

**JOHN E. THORSON
FEDERAL WATER MASTER
LUMMI DECREE
U.S. DISTRICT COURT (W.D. WASH.)
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June 16, 2021
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 (2021-2022), *United States & Lummi Indian Nation v. Department of Ecology*, No. C01-0047Z

Dear Judge Zilly:

Under section IV(G)(4) of the Lummi Settlement Agreement (Settlement Agreement), the Water Master must 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 2021-22 budget discussions among Mr. Matthew Janz, 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. Attachment A sets forth the calculations discussed in this letter.

Last year, as set forth in our June 22, 2020, letter to you, we adopted a budget of \$50,000 for the 2020-2021 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, 2021, to June 30, 2022. 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 2020-21 fiscal year involved maintaining the accuracy of the service list, efforts to secure payment of the annual "Eligible Landowner Fees," contested proceedings, my annual report, and routine matters (including maintenance of the web site). For the period of July 2020 through April 2021, I have billed fees of \$3700 (at \$200 per hour) and expenses of \$102.42 for an average monthly bill of \$380. Due to annual report and budget work, however, May and June are the months with the highest billings.

SueLynn Vasquez, the Financial Specialist for the U.S. District Court Clerk, reports that, as of May 11, 2021, we had a balance in the Water Master's account in the Clerk's office of \$222,621.90. At the conclusion of the fiscal year (June 30), I project the Water Master's account will have a balance of approximately \$222,637 (credit of May and June estimated interest).

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 me to use Table A4.1, "Selected Inflation Indicators," found this year on p. 107 of the Council's *Washington State Economic and Revenue Forecast* (Mar. 2021) (<https://erfc.wa.gov/sites/default/files/public/documents/publications/mar21pub.pdf>).

According to Council staff, the "Price Deflator" increase over years is calculated by determining the difference between the PCE price 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 2020 index is 1.112 (the 2021 index is not used since it is a forecast). The percentage of change 2006-2020 is 24.7%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 24.7% over the 2006 base year to a target of \$249,400 (as compared to last year's \$246,000 ceiling).

Since the estimated 2020-21 fiscal year-end balance of \$222,637 is less than the adjusted ceiling of \$249,400, the Lummi Nation and Eligible Landowners will, and

(depending on the circumstances) Ecology may, need to pay an additional amount for fiscal year 2021-22 (*see* paragraph IV(G)(2)). The total additional amount to be collected is \$26,763, subject to the adjustments below.

Due to the Cobvid-19 pandemic, the Court last year approved our recommended waiver of the 2020-21 water user fees, and our recommendation that those fees (\$7914 for the Lummi Nation and state water users) be *conclusively deemed paid* so the Lummi Nation and state water users would not have to makeup this amount in future years. *See* Federal Water Master's Annual Report for Fiscal Year 2019-2020 at 9 (June 30, 2020). Accordingly, \$7914 can be deducted from the \$26,763 target.

Anticipated 2021-22 interest on the account maintained by the Clerk of the Court can also deducted from the target. While the federal court system now pays interest on accounts such as ours, the interest rate has fallen dramatically. During the 2019-20 fiscal year, approximately \$3800 in interest was earned on the account. For the 2020-21 fiscal year, interest income will only be \$110.¹

By deducting the waived 2020-21 payments and estimated 2021-22 interest, the total amount to paid by the Lummi Nation and state water users during 2021-22 is reduced to \$18,739.

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

As calculated in the previous section, at the beginning of the next fiscal year (2021-22), \$18,739 in fees will be necessary to bring the Water Master's account up to the ceiling of \$249,400 authorized by Settlement Agreement paragraph IV(G).

Of this amount, one-half or \$9370 would be paid by the Lummi Nation. State water users would pay one-half (\$9370) plus an underpayment from 2019-20 (\$792) for a total of \$10,162. *See* Federal Water Master's Annual Report, *supra* at 9.

The Department of Ecology reports 233 active state Eligible Landowner allocations. Dividing \$10,162 by 233 produces a fee of \$43.61 for the basic allocation. For simplicity, we suggest rounding the basic annual fee for Eligible Landowners to \$44. The Department of Ecology would pay nothing (*see* examples in paragraph IV(G)(2) of Settlement Agreement).

Conclusion

Unless you conclude otherwise, you do not 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

¹ Interest rates on accounts deposited with the Clerk of the Court are determined by the U.S. Treasury. For example, interest on a one-year T-Bill was 1.94% on July 1, 2019. The rate had fallen to 0.18% on July 1, 2020.

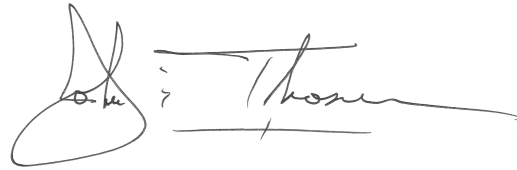
Department of Ecology, we fortunately agree on the budget this year.

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 by 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 2021-22 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 in the Water Master’s annual report, to be filed by June 30th.

Please contact us if you have questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Thorson". The signature is written in a cursive style with a large initial "J" and "T".

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

cc:

Mr. Matthew T. Janz
Assistant Attorney General
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Attorney for the Lummi Nation

ATT: Attachment A: Lummi Decree Assessment Calculations for 2021-22

	A	B	C	D
1		Attachment A:		
2		Lummi Decree Assessment Calculations for 2021-22		
3		5/29/21		
4				
5		Master's Ceiling Calculation:		
6		Settlement basic fund requirement		\$ 200,000.00
7		Implicit Price Deflator adjustment		24.7%
8		July 1, 2021 Adjusted ceiling		\$ 249,400.00
9				
10		Calculation of Total Amount to be Assessed:		
11		Balance as of May 11, 2021		\$ 222,621.90
12		Est May Interest		\$ 7.39
13		Est June Interest		\$ 7.39
14		Est Balance as of June 30, 2021		\$ 222,636.68
15	Line 8	Master's Ceiling Calculation		\$ 249,400.00
16		Shortage		\$ 26,763.32
17		Less 2020-21 Imputed Payment		\$ (7,914.00)
18		Less Est Interest 2021-22		\$ (110.00)
19		Amount to be Assessed		\$ 18,739.32
20				
21		Lummi Nation & State Water User Share of Assessment:		
22		Lummi Assessment 2021-22 (1/2)		\$ 9,369.66
23		State Water Users' Assessment (1/2)		\$ 9,369.66
24		Carryover Underpayment from 2019-20		\$ 792.00
25		Adjusted State Water Users' Assessment		\$ 10,161.66
26				
27		State Water User Fee Calculation:		
28		Adjusted State Water Users' Assessment		\$ 10,161.66
29		Number of Active State Allocations		233
30		User Fee (2021-22) for Basic Allocation		\$ 43.61
31				