



BC Farm Industry Review Board

May 22, 2024

DELIVERED BY EMAIL

Janice Comeau, Chair
BC Milk Marketing Board
32160 South Fraser Way, Unit 200
Abbotsford, BC V2T 1W5

Dear Janice Comeau:

RE: BC MILK MARKETING BOARD & DAIRY INNOVATION WEST

We write in response to your letter dated February 23, 2024, and our ongoing communication regarding the BC Milk Marketing Board's (Milk Board) involvement in the Dairy Innovation West (DIW) initiative.

On February 20, 2024, we directed the Milk Board to provide a complete accounting of all funds it has expended on the DIW initiative to date, no later than March 15, 2024, the particulars of which include, but are not limited to:

- a) funds expended in the "pre-operational phase";
- b) the source of all funds expended by the Milk Board in relation to a);
- c) the types of funds expended by the Milk Board in relation to a);
- d) the uses made of the funds in a), and an explanation of who made use of the funds and under what authority; and
- e) the dates of all such expenditures.

In your February 23, 2024 response, you stated that the Milk Board has entered into a cash flow agreement pursuant to which the Milk Board is responsible for payment of operating costs of the DIW facility, an extra-provincial project. In furtherance of that agreement, the Milk Board has made two "prepayments" in the amounts of \$154,804.66 and \$155,526.79. We understand that these payments were funded by producer deductions, that is, transportation levies that are deducted by the Milk Board from producer returns under the milk pooling system.

We have two concerns with the information you have provided.

First, it is not clear that your response provides all of the information that BCFIRB requested in its February 20, 2024 direction. Please confirm that the information you provided represents a full accounting of all funds expended by the Milk Board in the pre-operational phase of the DIW facility, as outlined and requested in a) to e) above.

Second, and more fundamentally, the execution of the cash flow agreement by the Milk Board appears to be directly contrary to BCFIRB's direction of April 23, 2020, and the Milk Board's undertaking of May 15, 2020, that the Milk Board would not invest milk board funds, directly or indirectly, in the DIW facility.

Web:

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Phone:

Info: 250 356-8945

Fax: 250 356-5131

Mail:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Office:

2975 Jutland Rd
Victoria, BC V8T 5J9

In our view, there is no material difference between the Milk Board's ownership of the DIW facility addressed in our April 23, 2020 direction, and payment of the ongoing operating costs of the facility pursuant to the cash flow agreement. Our review of the cash flow agreement demonstrates that the Milk Board is engaged in payment of the ongoing operating costs of the DIW facility as a going concern. It will be responsible for costs associated with the lease of land, taxes, management and financing fees, and insurance and auditing fees prior to the operation of the facility. These are the types of fees that owners of a facility are typically responsible for paying. They are clearly related to operation of the facility. They do not have a regulatory character, and do not appear to be capable of being characterized as being in relation to the promotion, control or regulation of the marketing of regulated product. In that way, the Milk Board's payment of the fees appears to us to be the Milk Board attempting to do indirectly what it has no statutory authority to do directly: that is, operate a milk processing plant.

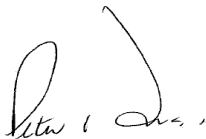
The cash flow agreement is structured in a way that characterizes the Milk Board's payment of the fees as being in consideration for future use of the facility. We acknowledge that the Milk Board may well be able to dispose of regulated product to the facility. However, the cash flow agreement, in our view, does not appear to be a true contract for sale of regulated product to the DIW facility. The cash flow agreement is in substance a means for the Milk Board to pay the pre-operating costs of the facility.

The cash flow agreement also raises significant concerns about the Milk Board's ability to regulate the industry in an independent manner, free from perceived bias or conflicts of interest, as discussed in the opinion shared with you in April 2020. As we understand it, milk concentration is something that other milk processors undertake. If the Milk Board pays the operating costs of the DIW facility, it will effectively compete with those other bodies. This gives rise to concerns about conflict of interest in the Milk Board's regulation of milk concentration and transportation. In our view, like the ownership of the facility, the funding of the facility is a role better undertaken by a producer organization like the BC Dairy Association, not an independent regulator like the Milk Board. Further, the cash flow agreement would also appear to contravene the Milk Board's use of levy power under the legislation which, as set out in the April 2020 opinion, is subject to jurisdictional territorial limitations.

Accordingly, BCFIRB is hereby **directing the Milk Board to cease participating in the funding of the DIW Facility** pursuant to the cash flow agreement, or by another means. **If there is any uncertainty with respect to the scope of this direction, please seek clarification by May 31, 2024.**

BCFIRB is **also seeking confirmation from the Milk Board by June 7, 2024** that the information you provided represents a full accounting of all funds expended by the Milk Board in the pre-operational phase of the DIW facility, as outlined and requested in a) to e) above.

Regards,



Peter Donkers

Chair, BC Farm Industry Review Board

Cc: Rob Delage, BCMMB General Manager
Cc: Peter Pokorny, Deputy Minister, Ministry of Agriculture and Food
Cc: Eric Kristianson, Assistant Deputy Minister, Ministry of Agriculture and Food
Cc: Gunta Vitins, BCFIRB Vice-Chair
Cc: Martha Anslow, BCFIRB Executive Director
Cc: BCFIRB Website