

DEPARTMENT OF AGRICULTURE
NEVADA DAIRY COMMISSION
PUBLIC MEETING

Wednesday, August 21, 2013
405 South 21st Street
Sparks, Nevada

Reported by: CAROL HUMMEL, RPR, CCR #340
JOB NO.: 187765

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APPEARANCES

Christopher Cook, Chairman
John Collier, Board Member
Thomas Orzech, Board Member
Troy Crowther, Board Member

ALSO PRESENT:
Lisa Burnett
Kathy Easley
Erica Ryan
Anna Vickrey
Kimberly Whitfield

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SPARKS, NEVADA; WEDNESDAY, AUGUST 21st, 2013

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MR. COOK: Let us convene this meeting of the Nevada State Dairy Commission for the month of August.

Mr. Orzech, would you open the meeting, please.

MR. ORZECH: Thank you, Mr. Chairman.

This is the time and place set for a regularly scheduled meeting of the Nevada State Dairy Commission for the month of August 2013. This meeting has been scheduled and noticed in compliance with pertinent statutes, including the open meeting law. A copy of the agenda has been handed to the court reporter with the request that it be part of the official transcript of these proceedings.

My name is Tom Orzech. I'm the operations manager for the Nevada State Dairy Commission. Present today are Mr. Christopher Cook, Chairman; Mr. Troy G. Crowther, member of the Commission; Mr. John Collier, member of the Commission; and certain members of the Dairy Commission staff.

Those who present statements or evidence to the Commission during this meeting are requested to first be acknowledged by the chairman, and to identify

1 themselves for the record.

2 MR. COOK: Proceed to the first agenda item,
3 please.

4 MR. ORZECH: Agenda item number 1 is public
5 comment and discussion.

6 MR. COOK: Any members of the public present
7 who would like to throw some comments out on the table at
8 this point? Being as there's only one member of the
9 public here, I see no attempt to throw anything on the
10 table, let's move to the second agenda item, please.

11 MR. ORZECH: Agenda item number 2 for possible
12 action is a license application. It's a peddler
13 distributor license application by Lobster ME, 3663
14 Las Vegas Boulevard, Suite 435, Las Vegas, Nevada 89109.
15 Elena Vandover, the controller.

16 (Video transmission lost.)

17 MR. COOK: Let's temporarily suspend the
18 proceeding.

19 (Recess taken.)

20 (Speakerphone now in use.)

21 MR. COOK: Back on the record.

22 MR. ORZECH: The second item on the agenda is
23 a peddler distributor license application from Lobster ME,
24 3663 Las Vegas Boulevard, Suite 435, Las Vegas, Nevada
25 89109. Elena Vandover is controller.

1 The applicant seeks a license to distribute
2 ice cream, sherbet, novelties and frozen yogurt in the
3 southern Nevada marketing area.

4 The applicant's prices and costs have been
5 reviewed by the members of the Dairy Commission staff, and
6 are in compliance with this agency's laws and regulations.
7 The applicant will be responsible for the assessments.

8 MR. COOK: Is there anyone present down there
9 in Vegas representing this applicant?

10 MR. CROWTHER: No.

11 MR. COOK: We're going to ask you to identify
12 yourself before you speak.

13 Is there anything that the staff would care to
14 add to this? Is there anything that the commissioners
15 need to know about this application?

16 MR. ORZECH: Nothing except this is a very
17 strange one, because this is actually lobster ice cream.

18 MR. COOK: Lobster ice cream?

19 MR. ORZECH: Ice cream with lobster added to
20 it.

21 MR. COOK: Think it's going to be a big
22 seller?

23 MR. ORZECH: They have a market.

24 MR. COOK: Okay. Any comments or
25 contributions from the staff? Any questions from any of

1 the other commissioners?

