

1 UNITED STATES DEPARTMENT OF AGRICULTURE  
2 BEFORE THE SECRETARY OF AGRICULTURE

3 IN re: Docket #AO-F&V-991-A3; FV03-991-01  
4 HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO AND  
5 CALIFORNIA  
6

7 Hearing held on the 16th day of October, 2003  
8 at 8:33 a.m.

9 Portland, Oregon

10 TRANSCRIPT OF PROCEEDINGS  
11  
12

13 BEFORE: HONORABLE JILL S. CLIFTON  
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## P R O C E E D I N G S

October 16, 2003

ADMINISTRATIVE LAW JUDGE: This is volume 2, as it is day 2 of our hearing, and the transcript pages should be numbered in sequence from the conclusion of yesterday's transcript.

I would like now to discuss what has been done since we recessed last night. Mr. Monahan, would you begin with regard to copies?

MR. MONAHAN: Yes, Your Honor. We the proponents, have prepared copies of Exhibits 7, and 9 through 15. We have delivered those to the court reporter. The court reporter may use those extra copies in aid of transcription. In addition, I have prepared extra copies of Exhibit 15, which had been identified during Mr. Carpenter's testimony. I snuck around the room this morning and placed a copy on Ms. Deskins' desk, as well as Mr. Moody's chair. So counsel should have copies of Exhibit 15. For the record, Exhibit 15, is a document that on the back page appears to have been prepared by the Hop Growers of America. It is titled The Need for Order in the U.S. Hop Industry, Justification for the Proposal in Favor of a Hops Federal Marking Order. And for the record, I deliver this Exhibit to the court reporter now.

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1                   You will note Your Honor, that in reciting  
2 Exhibits 7 through 15, I hastily skipped over 8 again.  
3 That is still the slide presentation that we have  
4 presently on the screen. At this point in time, the  
5 only hard copy that we have made is the one that was  
6 delivered to Mr. Moody yesterday afternoon. As we--  
7 never mind, we have one colored copy of Exhibit 8, and  
8 the others are being made as we speak.

9                   ADMINISTRATIVE LAW JUDGE: Great. Very good.  
10 Just hang onto that one, until we decide where it should  
11 go for now.

12                  MR. MONAHAN: Thank you, Your Honor.

13                  ADMINISTRATIVE LAW JUDGE: When do you expect  
14 the others to arrive?

15                  MR MONAHAN: I think in a few minutes.

16                  ADMINISTRATIVE LAW JUDGE: Very good. All  
17 right, I have a thought, that I want to explore now  
18 about the web site, where the transcript will be posted.  
19 Does the Government anticipate posting also Exhibits on  
20 the web site?

21                  MS. DESKINS: At this point, Judge Clifton, we  
22 don't know it would depend on the Exhibits. I don't  
23 know that we really thought about that at this point.

24                  ADMINISTRATIVE LAW JUDGE: All right. With  
25 regard to the PowerPoint presentation, is it possible

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1 for the participants here to have that PowerPoint  
2 presentation e-mailed to them?

3 MR. MONAHAN: Certainly, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: All right. If you  
5 would like a copy of the PowerPoint presentation  
6 e-mailed to you, I would like you to supply your e-mail  
7 address. Which committee member is going to receive  
8 those?

9 MR. MONAHAN: Mr. Roy.

10 ADMINISTRATIVE LAW JUDGE: Thank you. Because  
11 of the proprietary interest in the information, the  
12 subscription fees will be due to Mr. Smith. Just  
13 kidding, they are not a matter of public record. I  
14 didn't see any copyright on any of those. All right, so  
15 if you would like that e-mailed to you, just give your  
16 e-mail address to Mr. Roy. He can e-mail it to that  
17 address today, as I understand it, right here, right  
18 now, or when you provide the address to him.

19 MR. ROY: We have added page numbers to the  
20 slides this morning.

21 ADMINISTRATIVE LAW JUDGE: Excellent.

22 MR. ROY: So the copies that are here, will  
23 not have page numbers, but the copy that is e-mailed to  
24 anyone that wants it, will have page numbers, and they  
25 will have page numbers up on the screen today.

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1 ADMINISTRATIVE LAW JUDGE: Okay, good. So  
2 when you get your copy today, you may want to go ahead  
3 and mark those page numbers, just so we can keep up  
4 during cross examination. All right. Very good.

5 Now what other preliminary matters, does  
6 anyone want to raise? Mr. Carswell?

7 MR. CARSWELL: Do you want to discuss at this  
8 point, the timing for today, whether we're going to go  
9 late or not or?

10 ADMINISTRATIVE LAW JUDGE: Yes, thank you.  
11 I've done a lot of hearings where the day after we go  
12 late, people are not as sharp. And as a result, the  
13 evidence doesn't come in as high quality as it was the  
14 day before. So I don't love to go late, but in some  
15 cases, it is better to do that than to leave, without  
16 having completed the tasks. So for that reason, I am  
17 willing to go late, if everyone is in agreement with  
18 doing that. We always have to worry about whether the  
19 place where we are holding the hearing, is going to  
20 allow us to go late. And I understand that at least  
21 this room is not scheduled for something tonight. But I  
22 don't know whether additional charges would accrue if we  
23 wanted to use it. We would have to get permission I  
24 think, because we are only booked for the time through  
25 five o'clock.

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1           So that, with that caveat, who all would be  
2 interested in working late tonight? Okay, all of those  
3 who are against the proposal seem to be interested in  
4 going late if necessary. No one else indicated the  
5 desire to do that.

6           Mr. Monahan, do you have a general consensus  
7 of what your group feels about that?

8           MR. MONAHAN: We would defer to Your Honor's  
9 judgment, I think that we believe that given the hearing  
10 time that has been allotted, it should be, the issue  
11 should be able to be addressed. The evidence should be  
12 able to be submitted in the normally scheduled hours.

13           ADMINISTRATIVE LAW JUDGE: All right. Is  
14 there anyone else, we had Mr. DeCelle yesterday, out of  
15 order because of his schedule. Is there anyone else who  
16 must complete testimony while we're here in Portland,  
17 who is not available to go with us to Yakima?

18           MR. CARSWELL: Not today, but tomorrow there  
19 would be someone.

20           ADMINISTRATIVE LAW JUDGE: All right. And who  
21 is that?

22           MR. CARSWELL: Actually, we have a couple of  
23 people. Don Kloth, from Anheiser/Busch, and Steve  
24 Rockhold, from Coors Brewing Company. I would also  
25 assume that there may be some Morgan Growers, who plan

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1 to testify tomorrow who would not be able to go to  
2 Yakima as well.

3 ADMINISTRATIVE LAW JUDGE: Is there anyone in  
4 the room, who falls into that category? All right. It  
5 appears not.

6 How much time do you believe would be required  
7 for the direct examination of Mr. Kloth, and Mr.  
8 Rockhold?

9 MR. CARSWELL: I would, it depends on cross  
10 exam...

11 ADMINISTRATIVE LAW JUDGE: Just for direct.

12 MR. CARSWELL: Direct, I'm sorry. Just  
13 probably at the most an hour, I would think.

14 ADMINISTRATIVE LAW JUDGE: For each one?

15 MR. CARSWELL: No ma'am, total.

16 ADMINISTRATIVE LAW JUDGE: Total, all right.  
17 All right.

18 MS. DESKINS: Judge Clifton?

19 ADMINISTRATIVE LAW JUDGE: Yes, Ms. Deskins.

20 MS. DESKINS: If they are going to have  
21 witnesses come in tomorrow, if they already have  
22 statements from them, if we could get them sometime  
23 today it might help to speed them out of here tomorrow.

24 ADMINISTRATIVE LAW JUDGE: All right. Do you  
25 know if they have prepared statements, Mr. Carswell?

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1 MR. CARSWELL: Well, I know with respect to  
2 Anheiser/Busch, and I wanted to discuss this. I mean I  
3 know that he is going to have typed notes, and they are  
4 in the form of notes. It is his, you can tell from the  
5 reading of it, that they are notes. And I don't know,  
6 if those need to be provided or not. I mean we can,  
7 there is nothing, we are not hiding anything. But I  
8 just, they are notes. They are not statements, they are  
9 not planned to go in the record. But, I will leave it  
10 to your decisionmaking whether we need to submit those.

11 ADMINISTRATIVE LAW JUDGE: My own concern, is  
12 that I think sometimes we can all, well let me back up a  
13 bit. What happens after the hearing, is that all  
14 parties are given an opportunity to suggest corrections  
15 to the transcript. In the past, when the transcript has  
16 been inaccurately prepared, probably because of the  
17 unfamiliarity with the terms of the trade. The notes,  
18 even if they weren't a prepared statement, helped us get  
19 the transcript corrected. So that is why I think notes  
20 are helpful. But I wouldn't ever require someone, to  
21 put his rough notes in as an exhibit, if he felt that  
22 misrepresented, the jest of his statement.

23 MR. CARSWELL: I don't think that will be the  
24 case here, so we will be glad to submit them.

25 ADMINISTRATIVE LAW JUDGE: Okay.

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1 MR. CARSWELL: Just everybody realize, that  
2 they're not, it is really not meant to be a prepared  
3 statement.

4 ADMINISTRATIVE LAW JUDGE: All right. Very  
5 fine. Back to this correction of transcript, it is my  
6 job to certify to the Secretary, what is the correct  
7 record. But I rely on those of you, who are counsel, or  
8 very interested parties to help me do that. So it will  
9 be necessary, for you to get a thorough read of the  
10 transcript, at least of the people you called as  
11 witnesses. And if we have a crucial point that is in  
12 contention, I can obtain from the court reporting  
13 service, the actual tape, and I can listen to the tape  
14 again. But that is rarely necessary.

15 Yes, Mr. Carswell?

16 MR. CARSWELL: Yes, Your Honor, I you know  
17 understand Brendan's position, or you know the deferring  
18 to you on the timing, and going late tonight. But, you  
19 know I just do hope that we are given sufficient time,  
20 to present our side of the case. And both here, and in  
21 Portland, so you know I think it is important in terms  
22 of our message, that with the growers who are only going  
23 to be here, that we are able to do that.

24 ADMINISTRATIVE LAW JUDGE: All right, Mr.  
25 Moody are you aware of any, right now of any growers who

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1 want to testify in Portland, against the proposals?

2 MR. MOODY: Yes we have one Oregon grower, and  
3 we are still working on the names of the Idaho growers  
4 that have to be here in Portland. And so, the Oregon  
5 grower can testify here today, or tomorrow.

6 ADMINISTRATIVE LAW JUDGE: All right. then who  
7 is that?

8 MR. MOODY: John Annen.

9 ADMINISTRATIVE LAW JUDGE: And how is that  
10 spelled?

11 MR. MOODY: A-n-n-e-n.

12 ADMINISTRATIVE LAW JUDGE: And can you just  
13 approximate Mr. Moody, how long his direct examination  
14 might take?

15 MR. MOODY: 20, 30 minutes.

16 ADMINISTRATIVE LAW JUDGE: All right. Very  
17 good. Well at this point, I don't see a compelling need  
18 to go late tonight. So I think we will plan for today,  
19 to close at about 5:00 o'clock. Yes, Mr. Moody?

20 MR. MOODY: I don't know if we can maybe have  
21 to revisit it...

22 ADMINISTRATIVE LAW JUDGE: Are you close to  
23 the mike?

24 MR. MOODY: Oh, I don't know if we need to  
25 revisit this at noon, but I am really sure, we are going

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1 to need to go late, late tonight as people would feel  
2 comfortable doing. Just because I would like to get  
3 into as much of the meat, and nuts, and bolts of the  
4 actual marketing order provisions, once we finish the  
5 economics testimony this morning, from Mr. Smith. So  
6 maybe if we could just revisit this again at noon, or I  
7 don't know if Your Honor feels like you ought to kind of  
8 announce it now, so that the members of the audience can  
9 know what to do. But I just have a strong feeling, it  
10 would be helpful, more helpful to go later tonight, than  
11 it would be, to go later on a Friday night.

12 ADMINISTRATIVE LAW JUDGE: Well, I guess that  
13 is a point. If I am putting it off, that may make it  
14 worse. If we--let me ask you this way. I am going to  
15 ask you by a show of hands. If we had to go late, one  
16 of the two nights here in Portland, I am going to ask  
17 you if you would prefer that the late night be Thursday  
18 night, or if you would prefer that the late night be  
19 Friday night.

20 Would you prefer that the late night be  
21 Thursday night? Would you prefer that the late night be  
22 Friday night? All right. It is almost unanimous that  
23 the late night should be tonight, if there need be one.  
24 So we will revisit this, this issue before we go to  
25 lunch.

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1 MR. MOODY: Thank you, Your Honor.

2 ADMINISTRATIVE LAW JUDGE: You are welcome,  
3 Mr. Moody. All right. Any other preliminary matters?  
4 Is there any further direct testimony of Mr. Smith at  
5 this time before cross examination begins on what we've  
6 seen so far?

7 MR. MONAHAN: There is not, Your Honor. And I  
8 do need to back up in terms of preliminary matters. We  
9 have now been informed by Mr. Moody, of a couple of the,  
10 I believe an Idaho grower, or an Oregon grower who will  
11 testify. But we would appreciate to the extent  
12 possible, having a list of all growers, or all  
13 witnesses, that the opposition the cons, do presently  
14 intend to call as witnesses.

15 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
16 Moody, were you able to get a typed list?

17 MR. MOODY: Actually it is handwritten, and I  
18 am happy to give it to Brendan, if he can just after he  
19 looks at it, give it back so we can add some names, if  
20 we need to add any names, or make a copy and add it, and  
21 give it back to us.

22 ADMINISTRATIVE LAW JUDGE: All right, would  
23 you read it into the record now Mr. Moody, and spell the  
24 names for us please?

25 MR. MOODY: Okay. We have already discussed  
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1 Steve Rockhold. After that is...

2 ADMINISTRATIVE LAW JUDGE: Would you spell his  
3 name?

4 MR. MOODY: R-o-c-k-h-o-l-d. Okay, and there  
5 is going to be a gentleman from Redhook Brewery,  
6 testifying next week for sure out here.

7 MR. MONAHAN: That's correct.

8 MR. MOODY: Okay, next week. Then Wydmer,  
9 W-y-d-m-e-r, Brewery.

10 MR MONAHAN: W-i-d...

11 MR MOODY: I-d, also next week. S.S. Steiner.

12 MR. MONAHAN: That is next week, too.

13 MR. MOODY: Next week.

14 ADMINISTRATIVE LAW JUDGE: Spell that please.

15 MR. MOODY: S-t-e-i-n-e-r.

16 ADMINISTRATIVE LAW JUDGE: And what were the  
17 initials?

18 MR. MOODY: S.S. John Annen, A-n-n-e-n, here  
19 today, or Thursday, or Friday. Jeff Bush, B-u-s-h, here  
20 Thursday or Friday. George E. Desmarias,  
21 D-e-s-m-a-r-i-a-s. Stacy Puterbaugh,  
22 P-u-t-e-r-b-a-u-g-h, first name is S-t-a-c-y. Kevin  
23 Riel, K-e-v-i-n, R-i-e-l. And we are get to be  
24 determined if any Idaho growers will be needing to  
25 testify here. And I also mentioned Jeff Bush.

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1 ADMINISTRATIVE LAW JUDGE: All right, tell me  
2 where these growers are from?

3 MR. MOODY: Annen is from Oregon, Bush is from  
4 Oregon, the rest are from Washington.

5 ADMINISTRATIVE LAW JUDGE: I would like to go  
6 off the record for just a minute.

7 \*\*\*

8 [OFF THE RECORD]

9 [ON THE RECORD]

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: We are back on  
12 record at 8:59. Does that conclude the preliminary  
13 issues? It appears it does. Mr. Monahan, is Mr. Smith  
14 now available for cross examination?

15 MR. MONAHAN: Yes, he is.

16 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
17 Smith, I would like you to stay there, because during  
18 the cross examination, you may be asked to bring up a  
19 particular slide. And you remain under oath, and who  
20 would like to begin cross examination, of Mr. Smith?  
21 Mr. Moody, you may.

22 MR. MOODY: Thank you, Your Honor. And good  
23 morning, Mr. Smith.

24 \*\*\*

25 MICHAEL SMITH,  
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1 having been previously sworn, according to the law,  
2 testified as follows:

3 \*\*\*

4 BY MR. MOODY:

5 Q. Let's see, let's start with, I had a  
6 couple of questions about your Exhibit 8, page 3, the  
7 third page, and then its got the 3 justifications on it.

8 A. Is that the one you are referring to?

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Now he can't see  
11 that, so ask him by referring to some of the words?

12 \*\*\*

13 BY MR. MOODY:

14 Q. Reasons for a hot marketing order.

15 A. Okay, it is on the screen.

16 Q. Okay. The first one there, U.S.

17 production impact on world prices. If I understood your  
18 testimony correctly yesterday, and some of the charts  
19 you went through, where you were adding the high alpha  
20 varieties of U.S. and German produced hops. I  
21 understood you to say that those hops are substitutes  
22 for each other, is that correct?

23 A. They compete in the same market, yes.

24 Q. All right. And is the price, are they  
25 priced by variety, or are they priced by their alpha

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1 content?

2 A. Both.

3 Q. Okay. And is the CTZ type hop grown both  
4 here and in Germany?

5 A. I'm not aware of any significant  
6 production of CTZ that is growing in Germany.

7 Q. Is there one of the high alpha acid hops  
8 that is grown in both here, and Germany?

9 A. There actually are a couple, Nugget is  
10 grown commercially in the United States, and in Germany.  
11 And magnum is grown on very small scale in the United  
12 States.

13 Q. Okay. And would the prices for those be  
14 the same, or would one be higher than the other, for the  
15 Nugget hops?

16 A. For the Nugget hops?

17 Q. Um-hum.

18 A. Well it would depend actually, on the  
19 specific market. Because Nugget could be sold as a  
20 generic alpha variety, and in that case, would be  
21 competing directly with any other hop that was  
22 considered to be a generic alpha variety. But Nugget  
23 also can be sold, and is sold, as a specific variety.  
24 In the case of being sold as a specific variety, the  
25 opportunity for it to be priced higher than generic

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1 alpha exists.

2 Q. Okay. Now when you say that the high  
3 alpha varieties compete with each other, can you flush  
4 that out a little more. And do they compete as for sale  
5 as bails, do they compete for sale as extract, do they  
6 compete for sale as in some intermediate stage? Where  
7 does the competition actually occur for those high alpha  
8 varieties?

9 A. The main forms that those are sold in  
10 would be extract, and pellets.

11 Q. Okay. And they, when you say they  
12 compete with each other, is there a--I know, I apologize  
13 for asking some seemingly simplistic questions, but I  
14 think we need to get the record clear at this point. Is  
15 there an exchange that they compete on, if I was a  
16 brewer and needed some of these hops, where would I go  
17 to obtain them?

18 A. Would you repeat the question, I got  
19 lost?

20 Q. Okay. I want to just understand where  
21 the competition takes place? Does it take place on the  
22 internet, on e-bay, is there an exchange? Do I get on  
23 the phone and call people, where do I find out if I am a  
24 brewer, where to get some of these high alpha acid  
25 varieties?

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1           A.    The bulk of the high alpha acid varieties  
2 are marketing by four companies in the world.

3           Q.    Okay.  And what are those four companies?

4           A.    Yakima Chief Incorporated, out of  
5 Sunnyside, Washington.  The John Barth Organization,  
6 which actually includes two companies, the John Barth in  
7 Germany, and John A. Haas, in Washington, D.C.  The S.S.  
8 Steiner Organization, that has offices other places as  
9 well, but primarily in sources hops from Germany and the  
10 U.S.  And the fourth would be the HPG Grower  
11 Cooperative, out of Germany.

12           Q.    Okay.  And those would be considered  
13 dealers, or handlers, or both?

14           A.    I think dealers, handlers, processors,  
15 suppliers.

16           Q.    Okay.  Under the Marketing Order, would  
17 they be considered handlers?

18           A.    I'm not qualified to answer that, I  
19 really didn't work on the Marketing Order.

20           Q.    Okay.  Then what percentage of the high  
21 alpha acid varieties, would those 4 companies  
22 approximately account for?

23           A.    I am going to venture a guess, that is in  
24 excess of 90 percent.

25           Q.    Okay.  Now are they selling bails, or are  
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1 they selling extract, what do they sell?

2 A. They would sell bails, extract, pellets,  
3 what we would term downstream products. Most of those  
4 companies have the ability to produce a full array of  
5 products.

6 Q. Okay. And they are, the entities they  
7 are selling to would be brewers, is that correct?

8 A. That is correct.

9 Q. Okay. And how many, approximately how  
10 many brewers are there, that would be buying these  
11 products?

12 A. I am not really prepared to answer that.  
13 I mean it is a difficult question. If you were to take  
14 just for example, a couple of those companies sell to  
15 the craft breweries in the United States, and there is  
16 over 900 of them.

17 Q. Okay. And what makes a brewery a craft  
18 brewery?

19 A. I think it generally would be determined  
20 more by volume.

21 Q. Okay. It would be the smaller breweries?

22 A. That is correct.

23 Q. Okay. And then what, is there another  
24 category of brewers, that might characterize the larger  
25 companies?

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1           A.    The bulk of the, and I don't have those  
2           statistics with me, but certainly the majority of the  
3           beer production, is concentrated in the hands of a dozen  
4           brewing companies.

5           Q.    Okay.  So there is approximately 12 large  
6           breweries, approximately 900 small breweries, is there  
7           any other category of breweries we need to think about  
8           on the buying side?

9           A.    There would be some medium sized  
10          breweries, as well.

11          Q.    Okay.  And what, about how many of those  
12          companies are there?

13          A.    I am not prepared to answer that, I  
14          really don't know.

15          Q.    Dozens, hundreds?

16          A.    I would say in the hundreds.

17          Q.    Okay.  And could you give an example, of  
18          one that might have a national, nationally known brand  
19          name, the medium size brewery?  Like Sierra Nevada, or  
20          Olympia?

21          A.    I would say Sierra Nevada.

22          Q.    Okay.  All right.  And so but these  
23          approximately now, about 1,000 or more breweries buy  
24          from primarily the same 4 dealers?

25          A.    That is correct.

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1 Q. Okay. Now you are a partner, or an owner  
2 in Yakima Chief?

3 A. That is correct.

4 Q. Okay. And that is one of these dealers,  
5 correct?

6 A. They are a processor, supplier, yes.

7 Q. Okay. And what facility, what type of  
8 processing facility does Yakima Chief have?

9 A. They have storage facilities, cold  
10 storage facilities, pellet facilities, and CO2  
11 extraction facility.

12 Q. All right. And in addition to being, now  
13 is it a partnership, Yakima Chief?

14 A. It is an LLC.

15 Q. Okay. So are you an employee, as well as  
16 an owner?

17 A. I am not.

18 Q. You are an owner?

19 A. That is correct.

20 Q. Okay. And do you also, do your day--do  
21 you have any day-to-day duties, at Yakima Chief,  
22 involving on the marketing side for the hops?

23 A. Not anymore.

24 Q. Okay. Did you at some time in the past?

25 A. I did.

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1 Q. What did you do?

2 A. I represented the company in sales,  
3 internationally for oh from their inception, until about  
4 1999.

5 Q. And when was their inception?

6 A. 1996, I think.

7 Q. Okay. And so now, in connection with  
8 international sales, you were selling, your customers  
9 were these breweries, you previously mentioned?

10 A. That is correct.

11 Q. Did you go to, did you make these sales  
12 on the telephone, on the Internet, did you go to  
13 conventions, what form was your market activity  
14 conducted under?

15 A. Certainly there was telephone  
16 conversations, but I traveled to, and visited on  
17 numerous occasions, most of the major breweries in the  
18 world.

19 Q. And then, when they -- were hops  
20 typically sold by a variety, or simply sold in their  
21 alpha acid form, or both?

22 A. Both.

23 Q. And how would you determine the  
24 appropriate price, that you were offering to the market?

25 A. We made the mistake of trying to price at

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1 the cost of production, plus a reasonable profit. That  
2 is where our starting point was.

3 Q. Okay. And was that part of your job, as  
4 to determine an offering price?

5 A. That is correct.

6 Q. Now do I also understand that you are a  
7 grower of hops?

8 A. I am.

9 Q. And you have 2 different growing  
10 entities?

11 A. I do.

12 Q. Okay. And what are those?

13 A. There is an entity, our family entity by  
14 the name of Loftus Ranches Incorporated, and another  
15 entity by the name of Adams View Farms.

16 Q. Okay. And are both of those firms, part  
17 of Yakima Chief?

18 A. They both deliver hops to Yakima Chief,  
19 yes.

20 Q. And are you also an owner of a company  
21 called Hop Union?

22 A. That is correct.

23 Q. And what does that company do?

24 A. That company concentrates, or specializes  
25 in storage, processing, and sales to craft breweries.

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1 Q. All right. And is it also a grower of  
2 hops?

3 A. It is not.

4 Q. Is it a dealer like Yakima Chief?

5 A. You know the term dealer, what do you  
6 mean by that, could you give me an idea?

7 Q. Well I don't want to put any words in  
8 your mouth, I just seen that you had used in some of the  
9 testimony. Let's maybe use the word handler, would they  
10 be handler of hops?

11 A. They would be a handler of hops.

12 Q. Okay. So do they compete with Yakima  
13 Chief?

14 A. They compete with Yakima Chief in the  
15 craft brewing area, that is correct.

16 Q. All right. So they would be a 5th, the 4  
17 companies you previously mentioned that were handlers,  
18 this would be a 5<sup>th</sup> handler?

19 A. That is true.

20 Q. All right. Now in terms of the ownership  
21 of the hops, do they, are the hops typically sold from  
22 the grower to the handler, who actually takes title of  
23 the hop, or are they sold to the handler, on a  
24 consignment basis?

25 A. Consignment basis.

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1 Q. And that is true, at both Yakima Chief,  
2 and Hop Union?

3 A. That is true.

4 Q. Okay. And then does the handler deduct a  
5 marketing charge, and then return what is ever left over  
6 to the grower?

7 A. That is correct.

8 Q. And is that true, for throughout the  
9 industry?

10 A. No, that is not correct.

11 Q. Okay. Is there another form of sales  
12 transaction, that would characterize most of the  
13 industry?

14 A. Yes, a purchasing sale agreement.

15 Q. Okay. Where the handler takes title to  
16 the hops?

17 A. That is correct.

18 Q. And the growers are paid a fixed price?

19 A. That is correct.

20 Q. Okay. And then there would be, there are  
21 2 types of those sales, is that correct, 1 in spot  
22 market, and 1 forward contracts?

23 A. Yes.

24 Q. Okay. And are both forms of sales, the  
25 grower gets a guaranteed price, irrespective of what the

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1 handler is ultimately able to sell the hops for?

2 A. Yes.

3 Q. And are you familiar with forward  
4 contracts?

5 A. I am.

6 Q. Does Yakima Chief use that form of sale?

7 A. Use that form of sale, or that form of  
8 purchase?

9 Q. That form of purchase?

10 A. No. Not to any significant degree.

11 Q. Okay. Is the forward contract used by  
12 other firms, other handlers in the industry?

13 A. Forward contract for purchase of sale?

14 Q. For purchase?

15 A. As far as I know it is, yes.

16 Q. Okay. Do you see any benefits to the  
17 grower, from using forward contracts?

18 A. I think there is tremendous benefits,  
19 yes.

20 Q. And what would some of those benefits be?

21 A. Instability, and certainly the ability  
22 for the grower to finance his operation prior to the  
23 growing season.

24 Q. So to, meaning to finance his operation,  
25 can he take that forward contract to a bank, or the

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1 financial institution, and use that as collateral, to  
2 obtain financing?

3 A. Well I wouldn't say it is collateral, but  
4 certainly it is part of a business plan that becomes  
5 financeable at the bank.

6 Q. All right. Are the brewers ever involved  
7 in the forward contracts, or is it just the handlers?

8 A. As I mentioned yesterday, we have at  
9 least 2 brewers that contract directly with growers.

10 Q. And so they skip over the handler?

11 A. Well neither of those purchasers, those  
12 breweries have facilities to store hops, so they still  
13 utilize the handlers, in a capacity of storage and  
14 handling of the hops, but the actual purchase and sale  
15 agreement, is between the brewer and the grower.

16 Q. And by cutting out the middle man, does  
17 that give the grower a little bigger piece of the pie?

18 A. I think that is a fair depiction, of what  
19 actually happens, yes.

20 Q. Okay. And what term of years typically,  
21 are these forward contracts?

22 A. Well it varies. For example currently,  
23 there are no future contracts, well I shouldn't say  
24 that. I am not aware of any future contracts with one  
25 of the major purchasers directly, and the other

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1 purchaser has some contracts that are in place, I think  
2 for about 3 years.

3 Q. Okay. And is 3 years, historically  
4 speaking been typical for the industry in going back. I  
5 think you said you have been in this industry, since the  
6 old Marketing Order?

7 A. I think that it ranges by grower, but on  
8 average, I would say at a time when we used to utilize  
9 future contracts, in a significant way, I think 3 years  
10 would probably have been a good average. But it could  
11 have ranged as much as from 1 year to, and there was  
12 some contracts signed back in the '80s, that were 6 and  
13 7 year contracts, in the early '80s.

14 Q. All right. And what is the reason that  
15 Yakima Chief doesn't use forward contracts?

16 A. It is kind of, we need to kind of break  
17 apart the difference between contracts and consignment.  
18 Yakima Chief uses future consignment agreements, so the  
19 grower is committed to deliver hops to Yakima Chief, but  
20 not for a fixed price.

21 Q. So it is sort of, you could think of it  
22 as a supply contract in effect?

23 A. That is correct.

24 Q. Okay. And those growers are bound for  
25 some number of years, to deliver their production to

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1 Yakima Chief.

2 A. That is correct.

3 Q. That is not guaranteed as to what the  
4 quantity, or price would be?

5 A. The quantity is fixed at the beginning of  
6 each marketing year, but the price is definitely not  
7 fixed.

8 Q. And any particular reason Yakima doesn't  
9 use the price term, in these forward contracts?

10 A. Their business model has chosen to work  
11 with the growers on a consignment basis, rather than on  
12 a contract basis.

13 Q. And is it your belief, that you are able  
14 to, by using consignment sales, obtain a better return  
15 to growers, than companies that use forward contracts?

16 A. I think a case could be made that, it is  
17 a more equitable return.

18 Q. All right. Is there a reporting system,  
19 or a disclosure system for these, either price on a spot  
20 market, or a price on the forward contracts?

21 A. Do you mean an industry wide system?

22 Q. Yes.

23 A. Not that I am aware of.

24 Q. From your experience doing marketing for  
25 Yakima Chief, were you generally familiar with the

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1 contract prices, and the spot market prices that were  
2 obtained by other participants?

3 A. To the degree that they were available,  
4 yeah.

5 Q. Okay. And how did you find that out?

6 A. Coffee shop.

7 Q. Okay. But there is no formal exchange,  
8 or no formal price reporting system, like market news?

9 A. Not anymore no.

10 Q. Okay. Did there used to be?

11 A. Yes, there was.

12 Q. Okay. And how did that mechanism work?

13 A. Well, and I don't recall exactly, but the  
14 U.S. Department of Agriculture, printed I guess it was  
15 monthly, a hop, well it was called Hop Market News, and  
16 it had a lot of statistics in it, but it also, listed  
17 whatever market activity had taken place, in the prior  
18 period.

19 Q. Okay. And what time period did that  
20 publication cover?

21 A. I think it was monthly, and it didn't  
22 list the quantities necessarily, nor specific prices,  
23 but it would give a range of prices that were sold  
24 during that previous period.

25 Q. Yeah, but how far back in history did

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1 this go, back into the '80s?

2 A. When I got into the industry in 1974, it  
3 was part of the normal reporting that growers received.  
4 And we received that, I don't recall Mr. Moody, but I  
5 think we received that into maybe the late '80s, early  
6 '90s.

7 Q. Okay. Do you know why it was suspended?

8 A. I don't.

9 Q. All right. When you were marketing your  
10 high alpha hops for Yakima Chief, were you aware of the  
11 prices, that the German growers were selling their  
12 similar hops for?

13 A. The German growers were selling them to  
14 the dealers, or the dealers were selling to the brewers?

15 Q. Both.

16 A. The Germans have a reporting system, that  
17 allows access to information for what they are selling  
18 their hops for, yes. So that information was readily  
19 available. What prices that the German dealers were  
20 selling hops to brewers, sometimes you would get that  
21 information from a brewer, and other times you might  
22 not. But you could run a calculation based on the price  
23 that was being paid to the grower, and utilize some  
24 conversion factors of deficiencies and so forth, as well  
25 as rough processing costs, to arrive at an approximately

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1 price that German merchants or dealers, would be  
2 offering to brewers.

3 Q. Okay. But the disclosure system in  
4 Germany, covered the grower dealer samples?

5 A. That is correct.

6 Q. Now was the German market characterized,  
7 by forward contracts?

8 A. Yes, it is. Well it was, and it  
9 continues to be today.

10 Q. Okay. To the same extent as the U.S.  
11 market?

12 A. Well the U.S. market today, really  
13 doesn't have a future contract market.

14 Q. But Germany does?

15 A. That is correct.

16 Q. And why is that?

17 A. I am not exactly sure.

18 Q. Is the disclosure system used in Germany,  
19 for the grower dealer price, is that sort of similar to  
20 the market news system, that USDA was using?

21 A. I have no idea, how that information was  
22 collected.

23 Q. Do you get it on a fax from Germany, or  
24 is it on the internet?

25 A. I get it from Mr. Roy.

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1 Q. Pardon me?

2 A. I get it from Mr. Roy.

3 Q. Okay. All right. Now is your, so was  
4 your price for alpha hops, you were able to offer  
5 brewers, influenced by the prices that you knew were  
6 happening in Germany?

7 A. I am sorry Mr. Moody, would you repeat  
8 the question?

9 Q. Right, was the price you were able to  
10 negotiate with brewers, influenced by the German prices?

11 A. To a certain degree, yes.

12 Q. Okay. And if you would have, and they  
13 are sold on a per pound basis, is that the unit of sale?

14 A. Generally, on a per kilogram of alpha  
15 basis.

16 Q. Okay. And what is just a rough price  
17 range, when you were doing these sales for a kilogram of  
18 alpha?

19 A. In the early '90s, and in fact, right  
20 around 1990, I recall making sales in excess of \$90 a  
21 kilo alpha. And I recall making sales before I left the  
22 company, in the low \$30 kilo alpha range.

23 Q. All right. And if you were, if the  
24 German's were offering \$50 a kilo for alpha, how much  
25 above that could you go, before you would chase the

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1 brewer sale away, to a German seller?

2 A. That is really kind of a difficult  
3 question, because when I got into the industry to begin  
4 with, we were selling, and I am talking primarily in  
5 European sales. We were selling Nugget alpha, and we  
6 were competing against Northern Brewer Alpha. And  
7 Northern Brewer Alpha was priced significantly higher,  
8 due to the much lower alpha acid content. And so, what  
9 we found in that situation, over a period of years,  
10 after there was a shortage of, the crop in Germany was  
11 short in '90, '92, and in '94. And through that period  
12 of time, we were able to move and to sell U.S. Nugget  
13 alpha, directly to German breweries, because we had a  
14 terrific price advantage. If we would have been at the  
15 same price, or even at a very close price, I would think  
16 that the German brewers, would have preferred to use  
17 German alpha.

18 Q. All right. Is it fair to say that the  
19 market for alpha acid, is competitive on a global basis?

20 A. I think that is a fair statement.

21 Q. All right. And so the variety  
22 differences in price, are reflective of the different  
23 alpha acid content, in those different varieties? Would  
24 that be correct?

25 A. To a certain degree, I think that is  
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1 correct.

2 Q. Okay. You mentioned you have 2 grower  
3 entities, one was Adams, and what was the other one?

4 A. Loftus Ranches.

5 Q. Loftus, and you are an owner of both of  
6 those entities?

7 A. I am.

8 Q. Pardon me?

9 A. Yes, I am.

10 Q. And so if the proposed Marketing Order  
11 goes forward, you would be entitled to 2 votes?

12 A. I have no idea, who is going to be  
13 allowed to vote.

14 Q. Okay. That is, somebody else is going to  
15 tell us about that?

16 A. That is correct.

17 Q. Okay. Now are either, did either of  
18 those growers experience a significant decline in  
19 production, during the last 6 or 7 years?

20 A. Now you get into some personal issues. I  
21 am not afraid to share those with you, I am not sure  
22 that they are relevant.

23 Q. Well, I am just going to interrupt you,  
24 for just a quick second. I asked the questions because  
25 part of the proponents case, is that there has been 2,

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1 there is a chronic over supply, and there has been an  
2 unwarranted decline in acreage, and so my questions are  
3 designed to test those statements, on behalf of the  
4 proponents, and to examine the impact of the decline, on  
5 profitability. Profitability being one of the key  
6 questions underlying the need for a Marketing Order. So  
7 that is why I am asking the questions, not obviously to  
8 pry into something that is proprietary, or trade secret.

9 A. Well then would your questions be better  
10 stated on a U.S. industry basis, rather than on my own  
11 personal farm?

12 Q. Well do you have, well we will do both,  
13 we will talk about your personal situation, and then  
14 talk about the industry?

15 A. Okay, go ahead.

16 Q. Okay. Have either of your farms  
17 experienced a significant decline in acreage, during the  
18 last 8 years?

19 A. The production has fluctuated over the  
20 last 8 years. It dropped significantly in 2002. And  
21 for the last crop in fact, across those entities, it was  
22 increased.

23 Q. Let me see, when you use the pronoun it,  
24 do you mean acreage was increased?

25 A. Acreage, yes.

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1 Q. Okay. So the last crop would be the '03  
2 crop?

3 A. That is correct.

4 Q. Okay. So when you say it declined, you  
5 are referring to both farms, your acreage declined  
6 during '02?

7 A. That is correct.

8 Q. Okay. Now do both the farms produce  
9 similar kinds of hops?

10 A. Yes.

11 Q. And are they mostly alpha varieties, or  
12 mostly aroma varieties?

13 A. One of the farms has most of its acreage  
14 devoted to the production of aroma varieties, and the  
15 other entity, is the reverse, it is primarily alpha  
16 varieties.

17 Q. Okay. So Adams, would be primarily alpha  
18 varieties?

19 A. That is correct.

20 Q. And the other farm what was it, I am  
21 sorry again, I apologize. What is the name of the other  
22 farm?

23 A. Loftus Ranches.

24 Q. Loftus, okay And that is primarily  
25 aroma varieties?

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1 A. It is a majority of aroma varieties, yes.

2 Q. Okay. Now have both of those farming  
3 operations been profitable, at the grower level, for the  
4 last 6, 7 years?

