

August 15, 2022

Ms. Daylin Baker
Vice President, Board of Trustees
Sallal Water Association
44021 SE Tanner Rd, Ste. E
North Bend, WA 98045

Re: Water Supply Agreements

Dear Daylin:

Thank you for your letter dated August 5, 2022. The City of North Bend appreciates Sallal's letter, and looks forward to a continued dialogue on the critical issues involving the timely supply of water to our respective customers. In that regard, please let me correct a number of errors in Sallal's letter, some of which are factual inaccuracies and others of which appear to be simple misunderstandings.

Significantly, the City's water supply agreement ("WSA") proposal is not "subjecting Sallal to the City's mitigation requirements under the City's Centennial Well water right permit," nor would the "application of the City's mitigation requirements to Sallal negatively impact Sallal's ability to serve its members." To the contrary, the WSA does not include any term or condition requiring Sallal to mitigate for its already permitted water rights. Sallal remains free to supply its own customers with its own supply. If Sallal chooses to sell some of its water supply to the City so the City can mitigate the City's Centennial Well withdrawals, both water systems will gain additional supply as we have repeatedly demonstrated. If, however, Sallal waits for a new or transferred water right from the Department of Ecology, that new supply would necessarily include a new mitigation requirement because of current laws protecting instream flows and requiring mitigation.

The important consideration in our discussions regarding the WSA remain only:

(A) In the event that the City would need mitigation water beyond its other existing mitigation water sources, Sallal sells mitigation water to the City;

(B) The City sells to Sallal at least as much municipal water as the City may purchase from Sallal; and

(C) Sallal has the right to purchase even more water from the City. Sallal's right to purchase more water provides the Sallal Board with the ability to immediately lift the existing moratorium on new water connections.

The City also takes issue with Sallal's claim to a "longstanding position" that Sallal prefers two separate WSAs, one wholesale supply from the City to Sallal and the other for mitigation water supply from Sallal to the City. For many years, the parties discussed and exchanged drafts of one agreement and one agreement only, all of which included terms for reciprocal sales. After these many years, Sallal's e-mail dated June 8, 2022, for the first time requests two separate agreements. Sallal offers no explanation or rationale at all for this change of position. If Sallal prefers two separate agreements, please provide drafts and we will promptly review and provide the City's comments. Importantly here, the City's most-recent WSA proposal includes terms that Sallal specifically requested mirroring language in existing water supply agreements and ensuring that Sallal was not required to guarantee a supply of mitigation water to the City.

In other words, the City's most recent proposal has no "downside" to Sallal. Sallal is not required to guarantee the sale of any specific volume of water to the City. The City—regardless whether Sallal sells any mitigation water to the City—will provide Sallal with as much municipal water as Sallal reasonably needs thereby ensuring continuity of water service to all of Sallal's members.

In response to the numbered paragraphs in your letter:

1. For purposes of the proposed WSA, the supply of mitigation water by Sallal and the supply of potable municipal water by the City are virtually synonymous. Sallal has yet to identify or explain any claimed differences. More importantly, Sallal is simply mistaken in writing that the City has promised to sell to Sallal only "the same amount of water that the City purchases from Sallal." The City has not said that. The draft WSA does not say that. If Sallal has new language to propose, the City would welcome it.
2. Sallal is again mistaken in writing, "Terms of the Agreement proposed by the City will require Sallal to curtail potable supplies to all its members if mitigation amounts are not available." The draft WSA reflect the City's agreement to supply Sallal with at least as much potable water, in real time, as the quantity of Sallal's mitigation water used by the City. Rather than requiring Sallal to curtail water supply to its members, the WSA actually enhances Sallal's supply of water to its members because Sallal can purchase more water from the City than the City purchases from Sallal.

To be clear—the WSA includes no scenario requiring Sallal to curtail supply to its members, because Sallal can choose to receive from the City as much—or more—water

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as it provides to the City. As mentioned above, Sallal is not obligated to mitigate its own water supply to its members. Again, if Sallal has new language to propose, the City would welcome it.

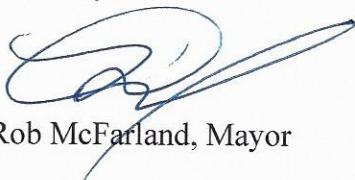
3. Respectfully, Sallal has not provided a comprehensive response at any point to the City's proposals. The City has repeatedly asked Sallal to provide its actual proposed edits to the City's drafts. Sallal has only responded with general comments and suggestions, forcing the City to try to incorporate Sallal's intent into the subsequent draft. That job is better left to Sallal.

As mentioned, the City's most recent draft WSA reflects Sallal's insistence that Sallal would not "guarantee" mitigation supply to the City and Sallal's suggestion that we use contract language mirroring the existing wholesale water agreement with Seattle Public Utilities. The City did exactly as Sallal requested, yet Sallal again refuses to offer proposed edits.

As I have already advised you, I intend to make public comments at the meeting of the Sallal Board of Trustees on August 16 regarding Sallal's imposition of a moratorium prohibiting all future water connections for a potentially indefinite period. Even before Sallal imposed the current moratorium, Sallal's failures in its own Water Service Area forced the City to take action with both the King County Utilities Technical Review Committee and the Washington State Department of Health in order to provide City water to property owners within Sallal's Water Service Area. Sallal's current Water System Plan—adopted just last year—states that Sallal will have adequate water supply for its full Water Service Area until at least 2030. In fact, Sallal is out of water for new connections right now. Sallal's past failures to serve customers in its own Water Service Area, coupled with a potentially indefinite moratorium, expressly refute the statement in Sallal's Water System Plan. The City's proposal permits Sallal to immediately lift the moratorium on new water connections.

I look forward to seeing you at the meeting of the Board of Trustees, and to continuing to work with Sallal on a mutually beneficial arrangement that best serves all of our respective water customers and the community. Please let me know if there are any questions. Thank you.

Sincerely,



Rob McFarland, Mayor

cc: Members of the North Bend City Council
Members of the Sallal Water Association Board of Directors