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Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES, in its own right and on
behalf of the Lummi Nation,

NO. C01-0047Z

Plaintiff,

LUMMI NATION,

Plaintiff-Intervenor,

FEDERAL WATER MASTER'S ANNUAL
REPORT FOR FISCAL YEAR 2015-
2016; MOTION TO COURT TO
APPROVE CHANGES TO SERVICE LIST

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY et al.

Defendants.

The "Settlement Agreement Regarding Uses of Groundwater on Lummi Peninsula"
(Settlement Agreement) was entered into by the parties to resolve the claims in this case.
The Court, by its Order and Judgment dated November 20, 2007, approved the Settlement
Agreement. The Agreement provides for the appointment of a Water Master "to protect
[the parties'] respective rights to the allocations set forth [in the Agreement], and to protect
the aquifer from saltwater intrusion." Settlement Agreement at § VIII(A)(1). Section

1 VIII(A)(1)(c) of the Agreement requires the Water Master to “issue an annual report of the
2 activities of the Water Master’s office, including requests for action, decisions or orders
3 issued, and enforcement actions taken.” The Court, in paragraph 14 of its Omnibus Order
4 of August 7, 2008, specified that the Water Master will file and serve the annual report on
5 or before June 30th of each year.
6

7 The Court appointed the undersigned as Water Master on June 10, 2008, and this is
8 the Water Master’s Annual Report for fiscal year 2015-2016. This report also includes a
9 motion to the Court to approve changes to the Service List for this case.
10

11 **REQUESTS FOR ACTION; DECISIONS & ORDERS ISSUED**

12 Since his appointment in 2008, the Water Master has opened 25 formal proceedings;
13 nine have been brought by the Washington Department of Ecology to enforce
14 administrative penalties; 15 have been brought by the Master, on his own motion, to collect
15 allegedly unpaid annual Eligible Landowner Fees; and one has been opened by the Master,
16 on his own motion, to recommend improvements to the Service List. No new proceedings
17 were filed or opened during the 2015-2016 fiscal year:
18

19 Of the 25 formal proceedings, 23 have been closed by dismissal, settlement or
20 judgment. At present, two proceedings remain open. The complete docket of proceedings
21 may be found on the Master’s web site (*infra*).
22

23 **ENFORCEMENT ACTIONS TAKEN**

24 On July 2, 2010, the Court adopted a Supplemental Judgments provision as an
25 amendment to the Court’s original Order and Judgment (Nov. 20, 2007). The Water Master
26 has used this procedure in 15 formal proceedings (WM 09-03, WM 09-06, WM 10-01, WM
27

1 10-02, WM 10-03, WM 11-01, WM 11-04, WM 11-05, WM 11-06, WM 12-01, WM 13-01,
2 WM 13-02, WM 13-03, WM 13-05, and WM 13-06) to secure Supplemental Judgments for
3 amounts due the Department of Ecology for unpaid penalties and filing fees, due the Clerk
4 of the Court in reimbursement of the Master's fees and expenses incurred in proceedings,
5 or due the Clerk in payment of annual Eligible Landowner Fees. These judgments or
6 settlements have resulted in the recovery of fees and expenses in four of the proceedings
7 (WM 09-03, WM 09-06, WM 10-01, and WM 13-04). The judgments create judgment liens
8 in King County and abstracts of judgment are selectively recorded (depending on prospects
9 for recovery) in Whatcom County.
10
11

12 **FINANCIAL MATTERS**

13 In paragraph 6 of its Order Appointing Water Master (June 10, 2008), the Court
14 directed the Clerk of the Court "to establish an account in the registry of the Court into
15 which all monies paid pursuant to the Settlement Agreement shall be deposited. Any
16 compensation or reimbursements to be paid to the Water Master shall be made from said
17 account."
18

19 The Clerk has maintained the required account since August 2008. Income has
20 consisted of payments from the Lummi Nation, Washington Department of Ecology,
21 individual water users, reimbursement of the Master's fees and expenses incurred in
22 formal proceedings, filing fees, and bank interest. As of June 1, 2016, the Financial
23 Specialist for the District Court Clerk reported a balance of \$228,993. A summary of
24 account income and expenditures for the May 15, 2015, to June 1, 2016, period is as
25 follows:
26
27

Item	Subtotal Amount	Amount
<i>May 15, 2015, Balance</i>		\$221,911
<i>Income</i>		
Lummi Nation	\$7,653	
Department of Ecology	0	
Landowner Payments	8,052	
Filing Fees & Other	0	
<i>Total Income</i>		15,705
<i>Expenditures</i>		(8,617)
<i>Correction (see note)</i>		(6)
June 1, 2016, Balance		\$228,993
Note: The Clerk's Office converted to a new accounting system (CRIS) in 2014 resulting in some difficulties in reconciling starting and ending balances for this account. The balances reported in this table have been reconciled to within \$6.		

