

**IN THE MATTER OF  
THE WATER RESOURCES ACT 1991  
AND**

**APPEAL AGAINST THE ENVIRONMENT AGENCY'S NON-DETERMINATION OF  
AN APPLICATION BY SOUTHERN WATER TO VARY ITS ABSTRACTION  
LICENCE**

**AND DETERMINATION OF THE AGENCY'S OWN PROPOSALS TO VARY THE  
LICENCE**

**AT TESTWOOD, HAMPSHIRE**

**PLANNING INSPECTORATE REFERENCE: APP/RSA/WR/00018**

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**UPDATE STATEMENT OF ALISON MATTHEWS IN RELATION TO TESTWOOD**

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1. This update statement has been prepared in response to instructions to the EA recorded in the Inspector's Inquiry Note (Ref ID19) dated 21 March 2018. In that document the Inspector states: "*it will be necessary for the Agency to set out in evidence their assessment approach to all three cases, and in particular their responses to the s52 consultations, including, but not limited to, the matters raised above as well as matters relating to the proposed Hand off Flows and the continuing need for abstraction at Candover.*" To address this instruction, this statement covers the following matters:
  - a. How the Agency formulated its licence change proposals;
  - b. How third parties were involved in the process before the notice was served;
  - c. How the Agency had regard to comments made on the notice served on Southern Water;
  - d. Whether there are any outstanding issues raised by third parties which they may feel were not addressed by the Agency during section 51 and section 52 process.

2. My purpose in this update statement is to provide the Inspector with the information he has requested and to take the opportunity to distil relevant parts of the history of these licence changes which have already been set out in the Agency's proofs. This will ensure that the Inspector has in this one document a consolidated account of how matters have progressed to the present point. This document should be read in conjunction with Tim Sykes's statements on the Itchen and Candover licence changes. Collectively these three statements provide a consolidated outline of the Agency's final case to the Secretary of State in light of recent developments.

#### How the Agency formulated its licence change proposals

3. Southern Water started an investigation into the impacts of abstraction on the River Test in 2011, concluding the main body of that work in 2013. As is apparent from the Inquiry documents, there was no final agreement between Agency and Southern Water regarding the requirement for changes to the Testwood abstraction licence.
4. Southern Water volunteered modifications to the Testwood licence in August 2016 as a starting point for further licence changes. The Agency did not determine that application and subsequently, on 30 June 2017, served notice on Southern Water to modify the Testwood licence under section 52 of the Water Resources Act 1991 (Ref SWCD9.7, Bundle pp 8252 - 8255).
5. Before serving notice, the Agency had to define licence conditions to ensure that there was no risk of deterioration under the Water Framework Directive 2000/60 ("**WFD**") and also to ensure all elements of the Lower Test Valley and River Test Sites of Scientific Special Interest ("**SSSIs**") were protected. Downstream, sites subject to the Habitats Directive 92/43/EEC were deemed not to be affected by the current abstraction licence, although any impacts on the downstream Ramsar site, a wetland site designated of international importance under the Ramsar Convention, also need to be accounted for in licence changes.
6. In the Licence Change Proposal Report ("**LCPR**") (Ref SC4.16 & SC4.17, Bundle pp 2392 – 2453), the Agency proposed licence changes to come into immediate effect, to ensure that there is no risk of deterioration; and then proposed additional conditions to take effect from 2027 to provide further protection to salmon as part of the River Test SSSI. The staged nature of the licence conditions reflects the immediate need to ensure that there is no risk of WFD deterioration, whilst the later licence changes secure protection for the SSSI but also take into account the fact that Southern Water needs time to develop alternative water resource options.

7. The Agency uses the Environmental Flow Indicator (“**EFI**”) to derive conditions for new abstraction licences and also as the default standard to ensure that there is no WFD risk of deterioration. The EFI is based on flow standards which are developed and agreed at a UK level through the UK Technical Advisory Group (“**UK TAG**”). These flow standards aim to support ‘Good Ecological Status’ – which is an allowable deviation from a natural ‘reference’ condition. The UK TAG standards have been translated for use within our existing regulatory regime by the Agency and this translation is what forms the EFI. This is explained further in my Testwood Proof of Evidence in paragraphs 15-19 (Ref EA2).
8. The EFI allows a certain percentage of water to be abstracted from a river depending upon the prevailing flow and the sensitivity of the river to abstraction. More water is permitted to be abstracted at high flows and less at low flows. The EFI also includes a hands-off flow (“**HoF**”) condition which restricts abstraction during periods of low flow. For all river sensitivities this is set as 75% QN99 – which is 75% of the natural flow expected to be exceeded 99% of the time. The River Test was assessed as having ‘moderate sensitivity’, which means that at low flows up to 15% of flow can be abstracted until the flow condition restricts abstraction.
9. The EFI requires calculation of natural flows without the influence of abstractions and discharges. Calculating natural flow sequences in an artificially managed network of river channels such as the Lower Test area is complex. We have assumed in our work that flow splits continue to be managed in the same way as they have in the past. But it is possible that this could change. To secure compliance with the EFI, we calculated natural flows for the total flow in the River Test and then calculated what level of abstraction would be permitted in order to comply with EFI. Our calculations showed that we needed to impose a HoF of 355 MI/d and to reduce abstraction to a daily rate of 80 MI/d.
10. We also proposed a higher HoF to operate on the Great Test of 265 MI/d and on total flows in the Test of 390 MI/d to come into effect from 2027. The derivation of this is explained in the Proof of Evidence of Adrian Fewings (Ref EA1).

#### How third parties were involved in the process before the notice was served

11. Southern Water made a voluntary application to reduce the Testwood licence on 2 August 2016, and the application was advertised on 13 October 2016 in the Hampshire Chronicle with a closing date for representations of 10 November 2016.
12. Responses were received from 10 individuals and organisations, including emails from Howard Taylor, Simon Barker and Mike Johnson.

