

STAFF RECOMMENDATION MCARTHUR SWAMP PLANNING UNIT

The Stewardship Council was created to oversee PG&E's land conservation commitment to protect over 140,000 acres of land (watershed lands) and to preserve and enhance, on an overall basis, the following six beneficial public values (BPVs): (1) protection of the natural habitat of fish, wildlife, and plants; (2) preservation of open space; (3) outdoor recreation by the general public; (4) sustainable forestry; (5) agricultural uses; and, (6) historic values. As part of this process, 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 McArthur Swamp Planning Unit, located in Shasta County, is the fourth largest of the Stewardship Council's 47 planning units and ranks sixth among all of the planning units in terms of the amount of acreage available for donation. McArthur Swamp contains the spring-fed Big Lake, the Tule and Little Tule Rivers and part of the Fall River, along with 6,000 acres of grassland and wetland areas. The site provides habitat for the endangered Shasta crayfish and several special status species. The multitude of bird species that reside or migrate through the area makes the McArthur Swamp site special. Fall River Valley, where McArthur Swamp is located, is Shasta County's most important waterfowl nesting area and has been designated by the Audubon Society as an Important Bird Area. Boating, fishing, wildlife viewing, and hunting are popular recreational activities at McArthur Swamp. The Rat Farm boat launch on the site also provides the only access to Ahjumawi Lava Springs State Park. The open grasslands of McArthur Swamp provide excellent forage for livestock grazing. McArthur Swamp is located within the ancestral territory of the Ahjumawi Band of the Pit River Tribe and includes several recorded archaeological sites.

A review team, composed of staff and consultants, evaluated two land stewardship proposals for McArthur Swamp. One of these proposals was submitted by the County of Shasta (County) and the California Waterfowl Association (CWA). The other proposal was submitted by a collaborative group consisting of the Fall River Resource Conservation District (RCD), the Pit River Tribe (Tribe), California State Parks – Cascade Sector (State Parks), and the Shasta Land Trust (SLT).

CONSIDERATIONS

In making the below recommendations, staff considered the following:

- The requirements of the Settlement and Stipulation¹
- General requirements outlined in Volume I of the LCP and other relevant policies, procedures, and goals.

¹ 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").

- The management objectives for the McArthur Swamp Planning Unit adopted by the Stewardship Council board in Volume II of the Land Conservation Plan;
- Public comments received regarding the potential donees and future stewardship of the Planning Unit;
- The programmatic, financial, and legal evaluation process that was used to evaluate the potential donees and their land stewardship proposals; and
- The evaluation team's analysis of the potential donees and the two land stewardship proposals.

Staff's Donee Recommendation:

- The selection of **Fall River Resource Conservation District** to receive fee title ownership of approximately 4,724 acres of the 7,663 acre site. The remaining 2,939 acres would be retained by PG&E.
- The selection of **Shasta Land Trust** to hold conservation easements over both the retained and donated lands.

Staff's Conservation Partner Recommendation:

The **California Waterfowl Association**, **California State Parks**, and the **Pit River Tribe** are recommended as conservation partners, to actively participate in future efforts to preserve and enhance the beneficial public values on the lands to be conveyed.²

Staff's recommendation of donees and conservation partners is based on a process that was established by the board in March 2008 for the McArthur Swamp Planning Unit and three other pilot project sites. This process was designed to select the best-suited prospective donees that would have the financial and organizational capacity to preserve and enhance the property and BPVs in accordance with the Land Conservation Plan (Volumes I and II). Key steps in the process consisted of soliciting and registering interested donee organizations, confirming their eligibility, requesting land stewardship proposals from eligible donee organizations, and reviewing and evaluating both the potential donees and their land stewardship proposals. This recommendation is also based on consideration of public comment received in the form of

² In addition to working with owners of donated lands, conservation partners with the concurrence of PG&E may also work with PG&E to implement specific enhancement projects on the lands PG&E retains. These enhancement projects may be funded, either wholly or in part, by the Stewardship Council and would be implemented in concert with other enhancements planned as part of PG&E's ongoing land stewardship programs, FERC License, and other regulatory requirements.

The recommendation of specific organizations by the Stewardship Council does not preclude additional organizations from participating as conservation partners. The selected fee title donee has also received interest in the planning unit from other organizations, such as Ducks Unlimited and Shasta County 4H.

stakeholder correspondence, comments at meetings of the Stewardship Council's board of directors, and via input from public meetings organized and facilitated by the Land Conservation Program staff.

