

## FEE TITLE DONEE RECOMMENDATION OROVILLE PLANNING UNIT

### EXECUTIVE SUMMARY

The Stewardship Council was created to oversee Pacific Gas and Electric's (PG&E) Land Conservation Commitment, as set forth in the Settlement and Stipulation,<sup>1</sup> to protect over 140,000 acres of land and to preserve and enhance, on an overall basis, the following six beneficial public values (BPVs): protection of the natural habitat of fish, wildlife, and plants; preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The Stewardship Council is responsible for developing a land conservation plan and recommending qualified organizations to become involved in the future stewardship of these lands.

The Oroville planning unit, located in Butte County, consists of 29 legal parcels encompassing approximately 1,336 acres of land. Approximately 1,217 acres have been identified by PG&E as lands outside of Federal Energy Regulatory Commission (FERC) project boundaries and not necessary for current and future utility operations. Therefore, these 1,217 acres of land have been made available for fee title donation. At its September 16, 2010 board meeting, the Stewardship Council board (Board) recommended that one 42 acre legal parcel be donated to the U.S. Bureau of Land Management (BLM). This parcel is the only land BLM applied for in this planning unit. The remaining 1,175 acres of land are available for donation. Stewardship Council staff received and evaluated a land stewardship proposal (LSP) from the California Department of Water Resources (DWR), seeking fee title to a portion of the land available for donation in this planning unit. No other entity submitted a LSP for lands of interest to DWR in this planning unit.

Stewardship Council staff has developed the following recommendation, which has been endorsed by the Watershed Planning Committee (Planning Committee), based on an evaluation of DWR's LSP, follow-up discussions with DWR, and the lack of donee interest by other eligible entities:

**DWR** to become the prospective recipient of fee title to approximately 20 acres available for donation within two parcels (parcels 694 and 695).

**PG&E** to retain fee title to approximately 1,155 acres available for donation within 23 parcels (parcels 670-679, 693, and 680-691). This acreage is in addition to the 119 acres originally designated by PG&E for retention in this planning unit.

If this recommendation that DWR receive fee title to parcels 694 and 695 (20 acres) is approved by the Board, PG&E would negotiate the transaction agreements with DWR, and the Stewardship Council would develop a Land Conservation and Conveyance Plan (LCCP) for the property. A conservation easement between DWR and the recommended easement holder would be negotiated and included as an appendix to the LCCP.

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<sup>1</sup> California Public Utilities Commission Decision 03-12-035, December 18, 2003 (the "Settlement") and the Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "Stipulation").

If this recommendation that PG&E retain approximately 1,155 acres in the Oroville planning unit is approved by the Board, PG&E would negotiate a conservation easement for those lands once the easement holder is approved by the Board. The Stewardship Council would include these lands in the LCCP with the conservation easement included as an appendix.

The Board will also consider the Planning Committee recommendation that the Northern California Regional Land Trust (NCRLT) be selected as the prospective conservation easement holder on the lands recommended for donation to DWR and the lands to be retained by PG&E.

The public will have an opportunity to review and provide comment on the proposed LCCP(s). Comments received will be shared with the Planning Committee before the Planning Committee forwards the proposed LCCP to the Board for its review and approval. Adoption of the LCCP by the Board would be the final step in the Stewardship Council's process.

## I. INTRODUCTION AND BACKGROUND

### a. *Planning Unit Description*

The Oroville planning unit is located in Butte County near Lake Oroville and contains lands that are a part of the Coal Canyon and Lime Saddle hydroelectric projects (which are exempt from Federal Energy Regulatory Commission (FERC) licensing). The majority of the parcels, and the largest contiguous acreage, surround the north and south sides of the Thermalito Diversion Pool (Diversion Pool), and border the FERC Project boundary of the Oroville Facilities Hydroelectric Project. The surrounding ownership of the planning unit consists of mostly private lands.

There is a license for grazing on a portion of the lands available for donation. This license permits grazing on the north side of the Diversion Pool, which has been occurring on the property for over 25 years.

