Pacific Northwest Sugar Company

January 13, 2003 *VIA FACSIMILE*

Mr. Dan Colacicco
Group Director-Dairy/Sweeteners Analysis
Farm Services Administration
U.S. Department of Agriculture
Washington, DC 20250-0516

RE: Adjustments to the Pacific Northwest Sugar Company, LLC ("PNW") Production History for Marketing Allocations under Sugar Program Regulations

Dear Mr. Colacicco:

I am writing this letter on behalf of Pacific Northwest Sugar Company, LLC ("PNW") and the Washington Sugar Company, LLC ("Washington Sugar"), as a follow-up to your meeting with my attorneys, Dale McNiel and Tracey Price, on January 8, 2003. As they discussed, we are requesting the CCC increase PNW's weighted average sugar production history by a total of 1.50 percent of the sum of all beet processors' weighted average sugar production based on certain adjustment factors for opening a desugarization facility and for suffering a substantial quality loss on stored sugar beets. We do not request any change in the allocations for the current crop year marketing allotment, but would expect the adjusted production history would be transferred to Washington Sugar and would be reflected in the allocations for succeeding crop years.

The allocation of marketing allotments to processors is determined in accordance with 7 CFR §1435.307. Section 1435.307(a)(3) provides that, as CCC determines, a beet processor's weighted average sugar production shall be increased by .25% for opening a molasses desugarization facility during the 1998 through 2000 crop years, and by 1.25% for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years. (See Section 1435.307(a)(3)(iii)-(iv)).

PNW completed the construction of a molasses desugarization facility in Spring 1999, including the installation of a chemical softener essential for the plant's operation in March and April 1999. Operations at the molasses desugarization facility began in the summer of 1999. Sugar produced at the molasses desugarization facility was routinely reported to CCC in the monthly reports filed by PNW. The opening of this facility during the 1998 crop year entitles PNW to an increase in its weighted average sugar production of 0.25 percent of the sum of all beet processors' weighted average sugar production pursuant to 7 C.F.R. 1435.307(a)(3)(iii).

In addition, PNW suffered a very substantial quality loss on stored beets during the 1998 crop year. Midway through the harvest, piles of beets reached over 225 feet wide and 24 feet tall. In December 1998, sugar beet piles at the factory were frozen to a depth of at least ten feet. Following the December freeze the weather turned warm and the stored beets deteriorated

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rapidly. During that campaign, only 55.8 percent of the harvested beets could be sliced, compared with 96.8 and 96.6 percent in the following 2 years.

The quality loss on stored beets can be estimated by comparing the production of sugar during the 1998 crop year with the following two years. Although 794,027 tons of beets were received in the 1998 crop year, only 605,257 cwt of sugar was produced for a yield of .762 cwt per ton of beets harvested and received. However, in the following 1999 crop year, 607,615 tons of beets were received, and 1,391,694 cwt of sugar was produced for a yield of 2.29 cwt. per ton of beets harvested and received. Thus, the quantity of sugar produced per ton of sugar beets harvested in the abnormal 1998 crop year was about one third the output in the following normal year. Comparing the 2000 crop year, 562,791 tons of beets were received, and 1,558,797 cwt of sugar was produced for a yield of 2.77 cwt. per ton of beets harvested and received. Comparing 1998 crop year with either of the following two normal years indicates that the quality loss on the stored beets during the 1998 crop year was about two thirds or more.

Crop Year	**1998**	**1999**	**2000**
Beets Received	**794,027**	**607,615**	**562,791**
Beets Sliced	**443,371**	**588,210**	**543,730**
CWT. Sugar Produced	**605,257**	**1,391,694**	**1,558,797**
CWT. Sugar/Ton Beets	**0.762**	**2.290**	**2.770**
% Beets Sliced	**55.8%**	**96.8%**	**96.6%**

The very substantial quality loss suffered by PNW on its stored beets during the 1998 crop year entitles PNW to an increase in its weighted average sugar production history equal to 1.25% percent of the sum of all beet processors' weighted average sugar production pursuant to 7 C.F.R. 1435.307(a)(3)(iv).

Accordingly, we request the CCC make a total adjustment to the PNW weighted average sugar production history equal to 1.5% percent of the sum of all beet processors' weighted average sugar production to account for the substantial quality loss and the opening of the molasses desugarization facility during the 1998 crop year. The adjustment should be made prior to the transfer of the PNW production history to Washington Sugar LLC, but no change in the allocation is necessary before the next crop year.

We look forward to your prompt response and please feel free to contact me if you need any further information.

Sincerely,

Scott Lybbert
Vice President Finance and Marketing.

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February 28, 2003

Mr. Scott Lybbert
Vice-President Finance and Marketing
Pacific Northwest Sugar Company
3501 West 42nd Avenue
Kennewick, WA 99337

Dear Mr. Lybbert:

The Commodity Credit Corporation (CCC) has reviewed your request to receive an increase to Pacific Northwest Sugar Company's (PNW) weighted average sugar production history a total of 1.5 percent of the sum of all beet processors' weighted average sugar production based on PNW's opening of a desugarization facility and PNW's substantial quality loss on stored sugar. We regret to have to inform you that CCC has denied your request because CCC relied on your certification of September 13, 2002, that PNW had not constructed a molasses desugaring facility or suffered a significant loss of extractable sugar on stored sugar beets in determining all beet processors' average production histories and sugar marketing allocations in October 2002. Other beet processors have used the published allocation data as a basis for business decisions and it would be unfair and inappropriate to reduce their permanent allocations, which were partially based on PNW's September 2002 certification.

We regret that we cannot be more positive. However, CCC sent out the Beet Processor Allotment Production History Adjustment Surveys in September 2002 to avoid exactly this problem. CCC also sent all processors their production history data, as recorded in CCC's database, and any production history adjustments contemplated by CCC for all beet processors to review prior to implementation of the sugar marketing allotment program in October 2002. PNW did not raise any objection to the preliminary allocation calculations that did not include the recently requested production history adjustments. We attached a copy of the communications between PNW and CCC on this issue.

You may request a reconsideration of this decision by filing a written request with James R. Little, Executive Vice President, CCC, 1400 Independence Avenue, SW, Washington, D.C., 20250-0501, detailing the basis of the request within 10 days of this letter.

Sincerely,

Daniel Colacicco
Director
Dairy and Sweeteners Analysis Group

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June 13, 2003

VIA FACSIMILE 202.690.1480, Original by Regular Mail
Attn: Ms. Barbara Fecso

The Honorable Ann Veneman
Secretary, United States Department of Agriculture

1400 Independence Avenue, SW
Room 3086-S, Stop 0501
Washington, DC 20250-0501

Attn: Mr. James R. Little
Administrator
Farm Service Agency
Executive Vice President, CCC

Re: Pacific Northwest Sugar Company, LLC (PNS)

Dear Mr. Little:

Pacific Northwest Sugar Company, LLC (PNS) appreciates the opportunity to present testimony, orally and in writing, in support of its request that the Secretary (CCC) increase its weighted average sugar production history by a total of 1.50 percent of the sum of all beet processors' weighted average sugar production is required under the 2002 Farm Bill. PNS is not requesting any change in the allocations for the 2003 crop year marketing allotment, but has requested that the adjusted production history be transferred to Washington Sugar Company, LLC (Washington Sugar) and be reflected in the allocations for succeeding crop years.

Section 359d(b)(2)(A)-(D) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 359dd(b)(2)(A)-(D)), as amended by 1403 of the Farm Security and Rural Investment Act of 2002 (Pub. L. No. 107-171, 116 Stat. 134) (The 2002 Farm Bill) provides inter alia, for the manner in which a beet processor's adjusted weighted sugar production would be determined, and the circumstances under which that weighted average production would be adjusted. With respect to adjustments of weighted average production history, this statute provides as follows:

(i) IN GENERAL.—The Secretary shall adjust the weighted average quantity of beet sugar produced by a beet sugar processor during the
1998 through 2000 crop years under subparagraph (C) if the Secretary determines that the processor—
(I) during the 1996 through 2000 crop years, opened a sugar beet processing factory;
(II) during the 1998 through 2000 crop years, closed a sugar beet processing factory;
(III) during the 1998 through 2000 crop years, constructed a molasses desugarization facility;
or
(IV) during the 1998 through 2000 crop years, suffered substantial quality losses on sugar beets stored during any such crop year.
(ii) QUANTITY.—The quantity of beet sugar produced by a beet sugar processor under subparagraph (C) shall be—
(I) in the case of a processor that opened a sugar beet processing factory, increased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each sugar beet processing factory that is opened by the processor;
(II) in the case of a processor that closed a sugar beet processing factory, decreased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each sugar beet processing factory that is closed by the processor;
(III) in the case of a processor that constructed a molasses desugarization facility, increased by 0.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors

during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each molasses desugarization facility that is constructed by the processor; and (IV) in the case of a processor that suffered substantial quality losses on stored sugar beets, increased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph).

The regulations dealing with the request of Pacific Northwest Sugar Company, LLC (PNS) to increase its allocation 1.5 percent of the sum of all beet sugar producers' production history are found at 7 C.F.R. § 1435.307 (a)(3)(iii) and (iv):

Sec. 1435.307 Allocation of marketing allotments to processors. (a) Each **sugar** beet processor's allocation of the beet allotment will be calculated as the beet processor's share times the beet sector allotment:

(1) A beet processor's share is calculated as the beet processor's adjusted weighted average **sugar** production divided by the sum of all beet processors' adjusted weighted average **sugar** production.

(2) A beet processor's weighted average **sugar** production equals 0.25 times its 1998-crop **sugar** production plus 0.35 times its 1999-crop **sugar** production plus 0.40 times its 2000-crop **sugar** production, with the 2000 **sugar** PIK payments added to its 2000-crop **sugar** production.

