

SECTION 1.0

DESCRIPTION OF THE PROPOSED PROJECT

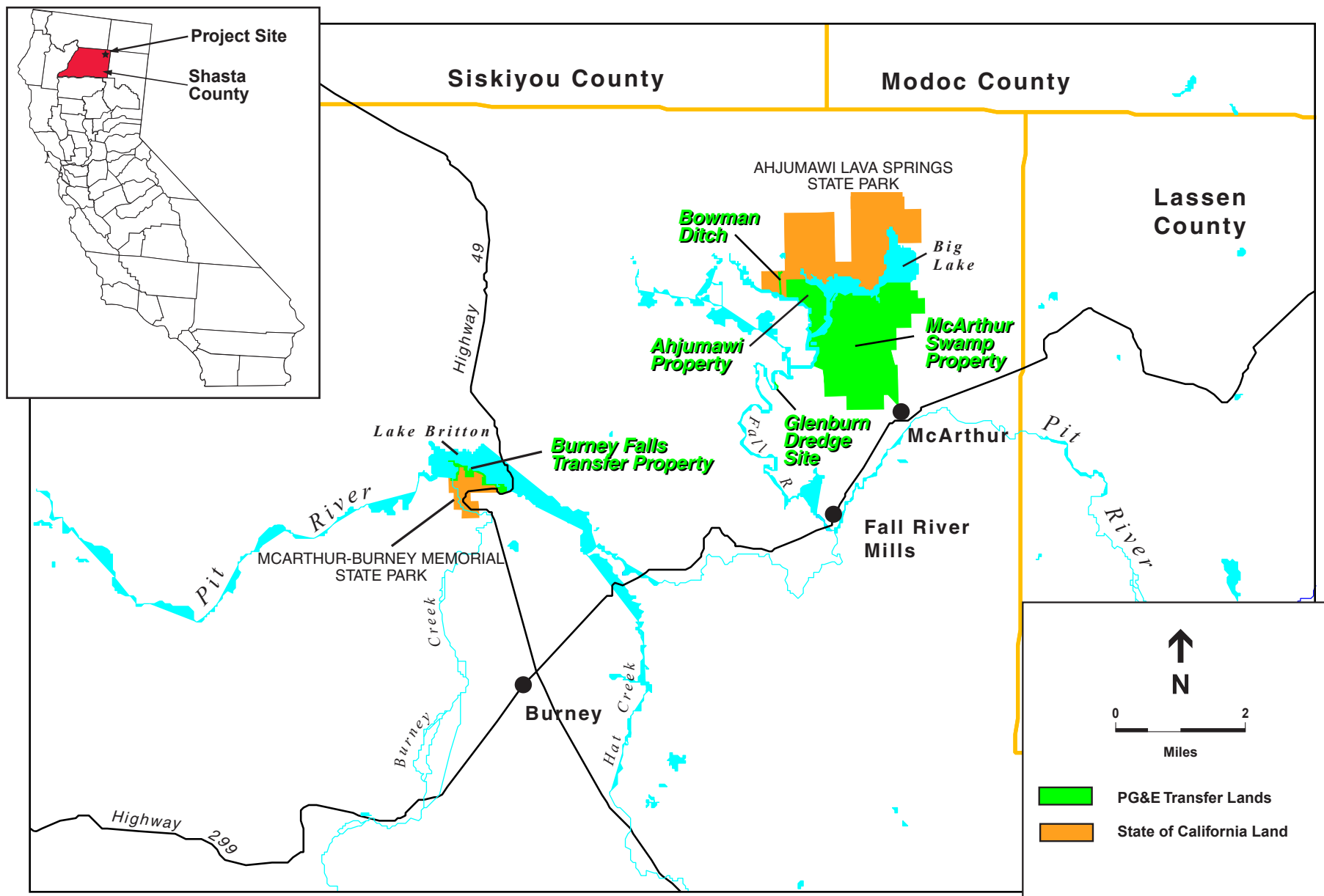
1.1 INTRODUCTION

Pacific Gas and Electric Company (PG&E) currently owns a fragmented network of land in northeastern Shasta County totaling approximately 15,137 acres, associated with the Pit 1, 3, 4 and 5 Hydroelectric Projects (FERC No. 2687 & 233). These lands are situated in three distinct areas including the McArthur-Burney Falls Memorial State Park (Burney Falls), Ahjumawi Lava Beds State Park, and an area south of the Ahjumawi Lava Beds State Park, referred to herein as the McArthur Swamp (**Figure 1-1**). The following document considers PG&E's proposal to market value, transfer and donate a portion of these lands to the California Department of Parks and Recreation (DPR), and the California Waterfowl Association (CWA). The California Public Utilities Commission (CPUC) is considering these actions under two separate applications, A.00-05-029 and A.00-05-030, however for purposes of CEQA analysis, these activities are considered in a single document because of the similarity of the two actions, their interrelatedness and geographic proximity.

1.2 PROJECT LOCATION AND SUMMARY

Burney Falls is located along Highway 89, approximately 20 miles northeast of the town of Burney. Ahjumawi Lava Beds State Park and McArthur Swamp are located immediately northwest of the town of McArthur in the Fall River Valley. The Ahjumawi Lava Beds State Park is currently accessible only by watercraft, due to its location on the northern side of the Tule River. The McArthur Swamp encompasses the entire land area between Ahjumawi Lava Beds State Park and the town of McArthur.

The Proposed Project consists of two separate but related land transfer actions. In May of 2000, PG&E applied to the CPUC for approval to market value and exchange specific lands for equivalently valued lands owned by DPR. The application also addressed PG&E's proposal to subsequently transfer the land received from DPR to CWA, which is a non-profit entity. Lands proposed by PG&E for transfer to DPR are commonly known as "Burney Falls" and "Bowman Ditch." Lands, which will be received by PG&E from DPR (subsequently transferred to CWA), are commonly referred to as the "Ahjumawi Property." A summary of acreages associated with the proposed action is shown on (**Table I-1**). This proposal represents the first action addressed in this document.



SOURCE: Teal Data Center and Environmental Science Associates, 2001.

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Figure 1-1
Regional Location Map

The second land transfer under evaluation as part of this environmental documentation is a proposal to market value and transfer certain properties to CWA. These land properties consist of areas in Shasta County commonly referred to as the McArthur Swamp, the Glenburn Dredge Site, Ahjumawi Property and a dredge used to maintain certain levees associated with those properties. The transaction includes a Conservation Easement and other terms designed to maintain existing land uses, enhance certain habitat types, and preserve cultural and historical resources. Each of these proposals is described in detail below and summarized in **Table 1-1**.

