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C. L. J. / H. C. O.

2004 FEB 8 P 2: 2

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Before the Secretary
United States Department of Agriculture
Washington, D.C.

_____)	
Hops Produced in Washington,)	DOCKET AO-F&V-991-A3;
Oregon, Idaho and California;)	FV03-991-01
)	
Hearing on Proposed Marketing)	Proponents' Post-Hearing Brief
Agreement and Order No. 991)	and
)	Proposed Findings and Conclusions
_____)	

Introduction

After two weeks of sometimes heated hearings, the parties can agree on at least one fact: Since the last hop marketing order ceased in the 1980s, American hop farmers have been subjected to extraordinary fluctuations in the prices they receive for their hops. Those extraordinary fluctuations have combined to take a heavy toll on the industry, as the years have borne witness to a precipitous drop in the number of active farmers and wild swings in the amount of planted acres.

All sides appear to be similarly convinced that the price fluctuations are a result of factors that are fairly unique to the hop industry:

PROPONENTS' POST-HEARING BRIEF AND
PROPOSED FINDINGS AND CONCLUSIONS - 1
321881b

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- Alpha acid, which is the primary saleable component of a hop plant, can be extracted and stored for 15 years or more, which can result in holdover inventory that exceeds the total industry demand for the following year.
- The combination of unutilized infrastructure, improved technology, and the advent of remarkably vigorous hop varieties, means that American hop farmers are now capable of producing significantly more alpha acid than the market demands. By some estimates, the American hop industry is only producing 50% of what its established infrastructure (consisting of trellised acreage and underutilized picking and processing facilities) is capable of producing.
- Relative to other commodities, there are very few hop growers, and even fewer outlets for sale. The conduct of one or two major players in this industry has the capacity to have wide ranging effects on the availability of hop products, and the resulting prices that may be offered.
- American hop growers face enormous initial investment costs, running well into the millions of dollars. In addition, hop farmers face unusually high per-acre costs each season (approximately \$4,000.00 per acre). To make matters more difficult, nearly all of the equipment and structural investments are crop-specific, and can be used *only* for hop farming. Thus, hop farmers find themselves with no reasonable exit strategy, and no incentive to reduce acreage.

Virtually every participant in the hop industry – every farmer, dealer, and brewer – agrees that something drastic must be done to correct the recurrent imbalances between supply and demand. Indeed, nearly every participant agrees

1 that the “something” is an eventual reduction in the artificial oversupply of alpha
2 acid inventory¹.
3

4
5 The different opinions arise when we discuss how the reductions should be
6 achieved. Many of the HMO proponents first believed that the reductions could be
7 accomplished through voluntary measures. Unfortunately, for every acre that was
8 taken out by a farmer who supported the industry initiatives, an extra acre was
9 surreptitiously planted by a self-interested farmer who wanted to increase his
10 relative market share.
11

12
13 The failure of the voluntary initiatives led the Proponents to request the
14 opportunity for an industry-wide vote on a Hop Marketing Order. The [Proposed]
15 Hop Marketing Order is intended to specifically target the sales of that portion of
16 the industry – alpha acid – that has been identified as the main problem.
17
18

19
20 The Opponents of the order are unapologetically Darwinian in their
21 approach. The opponent growers agree that acreage and production should be
22 reduced, but they’d like it to be because the “other guy” went broke. The opponent
23 purchasers, on the other hand, simply enjoy the benefit (and profits) of having an
24 excess of supply.
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35 ¹ The record indicates clear agreement from all sides that the industry suffers from debilitating cycles of overproduction. Excerpts of comments offered by the Opponents themselves are attached hereto as Exhibit “A”.

1 There is an undeniable capitalistic purity to some of the Opponents'
2
3 positions. The fact remains, however, that our Legislature has given us the means
4
5 to lawfully and responsibly correct the type of wildly fluctuating and unstable
6
7 market factors that define the current hop industry, and that result in
8
9 irresponsible and inequitable allocation of resources.

10 The alternative to a hop marketing order – and the position impliedly
11
12 advocated by the Opponents – is to simply wait for the unstable market to drive out
13
14 the less diversified or moneyed (or connected) members of the industry.

15 Opponents euphemistically refer to the desired carnage as a “market correction”².

17 The Proponents submit that the involuntary demise of otherwise able hop
18
19 farmers, solely because of unstable market factors, is unnecessary, represents an
20
21 unacceptably inefficient allocation of industry resources, and is precisely the type of
22
23 result that the Agricultural Marketing Agreement Act was designed to prevent.

24 25 26 I. BACKGROUND FACTS

27 28 A. Previous Hop Marketing Order (1966-1984)

29
30 The USA hop industry adopted its third Federal Hop Marketing order in 1966
31
32 (*hereafter*, “1966 HMO”). The primary impetus for the 1966 HMO was the

33
34 ² While the Opponents believe that a “market correction” is the natural and appropriate “cure” to the current
35 downcycle, even they must concede that the “cure” will be short-lived. Once the market has corrected itself, the inherent structural components of the U.S. hop industry will certainly cause a repeating cycle of imbalance.

1 significant surplus of unsold crops that had accumulated in the early 1960s. This
2 structural surplus in hops resulted in wild price fluctuations in the 1960s. (Mike
3 Smith testimony, Exhibit 8, PPT Slide No. 26).
4
5

6 After the implementation of the 1966 HMO, prices stabilized with marginal
7 increases in price for every year after its implementation. (Mike Smith testimony,
8 Exhibit 8, PPT Slide No. 27).
9
10

11 While the growers benefited from a stable price structure, they were also able
12 to consistently place sufficient hops on the market to meet both domestic and
13 foreign demand. (Dr. Raymond Folwell testimony, pg 848). Indeed, despite the
14 dire warnings and red flags raised by the opponents, the clear and un rebutted
15 evidence is that growers were always able to satisfy and/or exceed demand in all
16 times during the 1966 HMO.³
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22 According to the Proponents' expert, Dr. Ray Folwell, the "season average
23 price" data between 1950 and 2000 presents a clear picture of how the market
24 responds to the presence of a hop marketing order (see, e.g., Exhibits 26 and 27).
25
26
27

28 As he stated in his testimony:
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31

32 ³The lawyers opposing the Proposed HMO have made conclusory statements regarding the
33 "failure" of the 1966 HMO. They have offered no actual facts or data to support their arguments,
34 and indeed the consistent testimony from those who lived through it, and the clear market data,
35 indicate that prices enjoyed an unmatched level of stability.

1 *The degree of price variability during the life of the present order has*
2 *been less than half that experienced otherwise...The price data from*
3 *1966 through 1985, when the (1966 HMO) was in effect indicates that*
4 *the average price of hops increased or remained stable in a fairly*
5 *regular pattern indicating an orderly marketing situation. Starting in*
6 *1986 to the present after the order was terminated, the average price*
7 *of hops has increased and decreased in a rollercoaster pattern. Such*
8 *price swings are not indicative of an orderly marketing situation and*
9 *often leads to a misallocation of resources...(Moreover, the effect on*
10 *beer price) was so diminutive that a consumer would not know that a*
11 *federal marketing order was successful in creating an orderly*
12 *marketing situation. (Dr. Ray Folwell testimony, pgs. 859-860).*

13 The goal of the current proposal is not to limit acreage but rather to
14 responsibly meet (and not egregiously exceed) the demand for USA hops around
15 the world. This is precisely what the 1966 HMO was able to accomplish, and as a
16 direct result the industry experienced orderly and fairly stable acreage expansion
17 and contraction, while the season average price managed to continue its steady rise.
18 (See Exhibit 27, pg. 9, figure 3).

23 B. Summary of [Proposed] Hop Marketing Order

24 The [Proposed] Hop Marketing Order (*hereafter, "Proposed HMO"*) is a
25 fairly simple tool. It would regulate the sale of alpha acids from hops grown in
26 Washington, Oregon, Idaho and California, in order to ensure that an artificial
27 oversupply is not created. Here's how it works:
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- Each hop variety is assigned an alpha value, so that the volume of alpha acid in a given bale of hops can be easily and consistently calculated.
 - Each hop farmer receives a “base allotment” based on prior production of hops, and the corresponding production of alpha acid.
 - A duly elected group of producers collectively determines the total amount of alpha acid that should be offered for sale in a given year, and this amount is termed the “saleable quantity”.
 - Each producer may lawfully sell that amount of alpha acid that corresponds to his or her pro-rated share of the saleable quantity. The farmer’s pro-rated share of saleable quantity is of course determined by how his or her “base allotment” compares to the base allotment of other farmers.

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It’s not rocket science, and it’s not remotely as confusing as the opponents would pretend to believe.