13. Paragraph 44 in the Agency's Testwood Statement of Case (Ref SC4, Bundle pp 2044 - 2046) explains the representations that were made in response to Southern Water's voluntary application.
14. The main points of concern raised and summarised in section 5.1 of the determination report (Appendix Q1 of the LCPR) – Ref SC4.16 & 4.17, Bundle pp 3363 - 3367) were:
  - General concern over the reliance of public water supply on the fragile eco-systems of chalk streams.
  - Increased abstraction at Testwood (at that time this was of particular concern because of the potential construction of a new pipeline from Testwood to Otterbourne).
  - Specific concerns about possible ecological impacts on the River Test in relation to salmon and also WFD risk of deterioration.
  - Concern about additional abstraction during droughts.
  - Concern about possible impact on a local business – particularly in relation to any potential increases in water temperature which could affect fishing.
  - Respondents were keen to see flow conditions added to the licence.
15. Detailed responses were recorded for all representations in Appendix Q2 of LCPR (Ref SC4.17q2, Bundle 3394 – 3407). The relevant sections in relation to the fishing and land ownership interests of the Lower Test are in Annex 1 below.
16. Personalised letters were sent to all representors on 7 March 2017 (copy attached in Annex 2), which commented on their specific concerns and to say that the Agency had not determined the licence in time and that Southern Water were considering appealing to the Secretary of State for the Agency's non determination of the licence. Representors were also informed that the Agency intended to serve notice on Southern Water to vary the Testwood licence under section 52 of the Water Resources Act 1991.
17. Natural England were consulted by way of an 'Appendix 4' (A standard form by which the Agency formally consults Natural England in relation to possible impacts related to SSSIs) on 15 December 2016, and their response to this noted that assessment of possible impacts on the downstream Ramsar site were needed and they also noted concerns about Common Standard Monitoring Guidelines ("**CSMG**") compliance for Southern Water's proposals (Ref SC4.12A and SC4.12b, Bundle pp 2374 – 2381).

How the Agency had regard to comments made on the notice served on Southern Water

18. The Agency served notice on Southern Water of changes being proposed for the Testwood abstraction licence on 30 June 2017. On 4 July 2017 (copy attached in Annex 3), letters were sent to those who had responded to the section 51 voluntary application to notify them of the opportunity to comment on the proposal and to draw attention to the determination report for the section 51 application which formed an appendix to the LCPR (Ref SC4.17q1, Bundle pp 3354 – 3393).
19. The proposal was advertised in the Hampshire Chronicle on 6 July 2017 with a closing date for comments of 3 August 2017.
20. Responses were received from ten individuals/organisations, including a letter from Fish Legal, a list of concerns and comments from Mike Johnson and support for Mike Johnson's comments in an email from Simon Barker. Responses received from Hampshire & IOW Wildlife Trust, Test Valley Borough Council, Test and Itchen Association, the World Wildlife Fund UK ("**WWF UK**"), Natural England, Salmon and Trout Conservation UK and one individual were broadly supportive of the Agency's proposals to modify the Testwood abstraction licence. These are contained in Annex 19 of the Agency's Testwood Statement of Case (Refs SC4.19a to SC4.19j2, Bundle pp 3426 – 3505).
21. The main points of concern raised were broadly the same as the concerns raised in relation to the section 51 application with the addition of further clarification, comments and concerns in relation to:
  - A suggestion that the higher level of flow protection should be introduced before 2027.
  - The proposed HoFs should be higher with a suggestion that the Test Total Flow HoF should be 495 MI/d instead of 355/390 MI/d.
  - Concern about how the Agency has carried out its calculations for flows in individual channels.
  - Suggestion that the Agency should only give Southern Water until 2022 to find a long-term solution.
  - Concern that Southern Water would still be able to increase abstraction at Testwood to support abstractions which have been reduced in the Itchen catchment.
  - Concern that Southern Water carry out the monitoring to ensure compliance with proposed daily and annual limits and enforcement of HoF.

22. At the commencement of the Inquiry, Mike Johnson criticised the Agency for not responding to his section 52 representations. This criticism is new. He did not say this in his Statement of Case or Proofs of Evidence submitted on behalf of Little River Management (“LRM”), and so it is necessary for the Agency to respond here.
23. The Agency sent letters to all representors on 4 August 2017 to inform them that the licence holder, Southern Water, had objected and so the matter would now be referred to Secretary of State. A copy of the letter we sent to LRM is attached in Annex 4. Sections 52-54 of Water Resources Act 1991 do not require us to consider and respond to the proposals before we refer the matter to Secretary of State and so Agency had no need to send detailed replies to each party in response to their comments. Any subsequent consultation responses received after the Section 52 notice has been served are a matter for Secretary of State.
24. I am advised by the Agency’s legal team that the relevant sections of the Water Resources Act 1991 are as follows:
- Section 52(4) requires the Agency to advertise the proposals (Ref CD2.15, Bundle pp 4906 – 4909).
  - Section 53(4) says that if the licence holder objects to the proposals, the Agency shall refer the proposals to the Secretary of State, with the notice of objection (Ref CD2.16, Bundle pp 4910 – 4911).
  - Section 54(1)(c) then requires the Secretary of State, when considering the proposals, to have regards to any representations in writing received by the Agency (Ref CD2.17, Bundle pp 4912 – 4915).
25. The relevant extract from the Agency’s relevant Operational Instruction, ‘*Restoring Sustainable Abstraction: section 52 licence changes*’ therefore says this on page 10 about dealing with third party representations:

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**Third party representation** Third party representations don't alter the procedures explained above. If we have received a third party representation but the licence holder has not objected, don't refer to SoS.  
To deal with representations from a third party, follow the steps below:

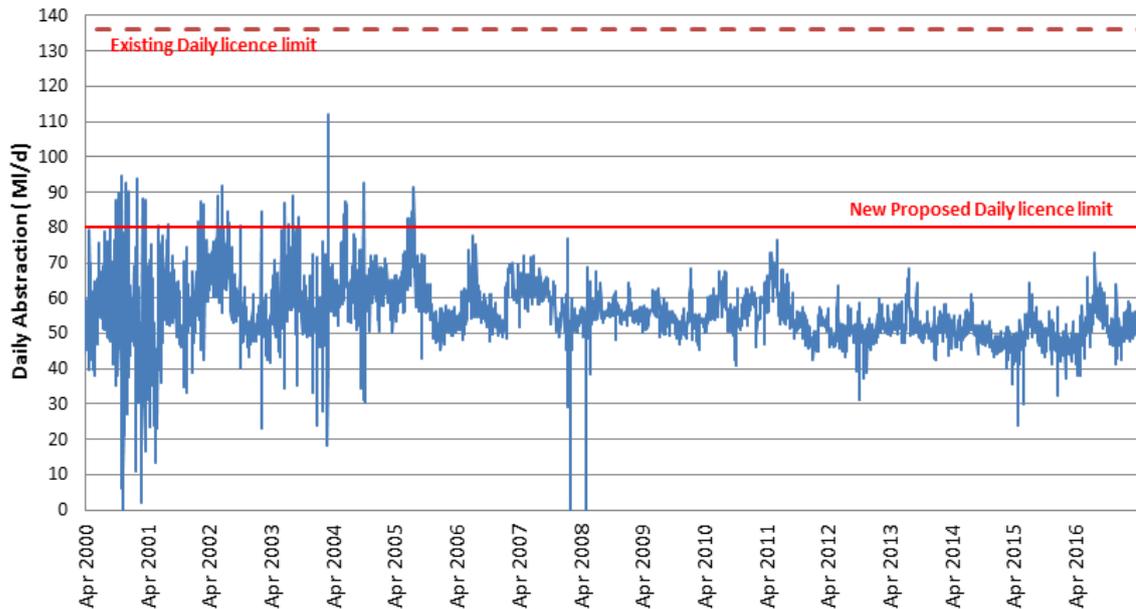
Step	Action	Who?
1	Acknowledge all representations in writing within three working days of receipt.	RSA Team
2	Copy the representations to the RSA Lead.	RSA Team
3	If the RSA Lead have any comments on the <b>representation</b> , inform the RSA Team.	RSA Lead
4	If the licence holder objects, forward the third-party representation (but not our comments) to the SoS - see Referring the case to the Secretary of State.	RSA Team
5	If the licence holder does not object, inform the third party. Don't refer anything to the SoS.	RSA Team

Southern Water did object and so the Agency implemented step 4 in this case.