5 A. The Adams View Company, is actually 2003,  
6 was its first year. And it was marginally profitable,  
7 or it is projected to be marginally profitable, in 2003.  
8 Generally speaking, Loftus Ranches, has been profitable  
9 on a cash cost basis, but has lost money on a tax basis,  
10 for each of those years.

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: I must announce  
13 this, we will go off record at 9:26.

14 \*\*\*

15 [OFF THE RECORD]

16 [ON THE RECORD]

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE: We are back on  
19 record, at 9:28. Thank you. You may resume, Mr. Moody.

20 MR. MOODY: Thank you, Your Honor.

21 \*\*\*

22 BY MR. MOODY:

23 Q. All right. You said that Adams was  
24 profitable on a cash basis for '03, or projected to be  
25 profitable?

1           A.    We are projecting some marginal  
2           profitability, yes.

3           Q.    All right.  Now did you say that Adams  
4           just began farming in '03, or has it been a grower for  
5           several years?

6           A.    We just took over ownership of that  
7           entity, in 2003.

8           Q.    Oh, but there was an Adams before, you  
9           took over its ownership?

10          A.    It was not a hop growing entity.

11          Q.    Oh you converted the land to hops?

12          A.    This gets pretty complicated.  I hope it,  
13          we are going to go beyond late tonight Judge.  I can  
14          tell you right now.  A previous entity that we owned,  
15          the Yakima Chief Ranch, is that we own in partnership  
16          with some other growers, decided to leave the business.  
17          They were involved in the hop business, the fruit  
18          business, and they also had a hop breeding venture, a  
19          hop variety breeding venture.  We made a business  
20          decision to disband the operations of that company.  
21          Subsequently, we sold land from that company.  Some of  
22          it was hop land, some of it was fruit land, or whatever.  
23          And we decided to sell pieces of that property, and we  
24          have done that.  We had a large planting of high alpha  
25          hops, that some of it was leased land, and some of it

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1 was deeded land, and we have leased that land to Adams  
2 View Farms. Does that help you?

3 Q. Yes, it does. So the land, on which  
4 Adams produced its hops for the '03 crop, had previously  
5 had hops on it?

6 A. That is correct, and that land was owned  
7 by Yakima Chief Ranches, or leased by Yakima Chief  
8 Ranches.

9 Q. Okay. So there, the physical, there was  
10 no physical change in the hop crop, being produced on  
11 those acres?

12 A. That is correct, and as I stated earlier,  
13 it was not raised in 2002, it was part of the set aside  
14 program, and we decided to leave it idle, and then in  
15 2003, we did decide to raise that acreage.

16 Q. Okay. But before '02, the hops were  
17 raised on those acres?

18 A. That is correct.

19 Q. And were they, if you know its production  
20 history, were they profitable before '02?

21 A. The company, the Yakima Chief Ranches  
22 decided to leave the business, because they were  
23 unprofitable.

24 Q. Okay. And they left the business, not by  
25 pulling out the hops, but by just selling their land?

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1 A. That is correct.

2 Q. All right. So the hop acreage on that  
3 land, has remained during this period '01, '02, or '03,  
4 remained constant?

5 A. That is not correct.

6 Q. Okay. What has happened to the hop  
7 acreage, has it declined as well?

8 A. Some of the land was sold to non-hop  
9 growers, and the trellises and plants were removed.

10 Q. And they have planted fruit trees, or  
11 something?

12 A. Most of it is corn, and alfalfa.

13 Q. Okay. Now so you didn't, in Adams' '03  
14 operation, you didn't expand your hop production, is  
15 that correct?

16 A. Well I mean you could say that it  
17 expanded, because they didn't raise anything in '02, and  
18 they did raise hops in '03.

19 Q. Oh, okay. How did you, now when you set  
20 that land aside in '02, that was part of the set aside  
21 program, that was testified to yesterday, by Mr.  
22 Carpenter?

23 A. Yes.

24 Q. Okay. And what was the reason you  
25 decided to participate in that set aside?

1           A.    We felt that the industry was making a  
2 reasonable effort to control the supply of hops, and we  
3 wanted to be part of that effort.

4           Q.    And but you didn't pull, you didn't  
5 physically pull out the hops, you just didn't string  
6 them?

7           A.    That is correct.

8           Q.    Okay.  And as a consequence, you didn't  
9 harvest a hop crop in '02?

10          A.    We did not.

11          Q.    And did you save some money by doing  
12 that?

13          A.    We did not.

14          Q.    You didn't save the cost of harvesting?

15          A.    Well we saved the cost of harvesting.

16          Q.    Okay.

17          A.    But in a general sense, it cost us money  
18 to leave that acreage idle.

19          Q.    Okay.  And why did you decide to go ahead  
20 and produce a crop in '03?

21          A.    Because we had a demand for the hops.

22          Q.    Okay.  Has something changed in the  
23 market, in the last 2 or 3 years, that changed your  
24 picture, or your view of the demand?

25          A.    I am trying to, I am not evading the  
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1 question, I am trying to figure out how to answer it.  
2 The company that we market our hops through, changed the  
3 way that they market their hops. And the opportunities  
4 for growers to participate in their consignment pools.  
5 And that changed allowed us the opportunity to  
6 participate in another pool, we felt that there was a  
7 reasonable expectation of given the information,  
8 supplied to us by the company, that those hops would be  
9 sold, and so we made the decision to grow hops for that  
10 additional pool.

11 Q. Okay. And the company you are referring  
12 to, is Yakima Chief?

13 A. That is correct.

14 Q. All right. Now did they have a forward  
15 contract, how did you have confidence, that they would  
16 be sold?

17 A. The assessment of the marketing staff,  
18 was that given their access to the market, and to  
19 customers, that they could sell hops on behalf of that  
20 pool, and that they would be able to sell the quantity  
21 that was established.

22 Q. Okay. And did they come up with a  
23 different business model, that gave you that assurance?

24 A. They made a change, yes.

25 Q. All right. If it doesn't reveal any

1 corporate proprietary information, can you tell us what  
2 that change is?

3 A. They established a market pool.

4 Q. Okay. And what is a market pool?

5 A. A market pool was a consignment pool,  
6 whereby the product would be sold to world brewers at  
7 market prices.

8 Q. Okay. And previous to '02--or previous  
9 to '03, they didn't have a market pool?

10 A. There was a market pool established in  
11 the Fall of 2002, but prior to that, all the hops were,  
12 or all the high alpha hops excuse me, were handled out  
13 of 1 pool.

14 Q. Okay. So is this a second pool, that was  
15 established?

16 A. It is.

17 Q. Okay. And what is the difference between  
18 the pools?

19 A. I think that is proprietary information.  
20 But the second pool, is a market pool.

21 Q. Okay. Is the first pool also a market  
22 pool?

23 A. That is proprietary information.

24 Q. Okay. And does Yakima Chief sell its  
25 customers, the brewery customers are worldwide?

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1 A. That is correct.

2 Q. Okay. As you use the term demand, for  
3 purposes of demonstrating a need for the Marketing  
4 Order. How would you define that term? Demand, what  
5 exactly is that demand for?

6 A. The demand as I was speaking to it  
7 yesterday?

8 Q. Yes.

9 A. The demand would be a, it is a loose  
10 definition, a brewer who was willing to purchase alpha  
11 acids from a seller.

12 Q. Okay. So it is the demand by brewers,  
13 for alpha acid?

14 A. That is correct.

15 Q. Okay. Now is there anything that you as  
16 a handler, Yakima Chief, or you as a grower, can do to  
17 influence that demand?

18 A. No.

19 Q. Okay. Is there anything that the Hop  
20 Administrative Committee, if it were established, can do  
21 to influence demand?

22 A. I wouldn't think so, no.

23 Q. Okay. So how is it your understanding  
24 that, or is it correct to say that the Administrative  
25 Committee's task in calculating the saleable percent,

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1 depends on knowing what the demand is?

2 A. Yes.

3 Q. Okay. How would you go about that task?

4 A. I think that is a very difficult  
5 situation, or a difficult task, but I think it can be  
6 done. And I think it can certainly, a demand can be  
7 approximated, not so much by going through formulas, but  
8 rather by listening to the market, and reacting to  
9 market price.

10 Q. All right. Well let us work through a  
11 scenario here. When would the saleable be determined,  
12 in the Springtime, Summertime?

13 A. I am really not prepared to answer any  
14 questions, as it relates to the Administrative  
15 Committee. Because I was not a part of the Proponents  
16 Committee, I haven't even read the Order, to any  
17 significant degree.

18 Q. Okay. For '03, you said now on Adams you  
19 expanded in the sense you planted those acres, you had  
20 previously--not plant, harvested those acreage you had  
21 in your set aside. What about your Loftus Farm, have  
22 you contracted or expanded during the last several years  
23 on that farm?

24 A. We have taken some acreage out of  
25 production over the last 6 years, completely out of

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1 production, based upon our analysis that that property  
2 didn't, wasn't very well suited for hops. But between  
3 2002 and 2003, we increased our production.

4 Q. Okay. And why did you increase your  
5 production on Loftus?

6 A. We had what we felt were markets, or  
7 positions in pools with the Yakima Chief, and that we  
8 felt there was a market for those hops.

9 Q. Is that the same pool Adams is involved  
10 in, or is that a different pool?

11 A. That would be the same.

12 Q. All right. Now were there some growers  
13 that contracted their, or reduced their production in  
14 '03?

15 A. I am not sure, I mean I think definitely  
16 there is a few growers in the industry that contracted  
17 their production in 2003.

18 Q. Okay. Well how is it that you are able  
19 to expand your production, and other growers are  
20 reducing their production?

21 A. Our personal situation, we felt and that  
22 there were markets for our hops, and so we were able to  
23 access some pools, both aroma and alpha, that allowed us  
24 to expand our acreage last year.

25 Q. All right. So different growers might

1 perceive their individual demands quite differently, is  
2 that correct?

3 A. I think that is true, yes.

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE: Mr. Moody?

6 MR. MOODY: Yes, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: I hate to interrupt  
8 you, this is very, very good solid information that we  
9 need to know, but I need to take a break.

10 MR. MOODY: Yes, Your Honor.

11 ADMINISTRATIVE LAW JUDGE: I would like during  
12 the break, are the color reproductions available?  
13 Before we leave on break, I would like to get those  
14 distributed. Now how many do you have that you can give  
15 out, in addition to the record copy? Mr. Monahan?

16 MR. MONAHAN: Thank you, Your Honor. I have  
17 already handed 1 to Mr. Moody, and I have handed 1 to  
18 Ms. Deskins. I have 2 other copies, 1 of which, well I  
19 have a total of 3 printouts. 1 of which will have to be  
20 the official record. I would like to keep 1 for the  
21 Proponents Committee, which leaves me with 1 left.

22 ADMINISTRATIVE LAW JUDGE: All right. I would  
23 like you to give it to the other economists, if you  
24 will. All right. At least that position is 1 of them,  
25 at every camp. And that is good.

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1 MR. MONAHAN: And for the record, I will hand  
2 1 of the other copies to the court reporter.

3 ADMINISTRATIVE LAW JUDGE: Is it marked as  
4 Exhibit 8?

5 MR. MONAHAN: It is now.

6 ADMINISTRATIVE LAW JUDGE: Very good. Do you  
7 move into evidence, Exhibit 8?

8 MR. MONAHAN: I do, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: Is there any  
10 objection to Exhibit 8, being admitted into evidence?  
11 There being none, it is hereby admitted into evidence.

12 I would like to take 15 minute break. Please  
13 be back and ready to go at 5 minutes to 10:00.

14 \*\*\*

15 [OFF THE RECORD]

16 [ON THE RECORD]

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE: We are back on  
19 record, at 10:02. Mr. Moody, you may resume.

20 MR. MOODY: Thank you, Your Honor.

21 \*\*\*

22 BY MR. MOODY:

23 Q. I guess in light of your previous  
24 comments about the individual growers perceiving demand  
25 differently, how is it that you believe, if you believe

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1 that a Committee, could do a better job of assessing  
2 demand, than each grower examining the market on their  
3 own?

4 A. My only experiences with that Mr. Moody,  
5 is really the previous Marketing Order. And as I  
6 mentioned in my presentation yesterday, I served as an  
7 alternate on the Hop Administrative Committee for quite  
8 a few years. And I was also able to serve on the  
9 Statistical Sub-Committee of the Hop Administrative  
10 Committee. And that is really where I gained a lot of  
11 my interest in the hop market, and hop statistics. And  
12 what I saw through that period of time, is that the  
13 marketing order by utilizing whatever statistics were  
14 available, was able to be proactive in their setting of  
15 the future saleables. And in the free market system,  
16 which, I mean I guess you could call what we are  
17 operating under now, the free market system. We are  
18 constantly reacting to price. And that reaction to  
19 price in a lasting demand commodity like hops, ends up  
20 allocating resources very inefficiently. So I believe,  
21 and again, it is based on my experience, I believe that  
22 a group of growers, with some help potentially from some  
23 economists, with any amount of reasonable information,  
24 would be able to make decisions better, for the better  
25 of the industry, rather than a group of individuals, all

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1 making individual decisions.

2 Q. And do you think the performance of the  
3 old Order, that you were serving under reflected such  
4 good decisions?

5 A. I think the old Order Mr. Moody,  
6 performed very, very well until 1980.

7 Q. And then what happened in 1980, to in  
8 your view, cause it to perform poorly?

9 A. In 1980, it was the second successive  
10 crop failure in Germany. And there was a severe  
11 shortage of hops worldwide. And that had followed, like  
12 I said, a '79 failure, as well. And in 1980 the Hop  
13 Administrative Committee made the decision, to expand  
14 the saleables significantly beyond 100 percent of a  
15 growers saleable quantity. The high prices that we're  
16 being offered to growers on future contracts, created an  
17 interest in hop growing that was unwarranted. And the,  
18 and I hesitate to use the term but, in fact, greed on  
19 the part of growers entered into the equation, and  
20 effectively, in 1980, the Hop Marketing Order ceased to  
21 operate as it was designed.

22 Q. Okay. And that is because the Committee  
23 in your view, made the wrong decision, on setting the  
24 saleable?

25 A. I think they made a in retrospect, they  
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1 made a decision that didn't, was not the best for the  
2 industry, that is correct.

3 Q. Okay. Now were you on the Committee  
4 through its termination?

5 A. I was, as an alternate member.

6 Q. Okay. And wasn't it terminated in  
7 February of '86?

8 A. I think the official termination yeah,  
9 was sometime in 1986, that is correct.

10 Q. Okay. But those last 5 years, there was  
11 a saleable set every year, '81, '82, '83, '84, '85?

12 A. You know, I don't recall what we did with  
13 the saleable, at the end of that period of time, Mr.  
14 Moody. The acreage peaked in the United States in 1982,  
15 and we lost, or effectively removed from production,  
16 between 1982 and 1986, about 40 percent of our acreage.  
17 So the saleable really didn't mean anything at that  
18 point in time.

19 Q. Well given the high prices that  
20 prevailed, why were you removing acres?

21 A. Only a portion of the crop was sold on  
22 contract from '81 through '84, and the high prices of  
23 course, led to a significant acreage increase, and an  
24 over supply of hops. In fact spot prices fell from  
25 1980, spot prices exceeded \$5 a pound, and then in 1981,

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1 spot prices fell to less than 50 cents a pound, which  
2 obviously indicated a significant over supply of hops,  
3 and there was not enough hops under contract in the  
4 period of '81 through '84, to allow that acreage to  
5 continue to be grown, at well below the cost of  
6 production.

7 Q. All right. Looking at your chart, it  
8 don't have a page number, but it is a U.S. season  
9 average price. It is sort of toward the end of your  
10 presentation.

11 A. Mr. Roy will get us there, go ahead, Mr.  
12 Moody.

13 Q. Okay. You have got a line, a vertical  
14 line on that chart defining, 2 vertical lines defining  
15 the Hop Marketing Order, from '66 being the first year,  
16 and '83 being the last year?

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE: Hold on just a  
19 minute Mr. Moody. because I want to make sure that all  
20 of the participants who have a hard copy, can turn to  
21 the right page as well.

22 MS. DESKINS: Also Judge Clifton, could you  
23 have them say what page it is?

24 ADMINISTRATIVE LAW JUDGE: Well Mr. Moody's  
25 isn't marked, but as soon as it is on the screen, we

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1 will announce what page it is.

2 MR. MOODY: I think that is page 25.

3 ADMINISTRATIVE LAW JUDGE: All right, page 25.  
4 And we will need to turn the lights down, so that we can  
5 see the slide. Mr. Moody, we now can see the page too,  
6 so go ahead and either start again with your question,  
7 or just resume where you were.

8 \*\*\*

9 BY MR. MOODY:

10 Q. Okay, well I was noting those vertical  
11 lines there, the Marketing Order began in '66, according  
12 to your chart here, ended in at the end of '82.  
13 Wouldn't it be a more accurate representation of the  
14 Marketing Order period, to have drawn that vertical line  
15 on the right, to end in the end of '85?

16 A. From a practical sense Mr. Moody, I think  
17 the Marketing Order ended in 1980. At least it ceased  
18 to operative effectively in 1980. But you are right,  
19 from a legal sense, the Order ceased to exist in 1985.

20 Q. Right. But for each of those years, '80,  
21 '85, you set a saleable, the Order's volume control  
22 provisions were in operation?

23 A. The saleable was set significantly above  
24 the quantity that was being grown by growers, throughout  
25 that period of time.

1 Q. All right. But the Committee was using  
2 its volume control authority, it was intending to have  
3 an affect on the market?

4 A. I don't think they were intending to have  
5 an affect on the market, no.

6 Q. Well why did they set a saleable?

7 A. There was tremendous pressure on the  
8 Committee at that time, to allow additional acreage to  
9 be grown by new growers, and even by existing growers  
10 that wanted to expand. In fact, represented some of  
11 those growers at the hearings in 1985.

12 Q. All right. So the reason you drew the  
13 line there at '82, was because of your belief that the  
14 Order was ineffective, after that period of time, or do  
15 you think, you would want to change that chart to put  
16 the line at '85?

17 A. I would really like to put that line at  
18 1980.

19 Q. Okay. What assurances do we have, that  
20 the new proposal won't backfire, or be operated poorly,  
21 or in a manner similar to what you have described to the  
22 old Marketing Order?

23 A. I mean I don't think there is any  
24 indication that, I mean I couldn't make the statement  
25 that we would operate it correctly. I think our

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1 experience with the last order, and some participants in  
2 the industry, clearly recall what we did wrong in that  
3 time period, and I think we would make better decisions.  
4 That said, we did have a fairly long history, certainly  
5 '66 through 1980, where I think we demonstrated as an  
6 industry, that the Hop Marketing Order was a very  
7 effective tool in stabilizing the price.

8 Q. That was the third Marketing Order, or  
9 that was the second Marketing Order?

10 A. Oh, I think it was the third actually.

11 Q. Okay. So this is the fourth time, we are  
12 going to have a Marketing Order?

13 A. Well I am not sure we are going to have a  
14 Marketing Order.

15 Q. All right, this is the fourth time the  
16 industry wants a Marketing Order?

17 A. This is the fourth time a portion of the  
18 industry, wants a Marketing Order, yes.

19 Q. And so in effect what you are saying, is  
20 this time you can trust us, to have learned from the  
21 mistakes of the past?

22 A. Again, I think from a grower perspective,  
23 certainly the indications are historically that under a  
24 Marketing Order, if we managed correctly, the prices are  
25 more stable. Without a Marketing Order, what we have

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1 seen, is that prices are volatile. I think the, at  
2 least a majority of the industry at this time, prefers  
3 to operate under a stable environment, rather than the  
4 current volatile environment.

5 Q. Do you have a definition for what your,  
6 in your view is an unreasonable fluctuation in the  
7 supply or price?

8 A. I think when you get fluctuations in  
9 price, that exceed 100 percent in a given year, that is  
10 getting to be a rather difficult environment to operate  
11 under as a grower.

12 Q. Okay. So that is kind of where you draw  
13 the line?

14 A. I am not drawing the line at any specific  
15 level, I think any business person would, I shouldn't  
16 say any business person, any producer, in any commodity  
17 or industry, would prefer to operate under a stable  
18 pricing environment.

19 Q. Do you have a price target for operation  
20 of the Marketing Order?

21 A. I don't.

22 Q. How would that be determined?

23 A. I am not sure prices would be determined  
24 by the Marketing Order.

25 Q. Do you have a stability target?

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1 A. I don't.

2 Q. How would that be determined?

3 A. I have no idea.

4 Q. You testified that on your hearing, and  
5 your chart it also says this. The demand for hops is  
6 inelastic?

7 A. That is correct.

8 Q. Then wouldn't that be true, for every  
9 agricultural commodity perhaps, except for marijuana?

10 A. Oh, I think there is degrees of  
11 inelasticity. I agree that with your statement, that  
12 most farm products have a degree of inelasticity in  
13 their price, yes. None however, to the degree that I am  
14 aware of, of hops.

15 Q. Well wouldn't that be true though, for  
16 any ingredient commodity, that since you have no power  
17 to influence the demand, what the demand as you see it,  
18 would be fair and inelastic?

19 A. Not necessarily, I mean we are also apple  
20 growers, and we know from experience, that if we can  
21 deliver, if we have to deliver apples into the  
22 marketplace at 50 cents a pound, or 60 cents a pound,  
23 that we move more apples, sell more apples to the  
24 consumers, than we do when they are priced at \$1.20 a  
25 pound. I can't say the same for hops.

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1 Q. Right. But apples, at least the apples  
2 you sell, aren't really an ingredient item though?

3 A. I thought you were referring to  
4 agricultural commodities.

5 Q. Right. Well do you think, is the demand  
6 for apples inelastic?

7 A. From a classical sense no. However from  
8 a practical sense, the demand for apples has become  
9 somewhat inelastic, yes.

10 Q. All right. Is that, is the inelasticity  
11 of a demand part of your justification, for the need for  
12 a Marketing Order?

13 A. It is.

14 Q. Okay. Now why, given the demand for most  
15 agricultural commodities, is inelastic, why does that  
16 provide a justification for a rigid form of producer  
17 allotments for hops?

18 A. I believe it is the degree of  
19 inelasticity.

20 Q. Okay. And where is the, what is the  
21 trigger in your view, how inelastic does demand have to  
22 get, before you would need a Marketing Order?

23 A. When it gets as inelastic as it is in  
24 hops, you need a Marketing Order.

25 Q. All right. Do you think the industry is

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1 Q. So then, in all likelihood, the Committee  
2 would have reduced supply, maybe dramatically?

3 A. You would have hoped.

4 Q. And then it also would have, the supply  
5 then would have been reduced even further, because of  
6 this German crop failure?

7 A. That is correct.

8 Q. And then what, would that market be in  
9 balance?

10 A. Under the--well, it depends on whether or  
11 not there was an over supply going into or not. If your  
12 premise was, that there was an over supply going into  
13 it, and the American industry reduce their supply. And  
14 the Germans had, which is essentially what happened  
15 anyway. While we didn't do it under any regulatory  
16 authority, the supply was reduced in the United States,  
17 by a reduction of acreage. The Germans had a very poor  
18 crop, and the market has come into balance, that is  
19 correct. Okay, at this point, if we had a Marketing  
20 Order in place, I would anticipate, that the Committee  
21 would assess the market situation, would probably come  
22 to the conclusion, that the German crop next year, would  
23 perform more along the lines of its long-term average.  
24 That the Germans in fact, wouldn't produce 900,000 kilos  
25 of alpha, from high alpha hops, that they would produce

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1 1.6 million kilos of alpha from high alpha hops. We  
2 would look at the production of the United States this  
3 year, at around 2.4 million kilos of alpha. And we would  
4 anticipate that then, if the Germans produced a normal  
5 crop, we would be in a balanced situation again next  
6 year. I would anticipate, that if the Committee were  
7 perceptive enough, and they had their figures correct,  
8 that they would not increase production from the U.S. in  
9 2004.

10 Q. What if there is another German crop  
11 failure next year?

12 A. We don't have any control over that.

13 Q. Right. And the Marketing Order doesn't?

14 A. The Marketing Order has no control of the  
15 German crop.

16 Q. But then it would be fair to say, that  
17 with the German crop failure, in any given year  
18 happening after the Administrative Committee has set the  
19 saleable for that year, that German crop failure would  
20 probably set the market off balance, by your definition  
21 of--I mean by definition, what the Committee sets the  
22 saleable at, will put it in balance absent German crop  
23 failures. So then with the German crop failure, that  
24 market will be out of balance?

25 A. The market would be out of balance

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1 regardless--I mean certainly if the Germans were to have  
2 a failure, the market would be out of balance. If the  
3 Germans had a surplus crop, the market would be out of  
4 balance. If the United States had a failure, which we  
5 have never really had, but if we had a failure, the  
6 market would be out of balance. If the Americans had a  
7 surplus of production, the market would be out of  
8 balance. We are dealing with a commodity, that is very  
9 difficult to predict, and it can have significant  
10 fluctuations from year to year. But the Committee would  
11 be acting in a proactive sense, rather than, well  
12 proactive to the degree, that they would take whatever  
13 information that they had, and make the best decision  
14 going forward. To make sure the market had a sufficient  
15 supply of alpha acids, in the ensuing year. There is no  
16 guarantee that that's going to happen however, because  
17 of the nature of the crop that we are producing.

18 Q. So we don't know really, whether this  
19 Marketing Order...

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: Dr. Jekanowski, we  
22 will change tapes, so keep that question in mind.

23 \*\*\*

24 [OFF THE RECORD]

25 [ON THE RECORD]

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1 \*\*\*

2 ADMINISTRATIVE LAW JUDGE: We are back on  
3 record at 10:34. Dr. Jekanowski.

4 DR. JEKANOWSKI: Okay, thank you.

5 \*\*\*

6 BY DR. JEKANOWSKI:

7 Q. I just basically want to make the point,  
8 that really we don't know going into this, whether this  
9 Marketing Order will bring the market into balance every  
10 year, going out?

11 A. I feel we have a better opportunity to do  
12 that.

13 Q. A better opportunity, than growers making  
14 their own decisions?

15 A. I think growers operating independent of  
16 each other, have not show themselves to make very good  
17 decisions, for the benefit of the industry.

18 Q. How about for the benefit of themselves?

19 A. I think the net affect of some of their  
20 decisions, in fact has had a negative impact on their  
21 own operations.

22 Q. One second point you mentioned there, is  
23 the inelastic demand for hops?

24 A. Yes.

25 Q. Would you agree, and you've mentioned  
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1 that you know, your measure of any elasticity here is  
2 that, brewers don't increase their hopping rate, when  
3 prices change, is that right?

4 A. That is correct.

5 Q. What determines a brewers hopping rate?

6 A. There is other people in the audience,  
7 that are more versed in that subject than I am. But as  
8 I mentioned yesterday, most of the beers in the world,  
9 have a specific flavor profile. That profile can change  
10 from time to time, but generally it changes  
11 incrementally, and there's not big changes, unless they  
12 are necessarily forced upon a brewer. And so  
13 subsequently, there is a specific formula of hopping for  
14 that particular beer by the brewer. Again, as I  
15 mentioned yesterday, the cost of hops in that formula,  
16 is insignificant in the overall cost of the product.  
17 And so the price of hops, as little or anything to do,  
18 with the rate at which that particular beer is hopped.

19 Q. All right.

20 A. Does that make sense?

21 Q. I think so, so basically what you are  
22 saying is that, the particular flavors of beer, are what  
23 determine the hopping rate, and you know that brewers  
24 change recipes, based on...

25 A. Maybe consumer preferences or whatever,  
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1       yeah.

2                   Q.    Consumer preferences, sure.  So they are  
3       responding to consumer demand?

4                   A.    That is correct.

5                   Q.    And by responding, if you effectively  
6       respond to consumer demand, that is generally good for  
7       your industry, right?

8                   A.    I would think so.

9                   Q.    Yeah, okay.  Another way to look at  
10      elasticity of demand, is to consider the degree to which  
11      products are substitutable, would you agree with that?

12                  A.    I am not sure that, that speaks to any  
13      elasticity of demand for this specific product.  No, I  
14      wouldn't agree with that.

15                  Q.    Yeah, but in general you know economic  
16      terms here, a product's degree of elasticity will depend  
17      to some degree on the availability, the willingness of a  
18      consumer to substitute other products.  This is you  
19      know, I am not trying to trick you into anything, this  
20      is just you know.

21                  A.    You do a pretty good job of it.

22                  Q.    And this is sort of you know, your basic  
23      economic theory, that if you have a product where there  
24      is very few substitutes, and you are sort of forced to  
25      buy that product, then we often say that, that has an

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1 inelastic demand?

2 A. Correct.

3 Q. And if we have a product where there is  
4 many substitutes, so that if the price of one goes a  
5 little bit higher, you can switch to another very  
6 similar product, and that is often considered to be more  
7 elastic?

8 A. I agree.

9 Q. Okay. Would you also agree, that the  
10 degree of elasticity depends upon where you--how you  
11 define your market, and where you measure your market  
12 geographically, or by product?

13 A. Your line of questioning to me, and this  
14 is because I am a dumb farmer, okay. Is if we talk  
15 about alpha acids in a general sense, I believe they are  
16 perfectly inelastic. Okay. I believe that there are  
17 forces in the marketplace, that can allow demand to  
18 shift from region to region, and in variety to variety.  
19 And I think that is where you are going.

20 Q. Right.

21 A. But to me, the two are not necessarily  
22 tied together.

23 Q. No, I mean I am not going to claim to be  
24 an expert in hops, but...

25 A. And I won't claim to be one in economics.

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1 Q. ...from an economics perspective, I think  
2 that is an important point, that would you say that  
3 alpha acid produced in Germany, is a substitute for  
4 alpha acid produced in the U.S.?

5 A. Not in all cases. In some cases, I would  
6 say that this is true, yes.

7 Q. In which cases? Can you give me an  
8 example?

9 A. In a case where a brewer is brewing with  
10 alpha acids solely, regardless of variety. In that  
11 case, I would believe that we would, alpha acids  
12 produced in the United States, would directly compete  
13 with alpha acids produced in Germany. That is not the  
14 case in all, for all brewers however. That is the case  
15 for a percentage of the market.

16 Q. And vice versa then, alpha acid produced  
17 in Germany, you wouldn't compete with alpha acid  
18 produced in the U.S.?

19 A. I think you could draw that conclusion,  
20 right.

21 Q. Okay. Just wanted to be clear. So this  
22 Marketing Order has no affect on what will be produced  
23 in Germany? Is that, that is correct, right?

24 A. Not the way it is proposed.

25 Q. All right. But is there a way, where it

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1 could?

2 A. Well I wish so.

3 Q. Why do you wish so?

4 A. For the reason that you stated earlier, I  
5 think that if there was an international Marketing Order  
6 for hops, and we are getting into purely theoretical  
7 terms, certainly the ability of the overall market to  
8 balance supply and demand, would be enhanced.

9 Q. Right, and I agree with you completely.  
10 So basically, what you are saying is, that by the U.S.  
11 possibly restricting their supply, if these products are  
12 substitutable, that might be a signal for Germany to  
13 increase their supply?

14 A. Only if it was economically advantageous  
15 to do so.

16 Q. What would make it economically  
17 advantageous?

18 A. Profitability.

19 Q. Higher prices?

20 A. Profitability.

21 Q. How about stability?

22 A. What do you mean by stability?

23 Q. Well stability in prices, less risks, if  
24 it was less risky to grow hops, wouldn't that also  
25 encourage production?

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1           A.    Stable prices that produce operating  
2 losses would probably not be an advantage for the  
3 growers.

4           Q.    Is it your view that everyone who is  
5 producing alpha acid right now, is operating at a loss?

6           A.    I am not going to say everybody.  But  
7 considering the latest market that we operated under,  
8 because as far as I know, there is not a futures market  
9 today.  And there may be one, I am just not aware of it.  
10 But at the latest market prices that were offered to  
11 growers, I believe that those growers would operate at a  
12 loss, that is correct.

13          Q.    But yet, they continue to operate?

14          A.    Sadly to say, yes they do.

15          Q.    Why would you do that, if you are losing  
16 money consistently, why would you continue to operate?

17          A.    You get into some pretty interesting  
18 scenarios, and I'll give you one, of why a grower would  
19 operate at a loss, okay.  If you need to--we need to  
20 look at what the average cost of production is, and then  
21 we need to consider what the incremental cost of  
22 production is.  Then we need to consider what the affect  
23 of fixed costs are, on the overall cost.  And then we  
24 need to consider what portion of the income for the farm  
25 is produced of sales of other varieties.  I'll give you

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1 an example. A grower that grows 30 percent of his hops  
2 as aroma hops, and delivers them on direct contract to  
3 Anheiser/Busch and Coors. And those hops, related to  
4 his overall cost of production, are profitable, okay.  
5 But they are only profitable, if he is able to spread  
6 his fixed costs over more acreage. In other words, if  
7 he only grew hops for Anheiser/Busch, his fixed costs  
8 would be so high, taxes, insurance, water, management,  
9 labor, blah, blah, blah. Would be so high, that even  
10 though the prices he was receiving for his hops sold  
11 directly to those brewers were profitable, his overall  
12 costs would exceed his income, and he would lose money.  
13 Therefore, by spreading his fixed costs over more  
14 acreage, growers have made decisions to sell hops, at  
15 below the average cost of production. Essentially,  
16 losing money on that acreage, it is an interesting  
17 scenario, what actually happens is, growers grow more  
18 hops so that they lose less money. Does that make  
19 sense? Because it doesn't to me, but it is what we do.

20 Q. All right. So you are losing "X" amount  
21 on every pound of hops you sell, so you are selling more  
22 to lose less?

23 A. And we are making up for it in volume.  
24 That is correct. It is hard to believe.

25 Q. All right. I don't know where to go with  
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1 that exactly. Let us move onto the next point here.  
2 The lack of competitive market. Can you explain again,  
3 just to sort of recap from yesterday, what you mean by  
4 that, and how a Marketing Order hopes to address this,  
5 or how it hopes to deal with this issue?

6 A. It is really a new situation for the hop  
7 industry over the last 20 years. And as I explained  
8 yesterday, in fact Leslie, if we could, you are falling  
9 down on the job here my friend. Oops, oops, right  
10 there. Is it okay if I point to the...

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: We are not on page  
13 2.

14 MR. SMITH: Page 2, when we look at this  
15 chart, and I spoke to this a little bit yesterday, but I  
16 would like to speak to it again. Because I think it is  
17 germane to your question. This block of alpha--excuse  
18 me, aroma hops listed as volamit [ph], comprising 15  
19 percent of the production in 2002, is purchased  
20 primarily by one brewer. And the bulk of it is, I  
21 stated yesterday, I am assuming the bulk of it is  
22 contacted directly with growers. And that really, the  
23 market for that variety is an uncompetitive market. It  
24 is nobody's fault, but there is basically one purchaser  
25 of the hops, who by virtue of their needs, can dictate

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1 the quantity of that variety that is grown. Because a  
2 grower who would grow hops in excess of that market,  
3 would have no market for those hops, because there is no  
4 user, does that make sense, so far?

5 \*\*\*

6 BY DR. JEKANOWSKI:

7 Q. Sure.

8 A. So that is a perfect example in our  
9 market, of an uncompetitive market. With the Hop  
10 Marketing Order addressed, that uncompetitiveness, I  
11 don't think so, okay. And there is multiple reasons for  
12 that, and if you want me to get into them, I will.  
13 However, when we move over to the other varieties, in  
14 the high alpha category, Warrior, Millenium, CTZ,  
15 Chinook [ph], Galena and Nugget. Those varieties  
16 comprise 75 percent of the production. And I stated  
17 yesterday, there is really 3 outlets in the United  
18 States for those hops, okay. The 1 outlet is through a  
19 grower-owned company, that really is not open to growers  
20 on the outside. It is not a freely accessible market,  
21 the bulk of the production that goes through that  
22 company, and accesses world brewers, is provided by the  
23 owners of that company. So a grower outside of that  
24 system, doesn't have access to that marketplace in  
25 general. Does that make sense? So that takes away a

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1 chunk of the production, of this total production of  
2 that class of varieties, away from the general grower.  
3 So at that point now, he has 2 outlets for his hops,  
4 because in general, brewers do not buy directly from  
5 growers, this class of hops. Because they have to be  
6 processed primarily okay, and delivered to breweries  
7 around the world. Individual growers don't have the  
8 capability of providing that, and so they are sold  
9 through what now is basically 2 dealers. And I talked  
10 to those yesterday. John Barth, John A. Haas  
11 Organization, and the S.S. Steiner Organization. Okay.  
12 I think your questions was, and which I haven't even  
13 come close to answering was, how would a Hop Marketing  
14 Order address that uncompetitive marketplace? Is that  
15 correct?

16 Q. Yeah.

17 A. In a theoretical sense, each grower in  
18 the industry, under a Hop Marketing Order are going to  
19 produce their allotment system, would be essentially  
20 granted a piece of the pie. Okay. Does that, are you  
21 following so, far?

22 Q. Repeat that, each grower would?

23 A. Each grower is going to receive some  
24 allotment, for this entire block of hops, and it is  
25 going to be divvied up under some formula, which I am

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1 not prepared to speak to, because I personally don't  
2 know what it is. But so each grower is going to have  
3 the opportunity then, to sell hops, and alpha acids to  
4 the marketplace. In the high alpha varieties, he  
5 basically has 2 outlets, okay. If the Committee does a  
6 good job in balancing, supply and demand. And the  
7 caveat there is if, okay. You can make a case because  
8 this happened in the last Order, that every grower is  
9 going to have the opportunity to sell his hops into the  
10 marketplace. Which he doesn't have right now,  
11 necessarily. And we have already seen that. We have  
12 growers in the business, that are not growing hops, and  
13 other growers or has significantly reduced their acreage  
14 of hops, while other growers have actually increased  
15 their acreage of hops, okay. Because maybe personal  
16 relationships, because of God knows what. But the fact  
17 is, that by putting in a producer allotment system, in  
18 to the hop industry, there will return to the growers  
19 some balance of, and I hesitate to use the term, but  
20 some balance of power. Because right now, the power in  
21 this marketplace, because it is uncompetitive, lies  
22 solely in the hands, of these 2 dealers. And they do  
23 have market control, no question.

24 Q. But then how about that grower you  
25 mentioned, for example that has increased his

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1 production, because he has an outlook for his hops. He  
2 is operating in essentially the same market, and if he  
3 is increasing his production, that must mean that he is  
4 satisfied with you know his own market situation?

5 A. He may, or may not be satisfied with it.  
6 He may be selling hops and losing money, and I think and  
7 this is the case today. He may be selling hops and  
8 losing money.

9 Q. He may, or may not. I mean it is  
10 possible that, some of those guys who have contracts and  
11 even high alpha hops that are increasing production, are  
12 doing so, because they say that is a, as an opportunity  
13 that is profitable to them?

14 A. Theoretically, that is true. I don't  
15 think under current market situations, that significant  
16 profits are being delivered to, any profits are being  
17 delivered to growers for high alpha hops.

