



FEE TITLE RECOMMENDATION EEL RIVER 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,¹ 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 Eel River planning unit, located in Lake and Mendocino counties, consists of 36 parcels encompassing approximately 7,449 acres of land. Approximately 5,214 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 lands have been made available for fee title donation, with the remaining approximately 2,235 acres to be retained by PG&E. The Stewardship Council received land stewardship proposals (LSPs) from three organizations interested in receiving a donation of fee title to lands in this planning unit: the Potter Valley Irrigation District (PVID), Potter Valley Tribe (PVT), and the US Forest Service - Mendocino National Forest (USFS). PVT and PVID each expressed interest in receiving a donation of approximately 1,824 acres in the same set of parcels. There was no overlap of their interest with regard to the lands of interest to the USFS.

Based on an evaluation of the LSPs, Stewardship Council staff developed the following initial recommendation, which was endorsed by the Watershed Planning Committee:

Potter Valley Tribe (PVT) is being recommended to receive fee title to approximately 723 acres within four parcels (parcels 744, 745, 746 and 748) in the Eel River planning unit, contingent on the following transaction terms:

- The Potter Valley Tribe provides a limited waiver of sovereign immunity to ensure that the conservation easement and other agreements executed pursuant to the Land Conservation Commitment are enforceable; and
- The Potter Valley Tribe agrees not to petition the federal government to have the donated lands placed into federal trust.

The Watershed Planning Committee also recommends that:

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 Stewardship Council Board (Board) approve the Stewardship Council funding the property tax obligations associated with the donation of lands to the Potter Valley Tribe.

Stewardship Council staff would continue to work with PVT, PVID, and USFS to assess the possibility of additional land transfers within the Eel River planning unit.

If this recommendation is endorsed by the Board, Stewardship Council staff would work with the prospective donee on the development of a management and funding agreement. This agreement would be developed in coordination with the development of a Land Conservation and Conveyance Plan (LCCP). The proposed management and funding agreement and proposed LCCP would then be presented to the Watershed Planning Committee and Board for consideration and approval.

In addition, Stewardship Council staff will make a recommendation of a prospective conservation easement holder as part of a separate recommendation to the Watershed Planning Committee.

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

I. INTRODUCTION AND BACKGROUND

a. *Planning Unit Description*

The Eel River planning unit is located in Mendocino and Lake counties, northeast of Potter Valley and 16 miles northeast of Ukiah. The planning unit contains Lake Pillsbury, Van Arsdale Reservoir, and a 12-mile section of the mainstem Eel River. Two dams and a powerhouse are also associated with these lands. These PG&E facilities provide water supply for PVID, Mendocino County Russian River Flood Control and Water Conservation Improvement District, the Alexander Valley in Sonoma County, the Redwood Valley Water District north of Ukiah, and the Sonoma County Water District. The lands in the vicinity of the planning unit are primarily Mendocino National Forest and private lands.

The Eel River planning unit provides suitable habitat for a variety of species within its reservoirs, riparian corridors along the Eel River, and the mixed conifer forests. The section of the Eel River that runs through the planning unit supports fall-run Chinook salmon and steelhead. Bald eagles and osprey have been seen at Lake Pillsbury and a herd of tule elk lives around the northern end of the lake.

Lake Pillsbury is a regionally important recreation destination. Camping, boating, fishing, hang gliding, and off highway vehicle (OHV) use are activities enjoyed at the lake. Several campgrounds and boat launches are available at the lake as well as a day use area. In addition two whitewater boating runs terminate at the lake, the Upper Eel River run and the Rice Fork run. Recreation use within the Eel River Canyon consists primarily of dispersed uses, camping, and whitewater boating.



Forest resources within the Eel River planning unit consist of 4,249 acres of mixed conifer stands with some late seral stage stands and old-growth trees managed within three Timber Management Units (TMUs). The majority of these forested lands are managed for multiple uses, meaning that although sustained timber production is an important management component, protection and uses of other resources and facilities may preclude sustained timber management as the highest and best use of portions of the TMU.