Are there any outstanding issues raised by third parties which they may feel were not addressed by the Agency during section 51 and section 52 process?

26. There is still concern from some stakeholders that Southern Water may choose to increase abstraction up to the new daily limit of 80 MI/d permitted by the new proposed abstraction licence. Fish Legal have suggested in their section 52 representation that abstraction should be reduced to 70 MI/d and 25,000 MI/yr. (At the time of writing I understand that discussions between Southern Water and Fish Legal are continuing and therefore Fish Legal may refine their stance) Southern Water have said that regular use of the licence at the maximum daily rate of 80 MI/d is unlikely as they have no need for additional water for most of the time, but need to retain some flexibility within their licence to allow for operational events. The proposed new licence offers a significant reduction in risk of this occurring compared with the existing licence, which permits up to 136 MI/d to be abstracted. The impact on total flows in the River Test is within acceptable limits as set by the EFI, which is our standard tool for defining the limits of sustainable abstraction across England.

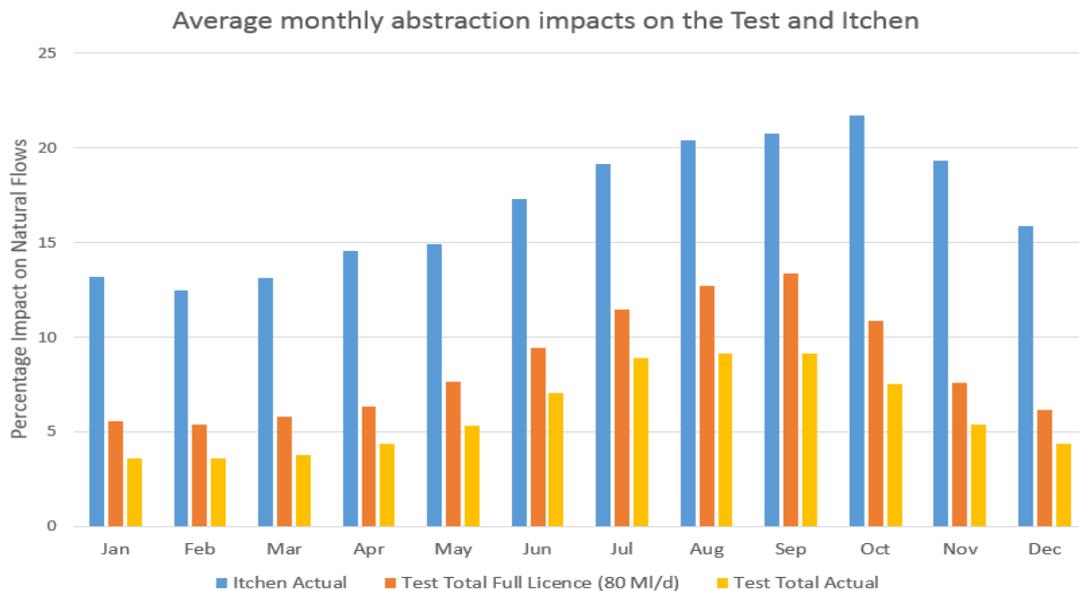
**Testwood Daily Abstraction  
April 2000 - March 2017**



27. Concerns still exist that abstraction impacts will be largest in the Great Test and that EFI will not be met in the Great Test. This is true and the Agency does not dispute that. However, the Agency’s general policy is to set licence conditions at the outflow point for WFD water bodies rather than at every point within a water body. That does not preclude use of local data to set local flow conditions or further restrictions on abstraction if local evidence shows that they are needed. A flow condition has been proposed for the Great Test from 2027. The reason it has not been applied sooner is because it was not felt necessary to implement it sooner to secure that there was no WFD risk of deterioration. The Agency feels that it is necessary to provide protection to the SSSI, but as set out in section 6 of its LCPR the Agency had regard to the potential impact on Southern Water of this decision and has chosen to delay the implementation date to enable development of alternative resources.

28. Fish Legal and others have commented about wanting to ensure that abstraction is fairly distributed between the Rivers Test and Itchen. The Agency have to set appropriate limits on abstraction for both rivers and to achieve that can use standard Agency licensing tools such as EFI (as used for the Lower Test) or flow standards based on high quality local evidence such as used on the River Itchen. Because of this difference in approach in setting abstraction licence conditions, the level of protection afforded to the Test is actually greater than that currently afforded to the Itchen. The HoF is more precautionary representing 75% QN99 on the River Test, but only 65% of QN99 on the River

Itchen; and the amount of surface water abstraction for Public Water Supply permitted from the lower River Test is smaller (80 MI/d) than the lower Itchen (90 MI/d) despite the fact that the River Test is a larger river with more flow. In addition, flows in the lower Itchen are affected far more by groundwater abstraction than flows in the lower Test. The graph below clearly shows that even if the proposed new licence at Testwood was fully used, abstraction impacts on the Itchen would still be a lot higher than impacts on total flows in the River Test.



29. Fish Legal and Little River Management suggest that the Testwood licence or the Section 20 Agreement (Ref ID9) should specify how Southern Water should use their sources to minimise environmental damage - in particular to force use of the bulk supply from Portsmouth Water before additional abstraction is made at Testwood. The Agency position is that abstraction licence conditions are the appropriate way to ensure that abstraction is sustainable. If abstraction is sustainable then there is no need to control how a licence holder uses that water once it has been abstracted. In addition, it is not the Agency's role to force one licence holder into a commercial agreement with another licence holder. It is the Agency's role to ensure that abstraction licences secure a sustainable abstraction regime. We believe that the proposed Testwood abstraction licence is sustainable and does not pose a WFD risk of deterioration even if it is fully used.

