

**BEFORE THE  
DEPARTMENT OF FOOD AND AGRICULTURE  
STATE OF CALIFORNIA**

**In the Matter of the Public Hearing to Consider a Petition to  
Amend and Terminate the Quota Implementation Plan**

**OAH No. 2020080708**

**ORDER RE-OPENING RECORD AND REQUEST FOR BRIEFING**

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephone conference on September 30, 2020, in Sacramento, California.

Megan Oliver Thompson, Attorney at Law, represented United Dairy Families of California (United Dairy Families or Petitioners), a coalition of dairy producers.

Ashley L. Vulin, Attorney at Law, represented the Stop QIP Tax Coalition (Stop QIP), a coalition of dairy producers.

Niall P. McCarthy, Attorney at Law, represented Save QIP, a coalition of dairy producers.

Michele Dias, General Counsel, California Department of Food and Agriculture (CDFA or Department) attended the hearing and did not present evidence or argument.

Evidence was received, the record was held open until October 12, 2020, for the submission of written arguments and supporting evidence, which were timely submitted by Petitioners, Stop QIP, and Save QIP.

The record is being re-opened on the ALJ's motion to allow the parties to submit additional evidence and argument relevant to the requirements that must be met to refer the Petition to Amend and Terminate the Quota Implementation Plan (Petition) for a producer referendum.

## **Procedural History, and Selected Statutes and Procedural Requirements**

1. By letter dated June 25, 2020, Petitioners submitted the Petition to the Department. On July 25, 2020, the Department sent a letter to Petitioners notifying them that they had submitted a sufficient number of signatures required to conduct a review of the petition. Specifically, the Department found that Petitioners submitted signatures of over 28 percent of the eligible milk producers in California.

Petitioners assert the Petition meets all legal and procedural requirements for the Petition to proceed to a statewide producer referendum, including, but not limited to, the requirements set forth in Food and Agricultural Code<sup>1</sup> section 62717, and section 1103 of the Quota Implementation Plan (QIP).

Section 62717, subdivision (b), states in pertinent part:

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<sup>1</sup> All statutory references are to the Food and Agricultural Code.

The director shall submit the termination of the plan on a statewide basis in a referendum . . . if . . . [she] finds that a substantial question exists as to whether or not producers desire the plan to continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

Section 1103 of the QIP states:

Upon receipt of a petition signed by at least 25 percent of market milk producers regarding the amendment or termination of this Plan, the Secretary shall convene the Producer Review Board to review the merits of the petition and make a recommendation to the Secretary.

If the Secretary finds that the Plan no longer tends to effectuate the purpose intended, termination shall be submitted for referendum. . . .

2. Section 62717, subdivision (b), includes a requirement that the Director “shall submit the termination of the plan” to a statewide referendum if, among other things, the producers who signed the Petition produce “not less than 25 percent of the production of all producers.” The QIP does not refer to the signatories’ share of production.

3. Section 1103 of the QIP includes the requirement that “[i]f the Secretary finds that the Plan no longer tends to effectuate the purpose intended, termination

shall be submitted for referendum . . . .” Section 62717, subdivision (b), does not refer to findings regarding the intended purposes of the pooling plan.

## **Discussion**

4. The Department’s July 25, 2020 letter to Petitioners did not state, and Petitioners did not argue, that the producers who signed the Petition produce 25 percent or more of milk. Nor did Petitioner’s meaningfully argue that the Plan no longer effectuates the intended purposes. Finally Petitioners did not argue whether it is necessary to make these findings as a precondition of referring the Petition for a producer referendum.

## **ORDER RE-OPENING RECORD**

No later than October 30, 2020, Petitioners may file and serve on the Department and the interested parties<sup>2</sup> any evidence that the producers who signed the Petition produce not less than 25 percent of the total production of all producers.

No later than October 30, 2020, Petitioners may move to admit into evidence any documents filed with the Department and served on the interested parties on or before September 30, 2020, and Exhibits 1 through 55 and 57 through 60, submitted with Petitioners’ post-hearing brief.

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<sup>2</sup> Stop QIP and Save QIP are the interested parties for purposes of this Order.

No later than October 30, 2020, the Department shall file with the OAH the documents constituting the Department's record regarding the Petition, and may move to admit into evidence any of the documents from the Department's record.

No later than November 9, 2020, Petitioners, the interested parties, or the Department may object to any of the documents offered by another party as evidence or for judicial notice.

No later than November 9, 2020, Petitioners, the interested parties, and the Department may submit written argument on the issues of whether: (1) all of the terms set forth in section 62717, subdivision (b), and section 1103 of the QIP apply equally to the Petition; and (2) the Secretary may issue an order that the Petition proceed to a statewide producer referendum in the absence of evidence sufficient to support factual findings and legal conclusions that the Secretary shall submit the petition to a referendum pursuant to section 62717, subdivision (b), and section 1103 of the QIP.

DATE: October 23, 2020

Timothy J. Aspinwall  
Timothy J. Aspinwall (Oct 23, 2020 10:34 PDT)

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings