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ENDORSED FILED

July 6, 2021

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The Honorable Susan E. Green, Presiding Judge  
Sutter County Superior Court  
1175 Civic Center Blvd.  
Yuba City, CA 95993

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF BUTTER  
CLERK OF THE COURT  
By JACKIE LASWELL Deputy

RE: Response to the 2020-2021 Sutter County Civil Grand Jury Report,  
"Development in South Sutter County; Fowl Play in the Natomas Basin?"

Dear Judge Green:

On behalf of The Natomas Basin Conservancy, a California Non-profit Public Benefit Corporation, I submit this response to the Sutter County Grand Jury's report titled, "Development in South Sutter County; Fowl Play in the Natomas Basin?" It pertains only to those remarks that are listed as "Findings" and "Recommendations" in the Grand Jury Report, and only those that have to do with the Natomas Basin Conservancy specifically. The Conservancy has no interest in commenting on, nor does it have purview, with respect to County government and the proposed developments the Grand Jury finds problematic.



### Response to Grand Jury Findings and Recommendations

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John R. Roberts  
*Executive Director*

**F1.** There is a serious communications breakdown between the Conservancy, Sutter County Board of Supervisors and County appointees, both in the time consuming and unclear method of selecting Conservancy board members and insuring our county liaison is actively involved.

Response: There has been no breakdown in communications between the Conservancy and County appointees to the Board of Directors or Sutter County leadership. There are periodic communications, mostly by email and telephone, with the County's CAO and its Principal Planner. These are well documented. Additionally, the County's Principal Planner is invited to and actively participates in the NBHCP Implementation Group, which meets periodically and consists of all "Parties" to the NBHCP, including the Conservancy, the City of Sacramento, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. Occasionally the County's Principal Planner is joined by the County's Development Services Director at these meetings. (Note: no meetings have been held during COVID-19.) Finally, the County's appointees to the Conservancy's Board of Directors meet in session every other month, receive periodic emails from the Conservancy's Executive Director, and a number of Sutter County appointees are contacted and consulted with on various matters, usually related to their expertise and engagement in Board activities (e.g., committee assignments, etc.).

**F3.** Past board of directors at the Conservancy approved risky investments of Sutter County mitigation funds which are still in place and could lead to financial problems in the future.

Response: It would be helpful if the Grand Jury would specify what investments the Conservancy's past Board of Directors approved which could

be deemed "risky." If there were risky investments made, they would have been identified by the independent auditor, by other HCP fee payers (which regularly examine the Conservancy's operations), by the Conservancy's investment advisor, which continues to note the Conservancy's endowment funds are 100 percent invested in T. Rowe Price mutual funds and in accordance with a carefully-approved (by the Board of Directors) investment policy (considered by the investment advisor to be conservative). Or the alleged risky investments would have been identified by one or more of the knowledgeable people who serve and have served on the Conservancy's Board of Directors appointed by Sutter County, which include past members of the Sutter County Board of Supervisors, by attorneys or by the County's senior management appointed to the Conservancy's Board of Directors. Or by a long-standing former Sacramento City Mayor, City Councilmember, multiple former City Managers, an attorney and similar officials (such as City Treasurer's office management executive) appointed by the City of Sacramento. Or, more recently, a CPA in private practice. But we are unaware that any Board member has ever voiced to Conservancy management or the Board of Directors in meeting any concern about such "risky" investments. Instead, they regularly approve the investment policies, as amended, by unanimous vote, which investment policies are followed by the investment advisor (T. Rowe Price).

Additionally, the City of Sacramento's city management officials recently spent approximately a year reviewing details of the Conservancy financials in a due diligence effort, and having completed its review, awarded the Conservancy a non-interest bearing, non-recourse loan of \$2 million to use in purchasing additional mitigation land. If investments were risky, as alleged by the Grand Jury, the City would have identified that and recommended corrective action.

Finally, the Yolo County Grand Jury recently met with the Conservancy, extensively, and ended up posting in its final report that a consequential conservancy organization in Yolo County consider partnering with the Natomas Basin Conservancy,<sup>1</sup> having told Conservancy management that "everywhere we go, when we ask questions about successful conservancy organizations, it seems they always tell us to meet with you." (That is, with the Natomas Basin Conservancy.) If the Conservancy invested its endowment funds in risky investments, the Yolo County Grand Jury would surely not have made the recommendations it did.

