



December 21, 2000

File: 44200-40/VIERS

DELIVERY BY FACSIMILE

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Chair and Members
British Columbia Egg Marketing Board
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Vancouver Island Egg Supply Review

Background

The British Columbia Marketing Board (BCMB) has completed its supervisory review of the issues surrounding the supply of eggs to Island Egg Sales Ltd. (Island Eggs). This review was initiated following the November 7, 2000 decision of the British Columbia Egg Marketing Board (Egg Board) to:

- (a) rescind its decision to direct the production from Firbank Farms and Claremont Farms to Island Eggs; and
- (b) approve a 5000 bird Temporary Restricted License Quota (TRLQ) for Ralin Holdings in consideration for Frontier Farms Ltd. (an associated company) shipping all of its egg production to Island Eggs.

This decision by the Egg Board raised important policy questions concerning how production, which is marketed through designated agency grading stations such as Island Eggs and Golden Valley Foods Ltd. (Golden Valley), ought to be fairly and properly allocated and marketed in British Columbia in general, and on Vancouver Island in particular. The BCMB examined this decision in the context of the supervisory responsibilities set out in section 3(5)(a) of the *Natural Products Marketing (BC) Act (Act)* which states that the BCMB

... has general supervision over all marketing boards or commissions constituted under this Act,

and Section 4 of the Regulations to the *Act* which states that the BCMB has

... general supervision over the operations of all marketing boards, commissions or their designated agencies constituted or authorized under the Act.

British Columbia
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Some industry stakeholders have criticised the BCMB for initiating this review, preferring that the management and operation of the industry should be left to the Egg Board and suggesting the BCMB not be involved in the market place. The BCMB accepts that the egg industry is complex and despite our jurisdiction should not generally be subjected to "micro-management".

However, it must at all times be remembered that this is a regulated marketing system, that the BCMB's role is to supervise and regulate that system, and that the broad policy issues that affect the operation of the regulated marketing system are clearly within the mandate of the BCMB. It is important that the actions of marketing boards and commissions and their management of the regulated marketing system are carried out in a fair and equitable manner. The BCMB will continue to intervene when issues of fairness and public interest are raised.

On November 15, 2000, the BCMB issued a Notice of Hearing for the Vancouver Island Egg Supply Review (Review). In this Notice, the BCMB requested that the Egg Board, Golden Valley, Firbank Farms (Mr. L. Jack), Claremont Farms (Mr. T. Marsden) and Ralin Holdings (Mr. R. Nickel) attend the meeting, make presentations and answer questions from the BCMB. The BCMB issued a broad invitation to other industry stakeholders to attend and make presentations.

On November 17, 2000, Island Eggs requested in writing that the BCMB direct Golden Valley to supply it with free range and free run production on an interim basis pending the supervisory hearing scheduled for December 7, 2000. The BCMB received and considered written submissions on this issue from the Egg Board and Golden Valley. On November 29, 2000, the BCMB issued its decision stating:

... the BCMB does not believe that it would be wise or appropriate for it to intercede in this matter, beyond the interim directions we provided on November 10, 2000, until we have held a proper hearing on the merits.

The BCMB stated that the Egg Board was not to take this decision as justification for inaction and noted that on November 10, 2000, the Egg Board was directed:

... to promptly and expeditiously process TRLQ applications from Vancouver Island respecting prospective specialty suppliers to Island Eggs.

The BCMB held a public hearing on December 7, 2000 to hear presentations from Island Eggs, the Egg Board, Golden Valley and other industry stakeholders. The BCMB also received written submissions from many of these parties and others. Separate in-camera sessions were held with Island Eggs and Golden Valley (with a representative of the Egg Board also present) for the limited purpose of considering confidential business information which, if disclosed publicly, would have been reasonably likely to damage either agency.

BC Marketing Board Decision and Directions

Over the past several years, the issue of whether and how regional markets are to be preserved or encouraged has been a concern of the BCMB. This issue has come before us in several appeals in different commodities as well as formed part of a number of supervisory reviews.

Restructuring in the processing and retail sectors is a major issue for producers and marketing boards to address. Consolidation into larger production and processing operations is one of the strategies available to the egg industry to reduce costs and maintain profitability. However, neither the Egg Board nor producers can afford to ignore the impacts to the system if regional production capacity is not maintained. Consolidation of processing in one region and the loss of production capacity in other regions of the Province could undermine the ability of the regulated marketing system to respond to pressures from outside.

