STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23308, 23455, 23503, 23508, 23511, 23528, 23602, 23603, 23662, 23754, 23774, 23775, 23777, 23791, 23821, 23843, 23856, 23896, 23897, 23900, 23922, 23930, 23932, 23933 and 23934 of CHARLES B. SEE, et al to Appropriate from Streams in the Napa River Watershed in Napa County.	Decision 1404

DECISION APPROVING APPLICATIONS IN PART

Charles B. See, et al, having filed the subject applications for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on March 21 and 22, 1972; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Applications

1. The essential features of these applications are set forth in Table I attached to this decision. A map showing the locations of the proposed appropriations is also attached.

Protestants

2. The protestants and applications protested are listed in Table II attached to this decision. The majority of the protests are based on the lack of unappropriated water in the Napa River

during the months of March, April and May when the water is used for frost protection and the supply is inadequate to meet all requirements.

3. Department of Fish and Game protested the applications in order to maintain a minimum flow in the Napa River to sustain fishlife. The following is the permit term recommended by Fish and Game for the mainstem of the Napa River between Calistoga and City of Napa:

> "Permittee shall during the period (1) from November 1 through November 14 bypass a minimum of 1.0 cubic foot per second or the flow of the stream whenever it is less than 1.0 cubic foot per second at the point of diversion, (2) from November 15 through February 29 bypass a minimum of 15 cubic feet per second or the flow of the stream whenever it is less than 15 cubic feet per second at the point of diversion, and (3) from March 1 through May 31 bypass a minimum of 10 cubic feet per second or the flow of the stream whenever it is less than 10 cubic feet per second at the point of diversion to maintain fishlife.

All applicants whose applications are approved by this decision have agreed to the inclusion of this term in their permits.

Source

4. The Napa River heads on the south side of Red Hill in Kimball Canyon at an elevation of 2,000 feet. It enters the Napa Valley just below Kimball Canyon Dam and courses in a generally

southeasterly direction about 60 miles to the Carquinez Strait where it enters San Pablo Bay. The portion of the river of interest in this decision is that portion north of Napa since the Napa River from Trancas Road to the Bay is affected by tidal action. The portion of the river above Napa comprises about 35 miles.

Water Supply

5. There are two U. S. Geological Survey gaging stations on the Napa River that measure streamflow continuously. Records for the upper station near St. Helena are available for the periods 1929 to 1932 and 1939 to the present. The recorder is located 2-1/4 miles east of St. Helena and 0.2 mile upstream from the Zinfandel Road bridge. Records for the second station near Napa are available for the periods 1929 to 1932 and 1959 to the present. The recorder is located about five miles north of Napa at the Oak Knoll Avenue bridge.

The mean annual runoff at the upper station is 65,400 acre-feet per annum (afa) (RT 70) and at the lower station it is about 120,000 afa.

There is no controversy over availability of unappropriated water for storage from about November 1 through the 15th of March. Average flows at the lower gage during these months are shown below. Essentially all of this water wastes to San Pablo Bay.

Average Streamflow (1961 - 1970) Napa River near Napa in cfs (from USGS records)	
November	41
December	223
January	544
February	640
March	320

The concern is over availability of unappropriated water and replenishment of depleted storage during the period March 15 through May 15 for frost protection. Average streamflow at the lower gage is shown below:

Average Streamflow Napa River near Napa in cfs (from USGS records)		
March 15 to March 31	121	cfs
April	69.6	cfs
May 1 to May 15	34.8	cfs

The only continuous requirement of these flows during this period of the year is 10 cfs for fish. The records show, however, that flow in the river is frequently substantially below the average during periods of actual frost.

Demand by riparian owners during this period for direct diversion for frost protection is substantial and frequently will exceed the available flows during an actual frost; however, long-time frost records in the valley show that there is an average of only about 18 hours during the critical frost damage month of April where temperatures are below 34°, the temperature below which sprinkler systems are customarily operated. Thus, about 97 percent of the time the streamflow, in excess of fish requirements, is available for pumping to offstream storage as proposed in the applications under consideration.

Frost Protection

6. Section 659, Title 23 of the California Administrative Code precludes approval of the portions of the applications which seek to divert directly without storage after March 15 and requires that action on the portions of the applications which seek to divert water after March 15 of each year to replenish winter storage be withheld until a water distribution program is established.

Beneficial Use of Water Directly Diverted

7. Water directly diverted without storage cannot be put to beneficial use for frost protection during the winter season prior to March 15, as the crop is not subject to frost damage prior to that time. Therefore, all applications and portions of applications for water to be diverted directly to use prior to March 15 should be denied.

