

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 21st day of October, 2003  
8 at 8:30 a.m.

9 Doubletree Hotel Yakima Valley  
10 1507 North 1st Street  
11 Yakima, Washington 98901

12 TRANSCRIPT OF PROCEEDINGS  
13  
14

15 BEFORE: HONORABLE JILL S. CLIFTON  
16  
17

18 FOR PROPONENTS:

19 BRENDAN MONAHAN, ESQUIRE

20 FOR OPPONENTS:

21 JAMES MOODY, ESQUIRE  
22

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P R O C E E D I N G S

October 21, 2003

ADMINISTRATIVE LAW JUDGE: We're on record at 8:31. This is the 21st of October, 2003, a Tuesday. We're in Yakima, Washington, and this is day five of the hops rulemaking hearing. This case caption is In re: Hops Produced in Washington, Oregon, Idaho, and California. The docket number is AO-F&V-991-A3; FV03-991-01. Now, I believe we were going to have cross-examination and Mr. Moody?

MR. MOODY: Just one preliminary matter. The letter that Dr. Folwell mentioned in his report that Dr. Jekanowski wrote, I've got a copy of that for the record, as well as an updated copy of his report that was files of pre-hearing comment and there are just a couple of changes to that and I'm going to ask Dr. Jekanowski to explain what those are to the report on the USDA website. I will pass those out -- that's next to exhibits on line.

ADMINISTRATIVE LAW JUDGE: All right. Let's start with his letter. The one that Dr. Folwell referenced. Let's consider that as Exhibit 31. And have all the copies, Mr. Moody?

MR. MOODY: Yes.

ADMINISTRATIVE LAW JUDGE: All right. Would  
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1 you give a chunk of them to Ms. Deskins and a chunk of  
2 them to Mr. Monahan? They can distribute them.

3 MS. DESKINS: Jim, can we have more than one?  
4 Thank you. Oh, okay

5 ADMINISTRATIVE LAW JUDGE: I'm going to mark  
6 the one that was handed to me as the official record  
7 copy Exhibit 31. How many copies did you have, Mr.  
8 Moody?

9 MR. MOODY: I think there are ten.

10 ADMINISTRATIVE LAW JUDGE: Ten? I see

11 MS. DESKINS: Thank you. There's a page  
12 missing. Starts with question two.

13 ADMINISTRATIVE LAW JUDGE: Thank you. The  
14 other document is entitled "Sparks Companies, Inc.,  
15 December, 2002: An Economic Analysis of an Allotment-  
16 based Marketing Order for the Hop Industry.

17 MS. DESKINS: Judge Clifton? On the first  
18 line..

19 ADMINISTRATIVE LAW JUDGE: Ms. Deskins, you're  
20 not loud enough.

21 MS. DESKINS: Judge Clifton, I'm the first one  
22 that was passed out -- one of the pages is missing

23 ADMINISTRATIVE LAW JUDGE: All right, thank  
24 you. Could someone check that for us?

25 MS. DESKINS: It's the first page that's

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1 missing.

2 MR. MOODY: It must be a problem with the  
3 copier, I'll have to get them to re-copy.

4 ADMINISTRATIVE LAW JUDGE: All right. Do you  
5 want to do that before we begin or do you want to begin  
6 before we do that? Mr. Carswell?

7 MR. CARSWELL: I believe Dr. Folwell is on a  
8 tight schedule and this letter -- he's already aware of  
9 it and -- because he apparently had it, so I would go  
10 ahead and do the cross-examination and then we can fix  
11 this at the break, Your Honor.

12 ADMINISTRATIVE LAW JUDGE: All right. Thank  
13 you, Mr. Carswell. The other document that I have just  
14 named, I'm going to label as Exhibit #32 and I'm going  
15 to give the copy that was handed to me to the court  
16 reporter as the official record copy. If those are used  
17 extensively here in the hearing, such that the typist of  
18 the transcript would be benefited by a copy of it, if  
19 you would provide an extra copy to the court reporter at  
20 your convenience. It remains to be seen whether that  
21 would be necessary. Dr. Folwell, would you position  
22 yourself near a microphone, please?

23 DR. FOLWELL: Right here?

24 ADMINISTRATIVE LAW JUDGE: That would be fine  
25 And I don't know whether you use a lavalier mike, I

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1 think the microphone that's there maybe to feed into  
2 tape recorder for the record. All right, Dr.  
3 Jekanowski, you're still on the witness stand. Would  
4 you again identify yourself for the record, spelling  
5 first and last names?

6 DR. JEKANOWSKI: I'm -- my name is Mark  
7 Jekanowski, M-a-r-k, last name J-e-k-a-n-o-w-s-k-i and  
8 I'm an economist with Sparks Companies, Incorporated.

9 ADMINISTRATIVE LAW JUDGE: Thank you. You  
10 remain sworn. Dr. Folwell, you'll be initiating cross-  
11 examination. Would you again identify yourself for the  
12 record?

13 DR. FOLWELL: Ray Folwell, R-a-y F-o-l-w-e-l-l  
14 with Washington State University, Pullman, Washington,  
15 99164.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Dr  
17 Folwell. You may begin

18 \*\*\*

19 BY DR. FOLWELL:

20 Q. Yesterday you spent quite a bit of time  
21 talking about the value of base and what was going to  
22 happen and I believe you used the figure of .50 a pound  
23 for hops, is that correct?

24 A. That's correct.

25 Q. Okay. If we assume a producer out here

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1 is producing super alpha hops and his yields are  
2 approximately 3,000 pounds per acre, in order to sell  
3 those hops under your assumption of .50 a pound, if he  
4 had to acquire the base, that would be costing that  
5 grower, what? \$1500 an acre?

6 A. Can -- well -- these -- what did you say  
7 3,000 pounds per acre?

8 Q. Per acre.

9 A. At 15 percent alpha?

10 Q. We're just talking pounds of hops...

11 A. Okay, okay, sure. At .50 would be 1500.

12 Q. Okay, \$1500 per acre that he'd have to  
13 acquire that would add on to his production cost. It  
14 was alluded to yesterday and many questions in this  
15 room. Do you have any idea what the average cost per  
16 acre is for producing hops here in the Yakima Valley?

17 A. I've seen different figures. I think you  
18 noted some in your testimony yesterday and off the top  
19 of my head, I don't recall exactly. You can refresh my  
20 memory on that, but I think it was 4500

21 Q. That included the establishment cost plus  
22 the first year's production cost. Probably a more  
23 reasonable cash cost for the first year would be about  
24 \$3800 per acre here and most of the growers incur that  
25 cost because they're all dealing with the same input

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1 suppliers, the same utility companies, et cetera. If a  
2 grower was to put in this acre of super alpha hops,  
3 incur these costs of \$3800 in terms of cash cost and  
4 also had to purchase this base at another \$1500 per  
5 acre, if this grower was your client, would you  
6 recommend to them that they sign a contract for .50 a  
7 pound?

8 A. Well, if they had to. If they had to buy  
9 base to fulfill a contract and they might have no choice  
10 to incur that cost, but otherwise I'd say I don't have  
11 enough information, because I don't know what the price  
12 of hops are and whether, you know, it makes sense from a  
13 profitability standpoint.

14 Q. Okay, let me just rephrase the question a  
15 little bit. The price of the base was .50

16 A. Right.

17 Q. There were super alpha hops contracted  
18 last year at .50 a pound. That was the price that was  
19 contracted for. Would you recommend, as a private  
20 consultant to this client that they should, in fact,  
21 sign a contract to produce and sell these hops at .50 a  
22 pound?

23 A. If their revenues exceed their cost of  
24 production, I would say they should.

25 Q. But if I can add up all these costs here

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1 we have \$1500 plus \$3800. Basically, we're looking at  
2 \$5300 per acre, right?

3 A That.

4 Q. In terms of cost.

5 A. ...sounds right. Right

6 Q. And he's only producing 3,000 pounds per  
7 acre. It seems like to me the cash costs in this first  
8 year are well in excess, almost three times what the  
9 prices they're going to receive for the hops.

10 A. Well then, I would say they should not  
11 produce those hops

12 Q. Are you aware that some growers did, in  
13 fact, sign contracts at this level?

14 A. Yeah, as I mentioned at the beginning of  
15 my testimony, I'm not -- I don't claim to be an expert  
16 in hop -- in the hop industry, per se, or in the  
17 production of hops, but it would not surprise me if some  
18 growers did.

19 Q. It doesn't make much economic sense, does  
20 it?

21 A. You know, growers have different risk  
22 preferences and if they -- I think in the long run, if  
23 they think that, you know, if they have in their horizon  
24 that prices are going to recover, they might keep  
25 producing, but eventually you can only losses for so

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1 long and then you have to exit the industry.

2 Q. All right. You say you're not an expert  
3 you know, in the hop industry or anything, but yesterday  
4 you were talking quite frequently about the fact that a  
5 producer allotment under a federal marketing order would  
6 actually restrict the ability of the industry to respond  
7 to price -- positive price signals in the market,  
8 correct?

9 A. I would agree with that, correct.

10 Q. Okay. Do you have any idea as to how  
11 long it takes a grower once the -- well, once they have  
12 a contract and the decision is made to go ahead and  
13 establish another acre of hops how long that might take?

14 A. Well, not first hand knowledge, but what  
15 I've heard is that in Washington state, some growers can  
16 almost full production off of their first year crop, so  
17 it appears to be relatively quick

18 Q. Okay. If we can go back in time here  
19 First of all, before this grower would plant this new  
20 acre of hops, I would assume that they have gone out and  
21 they've acquired a contract from a buyer, whether it be  
22 from a dealer or a brewer

23 A. Sure

24 Q. This takes time. To establish a new acre  
25 of hops, and I'm sure you've seen some hop yards out

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1 here.

2 A. Absolutely.

3 Q. ...during your visit? Do you have any  
4 appreciation for all of the sequence of activities that  
5 have to take place to establish that yard?

6 A. I imagine there are several. If -- and  
if there is some -- there's going to some lag and  
8 there's many activities that might have to be incurred  
9 even before the hops are even planted in terms of  
10 preparing the infra-structure.

11 Q. Um-hum

12 A. ...for planting hops, so -- but once the  
13 hops are planted, it's my understanding that you can  
14 harvest almost a full crop in the first year

15 Q. That's true for some hops, sure, but the  
16 entire time period that it might take before those hops  
17 are harvested in terms of reacting to a positive price  
18 signal out here must be at least 12, if not approaching  
19 18 months

20 A. I'd say that I would -- I have no reason  
21 to deny that, sure.

22 Q. Okay. Are you aware of the fact that in  
23 not all areas of production in the US they can get  
24 almost a full crop of hops the first year?

25 A. Yes.

Q. And do you know why?

2 A. I assume it has to do with varieties  
3 available and maybe the climate in different regions

4 Q. Anything else you can think of? In terms  
5 of cultural practices?

6 A. Not off the top of my head. I'm open to  
7 suggestions, but those are the two that immediately come  
8 to mind.

9 Q. Have you ever heard of the operation of  
10 stringing hops?

11 A. Sure.

12 Q. Okay. Can you describe what that is to  
13 me?

14 A. Not precisely. Again, not being an  
15 expert in hops, but just from testimony given in  
16 Portland and here, to my understanding, that once the  
17 hops are planted, in order to actually harvest a crop,  
18 they must be strung, presumably in the spring so that  
19 you can harvest them in the fall

20 Q. Are all hops, new hops, that are planted  
21 in the US strung the first year?

22 A. I don't know.

23 Q. Would you accept the idea that in the  
24 state of Washington, yes, they are put up on the trellis  
25 the first they are strung, but in the state of Oregon,

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1 they are not?

2 A. I would agree with that

3 Q. But they...

4 A. I have no reason not to.

5 Q. They're allowed to lay on the ground and  
6 they're not harvested the first year.

7 A. Okay, sure.

8 Q. Okay. You made some other statements  
9 yesterday that -- I'm not quite sure where you were  
10 coming from with them. One of them was about managing  
11 exports, and I'm not quite sure what you were getting at  
12 there, but could you tell me how this administrative  
13 committee within the proposed order would manage  
14 exports?

15 A. Well, no. I can't say how the committee  
16 would manage exports, but I think what I was referring  
17 to there, is that if the committee, in fact, restricts  
18 supply, has any effect on restricting supply, that's  
19 going to decrease the amount of hops on the market and  
20 it would just stand to reason from kind of a, you know,  
21 a simple economist's perspective that could decrease  
22 market opportunities to market your hops to alternative  
23 markets, in this case, exports.

24 Q. Okay, so as an economist, you're making  
25 an assumption that, in fact, the proportion of any lower

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1 quantity available on the market would also lower the  
2 quantity flowing into the export at the same time.

3 A. Yes.

4 Q. Okay. Well, let me ask you this. In  
5 terms of looking at the marketing channels for hops and  
6 the hands in which they have to flow through, who  
7 actually makes the decision on what's exported and  
8 what's used domestically? What group of people?

9 A. Probably the dealers.

10 Q. Okay.

11 A. And brewers.

12 Q. Okay, so the administrative committee in  
13 this order really doesn't make that decision or directly  
14 influence what can be used domestically or what's  
15 exported.

16 A. Well, that's right. And they might not  
17 directly influence what goes on to -- or you know  
18 directly influence what goes on to world markets, but  
19 they will, presumably, directly influence the total  
20 volume of hops available to all market sources.

21 Q. Okay. In terms of the total volume of  
22 hops that can be produced in this country, you alluded  
23 to yesterday that other areas can come into the  
24 production of hops in the US?

25 A. In just a hypothetical. Again, that's an  
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1 assumption from, again, not being an expert in the hop  
2 industry, I would say that that's a possibility, just  
3 from an economist's perspective that, you know, perhaps  
4 that's something to think about

5 Q. Well, you can grow most crops in about  
6 any area..

7 A. Sure.

8 Q. ...that you want, but in order to grow  
9 them economically and have it as a viable industry,  
10 there tends to be a certain level of production a  
11 producer has to achieve, correct?

12 A. I would agree with that, correct

13 Q. Okay. You have any idea why the hop  
14 production in the United States is concentrated to today  
15 in Oregon, Idaho, and Washington?

16 A. Well, probably because it's the superior  
17 growing region. I mean, it has the comparative in terms  
18 of cost.

19 Q. But do you know why?

20 A. It probably has to do with climate and  
21 I don't know exactly why, but...

22 Q. Would you accept from me that it has to  
23 do with the photo-length [ph] period of the day and the  
24 heat units that can be accumulated here in the Yakima  
25 Valley?

1 A. Sure. I'll -- I have no reason not to  
2 agree with you on that

3 Q. Realizing how far north these production  
4 areas are in the United States, how much of the rest of  
5 the continental United States would fit into this type  
6 of climate in terms of the length of photo period of  
7 day?

8 A. Probably not much. Maybe some of Canada,  
9 but I think just to back up a second here, when I made  
10 that statement, it was not only necessarily focusing on  
11 the US. I don't think I even intended to focus on other  
12 growing regions in the US, but just hypothetically, to  
13 talk about other growing regions worldwide that might  
14 not even be real players in hop, you know, in the hop  
15 industry right now.

16 Q. Going back to the old marketing order --  
17 and I fully realize that you weren't there

18 A. Sure

19 Q. ...and you didn't experience it. Do you  
20 have any idea what the range of saleable was during the  
21 life of that order?

22 A. Yeah. Actually, I saw some US -- some of  
23 the USDA data on that and I believe it was -- it started  
24 out in the range of 90 percent and then towards the  
25 when up to 130 percent that had just been -- I think you

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1 even testified to a state roughly close to 100.

2 Q. Actually, that's not true. It went down  
3 to 75 percent at one point in time in order to bring a  
4 balance between supply and demand

5 A. Okay, it may well be true. I.

6 Q. And then..

7 A. Sure.

8 Q. ...the 130 percent was a result of the  
9 crop failure in Europe

10 A. Okay, sure

11 Q. A couple more questions for you.

12 Yesterday the market share for the US hop industry, the  
13 figure that was thrown around was 25 percent.

14 A. Yes. World -- yeah, the world market  
15 share...

16 Q. Um-hum.

17 A. ...that's right.

18 Q. Do you have any idea what the market  
19 share is for alpha?

20 A. I think the last calculations I saw it  
21 was certainly higher, in the area of 35 percent, I  
22 believe

23 Q. Or maybe even quite a bit higher than  
24 that?

25 A. I have -- I could look it up, but it  
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yeah, it might be in the high 30s

2                   Q.    Do you think it could approach 60  
3 percent?

4                   A.    I don't think so, but it -- again, I  
5 could look up the

6                   Q.    Okay.

7                   A.    ...statistics. I don't know off the top  
8 of my head, but it -- my recollection would be that it's  
9 in the 30s

10                  Q.    Okay.

11                  A.    Mid to high 30s.

12                  Q.    Okay. I have one last area I want to ask  
13 you a question about. You referred to President  
14 Reagan

15                  A.    Right

16                  Q.    ...and the Republicans were in the White  
17 House. The executive order that came out -- and I could  
18 not find the letter this morning, but basically, it says  
19 that the basic philosophy at that point in time was to  
20 terminate federal marketing orders that had producer  
21 allotment programs which unduly restricted the flow of  
22 the product to the market. The letter further went on  
23 to say that by doing this, we would return to unfettered  
24 free markets. Can you tell me what an unfettered free  
25 market is?

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1           A.    I would characterize that as an  
2 unregulated market, a market where, you know, both  
3 producers and consumers are free to make their own  
4 choices within, you know, within a range of maybe, you  
5 know, legal limitations in terms of not harming somebody  
6 else.

7           Q.    Okay, does it have anything to do with  
8 what economists like to talk about in their theoretical  
9 word about a competitive market?

10          A.    Sure. I mean, it implies that, you know,  
11 that firms or individual firms working in their best  
12 interests are competing against one another and that  
13 that competition is fair and free

14          Q.    Okay. When economists talk about a  
15 competitive market and they have a norm with a standard  
16 perfect competition, which.

17          A.    Sure

18          Q.    ...you know doesn't exist and never will  
19 What is the characteristic of perfect competition which  
20 most economists want to evoke when they want to use that  
21 as the model or the framework in which -- within which  
22 they want to analyze a given situation?

23          A.    Well, the simplest description is many  
24 buyer, many sellers, so many market participants.

25          Q.    Okay. And that particular assumption

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1 about a perfectly competitive market often refer to the  
2 atomistic characteristic...

3 A. Sure.

4 Q. ...of that model, really means that the  
5 buyers and sellers are price takers?

6 A. In -- I agree. I mean, that that's  
7 right.

8 Q. Um-hum.

9 A. That's the assumption of the theory.

10 Q. Okay. And in fact, if they're price  
11 takers, that also implies that whatever their actions  
12 are, individually, it has no influence upon the market  
13 price.

14 A. That's right. In a pure sense, in a text  
15 book sense of pure competition, I think I would agree  
16 with that.

17 Q. Okay. In this particular situation with  
18 the US hop industry, we're currently talking about four  
19 to six or whatever number of buyers you want in terms of  
20 the demand side of the market for these hops and  
21 something around 70 or less hop growers. Could you  
22 describe to me how you would ever equate such a market  
23 structure to a competitive market?

24 A. Well, I'd have to say that I don't have  
25 enough information to not equate it to a competitive

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1 market. I mean, you know, sure, we don't have an  
2 infinite number of buyers or sellers, but you know, it's  
3 a -- you know, whether we have many buyers or sellers  
4 and whether they're all working in -- whether any one  
5 has, you know, market power or ability to influence the  
6 market, I just don't know. And I don't think we can  
7 make that judgment based purely on the number of firms  
8 competing.

9 Q. Okay. Yesterday there were statements,  
10 various statements made about Willamette and the fact  
11 that Anheuser-Busch is the major buyer of those hops.  
12 As a matter of fact, you're accounting for a very, very  
13 large percentage, I believe, yesterday.

14 A. Um-hum.

15 Q. It was entered into the record. Do you  
16 think they have some influence over the price of  
17 Willamettes and that the average price is paid every  
18 year?

19 A. Well, in a pure sense, I mean, sure.  
20 They can -- I mean, they know what they're willing to  
21 pay for hops, but on the flip side of that, I mean, the  
22 growers enter into a contract to produce those hops, so  
23 I think to some degree, I mean, it's certainly a  
24 negotiation between buyers and sellers and if buyers  
25 or, excuse me, sellers -- producers of hops, in this

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1 case -- weren't happy with those terms, ultimately, they  
2 wouldn't enter into that contract, so there's a level of  
3 negotiation that goes on there.

4 Q. Okay. If a hop producer's out here and  
5 he has Willamettes in his hop yard and he decides not to  
6 sell them to Anheuser-Busch or to enter into a contract  
7 with Anheuser-Busch, could you identify some other  
8 market outlets where a grower could go?

9 A. No, I really couldn't. I don't know  
10 enough about the hops, you know -- who buys what types  
11 of hops to know whether there is another outlet. There  
12 might not be, in which case the grower might have to  
13 either decide not to produce hops or to try a different  
14 variety.

15 Q. Okay. But you still would contend,  
16 though, that that is a competitive market and that the  
17 actions of any one individual on the demand or the  
18 supply side had no influence upon the price that year?

19 A. Well, whether the market is defined as  
20 competitive from a pure text book economic atomistic  
21 competition case, I'm not sure, but I wouldn't  
22 characterize a problem in that market, assuming we have  
23 the open negotiation between the buyer and the seller.  
24 I think that, you know, that's the way the market  
25 evolves. Now, I don't see necessarily a problem there

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2 Q. Under the proposed order, what precludes  
open negotiation between the buyer and seller?

3 A. I don't believe anything does

4 \*\*\*

5 DR. FOLWELL: Okay. Thank you. That's all I  
6 have.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Dr  
8 Folwell. Dr. Jekanowski, I think I'll ask you to step  
9 down and we'll hear Dr. Tweeten's testimony, then we'll  
10 recall you for additional examination.

11 DR. JEKANOWSKI: Okay.

12 ADMINISTRATIVE LAW JUDGE: That way,  
13 hopefully, Dr. Folwell will have a chance to examine Dr.  
14 Tweeten. Dr. Tweeten, would you please state and spell  
15 your full name for the record?

16 DR. TWEETEN: My name is Luther Tweeten,  
17 L-u-t-h-e-r T-w-e-e-t-e-n

18 ADMINISTRATIVE LAW JUDGE: Thank you, Dr  
19 Tweeten. Would you pull your chair closer to the table?  
20 But leave the mike where it was. I know it's awkward to  
21 have it that close, but I think we need for it to be  
22 that close. Would you raise your right hand, please?

23 \*\*\*

24 [Witness sworn

25 \*\*\*

1 ADMINISTRATIVE LAW JUDGE: Thank you. Before  
2 you begin your presentation, would you acquaint us with  
3 your educational and work background and identify the  
4 client for whom you work here today?

5 DR. TWEETEN: I received my bachelor's degree  
6 at Iowa State University in economics. I received an  
7 M.S. degree at Oklahoma State University. I returned to  
8 Iowa State University where I received a Ph.D. in  
9 agricultural economics.

10 ADMINISTRATIVE LAW JUDGE: All right. And  
11 what was your master's degree in?

12 DR. TWEETEN: It was in agricultural  
13 economics.

14 ADMINISTRATIVE LAW JUDGE: All right.

15 DR. TWEETEN: I'm sorry, I got the wrong  
16 bachelor's degree. That was in agricultural education.

17 ADMINISTRATIVE LAW JUDGE: All right. Thank  
18 you. Was that education continuous?

19 DR. TWEETEN: I was in the army for two years  
20 between my bachelor's and my master's degree.

21 ADMINISTRATIVE LAW JUDGE: All right. Thank  
22 you. And your first employment after your Ph.D. was  
23 achieved?

24 DR. TWEETEN: It was at Oklahoma State  
25 University where I was on the faculty for 27 years.

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1 ADMINISTRATIVE LAW JUDGE: All right. And  
2 what was your last year on the faculty?

3 DR. TWEETEN: Year 2000 at Ohio State  
4 University for -- I first served in 1988

5 ADMINISTRATIVE LAW JUDGE: All right. And  
6 what is your current business address?

7 DR. TWEETEN: It's 2120 Five [ph Road  
8 Columbus, Ohio, 43210.

9 ADMINISTRATIVE LAW JUDGE: All right, what has  
10 been the nature of your work since you left Ohio State  
11 University in the year 2000?

12 DR. TWEETEN: I have written a number of  
13 books, other publications. I have done some consulting  
14 work.

15 ADMINISTRATIVE LAW JUDGE: And who is your  
16 client that you're representing at this hearing?

17 DR. TWEETEN: I was originally contacted by  
18 Mark Jekanowski to review his materials. I -- in terms  
19 of compensation, it's Golden Gate Hop Ranchers and also  
20 Anheuser-Busch

21 ADMINISTRATIVE LAW JUDGE: And what is the  
22 central business location of Golden Gate Hop Ranchers?

23 DR. TWEETEN: The address is 655 Madison  
24 Avenue, New York, New York, 10021

25 ADMINISTRATIVE LAW JUDGE: I'm surprised at  
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1 the New York address. Are there actually ranchers who  
2 grow hops who are part of that business, and if so,  
3 where do they grow the hops?

4 DR. TWEETEN: S.S. Steiner is part of that  
5 business and grows hops in this area

6 ADMINISTRATIVE LAW JUDGE: All right, thank  
7 you. Dr. Tweeten, when you turn your head to speak to  
8 me, the mike misses your voice, so I just want to make  
9 sure everyone can hear. In the back of the room, did  
10 you hear his answer to the last question? If you did  
11 not, raise your hand. All right, good. They could hear  
12 you. And -- excuse me -- what is the central location  
13 of Anheuser-Busch, to your knowledge?

14 DR. TWEETEN: St. Louis, Missouri

15 ADMINISTRATIVE LAW JUDGE: All right, thank  
16 you. Is there anything further by way of introduction  
17 that you'd like to state before you deliver the meat of  
18 your testimony?

19 DR. TWEETEN: I think that's all, Your Honor.

20 ADMINISTRATIVE LAW JUDGE: All right. Thank  
21 you, Dr. Tweeten. You may proceed.

22

23

LUTHER TWEETEN,

24

having first been duly sworn, according to the law,

25

testified as follows:

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1 DR. TWEETEN: The thrust of my testimony is  
2 that a hop marketing order serves neither the best  
3 interests of the hop industry or the public at large.  
4 Today's hop industry is highly dynamic. In the words of  
5 the hop industry proponent committee, the industry has  
6 experienced "tremendous technological breakthroughs.  
7 International competition is keen. The dynamic nature  
8 of the industry thwarts efforts of a central committee  
9 of growers to organize supply in such a way that would  
10 serve the interests of producers and consumers. The  
11 difficulty can be conceptualized or recognized in some  
12 of the objectives of the order. Price objectives as  
13 listed include to provide stable and fair prices for  
14 merchants and end users, enable a more equitable price  
15 for growers from year to year, supply objectives include  
16 to set annual saleable amount of hops to satisfy  
17 anticipated world demand, enable a grower to plant to  
18 accurately meet the needs of the market from year to  
19 year, and ensure the needs of the market are met every  
20 year." Now I can tell you that those are very tall  
21 orders. Words in terms such as stable and fair,  
22 equitable, needs of the market, are arbitrary and  
23 subject to a wide variety of interpretations in the hand  
24 of those who administer a hop marketing order A  
25 committee tends not to be very adept at setting

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1 production to accurately target a specified price and  
2 here I might say it could be marketing as opposed to  
3 production. I use the terms kind of interchangeably  
4 because if you limit marketing, unless you're willing to  
5 store a great deal or destroy your crop, production and  
6 marketing tend to line up. And so it's very difficult  
7 to devise a price that both fair and equitable to  
8 growers and fair and equitable to the rest of the  
9 market. A marketing structure serving the public  
10 interest would promote a number of elements. These  
11 include economic efficiency, economic equity, economic  
12 stability, family farming, and freedom in making  
13 production and marketing decisions. Now I'll go through  
14 each one of these to see how the hop marketing order is  
15 likely to measure up. In terms of economic efficiency,  
16 with prices likely to be set above that of market-  
17 determined prices, in marketings set below that of  
18 market-determined marketings, that's a formula for  
19 inflation. Less output, higher price rather than for  
20 economic efficiency and improved national income  
21 Higher prices reduced output and inefficiencies in  
22 American hop production under a marketing order would  
23 compromise the industry's competitiveness and market  
24 share in international trade. Let's turn to the issue  
25 of economic equity. Revenue to hop growers as a whole

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would decline with an elastic demand as growers cut  
2 production under a marketing order but prices of hops  
3 will rise to benefit initial recipients of allotment  
4 bases. We talked quite a bit about the elasticity of  
5 demand yesterday. The elasticity is likely to be much  
6 greater in the long run than the short run. We didn't  
7 separate that out. There would be some economic gains,  
8 particularly to the initial allotment holders in the  
9 short run. In fact, the initial allotment base holders  
10 will tend to garner all the economic benefits of this  
11 order, and the reason is that if the base is leased out,  
12 the renter is going to have to pay the benefits. In  
13 fact, I'm aware of a study at Ohio State University that  
14 found for commodity programs as a whole, when economic  
15 benefits were improved from those programs, 60 percent  
16 of the benefits were passed from the rancher to the land  
17 owner within one year. So it happens very quickly  
18 Anybody who purchases these allotment bases from an  
19 established operator is going to have to pay the  
20 capitalized present value of all future benefits. That  
21 would make sense, because that buyer, in his mind, would  
22 be gaining as much economically by buying as not buying.  
23 So that's kind of the break-even. So the initial  
24 benefits pass to the initial recipients of the allotment  
25 bases. On the other hand, with these bases negotiable,

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1 one could purchase into that. Now, Mark Jekanowski made  
2 some estimates of what it would cost to get into the  
3 business. Now, he had to make a number of assumptions  
4 in order to be able to do that, but I looked over those  
5 assumptions and though I'm not an expert in the hop  
6 industry, they did seem to make sense to me and it  
7 appears that it would require about a million dollars  
8 worth of allotments in order to form an economic unit  
9 Now, that is an outlay before the purchase of equipment,  
10 machinery, and all the other capital items that go into  
11 hop production. That would be a tremendous barrier to  
12 entry. And so, the transfer of benefits tends to be  
13 from the lower -- in many cases, lower income, younger  
14 operators who are starting farming, expanding  
15 production, or would like to start farming, because they  
16 tend to get left out of this, whereas the benefits  
17 accrued to those who are established farmers, the  
18 initial recipients of the allotments, that tends to be a  
19 regressive redistribution of income and wealth. And so  
20 the marketing order does not serve economic equity.  
21 let's turn to economic stability. Just as a building  
22 must be constructed using flexible steel rather than  
23 rigid stone to be stable in the face of earthquakes, so  
24 a survival of the hops industry requires an ability to  
25 adjust to change. The problem is that this system is

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1 pretty rigid and that's one of the reasons why the old  
2 order failed. Very difficult for a committee to make  
3 decisions quickly enough to adjust to change. Now there  
4 is a provision for one percent added allotments per year  
5 if the saleables are on the increase. Half of that one  
6 percent would go to established operators, half to new  
7 operators. All in all, there's not a great deal of  
8 flexibility in the system and when you have to make  
9 decisions by committee it often takes time to make  
10 adjustments. A market tends to be much more flexible  
11 A market tends not to get involved in political issues  
12 and all the other things that make decisions by  
13 committee very difficult to make and take time to make.  
14 So it's very unlikely that there would be sufficient  
15 flexibility in the system to respond to the needs of  
16 this dynamic industry. Family farm preservation, this  
17 is related to the issue of equity. In the case of the  
18 United States, the government has spent almost a  
19 trillion dollars to preserve family farms, at least  
20 that's been one of the major objectives of farm  
21 commodity programs. I can't say that it necessarily  
22 succeeded in doing that very well, but an objective is  
23 to preserve family farms. On the other hand, with the  
24 barriers to entry that this marketing poses of up to a  
25 million dollars, as I indicated, and also some

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1 MR. BARTON: Can we take a momentary break?

2 ADMINISTRATIVE LAW JUDGE: Yes, let's change  
3 the tape at 9:16

4 \*\*\*

5 [Off the Record]

6 [On the Record

7

8 ADMINISTRATIVE LAW JUDGE: All right, we're  
9 back on record at 9:17. Dr. Tweeten, you indicated that  
10 there are no production controls. Are there.

11 DR. TWEETEN: On the major commodities.

12 ADMINISTRATIVE LAW JUDGE: On the major  
13 commodities? All right. Are you aware of any controls  
14 on the sale of major commodities? You indicated that  
15 marketing and production are used interchangeably in  
16 your report.

17 DR. TWEETEN: By major commodities, I'm  
18 referring grains and cotton and I'm not aware of any  
19 controls on sales.

20 ADMINISTRATIVE LAW JUDGE: All right, thank  
21 you. You may proceed

22 DR. TWEETEN: You caught me at a good time,  
23 because I'm ready for my summary. In summary, the  
24 proposed hop marketing order fails all economic tests of  
25 desirable features in a program serving the interests of

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1 growers and consumers. A mandatory supply control,  
2 centrally planned marketing order would be an  
3 anachronism applied to today's dynamic hops industry  
4 characterized by rapid technological change and subject  
5 to intense international competition. The "old  
6 marketing order" could not cope with change. The new  
7 promises little better. If the world has learned  
8 anything from real time experience in recent decades, it  
9 is that in a dynamic industry, number one, command and  
10 control bureaucratic regimes have failed, whereas number  
11 two, producers and consumers responding to prices set by  
12 market forces in a free enterprise economy have  
13 succeeded in creating wealth and meeting the needs of  
14 people. Instead of placing the industry in a strait  
15 jacket, emphasis needs to be on improving market outlet,  
16 technology, and contracts for better industry  
17 performance. Rigidities and inequities in a hop  
18 marketing order promise to poorly serve both the hop  
19 industry and the public at large. Thank you.

20 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
21 Tweeten. Dr. Folwell will begin examination with you,  
22 please

23 \*\*\*

24 BY DR. FOLWELL:

25 Q. Dr. Tweeten. I just have a few  
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1 questions. You talk about this industry being dynamic  
2 and adopting all of this new technology. What  
3 technology are you referring to?

4 A. New varieties, for example, would be a  
5 good example.

6 Q. Okay

7 A. Also, on the other end of things, on the  
8 demand side, the ingredients used in brewery products  
9 have been changing over the years, international  
10 competition is changing, China's coming on to markets.  
11 There are a vast number of changes that make this a  
12 dynamic industry.

13 Q. Okay. Getting back to the hop producer  
14 and this technology, I would assume that you would also  
15 include in there the palletizing of hops as new  
16 technology?

17 A. That would be another example

18 Q. The.

19 A. Storage is more feasible than it used to  
20 be

21 Q. The use of -- the possibility of making  
22 extract, having.

23 A. Yes

24 Q. ...the technology to do that?

25 A. Yeah.

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1           Q.    And you sort of indicated, at least I  
2 think you imply here that this dynamic nature of this  
3 industry has occurred since the termination of the last  
4 marketing order?

5           A.    It's been picking up over the years

6           Q.    Okay.  Can you name any high alpha  
7 varieties that were actually introduced and were under  
8 production during the last marketing order?

9           A     I'm not an expert on the hop industry.

10          Q.    Okay.

          A.    ...and I can't name those

12          Q.    Galena, Nugget, have you heard of these  
13 varieties?

14          A.    I don't recall hearing the name of those.

15          Q.    Okay.  Well, they're the high alpha  
16 varieties and they were introduced during the last  
17 marketing order.  I would also like to point out that  
18 the process of palletizing hops and the technology to  
19 make extract was also adopted during the last marketing  
20 order.  And this technology that we're talking about  
21 today is, yes, it might be adopted by a few more people  
22 today, but it did exist under the last order

23          A.    And we might add there that one of the  
24 effects of this technology, such as ability to store,  
25 helps to deal with some of the instability in the

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1 industry?

2 Q. Correct their stocks. I would agree with  
3 you. You also imply here that under the old order that  
4 there was inflexibility, not the ability to respond to  
5 market demands.

