IN THE MATTER OF APPEALS AND OBJECTIONS MADE UNDER THE WATER RESOURCES ACT 1991

OBJECTOR: MR M F FURSDON

RESPONDENT: ENVIRONMENT AGENCY

PLANNING INSPECTORATE REFERENCE: ENV/3378112

ENVIRONMENT AGENCY'S REPLY TO MR M F FURSDON STATEMENT OF CASE

This Response does not address every point made in the licence holder's statement of case, as the EA responded to the licence holder's grounds of objection to the section 52 notice, and to representations made by third parties, in section 8 and Appendix 2 respectively of its statement of case.

The Agency responds to the following main points made by the licence holder (which are italicised for ease of reference). The Agency will amplify upon these points in witness statements to be served by its Fisheries, Hydrology and Integrated Planning Team officers.

Basis of Objection

> *11. The EA, at paragraph 6.2 of the LCPR [4/55], confirms that the proposed licence changes are not necessary to protect the water environment from serious damage. The EA recommends these licence changes based on local impact. The EA has failed to demonstrate any detrimental impact that Old Walls Hydro has on local ecology.*

[EA Response]

The case presented does not seek to prove serious damage. ('Serious damage' is not defined in legislation but referred to in s27 Water Act 2003, when compensation does not have to be paid when section 52 licence changes are made. The principles of what constitutes serious damage are set out in November 2012 Government consultation response on serious damage. We are not alleging serious damage as per that consultation response).

The hydrological assessment clearly shows that the licence is unsustainable, and this is our key evidence to justify the proposed changes to the licence. We have drawn conclusions regarding the risk to protected migratory fish species from the hydrological modelling and our understanding of the infrastructure associated with the site.

> *14. The two guidance documents [Agency's hydropower and fish screening guidance] are not statutory guidance and as such are not binding. The EA should not apply its guidance rigidly without considering whether departures may be appropriate for the specific circumstances to which the guidance is being applied. The EA is under no obligation to make changes to the Licence purely in order to bring the Licence in line with current best practice, and should consider site-specific evidence.*

[EA Response]

Our preferred option represents best practice as set out in the guidance documents based on the species and life-stages known to be present. This guidance provides the best option for the environment. It constitutes our starting point in the knowledge that licence holder can provide their alternative solutions for our consideration, which may allow some compromise based on local operating conditions, for example. No such alternative solution was provided in this case. The best practice option therefore remains our preferred solution as, without the licence holder's representation, we have no justification for deviating from best practice.

The EA Guidance for run-of-river hydropower development, December 2017 was published following extensive consultation with stakeholders in 2013, including Defra, Natural England and the British Hydropower Association via the Hydropower Working Group. This Group included key representatives from the hydropower sector, angling and fisheries interests to support the development of environmentally sustainable schemes across England. It is the appropriate guidance to use for licensing river abstractions for hydropower.

General Grounds (i) unsuitability of evidence relied on by the EA

> *19. The EA's hydrological assessment, referred to at paragraph 2.2.3 of the LCPR [4/37], is not based on direct measurement at the abstraction point. The EA confirms that there is no continuous flow monitoring at the site and that river flows have instead been derived from a gauging station at Austins Bridge, approximately 14km downstream of the abstraction point, with those flows transposed to the site using modelling techniques. The River is a Dartmoor upland river characterised by flashy flow responses and high variability over short distances. The EA's reliance on transposed data therefore is not appropriate in these circumstances, and is not sufficiently reliable to justify the significant changes proposed to the Licence, in particular relating to the Hands Off Flow restrictions.*

[EA Response]

Transposition is a standard, recognised technique for deriving flow data for ungauged sites. In deriving and validating the naturalised flow data for the abstraction point, we have used the methods that we expect applicants to use when applying for new licences. This is described in Section 2 of our guidance 'hydrological information needed for your application' (updated 29 August 2025) (**Annex 19** contains the relevant aspects):

Hydrological information needed for your application section 2 - GOV.UK[1]

We acknowledge that there is some uncertainty involved in transposing from one site to another. However, the sites are in the same catchment and are hydrologically connected (one is directly upstream of the other). We can therefore expect a strong relationship between the flows at these two locations. We do not agree that the distance between the sites renders the derived naturalised flow data unreliable.

