

December 30, 2016

MEMO

TO: Davin Norene, Board Chair
Steve Willey, Board Vice Chair

FROM: John Roberts

RE: Update on CEO's employment agreement; 2016

Note: Normally, this memo would be addressed to the Board Chair and the Chair of the Compensation and Governance Committee. Due to the recent passing of the Committee Chair, Kay Backer, no Committee Chair successor has yet been named. I have taken the liberty of placing Board Vice Chair Steve Willey due to the vacant C&GC Chair.

Background. In the Employment Agreement ("Agreement") between me and the Conservancy, and according to new policies established by the Board of Directors in 2016, I am required to notify the Board Chair and the Compensation and Governance Committee Chair (see note above) of a process for performance evaluation of the Conservancy's executive officer. This packet of information attempts to follow the Board's new process and address the needs and requirements of the policy and law.

Request for renewal of Employment Agreement. I would like to renew the Employment Agreement between the Conservancy and me. The usual term of the Agreement has been for three (3) years, adjusted annually.

Final comment. The new policy requires an earlier submittal than in the past. A lot of the information normally provided in prior analyses cannot be updated until after the first of the year due to the unavailability of certain data. Therefore, I intend to send a follow-up package of the analysis portion in the next month or so.

Also, while I am always alert to follow Board policy and will, my own view is that the subject of my annual performance review and compensation has become too complex and labor intensive. This process must be onerous, at least, for the Board. Again, however, I am very willing to yield to the Board's desire.

Conclusion.

Thanks for giving me the opportunity to help the Conservancy serve its mission. Please call on me if more information is needed.

Performance Evaluation Practices
Conservancy Executive Director and CEO

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Statement of Purpose. This paper describes the process the Conservancy’s Board of Directors typically uses for Executive Director performance evaluations and related adjustments, if any, to compensation.

Introduction. As a matter of good governance practices, the Board of Directors of the Conservancy conducts annual performance evaluations of the Conservancy’s CEO/Executive Director (“Executive Director”). The evaluation process provides Board members with an opportunity to voice any issues with the Executive Director’s performance and for the Executive Director to learn more about the Board’s expectations.

Performance evaluation. The chair of the Board’s Compensation and Governance Committee (CGC) gathers information regarding the Executive Director’s performance for the prior year. This starts with obtaining from the Executive Director a self-evaluation of the Executive Director’s employment performance for the prior year. The Executive Director submits the self-evaluation to the CGC chair by December 31 of each year.

The CGC chair then sends the submitted Executive Director self-evaluation to Board members along with a request that Board members fill out a performance evaluation form (copy attached) for the Executive Director. The CGC chair requests Board members complete the Executive Director’s performance evaluation form and email it directly to the CGC chair no later than February 1 of each year, including any additional comments regarding:

- 1.) compliance with the Job Description (see below),
- 2.) adherence to the Employment Agreement with the Conservancy, and
- 3.) general performance.

Following receipt of Board members’ evaluations, no later than March 1 of each year, the CGC will synopsize Board members’ evaluation forms into one document.

At the next Board of Directors meeting, in closed session,

- 1.) the CGC chair shares with the Board the results of the CGC compilation of Board member evaluations,
- 2.) the CGC chair shares with the Board any recommendations of the CGC (this report is normally verbal, and is used to initiate discussion among Board members),

- 3.) the Board then discusses and finalizes the evaluation of the Executive Director's performance,
- 4.) after the meeting is completed, the Board Chair and the CGC chair meet with the Executive Director to convey the results of the Board's evaluation,
- 5.) the CGC chair and the Board Chair follow up with a written performance review, and along with the Executive Director's self-evaluation and Executive Director's response (optional) to the Board's performance evaluation, are included in the Executive Director's personnel file by April 15 of each year, and
- 6.) individual Board members' forms are to be held by CGC chair until such time the process is complete; when complete, the forms are destroyed.