6 A. And that's why, as you said yesterday,  
7 greed took over and that's one of the reasons why the  
8 old order failed.

9 Q. Yeah, the greed-related takeover. But do  
10 you have any idea how much the hop industry increased  
11 production from the '79, '80 marketing year to the '80,  
12 '81 marketing year when the crop failure occurred in the  
13 Hallertau region?

14 A. I can't give you that number

15 Q. If I told you it increased from 54.9  
16 million up to 75.6 million pounds in that one year's  
17 time period, would that be sort of significant increase,  
18 or flexibility to respond to market signals?

19 A. It sounds like a fairly significant  
20 change. I don't know if that number's correct, but that  
21 would be...

22 Q. If you'd like

23 A. ...a pretty significant change.

24 Q. ...to look the statistics, I have them  
25 here from the old marketing order. They increased the

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1 saleable percentage from 105 to 127 percent and  
2 basically the amount of hops produced increased by over  
3 20 million pounds in one year. Just really one last  
4 well, maybe two questions. Or maybe a clarification  
5 You keep talking about setting production, controlling  
6 supply

7 A. Well, marketing, let's put it that way.

8

9 Q. Okay. In order

10 A. It's supply control through controlling  
11 marketing

12 Q. I believe under the Agricultural  
13 Adjustment Act of 1937, it's not legal to control  
14 production.

15 A. I know that

16 Q. Okay. So you're actually..

17 A That's why I call it marketing

18 Q. Okay

19 A. Did you hear me tell you that earlier?

20 Q. I heard you say that, but you're trying  
21 to influence the supply response, aren't you?

22 A. Yes.

23 Q. Okay. Could you define for me what you  
24 mean by well-functioning market?

25 A. A well-functioning market uses all

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1 information, publicly available information in the  
2 market to -- through supply and demand to set the price  
3 in a way that clears the market. Consolidates its  
4 information into price.

5 Q. Okay. Could you explain to me how the  
6 proposed order would preclude that?

7 A My experience from watching this for now  
8 close to 50 years is that bureaucratic organizations,  
9 committees -- especially those representing special  
10 interest groups, do not respond efficiently to market  
11 forces and hence do not bring efficient outcomes. They  
12 fail, invariably. This has happened around the world,  
13 that's why we're moving both in terms of the way  
14 governments operate -- we could go to the Soviet Union  
15 or the way commodities operate and the way our commodity  
16 programs have operated to a great market orientation  
17 Australia and New Zealand basically have gotten out of  
18 the commodity program business. These efforts have  
19 failed all over the world

20 Q. Let me -- since this is not the corn or  
21 soy beans or wheat or cotton and it's hops and it's  
22 perennial crops and a specialty crop. Do you think that  
23 the characteristics of the crop and the industry itself,  
24 as well the demand sort of sets it apart from these  
25 other -- I'll call them roll crops from the Midwest?

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1           A.    Certainly there's a good deal of  
2 overhead, but that's not unique.  There's a great deal  
3 of overhead in a lot of industries.  Almost of all of  
4 our major livestock industries have a large amount of  
5 overhead.  That's not an excuse not to use a market

6           Q.    Okay.  When you talked about these well-  
7 functioning markets, et cetera, and the previous witness  
8 talked about the fact that he thought the hop market  
9 a competitive market, do you agree with that statement?

10          A.    Absolutely.

11          Q.    Even though there's only four to six  
12 buyers and 45 to 70 producers out here?

13          A.    There's a tremendous ignorance about the  
14 concept of perfect competition.  One of the assumptions  
15 of perfect competition is an atomistic market with  
16 basically an infinite number of buyers and sellers.  
17 don't want an infinite number of buyers and sellers.  It  
18 would be infinitely costly.  You don't want perfect  
19 knowledge.  It would be infinitely costly.  You don't  
20 want perfect mobility.  It would be infinitely costly  
21 What we have found over the years is it doesn't take  
22 very many buyers and sellers to make a highly  
23 competitive, efficient market.

24          Q.    Well, that's new to me.  What about this  
25 Willamette market that we've been talking about where

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1 basically you have one buyer? How would you  
2 characterize that?

3 A. Probably very competitive.

4 Q. You would? With only one buyer?

5 A. I'm not sure there's only one buyer, but  
6 the producers may set up another framework for  
7 marketing. They may move to other varieties of hops.  
8 It takes a little time, it takes a little investment,  
9 but I suspect you may be referring to Anheuser-Busch as  
10 a major buyer in that market

11 Q. I think that would.

12 A. If they treat their growers badly, what  
13 do you think is going to happen to Anheuser-Busch?  
14 Those growers are not going to come back from year to  
15 year. If they're not competitive with prices of other  
16 varieties of hops with other buyers and so forth, these  
17 -- these growers are not going to come back to Anheuser-  
18 Busch, so they have to be competitive

19 Q. Okay. In terms of your one million  
20 dollar example as a barrier to entry, that was in  
21 relation to cluster hops?

22 A. I would refer to Mark Jekanowski on that  
23 issue

24 Q. You reviewed his materials, correct?

25 A. Yes, and I have the information here.

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1 We're talking about \$5 for a one pound base of alpha.

2 Q. Could you tell me how many individual  
3 producers actually have a thousand acres of clusters?

4 A. I don't know

5 \*\*\*

6 MR. FOLWELL: Okay. Thank you. That's all  
7 have

8 ADMINISTRATIVE LAW JUDGE: Thank you, Doctor.  
9 I'd like to recall you as a witness before you leave  
10 you may stay right there. Dr. Tweeten, don't leave  
11 There'll be additional cross-examination of you in a  
12 moment

13 \*\*

14 RAYMOND FOLWELL,  
15 having first been duly sworn, according to the law,  
16 testified as follows:

17 BY ADMINISTRATIVE LAW JUDGE:

18 Q. Dr. Folwell, you -- in asking questions,  
19 articulated a number of facts which are important for  
20 to deal with and so I don't if you can remember all of  
21 those that you mentioned, but I would like to revisit  
22 some of those areas and have your direct testimony,  
23 including your identification of the source of the  
24 information

25 A. Yes, ma'am. If you're talking about the  
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1 statistics I just referred to.

2 Q. Yes, please

3 A. It was the handout at the October 20,  
4 1983, administrative committee meeting of Federal  
5 Marketing Order 991 and if you'd like it for the record,  
6 I will leave it here with you. I'm sure I can find  
7 another copy someplace. As far as the other  
8 information, in terms of cost and production, or yields  
9 and that, that comes from personal knowledge of working  
10 with hop producers and being somewhat familiar with the  
11 industry

12 Q. All right. Let's start with the handout  
13 Tell me again what the title of it is?

14 A. The title of it is "The US Hop  
15 Administrative Committee" and then it has an address  
16 where they -- the administrative committee had offices  
17 in Portland, Oregon, 1002 Corbitt Building [ph], 430  
18 Southwest Morrison Avenue in Portland. It's dated  
19 October 20th, 1983. The -- I guess you'd call it a  
20 table of contents here is labeled "Basic Hops  
21 Statistics."

22 Q. All right, yes. I would like that as an  
23 exhibit and if you could hand that up to Mr. Monahan.  
24 I'm going to mark that as Exhibit 34. Do you need this  
25 back?

1 A. No, ma'am.

2 Q. All right, I'll keep it until we figure  
3 out who will make copies for the record and for  
4 distribution. With regard to the high alpha varieties  
5 of hops that were developed under the former marketing  
6 order, you mention Galena and Nugget. Would you spell  
7 those and tell us about those?

8 A. It's right there in the exhibit I just  
9 handed you. Nugget is spelled N-u-g-g-e-t and Galena's  
10 G-a-l-e-n-a.

11 Q. All right. And the information about  
12 their alpha content is in this Exhibit 34?

13 A. Not be variety.

14 Q. All right, can you tell us from your own  
15 knowledge about their alpha content and when they were  
16 developed?

17 A They were developed in the early 1980s  
18 I can't give you an exact date of when they were first  
19 produced or released for planting. Their alpha was  
20 ranging upwards anywhere from 12 to 14 percent and I  
21 believe at that time the new super alpha varieties that  
22 are introduced today such as Tomahawk, are -- have alpha  
23 varieties of 16, 18 percent.

24 Q. On what do you base your statement that  
25 the alpha production in the United States could be in

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1 the vicinity of 60 percent?

2 A. Just strictly observation of numbers. I  
3 have not actually made the calculation. That's the  
4 reason I was asking the witness could it be possibly  
5 upwards to 60 percent.

6 Q. And if that is true that United States  
7 markets, say 50 to 60 percent of alpha acid as its share  
8 of the world market, does that change anything in your  
9 testimony yesterday when we were discussing the fact  
10 that the United States might control only 25 percent of  
11 the hops marketed globally?

12 A. I don't believe so. And I think when  
13 refer to the share here, we've got to talk about whether  
14 you're talking about the share of production, the share  
15 in terms of entering international trade, et cetera.  
16 And basically, when I was talking this morning when I  
17 used that number, I was referring to production levels.

18 Q. And what are cluster hops?

19 A. The aroma hops. Those that are low in  
20 alpha acid.

21 Q. And on what do you base your information  
22 that the Willamette Valley has only one buyer for its  
23 hops?

24 A. Basically, on what was entered into the  
25 record yesterday, the fact that Anheuser-Busch appears

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to be the major buyer of Willamette hops. I'm sure  
2 there's some Willamette hops that are sold to micro-  
3 brewers or other ones, but my understanding is that  
4 they're the major buyer.

5 \*\*\*

6 MR. MONAHAN: Just for clarification, Your  
7 Honor, it the Willamette variety which is grown, not  
8 just in the Willamette valley.

9  
10 BY ADMINISTRATIVE LAW JUDGE:

11 Q. Ah, that's a big difference. Thank you.  
12 And that's what you meant...

13 A. Right...

14 Q. ...Dr. Folwell.

15 A. ...the variety.

16 Q. Thank you. Is there anything else about  
17 -- I'll open the question to others in a moment.  
18 Anything else about the information you provided to Dr.  
19 Tweeten for him to answer questions that you would like  
20 to elaborate on or explain?

21 A. Well, basically, the old order with this  
22 approach to setting a saleable percentage, there's no  
23 doubt that there was some rigidity involved in the whole  
24 process. Sometimes the rigidity involved whether or not  
25 buyers were willing to offer contracts in terms of what

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1 was happening with the recommended saleable percentage  
2 to the Secretary of Agriculture. But my understanding  
3 is with the proposed order, the actual mechanism for  
4 setting the saleable percentage, what calculations would  
5 actually be made, what information would be used in  
6 doing it, has not been determined. It's going to be  
7 left up to the administrative committee. So basically,  
8 I would say that there's the opportunity to make the new  
9 marketing order even more flexible than the older  
10 old order

11 Q. Now, did you testify earlier that that  
12 formula needs to be an accounting-type calculation?

13 A. It was an accounting-type operation  
14 It's what we call a balance sheet approach. They would  
15 basically go through and actually, one of those  
16 accounting sheets is in the exhibit that you just  
17 marked. I don't remember the number, exactly.

18 Q. Exhibit 34? The one you just gave me?

19 A. Okay, right. But towards the end of  
20 exhibit, the actual calculations and statistical  
21 projections that were made by the Hop Administrative  
22 Committee were there and what they would do is they  
23 would go through for the year in which they were  
24 operating and project out all of the domestic and the  
25 international components of supply and demand for the

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1 year that they're in and then project for a year into  
2 the future what they thought the demand was going to be,  
3 both domestically and internationally, what they thought  
4 the international supply was going to be in terms of  
5 production in other countries. They also estimated the  
6 level of imports and exports, and then they calculated  
7 what the difference was between all of these demand  
8 components and all of these supply components without  
9 taking into account yet what the domestic production  
10 was. And what they would do then, is calculate a  
11 saleable percentage based upon 58.9 million pounds, I  
12 believe, was the -- was 100 percent of the base in the  
13 old order and they would say okay, there's this less  
14 then for the US market -- or the US hop producers to  
15 supply to the market. They have all of these demand  
16 components in balance with all of the supply components  
17 and then typically, they would also add maybe a few  
18 million pounds in anticipation of trying to increase  
19 their market share around the world. In looking at that  
20 sheet, you're going to run into some other funny little  
21 names in there. There was a special allotment for  
22 Fuggle [ph] hops. It was a special variety produced  
23 solely in Oregon for Anheuser-Busch. The Hop  
24 Administrative Committee made provisions to supply this  
25 part of the market without any hindrance to or any type

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1 of allotment to it. They just allowed, you know, that  
2 more or less to happen.

3 Q. Is there -- you testified yesterday that  
4 there is a -- that you can anticipate that the benefit  
5 of a marketing order would far exceed the costs. Would  
6 that also be true if the marketing order did this type  
7 of calculation merely to distribute the information to  
8 hop growers without there being any control of the sale  
9 of hops?

10 A. I -- in 1986, just about in this room,  
11 when it was obvious that the old federal marketing order  
12 was going to be terminated, I pleaded with the industry  
13 at that point in time to do everything they could to  
14 retain the statistical part of the order in order to  
15 continue to collect the data, provide the interpretation  
16 to the market trends, et cetera. The industry chose not  
17 to do it at that point in time and I think it is a very  
18 valuable marketing tool, but I still do not believe that  
19 you would create an orderly marketing process in this  
20 particular industry. I have watched the industry over  
21 the last few years attempt voluntary programs to reduce  
22 the oversupply that is on the market. A voluntary  
23 program works like let my neighbor reduce their acreage  
24 I'm going to keep mine. It just hasn't worked.

25 Q. Thank you. Is there anything else you'd

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1 like to add?

2 A. No, ma'am.

3

4 ADMINISTRATIVE LAW JUDGE: All right. I  
5 appreciate your fielding these questions on direct  
6 examination. Now, cross-examination. Mr. Carswell?

7

\*\*\*

8

BY MR. CARSWELL:

9 Q. Thank you, Your Honor. Dr. Folwell, you  
10 mentioned that your understanding that the alpha  
11 production for the US, the percent was something around  
12 60 percent?

13 A. I have not actually made the  
14 calculations. It's possible that it could be much  
15 higher than the 25 percent that we were using yesterday  
16 in terms of a share based upon strictly pounds.

17 Q. Would it surprise you if it was actually  
18 around 35 percent?

19 A. It could be. As I said, I've not made  
20 the calculation myself

21 Q. That was as of 2002 crop, which is the  
22 last year data's available. This data's from the Hop  
23 Growers of America, Your Honor, and I have this 2002  
24 statistical report that we can get into the record  
25 eventually.

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1  
2 ADMINISTRATIVE LAW JUDGE: All right. Thank  
3 you, Mr. Carswell.

4 \*\*\*

5 BY MR. CARSWELL:

6 Q. You also indicated during your  
7 questioning that we had established somewhere between  
8 four and six buyers yesterday. I -- it was my  
9 understanding that you indicated four in your paper, but  
10 that we clearly got in about six during your testimony.  
11 Would you agree with that?

12 A. Well, if you want to count all the small  
13 micro-breweries out here that are buying a few pounds  
14 here and there, yes, it's some greater than six.

15 Q. Well, I believe we even identified some  
16 other brokers that you hadn't identified.

17 A. Well, I didn't -- I don't know the  
18 existence of those brokers.

19 Q. Okay. Then if you counted Anheuser-Busch  
20 and Coors, which aren't micro-brewers, you're up to six

21 A. Right.

22 Q. With the brokers you had identified.

23 A. Correct.

24 Q. You also indicated yesterday that you  
25 weren't here on any -- behalf of any group. That you

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1 were here on behalf on of the industry, correct?

2 A. I view this strictly as a service to the  
3 industry as a faculty member. I originally had  
4 permission from the administration of the university to  
5 serve as a public consultant on the marketing order and  
6 I also have permission from the administration of the  
7 university to provide this service to the growers who  
8 requested it

9 Q. Do you believe that you were here  
10 speaking on behalf of Idaho Hop Growers?

11 A. That's a difficult one to answer for me  
12 right now, basically, because I have not had any direct  
13 contact with the Opendorfs [ph] and the other people  
14 that I used to know in the hop industry down here. My  
15 contact was primarily with Washington growers here.

16 Q. If I were to tell you that all of the  
17 Idaho Hop Growers are against the marketing order and  
18 have signed a letter to that effect, would you think  
19 that -- would you believe that they would say that they  
20 agree with your position on this matter?

21 A. I had no idea. Signing a letter at one  
22 point in time and then actually voting are two different  
23 things, so I can't really say. I don't know

24 Q. If they were opposed to the order at the  
25 time of voting, would you say that you were speaking on

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1 years?

2 A. That's -- I mean, if the hops were  
3 planted and they're laying on the ground, they just had  
4 to be strung the next year. The trellis and irrigation  
5 I assume, is in place.

6 Q. All right, so couldn't you have a  
7 significant supply of response within just one season?

8 A. It could happen that way, yes.

9 Q. And isn't it possible, given your  
10 given the committee structure, a group decision -- I  
11 guess it would take six of eight votes to make an  
12 affirmative on the saleable. How do you -- how would  
13 you measure the correctness of that decision? Is there  
14 a theoretical target, like a revenue figure you could  
15 look at after the fact and say they got it right?

16 A. Basically, in terms of serving as a  
17 public consultant on that marketing order, what I looked  
18 at and I had access to their projections at least the  
19 night before the night the meeting would occur, I would  
20 look at their projections, see whether or not they  
21 appeared to be reasonable for the various supply and  
22 demand components and then look at what they put in as a  
23 saleable percentage, and if that saleable percentage was  
24 less than what the market said it was wanting to buy out  
25 there, then I would object to it.

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1           Q.   And did you object to any of the saleable  
2           recommendations?

3           A.   We often had discussions about what the  
4           saleable was and what it should be.  And the way the  
5           meetings typically ran, I think I described it yesterday  
6           was that the statistical subcommittee would give their  
7           projections.  The dealers' advisory group, which also  
8           was part of that old order, would give their  
9           projections, then each member of the HAC -- they would  
10          go down the table and each member of the HAC would give  
11          their interpretation of the trends in the market and  
12          what they should be and then I was usually the last one  
13          to react.  They would usually turn around to me and say  
14          Doc, what do you think of it?

15          Q.   Right.  Well, what percentage at the time  
16          did you think that the committee vote was correct.  The  
17          saleable was correct, in your view?

18          A.   The vast majority of the time.  I mean,  
19          we had discussions and there was [sic negotiations that  
20          -- I would call them negotiations, a give and take that  
21          occurred in terms of arriving at a saleable that would  
22          not restrict the flow of hops.

23          Q.   But they did get it wrong once in a  
24          while?

25          A.   I think some of the people, in their  
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1 projections of what they were projecting out at times  
2 were wrong and that was the reason for every member of  
3 the administrative committee plus the statistical  
4 subcommittee to have input into the process.

5 Q. Now, you indicated that under the new  
6 order the provisions would be less binding on a  
7 committee, they could have greater discretion in setting  
8 the saleable?

9 A. Well, number one, I don't think the  
10 proposed order actually states how the saleable will be  
11 determined. Number two, I think because it is not  
12 stated in the proposed order, I think there's the  
13 flexibility to build various -- if you want to call  
14 safeguards into the order? I think the whole balance  
15 sheet approach, if that's the one chosen, if in fact the  
16 order goes into place is used, we're not going to be  
17 talking about pounds of hops anymore. We're going to be  
18 talking about alphas. So there's going to have to be  
19 major adjustments in the whole accounting process that  
20 was used to balance supply and demand.

21 Q. Well, did the old order have constraints  
22 actually written into the order?

23 A. I'm trying to remember if there -- I  
24 don't believe there was any type of constraint at all.  
25 As a matter of fact, if -- I'd rather not say anything,

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1 because it would be just truly a guesstimate on my part  
2 trying to recall what was in the actual order

3 Q. Okay. So you're not really sure if this  
4 committee has any more legal flexibility in setting the  
5 saleable than the old committee did?

6 A. I think because it has not been set, the  
7 opportunity exists to create more flexibility. That's  
8 what I stated earlier.

9 Q. Okay, but the old -- neither the old  
10 order or the new order provided the -- I think you  
11 called it the balance sheet.

12 A. For -- I don't quite follow what your  
13 question

14 Q. Right. Well, neither the old order or  
15 the new order provided the detailed formula the  
16 committee is expected to use?

17 A. I was not there in 1966 when the old  
18 order was instigated, so I can't tell you exactly how  
19 that balance sheet was arrived at and of course, with  
20 the proposed new order how the balance sheet will be  
21 developed has not been developed yet. I mean, it's up  
22 to the administrative committee if, in fact, the order's  
23 put in place

24 Q. So isn't there still a chance under the  
25 new order that the committee will get it wrong in terms

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1 of setting the saleable, occasionally?

2 A. There's always the possibility any time  
3 you're projecting something out 18 months into the  
4 future, that you're not going to be 100 percent accurate  
5 and there's going to be times when you're going to be  
6 off a little bit. However, you have to realize that  
7 what the administrative committee of this proposed order  
8 would recommend -- and I underline the word recommend  
9 to the US Department of Agriculture and the Secretary of  
10 Agriculture is brought under very tight scrutiny as to  
11 what's happening in the industry and they're going to be  
12 very much aware of whether or not there is any  
13 restriction in terms of the flow of hops to the market  
14 is apparently going to happen.

15 Q. But isn't that...

16 \*\*\*

7 ADMINISTRATIVE LAW JUDGE: Mr. Moody, it's  
8 9:51 and Dr. Folwell, I think yesterday you said you  
9 needed to be out of here by 9:30?

10 DR. FOLWELL: That's okay. There aren't too  
11 many state troopers..

12 MR. MOODY: I'm finished, Your Honor. Thank  
13 you.

14 ADMINISTRATIVE LAW JUDGE: Mr. Carswell?

15 \*\*\*

1 BY MR. CARSWELL:

2 Q. I'm sorry, Your Honor. I just had a  
3 couple more questions. With respect to the decision  
4 making by the Hop Administrative Committee, you  
5 mentioned earlier that -- again, this reference to greed  
6 took over. Could you describe what happened?

7 A. Okay. It was not greed by the  
8 administrative committee. What -- and I'm not going to  
9 name any people.

10 Q. I'm not asking.

1 A. I don't want any lawsuits. But  
12 basically, one or more hop producers at the time when  
13 the value of the base increased, went out and sold their  
14 entire allotment to other people. They came back to the  
15 Hop Administrative Committee and said I'm a hop grower.  
16 I want base, give it to me. And the administrative  
17 committee says no, this is going to destroy, you know,  
18 the whole process that we've put into place in terms of  
19 a marketing tool. At that point in time -- and please  
20 don't be offended by this -- but up to that point in  
21 time, we used to have more growers in the room that were  
22 interested in their future and what was happening in the  
23 hop industry than anybody else. All at once, we had  
24 more attorneys attending those meetings than we did  
25 growers. So that should sort of paint a picture of what

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
2 Carswell. Are there any questions of Dr. Folwell from  
3 the USDA representatives before he leaves? No. Dr  
4 Folwell, thank you for staying late.

5 DR. FOLWELL: Thank you

6 ADMINISTRATIVE LAW JUDGE: You're welcome  
7 Let's take a 15 minute break. Please be back and ready  
8 to go at 10:10

9 MR. MONAHAN: Your Honor

10 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

11 MR. MONAHAN: Before we do go off the record  
12 -- can you hear me?

13 ADMINISTRATIVE LAW JUDGE: Yes.

14 MR. MONAHAN: I would -- I regret not bringing  
15 this up first thing. I meant to. We are now in day  
16 five of these hearings, which means four days gone, four  
17 to go. We're past half time and the proponent's  
18 committee would ask, Your Honor...

19 ADMINISTRATIVE LAW JUDGE: Let's do this after  
20 the break

21 MR. MONAHAN: Okay, Your Honor.

22 ADMINISTRATIVE LAW JUDGE: Thank you. 10:10.

23 \*\*\*

24 [Off the Record]

25 [On the Record]

\*\*\*

2 ADMINISTRATIVE LAW JUDGE: ...distributed now.  
3 We're back on record at 10:11. Mr. Monahan, before I  
4 call on you to present the proposition you have for us,  
5 I wanted to talk a little bit about the exhibits. I've  
6 looked at what I had marked as Exhibit 34, which is the  
7 US Hop Administrative Committee document that Dr.  
8 Folwell referenced. The information's 20 years old, but  
9 some things are still the same and so I believe it may  
10 have value. It's a number of pages. I'll be happy to  
11 copy that if I don't get any volunteers, but if anyone  
12 would volunteer to make 15 copies of this, I would  
13 accept that gratefully. Dr. Hinman? Thank you. I  
14 appreciate that. And after we've made -- thank you very  
15 much. After we've gotten copies made and distributed,  
16 then we'll deal with whether that will be admitted into  
17 evidence, but I think it has value. With regard to  
18 Exhibit #33, I assigned that to Dr. Tweeten's report,  
19 which we got copies of last night, but I didn't say on  
20 the record that I had done that. I'd like to ask at  
21 this time whether there's any objection to the admission  
22 into evidence of Dr. Tweeten's report? There is none.  
23 Exhibit 33 is hereby admitted into evidence. Did I  
24 admit into evidence Dr. Jekanowski's presentation? I  
25 show that I did. Exhibit 30?

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MR. MOODY: Yes, Your Honor.

2 MR. MONAHAN: I think we did that yesterday.

3 ADMINISTRATIVE LAW JUDGE: All right. How  
4 about 31 and 32? You've just gotten copies of those  
5 today, is that correct?

6 MR. MONAHAN: Yes. We still need to admit  
7 those, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: All right. So I'll  
9 come back to that. All right, Mr. Monahan, you may  
10 start at the beginning of what you were concerned about  
11 that you started to say before the break.

12 MR. MONAHAN: Thank you, Your Honor. The  
13 proponent's committee would seek some guidance from the  
14 court as to how we are going to proceed with what is an  
15 increasing disparity in the time consumed by the  
16 opposing parties to this proceeding.

17 ADMINISTRATIVE LAW JUDGE: Your voice is  
18 pretty quiet.

19 MR. MONAHAN: The last time..

20 ADMINISTRATIVE LAW JUDGE: That's better.

21 MR. MONAHAN: ...we took a tally in Portland,  
22 I believe that the proponents were being outpaced by a  
23 factor of about three hours to one hour by the  
24 opponents. I don't sense that that discrepancy or ratio  
25 has really changed since we've moved to Yakima. We are

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1 now on day five, past the mid-point of the time allotted  
2 for these proceedings and the concern from the  
3 proponents' committee is at some point in time we become  
4 unable to bridge the gap, to reach a point of equality,  
5 to actually balance the time allotted for the sides and  
6 we would seek some guidance from the court on how that's  
7 going to be handled. Yesterday I announced to the court  
8 what I believed to be the time necessary to present the  
9 balance of the proponents' case, and my suspicion,  
10 although I've not kept specific records, but my  
11 suspicion is that even if we used all of the time left  
12 to present the proponents' case without any cross-  
13 examination, we still would not be on equal footing with  
14 the time thus far consumed by opponents. Ultimately,  
15 we're going to have to figure how to deal with that and  
16 I would ask for some guidance from Your Honor

17 ADMINISTRATIVE LAW JUDGE: All right, going  
18 into this hearing, those opposed to the marketing order  
19 had basically requested equal time and I believe what  
20 they thought I would measure is just direct testimony,  
21 but that's not how I measure it. I have tallied the  
22 time spent yesterday. I have not yet tallied the  
23 afternoon of Friday back in Portland, but you're right,  
24 Mr. Monahan. For example, yesterday you called Dr.  
25 Folwell and with regard to his direct testimony and the

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1 distribution of the exhibits, proponents used all day  
2 one and one quarter hours. Those against the marketing  
3 order used a total of two and a half hours in cross-  
4 examination of Dr. Folwell and then two and a quarter  
5 hours in Dr. Jekanowski's direct presentation. So that  
6 meant of the six hours yesterday, the proponents used  
7 one and a quarter and those against used two and three  
8 quarters -- excuse me, four and three quarters. So  
9 you're right, it continues to require more time by those  
10 opposed. Now, I do not think that a fair hearing  
11 necessarily requires an exact equal number of minutes  
12 consumed and there are multiple groups here who are  
13 against the marketing order. They're not just one  
14 group. So I don't necessarily think you each have to  
15 have exactly equal amount of time. But you're right to  
16 raise your concern, because if we keep going the way we  
17 have gone every day so far, proponents may not get an  
18 opportunity of complete their presentation, so you and  
19 the -- those against the proposal agreed that yesterday  
20 would be devoted to economists, but it spilled over. So  
21 we'll continue to finish with the economists, including  
22 cross of Dr. Jekanowski eventually today, I hope. Most  
23 of that will probably be done by proponents. So once we  
24 finish with the economists, it would be fine with me if  
25 proponents went through uninterrupted until they finish,

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1 but I'd like to see what problems that might pose for  
2 those who are against the marketing order. Would that  
3 pose any problem for you and your clients, Mr. Moody?

4 MR. MOODY: I will let Your Honor -- for the  
5 next break. I just want to find out who can't be here  
6 past Wednesday. But I'll let you know at the next  
7 break, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: Excellent. Mr.  
9 Carswell?

10 MR. CARSWELL: It shouldn't be a problem, Your  
11 Honor

12 ADMINISTRATIVE LAW JUDGE: All right. Anybody  
13 else have any thoughts or suggestions with regard to  
14 this? Ms. Deskins?

15 MS. DESKINS: Another issue that we need to  
16 bring up is there are some other proposals that are in  
17 the notice and I think we do have to keep asking if  
18 anyone's here on those proposals and there could be a  
19 time factor for that because if someone wants to put on  
20 evidence on that, that needs to be considered, too.

21 ADMINISTRATIVE LAW JUDGE: That's right. And  
22 we do have people who appeared on direct in Portland who  
23 have not yet been subject to cross-examination and their  
24 direct testimony should not be allowed to be left  
25 unchallenged, so we have that, as well. Is anyone here

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1 from Linsane Farms [ph]? How is that pronounced?

2 UNKNOWN: Lonsane [ph].

3 ADMINISTRATIVE LAW JUDGE: Lonsane? Lonsane  
4 Farms to speak with regard to the proposals two through  
5 ten?

6 MR. MOODY: He's not here today, Your Honor.  
7 We'll find out what day he's available.

8 ADMINISTRATIVE LAW JUDGE: All right, good.  
9 All right. So I don't have an answer for you yet, but I  
10 will get you one, Mr. Monahan

11 MR. MONAHAN: Thank you, Your Honor

12 ADMINISTRATIVE LAW JUDGE: You're welcome

13 MR. MONAHAN: The only other housekeeping or  
14 scheduling matter I'd bring up is to remind the court  
15 that today is the last day that Mr. Christensen will be  
16 in town.

17 ADMINISTRATIVE LAW JUDGE: All right, thank  
18 you. I appreciate that. All right, Dr. Tweeten. I  
19 would like to open the floor to additional cross-  
20 examination of Dr. Tweeten. I began with Mr. Folwell or  
21 Dr. Folwell simply because he had to leave, but now I go  
22 back to my normal practice of inviting those to ask  
23 questions who are here in a position against the  
24 marketing order. Is there anyone that would like to  
25 Dr. Tweeten questions about his presentation or anything

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1 else that's the subject of this hearing? All right,  
2 there are none. Now, those who are here in favor of  
3 marketing order, you may cross-examine Dr. Tweeten.

4 MR. SMITH: Hello, Judge.

5 ADMINISTRATIVE LAW JUDGE: Hello, welcome.  
6 Would you identify yourself for the record?

7 MR. SMITH: Michael Smith.

8 ADMINISTRATIVE LAW JUDGE: And where do you  
9 grow hops?

10 MR. SMITH: I grow hops in Yakima, the Yakima  
11 Valley.

12 ADMINISTRATIVE LAW JUDGE: All right. That  
13 lavalier is a little low to catch your voice. Can you  
14 make it closer?

15 MR. SMITH: Is that any better?

16 ADMINISTRATIVE LAW JUDGE: Count five to one

17 MR. SMITH: Five, four, three, two, one.

18 ADMINISTRATIVE LAW JUDGE: It's not as good as  
19 it has been on some people. It's because you're taller.  
20 Your mouth is farther from.

21 MR. SMITH: I've got a long neck. How's that?  
22 Is that any better?

23 ADMINISTRATIVE LAW JUDGE: Okay, raise your  
24 hand if you can hear him. Fine. Ah, you're okay.

25 MR. SMITH: Okay.

1 ADMINISTRATIVE LAW JUDGE: All right. Mr  
2 Smith, you may cross-examine Dr. Tweeten.

3  
4 BY MR. SMITH:

5 Q. Dr. Tweeten, I gave a presentation last  
6 week when the hearing was in Portland and I referred to  
7 myself as a dumb farmer. And even after almost five  
8 days of testimony I don't feel that that situation's  
9 changed a whole bunch. So I'm hoping that you'll bear  
10 with me when I ask you some questions, recognizing that  
11 I'm not an economist, number one, and number two, I'm  
12 not an attorney. So I may stumble a little bit here  
13 again, I hope that you'll have some patience with me.  
14 Regarding supply and demand, Doctor, in you opinion, a  
15 balanced supply and demand situation would be an  
16 advantageous situation or a disadvantageous situation?

17 A. Other things equal, a balanced supply  
18 demand would be an advantageous situation. But may I  
19 elaborate a bit?

20 Q. Certainly

21 A. A frequent complaint of farmers -- and  
22 believe me, I spend a great deal of farm -- of time with  
23 farmers and they complain quite often about exploitation  
24 by the agri-business sector and they accuse it of being  
25 an oligopoly and with that kind of imperfect competition

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1 with market power, they say farmers are not getting a  
2 fair return, a fair price for their commodities. Now,  
3 we don't know much about the pricing and output behavior  
4 of oligopolies, but we do know very sure about one  
5 aspect of them. They innovate and they advertise like  
6 heck. They are very aggressive. Consequently, in my  
7 judgment, we sell more -- far more food and beverages in  
8 this country because we have that imperfect competition  
9 in the agri-business sector. And that means higher  
10 prices and bigger markets for farmers

11 Q. Thank you, Doctor. I appreciate that,  
12 but I'm trying to figure what relevance it had to the  
13 advantages of a balanced supply and demand situation

14 A. If you had a balanced supply and demand  
15 situation, then you could look at balance as two  
16 monopolies facing each other or two perfectly  
17 competitive sectors facing each other, but let's say if  
18 it's perfectly sectors. Perfect competition can't  
19 advertise and they can't innovate because they can --  
20 pardon the jargon here of economics, and I might say  
21 parenthetically, there is no such thing as a dumb  
22 farmer, believe me. If it were a perfectly competitive  
23 sector, the -- agri-business could not innovate because  
24 they can't afford research, they can't advertise because  
25 they're such a small part of the market that they can't

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capture an increasing portion of the market by  
2 advertising, so in my judgment, if you had competition  
3 that is an atomistic structure of a great many firms, on  
4 the agri-business side farmers would be worse off. Now  
5 maybe that doesn't answer your question because the  
6 other alternative is for both to be monopolies. I  
7 regard that as purely academic, not relevant.

8 Q. Okay

9 A. I'm not going to answer it.

10  
ADMINISTRATIVE LAW JUDGE: Before you ask your  
12 next question, Dr. Tweeten, you've used the term before  
13 -- and I just want to make sure the typist gets it  
14 correct, atomistic, would that be A-d-a-m-i-s-t-i-c?

15 DR. TWEETEN: A-t-o-m.

16 ADMINISTRATIVE LAW JUDGE: Oh, so you're not  
17 referring back to an Adams?

18 DR. TWEETEN: No

19 ADMINISTRATIVE LAW JUDGE: You're referring.

20 DR. TWEETEN: ...atom in terms of something  
21 small. Very many small firms, so no one has an impact  
22 on output of the industry, that is, a notable impact  
23 the behavior of one firm does not influence the outcomes  
24 for other firms directly.

25 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.

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1 Smith, you may proceed

2 \*\*\*

3 BY MR. SMITH:

4 Q. Back to a balanced market, Doctor. In a  
5 fairly balanced market situation, what are some of the  
6 benefits that producers derive from that situation?

