

1 **BILL LOCKYER**  
 Attorney General of the State of California  
 2 **MARY E. HACKENBRACHT**  
 Senior Assistant Attorney General  
 3 **LINDA L. BERG**  
 Deputy Attorney General  
 4 State Bar No. 194667  
 1300 I Street  
 5 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 6 Telephone: (916) 327-5484  
 Fax: (916) 327-2319  
 7 Attorneys for Defendant, Secretary of the  
 California Department Food and Agriculture

8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

13 **STRAUS FAMILY CREAMERY, INC. and**  
**HORIZON ORGANIC HOLDING**  
**CORPORATION,**  
 14  
 15 Plaintiffs,  
 16  
 17 **v.**  
**WILLIAM LYONS, JR., in his official capacity as**  
**Secretary of the California Department of Food**  
**and Agriculture,**  
 18  
 19 Defendant.

Case No.: C 02 1996 BZ  
**DEFENDANT'S**  
**MEMORANDUM OF POINTS**  
**AND AUTHORITIES IN**  
**SUPPORT OF MOTION FOR**  
**SUMMARY JUDGMENT OR**  
**IN THE ALTERNATIVE,**  
**SUMMARY ADJUDICATION**  
 Date: July 30, 2003  
 Time: 10:00 a.m.  
 Department: G  
 Judge: Magistrate Judge Bernard  
 Zimmerman

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## I. INTRODUCTION

1  
2 The dairy industry has long been subject to boom and bust cycles. Although cows produce  
3 year-round, their productivity varies with the seasons, and times of peak productivity do not  
4 coincide with peak demand. Because milk is highly perishable and cannot simply be stored  
5 until demand picks up, the industry is subject to boom and bust cycles that threaten the supply  
6 of milk. To protect the supply of milk to the consumer, the California Legislature has enacted  
7 a complex set of laws that are designed to stabilize the dairy industry. These laws achieve this  
8 end by setting minimum prices for milk based on the end-use of that milk, and creating a pool  
9 that equalizes the minimum prices paid to the producers. The Legislature has directed that all  
10 market milk<sup>1/2</sup> produced in California is subject to these laws. Because organic milk is market  
11 milk, it is subject to the pooling and pricing laws.

12 Plaintiffs in this action are Straus Family Creamery, Inc. (Straus) and Horizon Organic  
13 Holding Corporation (Horizon). Straus is a processor of organic milk, and Horizon purchases  
14 organic milk and contracts with others to process that milk. Both have an obligation to  
15 participate in the pool, and challenge the State's right to include organic milk in the pooling  
16 and pricing laws. Plaintiffs argue that it is more expensive to produce organic milk than  
17 conventional milk, and contend that because the minimum prices set by the pooling and pricing  
18 laws do not reflect the actual cost of production of organic milk, the application of these laws  
19 to organic milk violates their equal protection and substantive due process rights. But organic  
20 milk is not alone in commanding higher than minimum prices. Conventional milk processors  
21 pay higher prices for milk with particular desirable attributes, such as milk with higher protein  
22 values, lower bacteria counts for higher quality milk, or milk produced without the growth  
23 hormone rBST. Thus, as with organic processors, these conventional processors purchase raw  
24 milk at prices that are above the minimum prices, but are still required to comply with the  
25

26 1. Market milk is milk that meets particular health and safety standards, and may therefore be used  
27 for fluid milk. Cal. Food & Agric. Code, §§ 32510, 35781-35788. Milk that does not meet these  
28 standards may not be sold as fluid milk, and must instead be used in manufactured products, such as butter  
and cheese. §§ 32509, 32516.5, 36301-36302.

1 obligations of the pooling and pricing laws.

2 Plaintiffs' equal protection and due process claims fail as a matter of law. Even if it is  
3 more expensive to produce organic milk, summary judgment should be entered in favor of the  
4 Secretary because there is a rational basis for including organic milk in the pooling and pricing  
5 laws. The Legislature could have reasonably concluded that subjecting all market milk,  
6 including organic milk, to the pooling and pricing laws increases the stability of California's  
7 equalization pool, that creating exemptions based on the costs of production of premium  
8 products would lead to the breakdown of the pool, and that exempting organic milk from the  
9 pool would give an unfair advantage to producers and processors of organic milk.

10 Additionally, Plaintiffs raise a procedural due process claim based on the rejection of a  
11 proposed amendment to the Pooling Plan for Market Milk (Pooling Plan). On October 23,  
12 2000, Petitioners filed a petition asking the Secretary to amend the Pooling Plan to decrease  
13 the pool obligation for processors of organic milk. The Secretary declined to amend the  
14 Pooling Plan and Plaintiffs raise a procedural due process challenge to this determination. But  
15 this does not give rise to a claim for procedural due process. To prevail on a procedural due  
16 process claim, a plaintiff must establish that he was deprived of a protected property interest.  
17 But citizens have no protected property right in having a statute or regulation amended.  
18 Additionally, in the context of a quasi-legislative activity, such as amending a regulation like  
19 the Pooling Plan, all that due process requires is that the legislative body perform its  
20 responsibilities in the normal manner prescribed by law. Because the Secretary complied with  
21 the proper legislative procedures in making the determination that the Pooling Plan should not  
22 be amended, there is no procedural due process violation.

23 At its core, the Plaintiffs' complaint is that they believe that California's pooling and  
24 pricing laws should differentiate between organic market milk and market milk that is not  
25 organic. But this type of line drawing is for the Legislature, not for the courts. Plaintiffs  
26 cannot establish that their inclusion in the pooling and pricing laws violates their Constitutional  
27 rights. Therefore, summary judgment should be granted in favor of the Secretary.

28

## II. BACKGROUND

### A. The Pooling and Pricing Laws Stabilize the Milk Market in California by Regulating All Market Milk Produced in California.

California's pooling and pricing laws apply to all market milk produced in California. Cal. Food & Agr. Code, § 61828.<sup>2/</sup> Because the organic milk that is the subject of this action is market milk, it is subject to these laws. In this action Plaintiffs allege that, because organic milk is more expensive to produce, it should not be included in California's pooling and pricing laws. Pooling and pricing programs that are analogous to California's program have long been a common feature in milk regulations in this country. *See, e.g., Nebbia v. New York*, 291 U.S. 502, 516 (1934) (finding that New York laws setting minimum prices for milk are constitutional); *United States v. Rock Royal Co-Op, Inc.*, 307 U.S. 533, 549 (1939) (*Rock Royal*) (finding that federal pooling and pricing laws are constitutional). To the Secretary's knowledge, all of these programs regulate organic milk as well as conventional milk. (*See* Horizon Annual Report 2002 at 7 (stating that organic milk is subject to the federal pooling and pricing laws)). Although organic processors have challenged the constitutionality of their inclusion in these laws, to date, these challenges have failed. *The Organic Cow, LLC v. The Northeast Dairy Compact Commission*, 46 F. Supp. 2d 298, 306 (D. Vt. 1999).

