

December 20, 2019

**VIA EMAIL: William.j.pickens@gmail.com**

Mr. William Pickens

**Re: Wood Mountain First Nation**  
**File No.: 0036187-00017**

At the Information Meeting held on December 14, 2019 at the Wood Mountain Lakota First Nation Community Centre, band member, William Pickens arrived with a lengthy list of questions which he wished to pose to legal counsel. As answering all of those questions would not have been an efficient use of the meeting's time and would have prevented other members from asking questions, we agreed to respond to his questions in writing.

This letter sets out each question as posed by Mr. Pickens and our response thereto. It is not intended to serve as a "frequently asked questions" document, but given that Mr. Pickens held out that some members shared his concerns, the Chief and Council requested that these responses be included in a letter for public dissemination.

The questions posed herein appear as phrased by Mr. Pickens,

**Questions submitted by Bill Pickens, William.j.pickens@gmail.com**

1. Q: Who were the experts who determined the valuation of the land and the loss of use?

A: Canada and Wood Mountain Lakota First Nation (the "First Nation" or "WMLFN") jointly retained two experts to assist in the valuation of the claim. The terms of reference for each study were negotiated at length between Canada and the First Nation.

Stan Lore Consulting Inc. was retained to complete a loss of use study. Stan Lore has a Bachelor of Science in Agriculture with a specialization in Economics and is a member of the Alberta Institute of Agrologists. He has been involved in the estimation of compensation for claims for over 20 years and is widely regarded as one of the foremost experts in valuing agricultural loss of use claims.

Hoffman & Associates Ltd. was retained to complete a Current Unimproved Market Value appraisal of the study lands. Dave Hoffman is the WMLFN lands manager. He has a Bachelor of Science in Agriculture and is a member of the Saskatchewan Institute of Agrologists. He is an accredited appraiser with the Appraisal Institute of Canada and has more than 25 years of work experience advising on First Nations land issues.

2. Q: Who did you hire?

A: Canada and the First Nation jointly retained Mr. Hoffman and Mr. Lore.

3. Q: How many different people worked for you on this matter, with respect to loss of use, and valuation of the land from its unlawful occupation?

1) What was the experience of the expert(s) you hired?

2) Their credentials?

3) University Degrees?

4) Proof of Degrees?

5) Previous Work?

6) Disciplinary Record?

7) Conflicts of Interest?

A: The First Nation and Canada jointly hired Mr. Lore and Mr. Hoffman. C.V.s for both Mr. Lore and Mr. Hoffman are attached and answer most of the questions relevant to their experience and qualifications. We are unaware of Mr. Lore or Mr. Hoffman ever being the subject of a disciplinary order.

Mr. Lore subcontracted Ground Engineering Consultants Ltd. to evaluate the gravel component of the claim. The First Nation hired RESPEC to evaluate the mineral component of the claim independently (<https://www.respec.com>).

4. Q: Who did Canada hire (repeat to them, questions 1 to 7)

A: Canada and the First Nation jointly hired Mr. Lore and Mr. Hoffman. Both experts were recommended by WMLFN. Mr. Lore then subcontracted Ground Engineering for the gravel study. The First Nation hired RESPEC to evaluate the minerals independently.

5. Q: What due diligence did you do on their experts?

A: Canada did not hire their own independent experts.

6. Q: Can you show the reports? Why not? Can you show us Canada's report?

A: The reports are subject to litigation and settlement privilege. Canada did not obtain an expert report.

7. Q: Why wouldn't you demand from Canada transparency within the process?

A: The First Nation was very satisfied with Canada's transparency after the claim was accepted for negotiation.

8. Q: Why is this the first time you sought our input for such a large settlement?

A: The First Nation has sought input annually from its members at the Annual General Meeting ("AGM") and included information relevant to the claim in its newsletter. The claim was discussed throughout the community. Several WMLFN members attended the oral history hearing, conducted in September 2016 when Elders David Ogle and Hartland Goodtrack testified on behalf of the First Nation. Their testimony was likely critical to Canada's decision to accept the claim for negotiation. In addition, Elder Margaret Schmalz contributed dozens of her father's writings, John LeCaine, and these formed part of the historical record.