Availability of Unappropriated Water

8. Unappropriated water is available to supply the applicants who seek to divert water to storage between November 1 and March 15, and, subject to suitable conditions, such water may be diverted to storage and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 23508, 23511, 23528, 23754, 23774, 23775, 23777, 23791, 23821, 23843, 23856, 23896, 23897, 23900, 23922, 23930, 23932, 23933 and 23934 should be approved in part and that permits should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: subject applications in this matter and all relevant information on file therewith.

ORDER

IT IS HEREBY ORDERED that Applications 23508, 23511, 23528, 23754, 23774, 23775, 23777, 23791, 23821, 23843, 23856, 23896, 23897, 23900, 23922, 23930, 23932, 23933 and 23934 be, and they are, approved in part, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions.

1. The water appropriated shall be limited to the quantities which can be beneficially used and shall not exceed the

acre-feet per annum by offstream storage to be collected during the seasons set forth in Table III attached to this decision.

The maximum rates of diversion to storage shall not exceed those set forth in said Table III.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. Permittee shall during the period (1) from November 1 through November 14 bypass a minimum of 1.0 cubic foot per second or the flow of the stream whenever it is less than 1.0 cubic foot per second at the point of diversion, (2) from November 15 through February 29 bypass a minimum of 15 cubic feet per second or the flow of the stream whenever it is less than 15 cubic feet per second at the point of diversion, and (3) from March 1 through May 31 bypass a minimum of 10 cubic feet per second or the flow of the stream whenever it is less than 10 cubic feet per second at the point of diversion to maintain fish life.

The provisions of this paragraph are based upon a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish.

3. For the protection of fish no diversion shall be made which depletes the flow of the stream to less than the amount stated in the preceding paragraph during the corresponding season. No water shall be diverted until the permittee has

installed in the stream immediately below his point of diversion a staff gage, or other device satisfactory to the State Water Resources Control Board, showing the levels which correspond to aforementioned flows. As a condition to the continuing diversion said measuring device shall be properly maintained.

4. In accordance with Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

5. The amount authorized for appropriation may be reduced in the license if investigation warrants.

6. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

7. Said construction work shall be completed on or before December 1, 1973.

8. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

10. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water. Permittee shall take all reasonable steps necessary to minimize waste of water, and may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. At any time after notice to affected parties and opportunity for hearing, the Board may impose specific requirements over and above those contained in this permit, with a view to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water

quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

12. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

13. This permit is subject to the continuing authority of the State Water Resources Control Board to impose further appropriate conditions to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

IT IS FURTHER ORDERED that, until a water distribution program is established among the water users in the Napa River watershed, action is withheld on Application 23308 and the portions of applications listed in attached Table III in the column entitled "Action Withheld" which are for diversion after March 15 of each year to replenish water stored in reservoirs prior to that date. No water shall be diverted after March 15 of each year under any of these applications until further order of the State Water Resources Control Board. If a water distribution program is not established by March 15, 1975, or any subsequent date fixed by the Board, the

portions of the applications upon which action has been withheld shall be deemed denied.

IT IS FURTHER ORDERED that Applications 23455, 23503, 23602, 23603 and 23662 be denied herewith.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: November 2, 1972

W. W. ADAMS
W. W. Adams, Chairman

RONALD B. ROBIE
Ronald B. Robie, Vice Chairman

E. F. DIBBLE
E. F. Dibble, Member

ABSENT
Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER
Mrs. Carl H. (Jean) Auer, Member

