

Little River Management Limited (LRM) Monitoring plan submission

19th March 2018

1. In its Statement of Case LRM referred to the potential operational and commercial risks to its business, and the consequential environmental risks, of any monitoring plans and restoration works.
2. Following the adjournment of the Inquiry LRM met with the legal representatives of Southern Water Services (SWS) on the afternoon of Tuesday 13th March. The purpose of the meeting was to discuss these operational and commercial risks and how they could be properly addressed. LRM also gave examples of why the history of SWS's approach to LRM and its fishery give rise to LRM being unable to propose, support or give consent to any monitoring, mitigation or restoration proposals, save those required by law and the proper exercise of the relevant powers, until its concerns are satisfactorily dealt with
3. LRM immediately notified the Environment Agency that despite our keenness to contribute to the draft monitoring plan we needed to wait until SWS had responded to our feedback on past issues and our suggestions for the future working relationship. On the morning of Wednesday 14th March Addleshaw Goddard (AG) confirmed their client understood our concerns and we should hear back from them shortly. In fact we did not hear anything until our counsel chased for a reply on Friday afternoon 16th March to be told that SWS were unlikely to be able to address our concerns and would respond formally this week
4. The consequence of this sequence of events, from AG inviting us to give them our feedback in the first place through to SWS failing to provide the promised response to our concerns during the 3 full working days following the adjournment has meant the main parties will be submitting a draft plan today that we have not contributed to and cannot support for the reasons referred to above and laid out in more detail below. SWS were aware that this outcome would be the result of their inaction and lack of proper engagement

5. The specific reasons why we cannot consent to or support any of the proposed monitoring plans and future restoration works are as follows;

a. SWS's track record on reimbursing disturbance allowances, and other cost claims is unacceptable. For example, our last disturbance allowance claim was withheld for 10 months and eventually only paid after we reluctantly proposed a 25% reduction to settle the matter. In another case, last month LRM had to resort to seeking a court order for the re-imburement of legal costs SWS had agreed to pay 18 months ago and then failed to pay despite LRM sending email reminders which were ignored, and still remain unanswered by SWS senior executives. The payment has now been made but following the intervention of AG

b. SWS has said it no longer intends to honour the agreed day rates for the directors and employees of LRM's time spent dealing with statutory notices, request for access for monitoring and subsequent compensation claims because it is a rural business

c. SWS has in the last few months served two statutory 7 day notices of their intention to come onto the fishery. In both cases the notices were incorrectly served and were subsequently withdrawn. This meant LRM and Barker Mill Estates (BM) spent considerable management time and incurred legal costs rejecting the notices. SWS has said it does not intend to reimburse either BM or LRM when any notice is challenged regardless of whether they have exercised their powers correctly or not

d. Despite our repeated requests for it not to do so, SWS continues to use 7 day statutory notices to gain access for non-emergency work in clear breach of its own code of conduct which proposes 42 day and 90 day notices for differing types of surveying and other routine work

e. SWS has continued to assert its right to enter our fishery and conduct invasive survey work including but not limited to changing the hatch management regime to experiment with different flows and water levels to support its own plans. LRM has already incurred legal and other professional costs to challenge SWS's threatened actions.

f. As has been explained by Howard Taylor of LRM in his Proof of Evidence the correct control and careful management of the fishery's highly complex hatch system is fundamental to creating the flow conditions that are conducive to effective flood management, fish migration and fishing. Any experimenting with the system can have not just short term consequences but also far reaching consequences regarding member retention and certainty of LRM's future income. SWS has previously made clear its intention to come into the fishery play with the hatches and flows, prove or disprove their case and if disproven to walk away and leave LRM to deal with the long term consequences of SWS's actions on its own

g. SWS may now claim the withdrawal of their Section 52 appeal means they are resigned to securing alternative supplies and do not intend to pursue the agenda described above but LRM is skeptical for two reasons and will therefore continue to withhold its consent to and co-operation with any of SWS and the EA's plans to enter the fishery.

h. The first reason is the wording in the draft Operating Agreement that no data collected by the proposed monitoring plan will be used to support any future increase in abstraction from the Test can never be guaranteed. Any future EIR can call for the data to be made public and any third party would have the right to present its interpretation of the scientific evidence in support of any future licence variation triggered by the EA or SWS. That would not put either of the main parties in breach of their joint Agreement but would compel any future Public Inquiry to consider the evidence submitted regardless

i. The second reason is that outside of the Inquiry SWS continues to act and campaign in ways which are incompatible with its acceptance of the need to secure alternative sustainable supplies. For example at a recent public consultation event it held as part of its engagement obligations it did not even give the option for people to select alternative supplies as one of their preferred ways to address any future Deployable Output deficit. Instead the choices revolved around examples such as stopping dripping taps or extracting more water from existing sources. Similarly just over two weeks ago SWS launched a new initiative called Catchment First the press release (see Annex 1) for which states;

