

Why this Contract with North Bend is NOT Good for Sallal

1. **The Contract Fails to Meet Basic Requirements:**
 - a. A contract with North Bend could be a mutually beneficial arrangement, but the terms of such agreement must be favorable to Sallal and protect Sallal's interests – which are to supply safe, reliable, and plentiful water to its members at a reasonable price.
 - b. **Key Issue** - An agreement shall not result in negative impacts to the availability of water and rates to Sallal members. In 2018 Sallal members communicated that requirement by an overwhelming margin in their Special Meeting and advisory vote – of the 273 participants, **83% of members voted against a contract** without those protections.
 - c. Also, an agreement shall not prevent Sallal from enjoying the full benefit of its water right (696AF and 1691gpm) for its own consumptive use.
 - d. **The Problem** - The terms of the DRAFT agreement as currently written **fail** to meet these requirements. In fact, under these terms it is very likely that Sallal members will be exposed to forced water curtailments that they would not have otherwise experienced were it not for this agreement. There has been no analysis, no reasoning, and no explanation as to how the agreement will prevent these likely outcomes. Multiple scenarios can be derived from current and projected water data operating under terms of the agreement indicating that negative impacts can occur.
2. **The Contract Increases Risk to Sallal:**
 - a. The contract as written puts Sallal into the position of being the **primary** mitigation source rather than Hobo Springs as originally contemplated. This significantly raises Sallal's risk that water won't be available when it needs it.
 - b. The water exchange arrangement between Sallal and North Bend as described in the Centennial Well ROE anticipated Sallal to be a **backup** to Hobo Springs, using **surplus** water when available, to **supplement** water from Hobo Springs when Hobo Springs supply is insufficient. The terms of the contract have unraveled this arrangement by making Sallal the primary mitigation source, which increases the risk to Sallal that water availability to its members will be negatively impacted.
 - c. The contract also allows the City to take mitigation water from Sallal before Sallal has reserved that water first by way of prior purchases from the City (banking). This significantly raises Sallal's risk that water won't be available when it needs it.
3. **Negative Impacts to Sallal Water Availability Are Likely:**
 - a. The current contract terms expose Sallal members to the risk of forced water curtailment. This will arise due to the City's planned growth that will lie within Sallal's existing service area. The extent of this new growth attached to the Sallal system will increase demand far beyond the limits of Sallal's water right, thus making Sallal **dependent** on water from the City's Centennial Well.
 - b. The City will also experience growth within its service area which will also be supplied from Centennial Well. The combined demand from Sallal and the City become the critical factor in understanding how much water needs to be supplied from Centennial Well. That amount of production may not be possible during periods when mitigation is also required, resulting in supply shortages.
 - c. Since there is no way to isolate the new growth from the rest of the Sallal members, **all** Sallal members will be negatively impacted during these events.

