

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT*
AND A SUPERVISORY REVIEW OF THE
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION
CENTRAL VANCOUVER ISLAND AGENCY DESIGNATIONS

DECISION

January 7, 2013

INTRODUCTION

1. V.I.P. Produce Ltd. (VIP) and Vancouver Island Farm Products Inc. (VIFP) separately appealed the April 27, 2012 BC Vegetable Marketing Commission (Vegetable Commission) decision¹ concerning their agency designations. VIFP appealed the exclusion of storage crops from its new agency designation, and VIP appealed the revocation of its agency designation effective May 5, 2012. Subsequently, an Interim Agreement to allow marketing by both agencies was put in place and the appeals held in abeyance.

2. As noted in the November 16, 2012 BC Farm Industry Review Board (BCFIRB) appeal panel letter directed to the Vegetable Commission, VIP and VIFP:

The designation of agencies and the consequent delegation of authority by a commodity board or commission to those agencies is a significant decision that under s. 8 of the NPMA Regulations requires the prior approval of BCFIRB.

The regulatory and agency structure of the British Columbia vegetable industry has been the subject of several reviews over the past number of years. The VMC also commissioned a January 30, 2012 ‘Opportunities Assessment of British Columbia’s Vegetable Sector’ that reports on marketing, regulatory, governance and other challenges and opportunities for going forward. I am not convinced that the status of these two agencies should be decided without taking this broader context into account as part of the decision-making process.

3. On November 21, 2012 a BCFIRB appeal panel determined that the subject matter under appeal would be more appropriately dealt with in a supervisory process. BCFIRB may refer subject matter under appeal to a supervisory process under section 8(8) of the *Natural Products Marketing (BC) Act (NPMA)* which states as follows:

If, after an appeal is filed, an appeal panel considers that all or part of the subject matter of the appeal is more appropriately dealt with in a supervisory process under its supervisory power, the appeal panel, after giving the appellant and the commodity board or commission an opportunity to be heard, may defer further consideration of the appeal until after the supervisory process is completed.

4. It is apparent from the appeal panel’s November 21, 2012 letter that “all” of the subject matter of both appeals has been referred to the supervisory process as being more appropriately dealt with in such a process. This reflects that the two appeals are inter-related, and that their resolution is not so much about determining “rights” as it is about considering important systemic and structural economic questions relating to the marketing of regulated vegetables on Vancouver Island (Island) and provincially. As the appeal panel noted, even if the appeals had not been filed, BCFIRB would have been required to approve the designation of any new agency, a supervisory responsibility arising from s. 8 of the *NPMA* Regulations:

¹ Available on the BC Vegetable Marketing Commission web site.

Notwithstanding anything to the contrary contained in any scheme, every designation of an agency heretofore made by a marketing board shall be effective only until December 31, 1975, unless approved in writing by the Provincial board and no designation of any agency thereafter shall be effective unless approved in writing by the Provincial board.

5. Section 8 of the *NPMA* Regulations is just one aspect of BCFIRB's general supervisory authority, set out in s. 7.1(1)(a) of the *NPMA*: "The Provincial board has general supervision over all marketing boards or commissions under this Act". This authority authorizes BCFIRB, as supervisor, to review and issue directions regarding significant specific or systemic issues arising in a regulated industry. Section 7.1(2) in turn allows the supervisory power to be exercised in a flexible way, suited to the circumstances, stating that the Provincial board "may exercise its powers under this section at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances."
6. In this case, BCFIRB sought and received input from industry stakeholders through a public submission process as outlined in the November 26, 2012 BCFIRB case management letter. Written submissions were received from the Vegetable Commission, VIP, VIFP, and Rage's Farms Ltd. Oral submissions were received at a December 13, 2012 meeting from the Vegetable Commission, VIP, VIFP, BC Fresh Vegetables Inc. (BC Fresh), and Rage's Farms Ltd. BCFIRB consulted industry documents such as the "BC Vegetable Marketing Commission 2010-2012 Strategic Plan" (Vegetable Commission Strategic Plan) and "Opportunities Assessment of British Columbia's Vegetable Sector" (Opportunities Report). Additional material considered included BCFIRB correspondence with the parties, BCFIRB staff consultation and other relevant materials.