The territory within and around the Eel River planning unit was shared by Pomo, Huchnom, and Yuki Tribes. There are at least two recorded village sites believed to be Pomo located in the lower region of the planning unit. Seven prehistoric sites, one historic site, and one prehistoric/historic site have been discovered around Lake Pillsbury. Nine prehistoric, one historic, and one prehistoric/historic site have been discovered around Van Arsdale Reservoir.

b. Description of Parcels 744, 745, 746, and 748

Parcels 744, 745, 746 and 748, which are the subject of this recommendation, are shown in Map 1 (attached). All four parcels are located in Mendocino County.

Parcel 744

Parcel 744 consists of 349 acres of steep, forested terrain, all of which are available for fee title donation. This parcel is bordered by Parcels 745, 746, and private property to the north, private property to the east, Parcel 748 and private land to the south, and Parcel 748 and private land to the west. The only access to this parcel is from a maintained and gated road known as Oat Gap Road. Trout Creek runs through the property from north to south.

Parcel 745

Parcel 745 consists of 159 acres of steep, forested terrain, all of which are available for fee title donation. The parcel is bounded by Parcel 744 to the south and by private land on all other sides. The only access to this parcel is from a maintained and gated road known as Oat Gap Road. Trout Creek runs through the property from north to south. PG&E indicated that portions of the property have historically been used for unauthorized dumping of debris and abandoned vehicles.

Parcel 746

Parcel 746 consists of 77 acres of steep, forested terrain, all of which are available for fee title donation. The parcel is partially bounded by Parcel 744 to the south and is bounded by private lands on all other sides. The only access to this parcel is from a maintained and gate road known as Oat Gap Road.

Parcel 748

Parcel 748 consists of 1,215 acres, of which 981 acres are available for fee title donation. The Stewardship Council is recommending approximately 138 acres of the lands available for donation to be donated to PVT. The lands recommended for donation to PVT are located east of



the Lower Eel River Bridge and north of the FERC boundary and extend east to the western boundary of Parcel 744.

Elk Mountain Road runs along the north side of the Eel River through this portion of Parcel 744 and Oak Gap Road also terminates at Elk Mountain Road in this portion of the parcel. The Eel River runs generally east-west through this parcel before connecting to Van Arsdale Reservoir. A telecommunication line is located along Elk Mountain Road and up Oat Gap Road. According to PG&E, portions of the property have historically been used for unauthorized activities including camping, shooting, dumping of debris and abandoned vehicles, a drug lab, marijuana cultivation, timber removal, and OHV use which has created trails, road cuts, and erosion problems.

A further description of this planning unit, including the BPVs and the management objectives that were previously approved by the Board for this planning unit, is included in the attached excerpted section of Volume II of the LCP.

c. Donee Evaluation Process

The Stewardship Council received statements of qualifications (SOQs) from four organizations interested in acquiring fee title to lands available for donation within this planning unit. A list of organizations that submitted an SOQ is attached. All four of these organizations were invited to submit LSPs, however, only the following three organizations submitted LSPs:

- Potter Valley Irrigation District (PVID)
- Potter Valley Tribe (PVT)
- United States Forest Service (Mendocino National Forest) (USFS)

PVT and PVID each expressed interest in receiving a donation of approximately 1,824 acres in the same set of parcels. There was no overlap of their interest with regard to the lands of interest to the USFS.

Subsequent to the Board's consideration of this recommendation, Stewardship Council staff would continue to work with PVT, PVID, and USFS to assess the possibility of additional land transfers within the Eel River planning unit.

In evaluating the LSPs submitted by PVT and PVID for the subject lands, the following factors were considered:

- An evaluation of the potential donees' programmatic, financial, and legal capacity to maintain the property interest so as to preserve and/or enhance the BPVs of the planning unit;
- Anticipated funding needs of the potential donees;
- The management objectives for the Eel River planning unit as set forth in Volume II of the Land Conservation Plan;
- 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 these two LSPs, Stewardship Council staff is recommending a donation of approximately 723 acres to PVT.

II. EVALUATION

PVT is being recommended to receive a donation of fee title to approximately 723 acres of land available for donation in this planning unit. This recommendation is based on an evaluation of its capacity and a determination that PVT possesses the organizational and financial capacity to own and manage fee title to this land as further described below.

a. *Donee Organizational Capacity*

Potter Valley Tribe

The organizational capacity of the PVT is summarized below.