Regional processing has proven to be a key component of maintaining a viable regional production sector. The existence of a viable milk processing plant on Vancouver Island is a key factor in maintaining dairy production in this region. The loss of chicken processing capacity on Vancouver Island was in part due to the fact that over time the system did not fully support the regional chicken processor by ensuring that all of the production in the region was available to them.

It was in this context that the BCMB undertook this supervisory review of recent Egg Board decisions involving the supply of eggs for Island Eggs.

Island Eggs sought the following relief in this Review:

- 1. that the Egg Board's decision of Nov. 7 (re-directing the Firbank and Claremont production to the mainland) be reversed;*
- 2. that the Egg Board process expeditiously all TRLQ applications from producers on Vancouver Island;*
- 3. that the Egg Board accord priority to the specialty needs of Island Eggs as directed in the Island Eggs appeal decision;*
- 4. that, by way of interim relief, the production from 7500 free range heavy weight birds and 4500 free run heavy weight birds be directed to Island Eggs at the Egg Board's applicable prices, such interim relief to terminate when such production is replaced by Vancouver Island TRLQ production;*
- 5. that the Egg Board accord priority to Island Eggs with respect to egg production on Vancouver Island with a view to ensuring that consumers on Vancouver Island have access to locally grown and graded product;*
- 6. that Island Eggs be reimbursed by the Egg Board for all additional costs flowing from the requirements that Island Eggs pick up an additional 47,000 caged birds on the mainland effective Oct. 23 (being the date when the original direction of Vancouver Island product was to take effect). This should continue until such time as the 47,000 caged birds in our region are received by us.*

Our decision is structured according to the remedies sought by Island Eggs. While this decision may not address every point made in the written and oral submissions, we have considered all of them in arriving at this decision.

1. The November 7, 2000 Egg Board Decision to Rescind the Transfer of Firbank and Claremont to Island Eggs

As part of this decision, the Egg Board transferred the production from a Lower Mainland producer (Frontier Farms) to Island Eggs and issued a 5000 bird TRLQ to a related company, Ralin Holdings.

After reviewing the evidence and the submissions of the various parties, the BCMB has determined that the Egg Board's decision, as set out in their letter of November 7, 2000 to Les Gammel, General Manager, Island Eggs, "to rescind the October 13, 2000 motion to move Firbank and Claremont's production to Island Egg Sales Ltd." was appropriate in the circumstances.

In arriving at this conclusion, the BCMB recognizes that the Egg Board has the authority to direct a producer's production from one agency to another. This power has been delegated by statute and it cannot be fettered by contract. The decision to direct product requires a regulatory body to take into consideration a broad spectrum of issues including the impact of its decisions on industry operations. Producer preference may be taken into account but it is not a determining factor. The BCMB also recognizes that, in appropriate circumstances, directing of product could be supportive of the Ministry of Agriculture, Food and Fisheries (Ministry) draft Regulated Marketing Policy Statements - Encouraging Regional Strengths and Opportunities.

The BCMB understands that white caged production is in short supply on Vancouver Island. Golden Valley has satisfied us that they require Vancouver Island white caged production to maintain its business strategy, discussed further under Heading 5. While not determinative, it is relevant, in view of Golden Valley's needs, that Vancouver Island producers, Firbank and Claremont, have expressed a significant preference to market their production through Golden Valley and expressed opposition to being transferred to Island Eggs at this time. Their primary concern is for their own business circumstances, in the event of a transfer, including concerns regarding potential grading decisions made by Island Eggs respecting their product in circumstances where their new agency's business margins may be lower. We do not find these concerns to be irrational, and we do not find, based on the information before us, that Island Eggs made meaningful contacts with these producers before making the request to the Egg Board.

Island Eggs' justification for the request is that it needs eggs to satisfy an "Island grown" marketing strategy it has developed. Island Eggs has sought to answer the allegation that it did not have commitments from these producers prior to making its "Island grown"

representation to a customer. While Island Eggs has explained its rationale for proceeding in this way from a business point of view, and may also have seen an “Island grown” strategy as a useful way to reduce overhead costs and win a contract, the reality was that it was taking a calculated risk.

Island Eggs at all times knew that regulatory approval was required for a scarce resource with competing demands and interests attached to it. Island Eggs’ choice of marketing strategy does not, in view of the factors we have identified above, outweigh the producers’ clearly expressed preferences and Golden Valley’s requirements for Vancouver Island production.

Good business relationships cannot be dictated by order of the Egg Board or the BCMB; only Island Eggs can develop these. It is incumbent on Island Eggs to work with Vancouver Island egg producers to foster a good business climate. Vancouver Island producers should consider that in other commodity sectors regional production became less profitable when regional processing was lost. A strong regional egg processing sector is important to support regional egg production.