ISSUE AND SCOPE OF REVIEW

7. The key issue on this review is whether the Vegetable Commission's decisions concerning the agency designations of VIP and VIFP were made in accordance with sound marketing policy.
8. While this issue appears straight forward, a principles-based decision grounded in sound marketing policy required consideration of several larger questions, including:
 - a. the direction of the BC regulated vegetable industry;
 - b. the direction of the Vancouver Island regulated vegetable industry;
 - c. the Vancouver Island regulatory structures which are most strategic and effective at this time, and into the future,
 - d. the governance and overall accountability expectations of the Vegetable Commission in respect to agencies; and,
 - e. the governance and overall accountability expectations of agencies;

BACKGROUND

Procedural history

9. Incorporated in 1988, VIP (approximately 25 producers at the time) was designated as an agency to market storage crops. In 2004, VIP was approved by the Vegetable Commission to market greenhouse vegetables. Prior to 2012, VIP sold produce for 10 growers (storage and greenhouse crops). In 2012 VIP marketed potatoes for 1 grower. VIP is a long-established name on the Island.
10. In November 2011 four of the ten VIP regulated growers applied to the Vegetable Commission to transfer from VIP to a “to be determined” agency. In December 2011 growers associated with VIP filed a notice of intent with the Vegetable Commission to create a new agency, VIFP, in the Central Vancouver Island (CVI) area to market storage and greenhouse crops. Irreconcilable differences were cited as the reason for seeking a new agency. Subsequently, the Vegetable Commission offered alternative dispute resolution support but not all parties accepted.
11. On April 25, 2012 the Vegetable Commission held a hearing regarding VIFP’s agency application. Intervenors included VIP, BC Fresh Vegetables Inc. (BC Fresh), Island Vegetable Co-operative Association (IVCA) and Okanagan Grown Produce Ltd (Okanagan Grown).
12. The Vegetable Commission’s decision recommended that VIFP be designated as an agency for marketing greenhouse vegetables only, and revoked VIP’s agency designation as of May 5, 2012. Storage crop growers were directed to transfer to either BC Fresh or IVCA, both of whom are currently designated to market storage crops.
13. Both VIFP and VIP appealed these decisions to BCFIRB. As the Vegetable Commission’s decisions and the related appeals came at the start of the growing season, BCFIRB facilitated and approved an Interim Agreement (June 1, 2012), allowing both VIP and VIFP to operate on an interim basis marketing both storage and greenhouse crops until no later than December 31, 2012. This agreement provided time to see whether it was possible to facilitate a longer-term resolution of the issues involved, including establishing adequate agency governance measures to forestall similar problems in the future. The appeals to BCFIRB were held in abeyance by agreement.
14. A BCFIRB member and staff entered into facilitation discussions with the Vegetable Commission, VIP and VIFP. A confidential Agreement in Principle, addressing interim marketing issues and supporting a mediated process to resolve outstanding concerns and examine future agency options, was signed in October 2012. Subsequently, that agreement failed and the appeal processes resumed.
15. As noted above, the BCFIRB appeal panel referred matters in the appeals to BCFIRB in its supervisory capacity on November 21, 2012.

