

**WATER RESOURCES ACT 1991, SECTION 52 WATER RESOURCES
(ABSTRACTION AND IMPOUNDING) REGULATIONS 2006, REGULATION 31**

**PROPOSAL BY THE ENVIRONMENT AGENCY TO VARY ABSTRACTION
LICENCE NO. 14/46/004/0685 HELD BY MR M. R. FURSDON IN RELATION TO OLD
WALLS HYDRO, WEST WEBBURN RIVER, WIDECOMBE-IN-THE-MOOR, DEVON**

PINS REFERENCE: ENV/3378112

OPENING SUBMISSIONS ON BEHALF OF THE ENVIRONMENT AGENCY

Introduction

1. These are the opening submissions of the Environment Agency (“the **Agency**”) in relation to its proposal under section 52 of the Water Resources Act 1991 (“**WRA 1991**”) to vary abstraction licence number 14/46/004/0685 held by Mr M. R. Fursdon in respect of the Old Walls hydropower scheme on the West Webburn River. The proposal is opposed by the licence holder, whose objection has been referred to the Secretary of State for determination under section 54 WRA 1991, with the Inspector appointed to hold this Inquiry and to make a recommendation.
2. The Agency's case is set out fully in its Statement of Case [CD33], its Response to the Objector's Statement of Case [CD34], and in the proofs of evidence of its three witnesses. This opening does not repeat that material. Instead, it draws together the strands of the Agency's case, identifies the statutory tests the Inspector must apply, introduces the evidence to be called, and addresses directly the central points of principle that divide the main parties.
3. At its core, this is a proportionate and evidence-led proposal to bring an existing, unmodernised abstraction licence into line with current best practice for run-of-river hydropower schemes, in a river which is failing to achieve good status principally because of pressures on its fish population, of which the Old Walls scheme is a probable contributor.

The site and the proposal

4. Old Walls Hydro is a hydroelectric scheme on Dartmoor, developed originally in 1936 and continuously licensed since 1992. Water is abstracted by gravity at Jordan Weir into a leat, generates power at a turbine, and is returned to the river approximately 600 metres downstream, creating a deprived reach of the West Webburn River of that length between the point of abstraction and the point of discharge.¹
5. The Agency proposes to vary the licence to introduce a hands-off flow (HoF) of 0.146 m³/s (Q95)², a 35% take above that HoF, a sweetening flow regime to protect the ecology of the leat itself while prioritising the river at very low flows, controls on the measurement of abstraction at the head of the leat, a 6mm permanent screen at the head of the leat (with a fallback set-back option), a 25mm tailrace screen, and a common end date in line with Agency policy.³
6. Old Walls Hydro has been on the Agency's Restoring Sustainable Abstraction (RSA) programme since 2009 owing to concerns raised locally about low flows and the risk of fish entrainment. The proposals now before the Inquiry are the product of an options appraisal and licence change process conducted between 2024 and 2026, in which the licence holder was invited, but declined, to put forward an alternative proposal of his own.

The statutory and policy framework

7. The Inspector's task is to consider the Agency's proposal to vary the licence, and the Objector's grounds of objection to it, and to make a recommendation to the Secretary of State as to whether the proposal should be confirmed, with or without modification, pursuant to section 54 WRA 1991.
8. The following provisions are central to that task.

Water Resources Act 1991

¹ See schematic drawings at pages 7-8 of EA SoC [CD33].

² Q95 is the flow that is exceeded 95% of the time.

³ Details of proposed new conditions in appendix 1 to this opening statement.