TABLE 1-1
SUMMARY OF THE PROPOSED ACTION

Land Area	Acreage (approx.)	Transfer Party	Initial Receiving Party	Ultimate Receiving Party
Burney Falls Area				
Burney Falls	182.0	PG&E	DPR	DPR
Bowman Ditch	4.0	PG&E	DPR	DPR
Ahjumawi Property	544.0	DPR	PG&E	RMA
McArthur Swamp				
McArthur Swamp	7,400.0	PG&E	CWA	RMA
Glenburn Dredge Site and Dredge	5.5	PG&E	CWA	Wildlife Conservation Board (CDFG)
TOTAL	8,135.5			

SOURCE: Pacific Gas and Electric Company, PEAs for Application's A.00-05-029 and A.00-05-030, October 23, 2000

1.3 PROJECT PURPOSE AND NEED

1.3.1 BURNEY FALLS AND McARTHUR SWAMP TRANSFER

As described by PG&E in the Proponent's Environmental Assessment (PEA) Application No. 00-05-030, the transfers proposed in the Burney Falls application grew out of discussions with DPR concerning PG&E's potential liability for failing to maintain about 4.3 miles of levees (referred to as the State Park Levee), which separate the Ahjumawi Property from the Tule River, as well as discussions with various resource agencies about adjusting the Pit 1 Project License boundaries to remove McArthur Swamp and transfer certain levee maintenance obligations outside the license. According to PG&E the combined transactions that have resulted from these discussions have the benefit of (1) resolving a potential dispute, (2) facilitating the Federal Energy Regulatory Commission's (FERC's) approval to remove McArthur Swamp from the Pit 1 Project boundaries, (thereby reducing costs and enhancing value of the Pit 1 Hydro Project), (3) preserving existing land uses for conservation and recreational purposes (4) preserving water rights and water flows that support hydroelectric operations, and (5) relieving PG&E and its ratepayers of obligations of land ownership, such as responsibility for taxes or environmental liabilities. PG&E also seeks to market value Burney Falls and Bowman Ditch in response to Assembly Bill 1890 (AB 1890). AB 1890 required PG&E to market value all non-nuclear generating facilities by December 31, 2001. Any net value in excess of the book value of the assets is to be credited to ratepayers, while any

combined book value of all assets in excess of the market value is to be considered a transition cost, and may be collected from ratepayers. AB 1890 specified that the market value of generation assets may be determined through a sale, appraisal, or other divestiture.

1.3.2 McARTHUR SWAMP TRANSFER

PG&E's assets on McArthur Swamp (Application No. 00-05-029) consist of transmission and distribution lines, a gauging station, and a canal diversion. Control of the land has also historically allowed PG&E to prevent others from acquiring or using water rights that might interfere with hydroelectric production at the downstream Pit River Powerhouses.

PG&E contends that the donation of McArthur Swamp, the Glenburn Dredge Site, and the dredge to CWA is in the economic interest of ratepayers and also provides many societal benefits. Removal of McArthur Swamp from the Pit 1 Project License will reduce the overall costs of that license and, at the same time, will increase the Pit 1 Project's market value. Such removal, however, can only be accomplished with FERC's approval.

Given concerns that FERC staff raised in the Final Environmental Assessment (FEA) for the Pit 1 Hydro Project, FERC is likely to give its approval only if removal can be shown to be consistent with the safety, environmental, and recreational values that inclusion in the license currently serves. For that reason, a purely commercial sale of McArthur Swamp without the Conservation Easement is not considered feasible. Donation on the terms proposed, which generally has the support of various resource agencies involved by PG&E in the Pit 1 Project License proceeding is judged by PG&E to be the most advantageous way to realize the benefits of removing McArthur Swamp from the license. PG&E also seeks to market value McArthur Swamp and the Glenburn Dredge Site in response to AB 1890.

According to PG&E the property transfer and rate making proposed accomplishes the following objectives:

- Allows PG&E continued access to the transmission and distribution equipment necessary or useful to its utility operation,
- Reserves water rights that support operations in conformance with FERC license requirements and past practices,
- Ensures continued responsible stewardship of natural resources,
- Restores local control and preserves recreational and grazing uses important to the local economy,
- Allows ratepayers to avoid costs and realize the increased market value of the Pit 1 Project.

1.4 BURNEY FALLS TRANSFER

1.4.1 LAKE BRITTON PROPERTY

Approximately 182 acres (of the 15,137 total acres comprising McArthur-Burney Falls Memorial State Park) are proposed for transfer to DPR under this action. The land consists of the south shoreline of Lake Britton, as shown in **Figure 1-2**. Approximately 112 acres of the property is currently within the boundaries of the Pit 3, 4, and 5 hydroelectric project boundary and are subject to the terms and conditions of a FERC License. DPR currently manages Burney Falls as part of the State Park, pursuant to a license agreement with PG&E originally instituted on August 8, 1955. The term of this license has been extended several times and currently expires on October 31, 2003.

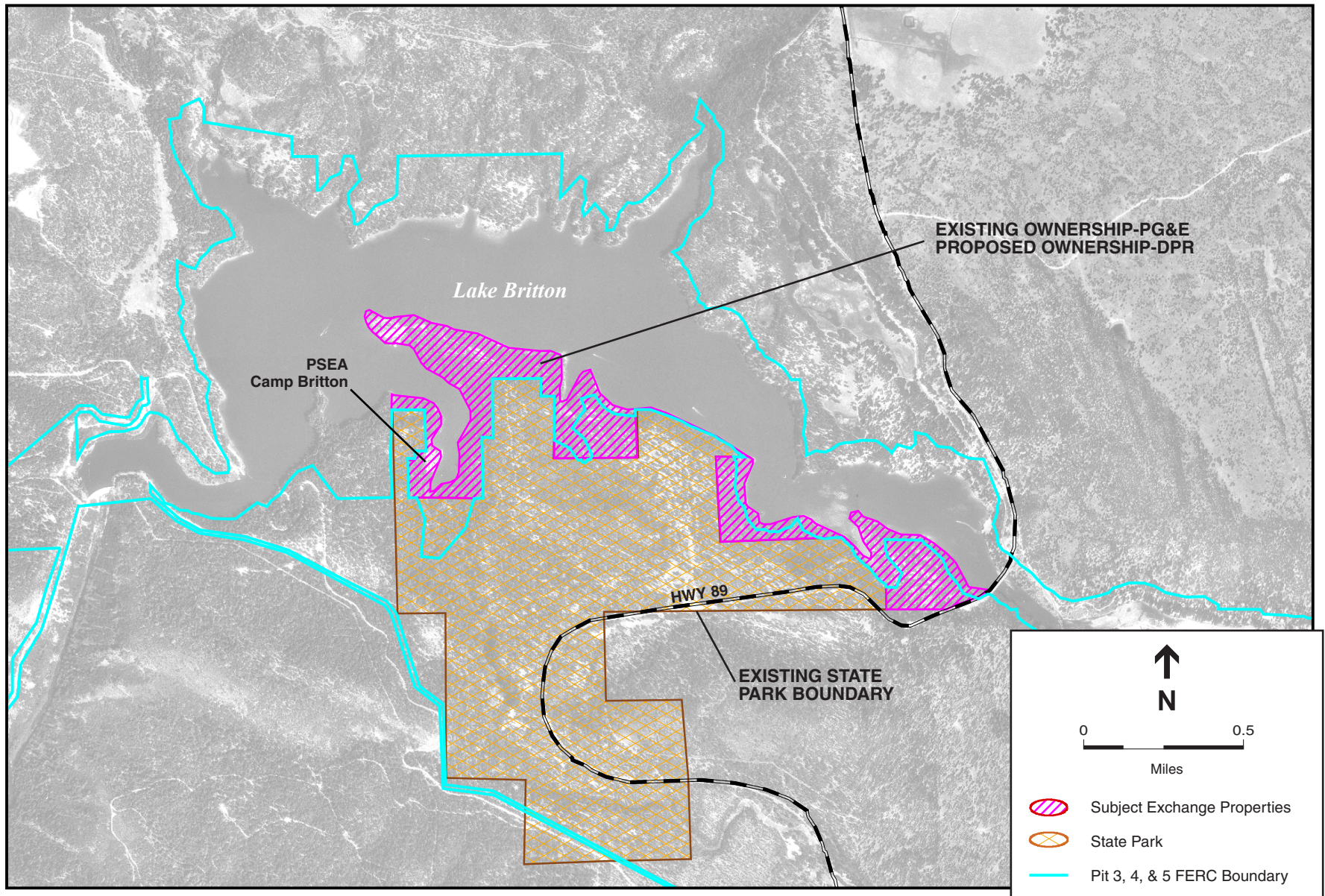
1.4.2 CAMP BRITTON

PG&E has also licensed a portion of the subject property to the Pacific Service Employees Association (PSEA), an association of PG&E's employees, for use as a recreational camp. This area is commonly referred to as "Camp Britton." The Camp Britton License will expire in 2005. If the proposed transfer occurs, the PSEA can continue to utilize Camp Britton under the terms of the existing agreement until expiration. At this time, DPR is undecided regarding future plans or operations of Camp Britton, once the License agreement expires. Once DPR gains control over this property, any future modifications or development of this property would be included in an amendment to the General Plan for the park, subject to CEQA.

