

Amendment of Eldorado National Forest Land Resource Management Plan Pertaining to Lands Donated by PG&E

Decision Memo
USDA Forest Service
Eldorado National Forest
Amador Ranger District
Alpine and Amador Counties, California

Background

In 2003, Pacific Gas and Electric (PG&E), PG&E Corporation (hereafter collectively referred to as PG&E) and the California Public Utility Commission (CPUC) entered into a Settlement Agreement that allowed PG&E to emerge from bankruptcy protection. This settlement agreement established 140,000 acres of PG&E's "Watershed Lands" that were to be conserved in perpetuity for the following "Beneficial Public Values" (BPVs):

- outdoor recreation
- sustainable forestry
- agriculture (which includes grazing)
- natural resource protection
- open space preservation
- protection of historic and cultural resources.

The Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) was formed as part of this settlement agreement to oversee the conservation of these lands. As required by the Settlement and Stipulation, the Stewardship Council prepared a Land Conservation Plan to establish a framework for the conservation and/or enhancement of the Watershed Lands and ensure the permanent protection of these lands for the benefit of current and future generations of Californians. To provide for this permanent protection, PG&E chose to make some these lands available for donation to certain qualified organizations. PG&E developed a competitive process for qualified organizations to apply to receive donation of these lands. Eldorado National Forest applied for and received three parcels of land:

- Cole Creek; 919.74 acres with 371.22 acres located in the Mokelumne Wilderness Area, APN: 028-060-03 and 028-060-05 (Amador County),
- North Fork of the Mokelumne River; 29.1 acres, APN: 025-060-016 (Amador County), and
- Blue Creek/Deer Creek 386.27 acres with approximately 30 acres located within the Mokelumne Wilderness Area, APN: 0045-010-003, 004-010-004, 004-040-003 (Alpine County).

The determination to apply for donation of these lands was based on the fact that acquisition of these parcels would enhance the management of the Eldorado National Forest land and resources. The Stewardship Council recommended donating properties within the boundary of the Eldorado National Forest to the United States to be managed as National Forest System lands to provide for permanent resource protection.

Table 1: Description of the donated land parcels located on the Eldorado National Forest

1) **Cole Creek** – Amador RD; acquired 12/10/2015

PARCEL	APN # (Amador Co.)	LEGAL DESCRIPTION	ACRES (approx.)
Cole Creek	028-060-03 028-060-05	<u>T.8 N., R.16 E., MDM*</u> Sec. 13: S½NE¼, SW¼, W½SE¼, NE¼SE¼ Sec. 14: S½S½ Sec. 15: SE¼ Sec. 22: NW¼NE¼, NE¼NW¼ Sec. 23: N½N½ Sec. 24: NW¼NW¼	<u>919.74*</u>

*NOTE: Approx. 371.22 ac. of the total are located within and are now part of the Mokelumne Wilderness Area.

2) **North Fork Mokelumne River** – Amador RD; acquired 12/21/2016

PARCEL	APN #	LEGAL DESCRIPTION	ACRES (approx.)
North Fork Mokelumne River	025-06-16 (Amador Co.)	<u>T. 7 N., R.15 E., MDM*</u> Sec.16: N½NW¼ (portion)	<u>29.1</u>

3) **Blue Lakes** – Amador RD; acquired 9/28/2017

PARCEL	APN # (Alpine Co.)	LEGAL DESCRIPTION	ACRES (approx.)
Blue Lakes	04-01-03 (por.) 04-01-04 (por.) 04-04-03	<u>T.9 N., R.18 E., MDM*</u> Sec. 12: S½NE¼*, S½NW¼ (por.), SW¼ (por.) Sec. 13: N½NW¼ (por); SW¼NW¼; NE¼SE¼ (por.) Sec. 27: NW¼SW¼ Sec. 28: NE¼SE¼ *	<u>386.27 (ENF)**</u> 16 (HTF)

* Portions of these lands are located within the Humboldt Toiyabe NF. The rest of the property is all within the ENF.

