

## FEE TITLE DONEE 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,<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 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). There was no overlap of interest with regard to the lands of interest to the USFS. In May 2012, the Stewardship Council Board of Directors (Board) approved a recommendation for a fee title donation of 723 acres in the Eel River planning unit to the Potter Valley Tribe. In November 2014, the Board approved a recommendation for a fee title donation of an additional 219 acres in the Eel River planning unit to the Potter Valley Tribe.

The Stewardship Council has continued to evaluate opportunities for the recommendation of additional donations of land within this planning unit. Stewardship Council staff has developed the following recommendation, which has been endorsed by the Watershed Planning Committee (Planning Committee), based on a review of the LSP received from the USFS and follow up discussions with the USFS:

**USFS (Mendocino National Forest)** as the prospective recipient of fee title to approximately 891 acres available for donation within four parcels (parcels 743, 769, 771, and 772), subject to compliance with all of the requirements of the Land Conservation Commitment.

**PG&E** to retain fee title to approximately 3,381 acres made available for donation within 23 parcels (parcels 739, 740-743, 747-749, 755-758, 760-769 and 773). This acreage is in

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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").

addition to the approximately 2,235 acres originally designated by PG&E for retention in this planning unit.

The Planning Committee also endorsed staff's recommendation that the board accept the USFS's proposed Conservation Covenant as providing satisfactory assurance that the parcels recommended for donation to the USFS in the Eel River 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 the recommendation that PG&E retain 3,381 acres is approved by the Board, PG&E would negotiate the conservation easement for lands in Mendocino County with the Mendocino Land Trust for lands which was previously recommended to hold conservation easements in Mendocino County at the Eel River planning unit. For lands in Lake County, staff will make a recommendation of a qualified entity to hold the conservation easement. PG&E would then negotiate a conservation easement with the entity that the Board selects to hold the conservation easement in Lake County. The Stewardship Council would also develop a LCCP for the property being retained by PG&E.

The proposed LCCPs would be made available for public review and comment before being forwarded by the Planning Committee to the Board for its review and approval. Adoption of the LCCP by the Board would be the final step in the Stewardship Council's process.

## I. INTRODUCTION AND BACKGROUND

### a. *Planning Unit Description*

The 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. The planning unit serves as a source of a portion of the Sonoma County Water District's water supply. 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 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. The parcels subject to this fee donation recommendation are located in Lake County and described below.

#### Parcel 743

Parcel 743 consists of 1,671 acres of steep, forested and riverbed terrain, all of which are available for fee title donation. Due to Federal Power Act Section 4(e) considerations, only 692 acres within this parcel that are adjacent to Benmore Creek are recommended for donation to the USFS (shown in Map 1). This portion of the parcel is mostly bounded by USFS land with some portions bounded by PG&E land and some by private land and is accessed via Elk Mountain Road. The USFS Benmore Creek Trail crosses this portion of the parcel and is accessed by a small dirt road to the immediate west of the Benmore Creek bridge crossing on an unnamed logging road that will be retained by PG&E. The trail continues south along Benmore Creek until it exits PG&E property. PG&E also reports that the Benmore Creek area, historically has been used for unauthorized camping, OHV use, hunting, shooting, and dumping of debris and abandoned vehicles. PG&E will reserve water rights along any and all water courses located on the property.

#### Parcel 769

Parcel 769 contains 242 acres, of which 170 acres are located within FERC Project boundaries and will be retained by PG&E for operational use. The remaining 72 acres of this legal parcel are available for fee title donation; however, due to Federal Power Act Section 4(e) considerations, only 51 acres in the northwest corner of this parcel are recommended for donation to the USFS (shown in Map 1). This portion of the parcel is bounded to the north, south, and west by USFS land and to the east by PG&E land. Access to this portion of the parcel is by a USFS road. A field evaluation that takes into account PG&E operational uses will be conducted to determine the appropriate location for the property division necessary to effectuate the transfer of a portion of this parcel.

