

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 22nd 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  
13 TRANSCRIPT OF PROCEEDINGS  
14  
15

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16 BEFORE: HONORABLE JILL S. CLIFTON  
17

18 FOR PROPONENTS:

19 BRENDAN MONAHAN, ESQUIRE

20 FOR OPPONENTS:

21 JAMES MOODY, ESQUIRE  
22  
23

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## P R O C E E D I N G S

October 22, 2003

ADMINISTRATIVE LAW JUDGE: We're on record now at 8:32 in the morning. This is the 22nd of October, 2003, Wednesday. We're in Yakima, Washington, and this day six of the hops rulemaking hearing. This volume of the transcript, volume six, should have page numbers numbered consecutively to yesterday and the 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. Before we actually go on record, I'd like to meet with counsel and I'd like to meet out in the hall and the people that I have in mind would be Mr. Mazumdar, Mr. Moody, Mr. Monahan, and Ms. Deskins. If you'd meet with me for a moment. And the rest of you may have a 10 minute stretch break.

\*\*\*

[Off the Record]

[On the Record]

\*\*\*

ADMINISTRATIVE LAW JUDGE: We're back on record at 8:40. Both in Portland and here, we have pointed out that at this point USDA has not taken a position either for or against the proposals and I explained in Portland and I'm not sure that I explained

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1 here that I am not involved in the decision-making  
2 process. I'm here to take in the evidence. The  
3 Secretary of Agriculture makes the decision. The  
4 Secretary, of course, would receive assistance in making  
5 that decision from workers within the United States  
6 Department of Agriculture and I would call on Ms.  
7 Deskins at this point and ask her just to give a little  
8 further clarification of the decision-making process.  
9 Also I understand Ms. Deskins has some procedural items  
10 to present also before we go forward.

11 MS. DESKINS: Thank you, Judge Clifton. I did  
12 want to explain a little bit about how this process  
13 works for -- because some people are new to it. Even  
14 those who are familiar with it sometimes don't remember  
15 everything, but what USDA has done is issued a notice  
16 which has a proposal in it. USDA has not taken a  
17 position on the proposal one way or another. The  
18 purpose of these hearings is to gather evidence and then  
19 after the hearing is over with, the Department will  
20 review it and determine if there's...

21 ADMINISTRATIVE LAW JUDGE: We have a hum that  
22 we didn't have yesterday in all -- my mike as well as  
23 hers. I don't know if we can correct that.

24 MS. DESKINS: Okay, I'm trying it again. And  
25 our purpose is to determine if there's sufficient

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1 evidence in the record to support an order. And  
2 because of this you might've seen us saying we can't  
3 discuss the merits of this proceeding with anyone. The  
4 only thing we can discuss is procedural issues such as  
5 do you have witnesses who are going to testify, when are  
6 they going to testify and we also ask people do you want  
7 to testify. I was asked yesterday about some proposals  
8 that people thought USDA had put in and if we were going  
9 to put on a witness to support the proposals and I just  
10 want to explain that USDA did require that certain  
11 sections be put in and they're at the end of the  
12 proposal, but USDA did not put those in to support one  
13 position or another. It was just so that the proposal  
14 that was submitted would be legally sufficient. So we  
15 are not going to be putting on any witnesses in regards  
16 to those sections. The other thing that I wanted to  
17 point out which is in the notice -- oh, let me just read  
18 that. The X party prohibition applies to the following  
19 parts of USDA. It applies to the employees of the  
20 Office of the Secretary of Agriculture, Office of the  
21 Administrator, Agricultural Marketing Service, Office of  
22 the General Counsel, and the Fruit and Vegetable  
23 Program, Agricultural Marketing Service. People who are  
24 employees of those agencies of the United States  
25 Department of Agriculture cannot discuss the merits of

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1 this proceeding with anyone. If you do have a question  
2 for us and you're not sure whether it's -- it would be X  
3 party, the best thing to do would be to ask it on the  
4 record because in these proceedings, in front of  
5 everyone, we can respond to some questions.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
7 Deskins. Are there any USDA employees who are not  
8 seated here at the USDA table who are present? All  
9 right, not currently. All right. I had an opportunity  
10 to talk with counsel and I just -- I have a concern that  
11 I'd like to relay this way at this time. If you are  
12 seated in the back, please respect the fact that this  
13 issue is extremely important and people have different  
14 views of it. And so please be very careful not to  
15 trample on your neighbor back there. I realize I'm a  
16 long way from the back of the room and things are very  
17 quiet here while there are speakers, but I understand  
18 some viewpoints have been expressed in the back of the  
19 room that interfered with those others who are here to  
20 hear what was being said and I'll deal more with that  
21 later. All right, let's see. Other preliminary  
22 matters. Exhibit 34 is the document that Dr. Folwell  
23 brought with him to yesterday's testimony and I have 20  
24 copies of it here. So Ms. Deskins and Mr. Monahan, if  
25 you would come forward, I'll divide it roughly in half

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1 and if you all would distribute copies, I'd like one to  
2 go to the court reporter as the exhibit copy, Mr.  
3 Monahan. Oh, I'm sorry. Let me trade you. The court  
4 reporter will get the original. Thank you. And we'll  
5 go off record while those are distributed at 8:46.

6 \*\*\*

7 [Off the Record]

8 [On the Record]

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: We're back on  
11 record at 8:47. Is there any objection to the admission  
12 into evidence of Exhibit 34? There is none. Exhibit 34  
13 is hereby admitted into evidence. You'll notice that  
14 the last page of it is a legal-sized page, it's merely  
15 folded up. All right, other preliminary matters? All  
16 right, there appear to be none. Mr. Monahan, shall we  
17 proceed with the rest of the economic expert testimony  
18 at this time?

19 MR. MONAHAN: Yes, Your Honor. As I  
20 understand it there was -- Mr. Carswell had some follow-  
21 up questions for Dr. Jekanowski.

22 ADMINISTRATIVE LAW JUDGE: Yes, and perhaps  
23 others, as well. I don't think it'll take long. Dr.  
24 Jekanowski, would you resume the witness stand? Would  
25 you again state and spell your names?

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1 DR. JEKANOWSKI: Mark Jekanowski, M-a-r-k  
2 J-e-k-a-n-o-w-s-k-i.

3 ADMINISTRATIVE LAW JUDGE: You remain sworn.  
4 Mr. Carswell, do you want to begin the questioning?

5 \*\*\*

6 MARK JEKANOWSKI,  
7 having been previously sworn, according to the law,  
8 testified as follows:

9 \*\*\*

10 BY MR. CARSWELL:

11 Q. Yes, Your Honor. Thank you. Dr.  
12 Jekanowski, do you still have your presentation on the  
13 system?

14 A. Unfortunately, Paul Signoritti didn't  
15 bring the projector this morning, so I don't have it on  
16 the system. All I have is a hard copy.

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE: Would you spell  
19 Signoritti, please?

20 DR. JEKANOWSKI: S-i-g-n-o-r-i-t-t-i.

21 ADMINISTRATIVE LAW JUDGE: Thank you. Do you  
22 have a copy of your Exhibit 30, that presentation and  
23 hard copy?

24 DR. JEKANOWSKI: I have one for myself...

25 ADMINISTRATIVE LAW JUDGE: Yes.

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1 DR. JEKANOWSKI: ...and whatever was passed  
2 out.

3 ADMINISTRATIVE LAW JUDGE: Okay, that's fine.

4 \*\*\*

5 BY MR. CARSWELL:

6 Q. As you recall yesterday, Dr. -- or Mr.  
7 Christensen was questioning your data with respect to  
8 spearmint oil...

9 A. Right.

10 Q. And the production, the imports, the  
11 exports, all of the data that you had on that and was  
12 calling it inaccurate and kind of scolding you for not  
13 having accurate data, is that correct?

14 A. That's correct.

15 Q. Where again did you get that information?

16 A. Well, actually, if I may just -- this is,  
17 I think, a perfect opportunity -- I would like to  
18 clarify a little bit about that data source and that  
19 slide I had up. And actually, there's some other  
20 clarifications I wanted to make, too, and to bring  
21 everybody back up to speed, I think it was Exhibit 30  
22 was my presentation?

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: That's correct.

25 DR. JEKANOWSKI: And in particular, he was

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1 referring to slide 56.

2 MR. CARSWELL: Well, I believe he was  
3 referring to slides 55 through 57.

4 DR. JEKANOWSKI: Well, that -- but he had a  
5 particular concern, really, about 56 and it was the  
6 export data and it didn't seem to be consistent with the  
7 Department of Commerce data. And I wanted to clarify  
8 that the -- there is a slight error on my part on the  
9 slide -- the title of the slide as I have it was...

10 ADMINISTRATIVE LAW JUDGE: Excuse me, Dr.  
11 Jekanowski. For some reason our mikes are much more  
12 sensitive today.

13 DR. JEKANOWSKI: I'm sorry. Okay.

14 ADMINISTRATIVE LAW JUDGE: So...

15 DR. JEKANOWSKI: Sure.

16 ADMINISTRATIVE LAW JUDGE: Thank you.

17 DR. JEKANOWSKI: The title of my slide was "US  
18 Exports of Spearmint and Peppermint." In fact, it  
19 should have been "US Net Exports of Spearmint and  
20 Peppermint" and what that means is it's actually the  
21 total exports minus the imports, so it controls for both  
22 imports and exports. So it's really the trade balance.  
23 And then I did do a little bit more research on this  
24 last night and that data, by the way, was from the  
25 International Trade Commission. I think I said FAS

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1 yesterday, but when I look back at my notes I discovered  
2 it was from the International Trade Commission. So to  
3 recap, that slide should have net exports of spearmint  
4 and peppermint and then for comparison -- or for  
5 completeness sake, I did download from the same data  
6 source, International Trade Commission, the actual  
7 exports of spearmint and peppermint and I don't have the  
8 projector, but I will submit this as a submission.  
9 And basically, the trend is the same. It doesn't  
10 fundamentally change my testimony, but for completeness  
11 sake, this is actual exports of spearmint and  
12 peppermint, again, from the International Trade  
13 Commission. I have the address of the website there.  
14 So that was one slide that he, you know, that he  
15 specifically questioned me on, had me compare with the  
16 Department of Commerce data and now I believe that I  
17 have, you know, verified or corresponded with his source  
18 of data. So I think that removes most of the question.  
19 The other slides, 55 was US production of spearmint,  
20 peppermint oil. I don't think he questioned my source.  
21 I mean, that is -- I stand by what I said it is, USDA  
22 National Ag Statistics Service data. I think he was  
23 more questioning my interpretation there, so I don't  
24 think there was any disagreement on the sources of any  
25 of the other data.

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BY MR. CARSWELL:

Q. Okay. Do you have any other clarifications, Dr. Jekanowski, before we conclude?

A. Just one very slight one. Again, towards the end of my testimony yesterday USDA had asked -- let me get -- on again Exhibit 30. This would be slide 14. USDA had asked how I had computed the average alpha content in alpha hops over time, from 1997 to 2002, and there again, I just -- without the benefit of having my notes right in front of me, I couldn't remember exactly, you know, how I took that weighted average. So I just wanted to clarify for the record that in fact, I had to -- I had to get some definition of bitter hops and what I used for that was indeed what the HGA, the Hop Growers of America, have on their website defined as bitter hops those varieties that are defined as alpha hops, alpha or high alpha hops, and those varieties that are defined as aroma hops. So indeed, some of those varieties that are defined as alpha hops actually have alpha less than 10 percent so that's why the average alpha for those varieties, in my slide -- on slide 14, actually -- appears to be so low. I mean, it is somewhere under 10 percent. But I needed some measure, some way to distinguish between alpha hops and aroma hops, you know,

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1 based on variety. So I just wanted to clarify that.  
2 And that should -- that's the extent of my  
3 clarifications.

4 \*\*\*

5 MR. CARSWELL: Thank you very much, Dr.  
6 Jekanowski. That's all I have.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
8 Carswell. Is there other cross-examination of Dr.  
9 Jekanowski before he's excused? Mr. Mazumdar? And if  
10 you'd again state your full name and spell it for us.

11 \*\*\*

12 BY MR. MAZUMDAR:

13 Q. J. Chandra Mazumdar, United States  
14 Department of Justice. J. C-h-a-n-d-r-a  
15 M-a-z-u-m-d-a-r. Good morning, Dr. Jekanowski.

16 A. Good morning.

17 Q. We've heard lots of discussion about  
18 prices as information signals. Just so I understand,  
19 are there different -- are there two different prices,  
20 spot prices and contract prices?

21 A. That's my understanding, yes.

22 Q. Do spot and contract prices provide  
23 different information?

24 A. I would say that they do. To me, a  
25 contract price provides signals about long-term, whether

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1 you -- you know, whether you want to be a participant in  
2 the hop industry, whether you want to grow -- be a hop  
3 grower, so to speak. The spot prices are more  
4 speculative prices and they will determine whether you  
5 hold or sell inventory, for instance, and very short-  
6 term decisions. The contract prices should guide the  
7 long-term decision-making process.

8 Q. And can you quantify how long long-term  
9 means?

10 A. Well, I would say, you know -- I mean,  
11 typically, the contracts will extend from anywhere from  
12 two to five years and that should be, you know, long-  
13 term enough to cover the expense of your investment in  
14 the productive capacity of your hop operation, to cover  
15 your long-term investment in that operation, that -- I  
16 would say that's what long-term is. I mean, long-term  
17 is your business decision, long-term was to whether you  
18 are or not -- are or are not a hop producer.

19 Q. And you said investment decision. Are  
20 you referring to whether or not to invest in  
21 infrastructure such as trellises?

22 A. Sure, absolutely.

23 Q. Or land?

24 A. I would agree with that, too.

25 Q. Anything else?

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1           A.    You know, I -- really, any fixed  
2 investment.  Equipment -- you know, those are long-term  
3 decision making -- long-term decisions which, you know,  
4 pay dividends for long periods into the future.

5           Q.    With respect to spot prices, you  
6 mentioned inventory and speculation.  Can you explain  
7 this more?

8           A.    Sure.  The spot prices again, are short-  
9 term prices.  The prices that are occurring right now in  
10 the market, so a spot price will determine -- assuming a  
11 grower has excess production beyond what he contracted  
12 for, the spot price will determine -- will drive the  
13 grower's decision whether to carry that inventory a  
14 little longer, if he thinks the spot price is going to  
15 increase, or to sell it now, if he thinks that the spot  
16 price is as high as it's going to be.  I mean, there is  
17 some level of speculation and I think that a grower will  
18 decide what he's comfortable with in terms of whether he  
19 wants to produce well beyond what he has contracted for,  
20 then he's taking a very speculative position in the  
21 market.  Or if he wants to only produce exactly what he  
22 has contracts for, then he's not operating in that  
23 speculative market.  So it's speculative in the sense  
24 that you don't really know, necessarily, what price  
25 they're going to be tomorrow as opposed to the contract

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1 market where you have much more stability, much more  
2 knowledge and appreciation for what your prices are  
3 going to be several years into the future.

4 Q. So I'm a grower. Do I need to consider  
5 the spot market in my planning decisions?

6 A. Well, in your short-term planning -- in  
7 your inventory-carrying decisions, certainly. But in  
8 terms of the bulk of your production decisions should be  
9 guided by your ability to obtain contracts at prices  
10 that are acceptable to you and cover your costs and it  
11 provide the return that you're looking for.

12 Q. So if I'm a grower, I don't have to look  
13 at spot prices at all when I decide what my long-term  
14 decisions -- how many hop plants to plant and whether to  
15 expand or contract?

16 A. I would agree with that, right. Your  
17 long-term decisions certainly shouldn't be dictated by  
18 the spot market.

19 Q. I certainly may consider the spot market,  
20 though.

21 A. Well, if you go into it knowing that you  
22 want to be at, you know, have a speculative position in  
23 the market, sure, then you're -- then you should  
24 consider your -- the spot prices.

25 Q. But I'm not forced to.

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1 A. Absolutely.

2 Q. I'd like to show you a document. Dr.  
3 Jekanowski, what I've shown you is a report entitled  
4 "Hops and Economic Assessment of the Feasibility of  
5 Providing Multiple Payroll Crop Insurance." It's  
6 prepared the Economic Research Service, USDA, for the  
7 Consolidation Farm Service Agency Office of Risk  
8 Management and it's dated July 26, 1995. And I'm going  
9 to have copies passed out.

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: Good. Thank you.  
12 Let's go off record while those copies are distributed.

13 \*\*\*

14 [Off the Record]

15 [On the Record]

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: All right, we're  
18 back on record now at 9:04. I appreciate your providing  
19 these copies, Mr. Mazumdar. You may proceed.

20 \*\*\*

21 BY MR. MAZUMDAR:

22 Q. Dr. Jekanowski, I'd like to direct your  
23 attention to page 16 and the second full paragraph.  
24 Immediately under the bold heading, "Prices", could you  
25 please read the first sentence out loud?

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BY MR. MAZUMDAR:

Q. And finally, Dr. Jekanowski, I'd like to direct your attention to the last paragraph of page 38. Could you please read the first sentence of that paragraph?

A. Under "Insuring Price Risks"? Under that heading?

Q. Yes, please.

A. "There appears to be little need for insurance that protects against price risks for hops because a high proportion of the crop is contracted, grower prices are relatively constant from season to season. Spot prices vary widely, but spot sales of hops usually account for five percent or less of the crop."

Q. Other than the last sentence, relating to the percentage that spot hops -- do agree with that statement?

A. I do.

\*\*\*

MR. MAZUMDAR: Thank you. Your Honor, we would -- has this been marked?

ADMINISTRATIVE LAW JUDGE: No, but the next exhibit number is 39. I have marked the exhibit as Exhibit 39.

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1 MR. MAZUMDAR: Thank you.

2 ADMINISTRATIVE LAW JUDGE: Do you move its  
3 admission in evidence?

4 MR. MAZUMDAR: I do.

5 ADMINISTRATIVE LAW JUDGE: Is there any  
6 objection to Exhibit 39 being admitted in evidence?

7 MR. MONAHAN: Your Honor, I think that's my  
8 mike misbehaving.

9 UNKNOWN: Well, I think his mike's still on.

10 ADMINISTRATIVE LAW JUDGE: Goodness.

11 MR. MONAHAN: Your Honor -- Brendan Monahan.  
12 Might I inquire, Mr. Mazumdar, is there going to be  
13 anyone from the Consolidate Farm Service Agency Office  
14 of Risk Management that would be available to voir dire  
15 on this exhibit?

16 MR. MAZUMDAR: No, there will not.

17 MR. MONAHAN: Do you know...

18 ADMINISTRATIVE LAW JUDGE: Let's go off record  
19 for just a moment.

20 \*\*\*

21 [Off the Record]

22 [On the Record]

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: All right, we're  
25 back on record at 9:09. Mr. Monahan?

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1 MR. MONAHAN: Thank you, Your Honor. Do we  
2 know, Mr. Mazumdar, if there is any information  
3 regarding percentages of contracts, percentages of the  
4 hop crop that is contracted since 1995?

5 MR. MAZUMDAR: Not in this document.

6 MR. MONAHAN: Your Honor, the opponents have  
7 no objection as to admissibility. You can imagine my --  
8 proponents. We may have some arguments as to...

9 ADMINISTRATIVE LAW JUDGE: Yes. Thank you,  
10 Mr. Monahan. Any other objection? Exhibit 39 is hereby  
11 admitted into evidence.

12 \*\*\*

13 BY MR. MAZUMDAR:

14 Q. Dr. Jekanowski, I believe that it was on  
15 Monday you testified that a hop marketing order could  
16 affect brewers' abilities to -- to respond to consumers'  
17 changing tastes. Can you please explain this?

18 A. Well, it would appear to me that by  
19 regulating the production of alpha acid and basically  
20 forcing growers to possibly be constrained in the amount  
21 of alpha acid they can produce, that could have an  
22 effect on, for instance, the type of varieties -- the  
23 ability for growers to switch varieties possibly in  
24 response to what a brewer might require, especially if,  
25 for instance, a variety -- if a brewer requests a

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1 variety for slightly higher alpha acid for whatever  
2 reason, and that grower's already producing up to his  
3 full allotment, he might not be able to respond. He  
4 might not be able to acquire the additional base  
5 necessary to fulfill that need. And also, I think even  
6 with aroma hops, it's my understanding that many aroma  
7 hop varieties aren't produced specifically for their  
8 alpha acid content, but yet this marketing order would  
9 force aroma hop producers to consider their total alpha  
10 acid production, so it's going to provide an incentive  
11 to always be, you know -- when the choice is offered to  
12 them, they're always going to be preferred -- they're  
13 always going to have a preference to produce lower  
14 quantities, varieties of lower alpha acid content. So I  
15 think it'll interfere -- at the very least, it'll  
16 interfere with the market signals that might otherwise  
17 be provided directly from brewers in terms of what they  
18 want, in terms -- you know, in terms of varieties of  
19 hops.

20 Q. And how will -- can you draw any  
21 conclusion as to how society will be affected by that  
22 interference?

23 A. Well, in -- ideally, markets respond  
24 directly to consumer demands and those consumer demands  
25 for beer, for instance, or for hops come from -- come

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1 through the brewer. I mean, the brewer is what is the  
2 avenue for the consumer demand to pass through to the  
3 hop producer. So if this marketing order interferes  
4 with the ability for brewers to obtain the types or  
5 quantities of hops that they desire, then certainly  
6 consumers are made worse off.

7 Q. So as a consumer, I may not be able to  
8 get the type of beer with the type of hops that I want?

9 A. You may have -- fewer varieties. You  
10 know, it should also probably be noted that -- I mean,  
11 my understanding is for instance, some -- I guess  
12 they're called craft brewers, or micro-brewers, often  
13 use very high quantities of hops, for instance. You  
14 know, their ability to obtain the amount of hops that  
15 they require if they want to change their recipes, that  
16 could be affected, as well. So overall, certainly I  
17 would expect it to some degree, the varieties and  
18 qualities of products available to the consumer to  
19 change and likely to decrease.

20 \*\*\*

21 MR. MAZUMDAR: Thank you.

22 ADMINISTRATIVE LAW JUDGE: Mr. Mazumdar, thank  
23 you. Is there any additional examination for Dr.  
24 Jekanowski? Yes, Mr. Carswell?

25 \*\*\*

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1 BY MR. CARSWELL:

2 Q. Dr. Jekanowski, if you could turn to page  
3 16 of the exhibit...

4 \*\*\*

5 MR. MONAHAN: Your Honor?

6 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Monahan?

7 MR. MONAHAN: Before Mr. Carswell gets a  
8 second go, might I have an opportunity to inquire?

9 ADMINISTRATIVE LAW JUDGE: I'm sorry. I  
10 didn't even look in your direction in the room.

11 MR. MONAHAN: Thank you, Your Honor.

12 ADMINISTRATIVE LAW JUDGE: Let me not do that  
13 yet, though. Let me stay with time-keeping of those who  
14 are against the order. I count Mr. Mazumdar as a  
15 government neutral, but I will get back to you. Mr.  
16 Carswell?

17 \*\*\*

18 BY MR. CARSWELL:

19 Q. If you could turn to page 16 of Exhibit  
20 39. And above the paragraph that Mr. Mazumdar had you  
21 read about the stability of pricing from '80 to '94,  
22 above that if you could look at that paragraph and if  
23 you could read beginning with the -- just go ahead and  
24 read the whole paragraph, if you would.

25 A. So basically, you mean the first full  
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1 paragraph of that -- page 16?

2 Q. Correct.

3 A. Beginning with US brewers? "US brewers  
4 used almost 41 million pounds of hops in 1993, '94, 28  
5 percent of the season's available supplies. The  
6 remaining supplies were either exported, 51 million  
7 pounds, or held in inventory at the end of the season,  
8 63 million pounds", in parentheses. "Mexico, Brazil,  
9 Canada, Germany, the Netherlands, and the United Kingdom  
10 are usually the largest export markets. US hops,  
11 however, are sold to some 75 countries. South and  
12 Central American markets accounted for about half of  
13 calendar year 1994 exports. European markets accounted  
14 for about a quarter. In Asian markets it counted for  
15 about one-tenth."

16 \*\*\*

17 MR. CARSWELL: Thank you very much.

18 ADMINISTRATIVE LAW JUDGE: Are there any other  
19 questions for Dr. Jekanowski from those who are in a  
20 position against the marketing order? There are none.  
21 Mr. Monahan?

22 \*\*\*

23 BY MR. MONAHAN:

24 Q. Thank you, Your Honor. Dr. Jekanowski, I  
25 understand -- I realize it's a little unfair to cross-  
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1 examine you on a -- boy, 40-some odd page document you  
2 just saw this morning, but bear with me. This document  
3 apparently was prepared in 1995, is that right?

4 A. That's correct.

5 Q. Based on the year that you've spent  
6 familiarizing yourself with the US hop industry, is it  
7 fair to say that there've been some changes in the hop  
8 industry since 1995?

9 A. There might've been. I don't know  
10 exactly when -- I mean, there's been -- there's constant  
11 change. I can't state for certain which changes  
12 occurred since 1995. There might have been some  
13 changes.

14 Q. Any changes in hopping rates, average  
15 hopping rates for beers?

16 A. That I do not know.

17 Q. Any change in the percentage of hop crop  
18 that is contracted?

19 A. It -- from the data from the US hop  
20 growers, it varies in -- if I recall correctly, it's  
21 been ranging from 90 percent down to, I think, the most  
22 recent was possibly 75 percent.

23 Q. You indicated, I believe in response to  
24 questions from Mr. Mazumdar, that one of the stabilizing  
25 forces, or stabilizing components of the hop industry is

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1 the existence of the forward contract, right?

2 A. That's correct.

3 Q. And perhaps in general terms, the more  
4 full contracts the industry has, the more stable the hop  
5 market is. Is that a fair assessment?

6 A. I think that's correct.

7 Q. When does a contract become a forward  
8 contract? I'll give you an example. If I'm a hop  
9 grower and in July of 2003 I enter a contract to sell my  
10 2003 hearts [ph] and let's assume that it's harvested in  
11 August.

12 A. Right.

13 Q. Is that the type of forward contract that  
14 lends to the stability of the market or is that really a  
15 glorified spot price?

16 A. Well, I mean, it depends. I mean, it's  
17 certainly not a spot price in the sense that you're  
18 selling out of your inventory. I mean, it's a -- that  
19 would be a, you know, it's a short -- well, actually, I  
20 can't really even call it a short-term contract, because  
21 I don't how far in the future it might go, but it's  
22 certainly starting out at the short term.

23 Q. For the purposes of my question, let's  
24 assume that the agreement in July of 2003 is to sell a  
25 specified quantity of hops in 2003.

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1 A. Sure.

2 Q. Are you aware of whether some contracts  
3 are based on just acreage production from a set number  
4 of acres?

5 A. I do not know.

6 Q. Have you ever actually reviewed a hop  
7 contract?

8 A. I have not.

9 Q. What percentage, as we sit here today --  
10 what percentage of the 2003 hop crop is contracted for?

11 A. I don't know off-hand. I've seen those  
12 statistics in Hop Growers of America statistical  
13 bulletin, but I really don't know.

14 Q. Do you know if there's any difference  
15 between the percentage of alpha hops that are contracted  
16 versus the percentage of aroma crop -- hops that are  
17 contracted?

18 A. My understand is that generally, the  
19 aroma crops are more highly contracted.

20 Q. 75 percent of the US production of alpha  
21 comes from what we call alpha hops, is that right? Does  
22 that sound about right?

23 A. That may be right.

24 Q. Of that 75 percent of alpha, do you have  
25 any idea what percentage is contracted for? For 2004?

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1           A.    I -- no, I really don't, off-hand.  I  
2 could look it up, I think.

3           Q.    Where would you look that up?

4           A.    I could look up what the percent of hops  
5 contracted are in the Hop Growers of America, but now  
6 that you've pointed out, I don't think they refer  
7 specifically to alpha contracting.

8           Q.    On page 16 of Exhibit 39 there was a  
9 statement attributed to the USDA Risk Management Office  
10 -- I should say authored by, apparently, the Risk  
11 Management Office.  It says "the season average price  
12 received by growers for hops as reported by USDA is  
13 relatively constant from year to year, ranging from  
14 about \$1.40 and 2.10 a pound for the 1980 through 1994  
15 seasons."  That -- do -- is that number, or is that  
16 statement consistent with the information you reviewed?

17          A.    Again, I don't exactly recall the  
18 specific data for those years, but I think that would be  
19 consistent.

20          Q.    Just looking at the average, \$1.40 to  
21 2.10, my quick math tells me that's about a 50 percent  
22 swing?

23          A.    That could be.

24          Q.    1.40 to 2.10.

25          A.    Right, right.

1 Q. 50 percent increase?

2 A. Sure.

3 \*\*\*

4 MR. MONAHAN: In your...

5 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, just  
6 for the record. When you refer to 2.10, that's two  
7 dollars and ten cents.

8 \*\*\*

9 BY MR. MONAHAN:

10 Q. Thank you, Your Honor. For the record --  
11 or excuse me, in your opinion as an economist, is that a  
12 relatively constant price change, if there's a 50  
13 percent increase from year to year?

14 A. Well, I don't know if that's necessarily  
15 from year to year. I mean, you know, that's over the  
16 period 1980 to 1994, so that doesn't necessarily mean  
17 that the price went that whole range from one year to  
18 the next, but over a 14-year period, I don't think  
19 that's terribly unreasonable.

20 Q. Do you know -- and again, I know it's  
21 unfair to ask about this document. Do you know if  
22 that's the average of all hops, including aroma and  
23 alpha?

24 A. I really don't. I would -- if I had to  
25 make a guess, I would say it probably is, but I don't

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1 know.

2 Q. And when you get an average, obviously,  
3 you don't see the swings between highs and lows, do you?

4 A. I know they get averaged out, so to  
5 speak.

6 Q. And you remember Mr. Smith's presentation  
7 in which he tracked the average price of alpha over the  
8 course of the last six, seven years?

9 A. Yes, I do.

10 Q. And the swings in price of alpha were  
11 upwards of a hundred percent in a given year, \$22 a kilo  
12 to over \$45 a kilo?

13 A. I think -- yeah, those types of figures,  
14 right.

15 Q. And that was a year-to-year, was it not?

16 A. I think those were spot market prices,  
17 probably. Right.

18 Q. You do?

19 A. Well, if they're prices at a given point  
20 in time, what they can get for that alpha. I think  
21 those are probably spot prices.

22 Q. Don't contracts require you to deliver  
23 product to a given point in time?

24 A. They can, sure.

25 Q. Or you don't know.

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1 A. Well, contracts certainly do require you  
2 to deliver a product to a certain point in time...

3 Q. Right.

4 A. ...but it isn't necessarily requiring you  
5 to deliver that product at the spot price at that point  
6 in time. It's going to be some contracted, negotiated  
7 price.

8 Q. Right. The price of the contract, right?

9 A. That's right.

10 Q. Okay. So if you deliver a product for  
11 the contracted price, doesn't that become part of the  
12 average price?

13 A. Yes, it would.

14 Q. Okay. And again, when we look at those  
15 average prices for alpha, what we've seen are wild 100  
16 percent swings in consecutive years, isn't that right?

17 A. Well, it could be but again, I'm not -- I  
18 don't think you -- I'm not completely familiar with the  
19 data that Mr. Smith put up, as well, so I really don't  
20 whether those included contract prices or whether  
21 they're spot market only. I really don't know whether  
22 they're average...

23 Q. Okay.

24 A. ...you know, over all types of growers.

25 Q. Yeah, but the testimony from Mr. Smith

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1 was, in fact, that the average price of alpha...

2 A. Um-hum.

3 Q. ...including spot and contracted prices  
4 were, as he put forth in his exhibit, with these 100  
5 percent swings, you wouldn't have any information or  
6 evidence to rebut that, would you?

7 A. No, I don't.

8 Q. In 2002 was the spot market price more or  
9 less than average contract price?

10 A. I really don't know.

11 Q. If a contract price is for less than the  
12 cost of production, does that help stabilize the hop  
13 industry or does it lend to instability of market  
14 conditions?

15 A. If a contract price is less than the cost  
16 of production?

17 Q. That's right.

18 A. It still stabilizes that price and yet  
19 given to every grower's cost of production...

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: I don't mean to  
22 interrupt, but the question was does it stabilize the  
23 industry rather than does it stabilize the price?

24 DR. JEKANOWSKI: Sure. I don't know whether  
25 it stabilizes the industry or whether it cause more

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1 instability in the industry or not. If some grower's  
2 entering into that contract and he finds it favorable  
3 over his long term planning horizon, I'd say it would  
4 lead to stability in the industry.

5 MR. BARTON: Can we take a moment to change  
6 the tape?

7 ADMINISTRATIVE LAW JUDGE: Yes, let's change  
8 the tape at 9:27.

9 \*\*\*

10 [Off the Record]

11 [On the Record]

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE: All right, we're  
14 back on record at 9:27.

15 \*\*\*

16 BY MR. MONAHAN:

17 Q. So let's take that to its logical  
18 conclusion. If every grower contracts his hops for less  
19 than the cost of production, what happens to the hop  
20 industry?

21 A. Well, you know, it also -- it depends on  
22 grower to grower. Some growers -- considering that they  
23 grow many different varieties, for instance. They might  
24 choose to contract some varieties at -- just about at  
25 the cost of production or maybe even only covering the

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1 variable cost of production to keep their resources  
2 active and contract other varieties at a higher price  
3 and that -- I would say that would lend to stability if  
4 it -- if it adds to their diversification of their  
5 portfolio and they'll have some varieties that they view  
6 as not necessarily large money-makers, but providing  
7 themselves stability in their operation and other  
8 varieties that might have higher prices, so I don't know  
9 if it's really, you know, accurate to say that a grower  
10 would contract all of his production at less than cost  
11 of production going forward -- less than his total cost  
12 of production going forward. I mean, that wouldn't to  
13 me necessarily be a rational strategy in the long run.

14 Q. Right. It would be irrational strategy  
15 for growers to contract at less than the price of --  
16 cost of production for any significant period, wouldn't  
17 it?

18 A. For all of their hops it would be.

19 \*\*\*

20 MR. MONAHAN: Your Honor, if you could -- I  
21 did not keep a note of what exhibit the Hop Growers of  
22 America 2002 Statistical Report is, but I would go  
23 retrieve it that from our trusty court reporter?

24 ADMINISTRATIVE LAW JUDGE: You may.

25 MR. BARTON: Is that the one you want?

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BY MR. MONAHAN:

Q. Doctor, I'm going to have you take a quick look at Exhibit 38 and turn, if you would, to page 12. Look at the table appearing in the bottom third of the page, entitled "US Adjusted Sold Ahead Survey Results, 1998 to 2002." See that?

A. I see it.

Q. Does that set forth -- at least -- well, tell me what you understand that to set forth.

A. I mean, basically, this tells us what percentage of each year's -- well, basically what percentage of production's contracted up to four -- five years in advance.

Q. This apparently is that number that we were confused about on your graph showing 122 percent...

A. Correct, right.

Q. That might be an indication, would it not, that inventory was being sold?

A. I would say it probably was.

Q. Tell me what do you see is the trend in terms of sold ahead or forward contract positions in the last several years?

A. For any year in particular?

Q. Well, trends you look at more than one

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1 year, don't you?

2 A. Right. But I mean for 2002 or 2003? The  
3 different columns...

4 Q. Well, 2002. If we're looking at...

5 A. Sure.

6 Q. Well, actually you're looking at 1999 to  
7 2002 in the far right...

8 A. That's right, that's right.

9 Q. ...column and it references the  
10 percentage of the crop that is sold into the future,  
11 right?

12 A. That's correct.

13 Q. As you sit here today, what percentage of  
14 the -- or I should say as of 2002, what...

15 A. Right.

16 Q. ...percentage of the 2006 crop had been  
17 sold?

18 A. Three percent.

19 Q. And 2005?

20 A. 25 percent.

21 Q. Okay. Next year's crop, 2004?

22 A. 33 percent.

23 Q. One third. And again, do you know -- you  
24 reviewed these figures before, have you not?

25 A. I have.

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1 Q. Have you taken any efforts to determine  
2 how these numbers bread down with respect to alpha and  
3 aroma?

4 A. No, I don't think there's enough  
5 information in this table to determine.

6 Q. Okay. One could infer, could one not,  
7 that the majority of these contracted prices are for  
8 aromas, just based on the testimony that we've heard,  
9 right?

10 A. Well, based on what we've heard, that  
11 aroma tends to be more highly contracted than alpha,  
12 yes.

13 Q. Would you agree with me, sir, that based  
14 on this information, that the 1995 statement by the risk  
15 management report, that a very high percentage of hops  
16 are contracted is probably incorrect, then?

17 A. You know, it's -- I'd say it appears that  
18 less hops are contracted in more recent years than were  
19 possibly when this ERS report was written, but to me,  
20 that's still a very high percentage, 76 percent, 56  
21 percent ahead -- you don't see that in many other  
22 agricultural commodities.

23 Q. And you don't know also what percentage  
24 of those contracted hops are contracted at less than the  
25 cost of production?

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1 A. I have no idea.

2 Q. And you would agree that as the trend --  
3 if the trend continues that less hops are being  
4 contracted for. That that tends to detract from the  
5 stability of the hop market.

6 A. Well, I don't -- I think that that,  
7 itself, provides a signal for ultimately, if one's  
8 producers -- if producers don't have a contract for  
9 their production, and they're uncomfortable with selling  
10 in the spot market and possibly incurring a large loss,  
11 they will start to decrease production. I mean, the  
12 level of contracting itself is a signal as to how much  
13 you should be planting -- or planning to harvest in  
14 future years.

15 Q. Mr. Mazumdar asked you if spot prices are  
16 also one of the signals that a market should recognize.

17 A. Sure.

18 Q. You would agree that if spot market  
19 prices were for less than the cost of production, that  
20 would be a big red flag for the industry...

21 A. Oh, I don't know. I mean, that could be  
22 -- again, I mean, given that spot prices vary, you know,  
23 fluctuate lively -- I mean, if you have -- if you're  
24 forced to sell your inventory at less than cost of  
25 production, I'd say that means that, you know, you

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1 speculated and the market moved against you. I mean,  
2 you might have had some bad luck.

3 Q. Gambled and lost?

4 A. That's right.

5 Q. Turning to your report. I did a quick  
6 count this morning and thumbed through the pages and  
7 came up with 14 graphs where you had done research,  
8 accumulated information from other sources, and then put  
9 them -- compiled them into graphs that you demonstrated  
10 for...

11 A. Okay.

12 Q. Of those 14 graphs, do I understand that  
13 the only one that you've gone back and double-checked is  
14 slide 56?

15 A. The only one that for which, basically,  
16 an error was found in terms of the -- the title. That's  
17 correct.

18 Q. I'm going to ask you again. Is slide 56  
19 the only slide that you've come back and double-checked  
20 your data?

21 A. Yes, it is.

22 Q. And you found that not only did you  
23 identify the wrong source of information...

24 A. In my testimony I didn't recall exactly  
25 what the source was, but in my notes...

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1 Q. You misstated it, didn't you? In your  
2 testimony.

3 A. I think I said I believe the data came  
4 from the Foreign Ag Service.

5 Q. And that belief was right?

6 A. Exactly.

7 Q. All right. So you misidentified the  
8 source and you misidentified and mislabeled the  
9 substance of the information, did you not?

10 A. It's not really -- I wouldn't really  
11 characterize that. It was a mistake in the labeling.  
12 It's still exports, but it's net exports. So in other  
13 words, it's adjusting for imports, as well. But it's  
14 still -- the idea is the same and the label was  
15 incorrect.

16 Q. Subsequently, those are two different  
17 things, aren't they? Exports and net exports.

18 A. Some -- yes, they are.

19 Q. In fact, if we look at the graph that you  
20 prepared here, the difference between exports and net  
21 exports results in a different direction of the line the  
22 last four years.

23 A. The last four years, but again, my intent  
24 was with the graph is to show the long-term trend. I  
25 mean, you can pick out points within this line that go

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1 in either direction.

2 Q. I'll just ask you one more time. You  
3 were wrong as to the substance of the information that  
4 you reported, weren't you, sir?

5 A. My interpretation was not wrong. My  
6 labeling of the graph was wrong. The content, the idea  
7 remains the same, that -- the result is the same, but  
8 yes, the label was wrong so it was the individual data  
9 points on that graph were incorrect.

10 Q. When you say...

11 A. Incorrectly labeled.

12 Q. When you say the intent and the result is  
13 the same, that means that even after discovering the  
14 mistakes as to source and to substance, you're not going  
15 to change your mind?

16 A. That's right. I think it tells the same  
17 story, right.

18 Q. And you've not gone back and double-  
19 checked the data that you presented to us in the other  
20 13 slides?

21 A. No, I have not.

22 \*\*\*

23 MR. MONAHAN: That's all I have, Your Honor.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

25 Monahan. Are there any other questions for Dr.

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1 Jekanowski by those who are here in support of the  
2 marketing order? All right, Mr. Moody, I saw your hand.  
3 You may cross-examine.

4 \*\*\*

5 BY MR. MOODY:

6 Q. Thank you, Your Honor. I just have one  
7 question, Mark.

8 A. Um-hum.

9 Q. Mr. Monahan asked you a variety of  
10 questions about trends and contracting.

11 A. Right.

12 Q. And I think we've had previous testimony  
13 that the prices were very high this year of 2003 because  
14 of a German crop failure, is that correct?

15 A. Yes, that's my understanding. Right.

16 Q. And what would you expect the contracts  
17 -- the trend in contracting to do from this year going  
18 forward?

19 A. I would expect it to increase. I would  
20 expect the level of contracting to increase because of  
21 the -- basically, because of German crop failure  
22 decreasing the supply.

23 Q. And is there anything economically  
24 remarkable about increases and decreases in the sold  
25 ahead percentage over time or is it just a useful

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1 signal, in fact, a necessary signal to producers,  
2 informing them about their plans for the future?

3 A. What do you mean by remarkable? I think  
4 it's just a useful signal that if a grower doesn't have  
5 a contract for his production, for instance, he might  
6 grow less or he might choose not to grow at all, but  
7 that is just a market signal.

8 Q. I think you indicated that you were not  
9 -- you didn't know any other agricultural commodity that  
10 had this high of a level of contracting?

11 A. Not to my knowledge.

12 Q. All right. And so a decrease in the  
13 level of the contracting would, in your view, be any  
14 justification for a supply control marketing order?

15 A. I can't see the connection between the  
16 need for a supply control in the level of contracting.

17 Q. All right. Then what -- but does the  
18 level of contracting have a benefit to the industry?

19 A. Sure. The level of contracting does and  
20 that, itself, does provide some stability and aid in the  
21 planning horizon for growers and for brewers, as well,  
22 who require that stability.

23 \*\*\*

24 MR. MOODY: Thank you very much.

25 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

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1 Moody. I would now invite questions from neutral  
2 parties beginning with USDSA. Dr. Hinman?

3 \*\*\*

4 BY DR. HINMAN:

5 Q. I just want to see one clarification on  
6 your exhibit, #30.

7 A. Um-hum.

8 Q. On page six, slide 17, 18.

9 A. Right.

10 Q. In these slides you are showing the  
11 reasoning you used to develop a simplified example of  
12 how saleable would be arrived at under these assumptions  
13 about market conditions. Is that correct?

14 A. That's right. I was trying to walk  
15 through it logically.

16 Q. And that certain level in your -- based  
17 on your assumptions, computation was 55 percent,  
18 approximately.

19 A. Yeah. I mean, based on my assumptions, I  
20 thought that would be possible, or reasonable.

21 Q. Right. And to arrive at that figure --  
22 I'm going to say something and tell me if I have this  
23 correctly.

24 A. Um-hum.

25 Q. Your assumption is that the operation of  
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1 the -- if the implementation of producer allotments, the  
2 net effect would be to essentially make 2002 look more  
3 like 2001. That is stability in terms of changing the  
4 stock levels back to that level? If that's not correct,  
5 can you please explain your reasoning on this point?

6 A. Well, I mean that's basically -- again, I  
7 have no idea how the committee is going to define  
8 stability or their need for stability, but just sort of  
9 based on the general proposal and what we've heard that  
10 would imply that stocks are too high. I said -- I just  
11 sort of arbitrarily said well, what if we reduce stocks  
12 back to a level that was in place two years ago. And  
13 again, I have no way of knowing if that's what the  
14 committee would decide, but I thought that that was a  
15 reasonable guess, you know, a reasonable assumption  
16 that, you know, somebody might interpret as -- of at  
17 least removing this excess supply from the market.

18 Q. Okay. And would the extra supply, making  
19 the 2002 -- basically, a level -- if the equivalent to  
20 2001 is the operation of the producer allotment  
21 program...

22 A. That's right.

23 Q. ...in your simplified example...

24 A. Exactly.

25 Q. ...and that -- using that figure then,

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1 you arrive at 55 as a possible and likely saleable,  
2 given these conditions?

3 A. That's correct.

4 \*\*\*

5 MR. HINMAN: Okay. Thank you. No further  
6 questions.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
8 Hinman. Additional USDA questions? Ms. Deskins?

9 MS. DESKINS: Your Honor, I don't have a  
10 question, but just for the witness's information. The  
11 exhibit that he's admitted of the slides, we are going  
12 to try to put the transcript and the exhibits on the  
13 Internet and I don't think the format that he has it in  
14 is going to be legible on the Internet, so I'm wondering  
15 if the witness wants to submit an exhibit where it's  
16 just one slide per page. And I think that when you scan  
17 that in, that would be legible on the Internet.

18 ADMINISTRATIVE LAW JUDGE: What if he e-mailed  
19 you his slide presentation? Is that possible as a Power  
20 Point...

21 DR. JEKANOWSKI: Sure. I'm happy to either.  
22 I was just trying to save some paper, so...

23 ADMINISTRATIVE LAW JUDGE: Okay. All right.  
24 Would you, Dr. Jekanowski, collect the e-mail addresses  
25 of those who would like it e-mailed to them?

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1 DR. JEKANOWSKI: Sure.

2 ADMINISTRATIVE LAW JUDGE: So will you still  
3 be with us a short time this morning?

4 DR. JEKANOWSKI: Yeah, I think through most of  
5 the day, at least.

6 ADMINISTRATIVE LAW JUDGE: All right. Then  
7 those of you who would like his presentation e-mailed to  
8 you, if you would give him your e-mail address. And Ms.  
9 Deskins, do you want to tell him your e-mail address?

10 MS. DESKINS: We'll speak to him at the break  
11 and give him that information.

12 ADMINISTRATIVE LAW JUDGE: Excellent. Yes,  
13 Mr. Monahan?

14 MR. MONAHAN: I just have a couple of follow-  
15 up questions.

16 DR. JEKANOWSKI: Sure.

17 \*\*\*

18 BY MR. MONAHAN:

19 Q. Again, this report that we've -- that has  
20 been referenced that you were questioned upon was  
21 prepared in 1995. When were the so-called super alphas  
22 first introduced to the American hop history?

23 A. Again, that's why I said I'm not sure  
24 exactly of the changes that occurred since 1995. I  
25 mean, my understanding was that high alphas starting

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1 arriving in the '80s and higher alpha -- perhaps you  
2 might call them super alphas have arrived in subsequent  
3 years. I don't whether it was before or after 1995.

4 Q. Do you recall testimony that CTZs really  
5 came on the scene in 1997-98?

6 A. That sounds correct.

7 Q. And how did that change the tonnage or  
8 pound yield per acre in the hop industry?

9 A. Well, it greatly increased the production  
10 potential and greatly increased the supply of alpha.

11 Q. Right. So -- not only did -- I should  
12 ask you, did the CTZs represent an increase in actual  
13 yield per acre just in terms of raw hops?

14 A. My understanding is that they did.

15 Q. Okay. And by a significant margin, isn't  
16 that right?

17 A. I believe so.

18 Q. And in addition to increasing the actual  
19 yield in pounds, the alpha percent was significantly  
20 higher than experienced by prior varieties, right?

21 A. That's my understanding.

22 Q. And would you agree that the advent and  
23 onset of these super alphas drastically changed the  
24 whole American hop producing landscape?

25 A. Well, I don't know if drastically changed  
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1 it. I mean, it was a continuing change towards higher  
2 yielding and higher producing varieties like we see in  
3 most agriculture commodities.

4 Q. And that changed the ability of the hop  
5 industry both to -- really to instantly oversupply the  
6 market, did it not?

7 A. It changed the ability of the hop  
8 industry to increase supply on the market.

9 \*\*\*

10 MR. MONAHAN: That's all I have. Thanks.

11 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
12 Monahan. Mr. Carswell?

13 \*\*\*

14 BY MR. CARSWELL:

15 Q. With respect to the super high alphas,  
16 which growing region in the US do you understand has  
17 benefited most from the development of this new -- of  
18 the super high alpha hops?

19 A. My understanding is that they're grown  
20 only or primarily in the Washington region.

21 Q. And if the hop marketing order were  
22 passed, would that -- would the supply restrictions or  
23 saleable restrictions tend to encourage or discourage  
24 the development of super alphas in Idaho and Oregon?

25 A. Oh, I think it would certainly discourage

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1 the production, really, of super alphas anywhere, but  
2 especially in those regions that don't have them  
3 currently.

4 \*\*\*

5 MR. CARSWELL: Thank you.

6 ADMINISTRATIVE LAW JUDGE: Mr. Monahan?

7 \*\*\*

8 BY MR. MONAHAN:

9 Q. Of our six friends from Idaho, the  
10 farmers there, what percentage of those farmers who grow  
11 super alphas?

12 A. My understanding would be that if -- that  
13 none of them do. If my belief that they're grown only  
14 in Washington is correct, my understanding is that none  
15 of them grow super high alphas in Idaho.

16 Q. Take a look, if you would, sir, at  
17 Exhibit 38 again. Page two. Setting forth state and  
18 variety of acres harvested. Do you know what -- in CTZ  
19 do you know what Z stands for?

20 A. I do not, no.

21 Q. I'm going to ask you to assume it stands  
22 for Zeus, okay? Are Zeus grown in Idaho?

23 A. It -- according to this there are 477  
24 acres.

25 Q. Okay, and how has that changed since 1998

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1 alone?

2 A. It appears to have increased.

3 Q. From one acre to 477, right?

4 A. Yeah, well from essentially unknown to  
5 477, right.

6 Q. Okay. And do you know whether the  
7 gentlemen from Idaho have reported their acreage since  
8 2001?

9 A. I have no idea.

10 \*\*\*

11 MR. MONAHAN: Okay, thank you. That's all I  
12 have.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
14 Monahan. Are there any other questions from anyone for  
15 Dr. Jekanowski before he is excused? There are none.  
16 Thank you, Dr. Jekanowski. Let's take a 15 minute  
17 break. Please be back and ready to go at 10:05.

18 \*\*\*

19 [Off the Record]

20 [On the Record]

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: All right, we're  
23 back on record at 10:06. I want to talk a little bit  
24 about scheduling just so we can anticipate what's next.  
25 Mr. Monahan, who would be the next witness you would

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1 call?

2 MR. MONAHAN: Leslie Roy, Your Honor. Mr. Roy  
3 is going to be testifying in support of the volume  
4 regulations, the allotment provisions, Sections 991.50  
5 through 991.52. While we have him in the hot seat, I'm  
6 also going to inquire him just regarding his status as a  
7 grower in Washington, some historical perspectives about  
8 the industry and reasons for his support of the proposed  
9 marketing order, Your Honor.

10 ADMINISTRATIVE LAW JUDGE: All right, thank  
11 you. Mr. Moody?

12 MR. MOODY: What were the sections he's  
13 testifying on? .50 through...

14 MR. MONAHAN: 52.

15 MR. MOODY: Oh. Who's testifying on the rest  
16 of the allotment base stuff?

17 MR. MONAHAN: Mr. Gasseling.

18 MR. MOODY: All right.

19 MR. MONAHAN: We hope to put them up in  
20 consecutive order, Your Honor.

21 ADMINISTRATIVE LAW JUDGE: All right, good.  
22 Thank you, Mr. Monahan. During the break I spoke with  
23 Mr. Annen [ph]. Mr. Annen testified in Portland on our  
24 -- I think our last -- yes, Friday, our last day there  
25 and we did not complete his testimony. I asked if he

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1 could be here so that we could continue with his  
2 testimony and he is here now. He's also here tomorrow  
3 and he's also here through ten o'clock Friday morning,  
4 but I do want to work him in at a logical point. Mr.  
5 Moody, you were going to check to see if any of the  
6 growers that you represent could testify only on  
7 particular days. Do you have any further information in  
8 that regard?

9 MR. MOODY: Yes, I have been advised that --  
10 I'll get the -- well, let me get that on the next break,  
11 Your Honor, but I think we have one gentleman that has  
12 to go this afternoon late in the day and will be here  
13 this afternoon and one gentleman who's been here Monday  
14 and Tuesday but today is his last day.

15 ADMINISTRATIVE LAW JUDGE: All right, so at  
16 our next break you'll have their names?

17 MR. MOODY: Yes, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: All right. And do  
19 you know yet when the gentleman who suggested proposals  
20 two through ten would be available?

21 MR. MOODY: We'll do that on Friday, Your  
22 Honor.

23 ADMINISTRATIVE LAW JUDGE: On Friday, all  
24 right. Good. All right. To those of you who are  
25 seated here, if you wish to testify and you're not

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1 working through one of the lawyers here representing  
2 growers who are either in favor of the order or who are  
3 against the order, let me know and we'll schedule you  
4 in. We don't want growers who wish just to be heard to  
5 be required to wait endlessly. I think it's very  
6 instructive for you to hear as much of this testimony as  
7 you can, but it may not be possible for you to stay for  
8 long periods. So feel free to let me know that you'd  
9 like to testify. If you testify, you're placed under  
10 oath to tell the truth under oath or affirmation, if you  
11 prefer, and you are subject to cross-examination, which  
12 can and sometimes be an unanticipated consequence, but I  
13 would welcome any of you to take the stand if you would  
14 like to. All right, Mr. Monahan, you may proceed.

15 MR. MONAHAN: Your Honor, again, just to give  
16 a more complete picture so that everyone knows where  
17 we're going and what to expect. We will present through  
18 the testimony of Mr. Roy and Mr. Gasseling the remainder  
19 of the provisions in the hop marketing order,  
20 specifically 991.50 through .58. In addition, Mr.  
21 Gasseling is going to introducing the provision on  
22 handler, which we have  
23 -- now have the opportunity -- excuse me, handle --  
24 which we've had the opportunity to amend. Following  
25 that, Mr. Carpenter is going to testify regarding the

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1       proponents committee's recommendations for the manner in  
2       which a grower referendum would and should be held.  
3       That, in addition to the numerous who I think would like  
4       to stand up and voice their support of the proposal will  
5       conclude the proponents' submission. We would like to  
6       reserve two hours at the end for Mr. Smith and Mr.  
7       Carpenter to issue some rebuttal to some of the  
8       information we've heard from opponents.

9               MS. DESKINS: Judge Clifton, I do have one  
10       question for Mr. Monahan. When we were in Portland, I  
11       don't know if you finished all you were going to do on  
12       the committee structure. Did you plan to continue with  
13       that?

14              MR. MONAHAN: Yes, thank you. I apologize.  
15       It has been brought to the proponents committee's  
16       attention that perhaps a more -- focus is deserved on  
17       the structure and functioning of the administrative  
18       committee. We are currently drawing straws to see which  
19       witness takes that duty, but hopefully that is something  
20       we can address today, as well, Your Honor.

21              ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
22       Monahan. You may call your next witness.

23              MR. MONAHAN: Proponents would call Mr. Leslie  
24       Roy.

25              MR. ROY: Good morning.

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1 ADMINISTRATIVE LAW JUDGE: Good morning. Mr.  
2 Roy, would you state and spell your full name for us?

3 MR. ROY: My name is Leslie Roy, L-e-s-l-i-e,  
4 last name R-o-y. Middle initial, A.

5 ADMINISTRATIVE LAW JUDGE: Thank you. You  
6 remain under oath and feel free to pour your water and  
7 so forth before you begin. Mr. Monahan, will you  
8 initially ask questions or will you wait until Mr. Roy  
9 has proceeded?

10 MR. MONAHAN: I'm going to begin with some  
11 background questions.

12 ADMINISTRATIVE LAW JUDGE: All right, you may  
13 proceed, Mr. Monahan.

14

\*\*\*

15

LESLIE ROY,

16 having first been duly sworn, according to the law,  
17 testified as follows:

18 BY MR. MONAHAN:

19 Q. Thank you, Your Honor. Mr. Roy, I know  
20 that you're on a first name basis with a lot of people  
21 in the room, but can you just describe briefly for USDA  
22 your family's background in the Washington hop industry?

23 A. I am a third generation hop farmer in the  
24 Yakima Valley. Actually, a partially fourth generation.  
25 My great-grandfather actually did raise hops, but not on

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1 a full-time basis. But we have three generations that  
2 are full-time hop farmers.

3 Q. How would you describe your family's  
4 operation today in terms of size and...

5 A. I would suspect we'd be considered one of  
6 the larger operations in the United States.

7 Q. I take it if we're going back three and a  
8 half generations, your family had experience under the  
9 prior hop marketing order.

