

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,

Plaintiff,

LUMMI NATION,

Plaintiff-Intervenor,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY et al.

Defendants.

NO. C01-0047Z

FEDERAL WATER MASTER'S ANNUAL  
REPORT FOR FISCAL YEAR 2019-  
2020; MOTIONS TO COURT TO (A)  
WAIVE 2020-2021 FEES; AND (B)  
APPROVE CHANGES TO SERVICE LIST

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

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

7  
8 The Court appointed the undersigned as Water Master on June 10, 2008, and this is  
9 the Water Master’s Annual Report for fiscal year 2019-2020. This report also includes  
10 motions to the Court to (a) waive 2020-2021 fees otherwise payable by Eligible  
11 Landowners and the Lummi Nation and (b) approve changes to the Service List for this  
12 case.  
13

#### 14 **REQUESTS FOR ACTION; DECISIONS & ORDERS ISSUED**

15 Since his appointment in 2008, the Water Master has opened 30 formal proceedings;  
16 ten have been brought by the Washington Department of Ecology to enforce administrative  
17 penalties; 18 have been brought by the Master, on his own motion, to collect allegedly  
18 unpaid annual Eligible Landowner Fees; one is a water user’s appeal of a Department of  
19 Ecology action; and one has been opened by the Master, on his own motion, to recommend  
20 improvements to the Service List.  
21

22 Of the 30 formal proceedings, 28 have been closed by dismissal, settlement, or  
23 judgment. At present, two proceedings remain open pending adjudication or some  
24 performance by the parties to those proceedings. The complete docket of proceedings may  
25 be found on the Master’s website (*infra*).  
26  
27

## ENFORCEMENT ACTIONS TAKEN

On July 2, 2010, the Court adopted a Supplemental Judgments provision as an amendment to the Court's original Order and Judgment (Nov. 20, 2007). The Water Master has used this procedure in 15 formal proceedings (WM 09-03, WM 09-06, WM 10-01, WM 10-02, WM 10-03, WM 11-01, WM 11-04, WM 11-05, WM 11-06, WM 12-01, WM 13-01, WM 13-02, WM 13-03, WM 13-05, and WM 13-06) to secure Supplemental Judgments for amounts due the Department of Ecology for unpaid penalties and filing fees, due the Clerk of the Court in reimbursement of the Master's fees and expenses incurred in proceedings, or due the Clerk in payment of annual Eligible Landowner Fees. These judgments or settlements have resulted in the recovery of fees and expenses in four of the proceedings (WM 09-03, WM 09-06, WM 10-01, and WM 13-04). The judgments create judgment liens in King County and abstracts of judgment are selectively recorded (depending on prospects for recovery) in Whatcom County.

## FINANCIAL MATTERS

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

The Clerk has maintained the required account since August 2008. Income has consisted of payments from the Lummi Nation, Washington Department of Ecology, individual water users, reimbursement of the Master's fees and expenses incurred in

formal proceedings, filing fees, and bank interest. Based on the May 5, 2020, report of the Financial Specialist for the District Court Clerk, the June 30, 2020, account balance is anticipated to be approximately \$234,207.

A summary of account income and expenditures for the July 1, 2019, to June 30, 2020, period (projected) is as follows:

<b>Item</b>	<b>Subtotal Amount</b>	<b>Amount</b>
<i>July 1, 2019, Balance</i>		\$229,937
<i>Income</i>		
Lummi Nation	\$4,678	
Department of Ecology	0	
Landowner Payments	3,710	
Filing Fees	250	
Interest (inc. June est.)	3,898	
<i>Total Income</i>		12,536
<i>Expenditures</i>		(8,266)
<b>June 30, 2020, Balance (projected)</b>		<b>\$234,207</b>

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 2019-2020, the Lummi Nation paid \$4,678 representing its 50% of the amount needed to bring the balance in the Water Master’s account to \$242,600—the maximum permitted at that time under the Settlement Agreement. Eligible Landowners were required to pay \$4,502 (adjusted by a prior year overpayment). For 2019-2020, Eligible Landowners actually paid \$3,710, which was an underpayment of \$792 (\$4,502-\$3,710). Under the Settlement Agreement, the Department of Ecology was not required to

1 make a payment this fiscal year (*see* examples set forth in section IV(G)(2) of Settlement  
2 Agreement).