Under the proposed terms of this transfer, PG&E will convey to DPR fee interest in the subject property. DPR will take the property subject to the PSEA license agreement, and will assume all of PG&E's rights and obligations under that agreement. PG&E will retain a distribution power line used to provide electricity to Camp Britton, and will reserve easements sufficient to access and maintain that line. PG&E will reserve water rights and easements deemed necessary to operate and maintain the Pit 3, 4, and 5 Project consistent with FERC requirements and past practices.

On June 29, 2000, PG&E applied to FERC for approval to transfer the Burney Falls fee title to DPR without modifying the current boundary for the Pit 3, 4, and 5 Projects. FERC approved this transfer on September 8, 2000. DPR will thus take the property subject to the federal license and its attendant conditions. Should changes to the Pit 3, 4, and 5 Project become desirable later, modifications would be proposed and addressed in the FERC relicensing process for the Pit 3, 4 and 5 Projects.¹

¹ The license for Pit 3, 4, and 5 expires on October 30, 2003. PG&E will likely file the application for relicensing on or about October 30, 2001.



SOURCE: PG&E and Environmental Science Associates, 2001.

PG&E Divestiture / 200496 ■

Figure 1-2
McArthur-Burney Falls SP Transfer Property

1.4.3 BOWMAN DITCH TRANSFER

Bowman Ditch, built in the early 1940s, is a four-acre strip of land contained within the license boundary for PG&E's Pit 1 Project. (See **Figure 1-3**). It is located approximately two miles northwest of McArthur Swamp and is bordered on three sides by the Ahjumawi Lava Beds State Park.² The ditch was built sometime in the early 1940s. Bowman Ditch collects water emanating from springs located to the north and conveys the water to the Little Tule River, which eventually flows through PG&E's Pit River Powerhouses.

PG&E has determined that fee ownership of the Bowman Ditch and certain other areas currently within the Pit 1 Project License boundary are not necessary to support hydroelectric operations. PG&E has therefore petitioned FERC to remove these lands from the license boundary, and proposes to divest these lands.

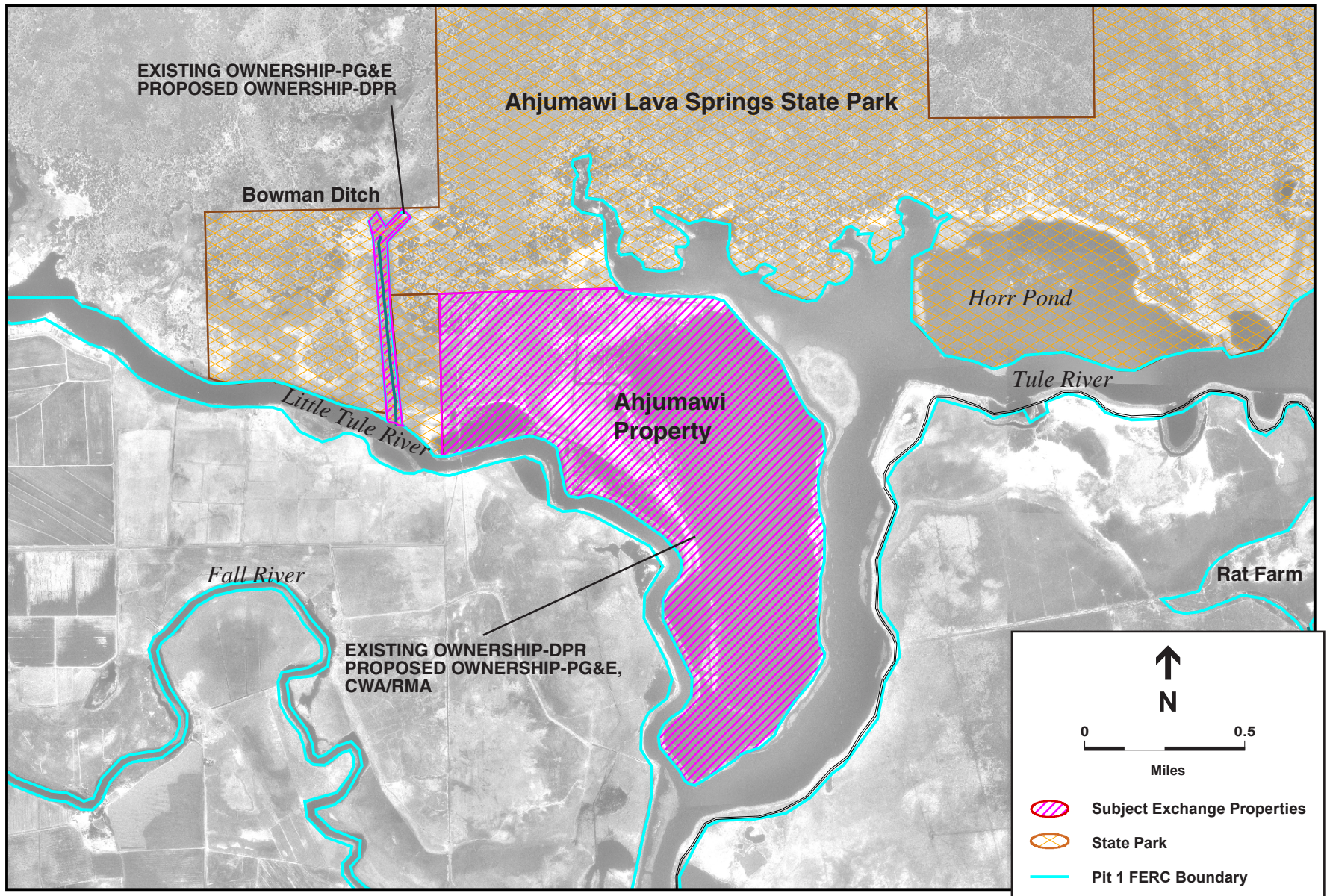
As part of this project, PG&E proposes to reserve water rights associated with Bowman Ditch, including property access for monitoring and enforcement of these rights. DPR cannot legally divert the water flowing to the Little Tule River (then to the Fall River and the Pit River Powerhouses) without the permission of PG&E.

1.4.4 AHJUMAWI PROPERTY TRANSFER

The Ahjumawi Property is located adjacent to PG&E's Pit 1 Project and is immediately north of PG&E's property at McArthur Swamp. (See **Figure 1-3**). DPR currently owns and maintains the Ahjumawi Property as part of the Ahjumawi Lava Beds State Park as a natural wilderness setting with primitive camping sites and pit toilets. Water is available from the many springs at the park, but it must be purified. DPR has not prepared a General Plan for the area, but its use is governed and restricted by the general provisions pertaining to lands classified as a "state park." Public access to the State Park is limited to watercraft only. As a condition of the Pit 1 Project License, PG&E provides a boat launch and day use area on the south shore of Big Lake located at the terminus of an access road referred to as Rat Farm Road, see **Figure 1-4**. This boat launch is the primary point of departure for access to Ahjumawi Lava Beds State Park.