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<sup>1</sup> "Final Consolidated Report," 2019-20 Yolo County Grand Jury. page 67. As presented in the report, responses section: "The Plan provides the YHC Board of Directors with the authority to partner with an existing land management agency (a plan operator) such as the Natomas Basin Conservancy that has an existing staff with the required qualifications and infrastructure to manage the Plan and to hire and manage the necessary environmental consultants. Response [by Yolo Habitat Conservancy]: The respondents agree with this finding." Later: By June 30, 2021, the YHC Board of Directors and the member agencies of the JPA should evaluate whether the Plan would be best served by partnering with an existing plan operator, such as the Natomas Basin Conservancy."



R3. The Sutter County Board of Supervisors establish procedures to receive regular annual updates from the Conservancy on impacts of all development in the area within the next 90 days.

Comment: The County has already approved and bound itself by unanimous vote of its Board of Supervisors under contract with the State of California and the U.S. Government the annual reporting process by the Conservancy to all Parties to the NBHCP, including the County. The Conservancy has followed and adhered to that reporting practice and responsibility in each of its 21 years. After the annual reporting process, the County (and all Parties to the Natomas Basin Habitat Conservation Plan) are invited to meet in public session to discuss the annual reporting.

R4. The Sutter County Board of Supervisors immediately direct its members to the Conservancy board of directors to investigate management of the Conservancy endowment funds and change procedures to minimize the financial impact on Sutter County.

Comment: This would be the fifth investigation of the Conservancy emanating from Sutter County in as many years. In contrast, after 21 years, the City of Sacramento has investigated the Conservancy zero times, and Metro Air Park's HCP group has also conducted zero investigations of the Conservancy in its long involvement. The Conservancy welcomes inquiry into the management of its endowment funds just as it has always encouraged and welcomed Sutter County engagement in Conservancy matters.

The Conservancy's investment policies have been shared with Sutter County officials (including as recently as February 1, 2021) and all of the Sutter County appointees to the Conservancy's Board of Directors on a regular basis. It was a Sutter County appointee to the Board that made the motion to accept and approve the investment policies when they were last approved by the Board (via unanimous vote).

Sutter County's Grand Jury has no authority to cause investigations to "change procedures" at the Conservancy. The Conservancy is not operated on behalf of any public entity. During the last federal litigation on the matter of the NBHCP, in which Sutter County was a defendant, Sutter County agreed with the other defendants that the Conservancy *is a separate and non-governmental organization*, and this is clearly stated in the NBHCP. This was approved by the Sutter County Board of Supervisors.

Also approved by the Sutter County Board of Supervisors is Section 8.16 of the NBHCP Implementation Agreement which states as follows: "Neither this Agreement nor the NBHCP shall make or be deemed to make any party to the Agreement the *agent for or the partner of any other party.*" (Emphasis added.)



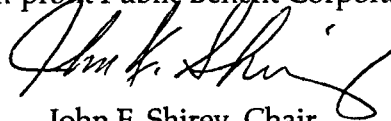
### Conclusion

Finally, the Conservancy believes errors in the overall Grand Jury Report are extensive. Clearly, the manner in which the Grand Jury obtained its information to file its report and make its recommendations are suspect. Moreover, the Grand Jury substantially misrepresented itself when it requested a meeting with Conservancy officials.

Sutter County continues its campaign of one investigation after another of the Conservancy (never once finding any allegations that have been substantiated). In doing so, it is creating a serious burden on the Conservancy, creating higher HCP fees as a result, and burdening other HCP fee payers with needless costs. We encourage Sutter County to re-consider its path.

Sincerely,

The Natomas Basin Conservancy, a California  
Non-profit Public Benefit Corporation



By: John F. Shirey, Chair  
Board of Directors

c: Board of Directors  
The Natomas Basin Conservancy

John Roberts, Executive Director  
The Natomas Basin Conservancy

Edward J. Quinn, Jr.  
Best, Best & Krieger

**RECEIVED**

JUL 14 2021

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER

