

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at LONDON**

UNITED STATES OF AMERICA, et al.)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 6:03-206-KSF
)	
DAIRY FARMERS OF AMERICA, INC., et al.)	
)	
Defendants.)	

APPENDIX: PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT

**COMMENT SUBMITTED BY
SOUTHEAST GRADED MILK PRODUCERS ASSOCIATION**

SOUTHEASTERN GRADED MILK PRODUCERS ASSOCIATION



P. O. Box 25 ◆ Somerset, Kentucky 42502
Phone (606) 679-3504 ◆ Fax (606) 678-4696

January 9, 2007

Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division
U.S. Department of Justice
1401 H St. NW, Suite 4000
Washington, DC 20530

IN RE: United States of America, et al.
vs.
Dairy Farmers of America, Inc.
U.S. District Court
Eastern District of Kentucky
London Division
Civil Action No.: 6:03-206-KSF

Dear Mr. Botti:

The Association wishes to express its thanks and appreciation to the Antitrust Division for its pursuit of the foregoing matter. Without that, this small association of milk producers would have been swallowed up by Dairy Farmers of America.

As I am sure you are aware, there is much more to be done to reign in the antitrust activities of Dairy Farmers of America, and we hope you will pursue that just as you did the above-styled action. About a year ago, when DFA owned 50% of the National Dairy Holdings plant in London, Kentucky, and 50% of Southern Belle Dairy in Somerset, Kentucky, we were able to work out a contract to supply milk to the NDH plant at London, Kentucky, whereby our producers received twenty (.20¢) cents per hundredweight more for their milk. DFA killed the contract. We then had no choice except Southern Belle Dairy and since there was no competition for our milk our producers lost the twenty (.20¢) cents per hundredweight. Since DFA still owns 50% of the London plant, we still have no competition for our milk.

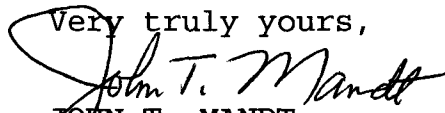
In other words, the foregoing lawsuit provides for competition for school milk, but does not address the problem of competition in the procurement of raw milk. That competition is stifled by the exclusive contracts that DFA has to supply milk to numerous plants. It is just such a contract that shut our association out of the NDA plant at London, Kentucky, which reduced

Hon. Mark Botti
January 9, 2007
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our choice of plants to one. Each independent producer or association needs at least two (2) totally independent plants to which he could market his milk. Only then can the antitrust activities be controlled.

Thanks again for what was done. Keep up the good work.

Very truly yours,



JOHN T. MANDT
Secretary

JTM: jlm

COMMENT SUBMITTED BY CARL PHELPS

To: Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division, U.S. Department of Justice
1401 H St. NW, Suite 4000
Washington, DC 20530

RE: United States of America, et al.
Vs.
Dairy Farmers of America, Inc.
U.S. District Court, Eastern District of Kentucky, London Division
Civil Action No.: 6:03-206-KSF

Dear Mr. Botti,

I want to thank the DOJ's Antitrust Division for the interest you have shown regarding the ownership of Southern Belle Dairy. This is a step in the right direction but there is still more to do to ensure that the Southeastern Graded Milk Producers survive. I think a third party should be involved to make certain that Prairie Farms will not have contact with DFA because they do have joint ventures with them.

