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BC Farm Industry Review Board
PO Box 9129 Stn Prov Govt.
Victoria, BC
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Attention: Wanda Gorsuch

Via Email: Wanda.Gorsuch@gov.bc.ca
firb@gov.bc.ca

Re: **2019-2020 Vegetable Supervisory Review**

Thank-you for the opportunity to comment further on the Vegetable Supervisory Review being conducted by the Farm Industry Review Board ("FIRB") following the release of the "What We Heard" document. This written submission is in addition to our April 30, 2020 submission and reinforces some of our earlier comments.

It was encouraging to hear from your consultations that the BC Vegetable Marketing Commission ("VMC") still has the support of the vast majority of the industry and "*generally makes good decisions*". We do not believe the system is broken despite recent legal challenges, but does require some modernizing.

While there are some good comments that have come out of your consultation process, we were disappointed by some suggestions that showed a lack of understanding of how the regulated system operates on a daily basis, specifically the Delivery Allocation system. There appears to be a lot of misconceptions and I trust there will be sufficient consultations prior to making any changes tied to these suggestions.

It appears the VMC should allocate resources to educate those within the regulatory supply chain about the operation of the overall system and the expectations under the General Orders. We believe this would be an important step prior to making any fundamental changes.

1. Commission Structure & Governance

Trust was a key element identified through the consultation process. To build long-term trust the VMC needs to develop clear policies through a timely, transparent consultative process, and then consistently enforce those policies. It should be noted that over the past year the VMC has made important improvements on policy development and enforcement. Also key to long-term trust and stability of the regulatory system is the need for timely decisions by both the VMC and FIRB. Currently the process can take months, or even years, before receiving closure. For FIRB to assist in developing solutions, they must understand that they have been, to some degree, part of the problem. The industry has generally become too litigious and bureaucratic. Supervisory reviews have been ongoing since 2015 and caused by a vocal minority. Trust and timely resolutions are not restricted just to the actions of the VMC.

All of the Commissioners are elected producers, working on behalf of the industry. They are some of the most experienced and dedicated producers in our sector and have invested significant time working on behalf of everyone in the industry. They have the respect of the vast majority of those that elected them. It is unfair for any Commissioner to be accused of bias or conflict of interest. Those perceptions or allegations stem from those in the industry that do not understand the regulated system or are wanting to advance their own interests at the expense of others.

BCfresh, as the largest storage crop Agency, has also been a target of some of this unwarranted criticism. And yet, in addition to supporting the move to an appointed Chair of the VMC, we have publicly advocated for the past 5-years for the appointment of an independent commissioner. This would help eliminate allegations and perceptions of bias. The delay by FIRB and the VMC in adding an independent Commissioner, has only added to these allegations, to the detriment of the elected Commissioners that have earned industry support. This must be rectified immediately.

Any appointed Chair or Commissioner must also have the trust and respect of producers. It is imperative that qualified candidates be vetted so trust can be built going forward, rather than relying on government political appointees who may not have the respect, support, or skill set required to do the job.

We also believe that the structure of the VMC must fairly represent the volume and supply associated with each growing region, while having a representative voice for those Districts ensuring regional concerns can be reflected. Suggestions, such as each Agency being represented on the VMC rather than producers, should not be considered. Nor should a restriction be added that Commissioners not be shareholders of Agencies. That restriction would make over 90% of producers' ineligible for election. Elected producers must always form the majority of VMC Commissioners as they are the stakeholders with the most to lose and also the most knowledge of the industry.

Recently, the VMC appears to be changing its decision-making process. Only greenhouse Commissioners can make decisions on storage crop issues and vice-versa. One questions why an elected storage crop producer would serve only to provide input and decision making on greenhouse related matters while not having their knowledge used for the benefit of their own sector. The same would pertain to greenhouse producers not being able to contribute on greenhouse industry related matters. It seems the pendulum of perceived conflict of interest and bias has swung too far. This will inevitably result in poor decision making by the VMC by not relying on the knowledge of those that were elected for that very purpose. Is FIRB going to require that chicken growers or dairy growers no longer be eligible to have input on related matters on their respective marketing boards? If not, why are these stringent decision-making parameters only being required of the VMC?

Instead of striving to reduce appeals over allegations of bias, not allowing Commissioners to utilize their direct knowledge of the industry will increase appeals due to poor decision making. It is very dangerous to go down this road and is resulting in the VMC becoming increasingly afraid of its own shadow in the decision-making process. Political expediency should not replace sound decision making.

The Commission's current election process often results in the acclamation of a candidate, making it obvious that additional qualified candidates are not putting their name forward. Why should they, with the increasing workload, allegations of bias, and Commissioners that are only asked to adjudicate matters outside their area of expertise?

