



**McMULLIN ORCHARDS INC.**

*Growers and Shippers of Quality Fruit*



April 26, 2011

To Whom It May Concern:

My name is Robert McMullin. I am a 61 year old third generation tart cherry grower living at 11052 S. 200 W. Salem Utah. I have been involved in the growing of tart cherries since I was 12 years old trying to run a Friday limb shaker to harvest cherries. I farm with my 2 brothers a sister my son and several nephews in the south end of Utah County. We have about 500 acres of tart cherries that we grow.

I currently serve on the CIAB board as a Grower member from District 7.

I as a Utah grower support the Federal Tart Cherry Marketing order and the Cherry Industry Administrative Board.

I am here to speak in favor of the proposed amendment to allow bottom line diversion credits.

In years past and especially in 2009 we have chosen to divert major portions of our crop by putting them on the ground. In 2009 for example our total crop was 8,494,438 pounds and of that total crop 3,468,055 pounds were diverted on the ground. This represents almost 41% of our crop that went on the ground. We felt that rather than putting it on the market and depressing prices it was better to do our part by just not harvesting it.

During periods of high restriction this practice has not allowed us to fully utilize our diverted fruit. We have been penalized a high percentage because the credits were added to the production of our processor and not allowed as a bottom line number. As a result in 2009 when we had a 68% restriction our credits that we did in orchard diversion were only worth 32% of what was diverted. This really came home to us after the crop was harvested because of the huge crop all over the country. We had only planned on a restriction after the market growth factor of something in the high 40's for restriction. This in essence penalized us for allowing our fruit to go on the ground. This fruit was not put on the market it was not processed or put into storage. It was just abandoned. Why should the fruit that we abandoned not be allowed the same credit as fruit that was exported or put up for new product development?

I am including an addendum for the record that outlines some of the talking points I have mentioned above. I will not take the time to read those at this time but I do agree with all of the points mentioned.

I believe by passing this amendment that I as a grower will received a higher return for my cherries that are in orchard diverted as well as a higher return on those cherries that are put onto the regular market. This is another tool that again will increase my returns. I am also including written testimony from other members of my family since they were not able to appear in person today.

Thank you for this opportunity to testify.

Robert McMullin

## TALKING POINTS - AMENDMENT FOR IN-ORCHARD DIVERSIONS

**Issue:** The grower in-orchard diversion process has not worked as well or as effectively as it should in dealing with surplus production. The marketing order functions in a way that discourages in-orchard diversions, and it needs to be restructured to better serve the needs of tart cherry producers and handlers.

- The entire industry must deal with surplus tart cherry production especially in those years when there is significantly more production than demand
  - Growers should have a stronger incentive to do in-orchard diversions
  - Handlers should have a stronger incentive to encourage in-orchard diversions
  
- Grower in-orchard diversions and handler post harvest diversions should be accorded equivalent compliance worth<sup>1</sup>
  - Handler post harvest diversions are granted a compliance worth of one-to-one against restriction obligation
  - Grower in-orchard diversions are as important as any other type of diversion activity
    - They remove an equivalent volume of surplus fruit from the current year's supply as any other diversion activity
    - In-orchard diversions should be granted a compliance worth of one-to-one against restriction obligation just like handler post-harvest diversion credits
  
- The marketing order should be structured to encourage rather than discourage in-orchard diversions as the crop size increases
  - Grower in-orchard diversion credits are treated differently than handler post-harvest diversion credits
  - Growers can never be certain of the worth of in-orchard diversion certificates
    - Their worth changes with the crop
    - This presents risk to the grower
  - The current order discourages in-orchard diversions as the crop gets bigger
    - In-orchard diversions are part of the processor's handle and, therefore, increase the crop size even though these cherries went on the ground
    - In-orchard diversions are subject to the restriction percent since they are considered part of the processor's handle
    - There is an inverse relationship between increasing crop size the worth of grower diversion certificates
      - As the crop size increases, the worth of in-orchard diversion credits decrease
      - This is a disincentive for growers to divert
      - This is a disincentive for handlers to accept grower diversion credits

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<sup>1</sup> The term "worth" is intended to refer to the in-orchard diversion credits as compliance tools. The term "value" is intended to refer to the dollar value of in-orchard credits.

## TALKING POINTS - AMENDMENT FOR IN-ORCHARD DIVERSIONS

- Handlers are discouraged from encouraging or utilizing in-orchard diversion credits by the way the order is structured
  - \* The compliance worth of in-orchard diversions cannot be known until harvest is complete
  - \* In-orchard diversion credits are discounted by the amount of the restriction percentage *10,000 lbs*
    - E.g. ~~1,000~~ lbs. x 25% restriction = 2,500 lbs. restriction  
7,500 pounds of credit are available for other restriction
  - \* If the crop increases and the restriction increases, the worth of in-orchard diversion credits decreases *from*
    - E.g. ~~1,000~~ lbs. x 50% restriction = 5,000 pound restriction  
5,000 pounds of credit are available for other restriction
  - \* At higher restriction levels handlers can reach a point of diminishing return for using in-orchard credits as a compliance option
  - \* The changing compliance worth of in-orchard diversion credits presents risk to the processor
    - This increased risk discourages handler use of in-orchard diversion activities in favor of other options
- Handler alternative compliance options are fixed and known, and these may be more attractive to handlers than in-orchard diversion credits
  - Post-harvest diversion credits (export, new market, new product, destruction, etc.) are a pound-for-pound credit against the restriction obligation
  - The compliance worth of post-harvest diversion credits do not fluctuate with crop size
    - \* They present no risk to the handler
  - It may be more advantageous for handlers to receive and process cherries and undertake post-harvest diversions than to take in-orchard diversion credits
- Growers returns
  - For diversion credits will increase with the amendment
    - \* Handlers often pay growers for the diversion credits
    - \* Handlers pay for the perceived or predicted compliance worth of in-orchard diversion credits
    - \* Handlers discount payments to growers for the risk associated with grower diversion credits
  - For delivered cherries should increase
    - \* Less total inventory in the industry will have an upward impact on grower pricing
    - \* Handlers should have more capital available with which to pay grower
      - See discussion below

## TALKING POINTS - AMENDMENT FOR IN-ORCHARD DIVERSIONS

- Grower costs
  - Will be reduced
    - If a grower uses in-orchard diversions, he will save the costs of:
      - Harvest: \$0.06 per pound
      - Transportation: \$0.005 per pound
      - Surcharges: \$0.005 per pound CMI<sup>2</sup>  
\$0.005 per pound CIAB promotion  
\$0.075 per pound
- Handler benefits and savings
  - Will save
    - Variable costs for cherries left in the orchard
    - Storage costs for cherries left in the orchard
  - Will have less capital tied up in inventory

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<sup>2</sup> It is assumed that the costs of the promotional surcharges are passed either directly or indirectly to growers by the processors.