

Dairy Industry Crushed Innovator Who Bested Price-Control System

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In the summer of 2003, shoppers in Southern California began getting a break on the price of milk.

A maverick dairyman named Hein Hettinga started bottling his own milk and selling it for as much as 20 cents a gallon less than the competition, exercising his right to work outside the rigid system that has controlled U.S. milk production for almost 70 years. Soon the effects were rippling through the state, helping to hold down retail prices at supermarkets and warehouse stores.

That was when a coalition of giant milk companies and dairies, along with their congressional allies, decided to crush Hettinga's initiative. For three years, the milk lobby spent millions of dollars on lobbying and campaign contributions and made deals with lawmakers, including incoming Senate Majority Leader [Harry M. Reid](#) (D-Nev.).

Last March, Congress passed a law reshaping the Western milk market and essentially ending Hettinga's experiment -- all without a single congressional hearing.

"They wanted to make sure there would be no more Heins," said Mary Keough Ledman, a dairy economist who observed the battle.

Hettinga, who ran a big business and was no political innocent, fought back with his own lobbyists and alliances with lawmakers. But he found he was no match for the dairy lobby.

"I had an awakening," the 64-year-old Dutch-born dairyman said. "It's not totally free enterprise in the United States."

Most U.S. dairy farmers work within a government system set up in the 1930s to give thousands of small dairies a guaranteed market for their milk and to even out prices for consumers. Farmers who participate in regional pools operated by the federal government or the states deliver raw milk to cooperatives or food processors. They get a guaranteed price, whether the milk ends up in a gallon jug, cheese, butter or ice cream. In Arizona and other federally regulated regions, the Agriculture Department uses a formula to set the price processors pay for raw milk, issuing "milk marketing orders."

Developed for a bygone era of small dairies and decentralized milk plants, the system lives on when 3,000-cow dairies are not uncommon and huge cooperatives and food companies dominate the business.

Business groups, fiscal conservatives and some dairy organizations have called for Congress to overhaul the complex system of protections and subsidies, which they say is costly to taxpayers and consumers. A recent USDA study acknowledged that "dairy programs raise the retail price" of milk. The watchdog

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group Citizens Against Government Waste estimates that the programs cost U.S. consumers at least \$1.5 billion a year.

The 1937 law allowed "producer-handlers" -- dairy farmers who bottle milk from only their own cows -- to operate outside the pools. But it was risky for a farm to do this because it might end up with more milk than it could sell. Most of these outsiders were small.

Hettinga started out as a hired hand in the Dutch American dairies of Southern California, where his family emigrated after World War II. He soon figured out he could buy cows with injured hooves, then fix and sell them at a profit that exceeded his weekly paycheck.

By the early 1990s, Hettinga was working with partners and relatives and had half a dozen dairies in Arizona and California. Then he decided to build his own bottling plant in Yuma, Ariz.

His first customers were in Mexico. Later he made a deal with a chain of Arizona stores catering to the fast-growing Hispanic population. In 2002, he and his son began building a second Yuma plant to supply Costco stores in Southern California.

For Costco shoppers, it was a good deal, according to an e-mail sent last year to Reid's office by Joel Benoliel, Costco Wholesale Corp.'s senior vice president. The arrangement lowered the average price of milk "by 20 cents a gallon overnight and it stayed that way for three years," Benoliel wrote in the e-mail, made available to The Washington Post. "Milk suppliers in southern California were gouging the public on price (20 cents a gallon higher than N. California) for years and were unresponsive to our call for lower prices. It was a brazen case of price gouging and profiteering by the strongest, largest market suppliers simply because they could."

In Arizona, Hettinga was competing for retail sales against Arizona's biggest milk company, Shamrock Foods Co. of Phoenix. He "wasn't by any stretch a more cost-effective operator than we are. He just didn't have the same rules apply," said Shamrock's general manager, Michael A. Krueger.

United Dairymen of Arizona, a cooperative that handles 85 percent of the state's milk, complained that by keeping his milk outside the Arizona pool, Hettinga was affecting the USDA price-setting formula, lowering returns for other dairies.

In California, the Hettingas were taking on the two biggest players in the U.S. milk industry: Dean Foods Co., the largest processor of dairy products, with \$10 billion in annual sales and five California plants, and Dairy Farmers of America, a co-op that controls nearly a third of the nation's liquid milk.

In Southern California, the co-op sells to Dean Foods, which in turn sells to retailers. As Hettinga's milk began reaching Costco stores, there was a snowball effect as other milk suppliers were forced to lower their prices, Costco's Benoliel said.

Dean Foods recently said that Hettinga was unfairly exploiting a "regulatory loophole" and that his actions led to lower milk prices for California dairies.

