



BC VEGETABLE MARKETING COMMISSION

DECISION RE:

IN THE MATTER OF AN APPLICATION MADE BY  
RED SUN FARMS ("RSF")  
FOR AN ORDER DESIGNATING IT AS AN AGENCY

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BEFORE: The British Columbia Vegetable Marketing Commission  
Derek Sturko, Chair  
Craig Evans, Member  
Natalie Veles, Member  
Hugh Reynolds, Member  
Michael Minerva, Member

DATE: November 6, 2023

## Introduction

1. "Designated agencies" are a critical component of the regulatory system for vegetables in British Columbia. Agencies play a strategic role and assist the BCVMC to regulate, manage and grow the regulated vegetable sector in an orderly fashion. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product.
2. Agencies are businesses licensed by the BC Vegetable Marketing Commission (Commission) to market regulated vegetables and harness the collective power of producers to gain market access. The Agency designation is a privilege that gives the licence holder the ability to market regulated product to the exclusion of others. The licence is non-transferable and is not approved in perpetuity. It expires annually and the regulated entity must apply for its Agency licence to be renewed. The Commission reviews existing Agencies to assess if an Agency status should be maintained, suspended, made subject to terms or conditions, or revoked.
3. Under the Natural Products Marketing (BC) Act (NPMA), the Commission can delegate authority to designated agencies to support the purposes of regulated marketing. Among other things, the Commission is empowered to: (a) regulate the time and place at which and to designate the agency through which a regulated product must be marketed; (b) determine the charges that may be made by a designated agency for its services; (c) set the prices, maximum prices, minimum prices or both maximum and minimum prices at which a

regulated product or a grade or class of it may be bought or sold in British Columbia or that must be paid for a regulated product by a designated agency and to set different prices for different parts of British Columbia; and (d) authorize a designated agency to conduct pools for the distribution of all proceeds received from the sale of a regulated product and to require that designated agency to distribute the proceeds of sale, after deducting all necessary and proper disbursements, expenses and charges, so that each person receives a share of the total proceeds in relation to the amount, variety, size, grade and class of a regulated product delivered by the person and to make those payments until the total net proceeds are distributed. Under section 8 of the NPMA, no designation of any agency is effective unless approved in writing by the BC Farm Industry Review Board (BCFIRB).

4. The decision on whether to designate a new agency for the marketing of regulated vegetables is a matter of fundamental marketing policy determined in the first instance by the Commission and subject to the approval of the BCFIRB. Each application for Agency designation is assessed by the Commission on its merits against the considerations in PART XIV of the General Order. The Commission may exercise discretion to grant an Agency designation if it is satisfied that the applicant meets the underlying objectives and principles of the designation, and subject to policy judgements relating to the appropriate number of agencies in a particular industry in particular circumstances. Providing agency options for the marketing of regulated vegetables contributes to orderly marketing by ensuring market growth opportunities for producers, and a steady supply of BC product for consumers. Though it is beneficial to have multiple agencies, too many agencies can lead to excessive competition for the same buyer and erode producer returns by agencies competing against each other on price in the same traditional markets. Having too few agencies may not provide for access to new markets or further growth through new product improvements that increase overall consumer demand. Access to local supply for a proposed Agency, the impact this application will have on centralized coordinated marketing, and an Agency's ability to plan for positive growth as opposed to merely competing in existing markets are all criteria that need to be applied in a broader context when making a decision to grant another Agency designation. In the end it is the Commission's responsibility to ensure that producer returns are maximized through Agency options that are available to producers.
5. On September 9,2022 Red Sun Farms (RSF) submitted its application for Agency designation with the Commission office. By letter issued September 30,2022 the Commission informed RSF that in consideration of Part XIV section 1. (2), and specifically the June 1st deadline for applications, the Commission will review its application for the 2024 Crop Year. RSF was further informed that the application will remain confidential and secured in the BCVMC office and that a five-member panel of the Commission will be appointed to review its application once the June 1,2023 deadline for applications has passed.

