

IN THE MATTER OF THE  
*NATURAL PRODUCTS MARKETING (BC) ACT*  
AND AN APPEAL REGARDING A DECISION OF THE BRITISH COLUMBIA  
MILK MARKETING BOARD

**BETWEEN**

**BECKHOPE FARMS LTD.**

**APPELLANT**

**AND:**

**BRITISH COLUMBIA MILK MARKETING BOARD**

**RESPONDENT**

**AND:**

**BC MILK PRODUCERS ASSOCIATION  
MAINLAND MILK PRODUCERS ASSOCIATION**

**INTERVENERS**

**DECISION**

**APPEARANCES:**

For the British Columbia Farm Industry  
Review Board

Suzanne K. Wiltshire, Presiding Member  
Ron Kilmury, Chair  
Ron Bertrand, Member

For the Appellant

Ron and Kathy Beck

For the Respondent

Ken McCormack, General Manager  
Jim Byrne, Chair

For the Interveners

BC Milk Producers Association

Robin Smith, Executive Director  
Rehanni Khaseipoul, Director of  
Communication and Planning

Mainland Milk Producers Association

Tom Hoogendoorn, Executive Member  
Valerie Holbech, Secretary Manager

Date of Hearing

October 14, 2010

Place of Hearing

Abbotsford, British Columbia

## **INTRODUCTION**

1. Ron Beck, President of Beckhope Farms Ltd., and his wife Kathy Beck operate a dairy farm east of Mission, BC. On July 5, 2010 Mr. Beck wrote to the BC Milk Marketing Board requesting permission to transfer the entire farm, including the quota, as a going concern.
2. In an email dated July 7, 2010 the Milk Board advised that it had considered the request but had determined that no exceptions would be permitted to its current policy of not allowing any transfers, including going concern transfers, other than family transfers and those making use of the quota exchange.
3. Ron Beck on behalf of Beckhope Farms Ltd. appeals the decision of the BC Milk Marketing Board and seeks, as an exception to the current policy, approval to transfer the dairy farm quota directly to the purchaser of the Beckhope dairy farm as part of the going concern sale of the entire farm.

## **ISSUE**

4. Did the Milk Board err when it decided to deny the appellant's request for an off-exchange transfer of the dairy farm quota as part of a going concern sale?

## **BACKGROUND**

### *Transfer of Quota*

5. The Milk Board has operated a quota exchange since early 1996 to enable dairy producers to obtain quota as a means of enabling milk production. The Milk Board describes one of the policy objectives of the quota exchange to be the provision of equitable and fair access to available quota for sale to all producers in British Columbia. Over the years, the quota exchange has taken various forms.
6. The Milk Board's Consolidated Order provides that quota may only be transferred upon application to, and with the approval of, the Milk Board and only through the quota exchange, with certain specified exceptions.
7. The exceptions to transfers through the quota exchange are: transfers to exempt persons (defined as certain family members) and commonly referred to as family transfers; transfers which constitute a going concern sale as defined in the Consolidated Order; credit transfers (commonly referred to as swaps); deemed transfers between partners or shareholders; or transfers from a producer to a partnership or corporation in which that producer is a partner or shareholder. These types of transfers are commonly referred to as "off-exchange" transfers.

