

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Supervisory Review Re:

Chicken Operating Agreement Amendments

AFFIDAVIT

I, **WILLIAM P. VANDERSPEK**, of 101-32450 Simon Avenue, Abbotsford B.C.,
SOLEMNLY AFFIRM AS FOLLOWS:

1. I am the Executive Director of the British Columbia Chicken Marketing Board (the “Chicken Board” or the “BCCMB”) and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be made upon information and belief and where so stated I verily believe them to be true.

2. Attached hereto are the following Exhibits that are referred to in the Chicken Board’s March 31, 2016 submission, some of which are referred to further below:

- (a) **Exhibit 1** is a true copy of the *British Columbia Chicken Marketing Scheme*, B.C. Reg. 188/61;
- (b) **Exhibit 2** is a true copy of minutes of the September 5, 2012 Pricing and Production Advisory Committee (“PPAC”) meeting;
- (c) **Exhibit 3** is a true copy of minutes of the January 17, 2013 PPAC meeting;
- (d) **Exhibit 4** is a true copy of minutes of the May 8, 2013 PPAC meeting;
- (e) **Exhibit 5** is a true copy of minutes of the September 19, 2013 PPAC meeting;
- (f) **Exhibit 6** is a true copy of minutes of the November 14, 2013 PPAC meeting;
- (g) **Exhibit 7** is a true copy of the minutes of the April 16, 2014 PPAC meeting;
- (h) **Exhibit 8** is a true copy of the minutes of the December 16, 2014 PPAC meeting;
- (i) **Exhibit 9** is a true copy of the minutes of the February 19, 2015 PPAC meeting;

- (j) **Exhibit 10** is a true copy of the minutes of the November 24, 2015 PPAC meeting;
- (k) **Exhibit 11** is a true copy of notes from the Chicken Board's files of an August 16, 2011 meeting between the Chicken Board and BC processors respecting differential growth;
- (l) **Exhibit 12** is a true copy of notes from the Chicken Board's files of a May 3, 2012 meeting between the Chicken Board, the British Columbia Chicken Growers Association and the PPPABC;
- (m) **Exhibit 13** is a true copy of notes from the Chicken Board's files of a November 19, 2012 meeting between the Chicken Board and PPPABC;
- (n) **Exhibit 14** is a true copy of notes from the Chicken Board's files of an April 18, 2013 meeting between the Chicken Board, SMAC and PPAC;
- (o) **Exhibit 15** is a true copy of notes from the Chicken Board's files of a May 29, 2015 meeting between the Chicken Board and processors;
- (p) **Exhibit 16** is a true copy of the March 21, 2016 report entitled *Comparison of Projected Allocation Growth Using Current Differential Growth Formula to Pro Rata Allocation*, prepared for the Chicken Board;
- (q) **Exhibit 17** is a compilation of true copies of letters sent by Chicken Board chairs to BC processors obtained from the Chicken Board's files;
- (r) **Exhibit 18** is a Farm Products Council of Canada *Complaint Committee's Final Report and Recommendation* dated September 2014
- (s) **Exhibit 19** is a Farm Products Council of Canada *Complaint Committee's Final Report and Recommendation* dated September 2015.

3. I have been the General Manager (now Executive Director) of the BCCMB since 2004 and served as an appointed member of the BCCMB from March of 2003 to March of 2005.

From July 1974 to present, I have been actively employed and involved in various aspects of the BC Chicken industry.

4. Since the commencement of my role as General Manager/Executive Director of the Chicken Board, I have been closely involved in the allocation process provided for in Schedule B to the Federal-Provincial Agreement for Chicken (the "Operating Agreement").

5. The process provided for in the Operating Agreement contemplates that British Columbia processors provide an allocation amount to the BCCMB and that the BCCMB then makes a recommendation, within the stated regional range limits of the Operating Agreement, to the BCCMB Price and Production Advisory Committee ("PPAC"). The PPAC is a committee constituted under the *BC Chicken Marketing Scheme*, a copy of which is attached hereto as Exhibit 1. The PPAC is comprised of an equal number of grower and processor representatives, an independent chair appointed by the BCCMB and other members as required.