10 A. That's correct.

11 Q. Were you involved in the family's hop  
12 farming operation under the prior hop marketing order?

13 A. Yes, I was. I actually entered full-time  
14 farming in 1973 after getting my degree from Washington  
15 State University in Agricultural Economics.

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: Mr. Monahan,  
18 there's a little disparity between the volume of your  
19 voice and the volume of Mr. Roy's. Would that lavalier  
20 fit on your other lapel because your mouth faces that  
21 way when you're speaking to Mr. Roy.

22 MR. MONAHAN: How's this, Your Honor?

23 ADMINISTRATIVE LAW JUDGE: We'll try it.

24 Thank you.

25 \*\*\*

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1 BY MR. MONAHAN:

2 Q. Could you just describe generally your  
3 observations of the manner in which the hop industry  
4 operated under the prior hop marketing order?

5 A. During that time, as I said, I started  
6 full-time farming in 1973 and during that time I also  
7 served on the Hop Administrative Committee as an  
8 alternate member. And during that time, in my belief,  
9 we had a time of stable prices and since the demise of  
10 the -- of the hop marketing order, you've got a wild  
11 fluctuations of prices.

12 Q. There's been some discussion of how a  
13 subsequent or potential hop marketing order might affect  
14 the prevalence of forward contracts. Can you describe  
15 what experience your family's hop farming operation had  
16 with forward contracts under the prior hop marketing  
17 order?

18 A. Generally speaking, during the previous  
19 marketing order, we had a higher level of forward  
20 contracts. I think it's been stated in prior testimony  
21 that generally, the industry strung their hops by May or  
22 June with about 90 percent being contracted. That has  
23 changed dramatically in today's world.

24 Q. How has that changed?

25 A. Well, I think that we -- we were forced  
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1 to enter the growing season with less forward contracts,  
2 which could be one year, could be multiple years, and so  
3 we are making decisions without any contracts.  
4 Essentially, you're forced to either not grow or grow  
5 with a high degree of risk not knowing what the price  
6 will be after harvest.

7 Q. There's been some discussion or  
8 suggestion that contracting directly with brewers is, or  
9 perhaps may decline with a marketing order. Did your  
10 family have any experience contracting -- entering  
11 forward contracts directly with brewers under the old  
12 marketing order?

13 A. Our family has been dealing directly with  
14 Anheuser-Busch and Coors since the mid-70s. So we  
15 delivered hops to both those breweries during the last  
16 marketing order and we have no problems in assuring full  
17 delivery to the breweries.

18 Q. Describe for those of us here how forward  
19 contracts are actually handled under a hop marketing  
20 order. When a grower is faced with a saleable quantity.

21 A. Well, I think that under the previous  
22 order we would know after the January meeting how many  
23 pounds of hops -- the previous order was raw pounds of  
24 hops -- so we would know how many pounds of hops we  
25 could deliver, so in a -- as the contracts were made,

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1 either directly with the breweries -- in our case, with  
2 Anheuser-Busch -- or with existing handlers, or dealers  
3 that were in existence at that time, the date of the  
4 contract became a major component of the delivery. So  
5 in other words, the first contract made would become the  
6 first contract delivered. And that would go against  
7 your allotment base. And so as -- in this discussion  
8 about the future in a new marketing order and the  
9 potential of not getting delivery by some people, I  
10 think it's -- actually encourages forward contracting,  
11 because the first contract on your list of contracts  
12 becomes the first one you deliver, so you -- in other  
13 words you ensure delivery of those hops as the first  
14 contract.

15 Q. Is there incentive for the grower to  
16 actually fill contracts first?

17 A. Yes.

18 Q. Is there any reason why that practice  
19 couldn't be followed under the proposed hop marketing  
20 order?

21 A. No. I think it would actually encourage  
22 some degree of long-term contracting because those that  
23 would want absolute assurance that they would have their  
24 hops delivered would actually contract ahead and they  
25 would become the first in line and they would have

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1 ensured delivery. What was interesting under the last  
2 order, too, was about this allotment base and how it was  
3 administered. There was [sic] contracts actually  
4 entered in with growers as you went through your  
5 contracts and contracts were made, it was mandated that  
6 you reported what your previous sales were. So in other  
7 words, if dealer A entered into a contract with you, he  
8 would want to know what was the prior contracts with  
9 dealer B, dealer C or brewery A or B or whatever.

10 Q. What, in your opinion, is the reason that  
11 the prevalence of forward contracts has declined since  
12 the termination of the last marketing order?

13 A. Well -- my personal opinion? I think  
14 that when you have such wide fluctuations in the market,  
15 I think it starts off at the higher level, at the  
16 consumer level, with the breweries around the world.  
17 When they have forward contracts or at price X and the  
18 spot market price is well below that, at some point in  
19 time the finance department is going to ask the  
20 purchasing agent why are you purchasing hops on contract  
21 at twice or three times the price that spot market is.  
22 So as time goes on, that -- the incentive is to well,  
23 spot market's so lower, so why not -- why do we enter  
24 into contracts. So I think that just kind of cascades  
25 it way down through the dealers and eventually ends up

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1 at the grower level with less contracts and more  
2 speculative spot market.

3 Q. One of the purposes of this proposed  
4 marketing order is to impose a mandatory mechanism for  
5 limiting oversupply of hops. Is that a fair statement,  
6 sir?

7 A. That's correct.

8 Q. Has the industry in the past several  
9 years undertaken or explored any voluntary measures to  
10 prevent oversupply?

11 A. Yes, we have.

12 Q. Describe those for us, please.

13 A. In 2000, when it was pretty evident that  
14 we were in an overproduction scenario in the hop  
15 industry -- that was mostly characterized by hops  
16 unsold, people having inventory. We had many industry  
17 meetings starting off in Yakima, which actually were  
18 composed of growers from Oregon and I think in some  
19 cases a few Idaho growers made it over, but not too  
20 many. And it was decided that we needed to do something  
21 to address this oversupply, so the Hop Alliance was  
22 created -- I'm not sure, somewhere in late 2000 or even  
23 in 2001 and it was decided that we needed around a three  
24 percent reduction in our overall volume to achieve some  
25 degree of stability or to reduce the oversupply. So

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1 there was quite a bit of discussion in the groups and we  
2 had these large meetings where, you know, almost every  
3 grower there was there at one time or another and it was  
4 very hard to come up with a starting point, how to start  
5 this thing. So at that time, the three largest growers  
6 stepped forward and said we will reduce seven percent of  
7 our own production if the industry matches three  
8 percent. So we did not sign any papers, but we did,  
9 with a voluntary program -- and there might've been  
10 something written, I'm not sure, but was basically the  
11 three largest growers stepped forward and said we will  
12 reduce our production by seven percent if the industry  
13 matches it at three. And the three largest growers did  
14 what they said. And then many other growers did what  
15 they said they would do. This is a small industry.  
16 When you only have 40, 50 growers -- not that many in  
17 the state of Washington -- your neighbors know what  
18 you're doing. So it wasn't hard to kind of self -- you  
19 knew what was going on. So as the acreage finally came  
20 out, it became evident that the acreage did not reduce  
21 and the only acreage that was actually reduced was the  
22 three largest growers. So essentially what it was, was a  
23 small minority of growers tried to exploit that  
24 reduction of the largest growers and increase their  
25 production. So that was fool me once. Number two -- so

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1 then we went into 2002...

2 Q. Let me...

3 A. Okay.

4 Q. ...just stop you there and ask for a  
5 little more information.

6 A. Okay.

7 Q. You referenced the Hop Alliance?

8 A. That's correct.

9 Q. Is that the same thing as the American  
10 Hop Producers Alliance?

11 A. Correct.

12 Q. And was that an actual legal entity or a  
13 loose association?

14 A. Yes, it was.

15 Q. Did it have a board of directors?

16 A. Yes, it did.

17 Q. Are you able to give us an idea of what  
18 representation across the industry...

19 A. It was composed of a wide assortment of  
20 growers, I think, from multiple states and everything  
21 else.

22 Q. Okay. How many members on the...

23 A. I could not tell you.

24 Q. You referenced the three largest growers.  
25 Should we infer that you're one of the three largest

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1 growers?

2 A. That's correct.

3 Q. Were some of the smaller growers on the  
4 board of directors?

5 A. That's correct.

6 Q. Did this -- did the Hop Alliance have  
7 meetings?

8 A. Multiple meetings.

9 Q. Okay. And it was through the course of  
10 these meetings that it was decided that there should be  
11 a three percent voluntary reduction in alpha production  
12 or pounds production?

13 A. Pounds at that point.

14 Q. Did it matter what varieties were  
15 reduced?

16 A. No, it was not really. It -- I mean, the  
17 general feeling was it should be alpha varieties, but at  
18 that time we felt that, you know, we weren't going to  
19 make big issue of it. Three percent was three percent,  
20 you know.

21 Q. Were there actual -- I understand that  
22 maybe the board of directors who are the architects of  
23 this proposal.

24 A. Yes.

25 Q. Were there actual members of the Hop  
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1 Alliance?

2 A. Yes, there were.

3 Q. And how many members of the industry were  
4 members?

5 A. I mean, I felt it was 100 percent of the  
6 industry because I think every grower was there at one  
7 time or another.

8 Q. Okay. You indicated that there was an  
9 agreement that the three largest producers would cut  
10 production by seven percent if the remainder of the  
11 industry would cut their production by three percent, is  
12 that correct?

13 A. That's correct.

14 Q. And...

15 A. As a net result -- I mean, we felt that,  
16 yeah.

17 Q. Explain, if you would then, how that  
18 agreement was reached. Did you do a straw pull, were  
19 there votes, did people raise their hand and say they'd  
20 participate?

21 A. I think it was part of the process of  
22 many meetings, many discussions, and I don't recall  
23 exactly how we came to that three percent, but it was a  
24 number we felt was a starting point.

25 Q. What I'm trying to gather, Mr. Roy, is at  
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1 some point in time -- I imagine 2001 -- you withdrew  
2 seven percent of your production, is that...

3 A. That's correct.

4 Q. What was it that convinced you -- why did  
5 you feel assured that you had, I guess, the assurances  
6 that the rest of the industry, that they would reduce by  
7 three percent?

8 A. As I said, there's not that many of us  
9 and you pretty much feel you can trust, you know, your  
10 fellow growers and what people say is what they will do.

11 Q. Did people say they would reduce by three  
12 percent?

13 A. Some, you know -- not all growers said  
14 that but, the feeling was it was a realistic goal and  
15 they should be able to be reached. Some took out more  
16 than three percent. Probably a few took out a little  
17 less, but everybody tried to do something.

18 Q. Not everybody.

19 A. No, not everybody, that's true.

20 Q. Is it -- as I understand it, there were  
21 some people who responded to this voluntary reduction in  
22 production by planting more acres?

23 A. That's correct.

24 Q. Was the voluntary effort by the Hop  
25 Alliance then a success or a failure?

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1           A.    Well, I think it was part of the process  
2 that led us to where we are today.  So I think in the  
3 sense of 2001 it was a partial failure.  It did reduce  
4 some hops.  I bet it was ours, but it reduce some hops.  
5 So I think it was part of the process that led us to  
6 where we are today.

7           Q.    Were there any subsequent -- after the  
8 Hop Alliance efforts, were there any subsequent  
9 voluntary efforts by the industry to reduce acreage or  
10 production?

11          A.    Yes.  In 2002, after the problem we had  
12 in 2001, we felt we're going to have to have -- make  
13 some -- a program that's a little more mandatory or had  
14 a little more teeth in it than the voluntary program we  
15 had in 2001.  So again, meetings continued under the  
16 auspices of the Hop Alliance and generalized meetings  
17 and it was decided that similar to what Germany does, or  
18 the European Union would be a better word, where they  
19 have grubbing grants, we got the idea that it would be  
20 advantageous for us to again reduce production.  We  
21 still were facing an oversupply situation with hops  
22 unsold, inventories building, prices low.  So we hastily  
23 crafted a contract that where a grower would -- by the  
24 contract, would agree to reduce their acreage by...

25                   \*\*\*

1 [Off the Record]

2 [On the Record]

3

\*\*\*

4

ADMINISTRATIVE LAW JUDGE: We have just  
5 changed tapes. We're back on record at 10:30. Mr. Roy,  
6 would you start that sentence again?

7

MR. ROY: So we decided to -- the growers that  
8 would sign the contract and reduce their acreage, they  
9 would receive a grubbing grant, which was X number of  
10 dollars per acre for every idle acre. That was net  
11 reduced for 2001. And also, as part of that contract,  
12 it was stated that you would vote for the referendum  
13 that needed to be into place to raise the money to pay  
14 the growers that reduced their acreage. So in other  
15 words, it was kind of the cart before the horse, in a  
16 sense, but we felt that the industry -- the majority of  
17 the industry was in favor of this, well over 80 percent  
18 had on the papers. I think even probably higher than  
19 that. And so, what it was, was a mutual agreement among  
20 growers stating okay, I know you can't bind my vote, but  
21 I do agree in principle, so I will reduce my acres by  
22 this amount and knowing that when the vote comes  
23 forward, I will vote yes and then the whole program  
24 works together. And so the goal was to reduce by, I  
25 believe between 6,000 to 6500 acres. Most of that -- in

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1 our discussions with many of the other states, Idaho and  
2 Oregon, about this program, they all felt the problem  
3 was in Washington. So we felt the burden was on  
4 Washington, I agree on that. And so -- but, there was  
5 sympathy in all the other states, so we actually had  
6 growers from Oregon that actually signed and put some  
7 acreage into that program knowing that they would not  
8 receive anything, but we would try to do something for  
9 them, if we could. We even had some sort of  
10 participation from Idaho and -- just keep going? Okay.  
11 So...

12 ADMINISTRATIVE LAW JUDGE: Let me just  
13 clarify. For those who thought the problem was in  
14 Washington, were they referring to the Washington hop  
15 growers?

16 MR. ROY: That's correct. The alpha -- you  
17 know, the overproduction of alpha.

18 ADMINISTRATIVE LAW JUDGE: Thank you.

19 MR. ROY: So we growers made stringing  
20 decisions based on these contracts that had been signed.  
21 We had reached the goal of 6500 acres. Again, the three  
22 largest growers stepped forward with substantially more  
23 than the percentage of the industry. We had -- as it  
24 got down to the deadline, there was -- we did not  
25 actually have enough acres to reach the goal. There was

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1 a trigger point in this. So in other words, when you  
2 sign the contract among yourselves, once -- it was not  
3 binding until we reached the 6500 acres. So in other  
4 words, that goal was very important and as we came  
5 closer to the deadline there was probably a shortage of  
6 acreage, so a few -- again, the larger growers stepped  
7 up and put in more acreage. Now again, this is  
8 interesting. This is net. We'd -- the three largest  
9 already reduced by seven percent in 2001, and so the  
10 contract for 2002, there had to be a net reduction  
11 again. So we'd already taken one in '01, which we had  
12 no credit for and we had to take again out in 2002 to  
13 make this work. So we made our stringing intentions and  
14 all other growers made the stringing intentions based on  
15 what we felt was a very good contract and it would go  
16 forward. Well, late in May, early June, which was again  
17 -- I think it was late May -- a small minority of  
18 growers challenged the legality of this contract and  
19 went to Washington State Department of Agriculture.  
20 What we were doing was we were going to assess this --  
21 only the state of Washington, five cents a pound, to  
22 finance this program. There was [sic] enough votes to  
23 make this goal because we had signed contracts of well  
24 over 80 percent of the growers that were in favor of  
25 this. It might be higher than that, I don't know, but

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1 again, a small minority of growers challenged it  
2 legally. The Department of Agriculture -- the state  
3 department -- Washington State Department of Agriculture  
4 felt that they did not want to risk the cost of an  
5 ongoing lawsuit, so after telling us verbally, that  
6 everything was a go in early May, they reversed their  
7 decision late May, early June and the whole program was  
8 thrown out.

9 \*\*\*

10 BY MR. MONAHAN:

11 Q. When are stringing decisions made?

12 A. Usually in probably March you have to  
13 make your decisions. You could probably make some  
14 decisions as late as into April, maybe early May or  
15 something.

16 Q. Is it a fair statement, then, for this  
17 set-aside program that the 80 percent of the industry  
18 who had signed up actually had to take practical steps  
19 to remove acreage -- make affirmative decisions not to  
20 string prior to May?

21 A. That's correct.

22 Q. And then after May it was announced that  
23 the set-aside...

24 A. Well, at the end of May.

25 Q. Okay.

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1 A. The end of May.

2 Q. Is it fair to say that by then it was too  
3 late to go back and string the hops you'd pulled out?

4 A. Generally speaking. What happens is I  
5 think you can make case that some could be strung that  
6 late, but it has to be the right variety, the right  
7 field. You have to have your string in place. Many  
8 people order just enough string, you know, for what they  
9 need, so...

10 Q. With the 80 percent of the industry  
11 voluntarily participating in this set-aside program, did  
12 you have any observations as what the minority was doing  
13 with their acreage at the same time?

14 A. There was some acreage planted -- or I  
15 mean strung, excuse me. That's a better word for it.  
16 So again, a small minority tried to exploit the  
17 majority's...

18 Q. Tell us, Mr. Roy then, what was the next  
19 step in the process of bringing us to where we are today  
20 with this proposal of limitations in form of a federal  
21 hop marketing order?

22 A. Actually, it became fool me twice. So we  
23 -- during this whole process -- part of this whole  
24 process that we went through with the alliance and even  
25 the set-aside, there was always the feeling that we

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1 needed to go to something more mandatory and a marketing  
2 order's always come up in the discussion. And even  
3 during the time of the set-aside, there was work being  
4 done on a marketing order and at one time -- it just  
5 continued on, so we -- this is kind of an extension of  
6 this whole process starting in 2000 with grower meetings  
7 at Hop Growers of America conventions. There's always  
8 been this ongoing discussion about the need and the  
9 desire to put a marketing order in. In fact, at the  
10 convention in 2000 -- I believe it's 2001, I'd have to  
11 look back, but we -- it was publicly made notice -- the  
12 industry was publicly put on notice that the -- there  
13 was going to be a proponents committee created, that we  
14 would honor contracts if a marketing order was put into  
15 place -- there was always the issue of contracts, you  
16 know, honoring contracts. We made a statement that any  
17 contract made prior to this date would be honored by a  
18 marketing order. So the industry was put on notice  
19 after that point that the potential for a cut was being  
20 presented, or possible.

21 Q. Mr. Roy, you had testified about the way  
22 the industry in Germany is perhaps managed with this  
23 grubbing grant...

24 A. Yes.

25 Q. ...concept. Are you -- in your history

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1 and experience as a hop grower, have you had the  
2 opportunity to familiarize yourself with the cultural  
3 practices and industry approaches from the other major  
4 growing regions in the world?

5 A. Yes, I've been very fortunate to visit  
6 most of the major hop growing areas of the world  
7 multiple times. I'm currently the United States  
8 representative to the ICC [ph], which is the  
9 International Hop Growers Congress, which is  
10 representative of over 20 countries from around the  
11 world that raise hops. So I have been the United States  
12 representative to that for, I think about eight, nine  
13 years. So we have multiple meetings every year to  
14 discuss -- to share statistical information on the  
15 various numbers, of the balance between aroma and alpha,  
16 you know, different acreages and things like that. And  
17 in fact, I've spent multiple time in Germany. We've had  
18 one of the largest German growers spend the summer with  
19 us. My son has been over there working on their farms  
20 over there. So we have a pretty good understanding of  
21 the system, how it works. And most of the major areas,  
22 also.

23 Q. Describe, if you could, briefly the other  
24 major growing regions that you visit.

25 A. I think that I've been to Germany, as I  
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1 said, multiple time, England multiple times. I've been  
2 to Spain, Bulgaria, the Czech Republic, New Zealand. I  
3 have not been to Tasmania, but I've had two growers  
4 spent two consecutive summers with us from Tasmania. I  
5 think I -- might be some...

6 Q. Ever been to China?

7 A. I have not been to China.

8 Q. Do you have any understanding or opinion  
9 as to whether the American farmer enjoys any competitive  
10 advantages over these other major hop growing regions?

11 A. In my view, just in talking to growers  
12 and many times when we have these meetings and  
13 exchanges, we do have grower tours from around the world  
14 come through our farm on a regular basis, so we get a  
15 chance -- very fortunate chance to discuss with fellow  
16 farmers the issues of their particular countries and I  
17 think it's kind of -- you know, the German growers --  
18 it's a unique situation over there. There is about  
19 little less than 3,000 growers raising similar acreage  
20 as ours. The average grower over there is probably  
21 about 15 acres, maybe less. They are part-time farmers.

22 Q. Just to back you up. You say -- there  
23 are 3,000 growers.

24 A. Yes.

25 Q. And when you say growing similar acreage,

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1 you mean the total acreage by 3,000 farmers in Germany  
2 equates to the total acreage by 50 farmers in the US?

3 A. Similar, yes. They have a higher -- it  
4 fluctuates back and forth, but generally...

5 Q. Okay. I didn't mean to cut you off.

6 A. That's okay. And -- so around 60 percent  
7 of the German farmers are part-time farmers as  
8 referenced by Dr. Tweeten. And you know, it is  
9 interesting. They work in the factories, they call them  
10 hop gardens in Germany for a reason. And so they're  
11 very -- it's -- what happens in the market, it really  
12 doesn't affect those guys. There's a very small  
13 percentage of the German growers that are actually full-  
14 time farmers that they respond to the market back and  
15 forth. There's very limited capacity for those guys to  
16 really expand. You see them -- there is some degree of  
17 consolidation with the growers absorbing their  
18 neighbors, usually through a lease-type arrangement  
19 because usually European land doesn't sell very often.  
20 They are -- they have labor problems. Most of the labor  
21 done on their farms is family. There is a small degree  
22 of labor that comes in from Poland to help sometimes in  
23 the spring and during the harvest, but that's usually  
24 only the large growers. It's not a common thing. So  
25 they have some very structural problems in their ability

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1 to really expand dramatically. They may change  
2 varieties, I mean -- and we've seen that going from very  
3 low alpha varieties to some of the higher alpha  
4 varieties. They have very small machines. Their  
5 machines are such that would fit -- you could probably  
6 get four or five of the machines in this room. They're  
7 usually -- farmers in Germany live in the city, their  
8 farms are outside the city, so you drive up to a small  
9 house and there is a barn and you open the door and  
10 there's a pick machine, dryer, and packaging all in one  
11 small room.

12 Q. Just for the folks in the room who  
13 perhaps haven't had the experience of -- in a hop  
14 picking machine...

15 A. Um-hum.

16 Q. Compare that to the United States. If  
17 there could be four hop picking machines in this room in  
18 Germany, how would that compare to the hop picking  
19 operation in the United States?

20 A. A pick machine in the United States would  
21 take four -- maybe three or four of these rooms to --  
22 that's just a picking machine part.

23 Q. What...

24 A. Then you have the drying facility, which  
25 is substantially larger again and then the packaging

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1 where we bale them is even larger or as large.

2 Q. Does the Roy family farming operation  
3 have any other products other than hops?

4 A. Yes, we do. We -- I have -- I farm with  
5 two other brothers. My father still is alive in his  
6 mid-70s. He has farmed all of his life hops. We are --  
7 we have apples, cherries, sweet corn, grapes, commercial  
8 storage. We do a wide range of products -- beans -- I'd  
9 have to sit and think of all the things we do, but...

10 Q. Just in terms of percentages, what  
11 percentage of the overall Roy farms operation is  
12 comprised of hop farming?

13 A. About 35 percent. It's a unique -- I  
14 might make a comment about some of the crops we raise.  
15 It's kind of a -- we raise Concord grapes, I think I  
16 forgot that one -- Concord grapes that actually under  
17 Welch paper. We do -- we are part of the Welch  
18 cooperative, which you must have paper to deliver grapes  
19 to that cooperative. You can buy it...

20 Q. Is paper a basic term for a contract?

21 A. No, it's more of an allotment. You have  
22 it, you buy -- it's kind of like a certificate saying  
23 that you can deliver X number of pounds to the  
24 cooperative, Welch paper. It was kind of -- what's  
25 interesting about this is this spring we bought from

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1 farm credit on a bankruptcy sale 70 acres of grapes that  
2 did not have any Welch paper and those grapes are  
3 hanging today. Or part of them are hanging today. We  
4 could not deliver them. There was no market for them,  
5 so the paper was -- the grapes that we had paper on we  
6 could deliver. The grapes that we do not have paper on  
7 could not be delivered. And it -- now we're facing the  
8 idea of either taking the grapes out or buying --  
9 spending two to three thousand dollars an acre to  
10 acquire the paper to allow us to deliver those grapes.

11 Q. Is there a marketing order for Concords?

12 A. Well, not so much a marketing order. The  
13 Welch cooperative is essentially a mini-order, in a  
14 sense, where they control the production.

15 Q. There was some discussion this morning,  
16 or least testimony about whether -- how the hop industry  
17 compared to other industries in terms of prevalence of  
18 contracting. What's the prevalence of contracting in  
19 the grape juice industry?

20 A. Well, I think that you have basically  
21 open grapes and you have contract grapes. I mean,  
22 contract -- the terms probably used a little -- in that  
23 we have Welch paper, we have the ability to deliver to  
24 the Welch based on our -- the allotment we have. And  
25 eventually there's other grape processors that do the

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1 same thing, but maybe on a one year basis.

2 Q. Do you know what the prevalence of  
3 contracting is for...

4 A. I could not -- I'm not sure.

5 Q. When -- I want to take you back to the  
6 set-aside program that was at least started in 2002  
7 before it was discontinued. What, to your observation  
8 and knowledge -- what is the highest percentage of hops  
9 that you heard of any single farmer setting aside and  
10 taking out of production in the 2002 set-aside program?

11 A. Which -- how many acres? Well, I think  
12 that...

13 Q. If you don't understand my question...

14 A. Yeah, I'm not sure if I understand.

15 Q. You are -- you say this is a small  
16 industry.

17 A. That's correct.

18 Q. You pretty much know what your neighbors  
19 are doing.

20 A. That's correct.

21 Q. You know, or at least believe, that at  
22 least 80 percent of the growers in the industry signed  
23 up to set aside a portion of their total hop production  
24 in the set-aside program.

25 A. That's correct.

1 Q. What's the highest portion you're aware  
2 of of a single farmer setting aside...

3 A. Well, I think there were a few farmers  
4 that actually did it 100 percent. They felt they were  
5 probably smaller farmers and they felt that in their  
6 best interest, financially, it was best just to lay 100  
7 percent idle and collect the, you know, the set-aside  
8 payment and they'd probably be better off doing it that  
9 way, so it was just a decision they made. The hops are  
10 still there, they're being raised on the ground, but  
11 they left them idle and did not string them.

12 Q. And eventually didn't get the set-aside  
13 payment?

14 A. That's correct.

15 Q. Describe when a farmer set aside or lays  
16 idle a hundred percent of production, describe what that  
17 entails. What do you do and what don't you do when  
18 you've let acreage go idle?

19 A. Well, I think that the difference is that  
20 -- I mean, if you were to leave your hops idle and leave  
21 the plants in, which is commonly done, you still must  
22 pay your water, you still must pay your taxes. You have  
23 to water those plants, keep those plants healthy to some  
24 degree. You may have to spray them, maybe for mildew,  
25 maybe for bugs. It's hard to know. Each variety

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1 responds a little differently. There is a financial --  
2 depending on how long they stay idle, you might lose a  
3 little production when you come back in. If you were to  
4 raise them -- the only difference between leaving them  
5 on the ground and raising them for production, for  
6 stringing them, would be you put the string up, you  
7 train the hops up the string and take care of them  
8 through the summer, water and fertilizer and pesticides  
9 to control bugs and then you harvest them. Really,  
10 that's the only difference.

11 Q. So you have additional cultural  
12 practices, but primarily you have additional labor  
13 costs.

14 A. That's correct. Yeah, high labor.

15 Q. There was some testimony -- not  
16 testimony, excuse me. There were some questions of Mr.  
17 Carpenter regarding whether he knew of some instance  
18 where hop grower numbers were stenciled on a given bale  
19 of hay produced by his farm. Remember that?

20 A. Alfalfa?

21 Q. Wrong case, sorry.

22 A. Okay.

23 Q. Of hops produced on the Carpenter farms.

24 A. Yes, yes. I remember that testimony.

25 Q. Okay. Do you have any knowledge of what

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1 that's all about?

2 A. Yes.

3 Q. Can you describe that for us?

4 A. What -- the issue was as -- given the  
5 history of the 2001 voluntary program and the 2002 set-  
6 aside, as I said, there was [sic] some growers that  
7 actually had chosen to remain 100 percent idle. At the  
8 time when we were formulating the marketing order it was  
9 stated that we would use 2001 as the voting period or  
10 the voting year for the grower referendum, the reasoning  
11 being because of these other programs that had gone on,  
12 the alliance and the set-aside, it was not fair to  
13 penalize grower that maybe were 100 percent idle in  
14 2002, you know, with no vote. So we had chosen 2001 as  
15 a voting year because of that, to be the most fair to  
16 the producers that were real producers. Well, as we  
17 went through this process it became -- I'm not going to  
18 say clear, but it became a concern to us that there was  
19 some concern by the Department on the voting year, there  
20 was much concern by the opposition, the opponents, on  
21 the voting year, not knowing how the ultimate outcome  
22 would be. Some of the growers that had been 100 percent  
23 idle in 2002 became very nervous that they would not  
24 either -- possibly not get base, possibly may not even  
25 get to vote, even though we had in the proposal a 2001

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1 year as a base year for voting and as establishment as a  
2 producer. So even in my own -- in many of our meetings  
3 through the spring, I made it public that I felt it was  
4 not necessary for a grower to plant hops just to  
5 preserve his vote. And I made a public statement that I  
6 would produce some hops for some growers, which is  
7 legal, and sell, give, trade hops to some growers for,  
8 you know, so they can put their grower number on, too.  
9 Just to do that. And part of it was we did not do this  
10 -- we made the public statement, but happened was during  
11 the summer it became -- again, this is a very small  
12 industry. Not much happens without everybody knowing.  
13 It became -- to our attention, that there was grower  
14 numbers being requested from the Washington Hop  
15 Commission -- additional grower numbers from some of the  
16 opposition and in our case, being one of the larger  
17 growers, we only have one grower number and many other  
18 large growers are the same way. I felt I was not going  
19 to enter into that type of chicanery or whatever it was.  
20 I just said okay, I'm just going to stay with our one  
21 vote, but there was kind of this rash of -- once one  
22 started, everybody just started asking for grower  
23 numbers and so we chose to trade to some growers a bale  
24 of hops so they -- again, as I say, in the early spring  
25 to help those growers that had helped the industry by

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1 being 100 percent idle.

2 Q. How many of these growers took you up on  
3 your offer?

4 A. Six. Six grower numbers.

5 Q. Did all of those six growers, were they  
6 all hop growers...

7 A. Yes. I would feel they're hop growers.  
8 They were part of the process to get where we are today.

9 Q. Did they all participate in the voluntary  
10 cutbacks of 2001?

11 A. Yes.

12 Q. Did they all participate in the 2002  
13 voluntary set-aside program?

14 A. Yes.

15 Q. To a 100 percent degree, it sounds like.

16 A. Well, in some cases 100 percent degree,  
17 yeah. There was different degrees of participation, but  
18 some of them were a hundred percent.

19 Q. To the best of your knowledge, are these  
20 six individuals still, in your opinion, hop growers?

21 A. Yes.

22 Q. Do they still have hop -- property on  
23 which hops grow?

24 A. Yes, they still have facilities, they  
25 still have ground, they -- in many cases, they have hops

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1 that are -- well, we -- for a term we call idle, which  
2 is the hop plants are still there being nurtured, being  
3 taken care of.

4 Q. Just not strung?

5 A. That's correct.

6 Q. Hop plant, of course, are perennial.

7 A. That's correct.

8 Q. How long would, say, a Galena hop plant  
9 live?

10 A. Well, I -- boy. Yeah, I've seen fields  
11 that are probably over 20 years old, maybe even longer.  
12 There might be some fields in the valley that could be  
13 approaching 30 years, I mean, some of the cluster  
14 varieties. But -- it's not that common, but generally,  
15 market conditions dictate, you know, things but  
16 generally, you could -- hops are perennial, they live on  
17 forever.

18 Q. So in theory, one could continue to grow  
19 hops but then just decide on a given year whether to  
20 string them if market conditions were appropriate?

21 A. That's correct.

22 Q. Let's turn, then, to the proposed order.  
23 We've asked you to testify today regarding...

24 \*\*\*

25 ADMINISTRATIVE LAW JUDGE: Mr. Monahan. Let  
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1 me acquaint everyone there that you can get a copy of  
2 the proposed order. To my right against the wall, there  
3 are copies and so you may want that to follow along.  
4 It'll also be on the screen, but sometimes it's  
5 difficult to see the screen from as far away as you are,  
6 so we'll take just a minute to get those copies for  
7 anybody that wants them. Thank you, Mr. Monahan.

8 MR. MONAHAN: Thank you, Your Honor. Can my  
9 trusty assistant switch to 5-0 so that the...

10 MR. BARTON: Is it the down arrow?

11 UNKNOWN: No, it's not.

12 MR. BARTON: The -- it's down on the lower  
13 left-hand corner -- the right-hand corner. There...

14 \*\*\*

15 BY MR. MONAHAN:

16 Q. Sir, we've asked you to testify today  
17 regarding marketing policy, the recommendations for  
18 volume regulation and the issuance of volume regulation  
19 components of the proposed order. Is that right?

20 A. Yes.

21 \*\*\*

22 MR. MONAHAN: Can you just describe --  
23 actually, Your Honor, I should mention that I've been  
24 encouraged by other counsel here to address the  
25 substance of the provisions without taking the time to

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1 read them into the record and with Your Honor's  
2 permission, we're happy to do that.

3 ADMINISTRATIVE LAW JUDGE: Yes, thank you. I  
4 think that saves time and actually preserves accuracy in  
5 case the document would be slightly misread.

6 MR. MONAHAN: Thank you, Your Honor. Can you  
7 then, just describe, Mr. Roy, in general terms what the  
8 marketing policy provision of the proposed order is  
9 intended to accomplish or how it's intended to work.

10 ADMINISTRATIVE LAW JUDGE: Just for the  
11 record, we're at Section 991.50 Marketing Policy.

12 MR. ROY: Thank you. I think I'll address  
13 these by sections here. In 991.50 Marketing Policy A,  
14 generally what this means is that the committee shall  
15 meet once a year before November 15 to adopt a marketing  
16 policy. The committee will take -- and then submit to  
17 -- sometime following that meeting, submit to the  
18 Department a recommendation for the following year.  
19 Also, what it means that the committee is able to revise  
20 -- adopt a new policy or revise policy because of  
21 changes in demand/supply situation with respect to alpha  
22 acid during the year, too. So basically, meet once a  
23 year before November 15 and sometime shortly after that  
24 have a recommended policy.

25

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1 BY MR. MONAHAN:

2 Q. What is the marketing policy intended to  
3 include?

4 A. Well, I think the stated policy or the  
5 intent of the whole thing is the eventual balance of  
6 supply and demand for a stable price. I mean, that's  
7 what...

8 Q. In terms of substantive components, is  
9 there anything in the proposed order that the  
10 administrative committee is required to include within  
11 its marketing policy? If I might help...

12 A. Yeah.

13 Q. ...direct you, if you could take a look  
14 at 991.50 B...

15 A. Well, okay. That would be in B, yeah. I  
16 was going to come to that. But that would -- to include  
17 in that marketing policy, number one, the established  
18 quantity of saleable alpha acid held by producers and  
19 handlers. Number two, the estimated demand for alpha  
20 acid. Three, respective production of alpha acid.  
21 Four, total of allotment bases for the current marketing  
22 year and the estimated total allotment bases for the  
23 ensuing marketing year. Five, the quantity of reserve  
24 alpha pool in the storage. Six, producer prices of  
25 alpha acid. And these are -- shall consider, but not

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1 limit -- be not limited to these, either. These are  
2 just things that we feel are important, that they should  
3 be taken into consideration.

4 Q. Let's back up to sub-section A.

5 A. Okay.

6 Q. As I read this, the marketing policy  
7 provision requires the administrative committee to  
8 submit to the Secretary of Agriculture recommendations  
9 for volume regulations. Describe for those...

10 A. It would be the saleable quantity.  
11 You're not limited to your production. All it is is a  
12 volume that would be allowed to be put into trade or  
13 saleable quantity.

14 Q. And just describe for those of us here in  
15 general what saleable quantity means.

16 A. Well, that -- saleable quantity is the  
17 amount that you would be able to sell into the trade.  
18 Knowing what the saleable quantity is early in the fall  
19 or late fall, you would be able to make your plans for  
20 the following year. How many pounds -- the trade would  
21 be able to contract up to that level. So in other  
22 words, if a brewery wanted to ensure delivery, he would  
23 be the first contract on record. He would be ensured  
24 that he would get his production because he'd know what  
25 the policy was and he would be the first one to against

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1 the allotment base.

2 Q. The language states that volume  
3 regulation recommendations would be made to the extent  
4 they were deemed necessary to meet market requirements.  
5 How, sir, would the administrative committee determine  
6 what was necessary to meet market requirements?

7 A. I think if you go back to B, you would go  
8 through, like, I think something similar to what was  
9 done in the last order with that balance sheet approach  
10 that Dr. Folwell spoke of which...

11 Q. Could you describe that for us?

12 A. Well, it kind of took in a whole bunch of  
13 -- I saw it there. I did not review it. I was not on  
14 the statistical subcommittee during the last order, so  
15 I'm not real comfortable -- but basically, you looked at  
16 exports, you looked at imports, you looked at  
17 production, you estimated demand. Given that hops is --  
18 I mean, it's only used for one product. I mean, demand  
19 does not change dramatically. Supply can change, but  
20 demand doesn't change. I mean, generally we're in a  
21 decrease in demand because of lighter beer. So I think  
22 it's very -- it's a relatively stable demand. That's  
23 one of the problems with our industry.

24 Q. Under subsection B, there are a number of  
25 components of the marketing policy that must be

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1 included. Number one, estimated quantity and saleable  
2 alpha acid held by producers and handlers. How is the  
3 committee going to obtain that information?

4 A. Well, I think that -- again, that's up to  
5 the committee to set the parameters or how they would  
6 require that information.

7 Q. Are there any reporting requirements in  
8 this proposed order?

9 A. I think there's reporting requirements of  
10 production so you know what is produced and you would  
11 know what reserve -- what production would reduce over  
12 the top of your saleable allotment. So you would know  
13 those things are required to be reported.

14 Q. And are the items set forth in 991.50 B,  
15 one through six, some of the items that you would  
16 anticipate the committee reviewing in its efforts to...

17 A. Yeah. The committee -- the proponents  
18 felt that these -- at least these six items were of  
19 importance, that they should consider but not limit it  
20 to these.

21 Q. What other resources are available to --  
22 would be available to the administrative committee in  
23 its efforts to ascertain demand?

24 A. I think that you can look at exports.  
25 You could probably have conversations with breweries

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1 around the world. There are -- what has been done in  
2 the previous order. There was [sic] frequent marketing  
3 trips. You -- you know, as stated, we're getting down  
4 to 10, 12 to 15 breweries that control over half the  
5 beer of the world, maybe even higher. So the  
6 information's becoming more apparent all the time.

7 Q. In terms of exports, imports, and total  
8 hops in production, can you identify any published  
9 resources that would potentially give the administrative  
10 committee guidance on these issues?

11 A. On the exports?

12 Q. No, on any...

13 A. On any -- okay. What we do -- there is  
14 [sic] government reports that track imports of hops to  
15 the United States by type of hops. Raw hops, pellets,  
16 extract. There are also government reports that track  
17 -- did I say exports or imports? Both of them. They're  
18 both imports and exports. So both those numbers are  
19 available to us to look at. I think those would be the  
20 primary ones and then with the grower reporting  
21 requirements, then I think you have a pretty good handle  
22 of what's going on.

23 Q. We saw today in Exhibit 39, I believe,  
24 that the USDA had tracked some average price reports.

25 A. That's correct.

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1 Q. Would those -- would that be information  
2 that the...

3 A. I think that could be a potential -- you  
4 know, the US average prices is kind of an interesting  
5 number. I mean, it has value, but it doesn't sometimes  
6 take into effect the wide fluctuations that are existing  
7 in the market place. You know, sometimes inventory that  
8 -- 2000 inventory that was sold at .50 or .40 two years  
9 post-harvest would not reflect it and the variability  
10 that really does exist.

11 Q. What's the Barth report?

12 A. The Barth report is a report put out  
13 yearly by the John Barth Group out of Germany, that --  
14 it's -- the Gianhaus [ph] at the John Barth Company have  
15 common ownership. They're not -- they are different.  
16 They are separate Gianhauses based in the United States.  
17 John Barth is based in Germany. There is common  
18 ownership. I don't know their total structure, but  
19 there is independence of some degree. But John Barth  
20 puts out a report every year that goes through the alpha  
21 -- I mean, it goes through each country, comments on the  
22 beer market worldwide, talks about individual countries  
23 and their beer production. It's a very extensive  
24 report. S.S Steiner does that, also. There's actually  
25 two reports I know of.

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1 Q. Does the Hop Growers of America set forth  
2 an annual statistical report?

3 A. Yes, they do.

4 Q. I don't know if I -- if he answered the  
5 question. Describe for me just in general the  
6 information that you would anticipate a hop growers  
7 statistical to include and that the Barth report and  
8 Steiner report would include.

9 A. Currently or as...

10 Q. What type of information do those reports  
11 generally include on an annual basis?

12 A. Well, they include acreage numbers from  
13 around the world, which some of it that has arrived  
14 either from the Barth report or from the ICC. It has to  
15 do with the breakdown between aromas and alpha varieties  
16 in particular countries. There's some degree of  
17 estimation of alpha production, alpha demand,  
18 essentially, the Hop Growers of America report takes  
19 information from multiple sources and brings them  
20 together under one. The -- okay.

21 Q. I've handed you a document hot off the  
22 press. Can you identify that for us?

23 A. That is a 2002-2003 Barth report.

24 \*\*\*

25 MR. MONAHAN: Your Honor, I would ask that  
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1 this report be marked as the next sequential exhibit.

2 ADMINISTRATIVE LAW JUDGE: The Barth report  
3 will be marked as Exhibit 40. And how many copies do  
4 you have?

5 MR. MONAHAN: I have four originals and three  
6 copies. Five originals and three copies.

7 ADMINISTRATIVE LAW JUDGE: Okay. Do you want  
8 the record copy to be an original?

9 MR. MONAHAN: Sure.

10 ADMINISTRATIVE LAW JUDGE: All right. Let me  
11 mark that one.

12 MR. ROY: Your Honor, that is available on a  
13 website, so...

14 ADMINISTRATIVE LAW JUDGE: All right. And  
15 would you read into the record the website on which it's  
16 available?

17 MR. ROY: I'm not sure if I have that right  
18 here. I believe it's j-o-h...

19 UNKNOWN: J-o-h...

20 MR. ROY: J-o -- j-o-h Barth? Is there a dash  
21 in it, I'm not sure if there's a dash in there. It  
22 might j -- www.johbarth.com.

23 ADMINISTRATIVE LAW JUDGE: I thought you would  
24 just turn to the inside page there.

25 MR. ROY: Is it in there?

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1 ADMINISTRATIVE LAW JUDGE: Yeah. Down at the  
2 bottom...

3 MR. ROY: Oh, yeah. Thank you. Never got  
4 that far. Yeah, it is johbarth.com.

5 MR. MONAHAN: Thank you, Your Honor.

6 ADMINISTRATIVE LAW JUDGE: All right. And  
7 thank you, Mr. Monahan, for distributing those as far as  
8 they went. This also looks like a very comprehensive  
9 and valuable report. You may proceed.

10 \*\*\*

11 BY MR. MONAHAN:

12 Q. Thanks, Your Honor. I'm going to ask you  
13 to move ahead to the next section, Mr. Roy.

14 A. Yes.

15 \*\*\*

16 MR. MONAHAN: Section 991.51. And Your Honor,  
17 I just might mention that I know that with other  
18 witnesses we have stopped after each section and invited  
19 cross-examination. I think in the proponents committee  
20 estimation, these three provisions sort of work together  
21 and it might make sense to wait until all three have  
22 been presented before cross-examination's invited.

23 ADMINISTRATIVE LAW JUDGE: That will be fine.

24 \*\*\*

25 BY MR. MONAHAN:

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1 Q. Thank you, Your Honor. Section 991.51 is  
2 titled "Recommendations for Volume Regulation." Can you  
3 please describe to those of us assembled how these  
4 recommendations for volume regulation are intended to  
5 work?

6 A. Well, it's -- kind of sets forth some  
7 framework for the committee to work under. If the -- if  
8 it's determined by the committee that there is a need to  
9 reduce alpha acid supply...

10 Q. Let me stop you right there. Is -- the  
11 first word is if.

12 A. If.

13 Q. Is it a fair statement that the question  
14 of whether a saleable quantity is going to be set is  
15 addressed each year?

16 A. That's correct.

17 Q. And it's possible that the administrative  
18 committee, when reviewing demand and reviewing potential  
19 supply might elect to not impose any saleable quantity  
20 whatsoever?

21 A. That's correct.

22 Q. Excuse me, recommend a saleable quantity?

23 A. Yeah. That's correct.

24 Q. What...

25 A. Recommend to the Secretary.

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1 Q. What happens if the administrative  
2 committee makes no recommendation? Does not recommend  
3 the imposition of a saleable quantity?

4 A. The volume regulations for that year are  
5 not enforced.

6 Q. Describe then -- keep going.

7 A. Okay.

8 Q. Let's take the if. If the if falls the  
9 other way...

10 A. If the committee decides there's a need  
11 for limiting the quantity of alpha acid, the committee  
12 shall recommend to the Secretary a saleable quantity and  
13 allotment percentage for the ensuing marketing year.  
14 Such recommendations shall be made prior to November 15  
15 or such other date as the committee may establish. What  
16 that means is the committee in this -- at least in the  
17 wording here, the proponents would hope that the  
18 decisions made prior to November 15, but if the  
19 committee decides that it -- it's better to recommend  
20 this policy at a later date, that's up to their  
21 discretion.

22 Q. Just for the purposes of a farmer who is  
23 -- who's trying to make decisions on how much acreage to  
24 string or perhaps even which varieties to produce in a  
25 given year, when must that farmer in a given calendar

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1 year have this guidance from the administrative  
2 committee?

3 A. Well, I think the idea -- that's why it's  
4 November 15 -- it gives the growers some chance to make  
5 plans and plan for the future. But I believe there'll  
6 be some indications by the November 15 meeting what the  
7 committee hopes to do. Expects to do.

8 Q. Well, you're a grower.

9 A. Yes.

10 Q. And you'll need to know -- if there were  
11 a marketing order, what your saleable quantity is for a  
12 given year.

13 A. That's correct.

14 Q. And your saleable quantity -- we'll get  
15 into it in a moment, but it's going to be comprised of  
16 -- in pounds of alpha.

17 A. That's correct.

18 Q. All right. And that saleable quantity, I  
19 would imagine, will dictate perhaps what varieties you  
20 may string...

21 A. I mean, I think in a practical matter,  
22 you're not going to see the committee make these wild  
23 swings. I think you'll see, as in the last order, there  
24 was a certain amount of degree of stability in the  
25 saleable quantity and it actually increased over the

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1 life of the order, from '66 through -- to 1986.

2 Q. My question...

3 A. Actually, 1980. That's when I really --  
4 it became dysfunctional.

5 Q. My question for you, Mr. Roy, is at what  
6 point in time in the calendar year or perhaps in a  
7 growing season do you need to know specifically what  
8 your saleable quantity is in order to give you  
9 sufficient time to plan and implement the proper  
10 cultural practices?

11 A. The latest time I could make those  
12 decisions?

13 Q. What's the best time?

14 A. The best time is in the fall.

15 Q. Okay. And in the following year, or the  
16 growing year itself, when's the latest you can have that  
17 information?

18 A. I would think in May. You know, late  
19 April, May. But a practical matter, you -- January,  
20 February you need to get string ordered or be able to  
21 buy it and things like that, because of the -- there's  
22 such a small amount -- small number of growers. Many  
23 growers don't carry excess inventories, so the string...

24 \*\*\*

25 MR. MONAHAN: Take a look at 991.51 B, if you  
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1 would, and describe for us what this sub-provision is  
2 intended to accomplish.

3 MR. BARTON: Let's take a break now to  
4 change...

5 ADMINISTRATIVE LAW JUDGE: We're going to take  
6 a break now at 11:14 to change the tape. Let's also  
7 take a 10 minute stretch break. Please be ready to go  
8 again at 11:25.

9 \*\*\*

10 [Off the Record]

11 [On the Record]

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE: We're back on --  
14 boy, my voice is funny. We're back on record at 11:28.  
15 Mr. Monahan, you may resume.

16 \*\*\*

17 BY MR. MONAHAN:

18 Q. Thank you, Your Honor. I believe when we  
19 went off record we were addressing Section 991.51 B and  
20 its provisions with respect to the administrative  
21 committee could amend or increase the saleable quantity  
22 during the course of a given growing season. And could  
23 you describe for those of us here how that is intended  
24 to work and why it was included in the proposed order?

25 A. The ability to change or increase the  
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1 saleable?

2 Q. The allotment percentage, yes.

3 A. Okay. I think that -- what the intent  
4 there is that if market conditions were to warrant --  
5 maybe a good example would be the crop failure of 2002  
6 in Europe -- that the committee would raise the saleable  
7 percentage by a certain percent to allow more hops to  
8 enter into the marketplace, essentially those -- either  
9 excess production from a grower, that he may be  
10 producing more that year or to open up hops from a  
11 reserve pool to go into the marketplace.

12 Q. Certainly if the change were announced  
13 between November 15 of the prior year through, say  
14 April...

15 A. Yes.

16 Q. ...of the growing season, would that  
17 enable a grower to actually make some subsequent changes  
18 in the growing operation to address that increase in  
19 saleable quantity?

20 A. Yes. Yes, it could.

21 Q. There have been some questions on cross-  
22 examination as to whether or not the members of any  
23 prospective administrative committee could somehow  
24 foresee a crop failure in Germany, for example. This  
25 year we don't have a hop marketing, obviously. Right,

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1 sir?

2 A. That's correct.

3 Q. And did you foresee the German crop  
4 failure?

5 A. No, we did not.

6 Q. To that extent, are the individual  
7 farmers really in the same boat as the administrative  
8 committee to the extent?

9 A. That's correct.

10 Q. Turn then to, sir, Section 991.52.

11 A. Yes.

12 Q. This section addresses issuance of volume  
13 regulation, does it not?

14 A. Yes, it does.

15 Q. Describe for us in general terms how the  
16 issuance of volume regulation is intended to be  
17 addressed or accomplished.

18 A. How that number -- the individual  
19 saleable percentage would be arrived at or in the  
20 aggregate of...

21 Q. Why don't we hit both?

22 A. I think as I stated earlier, in the  
23 aggregate the committee would look at the various  
24 imports/exports demands, inventories and set a policy of  
25 a certain percentage of the total allotment. Let's use,

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1 as an example, 80 percent saleable as an example. Or  
2 even 75 percent. 80's easier for me to do some  
3 calculation, if necessary. So if a grower, after  
4 receiving their initial allotment base -- let's say  
5 1,000 pounds of alpha, and the committee determined that  
6 it was necessary to reduce the saleable quantity, then  
7 -- and let's say it was 80 percent saleable, you would  
8 multiply 80 percent times your individual allotment of  
9 1,000 to arrive at 800 pounds of alpha you could deliver  
10 to the market. You could raise as much as you want, but  
11 the only amount that you could sell would be that 80  
12 percent or 800 pounds.

13 Q. And again, the volume regulations would  
14 be measured in terms of alpha? Is that right?

15 A. That's correct.

16 Q. How does that differ from the last hop  
17 marketing order?

18 A. The previous order was based on pounds,  
19 raw pounds of hops. So in other words, the grower  
20 allotment was essentially, if you had a thousand pounds  
21 -- say it was a thousand pounds of raw hops. In this  
22 current proposal, it is based on pounds of alpha.

23 Q. Describe for us why the proponents  
24 committee decided to make that change where alpha would  
25 be considered instead of raw hops.

1           A. Well, we felt that -- really, in the main  
2 discussions we had throughout the industry, in talking  
3 to all the growers and as many people as we could, felt  
4 that the real problem was alpha acid. It was -- which  
5 alpha acid and bittering units is really the component  
6 of beer. So if you follow it all the way through, it  
7 just made logical sense to use alpha acid as the item  
8 that we would regulate rather than raw pounds.

9           Q. There is -- in Section 991.52 C, there's  
10 a reference to alpha acid factors. Can you describe for  
11 us how those would work?

12           A. Okay. The reason, again, for the alpha  
13 acid factor and how that became into being was, again,  
14 out of many meetings and discussions that the industry  
15 currently is still pretty much composed of sales of raw  
16 hops. So in other words, most -- almost a hundred  
17 percent of the aroma hops are sold by pounds, set  
18 pounds. Irrelevant -- alpha acid does not come into the  
19 issue there and growers -- most growers still contract -  
20 - if there is a contract ahead, they would contract a  
21 set number of pounds. And even the spot hops are pretty  
22 much bought on a set pounds of raw hops. There are a  
23 few contracts that probably are based on alpha acid. So  
24 in other words, we have multiple -- we have a kind of a  
25 mixture of contracting going on right now and spot

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1 purchases, so sometimes you may sell a set number of  
2 pounds at a set price -- some cases -- and that's one  
3 type of contract. You also may have a set number of  
4 pounds with an alpha premium. So if you go over a  
5 certain average, which are -- which the industry pretty  
6 much knows the average for in that variety -- if you go  
7 over that average there would be a bonus per pound of  
8 alpha you produce over the contract. There also are  
9 contracts that are completely alpha based in that you --  
10 the price that you receive for your raw hop is a pound  
11 -- is a price per pound. So in other words, if I  
12 produce 100 pounds of hops at 10 percent, that would be  
13 10 pounds of alpha and we have a price -- it could be  
14 anywhere from \$4 to \$10 a pound, depending on the  
15 varieties and things. So that's a little bit of  
16 background. So what the committee and in our main  
17 discussions with the industry, we did not want to hinder  
18 the marketing of hops. I mean, the underlying goal of  
19 this whole process that we went through for the last  
20 three years, almost four years, is that we want to  
21 facilitate the sale of as many American hops as  
22 possible. There is no desire to not meet the demand for  
23 American hops. We want to increase the demand for  
24 American hops. So the desire is to facilitate and make  
25 as easy as possible the sale of as many American hops as

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1 possible. So we felt that -- as we went through this  
2 alpha issue and we determined that alpha was the  
3 problem, we started looking into the mechanics of how  
4 this would work and we said okay, we know we want to  
5 regulate the alpha. That's the problem, or the issue.  
6 That's the main component we wanted to regulate. And  
7 since so many growers still do raw pounds, we would have  
8 to -- and a grower would have the ability to sell, let's  
9 say 800 pounds in the example I presented, he would not  
10 know -- if we didn't have some mechanism to allow that  
11 sale of raw hops, the grower would have to wait until at  
12 post-harvest. He would take his raw hops, produce them,  
13 have an analysis made of the alpha content and then he  
14 would then know how much he could sell, which kind of  
15 hinders the market. So what we did, we said okay, to  
16 make this is as easy for everybody involved, let us  
17 establish an alpha factor for a variety. So in other  
18 words, let's say the three-year average with this alpha  
19 factor, how it is arrived at is you take into  
20 consideration the three-year average alpha of a variety  
21 and you create an alpha factor. So in other words,  
22 let's say as an example, the alpha factor for a variety  
23 three averages around 10 percent. So a grower -- and  
24 you would establish alpha factors for each variety  
25 involved. So you would have a list of varieties. You

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1 would have a list of alpha factors. And you would know,  
2 from the committee's recommendation, how much alpha  
3 would be saleable in your own system. So what you would  
4 do is you could -- you would multiply your expected  
5 production times the alpha factor and you would get to  
6 amount of raw hops you could contract knowing that you  
7 could make -- absolutely guarantee that you would  
8 deliver those hops.

9 Q. Just to back up and take this as a  
10 step-by-step process. Is -- the first step in any  
11 marketing year is going to be for the administrative  
12 committee to set a total saleable quantity for American  
13 hops, is that...

14 A. That's correct. In aggregate.

15 Q. And that would be measured by a total  
16 pounds of alpha?

17 A. That's correct.

18 Q. And then the next step would be to then  
19 prorate that total saleable quantity to each grower?

20 A. That's correct.

21 Q. And how -- and the growers' percentage of  
22 that total saleable is going to be determined by the  
23 allotment base, which Mr. Gasseling will talk about?

24 A. That's correct.

25 Q. Okay.

1 A. Initial allotment base.

2 Q. Okay. Then...

3 A. Plus the new growers and things like  
4 that.

5 Q. All right. In terms of each grower then  
6 trying to figure out how much they should or could grow  
7 or what varieties to grow, that is going to be  
8 determined by a [sic] alpha acid factor, not by the  
9 actual alpha of their hops?

