

Appendix 2

EA's Response to third party representations

Issues raised in third party representations are italicised.

1 - Dr Tom Greeves:

The conditions are very onerous and, if implemented, will have a very considerable negative effect on the financial and practical viability of the scheme.

The EA should recognise the achievements (and awards) of this hydro scheme.

EA Response: The proposed changes to the licence are to address unsustainable abstraction and are not related to any awards or operations of the hydro scheme.

We consider our proposal the one that best meets the needs of the environment, balanced with the licence holder's ability to abstract.

2 - Cara Jenkinson (Cities - Sustainable Towns and Cities)

Scheme has been operating under licence, compliance with conditions with no damage to fish and will reduce energy production by 70%.

EA Response: Our proposal to vary the licence is not related to the operation by the licence holder of the site – our proposal to vary the licence is based upon the impact to the West Webburn River.

The scheme has welcomed 3,000 visitors helping them understand renewables with information, discussions and practical models for young people.

The proposed option is the one that best meets the needs of the environment, balanced with the licence holder's ability to abstract, allowing the operation to continue and be a source of information for visitors.

3 - Kate Gilmartin (British Hydropower Association)

1. Status of the Scheme and sector context – concerns that the way this case is handled will have implications well beyond the individual licence holder.

EA response: Each New Hydropower application will be determined on its own merits. This licence was issued before our modern guidance was written – our concerns with the licence and site are that the licence is unsustainable based upon the impact to the West Webburn River. This includes insufficient flows remaining in the deprived reach during low flows when the licence allows the abstraction of all the river flow apart from a very small flow and the current screening arrangements do not meet current best practice and therefore there is an increased risk of fish entrainment, injury or death. Our proposals for the variation of this licence are based on our Run of River Guidance which is also what we use to

determine new hydropower licence applications and so the outcome of this licence proposal would not impact wider beyond the licence holder.

2 - Importance of regulatory certainty and proportionality

The proposed use of Section 52 powers in circumstances where no site specific environmental harm has been clearly demonstrated raises concern within the sector about the potential for retrospective regulatory change being applied to legacy assets without clear statutory authority or evidential justification in public law terms, proportionality requires that any interference with long-established lawful activity must be justified by reference to a legitimate objective, be rationally connected to that objective, be no more intrusive than necessary, and strike a fair balance between competing public interests. These are not discretionary considerations but requirements of lawful decision-making.

The BHA is concerned that an expansive or precautionary interpretation of Section 52, if applied inconsistently or without clear statutory grounding, could undermine confidence across the small-scale hydropower sector and deter continued investment in renewable generation.

EA response: The site has been in the RSA Programme since 2009. This site was included in the Programme on account of concerns raised by local area staff relating to the low flows in the River Webburn and risks of fish entrainment (as detailed in the main body of our Statement of Case). In putting forward the proposals to vary the licence we are seeking to improve the balance of natural river flows between the river and the leat (which leads to the HEP); and upgrade the screening infrastructure to meet current best practice within the 'Guidance for run-of-river hydropower development' (**Annex 6**).

We also have duties under Water Framework Directive under which the core obligation is for the EA to exercise its relevant functions so as to prevent deterioration of the surface water status of a body of water and otherwise to support the achievement of the environmental objectives set for a body of water (Regulation 3).

The West Webburn River is a water body regulated under the WFD Regulations 2017, with the overall water body status was assessed as Moderate, with Moderate status for the fish element classification primarily driven by lower than expected numbers of eels and salmon. This fish element has deteriorated since 2016 and where deterioration in an element has occurred, we need to identify the cause and ensure relevant measures to reverse the deterioration are put in place as soon as practicable.

3. Section 52 of the Water Resources Act 1991 provides a procedural framework for proposing licence variation without consent. It does not, in itself, determine whether interference with long-established rights and lawful uses is justified in any particular case. From a sector perspective, it is essential that Section 52 is applied with appropriate legal discipline and is not treated as a general-purpose mechanism for delivering programme objectives in the absence of demonstrated harm

4. Balancing of Statutory duties and public interest

Section 4 of the Environment Act 1995 places a duty on the Environment Agency to have regard to likely costs, to protect the environment taken as a whole, and to contribute to sustainable development. From a sector perspective, it is important that these duties are visibly and transparently considered when discretionary regulatory powers are exercised.