6. After receiving the advice of the PPAC, the BCCMB forwards to the CFC the total estimated requirements of the British Columbia chicken industry. The CFC then meets and sets a national allocation, which in turn results in an allocation of quota to British Columbia for the period. The BCCMB then allots the British Columbia allocation to its chicken growers on a pro-rata basis in relation to each grower's quota holdings. British Columbia processors then purchase the total quota volume of live chicken from the growers.

7. In addition to the domestic national allocation, there is some additional imported chicken available to processors to purchase. Some types of chicken, such as spent fowl, are not subject to import restrictions. BC processors do not provide any information to the BCCMB with respect to the amount of spent fowl that is imported, in which province any spent fowl is used and/or sent for further processing.

8. Spent fowl imports are taken into account when setting the national allocation as this information is available to CFC. Each quarter, CFC staff provides a spent fowl report that is compiled by Agriculture Canada that shows the amount of fowl processed domestically and imported on a year to date basis and as it compares to the same time period in the previous year. This report is provided to all CFC directors and circulated widely in the industry as well as

discussed at CFC allocation meetings.

9. The majority of chicken products are subject to import restrictions which impose duty on imports. Pursuant to its commitments under the North American Free Trade Agreement and the World Trade Organization, Canada has in place a Tariff Rate Quota ("TRQ") for imports of chicken and chicken products which permit a predetermined quantity of chicken to be imported into Canada at a lower rate of duty.

10. The TRQ program is administered federally and without the involvement of the BCCMB. However, due to my involvement in the national allocation process, I have some understanding of the manner in which the TRQ system operates. At present, the amount of TRQ available is equal to 7.5% of the previous year's national domestic allocation.

11. TRQ is allocated to three groups: (a) the traditional group, (b) the processor, distributor and food-service group; and (c) processors of chicken products not on the *Import Control List* ("non-ICL"). Allocation to the traditional group is equal to the quantity allocated to this group in the previous year, adjusted for under-utilization. Allocation to processors in the processor, distributor and food-service group constitutes 62.5% of that group of TRQ and is available to all processors who process at least 250,000 kg per year. To the extent allocation is made based on processor market-share, the market-share is calculated based on produce that have been processed in Canada owned and operated by the processor. Accordingly, where a processing plant located in British Columbia is owned and operated by a company based in another province, the processor's entire TRQ allocation is made to the province in which the company head office is located. Processors are eligible for only one allocation of TRQ except for those who are eligible for a non-ICL allocation may qualify for an allocation under that category as well as the processor category.

12. Transfer of TRQs is permitted between allocation holders with the approval of the Minister. The Chicken Board is not formally made aware of such transfers. In practice, the Chicken Board is aware anecdotally that certain British Columbia processors may sell their TRQs to processors in eastern Canada in part because transportation costs from major areas of American production make it more economical for TRQs to be used in eastern Canada.

13. TRQ is a national program and usage of TRQ has always been, and I anticipate will continue under the proposed amendments to the operating agreement to be, taken into account in setting the national allocation. In order to permit usage of TRQ to be used in setting the national domestic allocation, Chicken Farmers of Canada compiles and circulates information each week about national year-to-date import permit issuance. An example of a recent such report is attached hereto as **Exhibit 20**.

14. At the CFC allocation meeting, all directors are fully aware of the amount of TRQ that has been imported as compared to a pro rata monthly rate of import of the total TRQ allocated. If the amount of TRQ is very high or very low as compared to the pro rata rate of imports, CFC will know that more or less than expected will come in each week for the balance of the year. This factor is then taken into account when settling allocation and is part of a full market update that is provided to the CFC directors by CFC staff.

15. No information is available to the Chicken Board as to the amount of TRQ held and/or used by each BC processor. My understanding is that processors consider this information to be proprietary and they have never, to my knowledge, been prepared to provide it to the Chicken Board. BC processors have never revealed to the BCCMB how much TRQ they own or in which province they utilize their TRQ.

16. Even if information about the amount of TRQ allocated to each province were available, it would not be of assistance to the BCCMB in determining the total supply of chicken to processors in British Columbia for a number of reasons.

