



425/888-3650

Sallal Water Association strives to provide pure, untreated water at low cost to members.

April 2019 Newsletter

Based on the large turnout of concerned Member's at the Annual Meeting, the Board is providing a monthly newsletter to better keep members informed.

NOTICE: Please see www.sallal.com for information on how to apply for a new vacancy on the board.

Q & A

Submit your additional questions to info@sallal.com

Q: The FAQ document indicates that Sallal's water right application was set aside "due to availability of water from the Centennial Well." When DOE (Ecology) granted the North Bend Centennial Well water right permit G1-26617(A), was there a formal condition in the permit that the well is also to provide water for Sallal? If so, and if North Bend is failing to negotiate in good faith regarding a water agreement with Sallal, is there a grievance process with DOE that can be pursued to compel North Bend to negotiate in good faith?

A: There is no condition in the City of North Bend's (City) permit that the well must also provide water for Sallal, but it is clearly stated in the documentation for the City's Centennial Well permit that the plan was to sell water to Sallal in order for Sallal to serve the Urban Growth Area (UGA) until such time as the City can take over service directly to the UGA. That has been the City's historical intent. However, Department of Ecology has not viewed these future intentions as conditions of the Centennial permit.

Q: What is the time frame by which these matters need to be resolved?

A: There is no timeframe prescribed by any regulating entity (such as Ecology or Dept of Health). The pressure is increasing for the City to offer water to the properties in Sallal's service area within the Urban Growth Area (UGA) that we are unable to serve ourselves. In fact, they have already issued certificates of water to two developments within Sallal's service area and just recently a developer has filed a petition to allow it to extend a City-owned and operated water main into Sallal's service territory.

Q: At present time, what does the Board feel is the best course of action if an agreement with North Bend cannot be reached?

A: The Board is soliciting ideas from members because we'd like to know how to best represent what the members want. Should we try to shrink our service area by trying to sell some part of it to the City or allowing the City to serve new growth within some portion of Sallal's service area? Should we try to buy water from the City without selling them any mitigation water? *In this case, mitigation is the process of*

returning water back to the Snoqualmie River during low river flow periods to lessen the impacts caused by the pumping/use of the Centennial well.

Please submit your opinions and ideas of what Sallal should do to info@sallal.com.

The quickest short-term solution may be to see if the City would sell us water without us selling them mitigation water. The next easiest path may be to see if they would be interested in serving some part of the area that is expected to have the greatest growth down North Bend Way. We need to hear ideas and preferences from members.

Q: Ensuring that property owners within the Sallal service area can fully enjoy and benefit from their property without fear of being able to obtain a certificate of water availability is of utmost importance. I have been a member for 25 years and own property in unincorporated King County with the potential to short plat it into 4 parcels. To have that opportunity denied because Sallal has committed its remaining water capacity to new developments within the North Bend UGA is not acceptable. Other members at the recent annual meeting expressed similar concerns. What is being done to address this? One consideration would be to apportion Sallal's remaining water rights capacity based on the seniority of members and the potential of members to develop their property. Please comment on that consideration.

A: Without a change to either supply or demand, Sallal's service area will be at significant risk of being invaded by the City. We are required to serve everyone in our service area, on a first come, first serve basis. We know of no legal way of allocating remaining capacity based on seniority of membership. New developments that are within our service area are occurring because land owners are choosing to develop their property, just as you may one day desire to develop yours. If members want everyone to maintain the availability of water to maximize future property development, we all need to find and agree to a long-term solution to the supply/demand problem that is both legal as well as practical.

Q: How many existing Sallal members reside within the North Bend UGA?

A: Current estimates put approximately 36% of current Sallal connections within the UGA. To break it down, approximately 21% of Sallal connections are within City limits, 15% outside City limits but within the UGA, and 64% in Unincorporated King County (not in UGA).

Q: As a general consideration, increasing the supply to the Sallal system sufficient to support current and future growth is the preferred course of action. However, given the uncertainties of that prospect, by selling that portion of the Sallal system within the UGA to North Bend, the demand on the Sallal water right will be reduced, thus allowing for future growth within the remainder of the system. The proceeds from such a sale could be used as capital reserve to maintain/upgrade the remainder of the Sallal system. To what extent has the Board researched this possibility including any system modifications needed to implement the asset transfer and the associated costs?