3 As was the case for prior years, the eleven months of the 2019-2020 fiscal year have  
4 been very peaceful; but the Water Master has undertaken work and incurred expenses in  
5 financial and administrative matters (including a major upgrade and ongoing maintenance  
6 of the website), collecting Eligible Landowner Fees, and ongoing implementation  
7 procedures developed in an earlier proceeding (WM 11-03) to retain the accuracy of the  
8 post-Decree Service List.  
9

10 The table set forth in Attachment A (with estimated June data) reflects the Master's  
11 time (in dollars at \$200 per hour) and expenses for this fiscal year and the previous eleven  
12 years. The average monthly fee billed during 2019-2020 has been \$692 and the average  
13 monthly expenses have been \$141.<sup>1</sup>  
14

### 15 **WATER MASTER BUDGET 2020-2021**

16

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

23 The required discussions were held, and the Department of Ecology and the Lummi  
24 Nation agreed on a final Water Master budget for fiscal year July 1, 2020, to June 30, 2021.

25 In its August 7, 2008, order, the Court set an initial annual budget of \$100,000 for the  
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27 <sup>1</sup> 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 Water Master, and this amount was adopted by agreement for subsequent years. In view of  
2 the relatively modest annual expenditures since 2008, the Water Master recommended in  
3 2017 a reduced budget of \$50,000 for the 2017-2018 fiscal year; and the Lummi Nation  
4 and Department of Ecology agreed with that recommendation. The same budget was also  
5 set for 2019-2020. The Lummi Nation and Department of Ecology have also agreed on a  
6 \$50,000 budget for the upcoming 2020-2021 fiscal year. The Water Master's hourly rate  
7 will remain unchanged at \$200 per hour and he will continue his efforts to minimize his  
8 time and costs. This agreement has been communicated to the Court (letter on Water  
9 Master's website).

12 As mentioned, based on the Clerk's Financial Specialist report of May 5, 2020, the  
13 anticipated June 30, 2020, balance in the Water Master's account will be \$234,207 (as  
14 adjusted; *see p. 4, supra*). Since this figure is less than the adjusted \$246,000 ceiling  
15 anticipated by the Settlement Agreement (*see following discussion*), the Lummi Nation and  
16 Eligible Landowners would need to pay collectively, *in a normal year*, an additional amount  
17 for fiscal year 2020-2021, pursuant to the payment provisions set forth in sections IV(G)(1)  
18 & (2) of the Settlement Agreement.

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

26 The U.S. Bureau of Economic Analysis maintains the Implicit Price Deflator, but  
27 Washington State's Economic and Revenue Forecast Council publishes annual reports of

several inflation indices for the Seattle area. Council staff advises the use of Table A4.1, “Selected Inflation Indicators,” found on p. 106 of the Council’s *Washington State Economic and Revenue Forecast* (Feb. 2020e).<sup>2</sup> According to Council staff, the “Price Deflator” increase over a series of years is calculated by determining the difference between the index figures for the beginning and ending years and expressing that change as a percentage of increase or decrease over the base year. For Lummi Decree purposes, the 2006<sup>3</sup> index is 0.892 and the 2019 index is 1.097 (the 2020 index is not used since it is a forecast). The percentage of change 2006-2019 is 23%.

Thus, to comply with section IV(G)(2) of the Settlement Agreement, the ceiling on the Water Master’s account should be adjusted by 23% to \$246,000 (as compared to last year’s \$242,600 ceiling).

#### **PARTIES’ FEES 2020-2021 IN A NORMAL YEAR**

*In a normal year*, a total of \$11,793 would be necessary to bring the Water Master’s account up to the maximum amount of \$246,000 allowed by Settlement Agreement section IV(G) and as adjusted for inflation as previously discussed (\$246,000 minus expected year-end balance of \$234,207). This amount would be reduced by estimated interest of \$3,879 earned during 2020-2021 on the funds maintained in the Water Master’s account. This would leave a balance of \$7,914 to be paid by the Lummi Nation and state water users. Of the \$7,914, the Lummi Nation would pay \$3,957 (1/2 of \$7,914). Eligible Landowners

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<sup>2</sup> Available at <https://erfc.wa.gov/sites/default/files/public/documents/publications/feb20pub.pdf>.