18 Q. How about the other varieties, like  
19 Cascade, and Pearl, that are grown in very small  
20 quantities, how would you characterize those?

21 A. They are varieties that are grown in very  
22 small quantities.

23 Q. How would you--are those aroma hops, or  
24 are those?

25 A. Oh I am sorry, yes they are aroma hops.

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1 Q. Okay. It seems we heard repeatedly  
2 yesterday, and even some today that, some of those  
3 varieties, that are grown for aroma hops, are highly  
4 contracted in the market, and they are you know, those  
5 hops are in balance. Is that correct?

6 A. I would say that they are fairly much in  
7 balance, I would not say that they are highly  
8 contracted, no I would not.

9 Q. Okay. Is there any fundamental  
10 difference, in the competitive market forces in you  
11 know, the competitive position of the buyers, in those,  
12 for those hops relative to high alpha hops?

13 A. Would you repeat the question again,  
14 because I didn't understand it?

15 Q. Yeah. And basically, just to sort of  
16 start over again here. I get the impression that, you  
17 know that you are saying that for high alpha hops, that  
18 there is this non-competitive market, that is leading to  
19 you know, whatever driving down grower prices maybe, or  
20 you know leading to some undesirous situation to the  
21 grower?

22 A. I think the non-competitive market, leads  
23 to the potential for market control, yes.

24 Q. Of market control. You are sort of  
25 implying then, by extension that the buyers are driving

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1 down the prices for those hops?

2 A. The buyers have control of the price.

3 Q. The buyers have control. Well then, do  
4 they have similar control of the prices for, you know  
5 those other minor varieties?

6 A. And which varieties, would you be  
7 referring to?

8 Q. Well let us say, Mount Hood, Pearl, any  
9 other aroma?

10 A. In the Cascade and other aroma category,  
11 and again, I mentioned yesterday, that other aroma  
12 category, I mean it comprises 20 plus varieties, okay.  
13 Those hops are primarily sold to craft breweries. And  
14 as I mentioned yesterday, there is over 900 of those in  
15 the United States. There is no, there is absolutely no  
16 buyer control of those, of the prices of those hops in  
17 my opinion.

18 Q. Is there seller control?

19 A. To the degree that there is competition,  
20 I would say no. However it is interesting, because 2  
21 companies provide the vast majority of hops to the craft  
22 brewing industry in the United States. Both of those  
23 companies are grower-owned. Both of those companies,  
24 operate with I am going to call them private marketing  
25 orders. Both of those companies restrict the supply of,

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1 I shouldn't say restrict, that is the wrong word,  
2 because at times they ask for expanded supply. But  
3 regulate the supply I guess, is a better term. Regulate  
4 the supply of those specialized aroma hops, as the  
5 quantity to be delivered to those companies, for the  
6 ensuing crop year, based upon the quantity of those hops  
7 that were sold in a prior year, the current inventory,  
8 and the projected sales for the coming year. So it is  
9 interesting, but the bulk of the, I shouldn't say the  
10 bulk of the Cascades, I would say half of the Cascades,  
11 fall into that scenario, and the bulk of the other aroma  
12 hops. And the supply of those hops to the craft brewing  
13 industry in the United States, is carefully managed to  
14 make sure that there is enough hops available, but not  
15 an excessive supply, nor a shortage. Did you follow?

16 Q. So that is managed basically through  
17 direct interaction between the grower and the buyers?

18 A. Between the company and the growers.

19 Q. The company and the growers?

20 A. Yes. The company anticipates the demand  
21 for the varieties, looks at what the inventory is, okay.  
22 Looks at what the historical sale were, and those 2  
23 companies operate very similarly, not they don't operate  
24 in conjunction with each other, they operate  
25 independently, but they assess their own market

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1 situation, and they establish how much of those  
2 individual varieties that they would like the growers to  
3 deliver. Not they would like the growers, they tell the  
4 growers how much they can deliver in any given year.  
5 They are essentially private marketing orders. And  
6 there is essentially, you could make a case this is a  
7 marketing order, for each individual variety.

8 Q. How will this marketing order deal with  
9 for instance, the demand for Cascade hops, or the demand  
10 for other aroma hops?

11 A. I am not familiar enough with the Order,  
12 and how it is going to work, or how it is even proposed  
13 to work, to know that to answer that. I think there are  
14 other people who might be able to answer that, but I  
15 can't.

16 Q. You just think you need one, you don't  
17 know how it is going to work, or?

18 A. I know we need one.

19 Q. Okay. Okay. So just to back up one more  
20 time, so then would you say that the degree of  
21 contracting is more or less, with some of those minor  
22 varieties, than with the high alpha hops?

23 A. In the current scenario, I think the  
24 degree of contracting is, well in my opinion, it is the  
25 lowest it has ever been in the United States. At least

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1 in my experience. Those specialty varieties, that I  
2 talked--that I eluded to earlier, are almost entirely  
3 spot. The business for those, is almost entirely spot  
4 business.

5 Q. Okay. So then to get back to the  
6 original, my original question here, can you refresh my  
7 memory again. How will a Marketing Order change the  
8 competitive landscape for hops?

9 A. Because the market for hops, in my  
10 opinion, is uncompetitive. The only thing that it can  
11 do is help balance the power, so to speak, between the  
12 growers of the commodity, and the purchasers of the  
13 commodity.

14 Q. So by restricting supply?

15 A. By balancing supply and demand, yes.

16 Q. Now whether or not that is restricting  
17 supply, not necessarily. It could be expanded supply.  
18 The previous order expanded supply over a continual  
19 period of time. And I anticipate that this, if the  
20 market share for U.S. hops growers, the Marketing Order  
21 would be required to, would need to, and it would be in  
22 the best interest of the industry and the growers, to  
23 expand production. So where you are constantly  
24 referring to restricting supply, I don't think that that  
25 is accurate.

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1 Q. Well they still might have restricted the  
2 expansion and supply. I mean even if it they set the  
3 saleable at 130 percent, there might well have been some  
4 growers out there, who are still restricted in the  
5 amount that they wanted to increase? And basically...

6 A. In an individual case, I would agree with  
7 that, but as an industry, that is not necessarily the  
8 case.

9 Q. And basically, the Marketing Order has no  
10 way of you know forcing a grower to increase their  
11 supply, all it can do is force the grower to restrict  
12 his supply?

13 A. The grower can grow as many hops as, the  
14 way I understand the market. A grower can grow as many  
15 hops as he wants. But he might not be able to sell them  
16 all.

17 Q. Well right, so.

18 A. In a given marketing period.

19 Q. So essentially, you know sure, you can  
20 grow as much as you want, but why would you grow them if  
21 you can't sell them?

22 A. I don't know, we are doing that right  
23 now. That is a very good question.

24 Q. Well why are you doing that?

25 A. I can't answer that, it makes no sense

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1       whatsoever.

2                   Q.    So you are really hoping, that somebody  
3       out there is going to tell you, to reduce supply,  
4       because you can't figure it out on your own?

5                   A.    I think that is pretty accurate, yeah,  
6       yeah.  What it really boils down to, and I said this  
7       earlier.  And I note, I see you scratching your head,  
8       and I don't blame you.  This industry makes absolutely  
9       no sense, doctor.  This industry begs to have some  
10      regulation.  We have not shown, that even though there  
11      is only 45 or 50 of us, or whatever, we have not shown  
12      that we can work together, to balance supply and demand,  
13      to the betterment of the industry as a whole.  The  
14      suppliers, the growers, would benefit as well as over  
15      the long-term the customers, would benefit as well, the  
16      brewers.  We can go into making that contention if you  
17      want, I am not necessarily sure that we need to.  But  
18      the point is, that this industry, has a history of over  
19      producing.  The inelasticity of demand for our product,  
20      brings about huge price swings.  In the end, that leaves  
21      us with an inefficient allocation of resources.  In the  
22      end, the brewers pay for all of that.  The brewers pay  
23      to take acreage out, and the brewers pay, to put acreage  
24      back in.  And they have been doing that for 100 years.  
25      It is a very inefficient market, when it is allowed to

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1 operate on a free basis, very inefficient.

2 Q. But we have already established here  
3 that, the Marketing Order has no affect on whether or  
4 not you are going to have a German crop failure, or a  
5 crop failure anywhere?

6 A. It can, it has the ability to react to  
7 that.

8 Q. The same way a grower would react? I  
9 mean it can only react after the fact, right? You can't  
10 predict it?

11 A. That is correct.

12 Q. And you made the point that one of the  
13 reasons why, maybe towards the end of the last Marketing  
14 Order, it didn't work as planned, is because there was  
15 back to back German crop failures, and the Committee  
16 couldn't decide how to react properly. Is that  
17 basically, true?

18 A. Basically, there was a shortage that  
19 existed, that was beyond anybody's expectation, okay. I  
20 mean I think I stated earlier, greed got in the way, in  
21 my opinion, greed got in the way of good decisionmaking.  
22 And if the Marketing Order would have been utilized, the  
23 way that it was designed through those periods of time,  
24 the industry would have been better off. And I argue  
25 that we probably would still have the Order today.

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1 Q. So it would have been better off, if they  
2 didn't increase supply as much as they did, is that what  
3 you are saying?

4 A. They could have increased the supply I  
5 think, but if the reserve pool would have been allowed  
6 to operate, the way that it was designed. It would have  
7 prevented a significant over supply of hops.

8 Q. How is the reserve pool operated  
9 incorrectly?

10 A. It wasn't allowed to operate, that was  
11 the problem in my opinion. The saleable was set so  
12 high, that there actually was not reserve pool hops  
13 created. Nobody wanted to take the, for whatever  
14 reason, and in my opinion it was the wrong decision.  
15 But they didn't want to take away the marketing decision  
16 from the grower at that particular time. There was so  
17 much pressure, coming from people to expand acreage, and  
18 so much pressure on the Order, that the Administrative  
19 Committee created a saleable that was unrealistically  
20 high, for the market conditions.

21 Q. And that situation is going to be  
22 avoided, under this Order?

23 A. I would sure hope so. Hopefully memories  
24 are long enough.

25 Q. And do you honestly think that, that is

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1 realistic, that memories are long enough, that if we  
2 have given a German crop failure this year, let us  
3 hypothetically say there is one next year, prices spiked  
4 incredibly, and growers were clamoring for the  
5 opportunity to take advantage of those higher prices, by  
6 increasing their production. Do you think a Committee  
7 would really have the ability to say no, we are going to  
8 still restrict supply further?

9 A. I would hope so. I am a generally  
10 optimistic person.

11 Q. Well, all right. Just another couple of  
12 little points, can we put up the slide with the Hop  
13 Marketing Order, the prices, and the--it is towards the  
14 end again, I think. We had it up before. There we go,  
15 yeah. Help, next one. It comes right after Will A Hop  
16 Marketing Order Be Effective.

17 A. We are going to get it here, but don't  
18 pay any attention to the man behind the curtain.

19 Q. Right there.

20 A. There we go.

21 Q. Okay.

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE: That is page 25.

24 \*\*\*

25 BY DR. JEKANOWSKI:

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1 Q. Now you referred to the period of 1966,  
2 to 1980, as a, or '82, however you have it here. As a  
3 period when the Marketing Order achieved its goals,  
4 basically, right? The Marketing Order report?

5 A. I refer to it, as the time of the  
6 industry where we saw the most stability.

7 Q. Okay. So you are saying that prices were  
8 stable from 1966, to 1982?

9 A. I am saying that the industry faced its  
10 most stable time, yes. Okay. Were prices stable,  
11 absolutely not, I mean you can see the prices moved up  
12 over a period of time.

13 Q. Well then how are you defining stability?  
14 What do you mean, what else was stable, I mean because  
15 prices, to me stable prices imply a horizontal line, you  
16 know that would...

17 A. I said the state of the industry, was at  
18 its most stable time. Prices were increasing at a  
19 similar rate, to inflation, over that period of time.  
20 So the relative profitability for a grower, while it  
21 wasn't great, was stable throughout, pretty much  
22 throughout that period of time, okay. And we saw  
23 consistent profits, albeit not great ones, but  
24 consistent profits for growers, from the period 1966  
25 through 1980.

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1 Q. So then a lot of it, you would agree that  
2 a lot of that you know, change in price especially from  
3 1970 through the late '70s, was probably as much as  
4 anything, a result of inflation?

5 A. I think that most of it was, yes.

6 Q. Was there anything different in terms of  
7 the demand for hops, I mean were any of the demand  
8 conditions different than they are today?

9 A. The structure of the industry was  
10 certainly different. Through that period of time, we  
11 grew primarily 1 variety of hops, compared to the  
12 multiple varieties, that we grow today. The thing that  
13 characterized that time period the most, and any growers  
14 who lived through any portion of that time period I  
15 think will recall. And what really provided the  
16 stability in price, over a period of time, was that the  
17 majority of the product of the crop, was forward sold  
18 every year. We would go into a year with 90 to 95  
19 percent of the crop sold on contract, compared to the  
20 current time, where I would guess that less than 10  
21 percent of this crop, is actually sold on contract.  
22 That in itself, as you can imagine, being able to move  
23 to a highly contracted situation, is going to lend  
24 stability to a market, because there is a small  
25 percentage of the crop that is actually going to be

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1 impacted, by that given years production, versus the  
2 scenario we are in now, where a significant percentage  
3 of the crop, is being grown without contract, and is  
4 subject to annual fluctuation in production. We can see  
5 that just in what happened last year, I mean we were  
6 selling hops to brewers for \$20 a kilo alpha, the price  
7 to growers was less than, or around 50 cents a pound.  
8 In 1 year, we are selling hops to brewers, and in excess  
9 most recently, as recently as last week at over \$40 a  
10 kilo alpha. So you can see the amount of instability in  
11 the marketplace, that we have got versus, now part of  
12 that is driven as well by the brewers. Because the  
13 brewers are not operating under the contract system, as  
14 much as they were in that prior period.

15 Q. So then is there a link between the  
16 Marketing Order and contracting, is your intention that  
17 the Marketing Order will somehow bring a return to more  
18 contracting?

19 A. I think if the industry is able to  
20 balance supply and demand, that we will see a return to  
21 the contracting system. It makes no sense, for anybody  
22 to contact hops in this environment from a grower. I  
23 wouldn't want to do it, because the price can move so  
24 much from year to year. I mean as a grower, and I mean  
25 this gets kind of unusual, as a grower you would

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1 anticipate that a grower would not enter into a contract  
2 prior to the growing season, at less than the cost of  
3 production. What happened last Spring refutes that  
4 however, because there was some contracts that were  
5 entered into, at maybe below the cost of production, but  
6 in general, a grower is not going to lock in a loss, a  
7 significant loss at the beginning of the year. So, and  
8 I kind of lost my line of reasoning here, but what we  
9 were talking about was, bring about a resumption of  
10 contracting is that right?

11 Q. Right.

12 A. And so in the unstable environment that  
13 we are in today, we have a lack of future contracting,  
14 and for good reason. Because the industry has no  
15 control over how much alpha acid, is going to be  
16 produced in a given year, and as a dealer, to step in  
17 and purchase alpha acids from a grower, at above the  
18 cost of production, when in any ensuing crop, the  
19 industry can produce significantly more than its demand,  
20 and price can fall dramatically, puts that dealer at  
21 risk, by taking a position in those hops. And what we  
22 have seen right now, and correct me if I am wrong,  
23 somebody in the audience, we do not have a future  
24 contract market in this industry anymore. We are  
25 virtually reliant upon spot market business.

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1 Q. Yeah, one point I just want to raise, you  
2 said that there are some growers, who would actually  
3 enter into a long-term contract, that doesn't cover the  
4 cost of production?

5 A. I don't think I said long-term.

6 Q. Or a contract, I mean a contract  
7 implies...

8 A. I think there was some hop, well there is  
9 the industry is aware of, and maybe not the specifics of  
10 it, of some hops that were contracted in the Spring of  
11 2003, at a price level that is at best, would be termed  
12 to be at incremental cost, in a best case scenario. So  
13 yes, those growers had to lose money, on those  
14 particular deliveries, if they were looked at, on an  
15 average cost of production basis. Does that make sense?

16 Q. It makes sense what you are saying, it  
17 doesn't, you know I still don't...

18 A. It doesn't make sense why a grower would  
19 do that.

20 Q. Yeah, it doesn't make sense economically  
21 really.

22 A. Welcome to the hop business.

23 Q. You know I can understand in the short-  
24 term, that a grower might be forced to accept a price  
25 below his cost of production, but over the long-term,

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1 that grower then should be probably weeded out of the  
2 business, would you agree with that?

3 A. Do you mean personally, taken behind the  
4 barn and flogged or?

5 Q. No, I mean I am not joking, I mean in  
6 over time, if you are selling for less than your cost of  
7 production, you are going to go out of business, isn't  
8 that part of the way the market balances?

9 A. I would assume that, that is going to  
10 happen eventually, yes.

11 Q. And that those that remain, are the ones  
12 who are, who actually have a lower cost of production  
13 and who are you know able to make a profitable return at  
14 the given market prices?

15 A. Not necessarily. We have an interesting  
16 scenario in the hop business today, where you could make  
17 a case of the strongest hop growers, or the strongest  
18 hop growers, because they are not fully reliant on hop  
19 growing for their income. An in fact, they are  
20 supplementing their losses, that are being sustained at  
21 the hop ranch, with income from other ventures. So you  
22 can have a situation, I think we have one right now,  
23 where growers will continue to grow hops at a loss, and  
24 will be able to do so, for quite some period of time,  
25 because they are profitable in other ventures. And they

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1 don't want to, because it is a problem for a hop grower  
2 to leave the industry, if there is no value to the  
3 assets. In the current environment we have, the capital  
4 investment you have is worthless. Other than maybe in  
5 the land, if it can be used for another commodity. But  
6 the trellis is worth nothing, even on salvage value  
7 basis. The harvest facilities are worth nothing, okay.  
8 The equipment that is specific to that operation for hop  
9 harvesting, is worth nothing. So growers will continue  
10 to grow hops at a loss, for quite some period of time.

11 Q. But that is true of a lot of commodities,  
12 isn't it?

13 A. I can't really speak to other  
14 commodities.

15 Q. A potato harvester can only be used to  
16 harvest potatoes, right?

17 A. I know nothing about potatoes.

18 Q. You know I think what you are pointing  
19 out are some, you are sort of making an assumption that  
20 the hop industry is unique, because of this asset  
21 specificity problem, in economic terms. But that is  
22 really true across a lot of agriculture. The assets  
23 only have value for the production that they are  
24 intended for?

25 A. If I decided to get out of the potato

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1 business, and decided to sell my potato harvester, I  
2 think there is a market for my potato harvester. If I  
3 decide to get out of the hop business today, I can  
4 guarantee you doctor, there is no value. There are no  
5 buyers for my hop harvesting facility. There is dozens  
6 of them, sitting idle in the United States, and the  
7 Yakima Valley today. They are worthless.

8 Q. How will a Marketing Order change that?

9 A. By balancing supply and demand, and  
10 improving profitability. I would hope, I sincerely  
11 hope, that my hop harvest operation, and my hop  
12 operation in general, gain some value. Because today,  
13 it has none.

14 Q. But the salvage value, I mean the issue  
15 is regarding salvage value are the same, right?

16 A. No, there is no salvage value.

17 Q. Regardless of whether there is a Hop  
18 Marketing Order, or not?

19 A. Well let us put it this way, during the  
20 hop marketing years, harvest operations had value.  
21 Because they were acquired by other growers. Land had  
22 value, it was being acquired by other growers. That  
23 doesn't really exist today. There is excess production  
24 facilities, that have absolutely no value. There is  
25 nobody interested in acquiring them.

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1 Q. Did base have value?

2 A. It did.

3 Q. Any idea about the value? And relative,  
4 was it high value compared to the price of hops?

5 A. It generally, floated with the, what was  
6 the perception of the buyer, as to the long-term  
7 benefits of owning base. So as the, as we got to that  
8 crazy price period, base reached a very high price. I  
9 in fact, purchased base and I can't believe I did this  
10 now, when I look back, for \$3.25 a pound. And I was  
11 continuing to pay for that base, after the Order ceased  
12 to effectively operate.

13 Q. Do you think that, that is healthy, for  
14 the hop industry, to have this artificial base value?

15 A. If the industry is providing a quality  
16 product, at a reasonable price to its customers, and  
17 there is profitability in the industry, and we are  
18 working under a production allotment system, I assume  
19 that base may have value. I don't view that to  
20 necessarily be a bad thing. I think the needs of the  
21 market, are being met in an efficient manner. If that  
22 means that there is base values, so be it.

23 \*\*\*

24 [OFF THE RECORD]

25 [ON THE RECORD]

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ADMINISTRATIVE LAW JUDGE: We are back on record now at 11:18, we have changed the tape. Dr. Jekanowski?

DR. JEKANOWSKI: Thank you. I am going to wrap up here pretty quick.

\*\*\*

BY DR. JEKANOWSKI:

Q. You said that I mean, you don't see a problem with base having value, but doesn't that, I mean isn't that an extra added cost to producing hops, if you have to buy base in order to have the rights to produce hops?

A. It only has value in my opinion, if it provides value. If it provides value, then you could make the case, and certain we did for 20 years. That the acquisition of base for value, made economic sense for many growers in this room.

Q. Who benefits from the base, from the sales of the base?

A. Well in my case, and I expanded our base position on our farm significantly over that period of time, I think I am the one who benefited. I acquired the ability to participate in a profitable, albeit not exorbitantly so, a profitable industry. A profitable

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1 industry that provided hops to its customers, of very  
2 high quality, at reasonable prices. Reasonable prices  
3 because they covered the costs of production, they  
4 allowed a reasonable profit for the producer, and they  
5 allowed enough profit for the producer to reinvest in  
6 his operation, and increase his productivity. And that  
7 was a wonderful scenario for the hop industry. And I am  
8 afraid doctor, that that is a scenario, that doesn't  
9 exist today. The level of investment in the hop  
10 industry over the last 10 years, is woefully inadequate,  
11 for our industry to maintain a competitive position in  
12 the world. You would be shocked, if you walked out onto  
13 some of our hop operations today, and looked at the  
14 condition of the equipment, the condition of the harvest  
15 facilities and so forth. There has not been a  
16 significant level of investment in this industry,  
17 because there is no profitability.

18 Q. Well how, but won't if you have to buy  
19 base, won't that compete for investment? I mean that is  
20 an added investment that you are forced to buy right  
21 there, so how can you buy a harvester, if you have to  
22 pay \$3 as you did for base?

23 A. I would like you to repeat that question,  
24 I know I should be able to answer it, but I am getting a  
25 little tired so.

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1           Q.    Yeah, I understand.  I just want to probe  
2           that a little bit, that I don't understand how having  
3           base, what we are talking about, why base will have  
4           value, and why that is not bad for the industry.  And  
5           you seem to be implying that having this you know, this  
6           value of the base overhanging, the industry will somehow  
7           increase investment in the industry?

8           A.    Well no, what I said was that, if base  
9           gains value, it gains value by definition because, the  
10          purchaser of base, if there is going to be any,  
11          perceives that there is value in owning base, okay.  His  
12          perception of value must mean that he is participating,  
13          or increasing his participation in an industry, that is  
14          providing profitability.  Every pound of base that I  
15          bought under the previous order, I was more than happy  
16          to pay.  I felt that was a good investment.  I was also  
17          able not only to purchase that base, but because the  
18          industry was stable, because there was some level of  
19          profitability throughout that time, I was also able to  
20          invest in equipment.  I was able to invest in additional  
21          land, I was able to invest in assets, that improved my  
22          productivity, as an American farmer.  That was a healthy  
23          situation, it was a healthy situation for my family.  It  
24          was a healthy situation for our business.  And in the  
25          end, it was a healthy situation for the purchasers of

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1 our hops. They received a very high quality product, at  
2 consistent prices, and albeit very reasonable prices, if  
3 you were to look at it on a inflation adjusted basis.  
4 The productivity gains that our farms saw, and the  
5 industry saw, significant percentages of those  
6 productivity gains were passed onto the customers of our  
7 product. It was a very healthy situation doctor, I can  
8 tell you, compared to the one we have today, which is  
9 unhealthy.

10 Q. Well typically you know, productivity  
11 gains are associated with increasing supply at lower  
12 costs, I mean that is sort of the definition or  
13 productivity. The ability to supply more at a lower  
14 cost?

15 A. Or even supply the same quantity, at a  
16 lower cost.

17 Q. Sure, at a lower cost.

18 A. But you have to increase productivity.  
19 In general doctor, I would submit that increasing  
20 productivity, requires capital investment.

21 Q. Sure, and I don't, I just don't follow  
22 how restricting supply. If you are implying that there  
23 is a lack of investment in the hop industry right now,  
24 you know that typically would, that implies to me, that  
25 you are saying that there is a lack of supply. That

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1 there, but I will be testifying later, so I will address  
2 some of these issues.

3 ADMINISTRATIVE LAW JUDGE: All right. And do  
4 you want Mr. Smith, to try to respond to that last one,  
5 or are you willing to let it go?

6 DR. JEKANOWSKI: I think I am willing to let  
7 it go.

8 ADMINISTRATIVE LAW JUDGE: All right.

9 DR. JEKANOWSKI: And at least for now, I think  
10 that concludes my questioning.

11 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
12 Jekanowski. Other cross examination, of Mr. Smith?

13 MR. CARSWELL: Yes, ma'am, Your Honor, but can  
14 we take, I am sorry, but can we take a short break  
15 first?

16 ADMINISTRATIVE LAW JUDGE: Surely. Do you  
17 want what 10 minutes?

18 MR. CARSWELL: It works for me.

19 ADMINISTRATIVE LAW JUDGE: All right. Please  
20 be back and ready to go at 11:35.

21 \*\*\*

22 [OFF THE RECORD]

23 [ON THE RECORD]

24 \*\*\*

25 ADMINISTRATIVE LAW JUDGE: We are back on  
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1 record at 11:37. Mr. Carswell?

2 MR. CARSWELL: Thank you, Your Honor.

3 \*\*\*

4 BY MR. CARSWELL:

5 Q. Mr. Smith, just as a prefatory comment, I  
6 have a mind like a still sieve, so I am not going to  
7 necessarily remember what you said 20 minutes ago, let  
8 alone yesterday, so.

9 A. I won't either, so don't worry.

10 Q. So if we have to go over some ground,  
11 forgive me for that?

12 A. That is fine.

13 \*\*\*

14 ADMINISTRATIVE LAW JUDGE: He may be  
15 forgiving, but I am not sure how forgiving I will be so.

16 MR. CARSWELL: Well step in at anytime.

17 ADMINISTRATIVE LAW JUDGE: All right.

18 MR. CARSWELL: And I will not, I certainly  
19 won't be trying to drag this out, and I won't be trying  
20 to ask any questions twice, to catch anything, it is  
21 just really because I didn't catch it the first time.

22 \*\*\*

23 BY MR. CARSWELL:

24 Q. I believe you said during your testimony,  
25 and maybe more than once. That the aroma hop market, is

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1 in equilibrium, and generally historically at least, at  
2 lest for the past say 10, 15 years, has been in  
3 equilibrium. Is that correct?

4 A. In general, I would say that is true, but  
5 specific varieties within those aroma categories, have  
6 gotten significantly out of balance over the years, at  
7 times.

8 Q. And if we have a Hop Marketing Order,  
9 what affect do you think that will have on aroma hops?

10 A. I don't think it will have any impact  
11 whatsoever.

12 Q. For example, if the saleable quantity  
13 were cut by 50 percent for all growers. Do you not  
14 think that would have an impact on aroma hop growers?

15 A. I do not.

16 Q. You don't think that they would have to  
17 acquire base, in order to meet their contractual  
18 obligations?

19 A. I think if they needed to acquire base,  
20 they would need, and I am speaking in a general sense  
21 here. I am not going to try to speak to any specific  
22 individual situation. I think you can come up with some  
23 hypothetical examples that would render what I am about  
24 to say to be untrue. But if--I think, my own feeling  
25 is, and on my own farm. I would, and if I was short of

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1 base, and needed to acquire base. I would be acquiring  
2 base in order to grow high alpha hops. I would grow my  
3 aroma hops first. Does that make sense?

4 Q. Yes.

5 A. And I will elaborate on the reason why, I  
6 would do so. And I think it is interesting for aroma  
7 hop purchasers. They have access to a grower's harvest  
8 window so to speak. Your own company in fact, has  
9 access to a harvest window that is unique. I cannot  
10 harvest any, I cannot economically harvest any high  
11 alpha varieties, at the same time that I can harvest my  
12 aliments. Anheiser/Busch has the opportunity to  
13 purchase hops from me, and I am going to continue to  
14 supply hops to Anheiser/Busch, as long as that  
15 opportunity exists, probably, and I hate to see this  
16 with Tom there, probably would do it at a much lower  
17 price, than they are offering me right now. Again, I  
18 have so much cost wrapped up in my harvest facilities,  
19 my fixed costs are so high, I don't make any money  
20 unless my picking machine is running. And  
21 Anheiser/Busch in aliments, has access to that harvest  
22 window, and I am going to utilize my base, to fill that  
23 window first.

24 Q. Could there be some growers in the  
25 market, who exclusively grow aromas?

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1 A. I suppose there could, yes.

2 Q. And if their base were cut 50 percent, or  
3 their saleable quantity, I am sorry. Would they have to  
4 acquire base to sell aromas?

5 A. Well not necessarily. Because depending  
6 on how the base, and gain I did not serve on the  
7 Proponents Committee in drafting the Order, and I have  
8 mentioned earlier, embarrassingly so maybe. I don't  
9 know the provisions and details of the Order, as it is  
10 proposed. Okay. But from what I do know, of what I do  
11 know about the Order, in the period in which the base  
12 allotment would be determined. I don't know of any  
13 growers that exclusively grew aroma hops at that time.  
14 Now they may exclusively grow aroma hops today. But I  
15 would anticipate that those growers would receive, if  
16 they were only growing aroma hops today, and in the  
17 period in which the base was allocated, were growing  
18 high alpha hops, my guess is, that they would have more  
19 base than they needed. Or certainly more, you couldn't  
20 make the case, that if there was a 50 percent cut in  
21 saleable, that they would need to acquire twice as much  
22 base in order to grow their aroma hops, I don't think  
23 you could make that, could you come to that conclusion.

24 Q. I am sorry, could you make the case, so  
25 they would have to acquire some base, to sell the same

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1 amount of hops?

2 A. They may have to.

3 Q. Which would add to their costs?

4 A. It may.

5 Q. And do you think that could affect the  
6 equilibrium situation that we have in the aroma market  
7 now?

8 A. No.

9 Q. Because?

10 A. I said it earlier, I think that growers  
11 will elect, to grow the aroma hops first, that those  
12 will be the priority, because I think the potential for  
13 profitability there is going to be greater, than it is  
14 in the general high alpha market. I think that is  
15 really a commodity market, and not a specialized market.  
16 And certainly, and I have already stated in testimony.  
17 On my own farm, I have made the decision to grow the  
18 bulk of my acreage under aroma acreage. I feel that  
19 that is a more profitable area, then under the generic  
20 alpha market, that exists out there today for growers.

21 Q. That looks at it from a seller's side,  
22 that from a purchaser's side, if the costs were  
23 increased because of the need to acquire base allotment,  
24 and you have indicated that could be quite expensive, or  
25 at least it was, back in the previous Marketing Order?

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1           A.    At the end of the previous Marketing  
2    Order.

3           Q.    At the end of it, and I want to get into  
4    that a little bit later, but with that increased cost,  
5    do you think that could affect the relationships between  
6    buyers and in terms of buyers, not want to buy from  
7    sellers whose costs have increased so much?

8           A.    I don't think that is true.  No, I don't  
9    think there would be a significant increase in the cost.  
10   I think the relationship between the aroma buyer, and  
11   the seller, would remain in tact.

12          Q.    Right now the--historically, the  
13    relationship has been multi-year contracts on the aroma  
14    side.  As you know, we have indicated that we are not  
15    going to be doing multi-year contracts until the  
16    uncertainty is created by the Hop Marketing Order, in  
17    the proposed Hop Marketing Order have been eliminated.  
18    Do you think the fact that forward contracting will not  
19    continue, will affect the equilibrium situation  
20    occurring in aroma today?

21          A.    No.

22          Q.    Why not?

23          A.    I don't think the fact that whether there  
24    is a future contract or not, and I am not going to speak  
25    for other growers here, I don't have a future contract

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1 for my aliments with AB, but I haven't taken any of the  
2 aliments out of the ground yet. I fully expect and  
3 hope, that AB will come back and offer to me, and  
4 opportunity for me to sell my, the aliments that I sold  
5 to them last year, if they are going to keep the same  
6 quantity of aliments, I am hoping I am going to be able  
7 to grow the same quantity of aliments. I will do that  
8 on a 1 year basis with them, I will do it on a 5 year  
9 basis with them. It is a significant part of our  
10 business, we want to protect it. We have been treated  
11 very fairly. And I think I am speaking for the rest of  
12 the industry, in that I think AB has acted very  
13 responsibly. Whether or not AB uses multi-year  
14 contracts or single year contracts, really shouldn't  
15 make a whole bunch of difference. It only represents 15  
16 percent of the production. Where we need to get the  
17 future contracts again, to provide stability to the  
18 industry, is on a larger block of hops that are grown,  
19 and that is the high alpha hops.

20 Q. So you would say that the Hop Marketing  
21 Order while perhaps reducing, or you know from our  
22 standpoint will reduce multi-year contracts from the  
23 aroma side, it will create an incentive for multi-year  
24 contracts on the office side, and thus help the  
25 industry? And it doesn't matter that you'll reduce

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1 multi-year contracts on the aroma side?

2 A. I don't pretend to know why AB has  
3 decided to move away from multi-year contracts, I was  
4 told and in conversations, or had informal conversations  
5 that maybe AB was going to move to a single year  
6 contracts anyway, prior to the Marketing Order talk. So  
7 again, I am not going to presume why AB's decided to do  
8 that. It doesn't make any sense to me, that it should  
9 be tied to the Marketing Order. AB has a need for hops,  
10 they have growers how produce hops, and why in the world  
11 AB wouldn't enter into a long-term agreement, if that  
12 suited their business model, and their need for hops,  
13 why they wouldn't move into that regardless of the  
14 Marketing Order, makes no sense to me. If a grower  
15 sells the hops to AB, I am assuming that he would do so,  
16 recognizing that he had the responsibility then, of  
17 having allotment to sell those hops. And certainly, if  
18 I made a contract with AB for whatever, for how many  
19 ever years in the future, I am going to make sure that I  
20 have allotment base to cover those sales. And I would  
21 assume I any contract that AB entered into with me, it  
22 would make that a requirement, that I have sufficient  
23 base to cover those contracts. I don't know if I  
24 answered your question, because if really didn't  
25 understand it, but that is my best attempt.

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1 Q. Thanks. You mentioned that Yakima Chief,  
2 doesn't do forward contracting when it purchases from  
3 alpha growers, is that correct?

4 A. No, Yakima Chief doesn't purchase hops  
5 from alpha growers. They create, they accept alpha hops  
6 from growers on consignment. In lieu of a future  
7 contract, which would set a fixed price, they set a  
8 deliverable quantity for that grower into the future.

9 Q. If forward contracting would be favorable  
10 for high alpha growers, why is Yakima Chief not doing  
11 it?

12 A. Well they are. I mean within the  
13 confines of their business model, remember again, that  
14 they are accepting hops on consignment. They are  
15 accepting the amount of hops, that they either have  
16 sold, or that they presume to be able to sell. The  
17 grower has a commitment, a contractual commitment to  
18 deliver that quantity of hops to Yakima Chief. The  
19 price for those hops, is yet to be determined.

20 Q. Right. They are not forward contracting  
21 in the sense of setting a price?

22 A. In setting a price. Now Yakima Chief  
23 will have, as you can well imagine, future relationships  
24 and contracts with world brewers, for a percentage of  
25 those consigned quantities. Does that make sense?

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1 Q. Yes, but it is still not clear to me, why  
2 if forward contracting and high alpha is favorable for  
3 growers, and Yakima Chief, from what I understand is  
4 controlled by growers, why Yakima Chief doesn't do  
5 forward contracting with these growers where the price  
6 is set going forward?

7 A. For Yakima Chief to enter into future  
8 contracts with their growers utilizing a set price,  
9 implies that Yakima Chief would be taking title to those  
10 hops. Yakima Chief does not operate as a dealer, they  
11 operate as a consignment merchant. It is a completely  
12 different business model.

13 Q. Are they processing the hops, like as a  
14 dealer/handler would be processing them?

15 A. They are processing the hops as a  
16 processor would process the hops.

17 Q. And dealers are generally processors  
18 also, right?

19 A. Dealers have processing capability.

20 Q. So in every other respect, they are a  
21 dealer, except for the business model, is that?

22 A. They are not a dealer.

23 Q. Because they don't buy them?

24 A. Because they don't take title to the  
25 hops.

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1 Q. But they could, they could be a dealer if  
2 they wanted to be, right?

3 A. I suppose they could be. They have  
4 chosen not to be.

5 Q. And would you say that Yakima Chief is  
6 made up of a majority of the owners, or proponents of  
7 the HMO?

8 A. I would not say that, no. Although I  
9 could do a quick count.

10 Q. Okay.

11 A. I am not on the Proponents Committee, I  
12 hope you understand that.

13 Q. But you are a proponent?

14 A. I am definitely a proponent.

15 Q. Right. So could you do that quick count?

16 A. The Proponents Committee consists of a  
17 minority of Yakima Chief owners.

18 Q. Not the Proponents Committee, I am sorry,  
19 is Yakima Chief made up of a majority of proponents?

20 A. Are you asking me the question, or is Mr.  
21 Desmarias asking me the question?

22 Q. I am getting a little help.

23 A. Okay, I can see that. I don't presume to  
24 know that. We have not taken a formal vote within the  
25 company. The fact that Yakima Chief operates under what

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1 I would kind of term a private marketing order, and they  
2 have seen the benefits that that has derived to their  
3 ownership, and to their growers. My presumption is,  
4 that the majority if not all, of the Yakima Chief  
5 growers will support the HMO. But I don't know that for  
6 a fact. I am again, I am presuming that.

7 Q. And yet, Yakima Chief is not doing  
8 forward contracts, setting price, that is correct?

9 A. Let us try this again. Yakima Chief,  
10 consigns with growers, that is a forward contract. It  
11 is a forward contract for a delivered quantity of hops.

12 Q. I said setting price, they are not doing  
13 a forward contract, where they are setting price?

14 A. Well I thought what you said was, enters  
15 into future contracts, and that is what I was addressing  
16 first. They do enter into future contracts. The  
17 contracts do not have a set price. So I don't know if I  
18 am agreeing with you, or disagreeing with you.

