



June 22, 2016

File: 44200—20 BHEC

DELIVERED BY EMAIL

Casey Langbroek
Chair
BC Broiler Hatching Egg Commission
180 – 32160 South Fraser Way
Abbotsford BC V2T 1W5

Dear Mr. Langbroek:

BC FARM INDUSTRY REVIEW BOARD PRIOR APPROVAL DECISION – RESERVE FUND

On December 21, 2015 the BC Broiler Hatching Egg Commission (Commission) requested the BC Farm Industry Review Board (BCFIRB) prior approve use of the Commission's Reserve Fund to purchase an office building.¹

Background

The Reserve Fund (Fund) arises from the historical transfer of hatching egg production from B.C. to Ontario. In accordance with the requirements of the 1993 World Trade Organization Agreement on Agriculture, the federal government of the time adjusted the broiler hatching egg import/export ratio. As a result, B.C. was required to reduce its hatching egg production. In March 2000 the Commission transferred a portion of B.C.'s share of the domestic national allocation to the Ontario Broiler Hatching Egg & Chick Commission (OBHECC). In return, the OBHECC paid the Commission \$1.8 million. BCFIRB prior approved the transfer with the proviso that monies realized from this agreement would be used to fund projects for the improvement of the hatching egg industry, and that BCFIRB must prior approve any expenditure.

¹ Note: This submission was incomplete. BCFIRB received a complete version on January 8, 2016.

**British Columbia
Farm Industry Review Board**

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Commission Proposal

The Commission submitted a prior approval request to BCFIRB on December 21, 2015 to use the Fund to purchase a building that would house staff, equipment and vehicles (including a cooler-site for the Non-Hatching Egg Program). It also noted it was exploring potential co-housing/co-purchasing arrangements with the BC Chicken Marketing Board (Chicken Board) and the incorporation of an emergency response centre.

On February 18, 2016, BCFIRB noted that stakeholder consultation wasn't sufficient and requested that the Commission provide an assessment of the likelihood of co-location with the Chicken Board and garner stakeholder views on this potential partnership. On May 11, 2016, the Commission reported back to BCFIRB, stating that the majority of respondents were in favour of co-location. It also reported it was difficult to provide an assessment of the likelihood of co-location given the uncertainty of the release of the Fund to purchase the building.

Subsequently BCFIRB was verbally informed that there was a joint offer in place to purchase a building with the Chicken Board.

Legal Authorities

In British Columbia, the production and marketing of broiler hatching eggs is regulated under the *Natural Products Marketing (BC) Act (NPMA)* and the British Columbia Broiler Hatching Egg Scheme.

Under s. 7.1 of the *NPMA*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the Province, including the Commission. Section 7.1(2) of the *NPMA* provides for this supervisory authority to be exercised "at any time, with or without a hearing, and in the manner [BCFIRB] considers appropriate to the circumstances".

Under s. 9 of the *NPMA*, BCFIRB "has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined by [BCFIRB] under [the *NPMA*]".

Prior Approval Requirements

In 2000 BCFIRB established the following conditions in relation to use of the Fund:

1. The fund is to be used for the overall improvement of the hatching egg industry.
2. The fund distribution plan must be prior approved by BCFIRB before any expenditure. BCFIRB previously approved the Commission plan to use an Industry Advisory Committee (IAC) as a screening and recommendation body in relation to applications made by producers and industry stakeholders for fund expenditures.
3. The Commission is to use good accounting procedures and reporting.

In recognition that circumstances change overtime, BCFIRB noted in a February 19, 2015 letter that BHEC could use a SAFETI²-based approach to review the fund distribution plan and determine whether changes were needed. BCFIRB stated it would accept changes on the following conditions:

1. Changes result from a SAFETI-based process;
2. Changes adhere to BCFIRB's overarching directions on fund use, accounting and reporting (thus, reaffirming conditions 1 and 3, above);
3. Changes meet legal and sound marketing policy requirements;
4. Changes are clearly communicated to producers and all hatching egg stakeholders; and,
5. Use of fund monies and rationale are reported publically.

BCFIRB Process

BCFIRB reviewed the Commission's December 21, 2015 and May 11, 2016 submissions and subsequent update in light of principles-based regulation and SAFETI at its June 9, 2016 board meeting. Its considerations included, but were not limited to: the history and intent of the Fund; and whether the Commission met BCFIRB's prior approval directions; including overall legal and sound marketing policy requirements.

BCFIRB Decision

BCFIRB approves use of the Fund for the purchase of an office building and any related necessary improvements based on the condition that the purchase results in co-location with the Chicken Board.

If the building purchase would not result in co-location with the Chicken Board the Commission must re-submit its prior approval request to BCFIRB.

Any remaining Fund monies continue to be subject to BCFIRB's prior approval conditions. BCFIRB expects the Commission will:

- a) Communicate any decisions and rationale related to the building purchase to all hatching egg stakeholders in a timely manner; and,
- b) Use good accounting procedures and reporting.

Rationale

In terms of process, Commission engagement with industry stakeholders was not as inclusive, transparent and informed as could be desired given the Fund is to be "used for the benefit of the hatching egg industry". However BCFIRB is satisfied that the Commission sufficiently met BCFIRB's consultation requirement in this instance by ensuring all producers were aware of the proposal to buy a building using the Fund and also sought their input on co-location with the Chicken Board

² Strategic Accountable Fair Effective Transparent Inclusive

BCFIRB also notes that it was not clear to what extent the Commission assessed alternative uses for the Fund in relation to the risks and opportunities identified in its Strategic Plan. Assessing resource use in light of all strategic outcomes is a key part of principles-based regulation. BCFIRB does note, however, that the Commission has established a separate unforeseen contingencies fund to ensure it has financial reserves to manage other industry risks, if needed.

In terms of legal requirements, *NPMA* s. 10(3) grants the Commission authority to “acquire, hold and dispose of real property”.

BCFIRB is satisfied that purchasing a building (with a cooler-site) and co-locating with the Chicken Board meets the Fund condition that it be used for the benefit of the hatching egg industry. The Commission proposal sets out that consolidating its current two facilities (office and off-site cooler) will provide efficiency gains, cost savings and resolution to on-going human resource challenges – an overall net benefit to the industry. BCFIRB agrees with this assessment.

In relation to long-term industry benefit (including sound marketing policy), BCFIRB notes there are substantive benefits to co-location with the Chicken Board. As part of closely linked industries in the chicken value chain, co-location by these two first instance regulators will help support information sharing, joint risk management, and build stronger relations.

In accordance with s. 57 of the *Administrative Tribunals Act*, “an application for judicial review of a final decision of (BCFIRB) must be commenced within 60 days of the date the decision is issued.”

Administrative decisions made by the Commission in the implementation or application of the Fund to purchase a building – as approved by BCFIRB – are appealable under s. 8 of the *NPMA* within 30 days of a Commission decision.

If you have any questions, please feel free to contact BCFIRB.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



John Les, Chair

cc: BCFIRB web site