Approved: 2-8-00
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Steve Morris at 10:00 a.m. on February 7, 2000, in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Nancy Kippes, Committee Secretary

Conferees appearing before the committee:
Senator Harry Stephens
Ivan Wyatt, President, Kansas Farmers Union
Mike Schultz, Chairman, Kansas Cattlemen's Association
Representative Dennis McKinney
Mike Callicrate, Cattlemen's Legal Fund
Elroy Heim, Cattle Business
Bill Fuller, Associate Director, Public Policy Division, Kansas Farm Bureau
Mike Jensen, Executive Vice-President, Kansas Pork Producers Council
Dee Likes, Executive Vice President, Kansas Livestock Association

Others attending: (See Attached)

Senator Stephens made a motion to approve the minutes of the February 4, 2000 meeting as submitted. Senator Huelskamp seconded. The motion carried.

Hearing on: **SB 494 - concerning livestock, enacting the competitive livestock markets act; prohibiting certain acts and prescribing certain penalties**

Senator Harry Stephens testified in support of **SB 494**, which is intended to prohibit any packer of 5,000 animal units or more from engaging in unfair or deceptive practices (Attachment 1).

Ivan Wyatt, President, Kansas Farmers Union, provided testimony in support of **SB 494**, stating that when Kansas producers are denied the opportunity to receive fair market value for his or her production because of non-competitive activities in the market, all of Kansas economy suffers (Attachment 2).

Mike Schultz, Chairman, Kansas Cattlemen's Association, testified in support of **SB 494**, advising that this bill is to protect producers from what is happening to them by the monopolistic powers of the packing industry that exist today (Attachment 3).

Representative Dennis McKinney appeared in support of **SB 494** (Attachment 4). Representative McKinney stated that **SB 494** takes key portions of the Packers and Stockyards Act and places them in Kansas law. Such action would allow the Kansas Attorney General to enforce the same legal principles designed to preserve competition and discourage abuse of market power. Representative McKinney recommended an amendment to strike the words on page 2 of the bill "any live poultry dealer, stockyard owner, market agency, and dealer", inasmuch as he does not believe these businesses are a source of contention at this time.

Mike Callicrate, Cattlemen's Legal Fund, provided written testimony in support of **SB 494** (Attachment 5).

Elroy Heim testified in support of **SB 494**, stating that he would encourage this legislation to allow for treble damages, fines and payment of attornerys fees (Attachment 6).

Written testimony in support of **SB 494** was provided by Herman Schumacher, Herried, South Dakota (Attachment 7) and David Pfrang, a member of Kansas Livestock Association, (Attachment 8).

Bill Fuller, Associate Director, Public Policy Division, Kansas Farm Bureau, testified in opposition to **SB 494**, stating Kansas Farm Bureau members support other specific initiatives to help the farm economy (Attachment 9). Mr. Fuller advised the Farm Bureau membership has made numerous recommendations and is currently working with the U.S. Congress calling for action by the Departments of Justice and Agriculture.

Mike Jensen, Executive Vice-President, Kansas Pork Producers Council, provided testimony in opposition to **SB 494**, stating that this problem should be handled at the federal level (Attachment 10).

Dee Likes, Executive Vice President, Kansas Livestock Association, provided written testimony in opposition to **SB 494** inasmuch as charging the Kansas Attorney General with almost the exact same responsibilities as the Grain Inspection Packers and Stockyards Administration is already charged with enforcing will not provide benefit or change for the better the cattle marketing losses of recent years (Attachment 11).

Written testimony in opposition to **SB 494** was distributed from Farmland National Beef (Attachment 12) and U.S. Premium Beef (Attachment 13).

After questions from committee members, the hearing on **SB 494** was closed.

The next meeting will be February 8, 2000.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-7-00

NAME	REPRESENTING
Bill Fuller	Kansas Farm Bureau
Elroy Helm	Kansas Cattlemen Assoc
MIKE CALLICRATE	KANSAS CATTLEMENS
Ivan Wyatt	Kansas Farmers Union
Paul Johnson	PACK
Mary Fund	Ks Rural Center
Malcolm Moore	[redacted]
Joe Lieber	KS Co-op Council
Leslie Kaufman	KFB
DAN JOHNSON	HOUSE OF REPRESENTATIVES
Matt Wolters	Rep. Dahl & Schwartz
Allie Devine	KLA
Dee Likes	KLA
Tom Bruno	Allen & Assoc.
Jim Allen	Seaboard
John Garlinger	KDA
Rep Beasley	Attorney General's Office
Lee Masenthin	KDOC+H
GEORGE TEAGARDEN	KAHD

Dennis McKinney State Representative

STATE OF KANSAS
SENATE CHAMBER

HARRY STEPHENS
SENATOR, SEVENTEENTH DISTRICT
CHASE, COFFEY, GEARY, LYON, MARION,
MORRIS, OSAGE, WABAUNSEE COUNTIES
2602 MONTEREY DRIVE
EMPORIA, KANSAS 66801

COMMITTEE ASSIGNMENTS
RANKING MEMBER: AGRICULTURE
MEMBER: ASSESSMENTS & TAXATION
ENERGY & NATURAL RESOURCES
SPECIAL CLAIMS AGAINST THE STATE
TRANSPORTATION & TOURISM

STATE CAPITOL
TOPEKA, KANSAS 66612-1504
785-296-7384
(FAX) 785-296-0103
1-800-432-3924

The competitive livestock market act for Kansas is patterned after the Iowa and Minnesota acts. SB 494 is intended to prohibit any packer of 5,000 animal units or more to:

- Engage in unfair or deceptive practices
- Give unreasonable advantage to any person
- Prevent sale from any dealer for the purpose of restraining commerce
- Prevent transfers or sales for the purpose of creating a monopoly
- Engage in business with the effect of manipulating or controlling prices

The Kansas livestock market act would be enforced by the attorney general. Violators would be subject to fines or imprisonment. They also would be liable to the person injured for the full amount of damages.

Senate Agriculture
2-7-00
Attachment 1

FAX: 785-296-0103
Email: stephens@senate.state.ks.us

2-7-00

Statement
of
Ivan W. Wyatt Pres. Kansas Farmers Union
on
Senate Bill 494
Competitive Livestock Marketing Act

Mr. Chairman, Members of the Committee:
I am Ivan Wyatt, representing the members of the Kansas Farmers Union, we support the intention of SB-494 to restore in Kansas the more competitive marketing of livestock.

In the past three or four decades we have witnessed the steady erosion of what most people perceive as the core of our political- economic system of capitalism, a fully open and competitive marketing system. Their presumption is described in Webster's Dictionary defining capitalism as "the economic system in which all or most of the means of production and distribution, as land, factories, railroads, etc., are privately owned and operated for profit, originally under fully competitive conditions."

What we have been witnessing during the past few decades in American agriculture is reminiscent of the Soviet Union and their idea that giant, industrial agriculture run from the top with a single policy is the way to run a food and farming system.

We all I'm sure are aware of the failure such a system in Russia unraveling today.

That is why the purpose of Senate Bill No. 494 is important. I commend this committee for introducing this bill and holding hearings.

There have been far wiser persons than us who have declared, unlimited power breeds unlimited corruption.

Today, that is what we are witnessing today, virtually unlimited power in the so-called "market place", being directed from the top, by unfettered industrial agriculture giants.

If there is to be competition, there has to be fair and just rules that all parties understand, and abide by.

Today we have consumer protection rules, we have "Truth in Lending" rules etc., so everyone has the opportunity to understand the contracts, the rules, the obligation, the pay out, etc.

That is not the case today in production agriculture by the independent entrepreneur.

We should remember when a Kansas producer is denied the opportunity to receive fair market value for his or her production because of non-competitive activities in the market, all of the Kansas economy suffers.

Thank You!

Senate Agriculture
2-7-00
Attachment 2

Senate Agriculture Committee
Testimony from Mike Schultz
And Chairman of the
Kansas Cattlemen's Association
February 7, 2000

Mr. Chairman and members of the committee,

My name is Mike Schultz. I am from Brewster, Ks. Today is a very important day for the cattle producers. I am a Registered Angus and commercial cow/calf producer in northwest Kansas. I also co-founded the Kansas Cattlemen's Association. This association has membership that continues to grow every day. Why, might you ask? Because there is something WRONG in the livestock industry today.

This bill that you are hearing today is to protect producers from what is happening to them by the monopolistic powers of the packing industry that exist today. This bill would not need to be considered if the federal government would enforce the Packers and Stockyards act of 1921. This bill will eliminate the abusive power that the packers have on producers and our market today and I will give you the examples to back this up.

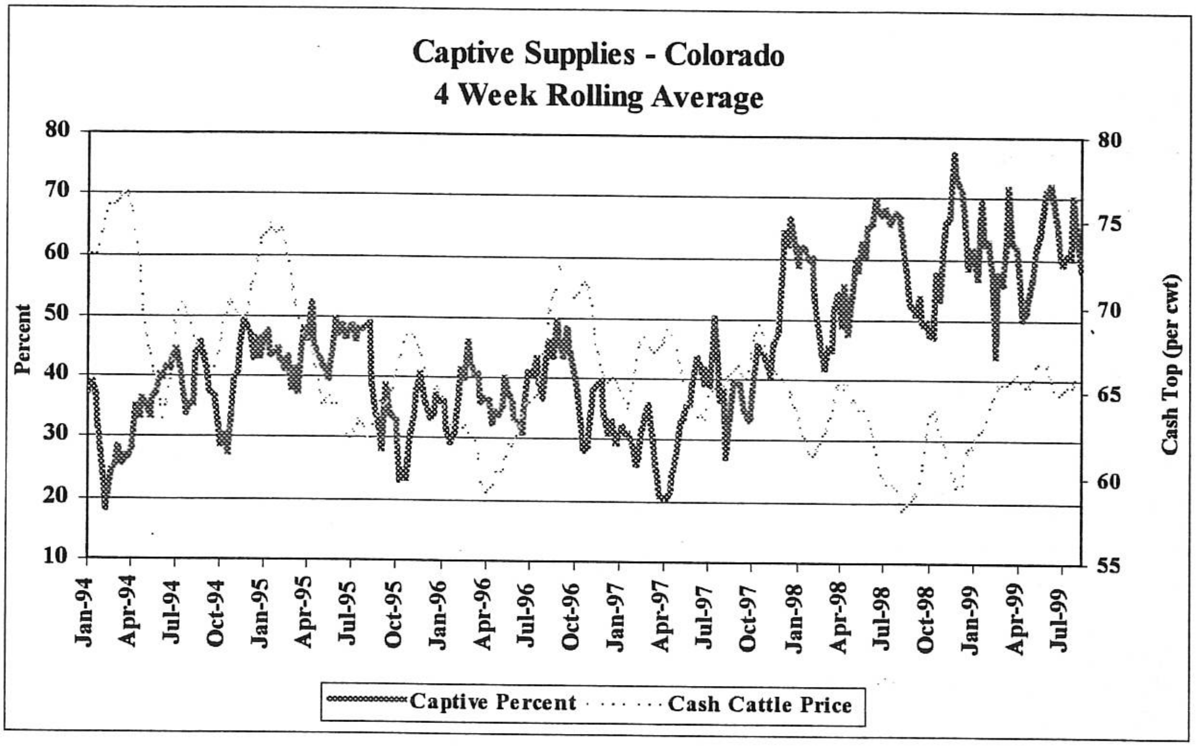
The first example to give is the Packer monopoly not wanting to send buyers to small farmer/feeders 500 hd and less. Producers bring up the fact that they cannot get buyers to their farms to sell the cattle therefore they are forced to feed in commercial yards. This has forced small farmer/feeders who would like to feed their own cattle and market their own grain and feed independently, out of this segment. If producers had more competition this would not happen.

