

# **Sallal Water Association**

P.O. Box 378, North Bend, WA 98045  
(425) 888-3650

## **OFFICIAL NOTICE OF SPECIAL MEMBER MEETING, JULY 11<sup>TH</sup> 2023, 6:00 pm RUN-OFF ELECTION FOR ONE TRUSTEE POSITION AND PARTIAL BOARD RECALL**

NOTICE IS HEREBY given that a special meeting of the membership of Sallal Water Association will be held in person at 47230 SE 144<sup>th</sup> Street, North Bend, WA 98045 on Tuesday, July 11, 2023, at 6 pm.

The following items of business will be presented at this meeting:

1. Call to order
2. Proof of notice of meeting
3. Run-Off Election For One Trustee Position

This is a run-off election for one position on the Board of Trustees. The position is for a three-year term to expire March, 2026. The position will be filled based on the person receiving the highest number of votes as long as he receives a majority of the votes cast. Previous candidate Donald Wise has withdrawn from this election.

VOTE FOR ONE (1) of the following nominees: Rich Formisano or Marcus Morissette. A brief resume of each nominee is included with this notice.

4. Election to Recall Four Trustees  
Presentation of Charges and Responses
5. Call to close Voting on Run-off and Recall Election
6. Results of Recall Vote
7. Election of Board Replacement Candidates if Recall Vote Passes
8. Call to close Voting on Replacement Candidates
9. Results of Replacement Candidate Vote
10. Adjournment

Note: Ballot collection and counting will be conducted by a certified public accounting firm. Limited member viewing of the following will begin at 2pm on July 11, 2023, at the Sallal office; opening of the sealed and signed envelopes, and the beginning of the counting process. Ballots not mailed may be delivered in person to the Sallal office beginning at 2pm on July 11, 2023. Ballots will not be accepted at the Sallal office prior to 2pm July 11, 2023.

The Sallal Water Association invites all members to attend this special meeting. IF YOU CANNOT ATTEND, please take the time to vote by mail (ballot included) or complete the proxy and give it to a member who is planning to attend. Each attending member may vote one proxy.

The July 11, 2023 special meeting will serve two purposes.

**1. Conduct a run-off election for one position to the Board of Trustees.**

On March 28, 2023 we held our annual election for two open board positions on the Board of Trustees. These positions are filled based on the candidate who receives a majority of votes of all the votes cast. Only one candidate received the required number of votes to be elected to the board. One position was left unfilled.

On May 1, 2023 we held the run-off election for one open board position. Three members ran for the position and none received a majority vote. Subsequently, one of the three candidates withdrew from the race so now there are only two candidates.

In order to fill the open position the board scheduled this run-off election for the remaining two candidates. We ask that you please vote for the remaining board trustee position. This is your board, your voice.

**2. To conduct a vote of the membership to recall four Board members; and if the vote is affirmative, to vote on their replacements. For the recall to be successful the majority of the membership must vote in favor.**

A member petition was received by the Board Secretary on June 5, 2023. The petition appears to satisfy the requirement of Art. IV, Sec. 6 of the Association's bylaws of 10% of member signatures.

The member petition calls for a vote on the removal of four specified board trustees. The charges setting for the basis for this recall statement is included in this notice. Also included are the responses of the four board members that are subject to the recall petition. At the July 11, 2023 special meeting, [T]he trustee or officer against whom such charges have been presented ... shall have the opportunity at such meeting to be heard in person or by counsel and to present witnesses; and the person or persons presenting such charges against him shall have the same opportunity. Art. IV, Sec. 6 of the Bylaws.

- You are asked to vote on a recall of the four board trustees.
- If the recall vote passes, members that attend the July 11, 2023, meeting in person or by proxy will have the opportunity to vote on replacements to fill the four vacated Board seats pursuant to Art. IV, Sec. 6 of the Association's bylaws.

