

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF PIIKANI INVESTMENT
CORPORATION**

**AND IN THE MATTER OF THE *WINDING-UP
AND RESTRUCTURING ACT*, R.S.C. 1985, C.
W-11 (AS AMENDED)**

BETWEEN:

PIIKANI NATION and CHIEF REG CROW SHOE

Petitioners

-and-

PIIKANI INVESTMENT CORPORATION

Respondent

**INVESTIGATOR'S SECOND REPORT ON THE FINANCIAL AFFAIRS OF
PIIKANI INVESTMENT CORPORATION**

May 13, 2010

Alger & Associates Inc.

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Executive Summary

This is the Investigator's Second Report and based on the further information received and the additional work performed since the Investigator's Preliminary (First) Report, the observations and findings in that report remain valid.

Key Findings

- Approximately \$19.1 million has been received and \$18.7 million disbursed by the PIC and PBEs and the only asset of significant value is the interest in the ATCO JV which cost \$7.8 million. See page 29 of this report for details.
- PIC and PEC are insolvent, PLHC has been struck, and OIL is likely to become insolvent.
- Advancing loans from the Trust via PIC is likely contrary to the terms of the Trust and problematic as:
 - PIC is an oversight and control entity which should not directly handle funds and, in fact, to do so creates a direct conflict of interest ;
 - The solvency of PIC is jeopardized whenever any of the ultimate loan recipients default.
- POHLP has not documented a repayment plan for the \$7.8 million advance from the Trust that was used to acquire the 25% interest in the ATCO JV and there is no documentation for the distribution of the partnership income.
- Since PLHC was struck and activities ceased, the land strategy to acquire 10,300 acres of Reserve land pursuant to an option granted in the Settlement Agreement has not been pursued.

Key Recommendations

- Restructure or wind up PIC as it is insolvent; consideration should be given to restructuring PIC, perhaps using the proposal provisions of the Bankruptcy & Insolvency Act, as this would preserve the present PIC.

Key Recommendations (Continued)

- Pursue the Raymond James litigation forthwith as there appears to be a significant potential for recovery.
- Place PEC into receivership.
- Continue the work commenced by OIL to pursue, develop and implement an irrigation strategy on the Piikani Nation Reserve.
- Revive PLHC in order to exercise the First Nation Reserve land acquisition option granted in the Settlement Agreement.
- Develop documentation in POHLP for the repayment of the \$7.8 million advanced by the Trust and the distribution of income from the ATCO JV.
- Finalize the amount the Piikani Nation owes to PIC and PBE's and structure an acceptable arrangement to have this amount repaid directly to the Trust.
- Consider asking the Court to provide a declaratory order that PIC is not a PBE pursuant to the existing terms of the Piikani Trust; or alternatively
 - Ask the Court to exercise its powers, under the Trustee Act to clarify that the Trust is not permitted to loan funds to PIC or its replacement entity; and
 - Review the Trust with a view to providing guidance in eliminating inconsistent or unclear terms in the Trust.

Background

1. Alger & Associates Inc. (the "Investigator") was appointed Investigator of the conduct and financial affairs of Piikani Investment Corporation ("PIC") on October 22, 2009 pursuant to the Order of Honourable Justice R.A. Graesser of the Queen's Court of Alberta. The October 22, 2009 Order, made pursuant to section 14 of the Winding up and Restructuring Act, R.S.C. 1985, c. W-11 (the "Act") appointed the Investigator to "prepare a statement of the assets, debts and liabilities" of PIC and "inquire into the financial affairs" of PIC and may include "an investigation of the conduct and financial affairs of the Piikani Energy Corporation ("PEC"), Oldman Irrigation Ltd. ("OIL"), Piikani Land Holding Corporation ("PLHC") or the Piikani Oldman Hydro Limited Partnership ("POHLP"), collectively called PIC and Piikani Business Entities ("PBEs"). A copy of the October 22, 2009 Order is attached as Exhibit 1.
2. Alger & Associates Inc. was appointed Conservator of Piikani Energy Corporation ("PEC") on December 21, 2009 pursuant to the Interim Preservation Order of Honourable Justice R.A. Graesser of the Queen's Court of Alberta in Action No. 0901-18791. The December 21, 2009 Order, made pursuant to section 13(2) of the Judicature Act, R.S.A. 2000, c. J-2, appointed Alger & Associates Inc. the Conservator of all PEC's current and future assets, undertakings, and property of every nature, wherever situated. A copy of the Interim Preservation Order is attached as Exhibit 2.
3. The Investigator filed a Preliminary Report ("First Report") on November 30, 2009. This second report constitutes a summary of the Investigator's further work, findings and final recommendations to the Court.

Report Limitations

4. The information contained in this report has been obtained from the records of the Companies, pleadings filed in this litigation and Action No. 0901-18791 (Piikani Nation and Piikani Energy Corporation v. Dale McMullen), and discussion and inquiry with various directors and officials of the Companies and third parties. The Investigator, or its counsel, has not attended the extensive examinations on affidavits which have been conducted in both this

action and Action No. 0901-18791. Rather, the Investigator has relied on reporting from the parties to the actions and various discussions and correspondence with interested parties. The information has not been audited or otherwise verified for accuracy or completeness by the Investigator. The Investigator does not express an opinion or any other form of assurance regarding the accuracy or completeness of the information provided except as expressly stated in this report. Further, the Investigator may alter or refine its observations as further information is brought to its attention after the date of this report.

History

Settlement and Trust

5. On July 16, 2002 a Settlement Agreement was entered into among the Piikani Nation, the government of Canada, and the government of Alberta which, in part, settled a Trust (the "Trust") into which Canada and Alberta made payments totaling \$64.3 million from 2002 to 2008 and continued to make annual payments of \$567,000 increasing to \$800,000 in 2010. A copy of the Piikani Trust Agreement is attached to the First Report.
6. Of the amounts paid into the Trust, \$36.3 million plus the annual payments are to be kept in a separate "Investment Account", per section 6 of the Trust Agreement. It is an express provision of the Trust (6.2) that no funds from the Investment Account be expended until PIC was established. Accordingly, it is clear PIC was set up as a key control over the use of Trust funds from the Investment Account.
7. CIBC Trust Corporation ("CIBC" or the "Trustee") has acted as Trustee for the Trust since inception and in accordance with subsection 6.1 of the Trust Agreement. In part, the Trust Agreement reads:

"The Settlement Funds paid into the Investment Account shall only be used by the Trustee, as directed by the Piikani Nation as beneficiary, for the purpose of permitting the Trustee:

 - To enable the purchase of Authorized Investments in accordance with Section 10.
 - To loan funds to a Piikani Business Entity pursuant to Section 6.3.
 - To provide guarantees for loans to a Piikani Business Entity pursuant to Section 6.3.

- To loan funds, pursuant to Section 6.4, to the Piikani Nation for the purpose of enabling the Piikani Nation to purchase Shares or a controlling interest in a specified Piikani Business Entity ("PBE").
- To pay, as directed by Band Council Resolution ("BCR"), the Piikani Investment Corporation an amount not to exceed Three Hundred Thousand (\$300,000.00) Dollars in each Fiscal Year to be used for annual operating costs.
- To enable the Piikani Nation to pay Authorized Expenses of the Trustee pursuant to Section 11."