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

would pay \$4,749 (1/2 of \$7,914 plus \$792 for collective underpayments by state water users during 2019-20). Pursuant to section IV(G)(1) of the Settlement Agreement, the Eligible Landowner Fee would be \$23 for the basic parcel in order to raise the \$4,749 required of the state parties.<sup>4</sup> This is considerably less than the annual \$100 fee imposed when the Decree was first issued. The Department of Ecology would pay nothing for the 2020-2021 fiscal year (*see* examples set forth in section IV(G)(2) of Settlement Agreement).

*In a normal year*, the Lummi Nation would pay its share of the Water Master budget on or before August 1<sup>st</sup>. The Department of Ecology would send Water Master fee notices to Eligible Landowners by August 1<sup>st</sup>. Eligible Landowners would be required to pay their fees by November 1<sup>st</sup>.

### **RECOMMENDED WAIVER OF 2020-2021 FEES**

Due to the COVIDF-19 pandemic, fiscal year 2019-2020 has not been a normal year; nor is 2020-2021 expected to be. The pandemic will likely have continued negative health and economic impacts including unemployment and increases in household expenses. After required, annual budget consultations, the Lummi Nation, Department of Ecology, and Water Master all agree that a *one-year waiver* of fees paid by Eligible Landowners and the Lummi Nation (otherwise estimated at \$7,914 total) would help mitigate the financial hardship of these water users. The approximately \$234,000 now on deposit in the Court Clerk's Water Master Account, plus estimated annual interest of \$3,900 during 2020-2021, provides sufficient funds for the Water Master's budget.

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<sup>4</sup> Calculated as follows:  $x/4749 = 18/3710$ , where x is the basic 2020-2021 Eligible Landowner Fee, 4749 is the amount to be raised for 2020-2021, 18 is the 2019-2020 basic fee, and 3710 is the amount actually raised from Eligible Landowner fees during 2019-2020. This formula produces an annual, basic fee of \$23.



Pursuant to Rule 53, Federal Rules of Civil Procedure, the Water Master recommends a one-time waiver of Water Master fees. The specifics of this recommendation are these:

1. The Court is respectfully requested to modify its Order and Judgment approving the Settlement Agreement (Nov. 20, 2007; Docket No. 1273) allowing a one-time waiver of the 2020-21 fiscal year Water Master fees otherwise required of Eligible Landowners, the Lummi Nation, and, under some circumstances, the Washington Department of Ecology.
2. Rather than defer these fees for future payment, conclusively deem these assessments (\$7,914, the amount otherwise due for 2020-2021) to have been paid when calculating the adjusted ceiling for the Water Master Account in future years. This determination will avoid compounding financial hardship if water users were required next year to make up the 2020-2021 waiver and also pay the 2021-2022 assessment.
3. Direct the Water Master to add the Eligible Landowners' \$792 underpayment of fees (2019-2020) to the 2021-2022 assessment.
4. Require the Department of Ecology to send a letter, approved by the Master, before August 31, 2020, to Eligible Landowners explaining the waiver.

This waiver recommendation is set forth in the proposed order, Attachment B. Parties to this proceeding may object to or comment on the recommendation on or before July 31, 2020.

### SERVICE LIST

A continuing problem in Lummi Decree administration has been ensuring accuracy, over time, in the Service List maintained by the Clerk of the Court. In his 2011-2012 annual report, the Water Master recommended, and the Court adopted, certain annual procedures conducted in cooperation with the Washington Department of Ecology to improve accuracy of the Service List, specifically to (a) identify apparent changes in party and water user

1 contact information; (b) propose changes to the Court with opportunities for parties to  
2 object and respond; and (c) culminate in a Court order approving the updates to the  
3 Service List. *See* Federal Water Master's Report to the Court on Recommendations for  
4 Updating the Service List (June 29, 2012).