### Parcel 771

This parcel contains 176 acres, of which 132 acres are located within FERC Project boundaries and will be retained by PG&E for operational use. The remaining 44 acres of this legal parcel are available for fee title donation and are recommended for donation to the USFS. Access to the parcel is available from Simmons Road. The portion of the parcel recommended for donation is bounded to the west by USFS land, to the south by PG&E retained land and to the north and east by land also recommended for donation to the USFS.

### Parcel 772

This legal parcel consists of 109 acres, of which 6 acres are located within FERC Project boundaries and will be retained by PG&E for operational use. The remaining 103 acres of this legal parcel are available for fee title donation and are recommended for donation to the USFS. The portion of the parcel recommended for donation is surrounded by USFS land, PG&E retained land, and other land recommended for donation to the USFS. This portion of the parcel has a meadow area within it that is heavily used for unauthorized OHV recreation, which has caused the area to become heavily rutted and eroded. There is also evidence of unauthorized target shooting and camping.

#### *b. 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 the same set of parcels. There was no overlap of interest with regard to the lands of interest to the USFS.

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 Eel River 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 staff's recommendations for the a donation of other lands to the Potter Valley Tribe.

## II. EVALUATION

The USFS is being recommended to receive a donation of fee title to approximately 891 acres of land available for donation in this planning unit. This recommendation is based on an evaluation of the public entity's capacity and a determination that the USFS possesses the organizational and financial capacity to own and manage fee title to this land as further described below.

Stewardship Council staff is recommending that fee title to the subject 891 acres be donated to the USFS rather than be retained by PG&E 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 enhance the BPVs.
2. The USFS appears to have sufficient capacity and interest in preserving and enhancing the BPVs associated with these lands.
3. Donation of these lands to the USFS would significantly increase the likelihood that the existing use of the land and its contribution to the preservation and enhancement of the BPVs would continue.
4. Donation of these lands to the USFS would increase the likelihood that the proposed management activities and enhancements described in Section II of this recommendation would occur.

A recommendation for the donation of other lands of interest to the USFS in the Eel River planning unit was not made 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 (Mendocino 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 Mendocino National Forest manages the land surrounding the parcels recommended for donation to them as part of the 900,000 acre Mendocino National Forest. Law, policy, and various regulations govern the management of public lands by the USFS. The Mendocino National Forest Land and Resource Management Plan provides direction for the management of natural and cultural resources within the National Forest. The Mendocino National Forest also works with various entities to manage the natural and cultural resources in the region.

*b. Donee Financial Capacity*

The financial capacity of the USFS was evaluated, and the USFS appears to possess the financial capacity to own and manage the lands being recommended for transfer to them within the Eel River planning unit.

*c. Management Objectives*

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

The USFS proposes to manage donated lands consistent with existing access, uses, and management direction on the surrounding Mendocino National Forest lands. Moreover, it has been proposed by the USFS that the Mendocino 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.
- Cultural resource inventory.
- Benmore Creek trail reconstruction.

*d. Funding and Financial Costs*

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

*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 Stewardship Council would work with PG&E and Lake 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 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 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 Eel River planning unit is attached.

### IV. NEXT STEPS FOLLOWING PLANNING COMMITTEE RECOMMENDATION

If the Board approves this recommendation on June 24, 2015, and also approves a conservation covenant holder on the lands recommended to the USFS, 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 entity that will be recommended by the Board to hold the



