STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for the

PETER MICHAEL WINERY
TRIBUTARY 3 BYPASS FACILITY

SOURCE: UNNAMED TRIBUTARY 3, TO UNNAMED TRIBUTARY 5, TO KELLOGG CREEK, TO REDWOOD CREEK, TO MAACAMA CREEK, TO THE RUSSIAN RIVER

COUNTY: SONOMA COUNTY

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

I. Project Description

Peter Michael Winery (Applicant), filed Water Right Application 30745 with the Division of Water Rights (Division) on March 23, 1998, to appropriate 85 acre-feet per annum from an Unnamed Stream (Tributary 3) tributary to Kellogg Creek, for storage behind an existing onstream dam (lower reservoir) and in an existing offstream reservoir (upper reservoir) between December 15 and March 31 of the succeeding year. Stored water would be used for irrigation of 151 acres of vineyard and for recreation. On September 24, 2012, the Division issued a Permit for Diversion and Use to the Applicant (Water Right Permit). See Initial Study for Water Right Permit 21312/Water Right Application 30745 (Application) for additional information.

The lower reservoir receives water from three Unnamed Stream tributaries (Tributaries 1, 2, and 3). Tributary 4 originates at the lower reservoir spillway, located in the southwest corner of the lower reservoir, and flows into Kellogg Creek. Tributary 5 originates roughly 190 feet south of the toe of the existing lower reservoir dam (see Figure 1). In accordance with the Water Right Permit conditions, the Applicant is required to bypass a minimum flow of 0.56 cubic feet per second (cfs) at Tributary 3. Bypass flows will be diverted downstream to Tributary 5, which then flows into Kellogg Creek, thence Redwood Creek, thence Maacama Creek, thence the Russian River.

To protect fish and wildlife, the Applicant will construct the Tributary 3 Bypass Project (Project) in Tributary 3, roughly 40 feet upstream of the confluence with the lower reservoir. During the period from December 15 through March 31, the Applicant shall bypass a minimum of 0.56 cfs from Tributary 3 or the total streamflow if flow is less than 0.56 cfs. From April 1 through December 14, the Applicant shall bypass the total streamflow. The bypassed streamflow will flow through a 12-inch diameter pipeline (bypass pipeline) buried along the eastern side of the lower reservoir under the existing gravel path. The bypass flow will be released into Tributary 5 by connecting the bypass pipeline to an existing 12-inch diameter storm drain pipeline that originates near the toe of the lower reservoir dam and empties into Tributary 5, and subsequently Kellogg Creek.

The Project is located approximately 6 miles northwest of the town of Calistoga and approximately 15 miles east of the town of Healdsburg in Sonoma County, California. The Project area is in projected Sections 5 and 8, Township 9N and Range 7W, Base and Meridian MD of the "Mount Saint Helena" 7.5-minute U.S. Geological Survey topographic quadrangle.

The Applicant proposes to construct a concrete weir bypass facility in Tributary 3 with features that include:

1. *Weir bypass facility.* The concrete weir will be approximately 20 feet wide and 7 feet high (4 feet above the streambed and 3 feet buried in the streambed) and 1 foot thick. There will be a 4 foot wide rectangular opening in the wall for flashboards to regulate the pooled water level. Void of flashboards, the bottom of the opening will be at about the same elevation as the thalweg of Tributary 3.

2. *Bypass inlet in left bank of Tributary 3.* The inlet structure will be approximately 6 feet wide, 6 feet tall, and 4 feet deep with a 1 foot deep toe at the front of the structure.

3. *Riprap protection.* 16 cubic yards of clean rock slope protections (riprap) will be installed and extend 15 feet upstream and 5 feet downstream of the weir.

4. *Bypass pipeline.* The bypass pipeline will be a 12-inch diameter double wall concrete cylinder pipe. The bypass pipeline will be located under an existing gravel pathway along the eastern side of the lower reservoir. The exposed end of the bypass pipeline will be protected by a bar rack.

5. *Twelve-inch gate.* A 12-inch gate with a threaded stem and hand wheel operator will be installed at the exposed end of the bypass pipeline.