(3) A beet processor's weighted average **sugar** production ***shall be adjusted*** by the following, as CCC determines: (i) Increased 1.25 percent of the sum of all beet processors' weighted average **sugar** production for opening a **sugar** factory during the 1996 through 2000 crop years; (ii) Decreased 1.25 percent of the sum of all beet processors' weighted average **sugar** production for closing a **sugar** factory during the 1998 through 2000 crops years; ***(iii) Increased 0.25 percent of the sum of all beet processors' weighted average*** *sugar* ***production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and (iv) Increased 1.25 percent of the sum of all beet processors' weighted average*** *sugar* ***production for suffering a substantial quality loss on stored*** *beets****, as CCC determines, during the 1998 through 2000 crop years.*** (Emphasis Supplied).

There is no discretion given in the law or the regulations. It is provided that the weighted average sugar production **shall** be adjusted if any of the four criteria are met.

With its January 13, 2003 submission to Dan Colacicco of your office, PNS provided documentary evidence, that is undisputed, that it opened a molasses desugarization facility during the 1998 through 2000 crop years, and that it suffered a substantial quality loss on stored beets during the 1998 through 2000 crop years. By so doing, it proved by clear, cogent and convincing evidence that it was entitled to the requested adjustment. We understand that this previous submission is a part of this consideration. The law is clear and unambiguous, and PNS and Washington Sugar simply ask that the law be followed as written.

PNS completed construction of a molasses desugarization facility in the spring of 1999, including the installation of a chemical softener essential for the plant's operation in March and April of 1999. The starting of the desugarization was hailed by the local newspaper in an article printed June 6, 1999. "The Pacific Northwest Sugar Company plant is the first factory to design this process to run as part of a normal sugar beet operation and as a stand alone system during the summer" the local paper asserted. A copy of the complete article was included in the earlier submission along with other evidence that this facility was indeed opened during the relevant years. As such, for this event, under the law, PNSs' weighted average **sugar** production shall be ***(iii) Increased 0.25 percent of the sum of all beet***

processors' weighted average** sugar **production for opening a molasses desugarization facility during the 1998 through 2000 crop years.

Likewise, the qualifying quality loss on stored beets suffered by PNS during the 1998 crop year was well documented. In addition to articles appearing in local papers and in *The Wall Street Journal/Northwest,* PNS has provided undisputed evidence, both through photographs and analysis, that it suffered the type of loss contemplated by Congress in the enactment of these provisions to the 2002 Farm Bill. Even though PNS received in excess of 794,000 beets in 1998 (compared to 607,600 in 1999 and 562,790 in 2000), because of weather conditions beyond its control, large quantities of stored beets were destroyed, and while in excess of 96% of the beets received were sliced in 1999 and 2000, less than 56% of the beets received in 1998 were of sufficient condition for slicing. First freezing to a depth of at least ten feet, then being subjected to unseasonably warm weather, caused the beets to deteriorate. *The Wall Street Journal/Northwest* described the situation in this way: "In December, as the refinery tried to make up for lost time, a weeklong deep freeze hit the region, freezing pipes and air compressor lines, and shutting down production altogether. Then, just as suddenly, temperatures rose to above normal, hastening the decomposition of tons of beets lying in the surrounding fields."

As such, for this event, under the law, PNSs' weighted average **sugar** production shall be ***(iv) Increased 1.25 percent of the sum of all beet processors' weighted average** sugar **production for suffering a substantial quality loss on stored beets** ...**during the 1998 through 2000 crop years.***

There has been a question concerning the fact that a Beet Processor Allotment Production History Adjustment Survey (Survey) which appears to have been faxed to PNS Tuesday, September 10, 2002, answered Friday, September 13, 2002 and faxed to Washington Sunday, September 15, 2002 wherein it was erroneously indicated that no molasses desugarization facility was constructed in the period, October 1, 1998 through September 30, 2001, and further that PNS did not suffer an average extractable sugar loss of more than 20% above normal on sugar beets stored during any crop in the period, October 1, 1998, through September 30, 2001. Both of these answers are wrong. There is nothing in the 2002 Farm Bill or the regulations that calls for such a survey, and there is nothing in the law or the regulations that limits the time in which the adjustment, if appropriate, can be requested. The adjustment could have been requested in 2004 or 2005 – any time during the life of the 2002 Farm Bill. What is clear is that once requested, upon proof that either or both of the conditions described here exist, the adjustment **shall** be made.

It is also worthy of note that the 2002 Farm Bill was signed into law by the President on March 13, 2002, some six months **before** the Survey was circulated. Therefore, the answers to that Survey had no bearing on the wording of the law or the inclusion of these adjusting factors in the law by Congress.

An amended response to the Survey was made February 6, 2003, after the earlier incorrect response had been called to PNS' attention. There is nothing in the law or regulations that require any response, only proof that the desugarization facility was, in fact, constructed, and/or that the loss occurred. That proof has been provided, and the fact that an earlier voluntary Survey hurriedly completed is a non-event, and of no material consequence. While the survey should have been accurately completed, if completed at all, what is important is what occurred. At the time the survey was completed, it was obvious to Mr. Lybbert that most of PNS' allocation for the coming year would be reassigned anyway, and there was no reason for him to determine if the company also qualified for an increased allocation that would also be reassigned. Clearly, the law does not mandate that a company make its request for an adjustment by any date certain. If I say it did not rain when it did rain, the crops will grow in spite of my erroneous statement. Here, there was a qualifying desugarization facility constructed and a qualifying loss occurred, and the wrong answers to a voluntary Survey do not change that fact one iota,

nor does it change the fact that when those two conditions exist, as here, the Secretary/CCC shall increase PNSs' weighted average **sugar** production history by 1.5 percent.

Thank you for the opportunity to present this to you, and to be heard on Monday, June 16, 2003.

Very truly yours,

RAMSAY, BRIDGFORTH, HARRELSON AND STARLING LLP

By S/S William C. Bridgforth
William C. Bridgforth

WCB:lw
cc: Pacific Northwest Sugar Company, LLC
Washington Sugar Company, LLC

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June 23, 2003

VIA FACSIMILE 202.690.1480 and email, Original by Regular Mail
Attn: Ms. Barbara Fecso

The Honorable Ann Veneman
Secretary, United States Department of Agriculture
1400 Independence Avenue, SW
Room 3086-S, Stop 0501
Washington, DC 20250-0501

Attn: Mr. James R. Little
Administrator
Farm Service Agency
Executive Vice President, CCC

Re: Pacific Northwest Sugar Company, LLC (PNS)

Dear Mr. Little:

Pacific Northwest Sugar Company, LLC (PNS) appreciates the opportunity to present this additional information for your consideration in support of its request that the Secretary (CCC) increase its weighted average sugar production history by a total of 1.50 percent of the sum of all beet processors' weighted average sugar production as is required under the 2002 Farm Bill. As previously stated, PNS is not requesting any change in the allocations for the 2003 crop year marketing allotment, but requests that the adjusted production history be transferred to

Washington Sugar Company, LLC (Washington Sugar) and be reflected in the allocations for succeeding crop years.

In the public hearing held by you on June 16, 2003, and in written correspondence from your office, there has never been any suggestion that the two situations qualifying PNS for the increase in its weighted average that it seeks did not exist. In fact, it is uncontroverted that both of these situations (construction of a molasses desugarization facility during the 1998 – 2000 crop years, and the suffering of substantial quality losses on stored beets during that same period), which under the law and regulations previously cited, create an entitlement for PNS, did in fact exist.

The only reason cited for disallowing the request by PNS is the fact that a sheet of paper, entitled Beet Processor Allotment Production History Adjustment Survey, faxed to Scott Lybbert of PNS, was erroneously filled out in September, 2002, some six months after the 2002 Farm Bill creating this entitlement was signed into law. There is nothing to indicate that it was in any way an official form. There was no indication that it had been approved by the Office of Management and Budget, as is required by the Paperwork Reduction Act before it can be given the significance placed upon it by CCC. It was just a sheet of paper, without specific certification of truth made when signing, a certification that appears on every FSA or CCC official form with which I am familiar[1], and without any warning, much less adequate warning, of the consequences for filing a false or erroneous form. Nowhere in the law, or in the past practice of FSA or CCC with which I am familiar has such a form been used to deny an individual the rights and privileges to which he or she is entitled under law. In cases where a person is charged with the consequences of a false statement, it is customary to see the courts point to the language of a specific certification of truth, and to the existence of an adequate warning of penalties for filing false information.[2] No such certification or warning appeared on this survey form.

Moreover, the survey gave no indication that there would be only this once in a lifetime opportunity to assert the right to adjustments of the production history under the farm bill. A person filling out the survey could reasonably interpret it as asking for the adjustments being requested for the imminent allocations to be announced for the upcoming marketing year. There is nothing to suggest that a similar survey would not be made in each of the following years In addition, a layman responding to the very informal survey (check the boxes) would not necessarily know whether the facts pertaining to the company in question would qualify under the law for the requested adjustment. But this is what is being interpreted by FSA's rejection of the petition for the adjustments.

And if failure to assert an entitlement to an adjustment on this faxed form results in forever being denied the entitlement, there has been blatant non-compliance with the rule making requirements of the APA. The farm bill did exempt the promulgation of implementing regulations from the Hardin memo, the Paperwork Reduction Act and the notice and comment

[1] Form CCC-502A, for example, concludes with this language: "I certify that all the information entered on this document and any supporting documents is true and correct. I understand furnishing incorrect information will result in forfeiture of payments and the assessment of a penalty. …"

[2] See U.S. v. Weiss, 930 F. 2d 185 (2nd Cir. 1991) ,par. 42.

provisions of 5 U.S.C. 553, but it did not exempt FSA from incorporating in its final regulations, published without notice or comment, a provision stating that a survey of beet sugar processors would be made and that the failure to claim an adjustment at such time would extinguish their statutory right to an adjustment for all time.

The law and the regulations never mention such a form. Mr. Lybbert had no way of knowing, or even suspecting, that he had only one time to seek the adjustment provided to processors of beets during the 1998 – 2000 crop years. Nothing in the law or in the regulations limits the time in which a qualifying beet processor, as PNS clearly was, from seeking the adjustment. Had a certification similar to the one cited below appeared on this survey, then he would have known that he should not wait to claim the adjustment to which PNS was absolutely entitled.