California's pooling and pricing laws are the product of two acts, the Milk Stabilization Act and the Gonsalves Milk Pooling Act of 1967. The Milk Stabilization Act sets minimum prices for raw milk. Because the value of milk depends upon how it is used, the statute requires the Secretary to set five different minimum prices for milk, depending on the end-use of that milk (the classified price). Thus, milk used for cheese, butter, yogurt and fluid milk will have different classified prices. The Secretary sets these prices through complex formulas based, in part, on the value of dairy commodities. Because Class 1 milk, milk that is sold as fluid milk, has the highest value in the marketplace, Class 1 milk is typically given the highest minimum price. Other products produced from milk, such as butter or cheese, are

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2. All statutory references are to the Food and Agricultural Code, unless otherwise indicated.

1 priced in accordance with indicators of the market value of those products. (Joint Statement  
2 of Undisputed Facts (Joint Stm.) Nos. 2, 3)

3 This tiered pricing structure, implemented under the Milk Stabilization Act, led to  
4 destabilizing competition for Class 1 contracts resulting in unfair business practices on the  
5 part of some processors. To resolve this problem and stabilize the milk market, the California  
6 legislature passed the Gonsalves Milk Pooling Act, which allowed the Secretary to implement  
7 a milk pooling plan.<sup>3/</sup> (Joint Stm. No. 4; *see also* § 62704.) The Pooling Plan for Market  
8 Milk (Pooling Plan) created a pricing system that severed the direct connection between the  
9 minimum price available to a producer and the use made of the milk by the processor. The  
10 Pooling Plan accomplished this by pooling the classified minimum prices that processors were  
11 required to pay for raw milk, deriving minimum producer prices based on the state-wide  
12 average of all classified prices (the minimum pool price), and then requiring California  
13 processors to pay individual producers the pool price, at a minimum. (Joint Stm. No. 6.)

14 Although the pool equalizes the minimum payments due to producers, it is administered  
15 through the processors. Under the Pooling Plan, California processors must account to the  
16 pool for raw milk purchases based on the use of raw milk, and the classified minimum price  
17 for that use (the Pool Obligation). Pooling Plan §§ 900, 1003, 1004. The funds accounted for  
18 are then equalized and distributed to the processors to pay to their producers. § 62702. For  
19 example, a processor operating a Class 1 plant that processes all of the raw milk purchased for  
20 use as fluid milk, must account to the pool in an amount determined by multiplying the total  
21 pounds of raw milk purchased by the Class 1 price. This price is known as the “in-plant blend  
22 price.” The Class 1 plant must pay its producers the minimum pool price, but may pay its  
23 producers in excess of that amount. Because the Class 1 price is normally higher than the  
24 minimum pool price, the Class 1 plant will owe the pool the difference between the Class 1  
25 price and a credit equal to the total minimum pool price that it was required to pay to its  
26

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27 3. The current pooling plan is available at Pooling Plan for Market Milk,  
28 [http://www.cdfa.ca.gov/mkt/mp/POOLPLAN\\_09-01.pdf](http://www.cdfa.ca.gov/mkt/mp/POOLPLAN_09-01.pdf).

1 producers. (Joint Stm. Nos. 5, 6.)

2 On the other hand, a plant that processes its raw milk purchased for cheese (Class 4b) will  
3 account to the pool in an amount determined by multiplying the total pounds of raw milk  
4 purchased for processing at the plant by the Class 4b prices. As with all plants, the Class 4b  
5 plant is required to pay its producers at least the minimum pool price. If, as is normally the  
6 case, the total amount paid to producers is greater than the amount accounted to the pool at the  
7 Class 4b price, the pool will pay the Class 4b plant the difference between the amount the plant  
8 paid its producers and the Class 4b price.

9 Although this regulatory system requires all processors to pay their producers the  
10 minimum pool prices, it does not set a cap on the prices that a processor pays to its producers.  
11 It is common for California processors to pay above the minimum pool prices to their  
12 producers. For example, milk with a lower bacteria count will bring a higher price than milk  
13 that does not meet these standards. Additionally, given the growing market for dairy products  
14 that are produced without the use of artificial hormones, some conventional processors pay  
15 a premium for milk produced without the use of the growth hormone rBST. (Decl. of Hale,  
16 ¶ 5; Decl. of Ikari, ¶ 10.) Even though these processors pay more than the minimum prices  
17 for this milk, they are obligated to participate in the pool.

18 Including higher value milk in the pool is consistent with the purpose of the pooling and  
19 pricing laws. The Legislature did not intend that the minimum prices support production of  
20 premium products such as organic milk or milk produced without the use of the growth  
21 hormone rBST. Instead, the purpose of the pooling and pricing laws is to protect the  
22 consumer, not the producer or processor, by setting a minimum price that is adequate to ensure  
23 the continued supply of milk to the consumer at fair and reasonable prices. *See Golden*  
24 *Cheese Co. v. Voss*, 230 Cal. App. 3d 547, 553, 562 (1991); § 62062(b). Although the  
25 Secretary must consider the cost of production, among other factors, in setting these prices,  
26 the Secretary's role in setting these prices is not to ensure that individual producers will make  
27 a profit, but to ensure that "the people shall be able to purchase milk at the lowest price at  
28 which enough distributors operating with average efficiency will be able to do business at a

1 reasonable profit so as to supply the demand of all the consumers in the marketing area.”  
2 *Golden Cheese*, 230 Cal. App. 3d at 553, 561. If, in fact, the Secretary did set minimum  
3 prices at a level necessary to support less efficient producers or producers of a premium  
4 product, it would defeat the purpose of ensuring that affordable market milk is available to the  
5 consumer.

## 6 B. The Growth of the Market for Organically Produced Milk

7 The 1990s saw the development of a new niche market, organic dairy products. Organic  
8 milk is not a different product from conventional milk. Instead, it is the same product, but was  
9 produced in accordance with a specified production system. (See Joint Stm. No. 12.) Organic  
10 milk can be freely sold as conventional milk. (See Joint Stm. No. 17; see also Decl. of Ikari,  
11 ¶ 9.) Plaintiffs concede that the organic milk that they process is “market milk,” as defined  
12 by the California Legislature and, as such, is subject to California’s pooling and pricing laws.  
13 (Joint Stm. No. 11.) But they argue that, because they have elected to process milk that may  
14 be more expensive to produce, they should not be subject to California’s pooling and pricing  
15 laws.

