

1. My name is Ray Rowley. I am a cherry grower in the Santaquin area which is in the south end of Utah County, state of Utah. Cherry Hill Farms, Inc. is a family owned business that grows tart cherries, apples, and peaches. My brothers and I own and operate the farm. We are affiliated with the Payson Fruit Growers Co-op which handles our cherries. We would be considered a large tart cherry grower. Cherry Hill Farms, Inc. is in support of the proposed amendment to the tart cherry market order which would make in-orchard diversion credits equal to bottom-line credits in value.
2. Cherry Hill Farms, Inc. has used in-orchard diversions in past years to generate diversion certificates for our handler. In the 2009 crop year we in-orchard diverted 1,903,126 pounds of tart cherries, or about 15% of our crop. We used in-orchard diversions in the 2006 and 2007 crop years also. We have made the decision in each of these years to divert cherries based on our handler's compliance plan. At the beginning of the 2009 harvest season we estimated what it would take to be in compliance with the regulation. We in-orchard diverted what we planned. As the national crop increased above the June estimate, the value of our in-orchard diversions was reduced. As the crop and the restriction increased, the value of our diverted fruit decreased. This seemed just opposite of what it should have been. The incentive was to not in-orchard divert in this large crop year. This is one of the biggest reasons for the amendment...to give growers an incentive to put some cherries on the ground in large crop years.
3. Growers think that the different value of top line and bottom line credits is unfair. The Order is confusing to the growers and others because in-orchard diversion credits are not treated the same as all other diversion credits. These in-orchard diversion credits are currently counted as part of the overall gross pounds harvested and are thus referred to as top-line certificates or credits. All other credits; exports, new market, new products, etc.; are all counted on the bottom line and are taken at a one to one face value. The top-line credits are usually discounted in value because the more cherries that are harvested, the greater the restriction. As a fixed number of orchard diverted certificates are spread over an increasing number of total gross cherries, they become less valuable.

Growers in the cherry industry have seen this inequity play out time and time again over the years of this marketing order. In years where the restricted percentage is low, it has less impact, but in years where it is high; there is a greater negative impact to the value of the certificates

4. At the CIAB Meeting September 10, 2009 the board recommended restriction percentages to deal with the large crop. A couple months later, in November of December 2009, the USDA did not accept the CIAB board's recommendation for final restriction percentages.

5. On February 16, 2010 there was a meeting between CIAB leaders and USDA representatives that oversee the Market Order, David Shipman, Mike Durando, and others. They told us to work on the following issues:
 - A. Work on getting supply and demand in line.
 - B. Promotions
 - C. Do all possible to eliminate the variation between preliminary restriction made in June before the crop and the final restriction made at the September meeting after the crop is harvested.
 - D. Consider a tree pull and see if it would work for the cherry industry.
 - E. Any other ideas that we could pull together to help alleviate the problem.

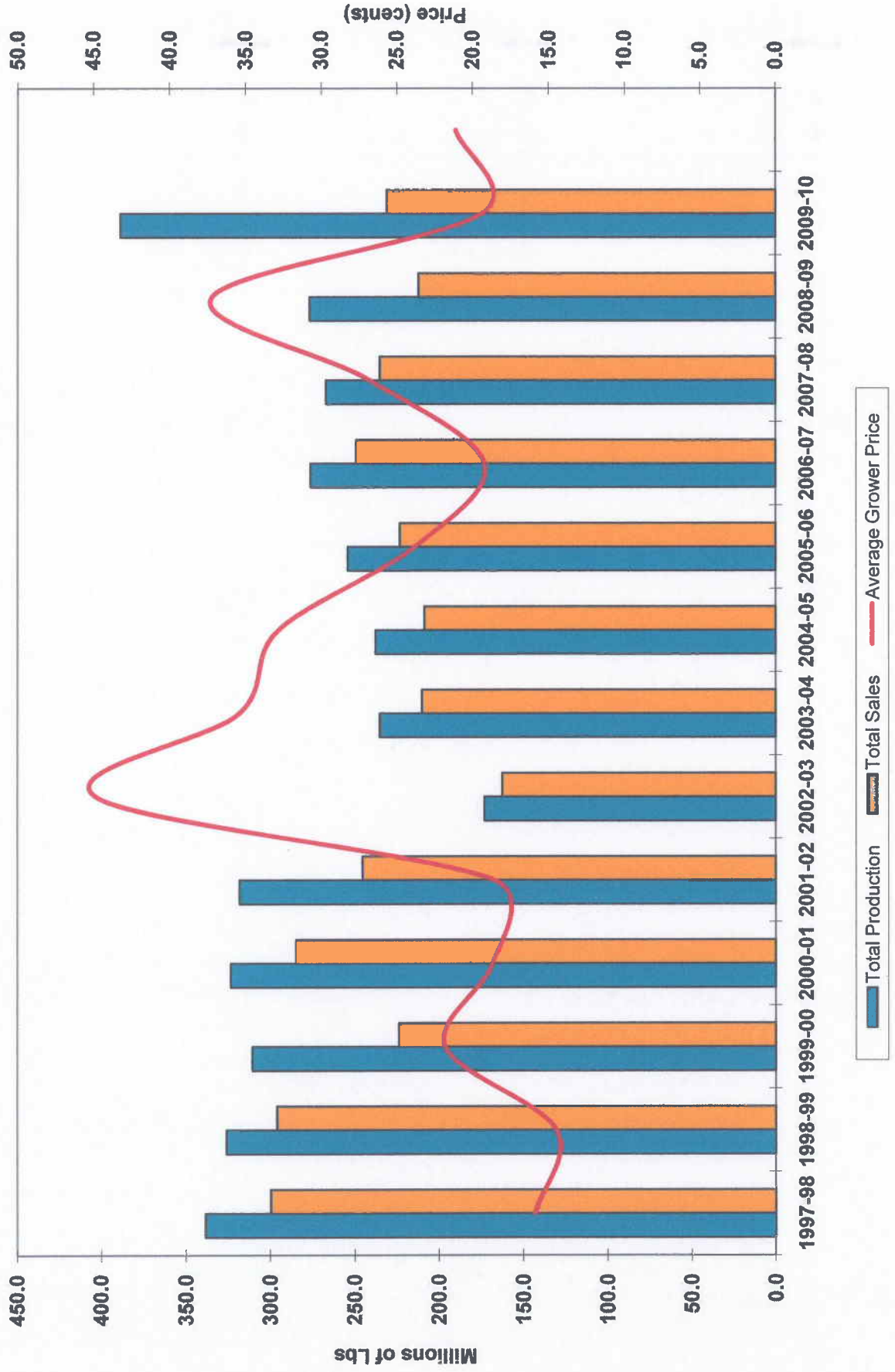
The idea of making in-orchard diversion credits equal to all other credits to encourage more cherries on the ground in high production years was discussed as a possible solution again and brought to the forefront as a viable alternative to help reduce the over production.