30. In addition Fish Legal have suggested that the licence should be time limited to 2022 on the basis that would give Southern Water sufficient time to implement water resources schemes. In Southern Water's draft Water Resources Management Plan 2018 it is apparent that most long-term water resources schemes cannot be delivered until after 2022.

31. In the future, Southern Water will have to look at the potential for adopting CSMG flow targets on both rivers (an appendix to my Testwood Proof of Evidence Ref EA2i) and also to look at tighter abstraction controls under the Salmon 5 Point Approach (an appendix to my Testwood Proof of Evidence Ref EA/2h). At this stage the investigations planned for 2020-25 will consider the cost and impact of applying those potential standards. The Agency is also committed to developing a new target flow regime for the Itchen by 2021, at which time the level of protection on the Itchen is likely to increase. For both rivers, abstraction licences may change in the future to give an even higher level of protection to the environment, but those decisions will be informed by further work. We have applied the standards and agreed flow regimes that are currently in use.
32. Fish Legal have stated on several occasions that an Environmental Impact Assessment (“**EIA**”) is required but as set out above, in Appendix Q2 to our LCPR we stated that it is not required in relation to the changes to the abstraction licence (Ref SC4.17q2, Bundle pp 3365 & 3396). The simple answer is that this is not an application for development consent within the meaning of the EIA Directive and so an EIA is not required.
33. Concern has been expressed about the diurnal fluctuations in pumping rate at Testwood. Fish Legal are concerned that Southern Water are abstracting more at night when fish are moving and would prefer a uniform rate throughout the day. This is a new issue raised in Mr. Lawson’s rebuttal and so we did not account for it in our original proposals. Southern Water and the Agency have agreed in principle to an investigation being secured through the National Environment Programme (“**NEP**”) process which could result in licence modification in the future.
34. Comments have been made that the Agency has not provided sufficient evidence to show how the temperature of the river will not be affected by operation of the Testwood source under the terms of the new abstraction licence. The Agency had regard to the comment from the fishery in its section 51 determination report (Appendix Q1 to the LCPR – Ref SC4.17q1, Bundle 3354 – 3393) and also in the LCPR itself (Ref SC4.16, Bundle pp 2392 – 2453). Although no further detailed modelling was carried out, the Agency are satisfied that there is very low risk of abstraction increasing water temperature under the terms of the proposed new licence.
35. Fish Legal also disagree with the Agency’s salmon migration modelling and the Agency’s view that actual abstraction in the context of recent flow patterns does not appear to have had an impact on salmon. They suggest that the HoF should

be 495 MI/d. A HoF of 495 MI/d is significantly higher than the HoF of 355 MI/d which the Agency has selected based on the EFI. I believe that this is a level of precaution which is not justified based on the evidence available and the impact on Southern Water would be significant in the absence of their long-term solutions being operational. It is for Southern Water to explain how this may affect their supplies, but my initial assessment is that a flow condition set at this level would constrain Southern Water's ability to abstract in dry summers when it may not be possible to apply for a Drought Permit to maintain water supplies. This level of HoF would also be strongly out of balance with the level of protection afforded to the River Itchen – 104%QN99 compared with 65%QN99 on the River Itchen.

36. Natural England have stated that they believe current abstraction may have an impact on macrophytes and they have requested mitigation of any impacts. They have also noted that the new licence may not be compliant with CSMG targets. But they have also stated that they don't want their suggestions for compliance with CSMG or mitigation to delay implementation of the Agency's proposed licence conditions.

37. Concern has been expressed about Southern Water's monitoring of compliance with their licence conditions. It is standard practice for licence holders to meter their abstraction under the terms of specific metering conditions in the abstraction licence. The Agency makes regular compliance checks to ensure that the meters used are calibrated and are suitable and the records submitted to the Agency are accurate. The Agency can take enforcement action against any breaches in the metering and measurement conditions of abstraction licences.

## **DECLARATION**

The evidence that I have prepared and provided for these in this summary statement is true. I confirm that the opinions expressed are my true and professional opinion.

**Signature:** .....

**Alison Matthews**

**Technical Specialist in the Groundwater Hydrology and Contaminated Land  
West Team for Solent and South Downs Area with the EA.**

**Date:** .....

## Annex 1

Text copied from Representation	Environment Agency Response
<p style="text-align: center;"><b>Representation 1 - Test &amp; Itchen Association</b></p> <p>Thank you for the opportunity to comment on the above application. Please note that the views expressed in this letter are those of both the Test &amp; Itchen Association and of the River Test Salmon Group of which I am a director and chairman respectively.</p> <p>Firstly, I would like to submit the comment that the situation that we now find ourselves in i.e. the proposed increased abstraction of water from the river Test to supplement a reduction in water taken from the river Itchen during low flow conditions is far from acceptable as a long term solution to the requirements for a sustainable water supply in the region. Both of these rivers are iconic chalk streams with fragile eco-systems and with genetically unique stocks of migratory Atlantic salmon.</p> <p>We strongly believe that moving into the next cycle of water resource planning Southern Water must bring forward options that are no longer as reliant on chalk stream abstraction for their bulk supply.</p> <p>With regard to the proposed licence changes from Southern Water for: Abstraction of Surface Water from the River Test at Testwood:</p> <ul style="list-style-type: none"> <li>• A reduction in annual abstraction from 50,000MI/d to 30,000MI/d</li> <li>• Reduction in daily abstraction limit from 136MI/d to 105MI/d</li> <li>• A temporary return to 136MI/d at Testwood when flows in the River Itchen fall below 240MI/d – and only after a Temporary Use Ban (TUB) has been exercised</li> </ul> <p>Whilst the above licence change proposals are an important first step toward reducing headroom in the current Testwood abstraction licence we remain concerned that there is little or no evidence to show that abstraction at these new levels (the present Testwood level of abstraction is nearer 65-70MI/d) would not be damaging to the ecology of the river Test. We would, therefore, request clarification as to how this uncertainty will be managed by the EA to ensure that the river Test suffers no ecological deterioration under the Water Framework Directive.</p> <p>We believe it is imperative that stakeholders are given reassurance that abstraction on the Test will be operated in a manner sensitive to the ecology of the river and that the Temporary Use Bans (TUB), as detailed above, must be an integral part of the licence. Both the Test &amp; Itchen Assoc. and the Test Salmon Group have been involved at a stakeholder level throughout the last six years of discussions and yet there remains a lack of clarity as to exactly how and when increased abstraction would occur on the Test. To garner continued support of the various NGO's engaged in this process, it is essential that there is</p>	<p>We have decided to use our powers under section 52 Water Resources Act to impose conditions on the Testwood licence to reduce the amount of abstraction allowed and to provide improved environmental protection. The detail of our proposals is contained in the documents accompanying the section 52 notice.</p> <p>There is no evidence of any ecological impacts on the River Test and River Itchen caused by abstraction under normal weather conditions. Abstraction has been in long-term decline since 1990 so there is in fact less pressure now on water resources and the freshwater environment despite continued population growth. We are continuing our work to ensure that all abstraction licences are sustainable, meeting our legal obligations to protect the environment as well as having regard to abstractors needs.</p> <p>The risk to the environment posed by this voluntary application is lower than the risk posed by the current licence which allows 136 MI/d to be abstracted every day. However, we still need to be sure that any possible impacts as a result of full use of the varied licence are acceptable and there is no risk of deterioration under WFD.</p> <p>As we still have concerns that this proposed licence change could lead to impacts on the environment, we propose to modify the licence under section 52 Water Resources Act to reduce the daily abstraction rate to 80 MI/d and to apply, with immediate effect, a hands off flow condition of 355 MI/d for total flows in the River Test. Both of these changes will enable flows in the Lower Test system to meet the Environmental Flow Indicator which is used to determine if flows support Good Ecological Status under Water Framework Directive.</p> <p>From 2027, we will also include the more restrictive flow conditions of 265MI/d (March to December) and 233 MI/d (January and February) on the Great Test and 390 MI/d (March to December) and 355 MI/d (January and February) on the total flows in the River Test. This condition is delayed to allow</p>

