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 U.S. DISTRICT COURT (W.D. WASH.)
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June 28, 2019
 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 (2019-2020), *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 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.

This letter summarizes 2019-2020 budget discussions among Ms. Robin G. McPherson, Office of the Washington Attorney General, who represents the Department of Ecology; Mr. James Stroud, Office of the Reservation Attorney, who represents the Lummi Nation; and John Thorson, Federal Water Master.

Last year, as set forth in our June 29, 2018, letter to you, we adopted a budget of \$50,000 for the 2018-2019 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, the Lummi Nation, and the Water Master have agreed on a final Water Master budget of \$50,000 for fiscal year July 1, 2019, to June 30, 2020. 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.

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 0.892 and the 2018 index is 1.082 (the 2019 index is not used since it is a forecast). The percentage of change 2006-2018 is 21.3%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 21.3% over the 2006 base year to \$242,600 (as compared to last year's \$238,000 ceiling).

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

During the 2018-2019 fiscal year, the Lummi Nation paid \$2,426 representing its 50% of the amount needed to bring the balance in the Water Master's account to \$238,000—the maximum permitted at that time under the Settlement Agreement.

Eligible Landowners were required to pay \$2,636 to cover the 2018-2019 year and an underpayment from the prior year. For 2018-2019, Eligible Landowners paid \$2,812 (\$3,422 in actual collections less \$610 in overpayments due to the billing error), which was an overpayment of \$176 (\$2,636-\$2,812). Interest added \$4,298 to the account during the fiscal year.

Under the Settlement Agreement, the Department of Ecology was not required to make a payment during the 2017-2018 fiscal year (see examples set forth in section IV(G)(2) of Settlement Agreement).

A summary of account income and expenditures for the July 1, 2018, to June 30, 2019, period (projected) is as follows:

Item	Subtotal Amount	Amount
July 1, 2018, Balance		\$229,562
Income		
Lummi Nation	\$2,426	
Department of Ecology	0	
Landowner Payments	3,422	
Interest (inc. June est.)	4,298	
Total Income		10,146
Less Landowner Overpayments		(610)
Expenditures		(10,152)
June 30, 2019, Balance (projected)		\$228,946

Background

The Water Master's work during the 2018-2019 fiscal year has included updating the service list, efforts to secure payment of the annual "Eligible Landowner Fees," preparation of the annual report, and routine matters (including maintenance of the website).

The attached spreadsheet, with estimated June data, reflects the Water Master's time (in dollars at \$200 per hour) and expenses for this fiscal year and the previous ten years. As you can see, the average monthly fee during 2018-2019 has been \$742 and the average monthly expense has been \$96.

Based on the April 15th 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 \$229,556. Due to a billing error, the Department of Ecology initially sent out 2018-2019 annual bills to state water users charging \$18 for the basic water allocation—rather than the approved amount of \$11. Before updated bills were sent, some water users paid their fees based on the \$18 amount. The result was an overpayment by state water users of \$610 during 2018-2019. This amount needs to be deducted from the estimated year-end balance and credited to the individual state water users during the next fiscal year. Deducting this overpayment, the working year-end balance in the Clerk's account is estimated to be \$228,946.

Since this year-end balance is less than the adjusted \$242,600 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 2019-2020 (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. 99 of the Council's *Washington State Economic and Revenue Forecast* (Mar. 2019).¹

¹<https://erfc.wa.gov/sites/default/files/public/documents/publications/mar19pub.pdf>.

At the beginning of the next fiscal year (2019-2020), we estimate a total of \$13,654 (\$242,600 minus expected year-end balance of \$228,946) will be necessary to bring the Water Master's account up to the maximum amount of \$242,600 allowed by Settlement Agreement section IV(G) and as adjusted for inflation as previously discussed. Interest on the funds maintained in the Water Master account is projected to be \$4,298, thus reducing the amount to be raised to \$9,356.

Of the \$9,356, the Lummi Nation will pay \$4,678 (1/2 of \$9,356). Eligible Landowners will pay a total of \$4,502 (1/2 of \$9,356 less \$176 as a credit for collective overpayments by state water users during 2018-19). Pursuant to section IV(G)(1) of the Settlement Agreement, the Eligible Landowner Fee will be \$18 for the basic parcel in order to raise the \$4,502 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 2019-2020 fiscal year (see examples set forth in section IV(G)(2) of Settlement Agreement).

