SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

HRG DATE / TIME **JUDGE**	**July 31, 2020 / 10:00 A.M.** **James P. Arguelles**	**DEPT. NO.** **CLERK**	**17** **Slort**
FARMDALE CREAMERY, INC. **Plaintiff/Petitioner,** **v.** **CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, and Does 1 through 100, inclusive,** **Defendants/Respondents,** **and** **CLOVERDALE DAIRY, LLC et al.,** **Defendants/Respondents in Intervention.**		**Cases No.: 34-2020-80003332**	
Nature of Proceedings:	**Petition for Writ of Mandate and Complaint for Declaratory Relief – Final Ruling**		

The petition for writ of mandate is DENIED.

The request for a declaration that the California Quota Implementation Plan (QIP) is invalid is DENIED; the QIP is not invalid on grounds that Respondent California Department of Food and Agriculture (CDFA) failed to adopt it as a pooling-plan amendment after holding public hearings pursuant to the Food and Agricultural Code.

CDFA's request for judicial notice is unopposed and granted.

Petitioner Farmdale Creamery Inc.'s (Farmdale) objections to the Houston Declaration are sustained.

Introduction

Farmdale is a California milk processor, also known as a "handler." Farmdale purchases raw milk from dairy farmers (producers) and processes it into cheese and other products for

eventual retail consumption. Along with non-party United States Department of Agriculture, CDFA exercises regulatory authority over producers and handlers in California. In November 2019, CDFA assessed Farmdale $364,367.39 in fees for milk Farmdale had ostensibly purchased from Arizona handler GH Processing. Farmdale challenges the assessments on two main grounds.

First, Farmdale argues that the fees were erroneously assessed because they may only be assessed on handlers' purchases of milk from producers. Given that GH Processing is a handler, Farmdale contends that it was not required to pay assessments on milk purchased from GH Processing.

Second, Farmdale contends that the legal authority underlying the largest of the three fees ($285,653.41) is invalid. The authority for this fee is the QIP, which CDFA promulgated after producers replaced most of California's milk marketing and pooling regime with a Federal Milk Marketing Order (FMMO). In Farmdale's view, the QIP is void because it was not enacted in conformity with the underlying statute.

In its petition and complaint (Petition), Farmdale prays for a writ of mandate setting the assessments aside.[1] In addition, Farmdale asks the court to declare the QIP invalid. CDFA and Intervenors[2] oppose.

Background

CDFA assessed three different fees against Farmdale: a California Dairy Council fee in the amount of $4,792.22, a California Milk Advisory Board fee of $72,609.22, and the QIP Assessment fee of $285,652.41. CDFA imposed these fees on Farmdale's receipt of unprocessed milk from California producers. Farmdale ostensibly made these purchases pursuant to two contracts with GH Processing collectively covering the period January 1, 2019 through December 31, 2020. The contracts identify GH Processing as the "seller," not merely the agent or broker for another seller.

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[1] The Petition's prayer contains a request for an order barring CDFA from assessing fees on Farmdale's future purchases of milk from out-of-state handlers. In its opening brief, Farmdale references GH Processing's location out of state and argues that a milk marketing order authorizes CDFA to collect Milk Advisory Board fees, discussed infra, from out-of-state handlers. There is no broader discussion, however, of CDFA's authority *vel non* to assess fees on purchases of raw milk from out-of-state handlers. The opening brief's conclusion likewise omits any reference to an order prohibiting assessments on milk purchases from out-of-state handlers. Consequently, the court construes the initial request for an order barring such assessments as having been abandoned.

[2] The court granted the following Intervenors leave to participate in this case: Cloverdale Dairy, LLC; Cuoco Creek Dairy, Inc.; De Jager Farms South; Double D. Dairy; Dover Dairy Farms; DYT Dairy; Fagundes Dairy; Felicita Dairy; Frank J. Borges Dairy; Goyenetche Dairy; McClelland's Dairy; Migliazzo & Sons Dairy; Milky Way Dairy – Visalia; Tillema Farms; Van Exel Dairy; Vierra Dairy Farms; and Vista Verde Dairy.

The contracts further identify Gerben Hettinga (Hettinga) as GH Processing's signatory.[3] Hettinga is the 50 percent owner and managing partner of GH Processing's parent company, GH Dairy. GH Dairy is a producer with dairies in California. Hettinga describes GH Processing as an entity separate from GH Dairy but serving as an "operating arm" of the latter. (See Hettinga Decl., ¶ 2.) According to Hettinga, when GH Processing purchases raw milk from a GH Dairy farm, the transaction is at arms-length and memorialized as such in GH Processing's separate books. Hettinga's parents own other dairy farms (Hettinga Dairies) in California. Two letters from Farmdale's counsel to CDFA indicate that at least one of Hettinga's parents is also an owner of GH Processing. (See Hofferber Decl., Exh. E, p. 2; *id.* Exh. F, p. 3.)

