

Application number:

NPS/WR/020890
NPS/WR/020888
NPS/WR/020891

Licence number:

11/42/22.7/94 (Itchen – Otterbourne Groundwater)
11/42/22.6/93 (Itchen – Otterbourne Surface water)
11/42/22.6/92 (Itchen – Twyford)

EA Region:

SE

Date of Serving Notice on licence holder:

07/11/2016

Applicant details:

Southern Water Services Ltd.

Summary of the proposal:

The three abstraction licences held by Southern Water can have an impact on flows in the River Itchen which is designated as a Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). Following an Appropriate Assessment, the Agency determined that it could not be ascertained that the three licences could not have an adverse effect on the integrity of River Itchen SAC. The licences therefore needed to be varied in order to ensure no adverse effect on the SAC and to comply with the requirements of the Habitats Directive and Regulations.

Section 52(1) of the Water Resources Act entitles the Agency to formulate proposals to vary or revoke an abstraction licence. The Agency formulated its proposals to modify the three abstraction licences and these changes were detailed in the Licence Change Proposal Report. Section 52(4) of the Act requires the Agency to serve notice of any proposals on the licence holder and to advertise the proposals. Notice was served on Southern Water on 7 November 2016 to make the following licence changes:

(i) Imposition of aggregate total monthly abstraction limits during June to September inclusive as follows: 4,110 MI for June, 3,940 MI for July, 3,445 MI for August and 2,280 MI for September. (MI = million litres)

(ii) A Hands-Off Flow (HoF) condition to be added to the licences. Southern Water must manage abstraction to keep the total combined flow at Allbrook and Highbridge gauging stations above 198 MI/d to prevent them having to cease abstraction. (MI/d = million litres per day)

(iii) A time limit of 31 March 2025 to be added to the licences.

In addition, the Agency also proposed to reduce the annual aggregate total of the three licences from 55,138 MI to 42,000 MI.

Source of Supply:

11/42/22.7/94 Underground Strata

11/42/22.6/93 River Itchen

11/42/22.6/92 Underground Strata

Points of abstraction and quantities:

11/42/22.7/94 71.601 MI day, 21,230.240 MI per year

11/42/22.6/93 3.031 MI per hour, 45.460 MI per day, 16,638.368 MI per year

11/42/22.6/92 36.369 MI per day, 13,274.537 MI per year

The aggregate quantity of water authorised to be abstracted under licences 11/42/22.6/93, 11/42/22.7/94 and 11/42/22.6/92 shall not exceed:

- (i) 4,110 MI for the month of June.
- (ii) 3,940 MI for the month of July.
- (iii) 3,445 MI for the month of August.
- (iv) 2,280 MI for the month of September.
- (v) 42,000 MI per year.

Means of abstraction:

Pumps

Purpose of abstraction:

Public water supply

Abstraction period:

All year

Case history:

The full details of the case history are given in the Licence Change Proposal Report for the River Itchen. A brief summary of the case history is given below.

The impacts of water company operations on the River Itchen have been investigated in detail over many years largely driven by the Agency's Review of Consents programme. In October 2007 we published the Site Action Plan for the River Itchen SAC which explained the licence changes that would be necessary under the Habitats Directive (as transposed by the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations)) to protect the designated site. Our decisions for these licences were guided by a need to protect a defined flow regime which we derived, based on an analysis of local invertebrate and fish data.

Because the impacts of the licence changes on Southern Water were significant, they proposed to implement them in a phased way from 2015 to 2018 whilst they investigated and implemented other options. In October 2015 Southern Water volunteered to modify its licences to accept monthly changes in June and July and to reduce the annual aggregate licence volume from 51,138 MI to 42,000 MI with immediate effect. At the same time they volunteered to implement the remaining changes by December 2018.

In December 2015, we wrote to Southern Water to state that the voluntary changes to the abstraction licences would not be issued at that time, as in order to achieve compliance with Article 6(3) and (4) of the Habitats Directive, there must be a valid case for imperative reasons of over-riding public interest (IROPI) in place before the modified licence containing conditions with delayed implementation dates could be issued. At that time, Southern Water were invited to provide evidence to support an IROPI case. Although further information was provided, on 27 September 2016, the Agency responded to say that: *"As there are alternative solutions available there are no IROPI. Therefore the licence changes must be made with immediate effect."*

Southern Water withdrew their section 51 application made in October 2015. In order to deliver the licence changes needed to comply with the requirements of the Habitats Directive and Water Framework Directive, we used our powers under section 52 of the Water Resources Act to make the variations to the abstraction licences, serving notice on Southern Water in November 2016.

Southern Water formally objected to the Agency's proposals on 15 December 2016. As a result, the objection was referred to the Secretary of State on 20 December 2016. The Secretary of State subsequently referred the matter to the Planning Inspectorate to hear.

Assessment and determination of the licence proposals:

The Agency's Licence Change Proposal Report provided all of the information to show how the Agency derived the proposals for the licence changes and had due regard to statutory obligations, legal requirements and the impact of the proposals on the licence holder. This document is provided alongside this statement.

In the documents supporting the licence inquiry, further details were also given in the Agency's statement of case and proofs of evidence.

Statutory Consultation:

The Agency's proposals were advertised in the Hampshire Chronicle on 17 November 2016

External Representations:

Ten representations were received which broadly supported the Agency's proposals. Many were keen to see a move away from abstraction from chalk streams and the chalk aquifer and wanted to encourage Southern Water to take a more innovative approach involving wider catchment solutions. Concern was expressed about potentially transferring abstraction impacts from the River Itchen to the River Test.

Several groups referred to work previously completed by WWF UK which suggested that a higher Hands Off Flow condition should be applied to the licences to raise the flow condition at Allbrook & Highbridge from 198 MI/d to 224 MI/d. It was also noted that rCSMG (Joint Nature Conservation Committee revised Common Standards Monitoring Guidance for rivers) flow targets may apply on the River Itchen in the future which would result in further restrictions in abstraction.

One abstractor raised concerns about potential derogation of their own supplies.

The Agency considered all of these responses before referring the proposal and the representation and objection from Southern Water to the Secretary of State.

The inquiry:

The proposal to modify the three licences was considered at an inquiry which took place on 13 and 27 March 2018 before the Planning Inspector who had been appointed by the Secretary of State. The inquiry also considered the proposed licence changes for Southern Water's Testwood abstraction licence and the Agency's Candover Scheme licence. The Inspector's report, dated 28 August 2018, concluded that the licences should be changed as proposed by the Environment Agency. The Inspector's report and Defra's letter to the Agency have been published alongside this document.

In sections 9.33 to 9.39 of the Inspector's report the main issues raised by the ten representors to the proposed Itchen licence changes are addressed. The Inspector concludes this section on the Itchen licence changes by stating:
"Having reviewed the submitted evidence I consider that variation to these licences would not have a significant effect either individually, or in combination with other plans or projects, on the SAC. Accordingly, I am satisfied that the proposed licence quantities and conditions are appropriate, and accord with the considerations set out in s54 of the WRA, and with Article 6(3) of the Habitats Directive, as transposed by Regulation 63(1)."

Conclusion and recommendation:

Following the inquiry in 2018 and subsequent publication of the Inspectors Report, the Agency has now been directed by the Secretary of State to modify the three abstraction licences in line with the proposals originally made by the Agency in 2016.

Further information is available on the inquiry website

www.hwa.uk.com/projects/itchen-candover-and-testwood-water-abstraction-inquiry/