> *20. The Objector also queries the EA's reliance on its modelling given the limited evidence of validation, in light of the variability of flows in this type of catchment. The EA states that*

[1] Screen shots of the relevant aspects are in **Annex 19**

the model has been checked against spot gaugings, but there is no evidence of continuous monitoring or long-term calibration at the abstraction point.

[EA Response]

We acknowledge that we do not have continuous monitoring of river flow at the abstraction point. However, as described above, transposition is a valid technique for deriving flow data for ungauged locations. We have validated this data using spot flow measurements taken at the abstraction point using specialised techniques. This is equivalent to the approach we expect applicants for new licences to take. These techniques are described in Section 3.1.3 of our guidance 'hydrological information needed for your application' (updated 29 August 2025) (**Annex 20** contains the relevant aspects):

Hydrological information needed for your application section 3 - GOV.UK[2]

Our guidance states that for most rivers, 3 to 5 measurements are required. We have followed this advice in validating our derived flow data for the abstraction point. As described in our hydrology report (Annex 7 to the Statement of Case, page 17) we consider that the derived flow data is a good representation of the flow at the abstraction point and suitable for use in the assessment. We do not accept that the lack of continuous monitoring at the abstraction point invalidates our conclusions.

21. Additionally, the EA's analysis is based on a "fully licensed scenario", assuming that abstraction occurs at the maximum rate permitted under the Licence. The modelling therefore represents a theoretical worst-case scenario rather than real-world operating conditions. The EA acknowledges that actual abstraction is constrained by available river flows and has historically been lower than the licensed maximum. The EA has therefore not demonstrated on the evidence that the current abstraction regime, as operated in practice, is causing ecological harm.

[EA Response]

It is a misunderstanding that our modelling only accounts for the maximum rate permitted under the licence and not the available river flow. We consider that our modelling does provide a realistic representation of real-world operating conditions. Our Statement of Case (Section 5.3) describes why the weekly abstraction data provided to the EA was not suitable for use in our hydrological modelling. In summary, because the data provided is derived from power generated at the turbine and does not include water that returns to the river via the overflow or bypasses the turbine, it does not represent the total volume of water abstracted. The weekly resolution of the data was also insufficient. We have therefore modelled a "fully licensed scenario" which accounts for both the licence conditions (including the HoF) *and* the availability of water in the river. The Objector notes that the EA acknowledges that actual abstraction is constrained by available river flow. Our modelling accounts for this fact. In order to verify this assertion, we have compared our modelled abstraction volumes with the data provided by the Objector.

Analysis of the licence holder's abstraction returns shows that on average, between 2000-2022, the annual abstraction was approximately 90% of the maximum abstraction allowed under the licence in its current form.

[2] Screenshots of the relevant aspects are in **Annex 20**

We therefore consider that our modelling of the abstraction impact is a fair representation of the actual impact that the abstraction has on flows in the deprived reach and can be used to draw conclusions regarding the ecological impact under existing operational practices.

> *22. The EA's fisheries assessment, referred to at paragraph 2.2.4 of the LCPR [4/41], relies on the expert opinion of EA Fisheries Technical Specialists as to the effects that would be observed on fish migration if the Licence was operated to maximum authorised quantities. As with the EA's hydrological assessment, the EA has failed to consider site-specific evidence, and has inappropriately considered the possible impacts from a fully licensed scenario rather than typical levels of abstraction.*

[EA Response]

The EA's fisheries assessment uses best practice guidance such as the 'EA Guidance for run-of-river hydropower development, December 2017' in the context of the hydrological assessment (the suitability of which is discussed in our response to 21 above) and the species and life-stages known to be present. We consider that our assessment of the potential impact of the Old Walls licence and associated infrastructure is appropriate.