5  
6 The Master has completed the eighth annual review of the Service List, based on the  
7 above procedure, and now recommends a series of corrections to the Service List set forth  
8 in Attachment C to this Report. Recipients of this Annual Report are urged to examine  
9 Attachment C to determine whether a recommendation affects them. Attachment C  
10 provides explanatory information and the procedure for filing an objection if you believe  
11 the Master's recommendations are incorrect. Attachment D is a proposed Court order for  
12 updating the Service List, and Attachment E is a preprinted Objection Form.  
13

## 14 WEBSITE

15  
16 Pursuant to the Court's direction, the Water Master established and maintains a  
17 website that provides information on how to initiate proceedings before the Master, the  
18 status of pending proceedings, a compendium of the Master's claims for fees and expenses  
19 and the Court's orders in response to those claims, and annual reports and service  
20 certificates. The website has been substantially updated during 2019-2020. The Master's  
21 website may be found at: [www.lummiwatermaster.com](http://www.lummiwatermaster.com).  
22

## 23 CONCLUSION

24 I continue to appreciate the opportunity to work with the Court, the parties, counsel,  
25 and Court staff—all of whom have been helpful and cordial. I thank them for their  
26 assistance. I especially thank Kelly Hamilton and Kasey Cykler of the Washington  
27

1 Department of Ecology for their assistance in identifying address changes and water  
2 allocation transfers.

3 I hereby respectfully submit my annual report for 2019-2020 and move adoption of  
4 (a) the recommendations concerning a waiver of the 2020-2021 Water User fees, as  
5 described on pp. 8-9, *supra*, and in Attachment B (Proposed Order re Waiver of Water User  
6 Fees); and (b) the recommendations for updating the Service List, as set forth in  
7 Attachment C with the accompanying Proposed Order, Attachment D.  
8

9 Dated: June 30, 2020.

10 */s/John E. Thorson*

11 \_\_\_\_\_  
12 John E. Thorson  
13 Federal Water Master – Lummi Decree  
14 376 River Road West  
15 Plains, MT 59859  
16 (406) 826-0500  
17 johnethorson@mac.com

18 **CERTIFICATE OF SERVICE**

19 The Certificate of Service of this Annual Report and all attachments has been filed  
20 separately with the Clerk of the Court. A copy of the Certificate may be reviewed on the  
21 Water Master’s website: [www.lummiwatermaster.com](http://www.lummiwatermaster.com).  
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23  
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**ATTACHMENT A: FEDERAL WATER MASTER EXPENDITURES**  
**BY FISCAL YEAR (2008-09 TO 2019-20)**

[Next page]

ATTACHMENT A: FEDERAL WATER MASTER EXPENDITURES BY FISCAL YEAR (2008-09 to 2018-19)													
Month	2008-09		2009-10		2010-11		2011-12		2012-13		2013-14		Exp
	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	
July	\$800	\$513	\$400	\$75	\$250	\$0	\$500	\$0	300	\$0	\$400	\$0	\$1
Aug.	200	0	300	39	500	10	950	27	700	0	700	0	14
Sept.	0	0	100	0	400	2	900	14	700	6	300	0	0
Oct.	400	100	200	0	200	0	800	9	600	0	650	2	0
Nov.	2400	542	500	0	200	0	200	0	750	8	600	25	0
Dec.	100	0	200	0	200	0	1000	0	200	0	200	0	0
Jan.	0	0	650	4	450	2	950	6	200	0	400	0	0
Feb.	600	130	0	0	450	6	950	2	800	11	600	5	0
Mar.	0	0	200	0	800	11	200	0	400	1	200	0	0
April	450	0	200	0	400	12	900	0	800	42	200	0	0
May	1000	16	400	0	400	49	1300	115	700	105	2000	7	0
June	1300	176	2300	275	2300	289	2700	574	6,050	1,464	5000	867	0
TOTAL	\$7,250	\$1,477	\$5,450	\$393	\$6,550	\$381	\$11,350	\$747	\$12,200	\$1,637	\$11,250	\$921	\$921
Average	\$604	\$123	\$454	\$33	\$546	\$32	\$946	\$62	\$1,017	\$136	\$938	\$77	\$77
Month	2014-15		2015-16		2016-17		2017-18		2018-19		2019-20		Exp
	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	Fees	Exp	
July	400	1	200	0	0	0	200	0	100	0	0	0	0
Aug.	100	5	200	0	0	0	0	0	100	0	300	104	0
Sept.	250	1	300	2	200	2	0	0	100	0	0	0	0
Oct.	200	0	600	0	0	0	0	0	0	0	0	0	0
Nov.	200	0	0	0	600	0	0	0	300	102	0	0	0
Dec.	200	0	200	0	200	0	0	0	0	0	0	0	0
Jan.	100	0	0	0	0	0	0	0	0	0	500	0	0
Feb.	100	0	100	0	400	0	0	0	0	0	0	0	0
Mar.	600	4	0	0	0	0	0	0	200	0	200	0	0
April	200	0	100	0	0	0	200	0	0	0	200	0	0
May	1900	124	0	0	800	0	1400	0	200	0	1100	590	0
June	4200	793	5000	1298	4600	990	6900	1050	5900	862	6000	1000	0
TOTAL	\$8,450	\$928	\$6,700	\$1,300	\$6,800	\$992	\$8,700	\$1,050	\$6,900	\$964	\$8,300	\$1,694	\$1,694
Average	\$704	\$77	\$558	\$108	\$567	\$83	\$725	\$88	\$575	\$80	\$692	\$141	\$141