Recreational activities in the planning unit are limited and involve mountain biking, hiking, and horseback riding on trails. The lands within this planning unit contain a variety of native communities including mixed oak woodlands, foothill pine, and oak/pine woodlands with a mosaic of chaparral. In 2005, a new bald eagle nesting territory was established in the area south of the Diversion Pool. In addition, osprey nesting has taken place on transmission line structures.

There are no PG&E Timber Management Units (TMUs) in this planning unit. Regular vegetation management is conducted to control the fuel load.

There is little to no information about cultural resources in this planning unit. Native Americans have been in the area for at least 3,000 years, and recent surveys for the Oroville Facilities relicensing found 803 recorded sites in that project area and many more are suspected.

Parcels 694 and 695 consist of approximately 20 acres, all of which are available for donation and recommended for donation to DWR. These parcels are bounded by DWR land along Lake Oroville to the north and east, by DWR and private land to the south, and by a county road, known as Pentz Road, and DWR land to the west. These parcels contain the canal leading to the Coal Canyon Powerhouse, a penstock, a siphon, and electric distribution facilities. There are several abandoned structures on these parcels that were once part of Parish Camp, a camp facility

for PG&E employees. The property has a moderately flat grade and contains grasses, brush, and oaks.

**b. Donee Evaluation Process**

The Stewardship Council received statements of qualifications (SOQs) from six organizations interested in acquiring fee title to lands available for donation within this planning unit. A list of organizations that submitted SOQs is attached. Based on a review of the SOQs, five of the six organizations were invited to submit an LSP. Of these organizations, only the California Department of Water Resources (DWR) submitted a LSP for the 20 acres that is the subject of this fee donee recommendation. In evaluating DWR's LSP, the following factors were considered:

- The potential donee's programmatic, financial, and legal capacity to maintain the property interest so as to preserve and/or enhance the beneficial public values of the planning unit;
- Anticipated funding needs of the potential donee;
- The management objectives for the Oroville planning unit as set forth in Volume II of the Land Conservation Plan (LCP);
- Public comments received regarding the desired qualifications of potential donees and the future stewardship of the planning unit;
- The requirements of the Settlement and Stipulation; and,
- Other relevant policies, procedures, and goals adopted by the Stewardship Council.

After completing an evaluation of DWR's LSP for the subject lands, Stewardship Council staff is recommending a donation of 20 acres to DWR.

**II. EVALUATION**

Stewardship Council staff's evaluation of the submitted LSP included follow-up discussions with DWR. Based on this evaluation, DWR is being recommended to receive a donation of fee title to lands within the Oroville planning unit as follows, subject to compliance with all of the requirements of the Land Conservation Commitment:

**DWR** to become the prospective recipient of fee title to approximately 20 acres available for donation within two parcels (parcel 694 and 695).

**PG&E** to retain fee title to approximately 1,155 acres available for donation within 23 parcels (parcels 670-679, 693, and 680-691). This acreage is in addition to the 119 acres originally designated by PG&E for retention in this planning unit.

This recommendation is based on a determination that DWR appears to have sufficient financial and organizational capacity to hold and maintain fee title interests on these lands, and that the addition of these lands to existing DWR land holdings would result in the preservation and/or enhancement of the BPVs. Staff's evaluation of DWR and its LSP is further described below.

The recommendation that PG&E retain 1,155 acres is based on the lack of interest of qualified and eligible entities for a fee title donation to those lands.

**a. *Donee Organizational Capacity***

DWR is a major resource management, protection, and emergency response department within the California Natural Resources Agency. DWR's mission is to manage the water resources of California in cooperation with other agencies, to benefit the people, and to protect, restore and enhance the natural and human environments. DWR operates and maintains the California State Water Project, which provides drinking water and water to farms. Other DWR programs involve preserving the natural environment and wildlife, monitoring dam safety, managing floodwaters, conserving water use, and providing technical assistance and funding for projects for local water needs.

