



BC FARM INDUSTRY
REVIEW BOARD

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DELIVERED BY EMAIL

Janice Comeau
Chair
BC Milk Marketing Board
32160 South Fraser Way, Unit 200
Abbotsford, BC
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[REDACTED]

Dear Chair Comeau:

RE: BC MILK MARKETING BOARD PARTICIPATION IN THE REVISED DAIRY INNOVATION WEST COST SHARING AGREEMENT – APPROVED

Since 2019, the Western Milk Pool (WMP) has been developing Dairy Innovation West (DIW), a milk concentration facility in Red Deer Alberta. Throughout that time, the BC Milk Marketing Board (BCMMB), which stands on a somewhat different regulatory footing than the other western milk regulators, has been exploring avenues pursuant to which it can participate in the DIW project.

On June 5, 2025, BCMMB made a submission to BCFIRB on its statutory authority to enter into a cost-sharing agreement (CSA) pursuant to which it will contribute to the payment to DIW for its concentration services. BCFIRB provided preliminary feedback to BCMMB in August 2025, following which BCMMB amended and resubmitted the CSA to BCFIRB on September 5, 2025.

For the reasons that follow, BCFIRB confirms that BCMMB has the statutory authority to enter into the CSA, and that doing so is consistent with sound marketing policy.

Background

In the summer of 2019, BCMMB advised BCFIRB of the WMP's intention to develop a new milk concentrate processing plant in Alberta. In a July 18, 2019 letter, BCFIRB set out a number of initial legal and sound marketing policy issues that would need to be addressed before BCMMB could consider entering into such a business arrangement. BCFIRB confirmed that it would need to revisit its directions once BCMMB made further information available to BCFIRB about the precise role that BCMMB and BC producers would have with the proposed facility.

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BCMMB provided BCFIRB with an update at a meeting on November 13, 2019. In a follow-up letter, BCFIRB reminded BCMMB of the need for it to address legal and regulatory issues before moving forward with the project.

On November 20, 2019, BCMMB and the other western milk regulators announced that the project would commence construction in April 2020. The WMP represented that the concentration facility will be the first of its kind in Canada. The technology used by the facility would remove water from raw milk that will create concentrated components (e.g., cream, fat, protein, lactose). The concentration facility will reduce transportation costs in the four provinces and increase jobs and boost economic contributions in Alberta.

In December 2019, BCMMB provided BCFIRB with more information about the project. At that time, DIW was proposed to be administered through a federally-registered not-for-profit corporation owned by the WMP members, including BCMMB.

BCFIRB had a number of outstanding questions about DIW, the business case, and the proposed funding model. In particular, BCFIRB was concerned that BCMMB lacked the statutory authority to own and/or operate DIW. This was communicated to BCMMB by way of a January 23, 2020 letter. BCFIRB directed BCMMB to provide specific information to it no later than February 7, 2020. Without that information, BCFIRB would not be in a position to determine whether BCMMB's participation and/or investment in the DIW initiative would be sound marketing policy, regardless of BCMMB's statutory authority.

On February 25, 2020, BCFIRB met with BCMMB to discuss the DIW initiative, which was also attended by representatives from the BC Dairy Association (BCDA) and the Ministry of Agriculture (Ministry). At that meeting, the participants discussed a range of issues, including the legal and regulatory issues associated with BCMMB's participation in the DIW project.

BCFIRB determined that BCMMB's ownership of DIW was not permitted under the existing legislative framework under which BCMMB operates. BCFIRB confirmed this to BCMMB in an April 23, 2020 letter. BCMMB confirmed in an April 3, 2020 phone discussion that it was no longer pursuing any form of ownership interest and/or operating role in the DIW initiative. BCFIRB also asked BCMMB to confirm that no funds collected by the BCMMB would be invested in the DIW initiative, either directly or indirectly, which BCMMB subsequently confirmed on May 15, 2020.

At the same time, BCFIRB also identified to BCMMB a different way for the BC milk industry to participate in the DIW project. Specifically, as was discussed at the February 25, 2020 meeting, levies collected by the Dairy Industry Development Council (DIDC) created under BC's *Farming and Fishing Industries Development Act* (FFID), could be used for the DIDC to own a portion of DIW, with approval by a plebiscite of producers and the Ministry. BCFIRB understands that DIDC now owns BC's share of the body that owns DIW pursuant to such an arrangement.