5. Governance Standards and escalation

The proposed escalation of this matter to Secretary of State level underscores the importance of ensuring that proportionality and precaution have been correctly applied at earlier stages. Escalation in the absence of a clearly articulated evidential basis and balancing exercise risks embedding precisely the regulatory failure modes identified in recent Government-commissioned reviews of regulatory practice (Corey/ Fingleton) which emphasise the need for restraint, clarity of authority, and proportionality in the exercise of regulatory power.

EA Response to points 3, 4 and 5: We consider that there is clear statutory authority for our proposals, and that these proposals are proportionate, rational, and no more intrusive than necessary, for the reasons explained in the main body of our Statement of Case. With reference to the point about section 4 of the Environment Act 1995, we also consider that the points have been transparently considered. We agree that section 52 of the WRA 1991 provides a procedural framework for putting forward proposals, and that where the licence holder objects it is for the Secretary of State to make a decision on whether the proposals are justified.

4 – Gail Fursdon:

Miles has designed and built his own fish screener, over and above our licence requirements, which the EA now want to adopt in hindsight

EA Response: The existing screen was agreed with/by the EA's predecessor at the time it was installed despite it not meeting the licence requirement. The licence requires screening at the leat entrance which the existing screening does not comply with as it is set back. The Agency does not want to adopt the existing screen or design – the preferred option at river frontage has been chosen to meet best practice as outlined in the EA's 'Guidance for run-of-river hydropower development'.

In the leat brown trout like the calmer waters and weed to hide under

EA Response: Brown trout will utilise habitat in the leat. However, this does not outweigh the potential for impacts due to entrainment of various lifestages of sea trout, salmon and eel.

When another tributary of the Dart river system (which we are on) had a pollution incident the EA officers came and electro fished our leat so they could restock the affected section with local fish, upwards of 300 fish. This help would not be available under the S52 restrictions.

EA Response: We suggest that the numbers of fish removed serve to highlight issues with entrainment at the site.

The EA are asking us to screen water at the intake which would deny the brown trout entry into our leat.

EA Response: This is true. There is a balance between allowing trout to utilise the habitat that the leat provides and limiting entrainment. The guidance, and our position, favour the health of the river as a whole by limiting entrainment.

[The EA] appear to not understand about the fist sized stones and gravel that would incapacitate the screener if it were put at the intake – as we have already proved 30 years ago when they originally insisted the screen be at the intake. After a year they accepted it was not viable and it was relocated

EA Response: River frontage screening is now standard practice (and was common practice when installed in the early 1990s). This includes many sites on active, flashy river systems in Devon and Cornwall. There will be a burden in terms of maintenance, however, this is not a reason not to protect the environment, and a well-designed screen should reduce issues significantly.

Salmon are still travelling up the West Webburn and spawning as they have always done, leaping our 1m weir with ease. Our weir is the same size as when it was built in 1936 to provide hydroelectricity for the farm and family before mains electricity even came to Dartmoor, 90 years ago

EA Response: The EA's electric fishing survey data shows a significant decline in juvenile salmon densities at sites in the West Webburn catchment over the last 30 years with no juvenile salmon recorded since 2014. We know from anecdotal evidence from landowners and anglers that salmon do still return to the West Webburn but in nothing like the numbers that they used to. This decline is mirrored across the catchment and the latest annual salmon stock assessment for the River Dart suggests that the situation is perilous for the Dart population. This means that it is critical that any and all pressures on salmon are addressed where possible as they are exerting stress on an ever more depleted and susceptible population. Our actions at Old Walls are part of a wider programme of works, either planned or already underway, to improve conditions for fish and wider ecology in the West Webburn catchment.

We have worked hard to facilitate the salmon upstream to spawn and downstream to return to the sea as smolts - without harm.

EA Response: Screening measures are in place at Old Walls, however, they do not meet best practice and, when combined with the impacts on flow, have the potential for significant impacts on migratory species.