California handlers are required to make regular reports to CDFA for milk received from California dairies. When CDFA auditors reviewed Farmdale's reports for the period November 2018 through April 2019, they determined that Farmdale had inaccurately reported the receipt of raw milk from GH Processing in November and December 2018. Auditors discerned the inaccuracy from discrepancies between Farmdale's reports to CDFA and the source documents in Farmdale's possession, i.e., unique "farm tags" identifying GH Dairy and Hettinga Dairies as the actual sources of the milk.[4]

For the period between January and April 2019, Farmdale once again reported receiving raw milk from GH Processing, but it failed to retain the associated farm tags for auditors' review. When asked about this change in practice, Farmdale asserted that it no longer kept the farm tags. The auditors were thus forced to rely on other source documents that Farmdale had retained, namely its Beta Lactam & Tertracycline Testing Daily Log Sheets (Daily Logs). Many of these handwritten Daily Logs disclosed milk receipts from "HHD" and "GHD," abbreviations that Farmdale had used in prior months to denote California dairies belonging to GH Dairy and Hettinga Dairies. Some of Farmdale's Daily Logs from months before January 2019 reflected receipt of milk from two GH Dairies in Arizona, but the Daily Logs did not consistently distinguish Arizona dairies from California dairies. Because Farmdale had not retained records supporting claims that the receipts were not subject to assessments, CDFA treated all receipts from GH Dairy for the period January through April 2019 as receipts from GH Dairy farms in California.

In a letter dated November 20, 2019, CDFA informed Farmdale that the latter's "Producer receipts were misreported as Handler receipts during the months of January through April 2019. [¶] Milk from a California producer that is then received and utilized in a California plant must pay California assessments." (Hofferber Decl., Exh. C, p. 1.) The letter further indicated that adjustments for the misreporting had resulted in additional assessments.

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[3] The only versions of the contracts before the court are unexecuted.

[4] Other CDFA staff had noted the same inaccuracies earlier, and the inaccuracies did not yield any portion of the fees disputed in this case.

In a responsive letter dated January 6, 2020, Farmdale asserted that the assessments were erroneous because Farmdale had purchased the milk from GH Processing, not from a producer. The parties reached an impasse, and this action followed.

Standard of Review

> Ordinary mandate is used to review an adjudicatory decision when an agency is not required to hold an evidentiary hearing. [Citation.] The scope of review is limited, out of deference to the agency's authority and presumed expertise: "The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.] . . . 'A court will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support.'"

(*Stone v. Regents of Univ. of Calif.* (1999) 77 Cal.App.4th 736, 745.)

Discussion

The California Dairy Council Fees and Milk Advisory Board Fees

During the period in question, Dairy Council fees were "collected from the handler that purchase[d], or otherwise acquire[d] possession or control of th[e] milk by deducting the fee from any payment ... due the producer[.]" (See former Food and Ag. Code § 64302(a).)[5] Similarly, Milk Advisory Board fees were (and continue to be) collected from the first handler receiving or acquiring the milk from a producer. (See *Marketing Order for Research, Education, and Promotion of Milk and Dairy Products in California* (Marketing Order) [Knox Decl., Exh. A], art. IV, § C-2.) CDFA imposed the fees on Farmdale on the theory that the contracts between Farmdale and GH Processing were "formalities", and that the real arrangement was for Farmdale to receive milk from GH Dairy or Hettinga Diaries in California. CDFA cites several tax cases for the proposition that CDFA and the court may look to the "substance" of transactions when deciding whether administrative fees should be imposed.

Farmdale maintains that it received all the milk in question from GH Processing, a handler. Evidence submitted with the opening brief indicates that GH Processing is indeed a handler and operates separately from GH Dairy and Hettinga Dairies. CDFA does not argue that GH Processing is itself a producer.

Nonetheless, there is evidence supporting CDFA's contentions that the arrangement between Farmdale and GH Processing was "for show," and that Farmdale was the first handler of the milk. First, as a handler operating in California's milk markets, GH Processing is required to

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[5] Food and Ag. Code § 64302 was amended effective 2020.