RCW 24.06.130 requires the recall provision to be in the articles of incorporation. Whether the recall provision in Art. IV., Sec. 6 of the Association's bylaws is valid and enforceable is unknown. All rights to determine the validity of that section are reserved.

Thank you in advance for your participation.

BOARD OF TRUSTEES  
Denise Smutny, President

### CANDIDATES FOR TRUSTEE

**RICH FORMISANO, INCUMBENT:** Rich has been a Board of Trustee since **February 2020**. Mr. Formisano has master's degrees in Mechanical Engineering and Engineering Management. He enjoys spending his free time skiing, golfing, woodworking and helping his wife and neighbors provide and serve meals to the homeless in the valley through RECLAIM (formerly Snoqualmie Valley Shelter Services). In the last 3 years as a Board of Trustee, Rich's goal has been to represent the interests of the members through increased engagement, being transparent and fiscally responsible. Rich is one of the original members of Sallal's Member Advisory Committee (MAC). He volunteered in late 2021 to take over the duties of Board Secretary. He has been actively involved in assisting the staff with oversight of Well #4 & New Reservoir (2020-21) and New Office & Shop (2021-22) capital improvement projects. He also led a team through the preliminary permit process exploring the viability of 2001 Water Right application. He has presented to members an analysis of Chlorine Treatment Alternatives (2020) and the results of the 2001 Water Right Application (2021). Most recently, he developed the PowerPoint presentation used for the Emergency Interim Moratorium Public meeting (Aug 2022). It would be an honor to serve on the Board of Trustees for another term. Respectfully, Rich Formisano

**MARCUS MORISSETTE:** Assistant General Counsel and Chief Privacy Counsel at Argo Group  
As Argo Group's Chief Privacy Counsel, Marcus is responsible for managing Argo Group's compliance with applicable data protection laws, advising business & legal on legal and regulatory issues concerning privacy & information security, and providing guidance to senior leadership on privacy, information security risk management and data strategy. In addition, he also manages global Records & Information Management and Intellectual Property Management. Prior to joining Argo Group, Marcus was a Senior Privacy & Cyber Security Advisor at the law firm of Fenwick & West. He worked with wide range of clients, focusing on the operationalization of their privacy & information security compliance obligations, such as the GDPR, CCPA, and other applicable laws. Marcus was previously the Chief Privacy Officer at eBay, Inc., where he designed and managed the implementation of eBay's GDPR compliance program. He managed a global privacy team of over 12 team members and was responsible for eBay's global privacy & security compliance and privacy operations programs. Marcus currently serves an attorney in the US Navy reserve, and currently serving as Reserve Force Judge Advocate for the Commander of Naval Information Warfare Reserve Command in Ft. Worth, TX. Marcus has a bachelor's in economics from the University of Maryland, and a JD from the

University of Idaho. Marcus is Certified Information Privacy Professional (CIPP/US), a Certified Information Privacy Manager (CIPM), a Certified Information Privacy Technologist (CIPT), a Certified Information Systems Security Professional (CISSP), and a Fellow of Information Privacy (FIP). Holds an active government security clearance. Marcus is married to Kim and has 3 children. He is a Sallal member in good standing, and he and his family reside off of Mt. Si Road.

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**PROXY**

I HEARBY MAKE, CONSTITUTE, AND APPOINT \_\_\_\_\_ as my proxy to vote for me at the Special Meeting of the Membership to be held on Tuesday July 11, 2023. The meeting is held for the purpose of electing a member to serve on the Board of Trustees, a vote on recall of four trustees and, if the recall vote passes, election of replacement trustees.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Member Signature)

\_\_\_\_\_  
(Member Number)

**Petition:**

**Member Petition TO CALL A VOTE on the Removal of 4 Sallal Board Members**

**CHARGES FOR REMOVAL OF BOARD MEMBERS OF**

**SALLAL WATER ASSOCIATION**

To: **Eric O'Brien**, Secretary of the Board Sallal Water Association, 47230 SE 144<sup>th</sup> St. North Bend, WA 98045

I, Jean Buckner, a member of the Sallal Water Association, hereby present charges against **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone** for breaking trust with Sallal's Member-Owners. As required by the by-laws of the corporation, I have attached a petition signed by ten percent of the members of the corporation in support of these charges.

