

**JOHN E. THORSON  
FEDERAL WATER MASTER  
LUMMI DECREE  
U.S. DISTRICT COURT (W.D. WASH.)  
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June 29, 2016

Sent by e-mail

Hon. Thomas S. Zilly  
Senior Judge  
United States District Court  
Western District of Washington  
United States Courthouse  
700 Stewart Street, Suite 15229  
Seattle, WA 98101

Re: Water Master Budget (2016-2017), *United States & Lummi Indian Nation v. Department of Ecology*, No. C01-0047Z

Dear Judge Zilly:

Pursuant to section IV(G)(4) of the Lummi Settlement Agreement (Settlement Agreement), the Water Master is required to confer with the Washington Department of Ecology and the Lummi Nation before June 1<sup>st</sup> of each year on a draft Water Master budget for the next fiscal year. Section IV(G)(4) also indicates that Ecology and the Lummi Nation will adopt a final budget by an agreement entered into by July 1<sup>st</sup>.

Last year, as set forth in our June 11, 2015, letter to you, we agreed to continue the original arrangement set forth in your August 7, 2008, order and, accordingly, adopted a budget of \$100,000 for the 2015-2016 fiscal year. The Water Master's hourly rate remained at \$200 per hour.

We have completed the required discussions for the upcoming fiscal year, and the Department of Ecology and the Lummi Nation have agreed on a final Water Master budget for fiscal year July 1, 2016, to June 30, 2017 (the Lummi Nation reserves the right to revisit this budget approach for future years). We adopt a budget of \$100,000 for the 2016-2017 fiscal year. The Water Master's hourly rate will remain unchanged at \$200 per hour and he will continue his efforts to minimize his time and costs.

## **Background**

The Water Master's work during the 2015-16 fiscal year has included continued implementation of the previous special proceeding involving the accuracy of the service list, enforcement proceedings, efforts to secure payment of the annual "Eligible Landowner Fees," his annual report, and routine matters (including maintenance of the web site).

The attached spreadsheet (FederalWaterMasterExpenses061416.xlsx), with estimated May and June data, reflects the Water Master's time (in dollars at \$200 per hour) and expenses for this fiscal year and the previous seven years. As you can see, the average monthly fee during 2015-16 has been \$558 and the average monthly expenses have been \$67.

SueLynn Vasquez, the Financial Specialist for the U.S. District Court Clerk, reported that, as of June 1, 2016, we had a balance in the Water Master's account of \$228,993. At the conclusion of the fiscal year, the Water Master estimates the Water Master's account will have a balance of approximately \$228,893 (June 1 balance less Master's estimated claim for May).

Since this year-end balance is less than the adjusted \$231,040 ceiling for the Water Master account anticipated by the Settlement Agreement (*see* discussion, *infra*), the Lummi Nation, Eligible Landowners, and (depending on the circumstances) Ecology will need to pay an additional amount for fiscal year 2016-2017 (*see* Settlement Agreement section IV(G)(2)).

## **Adjusted Ceiling for Water Master Account**

Section IV(G)(2) provides, "[T]he amount the Lummi Nation and state defendants pay shall be reduced proportionally so that the total amount in the Water Master's account does not exceed Two Hundred Thousand Dollars (\$200,000), *adjusted by the Implicit Price Deflator*" (emphasis added). Thus, the Settlement Agreement contemplates a periodic inflation adjustment to this cap.

The U.S. Bureau of Economic Analysis maintains the Implicit Price Deflator, but Washington State's Economic and Revenue Forecast Council publishes annual reports of several inflation indices for the Seattle area. The Council staff advised the Water Master to use Table A4.1, "Selected Inflation Indicators," found this year on p. 103 of the Council's *Washington State Economic and Revenue Forecast* (Feb. 2016) (<http://www.erfc.wa.gov/publications/documents/feb16pub.pdf>).

According to Council staff, the "Price Deflator" increase over a series of years is calculated by determining the difference between the index figures for the beginning and ending years and expressing that change as a percentage of increase

or decrease over the base year. In our case, the 2006 index is 0.947 and the 2015 index is 1.094 (the 2016 index is not used since it is a forecast). The percentage of change 2006-2015 is 15.52%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 15.52% over the 2006 base year to \$231,040 (as compared to last year's \$229,800 ceiling).

### **Amounts to be Paid by Lummi Nation, Eligible Landowners & Dep't of Ecology**

During the 2015-16 fiscal year, the Lummi Nation paid \$7,653 representing its 50% of the amount needed to bring the balance in the Water Master's account to \$229,800—the maximum permitted at that time under the Settlement Agreement. Eligible Landowners paid \$8,052 or \$95 less than their 50% allocation plus an adjustment for prior year underpayments, which payments during 2015-2016 did decrease the running underpayments by Eligible Landowners from prior years. The running total of underpayments by Eligible Landowners is now \$95 (\$563 budgeted less \$468 actually collected in 2015-2016 against underpayments). Under the Settlement Agreement, the Department of Ecology was not required to make a payment this fiscal year (*see examples set forth in section IV(G)(2) of Settlement Agreement*).

