

Integrated Environmental Planning Team
Environment Agency
Operations Catchment Services,
Manley House,
EX2 7LQ

Tuesday 3rd February 2026

**Re: Proposed variation of abstraction licence under Section 52, Water Resources Act 1991
(Old Walls hydropower scheme)
DCISOldWallsS52**

Dear Ms Miller,

The British Hydropower Association (BHA) submits this representation in its capacity as the UK trade association for the hydropower sector. This representation is made in support of the continued lawful operation of the above scheme and is intended to address sector-wide, governance, and public-interest considerations, rather than site-specific technical matters, which we understand are addressed separately by the licence holder.

1. Status of the scheme and sector context

The scheme in question is representative of a large cohort of small, long-established hydropower installations across England and Wales. Such schemes were lawfully consented, constructed, and operated under regulatory frameworks that encouraged renewable generation while managing environmental impacts. Many form part of the UK's legacy energy infrastructure and continue to deliver low-carbon electricity, rural resilience, and local economic value. From a sector perspective, the way in which this case is handled will therefore have implications well beyond the individual licence holder.

2. Importance of regulatory certainty and proportionality

Small-scale hydropower is a capital-intensive, long-life form of infrastructure. Its viability depends critically on regulatory certainty, particularly where schemes have operated lawfully for decades. While the BHA recognises and supports the Environment Agency's role in environmental protection, that role must be exercised lawfully, proportionately, and with appropriate regard to the public interest in renewable energy generation. 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.

3. Section 52 as a procedural mechanism

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.

While precaution may justify investigation or assessment where uncertainty exists, it does not dispense with the requirement to complete the proportionality analysis or to justify the scale of regulatory response by reference to evidence. Precaution informs how uncertainty is handled; it does not determine outcome by default. 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.

4. Balancing of statutory duties and public interest

Hydropower schemes sit at the intersection of multiple statutory objectives, including environmental protection, climate change mitigation, energy security, and sustainable development. The BHA emphasises that regulators are required to reconcile and balance these duties, rather than treating any single objective as overriding in the absence of explicit Parliamentary instruction.

In particular, 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.

From a sector perspective, these statutory duties require not only that environmental protection be pursued, but that it be pursued in a manner that is proportionate, evidence-led, and mindful of opportunity cost. Significant regulatory effort directed toward low-risk, long-operating schemes necessarily diverts public resource from higher-impact environmental pressures elsewhere.

5. Governance standards and escalation

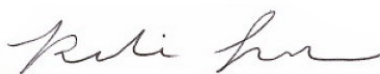
The proposed escalation of this matter to Secretary of State level underscores the importance of ensuring that proportionality and precaution have been correctly applied at earlier stages. Escalation in the absence of a clearly articulated evidential basis and balancing exercise risks embedding precisely 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.

6. Closing observations

The BHA does not seek to obstruct environmental protection or appropriate regulatory oversight. Rather, we urge that any proposed interference with long-established hydropower schemes be grounded in **clear statutory authority, site-specific evidence of necessity, and a transparent balancing of public interests.**

We respectfully submit that careful consideration of these principles at this stage would serve the interests of good regulation, sustainable development, and public confidence, and may avoid the need for escalation or dispute at a later stage.

Yours Sincerely,



Kate Gilmartin

Chief Executive, British Hydropower Association