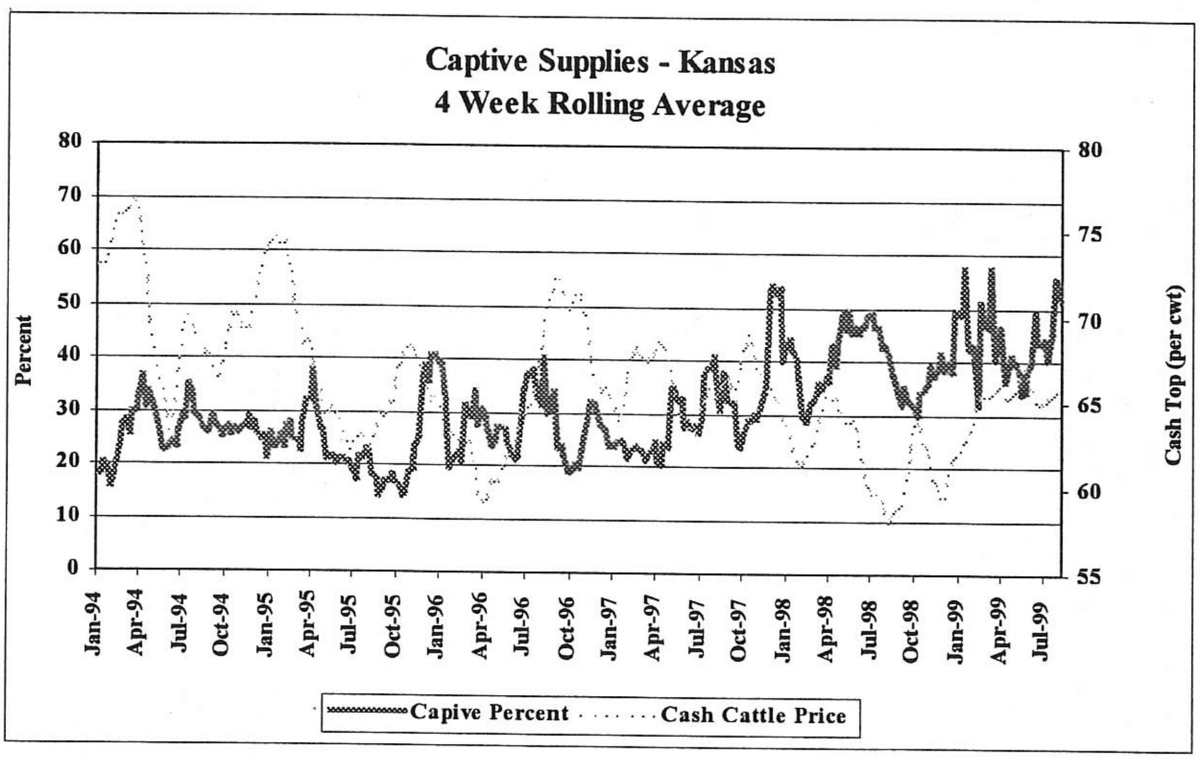
The second is the when I asked producers to come and testify today they were afraid of dire consequences in the form of retaliation by the packers if they stepped up to speak, THIS IS WRONG AND THEY NEED YOUR HELP.

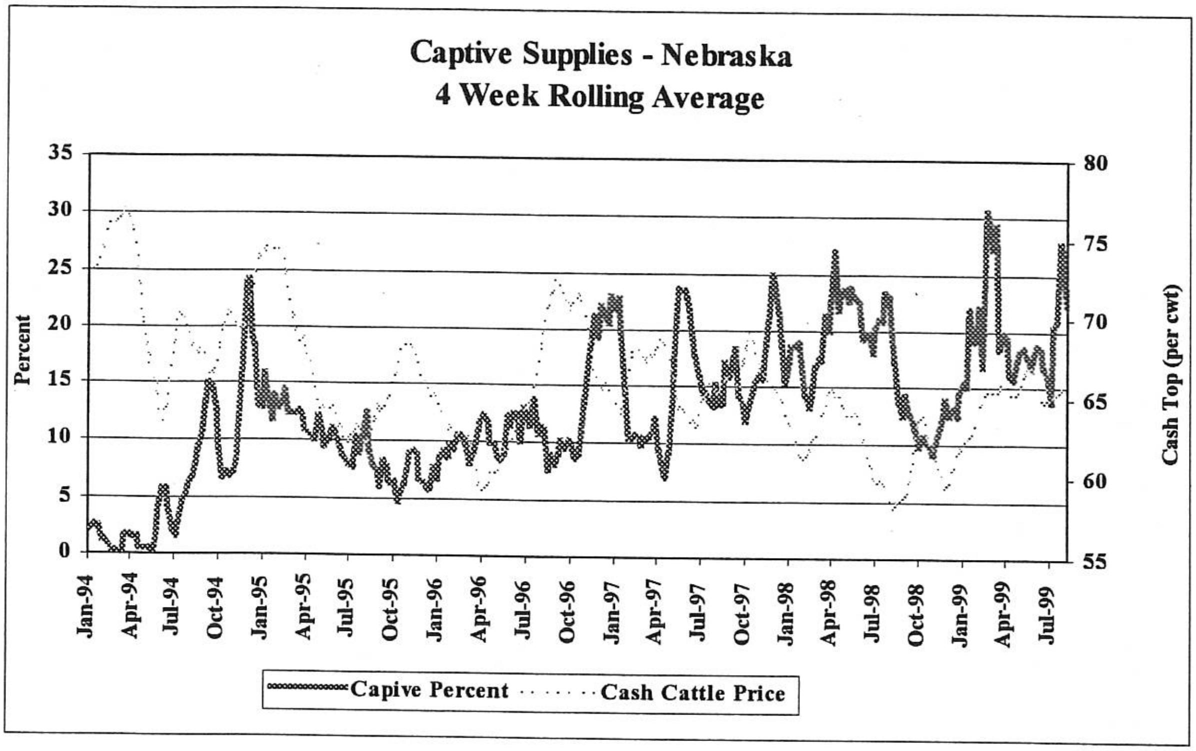
Another example is the selling of packer owned cattle (captive cattle) from one packer to another to the sum of 7500 HD. This disrupted the cash market to the tune of $6.00 lower. When packers have captive supplies KCA has shown that they do force the cash market lower. (See the Charts