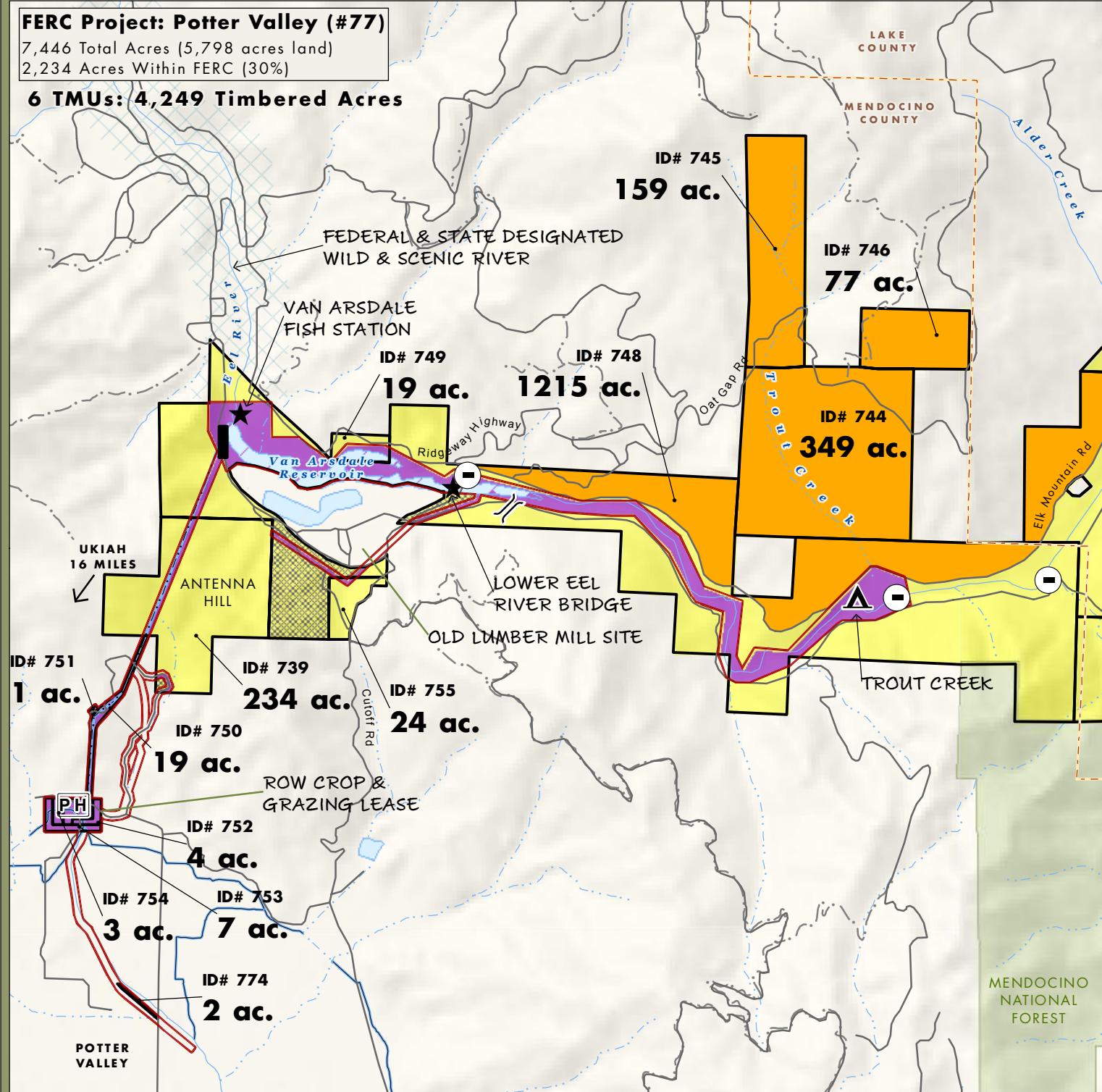
conservation easement over lands being retained by PG&E. The conservation easement and conservation covenant will be incorporated into the LCCPs that are to be developed for this planning unit.

