

November 26, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
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Seattle, Washington 98104  
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**ORDER**

SUBJECT: Utilities Technical Review Committee file no. **UTRC20191**

**CEDAR RIVER PARTNERS V. SALLAL WATER ASSOCIATION**

Appeal of UTRC Decision on Water Service

Location: 90190 SE North Bend Way, North Bend

Appellant: Friends of the Snoqualmie Valley Trail and River (Friends)  
*represented by* **Jean Buckner**  
46226 SE 139th Place  
North Bend, WA 98045  
Telephone: (425) 747-9187  
Email: jean.buckner@comcast.net

Respondent: Cedar River Partners (Partners)  
*represented by* **Dean Williams**  
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Respondent: City of North Bend (North Bend)  
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Respondent: Sallal Water Association (Sallal)  
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King County: Utilities Technical Review Committee (Committee)  
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### Overview

1. Friends of the Snoqualmie Valley Trail and River (Friends) appeals a decision by King County's Utilities Technical Review Committee (Committee) finding that the Sallal Water Association (Sallal) was not providing timely water service to a Cedar River Partners' (Partners') development project. Because Friends lacks standing, *agrees* that Sallal cannot adequately serve Partners, and does not raise a claim on which relief can be granted, we dismiss Friends' appeal.

### Background

2. In April 2018, the City of North Bend (North Bend) approved Partners' preliminary short plat and binding site plan. Friends appealed that approval to North Bend's examiner, Gary McLean. Examiner McLean dismissed most of Friends' appeal pre-hearing, leaving only consistency with the comprehensive plan, sewer capacity, and water supply for hearing.
3. Post-hearing, in October 2018 examiner McLean approved Partners' preliminary short plat and binding site plan and dismissed the remainder of Friends' appeal. Regarding water supply, examiner McLean observed that the project had two possible water purveyors, Sallal and North Bend. In approving the preliminary short plat, he conditioned final short plat approval on a written guarantee of adequate potable water from Sallal or North Bend. No one appealed examiner McLean's decision.
4. In April 2019, Partners went to the Committee, asserting that Sallal was not providing Partners with timely water service. Sallal, North Bend, and Friends all participated in the Committee's proceedings. In August 2019, the Committee found that Sallal's offer of water services was not timely, and it removed Partners' property from Sallal's service area.

5. The Committee did *not* make any ruling that North Bend could provide water to Partners. In fact, the Committee agreed with Friends that, “Water right(s) or source water and mitigation water appear to be limited for both Sallal and the City of North Bend given the exhibits filed and project development.” Nonetheless, Friends appealed the Committee’s decision to us. North Bend and Partners seek dismissal of Friends’ appeal.

### Analysis

6. Partners asserts that Friends lacks standing because only an applicant or water purveyor may appeal a Committee decision to us. There are provisions in County code that specify (and thus limit) who may appeal to us. *See, e.g.*, KCC 12.18.070.A (respondent or charging party may appeal); KCC 12.19.050 (an aggrieved contractor may appeal). However, the controlling code for appeals of Committee decisions, KCC 13.24.090.B does not limit who may appeal. The default code governing appeals to the examiner similarly does not set a restriction. KCC 20.22.080.A (“a person initiates an appeal”). And given our role to “protect and promote the public and private interests of the community,” KCC 20.22.020.A, we do not lightly read in a limit on who may appeal a County decision where (as Friends has here) that appellant has fully exhausted its administrative remedies.
7. We can envision a hypothetical where someone other than the applicant or purveyor would have standing to challenge a Committee decision. Keeping the party names but changing the scenario, suppose Sallal currently has infrastructure lying east of Partners’ development. Friends owns property just west of Partners’ property. Friends wishes to develop its property. Friends’ hopes rest on Partners expanding the Sallal lines west across the Partners property to near the Friends’ border, so that Friends would only need to expand the Sallal lines a little further west.
8. Continuing with that hypothetical, say Partners challenges Sallal’s ability to timely provide service. Sallal argues that it can timely provide service. The Committee disagrees and shrinks Sallal’s effective service area. Sallal elects not to spend the effort and money appealing. Yet Friends remains convinced that Sallal can timely and reasonably provide water both to Partners and eventually to Friends. Friends thus appeals to us. Friends asserts that extending the Sallal lines all the way from their current location to Friends’ property, or finding an alternative water source, would be prohibitively expensive.
9. In such a hypothetical, we would likely determine that Friends had standing to appeal to us. The Committee’s decision would have prejudiced Friends (and could cause it injury), Friends’ interests in obtaining water (arguably) would have then among the interests the Committee should have considered, and our judgment in Friends’ favor would redress that prejudice. Thus, we are not announcing today any blanket prohibition against someone other than an applicant or purveyor appealing a Committee decision to us.
10. Our facts, however, are very different from that hypothetical. Friends is *not* asserting that the Committee got it wrong in finding that Sallal cannot provide sufficient water service to Partners. Instead, Friends’ initial appeal asserted that Sallal is working off expired certificates, does not have sufficient certificates to cover Partners’ development, and that the conditional certificates Sallal issued are not valid. Friends’ final briefing reiterates that

Sallal does not have authority to provide water to Partners. The Committee’s decision that Sallal cannot timely provide water service to Partners does not prejudice Friends, nor would our decision reversing the Committee and finding that Sallal can timely provide service redress Friends’ actual grievance.