9. Q: Why did you not attempt to meet with us, where we live? Most land claim settlements travel.

A: The First Nation met with the membership annually at the AGM, which is well attended, particularly given the remote location of the First Nation. Band members receive travel honorariums to attend the AGM. Many members travel from Alberta, British Columbia and beyond to attend the AGM. The Band's membership is very diffuse, and so travel to other centres was not practical or economical. Instead, Band members are funded to attend the AGM.

10. Q: Why do you think it is acceptable working only with Band Council, a federal construct, without engaging the First Nation, then informing the community they must take it or leave it?

A: The Chief and Council is the democratically elected government of the WMLFN. It is a government that exercises both rights conferred under the *Indian Act* and Aboriginal and inherent rights of self-government. Some Band members recently challenged the authority of Chief and Council to govern the First Nation in Court. The Saskatchewan Court of Queen's Bench awarded punitive damages of \$20,000 against Band members William Goodtrack and Edith Goodtrack who refused to acknowledge the authority of Chief and Council. The decision was confirmed on appeal.

The discussions between Canada and the First Nation were subject to confidentiality requirements and settlement privilege such that members could not be advised of all discussions in the settlement negotiations. Once an agreement-in-principle was reached, Council was able to inform members. Members have a right to vote on the final settlement documents.

11. Q: What work were you aware of before you sat down to negotiation, that Canada's experts had done?

A: Canada did not have any experts prior to commencing negotiations.

12. Q: Were you comfortable with the expert reports provided by the Crown?

A: The Crown did not provide any expert reports. The expert reports were joint reports.

13. Q: What were your initial thoughts when you reviewed their position?



A: When Canada initially denied liability, we disagreed vehemently and so we brought the claim before the tribunal. At the negotiation table, Canada was much more conciliatory and worked collaboratively with the First Nation to value the claim and reach a settlement.

14. Q: What was the range of settlement the Crown experts proposed during the first meeting?

A: Canada did not retain experts or propose an initial settlement range.

15. Q: What was your valuation prior to your first sit down with the federal Crown?

A: Prior to sitting down with the Federal Crown, we hoped that a settlement around \$30 million would be possible. This was based on our experience, without the benefit of the expert evidence that came later.

16. Q: When did the Federal Crown first table an offer (date)?

A: On or about May 15, 2019, the First Nation made the first offer. On August 16, 2019, Canada made a counter-offer, which was very close to the First Nation's original offer. WMLFN accepted this offer.

17. Q: How many times did they revise their offers?

A: The First Nation made one offer, which was accepted by Canada, subject to some adjustments. Keeping the amount of the compensation under \$50 million allowed the Minister to settle the claim without having to go through Cabinet, which would have taken many months. The intervening federal election also created risk to achieving a settlement. As a result, on August 23, 2019, the Chief and Council accepted Canada's offer.

18. Q: What dates did they revise their offers? What was your give and take?

A: The exchange of offers is detailed above. Since joint experts and studies were used, this made the experts' evaluations credible and accepted by both parties. Both Canada and WMLFN accepted the experts' conclusions on the settlement amounts and this is the basis of the \$50 million settlement.

19. Q: What was the Band Council's starting point?

A. Prior to sitting down with the Federal Crown, we hoped that a settlement around \$30 million would be possible. This was based on our experience, without the benefit of the expert evidence that came later.

20. Q: What was the Band Council's reaction to the federal Crown's initial position?

A: The exchange of offers is detailed above.

21. Q: When did you notify the client?

A: We notified the Chief and Council immediately upon receiving Canada's counter-offer.

22. Q: Who do you work for? The Band Council or the community?

A: Legal counsel represents the First Nation which is made up of all of the members of the WMLFN. The First Nation exercises both statutory and inherent rights of self-government. Legal counsel takes direction from the First Nation's duly elected Chief and Council who speak on behalf of WMLFN. Band members, whether at large or in groups on social media, cannot instruct legal counsel on behalf of the First Nation.

23. Q: Why are you providing just this information session?

A: The *Indian Referendum Regulations* only require one information meeting. However, the settlement and trust agreement were discussed at length during the 2019 WMLFN AGM. The First Nation's legal counsel and financial advisor each gave presentations about the settlement. Members asked many questions and offered several comments. Ultimately, revisions were made to the Trust Agreement to incorporate feedback received from membership. In addition, the settlement has been discussed annually at the AGM since 2009. Furthermore, the First Nation's legal counsel and financial advisor are each available to answer any questions the membership may have. As a result, the First Nation elected to have one on-reserve information meeting, which coincided with the annual Christmas Party when many members return home and compensation is available to offset travel costs.