### *Recent Changes Respecting the Quota Exchange and Off-Exchange Transfers*

8. Because of concerns of manipulation, the Milk Board suspended the quota exchange in January 2010 to allow for the introduction of changes to the manner in which the exchange would operate. Among the changes were limits on the maximum allowable bid restricting a producer already holding quota of less than 50,000 kgs to a maximum bid of 5,000 kgs and a producer with quota holdings of more than 50,000 kgs to a maximum bid equal to the lesser of 10% of the producer's existing quota holdings or 40,000 kgs. The changes to the quota exchange became effective in February 2010 for March transfers.
9. While the changes appeared to be successful in ending the manipulation of transactions on the quota exchange, they resulted in unanticipated and unintended consequences. Since certain producers could no longer manipulate the quota exchange to their advantage, they turned to the use of off-exchange transactions to continue to effect large quota transfers between producers.
10. Given potential avoidance activity, at its meeting on February 16, 2010 the Milk Board directed staff that going concern transfers, partnerships and corporate mergers would require board approval and asked staff to have legal counsel review transfer requests received.
11. On February 23, 2010 the Milk Board issued a Notice to Producers advising that off-exchange transactions involving going concern sales, partnerships, corporate mergers and name changes would require Board approval and setting out required documentation with respect to such transactions.
12. At its meeting on March 16, 2010 the Milk Board was informed that three applications for off-exchange transfers all appearing to deal with corporate mergers and partnerships had been received. Concerned that more such applications would render the new quota exchange ineffective in meeting the board's policy objectives, the Board suspended off-exchange transactions concerning partnerships and corporate mergers or reorganizations. At the same meeting the board indicated it would continue to receive applications for going concern transfers but its direction that such transfers would require board approval remained in effect. The Milk Board informed producers of these changes in its March 17, 2010 Notice to Producers.
13. At subsequent meetings on March 23 and April 8, 2010, the Milk Board dealt with the three applications it had received prior to March 16, 2010 for off-exchange transfers involving partnerships and corporate mergers: approving one such transaction because it had been received prior to February 23, 2010; approving another which concerned an application to form a joint venture, but only for a five year term; and rejecting the third application for a merger because the parties had chosen not to provide additional information requested.

14. At its April 8, 2010 meeting, the Board also reviewed an application for a going concern transfer. Although it understood that the agreement between the parties contemplated the subsequent sale of land and other assets and was in fact primarily an agreement to ensure a large block of quota could transfer directly between producers, the Milk Board approved the transfer.
15. Because of concerns raised by this application, the Board then extended its suspension of off-exchange transfers to include going concern sales. The Board directed its staff to seek input from the Quota Exchange Committee, the BC Milk Producers Association and regional producer associations regarding permissible transfers going forward. At a meeting of the Quota Exchange Committee on April 9, 2010, the committee supported the Board's decisions and agreed quota should be sold on the exchange pending review of off-exchange transactions.
16. The Milk Board informed producers of this change in its April 9, 2010 Notice to Producers, advising that the suspension of off-exchange transfers other than family transfers would remain in effect until the Milk Board had completed consultations with industry associations and the Quota Exchange Committee and the Consolidated Order had been amended to reflect permissible transfers going forward. It was noted that the quota exchange and quota swaps remained in operation to assist producers in managing their quota.
17. At its meeting on April 27, 2010, the Milk Board denied an application by another producer to effect an off-exchange going concern transfer on the basis that it was not received prior to the April 8, 2010 deadline for receipt of such applications.
18. At its meeting on July 6, 2010, the Milk Board denied Ron Beck's request to allow the off-exchange transfer of the Beckhope quota as part of a going concern sale of the dairy farm. The minutes record the Milk Board's agreement that "the policy to suspend such transfers must be applied to all producers the same".
19. The Quota Exchange Committee at its July 8, 2010 meeting expressed concerns about changing any policy at that time to allow off-exchange transactions and indicated it wanted more time to pass to allow the quota exchange an opportunity to work. The committee recommended the Board continue its suspension of off-exchange transactions. The suspension of off-exchange transfers other than family transfers continues in effect at the date of this decision.

#### ***Circumstances Giving Rise to Decision to Sell Beckhope Farms***

20. Beckhope Farms was started by Peter Beck, Ron Beck's father, in 1964 with the purchase of the farm site and built up by him and his family to be a 100% purebred Holstein herd. From 1983 on Ron Beck and his wife, together with Peter Beck, looked after all of the work on the farm.