6. On March 27,2023 the Commission wrote to RSF as follows:

“... You are also aware that in 2021 the Commission recommended to BCFIRB that MPL British Columbia Distributors Inc. (MPL) be designated as an agency to market regulated greenhouse vegetables. However, BCFIRB has not yet completed its prior approval process of this agency designation. On March 8th, 2023 BCFIRB finalized the terms of reference it will follow to consider the BCVMC’s recommendation. A hearing is now set to take place on May 23rd, 24th, and 26th with a decision on MPL’s agency designation to follow.

We bring this pending BCFIRB decision on MPL’s agency designation to your attention because the Commission will take this decision into consideration prior to issuing a recommendation to BCFIRB on Red Sun Farms’ agency application. It is our intention to complete the review of Red Sun Farms’ agency application and issue a decision on or before September 15th. However, the timing is dependent on when BCFIRB issues its decision on MPL’s agency designation.

Unless you instruct otherwise, the agency application submitted by Red Sun Farms in 2022 will remain confidential and secured in the BCVMC office and will be the application that is to be reviewed. You may also submit an amended application to replace the application that is currently on file. If you plan to do so we ask that you inform the Commission General Manager in writing as soon as possible of your intentions. An amended agency application must be submitted to the Commission office by June 1st, 2023....”

7. On August 18,2023 the Commission wrote again to RSF:

“On March 27, 2023, the Commission informed you that Red Sun Farms’ agency application will not be reviewed until after June 1, 2023, in accordance with section 2 under General Order Part XIV Procedures For Designation Of Agencies. You were further advised that our intention to issue a decision by September 15, 2023 was dependent on the timing of BCFIRB’s decision on the Commission’s recommendation to grant Mastronardi Produce Ltd. (MPL) an agency licence. As of the date of this letter, a decision has yet to be issued and the absence of a response from BCFIRB is now impacting the timing of the consideration of Red Sun’s application. Once the BCFIRB decision is issued, the Commission will be in a better position to provide you with additional details on how the timing will be impacted.

In the same letter we informed you that the agency application submitted by Red Sun Farms in 2022 is to remain confidential and secured in the BCVMC office. You were also invited to submit an amended application by June 1, 2023, to replace this application. No amended application was received and therefore the original application submitted in 2022 will be the application that is reviewed.

Once the BCFRIB decision is issued, the Commission will proceed with the consideration of Red Sun Farms' agency application. Information on the review process is to be issued at that time."

8. RSF replied to the Commission on August 21, 2023 and urged the Commission to move forward immediately with the review of its application, without regard to the status or ultimate outcome of the MPL application. Among other things, it informed that if its Agency designation is approved, an anticipated decision past September 15<sup>th</sup> will hinder its ability to sign grower GMAs before the October 31, 2023 deadline.
9. On August 30, 2023 the Commission wrote back to RSF expressing that it will begin to process its application and that considerations on an agency licence being granted to MPL will be addressed in the review process. The letter also states that once a five-member panel is struck the Commission will make its best effort to process the application as quickly as possible and to have a decision issued in advance of the October 31 producer transfer deadline.
10. On September 13, 2023 the Commission informed RSF of the panel members and that the panel is in the process of reviewing its application.
11. On review of RSF's application, the panel noted perceived omissions or deficiencies in the submitted application. A letter was issued to RSF on September 25, 2023 that encouraged RSF to rectify these perceived omissions or deficiencies or clarify any part of the application by written submission prior to presenting its application to the panel. The letter informed RSF that the perceived omissions or deficiencies observed in reference to the General Order, are as follows:
  - A. **PART XIV 1.(3)(b), detail on commencement and operational capacity, including:**
    1. The proposed Agency's long-term objectives.
  - B. **PART XIV 1.(3)(c), evidence that demonstrates support for the proposed Agency, and specifically:**