11. Thus, Partners is ultimately correct that Friends lacks standing to appeal the Committee’s decision. However, the reasoning is more nuanced than simply that Friends was neither the developer nor the service provider. We dismiss Friends’ appeal under our specific facts, not simply because someone other than an applicant or purveyor is doing the appealing.
12. We reach the same dismissal result looking through alternative lenses.
13. First, we do not currently have a case or controversy. The Committee determined that Sallal could not adequately serve Partners. Friends does *not* dispute that determination. In fact, Friends explicitly agrees that Sallal cannot serve Partners. That there may be a future dispute based on a future decision to extend North Bend’s service area to Partners does not create a case or controversy related to the Committee’s August 2019 decision removing Sallal from the equation.
14. Second, Friends does not state a claim upon which relief can be granted. Friends is looking to use an appeal of the Committee’s decision on Sallal to shoehorn in a challenge to whether *North Bend* can provide water to Partners. Again, the Committee decision currently on appeal to us did not decide that North Bend could provide water to Partners. In fact, the Committee noted that North Bend’s water rights, source water, and mitigation water appear limited. Finding that the Committee got it wrong, and that Sallal can adequately provide water to Partners, will not provide Friends with relief.

#### Future-Looking

15. Friends was not the only party that misconstrued the scope of Committee’s decision. North Bend sowed confusion by writing that that “individual building permits will likely be issued soon...now that the water situation has been resolved by the [Committee].” That was misleading on two levels.
16. First, asserting that the Committee had “resolved” the “water situation” was erroneous; the Committee did no such thing. The Committee’s decision merely removed Partners from Sallal’s service area. The Committee did not “resolve” that North Bend had could legally and sufficiently serve Partners or that Partners’ water situation was settled.
17. Second, writing that building permits would likely soon be issued—well before final short plat approval—was inconsistent with our Court’s instruction that all water rights requirements must be satisfied and confirmed in writing before final plat approval, and that such requirements may not be kicked to the building permit stage. *Knight v. City of Yelm*, 173 Wn.2d 325, 267 P.3d 973 (2011). In his preliminary short plat decision, examiner McLean wrote that, in light of *Knight*, he was modifying the plat conditions “to make perfectly clear for all parties that the final short plat cannot be approved by the city

until after the applicant provides proof to establish that they have adequate water supplies and infrastructure to serve their project” (emphasis added).

18. Even if North Bend had not muddied the waters, clarity would seem to benefit everyone. Friends’ attempt to cram the square peg of a challenge to North Bend’s potential provision of water services into the round hole of a Committee decision limited to excising Sallal wasted everyone’s time and resources—ours, Friends’, North Bend’s, Partners’, and the Committee’s. Thus it seems sensible to provide a roadmap on when and how to properly challenge water provision. Our good-government hope was that Friends would not continue barking up the wrong trees if it had clear direction on what tree to bark up.
19. We thus asked North Bend to provide, in a supplementary briefing, some clarity about when and how to challenge a future decision on Partners’ water. North Bend’s response was disappointingly unhelpful. Confusion and more wasted resources may follow. Our disappointment, however, does not expand our authority.
20. As the County examiner we only have control over County decision-makers. The County has been and is being transparent. The Committee’s decision explained the limits of its determination and provided appeal information. Later, Committee chair took the time to participate in our prehearing conference and to clarify that the Committee’s decision was limited to removing Partners’ from Sallal’s area and that it did not expand North Bend’s service area. And we take pains below to provide as much information as we can about how one would appeal today’s decision. Yet we have no jurisdiction over any city, and there is not much more we can do to try to stop parties going down future rabbit holes.

#### DECISION:

1. We dismiss Friends’ appeal of the Committee’s August 2019 decision finding that Sallal was not providing timely service to Partners and removing parcel 1423089010 from Sallal’s service area.
2. Our decision today is limited solely to upholding the Committee’s determination that Sallal cannot provide water service to Partners. Just as the Committee’s August 2019 decision did not explicitly or implicitly approve North Bend expanding its water service area to encompass Partners, neither does our decision today.

ORDERED November 26, 2019.



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David Spohr  
King County Hearing Examiner

## **NOTICE OF RIGHT TO APPEAL**

What is clear is that KCC 20.22.040.Q directs the Examiner to make the County’s final decision for this type of case, and that this decision will become final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court.

What is less clear—this being the first appeal of a Committee decision to reach us—is exactly what proceeding to launch. This case fits somewhat, but not neatly, within the Land Use Petition Act (LUPA), chapter 36.70C RCW, framework. Determining whether, how, and when to appeal is ultimately up to an individual would-be appellant, but we offer the following suggestion. Within 21 days a would-be appellant should likely bring, in superior court, a pleading covering its bases with several alternative grounds: a LUPA appeal under chapter 36.70C RCW, a writ of review under chapter 7.16 RCW, a constitutional writ, and a declaratory judgment under chapter 7.24 RCW.

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**CERTIFICATE OF SERVICE**

SUBJECT: Utilities Technical Review Committee file no. **UTRC20191**

**CEDAR RIVER PARTNERS V. SALLAL WATER ASSOCIATION**  
Appeal of UTRC Decision on Water Service

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED November 26, 2019.

**Buckner, Jean**

Hardcopy

**Hirschey, Stephen**

Department of Natural Resources and Parks

**Jonson, Richard**

Jonson & Jonson

Hardcopy

**Keiffer, Eileen**

Kenyon Disend PLLC

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**Kolousková, Duana**

Johns Monroe Mitsunaga Kolousková

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**Stockdale, Mark**

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**Williams, Dean**

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