In exchange for Burney Falls and Bowman Ditch, DPR will transfer the approximately 544-acres of property which forms a peninsula between the Little Tule and Tule Rivers. Previously, about 4.3 miles of levees (the State Park Levee) have separated the Ahjumawi Property from the rivers. Although the State owns the levees, they are project features included within the boundary for the Pit 1 Project license. As such, PG&E has in the past taken steps to maintain the levees, and FERC may require additional maintenance in the future. In recent years, however, the levees have been damaged by storms, erosion, and muskrats resulting in flooding of a portion of Ahjumawi Lava Beds State Park, including almost all of the Ahjumawi Property that is the subject of the proposed transfers.

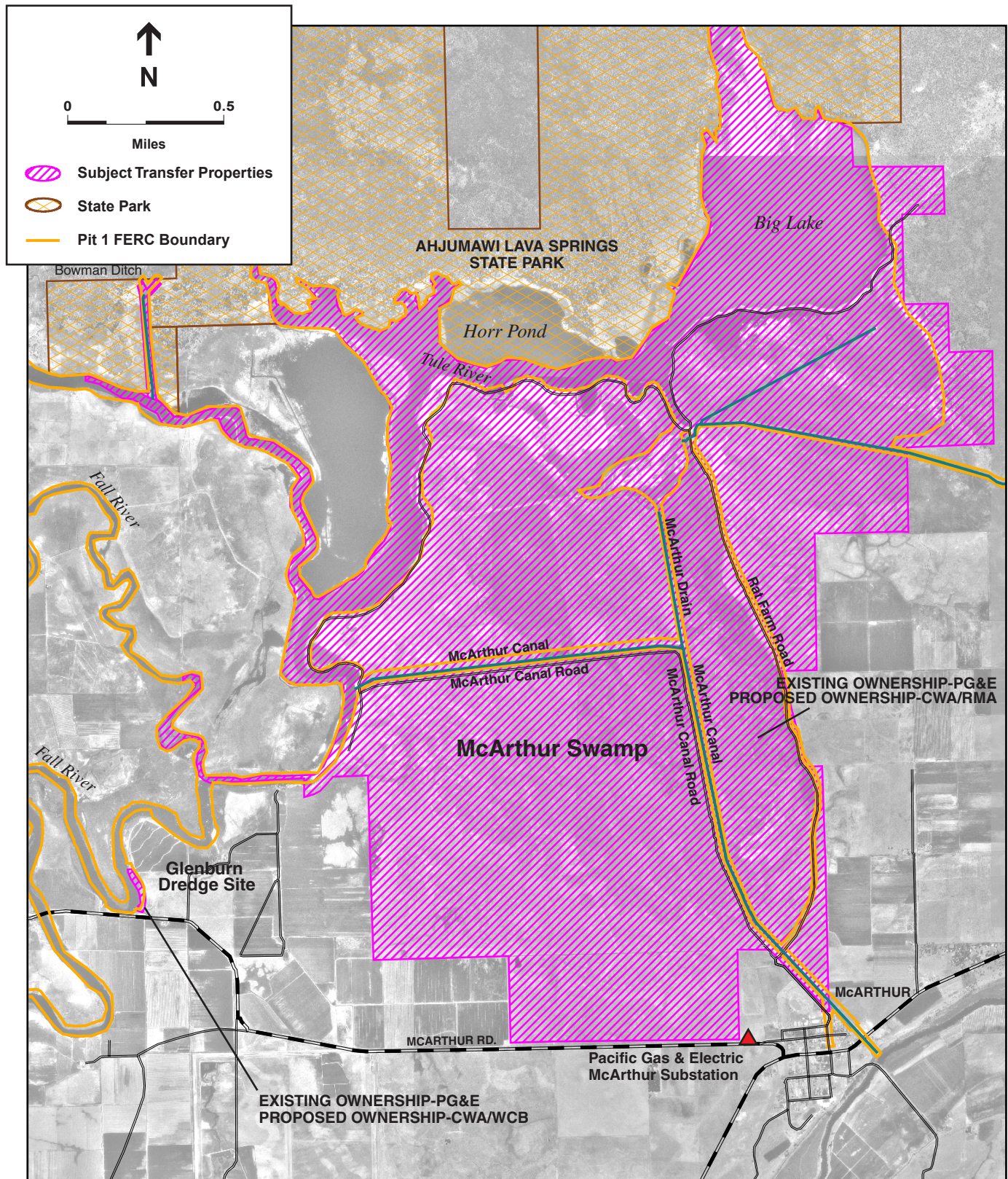
² McArthur Swamp is an area of about 7,400 acres that includes Big Lake, portions of the Tule and Little Tule Rivers, and several thousand acres of grasslands and wetlands south of Big Lake and to the east of the rivers, described in a subsequent section of this document.



SOURCE: PG&E and Environmental Science Associates, 2001.

PG&E Divestiture / 200496 ■

Figure 1-3
Ahjumawi Lava Beds - SP Transfer Properties



SOURCE: PG&E and Environmental Science Associates, 2001.

PG&E Divestiture / 200496 ■

Figure 1-4
McArthur Swamp Donation Properties

DPR will convey the Ahjumawi Property title subject to deed restrictions that prohibit hunting, grazing, subdivision, commercialization, construction or reconstruction of roads, or structures, dumping of refuse, toxic materials or hazardous waste, mining or any ground disturbing activity, including the maintenance of the levees.

PG&E owned the Ahjumawi Property until the 1940s and, thus, already owns water rights appurtenant to the property. As a result of a series of transactions, however, the DPR has a long-term agreement to take up to 1,040 acre-feet (ac-ft) of water annually until 2019. Upon the transfer of the Ahjumawi Property to PG&E, DPR has agreed to reduce the amount of water it is entitled to take under the license by 300 ac-ft / year (see **Figure 1-2**).

TABLE 1-2
SUMMARY OF CHANGES IN EXISTING WATER RIGHTS

Land Area	Proposed Changes in Allocated Water Rights
Burney Falls	PG&E would retain all water rights pertaining to the Burney Falls Property
Bowman Ditch	PG&E would retain all water rights associated with the Bowman Ditch
Ahjumawi Property	DPR would amend its 1969 Agreement with PG&E, by reducing its current allocation of 1,040 acre-feet / year by 300 acre-feet / year. DPR's new allocation of water would then equal 740 acre-feet / year.
McArthur Swamp	PG&E will retain all of its existing water rights, except for allocating 300 acre-feet / year of water to CWA for wetland restoration and management purposes.
Glenburn Dredge Site	PG&E would retain all water rights pertaining to the Glenburn Dredge Site.

SOURCE: Pacific Gas and Electric Company, Applications A.00-05-029 and A.00-05-030, October 23, 2000

PG&E has also agreed to remove four wooden power poles on the DPR property, which are not being transferred to PG&E. The original power line crossed the Little Tule River west of Bowman Ditch, entered Ahjumawi Lava Beds State Park, and traversed northeasterly across Bowman Ditch to Ja She Creek.

1.5 MCARTHUR SWAMP PROPERTY DONATION

The portions of the Tule and Little Tule River that adjoin the Ahjumawi Property are part of the McArthur Swamp property that PG&E proposes to donate to CWA once McArthur Swamp is removed from the Pit 1 Project License boundary (see **Figure 1-4**). The McArthur Swamp transfer will take place subject to a Transfer and Maintenance Agreement (**Appendix A**) and a permanent Conservation Easement (**Appendix B**) that will require the maintenance of existing land uses, the preservation and restoration of habitat and protection of cultural and natural resources, including endangered species.