Perhaps the fishermen should halt catching salmon altogether to protect them. Catch and release, which is their favoured conservation method, is only as good as each individual fisherman is at following the strict guidelines in the EAs own report of "Catch and Release":

- *angling method*
- *deep hooking*
- *poor and excessive handling*
- *being kept out of the water for a prolonged period*

No one inspects them like they do us each and every year. Low numbers of salmon have been linked to Pollution, Climate Change, Habitat Barriers, Overfishing and intercropping, Natural Mortality and conservation efforts are needed.

EA Response: The returning adult salmon population in the Dart is now so low that the rod fishery has effectively ceased to exist. The rod catch of salmon has not exceeded 10 fish since 2019 and was zero in 2024. This illustrates why urgent actions to improve salmon survival in the River Dart are required and explains why the angling associations communicate their concerns to the EA.

EA Response: No comments - no points were raised which relate to our proposals to vary the licence.

6 – Kirsty Russell (individual)

1. Water quality (South West)

The existing implementation of the automatic fish protection and debris screen removes water contaminants (such as drinks cans, bottles, plastic bags, sweet wrappers, fishing line and hooks) which would otherwise enter the watercourse and continue from the Webburn to the River Dart to eventually be released into the ocean Overall water quality for recreational use is improved assisting in promoting the Webburn and Dart River for recreational purposes and continued tourism.

- *Water is more suitable to re-enter the river for wildlife having less detrimental impact on fish and contaminants which would otherwise be digested.*
- *Water is aerated upon return to the river actively encouraging healthier grade water for the environment and ecology.*
- *No water is wasted due to the design of the debris screen returning water directly back into the water table for equilibrium. This reduces overall water abstraction further for the scheme.*

Following the Environment Agency's proposals these benefits (water quality due to less debris in river, water is aerated upon return and no water is wasted due to returning back to the river would be lost. Debris and contaminants would be bypassed directly back into the river to a negative impact to the environment, wildlife and tourism.

EA Response: We consider the benefits to fish migration which will be provided by the screening at the head of the leat to outweigh any possible risks from debris remaining in the river.

With respect to water aeration and water wastage referred to there is no change to the amount of water in the river system overall as the abstraction is non-consumptive.

2. Protection of migrating Fish and fish population

The Environment Agencies solution would however reduce efficiency by relocating the screen away from a direct power source to the river intake, creating more risk of the screen becoming overwhelmed by aggregate loads which are carried in the turbulent water of every steep Dartmoor river without any foreseeable benefit.

EA response: We have drawn conclusions regarding the risk to protected migratory fish species. These arise from both the reduced flow in the deprived reach and the passage of fish into the leat, which is a dead end unless the licence holder opens a bywash to transfer the fish back to the river. We consider the benefits to fish migration to outweigh these risks.

3. Local ecology and habitat

General damage will result from new works- including damage to woodlands, disruption to riverbanks and sediment balance

EA Response: We would expect that any works undertaken to deliver the proposed changes to the licence to minimise the impact on riparian habitats and riverbanks. The West Webburn River is an 'ordinary watercourse' and so, dependent on the activity, it may be necessary for the licence holder to apply for land drainage consent from Devon County Council. The application

would have to demonstrate that proposals will not have an adverse effect on local flood risk or the environment.

7 – Sandra Ashford (received after representation closing date)

What is the Environment Agency trying to achieve?

EA Response: Our proposal to vary the licence is because we consider the current abstraction licence unsustainable based upon the impact to the West Webburn River. This includes insufficient flows remaining in the deprived reach during low flows when the licence allows the abstraction of all the river flow apart from a very small flow and the current screening arrangements do not meet current best practice and therefore there is an increased risk of fish entrainment, injury or death.

What is it the licence holder doing wrong?

EA Response: Our proposal to vary the licence is not related to the operation by the licence holder of the site. Our proposal to vary the licence is based upon the impact to the West Webburn River.

There has never been a greater need for Local and Greener Energy. We should all be working together to create more systems like it.

EA Response: Our proposals to vary this licence are to protect the environment as a whole, as we consider current abstraction to be unsustainable. New Hydropower applications will be determined on their own merits through our permitting process.