BC regulated vegetable industry

16. To provide proper context for our decision, it will be useful at the outset to review certain facts regarding the provincial and regional regulated vegetable industry.
17. First, some definitions. Under the *British Columbia Vegetable Scheme* (Scheme), “regulated product” is defined as meaning “vegetables, and includes potatoes...” In turn, the Consolidated General Order of the Vegetable Commission specifies “storage crops”, “processing crops” and “greenhouse crops” as being regulated:
 - "Storage Crops"** (formerly **Root Crops**) include beets (tops off), green cabbage, white (purple top) turnips, yellow onions, and potatoes (all types and varieties) when the end use is not for seed.
 - "Processing Crops"** includes peas, beans, corn, broccoli, Brussels sprouts, cauliflower, potatoes (all types and varieties) and strawberries when the end use is manufacturing/processing.
 - "Greenhouse Crops"** includes cucumbers (all types), tomatoes (all types), peppers (all types), and butter lettuce.
18. As of 2008 there were over 10,000 ha of land producing about 169 million kg per year of regulated vegetables, resulting in \$73 million in income to BC growers. In 2010, the greenhouse sector saw about \$276 million in farm gate value, and employed more than 3,200 people, with exports making up about 65% of sales.
19. Overall, BC produces about 2.7% of the volume of all field vegetable crops, and 24% of greenhouse crops in Canada. The greenhouse sector saw rapid expansion starting in the early 1990s. Field vegetables saw more modest growth during the same time period, and suffered from vulnerability to weather.
20. BC is a high cost producer with a limited growing season. These are significant factors affecting the competitiveness of BC vegetables against imports of fresh field vegetables, 80% of which come from the US. The majority of fresh vegetables are imported between November and June from competing jurisdictions with lower production costs and longer growing season.
21. Over 40% of potatoes sold in BC are from the US. Neighbouring states have over 202,000 ha in potato production, while BC has approximately 2,600 ha. BC enjoys an anti-dumping duty on potatoes, but this duty expires in three years and it is open to question whether it will be renewed. There is also suggestion that federal packaging restrictions, which help moderate entry of US potatoes, may be removed by 2014.
22. The area planted for storage crops has varied since 1990. Potatoes, with the most area planted, saw a steady increase up to 2002, followed by a decline to a steady state of around 2,600 ha today. Other storage crops show a fairly steady state or

- moderate increase (parsnips, rutabagas and turnips, beets). Carrots and cabbage have varied between 200 and 300 ha. Overall, BC does not have a significant portion of land in storage crop production, especially in comparison to other jurisdictions.
23. The area planted in processing crops has generally declined since 1990, except for Brussels sprouts and bush beans. Concurrently, BC's processing capacity continued to decline. Vegetable canning ended in BC many years ago. Some freezing remains (e.g. peas, bush beans, cauliflower, Brussels sprouts).
 24. The Vegetable Commission has noted that these industry realities exist alongside certain commercial and consumer trends, including the increasing need for accountability and traceability of production, an increasing need for communication and cooperation throughout the value chain, a growing consumer linkage between food and health, and ongoing demand for sustainable local production (e.g. buy local). The Commission also pointed to a consolidation trend, with fewer, larger retailers driving growers to merge to capitalize on efficiencies and market share. Smaller growers may become limited to selling at farmers markets and the farm gate.
 25. Risks identified by the Vegetable Commission include declining profit margins, on-going loss of processors and associated value-added opportunities, an aging farm population with few new entrants, labour shortages and reduced government research and development.
 26. The Opportunities Report (January 30, 2012) stated that:

... five risks and challenges are perceived to be acutely impacting the competitiveness of BC's vegetable industry and the involved businesses. The first four are: increasing operational costs, inconsistent quality, inconsistent supply, and lack of industry cohesion/co-operation. In one form or another, all of these factors result in the fifth critical issue: financial risks.
 27. The panel heard from the industry that there is a strong trend toward retailer consolidation and expansion (e.g. Walmart, Costco, Target). These retailers seek a reliable, consistent supply of quality produce at a competitive price. While these retailers capitalize on the "buy local" trend, they still require a sufficient supply of product that meets their business model. In general, buyers are exerting continuous pressure to lower prices both directly and through competition, along with supplying consistent volume.
 28. The panel heard that while Vancouver Island is a distinct market with excellent customer loyalty, the overall volume of regulated potatoes and other vegetables grown and marketed is declining. Despite having some of the highest production costs in North America, Island growers see better than average returns as compared to the BC industry as a whole. Returns were attributed to customer loyalty and the Island direct-to-store marketing approach. Presently there are 4

