

File: 44200-20/CMB

November 21, 1997

DELIVERED BY FAX

Mr. Arne Mykle
Chair
British Columbia Chicken Marketing Board
Dale Building, Suite 203
5752 - 176th Street
Surrey, British Columbia
V3S 4C8

Dear Mr. Mykle:

RE: NATIONAL ALLOCATION AGREEMENT FOR CHICKEN (NAPA)

**MEMORANDUM OF AGREEMENT BETWEEN THE
BRITISH COLUMBIA CHICKEN MARKETING BOARD, THE
ALBERTA CHICKEN PRODUCERS, THE SASKATCHEWAN
CHICKEN MARKETING BOARD AND THE MANITOBA
CHICKEN PRODUCERS BOARD CONCERNING THE
DELINEATION OF RESPONSIBILITIES AND ACCOUNTABILITIES
SPECIFIC TO THE NATIONAL ALLOCATION AND PRODUCTION
SYSTEM'S MARKET RESPONSIVE POOL (MOA)**

On November 12, 1997, we issued a decision directing the British Columbia Chicken Marketing Board (Chicken Board) to refrain from signing the Western Memorandum of Agreement (MOA) referred to in that decision. However, we were not prepared to prevent the Chicken Board from entering into the National Allocation Agreement (NAPA) referred to therein.

We stated that we were issuing our decision on an urgent basis with reasons to follow. The following are those reasons.

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British Columbia
Marketing Board

*Final
COPY FAILED TO
BCMB MEMBERS/FALTON.*

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Location:
Suite 107, Hartwig Court
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The British Columbia Marketing Board (BCMB) has for some time been aware that the Chicken Board has been involved in inter-provincial discussions concerning a new national agreement for the allocation of chicken production. On October 24, 1997, the BCMB wrote to the Chicken Board regarding the proposed NAPA and the importance of additional consultation prior to any decision to sign the agreement.

On November 6, 1997, members of the BCMB attended a meeting of the Chicken Board and stakeholders at which the NAPA was reviewed, discussed and commented upon. Representatives of the Primary Poultry Processors Association of British Columbia (Processors), who also had prior knowledge of the inter-provincial discussions and involvement in previous consultative sessions, attended that meeting. The Chicken Board proposed to sign the NAPA on November 13 or 14, 1997 in Ottawa. After the November 6, 1997 meeting, the Chicken Board made the decision to sign the document.

What was unknown by the BCMB prior to the November 6, 1997, meeting was that the Chicken Board had also proposed to enter into a MOA requiring it to forgo its pro rata share of the Western Region market responsive pool. This document was circulated at the November 6, 1997 meeting, not by the Chicken Board, but by the Processors who had obtained the MOA through other sources.

At the conclusion of the November 6, 1997 meeting, members of the BCMB reminded the Chicken Board about the importance of proper consultation with respect to these agreements. The Chicken Board was also advised that although there were no formal protocols calling for consultation with the Government or the BCMB, appeals of any decision to enter into the agreements were likely. In the event of an appeal, the BCMB would determine the adequacy of any consultation undertaken.

On November 10, 1997, the BCMB received a facsimile letter from counsel for certain chicken processors appealing the Chicken Board's decision to enter into these agreements and seeking a direction that implementation of these decisions be "stayed" pending appeal. That appeal was formalized late on November 12, 1997.

Our board considered the issue of our jurisdiction to suspend marketing board orders and decisions pending further consideration or appeal in our recent decision in respect of Chicken Board Order #320. We will not repeat that discussion here. We find that, with or without an appeal, the BCMB's supervisory authority allows it to direct a marketing board to refrain from entering into an agreement.

The full BCMB has met and considered the information we have been provided on both agreements, including our consultations with the Chicken Board, the November 6, 1997 meeting and the appeal documents filed.

We are not today prepared, in the exercise of our supervisory authority, to order the Chicken Board to refrain from signing the NAPA pending the proposed ratification on November 13 or 14, 1997. Based on what we know to date, no clear and compelling case has been presented regarding inadequate consultation or irreparable damage to the industry or any particular processor.

However, the MOA is another matter. While the appeal documents provide little or no information on the impact of the MOA on the Processors, we have our own supervisory concerns about the consultation process respecting that agreement, and the potential harm to the B.C. industry should such an agreement be entered into. Those concerns are sufficiently serious that we, as a Board, do not believe it is in the public interest for the Chicken Board to sign the MOA at this time.

We wish to emphasize the words "at this time". We would like to receive full submissions from both parties on the question of whether signing the MOA should be further suspended pending appeal. Whether and to what extent our existing direction will continue will depend on those submissions.

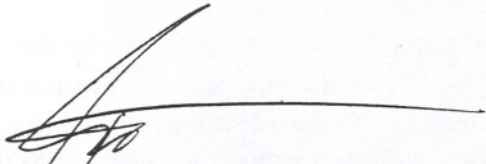
The urgent nature of this matter made it impossible for us to hear submissions from both sides before making this direction in the exercise of our supervisory jurisdiction. In the time it would have taken to meaningfully complete that process, the MOA would have been a fait accompli.

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As noted, we are fully prepared to consider revising our direction in respect of the MOA, and of the NAPA, after receiving further submissions. We would suggest that a pre-hearing conference would be in order to canvass how this matter should be addressed. To that end, Mr. Collins of this office will be in touch with the parties shortly.

Yours truly,

BRITISH COLUMBIA MARKETING BOARD
Per



J.T.R. Husdon, P.Ag.
Chair

cc: Mr. Christopher Harvey, Q.C.
Russell & DuMoulin

Mr. John Hunter, Q.C.
Davis & Company

Mr. Colin Pritchard