

IN THE MATTER OF

SECTION 52 OF THE WATER RESOURCES ACT (AS AMENDED BY SECTION 22 OF THE
WATER ACT 2003) AND

REGULATION 31 OF THE WATER RESOURCES (ABSTRACTION AND IMPOUNDING)
REGULATIONS 2006

PROPOSAL BY THE ENVIRONMENT AGENCY TO VARY ABSTRACTION LICENCE NO.
14/46/004/0685 HELD BY MR MILES R. FURSDON IN RELATION TO OLD WALLS HYDRO

OBJECTION BY MILES R. FURSDON

OBJECTOR'S RESPONSE TO EA'S STATEMENT OF CASE

Introduction

- 1 This statement is prepared on behalf of Mr Miles R. Fursdon (the **Objector**) in response to the Statement of Case provided by the Environment Agency (**EA**), received by the Objector on 11 May 2026. This Response is prepared further to the directions from the Planning Inspectorate in its letter dated 13 March 2026.
- 2 Given the volume of material in the EA's Statement of Case, this Response addresses the main points raised by the EA to the extent that these have not already been addressed in the Objector's Statement of Case. For the avoidance of doubt, failure to address any specific points raised by the EA in their Statement of Case does not equate to the Objector's acceptance of said points.
- 3 In addition to the Objector's submissions in its Objection Letter, its Statement of Case and in this Response, the Objector intends to submit proofs of evidence in advance of the Inquiry to address the evidential issues in dispute between the parties.
- 4 Unless stated otherwise, references in this statement to paragraphs, sections, annexes and appendices are references to the EA's Statement of Case.

Overview

- 5 The Objector submits that the EA, across its 44-page Statement of Case and Appendices, has still failed to provide:
 - 5.1 Any evidence of actual harm being caused by abstraction at Old Walls Hydro pursuant to the current licence; or
 - 5.2 Any evidence that the EA's licence change proposals, if implemented, would have a material benefit to the ecology of the West Webburn River which would be proportionate to the burden imposed on the Objector.

- 6 The Objector therefore maintains the position in his Statement of Case that the EA has not shown any justification for its licence change proposals.
- 7 The EA, on numerous occasions in its Statement, confirms that the EA's assessment of harm caused by abstraction at Old Walls Hydro is not based on site-specific investigation. In particular the Objector notes paragraph 8.1, in which the EA confirms that it has "no direct evidence of harm at Old Walls" and is relying on a risk-based assessment following best practice guidance.
- 8 The EA has failed to explain why its licence change proposals are required in order for the EA to comply with its statutory duties.
- 9 The Objector submits that such substantial licence change proposals cannot be justified purely on the basis of hypothetical risks, and respectfully submits that the Inspector should refuse to approve the EA's proposals without site-specific evidence of actual harm being caused by the abstraction at Old Walls Hydro.

EA's Powers and Responsibilities

- 10 Within its Statement (and in particular at section 4), the EA sets out its various powers and duties under statute. The Objector submits that the EA has not demonstrated how its licence change proposals are necessary or otherwise contribute to fulfilling the EA's objectives and functions. For example:
 - 10.1 The Objector notes the EA's statement at paragraph 2.4, namely that the EA is "responsible for investigating sites to find out *where unsustainable abstraction is occurring* and working with the affected parties to restore sustainable water resources" (emphasis added). The Objector notes that the EA has not provided any evidence of unsustainable abstraction actually occurring at Old Walls Hydro.
 - 10.2 The EA has not demonstrated that the burdens imposed by its licence change proposals are necessary and proportionate, in accordance with the Regulators' Code (paragraph 4.26).
 - 10.3 The EA has not demonstrated that the licence change proposals will improve the ecological status of the West Webburn River or prevent its deterioration, pursuant to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, or that the current licence is preventing the Water Framework Directive objectives from being achieved.
- 11 The Objector cannot locate a copy of the 2002 guidance referred to at paragraph 4.9 entitled "The Environment Agency's Objectives and Contributions to Sustainable Development: Statutory Guidance". The Objector requests that the EA provides the Objector with a copy of this guidance and confirms whether it considers that this guidance remains in force.