As stated in the oral presentation at the public hearing, and in written information previously provided, Mr. Lybbert knew that any allotment that was assigned by PNS as a result of the increase in its weighted average production history would have to be reassigned for the 2003 crop year, so he saw no need for the CCC to go through that unnecessary step for 2003. At the beginning of 2003 however, he felt that it was likely that he could utilize such increase beginning in 2004 and sought the adjustment to which PNS was entitled. It was never considered that there would be a denial or the delay that this denial has occasioned.

To reiterate, and highlight, relevant points previously made:

Section 359d(b)(2)(A)-(D) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 359dd(b)(2)(A)-(D)), as amended by 1403 of the Farm Security and Rural Investment Act of 2002 (Pub. L. No. 107-171, 116 Stat. 134) provides inter alia,

(i) IN GENERAL.—The Secretary shall adjust the weighted average quantity of beet sugar produced by a beet sugar processor during the 1998 through 2000 crop years under subparagraph (C) if the Secretary determines that the processor—
……
(III) during the 1998 through 2000 crop years, constructed a molasses desugarization facility; or
(IV) during the 1998 through 2000 crop years, suffered substantial quality losses on sugar beets stored during any such crop year.
(ii) QUANTITY.—The quantity of beet sugar produced by a beet sugar processor under subparagraph (C) shall be—
……..
(III) in the case of a processor that constructed a molasses desugarization facility, increased by 0.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each molasses desugarization facility that is constructed by the processor; and
(IV) in the case of a processor that suffered substantial quality losses on stored sugar beets, increased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar

produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph).

To deny PNS this entitlement based upon the survey is not proper, and wrongfully denies PNS the adjustment. The truth is that PNS did construct the molasses desugarization facility and did sustain the quality loss to stored beets during the 1998-2000 crop years. I would frankly be surprised if both CCC and many of those who spoke against the application of PNS were not in fact aware that PNS qualified in both categories, irrespective of the answers given on the initial survey. In Mr. Lybbert's January 13, 2003 letter request, he reminds CCC that "Sugar produced at the molasses desugarization facility was routinely reported to CCC in the monthly reports filed by PNW[3]." So, CCC could not have been surprised when PNS claimed the adjustment to which it was entitled, and either knew or should have known that the answer on the initial survey was incorrect and at the very least inquired further before taking such damaging action. It is also inconceivable to me that PNS competitors, such a small group of companies, were unaware of such an event.

Surely those in the beet processing industry read the *Wall Street Journal*, and keep up with the beets available to those with whom each competes. The fact that PNS had such a devastating loss to stored beets in 1998 was of sufficient notoriety that it was highly publicized in Washington State and in the regional Journal. Surely it did not go unnoticed by those who now claim that they relied upon the initial survey answers. It would have made far more sense to rely upon the facts that were known, namely, that the facility was constructed and the loss was incurred.

All that PNS asks is that the law be applied exactly as it is written, and that the regulations be followed to the letter. It seeks no modification in the law or in the regulations, and asks only that it be given what the 2002 Farm Bill clearly gives to it, and mandates that it receive. Nothing more, and nothing less. If there is to be any confidence in government, it is incumbent upon government to live within the letter of the law and the regulations.

Very truly yours,

RAMSAY, BRIDGFORTH, HARRELSON AND STARLING LLP

By: /S/ William C. Bridgforth
William C. Bridgforth

WCB:lw
cc: Pacific Northwest Sugar Company, LLC
Washington Sugar Company, LLC

[3] PNW is the same company referred to herein as PNS.

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United States Department of Agriculture
Commodity Credit Corporation

Public Hearing

2003-Crop Year Beet Sugar Marketing Allocations

Washington, D. C.
June 16, 2003

Statement

of

John Richmond
President and Chief Executive Officer
Southern Minnesota Beet Sugar Cooperative
Renville, Minnesota

Pacific Northwest Request

As to the request of Pacific Northwest Sugar Company, LLC, we do believe it is important to grant an adjustment or adjustments to a processor that genuinely experienced a substantial quality loss, or losses, during the base period. We also agree that the law provides some special consideration for those building a molasses de-sugarization facility during the applicable time frame.

However, we also believe that the CCC should clarify when an entity is no longer a beet sugar processor that should receive an allocation.

The 2002 Farm Bill says, "If a processor . . . has been dissolved, liquidated in a bankruptcy proceeding, or otherwise has permanently terminated operations (other than in conjunction with a sale or other disposition of the processor or the assets of the processor)," the allocation is to be eliminated and distributed pro rata to the other processors." The regulations, however, take a more limited approach, saying, "Subject to paragraph (a) of this section, [where the growers can choose to take their crop elsewhere] CCC will eliminate the allocation of the processor who has been dissolved or liquidated in a bankruptcy proceeding and the allocation will be distributed to all other processors on a pro-rata basis."

From the information we have, it would appear that Pacific Northwest "has been dissolved" within the meaning of the 2002 Farm Bill, since we understand that the factory has been sold and the assets, other than the factory, have also been sold, and that no sugar beets have been planted for the last three years. If that is true, then it does not matter whether Pacific Northwest suffered a substantial quality loss or if it opened a molasses desugaring facility, because it would not have any allocation to be adjusted at all.

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My name is Frank Bush. I am Vice President of Sales and Marketing for the Western Sugar Cooperative.

The Western Sugar Cooperative supports the CCC in it's denial of the petition by the Pacific North West Sugar Company that it be granted increased marketing allocation. As we understand this petition, PNW has made this request on the basis that, during the reference period of the years 1998-2000, it suffered substantial quality losses on stored sugarbeets and, that it constructed a molasses desugarization facility.

Pacific North West Sugar, along with the rest of the sugar beet processors were surveyed by the USDA in September of 2002 as to whether or not they were certified under the quality loss category or if they constructed a molasses desugarization facility. At that time, PNW did not designate itself as eligible for increased marketing allotment under either of these provisions.

How a substantial quality loss on stored sugar beets or the construction of a molasses desugarization facility could have been overlooked is not for me to say. However, the data from this survey was used in consideration of the initial company allocation announcements. Since these announcements, Western Sugar along with other industry participants is well down the path of completing their marketings in accordance with these announcements. This petition smacks of "changing the rules after the game has begun". In fact, long after the game has begun and would be detrimental to the orderly management of the sugar marketing allotment program and unfairly damaging to those processors who accurately responded to the September 2002 survey.

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Testimony of Ralph C. Burton
Pacific Northwest Response

Pacific Northwest participated in the development of the allocation and had ample opportunity to inject into the discussion those concerns. It would seem to me that since a crop has not been grown and the factory has not processed sugarbeets for at least two years, the USDA should not recognize this appeal. At such time as the factory becomes viable, the Farm Bill provides for new entrants.

Thank you.

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Pacific Northwest Response

My name is Perry Meuleman. I am President of the Idaho Sugarbeet Growers Association. We are part of the Snake River Sugar Company, a grower-owned cooperative. I am speaking on behalf of these 1100 farmers who grow over 220,000 acres of sugarbeets.

From my perspective, the farm economy is not very healthy. Growers are struggling. Many are staying in farming only by systematically eroding away personal equity. That is because commodity prices do not always cover the costs of production – let alone provide a return on assets. This is the case with most of the crops grown in my area. We are losing many smaller family farms that are not able to survive under these circumstances. I consider that a tragedy for our communities and nation, as well as these individual families.

Our Association and industry worked hard to help improve the new Farm Bill. We sought to make it more accurately reflect the real world we are producing and marketing in. With the passing of the Farm Bill, proper implementation of its sugar marketing allocations has helped return the profitability to

growing sugarbeets. Prices have recovered to reasonable levels,. Stability has returned to the marketplace.

We continue to face issues that threaten the operation of the sugar program under the new Farm Bill. NAFTA, and the Administration's initiatives to negotiate more regional trade agreements, pose threats to our existing marketing allocations. New marketing schemes designed to circumvent the allocation formula in the Farm Bill pose further threats.

There is no new sugar demand being created. If this appeal is approved, our beet acreage will have to be reduced, or our costs for storage will have to increase. Neither option is acceptable – especially if they are the result of an effort to circumvent the allocation formula existing in law.

It is my understanding that Pacific Northwest has not planted sugarbeets for at least two years – and 2004 is suspect. They do not control the factory assets. In fact, the owner of the factory assets has recently agreed to sell three of their beet pilers to The Amalgamated Sugar Company. Pilers are a critical component of a successful beet operation. It would seem to me that Pacific Northwest would be a legitimate candidate for a new factory marketing allocation only if, at some time in the future, the phoenix rises from the ashes.

I urge the CCC to reject Pacific Northwest's appeal.

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Additional Comment from PerryMeulman:

Pacific Northwest Response

Pacific Northwest participated in the development of the
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storage will have to increase. Neither option is acceptable ?
especially if they are the result of an effort to circumvent the
allocation formula existing in law.

It is my understanding that Pacific Northwest has not planted
sugarbeets for at least two years ? and 2004 is suspect. They do not
control the factory assets. In fact, the owner of the factory assets
has recently agreed to sell three of their beet pilers to The
Amalgamated Sugar Company. Pilers are a critical component of a
successful beet operation. It would seem to me that Pacific Northwest
would be a legitimate candidate for a new factory marketing allocation

only if, at some time in the future, the phoenix rises from the ashes.

I urge the CCC to reject Pacific Northwest?s appeal.

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On behalf of 1,000 grower/owners of Michigan Sugar Company I appreciate the opportunity to comment on Pacific Northwest Sugar Company's request to amend its production history and receive an increase of their allocation. My name is Mark Flegenheimer and I am the President and CEO of Michigan Sugar Company a grower owned cooperative.

Mr. Colacicco's letter of February 28, 2003 denying PNW's request, correctly states that other beet sugar companies have utilized the published allocation data as a basis for business decisions. Michigan Sugar Company, which was recently bought by 1,000 growers, relied heavily on that data in order to secure financing. Changing the allocations at this point in time would have severe consequences on our new cooperative. Granting PNW additional quantities would directly effect our ability to market our production and would adversely effect our revenues.