I, Jean Buckner and the petitioners allege that **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone** have broken agreements made by the Sallal Board at the June 11, 2019, special meeting of the members. At the meeting, the then Sallal Board President, Eric O'Brien agreed that no contract with the City of North Bend would be agreed to without holding two member meetings, one month apart in which the Sallal Board would provide an overview of the proposed draft contract and seek member input before contract terms would be agreed to with the City. The rest of the Board agreed with Mr. O'Brien's good faith promise to the members. The promise was repeated in several official Sallal communications and emails between June 11<sup>th</sup>, 2019, and April of 2023.

On April 18<sup>th</sup> 2023, **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone in a 4/3 vote of the Sallal Board, approved the following motion** : "To approve the Agreement for the Wholesale Supply of Water with the City of North Bend in the form and substance as presently presented on the Association's website subject to reasonably obtainable and final modifications acceptable to Associations' Director of Finance and Administration and counsel based on Board and member comments that do not alter the basic substance of the agreement."

This motion removes the ability of Sallal Member-Owners, including Sallal Board Members, to provide substantive feedback regarding the proposed contract. The Motion, approved by **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone in a 4/3 vote of the Board** breaks promises made by the Sallal Board to Member-Owners at the June 11<sup>th</sup>, 2019 Member Meeting referenced above. As a function of this motion, Sallal Member-Owners lose the ability to provide other than superficial input before contract terms are agreed to as the motion precludes Board and Member-Owner comments that might "alter the basic substance of the agreement."

The motion gives all decision making powers to the Association's Director of Finance and Administration and that person is only allowed to make "reasonably obtainable and final modifications" they find acceptable.

As required by the by-laws of the corporation, I have attached a petition signed by ten percent of the members of the corporation in support of these charges.

We request that the Sallal Water Association schedule a special meeting of the members to consider the removal of **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone** from the Board, in accordance with the by-laws of the corporation. We also request that the Board provide us with notice of the time, date, and place of the meeting, and that we be given an opportunity to address the Board regarding this matter.

Furthermore, we request that **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone** be informed, in writing, of the charges presented against him/her, and that he/she be given the opportunity to be heard in person or by counsel and to present witnesses at the meeting. We also request that the person or persons presenting such charges against [Board Member's Name] be given the same opportunity to be heard.

If the removal of **Denise Smutny, Daylin Baker, Joyce Hibma and Shawn McKone** is approved by a majority vote of the members, we request that any other office held by the removed trustee in the corporation be vacated, and that a vacancy in the Board thus created be immediately filled by a vote of a majority of the members present and voting at such meeting for the remainder of the unexpired term of the discharged director. We also request that any vacancy in any office thus created be filled by the trustees from among their number so constituted after the vacancy in the Board has been filled.

#### **Consolidated Statement:**

##### **We kept our promise to hold two meetings before signing the contract.**

On April 18, 2023, a majority of the Board of Trustees voted to approve the draft agreement negotiated with the City. However, this vote did not authorize the Board's President to sign the agreement. The April 18<sup>th</sup> vote was not a final binding obligation to execute the agreement. The vote recognized the commitment made by the Board in 2019 to hold two informational meetings after the city and Sallal agreed to terms and before the parties signed the agreement. The final vote that authorized signing the agreement did not occur until June 5, 2023 – after the second of two informational member meetings. Until June 5<sup>th</sup>, the door remained open for the Board to either vote to accept or reject the agreement.