- PVT is a federally recognized tribe with aboriginal ties to the land within the Eel River planning unit. The ancestors of the PVT shared this territory with other Pomo tribes and the Huchnom and Yuki people. The tribe's current membership consists of six individuals.
- The preamble to the PVT's constitution includes language to protect the cultural and natural resources of its aboriginal land or any other acquired territory, and to carry on enterprises for the benefit of its community.
- PVT currently owns and manages five properties in Mendocino County totaling approximately 88 acres of land for the purposes of housing, public camping, community gardens, grazing, office space, and community events.
- In 2007, in cooperation with the US Environmental Protection Agency (EPA), PVT closed and cleaned a dumpsite adjacent to a water body on its property, recycling or disposing of 150 cubic yards of waste that pre-existed on a two-acre site they acquired.
- PVT recently purchased a 69-acre ranch on the coast in Fort Bragg with the intent to restore the 100+ year old barn and the 1940's era clubhouse as community buildings; construct primitive campgrounds and infrastructure; and construct a small wind-energy farm, solar showers, and an RV park. Since acquiring the property in 2009, PVT has delineated wetlands and cultural resource sites, trained Native American crews on deconstruction and materials reuse, installed a new roof, rebuilt bathroom facilities, and upgraded kitchen facilities in the clubhouse. In addition, PVT has renovated two drinking water wells with new pumps, tanks and distribution systems.
- PVT has operated an environmental education program since 2004, hosting several annual workshops on native resource use, pest and disease management, least-toxic pesticide use, and home canning. Over the past three years up to 75 Native American pre-

school children from local tribes have participated in environmental workshops hosted by PVT. In addition, PVT hosted an environmental campout for over 140 children and adults on its property in the summer of 2011.

- PVT operates public programs, which the local community is invited to participate in, such as the USDA Summer Lunch Program, and environmental education and gardening classes.
- PVT has the equivalent of nine full-time employees. Within the Tribal Environmental Office (TEO) four employees would have primary responsibility for managing donated lands. This includes an environmental director, an environmental technician, and two full-time maintenance and grounds personnel to inspect and maintain tribal lands. PVT also uses workers enrolled in community service programs to assist staff with land maintenance and operations. In partnership with the California Indian Manpower Consortium, PVT also provides summer training for youth.
- PVT staff has experience with grant writing; project planning and management; environmental assessments; construction oversight; and operations and maintenance of community buildings, tribal housing, recreation, and agricultural operations.
- PVT is active in local associations of tribal environmental directors in Lake and Mendocino Counties, which meets ten times a year to discuss local environmental issues.
- In coordination with the USDA-Environmental Quality Incentives Program (EQIP), PVT developed two conservation management plans for its properties. One plan outlined a strategy to improve an existing irrigation system, conserve water, reduce erosion, and restore a stream bank on the east fork Russian River. The other addressed how to improve and re-seed an upland pasture to reduce erosion, and enhance an existing pond for wildlife.
- Fiscal management related to this land acquisition and future management will be administered according to federal uniform administrative requirements and cost principles.

Potter Valley Irrigation District

The organizational capacity of the PVID is summarized below.

- PVID is a public agency that has been operating since 1923 to improve and maintain the infrastructure necessary to distribute available water in an efficient and equitable manner to the 275 landowners and 6,997 acres currently served.
- PVID has two full-time, four part-time and seven seasonal employees. Consultants for accounting, legal, engineering, and other professional services are hired when needed.
- PVID owns an office and equipment yard on 1.5 acres of land and maintains over 36 miles of irrigation ditches.
- PVID has been directly involved as a stakeholder in PG&E's Potter Valley Project.



If PVID were the recipient of PG&E land in the Eel River watershed, it plans on establishing a non-profit 501(c)(3), Eel River Conservancy, to whom it would transfer the property.

b. Donee Financial Capacity

The financial capacity of PVT was evaluated based on a review of its operating budget for the current fiscal year, as well as financial statements for the three most recent fiscal years. Based on a review of financial statements submitted, PVT appears to possess the financial capacity to own and manage the lands available for donation and being recommended for transfer within the Eel River planning unit at this time.

c. Management Objectives

Volume II of the Land Conservation Plan established certain management objectives for the Eel River planning unit (see attached Volume II Planning Unit Report). Stewardship Council staff is recommending donation of fee title to approximately 723 acres of land within the Eel River planning unit to PVT to achieve a number of proposed management activities that are described below and appear to be consistent with the established management objectives.