24. Q: Is this a requirement by law, or did the federal Crown make their Band Council perform this task?

A: The *Indian Referendum Regulations* require that an information meeting be held and that the First Nation receives independent legal and financial advice about the settlement. To be clear, MLT Aikins LLP and Chalupiak & Associates each answer to the First Nation. They do not work for Canada.

25. Q: Are we informed?

A: Members have had and continue to have ample opportunity to inform themselves of the settlement. In the event you continue to have questions, please reach out to the First Nation's legal or financial advisors. As indicated, prior to an agreement-in-principle being achieved (late August, 2019), information provided at the negotiations was subject to confidentiality requirements and could not be shared with Band members. Once an agreement-in-principle was reached, the First Nation informed the membership of the settlement amount.

26. Q: At what point did you as legal counsel for Band Council attempt to include the community, being those who need to make a decision based on your recommendation?

A: Members have been updated and consulted annually since 2009 on the progress of the claim and its settlement. As indicated, prior to an agreement-in-principle being achieved (late August, 2019), information provided at the negotiations was subject to confidentiality requirements and could not be shared with Band members. Once an agreement-in-principle was reached, the First Nation

informed the membership of the settlement amount. The settlement agreement (which largely is a standard agreement used by Canada) was not finalized until early November and the Trust Agreement was not finalized until mid-November, 2019.

27. Q: At what point did you as legal counsel for Band Council made sure that your client was effectively communicating with their membership?

A: Chief and Council have arranged for legal counsel to present on the 1910 Specific Claim annually for 10 years. The settlement was discussed extensively by Chief and Council, the First Nation's legal counsel, and the First Nation's financial advisor at the 2019 AGM. Again, prior to an agreement-in-principle being achieved (late August, 2019), information provided at the negotiations was subject to confidentiality requirements and could not be shared with Band members. Once an agreement-in-principle was reached, the First Nation informed the membership of the settlement amount.

28. Q: Did you yourself, as legal counsel or Band Council include the broader community?

A: As discussed above, leadership and legal counsel consulted with the broader community extensively. In addition, First Nation elders have contributed to having the claim resolved, including the First Nation's pipe carrier, Hartland Goodtrack, who testified at the oral history hearing, as well as Margaret Schmaltz who contributed dozens of documents given to her by her father, John LeCaine. Again, prior to an agreement-in-principle being achieved (late August, 2019), information provided at the negotiations was subject to confidentiality requirements and could not be shared with Band members. Once an agreement-in-principle was reached, the First Nation informed the membership of the settlement amount.

29. Q: Can you show us?

A: If this question relates to examples of community consultation, then numerous examples have been presented elsewhere in the answers to the questions.

30. Q: Did you make an attempt, and can you provide us with examples of your attempts?

A: The responses above provide many examples of community consultation. In addition, legal counsel has answered a number of inquiries from members with respect to the settlement.

31. Q: Why are costs to negotiate as well as legal fees taken off the top of the settlement?

A: During the course of negotiations, Canada provides the First Nation with a loan to cover its legal and expert expenses. This loan is then re-paid out of the settlement proceeds.

32. Q: Why does the settlement not include total value? (\$50M is the total, minus the cost of your band's lawyer). (By the way, grants are available)

A: The settlement includes the total value, which is \$50 million. The First Nation's loan is then repaid out of the settlement proceeds. To be clear, the loan amount includes the total fees for the



First Nation's legal counsel and experts. Contrary to the suggestion that grants are available, departmental funding for specific claims is loan funding only - not grant funding.

33. Q: Why did you not apply for a grant to fund your work?

A: The First Nation applied for (and received) loan funding, as discussed above. The funding is loan funding - not grant funding. Grant funding is not available for specific claims. More information about funding for specific claims can be found on the Department of Crown and Indigenous Relations website.

34. Q: How did you reach the \$50m valuation?

A: The final settlement value was based on the joint expert opinions of value prepared by Mr. Hoffman and Mr. Lore.