> *23. The EA has not presented any evidence, such as fish counter evidence, to demonstrate that the abstraction or associated structures at Old Walls are acting as a barrier to fish migration. The assessment does not include any direct study of fish behaviour, movement or mortality at the site, which would reasonably be expected to justify such extensive proposed changes to the Licence.*

[EA Response]

Physical fisheries monitoring was not undertaken as part of the EA's assessment process for two reasons. First, it was considered by the RSA project team that the hydrological assessment provided compelling enough evidence that the licence was unsustainable. In addition, robust data proving harm would require detailed monitoring undertaken using, for example (and as the licence holder suggests as an example), a fish counter, which requires installation of expensive equipment, monitoring and subsequent data analysis which would be labour intensive and expensive. Alternate options such as direct trapping or tagging and tracking are similarly intensive and costly. As stated above, the hydropower guidance (Annex 6) was published following extensive consultation with stakeholders in 2013, including Defra, Natural England and the British Hydropower Association via the Hydropower Working Group. This Group included key representatives from the hydropower sector, angling and fisheries interests to support the development of environmentally sustainable schemes across England. Basing our preferred solution on the best practice guidance is therefore an appropriate decision.

General Grounds (ii) Ecological context of the site

> *25. EA survey data [footnote 3] records the presence of migratory species, including Atlantic salmon and European eel, both upstream and downstream on multiple occasions. This is supported by the Objector's observations on site. The presence of these species upstream necessarily indicates that Old Walls Hydro does not prevent or impede*

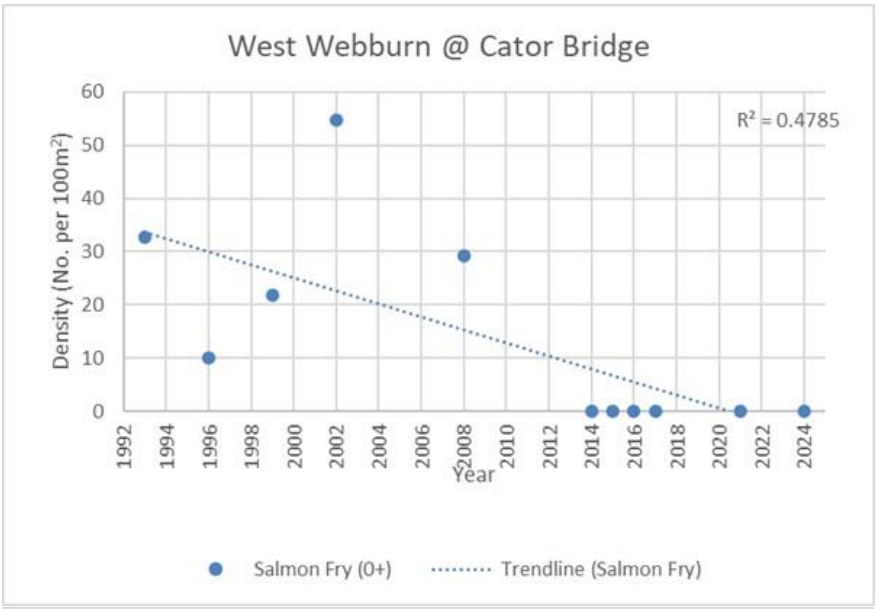
migration in practice. The EA has not presented any evidence to show a significant reduction of such species upstream, which would be expected if migration was being materially impeded.

