

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF A
SPECIAL CIRCUMSTANCES APPLICATION BY
MYLES MATER I
ON BEHALF OF LAVERNA MATER I

DECISION

November 17, 2009

INTRODUCTION

1. In connection with the British Columbia Farm Industry Review Board (BCFIRB) consideration of the New Entrant Program Rules recently submitted for approval by the British Columbia Egg Marketing Board, Myles Materi has requested that BCFIRB direct the Egg Board to allot 5000 to 9500 layers of quota to his wife, Laverna Materi, because of their special circumstances.

BACKGROUND

2. Myles Materi has been both a registered producer of eggs and the operator of an egg grading station, Mountain Morning Farms.
3. In 2007 Mr. Materi appealed two separate decisions of the Egg Board to BCFIRB, one in his capacity as a producer and the other in his capacity as a grading station operator. See *Mountain Morning Farms* (August 14, 2007 Corrigendum – August 3, 2007 Decision). His appeals were dismissed.
4. With respect to the second appeal (the brown egg supply appeal), Mr. Materi took the position that the Egg Board had failed to live up to its commitment and obligation to supply Mountain Morning with brown eggs and sought a direction from BCFIRB that the Egg Board direct more brown egg production to his grading station and allocate a 5000 bird quota or permit to his wife, Laverna Materi.

SUBMISSIONS

5. Mr. Materi provides the following as reasons in support of the application:
 1. The FIRB has been given numerous letters from the public requesting Laverna's eggs;
 2. The BCEMB has failed to provide 9,500 birds of layer production to be sent to Mountain Morning Farms;
 3. The BCEMB has failed to fulfil its promises in writing of production;
 4. The BCEMB has audited Mountain Morning Farms and there is now indisputable proof that this production is needed;
 5. Laverna's name has appeared on previous quota allocation lists.

[Reproduced as written]

6. Mr. Materi states that Laverna Materi has proven markets for her specific type of eggs in the interior region of British Columbia and has barns and equipment and can be in production in three months. He submits that if the application is allowed, consumers in the interior will be able to participate in the "100 mile diet" and the allocation will fulfill a promise of production to Mountain Morning Farms and start to fulfill "the 2004 policy". He submits further that the allocation of quota to Laverna Materi will not set a precedent as the Egg Board has already issued production to producers outside the system.

7. The Egg Board relies on the BCFIRB 2007 decision in *Mountain Morning Farms* and submits that it is bound by that decision.

ANALYSIS

8. The panel has reviewed all submissions and accompanying materials respecting Mr. Materi's application.
9. The panel has reviewed the 2007 *Mountain Morning Farms* decision and agrees the parties to that decision are bound by it.
10. In that decision, as in this application, Mr. Materi sought to have quota allocated to his wife. Indeed, the five reasons set out in paragraph 5 above which were given by Mr. Materi for why Laverna Materi should be allocated quota are essentially the same as those advanced in the previous brown egg supply appeal. They are primarily related to the supply of product to the grading station, in particular reasons 2, 3 and 4, and have been previously considered on, or are governed by the decision in, the previous brown egg supply appeal. The question of allocation of quota to Laverna Materi was also considered in connection with the previous brown egg supply appeal.
11. The following paragraphs from the decision in *Mountain Morning Farms* are instructive:
 59. After hearing the evidence and reviewing the submissions, the Panel finds that the Egg Board has met its regulatory obligations in support of Mountain Morning's requirement for more brown eggs. It continued to make efforts to find a producer to convert to brown production despite the fact that during the same time frame Mr. Materi was flaunting the rules, threatening to "ramp up" the production of his "499 bird flock" and not paying for eggs delivered to his grading station. We agree with Mr. Alibhai of the BCEPC who stated succinctly that it is not up to individual graders to take the rules and laws of supply management and interpret them for their own individual needs and change them to suit their own specific grading stations.
 60. Finally, there is the issue of Mr. Materi's request that his wife be granted 5000 birds of production. Given our finding that the Egg Board has met its obligation to supply eggs to Mountain Morning, it follows that the Panel is not prepared to grant this relief. However, as Mr. Materi spent a great deal of his time pressing this point, the Panel has a few comments. First, even if Mr. Materi had been successful on this appeal, the Panel would not have ordered the Egg Board to issue quota to Mrs. Materi.
 61. CEMA gives British Columbia its provincial allocation and all layers in the province must be accounted for under that allocation. From that allocation, producers are allotted production in accordance with their quota holdings. There is also a small allotment of quota known as the Market Responsive Allocation Pool (MRAP). The Egg Board has the ability to allocate this production under various programs. In order to access the MRAP pool, a person must apply to the Egg Board and meet its criteria. There is usually a waiting list of persons seeking the finite amount of production available through MRAP. Mrs. Materi can apply like

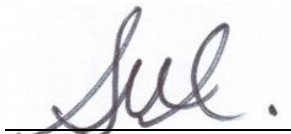
others have and be put on a waiting list. If she meets the applicable criteria, she too can receive MRAP quota. However, the Panel would not as a result of this appeal order that Mrs. Materi be placed on the list ahead of any other person seeking MRAP quota.

62. Secondly, the Panel observes that the remedy of a 5000 bird quota allocation to Mrs. Materi is unnecessary. By this we mean that Mountain Morning as a grading station has the ability to contract with and work with any producer. Supply issues could be addressed by finding other qualified persons willing to apply under the New Entrant Program and willing to work with Mountain Morning. Mrs. Materi is not the only person capable of producing eggs for the grading station. It is difficult to view this remedy as anything other than an attempt by Mr. Materi to obtain a windfall by acquiring and controlling quota, or at the very least a valuable production right via permit, which is tenfold the size of his current legal holdings.
63. Mr. Materi has repeatedly pointed to another producer who he believes was given quota by the Egg Board. Presumably this person applied under an existing or past Egg Board program and subsequently received quota. Others have also done so. A basic principle behind the 2003-05 Specialty Review was servicing and developing the specialty market place by encouraging different types of production. Eligible applicants whether under existing programs or not were given the opportunity to apply for MRAP quota in order to produce specialty eggs for the market place. As a grading station operator, it is open to Mr. Materi to develop relationships with new entrants and prospective new entrants who want access to that program.
12. Mr. Materi has not put forward any special circumstances outside the circumstances already considered in the *Mountain Morning Farms* decision. In fact this application appears to be an attempt to reargue that appeal in the hope of a different decision. We find no special circumstances that support the request that BCFIRB direct the Egg Board to allot quota to Laverna Materi. Even if able to qualify as a new entrant applicant, there is no basis to conclude Laverna Materi should be treated differently than any other new entrant applicant.

DECISION

13. The request that BCFIRB direct the Egg Board to allot quota to Laverna Materi is denied.


Dated at Victoria, British Columbia, this 17th day of November 2009.



Sandi Ulmi
Vice Chair

Ron Bertrand

Ron Bertrand
Member



A handwritten signature in cursive script, appearing to read 'Suzanne K. Wiltshire', is shown within a light blue rectangular background. The signature is written in dark ink and features a prominent, sweeping flourish at the end.

Suzanne K. Wiltshire
Member