The Settlement Agreement specifies that the Lummi Nation and the “state defendants” each shall pay 50% of the budgeted costs of the Water Master’s office. The “state defendants” are the Department of Ecology and Eligible Landowner households receiving a right to water from the allocation administered by the Department. Settlement Agreement § IV(G)(1).

For fiscal year 2015-2016, the Lummi Nation paid \$7,653 representing its 50% of the amount needed to bring the balance in the Water Master’s account to \$229,800—the maximum permitted at that time under the Settlement Agreement. Eligible Landowners paid \$8,052 or \$95 less than their 50% allocation plus an adjustment for prior year underpayments, which payments during 2015-2016 did decrease the running underpayments by Eligible Landowners from prior years. The running total of underpayments by Eligible Landowners is now \$95 (\$563 budgeted less \$468 actually collected in 2015-2016 against underpayments). Under the Settlement Agreement, the Department of Ecology was not required to make a payment this fiscal year (*see examples set forth in section IV(G)(2) of Settlement Agreement*).

1 As was the case for prior years, the eleven months of the 2015-2016 fiscal year have
2 been very peaceful; but the Water Master has undertaken work and incurred expenses in
3 several enforcement actions, several Eligible Landowner Fee matters, and ongoing
4 implementation of a proceeding (WM 11-03) to retain the accuracy of the post-Decree
5 Service List.
6

7 The table set forth in Attachment A (with estimated June data) reflects the Master's
8 time (in dollars at \$200 per hour) and expenses for this fiscal year and the previous seven
9 years. The average monthly fee billed during 2015-2016 has been \$558 and the average
10 monthly expenses have been \$67.¹
11

12 WATER MASTER BUDGET 2016-2017

13 Pursuant to section IV(G)(4) of the Settlement Agreement, the Water Master is
14 required to confer with the Department of Ecology and the Lummi Nation before June 1st of
15 each year on a draft Water Master budget for the next fiscal year. Section IV(G)(4) also
16 indicates that Ecology and the Lummi Nation will adopt a final budget by agreement
17 entered into by July 1st.
18

19 The required discussions were held and the Department of Ecology and the Lummi
20 Nation agreed on a final Water Master budget for fiscal year July 1, 2016, to June 30, 2017.
21 Specifically, they agreed to continue the existing arrangement originally set forth in the
22 Court's August 7, 2008, order and continued during subsequent fiscal years including the
23 2015-2016 fiscal year. Accordingly, the Lummi Nation and the Department of Ecology have
24 adopted a budget of \$100,000 for the 2016-2017 fiscal year. The Water Master's hourly
25
26

27 ¹ May and June bills are typically paid during the next decree year (*i.e.*, after July 1). Accordingly, for
28 a decree year, the average monthly bill may vary from the average amount paid to the Master.

1 rate will remain unchanged at \$200 per hour and he will continue his efforts to minimize
2 his time and costs. This agreement has been communicated to the Court (letter on Water
3 Master's website).

4 As mentioned, the Clerk's Financial Specialist reported that, as of June 1, 2016, the
5 balance in the Water Master's account was \$228,993. At the conclusion of the 2015-2016
6 fiscal year, the Water Master's account will have a balance of approximately \$228,893 (June
7 1, 2016, balance less the Master's pending claims). Since this figure is less than the
8 adjusted \$231,040 ceiling anticipated by the Settlement Agreement (*see following*
9 *discussion*), the Lummi Nation and Eligible Landowners will need to pay collectively an
10 additional amount for fiscal year 2016-2017, pursuant to the payment provisions set forth
11 in sections IV(G)(1) & (2) of the Settlement Agreement.

12 Section IV(G)(2) provides, "[T]he amount the Lummi Nation and state defendants pay
13 shall be reduced proportionally so that the total amount in the Water Master's account
14 does not exceed Two Hundred Thousand Dollars (\$200,000), *adjusted by the Implicit Price*
15 *Deflator*" (emphasis added). Thus, the Settlement Agreement contemplates a periodic
16 inflation adjustment to this cap.