Past practice; compensation adjustments. In any CGC meeting (or in non-meeting communications with CGC members) where the Executive Director's performance evaluation is conducted, the CGC also considers the Executive Director's compensation. At this time, the CGC evaluates whether there should be any adjustment to the Executive Director's compensation for the coming 12 months.¹

At the Board of Director's meeting where the Executive Director's performance is evaluated,² the Board discusses any proposed changes to the Executive Director's compensation.³ If there are changes, then these are generally referred to legal counsel, who provides for an amendment to the Employment Agreement between the Executive Director and the Conservancy. This is then scheduled for action at the next regular Board of Directors meeting if it was not acted on at the above-noted Board meeting.

Conclusion. The performance review of the Conservancy's Executive Director is intended as a communications tool. By going through an evaluation process and by communicating the results of this process with the Executive Director, it is more likely the Board and Executive Director are clear on expectations. It also helps insure that at least annually, the Board of Directors engages itself in a discussion as to the adequacy of the services of the Executive Director for the benefit of the Conservancy.

¹ The Board is required to determine that any changes to a chief executive officer's compensation are "just and reasonable." See excerpt from California Government Code, Section 12586(g):

The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees.

The CGC and the Board should have available to them a report to use in making the "just and reasonable determination."

² The Board convenes in Executive Session for the Executive Director's performance evaluation.

³ Action taken to change the Employment Agreement between the Conservancy and its Executive Director, including adjustments to the Executive Director's compensation, if any, are conducted in open session.

<p style="text-align: center;">JOB DESCRIPTION Executive Director The Natomas Basin Conservancy</p>
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February 1999

General: Serves as the chief executive officer. Recommends and participates in the formulation of new policies and makes decisions within existing policies as they have been approved by the Board of Directors. Plans, organizes, directs and coordinates the staff, programs and activities of the organization to assure that objectives are attained and plans fulfilled. Maintains effective internal and external relationships on behalf of the organization. Through management and leadership, achieves economical, productive performance, forward-looking programs and constructive management of the organization.

Specific: Within the limits of the bylaws and policies of the organization, the executive director is responsible for and has commensurate authority to accomplish the duties set forth below:

- Sees that the Board of Directors are kept informed on the conditions and operations of the organization.
- Attends all meetings of the Board of Directors.
- Plans, formulates and recommends for the approval of the Board of Directors, basic policies and programs which further the objectives of the organization.
- Executes the decisions of the Board of Directors.
- Develops, for purposes of day-to-day administration, specific policies, procedures and programs to implement the general policies established by the Board of Directors.
- Establishes a sound organization structure for the headquarters office and recruits, hires, trains and motivates organization staff. Responsible for all hiring and employment terminations. Directs and coordinates all approved programs, projects and major activities of the headquarters staff.
- Maintains effective relationships with other organizations, both public and private.
- In cooperation with the Board of Directors develops and recommends, and upon approval, operates within, an annual budget. Insures that all funds, assets and property of the organization are safeguarded and appropriately administered. Assists with audits that the Board of Directors orders.
- Oversees the collection of fees and other income, properly accounts for their receipt, and reports on this activity to the Board of Directors on a timely basis.

- Performs a secretarial function for the Board of Directors, maintains official minutes and keeps them and all other important organizational papers and documents in an appropriate and safe place.
- Works with legal counsel, accountants and the Board of Directors to make sure the organization is in compliance with all laws, and that financial and accounting rules, standards and regulations are adhered to.
- Is responsible for the planning, promotion and administration of all official meetings of the organization.
- Carries out such other general responsibilities as may be delegated by the Board of Directors.

Relationships: Is responsible to the Chairman/President for the administration of the headquarters office and for the proper interpretation and fulfillment of all of the Executive Director functions, responsibilities and authority. Also, serves as ex-officio to the Board of Directors, without right to vote.