<p>transparency from Southern Water regarding their plans to use this abstraction, both during normal flows and in particular in low flow conditions, when the river is already under increased environmental stress.</p> <p>Regarding the proposed Hands-off flow (HOF) of 240MI/d on the river Itchen, whilst we would have preferred to see this reduced to the original suggested Environment Agency trigger level of 220MI/d, we are broadly supportive of this measure. We would, however, prefer to see this HOF time limited, with the flexibility to adjust this figure should new evidence/technology become available that would afford increased protection to the environments of both rivers.</p> <p>We also understand it is the intention of the Environment Agency to ensure a HOF is implemented on the river Test by 2027. Our preference would be to see this happen sooner than the proposed date but accept the circumstances surrounding this decision and are, therefore, supportive of such an approach. We do, however, believe it is vital that the EA are explicit in the new licence with regards to the Test HOF so that a clear message is given to Southern Water that continued over-reliance of supply from the chalk aquifers will no longer be a long term option for the company. With this in mind, and in the absence of any better evidence, we are supportive of an Environment Agency HOF flow being set at 265MI/d for the Great Test and 400MI/d on the system as a whole, with the condition being time limited to allow for the consideration of any new evidence obtained over the coming years.</p>	<p>Southern Water time to develop alternative water supply options.</p> <p>The drought planning process and associated legislative provisions operate to protect security of supply and minimise the impacts of abstraction on the environment during a drought. As a result, we need to be mindful of the regulatory relationship between abstraction licensing for non-drought conditions and the drought permit / order process for drought conditions when taking action to prevent deterioration.</p> <p>We will no longer specify conditions on licences to allow a licence to operate as a quasi-drought order/permit. This includes conditions related to any drought triggers or measures such as temporary use bans.</p> <p>For that reason, we will not issue a revised licence at Testwood that contains the ability to increase abstraction up to 136 MI/d in response to low flows in the River Itchen. This type of use should be within the scope of Southern Water's Drought Plan.</p> <p>Southern Water will be considering a variety of options in their next Water Resource Management Plan many of which do not depend on abstraction from chalk streams.</p>
<p style="text-align: center;"><b>Representation 2</b></p> <p>We OBJECT to the application.</p> <p><i>a) The '105 ml/d scenario'</i></p> <p>The "minor changes" now applied for apparently include very significant <b>increases</b> from the 'recent actual' Testwood abstractions, to 105 MI/d on a much more frequent basis than at present.</p> <p><b>FACT: SWS have only abstracted 105 MI/d on one day in the last 20 years.</b></p> <p>We have been in detailed talks with them for the past 14 months. We understand they intend to abstract 105 MI/d on a much more frequent basis. We understand this is one of the main focuses of their pipeline project.</p> <p>The infrastructure to customers from SW's Testwood pumping station reaches customers with a daily actual demand of about 55 MI/d.</p> <p>With the proposed new pipeline in place this catchment of consumers will increase dramatically (From "200,000 customers in Totton, Waterside and Southampton as well as parts of the Isle of Wight ...to for 680,000 people across Hampshire") as indicated by SWS' own publicity.</p> <p><i>"Central to the plans is a scheme to build an 18km pipeline to transfer up to 45 million litres of water a day from the River Test to the supply works in Otterbourne. The amount of water taken from the River Test will remain within our existing abstraction licence and will depend on demand for</i></p>	<p><i>See response for Representation 1 -Test &amp; Itchen Association</i></p> <p><i>additional comments to specific queries are given below.</i></p>

water. (Water Briefing website, 8 December 2015, "Southern Water to build 18km strategic pipeline").

We understand SWS intend to abstract 105 MI/d on a much more frequent basis.

SWS have the licence to abstract this now. However, they do not have the demand so, in real terms they very very rarely do this (once in 20 years).

We do not know what effect this higher frequency of abstraction would have on the river Test ecosystem. A full EIA should be carried out prior to allowing this.

The question, to which we have not yet received a clear answer, is how frequently the increased abstraction (over the normal 50-70 ml/d range) will actually now happen, and whether it will be more frequent than at present/recently?

From the outline information, it appears to us that the 'effective demand' for River Test water (combined with River Itchen water if that is available), following installation of the proposed Otterbourne pipeline, will increase from the present approximately 200,000 population equivalent to approximately 400,000. So if River Itchen supplies are limited (such as via the proposed Otterbourne WTW licence variations), the effective demand for River Test water will increase substantially over present levels – which are currently limited by the present 'Testwood' infrastructure – without the new pipeline in place.

**The Environment Agency must impose a condition should a licence change be accepted, that strictly protects the river Test to recent actual flows within the normal 50-70 ml/d range AND frequency. It is unacceptable to increase the frequency of abstraction to 105ML/d above once in 20 years as we do not know what damage this would do to this unique chalk stream habitat. If the pipeline is built, the condition should stipulate clearly, that the pipeline cannot be used to abstract water above the normal 50-70 ml/d range AND frequency, unless the river Itchen SAC flows fall towards the HoF of 198MI/d. I.e. 210-220MI/d. And provided this DOES NOT increase the frequency of up to 105 MI/d from the river Test to more than once in 20 years (RA).**

It is unacceptable, without a full EIA, that the varied licence will, at least prior to 2027, lead to abstractions on a regular basis exceeding RA (or "recent historic") levels of the Test. This proposed significant increase over RA levels could obviously have significant environmental impacts and a full EIA must be carried out to mitigate against this rather than going in blind as we are in danger of doing now.

b) *The '136 ml/d scenario'*

A basic calculation of the reduction in flows that would take place on the Great Test in extreme drought conditions with the 136 MI/d abstraction at Testwood taking place (as would be permitted with the Testwood licence varied as proposed and the new pipeline in place), **based on 1976 extreme drought flows (prior to abstraction from the EA gauging station upstream of Testwood) in the region of 200 MI/d.** c100 MI/d is of course far below the HOF level for the Great Test (265 MI/d) planned to be imposed in 2027, though there are doubts about how

An EIA does not have to be carried out for this abstraction licence application but it is possible that Southern Water will need to complete one if they proceed with their proposal to apply for planning permission for the proposed pipeline.