TABLE I

App No.	Date Filed	Applicant	Section	TWP & Range	cfs	acft	Season	Acres
23308	7-9-69	Charles B See dba Silverado Vineyards	NWSE 31	7N4W	1c	60	DD 4/1-6/30 S 3/15-6/30	110
23455	3-3-70	John P Jr. & Karen Kirk Lowney	SWNW 15	7N5W	0.08c		DD 4/1-8/1	32
23503	5-11-70	Joseph & Suzanne G Wilson	SESE 23	8N6W	0.2c		DD 3/15-7/15	18
23508	5-18-70	Calistoga Vineyards A Partnership	NWSW 36	9N7W	0.44c	30	DD 2/1-5/31 S 10/1-5/31	35
23511	5-19-70	Robert Mondavi Vineyards, Inc.	SESE 6	6N4W	5c	125	DD 3/1-10/1 S 10/1-5/1	400
23528	6-8-70	John P Jr & Karen Kirk Lowney	SWNW 15	7N5W	0.35c	20	DD 3/1-8/1 S 11/1-5/1	32
23602	9-10-70	Mont La Salle Vineyards	NENW 22	7N5W	0.6c		DD 3/1-6/30	83.8
*23603	9-10-70	Mont La Salle Vineyards	SWSE 18	6N4W	0.66c		DD 3/1-5/31	101
23662	12-21-70	Zinfandel Associates	SWSW 33	8N5W	0.24c		DD 3/15-5/30	20
23754	4-8-71	Connecticut Mutual Life Insu Co	NWSW 15	7N5W	11.4c	74	DD 3/1-5/15 S 11/1-5/15	700
23774	4-30-71	Marion C Jaeger	NWSW 15	7N5W		30	S 1/15-5/15	40
23775	4-30-71	Marion C Jaeger	NWSE 16	6N4W		120	S 1/15-5/15	180
23777	5-3-71	R & M Harris; J & D Hoxsey	SWNE 26	7N5W	0.9c	24	DD 3/1-8/1 S 3/1-6/1	80
23791	5-27-71	Alfred Charles Godward	SWNE 26	9N7W		20	S 10/1-4/30	53
23821	7-6-71	Chateau Montelena A Partnership	NWNE 26	9N7W	3c	20	DD 3/1-5/15 S 11/1-5/15	100
23843	8-13-71	The R G Ranch	NESE 22	7N5W		30	S 11/1-4/30	79
23856	8-23-71	J M & Joye J Westerman	NWNE 8	8N6W		1.5	S 11/1-4/30	8
23896	10-14-71	John J & Marie C Angeloni	NENW 22	7N5W		6.1	S 11/1-4/30	35
23897	10-14-71	Kenneth G & Madelynne H Wolfe	NWNW 14	8N6W	0.57c	3.	DD 3/1-5/15 S 11/1-4/30	15
23900	10-18-71	Jules E & Barbara J Alcouffe	SENW 10	8N6W	1.5c	7	DD 3/15-5/15 S 11/1-4/30	40
**23922	11-15-71	J M Garoutte	SWNE 22	8N6W		20	S 11/15-6/15	30
***23930	11-26-71	Roy Chavez	NWSE 8	7N5W	1c	5	DD 4/1-5/30 S 11/1-5/30	35
23932	12-1-71	Sterling Vineyards	SESW 5	8N6W	2.67c	110	DD 3/1-5/15 S 11/1-4/30	165
23933	12-1-71	Sterling Vineyards	NESW 6	8N6W	2.67c	23	DD 3/1-5/15 S 11/1-4/30	65
23934	12-1-71	Sterling Vineyards	NENW 9	8N6W	2.67c	26	DD 3/1-5/15 S 11/1-4/30	70

DD - Direct Diversion; S - Storage

Source in Napa River except:
* Dry Creek trib Napa River
** Hirsch Creek trib Napa River
*** Unnamed Stream trib Bale Slough thence Napa River

TABLE II

	23308	23455	23503	23508	23511	23528	23602	23603	23662	23754	23774	23775	23777	23791	23821	23843	23856	23896	23897	23900	23922	23930	23932	23933	23934
Department of Fish and Game	X	*X	*X	X	*X	*X	*X	*X	X	*X	*X	*X	*X		X	*X	*X	X	X	X					
Angelo Regusci	X																								
Paul Jaeger		X	X			X	X		X	X	X		X												
Charles B. See		X	X			X	X		X	X															
Robert E. Connolly			X																						
Lewis Carpenter, Jr.			X	X											X										
Tamagni Dairy				X																					
R. W. Griffin							X							(not protested)											
John Angeloni							X																		
Napaco Vineyards								X																	
Vinifera Development Corp.									X																
Mont La Salle Vineyards										X					X										

