

RESOURCE MANAGEMENT ACT 1991**Decision of Marlborough District Council**

RESOURCE CONSENT: U170165

APPLICANT: Constellation Brands New Zealand Limited, Lawson's Dry Hills Limited and Wainui Terraces Limited

LOCATION: 1764 Redwood Pass Road, Redwood Pass

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

DECISION: **Granted**

RESOURCE CONSENTS ISSUED:

Type of Consent	Number	Activity	Page
Water Permit (Take Water)	U170165.1	To take A Class Awatere River FMU water from an existing intake (Grid Ref 1691210E 5389383N) up to a maximum rate of 924 cubic metres per day.	1
Water Permit (Use Water)	U170165.2	To use water for the irrigation of up to 42 hectares of vineyard on Lots 1-3 DP 416274 and Lot 3 DP 338788.	4

Certificate of Resource Consent

- Consent Holder:** Constellation Brands New Zealand Limited, Lawson's Dry Hills Limited and Wainui Terraces Limited
- Consent Type:** Water Permit (Take Water)
- Consent Number:** U170165.1
- Lapse Date:** This consent will lapse on 1 April 2019 unless given effect to prior to that date.
- Expiry Date:** This consent shall expire on 1 April 2047.

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Marlborough District Council **grants** consent to take A Class Awatere River FMU water from an existing intake (Grid Ref 1691210E 5389383N) up to a maximum rate of 924 cubic metres per day, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

Conditions

1. The maximum abstraction rate authorised by this consent is 924 cubic metres per day. The water can only be taken from 1 October to the following 30 April.
2. The abstraction may be rationed if the flow in the Awatere River (measured at Council's Awapiri recorder) is between 2.300 cubic metres per second and 1.450 cubic metres per second.
3. The abstraction shall cease if the flow in the Awatere River (measured at Council's Awapiri recorder) is below 1.450 cubic metres per second.
4. The consent holders shall maintain a meter at the abstraction site to measure water abstraction that is able to provide data in a form suitable for electronic storage. The meter is to exclusively record all water taken and used pursuant to this consent with an accuracy of plus or minus 5 percent. The meter shall have the number 1127.
5. The meter shall at all times be maintained in a fully workable condition.
6. The consent holders shall maintain a data logger on the meter to record and store water abstraction data at daily intervals. Data recorded is to be provided to the Marlborough District Council by a telemetry system at daily intervals.
7. Council staff will perform an audit role in respect of water abstraction records and may call to take readings from time to time.

8. In accordance with section 128 of the Resource Management Act 1991, from the date of consent until expiration, the Marlborough District Council may review the conditions of the consent at any time from 1 June to 31 August in each year for the following purposes:
 - a) For the purpose of dealing with any adverse effects on the Awatere River, neighbouring spring systems or on any neighbouring wells or intake structures existing at the time this consent was granted, that may arise as the result of the exercising of this consent or as the result of the cumulative effect of this consent combined with the exercise of other resource consents, which may become apparent from monitoring undertaken pursuant to this consent or by the Marlborough District Council Officers.
 - b) To bring the consent conditions in line with any regional plan which sets rules relating to a maximum or minimum level of flows or rates of use or minimum standards of water quality if in the Marlborough District Council's opinion it is appropriate to review the conditions in order to enable the levels, flows, rates or standards set by such rules to be met.
 - c) For the purpose of reviewing the restrictions placed on the abstraction in Conditions 2 and 3.
9. If water, the subject of this consent, is to be conveyed by pipelines which will cross Council's roads, the permission of Council must be obtained to such road use and must be obtained before any water is taken under this permit. Council's permission is granted through a process separate to the resource consent process and the grant of this resource consent does not grant consent to use or cross Council's roads for purposes of conveying water the subject of this consent. Council may, as a condition of the grant of consent, require the consent holder to enter into formal documentation to regulate the use of the road by the consent holders.
10. Resource consent U140153 shall be deemed to be surrendered immediately upon the granting of this consent.

Advice Notes

1. A reminder to the consent holders that in the event of relinquishing the water permit to a new owner, notification of the transfer must be lodged with the Council on the appropriate forms, containing signatures of both parties and with payment of the appropriate fee. Further, all conditions of consent must have been complied with, in particular any requirement for water flow meter installation.
2. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the monitoring of this resource consent.
3. Data shall be provided to Council in a format and to a standard approved by the Compliance Manager, Marlborough District Council. Acceptable formats for data are XML (eXtensible Markup Language) or CSV (Comma Separated Value). XML is the preferred format. Data provided in CSV format may incur additional programming and processing costs under section 36 of the Resource Management Act 1991.