Functions of Executive Director
The Natomas Basin Conservancy
A partial list

Area of engagement to fulfill job requirements	Examples
1. economic analysis	NBHCP Finance Model, MAP alternative fee proposal analysis, Greenbriar HCP fee analysis, etc.
2. implement habitat conservation plans	Natomas Basin Habitat Conservation Plan, Metro Air Park Habitat Conservation Plan; proposed Greenbriar Habitat Conservation Plan.
3. asset accounting and management	\$60 million plus in assets; accounting for audit, federal and state agencies; useful life; long-range planning for replacement, etc.
4. web site content management	design and content provision
5. weed control and management	weed management is independently evaluated and graded each year by biological monitoring contractor; HCP requirements for same, both terrestrial and aquatic.
6. security	property, personnel, contractor, data, archives, etc.
7. interagency and governmental relations	SAFCA, RD1000, NCMWC, CalTrans, U.S. Bureau of Reclamation, Central Valley Regional Water Quality Control Board, U.S. Army Corps of Engineers, Air Resources Board, City of Sacramento, County of Sutter, etc.
8. monitor and manage investment advisors	T. Rowe Price, City of Sacramento, Wells Fargo Advisors, staff
9. crop protection materials management	understand and guide authorized use of pesticide on Conservancy property
10. general property management	4,200 acres
11. employee and personnel management	hire, motivate and retain staff

12. insurance property, liability, directors and officers, machinery and boiler, workers compensation, etc.
13. irrigation and water with farm tenants, on marsh complexes, manage Conservancy's 11 percent interest in the Natomas Central Water Company, Bureau of Reclamation allocations and certifications, State Water Resources Control Board, etc.
14. agronomy farming on 2,100-plus acres, milling and marketing affiliations, federal farm program participation, livestock, etc.
15. contractor relationships manage farmer contractors, land maintenance contractors, biological monitoring contractors, fencing contractors, well drilling and maintenance contractors, legal counsel, accounting, etc.
16. archive and document management HCP requires Conservancy serve as repository and archivist for all documents related to the HCP, IAs and Plan Operator; formats, retrieval, off-site storage, public access, etc.
17. Board relations work with the Board of Directors on matters ranging from inquiries to meeting organization and serving committees of the Board.
18. "customer" relations regular and reliable communication with those the Conservancy serves as Plan Operator for.

Employment Agreement Key Points History

John R. Roberts	Employee	Amendment 1	Amendment 2	Amendment 3	Amendment 4	Amendment 5	Amendment 6	Amendment 7	Amendment 8	Amendment 9	Amendment 10	Amendment 11	Amendment 12	Amendment 13	Amendment 14
Date of Execution	03.22.01	05.08.03	08.12.04	01.04.05	03.22.06	11.09.07	05.30.08	04.27.09	05.11.10	07.07.11	06.06.12	03.15.13	03.05.14	03.15.15	03.15.16
Term	3 years	3 years	<i>no change</i>	<i>no change</i>	3 years	3 years	3 years	3 years	3 years	3 years	3 years	3 years	3 years	3 years	3 years
Beginning Date	03.15.01	03.15.03	<i>no change</i>	<i>no change</i>	03.15.06	03.15.07	03.15.08	04.27.09	03.15.10	03.15.11	03.15.12	03.15.13	03.15.14	03.15.15	03.15.16
Ending Date	03.15.03	03.15.06	<i>no change</i>	<i>no change</i>	03.15.09	03.15.10	03.15.11	03.15.12	03.14.13	03.15.14	03.15.15	03.15.16	03.15.17	03.15.18	03.15.19
Monthly Compensation	\$8,800	<i>no change</i>	<i>no change</i>	\$12,500	\$13,125	\$13,573.88	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	\$14,116.84	<i>no change</i>	\$14,331.42	\$14,976.34
Monthly Auto Allowance	\$500	<i>no change</i>	\$850	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>
Annual Leave Accrual	9.38/12.50	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	15.63	15.63	no limit	no limit	no limit	no limit	no limit	no limit	no limit	no limit
Annual Sick Time Accrual	12 days	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>
Monthly Paid Health Insurance	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Annual Company Paid Disability Insurance	no	no	no	no	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107	\$1,107
Monthly SEP IRA (% of employee's gross monthly salary)	8%	10%	<i>no change</i>	<i>no change</i>	<i>no change</i>	13%	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>	<i>no change</i>

Annual Leave/Sick Leave Accrual History:

at 9.38 hours per month = 15 days. Each year thereafter accrual is at 12.50 hours per month = 20 days. Maximum annual accrual 35 days.