* Agreement with applicant

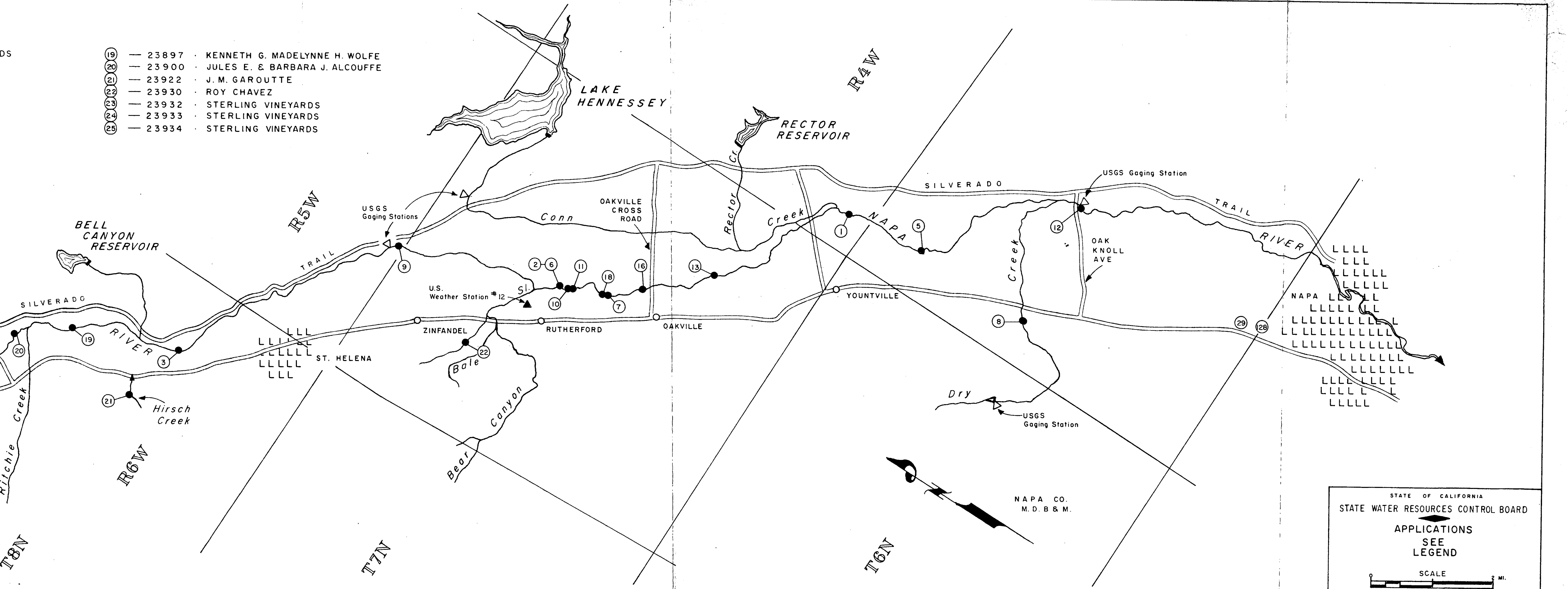
TABLE III

ACTION TAKEN ON APPLICATIONS BY DECISION

Application	Approved in Part	Action Withheld	Denied	Source	Storage Quantities afa	Season	Rate of Diversion to off-stream storage in cfs	Place of use – acres
23308		X		Napa R.				
23455			X					
23503			X					
23508	X	X		Napa R.	30	10/1–3/15	3.0	35
23511	X	X		"	70	10/1–3/15	5.0	400
23528	X	X		"	10	11/1–3/15	0.5	32
23602			X	"				
23603			X	Dry Creek				
23662			X	Napa R.				
23754	X	X		"	74	11/1–3/15	11.4	700
23774	X	X		"	10	1/15–3/15	1.125	40
23775	X	X		"	40	1/15–3/15	2.99	180
2	X	X		"	24	2/1/–3/15	0.9	80
23791	X	X		"	20	11/1–3/15	3.33	53
23821	X	X		"	20	11/1–3/15	3.0	100
23843	X	X		"	10	11/1–3/15	4.66	79
23856	X	X		"	1.5	11/1–3/15	400 gpm	8
23896	X	X		"	6.1	11/1–3/15	750 gpm	35
23897	X	X		"	3	11/1–3/15	0.57	15
23900	X	X		"	7	11/1–3/15	1.5	40
23922	X	X		Hirsch Cr.	20	11/1–3/15	0.5	30
23930	X	X		Unn. Stream	5	11/1–3/15	1.0	35
23932	X	X		Napa R.	55	11/1–3/15	2.67	165
23933	X	X		"	11.5	11/1–3/15	2.67	65
23934	X	X		"	13	11/1–3/15	2.67	70

DS

(19) — 23897 · KENNETH G. MADELYNNE H. WOLFE
(20) — 23900 · JULES E. & BARBARA J. ALCOUFFE
(21) — 23922 · J. M. GAROUTTE
(22) — 23930 · ROY CHAVEZ
(23) — 23932 · STERLING VINEYARDS
(24) — 23933 · STERLING VINEYARDS
(25) — 23934 · STERLING VINEYARDS