Undesignated statutory references shall be to the Food and Ag. Code.

submit, and does submit, the same reports that Farmdale submits to CDFA. Farmdale does not deny that, to comply with reporting requirements, GH Processing was required to identify any milk it resold in California, including the milk it purportedly resold to Farmdale. The undisputed evidence, however, is that GH Processing did not identify any resale of milk to Farmdale in reports it submitted for the period covered by the contacts. (Shipplehoute Decl., ¶ 10.)[6]

In addition, there is the evidence that Farmdale repeatedly attempted to hide evidence that raw milk it claimed to receive from GH Processing actually came from GH Dairy and Hettinga Dairies. Farmdale has not identified a justification for this concealment. A natural inference to be drawn is that Farmdale wanted CDFA to believe that milk was coming directly from GH Processing, not a California affiliate. If Farmdale had considered the contracts with GH Processing to be genuine, there would have been no need to conceal receipt of milk directly from the California dairies.

Finally, there is evidence that Hettinga and/or his parents own GH Processing, GH Dairy and Hettinga Dairy. By itself, this evidence of overlapping and family ownership would not support a finding that GH Processing was merely a conduit for GH Dairy and/or Hettinga Dairies on the contracts with Farmdale. Nonetheless, it is evidence that Hettinga was in a position to exploit GH Processing, GH Dairy and Hettinga Dairies in order to make it appear as though Farmdale was obtaining milk from GH Processing rather than from the dairies. As a result, when combined with the other evidence, the common ownership of these entities supports CDFA's position.

Given the evidence, CDFA did not act arbitrarily or capriciously by treating Farmdale as the first handler of the milk and, therefore, the party from which to collect the fees. In reaching this conclusion, the court is aware of evidence that Farmdale paid GH Processing for the milk it received from the dairies. The court, though, does not reweigh the evidence. Hence, some evidence that Farmdale performed on the contracts with GH Processing does not negate CDFA's position, based on other evidence, that the contracts were a cover for Farmdale's receipt of raw milk directly from GH Dairy and Hettinga Dairies.

In its reply brief, Farmdale attempts to shore up its arrangement with GH Processing by asserting that GH Processing was the one that proposed contracting for raw milk. Farmdale asserts that it accepted the proposal only because GH Processing offered the lowest price for the milk. Farmdale does not explain how GH Processing – a middle man – could have offered lower prices than the dairies themselves. As a consequence, Farmdale's explanation for its contracts with GH Processing does not alter the outcome.

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[6] The court also notes that, despite Hettinga's assertion that GH Processing memorializes its purchase of raw milk from GH Dairy and Hettinga Dairies in its separate books, neither Hettinga nor Farmdale produced relevant portions of such books to substantiate GH Processing's contractual sales of milk to Farmdale.

Finally, the court invited counsel to discuss at oral argument whether, in the absence of evidence that Farmdale knew GH Processing never acquired the milk it purported to resell, equitable considerations would have precluded CDFA from levying fees against Farmdale as the first handler. Neither side cited a case directly addressing this question. As noted above, there is evidence that Farmdale was aware of the scheme. But even if the evidence were otherwise, the court would uphold CDFA's treatment of Farmdale as the first handler. Farmdale is a sophisticated party and a regular participant in California's milk markets. As such, Farmdale is in a better position than CDFA to protect its interests and ensure that the liability for regulatory fees is appropriately allocated in its contracts.

The QIP Assessments[7]

The QIP describes two different assessments. The "quota premium" is assessed to compensate producers for quota they own. (See QIP, art. 1, p. 2 [defining "quota premium;" *id.*, § 901.) The "program administration assessment" is collected to operate the QIP. (See *id.*, § 902.) Both assessments are collected from handlers. (See *id.*, § 700.) Handlers, in turn, deduct the fee amounts from what they otherwise owe their producers:

> Handlers shall deduct a fee from payments made to producers for all milk received or diverted each month in an amount calculated by multiplying the pounds of solids not fat handled for the producer by the quota revenue assessment rate. Handlers shall also deduct a fee for payments made to producers for all milk received or diverted each month in an amount calculated by multiplying the hundredsweight of milk by program administrative assessment rate.
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> The amount of such fee shall be paid to the Secretary... .

(*Id.*, § 1003.)

For the same reasons it assessed the Dairy Council fees and Milk Advisory Council fees on Farmdale, CFDA imposed the QIP assessments on Farmdale as the first handler. (See Hofferber Decl., Exh. C, pp. 2-3.) Farmdale argues that the imposition of fees was unauthorized because the QIP designates GH Processing as the first handler. Article 1 in the QIP defines "handler" as follows:

> "Handler" means any person who operates one or more plants in California or that engages in the operation of selling, marketing, or distribution in California of Bulk Market Milk[8] he or she has produced or purchased or acquired from a producer ... .