1. The particulars on how the applicant intends to secure arrangements with producers who will ship regulated products to the proposed Agency.
  2. Copies of letters of commitment obtained from arms-length Producers who wish to market regulated product through the proposed Agency.
  3. The amount of existing greenhouse production allocation (m2) that is to be transferred to the proposed Agency.
- C. PART XIV 1.(3)(d), detail on marketing strategy and framework, including:**
1. The particulars of the proposed Agency's target market, and the total amount of regulated product to be received from each Producer who will market through the proposed Agency.
  2. An assessment of market supply and demand, including an assessment of market supply and demand in areas where the proposed Agency intends to market regulated product.
  3. The particulars of the proposed Agency's intended product placement by market category. Please complete the attached form titled 'BCVMC Market Category Template'.
  4. The names and contact information of proposed customers of the proposed Agency.
  5. Letters of commitment from proposed customers of the proposed Agency.
- D. PART XIV 1.(3)(g), The particulars on how this proposed Agency advances Producer and industry interests, including:**
1. How it would prioritize the marketing of regulated products.
  2. How it would encourage collaboration in Agency decision-making with their Producers regarding the production, transportation, packaging, storage, and marketing of regulated vegetables.
- E. PART XIV 1.(4)(g), A rationale in support of the application, with specific reference to the following:**
1. Existing and anticipated market requirements that could be serviced by the proposed Agency.
  2. How producers would benefit from shipping through this proposed Agency.
  3. How the proposed Agency benefits the industry as a whole.
  4. The impact that the proposed Agency would have on existing designated Agencies.
12. On September 29, 2023 RSF submitted a letter and supplemental attachments in response to the panel's September 25, 2023 letter.
13. On October 13, 2023 RSF presented their agency application to the panel.

14. Subsequent to the presentation, RSF circulated a letter to the panel on October 16, 2023 that provided additional commentary regarding specific questions that were asked.

## Analysis

15. The Agency designation is a privilege that gives the license holder the ability to market product to the exclusion of others. Agencies are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. An agency plays a strategic role to assist the Commission to regulate, manage and grow the regulated vegetable sector in an orderly fashion.
16. There is a high threshold to be achieved before an application for agency status will be granted. The designation of a new agency should only follow where the panel is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion, or otherwise undermine orderly marketing. The panel must be assured that the presence of the agency will enhance orderly marketing, promote the development of industry, and ensure that producer returns are maximized. These considerations are expressed in more detail in PART XIV of the General Order.
17. On review of the application the Panel is to confirm that the applicant has sufficiently demonstrated that it has addressed all considerations. The application is then assessed on its merits against the considerations in PART XIV of the General Order, and on the evidence gathered by engaging industry in consultation to validate the need for another the agency.
18. The panel has thoroughly reviewed RSF's application and its submission subsequent the delivery of its presentation. There is no doubt that RSF is a well-established, leading marketer, with direct access to significant customers throughout North America and has arrangements to deliver programmed business to national retailers. RSF also has direct access to a significant amount of production throughout North America through established acreage and grower partners, and is investing in infrastructure to better service its customer base and market needs. RSF has long established relationships with existing agencies that regularly buy and sell product to RSF to cover shortfalls in supply. RSF is licensed as a wholesaler of regulated vegetables in BC which enables it to acquire product within BC from existing agencies. However, RSF further notes that although they have been working with a wholesaler license, this form of licence is not suitable for bidding and building contracted programmed business with customers. By acquiring designated agency status RSF desires to gain direct access to BC production and provide BC producers with an opportunity to participate in supplying programmed business that is currently being filled by RSF with production from other regions. RSF seeks to represent BC producers through partnerships that map BC production to stable retail direct programs.

19. For the reasons that follow, the Commission has decided to summarily dismiss RSF's application. First, the Commission is not satisfied that RSF has provided sufficient evidence of support from arm's-length producers. Second, it is the Commission's view that there are already a sufficient number of agencies, and that the designation of yet another agency would undermine the objective of centralized, coordinated marketing. Each of these grounds will be addressed in turn.

