

Producer Review Board
Board of Directors Meeting Minutes
August 27, 2020
Teleconference
2399 Gateway Oaks Drive, Suite 210
Sacramento, CA
(Draft)

Call to Order and Roll Call:

Donald Shippelhoute called the meeting to order at 10:00 am. Chair Fred Douma conducted a roll call of members and alternates to establish a quorum. A quorum was present with fourteen (14) of fifteen (15) members present. Note, one member joined at a later point increasing the number to fifteen (15) in attendance. In attendance were:

Members Present:

Chuck Ahlem
Jarrid Bordessa
Ted De Groot
Arie De Jong
Fred Douma
William Dyt
Fred Fagundes
Joey Fernandes

Members Present:

Craig Gordon
John Moons
Tony Nunes III
Kerri Vander Poel
Art Van Beek
Arlin Van Groningen
Case Van Steyn

Members Absent

None

CDFA Staff:

Michele Dias, General Counsel
Donald Shippelhoute, Special Assistant
David DaSilva, General Auditor III
Steven Donaldson Research Data Analyst II

Approval of Meeting Minutes:

The Chair requested approval of the minutes from the board meeting on May 7, 2020. No additions or corrections were offered.

Board Action 2020-11: It was moved by Mr. Fernandes and Seconded by Mr. Van Beek to approve the May 7, 2020 meeting minutes.

Discussion: There was no further discussion

Public Comment: There were no public comments

Vote on Board Action 2020-11: The motion passed with thirteen (13) members in favor, none in opposition and one (1) abstention. Yes votes: Jarrid Bordessa, Ted De Groot, Fred Douma, William Dyt, Fred Fagundes, Joey Fernandes, Craig Gordon, John Moons, Tony Nunes III, Kerri Vander Poel, Art Van Beek, Arlin Van Groningen and Case Van Steyn. No votes: none. Abstain: Arie De Jong

CDFA Quota Implementation Update:

Mr. Shippelhouse provided updates on Quota Implementation Plan (QIP) funding and enforcement.

Funding Update: Mr. Shippelhouse shared the fund condition spreadsheet and discussed the cash on hand versus the receivables over the entire operation of the QIP program. Of the approximate \$5.5 million that was held over from the former Pooling program, approximately \$200,000 has remained uncollected. A comparison of cash on hand and receivables shows a difference of plus \$219,000 in June 2020 and plus \$327,000 in July 2020. Though the August heatwave may reduce production, the recent increase in the assessment indicates there is sufficient funding to handle a few months of negative balances to fund the quota premium.

Enforcement Update: Mr. Shippelhouse indicated that CDFA is working with the Attorney General office to collect on the delinquencies. The Farmdale lawsuit is still pending since the Sacramento Superior Court has only issued a tentative ruling and no final ruling has been issued. That issue is only related to uncollected funds since the QIP was implemented. The Board asked questions and received clarification that the Farmdale lawsuit is fixed based upon an audit and that Farmdale continued with non-payment.

Legal Update:

Michele Dias, General Counsel with CDFA, provided a legal update.

Stop QIP Lawsuit Update: The first item Ms. Dias reported on was the Stop QIP lawsuit which addressed an interpretation of Food and Agricultural Code (FAC) Section 62757 on whether CDFA was required to hold a hearing prior to a referendum as part of the implementation process for the QIP. The case was heard in Sacramento Superior Court. The court had a tentative and final ruling that stated the California Legislature did not intend for the QIP to have a hearing prior to the referendum and therefore denied. The ruling was filed on August 17, 2020 and Stop QIP has until October 17, 2020 to file an appeal.

Chapter 3.5 Hearing Update: General Counsel provided an update related to the June 9 and 10, 2020 administrative hearing that took place to suspend Chapter 3.5 of the FAC. The ALJ hearing officer carried out a statutory review and determined Chapter 3.5 was not intended to terminate the QIP, and therefore legally defective. The ALJ stated that the referendum was not required and recommended the Secretary not carry out the referendum.

CDFA received from Stop QIP a motion for reconsideration on August 5, 2020 and was subsequently denied on August 11 since no provisions for reconsideration exist. CDFA adopted the ALJ recommendation on August 14, 2020. Stop QIP has until September 14, 2020 to seek Superior Court judicial review of the adopted ALJ recommendation.

Conflict of Interest: Next, General Counsel discussed Conflict of Interest. Ms. Dias indicated why there is no Board member conflict of interest, if decisions made by the Board affect the entire industry as a whole. An example would be the passage of an assessment rate for the entire industry. This Board is similar in make up to other commodity boards. However, if a member believe they have a conflict of interest, then they should not participate in the discussion and possible action of an item.

United Dairy Family Petition:

The Board next considered the petition submitted by United Dairy Families (UDF). Staff indicated the petition had two components:

- 1) set the Regional Quota Adjusters (RQA) at a uniform rate across the state and making the spread to \$1.43 per hundredweight, and
- 2) sunset the Quota Implementation Plan on March 1, 2025.