17. First, TRQ may be transferred from one processor to another with federal government approval but information about any transfers by BC processors are not made available to the BCCMB. In practical terms, the Chicken Board understands anecdotally that there may be sales of TRQ from BC processors, food service and distributors to other parts of Canada.

18. Second, some significant BC processors have operations and/or head offices in other provinces. The TRQ may accordingly be attributed to another province depending on the corporate structure of a particular processor, regardless of whether the TRQ is in fact used in British Columbia, another western province, or elsewhere in Canada.

19. Third, TRQ imports by province indicate only the point of entry into Canada, not where the product is actually processed, sent for further processing or sold.

Inclusion of Specialty Production in Allocation

20. Since the current Operating Agreement was entered into, the allocation system has evolved to include specialty production. Following, FIRB's 2005 Specialty Review, specialty production previously produced under permit was brought into the quota system. When this occurred, specialty production was made as part of BC's ordinary allocation as that was the only allocation available to British Columbia at that time. To account for the addition of the specialty production to its quota base, BC received a special adjustment to its base so at that time there was no impact on the mainstream domestic allocation.

21. Over the ensuing ten year period the specialty production grew (essentially doubled) without any adjustment to base, the effect of which was to cannibalize BC's mainstream allocation to accommodate the growth in the specialty sector. In 2013/2014, the BCCMB approached CFC to request that a separate specialty allocation be provided to British Columbia. The result of CFC's approval of this request was to remove the specialty production from mainstream, providing British Columbia with a separate specialty allocation in addition to its mainstream allocation. This had the effect of immediately returning approximately two million kilograms of allocation per year to mainstream growers and processors and will permit the BC specialty chicken sector to grow beyond current levels without further impact to the mainstream growers and processors. A copy of a communication sent by the Chicken Board to the industry describing these changes to the specialty allocation is attached hereto as **Exhibit 21**.

Proposed Amendments to the Operating Agreement

22. For the past several years, there have been difficulties with the current Operating Agreement and there has been discussion at the CFC table about amending the terms of the Operating Agreement to resolve some of these difficulties. Starting in approximately 2012, there were intense negotiations between teams representing all ten provinces, including an intensive mediation process in 2014.

23. One of the problems with the allocation process in the current Operating Agreement

from BCCMB's perspective has been the failure of BC processors since approximately 2010 to supply market requirements to the Chicken Board as part of the allocation setting process.

24. As contemplated in the Operating Agreement, each allocation period, the chair of the Chicken Board writes to BC processors to solicit individual processor requests for the level of production for the upcoming quota period for both market development and domestic production. Some recent examples of these letters are attached hereto as Exhibit 17 (Exhibit pages 117 – 155). Since approximately 2010, British Columbia processors have failed to respond to these letters and have refused to provide information about requested allocation or market needs to the Chicken Board in connection with the allocation process. In part as a result of this position, the domestic allocation has not been able to be set in the manner contemplated by the Operating Agreement and it has been set largely on a pro rata basis.

25. The difficulties with the current allocation system also included the failure to consider comparative advantage in the allocation process and the dissatisfaction of Alberta with the method of allocation, illustrated by Alberta's withdrawal from the national allocation plan.

26. The negotiation of the current proposed amendments to the Operating Agreement were hard fought and included a great deal of consultation by the BCCMB with stakeholders including growers and processors. All industry stakeholders, including the PPPABC were consulted and kept apprised during the process of negotiating the proposed amendments and the feedback of stakeholders, including processors was taken into account by the Chicken Board. Minutes of certain meetings reflecting discussions and consultation with stakeholders about the process are attached hereto as Exhibits 2 – 15 (Exhibit pages 12 – 106).

27. There were numerous other consultations and discussions with industry stakeholders beyond those formally documented in meeting minutes. By way of example, with respect to further processing, the Chair of the Chicken Board spoke more than once to Mr. Blair Shier, CEO of JD Sweid and chair of the Further Poultry Processors Association of Canada (FPPAC) during the development of a further processing component of the proposed amendment. The Chicken Board sought Mr. Shier's opinion on: whether inclusion of a further processing component would benefit BC, what percent of Canadian further processed products came from BC, what products should be included/excluded from this calculation, and whether an

independent survey of further processors might yield reliable volume information. Some information was provided including an estimate that 12-14% of further processed products came from British Columbia. The BCCMB Chair had similar conversations with other industry executives and staff of FPPAC.