agencies marketing on the Island (VIP, VIFP, IVCA, BC Fresh). Thrifty Foods is the major buyer of Island regulated vegetable production. Thrifty Foods is now owned by Sobeys, one of only two national grocery retailers in Canada, and a wholly-owned subsidiary of Empire Company Limited. It is unknown whether Thrifty Foods will remain a loyal local customer or if the parent company will seek alternative supply and purchasing arrangements in the future.

29. Overall, the Opportunities Report observed that:

[a] lack of meaningful data exists on the nature, size and productivity of BC's vegetable industry, and the performance of value chains which together comprise the industry.

The panel sees the Vegetable Commission starting to address this concern in its 2010-2012 Strategic Plan, along with production of the Opportunities Report. However, continued work is needed in order to fully address questions regarding the future of BC's vegetable industry and what role the regulated system needs to play.

30. At this time the panel observes a commercial industry facing considerable increasing competitive pressure, both provincially and on the Island, to meet market demand for a sufficient volume of quality local vegetables on a consistent basis. Competing on price and volume alone is not sufficient. It is clearly in the industry's interest to make collaborative efforts to cultivate and expand, where possible, brand loyalty and associated customer satisfaction.
31. Although work has started in terms of the Vegetable Commission Strategic Plan and the Opportunities Report it is not clear what the industry trends and risks mean for the regulatory system, and how the system must adapt provincially and regionally to meet sound marketing policy in the public interest.

VEGETABLE COMMISSION – AUTHORITIES AND RESPONSIBILITIES

32. Under the Scheme, the Vegetable Commission may regulate all vegetables grown in the province. At this time storage, greenhouse and processing crops, as defined in the Vegetable Commission General Orders, are regulated "south of the 53rd parallel north, including Vancouver Island and the Gulf Islands and excluding the Queen Charlotte Islands".
33. The legal authority assigned to the Vegetable Commission, as first instance regulator of the BC vegetable industry under the Scheme, imposes a corresponding responsibility to ensure that this authority is exercised in accordance with fundamental principles of good governance and sound marketing policy in the public interest.

AGENCIES - AUTHORITIES AND RESPONSIBILITIES

34. Under s. 11(1)(a) of the *NPMA*, boards and commissions may designate agencies through which a regulated product can be produced, packed, stored, transported or marketed. The Vegetable Commission possesses all of the powers listed in s. 11 of the *NPMA*: Scheme, s. 4.
35. Agencies are a vehicle for marketing regulated product. Like registered growers, agencies are subject to the terms, limitations and conditions governing their agency designation. Like growers, agencies are subject to the oversight of the Vegetable Commission and BCFIRB: see the Scheme and *NPMA* Regulations, s. 4.
36. Agencies operate differently depending on the industry. In the vegetable industry, growers may transfer to any agency in the province through a process overseen by the Vegetable Commission. Agencies are free to market in any area of the province. Agencies need to ensure both market and grower interests are met in order to retain growers.
37. Agencies are intended to play a key role in marketing BC vegetables by harnessing the collective power of growers to develop and maintain market access for BC products. One of their front line roles is to ensure that marketing is conducted in an orderly fashion according to the Vegetable Commission Consolidated General Order. Orderly marketing provides fair market access for all registered growers. Agencies are an important tool for the success of the regulated vegetable industry.
38. Given the powers they are granted and the responsibilities they are charged with exercising, it is incumbent upon agencies to ensure they operate within the basis of their legal authority, in accordance with the Vegetable Commission Consolidated General Order, and with good governance to deliver sound marketing policy in the broad public interest. Both the Vegetable Commission, in the first instance, and BCFIRB, play an oversight role.