9. Section 52 permits the Agency to formulate proposals to vary a licence to better manage the water environment, subject to the licence holder's right of objection, in which case, under section 54, the Secretary of State must consider the proposal and the objection and determine whether the proposal should take effect, with or without the Agency's proposed modification.
10. Section 54(4) applies section 40 to the Secretary of State's determination in the same way that it applies to the Agency's own decisions. Section 40(2) requires that, where no minimum acceptable flow has been formally set, regard must be had to the matters in sections 21(4) and (5), including the flow of water in the inland waters from time to time and the character of the waters and their surroundings, read together with the Agency's duties under sections 6 and 7 of the Environment Act 1995.
11. Section 61 addresses compensation payable to a licence holder for loss and damage directly attributable to a variation made under this process. The availability and quantum of compensation is a separate process from this Inquiry, and is not a basis on which the Inspector should decline to recommend a proposal that is otherwise justified on its merits.⁴

Environment Act 1995

12. Section 4 sets the Agency's principal aim as being to protect or enhance the environment as a whole so as to contribute to sustainable development. Sections 6 and 7 impose duties to promote the conservation of flora and fauna dependent on the aquatic environment, to conserve and augment water resources, and to maintain, improve and develop fisheries of salmon, trout, eels and freshwater fish. Section 39 requires the Agency to take into account the costs and benefits of its decisions, but under subsection 39(2), that requirement does not affect the EA's obligation to: discharge a duty imposed under other legislation, including the Water Framework Directive obligations addressed below, comply with any requirements, or pursue any objectives, imposed upon or given to it elsewhere.

Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

13. The Agency must exercise its functions so as to prevent deterioration of, and to support the achievement of, good status for the West Webburn River, a designated waterbody under these

⁴ As per the correct observation of the inspector in CD57, paras. 1.8-1.10.

Regulations. Good ecological status requires every quality element, including the fish element, to be at good status or better; the fish element for this waterbody deteriorated from high to moderate status in 2016 and has remained there since. The Environmental Flow Indicator (EFI) is the Agency's tool for assessing whether abstraction pressure is consistent with achieving good status, and compliance with the Q95 EFI is the recognised metric for the hydrological regime supporting element of that classification.

Salmon and Freshwater Fisheries Act 1975

14. Section 14 imposes a strict statutory obligation, at the cost of the operator, to install and maintain fish screens at abstraction structures on waters frequented by salmon or migratory trout, together with a suitable bywash to return fish to the river. It is common ground that migratory salmonids are present in the West Webburn River. The Inspector does not need site-specific proof of entrainment at Old Walls before the section 14 obligation, and current best practice as to its proper discharge, become engaged.

Natural Environment and Rural Communities Act 2006, Deregulation Act 2015 and Legislative and Regulatory Reform Act 2006

15. These provisions require the Agency to further biodiversity conservation, to have regard to the desirability of economic growth, and to act proportionately, transparently and consistently. None of these duties displaces the Agency's primary environmental obligations; growth and proportionality are factors to be weighed, not trump cards (especially given s.39(2) EA 1995). Thus, whilst the licence holder's understandable concerns about the impact on the hydropower operation are noted and have been taken into account⁵, the statutory duties set out above must carry the decisive weight.⁶
16. Taken together, these provisions require the Inspector to ask two central questions: first, whether the Agency's proposal is justified having regard to the statutory duties and to the

⁵ Noting the Agency's updated position on the impact on abstraction available for power generation in its note dated 3 August 2026, suggesting the reduction in number of days is approximately 5% on average over 1991-2020 (347 days as against 365), and 301 days (as against 365) in the dry year of 2022 — not the approximately 50% reduction previously stated in the proofs of evidence of Ms Townsend and Ms Ames. Power generation remains possible in all months of the year under the proposed licence, not only from autumn to spring as previously stated. The hydrological modelling itself, and its conclusions as to residual flow in the deprived reach, are unaffected by this correction.

⁶ See the similar approach taken to impact on a business reliant on abstraction in CD56 paras. 65-66.

evidence, including the application of the precautionary principle discussed further below; and second, whether the specific conditions proposed are proportionate and technically feasible.