EA's Description of the Scheme

- 12 The Objector wishes to make the following corrections to the EA's description of the background to and operation of Old Walls Hydro:
 - 12.1 As noted in the Objector's Statement of Case, the EA erroneously refers to the weir at Old Walls Hydro (**Old Walls Weir**) as "Jordan Weir" (for example at paragraph 3.5).

- 12.2 At paragraph 3.4, the EA correctly states that the original licence issued in 1992 was varied in 2010 simply to change the Objector's address details. However, the EA goes on to state in paragraph 3.5 that the 1992 agreement between the Objector and the National Rivers Authority (**NRA**) was "superseded" by condition 10.7 in the 2010 licence variation, which stated: "Intake must be adequately screened against the ingress of fish". The assertion that the 1992 agreement was "superseded" by condition 10.7 is incorrect – the Objector notes that the original 1992 licence (at Annex 3 of the EA's Statement of Case) already contained an identical condition to condition 10.7, namely the condition at paragraph 7 of the Schedule.

EA's Case for Licence Change

- 13 As conceded by the EA throughout its Statement, the EA's case for licence change relies on risk assessments, hydrological modelling and reliance on its own best practice guidance.
- 14 The Objector submits that the EA has not provided any evidence of actual harm being caused by Old Walls Hydro, or evidence that its proposals will bring a material benefit to the ecology of the River. The Objector submits that the licence change proposals cannot be accepted without such evidence.
- 15 The Objector intends to submit evidence to the Inquiry on the extent to which Old Walls Hydro actually affects the ecology of the River. In the meantime, the Objector wishes to make the following points in response to submissions made by the EA in their Statement of Case.

Modelled Impact

- 16 The EA, in support of its proposed changes to flow conditions in the licence, relies on its hydrological modelling at Annex 7.
- 17 The Objector refers to his comments about the EA's hydrological assessment at paragraphs 19 to 21 of his Statement of Case.
- 18 The EA states at paragraph 5.3 of its Statement that it has used the maximum permitted abstraction quantities as the foundation for its hydrological modelling "because we do not have suitable data on actual abstraction quantities". This is on the basis that the weekly abstraction data provided by the Objector is not suitable for use in its modelling.
- 19 The Objector has serious concerns about the EA's approach to assume that actual abstraction at Old Walls is similar to the fully licensed abstraction rate, and that the weekly readings under-record the volume of water abstracted into the leat at the abstraction point.
- 20 The Objector submits that the EA, in its hydrological modelling, has fundamentally misunderstood how the abstraction at Old Walls is controlled in practice. This undermines the approach taken by the EA in its hydrological modelling, on which it is relying to justify its proposed flow conditions. The Objector intends to submit evidence to the Inquiry on the reliability of the EA's hydrological modelling.

Ecological Status

- 21 At paragraphs 5.7 to 5.12 of its Statement, the EA asserts that its surveys have identified a reduction in eel and salmon densities in the West Webburn River over time. The EA asserts that this reflects "a combination of pressures". The EA asserts that Old Walls Hydro

constitutes a "probable" Reason for Not Achieving Good (**RNAG**). The Objector has the following comments on the EA's analysis:

- 21.1 At paragraph 5.9, the EA cites the assessment taken from the EA's Catchment Data Explorer, from which data is reproduced at Annex 9 of the EA's Statement. The Objector queries the source of the EA's classification of certain factors being "Probably" or "Suspected" RNAG, as these classifications are not set out in Annex 9 or on the Catchment Data Explorer available on gov.uk.¹
- 21.2 In any event, the EA has not explained how Old Walls constitutes a "Probable" reason for the decline in eel and salmon densities at paragraph 5.9.1, having not provided any site-specific evidence of its ecological impact. The observation that Old Walls "creates a break in the river's natural continuity" is not sufficient to link Old Walls with a broader decline in eel and salmon densities.
- 21.3 The EA acknowledges at paragraph 5.9.1 that Old Walls is "not considered to be the sole driver responsible for declining fish population status on the West Webburn", and lists three other "Probable" or "Suspected" reasons at paragraphs 5.9.2-5.9.4. In particular, at paragraph 5.9.4 the EA states that the decline in salmon numbers observed in the River "mirrors the national decline in salmon numbers" and is "similar to other tributaries in the River Dart catchment". In light of the multiple potential contributing factors that the EA has identified, including background pressures which are affecting rivers beyond the West Webburn River, the Objector submits that the EA has failed to demonstrate that Old Walls Hydro is actually (or even probably) causing any decline in fish populations.
- 21.4 The Objector refers to section B(ii) of his Statement of Case for evidence of the presence of migratory fish species both upstream and downstream of Old Walls.
- 21.5 In relation to sea trout, the EA acknowledges at paragraph 5.7 that their surveys observed consistently good juvenile trout densities, suggesting that the EA does not associate Old Walls with any decline in sea trout. Given that sea trout must migrate past Old Walls (as noted by the EA at paragraph 5.17), the Objector submits that this undermines the EA's assertion that Old Walls poses a barrier to migration.

