Objection to Section 52 Notice to vary abstraction licence

Name of Licence Holder / Objector: Mr Miles Fursdon

Address: Waterleat Lodge, Widecombe in the Moor, Newton Abbot, Devon, TQ13 7FA

Water Abstraction Licence Number: 14/46/004/0685

EA Reference Number: RSAOldwallsDSIC

Type of objection: Technical and Compensation

Date: 4th February 2026

Objection

Background of the scheme

A hydroelectric installation has operated at Old Walls since 1936, originally supplying power to remote dwellings and a farm. The current installation was developed in 1995 as a farm diversification project, expanding and renewing the scheme and connecting it to the national grid. It generates enough electricity to meet the needs of approximately 150 average homes and was further refurbished in 2021, with no material change to its layout or output.

Interaction with the EA

The site was licensed in 1992, at a time when the original plant was operating. As a licence of right, the abstraction licence reflected the historic operation, while additional conditions were applied to the anticipated 1995 scheme via negotiation with the regulator. Since that time, the licence holder and the Environment Agency have maintained a long-standing collaborative relationship, with fish screening, bywash and tailrace arrangements modified at times to improve reliability, always working with the EA and as necessary tested to ensure their continued effectiveness.

Around 2007, the EA indicated that the licence might be reviewed under the Review of Consents, later Restoring Sustainable Abstraction process, initially on the basis of potential impacts on a Special Area of Conservation (SAC). That position was later withdrawn when the EA confirmed the abstraction could not be affecting the upstream SAC. In 2016, the EA again raised concerns about sustainability and undertook ecological surveys in 2018. Those surveys found no damage attributable to the hydro scheme. Nevertheless, the EA continued to rely on subjective judgement rather than the survey findings, before subsequently confirming that it was reprioritising licence reviews and that no further action was proposed. In reliance on this position, the licence holder invested in efficiency improvements and renewal of the plant.

In 2025, the EA renewed its intention to modify the licence. This was based on a hydrological modelling exercise that assumed maximum theoretical abstraction and inferred environmental

damage through subjective judgement, rather than observed impacts. Discussions failed to identify an acceptable voluntary solution, and the EA proceeded to serve a notice under section 52 of the Water Resources Act 1991 following preparation of a Licence Change Proposal Report (LCPR). The LCPR confirms that the proposed licence variation is not required for Water Framework Directive compliance and represents a discretionary regulatory intervention.

Overall position

The licence holder recognises the EA's statutory role in protecting the water environment and accepts that abstraction regulation may evolve over time. However, the proposed variation, as currently framed, is not justified by evidence, is procedurally flawed, and is wholly disproportionate in its environmental, economic, and energy impacts.

The EA's proposal is discretionary rather than driven by statutory compliance requirements and is founded primarily on modelling assumptions, while disregarding the EA's own extensive site-specific surveys and evidence concluding that no environmental harm is occurring under the existing licence.

Nature of the regulatory driver and procedural fairness

The EA's own documentation confirms that the driver for the proposed licence change is "local" and not linked to:

- Water Framework Directive water body failure or deterioration risk;
- Habitats Regulations requirements;
- Statutory biodiversity targets.

In such circumstances, any intervention must be clearly justified by site-specific evidence of environmental risk, and be proportionate to that risk. The EA must ensure that its position is reflecting its own technical judgement and not adopting third party concerns.

The EA's position should also take account of the fact that the licence is for non-consumptive abstraction for milling power as opposed to simple abstraction.

The licence holder was served notice of the proposed changes without being provided with the EA's reasoning or evidence base. Key documents, including the LCPR, were withheld from the licence holder for a significant portion of the statutory objection period, while being made available to members of the public at Manley House without the licence holder being informed. This failure materially prejudiced the licence holder's ability to engage meaningfully with the proposal and undermines procedural fairness.

Evidence base and absence of observed harm

The central defect in the EA's proposal is the absence of evidence of observed environmental harm.

Over decades of operation, and through multiple EA-led investigations, no adverse ecological impacts attributable to the licensed abstraction have been identified. The EA's own monitoring demonstrates:

- No detectable ecological impact on invertebrate communities in the depleted reach;
- No deterioration in ecological condition, even during prolonged low-flow periods;

- No causal link between the scheme and fish population trends, which are identified as catchment-wide;
- No evidence of eel entrainment or injury following physical testing.

Despite holding this evidence, the EA has relied on modelling scenarios, assumptions based on maximum theoretical abstraction, and inferred impacts derived from current guidance. The proposal does not adequately explain why real-world monitoring evidence has been discounted in favour of hypothetical risk.

While the licence holder accepts that precautionary regulation may be appropriate in some circumstances, precaution cannot justify ignoring available evidence or imposing severe restrictions where harm has not been demonstrated.