Activities of Investigator since First Report

8. The Investigator has performed a significant amount of work to update the Court on the affairs and books and records of PIC and PBEs as follows:
 - Completed bookkeeping for PIC and PBEs to reconcile bank balances and prepare further entries to update records to December 31, 2009.
 - Obtained a list of Federal Court legal actions in which it appears that PIC or PBEs may have funded or been involved.
 - Obtained all loan agreements between the Trust and PIC, and between PIC and PBEs, with the exception of the executed loan agreements between the Trust and OIL, and PEC and POHLP which could not be located or which do not exist.
 - Obtained source documents that the Investigator was not able to obtain before the completion of the First Report.
 - Reviewed selected affidavits from various parties to this Action and Action No. 0901-18791.
 - Prepared an analysis of legal expenses incurred by each entity, and amounts paid to each law firm.

- Prepared an analysis of the management, director and professional fees incurred by PIC and PBEs.
- Reviewed details of the advances from PIC and PBEs to the Piikani Nation, and requested confirmation from both the Piikani Nation, and PIC and PBEs to reconcile the accounts between the Piikani Nation, PIC and PBEs.
- Engaged legal counsel to monitor, review and participate in ongoing correspondence, pleadings, affidavits, legal arguments, submissions and records received from litigants and stakeholders, Court appearances and meeting as deemed necessary.
- Reviewed Special Reports from Stephanie Ho Lem and Dale McMullen received in late November 2009.
- Prepared correspondence to Dale McMullen, over the course of several weeks, requesting information that was discussed at various meetings and that Mr. McMullen had undertaken to send to the Investigator. The Investigator did not receive much of the information requested, or undertaken by Dale McMullen to provide, as of the date of this report.
- Corresponded with Dexter Archibald, PIC and PEC's bookkeeper, for additional reports on PIC.
- Fielded calls from various council members, and PN administration officials.
- Performed detailed calculations on accrued interest payable to the Trust, and receivable from PBEs, and reflected these amounts in the estimated financial position of PIC and PBEs.
- Calculated the effect of the renegotiation of the loans between PIC and PEC on accrued interest receivable from PEC.

- Attended a meeting with Dale McMullen, to discuss the solvency of PIC. McMullen indicated he had information for the Investigator; however, this was never received, despite follow-up by the Investigator.
- Met with CLW Partners LLP, recently engaged auditor of PEC and POHLP, on three occasions to:
 - Review the audit plan for PEC and POHLP;
 - Provide the auditor with background information; and
 - Provide comments on PEC draft financial statements for fiscal years 2005-2007 and POHLP draft financial statements to 2009.
- Performed an analysis of the use of loan proceeds and compared this to the prior approved use of these proceeds as set out in Band Council Resolutions.
- Made repeated requests for banking information from Peace Hills Trust, in order to finally receive the banking information for PLHC.

Use of Trust Loan Proceeds

9. There were six loans advanced from the Trust to PIC and PBEs. Each loan application to the Trust was accompanied by, along with other documentation, a Band Council Resolution (“BCR”) approving the loan and stating its purpose. The Investigator has determined the actual use of the loan proceeds and compared this to the prior approved purpose.

Loan #1 - \$2,000,000 (PEC)

10. The first loan, in the amount of \$2,000,000, while made to PIC, was advanced directly to PEC from the Trust on July 15, 2005. The approved purpose of the loan was to allow PEC to acquire a 50% interest in a wind turbine named Weather Dancer I, for up to \$1.2 million plus costs, and to provide financing for PEC’s operations in the amount of \$800,000 for the period through to March 31, 2006. This is supported by a Piikani Band Council Resolution (“BCR”) dated

February 30, 2005. This BCR also specifies that funds were to be "held in the Investment Account and allocated to PEC but [only] drawn as directed by the Board of Directors of PEC".

11. The interest in Weather Dancer I has not been purchased. Funds in the amount of \$1,000,000 were disbursed for operations, and another \$1,000,000 was advanced to the Piikani Nation.
12. The Investigator has determined that \$1,000,000 of Loan #1 has been used for the approved use, PEC's operating expenses which are in excess of the approved amount by \$200,000.
13. Lastly, the advance of \$1,000,000 to the Piikani Nation is not an approved use of funds pursuant to both the BCR approving the loan and the use of funds specified by the Trust Agreement.

Loan #2 - \$500,000 (PLHC)

14. The second loan, in the amount of \$500,000, was advanced directly to PLHC from the Trust on September 23, 2005. The approved purpose of the loan was to assess, evaluate and acquire land to be designated as Reserve Lands pursuant to an option granted by the Federal government for 10,300 acres to be added to the Piikani Nation Reserve.
15. The Investigator has now obtained complete banking records of PLHC and can confirm disbursements of \$152,219 relate to the intended purpose of PLHC: to assess, evaluate and acquire land to be designated as Reserve Lands. It appears the balance of funds were expended for:
 - Advances and loans to the Piikani Nation of \$253,557, including payment of Chief and Council honorariums, per diems and travel expenses;
 - Payments of honoraria, travel and meal expenses of \$280,000 within a period of two years;
 - Loans totaling \$44,000 to Piikani Housing Corporation and to Piikani Utilities Corporation; and
 - Expenses relating to operating and accounting fees.

Loan #3 - \$2,000,000(PEC)

16. The third loan was approved for \$3,000,000; however, only \$2,000,000 was advanced to PIC on July 26, 2006. The approved purpose of this loan, as outlined in the related BCR was two-fold: to advance \$2,000,000 to PEC so it could secure a lease agreement with Piikani Nation for the development of a wind park on the reserve, and \$1,000,000 for PEC to use for a wind park development plan.
17. According to a Memorandum of Understanding ("MOU") signed February 6, 2006 between PIC and the Piikani Nation, the second payment of \$1,000,000 was to be advanced once a lease agreement was reached with the Piikani Nation. The Investigator understands that a lease agreement was not reached.
18. PIC received \$2,000,000 from the Trust and ultimately advanced only \$160,000 of this amount to PEC, which was spent on PEC's operating expenses and legal fees. The remaining \$1,840,000 was spent by PIC on operating expenses.
19. The Investigator has made repeated requests for a copy of the wind park development plan, but has not been supplied with any material in this regard.

Loan #4 - \$7,800,000 (POHLP)

20. This loan was used to acquire a 25% interest in the Oldman River Hydro Dam for \$7.44 million plus costs and is in accordance with the approved use of the funds.

Loan #5 - \$1,450,000 (PEC)

21. The fifth loan, in the amount of \$1,450,000, was advanced to PEC on November 5, 2007 for the purpose of purchasing a 50% interest in the Weather Dancer I test turbine. This is the same project that was approved by the Piikani Nation in 2005 which was the subject of Loan #1.

22. No interest in Weather Dancer I has ever been purchased. In May 2008, PEC loaned \$700,000 back to PIC pursuant to a loan agreement executed on May 22, 2008, which funds were utilized for professional, legal fees and other operating costs and the balance of the loan advance of \$750,000 was spent by PEC on professional and legal fees.

Loan #6 - \$275,000 (OIL)

23. Loan #6, in the amount of \$275,000, was advanced to OIL on November 5, 2007. The purpose of the loan was to pay for preliminary studies required to apply for a permit from Indian Northern Affairs Canada to further develop irrigation on Piikani Nation lands. This is supported by an undated BCR executed by Chief and Council.
24. The Trustee has not been able to supply the Investigator with executed loan documents between the Trust and PIC for this loan.
25. OIL also received a government grant in the amount of \$100,000 to conduct the feasibility study.
26. The Investigator has determined approximately \$250,000 was used to conduct a preliminary irrigation feasibility study of Piikani Nation lands. After considering the government grant, the Investigator is of the opinion approximately \$150,000 of the loan was used for its approved purpose.