17 The U.S. Bureau of Economic Analysis maintains the Implicit Price Deflator, but
18 Washington State's Economic and Revenue Forecast Council publishes annual reports of
19 several inflation indices for the Seattle area. Council staff advises the use of Table A4.1,
20 "Selected Inflation Indicators," found on p. 103 of the Council's *Washington State Economic*
21 *and Revenue Forecast* (Feb. 2016).² According to Council staff, the "Price Deflator" increase
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28 ² Available at <http://www.erfc.wa.gov/publications/documents/feb16pub.pdf>.

1 over a series of years is calculated by determining the difference between the index figures
2 for the beginning and ending years and expressing that change as a percentage of increase
3 or decrease over the base year. For Lummi Decree purposes, the 2006³ index is 0.947 and
4 the 2015 index is 1.094 (the 2016 index is not used since it is a forecast). The percentage of
5 change 2006-2015 is 15.52%.

7 Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the
8 Water Master's account should be adjusted by 15.52% to \$231,040 (as compared to last
9 year's \$229,800 ceiling).

11 PARTIES' FEES 2015-2016

12 A total of \$2,147 will be necessary to bring the Water Master's account up to the
13 maximum amount of \$231,040 allowed by Settlement Agreement section IV(G) and as
14 adjusted for inflation as previously discussed (\$231,040 minus expected year-end balance
15 of \$228,893). Of the \$2,147, the Lummi Nation will pay \$979 (1/2 of \$2,147 less \$95 to
16 remove the running deficit of underpayments by Eligible Landowners). Eligible
17 Landowners will pay a total of \$1,169 (1/2 of \$2,147 plus \$95 to remove the running
18 deficit). Pursuant to section IV(G)(1) of the Settlement Agreement, the Eligible Landowner
19 Fee will be \$5 for the basic parcel in order to raise the \$1,169 required of the state parties.⁴
20 This is considerably less than the annual \$100 fee imposed when the Decree was first
21
22
23

24 ³ While the Settlement Agreement was not approved by the Court until November 2007, the
25 Agreement itself appears to establish a 2006 base year for these financial calculations. *See*
26 Settlement Agreement § IV(G)(2).

27 ⁴ Calculated as follows: $x/1169 = 33/8052$, where x is the basic 2016-17 Eligible Landowner Fee,
28 1169 is the amount to be raised for 2016-17, 33 is the 2015-2016 basic fee, and 8052 is the amount
actually raised from Eligible Landowner fees during 2015-2016. This formula produces an annual,
basic fee of \$4.79, rounded to \$5 for convenience.

1 issued. The Department of Ecology will pay nothing for the 2016-2017 fiscal year (*see*
2 examples set forth in section IV(G)(2) of Settlement Agreement).

3 The Court's August 7, 2008, order (in paragraph 3) specifies that "[i]n subsequent
4 years [beyond 2008/2009], Lummi Nation shall pay its share of the Water Master budget
5 on or before August 1st of the fiscal year." Similarly, the order (in paragraph 4) provides that
6 the Department of Ecology will pay its share of the Water Master budget by August 1st
7 (however, as discussed above, no Ecology payment is required for the 2016-2017 fiscal
8 year) and also send Water Master fee notices to Eligible Landowners by August 1st. Eligible
9 Landowners must pay their fees by November 1st.

12 **SERVICE LIST**

13 A continuing problem in Lummi Decree administration has been ensuring accuracy,
14 over time, in the Service List maintained by the Clerk of the Court. In his 2011-2012 annual
15 report, the Water Master recommended, and the Court adopted, certain annual procedures
16 conducted in cooperation with the Washington Department of Ecology to improve accuracy
17 of the Service List, specifically to (a) identify apparent changes in party and water user
18 contact information; (b) propose changes to the Court with opportunities for parties to
19 object and respond; and (c) culminate in a Court order approving the updates to the
20 Service List. *See* Federal Water Master's Report to the Court on Recommendations for
21 Updating the Service List (June 29, 2012).

24 The Master has completed the fourth annual review of the Service List, based on the
25 above procedure, and now recommends a series of corrections to the Service List set forth
26 in Attachment B to this Report. Recipients of this Annual Report are urged to examine
27

28 **Attachment B to determine whether a recommendation affects them. Attachment B**

1 provides explanatory information and the procedure for filing an objection if you believe
2 the Master's recommendations are incorrect. Attachment C is a proposed Court order for
3 updating the Service List, and Attachment D is a preprinted Objection Form.
4

5 WEBSITE

6 Pursuant to the Court's direction, the Waster Master established and maintains a
7 website that provides information on how to initiate proceedings before the Master, the
8 status of pending proceedings, a compendium of the Master's claims for fees and expenses
9 and the Court's orders in response to those claims, and annual reports and service
10 certificates. The Master's website may be found at: www.lummiwatermaster.com.
11