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As discussed at the hearings, the collective judgment of the industry was that any marketing order should regulate the sale of alpha acids, as opposed to raw hops. The primary purpose of regulating alpha acids was to ensure that those market participants who were viewed as the problem – growers of high alpha hops – shouldered the heaviest burden in solving the industry’s problems.

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In furthering this purpose, the Proponents have included a “10% rule” for all low alpha hops. Under this rule, any hop variety that has less than 0% alpha acid is presumed to have a full 10% alpha production for the purposes of computing “base”. This equitable rule ensures that growers of aroma hops and other lower

1 alpha varieties will receive more than sufficient base allotment to continue their
2 sales at the same level as prior years. As a consequence, these growers (many of
3 whom are Oregon growers) would not have to shoulder the burden that was caused
4 by the proliferation of high alpha varieties. Indeed, these same growers would be in
5 a position to expand, or to rent or sell base to larger, high alpha growers from
6 Washington.
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12 The devil, of course, is in the details. But while the original draft of the
13 HMO did have some technical ambiguities, the proponents submit that the hearing
14 process allowed them to refine the HMO into what will be (if voted in by the
15 industry) a tightly structured and highly effective mechanism that operates to
16 correct the current market imbalances.
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21 A summary of the “nuts and bolts” of the Proposed HMO is attached hereto
22 as Exhibit “B”.
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26 C. Overview of Hop Industry
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28 Hops have been used in the brewing process for centuries to impart bittering
29 and other flavoring characteristics to beer. For all intents and purposes, hops are
30 only used in beer production.
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1 Hops are a perennial plant and require a specific day-length to initiate
2
3 flowering. Since the cone (or flower) is the only commercial portion of the plant,
4
5 hops can only be grown commercially within a relatively narrow range of latitude.
6
7 Germany and the United States produce more than half of the world production.
8
9 Other growing regions include China, the United Kingdom, France, Belgium, the
10
11 Czech Republic, Ukraine, Bulgaria, New Zealand, and Australia.

12 In general, hops are grown, harvested and dried on farms and then delivered
13
14 to merchants who handle, process and market hops to brewers. A specialized trellis
15
16 system and expensive harvest equipment unique to the hop industry are required to
17
18 grow hops. Hops enter the trade in one of four different forms:

- 19 ● Raw hops: Hops in the cone form, generally in bales as
20 delivered from the farms.
- 21
- 22 ● Pellet hops: Hops which have been pelletized and sealed in
23 oxygen-free containers.
- 24
- 25 ● Extract: Pure resins extracted from hops (alpha acids and other
26 bittering components).
- 27
- 28 ● Modified extracts: Extract which has been chemically altered to
29 enhance utilization in the brewing process.

30 Hops in the extract form can be stored without significant oxidative loss for
31
32 15 years or more. Pellets are more stable than raw hops, and therefore can be stored
33
34 without oxidative loss for longer periods, but not as long as extract. Modern
35

1 processing and better utilization have both contributed a reduced need for as many
2
3 pounds of raw hops.

4
5 In the past 20 years, the industry has welcomed the new hop varieties called
6
7 “super-alphas”, which not only yield significantly more tonnage (as much as 100%
8
9 more per acre) than older alpha varieties, but also contain remarkably higher levels
10
11 of alpha acids per pound. As a result, a single acre of super-alphas can produce as
12
13 much as three or four times the alpha acid as an older alpha variety.

14
15 New technologies and cultural advances, especially in the U.S., have
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17 additionally made hop production much more efficient and productive. The advent
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19 of drip irrigation, higher density plantings, and improved farming and processing
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21 techniques have all contributed to our ability to produce higher and higher yields of
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23 both raw hops and alpha acids.

24
25 The American hop growing regions are also unique in that they have
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27 demonstrated themselves to be virtually immune from the plagues and droughts that
28
29 affect other producing regions in the world. In the past 50 years, only 1997's
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31 Powdery Mildew outbreak caused any real decline in production, and even that
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33 decline had a minimal effect (less than 10%) on total production.
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D. Industry Factors Contributing to Overproduction

There is simply no dispute that the advent of new varieties and continued refinement of farming and processing practices have combined to create a chronic cycle of overproduction of hops and hop products. At the same time, improved utilization of hop products at the brewery level and changing tastes and habits among end-product (beer) consumers have impacted the demand for hops.

Growers are faced with relatively high fixed costs, few alternative crops, and an investment in the extraordinarily expensive equipment that is necessary to grow hops. The equipment is so specialized that it has virtually no resale value. For example, a \$400,000.00 hop picking machine can only be used for picking hops, and with dozens of underutilized machines and few market entrants, the only options are to farm or lay idle.

Because of these unique dynamics, hop growers have been reluctant to voluntarily reduce acres on their own. Making a partial payment on an equipment loan is better than making no payments at all, so many farmers are forced to farm below the cost of production in the hopes that the market will someday turn around.

E. Industry Efforts to Control Overproduction and the Development of the proposed HMO.

1 In recognition of the capacity for egregious overproduction, American hop
2 growers have participated in several voluntary industry efforts to bring production
3 back in line with demand. The efforts were coordinated with the firm belief among
4 most growers that a stable, healthy hop industry is in the best interests of growers,
5 merchants, processors, and customers.
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10 In July of 2000, the American Hop Producers Alliance (AHPA) was formed
11 to study the economics of growing hops and advocate solutions to the chronic
12 overproduction problem. The original membership of the AHPA consisted of 80
13 percent of all independent American hop growers.
14
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16

17 In early 2001, AHPA launched an initiative to reduce U.S. production by
18 400 acres. Momentum was created by several large growers who voluntarily
19 reduced their acreage by 5%, and the 1400 acres were indeed taken out of
20 production by March of 2001.
21
22
23

24 The atmosphere of cooperation and accomplishment was unfortunately short-
25 lived. AHPA discovered that certain growers (many of whom were to become
26 primary opponents of the HMO) had surreptitiously planted more than 1,250 acres
27 of hops *after* the AHPA had announced that its goal had been reached. Market
28 signals in the fall had clearly indicated that extra production was not needed, but
29 this small segment of self-interested entrepreneurs took it upon themselves to undo
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1 the significant accomplishments of an entire industry. There may not be another
2 agricultural commodity in America where a minority of participants can have such
3 a significant effect on the health of the industry.
4
5

6 In the wake of the failed voluntary efforts, the Hop Growers of America
7 (HGA) appointed a task force to study the dynamics of overproduction and
8 recommend a plan of action. After a series of meetings held throughout the Pacific
9 Northwest hop growing regions, a consensus was developed on several key issues
10 (see Exhibit 64):
11
12
13

- 14 1. Any program to combat overproduction must be mandatory with
15 penalties for non-compliance.
- 16 2. The benefits and costs must accrue equitably across the
17 industry.
- 18 3. As Oregon primarily grows aroma and lower alpha varieties, it
19 was agreed that Washington growers bear the primary burden of
20 reduction.
21
22
23

24 Based on this input a two-fold recommendation was presented to the industry
25 at the 2002 HGA Convention:
26

27 Phase 1: Washington would take a leadership role in reducing
28 overproduction by pursuing the establishment of a Set-Aside Program
29 which would provide economic incentive for growers to leave acreage
30 idle for the 2002 crop.
31

32 Phase 2: A Proponent's Committee would be formed to consider the
33 development of a federal marketing order for hops.
34
35

1 Beginning in February of 2002, another series of industry meetings was held
2
3 in all U.S. hop growing region to gather input on a proposal for a federal marketing
4
5 order. A first draft was presented to the industry in July of 2002 and subsequent
6
7 meetings were held to hear input on the first draft. Based on considerable input
8
9 from all growing regions, a “final” hop marketing order proposal was submitted to
10
11 USDA on October 7, 2002, and this matter was ultimately scheduled for hearings in
12
13 October of 2003.

14 II. CURRENT HOP MARKETING CONDITIONS

15 A. Price Fluctuations.

16
17 Since 1984, the season average price paid to hop growers has fluctuated
18
19 wildly. (Charts 1 and 2 herein, presented as illustrative renderings of Dr. Hinman’s
20
21 submission, Exhibit 5, Table 8).