Federal Water Master Budget

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." For eight years, we agreed that this arrangement would be continued for each fiscal year; and, accordingly, a budget of \$100,000 was adopted for those fiscal years.

Given the amount of actual work required over past years, the Master indicated in 2017 year that he no longer saw the need to set a budget this high and suggested a reduced fiscal year budget of \$50,000, which we adopted. We now agree to continue a budget of \$50,000 for fiscal year 2018-2019. The Master reserves the right to approach the Court for additional budgetary authority in the event of unexpected, extraordinary litigation. The Master's hourly rate will remain at \$200.

The Master does anticipate incurring additional website expenses as the software he has used is no longer supported, and he would like to have a more attractive, accessible, and updated website. The Master will research ADA requirements or guidelines for court-related websites.

² Calculated as follows: $x/4502 = 11/2812$, where x is the basic 2019-2020 Eligible Landowner Fee, 4502 is the amount to be raised for 2019-2020, 11 is the 2018-2019 basic fee, and 2812 (3422-610 overpayment) is the amount actually raised from Eligible Landowner fees during 2018-2019. This formula produces an annual, basic fee of \$17.61, rounded upward to \$18 for convenience. The Department of Ecology has confirmed the \$18 amount based on a count of actual allocations.

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 2019-2020 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,



John E. Thorson
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Federal Water Master, Lummi Decree

cc:

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ATT: Attachment A: Federal Water Master Expenditures

Month	2008-09		2009-10		2010-11		2011-12		2012-13		2013-14	
	Fees	Exp.	Fees	Exp.	Fees	Exp.	Fees	Exp.	Fees	Exp.	Fees	Exp.
July	2,000	0	3,000	0	3,500	0	5,000	0	3,000	0	4,400	14
Aug.	0	0	1,000	0	4,000	2	9,000	14	7,000	6	7,000	0
Sept.	0	0	0	0	0	0	0	0	0	0	0	0
Oct.	2,400	0	5,000	0	2,000	0	2,000	0	2,500	0	6,600	23
Nov.	1,000	0	2,000	0	1,000	0	1,000	0	2,000	0	2,000	0
Dec.	0	0	6,500	4	4,500	2	9,500	6	2,000	0	4,400	0
Jan.	0	0	1,000	0	0	0	0	0	0	0	0	0
Feb.	0	0	0	0	5,000	11	2,000	0	4,000	11	2,000	0
Mar.	0	0	0	0	0	0	0	0	0	0	0	0
April	4,500	0	2,000	0	4,000	12	9,000	0	8,000	42	2,000	0
May	10,000	16	4,000	0	4,000	49	13,000	115	7,000	102	2,000	0
June	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	\$1,200	\$1,175	\$4,400	\$2,000	\$25,500	\$379	\$1,700	\$274	\$37,500	\$1,424	\$11,200	\$82
Average	\$6,004	\$123	\$4,554	\$335	\$5,546	\$32	\$5,846	\$62	\$1,017	\$136	\$938	\$7
Month	2014-15		2015-16		2016-17		2017-18		2018-19			
	Fees	Exp.	Fees	Exp.	Fees	Exp.	Fees	Exp.	Fees	Exp.		
July	4,000	1	2,000	0	0	0	2,000	0	1,000	0		
Aug.	0	0	2,000	0	0	0	0	0	1,000	0		
Sept.	1,000	0	0	0	0	0	0	0	0	0		
Oct.	2,000	0	6,000	0	0	0	0	0	0	0		
Nov.	2,000	0	0	0	6,000	0	0	0	3,000	102		
Dec.	2,000	0	2,000	0	2,000	0	0	0	0	0		
Jan.	1,000	0	1,000	0	4,000	0	0	0	0	0		
Feb.	0	0	0	0	0	0	0	0	0	0		
Mar.	6,000	4	0	0	0	0	0	0	2,000	0		
April	2,000	0	1,000	0	0	0	0	0	2,000	0		
May	0	0	0	0	0	0	0	0	0	0		
June	42,000	283	5,000	1,298	6,000	900	6,000	10,000	6,000	1,000		
TOTAL	\$8,450	\$828	\$6,700	\$1,308	\$6,800	\$972	\$8,700	\$1,050	\$8,900	\$1,122		
Average	\$704	\$77	\$558	\$108	\$567	\$85	\$725	\$88	\$742	\$96		

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. Due to the timing requirement for the Annual Report, June 2019 is estimated and based on prior year.