Growers in Michigan borrowed substantial amounts of money on a personal basis in order to buy Michigan Sugar Company. Any reduction in Michigan Sugar Company's allocation would require us to cut acreage. A reduction in acreage would jeopardize many of our growers' ability to repay their loans.

The CCC gave each and every company ample time to review the data it was going to use in order to calculate each processors allocation. In order to make sure our data was correct, Michigan Sugar Company had numerous conversations with the USDA prior to their announcement of individual processor allocations. Making a change after the final numbers have been set would not be fair to the other processors. We also am concerned that if this is approved it might encourage similar activity in future years which could jeopardize the entire sugar progam.

We feel the USDA has ruled correctly on PNW's request.

Thank you.

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STATEMENT OF JAMES HORVATH
AMERICAN CRYSTAL SUGAR COMPANY
on

THE PETITION OF PACIFIC NORTHWEST SUGAR COMPANY

June 16, 2003

I appreciate having the opportunity to testify today in opposition to the petition of Pacific Northwest Sugar Company for reconsideration of the decision by the Commodity Credit Corporation to deny Pacific Northwest's request for adjustments of its weighted average sugar production history for purposes of allocations under the beet sugar flexible allotment program.

I am speaking on behalf of not only my company but the seven other companies who signed the written statement I am also submitting to you for the record.

Our group includes cooperatives and companies that represent over 90 percent of the U.S. beet sugar industry. We process sugarbeets produced in California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, and Wyoming. As a group, we have over 9,000 employees, and our combined payroll exceeds $187,000,000 annually. Our combined revenues last year were over 2.2 billion dollars. We provide processing services for over 8,000 sugar beet farmers.
Clearly, then, our group speaks for an overwhelming majority of the industry when I say that we strongly oppose the Pacific Northwest petition.
We believe CCC was right in its initial decision to deny Pacific Northwest's adjustment request.

Pacific Northwest did not come forward with its information relating to the desugarization plant and the supposed quality losses on stored sugarbeets in a timely fashion, and the other beet processors made business decisions based on the allocations calculated without that information and communicated to all processors by the CCC beginning in September 2002.

Pacific Northwest has not processed sugarbeets of the 2001 and 2002 crops, and it is our understanding that no sugarbeets have been planted for the 2003 crop. Therefore, it is a real question as to whether it will be able to continue in operation in 2003. And, it is hard to see how Pacific Northwest could use any new allocation it would receive if its weighted average sugar production history is adjusted as it requests.

In sum, the equities in this case do not favor Pacific Northwest; rather they strongly favor the other processors. Pacific Northwest had a number of chances to provide the information in a timely fashion, but failed to do so. And, while it suffers no harm if it gets its adjustments—in fact it receives great benefits—the rest of the industry, which has done no wrong here, suffers substantial harm in two ways. First, all business plans and commitments relating to processing the 2002 and 2003 crops made so far will be put at risk. Second, the other processors will lose allocations to accommodate Pacific Northwest's increased allocation, and that translates into the multi-million dollar losses to our companies.

The upward adjustment of a sugarbeet processor's weighted average sugar production history has the effect of increasing the processor's annual allocations, and that of course is why Pacific Northwest has requested adjustments. However, the allocation program is what is called a "zero sum game" because the total combined allocations for any crop cannot exceed the overall beet sugar flexible marketing allotment for that year.

That means that any increased allocation for a crop that Pacific Northwest gets as a result of the upward adjustments it has requested will be taken from the allocations that the rest of the processors have been assigned for that crop. And, what we are talking about in this case, since Pacific Northwest, if successful, would get an increase in its annual allocations of as much as 65,000 tons, is a concomitant reduction in every other company's allocation of 1.5 percent. The combined reductions in allocations involve losses of in excess of $100 million of sales revenue during the remainder of the 2002 Farm Bill.

And, while it might be zero sum, it is not a "game" It is the livelihoods of the 8,000 farmers and 9,000 employees that our companies represent and our companies' financial stability that are at stake here.

The beet sugar industry has gone through severe economic stress in recent years. The industry knew that the restrictive flexible allotment system Congress included in the 2002 Farm Bill was necessary, but we also faced the grim realization that we would have to reduce our marketings and profit margins to the bare

minimum to survive until prices turned around. And, our companies put together their financing plans based on our common understanding of what our shares would be under the flexible allotment program.

So, yes, given our thin margins and financing plans, reducing our allocations by even as little as 1.5 percent (or two or three times that amount if other applications for allocation or adjustments are counted) will put us in serious financial stress. Let me also point out here that the tonnage we lose will be marginal tonnage that does not have fixed costs attached to it, only variable costs. This is our highest profit tonnage we will be losing.

Thus, I strongly urge the Vice President of the CCC to deny Pacific Northwest's request for reconsideration. Thank you.

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SUGARBEET PROCESSORS STATEMENT

on

THE PETITION OF PACIFIC NORTHWEST SUGAR COMPANY FOR RECONSIDERATION OF CCC'S DECISION TO DENY ITS REQUEST FOR ADJUSTMENTS OF ITS WEIGHTED AVERAGE SUGAR PRODUCTION HISTORY FOR PURPOSES OF ALLOCATIONS UNDER THE BEET SUGAR FLEXIBLE ALLOTMENT PROGRAM

June 23, 2003

We appreciate having the opportunity to submit this statement on the petition of Pacific Northwest Sugar Company ("Pacific Northwest") for reconsideration of the decision by the Commodity Credit Corporation ("CCC") to deny Pacific Northwest's request for adjustments of its weighted average sugar production history for purposes of allocations under the beet sugar flexible allotment program.

SUMMARY

We oppose Pacific Northwest's petition for reconsideration and believe CCC was right in its initial decision to deny Pacific Northwest's adjustment request.

Pacific Northwest did not come forward with its information relating to the desugarization plant and the supposed quality losses on stored sugarbeets in a timely fashion, and the other beet processors made business decisions based on the allocations calculated without that information and communicated to all processors by the CCC beginning in September 2002.

Pacific Northwest has not processed sugarbeets of the 2001 and 2002 crops, no sugarbeets have been planted for the 2003 crop, and it is doubtful that sugarbeets will be planted in 2004. Therefore, it is a real question as to whether it will be able to continue in operation in 2003. And, it is hard to see how Pacific Northwest could use any new allocation it would receive if its weighted average sugar production history is adjusted as it requests.

If Pacific Northwest prevails and it gains allocation as a result of the adjustments it seeks, all of our businesses will be adversely affected.

Thus, we strongly urge the Vice President of the CCC to deny Pacific Northwest's request for reconsideration.

BACKGROUND

a.

The group signing this statement includes cooperatives and companies that represent over 90 percent of the U.S. beet sugar industry. We process sugarbeets produced in California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, and Wyoming. As a group, we have over 9,000 employees, and our combined payroll exceeds $187,000,000 annually. Our combined revenues last year were over 2.2 billion dollars. We provide processing services for over 8,000 sugar beet farmers.

Clearly, then, we are speaking for an overwhelming majority of the industry when we say that we strongly oppose the Pacific Northwest petition.

b.

The 2002 Farm Bill provision (section 359d(b)(2)(D)) relating to adjusting each sugarbeet processor's weighted average production history, along with the rest of the provisions for establishing annual beet sugar marketing allocations among processors, were written with great detail and precision. The reason for this is stated in the 2002 Farm Bill debate on the provision.

On February 8, 2002, Senator Conrad introduced, for himself and Senator Crapo, an amendment to the 2002 Farm Bill to add the beet sugar allocation provisions to the bill. He stated that the purpose of the amendment was to "provide a predictable, transparent, and equitable formula for the Department of Agriculture to use" in establishing allocations. He further noted that the amendment "reflects producers' efforts to forge [a] consensus" on this matter.

In short, it is clear from the legislative history of the 2002 Farm Bill the detailed rules for adjustments were intended to avoid disputes and surprises, and had considerable industry input.

WHY THE PACIFIC NORTHWEST PETITION SHOULD BE DENIED

Pacific Northwest Did Not Timely Submit Information On Issues Related To Adjustments

The facts are that Pacific Northwest, which participated actively in the part of the farm bill process that produced the very specific provisions relating to allocations, never provided any information on the opening of a desugarization plant or on suffering a quality loss to stored sugarbeets at any time during the many industry discussions on the allocation formula. In other words, this information was not part of the industry consensus Senator Conrad referred to in describing the allocation rules.

Further, Pacific Northwest did not report this information to the CCC when CCC surveyed the industry in September of 2002 preliminary to making allocations for processing the 2002 crop and specifically requested the information from processors on these matters. In its response to the survey, Pacific Northwest certified that it had not constructed a molasses desugaring facility or suffered a significant loss of extractable sugar on stored sugarbeets during the applicable time periods.

It is also worth noting that Pacific Northwest did take care, in filling out the September CCC survey, to report, and effectively claim an adjustment for, building a new processing plant in 1997. And, the rest of the industry had been made aware during the farm bill process that Pacific Northwest would claim this adjustment (unlike with the other two situations, where Pacific Northwest kept the rest of the industry in the dark).

Then, after the survey process was completed and CCC had gotten feedback from all processors, including Pacific Northwest, CCC sent back to the processors, for their review, their production history data (as recorded on the CCC data base), and any production history adjustments CCC was contemplating. CCC wanted processors to review this information before it actually set the 2002-crop allocations. What CCC sent Pacific Northwest to review did not include any adjustment for a desugarization plant or quality losses on stored beets. Yet, Pacific Northwest did not raise any objections to this at that appropriate time.

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In short, Pacific Northwest had at least three opportunities to report, in a timely fashion before the 2002-crop allocations (which are the first annual allocations under the 2002 Farm Bill) were announced on October 1, 2002, on the desugarization plant and quality losses that could trigger adjustments for it; but it failed to do so each time. As a result, the CCC relied on Pacific Northwest's September survey results in determining all producers adjusted weighted average sugar shipment histories and sugar marketing allocations for purposes of the October 1, 2002, announcement.