Proposed Demonstration Project:

In recognition of the unique wildlife habitat values of the McArthur Swamp and the importance of the agricultural use of cattle grazing to the local economy, staff is also recommending the creation of a demonstration project to develop and implement a land management plan and projects that are intended to demonstrate how the beneficial public values existing on the property can be harmonized and enhanced to their mutual benefit (See Appendix A). The management objectives of the demonstration project are expected to include enhancing habitat and nesting cover, controlling noxious weed populations, maintaining a diversity of meadow plant species, maintaining or improving water quality, and promoting ethno botanical species, while at the same time allowing for the Planning Unit to continue supporting an economically viable cattle grazing operation.

Proposed Transaction Terms:

Staff recommends that the Planning Committee's recommendation of prospective donees for the McArthur Swamp Planning Unit be accompanied by the following transaction terms:

1. The SLT will hold a conservation easement over both the lands to be retained and conveyed by PG&E, which shall provide for the preservation in perpetuity of the BPVs outlined in Volume II of the Stewardship Council's Land Conservation Plan (LCP).
2. The RCD shall receive fee title to the property, subject to the conservation easement and to PG&E's reserved rights described below.
3. The conservation easement will honor existing agreements for economic uses of the property (the grazing licenses) by reserving to the land owner the right to maintain and renew such agreements.
4. The conservation easement will provide that the land owner will not renew, replace, or enter into any agreements with a lessee without including language pursuant to which the lessee acknowledges that the property is subject to the terms of the conservation easement and reserving to the land owner the right to prevent substantial impairment of the BPVs resulting from such uses. All uses of the lands conveyed in fee simple must be conducted in accordance with best management practices and not significantly impact other BPVs, including protection of the natural habitat of fish, wildlife, and plants, and historic values.
5. The conservation easement will establish a mechanism (such as a land management plan) to provide for ongoing monitoring and future enhancements to the BPVs. The initial land management plan shall be included in the Land Conservation and Conveyance Plan (LCCP) to be submitted to the Stewardship Council board for approval.

6. The Stewardship Council will facilitate the development and implementation of a demonstration project at McArthur Swamp. The demonstration project would lead to the development and implementation of a land management plan and enhancement projects that have the potential to enhance the beneficial public values of wildlife habitat protection and agricultural uses. The demonstration project would also lead to the development of complementary land management plans for the retained and conveyed lands to maximize the preservation and enhancement of the BPVs. The donee of fee title will be required to implement the demonstration projects and any studies necessary to implement the initial land management plan.
7. After transfer of fee title, the new landowner will assume responsibility for compliance with all applicable laws and regulations (including CEQA) applicable to post-closing preservation and enhancement measures on the lands which are conveyed.
8. The recommended donees will provide the Stewardship Council with details concerning the composition and operation of the technical advisory committee, how the three-member management team will function, and the content of the proposed MOU between the Pit River Tribe and the RCD.
9. A third party beneficiary may be appointed by the Stewardship Council for purposes of approving subsequent fee owners and conservation easement holders.
10. PG&E will reserve rights necessary to operate and maintain hydroelectric generation and related facilities in accordance with the terms of the Settlement and Stipulation. The conservation easement and/or other agreements to be negotiated as part of the LCCP process will describe PG&E's reserved rights with reasonable specificity.
11. Future revenue generated from use of the lands donated in fee, such as the grazing licenses, shall be applied to costs associated with property ownership, such as land management costs, future enhancements to the BPVs, and the payment by the fee title holder of property taxes.
12. The land owner will permit reasonable access to the property for such purposes as public recreational access, protection of cultural and historical resources, scientific research into such issues as climate change, and outdoor programs for local and out-of-county youth as described in the conservation easement and/or other agreements to be negotiated as part of the LCCP process. The donee of fee title shall permit Native Americans to have reasonable access to the McArthur Swamp for traditional activities such as ceremonial and spiritual purposes and harvesting plant materials for food, medicinal, or artistic uses.
13. The Stewardship Council may require that legal documents transferring title to the RCD contain a prohibition against future transfers of title without the consent of the Stewardship Council or a third party, or such other restriction on the right to transfer fee title as may be necessary to ensure that the terms of the Land Conservation Commitment are honored in perpetuity.
14. In transferring fee title to the Property, PG&E will hold the donee harmless for hazardous waste or substance liability as provided in the Settlement and Stipulation.