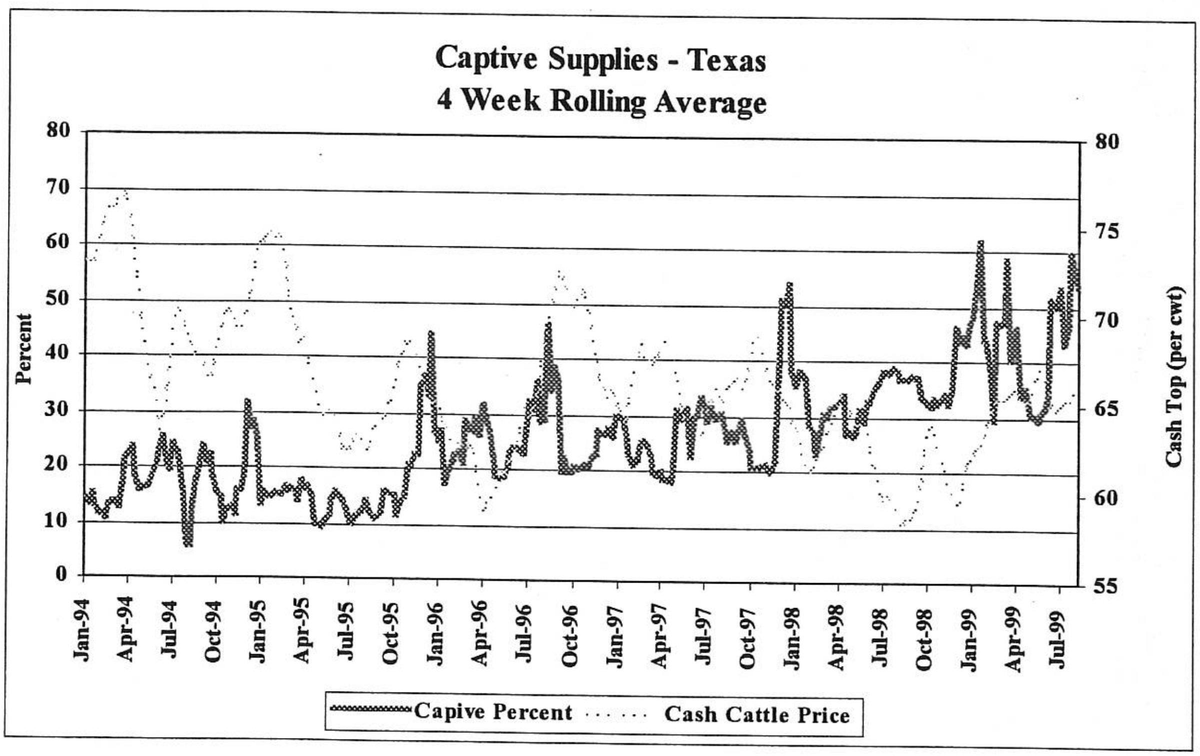
Senate Agriculture
2-7-00
Attachment 3

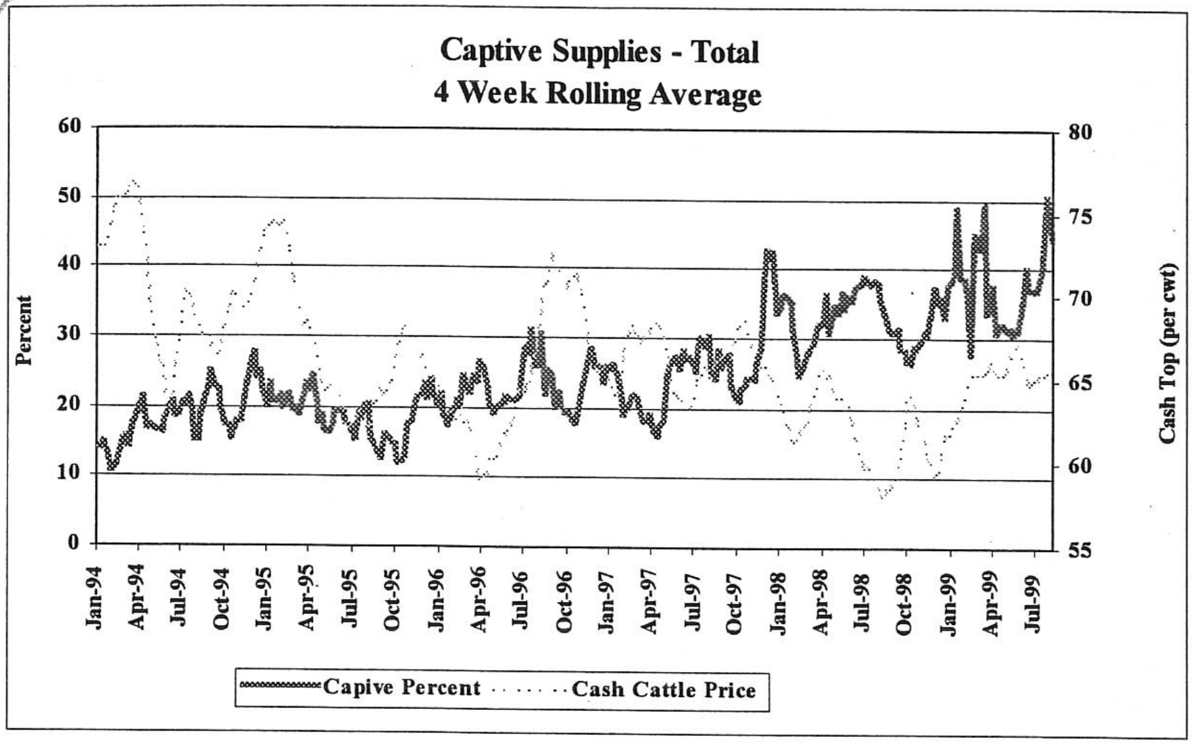
below) This is a very corrupt and abusive form of the packer monopolies market control.






Captive Supplies - Nebraska
4 Week Rolling Average
Percent
Cash Top (per cwt)
35
30
25
20
15
10
5
0
80
75
70
65
60
55
Jan-94
Apr-94
Jul-94
Oct-94
Jan-95
Apr-95
Jul-95
Oct-95
Jan-96
Apr-96
Jul-96
Oct-96
Jan-97
Apr-97
Jul-97
Oct-97
Jan-98
Apr-98
Jul-98
Oct-98
Jan-99
Apr-99
Jul-99
Capive Percent
Cash Cattle Price


Captive Supplies - Texas
4 Week Rolling Average
Percent
Cash Top (per cwt)
80
70
60
50
40
30
20
10
0
80
75
70
65
60
55
Jan-94
Apr-94
Jul-94
Oct-94
Jan-95
Apr-95
Jul-95
Oct-95
Jan-96
Apr-96
Jul-96
Oct-96
Jan-97
Apr-97
Jul-97
Oct-97
Jan-98
Apr-98
Jul-98
Oct-98
Jan-99
Apr-99
Jul-99
Capive Percent
Cash Cattle Price



As for the current cattle prices of feeders, producers like myself are concerned about the current spread between calf prices and the fat market. Yes, calf prices are higher right now but remember that corn and milo are at very low prices and producers are forced to run the grain through the cattle to try and make a profit. With today's prices for fats this is very risky with the cash market. Might the packers who buy feeder cattle be setting the stage for a collapse like the wreck that ruined the independent hog producer in 1998?

It is time for the producers and legislators together to put strict enforcement of the laws and profit back into rural Kansas. The passage of this bill will do just that. **We will not build a so-called wall around Kansas but we will restore a competitive and fair marketing system beneficial for all producers.** Please consider all of the information. This is a very serious hearing for independent cattle producers all over.

Thank you,
Mike Schultz Chairman
Kansas Cattlemen's Association

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

ASSISTANT MINORITY LEADER
COMMITTEE ASSIGNMENTS
TRANSPORTATION
CALENDAR & PRINTING
ENVIRONMENT
SELECT COMMITTEE ON
INFORMATION MANAGEMENT

February 7, 2000

Senate Agriculture Committee
Testimony in Support of SB 494

Thank you for the opportunity to testify in support of Senate Bill 494.

Some commentators contend that one of the most aggressive anti-trust laws is already on the books: The Packers and Stockyards Act. However, over the past year both USDA Secretary Glickman and Under Secretary Mike Dunn have made public statements that the Packers and Stockyards Administration lacks funding and staff to vigorously enforce the Packers and Stockyards Act.

In addition, at a meeting I attended, U.S. Senator Robert Kerry of Nebraska reported that the head of the Packers and Stockyards Administration had told a Senate Committee that he saw no problem with vertical integration in the cattle industry as it had been good for the chicken industry in Arkansas. This leads one to suspect that the Packers and Stockyards Administration may lack the will as well as the money needed to enforce the Act.

Therefore, S.B. 494 takes key portions of the Packers and Stockyards Act and places them in Kansas Law. Such action would allow the Kansas Attorney General to enforce the same legal principles designed to preserve competition and discourage abuse of market power.

The first evidence that a few packers have a large share of market power is the fact that some commercial feedlot managers have said they are afraid to speak out for fear of packer retaliation. The feed yard managers must have major packer buyers show up and give credible bids every week. If they do not, the feed yard has trouble selling cattle and loses customers. In a highly competitive market the feed yard manager can speak without fear as buyers will be available.

Secondly, as a beef producer I have heard stories from feed yard managers, cattle buyers, truck drivers, and others of anti-competitive practices by packers. But these people usually feel there is no one to turn to for help. They do not see the federal government as a source of help.

Senate Agriculture
2-7-00
Attachment 4

Testimony of Mike Callicrate
Concerning Competitive Livestock Markets,
Price Discovery and Meat Labeling
Nebraska Legislature
Ag Committee Hearing
February 2, 1999

Mr. Chairman, members of the Ag Committee, thank you for the opportunity to speak to you today. I have been involved in the cattle feeding business for twenty-five years. I have become increasingly concerned about the high levels of corporate concentration and the many related problems resulting to agricultural producers, rural communities and consumers. I represent the Cattlemen's Legal Fund, a group of cattle producers who have filed a lawsuit against IBP for what we believe are anti-competitive practices. Your Senate Bill 494 addressing anti-competitive practices by meat packers gives us hope and encouragement. We stand in full support.

"It has been brought to such a high degree of concentration that it is dominated by few men. The big packers, so called, stand between hundreds of thousands of producers on one hand and millions of consumers on the other. They have their fingers on the pulse of both the producing and consuming markets and are in such a position of strategic advantage they have unrestrained power to manipulate both markets to their own advantage and to the disadvantage of over 99 percent of the people of the country. Such power is too great, Mr. President, to repose in the hands of any men."

These words were spoken on the floor of the U.S. Senate by Wyoming Senator John B. Kendrick in 1921. The Packers and Stockyards Act was legislated to prevent a packer monopoly from occurring again.

Five packers controlled less than 50% of the market in 1921. Today four firms control 87% of beef packing. I believe one packer, IBP leads the way in setting the price and the other packers follow. At the same time as four firm packer concentration has increased from 36% twenty years ago to today's current high levels, consumers have continued to pay increasingly higher prices while producers have continued to receive less of the consumers' meat dollar. Today the cattle producer has lost approximately 20% of the consumer dollar or about $300 per head. This has occurred at the

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2-7-08
Attachment 5

same time the cattle producer has done more to produce a better product and the packer and retailer have done less.

Anti-competitive practices, evidenced by what IBP termed the "Death March", have eliminated competitors as well as producers. Independent packers have been regulated and predatory priced out of business. We are now left with a packing monopoly that is stealing from both producers and consumers as well as threatening not only our food supply but a safe food supply. The laws are currently in place to prevent this tragedy; however the Under Secretary of Agriculture, Mike Dunn reported at Rural Unity Days in Columbia Missouri that meat packers have become more powerful than the government. He said, "IBP has more money and more attorneys than we do. We need your help!" IBP has more than 900 lawyers in just one of their law firms, Office of General Council (OGC) that represents Packers and Stockyards has four attorneys.

The P&S Act basically says that if what a packer is doing has the effect of reducing competition, they must stop. The Secretary has the power to impose injunctive relief, yet he does nothing.

It has been proven that IBP uses captive supplies, those inventories of cattle available to IBP outside of the competitive market, to lower prices paid to producers. Recently IBP's highly secretive captive supply arrangements have provided them with captive supplies as high as 122%. The cash market determines the value of these captive cattle. What is the cash market if the price leader IBP, doesn't need any cattle?

The big packers do business with each other. Corporate Roundup – "In a move that made cattle feeders livid and has drawn attention from government regulators, ConAgra sold cattle to IBP for slaughter in late January. ConAgra (and IBP) pushed cattle prices down with the deal, and left cattle feeders wondering if a competitive market — or laws against market manipulation — were still in force."

USDA market reporters confirmed ConAgra sold 7250 head of cattle to IBP, breaking the cash market approximately $60 per head from cattle feeder asking prices. In today's market a sale of this volume causes the entire industry to flush their inventories of cattle at the going low price. Feeders have only minutes to decide on the take it or leave it offers by the big packers.

A past ConAgra executive recently informed cattle producers and feeders that ConAgra consistently used their own cattle inventories, although not market ready, to stay out of the cash market.

I commend the State of Kansas for taking the important and necessary steps to protect our producers and save our rural communities. Our federal government has proven that left up to them we will be left without a competitive independent agriculture.

Many packer promoted studies show there is no problem with captive supplies. Any feedlot manager with a Monday morning showlist knows this is untrue.

Economists Russell Parker and John Connor in their study, "Monopoly Effects on Producers and Consumers," related the following:

"In about 1950, economists and econometricians started doing statistical studies relating the level of concentration to the level of profits. Some of the studies related concentration to the level of prices, and others to price-cost margins computed by the Bureau of the Census. All of these variables roughly measure the same thing: the costs of high concentration. Nearly all of the studies showed a positive relationship: as concentration increases, profits, consumer prices, and price-cost margins increased.

