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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 2018-
2019; 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 2018-2019. 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 28 formal proceedings;
13 nine have been brought by the Washington Department of Ecology to enforce
14 administrative penalties; 18 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.
17

18 Of the 28 formal proceedings, 26 have been closed by dismissal, settlement or
19 judgment. At present, two proceedings remain open pending some performance by the
20 parties to those proceedings. The complete docket of proceedings may be found on the
21 Master’s website (*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. Based on the April 15, 2019, report of the
23 Financial Specialist for the District Court Clerk, the June 30, 2019, account balance is
24 anticipated to be approximately \$229,562.
25

26 Due to a billing error, the Department of Ecology initially sent out 2018-2019 annual bills
27 to state water users charging \$18 for the basic water allocation—rather than the approved amount
28

of \$11. Before updated bills were sent, some water users paid their fees based on the \$18 amount. The result was an overpayment by state water users of \$610 during 2018-2019. This amount needs to be deducted from the estimated year-end balance and credited to the individual state water users. Deducting this amount, the working year-end balance in the Clerk’s account is estimated to be \$228,946.

A summary of account income and expenditures for the July 1, 2018, to June 30, 2019, period (projected) is as follows:

Item	Subtotal Amount	Amount
<i>July 1, 2018, Balance</i>		\$229,562
<i>Income</i>		
Lummi Nation	\$2,426	
Department of Ecology	0	
Landowner Payments	3,422	
Interest (inc. June est.)	4,298	
<i>Total Income</i>		10,146
<i>Less Landowner Overpayments</i>		(610)
<i>Expenditures</i>		(10,152)
June 30, 2019, Balance (projected)		\$228,946

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 having a right to water from the allocation administered by the Department. Settlement Agreement § IV(G)(1).

For fiscal year 2018-2019, the Lummi Nation paid \$2,426 representing its 50% of the amount needed to bring the balance in the Water Master’s account to \$238,000—the maximum permitted at that time under the Settlement Agreement. Eligible Landowners

1 were required to pay \$2,636 to cover the 2018-2019 year and an underpayment from the
2 prior year. For 2018-2019, Eligible Landowners paid \$2,812 (\$3,422 in actual collections
3 less \$610 in overpayments due to the billing error), which was an overpayment of \$176
4 (\$2,636-\$2,812). Under the Settlement Agreement, the Department of Ecology was not
5 required to make a payment this fiscal year (*see* examples set forth in section IV(G)(2) of
6 Settlement Agreement).

8 As was the case for prior years, the eleven months of the 2018-2019 fiscal year have
9 been very peaceful; but the Water Master has undertaken work and incurred expenses in
10 financial and administrative matters (including maintaining the website), collecting Eligible
11 Landowner Fees, and ongoing implementation procedures developed in an earlier
12 proceeding (WM 11-03) to retain the accuracy of the post-Decree Service List.

14 The table set forth in Attachment A (with estimated June data) reflects the Master's
15 time (in dollars at \$200 per hour) and expenses for this fiscal year and the previous ten
16 years. The average monthly fee billed during 2018-2019 has been \$742 and the average
17 monthly expenses have been \$96.¹

19 WATER MASTER BUDGET 2018-2019

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

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 The required discussions were held and the Department of Ecology and the Lummi
2 Nation agreed on a final Water Master budget for fiscal year July 1, 2019, to June 30, 2020.

3 In its August 7, 2008, order, the Court set an initial annual budget of \$100,000 for the
4 Water Master, and this amount was adopted by agreement for subsequent years. In view of
5 the relatively modest annual expenditures since 2008, the Water Master recommended in
6 2017 a reduced budget of \$50,000 for the 2017-2018 fiscal year; and the Lummi Nation
7 and Department of Ecology agreed with that recommendation. The same budget was also
8 set for 2018-2019. The Lummi Nation and Department of Ecology have also agreed on a
9 \$50,000 budget for the upcoming 2019-2020 fiscal year. The Water Master's hourly rate
10 will remain unchanged at \$200 per hour and he will continue his efforts to minimize his
11 time and costs. This agreement has been communicated to the Court (letter on Water
12 Master's website).
13
14

15 As mentioned, based on the Clerk's Financial Specialist report of April 15, 2019, the
16 anticipated June 30, 2019, balance in the Water Master's account will be \$228,946 (as
17 adjusted; *see p. 4, supra*). Since this figure is less than the adjusted \$242,600 ceiling
18 anticipated by the Settlement Agreement (*see following discussion*), the Lummi Nation and
19 Eligible Landowners will need to pay collectively an additional amount for fiscal year 2019-
20 2020, pursuant to the payment provisions set forth in sections IV(G)(1) & (2) of the
21 Settlement Agreement.
22
23

24 Section IV(G)(2) provides, "[T]he amount the Lummi Nation and state defendants pay
25 shall be reduced proportionally so that the total amount in the Water Master's account
26 does not exceed Two Hundred Thousand Dollars (\$200,000), *adjusted by the Implicit Price*
27 *Deflator*" (emphasis added). Thus, the Settlement Agreement contemplates a periodic
28

1 inflation adjustment to this cap.

2 The U.S. Bureau of Economic Analysis maintains the Implicit Price Deflator, but
3 Washington State's Economic and Revenue Forecast Council publishes annual reports of
4 several inflation indices for the Seattle area. Council staff advises the use of Table A4.1,
5 "Selected Inflation Indicators," found on p. 99 of the Council's *Washington State Economic*
6 *and Revenue Forecast* (Mar. 2019).² According to Council staff, the "Price Deflator" increase
7 over a series of years is calculated by determining the difference between the index figures
8 for the beginning and ending years and expressing that change as a percentage of increase
9 or decrease over the base year. For Lummi Decree purposes, the 2006³ index is 0.892 and
10 the 2018 index is 1.082 (the 2019 index is not used since it is a forecast). The percentage of
11 change 2006-2018 is 21.3%.

14 Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the
15 Water Master's account should be adjusted by 21.3% to \$242,600 (as compared to last
16 year's \$238,000 ceiling).

18 **PARTIES' FEES 2019-2020**

19 A total of \$13,654 will be necessary to bring the Water Master's account up to the
20 maximum amount of \$242,600 allowed by Settlement Agreement section IV(G) and as
21 adjusted for inflation as previously discussed (\$242,600 minus expected year-end balance
22 of \$228,946). This amount will be reduced by estimated interest of \$4,298 on the funds
23 maintained in the Water Master's account. This leaves a balance of \$9,356 to be raised from
24

26 ² Available at <http://www.erfc.wa.gov/publications/documents/mar19pub.pdf>.

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

1 the Lummi Nation and state water users. Of the \$9,356, the Lummi Nation will pay \$4,678
2 (1/2 of \$9,356). Eligible Landowners will pay a total of \$4,502 (1/2 of \$9,356 less \$176 as a
3 credit for collective overpayments by state water users during 2018-19). Pursuant to
4 section IV(G)(1) of the Settlement Agreement, the Eligible Landowner Fee will be \$18 for
5 the basic parcel in order to raise the \$4,502 required of the state parties.⁴ This is
6 considerably less than the annual \$100 fee imposed when the Decree was first issued. The
7 Department of Ecology will pay nothing for the 2019-2020 fiscal year (*see examples set*
8 *forth in section IV(G)(2) of Settlement Agreement*).

9
10 The Court's August 7, 2008, order (in paragraph 3) specifies that "[i]n subsequent
11 years [beyond 2008/2009], Lummi Nation shall pay its share of the Water Master budget
12 on or before August 1st of the fiscal year." Similarly, the order (in paragraph 4) provides that
13 the Department of Ecology will pay its share of the Water Master budget by August 1st
14 (however, as discussed above, no Ecology payment is required for the 2019-2020 fiscal
15 year) and also send Water Master fee notices to Eligible Landowners by August 1st. Eligible
16 Landowners must pay their fees by November 1st.