4. A reminder to the consent holders that the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 require that the water meter device or system must be verified every five years.
5. The proposal that is subject of this permit involves the installation of pipelines within the road reserve/public land. Before any work commences you are advised that a licence to occupy this land must be obtained. Please contact APL Property Limited, Blenheim, for further information.

Certificate of Resource Consent

- Consent Holder:** Constellation Brands New Zealand Limited, Lawson's Dry Hills Limited and Wainui Terraces Limited
- Consent Type:** Water Permit (Use Water)
- Consent Number:** U170165.2
- Lapse Date:** This consent will lapse on 1 April 2027 unless given effect to prior to that date.
- Expiry Date:** This consent shall expire on 1 April 2047.

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Marlborough District Council **grants** consent to use water for the irrigation of up to 42 hectares of vineyard on Lots 1-3 DP 416274 and Lot 3 DP 338788, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

Conditions

1. Water can be used up to the maximum monthly rate (cubic metres per month) set out in the table below:

January	February	March	April	May	June
26,880	23,100	14,700	5,460	0	0

July	August	September	October	November	December
0	0	0	3,780	16,800	23,940

2. The maximum cumulative annual usage shall not exceed 98,028 cubic metres. A year is defined as from 1 July to the following 30 June.
3. In accordance with section 128 of the Resource Management Act 1991, from the date of consent until the date this consent expires, the Marlborough District Council may at any time from 1 June to 31 August in each year, review the conditions of consent to bring the consent conditions in line with any regional plan which is made operative, which sets rules or guidelines relating to rates of usage.

Advice Notes

1. A reminder to the consent holders that in the event of relinquishing the water permit to a new owner, notification of the transfer must be lodged with the Council on the appropriate forms, containing signatures of both parties and with payment of the appropriate fee. Further, all conditions of consent must have been complied with, in particular any requirement for water flow meter installation.
2. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the monitoring of this resource consent.

Reasons

Proposal

1. The applicants are proposing to:
 - Take A Class Awatere River FMU water from an existing intake (Grid Ref 1691210E 5389383N) up to a maximum rate of 924 cubic metres per day; and
 - Use water for the irrigation of up to 42 hectares of vineyard on Lots 1-3 DP 416274 and Lot 3 DP 338788.

Background

2. The applicants have an existing water permit, U140153, which allows for the abstraction of A Class Awatere River surface water from an existing intake up to a maximum rate of 924 cubic metres per day for the irrigation of up to 42 hectares of vineyard on Lots 1, 2 and 3 DP 416274 and Lot 3 DP 338788. This consent expires on 1 June 2017.
3. This consent was given a relatively short term because the applicants had not taken many meter readings during the previous consent period and were not able to justify the requested volume. A short term consent was granted to allow the applicants to continue taking water and to allow for a better meter record to be compiled through a telemetered datalogger water meter. A telemetered datalogger water meter has been installed and meter readings show the applicants have been using up to the maximum abstraction rate.

Description of Existing and Surrounding Environment

4. The applicants' property is located on the low hills and flats just north of the Redwood Pass Road. The intake is located adjacent to the Awatere River, approximately 1.3 kilometres east of the Redwood Pass Road – Lintons Road intersection. The nearest downstream intake is located approximately 75 metres from the applicants' site.
5. The property is zoned Rural 4 under the Wairau/Awatere Resource Management Plan (the Plan) and the Rural Environment Zone under the Proposed Marlborough Environment Plan (the Proposed Plan).

Planning Provisions

6. Section 14 of the Resource Management Act 1991 states that no person may take or use water in a manner that contravenes a rule in a regional plan unless allowed by resource consent.
7. Rule 27.1.2.4 of the Plan, provides for any abstraction from a water source other than the Wairau Aquifer, greater than 500 cubic metres per day, as a non-complying activity.
8. The use of water is not provided for in the Plan so in accordance with section 87B of the Resource Management Act 1991, the use of water is a discretionary activity.
9. Rule 2.5.2 of the Proposed Plan states any take of water not provided for as a permitted activity or controlled activity, or limited as a prohibited activity, is a discretionary activity.

10. Rule 2.5.3 of the Proposed Plan states any use of water not provided for as a permitted activity or limited as a prohibited activity is a discretionary activity.
11. The Proposed Plan was publicly notified on 9 June 2016, so in accordance with section 86B(3) of the Resource Management Act 1991, the rules relating to regional issues have immediate legal effect. Therefore, this application shall be assessed as a discretionary activity under Rules 2.5.2 and 2.5.3.
12. As this proposal contains both discretionary and non-complying sections, the entire proposal shall be bundled and treated as a **non-complying activity**.