Pacific Northwest only came forward with the information on the desugarization plant and the quality losses in January 2003, long after the rest of the processing industry had made business arrangements and commitments with respect to the processing of the 2002 crop of sugarbeets, as well as made 2003 crop planting intentions, based on the October 1, 2002, allocation announcements.

Looking at it from the CCC's perspective, you cannot manage a zero-sum, six-year marketing allocation program if you have to deal with ever-shifting data or criteria. To do otherwise would be to engender serious uncertainty in the program, significantly increased costs to processors (for potential storage problems); and concern among lenders about the stability of the program.

Pacific Northwest Is Not Now An Active Processor

We understand that Pacific Northwest has not processed beets during the 2001 and 2002 crop years. As you know, Pacific Northwest had to surrender 97,639 tons of its 2002-crop allocation of 112,639 tons even before the processing season had started. Its allocation has since been reduced to a mere 381 tons.

Further, we understand that Pacific Northwest's prospects for the future are not any brighter. No sugarbeets have been planted for the 2003 crop, and it is reported that it is in the process of selling some of its equipment critical to the processing of sugarbeets. And, at the hearing held on Pacific Northwest's petition on June 16, 2003, Pacific Northwest's representative could not even state with any degree of certainty that any sugarbeets would be planted for Pacific Northwest in 2004.

It makes no sense for CCC to be forced to make adjustments for the sole purpose of increasing Pacific Northwest's allocation if it cannot fill as much as one-half of one percent of the allocation it already has for 2002, and it looks like it won't be able to use one for either the 2003 or 2004 crop.

A Decision In Favor Of Pacific Northwest Will Have Substantial Adverse Effects On Other Processors

The upward adjustment of a sugarbeet processor's weighted average sugar production history has the effect of increasing the processor's annual allocations, and that of course is why Pacific Northwest has belatedly requested adjustments for a desugarization plant and quality losses. However, the allocation program is what is called a "zero sum game" because the total combined allocations for any crop cannot exceed the overall beet sugar flexible marketing allotment for that year.

That means that any increased allocation for a crop that Pacific Northwest gets as a result of the upward adjustments it has belatedly requested will be taken from the allocations that the rest of the processors have been assigned for that crop. And, what we are talking about in this case, since Pacific Northwest, if successful, would get an increase in its annual allocations of as much as 65,000 tons, is a concomitant reduction in every other company's allocation of 1.5 percent. The combined reductions in allocations involve losses of approximately $140 million of sales revenue during the remainder of the 2002 Farm Bill.

And, while it might be zero sum, it is not a "game" It is the livelihoods of the 8,000 farmers and 9,000 employees that our companies represent and our companies' financial stability that are at stake here.

The beet sugar industry has gone through severe economic stress in recent years. The industry knew that the restrictive flexible allotment system Congress included in the 2002 Farm Bill was necessary, but we also faced the grim realization that we would have to reduce our marketings and profit margins to the bare minimum to survive until prices turned around. And, our companies put together their financing plans based on our common understanding of what our shares would be under the flexible allotment program.

So, yes, given our thin margins and financing plans, reducing our allocations by even as little as 1.5 percent (or two or three times that amount if other applications for allocation or adjustments are counted) will put us in serious financial stress. Let us also point out here that the tonnage we lose will be marginal tonnage that does not have fixed costs attached to it, only variable costs. This is our highest profit tonnage we will be losing.

Further, we in the sugar production industry have to keep looking over our shoulders at what is happening with Mexico's access to the U.S. sugar market under NAFTA and what additional access might be granted to other countries in the many trade negotiations now ongoing. Increased imports down the road will reduce the flexible allotments even further and add to the pressure on our bottom lines.

So, even though the effect on other processors of granting Pacific Northwest its relief would appear to be a few percentage points of allocation tonnage, we can assure you that the reduction is not minor; it is substantial to us.

The Equities Support Sustaining The Initial CCC Decision

Since Pacific Northwest did not timely report on the desugarization and disaster loss matters, CCC should estop it from coming in late to grab additional production history by way of a delayed adjustment of production history. The legal principles underlying the concepts of equitable estoppel and waiver call for the weighing of the equities of the situation—who will be helped and who will be harmed, and who is culpable and who is not.

Clearly, the equities do not favor Pacific Northwest; rather they strongly favor the other processors. Pacific Northwest had a number of chances to provide the information in a timely fashion, but failed to do so. And, while it suffers no harm if it gets its adjustments—in fact it receives great benefits—the rest of the industry, which has done no wrong here, suffers substantial harm in many ways.

First, all business plans and commitments relating to processing the 2002 and 2003 crops made so far will be put at risk. And, the other processors will lose allocations to accommodate Pacific Northwest's increased allocation, and that translates into the multi-million dollar losses of sales noted above.

Also, at the hearing, witnesses gave two very specific examples of harm they suffered by relying on the allocations based on the adjustments reported in September 2002: In one case, the processor's farmers have already planted their 2003 crops based on the announced allocations (and this really applies industry-wide); and in another case, the growers bought the sugar company they worked with, again based on the announced allocations.

No New Facts Or Arguments Have Been Presented That Should Change The CCC Initial Decision

Pacific Northwest has already lost the battle on its petition once, the CCC having turned down its initial application for the requested adjustments. It is now asking you to reconsider that denial. However, as a general rule, to get an administrative agency to grant reconsideration, a party must present new factual evidence or legal information and explain which such new information could not have been presented earlier. Here, Pacific Northwest, in its June 13, 2003, written statement, and its June 16, 2003, oral presentation has submitted no new relevant facts that aid its case; nor has it offered any new legal arguments that should change the CCC position.

In its reconsideration petition, Pacific Northwest is now arguing that the 2002 Farm Bill provisions on adjustments are requirements that entitle Pacific Northwest to receive the adjustments it requests even though it did not report the information on which to base the adjustments in a timely manner when the CCC asked for it. However, while it is true that the 2002 Farm Bill adjustment provisions are requirements, they cannot be allowed to prevail if Pacific Northwest is subject to equitable estoppel or waiver for its failure to timely report the information needed to make the adjustments when CCC made the allocations.

Also, in his June 13 letter and at the June 16 hearing, Pacific Northwest's representative offered an excuse for Pacific Northwest's delay in requesting adjustments. He said that, at the time Pacific Northwest's Vice President for Finance and Marketing filled out the CCC survey in September 2002, he believed that it was unnecessary to fill it out correctly since any increased allocation Pacific Northwest would get for the 2002 crop as a result of filling it out correctly would only be reassigned. First of all, the CCC is entitled to expect that companies participating in the sugar program will be truthful in their answers to questions it poses to them on extremely important matters such as adjustments to history, regardless of its possible effect on the company reporting to it. Second, there is nothing in the survey form that indicates it only applies to only the 2002 crop. On the contrary, Pacific Northwest must have been familiar enough with the provisions of the 2002 Farm Bill to know that the adjustments to history would affect all annual allocations under the Farm Bill, not just the 2002 crop allocations.

Finally, this excuse simply isn't credible. Pacific Northwest did report that it had opened a processing plant in 1997, which qualified it for one adjustment. If the rationale that Pacific Northwest put forward for not reporting the other two events that would trigger an adjustment were true, it wouldn't have reported the new plant either. And, as a matter of fact, the 2002 crop allocation it garnered based on that adjustment it did report was reassigned, as expected.

In sum, Pacific Northwest can offer no excuse for what it did in responding to the CCC's September 2002 survey, that can exculpate it from its responsibility to the CCC and those in the industry that acted to their detriment on its report to the CCC.

Additionally, in Pacific Northwest's June 13 letter, the argument is made that the enactment of the 2002 Farm Bill pre-dated the CCC September 2002 survey and nothing in the Farm Bill or its regulations specifically talks about the conduct of a survey. Both of the facts are indisputable, but where does that get Pacific Northwest? It is still has a duty to cooperate with the CCC in the implementation of the sugar program; and it is still responsible for the statements it makes that others rely on.

CONCLUSION

We would like to supplement this statement with a legal analysis of Pacific Northwest's petition, which we will submit within the next couple of days.

Finally, we believe that Pacific Northwest clearly has no case for receiving the requested adjustments to its production history, and urge the CCC to deny the petition for reconsideration.

Respectfully submitted,

The Amalgamated Sugar Company
American Crystal Sugar Company
Imperial Sugar Corporation (for itself and Holly Sugar Corporation)
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Western Sugar Cooperative

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June 23, 2003

ANALYSIS

of the Petition of the Pacific Northwest Sugar Company for Reconsideration of the CCC Decision to Deny

Its Request for Adjustments of its Weighted Average Sugar Production History for Purposes of the Assignment of Allocations under the Beet Sugar Flexible Allotment Program

The Pacific Northwest Sugar Company has submitted to the U.S. Department of Agriculture a request that the Commodity Credit Corporation ("CCC") reconsider its February 28, 2003, decision that Pacific Northwest is not entitled to certain adjustments of its weighted average sugar production history for purposes of the assignment of allocations under the beet sugar flexible allotment program. Pacific Northwest supplemented its request with a written statement submitted to the Secretary of Agriculture and the Administrator of the Farm Service Agency on June 13, 2003. In addition, the CCC conducted a hearing on Pacific Northwest's request on June 16, 2003

Pacific Northwest has failed to make a good case for granting reconsideration. It is subject to equitable estoppel from claiming the right to such adjustments at this late date, or has waived those rights. Further, the information it submitted on June 13 and 16 does not present any new facts or legal arguments that invalidate the original CCC decision. On the contrary, CCC's February 28 decision was reasonable and ensures the fair and equitable assignment of beet sugar marketing allocations under the sugar program, and should be confirmed.

I. BACKGROUND

During Congress's consideration and debate on the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), the members of the sugarbeet processing industry, including Pacific Northwest, worked hard and met many times to develop the formula for the making of allocations to processors of the beet sugar flexible marketing allotments that is included in the Farm Bill. During that process, Pacific Northwest consistently represented that it had only one event that would qualify for an adjustment of its weighted average sugar production history under the formula that the industry developed, and that was an adjustment for constructing a new processing factory during the 1996 through 2000 crop years.