CENTRAL VANCOUVER ISLAND AGENCIES

Vegetable Commission Role and Decision-making

39. A helpful summary of the overarching purposes of regulated marketing may be found in the Ministry of Agriculture 2004 Regulated Marketing Economic Policy, which states:

The regulated marketing system operates in the interests of all British Columbians. Boards and Commissions operating under the authority of the *Natural Products Marketing (BC) Act* are responsive to the needs of British Columbia producers, as well as to processors, consumers and other participants in the British Columbia food system.

40. While the Vegetable Commission did take the industry and growers into consideration in their April 27, 2012 decision, a proper regulatory decision regarding agency designation – whether that decision is to authorize a new agency or terminate an existing agency authorization – must be grounded in a clearly communicated vision and strategic direction for the regulated vegetable industry, including the Island. That vision needs to be integrated with a proactive approach that seeks to identify and resolve emerging issues and problems within the industry, including its agencies.
41. Overall, there were some key areas here where the Vegetable Commission processes could have been more strategic and accountable.
42. Although allegations concerning VIP governance and management were long-standing and well-known, the Vegetable Commission did not at any time conduct an agency review, as laid out in the Consolidated General Order, or write to VIP identifying issues of concern.
43. By the time the four VIP growers applied to transfer to another agency, the problem had become acute. Timeliness is an important part of dispute resolution. Offering alternative dispute resolution services at that late stage did not provide much opportunity for success.
44. We are now faced with seeking a solution that best accords with sound marketing policy in the face of what the panel is informed are ‘irreconcilable differences’ built over years between growers, and a lack of an articulated regulatory system vision and strategic direction. This is obviously concerning given the emerging industry realities and challenges we have identified above.
45. From the perspective of sound agency decision-making, it is disturbing that VIP and the other stakeholders were not informed that revocation of VIP’s agency designation was under consideration as part of VIFP’s agency application. The Vegetable Commission’s position that agencies be composed of more than one grower is not strong justification for failing to inform the relevant parties in this instance. The Commission Consolidated General Order (Part XIV para 10 – 16)

- clearly sets out a process for review of existing agencies. If the Commission decides to vary from this process, that is their discretion, but the immediate parties and stakeholders should be informed of the variance with supporting reasons.
46. The Vegetable Commission contended that the logical course of holding a hearing regarding VIP's agency designation was thwarted by the appeals, the Interim Agreement and efforts by all parties to engage in alternative dispute resolution. The panel points out that the April 27, 2012 decision did not make mention of a forthcoming process related to the revocation of VIP's agency designation, except for referral to BCFIRB. Once the Commission makes a decision, under legislation parties only have 30 days in which to appeal. If VIP did not file an appeal, its opportunity would have been lost. Revoking an agency designation is a significant matter and the Vegetable Commission, in our respectful view, did not demonstrate the proper transparency or accountability on that issue.
 47. Conflict of interest in Vegetable Commission decision-making was a serious issue raised in submissions. As BCFIRB has noted in the past, conflict of interest cannot be understood in regulated marketing in the same way as it applies in other contexts. The very structure of commodity boards, most of which still require a majority of elected producers, means that the legislation is prepared to accept a significant degree of "conflict" in the larger interest of producer governance in light of industry knowledge and expertise.
 48. Producer governance undoubtedly raises special challenges for commodity board members seeking to identify those situations where there might still be a special or unique conflict that exists over and above the fact that a person is a producer. However, until the legislation or schemes are amended, these are challenges that must be met if commodity boards are to function effectively. Unless there is a true disqualifying conflict, commodity board members must respect election results and must do their jobs to ensure, to the best of their ability and in good faith, the proper governance of the industry. BCFIRB recognizes that this can be difficult, and as such is available to assist and advise commodity boards in respect of conflict management.
 49. Although several parties suggested the Vegetable Commission form third party panels to make agency designation decisions, the legislation does not allow for such panels to make Commission decisions. The suggestion was also raised that this particular agency designation decision should have gone directly BCFIRB. As first instance regulator, it is the Vegetable Commission's responsibility to make the initial agency designation decision. Although BCFIRB has the authority to intervene, this is not generally an effective or strategic approach to industry level decision-making.
 50. The Commission continues to struggle with electing members from a shrinking pool of registered growers, and an even smaller pool of those interested in serving