Mr. Shippelhouse went over a spreadsheet that showed the impact on the quota fund based upon the proposal's change in RQA rates. Because the RQA would increase, that would collect between \$850,000 to \$875,000 more RQA dollars per month from quota holding producers thus decreasing the overall quota assessment by approximately \$0.026 per hundredweight.

A member asked if a petition could have two separate issues and the answer was yes. Another member asked what the next step is in the process. Pursuant to the petition guidelines developed by the Board, the petition is being brought forth to the Board to consider and make a recommendation to the Secretary. The petition is also under the authority of Chapter 3 (of Food and Agricultural Code) and therefore requires that CDFA conduct a hearing, and therefore will occur. The hearing will be carried out by an ALJ similar to that conducted in early June 2020. The ALJ would make a recommendation to CDFA, and then CDFA would make a determination whether to go to referendum.

A question was asked whether notarized signatures were included as part of the petition process. Staff indicated notarized signatures were not submitted, nor required to validate the petition. The petitions received were signed by various producers. The petition received was signed by various producers. Staff looked at records on file at the Quota Administration Program and Milk and Dairy Food Safety to verify who on file is the actual producer. Some individuals that signed were not accepted if an individual was not on file as an authorized owner. A member questioned whether surveys submitted and collected at the UDF meetings were used to submit the petition. Staff indicated that what was submitted indicated that it was a petition and included the proposed amendment language. One member confirmed that it was a petition and not a survey. A member wanted to make a motion, but staff indicated public comment was required first.

A member asked that provided the PRB makes a recommendation, the Secretary has thirty days to make a decision, and if so, should the timing of the hearing be pushed forward. Staff indicated they would look at that. For clarity, member indicated that UDF requests a hearing, that if a petition is received, it

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automatically must go through a hearing and cannot go directly to a referendum, which staff indicated yes pursuant to Chapter 3.0. One member asked whether the petition was automatically going to a hearing? CDFA Counsel indicated yes, because it was filed under Chapter 3.0 which is statute and supersedes any other procedures.

Public Comment: A member of the public asked about the date of the petition, which goes back to March 1, 2020 and would like to know if that date is locked in or could the date be modified by recommendation of the PRB or the Secretary? Staff indicated the petition indicated a hardcoded March 1, 2025 termination date. The Secretary would not have latitude to interpret a different termination date, therefore the March 1, 2025 date is set for hearing purposes. The Secretary can amend, accept, or reject the ALJ recommendation.

Board Action # 2020-12: Motion by Fred Fagundes and seconded by Arie De Jong to recommend to the Secretary to deny the United Dairy Families Petition as written.

Discussion: A few members indicated the industry went through the petition process and that a hearing should go forth, otherwise disagreement will continue. A motion was made by Mr. Fagundes and seconded by Mr. Dyt to amend the motion that a hearing be conducted. After brief discussion, members and Mr. Fagundes agreed to move forward with voting on the original motion (Board Action 2020-12).

Public Comment: There were no public comments.

Vote on Board Action 2020-12: The motion failed, with five (5) members in favor; nine (9) opposed, and one (1) abstention. Yes votes: Jarrid Bordessa, Arie De Jong, Fred Fagundes, Art Van Beek, Case Van Steyn. No votes: Charles Ahlem, Ted De Groot, Fred Douma, William Dyt, Joseph Fernandes, John Moons, Tony Nunes III, Kerri Vander Poel, Arlin Van Groningen. Abstain: Craig Gordon

Board Action # 2020-13: Motion by Joseph Fernandes and seconded by William Dyt to recommend to the Secretary that the (United Dairy Families) Petition is valid and should go through the formal hearing process.

Discussion: Members discussed whether the PRB would need to meet once an ALJ recommendation has been made, and then make a recommendation to the Secretary. It was clarified that based upon Board Action 2020-13 the PRB would not meet after a hearing.

Public Comment: There were no public comments

Vote on Board Action 2020-13: The motion passed, with ten (10) members in favor; four (4) opposed, and one (1) abstention. Yes votes: Charles Ahlem, Ted De Groot, Fred Douma, William Dyt, Joseph Fernandes, John Moons, Kerri Vander Poel, Art Van Beek, Arlin Van Groningen, Case Van Steyn. No votes: Jarrid Bordessa, Arie De Jong, Fred Fagundes, Tony Nunes III. Abstain: Craig Gordon

Public Comments:

There were no comments from the public. A member wanted to be able to discuss procedures and asked to do so at a future meeting. It was also discussed whether a motion that was tabled at the prior meeting could be discussed now. Pursuant to the Bagley Keene Open Meeting Act any tabled motion would need to be on the agenda to discuss and act upon.

Meeting Conclusion

With no further business before the board, the Chair adjourned the meeting at 11:51 am.

Quota Administration Program