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

- Eel River Planning Unit Map
- LCP Volume II Planning Unit Report for Eel River Planning Unit
- List of Registered 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 Planning Unit: Map 1

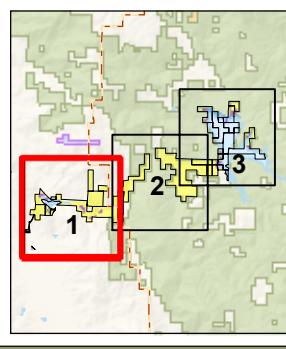


- [Yellow Box] PG&E Lands Preliminarily Designated for Donation
- [Purple Box] PG&E Lands Preliminarily Designated for Retention
- [Blue Box] PG&E Lands Under Water
- [Grey Box] Lands Recommended for Donation to USFS
- [Orange Box] Lands Recommended for Donation to Potter Valley Tribe
- [#] Legal Parcel Boundary and Id Number
- [Yellow Box with Hatched Pattern] 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.

- [Light Grey Box] Private
- [Light Green Box] USFS
- [Dashed Line] OHV Road
- [Dashed Line] Trail
- [Sailboat Icon] Boat Launch
- [Triangle Icon] Campground
- [Dam Icon] Dam
- [Pencil Icon] Day Use
- [OHV Icon] OHV Use Area
- [Powerhouse Icon] Powerhouse
- [Gate Icon] Gate
- [Crossed Out OHV Icon] Whitewater Put-In/ Take-Out