6. *Passive bypass pipe.* A 5-inch passive bypass pipe will be located next to the bypass pipeline and will connect with the bypass pipeline. The exposed end of the passive bypass pipe inlet will be capped with a basket screen and then the bar rack which also protects the bypass pipeline.

7. *Gravel pathway.* The existing gravel pathway that runs along the eastern side of the lower reservoir will be excavated to lay the bypass pipeline and then the pathway will be replaced.

The Applicant will implement management practices to minimize sediment production, prevent the movement of loose soil off-site, contain cement, and ensure that these materials do not enter the waterways. The Applicant shall prioritize use of wildlife-friendly, 100 percent biodegradable erosion control products and similar best management practices (BMPs).

The Applicant is responsible for implementing BMPs, which include, but are not limited to the following:

- Install all erosion control measures by October 15, or during non-construction periods.

- Maintain all erosion control measures throughout the Project.

- Conduct construction activities between August 20 and October 15 when Tributary 3 is dry and void of flowing water from the confluence of Tributary 3 with the lower reservoir to 200 feet upstream.

- Confine the work area within the streambed and riparian zone to the minimum area needed to accomplish the Project.

- Use of erosion control products that contain synthetic (e.g., plastic or nylon) netting or materials for permanent erosion control (i.e., to be left in place for two years from the date of completion of the Project) is prohibited. For purposes of this certification, photodegradable synthetic products are not considered biodegradable.

- If erosion control netting or products entrap and harm wildlife, the Applicant shall immediately remove the netting or product and replace it with wildlife-friendly biodegradable products at that location. These erosion control netting or products shall also be removed and replaced elsewhere in the Project area within 5 days.

- Control and contain soil, debris, silt, unset cement, oil, and other foreign substances or materials. Filter runoff from disturbed areas to prevent the escape of sediment from the disturbed area from entering into waters of the United States or waters of the State during and after construction.

- Enclose and cover exposed stockpiles of dirt or other loose, granular construction materials (e.g., gravel from pathway) that could contribute sediment to waterways.

- Use of soil stabilization products that contain synthetic materials within waters of the United States or waters of the State at any time is prohibited.

- Remove all temporary erosion and sediment control measures after any disturbed area is stabilized and work is completed.

- Remove all remaining synthetic netting or materials no later than two years from the date of completion of the Project.

- Revegetate all disturbed soil with native species or seed with native grasses. If vegetation cannot be reestablished before expected rainfall, mulching, erosion control fabric, or other sediment control measures shall be implemented to prevent delivery of sediment to the drainages.

- All equipment shall be maintained in good working order and spill kits shall be on hand during construction. Equipment shall not be staged or fueled near waters of the United States or waters of the State.

- Remove all temporary fill and restore all temporarily affected streambed and riparian zones to pre-construction contours prior to Project completion.

- All required BMPs shall be on-site and ready for timely deployment before the start of construction activities.

II. Regulatory Authority

Water Quality Certification and Related Authorities

The Federal Clean Water Act (CWA) (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 101 of the CWA (33 U.S.C. § 1251 (g)) requires federal agencies to "co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources."

Section 401 of the CWA (33 U.S.C. §1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the CWA, including water quality standards and implementation plans promulgated pursuant to section 303 of the CWA (33 U.S.C. § 1313). CWA section 401 directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the CWA and with any other appropriate requirement of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project. The State Water Resources Control Board (State Water Board) is designated as the state water pollution control agency for all purposes stated in the CWA and any other federal act. (Wat. Code, § 13160.) The State Water Board's Executive Director has been delegated the authority to issue a decision on a water quality certification (WQC) application. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

An initial application for WQC was received from the Applicant by the State Water Board on April 4, 2012, and was not accepted for filing until May 10, 2012, when a revised and complete application was received. The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the State Water Board website on May 25, 2012. No comments were received. On July 5, 2012, the State Water Board issued a denial without prejudice letter for the Applicant's May 10, 2012 request for WQC for procedural reasons. A second complete application for WQC was received and accepted for filing by the State Water Board on August 21, 2012.