21. Following the death of Peter Beck in February 2009, issues arose with respect to the distribution of his estate among his four children. Ron Beck was left the residue of the estate which included all of the shares of Beckhope Farms Ltd. with the exception of 1000 voting preference shares divided between his two sisters and directed to be held in trust for 10 years and then redeemed. The sisters also received all personal and household articles, consumables, automobiles, cash and other investments. No provision was made for Ron Beck's brother, the will indicating he was bought out of the family farm in 1987 and the proceeds he received then represented his inheritance.
22. Following Peter Beck's death, the intention of Ron and Kathy Beck was to continue operating the family farm and they continued to expend money on needed repairs and some improvements.
23. In May 2009 Ron's two sisters and later, in May 2010, his brother indicated they were not happy with what their father had provided for them in his will and intended to claim against the estate.
24. Ron Beck commenced negotiations in June 2009 with his two sisters to settle the estate believing at that time that his brother did not want anything from the estate.
25. In November 2009, the will was probated. This necessitated the sale of quota on the quota exchange in December 2009 to pay probate fees and other costs relating to the estate. More quota was sold on the exchange in February 2010 in anticipation of a settlement with the two sisters. Quota remaining at March 2010 was 24,384 kgs.
26. With a reduced milk cheque as a result of the sale of quota and higher winter production costs, Ron and Kathy Beck discussed the sale of the farm with their accountant in February 2010 and concluded that they would need to sell.
27. In the fall of 2009 a neighbouring milk producer, Gerard Baars, had indicated he was planning to expand his dairy operations and would be interested in buying the Beckhope dairy farm as a going concern because he needed land, cows and quota to complete his expansion. By March 2010, Mr. Baars had funding in place for his expansion, had put in a new lagoon and prefill for a new barn and was starting construction of the new barn.
28. On March 4, 2010, following multiple prior discussions, Ron Beck entered into an oral agreement to sell the family farm as a going concern to Mr. Baars, on the understanding that the transaction would not be completed until the estate was settled and that this would take until at least June.
29. In April 2010 all going concern transfers were suspended, in the view of the Becks without any warning.

30. Then in May 2010, Ron Beck's brother made a claim against the estate. Following negotiations, an agreement was made with the brother in June 2010 with "details to be worked out by the lawyers".
31. Having reached agreements with all of his siblings to settle the estate, in early July 2010 Ron Beck, on behalf of Beckhope Farms Ltd., applied for approval to transfer the family farm to Mr. Baars on a going concern basis citing the circumstances surrounding the settlement of the estate as factors delaying the application even though the oral agreement to sell was entered into in March 2010, prior to the suspension of going concern transfers.
32. In his application to the Milk Board for the transfer Ron Beck stressed that he had sought a purchaser who would buy the entire farm as a going concern dairy farm. He stated that the purchaser wanted the whole farm and wanted to continue with the breeding that the Becks had worked 50 years to establish. He indicated the purchaser had dreamed of having their own herd of purebred Holsteins and would keep the herd on the farm.
33. At the hearing, it became apparent that if the transaction were permitted to proceed, Mr. Baars' intention was to move the cows to his new barn and to lease the barn on the Beck property to a third party.

#### **SUBMISSIONS OF THE APPELLANT**

34. The appellant submits that the Milk Board erred in denying approval of the transfer on a going concern basis because of the special circumstances which apply in its case, namely:
  - The sale of the farm became necessary because of the claims of Ron Beck's siblings against the estate of their father, Peter Beck.
  - A valid oral agreement to sell the farm as a going concern had been made in March 2010 prior to the suspension of the going concern transfer exception.
  - The completion of the sale of the dairy farm could not proceed until the claims against the estate were settled and so no application was made at that time for approval to transfer the quota.
  - The Milk Board did not give any prior notice of its intention to suspend the going concern transfer exception.
  - If given prior notice, the appellant would have sought approval for the transfer prior to the suspension so that the dairy farm could be sold as a going concern.
35. Additionally, in the July 19, 2010 letter giving notice of the appeal and at the hearing the Becks advanced several arguments as to why the sale of the farm as a going concern would serve the industry better than marketing the farm in a piecemeal fashion.

