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**EXHIBIT A**  
**to**  
**Order Conditionally Approving Settlement Agreement**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES, in its own right and on  
behalf of the Lummi Indian Nation  
  
Plaintiff,  
  
LUMMI INDIAN NATION  
  
Plaintiff-Intervenor,  
  
v.  
  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY, et al.,  
  
Defendants.

No. C01-0047Z

DRAFT ORDER  
AND JUDGMENT

THIS MATTER comes before the Court on a Joint Motion to Approve Settlement brought by plaintiff United States, plaintiff-intervenor Lummi Indian Nation, and defendants Washington State Department of Ecology (“Ecology”), Whatcom County, the Georgia Manor Water Association, the Harnden Island View Water Association, and the Sunset Water Association (collectively, the “Water Associations”), and various property owners represented by Eugene Knapp of Barron Smith Daugert PLLC. By Order dated November 2, 2007, the Court conditionally approved the settlement and directed the parties to file the final

1 Settlement Agreement. Having now reviewed the final Settlement Agreement, the Court  
2 does hereby ORDER AND ADJUDGE:

3 (1) **Approval of Settlement Agreement.** The Court GRANTS the Joint Motion to  
4 Approve Settlement, docket no. 1056, and APPROVES the final Settlement  
5 Agreement, docket no. TBD [hereinafter the “Settlement Agreement”]. The “Case  
6 Area,” as that term is used in the Settlement Agreement, the Court’s previous orders,  
7 and this Order and Judgment, means that portion of the Lummi Reservation indicated  
8 in the attached legal description and map. From the date of entry of this Order and  
9 Judgment, all groundwater use and regulation of groundwater use within the Case  
10 Area shall be governed by the provisions of this Order and Judgment and the  
11 Settlement Agreement. Any and all groundwater uses not consistent with the  
12 requirements of this Order and Judgment and/or the Settlement Agreement, including  
13 uses otherwise permitted by state and/or federal law, are hereby ENJOINED. All  
14 parties, all persons, and all entities bound by this Order and Judgment, and all their  
15 heirs, successors, and assigns, are hereby DIRECTED to take any and all actions  
16 required by the Settlement Agreement and this Order and Judgment, and are hereby  
17 ENJOINED from taking any actions inconsistent with the Settlement Agreement and  
18 this Order and Judgment.

19 (2) **Allocation of Groundwater.** Pursuant to and subject to the terms of the Settlement  
20 Agreement, Ecology may allocate up to 120 acre-feet per year of groundwater within  
21 the Case Area. Any adjustments to the 120 acre-feet allocation resulting from land  
22 transfers or other actions shall be made in accordance with the terms of the Settlement  
23 Agreement. The Lummi Nation may authorize withdrawal of all groundwater in the  
24 Case Area not subject to allocation by Ecology or otherwise committed to non-Lummi  
25 water users under other settlements or service agreements, provided that chloride  
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1 levels remain within an acceptable range, as measured and determined in accordance  
2 with the terms of the Settlement Agreement. The Lummi Nation may use, and  
3 authorize withdrawal of, such water for any legal purpose.

4 (3) **Water Master.** A Water Master shall be appointed in the manner, and shall have the  
5 authority, described in the Settlement Agreement. The budget for the Water Master  
6 shall be established by agreement between the Lummi Nation and Ecology on an  
7 annual basis, with input from the Water Master, and shall be funded as specified in  
8 the Settlement Agreement. If the Lummi Nation and Ecology cannot agree on the  
9 amount of the budget for a particular year, the amount of the budget shall be  
10 determined by the Court. Nominations of candidates for the position of Water Master  
11 shall be submitted via motion filed within ninety (90) days of the date of this Order  
12 and noted by the moving party for the third Friday after filing and service.

13 (4) **Initiating Appeal.** Any person aggrieved by any action or order of the Water Master  
14 may appeal to this Court. Such person shall file a Notice of Appeal and pay the filing  
15 fee applicable for new civil actions. The Notice of Appeal shall briefly describe the  
16 action or append a copy of the order of the Water Master to be reviewed, and it shall  
17 contain the following language: “This appeal is from a decision of the Water Master  
18 appointed by the Honorable Thomas S. Zilly, United States District Judge, pursuant to  
19 the Settlement Agreement in *United States, et al. v. Department of Ecology, et al.*,  
20 Case No. C01-0047TSZ.” Within three (3) days after filing the Notice of Appeal, the  
21 appealing party shall serve a copy of the Notice of Appeal on Ecology, the Lummi  
22 Nation, and any other person or entity that was a party to the dispute before the Water  
23 Master. The appealing party shall also provide the Water Master with a copy of the  
24 Notice of Appeal. If Ecology, the Lummi Nation, or any other person or entity that  
25 was a party to the dispute before the Water Master wishes to be heard concerning the  
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1 merits of the appeal, then no later than ten (10) days after receipt of the Notice of  
2 Appeal, such person or entity shall electronically file and serve on the appealing party  
3 a Notice of Appearance.