Potter Valley Tribe

PVT proposes to undertake the following objectives and activities on lands conveyed to it in the Eel River:

- Patrol the properties at least twice weekly (March – October) and bi-weekly (November–February) for poaching, illegal camping, and Off Highway Vehicle (OHV) use. Written reports will be submitted to the Tribal Environmental Office (TEO), which will report to the Tribal Council and authorities as necessary.
- Delineate and map current vehicular access and assess the impacts of OHV use. Using this information PVT will assess priority locations and begin the process of closing or enhancing vehicle access to protect habitat quality while providing compatible recreational opportunities. Together with local community groups, the PVT will coordinate installation and maintenance of signs, gates, and barriers.
- Within one year of property acquisition, incorporate properties into the BIA Roads Inventory, Tribal Environmental Assessment Plan, Integrated Resource Management Plan, and Solid Waste Management Plan.
- Notify BIA and U.S. Drug Enforcement Agency (DEA) of property acquisition and submit a request for federal enforcement assistance to address illegal marijuana agriculture. PVT will also arrange meetings with Mendocino County Sheriff's Department and U.S. Drug Enforcement Agency and DEA representatives to coordinate enforcement of such illegal activities on acquired lands.
- In coordination with local agencies, the adjacent USFS, and potential conservation partners, PVT will develop recreation maps outlining access points, existing facilities, attractions, and trails.

- Develop a holistic forest management plan that addresses forest health and fire protection. The plan would also outline traditional management areas for demonstration.
- Develop a Memorandum of Understanding (MOU) with BIA, USFS, and California Department of Forestry and Fire Protection (CAL FIRE).
- Develop a Cultural Resource Management Plan, in consultation with other local Native American entities. Conduct a cultural resource survey and compile PG&E and USFS cultural resource records to develop a confidential map of the cultural resources located within the parcels.
- Develop best management practices and mitigation measures in accordance with the USFS Water Quality Management Handbook. Coordinate with the BIA, USEPA, USDA and State of California to address non-point sources.

Potter Valley Irrigation District

In its LSP, PVID indicated an interest in acquiring the land proposed for donation to PVT to foster conservation on the lands for enhancement of cultural and natural resources including public recreation, river access, agriculture, forest management, watershed management, wildlife and fisheries habitat restoration, erosion control, carbon sequestration and air quality improvement. PVID proposes to undertake the following activities on lands conveyed to it in the Eel River:

- With the assistance of law enforcement, PVID will work to minimize illegal dumping of garbage and hazardous waste and marijuana cultivation on these lands.
- Design and develop roads and trails that are appropriate for OHV use. PVID will construct post barriers and plant vegetation barriers to control erosion in sensitive areas damaged by OHV use in the past.

With regard to other lands in the Eel River planning unit, not the subject of this fee title recommendation, PVID has proposed additional enhancements.

d. Funding

The estimated annual property tax amount on the portion of the parcels being recommended for fee title donation to PVT is approximately \$9,500. PVT is not exempt from paying property taxes on lands it holds in fee. However, the Planning Committee is recommending to the Board that the Stewardship Council provide funding for future property tax obligations associated with this recommended donation. This recommendation is based on the following two factors: PVT is prevented from taking these lands into trust due to a requirement of the Settlement Agreement and Stipulation, thereby preventing PVT from obtaining tax exempt status; and, to date, recommended donees have agreed to pay property taxes only in instances where there was a significant source of revenue associated with the land.

The lump sum payment needed to satisfy property tax neutrality is anticipated to be between \$190,000 and \$315,000 based upon the method of payment and final reassessment. The Stewardship Council would work with PG&E, PVT, and Mendocino County to determine the

final payment methods and amounts necessary to satisfy the new landowner's property tax obligations.

e. Requirements of the Settlement Agreement and Stipulation

The Stewardship Council's recommendation that PVT receives 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.

A conservation easement will be established on all lands donated to PVT. The conservation easement for lands that are donated 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 PVT, the grant deed would reserve to PG&E similar rights for operation and maintenance of hydroelectric facilities and associated water delivery facilities.