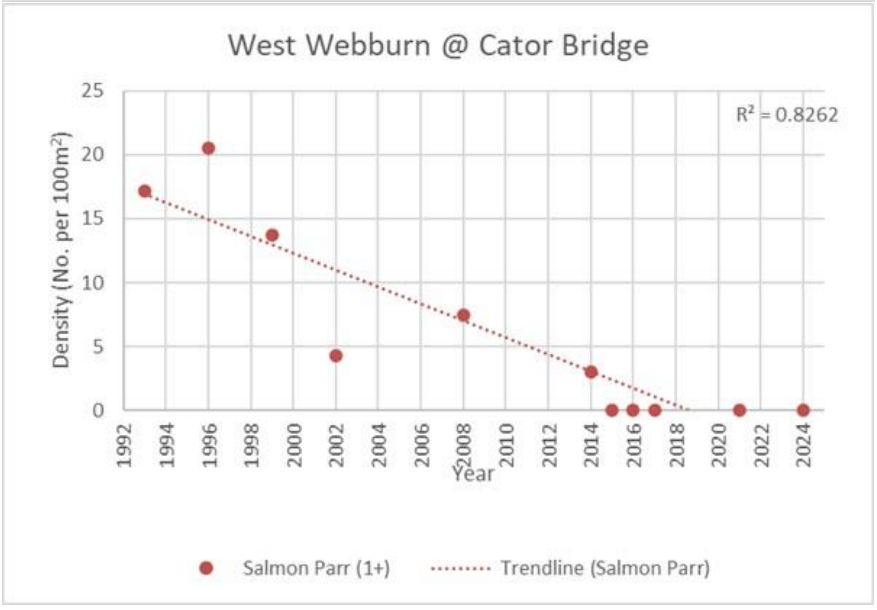
[EA Response]

The NBN atlas data for salmon and eel (which is the EA survey data the objector is referring to) largely consists of EA fish survey data up to 2021 with some additional observations from external parties. These include sites on the West Webburn River and its tributary, the Broadaford Brook. The Objector is correct that there are records of salmon on the NBN database - but only up to 2014. The EA data[3] show a marked decline in juvenile salmon densities in the West Webburn River over time to the point where no juvenile salmon have been recorded in EA surveys since 2014. See plots below for the Cator Bridge site approx. 2.5 km upstream of Old Walls as an example. These show the significant decline in salmon fry and parr[4] densities over time. As discussed in the Agency's SoC, this reduction in juvenile salmon densities is part of a wider decline being seen across the Dart catchment, and the South West in general. The data resolution from the EA's fish surveys is not sufficient to assess impact at a site level; it is designed to provide a broad catchment overview of population status. However, as described in the SoC, the EA's data for the River Dart suggest that the salmon population continues to decline with the species currently perilously close to collapse. It is therefore critical that any and all impacts/pressures are mitigated wherever possible to halt that decline.

[3] Freely available in detail online at https://environment.data.gov.uk/ecology/explorer/

[4] Environment Agency electric fishing surveys for salmonids (salmon and trout) are designed to monitor suitable juvenile habitat. The lifestages monitored are fry (young-of-the-year fish or 0+) and parr (juveniles that have spent more than one winter in the river or 1+). Salmon and sea trout parr tend to undergo physiological changes in their second or third years in the Dartmoor rivers which allows them to go to sea as smolts.





26. Additionally, a smolt trial was conducted by the Objector and the EA in 2007, at the EA's request [6/137]. The trial recorded the movement of smolts and trout within the forebay and their subsequent return to the River via the bypass pipe. While this report was not signed off by the EA, for reasons which are not clear to the Objector, the report concluded that no damage to fish was observed under the conditions in which the trial was undertaken.

[EA Response]

The smolt trial referred to was undertaken in 2007 to take advantage of the presence of a tank located at the site for an unconnected salmon hatchery/smolt rearing operation which the licence holder was undertaking with riparian/fishery owners and the EA. The smolt trial had no scientific basis, nor was it intended to. We were aware of the trial, but we no longer have a copy of the report and so it was not referred to in the Agency's SoC.

The smolt trial report provided by the objector was not produced by the EA. It was written either by or on behalf of the licence holder who sought to have it signed off by the EA. The objector wrote to the EA's then Regional Director requesting sign off (although we no longer hold copies of these letters). The Regional Director was not prepared to sign the report, recognising the informal nature of the investigation and that it was not sufficient to substantiate all the claims made. This has been confirmed by the EA's Chris Lawson (Team Leader, Environmental Crime Team).