### 16 1. *The Emergence of a New Market*

17 The marketing of organic foods is still in its infancy, but it is already big business. Both  
18 the federal and California organic foods acts, which created state and national standards for  
19 organic foods, were passed in 1990. (Joint Stm. No. 8.) Just six years later, in 1996, organic  
20 food sales in the United States had grown to an estimated \$3.6 billion annually. From 1996  
21 to 2002, the sales of organic foods have grown to an estimated \$9.5 billion, which represents  
22 a compound growth rate of 21.5% annually. (Declaration of Linda Berg (Decl. of Berg), Ex.  
23 B, Horizon Annual Report 2002 at i1.) The Organic Trade Association estimated that sales of  
24 organic foods will continue to grow at a compound rate of 20%, as compared to a growth rate  
25 of 1 to 2 percent for the food industry overall. (*Id.* at i8.)

26 The participants in organic market are not limited to small family farms. This market has  
27 already caught the attention of the well-known conventional food processors. General Mills  
28 Corporation and H.J. Heinz Company have made significant investments in organic product

1 lines. (*Id.* at 8.) The growing market for organic dairy products has also caught the attention  
2 of national food processors. Dean Foods has purchased a minority interest in Horizon,  
3 acquiring preemptive rights, as well as rights of first negotiation to purchase Horizon should  
4 there be a sale of that company. (*Id.* at 12.)

## 5 2. *The Plaintiffs' Emergence in the Dairy Industry*

6 Horizon and Straus, the Plaintiffs in this action, have both benefitted from the growth and  
7 changes that have taken place in the marketing of organic foods products. In the past Horizon  
8 has both produced and processed organic milk. Due to the increasing availability of organic  
9 milk, Horizon is divesting itself of its dairies. (Decl. of Berg, Ex. B, Horizon Annual Report  
10 2002 at 6.) It now purchases organic milk, and either processes that milk, or contracts with  
11 local processors to process milk on its behalf.

12 In the approximately ten years since it marketed its first organic products, Horizon  
13 markets the leading brand of certified organic foods in the United States. (*Id.* at Corporate  
14 Profile.) It the first company to offer branded organic milk on a nationwide basis, and now  
15 sells the leading brand of certified organic milk in both the United States and the United  
16 Kingdom. (*Id.* at Corporate Profile and 1.) Its net sales have increased rapidly, from \$49.3  
17 million in 1998 to \$187.5 million in 2002. (*Id.* at Corporate Profile.)

18 Horizon's sales are not limited to fluid milk. Its first product, introduced in 1992, was  
19 yogurt. It introduced its organic cheese in 1996, and now markets Cheddar, Monterey Jack,  
20 Colby, Mozzarella and Parmesan. Additionally, Horizon markets butter, sour cream, cottage  
21 cheese, cream cheese, whipping cream, organic juices, and has just introduced a line of organic  
22 pudding. (*Id.* at 1.) Horizon's sales of these products are not confined to a niche market of  
23 people who shop at health food stores. It now sells its products at more than 20,000 retail  
24 locations in the United States. Horizon's dairy products are sold in such mainstream retail  
25 outlets as A&P, Albertson's, Kroger, Safeway, Target and Wal-Mart. *Id.* Horizon is optimistic  
26 about future growth. In particular, Horizon's believes that the adoption of the National Organic  
27 Standards will provide a further impetus to the market for organic foods. Horizon claims to  
28 be instrumental in the passage of these standards. (*Id.* at i8.) Horizon believes that these

1 standards will increase acceptance and visibility of all Horizon's organic products. (*Id.* at i2.)

2 In contrast with Horizon, Plaintiff Straus, a processor, is a family owned-corporation,  
3 owned by Albert Straus (Straus) and his wife. (Decl. of Berg, Ex. D, Deposition of Albert  
4 Straus (Depo. of Straus) at 40:19-23.) Straus's transition into organic arises, in part, out of  
5 his experiences with his family dairy farm, Blakes Landing Farms (Blakes Landing). Believing  
6 that the future was dim for Blakes Landing if it remained conventional, in 1992 Mr. Straus  
7 decided to transition Blakes Landing to an organic dairy, where he could demand a higher price  
8 on the milk he produced. (Decl. of Berg, Ex. D, Depo. of Straus at 13:13-20.) In conjunction  
9 with transitioning the dairy to organic production, Mr. Straus started an organic processing  
10 plant, Straus Family Creamery, to process the milk that Blakes Landing produced. (Decl. of  
11 Berg, Ex. D, Depo. of Straus at 13:13-25.) In 1994, Straus Family Creamery began its  
12 operations. (Decl. of Berg, Ex. D, Depo. of Straus at 17:7-8.)

13 At first, Straus's operations centered around fluid milk products, which by their perishable  
14 nature must be sold within the region. But Straus has been developing other products that it  
15 is beginning to market nationally, including butter, yogurt and cheese. (Decl. of Berg, Ex. D,  
16 Depo. of Straus at 28:25-29:20.) Mr. Straus has just fulfilled a life-long dream by adding an  
17 ice cream processing facility to his plant. (Decl. of Berg, Ex. D, Depo. of Straus at 23:20-  
18 24:6.) Although Mr. Straus is not yet aware of the full capacity of his ice cream processing  
19 facilities, he envisions a nationwide market for his organic ice cream. (Decl. of Berg, Ex. D,  
20 Depo. of Straus at 25:14-26:2.)

### 21 3. *The Growth in Production of Raw Organic Milk*

22 The growth in sales of organic dairy products is dependent upon the growth of production  
23 of organic milk. Estimates indicated that the domestic organic dairy market is growing at a  
24 rate of approximately 20% a year, and the market in the United Kingdom is growing at a rate  
25 of 40% a year. (Decl. of Berg, Ex. C, Horizon Annual Report 2001 at 2.) With the growth of  
26 this market, the economics of organic production are changing and are likely to continue to  
27 change. The number of dairies producing organic milk has grown over the past ten years, and  
28 additional dairies are currently transitioning to organic. (Decl. of Berg, Ex. D, Depo. of Straus

1 36:4-38:9, Ex. E, Deposition of Joe Tresch (Depo. of Tresch) at 54:4-20; 55:18-6; see also  
2 Ex B, Horizon Annual Report 2002, at 6.) This increase in production raises the possibility that  
3 there could be a surplus of organic milk, which would be sold into the conventional markets  
4 at lower prices, thereby lowering the price of all milk and affecting the stability of dairy  
5 market. Indeed, Horizon has already reported that the supply of organic milk in England has  
6 grown faster than demand and lowered the prices of that milk. (Joint Stm. No. 18.)

