

**JOHN E. THORSON**  
**FEDERAL WATER MASTER**  
**LUMMI DECREE**  
**U.S. DISTRICT COURT (W.D. WASH.)**  
**376 RIVER ROAD WEST**  
**PLAINS, MT 59859**  
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**johnethorson@mac.com**

June 27, 2022  
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 (2022-2023), *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 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>.

This letter summarizes 2022-23 budget communications 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 2021-2022 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, 2022, to June 30, 2023. The Water Master is requesting an increase in his hourly rate from \$200 per hour (set by the Court in 2008) to \$250 per hour, as discussed herein.

## **Background**

The Water Master's work during the 2021-22 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 2021 through May 2022, I have billed fees of \$6000 (at \$200 per hour) and expenses of \$1198 for a total of \$7198 or an average monthly bill (over 11 months) of \$654. 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 31, 2022, we had a balance in the Water Master's account in the Clerk's office of \$235,650.57. At the conclusion of the fiscal year (June 30), I project the Water Master's account will have a balance of approximately \$235,690 (with 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. 98 of the Council's *Washington State Economic and Revenue Forecast* (Feb. 2022) (<https://erfc.wa.gov/sites/default/files/public/documents/publications/feb22pub.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 0.893 and the 2021 index is 1.155 (the 2022 index is not used since it is a forecast). The percentage of change 2006-2021 is 29.3%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 29.3% over the 2006 base year to a target of \$258,600 (as compared to last year's \$249,400 ceiling).

Since the estimated 2020-21 fiscal year-end balance of \$235,690 is less than the

adjusted ceiling of \$258,600, 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 \$22,909, subject to the adjustments below.

Due to the Covid-19 pandemic, the Court in 2020 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 \$22,909 target.

Anticipated 2022-23 interest on the account maintained by the Clerk of the Court can also be 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 2021-22 fiscal year, interest income will be less than \$100.<sup>1</sup> A conservative \$240 in interest income is assumed for 2022-23.

By deducting the waived 2020-21 payments and estimated 2022-23 interest, the total amount to be paid by the Lummi Nation and state water users during 2022-23 is reduced to \$14,755.

### **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 (2022-23), \$14,755 in fees will be necessary to bring the Water Master's account up to the ceiling of \$258,600 authorized by Settlement Agreement paragraph IV(G).

Of this amount, one-half or \$7,378 would be paid by the Lummi Nation. State water users would pay one-half (\$7,378) plus an underpayment from 2021-22 (\$174) for a total of \$7,552. *See* Federal Water Master's Annual Report 2021-22, at 7.

The Department of Ecology reports 233 active state Eligible Landowner allocations. Dividing \$7,552 by 233 produces a fee of \$32.41 for the basic allocation. For simplicity, we suggest rounding the basic annual fee for Eligible Landowners to \$32. The Department of Ecology would pay nothing (*see* examples in paragraph IV(G)(2) of Settlement Agreement).

### **Request for Compensation Increase**

Upon my appointment on June 10, 2008, the Court's order established my initial hourly rate at \$200 per hour and indicated that "[s]uch rate may be adjusted upon

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<sup>1</sup> Interest rates on accounts deposited with the Clerk of the Court are determined by the U.S. Treasury.

request of the Water Master, after all parties to the settlement agreement have been given notice and an opportunity to be heard.” Order Appointing Master ¶ 5 (June 10, 2008). At this time, I do request an increase in my hourly rate from \$200 to \$250 per hour. As the calculations for the “Adjusted Ceiling for Water Master Account,” *supra*, indicate, we have experienced 29.3% inflation since my appointment in 2008, which would justify an adjustment to more than \$250 per hour. Currently, I charge \$250 per hour for other legal and mediation work. My request will be set forth in my annual report so all parties have notice and an opportunity to be heard.

### **Conclusion**

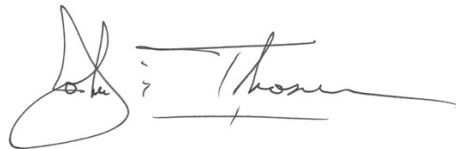
Unless you conclude otherwise, you do not need to take any action at this time on these Water Master budget matters. While the Settlement Agreement does provide that the Court may resolve a budget dispute between the Lummi Nation and the Department of Ecology, we fortunately agree on the budget this 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 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 2022-23 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 in the Water Master’s annual report, to be filed by June 30<sup>th</sup>.

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".

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

cc:

Mr. Matthew T. Janz  
 Assistant Attorney General  
 Ecology Division  
 Attorney General of Washington  
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 Olympia, WA 98504-0117  
*Attorney for the Department of Ecology*

Mr. James Stroud  
 Staff Attorney  
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 Lummi Nation  
 2665 Kwina Road  
 Bellingham, WA 98226  
*Attorney for the Lummi Nation*

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

1	<b>Attachment A:</b>	
2	<b>Lummi Decree Assessment Calculations for 2022-23</b>	
3	6/19/22	
4		
5	<b>Master's Ceiling Calculation:</b>	
6	Settlement basic fund requirement	\$ 200,000.00
7	Implicit Price Deflator adjustment	29.3%
8	July 1, 2021 Adjusted ceiling	\$ 258,600.00
9		
10	<b>Calculation of Total Amount to be Assessed:</b>	
11	Balance as of May 31, 2022	\$ 235,650.57
12	Est May Interest	\$ 20.00
13	Est June Interest	\$ 20.00
14	Est Balance as of June 30, 2022	\$ 235,690.57
15	Master's Ceiling Calculation (Line 8)	\$ 258,600.00
16	Shortage	\$ 22,909.43
17	Less 2020-21 Imputed Payment	\$ (7,914.00)
18	Less Est Interest 2022-23	\$ (240.00)
19	Amount to be Assessed	\$ 14,755.43
20		
21	<b>Lummi Nation &amp; State Water User Share of Assessment:</b>	
22	Lummi Assessment 2022-23 (1/2)	\$ 7,377.71
23	State Water Users' Assessment (1/2)	\$ 7,377.71
24	Carryover Underpayment from 2021-22	\$ 174.00
25	Adjusted State Water Users' Assessment	\$ 7,551.71
26		
27	<b>State Water User Fee Calculation:</b>	
28	Adjusted State Water Users' Assessment	\$ 7,551.71
29	Number of Active State Allocations	233
30	User Fee (2022-23) for Basic Allocation	\$ 32.41