** Approx. 30 acres of the ENF total are located within and are now a part of the Mokelumne Wilderness Area.

A Conservation Covenant was negotiated between the Forest Service, Stewardship Council, and the Sierra Nevada Conservancy for these lands. The purpose of the Conservation Covenant was to facilitate the transfer of these lands by assuring that the transfer would meet the requirements of the PG&E Settlement and Stipulations and the Department of Justice title stands for land acquisition.

Purpose and Need

The Conservation Covenant (described in Background section of this document) requires the Forest Service to amend the Eldorado National Forest Land and Resource Management Plan (LRMP) to embody objectives for protecting the BPVs identified in the Stewardship Council's Land Conservation Plans for the donated parcels (Table 2). The Conservation Covenant also provides direction (that will be included in the forest plan amendment and incorporated into the LRMP) for notifying the Sierra Nevada Conservancy of any proposed plans or projects related to the management or use of the donated parcels. Because the Conservation Covenant was developed to assure it was consistent with Department of Justice title standards, the language regarding resource protection essentially commits the Forest Service to abide by the laws currently governing management of National Forest System lands as articulated through the Objectives below.

Objectives from the Land Conservation Plans for all three parcels; Cole Creek, North Fork of the Mokelumne, and Blue Creek/Deer Creek are listed below in Table 2. Following the objectives is a description from the Land Conservation Plan of how the Forest Service will manage these lands to address these objectives (see Column Forest Service Land Management).

Table 2: Objectives for protecting the Beneficial Public Values (BPVs) of the North Fork of the Mokelumne River and Cole Creek Parcels donated lands.

Objectives	Forest Service Land Management
Preserve and enhance habitat in order to protect special biological resources	The USFS agrees to manage the Property for habitat purposes consistent with the multiple uses identified in the Eldorado National Forest LRMP and in full compliance with the Endangered Species Act (ESA).
Preserve open space in order to protect natural and cultural resources, agricultural land uses, recreation experiences, and viewsheds.	The USFS agrees to manage the Property for public uses and protection of natural resources as a component of the National Forest System and subject to applicable laws and regulations.
Enhance recreational facilities in order to provide additional education opportunities, recreation management, and enhance the recreation experience.	The USFS agrees that the Property will be open to the public for outdoor recreation such as hiking, camping, hunting and fishing, subject to reasonable regulations and state fish and game laws and consistent with the long-term protection of the natural resources of the Property.
Develop and implement forestry practices in order to contribute to a sustainable forest, preserve and enhance habitat, as well as to ensure appropriate fuel load and fire management.	The USFS agrees that the Property will be managed for sustainable forestry in accordance with the Eldorado National Forest LRMP and other applicable laws and regulations.
Preserve and enhance grazing in order to support associated economic benefits, as well as to protect open space and habitat resources. (Only applies to the Cole Creek and the North Fork of the Mokelumne River Parcel)	The USFS agrees that the North Fork of the Mokelumne River and Cole Creek Parcels will be managed for agricultural values such as forage in accordance with the Eldorado National Forest LRMP, LRMP standards, and other applicable laws and regulations. (This only applies to the Cole Creek Parcel and the North Fork of the Mokelumne River Parcel. Blue Creek/Deer Creek Parcel lands are not used for grazing).
Identify and manage cultural resources in order to ensure their protection, as well as to support opportunities for public education.	The USFS agrees that the Property will be managed to protect historic, cultural and archeological resources in conformity with the National Historic Preservation Act and the Archeological Resources Protection Act.

Proposed Action (Forest Plan Amendment)

The donated National Forest System lands referred to as the Cole Creek, North Fork of the Mokelumne River and Blue Creek/Deer Creek Parcels (Figure 1-3), are subject to a Conservation Covenant between the United States Department of Agriculture (USDA) Forest Service and the Sierra Nevada Conservancy (SNC), an agency of the State of California.

The language included below will be added to the Eldorado National Forest Land and Resource Management Plan as a goal (36 CFR 219.7(e)(2)). Goals are optional plan components that are broad statements of intent, other than desired conditions, usually related to process or interaction with the public. The goal will apply specifically to the three parcels of donated lands: Cole Creek, North Fork of the Mokelumne River Parcel, and Blue Creek/Deer Creek Parcel.