28. In respect of further processing, in order to provide time for an independent consultant to conduct an industry survey a temporary methodology for A-127 to A-132 was implemented. It was agreed to allocate the further processing component as follows: 50 percent by the number of further processing plants in a province based on CFIA data and 50 percent by the 24 month average of further processing storage stocks. This temporary methodology did not work to the advantage of BC.

29. An independent consultant was retained to conduct a survey of processors to determine provincial production volumes. The Chicken Board was as critical of the methodology as were the processors. This study was cancelled due to lack of cooperation from processors across Canada.

30. On December 3, 2015 the directors of CFC unanimously agreed to allocate the further processing component among provinces according to an agreed percentage. BC received 14.069 percent of the national volume. This percentage is very similar to the estimate by Mr. Shier in his discussions with the Chair of the Chicken Board. Although BC processors have claimed that a large proportion of further processed product sold in BC through both retail and food service originates from outside of BC, they have never documented where they sell their further processed products. As there are no barriers to product flow the Chicken Board assumes that BC products are also sold in other provinces.

31. In part in response to concerns expressed by the processors about the impact of the proposed amendments on BC's allocation, the Chicken Board also retained Ference & Company to analyze the projected allocation under the proposed amendments to the Operating Agreement and the status quo. The report is attached hereto at Exhibit 16 (Exhibit pages 107 – 116).

32. Over the course of the negotiations, while the BC processors frequently expressed dissatisfaction with the various allocation models proposed, they failed to endorse any concrete

alternative proposal until late in the negotiations. The proposal the processors ultimately endorsed was the Differentiated Regional Allocation model ("DRA"), which was developed by representatives of the Chicken Board, including myself, together with the processors. While the Chicken Board had been satisfied that the proposed amendments to the Operating Agreement, without the inclusion of the DRA, was in the interests of BC's chicken industry, the Chicken Board was prepared to support the inclusion of the DRA model at the CFC table in order to accommodate the processors' concerns.

33. Discussion of the DRA model was scheduled for consideration at the September 2015 CFC meeting and was to be presented by a processor representative. However, the processor representative who was to speak to the DRA proposal failed to appear at the CFC meeting, leaving the proposal instead (without advance notice) to be presented to CFC by me.

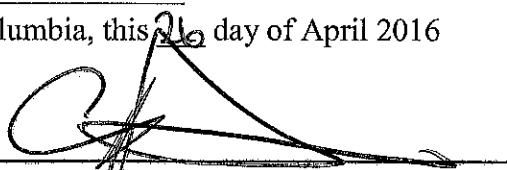
34. I spoke in favour of the DRA proposal; however despite my efforts, the DRA was not accepted as a viable proposal at the CFC table. There was no consensus around the DRA model even among the Canadian processor community and it was apparent at that meeting that it would not be possible to reach agreement to a modification that to the proposed amendments that would incorporate the DRA model.

35. While the BCCMB was of the view that adoption of the DRA model would have been consistent with BC's overall interests, particularly if its adoption would have led BC processors to endorse adoption of the overall amendments, in the face of an inability to achieve consensus around the DRA model, the BCCMB was required to consider whether BC's interests-including the interests of BC processors-was better served by supporting the proposed amendments around which a consensus had developed or by refusing to participate in any amended operating agreement that did not incorporate the DRA model.

36. In deciding to seek leave from the Farm Industry Review Board to sign the amendments to the Operating Agreement in the form proposed, the Chicken Board has considered a number of factors, including the concerns raised by the BC processors in this Supervisory Review and as described in the SAFETI prepared by the Chicken Board and the board's submissions filed in this matter.

37. At the March 2016 meeting of Chicken Farmers of Canada, and subsequent to the commencement of this Supervisory Review, the provincial boards agreed that under the amended operating agreement, if adopted, there will not be a special vote held unless all ten provincial boards are present.

AFFIRMED BEFORE ME at
MISSION in the Province of British
Columbia, this 26 day of April 2016


A Commissioner for taking Affidavits
in British Columbia


William P. Vanderspek

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