March 22, 2001 - maximum annual sick time accrual

March 15, 2007 - annual leave accrues at 15.63 hours per month = 25 days. Maximum annual accrual 35 days. Employee earned vacation over 35 days (262.5 hours) is paid at year-end and not carried forward.

March 15, 2009 - annual leave accrues at 15.63 hours per month = 25 days. Annual accrual will no longer

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“Just and reasonable” Worksheet

Consideration of a change in the Employment Agreement between the Conservancy and its Executive Director

This purpose of this document is only to assist in determining that the Conservancy Executive Director compensation meets “just and reasonable” standards.

December 30, 2016

The Board or an authorized committee of the Board is required to determine that changes to a chief executive officer’s compensation are “just and reasonable.” See excerpt from California Government Code, Section 12586(g):

The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer’s compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees.

There are four sources used to help determine if the CEO’s compensation meets a “just and reasonable” standard in this worksheet:

- Excerpts from *Association Compensation & Benefits Study, 2014 - 2015 Edition*. American Society of Association Executives. Job Description & Salary Schedule. This is the most current study available from ASAE. It is the primary resource for non-profit organization compensation administration.
- City and County of Sacramento (for comparable positions or relevant for other reasons).
- Levels of compensation for previous jobs held by the Executive Director in Sacramento (this was requested by a previous Conservancy Board).
- Levels of compensation for California Department of Food and Agriculture Marketing Branch compensation survey for 2013.

1. Association Compensation & Benefits Study, 2014-2015 Edition¹

The most prevalent of the non-profit organization compensation studies comes from the American Society of Association Executives in Washington, D.C. Its extensive surveys are commonly used in compensation administration by non-profit organizations throughout the United States. In the table below, please find excerpts from the Study that may be helpful.

¹ From: *Association Compensation & Benefits Study, 2014-2015 Edition*. American Society of Association Executives. Washington, D.C.

**Relevant Excerpts from
 Association Compensation & Benefits Study, 2014 - 2015 Edition***

Non-profit organization comparators by type	Median (\$)	Average (\$)	Source
CEO Base Salary and Total Compensation by Total Budget (\$1,000,000 to \$4,999,999) for <i>trade associations</i> (not membership organizations); 94 organizations reporting	179,563 base 200,910 total	184,929 base 219,849 total	Table 1.1
CEO Base Salary and Total Compensation by Total Budget (\$1,000,000 to \$4,999,999) for <i>professional associations</i> (not membership organizations); 95 organizations reporting	151,000 base 178,950 total	166,562 base 186,822 total	Table 1.1
CEO Base Salary and Total Compensation Summary Data by Select Metropolitan Area-Sacramento; 11 organizations reporting	150,000 base 156,000 total	234,800 base 334,109 total	Table 1.6
CEO Total Compensation by Total Annual Budget, \$1,000,000 to \$4,999,999 (most number of reported samples)	186,492	n/a	Figure 6

*"Total" compensation includes base compensation, other cash compensation and employer-provided deferred compensation. The Conservancy does not provide other cash compensation or deferred compensation benefits.

Non-tabled data includes:

--"A majority (74.5%) provided merit increases averaging 3.0 percent in the current year. (Page 28) down from 4.0 percent last year. Subsequent data show a similar overall increase for 2015 as well. Accordingly, these figures would need to be aged by six percent to estimate a good, contemporaneous comparator.

--Most organizations (94%) conduct salary reviews for full time staff on an annual basis. (Page 21)

--Special note: Compensation amounts presented above are adjusted upward *very significantly* for total budget size that is larger than \$1million to \$5 million category. The Conservancy's revenues have exceeded \$17 million annually (highest year), and \$8.2 million was the revenue in 2012.