The second aspect of the Egg Board’s November 7, 2000 decision involved the transfer of Lower Mainland producer Frontier Farms’ production to Island Eggs and the approval of a 5000 bird TRLQ to a related company, Ralin Holdings. The BCMB appreciates that following the Egg Board’s decision not to direct production from the Firbank and Claremont farms to Island Eggs, it granted the TRLQ permit to Ralin Holdings in an attempt to promptly obtain the required white caged production for Island Eggs. However, the BCMB cannot support the use of TRLQ as an incentive to transfer production.

Direction:

The Egg Board is directed to rescind the TRLQ permit approved for Ralin Holdings. This 5000-bird allocation is to be returned to the Market Responsive Allocation Pool (MRAP).

In issuing this decision, we wish to make it clear that we are speaking about the specific issue of directing Vancouver Island production to Island Eggs at this time. Pending Vancouver Island production coming available at a later date, the Egg Board is directed to ensure that other white caged production is made available to Island Eggs, as reflected in its market share policy.

2. The Expedient Approval of TRLQ Applications from Vancouver Island Producers

The BCMB reiterates its November 10, 2000 direction to the Egg Board *“to promptly and expeditiously process TRLQ applications from Vancouver Island respecting prospective specialty suppliers to Island Eggs.”*

The Egg Board has made some progress on this matter but it is important that these TRLQ applications are dealt with in a manner that addresses the need for urgency recognized in the BCMB direction.

The BCMB notes that the Egg Board was able to issue TRLQ to Ralin Holdings in a very short time period and expects the Egg Board to be as prompt in addressing the other TRLQ and/or Market Responsive Quota (MRQ) applications.

3. The Egg Board Accord Priority to the Specialty Needs of Island Eggs

Island Eggs seeks a direction from the BCMB that the Egg Board accord priority to the specialty needs of Island Eggs as directed in the *Island Eggs Appeal Decision* dated August 4, 2000. In that decision, a Panel of the BCMB determined that the Egg Board had failed to address Island Eggs' longstanding need for specialty product. The Egg Board appeared to favour the needs of Lower Mainland and Interior grading stations. As a result, the Egg Board was directed to "give priority to (Island Eggs') request for specialty production."

Island Eggs is attempting to use this decision to support its claim not just for more specialty production but for more specialty production from Vancouver Island. Access to more Vancouver Island specialty production was not the issue in the Island Eggs appeal. That decision cannot be taken as a statement by the BCMB that Island Eggs is to be given priority to have its needs met in whatever manner it deems fit.

Island Eggs operates in a provincial market. It may choose to emphasize Island production as a marketing strategy. That is its choice. However, even recognizing the importance of such regional markets, it is not reasonable to expect the Egg Board to respond immediately to such a request.

The mechanism is in place by which Vancouver Island egg production can expand. As a practical solution, the BCMB has recently issued a supervisory report in which the Egg Board was directed to develop the MRAP and allocate additional layers through TRLQ/MRQ. We expect timely decisions in that regard. These changes are very recent and the Egg Board needs time to allocate this TRLQ/MRQ fairly and equitably. The BCMB appreciates that Island Eggs has acute shortages of product but these have been exacerbated by Island Eggs' recent business decisions.

4. Direction of Specialty Product to Island Eggs

By way of interim relief, Island Eggs asks that the production from 7500 free range heavy weight birds and 4500 free run heavy weight birds be directed to Island Eggs at the Egg Board's applicable prices, such interim relief to terminate when such production is replaced by Vancouver Island TRLQ production.

Again the BCMB recognizes that Island Eggs requires increased production to meet the demands created by acquiring a customer that was previously served by Golden Valley. In view of the shift in markets, the Egg Board should review the supply of specialty eggs across the Province. The Egg Board, other grading stations and producers should recognize that, in the best interests of maintaining a strong regulated marketing system, product should be made available where it is needed.

Direction:

As directed in the Island Eggs appeal Decision dated August 4, 2000 and in accordance with the Egg Board's market share policy, the Egg Board is to ensure that Island Eggs' specialty egg requirements are addressed.

5. Egg Board Give Priority to Island Eggs with a View to Ensuring Vancouver Island Consumers' Access to Locally Grown Product

Island Eggs takes the position that it is the role of the Egg Board to ensure that Vancouver Island consumers have access to locally grown product. The BCMB heard that there is a preference by Vancouver Island consumers for Island product. That may be so. However, the Egg Board has an obligation to manage the egg industry in the best interests of the entire province of BC.