Forest Plan Amendment

The goal of the Conservation Covenant is to work cooperatively with SNC to meet the intent of the Conservation Covenant to ensure the permanent protection for the property's natural resources. The Conservation Covenant for Cole Creek, recorded in the official records of Amador County (Document No. 2015-0009233, December 10, 2015), for North Fork of the Mokelumne River, recorded in the official records of Amador County (Document No. 2016-0010271, December 21, 2016), and for Blue Creek/Deer Creek, recorded in the official records of Alpine County (Document No. 2017-000561, September 28, 2017). These records were filed with the Eldorado National Forest's land acquisition dockets, specifies that the Forest Service will:

- Preserve and enhance habitat in order to protect special biological resources.
- Preserve open space in order to protect natural and cultural resources, agricultural land uses, recreation experiences, and viewsheds.
- Enhance recreational facilities in order to provide additional public access and enhance the recreation experience, opportunities and management.
- Develop and implement forestry practices in order to contribute to a sustainable forest, preserve and enhance habitat, as well as to ensure appropriate fuel load and fire management.
- Preserve and enhance grazing in order to support associated economic benefits, as well as to protect open space and habitat resources. (This only applies to the Cole Creek Parcel and the North Fork of the Mokelumne River Parcel. Blue Creek/Deer Creek Parcel lands are not used for grazing)
- Identify and manage cultural resources in order to ensure their protection, as well as to support opportunities for public education.

The Forest Service will provide reasonable advance written notice to SNC of any future proposals to amend or revise the ENF LRMP or any other successor management plans or documents relating to the management or use of the donated Property and provide SNC with the opportunity to fully participate in such planning process as an interested party. In any public proceedings respecting any proposed modification to the LRMP or any other management plan or document relating to the management or use of the donated Property, the Forest Service shall fully disclose and describe the existence of the Covenant and intentions of the Stewardship Council to effect permanent protection of the Beneficial Public Values of the donated Property in connection with PG&E's donation of the donated Property to the United States.

Decision

My Decision is to amend the Eldorado National Forest Land and Resource Management Plan as described above under the Proposed Action section to reflect the agreements included in the Conservation Covenant associated with the acquisition of lands donated by PG&E. This action falls within a category of actions that is excluded from documentation in an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) and no extraordinary circumstances [36 CFR 220.6(b)] would preclude the use of this category:

Land management plans, plan amendments and plan revisions, developed in accordance with 36 CFR 219 et. seq. that provide broad guidance and information for project and activity decision-making in a NFS unit (36 CFR 220.6(e)(16)).

Appendix A contains a “Review of Extraordinary Circumstances” supporting my determination that no extraordinary circumstances exist.

Findings Required by Other Laws and Regulations

Under the National Forest Management Act (NFMA) and its implementing regulations at 36 CFR 219 (2012 Planning Rule), a plan may be amended at any time. Plan amendments may be broad or narrow depending on the need for the change. As the Responsible Official, I have the discretion to determine whether and how to amend the Eldorado National Forest LRMP and to determine the scope and scale of any amendment (36 CFR 219.13(a)).

Based on the limited scope and scale of the proposed plan amendment and the determination that no extraordinary circumstances would preclude documenting the amendment using a categorical exclusion, the decision to amend the Eldorado National Forest LRMP as described in the Proposed Action is consistent with Forest Service NEPA procedures (36 CFR 219.13(b)(3)).

The effects of the plan amendment are documented in this decision memo following Forest Service NEPA procedures at 36 CFR Part 220. Because the appropriate NEPA documentation for this amendment is a decision memo, it is not considered a significant change to the plan for purposes of the National Forest Management Act (NFMA) (36 CFR 219.13(b)(3)).