The evidence to be called and the areas of expertise

17. The Agency will call three witnesses, each addressing a strand of the Agency's case.
18. Emma Townsend, Senior Specialist for water resources, will explain the RSA programme and its application to Old Walls, WFD status and Reasons for Not Achieving Good status identified for the fish element, the options appraisal process, the cost-benefit assessment, and the balance struck between the environment and the continued operation of an existing scheme.
19. Harriet Ames, Technical Specialist in Hydrology, will explain the hydrological modelling that underpins the Agency's case: the derivation of naturalised flows at the abstraction point by transposition from the Austins Bridge gauging station, the validation of that transposition, the modelling of the impact of the current licence and of the proposed licence on flows in the deprived reach, and the resulting conclusions as to the improvement that the proposed conditions would deliver.
20. David Bartlett, Fisheries Technical Specialist, will explain the fisheries context: the status of Atlantic salmon, sea trout and European eel in the West Webburn and wider River Dart catchment, the application of the Agency's Guidance for run-of-river hydropower development to screening and bywash design, the proposed screening, and the application of the precautionary principle to fisheries protection at this site.
21. Cutting across all three witnesses' evidence is a single, consistent methodology: the Agency has approached Old Walls as it would approach a new hydropower licence application, using its published Guidance for run-of-river hydropower development [CD5] as the benchmark for best practice, informed by robust and unrebutted hydrological modelling and by the recognised protections owed to migratory fish under statute.

The hydrology is unchallenged and it is determinative

22. The foundation of the Agency's case is the hydrological modelling carried out by Ms Ames, described in the Agency's hydrology report, “Old Walls RSA Scheme Hydrological Modelling”, June 2025 [CD6], and in her proof of evidence. No competing hydrological model has been put forward by the Objector. The Objector's evidence on residual flow (Mr Elliott's short-term monitoring) supplements the factual picture as to how the scheme is currently operated in practice; it is not, and does not purport to be, an alternative model of the natural flow regime or of the fully-licensed impact of the abstraction on the deprived reach. The methodology used by Ms Ames — naturalisation of flows by transposition from Austins Bridge, validated against spot gaugings, applied to the licence conditions to calculate residual flow, and compared against the Environmental Flow Indicator — stands unchallenged by any alternative hydrological analysis.
23. That unchallenged modelling shows that, in the current fully licensed scenario⁷, flow in the 600m deprived reach can drop below the natural Q95 threshold for approximately 70% of the year, compared with an expected 5% under natural conditions, and flatlines at the current minimal hands-off flow of 0.025 m³/s for long periods. Residual flow falls below the EFI for 336 days a year on average — 92% of the time. This is not a marginal or borderline shortfall; it equates to a chronic and severe deprivation of flow, capable of being sustained for the greater part of every year, and worse still in dry years such as 2022. The limited evidence of the *actual* abstraction in the period 2000-2022 suggests⁸ it was at 97% of the fully licensed scenario.⁹
24. From (i) the unchallenged modelling evidence of the fully licensed scenario; and (ii) what is known about the reasons for the fisheries quality element failing to reach ‘good’ status: the Agency draws what it submits is the only reasonable conclusion available on the material before the Inquiry: that chronic, severely depressed flow of this kind and duration in a 600m reach of river inevitably impinges upon the ability of migratory fish, and salmon in particular, to move through that reach, whether migrating upstream to spawn or downstream as smolts and kelts. Further, flow variability is itself a recognised migratory cue; a flatlined reach removes that cue as well as the physical volume of water needed for passage.¹⁰
25. That conclusion cannot be assessed in the abstract. It must be seen against the backdrop of a salmon population that is already gravely depressed. The most recent Annual Salmon Stock

⁷ Using a fully licensed scenario has been held to be a reasonable and precautionary approach e.g. in CD56 paras. 37, 58.

⁸ Albeit the nature of that data needs to be read with some caution for reasons explained at CD45 paras. 37-39.

⁹ H Ames PoE: CD45, para. 36.

¹⁰ Such conclusions being the logical ones to draw, as did the inspectors in CD56, para. 52, and CD59 para. 44.