36. The appellant's primary argument is that because the farm's purebred Holstein herd represents 50 years of genetic improvements, it would be to the industry's detriment to have these genetics diluted by integrating the herd into a variety of commercial herds as a result of a herd dispersal auction. The appellant submits that permitting a going concern sale of the operation will afford the buyer of the herd and genetics program the opportunity to maintain the hard earned domestic and international markets developed by Beckhope Farms. In support of this argument the appellant provided a letter from Lisa Hemphill D.V.M.
37. The appellant also argues that a going concern sale will place more appropriate values on the farm assets – land, buildings, cows and quota – based on their relative contribution to the operation, while a piecemeal sale places a higher value on quota and diminishes the value of the cows and dairy facilities. Thus a piecemeal sale will result in the undervalued facilities being relied on to determine the contributory value of the dairy facilities of those who remain in the industry and restrict their borrowing potential and financing options and hence their investment in the industry. At the hearing Kathy Beck clarified that whether the farm was sold as a going concern or piecemeal the total proceeds received would be approximately the same or perhaps even slightly more if the farm were to be sold piecemeal.
38. The appellant submits that the success of the industry depends on the success of its individual producers. Since large quantities of quota can no longer be purchased on the exchange by any one purchaser, the appellant argues that approval of the transfer of Beckhope Farms to Mr. Baars, who is already a successful producer, will permit him to acquire additional land and quota and will therefore benefit the industry. In support of this argument the appellant also provided a letter from G.E. Lathrop, AACI, P.App, RI.
39. The appellant also initially argued in its notice of appeal that a going concern sale would mean that the dairy facilities would continue to be used and properly cared for and even if the herd was subsequently relocated the facilities would be kept functional and would represent a start-up leasing opportunity to a future new entrant into the industry.
40. The appellant seeks approval for transfer of the quota as an off-exchange transfer as part of the going concern sale of the dairy farm in accordance with the oral agreement of March 4, 2010.

#### **SUBMISSIONS OF THE RESPONDENT**

41. The Milk Board submits that the arguments of the appellant with respect to the benefits of maintaining the dairy farm as a complete unit and the benefits of keeping the herd together for breed protection and genetic improvements are not germane to the appeal. As well, the Milk Board notes the testimony at the hearing indicating the present intention is to move the herd to a new barn on the Baars' farm.

42. The Milk Board submits that its position and the scope of its authority and responsibility are clear. It submits that “Quota is the property of the [Milk Board]...and as such the Board has the responsibility of ensuring that quota is administered properly and any policy or program relating to that quota function is administered to the benefit of all producers equitably.” The Milk Board argues that it should not concern itself with ensuring that producers have the ability to maximize the total value of their operations and assets upon sale. The Milk Board submits its job is to ensure effective rules and programs are in place so that producers can equitably access quota and produce milk.
43. The Milk Board submits that its policy objective of a properly functioning quota exchange to facilitate equitable quota transfers to all producers and to generate quota assessments to facilitate the graduated entry program and growth in the specialty industry was at risk. As such, it argues its responsibility was to act and make decisions to protect those objectives and that is the reason behind its decision to suspend all off-exchange quota transfers other than family transfers. That is also the reason why the Milk Board could not permit an exception for the appellant that would put “all of the Board and industry progress at risk”.
44. The Milk Board asks that the appeal be dismissed.

#### **INTERVENER SUBMISSIONS**

45. The Mainland Milk Producers Association (MMPA) supports the decision of the Milk Board on April 8, 2010 to suspend all transfers of quota other than transfers through the quota exchange and family transfers and the subsequent decision of the Milk Board to deny a transfer of the Beckhope farm as an off-exchange going concern transfer.
46. The MMPA indicates that, like others affected by the suspension, Ron Beck can sell the farm in a piecemeal fashion by selling the quota on the exchange and by selling the breeding herd for good market value and the land for fair market value. The MMPA submits that since the province has the highest production per cow in the country, dispersal of the herd will not be detrimental to the BC dairy industry.
47. Alternatively, the MMPA notes that the next Quota Exchange Committee meeting is scheduled to take place in January 2011. The MMPA suggests that the appellant could wait until the review of the quota transfer policy is complete and the policy is updated. Since off-exchange transfers are only suspended at this time the appellant may then have an opportunity to sell the farm as a going concern.
48. The BC Milk Producers Association (BCMPA) were also granted intervener status in the appeal. BCMPA attended the hearing as an observer but did not make a submission.