[7] In its opposition brief, CDFA argued that Sections 62708 and 62708.5 rendered GH Processing and its affiliated dairies a single producer-handler. At oral argument, however, CDFA's counsel conceded that these two sections were suspended before the transactions at issue took place. Accordingly, the court disregards CDFA's arguments based on these two sections.

In Farmdale's view, because GH Processing "engages in the operation of selling" milk in California, it was the first handler liable for the fees. But this argument overlooks the evidence discussed above, namely that GH Processing did not report the resale of the milk in question, Farmdale attempted to conceal the true origins of the milk, and Hettinga was in a position to exploit GH Processing and its affiliates. The fact that GH Processing is a handler does not command a conclusion that it acted as a handler on the transactions at issue.

Seizing on CDFA's arguments that GH Processing and its affiliated dairies should be treated as a single producer-handler, Farmdale reasons that it cannot be construed as the first handler. The QIP's above-cited definition of "handler" includes a person who engages in the sale of milk (s)he has produced. Again, though, there is evidence that GH Processing did not actually sell any milk, and instead acted merely as a conduit for its producer affiliates. Whether or not GH Processing and its affiliates constitute a single producer-handle on other transactions, CDFA did not act arbitrarily or capriciously in treating them as a producer on the subject transactions with Farmdale. Moreover, the court does not construe CDFA's characterization of GH Processing and its affiliates as a single producer-handler as a concession that any of these entities actually "handled" the milk for which Farmdale was assessed QIP fees.

Next, Farmdale argues that the QIP should be declared void. This argument requires some additional background.

California's milk-pooling scheme is codified in Section 62700 *et seq.* In *Ponderosa Dairy v. Lyons* (9th Cir. 2001) 259 F.3d 1148,[9] the Court of Appeals provided the following history and summary:

> California has operated a unique milk price stabilization and marketing program since the 1930's. The program classifies milk products into five categories: Class 1 includes fluid products such as the several varieties of milk; Class 2 includes yogurt, cottage cheese and heavy cream; Class 3 includes frozen milk products; Class 4a includes butter and non-fat dry milk; and Class 4b includes cheeses. The program establishes minimum prices for raw milk depending upon the class of product for which the milk will be used. The program was created to address destructive trade practices that resulted because processors that predominantly made Class 1 products could afford to pay more for raw milk than could processors making other classes of products.

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[8] The QIP defines "Bulk market milk" is defined as "milk, cream, or skim milk, other than packaged products, from market milk sources." "Market milk," in turn, means "milk, cream, or skim milk that is produced in conformity with applicable regulations of the appropriate public regulatory or health authority for disposition as market milk."

[9] The United States Supreme granted certiorari in *Ponderosa Dairy* and vacated the judgment on grounds not pertinent to the case at bench. (See *Hillside Dairy, Inc. v. Lyons* (2003) 539 U.S. 59, 156 L. Ed.2d 54, 123 S. Ct. 2142.)

> The California legislature enacted the Gonsalves Milk Pooling Act of 1967 to address market disparities that resulted from the existing price stabilization and marketing program. California's pooling plan seeks to eliminate pricing inequalities by pooling the revenues generated by the sale of raw milk and redistributing the revenues among all producers according to a blended price that is based on milk usage across the state regardless of the use for which a particular producer's milk is purchased. At the same time, the minimum prices that are used to calculate each processor's obligation to the pool for raw milk ("pool obligation") vary according to the end-product produced. Accordingly, Class 1 processors typically have a larger pool obligation than do processors of other end products. In sum, the pooling system reduces the competition among dairy farmers for contracts with Class 1 processors and reduces the incentives Class 1 processors have to extract concessions from the dairies that supply their milk.
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> The pooling plan redistributes the pooled revenues according to a quota system that includes both a quota and an over-base price. California producers are allocated quota share based upon their historic Class 1 milk production. Quota shares can also be purchased from other producers. Owning quota is beneficial because quota price exceeds overbase price by $ 1.70/hundredweight and producers are paid at quota price for milk contributed to the pool up to the amount of quota shares they own. The lesser, overbase price is paid for milk contributed to the pool in excess of quota. Consequently, many producers have elected to purchase quota shares in order to maximize the price they receive for their raw milk.
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> Each month, the California Department of Food and Agriculture calculates the gross amount each processor owes its various producers. Processors are authorized to subtract from the gross amounts certain deductions such as transportation and regional quota allowances. Where the total value of milk that a processor uses is greater than the amount the processor owes its producers, the processor pays the difference into the pool equalization fund. Conversely, a processor is paid from the pool equalization fund when the total amount the processor owes its producers exceeds the value of the milk it used.