4 (5) **Transmitting Record.** Within ten (10) days after filing a Notice of Appeal, the  
5 appealing party shall electronically file the portions of the written record before the  
6 Water Master that are germane to the Court’s review of the Water Master’s decision.  
7 Such portion of the record shall have a cover page with the title “Appellant’s Excerpt  
8 of Record” and shall be paginated. Within ten (10) days after filing of the Appellant’s  
9 Excerpt of Record, any party that has filed a Notice of Appearance may submit  
10 additional, relevant portions of the written record or a log identifying any portions of  
11 the Appellant’s Excerpt of Record that should be stricken and the basis for such  
12 position. Additional portions of the written record, if any, shall be electronically  
13 filed, shall have a cover page with the title “Respondent’s Excerpt of Record,” and  
14 shall be paginated. If an Excerpt of Record exceeds fifty (50) pages in length, the  
15 filing party shall also deliver a paper copy to the Clerk’s Office clearly marked on the  
16 first page with the words “Courtesy Copy of Electronic Filing for Chambers.”

17 (6) **Briefs and Noting Date.** Within thirty (30) days after filing of a Notice of Appeal,  
18 the appealing party shall electronically file and properly serve an opening brief, not to  
19 exceed twelve (12) pages in length, identifying the alleged errors of the Water Master  
20 and any relevant factual and/or legal authorities. The appealing party shall note the  
21 matter on the Court’s motion calendar for the fourth Friday after filing and service of  
22 the opening brief. Any party that has filed a Notice of Appearance may electronically  
23 file and properly serve a responding brief, not to exceed twelve (12) pages in length,  
24 by the Monday before the noting date. The appealing party may electronically file  
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1 and properly serve a reply brief, not to exceed six (6) pages in length, by the noting date

2 (7) **Time and Service.** With regard to the computation of time and the method of service,  
3 the requirements of Fed. R. Civ. P. 5 and 6 and Local Rule CR 7(d)(3), as amended  
4 from time to time, shall apply. Unless otherwise specified in this Order and  
5 Judgment, service shall be made on any party that has filed a Notice of Appearance.  
6 The appealing party shall be deemed to have filed a Notice of Appearance by filing  
7 the Notice of Appeal. Extension or expediting of the deadlines imposed by  
8 paragraphs 4, 5, and 6 of this Order and Judgment may be sought by motion noted for  
9 consideration no earlier than three (3) judicial days after filing and service. Papers  
10 opposing such motions shall be due on the noting date. No reply papers shall be filed  
11 unless requested by the Court.

12 (8) **Review.** Any appeal shall be on the written record established before the Water  
13 Master. The Court will apply the standard of review that governs in appeals from  
14 final federal agency action under the Administrative Procedures Act. The Water  
15 Master's decisions will not be disturbed unless they are arbitrary and capricious, an  
16 abuse of discretion, unsupported by substantial evidence, or not in accordance with  
17 law. The Court will evaluate the Water Master's interpretation of the Settlement  
18 Agreement under a two-step process analogous to the procedure established by  
19 *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). The  
20 Court will defer to the Water Master's factual findings if they are supported by  
21 substantial evidence, and the Court will review questions of law de novo. The final  
22 judgment of this Court, after review of the challenged action or order of the Water  
23 Master, may be appealed in the same manner and pursuant to the same rules and  
24 standards as any other judgment of a district court.

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1 (9) **Scope of Order and Judgment.** This Order and Judgment shall be binding on all  
2 parties to this action, and on all their heirs, assigns, and successors in interest. This  
3 Order and Judgment applies only to groundwater in the Case Area; it has no effect on  
4 current or potential claims of any party to any other water source, except to the extent  
5 that such claims interfere with the exercise of groundwater rights described in the  
6 Settlement Agreement. This Order and Judgment shall not be construed in any way to  
7 create tribal jurisdiction as to any party or property where such jurisdiction would not  
8 otherwise exist.

9 (10) **Previous Settlements.** All settlements previously approved by the Court in this case  
10 are not affected by this Order and Judgment, and such settlements remain in full force  
11 and effect.

12 (11) **Continuing Jurisdiction.** The Court shall retain jurisdiction of this case to modify  
13 this Order and Judgment upon motion of the parties, to appoint a Water Master and to  
14 replace the same as might be necessary from time to time, to decide appeals from  
15 decisions of the Water Master, and to resolve disputes regarding the annual budget of  
16 the Water Master.

17 (12) **Prior Orders.** The Court VACATES its Order dated May 20, 2005, docket no. 779,  
18 and its Amended Order dated June 23, 2005, docket no. 794. Said Orders shall be of  
19 no preclusive effect as to any party, any person or entity bound by this Order and  
20 Judgment, or any of their heirs, successors, and assigns.

21 (13) **Costs and Fees.** All parties shall bear their own costs and attorney fees incurred in  
22 this matter.

23 (14) **Judgment.** Pursuant to Fed. R. Civ. P. 58, this document constitutes the Court's  
24 separate and final judgment in this matter.

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IT IS SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

**DRAFT**

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Thomas S. Zilly  
United States District Judge