10 A. That's correct.

11 Q. For example, if you grew a hundred pounds  
12 of Zeus in Moxee...

13 A. Um-hum.

14 Q. ...and an Idaho grower grew a hundred  
15 pounds of Zeus in southern Idaho, if we were to perform  
16 some type of actual testing, might there be a difference  
17 in the alpha?

18 A. There could be.

19 Q. Okay.

20 A. I mean, if we set the alpha factor as an  
21 average, there will be growers below the average and  
22 there will be growers above the average. But for  
23 determining the pounds of hops you could sell is based  
24 on the alpha factor, so you know prior to your growing  
25 season how many raw pounds you could produce.

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1 Q. Do you -- I just want to explore a little  
2 more why you chose to use an alpha acid factor instead  
3 of the actual alpha in a grower's operation. How many  
4 different ways are there to test for alpha?

5 A. Well...

6 Q. To measure alpha, I should say.

7 A. There's really -- well, I think there's  
8 different -- if I understand your question correctly, if  
9 there's different analyses, there's -- the United States  
10 works under a spectral analysis, Europe reports their  
11 hop production under Mebak, the brewing industry in  
12 general by HPLC, so there's various -- to give an idea,  
13 as you go down it becomes -- the highest reading would  
14 be a spectral reading. I believe six or seven percent  
15 below that would be a Mebak reading and another six or  
16 seven percent that would be the HPLC. And so it became  
17 -- again, it became an issue of trying to be -- what's  
18 the word I want? Not to hinder the movement of hops.  
19 So we decided the best way to allow the most freedom for  
20 growers and the most flexibility was to establish an  
21 alpha factor so a grower would know, make his individual  
22 decisions, divide his production by different alpha  
23 factors and know what he could produce.

24 Q. If I...

25 A. Know what he could market, excuse me.

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1 Q. If I harvest a bale...

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, could  
4 I just have some help with the spellings? What is  
5 Mebak?

6 MR. ROY: It's a type of alpha analysis that's  
7 done in Europe for the most part. M-e-b-a-k, I believe.  
8 There's actually other components of the different  
9 types, but in general, those are the three.

10 ADMINISTRATIVE LAW JUDGE: All right. M-e-b-  
11 a-k, Mebak.

12 MR. ROY: I believe so. If somebody could  
13 correct me -- okay.

14 ADMINISTRATIVE LAW JUDGE: All right. And  
15 then does HPLC stand for something?

16 MR. ROY: I could not -- maybe somebody else  
17 could help me on that.

18 ADMINISTRATIVE LAW JUDGE: Ms. Brulotte, could  
19 you identify yourself for the record and help me with  
20 those -- with that acronym?

21 MS. BRULOTTE: Reggie Brulotte. And I believe  
22 that HPLC stands for high-pressure liquid  
23 chromatography.

24 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
25 Monahan, you may resume.

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BY MR. MONAHAN:

Q. Thank you. If I'm a grower and I harvest a bale of 200 pounds of Zeus in August and I don't sell it until -- let's say I store it and sell it the following, what? May? Could that happen?

A. That could happen.

Q. Okay. Would there be a discrepancy or would there be an erosion or reduction in the amount of alpha?

A. Yes, there is. There is a natural deterioration that takes place in alpha acid, probably more rapidly in the raw bale, probably slow down to some degree at pellets and even to some -- to the most part stabilize in the extract if it's an extract. For the purpose of this marketing order, it -- the alpha is determined at the time of -- well, the alpha factor is -- comes into play -- it doesn't make any difference what you produce, it's the alpha factor that comes into play as far as your saleable quantities.

Q. Again, taking you back one step. Clearly, the proponents committee made a determination to have the saleable quantity measured in alpha pounds.

A. That's correct.

Q. There's some question as to whether this

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1 marketing order should've only applied to alpha hops as  
2 opposed to aroma hops. Is that something that the  
3 proponents committee considered?

4 A. Yes, at various stages through this  
5 process aroma hops have been added, deleted, exempted.  
6 We've tried all kinds of things. And as we went through  
7 the process and talked to growers and various people in  
8 industry -- you know, when we looked at -- as an  
9 example, when we looked at exempting aroma hops, what  
10 came into play was some aroma growers felt well, it  
11 limits my decision making. So if I have only aroma hops  
12 and there was an alpha base and I made this -- as a more  
13 extreme example, a grower's 100 percent aroma hops and  
14 he has no alpha base. And he has, let's say, a direct  
15 contract with a brewery. And that brewery has  
16 determined that this grower's a very good grower. He --  
17 they have a very good relationship and the brewery  
18 decides to change to what we classify as an alpha  
19 variety and that grower would not be able to move to the  
20 alpha side unless he bought allotment. We felt, as many  
21 growers felt, that was not fair. So we decided to  
22 include -- again, through this long process we decided  
23 to include aromas and alphas together knowing that  
24 alpha's really -- the alpha varieties are the real  
25 problem, but we wanted to allow as much flexibility for

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1 the producers, for the consumers, for the merchants, to  
2 eliminate paperwork, all those kind of things, to make  
3 it as flexible as possible. I mean, in our -- when we  
4 started this whole thing -- and this is kind of a  
5 personal observation -- we really wanted to create a  
6 system of the free market underneath the umbrella of the  
7 overproduction. Let the growers make the decision. It  
8 allows much flexibility as possible in the system for  
9 growers to make their own individual decisions and allow  
10 the consumers of our product to be a part of that  
11 process. So in other words, let the growers make their  
12 decisions. Sure, there is [sic] restrictions in what  
13 you can sell, but I really do feel we can create a  
14 system that addresses all the demands of our consumers  
15 plus increase our market share over time. I think that  
16 we as a group can better address the issues of -- in a  
17 group than we can individually, which has been borne out  
18 by some previous testimony. I mean, I think that we all  
19 -- what's interesting is -- I'm probably going to ramble  
20 on a little bit here, but you can cut me off whenever,  
21 but -- I think that when you're down to 50 growers --  
22 there was a time when my father, going back to my father  
23 and my grandfather, when there was maybe a thousand  
24 growers, maybe 300 growers, we -- you know, each of us  
25 could make our own decisions and not really reflect the

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1 market -- or reflect or change or -- our decisions were  
2 not -- did not influence what happened. But if we get  
3 down -- as our farms increase in size, there's fewer of  
4 us. Each one -- our individual decisions are starting  
5 to influence the total group. I think -- my personal  
6 view, we each individually have to responsible for what  
7 happens to everybody. And I think that's why I support  
8 this. I think that -- you know, if people pointed  
9 fingers to larger growers when we started the alliance  
10 and the set-asides and maybe we are a little bit more  
11 guilty of increasing more, but we were willing to take a  
12 bigger cut just to help the industry in general. And I  
13 still believe that. I think that we have to be  
14 responsible for our actions and I think we, as a group,  
15 can address these issues and I think the whole group  
16 will be better off. We talk about, you know, many  
17 people talk about a committee being -- regulating to us,  
18 but the fact of the matter is, there's only 50-some of  
19 us. I mean, if there's eight members on a committee,  
20 sheesh, we got -- each voting member has -- represents  
21 seven growers. If we can't get our point across that  
22 way, we've got some real problems. But I think that,  
23 you know, one vote for every seven growers isn't bad.  
24 We can get our points across, so -- I'll stop there.

25 Q. I asked yesterday when I was examining  
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1 Dr. Jekanowski as to whether -- we talked about risk  
2 tolerance and different growers and if a component of  
3 growers was willing to sell at a loss for an extended  
4 period that they could drive out efficient, hard-working  
5 growers and I would ask you, in terms of -- well, I  
6 won't ask that question. I will ask you this. Who is  
7 -- who, in your opinion, is poised to benefit most by  
8 this proposed hop marketing order?

9 A. I think the industry, the consumers -- I  
10 mean by consumers, I talk about the brewers. I think --  
11 you know, it's been borne out by a lot of testimony, you  
12 look back -- my father was one of the proponents of the  
13 previous order and served on the committee for many  
14 years. He may have talked many times and he said you  
15 know, I farmed -- he started farming in 1950 on his own  
16 and so he farmed through that first marketing order,  
17 1949-50, which was -- which did not work. And then he  
18 farmed without a marketing order until he helped  
19 implement the one in '66 and served on its committee for  
20 many years. And we've also farmed since demise in '86.  
21 He said you know, it -- during -- I've been through  
22 with, without, and I have to say that during -- what his  
23 -- to quote him, he said the most stable time was during  
24 the marketing order. The prices were not great, but  
25 stable prices allowed us to plan ahead and that allowed

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1 us to invest, to make decisions, to look into a longer  
2 horizon and that may be only three or four years or five  
3 years, but right now we can't even do that with no  
4 contracts -- I mean, there's been a lot discussion about  
5 this whole issue of contracts. Sure, you may look at  
6 numbers and you look at HGA numbers and it looks --  
7 doesn't look that bad, but the fact of the matter, that  
8 clearly reflects aroma hops. You look at the alpha hops  
9 -- many hops are still -- aren't contracted. Growers  
10 were -- entered this year. Some growers entered  
11 contracts at .50. Growers that said no to that, waited  
12 until after harvest, sold them over a dollar, there's  
13 growers that turned down the dollar that still have  
14 inventory -- that would be me. And -- so I think, you  
15 know, it's really a crazy market. I think that -- I  
16 think there's -- the stability is in the best interest  
17 of all of us and then we, as an industry, can address  
18 some of the issues that are facing us. Maybe it's  
19 China. Maybe it is a threat of Germany, which I don't  
20 feel is a major threat. But I think as an industry, we  
21 can reinvest, we can set goals as an industry to combat  
22 some of these potential problems we face down the line.

23 \*\*\*

24 MR. MONAHAN: Thank you, Mr. Roy. That's all  
25 I have, Your Honor.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
2 Monahan. There may be many of you in the audience who  
3 would like to ask questions, so let me tell you in what  
4 order I normally go. This witness is in favor of the  
5 marketing order, so I'd ask for questions from those who  
6 are in favor of the marketing order. Then I ask for  
7 questions from those who are against the marketing  
8 order. Then I ask for questions from those who are  
9 neutral, starting with the USDA representatives and the  
10 other US government representatives. And so if you feel  
11 you're in any of those categories, you could raise your  
12 hand and come to a microphone and identify yourself and  
13 ask questions. Then I generally ask for questions from  
14 anyone because many of you may not know which category  
15 you will eventually fall into. So starting with those  
16 who have questions for Mr. Roy about the subject matter  
17 he has just covered in his testimony who are in here in  
18 a position in favor of the marketing order. Now I would  
19 turn to those who are in a position against the  
20 marketing order to ask questions of Mr. Roy. Mr.  
21 Carswell?

22 MR. CARSWELL: Just in case you haven't looked  
23 at your watch, Your Honor, I was just wondering with it  
24 being almost 12:00 that this would be an appropriate  
25 time to do lunch and maybe give Leslie, or Mr. Roy a

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1 chance to gird himself, so to speak.

2 ADMINISTRATIVE LAW JUDGE: Thank you.

3 Normally, I wouldn't break again so soon after we just  
4 had a break, but that's just based on my own comfort  
5 level and I'll take your question as a motion that we  
6 adjourn for lunch. How many of you would like to stop  
7 now for lunch? Okay. Sizeable number. All right and  
8 would an hour be sufficient, Mr. Carswell?

9 MR. CARSWELL: Yes, ma'am.

10 ADMINISTRATIVE LAW JUDGE: All right. Please  
11 come back at five minutes to 1:00. Thank you.

12 \*\*\*

13 [Off the Record]

14 [On the Record]

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Wait just a minute  
17 until we're on record, Mr. Moody. All right, we're back  
18 on record at 11:55. We won't break for lunch yet so  
19 hold on just a minute and I'll give you a different time  
20 to be back. Mr. Moody?

21 MR. MOODY: Mr. Shinn, who is a Washington  
22 state grower, Mr. Ungewitter, who is a...

23 ADMINISTRATIVE LAW JUDGE: I'm sorry. How is  
24 Shinn spelled?

25 MR. MOODY: S-h-i-n-n.

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1 ADMINISTRATIVE LAW JUDGE: Thank you.

2 MR. MOODY: Mr. Ungewitter.

3 ADMINISTRATIVE LAW JUDGE: And how is that  
4 spelled?

5 MR. MOODY: U-n-g-e-w-i-t-t-e-r.

6 ADMINISTRATIVE LAW JUDGE: U-n-g-w-i-t-t...

7 MR. MOODY: E-r.

8 ADMINISTRATIVE LAW JUDGE: E-r. And he's a  
9 Washington grower, as well?

10 MR. MOODY: Yes.

11 ADMINISTRATIVE LAW JUDGE: And Mr. Moody, are  
12 you saying that these gentlemen want to testify today?

13 MR. MOODY: Yes, Your Honor.

14 ADMINISTRATIVE LAW JUDGE: All right.

15 MR. MOODY: And one final one, Joe Morrier,  
16 M-o-r-r-i-e-r.

17 ADMINISTRATIVE LAW JUDGE: And he is also a  
18 Washington state grower?

19 MR. MOODY: Yeah.

20 ADMINISTRATIVE LAW JUDGE: And who would like  
21 to testify today?

22 MR. MOODY: Yes, Your Honor.

23 ADMINISTRATIVE LAW JUDGE: All right.

24 MS. DESKINS: And Your Honor, while we're on  
25 the record, can we remind people if they have a

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1 statement they should make sure they have sufficient  
2 copies when they come in so that the proceedings aren't  
3 delayed by copying. There is a business center in here  
4 where you can make copies.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
6 Deskins. Yes. If you have a statement that you've  
7 prepared, whether you're going to read directly from it  
8 or just use it to spark your recollection of what you  
9 want to say, it is very helpful if the rest of us can  
10 have a copy to follow along. We've generally found that  
11 you need 12 to 15 copies just to serve the key players  
12 here. If you made more than that, then people in the  
13 audience can see, too. So if you have a written  
14 statement, bringing copies is an excellent idea. Not  
15 required, but very helpful. All right, now please be  
16 back at one o'clock and we'll break now for lunch at  
17 11:57.

18 \*\*\*

19 [Off the Record]

20 [On the Record]

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: We're back on  
23 record at 1:02. I did have a chance to tally up time  
24 used and I just want to report those figures to you.  
25 I'm not keeping a running total, because I'm not going

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1 to try to balance it exactly equal/equal, but just so  
2 both sides know about how much times you've consumed, I  
3 am keeping track. With regard to today, the 22nd of  
4 October, so far those in favor of the marketing order  
5 have consumed two hours, those against, one-quarter  
6 hour. Yesterday, 21 October, those in favor of the  
7 marketing order consumed three and three-quarters hours  
8 and those against consumed one and a quarter hours. I  
9 did also tally the time from Friday afternoon, 17  
10 October, 2003, beginning after the lunch with Mr.  
11 Christensen's testimony and that was those in favor of  
12 the marketing order consumed one hour, those against,  
13 one and a half hours. So still, Mr. Monahan, you're  
14 owed plenty of time, but I have a good feeling that  
15 we're going to get it all in. And that said, Mr.  
16 Monahan, we can resume Mr. Roy's testimony. Oh, we need  
17 Mr. Roy's expertise to get the screen activated. During  
18 the lunch break someone from the hotel came and I guess,  
19 did she put batteries in the lavalier microphone that Mr.  
20 Monahan is using? And she adjusted something that's in  
21 the back that governs the overall volume and she said  
22 someone had turned it too high. That's probably why we  
23 were getting that feedback earlier. So I think it'll be  
24 easier to listen to now that those adjustments were  
25 made.

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1 MR. MONAHAN: Your Honor, once Mr. Roy  
2 concludes his technical duties, we -- the proponents  
3 committee has no further direct examination of him.

4 ADMINISTRATIVE LAW JUDGE: All right.

5 MR. MONAHAN: And we turn him over to those  
6 who would inquire.

7 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
8 Carswell, then, you were about to ask a question. I'll  
9 turn the floor back to you.

10 \*\*\*

11 BY MR. CARSWELL:

12 Q. Thank you, Your Honor. Mr. Roy, I  
13 believe you mentioned that you had grown hops without a  
14 contract for those hops, is that correct?

15 A. Over my experience as a hop grower, yes.

16 Q. If someone hasn't contracted for hops,  
17 why would you grow them?

18 A. Could you repeat that?

19 Q. If someone hasn't contracted...

20 A. Has not contracted?

21 Q. Has not, yeah.

22 A. Okay.

23 Q. Why would you grow those?

24 A. Well, I think as I stated earlier, the  
25 market has changed, where probably if you go back five,

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1 six years ago, there was a higher degree of contracting  
2 and in more recent times, specifically in the last two  
3 or three years, there's been a lack of contracting, so  
4 growers are being forced to speculate or do their own  
5 supply/demand or however you want to look at it,  
6 speculate on the market. So in other words, some  
7 growers may look at the beginning of the year and say  
8 okay, I have -- I produced -- or I sold this many pounds  
9 last year either by contract and spots and they  
10 anticipate that they would sell the same amount of  
11 quantity in the following and they -- sometimes they say  
12 okay, there is [sic] no contracts being offered as there  
13 is not right now to any great extent, so you speculate  
14 that you could sell them as spot hops after harvest.

15 Q. You're not forced to grow those hops,  
16 though. Correct? You could just not grow those hops  
17 and not sell...

18 A. Which some individuals do. Correct.

19 Q. And if you -- if -- the more that there's  
20 the speculation, the more of a spot market that's  
21 created, correct?

22 A. I'm not sure if I understand that.

23 Q. If you have a number of growers who are  
24 selling without a contract and if they -- if those  
25 numbers increase in the amount of hops available that

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1 are not under contract or in the market, that increases  
2 the incentive for buyers to buy on the spot market,  
3 isn't it correct? Because it'll be cheaper...

4 A. Yeah, that's correct. That's correct.

5 Q. There'll be more hops on the spot  
6 market...

7 A. Yeah, as I indicated, you know, as more  
8 and more growers are forced to go into the growing year  
9 without contracts, you know, there is a bigger risk, you  
10 know, because growers -- many growers need to be paid by  
11 November or want to be paid by November and so there's  
12 this kind of jockeying back and forth with do I sell  
13 now, do I wait, do I have the money to be able to  
14 process them, to hold them, things like that.

15 Q. So if no -- at least US hop growers grew  
16 hops without a contract, there -- you know, presuming  
17 there was no other supply in the world, there would be  
18 no spot market, is that correct?

19 A. Could you repeat that?

20 Q. If no -- presume that -- let's presume  
21 everyone in the world does not grow hops except under a  
22 contract, there would be no spot market, isn't that  
23 correct?

24 A. I'm not sure if I understand the  
25 question, but I might -- you mean if the rest of the

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1 world was under contract?

2 Q. No, if all hop growers -- excuse me for  
3 interrupting, but if all hop growers in the world,  
4 including the US hop growers didn't sell except --  
5 except those hops that they had a contract for, there  
6 would be no spot market.

7 A. So if growers only grew what they had  
8 contracted...

9 Q. Right.

10 A. Well, I think there's still a potential  
11 for a little bit of spot market because yields do  
12 fluctuate, so if the yields -- if you had contact,  
13 usually you will contract at an expected average yield,  
14 so if your yields were to come in greater there is still  
15 a potential for a spot market after the fact.

16 Q. For the excess hops.

17 A. That's correct.

18 Q. It would be pretty limited, though, I  
19 guess, wouldn't it?

20 A. I would expect.

21 Q. You know, I -- we've all heard the  
22 testimony about the spot market and how it's -- the  
23 price has been depressed in the spot market and it just  
24 doesn't seem rational for me, for anyone, to grow hops  
25 without a contract. Is that -- would you agree with

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1 that or...

2 A. Well, I think that -- it's -- it comes  
3 down to expectations. If, in the prior year you sold --  
4 you have a combination of contracted hops and hops that  
5 you sold in the spot market post-harvest, you would have  
6 the reasonable expectation that the following year you  
7 could sell the same amount and so you -- with no  
8 contracts being offered in the springtime and given the  
9 previous year's experience that you were able to sell  
10 them in the post-harvest spot market, then you have the  
11 reasonable expectation you could do the same thing the  
12 following year.

13 Q. It seems almost like the chicken and the  
14 egg, though. One reason why you wouldn't have contracts  
15 is because there's this -- you know, ample supply of  
16 hops on the spot market.

17 A. That's correct. You would think that.

18 Q. Mr. Monahan has indicated with some  
19 questions -- I don't think that there's any evidence on  
20 the record, but the record would reflect whether there  
21 is or isn't, but he's indicated that there is a problem  
22 of growers growing hops that they sell at a price below  
23 the variable cost of production and I wanted to ask you,  
24 do you consistently grow hops that you sell at a price  
25 below the variable cost of production?

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1           A.    Have I -- if I had sold hops that would  
2 generate a potential loss at times, yes.

3           Q.    Because of miscalculation?

4           A.    Correct.

5           Q.    You never intended to do that.

6           A.    Well, what happens is let's say I  
7 produced the hops -- let's say I'm forced to speculate  
8 to some degree starting in the year that there's a lack  
9 of contracting. So I grow them on an expectation of  
10 some sale at a price I feel would be adequate. So I  
11 produce some and -- this is typical of what most growers  
12 will go through. I've produced them, they're sitting in  
13 my warehouse. I have probably put a certain price  
14 expectation in the budget to the bank, because we're  
15 pretty much driven by cash flows these days on banks.  
16 And I'm facing either not selling them or processing  
17 them -- putting additional money in which in many cases  
18 could double the price, I mean to palletize or to  
19 extract, it could easily double the price I already have  
20 into them and store them for some undetermined period of  
21 time. So a grower -- that's an individual grower's  
22 decision. He decides, okay, I do not want -- I don't  
23 have the money to put into storage, I don't want to do  
24 that, I'm unable. I'd just -- I'd rather sell them  
25 right now, get the money and go on.

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1 Q. But going in to -- when you go in to grow  
2 those hops, you don't intend to sell them at a price  
3 below the variable cost of production, is that correct?

4 A. That would be my expectation.

5 Q. Do you know of other growers who  
6 consistently knowingly grow hops that are sold at a  
7 price or will be sold at a price that's below their  
8 variable cost of production?

9 A. I think the word consistent is not very  
10 good. I think growers have done it, I think again, it  
11 goes back to that expectation or that desire of a  
12 grower. If a grower were to make a decision in the  
13 springtime, let's say at .50 to sell hops, which  
14 definitely does not cover, you know, variable costs and  
15 thing. But that's the grower's decision. He has --  
16 does not want to take the risk. He does not -- he  
17 cannot afford to take the risk or whatever and he  
18 decides to sell them at that price and that's the only  
19 price being offered. He's got that choice, to take it  
20 and go forward or grow them and hope to sell them after  
21 harvest or not even grow any. And I think, as Mr. Smith  
22 alluded to, this -- you're actually minimizing your  
23 losses because to leave that ground idle, there are  
24 costs associated. You still have to pay water, you've  
25 still got to pay taxes, there are fixed costs that are

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1 associated with that and to grow them, sometimes that's  
2 being done.

3 Q. The reason I said consistently is that in  
4 his questions, Mr. Monahan was indicating that over the  
5 past 17 years this appears to have a been an endemic  
6 problem in the industry and so...

7 A. I don't think he -- did he -- I don't  
8 think -- that was stated as a long-term trend.

9 Q. Okay. So are you saying now that it's  
10 not a long-term trend?

11 A. Well, it can be. If you continue to sell  
12 below the cost of production. It's just a matter of  
13 time before you're not there -- it's not an issue  
14 because you can't survive. The bank will eventually  
15 just say okay, enough of this.

16 Q. Right. So would you say over the long-  
17 term trend the past 17 years that most hop farmers have  
18 earned a normal rate of return?

19 A. I think as an industry, you know, it goes  
20 back to this whole discussion about whether -- what we  
21 gain with a marketing order and what we gain without  
22 one. I mean, over time the prices have to equate to  
23 some sort of return which covers costs and some return  
24 to the growers. The issue is do we do it with stable  
25 prices that give you the same price. I think we arrive

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1 at the same goal over time, it's just how much  
2 variability and it's very inefficient when we're taking  
3 acreage out and adding acreage. You know, if I take a  
4 -- for me to take an acre of hops out of production,  
5 that may be take the plants out and leave it idle until  
6 the market conditions warrant it, then put it back in,  
7 I'm looking at three, four thousand dollars an acres jus  
8 to replant, take it out, keep it -- you know, keep the  
9 ground poles up, lost revenues, opportunity costs, all  
10 those kind of things. So it's not very efficient in how  
11 -- you know, in the long run. I think that stable  
12 prices give you a better -- you know, it's better for  
13 everybody, the brewers, the growers, the handlers,  
14 everybody.

15 Q. But if there were under the marketing  
16 order a cut in the amount of saleable, won't you be  
17 idling production by doing that?

18 A. I would expect in our case, we would  
19 probably have to idle some acres, that's correct.

20 Q. And so that would be terribly  
21 inefficient, yes?

22 A. Well, I think that -- I think I would  
23 expect my overall gain from it would more than  
24 compensate for that. And I would be -- then I know what  
25 it is and then I make my decisions based on that and

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1 I...

2 Q. And how would you -- I'm sorry if I  
3 interrupted.

4 A. Yeah.

5 Q. How would you describe how you would gain  
6 from it?

7 A. Well, I think the stable prices and some  
8 of these inefficiencies that are inherent to these wild  
9 price fluctuations we're having and so I don't have -- I  
10 can plan better, long-term horizon, I can re-invest in  
11 some changes to lower my cost, things like that.  
12 There's been very little investment in facilities. If  
13 you were to drive through our Moxee area or other areas,  
14 these facilities have not changed much in the last 15,  
15 20 years. I mean, it's very difficult to invest in  
16 improvements when one year the price \$2 and the next  
17 year the price is .50, let's say. I mean, it -- you  
18 can't manage your risk, you can't plan ahead because you  
19 don't know what next year's going to be, especially with  
20 no contracts, you start the year off, you don't know  
21 what -- how much money you're going to have at the end  
22 of the year. It could be you may be forced -- unable to  
23 sell them. You may be forced to dump them at very low  
24 prices just because you don't have the money to invest  
25 in storing them long term.

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1 Q. And you believe that a marketing order  
2 will create greater certainty?

3 A. Well, I think it creates stability and  
4 that's what we're after. I mean, I don't see -- if you  
5 look back in the previous one, the prices were -- it was  
6 interesting. You know, I talked to my father about this  
7 and they were not great prices, they are right there,  
8 but the stability allowed you to really concentrate on  
9 reducing your costs and reinvesting into changes that  
10 allowed you to even lower your costs, so I think that's  
11 where we gained -- and industry gained, in general.

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE: At 1:18, let's  
14 change the tape.

15 \*\*\*

16 [Off the Record]

17 [On the Record]

18 \*\*\*

19 ADMINISTRATIVE LAW JUDGE: We're back on  
20 record at 1:18. Mr. Carswell.

21 \*\*\*

22 BY MR. CARSWELL:

23 Q. Thank you, Your Honor. Mr. Roy, you --  
24 well, let me just finish this line of questioning. If -  
25 - I think I asked you if you knew of other growers who

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1 consistently grew hops that were sold hops that were  
2 sold below the -- their variable cost of production and  
3 you took issue with -- didn't take any issue, but you  
4 said the use of the word consistently I think made you  
5 answer in the negative because it couldn't happen...

6 A. Well, it can happen long-term.

7 Q. Right.

8 A. I mean, I think that all of us in the  
9 industry would be -- I don't want to use the word guilty  
10 of making sales that probably were not in our individual  
11 best interest, but at the time it fit into averages we  
12 have. There's contracts -- we may have direct contracts  
13 that -- with a brewery or something that are very  
14 attractive and sometimes you rob those to offset maybe a  
15 sale that turned out to be very poor. Sometimes you  
16 make sales at the time you think will return you  
17 adequate -- you -- what's funny is, as a grower, our  
18 expectations are the highest yield, the highest alpha we  
19 ever experienced. The reality is it comes on average.  
20 And so sometimes when we make our pricing expectations,  
21 our pricing decisions, we make them based on the highest  
22 we've ever done, but in reality it becomes the average  
23 and so sometimes the reality and expectations aren't the  
24 same.

25 Q. Do you know of any growers who have  
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1 inconsistently sold their hops...

2 A. Inconsistently?

3 Q. Inconsistently sold their hops at a price  
4 lower than their variable cost of production?

5 A. You're asking me if I know any growers  
6 who have inconsistently...

7 Q. Sporadically, sporadically we'll say.

8 A. Not -- not sold?

9 Q. No, sporadically sold their hops at a  
10 price lower than the variable cost of production?

11 A. No. As I stated earlier, I think all of  
12 us are guilty to -- of it to some degree.

13 Q. Through rational -- being rational, but  
14 making mistakes. Is that accurate? Or being over-  
15 optimistic, is that -- regarding the alpha...

16 A. There's a lot of reasons.

17 Q. Do you know, is it a phenomena that some  
18 growers -- I'm not asking for any names here, but is it  
19 -- are you aware of any situations where growers short  
20 contracts when spot prices are higher than contract  
21 prices?

22 A. I'm not sure what you mean.

23 Q. Say that the spot price, because of the  
24 supply limitations have gotten higher than contract  
25 price. I guess that happens on occasion?

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1           A.    There's no limitations right now, so that  
2           wouldn't...

3           Q.    Well, I don't mean any mandated  
4           limitations or you know, centrally governed limitations,  
5           but just that there's not enough supply in the market so  
6           that the spot market price gets higher than any given  
7           contract price and with respect to an individual grower,  
8           are you aware of any situations where an individual  
9           grower will short a contract and to sell the hops on the  
10          higher spot market?

11          Q.    In our case, we have never done that.

12          A.    Are you aware of other -- good to hear,  
13          but...

14          Q.    Do I get a gold star today?

15          A.    I should give you a big gold star.  Are  
16          you aware of other growers...

17          Q.    Well, there -- as you know, I said before  
18          this is a small industry, I mean -- there's probably  
19          been some instances where that happens.  What happens  
20          is, you know, it kind of goes into the structure of the  
21          way contracts are made and in many cases -- I'm speaking  
22          to this in a more generalized because we do ours a  
23          little differently so I can comment on that later, but  
24          generally, growers will make a contract with a merchant  
25          and it may be for a particular field, okay?  And so he

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1 may have this field, field A, contracted at price B.  
2 Then he has field -- I'm going to have to make sure I  
3 get my -- field X, let's call it -- contracted at a  
4 price that's higher and it comes to harvest and let's  
5 say the spot market is higher and he has another field,  
6 a third field, that's uncontracted, let's say. Now --  
7 then, when the merchant made the contract, he was  
8 supposed to get all the production from field A and the  
9 other one was supposed to -- merchant B was supposed to  
10 get all the production from the second field and the  
11 third field's uncontracted and the spot price is quite a  
12 bit higher. I -- who would know what the production on  
13 each one of those fields was, so you take it from there.

14 Q. So I can infer that maybe there's...

15 A. I would expect there's probably some, you  
16 know, it's quite a process to harvest hops, you know.  
17 You haul them in, there's truckloads that are going in  
18 here and the truckloads come in and they come out over  
19 there, so -- you know...

20 Q. I'll get that list off the record later.  
21 Just kidding, of course. You mentioned earlier that  
22 during the previous hop marketing order that there was  
23 incentive to reinvest and I think that your farm  
24 actually reinvested or invested in technology, is that  
25 correct?

1 A. We've invested quite a while.

2 Q. Have you invested since the end of the  
3 hop marketing order?

4 A. Yes.

5 Q. Have you -- well, for example -- I'm not  
6 sure exactly the timetable of super alphas, but when did  
7 super alphas come into play in Washington, at least on a  
8 commercial scale?

9 A. I believe in the early '90s, mid-90s.

10 Q. Did you -- do you grow any high alphas...

11 A. Yes.

12 Q. ...super alphas?

13 A. Yes. Yes.

14 Q. So you've invested in those -- in that  
15 plant stock, is that accurate?

16 A. That's correct.

17 Q. Have you also maybe bought any new  
18 machinery, like picking machines or anything during the  
19 '90s or in the 2000s?

20 A. Yes.

21 Q. Have you done that recently, or...

22 A. Well we -- it's kind of -- our facilities  
23 on -- we have multiple farms, so what we consider a  
24 Moxee farm -- we had two pick machines in a  
25 configuration and we had a drying facility built in the

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1 '60s and we had a baling facility that was built in the  
2 '40s, I believe. And being one of the larger growers,  
3 there is -- we seem to be under a higher degree of  
4 scrutiny from various government agencies and one of  
5 those being Labor and Industry and our picking facility  
6 was very -- at least in their view, wasn't very safe and  
7 maybe I had received a few fines over that. So we were  
8 facing some major changes to that -- excuse me -- to  
9 change -- to bring into compliance for Labor and  
10 Industry, so we chose to dismantle it and put it back  
11 together in a different configuration, which did cost us  
12 a substantial amount of capital we probably got from  
13 some of our other enterprises. We then -- given the  
14 higher yields of some of these super alphas, our baling  
15 facility that was built in the '30s and '40s was not  
16 even approaching even anything adequate to take care of  
17 the volume of hops that was coming through. So we  
18 voluntarily did rebuild that, built that ourself [sic]  
19 at our own expense and then we had a fire in the  
20 remaining third building and we rebuilt that, so we --  
21 as far as the industry goes, probably one of the newer  
22 complete facilities out there.

23 Q. So you engaged in a substantial amount of  
24 investment since the last marketing order.

25 A. Yes. And I have some stockholders to  
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1 address -- answer to that -- for that expenses, those  
2 expenses.

3 \*\*\*

4 ADMINISTRATIVE LAW JUDGE: Could I get the  
5 spelling of Moxee? Your Moxee farm?

6 MR. ROY: M-o-x-e-e.

7 \*\*\*

8 BY MR. CARSWELL:

9 Q. You mentioned that there were -- I  
10 believe, that the three largest growers, did they -- I'm  
11 sorry. Did they participate in the -- or plan to  
12 participate in the set-aside program, is that...

13 A. Yeah, I -- in my testimony earlier.

14 Q. Right.

15 A. And in both the alliance program and the  
16 set-aside program, the three largest growers  
17 participated in a higher degree than the general --  
18 well, as a percentage, I guess. It's kind of how you  
19 want to look at it, because we -- there was [sic]  
20 probably growers that went a hundred percent idle as  
21 part of the program, so who did the most, I don't know,  
22 but we did do a substantial amount of acreage, the three  
23 of us. As a percentage. Yes, sir.

24 Q. Were those the three largest independent  
25 growers, or would that count, for example, John Haas,

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1 the Haas operation?

2 A. I think in the 2002 program, Haas was  
3 part of it, I believe.

4 Q. Okay.

5 A. I believe.

6 Q. And I think you identified yourself as  
7 one of the three, is that correct?

8 A. That's correct, yes.

9 Q. And who is the other operation?

10 A. Is it necessary to address -- I mean, I  
11 think the industry in general knows, but...

12 Q. Well, if everybody knows -- I mean, I'm  
13 not trying to hurt anybody, I just want to understand.  
14 I'm trying to understand, you know, who was involved and  
15 I don't know personally, I'm sorry.

16 A. It was Roy Farms, our own company, Green  
17 Acres and Wyckoff Farms.

18 Q. Okay. On those acres that were to be set  
19 aside or that were set aside...

20 A. Um-hum.

21 Q. ...were those any -- were any of those  
22 acres under contract?

23 A. There was -- no.

24 Q. No.

25 A. I think that was -- there were growers

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1 that made statements at the time that we were trying to  
2 solicit acreage that they were 100 percent sold. We  
3 accepted those statements as facts. If they were fact  
4 or talk, who knows? But we accepted growers that stated  
5 to us that they were -- they were sold, or so they said.

6 Q. So they weren't under contract, I'm  
7 sorry?

8 A. I don't know that for a fact.

9 Q. So -- I mean, it's your general  
10 understanding that these acres were not under contract,  
11 is that accurate?

12 A. I don't know.

13 Q. You don't know.

14 A. They made statements to that effect.  
15 Some people did.

16 Q. The acres that you set aside, were they  
17 under contract?

18 A. They were not.

19 Q. What was the spot market at that point?  
20 Was it low?

21 A. My gosh, we're going back a few years. I  
22 think in 2001 there was some fires, they had some  
23 warehouse fires and the price actually went up quite  
24 high in 2001. 2002, I could not -- the price had  
25 dropped substantially. I mean actually, in 2002 there

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1 was no market. I mean, here we went from a price of \$20  
2 a pound of alpha, so if you had a 15 alpha hop, you got  
3 \$3 a pound to one year later where there was no market.  
4 You couldn't sell them.

5 Q. So you couldn't sell those hops?

6 A. One year later.

7 Q. Yeah. In 2002 you could not have sold  
8 those hops, anyway.

9 A. Well, I think there's some -- there was  
10 some sales made, but I don't recall exactly what the  
11 pricing was but there was a lot of inventory held.

12 Q. Would it be accurate to say that those --  
13 at least, for some of the acres -- let's say for your  
14 acres, that it was in your economic interest not to sell  
15 those hops, anyway. Would that be accurate?

16 A. Which ones?

17 Q. The ones that you set aside. The acres  
18 that you set aside.

19 A. We could've just as easy raised them. It  
20 was -- excuse me. I think -- as I said earlier, I think  
21 we individually and collectively all have responsibility  
22 for the market. We -- I think it was very much  
23 generally recognized that there was an oversupply. And  
24 many people, small -- I mean many growers pointed a  
25 finger at some of the larger growers for their expansion

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1 over the years, so we accepted some degree of  
2 responsibility and reduced to a higher degree. I could  
3 just as easy have raised those hops. I didn't have to  
4 leave them idle.

5 Q. But from your personal perspective, it  
6 really -- was it in -- would it have been to your...

7 A. Well...

8 Q. ...economic interest to...

9 A. You know, we talked about -- I talked  
10 about how we make our decisions on growing hops and with  
11 a lack of future contracts, you go on the experience of  
12 the previous year. If I had sold hops in 2001 at \$3 a  
13 pound and I go into 2002 with no contracts and I reduce  
14 my acreage, if I had made my decision based on the  
15 previous year where it was \$3, I should've raised all my  
16 production, but I knew that there was a structural  
17 oversupply and that what happened in 2001 was really  
18 just a unique situation because of the fires. And  
19 there's actually -- as it proved out over time, it was  
20 really an overreaction to a very short supply. It's  
21 similar to what happened in, you know, in the previous  
22 marketing order and when we had the crop failures in  
23 Germany.

24 Q. If you had a contract for those acres,  
25 would you have set them aside?

1           A.    No, I would not have cut across  
2 contracts. I do not do that.

3           Q.    You kind of indicated earlier that you  
4 were, you know -- kind of fool me once, that you were  
5 all...

6           A.    Well, I think that -- what it -- do you  
7 want me to...

8           Q.    Please. Thanks for saving me.

9           A.    Well, I think that -- you know, when  
10 collectively the majority of the industry, we -- I think  
11 there was -- I would say 100 percent of the growers,  
12 that's my -- this is my personal opinion, agreed that  
13 there was an oversupply. There was -- I think -- we saw  
14 a lack of contract, low prices and we tried work  
15 together as an industry in voluntary programs and two of  
16 them failed. It's -- you know. That's why I think that  
17 a mandatory -- in many, you know, in all of our meetings  
18 it always came out that whatever we do is going to have  
19 to be mandatory. The voluntary programs aren't working.  
20 In fact, some of the proponents on our committee would  
21 -- did not even participate in the set-asides or even  
22 the alliance program because they felt that they would  
23 not do it unless it was a mandatory program and they --  
24 and those proponents would not even talk to us during  
25 that time. But over time, as we had many industry

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1 meetings and came to where we are today, you know, a  
2 mandatory program. For the best interests of all.

3 Q. If you were -- if you -- you said that if  
4 you were -- had these acres all under contract, you  
5 wouldn't have set them aside. Would you expect another  
6 grower who is -- who was fully contracted for his hops,  
7 would you expect him to voluntarily set aside acres?

8 A. No. As I said there were growers who  
9 made that statement and I don't know if it was true or  
10 not.

11 Q. But you wouldn't have done it yourself,  
12 right?

13 A. I would not have. I would've made the  
14 statement that they were contracted and -- yeah.

15 Q. Fine.

16 A. I mean we accepted that from people.

17 Q. Um-hum.

18 A. Because even people -- there were a lot  
19 of people that made statements that they had contracts  
20 and they could not cut. We accepted that for what it  
21 was. If it was true or not, I cannot say for sure.

22 Q. So those folks that said that didn't fool  
23 you, I guess, because they -- you knew their position...

24 A. It seems to be when there's hops being  
25 sold -- pull a season, you wonder, don't you?

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1 Q. Couldn't that be because of excess  
2 production, you know, they got more out of the crop than  
3 they expected or...

4 A. It could be.

5 Q. I take it from your laughter...

6 A. You know, I think if the acreage were to  
7 increase, if some people were increasing acreage...

8 Q. Right.

9 A. ...then that's a different situation,  
10 too.

11 Q. Yeah, yeah.

12 A. And they could've had contracts for that  
13 acreage, too, but...

14 Q. Right, right. If -- I don't know if you  
15 would know if those -- if they were selling on the spot  
16 market or not, but that would indicate whether they were  
17 contracted or not. I don't know if you -- if that  
18 information is that transparent. It's not, I guess.

19 A. It's transparent as it can be with a  
20 small industry of 50 growers, so...

21 Q. Well, did you have evidence of people  
22 selling on the spot market? And who said they were  
23 fully contracted?

24 A. I'd rather not answer that.

25 Q. Okay. All right. These fields that were  
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1 taken out of production. I presume some of them were  
2 just left idle and nothing happened.

3 A. In which year? In...

4 Q. 2000. I guess since 2002. But have some  
5 of the acres been replanted with new varieties of hops?

6 A. I think -- to me, there's been  
7 replanting. There's been some interest in one  
8 particular variety, Cascade, there was quite a scramble.  
9 There were contracts made for three years at decent  
10 prices, so growers took out some of the higher alpha  
11 hops and moved over to those. There was -- I mean  
12 there's sporadic interest in various varieties. As we  
13 go through this oversupply situation, varieties get out  
14 of balance, you know, so you may overcorrect -- grow --  
15 with the imperfect knowledge we have, you don't know.  
16 You can't sell, let's say, a Nugget one year and the  
17 next year you can sell it or a cluster one year and you  
18 can't sell it the next year. So the knowledge is very  
19 imperfect and so there's always over-corrections and you  
20 know, after you bet burned once, you know, you sell them  
21 at below the cost of production, you say well, I'm not  
22 going to raise them again, and then all of a sudden, the  
23 demand comes out of the woodwork. A year later you  
24 replant them. It's always funny to watch. I'm taking  
25 one variety out, my neighbor's planting it. Makes you

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1 scratch your head.

2 Q. But there was some use at this time, or  
3 this period when these were set aside to reinvest in  
4 these fields, is that accurate?

5 A. What do you mean by reinvest?

6 Q. Reinvest in the sense of changing  
7 varieties, putting new plants in.

8 A. I mean, reinvest -- I mean, replanting  
9 would be a better word in my mind. I mean, you go to  
10 what -- I mean, if the grower wanted to reduce his risk  
11 and he wanted to make a contract, some varieties maybe  
12 because of their nature and their want by one brewery,  
13 because many of these varieties that are getting sold,  
14 it's only desired by one or two breweries at the most  
15 and so as the instability of that variety is -- you  
16 know, you may switch over to that variety or something.  
17 And we're still bound by these picking windows, you  
18 know, I think Mr. Smith alluded to this, you know,  
19 especially in the Willamette issue. That is -- that  
20 period there is no other competition for that variety  
21 and you know, we value those contracts very dearly.

22 Q. Why do you value them?

23 A. Well, they're -- it's fair pricing and it  
24 fits our picking window very well. I mean, I think  
25 ourselves as well as every grower in the industry would

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1 do about anything to keep those contracts, so...

2 Q. So you wouldn't characterize the  
3 treatment that you had from Anheuser-Busch as in any way  
4 exercising any market power in terms of pricing?

5 A. No. I mean, we've dealt with them for  
6 over 30 years and I think the relationship has been very  
7 good.

8 Q. Would it be in Anheuser-Busch's economic  
9 interest to take advantage of growers in the long run?

10 A. No. It's kind of a -- I mean, we --  
11 we've had our differences over the years, sure, there  
12 were always issues back and forth, but it's kind of a --  
13 you know, symbiotic relationship. They need us, we need  
14 them and we work it out over time and maybe some years  
15 maybe they -- things -- it kind of goes back and forth,  
16 you know, over time and it's been a very good  
17 relationship and I think a real testimony to it is that  
18 you don't see many growers leaving, you know, so that  
19 indicates to me that it's a good program.

20 Q. Wouldn't that approach be sensible for  
21 any brewer?

22 A. Yes, it would.

23 Q. You mentioned earlier that German  
24 production -- I believe I got kind of a general message  
25 that German production is in potential expansion is --

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1 the potential for expansion is somewhat limited, is that  
2 accurate?

3 A. In their total acreage. In their acreage  
4 base, I think.

5 Q. Okay, in acreage.

6 A. Yeah.

7 Q. Okay. If we could turn to the  
8 statistical overview in the HGA 2002 Statistical  
9 Report...

10 A. Um-hum.

11 Q. I'm sorry, what exhibit number is that,  
12 do you know? For the record, Exhibit 38. And if we  
13 could turn to page, Roman numeral four.

14 A. Okay.

15 Q. I believe we've determined that generally  
16 speaking, at least with respect to many brewers,  
17 particularly who use alpha hops, that alpha acid is  
18 often the true question as to the production amounts of  
19 different growers. Is that accurate?

20 A. I'm not sure if I...

21 Q. Well, for example, under the marketing  
22 order the -- what's being restricted and what's being --  
23 or not restricted, what's being regulated -- I apologize  
24 -- is alpha acid production. Is that accurate?

25 A. Yes.

1 Q. So it would seem that there's been a  
2 determination that alpha acid is the key issue as  
3 compared to a pound of hops. Is that accurate? That  
4 alpha acid is the commodity that's most relevant in  
5 terms of defining the amount, the available...

6 A. The ultimate -- I mean, the ultimate  
7 demand is related to alpha acid production and its usage  
8 in the beer process.

9 Q. It's commonly sold as pellet or extract  
10 or...

11 A. Right.

12 Q. Yeah. So it's the alpha acid, it's not  
13 the particular...

14 A. Well, I think it -- again, it comes down  
15 to brewery preference, which is our customer, let's call  
16 it that.

17 Q. Right.

18 A. I mean, some breweries use hops very  
19 specific variety from different areas of the world for a  
20 reason -- I mean, alpha acid does come into play with  
21 it, because if they're using, let's say, a Willamette  
22 variety that historically has a 3.5 alpha average and  
23 the average -- and the alpha were to drop down to 2 on  
24 the average for that year, they would end up using more  
25 Willamettes. Not necessarily double or close to it,

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1 they would use some incremental -- incrementally more  
2 just to get the bittering units in their beer. So in --  
3 and then there's other breweries that probably use  
4 bittering units solely in a generic nature. They don't  
5 necessarily care where it comes from, but they use it.  
6 Now, that's being changed. I think some breweries have  
7 adopted that generic usage, but that's -- but they --  
8 they're finding out that as bittering -- as our hopping  
9 rates come down in the -- to lighter and lighter beer,  
10 varietal differences become an issue.

11 Q. Um-hum. But kind of typically, the state  
12 of the industry is for those brewers who aren't using  
13 aroma hops, but are using alpha hops, they are generally  
14 -- or many of them are looking at it just from an alpha  
15 acid perspective, is that -- is the bitter...

16 A. In the non-aroma ones, yes.

17 Q. Yes.

18 A. Generally.

19 Q. If we could look at columns -- excuse me,  
20 tables -- this is the statistical overview. If you  
21 could go down to six, paragraph where it says alpha  
22 acid...

23 A. Production?

24 Q. ...production. Is that -- is it fifth or  
25 sixth? I think it's six. Yeah.

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- 1 A. Yeah.
- 2 Q. Alpha acid production in pounds.
- 3 A. Um-hum.
- 4 Q. And if you look at Germany in 1992...
- 5 A. Right.
- 6 Q. ...what is that number?
- 7 A. Three million 0-53.
- 8 Q. Pounds of...
- 9 A. Oh, pounds of alpha acid.
- 10 Q. ...alpha acid.
- 11 A. Right.
- 12 Q. And that was in 1992.
- 13 A. That's right.
- 14 Q. What is the number for 2002?
- 15 A. Six million 5-0-5, 0-0-0 pounds.
- 16 Q. So we've seen over a doubling of alpha
- 17 acid pounds produced by German brewers?
- 18 A. That's correct.
- 19 Q. German hop growers?
- 20 A. Yeah.
- 21 Q. And would that indicate to you a lot of
- 22 expansion during that period?
- 23 A. Well, I think what it represents is a
- 24 change in varieties.
- 25 Q. Um-hum.

1           A.   Historically, Germany prior -- around  
2           that period, was producing probably pretty much solely  
3           aroma hops with some -- they had bitter hops that they  
4           considered bitter hops, but those were in the alpha  
5           range of five, four, six percent.

6           Q.   Uh-huh.

7           A.   And they switched over to Magnum  
8           varieties -- or to some newer varieties, Magnum being  
9           one, Taurus being another one that produce in the 14-15  
10          range.

11          Q.   Then if you would look at the US  
12          production in 1992...

13          A.   Um-hum.

14          Q.   ...and what number does that state?

15          A.   In 1992 the United States produced  
16          6,953,000 pounds of alpha.

17          Q.   And it -- I'm sorry. 2002?

18          A.   6,922,000.

19          Q.   So that indicates a reduction of 31,000  
20          pounds of alpha.

21          A.   That's right. But that also -- see,  
22          2002, when we had the set-aside where we took out 6,000  
23          acres.

24          Q.   Right.

25          A.   And it doesn't reflect the fluctuations

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1 that happen between that '92 to 2002.

2 Q. Are there some years where there were a  
3 lot higher numbers?

4 A. Oh, yes.

5 Q. Like...

6 A. Probably over -- well over in the sevens.  
7 Maybe 8,000.

8 Q. Okay.

9 A. Without looking at the numbers, I'd have  
10 to...

11 Q. Okay.

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE: I hate to  
14 interrupt, but...

15 MR. ROY: Yes.

16 ADMINISTRATIVE LAW JUDGE: ...when you  
17 mentioned the varieties that are grown in Germany to get  
18 a higher acid alpha content...

19 MR. ROY: Yes.

20 ADMINISTRATIVE LAW JUDGE: You mentioned  
21 Magnum...

22 MR. ROY: Yes.

23 ADMINISTRATIVE LAW JUDGE: ...and Clouse? Is  
24 that what you said?

25 MR. ROY: Taurus.

1 ADMINISTRATIVE LAW JUDGE: How is that  
2 spelled?

3 MR. ROY: Taurus is T-a-u-r-u-s. Is it --  
4 everybody's shaking their head. I'm a horrible speller.  
5 And Magnum is M-a-g-n-u-m. Nobody's saying yes, yet or  
6 no, okay.

7 ADMINISTRATIVE LAW JUDGE: All right. And  
8 when I interrupted you, you were just talking the  
9 interim years between...

10 MR. ROY: Well, I think that this...

11 ADMINISTRATIVE LAW JUDGE: ...'92 and 2002 in  
12 the US.

13 MR. ROY: Well, I think that this doesn't...

14 ADMINISTRATIVE LAW JUDGE: And you said that  
15 the production went up to eight...

16 MR. ROY: Well, I'd have to look for sure, but  
17 I presume at some periods of time we went over eight  
18 million pounds of alpha. So I think that it doesn't  
19 adequately reflect what happened during that period, so  
20 -- and especially with 2002 being -- after two years of  
21 voluntary reduction, it doesn't adequately reflect, you  
22 know, what happened -- could happen.

23 \*\*\*

24 BY MR. CARSWELL:

25 Q. Is there a voluntary set-aside program in  
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1 place for 2003?

2 A. There is not.

3 Q. What do you expect the production for  
4 2003 to be? And I understand that there are less acres.

5 A. Yeah, there's less.

6 Q. So you expect lower production?

7 A. In pounds or alpha?

8 Q. Alpha acid pounds.

9 A. It would be hard for me to know. I think  
10 I would expect some degree of reduction. How much, I  
11 don't know.

12 Q. So -- and I understand this is a snapshot  
13 in time...

14 A. Um-huh.

15 Q. ...and 2000 -- in 1992 and 2002 or 3 --  
16 well, let me ask you one more question...

17 A. Yeah.

18 Q. ...to try to set this up. In 2003 -- no,  
19 that's -- never mind. I'm sorry. But -- so this is a  
20 snapshot in time and 1992 and 2002, but in 2002 included  
21 voluntary reduction which skew the numbers somewhat, yet  
22 the numbers for 2003 without a voluntary set-aside are  
23 going to be similar. And with these snapshot, it would  
24 seem to be that there's been a great expansion by  
25 Germany in production and pretty flat to even maybe a

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1 little decline when you look at it at this point in time  
2 vis-à-vis 1992, not taking into account any  
3 intervening...

4 A. Well I think...

5 Q. ...level variances.

6 A. Yeah.

7 Q. Is that accurate?

8 A. I have no reason to disagree. I mean  
9 it's kinds of a -- the conclusions are -- somebody could  
10 make about any set of conclusions you want from this. I  
11 mean, I think to not take into account what's happened  
12 during that period in the interim years is -- doesn't  
13 give the true picture of what's happened.

14 Q. I think that's fair enough.

15 A. Yeah.

16 Q. And let's talk about that. It seems  
17 like, you know, one way you could look at this and  
18 there's going to be a question mark at the end of this,  
19 but as a development of the super high alphas came in,  
20 it jacked the -- and I could be totally wrong, I'm just  
21 trying...

22 A. Yeah.

23 Q. ...to understand this, but it jacked the  
24 total alpha acid pounds up and now there's been a  
25 correction in the market to take the super alpha acids

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1 into account. Is that accurate at all, do you think?

2 A. Take into account, I mean...

3 Q. Take into account the presence of super  
4 alphas and there's been a corresponding decline in the  
5 number of acres that are growing hops and...

6 A. Well, I -- without -- I don't think I can  
7 come to a complete conclusion unless I really look at  
8 what acreage has done -- you know, there's a lot of  
9 components that went into this. I mean, I will  
10 acknowledge that Germany has switched from lower alpha  
11 hops to higher alpha hops at the expense of other parts  
12 of the world. If you look at that same period of world  
13 acreage from that period of time -- I don't know if it's  
14 in here. I think we have seen -- well, I'm not sure if  
15 this adequately reflects it, but I've seen numbers that  
16 would indicate that the world acreage of hops has almost  
17 been cut in half in the last 10 to 12 years. So what  
18 happens is Germany has increased their alpha production  
19 at the expense of some very small countries. I mean, we  
20 have probably 25 countries -- at least -- it's probably  
21 more than that, but 25 I could knock off pretty easily  
22 that raise hops. But really, most -- for the most part,  
23 most of these countries raise it for only domestic  
24 production.

25 Q. Um-hum.

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1           A.    So in other words, let's say -- let's use  
2 Spain as an example that raises Nuggets that which would  
3 have some degree of substitutability with our Nuggets to  
4 some degree.

5           Q.    Um-hum.

6           A.    They're used solely by Spanish breweries.  
7 They don't really export, they satisfy their demand.  If  
8 there's -- you know, if they have a shortage or  
9 something, they may come look at American Nuggets or  
10 German Nuggets, but most of these countries are just in  
11 a -- they manage their own supply for their own demand.  
12 And so, you know, really the only two countries -- well,  
13 let's use China.  China's been pretty busy just keeping  
14 their own beer production supply, so they haven't really  
15 been a major factor in the world market to any high  
16 degree.  So it's really the United States and Germany  
17 that are the problems.

18          Q.    Are there hop growers in Portugal?

19          A.    Yes, there are.  They have about four --  
20 I could pull some numbers off, but I think it's about  
21 200 to 400 acres or something like that.  Some very  
22 small production.

23          Q.    Yeah.  Is Portugal a net importer of  
24 hops?

25          A.    I'd have to look at numbers.  I suspect,  
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1 but I don't know.

2 Q. Okay. Well, I won't get into that. I  
3 just want to talk, and I'm not trying to put you on the  
4 spot. I just -- we just need to...

5 A. No.

6 Q. ...understand the relationship and the --  
7 you know, it's going to become an issue who's a grower  
8 and who's not a grower for purposes of voting for this  
9 referendum.

10 A. I understand.

11 Q. And I'm not -- really, I'm not trying to  
12 make you uncomfortable, but you know, we need to  
13 identify, you know, what's...

14 A. Yeah.

15 Q. ...going on and I understand that maybe  
16 some of what you were doing was a reaction to what other  
17 people were doing.

18 A. That's correct.

19 Q. But there was some transaction where you  
20 transferred bales to...

21 A. Six grower number...

22 Q. ...people I would call individuals and  
23 you would call -- we won't get into that.

24 A. Okay.

25 Q. But there was some transfer there, is

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1 that accurate?