17 18 19 **SERVICE LIST**

20
21 A continuing problem in Lummi Decree administration has been ensuring accuracy,
22 over time, in the Service List maintained by the Clerk of the Court. In his 2011-2012 annual
23 report, the Water Master recommended, and the Court adopted, certain annual procedures
24

25
26 ⁴ Calculated as follows: $x/4502 = 11/2812$, where x is the basic 2019-2020 Eligible Landowner Fee,
27 4502 is the amount to be raised for 2019-2020, 11 is the 2018-2019 basic fee, and 2812 (3422-610
28 overpayment) is the amount actually raised from Eligible Landowner fees during 2018-2019. This
Department of Ecology has confirmed the \$18 amount based on a count of actual allocations.

1 conducted in cooperation with the Washington Department of Ecology to improve accuracy
2 of the Service List, specifically to (a) identify apparent changes in party and water user
3 contact information; (b) propose changes to the Court with opportunities for parties to
4 object and respond; and (c) culminate in a Court order approving the updates to the
5 Service List. *See* Federal Water Master’s Report to the Court on Recommendations for
6 Updating the Service List (June 29, 2012).

8 The Master has completed the seventh annual review of the Service List, based on the
9 above procedure, and now recommends a series of corrections to the Service List set forth
10 in Attachment B to this Report. Recipients of this Annual Report are urged to examine
11 Attachment B to determine whether a recommendation affects them. Attachment B
12 provides explanatory information and the procedure for filing an objection if you believe
13 the Master’s recommendations are incorrect. Attachment C is a proposed Court order for
14 updating the Service List, and Attachment D is a preprinted Objection Form.

17 WEBSITE

18 Pursuant to the Court’s direction, the Water Master established and maintains a
19 website that provides information on how to initiate proceedings before the Master, the
20 status of pending proceedings, a compendium of the Master’s claims for fees and expenses
21 and the Court’s orders in response to those claims, and annual reports and service
22 certificates. The Master’s website may be found at: www.lummiwatermaster.com.

24 CONCLUSION

25 I continue to appreciate the opportunity to work with the Court, the parties, counsel,
26 and Court staff—all of whom have been helpful and cordial. I thank them for their
27

1 assistance. I especially thank Kasey Cykler and Kelly Hamilton of the Washington
2 Department of Ecology for their assistance in identifying address changes and water
3 allocation transfers. I hereby respectfully submit my annual report for 2018-2019.

4 Dated: June 30, 2019.

5 */s/John E. Thorson*

6 _____
7 John E. Thorson
8 Federal Water Master – Lummi Decree
9 376 River Road West
10 Plains, MT 59859
11 (406) 826-0500
12 johnethorson@mac.com

13 **CERTIFICATE OF SERVICE**

14 The Certificate of Service of this Annual Report and all attachments has been filed
15 separately with the Clerk of the Court. A copy of the Certificate may be reviewed on the
16 Water Master’s website: www.lummiwatermaster.com.

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ATTACHMENT A: FEDERAL WATER MASTER EXPENDITURES
BY FISCAL YEAR (2008-09 TO 2018-19)

[Next page]