2 MR. ORZECH: I have none.

3 MR. CROWTHER: I have none.

4 MR. COOK: Hearing no more comments or
5 anything, I will entertain a motion.

6 MR. COLLIER: I make the motion that we accept
7 the peddler distributor application by Lobster ME in Las
8 Vegas, Nevada, who seeks a license to distribute ice
9 cream, sherbert, novelties, and frozen yogurt in the
10 southern Nevada market area.

11 MR. CROWTHER: I second.

12 MR. COOK: Having a motion and a second and no
13 dissenting votes, the motion carries, and the license is
14 granted.

15 Troy, I want you to be the first on the
16 commission to sample this ice cream, and bring back a full
17 report.

18 MR. ORZECH: Bring some with you on the 16th.

19 MR. CROWTHER: You put butter on lobster, I
20 guess. It's dairy. Why not ice cream, right?

21 MR. COOK: Okay. All right.

22 Go ahead, Tom, press on, please.

23 MR. ORZECH: Agenda item number 3 for possible
24 action is approval of the minutes for the July 17th, 2013,
25 Dairy Commission meeting. Copies of the corrections have

1 been handed to the commissioners.

2 MR. COOK: Can I hear a motion on adoption of
3 the minutes.

4 MR. CROWTHER: I will make the motion to
5 approve the minutes with the indicated changes of the July
6 17th, 2013, Dairy Commission meeting.

7 MR. COLLIER: Mr. Chairman, I second that
8 motion.

9 MR. COOK: Having a motion and a second and no
10 dissenting votes, the minutes are adopted as corrected.

11 MR. ORZECH: Agenda item number 4 is the Dairy
12 Commission staff report for August 2013.

13 The tour of the new dry powder plant is on
14 schedule for October 16th. We will depart from here in
15 Sparks right after the meeting in October.

16 We will be pursuing a notice of violation
17 against Legacy Ice Cream for failure to file the required
18 monthly remittance reports and pay the required
19 assessments. Legacy Ice Cream has not filed a remittance
20 since June of 2012.

21 A final warning letter was sent to them on
22 July 22 with no reply. I briefed Warren on this, and I
23 will be working with him shortly to get the violation
24 complaint out quickly. I hope to have it on the agenda
25 next in September, but there is a 20-day requirement that

1 they have to reply back. I don't know if I'm going to
2 make that 20 days.

3 Does anybody want more information on that
4 violation? I've got --

5 MR. COOK: Let's put that in the other items
6 of concern.

7 MR. ORZECH: We can discuss that if you want
8 some background on that. It won't be an action item,
9 because it will just be discussion.

10 We're preparing to make a few regulation
11 changes. And this will be placed on the agenda next month
12 for a full briefing, and Anna will give you a briefing on
13 that.

14 And we're still working on renewing Warren's
15 contract, and we hope to have that in place by next month.

16 MR. CROWTHER: On those regulation changes
17 next month, will that just be again a briefing? There
18 will be no action taken on it next month; is that correct?

19 MR. ORZECH: I'll probably put it down as an
20 action item, because as Anna goes over it, it will be for
21 you all to go through the commissioners to say that they
22 want to proceed with it. Because we have to file a notice
23 of intent to change regulations. So it will be an action
24 item for the Commission.

25 But this is just the beginning. We still have

1 to hold the hearings, and then go through the whole
2 process. So this is just to bring the commissioners up to
3 speed on what's happening, and to get your approval to
4 proceed with it.

5 MR. CROWTHER: The action that we would take
6 next month would be approving going forward with the
7 change?

8 MR. ORZECH: That's correct, going ahead with
9 the process of doing the public comment and all the
10 hearings that are required.

11 MR. CROWTHER: Okay. When will we get -- are
12 we going to get an advance briefing on that then before
13 that meeting?

14 MR. ORZECH: An advance briefing?

15 MS. VICKREY: What I will do is send out the
16 changes in a document format for your review ahead of
17 time.

18 MR. CROWTHER: Thank you.

19 MR. ORZECH: They're actually going to be
20 pretty minor. This is not like what we did last time when
21 we did a full revision. This is just some minor changes.

