

# Bailey & Wadden LLP

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## **Briefing Note- Sucker Creek First Nation Agricultural Benefits “Cows and Plows” Claim**

To: Chief, Council and Membership of the Sucker Creek First Nation

From: Legal Counsel, Bailey & Wadden LLP, Ian Bailey and Joseph Wadden

Date: January 13, 2020.

Re: Sucker Creek First Nation Update on Agricultural Benefits

### **Background:**

Sucker Creek First Nation (the “Nation”) submitted a claim to Canada’s Specific Claims Branch in March of 2017 citing Canada’s unfulfillment of treaty promises as it relates to agricultural benefits (the “Claim”);

On April 16, 2019, Canada offered to accept the Nation’s Claim for negotiations. A Settlement Offer and payout is still not guaranteed and the timing of any payment, if one does occur, cannot be provided at this time;

This offer to negotiate and the subsequent negotiations themselves will be conducted on a without prejudice, confidential and privileged basis but Chief and Council will provide as much information as possible as the Claim progresses;

Please continue to refer to the “Step by Step” guide that provides all the steps required in the negotiation and settlement process;

The Nation held community meetings in May and June of 2019 to provide an update with respect to the Claim and the Specific Claim negotiation process as a whole;

During the community meetings Chief and Council advised that a questionnaire would be circulated to the Members requesting their input as to the use of the potential settlement funds arising from the Claim.

Chief and Council have heard from certain Members of their desire to receive all of the potential funds arising from the Claim as a per capita distribution. In light of this, Chief and Council also wished to circulate a briefing note to the community outlining their fiduciary duty to the Nation and its Members, both alive today **and the future generations**, with respect to the Claim and any potential settlement funds that arise from it.

### **What is a fiduciary?**

A fiduciary is legally defined as being “[W]here by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power, that party thus empowered becomes a fiduciary ...”

Generally, a fiduciary must:

1. Act prudently, honestly and in good faith;
2. Act in the best interests of the beneficiaries (in this case, the Nation and the individual Members of the Nation, both alive today and the future generations); and
3. Exercise the care, skill and prudence of an ordinary person (carefully consider the consequences of actions based on common sense and informed judgment).

The fiduciary duty arises when Chief and Council makes a discretionary decision that stands to affect the interests of the Nation or the individual Members of the Nation.

As a result, with respect to any decisions concerning the potential Agricultural Benefits Settlement with the Government of Canada, Chief and Council owe a fiduciary duty both to the Nation and the individual Members of the Nation, and not only those who are alive today, but also future generations.

The interests or priorities of the Nation may not always coincide with the those of the individual Members, and so as result Chief and Council must balance what is in the best interests of the Nation versus the interests of individual Members.

Chief and Council of the Nation, in light of their fiduciary duty, must make decisions that will benefit not only the Members of today, but also future generations.

**Next Steps:**

**Please fill out the questionnaire and return to the Band Office as soon as you are able, so as to give Chief and Council as much time as possible to review the responses.**