Fisheries receptors and status

- 22 The EA states at paragraph 5.14 that there has been a significant decline in juvenile salmon densities across the catchment since the early to mid-2000s, which accelerated in the early 2010s, and that a similar trend has been noticeable in fish survey data for the West Webburn River. While the Objector agrees that salmon conservation in the catchment is important, the Objector submits that this in itself does not constitute a justification for the licence change proposals at Old Walls, considering that the EA has not provided evidence that Old Walls is contributing to these trends, which the EA states affect not just the West Webburn River but the wider catchment. In particular it is worth noting that Old Walls has been operating since 1936, with the current scheme having been in place since 1995.
- 23 The EA's observation at paragraph 5.17 that Atlantic salmon, sea trout and eels must migrate past Old Walls during their adult and juvenile life stages is accepted; however, the EA has failed to provide any evidence to suggest that Old Walls is affecting their migratory patterns. This is dealt with further below.

¹ <https://environment.data.gov.uk/catchment-planning/WaterBody/GB108046008410>

Fisheries impacts – migration

- 24 The EA states at paragraph 5.18 that continued operation under the current licence at Old Walls "poses unacceptable risks" to salmon, sea / brown trout and European eel populations in the West Webburn River, "given current stock status and life stage vulnerabilities". The EA also refers to the Dart salmon population as being "highly vulnerable to any additional pressures". The EA goes on to explore the impacts which it asserts Old Walls has on fisheries.
- 25 The EA's submissions on these impacts are dealt with in more detail below. However, the Objector's primary rebuttal is that the EA has failed to show that the abstraction at Old Walls is actually having any of the claimed impacts on fish populations in the West Webburn River.

Adverse impacts on upstream and downstream migration of migratory species due to reduced flow

- 26 In paragraphs 5.20-5.22, the EA has submitted that the Hands off Flow (**HoF**) under the current licence is "not considered adequate" to allow upstream migration of salmonids. The EA has also stated that the lack of flow variation (such as a proportional or percentage take) "can reduce both the stimulus and opportunity for upstream migration of fish".
- 27 In both cases, the EA's submissions that such factors *may* have an impact on upstream migration is based solely on its best practice guidance. The EA is not required to bring existing abstraction licences in line with its best practice guidance, and should consider the necessity and proportionality of any proposals to do so. The EA provides no evidence that the current licence conditions at Old Walls are actually impeding the upstream migration of fish.
- 28 Indeed, the EA's conclusion at paragraph 5.22 is that Old Walls Hydro is "assessed as *having the potential* to impact upstream migration" (emphasis added). The EA further clarifies that this is only under low to mid-range flow conditions, and that the impact is "unlikely to be significant" in wet years. The EA does not provide any evidence of actual impact.
- 29 At paragraph 5.22, the EA refers to the fish pass at Old Walls (Old Walls Weir) and states that it does not meet best practice standards, and therefore has the potential to contribute to adverse impacts on upstream migration. The EA confirms that it is not seeking improvements to the fish pass under the RSA programme, as the EA correctly identifies that the weir structure is not owned by the Objector. In any event, the Objector submits that the EA has provided no evidence that the weir is actually having adverse impacts on upstream migration.
- 30 At footnote 17, the EA refers to issues at Old Walls Weir being confirmed by an independent consultant in 2011. The Objector believes that this reference is to a 2011 report prepared by Fishtek Consulting for the Dart Fisheries Association, which assesses barriers to migration on the River Dart (a copy of this report is appended to this statement). While the report suggests improvements to Old Walls Weir, the Objector notes that the report also states the following:
- "[...] electrofishing surveys performed by the Westcountry Rivers Trust have found good numbers of juvenile salmon upstream of Old Walls. Regular electrofishing surveys by the Environment Agency at Grendon Bridge (SX 688 785), several kilometres upstream of Old Walls have found juvenile salmon there at varying densities every year in the past 10 years."*

The Objector considers that this report supports the Objector's position that abstraction at Old Walls Hydro is not having material adverse impacts on upstream migration of salmonids.