22
23 As noted by Dr. Folwell (Exhibit 26, page 7), “*Such price swings are not*
24
25 *indicative of an orderly marketing situation and often leads to a misallocation of*
26
27 *resources.*”

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Chart 1

US Season Average Price for Hops 1966-1984

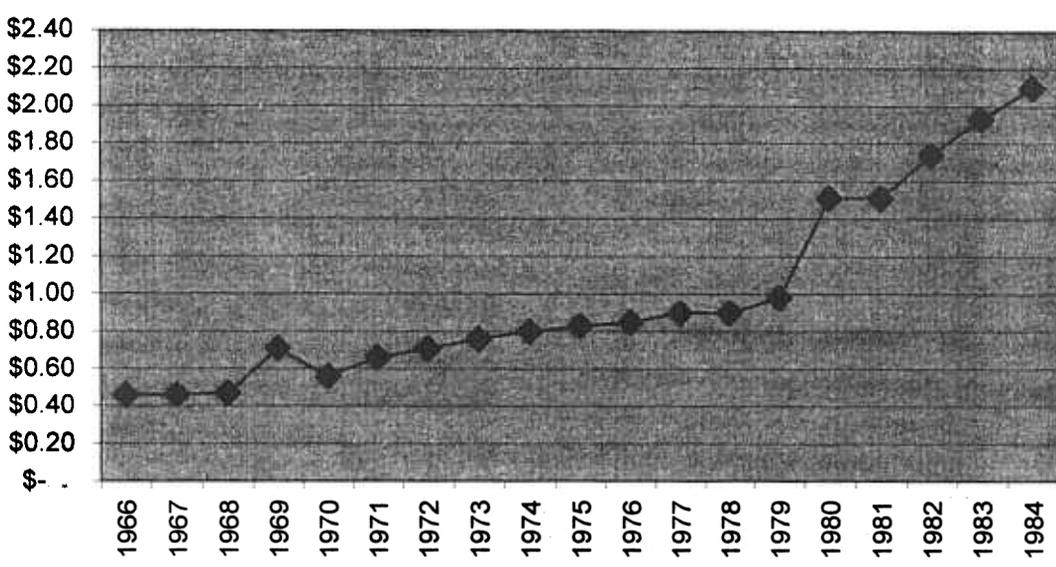
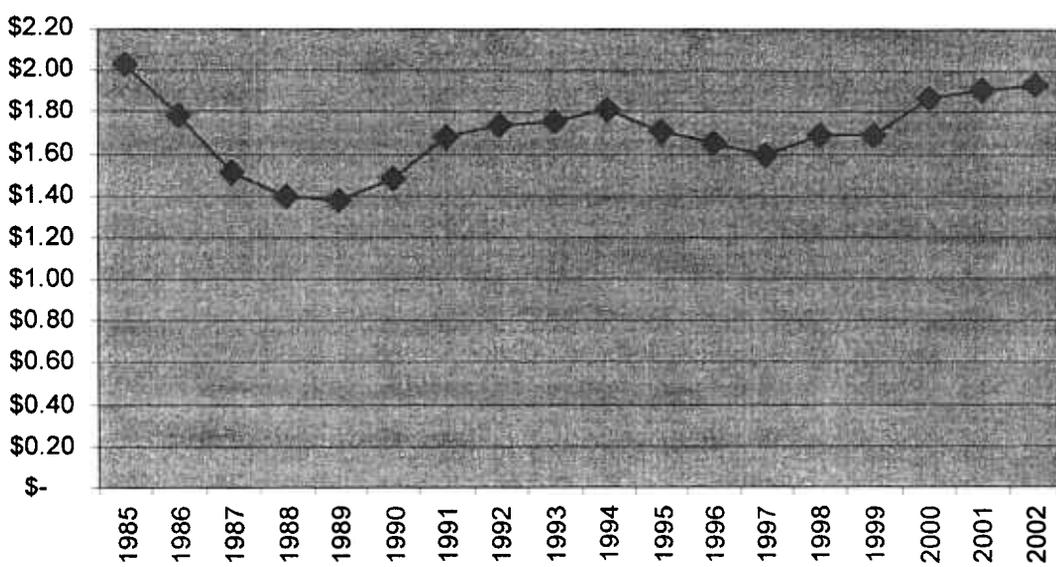


Chart 2

US Season Average Price for Hops 1985-2002



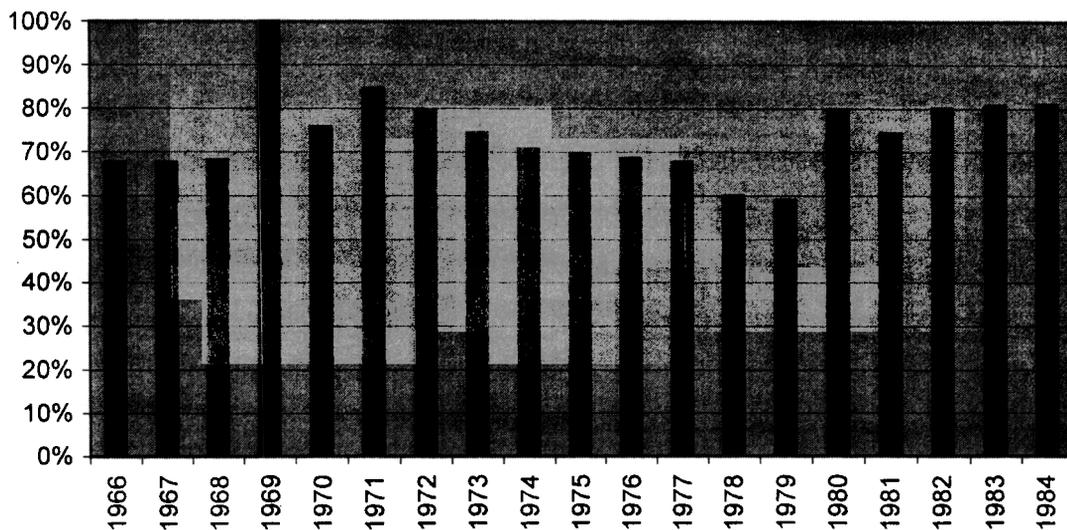
1 B. Season Average Price versus Parity Prices

2
3 Since 1984, the season average price paid to growers as a percentage of the
4 parity price has fallen consistently from the Hop Marketing Order years. The first
5 year following the demise of the 1966 HMO the season average price was 75% of
6 parity. In the years since, the season average price has fluctuated from 40% to 50%
7 of the parity price.
8
9
10 of the parity price.

11
12 Under the 1966 HMO, the season average price received by growers grew
13 from 60% of parity price to 80% of parity price. (See Charts 3 and 4, below, as
14 illustrative renderings of Don Hinman's submission, Exhibit 5, table 8).
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17 **Chart 3**

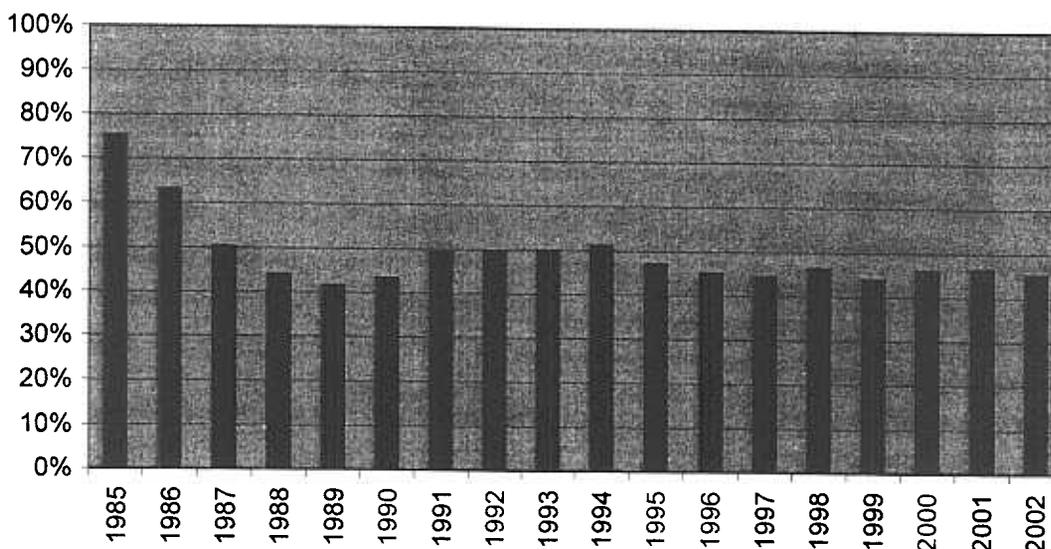
18 **Season Average Price as a % of Parity Price 1966-1984**