In November 2023, BCFIRB staff undertook a routine review of the November 20, 2023 BCMMB meeting minutes. Those minutes included reference to BCMMB reviewing options to cover the operational costs of DIW during the pre-commencement phase of the DIW project. Staff sought clarification from BCMMB given BCMMB's previous confirmation it would not expend any further funds on the DIW project. By way of a February 20, 2024 letter, BCFIRB directed BCMMB to provide a full accounting of all funds it had expended on DIW to date, no later than March 15, 2024.

In its letter of February 23, 2024, BCMMB confirmed it had entered into a cash flow agreement with the other WMP participants and had made prepayments to DIW by way of a producer deduction. On May 22, 2024, BCFIRB directed BCMMB to cease participating in the funding of the DIW facility pursuant to the cash flow agreement, or by any other means. By way of a further July 10, 2024 letter, BCFIRB found that BCMMB's "prepayments" constitute a direct contravention of BCFIRB's April 23, 2020 direction, and BCMMB's commitment not to contribute to DIW. On July 10, 2024, BCFIRB directed the BCMMB to recover the "pre-payments" made under the cash flow agreement and return them to the Milk Board's producer levy pool, which the BCMMB subsequently did.

2025 Cost Sharing Agreement

In early 2025, BCMMB began pursuing alternative arrangements pursuant to which it might pay DIW for its concentration services. At this time, BCMMB proposed that Alberta Milk enter into a Milk Concentration Agreement with DIW pursuant to which DIW provides concentration services to Alberta Milk in exchange for a standby fee. Pursuant to the CSA, BCMMB would pay a share proportionate to the volume of hectoliters produced for the month of the annual aggregate standby fee paid in the first instance by Alberta Milk. BCMMB would use its levy funds to pay the standby fee. BCMMB's purported goals of entering the CSA are to reduce the long-term interprovincial transportation costs incurred by BC dairy producers pursuant to the WMP and maintain and promote processing capacity in Western Canada.

BCMMB initially communicated this proposal to BCFIRB's legal counsel. BCMMB suggested it had the regulatory authority based on a broad interpretation of BCMMB's authority to "promote" milk in the *NPMA*.

In an April 15, 2025 letter to BCMMB, counsel to BCFIRB identified several concerns with BCMMB's analysis of its regulatory authority. Notably, the proposal was very specific that DIW will only concentrate milk from producers located in Alberta. Counsel for BCFIRB questioned whether payment for concentration of Alberta milk fell within BCMMB's statutory authority over BC milk. Counsel for BCFIRB suggested to counsel for BCMMB that the proposal could fall within BCMMB's statutory authority with respect to the operation of pools. Counsel directed BCMMB to put the matter before BCFIRB with an analysis of BCMMB's regulatory authority and a sound marketing policy analysis.

BCMMB put forward that proposal to BCFIRB by way of a June 5, 2025 submission. BCMMB provided an analysis of its regulatory authority that was once again grounded in its authority to “promote” milk. BCMMB also put forward a sound marketing policy analysis of the DIW proposal.

BCFIRB remained concerned that BCMMB had not found a proper source for its regulatory authority to enter into the CSA. BCFIRB undertook its own analysis. As set out in more detail below, BCFIRB has determined that BCMMB has the authority to make payments pursuant to the CSA as part of its delegated federal authority with respect to the operation of pools. This preliminary view was communicated to BCMMB in an August 1, 2025 staff to staff letter. The parties to the CSA subsequently amended the CSA, and the WMP Coordinating Committee passed resolutions, to clarify and confirm that the cost of concentration services will be treated as a pooled cost under the WMP Agreement. The revised DIW CSA and the WMP CC Motion were submitted to BCFIRB on September 5, 2025.

It is notable that in both 2019 and 2025, BCMMB and BCFIRB differed in their understanding of BCMMB’s statutory authority. In both cases, when BCFIRB was not satisfied with BCMMB’s interpretation of its statutory authority, BCFIRB did not simply reject the proposal (which it was entitled to do), but instead found solutions that would allow BCMMB to pursue the DIW project. Despite this, BCFIRB wishes to confirm that in the ordinary course it is for regulated marketing boards and commissions as first-instance regulators to put forward defensible bases for their statutory authority to pursue new initiatives. Boards and commissions should not rely on BCFIRB to find legal solutions for them.