I spent 30 years working at Southern Belle as a fieldman. I came to know and care deeply for the producers and always tried to make sure whatever I did was in their best interest. When Southern Belle was being run by the Shearer family, I didn't have a problem with this goal. When Southern Belle was purchased by DFA and Bob Allen, it seemed the best interest of the producers was of little concern. To my disappointment, I was told that I was not to get any more producers. I believe this was because they didn't want Southeastern to survive. I believe they wanted to control all of the raw milk supply and to force Southeastern producers to become DFA. When it came time to renew their contract with Southeastern, the producer board was told that they had a problem renewing their contract as it was. I feel that what it all boiled down to was they didn't really want to renew their contract which would have meant they had no where to sell their milk to and so would have been forced to become DFA members. Southeastern tried to find another place to market their milk. Southeastern negotiated with Charles Hyatt at Flav-O-Rich Dairy in London, Kentucky about supplying milk to that plant. An agreement was made with National Dairy Holdings which owns Flav-O-Rich to buy Southeastern's milk. Then, I was hired by Charles Hyatt as a fieldman for Flav-O-Rich Dairy to continue taking on producers for Southeastern and was told that I could take on all I could find to supply milk for the plant in London and a plant in Madisonville, Kentucky. I resigned from Southern Belle Dairy and was happy to do so, thinking the producers had a good deal and would be taken care of. Guess what? Flav-O-Rich Dairy is 50 percent owned by DFA. About a week after being hired, I was told the deal was off, that DFA wasn't going to furnish raw milk to the rest of their National Dairy Holdings plants if they let the Flav-O-Rich plant have Southeastern as their own raw milk supply. DFA got their way again. The producers wound up having to sign a contract that many were not happy with in order to have a place to sell their milk.

After learning that Southern Belle had been purchased by Prairie Farms, I had high hopes for the producers and the milk haulers, as many have kept in contact with me. Producers and milk haulers have called me to tell me of their fear about their future with Southern Belle. Some employees were told their jobs would be moved to Illinois; this made them very nervous about losing their jobs. Some employees were even told not to associate with certain people such as myself, making them feel this could put their job in danger. The management at Southern Belle has known for a long time that I know the truth about their connection with DFA. Management seems to be troubled that I would try to help the producers. Since taking over Southern Belle on 10/01/06, producers and milk haulers have contacted Gary Lee, Vice President of Prairie Farms, about becoming Prairie Farms producers and they were turned down. Haulers also have talked to Gary Lee about taking on new members. Producers and haulers have been puzzled that they were not contacted about their future with the new owners, making them feel that they are of little concern. I wonder if there might have been a deal made under the table between DFA and Prairie Farms when Southern Belle was sold to them. Perhaps, Southern Belle was a gift to Prairie Farms. Raw milk credits could be part of the deal. If this deal is approved by the DOJ, I think DFA will have it made and the SEGMPA will be put in a situation that will eventually destroy them. After all, if they were gone, DFA would be the sole supplier to the Southern Belle plant owned by Prairie Farms with joint ventures with DFA and the Flav-O-Rich plant in London, Kentucky (50 percent owned by DFA and 50 percent by National Dairy Holdings). I think DFA would probably give up something now and if the DOJ approves this, it won't be long before another plan of action will start against the Southeastern Graded Milk Producer Association. Also, with Prairie Farms owning Southern Belle and having joint ventures with DFA, if the Federal Order System is voted out or changed in any way, SEGMPA producers would be better off selling their milk to Southern Belle with an owner who is not connected to DFA because there will be no competition and DFA can potentially pay producers whatever they want to. I hope that you will really think about what your decision will mean to the people who make up the Southeastern Graded Milk Producers Association. In my opinion, the only right way to resolve this is to make sure that whoever ends up with Southern Belle has no connection to DFA.

Thank you,

Carl Phelps
6790 Hwy 1643
Somerset, KY 42501
606-382-5836

If you have any questions, please feel free to contact me.

COMMENT SUBMITTED BY WILLIAM R. SEWELL

January 15, 2007

To: Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division, U.S. Department of Justice
1401 H St. NW, Suite 4000
Washington, DC 20530

RE: United States of America, et al.
Vs.
Dairy Farmers of America, Inc.
U.S. District Court, Eastern District of Kentucky, London Division
Civil Action No.: 6:03-206-KSF

Dear Mr. Botti,

I would like to express my concern about the future operation and working relationship between Southern Belle Dairy and the Southeastern Graded Milk Producers Association.

I am in the third generation of my family as a producer of this operation. I have been told about things that have happened and directions that have been given that has caused me to ask the proper individuals to reinvestigate the situation.

The future welfare of my family depends much on this ongoing operation.