Ecological context of site

The ecological context of the site does not support the conclusions drawn in the LCPR.

There is no evidence that the affected reach represents a critical or limiting habitat for spawning or juvenile salmonids, nor that flow at this location constrains fish population recovery. Assertions regarding spawning gravel degradation, migration impediment, or reduced juvenile production are not supported by geomorphological assessment or site-specific fisheries evidence, or wider monitoring evidence.

Post-construction evidence consistently shows ecological stability rather than deterioration. The proposal therefore seeks to address a theoretical problem rather than a real one.

Engineering feasibility and proportionality

The revised licence conditions imply extensive new engineering works, including relocation of fish screening infrastructure to the intake in a steep upland river environment.

No outline designs have been prepared or assessed, no consideration has been given to constructability, flood resilience, debris loading, operational reliability, or planning constraints. While section 7 of the LCPR refers to the EA having taken account of the financial and environmental costs and benefits, no details of this cost-benefit analysis have been provided. This is inconsistent with normal licensing practice and with the Regulators' Code requirement to consider practicability and proportionality.

The proposed conditions would impose substantial capital and operational costs, materially reduce reliability, and may not be deliverable within planning constraints, particularly given the site's location within a National Park.

Claimed ecological benefits

The EA asserts that the proposed changes would improve fish protection and migration, yet provides no clear or credible mechanism by which this would occur at this site.

Existing screening and bypass arrangements have been physically tested, observed, and accepted by the EA as effective. There is no evidence of fish injury, entrainment, or migration failure under current operation. No assessment has been made as to whether the fish populations identified would actually benefit from the proposed changes, or whether the site is limiting those populations at all.

In contrast, the proposal would remove an existing leat habitat previously acknowledged as ecologically useful, without assessment of the consequences.

Climate change, sustainable development, and energy security

The proposal would reduce renewable electricity generation from the site by approximately 75%, with a high likelihood that the scheme becomes uneconomic at the end of the Feed-in-Tariff period, or at any time of significant equipment failure.

This loss of generation is certain, quantifiable, and long-term. Any ecological benefit, by contrast, is speculative and unproven. The EA has statutory duties under the Environment Act 1995 to contribute to sustainable development and protect the environment taken as a whole.

Reducing established low-carbon generation without demonstrable environmental gain risks causing net environmental harm and undermines both climate objectives and energy security.

Compensation.

The hydroelectric installation affected by these proposals is an income generating business which required significant capital to establish and which continues to evolve and improve through the investment and careful management of the owners.

If the proposed licence changes are confirmed, they will create a major detriment to the business. The costs of which, under the provisions of the Water Resources Act 1991, will form the subject of a compensation claim. Although detailed figures cannot yet be calculated, the claim will be well in excess of £1,000,000.

Heads of claim will include a) loss of profit in perpetuity, b) Injurious affection to the existing plant and machinery which will need to be replaced or modified to work with the revised flow rates and c) The cost of the proposed modifications to the intake and screening installations.

Conclusion

For these reasons, the licence holder submits that the proposal is not reasonable, proportionate, or evidence-based and should be withdrawn or fundamentally reconsidered in light of the full evidential record.

We object to the following specific licence conditions, with outline reasons:

1.1 Source of supply. Spelling mistake (Widecombe in the Moor).

3.1 Means of abstraction – the abstraction is currently controlled by the turbine and it should continue to be so.

6.1 Reduction in annual volume will not provide environmental benefit.

7.1 The means of measurement proposed is unnecessarily specific and will waste head and hence power for no increase in accuracy.

8.1 Wording of records needs to change to reflect change in 7.1.

9.1 The proposed date is certainly unrealistic if the EA succeed in forcing screening at the intake.

9.2 Hands off flows and sweetening flows. The revised Hands Off Flow is unnecessary, the 35% proportional take is unnecessary.

9.3 Intake and flow measurement design details. These items should not be changed from the current layout, if a change was forced upon the licence holder the dates are unrealistic.

9.4 Screening at intake. Screening should not be changed from its current position at the forebay. If it was, the dates are unrealistic.

9.5 Written plans. As 9.4 should not be imposed, 9.5 is unnecessary.

9.7 Outflow velocity. No evidence has been provided that the current speed is causing attraction to the outfall so this requirement is unnecessary.

9.8 Prior approval of repair work. Not acceptable since the EA has no competence to make such judgements.

9.9 Annual volume. As per 6.1, this provides no protection to the environment.

In view of the fact that the proposed licence conditions are interlinked, and subject to the provision of expert evidence, the Objector reserves the right to object to other aspects of the proposed licence conditions in due course.

The Objector requests that the case be heard in person by means of an inquiry.