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A Member Owned Water Co-op

### **Public Statement from Sallal Water Association**

The City of North Bend has released multiple misleading statements regarding the status of the Sallal Water Association and related matters concerning Sallal's effort to negotiate in good faith a water supply agreement with the City. The City has put forth a concerted effort to disparage Sallal, to misrepresent facts regarding the condition of the Sallal water system, and to misrepresent the circumstances regarding the inability of both parties to reach agreement on a supply contract. The City's actions have now culminated in their dubious offer to purchase Sallal. Following is an initial response from Sallal's board on these matters.

Sallal's Board remains committed to discussing a water supply agreement that provides long-term certainty for water availability in all of Sallal's service area. Recognizing the importance of providing this certainty the Board proposed in June 2022 that negotiations concentrate first on finding agreement on the topic of Sallal's wholesale purchase of water from the City. The Mayor and the City rebuffed this proposal and insisted on a convoluted contract that inappropriately ties our purchase of drinking water to an exchange for mitigation water from Sallal's wells.

#### **Emergency Moratorium**

Sallal's Board made a hard decision to enter an emergency, interim moratorium because we want to maintain a strong and healthy water system and take a conservative approach to managing this precious natural resource with care, as expected by our member-owners. The City of North Bend has taken the announcement of this interim moratorium as an opportunity to make baseless accusations against Sallal's system and management. It is extremely disappointing to see the City of North Bend chose to take this approach. Anyone that knows the City's history of managing its water system and supply already sees the hypocrisy in its statements and actions.

The Sallal Board heard clear and overwhelming support of the moratorium from members commenting at our August 16, 2022, public meeting. The only dissenting comment came from the City through prepared remarks delivered by Mayor McFarland. In contradiction to past statements that supported working together on a water supply agreement, the City and the Mayor have now chosen to make false claims about Sallal's water system reliability and our willingness to negotiate a water supply agreement.

#### **City of North Bend's Offer to Buy Sallal**

The City of North Bend's Mayor asked to submit a comment at our public meeting regarding our emergency moratorium on August 16, 2022. In an apparent act of political theater, Mayor McFarland, on behalf of the City, chose to derail our public meeting by announcing an offer to purchase the Association. This was clearly a calculated maneuver by the City to sow discord within the Sallal membership. To be clear, this announcement came as a complete surprise to the Sallal Board of Trustees and its management.

Members of the Sallal Board have been discussing water supply contract terms with the City for several years and had just received a response from the Mayor the day before the public meeting. His August 15<sup>th</sup> response continued to express the City's interest in continued negotiations. Not once did that letter indicate the City was preparing to make a purchase offer and this subject did not come up in previous negotiations.

The Sallal Board believes this offer ignores the will of Sallal members. The Mayor seemed to think that Sallal's Board could decide to sell the system. The fact is that state laws governing non-profit cooperatives require a vote of the members to approve any sale.

Note that a municipality's offer to buy often precedes an eminent domain proceeding. In other words, this offer is likely window dressing. An eminent domain proceeding would be an end-around attempt to remove the voting rights of Sallal's members. Sallal's Board has been aware of the possibility of a hostile attack from the City for several years and have received legal advice from specialists as to the rights of Sallal and its members. All we can say at this point is that Sallal has viable defenses to a hostile take-over and ultimately, a court may have to decide whether the City has that right.

Given this shocking move by the City, the Sallal Board, staff, and consultants will work to estimate what a purchase might mean in the way of a ballpark dollar amount of a payment to each member, and we will figure out the best way to get feedback and input from all Sallal members on this very important issue. Rest assured; no consensual sale can happen without a vote of the membership.

#### City of North Bend Motives

We understand the City will need to invest substantial amounts of City taxpayers' money to extend a large water main up North Bend Way from the Mule Pasture to serve the future National Guard site near Truck Town. The last estimate we heard from the Mayor was more than \$17 million for that work. While the National Guard will commit \$6M and Puget Western will commit \$3M, the City taxpayers will need to fund the remaining \$8M in project costs to build out and supply water to that area. This cost will likely grow larger as the City designs the improvements. This attempt to purchase Sallal's assets is a clear strategy to solve their infrastructure problem.

The City must also find a secondary source of mitigation water to remain in compliance with the 2008 water right permit from the Department of Ecology. The City appears to view the water

rights held by Sallal for its wells at Rattlesnake as the solution. The City has likely decided that attempting a takeover of Sallal will solve all of the City's significant water problems.

During our August 16 meeting, Mayor McFarland made a baseless claim that Sallal has a "failing system". Before the end of the meeting, the City published a notice on its website about the purchase offer and claimed that "The City's water system has shown itself to be more reliable than Sallal's system...." This claim is debunked given the City's multiple operating violations including mitigation violations in 2015 and 2019, excessive water withdrawals, and its very high distribution system leakage (DSL) which has exceeded 20%. The Sallal Board views this claim as another attempt by the City to deflect from the City's mismanagement of their own water system and to cast doubt and concern in the minds of Sallal's members about Sallal's Water System.