Over the last ten years, on average 54 MI/d has been abstracted with infrequent daily peaks up to 77 MI/d. Prior to 2006, daily peaks of over 80 MI/d occurred for several days of the year. Although the proposed new daily rate of 80 MI/d is not within the 50 – 70 MI/d range that you have identified, the use of a more protective flow condition will ensure that during low flow times, daily abstraction is restricted. These conditions offer targeted environmental protection, in line with our Abstraction Licence Strategy process by protecting low flows and restricting daily abstraction to acceptable levels. The proposals accord with the Environmental Flow Indicator for total flows in the Lower Test waterbody which is the EA's consistent approach for ensuring that there is no risk of deterioration. The conditions will come into immediate effect.

Under our proposals, Southern Water will no longer be able to abstract up to 136 MI/d and low flows will receive higher levels of protection in line with the Environmental Flow Indicator.

protective even this figure may be. Please inform us whether these reduced Great Test flows, if appropriate combined with the (unabstracted) drought flows occurring at the same time in the Little Test, go anywhere near to meeting the salmon entry and escapement standards now proposed for the Itchen SAC (see "Development of a Stage 4 Target Flow Regime").

We note in addition that a proportion of Itchen salmon (an interest feature of the Itchen SAC) are likely to migrate into the lower Test and/or the Test estuary, where they would be impacted under the present proposals as much as native Test salmon. These chalk stream salmon populations are genetically unique and it is unacceptable to put them at risk. (see Jamie Stevens et al).

On the assumption that lower River Test flows on this scenario will indeed fall very far below the proposed Itchen standards (see above), we believe that the combination of the varied Testwood licence plus the new pipeline, which will cause these kinds of unprecedentedly low flows in the lower Test should the Itchen HOF 'trigger level' be reached (prior to 2027), creates a high risk of causing a WFD deterioration of the fish biological element (and probably others) in the Test (Lower) WFD water body. As the Weser case (C-461.13) has now made clear (see eg. paragraphs 34 and 51 of ECJ judgment), developments which "may cause" a deterioration in the status of a water body (or jeopardise the attainment of good status) must be refused authorisation, applying the **precautionary principle** as set out in Art.192(1) TFEU. This means that the burden of proof is on the developer to demonstrate that the project will not cause a WFD deterioration, and that a WFD compliance assessment must therefore be completed.

Please inform us whether such an assessment has been completed to assess the effects of the Otterbourne pipeline under the proposed varied abstraction licence conditions.

Please inform us whether this assessment has taken into account the precise changes in abstraction at Testwood that will be enabled by the combination of the pipeline and the proposed varied abstraction licence. The changes obviously include the 'more frequent' abstractions up to 105 Ml/d that – if we are right as argued above – will occur as a result of the pipeline and varied licence; and the abstractions up to 136 Ml/d that the combination will allow in more extreme drought conditions. We are of the opinion that the EIA must be completed before the licence variation itself is granted, in that, under the EIA Directive (2011/92/EU) art.2(1), "projects likely to have significant effects on the environment" (of which the Testwood abstraction expansion project, significantly affecting a SSSI, is undoubtedly one) must be "made subject to a requirement for development consent and an assessment with regard to their effects on the environment", "before development consent is given". "Development consent" means (art.1(2)) "the decision of the competent authority or authorities which entitles the developer to proceed with the project". Grant of a varied licence, which, along with the necessary planning permission, would enable the pipeline construction and operation to go ahead, is one element in 'entitling the developer to proceed with the project', and so must not be granted until an EIA for the overall project has been completed.

The off-site impacts of salmon from the River Itchen SAC being affected by abstraction at Testwood has been assessed in the Licence Change Proposal Report accompanying the notice to change the Testwood licence served under section 52 Water Resources Act. There is not deemed to be an impact as a result of imposition of the new licence conditions imposed through section 52 Water Resources Act.

The flow protection for the River Test will actually be higher than that proposed for the River Itchen.

We were unable to determine this application within the statutory time period because we did not have the information to assess if there was likely to be a risk of deterioration as a result of this proposed licence modification. We have now carried out WFD assessments which are documented in the Licence Change Proposal report and also in the determination report for this application. The assessment shows that Southern Water's application does not meet the EFI for total flows in the Lower Test waterbody and so in the absence of an agreed alternative target flow regime, this suggests that there could be a risk of deterioration and so this application would have been refused.

<p>1. <u>Procedural issues</u></p> <p>Using the 'minor changes' licence variation process is inappropriate for an issue of this scale and significance.</p> <p>The lengthy concerns expressed in our correspondence to you in August – which merely 'skims the surface' of the Testwood licence variation and proposed pipeline issue – demonstrate, the issue is indeed (and self-evidently) not one which “won't have any effects which people could be concerned about”, as you put it. Your conclusion that “given the nature of the proposed changes to the current licence, we consider the use of this form is appropriate” is therefore, we regret to have to say, perverse, and clearly procedurally unfair to affected stakeholders.</p> <p>We also feel that the EA's advertisement of 19.10.2016 “ Notice of Application vary a full licence to abstract (take) water” was unfair and did not put across a clear and fair explanation for comments. It did not explain the truth of the actual water proposed to be taken from the River Test. And instead 'spins' a story about 'reductions'. Its poor wording implies to the reader that 136MI/d has actually been abstracted from the Test in the past, when it never has. This is misleading and unfair in our opinion.</p> <p>In conclusion, the application represents significant environmental damage to the river Test and the salmon population of both the river Test and river Itchen. An application of this magnitude should not be granted without substantive scientific data and a full EIA covering all discussed above. It should not be processed via a 'minor changes' application and should qualify for a full and timely public consultation once the findings of the EIA are published.</p>	<p>In line with our own procedures, this application was submitted as a Minor Variation. However, once the application had been submitted, we have applied the same procedures for advertising and determining the licence as would be afforded to a full licence variation application.</p> <p>The advertisement followed our standard template and presented simple details of the proposed licence change which was essentially to reduce the daily and annual licensed amounts.</p>
<p style="text-align: center;"><b>Representation 3</b></p> <p>We wish to object to the proposal and wish to endorse many of the observations made by Representation 2</p>	<p>See response to Representation 2</p>
<p style="text-align: center;"><b>Representation 4</b></p> <p>Under the proposed licence changes the average summer abstraction levels will increase, the water temperature will rise and the number of occasions we would stop fishing to protect the salmon population, as a result of the water temperature reaching 19 degrees, will increase at our commercial cost.</p> <p>Any increased frequency of this situation needs to be recognised in the licence conditions as a compensation event for which SW are liable and not just seen as an act of nature for which no compensation is payable.</p>	<p>See response to Representation 2 and detailed response on the specific issue of compensation below....</p> <p>Southern Water employed consultant Atkins to consider the impact of abstraction on river temperature and that information was supplied to the EA. Models were used to consider a worst case scenario of combining the hot weather seen in 2006, with the low flows seen in 1976 to assess the potential maximum impact on temperature of Southern Water's proposals to use the current licence.</p> <p>With no abstraction, temperature was predicted to exceed 21<sup>0</sup>C on 19 days in July and reach a maximum of 24<sup>0</sup>C which could potentially be fatal for salmon.</p>