7 A. A balanced market? Well surely, we want  
8 producers to be treated fairly. They need to cover the  
9 costs of their production and again, if I might appeal  
10 to research that I have done over the last 40 years, one  
11 of the things that I have done is compute the rates of  
12 return on equity for farms of different types and sizes  
13 for approximately every five-year interval since 1960  
14 and what I find is that the more able managers, that is  
15 the top-half of commercial farmers, of 95 commercial  
16 farmers, one with sales of \$250,000 or more of crops and  
17 livestock a year. They have done very well in terms of  
18 rates of return on their assets. They average 10  
19 percent and on up. Many of those average 15, 20 percent  
20 or more and I found that to be true for virtually five-  
21 year period. The point of it is that adequate size  
22 reasonably well-managed farms have been doing very well  
23 and I predict that in the next 20 years, 50 years, the  
24 same thing will hold and so the -- a lot of the reasons  
25 farmers complain is that most farmers are not in this

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1 category that I talked about. Most farmers are too  
2 small or not well enough -- not efficient enough to earn  
3 this competitive return. Now, they survive with all  
4 farm income. It's a hobby for them. They're willing to  
5 subsidize their farm operation. So even in a well-  
6 functioning economy, we don't expect all farmers to earn  
7 a return competitive with what the industry is giving.  
8 Because the industry is not in it for the hobby.

9 Q. Would it be fair to summarize your  
10 response that a producer's benefit of a balanced market  
11 is that he would receive the cost of production plus a  
12 reasonable profit?

13 A. Yes. And I would say that on average,  
14 that's true today. A reasonably well-managed adequate-  
15 size farm, on average, is earning a rate of return  
16 comparable to rates of return in other sectors, like  
17 resources in other sectors of the economy.

18 Q. And is that true for farms that are  
19 dealing in commodities that are out of balance?

20 A. You're sort of defining yourself out of  
21 this situation there

22 Q. I'm just asking the question, Doctor.

23 A. Well, yes. When they're out of balance,  
24 yes, they'll earn more returns and there are cycles of  
25 low returns, but what I find is that farmers do

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1       remarkably good job within about five years of getting  
2       back into balance.

3               Q.    And have you studied the hop market to  
4       see how long it's been out of balance?

5               A.    Okay.  Consumer benefits from a balanced  
6       market.

7               Q.    Can you share some of those with us?

8               A.    There's a lot of talk about a cheap food  
9       policy.  I think that's a pejorative that is unfortunate  
10      in many ways.  The world's progress out of a  
11      hunter/gatherer society with the most primitive systems  
12      of production and food gathering, disease, lack of  
13      education, so forth -- our progress in civilization is  
14      largely one of improving efficiency in agriculture so we  
15      would need fewer and fewer people in agriculture so that  
16      we free people to provide health care, education,  
17      entertainment, and all these other accoutrements of high  
18      standard of living.  So we wanted to look at efficiency  
19      as the way to improve our standard of living and how  
20      this industry has been a part of that.  The hops  
21      industry has improved its efficiency.

22              Q.    I still -- out of you answer, and I admit  
23      it was very eloquent, I didn't quite derive what  
24      consumer benefits there are to a balanced market.  Just  
25      in layman's terms -- I'm a dumb farmer sitting here

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1 Explain to me how a consumer benefits from a balanced  
2 market.

3 A. A consumer benefits from a balanced  
4 market by getting high-quality commodities, food  
5 supplies at reasonable prices.

6 Q. Couldn't the case be made that in the  
7 short term, a consumer benefits if there's an oversupply  
8 of a commodity or product?

9 A. Definitely, but that's very misleading

10 Q. Why is it misleading?

11 A. Because we have this cobweb effect  
12 pardon the jargon, it basically means that when you get  
13 a surplus for consumers, prices go down, farmers produce  
14 less, and then there's a shortage and then prices go way  
15 up so one of the purposes of stocks and futures markets  
16 and all of these many, many private and public devices  
17 to stabilize the market is to get away from these  
18 problems.

19 Q. So I think what I heard you say was that  
20 consumers as well as producers benefit from a balanced  
21 market in the long run. In the short run they may  
22 derive benefits from an out-of-balance situation, but  
23 over the long term.

24 A. Yes.

25 Q. ...that's not true.

1 A. I would rather not use the word balanced  
2 I would say a well-functioning...

3 Q. A well-functioning market, okay. What  
4 about traders in the market? Doctor, do traders benefit  
5 from a stable, well-functioning market or do they  
6 benefit more from a volatile environment?

7 A. It's a mixed -- if you're a speculator,  
8 you benefit from an unstable market and I've had a  
9 couple of students who've made their living as  
10 speculators

11 Q. Right.

12 A. You talk about high risk. Farmers say,  
13 you know, we can't stand risk, we don't want risk, we  
14 want to be compensated and protected by the government  
15 from risk, but we don't protect other sectors from risk.  
16 We don't protect the Wall Street plunger, the Los  
17 Angeles gambler -- Las Vegas, I mean, gambler and so  
18 forth. So risk any other place is taxed, in many cases.  
19 For some reason or other, in agriculture, we feel it  
20 ought to be subsidized

21 Q. Um-hum. So -- but essentially what  
22 you're saying is that for a trader to really maximize  
23 his profitability, he can do so much more easily in a  
24 volatile price environment, is that true?

25 A. I would say that of a speculator. I

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1 would not say for a trader, in general

2 Q. Okay. Do certain markets, when they're  
3 out of balance or not functioning correctly, to use your  
4 term, tend to inflict more economic pain on the  
5 participants than others?

6 A. Society is far best served by well-  
7 functioning markets

8 Q. That actually wasn't the question. What  
9 I asked was if certain markets, as compared to other  
10 markets when they're out of balance, do they tend to  
11 inflict more pain on the participants of that market  
12 than other -- than the other markets?

13 A. Well, certainly, the industry in which  
14 these imbalances occur, they are often the chief victims  
15 of those imbalances.

16 Q. It could be both the consumer and the  
17 producer side, correct?

18 A. Yes. And that's one of the reasons why  
19 for any sector we want to make it function as well as  
20 possible and avoid undue disturbances that upset the  
21 market.

22 Q. So if we have a market that fluctuates  
23 widely in price based on changes in supply

24 A. Um-hum.

25 Q. ...that's the type of market that would

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1       tend to inflict more pain on its participants, am I  
2       correct in that assumption?

3               A.    Again, as I noted earlier, there is some  
4       price variation that's desirable. We need to send out  
5       changing signals to get resources to move in the right  
6       directions or products to move in the right direction,  
7       but if it's above and beyond that degree of variability,  
8       then there all kinds of forces that come into play. You  
9       mention those who gain from instability. The  
10      speculators come in and they buy commodities when things  
11      are cheap, sell commodities when things are high.  
12      Stockholders come in, they accumulate stocks when prices  
13      are low, quantities are high, and vice-versa. This  
14      helps to stabilize the market, so there are private  
15      market devices that make for optimal stability and the  
16      private sector, by operating with respect to market  
17      incentives, tends to bring about the optimal degree of  
18      stability. Whenever you introduce committees, manmade  
19      devices to figure out this is the optimal amount of  
20      variation or whatnot, the history of these things has  
21      been that they don't do a very good job of it

22              Q.    Doctor, I appreciate your -- again, your  
23      very eloquent answers, but my question was in a -- in a  
24      commodity or a market where the price of that commodity  
25      moves significantly up and down with small degrees of

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1 changes in production. Does that market have the  
2 tendency to inflict more pain on its participants than  
3 another market, that -- where the price doesn't move as  
4 rapidly. Just a simple answer, please.

5 A. Yeah, other things equal, the more  
6 unstable the sector, the more pain it brings, but...

7 Q. Thank you, thank you.

8 A. Good.

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: You may finish  
11 after the but. What were you going to say?

12 DR. TWEETEN: Excuse me, Your Honor. May I  
13 finish that?

14 ADMINISTRATIVE LAW JUDGE: You may.

15 DR. TWEETEN: This instability is also an  
16 opportunity and if you're a producer, if you produce  
17 counter-cyclically, you can make a mint. And of course,  
18 a speculator can do the same thing. A stockholder can  
19 do the same thing. So sure, it offers pain, but it also  
20 offers major gain

21

22 BY MR. SMITH:

23 Q. Major gain for a minority of the  
24 participants, isn't that true?

25 A. Well, it depends on how many people want

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1 to get into this

2 Q. But if I'm out -- I'm operating counter-  
3 cyclically, don't I have to be in the minority?

4 Otherwise, I'm in the majority.

5 A. Well...

6 Q. And I'm operating with the cycle

7 A ...if enough people do it, you might even  
8 turn the cycle exactly the other way around.

9 Q. Thank you. Doctor, yesterday we had  
10 there was quite a bit of discussion about demand and the  
11 elasticity of demand. And sitting in the audience, I  
12 heard terms such as binary variables, positive auto-  
13 correlation, demand coefficient, double logarithm  
14 function, and to me those are pretty complicated terms  
15 and concepts that were being utilized to explain what  
16 again, to me, is a fairly simple concept. And as a  
17 professor, I would like it if you -- if possible, for  
18 you to indulge me for a moment and pretend that this is  
19 an Econ 101 class and I would like for you to explain as  
20 simply as possible, recognizing that a lot of us are not  
21 going to be going into economics, we're taking this  
22 class because we're forced to, explain as simply as  
23 possible the concept of price elasticity of demand

24 A. Price elasticity of demand refers to the  
25 percentage change in quantity associated with a one

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1 percent change in price.

2 Q. Thank you. Could you give me an example,  
3 or give us as a class, an example of a product or  
4 commodity that has a very elastic demand?

5 A. Probably some kind of -- one brand of  
6 beer. If Miller High Life increases its price, there's  
7 probably a massive substitution of some other beer for  
8 that and so a small change in price brings a lot change  
9 in quantity, the demand for that is very elastic

10 Q. Okay. Conversely, could you give us an  
11 example of a product where the demand is almost  
12 perfectly inelastic?

13 A. Well, in the short run, gasoline has  
14 quite a highly inelastic demand, but I want to emphasize  
15 that there's a big difference in the short and long run.

16 Q. Can you give me an example of a product  
17 in the long run that has a very inelastic demand?

18 A. Very inelastic in the long run? That's a  
19 little tougher, because most commodities tend have  
20 elastic demands in the long run. Food, in general  
21 probably -- you know, if you take food for the world as  
22 a whole, the elasticity demand for that -- price  
23 elasticity of demand is probably pretty inelastic even  
24 in the long run.

25 Q. What about salt?

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1 A. Salt? Probably pretty inelastic.

2 Q. In the long run, would...

3 A. In the long run.

4 Q. Explaining salt and why it's inelastic in  
5 demand to the class here, could you explain why that's  
6 true?

7 A. For one thing, it doesn't cost a lot for  
8 salt, so it doesn't mess up your income, your real  
9 income -- remaining income. You can afford to spend  
10 some money on it. Secondly, it has a high value to many  
11 people and they're simply not willing to give it up even  
12 if there's a change in price. So consequently, they're  
13 very responsive to a change in price, so it's very  
14 inelastic

15 Q. So if -- as a consumer of salt then, if  
16 the price of salt falls by 50 percent, I'm probably not  
17 going to use any more of it

18 A. You wouldn't use very much more of it

19 Q. Give me an example of a situation where  
20 if the price of salt fell 50 percent, I'd use any more

21 A. I'm sure I could give example of  
22 individuals. In foods, there are ways to substitute for  
23 the use of salt. Those people who are salt intolerant  
24 are quite aware of those substitutes and so the price of  
25 salt has some effect, not a lot of effect, but yes, it

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2 does have some effect because there are substitutes for  
3 salt, that tend to give some seasoning, but not from not  
4 salt

4 Q. So then do I understand you correctly to  
5 say that if salt -- if the price of salt were to double,  
6 that I would -- that there are consumers out there that  
7 would look -- and I'm talking individual consumers in  
8 this example -- who would look for an alternative for  
9 salt?

10 A. Some would, yes

11 Q. And would -- do you think that would be a  
12 significant percentage of the population that would

13 A. I don't know.

14 Q. ...look for an.

15 A. I don't -- well, it's just a judgment on  
16 my part, but I don't think it would bring about a big  
17 change. Now, I may add something to this and that is  
18 I'm talking about salt in the world. If you double the  
19 price of salt in the US, US salt consumers, the  
20 companies that provide it, might go to Mexico, or some  
21 other part of the world to get their salt, so the demand  
22 for salt in the US might be quite elastic

23 Q. But actually, the consumer -- you're  
24 talking about the distributors of salt.

25 A. Yes.

1 Q. But the consumer -- I'm talking about  
2 consumer -- the person that actually uses the salt is  
3 not going to change his demand much.

4 A. And I'm talking about industry demand in  
5 the United States for salt.

6 Q. I understand, I understand. Effectively,  
7 then, when we talk about salt, it's really what's it  
8 being used for as you as a consumer or anybody else in  
9 this room?

10 A. Well, to make your food taste better.

11 Q. It's a flavoring ingredient, isn't it?

12 A. Right.

13 Q. Yeah. What do you know about spearmint  
14 and its use as...

15 A. Well, I chew gum occasionally

16 Q. And spearmint provides what in gum?

17 A. Well, flavoring.

18 Q. Flavoring. And would you expect that  
19 demand for spearmint oil would be inelastic or elastic,  
20 if you're a gum manufacturer?

21 A. I think it would be quite inelastic for  
22 an individual consumer

23 Q. Okay. So how do you know -- or your  
24 familiarity with hops. Hops are used to do what in  
25 beer?

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1 A. To improve the flavor.

2 Q. Improve the flavor. So salt's a  
3 flavoring ingredient and it has a very inelastic demand.  
4 Spearmint oil is a flavoring ingredient and has a very  
5 inelastic demand. Hops are a flavoring ingredient.  
6 Would you agree that hops also have a very inelastic  
7 demand?

8 A. For the individual consumer

9 Q. Thank you. So I go back to my earlier  
10 question, is it possible that there are certain markets  
11 -- maybe the markets for flavoring ingredients, for  
12 example, that might be better suited to market controls  
13 because of their inelasticity than a commodity like  
14 wheat or corn or soy beans?

15 A. I would say basically no.

16 Q. Would you elaborate, please?

17 A. Because we -- we're talking here about  
18 industry demand?

19 Q. No, I'm talking about consumer demand

20 A. But that's not the way the market works

21 Q. Well, it absolutely is the way the hop  
22 market works. Okay, the consumer and the industry  
23 happen to be the same, but it's the brewer. The  
24 brewer's not going to use any more hops if the price  
25 decreases. He's not going to use less if the price.

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1           A. I can assure you that the industry demand  
2 for hops behaves very differently than an individual  
3 consumer's demand for hops and we're -- we need to deal,  
4 as an economic batter, with the industry, not with what  
5 any individual consumer does.

6           Q. Well, isn't the industry -- and we're  
7 talking about brewers -- aren't they the consumers?

8           A. The industry's made up of consumers, but  
9 total demand is made up of two components. One is for  
10 the United States demand for hops, the consumer demand  
11 in the United States. The other is the demand abroad,  
12 which is made up of two components and one is what  
13 others will purchase abroad and the other is what they  
14 will supply to us in response to a change in price. In  
15 other words, a net trade demand. And that component is  
16 highly elastic. And unless you want to erect major  
17 barriers against international trade, that overall  
18 demand is going to be elastic for hops.

19          Q. But when we look at industry demand for  
20 hops and industry supply of hops, I have a difficult  
21 understanding -- maybe it's just because I'm dense -- I  
22 have a difficult time understanding how the demand for  
23 hops can be elastic and the reason I say that is I can  
24 understand how the United States in any given year may  
25 produce and sell hops to a consumer, a foreign consumer

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1 and in effect, take away market share from a foreign  
2 producer in that given year. But the hops that that  
3 foreign producer produced in that year don't disappear  
4 As we talked about yesterday...

5 A. Let's say raise the price of hops. The  
6 effect will be that consumers in the United States may  
7 cut back just a little bit, as you mentioned, but if  
8 raise the price of hops, the Chinese producers get real  
9 excited and get geared up and there was a lot of talk  
10 yesterday about their primitive technology. Believe me,  
11 I witnessed over and over again that the Chinese are  
12 incredibly innovative and it won't be long, if it hasn't  
13 happened already, that they will be up to speed in terms  
14 of technology. The Germans may produce more. We may be  
15 selling hops in a lot of different markets, thereby to  
16 be purchasing less because they're going to be going  
17 elsewhere. There are consumers who will be reacting in  
18 terms of the higher prices, and so forth. We live in an  
19 international world and we have to recognize and unless  
20 we want to erect a barrier around this country, the  
21 demand for hops is going to be elastic. And given the  
22 trends in the World Trade Organization, although Cancun  
23 is not an inspiring example, the trend is toward greater  
24 globalization of trade. So we're going to be operating  
25 in an international atmosphere.

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Q. So then in your example, Doctor, if the  
2 Chinese can ramp up their technology and are able to  
3 produce hops significantly cheaper of the same quality,  
4 then your assumption, I take it, is that the Chinese  
5 production would supplant that of the United States?

6 A. Exactly.

7 Q. And then that would -- can I further  
8 assume, then, that you believe that consumers of hops  
9 would be comfortable relying on a hundred percent of  
10 their hop production produced from China?

1 A. Well, we're really not -- that's totally  
12 an academic thought...

13 Q. Well, I'm just curious about what your  
14 observations...

15 A. No, we're not going to be consuming their  
16 hops. Unless you tie this market up in a lockstep,  
17 fixed marketing order, we're going to be very  
18 competitive.

19 Q. So as long as the supply of hops out of  
20 the United States is fairly well matched to demand,  
21 there's a limit to the amount of market share that we  
22 would lose to the Chinese, would you agree?

23 A. If the American hop industry tends to its  
24 knitting and it continues to improve technology,  
25 continues to leave market open, continues to let young

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1 people with innovative, enterprising ideas come in, the  
2 American hop industry is going to be healthy and  
3 profitable for efficient producers and you won't need to  
4 worry an awful lot about the Chinese, in my judgment.

5 \*\*\*

6 MR. SMITH: Thank you very much, Doctor. I  
7 have no further questions, Your Honor

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
9 Smith. Other questions for Dr. Tweeten? Mr. Monahan?

10

11 BY MR. MONAHAN:

12 Q. Thank you, Your Honor. Dr. Tweeten, you  
13 and I chatted briefly during the break and I recounted  
14 to you what happened when I punched your name into a  
15 search engine this morning on the Internet. You  
16 explained that you had done the same thing recently We  
17 learned, I think you'd agree that you are a highly  
18 visible and outspoken critic of government farming  
19 programs, is that right?

20 A. That's safe to say.

21 Q. Then you've -- knowing you've published a  
22 lot, you've spoken at a number of gatherings and  
23 meetings and been quoted on a wide array of issues that  
24 are critical of government-sponsored farm programs

25 A. Correct.

1           Q.    Would it be fair to say that a number of  
2 your opinions and stances are controversial in the  
3 economic industry?

4           A.    They are controversial among many  
5 farmers. They are far less controversial beyond the  
6 farm gate.

7           Q.    You get a lot of resistance from farmers  
8 when you stand up and speak

9           A.    Yes, I do and I might say I just wrote a  
10 book on terrorism, radicalism, and populism, and it's  
11 the populist elements that give me a hard time. And I  
12 would be very disappointed if they didn't because I  
13 wouldn't be doing my job

14          Q.    In addition, there are [sic a lot of  
15 spirited debate between you and your colleagues on  
16 economic, Ph.D. agricultural economists regarding your  
17 position on farm programs.

18          A.    That's a little unfair. The vast  
19 majority of economists take my position. There are a  
20 few outspoken economists -- I'm not going to name them,  
21 but I can name them on the fingers of one hand, who do  
22 most of the speaking on the other side and in my  
23 judgment, and maybe this is too harsh -- forgive me if  
24 I'm too harsh -- but many of those are captive of their  
25 own commodity sector.

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1           Q.    You mean perhaps their views are biased  
2 because they're paid by one side of the business or the  
3 other?

4           A.    That's true and furthermore, in the case  
5 of extension people, for example, if you're working with  
6 the mile producers, you damn well better support no  
7 commodity programs or you're not going to be working  
8 with them.

9           Q.    In this case, you're actually hired by  
10 the people who are opponents of the hop marketing order,  
11 is that right?

12          A.    That's correct, but my ideas were  
13 formulated long before they came along.

14          Q.    I see. I reviewed your written comments,  
15 sir, and I notice that in your presentation today you  
16 softened some of your language. I want to first talk  
17 about a sentence that appears in the -- I guess it's the  
18 middle of the page of Exhibit 33. Actually, let me back  
19 up to your bullet points first. You have articulated  
20 the objective for this hop marketing order to include  
21 providing stable and fair prices for merchants and end-  
22 users, is that right?

23          A.    Correct

24          Q.    And you would agree with me that that's  
25 an acceptable and a goal of a marketing order? Is that

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1 a yes?

2 A. Yes.

3 Q. Okay. Enable a more equitable price for  
4 growers from year to year. Again, that's an acceptable  
5 and desirable result in marketing order?

6 A. Yes, I would.

7 Q. Okay. Also, to set an annual saleable  
8 amount of hops to satisfy anticipated world demand and  
9 will continue to ensure the needs of the market are met  
10 every year.

11 A. I'm in agreement with all of these  
12 things.

13 Q All commendable goals.

14 A. All commendable goals, and if horses were  
15 dreams, beggars could ride

16 Q. I won't try to break that one down. You  
17 agree that, in fact, if those goals were met that a  
18 marketing order would be successful and would be good  
19 for the hop industry?

20 A. Yes, and I might add parenthetically that  
21 there is absolutely no chance that those goals will be  
22 met. And they'll be met -- if they are met, far more  
23 closely with a market than with a committee

24 \*\*\*

25 ADMINISTRATIVE LAW JUDGE: We'll change the  
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1 tape at 10:57.

2 \*\*\*

3 [Off the Record]

4 [On the Record]

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: We're back on  
7 record at 10:57. Mr. Monahan?

8 \*\*\*

9 BY MR. MONAHAN:

10 Q. Thank you. Just to follow up on that  
11 last comment, sir. You indicated that you believe an  
12 unregulated free market system is going to be more  
13 likely to achieve these goals than a marketing order,  
14 correct?

15 A. Yes. I'm not a laissez-faire economist  
16 The government has a definite role to play. It must  
17 establish the frame work for markets to function and  
18 basically, that frame work requires providing public  
19 goods, in some cases a safety net. We have some  
20 technical terms we use in economics and that is market  
21 goods are goods that are exclusionary -- I can't  
22 remember the other terms -- transparent and rival. Hops  
23 meet every one of those requirements. Public goods  
24 don't have those properties, but hops is a market good  
25 not a public good.

1 Q. Sir, I need you to concentrate on my  
2 question, if you would.

3 A.

4 Q. Do I understand your testimony that these  
5 items providing stable prices for merchants, more  
6 equitable prices for growers, a sufficient supply of  
7 hops to satisfy world demand, satisfy the needs of the  
8 world market, that those goals, in your opinion, are  
9 going to be met under a free market system more readily  
10 than they would be under a marketing order? Is that  
11 your testimony?

12 A. Correct

13 Q. When did the last hop marketing order  
14 end?

15 A. 1987.

16 Q. Okay. So 16 years ago. In the last 16  
17 years, sir, has the free market system provided stable  
18 and fair prices for merchants and end users?

19 A. I would have to look at the rates of  
20 return on assets of well-managed hop producers.

21 Q. We're going to get to that in a minute  
22 But the answer is you don't know, is that right?

23 A. No, I don't know.

24 Q. Under the last 16 years of unregulated  
25 market, has there been a more equitable price for

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1 growers from year to year?

2 A. Again, I wouldn't be able to tell and  
3 we're dealing with a, you know, particular situation  
4 here. When I'm referring to these elements here,  
5 talking about a long term situation.

6 Q. Is 16 years long term?

7 A In a highly dynamic industry, you might  
8 be able to pick 16-year periods that are really  
9 aberrations

10 Q. Has the last 16 years in the hop industry  
11 an aberration?

12 A. I'm probably not in a position to answer  
13 that without more thorough study of the issue.

14 Q. You might want to talk to some farmers  
15 as well. Is that a yes?

16 A. Yes, that's a possibility.

17 Q. Let's talk about rate of return on  
18 assets. I'm going to read you a quote that I found on  
19 the Internet and you can tell me if you recognize  
20 author. "All farmers should rely on the market. Half  
21 of agriculture already does and the rates of return are  
22 about as good in both sectors."

23 A. I think my quote was that only half of  
24 agriculture is covered by commodity programs.

25 Q. Would you include marketing orders as

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1 commodity programs, sir?

2 A. No, they're not

3 Q. Okay. So that would be subsidy program?

4 A. These are the major commodity programs.

5 It does not include marketing orders

6 Q. All right, go ahead. Sorry to interrupt.

7 A Half of agriculture, essentially, is not  
8 covered by commodity programs. Some are covered by  
9 marketing orders, but that's still a small part of the  
10 total. Comparing rates of return, the rates of return  
11 are very comparable to the sectors that are covered by  
12 commodity programs and not covered by commodity  
13 programs.

4 Q. Okay, so the hop industry would be in the  
5 half that are not covered by a commodity program. In  
16 your.

17 A. Yes.

18 Q. Okay. I'm going to continue the quote.  
19 "Competent commercial farmers are earning what their  
20 resources would earn elsewhere. The rate of return of  
21 assets in commercial agriculture on \$200,000 or more in  
22 sales earned 8 percent and 15 percent on top earners.

23 A. That's correct.

24 Q. That's your opinion? That's your quote?

25 A. Yes, it is.

1           Q.    And so if I understand -- I'm sorry.  If  
2 you want to expand, I'll...

3           A.    Well, it's based on farms data from  
4 economic research service, if you're familiar with that.  
5 It's the -- I'm trying to think of the name of the  
6 acronym.  Agriculture Resource Marketing Statistics, or  
7 something to that effect.

8           Q.    In any event, based on that source, your  
9 professional opinion is that a farmer who invests money  
10 in agriculture, a competent, commercial farmer, should  
11 be able to return about the same amount as if he or she  
12 had invested that money elsewhere.

13          A.    That's correct and I might say that we  
14 just did a paper recently in which we looked at 10 types  
15 of farms.  It did not include hops because we don't have  
16 data for hops, but these results held up very well to  
17 back up that statement.

18          Q.    Okay.  Is it -- do you have any  
19 knowledge, sir, of what the average rate of return of  
20 assets is in the hop industry?

21          A.    I do not know.  I tried to find that  
22 number and I did not find it

23          Q.    Okay

24          A.    ...and

25          Q.    Would it be your opinion, sir, that if a

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1 hop farmer had a rate of return of less than eight  
2 percent, that that hop farmer would be an incompetent  
3 commercial farmer?

4 A. Not necessarily. He might've just had  
5 bad luck. This doesn't hold to every year. If he did  
6 that for 10, 15, 20 years and he got a rate of return of  
7 -5 percent, he's an inefficient farmer. He should be  
8 doing something else. He should be switching to another  
9 enterprise.

10 Q. If the average rate of return of assets  
11 for hop farmers in the 16 years past since the last  
12 marketing order, were less than eight percent, would  
13 that suggest to you that there are some structural  
14 defects in the hop market?

15 A. Absolutely not.

16 Q. Would that suggest to you that there was  
17 an industry filled with incompetent commercial farmers?

18 A. It's very important to note the structure  
19 of these industries and in these 10 types of farms that  
20 I analyzed recently in a study with Jeff Hopkins. What  
21 we found is there are tremendous economies of size in  
22 production. Small farms were losing money. They  
23 account for the majority of all farms, but as I  
24 indicated in my quote, adequate sized, that is  
25 commercial farmers in the top half, the more able of

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1 those, were earning returns of 10 percent and up on  
2 their equity. And that was pretty much true across the  
3 board. So it's important to look at the size of a farm,  
4 for example, so when you quote something as an average  
5 for the industry, the American agricultural industry  
6 averages a rate of return of four percent, which  
7 indicates a very poor of return. But that's misleading,  
8 because most farmers are hobby farmers and they're  
9 willing to pay for their hobby with their off-farm  
10 income. That includes college professors

11 Q. What percentage of hop farmers are hobby  
12 farmers, sir?

13 A. I don't know

14 Q. In your materials, you talk about the  
15 committee running a cartel. I did notice you removed  
16 that word from your spoken presentation. Can you tell  
17 what a cartel is, sir?

18 A. A cartel is where producers get together  
19 in single disk management of an operation. Management  
20 of production

21 Q. Okay. I brought a dictionary with me  
22 because I've seen this word pop up. I know that the  
23 opponents like to use it. One of the definitions is "a  
24 combination of independent or industrial enterprises  
25 designed to limit competition or fix prices." I want

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1 ask, you're not suggesting that this hop marketing  
2 order's designed to fix prices, are you?

3 A. I'm saying the attempt to fix allotments  
4 or what they can market is a way of achieving a price  
5 goal.

6 Q. What's the price goal under this hop  
7 marketing order?

8 A I think part of that would be up to this  
9 committee.

10 Q. Is that somewhere in the proposed order?  
11 That they actually try to achieve a price goal or is  
12 that something you inferred?

13 A. I have looked at the behavior of  
14 marketing orders over a period of time and the purpose  
15 of regulating marketings is to have an influence on  
16 price.

17 Q. The -- I'll have to admit, the way that  
18 I've seen it phrased best in terms of purpose is as what  
19 appears in your written materials. Isn't the real  
20 purpose to try to create sufficient supply to satisfy  
21 world demand and then the market will dictate the price  
22 in that balanced supply and demand industry?

23 A. I wish I could say that. I don't believe  
24 that very many groups, including college professors  
25 out of altruism. I think that most groups are looking

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1 out for number one and you have a committee of growers  
2 setting the marketing -- what can be brought to market,  
3 I think the temptation is irresistible to cut down  
4 marketings to bring a better price.

5 Q. In fact, that is in Dr. Jekanowski's  
6 presentation and in your own. That's the real fear, is  
7 it not? That somehow the hop industry is going to  
8 artificially reduce supply below world demand in an  
9 effort to artificially boost price. That's the concern,  
10 is it not?

11 A. Economists would not use those terms.

12 Q. Would you agree with the concept?

13 A. Basically, I think one of the fears is  
14 that yes, the cartel would try to keep supplies down to  
15 get the price up, which would be damaging to consumers  
16 around the world.

17 Q. That's right. That's why you don't like  
18 marketing orders.

19 A. I don't like marketing orders  
20 particularly because they cause inefficiencies in the  
21 system that makes people worse off.

22 Q. We can talk more about that later, too.  
23 Under the old marketing order, sir -- you were here when  
24 Dr. Folwell talked about the research and conclusions  
25 that were set forth in Exhibits 27, 28, and 29,

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specifically an analysis of whether the administrative  
2 committee, under the prior order, had artificially  
3 restricted demand -- excuse me, supply to affect demand.  
4 You see that?

5 A Yes I saw that

6 Q. And you recall the conclusion that the --  
7 under the prior order, the administrative committee  
8 regularly overestimated demand and therefore set  
9 supplies at levels high enough to every year satisfy  
10 world demand. You're not able to rebut that, are you?

11 A. I don't know enough about what the intent  
12 of that group was. It could've been just an error. It  
13 could've been specific intent. I don't know the  
14 reasons

15 Q. If their intent was to set an annual  
16 saleable amount of hops to satisfy anticipated world  
17 demand and ensure the needs of the market are met every  
18 year, you'd have to admit they accomplished those goals,  
19 did they not?

20 A. Demand at what price? You see, that's  
21 what bothers me when you talk about meeting world  
22 demand, because it's demand at what price? Demand is a  
23 price/quantity relationship. You can meet world demand  
24 at a high price or low price depending on how you set  
25 your quantity and somebody asking what I learned from 50

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1 years as an economist and I said that people are very  
2 good at rationalizing their self-interests. And if you  
3 put a bunch of growers in charge of marketing for  
4 growers, I think it's very difficult and naïve to think  
5 that those committees aren't going to serve the self-  
6 interests of growers.

7 Q. If you put a bunch of buyers in the same  
8 room do you think they would support a program that  
9 resulted in yearly oversupplies?

10 A. Buyers would do exactly the same thing  
11 and we're back to the market and Adam Smith

12 Q. Is the hop industry unique from any of  
13 these other 10 industries or commodity markets, I guess,  
14 that you researched in its ability to produce a product?

15 A. Is it unique...

16 Q. Yes.

17 A. ...in its ability to produce a product?

18 Q. No, I'll give you more of an example. We  
19 assume that last year the hop industry produced 6.9  
20 million pounds of alpha acid, all right?

21 A. Um-hum.

22 Q. Without any investment in infrastructure  
23 Without any extension of hop poles or wires, how much  
24 could the hop industry produce next year?

25 A. Were they at full capacity in terms of  
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1 their infrastructure?

2 Q. That's a good question. Do you know?

3 A. No, I don't know. Do you know? You're  
4 asking the questions.

5 Q. Do you know what percentage of -- and  
6 that's an -- it's an excellent question, really. Do you  
7 know how much extra capacity the hop market has -- the  
8 hop industry has in terms of producing alpha?

9 A. My understanding is that there's  
10 considerable excess capacity, but join the crowd. There  
11 are a lot of industries that have a great deal of excess  
12 capacity.

13 Q. Okay, so you don't think the hop industry  
14 is unique in that regard?

15 A. It isn't what?

16 Q. Is unique in that regard?

17 A. No, I don't think it's unique in that  
18 regard. I think that there are a great many other  
19 industries that also have very high overhead costs  
20 relative to variable cost. Have a lot of fixed  
21 investment, fixed capital as opposed to variable  
22 capital.

23 Q. Doctor, turning to the -- it's another  
24 sentence in the middle of Exhibit 33 where you're  
25 talking about elasticity of demand. And I know you

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1 talked to Mr. Smith about it, as well. In the example  
2 of salt, one of the reasons that salt is largely  
3 inelastic is because it is such a small -- a low price  
4 right, and that a large variation in price really  
5 constitutes a small amount of the consumer's budget.  
6 Correct?

7 A. Right.

8 Q. But if we apply that same analogy to the  
9 hop industry, would it have a bearing on your opinion of  
10 elasticity of hops as to what percentage the hops --  
11 cost of hops is in the ultimate product produced by a  
12 brewer?

13 A. It wouldn't have any impact on my  
14 thinking because you take small things.

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Dr. Tweeten.

17 DR. TWEETEN: ...in large quantities.

18 ADMINISTRATIVE LAW JUDGE: Dr. Tweeten.

19 DR. TWEETEN: Yes?

20 ADMINISTRATIVE LAW JUDGE: First answer his  
21 question, please. First answer his question and then go  
22 on to say that it wouldn't make any difference in your  
23 answer.

24 DR. TWEETEN: Would you repeat the question so  
25 I get that right?

1 MR. MONAHAN: There's no chance I can repeat  
2 that.

3 DR. TWEETEN: I thought his question was if  
4 this was a small item in the budget, would it affect  
5 your answer?

6 MR. MONAHAN: Let me back up.

7 ADMINISTRATIVE LAW JUDGE: All right.

8

9 BY MR. MONAHAN:

10 Q. Do you have any idea what the average  
bittering units are used in a barrel of beer in the  
12 United States?

13 A. It's very small

14 Q. Okay. Do you know what in a -- let's say  
15 a case of beer. Do you know how much the brewer has  
16 used to acquire and procure those hops?

17 A. It's a very modest amount

18 Q. Do you have an idea of how modest?  
19 Pennies, perhaps?

20 A. I think it's probably measured in  
21 pennies

22 Q. Do that fact, the fact that it is such a  
23 low percentage of the ultimate price of the product  
24 any bearing on elasticity of demand?

25 A. It probably makes for a more inelastic

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1 demand.

2 Q. Thank you. There's a sentence in your  
3 statement that says "overall demand for hops produced in  
4 the United States is price elastic when a count is taken  
5 of the very elastic export market." Sir, do you draw  
6 distinction between the elasticity of hops sold in the  
7 export market and hops sold domestically?