Lastly, in addition to an appointed Chair, and an appointed Commissioner, we believe it would be valuable to combine the Processing Crop position and a Storage Crop position in District I. This would allow for the appointment of an independent Commissioner that would bring expertise in the area of governance and regulated marketing. This should result in a reduction in the number of disputes and appeals, and provide added transparency in the interest of Administrative Fairness and Natural Justice. We again suggest the structure outlined in the table below.

Proposed Commission Structure 2020			
Greenhouse Cucumbers	District 1	Even	Elected
Greenhouse Tomatoes	District 1	Odd	Elected
Greenhouse Peppers	District 1	Even	Elected
Vegetables + Processing Crops	District 1	Odd	Elected
Potatoes	District 1	Even	Elected
Regulated at Large	District 2	Odd	Elected
Regulated at Large	District 3	Even	Elected
Outside Director		Odd	Appointed
Chair		3-Year Term	Appointed

Under this proposed structure all crops and Districts would be represented. About 70% of the 7 elected members would come from District I, where over 95% of regulated product is grown. This structure also provides representation for Districts II and III. Shifting representation by District (rather than by crop) would provide greater electoral options given the limited number of Licensed producers in these regions. The VMC could then add an appointed Member providing an element of independence, and hopefully, specialized expertise. This would also provide the VMC flexibility when panels and quorums are required.

The recent, but overdue, reintroduction of Advisory Committees will assist the VMC with knowledge gaps and expertise, while improving decision making transparency. Advisory Committees often have the ability to identify issues before they become problematic or litigious.

2. Designated Agency Accountability

We are in support of Agency and Producer Vendor accountability, and VMC oversight within reason. We would like to reiterate that the BC industry is already the most regulated vegetable industry in Canada. There is a fine line between supervisory oversight and interference with daily market dynamics and company operations. BC Fresh is proud to have Agency accountability standards that go above and beyond those established by the VMC for a Licensed Agency.

As an Agency of the VMC, we have complied with and exceeded all Commission requirements, including;

- Record keeping required
- Levy collection and submission
- Minimum pricing
- Weekly pricing calls and market information sharing with the other Agencies
- Delivery Allocation management
- Pool management
- Reporting
- Food Safety – Trace-back and recall
- Annual Commodity Meetings
- Strategic Planning and Marketing Strategies
- Packaging Innovation and new varieties
- Governance – 6 elected grower Directors and 2 appointed outside Directors with 8-10 Board meetings annually.
- Annual Shareholder meetings and Special Meetings as required
- Grower Marketing Agreements with all growers
- Anti-dumping litigation leadership

We have a respectful and cordial working relationship with the other BC Licensed Agencies and enjoy working with them to the benefit of the entire industry. With 5 Licensed Marketing Agencies, and a relatively small industry in comparison to other regions, this ensures all growers have multiple marketing options.

We are strongly opposed to making Agency reporting public to supply chain entities as has been suggested. All Agencies are privately-owned companies. The produce industry is intensely competitive throughout North America and to suggest we should provide public report cards, or disclosure of our activities, would seriously impair our ability to manage and grow our businesses. Giving competitors insight into internal industry performance, strengths and weaknesses, would provide them an advantage. The BC industry is already bound by onerous reporting requirements, transparency, and scrutiny that is unique to the BC industry. Public reporting would aide our competitors and make our sector the laughing stock of the North American produce industry. Regulators must proceed with caution as we are an industry already suffering from regulatory fatigue. Well meaning but needless regulatory changes could do more harm than good.

There is a suggestion that the VMC monitor, or potentially preapprove, any imports by BC Agencies. BC Fresh, like many of the larger Agencies and marketers of produce in Canada, participate in annual programs with national retailers and food service companies. As year-round suppliers and category managers, we use these relationships to build opportunities and increase market share for BC growers, keeping the BC industry relevant on the national stage. We lead with BC supply and then backfill from other production areas if our local supply is extinguished due to climatic, or other economic, constraints. Limiting the ability to quickly source will ultimately harm BC producers by impacting Agencies ability to control shelf space throughout the year.

The VMC does not have regulatory authority over imports into BC. Wholesalers, retailers and out of province competitors can import without delay, or restriction. Anyone can sell into BC without restriction. Requiring Agencies to seek permission to fill temporary, or seasonal shortages in BC supply, prior to importing, will cause disruptions and delays within the supply chain, and marginalize the BC industry. It is also an overreach of VMC authority. These decisions often require hourly responses and do not fit within the time constraints of a regulator, as well intentioned as they may be.