Month	2008-09		2009-10		2010-11		2011-12		2012-13		2013-14	
	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp
July	\$800	\$513	\$400	\$75	\$250	\$0	\$500	\$0	300	\$0	\$400	\$1
Aug.	200	0	300	39	500	10	950	27	700	0	700	14
Sept.	0	0	100	0	400	2	900	14	700	6	300	0
Oct.	400	100	200	0	200	0	800	9	600	0	650	2
Nov.	2400	542	500	0	200	0	200	0	750	8	600	25
Dec.	100	0	200	0	200	0	1000	0	200	0	200	0
Jan.	0	0	650	4	450	2	950	6	200	0	400	0
Feb.	600	130	0	0	450	6	950	2	800	11	600	5
Mar.	0	0	200	0	800	11	200	0	400	1	200	0
April	450	0	200	0	400	12	900	0	800	42	200	0
May	1000	16	400	0	400	49	1300	115	700	105	2000	7
June	1300	176	2300	275	2300	289	2700	574	6050	1,464	5000	867
TOTAL	\$7,250	\$1,477	\$5,450	\$393	\$6,550	\$381	\$11,350	\$747	\$12,200	\$1,637	\$11,250	\$921
Average	\$604	\$123	\$454	\$33	\$546	\$32	\$946	\$62	\$1,017	\$136	\$938	\$77
Month	2014-15		2015-16		2016-17		2017-18		2018-19			
	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp		
July	400	1	200	0	0	0	200	0	100	0	0	0
Aug.	100	5	200	0	0	0	0	0	100	0	0	0
Sept.	250	1	300	2	200	2	0	0	100	0	0	0
Oct.	200	0	600	0	0	0	0	0	0	0	0	0
Nov.	200	0	0	0	600	0	0	0	300	102	0	0
Dec.	200	0	200	0	200	0	0	0	0	0	0	0
Jan.	100	0	0	0	0	0	0	0	0	0	0	0
Feb.	100	0	100	0	400	0	0	0	0	0	0	0
Mar.	600	4	0	0	0	0	0	0	200	0	0	0
April	200	0	100	0	0	0	200	0	0	0	0	0
May	1900	124	0	0	800	0	1400	0	1200	0	0	0
June	4200	793	5000	1298	4600	990	6900	1050	6900	1050	6900	1050
TOTAL	\$8,450	\$928	\$6,700	\$1,300	\$6,800	\$992	\$8,700	\$1,050	\$8,900	\$1,152	\$8,900	\$1,152
Average	\$704	\$77	\$558	\$108	\$567	\$83	\$725	\$88	\$742	\$96	\$742	\$96

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. Due to the timing requirement for the Annual Report, June 2019 is estimated and based on prior year.

1 **ATTACHMENT B: SERVICE LIST RECOMMENDATIONS**

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8 Judge Thomas S. Zilly

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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

NO. C01-0047Z

13 Plaintiff,

14 LUMMI NATION,

15 Plaintiff-Intervenor,

FEDERAL WATER MASTER’S
RECOMMENDATIONS FOR UPDATING
THE SERVICE LIST

16 v.

17
18 STATE OF WASHINGTON,
19 DEPARTMENT OF ECOLOGY et al.

20 Defendants.

21
22 **BACKGROUND**

23
24 THIS DOCUMENT proposes changes to the Service List maintained for this case, No.
25 C01-0047Z. The Service List sets forth the names and addresses of parties entitled to
26 ongoing notice of most proceedings in this case. These changes are necessary to facilitate
27

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 17, 2018,
13 version of the Service List approved by the Court (Docket No. 1520) and maintained by the
14 Court Clerk. You may review a copy of the Report and the Service List on the Master's
15 website: 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 the August 17, 2018, Service List on
24 the Master's website: www.lummiwatermaster.com.

25 2. If you are listed in the following table, review your entry for accuracy. Each entry
26 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 17, 2018, 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 Thursday, August 1, 2019, under
28

1 the 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. Rich Text Format (rtf) and Portable
7 Document Format (pdf) versions of the form may be found on the Master's website:
8 www.lummiwatermaster.com.

