

**JOHN E. THORSON  
FEDERAL WATER MASTER  
LUMMI DECREE  
U.S. DISTRICT COURT (W.D. WASH.)  
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June 27, 2024  
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 (2024-2025), *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 2024-25 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 26, 2023, letter to you, we adopted a budget of \$50,000 for the 2023-2024 fiscal year. Earlier, 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, 2024, to June 30, 2025.

## **Background**

The Water Master's work during the 2023-24 fiscal year involved maintaining the accuracy of the service list, efforts to secure payment of the annual "Eligible Landowner Fees," formal proceedings, the annual report, and routine matters (including maintenance of the web site).

For the last 11-month period (July 2023 through May 2024), I have billed fees of \$6125 (at \$250 per hour) and expenses of \$1147 for an average monthly bill of \$661. Due to annual report and budget work, May and June (billed in June and July, respectively) are the months with the highest billings.

Based on figures supplied by SueLynn Vasquez, the Financial Specialist for the U.S. District Court Clerk, as of June 3, 2024, we had a balance in the Water Master's account in the Clerk's office of \$248,360. At the conclusion of the fiscal year (June 30), I project the Water Master's account will have a balance of approximately \$249,560 (including 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. 95 of the Council's *Washington State Economic and Revenue Forecast* (Feb. 2024) (<https://erfc.wa.gov/sites/default/files/public/documents/publications/feb24pub.pdf>).

According to Council staff, the "Price Deflator" increase over a series of 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 2023 index is 1.273 (the 2024 index is not used since it is a forecast). The percentage of change 2006-2023 is 42.6%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master's account should be adjusted by 42.6% over the 2006 base year to a target of \$285,200 (as compared to last year's \$275,200 ceiling).

Since the estimated 2023-24 fiscal year-end balance of \$249,560 is less than the adjusted ceiling of \$285,200, the Lummi Nation and Eligible Landowners will, and (depending on the circumstances) Ecology may, need to pay an additional amount for fiscal year 2024-25 (*see* Section IV(G)(2)). The total additional amount to be collected is \$35,640 subject to the adjustments below.

Due to the Covid-19 pandemic, the Court two years ago 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 \$35,640 target.

Anticipated 2024-25 interest on the account maintained by the Clerk of the Court can also be deducted from the target. The federal court system pays interest on accounts such as ours, and the interest rate has increased.<sup>1</sup> During the 2024-25 fiscal year, approximately \$10,000 in interest is reasonably expected to be earned on the account.

By deducting the waived 2020-21 payments and conservatively estimated 2024-25 interest of \$10,000, the total amount to be paid by the Lummi Nation and state water users during 2024-25 is reduced to \$17,726.

### **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 (2024-25), \$17,726 in fees will be necessary to bring the Water Master’s account up to the ceiling of \$285,200 authorized by Settlement Agreement Section IV(G).

Of this amount, one-half or \$8893 would be paid by the Lummi Nation. State water users would pay one-half (\$8893) less an overpayment from 2023-24 (\$61) for a total of \$8802.

The Department of Ecology reports 230 active state Eligible Landowner allocations. Dividing \$8802 by 230 produces a fee of \$38.27 for the basic allocation.

For simplicity, we suggest rounding the basic annual fee for Eligible Landowners to \$38. The Department of Ecology would pay nothing (*see* examples in Section IV(G)(2) of Settlement Agreement).

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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. Interest rates on short-term Treasuries are projected to be slightly higher during 2024-25.

**Conclusion**

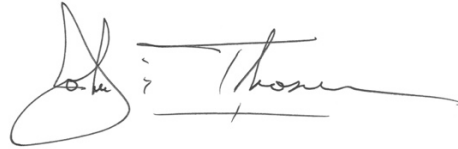
Unless you conclude otherwise, you need not take any action on these Water Master budget matters. While the Settlement Agreement does provide that the Court may resolve a budget dispute between the Lummi Nation and the Department of Ecology, we fortunately agree on the budget this year.

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 2024-25 fiscal year) and 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 on July 1, 2024 (due to June 30<sup>th</sup> falling on a Sunday his year).

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

Sincerely,



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

cc:

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2			
3	<b>Lummi Decree Assessment Calculations for 2024-25</b>		
4	<b>6/3/24</b>		
5			
6	<b>Master's Ceiling Calculation:</b>		
7	Settlement Basic Fund Requirement	\$	200,000.00
8	Implicit Price Deflator Adjustment	\$	0.43
9	July 1, 2024 Adjusted Ceiling	\$	285,200.00
10			
11	<b>Calculation of Total Amount to be Assessed:</b>		
12	Registry Balance as of June 3, 2024	\$	248,360.17
13	Est June Interest	\$	1,200.00
14	Est Registry Balance as of June 30, 2024	\$	249,560.17
15	Master's Ceiling Calculation (Row 9)	\$	285,200.00
16	Shortage	\$	35,639.83
17	Less 2020-21 Imputed Payment	\$	(7,914.00)
18	Less Est Interest 2024-25	\$	(10,000.00)
19	Amount to be Assessed	\$	17,725.83
20			
21	<b>Lummi Nation &amp; State Water Users Share of Assessment:</b>		
22	Lummi Assessment 2024-25 (1/2 of Row 21)	\$	8,862.91
23	State Water Users' Assessment (1/2 of Row 21)	\$	8,862.91
24	Carryover State Water Users' Overpayment (2023-24)	\$	(61.00)
25	Adjusted State Water Users' Assessment (Rows 25 & 26)	\$	8,801.91
26			
27	<b>State Water User Fee Calculation:</b>		
28	Adjusted State Water User's Assessment (Row 27)	\$	8,801.91
29	Number of Active State Allocations		230
30	User Fee for Basic Allocation (2024-25)	\$	38.27
31			