2 A. Yes, there was.

3 Q. Okay. And were they -- what was the  
4 transfer? What type of transfer was it? Was it a lease  
5 or was it a sale, or...

6 A. An oral contract between the grower and  
7 myself.

8 Q. Okay. And what -- were they paying for  
9 the bales, or...

10 A. No.

11 Q. Okay, so it was a...

12 A. I actually was -- I was probably paying -  
13 - in a sense, I was paying them to rather than to raise  
14 their hops and increase the oversupply, I said I would  
15 just give you production so you didn't have to go -- at  
16 that time there was a lot of uncertainty about what this  
17 voting was going to be. In my mind they are still bona  
18 fide growers. They have the facilities, they have hops  
19 that are probably idle on the ground. They are ready --  
20 they would like to get back into hop production. They  
21 put out their hops voluntarily as a group effort and if  
22 that grower made a decision to be 100 percent idle, then  
23 that was his decision. I should -- I do -- I mean, the  
24 goal of this whole proponents committee and this whole  
25 issue about growers is one grower, one vote. That's all

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1 we're after. So if this grower has the facilities still  
2 there he is -- and in some cases -- what's interesting  
3 is when the alliance was started, they actually -- now,  
4 I'm not -- somebody else will have to address this  
5 totally, but here's the way I understood it because we  
6 did not participate in that part of it -- there was  
7 actually -- the alliance made contracts -- it was kind  
8 of like a cooperative-type deal, so growers put hops  
9 into this alliance for eventual sale as a group. Well,  
10 the hops didn't sell. So I know in some cases, growers,  
11 the following year, which would be 2002, decided to stay  
12 100 percent idle and took the hops that they maybe had  
13 in the pool or took the neighbor's hops and then sold  
14 them into the marketplace to satisfy contracts they may  
15 have had or something. That, you know, I think that's  
16 what -- some of that happened, also, so -- there's a lot  
17 of -- I mean, it's very -- I think when you come down to  
18 it, it's one grower, one vote and I think later in this  
19 testimony we will address that, hopefully to everybody's  
20 satisfaction. There is no -- I mean, maybe we made some  
21 reactions based on, you know, who did this first, who  
22 did that first, well he went and got two numbers, well  
23 I'm going to get three numbers, so I went around and  
24 marked this bale because this guy did that. Well, I  
25 think there's -- we're all -- all of us, as an industry,

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1 are probably at fault to some degree, but I think  
2 everyone will agree, ultimately, all we want is one  
3 grower, one vote. That's...

4 Q. So it -- I didn't realize this, but this  
5 seems like it was tied -- this transfer was tied to  
6 those participating in the set-aside?

7 A. Well, let's say -- this is my personal  
8 opinion. If I, as a large grower, took out more than  
9 the -- than the average, let's say, as a percentage and  
10 I have a neighbor that takes out a hundred percent, I  
11 mean, kind of endears me to my heart. You know, I mean,  
12 he understands it and that's his decision, but I feel  
13 it's -- I mean, it's not right to penalize that person.  
14 Because I think many of us -- the majority of the  
15 industry tried to address this oversupply situation, so  
16 -- yeah, that's all right.

17 Q. So did you know that they -- I mean, do  
18 you know if they had contracts for these?

19 A. I don't know.

20 Q. Production.

21 A. I would not know.

22 Q. But you would presume not, right?

23 Because...

24 A. I do not know.

25 Q. Yeah. But would it make economic sense

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1 for them to take out of action hops...

2 A. I don't -- that's an individual decision.

3 Q. Okay. Presuming that they didn't have  
4 contracts for these hops...

5 A. Which hops are we talking about?

6 Q. The acres that they took out of  
7 production. And I guess it was the total acreage,  
8 right? They weren't...

9 A. In some cases, yes.

10 Q. I mean, in the cases of the ones that you  
11 transferred to because you did it to keep them as  
12 growers, right?

13 A. No.

14 Q. Okay.

15 A. I did not do it for that reason.

16 Q. I'm sorry. Why did you do it?

17 A. Because they are -- in my view, they are  
18 growers. And if somebody was going to make an issue out  
19 of the fact that a grower's idle and he's not a grower  
20 anymore, I felt that was not right.

21 Q. So to strengthen their position as a  
22 grower, you...

23 A. No.

24 Q. ...transferred the...

25 A. Not to strengthen, just to go back to the  
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1 same premise we've always wanted to promote. There's  
2 one grower, one vote. And I consider that person,  
3 whether he's idle, whether he's grown one acre, he has  
4 one bale or whatever, he is a grower.

5 Q. Right, but -- okay, let me just ask you  
6 why did you give them bales?

7 A. Because there was some discussion or  
8 hearsay or whatever you want to call it, that some  
9 people were going to make an issue of the voting year.  
10 When we proposed the order, we tried to address this  
11 issue as equitable as possible by saying 2001 was a year  
12 we want to establish a voting period and the whole  
13 industry was on notice of this. So in other words, in  
14 2002, given what they knew, that they -- the voting  
15 period was going to be 2001 if this -- if it went to  
16 vote, they could take their acreage out in 2002 a  
17 hundred percent and still have a vote in 2001 because  
18 they were a producer in 2001. All of a sudden -- then  
19 as this thing drug on -- I mean, we had hoped to be at  
20 this stage of the game, a year, year and a half ago --  
21 well, here we are a year, year and a half later. It's  
22 drug on, so I think growers made decisions based on what  
23 the committee was saying and we had these administrative  
24 meetings -- there was nobody that was not uninformed of  
25 what was going on, what we were shooting for as far as

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1 the voting period, contract exemptions, all those  
2 things. It was widely, you know, known in the industry.  
3 I can't think of -- I'd be surprised if somebody did not  
4 know. So I think that -- comes back to the point was if  
5 this grower took out in 2002 and for some administrative  
6 reason or some legality that somebody could exploit and  
7 make the voting period and this poor grower that had  
8 worked together with the industry was penalized, that's  
9 not right.

10 Q. But isn't it possible that they set this  
11 aside because they -- these acres and the corresponding  
12 hops aside because they didn't have a contract for them?

13 A. I don't know. I could not comment. I  
14 don't know what the individual -- I know that in some  
15 cases growers -- some of those growers took hops out of  
16 the alliance pool, delivered them. I believe there were  
17 some of the growers that laid a hundred percent idle did  
18 have a contract and was able to work with the merchant  
19 to deliver pool hops from the previous...

20 Q. Are there a couple of these growers who  
21 no longer have the infrastructure for growing hops?

22 A. I don't know that.

23 Q. A couple of folks who have maybe  
24 completely gotten out of the hop industry?

25 A. Define getting out.

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1 Q. Taking up another occupation and not  
2 having the infrastructure in place to...

3 A. I mean when -- as Dr. Tweeten indicated,  
4 I think 65 percent of the farmers are part-time farmers,  
5 so does that classify is he not a farmer? Even in the  
6 government definition, if a certain amount of income  
7 comes from agriculture, you're still a farmer. And the  
8 same thing in Germany where 60 percent of the farmers  
9 are part-time.

10 Q. Um-hum.

11 A. They're still farmers.

12 Q. Okay.

13 A. Sometimes I wonder about my own self,  
14 so...

15 Q. Now turning toward -- to the substantive  
16 provision of the marketing order, it seems like -- well,  
17 first of all, it -- the way it works is that you would  
18 have a marketing policy that you would present to the  
19 Secretary and that she would approve every year or not  
20 approve, I guess. Is that accurate?

21 A. Yeah. The growers themselves set the  
22 policy. The government does not set the policy. The  
23 growers meet -- and I think if you look at the mint  
24 model, it's kind of interesting where they have area  
25 meetings and the statistics are brought forward prior to

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1 these area meetings and actually the growers themselves  
2 sit together, discuss these, then their representative  
3 brings that to the board, then they have a discussion,  
4 then eventually it goes to the department for approval.  
5 Really, the government is just a rubber stamp, in my  
6 estimation. So it's really a decision of the growers  
7 themselves what they want to do. So the growers could,  
8 you know, they make the decision how they want to go  
9 forward with the market and supply in the market. And  
10 so that -- yeah.

11 Q. And so -- and then under 991.50 B, they  
12 would -- you would set the saleable quantity -- the  
13 factors are laid out about how you set the -- you know,  
14 the factors that come into place for when you set the  
15 saleable quantity, and that saleable quantity would be  
16 part of the marketing order policy. Kind of the core of  
17 the marketing policy. Is that accurate?

18 A. You mean the percent they set saleable?

19 Q. Yeah, the saleable quantity would be set  
20 and would be within a marketing policy.

21 A. That's correct.

22 Q. And if you determine during the course of  
23 the year -- the committee, when I say you -- the  
24 committee determined during the course of the year that  
25 that saleable quantity should be modified, should be

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1 raised.

2 A. That's the only thing they can do.

3 Q. Right, they can't...

4 A. They can't lower it, they can only raise  
5 it.

6 Q. Yeah. Then the Secretary could approve  
7 such a raising, is that...

8 A. I think with some justification, I  
9 believe it has to go along with that.

10 Q. And that could occur at any time?

11 A. That's correct.

12 Q. Um-hum. So it could occur after  
13 everybody's planted their hops, I guess.

14 A. That is correct.

15 Q. Um-hum. What would be some of the  
16 reasons why you would do that?

17 A. Well, I think -- you know, at different  
18 times of the year the reasons might be different, but I  
19 would envision in my mind view that if the committee  
20 were to raise a saleable, it would probably be later in  
21 the year and if the marketing order is functioning  
22 properly, we should have some reserve hops there. There  
23 would probably be some hops that -- a grower's not  
24 restricted to what they could produce. As an example,  
25 if I felt that in the year X plus one. X being the

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1 current year and then X plus one or X plus two, I  
2 anticipated making a varietal switch.

3 Q. Um-hum.

4 A. So I may...

5 \*\*\*

6 [Off the Record]

7 [On the Record]

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: We're back on  
10 record at 2:06. Mr. Roy, would you back up?

11 MR. ROY: Am I at X plus one or X plus two?  
12 Okay, let's -- I think, you know, some people have made  
13 -- I'm just going to step back just a second here and  
14 just kind of clarify -- you know, people have made some  
15 reference to the fact that we've already had three  
16 failures. I don't consider those failures. I think  
17 that's part of the process to where we -- that's brought  
18 us here today. I personally feel the previous marketing  
19 order in '66 could not have made -- adequately made the  
20 changes to where we -- what this one's proposed today.  
21 It's -- change is very difficult. It was probably best  
22 to throw it out and come back to where we are today. I  
23 think we've created a better system. And one of the  
24 really unique parts of this new marketing order is the  
25 reserve pool, which in the past marketing order, the

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1 committee controlled the reserve pool. They controlled  
2 the price, they controlled the ultimate disposition of  
3 that pool, which created a lot of -- let's call it self-  
4 interest greed on the committee, where the committee  
5 controlled the eventual disposition of that pool. So in  
6 other words, if I was sitting out in the audience and I  
7 had a large amount of hops to pool and the ultimate sale  
8 of that pool was determined by somebody on the board  
9 that had no pool hops and he dumped them into the market  
10 at a low price, I'd be upset. And that happened often.  
11 But in this current version of the proposed marketing  
12 order is where the reserve pool is held by the grower.  
13 The grower can raise whatever he likes, so he controls  
14 -- if he wants to raise hops and put them into pool for  
15 whatever reason, which I'll get into an example here  
16 shortly -- and he is responsible for storage, he assumes  
17 all risk of that. Now granted, he can't sell that, but  
18 he has to go to transfer between growers, so there's  
19 some yearly fluctuations in yield from area to area and  
20 so if grower -- if a grower in another area has low  
21 production and I have excess production in mine, I can  
22 legally transfer my production to the other grower.  
23 Now, that's in -- the merchant or the purchaser of those  
24 hops would have to agree to that, but that would become  
25 commonplace just because of the -- it balances

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1 everything, you know, rather than holding everything off  
2 the market, it lets the market determine which ones come  
3 out, so anyway -- well, getting back to my example, if I  
4 have decided I wanted to change varieties in year --  
5 we're back to X plus X one plus X two, which is two  
6 years into the future, I could choose to raise hops --  
7 and I may have a contract which I envision more  
8 contracting under a market order, so I have a contract.  
9 Again, I talk with the purchaser of those hops and we  
10 agree that I could deliver hops that are one year old,  
11 maybe in pellets, maybe in extract. And so I would  
12 raise more hops in one year and then maybe take out hops  
13 the following year and deliver against my contract -- it  
14 creates some very good efficiencies for -- you know, to  
15 maximized everything I'm doing on that farm.

16 \*\*\*

17 BY MR. CARSWELL:

18 Q. From a general hops industry standard  
19 position, it wouldn't be in growers' interest to produce  
20 more than they plan to sell, generally speaking, in any  
21 given year, would it?

22 A. Well, it depends on your situation. I  
23 mean, in our case -- and I think this will be more  
24 prevalent in the industry as time goes on -- many times  
25 we sell our farm -- and there's other growers that do

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1 this, too, and I think it'll increase, as I said --  
2 pounds of alpha only. Guaranteed delivery. So I make a  
3 contract for 10,000 kilos -- it's not -- generally, we  
4 speak in kilograms of alpha, which is just 2.2046 times  
5 a pound, so I sell X number of kilograms, it may be in  
6 raw hops, it may be in pelleted hops, it may be in  
7 processed hops. I guarantee that delivery. That's part  
8 -- why -- some of the uniqueness to what I do and other  
9 growers do. I may sell X number of kilograms and the  
10 buyer may not care where it comes from. But I guarantee  
11 that delivery. As well as the merchants -- what that  
12 does is assume some of the risk. The merchants do the  
13 same thing. They buy -- they make a sale to a brewery,  
14 or to an ultimate customer, another broker or whatever  
15 it may be at set number of kilograms. They assume --  
16 they -- it's a guaranteed delivery.

17 Q. Just kind of going back to what we said  
18 before about growers and what -- you know...

19 A. Um-hum.

20 Q. If you grow under contract, you know, you  
21 typically will grow only what you have under contract.

22 A. Well, that's your...

23 Q. Well...

24 A. As an example, you mean?

25 Q. Yeah. Well, just scratch that.

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1 A. Okay.

2 Q. Let me start over. If -- there would be  
3 a number, you would think, of growers, wouldn't there,  
4 who would only grow the amount of hops that they would  
5 have a sale -- the ability to sell in a given year?  
6 There'd be some...

7 A. You mean the ability...

8 Q. ...at least...

9 A. The ability to sell is a function of how  
10 much risk they want to assume. How good is their  
11 banker, or the banking line, I guess would be a better  
12 choice.

13 Q. Well, presume that they've got it fully  
14 contracted but, you know, the saleable has been set at  
15 some point below their allotment and so...

16 A. Well, I think -- you know, the example  
17 you're using is yeah, there's some adjustment period in  
18 this initial years...

19 Q. Um-hum.

20 A. ...and there's some inequities in those  
21 first couple years, but I think -- talking about the  
22 efficiency of this whole system in year three, year  
23 four, year five. In year one and two -- maybe even year  
24 three, there's some adjustments. There's going to be  
25 base that's going to have to move around, there's going

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1 to be contracts -- I mean, I would not support any  
2 program that would cut across a contract. If a grower  
3 to me he has a legitimate contract entered in before the  
4 marketing order, I'd like to go back to 2001, but you  
5 know, there's flexibility. I think we do not want to  
6 hinder in any way the sale of American hops. I mean, I  
7 would -- my goal is to increase it as much as possible.

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, we've  
10 had more than an hour...

11 MR. CARSWELL: Um-hum.

12 ADMINISTRATIVE LAW JUDGE: ...of your cross-  
13 examination of Mr. Roy, which is not a problem...

14 MR. CARSWELL: Um-hum.

15 ADMINISTRATIVE LAW JUDGE: ...so long as  
16 there's plenty of time for everything. Let me ask Mr.  
17 Moody how long you expect your three growers to testify  
18 today? On direct?

19 MR. MOODY: I would say probably total under  
20 an hour. I'll say 15 minutes apiece.

21 ADMINISTRATIVE LAW JUDGE: All right. And Mr.  
22 Monahan, you want also, besides finishing Mr. Roy's  
23 testimony today, to finish Mr. Gasseling's testimony  
24 today?

25 MR. MONAHAN: That's right, Your Honor.

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1 ADMINISTRATIVE LAW JUDGE: Would Mr. Roy be  
2 available, also, tomorrow? For further cross? If we  
3 allowed him to complete his direct?

4 MR. ROY: I'm around for awhile, I guess. I  
5 guess -- sure.

6 MR. MONAHAN: Whatever works best, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: Okay, I know you're  
8 in this thought-mode right now, Mr. Carswell, and I'm  
9 sure Mr. Moody is, too, but I think perhaps we would be  
10 best off to allow Mr. Roy to complete his direct, then  
11 perhaps take the three local growers, then turn it back  
12 for further direct from the proponents committee, if  
13 that would be acceptable.

14 MR. ROY: Do I have a vote?

15 ADMINISTRATIVE LAW JUDGE: Mr. Roy wants to  
16 know if he has a vote. You may vote last.

17 UNKNOWN: You're one grower, you get one vote.

18 MR. ROY: Yeah.

19 ADMINISTRATIVE LAW JUDGE: Mr. Carswell?

20 MR. CARSWELL: I'm sorry. I thought Mr. Roy  
21 had completed his direct.

22 ADMINISTRATIVE LAW JUDGE: I don't know. Does  
23 he have any other regulations to go over?

24 MR. MONAHAN: These are the last of the  
25 regulations.

1 ADMINISTRATIVE LAW JUDGE: Okay. All right,  
2 so he has completed his direct. You're right.

3 MR. CARSWELL: I would -- I'd prefer to try to  
4 finish the cross, but -- at least, my piece of it, but  
5 that's -- you know. It's just a piece of -- well, you  
6 have to consider, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: Okay. Do you care  
8 if Mr. Moody sets aside 10 acres of his crop?

9 MR. CARSWELL: Yeah. We -- maybe if I could  
10 finish and then we could bring Mr. Roy back tomorrow for  
11 other cross? It's just that I'm in the middle of a  
12 flow...

13 ADMINISTRATIVE LAW JUDGE: Okay. So long as  
14 you promise not to ask any questions of him tomorrow.

15 MR. CARSWELL: I promise.

16 ADMINISTRATIVE LAW JUDGE: Now, you know you  
17 don't want to do that.

18 MR. CARSWELL: I want to, you're right.

19 ADMINISTRATIVE LAW JUDGE: All right. Well,  
20 think about it. Let's take a 10-minute break.

21 \*\*\*

22 [Off the Record]

23 [On the Record]

24 \*\*\*

25 ADMINISTRATIVE LAW JUDGE: Back on record?

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1 We're back on record at 2:30. Let's see. I didn't let  
2 Mr. Roy put in his two cents worth. Mr. Roy, if we  
3 finish with the cross-examination and any questions from  
4 the government and re-direct by Mr. Monahan and the  
5 like, would that mean you would not have to be here  
6 tomorrow?

7 MR. ROY: No, I'm just going to run out of  
8 non-farmer clothes.

9 ADMINISTRATIVE LAW JUDGE: You may wear  
10 overalls.

11 MR. ROY: Thank you.

12 ADMINISTRATIVE LAW JUDGE: I'd like to, too.

13 MR. ROY: No, I will be here for the duration.

14 ADMINISTRATIVE LAW JUDGE: All right, that's  
15 good. Mr. Carswell, any further thoughts on how you'd  
16 like to proceed?

17 MR. CARSWELL: Yes, Your Honor. I would like  
18 to have the opportunity to have a coherent block of time  
19 where I could finish these -- my cross-examination of  
20 Mr. Roy.

21 ADMINISTRATIVE LAW JUDGE: All right, thank  
22 you. Mr. Moody, your thoughts?

23 MR. MOODY: That's agreeable and then I just  
24 want to add one more name. An Oregon grower, Charles  
25 Stauffer, S-t-a-u-f-f-e-r. And again, I think my

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1 estimate of 15 minutes per each was a little bit high.  
2 More like 10 minutes each. So we could start them -- if  
3 Mr. Carswell thinks he has about an hour of questions to  
4 go, we can start then at that time.

5 MS. DESKINS: And also, Judge Clifton, could  
6 we perhaps go late tonight and then that way Mr.  
7 Carswell could finish the witnesses who testify?

8 ADMINISTRATIVE LAW JUDGE: And Mr. Gasseling,  
9 of course.

10 MS. DESKINS: And Mr. Gasseling, yes.

11 ADMINISTRATIVE LAW JUDGE: How late are the  
12 USDA representatives prepared to go?

13 MS. DESKINS: I think we'd rather go late  
14 tonight than Friday.

15 ADMINISTRATIVE LAW JUDGE: I agree. So you'd  
16 be willing to go until, say 7:00 if it took that...

17 MS. DESKINS: Yes.

18 ADMINISTRATIVE LAW JUDGE: All right. And Mr.  
19 Monahan, your thoughts?

20 MR. MONAHAN: Your Honor, I think we're -- is  
21 there another mike on?

22 ADMINISTRATIVE LAW JUDGE: Oh, anybody else  
23 have a...

24 UNKNOWN: I think you're okay now.

25 ADMINISTRATIVE LAW JUDGE: And maybe Dr.

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1 Tweeten's. But go ahead.

2 MR. MONAHAN: Thank you, Your Honor.

3 Proponents committee is prepared to go late tonight. I  
4 think the process benefits from a continuation of Mr.  
5 Roy's testimony. We don't need to add another sleepless  
6 night to his last week. With respect to anticipated  
7 time of direct testimony, along the lines of fool me  
8 once, we heard in Portland, Friday afternoon, that the  
9 Oregon growers would take 10 minutes each and it ended  
10 up being 20 plus to 30 minutes, at least for one or two  
11 of them and if we are going to make estimates of time  
12 that cut into the proponents presentation, I would just  
13 ask that we actually stick to those.

14 ADMINISTRATIVE LAW JUDGE: Then I won't limit  
15 what valuable information can come from those growers by  
16 a bad estimated by counsel -- because after all, he's  
17 just guessing as well, so we've all got to be a little  
18 flexible here. I think perhaps Ms. Deskins' suggestion  
19 that this would be a good day to go late is correct. It  
20 seems we have a lot that we really should do today.

21 MR. MONAHAN: Fair enough.

22 ADMINISTRATIVE LAW JUDGE: All right. Dr.  
23 Tweeten?

24 MR. TWEETEN: Your Honor -- can you hear this?

25 ADMINISTRATIVE LAW JUDGE: No. It's not...

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1 MR. TWEETEN: Is it working now?

2 ADMINISTRATIVE LAW JUDGE: That's good, yes.

3 MR. TWEETEN: I have just a very few  
4 questions. I can wait until whenever is appropriate,  
5 but probably not more than 5 to 10 minutes at some  
6 point.

7 ADMINISTRATIVE LAW JUDGE: All right, good.  
8 Thank you. All right, and I'm sure others do, as well.  
9 All right, I think you've gotten a consensus from all,  
10 Mr. Carswell. You may resume your cross-examination.

11 MR. CARSWELL: Thank you, Your Honor. I  
12 appreciate it.

13 MR. ROY: Your Honor, could I make a  
14 statement?

15 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Roy?

16 MR. ROY: To borrow a term from one of my  
17 fellow growers, dumb farmer, I think I made a misuse of  
18 words a bit ago. I characterized the approval process  
19 of the marketing policy as being rubber-stamped by the  
20 Department and I think I had a very poor choice of  
21 words. And I'd like to retract that, as a dumb farmer,  
22 and put -- and have the Department as being a very  
23 important part of this process -- the approval process.  
24 Thank you.

25 ADMINISTRATIVE LAW JUDGE: You're welcome.

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1 Mr. Carswell?

2 \*\*\*

3 BY MR. CARSWELL:

4 Q. I hope that doesn't reflect any improper  
5 ex parte communications with the USDA.

6 A. It does not. My counsel.

7 Q. Thank you. I'm just kidding.

8 A. No.

9 Q. Okay. So when did the proposed order --  
10 you had had a saleable quantity that would be part of  
11 the marketing policy presented to the Secretary,  
12 correct?

13 A. A -- yes. Some sort of -- yeah.

14 Q. And the saleable quantity could be  
15 restricted...

16 A. Well, I...

17 Q. ...through -- it could be restricted to a  
18 substantial degree...

19 A. Well, I think restricted is an  
20 interesting choice of words. I would rather use  
21 balancing the supply and demand rather than restricting  
22 supply.

23 Q. Right. But if market indications were  
24 such that it would seem to encourage or to call for a  
25 restriction, presumably a committee would act rationally

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1 and restrict the saleable quantity...

2 A. I would accept it in that term, yeah.

3 Q. And then during the year, though, that  
4 could be modified, is that...

5 A. It could only be raised.

6 Q. It could be raised.

7 A. Yes.

8 Q. Can you imagine a situation where a  
9 grower relying on what the committee has set as the  
10 saleable quantity, has grown his crops in accordance  
11 with that, based on the base that...

12 A. Right.

13 Q. ...he has and how much he could grow and  
14 that he could be fooled by the committee changing the  
15 amount of saleable during the course of the summer, for  
16 example.

17 A. Well, I don't characterize as one  
18 individual being fooled, it would be the industry. I  
19 mean, I don't -- I find it very unlikely that the  
20 committee could fool the industry. I mean, I think if  
21 there was a reason to raise a saleable in a year if  
22 something unforeseen has happened. I do not envision  
23 the committee restricting supply and then suddenly, you  
24 know, opening it up or raising it just to benefit a few  
25 growers. I can't see that.

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1 Q. Well, you mentioned under the last order  
2 that -- you know, that greed took over among certain  
3 committee members or...

4 A. I never said that.

5 Q. Okay.

6 A. In industry.

7 Q. Okay, in the industry. I thought you  
8 said even among committee members, but...

9 A. Well no, it was in reference to the pool,  
10 the previous pool that administered by the committee.  
11 It was not greed on the committee's part, it was  
12 probably if -- grower that was not on the administrative  
13 committee help pool hops and the ultimate disposition of  
14 those pool hops was controlled by a committee and maybe  
15 one of them didn't have any interest in the pool, you  
16 know, his -- and he wanted to use that pool to generate  
17 additional market demand by expanding in the market and  
18 that grower that had the pool hops may not agree with  
19 that. He'd rather get the higher price and maybe the  
20 administrative committee in whole would've voted to dump  
21 those hops to increase some market in an obscure country  
22 or something.

23 Q. Could you -- just as a hypothetical. I'm  
24 not saying that the committee would do this. Just  
25 hypothetically, under these provisions, could the

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1 committee set the saleable at some restricted level and  
2 then as the -- as their crops come in, they see that  
3 they're going to have a record yield on their farms of  
4 say, six members, because I think it takes out of eight  
5 to vote on something in the committee.

6 A. That's correct.

7 Q. Say six members determined that they were  
8 going to have an extra amount of hops at the end of the  
9 year and hypothetically, at least, they could raise the  
10 allotment to their advantage, couldn't they?

11 A. Well, I think that would be very  
12 shortsighted on the committee's part. I think I would  
13 be one of the very first ones to sign a recall or a  
14 revote. I mean -- you know, I would do as I think the  
15 committee has some degree of responsibility. If they  
16 start being irresponsible, it's very easy to recall  
17 them. You have a democratic process to elect those  
18 people. If a person -- we have term limits in this,  
19 too, so there's going to be a complete rotation. With  
20 only 50-some growers, I think every grower will have an  
21 opportunity to sit on that thing on one time or another  
22 because we don't have enough growers to rotate, so...

23 Q. Could you imagine, Mr. Roy, that the  
24 committee could make a decision like that that would  
25 advantage say, a majority of growers, but to the

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1 disadvantage of a minority of growers, that they may  
2 make such decisions based on that advantage for the  
3 majority?

4 A. Oh, I think we could put together any  
5 hypothetical that you or anybody in the audience could  
6 put together and yeah, there's always that possibility.  
7 The likelihood is very unlikely.

8 Q. What is the purpose of this provision  
9 that you can change it during the year? What is the  
10 purpose of...

11 A. Well, I think the purpose is to meet an  
12 unexpected demand that may arise. Let's say, I think,  
13 2003 would be a classic example of increasing the  
14 saleable. So let's say as time went on into September,  
15 or August, we recognized that there was a crop shortage  
16 in Germany, I would envision the committee getting  
17 together -- with input from the growers. I mean, we're  
18 talking relatively with only this many growers, and each  
19 voting member having essentially seven members -- or  
20 seven growers behind them, you know one out of seven is  
21 pretty good -- and in aggregate we would -- we would  
22 agree that it's in our best interest to raise the  
23 saleable to satisfy this momentary demand that may  
24 happen because of a crop failure in some country.

25 Q. Well, as far as what you're growing that

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1 year, you're not going to be able to then go out and  
2 plant a new crop, right? So it's going to be...

3 A. Well, I think -- but that doesn't exist  
4 even currently. I mean, if I respond to the current  
5 market conditions as I understand them, in the spring --  
6 okay, we faced -- this past spring we faced a market  
7 that was at .50 a pound. That clearly is below the cost  
8 of production, clearly. But there were individuals that  
9 chose to do that. That's fine. Even in this current  
10 marketing order, we allow as much freedom for individual  
11 growers to make their own pricing decisions. So in  
12 other words, I think -- I see a price that's going to be  
13 very competitive worldwide in a marketing order, or  
14 without a marketing order. They're not -- I think the  
15 price is not going to change dramatically. All we will  
16 gain is a degree of stability in the price with a  
17 marketing order. And then you'll still have the ability  
18 to respond to these crazy momentary demands that happen.

19 Q. But you wouldn't have any ability to  
20 respond to oversupply, is that correct? During the  
21 course of a season...

22 A. To an oversupply?

23 Q. You could reduce the amount of  
24 saleable...

25 A. That's correct.

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1 Q. Why do you not have that...

2 A. Well, I think that what it does is it's  
3 not fair to the growing community. If we set a saleable  
4 at 80 percent and 90 percent, whatever it may be,  
5 growers make contracts, they make planting decisions  
6 based on that and it's not fair to penalize them for a  
7 bad decision. I mean, I think -- we -- you know, as it  
8 was stated by Dr. Folwell that this -- the process the  
9 previous committee went through was actually pretty  
10 good. So I expect the same thing in current one, so --  
11 I think that, you know, all kinds of scenarios could  
12 exist, but I -- in a practical matter, I don't think it  
13 will.

14 Q. Well, you say the process was pretty  
15 good, but that -- I think I've heard testimony that it  
16 kind of fell apart at the end.

17 A. Well, I think what happened was -- I  
18 mean, I think if there had been the possibility -- if  
19 the current structure of the reserve pool as we've  
20 proposed it in this order had been in effect the  
21 previous one, you could've used a reserve pool to  
22 satisfy that temporary demand than -- well, I think we  
23 wouldn't have been the problem we were, because what  
24 happened was, in the last one I think it's been stated  
25 many times, there were contracts made at exorbitant

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1 prices, two or three times the cost of production. As  
2 it turned out, those hops were not needed. And in fact,  
3 in most cases -- in many cases -- I can't say most. In  
4 many cases the hops -- the contracts were bought back.  
5 So in other words, if I had sold hops at 2.50, well  
6 above my cost, and all of a sudden it -- it realized  
7 that the -- I'm sorry, the industry realized that those  
8 hops were not needed and the spot price went down to  
9 well below a dollar, I can't remember how low it went,  
10 but it went pretty low. And here you have a contract --  
11 you have a grower that didn't sign one of those 2.50  
12 contracts at .50 and you have a grower that has a 2.50  
13 contract up here, it was crazy. You had one going out  
14 of business and one, you know, enjoying a high price.  
15 What happened was the merchants actually went to the  
16 grower, says I'll give you a dollar and don't ever  
17 produce them. So the grower never had to even produce.  
18 It was very inefficient.

19 Q. You mentioned in your direct testimony  
20 that the Barth report provides "some degree of  
21 estimation of production around the world." That  
22 doesn't really sound very precise. Is it your belief  
23 that there will be precise information that will  
24 allow...

25 A. Well, I think...

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1 Q. I'm sorry, let me just finish.

2 A. Oh.

3 Q. The -- I'm sorry. The administrative  
4 committee to make rational decisions?

5 A. Well, I think there's a lot information  
6 out there and one of the problems is confidentiality.  
7 We have state commissions that can collect a certain  
8 amount of information under state statute that  
9 guarantees confidentiality and that information cannot  
10 be shared with anybody else. I envision that there's --  
11 I know for a fact in the marketing order, as it's  
12 proposed, there is confidentiality, so I think you're  
13 going to see some information accumulated that may not  
14 be able to be accumulated as it is now because of  
15 confidentiality. And I...

16 Q. If -- I'm sorry. Go ahead.

17 A. I think that will lead to a -- some  
18 better informed statistics and decision making.

19 Q. Will there be greater access to  
20 information from foreign sources, from Germany and other  
21 countries?

22 A. Well, I think Germany has a very  
23 transparent system as it is right now. They have  
24 mandatory contract reporting, part of the EU policy.

25 Q. Um-hum.

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1           A.    So every contract that's entered into in  
2 Germany, and I believe all the way across the EU is  
3 recorded. The price, the quantity, and that's recorded  
4 on a regular basis. So I think that information's  
5 available, so -- as much of that's available -- other  
6 parts, too.

7           Q.    But there's no ability by the committee  
8 under this proposal to control production in the EU or  
9 elsewhere?

10          A.    No, no.

11          Q.    And I'm just wondering, you know, during  
12 the set-aside program, you were trying to control local  
13 production, is that correct?

14          A.    That's correct.

15          Q.    And I'm wondering how would you expect --  
16 or do you expect to limit production in response to a  
17 restriction in the US supply -- production around the  
18 world? Let me say it again.

19          A.    Yeah.

20          Q.    I don't -- I wonder, do you think that  
21 you're going to be able to limit production around the  
22 world in response to a restriction by the hop  
23 administrative committee of the US supply -- of the US  
24 saleable supply?

25          A.    They're not tied together. I mean, what

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1 we do -- every country is free to do what they want, but  
2 I think it's been, as stated in much testimony through  
3 this hearing, in most countries, it takes two, three,  
4 maybe four years in some cases, to get to full  
5 production. So they're planting horizons are a lot  
6 longer than the United States. So in other words, the  
7 United States can respond very quickly to a demand. If  
8 we want to go -- you know, we want to increase our  
9 market share, maybe we would put a little bit extra on  
10 the market and start, you know, trying to develop  
11 business for the United States.

12 Q. We've seen over the last decade from '92  
13 to 2002, a doubling of alpha acid pounds in Germany.  
14 You don't -- are you not concerned that you're going to  
15 see further increases in the production of alpha acid by  
16 Germany?

17 A. Well, I think that potential exists. I  
18 think the United States, in working together, could  
19 become a very formidable force around the world. I  
20 think that it's coming at the expense of some other  
21 countries, too, so it Germany's increased, you know,  
22 that's why it is the way it is. I think that -- so...

23 Q. You've -- you mentioned -- and this --  
24 just one more question about the seven growers issue.  
25 You mentioned that...

1 A. Seven?

2 Q. Or six. You said six, I'm sorry.

3 A. Yeah.

4 Q. That -- you know, you felt for them and  
5 you gave them these bales. Were -- would you  
6 characterize these growers as opponents or proponents of  
7 the marketing order?

8 A. I do not know.

9 Q. For none of the six, you don't whether  
10 they oppose or...

11 A. I do not know how they will vote.

12 Q. Okay. Do you have any idea of how they  
13 might vote?

14 A. I do not. They will get a vote, though.  
15 Hopefully. I mean, you know, the fact of the matter is,  
16 I'm not even sure how I will ultimately vote. As this -  
17 - as we go through this process, which this is a process  
18 to arrive at a -- hopefully, a vote on a proposed order.  
19 I think what we've presented here, what you've presented  
20 here, what the Department decides, will ultimately lead  
21 to, hopefully, a document that we as an industry can  
22 vote on. At that time I will look at the document and  
23 just make my final decision on voting. Am I a  
24 proponent? Yes. How I became a proponent was, through  
25 this process of all these industry meetings, I

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1 volunteered or was elected, I'm not sure you want to  
2 characterize it, to represent the industry and try to  
3 put together a program. And so this group of proponents  
4 here -- I mean, there's proponents that were absolutely  
5 against a marketing order when we started this process,  
6 absolutely against it. And more than one. And we went  
7 through a process of talking to people and we ended up  
8 here. And to characterize us as being the absolute  
9 proponents, no. Every one of these people along this  
10 board have been against what we've done, we've listened  
11 to a consensus, we've arrived at this hearing.

12 Q. Are there some folks who were initially  
13 in favor of the marketing order who are now not in favor  
14 of it?

15 A. I -- for one reason or another, I would  
16 think so.

17 Q. So do you think the industry really has a  
18 consensus at this point?

19 A. I don't know. When it comes time to  
20 vote, the industry will come to some sort of consensus  
21 and that's all I hope for. I mean, I am not -- if we --  
22 my hope is that we get to a vote. Let the growers  
23 decide. If the growers decide that they do not want to  
24 accept language that comes out of this hearing, that's  
25 their choice. And then I will go forward -- we all will

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1 go forward as an industry one way or another.

2 Q. This isn't asking the question again.  
3 Not precisely, but at the time that you provided those  
4 bales to those...

5 A. Yes.

6 Q. ...growers, did you have any idea of how  
7 you think -- how you thought they might vote?

8 A. To tell you the truth, I don't even know  
9 who some of them are. And that's the honest to God's  
10 truth. I had a set of grower numbers that were handed  
11 to me and since I had made the statement earlier, I was  
12 -- I would do what I did, I did. And I really do not  
13 know some of these -- who these people are.

14 Q. Who gave you the grower numbers?

15 A. I received them from various sources.  
16 Multiple people.

17 Q. Who was...

18 A. In fact, the one grower actually asked me  
19 to do it for him and I said yes.

20 Q. Who provided you those numbers?

21 A. Steve Carpenter.

22 Q. Okay. If Anheuser-Busch had a three-year  
23 contract that it was going to enter into in the fall of  
24 -- excuse me, in the spring of 2004, and presume that  
25 the order's been implemented already and so it's in

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1 place and the saleable quantity has been set and you  
2 know, by November -- mid-November of 2003. We really  
3 expedited this process, didn't we? You've got it done.  
4 Would Anheuser-Busch know what the saleable quantity for  
5 its -- if they did a three-year contract -- would they  
6 know, with respect to just an individual grower, what  
7 that individual grower's saleable quantity would be in  
8 years 2004?

9 A. Given the hypothetical, I think the  
10 committee will have some -- will give some indication  
11 -- once the decision's made, they would know.

12 Q. I think they would know for 2004...

13 A. If given that we could somehow get to a  
14 vote very quickly and we had to set a committee...

15 Q. Right.

16 A. Yeah. I mean, if everybody came together  
17 and say everything needed to be done was done, yes,  
18 Anheuser-Busch would know.

19 Q. I should've made the hypothetical start  
20 in 2005, but...

21 A. Yeah.

22 Q. Let's keep it at 2004. You've got  
23 everything done, you've got it set...

24 A. Yeah.

25 Q. ...though it could be raised, the

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1 saleable quantity could be raised, that's...

2 A. That's correct.

3 Q. Would AB know what the grower's saleable  
4 quantity would be in 2005?

5 A. In a sense, they would. I mean, that's  
6 where this idea of contracting -- if Anheuser-Busch were  
7 to be worried about this issue, I would highly encourage  
8 them to be the first contract. If they're the first  
9 contract, they will get their hops. They are the first  
10 ones on the list.

11 Q. But that wasn't my question. My question  
12 was would we know what the grower's saleable quantity  
13 would be in 2005?

14 A. I'm not sure how the committee would  
15 address that. I don't -- I mean, I think the committee  
16 should give some indication. I would hope the committee  
17 would give some indication of what their thinking was  
18 for the next two, three, four years and you could --  
19 people could rely on that as, you know, some...

20 Q. They don't set it except every year,  
21 right?

22 A. That's correct, that's correct.

23 Q. Um-hum. So we couldn't know, right?

24 A. In the case you've presented, you would  
25 only know one year in advance.

1 Q. Not only theoretically, but as a fact.

2 A. As a fact.

3 Q. As a fact, we couldn't know.

4 A. That's correct.

5 Q. And we also couldn't know what saleable  
6 quantity would be set for 2006, isn't that true?

7 A. And what I -- as I stated, the first  
8 contract gets the first -- I'm not looking at, you know  
9 -- there's going to be every grower has a certain degree  
10 of base they could sell. Given the alpha factor of the  
11 particular variety that Anheuser-Busch buys, Willamette  
12 at 3.5, for every pound of alpha base I get, I can  
13 deliver three pounds of Willamettes. I would suspect  
14 there's lots of potential in each grower's allotment to  
15 guarantee Anheuser-Busch. I know in our case, we would  
16 make sure that those contracts are delivered.

17 Q. So brewers who get in first are going to  
18 be at an advantage over brewers who contract last, is  
19 that accurate?

20 A. Well, as I say, yeah, the last contract  
21 made is the one that probably has a higher degree of  
22 risk, if especially into longer future. The longer you  
23 go out, the more risk there is, probably.

24 Q. And so if Anheuser-Busch doesn't want to  
25 enter into a contract because Anheuser-Busch is

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1 concerned that this is going to raise price and cost for  
2 US growers and thus will also look at foreign sources of  
3 supply, Anheuser-Busch will be disadvantaged by not  
4 doing a contract?

5 A. That's their decision. I can't -- you  
6 know, I can't -- I, you know, think what they would do.  
7 I think, you know, in the past, the pricing mechanism  
8 that the direct sales have been agreed on between  
9 growers and Anheuser-Busch has been -- has not been  
10 influenced by the rise and fall of prices other than  
11 those, you know, the alpha hops or whatever the other  
12 varieties. Anheuser-Busch price has been very stable.  
13 So I can't see that changing, because a grower still has  
14 a decision. If Anheuser-Busch feels that the prices are  
15 unduly being raised, they say -- they tell -- you know,  
16 if they -- if you come together and you agree these are  
17 your costs, these are your yields, and this is the price  
18 that we feel is fair, between -- working together, it's  
19 a grower's decision, as it will be without a marketing  
20 order or with a marketing order. The growers still  
21 ultimately make the decision of their price point.

22 Q. And the grower would enter into that  
23 contract not knowing what saleable quantity he would  
24 have, is that correct? In successive years.

25 A. Well, I think that there's a degree of

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1 uncertainty, there's no doubt, but I think that if you  
2 could make -- if the contract was in place, that would  
3 be the first contract on -- or the first or second or  
4 third, somewhere low in the whole volume and they would  
5 be their delivery.

6 Q. But for the seller, he won't know -- in  
7 terms of setting his price, he takes into account his  
8 costs, is that...

9 A. That's true.

10 Q. And he won't know what his cost -- his  
11 increased cost may be that would be necessitated by him  
12 buying base, is that accurate?

13 A. I mean, it's hard to know what -- I mean,  
14 I would think, in my view, that if Anheuser-Busch -- I  
15 hate to pick on those guys, but if they were to want to  
16 have the hops, they make the -- they become the first  
17 contract, second or third -- the risk really comes on  
18 the alpha side where it should be. The bitter hops.  
19 Those are the ones that are -- aren't contracted. Those  
20 are the ones that seem to be the most speculative in  
21 nature in that there are very few contracts and they're  
22 -- more sales would be made late in the season.

23 Q. So...

24 A. I -- in a practical manner, I envision  
25 that that would not be an issue.

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1 Q. The -- 991.52 C, if we could pull that  
2 up. It must be -- I'm sorry, it must be 51 C? It's the  
3 one -- it's 52 C, yeah.

4 A. Yeah.

5 Q. This is it.

6 \*\*\*

7 ADMINISTRATIVE LAW JUDGE: I just want to  
8 mention again that there are plenty of copies of the  
9 regulations in the back of the room. As you came in the  
10 entrance doors, they're right there on your left, so  
11 feel free to get those if you do not have them for this  
12 discussion.

13 \*\*\*

14 BY MR. CARSWELL:

15 Q. Mr. Roy, is there a three year average  
16 set for most varieties at this point in time?

17 A. No.

18 Q. Is there...

19 A. Well, I think there's averages that exist  
20 out there. I think it's not -- it goes back to this  
21 issue of confidentiality. I mean, I think it could be a  
22 acquired, but it's not routinely acquired at this point  
23 in time.

24 Q. How does the committee plan to get the  
25 three year average that's described here?

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1           A.    I don't know.  I'm sure they will be able  
2 to figure that out.

3           Q.    Could there be -- I'm sorry.  Could there  
4 be some possibility of gaming the situation because of  
5 what average they set?

6           A.    In what way?

7           Q.    Well, it would seem like people who grow  
8 -- this is what -- the three year average is going to  
9 establish, I think, the amount of -- it's going to set  
10 for each member of the industry...

11          A.    Um-hum.

12          Q.    ...how much they can grow.  Their -- a  
13 pound of...

14          A.    Yes.

15          Q.    ...Willamette is going to get -- there's  
16 going to be an average set, say it's four and a half  
17 percent.

18          A.    Correct.

19          Q.    And somebody who grows at three and a  
20 half percent Willamette is going -- it would seem to me  
21 to be disadvantaged, because they're going to be able to  
22 grow the -- sell the same -- let me use an alpha.

23          A.    I think that would be better.

24          Q.    Let me use an alpha.  A Nugget.  What is  
25 your estimate of an average yield on an average alpha

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1 percent for a Nugget?

2 A. 12 and a half to 13 or something like  
3 that. Maybe 13, 14. It's hard to know.

4 Q. Right, okay. But...

5 A. That information is available, so...

6 Q. It's not...

7 A. Use a number and I'll agree with you.

8 Q. Okay. Let's say 13.

9 A. Okay.

10 Q. And then let's say there's a grower in  
11 Oregon who's only getting 11 percent...

12 A. Correct.

13 Q. ...alpha for his Nugget.

14 A. Correct.

15 Q. It would seem like that grower is going  
16 to be -- if you're selling the alpha acid and that  
17 grower's going to get an allotment based on 13 percent,  
18 that he's going to be at a disadvantage vis-à-vis a  
19 grower who has an alpha -- a true alpha of 14 percent  
20 for Nugget. It could be that one with the 14 percent's  
21 going to have a substantial advantage, it would seem to  
22 me.

23 A. Does that advantage exist today? In the  
24 current market?

25 Q. Well, I guess the person with the 11

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1 percent's not going to be constricted in the amount he  
2 can sell today.

3 A. I think you misunderstand how that would  
4 work.

5 Q. Um-hum.

6 A. If we set an alpha factor at 13...

7 Q. Uh-huh.

8 A. ...that means a grower -- multiply -- is  
9 that times his average yield, let's say is 2,000.

10 Q. Um-hum.

11 A. That comes up to 260 pounds of alpha.

12 Q. Um-hum.

13 A. That he utilizes.

14 Q. Um-hum.

15 A. Whether he produces a -- actually  
16 produces 11 or he produces a 14, what goes against his  
17 allotment base is that 260.

18 Q. Um-hum.

19 A. Now, I will agree that the grower that  
20 produces over the 13 will end up with extra alpha, this  
21 is really -- is over and above what, you know -- so if  
22 he -- if I want to get charged 260 pounds against my  
23 allotment and I produce a 14 or something higher, yeah,  
24 I get some extra allotment. But the issue is, as I  
25 stated earlier, the general -- the vast majority of hops

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1 are sold by the pound, so those extra pounds of alpha --  
2 so if the grower only gets charged 260, that extra  
3 alpha's going -- is going to the handler, or the  
4 merchant or whoever buys them. So the grower doesn't  
5 get any benefit in that scenario. Now in some scenarios  
6 where a grower may neglect to assume risk and process  
7 those hops himself, yeah, there is a gain.

8 Q. Well, I thought there was quite a lot of  
9 sale of, on the alpha side, of extract and pellets.

10 A. Given that the growers are carrying  
11 inventory to that degree, yes. So -- because growers  
12 have put hops into pellets and extract to store them. I  
13 would agree.

14 Q. And so the high -- the...

15 A. So in that case, every grower would  
16 benefit.

17 Q. But the farmer growing the extra alpha  
18 would have an advantage in that...

19 A. So every grower that stored inventory  
20 would get the benefit. Not just a select few.

21 Q. Well, not -- the stored inventory was of  
22 an alpha content less than 13 percent. They wouldn't  
23 get the benefit, would they?

24 A. If they processed them all the way to the  
25 end? No, they would not.

1 Q. Okay.

2 A. But it does lead to some efficiencies,  
3 doesn't it? A change in policies.

4 Q. It seems to me that this ability to  
5 change during the course of the year to increase the  
6 allotment creates -- you know, unpredictability for  
7 growers, because they're not going to know what they --  
8 or they're not going to truly know how much they're  
9 going to be able to sell post-harvest?

10 A. That's true. I mean, I think -- you know  
11 the minimum. You know what -- when you -- given the  
12 knowledge we have at the time the decision is made, you  
13 know. Now, if things unforeseen come into play, I think  
14 that's very responsible management of a program to  
15 address the demand. I think the goal of this thing has  
16 always been to address demand for US hops. To whatever  
17 degree, if necessary. We've allowed a lot flexibility  
18 in this program to meet those unexpected demands,  
19 reoccurring demands.

20 Q. But it addresses one way, but it doesn't  
21 address it the other...

22 A. You mean as an oversupply or something...

23 Q. Yes, sir. Um-hum.

24 A. I agree. That would be addressed in the  
25 following year, I would suspect.

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1 Q. Um-hum.

2 \*\*\*

3 [Off the Record]

4 [On the Record]

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: We're back on  
7 record. We changed the tape at 3:06. Mr. Carwsell?

8 \*\*\*

9 BY MR. CARSWELL:

10 Q. Thank you, Your Honor. On the three year  
11 average...

12 A. Yeah.

13 Q. You don't know who that's going to be.

14 A. That would be up to the committee to  
15 decide.

16 Q. Okay. And there's no public information  
17 available to establish that? Or is...

18 A. Well, I think there's information. I  
19 think, you know, the Barth report has a number here.  
20 That's one group's estimate. I know the Steiner report  
21 has reports out that's -- again, that's one group's  
22 estimate. I thing Hop Growers of America put out a  
23 number. That's -- again, that's a compilation of  
24 multiple groups. Yakima Chief puts out some number.  
25 But those are just estimates, you know, individual group

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1 estimates. I think there's enough information out  
2 there, given the confidentiality that would be afforded  
3 the marketing order, that could acquire the correct  
4 data. And I think -- you know, I think we can arrive at  
5 a number that's pretty reflective of the industry.

6 Q. Would it be accurate to say that on a  
7 given high alpha that Washington typically -- Washington  
8 growers are able to get a higher alpha percent versus  
9 Oregon and Idaho growers?

10 A. Depends on varieties. I know that in a  
11 variety Nugget, Oregon beats the heck out of us. They  
12 don't raise any super alphas, as been indicated, so  
13 that's really a non-issue.

14 Q. Um-hum.

15 A. In Willamettes, they raise a higher alpha  
16 than the state of Washington.

17 Q. Um-hum.

18 A. Those are two major varieties. So in  
19 those two cases, Oregon is higher than the state of  
20 Washington.

21 Q. You mentioned that you felt like under a  
22 hop marketing order that the US market is going to  
23 increase its market share.

24 A. I do. We can work together to get to  
25 that.

1 Q. How do you think that that can happen if  
2 you're going to add the cost of base allotments to  
3 the...

4 A. Well...

5 Q. ...costs of US growers or some US  
6 growers?

7 A. Yeah, I mean, the stability that the  
8 marketing order affords us, the investment is a cost.  
9 There's no doubt around it. I mean, if I want to  
10 increase my production, I will have to expend some  
11 degree of money to acquire base. Even in the current  
12 proposal, our company will probably have to acquire base  
13 either through rentals or purchases to maintain our  
14 production. But I do feel that investment in a stable  
15 market is okay. I'm investing in grape allotment that  
16 allows me to produce so many acres. I'm investing in  
17 Tree Top paper that allows me to deliver processed  
18 apples to the Tree Top Co-op. I have just invested in  
19 the sum of \$2,000 an acre to invest in a Jazz apple from  
20 New Zealand, proprietary apple that's restricted supply  
21 that I will not be able to deliver for another three  
22 years, but I've already made that made investment and I  
23 feel I can get that money back. So I'm making  
24 investments on a regular basis. This is not hop -- what  
25 we're proposing here is not really unique. It's what's

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1 happening in the agricultural industry.

2 Q. With respect to those investments, are  
3 those in areas where there's a hop marketing order in  
4 effect?

5 A. A hop marketing order on apples?

6 Q. A marketing in effect, I'm sorry.

7 A. Well, I think it's interesting in the  
8 Welch paper. It is controlled production. Is it a  
9 federal -- no, it's a private marketing order of that  
10 company. Tree Top, the same thing. Private control of  
11 production.

12 Q. I don't know the details on those, but --  
13 and I don't know if we want to, you know, get into...

14 A. Yeah.

15 Q. ...it, but...

16 A. I think...

17 Q. ...government mandated...

18 A. Well, I think in the case of...

19 Q. Is that saleable amount restrictions?

20 A. Government sanctioned. Okay, is a patent  
21 a government sanction? It is. It's a right to maintain  
22 that patent. So if New Zealand comes here, establishes  
23 a patent, they have government approval for that patent.  
24 They can control who raises it and what -- how much is  
25 raised.

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1 Q. Because they own that...

2 A. That's right. It's government  
3 sanctioned.

4 Q. Right. But it's government sanctioned,  
5 but it's individual...

6 A. Well, it's the same thing on a...

7 Q. ...market player...

8 A. Yeah, but if Welch's or Tree Top or  
9 grower cooperatives, as sanctioned by the government in  
10 their structure -- I mean, it's similar things. How  
11 they're structured is just semantics as far as I'm  
12 concerned.

13 Q. So you know, there's going to be  
14 increased cost in the system, at least for some growers.

15 A. For some growers. I mean, it's the same  
16 thing when we grew during the last marketing order, when  
17 we started out probably in -- well, I -- I'd have to  
18 think back. I know in 1973, when I came back to the  
19 farm and dug ditches for four years with a college  
20 degree -- economics, by the way. We had about five, six  
21 hundred acres. And during the marketing order, we did  
22 grow to well over a thousand acres during that time.  
23 And we bought base, we rented base, we did all kinds of  
24 things. But the stability allowed us to make those  
25 investments and we felt they brought back value to us,

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1 otherwise we would not have done it. And at that time,  
2 we were 100 percent hops. We did not have any other  
3 commodity that we raised. And we did okay during that  
4 time.

5 Q. Well, now you've answered the question  
6 why Dr. Tweeten got his doctorate.

7 A. I had a couple days I was wondering.

8 Q. You know, we've got increased costs under  
9 a marketing order and you can't control production --  
10 foreign production under a marketing order. I don't see  
11 how you think you're going to increase market share.  
12 Can you elaborate on that?

13 A. I think market share generally can be  
14 acquired by innovation and varieties, efficiencies,  
15 which we can address as an industry. You can acquire  
16 market share by price. I mean, it's hard to know --  
17 there's all kinds of ways to acquire market share.

18 Q. But if you -- I would think that you're  
19 increasing production -- excuse me. You would lose  
20 market share if you increase price and world production  
21 remains at the same pricing because they don't have  
22 additional costs. Wouldn't you lose market share? If  
23 you increase price, if you restricted supply...

24 A. Well, I think you can increase price  
25 given -- I mean, irresponsible to the prices of the

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1 world, for given exchange rates -- we could -- if the  
2 exchange rate went the right way, we could raise our  
3 price and still increase our market share and maximize  
4 our returns.

5 Q. But given -- taking a variable that you  
6 can't control, such as exchange rates, out of the  
7 equation, if you increase price and because you've  
8 restricted production of US hops and wouldn't you expect  
9 foreign production to take market share away from the US  
10 hop production?

11 A. There is no provision in this marketing  
12 order to raise price. All we're doing is balancing  
13 supply and demand. And what's unique about this, the  
14 grower still has a choice of his ultimate price point,  
15 whatever that may be. So in other words, a grower can  
16 look at what the world prices -- we're not going to be  
17 immune from the world prices. We cannot be. So the  
18 growers will be able to price their commodity at  
19 whatever level they want and I think that's the  
20 important part of this. You know, let them choose. Let  
21 the growers choose. There's no price point that we're  
22 going after. The problem is we're looking for the  
23 stability of the marketing order. These wild price  
24 swings -- when you're going from .50 to well over a  
25 dollar in less than four or five months, that's --

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1 something's not right. That's not very efficient.

2 Q. But if you -- it's my understanding  
3 you're trying to achieve equilibrium and to date, the  
4 problem has been oversupply according to...

5 A. That's correct.

6 Q. ...the proponents committee. And so the  
7 idea would be to -- presumably, would be to have less  
8 supply in those situations where -- or to have supply  
9 meet demand and thus, to achieve better pricing, I would  
10 think. I...