22 MR. CROWTHER: Okay.

23 MR. ORZECH: Our current agency reserve is
24 \$513,600. Since this amount is so high, it appears we're
25 going to need to do another tax holiday real soon.

1 MR. COOK: Has the other one been fully
2 implemented and all of the rebates been dispersed?

3 MR. ORZECH: Most of it.

4 MR. COOK: Credits, I guess.

5 MR. ORZECH: Up to this point. We're
6 probably, within the next month or so we'll do another
7 one.

8 MR. COOK: Is there an explanation for why it
9 keeps climbing in spite -- are we selling more dairy
10 product in the state?

11 MR. ORZECH: Part of which is we're not --
12 we're over here now, and there's a salary savings on the
13 fact of the leftover from last year. Part of it's going
14 to be we're going to get some rent kickback from the old
15 building. So it's going to continue to grow, so we're
16 going to have to keep a close eye to keep that number
17 down.

18 That concludes the report.

19 MR. COOK: Okay.

20 Are there any comments or observations from
21 you, Troy or John?

22 MR. ORZECH: I have none.

23 MR. CROWTHER: No, I have no more.

24 MS. VICKREY: If I may, I would like to make a
25 short comment about the powder plant tour.

1 MR. COOK: Go ahead.

2 MS. VICKREY: If you do plan to come out, be
3 aware that you're going through dusty areas. Make sure
4 you wear appropriate shoes. They would prefer no shorts,
5 obviously. That's if we can get inside the plant at that
6 time. Just so that you're aware. Thank you.

7 MR. COOK: I think we'll relax the dress code
8 for the Dairy Commission meeting, for the October meeting.

9 MR. CROWTHER: Sounds good to me. I would
10 rather not take a second set of clothes up there.

11 MR. COOK: Bring your blue jeans.

12 MR. ORZECH: Agenda item number 5 is a legal
13 report by Warren Goedert. He's not present today, so
14 we'll move on to number 6.

15 Number 6 is consideration of any other matters
16 relating to the dairy industry.

17 MR. COOK: This is where I would like you to
18 expound upon the remedies for this Legacy Ice Cream issue,
19 please. Is that what you've included in the package here?

20 MR. ORZECH: You have it, but I don't know if
21 I do.

22 MR. COOK: Do you need to borrow my copy?

23 MR. ORZECH: In the commissioner's packet,
24 there's a printout I made that addresses the NRS
25 requirements, and then the NAC requirement for -- first

1 for filing the remittances, and then also that lays out
2 what the penalties are for failure to supply the
3 remittances.

4 What can basically happen in this case is if
5 the Commission finds that the violation is correct, then
6 the distributor can be held responsible for a penalty of a
7 thousand dollars for each violation or you can -- and/or
8 you could remove his license to do business in the state,
9 and that's covered in the NRS.

10 On NAC 584.6712, that lists out the types of
11 factors that you would need to consider when imposing the
12 violations or any penalty. And this was put in there
13 mainly just to give you a quick refresher on what we're
14 looking at since we don't do that many violations.

15 Does anybody have any questions on it?

16 MR. CROWTHER: I have a quick question. Does
17 it require the Commission's action to impose a penalty or
18 can that just be done by staff because it's in the law?

19 MR. ORZECH: It has to go through the
20 Commission. As it stands right now, you are still the
21 authority on the licenses, the Commission is. The staff
22 cannot -- I cannot issue a license. I cannot approve a
23 license, it still has to be done through the Commission.
24 It is the responsibility of the Commission for this.

25 MR. CROWTHER: I understand about the license.

1 What about the issuing of the penalty, assessing the
2 penalty?

3 MR. ORZECH: The penalty is based on a failure
4 to comply with the statutes or the regulations pertaining
5 to the license. So it does tie back to the authority of
6 the commission.