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 2020 is estimated and based on prior year.

**ATTACHMENT B: PROPOSED COURT ORDER RE  
WAIVER OF WATER USER FEES**

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,

[PROPOSED] ORDER

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY et al.

Defendants.

The Federal Water Master, in his 2019-2020 Annual Report (June 30, 2020)(Docket No. \_\_), has recommended the waiver of the 2020-2021 water user fees otherwise payable by Eligible Landowners, the Lummi Nation, and , in some cases, the Washington Department of Ecology.

1 No [Certain] objection[s] to the Master's recommendation having been filed or  
2 received within the time specified by Paragraph 11(a) of the Court's November 2007 Order  
3 and Judgment (as amended), the Court now enters the following Order:  
4

5 1. Due to financial hardships resulting from the continuing COVID-19 pandemic,  
6 the Water Master fees otherwise required of Eligible Landowners, the Lummi Nation, and  
7 the Washington Department of Ecology under Paragraph IV(G) of the Settlement  
8 Agreement (Docket Nos. 1264-10 through 1264-10) are waived for fiscal year 2020-2021.  
9 This one-time waiver is notwithstanding any other provision of the Court's November 2007  
10 Order and Judgment (as amended) (Docket Nos. 1273 & 1415) or the Settlement  
11 Agreement approved by that Order and Judgment,  
12

13 2. When calculating the adjusted ceiling for the Water Master Account in future  
14 years [see Settlement Agreement Paragraph G(1) & (2)], the Water Master fees for fiscal year  
15 2020-2021 will be conclusively deemed to have been paid. This determination will avoid  
16 compounding future financial hardship if water users were required to make up the 2020-  
17 2021 fees.  
18

19 3. The Water Master is directed to add the Eligible Landowners' \$792 underpayment of  
20 fees (2019-2020) to the 2021-2022 fees to be paid by Eligible Landowners.  
21

22 4. The Department of Ecology is directed to send a letter, approved by the Master,  
23 before August 31, 2020, to Eligible Landowners explaining the waiver.

24 IT IS SO ORDERED.

25 DATED this \_\_\_ day of August 2020.  
26

27 \_\_\_\_\_  
Thomas S. Zilly  
United States District Judge

**ATTACHMENT C: SERVICE LIST RECOMMENDATIONS**

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  
RECOMMENDATIONS FOR UPDATING  
THE SERVICE LIST

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY et al.

Defendants.

**BACKGROUND**

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



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

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

The Federal Water Master has followed the procedures set forth in the Report to the Court on Recommendations for Updating the Service List (Doc. No. 1411; June 29, 2012), subsequently approved by the Court. The proposed changes are to the August 9, 2019, version of the Service List approved by the Court (Docket No. 1533) and maintained by the Court Clerk. You may review a copy of the Report and the Service List on the Master's website: [www.lummiwatermaster.com](http://www.lummiwatermaster.com).