It is the Commission's job to set standards and review Agency performance. It is FIRB's job to make sure that the VMC is conducting their supervisory responsibility. Anything beyond that will result in regulatory interference and bureaucratic overreach.

3. Storage Crop Delivery Allocation

The Delivery Allocation ("DA") system is not a Supply Management system. It is an "access to market" management system. It is the mechanism that the Agencies use to place 160,000,000 lbs. of regulated vegetables into the market each year and to manage that flow on a daily basis.

The current Delivery Allocation (“DA”) system has been in place for decades and has served the industry well. DA periods are strategically designed to fit with the different production characteristics of each crop. Based on recommendations from the VMC Storage Crop Advisory Committee, the DA system has been modified multiple times over the years reflecting changing market demands and production changes. The DA system has remained current with today’s needs and will continue to be a work in progress as industry dynamics evolve. For example, BC Fresh has recently submitted a VMC request to amend a DA period for red beets to reflect year-round sales and is working on recommendations for 3 new DA categories to promote expansion and innovation within a certain sector of the industry.

The purpose of the DA system is to provide a mechanism for an Agency to manage supply within their grower group when supply exceeds demand to ensure the best opportunity to maximize producer returns. BC Fresh uses this system extensively to manage their supply base and consistently provide above-market returns to their growers. Producers use the DA system to plan their acreage and anticipated cash flow.

The DA system also provides the VMC the tools needed to monitor the volume and flow of product across the entire industry, helping to ensure Agencies are not over-producing and causing potential price suppression. Recently, the VMC requires the Agencies to report on sales volumes during the various DA periods and to provide projections. This has added to the transparency amongst those managing the system on behalf of the industry. There was a suggestion to link acreage and DA in some way to assist with managing surpluses - there could be a way for that linkage to have merit. But the reality is, there can be 25% swings on yields annually and that must be considered when assessing changes.

The suggestion that separate categories be established for regional or export markets should be carefully analyzed for the impact it will have on existing DA earned based on historic and current sales to those same markets. BC has been accessing western Canadian markets for decades, especially early in the season prior to local start up in other production areas.

For those that submit that the DA system can be restrictive, they may not understand the multiple ways DA can be earned. There are currently 7 different mechanisms for a producer to enter the industry or expand their existing DA:

1. A producer can buy an existing farm that has DA and have the DA form part of the purchase. This has happened multiple times over the years.
2. DA can be transferred between producers without buying an existing farm and is used extensively.
3. Producers can work with an Agency to identify supply shortages and target those opportunities. For example, early season and late season production.
4. Producers can produce strategic amounts based on an Agency’s ability to exceed 100% of their DA. All additional sales over 100% are shared equally among producers on a ton for ton basis.

5. Producers can sell by Manifest to customers not on the VMC Prohibited Customer List and the sales can build their DA.
6. An Agency can apply for an increase in DA to target a specific market and work with a grower(s).
7. Producers can apply as a New Entrant with an Agency's support and be granted DA.

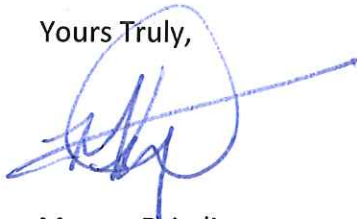
BCfresh strongly supports the New Entrant Program and has used the program to bring new producers into the industry in a managed way. We have sponsored three new producers under this program in recent years helping ensure their success in a competitive environment. It has been suggested that new producers should have priority delivery under DA. This is not necessary as they already gain equal priority, the same as all producers upon entry.

Agencies needing to expand their production base have an opportunity to do so under section *Part XV of the General Orders - Marketing of New or Additional Product*. This section of the General Orders could be utilized further to explore additional opportunities, with industry input. However, more stringent deadlines are required to ensure timely decision making.

In closing, we would also like to point out that the industry has become a victim of its own success. Steady pricing and management of product flow are the two main factors every producer looks for. Financial institutions also lend with more confidence with less risk variables. It is the reason more producers are attracted to our sector and litigate to gain leverage. But the other reality is that the industry is at market capacity in BC for most of the year with limited room for expansion. Exports, resulting in lower returns, are increasing. We understand that there are pressures to allow more producers into the system. The question is, at whose expense? Existing producers who have invested a lifetime building the industry? FIRB must proceed with caution.

We would again like to thank FIRB for the opportunity to comment at various times throughout this consultation process. We are strong supporters of the regulated vegetable industry and will continue to work towards improving producers returns and opportunities in a very competitive environment.

Yours Truly,



Murray Driediger
President & CEO, BC Fresh

c.c. BC Fresh Board and Shareholders