

Sallal Water Association

Amended and Restated Emergency Interim Rule (revised 2019)

RECITALS:

- A. Sallal Water Association ("Association") has finite water rights that limit the rate and extent to which it can withdraw water from its wells.
- B. The Association's water rights are insufficient to serve all of the potential growth that could occur within the area served by the Association. A substantial part of the expected growth is expected to come from an area annexed by the City of North Bend ("City") in 2009 in which dense zoning has been created.
- C. The Association previously adopted rules 40 and 41 governing applications for membership and issuance of certificates of availability.
- D. The Association previously adopted an Emergency Interim Rule ("Original Emergency Interim Rule") on August 16, 2016, setting forth a procedure to deal with requests for memberships and water availability that exceed the Association's water right capacity. The Original Emergency Interim Rule was adopted in contemplation that a wholesale water supply contract with the City that would supply the Association with additional water supply was imminent. The Original Interim Emergency Rule authorized the issuance of certificates of water availability that were conditioned upon the Association's and City's approval of a wholesale water supply contract.
- E. Despite diligent efforts, the Association has been unable to procure a wholesale water supply contract with the City and the Association is presently unable to foresee when a supply contract will be successfully negotiated and approved by both the City and Association.
- F. Due to changes in circumstances, the Association finds it necessary to amend and supersede the Original Emergency Interim Rule. This revision is not intended to affect the existing memberships and the terms and conditions of certificates of water availability presently in effect.
- G. The Association finds it necessary to apply the provisions hereof to all properties wherever located in the Association's water service area.

Now, therefore, the following motion is adopted as follows:

- a. The Original Emergency Interim Rule in the form adopted on August 16, 2016 is hereby superseded and replaced in its entirety by this motion, the text of which shall be identified as "Amended and Restated Emergency Interim Rule".
- b. Association Rule No. 40 is hereby amended and restated in full as follows:

40. APPLICATIONS FOR MEMBERSHIPS AND WAITING LIST: The Association will issue memberships subject to the following:

1. Parcels eligible for water service must be located within the Association's water service area as determined by the East King County Coordinated Water System Plan or the Association's Water System Plan and have an existing and actual need for water service from Association or a need that is based on development plans which the parcel owner is prosecuting in good faith. If a parcel spans the Association's water service boundary, the Board may determine whether the parcel or a portion of the parcel is eligible for service

2. Water service to a particular parcel is further subject to engineering, financial and legal feasibility and the conditions to service as contained in RCW 43.20.260.

3. All applications for membership and service connections shall be presented in person at the Association office utilizing Association's forms and shall be accompanied by payment of all fees, complete and true information on the parcel and the improvements to be served (for non-single family applications, the information must include a description of the number of ERUs requested, the estimated size of the meter and estimated average daily use projections) and a nonrefundable fee as set forth in the Association's rate schedule to cover the Association's administrative costs in processing the application. A separate fee may be levied initially or from time to time as compensation for maintaining the applicant's place in line for membership issuance. The Association may reject incomplete or inaccurate applications and applications submitted for speculative or illegitimate purposes as determined by the Board.

4. In order for the Association to issue a membership for a parcel, the application must be complete and based on development plans reviewed and approved by the applicable land use authority, all fees paid, and there must be available in the Board's determination a sufficient number of ERUs of water supply capacity to satisfy the applicant's proposed use of the parcel. If there is an insufficient number of ERUs available to satisfy the application for membership, (a) the applicant may withdraw the application, (b) the applicant may elect in writing within ten (10) business days after notification of the insufficiency to be placed on the Association's waiting list, (c) the member may reduce its plan for the proposed improvements and accept the number of ERUs available in full satisfaction of the application, or (d) the Association may deny the application. In any such events, the Association may process subsequent applications and issue memberships to applicants whose number of ERUs do not exceed the amount available.

5. The Association shall maintain a waiting list for persons and firms requesting memberships and certificates of water availability for parcels in which sufficient water is not available and who have requested, in writing, and are eligible to be placed on the waiting list. The waiting list shall identify each property owner's parcel, the number of equivalent residential units of water requested based on development plans determined to be feasible by the Association, and the date the owner requested to be placed on waiting list. Such date shall establish the priority of the property owner's right to receive water in case sufficient water becomes available. The Association may query each owner on the waiting list from time to time to determine whether the owner has a true and feasible need for water supply. The Association may remove owners from the waiting list whose need for water is determined by the Association's Board of Trustees to be speculative, unrealistic or infeasible or who, after reasonable inquiry do not appear to be prosecuting their developments with reasonable diligence, cannot be located or are unresponsive. The Association may establish fees for placement and retention on the waiting list. Failure to pay the fees in a timely manner shall be grounds for removal from the waiting list. If and

when water become available to applicants on the waiting list, the membership application provisions set forth above (and Rule 41 with regard to applications for certificates of availability) shall apply.