As a water utility, the Sallal Water Association has a fundamental duty to provide a safe and reliable supply of water to all members within its service area. In fact, Article III.a of Sallal's Articles of Incorporation acknowledges this "Duty to Serve" by listing that the primary purpose of the association is "to generate, purchase, acquire and provide water service for its members or for such other persons as allowed by law". As established in Sallal's bylaws and state law, the members of Sallal rely on the Board of Trustees to make the hard decisions necessary to ensure that the association can fulfill this "Duty to Serve". Approving the recently signed Water Supply Agreement was one of the hard decisions necessary to allow Sallal to fulfill this purpose.

Negotiating a water supply agreement with the City of North Bend as a means of securing additional water for members was not the first choice of the Board. However, this ultimately became the only viable option available after our attempt to secure a new water right failed and we could not negotiate a supply agreement with another utility (specifically Seattle Public Utilities) in a timely manner. Not to act would have placed the association in jeopardy of fulfilling its duty to serve and would have led to a

moratorium, risking rate increases and possible demise. Not acting on the water supply agreement would have violated the Board's obligation to take actions it believes were in the best interests of Sallal.

### **Individual Statements:**

#### **Denise Smutny:**

Regarding the charges that have been alleged against me and three other members of the Sallal Board of Trustees I present the following:

I have a duty to serve all members of Sallal and act in the best interests of Sallal. With over 1900 members it is not likely all members will agree on the course of action taken, but that does not remove my duty to serve all members.

The bylaws of Sallal specifically state that the Board of Trustees is granted the full power and authority to per Article V, Section 1 (m) "To enter into agreements, contracts and other instruments with any person, firm, association, corporation, governmental body or subdivision thereof and to do every act and deed necessary to effectuate same."

The Sallal Board is comprised of individuals with a mix of government and business experience committed to protecting and securing Sallal's future. In 2019 the meeting minutes captured this statement "If Sallal and the City agree on contract terms, the contract will be presented and explained to the members and the Board will listen to member input". The meetings were held, and feedback received. None of the feedback elicited substantive change to the contract as currently agreed to and the Board proceeded by a vote of 5 to 2 to proceed with signing.

Rarely will everyone be happy or in agreement when change occurs, but please note I have only the best interests for Sallal's future in mind when making decisions of this and any magnitude. I ask that you vote NO on the recall of the Trustees and help us move Sallal into the future to continue to provide water to our members and future members.

Denise Smutny – President

#### **Daylin Baker:**

We did not break any promises.

At the June 2019 special meeting, at Jean Buckner's insistence, the Board President agreed to hold two meetings 30 days apart. From the meeting minutes: "...if Sallal and the city agree on contract terms, the contract will be presented and explained to the members and the board will listen to member input."

Every time Jean has asked for confirmation of this commitment over the last four years, she was told we would hold the two meetings before signing the contract, and I have all the emails to prove it. So she has known all along that the commitment was only to not sign until after the two meetings, and that's exactly what we did.

Once we had set the dates for the two meetings, Jean's group got to work going door to door with a petition to try to amend the bylaws again to take away the board's ability to approve the contract. But that bylaw amendment had already been proposed by Anne Herman, leading to the June 2019 special meeting in which 60% of the 506 votes cast rejected her bylaw amendment, making it clear that the

majority wanted the board to make the decision about the contract, NOT the members.

It became clear that Jean had only asked for two meetings 30 days apart in order to give her group the time to try to stop the contract. It was never about ensuring members were well-informed and could give feedback on the contract.

Due to Jean's door-to-door efforts, we had to consider that this may be the last opportunity to get this contract approved and therefore help ensure Sallal's survival. Our attorney agreed that "it would be detrimental to the governance of the Association for the bylaws to be amended" by Jeans group and supported immediate Board action to approve the contract. So at the April 18th board meeting, the four of us voted to approve the contract. We did this knowing that our contract approval could be reversed by the board if needed but would protect the Association from one group imposing its own agenda on all 2000 members.