### 7 III. LEGAL DISCUSSION

#### 8 A. Standard of Review

9 A motion for summary judgment is properly granted on a showing that there is “no genuine  
10 issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed.  
11 R. Civ. P. 56(c). Plaintiffs challenge the classification of organic milk as market milk subject  
12 to the pooling and pricing laws, alleging that the Legislature’s failure to exempt them from the  
13 State’s pooling and pricing laws violates their equal protection and substantive due process  
14 rights. Because organic milk processors are not a suspect class, and engaging in the business  
15 of processing milk is not a fundamental right, these claims are subject to the same test, the  
16 rational basis test. *Country Classic Dairies, Inc. v. State of Mont., Dept. of Commerce Milk*  
17 *Control Bureau*, 847 F.2d 593, 596 (1988). For purposes of a motion for summary judgment,  
18 the standard for applying the rational basis test under the Equal Protection and Due Process  
19 Clauses is the same. *Gamble v. City of Escondido*, 104 F.3d 300, 307 (1997). Under this  
20 standard, the Court need only determine whether the Legislature had a conceivable basis for  
21 the law. To defeat summary judgment, the moving party must negate every possible basis for  
22 the law, and “establish that the facts on which the legislature may have relied could not  
23 reasonably have been conceived as true by the governmental decisionmaker.” *Dittman v.*  
24 *California*, 191 F.3d 1020, 1031 (9th Cir.1999); *Aleman v. Glickman*, 217 F.3d 1191, 1200  
25 (9th Cir. 2000).

26 Similarly, Plaintiffs carry the burden of proof on their procedural due process challenge  
27 to the Secretary’s decision not to amend the Pooling Plan. This is a quasi-legislative decision  
28 to which traditional procedural due process rules, such as the requirement of notice and an

1 opportunity to be heard, do not apply. Instead, “[w]hen the action complained of is legislative  
2 in nature, due process is satisfied when the legislative body performs its responsibilities in the  
3 normal manner prescribed by law.” *Halverson v. Skagit County*, 42 F.3d 1257, 1260 (9th Cir.  
4 1994). Therefore, summary judgment must be granted in favor of the Secretary in the absence  
5 of a showing that he failed to perform his responsibilities in the normal manner prescribed by  
6 law.

7  
8 B. Plaintiffs’ Equal Protection and Substantive Due Process Claims Fail Because the  
9 Pooling and Pricing Laws Do Not Discriminate and There is a Rational Basis for  
10 Including All Milk, Whether or Not Organic, in California’s Pooling and Pricing  
11 Laws.

12 The California Legislature has provided that *all* market milk is subject to the state’s  
13 pooling and pricing laws. § 61828. Market milk includes organic milk. (Joint Stm. No. 11.)  
14 Although the pooling and pricing laws were enacted before the passage of the California  
15 Organic Food Act of 1990 and the National Organic Program, effective October 2002, the  
16 Legislature has not amended the pooling and pricing laws to exempt organic milk. Further,  
17 there is no question but that the Legislature is aware that organic milk is included in  
18 California’s pooling and pricing laws. An Assembly Committee on Agriculture Bill Analysis  
19 regarding a bill designed to prevent seepage from the pool, stated that “[t]here are other issue  
20 being raised in the California Legislature regarding milk pooling and pricing standards:  
21 [including] the removal of organic milk from the pool.” Assembly Committee on Agriculture,  
22 May 29, 1999 Bill Analysis, AB 1470, [http://www.leginfo.  
23 ca.gov/pub/99-00/bill/asm/ab\\_1451-1500/ab\\_1470\\_cfa\\_19990520\\_102956\\_asm\\_comm.  
24 html](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1451-1500/ab_1470_cfa_19990520_102956_asm_comm.html). Additionally, Senator Burton has contacted Straus’s lobbyist requesting language for a  
25 potential exemption of organic milk. (See Joint Stm. No. 9.) But the Legislature has not  
26 amended the statute to create an exemption. Therefore, consistent with the governing statutes,  
27 the Secretary applies these regulations to all market milk, including organic market milk.

28 Plaintiffs challenge this inclusion of organic milk in the pooling and pricing laws as  
29 violative of the Equal Protection and Due Process Clauses of the federal and State  
30 Constitutions. Plaintiffs base these claims on the uncontested, but irrelevant, contention that

1 the monetary costs associated with the production of organic milk have historically been  
2 higher than the costs for conventional milk. In their equal protection claim, Plaintiffs allege  
3 that their equal protection rights are violated because the minimum prices and pool obligations  
4 are calculated without regard to the cost of producing organic milk. They also allege that the  
5 pooling and pricing laws discriminate against them by forcing organic producers pool to their  
6 revenues with conventional producers. In their substantive due process claim, plaintiffs allege  
7 that their constitutional rights are violated because the Pooling Plan fails to account for  
8 increased costs of production associated with organic milk. These claims fail because the  
9 pooling and pricing laws do not discriminate and because there is a rational basis for including  
10 all market milk within the scope of the pooling and pricing laws.

11  
12 1. *Plaintiffs' Equal Protection Claims Fail Because the Pooling and Pricing  
13 Laws Do Not Discriminate, But Instead Treat Organic Milk in the Same  
14 Manner as All Milk.*

15 Plaintiffs must establish two things to prevail on their equal protections claims. First,  
16 they must show that the pooling and pricing laws discriminate between groups or persons. *See*  
17 *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 152 (1963); *see also*  
18 *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 878 (1984). Second, if the laws do  
19 discriminate, they must show that there is no rational basis for the classification. (*See, infra*,  
20 section 2.B.1, 2.B.2.) Plaintiffs' claims fail on both counts. As discussed below, because  
21 there is a rational basis for including organic milk in the pooling and pricing laws, Plaintiffs'  
22 equal protection claim fails.

23 But Plaintiffs' equal protection claim, both under federal and state law, fails for the  
24 additional reason that the pooling and pricing laws do not discriminate against producers and  
25 processors of organic milk. Instead, under the pooling and pricing laws all producers and  
26 processors of market milk are treated equally, and producers and processors of conventional  
27 milk have exactly the same obligations as producers and processors of organic milk. (Joint  
28 Statement, Nos. 1-7, 13-15, 25.)