## ANALYSIS

49. Quota is a privilege and not a right. As recognized by Mr. Justice Macdonald in *Sanders v. British Columbia (Milk Board)*, 1991 CanLII 2036 (BCCA), 53 B.C.L.R. (2d) 167 at page 178 “A quota, a licence to produce, which may be issued on prescribed terms and conditions may be cancelled, that is annulled or abolished, also on prescribed terms and conditions.”
50. Under the *British Columbia Milk Marketing Board Regulation* B.C. Reg. 167/94, the Milk Board is vested with the power to promote, regulate and control in any and all respects the production, transportation, packing, storage and marketing of milk within the province. In particular, it is authorized to establish, allot, alter, suspend or cancel a quota and to establish the terms on which quotas may be allotted, held, transferred, altered, suspended or cancelled.
51. The Consolidated Order of the Milk Board is an expression of the rules under which the industry operates and through which the Board exercises its legislative authority. Part IV of the Consolidated Order deals with the transfer of quota. Between the date of the Milk Board’s decision in this matter and the hearing of this appeal, the October 1, 2009 version of the Consolidated Order was replaced with the new August 1, 2010 version. In this decision we reference the August 1, 2010 version which for the purposes of the matters in issue in this appeal is materially the same as the earlier version but reflects the change to Continuous Daily Quota.
52. Pursuant to section 17 of the Consolidated Order quota may only be transferred upon application to and with the approval of the Milk Board and, subject to certain exceptions, through the quota exchange. Those exceptions, which are referred to in this decision as off-exchange transactions, include “Transfers which constitute a Going Concern Sale”.
53. A “Going Concern Sale” is defined in the Consolidated Order as a “Transfer where Continuous Daily Quota is sold to a single Transferee together with the entirety of the Transferor’s interest in the associated dairy farm, subject to the surrender provisions of this Consolidated Order”.
54. The Milk Board submits that in acting to suspend most off-exchange transactions, including its suspension on April 8, 2010 of Going Concern Sales, it remained within its legislative authority because it has the ability to make decisions that could temporarily suspend or alter aspects of the Consolidated Order for purposes of enabling specific policy objectives or priorities. While this may be the case, the panel sees no need to address this point because the Consolidated Order provisions

themselves make it clear that all quota transfers are subject to Board approval and more specifically section 20 dealing with applications to transfer quota provides in subsection (5) that the Milk Board may suspend the approval of transfers for a definite or indefinite period of time. Nor has the appellant challenged the authority of the Milk Board to suspend going concern sales but says its case is different because of its special circumstances and an exception should be made to permit the transfer of its quota directly to the purchaser as part of the going concern sale of the Beckhope dairy farm. In essence what the appellant asks for is that its going concern sale be “grandfathered”.

55. Therefore, the principal question for the Milk Board’s consideration, as the first instance statutory decision-maker, was whether or not the special circumstances advanced by the appellant justified the exercise of discretion to approve, as an exception to the recent suspension of all off-exchange going concern sales, the off-exchange transfer of the appellant’s quota as part of the going concern sale of the Beckhope dairy farm.
56. The minutes of the July 6, 2010 meeting of the Board recording its decision with respect to the appellant’s request and its email of July 7, 2010 communicating its decision to the appellant do not directly address the special circumstances advanced by the appellant. They only note the Milk Board’s agreement that the policy to suspend off-exchange going concern sales must be applied equally to all producers and its decision to deny the appellant’s request. Nor did the Milk Board present evidence at the hearing to give us the benefit of the Milk Board’s reasoning with respect to the special circumstances put forward by the appellant.
57. An appeal, such as this one, to the British Columbia Farm Industry Review Board under the *Natural Products Marketing (BC) Act* R.S.B.C. 1996, c. 330 is in the nature of a full hearing into the merits of the case: see *British Columbia (Chicken Marketing Board) v. British Columbia (Marketing Board)*, 2002 BCCA 473 (CanLII) at paragraph 13. Therefore, with or without the benefit of reasons from the Milk Board, the principal question for our consideration remains the same as it was for the Milk Board – are there special circumstances sufficient to justify the exercise of discretion to approve, as an exception to the current suspension, the off-exchange transfer of the appellant’s quota as part of a going concern sale of the Beckhope dairy farm?
58. While not reduced to writing, an oral agreement to sell the dairy farm to Mr. Baars was confirmed by both Mr. Baars and Ron Beck and the existence of such an agreement was not disputed by the Milk Board. We accept that a valid agreement to sell the entire dairy farm as a going concern to Mr. Baars was made March 4, 2010 prior to the suspension of off-exchange going concern sales in April 2010.