Updated Financial Information

27. Based on further banking information received and upon further analysis of the books and records of PIC and PBEs, the Investigator has prepared updated financial information for the entities. All accounting has been updated from October 31, 2009 to December 31, 2009.

Piikani Investment Corporation

Piikani Investment Corporation				
Receipts and Disbursements				
January 1, 2004 to December 31, 2009				
	Preliminary October 31, 2009	Updates	Updated to December 31, 2009	Notes
Receipts				
Loans from Trust	\$ 9,800,000	\$ -	\$ 9,800,000	
Loan from PEC	700,000	-	700,000	
Annual operating cost from Trust	1,800,000	-	1,800,000	
Interest income	16,820	3,306	20,126	
	<u>12,316,820</u>		<u>12,320,126</u>	
Disbursements				
Loans to PEC	7,960,000	-	7,960,000	
Payments on behalf of PN	1,732,170	(688,721)	1,043,449	2
Payments on behalf of PBEs	-	624,268	624,268	3
Advance to OIL	-	30,000	30,000	
Small business loans to Loan Wolf	-	116,000	116,000	
Management, honoraria and accounting	1,946,744	(73,500)	1,873,244	
Legal fees	342,303	-	342,303	
Travel, accomodation and meals	188,289	(60,181)	128,108	
Office rent	9,462	(9,462)	-	4
Office expenses	100,793	20,248	121,041	
Payments to third parties (GST & PUC)	159,215	(81,547)	77,668	
Other expenses/unclassified	(126,201)	126,201	-	5
	<u>12,312,775</u>		<u>12,316,081</u>	1
Cash on hand	<u>\$ 4,045</u>		<u>\$ 4,045</u>	

28. Updates to the books and records of PIC are as follows:

Notes

1. Total disbursements is largely unchanged. However, the Investigator has reclassified a number of disbursements, based on additional information since the First Report, to more accurately reflect the nature of these disbursements.

- 2. The Investigator's First Report combined payments made on behalf of the Piikani Nation and PBEs which are now presented separately. A detailed analysis of advances made to the Piikani Nation by PIC and PBEs can be found in paragraphs 61 to 66 of this report.

- 3. Payment made on behalf of PBEs is an account receivable by PIC from these PBEs. The Investigator reviewed these intercompany receivables, reconciled them within a small discrepancy, and made adjustments to the books of PIC and PBEs. The table presented below contains the amounts receivable from specific PBEs.

Accounts Receivable from PBEs	
<u>Entity</u>	<u>Receivable</u>
PEC	\$ 555,459
OIL	3,675
PLHC	65,134
	<u>\$ 624,268</u>

- 4. Office rent has been accrued as receivable from PEC, as this expense was paid on behalf of PEC.

- 5. The Investigator has obtained further detail to allow for the classification of all remaining expenses.

Piikani Investment Corporation		
Estimated Financial Position		
December 31, 2009		
	<u>Book Value</u>	<u>Estimated Realization</u>
Assets		
Cash	\$ 4,045	\$ 4,045
Accounts receivable from others	56,698	unknown
Accounts receivable from PBEs	676,168	unknown
Accounts receivable from PN - legal costs	604,088	604,088
Accounts receivable from PN - operating	439,360	400,000
Due from PEC	11,410,000	9,000,000
Due from OIL	275,000	80,000
Due from PLHC	500,000	250,000
Small business loan to Lone Wolf	116,000	116,000
Accrued interest receivable from PBEs	3,787,828	unknown
	<u>17,869,188</u>	<u>10,454,133</u>
Liabilities		
Accrued interest due to Trust	4,430,243	4,430,243
Accrued interest due to PEC	123,708	123,708
Loans payable to Trust	14,025,000	14,025,000
Loan payable to PEC	700,000	700,000
	<u>19,278,952</u>	<u>19,278,952</u>
Estimated Shortfall	<u>\$ (1,409,764)</u>	<u>\$ (8,824,819)</u>

29. The estimated realization of the accounts receivable for legal fees from the Piikani Nation is based on the existence of a BCR authorizing PIC to pursue litigation in the Raymond James matter. The accounts receivable related to operating expenses is based on correspondence with the Piikani Nation that objects to certain amounts totaling \$40,000.
30. For the purposes of assessing the solvency of PIC, a value of \$9,000,000 has been estimated for the amount due from PEC. This amount is estimated based on the recovery of PEC's advances to POHLP and repayment of amounts due by PN to PEC.
31. The estimated realization from OIL and PLHC are based on the amount of current assets in those entities.

32. The loan to Lone Wolf is assumed to be realizable.

Accounts Receivable from the Piikani Nation

33. The amount receivable from the Piikani Nation is for various legal fees and other costs paid by PIC regarding Action No. 0601-13081 initiated against Raymond James et al regarding a claim for losses as a result of improper investments made by a former investment advisor of Raymond James. Until very recently, this suit was being pursued by Machida Mack Shewchuk and Meagher ("MMSM") who have only very recently ceased to act.
34. The Investigator has discussed this lawsuit with Norm Machida of that law firm who advises he was unable to obtain instruction from PIC. Mr. Machida has also advised he believes there is a strong likelihood of a significant recovery based on the potential for a settlement between the parties.
35. Counsel for the Piikani Nation has indicated the repayment of some of the costs identified as recoverable by PIC is in dispute. However, the participation and support of PIC in this suit was authorized in a BCR.

Small Business Loan to Lone Wolf Gas and Grub ("Lone Wolf")

36. PIC advanced \$116,000 to Lone Wolf Gas and Grub ("Lone Wolf") in early September 2009. The loan originally was to be funded by the Trust through PIC in the amount of \$503,000. Copies of the unexecuted loan agreements are attached as Exhibit 3.
37. The Lone Wolf loan is being used to build a gas station and convenience store in Brocket on the Piikani Nation Reserve. The project was started with the initial advancements; however, since PIC is unable to advance additional funds to Lone Wolf, the project has been halted. The buildings which were started remain incomplete.
38. Pursuant to Section 6 of the Trust Agreement, trust property from the Investment Account can only be used for specific purposes, as defined in s. 6.1 of the Trust Agreement, attached as Exhibit 4.

39. The Investigator has determined the loan proceeds were paid out of PIC's \$300,000 annual operating payment from the Trust.
40. PIC failed to obtain the full amount of the loan before disbursing the first installments to Lone Wolf, who proceeded to start construction on the buildings. Collectability of the loan is questionable if the project is not finished.

Accrued Interest and Restructured Loans between PIC and PEC

41. On June 12 and 13, 2008 PEC and PIC restructured all loans due from PEC to PIC extending the date for the first repayment to December 15, 2009 and restating the interest rate to the pre-default (face) rate as indicated below. This restructuring was done using two loan agreements which are attached as Exhibits 5 and 6.
42. PIC has filed a Statement of Claim under Action No. 0901-15268 which, in part, seeks an Order to have the loan and security agreement pertaining to this loan set aside. A copy of this filed, but un-served Statement of Claim is included in the First Report as Exhibit 10f.
43. The Investigator has accrued interest due and receivable by PIC and PBEs according to the original terms of the loans between PIC and PEC. The Investigator has calculated the interest according to the renegotiated terms in the table below.