11 A. There's no discussion about price.

12 Q. Well...

13 A. I mean, I think you've noticed...

14 Q. I know it's not in the body of text, but  
15 there's been a lot of discussion about how oversupply  
16 has cause low prices. Is that...

17 A. Well, I think, as I stated, over time --  
18 as an analogy, if you're climbing to the top of Mt.  
19 Rainier, there's a lot of ways to get to it, but you get  
20 to the top, ultimately. The same thing over time, I do  
21 not see the pricing changing dramatically between with a  
22 marketing order, without a marketing order. I think you  
23 still have to be responsive to world pricing and what's  
24 happening in the world. There's no doubt we have to be  
25 responsive. The problem is this up and down stuff is

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1 what's killing us. Hops in, hops out. And it's very  
2 inefficient and so it's actually costing our industry  
3 money. We're losing money by this inefficiency. So if  
4 we can gain some degree of stability, which ultimately  
5 leads to, you know, a stable price, I think we're better  
6 off in aggregate.

7 Q. Would you support a marketing order that  
8 would result in pricing that you had in 2002?

9 A. I'm not sure if I fully understand that.  
10 What do you mean?

11 Q. Would you support a marketing order if  
12 the result were that you would have the pricing that you  
13 -- that the industry saw in 2002?

14 A. The pricing in 2002 was from no demand,  
15 no contract, no market to growers that signed contracts  
16 in 2002 in the spring at .50 or less, to growers that  
17 sold post-harvest at well over a dollar. And we're  
18 talking about one variety. I'm not going to mix  
19 varieties here. We -- that's a whole other discussion.  
20 We have one variety that went from .50 to over a dollar  
21 to no demand. I don't think you could sell them. We  
22 have hops that there is no demand. There is no  
23 structural demand for those hops right now. I mean --  
24 do I want that? No, I don't.

25 Q. So you wouldn't support it -- you

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1 wouldn't support an order that would -- unless it -- if,  
2 in your view, would increase pricing versus...

3 A. No.

4 Q. ...2002?

5 A. I have not said increased pricing.  
6 Stable prices. And I think that could be achieved over  
7 time. I don't think it's going to happen initially, but  
8 over time, if the committee functions properly, you will  
9 see some stable prices.

10 Q. But it's your testimony that you don't  
11 expect to achieve higher pricing under the order.

12 A. In -- versus .50?

13 Q. Versus the -- yeah, the market...

14 A. I mean, I would expect a higher price  
15 than .50. If you have a price expectation for that,  
16 yeah. But I think I'm looking for stable prices long  
17 term. I'm looking at this as more of a long-term  
18 investment in my time, my assets, my resources, not for  
19 a quick fix in 2004, 2005. This is more of a longer  
20 term issue.

21 Q. So the stabilization of prices, would you  
22 define that as having pricing between certain levels?

23 A. I have no way to quantify that.

24 Q. Well, what do you mean by stabilization?

25 A. Well, I think, as I stated, over time

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1 prices -- I mean, we're going to have the -- if you  
2 average the prices without a marketing order and over a  
3 -- I'm not sure average would be the proper word, but we  
4 have to generate a price that is -- returns our cost of  
5 production plus a return on investment. Otherwise, our  
6 industry's dead. If we can't get that, we're dead.

7 Q. You indicated earlier that generally you  
8 haven't had an issue with respect to growers getting a  
9 rate of return over the last 17 years.

10 \*\*\*

11 MR. MONAHAN: Your Honor, I don't think the  
12 witness finished his answer.

13 MR. ROY: Yet.

14 MR. CARSWELL: I apologize.

15 MR. ROY: Yeah, so I mean if -- now I lost  
16 my...

17 MR. CARSWELL: I'm sorry.

18 MR. ROY: That's all right. But I think that  
19 ultimately you arrive at a stable price over time.  
20 Again, I don't see the price with a marketing order's  
21 going to generate these excess profits for the growers.  
22 We're still going to have to be responsive to the world  
23 demand. But it does bring stability. And if you want  
24 to talk about market signals to another country, if  
25 we're getting these wide price fluctuations, when a

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1 price goes well over \$2 or \$3 a pound, you have  
2 countries really scratching their head. But if you have  
3 a stable price that's adequate, then growers, you know,  
4 people are probably more -- and I think the United  
5 States can be very competitive, so I think I don't see  
6 the signals being as strong as the other way.

7 \*\*\*

8 BY MR. CARSWELL:

9 Q. Well, for a grower it has the added cost  
10 of buying base and under what you would deem to be a  
11 stable price, isn't he less competitive versus a foreign  
12 producer who doesn't have that added cost in his system?

13 A. Well, it's more complicated. Just a  
14 simple addition of allotment base -- I mean, I think the  
15 inefficiencies that are in the current system, the costs  
16 I may have to incur. I'm not even sure if I will incur  
17 costs, who knows? But we don't -- we're -- you know,  
18 it's a hypothetical that growers will have to incur  
19 cost. But I think the inefficiencies that are in the  
20 current system and the cost I may have to incur by  
21 buying or leasing base, I think those offset themselves  
22 and might even be -- you can make a case that's more  
23 efficient to pay a certain degree for leasing base or  
24 buying base rather than this inefficiency that -- in the  
25 current system.

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1 Q. Would you agree, generally speaking, that  
2 open competition among growers in an industry is  
3 healthy?

4 A. Yes, absolutely.

5 Q. Back to the -- and I'm almost finished.  
6 Back to the set-aside.

7 A. Um-hum.

8 Q. There were [sic] a group of growers who  
9 were very much against it.

10 A. In 2001-2002?

11 Q. Yes, sir. I guess both years.

12 A. 2002.

13 Q. Okay.

14 A. Yeah.

15 Q. And I think they said that it was because  
16 they were under contract, or at least some of them were  
17 against it because they were under contract.

18 A. And those various reasons.

19 Q. And so it didn't work as a voluntary  
20 program. Are those people the same people, or at least  
21 some of the same people who are now opponents of the  
22 proposed marketing order?

23 A. To some degree.

24 Q. And is that because what they saw is  
25 against their economic interest then is against -- that

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1 the marketing order would be against their economic  
2 interest now?

3 A. I have -- I presume there's multiple  
4 reasons why they're opposed to it. I'm not totally  
5 aware of all reasons. I think they're -- they -- I'm  
6 not sure. I mean, I think there's many reasons.

7 Q. You mentioned that there were going to be  
8 inequities at the outset of this -- of the marketing  
9 order if it gets passed.

10 A. Right.

11 Q. What are those?

12 A. Well, I think there's going to have to be  
13 some allotment that we'll have to shuffle around. If  
14 you look at the mint order, quite a bit of the base went  
15 for zero -- with a bona fide effort use it or lose it,  
16 many growers were faced with losing it, especially in  
17 the mint order. I'm using that as an example. So  
18 growers would say just take it. Here, I'll sign it to  
19 you. If a grower that could produce it. You had to  
20 prove that you could produce it. So I -- you know,  
21 maybe there's some that will go, some -- I don't know.

22 Q. Do...

23 A. It's hard to know to -- you know, to know  
24 exactly how this thing will play out.

25 Q. Do you think that the people who foresee

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1 that they would be the ones who would have to buy base  
2 would -- are the same folks who may be in general  
3 against the marketing order?

4 A. I think so. I think that would be a  
5 major reason. I think, for some reason, they feel that  
6 they're absolutely going to be -- have to buy base. We  
7 don't know that for a fact, but they believe -- they've  
8 taken the worst case scenario and put that as their main  
9 reason. And the worst case scenario, we don't know what  
10 scenario will exist once this thing -- if this thing  
11 would be put in.

12 Q. Do you think it's fair to create a system  
13 that would force them to have to do something they don't  
14 want to do?

15 A. They don't have to do it.

16 Q. That they would have to do to continue to  
17 produce hops or expand production of hops?

18 A. If I choose to expand and I invest in  
19 base? You know, it's interesting. Once -- you know,  
20 once -- it's a cost. If it makes sense to me for stable  
21 prices, so be it. And the inefficiencies I'm  
22 experiencing right now, taking hops in, taking hops out,  
23 is not very cost-effective.

24 Q. What if it doesn't make sense to them?

25 A. That's their choice.

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1 Q. But it won't be their choice if you get  
2 this passed, will it? It won't be their choice...

3 A. But it's still their choice if they want  
4 to invest into the future or just not invest. That's  
5 their choice. I mean, if we create -- if this thing is  
6 operated properly, we create a stable environment and it  
7 may -- it's their choice if they want to invest in the  
8 future of this industry.

9 Q. But they would have to invest in  
10 something that they would otherwise not invest in. And  
11 that they wouldn't want to invest in.

12 A. Maybe their -- for whatever reason, their  
13 time horizons are different than mine or some of the  
14 other people. That's their choice again.

15 Q. But you do see that as inequity?

16 A. I don't -- I would not agree that it's  
17 inequitable.

18 Q. I think you said earlier that there would  
19 be some inequities in the...

20 A. Right. Inequities in some people would  
21 have to buy base, some people would have to rent base,  
22 some people would be selling base.

23 Q. Yeah, this...

24 A. But I accept that. I mean, even in our  
25 case, we're going to have to buy base. I know it. I

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1 absolutely -- there's no scenario I can put forth that  
2 would not necessitate us having to lease or buy base.  
3 But I accept that. And as a general good for the  
4 industry and for a stronger industry in the long term, I  
5 accept that.

6 Q. Might you be in a better economic  
7 situation to buy base as compared to some of these other  
8 growers who would have to buy base?

9 A. I couldn't comment on that.

10 Q. Are you in a pretty good economic  
11 situation?

12 A. I'm not sure how my stockholders would  
13 agree on that.

14 Q. Do you think it's more fair to let free  
15 competition among growers decide who survives long term  
16 or a mandated set of controls that would decide who  
17 survives and who doesn't?

18 A. I don't think that these controls  
19 determine who survives. It's still a grower's decision  
20 of what he sells for, what he does long term, so...

21 Q. Turning to page -- this is -- really, I'm  
22 getting close to the end here. Page six of the Barth  
23 report and page twelve of the Hop Growers 2002  
24 Statistical Report...

25 A. Which ones would you have me turn to?

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1 Six or twelve, you said?

2 Q. Yes, sir.

3 A. You said one of one and one of Hop  
4 Growers of America, one of the Barth report, or...

5 Q. Yes, sir. Page six of the Barth report  
6 and page twelve of the Hop Growers 2002 Report --  
7 Statistical Report. The...

8 A. Okay.

9 Q. The 2002 report was used by Brendan  
10 during his cross-examination of Dr. Jekanowski.

11 A. Which one? The HGA one?

12 Q. Of the -- yes, sir. The HGA report and  
13 probably because he didn't know about the -- because it  
14 was, you know, this was before this -- the Barth report  
15 came into the record. So I'm certainly not denigrating  
16 Mr. Monahan for doing that. But I just want to look at  
17 the numbers here real quick on the forward contract  
18 rates.

19 A. Are you -- on HG are you on page six?

20 Q. No, sir. I'm sorry, I'm on page twelve  
21 on that one.

22 A. Okay.

23 Q. And then page six of the Barth -- the  
24 bottom left-hand corner on the Barth.

25 A. Okay.

1 Q. Bottom of the page on page twelve of the  
2 HGA survey. And if you look at on the last -- on the  
3 bottom of page six, you'll see under the US the forward  
4 contract rates and percentages and I know, for example,  
5 under the HGA survey for 2003, the percent sold ahead is  
6 56 percent. Is that correct? For the 2003 contract.

7 A. In what year? In the -- there's  
8 different years that you go across there.

9 Q. Right, but you see that there's on...

10 A. Okay.

11 Q. ...the forward contracting...

12 A. Right, that's...

13 Q. ...under 2003, there's 56 percent...

14 A. In the year 2002 on the left.

15 Q. Yes, sir.

16 A. Okay.

17 Q. And under 2003 in the Barth report, now,  
18 69 percent of that is contracted, I believe. Is that  
19 accurate?

20 A. That's what -- so they state.

21 Q. And then also, under -- back on the HGA  
22 for 2004 it shows 33 percent?

23 A. Correct.

24 Q. And under the Barth report now 2004 is 45  
25 percent?

1 A. Correct.

2 Q. Under 2005, you've got 25 percent under  
3 the HGA report and 32 percent under the Barth report.  
4 So that -- I guess I just want to get on the record the  
5 current numbers.

6 A. Okay.

7 Q. Are those accurate?

8 A. As presented in both tables.

9 Q. Thank you. Would you imagine that there  
10 may be more forward contracting considering the current  
11 crop season and the situation in Germany and the  
12 increased balance that I believe Mike Smith has  
13 indicated exist now?

14 A. For the years -- which year? 2004?

15 Q. Would that be the next...

16 A. That's the next growing year.

17 Q. Yeah, then you would -- people have  
18 already done whatever contracting they think they're  
19 going to do for 2003.

20 A. If they accepted only contracts that were  
21 offered. It was very few.

22 Q. Right.

23 A. There is no contracting for 2004 at this  
24 point in time.

25 Q. Okay. Would you foresee maybe that

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1 increasing?

2 A. Not my decision.

3 Q. Okay. What is -- 2004, it looks like  
4 it's 45 percent, so that would indicate there's some  
5 going on.

6 A. I don't know how Barth arrived at their  
7 numbers. I don't know -- HGA, I know how HGA arrived at  
8 their numbers. It's a voluntary survey sent out to  
9 growers. I believe we get back somewhere around 60  
10 percent, maybe less. So some extrapolation of numbers  
11 to arrive at that, so I can't comment Barth's because I  
12 don't know how they arrive at that.

13 Q. But Barth is the -- isn't -- I'm sorry.  
14 Isn't Barth going to be, like, the major source of  
15 information for the hop administrative committee to make  
16 their decisions?

17 A. I would not -- I wouldn't -- I couldn't --  
18 - I would say no.

19 Q. No.

20 A. I mean, Steiner puts out reports. Yakima  
21 Chief puts out reports. Other people around the world  
22 put out report. I think it would be a compilation of a  
23 whole bunch of different sources and then going back to  
24 this idea of confidentiality, we could acquire  
25 information that we cannot get at this current time.

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1 Q. But not from foreign producers.

2 A. That's correct.

3 Q. With respect to the information you're  
4 going to get and the fact that it's going to be kept  
5 confidential, I guess there are going to be Chinese  
6 walls set up to where the committee members won't get  
7 that information? That sensitive information -- the  
8 Chinese wall is a term we use in the legal community  
9 that where you prevent information flows to different  
10 people and I would assume that this sensitive  
11 information is not going to be shared with the committee  
12 members. Is that correct?

13 A. I -- whatever -- to whatever degree's  
14 necessary to preserve confidentiality, I would agree.

15 Q. And so it's just going to be the folks --  
16 the administrative people?

17 A. I can't comment how the committee would  
18 ultimately decide on that.

19 Q. Okay.

20 A. I think -- I would not know. I think  
21 that -- I mean, once you're bound by confidentiality by  
22 a federal program, there's some strict -- I mean, you  
23 think the penalties that we might face are -- those guys  
24 are under even more strict penalty. So I think they'll  
25 arrive at some common program or some way of getting it

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1 done to satisfy the confidentiality of the people -- of  
2 the information. That supplied information.

3 Q. And is this -- the issue of this  
4 information, is this appropriate for this witness or  
5 would it be more appropriate for Mr. Gasseling or...

6 \*\*\*

7 MR. MONAHAN: I'm sorry, I lost track of you,  
8 Mr. Carswell. What information?

9 MR. CARSWELL: You've got a whole other thing  
10 going on, huh? Sorry. The -- I can understand why, by  
11 the way. The confidentiality of the information and  
12 what information that's going to have to be provided to  
13 the committee, the terms of sales, information, contract  
14 information -- is that an appropriate line of  
15 questioning for this witness or...

16 MR. MONAHAN: As a general rule, I encourage  
17 you to ask the questions of the witness who present the  
18 topic and that would be presented by Mr. Gasseling.

19 \*\*\*

20 BY MR. CARSWELL:

21 Q. Thank you. I won't ask any more about  
22 this, then. I'm sorry.

23 A. Thank you.

24 Q. Generally speaking, what information  
25 would the committee have that a farmer would not have in

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1 making production decision?

2 \*\*\*

3 MR. MONAHAN: Your Honor, it seems to me we've  
4 revisited this issue a number of times, both in direct  
5 and cross for several witnesses and just given the time  
6 frames that we're dealing with, I would -- I guess I  
7 would ask some narrowing of the cross-examination.

8 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, you  
9 did ask him what the committee members would base their  
10 decision on and he told you...

11 MR. CARSWELL: Is that the same question, Your  
12 Honor?

13 ADMINISTRATIVE LAW JUDGE: Not exactly, but  
14 for him to know what every one of the 50 growers has  
15 available at his disposal is unlikely.

16 MR. CARSWELL: Can I ask him what he would  
17 have?

18 ADMINISTRATIVE LAW JUDGE: Yes.

19 \*\*\*

20 BY MR. CARSWELL:

21 Q. Okay. What information would you not  
22 have that the committee would have in making decisions?

23 A. I mean, that's not available today?

24 Q. That's not available to you today.

25 A. To me?

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1 Q. To you. In other words, what information  
2 would the committee have to make decisions about the  
3 future of the industry and the next year growing season  
4 that you, as an individual farmer, wouldn't have to make  
5 those decisions about your own farm?

6 A. Well, I think that maybe more accurate  
7 numbers. The confidentiality, hopefully, will allow the  
8 committee access to information that may not be  
9 available right now in a better -- maybe in a different  
10 format, maybe in a -- it's hard to really know what they  
11 may -- how the committee will look at this. I think  
12 it's really up to the committee to decide how -- what  
13 they want to accumulate. I mean, I have -- just as an  
14 example, I have the Barth report, one set of numbers  
15 here and I have HGA with another set of numbers over  
16 here. Which one do I believe?

17 Q. So isn't that going to be the same issue  
18 for the committee? I mean...

19 A. Yeah, I think they -- hopefully, they can  
20 resolve that.

21 Q. In the -- you were talking about the  
22 confidential information that would be available, but I  
23 don't think -- I hope that the committee's not going to  
24 have a lot of that information because it's going to  
25 be...

1           A. Well, it's confidential. So how they --  
2 I cannot -- I think there's confidentiality like at the  
3 Washington Hop Commission. They collect production --  
4 personal production data and other things about me that  
5 they have kept confidential. How -- I presume that  
6 would be a model to follow. I mean, many other  
7 industries collect, you know, state mandated information  
8 -- more state-oriented than federal. I believe -- so I  
9 think there's mechanisms in there to do that, so...

10           Q. Well, let me ask you because then we'll  
11 get into it with Mr. Gasseling. This is the end,  
12 thankfully. If we learned later that this confidential  
13 personal grower information is not available to  
14 committee members, then would you agree that you have  
15 access to the same information that the committee would  
16 have access to in making their decisions?

17           A. Well, I think the committee could acquire  
18 other information that might be of value to me.

19           Q. Such as?

20           A. Maybe some demand information, you know,  
21 things like that. I hope -- in aggregate, the supply  
22 information and the reporting of alpha, which I do not  
23 have access to would have value to my decision making  
24 process.

25           Q. Those things can be done without a

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1 marketing order, though, right? That...

2 A. I don't know.

3 Q. ...accumulation -- aggregation of  
4 information?

5 A. I could take you -- I could show you the  
6 Barth report and the number of kilograms of alpha  
7 produced. I could show you the Steiner report with  
8 kilograms of alpha produced. I could show you the  
9 Yakima Chief report and they'd be substantially  
10 different. So there's a lot of information and I --  
11 hopefully, given this confidentiality and what it would  
12 afford the committee, we could acquire some better  
13 information. Because we have very conflicting  
14 information, as is currently stated. By even -- it was  
15 vastly different, so as a grower, which one do we listen  
16 to? Or which one do we use in our decision-making  
17 process? If I look at the Hop Growers of America, soda  
18 head, make a decision on this and actually the Barth  
19 report is correct, or the Steiner report is correct, I  
20 can make some pretty poor choices.

21 \*\*\*

22 MR. CARSWELL: Mr. Roy, I just want to thank  
23 you for your patience during this. You've confirmed my  
24 opinion that you're a scholar and a gentleman. Thank  
25 you very much.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
2 Carswell. That did consume more than an additional hour  
3 of cross-examination, but there may be others who also  
4 wish to cross-examine this witness. Are there others  
5 who are in a position against the marketing order that  
6 would like to ask questions of Mr. Roy now? Dr.  
7 Tweeten?

8 MR. ROY: Uh oh.

9 ADMINISTRATIVE LAW JUDGE: Dr. Tweeten, for  
10 those who have come in since your testimony, would you  
11 again tell us who you are?

12 DR. TWEETEN: I am Luther Tweeten and I'm a  
13 professor emeritus at Ohio State University and also, I  
14 might say at Oklahoma State University.

15 ADMINISTRATIVE LAW JUDGE: Thank you. And  
16 your Ph.D. is in what field?

17 DR. TWEETEN: In economics.

18 ADMINISTRATIVE LAW JUDGE: Is it agricultural  
19 economics?

20 DR. TWEETEN: My emphasis is on agricultural  
21 policy and trade.

22 ADMINISTRATIVE LAW JUDGE: Thank you.

23 \*\*\*

24 BY DR. TWEETEN:

25 Q. If you could help me out a bit, Mr. Roy.

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1 Briefly state what you feel is the purpose of this  
2 marketing order.

3 A. I think I stated before, is the eventual  
4 balance of supply and demand for a stable price.

5 Q. And what price level do you have in mind?

6 A. I do not have a price level in mind.

7 Q. There will be committee that will be  
8 determining saleables. It's very difficult to set a  
9 saleable without having some price in mind.

10 A. I don't think that's ever come into this  
11 -- any of the wording that we've presented. I think  
12 what we've already said was balancing supply and demand  
13 for a stable price. I don't think there is -- a stable  
14 price is not an absolute price. It's just a -- as I  
15 stated, over time, a stable price.

16 Q. But you agree that you can have a stable  
17 price at a high level or a low level?

18 A. Well, it would -- based on what the  
19 growers decide is their selling point. The growers will  
20 decide what price they want to sell at, not the  
21 committee.

22 Q. What happens if you set the price  
23 unusually high?

24 A. As an individual?

25 Q. Say this committee sets the price...

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1 A. Committee...

2 Q. ...unusually high?

3 A. The committee does not set a price.

4 Q. Well, the quantity low so as to bring a  
5 high price.

6 A. That's not the objective of the  
7 committee.

8 Q. But how they set the quantity will  
9 determine the price.

10 A. It will not. That's farther -- I mean,  
11 there is no -- no language in this order that talks  
12 about price. It's just a balance of supply and demand.

13 Q. Economic equilibrium is a price/quantity  
14 relationship. You cannot...

15 A. I think...

16 Q. ...have one without the other, is that  
17 correct?

18 A. I think we're getting into economics  
19 class and you must have peeked at my grades. I would  
20 not want to argue economic theory with you. I could not  
21 win.

22 Q. You mentioned stability as one of the  
23 dimensions of this order. When farmers use the word  
24 stability, sometimes they use it to refer to the  
25 volatility of prices and quantities. At other times

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1 they refer to it as stabilization at some high price.  
2 Let's talk about if there's an attempt to raise incomes.

3 A. Well, I don't think that's -- there's no  
4 wording in this current proposal that points to that.

5 Q. So your view is that this order will not  
6 attempt to raise incomes of producers over what they  
7 have been?

8 A. I think I will agree with you that the  
9 income could raise to the -- to a degree that we create  
10 stability and we take away some of these inefficiencies  
11 that are inherent to the current system. There's plenty  
12 -- you know, as I stated, 3 or \$4,000 on acre to replant  
13 -- to plant acre plus the cost of taking it out. So  
14 we're just -- this yo-yo of taking in, putting out,  
15 taking in, putting out. That creates that a very  
16 inefficient market. I think that our income should --  
17 there's a benefit to this. It has to be for me to  
18 support this, so I think I could see my income raising  
19 just by taking that inefficiency.

20 Q. Would you agree that in a well-  
21 functioning market there have to be changes in resource  
22 use, acres coming in, going out, so forth?

23 A. There is a certain amount of that  
24 inherent to any market, I'd agree.

25 Q. And how does a market determine what is

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1 the optimal level of this instability in the market?

2 A. Could you say that again?

3 Q. How do you get the proper instability in  
4 the market to make good allocations of resources?

5 A. The proper instability? Did you...

6 Q. Proper degree of instability. Changes in  
7 prices and quantities.

8 A. I'm not sure if I can fully understand  
9 the question, for one, and...

10 Q. Well, let me put it in another way. Do  
11 you feel that a committee could make these decisions as  
12 to the proper saleables...

13 A. I...

14 Q. ...or quantities to be put on the market?  
15 That can the market itself...

16 A. Well, I think the market has shown that  
17 individuals -- we, as individuals, have not been very  
18 good at it. Now, I think that as I stated, the  
19 committee -- yeah, there's [sic] issues with a  
20 committee, there's no doubt. But we're talking an  
21 industry where there's -- let's say is 56 growers. You  
22 have eight voting members. That's one committeeman per  
23 seven people. I think we can all get our points across  
24 pretty well. I mean -- and with the term limits that  
25 are in this order, everybody's going to get their chance

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1 to sit on that hot seat. The decision-making process,  
2 as you well know, sitting out in the audience trying to  
3 second-guess a committeeman and actually sitting on that  
4 board and making those decisions is quite a bit  
5 different. So I think we can -- think this committee,  
6 given the small structure of our industry can arrive at  
7 a pretty good consensus. And a consensus could raise  
8 market share. It could be to look at the supply/demand  
9 numbers and decide if it's in our best interest to  
10 reduce demand. The United States is the only place that  
11 can produce hops in one year. That's very unique. So  
12 we can respond to market conditions that no one else in  
13 the world can. And I think -- I would hope the  
14 committee would be very responsive to that and very  
15 responsible with that -- with their obligations.

16 Q. When you got into farming, Mr. Roy, I'm  
17 sure you thought about the heat in the kitchen. Were  
18 you aware that there would be considerable instability  
19 in the farming industry...

20 A. When I came...

21 Q. ...producing hops?

22 A. Well, the trouble is when I came back, we  
23 were in a marketing order and it was relatively stable.  
24 My father asked me to come back, or I asked him to come  
25 back, I guess. I really was a computer science major,

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1 so it was kind of interesting for me to come back and I  
2 asked to come back. It was a stable market. We made --  
3 and we did okay. It was -- the pricing was not great,  
4 but we could concentrate on being more efficient by  
5 maximizing our yields, maximizing innovation,  
6 reinvesting in our industry. And we did at that time.  
7 And then when we get to this unstability [sic] right  
8 now, it's very difficult as a businessman -- yeah,  
9 fortunately, our company has the resources to invest the  
10 long term. That's not typical. Most people cannot.  
11 And I mean, if you really want to get down to the brass  
12 tacks, I should not even support this. I should just  
13 let it go because with our resources, we could make this  
14 go a lot longer than anybody else can. But I do feel --  
15 you know, I can keep rambling here, but I do feel that  
16 there's an obligation. As I said, we have a  
17 responsibility as individuals for our actions,  
18 collectively.

19 Q. And that includes holding a proper degree  
20 of inventory, for example, to stabilize the market?

21 A. In what way? Holding inventory in  
22 reserve pool...

23 Q. Correct.

24 A. ...holding inventory -- I think it is --  
25 part of -- I would think the committee, as part of their

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1 policy, would hold inventory to respond to unexpected  
2 demand. And I think the committee should encourage  
3 that. And I think in the -- there is -- I think -- I'd  
4 have to ask some people, but I think there's six months,  
5 eight months, maybe a year of inventory held in surplus  
6 in the main industry. I think there's some people that  
7 could address that very well. So I think those can be  
8 used to address unexpected demands.

9 Q. Aren't there ways that the individual  
10 farmer can live with a certain degree of instability in  
11 the market?

12 A. Well, you know -- I think that's forced  
13 on us. I think that -- you know, it's interesting.  
14 When I took the few -- what I do remember in my  
15 economics classes was, you know, diversification was an  
16 important part of that...

17 Q. Yes. Could I follow up on that? How did  
18 you diversify?

19 A. Well, we went into various crops and in  
20 fact, I was trying to find some of my old professors  
21 when every one of our crops that we went into was in the  
22 toilet. I mean seriously. The diversification actually  
23 magnified itself into -- more losses. And sure, a  
24 couple of years, it was pretty bad.

25 Q. What other forms of diversification do  
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1 you have?

2 A. We've gone into -- we've actually gone  
3 into what we consider to be non-productive ag. We've  
4 considered production ag to be such a high-risk venture  
5 that we have chosen to diversify to whatever degree we  
6 can outside production ag. To actually support  
7 production ag, in a sense. And that's not right.

8 Q. How about off-farm employment? Have you  
9 engaged in any of that or other members of your family?

10 A. My father kept me pretty busy digging  
11 ditches for a long time.

12 Q. And would you agree that this is one of  
13 the principle means used by farmers, in general to deal  
14 with risk.

15 A. Well, I think that it's interesting, you  
16 know, what are there? 2.2 million farms classified as  
17 farms in the United States?

18 Q. Approximately that.

19 A. But I think that, what? Two percent are  
20 over half a million dollar in gross sales, something  
21 like that?

22 Q. It's very small.

23 A. Yeah, very small. So you know, you have  
24 these -- I agree with you that a large percentage of  
25 these small farms are -- getting their income from non-

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1 farm use. We agree, right? That -- and most of -- as  
2 you said, most of their income is non-farm.

3 Q. Correct.

4 A. Okay.

5 Q. And that -- are you through...

6 A. Well, I was going to say...

7 Q. I didn't mean to interrupt you.

8 A. I would hypothesize that the majority of  
9 those farms, a lot -- I'm not going to say all of them,  
10 but a high percentage of them are really tax shelters  
11 more than they are farmers. I see a lot of my friends  
12 that would be classified as farmers in the government  
13 sense, but in actuality it's just something they do for  
14 tax benefits. And that's unfortunate.

15 Q. And are those farmers who are existing  
16 from farm sales alone, basically, would you agree that  
17 they face a good deal of risk?

18 A. If they're a hundred percent farm? If  
19 they're...

20 Q. If they're basically a hundred percent  
21 farm, we're talking about commercial farms here.

22 A. If they're single crop, a high degree of  
23 risk.

24 Q. Are they rewarded for their risk?

25 A. Well, you know, at one time they were. I

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1 don't think that exists today and the reason is if you  
2 look in prior -- in years or some period, but just in my  
3 experience as a farmer over the last 30-some years, we  
4 had highs and we had lows and some years we made great  
5 profits. Other years we probably lost a little bit of  
6 money, but over time it gave us an adequate return. And  
7 what I see in agriculture in general is we're getting  
8 these lows and very extended lows -- globalization is a  
9 big factor in this. We come down and we go along the  
10 bottom and then we come up and as soon as the price gets  
11 to a high point, some high level, another country will  
12 jump in and I -- and that is a problem. When it gets to  
13 some high level. And so we don't get the highs anymore,  
14 so we're -- we come down to the bottom, we just bounce  
15 on the bottom and then somebody else jumps in and then  
16 we go back down and we're in the toilet for awhile.

17 Q. So are you telling us that...

18 \*\*\*

19 ADMINISTRATIVE LAW JUDGE: Mr. Roy and Dr.  
20 Tweeten, we do need to change the tape at 3:52.

21 \*\*\*

22 [Off the Record]

23 [On the Record]

24 \*\*\*

25 ADMINISTRATIVE LAW JUDGE: We're back on  
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1 record. It's still 3:52. Dr. Tweeten?

2 \*\*\*

3 BY DR. TWEETEN:

4 Q. Mr. Roy, are you telling us that hop  
5 producers are a welfare case?

6 A. Some days I wonder.

7 Q. Would you be willing to hazard a guess as  
8 to the average net worth of the commercial hop producer?

9 A. I don't think we'd get much sympathy.  
10 Anywhere we turn, our assets are not very good. For the  
11 amount of assets we have.

12 Q. Would you agree that the average American  
13 consumer has indicated by various surveys and so forth,  
14 get very anxious when one puts the power of control and  
15 supply of food or beverages in the hands of growers?

16 A. You mean in what food? I think there's  
17 different, you know -- yeah, I would think there's  
18 probably some nervousness as -- should there be  
19 nervousness if the bulk of our food productions' coming  
20 from outside the country that's controlled by external  
21 factors? I think there's all kinds of fears that  
22 consumers can realize. And I think to me, that's a more  
23 serious -- factor than a group of growers working  
24 together to balance the demand.

25 Q. Would you agree that there is a real

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1 danger that when you put the control of marketing in the  
2 hands of the grower that there will be tendency to have  
3 a high price and a lower quantity of production that  
4 will increase inefficiency, reduce national income, and  
5 reduce our competitiveness in international markets?

6 A. If you could show me an industry where  
7 the grower had the pricing power, I'd be very interested  
8 in getting into that industry. I don't think it exists.

9 \*\*\*

10 DR. TWEETEN: Thank you. I'm through with my  
11 questioning.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
13 Tweeten. Do you all want a 10 minute break before we  
14 continue with the cross-examination or other  
15 examination? Yes, all right. Please be back and ready  
16 to go at 4:05.

17 \*\*\*

18 [Off the Record]

19 [On the Record]

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: We're back on  
22 record at 4:07. Other examination of Mr. Roy by those  
23 who are here in a position against the marketing order?  
24 Mr. Moody?

25 MR. MOODY: Your Honor, I have some questions,  
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1 but if it's all right, maybe we could give Mr. Roy a  
2 break and I'm kind of nervous about getting the guys  
3 that can only be here today on and done and gone. And  
4 then we can come back to Mr. Roy.

5 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, don't  
6 you want to do all of Mr. Roy's in a package?

7 MR. MONAHAN: I sure would, Your Honor. I'm  
8 not sure it's fair to the witness to make him start and  
9 stop and get these cyclical efforts against him.

10 ADMINISTRATIVE LAW JUDGE: All right. Go  
11 ahead then, Mr. Moody. We'll make sure your people get  
12 in today. As soon as we're done with Mr. Roy. We can  
13 take them before we take Mr. Gasseling.

14 \*\*\*

15 BY MR. MOODY:

16 Q. Okay. Mr. Roy, maybe -- if I could be  
17 one of the people who call you Leslie, too, that would  
18 be nice.

19 A. You're welcome to.

20 Q. Thank you, Leslie. On marketing policy,  
21 991.50, it says that the committee shall meet on or  
22 before November 15 of each year and I know the  
23 proponents are in some -- have some sense of urgency to  
24 implement the program, but you'd be needing to set the  
25 saleable next month, you know, if it were to be in

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1 effect in '04. So is it realistic that when you're  
2 looking at this being effective in is '05?

3 A. Well, I -- I mean, yeah. The idea is to  
4 get to vote and we voted and the industry decided they  
5 wanted this, then I think just as a practical matter.  
6 It's not practical to have 2004 as a regulated year.  
7 That's just -- I mean, just the practicality of going  
8 through the process we're going through.

9 Q. All right. Given that, then, and given  
10 what you mentioned -- some of the inequities that might  
11 occur surrounding the start-up of the program, wouldn't  
12 it more equitable and streamline the start-up of the  
13 program somewhat to use year '03 as the year for fixing  
14 base allotments or an average of '01, '02, and '03?

15 A. Well, I think the issue becomes of  
16 fairness. I think that the industry has been unnoticed  
17 since at least 2001, maybe earlier, that we were heading  
18 this direction. And I think it's unfair to some growers  
19 who may have tried to increase their production, for  
20 whatever reason, and they're rewarded for growers that  
21 operated under the assumption that this thing was going  
22 to come in under a different set of scenarios. I mean,  
23 if -- there's some inequities in that scenario, also.

24 \*\*\*

25 MR. MONAHAN: Mr. Moody, just for the purpose  
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1 of focus, I believe this topic will be addressed by Mr.  
2 Gasseling.

3 \*\*\*

4 BY MR. MOODY:

5 Q. Oh, okay. I know -- thank you. He  
6 brought up the issue of inequities. I was just trying  
7 to question him a little bit. Did you or anyone on the  
8 proponents committee work through a sample scenario of  
9 how the saleable would be set for, say, a recent year,  
10 '01, '02, or '03 had the marketing order been in effect?

11 A. We have not.

12 Q. Any particular reason for that?

13 A. Well, it was not knowing what the initial  
14 allotment would be, not knowing -- having knowledge of  
15 all the numbers, I -- it was just -- there was no way we  
16 could know for sure, so we chose not to do that. Not  
17 even chose not to do it, it just wasn't a practical  
18 thing to do.

19 Q. Okay. Could you, using historical data,  
20 could you -- for one of those three years, one, two, or  
21 three, could you estimate for me what the -- I guess I  
22 can't really do it as a percent, I don't know what they  
23 initially were, but...

24 A. I would not have the knowledge to make  
25 those kind of decisions or that kind of assumption or

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1 even hazard a guess.

2 Q. Oh, okay. Could -- how -- if we want to  
3 sit down and do that to understand more effectively how  
4 the order might operate, how would we go about --  
5 figuring out the saleable pounds for '01, '02, or '03?

6 A. I think that would be a very long  
7 process.

8 Q. Well, taking the actual pounds that were  
9 sold in '01, '02, or '03?

10 A. I think that, you know, given a point in  
11 time to try to -- I could not even hazard a guess of how  
12 the committee would respond. A lot of things change. I  
13 think one -- when ultimately, if a committee is set, the  
14 information they would have at their disposal will be  
15 different than the information we have right now. You  
16 know, we have a crop failure in Germany. It created --  
17 it seemed like a temporary demand and I mean temporary  
18 because it's almost gone now. The hops are -- there  
19 seemed to be a little flurry of activity, now there's  
20 nothing. So I think that has to be taken into effect,  
21 so there's a lot of things that need to be taken into  
22 effect and I don't think we have the time here to really  
23 analyze all those situations and all those factors and  
24 arrive at even a realistic number.

25 Q. You indicated that in the '01 and '02

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1 alliance and Washington state set-aside periods, some  
2 disappointment, I think, that not everybody participated  
3 and indeed, some growers may have expanded their  
4 production in response to the voluntary set-asides?

5 A. I indicated that.

6 Q. Is that correct?

7 A. Yes.

8 Q. Okay. And were there -- did the  
9 expansion by new entrants into the industry or is it  
10 existing growers that expanded their acreage or was it  
11 substituting higher yielding varieties?

12 A. I think a combination of all of those.  
13 And I would not necessarily be frustrated with all --  
14 each -- all those components. I mean, a new grower to  
15 come in, I think, is fantastic. I think that is a very  
16 healthy thing for industry. It brings new ideas forward  
17 and I think, really, we've only had one real new grower,  
18 Mr. Weilmunster in Idaho, and I welcome him to the  
19 industry. I think it's great. And we've tried to make  
20 everything as equitable as possible for his entry. And  
21 I think it's good and healthy for the industry.

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE: Could you spell  
24 that name for me?

25 MR. ROY: Who?

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1 ADMINISTRATIVE LAW JUDGE: Of the new grower?

2 MR. ROY: I think it's already in the record  
3 somewhere. I think he actually testified...

4 ADMINISTRATIVE LAW JUDGE: Oh...

5 MR. ROY: ...in Oregon.

6 ADMINISTRATIVE LAW JUDGE: Okay. And -- oh,  
7 yes. I didn't know that's what you were saying. That's  
8 right. It's...

9 MR. ROY: I might've pronounced it wrong.

10 ADMINISTRATIVE LAW JUDGE: It's spelled W-e-i-  
11 l-m-u-n-s-t-e-r. Thank you.

12 MR. ROY: Yeah, it might be wellminster, I'm  
13 not sure.

14 ADMINISTRATIVE LAW JUDGE: No, he said it  
15 wool.

16 MR. ROY: Wool.

17 ADMINISTRATIVE LAW JUDGE: Even though it  
18 looks like wile.

19 MR. ROY: Okay.

20 ADMINISTRATIVE LAW JUDGE: Yes.

21 \*\*\*

22 BY MR. MOODY:

23 Q. And Mr. Roy, did those -- did that new  
24 entry and expansion undermine the efforts -- or your  
25 efforts to achieve the goals of the set-aside?

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1           A. Well, could you -- I mean, I'm not sure  
2 if I understand the question. I mean, what do you mean  
3 by -- could you rephrase it or...

4           Q. Well, did it kind of cancel out...

5           A. Well, not in all cases. There was some  
6 acreage that was reduced. Maybe not to the degree that  
7 we had hoped for.

8           Q. Right. But you -- the intent, if I  
9 understand the alliance and the set-aside, was to  
10 basically reduce the supply.

11          A. Well, I think that we had set a target.  
12 But I think the frustrating part for me -- at least me  
13 and I think many other growers, was when working  
14 together, we thought we had some degree of consensus and  
15 when it doesn't happen, it is frustrating.

16          Q. Right, okay. Now, the pronoun there --  
17 it. When the it doesn't happen, you mean the supply  
18 wasn't reduced...

19          A. Well, the goals that were set by  
20 consensus, we felt.

21          Q. Okay. Again, the goal is a reduction in  
22 supply.

23          A. Yes, to reduce the over-production.

24          Q. Okay. And in part the reason that goal  
25 wasn't met was because some people expanded and got into

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1 the industry?

2 A. No, I think -- as I said, I welcome the  
3 new grower. I had probably bigger frustrations with  
4 some people that maybe had expanded for whatever reason.

5 Q. Okay. So that -- well, I used -- I was  
6 using the word cancel out to mean that the A and B and C  
7 reduce, and D and E and F expand, those two things kind  
8 of cancel each other out.

9 A. That's correct.

10 Q. Okay. And that's the complaint you were  
11 voicing?

12 A. Yes.

13 Q. Okay. Well, then help me to understand,  
14 please, if you -- within this very close-knit community  
15 of growers here, if you can't get everybody to kind of  
16 row their oar in the same direction, if you had a  
17 marketing order, how would you possibly expect to get  
18 the Germans and the Chinese and the Czechs and everybody  
19 else to not expand when you're controlling supply here?

20 A. There isn't -- we cannot influence their  
21 decision making. As I stated before, I think the United  
22 States is in a very unique position in our ability to  
23 overproduce faster than anyone in the world. And I  
24 think that is the uniqueness that allows us to look at  
25 some of these other ideas and I think that's where --

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1 the planting horizon on these other countries is a lot  
2 longer than it is in the United States. We can do it in  
3 one year where everybody else takes maybe three, maybe  
4 four years, at the worst.

5 Q. Can you explain a difference for me in  
6 restricting supply and restricting overproduction?

7 A. Well, I think that -- well, the goal -- I  
8 mean, we're talking about some terms here, so I think --  
9 I mean, the goal of this whole thing is to, you know,  
10 the eventual balance of supply and demand to stabilize  
11 prices. So supply, oversupply -- I mean, those are just  
12 terms.

13 Q. Well -- and this gets a little bit of  
14 what Dr. Tweeten asked. I'm going to follow up on that.  
15 In order to figure out what to restrict -- or in order  
16 to figure out where to -- well, how do you intend to  
17 draw a line on between restricting supply, which I think  
18 you don't want to do, and restricting oversupply, which  
19 you do want to do? Where do you draw that line?

20 A. I'm not sure if I understand that. I  
21 mean -- I'm not sure if I understand the question at  
22 all.

23 Q. Okay. If I understand your purpose is to  
24 balance supply and demand to stabilize price...

25 A. That's correct.

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MR. MOODY: Okay. Is it -- another way of saying that is you don't want to unduly restrict supply, but you do want to prevent overproduction?

ADMINISTRATIVE LAW JUDGE: Mr. Moody, I'm concerned that -- you're using the word overproduction rather than oversupply.

MR. MOODY: Okay, oversupply's fine.

MR. ROY: Yeah.

ADMINISTRATIVE LAW JUDGE: Okay.

MR. MOODY: All right.

MR. ROY: Could you rephrase...

\*\*\*

BY MR. MOODY:

Q. Right. Is it correct to say that you're -- another way of saying that is you don't want to unduly restrict supply, but you want to prevent an undue oversupply?

A. Well, I think I stated earlier that this rollercoaster that we have been in for the last -- since the demise of the last order has created some instabilities and I think, you know, inefficiencies where in -- so I think in that light, you know, you want to -- we want to balance supply and demand. We want to create enough -- have enough hops out there to satisfy

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1 every user of American hops and hopefully, increase  
2 usage of American hops. So to that end, how the  
3 committee will administer this order, that's their  
4 decision, with those stated goals. So I mean to -- I'm  
5 not sure if I can know how the committee will react.  
6 I'm comfortable that they will make decisions based on  
7 those stated goals.

8 Q. Hops are storable, if I understand it, as  
9 either pellets or extract?

10 A. That's correct.

11 Q. And they're -- as pellet, they're  
12 storable for a couple of years, let's say, and as  
13 extract indefinitely?

14 A. I would accept that.

15 Q. And is there a growing tendency to -- on  
16 the grower/dealer side of the equation to install  
17 extraction facilities?

18 A. Is there an increasing...

19 Q. Yeah, do the growers have a greater  
20 capacity to do the extraction and store the hops...

21 A. Well, as an individual decision to choose  
22 to hold inventory, that's their decision. Growers are  
23 -- I mean, when there's no market -- when there -- I  
24 mean, when I -- I'm not talking about selling at some  
25 low price when there is no market. A grower has no

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1 other option after he's produced it, but to store it.  
2 Some growers have chosen to store in bales because they  
3 didn't have the money to process. They lose a  
4 substantial amount of money. Some growers didn't have  
5 the money to process into pellets. Some growers had the  
6 money to process into pellets and they chose to do that.  
7 Some growers chose to pay the extraction right off the  
8 get-go. I mean, it's an individual decision.

9 Q. All right, but in these -- in achieving  
10 this balance of supply and demand, are -- during these  
11 last few years of what you describe as instability, are  
12 any of the hops wasted or...

13 A. I don't -- I have no knowledge of that.

14 Q. Yeah, but doesn't the market always clear  
15 -- in other words, the hops that are stored as pellets  
16 or alpha acid? Isn't all eventually sold?

17 A. In what time horizon?

18 Q. Well, at some point in time. It's not...

19 A. Well, I think eventually the goal is that  
20 you're not going to produce them and throw them away, so  
21 I think at some given -- given some time horizon, yeah.  
22 It could be one year, it could be five years.

23 Q. Well, I asked the question because some  
24 marketing orders, like raisins and almonds, they do  
25 produce it and eventually throw it away.

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1           A.    No, there's no provisions for that in  
2 this order.

3           Q.    Okay.  So has the -- since the  
4 termination of the old order, have the amount of hops in  
5 storage gone up and is there a kind of overhang on the  
6 market because of this storage?

7           A.    I wouldn't have the complete knowledge of  
8 that.  I don't know what growers are storing.  I don't  
9 know what the dealers may have.  Sure, I may see a  
10 number from stocks, but I have no way of knowing if  
11 that's correct or not.  Essentially a voluntary --  
12 there's no mandatory reporting, it's just a voluntary  
13 reporting.

14          Q.    All right, but is that -- is [sic] the  
15 stored hops contributing to the instability?

16          A.    Well, if there's an oversupply -- to the  
17 degree that the oversupply is known or perceived to  
18 known by the ultimate consumers, yeah.  If a consumer  
19 knows that there's a whole oversupply of a product out  
20 there, they're probably not as enthusiastic to contract  
21 ahead or to buy.  They know that when they need it, it's  
22 there.  So they just wait it out.

23          Q.    Right...

24          A.    Wait the price out.  So I mean, it comes  
25 -- when the grower gets tired of holding the inventory,

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1 they may sell it at a substantially reduced price  
2 because they're tired of holding it or they need money  
3 because a bank has said it's time to sell.

4 Q. So isn't it true that what's really  
5 contributing to these low prices is a build-up of stored  
6 hops?

7 A. Oversupply.

8 Q. And that -- that's where it's showing up  
9 -- on the build-up of stored hops side?

10 A. I guess. I mean, I think that that would  
11 be -- I mean, it's oversupply. Oversupply is  
12 oversupply. How it's held is -- if it's held in brewery  
13 hands, or if it's held in grower hands, or if it's held  
14 in merchant hands, that's -- it's all part of the  
15 equation.

16 Q. Okay. And so -- then you're -- then --  
17 what the order will seek to do then, is to cut down the  
18 amount of stored hops?

19 A. Not necessarily.

20 Q. Okay, can you explain that?

21 A. Well, I think that part of this process  
22 that the committee will go through would be to -- well,  
23 part of the -- I mean, what I'm trying to get to is  
24 maybe -- I could see a scenario where a one, two-year  
25 supply might be what the industry requires. Well, not

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1 requires, but wants. The committee would need to  
2 respond to that. If the numbers point to reducing  
3 supply of breweries -- just-in-time deliveries, then the  
4 industry needs to look at that and respond to it in a  
5 responsible way. As many companies are doing this just-  
6 in-time delivery has really created some interesting  
7 scenarios for commodities like hops or hops that have  
8 fluctuations from year to year because of yield and  
9 weather and other factors. So I think that becomes -- I  
10 think what I'm getting to is the committee will have to  
11 look at that and respond to those desires from the  
12 consumers, which is breweries, I would...

13 Q. All right, now you indicated that one of  
14 the motives of the marketing order was to increase the  
15 percentage of foreign contracts?

16 A. No, I did not say that.

17 Q. Okay, I thought that...

18 A. No, I said my personal opinion is I think  
19 that could be an outcome of it.

20 Q. Okay. How do you reconcile that with the  
21 testimony of two breweries who testified so far, that  
22 the marketing order would so substantially increase risk  
23 that they would be potentially less likely to contract?

24 A. Lot of opinions in this room, isn't  
25 there?

1 Q. If you look at 991.52 B...

2 A. Yes.

3 Q. Okay, and maybe these questions need to  
4 be better put to whoever's going to clarify what handle  
5 means, but if that's...

6 A. Yeah, I think we have a new definition of  
7 handler to be presented sometime soon.

8 Q. Okay, because the word here is purchase  
9 and I don't know how to reconcile that -- we've had some  
10 testimony about consignment operations and things like  
11 that and situations where...

12 A. I think that would be cleared up with the  
13 definition of handler when it's presented.

14 Q. Okay, and so this is not the right  
15 witness to ask?

16 A. Yeah, Thank you.

17 Q. Is that right?

18 A. Yes.

19 Q. Okay. On C of the alpha acid factor...

20 A. Yes.

21 Q. What if I'm a developer of a new  
22 proprietary variety of hops that's really hot. Let's  
23 say, you know, 2000 pounds an acre and 20 percent alpha.

24 A. Yes.

25 Q. Okay. And I don't really want to share  
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1 that with anybody just yet, but it gives me a  
2 comparative advantage.

3 A. Well, it it's proprietary, you already  
4 control the production of that variety by the patent.

5 Q. Right, but -- you know, it's a trade  
6 secret what my yields are.

7 A. Well, I don't think yields come in --  
8 yields are not part of this alpha factor. It's only the  
9 average alpha of that variety.

10 Q. Well, that's a trade secret, too.

11 A. Well, I think the committee would have to  
12 address that one. I think -- I mean, I can't envision a  
13 scenario where the alpha percent would be any -- the  
14 trade secret of that, wouldn't be of any significance.

15 Q. All right. Would you take my word for it  
16 as to what my alpha acid percentage is?

17 A. I would not think so. I do respect you.

18 Q. Would it be -- would the alpha be tested  
19 at some official USDA laboratory?

20 A. Well, I think in -- that will be  
21 addressed by -- I think later in some testimony about  
22 how that'll be done, but it -- basically, the committee  
23 will decided, but basically, it has to be some certified  
24 lab of some degree.

25 Q. On these grower numbers that have been

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1 talked about a little bit...

2 A. Which ones? Mine or somebody else's?

3 Q. Well, I'm -- that's what I'm trying to  
4 clear up.

5 A. Okay.

6 Q. Apparently, some of these are old numbers  
7 and they're old grower numbers that have been around for  
8 a long time.

9 A. I have no knowledge of that.

10 Q. And there's some new grower numbers that  
11 were just gotten from the state commissions?

12 A. I'm aware there's new numbers acquired, I  
13 have no knowledge of the old numbers.

14 Q. Okay. And -- well, the numbers you were  
15 talking about, were they new numbers that were recently  
16 acquired from the commissions?

17 A. I do not think so.

18 Q. Okay...

19 A. I don't know for a fact, but I believe  
20 that they were growers that took part in that set-aside  
21 that I felt had a valid right to be counted as a grower  
22 if the voting period were changed from what we  
23 originally proposed, which was 2001.

24 Q. Okay. And you said that they were new  
25 grower numbers.

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1 A. I did not say that, no.

2 Q. You said that's what you knew about this,  
3 it's new grower numbers.

4 A. Okay. We're talking about two different  
5 things here.

6 Q. Right, I...

7 A. You're talking about where I orally  
8 agreed -- had an oral agreement with some growers on  
9 these -- that had existing numbers. What started this  
10 whole process was that it became, to my knowledge, and  
11 probably the industry in general's knowledge that there  
12 was grower numbers being applied for.

13 Q. New -- is it correct to call new  
14 grower...

15 A. Well, I don't know. I mean, a new grower  
16 number -- from existing growers applying for multiple  
17 grower numbers. I think that might be a...

18 Q. Okay.

19 A. ...better characterization.

20 Q. All right.

21 A. So in other words, it became for whatever  
22 reason, growers were trying to stack the voting,  
23 depending on what the voting -- what determined a  
24 producer -- I think we've addressed that in this hearing  
25 and by definition of producer. Have we -- as a final --

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1 that will be presented to address this. Our goal is to  
2 have one grower -- one vote for one grower. That's the  
3 stated goal of this committee in going to referendum.

4 Q. Okay.

5 A. And it's addressed even in the order.  
6 Once we get -- if an order were to be adopted, that is  
7 how it is stated in the rules. But we have this little  
8 kind of a quirky little thing here where we can't adopt  
9 those rules to other marketing orders in effect, so we  
10 have this little kind of fuzzy area that we're trying to  
11 address.

12 Q. Okay. So let's so for '03. Some of  
13 these people who have got your bales and used these  
14 grower numbers on them didn't actually produce hops on  
15 their farms that year. In '03.

16 A. They produced hops, but they just didn't  
17 string them.

18 Q. Okay, but they didn't harvest hops.

19 A. I don't know if they harvested anything.  
20 I mean, there's -- we -- you know. I don't know. I  
21 mean, we had people come out for Oktoberfest and buy one  
22 or two vines. Did we harvest vines? I don't know.  
23 These are different here.

24 Q. Well, what was the reason to give them --  
25 what was the reason to stencil a grower number on your

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1 -- their grower number on their bales if they have their  
2 own bales?

3 A. Well, no. It was not on my bales. I  
4 produced them, yes. But they -- because of the oral  
5 agreement we had, they were their bales. They put their  
6 own grower number on their own bales. How they -- if  
7 they bought the bales from me, if I gave them to them,  
8 if we swapped something, that's irrelevant. I mean,  
9 they -- that was their production, their grower number,  
10 in my view.

11 Q. Okay, but it's -- let me just -- let's  
12 try this way. Which farm did they come from?

13 A. They came from our farm in Moxee.

14 Q. Okay...

15 A. And that's where they were strung,  
16 produced, harvested.

17 Q. Okay. And then grower A, B, and C got to  
18 stencil their numbers on the bales.

19 A. Because we had an oral agreement that  
20 that production -- I would sell, give, rent, whatever --  
21 we came up to terms with the production. And it's  
22 common. I mean, growers -- it's not uncommon for  
23 growers to buy production from another grower. It's not  
24 uncommon for growers to lease acreage from another  
25 grower. So I think -- I don't see anything illegal. I

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1 know there's nothing illegal about this. And even in  
2 the spirit of what we're trying to accomplish here, I  
3 don't think it's bad, either.

4 Q. All right. But I gather grower A, B, and  
5 C in this example didn't produce hops on their farms.

6 A. Well, produce means to -- they had hops  
7 in their field, if they're raising hops -- on the  
8 ground. Is that -- are they still a producer if they've  
9 chosen to -- you know, to not string their hops for  
10 whatever reason, are they still a producer? I think --  
11 what we're trying to do is get down to one grower, one  
12 vote. I think they should not be penalized for the  
13 decision to work with the industry in some voluntary  
14 programs and they happen to be punished because they  
15 happened to choose to leave their acreage idle in a  
16 certain year. I think that's not right. I think they  
17 should be entitled to their vote. One vote, one grower.

18 Q. Okay, so to be a producer you at least  
19 have to have hop vines? Is it a vine?

20 A. I don't -- I'd have to go back to the  
21 wording, but a producer -- you know, if he has  
22 proprietary -- I think the wording is -- I'd have to go  
23 back through the actual...

24 Q. What do you call a plant? Is it a vine?

25 A. Well, a plant. Hops are perennial.

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1 There is 889 plants depending on the spacing, but the  
2 general spacing is -- well, there's all kinds of -- but  
3 suffice it to say, there's 889 vines per acres on the  
4 average and then we put anywhere from two to three to  
5 four strings per hill, so you could have four vines per  
6 hill times 889. You're looking at 3600 strings, or  
7 close to it. So there's all kinds of ways to look at  
8 this.