The United States Army Corps of Engineers (ACOE) determined that under section 404 of the CWA a 404 Nation Wide Permit 12 is required for the Project. The ACOE identification number for the Project is 2011-00404N. The California Department of Fish and Game determined that a 1602 Streambed Alteration Agreement is required for the Project.

Water Quality Control Plans and Related Authorities

The California Regional Water Quality Control Boards (Regional Water Boards) adopt, and the State Water Board approves, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to Section 303 of the CWA. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute State water quality standards.

The North Coast Regional Water Quality Control Board (North Coast Regional Board) adopted, and the State Water Board and the United States Environmental Protection Agency approved, the *Water Quality Control Plan for the North Coast Region* (North Coast Basin Plan). The North Coast Basin Plan designates the beneficial uses of water to be protected along with the water quality objectives necessary to protect those uses.

The North Coast Basin Plan identifies existing and potential beneficial uses for the Mark West Hydrologic Subarea of the Middle Russian River Hydrologic Area. The existing beneficial uses are identified as: municipal and domestic supply; agricultural supply; groundwater recharge; freshwater replenishment; navigation; water contact recreation; non-contact water recreation; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; wildlife habitat; rare, threatened or endangered species; migration of aquatic organisms; and spawning, reproduction, and/or early development. The potential beneficial uses are identified as: industrial service supply; hydropower generation; shellfish harvesting; and aquaculture.

The Russian River is identified as impaired for sediment and temperature under CWA Section 303(d). At present, total maximum daily loads (TMDLs) are not established for this water body. If TMDLs are established and implementation plans are adopted for this watershed, the State Water Board may revise the provisions of this WQC to address actions identified in such action plans. Bank erosion is identified as a source contributing to sediment impairment. Removal of riparian vegetation is identified as a source contributing to temperature impairment. Activities authorized by this WQC are designed to increase riparian vegetation and reduce sediment discharges from bank erosion. Actions authorized by this WQC require implementation of BMPs for sediment and turbidity control and planting of more riparian zone shade vegetation at and near the Project site. Accordingly, this WQC is consistent with, and implements BMPs that would attenuate sediment and temperature adverse impacts.

The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The North Coast Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This certification is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants.

California Environmental Quality Act

The State Water Board is the lead agency for the purpose of California Environmental Quality Act (CEQA) compliance. The State Water Board issued an Initial Study (IS)/ proposed Mitigated Negative Declaration (MND) for the Project on June 22, 2012. The State Water Board approved the final IS/MND and Mitigation Monitoring and Reporting Plan (MMRP) for the Project on September 24, 2012, and filed a Notice of Determination (NOD) with the State Clearinghouse on September 24, 2012.

All documents and other information that constitute the public record for this Project shall be maintained by the Division of Water Rights and shall be available for public review at the following address: State Water Board, Division of Water Rights, 1001 I Street, Sacramento, California 95814.

III. Findings

In order to assure that the Project operates to meet water quality standards as anticipated, and to assure that the Project will continue to meet state water quality standards and other appropriate requirements of state law over its lifetime, this WQC imposes conditions regarding monitoring, reporting, enforcement, and potential future Project modifications. The MMRP was adopted by the State Water Board on September 24, 2012, prior to issuance of this WQC as part of issuance of the Water Right Permit. The same MMRP (Attachment A), with a minor revision to Mitigation Measure 3 is adopted as part of issuance of this WQC. All mitigation measures identified in the MMRP are hereby required as a condition of approval to avoid significant effects to the environment.

California Code of Regulations, title 23, section 3860 requires imposition of certain mandatory conditions for all water quality certifications. The State Water Board finds that, with the conditions and limitations imposed under this WQC, the proposed Project will be protective of the state water quality standards and other appropriate requirements of state law.

The State Water Board reviewed and considered the plans and Project description provided by the Applicant. Further, the State Water Board considered the North Coast Basin Plan, the existing water quality conditions and Project-related controllable factors. Any proposed changes incorporated into the Project are required as a condition of approval to avoid significant effects to the environment. The State Water Board finds that there is no substantial evidence in the record that the Project will have a significant effect on the environment, and finds that the approved MND and MMRP reflect the State Water Board's independent judgment and analysis. The State Water Board will file a NOD within five days of issuance of this WQC.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES THAT PETER MICHAEL WINERY'S TRIBUTARY 3 BYPASS FACILITY will comply with sections 301, 302, 303, 306, and 307 of the CWA, and with applicable provisions of State law, if the Applicant complies with the following terms and conditions during the Project activities certified herein.