as a Commissioner. We are told that one result is continuous difficulty in achieving a quorum of members with manageable conflicts when making decisions. BCFIRB has had numerous conversations with the Commission regarding conflict of interest, quorum and independent members over the years. The Commission stated it is beyond its authority to amend the Scheme to allow for the appointment of independent Commission members. While Scheme amendments must be approved by Cabinet, the Commission can recommend a Scheme amendment through a process supported by BCFIRB. Scheme amendments take time, but are unlikely to happen if initiative is not taken. We note that the Commission has very recently taken that initiative in a letter to BCFIRB, which we will refer to at the end of these reasons.

51. This part of our reasons has been focused on Commission decision-making and governance, which was important to address both for purposes of this review and going forward. That said, our findings regarding the Commission's process does not by itself dictate whether the Commission made the proper decisions as a matter of sound marketing policy. It is to that key question that we turn next.

Agency Discussion

52. As the panel stated earlier, current sound marketing objectives for the Island should be to maintain and grow brand loyalty and customer satisfaction through consistent, quality products marketed cooperatively, strategically and effectively.
53. The Vegetable Commission identified agencies as an effective tool for marketing BC regulated vegetables in an orderly fashion as part of the regulatory system. We agree. Without agencies, growers would be left to market independently, which would be contrary to their interests and the interests of the regulated industry. It follows that, to achieve their intended purposes, agencies must obviously operate strategically, effectively and inclusively in a transparent and accountable manner.
54. The Vegetable Commission Strategic Plan states that agencies are busy, and that requiring them to allocate resources to reporting to the Commission lacks immediate sufficient cost/benefit results. We do not agree. BCFIRB acknowledges that agencies, especially smaller agencies, are resource constrained. However, proper reporting to the Vegetable Commission is part of the privilege of being designated as an agency. It is only through such reporting that the Commission can in turn effectively exercise its responsibility in respect of the work of agencies and the overall regulation of the BC vegetable sector.

VIP and VIFP

55. This brings us to a discussion concerning what to do regarding the Vegetable Commission’s decisions with respect to VIP and VIFP. For the reasons that follow, we find that the only proper solution is an interim solution, followed by a longer term, more principle-based solution, the details of which are outlined below.
56. We begin by noting our agreement that the Vegetable Commission offered an accurate assessment of the VIFP agency designation application when it said that VIFP’s application was::
- ...the result of internal corporate friction [at VIP] as opposed to demonstrating to the VMC [Vegetable Commission] whether there is a market requirement for another agency and whether the designation of another agency would benefit the industry as a whole...
57. VIP contends that its former agency designation should be allowed to continue, and argues among other things that:
- Corporate governance issues should be addressed within VIP in accordance with its corporate governance rules and procedures, duties, rights and obligations.
 - The exiting VIP shareholders did not follow VIP corporate governance rules, procedures, duties, rights and obligations.
 - The core issue as between VIP shareholders was price pooling, not democracy and fairness.
58. There is weight to the suggestion that internal corporate friction in one agency should not be the key driver in designating a new agency. It would be contrary to the public interest to encourage disgruntled growers to simply “mutiny” by applying for a new agency every time they were unhappy. As raised earlier, if an agency is not meeting a grower’s business needs, growers may transfer between agencies. Agencies may market in any area of the province.
59. On the other hand, when relationships in an agency get to the point where they have become irreconcilable and even toxic, one has to question whether the existing agency – wherever the “fault” lies – can continue to effectively perform its mandate going forward and whether alternatives to the *status quo* need to be explored.
60. Where dissension has resulted in allegations on both sides regarding inappropriate conduct, problematic customer interactions, outstanding monies, product quality, and historical pooling disputes, as it has in this case, the regulator may be forced to give serious consideration to other means for marketing, including determining whether another agency would be ready, willing and able to fulfill the task.
61. Part of VIP’s arguments focused on resolving shareholder issues pursuant to standard articles from their time of incorporation. We are not confident that this is where the solution lies. For instance, BC Fresh pointed out at the April 25, 2012 hearing that its predecessor (Lower Mainland Vegetable Distributors Inc.) used