12 CONCLUSION

13 I continue to appreciate the opportunity to work with the Court, the parties, counsel,
14 and Court staff—all of whom have been helpful and cordial. I thank them for their
15 assistance. I especially thank Travis Burns of the Washington Attorney General's Office and
16 Kasey Cykler of the Washington Department of Ecology, along with Charles Hurt, Jr., and
17 Jeremy Freimund of the Lummi Nation for their assistance in identifying address changes
18 and water allocation transfers. I hereby respectfully submit my annual report for 2015-
19 2016.
20
21

22 Dated: June 30, 2016.

23 /s/ *John E. Thorson*

24 _____
25 John E. Thorson
26 Federal Water Master – Lummi Decree
27 376 River Road West
28 Plains, MT 59859
(406) 826-0500
johnethorson@mac.com

1 **CERTIFICATE OF SERVICE**

2 The Certificate of Service of this Annual Report and all attachments has been filed
3 separately with the Clerk of the Court. A copy of the Certificate may be reviewed on the
4 Water Master's website: www.lummiwatermaster.com.
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ATTACHMENT A: FEDERAL WATER MASTER EXPENDITURES
BY FISCAL YEAR (2008-09 TO 2015-16)

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FEDERAL WATER MASTER EXPENDITURES BY FISCAL YEAR (2008-09 TO 2015-16)
1-Jun-16

Month	2008-09		2009-10		2010-11		2011-12	
	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp
July	\$800	\$513	\$400	\$75	\$250	\$0	\$500	\$0
Aug.	200	0	300	39	500	10	950	27
Sept.	0	0	100	0	400	2	900	14
Oct.	400	100	200	0	200	0	800	9
Nov.	2400	542	500	0	200	0	200	0
Dec.	100	0	200	0	200	0	1000	0
Jan.	0	0	650	4	450	2	950	6
Feb.	600	130	0	0	450	6	950	2
Mar.	0	0	200	0	800	11	200	0
April	450	0	200	0	400	12	900	0
May	1000	16	400	0	400	49	1300	115
June	1300	176	2300	275	2300	289	2700	574
TOTAL	\$7,250	\$1,477	\$5,450	\$393	\$6,550	\$381	\$11,350	\$747
Average	\$604	\$123	\$454	\$33	\$546	\$32	\$946	\$62

Note: May & June 2016 fees and expenses are estimated.

Month	2012-13		2013-14		2014-15		2015-16	
	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp
July	300	\$0	\$400	\$1	400	1	200	0
Aug.	700	0	700	14	100	5	200	0
Sept.	700	6	300	0	250	1	300	2
Oct.	600	0	650	2	200	0	600	0
Nov.	750	8	600	25	200	0	0	0
Dec.	200	0	200	0	200	0	200	0
Jan.	200	0	400	0	100	0	0	0
Feb.	800	11	600	5	100	0	100	0
Mar.	400	1	200	0	600	4	0	0
April	800	42	200	0	200	0	100	0
May	700	105	2000	7	1900	124	0	0
June	6,050	1,464	5000	867	4200	793	5000	800
TOTAL	\$12,200	\$1,637	\$11,250	\$921	\$8,450	\$928	\$6,700	\$802
Average	\$1,017	\$136	\$938	\$77	\$704	\$77	\$558	\$67

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.

1 ongoing administration and enforcement of the November 2007 Order and Judgment (and
2 subsequent amendments) known as the Lummi Decree.

3 The proposed changes generally result from the following information or events: (a)
4 Court documents sent to a party listed on the Service List being returned by the U.S. Postal
5 Service without a forwarding address; (b) ownership changes in parcels having a water
6 allocation under the Lummi Decree (Exhibit C & D listings); (c) transfers of parcel
7 ownership or water service to the Lummi Nation (thus necessitating removal from Exhibit
8 C or D); or (d) a withdrawing attorney substituting the client on the Service List.

9
10 The Federal Water Master has followed the procedures set forth in the Report to the
11 Court on Recommendations for Updating the Service List (Doc. No. 1411; June 29, 2012),
12 subsequently approved by the Court. The proposed changes are to the August 19, 2015,
13 version of the Service List approved by the Court and maintained by the Court Clerk. You
14 may review a copy of the Report and the Service List on the Master's website:
15 www.lummiwatermaster.com.

18 GENERAL INSTRUCTIONS

19 1. Please review the following table for your name (names are listed in the second
20 column, alphabetically by last name; if your name is associated with any Exhibit C parcel,
21 that address is provided). If your name is not listed and you currently receive documents
22 from the Court or Master, you do not need to do anything. To ensure you are listed on the
23 Service List (unrepresented parties only), see a copy of August 19, 2015, Service List on the
24 Master's website: www.lummiwatermaster.com.