The proposed forest plan amendment adds a ‘goal’ to the existing Eldorado National Forest LRMP to guide future project and activity decision-making. The added goal applies specifically to the lands donated by PG&E. A goal as defined by the 2012 Planning Rule is an optional plan component that is a “... broad statement or intent, other than desired conditions, usually related to process or interaction with the public. Goals are expressed in broad, general terms, but do not include completion dates” (36 CFR 219.7(e)(2)).

In accordance with 36 CFR 219.13(b)(5), the responsible official must “[d]etermine which specific substantive requirement(s) within 36 CFR 219.8 through 219-11 are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment”. The substantive requirements address sustainability (36 CFR 219.8), diversity of plant and animal communities (36 CFR

219.9), multiple use (36 CFR 219.10), and timber requirements based on the National Forest Management Act (36 CFR 219.11). The rule goes on to state that “[t]he responsible official is not required to apply any substantive requirement... that are not directly related to the amendment (219.13(b)(5))... and the responsible official’s determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.” (36 CFR 219.13(b)(5)(i)).

When basing the responsible official’s determination for whether a substantive requirement is directly related to the plan amendment on the presence of adverse effect: “[t]he responsible official must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use.” (36 CFR 219.13(b)(5)(ii)(A)).

In accordance with the components of 36 CFR 219.13(b)(5)(i) and (ii) I have determined the proposed forest plan amendment is directly related to, and will have beneficial effects (36 CFR 219.13(b)(5)(i)) related to the following substantive requirements:

- *Opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate (36 CFR 219.10(a)(4)).*

A goal will be added to the Eldorado National Forest LRMP to work cooperatively with the Sierra Nevada Conservancy to meet the intent of the Conservation Covenant.

- *Habitat conditions, subject to the requirements of §219.9, for wildlife, fish, and plants commonly enjoyed and used by the public (36 CFR 219.10(a)(5)).*

Descriptive language will be added to the Eldorado National Forest LRMP for preserving and enhancing habitat to protect special biological resources on the North Fork of the Mokelumne River Parcel and the Blue Creek/Deer Creek and Cole Creek parcels.

- *Land status and ownership, use, and access patterns relevant to the plan area (36 CFR 219.10(a)(6))*

Descriptive language will be added to the Eldorado National Forest LRMP for preserving open space in order to protect natural and cultural resources, agricultural land uses, recreation experiences, and viewsheds and well as to enhance recreational facilities in order to provide additional public access and enhance the recreation experience, opportunities and management.

- *Opportunities to connect people with nature (36 CFR 219.10(a)(10))*

Descriptive language will be added to the Eldorado National Forest LRMP for preserving open space in order to protect natural and cultural resources, agricultural land uses, recreation experiences, and viewsheds and well as to enhance recreational facilities in order to provide additional public access and enhance the recreation experience, opportunities and management.

Furthermore, under the planning rule at 36 CFR 219.13(b)(5)(ii)(B), a categorical exclusion provides a rebuttable presumption that the amendment will not have substantial adverse effects. No evidence has been presented to rebut that presumption.

Public Involvement

This action was published as a proposal on the Eldorado National Forest Schedule of Proposed Actions on March 23, 2020. A legal notice was published in the Mountain Democrat, the forest's newspaper of record on May 8, 2020, initiating a 30-day comment period on the proposed forest plan amendments described in the Draft Decision Memo. In addition, a notice was published in the Amador Ledger Dispatch on May 8, 2020. Rick Hopson, Amador District Ranger, also contacted Amador County Board of Supervisor, Jeff Brown, and Alpine County Board of Supervisor, Terry Woodrow. No comments or concerns were received.

Forest Plan Consistency

All future projects and activities must be consistent with the amended plan. The 2012 Planning Rule consistency provisions at 36 CFR 219.15(d) apply only to the plan component(s) added or modified under the 2012 Planning Rule. With respect to determinations of project consistency with other plan provisions, the Forest Service's prior interpretation of consistency (that the consistency requirement applies only to plan standards and guidelines) applies. (FSH 1909.12, ch. 20, sec. 21.33.)