19 Q. Okay. One of the rationales, that you  
20 have stated, at least in your initial paper that was  
21 submitted back in February of 2002, for the benefits of  
22 a HMO, would be that they would, it would encourage  
23 forward contracts, is that correct? Multi-year forward  
24 contracting?

25 A. I think if the supply were being managed,  
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1 I am not going to say correctly. But if the supply were  
2 being managed properly, it would encourage future  
3 contracting. I believe that to be the case.

4 Q. And you just indicated that Yakima Chief  
5 is pretty much acting like a private HMO right now?

6 A. Essentially, for all intents and  
7 purposes, yes. And I don't have any problem explaining  
8 how that works, if it would help, if it would help you.

9 Q. That is okay. And yet, Yakima Chief is  
10 not entering into multi-year--let me finish this  
11 sentence, before you cut me off, you know because I am.  
12 They are not entering into multi-year forward contracts  
13 where the price is set?

14 A. They are not entering into multi-year  
15 forward contracts where the price is set.

16 Q. Is it not inconsistent, that they are  
17 acting as a HMO, but growers who would be proponents,  
18 they are not doing what they think, that the HMO will  
19 create a situation that will encourage?

20 A. Well they absolutely are, and because of  
21 that, I believe at this point, and I don't want this to  
22 sound wrong, particularly to the audience. I think at  
23 this point, the Yakima Chief grower really isn't a  
24 competitive advantage to the other growers in the  
25 industry. He is at a competitive advantage, because he

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1 is in a planned environment. He is in an environment  
2 where his company, the company that he owns, has  
3 relationships with multiple customers and users. His  
4 hops do not have to go through a broker, it is a  
5 transparent relationship whereby whatever the brewer  
6 pays for the hops. The fees are subtracted from those  
7 proceeds, and the grower knows what those fees are and  
8 he has returned the balance. And that grower in today's  
9 environment, has future contracts, significant future  
10 contracts. He also has access directly to the  
11 marketplace. He is able to, and if this company does a  
12 good job, he is able to sit down in the Spring with the  
13 company, anticipate how much demand they, or how much  
14 sales opportunity they have for the coming year. And he  
15 is able to deliver hops into a pool, which is called a  
16 market pool, we talked about it earlier. And he is  
17 able, hopefully if that is managed correctly, to have a  
18 home for those hops. So he is really in a different  
19 situation. Now granted, that only represents 13  
20 growers, 13, 14 growers, and it only represents 20 to 25  
21 percent of that high alpha market. I mean 25 to 30  
22 percent.

23 Q. So would you see as a possible solution  
24 to the high alpha problems, the creations of a couple of  
25 more Yakima Chiefs?

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1           A.    I don't presume that that is necessary,  
2           you would have to have people who are interested in that  
3           business model.  We would, if you were to look at a, it  
4           is interesting that you bring it up, because in the  
5           small industry that we are in, we have 2 different  
6           business models.  And are both of those models going to  
7           survive the test of time now.  I can't, I can't say that  
8           they will, or they won't.  but when we look at another  
9           industry in our State, which is the apple industry, it  
10          is run almost exclusively, on a consignment basis.  
11          There is not a significant amount of purchasing for  
12          taking title to product, and then selling it into the  
13          market.  Does that make sense?

14          Q.    Sure.  If we had a HMO, we may never know  
15          which one would win out, right?

16          A.    I don't think they are tied together at  
17          all.

18          Q.    You don't think that the HMO is going to  
19          replace some of the planning and business model  
20          functionality of Yakima Chief?

21          A.    No, I think the HMO will have very little  
22          impact on the business plan, or model of Yakima Chief.

23          Q.    Do you think the HMO will have a  
24          significant impact on the high alpha market?

25          A.    I think the HMO has the opportunity, if  
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1 again if it is managed correctly, to help balance the  
2 supply of high alpha hops to an annual demand. In that  
3 context, it should improve the market for high alpha  
4 hops.

5 Q. It is a good time I think for us to go to  
6 the slide if we could, on the HMO period. And you  
7 actually brought up the one I wanted to see as compared  
8 to the other one, because we can see this one better.  
9 This one and the next slide. I noticed as we have  
10 talked before, that this is I'm sorry...

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: Excuse me, Mr.  
13 Carswell, what page number is this?

14 MR. CARSWELL: We are going to fire you.

15 ADMINISTRATIVE LAW JUDGE: Approximately, so  
16 the people can find it?

17 MR. CARSWELL: It is toward the back now.

18 ADMINISTRATIVE LAW JUDGE: It is toward the  
19 back?

20 MR. CARSWELL: 28 I think. I think it is  
21 slide 28, Your Honor.

22 ADMINISTRATIVE LAW JUDGE: All right, thank  
23 you very much, Mr. Carswell.

24 MR. CARSWELL: And we will also be referring  
25 to slide 29, in a minute.

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BY MR. CARSWELL:

Q. You have got this identified as the Hop Marketing Order Period. And is that correct?

A. That is correct.

Q. This is also in the original, well not this slide, but the other slide, slide 25 that we looked at earlier, I believe is also in the initial petition, the position paper that came out in February of 2002, showing the Hop Marketing Order Period as being between '66 and '83, as well. Is that correct?

A. I didn't put together the position paper, and I really don't know what is in it.

Q. Okay. Yet I believe we have heard you testify earlier, that the Hop Marketing Order Period, would be more accurately described as ending in at least, going through 1985, is that accurate?

A. Formally the Order was in place through 1985. I think I stated earlier, that in my opinion, and again it is my personal opinion, that the Order ceased to function in 1980.

Q. Did the Hop Administrative Committee, or the Administrative Committee, have its full authority through 1985?

A. Yes, it did.

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1 Q. So as far as the powers of the Hop  
2 Marketing--excuse me, the Hop Administrative Committee,  
3 those powers were in full effect through 1985, and thus,  
4 that would be the effective period of the Hop Marketing  
5 Order, would it not?

6 A. Yes, it would.

7 Q. Thus, shouldn't this have a parenthetical  
8 perhaps, something to the effect of Hop Marketing Order  
9 during the period which Mike Smith thought it worked?

10 A. Well actually, if I would have done that,  
11 I would have cut off the last 3 years.

12 Q. Right, right. And I was going to say,  
13 plus a few years, I forgot that, I am sorry. If we  
14 could go to the next slide, slide 29. We see at 1985,  
15 the end of 1985, I believe that it is indicated by the  
16 third rectangle or square, is that accurate?

17 A. It looks to me like it is 1986.

18 Q. It looks like maybe it is the end of '85,  
19 I am not sure, maybe it is '86?

20 A. It might be the beginning of '86.

21 Q. Okay.

22 A. It is depicted as a season average price  
23 for that period of time.

24 Q. Yeah, so that, it seems like it would be  
25 '85, but I am not, it may be important. But yesterday,

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1 characterized by a chronic over supply?

2 A. I think the industry, has operated the  
3 last 3 or 4 years, under a significant over supply of  
4 alpha acids. Whether or not you want to turn that  
5 chronic or not, I am not sure. But certainly over the  
6 last 3 or 4 years, we have seen that.

7 Q. Well isn't it also true, that market  
8 forces have operated to correct that over supply  
9 situation?

10 A. They have.

11 Q. Okay. And is, as things stand now in the  
12 '03 industry, isn't it more in balance than it has been  
13 in the recent past?

14 A. We are more in balance, than we have been  
15 in the last 4 years, that is correct.

16 Q. All right. Now on the aroma side, is  
17 that part of the industry been in balance?

18 A. Individual varieties, in the aroma market  
19 get out of balance from time to time. But in general,  
20 they will come back into balance, fairly quickly. More  
21 quickly than I think, at least in my opinion, than the  
22 high alpha side.

23 Q. And that is also in response to market  
24 forces?

25 A. Yes.

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1 Q. Okay. So the over supply that occurred a  
2 few years ago, it was pretty much limited to the alpha  
3 varieties?

4 A. That was the over supply I was referring  
5 to yesterday, correct.

6 Q. All right. Why did that occur in alpha,  
7 and not in aroma?

8 A. Oh I think there is multiple reasons.  
9 Number 1, well I wouldn't say number 1, but 1 of the  
10 reasons was the increase in productivity, or  
11 productivity may not be the right term. The increase in  
12 alpha acid production on a per acre basis with the  
13 introduction of new varieties. That coupled with  
14 declining demand by world brewers, both from beers that  
15 were being hopped less heavily, as well as more  
16 efficient hop products. And thirdly, we had a currency  
17 situation that was working against the U.S. producer,  
18 and in favor of the German producer. And fourthly, the  
19 significant increase in acreage of high alpha hops in  
20 Germany.

21 Q. And that is because Germany, is a  
22 competitor of yours, for high alpha hops?

23 A. That is correct.

24 Q. All right. And has the market now pretty  
25 much caught up to those factors, and gotten back into

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1 balance for high alpha hops?

2 A. You know it is going to take a little  
3 time to tell that. Well we are certainly closer, let us  
4 put it that way. I think the potential exists for the  
5 market to be relatively balanced. Again we won't know  
6 that for another 3 to 4 months in my opinion, how  
7 balanced the market actually is. But it is going to be  
8 certainly much, much closer. However the balance is  
9 very, very tenuous. And I think that is probably the  
10 strongest argument in favor of a Marketing Order today.  
11 The infrastructure still exists in our industry, to  
12 vastly over produce the demand that we have. The amount  
13 of alpha acids, that we produced as an industry this  
14 past year, in my opinion is about right for the market.  
15 And for our, what I would call our market share under  
16 current conditions. However, and like I just stated,  
17 the infrastructure still exists for significantly more  
18 alpha to be produced, and I think that without some sort  
19 of industry wide control, that we very possibly could be  
20 back in a \$20, to \$22 market per kilogram of alpha,  
21 following the next season. And that would be very, very  
22 easy to do.

23 Q. Well since these external market forces,  
24 the shift in consumer taste in beer, and the increase in  
25 acreage in Germany, and the factors you mentioned, have

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1 all kind of happened already. Why would a producer,  
2 deliberately expand their alpha acid production, in a  
3 bad market?

4 A. The market price has improved  
5 significantly, from last year to this year. And I  
6 believe that there will be significant incentive on the  
7 part of growers, to increase their acreage from what  
8 they grew in 2003, for the 2004 crop. If nothing else,  
9 on a speculative basis.

10 Q. Are you planning on increasing your  
11 acreage?

12 A. I am.

13 Q. And do you think that is a wise idea?

14 A. I do.

15 Q. And you are just nervous, that too many  
16 other people are going to do it too?

17 A. I have the opportunity to market my hops  
18 differently, than the majority of the industry. And I  
19 think that gives me a significant advantage today.

20 Q. All right. Is your, going back to let us  
21 see, '91, '92, '93 period, is that roughly the time  
22 period when you began growing your particular variety of  
23 high alpha acid hops?

24 A. I grow multiple varieties of high alpha  
25 acid hops.

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1 Q. In the early '90s, did you begin growing  
2 I think the variety is Tomahawk?

3 A. I am not sure when it was, but it  
4 certainly, it was around the early '90s, that is true.

5 Q. And were you one of the early adopters of  
6 that variety?

7 A. I was.

8 Q. And does it take a few years, for that to  
9 ramp up its production?

10 A. Do you mean on an individual basis, or  
11 across an industry?

12 Q. On an individual basis?

13 A. It produces, or can produce, has the  
14 potential to produce at a very high level, in its first  
15 year.

16 Q. Then after, when does it reach its sort  
17 of maximum productive period?

18 A. Unfortunately, I have had fields that  
19 reached it the first year.

20 Q. All right. So its no way to predict  
21 that?

22 A. I think it is a farm by farm issue.

23 Q. Okay. And were you one of the early  
24 adopters generally, of these high alpha acid varieties?

25 A. I was one of the first growers of Galena  
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1 [ph], in the Yakima Valley. I was one of the first  
2 growers of O'Roark [ph], in the Yakima Valley. Those  
3 were in the early '80s actually. I was one of the first  
4 growers of Tomahawk, and more recently, I was one of the  
5 first growers of Warrior.

6 Q. Okay. Now then, as things moved along  
7 through the '90s, as we look at the CTZ varieties of  
8 high alpha hops, did those start being adopted later on  
9 in the '90s, '96, '97, and '98 period?

10 A. I think the testimony yesterday, and my  
11 charts indicate that, to be the case, yes.

12 Q. All right. And did that, do those take  
13 some period of time to ramp up, to their full  
14 production?

15 A. I think you just asked me that question.

16 Q. Was there a difference between the CTZ's  
17 and the Tomahawk's?

18 A. We are going to be going late, Judge.  
19 Without getting into the details of it, those 3  
20 varieties, those 3 names all refer to the same hop  
21 variety.

22 Q. All right. And do they experience the  
23 same production characteristics, as the Tomahawks in the  
24 sense that they can have in the first year, the maximum  
25 yield?

1 A. They are the same variety.

2 Q. As the Tomahawks?

3 A. They are all the same variety.

4 Q. Oh so the CTZ's and the Tomahawks, are  
5 all the same?

6 A. CTZ refers to 3 names. Columbus,  
7 Tomahawk, and Zeus.

8 Q. Okay. Would the fact that you were early  
9 a doctor, give you an advantage, in receiving base, if  
10 the base period were determined to be '97 to '02?

11 A. I have no way of knowing that, because I  
12 don't run the calculations of what our base position  
13 would be, following if the Order were adopted. And my  
14 anticipation is that I would need to acquire additional  
15 base.

16 Q. Because you would be expanding, your  
17 plans are anyway to expand in '04?

18 A. Our plans are to expand in '04.

19 Q. Okay. I think that is it. And I  
20 appreciate it, and I think you were a poster child for  
21 the success of the free market.

22 A. Thank you, Mr. Moody.

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
25 Moody. Additional cross examination? Dr. Jekanowski?

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1 DR. JEKANOWSKI: Thank you, Your Honor.

2 \*\*\*

3 BY DR. JEKANOWSKI:

4 Q. I just want to follow-up on a few points.  
5 I think Mr. Moody did a pretty good job of addressing a  
6 lot of the sort of economic justifications, that were  
7 presented here. One thing, can we go back to the slide  
8 you had up originally, with the 3 points, the 3  
9 justifications for the Market Order?

10 A. We will see if Mr. Roy can get us there.  
11 All right.

12 Q. All right. Yeah, that is the one. Okay.  
13 I would like to sort of go through these, sort of  
14 briefly, point by point. You note that there is an  
15 impact of U.S. production on the world prices?

16 A. Yes.

17 Q. So then would you also agree, that there  
18 is an impact of German production, on world prices?

19 A. To a lesser degree, I would.

20 Q. To a lesser degree?

21 A. Because they produce a much smaller  
22 quantity of the overall total.

23 Q. Of hops generally, or of high alpha hops?

24 A. Of high alpha hops.

25 Q. Okay. Why do they produce less?

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1 A. They have less acreage.

2 Q. Do they have the capacity, to produce  
3 more acreage?

4 A. I don't know the answer to that.

5 Q. Have they increased their acreage over  
6 time, of high alpha hops? Of high alpha, Germany?

7 A. I think that was pretty obvious  
8 yesterday, yes they have, significantly.

9 Q. Okay, okay. In your view, how do  
10 producers typically respond, to higher market prices?

11 A. Typically, they add more acreage.

12 Q. Right, I agree. Now is there any  
13 difference in the way a German hop producer would  
14 respond, than a U.S. hop producer, in your view?

15 A. I would assume that a German hop  
16 producer, would consider himself to be a business  
17 person, and would respond similarly to an American  
18 business person. If there was opportunity to make a  
19 profit by expanding his acreage, I would assume he would  
20 do so.

21 Q. So if the saw that prices might be  
22 increasing next year, or into the future, he might  
23 increase his production?

24 A. He might, yes.

25 Q. He might. Now this marketing order will

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1 presumably, it seems you repeated continuously  
2 yesterday, that it could increase the price of U.S.  
3 hops?

4 A. I think it could help balance the supply  
5 of alpha acids with the market. In today's pricing  
6 environment, it may not increase the price, versus last  
7 year's pricing environment, it would have definitely  
8 helped to balance price.

9 Q. Well why wouldn't it increase the price,  
10 if you decrease supply?

11 A. I didn't necessarily say we would  
12 decrease supply. To me a Marketing Order would balance  
13 supply. There would be, you could make a strong case,  
14 that there will be times where the Marketing Order,  
15 would actually need to increase supply in order to keep  
16 that balance.

17 Q. Right. But right now, I mean we are  
18 here, because you are implying that there is currently  
19 an over supply. So that implies that we need to  
20 decrease supply, is that correct?

21 A. No, that is not correct.

22 Q. So there is not an over supply of hops?

23 A. I just stated in my testimony to Mr.  
24 Moody, that I think we are very closely to being  
25 balanced at this current time.

1 Q. Okay. Well was there an over supply of  
2 hops last year?

3 A. There was an over supply, yes. Last  
4 year, yes.

5 Q. And why isn't there this year, there is  
6 no Marketing Order in effect, but this year there is  
7 where you seem to be in balance?

8 A. You were here yesterday, right?

9 Q. Yeah.

10 A. Okay. Because we could go back to the  
11 German production, if we look at it. The German  
12 production was devastated this year, by poor growing  
13 conditions. And the German's produced about 50 percent,  
14 50 to 60 percent of what they were anticipated to  
15 produce. That decrease in alpha production, allowed us  
16 to balance, or closely, hopefully closely balance the  
17 market. But it wasn't through any intervention on the  
18 part of growers.

19 Q. Sure, well do you think, had a Marketing  
20 Order been in effect, would it have foreseen the German  
21 crop failure?

22 A. It would not.

23 Q. But yet, last year there was no over  
24 supply of hops, is that correct?

25 A. There was.

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1 earlier you said that the period of the Hop Marketing  
2 Order, was one of price stability, I believe?

3 A. Relatively speaking, yes.

4 Q. And that there was, there is a lot more  
5 volatility outside the period of the Marketing Order?

6 A. That is what it appears to me, yes.

7 Q. But wouldn't this indicate, that if you  
8 included through 1985 the Hop Marketing Order, that  
9 there indeed has been quite a lot of volatility? That  
10 there was during the period of the Hop Marketing Order  
11 volatility?

12 A. Again, as I stated earlier, I think the  
13 Hop Marketing Order ceased to effectively stabilize the  
14 market in 1980, so yeah, I do agree with you in that  
15 regard. If the Marketing Order would have been  
16 operated, in the way in which it was designed, and the  
17 way in which it was envisioned by the original founders,  
18 I don't believe we would have seen that type of  
19 volatility in the marketplace. Once, even though the  
20 Marketing Order formally existed, you have to recognize,  
21 it did nothing to regulate or balance supply and demand.  
22 It opened it wide open.

23 Q. And yet the Hop Administrative Committee,  
24 had the full authority to do that, right?

25 A. And in my opinion, they made an error, a  
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1 significant error.

2 Q. Were you active during that period, I  
3 know you were an alternate?

4 A. I was an alternate, I was not a voting  
5 member.

6 Q. And did you participate in the meetings?

7 A. I sure did.

8 Q. Why do you think this time is going to be  
9 any different, when a situation is created, where there  
10 will be heavy demands to increase for example  
11 allotments, why will the HAC as I will call it H-A-C, be  
12 more effective?

13 \*\*\*

14 ADMINISTRATIVE LAW JUDGE: Mr. Smith, you have  
15 already answered that question. You may add to your  
16 former answer if you wish, but you need not.

17 MR. SMITH: I can only respond by saying, you  
18 know I am internally an optimistic person, and I think  
19 by looking back at the mistakes they made in the past, I  
20 think the Hop Administrative Committee, has a reasonable  
21 expectation to make a better decision at the next time,  
22 that that happens, if it happens.

23 \*\*\*

24 BY MR. CARSWELL:

25 Q. Are you planning to serve on the  
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1 committee yourself?

2 A. I hope not.

3 Q. So you are not putting yourself forward  
4 as a candidate, to be on the committee?

5 A. We don't have a Hop Marketing Order yet,  
6 Mr. Carswell, it is a little presumptuous.

7 Q. If you had one, would you be interested  
8 in being on the Committee?

9 A. I am not sure.

10 Q. If you were not on the Committee, would  
11 you be comfortable, well let me, I am sorry. Let me  
12 take that back. If you were not on the Committee, and  
13 had no say in how the Committee made its decisions,  
14 would you be entirely 100 percent comfortable, with  
15 those decisions that are being made, that could very  
16 much affect your business?

17 A. If I was not on the Committee, or even if  
18 I was on the Committee for that matter, I would feel  
19 very comfortable making my opinions known, trying to  
20 persuade my fellow growers, whether they be my  
21 representatives or fellow board members if I did serve  
22 on the Committee, to make the right decision for the  
23 best of the industry. That said, I would be perfectly  
24 willing to live with their decision, and adjust my  
25 business model accordingly, because I would, I firmly

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1 feel and it is obvious by my testimony, I firmly feel  
2 that this commodity, can best be managed under a global  
3 sense, and when I say global I am talking in the U.S.  
4 sense, that by working together, and managing the supply  
5 and demand correctly, that that is going to be a better  
6 environment for my business. It proved to be a better  
7 environment in the last one, than the current  
8 environment. And so, I think I answered your question  
9 there. I would be very, I might not agree with the  
10 decision, but I would be comfortable following whatever  
11 the regulation was.

12 Q. You have indicated, I believe that you  
13 are not sure how the Hop Marketing Order is going to  
14 function, is that accurate?

15 A. That is accurate.

16 Q. And yet you are going to, you would be  
17 comfortable considering the fact that you don't know how  
18 it is going to function? You are a smart, obviously a  
19 smart businessman, and you are comfortable...

20 A. What leads you to that conclusion.

21 Q. It almost sounds like you are in favor of  
22 any kind of Marketing Order, that has the potential of  
23 regulating production, regardless of how it functions,  
24 is that accurate?

25 A. I have spent the last effectively 20

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1 years, watching an industry function in a very  
2 inefficient manner. And I spent the prior 7 or 8 years,  
3 at the end of the Order, watching an industry function  
4 in a very efficient manner. So to answer your question,  
5 yes. I believe that the situation for U.S. growers will  
6 improve significantly under a Hop Marketing Order. And  
7 I am very comfortable with that. I think I am  
8 surrounded not just now, but in general by a very  
9 perceptive, educated, intelligent group of people. And  
10 I am not saying that they are going to make all the  
11 decisions correctly, but I think they will make the  
12 majority of them correctly. And no matter what, what I  
13 really believe, is that those decisions, are going to be  
14 much better made on an industry wide basis, than they  
15 are going to be made as individual decisions. Because  
16 we have shown over the last 20 years, that those  
17 individual decisions, are not to the best, are not in  
18 the best interest of the industry as a whole.

19 Q. You reference an industry wide decision,  
20 but with respect to high alpha, it is a global industry,  
21 yes?

22 A. We compete on a global market, that is  
23 correct.

24 Q. So the Germans are in the industry as  
25 well, correct?

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1 A. The Germans are in the industry as well,  
2 correct.

3 Q. So it won't be an industry wide  
4 decisionmaking process, correct?

5 A. I was referring to the U.S. industry.

6 Q. Speaking of the Germans, you mentioned  
7 earlier that U.S. growers, will grow hops even when it  
8 is not profitable. Is that with respect, I presume to  
9 high alpha, is that accurate?

10 A. Would you repeat that, I am sorry.

11 Q. It was badly stated, I am sorry.

12 A. I just thought I heard it incorrectly.

13 Q. I am sorry, no. I believe you said  
14 earlier that with respect to, at least with respect to  
15 high alpha, that U.S. growers will grow hops, even when  
16 it is not profitable?

17 A. That is correct.

18 Q. And do you think that that is the case  
19 also, for Germans?

20 A. I do.

21 Q. Because I believe you mentioned earlier,  
22 that Germans would only grow when it was profitable?

23 A. No, I think I was responding to a  
24 question about whether or not growers, German growers  
25 would expand their acreage. And I said I presume that

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1 German growers would expand their acreage, if it was  
2 profitable. I don't think I said that German growers  
3 would only grow if it was profitable.

4 Q. And increase production, that is right,  
5 is what you said, so.

6 A. And I think American growers would  
7 increase production as well, if it was profitable.

8 Q. Would Germans increase production when it  
9 is not profitable?

10 A. I can't presume to speak to that, but  
11 like I said earlier, I think that the German growers are  
12 business people, just like the American growers, and I  
13 don't think that they would increase production knowing  
14 they were going to lose money on that production.

15 Q. And Americans won't either?

16 A. I wouldn't think they would increase  
17 production, no. But I do believe that they would string  
18 existing acreage, even though it wasn't profitable.  
19 Again, it goes back to that spreading of fixed costs,  
20 and how do you, under what production scenario, do you  
21 lose the least amount of money. I know that is hard for  
22 you to understand.

23 Q. Do you think it will be profitable, for  
24 Germany to increase production, if the saleable quantity  
25 for alpha hops, is reduced by 50 percent?

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1           A.    That is a hard question to answer,  
2           because I, and I don't think that it necessarily  
3           follows, and I will explain why.  I think the German  
4           decision to grow, or not grow alpha hops, is going to  
5           depend upon what price those hops can be sold for into  
6           the world market.  Just because the United States  
7           reduces the quantity of alpha in any given year, by some  
8           degree, doesn't necessarily mean that the German growers  
9           will increase production, or decrease production.  There  
10          is other issues at stake.  They have varieties that are  
11          specifically demanded by some of their customers, we saw  
12          that this Fall.  There was, there have been sales of  
13          Magnum alpha, out of Germany at \$60 a kilo alpha.  When  
14          there was U.S. alpha available from CTZ for \$35.  So you  
15          can't just globally make a statement that the Germans  
16          will increase their acreage, if we decrease our acreage.  
17          They are going to make that decision based on  
18          profitability.  You could make a case that we could  
19          reduce our acreage, and the Germans would reduce their  
20          acreage as well.  I mean exchange rates are going to  
21          enter into that, our relative advantage in alpha  
22          production on a per unit of land basis, is going to  
23          enter into that.  The specific demand for specific  
24          varieties by brewers are going to enter into that, and  
25          so, I see where you are going, but I am not sure that I

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1 can answer that question accurately. Because I don't  
2 think it you know it really relates to the market the  
3 way it exists.

4 Q. You don't think it relates at all, or do  
5 you just not think that it is a given, that they will  
6 increase production?

7 A. I don't think it is a given at all.

8 Q. But you don't, but you think there could  
9 be a relationship don't you, between reduced supply  
10 here, to increased supply from the Germans?

11 A. There could be.

12 Q. It is my understanding, that currently  
13 China, there is no production of high alpha hops, is  
14 that correct?

15 A. I don't think that is correct, no. I  
16 think there is production of high alpha hops in China.

17 Q. Is it nascent, is it just beginning, or  
18 have they been doing it for some time or?

19 A. The bulk of the Chinese hops grown, and I  
20 mentioned this yesterday, are what we would, what I  
21 would consider to be in the bitter hop category. And  
22 that is in that 6 to 7, 7½ percent alpha range. In  
23 recent years, the Chinese have planted high alpha hops.

24 Q. Do you see it as a possibility that China  
25 will increase its production of high alpha hops?

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1 A. It is certainly a possibility.

2 Q. Do you see it as a possibility that they  
3 will increase it to the point that they will begin, if  
4 they are not already exporting high alpha hops?

5 A. It is certainly a possibility.

6 Q. Do you see the Chinese as a potential  
7 competitor to U.S. high alpha hops?

8 A. Yes, I do.

9 Q. Considering the Chinese history of  
10 successful export, could you see the Chinese increasing  
11 production in the event of a reduction of U.S. supply of  
12 high alpha hops?

13 A. I think the Chinese will probably  
14 increase production, if they so desired, regardless of  
15 what the United States does. I don't think those 2 are  
16 tied together, no.

17 Q. All things being equal, if U.S. high  
18 alpha supply decreases, do you see the Chinese as being  
19 more or less incentive wise, to increase the production  
20 of high alpha hops?

21 A. I think the Chinese will make their  
22 decisions totally independent, of what happens in the  
23 United States.

24 Q. If the price for high alpha hops goes up  
25 because of the restriction and supply of high alpha

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1 hops, do you see that as a incentive, or disincentive  
2 for the Chinese to increase their production of high  
3 alpha hops?

4 A. I don't think it really matters, I think  
5 they are going to increase it anyway. If you would like  
6 back there is a graph, I am sorry, I don't mean to  
7 elaborate here, and take up some of the opponents time,  
8 but if you go back to, we are on the opponents time  
9 right, Your Honor.

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: Have been all  
12 morning.

13 MR. SMITH: Give me a few minutes here, I know  
14 that slide is here somewhere.

15 ADMINISTRATIVE LAW JUDGE: All right, we will  
16 change tapes at 12:15. All morning, and 15 minutes of  
17 the afternoon.

18 \*\*\*

19 [OFF THE RECORD]

20 [ON THE RECORD]

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: We are back on  
23 record at 12:16. Mr. Smith.

24 MR. SMITH: Okay.

25 ADMINISTRATIVE LAW JUDGE: What page are you  
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1 on?

2 MR. SMITH: 15, it appears. What happened?  
3 Our IT Department. Okay. Mr. Carswell, I just wanted  
4 to point out this slide to you, because I think it  
5 speaks in a round about way, to the point that you were  
6 trying to make. And this is a slide that I introduced  
7 yesterday, and it is really the theoretical production  
8 of high alpha hops, and theoretical in the sense that  
9 Germany would have had a normal crop this year, instead  
10 of the crop disaster that they had. And that the U.S.  
11 would not have--would actually have sold into the market  
12 to brewers all of the high alpha hops that they produced  
13 over the last few years. Okay. And it compares to let  
14 me, it compares to this slide, which is the actual  
15 production, okay. And so, you recognize that I am not  
16 talking about, I am talking about theoretically here.

17 \*\*\*

18 BY MR. CARSWELL:

19 Q. Right, right.

20 A. And it is pretty interesting to notice,  
21 that the Americans...

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE: The actual is on  
24 what page?

25 MR. SMITH: Oh I am sorry, it is on page 14,  
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1 infrastructure, the processing facilities blah, blah,  
2 blah, doesn't happen overnight. There is a period of  
3 time. And what we got to hope as an industry, is that  
4 exchange rates help us. That productivity increases  
5 help us, that the adoption of technology helps us. But  
6 all of those, other than exchange rates, require  
7 investment. We are much better off to manage a  
8 shrinking market share profitably, so that we have funds  
9 and we have profits to invest. And hopefully maintain  
10 market share. Do I think that the United States is  
11 going to lose 100 percent of their market share in high  
12 alpha hops indefinitely, I absolutely do not believe  
13 that. At some point, we will maintain a market share.  
14 And that market share will fluctuate, based on our  
15 productivity increases, and exchange rates. Did I  
16 answer your question?

17 Q. How are you going to invest more if, why  
18 would you invest more, if you are paying a substantial  
19 amount, those growers who are having to pay a  
20 substantial amount to acquire a base allotment?

21 A. Who said they were going to have to pay  
22 anything to acquire a base allotment, I mean we are  
23 making a presumption, that I think it is a little bit  
24 difficult to make. But the point is, and I will go back  
25 to it, if there is a value to base, there is only a

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1 value because it is providing value to the purchaser.  
2 If it is providing value to the purchaser, because we  
3 are business people, we are trying to make a profit,  
4 presumably that base delivers the opportunity to make a  
5 profit. If I can make a profit, presumably I can  
6 reinvest those profits, hopefully in the adoption of  
7 technology, the adoption of machinery, the adoption of  
8 something that allows me to increase my productivity.  
9 As an industry, that is the only way we can maintain  
10 market share. I submit we cannot maintain market share  
11 by losing money. Which is the model that we have  
12 adopted for the last 4 or 5 years.

13 Q. It is only profitable, I mean it is only,  
14 it has value, is it not, if it is required?

15 A. It only has value if it provides value.

16 Q. But it would provide value in the sense,  
17 that the grower would be able to grow something that is  
18 profitable, yet it will be less profitable, because they  
19 have to buy the base, wouldn't it be less profitable?

20 A. Not necessarily.

21 Q. Well if there was no Hop Marketing Order,  
22 and they had to the very same contract, and presumed  
23 that they have to acquire base, wouldn't their contract  
24 be more profitable, if they didn't have to acquire the  
25 base?

1           A.    Not if without the Marketing Order, we  
2           couldn't balance supply and demand.  And I mean, you  
3           gave us a theoretical example yesterday, and I will give  
4           you a theoretical example.  If I sell hops for 50 cents  
5           a pound, which is essentially what the market was last  
6           year, and into this Spring.  My cost of production is a  
7           \$1.35 a pound, I am going to lose money.  Would you  
8           agree with that?

9           Q.    I am not being questioned, I am sorry.

10          A.    Actually I am questioning you, but okay.

11          Q.    I am not under oath, so you...

12          A.    Okay.  I will trust that you will be  
13          honest anyway.

14          Q.    I would be, but I am not going to answer  
15          your question.

16          A.    Okay.  Let me step through it then.  If a  
17          grower selling hops current 50 cents a pound, and it  
18          costs him a \$1.35 a pound, because we are using  
19          theoretical examples, like you did yesterday.  And if a  
20          Marketing Order could come into existence, and it  
21          allowed a balance of supply and demand.  And the price  
22          of hops could increase to \$1.65 a pound, okay.  From 50  
23          cents a pound, which say is somewhat above the cost of  
24          production.  And as a grower, I had to theoretically  
25          acquire that base for 5 cents a pound, or 10 cents a

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1 pound. I am better off, I am better off under that  
2 scenario. Even though I had to acquire base, because we  
3 had a system that allowed us to balance supply and  
4 demand, and improve the price of the hops, okay. We  
5 didn't improve the price of the hops exorbitantly, we  
6 didn't improve the price of the hops to 2, or 3 times  
7 the cost of production. We improved them to the cost of  
8 production plus a small profit. That is what the old  
9 Order did, that is what I am presuming the new Order  
10 would do.

11 Q. Didn't you say that the current situation  
12 is one of balance of supply and demand?

13 A. The current situation I am presuming will  
14 be a balance of supply and demand situation. We have  
15 get to know, what contract offers are going to be out  
16 there to growers, as far as I know. I don't know of a  
17 contract market that exists today for growers of high  
18 alpha hops. And I don't think there will be one  
19 regardless.

20 Q. Earlier I believe you testified, and you  
21 know the record will show it whether you did or didn't,  
22 that the market is currently in, and generally in a  
23 situation of balance. And presuming that is the case,  
24 wouldn't growers be better off, if they could enter into  
25 a multi-year contract, without having to acquire base?

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1 would be in a better competitive situation, vis a vis,  
2 domestic growers who do have to acquire base, under a  
3 proposed HMO?

4 A. I don't believe that to be the case, no.

5 Q. Why not?

6 A. The U.S. grower already maintains a  
7 significant advantage Mr. Carswell, in the total  
8 production of alpha acid per unit of land. That gives  
9 him a tremendous advantage. He has also been handed the  
10 advantage of an improving currency situation. The cost  
11 of any base, and I don't presume to know what that is,  
12 okay. Is going to be such a small, potentially a small  
13 portion of his overall cost, and I don't think it is  
14 going to factor into the equation of overall  
15 profitability at all.

16 Q. Well you mentioned that before the base  
17 cost \$3.25 a pound, that you had acquisitions of up to  
18 \$3.25 a pound. You would call that substantial,  
19 wouldn't you?

20 A. Yeah. But you know what was interesting  
21 about that, Mr. Carswell. I bought that base for \$3.25  
22 a pound, in order to enter into a long-term contract  
23 with the purchaser, at \$2.50 a pound, climbing up to  
24 \$2.75, when my cost of production was about 80 cents a  
25 pound. I paid for that base over a period of about 2½

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1 years. I presumed that I was going to have that base  
2 for a longer period of time, than I ended up having it.  
3 But I made that decision consciously, I paid a high  
4 price for that base, but I received a high value for the  
5 purchase of that base. And again, I submit that the  
6 value of base, will be directly tied to the value it  
7 provides to the purchaser.

8 Q. But again, if it is substantial, even if  
9 it provides value to the American buyer, or at least in  
10 the short run it does, isn't that going to drive, if you  
11 had such a substantial cost for base. Wouldn't that  
12 reduce the competitiveness, of American hop growers, vis  
13 a vis, foreign hop growers? Wouldn't that be a  
14 substantial component of cost component?

15 A. It wouldn't have to be, no. That was a  
16 very unusual situation. You have to go back and look at  
17 really what happened there. And through the prior  
18 period of time, base was not a significant cost to the  
19 growers overall. We had a very stable environment of  
20 slowly increasing prices, base was freely transferred  
21 between growers and a purchase mechanism, and a rental  
22 mechanism. And which I understand the new Order has got  
23 completely different way of handling that. But it was a  
24 very stable environment, to say that the price of base  
25 was high under the former Order, for a very short period

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1 of time, and say that that is going to be true under  
2 this Order, I can't agree with that.

3 Q. Do you foresee, do you have any  
4 understanding of the current setting of the base  
5 allotment, and how it is going to work?

6 A. I wouldn't want to speak to it, because  
7 my understanding of it is, it is not very good.

8 Q. If I told you that for example, the base  
9 was going to be set at a just throwing out a number  
10 here, at 130 percent of the level of the 2002 crop.  
11 Would you foresee a need to substantially cut the  
12 saleable quantity, or to reduce the saleable quantity to  
13 achieve any meaningful reduction in the level of hops  
14 being produced in the U.S.?

15 A. If you make the assumption, that the  
16 quantity of hops, that was grown last year, and I am  
17 referring to high alpha hops was the right amount of--  
18 was the right amount, going into the future. And that  
19 is the assumption that I am operating under. That  
20 looking at the German hop production, and the American  
21 hop production. If the Americans produce a similar  
22 quantity of hops that we did this year. That there is a  
23 reasonable expectation that the market would stay  
24 balanced through another growing season. My assumption  
25 is, that the Committee, would create enough base to

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1 allow that to happen. That would be the responsible  
2 thing for the Committee to do, but what the specific  
3 percentages are, or what have you, I couldn't even  
4 presume to know, because I don't have those facts. I  
5 don't have those figures, I don't think anybody on the  
6 Committee has those at this point. But I think that  
7 would be the goal of the Committee, and I think it is  
8 very reasonable to expect that that could be done.  
9 Would every grower have the correct amount of base, to  
10 grow what they wanted to grow? Probably not.

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, let  
13 me interrupt for just a minute. I hate to do that. But  
14 I have 2 competing interests right now. I understand  
15 that there is a witness, who wishes to testify against  
16 the proposals, who has a plane this afternoon. I also  
17 want Mr. Smith, who has been very patient, to be allowed  
18 to finish, and leave if he wishes. But I just need to  
19 get the particulars on the witness who needs to testify  
20 soon, how long he expects his direct to be, and when he  
21 needs to leave the room?