8 A. I make a distinction between the  
9 elasticity of demand in the domestic market, American  
10 consumers only versus the entire hop market for American  
11 hops domestically and foreign

12 Q. What percentage of American hops are  
13 exported?

14 A. I don't know the exact percentage, but I  
15 do -- there is a graph in Mark Jekanowski's slides in  
16 which he indicates the amount that is exported and that  
17 amount has been going up, so it's becoming a more  
18 significant portion of the total.

19 Q. What type of hops are generally exported?

20 A. My understanding is it's the high alpha  
21 hops.

22 Q. Is the prevalence or availability of the  
23 substitute products -- is it more prevalent in high  
24 alphas or in aroma hops?

25 A. I don't know.

Q. Are you able to name substitute products  
2 for aroma hops? You know a substitute for Cascade hops?

3 A. No, I don't know.

4 Q. Do you know a substitute for Orlando [ph]  
5 hops?

6 A. No, I don't know.

7 Q. The answers to those questions might have  
8 some bearing on price elasticity within a.

9 A. That's probably correct

10 Q. You talked about the bars or obstacles  
11 that a hop marketing order would have to new entries on  
12 the market. New farmers, right?

13 A. Correct.

14 Q. How many new hop farmers have entered the  
15 market since 1987?

16 A. Probably not very many.

17 Q. Would you agree that the free market  
18 system, the unregulated market has produced significant  
19 obstacles to entering the hop market?

20 A. Capital requirements are very high in the  
21 hop industry and that makes entry difficult under any  
22 circumstances, but what I was implying in my  
23 presentation was that adding the need to purchase  
24 allotment bases on top of that makes the barrier to  
25 entry even greater.

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1 Q. If, in the unregulated market, hops are  
2 being sold for less than the cost of production and in  
3 the rule of a market order, farmers are actually able to  
4 achieve cost of production and a reasonable profit,  
5 wouldn't you agree that there would be fewer obstacles  
6 to entering the market under a marketing order?

7 A. I think that is a series of assumptions  
8 that may not hold as to prices.

9 Q. Indulge me, sir. Let's assume it will.

10 A. Well, if you held a really, really high  
11 price with a marketing order, yes, you could pay -- you  
12 could afford to pay a million dollars per year allotment  
13 bases and do quite well to enter the industry

14 Q. That million dollar figure comes from Dr  
15 Jekanowski's

16 A. Correct

17 Q. .example with two farmers of a thousand  
18 acres of clusters each, right?

19 A. As I remember, that's approximately the  
20 figure.

21 Q. I assure you, you will hear more about  
22 that later. With respect to the barriers to enter the  
23 market, do you remember from his presentation what one  
24 percent increase in allotments would amount in terms of  
25 alpha acids?

1 A. Would you repeat that again?

2 Q. Yes. I understand your adoption of Dr.  
3 Jekanowski's argument is that by only one half of one  
4 percent for new growers, that somehow, in itself was a  
5 barrier to new entry.

6 A. Correct.

7 Q. And as I understand it, the number -- if  
8 we assume 9.2 million pounds of alpha, one half of one  
9 percent is 46,000 pounds is the most that can be opened  
10 up

1 A. Which isn't very much

12 Q. How many acres of Willamettes could you  
13 grow if you were to produce 46,000 pounds of alpha?

14 A. I can't figure that, but I suspect it's  
15 not very many acres

16 Q. Okay. Can you help me with a little  
17 math? Let's assume that a competent commercial farmer  
18 could generate 1400 pounds per acre of Willamettes  
19 okay? With me so far? Let's assume that the alpha in  
20 Willamettes is 3.5 percent. How many pounds of alpha  
21 per acre?

22 A. What percent, you say?

23 Q. 3.5 percent

24 A. 3.5. I'd need a calculator to figure  
25 that out.

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Q. Okay. It's about 50 pounds

2 A. Maybe

3 Q. How many times does 50 go into 46,000?

4 A. Probably about 92,000

5 Q. I think

6 A. 9200, or whatever it is

7 Q. A lot of acres, isn't it?

8 A. Yeah.

9 Q. Okay. I just -- I'm going to conclude,  
10 sir, with your summary. In your summary, you state "if  
11 the world has learned anything from the real time  
12 experience in recent decades, it is that a dynamic  
13 industry one" -- oh, sorry -- it is "that in a dynamic  
14 industry one, command and control bureaucratic regimes  
15 have failed whereas two, producers and consumers,  
16 responding to prices set by market supply and demand in  
17 free enterprise economies, have succeeded in creating  
18 wealth and meeting the needs of the people." And my  
19 question for you, sir, is have they been successful in  
20 creating wealth for the farmer or for the producer in  
21 the case of hops?

22 A. I don't know the experience of hops.  
23 basing this on world experience and not just one  
24 commodity, but many commodities. We...

25 Q. So that may not -- sorry.

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1           A. Well, we might take American agriculture  
2 as a whole and the same sort of things that have been  
3 happening in hops have been happening to a different  
4 degree, perhaps, but it's the same corrections in  
5 American agriculture in general. And under a market  
6 oriented, increasingly market-oriented agriculture, the  
7 American farmer now, on average, has a higher household  
8 income than non-farmers. The American farmer now has  
9 several times as much wealth as the average non-farm  
10 household. In fact, the American farmer on average has  
11 more all-farm income than the total income of non-  
12 farmers. The American farmer has made huge economic  
13 progress under a market-oriented system and I submit  
14 that hop producers will do the same. I don't believe  
15 that hop producers are very different kinds of people or  
16 entrepreneurs than the American farmer as a whole. So I  
17 am very optimistic. I have great faith in hop  
18 producers, that they will make proper decisions.

19           Q. Sir, do those statistics and averages  
20 that you've announced, do those hold true when applied  
21 to the American hop farmer for the last 17 years?

22           A. I cannot speak for the hop farmer, but I  
23 can speak for the two sectors of agriculture, the one  
24 covered by commodity programs, the other not. And their  
25 behavior is almost exactly the same. And as I say, I

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1 don't think the hop industry is that unique that it  
2 can't follow the lead and do what the rest of American  
3 agriculture has done

4 \*\*\*

5 MR. MONAHAN: Thank you, sir. Your Honor,  
6 that's all I have.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
8 Monahan. Are there any other questions for Dr. Tweeten  
9 from those who are here in favor of the marketing order?  
10 Mr. Roy?

1

12 BY MR. ROY:

13 Q. Thank you. I just have one question  
14 you. You made some reference to past failures of  
15 central committees and you mentioned New Zealand,  
16 correct?

17 A. I mentioned New Zealand.

18 Q. Isn't true that one of the reasons it  
19 failed is because New Zealand was the one best selling?

20 A. Yes; it was.

21 Q. And that...

22 A. And they've gotten rid of that and  
23 basically they've gone to a totally free market.

24 Q. Okay.

25 A. And they've done very well and the number  
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1 of farmers in New Zealand increased, I might say

2 Q. But that was really because of one best  
3 selling where they set the price for the whole -- all  
4 the commodities in the country.

5 A. It was much more than that. The  
6 government was involved in numerous dimensions of their  
7 agriculture

8 \*\*\*

9 MR. ROY: Okay, thank you. I'd love to  
10 someday talk about the future of production ag in the  
11 United States with you outside this forum.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Roy.  
13 Are there questions from those who are for the order  
14 Dr. Tweeten? There are none. Questions from neutral  
15 parties, beginning with the representatives from USDA?  
16 Dr Hinman?

7 \*\*\*

18 BY DR. HINMAN:

19 Q. To bring back that oft-quoted concept of  
20 elasticity here and wanted -- specifically draw your  
21 attention back to the specific models that have been  
22 discussed. You saw the Sparks model, you mentioned it  
23 and then the Folwell estimate there, and I think you  
24 made a comment to the effect or pointed out that perhaps  
25 both estimates when tested for statistical significance

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1 were actually one or close to one

2 A. Correct.

3 Q. And I just want to draw the implication  
4 from that. There's one thing we often want to do with  
5 these estimates in examining these kinds of issues is to  
6 say what would be total revenue with or without the  
7 change

8 A. Um-hum

9 Q. In this case the lower supply with a  
10 marketing order. Based on that would you say is your  
11 best estimate from reviewing this or any other  
12 econometric estimates of demand that perhaps that would  
13 be little or no change in the total revenue in the short  
14 run based on that

15 A. Well, first of all, may I say that my  
16 observation -- and I read the journal articles on the  
17 size of the supply elasticity and summarized results  
18 from all over the world and it's very important to  
19 separate short, intermediate, and long-run elasticities.  
20 Supply and demand elasticities. There's no question in  
21 my mind that what the demand is more elastic in the long  
22 run than in the short run. But if we take these  
23 estimates that you referred to approximately unitary  
24 elasticity, it means that if you have marketing  
25 restrictions, any reduction in quantity will be offset

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1 by an increase in price. Your revenue won't change, so  
2 your revenue ought to be somewhat stable even as prices  
3 and quantities change a good bit. Now, that's a unitary  
4 elasticity which I think applies more to the short to  
5 intermediate run. These equations were not built with a  
6 Koyck-Nerlove type of formulation to take into account  
7 the long-term elasticities, which I regard as probably  
8 much more elastic. And that means that if you cut  
9 output in the long term, you don't get a sufficient  
10 price rise to compensate and your revenue falls.

11 A. Could you repeat the -- what was missing  
12 from the equations to get the long-term estimates?

13 Q. Several things missing. One was -- and  
14 we had trouble with this yesterday -- failure to account  
15 for stock, failure to account for the international  
16 demand and we had troubles with Mr. Folwell with the  
17 definitions, so I'm going to try to explain it in more  
18 detail. If the price is high and the quantity low in  
19 the United States, say, that's going to generate more  
20 production abroad, less consumption abroad because of  
21 the higher prices and these prices get spread around the  
22 world, so if the price is high, that's going to generate  
23 more production, less consumption abroad, and that's  
24 going to be mean more available from abroad to the  
25 market. On the other hand, if the price is very low,

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1 consumers abroad are going to purchase more. Consumers  
if producers are going to produce less. So if the  
3 American price is low, that's going to cut back on  
4 amount of demand around the world and so these have the  
5 effect of making the demand more elastic, the stock  
6 demand and the international demand. That was left out.  
Furthermore, there was no provision in those equations  
8 for the short versus long-run. I apologize for using  
9 econometric terms here, but there a Koyck-Nerlove  
10 formulations and so forth that can take into account  
11 short and long-term effect, and that was not done.

12 Q. Could you spell that term?

13 A. Koyck, K-o-y-c-k - Nerlove,  
14 N-e-r-l-o-v-e

15 \*\*\*

16 DR. HINMAN: Thank you. Okay, no further  
17 questions. Thank you

18 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
19 Hinman. Ms. Deskins?

20

21 BY MS. DESKINS:

22 Q. Yes. Earlier, Doctor, when you first  
23 started to testify, you referenced a study by Mr  
24 Jekanowski and I'm wondering if you could identify if  
25 that's an exhibit that he's presented just so that

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1 record is clear as to what that is.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Thank you. I'm  
4 going to retrieve that from the court reporter

5 MR. BARTON: Is this the one? Let's see

6 ADMINISTRATIVE LAW JUDGE: I've handed  
7 Exhibits 31 and 32, both authored by Dr. Jekanowski and  
8 now marked as exhibits...

9 DR. TWEETEN: Excuse me, may I inquire  
10 precisely what statistic you were looking for? Was it  
11 the one that.

12 MS. DESKINS: I'm not looking for a statistic.

13 DR. TWEETEN: Oh.

14 MS. DESKINS: When you testified earlier, you  
15 referenced a study by Mr. Jekanowski and I just wanted  
16 to make sure the record is clear what exhibit number  
17 that study is

18 ADMINISTRATIVE LAW JUDGE: Now, it may have  
19 been his presentation, which was Exhibit 30. Let me get  
20 that

21 DR. TWEETEN: Exactly. That's where -- that's  
22 what should be cited. Yeah

23 ADMINISTRATIVE LAW JUDGE: I've handed Dr.  
24 Tweeten Exhibit 30

25 DR. TWEETEN: And if it's the historic price  
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1 of base, it's item 25. It's Exhibit 25 in his  
2 presentation yesterday.

3 MS. DESKINS: Exhibit 30, page 25. Right?

4 DR. TWEETEN: Well, mine says Exhibit 25, page  
5 nine.

6 ADMINISTRATIVE LAW JUDGE: All right, but is  
7 that contained in what I've marked on the front page as  
8 Exhibit 30?

9 DR. TWEETEN: Okay. Yes, that's Exhibit 30.

10 \*\*\*

11 BY MS. DESKINS:

12 Q. Okay. And I have one other question for  
13 you. When you testified earlier, you had mentioned that  
14 you had been hired by Golden Gate Hop Producers? And  
15 I'm just trying to find out -- one of the things about  
16 this hearing is it covers California, the production  
17 area. Are any of the people that are part of Golden  
18 Gate Hop Producers located in California?

19 A. I'm not aware of that. Maybe somebody  
20 here in the audience can that question.

21 \*\*\*

22 MS. DESKINS: Okay. Well, I'm just trying to  
23 find out for the record, because one of the issues I  
24 trying to bring up that Mr. Moody kind of made light of  
25 is with his notice of appearance, we're trying to find

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1 out if people from all the production areas are  
2 represented and because Mr. Moody doesn't state for the  
3 record who's included in that group, the record is  
4 silent whether people from other areas have  
5 representation here or not.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
7 Deskins. Can you elaborate at all, Dr. Tweeten, on who  
8 the components of the Golden Gate group are other than  
9 what you've given us so far?

10 DR. TWEETEN: Well, the only -- well, could I  
11 get some help on this, perhaps, from Jim?

12 MR. MOODY: Yeah, Golden Gate Hops is entirely  
13 in Washington state.

14 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
15 Moody. All right, do you know anything further, Dr.  
16 Tweeten, about the components of the Golden Gate group?

17 DR. TWEETEN: Well, only that S.S. Steiner is  
18 one of the, I guess, owners of that operation.

19 ADMINISTRATIVE LAW JUDGE: All right, thank  
20 you. All right. Yes, Mr. Olson. Question for Dr.  
21 Tweeten?

22 \*\*\*

23 BY MR. OLSON:

24 Q. Yes, Doctor, the proposed marketing order  
25 includes authority for assessing handlers or production

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1 research and marketing developing projects, and I was  
2 wondering what your opinion was of generic research and  
3 promotion programs in terms of their effectiveness?

4 A. I take, really, no stand on those. I  
5 have never opposed marketing orders for their activities  
6 in advertising, promotion, education -- where I tend to  
7 think it's a mistake is when they get into controlling  
8 marketing, regulating prices

9 Q. In terms of provisions for developing  
10 market information statistics, if I understand from your  
11 testimony, you believe that is a worthwhile objective of  
12 such programs?

13 A. I'm a great believer in more and better  
14 information.

15 \*\*\*

16 MR. OLSON: Thank you

17 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
18 Olson. Are there other questions from USDA? There  
19 appear to be none. Are there questions from any other  
20 neutrals or government entities who are here? Yes?

21

22 BY MR. MAZUMDAR:

23 Q. Chandra Mazumdar, United States  
24 Department of Justice, and yesterday I realized that I  
25 neglected to provide my address. And it is 325 7th

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1 Street, Suite 500, Northwest, Washington, D.C., 20530.  
2 Dr. Tweeten, you have spoken about prices functioning as  
3 signals to decision makers in the markets and you've  
4 spoken about prices in the spot market and the forward  
5 contract market. Do spot prices serve the same role as  
6 forward contract prices?

7 A. Forward contract prices are helpful in  
8 forward planning. They're very useful tools for those  
9 who want to cut down risk. There are producers, there  
10 are growers in the market who either because they want  
11 to speculate or for other reasons produced for the spot  
12 market. Sometimes they come out better, sometimes they  
13 come out worse. I take it that part of reason that  
14 they're independent producers going into the spot market  
15 is because they are not averse to some risk

16 Q. And what -- do forward contract prices  
17 play a different role in the short term than in the long  
18 term?

19 A. I'm not sure exactly what you're getting  
20 at, but forward prices have the effect of shifting risk  
21 in many cases, to the processor from the grower, and  
22 that's very helpful. Now, those prices can only be  
23 changed periodically. And in a number of cases -- not  
24 in hops, but in a great many other commodities, those  
25 who provide forward pricing, such as say, elevators in

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1 grain production, actually use the futures market to  
2 hedge their operations so they are protected, too. But  
3 the beauty of the forward contract of any type is that  
4 you can separate, you might say, production component  
5 from the risk-taking component. And that can be a very  
6 useful service to the grower.

7 Q. And the distinction between the forward  
8 contracts and the spot markets serves that purpose?

9 A. Yes. And it's a -- in my judgment, a  
10 very useful purpose, partly because as we know in  
11 agricultural production -- and it's been made clear  
12 today in hop production, sometimes the lead time between  
13 the decision to produce and finally getting your product  
14 on the market can be quite a while and many things can  
15 happen in the market in between. So it helps a good  
16 deal to have that ability to do forward planning.

17 Q. And does that forward planning increase  
18 efficiency?

19 A. Yes, it does. In my judgment

20 Q. And how does it do so?

21 A. Because it enables the grower to commit  
22 his resources as efficiently as possible to minimize  
23 cost, but still with the assurance that there's going to  
24 be a certain price available that -- when marketing  
25 occurs

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MR. CHANDRA MAZUMDAR: Thank you.

ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Mazumdar. Mr. Carswell?

MR. BARTON: Can we go off record for a moment?

ADMINISTRATIVE LAW JUDGE: Oh, we'll change the tape at 11:41.

[Off the Record]

[On the Record]

\*\*\*

ADMINISTRATIVE LAW JUDGE: We're back on record at 11:42. Mr. Carswell, you may not have had a question, but were just retrieving the microphone. Did you have a question you wanted to ask now?

MR. CARSWELL: I did, Your Honor.

ADMINISTRATIVE LAW JUDGE: All right. Let me first see if there are any other governmental entities that have any questions or any other neutrals? All right, it appears not. Mr. Carswell?

MR. CARSWELL: I do. Before I ask these questions, though, Brendan, in some of his questions, seemed to indicate a source of information for rate of return for hop growers over the past 16 years. We're

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1 not aware of any publicly or otherwise available  
2 information in this regard and so we wondering if  
3 Brendan had a source for such information

4 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

5 MR. MONAHAN: I don't believe I made a  
6 representation. I asked a question about what he would  
7 believe to be an appropriate rate of return on assets  
8 for hop farmers. I think that the growers in this room  
9 know what their return on assets is and they will  
10 ultimately be voting, perhaps, on this matter and I  
11 believe they can draw their own conclusions as to the  
12 accuracy of the Doctor's estimates

13 MR. CARSWELL: Well, I don't -- the accuracy  
14 of the Doctor's estimate as it would relate to the hop  
15 industry, I guess is what you mean

16 MR. MONAHAN: That's right

17 MR. CARSWELL: I got a sense from your  
18 question that you had information that

19 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, go  
20 ahead if you have a question for Dr. Tweeten.

21 MR. CARSWELL: Well, I just wanted to explore  
22 this a little bit more, because I got a sense from his  
23 question that he had information that it was

24 ADMINISTRATIVE LAW JUDGE: I understand that  
25 that's the sense you got. Now, you may continue with

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1 your questions of Dr. Tweeten

2 \*\*\*

3 BY MR. CARSWELL:

4 Q. Okay. You mentioned earlier, Dr.  
5 Tweeten, that you felt like the long term price  
6 elasticity for hops was -- that there was -- that it was  
7 elastic, is that correct?

8 A. That's correct

9 Q. And I just wanted to mention some numbers  
10 that -- just wanted to see if that would change your  
11 opinion in this respect. The US hop production in 2002  
12 was identified by the Hop Growers of America as  
13 58,336,600 pounds and the hop exports, US hop exports,  
14 for 2002 were identified at 51,776,000 pounds. Now,  
15 keep in mind, or consider the fact -- it's my  
16 understanding that those hop exports don't all come from  
17 2002 production. They could come from 2001 production  
18 and they could also come from existing stocks, I guess  
19 of hops even, you know, prior to 2001. But in any  
20 event, it's a very substantial amount of hops are  
21 exported from the US and sold in markets outside the US.  
22 As far as the elasticity -- well, let me give you a  
23 couple of other facts. We had Dr. Folwell testify on  
24 the record yesterday in his paper and also in his  
25 written -- I mean, his statement -- that German hops

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constitute a near perfect substitute for American hops.  
2 Also takes as a fact that the vast majority of American  
3 hops that are exported are alpha hops and that alpha  
4 hops are much interchangeable than aroma hops.  
5 Considering that, because of the high amount of -- the  
6 high number of hops that -- American hops that are alpha  
7 hops that are interchangeable and that are sold in  
8 foreign markets, would that in any way either strengthen  
9 or weaken your position that the supply of hops in the  
10 US is price elastic?

1 A. I'm glad you brought up that question  
12 because I was not aware that the percentage of American  
13 hops sold abroad is as high as it is. That leads me to  
14 think my conclusion is even more firm that the demand  
15 for American hops is elastic so that any marketing  
16 orders that would raise the price would lose revenue  
17 American producers

18 Q. With that in mind, you had mentioned that  
19 one of the goals of a production cartel and you know, I  
20 use the word cartel, or the goals of a marketing cartel  
21 would be to limit the amount of product that's available  
22 to sell, is that correct?

23 A. Exactly

24 Q. And it's always been my understanding  
25 from a basic economic standpoint that one of the -- not

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1 the primary goal of limiting the amount of product  
2 that's available to sell is intended to increase the  
3 price of that product, is that correct?

4 A. Exactly

5 Q. And you even identified here that this  
6 could be a worry, a fear, that would be present here.  
7 Considering the fact that the price elasticity that we  
8 just discussed and the question I just put to you about  
9 the price elasticity with respect to US hops, would you  
10 be concerned about a successful to raise price by US  
11 producers?

12 A. I -- my judgment is that an attempt by  
13 hop producers to raise their prices might bring a rather  
14 rude awakening and there would be a retrenchment and it  
15 might contribute to instability in the industry as you  
16 get a cyclical effect that is not from nature, but from  
17 man, and from the actions of a committee. There would  
18 be a learning process as the committee discovered that  
19 the demand is more elastic than they anticipated, so  
20 this just brings up the point that misguided notions  
21 about what the nature of the market is might lead to  
22 actions that actually increase instability in the  
23 industry on the part of a hop marketing order

24 Q. So in summary, you would not think that  
25 this price increase would be successful, an attempted

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1 price increase?

2 A. It would be very difficult to hold it  
3 because what would happen is that we end up with even  
4 far greater excess capacity in the industry than we  
5 currently have.

6 \*\*\*

7 MR. CARSWELL: That's all I have. Thank you.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
9 Carswell. Mr. Moody?

10

11 BY MR. MOODY:

12 Q. Thank you, Your Honor. Dr. Tweeten, is  
13 there anything in the nature of an inelastic demand even  
14 slightly in the elastic in the short term that would  
15 ever justify the type of supply management that's  
16 proposed in this marketing order?

17 A. I can't see any. Pricing is always a  
18 balance between the interests of producers and the rest  
19 of society. One of the beauties of the market is that  
20 and the data show this pretty clearly, reasonable well-  
21 managed commercial farms have done very well over the  
22 years, which is what you'd want them to do and at the  
23 same time there is great value in keeping costs  
24 reasonably low to consumers as I mentioned before, we  
25 talk about a cheap food policy, actually a low-cost food

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1 policy, has been very advantageous for consumers. Low-  
2 income consumers who spend a high proportion of their  
3 income on food have benefited from that policy. I don't  
4 know about beer drinkers, whether they're high income or  
5 low income, but we sort of made sport of the fact that  
6 it's not very much per, say a glass of beer or a bottle  
7 of beer, but if you add up the many glasses of beer, it  
8 gets to be millions of dollars, and so it is  
9 significant. It is important. We should be concerned  
10 about not just the interests of growers, which the  
11 market tends to take care of, but also the interests of  
12 the consumer

13 Q. What value to a well-functioning market  
14 is a cyclical, relatively low or lower than the long  
15 term average price

16 A. Well, if there is excess capacity in the  
17 system, the lower price is a signal that there are too  
18 many resources and that some of them need to find uses  
19 elsewhere and if they don't have much salvage value, one  
20 does the best one can. Now, I don't know -- perhaps  
21 you're referring to what we call the commodity cycles,  
22 the speculative cycles, that characterize many  
23 agricultural industries. Is that the question you're  
24 asking, what about commodity cycles or we overproduce  
25 for a period and get low prices and vice-versa in the

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1 next period?

2 Q. Well, I -- was reference to the hops  
3 proponents complaint that there's a feeling that there's  
4 a cyclical high supply and a cyclical low price

5 A. It looks to me like it's a fairly  
6 traditional commodity cycle. It happens in hogs,  
7 cattle, many agricultural industries. The solution to  
8 those problems is one, better outlook information. Also  
9 technical assistance in creating more flexible  
10 facilities and so forth. Technology that can help  
11 farmers to make adjustments, but the problem is what to  
12 do to get rid of the excess capacity. What you want to  
13 do is avoid it occurring in the first place by good  
14 outlook in stocks and so forth, but if it's there, then  
15 you're going to need to deal with this excess capacity  
16 and try to reduce it in the industry with as little pain  
17 as possible. But the way to do it is not through high  
18 prices. There are other ways to do it that accomplish  
19 the objective much better and much more successfully.

20 Q. Right. And would you agree that the way  
21 to do it is not with the supply management program  
22 proposed in the hop order?

23 A. Definitely not. In fact, the supply  
24 management program might just make the situation worse  
25 It might create more excess capacity.

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1 Q. What conclusion would you draw from  
2 observing a commodity where some producers were exiting  
3 and new producers were investing new resources in the  
4 same commodity?

5 A. As I indicated before, there's a huge  
6 difference in production costs between low cost  
7 producers and high cost producers. Now, that's true for  
8 10 commodity groups that I have examined. It's a huge  
9 difference. I don't know the situation for hops, but I  
10 suspect the same sort of tendencies are there, so you  
11 can have low cost producers coming into the industry,  
12 while high cost producers are exiting. It's a normal  
13 kind of thing to occur.

14 Q. And that would be sort of the behavior  
15 you'd expect to see in a well-functioning market?

16 A. Exactly.

17 Q. All right. Mr. Olson asked you a  
18 question about information. Is it correct that a well-  
19 functioning market provides an abundance of information  
20 to producers and processors and consumers in order to  
21 aid their decisions?

22 A. Yes, I would so and there's a lot of help  
23 in many of these things. I don't know the situation  
24 here, but in Ohio for example, we have the extension  
25 service, we have magazines, we have newspapers, we have

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1 all kinds of sources of additional information. If the  
2 marketing order can help out with that, wonderful, but  
3 as I say, it -- as a general rule, information is a  
4 public good and the more that can be provided, the  
5 better, to help people make better decisions

6 \*\*\*

7 MR. MOODY: Thank you very much, Dr. Tweeten

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr

9 Moody. Dr. Tweeten, is there anything else you want to  
10 add? Mr. Monahan has a question. Let me go to that one  
11 first. Mr. Monahan?

12 \*\*\*

13 BY MR. MONAHAN:

14 Q. Thank you, Your Honor. I think I can be  
15 very brief. Sir, I'm going to ask you to assume that in  
16 the history of the hop industry, the industry has  
17 experienced fits of what I think Alan Greenspan would  
18 call irrational exuberance, that when a small spike in  
19 prices occurs, there is a corresponding overreaction in  
20 terms of production. I further ask you to assume that  
21 that's entirely possible because of the thousands of  
22 acres of infra-structure, land, poles, wire, that can  
23 immediately create an extensive, what I would phrase,  
24 artificial oversupply of hops. In Mr. Carswell's  
25 example, he asked you to assume, for the purposes of his

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1 question, that the purpose of a "cartel" is to limit  
2 supply and raise price. I'd ask you to change your  
3 assumption. If you instead assumed that a properly  
4 elected administrative committee was intending to  
5 control this artificial oversupply, wouldn't you agree  
6 that that would help achieve a properly functioning  
7 market, sir?

8 A. Absolutely. And it would be totally  
9 naïve to think that they would stick to that goal.

10

11 MR. MONAHAN: Thank you, sir

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr

13 Monahan. Dr. Tweeten, is there anything else you'd like  
14 to add?

15 DR. TWEETEN: No, I just thank you, Your  
16 Honor, for this privilege of appearing before you.

17 ADMINISTRATIVE LAW JUDGE: You're welcome.

18 All right, is there any reason why Dr. Tweeten could not  
19 be excused? There being none, you may step down, Dr  
20 Tweeten and you are excused

21 DR. TWEETEN: Thank you

22 MR. CARSWELL: Your Honor

23 ADMINISTRATIVE LAW JUDGE: Mr. Carswell?

24 MR. CARSWELL: We can scratch that last one  
25 from the record. Your Honor, I'm sorry. I had one

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1 other piece. Dr. Tweeten was rather understated in his  
2 background and I just had a summary of his background  
3 that I would like to submit for the record, if I may

4 ADMINISTRATIVE LAW JUDGE: You may. Let's  
5 mark that as Exhibit 35?

6 MR. MONAHAN: Your Honor, as long as we're  
7 doing that, as Exhibit 36, I happen to have Dr  
8 Folwell's CV, as well.

9 ADMINISTRATIVE LAW JUDGE: Excellent. If each  
10 of you would mark those and distribute any copies that  
you have. And we'll go off record while you do that.  
12 It's now 11:59.

13 \*\*\*

14 [Off the Record]

15 [On the Record]

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: All right, we're  
18 back on record. Copies have been distributed. Dr.  
19 Tweeten's curriculum vitae, I've marked it as Exhibit  
20 35. Is there any objection to Exhibit 35 being admitted  
21 into evidence? Yes, Mr. Carswell?

22 MR. CARSWELL: I'm sorry, Your Honor. This  
23 one sheet that we did earlier, wasn't that going to be  
24 Exhibit 35?

25 ADMINISTRATIVE LAW JUDGE: I haven't put a  
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number on that.

2 MR. CARSWELL: Okay, great. So we can make it  
3 a later number. Super.

4 ADMINISTRATIVE LAW JUDGE: Right. And did you  
5 want to introduce that through one of the economists?  
6 Is that how you have that presented?

7 MR. CARSWELL: It came up in my questioning  
8 and I was just providing the source for my question. We  
9 can do that

10 ADMINISTRATIVE LAW JUDGE: Let's do that  
11 since Dr. Jekanowski will be returning to the stand.  
12 Lets have him identify the publication from which it  
13 came and the page and that way I'll have a witness  
14 identifying it

15 MR. CARSWELL: Fine, thank you.

16 ADMINISTRATIVE LAW JUDGE: Very good. All  
17 right, with regard to Exhibit 36, Dr. Folwell's  
18 curriculum vitae, it's very lengthy and there's only one  
19 copy at present. I want to know how many copies Mr.  
20 Monahan should make during whatever break he has these  
21 made in before we deal with it. If you'd like a copy of  
22 Dr. Folwell's background, his curriculum vitae, please  
23 raise your hand. All right, I think if you would just  
24 make three or four copies, Mr. Monahan, that would be  
25 adequate. All right. It's now 12:03. Mr. Carswell?

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1           MR. CARSWELL: I'm sorry, Your Honor. I was  
2 discussing something with Mr. McDaniel. He was  
3 misunderstanding something there. With respect to the  
4 -- Dr. Folwell's CV, if we could just get one copy for  
5 our group -- we just want to keep one set of exhibits  
6 and we just need one for, I think, the whole opposition.

7           ADMINISTRATIVE LAW JUDGE: Dr. Jekanowski, I  
8 counted your hand. Do you need one separate from what  
9 Mr. Carswell is talking about?

10          DR. JEKANOWSKI: No, I raised my hand because  
11 I didn't see anybody else in our group raise their hand,  
12 so I just wanted to.

13          ADMINISTRATIVE LAW JUDGE: All right, thank  
14 you. So three or four is still adequate, Mr. Monahan  
15 All right. Mr. Monahan, which would be better? To call  
16 Dr. Jekanowski for cross-examination next or to call Mr  
17 Christensen for direct testimony next?

18          MR. MONAHAN: I think it would probably make  
19 sense to do the cross-examination, Your Honor. I think  
20 -- I don't think that'll be too extensive

21          ADMINISTRATIVE LAW JUDGE: All right.

22          MR. MONAHAN: And we should have plenty of  
23 time left in the day to finish with Mr. Christensen

24          ADMINISTRATIVE LAW JUDGE: All right. Do you  
25 want to do that now or do you want to break for lunch

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1 now?

2 MR. MONAHAN: I would like to break for lunch  
3 now.

4 ADMINISTRATIVE LAW JUDGE: All right. Is  
5 there any objection to that? No objection. How long  
6 shall we take for lunch?

7 MR. MONAHAN: An hour? Is that...

8 ADMINISTRATIVE LAW JUDGE: All right. Please  
9 be back and ready to go at 1:05.

10 \*\*\*

11 [Off the Record]

12 [On the Record]

13 \*\*\*

14 ADMINISTRATIVE LAW JUDGE: All right, we're  
15 back on record now at -- excuse me, at 1:12 p.m. Dr  
16 Jekanowski, would you again state your name for the  
17 record?

18 DR. JEKANOWSKI: Mark Jekanowski and that's  
19 spelled M-a-r-k J-e-k-a-n-o-w-s-k-i.

20 ADMINISTRATIVE LAW JUDGE: Thank you. You  
21 remain sworn. With regard to the exhibits that you  
22 brought, I'd like now to ask now if anyone wishes to  
23 voir dire Dr. Jekanowski about Exhibit 31 or 32? I'd  
24 like now to ask if there's any objection in -- to the  
25 admission into evidence of either Exhibit 31 or Exhibit

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1 32? There are no objections. Exhibit 31 is hereby  
2 admitted into evidence and Exhibit 32 is hereby admitted  
3 into evidence. All right, now I would invite cross-  
4 examination of Dr. Jekanowski and I would begin with  
5 let's see. Have we had any cross-examination of you  
6 yet?

7 DR. JEKANOWSKI: By Professor Folwell.

8 ADMINISTRATIVE LAW JUDGE: Only by Professor  
9 Folwell, all right. Now I would invite any examination  
10 by those who are here in a position against the  
11 marketing order. None at this time. Now by those who  
12 are here in favor of the marketing order? Yes. Mr.  
13 Christensen, could you identify yourself there?

14 MR. CHRISTENSEN: Yes. Is that coming through  
15 okay?

16 ADMINISTRATIVE LAW JUDGE: It is. It's good

17 MR. CHRISTENSEN: My name is Rod Christensen

18 ADMINISTRATIVE LAW JUDGE: Yes, and again, if  
19 you'll just, for the record, identify your position  
20 here

21 MR. CHRISTENSEN: I'm a consultant working on  
22 behalf of the proponent committee

23 ADMINISTRATIVE LAW JUDGE: Thank you. You may  
24 proceed

25

\*\*

1 BY MR. CHRISTENSEN:

2 Q. Okay. Thank you. Good afternoon, Dr.  
3 Jekanowski

4 A. Good afternoon.

5 Q. As you may or may not be aware, beside  
6 consultant working for the proponent committee, I also  
7 the spearmint marketing order, and so I wanted to take a  
8 few minutes and just clarify some things that were  
9 entered into the record through your testimony yesterday  
10 concerning the spearmint program. Maybe just some  
11 general questions, first. I'm curious, what's your  
12 familiarity with the spearmint industry?

13 A. I don't have a lot of familiarity with  
14 it. Most of the work that I've done or, you know, the  
15 -- most of my analysis of this industry began after  
16 starting to work on the hop project, recognizing that a  
17 similar type of supply control program or marketing  
18 order was in place in the spearmint industry

19 Q. Okay. You made some fairly dramatic  
20 conclusions based on that, so I'm just wondering if you  
21 know -- for example, if you know where spearmint is  
22 grown?