6. If the Association makes available additional ERUs, the Association shall first consider applicants based on their respective order on the waiting list starting with the earliest application. If an applicant declines to accept a membership or certificate of availability if and when it is offered, the application and the applicant's place in line on the waiting list, if applicable, shall be cancelled and the ERU's offered to less senior applicants in line, provided that, if the membership offer is less than the amount of ERUs applied for, the applicant may elect in writing to remain on the waiting list in the same relative position taking into account acceptances by less senior applicants on the waiting list.

7. Subject to the waiting list provisions above, issuance of memberships shall be on a first come, first served basis, meaning that an applicant that has fully performed the application procedures and paid all fees and deposit shall be considered for membership prior to the consideration of a subsequent application. Once a membership is offered to an applicant, the applicant shall have ten (10) days within which to accept the offer. Except as provided above, if the applicant does not accept the offer within ten (10) days, the offer shall be deemed to be rejected and the application shall be null and void.

8. Memberships, applications for membership and places on the waiting list shall be appurtenant to the parcel for which the application is made and shall, upon application to and approval by the Association, transfer to the purchaser of the parcel that is vested with record title. Memberships, applications and places on the waiting list shall not otherwise be sold, transferred or assigned and the Association shall have no obligation to honor any attempt to sell, transfer or assign such rights. In the event of cancellation, memberships, applications for memberships and places on the waiting list shall be terminated and have no further force of effect.

9. If an application for membership is withdrawn, invalidated, cancelled or voided at any time prior to the issuance of a membership, the applicant's application fee shall be forfeited and retained by the Association. Forfeiture of the application fee shall also apply in the event the applicant is offered a membership but declines to accept it unless the application transferred to or remains on the waiting list.

10. Unless the Association has otherwise entered into contractual arrangements providing different terms, the Association may, but shall have no obligation to cancel an unused but issued membership and refund all fees paid less the sum of 10% of such fees or \$5,000, whichever is less which amount shall be retained by the Association as a non-refundable administrative fee, if the membership has not been put to actual use (meaning a meter has been installed and through which water service is being provided) within two years from the date of issuance of the

membership. The Association shall issue a written notice thirty days prior to taking such action. The member may request a hearing from the Board if it desires to contest the cancellation. After the hearing, the Board may cancel the membership unless member shows good cause as to why it did not install the service connections and meters within such two year period and shows a credible plan to make such installations within a time to be determined by the Board, but not more than two years. If the member shows good cause and a credible plan, the Board may extend the date with respect to which the member shall install the service connections and meters for up to two additional years. The Board's determination in such matters shall be final and binding upon the member.

11. Upon cancellation of a membership, the number of ERUs associated with that membership shall automatically be deemed forfeited and waived and the former member shall have no rights to receive water from the Association.

12. The Association's General Manager is authorized to implement the foregoing provisions and make necessary adjustments when inequity or unfairness would otherwise result.

- c. Association Rule No. 41 is hereby amended and restated in full as follows:

41. CERTIFICATES OF WATER AVAILABILITY:

Certificates of Water Availability (C/A) will be issued only to persons and other entities that have met all applicable requirement of the Association including but not limited to, have been issued or are eligible to be issued a membership in the Association for service to existing improvements or to proposed improvements within the Association's water service area that the applicant will build in accordance with the requirements of applicable land use and building codes, and that have paid the requisite fee as set forth in the Association's rate schedule. C/A's shall not exceed the number of requested ERUs actually needed or available as determined by the Association. Specific procedures pertaining to C/A's are as follows:

1. The C/A will be valid for a period of one year, expiring automatically unless the applicant applies for and receives in writing, as approved by the Board, an extension of time one year period prior to the date of expiration,

2. An extension of the C/A for not more than one year may be granted by the Board subject to the following. The applicant shall advise the Association of the need for an extension at least sixty (60) days prior to the date of expiration of the C/A, and shall present to the Association true, correct and verifiable documentation of the status of each jurisdictional review process and response by the applicant to all requests for information by the land use permitting jurisdiction(s) involved, The Member shall demonstrate just cause, as determined by the Board, with respect to its need for an extension. Factors considered by the Board, in whether just cause exists shall include whether the member has dem-

onstrated diligence in designing proposed improvements and in applying for and prosecuting all necessary building and land use permits. Written documents will be necessary to prove just cause. Extensions to a C/A will not be granted for delays caused by the applicant's failure to diligently pursue the proposed project, or for purposes of speculation or selling of the project or property.

3. Upon receipt of all permits and approvals necessary to proceed with the physical improvements associated with the development, the holder of a C/A shall, within 60 days of receipt of the last permit, apply to Association for a membership and a service connection, or if required, a developer extension agreement and pay all fees at Association's rates then in effect.

4. All C/A's that expire shall become null and void and have no further force or effect. The holder of an expired C/A may reapply for a C/A as if no C/A had been original issued.

- d. This Amended and Restated Emergency Interim Rule applies to all levels of development wherever located throughout the Association's water service area.
- e. To the extent that this motion is inconsistent with any rule, regulation, policy, practice or directive of the Association, the terms of this motion shall prevail.