

Craig Gordon Details QIP Battle, Producers' Frustrations in California

Despite some setbacks, efforts by the group of California dairy producers continue to try to overturn the Quota Implementation Plan (QIP). That's the administrative mechanism by which the California Department of Agriculture (CDFA) directs the state's federal milk order to deduct \$0.38/cwt. from all Grade A producers' monthly milk incomes. The QIP deductions – about \$13 million per month -- fund payments of \$1.70/cwt. to producers who own Quota.

In November 2018, California adopted a federal milk order. From that point, every month, Grade A producers have seen the QIP deduction on their monthly milk check statements. With farm milk prices often at ruinously low levels, financially struggling California producers have rebelled against the QIP. We posed the following questions to Craig Gordon, a California dairy producer and hay broker:

Question: At this time, how much money per hundredweight is being deducted from California's Grade A milk producers monthly milk checks to fund pay-outs of \$1.70/cwt. to producers holding Quota?

Gordon: All Grade A milk producers in California currently have a line-item deduction of 38-cents per hundredweight deducted from their monthly settlement checks to fund the Quota program.

Questions: The Stop QIP effort has encountered a legal setback in recent weeks. Please explain that event and your concerns about that decision. The Stop QIP has also hit an administrative roadblock with the California Department of Food and Agriculture (CDFA). Please explain that event and your group's concerns about that outcome.

Gordon: Our Petition, which was signed by over 1/3 of the dairy Producers in the State of California, asked for a referendum to suspend Chapter 3.5 in the Food and Ag Code — where the QIP resides. CDFA Secretary Ross denied our Petition, after an Administrative Law Judge (ALJ) recommended denial, based on the fact that we followed the procedures that are laid out in Chapter 3.5. The ALJ said that we should be following the procedures for suspending the QIP that are in Chapter 3. Chapter 3 is a Chapter for pooling plans and the QIP is not a pooling plan but a quota program.

Concerns: We didn't know that the ALJ and the Secretary could stop a vote of the dairy producers when they [the petitions] had met the 25% criteria. The ALJ said it is against the law to use Chapter 3.5 rules for suspending the QIP, which resides in Chapter 3.5 and did not give us the law he is referring to. Most disturbing is that Chapter 3 and Chapter 3.5 both should have been either suspended or terminated when California shifted to the Federal Order in November 2018. It is disturbing that the

dairy industry cannot get a vote to decide our future. Our government, which should be helping us facilitate the process of challenging QIP, is instead fighting us at every turn ... without justifications.

Question: You recently discovered what you believe to be CDFA's failure to follow California's Administrative Procedures Act (APA), when that agency established the Quota Implementation Plan. What are the specific rules set by your state's APA?

Gordon: Statutes are set by Legislatures and Regulations are done by agency. And all regs have to be legal, especially when you are talking about assessing or taxing people. So all new regulations are required to be turned into the APA for their approval. If a Regulation does not have an exemption, and it didn't go through the AP process it is considered a underground regulation. And underground regulations cannot assess anyone.

Therefore CDFA does not have the authority to assess our industry over \$13 million a month. They [CDFA's leadership] knew this at least by last January, when the state Attorney General's office acknowledged that the regulatory process was not followed; they told us they were going to go back and do the process that was required: have a hearing and a referendum to establish the QIP the right way. But [state officials] went back on their word and told us the deal was off. So here we are today and they keep on taxing producers' milk checks — full well knowing that it is illegal according to the APA.

Question: Why do you contend that CDFA violated the state's APA, when it implemented the QIP?

Gordon: CDFA is using codes in the FAC that pertain to pooling programs — namely Chapter 3, which is for amending, and terminating pooling plans. Quota was never a pooling plan, it was a certificate that was issued for free to dairymen back in 1969 that gave them more value for their milk in an effort to get them to join the pool that was being organized by Mr. Gonsalves.

CDFA did not do the required hearings or discuss the merits required by the APA. The agency put the quota program in a pooling chapter, no longer in force when California's Federal Order came in. The QIP is a tax implemented on dairy producers who receive no benefit — directly or indirectly — and that violates California's Constitution. We have dairymen getting RQA's from their quota and getting location differentials from the federal order, some people call that double dipping.

A 15-producer Board was charged by the CDFA Secretary to set up and administer the Quota Implementation Plan. That board is made up of 13 quota holders, plus two non-quota holders. That's like having 13 foxes and two hens setting up the security and then administering it for the hen house.

Question: What statements by CDFA employees can you cite to back up your claims that the agency violated APA?

Gordon: The lead counsel for CDFA — Michelle Dias — stated at a Producer Review Board meeting said that the QIP did not follow the regulatory procedures. And that is how the QIP operates today. I called the APA, spoke to a staff member, and they could not find any regulation that went by the name QIP? I replied, that has to be wrong because they are assessing me \$29,000 a month. he asked me if I had proof of that? I said of course, and asked why did he need proof? He replied state government agencies in California cannot assess or tax without approval from the APA. He sent me the forms to file a complaint.

Question: Can you reveal your next strategy to challenge the QIP, in light of your understanding of CDFA's alleged failure to follow the APA in establishing QIP?

Gordon: We are filing a formal complaint to the APA, and we have also filed a complaint to the Fair Political Practice Commission because of apparent conflicts of interests of members of the Producer Review Board suspend Chapter 3.5.

- We are going to file an Appeal on the Judge that denied our Writ of Mandamus to have CDFA cease and desist taking our money illegally and redistributing it to a small group of dairymen and we get nothing in return.

- We are going to file another Writ of Mandamus to seek and order to allow us to have our referendum to terminate the QIP.

- We also have another petition ready to go under Chapter 3 that we intend to file in Late March, when we expect a large group of Grade B shippers to become eligible to vote and will give us the cushion we need to win that Petition to terminate Quota.

- We also have served notice to the Federal Order to the existence of a competing pooling program and have asked for their assistance as well.

- We intend to begin a long list of depositions of CDFA personnel, past and present and deposing the dairymen who made declarations for the Save QIP movement in support of denying the Stop QIP petition.

- We have contacted the ReCall Gavin Newsom [California's governor] movement about sponsoring a billboard campaign across the state of California for his Recall.

- We have six other steps we are going to take, but for now would like to keep those under the wraps.

We are committed to terminate the QIP. or should we give it its real name: "The Bribe" The Bribe can only mean one thing, and it isn't anything good. We cannot believe all of these government people protecting a bribe, and denying us our rights to a have a vote and let our industry decide our fate.