Analysis

For the reasons that follow, BCFIRB has determined that BCMMB’s signing of the CSA is within its regulatory authority and consistent with sound marketing policy.

BCMMB’s Regulatory Authority

The primary source of BCMMB’s powers is the NPMA. BCMMB has a general regulatory authority to “promote, regulate and control” in any respect its regulated product, milk.¹ Notably, BCMMB’s authority under the NPMA is all in respect of BC milk. “Milk” for the purposes of the NPMA is “milk or cream obtained from cows in British Columbia”.²

In connection with pooling specifically, BCMMB has the power to operate pools by, among other things, collecting levies and charges, and using those levies and charges to equalize returns.³ BCMMB can also subdelegate the power to conduct pools to designated agencies.⁴ It further has the authority to purchase BC milk and process,

¹ NPMA, [s. 11](#)

² *British Columbia Milk Marketing Board Regulation*, [B.C. Reg. 167/94](#), [**BC Regulation**] [s. 1](#), “milk”

³ NPMA, [s. 11\(1\)\(o\)\(iv\)](#)

⁴ NPMA, [s. 11\(1\)\(l\)](#)

ship, export or sell that product.⁵ BCMMB can also set levies and use those levies to pay the expenses of BCMMB,⁶ or the costs and losses incurred in marketing a regulated product (specifically, BC milk).⁷

BCMMB has the authority to exercise its provincial powers in respect of BC milk in interprovincial and export trade pursuant to the *Agricultural Products Marketing Act*, [R.S.C. 1985, c. A-6](#) and the *Canadian Dairy Commission Act*, [R.S.C. 1985, c. C-15 \[CDCA\]](#). Pursuant to [s. 3](#) of the *BC Milk Order*, BCMMB can exercise its provincial powers with respect to the marketing of fluid milk from BC in interprovincial trade. Pursuant to [s. 4](#) of that order, it can also fix and impose levies and use those levies or charges to pay expenses and losses resulting from the sale or disposal of BC milk, or to equalize returns. Pursuant to s. 8 of the *Dairy Products Marketing Regulation*, BCMMB is vested with the authority to regulate BC milk and dairy products when it is being marketed in interprovincial and export trade.⁸

Importantly, however, all of these powers limit BCMMB to exercising them only in respect of milk from cows in BC. “Regulated product” in the milk context is defined as being milk from BC cows. The federal legislation in this respect authorizes BCMMB to exercise its provincial powers in respect of only that regulated product – BC milk – in interprovincial and export trade.

DIW will primarily concentrate milk from Alberta cows, not BC cows. BCMMB takes the position that it has the authority, based on these statutes, to pay DIW for its services concentrating Alberta milk. First, BCMMB suggests that the power to “promote” milk is broad enough to encompass paying DIW for concentration services because concentration will reduce transportation costs for BC producers.

“Promotion” in the agricultural marketing context does not extend so far as to permit BCMMB to engage services for concentration of milk, even if it will result in defrayed transportation costs to the WMP. In the regulated marketing context, “promotion” should be understood as relating to publicization of products, organizations and ventures so as to increase sales or public awareness. This is how it is understood in other statutes concerning milk marketing. For example, the CDC’s authority to promote under the *CDCA* is framed as the ability to “assist in the promotion of the use of dairy products, the improvement of the quality and variety of and the publication of information in relation to those products”.⁹

⁵ *NPMA*, [s. 11\(1\)\(r\)](#)

⁶ *NPMA*, [s. 11\(1\)\(o\)\(ii\)](#)

⁷ *NPMA*, [s. 11\(1\)\(o\)\(iii\)](#)

⁸ *Allan v. Ontario (Attorney General)*, [2005 CanLII 25770](#) (ON SCDC) [*Allan*], [paras. 48-52](#); *Nadeau Ferme Avicole Limitée / Nadeau Poultry Farm Limited v. New Brunswick Farm Products Commission et al.*, [2009 NBCA 48](#) [*Nadeau Ferme*], [para. 29](#)

⁹ *CDCA* [s. 9\(1\)\(e\)](#). See also, in the Saskatchewan context, *The Milk Marketing Plan Regulations*, [R.R.S. c. A-15.21 Reg 12](#), s. 31.1(5)

“Promotion” in the context of milk marketing should be understood in a similar vein: as relating to the ability to promote public awareness of and the market for consumption of fluid milk and manufactured milk products. As BCFIRB conveyed to BCMMB in 2020, BCMMB is essentially a regulatory body, and its ability to promote milk should not be read so broadly as to allow it to become a participant in the industry it regulates by engaging services for milk processing without some other regulatory basis for doing so.