Entrainment

- 31 Regarding paragraph 5.24, the Objector refers back to paragraph 38 of his Statement of Case for an explanation of the reasoning behind the screen originally being placed at the forebay, by agreement between the then licence holder and the NRA.
- 32 To justify its proposals to (1) mandate a fish screen at the head of the leat and (2) require this screen to have an aperture of 6 mm, the EA relies solely on recommendations in its best practice guidance.
- 33 The Objector submits that the EA cannot rely solely on recommendations in its best practice guidance (with which compliance is not mandatory) to justify such extensive changes to the licence at Old Walls. The EA, while highlighting the risks of fish entrainment identified in its best practice guidance, has not shown that the abstraction at Old Walls pursuant to the current licence is actually causing fish entrainment.
- 34 While the EA asserts that installing a screen at the intake would be in line with its best practice guidance, the Objector submits that the EA has not considered whether installing a screen at the head of the leat at Old Walls would provide any material benefit, or whether it would come with its own risks (see paragraph 43 of the Objector's Statement of Case).
- 35 In response to the EA's comments at 5.28, the EA has not proposed any new conditions relating to the kelt screen. However, the Objector confirms that there is a kelt screen at the head of the leat which is deployed seasonally by the Objector. The Objector submits that this kelt screen provides additional protection during periods when kelt are most likely to be present.

Loss of habitat in the deprived reach

- 36 The EA, at paragraph 5.29, asserts that the HoF conditioned in the current licence is not considered sufficient under its best practice guidance, and that the new HoF proposed by the EA would be able to improve the habitat for different life stages of fish as well as invertebrates. However, the EA has provided no evidence that the HoF under the current licence is detrimental to the habitat in the deprived reach, and relies solely on its best practice guidance. The EA has also not provided any evidence that its proposals to change the HoF would improve the habitat in the deprived reach.
- 37 The Objector also notes the EA's comment at paragraph 8.1: "We are not suggesting that salmonid habitat within the deprived reach is the critical issue".
- 38 At paragraph 8.1, the EA fundamentally accepts the findings of the 2018 Ecology Report that there was no detectable difference to the macroinvertebrate communities which could be attributable to the abstraction (see paragraph 27.2 of the Objector's Statement of Case). While the EA refers to the lack of 'pre' data to which the results can be compared, the Objector submits that this does not undermine the findings of the Report as to the current good habitat and flow conditions in the River.

Attraction

- 39 At paragraphs 5.30 and 5.31, the EA asserts that there is the "potential" for upstream migrating salmon and sea trout to be delayed when the tailrace screen is not deployed.

- 40 The Objector refers to section B(x) of its Statement of Case and submits that the EA has provided no evidence that the Objector's current operation of the tailrace screen at Old Walls is causing any harm or delay to upstream migrating fish. The Objector therefore submits that the EA's proposal to mandate the operation of this tailrace screen is not necessary or proportionate.

Stakeholder representations

- 41 At paragraphs 5.32 and 5.33, the EA has summarised concerns supposedly raised by the Dart Fisheries & Conservation Association (**DFCA**). The EA has not provided further information regarding the precise substance of the DFCA's concerns, nor the origins for these concerns, for example whether the concerns are based on site-specific assessment. From the information provided, it appears to the Objector that the DFCA's concerns are not based on evidence of actual harm being caused by abstraction at Old Walls, and are based on hypothetical risks. The Objector therefore submits that these paragraphs do not lend any support to the EA's licence change proposals.
- 42 At paragraph 8.4, the EA refers to "previous complaints and concerns raised with the EA by interested parties". The EA has not provided any further information in relation to these, including the extent to which these concerns were supported by site-specific evidence.