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Chart 4

Season Average Price as a % of Parity Price 1985-2002



C. Acreage Fluctuations.

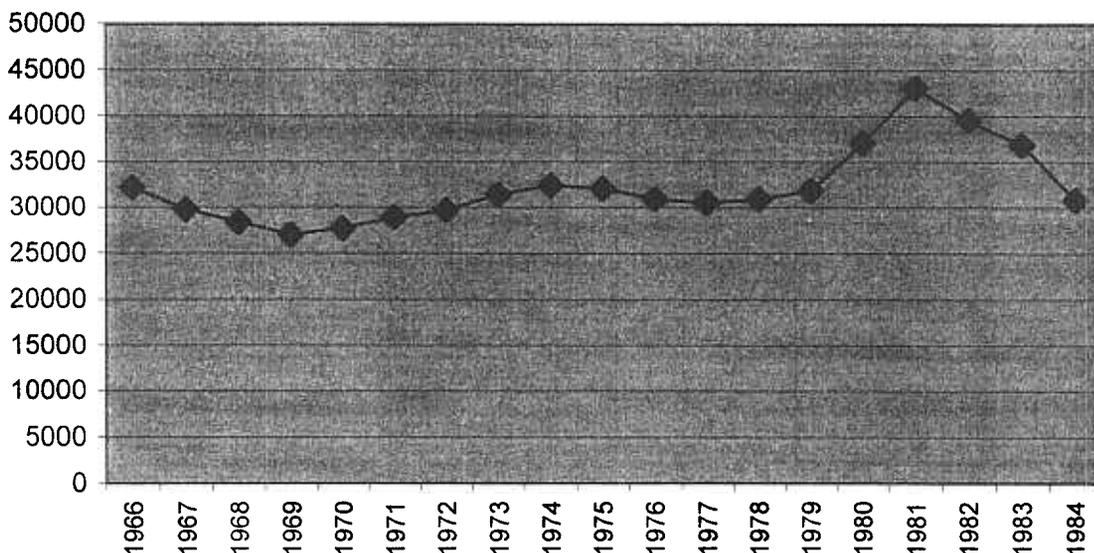
Between 1966 and 1979, the acreage in the U.S. was fairly stable—ranging from a low of 27,000 acres in 1970 to a high of 31,800 in 1979.

Back-to-back crop disasters in Europe in 1979 and 1980 led to a parabolic rise in prices and a subsequent, euphoric response by growers to increase their acreage and capitalize on the historically high prices. As many witnesses testified, it was this irrational response to market anomaly that led to the demise of the 1966 HMO.

1 Since 1984, hop acreage has fluctuated from a low of 24,999 acres in 1986,
2 to a high of 44,161 in 1996, and the all the way back to 27,093 acres in 2003. This
3 low-high-low variation in acreage results in an inefficient allocation of resources
4 (unneeded capital investment) from all participants in the industry. (See Charts 5
5 and 6, below, presented as illustrative renderings of the submission by Dr. Don
6 Hinman, Exhibit 5, tables 1 and 6; see also Exhibit 8).
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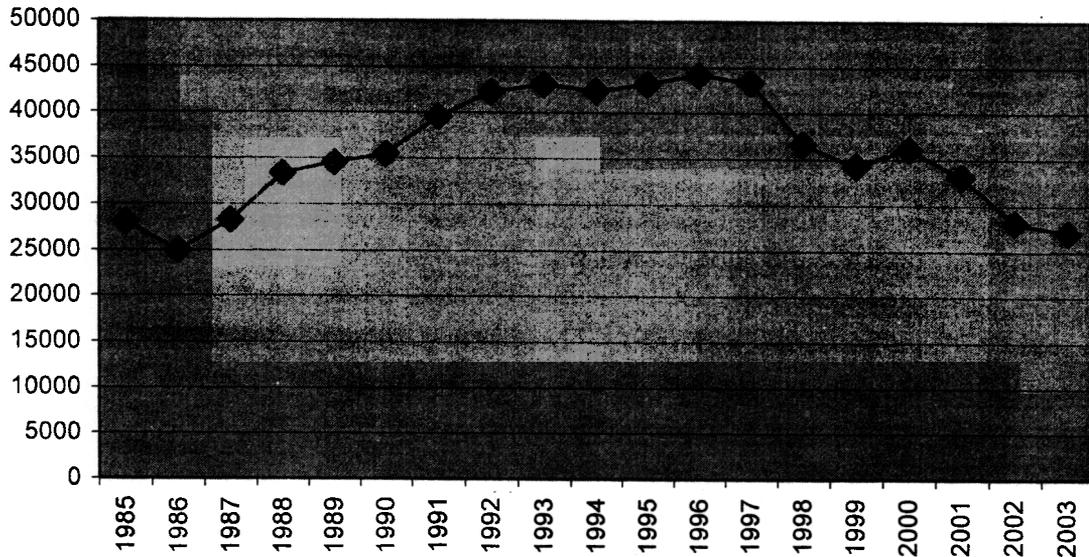
12 **Chart 5**

13 **US Hop Acreage 1966-1984**



1 **Chart 6**

2 **US Hop Acreage 1985 to 2003**



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18 **D. Decline in Number of Growers**

19

20 In 1966, there were 238 hop growers in Washington State. By 1983 this

21 number had fallen to 110, or 46% of the 1966 total. From 1984 to 2002 the number

22 of Washington State growers has dropped to the historic low of approximately 40.

23 (See Chart 7).

24

25

26

27 Of those who remain, the testimony has established that many are in dire

28 financial straits, and without a stabilized price structure they too will also be forced

29 to leave the industry. As concluded by Dr. Folwell (Exhibit 26, page 7), *"If the U.S.*

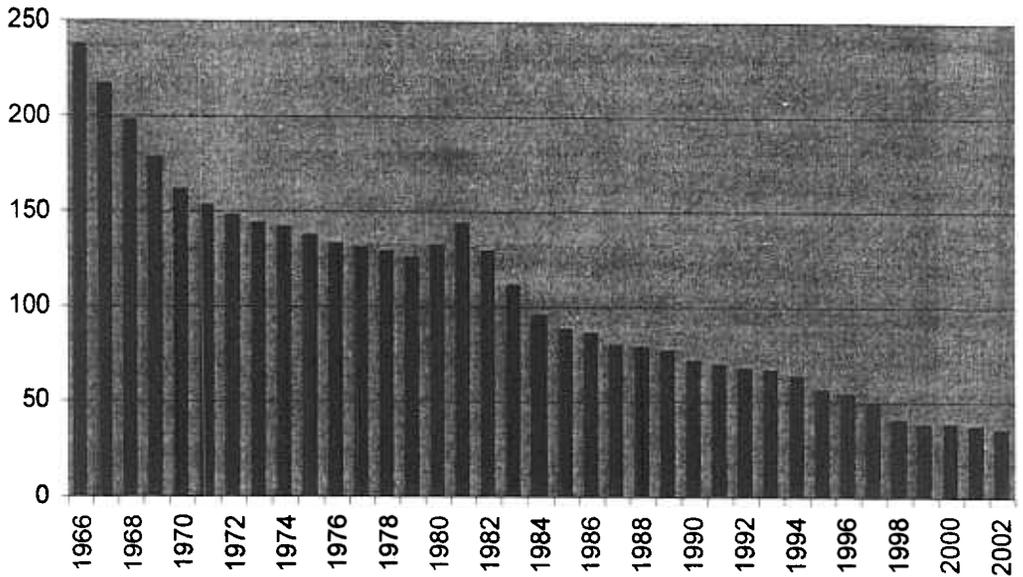
30 *hop producers are not allowed to use such a marketing tool (Proposed HMO), the*

31 *industry will continue to shrink in size and will someday become extinct"*

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Chart 7

Washington State Hop Growers
1966-2000



E. Inelasticity of Demand.

The demand for hops by brewers is extremely price inelastic. (Exhibit 26, pg. 4; Exhibit 8, PPT Slides No. 17, 18). This is due to the fact that hops are utilized as a flavoring ingredient and as such they represent a very low percentage of the cost of the beer that they flavor. The world's major beer brands have specific flavor profiles and the brewers are very reluctant to change those profiles for risk of alienating their customers. Subsequently, regardless of price, the quantity of hops (alpha acids) utilized by brewers remains static or changes gradually (See testimony at pgs. 213-216).

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F. Unavailability of Forward Contracts.

The un rebutted testimony at the hearing is that up to 90% of hops were forward contracted under the 1966 HMO. (Dr. Folwell, Pg. 862). Independent grower testimony established that there was significant forward contracting under the 1966 HMO, most notably from the very parties who now claim contracting will be compromised. (L. Roy testimony, pgs. 1448-49)

Other testimony confirmed that the prevalence of forward contracting has greatly diminished since the demise of the 1966 HMO. The Proponents submit that this dynamic is almost entirely attributable to availability of inventory from prior years' crops. Brewers are able to contract for a portion of their needs at set prices, but have been able in recent years to purchase hops on the spot market for less than what it cost to produce those hops. Farmers are willing to sell below the cost of production for a number of reasons, ranging from spiraling storage costs to simple cash flow needs.