the VIP articles of incorporation to model its own governance and shareholder structures. When the number of shareholders contracted over time, the remaining shareholders became exposed to the risk that a single large shareholder could control corporate election outcomes – as happened with VIP. BC Fresh amended its articles of incorporation to avoid this risk.

62. We are not in a position to adjudicate the “right and wrong” of one side or the other on any particular allegation as between current and former VIP shareholders. What we are in a position to do is to state from a regulatory standpoint that if tension and dysfunction have begun to impair orderly marketing, the regulator is obliged to consider alternatives, which is what the Vegetable Commission did here.

63. This latter point having been made, we hasten to add that just because “internal friction” has come to the point of requiring a change to the *status quo* does not mean that the exiting shareholders who wish to form their own agency are necessarily qualified for agency status.

64. All of which brings us to VIFP, which started marketing in 2012. VIFP reported a successful year and indicated several growers (including un-regulated growers) were interested in joining VIFP if its agency designation was confirmed and included storage and greenhouse crops. VIFP’s submission presented a vision of

....a united group of Growers committed to producing a variety of premium-quality products while receiving fair returns, allowing for re-investment in farms, infrastructure, and production capabilities.

65. VIFP outlined a governance and corporate structure its principals believe will help ensure grower equality, inclusivity and hence transparency which would make VIFP an appealing opportunity for growers.

66. VIFP has only just started up. Its commitment to this structure perhaps remains to be seen. It is not entirely clear why this vision and structure was not pursued by the same parties under VIP. The same growers (and staff) who previously formed a significant part of VIP and who cited internal tensions as the reason for forming a new agency, are now proposing a positive future for growers and the industry should they receive agency status. The panel is aware that the contraction of VIP shareholders over time resulted in remaining shareholders being exposed to a single large shareholder controlling corporate election outcomes. However, VIP’s corporate structure was established in 1988 – there was more than adequate time for shareholders concerned about this voting structure to pursue amendments as a means of preventing the particular conflict now being presented as a reason for a new agency.

67. Be that as it may, there is also a fundamental question regarding VIFP, and that is whether VIFP can adequately perform the agency functions required to achieve the strategic purposes of the regulated vegetable industry.

68. On this issue, the Vegetable Commission clearly expressed, several times, that **neither** VIP nor VIFP have capacity to manage the complex delivery allocation system for storage crops that is established in the Vegetable Commission's Consolidated General Order. Given that the Vegetable Commission oversees the delivery allocation system and has extensive experience with the management and producers involved, we accept the Commission's opinion.

Conclusions and Directions

69. Although it was open to BCFIRB to exercise its supervisory authority under s. 7 of the *NPMA* to make final decisions regarding these individual agencies, we decline to do so given that there are significant unanswered questions with respect to the appropriate sound marketing policy framework for the regulated vegetable industry, including on the Island. As stated earlier, agency designation decisions must be grounded in a clearly communicated vision and strategic direction for the regulated vegetable industry. In absence of a vision and strategic direction, we have chosen to defer our final decision with respect to agency designations pending further review.
70. It is apparent to us in all the circumstances that there are difficulties with both agencies. In addition, the irreconcilable tensions described above in respect of the VIP agency make it unrealistic to attempt to force all the previous growers back into one agency structure. On the other hand, to operate with neither agency would deny CVI growers the opportunity to maintain a separate marketing identity pending further review of the vision and strategic direction for the regulated vegetable industry on the Island. In our view, the circumstances we are faced with can only properly be addressed by way of a two pronged approach – supporting interim marketing that adheres to regulatory system requirements, while a longer term solution is reached.