Land management responsibilities within DWR are handled by geographically local divisions. In the Oroville region it is DWR's Division of Operations and Maintenance (O&M) – Oroville Field Division that would be responsible for any PG&E watershed lands acquired by DWR. The Oroville Field Division has approximately 114 employees that are responsible for managing local State Water Project (SWP) facilities and lands, including its pumping and hydroelectric plants, dams, reservoirs, aqueducts, buildings, and many recreation facilities. DWR Oroville staff coordinates most recreation management at Lake Oroville with California State Parks. The Lake Oroville State Recreation Area (LOSRA) is one of 278 Units of the State Park System.

This Oroville Field Division is further supported in its land and recreation management at Lake Oroville by several executive and technical services offices in DWR's Sacramento headquarters. Sacramento houses the headquarters of several divisions (each with 100-300 employees) – Operations and Maintenance, Environmental Services, Engineering, and Executive.

DWR owns and manages approximately 108,000 acres of land throughout California – most associated with the State Water Project. Management is often for multiple-use – including environmental and resource protection, recreation, and other beneficial public values.

When initiating relicensing of its Oroville facilities in 2000, DWR contacted over a thousand stakeholders representing local interests and governments, state and federal resource agencies, water agencies, non-governmental organizations and Native American tribes to help develop proposed terms and conditions for a new FERC license. The resulting Settlement Agreement was signed in 2006 by over 50 stakeholders, and identifies and commits DWR to implement actions that will benefit environmental, recreational, cultural, and land use resources.

As part of a Settlement Agreement Recreational Management Plan (SARMP), DWR has established ongoing working groups and public forums in which DWR seeks public input related to its Oroville facilities. The SARMP provides for a Recreation Advisory Committee to meet at least twice annually and DWR has also agreed to hold public workshops twice annually to gather input from the public and provide updates on the projects associated with the new license.

***b. Donee Financial Capacity***

DWR's financial capacity was evaluated based on a review of its operating budget for the current year, as well as financial statements for the three most recent fiscal years. Based on a review of financial statements submitted, DWR appears to possess the financial capacity to own and manage the lands being recommended for donation in the Oroville planning unit.

***c. Management Objectives***

Volume II of the LCP established certain management objectives for the Oroville planning unit (see Volume II Planning Unit Report with attachments). As described below, DWR is seeking fee title to lands within the planning unit to achieve a number of proposed management activities, which are consistent with the established management objectives. DWR proposes to hold fee title to the recommended lands with operating agreements with State Parks to manage these lands.

DWR is seeking a fee title donation in the Oroville planning unit to expand the Lake Oroville State Recreation Area (LOSRA). DWR proposes to undertake the following objectives and activities on lands conveyed to it in the Oroville planning unit:

- Parcels 694 and 695 are adjacent to the Lake Oroville Marina and "Lime Saddle" subunit of LOSRA. During DWR's Oroville Facilities Relicensing, a need was identified to increase the recreation-visitor capacity of the Lake Oroville Marina, and provide additional amenities to service the visitors at LOSRA.

Parcel 694 had long-ago been identified as a prospective acquisition to enable these expanded marina operations and public recreation services. The concept for recreation expansion, in coordination with the California Department of Parks and Recreation (State Parks) and the California Department of Boating and Waterways, on this parcel, would be to provide for expanded visitor parking and day-use facilities.

The proposed development on a portion of parcel 694 would be consistent with State Parks' design standards in place at the time of construction and may include shade ramadas, picnic tables, and benches installed on concrete foundations, a multi-purpose building, and a parking lot with permeable surface incorporating parking spaces for both single vehicles and vehicle-trailer combinations. The size and allowable uses for the multi-purpose building would be negotiated with the proposed conservation easement holder and would be approved by the Board as part of the final LCCP. The proposed development footprint for the parking lot, recreational facilities, and the multi-purpose building would encompass approximately three acres of previously disturbed land.

DWR will conduct investigations into the feasibility of additional recreation development adjacent to this parcel which could include the

possible development of a multi-use trail on a portion of this parcel that would connect these adjacent recreational facilities.

***d. Funding and Financial Costs***

DWR is not seeking any funding from the Stewardship Council, except for that which is necessary to fulfill the property tax neutrality requirement of the Stipulation.