7 MR. COOK: Does this licensee distribute
8 anything other than ice cream? Is their license
9 restricted to ice cream?

10 MR. ORZECH: His license is actually
11 restricted totally to novelties in the southern Nevada
12 marketing area.

13 MR. COOK: Do we know how big the facility is
14 in terms of how many people does he employ?

15 MR. ORZECH: I don't know that.

16 Kimberly, do you have any idea, the size of
17 it?

18 MS. WHITFIELD: The size of the facility?

19 MR. ORZECH: The facility in Vegas, how many
20 people he has down there.

21 MS. WHITFIELD: It's more of a distribution
22 center. They have several ice cream trucks out of there.
23 They're registered with Southern Nevada Health Department
24 as a commissary. So they actually rent out their lot as
25 well to the trucks, people that buy ice cream from their

1 facility.

2 I don't have -- I went over there to see the
3 size of it. It's a pretty good sized facility for the
4 amount of ice cream that they were distributing.

5 The son has now taken over the building, and
6 he doesn't report anything at all. When the father was
7 running it, it was all being reported timely, and all we
8 can base it on is that that was substantial.

9 MR. COOK: Just thinking out loud here. If we
10 were to pay a visit to the facility and talk to some of
11 the employees and say, do you understand what is at stake
12 here, that the license may be pulled and this facility
13 will be shut down.

14 MR. ORZECH: We have made visits over there.

15 MR. COOK: And your job --

16 MR. ORZECH: We've been told to talk to
17 California. So we have -- we've been trying to work with
18 this guy since June.

19 The packet, like I said, that's why we started
20 an audit. We've been sending notices to them since June
21 of 2012. It would probably have been July of 2012. Made
22 visits. Nothing. Nothing. We're directed to talk to the
23 guy in California.

24 MR. COOK: Even a reminder that your job may
25 hang in the balance here, because this facility may be

1 shut down?

2 MR. ORZECH: It will not matter. It's this
3 owner who refuses to speak with us. The fellow at the
4 top, I believe his name is Jay Sharon.

5 MR. COOK: This is the son that took over this
6 business from the father?

7 MR. ORZECH: Apparently so.

8 MR. COOK: That complied with all of our -- we
9 had no trouble with the father, dealing with the father?

10 MR. ORZECH: I don't know that. I don't know
11 that that's -- that he's been a hundred percent compliant.
12 That I don't know.

13 MR. CROWTHER: How long have they been a
14 licensee?

15 MR. ORZECH: The company changed hands. They
16 have been licensed back since 1994. But it was under a
17 different owner back then. Then they changed hands.
18 Looks like they changed hands somewhere in the -- I don't
19 know. I would have to get that.

20 MR. COOK: So does Legacy Ice Cream primarily
21 supply the ice cream vending trucks?

22 MR. ORZECH: I believe that's what their
23 business is.

24 Do you know, Kimberly, if they do any direct
25 store sales?

1 MS. WHITFIELD: Not that I'm aware of. But
2 you can go in there and buy as a retail outlet as well,
3 it's not just distributing to the trucks.

4 MR. CROWTHER: Where is their facility located
5 locally?

6 MR. ORZECH: It's at 2850 East Charleston
7 Boulevard.

8 MR. COOK: You so far have received no
9 response to this letter?

10 MR. ORZECH: No response. We did get the
11 return receipt back that indicated they have received it,
12 so that's the last contact.

13 MR. COLLIER: Has anyone from the staff tried
14 to call Mr. Sarin?

15 MR. ORZECH: Constantly.

16 MR. COLLIER: In Santa Ana, California?

17 MR. ORZECH: Yes.

18 MR. COLLIER: What would be the possibility of
19 somebody going to see Mr. Sarin in Santa Ana, California?

20 MR. COOK: We don't have any money for travel.

21 MR. ORZECH: It would cost us more to go visit
22 him than he probably owes us in assessments.

23 MR. COOK: We're really not talking about a
24 high dollar item here. What we're talking about is
25 somebody just thumbing his nose at our --

1 MR. ORZECH: That's exactly it.

2 MR. COOK: -- regulations.

3 MR. ORZECH: Right. And failure to comply.
4 Like I said, we do have an audit open on it. We can't
5 complete the audit because we can't get any information
6 from him.

7 MR. COLLIER: Tom, what happens if we decide
8 to say to this company that they no longer can do business
9 in the state of Nevada? What happens then? In other
10 words, we pull their license. So what recourse -- I mean,
11 do we send them a letter through the mail?

12 MR. ORZECH: We would send them a cease and
13 desist order saying they can no longer do business in the
14 state of Nevada. But then you start getting on shaky
15 ground as far as what if he then says, I don't care.

16 MR. COLLIER: Is that when it would proceed
17 into a court setting? At what point in time does it take,
18 for lack of a better description, some muscle to enforce?

19 MR. ORZECH: I'm not sure what that muscle
20 would be.

21 MR. COOK: The Dairy Commission SWAT team, of
22 course.

23 MR. ORZECH: I don't have an answer for that.

24 MR. COLLIER: Same way if we issue a penalty
25 on him and he decides he doesn't want to pay.

1 MR. COOK: I get the sense that maybe this guy
2 might do that.

3 MR. ORZECH: That's my feeling exactly.

4 MR. COOK: We might have somebody who's going
5 to play a game of chicken with us.

6 MR. ORZECH: That's my feeling exactly.

7 MR. COOK: And see who blinks first, as we sit
8 here and look at the cost.

9 MR. ORZECH: As of right now, we do have to
10 proceed through what the statutes and the regulations
11 require us to do.

12 MR. COOK: A question about the ice cream
13 truck vendors. Do they all have to be licensed?

14 MR. ORZECH: No.

15 MR. COOK: He should be paying the assessments
16 for what they are selling?

17 MR. ORZECH: That's correct.

18 MR. COOK: Can we then turn around and go
19 after the ice cream truck guys and say, the guy you're
20 buying the ice cream from isn't paying the assessment, so
21 now you have to pay it?

22 MR. ORZECH: I'm not sure that's the proper
23 route.

24 MR. COOK: As a way to apply pressure?

25 MR. ORZECH: No. He's bringing the product in

1 from California. He's responsible for it.

2 MR. CROWTHER: So right now our options, as I
3 understand them, are one, assess a penalty; two, revoke
4 his license; three, both or any combination thereof; is
5 that correct?

6 MR. ORZECH: That's not your option right now.
7 Right now we haven't even issued the violation to him yet.
8 Once the violation is, then we have to put it on the
9 agenda for a hearing so he has the opportunity to come and
10 respond to it. So then at that point is when you'll have
11 those options.

12 The key to remember too is, which I wrote in
13 that letter to him, is that if he doesn't show, you are
14 allowed by regulation to proceed with the evidence that's
15 in front of you at the time. So that -- we'll just have
16 to see -- I don't know whether or not he'll show. We'll
17 just have to wait and see.

18 MR. CROWTHER: I think we get that process
19 going then by issuing that violation, and then proceed
20 with the requirements as per the statute. Then if he
21 doesn't make whole, then we set a date for a hearing.

22 MR. ORZECH: Right. He's got, like I said, he
23 has -- according to the regulations, he has 20 days to
24 respond to the violation complaint after he receives it.
25 Like I said, depending on how far, if I can get in touch

1 with Warren, how fast I can get it out. I'm hoping for
2 September, but it may actually end up end of October. I
3 can't put him on -- he has that 20 days, according to the
4 regulation.

5 MR. COOK: Do you need an action from us to be
6 able to issue the violation?

7 MR. ORZECH: No.

8 MR. COOK: You just do it?

9 MR. ORZECH: We'll just issue the violation
10 with Warren, and I'll sign it, and Warren will sign it,
11 and then we'll bring it before the commission.

12 MR. CROWTHER: That would be very helpful if
13 we could get that done so that it can be on the same time
14 as the September commission meeting, since the October
15 commission meeting I will be up there.