23 A. My understanding is that's in the Pacific  
24 Northwest, Washington, Oregon. Much of the same area  
25 hops are grown.

1 Q. How about internationally? Do you know  
2 where it's grown worldwide?

3 A. Not off the top of my head, but I did  
4 review some of the trade statistics to see where imports  
5 were coming from and I just honestly don't recall...

6 Q. Okay.

7 A. ...right now, but.

8 Q. Okay. Do you know where the markets for  
9 spearmint-containing products are, principally?

10 A. No, not principally.

11 Q. Do you know what spearmint's used for,  
12 for example?

13 A. Yeah. I know some of the uses. I'm not  
14 sure if I know all of the uses, but I -- you know, I  
15 know the common uses of -- chewing gum, mouthwash,  
16 toothpaste, mint -- you know, mint flavored products  
17 ingredient

18 Q. Do you know who uses it, then? Mostly?

19 A. I would imagine it's the companies who  
20 manufacture those types of products.

21 Q. Going a little more specific than -- are  
22 you -- what's your familiarity with the spearmint  
23 marketing order, itself?

24 A. I don't have any personal familiarity  
25 with it other than through reading the basic provisions

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1 that are -- that were outlined in the Federal Register  
2 and you know, doing a little bit of research just to get  
3 the basic idea of how that program works.

4 Q. So do you feel like you have a basic  
5 of how it works?

6 A. Right. A basic idea.

7 Q. Okay. You've made a lot of statements  
8 about base and you know, related mostly to, of course,  
9 the hop marketing order. Do you have, you know, your  
10 familiarity with the spearmint include any knowledge of  
11 its base transfer program?

12 A. No. And I try to make a point of not  
13 really referring to the value of base in the spearmint  
14 marketing order precisely, because I didn't have that  
15 type of information.

16 Q. Would it -- excuse me. Would it surprise  
17 you to know that the value of base at the inception of  
18 the spearmint order was very minimal, if not non-  
19 existent?

20 A. That would surprise me a little bit and  
21 -- because I would -- my viewpoint, or my analysis would  
22 be that if you create an asset that is meant to allow  
23 you to produce something of value, that asset is going  
24 to have value, itself

25 Q. Okay. I wanted to just discuss this for

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1 a minute and then move on mainly to your testimony  
2 concerning spearmint, because I think it has value in  
3 the discussion

4 A. Sure.

5 Q. ...that's been going on here for a couple  
6 of days. What do you -- why would a producer purchase  
7 base?

8 A. Why would a producer -- are we talking  
9 spearmint now, or just general?

10 Q. In general.

11 A. Well, a producer would purchase base,  
12 know, if he or she believes that he or she could produce  
13 value, could produce a product from that base that would  
14 exceed its value in the marketplace.

15 Q. So if base would allow him to participate  
16 in a program that increases his value or increases value  
17 of the commodity to him, then he would -- he or she  
18 would be apt to purchase base.

19 A. Well, right. That's the way an  
20 individual producer would make the decision

21 Q. That's what I'm talking about, is an  
22 individual producer

23 A. But if I could just follow up a bit  
24 That -- you know, it -- ultimately, the value of that  
25 base will be bid up to the point where a producer would

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1 be indifferent between either purchasing base and not  
2 producing, or just staying out of the industry, so  
3 which is kind of back the argument I was trying to  
4 articulate, that ultimately, the productive value of  
5 that base gets capitalized into its price

6 Q. If a program such as a marketing order  
7 our marketing order program in spearmint -- for example,  
8 when it first came in, it was untested. There wasn't  
9 the real firm knowledge on the part of growers that it  
10 was going to work, that it was going to be able to  
11 accomplish its stated intent. Do you think that might  
12 be why the value of that base was minimal and non-  
13 existent in the early years of that marketing order?

14 A. You mean -- just to repeat. You're  
15 saying if there was uncertainty about whether it would  
16 fulfill a...

17 Q. Correct, um-hum

18 A. ...intent, yes. I would agree that that  
19 would reduce its value

20 Q. Right. And any new program, would you  
21 agree, would have a certain amount of that uncertainty  
22 with it until it was tested?

23 A. I would say with any new program there is  
24 some uncertainty. I can't -- you know, I don't think I  
25 can really work through how that might effect the

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1 initial price of base, for instance, or the initial  
2 impact on production decisions. You know, that's really  
3 going to be determined by the collective action of all  
4 of the growers who have to, perhaps, compete for this  
5 base or you know, the collective belief of the group as  
6 to what -- whether this program will work or not.

7 Q. All right. So it's possible that for a  
8 time, because of that uncertainty, that the value of the  
9 base can be pretty low?

10 A. Well, it's certainly possible, but it's  
11 -- I would say equally possible that it could be very  
12 high. I mean, that's just what we just don't know.

13 Q. I'm going to move in to the specific  
14 things that you talked about in spearmint. One of the  
15 statements that you made in your testimony and you've  
16 got -- I think starting with slide number 54 for those  
17 who want to follow along. You made the statement that  
18 peppermint oil can be substituted for spearmint oil

19 \*\*\*

20 MR. MONAHAN: Your Honor, can

21 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Monahan?

22 MR. MONAHAN: With Dr. Jekanowski's  
23 permission, if we could follow.

24 DR. JEKANOWSKI: Certainly.

25 MR. MONAHAN: Can you give me two minutes?

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1 ADMINISTRATIVE LAW JUDGE: Certainly. Good,  
2 that'll help. Let's go off record while we turn on the  
3 projector.

4 \*\*\*

5 [Off the Record]

6 [On the Record]

7 \*\*\*

8 ADMINISTRATIVE LAW JUDGE: We're on record at  
9 1:23.

10

11 BY MR. CHRISTENSEN:

12 Q. Okay. You know, the second bullet point  
13 there, substitutes for US spearmint oil include foreign  
14 production and peppermint, domestic and foreign

15 A. Right

16 Q. How did you arrive at that conclusion?

17 A. It sort of -- personal observation and  
18 you know, to some degree I have heard this specific  
19 order -- this specific type of program talked about in  
20 classes I'd had in Ag Econ and this was, you know, one  
21 of the points that was brought out, which is not to say  
22 that they're perfect substitutes, but at least, you  
23 know, from my perspective, it doesn't make a lot of  
24 difference if I have a spearmint flavored mouthwash or a  
25 peppermint flavored mouthwash. They're still mint, so

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1 there's some degree of substitution there, whether or  
2 not they're perfect substitutes is unknown by me

3 Q. Well, would it surprise you that a  
4 majority of consumers are much more discriminating than  
5 you are about that kind of thing?

6 A. It would surprise me, but I'll take your  
7 word for it.

8 Q. Well, let me ask you some questions  
9 you familiar with the blending operations of dealers and  
10 end-users?

11 A. No, I'm not.

12 Q. Have you ever heard of anything called  
13 product formulas?

14 A. In.

15 Q. In relation to mint?

16 A. No, I do not.

17 Q. Would it surprise you to know that end-  
18 users such as Colgate, Proctor and Gamble, Wrigley's,  
19 spend enormous amounts of money and time developing  
20 standing formulas, you know, on which their successful  
21 products are based and they are very, very reluctant to  
22 change those formulas...

23 A. Well...

24 Q. ...just because of that very  
25 discriminating pallet of the consumer?

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1 A. I would agree with that, but I would also  
2 add that it would be my belief, anyway, that they might  
3 be reluctant to change those formulas often or  
4 frequently, but over long periods of time, they still  
5 have to make a judgment in as far as how their  
6 ingredients affect their costs. And they might be  
7 slowly, over time, willing to adjust to a formula to  
8 minimize cost and maximize their own revenue.

9 Q. You know, I -- do you think Wrigley's  
10 Spearmint Gum, for example, do you think they'd be  
11 willing to change that and start bleeding in some  
12 peppermint oil into that spearmint gum?

13 A. Well, perhaps not in that -- right, in  
14 that variety.

15 Q. I don't think so. Because it's a very  
16 successful product and they will not take a chance on  
17 changing. It's kind of like the new Coke a few years  
18 ago that plopped because they changed that basic taste  
19 just a little bit and that's the discriminating nature  
20 of the consumer. You've heard of tasting panels and  
21 test markets and that kind of thing?

22 A. Sure.

23 Q. And so it probably doesn't surprise you  
24 that these companies spend enormous funds in doing those  
25 kinds of studies as they develop new products?

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1 A. No, it doesn't surprise me.

2 Q. And they do that precisely to determine  
3 if somebody likes a peppermint flavor better or a  
4 spearmint flavor better

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: Comma don't they?

7 MR. CHRISTENSEN: Don't they?

8 ADMINISTRATIVE LAW JUDGE: That's how you make  
9 it into a question.

10 \*\*\*

11 BY MR. CHRISTENSEN:

12 Q. Thank you, Your Honor. Don't they?

13 A. I assume they do

14 Q. And so don't you think it's possible that  
15 your assertion that peppermint is a substitute for  
16 spearmint, especially because of the marketing order,  
17 might be an error?

18 A. I don't think it's an error. I think  
19 there's -- again, there's potentially a difference in  
20 the degree of substitutability. Maybe I overstated that  
21 by saying they're substitutes. Maybe I should've  
22 they're potential substitutes or possible substitutes,  
23 but you know, I still -- I don't think this was an  
24 error. I mean, I think there's still the potential for  
25 some substitution between those two products.

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Q. So are you saying that saying something  
2 is a substitute is about the same as saying it  
3 potentially is a substitute?

A. Well no, and actually -- and that's why I  
4 don't this is an error, because I think it's all a  
5 matter of degree in whether they're -- I certainly -- I  
6 didn't put up there that they're perfect substitutes,  
7 but they are substitutes in, you know, to some degree.  
8

Q. Do you have any knowledge, yourself, that  
9 peppermint is substituted for spearmint?  
10

A. No, I do not  
11

Q. So the statement that you made that it  
12 is, is an error?  
13

A. I still don't -- from my personal  
14 perspective, I would substitute between peppermint and  
15 spearmint and the types of gum I choose, so that's a  
16 substitution that I'm making. So to me, they're a  
17 substitute. Whether they're a substitute for every  
18 industrial user, I don't have knowledge of that, though  
19 I do assure you that I didn't make that up and that I  
20 have heard this same type of statement made by other  
21 agricultural economists who studied the issue  
22

Q. So the conclusion that you drew is based  
23 on hearsay, then?  
24

A. If you want to state it that way, it's  
25

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1 based on my own belief that these products are  
2 substitutable in what I consume and what other people  
3 have told me. That's the way I would state it

4 Q. But you have no facts to back that up?  
5 Or personal knowledge?

6 A. To back up that particular statement, no,  
7 I do not.

8 Q. Okay. Let's go to your graphs. The next  
9 slide, I think, 55. This graph shows US production of  
10 spearmint and peppermint. I think you said it in your  
11 testimony, but repeat for me if you would where  
12 what's the source of this data?

13 A. This data, I believe came from USDA  
14 National Ag Statistic Service

15 Q. Is -- in the case of the spearmint graph,  
16 is that -- does that represent Scotch spearmint or  
17 native spearmint?

18 A. I do not know. I think it's the  
19 combination.

20 Q. A combination of Scotch and native?

21 A. Total production of both.

22 Q. Are you familiar with the difference  
23 between Scotch and native in the spearmint industry?

24 A. I know there is a difference, but I'm not  
25 familiar with what that difference is.

1           Q.    As you look at the -- this is a -- the  
2    spearmint graph represents production and I -- you know,  
3    correct me if I'm wrong. I think you used this graph to  
4    indicate that the spearmint industry was losing out in  
5    its battle, if you will, with peppermint. The  
6    peppermint was taking over markets that were normally  
7    held by spearmint, is that correct?

8           A.    That was my -- that's my general  
9    conclusion, yeah. This is sort of based on some degree  
10   of substitution between those products

11          Q.    Which we've determined doesn't occur, is  
12   that correct?

13          A.    I don't know if I would characterize it  
14   like that, but I think we've determined that they're not  
15   perfect substitutes

16          Q.    Okay. Does that graph of spearmint  
17   represent or include any carry-over stocks or reserve  
18   full oil?

19          A.    I don't recall off-hand. I don't think  
20   it does. I think it's annual production.

21          Q.    So do you think in drawing the conclusion  
22   that you drew that it might be important to include  
23   available stocks and reserve pool stocks in that kind of  
24   a representation?

25          A.    It might be, but again, my intention here

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1 wasn't to, you know, to claim to be an expert in the  
2 spearmint marketing order, particularly, but to show  
3 affect that we would expect to happen if products are at  
4 some -- are to some degree substitutes and you restrict  
5 one and not the other. So to the degree that peppermint  
6 is a substitute for spearmint, I think this graph, you  
7 know, supports that just to kind of, you know, basic  
8 theory of what would occur.

9 Q. So then you're making that conclusion  
10 based on a premise that we've established was quite  
11 faulty to begin with, that peppermint is substitutable  
12 for spearmint?

13 A. Well, you know, another way to look at it  
14 is it isn't necessarily that peppermint is substitutable  
15 for spearmint within a particular formulation, but then  
16 it might be substitutable to some degree across the  
17 types of products that a firm decides to produce. If  
18 I'm a producer a of mouthwash and the price of spearmint  
19 goes way up, I might just reduce my production of  
20 spearmint flavored mouthwash and produce peppermint  
21 flavored instead and consumers like me, who don't know  
22 the difference and don't -- aren't that interested in  
23 the difference would be made better off by the lower  
24 price, so that I still stand by my belief that there is  
25 -- they're both mints and they're both used for

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1 providing a mint flavor, so there's some degree of  
2 substitution that occurs in the marketplace.

3 Q. I guess that's where I have a big problem  
4 is that, you know, what I -- what we've tried to  
5 establish here is that the people who make that decision  
6 -- I think you'll agree with this, will you not -- are  
7 consumers in general?

8 A. Well, it's firms responding to what  
9 consumers are sending.

10 Q. So consumers dictate whether they're  
11 going to buy peppermint or spearmint flavored products?

12 A. Based on price and other factors as well,  
13 sure. Absolutely.

14 Q. So you know, a user of mint oil is going  
15 to respond to consumer wants and needs.

16 A. That's right.

17 Q. That's how they stay in business, is that  
18 correct?

19 A. Absolutely.

20 Q. Okay. So when you say that users of mint  
21 oil will decide, you know, how they're going to direct  
22 or what -- which one of these two commodities they're  
23 going to use, is it safe to say that they are guided  
24 very strongly in that decision by consumer preferences?

25 A. They're guided by that, sure, but they're

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1 also guided by the cost of production and whether or  
2 consumers are willing to pay more for one variety over  
3 another. So certainly, consumer preferences are part of  
4 that, but prices that they can receive in the market  
5 place and cost of production are part of that, as well.

6 Q. Are you familiar with the cost of  
7 production for spearmint and peppermint?

8 A. No.

9 Q. So you don't know if they're way out of  
10 line, the cost of production for peppermint is much  
11 lower than spearmint, therefore that would, you know,  
12 tempt an end-user to use peppermint instead of  
13 spearmint? You don't know that?

14 A. That's possible. I don't know that.

15 Q. You indicated that the big spike in  
16 peppermint in your graph there from what? About '94 to  
17 2000, in that range.

18 A. Um-hum.

19 Q. ...was due to reduced production in  
20 spearmint due to the marketing order which opened the  
21 door for more peppermint usage, is that right? That's  
22 what you were trying to show with this graph?

23 A. Well, I was trying to show a relation  
24 I can't say that it was due exclusively to the marketing  
25 order, but it seems to follow pretty nicely that there

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is a relation there between the flat production of  
2 spearmint, which is basically limited in supply and the  
3 increased production of peppermint, which is not limited  
4 in supply

5 Q. Are you at all familiar with another mint  
6 commodity called mentha arvensis?

7 A. Not -- I've heard the term, but I can't  
8 claim to be familiar with it.

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Mr. Christensen  
11 could you spell that for us?

12 MR. CHRISTENSEN: I will. M-e-n-t-h-a, second  
13 word, a-r-v-e-n-s-i-s. That's the scientific name for a  
14 product that's commonly known as menthol, or corn mint  
15 that's produced chiefly in India in large amounts. Very  
16 big quantities. One of the main ingredients in menthe  
17 arvensis is menthol. Mr. -- excuse me, Jekanowski, do  
18 you have an idea of what other commodity might use  
19 menthol or have menthol as a major ingredient?

20 DR. JEKANOWSKI: Menthol cigarettes

21  
22 BY MR. CHRISTENSEN:

23 Q. That's one of the uses for menthol, but  
24 it happens to also be a major component in peppermint,  
25 so both peppermint oil and menthe arvensis have large

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1 quantities of menthol. So do you think that -- let's  
2 take India, for example, and assume that India has a  
3 crop failure with their menthol...

4 \*\*\*

5 [Off the Record]

6 [On the Record]

7 \*\*\*

8 ADMINISTRATIVE LAW JUDGE: All right, we're  
9 back on record at 1:39. Mr. Christensen, would you back  
10 up again, please?

11 \*\*\*

12 BY MR. CHRISTENSEN:

13 Q. Okay. Is it possible that if India had a  
14 crop failure or a very reduced crop for whatever reason  
15 -- monsoons came early, those kinds of things happen  
16 the time over there -- that created a shortage of  
17 menthol in the world market, that there would be a  
18 corresponding increase in price of menthol, would  
19 stimulate an increased demand and an increased price  
20 US peppermint?

21 A. Sure, I think that's possible.

22 Q. So that might be a good explanation for  
23 the large peak that we see in peppermint production  
24 during those years

25 A. That could be an explanation, but I

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1 still, you know -- that's an explanation, but I still  
2 believe that to the extent that there's some  
3 substitution of these products in the market, a higher  
4 price for spearmint could encourage peppermint  
5 production, as well. So aside -- I'd say they're both  
6 correct.

7 Q. But I can tell you that the price wasn't  
8 higher during that year -- that time period. So that  
9 doesn't -- that's not a plausible explanation, is it?  
10 For that particular time period? Knowing that fact.

11 A. Knowing the prices of peppermint and  
12 spearmint are not the same.

13 Q. Right. Knowing that the price of  
14 spearmint did not go higher during that time period that  
15 would stimulate, you know, movement from spearmint to  
16 peppermint and thus, the increased production figure  
17 that's shown there.

18 A. Well, maybe not immediately, but there's  
19 still the potential that if you believe that supply is  
20 going to be restricted and prices are going to go  
21 higher, you might be more willing to invest in the  
22 production of a competing product. So at any point in  
23 time the prices don't have to necessarily be one higher  
24 than the other, I think there's some long-term decisions  
25 occurring, as well.

1 Q. But that's a lot of speculation and  
2 supposition on your part, isn't it?

3 A. Well, it's some speculation, but I  
4 believe it's consistent.

5 Q. Is it possible that the lower production  
6 figure shown there in spearmint in the past few years is  
7 due to growers reducing acres to adjust to market trends  
8 in a uniform and orderly manner?

9 A. It's possible that for -- that growers  
10 could've voluntarily could've -- some growers could've  
11 chosen to grow less, as well. Absolutely.

12 Q. Okay. Let's look at the next slide,  
13 slide 56. US exports of spearmint and peppermint.  
14 Again, can you tell me where you got this information?

15 A. This, I believe, is also -- it's not  
16 -- Foreign Ag Service of USDA, FAS.

17 Q. Did you check this information really  
18 carefully?

19 A. No. I used it from an official source  
20 and presented it here.

21 Q. So I think the conclusion that you drew  
22 in this slide was that spearmint exports had decreased  
23 while peppermint exports had increased. Is that  
24 correct?

25 A. No. Really, my conclusion was that

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1 spearmint exports didn't grow, that they were  
2 constrained, because this is just in absolute volumes  
3 here where peppermint imports, the production of which  
4 isn't constrained, did grow

5 Q. We're talking exports

6 A. I mean exports, I'm sorry.

7 Q. Okay. Well, we track this information  
8 very carefully, also. Our source of information is the  
9 Department of Commerce import and export figures. Is  
10 that where you got this?

11 A. No, I'm quite sure I got this from  
12 Foreign Ag Service, but they might, in turn, get it from  
13 the Department of Commerce.

14 Q. I think that would be the main source for  
15 this information. And I want to point out some major  
16 discrepancies in the figures that you have there and our  
17 figures and these figures are available. I have a  
18 statistical table that I can enter, if you would like me  
19 to, Your Honor, but I don't want to burden this  
20 proceeding a lot with spearmint information. But our  
21 data shows that exports...

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE: Mr. Christensen.

24 MR. CHRISTENSEN: Yes?

25 ADMINISTRATIVE LAW JUDGE: Nevertheless, I

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1 would like you to show the witness what you're looking  
2 at before you ask him the question

3 MR. CHRISTENSEN: Okay.

4 ADMINISTRATIVE LAW JUDGE: And so we'll go off  
5 record for just a moment while you do that

6 MR. CHRISTENSEN: Okay.

7

8 [Off the Record]

9 [On the Record]

10

\*\*\*

11

ADMINISTRATIVE LAW JUDGE: All right, we're  
12 back on record now at 1:45 and Dr. Jekanowski has the  
13 table before him. Are you able, Mr. Christensen, while  
14 he has your copy of the table to resume your questions?

15

MR. CHRISTENSEN: Yes.

16

ADMINISTRATIVE LAW JUDGE: All right, you may.

17

\*\*\*

18

BY MR. CHRISTENSEN:

19

Q. Okay. You look at this table, which if  
20 from official sources, our data shows that in 1999  
21 exports were roughly 1.2 million pounds?

22

A. That's correct.

23

Q. In 2000, 1.4 million?

24

A. That's correct.

25

Q. In 2001, 1.3 million?

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1 A. That's correct.

2 Q. And in 2002, just under 1.8 million?

3 A. That's correct.

4 Q. Now, if you look at your graph, you see  
5 those same years are all represented at figures less  
6 than a million pounds. Some of them in the 500,000  
7 pounds range. Is that right?

8 A. That's correct. In those last years, it  
9 is.

10 Q. Is there any way that you can account  
11 that magnitude of discrepancy?

12 A. No, not offhand. But again, I reassert  
13 that I didn't come here claiming to be an expert in  
14 spearmint oil and that these were official government  
15 statistics. I did not make them up

16 Q. Well, I don't expect you to be an expert,  
17 but do you agree that it's very important to be accurate  
18 when you're making assumptions and conclusions that --  
19 about an industry and about a marketing order program?

20 A. It's absolutely important to be accurate

21 Q. The 2002 figure, for example, at 1.8  
22 million pounds, is three times -- approximately three  
23 times as large as the figure that you have represented.  
24 That makes a big difference in the conclusion that can  
25 be drawn about increasing or decreasing trends in

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1 exports. In fact -- would you agree with that?

2 Q. It would change the conclusion slightly,  
3 sure. But I still see peppermint as much higher.

4 A. Well, let me give you this additional  
5 fact and ask for your comment. If you had gone back to  
6 the beginning -- well, you did go back to the beginning  
7 of the marketing order. The first five-year average is  
8 under a million pounds. With the correct information,  
9 in the last five years, the average is just under 1.5  
10 million pounds. That's an increase of approximately 50  
11 percent in exports of spearmint oil. That's a far cry  
12 from a conclusion that it's a declining trend of exports  
13 of spearmint oil. Wouldn't you agree with that?

14 Q. Yeah. But -- I mean again, my statement,  
15 I believe, was that the exports are relatively flat and  
16 if they did increase more in recent years, then they  
17 might be edging higher, but in either case is it -- are  
18 they declining?

19 A. Well, even a comparison to a flat export  
20 compared to a trend that's -- actually shows a 50  
21 percent increase is quite a bit different conclusion,  
22 don't you agree?

23 Q. It is. I mean, it's a different  
24 conclusion based on what this data offers, but I would  
25 still -- and there's no way to test this, but I would

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1 wonder what the exports would've been had there not been  
2 supply controls on the market

3 Q. But you will agree that a 50 percent  
4 increase in exports over a 20 year period is a position  
5 that many commodities would envy and love to have?

6 A. I'd say that that's a good position.

7 Q. And that it is completely different than  
8 the conclusion that you drew and presented in your  
9 presentation?

10 A. If -- that's right. Based on that data,  
11 if exports grew 50 percent over 20 years, that is a  
12 different conclusion than that they're flat.

13 Q. Thank you. Let's look at slide 57. I  
14 don't want to spend too much more time...

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Mr. Christensen...

17 MR. CHRISTENSEN: Yes.

18 ADMINISTRATIVE LAW JUDGE: ...before you go  
19 on, I want you to read into the record the source of  
20 information that you gave the witness to look at.

21 MR. CHRISTENSEN: Okay. Thank you. This is a  
22 table prepared by the Far West Spearmint Oil  
23 Administrative Committee based on source data provided  
24 by the Import/Export Reporting Service of the Department  
25 of Commerce.

1 ADMINISTRATIVE LAW JUDGE: And what is the  
2 date of the publication?

3 MR. CHRISTENSEN: The date is October 7, 2003.

4 ADMINISTRATIVE LAW JUDGE: Thank you.

5 MR. CHRISTENSEN: Um-hum.

6 ADMINISTRATIVE LAW JUDGE: October 7, 2003  
7 You can't get much more up-to-date than that.

8 MR. CHRISTENSEN: Correct. We prepared that  
9 for a meeting that was just held recently.

10 ADMINISTRATIVE LAW JUDGE: Thank you.

1 \*\*\*

12 BY MR. CHRISTENSEN:

13 Q. Um-hum. Let's look, if we can, now at  
14 slide 57. US imports of spearmint and peppermint and  
15 again, I didn't have time, since this was brought about  
16 last night, to check the accuracy of all of this  
17 information. But you made the assertion in your  
18 presentation that a managed industry under a marketing  
19 order would cause increased production in foreign  
20 countries, resulting in loss of market share here in the  
21 US, is that correct?

22 A. I think I said that supply controls any  
23 effort to decrease or limit the supply in the US would  
24 be offset by imports coming in.

25 Q. And you use this slide to point out that

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1 the spearmint marketing order caused this to happen in  
2 the case of spearmint. Is that correct?

3 A. Well, I'm saying that this appears to be  
4 consistent with that theory.

5 Q. Can you explain, as you look at the  
6 chart, you know, knowing that the marketing order became  
7 -- went into effect in 1980, why it would take 10 years  
8 before this effect, this alleged effect of the marketing  
9 order would start taking effect?

10 A. Well, it might've taken 10 years for the  
11 marketing order to raise prices sufficiently. And you  
12 know, there is some lag in investment decisions. It  
13 could be several years before growers decide to make  
14 these different investments overseas that would lead  
15 them to have higher production to export to the US. I  
16 don't think that's too unreasonable.

17 Q. I think that's because you don't know the  
18 spearmint industry very well. Do you think that's a  
19 possibility?

20 A. I never claimed to know the spearmint  
21 industry.

22 Q. Thank you. As you look at the graph, I  
23 see exactly the same thing happening with peppermint,  
24 which doesn't have a marketing order. How -- why is  
25 that? How do you explain that one was caused by a

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1 marketing order and the same thing happened to the other  
2 that doesn't have a marketing order?

3 A. Well again, it's based on my belief that  
4 there's some degree of substitutability between these  
5 two products

6 Q. Oh, back to that. If there is  
7 assuming that there's no substitutability, can you  
8 explain how this would happen?

9 A. If there's no substitutability between  
10 peppermint and spearmint

11 Q. Can you explain why peppermint would have  
12 the same phenomena occur in it that occurred in  
13 spearmint with a marketing order?

14 A. I really can't. If there's no  
15 substitutability, then they're completely separate  
16 markets and I would presume that different types of  
17 characteristics are driving the production of each  
18 commodity

19 Q. So it could be that there are other  
20 factors that stimulate increased production in a foreign  
21 market besides the marketing order here?

22 A. Certainly there could be other factors  
23 but they probably all come down to ultimately, to the  
24 expectations of higher prices.

25 Q. Do you think that producers in a foreign

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country such as China, do you think their price,  
2 relative to their cost of production, could be a  
3 significant factor in the results in increased  
4 production there?

5 A. If their cost of production is much  
6 lower, then I would think that they're going to increase  
7 their production for any given price, but if prices are  
8 raised even higher, then they'll have even a greater  
9 incentive to increase their production further

10 Q. All right. I mean, if they have a price  
11 that assures them a profit, then it's likely that  
12 they're going to produce as much as they can to sell at  
13 that price, right?

14 A. That's right.

15 Q. And they will increase production when  
16 that happens.

17 A. Absolutely

18 Q. Have you ever been to China?

19 A. I have not

20 Q. So you haven't seen how they -- the  
21 peasant farmer there produces most agricultural products  
22 for less than half of our cost here in the US?

23 A. Well, I'm not sure if I would agree with  
24 that. I mean, certainly they have lower -- some of  
25 their costs are lower. They would have lower labor

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1 costs, perhaps, but they probably also don't have the  
2 same types of economies of scale and productive assets  
3 that an American farmer would have, so I'm not sure what  
4 their unit cost of production is.

5 Q. Let me rephrase that. You haven't seen a  
6 spearmint farmer in China produce spearmint at half of  
7 our cost of production?

8 A. I haven't, no.

9 Q. Would it surprise you to know that a  
10 couple of years ago on a trip that we made there, there  
11 was -- there were roughly 3500 acres and 10,000  
12 producers?

13 A. That wouldn't surprise me.

14 Q. And when you do the math with that, that  
15 comes about one-third acre per producer, which is --  
16 wouldn't you have to agree is much, much smaller than  
17 our scales here?

18 A. Absolutely.

19 Q. And would it surprise you that these  
20 producers are called peasant farmers because they live  
21 very much like peasants and in very rudimentary  
22 dwellings and produce at a very, very low cost?

23 A. I would agree completely.

24 Q. You agree with that. So as you look at  
25 - you know, put yourself now in the place of the

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1 American producer and tell me how you think that  
2 producer should respond to that kind of competition?

3 A. Well, I still think that we don't have  
4 enough information about necessarily, the unit cost of  
5 production. I still think that American producers might  
6 produce a higher quality product. They might have  
7 access to a larger scale economies that decrease their  
8 total cost of production. I mean, they need to compete  
9 by lowering their own costs and producing what they can  
10 at the given price, but I don't think that managing the  
11 marketing of the product will solve the problem any more  
12 than a free market would

13 Q. Or any less, would you agree with that?

14 A. Oh, I think it could less. For precisely  
15 the reason that if, in fact -- if the committee were to  
16 restrict supply even slightly to increase prices, that  
17 only gives those Chinese peasants that much more  
18 incentive to possibly, you know, buy out their neighbor  
19 peasant and capture a little bit of economies and  
20 upscale and increase production.

21 Q. Would it surprise you to know that the  
22 peasant producer in China doesn't even know what a  
23 marketing order is, much less that there's one in  
24 existence on spearmint oil in the United States?

25 A. I'm sure of that, but they do see the

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1 price for their product and to the extent their price is  
2 determined in world markets and perhaps influenced by  
3 the marketing order, that would -- that could impact  
4 their production decisions.

5 Q. So I can tell you that their cost is less  
6 than half of our production and ask you are you telling  
7 the US producer that he needs to become more efficient  
8 to the extent that he could cut his production costs in  
9 half?

10 A. Total production?

11 Q. Yeah.

12 A. I'm saying the only -- his only hope,  
13 sure, is to find some way to compete with that producer,  
14 with that Chinese producer, and the only way that can  
15 happen is by lowering your own costs, perhaps capturing  
16 economies of scale, but certainly, restricting supply to  
17 raise prices won't do it

18 Q. What if you're restricting supply simply  
19 to have an orderly management of the industry and not  
20 with the intent, necessarily, of increasing prices?

21 A. Well.

22 Q. Would that not allow an industry to more  
23 capably respond to this kind of a situation?

24 A. Well, I don't exactly see the -- as to  
25 how that would allow the US producer to respond to

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1 somebody else who has lower production costs and also, I  
2 -- you know, I think even in testimony this morning, we  
3 learned that there's a lot of disagreement out there  
4 about whether or not a marketing order can achieve its  
5 goal of orderly marketing, you know, in today's global  
6 world, so I think on both points I still stand by my  
7 testimony.

8 Q. But would you agree that production in a  
9 foreign country, in the case spearmint it's China, those  
10 decisions are made almost -- I would say wholly  
11 independent of regard to actions taken by a marketing  
12 committee here

13 A. I really wouldn't agree. I still think  
14 that to some degree, their actions are taken based on  
15 the price they can receive for their product and to the  
16 extent that a marketing order might influence that, even  
17 in the US. It could affect their production decisions.

18 Q. Okay, I know, but we're getting  
19 redundant. Let's move on. I don't want to spend a lot  
20 of time on mint, but just a couple of more slides. If  
21 we can go to slide 58. 58, average grower prices per  
22 spearmint and peppermint, again you know, I'm not sure  
23 of the accuracy of these. I didn't have time to check  
24 it out. Can you tell me if the spearmint prices are  
25 Scotch or native prices?

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1                   A. I can't tell you offhand, but I can tell  
2 you that this is National Ag Statistic Service from  
3 USDA.

4                   Q. Okay. So that's probably a combination  
5 price of Scotch and native combined.

6                   A. It's probably a weighted average, right

7                   Q. Would it be interesting to you to know  
8 that these kinds of combination prices are virtually  
9 useless because they skew the true price of both Scotch  
10 and native individually?

11                  A. Again, I'm not an expert in spearmint,  
12 but I have no way to

13                  Q. Okay.

14                  A. ...to make that judgment

15                  Q. You said, I believe, in your testimony  
16 that the spearmint price line from 1980 when the  
17 marketing order came in -- on, in your opinion doesn't  
18 show that much stability, is that correct?

19                  A. Yeah. I'm saying that there's a fair  
20 amount of variation in prices even after 1980

21                  Q. Even after. If you look at the price  
22 graph between '72 and '80 and extend that graph back to  
23 20 years, to 1960 and repeat that drastic peak that you  
24 see a couple of more times back there. As you envision  
25 that and compare it to the line since the marketing

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1 order came in, would you say that the stability is much  
2 more apparent under the marketing order than it was  
3 prior to the marketing order?

4 A. Well, my data doesn't go back that far,  
5 so I don't really know what happened to 1972, but I  
6 would probably say that there's -- variation on either  
7 side of that line that distinguishes the marketing  
8 order.

9 Q. But the variation that you show right  
10 there, just in what data you do have is much greater  
11 than the variation after the marketing order, wouldn't  
12 you say?

13 A. Well, there happens to be one big jump in  
14 price from 1972 to 1974 and then a decline in price from  
15 roughly 1978 to 1980, but I don't think I really have  
16 any way of judging whether that's less stable than after  
17 the marketing order.

18 Q. Okay. Let's go to the final slide, slide  
19 59. This one you took a section of the final rule of  
20 our '02, '03 as it turned out

21 A. That's right.

22 Q. ...marketing policy. You took the short  
23 -- a small bit of that out and quoted parts of it. Were  
24 you at any of the meetings that this marketing policy..

25 A. No, I was not.

Q. Okay. So to understand the statement  
2 correctly, don't you think that you should have the  
3 entire story? Is it really a legitimate practice to  
4 take something out of context and present it as a  
5 conclusion for the entire action that was taken?

A. Well, actually I think I tried to take as  
6 big of a section there -- it's not really out of  
7 context, so to speak. And my reason for focusing in on  
8 this is because it fits in so nicely with exactly what  
9 we would expect, you know, what theory would tell us  
10 might happen with supply controls in a hop marketing  
11 order. And this just happens to illustrate a decline in  
12 world market share over time and it might not draw the  
13 conclusion of that the marketing order caused that, but  
14 certainly I thought it was an interesting observation  
15 that that happens to be an industry that is under the  
16 control of a marketing order and it's struggling with a  
17 loss of world market share.

Q. Okay. You indicated that you -- your  
19 firm works mostly on ag-related projects

A. That's right.

Q. So you might be aware of other ag  
22 industries that are going through this same kind of  
23 thing.  
24

A. Generally, yeah.

1 Q. Are you at all familiar with the  
2 asparagus industry here in the state of Washington?

3 A. I'm not familiar with the asparagus  
4 industry.

5 Q. Would it be interesting for you to know  
6 that they've lost more than 55 percent of their market  
7 share in the last few years?