9 Q. Okay, so these people who stenciled their  
10 grower numbers on your bales...

11 A. No, their bales.

12 Q. Pardon me?

13 A. Their production.

14 Q. Okay, bales that came from your farm.

15 A. That's correct.

16 Q. Okay. They had hop vines on their farm,  
17 they just didn't harvest them.

18 A. I have no knowledge of -- as I stated, I  
19 -- in some cases, I may have not even -- the grower  
20 numbers, I don't -- may not even know who they were,  
21 which company they were. Because there were multiple  
22 entities. One -- I know a couple of the names, but I  
23 don't know all of them. And I think -- it was just -- I  
24 mean, yeah. I -- I mean, I acknowledge I did it. I  
25 acknowledge there was nothing illegal about it. I felt,

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1 in my view, it was just bringing fairness to the  
2 process if these growers were going to be punished for  
3 their efforts to work with the industry on reducing  
4 acres. That's all I was after. And I've been up-front  
5 with it. I don't see any reason that it needs to be  
6 made an issue, because it's public, so...

7 Q. Was one of the beneficiaries of your  
8 generosity Pleasant?

9 A. I believe it was.

10 Q. Okay and what's the status of his farm?

11 A. I do not know.

12 Q. Do you know if hops are even there?

13 A. Do not know.

14 Q. Well, would it -- in order to be a...

15 A. Well, I think that the issue becomes --  
16 going back to what we initially started to do back two  
17 or three years ago and the reality of today, yeah,  
18 there's some difference and maybe some inequities, but  
19 the fact of the matter was we were operating in a  
20 generalized idea that growers in 2001 would be the ones  
21 to vote. Well, that seems to be changing. And I guess  
22 that's -- maybe we could make an issue of this, but I  
23 think that he's entitled, or any other grower that  
24 produced hops in 2001 should be entitled to a vote.

25

\*\*\*

1 MR. MONAHAN: Your Honor, Mr. Moody clearly  
2 enjoys the topic, but the issue of who will be presented  
3 or who the proponents believe should be considered for  
4 grower referendum is going to be the subject of a  
5 subsequent witness and to that extent, I believe there  
6 will be plenty of opportunity to inquire about who had  
7 what plant on what piece of property.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
9 Monahan, but I'll allow Mr. Moody to question. I'd like  
10 to get off this topic, too, but part of this  
11 consideration is which year should be utilized and it  
12 hasn't been decided yet, so to the extent that there may  
13 differences of opinion as to the validness of using the  
14 2001 year, I think Mr. Moody should be allowed to  
15 inquire. But I hope it won't take too much longer  
16 because there's so much to cover. Mr. Moody?

17 MR. MOODY: Your Honor, I kind of apologize  
18 for coming back to this area so often, but whether  
19 there's 50 or 80 growers and given the straw pulls that  
20 were conducted -- you know, the vote totals look so  
21 close that even one or two or three votes may be -- that  
22 the potential...

23 MR. MONAHAN: Well, frankly...

24 MR. MOODY: ...for either side, the proponents  
25 or the opponents from manipulating the vote is so great,

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1 that I think this is a very highly relevant area of  
2 inquiry.

3 MR. MOODY: Yeah, I'll -- I mean -- to  
4 explain, I can just as easily do it as...

5 MR. ROY: I feel I've been very open about  
6 what we did and I think those other people -- I think  
7 there's others that have not been yet. Or not had the  
8 chance to be open. Hopefully, they do.

9 \*\*\*

10 BY MR. MOODY:

11 Q. Well, the other specific farm I wanted to  
12 ask you about is the Tobins [ph]?

13 A. Yes, he is -- his sister is married to my  
14 brother.

15 Q. What's the status of his farm?

16 A. I believe he is idle.

17 Q. And what is the...

18 A. I mean, I -- okay, he has fields that  
19 he's raised -- I believe he's raising hops. I probably  
20 should not comment on what the status is today. I do  
21 not know.

22 Q. As far as what's led to -- I guess in the  
23 '90s to a decline in contracts, were you intending to  
24 kind of place the explanation for that on the demise of  
25 the old order or on the various market changes that

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1 occurred during the '90s, specifically the reduced  
2 brewer demand for hops and the increased yields, the new  
3 varieties?

4 A. I would fix the lack of contracting and  
5 the instability in the market. As I think I stated  
6 earlier, if a purchasing agent in a brewery is going I  
7 have forward contracts at price X and the spot price has  
8 been substantially lower, eventually some board of  
9 directors is going to look at this purchasing agent and  
10 go why are we doing this, if every year the spot prices  
11 are substantially lower? I think that's -- it's taken  
12 time for that whole process to come to fruition and I  
13 think that's why we are where we are right now.

14 Q. Do the Germans and other producing areas  
15 store hops in the same form, pellets and extracts, they  
16 do here in the US?

17 A. That gets into an interesting subject  
18 because Germany generally has a philosophy that they  
19 will sell out their production every year. You have a  
20 uniqueness -- really, in Germany there is multiple --  
21 there's a lot of little small merchants to some degree,  
22 the primary two major merchants and a grower crop, they  
23 call it HVG. HVG is mandated by the EU policy to be in  
24 existence and they administer the subsidies, they can  
25 initiate grubbing grants, which they have done in the

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1 past. They do a lot of different functions, but one of  
2 their functions has been is to create a pool, which has  
3 been followed by some of the other merchants. So they  
4 create a pool for unsold hops. It's not mandatory.  
5 They put them in, but quite a bit of the growers do do  
6 it. And then the philosophy of the HVG pool is to sell  
7 100 percent out every year at whatever price. So  
8 storage of German hops is not a common thing.

9 Q. I notice from the Barth report, which is  
10 Exhibit 40, that the Czech Republic had a hundred  
11 percent contracts for '03. What's the deal over there?

12 A. I'm glad I'm over here. The Czech  
13 Republic is an interesting study. They produce,  
14 essentially, one hundred percent Saaz hops. It's an  
15 aroma hop very low in alpha, very limited demand. They  
16 have responded to their supply and demand situation and  
17 reduced their acreage substantially. If you go back in  
18 history, there was -- they had a pretty good following  
19 of users and that's dwindled substantially in the last  
20 few years to maybe just a few -- not as many users and  
21 so they brought their supply and demand into balance and  
22 so they report or expect that they have a hundred  
23 percent of their hops sold. And in fact, what's  
24 interesting about Czech Republic, there's actually laws  
25 on the books that prohibit them from growing any other

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1 variety than the Saaz variety unless under special  
2 circumstances. So they can't even get into alpha hops  
3 by law. Unless there's special circumstances. And  
4 they're looking at some change in that, but it's very  
5 difficult. They probably didn't sell -- the  
6 traceability of their varieties and purity.

7 Q. Now I notice that Poland has a 90 percent  
8 contract rate. What -- you know...

9 A. I have to rely on -- I mean, as I said, I  
10 talk to a lot of these guys. If -- I could be corrected  
11 on this, but -- I'll give you my opinion that I think --  
12 Poland's got a very high duty of hops going into Poland.  
13 They work mostly with these bloc countries and so Poland  
14 has a very -- almost a system that's separate from  
15 everything else. And so they work with these bloc  
16 countries and their reporting of percent sold is open  
17 for discussion, I guess. But they state that, there's  
18 90 percent sold, so I guess I have to believe what I  
19 read. I'm not sure if that's the case in actuality.

20 Q. All right, so they have what some of the  
21 economists have referred to as border controls?

22 A. Very serious. Somebody could maybe  
23 comment. I think -- I'm not sure. I -- it's very high,  
24 whatever it was.

25 Q. All right. Are these grubbing agreements

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1 you referred to?

2 A. In the EU?

3 Q. Yes. And that's what you were trying to  
4 model your set-asides after?

5 A. Well, I think that it was not necessarily  
6 in how it was structured, but in the concept of paying  
7 growers to remove acreage.

8 \*\*\*

9 MR. BARTON: Can we take a break for a moment?

10 MR. MOODY: Right, okay now...

11 ADMINISTRATIVE LAW JUDGE: Mr. Moody, let's  
12 change the tape. It's 4:48.

13 \*\*\*

14 [Off the Record]

15 [On the Record]

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: All right, Mr.  
18 Moody, we're back on record, 4:48.

19 \*\*\*

20 BY MR. MOODY:

21 Q. Okay, we're talking about...

22 A. Yeah.

23 Q. ...grubbing agreements, and...

24 A. Okay. Do you have a question about it,  
25 or...

1 Q. I didn't mean to interrupt you.

2 A. No.

3 Q. All right. And if I understand, you were  
4 trying to model your set-asides after the grubbing  
5 agreements?

6 A. In concept only.

7 Q. Okay. But isn't one of the key  
8 provisions of a growing agreement the complete removal  
9 of crop rather than just a non-harvest?

10 A. In German EU policy, that was the case.  
11 As I stated, in concept, we were trying to model it --  
12 and I guess that was a poor choice of word. We -- the  
13 United States does not require removal. The United  
14 States program we were looking at did not require that.  
15 And Germans -- in the German EU policy it was required.

16 Q. Okay, wouldn't that have been sort of a  
17 more effective way of dealing with this oversupply  
18 problem that you referred to as just to get rid of the  
19 hops altogether?

20 A. We couldn't even get the other one in  
21 place. How could we have gotten a permanent grubbing  
22 grant in place?

23 Q. I guess what I mean is isn't that --  
24 isn't the purpose of doing the alliance and the set-  
25 aside was it in the hopes of clearing out some of the

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1 storage build-up?

2 A. Well, I think that we had a problem. We  
3 had inventories building and we also had over -- okay, I  
4 guess we had a structural oversupply in that we were --  
5 we had inventories and we were continuing to add to  
6 those inventories, so to that sense.

7 Q. Right. And by setting aside some acreage  
8 for a year or two, that would reduce the inventories in  
9 storage?

10 A. We would hope.

11 Q. Right. And -- but I -- I guess I was  
12 going to say wouldn't a more effective way of  
13 controlling the long-term supply, be in pulling hops out  
14 altogether?

15 A. Well, in theory, I'd agree with you on  
16 that.

17 Q. All right. Now, if the marketing order  
18 had been place back in '00, '01, and '02 and you've been  
19 successful at drawing down inventories, wouldn't you  
20 have missed out on the revenue gains that benefited this  
21 industry as a result of the German crop failure this  
22 year?

23 A. Well, I think a -- we can't foresee  
24 disasters like a crop failure. But I state that even  
25 the growers that were able to sell inventory this year

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1 did not realize any substantial gains. The cost of  
2 carrying that inventory for the last three, four years  
3 is very inefficient, so I can't see them, you know,  
4 substantially gaining from that. I think that, you  
5 know, we can't address how the committee would've  
6 responded to that, who knows?

7 Q. Did you have an opportunity to clear out  
8 some of your inventory this year because of the German  
9 crop failure?

10 \*\*\*

11 MR. MONAHAN: Your Honor, I guess I'm just  
12 asking. Earlier in the proceedings we reminded  
13 witnesses that they do need to divulge proprietary  
14 information. If we want to open the doors where all  
15 farmers are asked about their inventory and what they  
16 sold, I guess I'm happy to play by those rules.

17 MR. MOODY: I'm sorry. I thought Mr. Roy was  
18 present for the earlier discussion on trade secrets.

19 ADMINISTRATIVE LAW JUDGE: Some of you weren't  
20 present when we discussed in Portland that there is  
21 certain information that you may be asked on cross-  
22 examination about you own operation which is sensitive  
23 and would hurt you competitively to reveal it and we  
24 call that proprietary information. And you may decline  
25 to answer questions about it. However, people are

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1 perfectly free to ask about it, so you, as a witness,  
2 have to decide what you're going to share and what  
3 you're willing not to share. Then if there's some  
4 contest over whether it's truly proprietary information,  
5 I'll hear both sides and rule. But basically, the  
6 questioner is free to ask and the answerer must decide  
7 whether he wants to reveal it. Now I've forgotten, Mr.  
8 Moody, what your question was.

9 \*\*\*

10 BY MR. MOODY:

11 Q. My question was just whether the German  
12 crop failure -- if Mr. Roy, as one of the bigger  
13 producers, had an opportunity to draw down some of his  
14 own inventory.

15 A. I would acknowledge that I have inventory  
16 from this year and prior years and I would invite anyone  
17 that wants it, to talk to me.

18 Q. Well, it's -- is one of the -- isn't it  
19 true that one of the potential costs of putting a  
20 marketing order in place is that if it's -- the  
21 committee might operate the order in such a way as to  
22 have the -- you know, the inventories be so low that the  
23 US industry would miss out on an opportunity -- now,  
24 this is not a very nice thing to do, but to profit from  
25 somebody else's disaster.

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1 MR. MOODY: That's it for now, Mr. Roy. Thank  
2 you very much. Or Leslie, I apologize.

3 MR. ROY: Can I call you Jim?

4 MR. MOODY: Yes.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
6 Moody. It's 4:55. I know we're getting a little late,  
7 but I still would like to finish the examination of Mr.  
8 Roy. Is there anyone else from those who are here in a  
9 position against the marketing order that has questions  
10 for Mr. Roy? I see no one. I'd like now to turn to  
11 neutrals beginning with USDA. Are there any questions  
12 for Mr. Roy from USDA participants? Ms. Finn?

13 \*\*\*

14 BY MS. FINN:

15 Q. Good afternoon, Mr. Roy. First, I have a  
16 couple of questions, just some general industry  
17 questions.

18 A. Uh-huh.

19 Q. And then I do have some questions that  
20 relate to the specific provisions that you were  
21 testifying to. Do you know what the total number of  
22 growers are in the state of Washington?

23 A. I think it's open for discussion at this  
24 point.

25 Q. I know that the continuance referendum  
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1 issue is something that we are thinking about, but a lot  
2 of what we're looking for is we like to get a picture of  
3 the industry, an industry profile, so we try to get a  
4 sense of the size of the growing operations, the number  
5 of acres and those kind of things, so that's really why  
6 we're asking at this point, but it -- I keep hearing 50  
7 over all.

8 A. Well, in my view as -- what I define as  
9 entities, you know, if a father and multiple sons are  
10 farming, I consider that to be one. You know, brothers  
11 under common banking, those kind of things. That's in  
12 my view, how I define it.

13 Q. So would you have an estimate of what  
14 your number would be for Washington?

15 A. Given the discussion, I'd be afraid to  
16 hazard a guess at this point.

17 Q. Okay. Mr. Roy, of the approximately 50  
18 growers, what percent of those are Washington?

19 A. I think -- I'd be afraid to hazard -- I  
20 think at one time 75 percent, or something like that.  
21 70, 75 percent of the growers are in the state of  
22 Washington. That's open for discussion, too. I think  
23 -- I look at acreage. There's a lot of different ways,  
24 but -- you know, Oregon generally has more growers  
25 smaller farm size and Washington generally has larger

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1 farms and less numbers.

2 Q. That was going to be my next question.  
3 You said that there are -- you are the largest grower...

4 A. I did not say that.

5 Q. ...or one of the -- one of three? How  
6 about that?

7 A. It's felt that there are three large  
8 growers. I think there's -- it's -- I mean,  
9 independent, there's farms that over -- I think they  
10 classify the large farms as say, over 1500 acres and  
11 there's three of us plus I think some of the -- there's  
12 other -- I think there's probably five of us if you  
13 include -- in -- yeah, five. You can define it multiple  
14 ways, so...

15 Q. Okay. This may be a different question,  
16 but is there such a thing as organic hops?

17 A. There are [sic] such a thing. I'm not  
18 aware of any produced in the United States. I know that  
19 England produces some and I think there's maybe a few in  
20 Germany and there might be some in the United States. I  
21 know it's been tried. I'm not sure if it exists.

22 Q. But there are none to your knowledge...

23 A. Not to my knowledge.

24 Q. ...in the United States? Thank you.

25 We've been hearing a lot about .50 a pound for hops is

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1 below the cost of production and perhaps \$2 and .40 or  
2 .50 is...

3 A. Above the...

4 Q. ...above the cost. Is there...

5 A. Depending on the variety. I mean,  
6 there's varieties that sell at over \$3 a pound that is  
7 -- covers the cost of production plus an adequate  
8 return. So it depends on the variety if we're talking  
9 about pricing. I mean, each variety has a different  
10 price point.

11 Q. Is there a set -- a standard -- industry  
12 standard for what the cost of production price per pound  
13 would be?

14 A. I just refer back to cost studies the  
15 WSU's done.

16 Q. Okay, now to the specific provisions.  
17 Under 991.50 A, the first sentence says "the committee  
18 shall meet on or before November 15 of each year to  
19 adopt a marketing policy for the ensuing marketing year  
20 or years." Could you tell me what was intended by  
21 adding the words "or years" at the end of that sentence?

22 A. To allow the committee to -- flexibility  
23 to respond to maybe some unusual situations. I mean,  
24 the -- just the flexibility for the committee to respond  
25 to this dynamic industry we live in.

1 Q. But would you be meeting annually to...

2 A. I think you always meet annually. Yeah.

3 Q. Under paragraph D of that same section,  
4 and there's also a similar paragraph under 991.51, it  
5 says "as soon practical, following the effective date of  
6 this part and the organization of the committee, the  
7 committee may adopt a marketing policy." Can you  
8 explain what the intent of adding that paragraph...

9 A. Well, I think it allows -- the committee  
10 may means that they could decide not to adopt a  
11 marketing policy. Again, flexibility in the committee.

12 Q. Might it have something to do with if in  
13 the event the order was put in place at an odd time of  
14 year...

15 A. That could be one of the flexibility  
16 needed.

17 Q. Under 991.51 there is the authority to  
18 increase the saleable quantity at a later time during  
19 the year that you were discussing with Mr. Carswell.

20 A. Yes.

21 Q. If that did not exist -- if that wasn't  
22 in there, what would the potential impact...

23 A. I think that's a very important part of  
24 this whole policy, to be very responsive to the needs of  
25 the industry, of the consumer, which is the breweries.

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1 Like -- I think a very good example is this year, if  
2 there had been -- if the crop failure became very  
3 evident to the committee and to respond to that they  
4 would meet and come up with a policy -- and I would  
5 suspect it would have been to increase, to put more  
6 supply on the market. Or more saleable on the market.  
7 To respond to the needs -- that there would be as much  
8 flexibility as possible.

9 Q. Thank you. Under 991.52, the -- Mr.  
10 Moody made reference to using the word purchase and  
11 that's also used in paragraph A, so I understand that's  
12 being clarified at a later time.

13 A. Yes.

14 Q. But also, it says "no handler shall  
15 purchase from producers any alpha acid during such  
16 year." Is it always alpha acid that is purchased from  
17 producers?

18 A. No, I think that's where that alpha  
19 factor comes in so growers can still sell raw pounds of  
20 hops, which is characterized -- which is characteristic  
21 of the current market. So I think -- it's really alpha  
22 acid, but you come back to a function of the factor  
23 times the production gives you what you could market.

24 Q. So it would be the equivalent -- like an  
25 equivalent, like, from the hops to the...

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1 A. That's correct.

2 Q. ...alpha acid factor?

3 A. Yeah, yeah.

4 Q. And on the determination of the alpha  
5 acid factor, would it be the committee that would  
6 commute -- compute this information?

7 A. I'm not sure what the committee would  
8 decide and maybe they might allocate that to a sub-  
9 committee of growers -- of different growers, who knows?  
10 I think there's flexibility there, so...

11 Q. All right, in the last paragraph, C, on  
12 991.52, the last sentence. It says "a producer may  
13 forward sell any variety of hops in an amount equal to  
14 that variety's production times the alpha acid factor  
15 for that variety for the year for which the alpha acid  
16 factor has been established, or the producer may sell  
17 any combination of varieties provided that, in any case,  
18 the total quantity sold is within the producer's  
19 saleable quantity for that year." Could you explain  
20 what that means?

21 A. Well, I think what it does is allow or  
22 encourage forward contracting, so let's say that a  
23 grower knows that his average production for that  
24 variety is a thousand pounds per acre and the alpha  
25 factor is, let's say, five -- let's say 10, because my

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1 mind's getting pretty slow here. So the alpha factor is  
2 10. He knows that he can sell 10 percent times a  
3 thousand, which is a hundred, I believe. My mind's  
4 getting very slow here. A hundred -- so he knows he can  
5 sell 100 pounds of raw hops in a contract and know that  
6 he could deliver that 100 pounds, irrespective of what  
7 the alpha really was at harvest time. So I think the  
8 committee would -- I would hope -- I would encourage  
9 them to set alpha factors for multiple years to allow  
10 the contracts to made long-term.

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: Now, what you just  
13 explained, he could sell enough hops to add up to 100  
14 pounds of alpha...

15 MR. ROY: Yeah, that's correct. Yeah.

16 ADMINISTRATIVE LAW JUDGE: Okay.

17 MR. ROY: You're correct.

18 ADMINISTRATIVE LAW JUDGE: Okay.

19 MR. ROY: And he could sell that in any  
20 combination of varieties. He could have -- he would  
21 have multiple varieties, multiple alpha factors, so he  
22 could accumulate that to get to his saleable -- not  
23 saleable, but he would know how many pounds he could  
24 sell by each variety's alpha factor times his  
25 production.

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BY MS. FINN:

Q. Would the alpha acid factor be readjusted occasionally?

A. Well, I think that was part of the reason why the committee chose a three-year average. I think that more adequately represents what a variety does. There is yearly fluctuation.

\*\*\*

MS. FINN: Thank you. That's all I have.

ADMINISTRATIVE LAW JUDGE: Thank you, Ms. Finn. Other questions from USDA? Yes, Dr. Hinman. And Dr. Hinman, again, there are people here who weren't here the last time you spoke. Would you identify your credentials?

\*\*\*

BY DR. HINMAN:

Q. Yes. Don Hinman, economist with Agricultural Marketing Service, USDA, in Washington, D.C. Mr. Roy, again, the subject of contracts. You used the term cut across contracts in your testimony. Could you explain what you mean by that and it's implication for producer allotments?

A. Well, I think there's -- if a grower -- if a hypothetical grower had his production and he had a

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1 -- he had for some -- if he had the opportunity or the  
2 chance, which I don't think exists currently, but if he  
3 happened to have 100 percent of his production  
4 contracted for the next three years, let's say, and a  
5 producer allotment program was implemented and there was  
6 a cut, he -- theoretically, he would not be able to  
7 deliver those contracts unless he leased base or bought  
8 base. So what he did was -- we put growers on notice --  
9 again, I can't remember the date exactly -- but stating  
10 that any contract prior to that, we would honor those  
11 contracts and not cut across them.

12 Q. Okay. You explained that in the -- if  
13 the system was in place, the committee would make its  
14 decision, it would be in sufficient time -- they could,  
15 you know, order the string, make all those decisions...

16 A. Yes.

17 Q. The contract for that year in plenty of  
18 time...

19 A. Yes.

20 Q. ...for that...

21 A. Yes.

22 Q. For that upcoming season. But there have  
23 been -- you've expressed that that's sort of single-year  
24 contracting that season.

25 A. Um-hum.

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1 Q. In terms of multiple-year contracting,  
2 we've heard used expressed through questioning and  
3 response, is that producer allotments may not be  
4 compatible with multi-year contracting, but I believe  
5 you have said that you believe it is compatible...

6 A. Yes.

7 Q. ...and could you explain that?

8 A. I think I could earlier, but I'm not sure  
9 if I could go through it all again right now. I'm  
10 getting a little tired here. Could you ask the question  
11 again? I want to see if I can focus here.

12 Q. All right. Just distinguishing -- you  
13 know, you'd given an example of single-year contracting  
14 -- you know the saleable for sure now and you can  
15 contract, you know, say -- you know, in the early winter  
16 and make your decision.

17 A. I mean, if...

18 Q. If the saleable is known, okay...

19 A. But his saleable's known...

20 Q. Multiple-year contracts the saleable is  
21 not known with certainty.

22 A. That's true.

23 Q. So I'm asking -- I believe you expressed  
24 the general view...

25 A. Well, I think that...

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1 Q. ...that multiple-year contracts can be  
2 compatible with producer allotments.

3 A. Well, I think that -- I mean, if -- I  
4 think there's always going to be a certain segment of  
5 the market that will buy late in the season. What  
6 happened in the last order was those that really wanted  
7 to guarantee their supply of a particular variety longer  
8 term would contract long-term. I mean, they would have  
9 three, four year contracts. It -- if they're -- as I  
10 stated, if they're the first contract on -- in date,  
11 they become the first one against the allotment, so  
12 they're almost guaranteed because you can't envision a  
13 scenario where they were cut so deeply that it would cut  
14 across those. So they're pretty protected by that. And  
15 then as you went up -- there's a -- you have a pretty --  
16 the committee should be relatively stable in what they  
17 do, I would think, to some degree. At least it was in  
18 the last order. It wasn't this wild swings back and  
19 forth. There was stability that they did. And so I  
20 think that you -- as you come up, you can come up to a  
21 certain degree knowing that you're pretty comfortable  
22 that you're going to get it, so -- and then that  
23 contract's what we called T - total allotment contracts,  
24 I think, where the purchaser knew when he was getting  
25 close to the top, would say I'll take all your

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1 production up to your allotment base. And you wrote a  
2 contract so everybody knew what it was. So they -- once  
3 the committee set it -- sometimes you knew after the  
4 committee set it, sometimes you didn't, but you would  
5 sign a contract saying I'll take everything up to your  
6 allotment and the contract was signed that, so -- I  
7 think there was provisions that would allow contracting  
8 to exist in what we're proposing.

9 Q. Okay, I think I want to shift gears. You  
10 mentioned -- Ms. Finn mentioned cost and production and  
11 you mentioned -- you referred to studies. Do you have  
12 such a study available?

13 A. I think Washington State University put  
14 out a cost study and they do it periodically, I believe.  
15 The last one was 1999 and that is available. I'm not  
16 sure if it's been entered into evidence here, but it is  
17 available.

18 Q. It could be it's not yet been put into  
19 evidence.

20 A. Oh, okay.

21 Q. I want to ask about acreage. When we've  
22 talked about acreage in terms of the figures that have  
23 been, you know, published and passed around has been, I  
24 think what you call strong acreage. Strong and  
25 harvested acreage?

1 A. Yes.

2 Q. And I guess I'm -- seeing from this that  
3 there's various categories, based on your testimony,  
4 that you might have idle acreage, that you have  
5 trellises and then plants on the ground, but they -- you  
6 know, they didn't...

7 A. Yes.

8 Q. ...string them.

9 A. Yes.

10 Q. And you might have -- that's a second  
11 category. A third category, I guess of -- trellises and  
12 then no plant -- no vines at all?

13 A. Yeah. And it's interesting, you know,  
14 since we've gone through this radical price fluctuations  
15 and production -- we've left some ground idle and then  
16 replanted back and actually, there's maybe some  
17 advantages to that, so -- but there is a new  
18 classification, yeah. You'll -- there might be some  
19 advantages to leave it idle. So we have ground where we  
20 have plants growing on the ground waiting for production  
21 in a future year and we have plants that we string...

22 Q. Just to get an idea of productive  
23 capacities -- we have published figures only on  
24 harvested acreage. Is -- are there any figures on --  
25 productive capacity in terms of...

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1           A.    Not other than driving around and seeing  
2 idle fields and the trellises still there.

3           Q.    All right.  You mentioned, in your  
4 inventory, bales -- you make a decision to maybe  
5 palletize or make the extract of some or all of that,  
6 right?

7           A.    Yes.

8           Q.    That would be your decision based on your  
9 inventory.  Can you characterize the possible -- of  
10 other Washington growers or other industry growers to  
11 accept what other growers...

12          A.    I...

13          Q.    The same thing perhaps, between large and  
14 small who have the capacity to do that versus those who  
15 may decide to sell all of the bales out of inventory?

16          A.    How is the question phrased?  I...

17          Q.    Okay.  What is common practice in terms  
18 of storing inventory and bales versus how many growers,  
19 typically with bales -- how many people typically take  
20 that inventory that they know that they're going to have  
21 for a while and palletize or make extract?  Can you  
22 generalize about the industry?

23          A.    That would be very difficult because it  
24 depends on the variety.  Some varieties may hold up to a  
25 year longer in bale form and lose very little alpha,

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1 where there's other varieties that may lost 50 percent  
2 of their alpha in six months in bale form. So it's  
3 really dependent on the variety. So -- but I think you  
4 can generally characterize the industry right now as  
5 there's growers holding bales, there's growers holding  
6 pellets, and there's growers holding extract. And it's  
7 increasing the amount of growers doing it, where  
8 previously, maybe two or three growers did it on a  
9 regular basis for whatever reason, but today there's  
10 more and more of it being done.

11 Q. By being done, you mean fewer leaving in  
12 bales and more processing?

13 A. Well, more of a -- either -- in a sense,  
14 we're doing it because there is no option in some cases.  
15 There is no contract, there is no demand for those hops,  
16 so you either can force them into the market at some  
17 ridiculously low price because you want the money, or  
18 you choose not to accept that -- because there's risk --  
19 I mean, I don't blame it so much on the people that buy  
20 the hops because if a grower wants that money so bad  
21 that he'll push them in when there's no demand, that  
22 indicates to me that demand's pretty bad because the  
23 person that buys them says I may have to sit on these  
24 for a year, I may have to sit on them for two years, I  
25 may have to -- I will have to process them to hold them

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1 until the demand comes up, so -- I mean, there's all  
2 kinds of a combination of things. It's just -- the  
3 whole thing's just in disarray, in my view.

4 Q. Okay. You mentioned one particular  
5 variety and the percentage associated with it. I think  
6 it was Nugget. I think you gave a range from 12 and a  
7 half to 14 percent? Does that still represent your...

8 A. Well, I think that...

9 Q. ...a reasonable range?

10 A. Yeah, I think that was in a hypothetical  
11 and I wasn't going to argue about a percentage, so...

12 Q. Okay. And you stated that the committee  
13 does not have the -- have a list of, you know, likely  
14 typical averages, something like that. That's a future  
15 committee function.

16 A. That's a -- yeah, a...

17 Q. But is there a commonly known list of,  
18 say, currently grown varieties and -- with figures like  
19 you gave for Nugget?

20 A. Well, I think that you can look at the  
21 Barth report, you can look at the Steiner report, you  
22 could look at -- I think there's some reports out there  
23 do some estimates. They're not absolutes, but they're  
24 pretty close. I think you'd -- I'd have to look at some  
25 stuff. I think there are some numbers out there that

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1 would be useful.

2 Q. Okay, but you -- you've not presented in  
3 evidence?

4 A. No. No, I have not. No, I have not.  
5 And I think that's a future committee function to look  
6 at those and decide the alpha factor.

7 \*\*\*

8 DR. HINMAN: Okay. That's all my questions.  
9 Thank you, Your Honor.

10 MR. ROY: Thank you.

11 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
12 Hinman. Mr. Broadbent?

13 \*\*\*

14 BY MR. BROADBENT:

15 Q. Yeah. Leslie -- can I call you Leslie?

16 A. Sure.

17 Q. I only have a couple of things. One of  
18 which is you've -- don't want to beat it to death, but  
19 you used the number 50 for growers. Are you aware that  
20 the 1997 census of agriculture had 119?

21 A. Again, it comes to this idea of what is  
22 an entity. I mean, I think the census -- I think it is  
23 tax entities, you know, if you have -- like in our case,  
24 we do have multiple tax entities as subsidiaries of our  
25 main company, so those would each be reported

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1 separately, so that's how you get maybe some of these  
2 high numbers.

3 Q. That's kind of where I was getting to.

4 A. Yeah.

5 Q. We had a list -- when we sent out a  
6 mailing, we had a list of 111 and each one of them had a  
7 different name.

8 A. Yeah.

9 Q. So part of the way you get to -- from 50  
10 to 111 would be...

11 A. Be...

12 Q. ...separate...

13 A. Yeah.

14 Q. ...growers having more than one...

15 A. Tax entity.

16 Q. ...tax entity...

17 A. Under their control.

18 Q. Okay. Something else you mentioned was  
19 that -- throwing around a price of .50 for some hops and  
20 then you made the comment that for some hops there is no  
21 market. Could you elaborate on that for just 10  
22 seconds?

23 A. Well, I think the .50 was in relation to  
24 prior years' markets. I think in the year 2002 -- this  
25 is 2003 -- 2002, in the fall, there was some spot hops

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1 sold in the .40, .50 range. This spring there was some  
2 hops sold in that .50, .60 range, you know, in contracts  
3 for this year's production. And then this fall, there  
4 was some demand, initially, as the world was responding  
5 to the shortage in Germany, or Europe, I guess, in  
6 general. And then there was some activity of hops being  
7 bought and then as of today I do not think there is a  
8 demand for the hops and I still have hops available.

9 Q. So if I offered you .10 a pound for...

10 A. I wouldn't accept .10 at the moment.

11 Q. Okay. So to some extent, when you said  
12 there is no market, that is -- if I...

13 A. Well, I guess -- I don't know. I guess a  
14 poor choice of word. If a grower's willing to sell at  
15 .10 would somebody buy? Maybe. I don't know.

16 Q. Okay.

17 A. I don't know that for a fact, but really,  
18 there is no market. I mean, there is no -- if you were  
19 willing to sell at a reasonable price, let's say, there  
20 is no market.

21 Q. Okay. That was where...

22 A. Yeah.

23 Q. ...I wanted you to go. It was to try to  
24 clarify that, whether or not there is no market for --  
25 at a reasonable price, so -- if you'll indulge me, could

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1 we explore alpha acid content for just a second?

2 A. Sure.

3 Q. I'm kind of getting to the conclusion  
4 that there's a lot of variability in alpha acid. Would  
5 you agree?

6 A. Yes.

7 Q. And you already had testified that that  
8 can be based on the testing method?

9 A. Well, I think that what it is, is it's  
10 the same alpha being analyzed by different systems. The  
11 was the Europeans do it, the was the Americans do it,  
12 and the way the breweries sometimes buy it. So  
13 basically, you're working with the same component of  
14 alphas as how they measure it. It's just different  
15 systems measure it in different -- you know, a Mebak  
16 system versus a spectral versus HPLC -- they're dealing  
17 with the same amount of alpha, it's just some -- and  
18 maybe you have to get some chemists to explain it, but  
19 you know, it's...

20 Q. Okay, so that variation was based on  
21 testing method...

22 A. Right. That's correct.

23 Q. ...but could I infer from that, that if  
24 you were to take alpha from different testing methods  
25 that we would be comparing apples and oranges?

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1           A. Apples to apples. Because it's the same  
2 alpha, it's just tested differently. And I would really  
3 -- if you would allow, I think maybe somebody else  
4 that's got clearer mind could...

5           Q. Okay.

6           A. ...explain it. But it really is -- it's  
7 the same thing, it's just how it's tested.

8           Q. Okay.

9           A. If you don't mind. I...

10          Q. No, I can go with that.

11          A. Yeah.

12          Q. I have a couple other scenarios.

13          A. Okay.

14          Q. Try not to beat the dead horse, but...

15          A. No. That's me.

16          Q. Would it be fair to say that there could  
17 be differences in alpha acid content based on cultural  
18 practices?

19          A. That's presumed in some circles.

20          Q. How about weather?

21          A. Yes. There's a lot of -- the alpha --  
22 the ultimate alpha in a hop is -- somebody -- the  
23 industry has been chasing for centuries.

24          Q. Well, and I can appreciate that, but we  
25 have to corral it somehow and so...

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1           A. Well, I think that's what the average --  
2 the alpha factor utilizes -- or uses to kind of take  
3 away some of that variability. If we set a three year  
4 average, a grower can still the way he always has sold,  
5 by pounds. Multiply the alpha factor times the  
6 production he has, he know he can deliver that many  
7 pounds irrespective of the variability that -- the  
8 seasonal variability, you know, one year it's low, one  
9 year it's high. Because most of the hops are still  
10 bought by a raw pounds irrespective of the alpha. So if  
11 a merchant buys 100 pounds of Nuggets, there's -- sure,  
12 there's maybe some alpha incentives there, but the  
13 merchant takes the risk -- he absorbs that risk of the  
14 variability, not myself.

15           Q. Okay. One more thing on the variability.  
16 If it's -- when -- I had a hop tour and was able to  
17 learn a little bit about the industry. I was under the  
18 impression that some growers may pelletize on the farm?

19           A. That is done by one grower, currently.

20           Q. Okay. Would that one grower's palletized  
21 alpha acid content be different by going through the  
22 palletizing process before it got to any testing  
23 facility?

24           A. No, because it's an alpha factor. I  
25 mean, it's -- because he starts off -- he knows how many

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1 pounds that went into those pellets and he just  
2 multiplies by the alpha factor. That become how much  
3 alpha he can market, irrespective of what he does to  
4 them. They -- it is -- if he were to palletize them, he  
5 still -- it doesn't make any difference what he does  
6 with the hops after he produces them. He still is bound  
7 by the alpha factor for that variety times the  
8 production and that becomes how much alpha he can market  
9 or goes against his saleable. So it isn't just the  
10 process of the palletizing doesn't influence -- change  
11 anything.

12 Q. Okay. And then you kind of touched on it  
13 a second ago with -- hops aren't purchased -- I mean,  
14 alpha acid isn't purchased, hops are purchased with some  
15 accounting for the alpha acid content, is that a  
16 correct...

17 A. There's usually a state certificate there  
18 -- that may include alpha acid. Not required, but most  
19 of them are.

20 Q. Okay. In Section 991.50...

21 A. Yes.

22 Q. A -- the end of paragraph A. It says  
23 "additional reports shall be submitted to the Secretary  
24 if the committee subsequently adopts a new or revised  
25 policy because of changes in the demand and supply

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1 situation with respect to alpha acid."

2 A. Um-hum.

3 Q. Wouldn't that be more appropriately hops?  
4 Because the supply and demand situation isn't always --  
5 or some hops traded based on some other value to  
6 whoever's buying them other than their alpha acid  
7 content?

8 A. Well, I think ultimately, we're coming  
9 back to alpha acid, the bittering units in beer, so I  
10 think we felt -- the committee felt that that was a  
11 proper wording for what we're trying to accomplish.

12 Q. Okay. I'm okay with that. I was just  
13 clarifying.

14 A. Okay, yeah.

15 Q. In 991.52, the three year average that  
16 you're proposing to use for an alpha acid factor, would  
17 that be a weighted average? Given the variability and  
18 alpha acid content?

19 A. Well, I think as a variety -- I'll let  
20 the committee answer that question. I -- in my mind it  
21 was a probably a simple average, but it could -- I mean  
22 maybe it needs to be weighted. Let the committee  
23 decide.

24 Q. Okay. One last -- now that you're saying  
25 let the committee decide. It says that the rules --

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1 "rule and regulations will be established by the  
2 committee." Wouldn't it be a good idea the Secretary  
3 approved those rules and regulations?

4 A. Absolutely.

5 \*\*\*

6 MR. BROADBENT: That's all I have.

7 MR. ROY: Okay. Thank you.

8 MR. OLSON: Well, that's the second time --  
9 well, first...

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
11 Broadbent. Mr. Olson?

12 \*\*\*

13 BY MR. OLSON:

14 Q. Yes, my name's Gary Olson, Regional  
15 Manager of the Northwest Marketing Field Office. If I  
16 can call you Mister or -- even a few minutes remain.

17 A. No problem, Mr. Olson.

18 Q. The -- and I commend you for your, again,  
19 recognizing the importance of government oversight and  
20 recommending that additional change to be...

21 A. Did I? Thank you. Very poor choice of  
22 words on my part.

23 Q. The -- on the -- I think I can explain  
24 this without you having to read an additional section,  
25 but on some of the testimony earlier, there was

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1 discussion about the -- providing authority for the  
2 committee to recommend a marketing policy for each year  
3 or years. I'd like to spend just a minute or two  
4 talking about that. Do you believe that the -- there  
5 should be authority contained within the -- this section  
6 or an existing committee to make marketing policy  
7 recommendations or minimum saleables over a period of  
8 years?

9 A. I think that existed in the last one and  
10 I think -- I'll leave that to the committee. That's for  
11 them to decide if it best suits the demand or the  
12 situation or the brewing industry, our ultimate  
13 customer. So they'll decide that.

14 Q. I guess initial question would be whether  
15 you believe there is sufficient authority within this  
16 Section 4 committee to bind...

17 A. I don't think you can bind the committee.  
18 I think that you can make recommendations, but I don't  
19 think you can bind a future committee. I think it's the  
20 same as legislature or any other government. Or any --  
21 poor choice of words, but you look at anything that's  
22 decided like that, you cannot bind, you can make  
23 recommendations to the future -- but I don't think you  
24 can bind a future city committee.

25 Q. Well...

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1 A. Maybe at a minimum.

2 Q. Yeah.

3 A. I think I'd defer that to somebody else.

4 Q. Okay.

5 A. It would be better.

6 Q. The -- I don't -- this might be something  
7 that'll be covered later in one context or another, but  
8 should there be an authority for the committee to exempt  
9 certain kinds of shipments -- examples might be organic  
10 exemptions, or shipments for experimental purposes, or  
11 others.

12 A. There should be. If -- I think -- I  
13 cannot point to the specific provision, but it should be  
14 and I think that was the intent. I think in the last  
15 order that was there. There was exemptions for brewery  
16 test blots. There was actually exemptions for certain  
17 varieties, so I think that that should be somewhere in  
18 there. I could not point to where it is.

19 \*\*\*

20 MR. OLSON: Thank you, Mr. Roy.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
22 Olson. Any other questions from neutrals? Yes, Mr.  
23 Mazumdar? And again, Mr. Mazumdar, would you identify  
24 who you are?

25 \*\*\*

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1 BY MR. MAZUMDAR:

2 Q. Hello. Chandra Mazumdar, Attorney,  
3 United States Department of Justice. I have a couple  
4 questions that I'm really going to try and be quick.  
5 I'm going to take you back about seven hours ago to the  
6 very beginning of your testimony and at that time you  
7 stated that under the prior HMO there were stable prices  
8 and after its termination those prices fluctuated  
9 wildly. Is that correct?

10 A. Well, I think that's been borne out by  
11 graphs, you know, that's been presented.

12 Q. Okay. And when you were referring to the  
13 stable prices, were you referring to the spot price?

14 A. No, I think more the -- I think that  
15 because such a high percentage was contracted up to 90  
16 percent, given by April or May of the year, that led to  
17 stability. I think the spot price still responds to the  
18 market.

19 Q. So was the spot price stable? Was the  
20 contract price stable or were you...

21 A. There was variability -- probably a  
22 higher degree of variability in the spot price than  
23 there was in the contract price.

24 Q. Okay. I'm just trying to clarify for the  
25 record whether or not...

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1           A.    You remember I was digging ditches for  
2 the first four years, I was -- that's all -- so I may  
3 not have perfect recollection of that -- how it was,  
4 so...

5           Q.    Right, but with regard to your statement  
6 earlier today, were you referring -- when you said  
7 prices were stable, was that a blend of contract and  
8 spot prices?

9           A.    Yes.

10          Q.    Okay.  And with regard to the wildly  
11 fluctuating prices, was that spot prices?

12          A.    Well, there really -- we don't have any  
13 contracts to speak of.  Other than the direct contracts  
14 we have currently that are the stable prices, but you  
15 know, with the other -- in the current situation we're  
16 in right now, there is no real future contract market,  
17 so...

18          Q.    I...

19          A.    We're really bound by the spot price.  It  
20 controls everything at the moment.

21          Q.    Okay.  I'm just trying to focus on when  
22 you said after the prior hop marketing order was  
23 terminated, prices wildly fluctuated.  Are you referring  
24 to...

25          A.    Well, I think there's -- you could create  
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1 any scenario since the demise of the last order. There  
2 was periods where there were long-term contracts, which  
3 I consider three years, at fairly decent prices.  
4 There's other periods of time, probably more recent,  
5 where there is no contracts. So you create any scenario  
6 you want since the last order, but it's been very  
7 unstable.

8 Q. But when you say unstable are you  
9 saying...

10 A. Well, as I say...

11 Q. That spot prices are unstable, contract  
12 prices are unstable...

13 A. Well, if there's no contracts you can't  
14 be unstable, so to the degree that -- I think I stated  
15 earlier where you have a price in the spring, actually,  
16 a one-year contract at .50, .60 cents and then six to  
17 eight months later there is spot prices at well over a  
18 dollar and then three or four months later there is no  
19 market, ow, that's a high degree of unstable or very  
20 unstable. Getting tired.

21 Q. Okay. Just another two or three  
22 questions.

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: Mr. Mazumdar, this  
25 might be a good time for us to change the tape at 5:33.

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1 \*\*\*

2 [Off the Record]

3 [On the Record]

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE: We're back on  
6 record at 5:34. Mr. Mazumdar?

7 \*\*\*

8 BY MR. MAZUMDAR:

9 Q. Okay. When you said that the prices were  
10 stable under the prior marketing order, is it your  
11 conclusion that the stability was caused by the  
12 marketing order?

13 A. Yes.

14 Q. And can you explain the basis for that  
15 conclusion?

16 A. I'm getting tired, so I think that could  
17 take awhile. But I think a lot of testimony has been  
18 presented why it was. I think Mr. Smith presented some  
19 testimony to that and I would defer to him and agree  
20 with that analysis. It's getting a little late in the  
21 day for me to really go into that. That'd be correct in  
22 it, so...

23 Q. Anything else?

24 A. I'm not -- I can't think of anything at  
25 the moment.

1 Q. Give yourself 10 seconds. Can you think  
2 of...

3 A. I barely remember the question you asked.  
4 About stable prices, you mean?

5 Q. About what supports your conclusion that  
6 there's a...

7 A. I'll defer to previous testimony. How's  
8 that? And I would agree with that, so...

9 Q. And other than Mr. Smith...

10 A. Well, I think there's a lot of testimony  
11 being presented, you know, to why there's stability in a  
12 marketing order -- in a managed supply/demand situation.  
13 How's that? And I think that that -- even efficiencies  
14 that we have experienced are not in the best in interest  
15 of the growers long-term. I think we can gain some  
16 efficiencies with a managed supply and demand that leads  
17 to a healthier industry that can better react some of  
18 the external forces that we beginning to face and will  
19 have to face in the future.

20 Q. Okay. And the very end of your direct  
21 testimony, I believe that you stated that you wouldn't  
22 sell into the spot market at a price of 50 cents or \$1  
23 per pound.

24 A. I never said that.

25 Q. Would you sell into -- I believe you said

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1 that you chose to...

2 A. Well, I think that I at one point -- you  
3 know, I mean, I think we get into my decision making  
4 process or any other grower's decision making process at  
5 any given point in time. Maybe I'm facing having to --  
6 excuse me -- extract a hop which essentially cost me 60  
7 cents a pound or more and I chose not to do that. Maybe  
8 my cash flow is upside down, which has been happened,  
9 and I chose I don't want to do that. So I figure it's  
10 better to take what I can -- I don't have the money to  
11 put into 60 cents. It's not a function of whether I  
12 want to or my desire or I think that I might get it, but  
13 I don't have the money to do it. So I am forced to take  
14 what it is.

15 Q. And is there...

16 A. Well, not forced. I mean, that's -- I  
17 mean, I have to come up with some arrangement, some sort  
18 of business arrangement to make it happen, so...

19 Q. Right. But I believe you said you  
20 wouldn't take a price of 50 cents or \$1 and you would  
21 rather carry...

22 A. If I have the financial wherewithal to be  
23 able to do that, that's my choice, so...

24 Q. Right. I'm interested in your decision  
25 making process. I know...

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1           A. Well, if I go to my fellow stockholders  
2 and say I think the price shall increase, I will have to  
3 add these dollars to my already existing growing costs  
4 with an expectation of recovering those. I mean, I've  
5 already incurred all the growing costs and those were  
6 essentially voluntary back in May, but involuntary up  
7 until after harvest. Now I have a voluntary choice of  
8 making do I want to process these hops and incur further  
9 costs with some -- with an unknown time frame of when I  
10 would sell it to recover those costs at some reasonable  
11 profit, or take a price back before I make a decision to  
12 process. So that's the roughly the process.

13           Q. And is there anything else that goes...

14           A. It would probably include my banker  
15 somewhere in there, too.

16           Q. Anything else besides your banker?

17           A. A couple prayers, probably.

18           Q. Anything else?

19           A. There might be a lot more things. I'd  
20 have to -- you know, it goes into what variety I'm  
21 trying -- I'm working with, if the variety has demand.  
22 In some cases there's specific variety -- specific  
23 demand for specific varieties. And so there's a very  
24 complicated process, what variety I'm holding, what my  
25 expectation into the future is of that variety, is that

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1 variety storable, is that variety -- is the trend of  
2 that variety going downward. So if it's already going  
3 downward, it's kind of foolish for me to try to hope for  
4 a higher price somewhere in the future. So it's a very  
5 complicated process.

6 Q. Anything else?

7 A. Well, I think there's a whole bunch of  
8 things. I'm not sure if I can capture all those  
9 possibilities at this point, so...

10 \*\*\*

11 MR. MAZUMDAR: Okay. Thank you. I don't have  
12 any further questions.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
14 Mazumdar. Any other questions for Mr. Roy from anyone?  
15 Mr. Monahan.

16 \*\*\*

17 BY MR. MONAHAN:

18 Q. Sorry, Mr. Roy. You can try to punt on  
19 some of these issues, but some of them of your  
20 responsibilities.

21 A. Okay.

22 Q. It's time for you -- I want you to  
23 address directly the government's question regarding  
24 recommendations for volume regulation. 991.51. There's  
25 a question as to whether the committee could make a

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1 salable quantity -- set a salable quantity for more than  
2 one year in the future and you said that perhaps is up  
3 to them. I would invite you to read Section A closely  
4 where it says if the committee's marketing policy  
5 considerations indicate a need for limiting the quantity  
6 of alpha acid, the committee shall recommend to the  
7 secretary a salable quantity in allotment percentage for  
8 the ensuing marketing year. Do you see that?

9 A. Yes.

10 Q. Do you see any authority that would allow  
11 them to set a salable quantity for future years?

12 A. No.

13 Q. That's not the intent, is it?

14 A. No.

15 Q. You were asked a number of questions  
16 about the Barth report and I'd ask you to put that in  
17 front of you again. Again, at page six we see this  
18 reported information regarding forward contract rates.  
19 Just quickly, the Barth report comes out of Germany,  
20 does it not?

21 A. That's correct.

22 Q. And it's an effort of a German dealer, is  
23 it, to compile information from the different hop  
24 growing regions in the world?

25 A. Yes.

1 Q. We see -- read aloud, if you would, for  
2 the record the sentence appearing at the bottom of the  
3 table.

4 A. Way at the bottom?

5 Q. Yes, sir.

6 A. Contract rates were calculated based on  
7 the acreage expected for 2003 and a long-term average  
8 yield.

9 Q. Okay. So if we go to look at the 69  
10 percent of forward contract rates that are reported for  
11 the USA in 2003, we don't know if that takes alpha into  
12 account at all, do we?

13 A. Alpha?

14 Q. Yeah.

15 A. No, we do not.

16 Q. Okay. And I hate to do this to you, but  
17 I'm going to make you do a little math with me. Okay?  
18 Get out your pen.

19 A. Okay. Okay.

20 Q. I'll try to make it easy.

21 A. Thank you.

22 Q. I've got one acre of Willamettes.

23 A. Yes.

24 Q. I've got one acre of Zeus.

25 A. Yes.

1 Q. My acre of Willamettes is contracted.

2 A. Yes.

3 Q. What percentage of my total acreage is  
4 contracted?

5 A. 50 percent.

6 Q. Good. You're with me so far. How many  
7 pounds of hops is my one acre of Willamettes going to  
8 produce?

9 A. If we take the average, around 1,400  
10 pounds.

11 Q. How many acres of hops is my one acre of  
12 Zeus going to produce?

13 A. I think the average last year was around  
14 2,400.

15 Q. What percentage of my pounds of hops are  
16 contracted? Less than 50 percent?

17 A. Yeah.

18 Q. Okay.

19 A. Yeah, it's...

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: About 30 percent?

22 \*\*\*

23 BY MR. MONAHAN:

24 Q. Let's keep going.

25 A. Okay.

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1 Q. On my 1,400 pounds from my one acre of  
2 Willamettes, how much alpha am I going to produce?

3 A. Roughly three and a half times that.

4 Q. About 50 pounds?

5 A. Yeah.

6 Q. On my one acre of Zeus, how much alpha am  
7 I going to produce?

8 A. An average of 15 percent.

9 Q. 15 percent on 2,400 pounds?

10 A. Is?

11 Q. Is it about 360 pounds?

12 A. Sounds like a plan.

13 Q. So if you add 360 and the 50, what  
14 percentage of my alpha is contracted?

15 A. One-seventh -- 14 -- 13, 14 percent,  
16 something like that.

17 Q. Okay. And, of course, we don't know what  
18 variations are set forth in this report, do we?

19 A. That's correct.

20 Q. Is it fair to characterize the Barth  
21 report as observations on the hop industry from the  
22 German perspective?

23 A. Well, it's created in Germany, so there's  
24 probably perspective from the German side.

25 Q. I want you to take a look at some of the  
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1 language here and I'm going to ask you if you as an  
2 American hop grower agree with these perspectives from  
3 the German industry? You've got some columns in the  
4 right-hand side of page six. Now, I'm going to read you  
5 some sentences and you tell me if you agree as an  
6 American hop grower. Underneath market analysis in the  
7 right-hand column there's a paragraph regarding high  
8 alpha hops. And it states near the bottom, "At the time  
9 of reporting, many prices for residual stocks are still  
10 below the growers production costs. The brewing  
11 industry for it's part has taken advantage of the  
12 decades of very low prices, at least in part for  
13 stockpiling. 2002 has meant a massive loss of assets  
14 for growers in practically every hop growing country."  
15 Do you, sir, as an American hop grower concur or agree  
16 with that analysis?

17 A. I agree.

18 Q. Going on. "The main hop producers,  
19 Germany and the USA, which as market leaders are also  
20 responsible for pricing on the world hop market, are now  
21 called upon to initiate a turnaround in the hop market  
22 by further reducing acreage, especially in the high  
23 alpha segment. If acreage is not reduced to a  
24 sufficient extent, there can be no prospect of  
25 substantial recovery in prices for the spot market in

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1 2003, or of forward contracts being agreed at prices  
2 above production costs." As an American farmer, do you  
3 agree with that statement analysis?

4 A. Yes.

5 Q. The last paragraph says, "This -- the  
6 above -- will make the hop market increasingly  
7 unpredictable and risky also for the brewing industry."  
8 And I should this -- you'll probably need to read the  
9 sentence...

10 A. Yeah.

11 Q. ...above it. But about the  
12 consequence...

13 A. Yeah.

14 Q. ...of a further decline in forward  
15 buying. Have you read that?

16 A. Yes.

17 Q. Do you agree with that conclusion?

18 A. Yes.

19 Q. There's been some discussion about  
20 whether the US hop industry under a marketing order  
21 would be able to respond to otherwise unforeseen demand.  
22 Are you aware of under the prior hop marketing order,  
23 sir, there was a dialogue between the industry and the  
24 brewers with respect to what the appropriate level of  
25 inventory would be to meet brewers needs?

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1 A. I'm not aware of any.

2 Q. So you can defer that one to another  
3 witness?

4 A. Yeah.

5 \*\*\*

6 MR. MONAHAN: That's all I have, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
8 Monahan. Mr. Roy, you mentioned leasing base for  
9 allotment. Would you anticipate that the committee  
10 would record those kinds of transactions in the same way  
11 they would record sales of allotment?

12 MR. ROY: The private transactions between  
13 individuals -- so I don't know if it has any merit, but  
14 I'll defer that to the future committee and let them  
15 decide.

16 ADMINISTRATIVE LAW JUDGE: Any other questions  
17 for Mr. Roy? Mr. Carswell?

18 \*\*\*

19 BY MR. CARSWELL:

20 Q. Yes, Mr. Roy.

21 A. You can call me Leslie.

22 Q. Leslie. I'm sorry. But not Les, I  
23 guess. Leslie, if you'd go to page six, the quote that  
24 you just gave...

25 A. Yeah.

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1 Q. ...that you agreed with. It says that if  
2 acreage is to reduced to a sufficient extent, there  
3 could be no prospect of a substantial recovery in  
4 prices. So am I understanding you now to agree that the  
5 goal of the marketing order is to have a recovery in  
6 prices?

7 \*\*\*

8 MR. MONAHAN: Your Honor, I just object to the  
9 question to the extent that's an incomplete quote of the  
10 material in the report.

11 MR. CARSWELL: Okay. Recovery in...

12 MR. MONAHAN: Well...

13 MR. CARSWELL: ...prices for -- go ahead.

14 MR. MONAHAN: No, go ahead and ask the  
15 question.

16 ADMINISTRATIVE LAW JUDGE: The objection's  
17 sustained. If you'd reword your question, Mr. Carswell.

18 MR. CARSWELL: Yes. I'll read the full quote.  
19 "If acreage is not reduced to a sufficient extent, there  
20 could be no prospect of a substantial recovery in prices  
21 for the spot market in 2003, or of forward contracts  
22 being agreed at prices above production costs." So you  
23 agree with that?