**Loan Interest due to PIC from PEC
 As at December 31, 2009**

Loan #	Agreement Amount	Advanced Amount	Face Interest Rate	Default Interest Rate	Accrued Interest - Original Terms	Accrued Interest - Renegotiated Terms
1	\$ 2,000,000	\$ 2,000,000	8%	12%	\$ 950,972	\$ 840,616
3	3,000,000	160,000	7%	12%	55,862	41,982
4	7,800,000	7,800,000	7.5%	12%	2,091,104	1,556,404
5	1,450,000	1,450,000	7%	12%	337,788	227,008
	<u>\$ 14,250,000</u>	<u>\$ 11,410,000</u>			<u>\$ 3,435,726</u>	<u>\$ 2,666,011</u>

Piikani Energy Corporation

Piikani Energy Corporation Receipts and Disbursements July 15, 2005 to December 31, 2009				
	Preliminary October 31, 2009	Updates	Updated to December 31, 2009	Notes
Receipts				
Loans from PIC	\$ 11,410,000	\$ -	\$ 11,410,000	
Receipts from POHLP	2,615,000	25,000	2,640,000	
Interest income	124,865	662	125,527	
	<u>14,149,865</u>		<u>14,175,527</u>	
Disbursements				
Advance to POHLP	7,800,000	-	7,800,000	
Advance to Piikani Nation	1,000,000	-	1,000,000	
Loan to PIC	700,000	-	700,000	
Deposit at Peace Hills Trust	250,000	-	250,000	
Accounts receivable - other	88,041	-	88,041	
Management, honoraria, and accounting	1,979,846	468,056	2,447,902	1
Legal fees	1,135,078	200,484	1,335,562	2
Office rent	360,144	9,668	369,812	
Office expenses	176,710	(29,076)	147,634	
Travel, accommodation and meals	152,570	-	152,570	
Interest paid	-	111,123	111,123	
Expenses paid by PIC	(483,508)	(63,027)	(546,535)	3
Funds held in escrow	480,000	(480,000)	-	4
	<u>13,638,881</u>		<u>13,856,109</u>	
Cash on hand	<u>\$ 510,984</u>		<u>\$ 319,418</u>	

44. Updates to the books and records of PEC relate primarily to the October 31 to December 31, 2009 period. The Conservator's first second reports contain additional details of these amounts, and the Investigator also presents them here.

Notes

1. As detailed in the Conservator's First Report in Action No. 0901-18791, \$240,000 was paid to Dale McMullen as severance in accordance with his employment agreement and \$150,000 was prepaid to Stephanie Ho Lem for 2010 management fees. The remaining increase of \$78,056 is for legal fees and director fees.

2. PEC paid over \$200,000 of legal fees and retainers between October 31 and December 31, 2009 which are commented on in the Conservator's First Report dated January 7, 2010 in Action No. 0901-18791.
 3. The Investigator made adjustments to the intercompany advances based on further information received.
 4. The funds held in Escrow were returned to PEC's general account.
45. The Investigator questions the appropriateness of the \$240,000 paid to Dale McMullen and \$150,000 paid to Stephanie Ho Lem on a number of grounds:
- The payments may well constitute fraudulent preferences to non-arms length parties;
 - The amount paid to Stephanie Ho Lem constitutes a prepayment of fees for an entire year and is not an appropriate practice;
 - The payment of such substantial amounts appears to not be in PEC's interest; and
 - Dale McMullen continues to perform services for PEC which brings into question whether he was, in fact, terminated;
 - If Mr. McMullen was in fact terminated, was the termination for bona fide business reasons or simply to avoid the expected effects of a Receivership, or other order affecting the assets of PEC.

Piikani Energy Corporation Estimated Financial Position December 31, 2009		
Assets	Book Value	Estimated Realization
Cash held by Conservator	\$ 328,393	\$ 328,393
Peace Hills Trust	250,000	250,000
Advance to POHLP for ATCO JV	7,800,000	7,800,000
Advance to PN	1,000,000	1,000,000
Loan receivable from PIC	700,000	unknown
Accrued interest receivable from PIC	123,708	unknown
Accounts receivable - other	88,041	unknown
Property, plant and equipment	11,639	unknown
	<u>10,301,781</u>	<u>9,378,393</u>
Liabilities		
Accounts payable to PIC	546,535	546,535
Accounts payable to non-related entities	141,369	141,369
Advances from POHLP	2,640,000	2,640,000
Accrued interest payable to PIC	3,435,726	3,435,726
Loans payable to PIC	11,410,000	11,410,000
	<u>18,173,630</u>	<u>18,173,630</u>
Estimated Shortfall	<u>\$ (7,871,849)</u>	<u>\$ (8,795,237)</u>

46. The estimated realization of the advance to the Piikani Nation is based on correspondence confirming the advance was made to the Piikani Nation.

47. It has been assumed the Piikani Nation, upon reasonable terms, will be able to repay the \$1,000,000. However the Investigator has not verified this fact.

Advance to POHLP for ATCO Joint Venture

48. PIC borrowed \$7.8 million from the trust under Loan #4 which was then advanced to PEC who advanced the \$7.8 million to POHLP to acquire the interest in the ATCO joint venture. There is no loan agreement or other agreement between PEC and POHLP regarding this advance.

49. The Investigator has had discussions with the PEC auditors, Stephanie Ho Lem and Dale McMullen. It has not been possible to identify any documentation to support the basis for the advance as either debt or equity and what the repayment terms are, if any.
50. PEC received advances from PHOLP in the amount of \$2,640,000 which were funded with income from the ATCO JV. Since there is no direction as to the repayment of the \$7.8 million advance from PEC to POHLP, or the loan from PIC and ultimately the Trust, it is unclear whether these funds should be used to repay the \$7,800,000 to the Trust or be paid as a distribution to the Piikani Nation as a 99% limited partner.
51. Piikani Resource Development Ltd. replaced PEC as the General Partner on December 15, 2009 pursuant to a partner meeting called by the Piikani Nation as a 99% limited partner. PEC no longer has access to funds from the ATCO JV with which to repay the \$7,800,000 loan from PIC and subsequently the Trust.

Oldman Irrigation Ltd.

Oldman Irrigation Ltd.				
Receipts and Disbursements				
April 1, 2007 to December 31, 2009				
	First Report October 31, 2009	Updates	Updated to December 31, 2009	Notes
Receipts				
Loan from PIC	\$ 275,000	\$ -	\$ 275,000	
Grant income	100,000	-	100,000	
Advance from PIC	30,000	-	30,000	
Interest income	3,820	(1)	3,819	
	<u>408,820</u>		<u>408,819</u>	
Disbursements				
Prepaid expenses and deposits	-	32,000	32,000	1
Equipment	-	8,260	8,260	
Professional fees	83,989	163,490	247,479	2
Management and honoraria fees		38,618	38,618	
Office expenses		31,363	31,363	
Travel expenses		6,007	6,007	
Payments on behalf of PIC	3,675	(3,675)	-	
Legal expenses	9,681	(9,681)	-	
Other expenses	82,953	(82,953)	-	
Payments to third parties	170,214	(170,214)	-	3
	<u>350,512</u>		<u>363,727</u>	
Cash on hand	<u>\$ 58,308</u>		<u>\$ 45,092</u>	

52. Based on further analysis, the Investigator has been able to reclassify various expenses; however, there is no significant change in the total receipts or disbursements.

Notes

- OIL advanced a non-refundable deposit to Pearce Corporation for the purchase of irrigation equipment. The Investigator has confirmed this deposit and Pearce Corporation has indicated they are waiting for an equipment order to apply the deposit.

