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A Member Owned Water Co-op

September 30, 2022

Senator Judy Warnick, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
P.O. Box 40413
Olympia, WA 98501

Representative Steve Tharinger, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
P.O. Box 40600
Olympia, WA 98504-0600

Re: Task Force Recommendations

Dear Senator Warnick & Representative Tharinger:

The Sallal Water Association (Sallal) reviewed a copy of the September 19, 2022, letter submitted to you by the City of North Bend. We write today for two reasons. One is to support the Task Force's work towards developing strategies to improve access to new water rights for drinking water utilities. We appreciate the task force's efforts to find a path forward for water utilities in need of water rights to serve growth throughout Washington. The second reason is to correct egregious misinformation that the City of North Bend has put forward about the Sallal Water Association. Contrary to the city's claims, Sallal is a well-respected water utility with an outstanding record of compliance with state and federal regulations.

Sallal is a Group A water system that primarily serves the areas of unincorporated King County to the north and south of North Bend and, because of annexation, also serves the eastern portion of the city. Established in 1964 as a non-profit corporation owned by the members of the community it serves, Sallal provides reliable drinking water that meets or exceeds state and federal standards to approximately 6,500 residents of east King County. Sallal has a sound and reliable infrastructure that distributes excellent-quality water at affordable user rates. The association also enjoys strong financial health that allows it to quickly correct problems that may arise. Despite the hard work of Sallal's member-owners and its Board of Trustees, the Supreme Court's 2015 decision in *Foster v. Yelm* places the future of this strong utility at risk because it

prevents us from securing needed water rights to serve the needs of future prospective members of our community.

Sallal was originally formed through an initiative of landowners in unincorporated King County that wanted a reliable water system to support development of their rural residential properties. Throughout its early history, the Sallal service area remained zoned for rural residential development in unincorporated King County. This changed in 2009 when the City of North Bend annexed a significant swath of land through the middle of Sallal's service area. The annexation resulted in approximately one-third of Sallal's service area falling within the city boundary, and approximately one-third of Sallal members having their residency changed from rural King county to North Bend.

The annexation also brought dramatic changes in land use planning that shifted the area away from low-density rural residential development to high density mixed residential and commercial development. The Sallal Water Association had no authority to affect these land use decisions by the city and county, but Sallal nevertheless used its best efforts to develop strategies to serve growth in the annexation area. The Foster decision now prevents us from fully utilizing the physical capabilities of our Rattlesnake wellfield to serve that growth.

Existing water rights for Sallal were secured in 1986, with a supplemental right added in 1989. In 2001 Sallal applied to the Department of Ecology (Ecology) for an expanded water right to serve anticipated development. Ecology did not act on the application at that time and instead placed it on a waiting list. Ecology did not act on this application until 2019.

In 2008, after spending a decade in a building moratorium because of significant violations of their water rights, the City of North Bend secured a water right for their Centennial Well Field. Ecology's record of decision for this water right identified that this new water right was to provide potable water for the City of North Bend, including portions of the city in Sallal's service area. The decision also identified the use of Sallal's Rattlesnake Well Field as a possible source of water the city could use as a backup supply of mitigation water. Sallal did not object to the decision with the understanding that Sallal and the city would negotiate in good faith an agreement that would provide water to Sallal to serve the city's urban growth area. This agreement would also make mitigation water available to the city. Unfortunately, Sallal's attempts to begin these negotiations following the 2008 decision were met with unworkable demands from the city.

Ecology notified Sallal in 2019 that it was ready to process our 2001 water rights application. Although Sallal still remained willing to negotiate an agreement with the city, we requested that Ecology move forward with our application due to the ongoing uncertainty that negotiations would result in a mutually beneficial contract. By this time, however, the Supreme Court's Foster Decision dramatically changed the nature of water rights mitigation in the state. Although we developed a conceptual mitigation plan that proposed to use similar strategies that the city used to mitigate their 2008 water right, this concept was rejected because it did not meet the Foster standards. We were also told by Ecology that we would not be able to propose any mitigation strategy that would be acceptable under Foster.

Over the 15 years since Ecology extended water rights for the city's Centennial Well Field, Sallal made multiple attempts to negotiate a mutually beneficial agreement with the city. These attempts were met with silence or intransigence until the city began receiving pressure for not securing adequate mitigation. In 2017, Sallal and the city began more intensive discussions regarding a potential agreement and exchanged draft agreements. These negotiations have unfortunately stalled more than once because of the city's insistence on a convoluted framework that includes terms that will require all Sallal members 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). 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. This unresolved issue is at the heart of why Sallal has been unable to resolve the supply contract negotiation with the City

Contrary to the City's erroneous assertion, Sallal has never refused to negotiate in good faith a water supply agreement with North Bend. Despite the challenges, Sallal has attempted to remain engaged in negotiations and recently exchanged new drafts of key water supply and mitigation provisions. While we remain open to negotiating an agreement with the city, Sallal's Board of Trustees cannot accept terms that place undue risk on the association and its member-owners.

Sallal has invested millions of dollars to build the infrastructure it needs to provide high quality drinking water to our current and future members both inside the city's annexed territory and in unincorporated King County. We are in the best position to provide reliable water service at affordable rates to the area. Unfortunately, the Foster decision stands in our way of securing the water rights we need to provide this service.

The Sallal Water Association appreciates the work of the Foster Task Force. We recognize, however, that the work is not done. The Foster Decision has set an impossible standard that prevents utilities like Sallal from providing a vital public service. We need the legislature's help to pass legislation in 2023 that provides a pathway for reasonable water rights mitigation strategies.

Sincerely,



Daylin Baker
Vice President
Sallal Board of Trustees

cc:

Members, Joint Legislative Task Force on Water Resource Mitigation
5th Legislative District Delegation
Sheri K. Miller - Field Operations Manager Office of Drinking Water - DOH
Derek Pell, Department of Health, ODW Northwest Regional Office Manager
Laura Watson, Director, Department of Ecology
City of North Bend

Matt Baerwalde, Snoqualmie Indian Tribe
Anne Savery and Kurt Nelson, Tulalip Tribes
Carrie Sessions, Executive Policy Office
Sarah Perry - King County Council Member