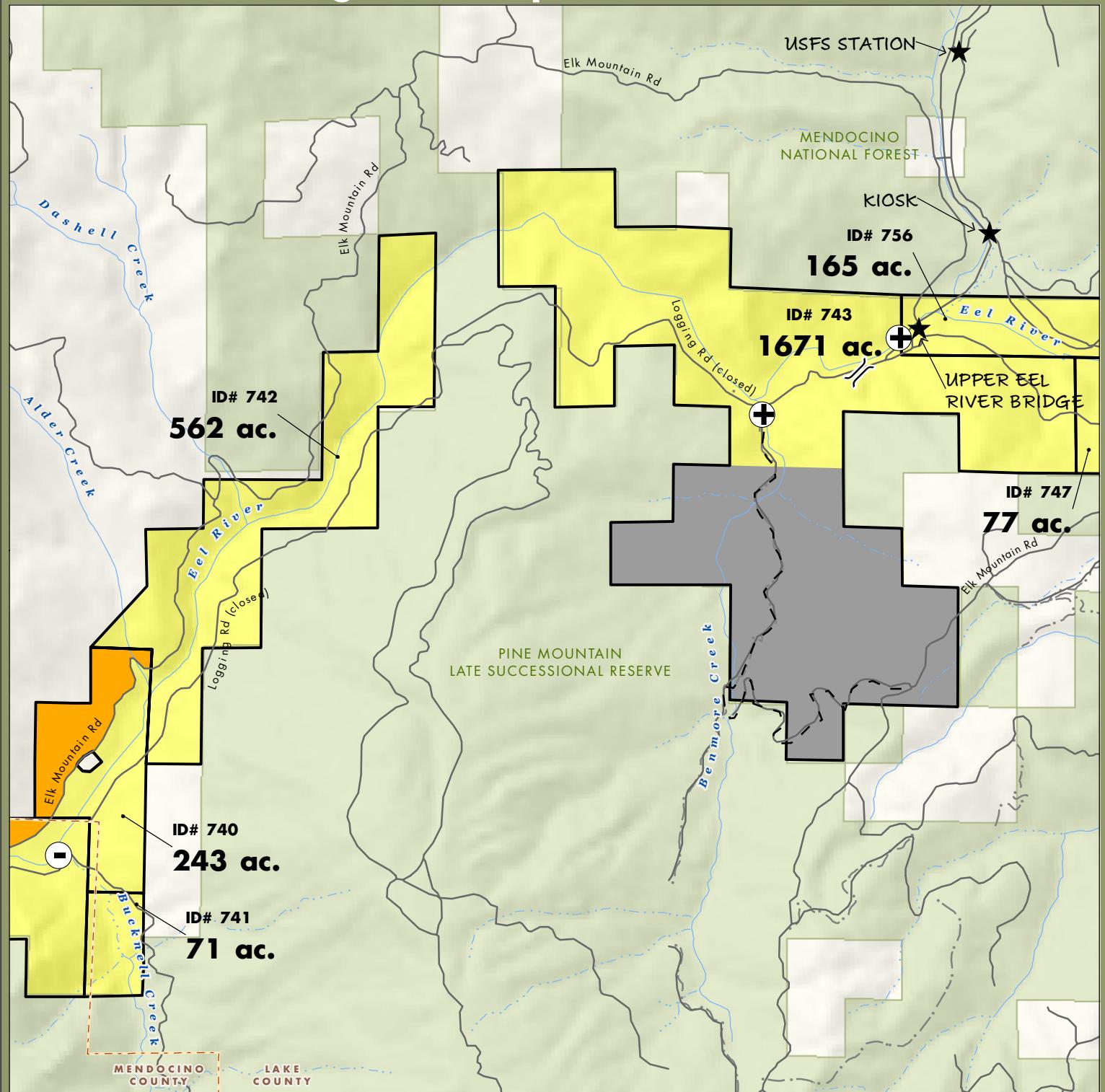
[Red Line] FERC Boundary



September 2014

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## Eel River Planning Unit: Map 2



- PG&E Lands Preliminarily Designated for Donation
- PG&E Lands Preliminarily Designated for Retention
- PG&E Lands Under Water
- Lands Recommended for Donation to USFS
- Lands Recommended for Donation to Potter Valley Tribe
- # Legal Parcel Boundary and Id Number
- 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.

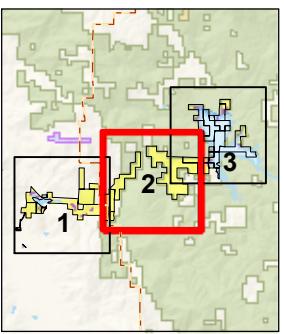
- Private
- USFS
- OHV Road
- Trail
- FERC Boundary
- Boat Launch
- Campground
- Dam
- Day Use
- Feature of Importance
- Gate
- OHV Use Area
- Powerhouse
- Whitewater Put-In/Take-Out