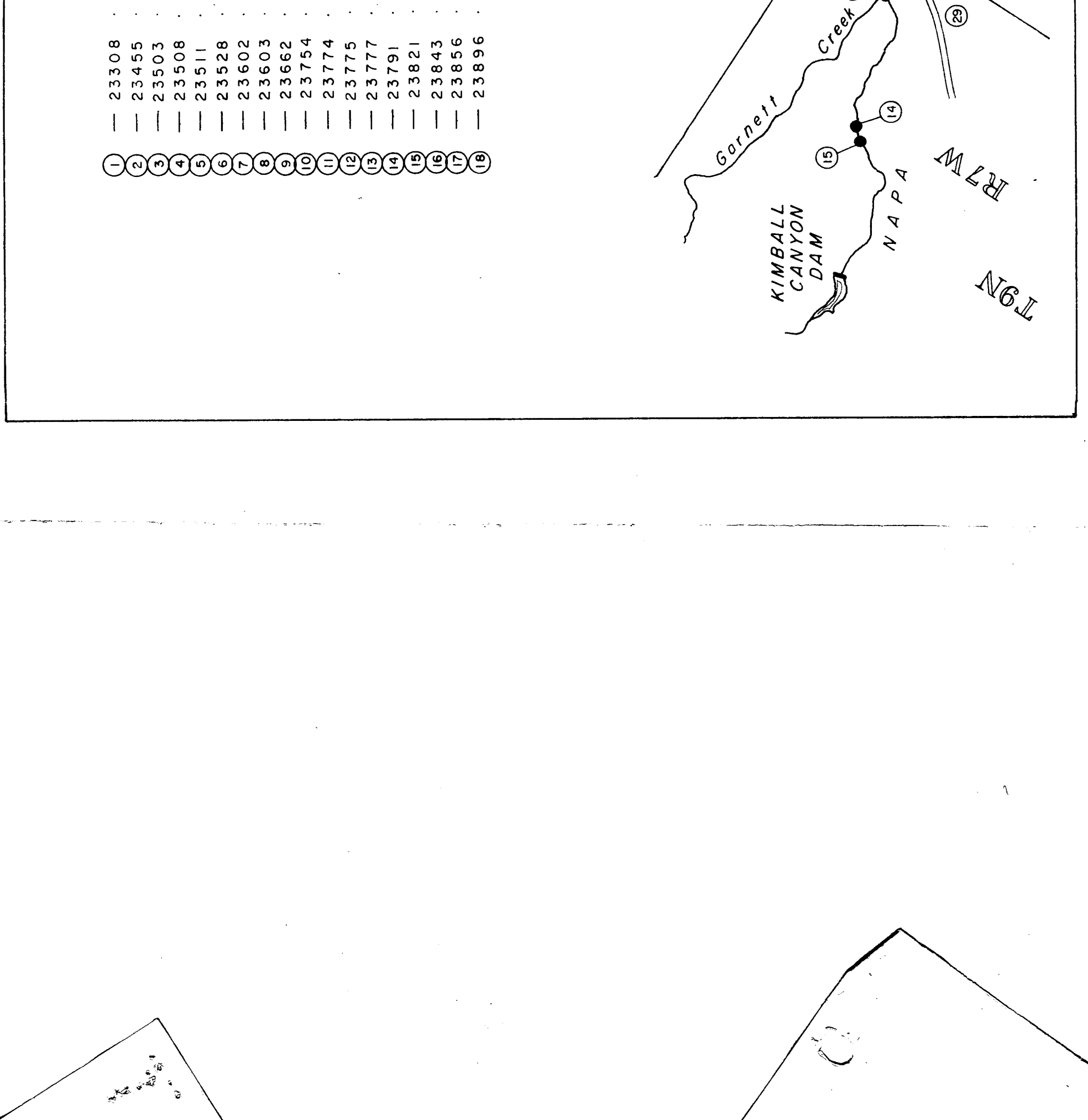


STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

APPLICATIONS
SEE
LEGEND

SCALE 0 2 MI.

DATE	DRAWN	CHECKED	DWG.
DEC - 71	C-C.W.	J.T.A.	2946


Garnett Creek
KIMBALL CANYON DAM
NAPA
T9N
R7W
29
14
15
1 — 23308
2 — 23455
3 — 23503
4 — 23508
5 — 23511
6 — 23528
7 — 23602
8 — 23603
9 — 23662
10 — 23754
11 — 23774
12 — 23775
13 — 23777
14 — 23791
15 — 23821
16 — 23843
17 — 23856
18 — 23896