William R. Sewell
Producer #107

COMMENT SUBMITTED BY BILL L. GUFFEY

Guffey Farms LLC
Bill Guffey
Rt 3 Box 301
Albany KY 42602

January 12, 2007

Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division
U.S. Department of Justice
1401 H St. NW. Suite 4000
Washington, DC 20530

IN RE: United States of America, et al
Vs.
Dairy Farmers of America, Inc.
Eastern District of Kentucky
London Division
Civil Action No.: 6:03-206-KSF

Mr. Botti:

I am writing the letter to express my thanks for initiating the Civil Action Suite against Dairy Farmers of America, Inc. by the Antitrust Division.

However, the speedy sale of DFA's per cent of interest in Southern Belle Dairy to Prairie Farms has raised concerns that this may only a deploy to lessen the investigation by the Antitrust Division. I would hope that this would not be the case and the Antitrust Division would continue to investigate DFA.

Being a Dairy farmer and a former Board of Education member and chairman, I understand the real need for competition for raw milk and the need for competition on bids for school milk also. With the continuing investigation by the Antitrust division this is assured to happen.

Thanks for reading this and your work on this matter.

Respectfully yours,


Bill L. Guffey

COMMENT SUBMITTED BY BRADLEY J. MARCUM

Bradley J. Marcum
HC-71 Box 454
Alpha, KY 42603
606.387.5193

January 10th, 2007

Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division
U.S. Department of Justice
1401 H St. NW. Suite 4000
Washington, DC 20530

IN RE: United States of America, et al
vs.
Dairy Farmers of America, Inc.
U.S. District Court
Eastern District of Kentucky
London Division
Civil Action No. : 6:03-206-KSF

Dear Mr. Botti:

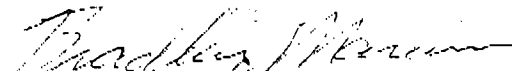
I personally would like to express my gratitude and appreciation to the Antitrust Division for its incomparable pursuit of the abovementioned matter. The Antitrust Division has been an asset to dairy owners, such as me.

Although the action of the Antitrust Division was beneficial in alleviating symptomatic problems that were occurring, the predominant problem remains. Dairy Farmers of America, Inc. still have an affluent influence upon decision making concerning the new plant of Prairie Farms, formally known as Southern Belle Dairy. Recently, it has been rumored that Prairie Farms have been manipulating individual producer pay price on raw milk. Some producers are receiving more than the contract allocated amount for raw milk; while others only receive a percentage of what the other producers are paid.

To the naked eye, it is difficult to understand why Prairie Farms would allow such a discrepancy between individual producers, yet when you begin to look closer, the picture becomes clear. Although the Dairy Farmers of America, Inc. were ordered to recede from the area and Southern Belle Dairy, many associates and "key" employees remain the same. To put it frankly, names on uniforms have changed to Prairie Farms, yet policies and business remain the same.

Thanks again for what was done. Keep up the good work.

Very truly yours,


Bradley J. Marcum

COMMENT SUBMITTED BY RONALD PATTON

5049 Hwy 490
East Bernstadt, KY 40729
January 12, 2007

Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division, U.S. Department of Justice
1401 H St. NW, Suite 4000
Washington, DC 20530

IN RE: United States of America, et al.
Vs.
Dairy Farmers of America, Inc.
U.S. District Court, Eastern District of Kentucky, London Division
Civil Action No.: 6:03-206-KSF

Dear Mr. Botti,

I wish to express my gratitude to the Antitrust Division for their efforts in pursuing the above mentioned matter. Even though the sale of Southern Belle Dairy to Prairie Farms may appear to resolve the competition for school milk bids, several issues remain.

My concern is that Dairy Farmers of America and Prairie Farms have made two transactions within the past year, The DFA sales of Turner Dairies and Southern Belle. Turner Dairies also has a milk processing plant in Kentucky. DFA's hasty sale of Southern Belle to Prairie Farms raises concern that other interested parties were not allowed to make an offer for this plant. I am knowledgeable of at least one offer that was not acted upon by DFA. The offer was from a local group of business officials who desired to see the plant operate independently of DFA and its associated partners. The independent group would have assured competition for bids for school milk and retail sales, as well as ensuring a market through which local farmers could sell raw milk rather than to the mega-coops.

It is imperative that the Antitrust Division investigate to ensure that the process under which Southern Belle Dairy was sold was fair and did not exclude other potential offers. It is my belief that the Antitrust Division has been lax regarding issues of the dairy industry, especially in the area of raw milk procurement, which ultimately affects the price of school milk!