22 MR. CARSWELL: Well instead of doing that, let  
23 me just go ahead and wrap up.

24 ADMINISTRATIVE LAW JUDGE: Well you may not be  
25 the only one that still has questions for Mr. Smith.

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1 MR. CARSWELL: That is true, fair enough.

2 ADMINISTRATIVE LAW JUDGE: So let me at least,  
3 find out what the situation is with the witness, that  
4 needs to be called. Who will be calling with witness?  
5 Mr. Moody?

6 MR. MOODY: He has a brief statement to read  
7 into the record, and I have just spoken a minute ago,  
8 and he would prefer to go now, rather than after lunch,  
9 if Mr. Smith wouldn't mind a break.

10 ADMINISTRATIVE LAW JUDGE: How long is his  
11 statement, how many pages?

12 MR. MOODY: 2 pages.

13 ADMINISTRATIVE LAW JUDGE: All right And then  
14 we may have some cross examination. What time does he  
15 need to leave the room, in order to catch his plane?

16 MR. MOODY: 1:30 or so.

17 ADMINISTRATIVE LAW JUDGE: Okay, thank you.  
18 Let us try to finish with Mr. Smith, and then call the  
19 witness, if we can. But I will see how much more cross  
20 examination there will be. Thank you. Mr. Carswell,  
21 you may resume.

22 \*\*\*

23 BY MR. CARSWELL:

24 Q. I believe you just mentioned Mr. Smith,  
25 that this year's production was the proper amount, is

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1 that correct?

2 A. I think by virtue of the fact that the  
3 German crop was so severely curtailed because of  
4 climatic conditions, it turned out to be the right  
5 amount. I think if the Germans would have produced what  
6 their potential was, we still would be--we would still  
7 be in a over supply situation. I would run some  
8 calculations that in order to balance the crop, the  
9 demand to the supply for this harvest season, we would  
10 have had to produce something less than 2 million kilos  
11 of alpha, and we produced 2.4. That said, we would have  
12 reduced the inventory, the existing inventory, our  
13 excess inventory from prior years, we would have reduced  
14 that by my calculations showed about 300, to 400 ton.  
15 And there was about a 1,000 metric ton of alpha in my  
16 opinion, and that was over produced.

17 Q. Okay. Just 1 more area, and then I will  
18 be done. You mentioned that the--that you didn't, at  
19 least certainly didn't draft the piece that was done  
20 back in February of 2002, the need for it?

21 A. I wasn't involved in that.

22 Q. You weren't involved. Have you read it?

23 A. I think I did read it at one time, yeah.

24 Q. There were several reasons given at that,  
25 in that piece for the creation of the Hop Marketing

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1 Order. And let me ask you if you recall whether these  
2 are the reasons that you, if you recall these reasons.  
3 One would be that it would increase long-term  
4 contracting. The second would be that U.S. growers  
5 acting independently, have failed to limit production.  
6 And another has been the lack of a previously common  
7 German crop failures. Finally, and not finally as  
8 saying these are all the reasons given. But another  
9 reason that was given, was the exchange rate situation.  
10 Those reasons don't seem to jive at all, or generally at  
11 least, with the reasons that you've given in this piece,  
12 your economic analysis piece. And I am wondering, is  
13 that because the conditions have changed since February  
14 of 2002?

15 A. I wasn't involved with the 2002 draft  
16 that you are talking about, or letter that you are  
17 talking about. I was asked by the Proponents Committee,  
18 to review the market, and give some justification. They  
19 gave me free reign to do that, they didn't ask me to put  
20 in any specific reasons why I felt the Order was needed  
21 or not. And that is what I have done. And so I  
22 wouldn't think that the 2 are tied together at all.

23 Q. Your piece did indicate for example that  
24 we now have a favorable exchange rate situation?

25 A. It is more favorable than it was, that's

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1 right.

2 Q. Right. And I believe you also indicate,  
3 you know you referenced the fact, that this was a German  
4 crop failure this past year?

5 A. That is correct.

6 Q. Would you agree that, the different  
7 reasons, if I am accurate in stating the reasons that  
8 were given for a HMO, back in February 2002, and that  
9 they differ markedly from your reasons given now. Could  
10 you ascribe that to the fact that, it is a reflection of  
11 a rapidly changing market?

12 A. I really don't know how to answer your  
13 question. And maybe it should be simple, I don't know.  
14 My feeling is that now is the perfect time to put in the  
15 Order. Now is the least painful time for this industry,  
16 to collectively begin to balance supply and demand. And  
17 that is because of a couple of things. And you have  
18 eluded to both of them. There was a German crop  
19 failure, that helped to, that should help to over the  
20 next few months, alleviate the over supply situation.  
21 Okay. So an Order doesn't need to, a future saleable  
22 doesn't need to be cut below what is needed for that  
23 year, to allow that inventory into the market. We have  
24 also, are operating under an environment where the  
25 exchange rate, that was working against us, is beginning

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1 to work for us. That gives us an opportunity to  
2 possibly recapture some market share. Okay. That gives  
3 us a possibility, to actually in future years, be able  
4 to increase the saleable. I could fully see a situation  
5 develop where, the Committee would set a saleable  
6 percentage, that somehow would allow the quantity of  
7 alpha hops that were produced in 2003, to be sold in  
8 2004. I further submit, that the possibility strongly  
9 exists, that for the 2005 crop, that saleable percentage  
10 could be increased. I believe that to be the case. I  
11 believe that to be the case, because of the 2 advantages  
12 that I listed in my testimony yesterday. We have a  
13 significant advantage in overall alpha production per  
14 hectare, which gives us a lower cost structure. And we  
15 have an improving exchange rate. And I believe that the  
16 U.S. industry, will marginally gain back some market  
17 share that we have lost.

18 Q. So between your comments, and the piece  
19 that was written back in February of 2002, the directly  
20 contrary position that exchange rates, the negative  
21 exchange rate back in February of 2002, and the positive  
22 exchange rate now, are both justifications for the Hop  
23 Marketing Order?

24 A. I don't think so. I have in my--and not  
25 having the document in front of me. But my

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1 interpretation of the document is, that we don't need a  
2 Marketing Order because we have an unfavorable exchange  
3 rate, and I think that is what you are saying. I think  
4 the document that was submitted by the proponents, is  
5 that there were certain factors, that have led to an  
6 over supply of hops. One of those factors, happens to  
7 be an unfavorable exchange rate. A Marketing Order is  
8 needed to balance supply and demand, regardless of the  
9 exchange rate. And so to say that the exchange rate has  
10 improved for the U.S. farmer, and now we don't need a  
11 Marketing Order, I don't follow that.

12 Q. No, I am, but my point was is that it  
13 seems, was and does it seem, you are offering as a  
14 justification for the HMO, or a rationale...

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Mr. Carswell. I am  
17 afraid you are belaboring this. So rather than starting  
18 your question with the way you just did, if you could  
19 just pause for a minute, and just focus in on the  
20 specifics of your question.

21 \*\*\*

22 BY MR. CARSWELL:

23 Q. Do you see the more favorable exchange  
24 rate as a justification for the HMO?

25 A. Do I see the favorable exchange rate as a  
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1 justification for the HMO?

2 Q. Or a rationale for the HMO/

3 A. I don't think the exchange rate has  
4 anything to do with the justification of the HMO.

5 Q. Okay. Thank you.

6 \*\*\*

7 MR. CARSWELL: I don't have anything else.  
8 Yeah, thank you very much.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
10 Carswell. Additional cross examination for Mr. Smith?

11 \*\*\*

12 BY MS. FINN:

13 Q. I don't have any economic questions. I  
14 just have a couple of questions about, I am trying to  
15 get a sense of the industry's structure, and you seem to  
16 have some knowledge on that. You said that there were 4  
17 major handlers, that handle 90 percent of the high  
18 alpha?

19 A. On a worldwide basis, yes.

20 Q. On a worldwide basis. I am trying to get  
21 a sense of how many handlers there are, in the United  
22 States, or in the production area?

23 A. As it relates to high alpha hops, in a  
24 global market, 3. As it relates to hops in general, I  
25 think you could say that there is, and I guess you could

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1 make a case that there is 5, in the United States.

2 Q. So a total of 5, including alpha and  
3 aroma hops?

4 A. Correct.

5 Q. Now those are, are those major handlers,  
6 or are there other smaller ones?

7 A. Those are the only ones that I am aware  
8 of. 3 of them, I think you would consider to be major,  
9 and 2 of them, I think you would consider strictly on  
10 the terms of volume, that they would be minor.

11 Q. Are these located in the production area?

12 A. That is correct.

13 Q. And do you know what states?

14 A. All in Yakima. The main offices would be  
15 in Yakima for handling. There is handling facilities,  
16 although I am not sure of any processing facilities in  
17 the other states.

18 Q. All right. And then you also said there  
19 were 2 brewers that contract with growers, so they would  
20 also be considered handlers, is that correct?

21 A. I wouldn't consider them to be handlers.  
22 I would consider them to be purchasers. And the reason  
23 I say handlers, they don't have facilities for handling  
24 hops, and actually sub-contract with the other suppliers  
25 or processors. They sub-contract with them, to handle

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1 and store the hops for them.

2 Q. But they actually make the contractual  
3 arrangement between the grower?

4 A. That is correct. And they pay the grower  
5 directly.

6 Q. Okay. Now, oh the Small Business  
7 Administration defines small agricultural service firms,  
8 which includes hops as those whose annual receipts are  
9 less than 5 million dollars, and small agricultural  
10 producers, are defined as those whose annual receipts  
11 are less than 750 thousand dollars. Would these 5  
12 handlers fall, would be considered small handlers, or  
13 large handlers, according to this definition?

14 A. According to that definition, I would say  
15 4 of them would be not considered small, and obviously 1  
16 of them would be.

17 Q. 1 small, okay?

18 A. I am just, I am speculating to that.

19 Q. And you had said that you have 2 growing  
20 entities, that you are an owner in?

21 A. Yes.

22 Q. How would you consider those small or  
23 large?

24 A. Under your definition, they would both be  
25 large.

1 Q. They would both be large, and your  
2 handling operations, I think you said there were 2 of  
3 those?

4 A. They would both be large.

5 Q. Okay. Do you have a sense of how many  
6 growers there are?

7 A. I think in actual entities, that the  
8 number is something close to 50.

9 Q. Would you know the breakdown of the  
10 states that might be a little harder to do?

11 A. 75 percent to 80 percent of those  
12 entities, I will say 70 percent of those entities, would  
13 reside in the State of Washington. And I am guessing  
14 here that you know, 20, 25 percent of the entities would  
15 reside in the State of Oregon. Typically the average  
16 size of the Oregon grower has historically been smaller  
17 than the Washington growers. So they have typically, a  
18 greater percentage in numbers, but a lower percentage in  
19 overall production. And the growers in Idaho, would  
20 constitute very small percentage of that, maybe 5  
21 percent or so, 6 percent.

22 Q. And of these 50 growers, would you have a  
23 sense of how many of them would fall within the small  
24 producer category, as defined by the Small Business  
25 Administration?



1 Q. I just want to get your clarification on  
2 basically on the sources. For the extract price, can  
3 you state what your source was, and if there was an  
4 additional computation made from a source, to derive the  
5 extract price, can you state what that was?

6 A. What I have done is, I have gone to the  
7 company that we have a position in, Yakima Chief. And I  
8 have looked at what the average f.o.b. prices were for a  
9 range of time, 3 to 6 months following the harvest. And  
10 then I just kind of rounded those off. And it is not a  
11 weighted average, or anything else, it is just kind of  
12 my feel for about what the average price was during that  
13 time period. So that is the source of that information.  
14 Did you ask about the alpha information as well?

15 Q. Well actually, I want to know when you  
16 compute or state there, U.S. production of alpha, how  
17 was that, what was the source, and how was that derived?

18 A. The source is basically 2 factors, would  
19 be yield, times alpha acid percentage. The yield I  
20 obtained from the official records of the U.S. Hop  
21 Growers Association, and the alpha acid figures, I  
22 actually derive as the average of those varieties, that  
23 were delivered to Yakima Chief.

24 Q. Okay. Thank you. And the world high  
25 alpha production in a similar way?

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1           A.    In a similar manner, yes.  The Germans  
2           produce very good figures as far as acreage as does the  
3           U.S.  And so acquired the official German acreage  
4           figures, and then I applied it in the same way, I  
5           inquired of what the average alpha acid level of their  
6           varieties was, and utilized that information.  Primarily  
7           on a speculative basis, like I say for 2003, I would go  
8           out and I have talked to a couple of different  
9           individuals who represent significant companies in  
10          Germany, and they have given me what they think the  
11          average is going to be.  From prior years, I have  
12          utilized the average alpha acid for German varieties  
13          that was provided in the annual Barth report.

14                Q.    The annual Barth report?

15                A.    The Barth report, yes.

16                Q.    Okay.  Thank you.  Okay, thank you, that  
17          finishes out the question.  I do have a question, you  
18          mentioned that production was affected, that powdery  
19          mildew of this plant disease, had a significant impact  
20          for some years, and there was a recovery from that  
21          negative impact on production.  If you could define  
22          indigenal terms, what years you were talking about where  
23          the negative impact occurred, and what happened, and  
24          what years they had less impact?

25                A.    The most negative impact, the year that  
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1 had the most negative impact, was 1998. And that was  
2 the year that, we never had dealt with powdery mildew  
3 prior to that. A fair amount of the acreage had been  
4 planted to a variety of hops, that was called, that was  
5 named Symphony. And Symphony turned out to be extremely  
6 susceptible to powdery mildew, and a significant portion  
7 of the crop was destroyed prior to the harvest. For the  
8 following year in 1999, the majority, the vast majority,  
9 if not all of the Symphony was removed from production,  
10 and were replaced with the majority of that I think went  
11 back into CTZ varieties. And so, they are susceptible  
12 to powdery mildew, but much less so. The control  
13 mechanisms, used by growers consisted primarily in '99,  
14 and 2000, of multiple fungicide applications. It was  
15 determined by the growers through experience, that those  
16 fungicide applications actually had a negative impact on  
17 yield, and even on alpha. Subsequently, the growers  
18 have begun to control powdery mildew, utilizing less of  
19 the fungicide applications, and more applications of  
20 copper, and sulfur and so forth, and other control  
21 mechanisms. So basically, while the disease exists  
22 today, and does provide a significant threat to the  
23 industry, the growers have learned to cope with the  
24 disease, and have and you can see from the graphs  
25 yesterday, the overall alpha production per acre, has

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1 increased over the last several years, due to those  
2 efforts.

3 Q. And then a final question relates to cost  
4 of production. You cited one figure I believe is \$1.35?

5 A. I was just picking a hypothetical  
6 example.

7 Q. Okay. But you do have some figures that  
8 would you know allow say, a comparison of a grower price  
9 to you know, industry wide, to a cost of production  
10 industry wide, from a total cost, or subtract the fixed  
11 cost, and get a variable cost figure?

12 A. I do actually have those specific  
13 figures, that I could provide to you, but I don't have  
14 them with me. It is the company that I belong to,  
15 Yakima Chief does an annual cost survey of its growers,  
16 and we are provided with what the average cost of  
17 production was across the group, and it is broken down  
18 into fixed costs, and variable costs. I am going to  
19 draw from memory here, just to give you a kind of rough  
20 idea. I think that that total cost, including  
21 depreciation is around 38 to \$3,900 an acre, within that  
22 group. The depreciation portion of that, maybe about  
23 \$300, so I am going to say fixed cost of 35 to \$3,600,  
24 and I could be off \$100 to \$200 an acre, but that gives  
25 you an idea I think.

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1 Q. Okay. Thank you, Mr. Smith.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
4 Hinman. Any additional cross examination, for Mr.  
5 Smith? Ms. Deskins?

6 \*\*\*

7 BY MS. DESKINS:

8 Q. Mr. Smith you used some terms and I just  
9 want to clarify what they are. You used something that  
10 you called a spot price, what is that?

11 A. Typically a spot price would refer to a,  
12 the price offered for hops that had been produced, had  
13 been harvested, and were owned by the growers, but had  
14 not been entered into a contractual agreement to  
15 purchase those hops prior to the production of those  
16 hops.

17 Q. And you also used the term AB, I assume  
18 you mean Anheiser/Busch?

19 A. Yeah, I am sorry, that is correct.

20 Q. Okay. Oh and also, when you were asked  
21 questions about how many large brewing companies there  
22 were, and small. You gave some numbers. And I was just  
23 wondering, is that in the United States, or is that  
24 worldwide?

25 A. Approximately 12 brewing groups worldwide

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1 control in excess of 50 percent of the beer production  
2 worldwide. I didn't refer to the craft breweries in the  
3 United States, and craft being I will just pick a figure  
4 of under 100,000 barrels. And in one company that we  
5 have, we have over 900 of those, as customers.

6 Q. Okay. And that is the United States?

7 A. That is the United States alone.

8 Q. Okay. Thank you.

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Any additional  
11 cross examination by the Government? Ms. Dec? No, all  
12 right. Mr. Moody, additional cross examination of Mr.  
13 Smith?

14 MR. MOODY: Yes, Your Honor, just one brief  
15 question.

16 \*\*\*

17 BY MR. MOODY:

18 Q. On your Loftus Farm, is it correct that  
19 you recently installed some high tech fancy harvesting  
20 equipment?

21 A. I wouldn't term it to be high tech, nor  
22 fancy.

23 Q. Maybe state-of-the-art is a better word  
24 for it?

25 A. We have installed some harvest equipment  
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1 that makes us more efficient probably than the average  
2 grower, yes.

3 Q. Okay. And about how many years ago, was  
4 that?

5 A. It is in a constant state of improvement,  
6 but about 4 or 5, I think.

7 Q. Okay. And we don't really need the exact  
8 figure, but is it fair to say, it was in the range of  
9 millions of dollars, for that investment?

10 A. Not really. I answered your first  
11 question, about 6 or 7 years ago, our kiln facility  
12 burned down. We received some insurance money from  
13 that, and we also decided that that was a unique  
14 opportunity for us to improve our harvest facilities in  
15 general. And we took the insurance money, as well as  
16 additional funds, and we improved our harvest facilities  
17 overall, to the tune of about a million, \$1.6 million.  
18 Subsequent to that, we did the other improvements that I  
19 thought you were referring to, a couple of years later,  
20 about 3 or 4 years ago, to the tune of investment of  
21 another quarter of a million dollars.

22 Q. Okay. And then at Yakima Chief, did you  
23 recently install some high tech, or state-of-the-art,  
24 extraction facilities?

25 A. I don't know how recent it was, about  
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1 1996, that is correct.

2 Q. Okay. And again, was that, would that  
3 represent an investment of millions of dollars?

4 A. That did.

5 Q. Okay. And how was it you are able to  
6 make these significant investments, in the absence of a  
7 Hop Marketing Order?

8 A. Well in my own case, I took money I made  
9 in an apple market, and I invested it in the hop market.  
10 And I am not saying that was very smart, but that is  
11 what I did.

12 Q. Okay. Thank you again very much, Mr.  
13 Smith. I appreciate your very helpful and thorough  
14 testimony, thank you.

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Are there any other  
17 questions for Mr. Smith? Before I ask if there is any  
18 direct, redirect examination, Mr. Smith I just want you  
19 to know how you were cross examined today.

20 MR. SMITH: Very politely.

21 ADMINISTRATIVE LAW JUDGE: An hour and 5  
22 minutes, total by Mr. Moody. Exactly an hour, by Dr.  
23 Jekanowski, and hour and 2 minutes by Mr. Carswell, and  
24 13 minutes by representatives of USDA. And I want to  
25 thank you, you are such an articulate witness, you were

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1 very helpful here, and your demeanor, your patience,  
2 your thoroughness, are the finest I have seen in a  
3 witness. And I thank you for it.

4 MR. SMITH: Thank you, Your Honor.

5 ADMINISTRATIVE LAW JUDGE: You are welcome.  
6 Any redirect, Mr. Monahan?

7 MR. MONAHAN: No, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: Is there any  
9 objection to Mr. Smith being excused for the balance of  
10 the hearing?

11 MR. SMITH: No, Your Honor.

12 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
13 Smith, do you have any anticipation of testifying again  
14 in the proceeding?

15 MR. SMITH: I sure hope not.

16 ADMINISTRATIVE LAW JUDGE: All right. You are  
17 excused, and you may feel free to attend any part of the  
18 sessions, but you are also free to go.

19 MR. SMITH: Thank you.

20 ADMINISTRATIVE LAW JUDGE: You are welcome.  
21 Let us take a 5 minute stretch break, before we call the  
22 next witness. It is now 12:55.

23 \*\*\*

24 [OFF THE RECORD]

25 [ON THE RECORD]

1 \*\*\*

2 ADMINISTRATIVE LAW JUDGE: We are back on  
3 record at 1:04. I would like for the next witness to  
4 come forward, and take the witness stand which is to my  
5 left. And before sitting down, would you hand to the  
6 court reporter the official copy of your statement, and  
7 your business card. I am going to ask the court  
8 reporter to mark that as Exhibit 20. And let us make  
9 sure your mike is on.

10 MR. ROCKHOLD: Can you hear me?

11 MR. MONAHAN: Yes.

12 ADMINISTRATIVE LAW JUDGE: Very fine. Would  
13 you state and spell your full name for us?

14 MR. ROCKHOLD: Steve Rockhold,  
15 R-o-c-k-h-o-l-d.

16 ADMINISTRATIVE LAW JUDGE: Is Steve short for  
17 Steven?

18 MR. ROCKHOLD: Yes.

19 ADMINISTRATIVE LAW JUDGE: How do you spell  
20 Steven?

21 MR. ROCKHOLD: S-t-e-v-e-n.

22 ADMINISTRATIVE LAW JUDGE: Thank you, I would  
23 like to swear you in, would you raise your right hand.

24 \*\*\*

25 [Witness sworn]

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1  
2 ADMINISTRATIVE LAW JUDGE: Now you will need  
3 to pull that mike close, because you need to be about an  
4 inch probably, or maybe 2 in order to project. You have  
5 brought your prepared statement, which I have had marked  
6 as Exhibit 20. Is it your preference to read that, or  
7 is it your preference to testify, using that loosely as  
8 a guide?

9 MR. ROCKHOLD: I will probably read it, Your  
10 Honor.

11 ADMINISTRATIVE LAW JUDGE: All right. You may  
12 proceed.

\*\*\*

13  
14 STEVEN ROCKHOLD,  
15 having first been duly sworn, according to the law,  
16 testified as follows:

17 MR. ROCKHOLD: Thank you, Your Honor. And  
18 thank you to the group for allowing me the indulgence of  
19 testifying, so that I can catch a plane, and get back  
20 out of here. I very much appreciate that.

21 I am Steve Rockhold, I am the Group Manager of  
22 Strategic Sourcing at Coors Brewing Company. And my  
23 department is responsible for procuring all of the raw  
24 materials at Coors, which includes hops. Adolph Coors  
25 was 26 years old when he opened his brewery in Golden

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1 Colorado in 1973. Since that time, Coors Brewing  
2 Company has become the third largest brewing company in  
3 the U.S., and the eighth largest brewing company in the  
4 world.

5 Adolph was an expert brewer, with an  
6 unlaboring devotion to producing only the highest  
7 quality, the finest tasting, and most refreshing beers.  
8 His passion for brewing commitment to quality still  
9 exists today, within the people at Coors, and continues  
10 to drive our desire for sourcing only the highest  
11 quality ingredients to make our beers.

12 Coors has been purchasing hops directly from  
13 U.S. growers, for more than 3 decades. We certainly can  
14 emphasize with the hop growers challenge of the free  
15 market system, especially in today's global market.  
16 Brewing company consolidation, has been at a rapid pace  
17 in the U.S. and world markets, and will continue to do  
18 so in the future.

19 We do business in a very competitive worldwide  
20 environment. We have seen a demise of hundreds of  
21 family owned breweries in the U.S. and world  
22 marketplace, and can understand the desire of the U.S.  
23 hop grower, to maintain their long-term viability. We  
24 purchase varieties in the U.S., that are unique to our  
25 needs for our domestic breweries, and we also purchase

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1 hops in the U.S. for our breweries in the United  
2 Kingdom. We utilize forward contracts, that are signed  
3 directly with growers, and hop merchants. Our growers  
4 and suppliers know exactly what our needs are, based on  
5 contracted quantities. We typically have forward  
6 contracts, 1, 2 and 3 years in advance of production, so  
7 our market signals are very clear.

8 We are very specific, and demanding in our  
9 quality parameters. We feel that we have paid fair and  
10 equitable prices to our growers, and as a result, most  
11 of our hop growers have been producing for us for many  
12 years. We hand select every hop that we purchase. We  
13 believe in only the choicest hops makes the finest beer.

14 We are concerned that our ability to continue  
15 to have a selection of high quality hops, may be  
16 affected with Marketing Order. We agree with the  
17 current Administration's stated agricultural policy,  
18 that recognizes that the marketplace is the best guide  
19 for allocating resources, and provides the most  
20 objective reward for efficiencies and good management.

21 Coors has a history of building relationships  
22 with hop growers, that reward them for producing high  
23 quality hops. On the other hand, we have eliminated, or  
24 eliminated relationship with growers and suppliers that  
25 have failed to meet our demands. We have many years of

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1 traditional and modern methods of brewing, that demand  
2 we foster and cultivate only the highest standards of  
3 relations with our suppliers, that are mutually  
4 beneficial both the grower and to us.

5 History has shown us, that supporting prices  
6 is self-defeating. Government attempts to hold prices  
7 above those determined by commercial markets, have  
8 simply made matters worse over time. Artificial  
9 constraints on production volumes, have not adequately  
10 anticipated the effects of external market forces in the  
11 past, and they will not be able to do so in the current  
12 worldwide hop growing environment. To maintain the  
13 amount of high quality hops in the U.S. will be a signal  
14 to the rest of the world to expand their production, and  
15 will send a signal to U.S. brewers, that more high  
16 quality hops can be found outside the U.S. borders.

17 We believe the future of the U.S. hop industry  
18 is tied to many factors, beyond the reach of an  
19 Agricultural Marketing Order. New varieties, improved  
20 production practices, technological advances in hop  
21 cultivation, and processing, will be the driving factors  
22 behind an individual hop growers sustainability and  
23 growth. As in most industries in the U.S., the high  
24 quality of efficient producer of product will be  
25 rewarded. We reward our producers with forward

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1 contracts, at reasonable prices, that insure their long-  
2 term success in our production. This system has worked  
3 well for our producers, and Coors. We benefit from high  
4 quality, consistent production, that manages our  
5 supplier risks. Any deviation from this, would be  
6 asking us to look at our alternative ways to manage our  
7 risks, including increasing sourcing from the global  
8 market, or a vertical integration in the hop production.

9 We consider our hop varieties a specialty  
10 ingredient, not a commodity like corn, soybeans, or  
11 wheat. Our hops are specific to us at Coors, and  
12 provide us with specific competitive advantages. And we  
13 must maintain our ability to freely source our hops. As  
14 we have seen in virtually every other commodity, or  
15 specialty crop, mother nature tends to be a much bigger  
16 factor in regulating supply of production. At Coors, we  
17 maintain sourcing strategies, and inventories that  
18 manage risks. A part of that strategy, is our U.S. hop  
19 sourcing. Crop failures in any part of the world, tend  
20 to have negligible effects on us, as this current crop  
21 failure in Europe, is vindicating our strategy of  
22 forward contracts, geographic distribution of our  
23 sourcing, and Coors also purchases hops in Idaho,  
24 Oregon, Washington, Germany and New Zealand. And  
25 adequate inventory holdings.

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1 MR. ROCKHOLD: In the U.S. we obtain hops from  
2 Idaho, Oregon and Washington.

3 ADMINISTRATIVE LAW JUDGE: All right. Coors'  
4 headquarters is in Colorado, is that correct?

5 MR. ROCKHOLD: Golden, Colorado.

6 ADMINISTRATIVE LAW JUDGE: But what did you  
7 mention about Colorado, in that same sentence where you  
8 discussed Idaho, Oregon and Washington, wasn't there a  
9 mention of Colorado?

10 MR. ROCKHOLD: Actually I mentioned that we  
11 also source hops in Germany, and New Zealand, not in  
12 Colorado.

13 ADMINISTRATIVE LAW JUDGE: All right. I must  
14 have misheard.

15 MR. ROCKHOLD: I'm sorry.

16 ADMINISTRATIVE LAW JUDGE: Thank you. Cross  
17 examination for Mr. Rockhold? Mr. Moody? Oh this may  
18 not be cross, if Coors is against the Order, but in any  
19 event, it is examination, you may proceed.

20 MR. MOODY: Thank you, Your Honor. And thank  
21 you, Mr. Rockhold.

22 \*\*\*

23 BY MR. MOODY:

24 Q. Just one question. What affect, could  
25 you just elaborate briefly, on what affect you would

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1 expect on your ability to forward contract with your  
2 growers, if the Hop Marketing Order, were implemented?

3 A. Our perception at the present time, with  
4 as much uncertainty around the Order that there is,  
5 could actually increase our risks. In any perception of  
6 increased risks, really defeats the purpose of the  
7 forward contract. That is the whole purpose behind the  
8 forward contract, and that is why we have done that for  
9 years, and why we do it today, is to eliminate or manage  
10 our risks. With the uncertainty around the Hop  
11 Marketing Order, and our ability to get the production  
12 volumes that we want, and the varieties that we want,  
13 that would certainly make us think through our forward  
14 contract strategy domestically.

15 Q. Thank you very much.

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: Other questions,  
18 for Mr. Rockhold, whether you are a proponents of the  
19 Order, proposed Order, or against it? Yes, please  
20 identify yourself?

21 MR. K. DESSERAULT: Ken Desserault.

22 \*\*\*

23 BY MR. K. DESSERAULT:

24 Q. Steve do you know whether you did any  
25 forward contracting, during the previous Marketing

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1 Order, with brewers?

2 A. You know I can't, I don't know. I can't  
3 adequately answer that. I wasn't here during the last  
4 Marketing Order.

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: Other questions for  
7 Mr. Rockhold? Is there any objection to Mr. Rockhold  
8 being excused? Do you have one Dr. Hinman, you may. If  
9 you would introduce yourself, to Mr. Rockhold?

10 DR. HINMAN: Yes, Donald Hinman, I am an  
11 economist with the Agricultural Marketing Service, U.S.  
12 Department of Agriculture.

13 \*\*\*

14 BY DR. HINMAN:

15 Q. I had a question about your comment about  
16 purchasing from growers. You said you purchase  
17 directly, does that mean you purchase it all directly,  
18 and you do not work through any hops merchants?

19 A. Yes, we also work through hop merchants  
20 as well.

21 Q. Okay. Could you, now I am not asking you  
22 to review private information, but could you give any  
23 sort of approximate idea for about how is purchased  
24 directly, and how much through merchants?

25 A. Domestically, U.S., my best estimation,  
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1 and actually just to clarify, we consider the hop  
2 dealers that we contract with as well as a direct grower  
3 contract, because the production of their ranch. We  
4 haven't always done that, but my strategy going forward  
5 is, is that U.S. domestic purchased hops, will come off  
6 their ranches. And that is not big secret to a lot of  
7 folks in the room, that I contract with. So in our  
8 world, we consider them a direct grower contract, volume  
9 wise and this is strictly an estimate, but I am going to  
10 estimate probably 30 to 40 percent of that, is probably  
11 directly off their ranches, just a guess.

12 Q. Okay. And generally the forms in which  
13 hops are purchased generally, whole leaf, pellets  
14 extract?

15 A. Yes.

16 Q. Would you be able to say anything about  
17 some of the you know, the percentages in which you buy  
18 those, or something about, show how they are bought, and  
19 how they are used, either approximates?

20 A. We buy all of our, we hand select all of  
21 our leaf hops, and we buy those by leaf.

22 Q. Okay.

23 A. And then we enter into agreements with  
24 different processors, and process those hops, either  
25 into pellet or extract form.

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1 Q. Okay. So all of the processing is done  
2 internally?

3 A. No, actually we hire that done through  
4 contract, through the dealers processor.

5 Q. Okay. That's it. Thank you, very much.

6 A. Yeah.

7 \*\*\*

8 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
9 Hinman. Any other questions? You are a blessed man.

10 MR. ROCKHOLD: I think they want to go eat.

11 ADMINISTRATIVE LAW JUDGE: You may be right.  
12 You may step down. Thank you.

13 MR. ROCKHOLD: Thank you.

14 ADMINISTRATIVE LAW JUDGE: All right. I think  
15 we should take a lunch break. I entertain your ideas as  
16 to how long, what would you say, Mr. Monahan?

17 MR. MONAHAN: Actually, Mr. Desserault  
18 volunteered to go right before lunch, thinking he might  
19 have no cross examination, too.

20 ADMINISTRATIVE LAW JUDGE: I would be happy to  
21 take him.

22 MR. MONAHAN: Your Honor, I think an hour is  
23 fine for the Proponents Committee.

24 ADMINISTRATIVE LAW JUDGE: All right. Does  
25 anyone object to our lunch break being merely an hour?

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1 No one does. I had said we would decide whether we  
2 would work late tonight, before we break for lunch. I  
3 would still like to make that decision, so that those of  
4 you who need to communicate with people who are  
5 expecting you, can do so. What are your ideas, as to  
6 how many additional hours we might put in, and whether  
7 you want to just work continuously through. Let's see,  
8 Mr. Moody, you are the one that is convinced that we  
9 need to work late, could you help me on this issue?

10 MR. MOODY: Well thank you, Your Honor. I  
11 would be kind of guided and defer to Brendan on this  
12 some, if his people want to keep going into the evening,  
13 it would I think be very, very helpful, to get as much  
14 done today, as we can.

15 ADMINISTRATIVE LAW JUDGE: Could we reconvene  
16 after the game?

17 MR. MONAHAN: Judge Clifton, I do have a point  
18 to make on this. I don't know how long the court  
19 reporter can stay?

20 COURT REPORTER: I am fine.

21 MR. MONAHAN: You are fine, okay.

22 ADMINISTRATIVE LAW JUDGE: He is tough, I tell  
23 you, we have got a gem in this court reporter. I do  
24 want to make a comment about that though. I know that  
25 the contract with York, requires a certain turn around

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1 time, with regard to the transcript. But I have  
2 interfered with that, because I haven't given the court  
3 reporter the opportunity to take any of the tapes to  
4 UPS, so I am hereby officially announcing, that York is  
5 not going to be required to comply with the contract as  
6 it is written, their turnaround time is undoubtedly  
7 going to be a little longer than that contracted for,  
8 because they are not getting these tapes day-by-day, as  
9 they normally would. At the end of the first day, I  
10 instructed the court reporter not to send anything yet,  
11 and today he is not going to have a chance to get to UPS  
12 before they close. So I have already delayed submission  
13 of the tapes by 2 days, and that will make a difference  
14 because York needs to be fed them gradually, in order to  
15 get the typing work farmed out, so. Mr. Monahan, Mr.  
16 Moody bounced it back to you, and you were the only one  
17 who voted, not to work late tonight?

18 MR. MONAHAN: Your Honor, I don't claim to be  
19 remotely objective about this. It is Pedro Martinez,  
20 and Roger Clemens, and I have an illness in my affection  
21 for the Red Sox. In any event, one of the reasons that  
22 the opponents were inclined to this morning, to work  
23 late into the evening is, at least as I heard it, they  
24 felt compelled to have equal time. That they thought  
25 they needed an equal opportunity to present their case.

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1 I would wager that as we sit here today, the opponents  
2 have used more time than the proponents.

3 ADMINISTRATIVE LAW JUDGE: That is true, I  
4 haven't tallied it exactly, but I have a rough idea, and  
5 you are correct.

6 MR. MONAHAN: I also just in taking notes, it  
7 appears that the opponents intend to call at least 3  
8 witnesses, between today and tomorrow. Mr. Kloth, Mr.  
9 Bush, Mr. Annen. I don't know if Dr. if you intend to  
10 testify here in Portland, or in Yakima?

11 DR. JEKANOWSKI: I would like to testify here  
12 in Portland but not necessarily today.

13 ADMINISTRATIVE LAW JUDGE: And for the record,  
14 that was Dr. Jekanowski.

15 MR. MONAHAN: Thank you, Jekanowski.

16 MR. CARSWELL: Excuse me, Your Honor. I just  
17 wanted to mention, because we have been discussing over  
18 here without Mark's--the benefit of Mark, this is Matt  
19 Carswell, without the benefit of Mark knowing this, that  
20 we could push Mark back to Yakima. And so, he is going  
21 to be in Yakima anyway, so you know we would be okay, I  
22 think with, personally I like Martinez and Clemmons too,  
23 I mean don't want to miss game 7, so we are okay with  
24 either not working late, or working maybe you know, say  
25 at the latest till 6:00, or something like that.

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1           Whatever works for everybody else.

2                   ADMINISTRATIVE LAW JUDGE:  Mr. Moody, do you  
3           agree?

4                   MR. MOODY:  Yes, Your Honor, of course.

5                   ADMINISTRATIVE LAW JUDGE:  Hallelujah.

6                   MR. MOODY:  I would like to also, just in case  
7           it hasn't been said enough times, in case there is  
8           anybody in the audience that hasn't identified  
9           themselves, and would like to talk here in Portland, I  
10          think we ought to make sure we have got time for them  
11          too, as well.

12                   ADMINISTRATIVE LAW JUDGE:  All right.  That is  
13          excellent news.  For the Proponents Committee people,  
14          will you object to going to Yakima, if we don't get to  
15          you today, or tomorrow?

16                   MR. MONAHAN:  Your Honor, we have vastly  
17          underestimated the time it would take to present our  
18          first 2 witnesses.  I do have a feeling however, that of  
19          the next boy, 7 witnesses, 4 or 5 of them will go rather  
20          quickly.  They are I think what we could accurately  
21          characterize as procedural components of the proposed  
22          Order, we will obviously be getting into what Mr. Moody  
23          likes to call the guts of it, or the meats of it, and  
24          the meat of it with Mr. Roy, Mr. Carpenter, Mr.  
25          Gasseling.  What we could probably do is decide amongst

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1 ourselves perhaps over the lunch hour, or later today,  
2 if it makes sense to start that in the morning, or  
3 perhaps even defer it until Yakima. I am sorry, it is a  
4 long way of answering, all of the members of the  
5 committee are from Yakima, and will be at the Yakima  
6 hearings.

7 ADMINISTRATIVE LAW JUDGE: That is great news  
8 as well. Mr. Moody, if we break for an hour now, and we  
9 stop at 5:00 today. What witnesses do we need to hear  
10 other than those that Mr. Monahan would call?

11 MR. MOODY: We can do just Mr. Monahan's  
12 witnesses, and Mr. Annen, and Mr. Bush can go tomorrow.

13 ADMINISTRATIVE LAW JUDGE: Okay, great. Good.  
14 All right, let us plan on that. We will finish at 5:00  
15 today. You will have an hour for lunch, so I would like  
16 you back here by 2:25, and who will volunteer to ask the  
17 hotel to check out the thermostat, so that the front of  
18 the room is not quite so cold?