25
26 2. If you are listed in the following table, review your entry for accuracy. Each entry
27 sets forth some or all of this information:

1 *Table Reference Number (Ref. #)*—The unique number for each entry in the table.

2 Use this number if you file an objection (*see* below).

3 *Status*—The status of your listing (if any) on the Service List: whether or not you are
4 currently listed on the Service List; whether Court documents have been returned without
5 forwarding address; whether ownership has changed concerning a parcel having a water
6 allocation; and whether the Washington Department of Ecology (DOE) has provided
7 relevant information.
8

9 *Names & Addresses*—Relevant names and addresses including any Service List
10 listing (August 19, 2015, version) that appears obsolete, as well as any new names and
11 addresses. This information is based on information provided by the U.S. Postal Service,
12 Department of Ecology, and other information properly considered by the Clerk and
13 Master.
14

15 *Motion*—The Master’s specific recommendation concerning your entry. Usually, the
16 recommendations are to (a) delete a name and address from the Service List because no
17 new address is available and/or the party no longer has an ownership interest in a parcel
18 having a water allocation; (b) update a name and address on the Service List based on new
19 information; or (c) add a name and address to the Service List because the person has an
20 ownership interest in a parcel having a water allocation.
21
22

23 3. If you AGREE with the Master’s motion or specific recommendation concerning your
24 entry, you do not need to do anything. The Court will formally make these proposed
25 changes after the 30-day objection period.

26 4. If you DISAGREE with the Master’s motion or specific recommendation concerning
27 your entry, you must file an objection with the Court by Monday, August 1, 2016, under the
28

1 provisions of Federal Rules of Civil Procedure (F.R.C.P.) 53(f), to propose the correct
2 information. Please see the next section for detailed instructions for filing an objection.

3 **INSTRUCTIONS FOR FILING AN OBJECTION**

4
5 1. If you are filing an objection to your specific entry in the table, you may use the
6 preprinted Objection Form attached as Attachment D. A Rich Text Format (rtf) version of
7 the form may be found on the Master's website: www.lummiwatermaster.com.

8 If you are filing an objection for any other reason other than the Master's recommendations
9 set forth in the following table, you will need to prepare your own pleading for filing and
10 service.
11

12 2. If using the preprinted Objection Form, please type or print the following
13 information in the specified spaces on pages 1 and 2:

14 --The Table Reference No. (Ref. #) for the entry to which you object

15 --In the Incorrect Information Box, set forth the incorrect information

16 --In the Correct Information Box, set forth the correct information.
17

18 3. You must sign the Objection Form in two spaces. In the Signature block (page 3),
19 please sign your name and provide your mailing address, telephone number, and e-mail
20 address (required by F.R.C.P. 11).
21

22 *Caution:* By signing and filing this Objection Form, you certify to the Court, under
23 F.R.C.P. 11, "that to the best of your knowledge, information, and belief, formed after an
24 inquiry reasonable under the circumstances [that your] factual contentions have
25 evidentiary support or, if specifically so identified, will likely have evidentiary support after
26 a reasonable opportunity for further investigation or discovery; and [your] denials of
27

1 factual contentions are warranted on the evidence or, if specifically so identified, are
2 reasonably based on belief or a lack of information.”

3 4. The second place you sign your name is in the Certificate of Service block (page 4).
4 Here you verify you are filing the original Objection Form with the Court and sending
5 copies to the Federal Water Master, the Washington Department of Ecology, Lummi Nation,
6 and the United States (addresses are provided).
7

8 5. You must send the original Objection Form to the Clerk of the Court for filing. Your
9 Objection Form must be filed on or before Monday, August 1, 2016. Be sure to keep a copy
10 for your records. If you request the Clerk to return a conformed copy of your objection,
11 please include an extra copy and mailing instructions.
12

13 6. At the same time you send your Objection Form to the Court, you must send copies
14 of your Objection Form to the Federal Water Master, the Washington Department of
15 Ecology, Lummi Nation, and the United States. The addresses are set forth in the Certificate
16 of Service portion of the form.
17

18 7. Although you are required to include your e-mail address on your objection, this
19 does not make you eligible to receive future communications from the Court or other
20 parties by e-mail. To register for the Court’s e-filing system (CM/ECT), please see:
21 <http://www.wawd.uscourts.gov/attorneys/cmecf>.
22

23 8. The following table refers to Exhibit C and D listings or parcels. Exhibit C is a listing
24 of parties withdrawing water from the Washington State allocation of water at the time of
25 the 2007 Lummi Decree. Exhibit D is a listing of well registrations receiving water from the
26 state allocation at the time of the 2007 Lummi Decree. The Department of Ecology has
27

provided the Federal Water Master with updates to these exhibits that are set forth in the following recommendations.