CWA will accept the Ahjumawi Property subject to the deed restrictions that DPR will impose when DPR conveys the land to PG&E. The Ahjumawi Property will also be subject to the

Conservation Easement with similar terms proposed to govern the McArthur Swamp area. The law requires an entity other than the fee owner to hold the easement. California Wetlands Foundation (CWF) will enforce the Conservation Easement with the advice and assistance of Technical Review Team (TRT) whose members include the California Department of Fish and Game (CDFG), University of California Cooperative Extension (UCCE), United States Fish and Wildlife Service (USFWS), the McArthur Swamp Resource Management Association (RMA), DPR, and CWA. The proposed deed restrictions and the Conservation Easement do not impose any obligation to repair the levees, and severely restrict the kind of ground disturbing activities that would be necessary to make such repairs. The transaction terms proposed by the project will result in the Ahjumawi Property permanently remaining in its undeveloped, flooded state, thereby restoring natural wetland conditions.

As part of the proposed action to transfer the Ahjumawi Property to CWA, PG&E will reserve all riparian and appropriative water rights, as well as water rights gained through the DPR exchange. Additionally, PG&E will reserve easements necessary to monitor those water rights.

Once the proposed Ahjumawi Property and McArthur Swamp land transfers are complete, CWA will enter into a two-year grazing lease with RMA. RMA is a limited liability company whose shareholders consist of the eleven ranchers who currently hold grazing licenses at McArthur Swamp. Under the lease with CWA, RMA will have responsibility, under the supervision of CWA, CWF, and the TRT, for ensuring compliance with the deed restrictions and the Conservation Easement. After two years, RMA will have the right to acquire the fee title to McArthur Swamp and to assume all liabilities and obligations under the Conservation Easement and McArthur Swamp Management Plan (MSMP). Should RMA exercise its right of acquisition it will also take fee title to the Ahjumawi Property subject to the deed restrictions and the Conservation Easement, and will assume CWA's obligations to maintain the land in its natural state. At that point, CWF will convey the Conservation Easement to CWA, which will thereafter be responsible for its enforcement. All provisions of the Conservation Easement and the MSMP, including the TRT oversight mechanisms, will remain in place after these subsequent transfers. The respective roles of CWA and RMA concerning the Ahjumawi Property and other lands that PG&E will donate to CWA are outlined in the MSMP, which is incorporated into the Conservation Easement. The MSMP included with this document as **Appendix C** and is described below.

1.5.1 SUBSEQUENT ACTIONS

Over the 5-year period following the transfer of McArthur Swamp to CWA, the MSMP calls for CWA, and its successors, to take specified actions to improve wildlife habitat, stabilize levees, protect and create habitat for the Shasta crayfish, and improve grazing and vegetation management. These activities are summarized in **Table 1-3** and described in detail in the following paragraphs:

Develop Fresh Emergent Wetlands

This development will occur primarily in two places, Hollenbeak Field and Ash Field Pond (see **Figure 1-5**, Existing Site Configuration and **1-6**, Activities Required as part of the MSMP).

**TABLE 1-3
SUMMARY OF SUBSEQUENT ACTIVITIES PURSUANT TO THE MSMP**

Activity	Location	Area/Acreage	Responsible Party
McArthur Swamp Levee Improvement	Land side along south shore of Big Lake / south and east banks of the Tule River	4.8 linear miles	CWA
Fresh Emergent Wetland Creation	Hollenbeak Field and Ash Field Pond	700 acres	CWA
Reverse Cycle Wetland Creation	Fields S-2 and S-1/S-2	20 acres plus brood habitat	CWA
Nesting Habitat Creation	Field E-3 and Field S-1/S-2	254 acres	CWA
Proposed Goose Pasture	Fields A-1, A-2, N-1, N-2, N-3A, N-3B, N-4A, and N-4B	1269 acres	CWA
Water Delivery and Management	Well site McArthur Drain	N/A	CWA

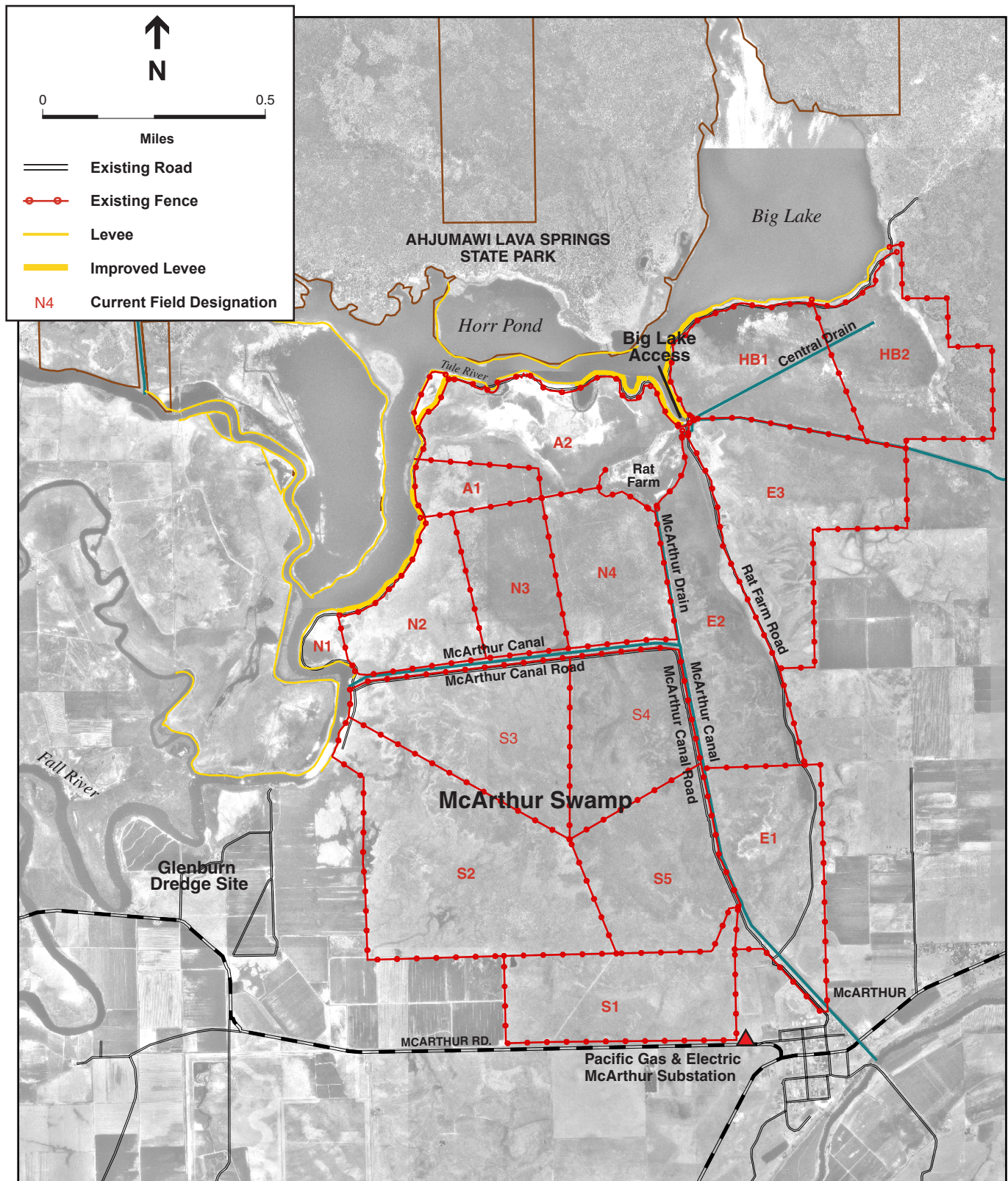
SOURCE: Pacific Gas & Electric Co., PEA for Application A.00-05-029 Oct. 23, 2000 and ESA 2001.

