

## FEE TITLE DONEE RECOMMENDATION BATTLE CREEK PLANNING UNIT

### EXECUTIVE SUMMARY

The Stewardship Council was created to oversee PG&E's 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 Battle Creek planning unit, located in Shasta and Tehama counties, consists of 71 legal parcels encompassing approximately 7,060 acres of land. Approximately 5,830 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 5,830 acres of land have been made available for fee title donation.

Stewardship Council staff received and evaluated two land stewardship proposals (LSPs) from the California Department of Forestry and Fire Protection (CAL FIRE) and the United States Forest Service (USFS) seeking fee title to a portion of the land available for donation in this planning unit. At its May 2, 2012 meeting, the Stewardship Council Board (Board) recommended CAL FIRE as the prospective recipient of fee title to approximately 2,326 acres of land and PG&E to retain approximately 2,362 acres of land previously available for donation at the Battle Creek planning unit.

The Stewardship Council has continued to evaluate opportunities for the recommendation of additional donations of land within this planning unit. At this time, Stewardship Council staff is proposing the following recommendation which has been endorsed by the Watershed Planning Committee (Planning Committee):

**USFS (Lassen National Forest)** as the prospective recipient of fee title to approximately 929 acres available for donation within 3 parcels (Parcels 302, 303 and 304), subject to compliance with all of the requirements of the Land Conservation Commitment.

**PG&E** to retain fee title to approximately 210 acres available for donation within 3 parcels (parcels 331-333).

The Planning Committee also recommended that the Board accept the USFS's proposed Conservation Covenant as providing satisfactory assurance that the parcels recommended for

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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").

donation to the USFS in the Battle Creek planning unit will be managed consistent with the purpose of the Land Conservation Commitment.

If this fee donee recommendation is approved by the Board, PG&E would negotiate the transaction agreements with the USFS, and the Stewardship Council would develop a Land Conservation and Conveyance Plan (LCCP) for the property. If approved by the Board, a conservation covenant between the USFS and the Sierra Nevada Conservancy, under which the Sierra Nevada Conservancy would monitor the uses on the subject lands, would be established in lieu of a conservation easement in order to protect the beneficial public values of the lands donated to the USFS.

If the recommendation that PG&E retain 210 acres is approved by the Board, PG&E would negotiate the conservation easement with the Western Shasta RCD, which was previously recommended to hold conservation easements at the Battle Creek planning unit. The Stewardship Council would also develop a LCCP for the property being retained by PG&E.

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 Battle Creek planning unit is located in both Shasta and Tehama counties at an elevation range of 1,000 to 6,000 feet. The planning unit is located in the vicinity of the rural communities of Shingletown and Manton, approximately 30 miles east of the City of Redding.

PG&E manages several leases and licenses at this planning unit for grazing, water use, recreational use, and aquaculture.

The planning unit provides aquatic habitat within the planning unit's many reservoirs, lakes, creeks, and canals. Rainbow trout are found in the reservoirs and lakes. California Department of Fish and Wildlife currently stocks fish in North Battle Creek Reservoir and Grace and Nora lakes. Fish species within Battle Creek include spring and fall-run Chinook salmon and steelhead trout, among other native and non-native fish species. Special status aquatic species within the planning unit include foothill yellow-legged frog and northwestern pond turtle as well as salmon and steelhead trout.

All developed recreation facilities are located near reservoirs and lakes in the northern half of the planning unit, including a campground and a car-top boat ramp. The North Battle Creek Reservoir is primarily used for camping, boating, and fishing. McCumber Reservoir is a popular local fishing spot, with a host and a boat launch.

A significant portion of the planning unit is forested and primarily managed for sustainable timber production. The planning unit contains eight PG&E Timber Management Units (TMUs), which cover approximately 3,386 timbered acres. Several of the TMUs are currently managed under a Recreation and Sustainable Timber Management prescription, meaning that recreation in this area is compatible with timber management. Outside of designated recreation areas,

sustainable timber management is emphasized. In these areas, TMUs are managed under a Sustainable Timber Management prescription, meaning that sustained timber production is regarded as the highest and best use of the land while also placing an emphasis on protecting water quality, wildlife and fisheries habitat, soils, carbon sequestration, and cultural resources. One TMU is currently managed under a multiple-use prescription, meaning that protection and use of other resources and facilities may preclude sustained timber management as the highest and best use of portions of the TMU.