The bywash does not comply with current best practice as discussed in the Agency's SoC.

27. Furthermore, the following two EA reports prepared in 2018 under the Restoring Sustainable Abstraction regime provide site-specific evidence to show that Old Walls Hydro has not been demonstrated to have a detrimental impact on the ecology of the River:

27.1 A fish investigation report [7/138-143], which considered the impact of Old Walls Weir (incorrectly referred to as Jordan Weir) on migratory fish. The report concluded that no evidence had been identified that the observed decline in salmon numbers was caused by Old Walls Hydro. While the report acknowledges that the scheme may have some localised influence on fish movement, it does not conclude that the abstraction is causing population-level effects or material ecological harm.

[EA Response]

This EA report, 'Restoring Sustainable Abstraction Fish Investigation for Old Walls Hydro Electric Scheme on the West Webburn', states the following in its conclusion:

> This report, therefore has no evidence that the salmon decline is caused by Old Walls Hydro-electric Scheme. The Old walls hydro scheme may have a local impact on fish movement and improvements to the screens to stop ingress of fish are needed.
>
> Similarly a Westcountry Rivers Trust Report in 2014, was not able to demonstrate any negative impact on migratory fish due to the weir at Jordan's leat.

Unfortunately, this is poorly worded. The assessment was unable to assign a level of impact *based on the limitations of the available data* – not because the Old Walls abstraction was not having an impact. This would have required the collection of much more robust data to assess. This is an important distinction which is not clearly communicated in the report's conclusion.

27.2 An ecology report [8/144-164] assessing the ecological impact of abstraction at Old Walls Hydro. The report focussed on macro-invertebrate communities and concluded that none of the various tests showed an ecological impact caused by the abstraction. The report also concluded that water quality remained high at all times during the survey period, that the depleted stretch showed no sign of deterioration, and that the volume of water remained high in the depleted reach even after a long period of dry weather. This evidence suggests that water quality and habitat conditions within the river remain good and that the abstraction is not resulting in observable ecological degradation.

[EA Response]

See Section 8.1 of the Agency's SoC under the sub-heading -'EA monitoring demonstrates there is no evidence of impact on invertebrate communities', which comments on the ecology report (which the EA attached to its SoC as Annex 15).

28. The EA's own classification data does not support the licence change proposals. The "Reasons for Not Achieving Good" (RNAG) dataset4 identifies the fish classification for the River as being affected by "other pressures", with no responsible sector identified. The EA has not attributed the moderate fish status to abstraction, hydropower, or any other specific activity.

[EA Response]

The RNAGs presented on the public portal of Catchment Data Explorer for the waterbody are reflective of our previous understanding (circa 2022) and this is what is referred to by the objector. Since then, as part of our routine work programme to publish the River Basin Management Plan 4 in 2027, we have reviewed and updated RNAGs for waterbodies not achieving good status. The RNAGs presented in section 5.9 of our Statement of Case (taken from our Catchment Data Explorer which is an internal tool) are from this review. This includes the RNAG of 'Morphology - Physical Modification / Barrier / Hydropower' for the probable impact of the abstraction at Old Walls HEP. These RNAGs will be part of a public consultation for RBMP4 published towards the end of 2026.

29. Overall, the available ecological evidence indicates that:

29.1 Macroinvertebrate communities are in good condition with no detectable downstream impact;

[EA Response]

The indices and analysis used in the 2018 macroinvertebrate study submitted by the objector under reference 8/144-146 are neither designed to, nor adept at, assessing and quantifying change in rivers where habitat diversity and flow velocity remain of good quality despite the loss of wetted width. Due to the limitations of the assessment performed, we cannot conclude that the abstraction has no impact on invertebrate communities (see Agency's SoC section 8.1).