The Opponents to the Proposed HMO spent much of the hearing suggesting, sometimes in remarkably direct terms (see, e.g., Don Kloth's statements at pgs. 5-6 of Exhibit 22), that forward contracting would be curtailed because of the "uncertainties" surrounding a hop marketing order.

1 The problem with the position taken by the Opponents is that it is simply not
2
3 based in fact. Forward contracting was the rule, not the exception, under the 1966
4
5 HMO.

6
7 Moreover, critics like Mr. Kloth make unfounded arguments when they
8
9 suggest (at Exhibit 22, pg. 5) that big purchasers won't enter into forward contracts
10 because they have "no assurances U.S. hop sources will be competitive with
11
12 alternative sources". Despite the inflammatory suggestions to the contrary, there is
13
14 no imaginary "cartel" setting hop prices. The prices Mr. Kloth's company will pay
15
16 will still be negotiated directly between the buyer and the seller. The market for
17
18 hops will still be dictated by what a willing buyer will pay a willing seller for U.S.
19
20 hops.

21 There is very little incentive for some hop purchasers to support the Proposed
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23 HMO because an abundance of oversupply allows them to purchase spot hops for
24
25 less than it costs to grow those hops. Indeed, with "market price" fluctuations of up
26
27 to 100% in short time periods, it would probably be irresponsible for purchasers to
28
29 bind themselves to any substantial purchases.

30 It also should not be lost on the USDA that the Anheuser Busch purchasing
31
32 representatives were sitting at counsel table throughout the hearings.
33
34 Representatives from the other major purchasers either gave direct testimony in
35

1 opposition to the Proposed HMO, or otherwise were present for each day of
2 testimony.
3

4
5 The Proponents submit that the testimony from corporate representatives (to
6 the effect that forward contracts will be imperiled by a marketing order), and the
7 presence of corporate representatives (who are responsible for the livelihood of
8 many growers) observing each and every witness, had an undeniably chilling effect
9 on grower participation at the hearings. (See, e.g., Paul Sears testimony, pgs. 2016-
10 17; Mike Hogue, Exhibit 61). The Proponents simply seek a private and
11 anonymous vote from all of the growers, where dire and unfounded proclamations
12 about the future of forward contracting will not unfairly affect the outcome.
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19 The Proponents further submit that when viewed objectively, a consistent
20 supply of hops, coupled with a responsible and efficient allocation of resources, will
21 almost certainly provide purchasers with the stability and confidence to contract
22 into the foreseeable future.
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25

26 III. HOP INDUSTRY TODAY

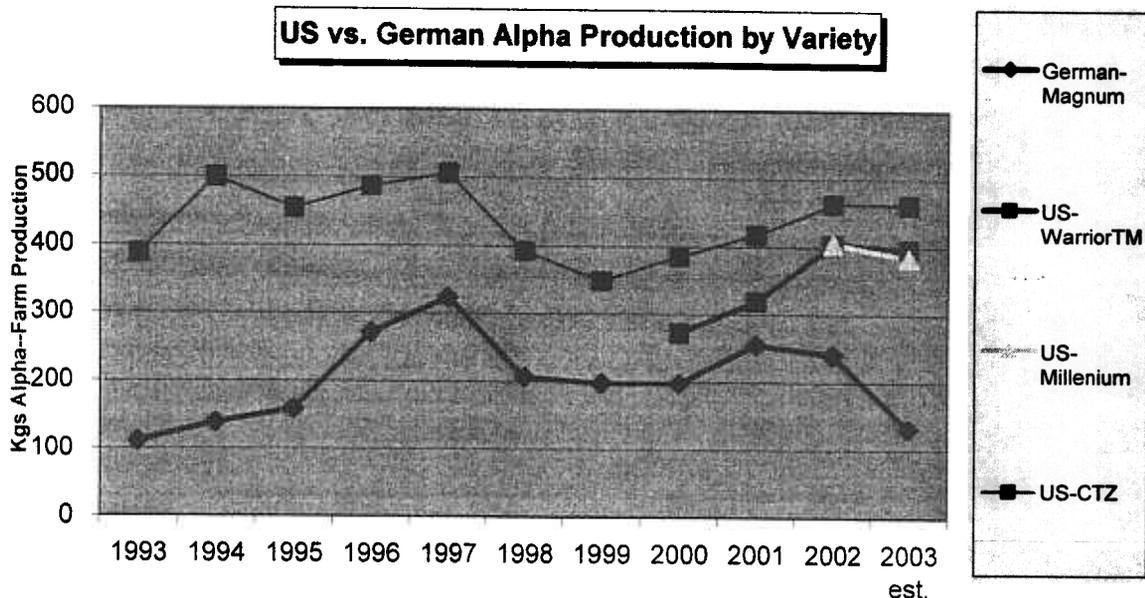
27 A. The Advantages of American Hops

28 The U.S. hop grower enjoys a significant advantage over foreign competitors
29 as it relates to total alpha acid production per unit of land. While this advantage
30 may be overshadowed for periods of time due to unfavorable exchange rates, for
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35

1 many years the U.S. hop grower has been able to maintain a significant share of the
2 world market for alpha acids produced from hops of 10% alpha or more.

3
4
5 In 1993 U.S. hop growers produced 82% of the alpha acids produced in the
6 major growing regions for varieties with alpha acid in excess of 10%. By 2003 the
7 U.S. growers' share had fallen to 52% due to technological improvements in hop
8 varieties by the German hop industry as well as an unfavorable exchange rate for
9 the U.S. dollar relative to the Euro. Regardless, while the U.S. only produces
10 approximately 25% of the world's hop production in pounds they produce the
11 majority of the world's alpha in the 'high-alpha hop' category. (See charts 8 and 9,
12 below, as duplications from Hearing Exhibit 8, PPT Slide Nos. 14, 30).
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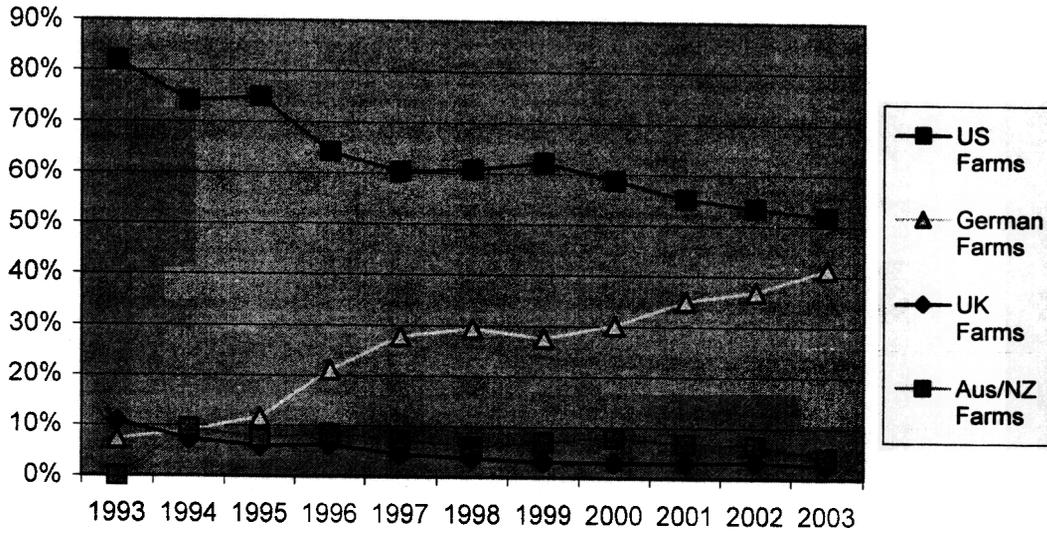
19 **Chart 8**



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Chart 9

World Production of High Alpha Hops
Varieties over 10%



B. Lack of Market Participants

The past 10 years of poor hop prices has also taken its toll on hop dealers. In 1990 there were seven hop merchants actively purchasing hops from U.S. hop growers. In 2003, there were only two still remaining⁴

⁴Although counsel for the Opponents enjoyed reading a laundry list of purported “merchants”, the record is completely devoid of any evidence that these supposed market participants purchase more than a nominal amount of hops each year. Indeed, the direct testimony is that most of the purported merchants were not available as outlets to most independent growers.

1 Outlets for hop growers today have become so limited that the current
2
3 situation is one in which the U.S. hop industry does not operate in a competitive
4
5 market environment. (See testimony of Dr. Folwell and Mike Smith, pgs. 216-218;
6
7 851-52).

