

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Supervisory Review re 2016 Amendments to Schedule "B" Operating Agreement for Chicken

AFFIDAVIT OF RON KILMURY

I, RON KILMURY, of 15879 Collingwood Crescent, Surrey, British Columbia, consultant,
SWEAR THAT:

1. I am a representative of the Primary Poultry Processors Association of British Columbia ("**PPABC**") and as such I have personal knowledge of the facts deposed to herein, except where stated to be based upon information and where so stated I verily believe those facts to be true.
2. I am past chair of the British Columbia Farm Industry Review Board ("**FIRB**") from June 2010 to November 2013, and I also was the Chair of the British Columbia Chicken Marketing Board ("**BCCMB**") from October 2004 to June 2010. I was Chair of the National Association of Agriculture Supervisory Agencies ("**NAASA**") from May 2012 to November 2013.
3. The *pro rata* allocations made by CFC since approximately 2006 have resulted in a significant supply imbalance in favour of Central Canada. The West has requested higher allocations than Central Canada to reflect the real growth of the Western markets. The markets in Central Canada have not experienced the same growth. As a result, when *pro rata* allocations are made at the national level, Central Canada obtains more supply than it needs and is able to use that additional supply to encroach on markets in the West. The additional domestic allocations received by Central Canada are then further supplemented by TRQ and fowl imports to give Central Canadian processors a significant competitive advantage over Western processors.
4. During my time as Chair of FIRB and NAASA I was privy to discussions with the Ontario Farm Products Marketing Council ("**OFPMC**"), the Ontario equivalent to FIRB, where Ontario took the position that while it would take more production, it would only do so if it came from the other provinces. In other words, Ontario was not growing its market independent of the other provinces, rather it was seeking to take market share from the other provinces.
5. In those discussions, I made inquiries into whether Ontario needed the additional allocation of 65 million kilograms and why Ontario would not consider new allocation, rather than a transfer of additional kilos from other provinces. I was told by the Chair of the OFPMC that "this was about strengthening Ontario."
6. The *pro rata* allocations since 2004 have prevented the Western processors from receiving the supply they needed to maintain their market share and to serve the growing Western consumer population, and the Western processors have experienced a significant incursion into their frozen and processed products in the Western retail market by processors from Central Canada. In addition, Central Canadian processors now dominate in the food service sector.

7. The BC processors have consistently expressed their frustration with the growing supply imbalance in favour of processors in Central Canada and the failure of CFC to use the differential allocation method in the current Operating Agreement. When presented with the MOU in the summer of 2014, the BC processors were dismayed to see that not only would the supply imbalance not be addressed, except in relation to Alberta, but it would be worsened. Additional production will move from the West to Ontario, and the effect of the new Operating Agreement will be to effectively continue *pro rata* allocations and supply imbalance for the next 10 years.
8. Sunrise and the Hallmark Group provided me with data on the volume of third party product that they have had to bring into their B.C. processing operations to meet current customer needs for the years 2013 to 2015. I aggregated these numbers and arrived at the following combined volumes:

2013 – 12,210,536 kg

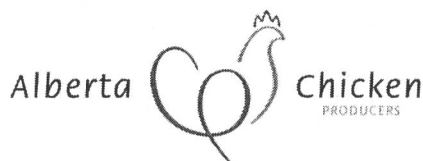
2014 – 8,616,045 kg

2015 – 10,280,352 kg
9. The volumes brought into BC by Sunrise and the Hallmark Group represent between 6-9% of the total domestic allocations for BC.
10. The Western processors do not have a seat at the CFC table. The Western processors rely on their boards to represent their interests at the national table. At a May 29, 2015 meeting of the Western boards and processors, the Western processors presented a proposal to amend the proposed amendments to the Operating Agreement to include differentiated regional allocation component (the "**DRA proposal**"). The Western boards agreed to present this proposal to the other provinces.
11. On September 2, 2015 at a CFC meeting in Ottawa the Western processors' proposal was introduced. The BCCMB in its submission is critical of the fact the processors did not attend to present the proposal. The processors did not attend because they were not advised that it was on the agenda.
12. As the representative of the processors who had presented the proposal to Western boards, if the processors were expected to be there, I would have attended as their delegate. However, I was not notified that the Western processors were expected to attend the meeting, nor was I asked to present the Western processors' DRA proposal to the CFC. I found out that the DRA proposal was going to be discussed only when the BCCMB contacted me the night before the meeting. At the time, I was in B.C. and could not make last-minute preparations to attend the meeting in Ottawa.
13. The minutes of the September 2, 2015 meeting which are attached as Exhibit B to the affidavit of Jeff McDowell in these proceedings, states that the Western provincial board managers would address feedback on the DRA proposal. However, to the best of my knowledge such follow up did not occur with the BCCMB. The only follow-up that I am aware of came from the Alberta Chicken Producers Board (the "**Alberta Board**") and the Further Poultry Processors Association of Canada ("**FPPAC**").
14. Attached and marked as **Exhibit "A"** to this Affidavit is a true copy of a letter dated September 11, 2015 from the Alberta Board regarding the DRA proposal.