2. *The Secretary Is Entitled to Summary Judgment Unless Plaintiffs Can Negate*

1                   *Every Conceivable Basis That Might Support the Law.*

2           Even if the pooling and pricing laws did discriminate, Plaintiffs' equal protection claims  
3 fail because the Legislature had a rational basis for including the all producers and processors  
4 of market milk in the class that is subject to the State's pooling and pricing laws.<sup>4/</sup> Similarly,  
5 because there is a rational basis for applying these laws to all producers and processors of  
6 market milk, Plaintiffs' substantive due process claims fail. For purposes of these claims,  
7 milk processors such as Plaintiffs are not a suspect class, and the right to engage in the milk  
8 processing business is not a fundamental right. Therefore, Plaintiffs equal protection and  
9 procedural due process claims are subject to rational basis review. *Country Classic Dairies,*  
10 *Inc.*, 847 F.2d at 596. Because the equal protection claim and the substantive due process  
11 claim are both subject to rational basis review, for purposes of summary judgment the standard  
12 for both is the same. *Gamble*, 104 F.3d at 307.

13           An economic regulation, such as the one at issue here, is accorded a strong presumption  
14 of validity. The law or regulation must be upheld "if there is a rational relationship between  
15 the disparity of treatment and some legitimate governmental purpose." *Aleman v. Glickman*,  
16 217 F.3d 1191, 1200 (9th Cir. 2000) (quoting *Heller v. Doe*, 509 U.S. at 319-20). When  
17 considering whether the Legislature had a rational basis for a law or regulation, the court must  
18 be careful not to judge the wisdom, logic or fairness of the legislative choices. *Heller v. Doe*,  
19 509 U.S. at 319. And a law does not fail merely because there is an imperfect fit between  
20 means and ends, is not made with mathematical nicety, or in practice it results in some  
21 inequality. *Heller*, 509 U.S. at 321 (quoting *Dandridge v. Williams*, 397 U.S. 471, 485  
22 (1970)).

23           A legislature need not actually articulate the purpose or rationale supporting the law or  
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25  
26           4. Plaintiffs bring their claims under both the Federal and State Constitutions. For purposes of  
27 review of economic regulations such as the one at issue here, both State and federal Courts apply the  
28 rational basis test to these claims. *Department of Developmental Services v. Ladd*, 224 Cal. App. 3d  
128, 139 (1990); *California Gillnetters Assn. v. Department of Fish & Game* 39 Cal. App. 4th 1145,  
1160-61 (1995); *Perkey v. Department of Motor Vehicles*, 42 Cal. 3d 185, 189 (1986).

1 regulation. *Aleman*, 217 F.3d at 1191 (quoting *Heller*, 509 U.S. at 320). Instead, under the  
2 rational basis test, the law or regulation withstands a challenge under rational basis “if there  
3 is any reasonably conceivable state of facts that could provide a rational basis for the  
4 classification.” *Id.* (quoting *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993)).  
5 “[W]e do not require that the government’s action actually advance its stated purposes, but  
6 merely look to see whether the government *could* have had a legitimate reason for acting as  
7 it did.” *Dittman v. California*, 191 F.3d at 1031 (emphasis in original). Accordingly, the  
8 burden on a challenger is a heavy one. To prevail, the party attacking the law must “negative  
9 every conceivable basis which might support it.” *Aleman*, 217 F.3d at 1191 (quoting *Heller*,  
10 509 U.S. at 320). In contrast “the government has no obligation to produce evidence to sustain  
11 the rationality of a statutory classification.” *Id.* If the rationality of the law or regulation is  
12 “at least fairly debatable,” the law must be upheld. *Halverson v. Skagit County*, 42 F.3d 1257,  
13 1262 (9th Cir. 1994).

14  
15 3. *The Legislature Could Rationally Conclude that All Milk, Including Organic  
Milk, Should Be Subject to California’s Pooling and Pricing Laws.*

16 The pooling and pricing laws are designed to protect the consumer, not the processor or  
17 producer. *Golden Cheese*, 230 Cal. App. 3d at 553, 562. They are not intended to ensure that  
18 the prices paid to producers cover the cost of production, nor to support the development of  
19 premium, but more costly categories of market milk, such as organic milk. Instead, the  
20 legislative intent is to ensure an adequate supply of fluid milk to the consumer at fair and  
21 reasonable prices. *Id.*; § 62062. It is reasonable for the California Legislature to believe that  
22 this end is best met by setting minimum prices sufficient to support the most efficient  
23 producers of market milk, allowing the producers of premium products to negotiate their  
24 prices in the marketplace.

25 Given that the pool stabilizes California’s dairy industry by pooling the various class  
26 prices set for *all* market milk and ensuring that the additional value associated with higher  
27 valued products is shared by all producers, the Legislature could reasonably believe “the  
28 integrity of the pool system is at risk whenever there is possible seepage from their ‘pooling

1 dam,” and that “[b]y taking any milk out of the pool system the pool suffers and therefore, all  
2 producers in the pool suffer.” Assembly Committee on Agriculture, May 29, 1999 Bill  
3 Analysis, AB 1470, [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_1451-1500/ab\\_1470\\_](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1451-1500/ab_1470_)  
4 [cfa\\_19990520\\_102956\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1451-1500/ab_1470_cfa_19990520_102956_asm_comm.html) (discussing potential effects seepage from the  
5 pool in an analysis relating to a bill proposed in 1999, relating to processing of market milk);  
6 *see also* August 20, 1996 Assembly Floor Analysis SB 1885,  
7 [http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb\\_1851-1900/sb\\_1885\\_](http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1851-1900/sb_1885_)  
8 [cfa\\_960820\\_205556\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1851-1900/sb_1885_cfa_960820_205556_asm_floor.html) (Noting in Assembly Floor Analysis of a bill designed  
9 to close a loophole in the pooling program that “[c]ontinued degradation of the pool could  
10 ultimately lead to the demise of the pooling system as established by California producers.”).  
11 The Legislature could therefore reasonably believe that the goal of stabilizing the milk industry  
12 is best accomplished by including all market milk in the pool, regardless of cost of production.