2. Professional fees relate to engineering surveys to support the preliminary feasibility study of a large scale irrigation project on the Reserve.
3. The Investigator has reclassified these amounts.

Oldman Irrigation Ltd.		
Estimated Financial Position		
December 31, 2009		
	<u>Book Value</u>	<u>Estimated Realization</u>
Assets		
Cash	\$ 45,092	\$ 45,092
Equipment	8,457	8,457
Deposit	32,000	32,000
	<u>85,550</u>	<u>85,550</u>
Liabilities		
Accounts payable to third parties	2,111	2,111
Accounts payable to PIC	30,000	30,000
Loans payable to PIC	275,000	275,000
Accrued interest payable to PIC	74,917	74,917
	<u>382,028</u>	<u>382,028</u>
Estimated Shortfall	<u>\$ (296,479)</u>	<u>\$ (296,479)</u>

53. There are significant changes to OIL's estimated financial position since the First Report, as a result of the Investigator's work confirming the amounts previously recorded as deposits and retainers. A majority of the assets on OIL's October 31, 2009 books and records were later identified as expenses related to engineering studies to complete the preliminary irrigation feasibility study of the Reserve. These disbursements should not be recorded as assets, despite the value of these disbursements to OIL's mandate.

Piikani Land Holding Corporation

Piikani Land Holding Corporation Receipts and Disbursements January 1, 2004 to December 31, 2009				
	Preliminary October 31, 2009	Updates	Updated to December 31, 2009	Notes
Receipts				
Loan from Trust	\$ 500,000	\$ -	\$ 500,000	
Annual revenue from Trust	101,361	147,654	249,015	1
Interest and other income	-	7,994	7,994	
	<u>601,361</u>		<u>757,009</u>	
Disbursements				
Honoraria, travel and meal expenses	45,719	234,429	280,148	2
Loans and advances to Piikani Nation	240,000	(4,567)	235,433	3
Professional fees (other than accounting)	-	152,219	152,219	4
Loans to Piikani Housing Corp and PUC	29,000	15,000	44,000	
Trust revenue to Piikani Housing Corp.	-	33,898	33,898	
Accounting fees	-	30,934	30,934	
Loans to Piikani Nation Council Members	13,038	5,086	18,124	
Office expenses	-	23,900	23,900	
Expenses paid by PIC	-	(61,754)	(61,754)	
	<u>327,757</u>		<u>756,903</u>	
Funds on hand (October 31 estimated)	<u>\$ 273,604</u>		<u>\$ 106</u>	

54. The First Report was prepared without the benefit of any books and records or source documents as none were available to the Investigator for PLHC. Based on source documents subsequently obtained directly from PLHC's bank and a copy of audited financial statements for PLHC to June 30, 2005 obtained from a special report dated November 25, 2009 and from Dale McMullen, the books and records of PLHC have been prepared.

Notes

1. Revenue bylaw income - \$249,015. PLHC received funds related to income from the Investment Account of the Trust. The Investigator did not have complete information on PLHC available before the release of the First Report, and classified \$101,361 as 'other

revenue'. However, the audited financial statements for PLHC to June 30, 2005 confirmed the amount of revenue bylaw income.

2. Honoraria, travel and meal expenses - \$280,148. There were a significant number of small payments to individuals. The Investigator classified these payments as Honoraria, travel and meal expenses based on both the description on the cheques and the recurring nature of payees and amounts. The Investigator had to use the cancelled cheques to ascertain the purpose of these payments, of which there were over 400.
3. Loans and Advances to Piikani Nation – \$235,433. Loan agreements support \$151,171 of these payments, a sample of which is attached as Exhibit 7, while \$84,262 appears to have been advanced without any documentation in place.
4. Professional fees relate to land consultant fees. The Investigator has not reviewed any reports by this consultant, nor have they been requested.

Piikani Land Holding Corporation		
Estimated Financial Position		
December 31, 2009		
Assets	Book Value	Estimated Realization
Cash	\$ 106	\$ 106
Loan receivable from Piikani Nation	151,171	151,171
Advances to Piikani Nation	84,262	84,262
Loan receivable from Housing Corp. and PUC	44,000	unknown
Loans receivable from individuals	18,124	18,124
	<u>297,664</u>	<u>253,664</u>
Liabilities		
Loans payable to PIC	500,000	500,000
Accounts payable to PIC	61,700	61,700
Accrued interest payable to PIC	277,185	277,185
	<u>838,885</u>	<u>838,885</u>
Estimated Shortfall	<u>\$ (541,221)</u>	<u>\$ (585,221)</u>

55. Estimated realization of loans and advances to Piikani Nation are based on correspondence with the Piikani Nation.
56. The Investigator has no financial information on the Piikani Housing Corporation or the Piikani Utilities Corporation to be able to assess the expected realization from these advances.
57. Loans receivable from individuals are documented loans made to former members of the Piikani Nation council, and are assumed to be collectable.

Piikani Oldman Hydro LP

Piikani Oldman Hydro LP			
Statement of Receipts & Disbursements			
April 1, 2007 to December 31, 2009			
	Preliminary October 31, 2009	Updates	Updated to December 31, 2009
Receipts			
Investment from PEC	\$ 7,800,000	\$ -	\$ 7,800,000
Payments from ATCO JV	2,800,000	-	2,800,000
Interest income	1,309	9,420	10,729
	<u>10,601,309</u>		<u>10,610,729</u>
Disbursements			
Investment in ATCO joint venture	7,444,968	-	7,444,968
Advances to PEC	2,615,000	25,000	2,640,000
Advances to Piikani Nation	267,181	(0)	267,181
Interest expenses	-	111,123	111,123
Professional fees	-	90,416	90,416
ATCO operating fund	50,000	-	50,000
Operating expenses	1,806	3,564	5,370
Travel, accommodation and meals	2,600	(2,600)	-
Other expenses (unclassified)	193,005	(193,005)	-
	<u>10,574,560</u>		<u>10,609,057</u>
Cash on hand	<u>\$ 26,749</u>		<u>\$ 1,672</u>

58. Based on further analysis, the Investigator has been able to reclassify various expenses; however, there is no significant change in the total receipts or disbursements.

Piikani Oldman Hydro LP		
Estimated Financial Position		
December 31, 2009		
	Book Value	Estimated Realization
Assets		
Cash	\$ 1,672	\$ 1,672
Investment in ATCO JV	7,445,081	7,445,081
Advances to PEC	2,640,000	unknown
	<u>10,086,752</u>	<u>7,446,752</u>
Liabilities		
Investment from PEC	7,800,000	7,800,000
	<u>7,800,000</u>	<u>7,800,000</u>
Equity in POHLP	<u>\$ 2,286,752</u>	<u>\$ (353,248)</u>

59. The Investigator commented previously on the advances to PEC of \$2.6 million and the Investment from PEC of \$7.8 million. There is no direction for the use of income from the ATCO JV, or a loan agreement between PEC and POHLP for the \$7.8 million advance made to POHLP, so it could acquire the 25% interest in the ATCO JV.