### GENERAL INSTRUCTIONS

1. Please review the following table for your name (names are listed in the second column, alphabetically by last name; if your name is associated with any Exhibit C parcel, that address is provided). If your name is not listed and you currently receive documents from the Court or Master, you do not need to do anything. To ensure you are listed on the Service List (unrepresented parties only), see a copy of the August 9, 2019, Service List on the Master's website: [www.lummiwatermaster.com](http://www.lummiwatermaster.com).

2. If you are listed in the following table, review your entry for accuracy. Each entry 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 9, 2019, 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 Friday, July 31, 2020, under the  
 28

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

### INSTRUCTIONS FOR FILING AN OBJECTION

1. If you are filing an objection to your specific entry in the table, you may use the preprinted Objection Form attached as Attachment D. Rich Text Format (rtf) and Portable Document Format (pdf) versions of the form may be found on the Master's website: [www.lummiwatermaster.com](http://www.lummiwatermaster.com).

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

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

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

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

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

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

*Caution:* By signing and filing this Objection Form, you certify to the Court, under F.R.C.P. 11, "that to the best of your knowledge, information, and belief, formed after an inquiry reasonable under the circumstances [that your] factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after 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 Friday, July 31, 2020. Be sure to keep a copy for  
10 your records. If you request the Clerk to return a conformed copy of your objection, please  
11 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	Anderko, Chris	See Ref. No. 8
2	Bartel, Angie	See Ref. No. 21
3	Boyd, Lois D19-21, D232 & E4	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports (based on daughter's communication for ill parent) a corrected name and updated mailing address:</p> <p><i>Service List Address:</i> Lois Boyd 2240 Main Street, Apt. 105 Ferndale, WA 98248</p> <p><i>New Name &amp; Address:</i> Gerald R. &amp; Lois M. Boyd Revocable Living Trust 7178 Dahlberg Road Ferndale, WA 98248</p> <p><i>Motion:</i> Delete Lois Boyd from Service List; add Gerald R. &amp; Lois M. Boyd Revocable Living Trust to Service List</p>
4	Cargill, John C.	<p><i>Status:</i> On existing Service List; Annual Report for 2019 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> John C. Cargill 3449 Ruth Rd. Bellingham, WA 98226</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<i>Motion:</i> Delete John C. Cargill from Service List
5	<b>Cargill, Rhonda L.</b>	<p><i>Status:</i> On existing Service List; Annual Report for 2019 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Rhonda L. Cargill 3449 Ruth Rd. Bellingham, WA 98226-9292</p> <p><i>Motion:</i> Delete Rhonda L. Cargill from Service List</p>
6	<b>Clark, Jeffrey</b>	<i>See Ref No. 16</i>
7	<b>Clark, Kay</b>	<i>See Ref. No. 16</i>
8	<b>Doran, James</b>	<p><i>Status:</i> Not on existing Service List; Dep't of Ecology reports Doran has acquired two of four unperfected allocations from Emma Pennea (on existing Service List) and Chris Anderko (not on existing Service List); Dep't of Ecology subsequently reports Doran has transferred these two allocations to the Lummi Nation</p> <p><i>Service List Address:</i> Emma Pennea 246 W. Walnut Lane Philadelphia, PA 19144-3204</p> <p><i>New Name &amp; Address:</i> Chris Anderko 246 W. Walnut Lane Philadelphia, PA 19144-3204</p> <p><i>Mailing Address:</i> James Doran 2115 Lummi Shore Road Bellingham, WA, 98226</p> <p><i>Motion:</i> Continue Emma Pennea on Service List since she apparently retains two unperfected water</p>

