



September 16, 2016

Files: #16-12, #16-13, #16-14,  
#16-16, #16-17

**DELIVERED BY E-MAIL**

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Dear Sirs/Mesdames:

**RE: Casey Van Ginkel dba V3 Farms (16-12), Skye Hi Farms Inc.,(16-13) and  
W. Friesen (16-14) v British Columbia Broiler Hatching Egg Commission**

On September 15, 2016, a pre-hearing conference call was held in the above captioned appeals. These appeals challenge the BC Hatching Egg Commission's (Commission) decision of August 19, 2016 (Request for Prior Approval for the Exclusion Permit Program of the Asian Breeder Producers) which seeks BCFIRB's prior approval to enact an exemption regulation. Prior to the conference call, a letter was sent by the chair of the BC Farm Industry Review Board to the Commission advising that a supervisory panel had been established to consider the Commission's request for prior approval. This letter can be found at [BCFIRB's website](#).

As a result of the establishment of the supervisory panel, the Presiding Member in these appeals raised the preliminary matter during the conference call of whether consideration of the appeals should be deferred pursuant to s. 8(8) of the *Natural Products Marketing (BC) Act (NPMA)* until the supervisory review process has completed.

The Panel invited submissions from the parties on this issue. Mr. Hrabinsky for the Commission confirmed, as per the Commission's previous written submission emailed in response to the filed notices of appeal, that the supervisory process and the appeal process could not run concurrently as the two processes would inevitably affect and could conflict with each other. In the

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**British Columbia  
Farm Industry Review Board**

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circumstances, the Commission's position was that the prior approval request should be dealt with in the first instance through the supervisory process and depending on the outcome of that process, the appeals could be revisited if any issues raised in the appeals remained outstanding.

Ms. Hunter, counsel for Casey van Ginkel, Skye Hi Farms and W. Friesen, noted that these appellants would not oppose consideration of the appeals being deferred with the following conditions:

- a) The appeals only be deferred for a period of 6 weeks (until end of October 2016); and,
- b) In the interim, a moratorium be implemented on any new entrants until the issues raised in the current appeals are resolved.

Ms. Hunter stated that there is great uncertainty in the industry and the appellant's are seeking a timely resolution of the issues. The moratorium would allow for current production to be stabilized.

Mr. Harvey, counsel for Bradner Farms and Coastline Chicks, agrees with the moratorium to stabilize the existing market until the issues are resolved, and further agrees that the issues raised on the appeal need to be dealt with in a timely manner whether through the supervisory process or through the appeal process.

Mr. Hrabinsky, for the Commission, noted in reply that it would not be reasonable or feasible to constrain the supervisory process as requested by the appellants.

Section 8(8) of the *NPMA* states:

If, after an appeal is filed, an appeal panel considers that all or part of the subject matter under 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.

In these circumstances, this Panel agrees with the Commission that until such time as the Commission's prior approval request has been addressed by the supervisory panel, further consideration of the issues raised in these appeals should be deferred. In the event that prior approval is granted by BCFIRB at the conclusion of the supervisory process, then it may be that the issues raised by the appellants in these appeals will have been addressed and reviewed as part of that process. In the event that prior approval is not granted, that will obviously inform the Commission of potential issues with its proposed regulation that may need to be further addressed. This also has the potential to affect the parties' positions on these appeals.

This Panel notes the appellants' concerns with respect to the timeliness of a resolution to these issues which have plagued the industry for some time. This Panel also recognizes the need for stability in this industry. However, we do not consider that it would be appropriate for us as an appeal panel to set out constraints on the supervisory process, such as specific timelines. We expect that process will proceed in a timely manner; however the process that will be followed will be defined by that panel in its supervisory capacity.

Turning now to the other condition sought by the appellants, the request for a “moratorium on new entrants” to the industry, it should be noted that this relief is not akin to a stay. It does not seek to preserve the status quo which flowed from the appellants successful appeal which resulted in the setting aside of the Commission’s new quota regime. Rather, it essentially amounts to a request for substantive relief on an issue which we have no evidence and which will inevitably be part of what is reviewed by the supervisory panel under that process. In our view and in these circumstances, it would be inappropriate for the Panel to entertain such remedial relief.

As a result, the consideration of these appeals will be deferred until the conclusion of the supervisory process established in BCFIRB’s letter dated September 15, 2016, has been completed. The appellants’ requests for conditions to be set on that deferral are denied.

This Panel will reconvene upon the conclusion of the supervisory process and will contact the parties for a further conference call at that time as required.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per:



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Chris K. Wendell, Presiding Member



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Al Sakalauskas, Member