#### Negotiations with the City for a Water Supply Contract

Recent comments in the media from the City have incorrectly claimed that we have not been acting in good faith in contract negotiations for a water supply contract. The Mayor even falsely claimed that Sallal backed out of a deal in 2009. However, the fact is that Sallal remains willing to negotiate an agreement that is fair for all involved. A brief recap of the negotiation history follows:

The Department of Ecology approved the 2008 City water permit without requiring a mitigation contract between North Bend and Sallal to be in place. The permit required North Bend to contract for a back-up source of mitigation water (the primary source being seepage from Seattle Public Utilities Cedar River impoundment). The permit also authorized North Bend to sell wholesale water to Sallal for use in the City's Urban Growth Area (UGA). It should be noted that the City received this permit several years before the 2015 Foster Decision by the State Supreme Court that placed tighter restrictions on water rights mitigations – restrictions that are now preventing Sallal from securing a new water right.

After the 2008 permit was issued, the City engaged FCS group for financial assistance in developing a wholesale rate to charge Sallal for potable water. Based on FCS's analysis, the City issued to Sallal cost and debt participation figures in order for Sallal to participate in the costs of the City's water system improvements and obtaining the water right permit. The cost participation was to begin immediately even though Sallal would not need water for many years. The cost participation figures came as a shock to Sallal. They were unaffordable. This caused negotiations to collapse in 2009/2010.

Still, direct discussions resumed between Sallal's manager and City management using water commodity charge/water trading concepts and many draft contract documents were exchanged during the next decade. The City eventually abandoned the cost/debt participation concept of the FCS report. In 2021, Sallal successfully proposed a water pricing methodology that was generally acceptable to both parties and which resolved an important part of a potential agreement. Water system design work by both parties relating to interconnection the two systems proceeded. The City extended its Boxley Creek mitigation line to the foot of Sallal's

wellfield at Rattlesnake. Sallal installed improvements to its system, at its own cost, to ensure that it could deliver untreated water to that pipeline. Sallal also studied as to how best for City water to enter Sallal's system in the lower valley. Sallal's system operates at higher pressures and is upgradient of the City's water system. Also, up until recently, Sallal was unchlorinated while the City's system was not, but that challenge has been removed because Sallal now chlorinates.

Sallal was always concerned about its ability to provide instream flow mitigation water from its wells at Rattlesnake while keeping its members in water – even though the City would eventually provide replacement water down in the valley. Therefore, Sallal's drafts repeatedly showed that mitigation water would not be guaranteed to the City by Sallal. This proved to be a point of contention. Only recently, in May 2022, did the City explain that discharge from its wastewater treatment plant allows the City to simultaneously replenish any amount of mitigation water provided by Sallal thus alleviating the concern about a guarantee. This concept had never been presented by the City before. When asked to explain, the City representatives including the Mayor were unable to do so. When Sallal asked to review the calculation and/or modeling that substantiates this claim the City declined, instead requiring Sallal to propose scenarios that would then be analyzed by the City engineering consultant.

Once Ecology issued the 2008 permit, North Bend was allowed to come out of moratorium and commence withdrawals from the Centennial Well. The pressure was off North Bend to negotiate in good faith with Sallal. Perhaps North Bend thought that it could force terms on Sallal based on Sallal's need for growth water to serve the UGA. With the 2008 permit having issued, perhaps it was inevitable that the parties failed to arrive at mutually acceptable terms after years of discussions. Nevertheless, Sallal remains interested in purchasing City water, but the City has been clear that it is only interested in a reciprocal arrangement that requires instream flow mitigation from Sallal's wells at Rattlesnake. These wells are effectively Sallal's sole source of supply (Sallal also has a small well at Edgewick with non-additive water rights), so Sallal's Board has been reluctant to overcommit its Rattlesnake wells.

To conclude, if the water systems are married whether through contract or consolidation, all Sallal members will be forced to curtail water usage when the City is unable to obtain sufficient mitigation water to allow Centennial Well to match demand (from both the City residents and Sallal UGA members). These curtailment events would be directly tied to the duration of low instream flows in the Snoqualmie River (which could be days or weeks) and are unpredictable as to when they may occur and their magnitude. But statistically, such events are likely. ***This negative impact of the water supply to all Sallal members would effectively subordinate Sallal's senior water rights to the mitigation requirements of the City water system.*** It is important to note that this outcome would result even if the City were to acquire the Sallal system. This unresolved issue is at the heart of why Sallal has been unable to resolve the supply contract negotiation with the City.