19 MR. OLSON: Gary Olson.

20 ADMINISTRATIVE LAW JUDGE: Gary Olson, good.  
21 Very good. And Mr. Olson the people in the back are  
22 comfortable, it is just the front of the room that is a  
23 little cold. All right, thank you. I will see you all  
24 back here at 2:25.

25

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1 [OFF THE RECORD]

2 [ON THE RECORD]

3

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4 ADMINISTRATIVE LAW JUDGE: We are back on  
5 record now, it is 2:32, we are back on record now. Mr.  
6 Monahan, who will be the next witness?

7 MR. MONAHAN: Your Honor, the proponents call  
8 Kenneth Desserault to discuss the definitions in the  
9 Proposed Order, which appear at Sections 991.01 to  
10 Section 991.13.

11 ADMINISTRATIVE LAW JUDGE: Mr. Desserault,  
12 please be seated. And if you will state for me your  
13 full name, and spell your names again, please?

14 MR. K. DESSERAULT: Ken Desserault, that is  
15 K-e-n, D-e-s-s-e-r-a-u-l-t.

16 ADMINISTRATIVE LAW JUDGE: All right. And I  
17 Ken short for Kenneth?

18 MR. K. DESSERAULT: That is correct.

19 ADMINISTRATIVE LAW JUDGE: All right. And do  
20 you have a statement, that has been numbered?

21 MR. K. DESSERAULT: That is correct.

22 ADMINISTRATIVE LAW JUDGE: All right. I am  
23 not clear Mr. Monahan, whether the official record copy  
24 of this witnesses statement has been given to the  
25 reporter?

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1 MR. MONAHAN: Your Honor, thank you. I do not  
2 believe that it has, I am presently handing up to the  
3 court reporter, the document that has been marked as  
4 Exhibit 9, and which constitutes Mr. Desserault's  
5 prepared remarks.

6 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
7 Desserault I know we have a slide behind you, is there  
8 enough reading light left for you to give us your  
9 statement?

10 MR. K. DESSERAULT: Yes.

11 ADMINISTRATIVE LAW JUDGE: All right, good. I  
12 would like to swear you in. Oh, I did that.

13 MR. K. DESSERAULT: No.

14 ADMINISTRATIVE LAW JUDGE: No, all right.

15 \*\*\*

16 [Witness sworn]

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE: All right. Thank  
19 you. You may proceed with your statement, Mr.  
20 Desserault.

21 \*\*\*

22 KENNETH DESSERAULT,  
23 having first been duly sworn, according to the law,  
24 testified as follows:

25 MR. K. DESSERAULT: Thank you. As you can see  
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1 we put the sections on the PowerPoint on the screen  
2 behind me, and my intentions are to read the various  
3 sections, and most of them, I have no additional  
4 comment, I do have additional comment on 3 or 4 of them,  
5 so we will go ahead and start on 99.01, the Secretary,  
6 Secretary Moon. The Secretary of Agriculture of the  
7 United States, or any other officer, or employee of the  
8 U.S. Department of Agriculture, who is, or who may be  
9 authorized to perform the duties of the Secretary of  
10 Agriculture in the United States. I have no additional  
11 comments.

12 Section 991.02, The Act. The Act meaning  
13 Public Act #10, 73<sup>rd</sup> Congress as amended by the  
14 Agricultural Marketing Act of 1937 as amended. No  
15 additional comments.

16 Regarding 991.03, A Person. A person means an  
17 individual, partnership, corporation, association, or  
18 any other business unit. I have no additional comments.

19 99.04, Hops, and Hop Products. Hops mean and  
20 include all kinds of varieties of humulous nupelous, or  
21 humulous americanus grown and harvested in the United  
22 States, whether loose, packaged or bailed, and all  
23 pellets, powder, oils, extracts and/or Lupulin derived  
24 therefrom. Alpha acid hops are those varieties that are  
25 primarily used for the bittering values. Aroma hops are

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1 those varieties primarily used for their aroma  
2 characteristics. I have no additional comments.

3 99.05, Production Area. Production area means  
4 all states with commercial production of hops, and shall  
5 be divided into the following districts. A) District 1  
6 is Washington, B) District 2 will be Oregon, C) District  
7 3 it will be Idaho and California. Additional comments  
8 are that District 1, Washington is the largest  
9 production area. District 2, Oregon is the second  
10 largest production area. District 3, Idaho and  
11 California, is the third largest production area.  
12 California is included in the production area, even  
13 though there is very little production, primarily  
14 because they have been a much larger production area in  
15 the past, and still have processing facilities that  
16 could be used for production of hops, and also have  
17 commercial hops growing.

18 99.06, Producer. Producer is synonymous with  
19 grower, that means any person engaged in the proprietary  
20 capacity in a commercial production of hops. Any  
21 producer with multiple legal entities, under his or her,  
22 i.e. Board of Directors, ownership, banking, et cetera,  
23 shall be for voting purposes only, included under the  
24 primary entity and shall be entitled to 1 vote. The  
25 Proponents Committee develops the 1 vote under the

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1 primary entity, to alleviate the problems that were  
2 encountered in the previous Marketing Order. The  
3 Committee felt that multiple entities with multiple  
4 votes under common ownership, were not in the best  
5 interests of the industry.

6 Section 99.07, Handler. Handler means any  
7 person that handles hops. And no additional comments.

8 99.08, Handle. Handle means to prepare hops  
9 for market, acquire hops from a producer, use hops  
10 commercially, of one's own production. Sell, transport,  
11 or ship, except as a common or contract carrier of hops,  
12 owned by another, or otherwise place hops in the current  
13 of Commerce within the production area, or from the area  
14 to points outside thereof, except that, A) the  
15 preparation for market of hops by producers dot dealers  
16 or users of the product, or B) the sale, transportation,  
17 or shipment of such hops by a producer to a handler of  
18 record, within the production area, and C) transfer the  
19 excess hops by the producer to another producer, to  
20 enable that producer to fill a deficiency in/and a  
21 allotment, should not be construed as handling. The  
22 U.S. brewer will become the handler of the production,  
23 that is produced--or purchased directly from the  
24 producer. The producer shall become the handler, for  
25 production that is purchased by a form brewer.

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1                   99.01, Marketing Year. Marketing year means  
2 the...

3                   ADMINISTRATIVE LAW JUDGE: Oh, the number  
4 again?

5                   MR. K. DESSERAULT: 99.109, excuse me.

6                   ADMINISTRATIVE LAW JUDGE: Thank you.

7                   MR. K. DESSERAULT: Excuse me. Marketing  
8 Year. The marketing year means the 12<sup>th</sup> month from  
9 August 1<sup>st</sup> to the following July 31<sup>st</sup>, inclusive. No  
10 additional comment.

11                   99.10, Crop. Crop means hops produced by  
12 producers during the marketing year. No additional  
13 comment.

14                   99.11, Saleable Quantity. Saleable quantity  
15 means the total quantity of hops that handlers may  
16 purchase from, or handle on behalf of producers during  
17 the marketing year. No additional comment.

18                   99.12, Annual Allotment. Annual allotment  
19 means that portion of the saleable quantity, pro-rated  
20 to the producer.

21                   99.13, A New Producer. The term new producer,  
22 means a person who has not grown hops prior to 2003.  
23 The new producer specifically excludes any person who  
24 has previously been granted a hop commission grower  
25 number, or an allotment based in any capacity, either as

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1 an individual, or as an officer, or officer or operator  
2 of any business entity.

3 ADMINISTRATIVE LAW JUDGE: All right. And  
4 that last phrase was as an owner?

5 MR. K. DESSERAULT: Officer or operator of any  
6 business entity.

7 ADMINISTRATIVE LAW JUDGE: Thank you.

8 MR. K. DESSERAULT: This protects the system  
9 from being abused by multiple entities with common  
10 ownership, but also allows for new producers within  
11 grower families. That is the extent of the definition  
12 section, of the Proposed Order.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
14 Desserault. Does anyone have questions, for Mr.  
15 Desserault. First of all, Mr. Monahan, do you want to  
16 ask any?

17 MR. MONAHAN: I do not, Your Honor. I just  
18 wanted to clarify that the display on the screen above  
19 us, is presented for illustrative purposes only, for the  
20 benefit of those assembled, and is not admitted as a, or  
21 offered as an Exhibit. I did notice and odd asterisks  
22 and question mark, on the slides above that do, of  
23 course do not appear in the Proposed Order.

24 ADMINISTRATIVE LAW JUDGE: The Proposed Order,  
25 was published in the Federal Register, and the Exhibit

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1 that contains it, is our Exhibit 1. Are there any  
2 questions for Mr. Desserault? Mr. Moody?

3 \*\*\*

4 BY MR. MOODY:

5 Q. Mr. Desserault, thank you. You mentioned  
6 there were some problems with the old Order concerning  
7 the definition of grower. I believe if it recall it  
8 correctly, you were on the old Administrative Committee?

9 A. That is correct.

10 Q. From about, what period of time were you  
11 on the Board?

12 A. Middle '70s, until the time it was  
13 terminated.

14 Q. Okay. So could you elaborate on what you  
15 were referring to, by the term problems with the old  
16 Order, concerning the definition of grower?

17 A. I think the issue of multiple entities,  
18 which had multiple votes with common ownership's,  
19 created a problem within the Order I think for the  
20 election process of the Committee, and I think the  
21 Proponents Committee felt that it was the best interest  
22 of the industry, they just have 1 vote, per 1 growing  
23 entity.

24 Q. Okay. So if, to give you a hypothetical.  
25 If A and B owned land and farm hops, and A and C owned

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1 land and farm hops, then they would get 2 votes?

2 A. Under the old Order that is correct.

3 Q. Okay. Under the Proposal?

4 A. They have 1 vote.

5 Q. Okay.

6 A. If they had common, if there was a common  
7 ownership between the 3.

8 Q. Okay. So it doesn't have to be a  
9 complete overlap, it can be just having 1 owner in  
10 common, can make them a single entity?

11 A. I believe that is correct.

12 Q. Okay. So a father that had a farm, and a  
13 father and son, had a different farm. In that instance,  
14 those 2 farms would only get 1 vote?

15 A. If they had, if the son had ownership in  
16 the father's farm, or the father had some ownership in  
17 the son's farm, that is correct.

18 Q. Okay. All right. That is my  
19 hypothetical. If the father has 1 farm alone. And the  
20 father and son has a different farm. Those 2 farms  
21 would get 1 vote?

22 A. That is correct.

23 Q. Can you describe what the grower numbers  
24 are, and where one goes to get those?

25 A. Stencil shop. No, excuse me. I think it

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1 is through the Commissions and that they can request a  
2 grower number.

3 Q. Okay. And there's a Commission in each  
4 of the states?

5 A. That is correct.

6 Q. And there's also one in Idaho?

7 A. I am not sure. I believe there is, but I  
8 am not positive.

9 Q. Is there one in California?

10 A. I do not know that, sir.

11 Q. And what function do those grower numbers  
12 perform?

13 A. They have--for identity on bails, that  
14 are--inspection purposes, and for lot numbers, to  
15 identify and to identify the specific grower.

16 Q. Okay. So those grower numbers, is it  
17 correct to understand that those grower numbers, having  
18 one does not entitle you to a vote, in either the  
19 elections for committee members, or on referendums?

20 A. Would you repeat that, please?

21 Q. Yes. Am I correct in understanding that  
22 just having a grower number, does not entitle you to a  
23 vote for committee members, or for referendums?

24 A. I do not know the answer to that  
25 question.

1 Q. All right. Suppose I have a grower  
2 number, and I don't have any underlying ownership  
3 interest in land on which hops are farmed. Will I be  
4 entitled to a vote?

5 \*\*\*

6 MR. MONAHAN: Your Honor, I would just  
7 register an objection as to vagueness, and I am not sure  
8 what underlying interests means, or if that includes the  
9 leasehold interests?

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
11 Monahan. Did you hear his concern, Mr. Moody?

12 MR. MOODY: Yes, and we will get to the lease  
13 situation in a second.

14 \*\*\*

15 BY MR. MOODY:

16 Q. My first question was, if you have a  
17 grower number, but you have no underlying, no economic  
18 interest in land on which hops are farmed?

19 \*\*\*

20 ADMINISTRATIVE LAW JUDGE: No ownership  
21 interests?

22 MR. MOODY: No, no interest of any kind, no  
23 legal interest of any kind. No property interest of any  
24 kind...

25 ADMINISTRATIVE LAW JUDGE: So that would

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1 include leasehold?

2 MR. MOODY: Correct.

3 ADMINISTRATIVE LAW JUDGE: All right.

4 MR. MOODY: We will get to the lease in a  
5 second.

6 MR. MONAHAN: I don't understand how you would  
7 get the grower number.?

8 \*\*\*

9 BY MR. MOODY:

10 Q. Well what does it take to get a grower  
11 number?

12 A. I presume you have to be, have hop  
13 production, but I don't know that for sure.

14 Q. Okay. Well I, let us assume you know in  
15 my hypothetical here, that a person obtains a grower  
16 number from the Washington Commission. And they have no  
17 legal interests in land on which hops are grown. That  
18 is my hypothetical. Would that person be entitled to a  
19 vote, in either for committee members, or a referendum?

20 A. I don't know, if I know the answer to  
21 that, but I assume you would have to present some sort  
22 of information to the Commission to get the grower  
23 number that you were a valid grower. But I don't know  
24 that for sure.

25 Q. Okay. Well let us stick to my

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1 hypothetical for a second. Then you got a grower  
2 number, okay. Whether you were you know, I don't  
3 necessarily know what information is required by the  
4 Commission. Do you know what information is required by  
5 the Commission?

6 A. I have no idea.

7 Q. Okay. Do you have a grower number?

8 A. I have a grower number.

9 Q. How many grower numbers do you have?

10 A. I have 1.

11 Q. Okay. And did you get it, would you  
12 recall at what time you got that grower number?

13 A. That has been in our family for--before I  
14 was there.

15 Q. Okay. So you don't, you don't know then?

16 A. I have no idea.

17 Q. Okay. All right, then assuming for my  
18 hypothetical here, you can just get a grower number,  
19 just for the asking from the Commission, without making  
20 any further demonstration?

21 A. I don't know that it be a fact.

22 Q. Okay. It is a hypothetical, I am just  
23 asking a what if. You have a grower number from the  
24 Commission in Washington. You have no economic  
25 interests, no legal interests in land on which hops are

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1 grown, for the '03 season?

2 A. I am not going to answer that, because I  
3 don't think you would get aid out of the grower. I  
4 don't think the hypothetical is a reasonable assumption  
5 there. As well as I would not think that you would be  
6 able to get the grower number. I mean you can try.

7 Q. All right. Let me try it this way. Do  
8 you have to have an economic interest in land on which  
9 hops are grown, in order to, for the '03 crop, in order  
10 to be voter, proper voter?

11 A. I am not sure I know that question.

12 Q. Okay. What do you have, as a Proponent  
13 Committee member, do you have a position on that issue?

14 A. No, position.

15 Q. All right. Let us talk about leasehold  
16 interests for a minute. Are there, are you aware that  
17 there are people in the hop industry, that lease the  
18 land, their land on which hops are grown?

19 A. I am aware of that.

20 Q. Okay. Would they be a voter?

21 A. If they had a grower number, yes, they  
22 would be.

23 Q. Okay. And what if they don't have a  
24 grower number? They just had a leasehold interest in  
25 land?

1 A. They would not be a producer.

2 Q. Okay. So you are saying, then do you  
3 have to have a grower number to be a producer?

4 A. I think you have to be a producer to get  
5 a grower number.

6 Q. Okay. All right. So let us try this  
7 hypothetical. Suppose a bonafide producer who is an  
8 owner of land, produces hops for the '03 season, and  
9 then transfers ownership of those hops to another person  
10 that does have a grower number, but does not have a  
11 leasehold, or a fee interest in land. But they stencil  
12 the grower number on the bails. Would that person be a  
13 proper voter?

14 \*\*\*

15 MR. MONAHAN: Again, for clarification  
16 purposes, is this for a perspective referendum?

17 MR. MOODY: Yes.

18 MR. K. DESSERAULT: The definition that I gave  
19 for the producer was regarding the proposed order. It  
20 has nothing to do with the voting procedures for the  
21 referendum, and I am not qualified to answer any of  
22 those questions regarding a referendum vote.

23 \*\*\*

24 BY MR. MOODY:

25 Q. Is there a different definition of  
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1 producer, for purposes of the referendum?

2 A. I don't know, I was not responsible for  
3 that section.

4 Q. Well who is responsible for that?

5 A. I do not know that.

6 Q. Well wouldn't the producer under the  
7 Order, logically be the same producer that would get to  
8 vote in a referendum?

9 A. I am not, I don't know that.

10 Q. All right. Is there, is it your  
11 anticipation that there will be a list maintained by the  
12 Committee of all the valid growers?

13 A. Not the Proponents Committee, no.

14 Q. All right. Under the, when the old  
15 Marketing Order was in place, that you were a member of,  
16 did you all maintain a list of the producers?

17 A. They had a list of producers within the  
18 Order, yes. after it was in effect.

19 Q. Okay. And was that list publicly  
20 available?

21 A. Yes.

22 Q. Is it your anticipation that for this  
23 program, that the list of growers will be maintained by  
24 the Committee and it will be publicly available?

25 A. I would probably assume they would, but I  
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1 am not, I have no way of knowing that they would.

2 Q. Okay. Well what, how will they be sure  
3 that the referendum on a Proposed Marketing Order is  
4 not, sort of improperly influenced or stacked in some  
5 way?

6 A. I don't know how they verify the, I think  
7 that is something that will be run by the Department of  
8 Agriculture I presume, I don't think that has anything  
9 to do with the Proponents Committee.

10 \*\*\*

11 MR. MONAHAN: Your Honor, just as a point of  
12 order. Do you understand at the Proponents Committee is  
13 that the referendum, grower referendum procedures and  
14 the definitions of grower for those purposes, are as  
15 defined as in the Code of Federal Regulations, I believe  
16 it is well, I won't venture a cite at the moment, but  
17 that is my understanding. That is why it is not part of  
18 the proposed order itself.

19 ADMINISTRATIVE LAW JUDGE: So you believe Mr.  
20 Monahan, that it is adequately defined already?

21 MR. MONAHAN: We believe that it is an issue  
22 for the Department of Agriculture to determine how the  
23 referendum is to be handled, there are definitions  
24 within the CFR's that talk about that, how those  
25 definitions are applied to the Washington, Oregon,

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1 Idaho, California industries, I think is going to be an  
2 issue, where the Department of Agriculture has to  
3 exercise some discretion, and is going to need some  
4 factual background from witnesses. We have, I believe  
5 it is the final item of our presentation. We were  
6 hoping to address that. But that is the reason why  
7 there is not a proposed definition of producer for  
8 referendum purposes.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
10 Monahan. Mr. Moody? Oh just a moment, we will change  
11 tapes, It is now 2:55.

12 \*\*\*

13 [OFF THE RECORD]

14 [ON THE RECORD]

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: We are back on  
17 record at 2:56. Mr. Moody?

18 MR. MOODY: Thank you. All right. So  
19 Brendan, if I understand you correctly, you are going to  
20 present another witness who is going to address  
21 referendum procedures and record dates, and  
22 qualifications to be a voter in the referendum?

23 MR. MONAHAN: Yeah Jim, I think if you look at  
24 the outline that I had handed you, that is our final  
25 section.

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1 MR. MOODY: Okay.

2 \*\*\*

3 BY MR. MOODY:

4 Q. Can you be both a producer, and a  
5 handler?

6 A. I believe so.

7 Q. When you were reading from our statement,  
8 there was one part of it you left out, and I just  
9 wondered if you had a comment on that? And it is  
10 991.08? It says here, your intended comment, or your  
11 possible comment was the U.S. brewer becomes the  
12 handler, for production that is purchased directly from  
13 the producer? Were you intending to delete that  
14 proviso?

15 A. No, I think that was in, to handle the  
16 direct contracts that were made by growers to brewers,  
17 At that point, the brewer would be the handler of  
18 record.

19 Q. Okay. Well then I am a little confused,  
20 because most of the time under USDA's Marketing Orders,  
21 the person that first puts a produced crop in the stream  
22 of commerce, becomes the handler, whether or not they  
23 are otherwise a producer or whatever kind of entity they  
24 are. So in that hypothetical where a brewer contracts  
25 with a producer, the normal situation would be that the

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1 producer becomes the handler for those hops. Why is it  
2 that you are suggesting to do it differently, in this  
3 program?

4 A. I am not sure I can answer that. I think  
5 that this was the situation in the Mint Marketing Order,  
6 I was told because I asked a specific question on that,  
7 and I was told that the person purchasing the commodity,  
8 would be the handler.

9 Q. Okay. But in a situation like, I think  
10 you are a grower affiliated with Yakima Chief?

11 A. Repeat that?

12 Q. You as a grower, are affiliated with  
13 Yakima Chief?

14 A. Yes.

15 Q. And you heard Mr. Smith's testimony about  
16 their business model, where they use consignment, grower  
17 consignment to the Yakima Chief operation?

18 A. Yes.

19 Q. In that instance, would Yakima Chief be  
20 the handler, and you would be the grower?

21 A. I don't know that.

22 Q. Or would the brewer to whom Yakima Chief  
23 sells the hops, be the handler?

24 A. I can't answer it.

25 \*\*\*

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1 ADMINISTRATIVE LAW JUDGE: Mr. Moody, or would  
2 the producer be the handler?

3 MR. MOODY: Yes.

4 \*\*\*

5 BY MR MOODY:

6 Q. Well it is kind of important to know who  
7 the handler is, because I have a whole pile of paperwork  
8 and reporting obligations, and if 900 little craft  
9 brewers are all of a sudden become handlers, it is going  
10 to be news to them. Plus there are severe penalties  
11 under the Orders, that usually are applicable to  
12 handlers. So it is kind of a big thing legally, when  
13 somebody becomes a handler. So I guess I would suggest  
14 that you all, your Proponent Committee go back and work  
15 a little more on that issue, to have a somewhat clearer  
16 position.

17 A. I appreciate your comment.

18 Q. Now on your operation, just one brief  
19 area of inquiry. If I understand your operation, you  
20 are a one, Ken Desserault, they are a one grower entity?

21 A. That is correct.

22 Q. Okay. And what is the name of your farm?

23 A. It is Desserault Ranch, Inc.

24 Q. All right. And is it, is the terminology  
25 has been used with other witnesses, do you count

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1 yourself an expanding, or a contract--or a reducing  
2 producer?

3 A. I am expanded, and I have contracted,  
4 both.

5 Q. Okay. I mean like, let us take the last  
6 4 seasons?

7 A. I have done both.

8 Q. You expanded in some years, and  
9 contracted in others?

10 A. That is correct.

11 Q. Okay. Thank you very much, Mr.  
12 Desserault.

13 A. Thanks.

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE: Additional  
16 questions for Mr. Desserault? Mr. Carswell?

17 \*\*\*

18 BY MR. CARSWELL:

19 Q. Mr. Desserault, I have just a couple of  
20 quick questions. On 91.06, the definition of Producer.  
21 Do you know if this definition would apply to any  
22 recision of a Hop Marketing Order, to the ending of a  
23 Hop Marketing Order?

24 A. As far as voting?

25 Q. Yes, sir.

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1 A. I would assume it would.

2 Q. Okay. And then second, as far as the  
3 proprietary capacity needed to make someone a producer,  
4 let me give you a quick hypo, if you had 5 people with  
5 ownership interests in a crop, and yet they were not  
6 under a common control, so they each had an undivided  
7 one-fifth interest legal title in a crop. Would that  
8 constitute, because of no common control, 5 growers, or  
9 5 producers?

10 A. According to if they were, had a common  
11 Board of Directors, or what?

12 Q. No, sir. Presume that they are 5  
13 separate individuals with no common control and they  
14 each had a one-fifth economic interest in the crop, the  
15 ownership in a crop, would they be treated separately as  
16 producers?

17 A. I can give you my personal opinion, I am  
18 not sure, that is what is here, personally I believe  
19 there would be, if there was no common thread, they  
20 would be 5 separate entities.

21 Q. Okay. That is all I have, thank you.

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
24 Carswell. All right, just a moment, please. Ms. Finn,  
25 you may proceed.

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2

BY MS. FINN:

3

Q. I have a couple of questions on a certain amount of provisions, and I will just start from the beginning. The first one I have some questions on are, 991.04, the definition of Hop and Hop Products?

4

5

6

7

A. Yes.

8

9

10

11

Q. In the definition it says hops means and includes all kinds and varieties of Humulous, Lupulous, or Humulous Americanas grown and harvested in the United States. What is intended by using in the United States?

12

13

14

A. That was taken from the old Order I presume that in reference to hops grown in Canada, or in Europe, not to be part of.

15

16

17

Q. Was it intended that if another state started growing hops, that they would be included under the Marketing Order?

18

A. Not to my knowledge.

19

20

21

Q. So perhaps, it would be the hops grown in the production area, would that be a more correct way to say it?

22

A. That is correct.

23

Q. What is Lupulin?

24

25

A. It is just the resin that is in the hop cone, and it is a fine powdery, if you recall in our

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1 visit where we showed you the cones, and inside that  
2 cone is the yellow resins, that is the Lupulin.

3 Q. Is that where the alpha acid is drawn  
4 from?

5 A. That is correct.

6 Q. Okay. On the next provision is the  
7 production area?

8 A. Yes.

9 Q. I go back kind of to that same question I  
10 asked before. It says production area, means all states  
11 with commercial production of hops. Is that intended to  
12 mean Washington, Oregon, Idaho, and California?

13 A. That is correct.

14 Q. Okay. The next section would be 991.06,  
15 producer?

16 A. Yes.

17 Q. When you talk about for voting purposes,  
18 you are talking about, let me just clarify this, I know  
19 it was discussed. We are talking about for voting for  
20 committee membership?

21 A. That is correct.

22 Q. And it is not intended to refer to voting  
23 for, in a referendum?

24 A. That is correct.

25 Q. And some of the examples that you have

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1 used in defining producers with multiple legal entities,  
2 like common Board of Directors, some of these terms are  
3 a little bit confusing to me, if you can explain them to  
4 me?

5 A. Under Board of Directors, if there was 3  
6 companies, and an individual had a seat on the Boards of  
7 each of those companies, then he would have a common  
8 interest in all 3 of those, and it is my understanding,  
9 that would represent that those 3 that he had the common  
10 interest in, would have only 1 vote, under election of  
11 committee members. The same with common ownership, if  
12 it was a partnership, and he had a interest in 3  
13 separate growing entities, then there would only be 1  
14 vote for voting purposes, within the Order.

15 \*\*\*

16 MR. MONAHAN: Your Honor, and Department of  
17 Agriculture. Before we get too far astray, this might  
18 be one of those areas, that I had warned about at the  
19 outset. That whenever you have the dynamic of a large  
20 committee, there may be varying degrees of  
21 interpretation, and with the permission of the Court,  
22 and the USDA, the Proponents Committee would like the  
23 opportunity to re-caucus on this definition with respect  
24 to issues of common membership, and common board, boards  
25 of directors, and readdress it later this afternoon,

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1 would that be acceptable?

2 MS. FINN: That is fine.

3 ADMINISTRATIVE LAW JUDGE: It is not written  
4 clearly enough, for a lawyer to figure out what is  
5 meant, so it does need work. Now I would doubt you  
6 could be ready this afternoon on that, so an even  
7 tomorrow might be a little problematic.

8 MR. MONAHAN: Your Honor, maybe what we could  
9 do is just recall a Proponents Committee witness first  
10 thing tomorrow, and at least provide specific testimony,  
11 as to what was intended by the definition. I do know  
12 historically, that some of the language was borrowed  
13 from other Orders that we thought worked well. And I  
14 think if we caucused, looked at the language we could  
15 give a coherent, direct explanation of what we have  
16 intended by this definition.

17 ADMINISTRATIVE LAW JUDGE: All right, thank  
18 you. And anyone who wishes to inquire about it, however  
19 may do so, because it may trigger additional needed  
20 clarification. So without being foreclosed about  
21 inquiring about it tomorrow, as it is rewritten, feel  
22 free to inquire about it now, any frailties that you  
23 might want to ask about.

24 MS. FINN: Shall I move onto the next  
25 provision?

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1 ADMINISTRATIVE LAW JUDGE: If you want to move  
2 on, if you have any other questions about this one, feel  
3 free. But if you want to move on to the next one, you  
4 are welcome to.

5 MS FINN: Okay, I will reserve questions on  
6 the definition of producer.

7 MR. MONAHAN: Thank you.

8 \*\*\*

9 BY MS. FINN:

10 Q. The next would be the definition of  
11 handler, or handle, 911.08? And Mr. Moody is correct,  
12 that we do need to, the handler is a critical player  
13 under the Marketing Order, so they do have--we do have  
14 to make a determination, of who exactly a handler is. I  
15 was wondering if it would be helpful, to maybe discuss  
16 the growing and harvesting of hops, and at what point  
17 they are transferred, the ownership is transferred from  
18 the grower to the handling entity, or the next entity,  
19 if that would help us to try to focus in on handling,  
20 when handling begins?

21 A. Well I think the language is taking some  
22 from the old Hop Order, and some from the current Mint  
23 Marketing Order. I am not sure I am qualified to get  
24 into some of the specifics that might be required, and  
25 probably need to discuss that later, also.

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ADMINISTRATIVE LAW JUDGE: Um, is there some member of Proponents Committee, who could discuss it now, however? Mr. Monahan?

MR. MONAHAN: I am not seeing anyone jump up, Your Honor. I do think, I agree, I think these 2 definitions producer, and handle, are critical and essential to understanding of the Order, and how it will work. And I think they do deserve some concerted attention by the committee as a whole. At least for the purposes of articulating what has been intended by the committee.

ADMINISTRATIVE LAW JUDGE: Mr. Moody?

MR. MOODY: Well, if it would help the caucusing activity, let me just raise a concern, that on the, if the person who is deemed to handlers, anybody but the first seller, for example, on these craft brewers. There are various provisions, other than the criminal and civil provisions, under the Act, which are you know \$1,000 a day minimum fine. There is another provision, which puts potentially these craft brewers at risk, and that is the provision dealing with over quota sales, in 6/08/85, that anybody who, well let us say a producer is engaging in, and I think the practice they used to call it is midnight bails. Where they are

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1 selling hops that aren't, that are over their producer  
2 allotment, and it creates a compliance problem. And  
3 they are selling those to one of these little craft  
4 brewers, who is then automatically and are deemed a  
5 handler, that brewer, knowing nothing whatsoever about  
6 the Marketing Order, even if there is a Marketing Order,  
7 or that he is receiving illegal hops, could all of a  
8 sudden be facing jail, and injunctions, and huge fines,  
9 and the Attorney General coming after him and all of  
10 that, so in addition to the paperwork requirements, they  
11 may or may not know about, and fines, if you don't do  
12 your paperwork. So it is potentially a terrifying  
13 situation, for a company that never was asked whether  
14 they wanted to be a part of this program at all. So it  
15 is a serious concern, and I hope the caucusing group,  
16 can address that.

17 MR. MONAHAN: Thanks for the remarks, and that  
18 is something we will try to specifically tell you with  
19 the language, to make sure we avoid.

20 ADMINISTRATIVE LAW JUDGE: Could I inquire,  
21 there is no minimum threshold, with regard to  
22 production, or volume, so everyone who grows hops is  
23 included, no matter how much yield is obtained and so  
24 on? Is that the intent?

25 MR. MONAHAN: It is Your Honor, and again, I

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1 don't intend to speak on behalf of the industry. I know  
2 that the theme of this Committee, and that their intent  
3 was 1 grower, 1 vote. And that if you are someone who  
4 has been laboring in this industry as a grower, you get  
5 a vote, whether it is 1 bail, or 3½ million pounds.

6 ADMINISTRATIVE LAW JUDGE: So, Mr. Moody?

7 MR. MOODY: Yes, Your Honor, I have a  
8 question, I had another question for Mr. Desserault.

9 ADMINISTRATIVE LAW JUDGE: Go ahead, Mr.  
10 Moody.

11 MR. MOODY: Okay.

12 ADMINISTRATIVE LAW JUDGE: I will come back to  
13 Ms. Finn.

14 MR. MOODY: Oh, I am sorry, I didn't know  
15 Kathleen wasn't finished.

16 ADMINISTRATIVE LAW JUDGE: Well, I don't think  
17 she is.

18 MR. MOODY: Okay, I can defer that.

19 ADMINISTRATIVE LAW JUDGE: But go ahead, with  
20 what you have.

21 MR. MOODY: Okay.

22 \*\*\*

23 BY MR. MOODY:

24 Q. Let us assume that a grower grew hops  
25 during part of the '97 to '02 period, and would be

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1 entitled to base, but they are not a producer during  
2 '03, or '04. Would that person be entitled to vote for  
3 committee representation, that would be developing the  
4 marketing policy for '05?

5 A. I am assuming that he would have base  
6 issued to him, if he was, if that was the respected  
7 period. And if he was a handler of base, I would make  
8 the assumption that he would have a vote, if in fact, he  
9 grew that production.

10 Q. Okay. So he could vote on a, for  
11 committee members, even though he hadn't actually  
12 physically produced hops, for in my hypothetical are 3  
13 seasons?

14 A. Hypothetically, he could.

15 Q. Okay. Thank you, Mr. Desserault.

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: Ms. Finn, you may  
18 resume.

19 MS. FINN: Are we reserving, can we reserve  
20 questions on the definition of handler, handle as well?

21 MR. MONAHAN: Please.

22 MS. FINN: All right.

23 \*\*\*

24 BY MS. FINN:

25 Q. Section 991.09, Marketing Year. Do you  
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1 know why it was determined that these months, August 1<sup>st</sup>  
2 through July 1<sup>st</sup>, would be the best marketing year?

3 A. Traditionally, that has been the period  
4 and that is about the end of the current year's is the  
5 end of July, and starting of the new harvest starts in  
6 August, and so traditionally, that has been the fiscal  
7 year they have used for the production.

8 Q. And when does harvest occur?

9 A. Starting in mid-August.

10 Q. And it ends around when?

11 A. The first of October.

12 Q. Section 991.13, the definition of new  
13 producer. Do you know what, why this definition was  
14 included in here?

15 A. I believe it was omitted, it was not a  
16 part of the old Marketing Order, it was a part of the  
17 Mint Order, and one of the provisions that was required  
18 when they put the Mint Order in, and I think it was at  
19 the suggestion, that it be included as have a new  
20 producer provision in the Proposed New Marketing Order.

21 Q. Did it have anything to do, do you  
22 remember with the proposed representative period for  
23 establishing initial base quantities?

24 A. I believe not.

25 Q. I have no other questions, thank you.

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1 \*\*\*

2 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
3 Finn. Other questions for Mr. Desserault? Ms. Deskins?

4 MS. RAZICK: Your Honor, I have a question for  
5 Mr. Desserault.

6 ADMINISTRATIVE LAW JUDGE: All right. Ms.  
7 Razick.

8 \*\*\*

9 BY MS. RAZICK:

10 Q. Mr. Desserault, under the definition of  
11 persons, Section 991.03, does it include co-ops?

12 A. It doesn't specifically say so here, I  
13 know in the, I don't know if that would come under  
14 associations or not. It very well could be.

15 Q. And Mr. Desserault, can you give an  
16 example of any other business unit, that is the last  
17 part of the?

18 A. I can't, I think it is a catch all.

19 Q. Okay. Thank you, I don't have any more  
20 questions, Your Honor.

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
23 Razick. Ms. Deskins?

24 \*\*\*

25 BY MS. DESKINS:

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1 Q. Yes. In regards to 991.04, the  
2 definition of hops, I was wondering in this definition,  
3 would that also include any, are there any hybrids of  
4 hops?

5 A. No, I think it just includes all that are  
6 in that family. The humulous, lupulous family, or the  
7 Americanas humulous.

8 Q. The reason I am asking, is because  
9 sometimes it has come up there is hybrids that are  
10 similar to the scientific definition, but they are  
11 slightly different, I am just trying to cover, I am just  
12 trying to understand how your particular industry works.  
13 Is that a possibility?

14 A. To my knowledge, there are none.

15 Q. Okay. And then also, in regards to this  
16 definition, if you look at 991.04B, you have alpha acid  
17 hops are those varieties that are primarily used for  
18 bittering value. How do you determine if hops are  
19 primarily used for bittering value?

20 A. Well that is pretty much at the  
21 discretion of the brewer, or the brew master, I presume,  
22 and just in layman's language, it would be that  
23 primarily they are hops that they use for their  
24 bittering units, and they have hops that they use for  
25 more of the aroma, the finishing side, and that is the

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1 distinction that we have used.

2 Q. Okay. Because I am wondering, since  
3 variety of hops seems to change over the years, is it  
4 possible for say, for a 10 year period for something to  
5 be a variety that is basically an alpha acid, and later  
6 on it will become more of an aroma variety?

7 A. Unlikely, but could happen.

8 Q. Okay. So because under this definition  
9 then, that would be, that would be confusing, because  
10 one year it could be mostly a alpha acid hop, then the  
11 next year mostly an aroma hop?

12 A. That is very unlikely, that there are  
13 some that are maybe used as both, but very few.

14 Q. Okay. Let me move on then. Okay, I also  
15 have some questions about handling, and producer. If  
16 you can't answer them now, let me just ask them, so that  
17 something that the Proponents Committee can think about.  
18 Okay, under your definition of production area, and  
19 producer, and handle. If someone grows hops in Montana,  
20 and they are handled by someone in a state covered by  
21 this production area. Is that included within the  
22 Order?

23 A. To my knowledge, that would not be.

24 Q. Okay. And then also, in regards to your  
25 definition of producer, 991.06 where you used terms on

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1 proprietary capacity, and commercial production. If you  
2 have someone who is in the hop, who grows hops, but they  
3 have lost money for 6, 7 years. Are they still  
4 considered to be a commercial producer of hops?

5 A. If they are sold on commercially, I would  
6 think they would be, yes.

7 Q. Okay. Well, I am just wondering,  
8 because.

9 A. You are looking at one right here.

10 Q. Yeah. Because some people have different  
11 definitions of commercial, and if you keep losing money,  
12 is it still commercial production. And also, if your  
13 production is small, if you are only growing, I don't  
14 know a lot about hops, if you are only growing, say 10  
15 acres. Are you considered a commercial producer of  
16 hops?

17 A. That would be considered a commercial  
18 producer of hops.

19 Q. Okay. If you are only growing like 4  
20 acres, is that still considered a commercial production  
21 of hops?

22 A. My understanding, that would be, yes.

23 Q. Okay. Because I am just wondering, if  
24 you have someone who maybe just has a couple of acres of  
25 hops, and they are growing, say I heard the term an

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1 heirloom variety, maybe something that no one else is  
2 growing, but you have a craft brewery that wants that  
3 particular variety. Under this definition, they would  
4 still be considered a producer, and they would be  
5 covered by the Order?