"The studies were also interested in looking for critical levels of concentration. If they could be identified they would be very useful to public policy considerations. Is there some range of concentration where industries are workably competitive? Is there a concentration value below which antitrust authorities and other public policy organizations shouldn't be concerned? Beyond this critical point does concentration rapidly become a problem?

"Models which were specified to determine if there was a critical level have shown that up to about the 40-percent level of four-firm concentration, there is no evidence that concentration is related to the levels of prices, profits or price-cost margins. In other words, industries with that level of concentration or lower are effectively competitive.

"Starting at about the 40-percent level of concentration, prices and profits start increasing and go up rapidly to about the 60-percent level of concentration where they level off. There is no significant further increase in prices or profits beyond about the 60-percent level of four-firm concentration. The conclusion is (pointing at the figure) that the effect of monopoly starts appearing when concentration goes above 40 percent and by the time concentration reaches 60 percent an industry is quite monopolistic."

This information backs up my contention that the market is simply an illusion. The market is totally disconnected from supply and demand and is simply what the packer wants it to be.

I believe price is maintained at the level at which the producer can be mentally conditioned to accept the price. Major beef publications, so-called producer associations, universities and market analysts constantly tell the producer that low prices are their fault despite the fact that consumers are buying record volumes of beef at record high prices. The big retailer is profiting also. It is easier for the packer to buy cattle cheaper than to sell meat higher to the also highly concentrated retailers with the leverage of anti-competitive captive supplies.

As levels of concentration and market power increase it is more important, not less, that market information be openly available. Complete price information is made available on the New York Stock Exchange. How would the stock market perform without complete information? We found out in 1929. Today, we have corrected the problems of the great market crash of 1929 and it is time to apply the same rules to commodity markets.

Trading on material non-public information is called insider trading and is illegal in the stock market. Why are the big multinational corporations allowed to trade our commodities in secret with secret information? Wouldn't you like to know Cargills futures position shortly before their market wrecking announcement of their intentions to import soybeans from Brazil? How about IBP's knowledge of captive supply inventories? As a cattle feeder I would like to know what prices the formula and contract feedyards are receiving. Is it fair for independent cattle feeders to compete in the auction for feeder cattle with those who don't sell finished cattle like IBP, ConAgra and Cargill along with those aligned feeders receiving preferential prices?

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Concentration is bad to the extent that it reduces competition. Competition is said to be "the cornerstone of excellence". Concentration also poses other threats such as food safety.

The smaller, more-efficient, lower-cost producers and packer-processors providing the safest, most healthful products, because they are more closely controlled, are being run out of business with unnecessary regulation and barriers to trade, while the government seems to clear the way for the continued devastation of concentration and consolidation. IBP, the biggest packer, for example, has the fastest chain speed, the most inexperienced workforce with the highest worker injury and turnover rate in the business (U.S. News and World Report). Thus contaminants and bacteria don't just sneak in – they're built in. Is it any wonder why E. coli has nearly become synonymous with IBP? Labeling and source verification is important domestically as well as globally!

It is now evident Congress has abrogated its oversight responsibilities regarding meat safety in allowing the beef and food industries to be dominated and controlled by a powerful packer monopoly and other domestic and multi-national food powerhouses. These companies, while maximizing profits, justify risking consumer's health and safety by promoting their false efficiencies, economies of scale and benefits of free global trade.

Nebraska truly is the "Heartland of America". Nebraska raised the multi-national corporation ConAgra. ConAgra and IBP have grown very large with their roots in the fertile Nebraska soil. Global financial trader and partner of one of the largest U.S. cattle feeding companies, George Soros, who has been credited with the economic collapses in Russia, Thailand, Malaysia, Indonesia and Japan recently said, "There has to be rules of the game." He said, "people and countries need to be protected from people like me."

I believe that while individual agricultural producers have been too busy doing the work of many, powerful corporations have gained complete control by writing the laws of this nation in their corporate boardrooms.

I hope and pray that Nebraska while being the heart of agriculture will now also become it's soul by recognizing and addressing these most critical

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issues that are truly threatening this countries future. Nebraska can now lead the way in restoring economic fairness and equal opportunity.

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Mike Callicrate

From: Stumo & Milleron, LLC <stumo.and.milleron@snet.net>
To: Michael Stumo <stumo.and.milleron@snet.net>
Sent: Tuesday, February 01, 2000 5:39 PM
Subject: OCM Senate Ag Committee testimony (oral version)

ORAL TESTIMONY OF
THE ORGANIZATION FOR COMPETITIVE MARKETS
presented to the
UNITED STATES SENATE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

presented by Michael C. Stumo, general counsel

February 1, 2000

Hearings on the Structure and Authority of the
Grain Inspection, Packers & Stockyards Administration

Thank you Chairman Lugar and distinguished members of the Committee on Agriculture, Nutrition and Forestry for the opportunity to speak here today. My name is Michael Stumo, general counsel of the Organization for Competitive Markets. The Organization for Competitive Markets is a multi-disciplinary group of farmers, ranchers, academics, attorneys and businessmen dedicated to reclaiming competitive markets in agriculture for independent farmers, ranchers and rural communities. I am also a hog farmer in Massachusetts and am formerly an Iowa hog and cattle buyer.

I come before you today with a sense of urgency. This is not just another farm crisis. This is the "end game" of independent, family farm agriculture. The crux of the issue is industry structure. There are tremendous amounts of money being made in the food industry. The farm sector is not receiving that money because the oligopsonistic meat packers and the oligopsonistic retailers have positioned themselves to capture the bulk of that profit. Thus, high retail margins, high packer margins and the end of the family farm.

Feedstuffs magazine, the number one agribusiness weekly in the country, editorialized last September that "American agriculture must now quickly consolidate all farmers and livestock producers into about 50 production systems." This is not just an editorial, it reflects the long range strategy of agribusiness. It cuts through the euphemistic rhetoric of "alliances" or "coordinated systems." It is mercantilistic win-lose. Agribusinesses win, farmers lose.

How did we get here? First the meat packers consolidated horizontally. Now, they are appropriating the food chain vertically. For the farm production sector, that means that IBP, ConAgra's Monfort, Cargill's Excel and Smithfield Foods are soaking up the productive assets of family farmers either through contracts or outright ownership. If packers own or control the livestock, there is no independent livestock agriculture. PERIOD.

Thus, we have not only open market oligopsony problems. We have closed

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market problems through widespread contracting. Why is contracting bad at the macro level? Why is this not merely free enterprise working? First, contracts take production off the open market, pricing becomes secret and the open market withers away. Second, packers can more consciously pick who continues and who fails by doling out contracts to preferred parties. Clear violations of the spirit of the Act. Third, a long term contract transforms a farmer from a profit center into a cost center. The producer becomes a locked in cost which the packer has the incentives and control necessary to reduce with unilateral will. Once under contract, the packer imposes terms and conditions which reduce producer profit and management discretion, and in many cases increases producer debt to the packer - the "company store problem." With widespread contracting, the open market withers away. Producers increasingly have no choice but to contract.

The Packers & Stockyards Act is the strongest trade regulation statute in the country. It was designed to prevent problems in their "incipiency", before they do harm, rather than after the harm has been done. Packer owned livestock is inherently discriminatory as to other producers. Contacted livestock allows more conscious and persistent discrimination between producers than does the open market.

The primary problems with enforcement of the Act lie with the Office of General Counsel. Mr. Dunn and Mr. Baker have failed to do anything to correct these problems.

First, OGC has failed to adopt the incipiency theory of regulation, i.e. correcting practices before they harm producers. Rather, it has taken the incorrect position that past harm must be proven before the Secretary's authority is triggered. The horse is then out of the barn. Further, OGC has failed to define specific circumstances in which it believes the Secretary's authority is triggered. The result is USDA abandonment of farmers.

If USDA had propounded regulations in the past, enforcement would be vastly simpler. USDA would merely have to prove that an illegal act occurred, with no complex analysis of whether it harmed or will harm farmers. The Administrative Procedures Act makes regulation, prior to enforcement, the rational and most effective way to go. OGC has prevented this from occurring.

With no substantive regulations, enforcement becomes more complicated and suffers miserably. Further, OGC's enforcement expertise is sorely lacking. Justice has this expertise. Anticompetitive practices cases take tremendous resources and experience, neither of which OGC possesses.

Under these conditions, no amount of resources will make GIPSA effective. GIPSA employees admit this to farmers in the field when they repeatedly say "there's nothing we can do."

As a result, Congress should do three things if it chooses to commit to a policy of fostering independent agriculture:

1. Legislatively clarify the fact that the P&S Act allows to substantively correct competition problems in their incipiency, before harm is done;
2. Limit contracted packer procurement and subject the remaining

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contracts to transparent, open bidding procedures;
3. Ban packer ownership of livestock or livestock production facilities as inherently discriminatory;
4. Move anticompetitive practices enforcement jurisdiction from USDA to the Department of Justice; and
5. Enact an attorney's fees provision in the Act to enhance private enforcement by farmers.

Thank you for your invitation to speak here today. I implore you to take bold action. I am happy to answer any questions.

Michael C. Stumo
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Lincoln, NE 68506
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5-9
~~5-11~~

Testimony of Elroy Heim
Before the Kansas Senate Agriculture Committee
February 7, 2000

Mr. Chairman and members of the committee. Thank you for the opportunity to speak to you today. My name is Elroy Heim. I have been in the cattle business for more than twenty years. It is discouraging to me to reflect back on the developments in the cattle industry. Many of my friends and family and associates have been forced out of the cattle business for no other reason than the abusive market power of meat packers.

Today, low cost and efficient independent cattle feeders continue to be driven out of business in Kansas and around the country by the abusive market power of meat packers; meat packers that are supposed to be regulated and prevented from monopolizing and abusing our markets. I manage the Callicrate Feedyard at St. Francis, Kansas. Prior to managing the Callicrate Feedyard I operated CY Feedyard at Gove, Kansas. CY was forced to close it's doors for no other reason than we were denied market access and were unable to market ours and our customers cattle.

Since I have taken over the management of the Callicrate feedyard we have been retaliated against and blackballed by the major packers. There is currently an ongoing Packers and Stockyards (P&S) suit against Farmland for discriminatory practices against our feedyard.

The process is slow, time consuming and expensive. It is very discouraging when you consider we are fighting and working for nothing because there is no provision under the current P&S law for recovery of damages to us, the injured party. As a deterrent to the packer and for compensation to the injured party, I would encourage this legislation to allow for treble damages, fines and payment of attorneys fees.

We all continue to hear the bogus arguments and results from the flawed studies on captive supplies. I deal with the anti-competitive practices of the meat packers every week and know what a lie the packer arguments are. Price leader, IBP continually bids a low price, not to buy, and the other cooperating packers continue to follow IBP's leadership.