15. Attached and marked as **Exhibit "B"** to this Affidavit is a true copy of an email chain dated October 14, 2015 between Robert de Valk of the FPPAC and me that contains the contents of a letter to the Manitoba Chicken Producers regarding the DRA proposal.
16. After the September 2, 2015 CFC meeting, Western processors did not pursue the DRA proposal further because of reports that the majority of the other provinces did not have an appetite to renegotiate the MOU. Western processors were left with a sense that the MOU was set in stone by that point.
17. The B.C. processors have no independent role in the national process. They rely on the BCCMB to advance their interests. CPEPC has a national role in advancing the interests of the processors across the country. The interests of the processors in Central Canada and the West are in conflict on the issue of supply share. Therefore, CPEPC cannot effectively advocate for BC processors. That role falls to the BCCMB, but it is not a role which the BCCMB has effectively pursued.
18. The processors are increasingly frustrated that the BCCMB looks to them to create regulatory solutions for the BC industry, when it is the BCCMB which has the jurisdiction to advance the industry in the best interests of all stakeholders.

SWORN before me)
at, British Columbia,)
on __/April/2016.)
)
_____)
A Commissioner for taking affidavits)
for British Columbia)

Ron Kilmury



September 11, 2015

Dear Western Provincial Board Managers of British Columbia, Saskatchewan and Manitoba:

Re: Differentiated Regional Allocation

The Alberta Chicken Producers (ACP) Board of Directors has reviewed and considered the *Differentiated Regional Allocation (DRA)* presentation; and, ACP offers the following feedback for consideration as requested at the September 2, 2015 Chicken Farmers of Canada (CFC) Meeting.

First and foremost, ACP wishes to make clear that it supports the current allocation agreement and proposed Operating Agreement amendments presented by CFC. ACP also acknowledges and understands that, in current form, the proposed Operating Agreement amendments are not acceptable to all parties.

ACP has been open to refining the DRA concept originally presented on May 29; and ACP continues to be open to exploring options that will lead to the successful conclusion and incorporation of the Operating Agreement amendments. The proposed addition of the DRA to base and proposed governance of the vote at CFC are two critically important concerns for ACP. ACP is also concerned and disappointed that this proposal has not been endorsed by the CPEPC at this time.

As stated at the May 29 meeting of the western boards and processors, and reiterated at the meeting on June 29, ACP is not supportive of a DRA that is added to base, and ACP is concerned that this concept has been included in the current presentation. ACP believes that adding the DRA to base distorts the integrity of the allocation agreement over time, particularly if added to base on a pro-rata basis; and potentially exposes the allocation setting process to rent seeking and gamesmanship, incenting parties to use the DRA to their advantage and dis-incenting parties to set the right domestic allocation.

ACP is also concerned that a special vote, as presented, will compromise CFC's allocation setting authority. ACP proposes that the CFC should retain ultimate discretion and authority in the setting of the total allocation.

Thank you for your consideration of these concerns. ACP values its participation in the national system and remains committed to working with the western provinces to put forth and refine options, including the DRA, which will support CFC in finalizing the Operating Agreement amendments. Please contact me at your convenience should you have any questions or wish to further discuss this matter.

Sincerely,

Karen Kirkwood, Executive Director
Alberta Chicken Producers

cc: Alberta Chicken Producers Board of Director

This is Exhibit "A" referred to in the
Affidavit of R. Kilmory
Sworn before me at.....
this.....day of.....

.....
A Commissioner for the
for British Columbia

From: Erina de Valk [erinadevalk@gmail.com]
Sent: October-14-15 11:28 AM
To: Ron Kilmury
Subject: Re: Oct 9 letter to MB Chicken Producers

Wayne Hiltz
whiltz@chicken.mb.ca
 Manitoba Chicken Producers

This is Exhibit " B " referred to in the
 Affidavit of R. Kilmury
 Sworn before me at.....
 this.....day of....., 20....

.....
 A Commissioner for taking Affidavits
 for British Columbia

Differential Regional Allocation (DRA) Proposal

In reviewing last month's activities, it was realized that FPPAC neglected to send to you and your colleagues our comments on the DA. The proposal was received and discussed but the final step of sending comments was missed. Our intention was to report back much sooner as requested. We are not sure where the proposal stands at this point, but perhaps our comments still can be useful. They are the following.

1. Underlying the DRA is the recognition that the recent changes to the allocation process to incorporate differential growth and specialty chicken allocation still do not fully address regional and companies' differences in growth and demand. We support and agree with this premise.
2. The key reason the current allocation system does not fully address demand is that neither the supply requests nor the supply distribution is firm-based but rather are provincially based. By this we mean that provinces submit supply requests and provinces allocate the supply available to processors in their province in various ways. Bottom-up, firm-driven demand, therefore, may not receive what is needed and it has to be purchased on the open market or the opportunity is lost. The trickle down approach to supply further processors is still a fact of life.
3. To add yet another element to the allocation system that fails to address this shortfall is not desirable. The DRA no doubt will be another step in the right direction but its weakness is that it also could be a source of misallocating in provinces where more than one primary process operates.
4. If the DRA could be modified to become a processor driven allocation proposal, FPPAC would be a strong supporter and we would be pleased to work with your group to achieve such an additional fine-tuning mechanism to add to the current allocation process. Such an approach is in place to cover further processing needs for turkey meat and it is working well although challenges in the distribution of processor driven requests remain.

Robert de Valk
 FPPAC

On Wed, Oct 14, 2015 at 2:14 PM, Ron Kilmury <rkilmury@shaw.ca> wrote:
 Could I request on behalf of western Canadian poultry processors an electronic copy of above referenced letter.

Thank you

Ron Kilmury
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