Combined Statement of Receipts and Disbursements

PIC and PBEs				
Combined Statement of Receipts and Disbursements				
January 1, 2004 to December 31, 2009				
	Preliminary October 31, 2009	Updates	Updated to December 31, 2009	Notes
Receipts				
Loans from Trust	\$ 14,025,000	\$ -	\$ 14,025,000	
ATCO JV payments	2,800,000	-	2,800,000	
Annual operating allowance from Trust	1,800,000	-	1,800,000	
Revenue bylaw income	101,361	147,654	249,015	
Interest income	146,814	21,381	168,195	
Government grant	100,000	-	100,000	
	<u>18,973,175</u>		<u>19,142,210</u>	
Disbursements				
Advances to Piikani Nation	1,946,541	617,646	2,564,187	1
Investment in ATCO joint venture	7,444,968	-	7,444,968	
Loans to Piikani Housing Corp. and PUC	-	44,000	44,000	
Deposit at Peace Hills Trust	250,000	-	250,000	
Small business loan to Lone Wolf	116,000	-	117,367	
Management, and honoraria fees	4,131,258	268,097	4,399,355	2
Travel, accommodation and meals	343,459	223,375	566,834	
Legal fees (expensed by entity)	1,487,063	312,713	1,799,776	3
Land engineer and consultant fees	-	399,697	399,697	
Accounting fees	-	81,759	81,759	
Office expenses	279,309	57,327	336,636	
Office rent	369,606	206	369,812	
Payments to third parties	599,838	(385,495)	214,343	
Interest paid		117,246	117,246	
Prepaid expenses and deposits		32,000	32,000	
Trust revenue to Piikani Housing Corp.		33,898	33,898	
Capitalized lawsuit costs	616,640	(616,640)	-	
Loans to third parties and unknown amounts	317,780	(317,780)	-	4
Funds held in escrow	480,000	(480,000)	-	5
	<u>18,382,462</u>		<u>18,771,877</u>	
Cash on hand	<u>\$ 590,713</u>		<u>\$ 370,333</u>	

60. The Investigator has updated the Combined Receipts and Disbursements from information obtained subsequent to the First Report. Amounts that differ significantly from the First Report are commented on below.

Notes

1. Advances to Piikani Nation - \$2,564,187. This is the total amount advanced to the Piikani Nation according to the books and records of PIC and PBEs. A detailed discussion of these advances follows in paragraphs 61 to 66.
2. Management fees increased due to fees paid to Dale McMullen (\$240,000) and Stephanie Ho Lem (\$150,000) by PEC prior to the appointment of the Conservator on December 21, 2009.
3. Legal fees increased due to amounts paid by PEC between November 1 and December 21, 2009. A breakdown of all legal disbursements is presented in the table below:

Summary of Legal Fee Disbursements PIC and PBEs	
Legal fees receivable from the PN	\$ 600,278
Legal fees paid by PIC and PBEs	1,799,776
	<u>\$ 2,400,054</u>

4. The Investigator has since classified all disbursements.
5. The Escrow was collapsed subsequent to the First Report and the funds repaid to PEC.

Amounts Receivable from the Piikani Nation

61. Advances from PIC and PBEs to the Piikani Nation began in July 2005 and continued until December 2007. On February 6, 2006, PEC advanced \$1,000,000 to the Piikani Nation which, according to Stephanie Ho Lem in her December 21, 2009 affidavit, was required as Indian and Northern Affairs Canada ("INAC") was going to appoint a third party manager for the Nation. Between February 6, 2006 and December 21, 2007, PIC and POHLP advanced additional funds to the Piikani Nation by way of payment for litigation expenses, payment of Piikani Nation operating expenses, and payments for Chief and Council honorariums.

62. Depending on the source of information, the amount due from PN varies from \$1.91 million to \$2.56 million as summarized in the table below.

Advances from PIC and PBEs to the Piikani Nation			
	Per Books	Per SHL Affidavit #3 Ex#1	Per Piikani Nation
Advances from PIC			
Costs of litigation support by PEC	\$ 764,809	\$ 694,044	\$ 79,745
Payment of Piikani Nation expenses	278,641	351,310	310,252
Advance from PEC			
Cash advance	1,000,000	1,000,000	1,000,000
Advances from POHLP			
Payment of Piikani Nation expenses	267,181	267,681	267,181
Advances considered in SHL affidavit	<u>2,310,630</u>	<u>2,313,034</u>	<u>1,657,178</u>
Advances from PLHC			
Loans to Piikani Nation C&C	151,171	NA	151,171
Payment of Piikani Nation expenses	84,262	NA	84,262
Loans to C&C individuals	18,124	NA	18,124
Total advances to Piikani Nation	<u><u>\$ 2,564,187</u></u>	<u><u>\$ 2,313,034</u></u>	<u><u>\$ 1,910,735</u></u>

63. As can be seen from the table above, most of the difference relates to litigation expense. The Piikani Nation objects to amounts that relate to Raymond James litigation, amounts paid to selected members of Chief and Council for honorariums, and a miscellaneous operating expense, paid for by PIC on behalf of the Piikani Nation. The total amount objected is \$655,357.

64. PEC maintains that advances due from the Nation are secured and that this security interest arises from a memorandum of understanding dated February 3, 2006, and a general security agreement dated June 23, 2006, a copy of each are attached as Exhibits 8 and 9 to this report.

65. The Investigator has had its counsel review the security and determined that the security is most likely not valid and/or enforceable. There are a number of reasons for this opinion:
- a. The February 3, 2006 MOU states on Page 4 that the MOU is non-binding and subject to further negotiations to reach a lease agreement with the Piikani Nation. A lease agreement between the Piikani Nation, PIC or PBEs was never reached. The MOU is "an agreement to agree" and not a legally enforceable contract.
 - b. The Trust Agreement does not appear to contain any provisions that contemplate or authorize PIC or PBEs to borrow funds from the Trust and then advance these funds to the Piikani Nation for administrative purposes. The advances may well be in breach of the Trust Agreement and thus unenforceable.
 - c. The granting of security over the proceeds of the right of way is likely contrary to the Indian Act and thus void.
 - d. The GSA provided by the Piikani Nation to PEC refers to security for the advances under the MOU, which is not a legally enforceable contract. Further, the lease proceeds actually flow to INAC, because the right of way agreement is made between Her Majesty and Altalink, and not the Piikani Nation.
66. The Investigator has reviewed the loan agreements and Section 6 of the Trust Agreement, and has not found any provisions contained in any of those documents authorizing PIC and PBEs to advance funds or make payments on behalf of the Piikani Nation.

Management and Honoraria Fees

67. The table below summarizes the fees paid to individuals or their professional corporations for management and honoraria fees.

**Piikani Investment Corporation and Piikani Business Entities
 Management, Honoraria, Travel and Meal Expenses
 January 1, 2004 to December 31, 2009**

<u>Payee</u>	<u>Amount</u>
Dale McMullen	\$ 1,485,289
Stephanie Ho Lem	876,097
Allan Sid / Ambercrest Management	745,823
Shelly Small Legs	428,867
Robert Nicolay / 1157669 Alta Ltd.	269,996
Kerry Scott	146,737
Edwin Yellow Horn	117,862
Stan Knowlton	99,421
Rick Yellow Horn	82,212
Velma Day Chief	49,575
Jordie Provost	39,009
Derek Smith	38,970
Edwin Small Legs	34,367
Neil Sharp Adze	33,163
Joseph Yellowhorn	30,756
Rod North Peigan	28,721
Brendan Yellowface	28,292
Brian Jackson	26,328
Elizabeth Big Swan	25,765
Pat Provost	21,555
Bill English	21,514
Payees > \$20,000 (46 Individuals)	335,870
	<u>\$ 4,966,188</u>

Comprised of:

Management and honoraria	\$ 4,399,355
Travel accommodation and meals	566,833
	<u>\$ 4,966,188</u>

68. Management of PIC and PBEs represent the top five payees in the table above. Payment amounts for Dale McMullen, Stephanie Ho Lem, and Shelley Small Legs also include payments of directors' honoraria; however, the majority of these amounts are management fees.
69. Directors of PIC and PBEs receive an honorarium for attending board meetings and for performing other duties as required of them.