(*Ponderosa Dairy*, pp. 1151-1152, emphasis added, footnotes omitted.) When the Gonzalves Milk Pooling Act of 1967 (Act) became law, it authorized CDFA's director[10] to propose a pooling plan with the assistance of a "formulation committee." (See § 62704 ["He shall appoint fluid milk producers, and representatives of producers, to be the members and alternate members of a formulation committee, reasonably representative of all producers and areas to be included in the proposed pooling plan, which committee shall advise and assist the director in the establishment of the proposed pooling plan area and in the formulation of the proposed pooling plan"].) Items within the pooling plan necessarily included the establishment of one or

[10] The head of CDFA is now its "secretary." (See *Delano Farms Co. v. California Table Grape Com.* (2018) 4 Cal.5th 1204, 1217, fn. 6.) As used in this ruling, the terms "director" and "secretary" have the same meaning.

more pools, production and class 1 usage bases, allocations and adjustments of quota, the transferability of quota among producers, and "[a]ny and all other matters necessary and desirable to effectuate the provisions of th[e] chapter." (§ 62707.)

The Act required the director to hold "one or more public hearings" at which the proposed pooling plan was considered. (§ 62705.) Procedures governing these hearings were set forth elsewhere. (See § 61994 [describing the manners in which notice of hearings could be given]; *id.* § 61995 ["At the hearing, interested parties shall be heard and records kept of the proceedings of such hearing for determination by the director whether the plan proposed will accomplish the purposes of this chapter"]; see also 3 C.C.R. § 2080.4 [providing detailed hearing requirements].) Pursuant to Section 62716, the director then submitted the proposed pooling plan to producers for their approval in a statewide referendum. Thereafter, the director was entitled to amend or terminate the pooling plan after notice and hearing. (See § 62717; 3 C.C.R. §§ 2080.3(a), 2080.4.)

The Act also required the director to appoint a producer review board (PRB) "composed of no less than 12 members to advise him in the administration of the pool plan." (§ 62719.) The PRB members "shall have proportionate representation to all areas of the state, with due regard to the relative production and usage of fluid milk in the various areas of the state." (*Id.*) The director was also entitled to appoint one additional "public member," based on nomination from the PRB, to "represent the interests of the general public." (*Id.*)

The Legislature anticipated that the pooling plan might be replaced at some point with an FMMO. Section 62726 automatically suspends California's milk-pooling provisions to the extent they are inconsistent with or duplicative of an established FMMO. Section 62728 then requires the director to terminate any inconsistent or duplicative pooling plan altogether:

> The director shall terminate any pooling plan in effect in any marketing area without notice or hearing at any time that there ceases to be a stabilization and marketing plan in force and effect in such marketing area, establishing minimum prices to be paid to producers, unless minimum prices payable by distributors to producers for fluid milk in such marketing area are subject to a federal milk marketing agreement or order which is not in conflict with, or in duplication of, the pooling plan.[11]

In 2015, three major dairy cooperatives asked the USDA to establish an FMMO for California. USDA responded in 2017 by proposing an FMMO, subject to California producers' approval, to supplant California's pooling plan -- except with respect to quota. USDA proposed allowing CDFA to continue administering and enforcing quota as a stand-alone program.

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[11] In the 1990's, the Legislature created a new chapter in the statutory scheme that dictated certain pricing, including pricing on quota. (See § 62750, 62750.1.) Provisions in this chapter contain their own, unique suspension provisions. (See §§ 62750, 62751 *et seq.*) Farmdale does not argue that these pricing or suspension provisions impact the outcome of this proceeding.

CDFA was concerned that litigation would ensue if it attempted to administer quota once the FMMO took effect. As a result, CDFA sponsored state legislation granting it authority to operate a stand-alone quota program in conjunction with the FMMO. The proposal was enacted into law with no amendments and, apparently, without much legislative scrutiny. The new law was codified in Section 62757 and reads:

> (a) If a federal milk marketing order is established in California, the secretary is authorized to establish a stand-alone quota program, the details of which shall be included in the pooling plan. The stand-alone quota program may be funded by an assessment on milk produced in the state.
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> (b) The secretary may require handlers, including cooperative associations acting as handlers, to make reports necessary for the operation of the stand-alone quota program.
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> (c) The stand-alone quota program shall be pursuant to a recommendation by the review board established pursuant to Section 62719 and approved by a statewide referendum of producers conducted pursuant to Sections 62716 and 62717. (Underlining omitted.)