Hettinga's operation was "damaging to the marketplace," said Elvin Hollon, director of economic analysis for Dairy Farmers of America. "Nobody ever envisioned there would be such large handlers" outside the pool.

"So," Hollon said, "the regulations had to change."

Political Education

The first challenge to Hettinga came in late 2001, when [Sen. Jon Kyl](#) (R-Ariz.) proposed a measure that would have forced Hettinga to pay in to the pool that Shamrock was governed by.

Shamrock's chairman, Norman P. McClelland, had contributed thousands of dollars to Kyl, beginning with Kyl's first House campaign, in 1986.

Hettinga fought back by printing labels saying that Kyl wanted to "limit competition and raise the cost of milk to the Arizona consumer" and putting them on 50,000 gallons of milk shipped around Arizona.

In the House, [Devin Nunes](#), a new Republican member from California's Central Valley, introduced a bill to close what he called the "regulatory loophole" that let Hettinga ship unregulated milk into California. Nunes's district is No. 1 in milk production in the nation. Nunes and Sons dairy, located a few miles north of Tulare, was started by Nunes's grandfather and was still in the family.

In Nunes's first run for Congress, in 2002, he pulled in \$130,000 from dairy interests, second only to President Bush among federal candidates, election records show.

Nunes's bill and Kyl's amendment initially went nowhere. So Kyl, a conservative Republican, found an unlikely ally in Reid, then the Senate's fiercely partisan Democratic whip.

Reid was no newcomer to dairy issues. Nevada's population was growing faster than its dairies could supply milk, so prices tended to be high. Milk plants that had to import milk from far away thought they could get it cheaper if they did not have to pay regulated prices. In 1999, Reid helped them out. He slipped an amendment into a spending bill exempting milk plants in the Las Vegas area from federal pricing rules.

David Coon, vice president of Anderson Dairy Inc., then the area's largest milk plant, hailed Reid's amendment as a "good example of the good we feel he has done fighting for our state." Reid later listed Anderson as one of 51 "soft money" donors to his Searchlight Leadership Fund, which funds Democratic candidates in Nevada.

The 1999 provision still left the Las Vegas area subject to some federal milk regulations. By 2003, fixing that had become a pressing concern as Dean Foods began construction on a \$40 million, state-of-the-art milk plant outside town.

That year, Reid and Kyl saw they could make a deal. Kyl agreed to back removing all of Nevada from federal milk regulation, and Reid agreed to support legislation cracking down on Hettinga and protecting Arizona dairies from competition from low-priced Nevada milk. In 2003, the senators co-sponsored an amendment with both provisions. In effect, Nevada bottlers would get some of the same rights that were being taken away from Hettinga. Under this arrangement, the money the Yuma dairyman would save by operating outside the federal system would have to be paid in to the pool.

Getting Around Lewis

In 2003, Hettinga still looked the part of a hard-working dairy farmer. He wore jeans, lunched on fried chicken and salad at the Hometown Buffet in Yuma, and seldom took a vacation. But he was no longer a little guy. He owned a private plane and kept a pilot on standby. His 16 dairies stretched from Texas to California, and his company, Sarah Farms, supplied nearly a fifth of Arizona's liquid milk.

As Kyl and Reid were putting together their deal, a milk-industry friend put Hettinga in touch with a Washington lobbyist, former representative Raymond J. McGrath (R-N.Y.). McGrath, who was president of the National Republican Club of Capitol Hill, had retained good connections in GOP circles.

During a swing through Capitol Hill with McGrath, Hettinga pitched his cause to House Appropriations Committee Chairman Jerry Lewis (R-Calif.).

Lewis's district was home to some large dairies, including a Hettinga dairy in San Jacinto. The two men had never before met or talked, according to Lewis's spokesman. But Lewis was sympathetic. "This is not right, taking a rifle shot at one individual," Hettinga recalls Lewis saying.

A few months later, Lewis used his power to kill the Kyl-Reid measure. "Congressman Lewis did it strictly on behalf of a constituent and because he thought Hein's deal was good for consumers," said Lewis's deputy chief of staff, Jim Specht.

Hettinga said that at Lewis's request he chipped in \$2,000 to the Bush-Cheney campaign later that year. He also gave \$4,000 to Lewis's campaign war chest between 2003 and 2006, records show.

But the big milk producers and dairy trade groups were already at work in Washington. Through its employees and political action committee, Dean Foods, with nearly 100 plants around the country, spent more than \$600,000 on political contributions in 2005 and 2006, including \$5,000 to Kyl and \$3,000 to Nunes. Reid got \$5,000 in 2004.