Legal Fees

70. The First Report identified 14 legal actions and legal fees of approximately \$2.1 million. Based on further information and analysis, the number of firms has been increased to 22 and the amount expended increased to \$2.4 million as summarized in the table below.

PIC and PBE Disbursements for Legal Services January 1, 2004 to December 31, 2009						
Firm	PIC	PEC	PLHC	OIL	POHLP	Total
Gowlings LLP	\$ 486,252	\$ 225,950	\$ 6,170		\$ 91,779	\$ 810,150
Ken Staroszik Prof./Rogers & Co.	13,470	513,698				527,168
Miller Thomson LLP	6,925	140,464				147,389
McMillian (Thackeray)	192,924					192,924
Field Law LLP		126,056				126,056
Willier & Co.	122,657					122,657
Navigant Consulting	70,369					70,369
Inkster Group	81,445					81,445
MMSM Barristers	68,464					68,464
Janes Freedman Kyle		54,253				54,253
Cook Roberts LLP (Freedman)	15,000					15,000
Borden Ladner and Gervais		46,055				46,055
Fleming LLP (Llewellyn)		40,000				40,000
Davis LLP		28,733				28,733
Ackroyd Piasta Roth & Day LLP		25,901				25,901
Bennett Jones LLP				13,624		13,624
Hutchins Caron LLP		10,000				10,000
Firms > \$10,000 (5 Firms)	5,000	5,000	5,000		4,866	19,866
	<u>\$ 1,062,506</u>	<u>\$ 1,216,109</u>	<u>\$ 11,170</u>	<u>\$ 13,624</u>	<u>\$ 96,645</u>	<u>\$ 2,400,054</u>

71. The Investigator has undertaken further analysis and inquiry and has now become aware of numerous legal actions underway in Federal Court. Copies of the originating documents for these actions are attached as Exhibit 10 as summarized below:

- i. Action A-514-09 - Jordie Provost v. Minister of Indian Affairs & Northern Development et al;
- ii. Action T-646-09 - Jordie Provost v. Piikani Band Council;

- iii. Action T-21-09 - Dale Smith v. Piikani Nation et al;
- iv. Action T-564-0S - Kerry Scott v. Piikani First Nation Council et al;
- v. Action T-477-07 - Brian Jackson et al v. Piikani Nation, Election Appeals Board et al;
- vi. Action T-8-07 - Brian Jackson et al v. Rebecca Yellow Wings et al;
- vii. Action T-1675-05 - Natoshia Bastien et al v. Chief Peter Strikes With A Gun et al;
- viii. Action A-468-05 - Chief Peter Strikes With A Gun et al v. Natoshia Bastien et al; and
- ix. Action T-1242-05 - Councilor Brian Jackson et al v. Chief Peter Strikes With A Gun et al.

72. The Investigator made written requests to 19 law firms for information, and a sample copy of the letter sent to all law firms is attached as Exhibit 11. The information requested was:

- Legal fees by action number;
- A brief description of the services provided and the amount of fees, if fees did not relate to a specific action; and
- Copies of invoices for the legal services provided.

73. The responses the Investigator received generally did not provide specific action numbers to assign legal costs to matters with certainty. The Investigator was able to identify approximately \$375,000 of legal costs with specific litigation matters based on the responses provided.

74. In some cases, the Investigator received a list of matters, but the response did not provide a breakdown of the amount of fees for each matter.

75. From the books and records of PIC and an analysis of intercompany transactions, the Investigator has determined that approximately \$450,000 of legal fees relate to Action No. 0601-13081 – Piikani Nation and Piikani Investment Corporation v. Raymond James Ltd., et al.

76. Based on the limited information provided by the law firms, the Investigator has only been able to perform a partial analysis of which litigation matters were funded by PIC and PBEs.

77. It is apparent, from the partial responses provided by the various counsels, that at least in one instance, Jordie Provost, Action v Minister of Indian and Northern Affairs et al, funding was provided for legal actions to which PEC was not a party, which does not appear to be consistent with the objectives of the Piikani Trust, and where no valid business reason was readily apparent. The Investigator has sought the advice of counsel who indicates that there is a concern such funding might be considered champerty¹ or maintenance and may not comply with the objectives of the Piikani Trust. While much further legal analysis plus further information from various lawyers would be required to more accurately comment on this matter, it does raise a serious concern regarding the conduct of directors and a potential breach of their duties.

Jordie Provost v. Minister of Indian Affairs et al - Action No. A-514-09

78. PIC and PBEs were not named as parties in Federal Court Action A-514-09 regarding an action by Jordie Provost for which fees were disbursed to Miller Thomson and Janes Freedman Kyle, in the amount of \$201,642.
79. The Investigator, in the course of its appointment as Conservator of PEC, became aware of this action when a request was made by PEC to fund an appeal. Based on a review of information

¹ In the third edition of his text book Tort Law, by Lewis Klar, the author deals with the tort of maintenance and champerty as follows:

"The torts of maintenance and champerty still exist in Canadian tort law. The policy of the law which underlies these torts is to discourage people from trafficking in litigation, or from maliciously inter-meddling in order to stir up litigation. Maintenance has been defined as the 'officious inter-meddling with a law suit which in no way belongs to one, by assisting either party with money, or otherwise, to prosecute or defend the suit. '

Champerty is maintenance together with an agreement to give the maintainer a share in the proceeds or subject matter of the proceeding, or some other profit. The essence of the wrong is that the litigation was stirred up without a legitimate motive. As stated in *American Home Assurance v. Brett* a person who is not a stranger to an action, one who has a legitimate and genuine business interest in it, has every right to participate in, or maintain, proceedings to protect his or her interest.

It is only when a person has an improper motive which may include, but is not limited to, 'officious inter-meddling' or 'stirring up strife' that a person will be found to be a maintainer.' There are a number of 'privileges'. A common interest between the parties, kinship, and even the charitable desire to assist may justify a person to participate financially in another's law suit. As well, there must be proof of actual loss."

provided by PEC and various lawyers, the Conservator was not prepared to authorize the expenditure of funds for the appeal.

80. This action is also discussed in the Conservator's second report dated May 10, 2010 and filed in Action No. 0901-18791.

Alberta Electrical System Operator ("AESO") Application

81. PEC submitted a preliminary application for access to the electrical grid in late 2007, which the Investigator understands is essential for the development of a wind farm on the Reserve. The filing of this application is the first step in a lengthy regulatory process to obtain Alberta electrical grid access. Further to the filing of this application, a number of additional steps are necessary to preserve a place in the access queue.

82. The preliminary application was accompanied by a deposit cheque of \$50,000 plus GST but the cheque was never cashed, since it is AESO's policy to only accept funds by wire transfer.

83. The Conservator was contacted by AESO to discuss the transfer of the application to Piikani Resource Development Ltd. ("PRDL"). The Conservator did not consent to the transfer but, in order to preserve the interest of PEC and the Piikani Nation in the application and after considerable discussion with counsel, AESO, and PEC, the Conservator approved payment of the application fee of \$50,000.

84. The Investigator understands that PEC and PRDL are working together to complete the next step in the application process which is due for filing on September 1, 2010.