Section 65757 took effect in June 2017. Around the same time, the PRB held the first of several public meetings to discuss a stand-alone quota program. These meetings followed procedures under the Bagley-Keene Open Meeting Act, Government Code Sections 11120-11132. In September 2017, after receiving public comments and making revisions, the PRB forwarded a draft QIP to CDFA's secretary. CDFA then mailed ballots for a producer referendum on the draft. Sixty-six percent of all producers participated, and 87 percent of the participants voted in favor of the QIP. After producers approved the FMMO by separate referendum, both the FMMO and the QIP took effect in November 2018.

Under the QIP, producers receive the price for quota that they received previously, and quota remains a transferrable asset. Other provisions in the QIP are new. CDFA concedes that the hearings it held when drafting the QIP were not pursuant to pre-existing regulations.

The rules of statutory construction are well-established. The court's "'primary task is to ascertain the Legislature's intent so as to effectuate the purpose of the law[,]'" according a "'reasonable and commonsense interpretation consistent with the Legislature's purpose.'" (*Department of Corrections & Rehab. v. Workers' Comp. Appeals Bd.* (2018) 27 Cal.App.5th 607, 618.) The court first considers the words in the statute and "'give[s] effect to the statute according to the usual, ordinary import of the language used in framing it.'" (*Id.*) "'When the language is clear and there is no uncertainty as to the legislative intent, [the court] look[s] no further and simply enforce[s] the statute according to its terms.'" (*Id.*) "If, however, the language is susceptible to more than one reasonable interpretation, then [the court] look[s] to 'extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the

statutory scheme of which the statute is a part.'" (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.)

Section 62757 authorizes CDFA's director to establish a stand-alone quota program. The word "hearing" does not appear in the text of this section. Farmdale nonetheless construes Section 62757 as encompassing hearing requirements appearing elsewhere in the statutory scheme. Specifically, Farmdale points out that Section 62757(c) cites Sections 62716 and 62717: "The stand-alone program shall be ... approved by a statewide referendum of producers conducted pursuant to Sections 62716 and 62717." In Farmdale's view, the citation to Sections 62716 and 62717 was intended to incorporate the hearings referenced in these sections. The court, however, disagrees.

Section 62716 reads, in its entirety:

> Following the required hearing, the director shall submit the pooling plan to producers concerned for their approval or disapproval in a statewide referendum.
> The approval or disapproval of individual producers voting in this referendum shall be kept confidential.
> Each producer shall have one vote and such vote shall be individually cast so that there will be no block voting. The director shall prepare a ballot. The ballot form shall be substantially as follows:
>
> Ballot.
>
> Shall the proposed pooling plan be made effective?
> Yes..... No.....
> In addition, the ballot shall include a statement of the voter's total production during the calendar month next preceding the month of the commencement of the referendum period, where and to whom such production was sold or otherwise disposed, and the producer's name and address.
> The director may reveal the names of producers whose votes have been received to both proponents and opponents of the plan.
> The referendum shall be set for a period of 60 days. The director may at his own discretion or upon a proper showing, extend the referendum for a period not to exceed 30 days.

The text thus distinguishes between the hearing that precedes the referendum and the referendum itself. The referendum is the confidential vote to approve or disapprove a proposed pooling plan. The hearing occurs beforehand pursuant to procedures outlined in Section 62705. Section 62757, however, does not refer to Section 62705.

Section 62717 further describes the referendum process:

> If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the

proposed pooling plan into effect. The director shall find that producers have assented to the plan if he finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state shall have voted in the referendum and finds one of the following:

(a) Sixty-five percent or more of the total number of eligible producers who voted in the referendum who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum approve the plan.

(b) Fifty-one percent or more of the total number of eligible producers who voted in the referendum who produced 65 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the plan.

Section 62717 then describes pooling plan amendments:

> The director may amend the plan, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the amendment is necessary to effectuate the purposes of this chapter. After the hearing, the director, upon his own motion, may make nonsubstantive amendments to the plan. The director may make substantive amendments to the plan only if producers assent to the proposed amendments at a referendum conducted in the same manner and in the same number as provided for the referendum approving the pooling plan. (Underlining omitted.)

Like Section 62716, these provisions distinguish hearings from referendums. And again, although Section 62717 cites other sections that describe hearings, Section 62757 does not cite such other sections.