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- d. Such events could last for weeks at a time based on the historical data – in 2022 instream flows were below the minimum thresholds for more than 90 days continuous. With weather and climate change uncertainties, these scenarios could increase in frequency, duration, and magnitude.
 - e. Engineering analysis to assess the full range of scenarios to understand the consequences of the contract have not been performed. Analyses of the combined demand of Sallal and the City in conjunction with the available supply of mitigation water have not been evaluated across the range of current and anticipated future conditions.
 - f. North Bend has already experienced at least 138 days per year requiring mitigation water to be added to the river. North Bend has already provided at least 68 million gallons per year of mitigation water, which is over 200AF. These metrics are projected to increase due to increased demand, as well as weather and climate change uncertainties.
 - g. The majority of Sallal members live in unincorporated King County and have no say in the policies and regulations influencing this outcome. To suggest that a contract would protect the self-governance virtue of Sallal is to deny the reality of what is being contemplated. Under terms of this contract, Sallal will become attached to the City water system and be subjected to the mitigation requirements of the Centennial Well. Without adequate terms in the agreement to protect Sallal members from experiencing negative impacts to their water availability, the contract is a failure.
4. **The Threat of Condemnation Never Goes Away:**
- a. The risk of condemnation or takeover by the City is not waived or otherwise eliminated by way of the agreement. In fact, terms in the agreement say so. The City will always have the right to exercise its power of eminent domain. Believing that entering into an agreement with North Bend with terms that are risky to Sallal’s water availability on the premise such arrangements will forego condemnation is careless thinking.
 - b. Sallal has viable defenses to a takeover, including condemnation, by way of the federal statute 7 USC 1926(b), which relevant case law indicates leans in our favor. While there is no guarantee in litigation, suggestions by the contract proponents of imminent defeat in a condemnation proceeding do not appear to align with the preliminary research provided to date.
 - c. From the research it is found that the vast majority of the federal courts that have addressed the scope of the statute have held that it must be construed liberally in order to effectuate the Congressional purpose of protecting a federal borrower’s service territory against invasion by other utilities.
 - d. One such example (*North Alamo Water, 5th, Supply Corp. v. City of San Juan, 90 F.3d 910, 915 Cir. 1996*) states, “The service area of a federally indebted water association is sacrosanct. Every federal court to have interpreted §1926(b) has concluded that the statute should be liberally interpreted to protect FmHA-indebted rural water associations from municipal encroachment”.
 - e. Another example *City of Madison, Mississippi v. Bear Creek Water Association, Inc., 816 F.2d 1057, 1059 (5th Cir. 1987)* informs us that the United States Court of Appeals for the Fifth Circuit affirmed, holding that 7 U.S.C. § 1926(b) does indeed prohibit any municipality's taking via condemnation proceedings a water association's right to furnish water services, so long as that water association is indebted to FmHA.
 - f. Because the threat of condemnation never goes away, the risk of a successful condemnation proceeding initiated by the City would increase if the two water systems are integrated by way

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of this contract. Given this potential outcome, the terms in any such contract must protect Sallal's interests and be iron clad. Unfortunately, that is not what we currently have. Our proposed edits have provided terms that correct these deficiencies. Refusal by the City to accept such reasonable terms should be viewed as a signal as to its real intentions.

5. **Cost Impacts to Sallal Members Due to the Contract are Unknown:**

- a. The suggestion by the contract proponents that costs will increase significantly without an agreement is not supported by any vetted analysis. Any representations about cost made to date are unsubstantiated. Many water systems are not able to grow and successfully continue to operate by way of funding their operations, maintenance, and capital improvements from their existing customer base. Sallal can do the same.
- b. A cost analysis was authorized by the board in October 2022 but that analysis has yet to be performed. Cost impacts with and without a water agreement are unknown. Some factors to consider:
 - i. A cost analysis must consider the increased cost of labor to operate and maintain the expanded system. Additional staff will be needed with wages, benefits, equipment, and tools.
 - ii. It must consider the increased cost of insurance.
 - iii. It must consider the use of borrowed money in addition to self-funding capital projects. Leveraging our cash flow position with low interest loans to fund larger CIP projects, together with nominal rate adjustments must be considered.
- c. Wholesale water purchased from the City will be at a **premium** price as compared to water produced by Sallal. The exact cost has not been defined in the terms of the agreement – this is a major deficiency. How this premium cost is apportioned to Sallal members has not been defined, but it could reasonably require creation of a separate customer class for Sallal UGA members to pay. Otherwise, spreading this cost to all Sallal customers who would otherwise not depend on the City water would be an unfair increase in their water rate.
- d. Per DOH records, there are 191 Type A water systems in King County. Of those, 51 have Blue operating permits, 139 have Green operating permits, and one has a Red operating permit. Of the Green and Blue permits, there are many water systems that are not able to support additional growth and are able to continue funding their operation with member rates while still meeting all DOH requirements for safety and reliability.
- e. Funding future O&M and capital improvements from a fixed customer base is viable with proper management. To date, an objective examination of this scenario has not been performed. It is not correct to assume that only a contract with North Bend is the appropriate solution for Sallal.

6. **Money from the State has Risky Conditions:**

- a. The purported money from the legislative budget is misrepresented. The money (\$2.2 million) is conditioned on a signed agreement that ensures a **minimum** of 100AF of **permanent** mitigation supply for the City. What does that mean and how have terms and conditions in the DRAFT agreement been influenced by this requirement? Who decides when it has been satisfied?
- b. There is no equivalent requirement of the City to ensure any amount of water supplied to Sallal – this is a **one-way street** that clearly favors the City. Attaching ourselves to this money subjects Sallal to commitments that favor the City at the expense of Sallal members.
- c. The money is associated with a “Consolidation” Line Item – is this laying the groundwork for a City takeover of Sallal?

