

**JOHN E. THORSON
FEDERAL WATER MASTER
LUMMI DECREE
U.S. DISTRICT COURT (W.D. WASH.)
376 RIVER ROAD WEST
PLAINS, MT 59859
(406) 826-0500
johnethorson@mac.com**

June 28, 2023
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 (2023-2024), *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 2023-24 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 stated in our June 27, 2022, letter to you, we adopted a budget of \$50,000 for the 2022-2023 fiscal year. By your order of August 9, 2022 (Docket No. 1569), the Water Master's hourly rate was increased to \$250 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, 2023, to June 30, 2024.

Background

The Water Master's work during the 2022-23 fiscal year involved maintaining the accuracy of the service list, efforts to secure payment of the annual "Eligible Landowner Fees," contested proceedings, the annual report, and routine matters (including maintenance of the web site). For the period of July 2022 through May 2023, I have billed fees of \$1000 (at \$250 per hour) and expenses of \$3.

Due to annual report and budget work, however, May and June are the months with the highest billings. Including estimated fees (\$4000) and costs (\$1500) for these two months brings the 2022-23 annual totals to \$5000 in fees (a monthly average of \$417) and \$1500 in costs (a monthly average of \$125).

Based on the June 7, 2023 report of SueLynn Vasquez, the Financial Specialist for the U.S. District Court Clerk, I project the Water Master's account will have a balance of approximately \$251,402 (including credit of May and June estimated interest) at the conclusion of the fiscal year (June 30).

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. 96 of the Council's *Washington State Economic and Revenue Forecast* (Mar. 2023) (<https://erfc.wa.gov/sites/default/files/public/documents/publications/mar23pub.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 2022 index is 1.229 (the 2023 index is not used since it is a forecast). The percentage of change 2006-2022 is 37.6%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 37.6% over the 2006 base year to a target of \$275,200 (as compared to last year's \$258,600 ceiling).

Since the estimated 2022-23 fiscal year-end balance of \$251,402 is less than the

adjusted ceiling of \$275,200, the Lummi Nation and Eligible Landowners will, and (depending on the circumstances) Ecology may, need to pay an additional amount for fiscal year 2023-24 (*see* paragraph IV(G)(2)). The total additional amount to be collected is \$23,798, 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 make up 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 \$23,798 target.

Anticipated 2023-24 interest on the account maintained by the Clerk of the Court can also be deducted from the target.¹ During the 2022-23 fiscal year to date, approximately \$5900 in interest has been earned on the account. For the 2023-24 fiscal year, a conservative estimate of \$6000 in interest income is assumed.

By deducting the waived 2020-21 payments and estimated 2023-24 interest, the total amount to be paid by the Lummi Nation and state water users during 2023-24 is reduced to \$9884.

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 (2023-24), \$9884 in fees will be necessary to bring the Water Master's account up to the ceiling of \$275,200 authorized by Settlement Agreement paragraph IV(G).

Of this amount, one-half or \$4942 would be paid by the Lummi Nation. State water users would pay one-half (\$4942) plus an underpayment from 2022-23 (\$320) for a total of \$5262. *See* Federal Water Master's Annual Report 2022-23, at 7-8.

The Department of Ecology reports 230 active state Eligible Landowner allocations. Dividing \$5262 by 230 produces a fee of \$22.88 for the basic allocation. For simplicity, we suggest rounding the basic annual fee for Eligible Landowners to \$23. The Department of Ecology would pay nothing (*see* examples in paragraph IV(G)(2) of Settlement Agreement).

Conclusion

Unless you conclude otherwise, you need not take any action 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.

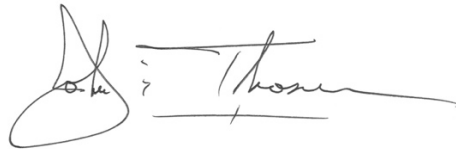
¹ Interest rates on accounts deposited with the Clerk of the Court are determined by the U.S. Treasury.

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 2023-24 fiscal year) and 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,



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
P.O. Box 40117
Olympia, WA 98504-0117
matt.janz@atg.wa.gov
Attorney for the Department of Ecology

Mr. James Stroud
Staff Attorney
Office of the Reservation Attorney
Lummi Nation
2665 Kwina Road
Bellingham, WA 98226
james@lummi-nsn.gov
Attorney for the Lummi Nation

1	Attachment A:	
2	Lummi Decree Assessment Calculations for 2023-24	
3	6/26/23	
4		
5	<i>Master's Ceiling Calculation:</i>	
6	Settlement Basic Fund Requirement	\$ 200,000.00
7	Implicit Price Deflator Adjustment	37.6%
8	July 1, 2023 Adjusted Ceiling	\$ 275,200.00
9		
10	<i>Calculation of Total Amount to be Assessed:</i>	
11	Registry Balance as of June 7, 2023	\$249,802.11
12	Est May Interest	\$ 800.00
13	Est June Interest	\$ 800.00
14	Est Registry Balance as of June 30, 2023	\$251,402.11
15	Master's Ceiling Calculation (Row 8)	\$ 275,200.00
16	Shortage	\$ 23,797.89
17	Less 2020-21 Imputed Payment	\$ (7,914.00)
18	Less Est Interest 2023-24	\$ (6,000.00)
19	Amount to be Assessed	\$ 9,883.89
20		
21	<i>Lummi Nation & State Water Users Share of Assessment:</i>	
22	Lummi Assessment 2023-24 (1/2 of Row 19)	\$ 4,941.95
23	State Water Users' Assessment (1/2 of Row 19)	\$ 4,941.95
24	Carryover State Water Users' Underpayment (2022-23)	\$ 320.00
25	Adjusted State Water Users' Assessment (Rows 23 & 24)	\$ 5,261.95
26		
27	<i>State Water User Fee Calculation:</i>	
28	Adjusted State Water User's Assessment (Row 25)	\$ 5,261.95
29	Number of Active State Allocations	230
30	User Fee for Basic Allocation (2023-24)	\$ 22.88