CONDITION 1 Any violation of conditions 5, 7, 9, 11, 12, 13, 16, 17, 18, 20 (with a revision to correct the reference to the California Regional Water Quality Control Board from the San Francisco Bay Region to the North Coast Region), 23, 25, 28, 29, and 31 of the Water Right Permit or subsequently issued license thereon shall be a violation of this water quality certification. Violations of the bypass flows required in Condition 16 of the Water Right Permit shall be reported to the State Water Board within 48 hours. The report shall document all observed impacts, and include an analysis of how to avoid non-compliance in the future. Fisheries effects (e.g., a fish kill, fish observed in obvious distress, or dewatering of redds downstream) resulting from any deviations from prescribed flow will be reported immediately to the California Department of Fish and Game, the State Water Board, and the North Coast Regional Board. All other condition requirements will be reported to the State Water Board within three days of identification of non-compliance.

CONDITION 2 All BMPs described in the application for WQC, supplemental information, and MMRP are hereby incorporated by reference into the conditions of this WQC. Notwithstanding any more specific conditions in this WQC, the Applicant shall comply with all measures described in the application for WQC and its supplements, and the attached MMRP.

CONDITION 3 Control measures for erosion, excessive sedimentation and turbidity shall be implemented and in place at the commencement of and throughout any ground clearing activities, excavation, or any other Project activities that could result in erosion or sediment discharges to surface waters. Erosion control blankets, liners with berms, and/or other erosion control measures shall be used for any stockpile of excavated material to control runoff resulting from precipitation, and prevent material from contacting or entering surface waters.

CONDITION 4 Project activities shall not cause an increase in turbidity downstream of the Project area greater than those identified in the North Coast Basin Plan. Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity shall not exceed natural levels by more than 20 percent. If monitoring shows that turbidity has exceeded the water quality objective, construction will cease and the violation will be reported immediately to the State Water Board's Deputy Director for the Division of Water Rights (Deputy Director) and the Executive Officer for the North Coast Regional Board (Executive Officer). Construction may not re-commence without the permission of the Deputy Director.

CONDITION 5 All imported riprap, rocks, and gravels used for construction shall be pre-washed. Wash water generated on-site shall not contact or enter surface waters. Wash water shall be contained and disposed of in compliance with state and local laws, ordinances, and regulations.

CONDITION 6 Construction material, debris, spoils, soil, silt, sand, bark, slash, sawdust, rubbish, steel, or other inorganic, organic, or earthen material, and any other substances from any Project related activity shall be prevented from entering surface waters. All construction debris and trash shall be contained and regularly removed from the work area to

the staging area during construction activities. Upon completion, all Project-generated debris, building materials, excess material, waste, and trash shall be removed from all the Project sites for disposal at an authorized landfill or other disposal site in compliance with State and local laws, ordinances, and regulations.

CONDITION 7 No unset cement, concrete, grout, damaged concrete, concrete spoils, or wash water used to clean concrete surfaces shall contact or enter surface waters. Any area containing wet concrete shall be completely bermed and isolated. The berm shall be constructed of sandbags or soil and shall be lined with plastic to prevent seepage. No leachate from truck or grout mixer cleaning stations shall percolate into Project area soils. Cleaning of concrete trucks or grout mixers shall be performed in such a manner that affected wash water and associated debris is captured, contained and disposed of in compliance with State and local laws, ordinances and regulations. Washout areas shall be of sufficient size to completely contain all liquid and waste concrete or grout generated during washout procedures. Hardened concrete or grout shall be disposed at an authorized landfill, in compliance with State and local laws, ordinances and regulations.

CONDITION 8 All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. Any equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment. Spill and containment equipment (e.g., oil spill booms, sorbent pads, etc.) shall be maintained onsite at all locations where such equipment is used or staged.