At the June 5th special board meeting, *after holding both of the member meetings as promised and considering all feedback*, five of us voted again to approve the contract and authorize our President to sign it, which she did the next day.

We held up our end of the commitment while Jean exploited the extra time we'd voluntarily given to try to sabotage the contract. So who really broke the trust?

\*If we are removed, beware that the members present at the July 11th meeting will immediately be able to vote in four new board members of their choosing. If that happens, there is the possibility that Sallal will be governed by the local antigrowth group.

Daylin Baker – Vice President

### **Joyce Hibma**

#### **Allegation submitted by Jean Buckner:**

*"No contract with the City of North Bend would be agreed to without holding two member meetings, one month apart in which the Sallal Board would provide an overview of the proposed draft contract and seek member input before contract terms would be agreed to with the City."*

#### **Response to Allegation from Joyce Hibma:**

No agreement was broken.

The actual agreement per the meeting minutes and historical email communication with Ms. Buckner was: "...if Sallal and the city agree on contract terms, the contract will be presented and explained to the members and the board will listen to member input." And "we would hold the two meetings before signing the contract." This agreement was kept and satisfied as of the second informational member meeting on May 24<sup>th</sup>, 2023.

**It is unfortunate that Ms. Buckner has re-conceptualized the request she made in June of 2019, to this level of financial and wearying burden on members and staff.**



The sole goal of the board is to protect the Association. I have based all decisions on confidential and public information supplied to me by professionals in the field of water. I have based all actions on my understanding of the Bylaws, Rules and Regulations of the Association and motions approved by the majority of the board. There is no place for personal agendas and vendettas on a board, nor should a board member allow or support the personal agendas of an outside party that has potential to cause harm to the Association. The 2019 courtesy commitment to hold two informational meetings *prior to signing* the contract was followed through by myself and my fellow board members. Based on my understanding of the commitment that was made prior to my service on the board, the accusations of the petition are false and does nothing more than exhaust the resources of Sallal's membership and staff.

Joyce Hibma – Treasurer

### **Shawn McKone**

Contrary to the accusations, I and other members of the Board of Trustees have consistently acted in the best interest of the association and in a manner necessary to ensure that Sallal satisfies its “Duty to Serve”. The claim that we “broke trust” with Sallal’s members is false and the specific charge that we “broke a promise...by failing to hold two meetings before agreeing to a contract” completely misrepresents the commitment made in 2019. As reflected in the minutes from the June 11, 2019, special meeting of the members, the Sallal board at the time committed to the following:

- "if Sallal and the city agree on contract terms, the contract will be presented and explained to the members and the board will listen to member input", and
- “we would hold the two meetings before signing the contract.”

Our actions satisfied these “commitments”. I and a majority of the Board of Trustees relied on information provided by our legal and engineering experts along with the opinions of Sallal members to make an informed decision about the water supply agreement. This was a good faith effort that carefully considered available facts to arrive at a decision that I and other members of the Board strongly believe is in the best interests of Sallal. Our vote on April 18, 2023, showed that we “agreed to the contract terms”. Sallal then held two member meetings in May and June prior to signing the contract.

A minority group of members have opposed any agreement with North Bend for many years. They would have had the Board take action to reject the water supply agreement to benefit their agenda – whether it be to oppose any growth in North Bend or to selfishly attempt to deny water to new residents. As a member of Sallal’s Board of Trustees I have a legal and ethical obligation to take actions that are necessary to ensure the organization works for the benefit of all members – not just a vocal minority of members that are pushing their own agenda. This petition to remove me and three other Board members is nothing more than an attempt to replace Board members who are committed to the best interest of Sallal with individuals hand-picked by a special interest group and who will work to promote that group’s agenda. They have failed to show how our actions violate the Board’s legal obligations. The members of the Sallal Water Association must therefore reject this hostile takeover attempt by a special interest group who’s stated mission conflicts with Sallal’s obligations as a water utility.

Shawn McKone - Trustee