Percent of captive supplies and other non-negotiated sources of cattle continue to crush our markets. USDA reports captive supplies, also known as

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"other disappearance," at less than 40%. This may not seem like much, but the way the packers are using these non-cash, non-negotiated supplies impacts the market as if they were 100% of available supplies.

Week after week on Monday, Tuesday, Wednesday, Thursday and sometimes Friday, the packers have virtually 100% captive supplies. They pound us, demoralize us, threaten us and intimidate us to accept lower prices as they continue to roll their kill chains with cattle they acquire outside of the competitive market. Finally after being shut out of a realistic market all week while the packers search the country for weakest seller, which then causes a flood selling, the rest of us who sell in the cash market are given five minutes to puke our finished cattle at the low, take it or leave it, price.

Meanwhile, the packer aligned feedyards receiving preferential treatment and thanks from the meat packers for providing the market wrecking captive supplies are gloating because they sold their lower quality cattle at a higher prices, on time, resulting in better conversions and costs of gain, with fewer to no discounts.

Auburn agricultural economist, Robert Taylor, states, "The increasing gap between retail food prices and farm prices in the 1990's is due largely to exploitation of market power, and not to extra services provided by processors and retailers." USDA data shows producers have lost more than twenty one percent or $300 per head of their share of the consumer beef dollar at the same time meat packers have consolidated and exerted their abusive market power.

Each year that the packer is allowed to practice anti-competitive behavior including cooperating rather than competing, and each year that packer continues to use captive supplies to leverage the price lower cattle producers will lose valuable income to the packer monopoly and the powerful retail sector. Independent producers will continue to fail along with the communities they support.

As long as packers find it easier to buy cattle cheaper than to sell meat higher, because of anti-competitive practices and a lack on P&S law enforcement, they will continue to record unfair profits and hand the retailer very high and unfair margins. The packer may not be retaining all that they steal, but that doesn't mean they aren't responsible for the theft.

The following is what each packer owes the cattle industry based on their percentage share of steer and heifer slaughter for each year that the cattle producer's loss of the consumer retail dollar is 21%:

IBP	- \$3.2 billion
Cargill	- \$1.88 billion
ConAgra	- \$1.8 billion
Farmland	- \$600 million

I encourage you to pass Senate Bill 494. This very important legislation will help restore a fair level of income to independent cattle producers.

Thank you,

Elroy Heim

Testimony of Herman Schumacher, Herried, South Dakota, appearing before the Senate Agriculture Committee, June 10, 1998

Good afternoon, Mr Chairman, Honorable members of the Senate committee and Mr. Secretary. Thank you for the opportunity to present testimony here today.

My name is Herman Schumacher from Herried, South Dakota. I am a cattle producer, cattle feeder and livestock auction operator and auctioneer. I have been involved in livestock production basically all my life. As I present this statement today, I can tell you I have never been more troubled. You see, Senators and Mr. Secretary, I know something most of you may not know.

The northern plains is a quiet place because there are very few of us who live there. We seem to be best known lately for our disasters, like tornadoes, droughts, winter blizzards and floods. Our history has always included the natural disaster type adversities and high levels of risk, but there is one thing we continue to do with little recognition. We produce food. Food, not only for sustaining life, but the raw, natural food production that is the very basis of wealth creation, that provides the fuel for this nation's economy. We are producers. We invest the capital, provide the labor and take the risk. We have never asked for, or received high rates of return.

I was honored to serve on the 1996 USDA's concentration committee and became part of a minority report identifying the most serious problems that others on the committee elected to minimize and ignore. I observed members of the committee who were also producers, selected by producer organizations like the National Cattleman's Beef Association (NCBA), National Pork Producers and others who are mistakenly perceived by you and other leaders to represent the best interests of producers, actually sell out their members to the interests of big agribusiness.

I have realized the real threat to production agriculture is not the natural disasters of the Dakotas, but the predatory multi-national agribusiness corporations. These companies were well represented on the committee and through their presence, influence and intimidation, controlled the outcome. Even the studies that were commissioned have now been proven to be flawed, and yet are still referenced by some, trying to justify and minimize the economic rape these companies inflict.

These now monopolistic global predators have surrounded us, forcing the prices of what we produce below our cost of production while in many cases becoming the only source of high priced inputs. These same companies have not only invested heavily in gaining essential monopoly control over cattle feeders and producers, but have also gained incredible influence in national and state politics.

Laws designed to uphold our constitutional rights of freedom and equal treatment are not being enforced. One such law, the Packers and Stockyard Act of 1921(P&S Act), the only law legislated to protect producers and consumers from another meat monopoly like the one of the early 1900's, has not been enforced. Government has succumbed to the lies

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of "efficiencies of scale, economies of size, the global economy, etc." to justify this catastrophic destruction of the American beef industry.

Please explain to me, and other cattle producers the following economic inconsistencies--

- Why are domestic cattle producers going broke producing less than 85% of the U.S. domestic demand? Overall, retail, hotel, restaurant and export prices are at record highs. (USDA chart herewith)

- Why have cattle producers (USDA chart herewith) lost basically 20% of the consumer beef dollar at the same time the packer, processor, distributor and retailer have gained approximately 20%, posting record profits. In 1975, it took seven calves to buy a new pickup. Today it takes nearly 100 calves. Like us, how many of you could live on 1975 wages with 1998 expenses?

  Consider the fact that the four-firm packer concentration during the same time increased from 36% to 87% and non-competitive packer controlled, captive supplies of IBP, the dominant price leading packer, increased from basically zero to levels as high as 122% (IBP Vs Robert M. Cook); meaning they needed basically no cattle from the cash market.

  Recently, two of the three biggest packers, IBP and ConAgra have traded finished cattle between themselves, reported the low price and broke the live cattle trade almost $60.00/head from industry asking prices. This is corporate greed, and solid proof that these companies intend to cooperate, rather than compete.

- Why, with the shortage of high quality, domestic beef, are the multi-national corporations allowed to export this domestic demand building premium beef overseas at exorbitant prices not shared with producers? (Ruth Fertel; Ruth Chris Steakhouses is questioning expansion plans due to short supplies of prime beef. Fall, 1997)

- Why are low quality, uninspected and unsafe beef imports allowed to cross our borders unlabeled and unrestricted? Imports as with U.S. producers are bought below cost of production in other countries by the multi-nationals and sold in the U.S., free of our government imposed costs.

  These imports in many cases are produced under non-sustainable production practices, using slave-like labor, chemicals and growth promotants illegal in the U.S. I have provided you with the Canadian data showing how their 224% increase in export values have resulted in lower to unchanged prices to producers. Where is the U.S. data?

- Why are uninspected and unsafe foreign meat imports allowed free access to all U.S. markets when U.S. producers are denied that same market access across our own state lines through state inspected processing plants? These State plants have a far better safety record than the nation's biggest packer and global merchant of e-coli, IBP.

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Fecal contamination and the resulting e-coli problem at IBP should be no surprise considering they are known for having the fastest chain speed, highest injury rates and highest worker turnover in the meat packing industry (U.S. News and World Report).

- Why are U.S. cattle producers denied access to vital price information? How would the NYSE function without transparency? Remember the late 1920s?

- Why do beef producers have to "give access to get access" in the global market while poultry processors enjoy high import restrictions while exporting freely?

The beef checkoff has recently come under scrutiny and is being questioned as to its benefits to the producers funding the commodity checkoff. As a board member of the Livestock Marketing Association, I am part of the effort asking for a referendum on the beef checkoff. Almost a billion dollars and 12 years later we have lost nearly half of our cattle producers, lost significant market share to poultry, lost the image of our quality product to the consumer, exported the top 8% of the beef supply at no benefit to the producer, promoted low quality beef imports and funded the attack of the multi-national packer against the global cattle producer.

The cattleman's promotion money has been hijacked by the NCBA. As recently as 1996, South Dakota auction markets conducted a survey on the beef checkoff. 8,200 cattle producers voted to discontinue the checkoff, with 202 voting to keep it.

Many others and myself believe the NCBA has sold out the interests of U.S. producers for the sake of the so-called "global economy". NCBA, USDA and others are condemning the Europeans for their trade policies protecting their healthy and diverse agriculture. Should we expect Europe to sell out their producers just because we have?

The very packers that are manipulating the low prices paid to producers and handing higher margins to retailers, are force-feeding complaining consumers the most inconsistent beef product in history. These same packers, namely IBP, are given producer checkoff dollars for value added product development. **Without fair distribution of the consumer beef dollar any value added will be the packers' gain only**. Packers can adopt a number of very inexpensive practices to improve beef consistency and quality immediately, but they do nothing, and with NCBA's help, defer the unwarranted blame for lost market share to producers.

Finally, NCBA, empowered with checkoff funds, has provided cover for these multinational predators by promoting the benefits of bigness and continually minimizing their constant P&S Act violations. Most recently NCBA has tried to blame low prices on the Asian financial crisis, despite the fact that beef shipments in the Jan-Mar, 1998 period totaled 500.4 million pounds, 10% above 1997 and a new record for the quarter (USDA chart herewith).

Packer controlled, NCBA, represents less than 40,000 members of the nearly one million U.S. cattle producers, many of which are generated through feeder cartel and feeder council member feedlots and many of whom do not participate, plus many who may not even be aware they are a member.

You may have seen in the recent news coverage of our small town, Spencer, South Dakota, recently wiped out by a tornado, residents wondering why it should be rebuilt. The town was already gasping its last breaths. This small agricultural community is made up of many farmers and ranchers exploited to the point they are left believing there is no hope. The biggest cause of death in agriculture is suicide. Producers feel shut out of the system and feel helpless and hopeless.

Remember, I said I know something you may not know? Without a healthy, diversified agriculture we will fail as a nation. Be forewarned that the U.S. Beef Industry is in catastrophic crisis. We are in the same position we were in 77 years ago, when in 1921, Wyoming Senator John B. Kendick stated the following on the Senate floor:

> "It (the beef industry) has been brought to such a high degree of concentration that it is dominated by few men. The big packers, so called, stand between hundreds of thousands of (cattle) producers on one hand and millions of consumers on the other.
>
> "They have their fingers on the pulse of both the producing and consuming markets and are in such a position of strategic advantage they have unrestrained power to manipulate both markets to their own advantage and to the disadvantage of over 99 percent of the people of the country.
>
> "Such power is too great, Mr. President to repose in the hands of any men."

His efforts resulted in the establishment of the 1921 Packers and Stockyards Act.

Today, at a minimum, this committee can—and must—take immediate steps to enforce this same P&S Act ending anti-competitive meatpacker concentration and monopoly, and breathing life into this nation's dying beef industry. Most of the other problems discussed here today are simply symptoms and the results of this deadly monopoly cancer.