29.2 Fish population changes are occurring at a catchment scale and are not attributed to the scheme; and

[EA response]

It is true that the Dart salmon population is declining at the catchment scale and this appears to be occurring at a rate exceeding that of other local rivers. This highlights how critical the removal of remaining pressures is, and it is the reason that the EA has been focussing on realising improvements on key spawning tributaries such as the West Webburn in recent years. Given the hydrological assessment, we cannot conclude no impact. Therefore, we do not consider this to be a valid reason not to pursue improvements at Old Walls.

29.3 The EA has not identified abstraction as a causal factor in the River failing to achieve good status

[EA response]

This has been addressed in our response to point 28, above. See also, paragraph 5.7 of the Agency's SoC which states that abstraction is considered to be a contributing factor for WFD status for the fish element, and overall status, being Moderate..

General Grounds (iii) Engineering feasibility and proportionality

30. The Draft Licence proposed has many complex conditions, but the EA has failed to assess if they are reasonably practicable. The Draft Licence requires the Objector to submit written plans and/or drawings detailing the design and specification of the intake structure required by Condition 9.2 and the screens required by Condition 9.4.

31. Therefore, if the Licence change proposals are implemented, neither the Objector nor the EA have any certainty that the proposal is capable of being delivered and at what cost

[EA Response]

Proposed conditions 9.2 and 9.4 are standard conditions applied to all hydropower licences and any licence where construction is required. They have a specified timeframe to allow sufficient time for the licence holder to develop feasible and practicable proposals. For new licences and applications to vary licences, submission of drawings are required, and must be agreed before licence issue. In the case of section 52 proposals, as a licence already exists, and design elements have not been agreed, the only way to achieve this is via the conditions included in the draft licence (conditions 9.3 and 9.5 which relate to the infrastructure in conditions 9.2 and 9.4 respectively) which require submission of plans/drawings. The Licence Holder can work with the EA to arrive at a design that is suitable, prior to construction.

Specific Grounds (v) Imposition of a 6mm fish and debris screen at the head of the leat

38. The location of the fish and debris screen is currently at the intake of the turbine (the forebay) and has been since 1996. The reason for the screen being moved to the forebay in 1996 was not, as suggested in the LCPR, due to the infirmity of the previous licence holder (who had passed away three years previously). The reason for moving the screen was related to the volume of stones and grit deposited at the intake in high-flow events, which made it fundamentally difficult to operate and maintain a screen reliably in this situation on a steep upland river. Placing a screen at the intake was attempted in 1995 when the revised site layout was installed but was found to be unworkable in times of flood. At the time the relevant EA officer agreed that the better solution was to put the screens at the forebay, along with a smolt bypass pipe to be operated as required.

[EA Response]

River frontage (i.e. head of leat) screening has been the accepted best-practice standard for many years and there are numerous installed, effectively functioning examples across the South West (and hundreds across the country), both modern installations and older examples, including on spate rivers similar to the West Webburn; and for hydropower applications specifically. River

frontage therefore remains our preferred option and, of the two available options originally provided (river frontage screening or set back screening with an improved bywash) the licence holder intimated that his preference would be for river frontage screening. Set back screening still remains a potential option, and would comply with best practice as a back-up, provided improvements to the bywash are made.

> *42. The current screen at the forebay is 10mm. The Hydro Guidance states that up to 10mm is appropriate for the protection of migratory salmonids where there is a cross-flow turbine. 6mm is recommended where there is evidence of Salmon parr. The Objector is not aware that there is any evidence of Salmon parr in the vicinity of Old Walls Hydro and the EA has not provided any evidence of this.*

[EA Response]

The guidance refers to salmonid (which includes both salmon and brown/sea trout) parr or fry. We have survey data (publicly available via https://environment.data.gov.uk/ecology/explorer/ and in **Annex 21**) from electric fishing survey sites at Cator Bridge (located approx. 2.5 km upstream of the Old Walls intake) and Mistresses Piece (approx. 4.7 km downstream on the River Webburn) which show salmonid fry and parr present over time (30+ years) and at the most recent surveys (2024) suggesting that juvenile salmonids are present wherever suitable habitat is present. While we do not have direct evidence of juvenile salmonids being present immediately upstream of the Old Walls intake, direct observation confirms that the reach upstream includes areas of suitable juvenile habitat and, as a minimum, juvenile brown/sea trout will be present.