6 A. My assumption, if it goes into  
7 commercial, and into commerce, it would be covered under  
8 the program, yes.

9 Q. Okay. Okay. And then also, on this  
10 definition of handler. If you can't answer it now, I  
11 just want to ask it, so you can think about it. If  
12 someone is a handler, and they buy hops from another  
13 handler, would they still under your definition, they  
14 would still be considered a handler?

15 A. I am not sure, my understanding would be  
16 that, that once the hop passes through the first sale,  
17 then it is not subject to the Marketing Order after  
18 that. If I am understanding you correctly, you are  
19 saying if someone, a handler has purchased hops from a  
20 grower, then the handler resells the hops, is this what  
21 you are saying?

22 Q. Well let us say I am a handler, and I buy  
23 directly from producers, but I also will buy from other  
24 handlers. Those sales from between handlers, are those  
25 covered?

1           A. My understanding, that that would not be  
2 under the Proposed Order.

3           Q. Okay. So even under this definition, as  
4 written, those transactions wouldn't be covered?

5           A. My understanding, that is correct.

6           Q. Also in the definition of handler in  
7 991.08B, you use the term a handler of record?

8           A. I believe the handler of record is the  
9 handler who has initially purchased the hop from the  
10 producer. He is the one that has recorded this, and  
11 paid the assessment, et cetera.

12          Q. Okay. Because the term record isn't  
13 defined, that is why I am asking.

14          A. Okay.

15          Q. Okay. Also, I had some more questions on  
16 991.06, if you can't answer them, let me just ask them,  
17 so people can think about it. Um, if under State Laws a  
18 corporation is defined as being a person. How would you  
19 use this definition to say that the different  
20 corporations have a common Board of Directors, or a  
21 common ownership?

22          A. I will defer that question.

23          Q. Okay. And then also, another thing to  
24 think about, is how you define what means a common Board  
25 of Directors? Is it the number of people on the board

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1 that are the same, could it be 1 person is the same on  
2 both boards, and then it is common, or does it have to  
3 be a minimum number of people, have to be the same for  
4 it to be a common Board of Directors? That is all the  
5 questions, oh. Okay. If you look again at the  
6 definition of handle, in 991.08A, you used the term  
7 dealers. Do you have a definition of what a dealer is?

8 A. I don't specifically have a definition of  
9 a dealer.

10 Q. Okay. Maybe that is something else to  
11 think about, and also the term users of the product,  
12 another thing to think about?

13 A. Sure.

14 Q. Okay.

15 A. Thank you.

16 \*\*\*

17 MS. DESKINS: No further questions.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
19 Deskins. Let me ask before I go to Mr. Moody. Let me  
20 ask if there are any other questions at this point, from  
21 any of the representatives from the Government? All  
22 right, not at this time. Mr. Moody?

23 MR. MOODY: Thank you.

24 \*\*\*

25 BY MR. MOODY:

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1 Q. Mr. Desserault in 991.04B, which is your  
2 definition of hops. It makes a distinction between  
3 aroma, and alpha hops?

4 A. Correct.

5 Q. Is that distinction in anyway important,  
6 for the Order's regulatory purposes? Does it matter?

7 A. That will be discussed later, I believe.  
8 I am not in a position there to report on that one.

9 Q. Okay. Well aren't there some kinds of  
10 hops, like Cluster for example, that could be considered  
11 either aroma or alpha hops?

12 A. It could be, not likely.

13 Q. All right. Is there, who gets to decide,  
14 if I am the grower of that particular Cluster variety,  
15 can I pick whether I want to be an alpha, or an aroma?

16 A. I think that will be discussed later on  
17 in the witnesses.

18 Q. Is there a definitive list, you know of  
19 that lists all of the varieties, and which category they  
20 belong to?

21 A. Not to my knowledge.

22 Q. Okay, thank you.

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: Mr. Carswell?

25 MR. CARSWELL: Just to follow-up, on this line  
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1 of questioning.

2

\*\*\*

3 BY MR. CARSWELL:

4 Q. If a hop is primarily used at one time  
5 for one thing, and then it becomes primarily used for  
6 another. I presume that this would envision the ability  
7 to have a variety switch from one category to another,  
8 is that correct?

9 A. I would assume that, but I am not in a  
10 position to comment, one way or the other on it.

11 Q. And the way different varieties, go  
12 ahead, I have deferred you Mr. Gasseling?

13

\*\*\*

14 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling?

15 MR. GASSELING: Maybe I could help out a  
16 little bit. That item B, on 991.04, it is nothing  
17 really more than, than the terms that are used between  
18 alpha hops, and aroma hops. Traditionally, anything  
19 over 10 percent was...

20 MS. DESKINS: Your Honor? Since he is not  
21 sworn in, maybe we should swear him in and then he can  
22 say this, because at this point it wouldn't be helpful  
23 to the record.

24 ADMINISTRATIVE LAW JUDGE: I agree, thank you,  
25 Ms. Deskins. Let me swear you in. Mr. Gasseling, first  
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1 state your full name for me?

2 MR. GASSELING: Thomas W. Gasseling,  
3 T-h-o-m-a-s, W., G-a-s-s-e-l-i-n-g.

4 \*\*\*

5 [Witness sworn]

6 \*\*\*

7 ADMINISTRATIVE LAW JUDGE: Thank you. Start  
8 again then, and tell us please, the distinction?

9 \*\*\*

10 THOMAS W. GASSELING,  
11 having first been duly sworn, according to the law,  
12 testified as follows:

13 \*\*\*

14 MR. GASSELING: Well basically this just  
15 explains the terminology alpha acid, or alpha hops  
16 versus aroma hops. Technically, it has nothing to do  
17 with the control, or the operation of the Order. The  
18 Order is an alpha acid order. So this doesn't make any  
19 difference whether I term a hop, an alpha hop, or an  
20 aroma hop. It is for the customers, some customers will  
21 consider a hop aroma, some will consider a hop, the same  
22 hop, a bittering hop. But for the purposes of the  
23 Order, it makes no difference at all. Because all of  
24 the hops are covered, based on alpha.

25 \*\*\*

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1 BY MR. CARSWELL:

2 Q. I am sorry. Does this definition  
3 govern...

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, go  
6 ahead.

7 MR. CARSWELL: I am sorry, Your Honor.

8 \*\*\*

9 BY MR. CARSWELL:

10 Q. Does this definition govern the treatment  
11 of aroma hops throughout the terms of the Marketing  
12 Order?

13 A. No. It treats alpha, the Marketing Order  
14 is an alpha based Marketing Order. And there is an  
15 alpha factor given for aromas, and an alpha factor given  
16 for bitter hops, and that counts toward your total base  
17 allotment.

18 Q. But as you know, there is a special  
19 treatment of aroma hops, under the terms of the Order,  
20 and in terms of the alpha assigned to it. And does this  
21 definition define what is an aroma hop for purposes of  
22 that treatment?

23 A. No. It is defined in another section,  
24 which will be addressed as to how the calculation of  
25 initial base allotment will be made.

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1 Q. And there will be a separate definition  
2 of aroma for the determination of who gets that  
3 treatment?

4 A. It says that the, and I am paraphrasing,  
5 basically, anything below 10 percent alpha, gets a 10  
6 percent alpha factor. Anything above 10 percent, gets  
7 the actual alpha factor analysis, that it is.

8 Q. Thank you.

9 A. Thank you.

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling, is  
12 this your subject matter later on?

13 MR. GASSELING: It might be.

14 MR. MONAHAN: Your Honor, it is now.

15 ADMINISTRATIVE LAW JUDGE: Thank you.

16 MS. DESKINGS: Judge Clifton, please?

17 ADMINISTRATIVE LAW JUDGE: Ms. Deskings?

18 MS. DESKINS: Based on what he said, maybe one  
19 of the things they all--they want to think about when  
20 they caucus is, that definition then.

21 ADMINISTRATIVE LAW JUDGE: Thank you. All  
22 right. Additional questions at this point, for Mr.  
23 Desserrault, or additional comments with regard to the  
24 concerns you have about the definitions he has covered?  
25 It appears there are none. Mr. Desserrault, you may step

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1 down, thank you.

2 MR. DESSERAULT: Thank you.

3 ADMINISTRATIVE LAW JUDGE: Very fine, we will  
4 change the tapes now, at 3:38.

5 \*\*\*

6 [OFF THE RECORD]

7 [ON THE RECORD]

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: We are back on  
10 record now at 3:54. Mr. Monahan, your next witness?

11 MR. MONAHAN: Actually, Your Honor, Mr. Moody  
12 informed me during the break that 3 gentlemen from  
13 Idaho, growers from Idaho have traveled to the hearing  
14 and to not anticipate being here tomorrow. They wish to  
15 offer testimony in opposition to the Proposed Marketing  
16 Order, and we would cede the floor to them at this time.

17 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
18 Monahan. I do want to commend you, and your group for  
19 your flexibility here. It is most appreciated. All  
20 right. We can call those growers now, Mr. Moody.

21 MR. MOODY: Okay. Thank you, Your Honor. And  
22 I want to thank Brendan and his team too, we are still  
23 intending to finish, there are 2 people he wants to  
24 finish today, as well. So we will keep on a pace here.  
25 If I could start with Mike Gooding?

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1 ADMINISTRATIVE LAW JUDGE: Mr. Gooding, would  
2 you come forward please, and have a seat in the chair  
3 that is to my left. Hello, if you would be seated.

4 MR. GOODING: Is this the hot seat?

5 ADMINISTRATIVE LAW JUDGE: This is the hot  
6 seat. I see you have a statement with you, Mr. Gooding.  
7 Is that, does that represent notes that you will be  
8 testifying from?

9 MR. GOODING: Your Honor, I have a letter that  
10 I would eventually like to read into the record, that  
11 was signed by all of the Idaho Growers, and sent to the  
12 Secretary of Agriculture.

13 ADMINISTRATIVE LAW JUDGE: All right. Has  
14 that previously been made part of the record in this  
15 case?

16 MR. GOODING: I do not know.

17 ADMINISTRATIVE LAW JUDGE: All right. What is  
18 the date of the letter?

19 MR. GOODING: The date is September 8<sup>th</sup>, 2003.

20 ADMINISTRATIVE LAW JUDGE: Ah, very recent.  
21 Do you have only the 1 copy?

22 MR. GOODING: I only have the 1 copy here.

23 ADMINISTRATIVE LAW JUDGE: All right. What I  
24 would like to do, we can certainly have that be the  
25 official record copy, but when you have finished

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1       testifying, I would appreciate it if you would go to the  
2       Business Office here in the Hotel, and purchase some  
3       additional copies of that, so that the main groups here,  
4       could at least have one to look at.

5               MR. GOODING: That would be fine, Your Honor.

6               ADMINISTRATIVE LAW JUDGE: Very fine. All  
7       right. Please state your full name, and spell your name  
8       for the record?

9               MR. GOODING: Michael J. Gooding,  
10       M-i-c-h-a-e-l, J., G-o-o-d-i-n-g.

11               ADMINISTRATIVE LAW JUDGE: Thank you, I will  
12       swear you in. Would you raise your right hand, please?  
13       And by the way, I am not looking at you, because these  
14       microphones demand that you look at them.

15                               \*\*\*

16       [Witness sworn]

17                               \*\*\*

18               ADMINISTRATIVE LAW JUDGE: Thank you. You may  
19       proceed.

20                               \*\*\*

21                       MICHAEL J. GOODING,  
22       having first been duly sworn, according to the law,  
23       testified as follows:

24                               \*\*\*

25               MR. GOODING: Thank you, Your Honor. My name  
                      York Stenographic Services, Inc.  
                      34 North George St., York, PA 17401 - (717) 854-0077

1 is Mike Gooding, I am a 5<sup>th</sup> generation hop grower. My  
2 family started growing hops in the Lama [ph] Valley in  
3 the 1870's, and '80s. My grandfather moved to Idaho in  
4 1945, and we have been growing hops, for the most part  
5 ever since those early days. I am the current  
6 President, of Idaho Hop Growers Association, and a  
7 member of the Idaho Hop Commission. There was a  
8 question earlier, if Idaho did have indeed have a Hop  
9 Commission, yes, we do. There are 5 members on the  
10 Commission, and it was formed in 1957.

11 The letter I have, that I would like to read  
12 into the record, was promulgated by a number of  
13 different people with some different thoughts. All of  
14 us growers, and I will read it into the record, and then  
15 at the end, read the names of all of the signatories.

16 It is dated 8, September of 2003. The  
17 Honorable Ann M. Veneman, Secretary, U.S. Department of  
18 Agriculture, c/o the docket clerk, and the Fruit and  
19 Vegetable Programs Marketing Order Administration  
20 Branch, USDA Mailstop 02371400, Independence Avenue,  
21 Southwest, Washington, D.C. 20250-0201.

22 Dear Madam Secretary. We the undersigned,  
23 comprised of all of the growers of hops in the State of  
24 Idaho, (The Idaho Growers), we wish to comment upon the  
25 Proposed Hops Marketing Order in response to

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1 solicitation in AMS Notice 156-03, dated July 1, 2003.

2 The Idaho Hop Growers are unanimously, and  
3 categorically opposed to the Proposed Hop Marketing  
4 Order, for a number of specific reasons, that are set  
5 forth in more detail below.

6 In general, we believe that the market  
7 conditions that could possibly justify a Marketing Order  
8 do not exist, that a Marketing Order would not address,  
9 the perceived problems, "in the industry", and that  
10 Government interference in our marketplace, would only  
11 result in artificial distortion creating unfair results.

12 In detail, we oppose the Proposed Hop  
13 Marketing Order for the following reasons. Number one,  
14 the Hop Marketing Order unfairly rewards certain farmers  
15 at the expense of the Idaho Growers. The Hop Marketing  
16 Order would restrict the Idaho Growers from operating  
17 our farms as we choose, by restricting the quality, and  
18 type of hops we might grow. What the Hop Marketing  
19 Order Proponents do not state, is that the so called  
20 problems, "in the marketplace" supposedly necessitating  
21 a Marketing Order are largely self-inflicted. Certain  
22 growers in the past decade, chose to plant additional  
23 acreage, or switch to high alpha hops, with a  
24 corresponding increase of unfair and capital costs.  
25 These were choices made by independent businessmen.

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1 Whether they were based upon greed, or inaccurate  
2 forecasts, it is simply wrong to punish the Idaho  
3 Growers, for the poor business decisions of others. The  
4 Proponents of the Hop Marketing Order are in effect,  
5 asking us, and other hop growers, to subsidize their  
6 ongoing operations for their exits from the business.  
7 This would be an unfair result.

8           Number two, the Hop Marketing Order, would  
9 harm the ability of the U.S. Hop Industry, to compete in  
10 international markets. A restriction in the U.S. supply  
11 of hops, would be an incentive for foreign producers to  
12 increase their production in order to compete globally  
13 with us. There would likely be a corresponding decrease  
14 of U.S. jobs, and an increase in foreign jobs.  
15 Moreover, one of the principal reasons the Proponents  
16 employ for justifying the Hop Marketing Order, is the  
17 absence of German crop failures. Yet, due to the Summer  
18 heat wave in Europe, the German crop in 2003, is  
19 expected to be decreased by 40 percent. The strong  
20 dollar was another ostensible reason for the Hop  
21 Marketing Order set forth by the Proponents, when they  
22 filed their argument with the USDA in October of 2002.  
23 Since then however, the dollar has decreased 12 percent  
24 against the Euro. The point is, that the Proponents are  
25 trying to justify the imposition of a permanent Hop

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1 Marketing Order on the basis of a temporary and changing  
2 conditions. Conditions which have in fact, recently  
3 become more favorable for U.S. Growers, and which are  
4 likely to change up or down, over time. The marketplace  
5 not the Government, is best able to adjust to these  
6 changing conditions.

7           Number three, the past Hop Marketing Orders,  
8 have been failures. Since 1938, 3 separate Orders have  
9 regulated hops and not 1 of them has worked. The most  
10 recent Hop Marketing Order, was terminated at the  
11 request of the hop growing community in 1986. USDA  
12 ended the last order because the entry of new producers  
13 have been severely restricted. The Order was unable to  
14 reconcile the imbalance between supply and demand, and  
15 it had clearly failed to achieve its goals. Those  
16 problems would all arise again in spades, if the new  
17 Order were adopted. Like the past Hop Marketing Orders,  
18 the new Order would create a lot of unnecessary  
19 litigation and require intense extra supervision and  
20 monitoring by USDA staff. There is nothing  
21 fundamentally different about the Proposed Hop Marketing  
22 Order, from the previous Hop Marketing Orders, all of  
23 which ended in failure. Hop Marketing Orders in  
24 general, violate the prevailing policies of free  
25 enterprise, and free trade by the Bush Administration,

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1 and this Government. The Hop Marketing Order, would  
2 create a Government mandated cartel, creating market  
3 inefficiencies and unfair results.

4 We the Idaho Growers believe that a Hop  
5 Marketing Order is the worst possible action that could  
6 be taken at this time. If the USDA were to mandate  
7 otherwise, then the Idaho Growers would respectfully  
8 ask, that we be exempted from the Hop Marketing Order,  
9 since we do not believe in the underlying premise, that  
10 the Proponents have set forth as their justification.  
11 Nor, do we believe that a Hop Marketing Order will solve  
12 any of the supposed structural problems in the  
13 marketplace.

14 Further, we do not feel it fair, that Idaho  
15 Growers be required to subsidize Proponents of the Order  
16 in Washington, Oregon, growers who may have made poor  
17 business decisions.

18 Finally, we ask that USDA not be swayed, by  
19 the counterproductive interests of a subset of domestic  
20 growers, given that there is very significant  
21 opposition, to a new Hop Marketing Order throughout the  
22 U.S. hop growers. There is simply no need to hand over  
23 a larger share of our market to foreign producers, who  
24 will not be hobbled by an anti-competitive artificial  
25 restraint on their ability to sell hops to U.S. buyers.

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1 Marketing Orders may have a place in our agricultural  
2 policy when there is consensus among the producing  
3 community, not when there is rampant controversy and  
4 contention. We welcome the opportunity to provide any  
5 additional information you may require, and to testify  
6 to any public hearing, in the event it takes place.

7 Thank you for your consideration of our  
8 position.

9 Sincerely.

10 Myself, as a signatory Mike Gooding, John  
11 Weilmunster, of Weilmunster Farms.

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE: Slow down. Read  
14 everything it says.

15 MR. GOODING: Oh, okay.

16 ADMINISTRATIVE LAW JUDGE: Read everything it  
17 says, so if you see a signature, say what the signature  
18 says, you can say, the signature of, and then read  
19 everything under that signature line.

20 MR. GOODING: Understood, thank you, Your  
21 Honor.

22 Mike Gooding, Gooding Farms Incorporated,  
23 23669 Back Corner Road, Parma [ph], Idaho, 83660, G-105,  
24 that is our grower number that I just as an additional  
25 comment. Jon Weilmunster, Weilmunster Farms

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1 Incorporated, 27207 Boise [ph] River Road, Parma, Idaho  
2 83660, G-106. Ray Obendorf, Rim [ph] Ranches  
3 Incorporated, 24034 Back Corner Road, Parma, Idaho  
4 83660, G-114. Reed Batt, Wilder Hop Farms Incorporated,  
5 P.O. Box 426, Wilder, Idaho 83676, G-118. Brad Studer,  
6 Elk Mountain Farms Incorporated, HCR 60, Box 264,  
7 Bonners Ferry, Idaho 83805, G-101. And Greg Obendorf,  
8 Obendorf Hop Incorporated, 24997 Highway 2026, Parma,  
9 Idaho 83660, G-123.

10 That is the letter that, that is the complete  
11 letter that I wish entered in the record.

12 ADMINISTRATIVE LAW JUDGE: If you will hand me  
13 the letter, I am going to mark it as Exhibit 21. And  
14 how do you know that it is signed by all of the hops  
15 growers in Idaho?

16 MR. GOODING: All of their signatures are  
17 familiar to me, Your Honor. Having served on the  
18 Commission with all of them, and having served as the  
19 Chairman--or the President, of the Hop Growers  
20 Association, in fact, 3 of the signatures I saw  
21 personally put on of the 6.

22 ADMINISTRATIVE LAW JUDGE: Thank you. Do you  
23 have anything else you would like to say, before the  
24 floor is open for people to ask you questions?

25 MR. GOODING: Yes, Your Honor. There are just

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1 a couple of other comments that I would have. The Order  
2 as it is written, and I am not completely familiar with  
3 the Order. There are just a couple of things that seem  
4 somewhat unfair to me. One of the things that bothered  
5 me a little bit, when we were first contacted, was the  
6 period that is used for the calculation of the  
7 allotment, based on alpha acids. And that was the 1997  
8 through 2001 time period. Idaho received the super high  
9 yielding in high alpha varieties, much later than other  
10 areas did, at least predominantly, the Yakima Valley.  
11 We had very little chance to achieve any averages even  
12 close to what other areas may have had. In fact, on our  
13 own farm, we did not receive, did not have an adult  
14 super high alpha crop until 1999. So the average would  
15 be considerably skewed in favor of growers or areas,  
16 that had access to those varieties, long before we did.

17 At this point, I really don't--wouldn't have  
18 anything else to add, other than to state that I am  
19 firmly opposed to Hop Marketing Order, and I feel it  
20 would be, and I am not saying that there is no, there  
21 are no problems in the industry, that is not to say that  
22 at all. But I do not feel that Hop Marketing Order is  
23 the answer.

24 ADMINISTRATIVE LAW JUDGE: Mr. Gooding, thank  
25 you. I am going to open it to questions, and I would

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1 like to start with questions from people who are also  
2 opposed to the Order, then I will open it to people who  
3 are Proponents of the Order. Mr. Moody?

4

\*\*\*

5 BY MR. MOODY:

6 Q. Yes, Mr. Gooding, thank you. In your  
7 first point in opposition there in your letter, you said  
8 that you felt that the Idaho Growers would be unfairly  
9 punished. And if I could suggest 2 reasons for that,  
10 and ask you to you know elaborate on that? Is it one of  
11 the reasons is because under the likely saleable percent  
12 set by the Committee if it goes into operation, that  
13 many of your members and indeed yourself, would be  
14 forced to buy or lease base from other producers, in  
15 order to just produce the quantity you are producing in  
16 '03. Is that a fair characterization?

17 A. Yes, sir, assuming that 1997 to 2001 are  
18 the base years that we use to acquire allotment base, I  
19 would say yes.

20 Q. Have you, have you and your members been  
21 over the last 2 or 3 years expanding your production, or  
22 making, or reducing your production generally speaking?

23 A. Generally speaking, acreage has remained  
24 fairly static, but production has increased somewhat  
25 with the additional, with the addition of newer

1 varieties, higher yielding and higher alpha varieties  
2 that we have continuously been adding in small portions  
3 to every year.

4 Q. All right. And is there another reason  
5 that you feel you might be unfairly punished, under the  
6 operation of the Order, is because separate and apart  
7 from the first year, if you in your second, and third,  
8 or fourth year, let us say, you wanted to expand your  
9 production, you would still be in a position of having  
10 to buy, or lease base or get it from the Committee, if  
11 the Committee even made any available. But if the  
12 Committee didn't make any available, you would still  
13 have to go buy new base, or buy base from an existing  
14 producers, just to expand your production in order to  
15 respond to market needs, as you perceive them?

16 A. Well that would definitely be correct.  
17 We had to do that once before, under an older Order, and  
18 I didn't like it then, and I don't like it now.

19 Q. You were a grower under the old Order?

20 A. Our family was, yes. I was the, in fact  
21 I did manage the farm under the old Order, at the very  
22 tail end of it yes.

23 Q. And did you have to just to produce your  
24 market demand, did you have to go out and buy base?

25 A. We did go purchase base.

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1 Q. And that hurt you economically?

2 A. Yes, it did.

3 Q. All right. And if you recall that far  
4 back, how high did you, did the price get for base?

5 A. I don't remember specifically, I remember  
6 one purchase that was made in 1979, and that is before  
7 it really went high, but that was at a \$1 a pound, and  
8 that was a purchase. There was one time that we rented  
9 base, for 25 cents a pound, just for one season. I  
10 don't remember specifically what the other 2, when we  
11 had 2 other purchases that we had made, and I don't  
12 remember specifically what those were. They were fairly  
13 expensive.

14 Q. All right. But those costs were very  
15 significant compared to what you are able to sell the  
16 hops for?

17 A. Yes.

18 Q. All right. Are the Idaho Growers as a  
19 group, generally sellers of alpha hops, or aroma hops?  
20 Or would it be both of them?

21 A. I would say, it is 50/50. The growers in  
22 Southern Idaho, predominantly grow the alpha types. The  
23 grower with 1, with a few aromas thrown in. The grower  
24 in Northern Idaho is, I would say exclusively aroma.

25 Q. All right. And the 6 of you, on the  
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1 letter now, that constitutes the entire grower body in  
2 Idaho, that is all the growers there are of hops?

3 A. Yes.

4 Q. And if you can approximate, about how  
5 many '03 pounds would be represented by that group?

6 A. Pounds of hops, pounds of alpha, or just,  
7 I mean straight pounds I could probably do. Alpha I  
8 probably couldn't.

9 Q. No, pounds of hops, or bails, whichever  
10 the correct way you measure it is?

11 A. I would estimate, in the 24 to 25,000  
12 bail range.

13 Q. All right. Thank you very much, Mr.  
14 Gooding. I appreciate your coming over.

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
17 Moody. Additional questions from those who are here to  
18 represent positions against the Marketing Order  
19 Proposal? All right. There being none, I would now  
20 invite questions for those--from those who are here as  
21 Proponents of the Marketing Order? All right. There  
22 being none, I would now invite questions from the  
23 Government representatives? Ms. Finn?

24 \*\*\*

25 BY MS. FINN:

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1 Q. You said there are 6 growers in Idaho, is  
2 that correct?

3 A. This is correct.

4 Q. Is there any particular region in Idaho,  
5 where hops are grown?

6 A. There are 2 regions, 1 region is in the  
7 very Northern most tip of the state, right at the  
8 Canadian line, in fact there are hops grown there in  
9 Idaho. Those are predominantly the aroma types. The  
10 Southern area, the Southwest area, West of Boise,  
11 towards the Oregon border, is where I come from and that  
12 is where the second area, growing area of Idaho is.  
13 Predominantly, an alpha area.

14 Q. Did you give the percentage of how much  
15 alpha hops are grown, the percentage to the aroma hops?

16 A. It is roughly, acre wise, it is roughly  
17 50 percent. I don't know the exact acres off the top of  
18 my head.

19 Q. Where do you send your hops for  
20 processing?

21 A. My hops go in part, direct to a brewer,  
22 and then the balance of them go to one handler.

23 Q. In Washington State or?

24 A. The hops are delivered to a warehouse in  
25 Idaho, and from there they are shipped either to

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1 warehouses in Oregon, or Washington State.

2 Q. Did representatives from the Proponent  
3 Committee, Proponents for a Marketing Order come to  
4 Idaho, to discuss instituting a Marketing Order?

5 A. Yes, they did, December of 2002, I  
6 believe they visited us. We had a Grower's Meeting in  
7 Greenleaf, Idaho, and they came down and made a  
8 presentation.

9 Q. And did they--there was nothing about the  
10 Marketing Order that--was there any wiggle room, is what  
11 I am trying to say, that maybe would make you more  
12 receptive to a Marketing Order for instance, if they  
13 changed the representative period, to be more equitable,  
14 would that make you more interested in implementing a  
15 Marketing Order, or supporting a Marketing Order?

16 A. At that time, and this is strictly my  
17 take on the meeting. At that time, I felt like we were  
18 being dictated to, and it did not appear to me as though  
19 there was any wiggle room at all. And at least I left  
20 fairly unhappy about the way the situation had been  
21 presented to us.

22 Q. Is there anything unique, to the growing  
23 hops in Idaho, than there are in Oregon, and Washington?

24 A. There are a few things, that I believe  
25 are unique. One thing that we are able to do, and I am

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1 speaking here about Southwest, Idaho. One thing that we  
2 are able to do is time everything, particularly in the  
3 Spring, as to the where there is very little chance for  
4 powdery mildew to evolve. We all take and knock our  
5 hops back at the same time, we are only at least 5  
6 growers in Southern Idaho, and we have a relatively  
7 small acreage, we are able to time everything fairly  
8 uniformly. And we tend to agree on things, and steps  
9 that need to be taken as a group, and the time in it  
10 needs to be taken. So I think we are able, one reason  
11 we are able to compete with slightly less average yields  
12 than the Yakima Valley, is because we have a certain  
13 economy, a scale in Southern Idaho, because we treat  
14 everything together as a group, and it makes it much  
15 easier to handle later on.

16 Q. Did you say you were an Officer in the  
17 Idaho Hop Commission or?

18 A. I am a member of the Idaho Hop  
19 Commission, and I am the President of the Idaho Hop  
20 Grower's Association.

21 Q. Do you know the process for obtaining a  
22 grower number?

23 A. The grower must apply with the  
24 Commission. And there is nothing in bylaws about  
25 issuing a grower number that I am aware of. It is

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1 strictly been policy handed down from previous  
2 Commissions. And the grower must show bonafide effort  
3 of production. And once that is done, either by showing  
4 us his growing field, or in generally in our case, we  
5 are so small, we already know. And once that has  
6 happened, then he is issued a grower number by vote of  
7 Commission.

8 Q. So they do offer some sort of  
9 verification, that they are an actual grower, before the  
10 grower number is issued?

11 A. That is correct.

12 Q. All right. Thank you, I don't have  
13 anymore questions.

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
16 Finn. Ms. Dec?

17 \*\*\*

18 BY MS. DEC:

19 Q. Mr. Gooding, if I could just follow-up on  
20 one of Ms. Finn's questions. This whole grower number  
21 issue is still kind of confusing to me. What actually  
22 are the purpose of those numbers, what are they used  
23 for?

24 A. The grower number signifies an inspection  
25 time when the State Federal Inspector pulls a sample, at

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1 least in my mind, who the grower of those hops is. The  
2 grower numbers is associated with a certain growing  
3 entity, and once the state pulls a core out of that  
4 particular grower number's lot, then it is inspected,  
5 you know and analyzed, and that forever becomes  
6 associated with that lot. Many times you will see a  
7 grower number, as in our case G-105, it is preceded by  
8 the last digit of the year that we are in, this year  
9 being 3, so my grower number would have been 3G-105, and  
10 followed usually with a suffix, a dash, indicating a  
11 lot, which may differentiate between variety, or  
12 differentiate between fields, or contracts, it is  
13 strictly pretty much up to the growers, and the handler,  
14 or the purchasers, options to designate lots. But the  
15 grower number itself, doesn't change, and in that way  
16 they are able to identify the initial producer of that  
17 particular bail, until it is ultimately consumed.

18 Q. Thanks, that was very helpful. A couple  
19 of questions about the Commission itself. Is that an  
20 organization set up under State Law, I would assume?

21 A. Yes, we are set up, we are well I don't  
22 remember the exact term, cause a state, everything is  
23 sanctioned, our Commission at least, everything is  
24 sanctioned through the Department of Agriculture, and  
25 our budget, we have the ability to levy and assessment

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1 for, and they are very specific things, in our charter  
2 that we are able to do, and specific things we cannot  
3 do, as well. One thing the Commission cannot do, is  
4 engage in any lobbying.

5 Q. Is that perhaps what the Grower's  
6 Association might be for?

7 A. That is exactly correct.

8 Q. What are the specific things that the  
9 Commission can do?

10 A. The Commission can enter into any sort of  
11 a contract, for promotion, research, anything along  
12 those lines. And if we do fund things, we are a member  
13 of the Hop Research Council, and we provide funds to the  
14 Hop Research Council, predominantly for research. We  
15 have engaged in promotional activities, and supported  
16 the Hop Growers of America in promotional activities,  
17 promoting the entire U.S. Hop Growing Industry.

18 Q. I think that is all I have. Thank you  
19 very much.

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: Thank you, Ms. Dec.  
22 Dr. Hinman, would you tell the witness who you are, Dr.  
23 Hinman?

24 DR. HINMAN: Yes. Donald Hinman, Economist  
25 with the Agricultural Marketing Service, USDA, in

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1 Washington.

2

\*\*\*

3 BY DR. HINMAN:

4 Q. You used the term adult, and I guess you  
5 can help us, help me understand a bit, the term adult  
6 versus what are other stages of growing, and then you  
7 know maybe add to that when, I think you said adult hop  
8 of a certain variety, when that reaches you know full  
9 production?

10 A. In Southern Idaho, I don't remember  
11 mentioning that, but I will elaborate a little bit. In  
12 Southern Idaho, some varieties don't reach full  
13 production until even a third year. Some varieties, may  
14 have a full adult crop the first year, generally  
15 speaking, most varieties have a 50 percent crop the  
16 first year. And the second year, then they are  
17 generally bearing a full crop.

18 Q. And would bearing full crop, that is  
19 adult?

20 A. Correct.

21 Q. And before that it is a?

22 A. Baby.

23 Q. Baby, okay. And if you can, characterize  
24 for yourself, and for other growers, the extent to which  
25 your sales are involved in you know, future sales or

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1 forward contracting. Could you generally characterize  
2 yourself, and/or any of the other growers?

3 A. Well for myself, future contracting is  
4 very important. You have to be able to plan a growing  
5 strategy, and a financing strategy, and you base that on  
6 the amount of pounds you have sold, or acres, or  
7 anything that covers the amount of hops you have in the  
8 ground. If in our case, we have hops that have sold  
9 from anywhere from 1 to 3, to 5 years ahead, and that  
10 allows us to plan the varieties that we will be growing,  
11 and the acreage we will be producing. The Hop Marketing  
12 Order in my opinion, would negate some of that forward  
13 contracting ability.

14 Q. Okay. Thank you.

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
17 Hinman. Any other questions from representatives of  
18 USDA, the Government? There are none. Are there any  
19 other questions from anyone?

20 MR. MONAHAN: Your Honor, I do have some  
21 follow-up questions.

22 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

23 MR. MONAHAN: Thank you.

24 ADMINISTRATIVE LAW JUDGE: If you would also,  
25 identify yourself, Mr. Monahan?

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1 MR. MONAHAN: I will. Good afternoon, Mr.  
2 Gooding, my name is Brendan Monahan, and I am an  
3 attorney for the Proponents Committee.

4 \*\*\*

5 BY MR. MONAHAN:

6 Q. You testified briefly about a visit that  
7 was made by Proponents. Do you recall sir, that there  
8 were in fact, 2 visits made to the Idaho region, by  
9 representatives of the Proponents Committee?

10 A. Yes, one visit was made and talked about  
11 promulgating a new Order as a group, with the group.  
12 The second visit was made individually, and discussed  
13 the Hop Marketing Order on an individual basis, for the  
14 most part with different producers.

15 Q. Do you recall being asked for suggestions  
16 on the Proposal, specifically including how the initial  
17 base allotment would be calculated?

18 A. At the second meeting, yes, I did--I do.

19 Q. Your testimony, sir. Was that at least  
20 as you understand the Proposed Marketing Order, that the  
21 Administrative Committee would take an average of the  
22 years 1997 through 2001?

23 A. That is my understanding.

24 Q. Okay. And you believe that would be  
25 inequitable?

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1 A. Yes, I do.

2 Q. Do you agree it would be the most, that  
3 the most equitable way of allocating initial base  
4 period, would be to pick the highest years, say between  
5 '97 and 2002? Would that be more equitable in your  
6 opinion, sir?

7 A. Yes, that would be more equitable. For a  
8 producer that has those years to pick from, yes. I  
9 would point out in Southern Idaho, we have a grower that  
10 would only have 1 year, in that period from which to  
11 pick.

12 Q. Not much to choose from.

13 \*\*\*

14 MR. MONAHAN: That is all I have, Your Honor,  
15 thank you.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
17 Monahan. Are there any other questions for Mr. Gooding?  
18 Mr. Moody?

19 MR. MOODY: Yes, Mr. Gooding, if I could just  
20 follow-up on that last point.

21 \*\*\*

22 BY MR. MOODY:

23 Q. That if there is 5 years, that people  
24 could pick their high year from, all of those years will  
25 get added up to make the initial base. Under that

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1 proposal, which is actually what is proposed in the  
2 Proponents Committee, wouldn't the total amount of  
3 initial base be higher than averaging those 5 years, and  
4 therefore the first year of saleable be lower?

5 A. I don't understand that question.

6 Q. Okay. If you, let us say, just to give  
7 you a quick hypothetical. That it is a, pretend there  
8 are 50, 40, 30, 20, and 10,000 pounds, okay. For the  
9 five years. That the average of those would be 30,000  
10 pounds.

11 A. Okay.

12 Q. Okay, with me on that?

13 A. Um-hum.

14 Q. So if we used it the way you thought it  
15 was going to be, the base for that grower would be  
16 30,000 pounds. Under what Mr. Monahan just suggested,  
17 for the Proponent's Committee, that grower would have  
18 the chance to pick their high year, which would be  
19 50,000 pounds. Okay?

20 A. I am with you so far.

21 Q. Right. So if everybody gets to pick, at  
22 least everybody that has 5 years of production, gets to  
23 pick their high year, the highest year. Won't the total  
24 of all of those bases be bigger, than the actual  
25 production of any one of those years?

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1           A. I would say that that is more than  
2 likely, but I think, and I won't speak for the  
3 Proponents here, but it would seem to me that, at that  
4 point, assuming an Order was put in place, you would  
5 have an instant cut in the saleable percentage.

6           Q. Right. And since the industry has been  
7 generally declining a little bit, that the total base,  
8 let us say it goes into effect in '05, the total base  
9 could be just hypothetically, twice what the Committee  
10 will decide as the appropriate market demand for '05?

11          A. Hypothetically, I would say that that is  
12 possible, I wouldn't say that that is probable, or  
13 anything else. But it is certainly possible.

14          Q. Right, and so using the, having a  
15 proposal where you use those high year, the highest year  
16 could operate to force you to have to buy more base,  
17 just to produce your demand, than you would if they had  
18 used an average?

19          A. I don't know, again I think it would  
20 depend on the saleable percentage.

21          Q. Okay. All right. But if your--is it  
22 fair to say, that the lower the saleable percentage is,  
23 that first year of operation, the greater the burden  
24 will be on you?

25          A. That would be a fair assumption, yes.

1 Q. Okay. Thank you, Mr. Gooding.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
4 Moody. Any other questions for Mr. Gooding?

5 MS. FINN: I just have one more quick  
6 question.

7 \*\*\*

8 BY MS. FINN:

9 Q. Mr. Gooding, the Small Business  
10 Administration defines small agricultural producers as  
11 those whose annual receipts are less than \$750,000. How  
12 would you classify the growers in Idaho? Would they  
13 considered small or large?