Options Appraisal

EA's engagement with the Objector

- 43 The Objector maintains that he has consistently co-operated with the EA. The Objector has been willing to consider proposed variations to the licence; however, given the absence of any evidence provided by the EA to justify any changes to the licence (including evidence of actual harm being caused by the existing licence), the Objector exercised his rights to decline to voluntarily submit licence change proposals under section 51 of the Water Resources Act 1991.
- 44 Regarding paragraph 6.3, the EA has misrepresented the Objector's position on the options for the screening arrangements. The Objector was indeed presented with two options by the EA. However, by email on 11 June 2025, the Objector confirmed that his preferred option was to maintain the status quo (i.e. for no changes to be made to the screen), given that the EA had provided no evidence that the current screening arrangements were causing harm. The Objector confirmed that, if the EA was only proposing two options, the Objector felt that screening at the intake was the least damaging of the two proposals. The Objector maintains that the EA has provided no evidence-based justification for either of its two proposals.

Selection of preferred option – flow

- 45 At paragraph 6.4, the EA summarises its assessment of four flow options (this is further set out at Annex 13). The EA states that it selected the figures in Table A of its best practice guidance for the following reasons:
- 45.1 The EA state that this option "delivers the environmental improvements for the site". The Objector submits that the EA has provided no evidence of this.
- 45.2 The EA states that this option "is consistent with our approach to new licences". The Objector does not accept that this is a relevant consideration, and there is no requirement for licence change proposals to existing licences to be consistent with the EA's approach for new licences. Such substantial licence change proposals

should be considered based on site-specific factors, including whether the licence change proposals are necessary to address harm or are proportionate to the likely benefits.

45.3 The EA states that this option "will allow the site to continue to operate and generate HEP". As set out in his Statement of Case (see paragraph 36.2), the Objector has serious concerns for the future economic viability of Old Walls Hydro if the licence change proposals are implemented.

46 At paragraph 6.7, the EA notes that applicants for new abstraction licences may apply for a licence that allows for higher abstraction than that recommended in its best practice guidance. The Objector submits that this shows that the EA is willing and able to depart from its best practice guidance where this is justified for specific sites. The Objector therefore does not accept the EA imposing the flow conditions recommended in its best practice guidance without first considering whether a higher abstraction rate is justified based on site-specific evidence, even if the EA's best practice guidance is considered to be binding or persuasive.

47 At paragraph 6.10, the EA notes that it considered including a higher maximum instantaneous abstraction rate, but did not do so as the Objector advised that he is not able to utilise a higher abstraction rate than the current licence instantaneous rate. It is correct that the Objector declined the EA's offer to increase the maximum instantaneous flow, on the basis that he could not make use of this to increase power generation. However, the Objector notes that a higher instantaneous maximum abstraction rate could in fact be used to provide a flow for the bywash. Therefore, in the event that the licence change proposals are approved, the Objector would seek a higher maximum instantaneous rate than has been proposed by the EA.

48 As noted above, the Objector has concerns about the methodology used by the EA in its hydrological modelling and the conclusions it has reached. The Objector intends to address this further in its evidence to the Inquiry. However, in any event the Objector submits that the EA has not provided evidence of any actual harm being caused by the flow conditions in the current licence to the ecology of the River.

Selection of preferred option – screening

49 At paragraphs 6.16 to 6.18, the EA confirms that its proposed screening conditions are based on its best practice guidance. The EA has not provided any evidence of actual harm caused by the current screening arrangements in order to justify its proposals. The Objector submits that the EA's best practice guidance cannot be used as the sole justification for such extensive proposed changes to the screening arrangements.

50 The EA notes at paragraph 6.18 the dangers of partial blinding. As stated at paragraph 43 of the Objector's Statement of Case, the EA has failed to consider the significant practical issues with installing a screen at the head of the leat, in particular the vast amounts of debris which accumulate at the head of the leat. The Objector does not consider that the automated 6mm screen suggested by the EA would be sufficient to address these issues.

EA's Submissions on Specific Conditions

51 The EA acknowledges at paragraph 8.11 that the proposed reduction in annual abstraction volume "will not provide additional environmental benefit". The EA relies on its internal guidance which states that the abstraction rates need to be achievable. While the Objector has not seen this guidance, the Objector notes that this is internal guidance only and the EA is not bound to follow it (nor is the Secretary of State).