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		allocations; add Chris Anderko since he appears to have an ownership interest in the two unperfected water allocations; do not add James Doran to the service List since he has transferred his water allocations to the Lummi Nation
9	<b>Gerald R. &amp; Lois M. Boyd Revocable Living Trust</b>	See Ref. No. 3
10	<b>Hughes, Douglas D.</b>  D1 & D2 3791 Haxton Way	<i>Status:</i> On existing Service List; Dep't of Ecology reports Hughes has transferred his allocations to the Lummi Nation  <i>Service List Address:</i> Douglas D. Hughes 3730 N.E. 17 <sup>th</sup> Ave. Pompano Beach, FL 33064  <i>Motion:</i> Delete Douglas D. Hughes from Service List
11	<b>Meyer, Richard</b>	<i>Status:</i> On existing Service List; Annual Report for 2019 returned as undeliverable; Dep't of Ecology has no updated contact information  <i>Service List Address:</i> Richard Meyer 18226 62 <sup>nd</sup> Ave., N.E. Kenmore, WA 98028  <i>Motion:</i> Delete Richard Meyer from Service List
12	<b>Mills, Adam</b>  D18	<i>Status:</i> On existing Service List; Dep't of Ecology reports Mills has transferred his allocation to the Lummi Nation  <i>Service List Address:</i> Adam Mills 2131 Postal Ave. Bellingham, WA 98226-9232  <i>Motion:</i> Delete Adam Mills from Service List

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
13	Mills, Olea D18	<p><i>Status:</i> On existing Service List; Dep't of Ecology reports Mills has transferred her allocation to the Lummi Nation</p> <p><i>Service List Address:</i> Olea Mills 2131 Postal Ave. Bellingham, WA 98226-9232</p> <p><i>Motion:</i> Delete Olea Mills from Service List</p>
14	Oreiro, Marc	See Ref. Nos. 17 & 20
15	Pennea, Emma	See Ref. No. 8
16	Pirois, Alicia C30	<p><i>Status:</i> Not on existing Service List; Dep't of Ecology reports Pirois has an allocation from Jeffrey and Kay Clark (both on existing Service List with other allocations); Dep't of Ecology subsequently reports Pirois has transferred the allocation to the Lummi Nation</p> <p><i>Service List Address:</i> Jeffrey Clark 2219 Lummi Shore Rd. Bellingham, WA 98226-9261</p> <p><i>Service List Address:</i> Kay Clark 2219 Lummi Shore Rd. Bellingham, WA 98226-9261</p> <p><i>Mailing Address:</i> Alicia Pirois 2207 Lummi Shore Road Bellingham, WA, 98226</p> <p><i>Motion:</i> Continue Jeffrey and Kay Clark on Service List; do not add Alicia Pirois to the Service List since she has transferred her water allocation to the Lummi Nation</p>
17	Qualls, Sandiann	<i>Status:</i> On existing Service List; Dep't of Ecology



REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
	C77 3374 Robertson Road	reports allocation has been transferred to Marc Oreiro, who is not on the Service List  <i>Service List Address:</i> Sandiann Qualls 1408 Cranberry Ct. Bellingham, WA 98226-7182  <i>New Name &amp; Address:</i> Marc Oreiro 3374 Robertson Road Bellingham, WA 98226  <i>Motion:</i> Delete Sandiann Qualls from Service List; add Marc Oreiro to Service List; <i>see also</i> Ref. No. 20
18	<b>Temple, James E.</b>	<i>Status:</i> On existing Service List; Dep't of Ecology reports Temple has transferred his allocation to the Lummi Nation  <i>Service List Address:</i> James E. Temple P.O. Box 4366 Bellingham, WA 98227  <i>Motion:</i> Delete James E. Temple from Service List
19	<b>Vanweerdhuizen, Daniel J.</b>	<i>Status:</i> On existing Service List; Annual Report for 2019 returned as undeliverable; Dep't of Ecology has no updated contact information  <i>Service List Address:</i> Daniel J. Vanweerdhuizen 7231 Secluded Lane Ferndale, WA 98248  <i>Motion:</i> Delete Daniel J. Vanweerdhuizen from Service List
20	<b>Webb, Briddick</b>  C77 3374 Robertson Road	<i>Status:</i> On existing Service List; Dep't of Ecology reports allocation has been transferred to Marc Oreiro, who is not on the Service List