Contrary to multi-national corporate rhetoric, steps must be taken to safeguard producers and consumers from unsafe meat and remedy the inability to identify the source of potential problems by adopting country of origin labeling on all beef and beef products. Producers are entitled to information on price, and today, without mandatory price reporting by these few companies, their market busting deals will stay secret.

Why are these deals secret? Why has there only been one man who is willing to speak out? Is it that feeders are in a favored position or are feeders just completely intimidated by the packers? Why are IBP-aligned cattle feeders, like Cactus and Simplot, expanding their feeding operations at the same time other more efficient and lower cost feeders are unable to sell their cattle at fair prices and are filing bankruptcy?

I have spoken to hundreds of feeders who are helpless and completely demoralized. Yet, when I have asked them to speak out, most have refused. So far, there has only been one cattleman who is willing to come forward and speak--Mike Callicrate of St. Francis, Kansas. As was once said:

> **"Truth is not only violated by falsehood, It may be equally outraged by silence."**

To conclude my statement, how many of you really understand and feel the problems we have in agriculture today? I think our South Dakota senators--Tom Daschle and Tim Johnson--understand it because 55 percent of our state's total economy is dependant on the cattle industry. They realize that their state's economy left alone is going to fail. I also think that Agriculture Secretary Dan Glickman got the drift a couple of months ago when he participated in a public agriculture forum in Aberdeen, South Dakota, where nearly 2,000 disgruntled farmers and ranchers showed up.

On behalf of all the people in agriculture today, I am asking you as committee members to tear away the rhetoric. Take the bull by the horns and stop these unfair business practices. Stop letting agri-business influence the votes through their giant campaign contributions. Your action to end market concentration can save the farmer and rancher.

If you want to see first-hand what is happening, I invite you to come to South Dakota where many farm auctions are going on, on a daily basis and the auctioneers are saying "SOLD" as the gavel ends a way of life and many people's dreams.

Thank you,
Herman Schumacher

TESTIMONY ON SENATE BILL 499
Given on February 7, 2000

My name is David Pfrang. As a member of KLA, I would like it to be known that I am opposed to KLA's position on this particular bill. Not every member of KLA has the time or can afford to attend the conventions where they are able to make their voice be heard. This is one issue that I feel that alot of KLA voices are not heard and are in opposition.

As an independent small cattle feeder,(800 head per year) we find it extremely difficult and sometimes almost impossible to sell our cattle. The cattle buyers are very, very few, and there are no stockyards anymore. About a year ago I had our one and only cattle buyer come out, and he told me that they were full. However, he had one opening for a night delivery at a dollar less. The next day futures went way up. Upon calling the plant, they told me that they had many empty pens.

If we don't sell to this company, they simply won't come out anymore. Three weeks ago this same cattle buyer came out and said that cattle were only worth $67, but he said, "I'll just be nice and offer you $68." Then we found out that the same company was actually bidding over $69.

Raising cattle is our livelihood, and we take pride in what we raise. It's frustrating when we know that we're not being treated fairly, and that the cattle buyers won't work with us to sell our cattle when the cattle are ready.

In this bill I feel that the number 5000 is too small. Divided by 52 weeks, that makes only 96 head a week. We need to not step on the small packer. After all, they're competing against the big ones. Thank you.

David E Pfrang

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PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: SB 494 – Enacting the Competitive Livestock Markets Act by placing key provisions of the federal Packers and Stockyards Act in Kansas law.

February 7, 2000
Topeka, Kansas

Prepared by:
Bill R. Fuller, Associate Director
Public Policy Division
Kansas Farm Bureau

Chairman Morris and members of the Senate Committee on Agriculture, Kansas Farm Bureau certainly appreciates this opportunity to express our views on SB 494 and provide our support for a number of measures to assist farmers and ranchers through these tough times in agriculture.

My name is Bill Fuller. I serve as the Associate Director of the Public Policy Division for Kansas Farm Bureau.

SB 494 proposes to take key provisions of the federal Packers and Stockyards Act and place them in state law for the Kansas Attorney General to enforce.

Kansas farmers and ranchers recently participated in American Farm Bureau Federation's annual meeting in Houston, Texas where considerable discussion resulted in a number of actions taken on the federal Packers and Stockyards Act. First the 385 voting delegates representing the 50 state and the Puerto Rico Farm Bureaus strengthened the organization's policy statement and called for amendments to the Packers and Stockyards Act:

1. Extend prompt pay requirements to wholesalers and retailers of livestock products;

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2. Include a dealer trust provision;
3. Provide jurisdiction and enforcement over the marketing of eggs as already exists for poultry meat;
4. Strengthen the ability of the Grain Inspection, Packers and Stockyards Administration (GIPSA) to stop predatory practices in the meat packing industry; and
5. Provide producer restitution when a case is successfully prosecuted.

AFBF policy goes on to recommend the following actions that are now a part of the organization's national agenda:

- USDA, in conjunction with the Department of Justice, should closely investigate all mergers, ownership changes or other trends in the meat packing industry for actions that limit the availability of a competitive market for livestock producers.
- Action should be taken to oppose further concentration of the meat packers. The Departments of Agriculture and Justice should more aggressively enforce current antitrust laws pertaining to packer concentration.
- Beef packers who process more than 1,000 head per day should be monitored so they cannot manipulate the market through forward contracting. The current threshold for reporting such purchases should be lowered from two weeks to five market days.

Additionally, the farm and ranch members sent a directive to the AFBF Board of Directors calling for formal action by the organization:

> *"AFBF requests the Justice Department and USDA to enforce current antitrust laws as outlined in the Packers and Stockyards Act of 1921. To facilitate these actions, it must recognize that GIPSA currently functions primarily as a regulatory agency. AFBF further requests that GIPSA's powers be broadened to include increased investigatory and prosecutorial authority. Whereas, mergers, acquisitions and market concentrations have the potential to lead to the monopolization and the end of a free and open livestock market it is further requested that a Deputy Assistant Attorney General for Agriculture be appointed to investigate, prosecute and enforce the findings to GIPSA, USDA and the Justice Department."*

Only a few days ago on February 1, 2000, Ron Warfield, president of Illinois Farm Bureau, testified before the U.S. Senate Agriculture Committee on behalf of AFBF concerning agriculture concentration with a focus on the Grain Inspection Packers and

Stockyards Administration. A ten-point action plan for competitive-market agriculture was the centerpiece of the testimony. We are working with Senators Daschle (D-SD) and Leahy (D-NH) on crafting comprehensive legislation to address the issue of concentration. We hope to have a bipartisan bill introduced in the next two weeks that addresses all ten points.

There can be no doubt that our farm and ranch members have concerns about the enforcement of antitrust laws and the issue of packer concentration. Farm Bureau has a plan. We are currently working with the U.S. Congress and we are calling for action by the Departments of Justice and Agriculture. We believe all entities focusing on the national scene can and will make a difference. Concerning SB 494, we frankly question whether creating a state Packers and Stockyards Act will achieve the goals many of us agree on.

During these times of declining state revenues, rather than creating a state program that duplicates an existing federal program, we suggest the limited state resources be focused on these initiatives:

- HB 2527 that establishes a low-interest agricultural production loan program.
- HB 2674 that restructures the grain commissions to direct more of farmers' check-off dollars on marketing, research and education.
- HB 2593 to extend the sales tax exemption on the construction and repair of commercial and on-farm grain storage.
- HB 2588 to revise the Kansas Income Tax Code to allow farming losses to be eligible for loss carry-back.
- Update, strengthen and provide resources to enforce the antitrust laws of the state of Kansas.
- Direct more resources to the Agricultural Products Division at the Kansas Department of Commerce and Housing for developing more value-added products and for increasing the export of additional agricultural commodities.
- Expand market opportunities by seeking the authority for interstate shipment of state inspected meat and poultry.
- Encourage the U.S. Congress to establish a federal moratorium on agribusiness mergers.

- Urge the U.S. Congress to pass legislation which would prevent the executive branch from imposing unilateral trade sanctions on food or medicine without the consent of Congress.

While we recognize the good intentions and share many of the same concerns of those supporting SB 494, we cannot support the measure. First, it appears to be duplication by creating a state program that already exists on the national level. Second, we are concerned that approval of the legislation would draw the limited state resources that are available today, in both dollars and personnel, away from measures that need to be approved by the legislature this session which are desperately needed by farmers and ranchers as many struggle to survive the state's troubled farm economy. Third, what would be the true impact and the potential outcome if SB 494 were enacted? Where would it put producers as they work to develop market alliances and new-generation cooperatives? What about producers who are a part of the increasing trend of marketing their cattle on a quality basis? Would the measure impact prices as it relates to processing efficiencies when the pipeline is kept full of cattle?

Thank you!

KANSAS • PORK PRODUCERS • COUNCIL
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Testimony in opposition to S.B. no. 494

Presented on behalf of the Kansas Pork Producers Council

by Mike Jensen, Executive Vice-President

Mr. Chairman, members of the committee, I am Mike Jensen. I represent the hundreds of pork producers in this state who produce and market nearly 90% of the pork in this state. Our opposition to this bill comes from a variety of reasons. Highlights of these are:

- This bill appears to mimic most of the language already present in the federal Packers and Stockyards (P & S) Act. Enacting state specific legislation that has the opportunity to be enforced or interpreted differently than federal legislation has grave consequences for our industry.

- Kansas pork producers currently rely on out of state markets for nearly all their marketing. The bill is unclear as to the responsibilities of out of state packers via this legislation. Quite frankly, most packers in other states **do not need** to buy Kansas pigs. If they perceive in any way that Kansas law, interpretreted or enforced differently than the current uniform federal law can do nothing other than put our producers at a increasingly competitive disadvantage.

- Our producers have lost 2 major packers in Kansas in the past 25 years. They continue to hope that a major packer may someday soon again locate in Kansas. Any perceived inconsistencies of Kansas law would drive a nail into that coffin of hope for a new packer.

- Most importantly in our opposition to this bill is the **complete lack of support** by our members for this type of legislation. Our members stated clearly at our last annual meeting that they are completely fed up with continued governmental intrusion into our business. Our industry has experienced challenges in the past 18 months that exceed any faced by several generations of pork producers. While this challenge has pushed pork producers to the edge of the envelope for solutions to controlling their destiny, This proposal was not among them.

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KANSAS LIVESTOCK ASSOCIATION

Since 1894

Testimony

presented by

Dee Likes
Executive Vice President

regarding

Senate Bill 494

before the

SENATE COMMITTEE ON AGRICULTURE

February 7, 2000

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,000 members on legislative and regulatory issues. KLA members are involved in all segments of the livestock industry, including cow-calf, feedlot, seedstock, swine, dairy and sheep. In 1998, cash receipts from agriculture products totaled over $8.9 billion, with nearly fifty-five percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing ninety percent of the livestock and poultry marketings.