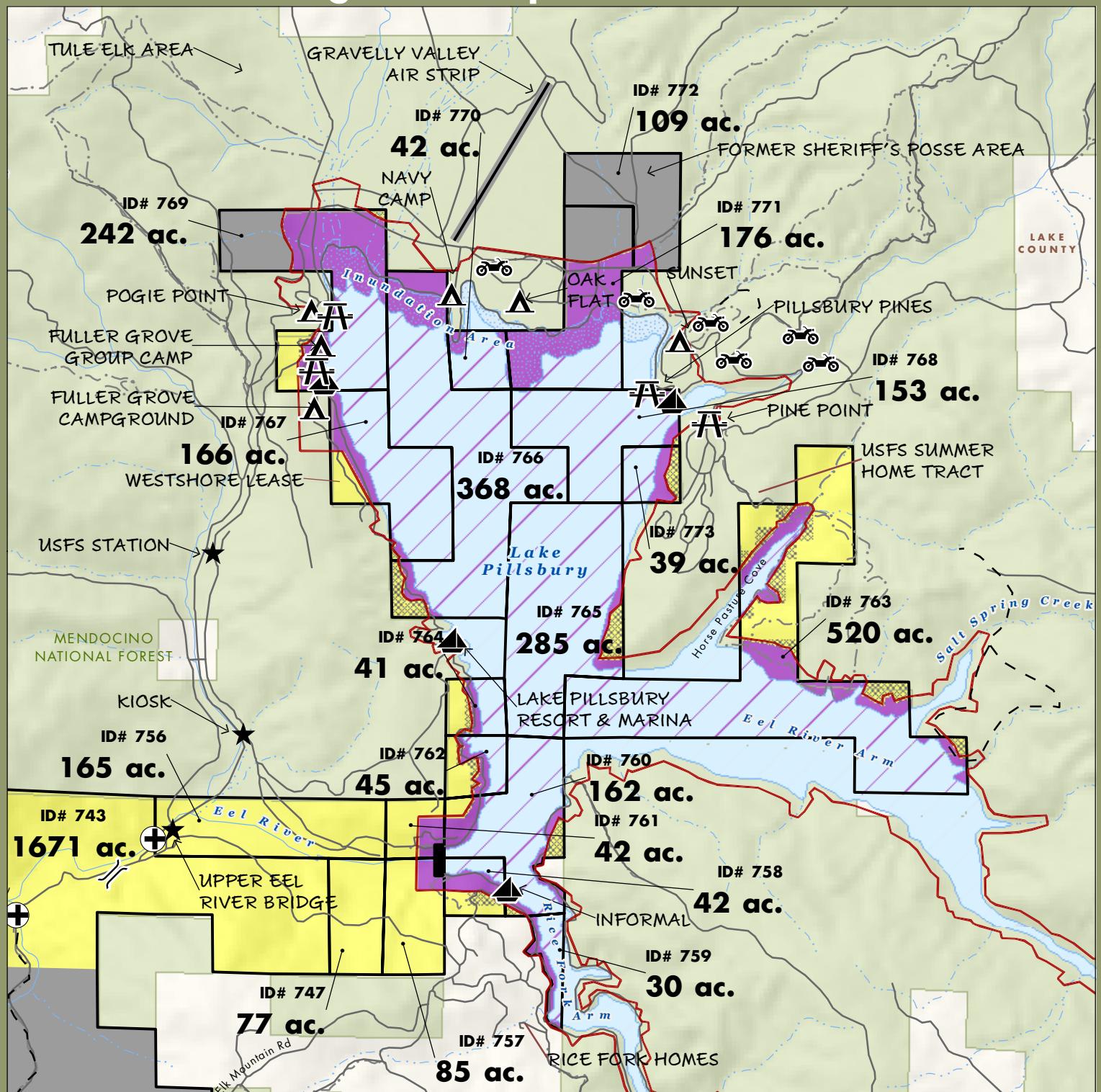
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0.5

1 Mile



## Eel River Planning Unit: Map 3



- PG&E Lands Preliminarily Designated for Donation
- PG&E Lands Preliminarily Designated for Retention
- PG&E Lands Under Water
- Lands Recommended for Donation to USFS
- Lands Recommended for Donation to Potter Valley Tribe
- # Legal Parcel Boundary and Id Number
- 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.

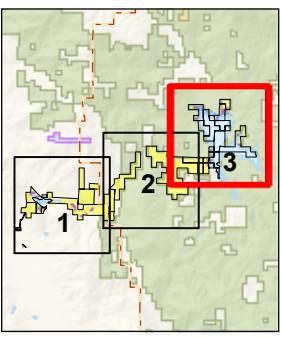
- Private
- USFS
- OHV Road
- Trail
- Dam
- FERC Boundary
- Boat Launch
- Campground
- Dam
- Day Use
- Gate
- OHV Use Area
- Powerhouse
- Whitewater Put-In/Take-Out
- Feature of Importance
- Gate
- OHV Use Area
- Powerhouse
- Whitewater Put-In/Take-Out



0

0.5

1 Mile

 September 2014  
**AECOM**


## **Eel River Planning Unit**

**The Eel River Planning Unit report located in LCP Volume II can be found at this link:**

**[Eel River Planning Unit Report](#)**

**The aerial map to the Eel River Planning Unit can be found at this link:**

**[Eel River Aerial Map](#)**

**The existing conditions maps to the Eel River Planning Unit can be found at this link:**

**[Eel River Existing Conditions Map](#)**



## **Eel River Planning Unit**

### Organizations That Submitted a Statement of Qualifications for Fee-Title Interests

Potter Valley Irrigation District  
Potter Valley Tribe  
The Conservation Fund  
United States Forest Service