16 MR. ORZECH: Either way. Like I said, I can't
17 guarantee it, because there's 20 days involved on it.
18 Depends how quickly I can get with Warren to work on it.
19 I'm not going to guarantee September. It's looking like
20 it will be probably more likely October.

21 MR. ORZECH: The 20-day period is the time
22 that he has to respond?

23 MR. ORZECH: Yes.

24 MR. COLLIER: What triggers that 20 days?

25 MR. ORZECH: His receipt of the violation

1 report.

2 MR. COLLIER: Doesn't this letter serve as
3 that?

4 MR. ORZECH: No. We have --

5 MR. COLLIER: So we haven't sent that out to
6 him yet?

7 MR. ORZECH: No. We have an official
8 complaint that has to be issued that spells out all the
9 violations, his rights under --

10 MR. COLLIER: You have to make sure that
11 Warren signs off on that?

12 MR. ORZECH: Yes. Warren actually drafts
13 that, and then --

14 MR. COOK: From the date this man receives it
15 he has 20 days to respond?

16 MR. ORZECH: He has 20 days to respond.

17 MR. COOK: If that 20 day time clock
18 expires --

19 MR. ORZECH: Yes.

20 MR. COOK: -- then we act on a license
21 suspension or revoke, revocation?

22 MR. ORZECH: If he doesn't respond in 20 days,
23 and fails to make any connection with us, it's assumed
24 that he's denying, which you have to go on.

25 But then when you hold the hearing, he does

1 not have to be there. You can then just go on the
2 evidence that's presented. We just have to make sure
3 everything is properly noticed again, and that he has --
4 that he gets everything.

5 MR. CROWTHER: So let's say he does not
6 respond, that 20 days run, how many days then does he need
7 to have notice before there's the hearing? Is there a
8 time period then between the time that the 20 days runs
9 and when the hearing is?

10 MR. ORZECH: That's not relevant. What we'll
11 do is we'll just notice him. I don't know that -- once he
12 doesn't respond -- what I intend to do, to be honest, what
13 I intend to do when I send the complaint out, I'm going to
14 put him on the agenda. You may see him on the agenda next
15 month, because I have to put it on there. But we may not
16 actually hold it next month if I don't meet that 20 days.
17 But I may schedule it on there anyway just so that it's on
18 the agenda, so that we're covered.

19 Because then you start playing with days with
20 the open meeting laws, and it becomes a real juggling act.

21 MR. COOK: Well, I would say proceed with what
22 you have to proceed with in this case. Let's get this
23 thing rolling forward, because it does not appear he's
24 willing to cooperate.

25 MR. ORZECH: Like I said, we have exhausted

1 every possible means, short of driving to Santa Ana and
2 pounding on his door, to get this corrected. And there's
3 just no luck.

4 MR. COOK: Let's proceed with it according to
5 the regs, and let this thing play itself out.

6 MR. ORZECH: Yes, sir.

7 MR. COOK: Next on the agenda.

8 MR. ORZECH: The final item on the agenda is
9 item number 7, which is public comment and discussion.

10 MR. COOK: Since we can't see you guys in
11 Vegas anymore, any members of the public care to make any
12 comments or get anything in the record?

13 MR. CROWTHER: We still just have one public
14 here, and he's not talking.

15 MR. COOK: I don't think we have anybody up
16 here in the north that's wanting to add anything. So
17 given that, I guess we'll adjourn the meeting.

18 (Proceedings concluded at 9:45 A.M.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
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6 I, CAROL HUMMEL, Certified court reporter for
7 the County of Washoe, State of Nevada, do hereby certify:

8 That I was present at the Nevada Dairy
9 Commission on Wednesday, August 21st, 2013, and took
10 stenotype notes of the above-entitled proceedings and
11 thereafter transcribed them into typewriting as herein
12 appears;

13 That the foregoing transcript is a full, true
14 and correct transcription of my stenotype notes of said
15 proceedings.
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23 _____
24 Carol Hummel, CCR #340
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