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7. **Property Values will Not be Negatively Impacted:**
 - a. There is no evidence to indicate that property values would be negatively affected if Sallal reaches the limits of its water right and is unable to serve new members.
 - b. That suggestion made by the proponents of the agreement is not supported by any analysis to validate such a claim. Many water purveyors are unable to serve new customers – at least 51 in King County alone. If anything, the value of properties will increase based on the supply of buildable land.
8. **Duty to Serve is Limited:**
 - a. The duty to serve requirement applies only to the extent the water purveyor has adequate water supply. At the point that Sallal reaches the limit of its water right, its duty to serve beyond that no longer exists. This outcome can be managed **with minimal risk** to Sallal by adjusting our service area to match the limits of our supply. A Water System Plan amendment is the mechanism to accomplish this which the regulatory agencies have confirmed and have encouraged. Sallal has previously done this as noted in our Water System Plan.
 - b. For persons desiring water, they can solicit service from the City, other water purveyors, or install their own exempt well. If additional water supply can be obtained by Sallal, then growth can resume. As mentioned previously, there are other prospective supply options including working with Seattle Public Utilities for wholesale potable water, working with interested parties regarding the Snoqualmie Aquifer project, collaborating with other water purveyors to create area wide mitigation sources.
9. **Water Conservation Policy:**
 - a. The City of North Bend approved their Water Conservation Ordinance (WCO) in 2020. As you would suspect it applied to all citizens of North Bend whether or not the citizens were in North Bend's water service area. This affected several hundred Sallal Members. Sallal objected.
 - b. The results after a couple of years of negotiations is a contract that includes the City's WCO applicable to all Sallal members within City limits.
 - c. That still wasn't enough for the City and so the contract also requires that Sallal shall adopt a water conservation policy, within 180 days of the contract being signed, that is substantially similar to the City's WCO. Of course, there is no description of what substantially similar means nor who decides if the policy is substantially similar to the City's WCO.
 - d. Sallal has always taken water conservation seriously and has focused on two of the most effective ways to conserve water – (1) using an escalating rate structure and (2) maintaining our water Distribution System Leakage below the Department of Ecology's (DOE) requirement to maintain a DSL percentage equal to or less than 10% over a 3-year running average. That can't be said for the City who has struggled to meet the DOE's DSL requirement for the last several years.
 - e. This is just another example of Sallal members being subjugated to unfair contract terms.
10. **USDA Approval Has Not Been Obtained:**
 - a. Sallal has two active loans with USDA Rural Development (RD). Terms of the RD Loan Security Agreements that flow from the Consolidated Farm and Rural Development Act (CFRDA), appear to require contract approval by the Government – that has not occurred.
 - b. Sallal's RD Loan terms also require that all service provided by the facilities shall be subject to the full rates prescribed in Sallal's rules and regulations. The current terms appear to violate that requirement.

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- c. Citations from the CFRDA require loans/grants only to rural water entities for purposes of perpetuating rural properties. Arrangements under a proposed contract with North Bend appear to deviate from that requirement since a large portion of the Sallal service area will become a dense urbanized growth area paid for in part, not only in dollars but in water from our limited water right, by the rural water users who have no say in regard to this development.
11. **Sallal is a Rural Cooperative and Should Not be Compromised by City Policy:**
 - a. Sallal was established to provide water predominately to rural areas in unincorporated King County that were underserved by other means. The successful relationship with USDA Rural Development to obtain low interest rate development loans underscores this fact. USDA Rural Development was created as a federal program designed to perpetuate the viability of rural water systems and the rural character they serve.
 - b. While there is no general objection to the City's development plans (that is for City residents to decide) it is not acceptable to impose the cost and negative impacts of such plans on Sallal members, particularly when the majority of Sallal members have no voice at the City's political table. There is little to no advantage to the Sallal rural members by entering into this contract, but there is considerable risk.
 12. **Excerpt from the 8-18-22 Public Statement:**

The following statement was previously communicated to members – **this has not changed.**

*“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....***”*
 13. **This Contract is Not Acceptable:**

If appropriate terms that protect Sallal member's water availability and costs cannot be reached, then the contract is a loser for Sallal and should not be executed. That is where we are today.