REF. #	NAME (Any Ex. C or D listing)	STATUS, INFORMATION & MOTION
		<p><i>Service List Address:</i> Briddick Webb 1408 Cranberry Ct. Bellingham, WA 98226-7182</p> <p><i>New Name &amp; Address:</i> Marc Oreiro 3374 Robertson Road Bellingham, WA 98226</p> <p><i>Motion:</i> Delete Briddick Webb from Service List; add Marc Oreiro to Service List; <i>see also</i> Ref. No. 17</p>
21	<p><b>Whitney, Clifford</b></p> <p>C9 2131 Postal Ave.</p> <p>C29 2205 Lummi Shore Road</p>	<p><i>Status:</i> : On existing Service List; Dep't of Ecology reports Mr. Whitney is deceased, based on information from Angie Bartel, his daughter; Bartel is already on the Service List</p> <p><i>Service List Address:</i> Clifford Whitney 2205 Lummi Shore Rd. Bellingham, WA 98226-9232</p> <p><i>Motion:</i> Delete Clifford Whitney from Service List</p>
22	<b>Wilck, Helmut C.</b>	<p><i>Status:</i> On existing Service List; Annual Report for 2019 returned as undeliverable; Dep't of Ecology has no updated contact information</p> <p><i>Service List Address:</i> Helmut C. Wilck 5135 Wisteria Drive Oceanside, CA 92056</p> <p><i>Motion:</i> Delete Helmut C. Wilck from Service List</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 Friday, July 31, 2020.

DATED June 30, 2020.

Respectfully submitted,

*/s/ John E. Thorson*

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

**ATTACHMENT D: PROPOSED COURT ORDER RE  
SERVICE LIST RECOMMENDATIONS**

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,

[PROPOSED] ORDER

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY et al.

Defendants.

No [Certain] objection[s] to Attachment C, the Federal Water Master's  
Recommendations for Updating the Service List, set forth in the Master's 2019-2020  
Annual Report (June 30, 2020) (Docket No. \_\_\_\_), having been filed or received within the  
time specified by Paragraph 11(a) of the Court's November 2007 Order and Judgment (as  
amended), the Court now enters the following Order:

1 The Federal Water Master's Recommendations for Updating the Service List, set  
2 forth as Attachment C to the Master's 2019-2020 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 2020.

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12 Thomas S. Zilly  
13 United States District Judge  
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**ATTACHMENT E: OBJECTION FORM RE SERVICE LIST RECOMMENDATIONS  
(FOLLOWING PAGES)**

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,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY et al.

Defendants.

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

[Set forth as Attachment C to the  
Federal Water Master's Annual Report  
filed June 30, 2020]

I, the undersigned person, object to a Service List recommendation made by the  
Federal Water Master as set forth in Attachment C, Federal Water Master's  
Recommendations for Updating the Service List, part of the Master's 2019-2020 Annual  
Report (June 30, 2020).

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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15           *Correct Information:* I affirm that the following is the correct information for this  
16 Table entry [print or type]:  
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I request the Court to correct the Service List in accordance with the information I have provided.

Respectfully submitted,

DATED: July \_\_\_\_, 2020

*Your Signature:* \_\_\_\_\_

*Name (Printed or Typed):* \_\_\_\_\_

*Address:* \_\_\_\_\_

*City, State or Province:* \_\_\_\_\_

*Zip or Postal Code:* \_\_\_\_\_

*Country (if other than US):* \_\_\_\_\_

*Telephone No.:* \_\_\_\_\_

*E-Mail Address:* \_\_\_\_\_

**Certificate of Service**

I certify that, on July \_\_\_\_, 2020, I submitted the foregoing Objection for filing in the above-captioned matter by first-class mail addressed to the Clerk of Court as follows:

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

I further certify that, on July \_\_\_\_, 2020, I served copies of the foregoing Objection filed in the above-captioned matter by first-class mail addressed to the following persons:

1 John E. Thorson  
2 Federal Water Master | Lummi Decree  
3 376 River Road West  
4 Plains, MT 59859

Stephanie Duvall  
Assistant Attorney General  
Ecology Division  
Attorney General of Washington  
P.O. Box 40117  
Olympia, WA 98504-0117  
*Attorney for the Department of Ecology*

6 James Stroud  
7 Office of the Reservation Attorney  
8 2665 Kwina Road  
9 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*

12 *Your Signature:* \_\_\_\_\_