Due to certain requirements of the Settlement Agreement and Stipulation, PVT must also agree: (1) to provide a limited waiver of sovereign immunity to ensure that the conservation easement and other agreements executed pursuant to the Land Conservation Commitment are enforceable; and (2) that they will not petition the federal government to have the donated lands placed into federal trust.

f. Conservation Partners

The permanent protection of the Eel River planning unit, and the future preservation and enhancement of the BPVs, may involve, and benefit from, the participation of land conservation partners. For 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 that contribute to the preservation and enhancement of the BPVs. Land conservation partners may be identified in 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.

Stewardship Council staff would work with the prospective donees 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 management and funding agreements and LCCP to be developed for this planning unit.

Potter Valley Tribe

PVT is interested in giving the InterTribal Sinkyone Wilderness Council (ITSWC) an advisory role in the development of management plans and ongoing management of lands donated to PVT. The PVT Chairman is on the ITSC Board of Directors and the two organizations have worked together on other conservation projects during the past five years. The ITSC is a



501(c)(3) non-profit consortium of ten sovereign, federally-recognized California Indian tribes engaged in cultural land conservation, Native American stewardship, habitat restoration, and education. The organization owns and manages 3,845 acres of coast redwood forest in Humboldt and northern Mendocino County.

As part of the Stewardship Council's process, PVT met with other organizations to explore potential partnerships. These organizations included the Potter Valley Irrigation District, Mendocino County, Redwood Valley Rancheria, Friends of Eel River, California Department of Fish and Game, and US EPA Region 9 Tribal Programs Office.

Potter Valley Irrigation District

If PVID were the recipient of PG&E land in the Eel River watershed it plans on establishing a non-profit 501c(3), Eel River Conservancy, to whom it would transfer the property. PVID believes that creation of this non-profit corporation would engender community involvement and would solicit stakeholder input to attract area agency collaboration and active volunteer programs.

PVID's LSP identifies 16 local organizations (including the Potter Valley Tribe) that its staff and Board of Directors have experience working with that would be potential land conservation partners if PVID acquired any PG&E watershed lands. PVID board members also sit on several of these organizations' boards.

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 Eel River planning unit is attached.

IV. RATIONALE FOR RECOMMENDATION

Stewardship Council staff is recommending that fee title to the subject 723 acres be donated to PVT for the following reasons:

1. 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.
2. PVT appears to have sufficient capacity and interest in preserving and enhancing the BPVs associated with these lands.
3. Donation of these lands to PVT would increase the likelihood that the BPVs would be preserved and enhanced in the future.
4. Donation of these lands to PVT would increase the likelihood that the proposed management activities and enhancements described in section II would occur.



V. NEXT STEPS

If the recommendation is approved by the Board on May 2, 2012, the Stewardship Council would invite the prospective donee to negotiate specific terms of the transaction with PG&E and would work with the prospective donee to develop a management and funding agreement. The development of a management and funding agreement would be coordinated with the development of an LCCP.

In addition, Stewardship Council staff will make a recommendation of a prospective conservation easement holder as part of a separate recommendation to the Watershed Planning Committee and Board.

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

ATTACHMENTS AND REFERENCE MATERIAL

- Eel River Planning Unit Map
- LCP Volume II Planning Unit Report for Eel River Planning Unit
- Organizations that Submitted SOQs for Lands Available in the Eel River Planning Unit
- Summary of Key Public Outreach Activities and Public Comments Associated with the Eel River Planning Unit