Administrative Review

This decision is not subject to legal notice and comment procedures of 36 CFR 218.22, and is not subject to the pre-decisional administrative review process pursuant to 36 CFR 218. Furthermore, because no comments were received, the proposed amendment is not subject to the pre-decisional administrative review (objection) process at 36 CFR 219.51(a).

Contact Person

For additional information concerning this decision, please contact: Rick Hopson, District Ranger at rick.hopson@usda.gov.

Signature

Elizabeth Berger
Acting Forest Supervisor
Eldorado National Forest

Date

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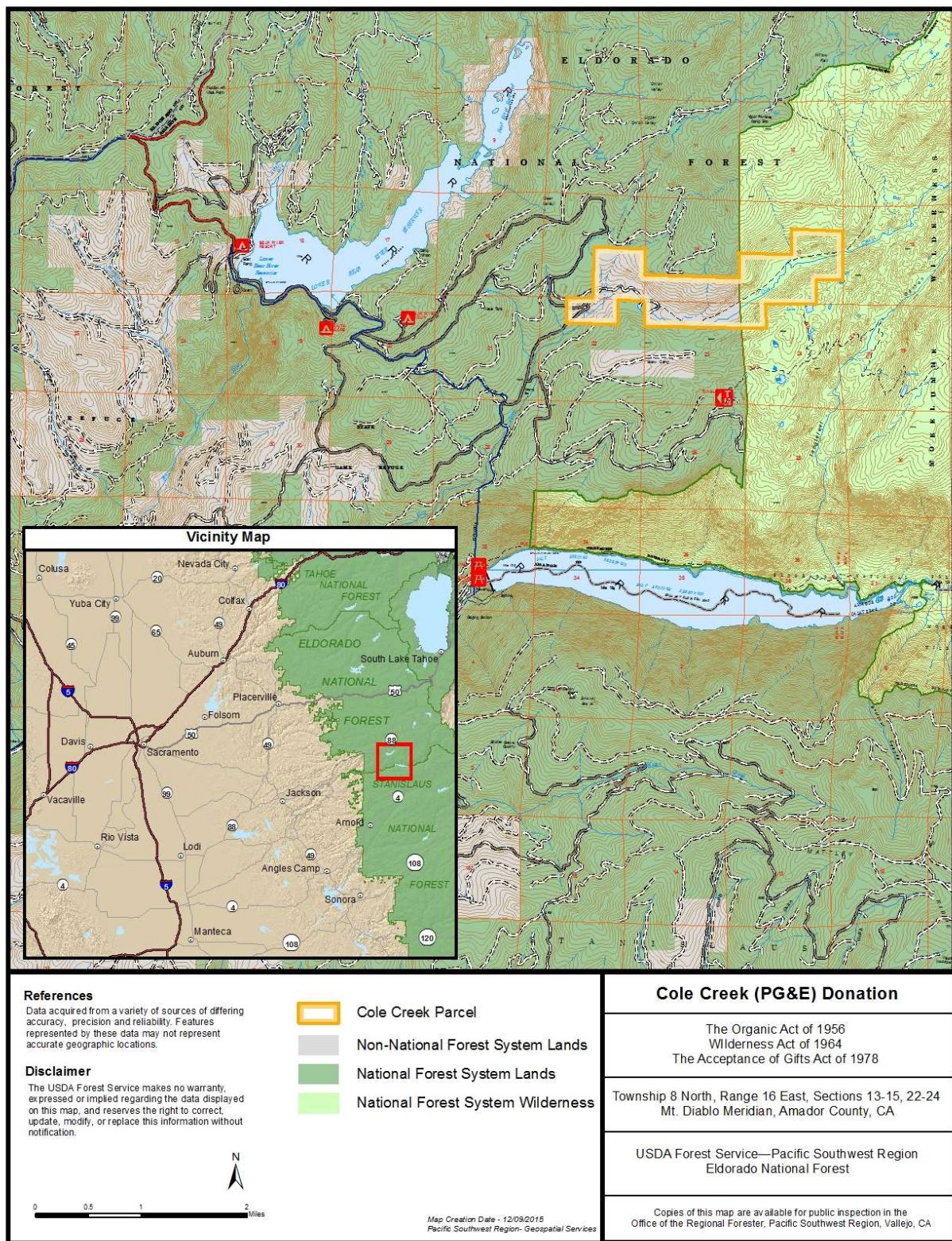