The court in *Lewis v. Clarke* (2003) 108 Cal.App.4th 563 rejected an argument like the one Farmdale advances. The question in *Lewis* was whether Penal Code Section 1203.4, subdivision (c) incorporated a hearing requirement in Penal Code section 987.8. At the time *Lewis* was decided, Penal Code Section 1203.4(c) required persons petitioning to change a plea or set aside a verdict to reimburse the jurisdiction for services rendered, subject to an ability to pay: "Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8[.]" (*Lewis*, p. 569.) Penal Code Section 987.8, in turn, governs criminal defendants' duty to reimburse for legal assistance. Penal Code Section 987.8(b) requires a hearing to determine a criminal defendant's ability to pay for legal assistance. Subdivision (g)(2), in turn, enumerates factors informing the defendants' ability to pay. Subdivision (g)(2) contains references to the hearing required under subdivision (b), but it does not expressly impose a hearing requirement. Penal Code Section 987.8(g)(2) only enumerates standards for use at the hearing required under subdivision (b).

The *Lewis* court held that the incorporation of Penal Code Section 987.8(g) into Penal Code Section 1203.4(c) did not import the hearing requirement in Penal Code Section 987.8(b):

> Penal Code section 987.8, subdivision (b) requires "notice and a hearing" before a court determines a defendant's ability to pay for legal assistance. Penal Code section 1203.4, subdivision (c) does not incorporate the hearing requirement of Penal Code section 987.8, subdivision (b), however, but incorporates only the standards set forth in Penal Code section 987.8, subdivision (g)(2). [¶] The fact that in describing those standards Penal Code section 987.8, subdivision (g) twice refers to "the date of the hearing" as a time reference does not indicate that by incorporating those standards Penal Code section 1203.4, subdivision (c) also incorporates the hearing requirement of Penal Code section 987.8, subdivision (b).

Like Penal Code Section 1203.4(c), F&A Code Section 92757(c) incorporates some statutory provisions and does not incorporate others. Section 92757(c) requires the stand-alone quota program to be "approved by a statewide referendum of producers," and that referendum must be "conducted pursuant to Sections 62716 and 62717." But referendums are not hearings, and the incorporation of referendum provisions in Sections 62716 and 62717 should not be read as the incorporation of every other provision in these sections. As other sections in the statutory scheme demonstrate, the Legislature knows how to insert the word "hearing" into a statute and impose a hearing requirement when it wants. Because Section 62757 does not contain the word "hearing," and because it does not expressly incorporate any hearing requirement in another section within the scheme, it does not incorporate the hearing requirements on which Farmdale relies.

Next, Farmdale focuses on the term "the pooling plan" as it appears in Section 62757, subdivision (a): "If a federal milk marketing order is established in California, the secretary is authorized to establish a stand-alone quota program, the details of which shall be included in the pooling plan." Farmdale argues that the term "the pooling plan" can only refer to the state pooling plan in effect before the FMMO took effect. Based on this construction, Farmdale argues that the Legislature must have intended for the secretary to establish the stand-alone quota program by amending the pre-FMMO pooling plan and, as a corollary, must have intended compliance with hearing procedures required for amendments.

Section 62717, however, empowers the director to amend the pooling plan if (s)he "find(s) that the amendment is necessary to effectuate the purposes of this chapter." Section 62757 was not enacted to effectuate purposes of the F&A Code chapter in question, Chapter 3 of Part 3, Division 21. (See § 62700 [stating the purpose of Chapter 3 to be the protection of the people's health and welfare given that the production and distribution of milk and cream affect the public interest]; see also § 62701 ["It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption"]; § 62702.1 [purposes of 1977 amendments were to accelerate equalization, equalize holders of quota and production base, and allocate new quota].) Section 62757 was enacted to establish a quota program because the FMMO replacing the pooling plan did not include one. Once the FMMO took effect, it served many of

the purposes that Chapter 3 had served previously. It is thus unlikely that the Legislature intended for the director to consult the purposes of Chapter 3, or make a finding in that regard, before establishing a stand-alone quota program under Section 62757. Like the hearing Farmdale invokes, no such finding is mentioned in Section 62757. That Section 62757 was not intended to incorporate the "finding" requirement in Section 62717 fortifies a conclusion that Section 62757 was only intended to incorporate the provisions it actually identifies.

Farmdale's notion that Section 62757 contemplates an amendment under Section 62717 also runs afoul of the termination provisions in Section 62728. As noted above, Section 62728 requires the director summarily to terminate a pooling plan conflicting with or duplicative of an FMMO. The question then becomes, Why would the Legislature require CDFA's director to include the stand-alone quota program in a pooling plan that she would then be required to terminate? (See *Santa Clara County Local Tran. Auth. v. Guardino* (1995) 11 Cal.4th 229, 235 ["[I]t is presumed the Legislature intended reasonable results consistent with its expressed purpose, not absurd consequences"].)