13       The Legislature could also reasonably believe that exempting organic producers from the  
14 pool is unwise and unfair in an industry where, as in California, many dairy processors pay  
15 premiums for raw milk. For example, processors may pay a premium for milk that has a low  
16 bacteria count. (*See* Decl. of Hale, ¶ 5; Decl. of Ikari, ¶ 10.) Additionally, some processors  
17 have started producing dairy products that are produced without the use of the growth hormone  
18 rBST. At least one processor who has transitioned to processing milk that is produced without  
19 the use of the growth hormone rBST believes that payment of a premium is necessary to  
20 guarantee that a steady supply of this milk can be obtained. (Decl. of Hale, ¶ 5.) Exempting  
21 organic processors from the pool raises a public policy dilemma regarding where to fairly  
22 draw a line of differentiation between organic dairy operations and conventional dairy  
23 operations that pay premiums for higher quality milk. Additionally, the Legislature could  
24 reasonably believe that, if organic milk were exempted from pooling and pricing laws, it would  
25 be hard to defend against future requests for similar treatment from processors that require  
26 high quality milk, for which a premium must be paid to guarantee a steady supply. (*See* Decl.  
27 of Hale, ¶¶ 5, 6.) The Legislature could reasonably believe that exempting raw milk, such as  
28 organic milk or milk produced without the use of the growth hormone rBST could ultimately

1 lead to the demise of the pooling system as established by California producers. Cf. August  
2 20, 1996, Assembly Floor Analysis SB 1885,  
3 [http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb\\_1851-1900/sb\\_](http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1851-1900/sb_1885_cfa_960820_205556_asm_floor.html)  
4 [1885\\_cfa\\_960820\\_205556\\_ asm\\_floor.html](http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1851-1900/sb_1885_cfa_960820_205556_asm_floor.html) (discussing the problems associated with  
5 exemptions from the equalization pool in other contexts).

6 The Legislature could also believe that, given the growth and profitability of organic dairy  
7 products, exempting this category from the pooling and pricing regulations could destabilize  
8 the pool in the future. The production of organic dairy products is in its infancy, but the  
9 Legislature could reasonably believe it is growing rapidly. The Legislature could reasonably  
10 believe that, if organic milk is exempted from the pooling and pricing laws, this increased  
11 production could have serious ramifications on the stability of these systems. Indeed,  
12 Horizon's Annual Report 2002, indicated that the United Kingdom is experiencing a glut of  
13 organic milk, driving down the price. (Joint Stm. No. 18.) When there is a surplus of organic  
14 milk, that milk will be sold on the conventional market. (Joint Stm. No. 17.) The Legislature  
15 could reasonably conclude that the same conditions could develop in California, resulting in  
16 unregulated organic milk being sold as conventional milk, thus destabilizing the pool.

17 Furthermore, the Legislature could reasonably believe that exempting organic milk from  
18 the pooling and pricing laws could create a regulatory incentive for processors to process  
19 organic rather than conventional milk. When a California processor purchases raw milk resold  
20 as fluid milk, the processor is required both to pay a guaranteed minimum pool price to the  
21 producers and to make a contribution of the difference between the Class 1 price and the pool price  
22 to the pool. (Joint Stm. Nos. 1-6.) If the processing of organic milk were exempted from  
23 California's pooling and pricing laws, there would be no pool obligation associated with the  
24 purchase of organic milk. This could create a regulatory advantage for organic producers and  
25 processors whenever the Class 1 price rose above the contract prices for organic milk. While  
26 processors of conventional Class 1 milk would be required to account to the pool for the Class  
27 1 price, processors of organic raw milk could purchase organic milk for the lower contract  
28 prices. Cf. *Hillside Dairy Inc. v. Lyons* \_\_ U.S. \_\_, 2003 WL 21310214, \*3 (2003) (finding

1 that California's pooling and pricing laws gave out of state producers a competitive advantage  
2 "because it did not require the processors to make any contribution to the equalization pool  
3 on such purchases."). This regulatory incentive could become a significant problem in the  
4 future. Currently, dairy prices are exceptionally low, and Class 1 prices are well below the  
5 contract prices that Plaintiffs pay for organic milk. But the Legislature could reasonably  
6 believe that prices could rise. Indeed, in the past three years, Class 1 prices have risen to above  
7 \$19.00 per hundredweight, making Plaintiffs' contract prices less than the Class 1 prices.  
8 (Joint Stm. No. 26.) Additionally, the Legislature could reasonably believe that, as organic  
9 milk production increases, the price of organic milk is likely to decline. (*Cf.* Joint Stm. No.  
10 18 (Horizon reported that, in the U.K., prices of organic milk have decreased due excess  
11 supply].) In either case, exempting organic milk from the pool would give producers of  
12 organic milk a competitive advantage, permitting them to undercut the minimum prices that  
13 must be paid to conventional producers and destabilizing the pool. This would not only result  
14 in unfairness, but could cause fluid milk processors to favor organic milk over conventional  
15 milk, relegating conventional milk to lower value uses, such as the manufacture of butter and  
16 cheese. This would defeat the purposes of the pool of the equalization of the value of Class  
17 1 contracts and could lead to the destabilization of the pooling and pricing system itself.

18  
19 Thus, there are several reasonably conceivable sets of facts that could provide a rational  
20 basis for applying the pooling and pricing laws to all market milk, including organic milk. As  
21 such, Plaintiffs' equal protection and substantive due process challenges fail, and the Secretary  
22 is entitled to summary judgment as to Plaintiffs' equal protection and due process claims.

23  
24 C. The Secretary Did Not Violate Plaintiffs' Procedural Due Process Rights When He Declined to Amend the Pooling Plan.

25 Plaintiffs' third claim for relief is for violation of procedural due process based on the  
26 Secretary's declining to amend the Pooling Plan to alter the pool obligations for processors  
27 of organic milk. Plaintiffs appear to base their claims on a condition that the Legislature  
28 imposed on the effectiveness of an amendment. When it enacted the Gonsalves Milk Pooling

1 Act, the Legislature provided that the Secretary could amend the statute if he determines that  
2 the amendment is necessary to effect the purposes of the statute. But, if the amendment is  
3 substantive, the amendment is only effective if it is approved by a majority of the producers  
4 of market milk. § 62717. In their complaint, Plaintiffs appear to be alleging that this provision  
5 violates their procedural due process rights because the effectiveness of the amendment is  
6 contingent on the approval of producers who have adverse interests. But “when the action  
7 complained of is legislative in nature, due process is satisfied when the legislative body  
8 performs its responsibilities in the normal manner prescribed by law.” *Halverson*, 42 F.3d at  
9 1260. Here, the Secretary followed the requisite procedures and concluded that the proposed  
10 amendment was not necessary to effectuate the purposes for which the pool was created.  
11 Therefore, his decision not to amend the statute was proper and Plaintiffs’ procedural due  
12 process claim fails.