Summary of Observations and Findings

85. The First Report contained a number of comments on the affairs, accounting records and financial position of PIC and the PBEs. After further investigation, the observations and findings continue to be valid. These original observations and findings, together with the most current findings of the Investigator, are set out below:

- Six loans totaling \$14,025,000 have been advanced from the Piikani Trust to PIC and PBEs;
- Since January 1, 2004 approximately \$19.1 million has been received and \$18.7 million disbursed by the PIC and PBEs and the only asset of significant value is the interest in the ATCO JV which cost \$7.8 million and which has paid \$2.8 million to POHLP;
- All six loans are in default which, by itself, renders PIC insolvent;
- PIC and PEC are insolvent, PLHC has been struck, and OIL is likely to become insolvent;
- The financial and accounting records of PIC and the PBEs are incomplete, inaccurate and confusing;
- The records of PIC and the various PBEs have not been independently audited or scrutinized for a number of years, if ever;
- It is the Investigator's opinion that advancing loans from the Piikani Trust via PIC is problematic and likely contrary to the terms of the Trust as PIC is an oversight and control entity which should not directly handle funds and, in fact, to do so creates a direct conflict of interest ;
- All loan advances from the Trust have been to PIC who, in turn, enters into loan and security agreements with the ultimate loan recipient. This structure is not only cumbersome but problematic as the solvency of PIC is jeopardized whenever any of the ultimate loan recipients default on a loan. Clearly, this is unacceptable as PIC is intended as a fundamental control feature over the investment of Trust funds in PBE loans and guarantees;
- While permitted under the Trust, it is the Investigator's view that it is not advisable for shares in a PBE to be owned by PIC. If PIC holds a controlling interest in a corporation,

accounting rules require that PIC's financial statements be consolidated with the owned company. This reporting makes it difficult to determine or assess the performance of the subsidiary on its own;

- The board of PIC should be separate from that of any PBE. While it may be advisable to have one director in common with PIC, all PBE boards should be independent;
- PIC's annual operating costs appear to be limited to \$300,000 by provision 6.1 (v) of the Trust Agreement which may, or may not, be adequate but, in any event, this amount has not been indexed or increased by any provision to account for inflation;
- There appears to be very little oversight into whether loans advanced are ever used for the original purpose of the loan;
- The Trust Agreement contemplates loans only to entities controlled by the Piikani Nation. This type of structure may inhibit entrepreneurial attitude as profits from extra effort are not necessarily accruing to the business owner;
- At the time of the Investigator's First Report, the Investigator identified 14 Alberta Court legal actions currently underway and most, if not all, arise from disputes between the Piikani Nation, PIC, a PBE or shareholders and directors of these entities. Significant legal costs for these lawsuits are being funded either directly or indirectly with assets belonging to the Piikani people. The Investigator has identified an additional nine Federal Court actions;
- It was recommended that an Order be made freezing the \$480,000 which PEC had placed in Escrow on May 29, 2009. These funds were repaid to PEC subsequent to the November 30, 2009 report. Once repaid, \$390,000 was almost immediately paid out to Dale McMullen (\$240,000) and to Stephanie Ho Lem (\$150,000) as prepaid 2010 fees. The Conservator has serious concerns regarding these payments which have been expressed earlier in paragraph 45 of this report;
- There is a potential recovery to PIC from Alberta Court Action No. 0601-13081 - Piikani Nation and Piikani Investment Corporation Vs. Raymond James Ltd., et al. This litigation will need to be completed or settled to realize this recovery. Counsel has recently ceased to act;

- OIL has conducted a preliminary assessment of an irrigation strategy for the Piikani Reserve and appears to be in a position to move this project forward;
- POHLP has not documented a repayment plan for the \$7.8 million advance from the Trust that was used to acquire the 25% interest in the ATCO JV. Similarly, there is no documentation for the distribution of the partnership income; and
- Since PLHC was struck and activities ceased, the land strategy to acquire 10,300 acres of Reserve land pursuant to an option granted in the Settlement Agreement has not been pursued.

Recommendations

86. Restructure or wind up PIC as it is insolvent. As PIC is a fundamental part of the structure of the Piikani Trust, consideration should be given to restructuring PIC, perhaps using the proposal provisions of the Bankruptcy & Insolvency Act, as this would preserve the present PIC. Alternatively, it may be possible to incorporate a replacement entity in which case PIC would be wound up.
87. Arrange, whether restructuring or liquidating PIC, to have the liability for the following loans assumed directly by the corresponding entity for repayment directly to the Trust:
 - Loan #2 - PLHC \$500,000
 - Loan #4 - PEC \$7,800,000 with repayment from POHLP to the Trust
 - Loan #6 - OIL \$275,000
88. Pursue the Raymond James litigation forthwith as there appears to be a significant potential for recovery.
89. Place PEC into receivership as it is insolvent and, with the transfer of the operation of the POHLP to PRDL, the only ongoing business of PEC is the AESO application. The Investigator recommends that the Receiver, if appointed:
 - Investigate the possible sale or transfer of the AESO application from PEC to a Piikani controlled entity;

- Review the affairs and legal actions of PEC with a view to potential recovery through litigation or other means, also taking into account what is commercially reasonable; and
 - Investigate the status of a wind farm project through a different Piikani controlled entity.
90. Continue the work commenced by OIL to pursue, develop and implement an irrigation strategy on the Piikani Nation Reserve.
91. Develop documentation in POHLP to:
- Provide for the repayment of the \$7.8 million advance to the Trust;
 - Determine how the income from the ATCO JV will be distributed; and
 - Determine management fees, if any, to be paid to the general partner, PRDL.
92. Revive PLHC in order to exercise the First Nation Reserve land acquisition option granted in the Settlement Agreement.
93. Finalize the amount the Piikani Nation owes to PIC and PBE's and structure an acceptable arrangement to have this amount repaid directly to the Trust.
94. Consider asking the Court to provide a declaratory order that PIC is not a PBE pursuant to the existing terms of the Piikani Trust; or alternatively
- Exercise its powers, under the Trustee Act to clarify that the Trust is not permitted to loan funds to PIC or its replacement entity; and
 - Review the Trust with a view to providing guidance in eliminating inconsistent or unclear terms in the Trust.

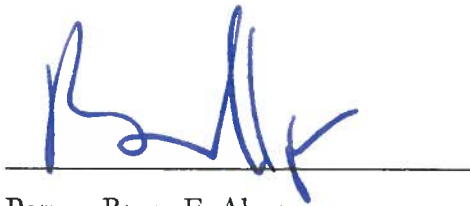
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95. Enforce the monthly and annual financial reporting requirements for PIC, or its replacement, and all other PBEs by the Trust and the Piikani Nation.

Respectfully submitted this 13th May, 2010

Alger & Associates Inc.

In its capacity as Court Appointed Investigator of
the Piikani Investment Corporation, and not in its personal capacity.



Per: Bruce E. Alger
President

Action No. 0901-15297

IN THE COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF PIIKANI INVESTMENT
CORPORATION

AND IN THE MATTER OF THE WINDING- UP
AND RESTRUCTURING ACT, R.S.C. 1985, c. W-
11 (AS AMENDED)

BETWEEN:

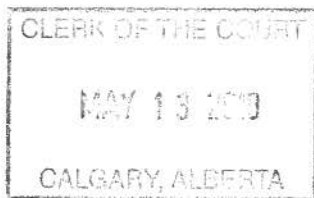
PIIKANI NATION and CHIEF REG CROW SHOE

Petitioners

-and-

PIIKANI INVESTMENT CORPORATION

Respondent



INVESTIGATOR'S SECOND REPORT

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