Thank you for your attention to this matter. I look forward to discussing this matter further with you.

Sincerely,



Ronald Patton, Past President
Southeastern Graded Milk Producers Assoc.

COMMENT SUBMITTED BY ANONYMOUS

To: Hon. Mark J. Botti
Chief, Litigation I Section
Antitrust Division, U.S. Department of Justice
1401 H St. NW, Suite 4000
Washington, DC 20530

RE: United States of America, et al.
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From: A **VERY** concerned citizen who would love to sign this comment but out of fear of being retaliated against it is probably in my best interest not to sign it.

Dear Mr. Botti,

Please consider this information before giving final approval to the Prairie Farms purchase of Southern Belle Dairy.

It seems to me that Dairy Farmer of America (DFA) and Robert Allen (Good Ole Bob) chose to sell to the entity that would serve their best interest...NOT the best interest of the public. I base this conclusion on the fact that at least one group that was interested was not even given the opportunity to submit a bid or make a proposal. Another interesting thing is I believe Prairie Farms would know exactly how that felt because I believe the very same thing happened to them when Suzia was forced to spin Southern Belle off in order to purchase Broughton Foods. Is it possible that Prairie Farms wasn't willing to play the DFA games at that time but for some reason they are willing to play those games now? The game plan DFA has for the Southern Belle Dairy case, I believe, is to see the Southeastern Graded Milk Producers Association (SEGMPA) disappear. SEGMPA is a group of dairy farmers that has supplied Southern Belle for many years. It seems DFA has viewed SEGMPA as a thorn in their side for a long, long time. You will see in the following history how DFA had played a role in going to great and expensive lengths to see that Prairie Farms did not take ownership of Southern Belle. I never could understand this because DFA and Prairie Farms had some joint ventures that Prairie Farms managed. It is my belief, and I think it could be backed up with financial information from the two organizations, that DFA should have been very happy with those joint ventures with Prairie Farms. I heard in the past that there were years that had it not been for those joint ventures with Prairie Farms, DFA would have seen red ink instead of black ink on their financials. The following history will show how DFA went to great lengths to keep Prairie Farms from owning Southern Belle yet now they seem to have pushed Southern Belle to Prairie Farms. Why? Maybe because Leonard Southwell and Roger Capps (two long-time leaders of Prairie Farms) both passed away within the last six months. Maybe they knew better than to play the DFA games. I hope you find the following history helpful and not too boring.

Southern Belle History

1951-1997: Family owned company, that family being the Ralph Shearer family. Very early on, Mr. Shearer recognized that the relationship between SEGMPA was vital to the company for two reasons.

1.) From the get go, he felt a good, close relationship with these farmers and working together with them the dairy could have a raw supply with superior quality that would give Southern Belle an edge over its competition.

2.) Then in the 60's, when the larger Co-ops became prevalent, he felt the relationship with SEGMPA became even more vital to the company. He felt these larger Co-ops would get into the processing side of the business, which they did. This along with all of the hidden charges the larger Co-ops had meant that SEGMPA would be able to supply the company at a fair price to the producers but also at a price where Southern Belle could remain competitive in the market place.

1997: Because it became more and more difficult to survive as a stand alone dairy with Dean Foods and Suzia, (a relatively young company but they were giving Dean Foods a run for their money to be the largest fluid milk processor in the country) both were buying every dairy they could get their hands on. Martin Shearer had replaced his father, Ralph, as president of Southern Belle back in the 80's and Ralph Shearer passed away in the early to mid 90's. It was at this time Martin felt the best thing for the company was to join other dairies in some type of merger or sell to someone who had other plants before Dean and Suzia owned every dairy in the country. This led to the Shearer family selling the dairy to Broughton Foods in Marietta, Ohio. Broughton had a plant in Marietta and a plant in Charleston, West Virginia and would later buy a milk plant in Port Huron, Michigan and an ice cream plant in Burton, Michigan. Broughton was owned by a group of investors headed up by Marshall Reynolds of Huntington, West Virginia. Mr. Reynolds' right hand man at that time was Kirby Taylor. Kirby was also a stockholder in Broughton Foods. Martin Shearer remained as president of the Southern Belle division of Broughton Foods. Martin, following in his father's footsteps, continued the relationship with SEGMPA. He believed that relationship was good for both parties.