24 MR. ROY: Well, I think that, you know, as  
25 given the wild...

1 ADMINISTRATIVE LAW JUDGE: Fluctuation.

2 MR. ROY: ...fluctuation -- thank you -- of  
3 the prices, a statement like this could be made at some  
4 part of the cycle where the prices are very low. And  
5 under a market order, I feel we'd get stable prices, so  
6 this statement wouldn't have to be made. If you make  
7 this statement at the very low of the prices when  
8 there's no market or very low prices, this statement has  
9 merit. You know, given the wild -- it wouldn't have  
10 much merit if it happened to be the top part of these  
11 wild fluctuations, so...

12 \*\*\*

13 BY MR. CARSWELL:

14 Q. That statement also said -- it says if  
15 acreage is not reduced to a sufficient extent -- and I  
16 read the whole quote...

17 A. Right.

18 Q. ...before, but it says if acreage...

19 A. Yeah.

20 Q. ...is not reduced. Is there anything  
21 about the hop marketing order that encourages acreage  
22 reduction? Reduction...

23 A. Well, I think it comes down to alpha. I  
24 mean, the acreage -- there's no restriction on acreage.

25 You know, if the United States chose -- or if the

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1 individual growers chose to raise all aroma hops, the  
2 amount of acreage that would be necessary to equate to  
3 that alpha is phenomenal. So I think we're not talking  
4 about acreage, we're talking about alpha, so...

5 Q. So that's inconsistent with this  
6 statement as well? With the marketing order.

7 A. Well, I think it's just we're talking --  
8 this report, the Barth part report comes out in German  
9 and it is translated. So to that extent, let's give it  
10 a little bit of latitude in how what they're using as  
11 far as terms and phrases and words.

12 Q. Now, we can go back to it, but in the --  
13 on page 12 of the Hop Growers of America Statistical  
14 Report...

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: Give him just a  
17 minute to find it.

18 MR. ROY: Okay. If anybody wonders, my  
19 glasses broke, so I only have one side here. So it's  
20 similar to what I'm feeling right now, so...

21 \*\*\*

22 BY MR. CARSWELL:

23 Q. This is actually the wrong page. I'm  
24 sorry. Bear with me. I'm looking for the chart that we  
25 had that showed the comparison between the US and

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1 Germany, '92 and 2002. It's Roman numeral four. I'm  
2 sorry. The statistical overview.

3 A. Okay.

4 Q. And as we discussed earlier, this  
5 indicates that US alpha acid production has gone -- at  
6 this point in time and also for 2003 it's similar --  
7 it's been steady or even declined a little bit, is that  
8 accurate?

9 A. Well, I think we discussed this earlier  
10 about it.

11 Q. Right.

12 A. It's just a snapshot of a time, it  
13 doesn't...

14 Q. Right.

15 A. ...reflect the fluctuations to get to  
16 this point.

17 Q. But between '92 and 2002, we've seen the  
18 introduction of super high alpha acids, is that correct?

19 A. That's correct.

20 Q. So aren't we seeing by this a correction  
21 in supply by the US hop industry without being under a  
22 hop marketing order?

23 A. We have -- it's interesting -- if you  
24 talk about efficiency, we've gone from 42,000 acres down  
25 to 29,000 acres. We've become more efficient.

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1 Q. And increasing the same -- yeah,  
2 increasing...

3 A. Yeah.

4 Q. ...the same amount, but not increasing  
5 more, maybe even it might be a little less.

6 A. Well, I think -- you know, what you were  
7 looking at, you're taking a snapshot of 2002 after two  
8 years of voluntary reductions.

9 Q. But isn't 2003 similar numbers?

10 A. I have no knowledge of that.

11 Q. I thought we discussed that it would be  
12 similar.

13 A. I don't think that was with me.

14 Q. You know, when you were talking about how  
15 this would encourage contracts with brewers...

16 A. Um-hum.

17 Q. ...when I was asking you, I got the  
18 impression -- and then when Dr. Hinman was asking you, I  
19 got it even stronger that -- do you see this as a way to  
20 coerce brewers to enter into contracts...

21 A. No.

22 Q. ...with hop growers?

23 \*\*\*

24 MR. MONAHAN: Your Honor, I'm going to object  
25 to the terminology.

1 ADMINISTRATIVE LAW JUDGE: The objection is  
2 sustained. Would you reword your question, Mr.  
3 Carswell?

4 MR. CARSWELL: I will if you could explain why  
5 it's a problem.

6 MR. MONAHAN: I'd be happy to, if Your Honor  
7 wants.

8 ADMINISTRATIVE LAW JUDGE: All right. Thank  
9 you, Mr. Monahan.

10 MR. MONAHAN: In fact, this is probably a good  
11 time to discuss it. I mean, we've heard repeated  
12 speeches and statements by counsel for Anheuser Busch  
13 about how the support of a marketing order is going be  
14 perceived by Anheuser Busch, and I think it's  
15 inappropriate to use words like coercion that can be  
16 construed by growers in this room as any level of  
17 intimidation for the hop industry that's trying to make  
18 an informed vote on a proposed marketing order. And so  
19 I disapprove of the language. I think it's intimidating  
20 and inappropriate.

21 MR. CARSWELL: But I'm not talking about AB  
22 coercing anybody, I'm talking about AB -- feeling and  
23 I'm expressing what I feel, that AB would be coerced or  
24 the idea would be to coerce brewers into entering  
25 contracts. That you would have market power to

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1 establish -- you would create a situation where the only  
2 way we're going to be able to know that we're going to  
3 get our hops because of the uncertainty, would be to  
4 enter into contracts. For example...

5 ADMINISTRATIVE LAW JUDGE: May I interrupt?  
6 Will you be testifying?

7 MR. CARSWELL: Likely not.

8 ADMINISTRATIVE LAW JUDGE: All right. Let's  
9 not do it now, either.

10 MR. CARSWELL: Well, I'm just -- you know, I  
11 do think it's relevant. I'll rephrase the question.

12 ADMINISTRATIVE LAW JUDGE: Yes. That'll be  
13 good.

14 \*\*\*

15 BY MR. CARSWELL:

16 Q. Okay. If you're -- if you were -- when  
17 you described the incentives for brewers to enter into  
18 contracts, you said that being first in would be  
19 advantageous for brewers under a situation where there  
20 was a cut in the saleable quantity, is that...

21 A. In any scenario.

22 Q. Um-hum.

23 A. Increasing -- increasing saleables or  
24 declining or whatever. I think in this case there's  
25 been statements made that people would make the decision

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1 to go somewhere else if they don't like the situation  
2 here.

3 Q. Right.

4 A. So I think to talk about this, you know,  
5 in any context is everybody's free to do whatever they  
6 want. The growers are free to make -- enter into  
7 contracts, the ultimate consumers are -- can go anywhere  
8 they want, so I think to put together a hypothetical of  
9 -- or whatever words you want to choose or whatever is  
10 -- I don't -- I'm not comfortable discussing it, so...

11 Q. But it -- so it creates a -- it just  
12 creates an environment where it makes more sense for  
13 brewers to enter into contracts...

14 A. Well, I think it's about this whole  
15 discussion about stability. It has -- it -- if we have  
16 -- if we're meeting supply and demand, or meeting demand  
17 with an adequate supply, you know, with however the  
18 committee decides to do it, I think there's -- it -- all  
19 parties should be happy and that would be my goal, I  
20 think the goal of the committee and the goal of the  
21 industry to satisfy every user of American hops to  
22 whatever degree necessary.

23 Q. We heard the other day that -- from Mr.  
24 Smith that the market is in relative balance now. Do  
25 you agree with that statement?

1           A.    Well, I might argue with him a little  
2 bit. I have hops to sell, so I would point to a little  
3 bit of oversupply, I would think.

4           Q.    You indicated earlier that you don't  
5 think that there are hardly any -- there aren't many  
6 contracts out for 2004. Is that accurate?

7           A.    In -- if -- on my particular situation,  
8 our personal situation is reflective of the industry, I  
9 would think so and I think it is.

10          Q.    I don't want to ask anything proprietary  
11 so I'm not going to ask you about your situation.  
12 Again, we have, you know, on page six of the Barth  
13 report, the number of 45 percent contracted for 2004 and  
14 would that number be significantly higher is Anheuser-  
15 Busch had contracted for 2004?

16          A.    I would think so. And maybe -- I'm not  
17 sure if some growers -- I'm not sure how the numbers are  
18 derived, because some growers may actually presume --  
19 with the stability that the Anheuser-Busch program  
20 offered us, some growers might've just factored in -- or  
21 put in that they were sold. I mean, I -- in my view, in  
22 my estimations, in my future planning, I presume they  
23 are sold every year, so -- I mean if I report it, I'm  
24 not sure what individual growers do. I mean, it's  
25 almost a given. Granted, we don't have a contract for

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1 2004 yet, but I -- in all likelihood I expect, I hope, I  
2 pray, I do a lot of things, but I think I have contracts  
3 there next year, so...

4 Q. So you think this number could reflect...

5 A. I don't know. I have no idea.

6 Q. Even though...

7 A. I'd have to talk to the Barth people to  
8 find out what they used, how they arrived at that  
9 number.

10 Q. So -- and I'll be very quick here, but is  
11 it the idea that we're going to try to reduce the spot  
12 market by incentivizing [ph] brewers to enter into long-  
13 term contracts, creating a system where...

14 A. No. There's no -- I just presented a  
15 scenario where I felt -- that was my personal opinion  
16 that there -- there's advantages to contracting. What  
17 they ultimately decide is their decision.

18 Q. But if you think it'll be a result of the  
19 marketing order...

20 A. I have no idea to know what choices will  
21 be made.

22 Q. Yeah, but...

23 A. Either by growers or by the brewers or by  
24 the merchants.

25 Q. But you've indicated that you think this  
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1 will result...

2 A. That was my personal opinion.

3 Q. Yeah. And increase contracts.

4 A. I presented a scenario where I felt it  
5 was advantageous to be the first in line.

6 Q. But -- and that should help dry up the  
7 spot market?

8 A. Well, the more contracts there are, the  
9 less spots there are. Given that.

10 Q. Thank you, sir. And again, I just want  
11 you to know that I'm certainly not saying anything about  
12 AB coalescing...

13 A. No, no.

14 Q. I'm just -- I was just -- it seemed to me  
15 that we're talking about maybe some coercion on the  
16 other side.

17 A. I don't think there can be coercion in  
18 the hop industry. I think it's pretty dynamic, so -- I  
19 think everybody's in -- everybody makes their own  
20 decisions and I hope -- as I stated earlier, I really  
21 feel we can create a system to manage oversupply and let  
22 the free market work as freely as it can underneath that  
23 umbrella.

24 Q. Well, you recall Dr. Folwell's testimony  
25 yesterday...

1 A. Um-hum.

2 Q. ...about market power and how different  
3 sides have different market position. Was it your  
4 general understanding that his position was that the  
5 market order would give growers a stronger position vis-  
6 à-vis buyers in terms of their relationship?

7 A. That's a long time ago. I'd have to go  
8 think about that one for a little bit. I think he made  
9 some -- else, his opinion, I think.

10 \*\*\*

11 MR. CARSWELL: Thank you very much.

12 MR. ROY: Okay.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
14 Carswell. Any other questions for Mr. Roy from anyone?  
15 All right. There are none. It's 6:01. Mr. Moody,  
16 would you like a short break before you call your grower  
17 witnesses?

18 MR. MOODY: I think just a five minute -- ten  
19 minute -- five minute comfort break would be okay.

20 ADMINISTRATIVE LAW JUDGE: I think we better  
21 make it ten.

22 MR. MOODY: All right. Thank you.

23 ADMINISTRATIVE LAW JUDGE: Please be back and  
24 ready to go by about 6:12.

25 \*\*\*

1 [Off the Record]

2 [On the Record]

3 \*\*\*

4 ADMINISTRATIVE LAW JUDGE: We're back on  
5 record now at 6:14. Mr. Moody, you may call a witness.

6 MR. MOODY: Mr. Morrier.

7 ADMINISTRATIVE LAW JUDGE: Mr. Morrier, if  
8 you'll please be comfortable there at the witness stand.

9 MR. MORRIER: All righty.

10 ADMINISTRATIVE LAW JUDGE: I appreciate that  
11 the hour is late and I thank you very much for waiting.

12 MR. MORRIER: Thank you.

13 ADMINISTRATIVE LAW JUDGE: Would you please  
14 state and spell your full name for us?

15 MR. MORRIER: Yes. It's Joseph Morrier and  
16 it's M-o-r-r-i-e-r, and...

17 ADMINISTRATIVE LAW JUDGE: I'll swear you in  
18 and then I'd like you to tell us a little about your  
19 background with hops, where you live and grow them, how  
20 long you've been involved with hops and the like and  
21 then either Mr. Moody can ask you questions or you can  
22 make your statement and he can follow up with questions.  
23 Your choice.

24 MR. MORRIER: That'll be fine. Thank you.

25 ADMINISTRATIVE LAW JUDGE: You're welcome.

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1 Would you raise your right hand? And try not to look at  
2 me because when you speak, you need to speak to the  
3 microphone.

4 \*\*\*

5 [Witness sworn]

6 \*\*\*

7 BY ADMINISTRATIVE LAW JUDGE: Thank you. Pull  
8 the mike a little closer. All right, thank you. Now,  
9 if you'd just give us your background information.

10 MR. MORRIER: I'm third generation in farming  
11 and my children now are in the fourth generation. Our  
12 family's been farming in the early 1900s and today I --  
13 not this year, but I'm a little over a 500 acre grower.  
14 But I've been in the business all my life. Born and  
15 raised on a farm.

16 ADMINISTRATIVE LAW JUDGE: On your farm, do  
17 you grow crops other than hops?

18 MR. MORRIER: Yes, I do.

19 ADMINISTRATIVE LAW JUDGE: All right. And  
20 where is your farm located?

21 MR. MORRIER: It's Mires Road in Yakima,  
22 Washington.

23 ADMINISTRATIVE LAW JUDGE: And how do you  
24 spell Mires?

25 MR. MORRIER: M-i-r-e-s.

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1 ADMINISTRATIVE LAW JUDGE: M-i-r...

2 MR. MORRIER: E-s.

3 ADMINISTRATIVE LAW JUDGE: E-s. All right.

4 Thank you. Would you like to present your statement or  
5 would you like Mr. Moody to ask you questions that you  
6 would answer?

7 MR. MORRIER: Well, no. I -- my statement's  
8 kind of simple. I'm one of these gentlemen that prefer  
9 not to have regulations and that is probably the primary  
10 reason I'm against the marketing order is that I want to  
11 be a person who grows his hops without having any  
12 interference from a committee or from the government on  
13 type of regulations. That's basically my statement. I  
14 do not want to be controlled by anybody.

15 ADMINISTRATIVE LAW JUDGE: Did you have any  
16 experience under the old marketing order?

17 MR. MORRIER: Yes, I did.

18 ADMINISTRATIVE LAW JUDGE: And can you  
19 describe what obligations that you had that you found  
20 burdensome, if any?

21 MR. MORRIER: Well, the only thing I would say  
22 is the fact that it didn't give you actually what you  
23 could do from one year to another year and whether or  
24 not there was base available that you could rent and if  
25 not, then you grew what was under the law, what the

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1 regulation gave you as far as allotment base was  
2 concerned, so that had bothered me before when the  
3 marketing order that went in, I think, in the '60s, so I  
4 was not very much for it at that time, either.

5 ADMINISTRATIVE LAW JUDGE: Do you have  
6 anything else you'd like to tell us before I invite Mr.  
7 Moody and other people in the room to ask you questions?

8 MR. MORRIER: No, I do not.

9 ADMINISTRATIVE LAW JUDGE: All right, Mr.  
10 Moody, you may begin.

11 \*\*\*

12 JOSEPH MORRIER,  
13 having first been duly sworn, according to the law,  
14 testified as follows:

15 BY MR. MOODY:

16 Q. Thank you. What varieties of hops do you  
17 grow?

18 A. I grow Willamettes, Zeus, Galenas,  
19 Nuggets, Mt. Hoods, Cantgoldings [ph], Cascades.

20 Q. So that's quite a portfolio. And that's  
21 a combination of aroma and alpha varieties?

22 A. Yes, it is.

23 Q. And how have you been doing during recent  
24 years as far as contracting?

25 A. It's been difficult.

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1 Q. And are -- generally speaking, are more  
2 of your aromas contracting for than the alphas?

3 A. A combination of both.

4 Q. And were you approached or asked to  
5 participate in any of these voluntary set-aside  
6 programs?

7 A. Yes, I was.

8 Q. And what was your feeling on that?

9 A. We set hops aside in 2001.

10 Q. Meaning you left them...

11 A. Left them unstrung, yes.

12 Q. All right. And in 2002?

13 A. We left some also idle in 2002.

14 Q. And what's your feeling as to the -- if a  
15 marketing order were to go into effect, what's your  
16 feeling as to the way the initial base should be handed  
17 out? The proposal is '97 to '02, but do you think, for  
18 example, it might be better to set the base on the '03  
19 production?

20 A. Well, basically, I'm not interested in  
21 having any base set.

22 Q. No, I understand that, but I mean one of  
23 the purposes of the hearing is to explore alternatives.  
24 Either no order or modifications to the order.

25 A. No, I'm basically -- would be very up-  
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1 front. I'm against the order, period. And so as far as  
2 -- you know, I'm probably middle-type grower, 500 acres.  
3 I do not want to not know whether or not I'm going to  
4 growing a 30 percent cut from one year or to another  
5 year. I'd like to be the one to decide what I should  
6 grow and whether it's economics or not.

7 Q. So from your experience under the old  
8 order, did it increase your risk in doing business?

9 A. It would increase our cost because of the  
10 fact we had to either buy base or rent base in order to  
11 increase our production if we desired to do it at that  
12 thyme.

13 Q. And did you do both under the old  
14 program?

15 A. The old program was probably a little  
16 more difficult than it was when it was open. Because of  
17 the facts not knowing -- depending what you sold your  
18 product for really dictated what you could -- what you  
19 wanted to have as far as growing your hops in the  
20 futures, what the contracts were, and whether or not it  
21 made sense for you to enlarge your operations, but most  
22 of my operations was enlarged after the order was left.

23 Q. You expanded after '85...

24 A. Yes.

25 Q. ...when the old order terminated?

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1 A. Yes, I did.

2 Q. Okay. And it must have been a lot of  
3 investment to do that.

4 A. Growing hops is a lot of investment,  
5 period.

6 Q. Yes. And one of the theories of the  
7 proponents is that a committee of eight is smarter than  
8 you are at figuring out what you should produce. I  
9 gather you believe you're smarter than they are.

10 A. Oh, no. I wouldn't want to say that.  
11 After hearing my good friend today, I think he's quite  
12 right. He did a great job, but it's just a philosophy  
13 difference that I believe in free enterprise. I think  
14 it's really difficult to decide what's best. In this  
15 case, of trying to get a decent price when we control so  
16 many -- so lot of the production worldwide.

17 Q. Do you see one of the risks of the order,  
18 if it were to go into effect, that it would tend to  
19 drive consumers offshore for their hops?

20 A. I don't think so. I think the American  
21 grower's probably the most efficient grower in the world  
22 today, so I think we'd try to find ways that we can be  
23 more efficient than we were the year before in order to  
24 be able to stay in the business. Although there -- we  
25 have some restrictions with our state when we have CPI

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1 for labor, we have NNI to continues to go up, we never  
2 know what the cost of natural gas or oil is concerned,  
3 so it's a difficult solution to know what you can do.  
4 Each person's economics really dictates what he can do  
5 for it -- for himself.

6 Q. Well, one of the suggested purposes of  
7 the marketing order would be to reduce the supply here  
8 in the United States. Isn't there a risk that that  
9 might encourage consumers of hops, brewers, to acquire  
10 their hops overseas?

11 A. I think the American grower grows a good  
12 hops that brewers will always grow from the American  
13 grower, but at the same time I want to say that I think  
14 if we tell the world what we're going to produce, we  
15 lose a marketing tool and we might well lose our  
16 marketing to Europe or Asia. We didn't have much Asia  
17 competition 10 years ago like we have today. So many  
18 things depend on how strong our dollar is or how weak  
19 our dollar -- whether or not we'd be competitive with  
20 the Europeans and this is probably the last 18 months  
21 has given the American grower at least an opportunity to  
22 know that our dollar is weak, that helps commodities  
23 that export and we export all of our hops. And from  
24 that point of view, we probably were at much  
25 disadvantage when our dollar is very strong. Now we're

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1 becoming competitive with the Europeans because of the  
2 fact our dollar's weak.

3 \*\*\*

4 MR. MOODY: All right, thank you very much,  
5 Mr. Morrier.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
7 Moody. Other questions for Mr. Morrier? Let me start  
8 with those who are here in a position against the  
9 marketing order. There are none. Any questions from  
10 those who are here in a position in favor of the  
11 marketing order? Mr. Monahan?

12 \*\*\*

13 BY MR. MONAHAN:

14 Q. Good evening, Mr. Morrier.

15 A. Good evening, sir.

16 Q. Would it be fair to characterize you as a  
17 diversified businessman?

18 A. I would say so.

19 Q. Okay. I know that you can't always  
20 believe the papers, but I think I saw somewhere reported  
21 that you're the largest landowner in the city of Yakima.

22 A. Does that have anything to do with hops?

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: Being landowner?

25 MR. MORRIER: Yes.

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1 ADMINISTRATIVE LAW JUDGE: It does in that  
2 we're trying to get a feel for what size productions and  
3 so forth...

4 MR. MONAHAN: I can withdraw the question.

5 ADMINISTRATIVE LAW JUDGE: All right.

6 MR. MONAHAN: I can go in another...

7 ADMINISTRATIVE LAW JUDGE: All right. Thank  
8 you, Mr. Monahan.

9 \*\*\*

10 BY MR. MONAHAN:

11 Q. Would you characterize yourself,  
12 personally, as an active hop farmer, Mr. Morrier?

13 A. Yes.

14 Q. Would you say you are perhaps otherwise  
15 occupied in other business interests, as well?

16 A. Yes.

17 Q. One of the business interests you have is  
18 in hops storage, is it not?

19 A. Yes.

20 Q. You rent out storage space to hop  
21 producers and dealers?

22 A. Yes.

23 Q. Are you able to tell us how much storage  
24 space you do have?

25 A. No.

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1 Q. Is -- are you able to tell us what  
2 percentage -- how your profits from your hops storage  
3 enterprise compared to your profits from your hop  
4 growing enterprise?

5 A. No.

6 Q. Would it be fair to say that your hops  
7 storage enterprise would benefit from a -- an abundance  
8 of hops on the market?

9 A. No.

10 Q. Would you be comfortable telling us here  
11 who the primary tenant of your hop storage facility is?

12 A. No.

13 \*\*\*

14 MR. MONAHAN: I imagine you -- never mind. I  
15 have no further questions, Your Honor.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
17 Monahan. Any other questions from those who are here in  
18 a position in favor of the marketing order? Now  
19 questions for representatives from the government?  
20 Starting with USDA? Dr. Hinman?

21 \*\*\*

22 BY DR. HINMAN:

23 Q. Yes. Mr. Morrier, this is a question  
24 we've asked of all -- good evening. Is that better?  
25 This is a question we ask of all grower witnesses

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1 because of the need to distinguish in our rule-making  
2 process between small and large growers. So it's a kind  
3 of a standard question here and it's a -- it comes from  
4 the distinction make by the Small Business  
5 Administration about whether somebody, from their  
6 agricultural sales is -- are more or less than \$750,000  
7 per year. Lower is small and by SBA definition higher  
8 than \$750,000 is large. Just in terms of your hop  
9 growing operation, do you characterize yourself just in  
10 total sales as being above or below that figure?

11 A. Above it, sir.

12 \*\*\*

13 DR. HINMAN: Okay, thank you. No further  
14 questions.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
16 Hinman. Any other questions from USDA representatives?  
17 There are none. Any other questions from US government  
18 officials? Mr. Mazumdar.

19 \*\*\*

20 BY MR. MAZUMDAR:

21 Q. Good evening, Mr. Morrier. Just a couple  
22 of questions. Do you currently have any forward  
23 contracts for aroma hops?

24 A. Yes.

25 Q. Can you -- and did you have forward

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1 contracts for aroma hops last year?

2 A. Yes.

3 Q. The year before?

4 A. Yes.

5 Q. The year before that?

6 A. I don't remember.

7 Q. Can you describe these contracts for me?

8 Are they for a set price X and increase, perhaps, a  
9 couple pennies a year?

10 A. I don't know all of that -- I have people  
11 who manage my operation that is more aware of it than I  
12 am.

13 Q. Okay. Do you currently have contracts  
14 for super alpha hops?

15 A. Do I need to answer that, Your Honor?

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: Not if you feel  
18 that it's proprietary.

19 MR. MORRIER: I think it is proprietary.

20 \*\*\*

21 BY MR. MAZUMDAR:

22 Q. In past years have you had contracts for  
23 super alpha hops?

24 A. Yes.

25 Q. And were those -- strike that. Would you  
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1 describe your past contracts for super alpha hops as  
2 wildly fluctuating or would you describe them as stable?

3 \*\*\*

4 ADMINISTRATIVE LAW JUDGE: Or neither.

5 \*\*\*

6 BY MR. MAZUMDAR:

7 Q. Or neither.

8 A. Neither's a good word.

9 Q. What would you describe them as?

10 A. Probably neither.

11 Q. I understand that one way of calculating  
12 how much money a hop crop is worth is on a per acre  
13 basis. Can you give me -- and as part of that, you  
14 would calculate the price per pound of hops and multiply  
15 it by the yield.

16 A. Correct.

17 Q. Can you give me a range for what -- a  
18 ballpark figure for what an acre of aroma hops would be  
19 worth?

20 A. It all depends what you contract them at.

21 Q. Could you give me what you believe a  
22 current estimate would be per acre?

23 A. I have no idea.

24 \*\*\*

25 ADMINISTRATIVE LAW JUDGE: Let me interrupt

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1 you. I need to change the tape at 6:30.

2 \*\*\*

3 [Off the Record]

4 [On the Record]

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: We're back on  
7 record at 6:31. Mr. Mazumdar, would you start again  
8 with your question?

9 \*\*\*

10 BY MR. MAZUMDAR:

11 Q. Thank you. Can you give me an estimate  
12 in prior years how much an acre of aroma hops would be  
13 worth?

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE: Do you mean the  
16 production from an acre?

17 \*\*\*

18 BY MR. MAZUMDAR:

19 Q. The production. I mean the pounds of  
20 hops multiplied by the price.

21 A. Well, as you've heard all day today there  
22 is [sic] so many different varieties. Mt. Hood is a  
23 variety that depending on what weather conditions are it  
24 could catch five or six bales. Two or three -- three,  
25 four years ago they were in the 2.85 to \$3 bracket at

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1 that time. Today there's no use for Mt. Hoods so we go  
2 through this variation of change.

3 Q. Willamettes?

4 A. Which is an aroma hop. I'm -- I can't  
5 guess what the price of is of some of them because I've  
6 actually forgotten them. I have other people who do  
7 that for me, so sometimes I get involved at the very  
8 last minute, but I can't remember.

9 Q. Okay. Can you comment on how the total  
10 value of an acre of hops varies among the different  
11 varieties?

12 A. Well, a lot of the varieties, variation  
13 comes from the production that you get on each acre.  
14 Where there's high alpha there are growers who do very  
15 well at, from what I understand, 15 to 18 bales to the  
16 acre. You have Willamettes growers get six to eight  
17 bales per acre and of course, a lot of that depends on  
18 what nature does for you. So it's very difficult from  
19 one year to -- this has been a year that for aroma hops  
20 hasn't been that good because of the heat that we had  
21 this summer, where the other hops, high alpha hops, were  
22 better, in fact.

23 Q. Any -- can you put a dollar figure,  
24 perhaps historically, on what an acre of Willamette hops  
25 would be worth?

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1 A. Whatever the brewery wants to pay us.

2 \*\*\*

3 MR. MAZUMDAR: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
5 Mazumdar. Any other questions for Mr. Morrier from  
6 anyone? Mr. Carswell.

7 \*\*\*

8 BY MR. CARSWELL:

9 Q. I hate to ask you a question I don't know  
10 the answer to, but with respect to the prices that  
11 you've been paid by Anheuser-Busch on your hops, do they  
12 -- do you generally consider that those have been fair  
13 prices?

14 A. Yes.

15 \*\*\*

16 MR. CARSWELL:: Thank you.

17 ADMINISTRATIVE LAW JUDGE: Any other questions  
18 for Mr. Morrier? Mr. Morrier, is there anything else  
19 you'd like to add?

20 MR. MORRIER: No.

21 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
22 Morrier, I thank you very much for testifying and would  
23 you just stop by the court reporter there and help him  
24 spell some of those varieties that you told us the names  
25 of?

1 MR. MORRIER: I might need some help, too.  
2 Yes, I will. Thank you.

3 ADMINISTRATIVE LAW JUDGE: Thank you so much.  
4 Let's go off record for just a moment while your next  
5 witness is brought to the witness stand, Mr. Moody.  
6 We'll go off record at 6:34.

7 \*\*\*

8 [Off the Record]

9 [On the Record]

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: All right, we're  
12 back on record now at 6:35. Would you state and spell  
13 your full name for us, please?

14 MR. SHINN: Edward Shinn. E-w -- E-d-w-a-r-d,  
15 S-h-i-n-n.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
17 Shinn. Would you raise your right hand, please?

18 \*\*\*

19 [Witness sworn]

20 \*\*\*

21 BY ADMINISTRATIVE LAW JUDGE: Would you give  
22 us some information about your background, particularly  
23 with regard to hops?

24 MR. SHINN: I'm second generation. We've been  
25 involved in hops since 1952. I have a son who is now

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1 involved and a grandson who probably will be. I suppose  
2 in a business like this with a tradition in history of  
3 it, we would still be considered new growers in some  
4 quarters.

5 ADMINISTRATIVE LAW JUDGE: Being second  
6 generation instead of fifth?

7 MR. SHINN: Yeah, something like that. Not  
8 being French.

9 ADMINISTRATIVE LAW JUDGE: Give us an idea of  
10 where your farm is and approximately what your  
11 production is, if you feel comfortable, and whether you  
12 grow things other than hops.

13 MR. SHINN: We're in the Toppenish area in  
14 Central Valley and we're presently at about 500 acres of  
15 hops. Historically, we were about at that level until  
16 the early '80s when we went to 800 acres. And in the  
17 last five years we've been pulling up poles and we're  
18 back to 500 acres again. We have taken the trellis down  
19 and planted grapes and so we actually have a little over  
20 500 acres of trellis left and where we removed it we  
21 have no intentions of putting it back. We grow a  
22 variety of crops. Concord grapes, which by the way are  
23 not covered by a federal marketing order. We grow 600  
24 acres of Welch grapes and we were in the asparagus  
25 business at several hundred acres until we lost all the

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1 market for that, more or less, and we removed all of  
2 that. We still have cattle, corn, wheat, and a lot of  
3 other unprofitable crops.

4 ADMINISTRATIVE LAW JUDGE: Toppenish is here  
5 in the Yakima Valley in Washington?

6 MR. SHINN: Yes.

7 ADMINISTRATIVE LAW JUDGE: Did you have  
8 experience under the former marketing order for hops?

9 MR. SHINN: Yes, I did.

10 ADMINISTRATIVE LAW JUDGE: Could you describe  
11 any portion of that that you found burdensome, if you  
12 did?

13 MR. SHINN: The necessity of buying base. The  
14 year that we -- that the federal marketing order went  
15 into effect, we had bought a ranch with a history of low  
16 production and had about a seven-bale base. We produced  
17 11 and a half bales that first year. There was supposed  
18 to be special hardship exemptions and we found out later  
19 what the hardship was, it was putting about a thousand  
20 or 1200 bales in the pool and then having them  
21 discarded. To grow, it was our choice to keep the  
22 trellis up and to grow the same amount of acres that we  
23 had in the past, so we began to buy base and we bought  
24 base in California starting with the very first year.  
25 We -- I think it was around .25 a pound that first year

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1 and it went up from there on clear up to the time the  
2 marketing order was rescinded, we were still buying base  
3 and in fact, paid for base for about three years after  
4 the marketing order was rescinded. That's part of it.  
5 Basically, I feel like Joe. I'm opposed to intervention  
6 in my business and I refuse to think that a committee of  
7 my peers can mess it up any more effectively than I can.  
8 Knowing it's impossible for them to know the ins and  
9 outs of my finances and my obligations and things like  
10 that and I just don't think that we will do anything  
11 with a new marketing order that would improve on the old  
12 one, basically. And that old order added another level  
13 of bureaucracy and red tape and inefficiency and cost  
14 that we never had previously and a lot has been said  
15 here about the wonderful mint -- spearmint marketing  
16 order. Let me say I've been a member of that since its  
17 inception and we used to grow -- when it was enacted, we  
18 grew 350 acres of spearmint, now we're growing 120. We  
19 started off at about a 75 or 80 percent saleable. Now  
20 we have a 36 percent saleable. Places in the world who  
21 have never historically grew mint are now net exporters  
22 and we are importers of oil from Sri Lanka, India,  
23 Pakistan, China, Canada, and then those who moved  
24 outside of our Northwest marketing order into South  
25 Dakota and New Mexico are now putting oil in for our

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1 enjoyment. I -- last I heard someone told me they could  
2 put Chinese oil on the dock in Seattle for \$4 a pound.  
3 Well, at the time the order was enacted, I was selling  
4 oil for about \$5 20-some years ago. Now we're selling  
5 it for \$8 and I'm not sure, but I think our buying power  
6 on \$5 20 years ago probably exceeded our buying power on  
7 \$8 now. And so that's my experience with marketing  
8 orders. I'm opposed to them. I'm from a very  
9 conservative family. I have a dad who got blown out and  
10 cancelled out of the dust bowl as a young man and a  
11 granddad who lost all his assets and we have a deep  
12 aversion to bankers and anybody who might get into our  
13 business and I don't relish the thought of having anyone  
14 controlling my business. That's all I have to say.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
16 Shinn. I'm going to ask others if they have questions  
17 of you, beginning with Mr. Moody.

18

\*\*\*

19

Edward Shinn,

20 having first been duly sworn, according to the law,  
21 testified as follows:

22

BY MR. MOODY:

23

Q. Mr. Shinn, thank you. What varieties of

24

hops do you produce?

25

A. Nugget, Galena, Cascade, Zeus,

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1 Willamette. I think that's all.

2 Q. So that would be like a -- some aroma and  
3 some alpha?

4 A. Yes, um-hum.

5 Q. And do you have contracts for those?

6 A. Yes.

7 Q. And given your experience with how the  
8 spearmint order is operated, would you expect that if  
9 there were a marketing order for hops that consumers of  
10 hops might tend to look overseas for their needs?

11 A. Well, it's what the spearmint barriers  
12 have done, however, I think there will be always a  
13 demand for American hops, but at a reduced level. Now,  
14 in the spearmint industry, they buy our oil at a reduced  
15 level and then they blend it with the Chinese oil which  
16 is of a lesser quality. And so they have blended the  
17 two to bring it up to their specifications.

18 Q. So it's cost the US market share?

19 A. Yes.

20 \*\*\*

21 MR. MOODY: Okay. Thank you very much, Mr.  
22 Shinn.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
24 Moody. I would invite questions from others who are  
25 here in a position against the marketing order. Now I

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1 would invite questions from those who are here in favor  
2 of the marketing order. Mr. Monahan.

3 \*\*\*

4 BY MR. MONAHAN:

5 Q. Mr. Shinn, you've made me nervous about  
6 getting into your business, but I do have a couple of  
7 questions for you. Would it be fair to characterize you  
8 as a -- primarily, a grower for S.S. Steiner?

9 A. No, I grow for myself and we sell -- have  
10 sold recently, basically to Steiner.

11 Q. You described a little bit how your  
12 acreage has fluctuated over time. Did the acreage of  
13 the Shinn farming operation increase under the last  
14 marketing order?

15 A. You mean hop acreage or...

16 Q. Yes, sir.

17 A. No. After the marketing order.

18 Q. How many acres did you put in after the  
19 marketing order?

20 A. 300 acres, as I said.

21 Q. How many have you taken out?

22 A. 300 acres.

23 Q. When did you take the 300 acres out?

24 A. In the last four or five years.

25 Q. Has it been frustrating to take acreage

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1 out and watch your neighbors put acreage in?

2 A. I haven't had any neighbors put in any --  
3 in the last four or five years.

4 Q. Would that discourage you if you were  
5 pulling acreage out and others were putting acreage in?

6 A. I suppose it would.

7 \*\*\*

8 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, I want  
9 to interrupt you. Let's go off record for just a  
10 moment.

11 \*\*\*

12 [Off the Record]

13 [On the Record]

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE: We're back on  
16 record at 6:46. Mr. Monahan?

17 MR. MONAHAN: I have nothing further for this  
18 witness. Thank you, sir.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
20 Monahan. Any other questions from those who are here in  
21 a position in favor of the marketing order? And now I  
22 would go to US government beginning with USDA  
23 representatives. Is that Ms. Finn?

24 \*\*\*

25 BY MS. FINN:

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1 Q. Thank you. Have you heard some of the  
2 discussion about there being an eight-member committee?

3 A. Yes.

4 Q. and that there were approximately 50  
5 growers so there would be -- and term limits so there  
6 would be a lot of opportunity to serve on the committee.  
7 Have you heard some of that discussion?

8 A. Yes.

9 Q. Do you think there would be any benefit  
10 to trying to serve on the committee to have your  
11 opinions heard?

12 A. I don't believe I would be interested in  
13 serving on the committee. I have a deep aversion to all  
14 kinds of meetings and I don't think I would be receptive  
15 to serving on a committee.

16 \*\*\*

17 MS. FINN: Thank you.

18 ADMINISTRATIVE LAW JUDGE: Dr. Hinman?

19 \*\*\*

20 BY DR. HINMAN:

21 Q. You heard the previous question posed  
22 about the small and large grower category that the Small  
23 Business Administration defines a small grower as less  
24 than \$750,000 in agricultural sales, and could you -- do  
25 you characterize yourself as above or below that figure?

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1 A. It would be above.

2 \*\*\*

3 MR. HINMAN: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE: And that's for hops  
5 only?

6 MR. SHINN: Yes.

7 ADMINISTRATIVE LAW JUDGE: All right. Thank  
8 you, sir. All right. Any other questions from USDA  
9 officials? Mr. Olson?

10 \*\*\*

11 BY MR. OLSON:

12 Q. Are you familiar with the part of the  
13 proposal that addresses the initial allocation of base?

14 A. I'm somewhat familiar with it, yes.

15 Q. Would you have any recommendations on  
16 what you believe the procedure should be for initial  
17 allocation of base?

18 A. Well, I would be comfortable with what  
19 they've proposed. I believe it's from '97 to what?  
20 2001 or 2? What is the proposal? I believe that's it.  
21 To establish the base during that period of years.

22 \*\*\*

23 MR. OLSON: Thank you.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
25 Olson. Any other questions from USDA representatives?

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1 Any questions from others from the US government? Any  
2 questions from anyone? Mr. Shinn, I thank you and I  
3 thank you for waiting so long. Mr. Moody, you may call  
4 your next witness.

5 MR. MOODY: Mr. Stauffer.

6 ADMINISTRATIVE LAW JUDGE: Mr. Stauffer, I  
7 could find you a clean glass if you want any water.  
8 Would that help?

9 MR. STAUFFER: Thank you, Your Honor.

10 ADMINISTRATIVE LAW JUDGE: All right. Thank  
11 you.

12 MR. STAUFFER: I have some other copies as  
13 well.

14 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
15 Stauffer has handed me a statement and he has some other  
16 copies. Ms. Deskins, may I impose on you to distribute  
17 the extra copies that he has? I'm going to mark Mr.  
18 Stauffer's statement as Exhibit 41.

19 MR. STAUFFER: Thank you.

20 ADMINISTRATIVE LAW JUDGE: Mr. Stauffer, would  
21 you state your full name and spell your name of the  
22 record, please?

23 MR. STAUFFER: Charles R. Stauffer.

24 C-h-a-r-l-e-s R. Stauffer, S-t-a-u-f-f-e-r.

25 ADMINISTRATIVE LAW JUDGE: Thank you. Would  
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1 you raise your right hand, please?

2 \*\*\*

3 [Witness sworn]

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE: Thank you. I don't  
6 know whether your statement includes as much as the  
7 others have said about their background, but it looks to  
8 me that it may, so if you would like to begin -- do you  
9 want to read your statement into the record, or do you  
10 want us just to receive it as an exhibit?

11 MR. STAUFFER: I would like to read it into  
12 the record, Your Honor.

13 ADMINISTRATIVE LAW JUDGE: You may proceed.

14 \*\*\*

15 CHARLES R. STAUFFER,  
16 having first been duly sworn, according to the law,  
17 testified as follows:

18 MR. STAUFFER: Thank you. "My name is Charles  
19 R. Stauffer and I am representing Stauffer Farms, Inc.,  
20 C&R Farms, Inc., and Stauffer Brothers LLC. These are  
21 family-owned corporations which farm hops and hazelnuts.  
22 I have served three three-year terms as a commissioner  
23 on the Oregon Hop Commission. Our farm was established  
24 in 1865 and I am a fifth-generation farmer. We started  
25 growing hops in the early 1930s. We are opposed to the

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1 hop marketing order. We believe that the HMO would put  
2 us, as well as most other Oregon hop growers at a  
3 distinct disadvantage. We feel we have responsibly  
4 reduced our hop growing acreage according to demand. We  
5 currently grow 280 acres of hops. At the termination of  
6 the last hop marketing order, we grew 420 acres, a  
7 reduction of one-third of our acreage. We do not buy  
8 into the theory of producing more to lose less. We  
9 believe in the concept of supply and demand. We have  
10 reduced acreage while others have increased or stayed  
11 the same. If base were issued to cover existing pounds  
12 or acres, it would be necessary to cut the base by at  
13 least 40 or 50 percent. If that happens, it would be  
14 causing us to reduce when we've already cut by 30  
15 percent while others never reduced at all. By using the  
16 years 1997 to 2003 for developing base, it is really  
17 unfair to us and other Oregon, Idaho, Washington, and  
18 California growers who responded responsibly to supply  
19 and demand in years prior to 1997. I expressed this  
20 when asked about this issue during development stages of  
21 this order. The response from the people doing the  
22 drafting work was that they try to be as fair to as many  
23 as possible, but they can't fair to everyone. If it  
24 can't be fair to everyone, then it should not be put  
25 into effect. Why should the responsible grower pay the

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1 price for the irresponsible grower? The hop marketing  
2 order would restrict our ability to sell varieties of  
3 hops that we believe could and should be included in the  
4 global market. If the HMO were established, it would  
5 allow other countries to take some of our existing  
6 markets. It is clear that the HMO would send domestic  
7 brewers in search of product from other countries when  
8 much of their supply needs could be met here  
9 domestically. Voting for referendum or for the  
10 components of the hop marketing order are vitally  
11 important issues. It has never been clear to us how  
12 equal voting rights can be determined. All grower  
13 numbers should be obtained fairly by meeting specific  
14 requirements and should not be considered for voting  
15 privileges otherwise. This is a slippery gray area.  
16 The voting process deserves much thorough consideration.  
17 I personally feel it is impossible to achieve a fair  
18 voting process for everyone involved. If the voting  
19 process cannot be fair, then the HMO should not even be  
20 considered. We have no desire to be a handler and don't  
21 want this involuntary title or responsibility. We want  
22 to be hop growers raising our own crop and selling it in  
23 a free market. There have been three previous marketing  
24 orders and all have failed. Perhaps some feel the last  
25 order worked well for 15 to 20 years. Then why did the

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1 US government terminate it? If a hop marketing order  
2 were put into effect, it would fail for the same reasons  
3 as the previous order. Greed and mismanagement. These  
4 are different times now. More countries have more  
5 technology and will certainly take more market share if  
6 given the opportunity. Our country was built with the  
7 concept of free marketing and supply and demand. We  
8 would like to continue to operate under these freedoms.  
9 We don't want a hop marketing order to dictate how to  
10 run our farming operation. Thank you for the  
11 opportunity to express our opinions and concerns.  
12 Especially submitted, Charles R. Stauffer for Stauffer  
13 Farms, Inc., C&R Farms, Inc., and Stauffer Brothers  
14 LLC." Thank you.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
16 Stauffer. Where is Hubbard, Oregon?

17 MR. STAUFFER: It's in the northern part of  
18 the Willamette Valley.

19 ADMINISTRATIVE LAW JUDGE: Thank you . I will  
20 now invite questions beginning with Mr. Moody.

21 \*\*\*

22 BY MR. MOODY:

23 Q. Mr. Stauffer, thank you. What varieties  
24 of hops do you grow?

25 A. Oh, I raise some Mt. Hoods and

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1 Willamettes, Sterling, Perle, Nuggets.

2 Q. So those are mostly aroma varieties, is  
3 that correct?

4 A. All the varieties mentioned are mostly  
5 aroma, but my production is probably about 50-50 of  
6 aroma and alpha.

7 Q. Do you have contracts for those hops this  
8 year?

9 A. Yes.

10 Q. Do you see one of the big risks of this  
11 marketing order were to go into effect, is that the US  
12 would lose market share to other countries such as  
13 Germany and China?

14 A. Yes.

15 Q. And do you sell any of your hops direct  
16 to brewers, or do you sell them to dealers?

17 A. Both.

18 Q. And so you understand that under the  
19 proposal you would become a handler?

20 A. That's my understand.

21 Q. That's a pretty scary thing.

22 A. Yes, it is.

23 \*\*\*

24 MR. MOODY: Okay. Thank you very much.

25 ADMINISTRATIVE LAW JUDGE: Let me ask at this  
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1 time if there's any objection to the admission into  
2 evidence of Exhibit 41, which is Mr. Stauffer's  
3 statement? There is none. Exhibit 41 is hereby  
4 admitted into the evidence. And before I ask for  
5 additional questions for Mr. Stauffer, I have a little  
6 housekeeping to do with regard to the exhibits. Mr.  
7 Roy, did you give the court reporter back the Barth  
8 report and the Hop Growers report?

9 MR. ROY: I...

10 ADMINISTRATIVE LAW JUDGE: You did?

11 MR. ROY: I had my own copy.

12 ADMINISTRATIVE LAW JUDGE: Oh, you had your  
13 own copy, so I'm going to ask the court reporter, do you  
14 have 38 and 40?

15 MR. BARTON: I have 39 and 40, but not 38.

16 ADMINISTRATIVE LAW JUDGE: Okay. At one point  
17 we borrowed 38 to give to the witness, so the other  
18 possibility would be that it was Dr. Jekanowski. Mr.  
19 Roy, you don't have 38? The Hop Growers report, Exhibit  
20 38?

21 MR. ROY: Which one? Could you show me a  
22 picture or what -- I don't think I have it.

23 ADMINISTRATIVE LAW JUDGE: Does someone have  
24 it?

25 MR. ROY: I think I have my own copy of those,

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1 I believe.

2 ADMINISTRATIVE LAW JUDGE: Okay. I want to  
3 make sure the record has a copy from someone. Let's go  
4 off record for just a moment and go back on record at  
5 7:01.

6 \*\*\*

7 [Off the Record]

8 [On the Record]

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: I'm sorry for that  
11 interruption. I need to keep better track of my  
12 exhibits. Other questions for this witness? Yes?  
13 Doctor, would you again state who you are?

14 \*\*\*

15 BY DR. TWEETEN:

16 Q. Luther Tweeten. Mr. Stauffer, do you  
17 feel that a marketing order would be useful to stabilize  
18 the industry?

19 A. No more useful than supply and demand  
20 works -- in its current condition.

21 \*\*\*

22 DR. TWEETEN: Thank you.

23 ADMINISTRATIVE LAW JUDGE: Are there any other  
24 questions from those who are on the -- are here in a  
25 position against the marketing order? Now those who are

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1 here in favor of the marketing order? Mr. Monahan?

2 \*\*\*

3 BY MR. MONAHAN:

4 Q. Good evening, Mr. Stauffer.

5 A. Good evening.

6 Q. You indicated in response to Professor  
7 Tweeten's question that you believe a hop marketing  
8 order would not work any better than current supply and  
9 demand, is that right?

10 A. I don't think a hop marketing order would  
11 work at all, thank you.

12 Q. Let's talk about supply and demand just  
13 briefly. As I see it, you've -- in response to what you  
14 have perceived as reduced demand, you have removed  
15 acreage from production?

16 A. Yes.

17 Q. Okay. And if everyone did what you did  
18 that would actually reduce supply to meet demand? Is  
19 that right?

20 A. I think supply and demand would be in  
21 balance.

22 Q. Okay, that would help balance supply and  
23 demand, would it not?

24 A. Yes.

25 Q. If everyone took what you've identified  
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1 as your responsible approach?

2 A. Yes.

3 Q. But the industry hasn't done that, has  
4 it?

5 A. No.

6 Q. In fact, as you've reduced your acreage,  
7 other folks have gone out and planted more.

8 A. That's correct.

9 Q. And that's exacerbated the imbalance  
10 between supply and demand, hasn't it?

11 A. And it'll correct itself in time.

12 \*\*\*

13 MR. MONAHAN: I have nothing further, Your  
14 Honor.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
16 Monahan. Any other questions from those who are here in  
17 favor of the marketing order? Now questions from USDA  
18 representatives? Dr. Hinman?

19 \*\*\*

20 BY DR. HINMAN:

21 Q. Mr. Stauffer, I intend to ask you the  
22 same question I've asked the others just about the terms  
23 of your hop -- annual sales of hop, the gross receipts  
24 from sales. Is it above or below \$750,000, which would  
25 make you a small or large grower? Just in terms of hops

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1 sales.

2 A. In terms of hop sales depends on what  
3 years we might be talking about, but most of the time  
4 above.

5 \*\*\*

6 DR. HINMAN: Okay. Thank you.

7 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Broadbent?

8 \*\*\*

9 BY MR. BROADBENT:

10 Q. I have previously stated that we mailed  
11 Notices of Hearing to 111 growers that we had on record  
12 and there was some conjecture as to how many growers  
13 there are versus how many entities. After seeing your  
14 list, I see that my list should've been at 112, because  
15 one of your entities didn't make our list. But if I may  
16 ask, do those entities have as defined previously in the  
17 order, common banking, common boards, common ownership,  
18 or are they distinct, separate entities?

19 A. I think they have common owners.

20 Q. Okay. I -- we're still trying to flesh  
21 out the number of growers and I appreciate that  
22 information.

23 A. I appreciate the question. I don't know  
24 how to determine who should have a grower's number and  
25 who shouldn't and that's part of the reason that I feel

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1 I -- that we can't ever arrive at a fair voting process.  
2 I don't see any way possible it could be achieved.

3 \*\*\*

4 MR. BROADBENT: All right. Thank you.

5 ADMINISTRATIVE LAW JUDGE: Are there any other  
6 questions for Mr. Stauffer from the USDA? Are there any  
7 questions from other governmental representatives? Mr.  
8 Mazumdar?

9 \*\*\*

10 BY MR. MAZUMDAR:

11 Q. Thank you. Good evening.

12 A. Good evening.

13 Q. Just so I'm clear. Do you currently have  
14 contracts for high alpha hops?

15 A. Yes.

16 Q. And did you have contracts for high alpha  
17 hops last year?

18 A. Yes.

19 Q. And the year before that?

20 A. Yes.

21 Q. And three years ago?

22 A. Yes.

23 Q. Four years ago?

24 A. Yes.

25 Q. Five years ago?

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1 A. Yes.

2 Q. And can you tell me how the contract  
3 price for those high alpha hops has varied over the last  
4 five years? Well, would you describe it as stable...

5 A. I think the hops are less valuable now  
6 than they were five years ago.

7 Q. Is that reflected in the contract price?

8 A. I don't wish to answer that.

9 Q. Okay. Do you currently have contracts  
10 for aroma hops?

11 A. Yes.

12 Q. Did you have contracts last year?

13 A. Yes.

14 Q. Two years ago?

15 A. Yes.

16 Q. Three years ago?

17 A. Yes.

18 Q. Four years ago?

19 A. Yes.

20 Q. Five years ago?

21 A. Yes.

22 Q. Has the contract price for those aroma  
23 hops remained stable, increased, decreased?

24 A. I would say somewhat stable with maybe  
25 some increase.

1 Q. Can you give me an idea? A couple  
2 pennies a year increase?

3 A. No, I can't reflect it in a couple  
4 pennies a year.

5 Q. Okay. I understand that one way to  
6 calculate the value of a crop is on an acre basis and  
7 you would take the contract price, multiply it by the  
8 yield. Can you give me a ballpark figure for what an  
9 acre of aroma hops might be worth today?

10 Q. No.

11 A. Can you give me a figure for high alpha  
12 hops?

13 Q. No.

14 \*\*\*

15 MR. MAZUMDAR: Thank you. I have no further  
16 questions.

17 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
18 Mazumdar. Are there any other questions for Mr.  
19 Stauffer? Mr. Stauffer, is there anything else you'd  
20 like to add?

21 MR. STAUFFER: No, thank you, Your Honor.

22 ADMINISTRATIVE LAW JUDGE: All right. Thank  
23 you very much. I think the one spelling that I'm not  
24 positive the court reporter has is for the Perle  
25 variety. If you could help him with that spelling of

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1 that as you step down?

2 MR. STAUFFER: I will. Thank you, Your Honor.

3 ADMINISTRATIVE LAW JUDGE: Thank you. And  
4 thanks very much for staying this late. I know it's  
5 past 7:00 and you have a -- I hope you're not driving  
6 back tonight. Three and a half hour drive?

7 MR. STAUFFER: No, I'm planning on staying  
8 here tonight, thank you.

9 ADMINISTRATIVE LAW JUDGE: Good. Thank you.

10 MS. DESKINS: And thank you for bringing all  
11 the copies.

12 ADMINISTRATIVE LAW JUDGE: Yes, thank you very  
13 much. Before we call the next witness, does anyone move  
14 the admission of the Barth report? I don't think I've  
15 admitted it into evidence?

16 MR. MONAHAN: It's my oversight, Your Honor.  
17 So moved.

18 ADMINISTRATIVE LAW JUDGE: All right. Is  
19 there any objection to the admission into evidence of  
20 the Barth report, which is Exhibit 40? There is none.  
21 Exhibit 40 is hereby admitted into evidence. Mr. Moody,  
22 you may call your witness.

23 MR. MOODY: Martin Ungewitter.

24 ADMINISTRATIVE LAW JUDGE: Thank you.

25 MR. UNGEWITTER: And I have some packets.

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1 ADMINISTRATIVE LAW JUDGE: Very good. Let's  
2 go off record while the copies are distributed.

3 \*\*\*

4 [Off the Record]

5 [On the Record]

6 \*\*\*

7 ADMINISTRATIVE LAW JUDGE: We're back on  
8 record at 7:11. Mr. Ungewitter, would you please state  
9 your full name and spell it into the record for us?

10 MR. UNGEWITTER: That's Martin Ungewitter,  
11 M-a-r-t-i-n U-n-g-e-w-i-t-t-e-r.

12 ADMINISTRATIVE LAW JUDGE: Would you raise  
13 your right hand, please?

14 \*\*\*

15 [Witness sworn]

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
18 Ungewitter, do you wish to make a general statement  
19 about the nature of your involvement with hops before  
20 you turn your attention to what I've been -- what I have  
21 marked as Exhibit 42?

22 MR. UNGEWITTER: I could just give a little  
23 background.

24 ADMINISTRATIVE LAW JUDGE: Please.

25 \*\*\*

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1                                   Martin Ungewitter,  
2       having first been duly sworn, according to the law,  
3       testified as follows:

4                   MR. UNGEWITTER: I'm vice president of S.S.  
5       Steiner, Inc. We are headquartered in New York City and  
6       that's where I'm based. We have farming operations in  
7       Yakima, Washington.