Second, BCMMB suggests it has express authority over milk or cream from cows produced in Alberta in [s. 8](#) of the *Dairy Products Marketing Regulations* promulgated under the *CDCA*. That section provides:

8 Where, pursuant to provincial law, a dairy product is required to be marketed in intraprovincial trade by or through a Board, or to a person designated by a Board, that dairy product shall only be marketed in interprovincial or export trade by or through that Board, or to the person designated by that Board.

[Section 8](#) has the effect of vesting in BCMMB the authority to regulate BC milk in respect of interprovincial and export trade. The effect of the NPMA and the *Milk Regulation* (provincial law) is that milk from BC cows (the dairy products at issue) must be marketed through BCMMB. As a result of [s. 8](#), milk from BC cows (the dairy products at issue) must be marketed in interprovincial or export trade through BCMMB. The section has been explicitly interpreted as designating a provincial marketing board as the only agency through which dairy products from that province can be marketed for interprovincial and export trade.¹⁰

[Section 8](#) does not have the effect of vesting in BCMMB the authority to regulate Alberta milk while it is still in Alberta, merely because it is destined for interprovincial or export trade to British Columbia. Indeed, it would be practically unworkable for BCMMB to have that authority over milk being concentrated at DIW. While much of the milk being concentrated at DIW is destined for BC, some of it is destined for other provinces. It would be unworkable for multiple marketing boards to be exercising regulatory authority over the same milk because it is destined for interprovincial or export trade. This is particularly so given that Alberta milk may well exercise regulatory authority over DIW’s concentration services.

While I disagree with BCMMB’s articulation of its regulatory authority to contribute to payment for DIW’s services, BCFIRB has identified a different basis for BCMMB to enter into the CSA: BCMMB’s delegated powers to operate interprovincial pools.

BCMMB exercises delegated powers with respect to milk pooling generally. Under the authority of [s. 9.1](#) of the *CDCA*, the Canadian Dairy Commission (CDC) has delegated to BCMMB in both the WMP Agreement and the P10 Agreement its authority to operate interprovincial pools. In accordance with [s. 9\(1\)\(f\)\(ii\) of the CDCA](#), WMP has the

¹⁰ *Allan*, [para. 48](#); *Nadeau Ferme*, [para. 29](#)

authority to deduct necessary and proper expenses related to the operating of the pools from producer returns.

It is notable that the WMP Agreement specifically envisions the pooling of interprovincial transportation costs. The WMP Agreement provides that “interprovincial transportation costs will be borne by the WMP” (s. 4.2(g)). Section 6.1 confirms that transportation costs are pooled and shared through pooling, up to a maximum.

Milk concentration is directly linked to decreasing interprovincial transportation costs. Like transportation costs, it may be a pooled cost that is properly deducted as a cost of operating the pool. BCMMB has now confirmed that the cost of the CSA is being treated as a pooled cost under the WMP Agreement, in the same manner as transportation costs. This is clear from the motion passed by the WMP Coordinating Committee and the revised CSA itself.

That being the case, BCMMB has the authority to pay DIW for its concentration services pursuant to the CSA, as doing so is pursuant to its delegated authority to operate the pool and is a necessary and proper expense related to the operation of the pool.

Sound Marketing Policy

BCMMB provided a sound marketing policy analysis and a SAFETI¹¹ analysis to BCFIRB in its June 5, 2025 submission. BCMMB argues that the purpose of the DIW CSA is to reduce pooled interprovincial transportation costs borne by BC producers and increase and maintain processing capacity in Western Canada. This, BCMMB says, benefits BC producers and the BC dairy industry.

BCMMB notes that the benefits of DIW are best understood in relation to the historical dynamics of industrial milk allocation and processing investment in the west. Historically, processing has been concentrated in ON and QC, which resulted in decreased opportunity for western producers to produce for the industrial market.¹² However, in the early 2000’s, the Comprehensive Agreement on Pooling of Milk Revenues (P9), was renegotiated to change the formula for allocating industrial quota among the provinces (90% according to population and 10% according to historical shares, referred to as the 90/10 policy). This resulted in a significant increase in industrial milk allocation for western producers.