- 52 Regarding the EA's proposal to install a means of measurement of abstraction at the head of the leat (see paragraph 8.12), the Objector asserts that the current measurement of abstraction is capable of accurately measuring the total volume of water abstracted from the river into the leat. As such, the Objector does not consider it necessary to propose an alternative approach to the approach currently in use.
- 53 At paragraph 8.15, the EA states that it was necessary for them to use Table A recommendations for the HoF and sweetening flow, given that they did not receive proposals from the Objector. The Objector submits that the EA is not justified in relying on its best practice guidance in the absence of proposals from the Objector, and should not make any proposals which are not based on site-specific evidence.
- 54 Regarding the EA's proposed new outflow velocity condition (see paragraph 8.19), the Objector notes that the EA is relying solely on its best practice guidance and has not provided site-specific evidence to justify this condition.
- 55 Regarding condition 9.8 of the draft licence variation (see paragraph 8.20), the Objector's objection relates to the necessity of this condition being added to the licence, given that the Objector will necessarily seek to obtain consents for any works or alterations where this is required by law, regardless of the conditions of the licence.

Further Submissions

Documents provided to the Objector

- 56 In relation to paragraph 8.5, the Objector maintains that he had difficulty obtaining information from the EA following service of the s.52 notice to enable him to assess the EA's licence change proposals.
- 57 When the s.52 notice was served on the Objector by email and post (on 8 and 9 January 2026 respectively), the pack of accompanying documents did not include all of the supporting documents which were on display to the public at the EA's office at Manley House. The Objector's consultant was told by the EA by email on 9 January 2026 that all supporting documents had been served on the Objector with the s.52 notice. However, when the Objector visited Manley House on 12 January 2026, pages 2-4 of the Licence Change Proposal Report (**LCPR**) were on display – no parts of the LCPR had been provided to the Objector at this time. The EA provided these pages to the Objector on 5 February 2026, confirming by email that these pages had been available at Manley House and that it was an oversight for them not to have been included with the pack originally sent to the Objector.
- 58 The Objector's consultant asked the EA on 9 January 2026 whether any internal reports or assessments which had informed the EA's decision to serve the s.52 notice would be shared with the Objector. The EA's initial response was that these would be shared with the Objector alongside the EA's statement of case. The Objector's consultant wrote back to stress that, without such information, it would be difficult for the Objector to decide if the EA's proposals were reasonable. The EA then provided the LCPR to the Objector's consultant on 22 January 2026.
- 59 While the Objector accepts that the LCPR was not required to be provided under section 52 of the 1991 Act, the Objector submits that the LCPR was a key document explaining the EA's justification for the licence change proposals. In the interests of procedural fairness and providing the Objector with enough information to consider whether and how to object to the s.52 notice, the Objector submits that the LCPR should have been provided directly

to him at the earliest opportunity, and not simply when further information was requested by the Objector's consultant.

EA's cost-benefit analysis

- 60 The Objector submits that the EA's cost-benefit analysis, as provided by the EA at Annex 17 and summarised at paragraph 8.7, is fundamentally flawed and presents a misleading picture. The Objector anticipates submitting evidence to the Inquiry on the anticipated costs of implementing the EA's proposals.
- 61 It is accepted that the value of lost power generation is relevant to a compensation claim rather than to this Inquiry; however, the Objector does not accept that costs which are relevant to compensation should be excluded from the EA's cost-benefit analysis, given that any compensation awarded to the Objector will still constitute a cost of the licence change proposals. The Objector therefore considers that the EA's failure to consider all relevant costs within its cost-benefit analysis undermines the conclusions that the EA has drawn about the proportionality of its licence change proposals.

Conclusion

- 62 The EA's Statement of Case does not provide sufficient evidence in support of its licence change proposals. In particular, the EA has failed to provide any evidence of actual harm to the ecology of the River caused by abstraction under the current licence at Old Walls, or any evidence that the licence change proposals are necessary or proportionate to achieve a material benefit to the ecology of the River.
- 63 For all these reasons, and for those to be advanced in the evidence which the Objector intends to submit to the Inquiry, the Objector will invite the Inspector to refuse the proposals to vary the licence.

Michelmores LLP

Legal representatives of the Objector

1 June 2026