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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

OMNIBUS ORDER

THIS MATTER comes before the Court to clarify the deadlines imposed by, and the procedures to be implemented pursuant to, the Settlement Agreement, docket nos. 1264-1 through 1264-10, executed by plaintiff United States, plaintiff-intervenor Lummi Nation, and defendants Washington State Department of Ecology (“Ecology”), Whatcom County, the Georgia Manor, Harnden Island View, and Sunset Water Associations (collectively, the “Water Associations”), and various property owners represented by Eugene Knapp of Barron Smith Daugert PLLC. Having conducted an informal conference on July 23, 2008, with the

1 Water Master appointed by the Court, at which all parties to the Settlement Agreement
2 except Whatcom County were represented by counsel, the Court hereby ORDERS:

- 3 (1) **Fiscal Year.** The Water Master budget's shall operate on a "fiscal year" running
4 from July 1 through June 30 of the following calendar year.
- 5 (2) **Budget for 2008/09 Fiscal Year.** The Water Master's budget for the year July 1,
6 2008, through June 30, 2009 (the "2008/09 fiscal year") shall be \$100,000.
- 7 (3) **Lummi Nation Share.** Lummi Nation shall pay its share of the Water Master budget
8 for the 2008/09 fiscal year, namely \$50,000, into the Clerk's Registry on or before
9 September 1, 2008. In subsequent years, Lummi Nation shall pay its share of the
10 Water Master budget on or before August 1 of the fiscal year.
- 11 (4) **Ecology Share.** Ecology shall pay its share of the Water Master budget for the
12 2008/09 fiscal year into the Clerk's Registry on or before September 1, 2008. In
13 subsequent years, Ecology shall pay its share of the Water Master budget on or before
14 August 1 of the fiscal year. For purposes of the payment due by September 1, 2008,
15 Ecology's share shall be calculated as follows: \$50,000 minus the aggregate amount
16 of payments anticipated in response to the notices sent by Ecology to individual
17 landowners in the Case Area. *See* Settlement Agreement at § IV.G.1. For example, if
18 the total expected from individual landowners obligated to pay \$100 per household
19 per year is \$30,000, Ecology must contribute \$20,000 by September 1, 2008. The
20 Court makes no ruling at this time concerning Ecology's responsibility to make up for
21 any deficiency in the overall sum received from individual landowners.
- 22 (5) **First Notices.** Ecology shall mail notices to individual landowners advising them of
23 the Water Master fee for the 2008/09 fiscal year (*i.e.*, \$100 per household receiving a
24 right to water from the allocation administered by Ecology, *see* Settlement Agreement
25 at § IV.G.1) as soon as practicable, but no later than September 1, 2008. In
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1 subsequent years, such notices shall be mailed by August 1 of the fiscal year. Such
2 notice for the 2008/09 fiscal year shall indicate that the due date for payment is
3 November 1, 2008. Such notice shall also indicate that payment shall be in the form
4 of check, money order, or cashier's check made payable to "Clerk, U.S. District
5 Court," bearing the case number "C01-47Z" and the identifier to be determined at a
6 later date, and mailed to Clerk of the Court, U.S. Courthouse, 700 Stewart Street,
7 Seattle, WA 98101. Ecology shall provide along with the notice an appropriate
8 remittance slip, accompanied by instructions to include the remittance slip with the
9 payment sent to the Clerk of the Court.

10 (6) **Clerk's Registry Accounting.** On a monthly basis, beginning September 15, 2008,
11 the Clerk of the Court shall provide to Ecology and the Water Master via e-mail an
12 Excel spreadsheet containing an accounting of amounts received and amounts
13 disbursed in connection with this matter. Any party to the Settlement Agreement may
14 obtain an annual accounting upon request directed to Charlotte Svendsen of the
15 Clerk's Office.

16 (7) **Bad Checks.** The Clerk of the Court shall notify the Water Master and Ecology if
17 any check received in connection with the annual Water Master fee in this matter is
18 returned for insufficient funds.

19 (8) **Second Notices.** Ecology shall have the responsibility for determining which, if any,
20 individual landowners have failed to pay the full amount of the Water Master fee on a
21 timely basis. Ecology shall send a second notice to such delinquent individual
22 landowners. Ecology may ex parte seek assistance from the Water Master concerning
23 the wording or form of a second notice. For the 2008/09 fiscal year, such second
24 notice shall be issued on or before December 31, 2008. Ecology shall forward to the
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1 Water Master a list of any individual landowners who remain delinquent as of
2 February 15 of the fiscal year.

3 (9) **Collection Activities.** The Water Master shall make reasonable efforts to collect
4 unpaid fees, costs, fines, and penalties, but shall have discretion concerning the
5 manner in which and the extent to which efforts are made to collect funds from
6 delinquent individuals or entities.