After enactment of the 2002 Farm Bill in May 2002, the Farm Service Agency ("FSA") of the Department of Agriculture began work to implement the sugar title of the legislation. As part of that implementation process, FSA developed a Beet Processor Allotment Production History Adjustment Survey, designed for sugarbeet processors to certify certain facts regarding their sugarbeet processing operations. Specifically, the survey asked questions relating to the four different permissible bases for adjustments of a sugarbeet processor's weighted average sugar production history.

The weighted average sugar production histories of all sugarbeet processors are used to calculate the allocations to processors of the annual beet sugar flexible marketing allotment under the Agricultural Adjustment Act of 1938, as amended for the 2002 through 2007 crops by the 2002 Farm Bill. *See* 7 U.S.C. 1359dd(b)(2).

The four different permissible bases of adjustments of a processor's history under the 2002 Farm Bill are: (1) as noted above, opening a new sugarbeet processing factory during the 1996 through 2000 crop years; (2) closing a processing factory during the 1998 through 2000 crop years; (3) constructing a desugarization facility during the 1998 through 2000 crop years; and (4) during the 1998 through 2000 crop years, suffering substantial quality losses on sugarbeets stored at the processing facility.

On September 13, 2002, Scott Lybbert, Pacific Northwest's Vice President for Finance and Marketing, submitted to FSA Pacific Northwest's completed survey and certification, which only checked "yes" with respect to the construction of a new factory. As to the other three items, including the desugarization facility and quality losses to stored beets items, Pacific Northwest checked "no".

Later in September 2002, FSA sent to all sugarbeet processors a follow-up document, which was a spread sheet that showed all the potential adjustments and the resultant anticipated allocations for the 2002 crop year, based on the completed survey forms and other data. Along with the spread sheet, FSA asked each processor to review the data and anticipated allocations and, if they had any questions or comments, to contact FSA. Pacific Northwest did not contact FSA or otherwise question its numbers on the spread sheet.

The FSA used the numbers on the spread sheet and comments it had received on the spread sheet to determine the allocations of the beet sugar marketing flexible allotment for the 2002 crop, as provided under the 1938 Act. Those determinations as to allocations were announced by the CCC on October 1, 2002. As in the spread sheet, the allocation to Pacific Northwest only reflected one adjustment to its history—that for construction of a new processing factory.

Then, by letter dated January 13, 2003, Mr. Lybbert requested on behalf of Pacific Northwest, that the CCC increase the company's history by belatedly making the Farm Bill adjustments authorized for construction of a desugarization facility and for suffering quality losses on stored beets. This letter was followed by Lybbert's submission, on February 6, 2003, of a new survey form and certification that checked "yes" next to the desugarization and quality loss items.

By letter dated February 28, 2003, the CCC denied Pacific Northwest's January 13 request. In its letter, CCC stated that it was denying the request because CCC had relied on Pacific Northwest's September 13, 2002, certification that it had not constructed a desugarization facility or suffered quality losses on stored sugarbeets in determining the overall adjusted production history for all processors and then calculating 2002 crop proportionate allocations based on that history. The CCC noted that, "[o]ther beet processors have used the published allocation data as a basis for business decisions and it would be unfair and inappropriate to reduce their permanent allocations, which were partially based on PNW's September 2002 certification."

The CCC letter also noted that the agency had sent out the survey forms in September 2002 "to avoid exactly this problem," and that it had also sent to each processor (including Pacific Northwest), for its review prior to the announcement of allocations in October 2002, the company's production history data and adjustments in its production history being contemplated by the CCC. The CCC pointed out that, even after reviewing the information provided to it by the CCC, Pacific Northwest did not object to the adjustment the CCC was proposing for it—a single adjustment based on Pacific Northwest's opening of a processing factory.

In Pacific Northwest's June 13 letter and its oral testimony on June 16, the company offered an excuse for its not certifying its desugarization facility and quality losses in a timely manner in September 2002. The company claimed that Mr. Lybbert at the time understood that most of any increased allocation it would receive if its production history were increased by certification of these two items would be reassigned anyway, which gave him no reason to answer the questions regarding these items in the affirmative. That excuse did not explain why Mr. Lybbert, at the same time, did determine that he should answer affirmatively on the question relating to the opening of a new factory, and in fact did.

In its June 13 and 16 submissions, Pacific Northwest also pointed out that, under the Farm Bill, the CCC is required to make the adjustments of production history; that the Farm Bill makes no provision for the use of a survey form to get information on possible adjustments; and that the form was circulated after the enactment of the 2002 Farm Bill.

At the June 16 hearing, and in answer to questions propounded by the Department of Agriculture officials conducting the hearing, two examples were given of business decisions that relied on the announced October 1, 2002, allocations and the adjusted production histories on which the allocations were based. A sugarbeet processor reported that sugarbeet growers throughout the country planted their 2003 crops based on the October 2002 allocations assigned to their processors. A sugarbeet grower testified that he and the other growers served by a particular processor bought the processor's facility to run themselves based on the proportionate allocation it had access to.

II. ANALYSES

A. The Doctrine of Equitable Estoppel Applies In This Case, And Under That Doctrine Pacific Northwest Is Estopped From Asserting Any Right To The Claimed Production History Adjustments

Because what Pacific Northwest is belatedly requesting flatly contradicts its long-held position as to the number of history adjustable events applicable to it, the parties that will be harmed by Pacific Northwest's proposal (the other sugarbeet processors that will be forced to take delayed reductions in their allocations to accommodate Pacific Northwest's increased allocation and the growers they serve) have the right to seek legal relief from Pacific Northwest's action. One basis for such legal relief is the doctrine of equitable estoppel, under which Pacific Northwest, because of its unfair actions, can be barred from asserting any right to the adjustment it claims. It should be so barred.

1. The doctrine of equitable estoppel should be applied to this case to determine if Pacific Northwest can be allowed to change its position on whether it constructed a desugarization facility or suffered quality losses, under the allocation formula rules

The doctrine of equitable estoppel or *estoppel in pais* is a "remedy by which a party may be precluded by its own act or omission from asserting a right to which it otherwise would have been entitled". 28 AM. JUR. 2D *Estoppel and Waiver* § 28 (2000); *Arizona Use of Gaines v. Copper Queen Consolidated Mining Co*., 233 U.S. 87, 95 (1914) ("Estoppel ordinarily proceeds upon principles which prevent one from denying the truth of statements upon which others have acted, where the denial would have the effect to mislead them to their prejudice.")

The doctrine of equitable estoppel can serve to cut off a right or privilege conferred by statute. 28 AM. JUR. 2D *Estoppel and Waiver* § 32 (2000).]). Thus, the doctrine can apply here where the right to be estopped is one created by the 2002 Farm Bill, rather than one created, say, by private contract.

At the heart of the doctrine of equitable estoppel is the concept that a party is forbidden from taking a position in regard to a matter that is directly contrary to, or inconsistent with, a position the party previously took. "[T]he fraud is the inconsistent position subsequently taken, rather than the original conduct; it is the former, rather than the latter, that operates to the injury of the other party." *Id*., at § 72. As a result, one who has been wronged in a transaction cannot later impeach that transaction after having originally recognized it as valid. *Id*.

Given these standards of law, what Pacific Northwest is seeking here—to have the CCC allow it to adopt an inconsistent position from that it originally took in the September certification process even though the CCC and the rest of the sugarbeet processing industry were misled—clearly must be subjected to an equitable estoppel analysis. If the elements of estoppel are met, that doctrine must be applied here.

2. The elements for establishing a right to equitable estoppel are met in this case

The elements that must be satisfied of the doctrine of equitable estoppel to apply in a case include the following:

(1) conduct of a party that conceals material facts or, at least, that is calculated to convey the impression that the facts are different than what the party later wants to assert;

(2) the intention or expectation that such conduct or statement will be acted on by other parties;

(3) knowledge of the real facts;

(4) other parties' lack of knowledge as to the truth as to the facts in question;

(5) good faith reliance by another party on the party's conduct or statements;

(6) action on the conduct or statement taken by the party claiming estoppel so as to change that party's position or status; and

(7) resultant detriment or disadvantage to the party claiming estoppel.

Id. at § 40.

Applying these criteria to this case:

(1) there is no question that the facts Pacific Northwest certified to in September 2002 are markedly different than those it certified to in February 2003;

(2) as Pacific Northwest indicated in offering its excuse for not requesting the desugarization and quality loss adjustments earlier, it fully expected that its allocation would be based on whatever it certified;

(3) it knew better than any other party what had happened at its factory as to the desugarization facility and the quality losses;

(4) the CCC had no reason to question Pacific Northwest's or any other processor's certification—that is why it sent out the surveys, to find out where the adjustments were—and the rest of the industry had no reason to follow press reports in Washington state so as to learn about activities at Pacific Northwest. Further, and perhaps more troubling, Pacific Northwest never once disclosed these facts to the rest of the industry during the many joint meetings they held to hammer out the details of the allocation formula that was included in the Farm Bill;

(5) as CCC explained in its February 28 letter and at the June 16 hearing, it relied on Pacific Northwest's September 2002 certification to develop the allocations announced on October 1, 2002 (*see also* (6) below);

(6) as also testified to at the hearing and reflected in statements submitted by other members of the sugarbeet industry, processors and growers alike across the country made business decisions based on the October 1 allocations (and the adjustments certified to in September on which the allocations were based); and

(7) that there will be resultant detriment from others' reliance on Pacific Northwest's certification should be obvious. If Pacific Northwest belatedly gets the adjustments it is requesting, other processors will see their allocations reduced by about 1.5 percent (as was testified to at the hearing and in the statements submitted by other processors and growers); this will in turn reduce the other processors' revenue for the

2002 and following crops by 1.5 percent below what they had been expecting and made financial arrangements on. For growers, such reductions will mean they likely will have to tear up 1.5 percent of the beets they planted this spring or have them processed and pay storage on them in hopes that they can be marketed next year. In either case, the grower suffers direct monetary loss.