Short term agency designation order

71. To help ensure an Island identity is maintained in the CVI area over the short-term while recognizing information shortfalls, process concerns and time constraints, and recognizing as well that both agencies have acknowledged that they have been able to co-exist over the past several months, BCFIRB grants both VIP and VIFP interim agency designation to market storage and greenhouse crops until no later than December 31, 2013. Interim status is granted on the following conditions:
- a. That to support market stability during this interim period, the Vegetable Commission is to not approve grower transfers between VIP and VIFP unless satisfied the transfer application is fully supported, meets sound marketing policy and has BCFIRB prior approval. Growers remain free to apply to transfer to other BC agencies.

- b. That the Vegetable Commission will establish and communicate how it will monitor and assess VIP and VIFP over the interim period, including the necessary reporting requirements.
- c. That the Vegetable Commission may revoke either or both agency designations if it determines that either agency has breached these conditions, breached any legislation, regulation or the Consolidated General Order or is failing to make its best efforts to serve the market in a cooperative ethical and responsible manner.

Agency designation beyond 2013

72. To ensure sound and proper regulatory decision-making beyond 2013, the Vegetable Commission is directed to provide to BCFIRB a report for review and approval that outlines the vision and strategic direction for the Island regulated vegetable industry within the provincial context. To this end, the Commission is directed as follows:
- a. By March 1, 2013, submit to BCFIRB for approval a project plan and schedule.
 - b. Provide regular project updates to BCFIRB.
 - c. By November 31, 2013, submit to BCFIRB a final report with supported recommendations, for BCFIRB approval. The report must include, but is not restricted to:
 - i. A description of the consultation process, what issues were raised, and how the Commission project plan and recommendations address those issues.
 - ii. Commission recommendations as to the number and type of agencies, including the regulated products they are to market, which will best serve the Island.
73. While the Vegetable Commission is expected to take VIP and VIFP performance during this interim period under consideration in its Island strategy, the Commission is not restricted to recommending either or both agencies for agency designation, and may recommend a different agency(s) or other options that could effectively serve the interests of sound marketing policy.

Agency oversight

74. As a proactive step in preventing similar situations in the future, the Vegetable Commission is directed to review generally its agency accountability requirements (including reporting) and submit a report concerning this subject to BCFIRB before December 31, 2013.
75. The Vegetable Commission is expected to include agency accountability reporting in its annual principles-based reporting to BCFIRB.

Scheme amendment

76. On January 4, 2013, BCFIRB received a Vegetable Commission letter requesting that BCFIRB give immediate consideration to Scheme amendments to allow persons other than commercial producers to be Commission members. BCFIRB is prepared to actively address this issue. Recognizing that Scheme amendments are Cabinet decisions, and that stakeholder input will be a relevant part of such decision-making, BCFIRB will be in contact with the Vegetable Commission to move this issue forward as effectively as reasonably possible.

OUTSTANDING APPEALS

77. Section 8(8.4) of the *NPMA* states as follows:

If an appeal is deferred under subsection (8) and the supervisory process has been completed, the appellant may give notice that it intends to proceed with the appeal, and the Provincial board must proceed with and decide the appeal.

78. While it appears to us that this supervisory decision has addressed the core issues on the appeals, the parties to the appeals are to advise BCFIRB in writing within 15 days if they believe there are any outstanding issues that may still warrant consideration by way of appeal. If so, this matter will be remitted to the appeal panel for its consideration as appropriate.

Dated at Victoria, British Columbia, this 7th day of January, 2013.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



Ron Kilmury,
Chair



Ron Bertrand,
Vice Chair



Corey Van't Haaff,
Member