8 A. That wouldn't surprise me at all. I  
9 think that illustrates the foreign competition, the  
10 aspect of foreign competition that.

11 Q. But the problem I have is that asparagus,  
12 for example, doesn't have a marketing order

13 A. That's right

14 Q. But because spearmint has a marketing  
15 order, the marketing order gets the blame for losing the  
16 same kind of market share that asparagus gets. Why is  
17 that?

18 A. Well, I think this illustrates that  
19 foreign competition is keen and that -- and again, it  
20 supports my overriding theory -- the overriding belief  
21 that any effort to restrict supply will only make those  
22 foreign producers that much more likely -- given that  
23 much more incentive to increase their share even further  
24 and I know that in the proposal for the hop marketing  
25 order, it was noted that the committee could manage

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1 supply and demand and maintain a global market share and  
2 I think this illustrates -- this quote illustrates that  
3 difficulty, that in fact, foreign competition is always  
4 going to be there and responding by potentially  
5 restricting US supply isn't going to make the problem  
6 less painful, certainly.

7 Q. But I -- I appreciate that. I don't  
8 think you really answered my question, which was why in  
9 the case of spearmint is this reduction in market share  
10 apparently caused by a marketing order when other  
11 commodities, such as asparagus and there's others I can  
12 name, who are -- that are experiencing the same kind of  
13 market share loss, don't have a marketing order? Why  
14 does this have to be a -- this loss of market share,  
15 does it have to be a function of the fact that there's a  
16 marketing order in place?

17 A. Well, my response is that the marketing  
18 order might not be the only reason, but all else equaled  
19 -- and this is what testimony this morning and yesterday  
20 brought out -- all else equaled, if you restrict US  
21 supply, it's going to increase the likelihood of  
22 imports, of foreign competition coming in and filling  
23 the balance and I think this illustrates that point

24 Q. Wouldn't you say that an industry like  
25 asparagus that doesn't have a marketing order losing

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1 market share experienced exactly the same general  
2 conditions in the global market as spearmint did, and so  
3 that therefore, the loss of market share in the  
4 spearmint industry has nothing to do with the marketing  
5 order?

6 A. I would not -- I wouldn't say it has  
7 nothing to do with it, but to sort of turn that around,  
8 I -- in response to the -- you know, based on that, I  
9 certainly wouldn't advise the asparagus growers to put  
10 in a marketing order, because I would think that that  
11 would exacerbate the problem and that's really the point  
12 that I'm trying to make here, is that that international  
13 competition is very keen and again, it just comes back  
14 to that general theory that if you restrict domestic  
15 supply, there's going to be foreign production to make  
16 up the balance.

17 Q. Well, I notice -- I just want to follow  
18 up on that a little bit and I notice that you up to this  
19 point have not distinguished between Scotch and native,  
20 but you're using a quote here that specifies Scotch  
21 spearmint and so since you weren't at the meeting, it  
22 might interest you to know that at this meeting  
23 actually, at a -- at the last several meetings, the  
24 several years, this very issue of market share has been  
25 hotly debated and the committee has been dealing with

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1 that. Particularly, in the case of Scotch, which  
2 produced in China in competition, you wouldn't

3 A. That wouldn't surprise me at all.

4 Q. Good. Would it surprise you, also, to  
5 know that those who advocated opening up the saleable,  
6 raising it to a level that essentially removed all  
7 regulation -- in other words, basically suspended the  
8 marketing order for a time, won out in that debate?

9 A. I think they -- that would make sense to  
10 me if the objective was to increase world market share.

11 Q. Yeah, that was the objective

12 A. That's right

13 Q. So that's what, you know, you may know if  
14 you've read part of this that that's what happened is  
15 that the saleable was increased at levels that were far  
16 above demand in an attempt, if you will, to buy market  
17 share. That's what you would advocate, correct?

18 A. Well, that would be, but here's part of  
19 the problem is that the investments that were already  
20 made in other foreign countries are already in place  
21 that's another point. I don't remember whether I made  
22 it specifically that once you lose market share in the  
23 world market, those -- that production doesn't go away  
24 when you try to regain your own production. Once that  
25 market share is lost, it -- you know, that only

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1 increases the competition for these world markets. It  
2 gets very hard to regain lost markets.

3 Q. But your advice would be to attempt that,  
4 wouldn't it?

5 A. It would be

6 Q. So the committee did that with Scotch and  
7 did it for several years in a row. So would you expect  
8 some result from that in terms of market share?

9 A. I would expect over the long term that at  
10 the very least, a decline in market share would've --  
11 would be declining at a slower rate. I'm not sure if it  
12 would -- if market share would increase or if market  
13 share would level off, but I'm sure that losses of  
14 market share would slow.

15 Q. Well, it may be interesting to you to  
16 know that what happened instead, in this case, was that  
17 prices for Scotch spearmint went from \$13 a pound to \$7  
18 a pound and the market share went from 850,000 to  
19 540,000 pounds. So don't you think it's interesting  
20 that just the opposite, apparent effect resulted from  
21 the actions that were taken by the committee as you  
22 would expect?

23 A. Well, it's a little bit surprising on the  
24 surface, but I think, you know, it takes time for  
25 markets to readjust, so I wouldn't predict that

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overnight market share would be regained or that prices  
2 would respond in any particular way. It certainly  
3 wouldn't -- doesn't surprise me that prices declined. I  
4 think that makes economic sense if we increased the  
5 supply. We would expect prices to decline.

6 Q. Well, at the -- you know, I would just  
7 give you one more little scenario to comment on. At the  
8 same time this was happening on the Scotch commodity,  
9 native was facing the same kind of a foreign market  
10 competition in India. The committee opted not to take  
11 this approach. Instead, they continued to set saleables  
12 at reasonable levels, managing the supply in a  
13 responsible manner and the result was that there was no  
14 loss of market share and prices went from 11 to \$10  
15 during that time period. Does that.

16 A. So prices still declined?

17 Q. Slightly. Yeah, it's not perfect, but  
18 it's eminently better than what happened with Scotch.

19 A. Well again, it -- I'll sort of stand by  
20 my belief that it takes time for markets to adjust and  
21 we're talking about long term changes and long term  
22 investments in production that have been made in other  
23 countries that are still influencing the market so no,  
24 markets won't react exactly as you might expect them to  
25 the moment you change the constraints they're facing but

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1 over time, I think we -- it's been pretty well  
2 established what will occur.

3 Q. Would you agree that it could also be  
4 that foreign competition and efforts to gain or retain  
5 market share are dependent upon factors completely  
6 extraneous from the marketing order? That in both of  
7 these cases the situation wasn't based on what the  
8 committee did but on other factors unrelated to what  
9 committee did, completely? Could you agree that that  
10 would be a possibility?

11 A. It could be a possibility, but I think by  
12 and large, we know that the decisions of the committee  
13 will make aren't going to accurately reflect what the  
14 wealth of knowledge that all of the growers operating in  
15 that industry would make and that the committee will  
16 influence supply and sometimes they're going to make  
17 mistakes. It's going to throw the market even more out  
18 of balance, perhaps. And so, you know, I think there's  
19 a lot of factors that are -- that do come into play in  
20 determining market share and prices and whatnot, but I  
21 don't think that it's realistic to think that a  
22 committee could do a better job at allocating resources  
23 or at setting market supply than the cumulative  
24 knowledge of all of the decision makers in the industry.

25 Q. Have you worked with a marketing order

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1 committee to any degree at any time?

2 A. No, I have not.

3 Q. So you haven't seen the process that they  
4 go through in making those decisions?

5 A. No, I have not

6 Q. I have for many, many years and I feel  
7 that they can be very responsible and they make good  
8 decisions and I know that you don't agree with that,  
9 correct?

10 A. I do not

11 Q. Last thing, do you know what it takes  
12 other than to terminate the spearmint marketing order  
13 other than USDA finding that it doesn't effectuate the  
14 declared policy or Congress?

15 A. I believe that the growers would have to  
16 vote on it

17 Q. The growers could vote. Do you know what  
18 the magnitude of that vote is?

19 A. No, I do not

20 Q. It's a simple majority

21 A. Well, right. I know that. I thought you  
22 meant for the spearmint -- right.

23 Q. For spearmint in particular.

24 A. Right, I know that. Yeah.

25 Q. So you know, wouldn't it make sense to

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1 you that if this program were unsuccessful and not  
2 helping growers that after 23 years they would've voted  
3 it out?

4 A. Well, I -- that's one of the points I  
5 tried to make on my last slide. That once these  
6 programs are in effect, they're very hard to terminate  
7 and I think for two reasons. That one, whenever you  
8 make a major policy change, it introduces uncertainty on  
9 behalf of the market participants and -- growers, like  
10 everybody else might be more comfortable with the status  
11 quo than with that type of uncertainty, but I think more  
12 important, if these types of programs get capitalized  
13 into an asset that would basically go away if the market  
14 order were terminated, then you know, if you got rid of  
15 the marketing order and the -- everybody's value of base  
16 dropped to zero, that's a tremendous hit on the asset  
17 side of the balance sheet where the -- but you still  
18 have to pay off the bank, potentially, for having  
19 already that asset so it's not surprising at all to me  
20 that this program remains just because they're so  
21 difficult to terminate for that very, you know,  
22 business-oriented reason.

23 Q. It was hard for me to believe that if it  
24 costs growers money, as you've asserted in various ways,  
25 and it's not giving them any value for that money, that

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1 Christensen. Other questions for Dr. Jekanowski from  
2 the proponents' group? Mr. Smith?

3 MR. GASSERLING: Can I make one question and  
4 that.

5 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling?

6 \*\*\*

7 BY MR. GASSELING:

8 Q. Thank you. Tom Gasseling.

9 A. Um-hum.

10 Q. With regard -- I'm a spearmint grower.  
11 What would be your take on the fact that under the  
12 spearmint market order there are two different base  
13 allotments. There's Scotch base and native base. Did  
14 you know that?

15 A. I didn't, but it's not surprising to  
16 me

17 Q. Okay.

18 A. ...that there's two different varieties.

19 Q. Would it surprise you to know that the  
20 more regulated side, which was the native, price is  
21 relatively stable, production relatively stable,  
22 maintained a fairly steady base allotment value, would  
23 that surprise you?

24 A. Well, it wouldn't surprise me that  
25 production is relatively stable on a side that's more

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1 regulated if that applies to -- I mean, ultimately, that  
2 the saleable stays the same and is constraining  
3 production over time. I mean, that to me, seems to be  
4 the -- you know, the purpose of the marketing order, to  
5 maintain a stable production.

6 Q. And on the other side, the Scotch, when  
7 the price went in the toilet and the ability to grow and  
8 sell Scotch virtually disappeared because of this  
9 opening up of the saleable, that the value of that  
10 allotment went almost to zero.

11 A. Well, if the saleable was basically not  
12 creating any limit on production, I would expect the  
13 base to go to zero. I mean, the price of the saleable  
14 is going to reflect the degree to which supply is  
15 restricted or prices are increased

16 Q. But the fact is that production could  
17 have taken place. The saleable was open to allow it,  
18 but because of the market, by itself the base allotment  
19 virtually had no value. Wouldn't you surmise from that  
20 that the only way for that base to have value, given  
21 this example, is that in turn, you've got some value  
22 back from it?

23 A. Well, that's right. The value of the  
24 base equals what someone believes is going to be the  
25 value of your production off of that base.

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Q. Well, it has to equal more.

2 A. Well

3 Q. It has to be more because if they were  
4 just -- if you didn't get more value than the value of  
5 the base, there would be no reason to do it. There has  
6 to be more in order to take care of that value. But my  
7 question to you is, there is a -- been out a number of  
8 times here that this base will have value. What's it  
9 going to have in the beginning? If you're not sure it's  
10 going to work, I think it's been said before, the value  
11 will be decreased, but the fact is in these two  
12 instances, wouldn't you agree, that where one was  
13 allowed to kind of pre-market, the people involved saw  
14 no value in that allotment consequently, they wouldn't  
15 purchase it, versus the other side -- and you use them  
16 interchangeably, I could argue that with you, but...

17 \*\*\*

18 [Off the Record]

19 [On the Record]

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: We're back on  
22 record. We changed the tape at 2:27. Mr. Gasseling,  
23 you were contrasting the two different allotments within  
24 the mint marketing order. Do you remember your  
25 question?

1 \*\*\*

2 BY MR. GASSELING:

3 Q. But on the other side, where it was  
4 regulated, the prices were more stable, remained higher  
5 than on the Scotch side. The value of the base remained  
6 relatively stable and in fact, increased a little bit

7 A. Right. That doesn't surprise me because  
8 for an individual producer who would've bought that base  
9 at the period when there was essentially no allotment in  
10 place, he or she might've expected that there will never  
11 again be an allotment in place, that the committee has  
12 made a decision to not regulate this side of the  
13 industry, so then there would certainly be no value in  
14 purchasing that base. As I kind of tried to lay out in  
15 my testimony, the value of that base reflects what the  
16 producer believes is going to be the future -- all of  
17 the future returns from holding that base. So if  
18 basically, the allotment is lifted, we would expect the  
19 value of base to decline.

20 Q. So it only has value if it works.

21 A. It has value if it restricts price  
22 sorry, if it restricts supply to affect price, or if it  
23 creates a situation where some growers must purchase  
24 that base just to fulfill their existing obligations.

25 Q. Well, I would invite you someday to come

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1 and investigate the mint industry because it doesn't  
2 operate that way, but the final thing I would say is  
3 that I would ask you to think about the fact that -- and  
4 it was brought up by Mr. Christensen -- that if you take  
5 -- let me put it in a question. You have to have a  
6 question so I don't preach. Would it surprise you to  
7 if you split Scotch spearmint and native up and get an  
8 evaluation on that based on how the saleables were  
9 handled on both sides, that you would see an entirely  
10 different scenario than you presented here today?

11 A. agree that these numbers do not split up  
12 Scotch and spearmint [sic and they might be different  
13 if I did that, right

14 Q. And I think had you have done that, you  
15 could not have come to the conclusions that you came to  
16 because the grasp would have been entirely different  
17 well, they are entirely different. So I think that  
18 -- my question is had you have done that, do you know  
19 that you could've made these statement?

20 A. Well, I think I still could make the  
21 statement that all else equal, restrictions on a  
22 domestic market have unintended consequences and at  
23 least at first glance, from just -- you know, I'm not a  
24 spearmint expert, it appears to me that there were and  
25 are some unintended consequences of the spearmint

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1 marketing order and I still believe that all else equal,  
2 that exports were sacrificed as a result and imports  
3 likely increased as a result. World competitiveness was  
4 likely sacrificed and I -- it was my belief that this  
5 spearmint -- this marketing order illustrated that. I  
6 wasn't necessarily picking on this marketing order as  
7 something that failed but more that it clearly  
8 illustrates what -- the points I was trying to make  
9 about what could happen in the hop industry.

10 Q. But if the statistics actually show that  
11 the committee restricted the oversupply and not the  
12 supply and that the amount of oil that was produced and  
13 the amount of oil that was released and the amount of  
14 oil that was sold showed a trend that there was always  
15 more than enough oil on the market to supply the demand,  
16 you still would say that the committee restricted the  
17 supply?

18 A. I think that would be a very tough test  
19 to prove because again, the market is going to always  
20 clear it, whatever the level of supply is.

21 Q. Well, let me give you a little more  
22 information for your answer. If a producer has product  
23 and can't sell it and price is not an issue, then we  
24 have an oversupply, wouldn't you agree?

25 A. If you can't sell it at any price?

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Q. Any price.

2 A. Then that sounds like at least  
3 temporary oversupply, right

4 Q. If you have, in the mint marketing order,  
5 a million pounds of product available for any potential  
6 excess market demand, do you consider that shorting the  
7 market?

8 A. Not if whatever the level of prices are

9 Q. So under the scenario of the -- of this  
10 marketing order and under the pretense of what's being  
11 proposed under the new -- hop marketing order, there  
12 would be inventory available in the event that there was  
13 demand there and the committee could -- I'm asking if  
14 you understand it this way -- the committee could, in  
15 fact, increase the saleable throughout any given growing  
16 year to respond to that demand. Is that how you  
17 understand?

18 A. Well, that's how I understand the intent,  
19 but I still don't believe that it would be feasible or  
20 very likely that a committee could accurately know 18  
21 months in advance what the demand's going to be or what  
22 supplies from foreign sources are going to be.

23 Q. Well, let me give you a -- what do they  
24 call it? I can't think of the word.

25

\*\*\*

1 ADMINISTRATIVE LAW JUDGE: Hypothetical.

2 \*\*\*

3 BY MR. GASSELING:

4 Q. Hypothetical. Thank you, Your Honor. In  
5 -- let's say that the spearmint marketing order people  
6 set a saleable and that was based on what they thought  
7 the actual demand for US spearmint was, okay? And we  
8 were going through the season and China and India have a  
9 total crop failure

10 A. Um-hum.

11 Q So all of a sudden, the industry needed a  
12 half a million pounds of oil. Now, given the scenario  
13 that we're growing the crop, you wouldn't think that we  
14 would be able to foresee this crop failure, would you?

15 A. That's correct

16 Q. Would it surprise you that the way the  
17 mint marketing order works -- and the way the hop  
18 marketing is set up to work -- that there would be an  
19 inventory available in such an event, so if we take this  
20 -- a hypothetical -- and there's a half a million pounds  
21 of oil necessary to fill the void by the crop failure  
22 the mint marketing order committee could increase the  
23 saleable to release a half a million pounds to take care  
24 of that demand immediately. Would that be a restriction  
25 of -- on supply? Would that not be reacting to demand

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1 or to a disaster, the ability to react very quickly?

2 A. Well, if we assume that that level of  
3 inventory was available and that that level of inventory  
4 is adequate, but I don't think the committee will be  
5 able to accurately determine what the proper level of  
6 inventory should even be. And I assume that there's  
7 some -- there's growers who carry inventory currently  
8 and they have the ability to sell more when the prices  
9 go up and carry that inventory when prices go down and I  
10 think that's the way, ultimately, the market is supposed  
11 to work

12 Q. Are you aware that the grower can grow as  
13 much product as he wishes to grow and that excess  
14 inventory that is considered to be pool is, in fact,  
15 controlled by him?

16 A. I am aware, but I also -- but I'm also  
17 aware that he still can't market whatever he wants. He  
18 can only market in that current year what his saleable  
19 is set at and then he's forced to carry the rest in  
20 inventory.

21 Q. If he wishes to do so. He doesn't have  
22 to produce it.

23 A. That's right. Those are his two options.  
24 He either produces it and carries it in inventory or he  
25 doesn't produce it.

\*\*\*

2 MR. GASSERLING: Thank you very much.

3 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
4 Gasseling. I've kind of lost track of when people might  
5 want to take a break. I'm ready to go with Mr. Smith  
6 unless folks here would like a 10 minute break. Okay,  
7 we're going to go. Mr. Smith?

8 MR. SMITH: Thank you. Thank you, Your Honor

9 ADMINISTRATIVE LAW JUDGE: Ms. Deskins?

10 MS. DESKINS: Does the witness need a break?

11 ADMINISTRATIVE LAW JUDGE: No, he indicated he  
12 was fine

13 MS. DESKINS: Okay

14 DR. JEKANOWSKI: I'm okay for now

15 ADMINISTRATIVE LAW JUDGE: Thank you.

16

17 BY MR. SMITH:

18 Q. Can you hear me okay.

19 A. Yeah

20 Q. ...Dr. Jekanowski? Dr. Jekanowski, could  
21 you share with us -- over the last five days we've heard  
22 a lot -- about a lot of different hypothetical  
23 situations. Would you share with us, in your opinion  
24 your expert opinion, as to what the value of those are?  
25 Those hypotheticals?

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1           A.    What the value of the hypothetical  
2 situations are?

3           Q.    As they relate to the discussion

4           A.    Yeah.  I mean, I think they force us to  
5 think through all of the different potential scenarios  
6 that a marketing order put in place could face.

7           Q.    Do you feel that as we're stepping  
8 through those hypotheticals, the process is better  
9 served if those hypotheticals are somewhat consistent  
10 with reality?

11          A.    I think the hypotheticals -- yes, they  
12 should be consistent with reality.

13          Q.    Okay.

14          A.    To help us to identify the unintended  
15 consequences of.

16          Q.    You spent a significant portion of your  
17 testimony yesterday talking about -- or speaking to the  
18 transfer of wealth...

19          A.    Right.

20          Q.    ...that would take place with a producer  
21 allotment system and in fact, Dr. Tweeten was so  
22 impressed with it that he included it in his testimony  
23 today about family farm preservation.  Do you recall him  
24 alluding

25          A.    I recall him mentioning that.

1           Q.    And the basis for that, the way I  
2 understand it -- correct me if I'm wrong -- is that  
3 there was [sic really three variables for a producer  
4 that would need to acquire allotment and thus have an  
5 impact on him financially and economically. And the  
6 three variables that I had down are number one, that he  
7 would have to have a need for allotment, obviously.  
8 Would you agree with that?

9           A.    Right

10          Q.    And for it to be a significant cost to  
11 his operation, you'd have to have a need for a  
12 significant quantity of allotment, correct?

13          A.    Sure.

14          Q.    And that on top of that, that the -- your  
15 assumption is that the saleable percentage -- or your  
16 assumption at least yesterday is that the saleable  
17 percentage for the first year would have to be set at 55  
18 percent, which would increase his need for allotment.

19          A.    Again, that was my hypothetical.

20          Q.    That's the hypothetical

21          A.    Right

22          Q.    And thirdly, the third variable was that  
23 the -- this allotment would have some significant value.

24          A.    Right. As a result of that cut in

25          Q.    Right.

1 A. ...the allotment

2 Q. Right. I think you picked a number of  
3 .50 per pound of hops, \$5 a pound for the alpha

4 A. And I picked that number only because I  
5 saw it based on, you know, just speaking with growers  
6 and reading some of the testimony from the last  
7 marketing order that the price seemed to range from  
8 roughly to .20 to over a dollar and then we heard  
9 testimony in Portland that some growers paid as much as  
10 three and a quarter for it. So I -- and .50 was just  
11 sort of thrown out there as a price that's -- you know,  
12 perfectly reasonable as a -- but it is, it's  
13 hypothetical

14 Q. It's hypothetical. So would you pull up  
15 for us, since you've got your presentation here, slide  
16 -- I think it's 19, Doctor. Sorry about that

17 A. You should've went first

18 Q. I think that's the one

19 A. Right

20 Q. And so we've already established that the  
21 hypothetical situations -- the closer they are to  
22 reality, the more valid they are for the purposes for  
23 which they're delivered, correct?

24 A. Well, right.

25 Q. Okay. So in your hypothetical here, you

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1 have farm one and farm two and farm one -- both of these  
2 farms in 1997, I think, you've got -- your hypothetical  
3 assumes they're at 100 percent cluster. Is that  
4 correct?

5 A That was for my hypothetical, right

6 Q. And the total acreage, if we go forward  
7 to the next slide. I'm sorry, slide 20. Thank you.  
8 We've actually got these two farms producing a total of  
9 1500 acres of cluster in the year 1997, is that correct?

10 A. Well, that's right.

11 Q. Okay

12 A. In this example

13 Q. This is what we're talking about.

14 A. That's right.

15 Q. Okay. And we're going to be talking  
16 about this for a little while here, so -- so 1500 acres  
17 -- do you -- are you familiar with or aware of how many  
18 acres of cluster were grown in the United States in  
19 1997?

20 A. No, but I would say that, you know, that  
21 part -- that level of detail isn't really necessarily  
22 relevant to, you know, to my general conclusions. I  
23 picked -- basically, what I did there was I picked a  
24 variety that had less than 10 percent alpha and I said  
25 assume a grower produced all of this. We can change the

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1 varieties and it doesn't change the conclusion from  
2 these slides.

3 Q. But it may change the level to which that  
4 producer was impacted, correctly -- correct?

5 A. It may

6 Q. So for example, instead of the grower in  
7 1997, 500 acres of cluster, if he had -- let's say  
8 they're -- all the varieties are under 10 percent. If  
9 he had a couple hundred acres of Willamette.

10 A. Correct.

11 Q. ...and he continued to keep Willamette on  
12 his farm, okay, because Willamette's an important part  
13 of the industry as a direct purchaser. He wouldn't need  
14 as much allotment, would he, for Willamette because of  
15 the low alpha that it produces compared to the other  
16 varieties.

17 A. Right. I mean, this example isn't meant  
18 to show what every producer -- the situation of every  
19 producer. I mean, we could change the assumptions to,  
20 you know, again I have 100 percent cluster variety, but  
21 let's assume that he has a variety, or many different  
22 varieties, that average -- overall, they average eight  
23 percent alpha.

24 Q. Can you give me an example of four or  
25 five of those varieties that would average eight percent

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1 alpha?

2 A. No, I can't but -- I mean, there are -- I  
3 know that there's many varieties and that they all vary  
4 in their alpha percentage. Some are over eight percent  
5 and some are under, so I don't think it's unreasonable  
6 to think that could be a farm with an average alpha of  
7 eight percent.

8 Q. Well, Doctor, again we're trying to  
9 establish whether or not this hypothetical -- or I'm  
10 trying to establish anyway, whether or not this  
11 hypothetical is actually -- has any relationship to  
12 reality and if we go to clusters, for example -- going  
13 back to that, you're hypothetical assumes that two  
14 growers out of 65 had 15 -- excuse me, had 34 percent of  
15 the cluster acreage in 1997.

16 A. That might be what this implies, but  
17 again, that's not critical to my point about the  
18 distribution of.

19 Q. Well, I think it is

20 A. About the distribution of wealth.

21 Q. I don't want to be argumentative, so  
22 we'll try ask in the form of questions, but if 1997 69  
23 percent of the acreage that was planted in the United  
24 States was planted high alpha hops, okay? If that were  
25 the case, would you assume that there would be growers

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1 in our industry that would have no high alpha hops  
2 planted in 1997?

3 A. There may be some. You said 69 percent  
4 was high alpha hops. I mean, you know -- I honestly  
5 don't know. I mean, that implies that many growers have  
6 high alpha hops. I don't know if it implies that every  
7 grower does or not. I would guess probably it doesn't.

8 Q. Do you know of any growers that had no  
9 high alpha hops planted in 1997 personally?

10 A. No, I do not

11 Q. So if -- let's go ahead to the next  
12 slide. If grower -- if farm two actually was consistent  
13 with the industry trends in 1997 and 70 percent of his  
14 acreage was planted to high alpha hops, okay again, his  
15 need for base going forward would be much lower, would  
16 you agree with that?

17 A. If he -- if his production pattern was  
18 different than this and that he -- his increased  
19 production over time was at a lower rate than this  
20 that's right. He would have less of a need for base.

21 Q. All right. So generally, what we can  
22 extrapolate from that, I think, is that if the industry  
23 had 69 percent of their hops devoted to high alpha hops,  
24 in general, the industry would need less base than the  
25 example that you've put up here.

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A. If -- repeat that again.

2 Q. Well, you've got a farm that I don't  
3 think exists. I don't think ever existed

4 A. Well, a hypothetical doesn't imply that  
5 is exists, I mean it is hypothetical. I mean, this is  
6 just sort of a -- you know, it's a -- it's kind of a  
7 though exercise to illustrate a point and the point  
8 being that there's going to be some transfer of wealth  
9 between growers and we can't necessarily say a lot about  
10 the magnitude of the transfer of wealth between every  
11 possible combination of growers out there, but the point  
12 is simply to illustrate that there might be -- that this  
13 type of situation, whether it exists or not -- if it  
14 exist, you know, that would be the magnitude of wealth  
15 transfer between those two growers

16 Q. I agree. I'm not arguing with your math

17 A. Um-hum.

18 Q. What I'm arguing with is that your  
19 premise really doesn't speak to reality and therefore  
20 the degree to which growers are going to be negatively  
21 impacted by this transfer of wealth is significantly  
22 lower than what you've painted for the industry

23 A. It could be. I mean, I didn't imply this  
24 to be an average or this to be representative. Again  
25 it's hypothetical, it's one case that -- I mean, you can

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1 take these basic -- that's why I was very careful to  
2 point out these basic assumptions. I mean -- but you  
3 can change them to match your own production scenario or  
4 your own farm and the implication is going to be  
5 different, but the point is that whenever we -- oop.  
6 What happened? The point -- my point -- I'll get back  
7 to that in a second. My main point there is that if we  
8 have a grower who's alpha production has declined over  
9 time for whatever reason and one who's production has  
10 increased over time for whatever reason, there's going  
11 to be a transfer between them

12 Q. Yes. And I'm not disagreeing with that  
13 It's the degree to which that transfer negatively  
14 impacts the farm two. And that's what I really want to  
15 address, because some of your acreage analysis, while  
16 it's hypothetical, is in my opinion and I think probably  
17 in the opinion of many growers here, is not close to  
18 reality. So if it was not close to reality, would you  
19 agree that the total impact to farm two could be much  
20 less?

21 A. I'm sure, but there is -- we could change  
22 the assumptions and come up with cases where the impact  
23 on farm two is much less, absolutely.

24 Q. Do you know, in your work with the  
25 opponents group or in discussions with any other growers

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1 of any individual farms that would have the negative  
2 impact anywhere close to a million dollars using your  
3 assumptions?

4 A. Not this case in particular and I, you  
5 know, typically, you know, wouldn't ask individual  
6 growers their own financial situation and their -- and  
7 whatnot, but from my talking with individual growers,  
8 there certainly are growers whose production has  
9 expanded recently and others who have declined and the  
10 ones who have expanded, some of them are uncomfortable  
11 with possibly having to purchase base from those who  
12 have declined.

13 Q. At any level?

14 A. Well, sure. I mean, if given the  
15 decision of having to purchase base at any level or  
16 purchasing no base, it would prefer the former -- or the  
17 latter

18 Q. Okay. And furthermore, if it was  
19 established in fact that under current market situations  
20 that the saleable percentage would not need to be 75  
21 would not need to be 55 percent in the first year, but  
22 rather would be 75 percent, the need for any  
23 hypothetical grower or actual, real-life grower would be  
24 less than significant. Is that true?

25 A. Well, it would be less, but I would add

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1 to that that again, remember that the example here is if  
2 the saleable were set at 75 percent, that's implying  
3 absolutely no supply restriction and presumably, no even  
4 short term impact on price but still, there's got to be  
5 that transfer of base there and that's, you know, in my  
6 view at least as inequitable as if the saleable were set  
7 less than that amount

8 Q. Do you believe, Doctor, after doing your  
9 analysis and setting up your hypotheticals of these two  
10 farms, that there's any farm in the United States that  
11 would even approach a million dollars in costs for the  
12 acquisition of base in the short term?

13 A. Well, I don't think so, only because  
14 there's so few farms that operate under programs that  
15 required purchase of base and I don't know enough about  
16 those industries -- the cranberry industry and the  
17 spearmint industry -- to know about their size economies  
18 and their needs for purchasing base, but other -- most  
19 other crops of the farms that I work with, there's just  
20 simply not that need to begin with.

21 Q. I'm sorry. I was referring only to the  
22 hop industry. Do you know of any hop grower in this  
23 industry, have you talked to any hop grower in this  
24 industry that would be impacted anywhere close to the  
25 degree that you've put forth for us today of a million

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1 dollars in the short term for acquisition of base?

2 A. Again, no. I haven't asked them --  
3 haven't asked any of the people that I work with about  
4 their particular financial situation with regard to  
5 that, but the growers that I have talked with have said  
6 that this isn't an unrealistic way to characterize the  
7 industry

8 Q. Oh, you -- the growers you've spoken with  
9 have stated that your hypotheticals, in fact, do have  
10 some semblance to reality?

11 A. They've said that this type of  
12 hypothetical, this type of situation, is consistent with  
13 reality.

14 \*\*\*

15 MR. SMITH: Really? Thank you very much  
16 That's interesting. At this point I have no further  
17 questions. Thank you, Dr. Jekanowski

18 DR. JEKANOWSKI: Thank you.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr  
20 Smith. I think maybe this would be a good time for a 10  
21 minute break. Please be back and ready to go at 3:05.

22 \*\*\*

23 [Off the Record]

24 [On the Record]

25

ADMINISTRATIVE LAW JUDGE: All right, let's go  
2 back on record. We're back on record at 3:07. Mr  
3 Monahan, shall we continue with cross-examination of Dr.  
4 Jekanowski or are you concerned about the time left for  
5 Mr. Christensen?

6 MR. MONAHAN: What time do we have, Your  
7 Honor?

8 ADMINISTRATIVE LAW JUDGE: It's about eight  
9 minutes after 3:00.

10 MR. MONAHAN: I think we can wrap up with Dr  
Jekanowski fairly expediently.

12 ADMINISTRATIVE LAW JUDGE: All right. That  
13 would be good. I'd like to have that kind of  
14 completeness of the record. Additional questions for  
15 Dr. Jekanowski from the people who are here who are in  
16 favor of the marketing order? Mr. Monahan?

17 \*\*\*

18 BY MR. MONAHAN:

19 Q. Thank you, Your Honor. Dr. Jekanowski, I  
20 want to sort of bring you back to the beginning and talk  
21 about the circumstances under which you were retained  
22 for this project. My understanding is that after you  
23 were graduating you went work for the USDA

24 A. That's correct.

25 Q. And then after the USDA you went to work  
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for Sparks Companies.

2 A. That's correct

3 Q. And when did you begin working for Sparks  
4 Companies?

5 A. That would be August of 2000

6 Q. It's a little over three ago

7 A. That's right

8 Q. And in that time you've been working in  
9 there is it Agricultural Policy Department?

10 A. Well, I've been working in the Washington  
11 offices of Sparks Companies and I mean, we do a lot of  
12 different projects, but typically, when policy issues  
13 arise it's our office that covers those, so..

14 Q. Okay.

15 A. ...right.

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: For clarification,  
18 that's Washington D.C. office?

19 DR. JEKANOWSKI: Washington, D.C., right.

20 ADMINISTRATIVE LAW JUDGE: Thank you.

21 MR. MONAHAN: There is another Washington.

22 DR. JEKANOWSKI: That's right, I know.

23 \*\*\*

24 BY MR. MONAHAN:

25 Q. The policy matters, what that include  
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allotment-based marketing orders?

2           A.    No, they would not. Well, I mean, they  
3 would include -- that's a possible policy issue that we  
4 could cover and we might examine. Obviously we did, but  
5 it's a rarity to have this type of issue, you know,  
6 presented to us because there's so few of them in  
7 existence.

8           Q.    It would be fair to say, would it not,  
9 this is the first allotment-based marketing order that  
10 you've ever considered?

11          A.    Absolutely.

12          Q.    We heard from Dr. Tweeten that he had  
13 been retained or was rather being compensated by  
14 Anheuser-Busch and S.S. Steiner, is that right?

15          A.    I believe that's correct

16          Q.    Is that the same companies that are  
17 reimbursing or compensating you for your services, sir?

18          A.    Well, it's a little bit more complicated  
19 than that in this sense, that -- you know, when this  
20 order -- I'll just kind of start from the beginning to  
21 get it all straightened out. When this order was first  
22 proposed, one of the hop growers who -- I wasn't going  
23 to name it, but since the name came out, it was the  
24 Golden Gate Hop branch, which is a division of S.S.  
25 Steiner, went to their own attorney to, you know, ask

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about what this would mean for them and that attorney  
2 was the Baker Botts law firm I referred to at the  
3 beginning of my testimony and that attorney advised them  
4 that they might want to get an economist to look over  
5 this because they had no experience in even agricultural  
6 policy issues. So that's where that law firm contacted  
me and we are essentially retained by Baker Botts law  
8 firm, who -- but over time the group of opponents who  
9 are contributing to, you know, those billings have  
10 expanded beyond S.S. Steiner to include many growers  
11 including Anheuser-Busch and others.

12 Q. Okay. In terms of direct payment, you  
13 get it from Baker Botts law firm and they collect from  
14 these various sources?

15 A. That's correct

16 Q. Would it be fair to state that Anheuser  
17 Busch and S.S. Steiner are two of the largest purchasers  
18 of hops in the United States?