8 There are two domestic breweries that purchase hops directly from growers.
9
10 These brewers have historically paid fair prices to growers, and have been true
11
12 partners and allies of the U.S. hop farmer. However, these brewers generally don't
13
14 purchase more than a nominal percentage of single grower's total production. As
15
16 such, the fair prices from the brewers often just subsidize or offset the losses
17
18 realized by the balance of the crop on the high alpha market.

19 The two largest hop dealers purchase approximately 70% of the high alpha
20
21 hops produced in the U.S. Nearly all that remains is handled by two grower-owned
22
23 organizations that are not open to participation from all growers.

24 The situation described above is one that does not produce a competitive
25
26 market as the two breweries and the two hop dealers have significant market power.
27

28 C. Sales at Less Than the Cost of Production.

29
30 The hop business is characterized by very high levels of capital investment,
31
32 which contribute to very high fixed costs (property taxes, insurance, depreciation,
33
34 interest on investment). These high fixed cost coverage requirements put hop
35

1 growers in a situation where additional acreage grown significantly lowers the
2
3 average cost of production.

4
5 Since the marginal cost of production is low relative to the overall cost, many
6
7 growers are willing to sell hops at below their average cost of production.
8
9 However, since the sales price is above a grower's marginal cost, his economic
10
11 situation has been improved in the short term. The long-term impact of this
12
13 strategy is the grower continues to lose money but at a slower rate than he would if
14
15 he were to idle a large percentage of his production area. Hence, we see the present
16
17 phenomena where growers compete to see "who can lose money the longest".
18
19 Using the Opponents' logic, the farmer who can lose money the longest wins, and
20
21 the "market correction" is achieved.

22
23 The current market dynamics simply must be corrected. When farmers are
24
25 forced to accept less than the cost of production, they are unable to make necessary
26
27 investments in technology, equipment, and even labor. The unprecedented buying
28
29 power of the two major purchasers coupled with the chronic oversupply of alpha
30
31 acid, places these farmers in a cycle of losses that can only be corrected through a
32
33 collective industry effort.
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LEGAL ANALYSIS

In 1937 the U.S. Legislature enacted the Agricultural Marketing Agreement Act (“AMAA”), and thereby empowered the Secretary of Agriculture to implement marketing orders that regulate the sale and delivery of certain agricultural products. 7 USC §601 et seq. Sequoia Orange Co. V. Yeutter, 973 F.2d 752 (9th Cir. 1992).

Congress enacted the AMAA, in order to establish and maintain orderly marketing conditions and “fair prices” for certain agricultural commodities. 7 USC §602(1); Chiglades Farm, LTD. v. Butz, 485 F.2d 125 (1973). Among the primary declared policies of the Act is the maintenance of “parity” prices for farmers. 7 USC §602(1).

In the U.S. Senate’s discussion of the AMAA, the following objectives and purposes were declared:

The primary objective set forth in the declaration of policy in the Agricultural Adjustment Act is to ensure fair exchange value for farm products. This objective is in itself, a worthy one from the standpoint of economics and social justice to farmers, and is of real national importance in the recovery program. By restoring and sustaining farm buying power, the Agricultural Adjustment Act can contribute effectively to the general recovery of business....

The marketing agreements and licenses which have been issued and entered into pursuant to the Agricultural Adjustment Act have contained a great variety of provisions in order to adapt each particular program to the peculiar problems and circumstances presented in a given area by a particular commodity. The essential

1 *purpose of these agreements and orders, has however, always been to*
2 *raise producer prices.*

3
4 Legislative history, Senate Report (S.Rep. No. 1011 74th Cong., 1st Sess. 1,
5
6 3 (1935)(*emphasis added*).

7 Hops are among the commodities that may be subject to marketing orders. 7
8
9 USC §608c(2). Hops are unique among the commodities regulated by the Act, and
10
11 are singled out as the distinct commodity that may be regulated according to
12
13 *variety, acreage, or yield.* 7 USC §608c(6)(G).

14 Marketing orders promulgated pursuant to the AMAA are a species of
15
16 economic regulation that displace competition in a number of discrete markets –
17
18 and for that very reason they are exempt from antitrust laws. Glickman v.
19
20 Wileman, 521 U.S. 457, 461, 117 S.Ct. 2130, 2134 (1997); 7 USC §608b. The
21
22 theory behind marketing orders is that they will allow collective industry action to
23
24 regulate the market for a given commodity, rather than for the market to be subject
25
26 to the aggregate consequences of independent (and self-interested) competitive
27 choices. Id.

28
29 The overall purpose of a marketing order is to “avoid unreasonable
30
31 fluctuations in supplies and prices”, and to that end it may include mechanisms that:

- 32
33 • limit the quality and the quantity of the commodity that may be
34 marketed, 7 USC §608c(6)(A),(7); and
35

- 1 • make an orderly disposition of any surplus that might depress
2 market prices. 7 USC §608c(6)(A)
3

4 Pursuant to the policy of collective, rather than competitive, marketing, the
5 orders also authorize joint research and development projects, inspection
6 procedures that ensure uniform quality, and even certain standardized packaging
7 requirements. 7 USC §608c(6)(D), (H), (I). The expenses of administering such
8 orders, including specific projects undertaken to serve the economic interests of the
9 cooperating producers, are "paid from funds collected pursuant to the marketing
10 order." §608c(6)(I), 610(b)(2)(ii)
11

12 The Proponents have submitted the Proposed HMO for the purpose of
13 achieving the stated goals of the AMAA. Substantial evidence and testimony has
14 been presented both in favor of and against the Proposed HMO, and indeed the
15 Proponents responded to many of the concerns and objections by making
16 significant revisions to the original proposal.
17

18 For the reasons set forth below, the Proposed HMO will tend to effectuate the
19 declared policy of the AMAA, and for that reason the Proponents request that the
20 Proposed HMO be sent to the growers for a referendum.
21

22 ARGUMENT

- 23 1. The HMO will tend to help to establish parity prices for farmers.
24

1 There is no question that current hop prices are nowhere close to parity.
2
3 There is also an undeniable record that the 1966 HMO had the effect of bringing
4
5 season average prices into much closer alignment with parity prices. As Dr.
6
7 Folwell has recognized, the termination of the 1966 HMO had the predictable effect
8
9 of increasing the margin between season average prices and parity prices – not only
10 did the average price go down, but parity prices (which are indirectly tied to the true
11
12 costs of producing the product) increased.

13
14 The Proponents submit that the removal of the artificial oversupply will have
15
16 the same effect as it did under the 1966 HMO, in that the disparity between parity
17
18 prices and season average prices will likely be reduced.

19 2. The HMO will tend to protect the interest of the consumer.

20
21 Under the 1966 HMO, American hop farmers always produced sufficient
22
23 hops to meet world demand. Under the Proposed HMO, the express intent is to
24
25 continue to allow U.S. hop farmers to produce more than enough hops to satisfy
26
27 world demand – but to simply regulate the saleable quantity of such hops so that an
28
29 artificial excess inventory is not created.

30 While some Opponents of the Proposed HMO have confidently testified that
31
32 they are the best interpreters of the market, the fact is that American farmers have
33
34 repeatedly been fooled by the signals that this unstable market has sent. By
35

1 collectively interpreting the appropriate market signals and thereby ensuring that a
2 responsible supply awaits the demand, the administrators of the HMO will serve the
3 best interests of dealer/brewer consumers and producers alike.
4
5

6 Moreover, the true consumer (the beer drinker) has continued its
7 consumption practices (see Exhibits 16-18) without any regard for the cost of hops,
8 or for whether a hop marketing order was in place. There is every reason to expect
9 that the consumers' interests will continue to be served by the efficient allocation of
10 resources throughout the industry.
11
12
13
14

15 3. The adoption of production and marketing research programs will tend
16 to establish and maintain orderly marketing conditions for farmers.
17

18 As stated above, American hop farmers as a whole have proven to be
19 remarkably inept at reading market signals. Small increases in demand result in
20 wide price fluctuations, which send expansion signals to the market. Growers
21 operating independently of each other consistently over-react, make unneeded
22 investments (and undertake irrationally exuberant planting regimens) that result in
23 an oversupply of the market. The oversupply is not a one year problem – it often
24 sits in storage rooms and competes against the harvested crops for up to a decade.
25 The result of independent market-readers has been a vicious cycle of short ups and
26 protracted downs.
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1 A duly elected group of hop producers working with comprehensive
2 resources has a much better opportunity to balance the annual supplies of alpha
3 acids available to the market. By utilizing the collective resources of the entire
4 growing industry, the administrators of the Proposed HMO will be able to not only
5 correlate a saleable quantity with a reasonably anticipated demand, but the market
6 participants will also be able to provide sufficient inventory reserves to cover any
7 unanticipated marketing opportunities – such as the late season destruction of the
8 German hop market in 2003.