6. At the March 23, 2010 CIAB meeting the concept of making in-orchard diversion credits equal to bottom line credits was discussed. The board passed a motion 16 to 1 to adopt this concept of making in-orchard diversion credits equal to bottom line credits. It was the intent of the board to get this into place as soon as possible and try to get in into place for the 2010 year. In the June 2010 meeting the USDA told the CIAB that it may or may not require an amendment to get this into place, but that it was still possible that through informal rule making the industry could have it into place soon.
7. On July 20, 2010 in Washington DC at a meeting with Mr. David Shipman and Mr. Mike Durando, we reported to them the progress the cherry industry had made to meet their requests from the February 16, 2010 meeting. Among other things, the in-orchard diversion to bottom line credit issue was discussed. Both Mr. Shipman and Mr. Durando understood the importance of making the change to help the industry. In the interest of time and the need to have this change in place as soon as possible, we asked Mr. Shipman if it would be possible to proceed with this change through informal rule making rather than go through the lengthy process of amending the marketing order. Other amendments to the order have taken 4 to 5 years. Mr. Shipman seemed open to the idea and was ready to move forward, but Mr. Durando said that his people could expedite the amendment process and have it done in 18 months. Mr. Shipman then requested that we go through the expedited amendment process if it was only going to be 18 months.
8. September 10, 2010. CIAB board meeting. The board decided to start the amendment process for the in-orchard to bottom line credits change. This was done with the expectation of having this change in place within the 18 months and in time for the 2012 crop year. September 2010 to July of 2012 is 21 months and the board expects this to be in place by then.
9. One purpose of this amendment is to comply with the request made from the USDA to the cherry industry to get supply and demand closer in line with what is happening out in the industry. The larger a crop and the restriction gets, the less incentive there is for a grower to put excess cherries

on the ground and gain in-orchard diversion certificates. We felt that if we could put the proper incentive to the growers and give them real value for putting excess cherries on the ground in high crop years then the supply and demand would be closer.

10. Another purpose of the proposed amendment is to make the order less confusing. As the order is written currently the two different types of credits, top line and bottom line credits, have different values to growers and processors. The value of the top line credits is a moving target and is dependent on the total crop size and also the restriction percentage. The value of the bottom line credits is usually different from the top line credits. If we pass this amendment it increases the value of the top line credits and makes them similar in value to the bottom line credits.
11. Another purpose of the proposed amendment is to make it more equitable to growers. The only market for diversion credits is the processors. This proposed amendment makes it so the grower can get similar value from in-orchard diversion certificates as bottom line credits..exports, new product, new market. This amendment will help growers get a better return for diversion credits.
12. The concept of the proposed amendment is that in-orchard diversions will become pound-for-pound diversion credits against handler restriction. In-orchard diversions will no longer be considered part of handle (i.e. "top line"). In-orchard diversions can be used pound-for-pound for handler compliance (i.e. "bottom line"). Their worth as a compliance tool will not vary due to fluctuations in crop size
13. Benefits to handlers of the proposed amendment. Handlers know that the in-orchard credits have a fixed, pound-for-pound worth as a compliance tool. They can use more accurately in-orchard diversions as a part of their compliance plan. Handler compliance plans should be more accurate with this tool in place.
14. Benefits to growers of the proposed amendment. Growers know that their in-orchard diversion credits have a fixed worth to handlers. Growers know that their credits are of equivalent worth to post-harvest diversion credits; export, new market, new product, etc.
15. Benefits to industry of the proposed amendment. Industry handlers and growers can still elect to use the in-orchard diversion process if it fits in their business models and compliance plans. Inventory reserves will be reduced. There should be fewer surplus cherries processed for the sake of processing. Less expense will be incurred for processing of cherries and storing finished goods in reserves.
16. Conclusions: Growers are able to undertake diversions with confidence that their diversion credits will retain their relative worth. Handlers will be free to take diversion credits knowing that the credits' worth as a compliance tool will remain constant. OSF – the OSF will continue to function and the free market will be properly supplied. The amendment proposal should be supported by all and implemented as soon as possible.