#### Lack of Evidence of Producer Support

20. On balance, the panel is satisfied that RSF has provided reasonable evidence that meets the requirements set out in PART XIV of the General Order, with one exception. The applicant has failed to demonstrate that it has producer support and commitment. Applications for designated agency status must include a detailed business plan addressing how the applicant will secure access to regulated product, including Part XIV paragraph 1.(3)(c)(iii):

“(iii) copies of all letters of commitment obtained from arms-length Producers who wish to market regulated product through the proposed Agency; ...”

21. RSF has not provided any letters of commitment that satisfy Part XIV paragraph 1.(3)(c)(iii) of the General Order. RSF states that its “goal in BC is to partner and represent growers ...” and that it has had several conversations with BC producers since communicating its intent to industry stakeholders to apply for a designated agency licence. RSF's position on this requirement is that it places the producer in a difficult situation to commit to a prospective agency so far in advance while the producer is supplying product under a grower marketing agreement that is in place with an existing designated agency. RSF contends that the obligation creates mistrust and concerns amongst producers and that the Commission should consider granting an agency applicant with a conditional agency licence, subject to the expectation that producers will commit to producing for the agency applicant over the ensuing crop year. A failure on the part of the agency applicant to attract prospective producers prior to the October 31 agency transfer deadline would provide grounds for retracting the conditional agency status that has been granted to the applicant.

22. The panel appreciates RSF's perspective on this requirement. However, producer support is an essential prerequisite. The General Order sets out the rules on how the Commission manages the industry to ensure orderly marketing. Part XIV paragraph 1.(3)(c)(iii) is a requirement stated in the Commission's General Order. Letters of commitment from producers provide evidence of producer support for the prospective agency. Producer support is a key pillar of an application in demonstrating through evidence that there is a strong need for another agency to represent BC regulated vegetable producers.

### The Application in Context

23. This application for designated agency status was submitted to the Commission on September 9, 2022. Part XIV paragraph 1. (2) of the General Order states as follows:

(2) Unless otherwise specified by the Commission in writing, applications for designated Agency status must be submitted to the Commission on or prior to June 1, for consideration by the Commission between June 1 and September 15 of that calendar year.

24. RSF was notified by the Commission of its intention to review its application over the period as directed in the General Order. At the time it was anticipated that a decision by BCFIRB to grant designated agency status to MPL British Columbia Distributors Inc. (“MPL BC”) would be forthcoming. However, this was not to be the case. Though MPL BC had been approved for agency designation by the Commission on December 21, 2021, as per section 8 of the NPMA, no designation of any agency is effective unless approved in writing by the BCFIRB. A decision by BCFIRB would not be forthcoming as was anticipated. BCFIRB’s decision on MPL BC was in fact issued on October 11, 2023, twenty-two (22) months after a panel of the Commission issued the decision that MPL BC should be designated as an agency, subject to the approval of BCFIRB.

25. On March 22, 2023, the Commission notified RSF of this concern and wrote to RSF as follows:

“... We bring this pending BCFIRB decision on MPL’s agency designation to your attention because the Commission will take this decision into consideration prior to issuing a recommendation to BCFIRB on Red Sun Farms’ agency application. It is our intention to complete the review of Red Sun Farms’ agency application and issue a decision on or before September 15th. However, the timing is dependent on when BCFIRB issues its decision on MPL’s agency designation. ...”

26. In subsequent correspondence with the Commission, RSF requested that the review of its application for agency designation should commence immediately and directed the Commission’s attention to the fact that there is nothing in the General Order that prohibits the Commission from reviewing an application while another application is pending or outstanding. In August 2023 the Commission struck a panel and proceeded with the process.

27. Though the Commission had every intention to comply with the period over which an application is to be considered, it does not agree that an application can be considered in isolation, and without regard to the broader context. On the contrary, MPL’s pending designated agency licence is a significant factor that needs to be noted. If there are too many agencies operating within the Province, the objective of centralized, coordinated marketing



is undermined. Indeed, the presence of too many agencies can lead to undesirable fragmentation that can actually erode producer returns. Thus, the presence of MPL BC as a designated agency needs to be taken into consideration when assessing the merits of the RSF application against the considerations in PART XIV of the General Order.