Grazing currently occurs in the Asbury Pump area, the Wildcat Diversion Dam area south of North Fork Battle Creek, and Inskip Powerhouse area. There is also a USFS range allotment on land adjacent to the reservoir.

The Battle Creek planning unit contains documented historic and prehistoric resources. The planning unit lies within the ancestral territory of the Yana people. The planning unit also has a long history of hydroelectric power generation and several structures associated with hydropower development are eligible for listing on the National Registry of Historical Places.

The parcels subject to this recommendation are located in Shasta County and are generally described as follows. The parcels are heavily forested and surrounded by the Lassen National Forest. The parcels consist of stands of mixed conifers amid mountain meadows and spring fed drainages that contribute to the headwaters of North Battle Creek Reservoir. The area has been managed in the past for timber production and watershed protection. The area is isolated with vehicle access limited to the nearby campground and boat launch.

#### ***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, all six organizations were invited to submit an LSP. Of these organizations, only CAL FIRE and the USFS submitted LSPs for the planning unit:

In evaluating the LSPs, the following factors were considered:

- The potential donees' 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 donees;
- The management objectives for the Battle Creek 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.

At this time, staff has completed its evaluation of the LSPs and is recommending a donation of fee title of some lands to the USFS, in addition to the initial recommendation of a donation of fee title of other lands to CAL FIRE.

## II. EVALUATION

Stewardship Council staff's evaluation of the submitted LSPs included follow-up discussions with the USFS and CAL FIRE. Based on this evaluation, and in consultation with the Planning Committee, the USFS is being recommended to receive a donation of fee title to lands within the Battle Creek planning unit as follows, subject to compliance with all of the requirements of the Land Conservation Commitment:

**USFS (Lassen National Forest)** as the prospective recipient of fee title to approximately 929 acres available for donation within 3 parcels (Parcels 302, 303 and 304).

This recommendation is based on a determination that the USFS appears to have sufficient financial and organizational capacity to hold and maintain the fee title interests so as to preserve and/or enhance the beneficial public values, as identified, on these lands.

**PG&E** to retain fee title to approximately 210 acres available for donation within 3 parcels (parcels 331-333).

A donation of fee title to these 210 acres is not being recommended because it would result in the creation of parcels that would be difficult for a new landowner, other than the USFS, to manage in the future. A donation of these acres to the USFS is not available due to the provisions of Section 12.b.(4) of the Stipulation relating to expanded authority of federal agencies under Part I of the Federal Power Act (FPA).

### **a. Donee Organizational Capacity**

As summarized below, the USFS appears to possess the organizational capacity and experience to own and manage fee title to the properties recommended for donation, and to preserve and enhance the beneficial public values thereon.

#### **USFS (Lassen National Forest)**

- The USFS is a federal agency within the US Department of Agriculture that manages 193 million acres of public land. The mission of the USFS is “to sustain the health, diversity, and productivity of the nation’s forests and grasslands to meet the needs of present and future generations.”
- The Lassen National Forest manages the land surrounding the parcels recommended for donation to them as part of the 1.2 million acre Lassen National Forest. Law, policy, and various regulations govern the management of public lands by the USFS. The 1992-93 Lassen National Forest Land and Resource Management Plan provides direction for the management of natural and cultural resources within the National Forest. The Lassen National Forest also works with various entities to manage the natural and cultural resources in the Pit-McCloud River watershed.

**b. Donee Financial Capacity**

The financial capacity of the USFS was evaluated based on a review of the organization's 2010 operating budget, as well as financial statements for the three prior fiscal years. Based on a review of financial statements submitted, the USFS appears to possess the financial capacity to own and manage the lands being recommended for transfer to them within the Battle Creek planning unit.

