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Supreme Court Decision Permanently Quashes Water Bottling Consents

After six years of court action Aotearoa Water Action (AWA) is thrilled with yesterday's decision from the Supreme Court which, once and for all, quashes water bottling consents granted to Cloud Ocean Water Ltd and Southridge Holdings Ltd.

The consents, originally granted to Cloud Ocean and Rapaki Natural Resources Ltd by Environment Canterbury (ECan), allowed water that had been allocated for a wool scour and freezing works to be used for water bottling. This was achieved by granting new 'use' consents which were then 'amalgamated' with the historical consents to 'take and use' water - effectively repurposing allocated water without returning it to the 'pot'.

The Supreme Court disagreed with ECan's approach - agreeing with the Court of Appeal that the "carefully chosen and deliberate" wording of the Canterbury Land and Water Plan, meant the 'take' and 'use' of groundwater water had to be be considered together rather than separately.

Addressing concerns raised by ECan about the difficulty that a consent holder would face if they wanted to repurpose water in a fully allocated catchment the Supreme Court noted that "the solution is for the take and use consent to be surrendered and a new take and use consent to be sought".

Chair of AWA Peter Richardson says that AWA agrees wholeheartedly with the Supreme Court decision.

"While the Court's decision may mean reduced flexibility for individual consent holders wanting to change the use of water it stikes a blow against the view that a water right may be treated as a private property right to water," he says. "Instead the Supreme Court's decision emphasises that a take and use right is only a limited right to take water for a particular use that is authorised by the consent itself. Ultimately AWA would like to see unused allocation returned to the pot and (if sufficient water is available to be safely allocated) reallocated to activities that improve community wellbeing and the environment. What that looks like should be decided by communities."

Spokesperson for AWA Niki Gladding says that AWA would like to thank its legal team of David Bullock and Steven MaChing of law firm Lee Salmon Long. It also wants to thank its previous barristers James Gardner-Hopkins and Prudence Steven.

“We’re a small team and we only got to this point because we were stubborn, and because we had an awesome community behind us. We thank everyone who has assisted financially or with their skills and support to achieving this result,” says Niki.

AWA notes that the Court’s decision deliberately did not address the question of whether the effects of plastic production should have been considered by the Council because the matter will be argued later this week in another Supreme Court hearing. On Wednesday 22 November Ngati Awa and Sustainable Otakiri will argue that consents originally granted to water bottling company Cresswell NZ Ltd by Whakatane District Council and the Bay of Plenty Regional Council should be quashed.

ENDS

Key Points

- In late 2017 Environment Canterbury (ECan) granted consents for Cloud Ocean Water and Rapaki Natural Resources to take up to 24 million litres of water per day from shallow aquifers beneath Belfast.
- ECan granted the consents without public notification.
- In December 2018 a Commissioner appointed by ECan allowed Cloud Ocean’s consent to be varied to allow water to be taken from a new bore at a depth of 180m sparking concern from the Christchurch City Council about the potential effects on Christchurch’s drinking water supply.
- In December 2017 Aotearoa Water Action challenged water bottling consents granted by the Canterbury Regional Council to Cloud Ocean Water Limited and Rapaki Natural Resources Limited.
- In 2018, an initial hearing ruled in favour of AWA, and that the water bottling companies could not rely on old industrial consents to bottle water at the Belfast sites.
- In 2019 the High Court upheld the process by which the consents were granted.
- On 20 July 2022 the High Court ruling was overturned by the Court of Appeal.

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