**MASTER’S RECOMMENDATIONS
FOR UPDATING THE SERVICE LIST**

The Federal Water Master moves the Court to make the following corrections to the Service List for this case, No. C01-0047Z.

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
1	Bank of New York Mellon C27 2195 Postal Ave.	<i>Status:</i> Whatcom County Assessor and Dep’t of Ecology report transfer of underlying property and allocation from Thomas R. Ficca (who is on the existing Service List) to Bank of New York Mellon; Dep’t of Ecology reports subsequent transfer of allocation & service to Lummi Nation; Bank has no other allocation or registration under Settlement Agreement and, consequently, no further need of notice <i>Service List Address:</i> Thomas R. Ficca 6429 195th Ave. E. Bonney Lake, WA 98391-8858 <i>New Address:</i> Bank of New York Mellon 55 Beattie Pl., #110 Mail Stop 015 Greenville, SC 29601-5115 <i>Motion:</i> Except for service of this Annual Report, do not add Bank of New York Mellon to Service List (<i>see also Reference No. 9</i>)
2	Birnel, Rowena	<i>See Reference Nos. 5-8</i>
3	Birnel, Don	<i>See Reference Nos. 5-8</i>
4	Boyd, Gerald	<i>Status:</i> Not on existing Service List; was issued new well registration in June 2015 (formerly on Ex. E, “Groundwater Applications Pending Before Dep’t of Ecology”) <i>New Address:</i> Gerald Boyd 787 Lange Road Bellingham, WA 98226

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<i>Motion:</i> Add Gerald Boyd to Service List
5	Buizer, Amonwadee C62 2989 Haxton Way	<i>Status:</i> On existing Service List; Dep't of Ecology reports transfer of allocation to Don & Rowena Birnel; Buizer does not have any other allocation or registration under Settlement Agreement <i>Service List Address:</i> Amonwadee Buizer 3320 Oregon Pl. Bellingham, WA 98226-4332 <i>New Address:</i> Don Birnel Rowena Birnel 630 Van Wyck Rd. Bellingham, WA 98226 <i>Motion:</i> Delete Amonwadee Buizer from Service List; add Don & Rowena Birnel to Service List
6	Buizer, James L. C62 2989 Haxton Way	<i>Status:</i> On existing Service List; Dep't of Ecology reports transfer of allocation to Don & Rowena Birnel; Buizer does not have any other allocation or registration under Settlement Agreement <i>Service List Address:</i> James L. Buizer 3320 Oregon Pl. Bellingham, WA 98226-4332 <i>New Address:</i> Don Birnel Rowena Birnel 630 Van Wyck Rd. Bellingham, WA 98226 <i>Motion:</i> Delete James L. Buizer from Service List; add Don & Rowena Birnel to Service List
7	Enfield, Mary C62 2989 Haxton Way	<i>Status:</i> On existing Service List; Dep't of Ecology reports transfer of allocation to Don & Rowena Birnel; Enfield does not have any other allocation or registration under Settlement Agreement <i>Service List Address:</i> Mary Enfield 3320 Oregon Place Bellingham, WA 98226