35. Q: Is it 50m total? And that it, or is it 50m, minus what you take off the top?

A: The total settlement is \$50 million, which is the maximum the Minister can pay without Treasury Board approval. The negotiation loan will be re-paid out of the settlement amount. The negotiation loan is approximately \$600,000. The loan amount includes the total fees for the First Nation's legal counsel and experts.

36. Q: Why do you get first dibs?

A: Under Canada's Specific Claims Policy, the negotiation loan is re-payable upon a settlement being concluded. If the settlement is approved, the loan will be re-paid. If it is not approved, the loan will remain outstanding from the First Nation to Canada.

37. Q: Why did not you include our community, at all, with the exception of our vote?

A: As provided elsewhere in these responses, community members were widely consulted prior to the settlement being reached. Each member has had and continues to have ample opportunity to inform themselves of the relevant facts and circumstances prior to the vote.

Furthermore, as discussed, prior to an agreement-in-principle being achieved (late August, 2019), information provided at the negotiations was subject to confidentiality requirements and could not be shared with Band members. Once an agreement-in-principle was reached, the First Nation informed the membership of the settlement amount.

38. Q: Do you have a Band Council Resolution (BCR) authorizing you. Can you supply me with it? And all BCR's that authorized you to speak on behalf of my community.

A: The Chief and Council passed all necessary BCRs to retain legal counsel. Copies of all BCRs are available from the Department of Indigenous Services Canada. The Chief and Council are elected by the membership to govern and speak on behalf of WMLFN.

39. Q: Section 6.5 (discretionary spending, letter from Chief) (\$2m total), explain the discretionary section for me.

A: The criteria for discretionary spending mirrors the criteria set out in the First Nation's Trust, which governs how the First Nation's gaming dollars from SIGA can be spent. The Chief and Council instructed legal counsel to insert the express provision that funds cannot be used to benefit an individual member or group of members unless there is a *bona fide* public purpose. For example, the discretionary spending would allow the First Nation to design programs for youth, the elderly, etc.

40. Q: Who used the words bona fides, and where is the criteria in that section?

A: The Chief and Council asked legal counsel to insert language which would protect funds expended under the "discretionary purposes" purpose from being misused or abused. Legal counsel recommended the term "*bona fide* public purposes" as it has a specific legal meaning which requires that the monies be spent in good faith for the benefit of the WMLFN.

Sincerely,

**MLT AIKINS LLP**

Per:



G. Rangi Jeerakathil

RGJ:ldb  
Enclosures



## **EDUCATION AND BACKGROUND**

Stan Lore, P.Ag., C.A.C. was raised on a grain and cattle farm near Carstairs, Alberta and graduated with a B.Sc. in Agriculture (specialization - Economics) from the University of Alberta in 1981.

Prior to my consulting career, which began in 1989, I was a lender – first with Farm Credit Corporation, then with the CIBC. I have consulted across Canada, focused mainly in the areas of finance, business, and economics.

My clients include farmers, agri-businesses, banks, and other financial institutions, government departments and organizations, professionals such as lawyers and accountants, and First Nations.

## **PROFESSIONAL DESIGNATIONS**

- Professional Agrologist (P.Ag.), since 1984, through the Alberta Institute of Agrologists
- Continual Professional Development and adherence to a Code of Ethics is a requirement for maintaining the above professional designation.

## **EXPERT WITNESS TESTIMONY**

- Court of Queen's Bench

## **PROFESSIONAL EXPERIENCE**

### Consulting Career

- President, Stan Lore Consulting/Agropyron Enterprises, (since April, 2006)
- Vice President, AFC Agra Services Ltd, (July, 1989 to March, 2006)
- Pre July, 1989: Lender for CIBC & Farm Credit Corporation

### Other Business Affiliations

- Shareholder in Lorel Products Ltd. a 2<sup>nd</sup> generation farm real estate company, owned by myself and my siblings

### General Consulting Experience

- Consulting assignments with small and large primary agricultural operations for purposes including operational and financial reviews, refinancing, operations in financial distress, business planning, and damage estimates.