Island Eggs has chosen as a market strategy, to supply Vancouver Island consumers with Island product. Island Eggs has used product from other regions of BC and Canada to augment their supply. However, they have recently refused to be supplied with product other than that from Vancouver Island.

In its marketing strategy, Golden Valley does not market its Vancouver Island product separately. It does maintain that its customers on Vancouver Island have sought assurances that Golden Valley purchases Vancouver Island eggs.

It is apparent that Golden Valley and Island Eggs have different marketing strategies when it comes to Vancouver Island product. Island Eggs' "local is fresher" strategy does not warrant the Egg Board directing Golden Valley's two remaining Vancouver Island producers to Island Eggs. As mentioned earlier, grading stations choose their marketing strategies. We do not consider it appropriate in these circumstances to support one strategy over the other.

The BCMB Egg Quota Allocation Review (EQAR) stated that regional and specialty requirements are to be considered in decisions regarding quota allocation and production. The Ministry's regulated marketing policies support the continuation of the regulated marketing system, and set out the need to address issues such as encouraging regional strengths and opportunities. These principles must guide the Egg Board in its decision-making, in the interests of maintaining a regulated marketing system that meets the needs of all British Columbians.

6. Reimbursement to Island Eggs for Additional Transport Costs

Island Eggs wants to be reimbursed for all additional costs associated with picking up an additional 47,000 caged birds on the Lower Mainland effective October 23, 2000 (being the date when the original direction of Island product was to take effect). They seek this relief until such time as Island Eggs is receiving the product from 47,000 caged birds on the Island.

The BCMB appreciates that Island Eggs is incurring additional costs as a result of the decision not to direct Firbank and Claremont Farms caged bird production. The BCMB is not prepared to intercede to direct this production for the reasons set out in Heading #1 and therefore, the BCMB is not prepared to direct the Egg Board to reimburse Island Eggs.

The BCMB is, however, concerned about the existing transportation policies within the egg industry. The Egg Board has stated that it is more responsive to move the eggs to the market than it is to move production to areas of shortage. However as Island Eggs has stated, the cost of transporting the eggs from other regions of the Province is an additional cost to the grading station and is a factor in the profitability of any grading station. The Egg Board provides the BC Egg Processors Council (Council) with \$500,000 annually to underwrite the costs of transporting eggs. The Council, based on criteria they have set, disburses these funds. The Egg Board has a responsibility to regularly review their policies to ensure that they actually support the objectives of the program – in this case to ensure that eggs move freely from areas of surplus to graders who require product. As these monies are collected by levy, the Egg Board also has the responsibility to ensure that the Council is administering these funds in ways that support the policy objectives, and are fair and transparent.

Direction:

Accordingly, we direct the Egg Board to review its transportation policies. The terms of reference and methodology for this review are to be developed in consultation with the Egg Industry Advisory Committee and the BCMB.

Other Issues

1. Island Eggs Pricing

Allegations were made during the Review that Island Eggs have expanded its marketing through the use of predatory pricing practices.

The BCMB examined documents provided in the in-camera session with Island Eggs and Golden Valley regarding the mark-up for one of the major Vancouver Island retailers. While the BCMB appreciates the complexities involved in determining the

price of products in the retail food business, the information provided by Island Eggs and Golden Valley in the in-camera sessions does not confirm these allegations.

2. Market Responsive Allocation Pool (MRAP)

In the Notice of Hearing, the BCMB stated that the Egg Board was to provide the BCMB with a detailed accounting of the MRAP showing the allocation from this pool. Through the information provided by the Egg Board at the Hearing, the BCMB has prepared the attached accounting.

With over 50,000 birds in the MRAP, the Egg Board has the tools to address Island Eggs' requirements in an orderly fashion, and meet the directions set out in the BCMB EQAR report to provide opportunities for new entrants to the industry, to meet regional marketing opportunities and accommodate organic production in the regulated marketing system.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

Ross Husdon P. Ag.
Chair

cc: Attendees at Hearing

Attachment - Market Responsive Allocation Pool (MRAP)

Allocation to MRAP

1999 BCMB Approval Allocation	25,123
2000 BCMB Approval Allocation	77,000
2000 Egg Board 5% Holdback	<u>5,400</u>

TOTAL **107,523**

MRAP Useage

1999 TRLQ Issued	20,763
2000 BCMB Approved Holdback	20,000
2000 TRLQ/MRQ Approved	<u>10,000</u>

TOTAL **50,763**

REMAINING MRAP **56,760**