Hollenbeak Field

The Hollenbeak Field is approximately 675 acres. An estimated 670 acres of this land will be re-contoured, fenced, and water control structures will be engineered and installed to manage the area as a seasonal wetland for geese and for production of waterfowl forage plants. Grazing in this area will be monitored by the TRT and the Resource Manager to ensure nest success and production, and grazing will be permitted only if it does not impact the production of waterfowl forage plants.

Ash Field Pond

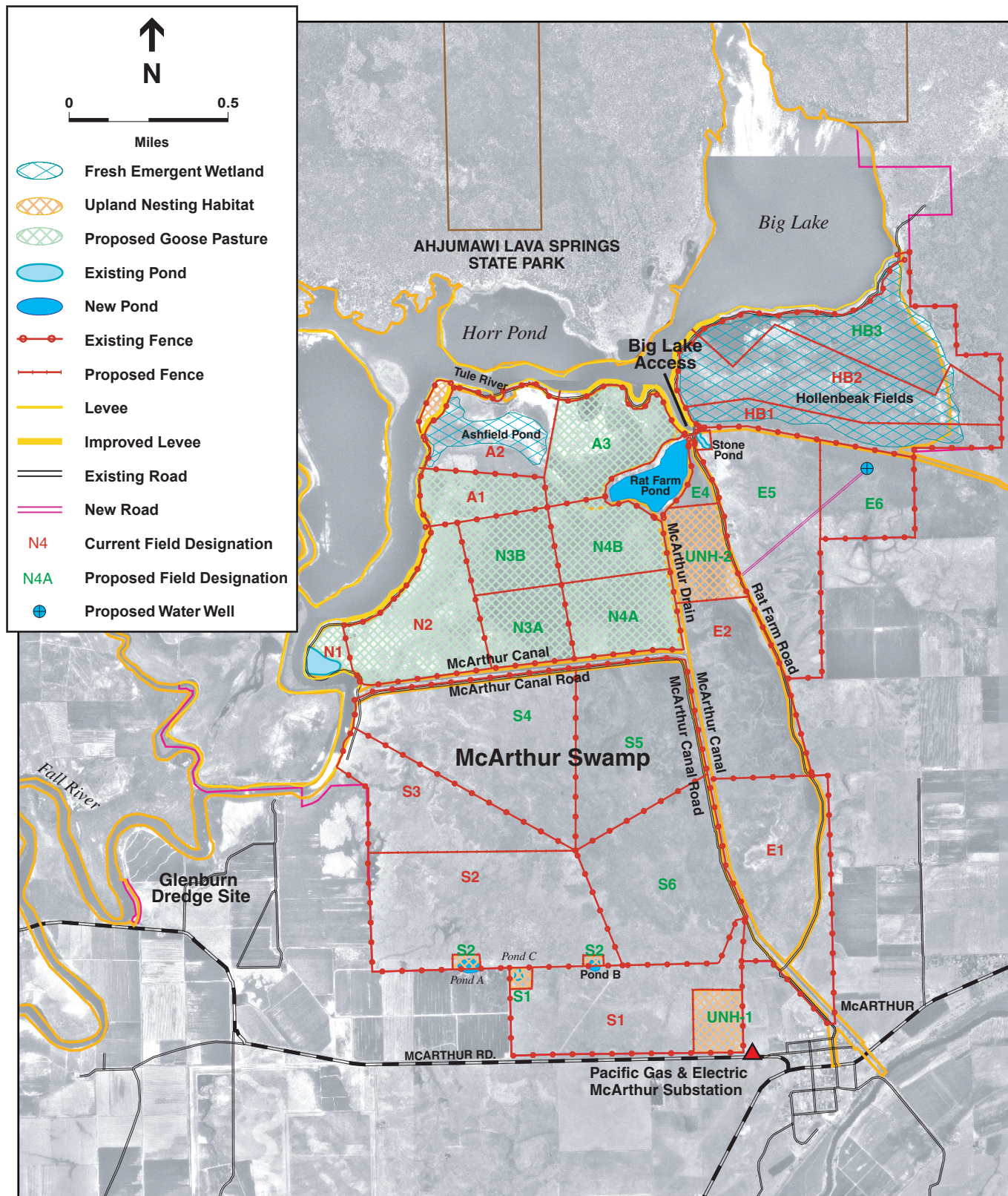
An 89-acre pond will be created west of the McArthur Drain in the Ash Field. The management goals for this pond are similar to the Hollenbeak Field with limited forage available for livestock grazing. Fencing will be utilized to leave part of the pond available to livestock to ascertain the impact of managed livestock use on waterfowl habitat.



SOURCE: PG&E and Environmental Science Associates, 2001.

PG&E Divestiture / 200496 ■

Figure 1-5
Existing Site Configuration



SOURCE: PG&E and Environmental Science Associates, 2001.

PG&E Divestiture / 200496 ■

Figure 1-6
Activities Required as part of the MSMP

Develop Reverse Cycle Wetlands

This activity will involve a total of four areas, the S-2 and S-1/S-2 Ponds and the Rat Farm Pond (see **Figure 1-5**, Existing Site Configuration and **1-6**, Activities Required as part of the MSMP):

Brood Ponds

A total of three ponds will be constructed in Fields S-1 and S-2 for nesting, rearing, and development of the brood. Each pond will be approximately 10 acres in size with additional acreage set aside for brood habitat. The ponds will be fenced to limit access by livestock. Depending on rainfall, limited grazing may occur in September and October.

Rat Farm Pond

Habitat development and improvement in and around the Rat Farm Pond will be achieved through vegetation management and repairing existing fences. This area will be incorporated into a regular grazing rotation.

Development of Nesting Habitat

Development of nesting habitat will occur primarily on two areas of McArthur Swamp, Field E-3 and Field S-1 (see **Figure 1-5** and **1-6**):

Field E-3 - Field E-3 will be fenced to provide approximately 100 acres of nesting habitat. The objective is to have standing vegetation 18 to 24 inches tall to provide nesting cover in the spring (March-May). Livestock grazing will be allowed in early and mid-summer and then removed to reach the desired residual vegetation objectives.

Field S-1 - This field has supported annual grasses and brush that should provide nesting habitat during average or better precipitation years. Approximately 115 acres located in the eastern portion will be fenced to limit livestock access. The management of this area for upland nesting habitat will limit early season grazing. The elimination of grazing in this relatively small area will not have a significant impact on the overall carrying capacity of the property.

Goose Pasture

Development of goose habitat will be encouraged through careful grazing practices in the northwest portion of the McArthur Swamp. The goal is to produce vegetation with an average height of three inches by the first frost. This will be achieved through careful late season grazing in the A-1, A-2, N-1, N-2, N-3A, N-3B, N-4A, and N-4B fields as shown in **Figure 1-6**. Additionally, the U.S. Fish and Wildlife Service (USFWS) will conduct cackling geese surveys at McArthur Swamp in order to monitor and track populations.

Water Delivery and Management

CWA will install an irrigation well capable of providing approximately 2,000 gpm. This well can only be installed in the area south of the Lee Drain and east of the McArthur Canal, due to local ground water conditions. The water pumped from it will be used for the specific purpose of

maintaining permanent wetland habitats on the property, as previously discussed. (See **Figure 1-6**). The RMA will also provide up to five cubic feet per second (cfs) of water from the Lee Drain from September 15 through November 15 for wetland management and flooding during the migration season.

CWA will also install water diversions and control structures in the McArthur and Central Drains to effectively divert water for wetland management. Delivery lines will be constructed from the irrigation well to the various areas described above. Water management berms will be constructed and flash-board risers and swales will be installed to apply and manage water on the wetlands to be created and/or restored at Hollenbeak Field, Rat Farm Pond, Ash Field Pond, and Brood Ponds S-2 and S-1/S-2.