- Consulting assignments for agricultural processing companies for the purpose of business planning and accessing government programs.
- Expert assistance with dispute resolution. My role has included preparation of court-ready expert reports, assistance with preparation for examinations for discovery, review of expert reports, and other general advice and consultation. I have been qualified several times as an expert in the Court of Queen's Bench.
- First Nation Land claims, including studies, consulting, and negotiation support. This has involved claims from Ontario to British Columbia. I have consulted in the areas of historic agricultural Loss of Use, agricultural treaty benefits, historic land use, study terms of reference, the "rental" and "proxy" models, and other issues relating to specific land claims.
- I am experienced and adept at complex spreadsheet modelling.
- I have completed various studies related to agricultural economics and management, some of which are listed below.

#### Selected Specific Studies

- A report on the Feeder Association Program of Alberta. This report examined the history, track record, and financial performance of the program as well as the economic impacts that the program has on individual farmers and Alberta, as a whole. In addition, alternatives to the present government involvement were presented and analyzed. The research included surveys of Feeder Associations and their members, extensive interviews with all stakeholders as well as secondary research on the economic impacts. 110 copies of the report were circulated to politicians, Feeder Associations, and other stakeholders.
- Team leader for the production and publication of *"Agriculture and Agri-business Structures – A Practical Handbook."* The guidebook is intended for use by groups or individuals choosing or changing an agricultural organizational structure as well as those professionals serving farms or agri-business (e.g. lawyers, accountants, consultants, extension professionals, etc.).
- An economic viability study for a 5,600 acre irrigation project. The research for this project included meeting with local farmers to estimate current dryland and irrigated farming yields, costs, and returns as well as the equipment, capital, labour, and management requirements for the project. In addition, the study provided a financial (is it affordable and profitable?) and economic (what is the economic value to society?) analysis of the project.



- A feasibility study for a densified hay processing plant. This involved research into export markets and the availability of supply as well as operational and financial considerations. The feasibility study was followed by a business plan. The plant has been operating successfully for several years.

#### Discussion of First Nation Land Claims Experience

- I have worked on many First Nation land claims across the country, including large tracts of agricultural land, remote communities, lands flooded by reservoirs, a mountain park, Treaty Land Entitlement claims, and linear takings (Hydro Lines, Easements, Irrigation Canals).
- I have worked solely for First Nations and I have also conducted studies that were completed jointly for the Crown and the First Nation.
- My role almost always includes the estimate of Past loss, which involves estimating the Annual Nominal Losses and then the Present Value of those losses. Additional services I have provided include agricultural loss consultant, land use consultant, compensation analyst, advisor, and part of the negotiation team.
- My compensation estimates have been accepted by the Crown and First Nations and used as the basis for settlement at negotiation tables across Canada. The cumulative settlement amount for claims in which I have been prominently involved total about \$1.5 billion (with verbal agreement on compensation for a further \$600 million) and every significant claim that I have ever worked on has been resolved.

#### Selected Examples of Experience as an Instructor and Presenter

- Design and delivery of a financial management course for First Nation farmers and ranchers. The course was aimed at individuals who had never kept financial records and featured an innovative method of teaching. The course was rated very highly by participants and was featured by the Farm Business Management Initiative at a national farm management convention.
- Instructor at Olds Agricultural College for 2 courses aimed at agricultural bankers. These courses dealt with the fundamentals of the cow/calf sector and the feedlot sector in Alberta.
- Presenter at September, 2001 Alberta Expropriation Association Conference. Paper was titled: *Components of Fixed Costs*.



- Presenter at several national land claims workshops, topics have included: *Issues for Agricultural Loss of Use Studies; Mastering Principles of Compensation and Restitution.*

## **COMMUNITY INVOLVEMENT**

I am an active member of my professional organization, the Alberta Institute of Agrologists (AIA), having been president of the AIA Calgary Branch, on AIA Provincial Council, Chairman of the 2000 Provincial Conference, a member of the Articling Agrologist Committee, and a reviewer of ethical case studies.

I was a long-time (20 years) member of the Board of Directors of Indian Business Corporation, an aboriginal-owned developmental lending company and have been a board member and President of a real estate investment strata corporation.

My local community volunteer efforts have included coaching soccer, President of the Northwest Calgary Ringette Association (NWCRA), designing and delivering an on-line survey for NWCRA, and volunteering for the Heart Fund and Stockman's Memorial Foundation.