> *43. The EA has not assessed the practical implications of installing a 6mm screen in a flashy upland river environment. Evidence from the site indicates that the River is capable of transporting significant volumes of debris, sediment and coarse material during high flow events. The EA acknowledges that fine screens are susceptible to blinding and blockage caused by debris, which can reduce their effectiveness and impede flow. In these conditions, a 6mm screen may be prone to blockage, increased maintenance requirements and potential adverse hydraulic effects, including risks of fish impingement or delay if flows are restricted. The effectiveness of such a screen depends not only on mesh size but also on its positioning, approach velocities, and the availability of safe escape routes for fish encountering the structure. No site-specific evidence has been provided by the EA to demonstrate how a 6mm screen would perform under such conditions or how it would deliver an overall ecological benefit.*

[EA Response]

Debris accumulation and blinding are relevant concerns which would need to be considered at design stage. As mentioned in our response to 38 above, river frontage screening has been the accepted best-practice standard for many years and there are numerous installed, effectively functioning examples across the South West, including on spate rivers similar to the West Webburn; and for hydropower applications specifically. A number of these river frontage screening installations have a more restricted mesh size of 2 mm aperture in line with the screening requirements in the Eels (England & Wales) Regulations 2009, however, their design ensures effective operation.

Specific Grounds (xi) Time limit

> *56. The Objector objects to the imposition of a time limit. The current South Devon WFD Management Area Abstraction Licensing Strategy [9/183] provides that all new licences and variations (other than downward variations or minor variations having no environmental impact) will have a time limit imposed. As the Objector's position is that the EA's proposals to vary the Licence should not be accepted, the Objector does not consider that a time limit should be imposed.*

[EA Response]

Our decision to impose the time limit is a matter of policy, as described in Table 3, on pages 7 and 8 of EA guidance document LIT11617- Applying time limits to new and varied abstraction licences:

'Special rules for applying time limits to variations.

Variation proposal made by the Environment Agency under s52 WRA 1991.	Apply a time limit to the **whole** licence.'

and page 2 of EA guidance document LIT 13052 - Restoring sustainable abstraction: Section 52 mandatory licence changes:

'Where we propose to change a licence under section 52, we apply a time limit to the whole licence.'

(**Annexes 22 and 23** contain the relevant aspects).

> *58. The EA's evidence indicates that the actual abstraction is already constrained by river flows and is unlikely to reach the current licensed maximum. The proposed reduction therefore appears to be an administrative adjustment rather than a response to ecological impact.*

[EA Response]

In our hydrology report (Annex 7 to the Statement of Case, page 12), we explain that the current annual authorised abstraction quantity limit on the licence is not achievable under the proposed licence conditions as abstraction would be restricted by the availability of river flow. It does not say that it would not be possible to abstract the current annual quantity under the *current* licence conditions. We acknowledge that in some years, total annual abstraction is constrained by the availability of river flows. However, in other years (for example 2008 and 2014) the licence holder's abstraction returns data shows that actual abstraction did reach the annual maximum volume permitted under the current licence. Our Statement of Case (Section 8.11) explains that the reduction in annual quantity is required because abstraction rates need to be achievable when multiplied up by the periods during which they will take place. We acknowledge that reducing the annual quantity will not further restrict the licence holder's ability to abstract beyond the reductions resulting from the introduction of the HoF and 35% take.

Annexes	
Annex 19	Hydrological information needed for your application- Section 2
Annex 20	Hydrological information needed for your application- Sections 3.1.3 and 3.2
Annex 21	Survey Data – Cator Bridge and Mistresses Piece
Annex 22	Applying time limits to new and varied abstraction licences
Annex 23	Restoring Sustainable Abstraction- Section 52 mandatory licence changes