## **SUMMARY OF KEY PUBLIC OUTREACH ACTIVITIES AND PUBLIC COMMENTS ASSOCIATED WITH THE EEL RIVER PLANNING UNIT**

### **PUBLIC REVIEW OF VOLUMES I AND II OF THE LCP**

The Draft Land Conservation Plan (LCP) Volumes I and II were released in June 2007 for a 60-day public comment period. During this time, the Stewardship Council held ten public meetings to publicize the availability of the Draft LCP and to encourage public comment. During public review of Volumes I and II of the LCP, two entities and four individuals submitted comments concerning the Eel River planning unit. Comments were received via email, the Stewardship Council website, and hardcopy letters. The comments were reviewed and responded to individually, and the text in the Draft LCP was revised as appropriate.

Public comments emphasized the following regarding the future management of the property:

- The importance of preserving historical resources and existing recreational uses
- Conduct cultural resource studies
- Establish native plant gathering and demonstration areas using traditional ecological knowledge
- Support for lands available for donation within the Mendocino National Forest to be transferred to the US Forest Service to support the consolidation of in-holding within the forest
- Support for the lands available for donation in Mendocino County to be transferred to a land trust to preserve old growth trees.
- Investigate the future use and management of the currently closed River Road south of the Eel River
- Prevent unauthorized uses on the property, such as unauthorized OHV use, illegal dumping, squatters, and marijuana farming
- Cleanup trash and illegal dump sites and install trash receptacles
- Protect old growth forest areas
- Ensure public access is allowed along the shores of Lake Pillsbury and the Eel River
- No new roads
- Develop educational facilities in coordination with tribes.
- Review grazing leases to identify impacts to fish, wildlife, plants, water, and land
- Develop a fish hatchery to revitalize local fish populations

### **PUBLIC INFORMATION MEETING FOR THE EEL RIVER PLANNING UNIT**

A public information meeting was hosted by the Stewardship Council on April 27, 2011 at the Ukiah Valley Conference Center in Ukiah, California. The meeting concerned the Eel River planning unit. A total of 15 people attended and participated in the meeting, representing a wide

variety of interests, including local, tribal, and federal governments, community organizations, and community members. The meeting was advertised via an e-mail sent to contacts in our database, an announcement posted on the Stewardship Council's web site, a press release in the local newspaper, and a postcard sent to all landowners on record that reside within one mile of any PG&E parcel associated with the three planning units that were the focus of the meeting.

The purpose of this meeting was to: (1) provide a review and update on the Stewardship Council's Land Conservation Program; and, (2) solicit additional public input on future stewardship of the Eel River planning unit. During the meeting, participants were invited to ask questions and provide comments on the Eel River planning unit. Stations were set up with maps, other pertinent information, and easels with blank paper. Below is a summary of the notes that were recorded on the easels and provided on comment cards.

- Whitewater rafting studies are not as important as wildlife viewing and education facilities (there is some rafting on Trout Creek, but not whitewater)
- Support for the development of a cultural resource center or museum
- Protect the two Osprey nesting sites along the Eel River
- The old-growth forest along Trout Creek drainage (Parcels 744, 745 and 746) should be protected from any harvesting, even sustainable harvesting

#### **ADDITIONAL CORRESPONDENCE SUBMITTED**

The Stewardship Council also received other public comments and letters from individuals and organizations regarding the future management of the Eel River planning unit, as summarized below:

- Interest in native fisheries in Eel River
- Increase opportunities for whitewater boating
- Repair and reopen currently closed River Road south of the Eel River
- Public access may need to be limited to protect sensitive resources
- Habitat should be assessed and restored, not just protected
- The conservation easement should provide assurances on how BPVs will be protected