8                   ADMINISTRATIVE LAW JUDGE: Thank you. Would  
9       you like to read the statement into the record?

10                  MR. UNGEWITTER: Yes, please.

11                  ADMINISTRATIVE LAW JUDGE: You may proceed.

12                  MR. UNGEWITTER: "Your Honor, members of USDA,  
13       fellow members of the hop industry, thank you for the  
14       opportunity to comment at this hearing. I've been  
15       involved in the hop industry for close to 20 years. I  
16       have found the hop industry to be highly competitive and  
17       continuously evolving during this period. Over the last  
18       several days you've heard about many of the changes  
19       taking place in our industry, including consolidation of  
20       breweries, consolidation of growers, development of  
21       higher yielding hops with higher alpha acid contents,  
22       and development of new, more efficient hop products.  
23       All of these developments are natural consequences of  
24       the free market in which we operate. Steiner is a hop  
25       grower, processor, merchant. Our farming subsidiary,

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1 Golden Gate Hop Ranches, Inc., farms approximately 1,500  
2 acres of hops in the Yakima Valley of Washington state.  
3 US alpha hops compete in the international market. In  
4 making sales to large, international breweries, we are  
5 constantly competing against low-cost sources of alpha  
6 hops from other producing areas. The United States has  
7 been able to compete on the world market by having a  
8 high degree of flexibility, in instituting innovations,  
9 and reducing costs of production. Unfortunately, the  
10 innovations and changes in the brewing industry have  
11 resulted in a declining requirement for alpha hops and a  
12 corresponding reduction of the production base. The hop  
13 marketing order, HMO, as currently proposed, is negative  
14 for the US hop industry for many reasons, some of which  
15 follow. Number one, it will cause US hops to be less  
16 competitive. The HMO's purpose is to artificially  
17 restrict supply and thereby raise prices. It will add  
18 to our cost structure, both by the imposition of fees to  
19 operate it, and the need for some producers to increase  
20 their costs by purchasing artificially created base  
21 allotment. It will especially hurt the alpha hop market  
22 since the cost of alpha base allotment will have a  
23 greater relative impact on alpha varieties versus aroma  
24 hops. It will reduce US growers' flexibility by  
25 burdening them with government regulation. Number two,

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1 it will create inequities and inefficiencies. The  
2 proposed representative base period begins in 1997. The  
3 potential exists for an initial base allotment to be  
4 close to 30 percent greater than the 2002 hop  
5 production. The proposal allocates ten percent alpha to  
6 hop varieties, which in actuality are less than 10  
7 percent alpha. Further saleable calculations will not  
8 be based on this factor, but will use an alpha acid  
9 factor in line with actual alpha acid content of these  
10 varieties, some of which are as low as three or four  
11 percent. A third provision that inflates the initial  
12 base allotment is the use of so-called actual alpha acid  
13 contents for determining past years' alpha acid  
14 production. No one laboratory analyzes all US hop. In  
15 spite of the industry's best efforts, there always  
16 remain differences from laboratory to laboratory and hop  
17 sample to hop sample. You may be aware of the  
18 statements made by the distinguished hop chemist,  
19 Rozalie [ph], and I quote 'We now believe that precise  
20 alpha acids analysis in hops is impossible. It is most  
21 imperative that all parties involved in hop transactions  
22 become aware of this fact.' Under the proposed HMO,  
23 those producers with excess base allotment will  
24 financially gain from the sale of that base allotment to  
25 their neighbors who do not receive enough base under the

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1 proposed formula. Number three. The proposal  
2 interferes with contractual obligations and breaches  
3 buyer/seller confidentiality. Under the proposed HMO,  
4 the potential exists for growers to not deliver their  
5 contractual obligations because of being issued  
6 insufficient base. Voiding of contracts would be a  
7 strong signal the proposal sends to all brewer to move  
8 away from US hops. Granting a committee of producers  
9 far reaching authority to receive information and  
10 investigate all hop market transactions is unacceptable  
11 to our customers. The potential for a marketing order  
12 under which contracts can be both investigated and  
13 voided gives brewers a disincentive for contracting US  
14 hops. In closing, we believe the proposed HMO will hurt  
15 the US industry. It will increase the cost of US hops  
16 relative to hops produced in other areas of the world.  
17 It will reduce the US's share of the world market. It  
18 will impede and inhibit innovation. Finally, it will  
19 unfairly reward declining producers at the expense of  
20 stable or growing producers. We respectfully suggest  
21 that the process should be ended as quickly as possible  
22 in order to limit further negative impact on the  
23 workings of the free market. Thank you for your  
24 attention."

25 MR. BARTON: Take a break?

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1 ADMINISTRATIVE LAW JUDGE: Yes, let's change  
2 tape at 7:18.

3 \*\*\*

4 [Off the Record]

5 [On the Record]

6 \*\*\*

7 ADMINISTRATIVE LAW JUDGE: We're back on  
8 record at 7:18. Thank you, Mr. Ungewitter. Is there  
9 any objection to the admission into evidence of Exhibit  
10 42? That's Mr. Ungewitter's statement. There is none.  
11 Exhibit 42 is hereby admitted into evidence. I'm going  
12 to hand the court reporter the record copy. He has  
13 another copy that can be sent with the tape to assist  
14 the typist in transcription. Mr. Ungewitter, is there  
15 anything you'd like to add before I open the floor for  
16 questions?

17 MR. UNGEWITTER: No, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: All right, thank  
19 you. Mr. Moody, you may begin.

20 \*\*\*

21 BY MR. MOODY:

22 Q. Thank you. Mr. Ungewitter, we've heard  
23 some discussion from the proponent side that they've  
24 gone out and obtained some growers numbers and  
25 distributed some bales around. Is this something that

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1 you have any knowledge of as far as what's going on at  
2 Steiner?

3 A. Yes. We became aware that new grower  
4 numbers were being issued in the course of the growing  
5 season this year and we applied for additional grower  
6 numbers ourselves.

7 Q. And why did you do that?

8 A. Well, we felt that it was an attempt on  
9 the part of proponents to manipulate the eventual vote  
10 and we weren't sure how that final decision would be  
11 made and in order to even the playing field, we felt we  
12 should probably get a few numbers, also.

13 Q. All right. And given the testimony about  
14 grower -- although I'm likely still a little confused  
15 about who's a grower, but the concept that the  
16 proponents have offered is one grower, one vote. How  
17 should that apply in general and how would it apply to  
18 Steiner?

19 A. Well, I've heard a few -- I think I've  
20 heard some testimony to the effect that common  
21 ownership, common banking, and so forth would somehow be  
22 understood to be one grower and as long as that ruling  
23 is applied fairly across the industry, I would guess  
24 that we would be one grower.

25 Q. All right, now you're both a grower and a  
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1 dealer?

2 A. You could refer to us a dealer.

3 Q. A merchant or handler?

4 A. Handler.

5 Q. Okay. And you obtained hops not only  
6 from your farm here in the United States, but from  
7 overseas, as well?

8 A. We supply our customers according to  
9 their requirements.

10 Q. And so -- do you think you're in a kind  
11 of unique position to appreciate the global nature of  
12 the hop market?

13 A. Perhaps I have a little wider scope of  
14 vision than some of the growers who live here in  
15 Washington.

16 Q. And is one of the risks you see to a  
17 marketing order that consumers of hops would be  
18 encouraged to source their hops overseas?

19 A. I think the potential exists for that.

20 Q. And getting back to this problem of  
21 determining the percentage of alpha acid. Do you have a  
22 laboratory that does that for you?

23 A. Yes, we do. We have actually more than  
24 one.

25 Q. I had -- we've heard some testimony that

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1 there are several methods for doing that? At least  
2 three that are employed?

3 A. I'm sure there are more than three, but  
4 there...

5 Q. And do you think the proponents have come  
6 to grips with kind of coming down on a single, reliable,  
7 equitable way of determining that for all growers?

8 A. Not from what I've heard so far.

9 Q. Regarding the base period for handing out  
10 base, it's proposed to '97 to '02. Do you think it  
11 might be more fair to have the base period be '03 or  
12 perhaps averaging '01, '02, and '03?

13 A. I certainly think that would be fairer  
14 than going all the way back to 1997.

15 Q. And as far as determining who's eligible  
16 to vote, do you think that ought to be limited to -- if  
17 the proposal goes to a vote, say in the next year, that  
18 -- or when the proposal goes to a vote, it ought to be --  
19 -- the right to vote ought to be limited to actual  
20 commercial producers during the most recent season?

21 A. I think -- and just to step back a minute  
22 -- I think Leslie Roy said it himself, this is one of  
23 the most difficult parts of this proposal and the part  
24 that really impacts the fairness of the issue is how  
25 this base is going to be distributed and everything that

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1 I've heard so far is that are certainly winners and  
2 losers and it just doesn't sound right, what's being  
3 proposed.

4 Q. And -- separate and apart from who gets  
5 to vote for committee members, USDA's going to have to  
6 determine who gets to vote in the referendum.

7 A. I believe so...

8 Q. If there is a referendum, how should they  
9 determine that, who gets to vote in the referendum?

10 A. I -- you know, one grower, one vote. Who  
11 is a producer in the most recent crop would probably be  
12 the fairest and I would say that he should really  
13 produce hops on his own farm.

14 Q. And by produce, you mean actually harvest  
15 for sale and not just to have some vines on the ground  
16 or some equipment that could potentially be used for the  
17 production of hops?

18 A. Absolutely.

19 \*\*\*

20 MR. MOODY: All right. Thank you very much,  
21 Mr. Ungewitter.

22 ADMINISTRATIVE LAW JUDGE: Other questions  
23 from those who are here in a position against the  
24 marketing order? There are none. Now from those who  
25 are here in a position in favor of the marketing order.

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1 MR. MONAHAN: I'll start.

2 ADMINISTRATIVE LAW JUDGE: Mr. Monahan.

3 \*\*\*

4 BY MR. MONAHAN:

5 Q. Thank you. You're going to have to help  
6 me with your name again. Ungewitter?

7 A. That's right.

8 Q. Okay. Mr. Ungewitter, I am -- it may  
9 surprise you, but I was not aware of the statements by  
10 the distinguished hop chemist Rozalie regarding alpha  
11 testing. I do note in your footnote that that quote was  
12 taken from 1980. Have there been any advance in  
13 technology or science with respect to alpha testing  
14 since 1980?

15 A. I'm not -- I'm not a chemist, so I really  
16 can't comment on that. I included that quote because I  
17 think anybody in the industry recognizes that name.  
18 He's a professor and has developed many of the analysis  
19 methods and I thought it was very pertinent to include  
20 it.

21 Q. What would be the most fair and equitable  
22 way to establish an alpha factor for a given hop?

23 A. Well, I think the committee has suggested  
24 that they're going to just pick a number...

25 Q. I'm asking you, sir.

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1 A. To -- for what purpose?

2 Q. You read how the -- you heard testimony  
3 about how the alpha acid factor is going to work, right?  
4 Do you remember that part?

5 A. Yeah. From which part of the -- it's  
6 going to work several different ways. To give the  
7 initial base or to set saleable? I'm not sure which  
8 part you're referring to.

9 Q. How many -- to your understanding, how  
10 many different contexts will the alpha acid factor be  
11 used? What -- to your understanding?

12 A. I'm not -- I am not entirely clear  
13 because the -- we haven't talked about the whole  
14 proposed marketing order yet, but it seems to me that at  
15 one part of the document it speaks about using the real  
16 alpha in the hops in terms of growers providing  
17 documentation for base allocation. And that in another  
18 part of the document it seems to speak about using a  
19 factor.

20 Q. Okay, that's what I'm talking about.  
21 Alpha acid factor and I think we'll be able -- you're  
22 not going to be here tomorrow?

23 A. No, I'm not.

24 Q. Unfortunately, we won't be able to clear  
25 that up for you tomorrow. With respect to setting the

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1 alpha acid factor...

2 A. Yes.

3 Q. ...what would you propose to be the most  
4 fair and equitable and accurate way of doing it?

5 A. I have no idea. I really wouldn't even  
6 want to guess on something like that. I wouldn't want  
7 that responsibility.

8 Q. For your business purposes, your company  
9 actually measures alpha acid, right?

10 A. We analyze hops, yes.

11 Q. Do you actually measure alpha acid?

12 A. Yes. And we analyze hops. And we  
13 analyze products.

14 Q. Okay. And in fact, you compensate  
15 growers based on your alpha acid measurements, do you  
16 not?

17 A. Under some of our contracts.

18 Q. Okay. And so you would expect those to  
19 be accurate measurements, would you not?

20 A. We do the best job we can.

21 Q. If they weren't accurate you wouldn't be  
22 being fair to your growers, would you?

23 A. That's correct.

24 Q. What method do you use?

25 A. In the case of measuring hops, the most  
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1 common method and the one that we use at time of harvest  
2 is the ASVC spectrophotometric [ph] method.

3 Q. Is that a fair and reasonably accurate  
4 method of measuring alpha acid?

5 A. It is a method. I can't comment on --  
6 fair compared to what?

7 Q. I'm afraid I have no answer for that one.  
8 I'm curious about your response. All right. Going on.  
9 What percentage of the American hop production does S.S.  
10 Steiner purchase?

11 A. I'm guessing, but it's probably somewhere  
12 in the 25 to 30 percent range.

13 Q. 25 to 30 percent of total hops grown in  
14 America is purchased by your company?

15 A. I'm guessing. I think it could be in  
16 that range, yes.

17 Q. You are the vice president of S.S.  
18 Steiner?

19 A. Yes.

20 Q. But that's -- is that a guess, or would  
21 you say...

22 A. Well, I think it varies from year to  
23 year.

24 Q. Okay. How about this year?

25 A. I haven't actually seen a final

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1 production number for this year and we're actually  
2 buying hops every day, so...

3 Q. How about last year?

4 A. I really don't know that statistic off  
5 the top of my head.

6 Q. When S.S. Steiner buys hops what  
7 percentage of the 25 to 30 percent of the American hop  
8 production does it turn around and sell to brewers?

9 A. All of it.

10 Q. And for S.S. Steiner to maximize profit,  
11 it makes sense for it to buy as low as it can and sell  
12 as high as it can, right?

13 A. Our job is to supply our customers and  
14 when our customers want to buy hops, we try to go out  
15 and buy hops from farmers that will allow us a return.

16 Q. Okay. And the best return -- are you a  
17 publicly traded company?

18 A. No.

19 Q. Privately held company?

20 A. Yes.

21 Q. Number of shareholders?

22 A. I'd prefer not to answer that.

23 Q. In order to generate the best return for  
24 shareholders as vice president, it's incumbent upon you  
25 to try to generate the best profit, is it not?

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1 A. I think any businessman does that.

2 Q. Okay. And to generate the best profit,  
3 it's in your best interests and your shareholders best  
4 interests for you to buy as low as possible. Is that  
5 right? To procure hops at the best prices you can find.

6 A. Every transaction takes a willing buyer  
7 and a willing seller.

8 Q. I'd like you to concentrate on answering  
9 the question, sir.

10 A. What was the question.

11 Q. The question was it's in your  
12 shareholders' interest and your job as the vice  
13 president to try to procure hops at the lowest price  
14 possible, isn't that right?

15 A. We try to do as best as we can for our  
16 company, yes.

17 \*\*\*

18 MR. MONAHAN: I'll try one more time, sir.

19 ADMINISTRATIVE LAW JUDGE: Mr. Monahan, your  
20 question's unfair. You know, there's a point at which  
21 it's not good business to go for the very lowest price,  
22 so if he's not answering it directly, it may be because  
23 of the way the question is phrased.

24 MR. MONAHAN: I appreciate that, Your Honor.  
25 If that's the answer, I'd accept that as an answer.

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1 ADMINISTRATIVE LAW JUDGE: Well, just --  
2 instead of just repeating the question the way you have,  
3 you know, if you could explore it in some other way, I  
4 think it might be helpful.

5 MR. MONAHAN: Fair enough answer -- or Your  
6 Honor. I tend to get cranky after seven o'clock at  
7 night.

8 ADMINISTRATIVE LAW JUDGE: Well you know, we  
9 all do. Including me.

10 \*\*\*

11 BY MR. MONAHAN:

12 Q. And I wish Mr. Ungewitter were here  
13 tomorrow or Friday because I think we'd have a lot more  
14 questions for him. Let me gather my thoughts and  
15 proceed, Your Honor. I want to touch briefly on you  
16 used the word manipulation with respect to the  
17 acquisition of grower numbers. How many grower numbers  
18 did S.S. Steiner acquire in the last year or two?

19 A. Well, I think that's something that  
20 happened this year.

21 Q. Okay. How many grower numbers did S.S.  
22 Steiner acquire this year?

23 A. I'm not entirely sure. I think it's  
24 about four or five.

25 Q. Okay. And the way Mr. Moody phrased the  
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1 question it was suggested that members of the proponents  
2 committee had acquired numbers and that's what motivated  
3 you, your company, to acquire grower numbers and I guess  
4 in a defensive posture?

5 A. Yes.

6 Q. Okay. Do you know who, or had you heard  
7 who first starting acquiring grower numbers whether it  
8 was opponents, proponents?

9 A. No, I couldn't say.

10 Q. Okay. That's all -- at least as we sit  
11 here today probably surplusage, because we -- you agree  
12 that it's a one grower, one vote, right?

13 A. I think if that's managed fairly, I would  
14 have no objection to that.

15 Q. You -- in response to a question from Mr.  
16 Moody, do I understand that you think the '03 year  
17 should be the base year?

18 A. I'd prefer there was no base year,  
19 because I don't believe the marketing order will work.

20 Q. If there were going to be a base year,  
21 was your testimony, sir, that you thought '03 should be  
22 the appropriate year for measuring base?

23 A. I think it would be the fairest.

24 Q. How many acres of hops did S.S. Steiner  
25 grow in 2000?

1 A. I don't remember.

2 Q. Did it plant new hops in 2000?

3 A. I think we've been relatively stable.

4 Q. How many acres did S.S. Steiner grow in  
5 2001?

6 A. I don't have that number at the tip of my  
7 tongue.

8 Q. Were you aware, sir, as the vice  
9 president of S.S. Steiner that in 2001 there was this  
10 voluntary hop alliance effort to reduce acreage in  
11 Washington?

12 A. I've heard about it.

13 Q. Was S.S. Steiner a voluntary part of that  
14 effort?

15 A. No.

16 Q. Did S.S. Steiner, in fact, in 2001 plant  
17 new acreage when the industry was making a voluntary  
18 effort to reduce?

19 A. Not that I recall.

20 Q. 2002, do you know how many acres S.S.  
21 Steiner had?

22 A. It's been approximately 1500.

23 Q. Okay. Is it your testimony here today,  
24 sir, that S.S. Steiner did not plant new hops in 2002?

25 A. Define plant new hops.

1 \*\*\*

2 MR. MONAHAN: How involved are you in the day-  
3 to-day...

4 MS. DESKINS: Your Honor, I hate to interrupt.  
5 I hear people laughing and that's inappropriate for  
6 these kind of proceedings.

7 ADMINISTRATIVE LAW JUDGE: No, actually that's  
8 the only way some of us are surviving.

9 MS. DESKINS: Well, I would request that  
10 people control themselves and that not happen for  
11 whatever reason.

12 ADMINISTRATIVE LAW JUDGE: Well, I differ. I  
13 don't -- I think it's a respectful, quiet laughter and  
14 some of the witnesses' responses are humorous. The  
15 laughing is at responses of witnesses and I think it's  
16 appropriate, so I don't think it demeans the process  
17 we're going through here and I do think we have to keep  
18 our sense of humor, so...

19 MR. MONAHAN: I'll try to better identify the  
20 question.

21 ADMINISTRATIVE LAW JUDGE: All right.

22 \*\*\*

23 BY MR. MONAHAN:

24 Q. What I mean, sir, by planting hops is to  
25 expand production in terms of actual acreage, to string

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1 hops that had not been strung the prior year.

2 A. I really don't know, because I'm not that  
3 close to the actual farming.

4 Q. Is there someone I could ask at S.S.  
5 Steiner to find out the answer to that question?

6 A. I think we would prefer to keep our  
7 business our business.

8 Q. In terms of S.S. Steiner's business  
9 model, purchasing hops from growers and selling to  
10 brewers, would you agree that S.S. Steiner benefits from  
11 a volatile industry?

12 A. No, I don't think I'd necessarily agree  
13 with that.

14 Q. If the prices fluctuate and there is an  
15 oversupply, doesn't that give you the opportunity to  
16 purchase low more often?

17 A. I think that every transaction takes --  
18 requires a buyer and a seller and if there's an  
19 oversupply, it probably will cause prices to be low.

20 Q. Of the 25 to 30 percent of American hops  
21 purchased by S.S. Steiner, let's say last year, what  
22 percent of those were part of forward contracts? Say  
23 contracts that reach more than a year prior.

24 A. Again, I think that's something I'd  
25 rather not get into.

1 Q. The following question would be then what  
2 percent were bought on the spot market? Is that  
3 something you're not comfortable with?

4 A. Yeah.

5 \*\*\*

6 MR. MONAHAN: I know I'm testing Your Honor's  
7 patience, but...

8 ADMINISTRATIVE LAW JUDGE: No, no. Not at  
9 all. You're doing fine. I'm just -- I'm in kind of a  
10 relaxed state at this point.

11 \*\*\*

12 BY MR. MONAHAN:

13 Q. I know we're in danger when I'm reading  
14 my notes but I'm listening to the gentlemen next door.  
15 One moment and then I think I can wrap this up. Does  
16 S.S. Steiner, on its ranches, prepare costing studies to  
17 determine the cost of production for a pound of hops?

18 A. We do occasionally look at what it costs  
19 us to grow hops, yes.

20 Q. Okay. Have you entered contracts with  
21 growers for what you believe are below the cost of  
22 production?

23 A. Below our cost of production?

24 Q. Sure.

25 A. It's possible.

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1 Q. Do you buy hops on the spot market for  
2 less than what you believe by your figures are the cost  
3 of production?

4 A. When the market prices are below the cost  
5 of production, we do buy hops at those levels.

6 \*\*\*

7 MR. MONAHAN: Your Honor, that's all I have  
8 for now.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
10 Monahan. Mr. Ungewitter, if it were determined that it  
11 should be one grower, one vote, do you have an estimate  
12 for how many US growers of hops there are?

13 MR. UNGEWITTER: I wouldn't want to guess.

14 ADMINISTRATIVE LAW JUDGE: All right. Are you  
15 aware of any currently operating in California?

16 MR. UNGEWITTER: I believe there may be two  
17 small producings of hops in California.

18 ADMINISTRATIVE LAW JUDGE: What geographic  
19 area are they in, do you know?

20 MR. UNGEWITTER: I'm actually not that -- I'm  
21 not sure. I think around Yuba city, but I'm really not  
22 sure.

23 ADMINISTRATIVE LAW JUDGE: All right, thank  
24 you. Other questions from those who are here in a  
25 position in favor? Yes? Very good. Let me see. Is

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1 there a seat there for you? All right, Mr. Smith, would  
2 you identify yourself, please?

3 MR. SMITH: Michael Smith, grower from  
4 Washington.

5 ADMINISTRATIVE LAW JUDGE: You may proceed.

6 \*\*\*

7 BY MR. SMITH:

8 Q. Is it okay, Mr. Ungewitter, if I refer to  
9 you as Marty?

10 A. That's fine.

11 Q. Thank you. Marty, you stated in your  
12 testimony, I think, part -- in the written testimony  
13 that you read into the record that the US was competing  
14 with lower priced sources of alpha from around the  
15 world. Is that pretty much what you stated?

16 A. Yes.

17 Q. Could you give us some examples of where  
18 that lower priced alpha would be produced?

19 A. Germany or China or New Zealand.

20 Q. Okay. You're familiar, of course, with  
21 the Barth report, I'm sure.

22 A. Frankly, I very rarely look at that, so I  
23 can't say that I am familiar with it.

24 Q. You're familiar that it's produced every  
25 year and...

1 A. Yes.

2 Q. Okay, and distributed widely around the  
3 world, at least to the brewing community around the  
4 world?

5 A. Yes.

6 Q. Okay. I'm going to read a statement if  
7 you don't mind and I'm going to ask if you'll agree or  
8 disagree with the statement. In -- let me find it here  
9 first. "In statistical terms, China, now the  
10 world's..."

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE: Mr. Smith, is that  
13 the one that's currently an exhibit?

14 MR. SMITH: It is.

15 ADMINISTRATIVE LAW JUDGE: Let me get that so  
16 that he can look at it while you're directing his  
17 attention.

18 MR. SMITH: That would be great. It's on page  
19 six. It's market analysis.

20 MR. UNGEWITTER: Thank you.

21 ADMINISTRATIVE LAW JUDGE: You're welcome.

22 \*\*\*

23 BY MR. SMITH:

24 Q. It's in the left-hand column, Marty.

25 A. Um-hum.

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1 Q. Bottom paragraph. "In statistical terms,  
2 China, now the world's biggest beer producer and the  
3 third biggest producer of alpha contributed  
4 approximately 200 metric tons to the alpha surplus and a  
5 1,085 metric tons. For various reasons, however, the  
6 Chinese hop market leads a life of its own and is of no  
7 significance as far as the world market is concerned.  
8 The surplus in China will remain a matter for the  
9 domestic market and will not affect the world market."  
10 Do you agree with that statement or disagree with it?

11 A. I think I would probably -- this was from  
12 2002...

13 Q. This is the most recent...

14 A. Yeah.

15 Q. ...Barth report. It just came out a  
16 couple of weeks ago.

17 A. I think that that is rapidly changing.  
18 And as of today, I probably wouldn't agree with that  
19 statement.

20 Q. So you take exception to that?

21 A. I think I would, yes.

22 Q. So can you give me some examples of  
23 markets, typical markets, where the US and Germany would  
24 compete directly with Chinese alpha? And even some  
25 brewers?

1           A.    I don't think I want to name specific  
2 customer names.

3           Q.    Markets then, please.

4           A.    I think that type of alpha would find its  
5 way into eastern Europe, perhaps.

6           Q.    But has it -- to your knowledge, has it  
7 found its way into eastern Europe?

8           A.    I believe it has, but I don't have any  
9 direct knowledge of that, no.

10          Q.    If it had found its way into eastern  
11 Europe, would it be to a significant degree, do you  
12 think, based on the statement by the Barth organization?

13          A.    As I understand it, they are producing  
14 significant quantities of a super high alpha variety in  
15 China.

16          Q.    That wasn't the question, it was that do  
17 you think that's being exported in significant  
18 quantities outside of China?

19          A.    As far as I know, it's not used in China,  
20 so my guess is it's being exported.

21          Q.    Okay.  Another couple of things I'd like  
22 to read out of the market analysis.  Well, first of all,  
23 continuing along with that line of questioning or  
24 reasoning, Marty, how long has China been producing  
25 commercially, producing hops?

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1 A. I really -- how long have they -- I  
2 really don't know. Commercially? For their own use?

3 Q. Just in a commercial sense. Where it's a  
4 significant industry, let's say.

5 A. I think there's been a Chinese hop  
6 production for maybe a hundred years.

7 Q. For maybe a hundred years. So over the  
8 hundred years, in the opinion of the Barth company,  
9 they're of no significance in the world market today.  
10 In your opinion, I think they're of -- maybe of some  
11 significance in maybe a few limited markets in eastern  
12 Europe. And yet testimony, would you agree or not -- or  
13 would you agree or disagree -- in this proceeding has  
14 indicated that China will take business market share  
15 away from the American producer if a marketing order's  
16 enacted?

17 A. I think we compete against China and to  
18 the extent a marketing order causes our costs and  
19 thereby, our prices to increase, it will take market  
20 share away from us.

21 Q. And yet the Barth company doesn't think,  
22 apparently, that we compete with China.

23 A. I can't comment.

24 Q. Okay. First sentence in that same market  
25 analysis, Marty. "As in the two previous years, alpha

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1 production in 2002 exceeded demand. Despite a reduction  
2 in acreage amounting to 1200 hectares and bringing world  
3 acreage down to only 57,703 hectares, the hop market  
4 produces surplus of 1,085 metric tons of alpha.  
5 Consequently, the prices for virtually all varieties on  
6 the world market were lower than they had been for  
7 decades. This meant that in the two main producer  
8 countries, Germany and the USA, with a combined share of  
9 world alpha totaling 67.6 percent, there were  
10 practically no spot markets in the conventional sense of  
11 the word." Do you agree or disagree with that  
12 statement?

13 A. I frankly don't know how to interpret  
14 that statement.

15 Q. What do you think that statement means?

16 A. I wouldn't even hazard a guess.

17 Q. Would you guess that it means that prices  
18 were very, very low? If it's -- if the opinion of the  
19 Barth company is that the market is not functioning --  
20 and I'm paraphrasing here -- is not functioning in a  
21 conventional sense, that would tend to indicate, at  
22 least in the opinion of this company, that prices were  
23 not in normal range.

24 A. I suppose you could interpret that.

25 Q. Do you agree or disagree with that?

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1 A. With what, specifically?

2 Q. That the spot market was not -- that  
3 there was no spot market in the conventional sense of  
4 the word.

5 A. Well, I think the term spot market means  
6 that there is a market, which in my opinion is a  
7 purchase and a seller.

8 Q. Apparently, the prices at least -- and  
9 we've talked about it in the -- earlier in the  
10 proceedings that we were subject to very low prices  
11 during this period of time, apparently. Would you agree  
12 or disagree?

13 A. Which crop are we talking about?

14 Q. 2002. Fall of...

15 A. I think the prices were very low last  
16 year, yes.

17 Q. The next paragraph starts with the  
18 sentence "The 2002 market was characterized by a  
19 combination of continued overproduction in an  
20 historically high volume on the hop market, particularly  
21 in Germany and the US." Would you agree or disagree  
22 with that?

23 A. You know, Leslie was right. This stuff  
24 is so convoluted English, I have a hard time following  
25 what it is they're saying. Can you put it in your own

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1 words? Maybe I'll understand it then.

2 Q. Well, basically it says an historically  
3 high volume on the open market. That, to me, would  
4 indicate that there's fewer contracts.

5 A. And you're asking me if I think...

6 Q. I'm just asking if you agree or disagree  
7 that there were apparently less contracts...

8 A. At what point in time?

9 Q. It said in 2002.

10 A. At what point in time?

11 Q. It was characterized by continued  
12 overproduction, so let's say at the beginning of the  
13 2002 production season, I'm assuming that there was less  
14 production contracted.

15 A. Less than when?

16 Q. Less than historical.

17 A. I think that might be true.

18 Q. Thank you. Back to -- Mr. Monahan was  
19 asking you some questions about the business dealings of  
20 S.S. Steiner, and I'd like to continue along those  
21 lines, if you don't mind. S.S. Steiner's in the  
22 business, as you testified, of growing hops as well  
23 acquiring and processing and selling hops, correct?

24 A. Yes.

25 Q. And the percentage of your overall gross  
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1 income is derived from hops. Is that lower than the  
2 percentage of income that you had derived from  
3 processing and selling hops?

4 A. I'd rather not answer that.

5 Q. Is the larger portion of your business in  
6 farming or in processing, can you just answer that one?

7 A. No, I don't think I want to answer that.

8 Q. I would assume if you handle 25 percent  
9 of the US crop, that chances are that there would be a  
10 higher chance or a higher probability of income there  
11 than if you were growing four percent of the hops in the  
12 US, is that correct?

13 A. The higher -- say that again? A  
14 higher...

15 Q. Well, if you handle 25 -- you testified  
16 you handle 25 percent...

17 A. Approximately, yeah.

18 Q. Approximately.

19 A. Yeah.

20 Q. And 1500 acres would approximately be  
21 four or five percent of the hops that were grown in the  
22 US?

23 A. I didn't figure that out, but it could  
24 be.

25 Q. The cost of growing hops -- since you're  
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1 a significant grower -- variable, obviously you'd have  
2 variable and fixed costs. Do you have an idea of the  
3 overall cost of production per acre to grow hops in  
4 Washington state?

5 A. Well, I think you testified, or one of  
6 your colleagues testified around \$4,000 an acre or  
7 something?

8 Q. Would you agree or disagree with that?

9 A. I think that ballpark, correct.

10 Q. What portion of the cost of that 4,000  
11 acres do you feel would be variable cost on a per acre  
12 basis, can you estimate that?

13 A. I'm not close to that. I couldn't  
14 comment.

15 Q. I told you that it was on super alpha  
16 hops and in fact, the rest of my questions will relate  
17 to super alpha hops -- if I told you that it was between  
18 .70 and .75 a pound, would you disagree with that or  
19 agree with it?

20 A. What is that?

21 Q. The incremental costs, the cash costs of  
22 growing super alpha hops. If I'm, as a grower, going to  
23 grow that next acre, and I told you that my calculations  
24 show that that's about .70, .75 a pound, would you agree  
25 or disagree with that?

1           A.    Ballpark it might be correct, but I think  
2 it could vary quite a bit from one farm to another based  
3 on yield.

4           Q.    Okay.  How about on a per acre basis?  
5 Would it vary very significantly from farm to farm?

6           A.    Probably not.

7           Q.    In your business of handling and  
8 processing hops, Marty, do you do processing for third  
9 parties on a -- just on a per pound basis?  You're not  
10 going to sell the hops on to a brewer, you're just going  
11 to process as a third party process?

12          A.    You mean toll processing?

13          Q.    Toll processing, thank you.

14          A.    Yeah.

15          Q.    Can you give us an idea -- if I was a  
16 grower and I came to you to have some hops put into CO<sub>2</sub>  
17 extract can you give me an idea of approximately the  
18 price that would be quoted?

19          A.    I think -- I hesitate quoting specific  
20 prices.

21          Q.    Would it be fair to assume it would be  
22 somewhere between .55 and .65 a pound?

23          A.    That sounds like the right range.

24          Q.    And if I came to you for pelletization,  
25 would it be fair to say that the prices would be between

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1 .15 and .25 cents a pound?

2 A. That sounds about the right range.

3 Q. When you're selling -- when you're making  
4 sales to brewers and I'm not sure if Mr. Monahan talked  
5 to you about this directly or not, so forgive me if I'm  
6 treading over ground that's already been covered, but  
7 those are sold on a contract basis and a spot basis, is  
8 that right?

9 A. When...

10 Q. Sales to brewers.

11 A. When we sell to brewers?

12 Q. Yes.

13 A. Well, it's contract whenever it's --  
14 whenever the sale takes place, a contract takes place.

15 Q. I guess what I'm referring to is a spot  
16 sale, in this case, would be a sale where a brewer  
17 wanted to buy production from the most recently produced  
18 crop, just a one-shot sale. It's -- I'm not -- we're  
19 not entering into a contract for a future year of  
20 production. That's the distinction I'm trying to make  
21 between spot and contract.

22 A. Okay.

23 Q. So S.S. Steiner would sell to brewers on  
24 both basis's, is that correct?

25 A. Yes.

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1 Q. Would you say, in your opinion, that the  
2 spot business -- that business to brewers that sold  
3 after the production of that crop year, that that  
4 percentage of the business has been increasing in recent  
5 years during the depressed price cycle?

6 A. Yes.

7 Q. What other suppliers are there of US hops  
8 to world brewers? And I mean of processed hop products?  
9 Basically, I'm asking you to name your competitors.

10 A. Well, I think we've had a big discussion  
11 about that over the last week and theoretically, every  
12 hop grower is a potential competitor, also.

13 Q. Okay. Name for me the three competitors  
14 that would comprise the majority of sales of US hop  
15 products to world brewers, if you would, please.

16 A. The three major hop...

17 Q. Yes, please.

18 A. ...hop handlers would be S.S. Steiner,  
19 John H. Haas, and Yakima Chief.

20 Q. And what percentage of sales to world  
21 brewers would they account for, would you say?

22 A. You know, I -- more than 50 percent.

23 Q. Wouldn't you say it would be -- and  
24 again, I want to clarify I'm talking about super alpha  
25 hops, okay, so the sales of aroma hops is not really

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1 part of my line of questioning here. Of super alpha  
2 hops, what percentage of the hops that are sold to world  
3 brewers are sold by, collectively by Yakima Chief, John  
4 H. Haas and S.S. Steiner?

5 A. Probably a very high percentage.

6 Q. Would it be over 90 percent?

7 A. It's possible, but it could also be  
8 under.

9 Q. How much under could it be, do you think?

10 A. Plus or minus ten percent.

11 Q. Thank you. And so these three companies,  
12 in their efforts to sell to the major brewers, or to any  
13 brewer in the world, for that matter, basically compete  
14 with each other. Is that correct?

15 A. I think that's correct, yes.

16 Q. And would you say that over a specific  
17 period of time, or over any length of time, okay, that  
18 the prices that they receive from those brewers be  
19 somewhat similar?

20 A. I would guess that would be true.

21 Q. Following the 2002 crop, would you -- in  
22 your opinion, did spot price decline from the prior crop  
23 year? I'm talking about prices to brewers.

24 A. From 2001 to 2002?

25 Q. Yes.

1           A.    I think there was a general decline in  
2 the market.

3           Q.    Can you give us a rough idea of what the  
4 price level paid by brewers was at the bottom of the  
5 market?

6           A.    I'd rather not comment about that.

7           Q.    Would you -- was it over \$25 or under \$25  
8 would you say?

9           A.    I don't think I want to comment on that.

10          Q.    If I said that it -- in my opinion, that  
11 it was around 20 to \$22, would you disagree with it?

12          A.    Do you want to define that, please?

13          Q.    20 to \$22 per kilogram of alpha, CO<sub>2</sub>  
14 extract, FOB US.

15          A.    And you're suggesting that's what?

16          Q.    20 to \$22.

17          A.    For what? For -- can you repeat the  
18 question?

19          Q.    If I stated that the price to brewers for  
20 CO<sub>2</sub> extract in drums, FOB the US was, following the 2002  
21 crop, was 20 to \$22, would you disagree with that?

22          A.    I think that might be true.

23          Q.    When you make purchases from growers,  
24 Marty, how's the price determined? And I'm talking  
25 about spot purchases from growers.

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1 A. Negotiation.

2 Q. So whatever price you feel's fair to  
3 offer to that grower? You make an offer and he either  
4 accepts it or rejects it, is that correct?

5 A. Or the grower comes to us and offers us a  
6 price.

7 Q. I see. How do you think that price that  
8 you pay the grower impacts the price that the brewer  
9 pays? Is there a relationship between those two?

10 A. I think it's absolutely a relationship,  
11 in our case.

12 Q. Can you briefly explain, in general  
13 theory, how that relationship works?

14 A. Well, sometimes, in a perfect world, it's  
15 a two-sided negotiation. At the same time that we are  
16 talking to growers, we're talking to brewers.

17 Q. And so you'll take the price that you  
18 think you can -- that you might pay the grower and  
19 there'll be some sort of a mark-up and of course,  
20 processing charges, and then a price is derived...

21 A. And it's passed on to the brewery.

22 Q. Passed on to the brewery. Are you aware,  
23 Marty, last year, that Yakima Chief started a market  
24 pool?

25 A. No.

1 Q. You have heard nothing about a market  
2 pool after the 2002...

3 A. I actually learned more about Yakima  
4 Chief's business model last week than I had ever heard  
5 before.

6 Q. You're about ready to learn a little bit  
7 more. If I told you that YCI -- that's an acronym now  
8 for Yakima Chief, Inc. -- created a market pool  
9 following the 2002 crop, would you think that that was  
10 probably a -- that -- would you think that I was telling  
11 you the truth?

12 A. Well, if you tell me it, Mike, I'm sure  
13 it's true.

14 Q. Thank you. Your company also owns -- has  
15 some involvement in the fruit business, isn't that true?

16 A. Yes.

17 Q. And in the fruit business -- fruit  
18 portion of your business, you operate under consignment  
19 arrangements, is that true?

20 A. As I understand it, yes.

21 Q. And you understand, at least from  
22 testimony last week, that that's the way YCI, or Yakima  
23 Chief, operates as well, correct?

24 A. Evidently.

25 \*\*\*

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1 MR. BARTON: Can we take a break?

2 ADMINISTRATIVE LAW JUDGE: Yes, let's change  
3 tape at eight o'clock?

4 \*\*\*

5 [Off the Record]

6 [On the Record]

7 \*\*\*

8 ADMINISTRATIVE LAW JUDGE: We're back on  
9 record at 8:01. Go ahead, Mr. Smith.

10 \*\*\*

11 BY MR. SMITH:

12 Q. Marty, the -- back to the consignment  
13 arrangement that we talked about that your company  
14 utilizes in the fruit side of the business and YCI  
15 operates or utilizes in hops side of the business. Can  
16 you briefly explain how that consignment arrangement  
17 generally works?

18 A. I should say that I'm not that closely  
19 involved with the fruit side of our business, but as I  
20 understand it, the growers bring fruit to the warehouse  
21 packer and that they hold ownership of that fruit until  
22 it is sold.

23 Q. And the warehouse, or packer, then  
24 charges that grower for the services that are rendered?  
25 Is that the way you understand the...

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1           A. I believe there's a fee for storage and  
2 marketing.

3           Q. And if I was to tell you that the charges  
4 that YCI charged to their growers for participation in  
5 the market pool was .60 cents a pound, would you think  
6 that that would be reflective of the market charge for  
7 extraction, pelletization, so forth?

8           A. Can you define the .60 again?

9           Q. The growers pay Yakima Chief .60 a pound  
10 to handle and process their hops. Would you think that  
11 that would be a fair price, as a processor, to handle  
12 and process those hops?

13          A. Are you including all processed products?

14          Q. I'm talking about extract and pellets.

15          A. It's the same fee for either?

16          Q. It was the same fee for either, yes. Is  
17 that a fair price?

18          A. I learn something new every day.

19          Q. Is that -- as a processor, if you were to  
20 receive .60 a pound for extraction, is that a fair price  
21 for...

22          A. Am I just performing extraction and  
23 nothing else?

24          Q. Extraction and sales.

25          A. I don't know. It seems a little low to  
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1 me, but...

2 Q. How about for pellets? Sixty cents for  
3 pellets?

4 A. I guess it seems a little high to me.

5 Q. So if you combined the two together, it  
6 could be a fair price for a processor, then?

7 A. It might average.

8 Q. Back to the spot market for 2002, Marty.  
9 Could you give us a range of prices that were paid in  
10 the spot market in 2002?

11 A. I would -- are we talking super high  
12 alphas?

13 Q. Super high alphas, yes.

14 A. I'm guessing that they started around a  
15 buck and they went down from there.

16 Q. Where did they end up?

17 A. I'm not sure.

18 Q. About .50 a pound?

19 A. I'd say that's close.

20 Q. Might've been some lower than 50?

21 A. It's possible.

22 Q. Would it be fair to assume that a  
23 processor who was active in the spot market in 2002  
24 probably paid around .50 a pound for his hops on  
25 average?

1 A. I wouldn't be able to comment about  
2 averages. I'm sure that they may have paid some.

3 Q. But that's not out of the realm of  
4 reality, is it?

5 A. That it went to .50?

6 Q. That it may have averaged about .50 a  
7 pound for the -- for its purchase price of spot hops in  
8 2002?

9 A. It sounds a little low to me.

10 Q. How low?

11 A. Well, .10, 15 maybe.

12 Q. So he may have averaged .60, .65? Is  
13 that correct?

14 A. That would seem to me to be a little bit  
15 more in the middle of a dollar to .50.

16 Q. Okay. If I were to tell you that the  
17 return to the grower in the YCI market pool was in  
18 average of .92 1/2 for the 2002 crop, would you think  
19 that that would be reasonable?

20 A. Reasonable in terms of last year's  
21 conditions?

22 Q. In light of the spot market at the brewer  
23 level. In light of what the YCI grower paid to YCI for  
24 processing and handling. His return was .92 1/2 average  
25 across that pool. Do you think that's a reasonable

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1 return, or do you -- would you have any reason to  
2 dispute that return?

3 A. I wouldn't have any reason to comment one  
4 way or another, really.

5 Q. So we talked a little -- going back, we  
6 talked earlier about the -- the incremental cost of  
7 production for the grower. And you and I talked about  
8 .70, .75 was probably a reasonable period and you agreed  
9 -- reasonable level and you agree with that, correct?

10 A. I think so.

11 Q. And so -- and I just shared with you that  
12 the YCI return was, in fact, .92 1/2 per pound. That  
13 would be above that incremental cost basis, is that  
14 correct?

15 A. If you're talking apples to apples in  
16 terms of timing and everything else, I guess that's  
17 correct.

18 Q. So the decision for the YCI grower, then,  
19 to participate in the market pool was a financially  
20 rewarding decision, wouldn't it be?

21 A. Using your assumptions.

22 Q. However, if the grower who was not  
23 participating in the YCI pool and in fact, was selling  
24 to your company, you probably sold at -- in .60 to .65  
25 area, isn't that true?

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1 A. It's possible.

2 Q. And so that grower lost money, then.  
3 That was not a financially rewarding situation.

4 A. I wouldn't know. I couldn't comment on  
5 that particular grower's cost of production.

6 Q. I thought we had agreed earlier that the  
7 incremental cost of production from grower to grower  
8 would be fairly similar, at least on a per acre basis  
9 and I...

10 A. I think I also said there was quite a  
11 variance possible.

12 Q. Marty, what is the spot market today? If  
13 you were to -- if -- is there a spot market today?

14 A. Good question. I don't have a number for  
15 that.

16 Q. You don't have a number because there is  
17 no spot market or you don't have a number because you  
18 don't want to share it?

19 A. No, I don't know where the spot market is  
20 today. I think that if there is a grower who wants to  
21 sell product, I think at some price he would be able to  
22 sell product.

23 Q. What do you think that price would be?

24 A. I hesitate to guess, but I'm sure that at  
25 some price it would find a market.

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1 Q. Is it over a dollar, under a dollar?

2 A. Probably under a dollar.

3 Q. What is the price to brewers today, to  
4 the best of your knowledge?

5 A. Price of what?

6 Q. Price of extract, as we spoke of earlier,  
7 the price...

8 A. I think I'd prefer not to answer that.

9 Q. If I told you that I was aware of sales  
10 made in the last couple weeks at over \$40 per kilogram  
11 alpha would you disagree with that?

12 A. That would surprise me.

13 Q. Would you think I was lying to you?

14 A. No, if you told me that that's what you  
15 sold at, I'd believe you.

16 \*\*\*

17 MR. CARSWELL: Your Honor, I'm sorry. Is Mr.  
18 Smith testifying or asking questions? Because a lot of  
19 this sounds like he's actually testifying without being  
20 subject to cross.

21 ADMINISTRATIVE LAW JUDGE: He's being pretty  
22 artful. So far, he's okay.

23 MR. CARSWELL: Okay, Your Honor.

24 \*\*\*

25 BY MR. SMITH:

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1 Q. Marty -- it's getting pretty late. I'm  
2 not sure we're getting anywhere. If I -- if -- you're a  
3 grower, Marty, and you're able to operate under a system  
4 that can return .92 1/2 a pound in a market pool  
5 following the 2002 crop. Would you say that that grower  
6 has an advantage over the grower who sold at .60 to .65  
7 a pound following the 2002 crop?

8 A. No.

9 Q. Because I received .30, 50 percent more  
10 than the other grower, that was not an advantage...

11 A. The other grower had the opportunity to  
12 sell the hops at some point earlier in the spot season  
13 when it was higher. I think I said it -- it may have  
14 started at a dollar.

15 Q. So any grower who wanted to sell hops  
16 following the 2002 crop could've done so at a dollar?

17 A. I think we're talking hypothetically here  
18 and I think the market was higher at that -- at some  
19 point in time than the .92 you mentioned.

20 Q. But we stated that it -- the spot price  
21 dropped from a dollar to .50. That indicates to me that  
22 there was a -- an oversupply of hops, doesn't it to you?

23 A. Yes.

24 Q. And so every grower that wanted to sell  
25 following the 2002 crop couldn't have sold at a dollar.

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1 A. Every grower didn't want to sell at a  
2 dollar.

3 Q. They couldn't all have sold at a dollar,  
4 could they?

5 A. I don't know. I don't think they wanted  
6 to.

7 Q. If they would've wanted to, could they?

8 A. I wouldn't know. Don't remember.

9 Q. Would you have -- would your company have  
10 purchased as many hops as were made available to them  
11 following the 2002...

12 A. No.

13 Q. ...crop at a dollar?

14 A. No, we only buy what we can sell.

15 Q. Marty, would it be more difficult or --  
16 would it be more difficult for your company to operate  
17 under their current business model if the hop marketing  
18 order were adopted?

19 A. I think it would present us some  
20 additional challenges.

21 Q. Would it impede your ability to buy hops  
22 freely?

23 A. Subject to the constraints of the  
24 saleable, no.

25 Q. Then how would it make it more difficult

1 for your company?

2 A. Well, I think we would be burdened with  
3 having to check these new rules and regulations and make  
4 sure they weren't \$5,000 a day for not fulfilling a  
5 proper form or...

6 Q. Wouldn't it be possible that you would --  
7 because of the saleable, because growers wouldn't be  
8 able to freely sell as much as they wanted, that your  
9 company would actually have to approach more growers,  
10 potentially, to get the same quantity of hops?

11 A. I think that the proponents themselves  
12 testified that it would be up to each grower to  
13 determine how he handled his unique situation.

14 Q. But actually, I was referring to your  
15 company.

16 A. Our own growing of hops?

17 Q. No, your purchasing of hops.

18 A. And whether -- can you repeat the  
19 question?

20 Q. Is it possible that if a hop marketing  
21 order were adopted, that in order for your company to  
22 purchase the same quantity hops that they're purchasing  
23 today, that they may have to approach more growers than  
24 they're approaching now? That they may actually have to  
25 conduct business with more growers?

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1 marketing order? There are none. Any questions from  
2 USDA representatives? There are none. Any questions  
3 from anyone else? Yes?

4 MR. PUTERBAUGH: I'm Stacey Puterbaugh, a hop  
5 farmer from Washington state. My name is spelled  
6 S-t-a-c-e-y and Puterbaugh is spelled  
7 P-u-t-e-r-b-a-u-g-h. And I'm...

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
9 Puterbaugh.

10 MR. PUTERBAUGH: And I'm against this  
11 marketing order, just so you know where I stand.

12 ADMINISTRATIVE LAW JUDGE: All right, thank  
13 you.

14 \*\*\*

15 BY MR. PUTERBAUGH:

16 Q. Marty, did you purchase hops from me in  
17 1991 on the spot market at .80?

18 A. I don't remember.

19 Q. Okay, I just wondered if you remembered.  
20 That was at the end of the year right after harvest, I  
21 believe you did, if my memory serves me right.

22 A. It could well be.

23 Q. Okay. And then as time went on, it went  
24 down to .50. Did you purchase some more at that point  
25 in time?

1 A. That could well be. I don't remember.

2 Q. Okay. My math's not very good, but I  
3 think the average is pretty close to that .92 that Mr.  
4 Smith is referring to, but I'm not for sure. And I  
5 believe I got full payment at the time of delivery for  
6 my hops.

7 A. Typically, when we contract hops, we do  
8 pay for our hops.

9 \*\*\*

10 MR. PUTERBAUGH: Thank you.

11 ADMINISTRATIVE LAW JUDGE: Was that -- what  
12 year was that?

13 MR. PUTERBAUGH: I believe it was the same  
14 year that the market pool that Mr. Smith was referring,  
15 if my memory's not mistaken.

16 ADMINISTRATIVE LAW JUDGE: Okay, but you went  
17 back to 1991.

18 MR. PUTERBAUGH: Oh, excuse me. I meant for -  
19 - I'm a little nervous here, you're going to have to  
20 excuse me, it's a little late. It was 2001, I believe.

21 ADMINISTRATIVE LAW JUDGE: Okay. That makes  
22 sense, because that correlates with the year Mr. Smith  
23 was talking about. Ask your question again using 2001.

24 \*\*\*

25 BY MR. PUTERBAUGH:

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1 Q. Marty, in 2001 did you purchase any spot  
2 hops from me for roughly .80?

3 A. I think that's possible.

4 Q. Okay. Do you want me to ask the...

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: Yes.

7 MR. PUTERBAUGH: ...the .50 one, too?

8 ADMINISTRATIVE LAW JUDGE: Yes.

9 \*\*\*

10 BY MR. PUTERBAUGH:

11 Q. Marty, did you purchase hops in 2001 at  
12 .50?

13 A. It's possible.

14 Q. Okay. Was I paid in full?

15 A. Yes.

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE: And go ahead and --  
18 even though he may not know this, but you may ask him if  
19 the average price was about whatever you said.

20 MR. PUTERBAUGH: Mr. Monahan's pretty good at  
21 that. Maybe he could average that out for me.

22 ADMINISTRATIVE LAW JUDGE: Go ahead, Mr.  
23 Puterbaugh. It depends on what quantity at each price.

24 MR. PUTERBAUGH: Well, that I don't want to  
25 reveal, but I will reveal the price.

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1 ADMINISTRATIVE LAW JUDGE: Was it an equal  
2 quantity at each price?

3 MR. PUTERBAUGH: No. I'll just say it. It  
4 was 800 the first go-around and I believe -- because I  
5 thought the market was going to go up and was fooled, it  
6 went down -- it was about 500.

7 ADMINISTRATIVE LAW JUDGE: All right. Thank  
8 you, Mr. Puterbaugh. Any other questions for Mr.  
9 Ungewitter? No, from Mr. Puterbaugh, I mean.

10 MR. PUTERBAUGH: That should do it.

11 ADMINISTRATIVE LAW JUDGE: All right. Thank  
12 you, sir. Any other questions for Mr. Ungewitter? Mr.  
13 Mazumdar?

14 \*\*\*

15 BY MR. MAZUMDAR:

16 Q. Good evening, Mr. Ungewitter.

17 A. Good evening.

18 Q. I have some questions about trends in  
19 foreign contract prices that you have observed in your  
20 position at S.S. Steiner. Can you tell me, with regard  
21 to price, what trends have you seen over the last 10  
22 years with contracts you've made with brewers? Have  
23 these contracts -- have prices been stable? And let me  
24 break in down by first, high alpha hops?

25 A. I think prices fluctuate with the supply  
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1 and demand.

2 Q. For -- can you give me an estimate of the  
3 amount that they fluctuate?

4 A. You know, there are so many different  
5 criteria for each transaction, it's very difficult to  
6 say what the fluctuation levels are. If you don't put  
7 further constraints into the equation.

8 Q. Okay. For a one year forward contract  
9 for the commoditized high alpha product that, from what  
10 I gather, is sold on a kilogram per alpha basis, over  
11 the last 10 years has the one year ahead contract price  
12 been stable, increasing, decreasing?

13 A. In any year -- one year ahead contract  
14 pricing for alpha on an X works [ph] basis in CO<sub>2</sub> form,  
15 the prices fluctuated throughout that period.

16 Q. And can you give me an estimate of the  
17 fluctuation? Is it 10 percent, 20 percent, 30 percent?

18 A. I'll just say a range -- and this is over  
19 10 years?

20 Q. Over 10 years.

21 A. The range could be from less than \$20 to  
22 more than \$50.

23 Q. What -- does the same range apply over  
24 the last five years?

25 A. I think that's possible.

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1 Q. And the last year?

2 A. No.

3 Q. What is the range for the last year?

4 A. Less than 20 and more than 30.

5 Q. Okay. Can you tell me, have you -- any  
6 trends you've seen in forward contracts to brewers is a  
7 percentage of their needs over the last 10 years?

8 A. I think there's -- and there was also  
9 other testimony about this. I think there's been a  
10 trend of decreasing forward contracting.

11 Q. And this is in alpha?

12 A. Yeah. Although, you could even extend to  
13 some extent to aromas.

14 Q. And you can you give me an estimate of  
15 how much it's been decreasing?

16 A. I can't put a number to it.

17 Q. Okay. Turning to your contracts with  
18 growers, can you give me what you see is the trend over  
19 the last 10 years with respect to the high alpha aroma  
20 -- let's say one year had on a extract CO<sub>2</sub> basis sold --  
21 I'm not sure of all the terminology, but one year had on  
22 an extract basis which is sold in kilograms of alpha  
23 acid. Have the prices that for your one year ahead  
24 contracts with growers been declining, increasing,  
25 stable?

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1 A. Over the last year?

2 Q. Well, last year's fine, yes.

3 A. Over the last year?

4 Q. Last -- over the last year.

5 A. I think that with the crop failure in  
6 Germany, prices have increased.

7 Q. Can you quantify the percentage of  
8 increase?

9 A. I'd rather not.

10 Q. Okay. Can you tell me what trend you've  
11 seen over the past five years?

12 A. Up and down.

13 Q. How much up and down?

14 A. I think we already established somewhere  
15 between less than 20 and more than 30.

16 Q. And that's the same for growers and  
17 brewers?

18 A. Well, in that ballpark range.

19 Q. And I'm assuming that the same applies  
20 when I ask you about a 10 year trend? You gave me an  
21 answer of less than 20 to more than 50 for brewers.  
22 Does -- is that range also applicable to growers?

23 A. I think it might be.

24 Q. Okay. Have you offered contracts for  
25 super alpha that some growers have declined?

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1 back on record at 8:26. I will see you folks in 12  
2 hours and four minutes at 8:30 in the morning. Thank  
3 you.

4 \*\*\*

5 [End of Proceedings]

## 1 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER

2  
3  
4 IN RE: HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO  
5 AND CALIFORNIA6  
7 HELD AT: Yakima, Washington8  
9 DATE: October 22, 200310  
11 We, the undersigned, do hereby certify that the  
12 foregoing pages, numbered 1390 through 1833, inclusive,  
13 are the true, accurate and complete transcript prepared  
14 from the reporting by the reporter in attendance at the  
15 above identified hearing, in accordance with applicable  
16 provisions of the current USDA contract, and have  
17 verified the accuracy of the transcript by (1) comparing  
18 the typewritten transcript against the reporting or  
19 recording accomplished at the hearings, and (2)  
20 comparing the final proofed typewritten transcript  
21 against the reporting or recording accomplished at the  
22 hearing.23  
24 Date:25 Karen D. Martini  
26 Karen D. Martini, Transcriber  
27 York Stenographic Services, Inc.  
28

29 Date:

30 Sarah Mowrer  
31 Sarah Mowrer, Proofreader  
32 York Stenographic Services, Inc.  
33

34 Date:

35 Kearney Barton  
36 Kearney Barton, Reporter  
37 York Stenographic Services, Inc.  
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