CONDITION 9 Onsite containment for storage of chemicals classified as hazardous shall be away from watercourses and include secondary containment and appropriate management as specified in California Code of Regulations, title 27, section 20320.

CONDITION 10 A copy of this WQC shall be provided to any contractor and all subcontractors conducting Project-related work, and copies shall remain in their possession at the Project site. The Applicant shall be responsible for work conducted by its contractor, subcontractors, or other persons conducting Project-related work.

CONDITION 11 The Deputy Director and the Executive Officer shall be notified one week prior to the commencement of ground disturbing activities. Upon request, a construction schedule shall be provided to agency staff in order for staff to be present onsite to answer any public inquiries during construction and to document compliance with this WQC. The Applicant must provide State Water Board and North Coast Regional Board staff access to Project sites to document compliance with this WQC.

CONDITION 12 The Applicant must take all reasonable measures to protect the beneficial uses of waters of the Russian River and its tributaries. This WQC is contingent on compliance with all applicable requirements of the North Coast Basin Plan. If at any time, an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project has or could soon be in violation of water quality objectives, the associated Project activities shall cease immediately and the Deputy Director and the Executive Officer shall be notified within three days. Associated activities may not resume without approval from the Deputy Director.

CONDITION 13 Unless otherwise specified in this WQC or at the request of the Deputy Director, data and/or reports must be submitted electronically in a format accepted by the State Water Board to facilitate the incorporation of this information into public reports and the State Water Board's water quality database systems in compliance with California Water Code section 13167.

CONDITION 14 The State Water Board's approval authority includes the authority to withhold approval or to require modification of a proposal or plan prior to approval. The State Water Board may take enforcement action if the Applicant fails to provide or implement a required plan in a timely manner.

CONDITION 15 The State Water Board reserves the authority to modify the conditions of this WQC: (1) if monitoring results indicate that continued operation of the Project could violate water quality objectives or impair the beneficial uses of the Russian River or its tributaries; (2) to coordinate the operations of this Project and other hydrologically connected water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water; or (3) to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA.

CONDITION 16 Notwithstanding any more specific conditions in this WQC, the Project shall be operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA.

CONDITION 17 This WQC does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (ESA) (Fish & Game Code §§ 2050-2097) or the federal ESA (16 U.S.C. §§ 1531 - 1544). If a "take" will result from any act authorized under this WQC or water rights held by the Applicant, the Applicant must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Applicant is responsible for meeting all requirements of the applicable ESAs for the Project authorized under this WQC.

CONDITION 18 In the event of any violation or threatened violation of the conditions of this WQC, the violation or threatened violation is subject to all remedies, penalties, process, or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the CWA, the applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this WQC.

CONDITION 19 In response to a suspected violation of any condition of this WQC, the Deputy Director or the Executive Officer may require the holder of any federal permit or license subject to this WQC to furnish, under penalty of perjury, any technical or monitoring reports the Deputy Director deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. (Wat. Code, §§ 1051, 13165,13267 & 13383). The State Water Board may add to or modify the conditions of this WQC as appropriate to ensure compliance.

CONDITION 20 No construction shall commence until all necessary federal, state, and local approvals are obtained.

CONDITION 21 Any requirement in this WQC that refers to an agency whose authorities and responsibilities are transferred to or subsumed by another state or federal agency, will apply equally to the successor agency.

CONDITION 22 The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this WQC, to the Deputy Director for prior review and written approval. If the Deputy Director is not notified of a significant change to the Project, it will be considered a violation of this WQC.

CONDITION 23 The State Water Board may provide notice and an opportunity to be heard in exercising its authority to add or modify any of the conditions of this WQC.

CONDITION 24 This WQC is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330 and California Code of Regulations, title 23, Division 3, Chapter 28, Article 6 (commencing with Section 3867).

CONDITION 25 This WQC is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

CONDITION 26 This WQC is conditioned upon total payment of any fee required under California Code of Regulations, title 23, Chapter 28.

