

**Application number:**

NPS/WR/024562

**Licence number:**

11/42/18.16/546

**EA Region:**

SE

**Date of Serving Notice on the licence holder:**

30/06/2017

**Applicant details:**

Southern Water Services Ltd.

**Summary of the proposal:**

Southern Water's Testwood licence is the largest consumptive abstraction in the River Test catchment and is located just above the tidal limit of the River Test. Investigations have been carried out to determine if the current abstraction has an impact on the River Test and associated wetlands and to consider if increased abstraction up to that allowed by full use of the licence could result in any impacts.

The Agency determined that licence changes were needed to ensure that there was no risk of deterioration under the Water Framework Directive 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 were deemed not to be affected by the current abstraction licence although any impacts on the downstream Ramsar site (i.e. a wetland site designated of international importance under the Ramsar Convention) also need to be accounted for in licence changes.

The Agency's proposals to vary the Testwood abstraction licence are explained in the Licence Change Proposal Report (LCPR) which is published alongside this statement. The changes are staged and included a reduction in daily and annual amounts and imposition of a flow condition and time limit with immediate effect. Proposed additional conditions 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.

**Source of Supply:**

River Test

**Points of abstraction and quantities:**

The proposal is to vary the licence in the following ways:

- ☐ Reduce the daily quantity to 80 MI per day;
- ☐ Reduce the annual quantity to 29,200 MI per year;
- ☐ Remove the current hands off flow condition;
- ☐ Include a hands off flow condition which restricts abstraction when flows are at or below 355 MI per day in the River Test measured as the sum of flow at Testwood Bridge, Test Back Carrier and Conagar Bridge until 31 March 2027;
- ☐ From 1 April 2027, include a hands off flow condition which restricts abstraction when flows measured as the sum of flow at Testwood Bridge, Test Back Carrier and Conagar Bridge are at or below 390 MI per day in the months March to December and 355 MI per day in the months January to February.
- ☐ From 1 April 2027, include a hands off flow condition which restricts abstraction when flows measured at Testwood Bridge are at or below 265 MI per day in the months March to December and 233 MI per day in the months January to February.
- ☐ Time limit the licence to expire on 31 December 2027.
- ☐ Include a fish screen condition.

**Means of abstraction:**

Pumps

**Purpose of abstraction:**

Public water supply

**Abstraction period:**

All year

**Case history:**

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. Following that investigation there was no final agreement between the Agency and Southern Water regarding the requirement for changes to the Testwood abstraction licence.

Southern Water volunteered modifications to the Testwood licence in August 2016 as a starting point for further licence changes. The Agency was concerned that the proposed variation would not provide sufficient environmental protection. To ensure that all legal obligations were met, the Agency chose to serve notice on Southern Water on 30 June 2017 to modify the Testwood licence under section 52 of the Water Resources Act 1991.

Southern Water formally objected to the Agency's proposals on 28 July 2017. As a result the objection was referred to the Secretary of State on 10 August 2017. 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 provides 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.

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

**External Representations:**

On 4 July 2017, letters were sent to those who had responded to Southern Water's voluntary application to change their licence to notify them of the opportunity to comment on the Agency's proposals. The proposal was advertised in the Hampshire Chronicle on 6 July 2017.

Responses were received from 10 individuals and organisations and these were broadly supportive of the Agency's proposals to modify the Testwood abstraction licence. Some argued that the Agency should impose more restrictive conditions sooner and there was also concern that although the daily abstraction rate had been reduced, abstraction could still increase beyond current levels. The sensitivity of chalk streams was highlighted and concern was expressed about the possibility of ecological damage and risk of deterioration of ecological status under Water Framework Directive.

Particular concern was expressed about the impact on salmon and sea trout both from a conservation and commercial point of view. It was felt that impacts on fish could be particularly related to reductions in flow (and velocity) and also the possibility of elevated river temperature. Alternative, higher flow conditions were proposed and there was a desire by some to impose tighter restrictions on abstraction.

Natural England did express the view that the proposals do not meet the rCSMG (revised Common Standards Monitoring Guidance) flow standards and that further work would be necessary to assess this.

The Agency referred the proposals, along with Southern Water's objections and the representations, to the Secretary of State on 10 August 2017.

## **The inquiry:**

The proposal to modify the licence was considered at an inquiry which took place on 13 and 27 March 2018 before the Planning Inspector, who was appointed by the Secretary of State. The inquiry also considered the proposed licence changes for Southern Water's Itchen abstraction licences and the Agency's Candover Scheme licence. During the course of the Inquiry, two changes were suggested to the Agency's proposed licence for Testwood. These were a force majeure condition and a requirement to notify Natural England in such an event. The Force Majeure condition affords Southern Water some specified modifications to the abstraction licence if an exceptional unforeseen event such as terrorism, power cuts or pollution threaten their ability to supply people with water. Following the inclusion of the Force Majeure condition, Southern Water withdrew their objections to the Agency's proposals.

The Inspector's report, dated 28 August 2018, concluded that the Testwood licence should be changed as proposed by the Environment Agency but also including the modifications agreed at the inquiry in relation to the Force Majeure condition which is discussed in paragraphs 9.67-9.79 of the Inspector's report. The Inspector's report and Defra's letter to the Agency have been published alongside this document.

The inspectors report specifically sets out his assessment of the Testwood licence in section 9.40 – 9.79. The Inspector concludes the section relating to the Testwood licence by stating: *"Accordingly, I am satisfied that the proposed licence quantities and conditions, with the agreed modifications presented during the Inquiry, are appropriate, and accord with the considerations set out in s54 of the WRA, and with the general duty and Article 4(1) of the WFD, as transposed by Regulation 3(1) and 3(2) of the WFD Regulations 2017."*

## **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 abstraction licence in line with the proposals originally made by the Agency in 2016 as modified by the addition of a Force Majeure condition proposed during the course of the inquiry.

Further information is available on the inquiry website

[www.hwa.uk.com/projects/itchen-candover-and-testwood-water-abstraction-inquiry/](http://www.hwa.uk.com/projects/itchen-candover-and-testwood-water-abstraction-inquiry/)