3. Estoppel is available to processors because they are privy to the allocation process and parties that would be directly affected by Pacific Northwest's action

An estoppel operates for the benefit of the parties to a transaction and their privies (28 AM. JUR. 2D *Estoppel and Waiver* § 128 (2000)), that is, those parties who have an interest in any action, matter, or thing (BLACK'S LAW DICTIONARY 1362 (rev. 4th ed. 1968)).

Since the other sugarbeet processors will see their allocations reduced proportionately should Pacific Northwest get its allocation increased by action of the production history adjustments it wishes to claim, the processors clearly are parties who have an interest in the adjustment process. It is noted, for example, that in the administrative law case of *In re Southern Minnesota Beet Sugar Cooperative*, SMA Docket No. 03-0001 (USDA Office of Adm. Law Judges), other sugarbeet processors were granted permission to intervene in the case. There, Southern Minnesota is seeking ALJ review of a similar CCC decision to deny the company a history adjustment.

B. In The Alternative, Pacific Northwest Has Waived The Right To Claim An Adjustment Of Its Production History

1. The doctrine of waiver is appropriate in this case

The legal doctrine of waiver is an equitable doctrine closely similar to equitable estoppel that could apply in this case as well as estoppel.

The two doctrines differ in that estoppel takes into consideration that the conduct complained of has injured another party; but with waiver, one need not show a third party's detrimental reliance to invoke the doctrine and prevent a party from asserting a right. Like equitable estoppel, waiver is an equitable doctrine invoked to further the interests of justice. 28 AM. JUR. 2D *Estoppel and Waiver* § 197 (2000).

The doctrine of waiver holds that a person, by its actions, can waive its legal rights, and be held to such waiver. "The doctrine of waiver is based on the principle that one may dispense with something of value by a voluntary act done with a knowledge of the rights involved and with an intention to relinquish those rights." *Id*. Further, waiver is unilateral in nature, so that one party acting on its own to abandon its rights is sufficient to create waiver. *Id*.

Waiver can and should apply in this case. Pacific Northwest had the chance in September 2002 to claim its right to desugarization and quality loss adjustments in its production history,

and—according to its own version of the facts—voluntarily chose not to assert its rights. It would be unjust to allow Pacific Northwest to disrupt the CCC's sugar program.

Congress expects the Administration to operate its programs efficiently and fairly, and Federal agencies such as the CCC in turn need the full cooperation of those who are covered by the programs and accuracy in their provision of information to it. Yet, because Pacific Northwest played around with completing the survey form and certifying its activities, CCC would now be forced to substantially revamp the agreed-on allocations to sugarbeet processors. This in turn would adversely affect the smooth operation of sugarbeet program under the 2002 Farm Bill, a program that so far has worked very well.

Looking at it from the CCC's perspective, that agency cannot manage a zero-sum, six-year marketing allocation program if it has to deal with ever-shifting data or criteria. To do otherwise would be to engender serious uncertainty in the program, significantly increased costs to processors (for potential storage problems); and concern among lenders about the stability of the program.

Yet, there is no compelling reason for CCC to have to go through the major disruption of its programs that Pacific Northwest would cause. As Pacific Northwest itself states, it is not going to use its 2002 crop allocation. Further, there is strong credible testimony from the June 16 hearing and the written statements submitted on this matter that Pacific Northwest hasn't processed sugar beets for at least two years and it is unlikely that it will ever get back to production of beet sugar under its current business conditions. Thus, it is hard to see what valid objective will be achieved for anyone involved by granting Pacific Northwest the adjustments it is belatedly requesting.

2. The requirements for waiver are met in this case

The doctrine of waiver provides that the party claiming waiver must show that that the person against whom waiver is asserted had either direct or constructive knowledge of the existence of the party's rights at the time the party waived them. *Id*, at § 202. And, while intent to relinquish a right or privilege is an element of the doctrine of waiver, intent can be implied through a party's action. *Id*., at § 206*; Northside Iron and Metal Co., Inc. v. Dobson and Johnson, Inc*., 480 F. 2d, 798, 800 (5th Cir. 1973)

Here, there is no evidence that Pacific Northwest was ignorant of the impact of the adjustment process or what the survey questions were for. On the contrary, while Pacific Northwest may not have thought through all the consequences of what it did in incorrectly completing the survey; the evidence is that it knew full well what it was giving up—the right to have its history adjusted. Further, Pacific Northwest's intent to give up those rights is obvious. Its representative said as much in explaining its excuse for doing so. He said, in effect, that Pacific Northwest was choosing not have the adjustments because it was going to have most of its allocation reassigned anyway.

As with equitable estoppel, the doctrine of waiver allows parties to waive statutory rights and protections. *Ellis v. General Motors Acceptance Corp*., 160 F. 3d 703 (11th Cir. 1998) ("it is certainly true that parties can waive statutory protections and assume liabilities not required by law [citing the *Northside* case]). Thus, waiver can apply here where the right waived is one created by the 2002 Farm Bill, rather than one created, say, by private contract.

C. The Arguments That Pacific Northwest Has Advanced For The First Time During The Reconsideration Process Are Unavailing

Pacific Northwest has already lost the battle on its petition once, the CCC having turned down its initial application for the requested adjustments. It is now asking the CCC to reconsider that denial. However, as a general rule, to make the reconsideration process meaningful, a party must present new factual evidence or legal information and explain why such new information could not have been presented earlier.

Here, Pacific Northwest in its June 13, 2003, written statement, and its June 16, 2003, oral presentation has submitted no new relevant facts that aid its case; nor has it offered any new legal arguments that should change the CCC position. Following are discussions of specific additional issues raised by Pacific Northwest in it June 13 letter and June 16 testimony.

1. The 2002 Farm Bill requirement for the making of adjustments does not exempt Pacific Northwest from the doctrines of waiver or collateral estoppel

In its June 13 letter, Pacific Northwest argues that the 2002 Farm Bill provisions on adjustments are requirements that entitle Pacific Northwest to receive the adjustments it requests even though it did not report the information on which to base the adjustments in a timely manner when the CCC asked for it. However, while it is true that the 2002 Farm Bill adjustment provisions are requirements, they cannot be allowed to prevail if Pacific Northwest is subject to the doctrines of equitable estoppel and waiver for its failure to timely report the information needed to make the adjustments when CCC made the allocations.

2. Pacific Northwest's newly offered excuse for its false September 2002 certifications is neither exculpatory nor credible

Also, in his June 13 letter and at the June 16 hearing, Pacific Northwest's representative offered an excuse for Pacific Northwest's delay in requesting adjustments. He said that, at the time Pacific Northwest's Vice President for Finance and Marketing filled out the CCC survey in September 2002, he believed that it was unnecessary to fill it out correctly since any increased allocation Pacific Northwest would get for the 2002 crop as a result of filling it out correctly would only be reassigned.

First of all, the CCC is entitled to expect that companies participating in the sugar program will be truthful in their answers to questions it poses to them on extremely important

matters such as adjustments to history, regardless of its possible effect on the company reporting to it.

Second, there is nothing in the survey form that indicates it only applies to the 2002 crop. On the contrary, Pacific Northwest must have been familiar enough with the provisions of the 2002 Farm Bill to know that the adjustments to history would affect all annual allocations under the Farm Bill, not just the 2002 crop allocations.

Finally, this excuse simply isn't credible. Pacific Northwest did report that it had opened a processing plant in 1997, which qualified it for one adjustment. If the rationale that Pacific Northwest put forward for not reporting the other two events that would trigger an adjustment were true, it wouldn't have reported the new plant either. And, as a matter of fact, the 2002 crop allocation it garnered based on that adjustment it did report was in fact reassigned.

In sum, Pacific Northwest can offer no excuse for what it did in responding to the CCC's September 2002 survey that can exculpate it from its responsibility to those in the industry that acted to their detriment on its report to the CCC.

3. The comparative timing of the enactment of the 2002 Farm Bill and CCC's circulation of the survey form is not relevant

In Pacific Northwest's June 13 letter, the argument is made that the enactment of the 2002 Farm Bill pre-dated the CCC September 2002 survey and nothing in the Farm Bill or its regulations specifically talks about the conduct of a survey. Both of those facts are indisputable, but where does that get Pacific Northwest? It is still has a duty to cooperate with the CCC in the implementation of the sugar program; and it is still responsible for the statements it makes that others rely on.

Respectfully submitted,

/s/ Phillip L. Fraas

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SUGARBEET GROWERS STATEMENT

on

THE PETITION OF PACIFIC NORTHWEST SUGAR COMPANY FOR RECONSIDERATION OF CCC'S DECISION TO DENY ITS REQUEST FOR ADJUSTMENTS OF ITS WEIGHTED AVERAGE SUGAR PRODUCTION HISTORY FOR PURPOSES OF ALLOCATIONS UNDER THE BEET SUGAR FLEXIBLE ALLTOMENT PROGRAM

June 23, 2003

We appreciate having the opportunity to submit this written statement on the petition of Pacific Northwest Sugar Company for reconsideration of the decision by the Commodity Credit Corporation (CCC) to deny Pacific Northwest's request for adjustments of its weighted average sugar production history for purposes of allocations under the beet sugar flexible allotment program.

SUMMARY

We oppose Pacific Northwest's petition for reconsideration and believe CCC was right in its initial decision to deny Pacific Northwest's adjustment request.

Pacific Northwest did not provide information to the CCC relating to the desugarization plant and the supposed quality losses on stored beets when CCC called for that information in September of last year, prior to its calculating 2002 beet sugar marketing allocations on October 1, 2002. The other beet processors who we work with made business decisions related to processing the 2002 crop based on the allocations announced on October 1. They should not have to change course now based on information Pacific Northwest submitted much later.

Further, Pacific Northwest is not using its current allocation, and there is a real question as to whether Pacific Northwest will ever be able to reopen its processing facility. It makes no sense, in this situation, to effectively transfer added allocation to this company, when it will be taken from other processors and growers who could use it.

If Pacific Northwest prevails and gains allocation as a result of the adjustments it seeks, all of our growers will be adversely affected.