**c. Management Objectives**

Volume II of the LCP established certain management objectives for the Battle Creek planning unit (see Volume II Planning Unit Report with attachments). The USFS seeks fee title to lands within the Battle Creek planning unit to achieve a number of proposed management activities, which are described below and appear to be consistent with the established management objectives.

As identified in their proposal and through follow-up discussions with Stewardship Council staff, the Lassen National Forest requested fee title to approximately 1,617 acres of land available for donation that wholly or partially encompass 27 parcels, which are adjacent to or within the Lassen National Forest boundary. Parcels subject to this recommendation are within the Forest boundary. Acquisition of these parcels by the USFS would result in consistent management of the natural and cultural resources found within these parcels and surrounding USFS land.

The USFS proposes to manage donated lands consistent with existing access, uses, and management direction on the surrounding Lassen National Forest lands. Moreover, it has been proposed by the USFS that the 1992-93 Lassen National Forest Land and Resource Management Plan (Forest Plan) be amended to incorporate the conveyed parcels and that specific management directions, standards, and guidelines would be developed consistent with the Stewardship Council's BPVs. Specific management activities identified in the USFS proposal include:

- Conduct baseline management activities for archaeological, boundary, range, recreation, road and trail, special use authorization, vegetation, wildland fire, and wildlife management.
- Survey wildlife as well as sensitive and invasive botanical resources.
- Develop and implement an archaeological survey plan to identify and document cultural and historical resources.
- Enhance public access, including installation of interpretive and directional signage.

**d. Funding**

Consistent with the Stewardship Council's Land Conservation Funding Policy, the Stewardship Council may elect to fund certain costs related to the transfer of fee title and/or costs of enhancements to the beneficial public values on watershed lands. Any costs to be funded by the Stewardship Council would be identified in a management and funding agreement to be developed by the Stewardship Council in coordination with USFS, the prospective donee.

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

Section 12(b)(4) of the Stipulation provides that the “Parties agree that the Land Conservation Commitment does not expand or limit PG&E’s obligation or the rights of others in Federal Energy Regulatory Commission relicensing proceedings or otherwise under Part I of the Federal Power Act (“FPA”). For example, a land disposition that would result in the creation of FPA Section 4(e) authority in PG&E relicensing proceedings would be inconsistent with this provision.” Therefore, the donation of lands to the USFS is conditioned on this Stipulation requirement being satisfied.

The USFS is precluded by existing policy from accepting a conservation easement on lands it acquires. Therefore, a conservation covenant has been proposed by the USFS in lieu of a conservation easement to provide satisfactory assurance that lands conveyed will be managed consistent with the purpose of the Land Conservation Commitment as required by Section 12(d)(2) of the Stipulation. This recommendation to donate fee title to the USFS is also contingent upon the Board finding that the proposed conservation covenant provides satisfactory assurance that the lands conveyed would be managed consistent with the purpose of the Land Conservation Commitment. The Sierra Nevada Conservancy is anticipated to serve as the conservation covenant holder.

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

The grant deed would 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.

**f. Conservation Partners**

The permanent protection of the Battle Creek planning unit, and the future preservation and enhancement of the BPVs, may involve, and benefit from, the participation of land conservation partners. For the purposes of this recommendation, land conservation partners are defined as organizations other than the prospective fee title donee or conservation easement holder that become involved in future activities on the donated lands and 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. The results of this effort would be reflected in the LCCP.

**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 Battle Creek planning unit is attached.

#### **IV. NEXT STEPS**

If the Board adopts this recommendation on November 14, 2013, staff would invite the USFS to negotiate specific terms of the transaction with PG&E. PG&E would also negotiate the terms of the conservation easement with the Western Shasta RCD, which was previously recommended to hold conservation easements at the Battle Creek planning unit over lands being retained by PG&E. The conservation easement and conservation covenant will be incorporated into the LCCPs that are to be developed for this planning unit.

Adoption of the LCCP by the Board would be the final step in the Stewardship Council's process for selecting donees. The proposed LCCP would be made available for public review and comment before it is approved by the Board.

#### **ATTACHMENTS AND REFERENCE MATERIAL**

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