	<p>Modelling suggested that in the area of the Testwood and Nursling fishery, cooler water from the Blackwater exerts an influence and that the maximum impact on temperature as a result of abstraction was around 0.1°C. Their work showed that the number of days on which temperature would exceed 19 °C was not increased as a result of abstraction.</p> <p>Although this proposed licence change is to allow less water to be abstracted, the current maximum of 136 Ml/d could still be abstracted under low flow and high temperature conditions and so impacts are likely to be similar to those modelled by Southern Water.</p> <p>We do have some concerns about the assumptions made in the modelling but in our Section 52 Licence Change Proposal Report, the maximum daily abstraction amount of 136 Ml/d will be reduced to 80 Ml/d and greater protection will be given to low flows which will reduce the small risk of any thermal impact even further.</p> <p>Therefore we do not believe that there is likely to be any impact on the downstream business as a result of our proposed licence changes to be made under section 52 Water Resources Act.</p>
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ANNEX 2 Section 51 Response Letters

Mike Johnson  
[REDACTED]

Our ref: NPS/WR/024562  
Your ref:  
Date: 7 March 2017

Dear Mr Johnson

Thank you for your representation on this application which we received on 10 November 2016. In your representation you raised, in addition to the points made by your fishery partner, Mr Taylor, additional concerns about higher abstraction at Testwood leading to rising water temperatures and more frequent occasions when fishing has to stop.

Whilst determining this voluntary licence application from Southern Water we have taken into account those matters you and others have raised. We have also taken note of other concerns that do not relate to this specific application, including aspirations for long-term sustainable abstraction in the Rivers Test and Itchen.

Having done this we have decided that we cannot grant this application until we have completed our technical assessment to ensure that the authorised quantities in a varied abstraction licence are sustainable and will not contravene Water Framework Directive requirements. We therefore propose to determine this application at the same time as we intend to serve notice of further compulsory licence changes during summer 2017. These will include modified Hands-off Flow conditions and new daily, annual, seasonal and monthly quantities.

We have written to Southern Water informing them of our decision regarding this licence application and our intention to publish proposals to vary the licence to ensure the longer-term sustainability of the River Test. These proposals will be advertised at which time you will have a further opportunity to comment. Southern Water is currently considering an appeal against our non-determination of their application. We will provide you with a copy of any Notice of Appeal, and if there is to be a hearing or public inquiry we will keep you informed.

Yours sincerely

[REDACTED]

Suzanne Fewings  
Team Leader Groundwater Hydrology and Contaminated Land West  
Solent and South Downs Area  
Direct Tel: +442084745952  
Email: [suzanne.fewings@environment-agency.gov.uk](mailto:suzanne.fewings@environment-agency.gov.uk)  
Environment Agency, Romsey Office, Canal Walk, Romsey, Hampshire SO51 8DU



Howard Taylor  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Our ref: NPSWR/024562

Your ref:

Date: 7 March 2017

Dear Mr Taylor

Thank you for your representation to this application which we received on 9 November 2016.

In your representation you raised concerns about increases in amount and frequency of abstraction at Testwood to compensate for reductions on the River Itchen, and the significance of the new pipeline enabling more regular abstraction with resulting risks to salmon migration. You referred to consequent risks of deterioration of River Test ecology with respect to the Water Framework Directive, questioned whether the effects of the application had been assessed in EIA, and reiterated your views on the procedural approach that was taken to review this abstraction.

Whilst determining this voluntary licence application from Southern Water we have taken into account those matters you and others have raised. We have also taken note of other concerns that do not relate to this specific application that set out long-term aspirations for sustainable abstraction in the Rivers Test and Itchen.

Having done this we have decided that we cannot grant this application until we have completed our technical assessment to ensure that the authorised quantities in a varied abstraction licence are sustainable and will not contravene Water Framework Directive requirements.

We therefore propose to determine this application at the same time as we intend to serve notice of further compulsory licence changes during summer 2017. These will include modified Hands-off Flow conditions and new daily, annual, seasonal and monthly quantities.

We have written to Southern Water informing them of our decision regarding this licence application and our intention to publish proposals to vary the licence to ensure the longer-term sustainability of the River Test. These proposals will be advertised at which time you will have a further opportunity to comment.

Environment Agency, Romsey Office, Canal Walk, Romsey, Hampshire SO51 8DU

Simon M J Barker  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Our ref: NPS/WR/024562  
Your ref:  
Date: 7 March 2017

Dear Mr Barker

Thank you for your representation on this application which we received on 10 November 2016.

In your representation you endorsed the points made by Mr Taylor which were principally about intermittent increases in abstraction at Testwood to compensate for reductions on the River Itchen, and the consequent risks of deterioration of River Test ecology with respect to the Water Framework Directive; also concerns about the specific regulation of periods of increased abstraction, how Temporary Use Bans would be written into the new licence, and the future dates of Hands-off Flow conditions coming into effect on these rivers, plus more general concern over the sustainability of reliance on chalk streams for public water supply.

Whilst determining this voluntary licence application from Southern Water we have taken into account those matters you and others have raised. We have also taken note of other concerns that do not relate to this specific application that set out long-term aspirations for sustainable abstraction in the Rivers Test and Itchen.

Having done this we have decided that we cannot grant this application until we have completed our technical assessment to ensure that the authorised quantities in a varied abstraction licence are sustainable and will not contravene Water Framework Directive requirements. We therefore propose to determine this application at the same time as we intend to serve notice of further compulsory licence changes during summer 2017. These will include modified Hands-off Flow conditions and new daily, annual, seasonal and monthly quantities.