Thus, we strongly urge the Vice President of the CCC to deny Pacific Northwest's request for reconsideration.

WHO WE ARE

The group signing this statement includes organizations that represent over 90 percent of all sugarbeet producers in the United States. We grow beets in California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, and Wyoming. Today, we present to you a united front of most of the sugarbeet growers who are the intended beneficiaries of the beet sugar flexible allotment and allocation program—we all firmly oppose the petition.

THE CCC'S INITIAL DECISION WAS CORRECT

We agree totally with the initial CCC decision not to provide adjustments to Pacific Northwest's weighted average sugar production history, based on an untimely request therefor.

CCC has pointed out that Pacific Northwest did not report to CCC on its desugarization facility or quality loss on stored beets when CCC surveyed the industry in September of 2002 preliminary to making allocations for processing the 2002 crop. At that time, CCC specifically requested the information from processors on these matters.

In fact, CCC states, in its denial letter to Pacific Northwest, that Pacific Northwest, in its response to the survey, certified that it had not constructed a molasses desugaring facility nor suffered a significant loss of extractable sugar on stored sugar beets during the applicable time periods. On the other hand, Pacific Northwest's completed survey form reflects that Pacific Northwest did take care to certify that it had constructed a new processing factory, thus qualifying it for an adjustment of history under a related provision of the sugar program.

Then, after the survey process was completed and CCC had gotten feedback from all processors, including Pacific Northwest, CCC sent back to the processors—for their review—their production history data (as recorded on the CCC data base), and any production history adjustments CCC was contemplating. CCC wanted processors to review the preliminary 2002-crop allocations before it actually set them. What CCC sent Pacific Northwest to review did not include any desugarization or quality loss adjustment for Pacific Northwest. However, Pacific Northwest did not raise any objections to the preliminary allocations.

Because of Pacific Northwest's failure to mention these adjustment items to the CCC when it needed to and when had every opportunity to do so, CCC assumed Pacific Northwest had only the new factory adjustment item for purposes of determining the adjusted weighted average sugar production histories and sugar marketing allocations for all processors on October 1, 2002.

Pacific Northwest did not come forward with the information on the desugarization plant and the quality losses until January of this year, long after the rest of the processing industry had made business arrangements and commitments with respect to the processing of the 2002 crop of beets based on the October 1, 2002, allocation announcements.

It would be unfair to everyone who has made business decisions based on the allocations announced so far to let Pacific Northwest come in now and substantially change the allocations picture. CCC understood this when it made its initial decision. Further, we know of nothing that has changed since CCC made its initial decision to upset CCC's reasoning. Thus, Pacific Northwest's request it is still unfair and the initial CCC decision should be confirmed.

PACIFIC NORTHWEST IS NOT AN ACTIVE PROCESSOR

We understand that Pacific Northwest is not now an actively processing sugar beets. And, based on its history, it is doubtful that it will be able to start doing so soon. To our knowledge, it was pieced together from a number of other processor facilities and it is saddled with old, mismatched equipment. It has never had a fully successful campaign. In fact, it has not processed

beets during the 2001 and 2002 crop years. And, as you know, it had to surrender 97,639 tons of its 2002-crop allocation of 112,639 tons even before the processing season had started; and since then its allocation has since been reduced to a mere 381 tons. Further, at the CCC's June 16, 2003, hearing on Pacific Northwest's petition, Pacific Northwest's representative indicated that was uncertain as to whether Pacific Northwest's growers would plant a 2004 crop of sugarbeets.

Looking at these facts, there has to be a real question in any reasonable person's mind as to whether this company can ever rise from the ashes to become an operational processor again. It certainly makes no sense to effectively transfer added allocation to this non-operational company at this time by allowing for the requested adjustments, when that added allocation will be taken from other processors and growers.

PACIFIC NORTHWEST'S REQUEST IN INCONSISTENT WITH THE FARM BILL

The 2002 farm bill provision (section 359d(b)(2)(D)) relating to adjusting each beet processor's weighted average production history, along with the rest of the provisions for establishing annual beet sugar marketing allocations among processors, were written with great detail and precision. The reason for this is that Congress wanted to establish a predictable, transparent, and equitable formula for the Department of Agriculture to use in establishing allocations. And, the formula that was developed was one that industry groups worked hard to develop and reach a consensus on.

In that regard, Pacific Northwest participated actively in the farm bill process that produced the very specific provisions relating to allocations, but never provided any information on the opening of a desugarization plant or on suffering a quality loss to stored sugar beets at any time during the many industry discussions as part of that process. As a result, the farm bill does not include provisions to accommodate Pacific Northwest on these items. Honoring Pacific Northwest's belated request for adjustments would undermine the equitable allocation formula in the farm bill that the beet industry agreed on. And, for what purpose? As noted above, Pacific Northwest is hardly even in operation now, so it does not need the addition to its allocation it will receive if you grant its request.

A DECISION IN FAVOR OF PACIFIC NORTHWEST WILL ADVERSELY AFFECT THOUSANDS OF GROWERS

The upward adjustment of a beet processor's weighted average sugar production history has the effect of increasing the processor's annual allocations, and that of course is why Pacific Northwest belatedly has requested adjustments. However, the allocation program is what is called a "zero sum game" because the total combined allocations for any crop cannot exceed the overall beet sugar flexible marketing allotment for that year.

That means that any increased allocation for a crop that Pacific Northwest gets as a result of the upward adjustments it has requested will be taken from the allocations that the rest of the processors have been assigned for that crop.

Such a transfer of allocation tonnage to Pacific Northwest from the other processors will have a very direct adverse effect on the thousands of growers our organizations represent. Processor allocations under the sugarbeet flexible allotments program are, in a real sense, for the benefit of the growers since the whole program is designed to strengthen growers' markets for sugarbeets. Further, the allocations the processors receive under each annual allotment are effectively passed on to our growers, as the allocations tell growers what amounts of beets we can expect to get processed into marketable sugar each year.

And, what we are talking about in this case, since Pacific Northwest, if successful, would get an increase in its annual allocations of as much as 65 thousand tons, is a concomitant reduction in every other company's allocation of the same amount. This would be a reduction of 1.5 percent of the allocation. The combined reductions in allocations involve losses of literally tens of millions of dollars worth of sales annually during the course of the 2002 farm bill.

The substantial reduction in marketings that our processors will get hit with will result in a comparable reduction in our growers' beet marketings. This will be very harmful to many growers just beginning to recover from the low prices that plagued our industry prior to enactment of the 2002 farm bill. It is a simple fact that many growers have very thin margins and substantial farm debts to service, including debt incurred to invest in our processors**.**

In addition, to save some segments of the sugarbeet industry when it went through tough times in recent years, it was necessary for the growers to band together to acquire the processor operations. As a result, we growers now have large equity interests in our processors—over 90 percent of the processing industry is owned by cooperatives of growers. Thus, we have an added interest—as owners of the processors—in making sure that they do not lose their marketing allocations. In that regard, financing for processors to a large extent has been structured on the basis of the percentage of the allotment they anticipated receiving under the current farm bill allocation formula.

Growers also have to be concerned if Mexico should begin taking full advantage of the access to the U.S. sugar market it received under NAFTA and if additional access is granted to other countries in the many trade negotiations now ongoing. Increased imports down the road will reduce the flexible allotments, allocations, and planted acreage even further and add to the pressure on our bottom lines.

In short, our growers are under considerable stress already, which will only intensify if they are hit with another set of reductions to benefit Pacific Northwest.

THE EQUITIES DO NOT FAVOR PACIFIC NORTHWEST

Since Pacific Northwest failed to timely report on the desugarization and disaster loss matters, CCC should not allow it to come in late to grab additional production history by way of a delayed adjustment of production history. For, while Pacific Northwest suffers no harm if it gets its adjustments—in fact it receives great benefits—the rest of the industry, which has done no wrong here, suffers substantial harm in several ways.

First, all business plans and commitments relating to growing and processing the 2002 and 2003 crops made so far will be put at risk. At the June 16 hearing, two graphic examples were given of business decisions made based on the 2002 allocations announced on October 1, 2002, without Pacific Northwest's proposed adjustments factored in. One witness testified that growers across the country planted their 2003 crops based on their understanding of the allocations announced on October 1, 2002. Another witness testified that his grower group purchased their sugar company again based on the October 1, 2002, allocation shares.

Also, the other processors and their growers will lose the benefits of allocations transferred to accommodate Pacific Northwest's increased allocation, and that translates into the multi-million dollar losses of sales noted above.

Finally, the excuse that Pacific Northwest offered at the June 16 hearing for not mentioning the desugarization facility and quality losses on stored beets in its response to the CCC's September 2002 survey simply doesn't hold water. Pacific Northwest said that it knew that the increased 2002 crop allocation it would receive if it got its history adjusted would be reassigned, so that increasing the allocation by reporting these items was meaningless. However, Pacific Northwest did report its new factory, thus qualifying it for at least one adjustment to its history and a concomitant increases in its 2002 crop allocation. That action is clearly inconsistent with, and undermines the truthfulness of, the "it doesn't mean anything" excuse that was offered on June 16.

CONCLUSION

As the intended beneficiaries of the sugar program and the owners of over 90 percent of the processors that will be adversely affected if Pacific Northwest is to succeed in its petition for reconsideration, we urge the CCC to deny the petition.

Respectfully submitted,

Big Horn Basin Sugarbeet Growers Association
Big Horn County Sugarbeet Growers Association
California Beet Growers Association
Colorado Sugarbeet Growers Association
Elwyhee Sugarbeet Growers Association
Idaho Sugarbeet Growers Association
Michigan Sugar Company Growers Cooperative
Minn-Dak Farmers Cooperative
Monitor Sugarbeet Growers Association
Montana-Dakota Sugarbeet Growers Association
Mountain States Beet Growers Association of Montana
NEBCO Beet Growers Association
Nebraska Beet Growers Association
Nyssa-Nampa Beet Growers Association

Platte Valley Wyobraska Beet Growers Association
Red River Valley Sugarbeet Growers Association

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