A: Given the relatively recent deterioration of the negotiations with the City over a wholesale water agreement, the Board has not yet fully investigated this option. We also do not have any sense from the City regarding their willingness to make such a purchase. However, we expect that the Board will attempt to investigate this option further with the City, including variations such as selling parts of the system or allowing the City to serve only the part within the city limits, or perhaps just the area down North Bend Way with the greatest growth demands. We plan to engage the membership in response to such a proposal, once we learn more from the City about what options are truly viable for them, which requires

the City's willingness to engage in discussions about this. It's a difficult subject to broach considering it may involve involuntary transfer of some current Sallal members to service by the City.

Q: If North Bend were to pursue an eminent domain action, does Sallal have a legal argument to successfully defend against such action? If not, to what extent would North Bend be able to acquire the Sallal system – only that portion that exists within the joint service area (UGA), or the entire system including those portions within unincorporated King County?

A: At the annual members meeting, Sallal's attorney described this situation by saying that our legal protections from takeover are only in place while we can serve. So being unable to provide water to meet the demand in our service area makes Sallal vulnerable to takeover. The *extent* of the City's ability to take over is a question that may have to play out in the legal system, but the greatest vulnerability is certainly within the City boundary or UGA. Mr. Rigos of the City was quoted in a recent [Living Snoqualmie](#) online article as preferring to take over the entirety of Sallal, *including our water rights*, but maintaining the system separately. We are unable to speculate on the legal strength of a case that the City might make to justify a complete takeover.

Per a board members recent conversation with the Department of Health about this, the City would have to demonstrate that it is in the public's best interest for them to take over the Sallal system.

We also must consider that any attempt by Sallal to stop the City from serving those we cannot serve would almost certainly be met with lawsuits from those we are unable to serve. Therefore, we must carefully consider the liability to Sallal Water Association of any attempt to prevent the City from serving the areas we cannot.

Q: Why was Sallal denied additional new water withdrawal rights from Department of Ecology (DOE) if North Bend was able to obtain a significant new water right for the Centennial Well? It would seem that the proposed well locations are all pumping from the same aquifer. Is this a political issue or a technical issue?

A: Sallal has a pending new water rights application to DOE that was submitted in 2001. It has never been acted upon by the agency. It was, in effect, set aside so that the agency could work on the City's application for the Centennial Well. The City was in a water connection moratorium, which in turn translated into a building development moratorium, at the time and had inadvertently exceeded its water rights. The City was prepared to spend seven figures on lawyers and hydrogeologists to develop a mitigation program involving return flows from its sewer system and buying water from Seattle Public Utilities (SPU) - which it has done. Currently Sallal's water rights do not require mitigation, because at the time that they were permitted by DOE, mitigation rules had not been implemented. New wells in the basin now require mitigation.

The City has contracted their hydrogeological consultants (Golder Associates) to assess the current and projected water demands and how best to provide backup mitigation for the Centennial Well. The Board is awaiting this report to better understand the potential impact and practicality of Sallal providing backup mitigation water on the City's behalf.

The hydrogeological situation is complex, so we are hoping the report contracted by the City will provide some answers regarding the need for more details as to the practicality and extent of Sallal Wells 1, 2, and new Well 4 to provide mitigation water to the City, and the amount necessary, if any.

Q: Are there any other practical strategies that can be considered for obtaining new water rights or increasing the capacity of the existing water rights?

A: Given the present state of the water right laws, which require immediate one for one mitigation of all amounts withdrawn from a well that is junior to an instream flow setting that is not being met, it may not be feasible for Sallal to file a new water rights application or to revive the 2001 application. DOE took the North Bend UGA into account when issuing the water right for the Centennial Well and it would likely be unwilling to grant a duplicate right for that service by Sallal, or to amend the City's water right to transfer a portion to the Sallal service area. Sallal is unaware of any water rights for sale in the basin that could be transferred to its service area.

As a bit of background, when Sallal was formed in the 1960's, it started off by buying water from SPU. But in the 1980's, SPU transferred all tap locations to points downstream of SPU's water treatment facilities. This was not feasible for Sallal, so SPU accommodated Sallal in the transition by granting an easement in its watershed for the Rattlesnake wells (Sallal wells 1 & 2). At that time (mid 1980's) water rights could still be acquired and Sallal was able to get a water right for those wells.

Exhibit B - Joint Water Service Area