Notification and Affected Parties

13. Given this application is replacing an existing consent that was publicly notified just over three years ago (March 2014) and given there were no opposing submissions, it is considered unnecessary for the application to be re-notified. The abstraction rate has remained the same and Council now has a good meter record which shows the applicants have been using most of the consented volume.
14. There have been no complaints from any of the neighbouring properties. I consider that there are no possibly affected parties.
15. In terms of sections 95A and 95B of the Resource Management Act 1991, I consider it is appropriate to process the application on a non-notified basis.

Assessment of Effects

16. The possible adverse effects that could arise from this abstraction are:
 - a) Interference with neighbouring wells.
 - b) Contribution to the depletion of the Awatere River FMU.
17. The possibility of an abstraction interfering with a neighbouring abstraction depends upon the size of the take, the distance between intakes and the aquifer properties. Generally, the greater the distance between intakes, the less likelihood there will be any significant adverse effects.
18. The nearest neighbouring intake is located approximately 75 metres downstream which is relatively close and could cause interference effects. Given there have been no signs of significant interference effects during the past and given there have been no complaints by the neighbours I believe the effects of the abstraction on the neighbours will be less than minor.
19. The nearest waterway is the Awatere River, so to minimise the effects of the abstraction on the instream flora and fauna, low flow restriction conditions have been imposed which will require the abstraction to cease when the flows in the Awatere River are below 1.45 cumecs (measured at Council's Awapiri recorder).
20. The applicants will be constructing a pipeline across Redwood Pass Road. This activity could disrupt traffic and other services within this road and the presence of the pipeline could impede the widening, maintenance or reconstruction of roadways. To ensure these adverse effects do not occur, the applicants will be required to seek a Licence Agreement with Council's Property Manager.

Relevant Statutory and Plan Provisions

21. Section 104(1)(b) of the Resource Management Act 1991 states that, when considering an application for a resource consent, the consent authority must, subject to Part 2, have regard to any relevant provisions of a national environmental standard, other regulations, a national policy statement, a regional policy statement and a plan.
22. Policy 6.2.1.1.3 of the Plan seeks to maintain groundwater levels which safeguard the life supporting capacity of the resource by setting and enforcing Sustainable Flow Regimes (SFR). A SFR has been established for the Awatere River and allows for the allocation of up to 86,400 cubic metres per day of A Class water. As this application is to replace an existing water permit that is already within the allocation, there is no risk of over-allocating this resource.
23. Policy 6.3.1.1.8 of the Plan requires all water permits to be metered by an acceptable method. The applicants have installed a telemetered datalogger water meter and are sending data into Council.
24. Policy 6.3.1.1.2 of the Plan seeks to allocate water to encourage efficient and equitable use. The abstraction rate is within Council's allocation guideline for irrigating vineyards.
25. Policy 5.2.13 of the Proposed Plan requires Council to limit the total amount of water to be taken from any Freshwater Management Unit (FMU) and avoid over-allocating water beyond the limit set. Appendix 6 of the Proposed Plan states the maximum daily allocation for A Class Awatere River FMU water is 83,250 cubic metres. As this application is replacing an existing consent that was already within the allocation, I believe this abstraction will be within the allocation for the Awatere River FMU.
26. Policy 5.2.4 of the Proposed Plan requires that minimum water levels are set for FMUs dominated by rivers to protect instream habitat and ecology, maintain fish passage and fish spawning grounds, and preserve the natural character of the river. A minimum water level for the Awatere River has been set and has been imposed as a condition of consent.
27. Water will be allocated after using the Irricalc reasonable use test model which provides monthly and annual allocations after taking in to consideration the crop type, rainfall and soil type for the specific location, and the irrigation method. I have used the Irricalc model to assess water usage for this consent and imposed conditions specifying the annual and monthly maximum allocations.
28. Policy 5.7.4 of the Proposed Plan requires all water permit holders to install a datalogger water meter and send the data in to Council via telemetry. The applicants have installed a telemetered datalogger water meter and are sending data into Council.
29. Policy 5.3.14 of the Proposed Plan states the duration of a water permit from a water resource that has an allocation and is not over-allocated shall be 30 years. I have recommended a 30 year consent period. Policy 5.4.1 states the lapse period for taking water shall be two years and Policy 5.4.3 states the lapse period for a water permit to use water is to be ten years.

30. The National Policy Statement for Freshwater Management 2011 requires Council to assess the possible effects of abstractions from over-allocated water resources. Policy B7 requires Council to look at all new applications and decide if the abstraction will cause any new effects and whether these effects will adversely affect the life supporting capacity of the freshwater system. Given this application is replacing an existing consent that is already within the allocation, it is considered that there will be no change in the effects and consequently no new effects on the life supporting capacity of the groundwater system. The application has also been assessed under the reasonable use test to reduce the aquifer over-allocation.