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

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

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

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

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

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

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

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 Thursday, August 1, 2019. 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	<p>Curran, Troy D.</p> <p>C82, C83, D24 & D27</p>	<p><i>Status:</i> On existing Service List; Dep’t of Ecology reports an updated address</p> <p><i>Service List Address:</i> Troy D. Curran - Zephyr Investments P.O. Box 32090 Bellingham, WA 98228</p> <p><i>New Address:</i> Troy D. Curran - Zephyr Investments 2551 Roeder Ave Bellingham, WA 98225</p> <p><i>Motion:</i> Update address information for Troy D. Curran - Zephyr Investments</p>
2	<p>Edson, Barbara</p> <p>C1 2103 Lummi Shore Rd.</p> <p>D54 2103 Postal Ave.</p>	<p><i>Status:</i> On existing Service List; Dep’t of Ecology reports Walter and Barbara Edson desire to remain on Service List for allotment C1 but add their son, Scott Edson, as point-of-contact for allotment D54</p> <p><i>Service List Address:</i> Walter A. & Barbara Edson 12933 Homes Pr. Dr. N.E. Kirkland, WA 98034</p> <p><i>New Name & Address:</i> Walter A. & Barbara Edson c/o Scott Edson 2103 Postal Ave. Bellingham, WA 98226-9232</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<i>Motion:</i> Add Scott Edson to Service List as point-of-contact for allotment D54
3	Edson, Walter A.	<i>See</i> Ref. No. 2
4	Handy, Dorothy	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Dorothy Handy 420 Thresher Avenue Sedro Woolley, WA 98284</p> <p><i>Motion:</i> Delete Dorothy Handy from Service List</p>
5	Handy, Kenny	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Kenny Handy 420 Thresher Avenue Sedro Woolley, WA 98284</p> <p><i>Motion:</i> Delete Kenny Handy from Service List</p>
6	Hansen, Mary Connie C12 2139 Lummi Shore Rd	<p><i>Status:</i> Dep't of Ecology reports allotment has been transferred from Rodger Elliott, who is not on Service List, to Mary Connie Hansen and Dane Jensen (<i>see</i> Ref. No. 9), who are not on Service List</p> <p><i>New Name & Address:</i> Mary Connie Hansen 2301 Minor Ave. East Seattle WA 98102</p> <p><i>Motion:</i> Add Mary Connie Hansen to the Service List</p>
7	Hurren, Max W.	<i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<p><i>Service List Address:</i> Max W. Hurren 114 W. Windsor Rd. North Vancouver, BC V7N2M8 Canada</p> <p><i>Motion:</i> Delete Max W. Hurren from Service List</p>
8	Jackson, Nancy E.	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Nancy E. Jackson 420 Thresher Avenue Sedro Woolley, WA 98284</p> <p><i>Motion:</i> Delete Nancy E. Jackson from Service List</p>
9	Jensen, Dane C12 2139 Lummi Shore Rd	<p><i>Status:</i> Dep't of Ecology reports allotment has been transferred from Rodger Elliott, who is not on Service List, to Mary Connie Hansen (<i>see</i> Ref. No. 6) and Dane Jensen, who are not on Service List</p> <p><i>New Name & Address:</i> Dane Jensen 2301 Minor Ave. East Seattle WA 98102</p> <p><i>Motion:</i> Add Dane Jensen to the Service List</p>
10	King, Linda L.	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Linda L. King 1516 Marine Drive Bellingham, WA 98226</p> <p><i>Motion:</i> Delete Linda L. King from Service List</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
11	King, Richard L.	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Richard L. King 1516 Marine Drive Bellingham, WA 98226</p> <p><i>Motion:</i> Delete Richard L. King from Service List</p>
12	Madsen, Kent C79 3396 Robertson Rd	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports allocation has been transferred to Kristine A. Heintz, who is already on Service List</p> <p><i>Service List Address:</i> Kent Madsen P.O. Box 1423 Ferndale WA 98248</p> <p><i>Motion:</i> Delete Kent Madsen from Service List</p>
13	Miles, James E.	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> James E. Miles 3105 W. McLeod Road Bellingham, WA 98225</p> <p><i>Motion:</i> Delete James E. Miles from Service List</p>
14	Moss, John B.	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> John B. Moss 73526 Highway 2 Moyie Springs, ID 83845</p> <p><i>Motion:</i> Delete John B. Moss from Service List</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
15	Moss, Mary	<p><i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Mary Moss 73526 Highway 2 Moyie Springs, ID 83845</p> <p><i>Motion:</i> Delete Mary Moss from Service List</p>
16	Pennea, Emma D47, D48, D49 & D55	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports updated contact information</p> <p><i>Service List Address:</i> Emma Pennea 1973 Coyote Lane Bellingham, WA 98226</p> <p><i>New Address:</i> Emma Pennea 246 W Walnut Ln Philadelphia, PA 19144-3204</p> <p><i>Motion:</i> Update address for Emma Pennea on Service List</p>
17	Schulte, Meg	<i>See Ref. No. 18</i>
18	Snead, Ruth L. D3 2995 Leeward Way	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports allocation has been transferred to Meg Schulte</p> <p><i>Service List Address:</i> Ruth L. Snead 2955 Leeway Way Bellingham, WA 98266-8601</p> <p><i>New Name & Address:</i> Meg Schulte 2955 Leeward Way Bellingham, WA 98226</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<i>Motion:</i> Delete Ruth L. Snead from Service List; add Meg Schulte to Service List
19	Tracy, Leana G. C68 3015 Haxton Way	<i>Status:</i> On existing Service List; Dep't of Ecology reports allocation has been transferred to Ray Tracy <i>Service List Address:</i> Leana G. Tracy 3015 Haxton Way Bellingham, WA 98226 <i>New Name & Address:</i> Ray Tracy 3928 Stanwood-Bryant Rd. Arlington, WA 98223 <i>Motion:</i> Delete Leana G. Tracy from Service List; add Ray Tracy to Service List
20	Tracy, Ray	<i>See Ref. No. 19</i>
21	Whiteley, John W.	<i>Status:</i> On existing Service List; Annual Report for 2018 returned as undeliverable; Dep't of Ecology has no updated contact information <i>Service List Address:</i> John W. Whiteley 3189 Sunset Way Bellingham, WA 98226 <i>Motion:</i> Delete John W. Whiteley from Service List
22	Wynne, Kate C73 3032 Harbor Place	<i>Status:</i> On existing Service List; Dep't of Ecology reports allocation has been transferred to Julie Lewis, who is already o Service List <i>Service List Address:</i> Kate Wynne P.O. Box 210065 Auke Bay, AK 99821-0065 <i>Motion:</i> Delete Kate Wynne from Service List