1998: It became known in early April that Dean and Suzia were both interested in acquiring Broughton Foods. The winner of that bidding war was Suzia. The rest of 1998 was spent by Suzia and Broughton getting DOJ approval.

1999: Finally, in the spring approval to the deal was given but with one stipulation...that was Suzia was given six months plus a possible one month extension, it was warranted, to spin Southern Belle off. At that time the DOJ feared there would be no competition for the school milk business in parts of Kentucky and Tennessee because Suzia already owned Flav-O-Rich, a dairy located in London, Kentucky, thirty miles from the Southern Belle plant. Tracy Noll, with Suzia, who had played a role in the purchase of Broughton Foods, now was playing a role in spinning Southern Belle off. It was my understanding that Prairie Farms was interested in purchasing Southern Belle but was not given an opportunity to make a proposal. I wonder why. DFA, an investor in Suzia at the time and partner in joint ventures with Prairie Farms... **STRANGE**...No, I believe Suzia and DFA

knew Prairie Farms would do what was best for Prairie Farms and the farmers who owned them (something DFA certainly doesn't understand) without any consideration of what was best for DFA or Suzia. The spin off was completed just as time was running out. If time had run out, DOJ had a trustee standing by to complete the spin off. Maybe it would have been best had they missed the deadline. Nevertheless, Southern Belle was purchased by a group of investors, several of which were former Broughton Foods stockholders. The group was headed up by Marshall Reynolds. Tracy Noll, for Suzia, and Kirby Taylor, for the investor group, played a significant role in the spin off. The price tag was \$6,500,000., a very good deal for the investors. Martin Shearer remained on as President of the company and there were virtually no changes.

2001: Marshall Reynolds decided it might be the right time to sell the company. Leonard Southwell and Roger Capps (two long-time leaders of Prairie Farms) visited the Southern Belle plant in Somerset, Kentucky and quickly made a \$13,000,000. offer for the company. This seemed to be a fair price for Prairie Farms and a very nice return for the investors. Double your money in two years...not bad. So it looked like Prairie Farms would own Southern Belle. *Not so fast*...Enter Tracy Noll, no longer with Suzia, now an owner in the newly born company called National Dairy Holdings (NDH)...yep, the same Tracy Noll that negotiated the sale of Broughton Foods to Suzia for \$80 plus million, then negotiated the spin off of Southern Belle for \$6,500,000., now back on the scene and upped the offer for Southern Belle to \$19,000,000. I'll bet that pissed Prairie Farms off. You see by this time Suzia had bought Dean the number (1) and number (2) in size as far as fluid milk processors in the country. As part of the Dean-Suzia deal, DFA had to sell their stock in Suzia...not to worry...they could re-invest now and own 50 percent of the newly formed NDH, who just happened to be the recipient of the dairies the new Dean had to spin off to gain DOJ approval. How nice this was for DFA; they now had 100 percent supply agreements with many of the new Dean company dairies and were 50 percent owners in the newly formed NDH and held 100 percent supply agreements with most of the NDA plants. Sounds like a plan is coming together. By the way, if you're ever in a position to sell or buy a dairy, get Kirby Taylor, not Tracy Noll.

1.) Kirby negotiates to sell Broughton Foods to Suzia, represented by Tracy Noll for \$80 plus million. Southern Belle went with the deal.

2.) Tracy Noll negotiates for Suzia to spin Southern Belle off to Kirby Taylor representing an investor group. The price: \$6,500,000.

3.) Kirby Taylor negotiates for the investor group and sells Southern Belle to none other than Trace Noll, now representing NDH for \$19,000,000.

Good Job Kirby!