Section 104D - Particular Restrictions for Non-complying Activities

31. Given the abstraction is within the A Class allocation provided for in the Plans and given there will be no interference effects on neighbouring intakes, the effects on the environment are considered to be no more than minor.
32. In addition, I consider that the proposal is not contrary to the objectives and policies of the Plan. Therefore the proposal passes both limbs of the section 104D test and the Council can consider granting the proposal.

Part 2 Resource Management Act 1991

33. Section 5 states the purpose of the Resource Management Act 1991 is to promote sustainable management of natural and physical resources. In this particular situation, sustainable management means allowing the applicants to take water from the Awatere River FMU to irrigate vineyards while sustaining the life supporting capacity of the aquifer or mitigating any adverse effects. There are sufficient separation distances to neighbouring intakes to ensure there will be no significant interference effects and the abstraction is within the allocation provided for in the Plan and the Proposed Plan.
34. This proposal is considered sustainable in terms of Part 2 of the Resource Management Act 1991 and is in accordance with the objectives and policies of the Plan and the Proposed Plan.

Consent Duration and Lapse Date

35. A 30 year consent term has been recommended in accordance with Policy 5.3.14 of the Proposed Plan.

36. The two year lapse date for the water take is in accordance with Policy 5.4.1 and the ten year lapse date for the water use is in accordance with Policy 5.4.3 of the Proposed Plan.

Recommended for approval:



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Glen Parker
Resource Management Officer

Approved:



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Anna Eatherley
Marlborough District Council Manager Resource Consents

23rd March 2017
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Date

Additional Important Information for Resource Consent Holders

The following information provided in this information sheet is a guide to the legal rights of applicants and submitters.

If you want to discuss matters raised in this information sheet you are welcome to contact Council. However, if you require specific advice you should contact an independent professional and refer to the relevant sections of the Resource Management Act 1991.

Commencement of a Resource Consent

Refer to section 116 of the Resource Management Act 1991

- Where no submissions were lodged or any submissions were withdrawn, a resource consent commences, (and may be actioned) on the date of the receipt of the decision.
- Where submissions were lodged to the application, and not withdrawn, the resource consent commences once the time for lodging an appeal has passed, provided no appeals have been received, or when all appeals have been resolved or withdrawn.
- If the resource consent was for activities controlled by the district plan on reclaimed land or land in the coastal marine area, or a restricted activity; then there are specific provisions regarding the commencement of resource consent. These provisions are outlined in section 116 of the Resource Management Act 1991.

Lapsing

Refer to section 125 of the Resource Management Act 1991

- If no lapse date is specified in the conditions of this consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to).

Conditions of Resource Consent

Refer to section 108 of the Resource Management Act 1991

- If conditions are imposed these will be set out in the decision document.
- Please read your consent and ensure that you fully understand any conditions.
- If you have concerns with any condition(s), in the first instance you should discuss your concerns with Council, although an option may be to lodge an appeal or objection.
- It is a legal requirement that there be **compliance with** all conditions.
- If any conditions are contravened it may be that the Council or members of the public will initiate enforcement action (outlined in Part XII of the Resource Management Act 1991).

Change or Cancellation of Conditions of Resource Consent

Refer to section 127 of the Resource Management Act 1991

- The consent holder may apply to the Council to change or cancel conditions of the consent, except a condition specifying duration.

Monitoring Fees

Refer to section 36 of the Resource Management Act 1991 and the Council's Schedule of Fees

- The consent holder will be charged for actual and reasonable costs associated with the monitoring of this consent.

Objections

Refer to section 357 of the Resource Management Act 1991

- In certain circumstances the applicant has the right to object to the Council's decision.
- Any objection shall be made in **writing** and will need to outline the reasons for the objection.
- An objection needs to be lodged with the Council within **15 working days** of the Council's decision being received by you or your agent.

Appeals

Refer to Form 16 and sections 120 and 121 of the Resource Management Act 1991

- The applicant and any submitters have the right to appeal the whole or any part of the Council's decision.
- A notice of appeal must be lodged with the Environment Court and the Council, within **15 working days** of the Council's decision being received (or received by your agent on your behalf). A copy also needs to be served on the applicant and submitters to the application within 5 working days of the notice being lodged with the Environment Court.

Before lodging an objection or an appeal it is recommended that you seek professional advice.

Annotation History

Date	Reason for Amendment/Alteration
4/05/2018	Transfer of whole Water Permit from Constellation Brands NZ Limited, Lawsons Dry Hills Limited & Wainui Terraces Limited to Constellation Brands New Zealand Limited, Lawson's Dry Hills Limited & Dashwood Vineyards Limited