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<p><i>New Address:</i> Don Birnel Rowena Birnel 630 Van Wyck Rd. Bellingham, WA 98226</p> <p><i>Motion:</i> Delete Mary Enfield from Service List; add Don & Rowena Birnel to Service List</p>
8	<p>Enfield, Paul</p> <p>C62</p> <p>2989 Haxton Way</p>	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports transfer of allocation to Don & Rowena Birnel; Enfield does not have any other allocation or registration under Settlement Agreement</p> <p><i>Service List Address:</i> Paul Enfield 3320 Oregon Place Bellingham, WA 98226</p> <p><i>New Address:</i> Don Birnel Rowena Birnel 630 Van Wyck Rd. Bellingham, WA 98226</p> <p><i>Motion:</i> Delete Paul Enfield from Service List; add Don & Rowena Birnel to Service List</p>
9	<p>Ficca, Thomas R.</p> <p>C27</p> <p>2195 Postal Ave.</p>	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports transfer of allocation to Bank of New York Mellon (<i>see</i> Reference No. 1); Ficca does not have any other allocation or well registration under the Settlement Agreement</p> <p><i>Service List Address:</i> Thomas R. Ficca 6429 195th Ave. E. Bonney Lake, WA 98391-8858</p> <p><i>Motion:</i> Delete name & mailing address from Service List</p>
10	<p>Hanson, Gloria</p> <p>2646 Mackenzie Road</p>	<p><i>Status:</i> Hanson is on the Service List; she filed a late objection to the Master's 2014-2015 Annual Report but reported a sale of her property to Sharon Perez; in response to the Master's inquiry, neither the Dep't of Ecology nor the Lummi Nation has been able to identify the associated water allocation or well registration or property description; Hanson and/or Perez must provide information to the Master, no later than June 1, 2017, justifying why they should be retained on the Service List (<i>i.e.</i>,</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<p>identification of the allocation or well registration and associated property description).</p> <p><i>Service List Address:</i> Gloria Hanson P.O. Box 1104 Bellingham, WA 98227</p> <p><i>Purported Buyer's Address:</i> Sharon Perez 2756 Cagey Rd. Bellingham, WA 98226-9287</p> <p><i>Motion:</i> Retain Hanson on Service List and add Perez to Service List pending submission to the Master of information justifying their retention on the Service List</p>
11	Mills, Adam	<i>See Reference Nos. 16-17</i>
12	Mills, Olea	<i>See Reference Nos. 16-17</i>
13	Pennea, Emma	<i>See Reference Nos. 18-19</i>
14	Perez, Sharon	<i>See Reference Nos. 18-19</i>
15	Reed, Jennifer A. D37 & D38	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports well registrations have expired; Reed still listed on allocations D46 & D47</p> <p><i>Service List Address:</i> Jennifer A. Reed 2644 Shorewood Ln. Bellingham, WA 98226-9224</p> <p><i>Motion:</i> Retain Jennifer A. Reed on Service List</p>
16	Shields, Cecil C13 2143 Lummi Shore Rd. D18	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports Cecil Shields is deceased; his interest in C13 has apparently transferred to Martha Shields, already on service list; his interest in D18 has been transferred to Adam & Olea Mills</p> <p><i>Service List Address:</i> Cecil Shields 2143 Lummi Shore Rd. Bellingham, WA 98226</p> <p><i>New Address for D18:</i> Adam Mills</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<p>Olea Mills 2131 Postal Ave. Bellingham, WA 98226-9232</p> <p><i>Motion:</i> Delete Cecil Shields from Service List; add Adam & Olea Shields to Service List for D18</p>
17	<p>Shields, Martha</p> <p>C13</p> <p>2143 Lummi Shore Rd.</p> <p>D18</p>	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports change of mailing address to c/o daughter for C13; interest in D18 has been transferred to Adam & Olea Mills</p> <p><i>Service List Address:</i> Martha Shields 2143 Lummi Shore Rd. Bellingham, WA 98226</p> <p><i>New Address for C13:</i> Martha Shields c/o Anne Rasmussen 4496 Rural Ave. Bellingham, WA 98226</p> <p><i>Motion:</i> Change mailing address on Service List as indicated above; add Adam & Olea Shields to Service List for D18</p>
18	<p>Tanner, Wanda</p> <p>D47, 28, 49 & 55</p>	<p><i>Status:</i> Tanner on existing Service List; Dep't of Ecology reports transfer of allocations to Emma Pennea; Tanner was issued new well registration in June 2015.</p> <p><i>Service List Address:</i> Wanda Tanner 113313 19th Ave., N.E. Seattle, WA 98125</p> <p><i>New Address:</i> Emma Pennea 1973 Coyote Lane Bellingham, WA 98226</p> <p><i>Motion:</i> Add Emma Pennea to Service List; retain Wanda Tanner on Service List</p>
19	<p>Tanner, William</p> <p>D47, 28, 49 & 55</p>	<p><i>Status:</i> Tanner on existing Service List; Dep't of Ecology reports transfer of allocations to Emma Pennea; Tanner was issued new well registration in June 2015</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<p><i>Service List Address:</i> William Tanner 113313 19th Ave., N.E. Seattle, WA 98125</p> <p><i>New Address:</i> Emma Pennea 1973 Coyote Lane Bellingham, WA 98226</p> <p><i>Motion:</i> Add Emma Pennea to Service List; retain William Tanner on Service List</p>
20	Wiggins, Valerie D38	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports well registrations have expired; Wiggins does not have any other allocation or registration under Settlement Agreement (she is listed a c/o for BelBay Water Association)</p> <p><i>Service List Address:</i> Valerie Wiggins 2644 Shorewood Ln. Bellingham, WA 98226-9224</p> <p><i>Motion:</i> Delete Valerie Wiggins from Service List (she will be retained as c/o addressee for BelBay Water Association)</p>

NOTICE OF TIME FOR OBJECTION

Paragraph 11(a) of the Court's November 2007 Order and Judgment (as amended) provides that objections to the recommendations set forth in the foregoing table must be filed within 30 days of service of the Annual Report containing this table. For purposes of this Annual Report, objections must be filed and served by Monday, August 1, 2016.