Grazing Management

CWA will take McArthur Swamp subject to nine existing grazing licenses. The licensees, who are all shareholders of the RMA, will assume day-to-day management of the grazing, subject to the MSMP. At first, this will be pursuant to a lease with CWA, but RMA may eventually assume title in its entirety. The MSMP will allow approximately 10,000 Animal Unit Months (AUMs) of grazing, which will be managed to avoid interference with the restoration and maintenance of wetland habitats. Grazing will occur on a rotational basis at various areas of McArthur Swamp. Cross fencing and gates will be constructed and utilized to improve the timing and duration of grazing (see **Figure 1-5** and **1-6**). A manager will be hired by RMA to balance the grazing activities and habitat conservation objectives of the MSMP.

Monitoring of Habitat and Waterfowl Development

CWA will be responsible for a variety of monitoring and resource management tasks, including observations of breeding duck populations and reproductive success, vegetation surveys in nesting habitat and livestock exclusion areas, measuring the height and density of vegetation at nesting sites, and conducting duck brood surveys to determine habitat associations and survival rates.

Cultural Resource Surveys

CWA has agreed that, prior to the commencement of any activity on the property that may materially disturb the ground at McArthur Swamp (e.g., development of ground water, grading, construction, excavations, etc.), a site survey will be conducted to determine if any cultural resources exist in the area of the proposed activity and if so a specific protocol for dealing with the resource will be followed, with avoidance as the first priority.

Restoration of Recreational Access at the Glenburn Dredge Site

Upon obtaining the Glenburn Dredge Site (described below), CWA plans to enter into an agreement with an adjacent property owner to re-establish public access to the existing boat launching facilities. CWA eventually intends to transfer ownership of this property to the California Wildlife Conservation Board (CWCB) (a part of CDFG) to comply with a recommendation made in FERC's FEA of the initial Pit 1 Relicensing Proposal requesting assurances for continued public access to the Fall River.

Use of the Dredge “Frances”

CWA intends to keep the dredge moored at the Glenburn Dredge Site, but will use the dredge only as a back-up method of levee maintenance. (Maintenance will be performed primarily by importing materials by land via roads built on top of the levees.) All dredge use will be consistent with the conditions and restrictions of the current United States Army Corps of Engineers (USACOE) Permit. This permit will be assigned to CWA. Among other things, the permit specifically prohibits dredging where the Shasta crayfish is present beyond what has been termed the geographic line of demarcation.

Preservation of Free Public Access to the Ahjumawi Lava Beds State Park via McArthur Swamp

CWA will continue to ensure free public access to DPR’s Ahjumawi Lava Beds State Park via the Big Lake Access at McArthur Swamp. CWA will maintain this area and public access consistent with the existing practices mandated by the FERC license for the Pit 1 Project.

Subsequent Transfer of the Properties

For an initial two-year period, CWA will hold title and lease the land to RMA, which will have responsibilities for actually carrying out terms of the MSMP. After a two-year holding period, RMA will have an option to acquire the title for McArthur Swamp and the dredge, upon payment of acquisition costs and assumption of obligations imposed by the Conservation Easement and the MSMP. If CWA transfers title to these properties, the Conservation Easement, with CWA, thereafter monitoring and enforcing RMA’s fulfillment of the easement and the MSMP. All provisions of the easement and the MSMP, including the TRT oversight mechanisms, will remain in place.

CWA plans to enter into an agreement with an adjacent property owner to re-establish public access to the existing boat launching facilities located at the Glenburn Dredge Site. CWA eventually intends to transfer ownership of this property to the CDFG or the CWCB to assure continued public access to the Fall River.

Indemnification of PG&E for Environmental Liabilities

PG&E has conducted a Phase I Environmental Site Assessment that did not identify any “recognized environmental conditions.” CWA has acknowledged that it has the right to investigate McArthur Swamp and the Glenburn Dredge Site further. It also agrees that PG&E will not be responsible to CWA for the presence of hazardous materials either on or affecting these properties. In addition, CWA has agreed to execute and deposit with the title company prior to the close of escrow a Release and Indemnity Agreement containing a general release in which it waives and relinquishes any and all rights it may have under Section 1542 of the California Civil Code to limit the release from environmental liabilities that it grants to PG&E.

1.5.2 GLENBURN DREDGE SITE

The Transfer Agreement between CWA and PG&E also covers the transfer of an approximately 5.5-acre strip of property located nearly one and one-half miles due west of McArthur Swamp. This property abuts the east bank of the Fall River and is north of, but not directly accessible from, McArthur Road. It is known as the Glenburn Dredge Site because the dredge used for levee maintenance at McArthur Swamp is moored at this location. The property is currently within the boundaries of the Pit 1 Project (see **Figure 1-4**). PG&E has proposed to remove this property from the Pit 1 Project and to transfer both the dredge and the property to CWA when it transfers McArthur Swamp.

One of the Pit 1 Project FEA was to provide public access to the Fall River at the Glenburn Dredge Site. Public access had previously been provided by the CWCB in cooperation with PG&E and an adjacent landowner. PG&E provided space for a parking lot and car-top boat launch facility. The CWCB leased access from the adjoining landowner. In 1996, the CWCB did not renew the lease allowing access to the site and the site was closed to the public. To provide public access at the Glenburn Dredge Site, CWA will enter into an arrangement with the adjacent and willing property owner to secure public access to the existing boat launching facilities. This will likely be done by swapping some of the land in the Glenburn Dredge Site for a small strip of land needed to connect the site to the McArthur Road. To ensure permanent access for the public, CWA intends to eventually transfer the site to the CWCB, which previously had responsibility for managing the area.

To allow flexibility for a land swap with the adjacent landowner and a subsequent transfer to the State, PG&E proposes that the Glenburn Dredge Site will not be directly encumbered by the Conservation Easement. However, the Transfer Agreement and the MSMP both require the provision of permanent public access to the Fall River from this site, as recommended by FERC staff in its FEA.

1.5.3 THE DREDGE

The dredge “Frances” proposed for donation by PG&E to CWA is a Dutra dredge that was manufactured in the 1960s. The dredge has been used exclusively to maintain the levees at or near McArthur Swamp. In recent years, concerns about the Shasta crayfish and other issues have limited the usage of the dredge. It is not practical, however, to dismantle the dredge or move it to other PG&E lands. Moreover, CWA may need the dredge to assist in its compliance with the Conservation Easement and the MSMP.

1.5.4 SUMMARY OF LAND TRANSFERS

In summary, a number of land ownership changes would occur as a result of the proposed action, as shown in Table 1-1. Application 00-05-030 would involve the transferring of fee title ownership over the 182-acre Burney Falls Property within McArthur-Burney Falls State Park and the 4-acre Bowman Ditch from PG&E to DPR. DPR would ultimately end up with an additional 186-acres in total. In return, DPR would transfer fee title ownership of the 544-acre Ahjumawi Property to

PG&E, who would then donate the property to CWA. This property would then be subject to the Conservation Easement, which would be granted to CWF. CWA ultimately gains the addition of 544-acres to its holdings.

Application 00-05-029 involves the donation of the 7,400-acre McArthur Swamp property and the 5.5-acre Glenburn Dredge Site to the CWA. After a two-year period, CWA would convey title of the McArthur Swamp property under the provisions to the RMA. Ultimately, the RMA will gain a total of 7,400-acres. At the same time, CWA will transfer title of the 5.5 acre Glenburn Dredge Site over to the Wildlife Conservation Board (WCB).