Figure 1. Cole Creek Parcel

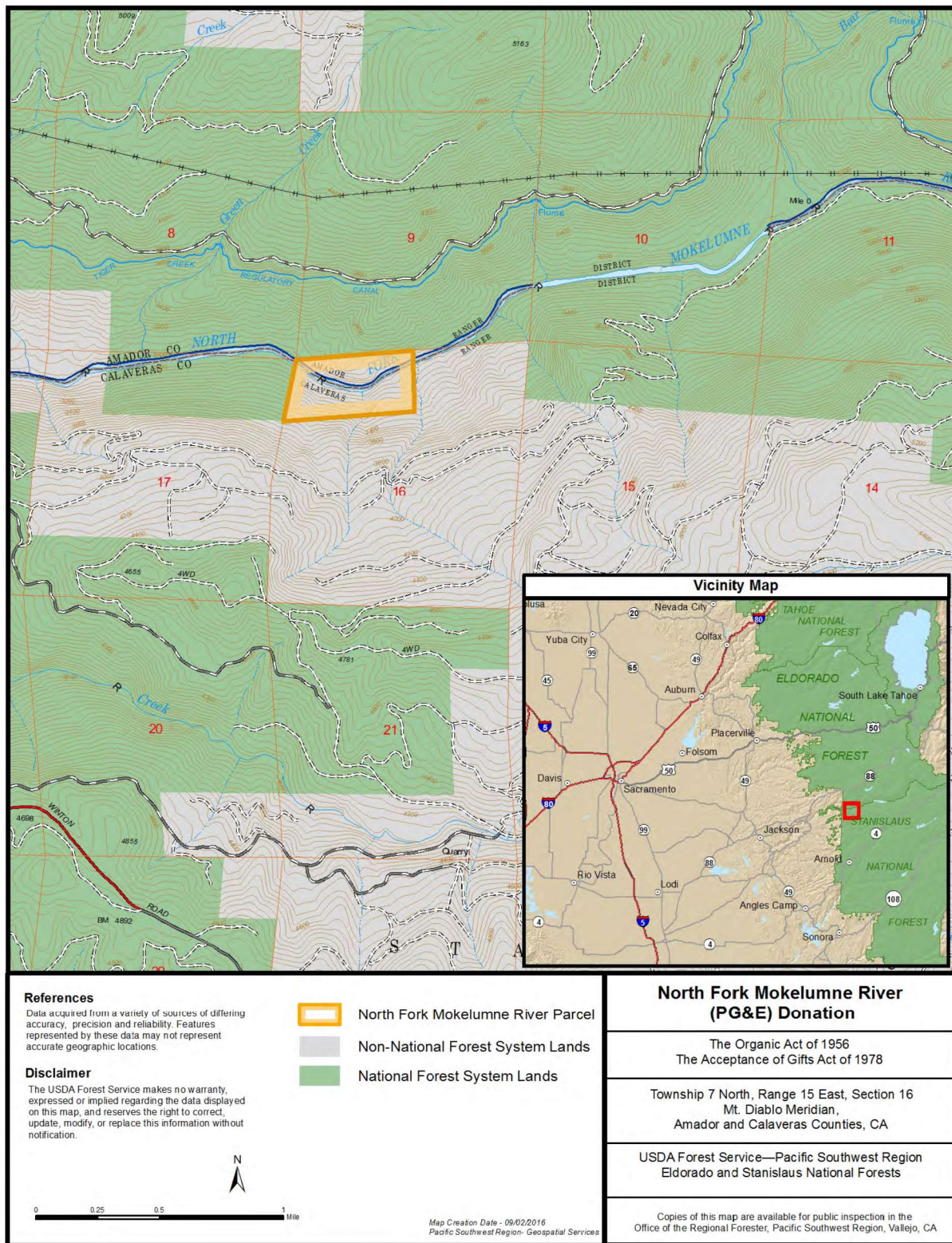


Figure 2. North Fork of the Mokelumne River

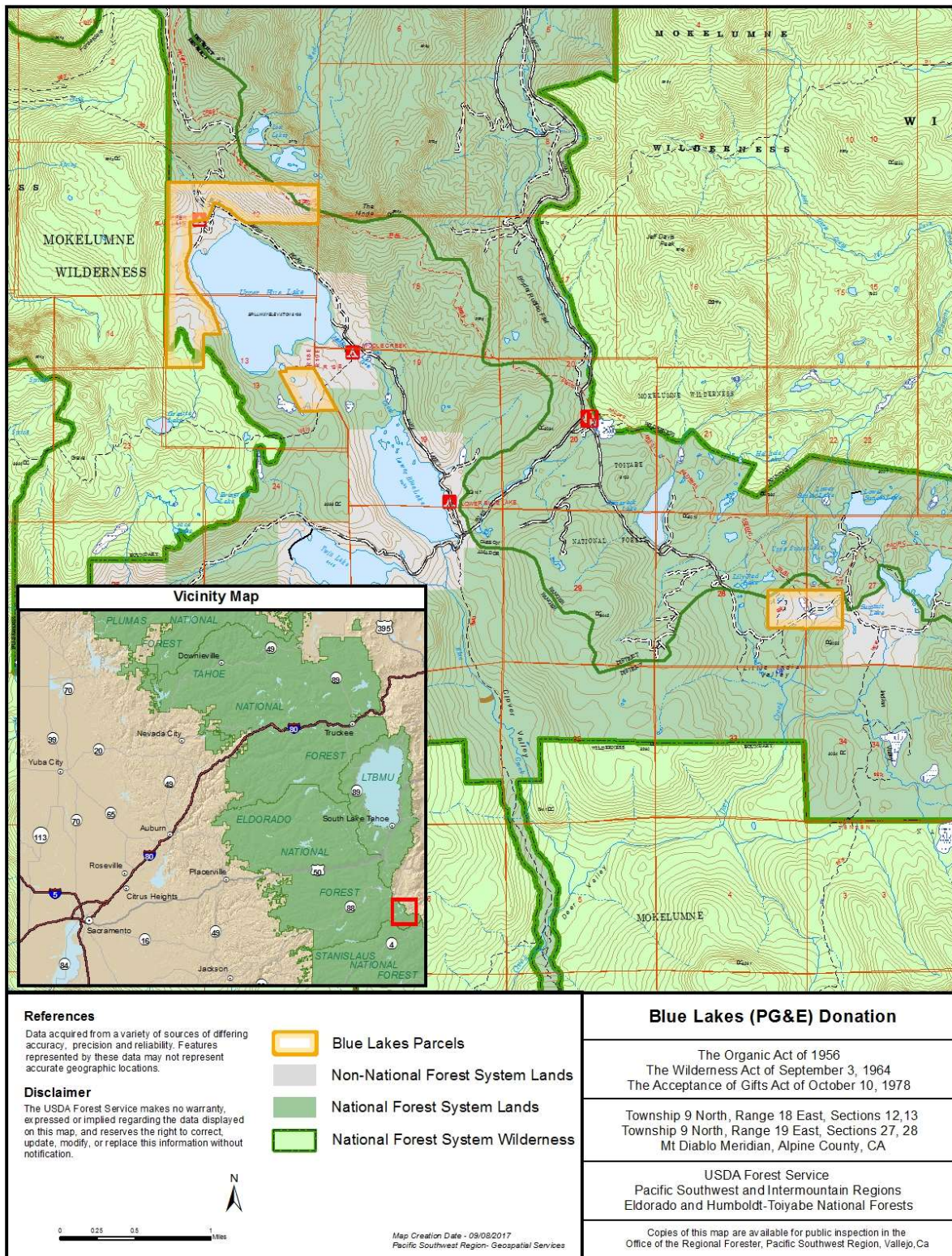


Figure 3. Blue Creek/Deer Creek

Appendix B: Review of Extraordinary Circumstances

In accordance with 36 CFR 220.6(b), the Responsible Official considered the following resource conditions in determining whether extraordinary circumstances related to the proposed action would warrant further analysis and documentation in an EA or EIS.