19 A. It would be my understanding, sure.

20 Q. Do you know what market share, what  
21 percentage of American hops they purchase on an annual  
22 basis?

23 A. I really don't.

24 Q. Let's walk you through some of the  
25 slides. I think we're through with slide one now.

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1 Let's jump ahead to slide three, if you don't mind.  
2 right, you identified the concept of the hop marketing  
3 order as to restrict supply to effect parents [ph] raise  
4 prices, right?

5 A. That's correct

6 Q. And that's your language, right?

7 A. It is. That is my language. Absolutely

8 Q. We wouldn't find that language in a  
9 proposed order, would we?

10 A. I don't think you would find that  
11 language in a proposed order, no.

12 Q. And in fact, if we look at Dr. Tweeten's  
13 materials, he actually identifies the concept a little  
14 differently or at least the purpose a little  
15 differently. And then the concept is to set annual  
16 saleable amounts, satisfy anticipated world demand and  
17 provide equitable prices for growers, right?

18 A. Right. I think those were the concepts  
19 that were set out in the proposal for this order. I'm  
20 kind of talking a little bit more in general terms here  
21 and in terms of just, you know, economic theory in  
22 talking about supply controls, generally. Not  
23 necessarily restricted to this marketing order, but just  
24 supply controls. The concept is to restrict supply and  
25 to raise prices.

1           Q.    You'd agree that to effectively critique  
2 the proposal we should accurately state what its purpose  
3 is, should we not?

4           A.    We should and -- but again, I think also  
5 to accurately critique the proposal you have to have  
6 some general, you know, economic framework to begin  
7 with. And that's why I try to lay out what some of the  
8 necessary and preferred conditions were for a supply  
9 control program to work.

10          Q.    We'll get a little more into the  
11 specifics in a moment. I read through your written  
12 report, Exhibit 32, and your critiques of allotment-  
13 based marketing orders in general. Is it a fair  
14 statement that you just think allotment-based marketing  
15 orders are a bad idea in general?

16          A.    Yeah. I mean, I think -- exactly. I  
17 mean, efforts to restrict supply, efforts to manage  
18 markets, efforts to you know, interfere at that level  
19 are a bad idea in general.

20          Q.    And not to simplify it, but one of the  
21 reasons is you're somewhat cynical about human nature  
22 and that you think the fallibility of the human being's  
23 to anticipate and correctly identify demand is limited  
24 right?

25          A.    That and that we -- their greed comes

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1 into play, too.

2 Q. Does greed come into play in a free  
3 market system?

4 A. Sure, it does.

5 Q. You're probably going to run into greed  
6 whether you have a marketing order or not, right?

7 A. You may, but if individual producers are  
8 all able to act on their own free will and act on their  
9 own level of greed within the confines of what's legal,  
10 you know, I would prefer to be able to see individual  
11 growers acting on their own behalf to increase their  
12 prices, to take their own market risks rather than  
13 having the committee do it for them and be potentially,  
14 well afalable [ph in terms of their ability to  
15 anticipate demand or supply and be potentially, you  
16 know, greedy on behalf of themselves at the expense of  
17 the rest of the industry that they might have some  
18 control over.

19 Q. So to use what I believe are economists  
20 terms, atomistic greed is preferable to the potential  
21 for the greed in a regulated marketing order situation?

22 A. That would be an interesting way of  
23 putting it, but I think I would agree with that

24 Q. On slide number three you talk about  
25 strict enforcement with stiff penalties and as I recall

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1 your direct testimony, you quoted or referred to Mr  
2 Moody's warnings about potential penalties under 7 USC,  
3 608 C-14 -- remember that?

4 A. That's right, yeah

5 Q. And you talked about a potential for a  
6 \$5,000 penalty for a handler. Is that right?

7 A. I believe he did

8 Q. Do you know if that's a maximum or a  
9 minimum penalty?

10 A. I really don't know.

11 Q. Do you know if there is a minimum?

12 A. No.

13 Q. Would it surprise you if it was as little  
14 as 50 bucks?

15 A. It wouldn't surprise that there's a range  
16 of penalties depending upon the size of the offense

17 Q. Under the prior marketing order from 1966  
18 to 1986, I think

19 A. Um-hum.

20 Q. ...how many handlers were prosecuted  
21 under that.

22 A. I have no idea.

23 Q. How many \$5,000 fines were handed out?

24 A. Again, I have no idea.

25 Q. In the last 20 years how many handlers

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1 has the USDA prosecuted for criminal prosecution  
2 violation of marketing orders?

3 A. I just don't know.

4 Q. Do you know if it's any?

5 A. It may or may not be, but I think that  
6 the -- still, the fear of being subject to fines is,  
7 know -- I mean, is what encourages people to play within  
8 the limits of the law.

9 Q. Right. It's an encouragement to actually  
10 follow the rules, isn't it?

11 A. Absolutely.

12 Q. And for a marketing order to work, people  
13 have to follow the rules, right?

14 A. It -- well, yes. It will have to follow  
15 that rules [sic]

16 Q. Do you know under Washington law what  
17 other provisions or regulations a hop grower might face  
18 that might have criminal sanctions?

19 A. No, I don't

20 Q. How about a Labor and Industry law?

21 A. Sure

22 Q. Okay. Industrial safety?

23 A. Could be.

24 Q. Payroll.

25 A. Sure.

1           Q.    So for these -- for a sophisticated -- to  
2    use Dr. Tweeten's verbiage, a competent commercial  
3    farmer is going to be encountering all types of areas  
4    where there are government-based incentives to comply  
5    with the rules, right?

6           A.    Absolutely

7           Q.    That wouldn't be unusual for a marketing  
8    order, would it?

9           A.    Well, no. I mean, as I stated -- I mean,  
10   that's an -- that's absolutely a necessary condition,  
11   that there have to be these rules in place with  
12   enforcement in order for it to work.

13          Q.    Okay.

14          A.    That's what I'm saying.

15          Q.    The next section you talk about  
16   additional preferred conditions.

17          A    That's right.

18          Q    I'm curious. Were these sort of  
19   back-of-the-napkin terms that you came up with or did  
20   you actually have a source for these preferred  
21   conditions?

22          A.    These are, I believe, these came from a  
23   -- from just a text book, an agricultural policy text  
24   book.

25          Q.    Can you identify the text book for me?

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1           A.   Not off the top of my head.  It came off  
2 my shelf, but these are also just -- you know, I would  
3 characterize them -- I think I probably came up with  
4 them myself as sort of common, you know, maybe common  
5 conditions or expected conditions and then would be  
6 verified in this common policy teaching.

7           Q.   Okay.  How common?  Could you tell me  
8 about another marketing order that would include these  
9 preferred conditions?

10          A.   Well, any allotment-based marketing order  
11 would essentially require these preferred conditions.

12          Q.   Can you name one that does?

13          A.   That does?

14          Q.   Yeah.

15          A.   Perhaps cranberries

16          Q.   Do you know that or are you guessing,  
17 sir?

18          A.   Well -- I'm not saying that any marketing  
19 order actually -- that any market -- my point here is  
20 I'm not saying that any market actually has these  
21 preferred conditions.  Any marketing order would require  
22 them or these conditions would be preferred in any  
23 market where some central planner is going to regulate  
24 supply.  This isn't a statement of whether these  
25 conditions exist in any individual industry.  And my

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hope was to show that these are the conditions that  
2 would help the marketing order to work, to achieve its  
3 goal and through the rest of my testimony I hoped to  
4 show that most, if not all of those conditions are, you  
5 know, at least in some interpretation, are -- don't  
6 exist in this industry.

7 Q. What I'm trying to determine, Doctor, is  
8 in order for something to become preferred, shouldn't it  
9 have actually been experienced or tested or have some  
10 experience with it before we say it's preferred?

11 A. Well again, I -- if you recall, I think I  
12 tried to be fairly careful in my testimony here to say  
13 that I wanted to talk about text book theory to sort of  
14 lay out the theory of supply controls and then we'll go  
15 through and actually test whether, you know, the theory  
16 applies to this case and...

17 Q. And you have a text book somewhere that  
18 says that the preferred conditions for an allotment-  
19 based marketing program would include these things?

20 A. I don't think I have a text book that  
21 says an allotment-based marketing program would  
22 absolutely need to have the things, but what I have are  
23 text books that show based on experience of agricultural  
24 policy and efforts to restrict output through set-asides  
25 or through restrictions that some market conditions are

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1 preferable for these efforts to be successful.

2 Q. Were there border controls under the last  
3 hop marketing order?

4 A

5 Q. Were there -- are there border controls  
6 under the mint order?

7 A I don't believe so.

8 Q. Are there border controls under the  
9 cranberry order?

10 A. I don't believe so.

11 Q. Perfect foresight by central planners  
12 is that a term you lifted from a text book or is that  
13 something you wrote on the back of a napkin?

14 A. That might have been my paraphrasing, but  
15 that's the general idea. If you can accurately predict  
16 supply and demand

17 Q. You heard Dr. Folwell's testimony about  
18 the accuracy of the administrative committee under the  
19 prior hop marketing order about predicting demand,  
20 correct?

21 A. I think I did, yes.

22 Q. He believed they were remarkably  
23 efficient, did he not?

24 A. I -- he -- yes. He believed they were.

25 Q. And in fact, he presented three documents

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including -- that included research projects concluding  
2 that the central planners' estimates of demand were  
3 always in excess of actual demand. Remember that?

4 A. I think that's what he said. That those  
5 documents -- but I have not had time to read those  
6 documents in any length.

7 Q. Well -- and as you sit here today -- how  
8 long have you been working on this case?

9 A. Almost a year now

10 Q. Okay. In that year have you found any  
11 evidence to suggest that that's inaccurate?

12 A. It just suggests that they did not have  
13 perfect foresight.

14 Q. Well, to suggest that under the prior hop  
15 marketing order that the hop marketing committee  
16 restricted supply below demand...

17 A. I would say that I think even in Dr.  
18 Folwell's testimony, he admitted that they couldn't  
19 predict crop failures, for instance, and if you set a  
20 saleable assuming no crop failure in the world, then I  
21 think that would stand to reason that your saleable  
22 wasn't what it should've been had you had perfect  
23 foresight.

24 Q. Okay, let's take out the element of crop  
25 failures. How many crop failures were there between '66

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1 and '86?

2 A. I don't know exactly, but I mean  
3 obviously the two that -- I mean, we've been talking  
4 about two that occurred toward the end of the marketing  
5 order.

6 Q. And I promise we're going to talk about  
7 that later, too. But if we take out those two years  
8 that you're aware of, in the year you've been working on  
9 this, you've not been able to come up with any evidence  
10 that the advisory committee...

A Um-hum.

12 Q. ...the administrative committee under  
13 prior hop marketing act ever restricted supply below  
14 demand, can you?

15 A. I have not, but you know, let's also  
16 recall that for any level of supply there's always going  
17 to be a demand and they may have -- and I think Dr.  
18 Folwell also testified that they certainly might've  
19 restricted supply below what it otherwise would have  
20 been at any point in time.

21 Q. Well, that's an interesting point. You  
22 say that there will be a demand for any supply. For  
23 example, if there are farmers out there offering alpha  
24 that 40 percent of the cost of production, you're  
25 probably going to find a dealer who will snap it up,

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1 right?

2 A. You might.

3 Q. That's right and you might turn around  
4 and trade it on the market, right?

5 A. They might.

6 Q. Does that really have any bearing on  
7 actual supply and demand?

8 A. Well, actual supply and demand at any one  
9 point in time, I -- you know, I think that that's  
10 speculative activity itself will to some -- is to some  
11 degree meant to iron out some of the fluctuations in  
12 crisis, in supply and demand, but -- you know, at any  
13 point in time, you know, that those speculative hops, so  
14 to speak, don't necessarily reflect current market  
15 demand

16 Q. Right. Your preference is for the  
17 collective cumulative atomistic approach of the industry  
18 to determine demand, right? You think that that's more  
19 accurate than this -- than the administrative committee  
20 would be?

21 A. For individual growers, absolutely. I  
22 think if individual growers can determine what they  
23 should be producing based on their ability to get  
24 contracts for their long term production and their  
25 willingness to take risks maybe in the short term market

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1 by -- if they want to produce hops beyond what their  
2 contract is, you know, they can do that. They're freely  
3 willing and able to do that recognizing that there's a  
4 risk that they might have to sell those hops for less  
5 than cost of production. But on the other hand, they  
6 might be able to sell those hops for much more than the  
7 cost of production but I think that has to be an  
8 individual grower decision based on whether he or she  
9 can acquire a market for their hops.

10 Q. To be successful in the unregulated  
market, does the individual farmer have to have perfect  
12 foresight?

3 A. No, but he has to have knowledge of his  
14 market. He has to have knowledge of whether there's  
15 people out there willing to buy his hops or not. And to  
16 me that's, you know, that's close to perfect foresight.  
7 And then he also has to be willing to decide for himself  
18 how much risk he wants to incur beyond what he has  
19 contracted production for.

20 Q. Let's assume that in the hop industry  
21 there are hop farmers who actually have  
22 less-than-perfect foresight...

23 A. Um-hum.

24 Q. ...and that in response to a small

25

\*\*\*

1 [Off the Record]

2 [On the Record]

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ADMINISTRATIVE LAW JUDGE: We're back on record at 3:28. Mr. Monahan, would you start that hypothetical over again? Your small brewer.

7

\*\*\*

8

BY MR. MONAHAN:

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17

Q. Thank you. I want you to assume that in the hop industry there have been and that there are hop growers who have less-than-perfect foresight and that in response to small increases in prices they maximize production and plant more acreage and we end up with what I think I described to Dr. Tweeten as an artificial oversupply of hops. In that case doesn't the imperfect foresight by a small group of farmers affect the market for everybody?

18

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A. Sure, it does. I mean, the market is made up of the collective decisions of all of the producers and -- but, you know, recall it as Dr. Tweeten pointed out, over the long term if a grower consistently makes the wrong production decisions and he consistently produces without a contract and consistently can't sell those hops, then that producers is likely to be producing it less than his cost of production, probably

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1 have to find another business venture.

2 Q. Sort of the Darwinian theory of farming?

3 A. Essentially. You -- I think...

4 Q. The phrase you used this morning was risk  
5 preference, that Mr. Smith asked if you made any  
6 economic sense whatsoever for a grower to enter into a  
7 contract that compensated the grower at less than the  
8 cost of production, right?

9 A. I

10 Q. He asked you if that made any sense.

11 A. Right. I believe he asked that, right

12 Q. And you said well, it could make sense  
13 depending on that grower's risk preference. Did I  
14 misunderstand you?

15 A. No, I don't think -- I don't exactly  
16 recall the context of that question, but you know, it  
17 would depend on many things. Some -- you know, it  
18 depends of for instance, the number of different  
19 varieties he grows. I would say it wouldn't make strict  
20 economic sense for a grower to engage in a long-term  
21 contract over a very long planting horizon to sell all  
22 of his hops at less than the cost of production over a  
23 long period of time

24 Q. And the percentage of those hops that  
25 this hypothetical grower might contract for less than

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1 the cost of production would depend on that grower's  
2 risk preference -- or risk tolerance, if that's a better  
3 phrase.

4 A. Well, right. It's basically like a  
5 diversification

6 Q. If a sufficiently high number of growers  
7 in the industry have the type of risk preference or risk  
8 tolerance where they repeatedly sell hops for less than  
9 the cost of production, doesn't the risk preference of  
10 that small group of growers eventually dictate the  
11 market for the other efficient growers?

12 A. Well, hypothetically. But I would still  
13 say that if that little -- if that small group of  
14 growers consistently did that over the long term they  
15 probably wouldn't be growers of hops in, you know  
16 forever.

17 Q. It might depend on their other resources,  
18 right?

19 A. It could

20 Q. In that kind of market the rule would be  
21 whoever can sell at a loss for the longest wins, right?

22 A. Well -- I mean, yeah. In that  
23 characterization, the markets...

24 Q. And I want you to stick with this  
25 hypothetical.

1           A.    Sure.

2           Q.    If we have the type of dynamic in a hop  
3 industry that whoever sells at a loss for the longest  
4 wins, that could end up driving out these efficient  
5 growers that have been at the base of all of your  
6 hypotheticals, right?

7           A.    Under that hypothetical, yeah. That is  
8 hypothetically possible. I don't think it's realistic.

9           Q.    The growers you talked to didn't give you  
10 that fact pattern?

11          A     No

12          Q.    Okay. Wouldn't that result -- if you had  
13 the situation where the efficient grower is driven out  
14 of the business by the grower with the high risk  
15 tolerance, doesn't that result in an inequitable  
16 transfer of wealth that you're so adamant in opposing?

17          A.    Not really. I mean -- you know, I don't  
18 completely follow again why -- you know, these severely  
19 hypothetical questions that you're posing to me, you  
20 know, why is that unique to this industry would be my  
21 question

22          Q.    Is it hypothetical that growers in the  
23 Washington, in the Northwest hop region, are growing and  
24 selling hops for less than the price of production?

25          A.    That is...

1 Q. It's a fact

2 A. That's possible. No, I wouldn't state it  
3 as a fact. I don't have that fact. I've spoken to  
4 growers who say that they are growing and selling hops  
5 at or above the cost of production and also we have to  
6 remember that some growers who I've spoken to said that  
7 yeah, occasionally they will sell hops at less than the  
8 cost of production, but in other years they sell hops at  
9 much more than the cost, much higher than the cost of  
10 production and over time, they're more than covering  
their costs

12 Q. That...

3 A I don't think it's a fact that the hop  
14 industry is selling hops at less than the cost of  
15 production.

16 Q. That example that those growers gave you  
7 would be an example of the roller coaster of prices we  
18 heard about earlier, right?

19 A. That would be an example of variation of  
20 prices.

21 Q. Let's have a look at slide four. The  
22 first concept you have on this slide is that less supply  
23 might artificially boost prices.

24 A. That's right.

25 Q. And your theory is that if the

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1 administrative committee sets supply at less than  
2 demand, that would artificially boost the prices of  
3 those American hops in the short run?

4 A. Right. It would boost prices above what  
5 they would've been otherwise

6 Q. Okay. And conversely, if -- let's take  
7 some hypothetical numbers. If the actual demand for  
8 American hops is 50 million pounds a year and the  
9 administrative committee sets the saleable quantity at  
10 25 million pounds, clearly we're going to experience  
11 some higher prices in the short run, but to the long  
12 term detriment of the industry

13 A. I would think so.

14 Q. If the actual demand is 50 million pounds  
15 and the administrative committee sets the saleable  
16 quantity at 75 million pounds, we're going to have an  
17 artificial surplus, aren't we?

18 A. We might.

19 Q. And then you would see artificially  
20 diminished prices, right?

21 A. Under that scenario, but I would still  
22 say that still, despite the actions of what the  
23 committee decides, a grower probably would not produce  
24 hops -- certainly the committees would be used as  
25 guidance, but I don't the committee would necessarily

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1 force growers to produce hops. I mean, they're still  
going to -- if they can't market their hops and they  
3 that prices are going to be low they still might produce  
4 less than that maximum despite what the committee  
5 recommends

6 Q. In the last, say five or six years in  
7 response to prices, wouldn't you say it hasn't been the  
8 experience of the hop industry that growers have  
9 consistently overproduced in response to minor price  
10 increases?

11 A. I don't know. I think -- I mean  
12 production has certainly changed in response to price  
13 changes and I don't think that that's unreasonable.

14 Q. Let's go back to the hypothetical. If  
15 in fact, this hop administrative committee set a  
16 saleable quantity of 50 million pounds.

17 A. Um-hum.

18 Q. ...for a 50 million pound demand, isn't  
19 that the type of balance that we're looking for in an  
20 orderly marketing industry or orderly marketing  
21 situation?

22 A. That would imply that that committee set  
23 the saleable to exactly equal whatever, as you say,  
24 demand is. If we knew that demand was, in fact, 50  
25 million pounds and the committee set it right at that

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level, then right, that would be -- they'd be setting  
2 the supply at the demand.

3 Q. Next slide please. "Hop market is  
4 global, prices determined in world markets. US share of  
5 world production is roughly 25 percent." What was the  
6 US share of world production at the conclusion of the  
7 last marketing order?

8 A. Honestly, I don't recall.

9 Q. Has it

10 A. I think it was less.

11 Q. Has it improved or diminished in the last  
12 17 years?

13 A. In the last 17 years, based on the chart  
14 that I had up with world acreage shares, the US share, I  
15 believe -- I think it increased slightly then started to  
16 decrease in the most recent years

17 Q. Okay and if that..

18 A. But that's just going...

19 Q. If you look at -- you heard Mr. Smith's  
20 presentation in Portland?

21 A. I did

22 Q. And he actually had some graphs showing  
23 that we've been losing -- the United States has been  
24 losing market share with respect to alpha consistently  
25 over the last 10 years, right?

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1                   A.    I think I recall that.  That's correct,  
2    right

3                   Q.    And that has been the free market system  
4    at work, right?

5                   A.    Sure

6                   Q.    One of the arguments that heard you and I  
7    believe, Dr. Tweeten, make is that if these restrictions  
8    -- if there is some type of mechanism in place to  
9    restrict supply or control supply, that other foreign  
10   markets will be incentivised [ph] to up production  
11   right?

12                  A.    That's right.

13                  Q.    We also heard from Mr. Carswell that  
14   China has made substantial and significant leaps in the  
15   development of infrastructure of their hop industry,  
16   right?

17                  A.    We did hear that.

18                  Q.    What about the free market system  
19   incentivised China to make all of these changes in the  
20   last 17 years?

21                  A.    China has been very aggressive in growing  
22   all of its agriculture, in expanding all of its  
23   agricultural industries and investing in technologies  
24   and education and investment for several reasons.  One,  
25   to try to be self-sufficient in agriculture.  I mean,

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1 that's sort of a political goad and also to exploit  
2 whatever cost economies it has as a nation in production  
3 of different types of foods. So it's not surprising.  
4 They see opportunity in the hop industry.

5 Q. And they've seen that for the last 17  
6 years under the free market system.

7 A. Evidently.

8 Q. If the US hop industry is collectively  
9 producing alpha at less than the cost of production,  
10 does it make any sense to hang on to market share at  
11 expense of profit?

12 A. If the US hop industry is collectively  
13 producing hops at less than the.

14 Q. Excuse me, selling. Keep selling hops at  
15 less than the

16 A. I'm sorry Collectively selling hops at  
17 less than the cost of production. I mean, that's a big  
18 assumption right from the start but if the industry's  
19 collectively producing hops at less than the cost of  
20 production, then I would say.

21

22 ADMINISTRATIVE LAW JUDGE: Selling.

23 DR. JEKANOWSKI: I'm sorry, selling. I would  
24 say that, you know, market share might be the least of  
25 their problems

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BY MR. MONAHAN:

Q. Next slide, please. I don't have any clever questions about this one. I just need to know what it is

A. This is the balance of trade basically, it's the value of exports minus the value of imports. So it's just basically anything above zero implies that we're exporting more hops than we're importing in terms of value and that's what this is showing

Q. And this is -- did you say the source?

A. It's right out of the Hop Growers of America

Q. Did you -- on the bottom we have these years grouped into years -- a two year period. It's '85-'86 and that's where we've put the -- what do you call them, the dots? What do economists call those?

A. The dots.

Q. Okay. Did you borrow the entire graph from USG or did you do that yourself?

A. No. I believe I took that out of a table and I graphed it. I mean, it's my own graph. I don't remember whether they had the same graph in there or not, but...

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1 Q. Okay, and you...

2 A. ...I plotted them myself

3 Q. You inserted the vertical line showing  
4 where the marketing order ended?

5 A. Yes, absolutely

6 Q. And again, I'm sorry, I was a liberal  
7 arts major, so you've got to walk it through me slow  
8 walk me through it. What do these -- let's say the 60  
9 million dollar figure in or about just less than 60  
10 million dollars in '89 - '90. What does that reflect?

A. 60 in '89 -- that's basically implying  
12 that the value of what we exported was worth about 60  
13 million dollars more than the value of what we imported.

14 Q. Okay. So it could show us increased  
15 exports or diminished imports.

16 A. That's right. I mean, basically this is  
17 showing the balance and this could be either.

18 Q. This doesn't distinguish what it is.

19 A. Not -- no, not directly.

20 Q. Okay. Do -- you heard Mr. Smith's  
21 testimony about when the old marketing order ceased to  
22 be effective in his opinion, right?

23 A. Yeah. I think he said in maybe 1980.

24 Q. Do you have any reason to disagree with  
25 that? There's some points in time where allotment-based

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1 marketing orders become ineffective?

2 A. Well, I don't know. I mean, I used the  
3 pure definition based on whether a saleable was set by  
4 USDA and based on what I could sort of work through from  
5 the Federal Register when this was terminated.

6 Q. What was the saleable set by USDA from  
7 1980 through '86 compared to percentage of base.

8 A. It was more than the percentage of base

9 Q. 140 percent, 130 percent was it not?

10 A. May be 130

11 Q. Okay. In other words, even though there  
12 was technically a saleable set it was at such an  
13 artificially high number that all of the hop producing  
14 land in the United States wasn't going to be able to  
15 reach that saleable quantity, right?

16 A. Possibly. I don't know whether the base  
17 was initially -- whether more capacity was still  
18 available, but certainly it was -- the saleable was set  
19 above what the base of 1966 was and that's so -- let's  
20 say 30 percent higher.

21 Q. If the saleable quantity was more than  
22 all American hop producers could produce, would you  
23 agree with me that the marketing order had ceased to  
24 operate effectively?

25 A. Again, I don't think I can judge whether  
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1 it was effective, whether -- I mean, you know, whether  
2 it was operating by its definition, by its goals.  
3 Whether it was somehow corrupted. I mean, I would think  
4 that -- you know, again my basic testimony is that it  
5 certainly over the long term, but probably even over  
6 short term, this type of marketing order can't work  
7 effectively to effectively anticipate what supply and  
8 demand is. And perhaps the period of 1980 to '86 or  
9 whatever is demonstrating that. I don't know

10 Q. I'm going to rephrase it. I'm going to  
11 ask you to concentrate on answering the question, sir

12 A. Sure.

13 Q. If, from 1980 through 1986 the saleable  
14 quantity is set higher than all the American hop  
15 industry can produce.

16 A. Right.

17 Q. ...wouldn't you agree that for all  
18 intents and purposes we're working under an unregulated  
19 free market system?

20 A. At that point in time, yes. But can I  
21 follow up for a second?

22 Q. Sure. You bet.

23 A. You know, another point of that would be  
24 that under the period of time from say 1970 through '76  
25 the industry was also effectively capped, so if there

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1 wasn't new investment in bringing land into potential  
2 productive capacity, so certainly maybe that excess  
3 capacity didn't exist when the saleable was finally  
4 raised to 130 percent. I don't have any knowledge of  
5 that one way or another, but I would be saying that over  
6 time that investment in land and infrastructure might  
7 have been made previous to those years if that marketing  
8 order had not been in place

9 Q. You've got a lot growers in the room, so  
10 I'm interested in hearing this testimony again. Did you  
11 say there was no investment in land and infrastructure  
12 under the old marketing order?

13 A. I didn't say there was no investment,  
14 I'm saying that if the total saleable amount was capped,  
15 then if I'm restricted in what I can sell, I'm not going  
16 to invest in the assets to produce more of something I  
17 can't sell.

18 Q. What if the saleable quantity was set at  
19 a level that actually exceeded demand and growers are  
20 actually able to return to cover cost of production plus  
21 a reasonable profit? Wouldn't they be able to invest in  
22 their own land and infrastructure?

23 A. If it exceeded demand and prices remained  
24 higher than an equilibrium level.

25 Q. Such, I think, is the unrebutted evidence

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1 from Dr. Folwell

2 A. I guess under that hypothetical they  
3 might've, but still I don't quite follow -- if they're  
4 restricted in the amount they can sell and the total  
5 amount they can sell or if the total amount that the  
6 industry can sell, maybe that's more accurate. Sure,  
7 individual growers can still buy base and trade their  
8 base amongst each other, but if the industry is  
9 basically tapped in what it can market, there's  
10 certainly going to be less investment, less need to  
11 invest in expanding production.

12 Q. Have you, in the year that you've been  
13 working on this case get a chance to track how much has  
14 actually been invested in hop growing operations by  
15 American hop growers in the last 17 years?

16 A. No, I have not.

17 Q. Okay. You can jump all the way to slide  
18 14, if you don't mind. This was the first of your  
19 slides, was it not, that -- maybe not the first, but  
20 first in a series of slides where you tried to estimate  
21 or calculate the anticipated saleable quantity in year  
22 one of the marketing order?

23 A. I think here I was trying to anticipate  
24 what the base would be, so right. This would be the  
25 first step in that process.

1 Q. Okay. I'm sorry. It's slide 16 I'm  
2 looking for.

3 A. Okay.

4 Q. It was my fault. Okay, that's the one I  
5 was talking about.

6 A. Sure.

7 Q. Okay. And at the bottom of your -- of  
8 slide 16, you indicate that saleable quantity must be  
9 set at 75 percent just to equal 2002 alpha production

10 A. That's right.

11 Q. And that was based on -- you started with  
12 the lower bound of 1997 and then compared it -- you  
13 added a five percent and compared it to 2002.

14 A. That's right.

15 Q. Right? You then -- go to the next slide  
16 It's -- I'm able to look at two slides at once but  
17 you're not, so it's going to be a little unfair to you,  
18 but I'll ask you just to agree with the approach you  
19 took.

20 A. Okay, sure

21 Q. After reaching the 75 percent saleable  
22 quantity to get down from the 9.2 million to the 6.9  
23 million.

24 A. Right.

25 Q. ...you then factored in what you believed

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1 to be the carry over or carry-in

2 A. Well, I factored in -- basically, what I  
3 did was I looked at USDA estimates of stocks on hand and  
4 I sort of -- I wanted to come up with -- I mean, I have  
5 no idea what this committee -- how the committee's  
6 objectives are going to be set, but based on sort of a  
7 general belief that there is excess supply, I interpret  
8 that to mean excess stocks. So I said okay, this again  
9 hypothetically, what if our objective was simply to  
10 keeping all else equal, reduce stocks from 2002 levels  
11 to -- or 2003 levels to 2001 levels, so that's where I  
12 came up with that.

13 Q. Okay. Do you have any knowledge of how  
14 the shortages and the German crop this year have  
15 affected or will affect the stock?

16 A. I'm assuming it'll decrease it.

17 Q. And in fact, if that were able to  
18 decrease it down to 1.8 million pounds by itself, we'd  
19 be back to the 75 percent saleable quantity, wouldn't  
20 we?

21 A. That's correct.

22 Q. All right.

23 A. And the market would've essentially, by  
24 this definition of being in balance, it would've come  
25 back into balance on its own this year.

1 Q. Which would make this a good time to  
2 enter a marketing order, right?

3 A. I wouldn't agree with you there.

4 Q. Let's take a look at slide 19. Don't  
5 worry, I won't beat you up on the clusters.

6 A. Thank you

7 Q. I want you -- one of the premises of  
8 these comparisons is that you've got your efficient  
9 grower and your inefficient grower, your expanding  
10 grower and your declining grower

11 A. Right

12 Q. Tell me -- are you familiar with what  
13 fixed and variable costs are in hop production?

14 A. Not offhand. I've seen some of the costs  
15 estimates that were presented by -- like Ray Folwell,  
16 for instance.

17 Q. So if I asked you questions, for example,  
18 what an efficient hop grower would spend on labor for  
19 the harvest operations...

20 A. Um-hum

21 Q. ...you wouldn't have a clue, would you?

22 A. No.

23 Q. So you wouldn't be able to actually  
24 identify those areas where some grower in the room might  
25 want to judge whether he was efficient or not?

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1           A.    Yeah, you know, in -- maybe in my  
2           testimony in my description, efficient -- I'm sort of  
3           meaning efficient to mean that producer who has expanded  
4           -- in this hypothetical example, expanded in new, more  
5           efficient varieties, varieties that yield more and  
6           varieties that produce more per acre. I mean that from  
7           a strictly sort of, you know, economics perspective,  
8           that's a measure of efficiency. So it isn't necessarily  
9           meant to say that an individual grower is more efficient  
10          than another, but in this hypothetical he's made  
11          decisions that certainly would be consistent with being  
12          a more efficient producer.

13                Q.    Okay, so this more efficient producer  
14          who's gone with higher alpha...

15                A.    That's right.

16                Q.    ...he's getting higher alpha percentages  
17          and higher yields, that sort of has got us to the  
18          problem we're in right now in the industry, hasn't it?  
19          The abundance of alpha acids?

20                A.    Right. If you take for granted that  
21          there's a problem in the industry, that -- you know,  
22          investment in this, you know, new technology. These  
23          high-yielding varieties certainly increase the supply  
24          and we would expect that to decrease the price and the  
25          market must come back into equilibrium to the point

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1 where eventually, people will stop overproducing and  
2 prices will rise back up.

3 Q. One of the arguments I've heard made  
4 and I don't want to attribute it to you, it might've  
5 been from someone else. What I've heard is that high  
6 alphas are the problem and by adopting a marketing  
7 order, we're going to punish some of these aroma growers  
8 who really are, at least in the current state, somewhat  
9 in balance

10 A. Well, I say -- I would say I agree with  
11 you that I've heard that high alphas are the problem and  
12 I think the problem is in the way the marketing is. I  
13 can't say for certain we're going to punish individual  
14 aroma growers, but we're certainly going to risk  
15 upsetting that market balance that has evolved on its  
16 own. But when you're also regulating a type of hop for  
17 which alpha isn't one of the critical characteristics of  
18 that hop...

19 Q. When you say upset the market balance,  
20 one of the things that I've heard you talk about is  
21 perhaps sending signals to the folks who have contracts  
22 with those growers and sending signals of instability in  
23 the market. That's one of the arguments, is it not?

24 A. That's an argument, right

25 Q. Let's create a farmer number three, if

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you don't mind.

2 A. Sure.

3 Q. And do you have a pen and paper handy?

4 We have Farmer Jekanowski grows 100,000 pounds of  
5 Willamettes, okay? And Farmer Jekanowski's one of these  
6 efficient, growing, expanding farmers who in 2002 has  
7 reached the pinnacle, the height of production, okay?  
8 With the hundred thousand pounds.

9 A. Okay.

10 Q. Do you know what the alpha is for  
11 Willamettes?

12 A. Not offhand, no.

13 Q. Let's assume it's three and a half  
14 percent.

15 A. Sure.

16 Q. Okay? At three and a half percent how  
17 much alpha has Farmer Jekanowski produced?

18 A. 35,000 pounds...

19 Q. 3500.

20 A. 3500, yeah.

21 Q. Okay. So 3500. And let's assume again  
22 that this farmer has developed relationships with  
23 purchasers, has long term contracts -- one of the things  
24 you're worried about is that this marketing order might  
25 jeopardize those types of relationships, right?

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1 A. I would be worried that it could

2 Q. Let's assume, then, that this farmer  
3 number three chooses 2002 as his production year, okay?  
4 How much base does this farmer get for his hundred  
5 thousand pounds of Willamettes?

6 A. In this case I would believe he would get  
7 10 percent alpha, which would come up to 35,000 pounds.

8 Q. Well, 10 percent of a hundred thousand is  
9 10,000.

10 A. Oh, I was -- right. You're right.

11 Q. Okay. So 10,000 pounds, right?

12 A. That's right.

13 Q. Now let's assume that the saleable  
14 quantity has to get knocked back what? 55 percent -- 50  
15 percent. That's a number we've heard. Then what is  
16 farmer number three's saleable quantity in the first  
17 year of the marketing order?

18 A. 5,000 pounds.

19 Q. And what's his actual production?

20 A. This farmer's actual production is 3500  
21 pounds

22 Q. So this farmer of Willamettes, even with  
23 a 50 percent reduction in saleable quantity, is going to  
24 have no problem meeting this contract for Willamettes  
25 is he?

1           A.    In this case, no.  This farmer appears  
2 with a 50 percent saleable, he'll have plenty of base.

3           Q.    And one of the theories you've heard is  
4 that because high alpha hops are the problem, that they  
5 share a greater burden under this marketing order and it  
6 preserves and protects lower aroma growers, right?