13 1. *Plaintiffs’ Procedural Due Process Rights Were Not Violated Because They*  
14 *Have No Property Interest in the Amendment of a Regulation and the*  
*Secretary Complied with the Procedures Set Forth by the Legislature*

15 A procedural due process claim has two components. First, the plaintiff must establish  
16 the loss of a protected property interest. Second, the plaintiff must show that the procedural  
17 safeguards surrounding the loss were inadequate. *Sierra Lake Reserve v. City of Rocklin*, 938  
18 F.2d 951, 957 (9th Cir. 1991), *vacated*, 56 U.S. 802, *on remand*, 987 F.2d 662 (9th Cir.  
19 1993) Here, neither component can be established.

20 First, Plaintiffs cannot establish that the Secretary’s declining to amend the Pooling Plan  
21 deprived them of a protected property right that had vested under state law. *Id.* at 597. At the  
22 time that Plaintiffs’ petition to amend the Pooling Plan was before the Secretary, state law  
23 established that organic milk is subject to the pooling and pricing laws. Therefore, Plaintiffs  
24 had no vested property interest to lose. Furthermore, there is no protected property interest  
25 in having laws or regulations amended, or in property to which you might be entitled if laws or  
26 regulations are amended. Therefore, Plaintiffs cannot state a procedural due process claim.

27 Second, Plaintiffs’ claims fail because, in deciding not to amend the Pooling Plan, the  
28 Secretary performed his responsibilities in the normal manner prescribed by law. Both the

1 California and federal Constitutions protect the procedural due process rights of citizens. But  
2 the process that is due varies depending upon the nature of the government action. Where an  
3 act is adjudicatory, a litigant is entitled to traditional due process protections, such as notice  
4 and a constitutionally adequate opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319,  
5 344-35 (1976). But “[t]he adoption, amendment and vacation of rules and regulations are  
6 quasi-legislative acts.” *Motion Picture Studio Teachers & Welfare Workers v. Millan*, 51 Cal.  
7 App. 4th 1190, 1196 (1996). They differ from adjudications in that they are “normally  
8 directed primarily at ‘situations’ rather than particular persons.” *Willapoint Oysters v. Ewing*,  
9 174 F.2d 676, 693 (1949). Where an administrative decision addresses a rule of general  
10 applicability, rather than a rule directed at a small number of individuals “who were  
11 exceptionally affected, in each case upon individual grounds,” the rules regarding adjudications  
12 do not apply. *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 446  
13 (1915). Instead, “[i]ndividual protestations of injury are normally and necessarily lost in the  
14 quantum of the greater good.” *Willapoint Oysters*, 174 F.2d at 693. Accordingly, an  
15 individual’s procedural due process rights are greatly reduced in the context of this type of  
16 quasi-legislative activities. *Id.* at 693 (“However in legislation, or rule-making, there is no  
17 constitutional right to any hearing whatsoever”); *see also McKinny v. Board of Trustees*, 31  
18 Cal.3d 79, 99 (1982) (“[O]nly those governmental decisions which are *adjudicative* in nature  
19 are subject to procedural due process principles. *Legislative* action is not burdened by such  
20 requirements.”). In the context of a quasi-legislative action, the rule is that “due process is  
21 satisfied when the legislative body performs its responsibilities in the normal manner  
22 prescribed by law.” *Halverson*, 42 F.3d at 1260.

23 In their October 23, 2000 petition to the Secretary, Plaintiffs sought an amendment to  
24 the Pooling Plan to create an exemption for *all* processors and producers of organic milk.  
25 Their petition was not based on the specific costs of their individual producers, but was instead  
26 based on the argument all producers of organic milk faced higher costs. (Joint Stm. No. 27.)  
27 Thus, Plaintiffs were seeking a rule of general applicability relating to a particular situation,  
28 rather than seeking an adjudication of any individual injuries, and the hearing process on the

1 proposed amendment to the Pooling Plan were legislative rather than adjudicative. As such,  
2 if the legislative determination was properly made, there was no due process violation.

3           2.     *The Secretary Properly Determined that the Proposed Amendment*  
4                     *Was Not Necessary to Effectuate the Purposes of the Gonsalves Milk*  
5                     *Pooling Act.*

6           All that is required by procedural due process is that the Secretary make a proper  
7 legislative determination, “tested solely by the statute” providing the requisite procedures.  
8 *Willapoint Oysters*, 174 F.2d at 693. Here, Plaintiffs concede that the Secretary complied  
9 with the statutory requirements in the rulemaking process. (Joint Stm. No. 28) And they admit  
10 that the Secretary found and concluded that “[t]he current Milk Pooling Plan for Market Milk  
11 now in effect continue [sic] to be in conformity with the standards prescribed in and do tend  
12 to effectuate the purpose” of the Act. (Joint Stm. No. 31.)

13           Although they neither challenge the correctness of this conclusion nor contend that the  
14 Secretary’s determination was arbitrary, capricious or lacking in evidentiary support, Plaintiffs  
15 contend that their due process rights were violated because Section 62717 makes

16 //

17 the effectiveness of a substantive amendment dependent on a referendum of producers who  
18 Plaintiffs claim are their competitors. This contention fails on several grounds. First, it is  
19 well established that referendum provisions in statutes such as the Pooling Plan are  
20 constitutional. *Sequoia Orange Co. v. Yeutter*, 973 F.2d 752, 759 (9th Cir. 1992).

21           But even more importantly, in the present case, the referendum provision was irrelevant  
22 to the Secretary’s ultimate determination. The Secretary can only amend the Pooling Plan if  
23 he finds that the proposed amendment is necessary to effectuate the purposes of Chapters 3  
24 (beginning with section 62700) and 3.5 (beginning with section 62750) of the Food and  
25 Agricultural Code Interest in the Amendment of a Regulation (the Gonsalves Milk Pooling Act).  
26 § 62717. Because the Secretary found that the current Pooling Plan is in conformity with the  
27 Act, he necessarily found that the proposed amendment was not necessary to effectuate the  
28 purposes of the act. Therefore, the Secretary could not have amended the Pooling Plan,  
regardless of whether the amendment would have been approved by regulation.