1.6 GOVERNMENTAL AGENCY APPROVALS

FERC Approval

Portions of both McArthur Swamp and the Glenburn Dredge Site are located within the boundaries of the Pit 1 Project. Removal of the properties from that license boundary is a condition of the agreement to donate the properties to CWA. The transaction with CWA has been structured to meet concerns raised by FERC, and, based on the proposed transaction, a number of resource agencies and local interests have submitted letters to FERC endorsing the license boundary adjustment. Thus, PG&E anticipates that FERC will remove McArthur Swamp and the Glenburn Dredge Site from the Pit 1 Project License boundary when it relicenses the project. To date, the FERC has not issued a license for the Pit River project and is waiting for the USFWS to complete a Biological Opinion (BO) for the project.

Legislative Approval for DPR's Transfer of the Ahjumawi Property

DPR and the California Department of General Services do not have the unilateral authority to dispose of surplus property. The departments have already approved the transfer of Ahjumawi Property. However, those authorizations are subject to legislative approval. SB 1778 sought the legislative approval necessary for DPR to transfer the Ahjumawi Property to Pacific Gas and Electric Company. On September 26, 2000, SB 1778 was signed by the Governor and filed with the Secretary of State on September 27, 2000. Because SB 1778 is deemed "non-urgent," the law (and the corresponding approval for DPR's transfer of the Ahjumawi Property) became effective on January 1, 2001.

Other Regulatory Aspects

PG&E proposes to transfer to CWA the riparian right to 300 ac-ft of water along with McArthur Swamp. Notice of this transfer must be given to the State Water Resource Control Board (SWRCB) so that the Board may communicate with the new owner (*i.e.*, CWA). The SWRCB does not, however, perform any discretionary review of the transfer, so CEQA does not apply.

Relationship of the Two Applications

On August 7, 2000, the CPUC's Administrative Law Judge (ALJ) consolidated the McArthur Swamp Application (A.00-05-029) with the Burney Falls Application (A.00-05-030). The proposed transfer of McArthur Swamp, the Glenburn Dredge Site, and the dredge is not dependent

upon the CPUC's approval of the Burney Falls Application. Both PG&E and CWA request approval of this Application for authority to transfer McArthur Swamp and the dredge regardless of whether the Burney Falls, Bowman Ditch, and Ahjumawi Property transfers discussed in A.00-05-030 are approved. The plan to transfer the Ahjumawi Property to CWA that is addressed in A.00-05-030, however, is contingent upon the approval of the McArthur Swamp transfer; that is, CWA will not take the Ahjumawi Property unless it receives McArthur Swamp as well.

1.7 APPLICANT PROPOSED MEASURES

PG&E has included several provisions as part of the proposed transactions to avoid or minimize environmental impacts.

The following mitigation measures proposed by PG&E are the result of multi-party negotiations and are designed to meet specific concerns raised by FERC staff in its FEA for the Pit 1 Project relicensing proceeding. Provisions incorporated into the proposed transactions that also serve to minimize environmental impacts include the following: All of the property will be transferred to either a state agency or a non-profit organization charged with the responsibility and purpose of preserving natural, scenic, cultural, and ecological resources.

- Over one-half of Burney Falls will remain subject to the FERC license for the Pit 3, 4, and 5 Project.
- CWA will take the Ahjumawi Property subject to certain deed restrictions and a Conservation Easement. These restrictions will preserve the existing beneficial uses of the Ahjumawi Property (primarily wetland habitat), and limit use of the property in a way that will foster local community cohesiveness and ecological stability. The subsequent transfer to RMA will occur subject to the use restriction and obligations imposed at the time of the initial transfer.
- Information regarding cultural resources and sensitive species and habitats will be transferred to the State or to CWA along with the property transfers.
- PG&E will retain water rights that support existing flows and usage of water for operations of the Pit 1 and Pit 3, 4, and 5 Powerhouses.

1.8 AREAS OF CONTROVERSY

Protection of Cultural Resources of the Pit River Tribe

The Pit River Tribe has expressed a concern about the protection of cultural resources on certain lands at or near PG&E's Pit River and Hat Creek hydroelectric projects. The PEA states that previous correspondence from the Tribe is somewhat ambiguous as to the specific lands that are the subject of these concerns. However, PG&E acknowledges that concerns do apply at least in part to McArthur Swamp.

There is evidence that Native Americans occupied certain areas of McArthur Swamp in an earlier era. Based on a recommendation in the FEA for the relicensing of the Pit 1 Project, PG&E has

worked with FERC, SHPO, the Pit River Tribe, and the Advisory Council on Historic Preservation to design a Programmatic Agreement to survey a portion of McArthur Swamp within the FERC-defined “Area of Potential Effect.” PG&E completed these surveys of the McArthur Swamp area within the FERC project boundary.

Under the Conservation Easement proposed as part of the project, CWA agrees to protect and preserve any such sites that exist or may be found in the future. Additionally, CWA has agreed that, prior to the commencement of any activity on the property which may materially disturb the ground at McArthur Swamp (*e.g.*, development of ground water, grading, construction, excavations), a site survey shall be conducted to determine if any cultural materials or sites exist in the area of the proposed activity.

Property Claims by the Pit River Indian Tribe

The Tribe’s letter to the Energy Division also alleges that it has a property right in certain lands belonging to PG&E, including McArthur Swamp and the Glenburn Dredge Site. PG&E contends that it acquired a clear and valid fee title to almost all of this land from its predecessor in interest, the Mount Shasta Power Company, in 1936, and acquired a fee simple patent for the remainder (an 80-acre piece of property near Big Lake) directly from the United States Government in 1967. Title reports contained in the application demonstrate that PG&E continues to hold clear and valid title to these properties.

At times, the Pit River Tribe has also alleged a property interest in a 100-mile square piece of land that encompasses McArthur Swamp and the Glenburn Dredge Site, as well as several California municipalities, national parks, and a good portion of Mount Shasta. The Pit River Tribe makes this claim based in part on their interpretation of a finding of the Indian Claims Commission in Docket No. 347.

PG&E acknowledges that the Indian Claims Commission determined that the Pit River Tribe once held the property interest in the 100-mile square. However, the Claims Commission also determined that the United States Government had taken title to that property. The Federal Government and the Pit River Tribe entered into a settlement, compensating the tribe for the taking of the property interest in the 100-mile square. Although the Pit River Tribe challenged that settlement, alleging, *inter alia*, “that the attorneys for United States misled the Indians as to the value of the property in question,” that settlement was upheld by the United States Court of Claims in *Andrade v. United States*.

1.9 REFERENCES

Pacific Gas and Electric, 2000a. Proponent’s Environmental Assessments for Burney Falls and McArthur Swamp and McArthur Swamp (Application Numbers 00-05-030 and 00-05-029).

Pacific Gas and Electric Application 00-05-029, 2000. Application of Pacific Gas and Electric, a California corporation, and the California Waterfowl Association, a California public benefit corporation, for an Order Market Valuing and Authorizing the Former to Transfer

to the latter Certain lands in Shasta County (McArthur Swamp) and Related Property Pursuant to Public Utilities Code Sections 367(b) and 851.

Pacific Gas and Electric Application 00-05-030, 2000. Application of Pacific Gas and Electric, a California corporation, the State of California, acting by and through its Department of Parks and Recreation, with approval of its Department of General Services (DPR), and the California Waterfowl Association, a California public benefit corporation (CWA), for Orders Pursuant to Public Utilities Code Sections 367(b) and 851 (1) Establishing the Market Value of and Authorizing Pacific Gas and Electric to Transfer to DPR Certain Pieces of Land in Shasta County (Burney Falls) in Exchange for Land Currently Owned by DPR (Ahjumawi Property), and authorizing Pacific Gas and Electric to donate the Ahjumawi Property to CWA.