59. We also accept that the reason the appellant did not seek approval for the transfer of the quota prior to the suspension of the going concern sale exception was a result of the unique circumstances involving the estate of Peter Beck. The dairy farm represents the major (and perhaps only) residual asset of the Peter Beck estate after specific bequests. The potential claims against the estate put into question who was entitled to this asset of the estate. The period during which claims could be made against the estate was still open and would remain so until early June. It was therefore considered necessary to first settle all disputes surrounding the distribution of the estate in order to be able to complete the sale of the farm. The agreement to sell recognized this and provided for the completion of the sale upon settlement of the disputes concerning the estate.
60. We agree that it was reasonable in these unique circumstances to delay seeking approval to transfer the quota. The usual Milk Board process calls for applications to transfer to be provided to the Board on or before the first business day of the month preceding the month in which the transfer is to occur. A request on or before April 1, 2009 to approve the transfer of the Beckhope quota as part of the going concern sale would therefore have been premature. Indeed the potential claim of Ron Beck's brother against the estate did not materialize until May 2010, just prior to the period for making a claim was to expire.
61. Had there been advance notice of the intention to suspend the going concern sale exception, we accept the appellant's evidence that the agreement to sell the dairy farm as a going concern would have been put in writing to comply with the Milk Board's requirement that there be a written agreement so that an application to transfer the quota as part of the sale of the dairy farm as a going concern could have been made before the suspension. We are uncertain how the ongoing estate issues would have been addressed in this situation but perhaps the Milk Board's permission would have been sought to delay the actual transfer until the potential claims against the estate had been resolved or some form of escrow might have been agreed to by all concerned parties.
62. However there was no advance notice. The evidence of the Milk Board was that following its approval on April 8, 2010 of a different off-exchange going concern transaction, the board proceeded immediately to suspend any further going concern transfers. It did so because of concerns that the transaction it had just approved was another attempt to avoid transferring the quota on the quota exchange so as to enable the transfer of a large block of quota to a single purchaser to be followed by sales of the land and cattle to third parties shortly after the quota transfer. No prior notice of the decision to suspend all further off-exchange going concern transfers was given because the Milk Board considered to do so would likely accelerate the number of going concern transactions similar to the one it had just approved coming forward as a means of avoiding the quota exchange.