1. *Federally listed threatened or endangered species or designated critical habitat, species proposed or Federal listing or proposed critical habitat, or Forest Service sensitive species:*

Wildlife

Federally listed threatened or endangered species:

No federally listed threatened or endangered species are known to be found in the project area, however there is potential for the species to be present, particularly Sierra Nevada yellow-legged frog (SNYLF), and Yosemite Toad (YOTO), and suitable habitat for both species is present within the Blue Lakes parcel, and SNYLF habitat and potential for species present in the Cole Creek parcel. However, no activities are proposed that would affect the resource.

Designated Critical Habitat:

There is designated critical habitat for SNYLF, at both locations, and designated critical habitat for the YOTO at the Blue Lakes parcel. However, no activities are proposed that would affect designated critical habitat.

Species Proposed for Listing

No species proposed for Federal listing are found within the project area.

Proposed Critical Habitat

No proposed critical habitat is within the project area.

Forest Service Sensitive Species

The following sensitive wildlife species and associated habitat may be present: bald eagle, California spotted owl, northern goshawk, fisher, fringed myotis, Great gray owl, northern goshawk, North American wolverine, Pacific marten, pallid bat, Townsend's big eared bat. There will be no adverse effect on these species because there are no activities proposed that would affect these species or their habitat.

There are no known sensitive plants however two parcels contain potential habitat for the following species: *Allium tribracteatum*, *Botrychium ascendens*, *Botrychium crenulatum*, *Botrychium lunaria*, *Botrychium minganense*, *Botrychium montanum*, *Botrychium paradoxum*, *Botrychium pendunculatum*, *Bruchia bolanderi*, *Helodium blandowii*, *Meesia uliginosa*, *Ophioglossum pusillum*, *Peltigera gowardii*, and *Pinus albicaulis*. The actions included in the proposed action are administrative in nature and do not include actions that would have direct or indirect effects.

2. *Flood plains, wetlands, or municipal watersheds*

The actions included in the proposed action are administrative in nature and do not include actions that would have direct or indirect effects on these resources.

3. *Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas*

Approximately 400 acres of the donated lands are within Mokelumne Wilderness. The proposed action are administrative in nature and do not include actions that would have direct or indirect effects.

4. *Inventoried roadless areas or potential wilderness areas*

Parcels are not located within an IRA or a potential wilderness area.

5. *Research natural areas*

Parcels are not located within a Research Natural Area.

6. *American Indians and Alaska Native religious or cultural sites*

The donated Property will be managed under Federal Law, mainly the National Historic Preservation Act (NHPA), to ensure the protection of historic, cultural, and archaeological resources.

There will be no adverse effect to American Indian sites through the donation of the Property. Land acquisition is considered Exempt from NHPA Section 106 review under the Programmatic Agreement among the U.S.D.A. Forest Service, Pacific Southwest Region (Region 5), California State Historic Preservation Officer, Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Processes for Compliance with Section 106 of the National Historic Preservation Act for Management of Historic Properties by the National Forests of the Pacific Southwest Region (PA), Appendix D, 1.3 (b): Land acquisitions or transfers of administrative control to the Forest Service, where the historic properties received are not considered in exchange for any relinquished.

7. *Archaeological sites, or historic properties or areas*

The donated Property will be managed under Federal Law, mainly the National Historic Preservation Act (NHPA), to ensure the protection of historic, cultural, and archaeological resources.

There will be no adverse effect to American Indian sites through the donation of the Property. Land acquisition is considered Exempt from NHPA Section 106 review under the Region 5 PA, Appendix D, 1.3 (b): Land acquisitions or transfers of administrative control to the Forest Service, where the historic properties received are not considered in exchange for any relinquished. There will be no adverse effect on these resources because there are no ground disturbing activities aligned with implementing the proposed forest plan amendments.