In order to maintain industrial allocation increases for BC producers, processors needed to be attracted to BC to utilize this allocation. When Vitalus Nutrition was considering a new plant in Abbotsford, BC (P500) in the 2010s, Vitalus indicated they would need a

¹¹Strategic, Accountable, Fair, Effective, Transparent, Inclusive. See the [SAFETI definitions and guidance document](#) for more information.

¹² There are two types of quota: industrial and fluid milk quota. Fluid (fresh) milk quota supplies provincial milk requirements for fresh products such as milk and cream. Industrial quota supplies milk for processing into products such as yogurt, cheese, and ice cream. Each province tends to supply its own fresh milk market. Industrial milk products however have a more national market. Fluid milk receives a higher price than industrial milk but is pooled at a national level.

substantial portion of milk from outside BC. The then-proposed P500 plant would increase Vitalus' processing capacity to 500ML/year (equivalent to ~61% of BC's 2024 production of ~824ML). DIW proposed to concentrate the milk supplied to P500 and other processors by 50%, thus reducing transportation costs which are pooled and paid by producers.

BCMMB indicates that although the majority of milk concentrated at DIW will be from Alberta, all provinces will benefit from concentration as transportation costs are pooled across the WMP. BCMMB estimates that, at the end of the first five years of DIW being in operation, BC producers' net savings will be ~\$8M over those five years with annual savings after that starting at ~\$5M a year. Because transportation costs and savings are deducted from the producer pool, the benefit of these cost savings will be distributed among BC producers in proportion to their production. The reduced costs will be reflected in their producer statements.

BCMMB also notes that it consulted with producers on DIW in 2019 and 2025 and provided to BCFIRB the substantial consultation packages used – including slide decks with substantial information. BCMMB also provided documentation directly to BCFIRB as requested. The WMP also consulted processors on DIW, whose initial feedback was that steps should be taken to ensure that no processor receives an unfair advantage by using the concentration services of DIW. BCMMB notes that this feedback will be addressed by charging a cost recovery fee to processors for using the concentration services of DIW. The fee is intended to offset any economic advantage of a processor using concentrated milk in their processing.

I accept these representations and find that BCMMB's participation in the DIW CSA is consistent with sound marketing policy. BCMMB's payments to DIW of the cost of its concentrations services as a pooled cost pursuant to the WMP Agreement will effectively reduce BC producers' transportation costs. It provides clear cost savings to producers and does not create an unfair advantage to any particular processors who use DIW's services. DIW also supports the development of processing capacity in BC, including the P500 facility, and thereby supports continued increases of industrial milk allocation to BC producers. The CSA is a way for BCMMB to ensure those benefits are achieved.

I am also satisfied that BCMMB's process and analysis set out above are consistent with SAFETI principles:

Strategic – There will be a significant benefit to BC producers in the form of reduced transportation costs. DIW also supports processing in BC, which in turn supports the allocation of industrial quota to BC producers.

Accountable – BCMMB will continue to report DIW financials to producers. BCMMB cost savings will be communicated to each producer in their producer statements.

Fair – BCMMB followed fair process that involved consultation with both producers and processors. Processor feedback about processors who use DIW's concentrations services not receiving an unfair advantage was accounted for by BCMMB through a cost recovery fee.

Effective – At the end of the first five years of DIW being in operation, net savings for BC producers will be ~\$8M over those five years with annual savings after that starting at ~\$5M a year.

Transparent – BCMMB consulted regularly with BCFIRB and provided BCFIRB with regular updates and documentation on its process.

Inclusive – As noted above, both producers and processors were consulted and support the proposal.

Decision

Following careful review of the revised DIW CSA and the WMP CC Motion, BCFIRB in its supervisory role approves BCMMB's participation in the DIW CSA as submitted. BCFIRB appreciates BCMMB's diligence and cooperation throughout this process. We trust that BCMMB will proceed with the implementation of the DIW CSA in accordance with the approved terms and continue to keep producers informed of developments.

Should you have any questions regarding this decision, please do not hesitate to contact Martha Anslow, Executive Director and Registrar.

Sincerely,



Gunta Vitins

Chair, BCFIRB

cc: Rob Delage, General Manager, BCMMB
Michelle Koski, Deputy Minister, Ministry of Agriculture and Food
Eric Kristianson, Assistant Deputy Minister, Ministry of Agriculture and Food
Martha Anslow, Executive Director and Registrar, BCFIRB
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