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DATED June 30, 2016.

Respectfully submitted,

/s/ John E. Thorson

John E. Thorson
Federal Water Master
Lummi Decree
376 River Road West
Plains, MT 59859
(406) 826-0500
johnethorson@mac.com

1 **ATTACHMENT C: PROPOSED COURT ORDER**

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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

9 UNITED STATES, in its own right and on
10 behalf of the Lummi Nation,

NO. C01-0047Z

11 Plaintiff,

12 LUMMI NATION,

13 Plaintiff-Intervenor,

14 [PROPOSED] ORDER

15 v.

16 STATE OF WASHINGTON,
17 DEPARTMENT OF ECOLOGY et al.

18 Defendants.
19

20 No [Certain] objection[s] to Attachment B, the Federal Water Master's
21 Recommendations for Updating the Service List, set forth in the Master's 2015-2016
22 Annual Report (June 30, 2016) (Docket No. ____), having been filed or received within the
23 time specified by Paragraph 11(a) of the Court's November 2007 Order and Judgment (as
24 amended), the Court now enters the following Order:
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27

1 The Federal Water Master's Recommendations for Updating the Service List, set
2 forth as Attachment B to the Master's 2015-2016 Annual Report, are approved [with the
3 following changes: (Insert any changes)].

4 With the assistance of the Master, the Clerk is instructed to update and restate the
5 Service List for this case in accordance with the Master's recommendations [, as modified
6 herein by the Court].

7 IT IS SO ORDERED.

8 DATED this ___ day of August 2016.

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11 _____
12 Thomas S. Zilly
13 United States District Judge
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**ATTACHMENT D: OBJECTION FORM
(FOLLOWING PAGES)**

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Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES, in its own right and on
behalf of the Lummi Nation,

NO. C01-0047Z

Plaintiff,

LUMMI NATION,

Plaintiff-Intervenor,

OBJECTION TO THE FEDERAL WATER
MASTER'S RECOMMENDATIONS FOR
UPDATING THE SERVICE LIST

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY et al.

[Set forth as Attachment A to the
Federal Water Master's Annual Report
filed June 30, 2016]

Defendants.

I, the undersigned person, object to a Service List recommendation made by the
Federal Water Master as set forth in Attachment B, Federal Water Master's
Recommendations for Updating the Service List, part of the Master's 2015-2016 Annual
Report (June 30, 2016).

My objection pertains to the entry identified as Table Reference No. (Ref. #) _____.

1 *Incorrect Information:* I object to this information set forth in this Table entry [print
2 or type]:

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Correct Information: I affirm that the following is the correct information for this
Table entry [print or type]:

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2 I request the Court to correct the Service List in accordance with the information I
3 have provided.

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5 Respectfully submitted,

6 DATED: July ____, 2016

7 *Your Signature:* _____

8 *Name (Printed or Typed):* _____

9 *Address:* _____

10 *City, State or Province:* _____

11 *Zip or Postal Code:* _____

12 *Country (if other than US):* _____

13 *Telephone No.:* _____

14 *E-Mail Address:* _____

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20 **Certificate of Service**

21 I certify that, on July ____, 2016, I submitted the foregoing Objection for filing in the
22 above-captioned matter by first-class mail addressed to the Clerk of Court as
23 follows:

24 US District Courthouse Clerk's Office
25 700 Stewart Street, Suite 2310
26 Seattle, WA 98101

27 I further certify that, on July ____, 2016, I served copies of the foregoing Objection
28 filed in the above-captioned matter by first-class mail addressed to the following
persons:

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

Travis H. Burns
Assistant Attorney General
Ecology Division
Attorney General of Washington
P.O. Box 40117
Olympia, WA 98504-0117
Attorney for the Department of Ecology

Charles Hurt, Jr.
Office of the Reservation Attorney
2665 Kwina Road
Bellingham, WA 98226
Attorney for the Lummi Nation

James B Cooney
U.S. DOJ-ENRD
Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, D.C. 20026-4378
Counsel for the United States

Your Signature: _____