Eight groups with an interest in the legislation reported overall lobbying spending of more than \$5 million in 2005 and the first half of 2006. Dean Foods reported spending almost \$2.5 million, including \$500,000 for outside lobbyists. One was Charles M. "Chip" English Jr. of Thelen Reid & Priest. English also represented Shamrock Foods, United Dairymen of Arizona and the Dairy Institute of California.

During 2005, English fine-tuned the language in the milk bill. "My hand can be seen throughout the bill," he said in an interview. Pick a paragraph in the legislation, he said, and "either I wrote it or I commented on it."

Among others in the lobbying effort were the International Dairy Foods Association, the National Milk Producers Federation and the Western United Dairymen. Dairy Farmers of America, with members in 47 states, mobilized a grass-roots campaign for the legislation.

At every turn, Lewis's office was "barraged by calls and faxes from dairy owners," recalled Specht, Lewis's aide. "It seemed clear that all the skids had been greased for this legislation."

An Angry Meeting

On the evening of Nov. 2, 2005, lawmakers and several dozen lobbyists squeezed into the conference room of [Sen. Dianne Feinstein](#) (D-Calif.) to seek common ground in the milk dispute. Lewis brought Hettinga and McGrath. Reid came with Anderson's Coon. Shamrock Foods' McClelland was with Kyl.

"Jerry, if it wasn't for you, we'd have taken care of this a long time ago," Reid said, according to several participants.

Lewis bridled. It seemed as if Reid was calling him a "liar," he said. If that was so, he might as well

leave, he added.

Hettinga told the group how he had built his plants, arguing that the other dairy farmers "didn't pay me when I started the business, why should I start paying them when the business is successful?"

At the end, participants said, Reid was plainly exasperated. "I'm not listening to any more of this," he said. "I'm out of here."

Reid made his move on Dec. 16, with the Senate chamber nearly empty. He brought up the milk bill, which passed a few minutes later by "unanimous consent," a procedure that requires no debate or roll call vote if both political parties agree. Reid and Kyl said in recent statements that their goal was to level the playing field for milk producers.

That set the stage for a bitter battle in the House, pitting Nunes, the new California-dairy-district congressman, against Lewis, then a 14-term veteran with friends on both sides of the aisle.

Lewis used the muscle of his 66-member Appropriations Committee, the dispenser of billions of dollars a year in spending. But he faced the nearly unified front of the dairy lobby and its friends. Virginia dairy farmers had helped win the key support of [Robert W. Goodlatte](#) (R-Va.), chairman of the Agriculture Committee, convincing him that if Hettinga were brought into line, the threat "would be less likely to show up back here," said lobbyist Charles Garrison. Nunes was a protege of House Ways and Means Committee Chairman [Bill Thomas](#) (R-Calif.). And he had recently backed [John A. Boehner](#) (R-Ohio) in his successful campaign for majority leader.

In late March, Boehner placed the bill on a special docket usually reserved for uncontroversial measures such as naming post offices. Under that docket, bills require a two-thirds majority for passage. But the parliamentary procedure also meant that no one could offer an amendment to slow the bill down.

McGrath, Hettinga's lobbyist, watched the vote from the Capitol Hill Club. After Lewis came up 13 votes short and the bill passed, McGrath recalled, a large contingent of dairy lobbyists arrived, some trading high-fives. Lewis was to have had dinner at the club with his wife, but when he showed up and saw the lobbyists celebrating, he turned and left.

In an interview later, Nunes called the milk legislation a victory for "every dairy farmer in America except those who were gaming the system." He added, "People out there were making millions of dollars a year off the backs of America's dairy farmers . . . that was a wrong that was finally righted."

The next morning, lawmakers in dairy districts who voted against the dairy groups got an e-mail from a lobbyist expressing "disappointment on behalf of the members of the International Dairy Foods Association for your vote." It added: "We will be letting our member companies and their employees know of the outcome."

Hettinga vowed to keep supplying his customers in Arizona and California even though the new law required him to pay the Arizona pool what he said was a "crippling" sum of up to \$400,000 a month.

"The irony is that Hein is paying his competitors," said Alfred W. Ricciardi, Hettinga's Phoenix lawyer.

Hettinga and his relatives gave nearly \$20,000 to Kyl's Democratic challenger this year. Kyl won handily and got his own dairy industry support: A few weeks before Senate action on the milk bill, 11 officials of Shamrock contributed \$14,800.

Hettinga also turned to the courts. In October, he filed a lawsuit charging that the milk bill was unconstitutional because it was aimed at penalizing a single individual.

"I still think this is a great country," Hettinga said. "In Mexico, they would have just shot me."

Research editor Alice Crites, research database editor Derek Willis and staff researcher Magda Jean-Louis contributed to this report.

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