In its reply brief, Farmdale suggests that Section 62728 only requires the director to terminate provisions in a pooling plan conflicting with an FMMO. Farmdale thus argues that the director could have created the stand-alone quota program by amending the existing pooling plan, which Section 62728 would have then whittled down to nothing but the quota program once the FMMO took effect. But Section 62728 requires the director to terminate "any pooling plan" conflicting with or duplicative of an FMMO, not merely conflicting or duplicative provisions. (Compare § 62726 [enactment of an FMMO automatically *suspends* conflicting or duplicative *provisions* in the pooling scheme].) Farmdale's contrary reading of Section 62728 does not explain how a stand-alone quota program included in the pre-existing pooling plan would survive termination under Section 62728.

Furthermore, Farmdale does not deny that the details of a stand-alone quota program could comprise "the pooling plan" under Section 62757. As Farmdale describes it, first CDFA should have enacted the stand-alone quota program as an amendment pursuant to Section 62717 and then should have inserted the details of the program into the existing pooling plan before the FMMO took effect. Farmdale adds that, to avoid being terminated later along with the rest of the pooling plan, CDFA should have delayed the quota program's implementation date, the suggestion being that CDFA could have technically included the quota program within the pre-existing pooling plan within subjecting it to termination.

The court doubts that the stand-alone quota program could have been nominally included in the pooling plan while remaining outside the plan for purposes of termination under Section 62728. The court likewise doubts that Section 62757 was intended to accommodate such a convoluted procedure without making any clear reference to it. (See *Polster v. Sacramento City Office of Educ.* (2009) 180 Cal.App.4th 649, 665 [constructions yielding mischief or absurdity should be rejected].) As noted above, if the Legislature wanted to require a hearing or amendment as part of the establishment of a stand-alone quota program as set forth in Section

62757, it seems much more likely that it simply would have inserted such requirements into the statute.

Notwithstanding any difficulty in the term "the pooling plan" in Section 62757(a), the court is satisfied that the Legislature did not intend to impose hearing requirements incorporated into Sections 62716 and 62717. The purpose of Section 62757 was to grant CDFA authority to establish a stand-alone milk quota program. The Legislature attached certain procedural requirements (PRB recommendation and producer referendum) to this authority, and did not attach others. Allowing the QIP to serve as "the pooling plan" does not subvert the object of the legislation. (Cf. *Griffin v. Oceanic Contractors, Inc.* (1982) 458 U.S. 564, 571 ["In rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling"].) And, as noted above, construing Section 62757 as requiring amendments to the pre-FMMO pooling plan leads to an absurd result, namely the termination of the same amendments. (See *Santa Clara County Local Trans Auth.*, p. 235.)

Disposition

The petition for writ of mandate is denied.

That the QIP was not adopted as a pooling-plan amendment, or was adopted without public hearings pursuant to the Food and Agricultural Code, does not render the QIP invalid.

Pursuant to CRC 3.1312, counsel for CDFA shall lodge for the court's signature a proposed judgment that incorporates this ruling as an exhibit.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: September 15, 2020

Hon. James R. Arguelles
California Superior Court Judge,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING – ATTACHED

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled **Petition for Writ of Mandate and Complaint for Declaratory Relief – Final Ruling** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

KNOX, LEMMON & ANAPOLSKY, LLP
Thomas S. Knox
2339 Gold Meadow Way, Suite 205
Gold River, CA 95670

John M. Lemmon
David P.E. Burkett

Rochelle L. Wilcox
Kelly M. Gorton
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111

Chip English (Admitted Pro Hac Vice)
Ashley L. Vulin (Admitted Pro Hac Vice)

Megan Oliver-Thompson
HANSON BRIDGETT LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Shannon M. Nessier
Matthew J. Peck

Matthew Goldman, DAG
Linda Berg Gandara, DAG
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 944255
Sacramento, CA 94244-2550

Niall P. Mccarthy
COTCHETT, PITRE & MCCARTHY, LLP
San Francisco Airport Office Center
840 Malcolm Road
Burlingame, CA 94010

Brian Danitz
Sarvenaz J. Fahimi
Andrew F. Kirtley

Dated: September 15, 2020

Superior Court of California,
County of Sacramento

By: S. Slort,
Deputy Clerk