Thomas Howard
Executive Director

Dated: OCT 16 2012

Figure 1: Tributary 3 Bypass Facility

Attachment A: Final Mitigation Monitoring Plan (Mitigation Monitoring and Reporting Plan)

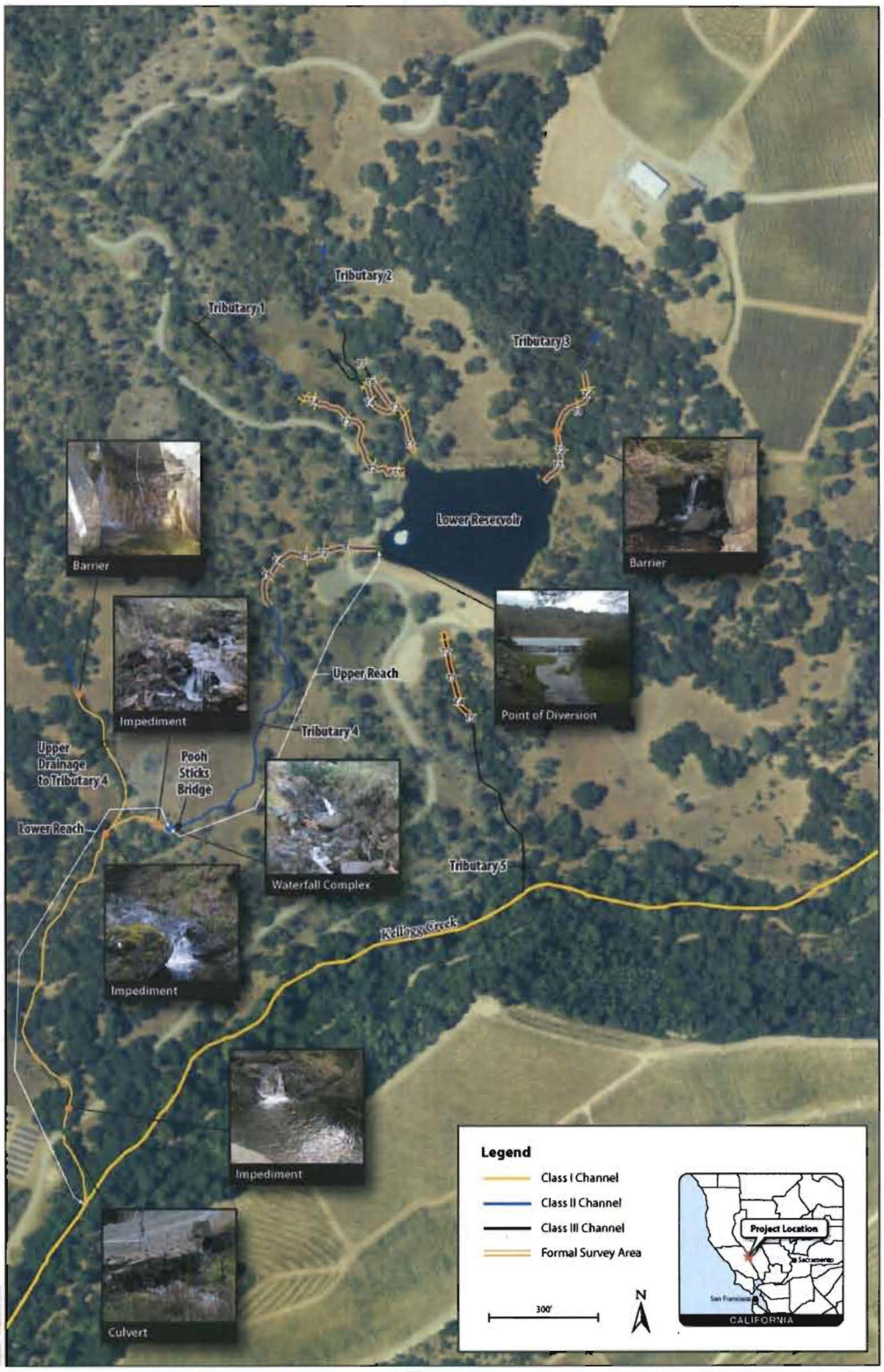

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Figure 3
Stream Class Designations and Survey Areas

Figure 1. Location of Tributary 3 Bypass Facility, Tributaries and Lower Reservoir (Source: IS/MND for Application 30745, 2012)