Total Production, Total Sale, Average Grower Price



**"Bottom Line" In-Orchard Diversion Credits
Their Impact upon the OSF and Restriction Compliance
Assuming Greater Grower Diversions in Response to Revision Proposal**

part of june final number presentation

| | |
|---------------------------------|-------------|
| 6.49% | 1.945816733 |
| Assumptions & Inputs | |
| Crop | 250 |
| Sales | 170 |
| In-orchard | 10 |
| Orig. OSF | 30 |
| Revised OSF | 50 |
| Carry-in | |

| | |
|-----------------------------------|--------------|
| Percentages and Pounds | |
| Decrease in Rest. ## | (30) |
| Increase in Rest. % | 7.4% |
| BLC & Handler Credits: | |
| Pounds | 30 |
| vs. Preliminary | 29 |
| vs. OSF, Final | Cannot Calc. |
| Percent | |
| vs. Preliminary | Cannot Calc. |
| vs. OSF, Final | 13.5% |

| | OSF (Preliminary) | OSF (Final) | OSF (Final, Amended) |
|---|----------------------|----------------|----------------------------|
| Supply | | | |
| Processed Production | 245 | 243 | 215 |
| Restricted | | | |
| In-orchard as is (considered "handle") | 0 | 2.0 | N/A |
| ST, Restricted: | 245 | 245 | 215 |
| Unrestricted | 5 | 5 | 5 |
| Carry-in | 50 | 50 | 50 |
| ST, Processed Production: | 300 | 300 | 270 |
| Orchard Diversions per amendment (not considered "handle") | N/A | N/A | 30 |
| Total Supply: | 300 | 300 | 300 |
| Demand | | | |
| Sales | 170 | 170 | 170 |
| Surplus | 130 | 130 | 130 |
| Gross Restricted & Free | | | |
| Restricted pounds (Surplus / Restricted) | 53% | 53% | 61% |
| Free tonnage from: | | | |
| Retricted districts | 47% | 47% | 40% |
| Unrestricted districts | 5 | 5 | 5 |
| ST, Free: | 120 | 120 | 90 |
| Market Growth | | | |
| Adjusted Surplus | 17 | 17 | 17 |
| Net Restricted & Free | | | |
| Restricted | 113 | 113 | 113 |
| Free | 132 | 130 | 102 |

**"Bottom Line" In-Orchard Diversion Credits
Their Impact upon the OSF and Restriction Compliance**

part of june final number presentation

Assuming Greater Grower Diversions in Response to Revision Proposal

- Observations**

 - 1 The volume of restricted pounds remains the same.
 - 2 Only the volume of free tonnage is reduced.
 - 3 The reduction in free tonnage is replaced with the product that would otherwise be in reserves.
 - 4 The restriction percentage increases only because the divisor of restricted production is smaller.

| | OSF (Preliminary) | OSF (Final) | OSF (Final, Amended) |
|-------------------------------------|----------------------|----------------|----------------------------|
| Compliance | | | |
| Restricted | 130 | 130 | 130 |
| Activities | | | |
| In-orchard | | | |
| At-plant | 0 | 2 | 30 |
| Exports | 15 | 15 | 15 |
| Market expansion | 35 | 35 | 35 |
| MGF | 17 | 17 | 17 |
| Inv. Res. (current year) | 63 | 61 | 33 |
| Total, compliance: | 130 | 130 | 130 |
| Impact upon Reserves by Type | | | |
| Primary | 50 | 50 | 50 |
| Secondary | | | |
| BOY | 85 | 85 | 85 |
| Added | 63 | 61 | 33 |
| Subtotal: | 148 | 146 | 118 |
| Total reserves: | 198 | 196 | 168 |
| Free tonnage & carry-out | | | |
| Free tonnage | | | |
| Carry-over | 50 | 50 | 50 |
| Unrestricted | 5 | 5 | 5 |
| Restricted, "free" portion | 115 | 115 | 85 |
| MGF | 17 | 17 | 17 |
| Economic Factor | 0 | 0 | 30 |
| Total supply | 187 | 187 | 187 |
| Sales, free | 170 | 170 | 170 |
| Carry-out | 17 | 17 | 17 |