We have written to Southern Water informing them of our decision regarding this licence application and our intention to publish proposals to vary the licence to ensure the longer-term sustainability of the River Test. These proposals will be advertised at which time you will have a further opportunity to comment.

Southern Water is currently considering an appeal against our non-determination of their application. We will provide you with a copy of any Notice of Appeal, and if there is to be a hearing or public inquiry we will keep you informed.

Environment Agency, Romsey Office, Canal Walk, Romsey, Hampshire SO51 8DU

Simon M J Barker	Our ref: TW 11/42/18.16/546 Your ref: Date: 4 July 2017
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Dear Mr Barker

We are writing to inform you that we have now completed our technical assessment of the above licence application that you provided representation on and which we received on 10 November 2016.

Whilst determining this voluntary licence application from Southern Water we took into account those matters you and others raised. We also took note of other concerns that did not relate to this specific application that set out long-term aspirations for sustainable abstraction in the Rivers Test and Itchen.

We informed you that we could not grant this application until we had completed our technical assessment and that we proposed to determine this application at the same time as we intended to serve notice of further compulsory licence changes during the summer of 2017.

We outlined that these would include modified Hands-off Flow conditions and new daily, annual, seasonal and monthly quantities. Southern Water subsequently appealed against our non-determination of their application to the Planning Inspectorate, and so determination of that matter is now out of our hands.

On 30 June 2017 we served notice on Southern Water to require these further licence changes and the relevant documents can be viewed electronically at the sharefile location outlined on the enclosed guidance note from July 6 2017 for a period of 28 days.

You will find included as Appendix Q1 of our Licence Change Proposal Report a report setting out how we would have determined Southern Water's voluntary licence application had Southern Water not lodged an appeal against our non-determination of it.

Yours sincerely

Suzanne Fewings

Team Leader Groundwater Hydrology and Contaminated Land West

Solent and South Downs Area

Direct Tel: +442084745952

Email: [suzanne.fewings@environment-agency.gov.uk](mailto:suzanne.fewings@environment-agency.gov.uk)

## **Guidance on accessing Sharefile point for Section 52: Southern Water Services Limited (11-42-18. 16-546)**

- 1) Click on this link: <https://ea.sharefile.com/i/icb79f0169ce4f73b>
- 2) Enter your email address, first name and last name in the appropriate boxes. Note: if you wish to remain anonymous the first name and last name can be populated with single letters or 'Anon'.
- 3) Tick the box to agree to the Terms & Conditions, then click 'Continue'.
- 4) On the next screen, enter a password in the 'New password' and 'confirm password' fields (Password must be at least 8 characters and contain at least one letter and one digit. Note that this is case sensitive.). Click 'Save'.

### **Return visits**

- 1) Once you have registered, you can use either the link above or the following link for subsequent visits to the site: <https://ea.sharefile.com/login.aspx>
- 2) Enter the email address and password you used to register, tick the box to accept the Terms & Conditions, then click on "Log In".
- 3) Click on the "Southern Water Services Limited (11-42-18.16-546)" folder to see the file list.

### **Accessing documents**

- Click on the column headings to order by Title or date uploaded.
- Click on the relevant file name to open a document. You will be given the option to open or to save the document to your computer.
- To view or download multiple documents, tick the boxes next to each document then select 'Download' at the top left of the list.

### **Log out**

- Log out at the top right of the screen

Mike Johnson	Our ref: TW 11/42/18.16/546 Your ref: Date: 4 July 2017
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We are writing to inform you that we have now completed our technical assessment of the above licence that you provided representation on and which we received on 10 November 2016.

Whilst determining this voluntary licence application from Southern Water we took into account those matters you and others raised. We also took note of other concerns that did not relate to this specific application that set out long-term aspirations for sustainable abstraction in the Rivers Test and Itchen.

We informed you that we could not grant this application until we had completed our technical assessment and that we proposed to determine this application at the same time as we intended to serve notice of further compulsory licence changes during the summer of 2017. We outlined that these would include modified Hands-off Flow conditions and new daily, annual, seasonal and monthly quantities.

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Yours sincerely

Suzanne Fewings

Team Leader Groundwater Hydrology and Contaminated Land West

Solent and South Downs Area

Direct Tel: +442084745952

Email: [suzanne.fewings@environment-agency.gov.uk](mailto:suzanne.fewings@environment-agency.gov.uk)

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- Click on the relevant file name to open a document. You will be given the option to open or to save the document to your computer.
- To view or download multiple documents, tick the boxes next to each document then select 'Download' at the top left of the list.

### **Log out**

- Log out at the top right of the screen

ANNEX 4 Letters sent by Agency upon receipt of Section 52 comments



Andrew Kelton  
[REDACTED]  
[REDACTED]  
[REDACTED]

Our reference: 11/42/18.16/546

Date: 4 August 2017

Delivered via email to:

[REDACTED]@fishlegal.net

**Restoring Sustainable Abstraction - Proposal to vary (change) a licence**  
**Licence number: 11/42/18.16/546**  
**Licence holder: Southern Water Services Limited**

Dear Mr Kelton,

Thank you for your comments on our proposal to change the above water resources licence held by Southern Water Services Limited.

The licence holder has objected to our proposals and so we will now refer the case to the Secretary of State. The Secretary of State will consider our proposal and then tell us what we must do. We do not know how long this will take, but we will write to you to tell you the decision.

If you need any more information, please let me know.

Yours sincerely,



**Karen Abrey**  
**Principle Advisor, RSA / WFD Team**

Phone: 0203 025 4412

E-mail: [rsa@environment-agency.gov.uk](mailto:rsa@environment-agency.gov.uk)



Simon Barker  
[Redacted]

Our reference: 11/42/18.16/546

Delivered via email to:  
[Redacted]

Date: 4 August 2017

**Restoring Sustainable Abstraction - Proposal to vary (change) a licence**  
**Licence number: 11/42/18.16/546**  
**Licence holder: Southern Water Services Limited**

Dear Mr Barker,

Thank you for your comments on our proposal to change the above water resources licence held by Southern Water Services Limited.

The licence holder has objected to our proposals and so we will now refer the case to the Secretary of State. The Secretary of State will consider our proposal and then tell us what we must do. We do not know how long this will take, but we will write to you to tell you the decision.

If you need any more information, please let me know.

Yours sincerely,



**Karen Abrey**  
**Principle Advisor, RSA / WFD Team**

Phone: 0203 025 4412

E-mail: [rsa@environment-agency.gov.uk](mailto:rsa@environment-agency.gov.uk)