15 4. The HMO will still allow for the orderly flow of hops and hop
16 products to consumers, and will tend to prevent unreasonable fluctuations in
17 supplies or price.

19 By making an informed and collective judgment of the reasonable world
20 demand for American hops, and by setting a responsible saleable quantity that
21 ensures that such demand is met, the HMO will ensure orderly delivery of hops to
22 the brewer/dealer consumers. Those buyers, in turn, will be assured of an available
23 product. And the growers, who will be assured of a stable market, will be able to
24 responsibly invest in their farming operations. The entire process will therefore
25 benefit from this responsible and equitable allocation of resources, and prices,
26 supplies, and even acreage, will resume the stability that was last seen under the
27 1966 HMO.

1 The true consumer (the beer drinker) is virtually guaranteed to be protected in
2
3 this process. As the testimony revealed, hops account for a miniscule amount of the
4
5 cost of producing beer. The brewers have demonstrated that their bittering rates
6
7 (use of hops in their beer formulas) do not vary when the cost of hops goes up. And
8
9 despite the fact that the price of alpha acid has undergone price swings of up to
10
11 100%, the price of beer has remained remarkably constant. Common sense would
12
13 dictate that the consumer's cost is much more dependent upon a brewer's
14
15 advertising budget than its hop budget.

16 5. Small Growers Will Not Be Harmed.

17 Many of the small growers left in the U.S. are from Oregon. As was
18
19 developed in testimony, most of the hops grown in Oregon are aroma or lower
20
21 alpha varieties.

22 Because of the equitable "10% rule", the Oregon growers will receive
23
24 significantly more "base" than they now use. Indeed, even if we assume that the
25
26 first year's saleable quantity is set at 71% of the first year base allotment, Oregon
27
28 growers as a whole would still receive an increase of more than 30% in the amount
29
30 of alpha acid they have historically marketed.

31 With respect to small growers of higher alpha varieties, the Proposed HMO
32
33 provides remarkable protection against predatory practices by larger conglomerates.
34
35

1 For example, in the current unregulated market, a large grower could simply plant
2
3 an additional 1,000 acres and sell the resulting crop below cost. The presence of
4
5 this unneeded, additional product on the market could easily drive a smaller farmer
6
7 out of business, because he or she would be unable to compete against the pricing.

8 Under the Proposed HMO, however, the smaller farmer will be essentially
9
10 guaranteed a market for his or her crop. The conglomerate grower will have no
11
12 incentive to plant acreage that is above and beyond what he can be marketed.
13
14 Hence, the Proposed HMO will operate as a tremendous benefit to those smaller
15
16 farmers in the U.S. hop industry.

17 6. The Cost of "Base" Will Not Be Inequitable

18 a. Grower Testimony.

19
20
21 Only one grower actually testified that he'd have to buy base in order to
22
23 resume his current level of production (see Exhibit 63, and testimony at pgs. 2369-
24
25 77). The grower concluded that he'd need to buy 79,769 pounds of base to meet his
26
27 2004 projections. (Exhibit 63).

28 These conclusions were a little difficult to cross-examine, however, as the
29
30 grower refused to actually identify the varieties of hops he was growing, or to
31
32 disclose the actual amount of alpha his operation produced. (See pgs. 2397, et.
33
34
35

1 seq.) Because of the 10% rule, it is absolutely essential to know how much alpha
2
3 this grower actually produced in order to give his estimates any weight whatsoever.
4

5 As a limited example, for every 1,000 pounds of Willamette hops he
6
7 produced, this grower would be able to market 100 pounds of alpha acid. In reality,
8
9 those same Willamette hops would have only really produced 350 pounds of alpha
10
11 acid – meaning that the HMO would enable him to market nearly 300% of his prior
12
13 production of Willamette hops.

14 Perhaps even more importantly were the disclosures made by the grower
15
16 regarding his own operation: From 2000 to 2002, a period marked by voluntary
17
18 industry efforts to remove acreage, this grower increased his production by
19
20 approximately 60% (see Exhibit 63). In his final “cost of base” estimates, he
21
22 predicts that in 2004 he’ll have increased his production by more than 270% from
23
24 his 2000 efforts.

25 The Proponents would disagree with a number of the assumptions and would
26
27 question the material omissions in this grower’s presentation. At the end of the day,
28
29 however, the Proponents recognize that those growers who have ignored industry
30
31 efforts and who have brazenly increased production in a time of chronic
32
33 oversupply, may end up having to shoulder a slightly heavier load than if they’d
34
35 been more responsive to the needs of the industry.

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b. Expert Testimony.

The gentleman from the Sparks Company (Mr. Jenakowski) testified that certain hypothetical growers would likely have to purchase base. The expert created a hypothetical “Grower A” and a “Grower B” to illustrate his point.

Given the manipulative and contrived attributes that the expert chose to give these hypothetical growers, the Proponents have taken to calling them “Grower Mars” and “Grower Pluto”. Indeed, the hypothetical growers were growing varieties and acreages that would have bankrupted them years ago. When the contrived figures are combined with baseless and inflated assumptions about the saleable quantity and the cost of base, the Proponents submit that the Sparks’ conclusions should carry no weight whatsoever.

When viewed objectively, and through the window of experiences in the 1966 HMO and the current Far West Spearmint Marketing Order, we can safely assume the following:

- The initial cost of base will be negligible, and will remain negligible until the HMO proves to be an effective tool for generating fair and stable prices. This was the experience under the 1966 HMO and the current Spearmint Order, where base was often given away.
- Once the HMO has established itself, investment in base will be an investment in a stable pricing system. By comparison, it will be a much more sound and practical investment than an investment in acreage or equipment under the current state of the industry.
- With established base and stable pricing, the reality is that forward contracts will once again become the norm. This will give confidence

1 to banking institutions, and will add to growing levels of efficiency
2 within the industry.

3
4 7. There Will Be No Loss of True Market Share

5 One of the scare tactics employed by the Opponents was to argue that the
6 U.S. will lose market share under the Proposed HMO. In addition to being totally
7 unsupported by fact, the Opponents' argument betrays a fundamental
8 misapprehension of how the U.S. market share has evolved.
9

10
11 The record at hearing demonstrated that the U.S. has consistently lost market
12 share for high alpha hops for 10 years running. What is most significant about that
13 fact is that most U.S. farmers have suffered operating losses during that same
14 period—which of course means that we're selling at a loss, and we're still not able to
15 maintain our market share. The Opponents would therefore have us desperately
16 cling to an unregulated marketing strategy that ensures continued losses for farmers.
17 One can immediately recognize why this is not a viable long-term strategy, and
18 suggests that those advocating on behalf of the Opponents are focusing only on
19 short-term gain.
20

21
22 These simple facts illustrate that the U.S. has not yet found its true market
23 share. And its true market share will only be determined once it begins to regularly
24 operate without a loss. The U.S. still maintains significant competitive advantages
25 over Germany (which has limited acreage), China (which has infrastructure and
26
27
28

1 quality challenges, and which still has no export program), and is unique in that it
2
3 has no horticultural or biological challenges to full production. If the U.S. hop
4
5 farmer is able to realize a stable price, and to produce an amount that is structured
6
7 to meet demand, then the efficiencies and allocations of resources will enable the
8
9 U.S. industry to retain its faltering position as the world leader in hop production
10
11 and sales.

12 13 PROPOSED FINDINGS AND CONCLUSIONS

14
15 Based on the foregoing, the Proponents' Committee proposed the following
16
17 Findings and Conclusions:

18
19 Hops are among the agricultural commodities subject to regulation by
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21 marketing order, pursuant to the Agricultural Marketing Adjustment Act of 1937.

22
23 2. The Hop Marketing Order that has been submitted by the Proponents,
24
25 and all of the terms and conditions thereof (as modified during the hearing), will
26
27 tend to effectuate the declared policy of the Act.

28
29 3. The Hop Marketing Order regulates the handling of hops and hop
30
31 products grown in the production area that is defined therein.

32
33 4. The Hop Marketing Order is limited in its application to the smallest
34
35 regional production area which is practical, consistent with carrying out the
declared policy of the Act.