14 A. I would and this is strictly a guess, but  
15 I would guess, that of the 6 producers in Idaho, 2 of  
16 them would be considered small businessmen, and 4 would  
17 not.

18 Q. Okay. Thank you.

19 \*\*\*

20 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
21 Finn. Any other questions of Mr. Gooding? Mr. Gooding,  
22 since I am putting you to the trouble of making  
23 photocopies, and it probably doesn't make that much  
24 difference whether you make one or several, would you  
25 make 12 photocopies of that for me?

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1 MR. GOODING: Your Honor, I will bring in a  
2 couple of dozen, and I will just leave them here.

3 ADMINISTRATIVE LAW JUDGE: Okay.

4 MR. GOODING: And you can disseminate them, as  
5 you see fit.

6 ADMINISTRATIVE LAW JUDGE: All right, thank  
7 you very much. You may step down.

8 MR. GOODING: I would also like to add a very  
9 heartfelt thank you, for advancing us on the agenda. We  
10 are in harvest still in certain things, and we do  
11 appreciate the time that everyone has given us to sneak  
12 ahead in the line, as it were.

13 ADMINISTRATIVE LAW JUDGE: I am sure, everyone  
14 is appreciative. How many miles did you travel, to come  
15 here?

16 MR. GOODING: It is about a 400 mile drive,  
17 give or take a little.

18 ADMINISTRATIVE LAW JUDGE: One way?

19 MR. GOODING: Yes.

20 ADMINISTRATIVE LAW JUDGE: Thank you.

21 MR. GOODING: Thank you.

22 ADMINISTRATIVE LAW JUDGE: And who will the  
23 next witness be?

24 MR. OBENDORF: Greg Obendorf.

25 ADMINISTRATIVE LAW JUDGE: Welcome. If you  
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1 need water this one is clean, and that one is not so.

2 MR. OBENDORF: Really. I will get some water,  
3 I will be here quite awhile.

4 ADMINISTRATIVE LAW JUDGE: Could be.

5 MR. OBENDORF: Do you want some too?

6 ADMINISTRATIVE LAW JUDGE: No, thanks. Thank  
7 you. All right. We will switch tapes then at 4:34.

8 \*\*\*

9 [OFF THE RECORD]

10 [ON THE RECORD]

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: We are back on  
13 record now, at 4:35. Mr. Obendorf, would you state and  
14 spell your full name for us?

15 MR. OBENDORF: My name is Gregory Ray  
16 Obendorf, G-r-e-g-o-r-y, R., O-b-e-n-d-o-r-f.

17 ADMINISTRATIVE LAW JUDGE: Thank you. Would  
18 you raise your right hand please?

19 \*\*\*

20 [Witness sworn]

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: And you are going  
23 to need to be just a bit closer to that mike, if you  
24 would. I think you need to move your chair.

25 MR. OBENDORF: I do.

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1 ADMINISTRATIVE LAW JUDGE: All right, thank  
2 you. Before you begin with your statement, would you  
3 tell us a little bit about where you grow hops, how long  
4 you have grown hops, whether you were one of the people  
5 who signed the letter that has been marked as Exhibit  
6 21, just give us a little background to identify  
7 yourself, before you proceed with your statement?

8

\*\*\*

9

GREGORY R. OBENDORF,

10 having first been duly sworn, according to the law,  
11 testified as follows:

12

\*\*\*

13

MR. OBENDORF: I am a hop grower in Idaho. I  
14 started growing hops on my own in 1980, under the old  
15 Marketing Order, that I had to purchase base at that  
16 time for. My father started growing hops in 1948, he is  
17 now 80 years old, and is still involved in the hops. I  
18 am a neighbor of Mike Gooding, we farm right next to  
19 each other, and we also raise onions, beets, corn,  
20 grain, cattle, pasture, a lot of, all different things  
21 on the farm.

22

ADMINISTRATIVE LAW JUDGE: That is good, thank  
23 you. And now you may proceed with anything you would  
24 like the participants in the hearing to know.

25

MR. OBENDORF: Well I think Mike Gooding said  
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1 it probably the best with the letter that we presented  
2 to you. I am totally opposed to a Marketing Order, as I  
3 just stated before, I was a new grower in 1980, when  
4 that Order was thrown out. I believe I went to the bank  
5 that Fall when they threw it out, and I had a \$500,000  
6 loan to pay, with no way to pay it, because of hop bases  
7 that I had to purchase in order to grow hops. So my  
8 ideas of a Hop Marketing Order, are pretty poor. On  
9 this Marketing Order they are proposing now, from 1997  
10 to 2001, I believe we got to years of 2002, whatever  
11 they want to use. The hops that were grown in Idaho  
12 during this time, it was very few of the super high  
13 alpha varieties that were a super high yield. And the  
14 reason being that they were developed in Washington, and  
15 the Washington growers and dealers would not give them  
16 to the growers in Idaho, for a period of probably 8 to  
17 10 years. I asked time and time again, for the  
18 varieties in Washington, I couldn't get them, until  
19 finally a dealer developed them on their own, and that  
20 is how we ended up with a super high alpha varieties in  
21 Idaho. Because the people in Washington, wouldn't give  
22 them to us, and now, they want to put a Marketing Order  
23 in for us, to help them because to subsidize the growers  
24 up there that over-planted, and over-produced. We  
25 stayed the same, and they want us, they come to Idaho

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1 and say boy, you guys need to be on the vote here for  
2 this Marketing Order. Oh I just can't see it. And for  
3 them to come and ask us for help, in my mind is  
4 ludicrous, but anyway, that is me.

5 ADMINISTRATIVE LAW JUDGE: I am handing you  
6 what has been marked as Exhibit 21. Is your signature  
7 on that document?

8 MR. OBENDORF: Yes, it is.

9 ADMINISTRATIVE LAW JUDGE: Do you recognize  
10 any of the other signatures?

11 MR. OBENDORF: I recognize my father's, and I  
12 might recognize all of them.

13 ADMINISTRATIVE LAW JUDGE: All right, thank  
14 you. Anything further, before I open the floor for  
15 questions? All right. Questions, and I would like to  
16 begin with those who are here in a position against the  
17 Proposed Marketing Order. If you would begin the  
18 questioning, please. Mr. Moody?

19 MR. MOODY: Thank you.

20 \*\*\*

21 BY MR. MOODY:

22 Q. Mr. Obendorf, are you primarily alpha, or  
23 primarily an aroma grower?

24 A. I am an alpha grower.

25 Q. And are you growing in '03, under forward  
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1 contracts?

2 A. Yes, I am.

3 Q. For approximately, what percentage of  
4 your crop?

5 A. 100 percent of my crop, I am forward  
6 contracted.

7 Q. And from your perception, from your  
8 personal farm's point of view, is your supply and demand  
9 situation in balance?

10 A. I believe it is.

11 Q. Do you have any plans for the upcoming  
12 few seasons, to either expand or reduce your production?

13 A. If I do anything, I will probably expand.

14 Q. And do you understand that under the  
15 Marketing Order, you would have to buy base, or lease  
16 base in order to expand?

17 A. Oh yeah.

18 Q. And that would be a very uneconomic  
19 proposition for you?

20 A. It is not economical at all.

21 Q. All right. Thanks, Mr. Obendorf, I  
22 really appreciate your coming over.

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: Any additional  
25 questions from people who are here in a position against  
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1 the Proposed Order? There appear to be none. For those  
2 who are here in favor of the Proposed Order, any  
3 questions?

4 MR. MONAHAN: Yes, Your Honor, thank you.

5 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

6 MR. MONAHAN: Thank you.

7 \*\*\*

8 BY MR. MONAHAN:

9 Q. Mr. Obendorf, my name is Brendan Monahan,  
10 I am with the Proponents Committee, I represent the  
11 Proponents Committee. I have heard testimony, there are  
12 6 growers in Idaho, 5 of whom are from Southern Idaho,  
13 did I hear that right?

14 A. Yes.

15 Q. I haven't had a chance to look at the  
16 letter, do I understand that 2 of those 5 Southern  
17 growers, are you, and your father?

18 A. That is correct.

19 Q. Who is the Northern grower?

20 A. Brad Studer.

21 Q. Who is Brad Studer with?

22 A. He is with Anheiser/Busch.

23 Q. Is it a fair statement that all of the  
24 growers in Idaho, deliver their hops to either  
25 Anheiser/Busch or S.S. Steiner, sir?

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1 Q. Just 2 of the same questions I asked Mr.  
2 Gooding. If you heard my definition of small grower, as  
3 defined by the SBA as annual receipts of less than  
4 \$750,000. Would you agree with his statement that 2 out  
5 of the 4, may exceed that level--2 out of 6, I am sorry?

6 A. I understood him that 2 would exceed it,  
7 I figure it was about 50/50.

8 Q. 50/50?

9 A. Yeah, that is what I figure.

10 Q. Is there, do you believe there is  
11 something unique about the growing hops in Idaho, than  
12 Oregon and Washington?

13 A. I have to agree with what Mr. Gooding  
14 says, I also think that we also have heat bays that are  
15 different than other areas. And we are a very close  
16 knit group, that makes it very unique. We talk amongst  
17 ourselves everyday, except for Northern Idaho, but the  
18 growers of Southwest Idaho, we are pretty good friends,  
19 all of us. So we kind of talk back and forth, to see  
20 what is going on all of the time.

21 Q. And if someone has a problem with bugs,  
22 or water, or we know. You know, if you have an outbreak  
23 of powdery mildew, when it first hit Idaho, I think  
24 every grower knew within 3 hours. So that is unique, I  
25 think in a sense.

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1 Q. Thank you.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
4 Finn. Additional questions, from Government  
5 representatives? There are none. Any other questions  
6 for Mr. Obendorf? Mr. Obendorf, is there anything  
7 additional that you would like to add?

8 MR. OBENDORF: Not at this time.

9 ADMINISTRATIVE LAW JUDGE: All right. Thank  
10 you very much, you may step down. And you may take the  
11 water.

12 MR. OBENDORF: I will drink it before I go.

13 ADMINISTRATIVE LAW JUDGE: You may take those,  
14 too.

15 MR. OBENDORF: Oh, thank you.

16 ADMINISTRATIVE LAW JUDGE: And the next  
17 witness from Idaho?

18 MR. MOODY: Jon Weilmunster.

19 ADMINISTRATIVE LAW JUDGE: Hello. If you want  
20 a glass of water, we will find one for you.

21 MR. WEILMUNSTER: That is okay.

22 ADMINISTRATIVE LAW JUDGE: You are okay. All  
23 right. Please state your full name for the record?

24 MR. WEILMUNSTER: My name is Jon K.  
25 Weilmunster, first name J-o-n, middle initial K., last  
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1 name W-e-i-l-m-u-n-s-t-e-r.

2 ADMINISTRATIVE LAW JUDGE: And you pronounce  
3 your last name Weilmunster?

4 MR. WEILMUNSTER: Weilmunster.

5 ADMINISTRATIVE LAW JUDGE: Weilmunster. If  
6 you would raise your right hand, I will swear you in as  
7 a witness.

8 \*\*\*

9 [Witness sworn]

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: Thank you. You  
12 have no written statement, but I would like you, before  
13 you give us your opinion, to just acquaint us with your  
14 background, and position within the Hops Growing?

15 \*\*\*

16 JON K. WEILMUNSTER,  
17 having first been duly sworn, according to the law,  
18 testified as follows:

19 \*\*\*

20 MR. WEILMUNSTER: Okay, I am a real crop  
21 farmer. I started farming when I graduated from high  
22 school in 1976. I raised sugar beets, wheat, corn  
23 alfalfa seed. I recently purchased the hop operation in  
24 2002, from a grower that had been producing in Idaho for  
25 many years. I am probably the world's newest hop

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1 grower.

2 ADMINISTRATIVE LAW JUDGE: Thank you. Did you  
3 sign, I am going to hand you Exhibit 21. Did you sign  
4 that document?

5 MR. WEILMUNSTER: Yes, I did.

6 ADMINISTRATIVE LAW JUDGE: And do you  
7 recognize any of the other signatures?

8 MR. WEILMUNSTER: I recognize a couple of  
9 them, that signed it the same time I did.

10 ADMINISTRATIVE LAW JUDGE: And who would those  
11 be?

12 MR. WEILMUNSTER: Greg Obendorf, Reed Batt.

13 ADMINISTRATIVE LAW JUDGE: All right, thank  
14 you. And now you may proceed to share with this group,  
15 your opinion?

16 MR. WEILMUNSTER: Well I am against the  
17 Marketing Order for several reasons. One of them if  
18 2001 is used as the last base year, I would have no  
19 base. Fundamentally, I am opposed to the Marketing  
20 Order, because of the last Marketing Orders didn't work.  
21 I am a conservative, so I am on the free market system.  
22 If we are going to have a Marketing Order on hops, why  
23 don't we put them on cattle, and corn, or whatever else.  
24 I have to compete now against a worldwide market, the  
25 world is shrinking, everybody just seems to be a phone

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1 call away. I am afraid if we go into a marketing  
2 situation, some foreign producers will pick up the  
3 slack. In our area, we have a Spearmint Marketing  
4 Order, that is failing at the present time, particularly  
5 because of other states that are not in the Marketing  
6 Order picking up the slack, and I am sure that it will  
7 happen in this world market with hops as well.

8 ADMINISTRATIVE LAW JUDGE: Are there any other  
9 thoughts before I open the floor to questions?

10 MR. WEILMUNSTER: Actually no, Mike covered it  
11 pretty good on the letter he read, my feelings are right  
12 along that line.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
14 Weilmunster. I am going to open the floor first to  
15 questions for those who are here in a position against  
16 the Proposed Order. Mr. Moody?

17 MR. MOODY: Thank you.

18 \*\*\*

19 BY MR. MOODY:

20 Q. Mr. Weilmunster, is it your understanding  
21 that '02 was added as a base year, a year earn base, at  
22 the last minute, at the request of USDA?

23 A. I am not sure about that. I think so.

24 Q. All right. Does it, even though now you  
25 could qualify for base, does it seem fair to you, that

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1 you have only 1 year to pick from, where your  
2 competition has 5 years to choose their highest year  
3 from?

4 A. Yeah, I agree with that, and also, I  
5 didn't have the advantage of having high alpha hops,  
6 during the other years, also.

7 Q. Now are you a new grower of high alpha  
8 hops? I mean are your--you bought a hop operation, did  
9 it already have hops on it?

10 A. It already had existing hops on it.

11 Q. All right. And are you a fairly new,  
12 compared to the Washington growers, are you a fairly new  
13 grower, of the high alpha variety?

14 A. A nusic, yes.

15 Q. Have your high alpha hops reached the,  
16 what has been previously described as the adult, you  
17 know part of their production cycle?

18 A. Yes.

19 Q. But the Washington competitors had a few  
20 years early advantage over you, because they had been  
21 growing them longer?

22 A. That is what I understand.

23 Q. And are you mostly alpha hop, or mostly  
24 aroma hop grower?

25 A. Basically, all alpha.

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1 Q. And you are forward contracted for the  
2 '03 year?

3 A. Yes, I am.

4 Q. And do you have any plans to expand in  
5 the '04, or '05 years, or reduce your production?

6 A. I don't plan on reducing my production,  
7 my farm is on an economic threshold, where if I reduced,  
8 I would be out. I would like to expand a little bit,  
9 but my facility only allow me to go so far.

10 Q. Do you mean, is that because you are  
11 harvesting facility has kind of a volume limitation to  
12 it?

13 A. That is right, I have a limited potential  
14 in harvest window.

15 Q. All right. And when you, what will the--  
16 a lot of the other--or some of the proponents in their  
17 paperwork, said that at USDA, said there is chaos and  
18 problems, and disorderly marketing conditions in hops.  
19 And why is it given that suggestion of a problem, what  
20 attracted you in '02, to come in and invest money in  
21 buying into the hop industry?

22 A. Oh, I have a mentor in Idaho, that has  
23 helped me make the decision. I like the forward  
24 contracting ability of the hop market. Row crop farming  
25 margin is getting slimmer and slimmer, all of the time.

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1 Not that hops is any better, but I like the contracting  
2 part, for the security reasons and banking and such.

3 Q. And do you think if they put the  
4 Marketing Order in place, that it would make it harder,  
5 or riskier to get those forward contracts?

6 A. Yeah, I don't personally in my own  
7 opinion, I don't see where there would be an advantage  
8 for the people that buy my hops, to forward contract, if  
9 this marketing order went in.

10 Q. All right. Well thank you very much, Mr.  
11 Weilmunster, I really, really, appreciate your coming  
12 over.

13 A. You are welcome.

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE: Additional  
16 questions from those who are here in an against  
17 position? There are none. Questions for those who are  
18 here in favor of the Proposed Marketing Order? Mr.  
19 Monahan?

20 MR MONAHAN: Thank you, Your Honor.

21 \*\*\*

22 BY MR. MONAHAN:

23 Q. Sir, I would--you are not going to hurt  
24 my feelings if you don't want to answer questions for  
25 proprietary reasons. I think I just have 1 or 2

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1 questions. Are you comfortable in telling us when you  
2 entered the forward contracts?

3 A. No, I am not.

4 Q. You would not be comfortable telling us  
5 when they were entered in relation to when the Hop  
6 Marketing Proposal was announced?

7 A. It was before the Proposal was announced.

8 Q. Thank you, sir. That is all I have.

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
11 Monahan. Questions from anyone else, who is here in  
12 favor of the Marketing Proposal? There are none.  
13 Questions from Government representatives, USDA? None.  
14 All right, thank you, sir.

15 MR. WEILMUNSTER: I have one more thing, I  
16 would like to add, before I step down. I have been able  
17 in the current market situation, to come in and buy a  
18 hop farm and make a margin, and what I consider to be a  
19 comfortable living at it. And I, like I said in that  
20 regard, I don't see any merit in the Proposed Marketing  
21 Order, whatsoever, in any way, shape, or form. And I do  
22 appreciate you getting us in early, because we are in  
23 sugar beet, and corn harvest, right now.

24 ADMINISTRATIVE LAW JUDGE: You are welcome,  
25 Mr. Weilmunster. I hope you didn't drive all the way

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1 here, and now plan to drive all the way back, same day?

2 MR. WEILMUNSTER: No, I think we will have  
3 dinner tonight, and drive home in the morning.

4 ADMINISTRATIVE LAW JUDGE: All right. Good.  
5 Oh, another question, Mr. Carswell?

6 MR. CARSWELL: I am sorry.

7 \*\*\*

8 BY MR. CARSWELL:

9 Q. Mr. Weilmunster, I just wanted to ask you  
10 a couple of quick questions.

11 A. Sure.

12 Q. If after, if the HMO was passed, and a  
13 saleable quantity was set, it was 50 percent less than  
14 the base allotment that you received, would you likely  
15 have, it would seem like you would have a reduction in  
16 what you could grow next year?

17 A. Correct.

18 Q. And you indicated that you own the  
19 threshold of making it now. I guess you had a, you were  
20 slightly profitable this past season?

21 A. Yeah, you could say that.

22 Q. So could that, could that hypothetically  
23 put you out of business, if you were to had to cut your  
24 crop next year?

25 A. It would, put me out of business.

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1 Q. That is all I had, thank you.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
4 Carswell. Any additional questions generated by those?  
5 No, you may step down, Mr. Weilmunster.

6 MR. WEILMUNSTER: Thank you.

7 ADMINISTRATIVE LAW JUDGE: Thank you. I would  
8 like to distribute these copies of Exhibit 21. First I  
9 would like the court reporter to have the original, plus  
10 a copy for the typist. And I am going to hand all the  
11 rest to Ms. Deskins. There are ample here, for those  
12 who are sitting in the back also, to have copies. Thank  
13 you, Ms. Deskins. Mr. Moody, I know you indicated with  
14 your good heart, that you still intended Mr. Monahan, to  
15 be able to put on all the witnesses, that he had planned  
16 for the afternoon but....

17 MR. MONAHAN: Let us go, Your Honor, I am  
18 ready. I think that was an implied waiver of his cross  
19 examination rights, Your Honor.

20 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, given  
21 that it is 4:56, you are welcome to call a witness if  
22 you would like. But you are also welcome to wait until  
23 the morning, if you would like?

24 MR. MONAHAN: Your Honor, I would like to call  
25 Mr. Newhouse, he does need to leave this evening.

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1 ADMINISTRATIVE LAW JUDGE: All right.

2 MR. MONAHAN: He is going to be I think, no,  
3 he is next in line, as it were.

4 ADMINISTRATIVE LAW JUDGE: Oh excellent. Very  
5 fine.

6 MR. MONAHAN: Your Honor, in the interests of  
7 brevity, Mr. Desserault took the time to read each  
8 provision into the record of all of the proposed  
9 verbiage. Unless there is an objection from the  
10 Department, or Your Honor, I would ask that Mr. Newhouse  
11 be allowed to dispense with the actual verbatim  
12 rendition, and instead concentrate perhaps on issues  
13 that caught the specific attention of the Proponents  
14 Committee.

15 ADMINISTRATIVE LAW JUDGE: Which sections will  
16 he be covering, Mr. Monahan?

17 MR. MONAHAN: Thank you, your Honor. He will  
18 be talking about the Administrative Committee itself,  
19 and the provisions set forth, at Sections 991.15 through  
20 991.26.

21 ADMINISTRATIVE LAW JUDGE: All right. I would  
22 really rather have him read them, but I think given the  
23 lateness of the hour, and our desire to end soon. Your  
24 proposal is an excellent one. Mr. Newhouse, would you  
25 again, state and spell your name?

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1 MR. NEWHOUSE: My name is Dan Newhouse, D-a-n,  
2 N-e-w-h-o-u-s-e.

3 ADMINISTRATIVE LAW JUDGE: And is Dan, short  
4 for another name?

5 MR. NEWHOUSE: My full name is Daniel M.  
6 Newhouse.

7 ADMINISTRATIVE LAW JUDGE: Thank you. And  
8 would you please raise your right hand, and I will swear  
9 you in?

10 \*\*\*

11 [Witness sworn]

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
14 Monahan, do you want to lead him into the area he will  
15 be discussing?

16 MR. MONAHAN: No, thank you, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
18 Newhouse, you may proceed.

19 \*\*\*

20 DANIEL M. NEWHOUSE,  
21 having first been duly sworn, according to the law,  
22 testified as follows:

23 \*\*\*

24 MR. NEWHOUSE: I should say my grower number  
25 is 387.

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1 ADMINISTRATIVE LAW JUDGE: Thank you. Do you  
2 know how you got it?

3 MR. NEWHOUSE: It was passed down through the  
4 generation, so originally, I guess I would assume it was  
5 through the Commission.

6 ADMINISTRATIVE LAW JUDGE: Thank you.

7 MR NEWHOUSE: Well as Mr. Monahan indicated,  
8 in the essence of time, and everyone's attention. If it  
9 pleases the Judge, for brevity, I would like to just  
10 read through those sections of the Administrative  
11 Committee, starting with Section 991.15 having to do  
12 with establishment, and membership. And I will read  
13 through those that I have comments on, but I would  
14 certainly be available for any questions that someone  
15 may have, over the entire text of this particular  
16 section.

17 Section 991.15, Establishment and Membership.  
18 A) A Hop Administrative Committee consisting of 8  
19 members, each of whom shall have an alternate, is hereby  
20 established to administer the terms and provisions of  
21 this part. 5 of the members, and their alternates,  
22 shall be producers in District 1. 2 members and their  
23 alternates, shall be the producers in District 2. And 1  
24 member, and his or her alternate, shall be producers in  
25 District 3. An additional member, and his or her

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1 alternate, shall represent the public, and shall be in  
2 ex-officio member of the Committee without a vote.

3 Section B) Representation on the Committee  
4 shall be by independent producers as follows: 1)  
5 Position 1, for District 1, Sub-District 1, shall be all  
6 that portion of the State of Washington, lying North of  
7 the South line of township 12N. 2) Position 2, for  
8 District 1, Sub-District 2, shall be all that portion of  
9 the State of Washington, lying South of the line of  
10 township 12N, and West of the East line of range 20E.  
11 3) Position 3, for District 1, Sub-District 3, shall be  
12 all areas of the State of Washington, and not included  
13 in Sub-District 1, or Sub-District 2. 4) Position 4, is  
14 an at-large position, and shall be all of District 1.  
15 Position 5, is an at-large position and shall be all of  
16 District 1. Position 6, shall be all of District 2.  
17 Position 7, shall be all of District 2. And position 8,  
18 shall be all of District 3.

19 C) The Committee may change Sub-District  
20 boundaries in District 1, to reflect significant changes  
21 in numbers of producers.

22 D) Each Committee shall select officers  
23 consisting of a chairman, vice-chairman, secretary, and  
24 treasurer, and these officers shall constitute the  
25 Executive Sub-Committee. My one note on this particular

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1 section, the make-up of the Committee reflects as much  
2 as possible, the acreage in each of the Districts. A  
3 similar system if used currently, in Hop Grower  
4 Organizations, providing fair and equitable  
5 representation to all growers, is the main objective  
6 here. A public member is provided for, to give the  
7 Committee the benefit, of an outside perspective.

8 Section 991.16, Sellage Ability. Each member  
9 and alternate of the Committee shall be, at the time of  
10 his or her selection, and during his or her term of  
11 office, a producer, or an officer, or an employee of a  
12 producer in the District, or Sub-District for which  
13 selected. Provided that these requirements shall not  
14 apply to the public member, and the alternate public  
15 member. My note is all members of the Committee, except  
16 the public member and alternate, will be people actively  
17 involved in the production of hops.

18 Section 991.17. Term of Office. The term of  
19 office of each member, and alternate member of the  
20 Committee, shall be for a period of 3 years. Provided  
21 that the members initially selected for position 1, 2  
22 and 5, shall serve for terms ending on December 31,  
23 2006. And the members initially selected for positions  
24 3, 7 and 8, shall serve for terms ending on December 31,  
25 2007. And the members initially selected for positions

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1 4 and 6, shall serve for terms ending on December 31,  
2 2008. Committee members shall serve in such capacity,  
3 and for the term of office, for which they are selected,  
4 and have qualified, and until their respective  
5 successors are selected and have qualified. No member  
6 shall serve more than 2 consecutive terms as member, and  
7 no alternate, shall serve more than 2 consecutive terms  
8 as alternate. And my note is that this initial  
9 staggering of the expiration of terms, will provide  
10 consistency and some institutional memory for the  
11 Committee.

12 If I may jump ahead to, as the next couple of  
13 sections I had no particular comments. But as I said I  
14 would be available for any questions, if someone does  
15 have something they would like to find out more about.  
16 Is Section 991.22, Powers. The Committee shall have the  
17 following powers. A) To administer this part, in  
18 accordance with its terms and provisions. B) To make  
19 rules and regulations to effectuate the terms and  
20 provisions of this part. C) To receive, investigate and  
21 report to the Secretary complaints of violations of this  
22 part. And D) To recommend to the Secretary, amendments  
23 to this part. Included, and this is my note. Included  
24 in the powers of the Committee, they would have the  
25 ability if so desired, to exempt those producers for

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1 whom this Order is not intended. To clarify it, it is  
2 not the intention of the Order to restrict the actions  
3 of any brewer, and their growing activities producing  
4 hops used in their own operations.

5 Jumping ahead to Section 991.25, Procedure.

6 A) At an assembled meeting, all votes shall be cast in  
7 person, and 7 members of the Committee shall constitute  
8 a quorum. Decisions of the Committee shall require the  
9 concurring vote of at least 6 members. If both a  
10 committee member, and appropriate alternate are unable  
11 to attend the Committee meeting, the Committee may  
12 designate any other alternate from the same district,  
13 who is present at the meeting to serve in the member's  
14 place. And B) The Committee may vote by mail,  
15 telephone, or other means of communication, provided  
16 that each [page 44248] proposition is explained  
17 accurately, fully and identically, to each member. All  
18 votes shall be confirmed promptly in writing. 7  
19 concurring votes and no descenting votes shall be  
20 required for approval of a Committee action by such  
21 method. And my comment is that this, is the super  
22 majority clause, to prevent any District from  
23 controlling the Committee. 1 vote would be needed from  
24 1 of the other Districts. This is important, as it  
25 prevents 1 District from forcing its will on any of the

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1 other Districts. Fairness to all growers, in all  
2 Committee action, is the intention in this section.

3 And Section 991.26, Has to do with research  
4 and development projects. The Committee may establish  
5 or provide for the establishment of production research,  
6 marketing research, and development projects, designed  
7 to assist, improve, or promote the marketing,  
8 distribution, and consumption or efficient production of  
9 hops. The expense of such projects, shall be paid from  
10 funds collected pursuant to Section 991.31. And my  
11 comments that would pertain to not just the last  
12 section, but to the whole section of Administrative  
13 Committee. The provisions provided above for the  
14 establishment and operations of the Administrative  
15 Committee, are all very important to the overall success  
16 and sustainability of the Proposed Order. Providing  
17 growers the assurance of a structure that give  
18 confidence in the ability of the Committee to be run  
19 fairly, is above all the most important part of  
20 implementing the Order. If we are sincere in our  
21 desire, to help stabilize the price for hops, to help  
22 farmers find consistency in their industry, and to  
23 provide a stable industry that will be good for our  
24 consumers. We must have a solid foundation from which  
25 to build. This provides that foundation. In our

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1 efforts to help the industry, we must not lose sight of  
2 the most important element, the fairness to all that  
3 will be affected.

4 That concludes my comments.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
6 Newhouse. Questions for Mr. Newhouse?

7 MR. MONAHAN: Your Honor, just as a  
8 housekeeping matter, before we get into cross  
9 examination, I had handed up Exhibit 9, for Mr.  
10 Desserault, I would like to now hand up to the court  
11 reporter, Exhibit 10, which are the prepared remarks,  
12 including the notes offered by Mr. Newhouse. And I  
13 would like to offer both Exhibits 9 and 10, into  
14 evidence.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
16 Monahan. Is there any objection to Exhibits 9 and 10,  
17 being admitted into evidence? There being none,  
18 Exhibits 9 and 10 are hereby admitted into evidence. Is  
19 there any objection, I am digressing a moment. Is there  
20 any objection to the admission into evidence of Exhibit  
21 21, which was brought here by the Idaho Growers? There  
22 being none, Exhibit 21 is hereby admitted into evidence.  
23 Did I admit into evidence Exhibit 20, the Rockhold  
24 statement?

25 MR. MONAHAN: Officially, I am not sure.

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1 ADMINISTRATIVE LAW JUDGE: I don't think I  
2 did. If I did, then this is overkill. Is there any  
3 objection to the admission into evidence of Exhibit 20?  
4 There being none, Exhibit 20, is hereby admitted into  
5 evidence. All right. Mr. Monahan, any other questions,  
6 or matters?

7 MR. MONAHAN: No thank you, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: All right. Any  
9 questions of Mr. Newhouse? Mr. Moody?

10 \*\*\*

11 BY MR. MOODY:

12 Q. Mr. Newhouse, thank you. You propose a  
13 Committee of 8 members, given the diversity of  
14 varieties, and markets, and we have heard about from  
15 some of the testimony, why did you limit it to 8  
16 members, when for example, the Raisin Committee has 47?

17 A. I can't speak to why the Raisin Committee  
18 would have so many. And I think that we have used, I  
19 guess I could use the word boiler plate almost for,  
20 since we did not want to reinvent the wheel, we have  
21 borrowed from other Marketing Orders, other successful  
22 Marketing Orders. But specifically, for the size of the  
23 Administrative Committee and the Hop Order, in our  
24 experience, I believe that when you get too large of a  
25 number, you are in efficient and it is hard to come to a

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1 consensus, too small is not representative of the group.  
2 And so, this particular number seemed to be a good  
3 workable number, that we all agreed was very possible to  
4 use.

5 Q. All right. Looking at 991.15B. It says  
6 that representation on the Committee, shall be by the  
7 word is independent producers, and I want to talk about  
8 the meaning of the word independent. And my first  
9 question is, does that mean that somebody who is a  
10 grower, and also a handler, or an employee of a handler,  
11 would they be allowed to serve on the Committee?

12 A. I honestly, do not have that information.  
13 I can make an assumption, but I don't want to do that.

14 Q. All right. Well do you have a personal  
15 view about that?

16 A. Well I can, speaking from experience in  
17 our current Hop Organizations, that--well that is not  
18 true. Up until recently, only growers who are  
19 independent of handler, or dealer operations were  
20 eligible, but that has also been changed. So I would  
21 have to defer to other members of the Committee for  
22 clarification on that eligibility requirement.

23 Q. All right. Well what is meant by the  
24 word independent there? What force is that intended to  
25 have?

1 A. What force is it intended to have?

2 Q. What meanings?

3 A. Independent, I assume would mean  
4 independent of any other hop entity, that has engaged in  
5 things other than producing, the act of producing hops,  
6 but still involved in the Hop Industry. In other words,  
7 not be an employee of a handler, or a brewer, or other  
8 segments of the Hop Industry.

9 Q. Okay. So does that mean that, if I am a,  
10 well if I am a genuine bonafide producer, and there is  
11 no dispute about that. But we will use Yakima Chief as  
12 an example. If I am a grower for, that consigns my hops  
13 to Yakima Chief, but I also work in marketing for Yakima  
14 Chief. Would I be allowed to be on the Committee?

15 A. Again, I would have to defer to someone  
16 else on the Committee, who may have a better answer for  
17 that. I would just be making conjecture. I am sorry.

18 Q. All right. Sometimes the word  
19 independent is used in the Fruit and Vegetable Marketing  
20 Order language to mean, not associated with a  
21 cooperative. Is that your intent with the word  
22 independent?

23 A. I can see the logic of that, but as I  
24 said, I am not 100 percent sure, so I would defer that  
25 to other members.

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ADMINISTRATIVE LAW JUDGE: Mr. Monahan, is there someone who could field those questions now?

MR. MONAHAN: Judging by the nodding heads to my left, I think so. And if I could just have one moment, Your Honor?

ADMINISTRATIVE LAW JUDGE: Yes.

MR. MONAHAN: Is Mr. Gasseling, still under oath?

ADMINISTRATIVE LAW JUDGE: He is.

MR. MONAHAN: I believe he can answer the question, Your Honor.

ADMINISTRATIVE LAW JUDGE: All right. Mr. Gasseling?

MR. GASSELING: I wasn't really paying attention. Could you maybe go back and restate your question?

\*\*\*

BY MR. MOODY:

Q. Well there is 2 sort of questions pending. One is the issue of whether somebody who is a bonafide producer, but they are also an employee of a handler, if we are going to have one involved in marketing of the hops. Would they be eligible to be on the Committee, that is question number 1?

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1           A.    So they are, if I understand your  
2 question.  In their proprietary capacity, they are a  
3 producer?

4           Q.    Yes.

5           A.    Then they would be able to serve on the  
6 Committee, under the definitions of a producer.

7           Q.    Okay.  So someone who is a producer, or  
8 an employee of a producer, doesn't lose the right to be  
9 on the Committee, no matter what other interest they  
10 have in the Hop Industry?

11          A.    They have to, their proprietary  
12 profession has to be a producer.  That has to be their  
13 main business.  They can't be in a situation where it is  
14 not their proprietary profession.  As it is defined in  
15 producer.

16          Q.    Okay.  So if I am a producer, but I lease  
17 my land to somebody else, who does the actual farming.  
18 And my day job is working on the marketing desk at  
19 Yakima Chief, am I allowed to be on the Committee?

20          A.    Well you are not a producer.  You told me  
21 you--if I understand you, you said I leased it away, so  
22 I am not producing.  My proprietary profession is not a  
23 producer.

24          Q.    All right.  I think you said that the  
25 person's primary activity, had to be as a producer.

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1 Does that mean that's like an income box or, an hours  
2 per day test, or?

3 A. I think I said proprietary, if I didn't,  
4 I misspoke.

5 Q. Well does the person who is eligible to  
6 be on the Committee, have to actually do the farming, or  
7 could they be just like a doctor, or a lawyer, or an  
8 accountant, and contract with somebody else to do the  
9 farming?

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: All right. We will  
12 change tape at 5:18.

13 \*\*\*

14 [OFF THE RECORD]

15 [ON THE RECORD]

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: We are back on  
18 record at 5:19. Mr. Monahan?

19 MR. MONAHAN: Yes, Your Honor, I was just  
20 going to suggest that perhaps we could continue the  
21 cross examination on the Administrative Committee  
22 provisions tomorrow. I don't believe Mr. Newhouse's  
23 presence, is essential to respond to the questions. If  
24 others disagree, and want to ask questions specifically  
25 of Mr. Newhouse, certainly I have no objection to

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1 continuing on until completion. But just in terms of  
2 having a substantive and complete response to questions  
3 regarding the provisions, regarding the Administrative  
4 Committee, I do believe that there will be sufficient  
5 representation from the Proponents Committee tomorrow  
6 morning.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
8 Monahan. Mr. Newhouse, was there anything else, that  
9 you wanted to cover, before you leave?

10 MR. NEWHOUSE: I think I have covered it. I  
11 believe I have covered most of my points, thank you.

12 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
13 Carswell?

14 MR. CARSWELL: Will there be sufficient  
15 representation to speak to the notes, that are addended  
16 to these provisions as well, Brendan?

17 MR. MONAHAN: There will be people who will be  
18 happy to respond to those notes, Mr. Carswell.

19 MR. CARSWELL: Thank you, sir.

20 ADMINISTRATIVE LAW JUDGE: All right. I do  
21 have a concern about the slipperiness, of the process.  
22 Cross examination is being hampered by the inability of  
23 the people assigned to a topic to be able to present  
24 with regard to that topic. It may sort itself out, but  
25 it is a difficult process. And we are not going to cure

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1 it tonight, and I don't suggest that we continue to  
2 labor on this now. But it does raise a concern.

3 MR. MONAHAN: Your Honor, we are--we realized  
4 that as we have gone along, and I know that at the  
5 outset, the Proponents had suggested that perhaps 1  
6 person could present the materials. And that the entire  
7 Committee be allowed to field questions. That model is  
8 apparently proven ineffective, and I think tonight we  
9 can think about it a little more, and try to put the  
10 person in the hot seat, who is best equipped to answer  
11 the specific questions.

12 ADMINISTRATIVE LAW JUDGE: Good, thank you.  
13 All right. Is there anything further, before we  
14 adjourn? All right. There is not, Mr. Newhouse you may  
15 step down, thank you. And we will go off record at  
16 5:22. I will see you here at 8:30 tomorrow morning.

17 \*\*\*

18 [End of Proceedings]

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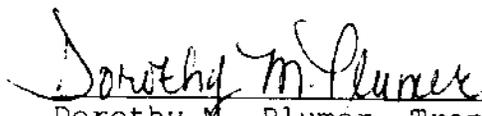
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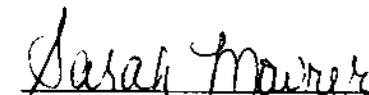
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