Rationale for Donee Recommendation:

In recommending general acceptance of the RCD/Tribe/State Parks/SLT collaborative proposal (“collaborative proposal”), staff took into account the following key considerations:

1. The collaborative proposal supports the preservation and enhancement of the BPVs identified in the Stewardship Council’s Land Conservation Plan (LCP) and the proposed preservation and enhancement measures are consistent with the management objectives for the property.
2. The stated goals of the collaborative proposal are consistent with the Stewardship Council’s core values, particularly with respect to collaboration.
3. The collaborative proposal supports the continuation and enhancement of existing public recreational uses and economic uses (i.e. grazing) of the property.
4. The organizations that comprise the collaborative proposal team have demonstrated an interest in, knowledge of, and ability to seek grant funding for projects, including watershed improvement projects, meadow and stream restoration projects, and noxious weed management.
5. The Stewardship Council’s Land Conservation Program Funding Policy states that revenues derived from lands donated in fee will be the first source of funding for the costs associated with property ownership, land management, and enhancements to the BPVs. The collaborative proposal indicates that revenues from existing grazing operations and other revenue received would be applied to such costs.
6. The collaborative proposal includes Native American involvement and supports the preservation of cultural values and resources.
7. Overall, the collaborative proposal creates an opportunity for managing, preserving and enhancing the property’s resources in accordance with the goals and objectives of the Land Conservation Commitment and the Land Conservation Plan. It also provides opportunities for youth engagement at the site.
8. The Shasta Land Trust holds 6 conservation easements on properties in Shasta County totaling approximately 15,000 acres, and appears to possess the capacity and experience to hold and administer a conservation easement over the property. It has expressed enthusiasm for participating in the demonstration project.
9. The RCD is well suited to help design and implement a demonstration project to preserve and enhance the Stewardship Council’s BPVs, focusing on agriculture and habitat protection, and has expressed enthusiasm in participating in that process.
10. The Pit River Tribe, which would be jointly managing the property with the RCD, has significant experience owning and managing rural lands, including lands utilized for cattle grazing. The proposal indicates that the Tribe would donate in-kind resources to preserve and enhance the natural habitat of fish, wildlife, and plants, and would seek

grant funding for noxious weed abatement and other projects. The tribe has a successful track record obtaining and managing federal grants and would be an active participant in the demonstration project.

11. California State Parks, which would be a member of the proposed Technical Advisory Committee, would contribute to the overall management of the McArthur Swamp Planning Unit by lending its expertise in managing recreational land, including experience with cultural and natural history.
12. The California Waterfowl Association has significant expertise in implementing wildlife habitat enhancement projects and has demonstrated a strong interest in McArthur Swamp working with the community, resource agencies, and PG&E to prepare management plans for McArthur Swamp over a several year period.

Staff's Funding Recommendation:

The McArthur Swamp planning unit presents a unique opportunity to preserve local grazing traditions while enhancing wildlife habitat, and providing greater access to recreational opportunities in the Fall River Valley. It is the fourth largest of the Stewardship Council's 47 planning units and ranks sixth among all the planning units in terms of the amount of acreage available for donation. For these reasons, staff recommends that the Stewardship Council:

- Fully fund transaction costs as reasonable and appropriate based upon discussions with the recommended donees, PG&E, Shasta County, and other stakeholders.
- Provide a reasonable level of funding to support enhanced management activities on the swamp and to provide a reserve for major maintenance projects.
- Provide grant funding for a portion of the costs of development and implementation of the demonstration project, studies, and other enhancements. Staff will make a more specific funding recommendation to the Planning Committee after the demonstration project has been designed.
- Fully fund property tax neutrality costs as reasonable and appropriate based upon discussions with Shasta County and special tax districts.
- Provide funding for reasonable costs of monitoring and managing a conservation easement (including baseline conditions report, easement recordation, endowment for annual costs, and legal defense).

Final funding priorities and the Stewardship Council's proposed funding commitment will be reflected in the draft LCCP that will be reviewed by the Planning Committee and board prior to their approval.

In support of staff's recommendation, the following information is found in Appendices B, C, and D:

1. A description of the property, key features, and summary of the management objectives that were adopted by the board for the McArthur Swamp Planning Unit;

2. A summary of public outreach conducted by the Stewardship Council and public comments received and considered regarding the potential donees and future stewardship of the planning unit;
3. An overview of the process that was followed to solicit, engage, evaluate, and recommend prospective donees;
4. A summary of the two land stewardship proposals that were submitted; and
5. An overview of the programmatic, financial, and legal evaluation process that was used to evaluate the potential donees and their land stewardship proposals;

APPENDICES

Appendix A - McArthur Swamp Demonstration Project Description

Appendix B - McArthur Swamp Background

Appendix C - McArthur Swamp Planning Unit Report from LCP Volume II

Appendix D - Summary of Public Comments and Correspondence