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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 Thursday, August 1, 2019.
DATED June 30, 2019.

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

NO. C01-0047Z

12 Plaintiff,

13 LUMMI NATION,

14 Plaintiff-Intervenor,

[PROPOSED] ORDER

15 v.

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

18 Defendants.
19

20
21 No [Certain] objection[s] to Attachment B, the Federal Water Master's
22 Recommendations for Updating the Service List, set forth in the Master's 2018-2019
23 Annual Report (June 30, 2019) (Docket No. ____), having been filed or received within the
24 time specified by Paragraph 11(a) of the Court's November 2007 Order and Judgment (as
25 amended), the Court now enters the following Order:
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28

1 The Federal Water Master's Recommendations for Updating the Service List, set
2 forth as Attachment B to the Master's 2018-2019 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 2019.

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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, 2019]

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 2018-2019 Annual
Report (June 30, 2019).

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

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

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

1
2 I request the Court to correct the Service List in accordance with the information I
3 have provided.

4
5 Respectfully submitted,

6 DATED: July ____, 2019

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 ____, 2019, 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 ____, 2019, 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

Robin G. McPherson
Assistant Attorney General
Ecology Division
Attorney General of Washington
P.O. Box 40117
Olympia, WA 98504-0117
Attorney for the Department of Ecology

James Stroud
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: _____