1 Furthermore, the exemptions to the Pooling Plan are all created by the Legislature, and  
2 the Secretary reasonably found that there was no showing that he even had the power to make  
3 the proposed amendment. Before the Secretary can amend the Pooling Plan, he must find that  
4 the proposed amendment is within the powers of the Secretary. When it passed the Gonsalves  
5 Milk Pooling Act, the Legislature directed that *all* market milk be included in California's  
6 pooling and pricing laws. § 61828. The few exemptions to inclusion are statutory, not the  
7 product of regulation.<sup>5/</sup> The Legislature has subsequently considered whether to remove  
8 organic milk from the pool, but has not done so. Assembly Committee on Agriculture, Bill  
9 Analysis, AB 1470, [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_1451-1500/ab\\_1470\\_cfa\\_19990520\\_102956\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1451-1500/ab_1470_cfa_19990520_102956_asm_comm.html) Therefore, the Secretary  
10 reasonably questioned whether the power to create exemptions to the pooling and pricing laws  
11 was reserved to the Legislature and was not within the power of Secretary. (Deft's Sep. Stm.  
12 Nos. 1-3.)

14 Additionally, the Secretary found that the amendment was not necessary to effectuate  
15 the purposes of the Act Plaintiffs do not challenge the correctness of this determination. Nor  
16 could they. If they had, they would have to show that the action was arbitrary, capricious or  
17 entirely lacking in evidentiary support. *Corona-Norco Unified Sch. Dist. V. City of Corona*,  
18 17 Cal. App. 4th 985, 992 (1993). Here, however, the Secretary's determination was  
19 supported by the evidence.

20 First, the Secretary found that the proposed amendment actually conflicted with the  
21 Gonsalves Milk Pooling Act. The Act requires that the Secretary set equal raw product costs  
22 for all market milk. § 62720 ("no pooling plan shall result in an unequal raw product cost  
23 between distributors in the same marketing areas"). The proposed amendment would conflict  
24 with this statutory mandate because it would "result in unequal raw product costs between  
25 organic processors, and between organic and conventional processors of Class 1 products."

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27 5. When passing the Gonsalves Milk Pooling Act, the Legislature drew those lines, creating three  
28 exemptions for market milk—the exemption for a limited group of "producer-handlers," for producers of  
raw milk, and small producers. §§ 62708, 62708.5, 62722.

1 (Deft’s Sep. Stm. No. 4.)

2         Second, the proposed amendment conflicted with the statute in that “[t]he Gonsalves  
3 Milk Pooling Act and the Milk Pooling Plan for Market Milk provides for the equalization of  
4 the distribution of Class 1 usage among producers of this state.” (Deft’s Sep. Stm. No. 5  
5 (citing §§ 72702, 72702.1).) The Secretary found that, in contrast to the statutory mandate  
6 “[t]he petitioners proposal will do the opposite. Instead, the proposal will reduce the amount  
7 of Class 1 usage value that will be available to be distributed among all producers.” (Deft’s  
8 Sep. Stm. No. 5.) Because the Secretary found that the proposed amendment actually  
9 conflicted with the Pooling Plan’s authorizing statutes, the Secretary could not have amended  
10 the Plan as requested by Plaintiffs’ petition.

11         The Secretary also cites several policy reasons for finding that the Plaintiffs’ proposed  
12 amendment was not necessary to effectuate the purposes of the Act. For example, the  
13 Secretary explained that “[t]he Department is only obligated to set minimum class prices that  
14 the pool uses to establish minimum payments to producers.” (Deft’s Sep. Stm. No. 6.) That  
15 market forces have established the value of organic milk above the minimum prices does not  
16 compel amendment of the plan, because “[i]t has never been the practice or intent of the Pool  
17 to value payment to producers over *minimum* prices.” (Deft’s Sep. Stm. No. 6.) The Secretary  
18 also noted, that the proposal submitted by Petitioners would only benefit the organic  
19 processors, and had not provision that would ensure that there was any benefit to the consumer  
20 or organic producer.

21         Additionally, the Secretary stated that, even if he had the authority to enact the  
22 amendments, the proposed amendment was a substantive amendment and, by statute must be  
23 subject to a producer referendum. In light of the testimony before the panel, it was clear that  
24 the referendum would fail. (Decl. of Berg, Ex. A, (Statement of Determination and Order of  
25 the Secretary of Food and Agriculture Regarding Proposed Amendments to the Milk Pooling  
26 Plan for Market Milk that Address an Alternative Pool Obligation for Organic Milk used in  
27 Class One Products, at 10-11.) However, because the Secretary’s ultimate finding was that  
28 amending the Pooling Plan was not necessary to effectuate the purposes of the Gonsalves Milk

1 Pooling Act, the referendum provision is irrelevant to the Plaintiffs' procedural due process  
2 challenge. In light of that finding, the Secretary could not amend the Pooling Plan, regardless  
3 of whether it was supported by the industry.

4 In the context of a quasi-legislative procedure such as the rulemaking challenged here,  
5 the procedural requirements of the due process clause are met "when the legislative body  
6 performs its responsibilities in the normal manner prescribed by law." *Halverson*, 42 F.3d at  
7 1260. Here, the Secretary complied with all statutory procedures, considered all evidence  
8 presented, and determined that the proposed amendment was not necessary to effectuate the  
9 purposes of the Milk Pooling Act. (Decl. of Berg, Ex. A, (Statement of Determination and  
10 Order of the Secretary of Food and Agriculture Regarding Proposed Amendments to the Milk  
11 Pooling Plan for Market Milk that Address an Alternative Pool Obligation for Organic Milk  
12 used in Class One Products, at 12.) Therefore, the Secretary could not have amended the  
13 statute in accordance with Plaintiffs' petition. As such, the requirements of due process have  
14 been met, and Plaintiffs' claim for procedural due process fails.

#### 15 IV. CONCLUSION

16 Because there is a rational basis for having all market milk, including organic market  
17 milk, subject to California's pooling and pricing laws, Plaintiffs' equal protection and due  
18 process claims fail. Additionally, because the Secretary complied with the proper legislative  
19 procedures in making the determination that the Pooling Plan should not be amended,  
20 Plaintiffs' procedural due process claims fail. Because there is no constitutional violation,  
21 summary judgment is also appropriate as to Plaintiffs' claim for declaratory relief.  
22 Accordingly, for all of the foregoing reasons, the Secretary respectfully requests that this  
23 Court grant his motion for summary judgment.

24 Dated: June 25, 2003.

25 BILL LOCKYER, Attorney General

26  
27 LINDA BERG  
28 Deputy Attorney General

Attorneys for Defendants WILLIAM LYONS, JR.,  
in his official capacity as the Secretary of the  
California Department of Food & Agriculture

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