2. Job Description & Salary Schedule, City of Sacramento, County of Sacramento

Prior Conservancy Board of Director discussions included mention that the Conservancy Executive Director position would likely fit into the City of Sacramento's Deputy City Manager compensation classification. The City no longer lists a Deputy City Manager job position, so the Director of Director of Public Works and Assistant City Manager classifications have been used

as substitutes. Also added is the County of Sacramento since it has multiple similar positions. These are updated below. Source: “Government Compensation in California,” Controller’s Office, State of California, January 2016. *Important note:* these listings are for positions that include a Cal-PERS or similar benefit package. The Conservancy does not participate in CalPERS or any other defined benefit pension plan.

Classification	2015 Wages*
Director of Public Works, City	\$191,456
Assistant City Manager, City	\$193,048**
Assistant Executive Officer, County	\$236,954
Chief Deputy County Executive, County	\$220,388***
Director of Community Development, County	\$203,950

*does not include CalPERS or other pension benefits or health care costs, etc.

**another Assistant City Manager was listed at \$155,765

***other Chief Deputy County Executive listings include \$215,156 and \$213,896.

3. Levels of compensation for previous jobs held in Sacramento.

In an early Board discussion on appropriate compensation for the Executive Director, Board members asked that in trying to meet the “community standard” test. One comparator was considered to be the CEO’s previous positions and the level of pay set by those employers for his successor(s). The following represents the CEO’s previous employers and what each pays its CEO/Executive Director. The information provided is for the most recent compensation report currently available.

Previous employer	Position	Source	Annual reported Compensation
Sacramento Area Commerce and Trade Organization (renamed Greater Sacramento Area Economic Council)	Executive Director and CEO	Sacramento Bee (2015)	\$500,000 ²
Sacramento Metro Chamber of Commerce	Executive Director and CEO	IRS Form 990 (2014)	n/a ³
California Rice Commission	Executive Director	Department of Food and Agriculture, State of California, Commission (2014)	\$221,000

² The CEO’s exact compensation could not be conformed because he has not had enough time in the job to have a Form 990 filed. However, multiple reports in the Sacramento Bee state that Barry Broome’s compensation is in excess of that stated here.

³ The Chamber’s CEO could not be determined from IRS Form 990 filings for the current Executive Director/President. With the departure of the prior CEO (Matt Mahood), a temporary CEO (Roger Niello) occupied the position until a more permanent CEO was in place. That CEO is Peter Tataishi. The prior CEO’s compensation was \$239,530 in 2014.

4. Levels of compensation for similar type positions in Sacramento.

There are numerous jobs in Sacramento for farming related organizations. However, none are responsible for large farming operations as well as operate complex habitat conservation plans as does the Conservancy. However, there is good, publishable data for these positions available through the California Department of Food and Agriculture's Marketing Branch. In that department's 2013 "Salary Summary," the following results were shown:

For organizations with annual budgets ranging from \$2,500,001 to \$7,500,000, the average budget was \$4,817,360. The range of annual compensation was \$135,100 to \$242,000. The average compensation for this group was \$188,025.⁴ This is 2013 data, and should be aged by approximately three (3) percent per year to get normalized.

The Conservancy's unique position. The Conservancy is caught between the public world and the private world. Unlike private companies, it doesn't have equity compensation programs, restricted stock awards and profit sharing programs, and unlike public employers, doesn't have such benefits as those offered by CalPERS (e.g., defined benefit pension plans and health care). The Conservancy also is comparatively small in terms of staff size, although in some years, its income has been substantially higher than non-profits in Northern California that have been used to make these comparisons.

In order to stay flexible and keep fixed costs at a minimum, the Conservancy has contracted out much of what other organizations would add staff for. This addresses "span of control" issues, whereas it would be easy to "staff up" to show a larger span of control, but this would likely not be in the best interest of the Conservancy. And unlike the very largest non-profits (Sutter Health, VSP, California Farm Bureau Federation, etc.) in the region, many employee benefit programs used by such organizations are impractical for small non-profits like the Conservancy due to relative high costs, administrative burden and compliance liabilities.

I look forward to continued service with the Conservancy, and am quite willing to respond to any questions that may arise.

⁴ Source: "2013 Salary Summary for Chief Executives of California Marketing Programs, California Department of Food and Agriculture."