7 (10) **Fees for Actions Before the Water Master.** Any person or entity seeking review by,
8 or the grant of relief from, the Water Master shall submit the applicable \$250 fee (*see*
9 Settlement Agreement at §§ IV.G.3, VIII.C.1.a.iii, & VIII.C.1.b.iii) by check made
10 payable to “Clerk, U.S. District Court,” bearing the case number “C01-47Z.” Such
11 check shall be mailed first class, postage prepaid, to the Water Master at 376 River
12 Road West, Plains, Montana 59859 (Attn: John E. Thorson). The Water Master shall
13 make a record of such payment and then forward the check along with appropriate
14 explanation to the Clerk of the Court.

15 (11) **Other Payments.** Whenever a person or entity is required to submit funds to the
16 Water Master, for example as a fine or penalty or for cost recovery, the amount due
17 shall be in the form of a check made payable to “Clerk, U.S. District Court,” bearing
18 the case number “C01-47Z.” Such check shall be mailed first class, postage prepaid,
19 to the Water Master. The Water Master shall make a record of such payment and then
20 forward the check along with appropriate explanation to the Clerk of the Court.

21 (12) **Third-Party Checks.** In the event that a person erroneously makes a check payable
22 to other than “Clerk, U.S. District Court,” for example to the Water Master, the
23 United States, the Lummi Nation, or Ecology, the check shall be endorsed to “Clerk,
24 U.S. District Court” and forwarded to the Clerk of the Court with appropriate
25 explanation. The Clerk is directed to accept such third-party checks endorsed to the
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1 Clerk if received from any of the following persons or entities: the Water Master, the
2 United States, the Lummi Nation, or Ecology.

3 (13) **Water Master Compensation and Reimbursement.** The rate of compensation and
4 reimbursement is specified in the Court's Order Appointing Water Master, docket
5 no. 1296, except that the Court hereby clarifies that, for purposes of reimbursement,
6 the federal governmental per diem rates shall be used. The Water Master shall retain
7 receipts for all expenses for which reimbursement is sought, but shall submit copies to
8 the Court only for those individual expenses exceeding \$250. On the 15th day of
9 each month, the Water Master shall submit to the Court a bill itemizing the services
10 rendered and expenses incurred in connection with this matter. Such bill may be
11 transmitted via e-mail to the Court. Such bill shall also be posted on the Water
12 Master's web site. Any objections to the bill shall be electronically filed in Case
13 Number C01-47Z by the 30th day of the month, and noted for the day of filing. The
14 Court will promptly consider any objections and independently review the bill. The
15 Court will electronically file in Case Number C01-47Z all of its orders concerning
16 Water Master bills, but will not provide conventional service, *i.e.*, copies via mail, of
17 any such orders. The Water Master shall post the Court's orders regarding bills on
18 the Water Master's web site.

19 (14) **Annual Reports.** The Water Master shall electronically file in Case Number C01-
20 47Z the annual reports required by Section VIII.A.1.c of the Settlement Agreement on
21 or before June 30 of each fiscal year. The annual reports shall also be conventionally
22 served upon any party not having access to the Court's electronic document filing
23 system ("CM/ECF").

24 (15) **Pleadings Filed with Water Master.** A person or entity seeking review by, or the
25 grant of relief from, the Water Master shall send the requisite pleadings to the Water
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1 Master via both U.S. mail and e-mail. Acceptable electronic formats are Microsoft
2 Word, portable document format (“pdf”), or rich text format (“rtf”). Any pleadings,
3 including responsive documents, submitted to the Water Master shall set forth a brief
4 summary on the first page that may be used by the Water Master to describe the
5 pleading in the docket on the Water Master’s web site.

6 (16) **Record of Proceedings.** Proceedings before the Water Master shall be audio
7 recorded unless, at the Water Master’s discretion, a court reporter is required.
8 Proceedings may be conducted in person, via telephone, or using some other means,
9 at the Water Master’s discretion.

10 (17) **Informal Resolution of Disputes.** At the Water Master’s discretion, the parties may
11 seek consultation to mediate a dispute before formally seeking the Water Master’s
12 review. Before seeking such consultation, a party must provide notice via e-mail to
13 all represented parties concerning the proposed date and time for contacting the Water
14 Master. Any such consultation may not be conducted ex parte.

15 (18) **Current Ninth Circuit Appeal.** The parties to the Settlement Agreement have agreed
16 that, in the unlikely event the Ninth Circuit reverses the Court’s order approving the
17 Settlement Agreement, the Water Master shall be entitled to full compensation and
18 reimbursement for all work performed and expenses incurred.

19 (19) **Contact Information for Water Master (John E. Thorson).**

20 Address: 376 River Road West, Plains, Montana 59859

21 Telephone: (406) 826-0500; (510) 710-9733 (cell)

22 E-mail: johnethorson@mac.com.

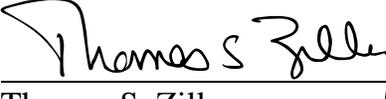
23 Web site: http://web.mac.com/johnethorson/Lummi_Water_Master/Home.html

24 (20) **Service of this Order.** The Clerk is directed to send a copy of this Order to all
25 counsel of record, to all pro se parties, and to John E. Thorson at 376 River Road
26 West, Plains, Montana 59859.

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IT IS SO ORDERED.

DATED this 7th day of August, 2008.


Thomas S. Zilly
United States District Judge