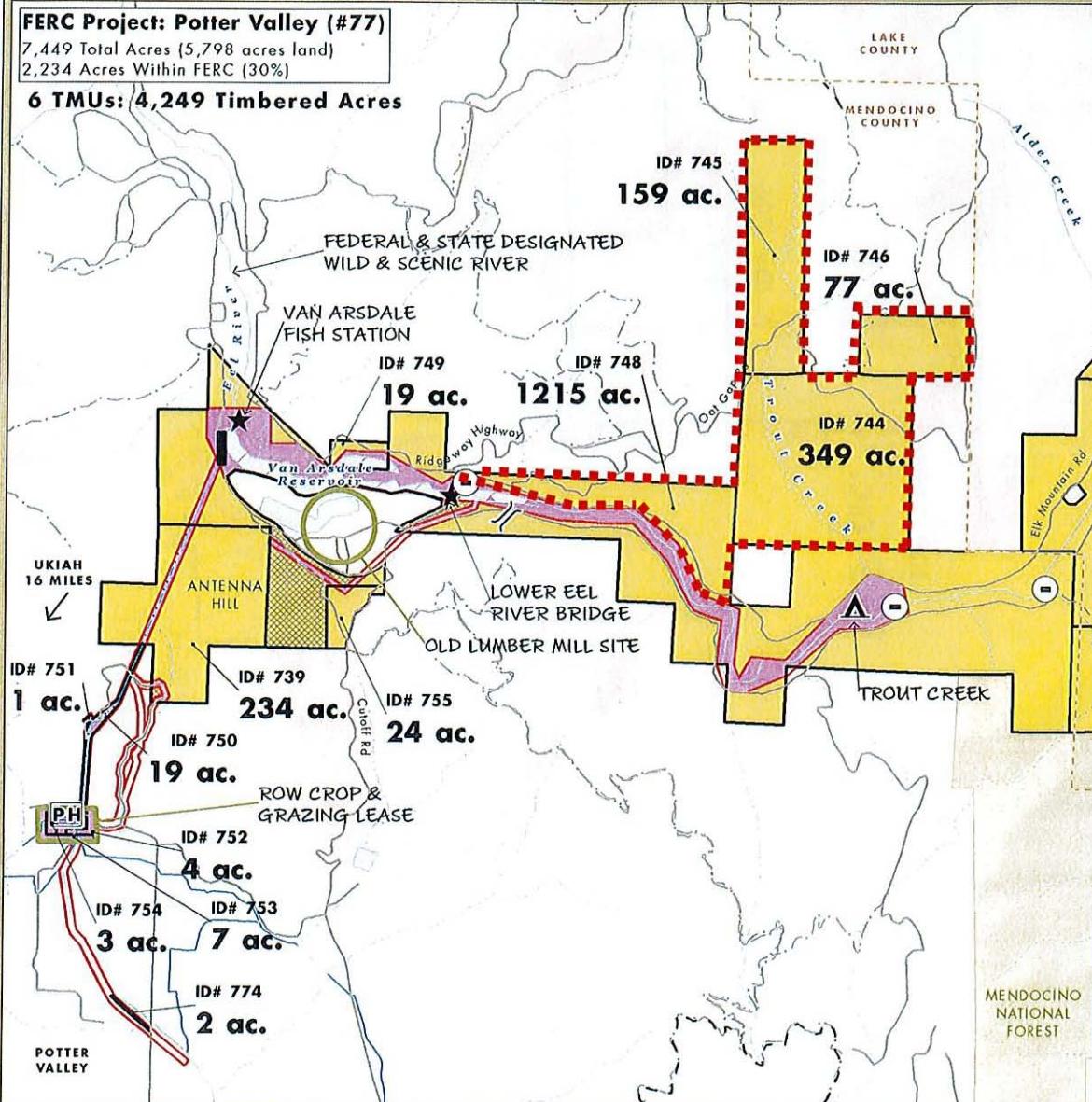
Eel River Watershed

Eel River Planning Unit: Map 1



FERC Project: Potter Valley (#77)
7,449 Total Acres (5,798 acres land)
2,234 Acres Within FERC (30%)

6 TMUs: 4,249 Timbered Acres



[Yellow Box] PG&E Lands Preliminarily Designated for Donation

[Purple Box] PG&E Lands Preliminarily Designated for Retention

[Water Pattern Box] PG&E Lands Under Water

[Red Box with Number] Legal Parcel Boundary and Id Number

[Checkered Box] Certain Considerations May Make Donation Inadvisable

Acreage and location of lands preliminarily designated for retention by PG&E outside the FERC boundary are approximate. FERC boundary is approximate and may change over time.

[White Box] Private

[White Box] USFS

[Dashed Line] OHV Road

[Dashed Line] Trail

[Red Line] FERC Boundary

[Boat Launch icon] Boat Launch

[Campground icon] Campground

[Gate icon] Gate

[OHV icon] OHV Use Area

[Powerhouse icon] Powerhouse

[Whitewater icon] Whitewater Put-In/ Take Out

[Star icon] Feature of Importance

[OHV icon] OHV Use Area

[Whitewater icon] Whitewater Put-In/ Take Out

February 2011

AECOM