***e. Requirements of the Settlement and Stipulation***

The Stewardship Council's recommendation that DWR receive fee title to certain lands available for donation within this planning unit is subject to compliance with all the requirements of the Land Conservation Commitment. Several of these requirements are highlighted below.

The Stewardship Council would work with PG&E and Butte County to ensure the land conveyance of these parcels achieves property tax neutrality.

A conservation easement will be established on the lands within the planning unit. The conservation easement will include an express reservation of rights for continued operation and maintenance of hydroelectric facilities and associated water delivery facilities, including project replacements and improvements required to meet existing and future water delivery requirements for power generation and consumptive water use by existing users, and compliance with any FERC license, FERC license renewal, or other regulatory requirements on lands to be retained by PG&E. On lands to be conveyed to DWR, the grant deed would reserve to PG&E similar rights for operation and maintenance of hydroelectric facilities and associated water delivery facilities.

***f. Conservation Partners***

The permanent protection of the Oroville planning unit and the future preservation and enhancement of the BPVs may benefit from the participation of land conservation partners. For the purposes of this recommendation, land conservation partners are defined as an organization, other than the prospective fee title donee or conservation easement holder, involved in future activities on the donated lands that contribute to the preservation and enhancement of the BPVs. Land conservation partners may be identified in the LSPs submitted by organizations interested in a fee title donation, or during or after the development of the LCCP. Such organizations and activities may be eligible for Stewardship Council funding, depending on the type of organization, proposed activities, availability of funds, and other factors. Staff would work with the prospective organizations recommended for donation of fee title and conservation easements in this planning unit and evaluate opportunities for land conservation partners.

DWR has agreements and supporting state legislation designating State Parks to manage most recreational facilities within the Oroville Facilities project boundary. State Parks has statutory management responsibilities at Lake Oroville, Diversion Pool, and Thermalito Forebay. DWR proposes to hold fee title to the recommended lands with operating agreements with State Parks to manage the lands.

**III. PUBLIC COMMENTS**

The Stewardship Council has implemented a public outreach program to engage stakeholders and solicit public input on the development and implementation of the land conservation plan. A

summary of key public outreach activities and public comments associated with the Oroville planning unit is attached.

#### IV. RECOMMENDATION

Stewardship Council staff is recommending that fee title to the subject 20 acres be donated to DWR for the following reasons:

- Donation of these lands would further one of the key goals of the Land Conservation Commitment of donating lands to a qualified organization with the financial and organizational capacity to preserve and/or enhance the BPVs.
- DWR appears to have sufficient capacity and interest in preserving and enhancing the BPVs associated with these lands.
- Donation of these lands to DWR would significantly increase the likelihood that the existing use of the land and its contribution to the preservation and enhancement of the BPVs would continue.
- Donation of these lands to DWR would increase the likelihood that the proposed management activities and enhancements described in section II would occur.

#### V. NEXT STEPS FOLLOWING PLANNING COMMITTEE RECOMMENDATION

If the Board approves this recommendation on January 23, 2014, and also approves the recommendation that the NCRLT be selected as the prospective conservation easement holder on the lands recommended for donation to DWR and the lands to be retained by PG&E, staff would invite DWR to negotiate specific terms of the transaction with PG&E, and NCRLT would negotiate a conservation easement with DWR and a separate easement with PG&E.

After review by the Stewardship Council, the proposed conservation easements will be incorporated into a Land Conservation and Conveyance Plan (LCCP) developed for the planning unit. The public will have an opportunity to review and provide comment on the proposed LCCP. Comments received will be shared with the Planning Committee before the Planning Committee forwards the proposed LCCP to the Board for its review and approval. Adoption of the LCCP by the Board would be the final step in the Stewardship Council's process.

#### ATTACHMENTS AND REFERENCE MATERIAL

- Oroville Planning Unit Map
- LCP Volume II Planning Unit Report for the Oroville Planning Unit
- List of Registered Organizations That Submitted SOQs for Lands Available in the Oroville Planning Unit
- Summary of Key Public Outreach Activities and Public Comments Associated with the Oroville Planning Unit