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Mr. Chairman and other members of the committee, we appreciate the opportunity to express the position of the membership of the Kansas Livestock Association on this bill. I will be brief.

We do not support this proposal for the following reasons:

1. It is not needed. We have a federal regulatory agency, i.e. the Grain Inspection Packers and Stockyards Administration (GIPSA), already charged with enforcing federal law a part of which this bill is almost an exact replication. The Packers and Stockyards Division of GIPSA has hundreds of people including staff attorneys, economists, and investigators with the knowledge and expertise to oversee the packing of dollars industry and its activities in the marketplace. They have an annual budget of tens of millions annually and have conducted numerous investigations over the years with regulatory actions when appropriate, including several recent investigations.

We do not believe charging the Kansas Attorney General with almost these exact same responsibilities will provide benefit or in any way change for the better the cattle marketing losses of recent years, which were undoubtedly part of the genesis for this bill.

2. We believe enactment of this legislation would negatively impact producers by imposing yet another level of regulation at the state level which duplicates federal regulation. Cattlemen believe that means more audits, investigations, and unnecessary interference with their business. Courts have interpreted the federal act numerous times. Appellate decisions have settled the law into case law precedents to guide the federal agency. It would be negative to the industry to now impose another state layer of law to conceivably cause another series of interpretations.

KLA is deeply concerned about protecting the best interests of our members. Caring about cattlemen has been our primary focus for many many years. We realize the intent of the supporters of this bill is well-intentioned. However, the vast majority of our members believe the best way to help them is to leave the marketplace alone. Let me be absolutely clear in communicating to you that our members have said to us very plainly, very repeatedly, and very recently during policy formation debates that they do not want more laws and regulations governing cattle marketing. They see the interference of government as damaging to their freedom of choice decisions in management and in marketing. It's been widely reported that many members of this body ran for office on a platform advocating less government. We respectfully submit to you that this bill represents more and bigger government and we ask you to not give it favorable consideration. Thank you.

Investigations of Livestock Marketing Related Issues

June 1994 - The Commodity Futures Trading Commission (CFTC) investigates allegations that meat packers manipulated the livestock futures market. CFTC reports that no evidence of manipulative trading activity was found. In addition, CFTC found that during the period of greatest price decline (April 25 to May 25) packers were net buyers of Live Cattle contracts. Also, CFTC found packers were net buyers of the Live Cattle contract on all-futures-combined basis on six of the eight days when the June futures closed $1.00 or more lower.

October 1994 - CFTC completes a second and more in-depth investigation of allegations that meat packers manipulate the Live Cattle contract through intra-day trading. CFTC reports their investigation found no manipulation of the contract.

February 1995 - The Grain Inspection, Packers and Stockyards Administration (GIPSA) launches an investigation in Kansas into the buying practices of the four major beef packers.

April 1995 - Live Cattle contracts trade sharply lower. Commodity Funds are blamed but CFTC reports that Commodity Funds were responsible for less than 1% of contracts sold on that day.

August 1995 - GIPSA investigates and charges IBP with violating the Packers and Stockyards Act (section 202b) for giving undue preference to a small group of central Kansas feedlots. IBP uses a formula to buy fed cattle from those particular feedyards.

September 1995 - GIPSA receives complaints that some feedyards are selling "higher quality" cattle on the condition the packer buy a pen of "lower quality" cattle at the same price.

February 1996 - USDA releases the results of an investigation of concentration in the meat industry. The study began in October 1991. Six different projects were funded by congress. No illegal practices were found.

February 1996 - USDA Secretary of Agriculture Dan Glickman announces the formation of a USDA Advisory Committee on Agricultural Concentration. The committee is charged with investigating concentration in virtually every segment of the agriculture economy.

April 1996 - GIPSA releases the results of the investigation of packer procurement practices in Kansas. The time frame investigated included February, March, April and May of 1995. Data was obtained on over 15,000 transactions that included over 2 million cattle. In addition, GIPSA obtained cellular phone bills to determine if cattle buyers from the respective six plants had any communication between the buyers of the different packing plants. Over 10,000 cellular calls were analyzed. No violations were found.

June 1996 - The USDA Advisory Committee on Agricultural Concentration releases its report. Proposals to prohibit packer ownership of livestock and to limit how livestock can be sold are rejected.

June 1996 - GIPSA announces they will conduct another investigation on packer procurement, this time in Texas.

January 1997 - USDA considers and then rejects a petition that proposes to prohibit packers from forward contracting and feeding cattle.

September 1997 - An administrative law judge dismisses a complaint against IBP charging they gave undue preference to a group of Kansas feedlots.

August 1998 - A USDA judicial officer upholds a previous order that found IBP's marketing agreement with a group of Kansas feedyards was legal with one minor exception. In the agreement IBP has the first right of refusal. This one small issue remains on appeal.

January 1999 - A feedyard operator in northwest Kansas, who has filed a lawsuit against at least one meat packer, complains that packers are boycotting his feedyard. The operator complains the boycott is because he is outspoken in his criticism of meat packers. GIPSA is currently investigating the allegations.

May 1999 - A study released by the USDA's Economic Research Service found that concentration in the meatpacking industry is **not** to blame for depressed cattle prices.

May, 1999 - The Research Institute on Livestock Pricing releases a White Paper on Status, Conflicts, Issues, Opportunities and Needs in the U.S. Beef Industry. The report is written by several respected researchers from Kansas State University, Oklahoma State University and North Carolina State University. Several topics are covered including: Understanding Price Determination vs. Price Discovery; International Beef and Cattle Trade Issues and Vertical Price Transmission Issues in the Beef Sector.

June 1999 - A research paper titled "The Source of Better Prices for Cattle Producers" is published by Dr. Wayne Purcell, Director, Research Institute on Livestock Pricing. The report concludes that regulating the marketplace or controlling how packers can do business is not going to push calf prices up. According to the report higher livestock prices are obtainable if the beef industry can continue to develop and market high-quality, consistent, and convenient beef products.

July 1999 - GIPSA files a complaint against Farmland National Beef alleging the meat packer did not buy cattle from a feedyard in northwest Kansas. The government alleges Farmland National Beef stopped buying cattle from the feedyard after the feedyard manager was outspoken in his criticism of meat packers.

August 1999 – The U.S. Circuit Court of Appeals in St. Louis reverses an earlier USDA administrative ruling that stated IBP should discontinue its right of first refusal practice on buying cattle from a group of Kansas feedlots. In its decision, the court found this stipulation "has not had the actual effect of suppressing or reducing competition." This action effectively ends USDA's pursuit of a 1995 complaint against the packing firm. USDA had charged IBP with giving undue preference to a small group of Kansas feedlots known as the Beef Marketing Group. An administrative law judge initially dismissed the USDA complaint in 1997, finding no evidence IBP violated terms of the Packers & Stockyards Act. USDA appealed and the ruling was upheld, except for the provision on right of first refusal. IBP then took the case to the U.S. Circuit Court of Appeals in St. Louis.

November 1999 – The GIPSA investigation of the Texas fed cattle procurement investigation that began in 1996 is completed. The investigation studied a 16-month period and included over 37,000 purchase transactions involving 6.2 million head of cattle. GIPSA found no violations. GIPSA announces they will now fund a peer review analysis of the investigation.

December 1999 - GIPSA releases the results of the peer review analysis of the Texas fed cattle procurement investigation. The reviewers found that method of the investigation was solid and they found no evidence of behavior that would constitute a violation of the P&S Act.

December 1999 – GIPSA announces it has entered into five agreements with public researchers to cooperatively study competition and other issues in the livestock and poultry markets.

1. Texas A&M will further analyze effects of captive supply. This research will be a follow-up study to an earlier study conducted at Iowa State University and the University of Nebraska to determine if captive supply resulted in lower cash market prices. This research is expected to be completed in nine months at a cost of $13,750.
2. GIPSA also contracted ($33,423) with Utah State University to assess beef packers use of market power. This research is scheduled to be completed in October 2001.
3. GIPSA also issued a contract ($24,995) to the University of Wyoming to study the bidding behavior in auction markets to evaluate possible collusive behavior. This study is scheduled to be completed in September of 2000.
4. GIPSA issued a contract ($64,756) to North Carolina State University to analyze the economic effects of alternative compensation methods on contracts growers
5. GIPSA contracted ($67,460) with Texas A&M University to assess markets for chicken grower services and integrator use of the contracts. The project is scheduled to be completed in 2001.

11-5

KANSAS LIVESTOCK ASSOCIATION

KLA Policy Adopted by the Membership

19. MARKETING (1999)

WHEREAS, the livestock industry is facing a changing marketing situation and many recognize the negative effects of non-negotiated sales, captive supply and cash selling on averages as evidence that the current fed cattle marketing system has broken down, and

WHEREAS, many in the industry see the practice of selling all cattle for one money without regard to carcass merit as a major impediment in the value discovery process, and

WHEREAS, too many consumer beef eating experiences today are unsatisfactory, and the beef cattle industry must move toward the production of a more consistent, higher quality beef product in order to recapture market share.

THEREFORE, BE IT RESOLVED, the Kansas Livestock Association supports changes to the current marketing system that improve the value discovery process.

BE IT FURTHER RESOLVED, the Kansas Livestock Association supports a marketing system free from government regulations.

BE IT FURTHER RESOLVED, the Kansas Livestock Association suggests to its members they consider the benefits of selling on a negotiated carcass merit basis, but shall continue to guard its members' freedom of choice to conduct their own business and utilize their own marketing program as they see fit.

20. KLA STATEMENT OF OPERATING PRINCIPLES (2000)

WHEREAS, the Kansas Livestock Association believes the livestock industry is best served by the process of free enterprise and free trade, and

WHEREAS, even with its imperfections, free trade is relatively more equitable than regulated and subsidized markets which retard innovation and distort production and market signals, and

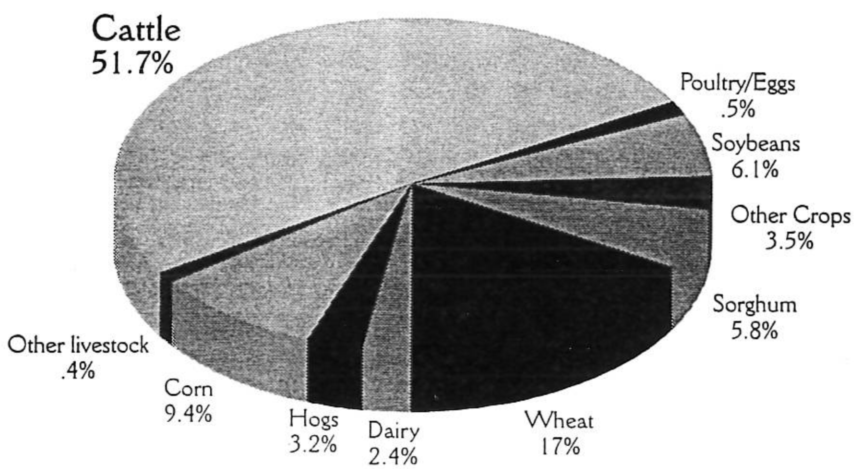
WHEREAS, regulated and subsidized markets disadvantage some producers in favor of others, and

WHEREAS, recent proposals of federal non-natural disaster direct government payments and federal livestock insurance are two examples of long-term negative precedents for the livestock industry.

THEREFORE, BE IT RESOLVED, the Kansas Livestock Association reaffirms its opposition to the imposition of political solutions to the livestock industry's economic problems or attempts to narrow the business options or limit the individual freedom of livestock producers to innovate in the management and marketing of their production unfettered by additional government regulations.

1998 Kansas Agricultural Cash Recepits

Total $7.8 billion



Written Comments

Presented

by

Farmland National Beef

February 7, 2000

Re: SB 494

The Competitive Livestock Markets Act

Before

the

Senate Agriculture Committee

Topeka, Kansas

Senate Agriculture
2-7-00
Attachment 12

Background on Farmland National Beef

Farmland National Beef is the only farmer-rancher owned beef processor in the country. In 1992, Farmland purchased the former HyPlains Beef operations in Dodge City. Then in 1993, National Beef in Liberal was purchased and the company renamed Farmland National Beef L.L.C.

In December of 1997, U.S. Premium Beef Ltd. purchased a minority interest and today the company is jointly owned by Farmland Industries and U.S. Premium Beef Ltd. The joint ownership between Farmland Industries and U.S. Premium Beef ensures both farmers and ranchers have a vested interest in breeding and raising quality cattle to provide consumers quality beef.

Farmland National Beef processes more than 2.6 million head of cattle a year and ships over 700 loads of beef a week to customers across the United States. We have increased our processing capacity over 50% since 1992. Today, Farmland National Beef is the fourth largest beef processor in the United States where we supply nearly 10% of the beef. That means 1 out of every 10 steaks sold is from Farmland National Beef.

Farmland National Beef is an important part of the Kansas agricultural economy. Both of our processing facilities are located in the state of Kansas and the largest percentage of cattle slaughtered are sourced from Kansas beef producers and feedlots. Through cattle purchasing, beef processing/marketing and transportation, Farmland

National Beef Packing Co. is a vital part of Kansas agriculture.

SB 494, The Competitive Livestock Markets Act
The bill, as written, unfortunately deems that increased governmental regulation will preserve free market access. However, it is the freedom of market access that exists today that many Kansas producers have leveraged to become more profitable and efficient while producing safer and higher quality meat and poultry products.

Many of the articles of this proposed legislation are already governed by current federal law including the Packers and Stockyards Act and the Sherman Anti-trust Act. Duplication of such governance will only provide another layer of regulation that increases the cost of business to all participants. It would also restrict innovative and progressive Kansas producers the ability to invest and participate in marketing efforts that best fit their personal business strategies.

The section defining "packer" would appear to include not only major livestock and meat processors, but also such groups or individuals as cooperatives or commission-based "livestock for slaughter" buyers. This would include successful producer-led cooperatives like U.S. Premium Beef; local fed cattle and cow/bull commission buyers; farmer-owned hog buying stations and other related buyers of livestock. It is not unusual for these organizations or individuals to purchase more than 5,000 head of livestock per year. Many of these cooperatives and/or buyers are small businesses that would suddenly fall under the auspices of additional government regulation and the risk of fines or imprisonment.

The definition of "undue or unreasonable preference whatsoever" is extremely broad. The economic value of an animal, relative to a specific buyer's order or a plant's meat sales, varies widely. The quality of a particular product highly impacts value and that value can be dramatically different from day to day and from week to week. Freight differentials automatically prejudice all sellers relative to their neighbors and a buyer's slaughter facility. To enact and enforce such restrictions would automatically penalize those Kansas livestock producers who have developed production and marketing practices focused to meet ever changing consumer demands.

In Conclusion

We appreciate the opportunity to submit written comments regarding this proposed legislation, S.B. 494. We respectfully encourage the Committee members to seriously consider the concerns raised about the current language. We ask the Committee to seriously consider rejecting this legislation as currently written.

Questions may be forwarded to Gina Bowman-Morrill, Director of Government Relations, Farmland Industries, Inc.
Telephone: 816/459-6745.

Written Comments

Presented

by

U.S. Premium Beef

February 7, 2000

SB 494 -The Competitive Livestock Markets Act

Before

the

Senate Agriculture Committee
Topeka, Kansas

Senate Agriculture
2-7-00
Attachment 13

Thank you for the opportunity to allow us to submit comments regarding S.B. 494, the Competitive Livestock Markets Act, before you today. It is the philosophy of U.S. Premium Beef, today and in the future, that our cooperative efforts through strategical alignments, throughout the many industry segments, will ensure our survival. These segments refer to all participants up and down the food chain from the ranch to the consumer.

We will look back on this time as a watershed moment for both cattle producers and other segments of the beef industry. The issues and factors affecting our industry are complex. U.S. Premium Beef has a very uncommon role in the industry, as a closed cooperative of beef producers and as a packer. Because of this, we feel we can best illustrate to you the adverse impact that SB 494, the Competitive Livestock Markets Act, will have on U. S. Premium Beef.

Background of U. S. Premium Beef, Ltd.

As early as the fall of 1995, Midwestern producers from all segments of the cattle industry, seed-stock, cow/calf, farmer feeder and feedlots, began meeting to discuss solutions to the problems plaguing the current cattle marketing system. Such problems include:

1. A system that promotes mediocrity by the gathering of cattle in large numbers, primarily entire feedlot showlists, and establishing one average price without regard for quality or value differences.

2. A system that has provided incentives only for production efficiencies (i.e.: faster weight gain and lower feed costs) and little or no regard for carcass or meat quality thus lowering the overall quality of beef and consumer demand.

3. A system that provides large producers the advantages of the efficiencies of economies of scale and the leverage to negotiate private marketing agreements with little opportunity for the independent family rancher or feeder to enter agreements that reward for producing a more valuable animal.

After much research by a group of cattlemen, frustrated with the rhetoric of problems and finger pointing, and committed to taking control of their own destiny, U.S. Premium Beef, Ltd. was formed. Founded on July 1, 1996, U.S. Premium Beef was structured as new generation marketing cooperative, the first and only in the United States. Shortly thereafter a business plan was established and a mission statement was adopted. This mission reads:

"To increase the quality of beef and the long-term profitability of cattle producers by creating a fully integrated producer-owned beef processing system that is a global supplier of high quality value-added beef products responsive to consumer desires."

From there, more than 675 producers from 24 states committed both cattle production and capital to seek out the most economically feasible inroad into further processing and value added products. After extensive research into the different alternatives of acquisition, building or joint venture, it became evident that the only viable avenue for producers to enter further processing was through joint venture.

As producers, what we bring to the table is the ability, through known genetics and cattle management, to design supply cattle tailored to consumer demands and delivered in a systematic way that will provide a year around supply of cattle to plants. As producers, we provide little expertise in processing and marketing and are ill equipped to compete in a mature beef packing industry that is highly competitive.

In July 1997, we announced U. S. Premium Beef entered into partnership with Farmland Industries, Inc., the nation's largest farmer-owned cooperative, to purchase up to 50% of Farmland National Beef Packing Company. Farmland National Beef is the fourth largest beef processing company and an international leader in value-added branded products.

During the fall of 1997, U.S. Premium Beef mounted a stock offering drive throughout the United States. By December 1, 1997 our efforts were successful. We had commitments for close to 700,000 cattle annually and over $72 million of capital raised. The following week, U.S. Premium Beef began operations, buying more than 10,000 member cattle on an individual animal basis over a progressive carcass value based grid.

Current U.S. Premium Beef Operations

To date, U.S. Premium Beef and its members have marketed more than 1 million cattle through its plants and beef company. Membership totals over 1,000 producers from all segments in 28 states. While still in its infancy, U.S. Premium Beef has paid out more than $14.5 million dollars in premiums over the cash live cattle market. This represents an average of over $14 per head premium. The top 25% of performers earned an average of $35 per head.

In addition, our stockholder/members have realized earnings of more than $28 per head through the profits of the Beef Company they own. The share value has increased from the initial $55 per share to $80 per share. This represents an overall average return on investment of more than 120% on the initial $55 investment over a two-year period.

Additionally, every producer member is ensured a competitive carcass merit grid pricing, carcass data on individual animals, transportation credit up to 110 miles and livestock and meat consulting, all at no charge.

The results of our first two years of operations are very encouraging. The level of premiums has steadily increased over the past year. This has occurred in great part due to the utilization of carcass data and the financial incentives in place through grid pricing. Any producer armed with the correct tools can achieve these results.

SB 494 - The Competitive Livestock Markets Act

Under the definitions used in this legislative language, U.S. Premium Beef is considered a packer. It is therefore subject to the broad interpretation of practices, declared as "unfair, unjust, or discriminatory," which are employed by our beef producer cooperative, in partnership with Farmland National Beef.

Also, U.S. Premium Beef does engage in the practice outlined in lines 31-36 (page 1), even though, in our opinion, this activity does not limit commerce nor does it create a monopoly. U.S. Premium Beef, as a packer, transfers cattle every day to Farmland National Beef, a packer, and therefore could be deemed unlawful under this section of the bill.

We feel that S.B. 494 is in some ways duplicative of current federal law, which is being enforced. And if passed, S.B. 494 will only create the need for expanded state bureaucracy, which will ultimately mean that livestock producers will pay for the cost of its potential enactment.

In Conclusion

For years, the cattle industry has talked about problems. For years, we have witnessed devastating market share erosion and loss of independent cattlemen and women. U. S. Premium Beef is a solution, created as an effort to respond in a proactive way to challenges of our industry. We work in partnership with another cooperative packing company, Farmland National Beef, the only farmer-owned beef and pork processing cooperative in the nation.

Three years ago, the founding members of U. S. Premium Beef shared many of the same concerns heard during testimony today regarding S.B. 494. However, as our membership took a step back and began looking at the facts objectively, we, as producers, realized the solutions lied in coordination versus isolation.

We believe that more time needs to be spent on positive, proactive approaches to enhance producers' ability to compete in the marketplace. S.B. 494 does not provide such an approach.

Therefore, we ask you to seriously consider rejecting S.B. 494. Thank you for this consideration.

Questions may be forwarded to Steve Hunt, CEO of US Premium Beef, 816/891-2301 or Gina Bowman-Morrill, Farmland Government Relations, 816/459-6745.