

**JOHN E. THORSON
FEDERAL WATER MASTER
LUMMI DECREE
U.S. DISTRICT COURT (W.D. WASH.)
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June 28, 2017

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 (2017-2018), *United States & Lummi Indian Nation v. Department of Ecology*, No. C01-0047Z

Dear Judge Zilly:

I'm pleased to introduce Ms. Robin G. McPherson, Office of the Washington Attorney General, who now represents the Department of Ecology, and Mr. James Stroud, Office of the Reservation Attorney, who now represents the Lummi Nation.

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 1st 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 1st.

Last year, as set forth in our June 19, 2016, 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 2016-2017 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, 2017, to June 30, 2018. Based on my recommendation, we adopt a budget of \$50,000 for the 2017-2018 fiscal year. The Water Master's

hourly rate will remain unchanged at \$200 per hour and the Master will continue his efforts to minimize time and costs.

Background

The Water Master's work during the 2016-17 fiscal year has included continued implementation of the previous special proceeding involving the accuracy of the service list, efforts to secure payment of the annual "Eligible Landowner Fees," the annual report, and routine matters (including maintenance of the web site).

The attached spreadsheet, 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 eight years. As you can see, the average monthly fee during 2016-17 has been \$600 and the average monthly expenses have been \$109.

Based on the May 24th report of SueLynn Vasquez, the Financial Specialist for the U.S. District Court Clerk, the fiscal year ending (June 30th) balance in the Water Master's account is anticipated to be approximately \$223,970. Since this year-end balance is less than the adjusted \$233,800 ceiling for the Water Master account anticipated by the Settlement Agreement (*see discussion, infra*), the Lummi Nation and Eligible Landowners will need to pay additional amounts for fiscal year 2017-2018 (*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* (Mar. 2017).¹

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 2016 index is 1.107 (the 2017 index is not used since it is a forecast). The percentage of change 2006-2016 is 16.9%.

¹ <http://www.erfc.wa.gov/publications/documents/mar17pub.pdf>.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 16.9% over the 2006 base year to \$233,800 (as compared to last year's \$231,040 ceiling).

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

During the 2016-17 fiscal year, the Lummi Nation paid \$979 representing its 50% of the amount needed to bring the balance in the Water Master's account to \$231,040—the maximum permitted at that time under the Settlement Agreement. Eligible Landowners paid \$1,170 which satisfied their 50% allocation plus an additional \$95 for prior year underpayments, with these total payments during 2016-2017 removing the running underpayments by Eligible Landowners from prior years.

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 (2017-2018), we estimate a total of \$9,830 (\$233,800 minus expected year-end balance of \$223,970) will be necessary to bring the Water Master's account up to the maximum amount of \$233,800 allowed by Settlement Agreement section IV(G) and as adjusted for inflation as previously discussed. Of the \$9,830, the Lummi Nation will pay \$4,915 (1/2 of \$9,830). Eligible Landowners also will pay a total of \$4,915. Pursuant to section IV(G)(1) of the Settlement Agreement, the Eligible Landowner Fee will be \$20 for the basic parcel in order to raise the \$4,915 required of the state parties.² 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 2017-2018 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 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.

² Calculated as follows: $x/4915 = 5/1179$, where x is the basic 2017-18 Eligible Landowner Fee, 4915 is the amount to be raised for 2017-18, 5 is the 2016-2017 basic fee, and 1170 is the amount actually raised from Eligible Landowner fees during 2016-2017. This formula produces an annual, basic fee of \$20.84, rounded downward to \$20 for convenience. The Department of Ecology reached the same result based on a count of anticipated Eligible Landowner payors.

Given the amount of actual work required of the Master over past years, we no longer see the need to set a budget this high. Based on my recommendation and concurred in by counsel, we adopt a budget of \$50,000 for fiscal year 2017-18. I reserved the right to approach counsel and the Court for additional budgetary authority in the event of unexpected, extraordinary litigation. The Master's hourly rate will remain at \$200.

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 1st 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 1st (however, no payment is required for the 2017-2018 fiscal year) and also send Water Master fee notices by August 1st.

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 30th.

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

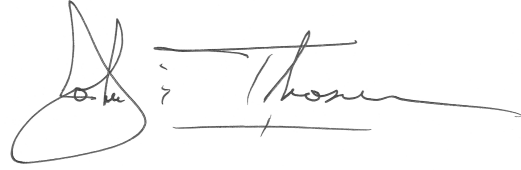
Sincerely,

/s/ Robin G. McPherson

/s/ James Stroud

Ms. Robin G. McPherson*
Assistant Attorney General
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Attorney General of Washington
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Attorney for the Department of Ecology

Mr. James Stroud*
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". The signature is written in a cursive style with a large, looped initial "J" and a long, horizontal stroke extending to the right.

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

* Ms. McPherson and Mr. James Stroud have authorized the Water Master to sign and submit this letter in their behalf. Cc: Ms. McPherson & Mr. Stroud

ATTACHMENT A: FEDERAL WATER MASTER EXPENDITURES BY FISCAL YEAR (2008-09 to 2016-17)

	2008-09		2009-10		2010-11		2011-12		2012-13	
Month	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp
July	\$800	\$513	\$400	\$75	\$250	\$0	\$500	\$0	300	\$0
Aug.	200	0	300	39	500	10	950	27	700	0
Sept.	0	0	100	0	400	2	900	14	700	6
Oct.	400	100	200	0	200	0	800	9	600	0
Nov.	2400	542	500	0	200	0	200	0	750	8
Dec.	100	0	200	0	200	0	1000	0	200	0
Jan.	0	0	650	4	450	2	950	6	200	0
Feb.	600	130	0	0	450	6	950	2	800	11
Mar.	0	0	200	0	800	11	200	0	400	1
April	450	0	200	0	400	12	900	0	800	42
May	1000	16	400	0	400	49	1300	115	700	105
June	1300	176	2300	275	2300	289	2700	574	6,050	1,464
TOTAL	\$7,250	\$1,477	\$5,450	\$393	\$6,550	\$381	\$11,350	\$747	\$12,200	\$1,637
Average	\$604	\$123	\$454	\$33	\$546	\$32	\$946	\$62	\$1,017	\$136
	2013-14		2014-15		2015-16		2016-17			
Month	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp		
July	\$400	\$1	400	1	200	0	0	0		
Aug.	700	14	100	5	200	0	0	0		
Sept.	300	0	250	1	300	2	200	2		
Oct.	650	2	200	0	600	0	0	0		
Nov.	600	25	200	0	0	0	600	0		
Dec.	200	0	200	0	200	0	200	0		
Jan.	400	0	100	0	0	0	0	0		
Feb.	600	5	100	0	100	0	400	0		
Mar.	200	0	600	4	0	0	0	0		
April	200	0	200	0	100	0	0	0		
May	2000	7	1900	124	0	0	800	0		
June	5000	867	4200	793	5000	1298	5000	1300		
TOTAL	\$11,250	\$921	\$8,450	\$928	\$6,700	\$1,300	\$7,200	\$1,302		
Average	\$938	\$77	\$704	\$77	\$558	\$108	\$600	\$109		
Note: May and June bills are typically paid during the next decree year (i.e., after July 1). Accordingly, for a decree year, the average monthly bill may vary from the average amount paid to the Master.										