Exhibit A

UNANIMOUS AGREEMENT REGARDING OVERSUPPLY

Henry von Eichel of John I. Haas, a merchant based in Washington, DC, states in a letter to the industry dated **September 5, 2003** (Exhibit No. 23) that *“There exists a large structural surplus of alpha in the world, much of it in the US”*. He further warns, in the same **letter** that,

the present level of alpha production in the U. S. is likely to exceed needs and depress prices to levels well below cash cost in the coming years unless an acreage adjustment is made. Only a clear signal of acreage reduction for crop 2004 will turn the 2003 recovery into long term sustainable better prices”

Don Kloth, Vice President and Group Executive of Anheuser Busch Companies, Inc., refers in his hearing testimony (Exhibit No. 22) to the structural oversupply when he states, *“The problem with the US hop industry is not aroma hops it's a high alpha hop problem”*

Andrew C. Kerr of Capitol Farms, Inc. of Salem, Oregon, proclaimed Opponent of the Proposed HMO, refers to an *“over-supply”* or *“over-production”* repeatedly in his testimony (Exhibit No. 25).

- John Annen, President of Annen Bros., Inc. in Oregon, and another vocal opponent of the Proposed HMO, states the following in his written testimony (Exhibit No. 48): “...*the hop industry is heading for a serious meltdown if something is not corrected.*” He further states, “*My opinion is that this whole alpha over-supply problem did not happen over night. Industry leaders as well as the statistics have been clearly pointing to compounding overproduction problems for the last five years, yet uncontracted, unneeded hops were produced by the millions of pounds, adding to the steadily increasing alpha inventories which are the cause of the melt down I mentioned earlier.*”
- In the neutral market publication “The Barth Report, 2002/2003” (Exhibit , pg. 6), it states: “*At the time of reporting, many prices for residual stocks are still below the growers’ production costs. The brewing industry for its part has taken advantage of the decades of very low prices, at least in part, for stockpiling...(USA and Germany) are now called upon to initiate a turnaround in the hop market by further reducing acreage, especially in the high alpha segment. If acreage is not reduced to sufficient extent, there can be no prospect of a significant recovery in prices for the spot market in 2003, or of forward contract being agreed at prices above production costs.*”

Exhibit "B"

PRACTICAL WORKINGS OF THE PROPOSED FEDERAL MARKETING ORDER

The [Proposed] HMO covering Washington, Oregon, Idaho and California will function much differently than the 1966 HMO. The proposed Order allows for maximum grower flexibility and control as it pertains to what is grown, how much is grown and how and when excess production may be marketed.

Below is an overview of key provisions of the Proposed Order and how they will be operate upon implementation:

Definitions:

Much of the hearing time was dedicated towards refining the definition of "Handle". The parties finally settled upon the definition that appears at Exhibit 53.

A party is generally said to "handle" hops when it purchases or consigns hops from a producer.

When the initial sale is made to a brewer or foreign purchaser, or when the hops are transferred outside the production area, then the grower generally assumes the obligations of a handler.

This definition is structured to ensure that the reporting and record keeping requirements are fulfilled by the appropriate party, and to make sure that in each transaction the required information is accurately compiled and maintained.

Administrative Committee:

An eight person Hop Administrative Committee will administer the terms and provisions of the Proposed HMO. The Committee makeup shall reflect, as close as possible, the percentage production from each area. An additional member and alternate shall represent the public and shall be an ex-officio member of the Committee without a vote.

Each Committee member and alternate shall serve terms of three years with a maximum of two consecutive terms as a member or alternate, thus insuring continuing new representation on the Committee. Original Committee and Alternate terms shall be staggered so as to insure orderly changes in Committee membership.

At assembled meetings all votes shall be cast in person and all decisions shall require six (6) concurring votes. If voting takes place by telephone, all decisions shall require seven (7) concurring votes. The above structure assures that no one District shall be able to control the Committee direction.

The Committee shall be responsible for setting up a management structure, approving expenses, determining Assessments, setting volume regulations, issuing reports, keeping records and any other duties as required by the Secretary of Agriculture.

Expenses and Assessments:

The Committee shall submit to the Secretary a budget for each marketing year and make a recommendation as to the appropriate assessment for such year. The Assessment shall be paid by the Handler as defined under the definition section.

Volume Limitations:

The procedure for issuing the initial allotment base will be as follows: First, the representative base period shall be the marketing years 1997 thru 2002 provided that a producer shall have produced hops in the 2001 or 2002 crop year to be eligible to apply for initial base allotment. The only exception to this rule is for a new producer in crop year 2003. If that producer meets the

definition for a new producer in 2003 then that producer shall be entitled to allotment base in an amount equal to that producer's 2003 production.

The determination of a producer's initial allotment shall be made by the Committee with information submitted by the producer. For each variety over 10% Alpha the contributed Alpha shall be determined by multiplying the actual production by the actual alpha acid for that variety. For each variety equal to or less than 10% Alpha Acid the contributed Alpha shall be determined by multiplying the actual production by a flat rate of 10% for that variety. The producer shall pick the highest alpha production year from the representative period and submit the appropriate information. As verification for the information submitted to the Committee, the producer shall submit documentation verifying the State and County where production occurred, appropriate weight lists by lot, a copy of appropriate state certification documents and if state certification documents are not available a copy of Handler ultra violet spectral analysis documentation may be submitted.

In the event a producer suffered a hardship based solely on an act of God, that producer may apply to the Committee under the hardship clause of the order, for special consideration as if pertains to the initial allotment base allocation.

With the seating of the Administrative Committee and the establishment of each producer's initial allotment the Committee shall have the ability, with the Secretary's approval, to set a salable percentage for the next marketing year. Once the Salable has been established an Alpha Acid Factor shall be established for that marketing year for each variety of hops and shall be equal to the most recent 3 year average of Alpha Acid for each variety. If a three year average is not available the Committee shall determine an Alpha Acid Factor until a three year average is available. This allows a producer to sell ahead using the traditional method of pounds of raw hops or pounds of Alpha Acid.

Any producer contract entered into prior to January 31,2002 for crop years 2003-04 or 2004-05 that causes that producer to be in excess of his annual salable allotment shall be exempt.

Each Producer shall be required, as set forth by the Committee, to make a Bona Fide Effort to produce his annual allotment. Failing to do so shall

result in a reduction of allotment equal to the unused portion, provided that a producer's reserve pool shall be included in the bona fide effort requirement. This will help insure allotment stays in the hands of bona fide producers.

Periodically, but at least once every five years, the Committee shall review and may adjust each producer's allotment base to reflect changes and trends in production and supply. In addition, annually, the Committee shall make available additional allotment base in the amount of no more than 1% of the total allotment base. Fifty percent shall go to existing growers and Fifty percent shall go to new growers, as new grower is defined, provided that in any year where the salable is equal to or less than the previous year, the Committee is not required to issue additional allotment for the ensuing year.

A Producer may transfer all or part of an allotment base to another producer under the rules established by the Committee, provided that the allotment base obtained from another producer shall not be transferred for at least 2 years following the transfer and the producer receiving the allotment shall show evidence of an ability to produce hops from such allotment base in the first marketing year following the transfer or issuance.

If a producer produces alpha acid in excess of the producer's annual allotment that production is identified as excess alpha acid and can be disposed of as follows:

Before November 30, or such date as established by the Committee, a producer may transfer excess alpha acid to another producer to enable that producer to fill a deficiency in that producer's annual allotment or

On December 1, or such date as established by the Committee, with the approval of the Secretary, shall identify excess alpha acid as Reserve Pool Alpha Acid. No Handler shall handle Reserve Pool Alpha Acid.

The Committee shall designate a Committee employee as Pool Manager to over see the accurate accounting of the pool. The Producer shall be responsible for reporting to the Pool Manager, storage and making all decisions as to disposal and sale under the following conditions:

When in any marketing year, a producer has produced less than the annual allotment of Alpha Acid, the producer may, upon notice to the Committee, fill the deficiency with Reserve Pool Alpha Acid.

Upon supervision of the Committee, the producer may exchange salable alpha acid for the same quantity of reserve alpha acid from his own production.

Reports and Records

Handlers shall be responsible for reports such as inventory, receipts and other reports as required by the Committee. Each Handler must maintain appropriate records. Verification shall be made by either the Secretary or by the Committee through a duly authorized employee of the Committee. All records, reports, etc. shall be at all times kept in the custody and under the control of one or more employees of the Committee who shall disclose that information to no one other than the Secretary.

Miscellaneous Provisions

The order can be terminated in 2 ways:

Failure to effectuate. The Secretary can terminate the order if he/she finds the order doesn't effectuate the declared policy of the Act.

Referendum. The Secretary shall terminate the order if through a referendum of growers the Secretary finds that a majority of producers, who during the preceding marketing year produced for market more than 50% of the volume of alpha acid, favor such termination.

In conclusion, this Marketing Order is designed to operate efficiently yet with much flexibility. It will achieve the goal of bringing stability to our troubled industry and allow for orderly marketing.