I will have to commend Tracy Noll for having guts and a big set of you know what. Because you see...DOJ had required Suzia/Tracy Noll to spin off Southern Belle because they did not want the same company to own both Flav-O-Rich and Southern Belle. Guess what?? Flav-O-Rich was one of those plants spun off by the new Dean to NDH and part owner Tracy Noll and now he is about to buy Southern Belle. He must have figured because it was under the \$50,000,000 threshold, DOJ couldn't stop it. Tracy Noll must have got nervous because on Friday before the Southern Belle Board was to meet to

recommend the sale of NDH to stockholders, Kirby Taylor said, "The deal to NDH has been handed off to DFA." If I were Prairie Farms, I would really be mad now. DFA, a partner to Prairie Farms, buys Southern Belle right out from under them. You now see what lengths DFA will go to keep Prairie Farms from having Southern Belle. On Tuesday before the Southern Belle Board meeting, enter Jerry Boss, representing DFA and Bob Allen. The next day Southern Belle voted to recommend the sale of the company to DFA. To no one's surprise, Bob Allen is going to be the managing partner for DFA. He invested \$1,000,000. of his money to become a 50 percent owner in a \$19,000,000. company. Good ole Bob, a perfect partner in the words of Gary Hanman (the head man of DFA). Good ole Bob must have seen \$ signs, why not after walking away with \$17,000,000. in a very short period of time in a deal very similar to this one and also with DFA that involved Tuscan and Lehigh Dairies up in the northeast. Most anyone would be a perfect partner for an easy and quick \$17,000,000.

After the deal was complete and DFA and good ole Bob took over Southern Belle, good ole Bob almost immediately began laying the groundwork to give the SEGMPA two wonderful options:

- 1.) Become a DFA producer or
- 2.) Go fly a kite.

It was also apparent soon after Bob took over that he needed someone to be his yes man because Martin Shearer just did not fit the bill. The yes man suddenly appeared...why, it's Mike Chandler right out of the sales department. Mike is the kind of guy that gives all salespeople a bad name. People say he would climb a tree to tell a lie. However, he was lacking when it came to speech because he couldn't say shit with a mouthful.

Now this is where DOJ gets a well deserved Pat On The Back. Much to the surprise of DFA and good ole Bob, DOJ filed a lawsuit asking DFA to divest itself of its ownership in Southern Belle. Good ole Bob had to put the brakes on his plan. After all, it wouldn't look good if he sent Martin Shearer home and kicked the producers right between the legs, at least not right now. DFA and good ole Bob put up a good fight and finally finagled a judge into giving them a Summary Judgment. Good ole Bob must have known he was going to get it, as he sent Martin Shearer home before the Summary Judgment was made public and he put his yes man in place. When the Summary Judgment in favor of DFA and good ole Bob was made public, celebrations broke out to honor the victory over DOJ. After all, who is the DOJ that would question DFA and the perfect partner, good ole Bob.

Here is another well-deserved Pat On The Back for DOJ. You didn't quit. DOJ filed an appeal. The judge who was tricked by DFA and good ole Bob had his decision overturned. This really made DFA and good ole Bob mad. But what could they do?.....Give up and agree to sell it and quickly find someone to move it to that would finish the job for them. Why after going to great and expensive lengths to keep Prairie Farms from owning Southern Belle do they quickly sell it to them without even giving one group a chance to make a proposal? I know opinions are like assholes; every body has one. Here's my opinion – Whatever Prairie Farms might have given will be returned to them in some way, probably in credits toward raw milk purchases, making the price tag this time around \$00. plus keep lying Mike Chandler in charge to oversee DFA's best interests of seeing SEGMPA die a slow but sure death. At last, mission accomplished for DFA.

Please do whatever it takes to see Southern Belle end up in the hands of someone who has (zero) connection to DFA. Thanks for listening.

A very concerned citizen

P.S. Something else you may need to take a look at. Remember the children and families and taxpayers you were trying to protect when you made the new Dean spin off those plants.

1.) The one in northern Alabama that needed to give Dean competition; you may not know but it's gone. Dean has North Alabama schools all to themselves now. Poor children.

2.) The one in Virginia that was supposed to give Dean competition in parts of Virginia; you may not know but it's gone. Poor children.

3.) The one in Indiana that was supposed to give Dean competition; you may not know it but it's gone. Poor children.

You might ought to watch the rest that were spun off because some of them may soon disappear as well.

Thanks again for listening.