At the beginning of the next fiscal year (2016-2017), we estimate a total of \$2,147 (\$231,040 minus \$228,893) will be necessary to bring the Water Master's account up to the maximum amount of \$231,040 allowed by Settlement Agreement section IV(G) and as adjusted for inflation as previously discussed. Of the \$2,147, the Lummi Nation will pay \$979 (1/2 of \$2,147 less \$95 to remove the running deficit of underpayments by Eligible Landowners). Eligible Landowners will pay a total of \$1,169 (1/2 of \$2,147 plus \$95 to remove the running deficit). Pursuant to section IV(G)(1) of the Settlement Agreement, the Eligible Landowner Fee will be \$5 for the basic parcel in order to raise the \$1,169 required of the state parties.<sup>1</sup> This is considerably less than the annual \$100 fee imposed when the Decree was first issued. The Department of Ecology will pay nothing for the 2016-2017 fiscal year (*see examples set forth in section IV(G)(2) of Settlement Agreement*).

### **Federal Water Master Budget**

As previously mentioned, under your August 7, 2008, order, the Water Master operated under a \$100,000 budget for the 2008-2009 fiscal year. This arrangement apparently was based on section IV(B)(2) of the Settlement Agreement which indicates that the "Water Master's office shall be funded at the initial rate in 2006 of

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<sup>1</sup> Calculated as follows:  $x/1169 = 33/8052$ , where x is the basic 2016-17 Eligible Landowner Fee, 1169 is the amount to be raised for 2016-17, 33 is the 2015-2016 basic fee, and 8052 is the amount actually raised from Eligible Landowner fees during 2015-2016. This formula produces an annual, basic fee of \$4.79, rounded to \$5 for convenience.

One Hundred Thousand Dollars (\$100,000) per year.” We have agreed to this same arrangement for all subsequent fiscal years including the current fiscal year. We now agree to a budget of \$100,000 for the 2016-2017 fiscal year with the Water Master’s hourly rate still at \$200. The Lummi Nation reserves the opportunity to revisit this budget methodology in the future.

Unless you conclude otherwise, we do not believe you need to take any action at this time on these Water Master budget matters. While the Settlement Agreement does provide that the Court may resolve a budget dispute between the Lummi Nation and the Department of Ecology, we are fortunately in agreement on the budget this year.

Your August 7, 2008, order (in paragraph 3) specifies that “[i]n subsequent years [beyond 2008-2009], Lummi Nation shall pay its share of the Water Master budget on or before August 1<sup>st</sup> of the fiscal year.” Similarly, the order (in paragraph 4) provides that the Department of Ecology will pay its share of the Water Master budget by August 1<sup>st</sup> (however, no payment is required for the 2016-2017 fiscal year) and also send Water Master fee notices by August 1<sup>st</sup>.

These provisions and our budgetary agreement appear to address all outstanding financial matters. This information will be set forth in the Water Master’s annual report, to be filed by June 30<sup>th</sup>.

Please contact us if you have any questions. Thank you for your consideration of this matter.

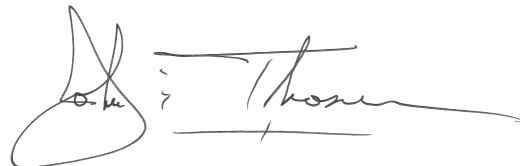
Sincerely,

*/s/ Travis H. Burns*

*/s/ Charles N. Hurt, Jr.*

Mr. Travis H. Burns\*  
Assistant Attorney General  
Ecology Division  
Attorney General of Washington  
P.O. Box 40117  
Olympia, WA 98504-0117  
*Attorney for the Department of Ecology*

Mr. Charles N. Hurt, Jr.\*  
Staff Attorney  
Office of the Reservation Attorney  
Lummi Nation  
2665 Kwina Road  
Bellingham, WA 98226  
*Attorney for the Lummi Nation*

A handwritten signature in black ink, appearing to read "John E. Thorson", with a horizontal line drawn underneath it.

John E. Thorson  
376 River Road West  
Plains, MT 59859  
*Federal Water Master, Lummi Decree*

\* Mr. Burns and Mr. Hurt have authorized the Water Master to sign and submit this letter in their behalf.

Cc: Mr. Burns & Mr. Hurt

Attachment: FederalWaterMasterExpenses061416.xlsx