28. In this regard, it is notable that the Commission made the following comment in its decision to grant designated agency status to MPL, subject to the approval of the BCFIRB:

“...it is generally undesirable to permit a proliferation of agencies that might simply compete against each other resulting in price erosion...”

29. As noted, “designated Agencies” are a critical component of the regulatory system for vegetables in British Columbia. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. The appropriate number of designated agencies and the potential for marketing “fragmentation” to erode producer returns is an important consideration that needs to be addressed at the industry level. At any given time, the ideal marketing structure needs to provide for reasonable stability and should help producers make sound business decisions that work for them, while promoting industry competitiveness, adaptability, and growth. The panel is cognizant that new agencies should not be admitted unless there is evidence showing how the introduction of a new agency benefits the industry as a whole despite further decentralization of marketing.

30. Therefore, the BCFIRB decision to grant or deny the MPL BC designated agency licence is an important consideration that bears on the Commission’s assessment of this agency application. The delay in the review of the application is not unreasonable.

## Summary

31. After due consideration the panel has decided to summarily dismiss RSF’s application pursuant to subsection 2(4) of PART XIV of the Commission’s General Order. The panel is satisfied that it would not be in the interest of the industry to grant designated Agency status to RSF at this time due to the application’s non-compliance to Part XIV paragraph 1.(3)(c)(iii) and the Commission’s view that there are already a sufficient number of agencies, and that the designation of yet another agency would undermine the objective of centralized, coordinated marketing.

32. The Commission does not agree that an application can be considered in isolation, and without regard to the broader context. The appropriate number of designated agencies and the potential for marketing “fragmentation” to erode producer returns is an important consideration that needs to be addressed at the industry level. New agencies should not be

admitted unless there is evidence showing how the introduction of a new agency benefits the industry as a whole despite further decentralization of marketing.

33. The panel acknowledges RSF’s collaborative approach to working with BC agencies and producers and invites RSF to apply again in the future with an agency application that demonstrates producer support.

34. It is the panel’s considered view that this decision reflects a principled-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the “S.A.F.E.T.I.” principles.

35. The S.A.F.E.T.I. analysis of this decision:

<b>STRATEGIC</b>	<ul style="list-style-type: none"> <li>The decision reflects the identification of key opportunities as well as systemic challenges. Because centralized marketing is the primary mechanism by which producer returns are maximized, the panel is cognizant that new agencies should not be considered unless there is evidence of producer support for the new agency applicant despite further decentralization of marketing. In this instance the application was submitted without demonstrated producer support.</li> </ul>
<b>ACCOUNTABLE</b>	<ul style="list-style-type: none"> <li>The panel has maintained legitimacy and integrity by discharging its responsibilities according to the detailed criteria for new agency applications published in Part XIV of the General Order.</li> <li>Builds accountability in the system by bringing attention to Producer support as a key pillar of an application in demonstrating through evidence that there is a strong need for another agency.</li> </ul>
<b>FAIR</b>	<ul style="list-style-type: none"> <li>The panel has ensured procedural fairness by providing the applicant with a fulsome opportunity to express their opinions and comply with all considerations expressed in detail in PART XIV of the General Order.</li> </ul>
<b>EFFECTIVE</b>	<ul style="list-style-type: none"> <li>The high threshold for the grant of an agency designation, as well as the process by which such applications are to be made, are both clearly defined in Part XIV of the General Order. The Commission’s expectations are therefore clearly defined for the applicant.</li> </ul>
<b>TRANSPARENT</b>	<ul style="list-style-type: none"> <li>The panel has taken all appropriate measures to ensure that process, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed.</li> </ul>
<b>INCLUSIVE</b>	<ul style="list-style-type: none"> <li>The panel has taken all appropriate steps to ensure that appropriate interests are considered.</li> </ul>



Derek Sturko, Chair