63. The Milk Board's decision to suspend off-exchange going concern transfers without notice was in our view reasonable in light of the concerns surrounding use of the off-exchange transfer exceptions for purposes of avoiding transfers through the quota exchange. The lack of notice thus becomes just another factor to be taken into account when determining whether or not to exercise our discretion.
64. We turn next to the nature of the transaction proposed by the appellant. While described in the appellant's July request letter to the Milk Board as a transaction that would see the continuing use of the dairy facilities, it became apparent at the hearing that Mr. Baars' plan was to move the herd to his new barn after the sale was completed. Mr. Baars indicated that after moving the Beckhope herd to his new barn, his intention was to rent the Beckhope barn to a new farmer.
65. The panel notes that the definition of a going concern sale in the Consolidated Order does not address the intentions of the purchaser once the sale transaction is completed. Nor did the Milk Board provide evidence at the hearing of the policy considerations which led to the original decision to exempt going concern sales from the requirement to transfer quota through the quota exchange. We therefore conclude that the agreement to sell the entire Beckhope dairy farm – land, buildings, equipment, cows and quota – falls within the Consolidated Order definition of a going concern sale. In considering what might constitute permissible off-exchange transactions in future, the Milk Board and the Quota Exchange Committee may wish to have regard to how to address the issue of purchaser intent following a going concern transaction. A more principles based approach may be necessary and the Milk Board in dealing with competing policy objectives may need to move away from the position stated in its minutes of March 23, 2010 that it “does not want to be in a position of trying to determine which applications for partnership and corporate merger are appropriate and which are not”.
66. The appellant's argument that we should approve the off-exchange transfer of the quota because it will serve to keep the herd together and preserve the herd's genetics does not in our view constitute a special circumstance. The Becks are to be commended for their interest in and efforts toward breed improvement over the years and we can understand and appreciate their interest in seeing the herd kept together. While we agree purebred dairy cattle are important to the industry, it is not the industry as a whole which is our concern in this instance. We also note the MMPA's submission that dispersal of the herd will not be detrimental to the industry and agree with their comment that other breeders if interested could buy the cattle. Indeed the appellant's indication that other breeders had not expressed interest in the cattle because they already had enough cattle would appear to support the MMPA's view.

67. We agree with the respondent that the appellant's other arguments as to why the sale of the farm as a going concern would serve the industry better than marketing the farm in a piecemeal fashion are not germane to this appeal. Being arguments relating to the industry as a whole they may perhaps be relevant to the Milk Board's ongoing considerations as to whether or not and under what circumstances off-exchange going concern transactions might be allowed in future; they are not relevant for the purposes of this appeal.
68. This leaves us with the timing of the agreement to sell the farm as a going concern and the unique circumstances involving the need to resolve the potential claims to the residue of the estate before being able to complete the sale of the dairy farm.
69. Given that the Milk Board approved a different going concern transaction on April 8, 2010, with which it had grave concerns, we conclude the transfer of the Beckhope quota as part of a going concern sale of the family farm to Mr. Baars was very likely to have been approved had the application for that transfer been before the Milk Board on April 8, 2010.
70. We find the fact that the first discussions regarding the sale of the farm took place in the fall of 2009 and were later followed by multiple discussions culminating in the parties entering into a valid agreement to sell the dairy farm as a going concern on March 4, 2010 persuasive factors for grandfathering the transaction as an off-exchange going concern sale. We also find persuasive the fact that financing to complete the sale was in place by March 4, 2010. We find these factors when combined with the unique circumstance of potential multiple claims against the Peter Beck estate which called for a delay in completing the transaction until those matters were settled and the period for any further claims had expired constitute in this particular case sufficient special circumstances to justify the exercise of discretion to put the appellant in the position it would have been in if it had sought approval for a going concern transfer exception on April 8, 2010. This will also accord the appellant, as a matter of fairness, the same treatment afforded the producer whose application for an off-exchange going concern sale was approved on April 8, 2010 despite the Milk Board's concerns regarding that transaction.

## **CONCLUSION**

71. The appeal is allowed. As discussed, we find the special circumstances relating to the timing of the agreement to sell Beckhope Farms Ltd. as a going concern combined with the need to delay completion of the sale to settle potential claims against the estate of Peter Beck sufficient to justify the exercise of discretion to grandfather this transaction and approve the off-exchange transfer of the related quota.

72. We order that upon the appellant providing to the Milk Board the required documentation for a going concern transfer set out in the February 23, 2010 Notice to Producers, the transfer of Continuous Daily Quota as part of the Going Concern Sale of the Beckhope dairy farm pursuant to the oral agreement of March 4, 2010 be approved as an exception to the requirement to transfer such quota through the quota exchange, subject to the surrender provisions of the Consolidated Order.

Dated at Victoria, British Columbia this 20th day of December 2010.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



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Suzanne K. Wiltshire, Presiding Member



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Ron Kilmury, Chair



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Ron Bertrand, Member