Through our Catchment First approach, we plan to demonstrate that investing in more natural solutions such as catchment management, river restoration and 'slowing the flow' measures can help deliver a sustainable supply of high quality drinking water in a cost-effective way

As this is a new and innovative approach, we need to be confident it will deliver the outcomes we need. The first phase of this work will involve evidence gathering (monitoring and modelling), feasibility and design. This first phase will run across three catchments from 2020-2025: The River Test in Hampshire, The Arun and Western Streams in West Sussex and Hampshire, The Medway in Kent

Catchment First has the potential to offset the need for far more costly and intrusive water supply schemes, such as desalination schemes, that have the potential to cost more than £800m

It goes on to say;

The River Test is a renowned chalk stream for salmon fishing and Site of Special Scientific Interest which provides drinking water to many thousands of people across Hampshire and the Isle of Wight. Catchment First will explore options, working closely with stakeholders, to work towards achieving a vision for the River Test by creating an exemplar chalk river system. We believe a range of interventions will be required to restore and enhance the form and function of the River Test catchment.

j. In fact anybody with any knowledge or interest in the river Test knows it is in fact renowned for its trout fishing not its salmon fishing. As LRM explained in its Statement of Case salmon fishing on the River Test is a niche sport that only attracts very few followers who would be very difficult to replace. Yet it is the income from these members who pay for the two full time employees whose job it is to protect the unique chalkstream salmon population whose existence is under threat from the proposed new licensing arrangement.

k. The only conclusion to be drawn from the Catchment First initiative is that it is still very much SWS's intention to find a way of gaining sufficient data and public support to secure further river abstraction to, as it so even-handedly puts it, *offset the need for far more costly and intrusive water supply schemes, such as desalination schemes, that have the potential to cost more than £800m*

N.B. Unfortunately its commitment to consultation did not extend as far as giving any clear explanation as to what the £800m represented other than an awful lot of money

l. In 2017 SWS commissioned CEFAS to undertake a netting trial with the intention of undertaking a project to net, tag and radio track salmon and sea trout with the fish netted as they make their way into our fishery but just outside our boundary and using tracking devices to be installed on our fishery. At no stage before, during or after the netting trial has SWS had any contact with LRM to discuss the objectives of the trial, the implications for fish stocks, the fishery, our members and our employees. LRM only learnt of the trial and intended project from the Environment Agency once a netting application had been lodged

m. SWS continue to refuse to recognise the specific nature of LRM's business and take proper account of the operational disruption and commercial risks it is imposing on LRM. As explained in our Statement of Case the vast majority of our costs are fixed and the vast majority of our income is derived from a very small number of members. The ten year cost of losing a salmon and sea trout member we could not replace is c.£65,000. We have already lost one member as a result of the recent salmon netting trial undertaken on SWS's behalf.

n. LRM is a very small business with two employees. It neither has the time or the resources to deal with a constant stream of statutory notice disruptions to our business and deal with the ensuing fishing diary management issues, member relations and compensation claims. The standard compensation methods are not appropriate for the operational and commercial dynamics of our business. We are not a rural farming business we are a membership-based business selling pre-planned days of fishing and each day is a perishable product that can only be sold once and is lost once its gone

6. In anticipation of the future impact of not just the monitoring plans and restoration/mitigation projects but also the disruption of any post-drought remedial works and the potential threat of the construction of a Testwood Otterbourne pipeline across the fishery LRM and SWS need to agree a fair and reasonable compensation mechanism up front.

7. We cannot support the projects and plans surrounding the next ten years of the proposed Test abstraction licence and its associated operating agreements unless an agreement is reached in the round between SWS and LRM that properly deals with the real risks we face as a result of SWS's and the EA's intentions. Otherwise the business, our employee's livelihoods and the protection they afford the salmon and local residents, will suffer the slow death of a thousand individual compensation claims and the managerial burden and member dissatisfaction that will create

8. In Mike O'Neill's proof of evidence for the EA he gave all the legal, operational and practical reasons why they would not use and could not be compelled to use their powers to enter into a Section 20 Agreement with SWS in pursuit of SWS's intention to impose the fishery-related monitoring, mitigation and restoration planning work on LRM regardless of the legitimate concerns LRM has laid out in this document and has raised many times before with SWS

9. LRM await SWS's response with interest and with the hope that the concerns expressed here, and already relayed to SWS on many other occasions, will now be given the attention they deserve