## **18.0 QUALIFICATIONS OF CONSULTANT**

**DAVE HOFFMAN, B.Sc.A, P Ag, P App, AACI**

President, hoffman & associates ltd

Box 39056, Lakewood P.O.

Saskatoon, SK S7V 0A4

Phone: (306)244-8765

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email: hoffman.assoc@sasktel.net

### **1) Academic Qualifications and Continuing Professional Development**

- Bachelor of Science in Agriculture (B. Sc.A.), University of Manitoba
- Diploma in Agriculture, University of Manitoba
- Professional Agrologist - Saskatchewan Institute of Agrologists
- Accredited Appraiser - Appraisal Institute of Canada
- International Right of Way Association (IRWA) - various courses
- Ecogift Seminars/Workshops
- Verifier - First Nations Land Management

### **2) Memberships**

- Appraisal Institute of Canada
- Saskatchewan Institute of Agrologists
- Agricultural Institute of Canada

### **3) Career Experience**

- President/part-owner - hoffman & associates ltd - May 1991 to Present

See Assignments following

- Head of Land Administration - Department of Indian & Northern Affairs

Coordination and administration of the lands program pertaining to land referendums, land appraisals, analysis of applications for the devolution of land management programs and research for land entitlement and specific claims.

- Superintendent of Lands, Revenue & Trusts - Department of Indian & Northern Affairs

Management of the Lands, Revenue and Trust program at the district level - the negotiation of agricultural and recreational leases, research on land entitlement and specific claims, management of program funding, supervision of field staff and administration of the statutory requirements for Indian estates, membership entitlement, local trust funds, band elections and treaty obligations.

- District Manager - Saskatchewan Land Bank Commission

Administration of the agricultural leasing program within an assigned field area - included the purchase and allocation of land (that is, prescreening, rating, investigation and interviews with a final recommendation to the Commission).

- Credit Advisor - Farm Credit Corporation

Responsible for lending, appraisal, collection and advisory services.

### **Assignments**

#### **• Appraisals**

- Appraisals prepared for financial institutions, provincial and federal governments, relocation companies and private individuals throughout Saskatchewan and western Manitoba.
- Improved and bare land appraisals for First Nations in their acquisition of lands under TLE and Specific Claims.
- Current day appraisals of surrendered lands completed for First Nations on their Specific Claims projects.
- Eco-gift appraisals completed for Environment Canada.
- Ad hoc reviewer of eco-gift appraisals working under contract with Environment Canada.
- Acquisition appraisal and mediation services for potash expansions.
- Expropriation appraisals for highways infrastructure.

#### **• Historic**

- Historic appraisals of land and improvements for First Nations Specific Land Claims.
- Research right of ways and easements on a property over time and provide an opinion on amounts paid at their time of taking.
- Historical Land Titles research and reports on surface and subsurface ownership from original grant to current day.

#### **• Lease Management**

- Negotiation and administration of fee simple agricultural and commercial leases for property owners.
- Property management of agricultural lands for freehold owners and First Nations which includes negotiation, document drafting, collection of lease revenues, submission or deposit of lease revenues and the monitoring of various terms and conditions of the leases.

#### **• Land Consultations**

- Assist First Nations with the establishment of a Land Use policy.
- Work with First Nations on obtaining land designations for commercial and recreational purposes.
- Identify potential problems prior to land acquisition for First Nations under Treaty Land Entitlement and Specific Claim.
- Aid First Nations with resolving third party issues in their Treaty Land Entitlement and Specific Claim land acquisitions.



- Assist First Nations with Reserve Creation.
- Soil comparison studies completed for First Nations on Specific Land Claims.
- Completion of comprehensive soil assessments on reserve lands in Saskatchewan.
- Help First Nations in drafting a Land Code under the First Nation Land Management Act.
- Work with First Nations in establishing an on reserve Taxation bylaw.
- Mapping - a broad range of computer mapping from historical to current day including ground cover, reserve land base, soil quality, historical land use and others.

• **Selected Projects**

- Market analysis study done for pipeline expansion in Western Canada.
- Assist with tax loss implications for First Nations.
- Involved with mineral negotiations regarding potash, oil and gas for First Nations.
- Provided research and analysis reports for First Nations on Specific Claims and Treaty Land Entitlement.
- Verifier for Canada and First Nations under the First Nation Land Management Act.