7           A.    That's an argument I've heard, right.

8           Q.    And in fact, this hypothetical would bear  
9 that out, would it not?

10          A.    Well in this hypothetical for this  
11 grower, he will have, it appears, enough base to cover  
12 his current production.  He will still be potentially  
13 restricted in what he might be able to produce several  
14 years hence if he wants to increase his production, but  
15 in this case he has enough to fulfill this last year's  
16 production.

17          Q.    In your offices in Washington, D.C., you  
18 often give advice to agricultural interests, right?

19          A.    That's correct

20          Q.    If you were advising the purchaser of  
21 those Willamettes on whether it made sense under this  
22 marketing order to enter a forward contract given the  
23 possibility of 50 percent reduction of base, wouldn't  
24 you agree that it would be good advice to continue on  
25 with those contracts?

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inflation

2

\*\*\*

3

MR MONAHAN: Thanks for your patience

4

don't have anything else

5

DR JEKANOWSKI: Thank you

6

ADMINISTRATIVE LAW JUDGE: Thank you, Mr

7

Monahan. Are there additional questions for those who

8

are here in favor of the marketing proposal? For Dr

9

Jekanowski? There appear to be none. Are there

10

questions for Dr. Jekanowski from USDA representatives?

11

Dr. Hinman?

12

\*\*\*

13

BY DR. HINMAN:

4

Q. I wanted to draw on Exhibits 32 and 31

5

that were handed out, the reports. Do you have those

16

available to you?

17

A No.

18

19

ADMINISTRATIVE LAW JUDGE: Let me get those

20

from the court reporter. Dr. Jekanowski now has

21

Exhibits 30, 31, and 32.

22

\*\*\*

23

BY DR. HINMAN:

24

Q. Would you turn to page five of Exhibit

25

31, please?

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A. Yes

2 Q. Your model was mentioned -- referenced in  
3 previous testimony. Is this the model that previous  
4 witnesses were referring to?

5 A. I believe it is, right. I don't have the  
6 previous witnesses' testimony right in front of me to  
7 compare, but this was certainly the one that he referred  
8 to.

9 Q. Could you kind of just briefly explain  
10 this model and also if you want to include any, you  
11 know, references were made about the statistical  
12 validity of that, do you want to make any of your own  
13 comments related to that, please do so

14 A. Well, my intent here was -- and again,  
15 this model came to be as a response to questions that  
16 were asked by USDA about ultimately what would happen to  
17 the total industry revenue for the hop industry if  
18 production were restricted, essentially. So in order  
19 do that, you know -- I mean, that basically gets at the  
20 heart of estimating elasticity of supply, so what I did  
21 here was a very -- what would be considered a very  
22 simple demand model that measures, basically, how prices  
23 have responded over the period 1977 to 2001 based on a  
24 number of variables, including alpha production, alpha  
25 stocks, and beer production. And again, it was just

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1 meant to provide guidance, meant to provide a simple  
2 analysis of what the elasticity might be

3 Q. And do you think it -- at this date, some  
4 of the data still represents a reasonable representation  
5 of what you intended?

6 A. Well, I mean, this certainly isn't a  
7 wasn't meant to be a dissertation. I mean, there's not  
8 -- you know, I didn't do a highly complex model here  
9 a highly complex estimation, but I do believe that this,  
10 you know, simply shows how prices have responded to  
11 changes in quantity over time. I think generally, it is  
12 correct and that, you know, with a lot more time to  
13 spend, somebody might do some, you know, a little bit  
14 more fancier specifications and different tests, but  
15 essentially, this -- you know, this demonstrated to me  
16 that the prices response, at least over some -- over  
17 this range of data, the price response is elastic.

18 Q. Okay. Yeah. I'm going to just quote  
19 some of your figures here to make sure I have them...

20 A. Sure.

21 Q. ...correct. You have a production  
22 coefficient on alpha 0.73 which represents your price  
23 flexibility estimate, correct?

24 A. That's correct

25 Q. And that led you to conclude that price

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1 was inflexible, therefore that demand was elastic.

2 A. That's correct, because -- I mean just to  
3 sort of bring everybody on to the same page, a  
4 flexibility is roughly interpreted as the inverse of an  
5 elasticity.

6 Q. Thank you. I guess we're back in Econ  
7 101, much to the detriment of some people in the  
8 audience.

9 A. That's right.

10 Q. Is it correct that you said a 10 percent  
11 decrease in alpha would lead to a 7.3 percent decrease  
12 in price and the revenue would decline by about four  
13 million dollars?

14 A. I believe I have -- yeah. I found that  
15 -- right

16 Q. Okay. Given the fact that there have  
17 been additional discussions about elasticity estimates  
18 quite different from that and the discussion that  
19 perhaps all the estimates we've seen so far, perhaps  
20 given statistical validity of the estimates themselves  
21 perhaps are actually, in fact, one -- unitary.

22 A. Um-hum

23 Q. Does that cause you to change this  
24 conclusion at all?

25 A. Well again, if it were perfectly unitary,  
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then any reduction in price would be offset by -- I'm  
2 sorry. Any increase in -- or any decrease in supply  
3 would be perfectly offset by the increase in price and  
4 total industry revenues would not change. It would just  
5 be a -- you know, we'd be right off -- right where we  
6 were when we began, but there'd be no measurable impact  
7 on industry revenues in that case.

8 Q. Granted that, you know, this is a simple  
9 model. You intended to do it in a fairly quick  
10 response.

11 A. Right.

12 Q. to a USDA request.

13 A. Um-hum

14 Q. Would you say that the four million  
15 dollars still represents the best estimate of the  
16 change, with is sort of the opposite of what a person  
17 believing in any less a demand would believe, or do you  
18 think that your subsequent statement that perhaps demand  
19 is unitary and that perhaps there may be no change  
20 Which is the better estimate, given your current belief?

21 A. Well, I still generally believe that  
22 -- again, if we look at these issues over the long run,  
23 if anything, this underestimates the degree to which the  
24 response is elastic, so you know, I showed, you know  
25 that the response was slightly elastic, we might say

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1 So if anything, over the long run, once -- especially  
2 once we, again, account for international trade, which I  
3 don't believe I did in this model due to lack of time  
4 I think we would see that it's actually more elastic  
5 so there would actually be a greater reduction over the  
6 long term in industry revenues than what's reported  
7 here.

8 Q. Okay. Thank you for that. Turn to page  
9 one of that same exhibit, please. And you again in  
10 response to the same USDA request, you put together  
11 information on duties and on ocean freight.

12 A. That's right.

13 Q. And you intend that to represent, I guess  
14 -- at least, in a simple way, the cost of importing hops  
15 is the transportation quota and duty cost.

16 A. I believe and again, I don't remember  
17 exact context of the question, but I think I have it  
18 written here that basically the question was first of  
19 all, are there any strict restrictions on imports and  
20 then essentially, exactly what are the costs of  
21 importing hops from Germany, I think was roughly the  
22 question.

23 Q. And can you conclude anything from those  
24 figures about how just the pure cost of importation as  
25 represented here, would affect a domestic user of

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1 imported hops, what level of price -- domestic price  
2 increase might, I guess, would be the impact of this in  
3 terms of a domestic grower choosing the importer's hop  
4 over domestic based on these costs? Did you draw any  
5 such conclusions from this estimate?

6 A. Not directly. I mean, basically my  
7 general conclusion is that the cost of importing isn't  
8 great, isn't very high and -- but, you know, I think it  
9 should also be pointed out that other characteristics of  
10 the hops themselves will determine whether a brewer  
11 decides to import to source domestically. Perhaps, you  
12 know, different varieties and different, you know,  
13 quality characteristics might, as well. But given -- if  
14 we were to assume that this is a pure commodity product  
15 and perfectly interchangeable, the restrictions on  
16 imports are very minor as a proportion of the total  
17 price of that product

18 Q. Okay, thank you. Could you turn to the  
19 last page of that report, which is your table?

20 A. Right.

21 Q. Table -- the source of data for your  
22 model. What I intend to do here is to basically  
23 understand your sources and computations. In the middle  
24 there on -- in this appendix, data used to estimate  
25 econometric model, if average alpha percent, going

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1 through your entire time period 1977 to 2001.

2 A. That's correct

3 Q. Where -- what is the source of that  
4 particular piece of information?

5 A. You know, this was done almost a year ago  
6 and I think -- I would have to look back at my notes,  
7 but I think what I did here -- oh, well it -- this came,  
8 I believe, from the Hop Growers of America. I think  
9 they report average alpha content for US hops and I  
10 think I used that directly, at least back to 1982. If  
11 not, then I took a weighted average of the varieties  
12 that are produced, but I'm -- again, I would have to  
13 look back to my notes. I believe this came right out of  
14 Hop Growers of America's statistical reports

15 Q. You have that alpha has a -- computations  
16 flow directly from those percentages you multiplied  
17 production time and that percentage to get production  
18 stocks -- to get the stock value and divide that -- the  
19 price by that figure to get the value, is.

20 A. That's correct.

21 Q. Okay. I want to ask you to state a few  
22 more details from your presentation there. And the  
23 intent is the same, just to understand the source.  
24 Could you look on your presentation on slide 14? And in  
25 that -- in the middle of...

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1 A. It's going to take a minute.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Let's change the  
4 tape at 4:12

5 \*\*\*

6 [Off the Record]

7 [On the Record]

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: We're back on  
10 record, still at 4:12. Dr. Hinman?

11 \*\*\*

12 BY DR. HINMAN:

13 Q. I'll try not to jump the gun again. On  
14 the assumption of bitter hops, you state alpha  
15 percentage is increasing over time, 12.5 and 13  
16 percent.

17 A. Right.

18 Q. Is that the same source as the -- your  
19 data table?

20 A. No, not exactly. I mean, this one  
21 since this one is a little more recent, I remember  
22 exactly -- what I did there was I took what are -- what,  
23 you know, based on Hop Growers of America descriptions,  
24 what are commonly referred to as alpha hops and of all  
25 those varieties, and I basically took a weighted average

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1 of the production of those alpha hops over this time  
2 period based on the alpha percentages that are reported  
3 on the hop -- that's sort of the mid-point in the alpha  
4 percentages that are recorded on the Hop Growers of  
5 America web page. So this one was actually a little bit  
6 more tedious, the actual calculation, rather than just a  
7 -- you know, a source of data.

8 Q. Refer to the next slide, please. 15.

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Before he does  
11 that, Dr. Hinman, are you saying that you left out the  
12 aroma hops in calculating that percentage?

13 DR. JEKANOWSKI: That's right. Under this one  
14 where it says bitter hops, that's...

15 ADMINISTRATIVE LAW JUDGE: That's just the  
16 alpha hops.

17 DR. JEKANOWSKI: That's just what I believe to  
18 be considered alpha hops, right. Which I think I just  
19 used as a cutoff hops that were over 10 percent. Over  
20 10 percent alpha.

21 ADMINISTRATIVE LAW JUDGE: So of those that  
22 over 10 percent alpha, the average has now grown to 13  
23 percent.

24 DR. JEKANOWSKI: I believe that's correct,  
25 although I guess I shouldn't absolutely quote myself

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1 that I used 10 percent alpha, because I might've used  
2 what was, you know, considered to be -- believed to be  
3 alpha hops. You know, based on how the Hop Growers of  
4 America, on their website, have the description of  
5 different hops characterized by alpha and aroma. I used  
6 one of those two methods and just need to look at my  
7 notes to make sure

8 \*\*\*

9 BY DR. HINMAN:

10 Q. The next slide, 15, please. This is the  
11 -- your computation of base and this is where I'm going  
12 to refer to the other exhibit here. Exhibit 32, and on  
13 the back of your -- this economic analysis of allotment-  
14 based marketing order for the hop industry from Sparks  
15 Companies, you have an appendix

16 A. Right

17 Q. And that is estimating the industry base  
18 using available data

19 A. That's right.

20 Q. Is that the source of these graphs here?

21 A. That -- yes. This is the source of those  
22 bars on that graph, right.

23 Q. And again, the alpha production is  
24 discussed as we -- on this graph is computed as we  
25 discussed previously average percentage times hop

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production.

2           A.    Average, yes.  The average percentage  
3 times the production in each of those years, right

4           Q.    Okay.  If you could go then to slide 23  
5 What I'm seeking here is a clarification.  I don't think  
6 I followed where you got these figures of effective  
7 saleable 47 percent and 125 percent.  Could you review  
8 that with us how you arrived at those figures, please?

9           A.    Certainly.  That's based on the fact that  
10 a grower's 2003 production, his most -- his or her most  
11 recent production isn't counted, so under my  
12 hypothetical farm expanding producer, I forget whether  
13 that's one or two, his production expanded in 2002, but  
14 it isn't counted.  His base is established based on 2002  
15 rather than 2003.  So if he wanted to just produce what  
16 he did in 2003, his saleable is actually, you know, more  
17 constrained than a producer who declined in 2003

18          Q.    Okay.  Thank you.  It's hard to jump  
19 around here, but I do -- could you jump back, then, to  
20 slide number seven?  The second point there about there  
21 on stifling domestic innovation and technology.  You  
22 talk about unintended consequences of supply controls,  
23 but do you also intend this to represent the impact in a  
24 producer allotment marketing order?  And if so, could  
25 you explain the mechanism or the reasoning behind

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1 exactly what is the -- what is stifling the innovation,  
2 what is preventing the technology adoption?

3 A. Absolutely. You know, I'm sort of  
4 referring here -- in referring to supply controls, I'm  
5 assuming that the marketing order will ultimately have  
6 some effect on lowering supply, first of all. You know,  
7 if we assume that the markets are oversupplied and  
8 therefore, prices are low, this marketing order will  
9 effectively be operated as a type of supply control. So  
10 that's the clarification of that. Now, in terms of  
11 stifling domestic innovation and technology adoption  
12 there's at least two ways that I think that'll happen.  
13 One -- and we've talked about this a lot, is the, you  
14 know, potential need to purchase base, grower base, and  
15 that's a new cost of production that can potentially  
16 compete with purchasing other types of technologies.  
17 Purchasing new equipment, new harvesters, et cetera, so  
18 there'll be some competition for resources, you know,  
19 because of this. And then the other reason is recall  
20 that since this marketing order in particular regulates  
21 alpha production, there's certainly going to be much  
22 less incentive to produce yet even higher yielding alpha  
23 hops because, you know -- because we're restricted to  
24 what we can -- what a grower can produce in terms of  
25 alpha, so it seems to me that that'll stifle -- if you

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1 consider that investment in high alpha hops is an  
2 investment in technology, I think certainly this  
3 marketing order will decrease the incentive for that  
4 technology, for instance.

5 \*\*\*

6 DR. HINMAN: Thank you. That concludes my  
7 questions

8 ADMINISTRATIVE LAW JUDGE: Thank you, Dr  
9 Hinman. Other questions by USDA representatives for Dr.  
10 Jekanowski? Ms. Deskins?

11  
12 BY MS. DESKINS:

13 Q. I just want to clarify. Is the law firm  
14 Baker, Botts, McKenzie -- are they here at the hearing  
15 and do you know if they want to make an appearance on  
16 the record?

17 A No, they're not at the hearing and they  
18 don't have any direct interest in this. I mean, I was  
19 just -- they were just sort of the link to bringing me  
20 together with the client

21 Q. Okay. And also in terms of Golden Gate.  
22 I did ask your colleague this. Do you know if they have  
23 any connection to California hop producers?

24 A. I'm -- I don't know absolutely for  
25 certain, but I'm pretty sure they do not. I believe

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1 they're just in Washington.

2 \*\*\*

3 MS. DESKINS: Okay. Thank you

4 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
5 Deskins. Any other questions by USDA representatives?  
6 Dr Jekanowski, you'll be here again tomorrow, is that  
7 correct?

8 DR. JEKANOWSKI: I will be

9 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
10 Carswell, I know I'm asking you to introduce your one  
11 page and your booklet from which it came through this  
12 witness, but we could do that tomorrow?

13 MR. CARSWELL: Yes, Your Honor. I did have a  
14 couple more questions, too. Do you want to do that  
15 tomorrow?

16 ADMINISTRATIVE LAW JUDGE: Could we? Because  
17 I don't want to go late and I do want to finish Mr.  
18 Christensen. So we'll recall this witness tomorrow

19 MR. CARSWELL: It'll just take a minute from  
20 my standpoint

21 ADMINISTRATIVE LAW JUDGE: That's fine. Thank  
22 you so much. You may step down for now, Dr. Jekanowski

23 DR. JEKANOWSKI: Thank you, Your Honor.

24 ADMINISTRATIVE LAW JUDGE: Would you please  
25 give those three exhibits to the court reporter?

1 MR. MONAHAN: Your Honor?

2 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

3 MR. MONAHAN: If you are interested in making  
4 a record, then of course it makes sense to recall Dr  
5 Jekanowski. If it would help save time, the opponents  
6 committee is prepared to stipulate to the admission of  
7 the documents that Mr. Carswell has handed out.

8 ADMINISTRATIVE LAW JUDGE: All right. That  
9 works very well

10 MR. CARSWELL: My questions, Your Honor, don't  
11 relate to those documents. They relate to -- it would  
12 be a redirect, just a couple of questions.

13 ADMINISTRATIVE LAW JUDGE: All right. Without  
14 prejudice to your ability to ask questions tomorrow, I  
15 will mark a one page exhibit that has a little Roman  
16 numeral four at the bottom, that it also shows a website  
17 of www.USAhops.org, and is entitled up at the top "Hops  
18 Growers of America 2002 Statistical Report, Statistical  
19 Overview." I will mark that as Exhibit 37. Is there  
20 any objection to that being admitted into evidence?  
21 There is none. Exhibit 37 is hereby admitted into  
22 evidence. And then I believe Mr. Roy has the copies of  
23 the book from which it came and I would like to consider  
24 that as Exhibit 38. I'll just take one

25 MR. ROY: Okay.

1 ADMINISTRATIVE LAW JUDGE: And -- oh, it's in  
2 color. Well, at least the first page. That's the  
3 booklet from which the page that is Exhibit 37 came. I  
4 will label the booklet as Exhibit 38. This is great to  
5 have this up-to-date data and I appreciate it very much,  
6 Mr. Roy. I've marked this as Exhibit 38 and is there  
7 any objections to Exhibit 38 being admitted into  
8 evidence? There is none. Exhibit 38 is hereby admitted  
9 into evidence. All right, Mr. Monahan, do you want a  
10 short break before you call Mr Christensen?

1 MR. MONAHAN: Yes, Your Honor, just a couple  
12 of minutes.

13 ADMINISTRATIVE LAW JUDGE: All right. About  
14 five?

15 MR. MONAHAN: That would be perfect, thanks.

16 ADMINISTRATIVE LAW JUDGE: Okay. Everyone  
17 please be back and ready to go at 4:30.

18 \*\*\*

19 [Off the Record]

20 [On the Record]

21

22 ADMINISTRATIVE LAW JUDGE: We're back on  
23 record at 4:33. Mr. Monahan

24 MR. MONAHAN: Thank you, Your Honor. The  
25 proponents would call Rod Christensen to discuss the

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purpose and effect of the miscellaneous provisions in  
2 the proposed order, specifically those set forth at  
3 Sections 991.70 through 991.94.

4 ADMINISTRATIVE LAW JUDGE: Thank you. Mr  
5 Christensen, would you again state and spell your full  
6 name?

7 MR. CHRISTENSEN: Rod Christensen, R-o-d  
8 C-h-r-i-s-t-e-n-s-e-n

9 ADMINISTRATIVE LAW JUDGE: Thank you. You  
10 remain sworn. Would you again acquaint those here with  
11 your position regarding the hearing and also your  
12 position with regard to the mint order?

13 MR. CHRISTENSEN: I'm a consultant working on  
14 behalf of the proponent committee and I'm also a manager  
15 of the spearmint marketing order.

16 ADMINISTRATIVE LAW JUDGE: Thank you. Mr  
17 Monahan, you may proceed

18  
19 ROD CHRISTENSEN,  
20 having been previously sworn, according to the law,  
21 testified as follows:

22 BY MR. MONAHAN:

23 Q. Thank you, Your Honor. Mr. Christensen,  
24 could you please read into the record, in sequence,  
25 those provisions appearing at Sections 991.70 through

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991.94 and to the extent you have any comments or  
2 observations about the purpose, intent, or effect of  
3 such provisions, please share those thoughts with us.

4 A. Yes, sir

5  
6 MR. MOODY: Excuse me, Your Honor. Could we  
7 stipulate that the Federal Register notice says what it  
8 says and just have Mr. Christensen give his comments on  
9 the sections without taking the time to read it all into  
10 the record since it's already in the record?

1 ADMINISTRATIVE LAW JUDGE: And also there are  
12 handouts so that anyone in the audience who can't see  
13 the screen can pick up one of those handouts. Based on  
14 that, Mr. Monahan, would you have any objection to that  
15 procedure?

16 MR. MONAHAN: Not at all, Your Honor. I think  
17 these would qualify as the -- to use the imperfect term,  
18 boiler plate provisions of a marketing order.

19 ADMINISTRATIVE LAW JUDGE: All right, very  
20 fine. Thank you for that suggestion. That's how we'll  
21 proceed.

22 MR. CHRISTENSEN: Your Honor, I have no  
23 comments on these sections.

24 \*\*\*

25 BY MR. MONAHAN:

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2 Q. I'll ask a couple of questions then, Your  
3 Honor. You are -- you administer the mint order, do you  
4 not, sir?

5 A. Yes.

6 Q. Does the mint order have provisions that  
7 would be perhaps characterized as miscellaneous?

8 A Yes, it does

9 Q. Which is to say they do not fit in under  
10 any of the provisions regarding volume regulations or  
11 allotment base?

12 A. Correct.

13 Q. Is that how you would characterize, sir  
14 the proposed provisions appearing in Sections 991.70  
15 through 991.74?

16 A. Yes

17 Q. To the best of your knowledge, sir, do  
18 any of these proposed provisions have any effect on the  
19 way a producer operates?

20 A. No, they wouldn't.

21 Q. Okay. And the same is true with a  
22 handler. I see 991.70 addresses the fact that a handler  
23 must handle hops in conformity with these provisions, is  
24 that right?

25 A. That's correct.

Q. But are there any other of these

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1 miscellaneous provisions that affect, say, subtenant  
2 rights of a handler?

3 A. There could be some effect on a handler  
4 in the event of a termination in that there are  
5 provisions in Section 991.80 concerning proceedings  
6 after termination and as I recall, some of that could be  
7 -- could affect a handler in terms of the refunds of  
8 funds and et cetera.

9 Q. Let's talk briefly about the issue of  
10 termination. Do these provisions address how a  
11 marketing order, if accepted by grower referendum, how a  
12 marketing order would be terminated?

13 A. Yes.

14 Q. Can you describe that, please?

15 A. Well, a marketing order can be terminated  
16 in a couple of ways. One is if the Secretary finds that  
17 the order is no longer carrying out the declared policy  
18 of the Act, then he or she can terminate the order.

19 \*\*\*

20 MR. MONAHAN: Your Honor, just as a point of  
21 order again, we have been using slides as illustrative  
22 exhibits. I note that the slide up there indicates a  
23 66.67 volume is needed to terminate. That apparently is  
24 inconsistent with the proposed provision appearing at  
25 991.78 and if Mr. Roy were here, we'd have him amend the

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illustrative exhibit accordingly.

2 MR. SMITH: I can amend it

3 MR. MONAHAN: Mr. Smith can do so. That's  
4 just for those assembled, that they not be misled.

5 MR. CHRISTENSEN: To clarify that point,  
6 Sections .78 provides that the second method for  
7 terminating a marketing order is by referendum and -- of  
8 the growers -- and the Secretary shall terminate the  
9 provisions of this part when he or she finds that such  
10 termination is favored by a majority of the producers.

11 \*\*\*

12 BY MR. MONAHAN:

13 Q. What is the continuance referendum?

14 A. It's a referendum conducted to determine  
15 continued support for the marketing order.

16 Q. And when are continuance referendums  
17 held?

18 A. Well, I think the Secretary has the right  
19 to call for a continuance referendum at any time. The  
20 language in the order prescribes that a continuance  
21 referendum will be held within four years of the  
22 effective date of the order and subsequent to that,  
23 every eight years.

24 Q. What happens if growers vote to toss out  
25 a marketing order? What happens upon termination?

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A Well, upon termination, the

2 Q. I should ask you is there a provision  
3 that addresses that..

4 A. There is

5 Q. Which is it?

6 A. It's Section .80. Do you want me to go  
7 through that a little bit?

8 Q. Please.

9 A. Well, upon termination the committee acts  
10 as, I think, as board of trustees to carry out the  
11 provisions of the termination. I've never gone through  
12 this. Fortunately...

13 Q. Now's your chance.

14 A. I mean, in actual...

15 Q. Oh, okay. I'm sorry.

16 A. Actuality. So...

17 Q. You have read the provision.

18 A. I've read the provision, yes.

19 Q. Okay, thanks.

20 A. And the committee is under the, you know,  
21 jurisdiction and direction of the Secretary. So they  
22 act as trustees of all the funds and property in its  
23 possession or under its controls, including claims for  
24 any funds unpaid or property not delivered at the time  
25 of such termination and they continue until they're

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discharged by the Secretary. They continue through that  
2 process to account for all the receipts and  
3 disbursements and so on and verifying that books and  
4 records of the committee are proper and closed out as  
5 they should be. And then upon the request of the  
6 Secretary they execute such assignments if it's  
7 necessary or appropriate to essentially close out the  
8 marketing order.

9 Q. Take a look, if you would, at Section  
10 8.1.

11 A. Um-hum.

12 Q. And can you describe for us what this  
13 provision addresses?

14 A. "Unless otherwise expressed and provided  
15 by the Secretary, the termination of this part or any  
16 regulation issued pursuant to this part shall not affect  
17 or waive any right, duty, obligation, or liability which  
18 shall have a reason or which may thereafter arise in  
19 connection with any provision of this part." So you  
20 know, that is simply saying that just because the order  
21 is terminated, it doesn't mean -- it doesn't waive any  
22 right or duty, so on, that arose -- that may have arisen  
23 after -- that arose before or might arise afterwards in  
24 connection with the marketing order.

25 Q. What happens to the concept of base -- an  
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1 allotment base upon termination of a marketing order?

2 A. What happens to the concept?

3 Q. Yeah.

4 A. Well, it's defunct. It's gone

5 Q. Okay, and that's...

6 A. There's no base

7 Q. That's something within the power of the  
8 growers to vote out?

9 A. Correct.

10 \*\*\*

11 MR. MONAHAN: Okay. Your Honor, I have no  
12 further questions.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
14 Monahan. I now invite questions of Mr. Christensen on  
15 these provisions from those who are here in favor of the  
16 marketing order. I now invite questions from those who  
17 are here in a position against the marketing order.  
18 Moody?

19 \*\*\*

20 BY MR. MOODY:

21 Q. Thank you, Your Honor. I'd like to ask  
22 you a little bit about the section concerning  
23 compliance, Mr. Christensen.

24 A. Yes.

25 Q. As part of your duties with the mint  
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1 order, I gather you're familiar with the USDA guidelines  
2 on compliance by marketing order committees adopted  
3 around 1992?

4 A. I am.

5 Q. And among other things, those guidelines  
6 require that handlers be audited at least once every  
7 three years, I think it is?

8 A. Correct

9 Q. And is that being done by the mint  
10 committee?

11 A. It is.

12 Q. Okay. And what assurance would we have  
13 under the proposed hop order that that would be done for  
14 hops?

15 A. Well, I think that you would have the  
16 assurance that the committee and its management would  
17 carry out the provisions, you know, pertaining to the  
18 order faithfully. In addition to that, you have the  
19 assurance that USDA is overseeing all of the activities  
20 of the committee and make sure that that -- that those  
21 procedures are followed, you know, in connection with  
22 the area of compliance, an individual's committee's  
23 compliance plan is regularly audited by USDA to assure  
24 that it's updated, that it's comprehensive, and that it  
25 is -- it covers all areas that would assure compliance

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1 with the order.

2 Q. Have you uncovered any violations of the  
3 order at the mint committee?

4 A. We have.

5 Q. And turned them in to USDA?

6 A. Correct.

7 Q. And do any of those involve sales over  
8 allotment?

9 A. They do, um-hum.

10 Q. Maybe I'm just recalling something from  
11 -- don't they have a -- kind of a colloquial word for  
12 that in the mint industry? Midnight barrels or  
13 something like that?

14 A. I think you're confusing this with  
15 another program.

16 Q. Okay.

17 A. We don't have.

18 Q. Midnight bales of hop, maybe I'm thinking  
19 about. All right. On continuance referenda...

20 A. Yes

21 Q. ...it -- I gather though -- well, it's my  
22 understanding that the normal time for those is every  
23 three years and you're extending this to every eight  
24 years and it just seems like a very long time,  
25 especially since these provisions are within the range

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1 of tools available under the AMA among the more  
2 restrictive. Is there any particular reason why you  
3 don't feel it's appropriate to do the continuation  
4 referenda every three years?

5 A. Well, first I don't -- I'm not aware of  
6 that policy that there's a standard time for a  
7 continuance referendum. You know, my understanding is  
8 that that's written into each order individually and  
9 that it -- there's no -- I don't know of any particular  
10 guideline relating to how often a continuance referendum  
11 should be held. In this particular order, I think the  
12 fact that there's one -- first, just let me say that  
13 continuance referendums do incur considerable expense  
14 and so I don't think that they should be engaged in  
15 just well, let's -- you know, do it because we haven't  
16 done it for a year or two. I think in this case, having  
17 a continuance referendum four years from the time that  
18 the order becomes effective is, if anything, pushing the  
19 limit, you know, in terms of how soon, because I think a  
20 new order has to have an opportunity to be established,  
21 to take care of existing marketing situations and have a  
22 chance to -- for growers to see how it works before its  
23 put before them for a continuance vote.

24 Q. All right, in order for the order to  
25 continue is it correct that it has to achieve the same

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1 two-thirds vote by volume or number that it needs to  
2 pass in the first place?

3 A. That's not specified in the order, but  
4 that's my understanding, yes

5 Q. And would the continuance referendum be  
6 mandatory? Maybe not the holding of it, but the  
7 would have to get the two-thirds vote in order to  
8 continue

9 A. Yes, um-hum. That's my understanding.

10 Q. All right. Getting back to compliance  
11 for a second. Given that I -- if I understand things  
12 now given a couple of the changes the proponents have  
13 made, that every grower that sells to a brewer will be a  
14 handler and the brewers will be responsible for  
15 administering their own pool, alpha. How does the  
16 committee envision conducting these compliance allotted  
17 to what could be possibly every grower in the industry?

18 A. You know, I can only answer it from my  
19 experience with spearmint, not knowing exactly, you  
20 know, what all the procedure would be in the hop  
21 marketing order, but in spearmint, growers are very well  
22 educated in terms of the procedures that are required of  
23 them to comply with the order. There's [sic] procedures  
24 beyond that of being a handler. There's procedures as a  
25 grower that have to be followed, reporting requirements

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and so on. One of the advantages of a small industry  
2 such as hops and spearmint is that it's very possible  
3 reasonable, to have regular contact with each grower to  
4 inform them of the provisions that are required of them  
5 to help them at any time they need help in filling out  
6 forms and following what needs to be done to comply with  
7 the order. So I guess what I'm saying is that it's very  
8 important to use preventive measures to keep producers  
9 from violating the order unintentionally. I think those  
10 who -- producers or handlers who intentionally violate  
1 the order are few and far between.

12 Q. How many handlers are there in spearmint.

3 A. There's what, six handlers.

14 Q. All right. And you don't think there  
5 would be an unwieldy compliance problem in hops to have,  
16 you know, 80 or 100 handlers?

7 A No, I don't think it would be. You know,  
18 keep in mind that the transactions that you're talking  
19 about that constitute handling would be, you know,  
20 relatively few per each producer. So I don't think that  
21 the process of monitoring that and making sure that's  
22 completed correctly would be difficult at all

23 Q. Is alpha acid stored in drums or barrels?

24 A. I don't know

25 Q. It can potentially go for \$50 a kilogram



1 A That's correct

2 Q. okay. Does that need to be added to that  
3 section?

4 A. I think that would be good, yes. Um-hum.  
5 Yes

6 Q. And then also in Section 991.78, which is  
7 on termination.

8 A. Yes.

9 Q. If you look in B, it refers to 50 percent  
10 of the volume of alpha acid. Should -- is that supposed  
11 to be alpha acid or should it be hops?

12 A. I think it should be alpha acid because  
13 that's the commodity that's being regulated.

14 \*\*\*

15 MS. DESKINS: Thank you.

16 ADMINISTRATIVE LAW JUDGE: Mr. Moody, I see  
17 your hand, but let me first see if there are any other  
18 questions from the USDA group. It appears not. Mr.  
19 Moody?

20 MR. MOODY: Thank you. Sharlene's question  
21 provoked a thought. In these continuation referendums  
22 when you're voting your pounds of alpha acid, will the  
23 aroma hops get the 10 percent bump in that vote?

24 MR. CHRISTENSEN: I don't know the answer to  
25 that at this point, you know, I think that would be a

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1 determination to be made by USDA as they establish rules  
2 for the termination

3 MR. CARSWELL: Just as a follow-up -- Matt  
4 Carswell.

5 MR. CHRISTENSEN: Um-hum.

6 MR. CARSWELL: They don't get a bump now on  
7 the vote on whether or not to implement the proposal  
8 right?

9 MR. CHRISTENSEN: You know, again, I think  
10 that's USDA's call how that -- exactly how that is  
11 applied.

12 MR. CARSWELL: Thanks

13 ADMINISTRATIVE LAW JUDGE: Mr. Moody?

14 MR. MOODY: Well, do the proponents have a  
15 position on that? I know -- I think you said there  
16 would be another witness dealing with referendum issues  
17 and maybe it can be covered there, but do you have a  
18 position on whether the aroma hops should get the 10  
19 percent bump?

20 MR. MONAHAN: That's where it will be covered.

21 MR. MOODY: Pardon me?

22 MR. MONAHAN: That's where it will be covered.

23 MR. MOODY: Thank you.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

25 Monahan. All right, any other questions from those who

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1 are opposed to the marketing order? Any questions from  
2 anyone for Mr. Christensen on the provisions that he's  
3 covered? There are none. May this witness be excused  
4 for the balance of the hearing? And Mr. Monahan is  
5 nodding yes

6 MR. MONAHAN: Yes, Your Honor

7 ADMINISTRATIVE LAW JUDGE: All right. Thank  
8 you, Mr. Christensen.

9 MR. CHRISTENSEN: Thank you

10 ADMINISTRATIVE LAW JUDGE: You're welcome.  
11 It's 4:56. Mr. Monahan, do you want to call an  
12 additional witness tonight?

13 MR. MONAHAN: No, thank you, Your Honor.

14 ADMINISTRATIVE LAW JUDGE: All right. Would  
15 we like to begin at 8:30 in the morning?

16 MR. MONAHAN: Yes, we would

17 ADMINISTRATIVE LAW JUDGE: And what would be  
18 your plan at that time?

19 MR. MONAHAN: Our plan tomorrow morning is to  
20 set forth with volume limitations, Section 991.50  
21 through 991.58

22 ADMINISTRATIVE LAW JUDGE: And who will be  
23 your first witness?

24 MR. MONAHAN: Mr. Leslie Roy.

25 ADMINISTRATIVE LAW JUDGE: All right. Now,  
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shall we finish off Dr. Jekanowski's testimony before  
2 Mr. Roy begins?

3 MR. MONAHAN: That makes sense.

4 ADMINISTRATIVE LAW JUDGE: Okay.

5 MR. MONAHAN: The proponents have nothing more  
6 for Dr. Jekanowski, but I understand Mr. Carswell does.

7 ADMINISTRATIVE LAW JUDGE: Yes. I think there  
8 may be a few questions. I don't expect it to be  
9 lengthy. All right, is there anything further to be  
10 discussed tonight? There is not. We'll go off record  
11 at 4:57. Thank you

12

13 [End of Proceedings