Assessment classifies the River Dart salmon stock as “At Risk”, and Atlantic salmon have been classified as “Endangered” on the IUCN Red List for Great Britain since 2023. No juvenile salmon have been recorded at the West Webburn survey sites at Grendon Bridge and Cator Bridge since 2014. The fish element of the West Webburn waterbody classification deteriorated from high to moderate status in 2016 and has remained there ever since, and the Agency's own Reasons for Not Achieving Good analysis identifies the abstraction and infrastructure at Old Walls as a “probable” contributor to that deterioration, alongside other identified pressures which the Agency is separately working to address.

26. It is against this combination of factors — chronic and unchallenged flow deprivation, a documented deterioration in fish status, and an accepted role for low flow among the recognised causes of that deterioration — that the Agency submits the case for licence variation is made out.

The precautionary principle

27. The Objector's central submission, repeated throughout his Statement of Case, is that the Agency has failed to produce site-specific ecological evidence — of the kind that might be generated by a fish counter, tagging and tracking programme, or direct observation of mortality — proving that the Old Walls scheme is causing harm to fish populations. The Agency submits that this submission proceeds from the wrong starting point and, if accepted, would invert the correct approach to a known and quantified environmental risk. There is no strict burden of proof here. Rather, a precautionary approach must be taken to the evidence that *is* available.¹¹
28. The Agency's approach to Old Walls mirrors the approach it would take to a new licence application for a hydropower scheme at this location. On a new application, the Agency would not require an applicant's opponents, or the Agency itself, to first prove actual harm to fish before applying the flow and screening standards in its published Guidance for run-of-river hydropower development [CD5]. Those standards exist precisely because reduced flow and unscreened intakes are known, generic risks to migratory fish, and because the population-level consequences of exposing an already vulnerable species to those risks are severe and, in practice, irreversible and unquantifiable after the fact. It is the applicant who must justify any departure from recognised standards and Guidance where there is a clear identified risk, not the Agency who must prove harm before such standards apply.

¹¹ See the consistent approach taken by inspectors dealing with similar issues: CD55 paras. 67-69

29. The same logic applies with equal force to an existing scheme being brought into line with current best practice through the RSA programme. The Agency does not accept that the precautionary principle is disapplied, or somehow inverted, merely because the abstraction predates the current Guidance. The precautionary principle¹² plainly applies to the application of the EA's duties set out above, in particular in respect of the WFD.¹³ To accept the Objector's approach would require the Agency to await, and to positively prove, demonstrable population-level harm to a species already classified as being at risk of extinction in this catchment before it could act to remove a known and quantified pressure. That is not how the precautionary principle operates, nor how environmental protection of vulnerable and declining species is, or should be, undertaken. The correct question is not whether the Agency has proved harm, but whether the licence holder has shown, on the evidence, that this scheme should be treated as an exception to standards that would otherwise apply, in circumstances where the modelling indicates a clear and grave risk.
30. The Agency did consider whether to commission the kind of direct monitoring the Objector says is necessary. It concluded that such monitoring — a fish counter, or direct trapping, tagging and tracking — would be labour-intensive, expensive, and would have to be funded by displacing monitoring resource from other sites, for a result that would, at most, confirm what unchallenged hydrological modelling and recognised best-practice guidance already indicate. The absence of that additional, resource-intensive monitoring does not undermine the Agency's case; it reflects a proportionate and defensible use of finite public resources once a probable causal pathway has already been identified through modelling and expert judgement.
31. In short, the burden in this case does not rest on the Agency to demonstrate harm through site-specific ecological evidence. Rather, although not a strict 'burden' of proof, it is incumbent upon the licence holder to demonstrate that his operation is not causing the harm that unchallenged hydrological modelling, recognised best-practice guidance, and the documented deterioration in the fish element of this waterbody's status all indicate is occurring.¹⁴

¹² See the definition in the 1992 Rio Declaration, now incorporated into the statutory Environmental Principles Policy Statement published section 17(5) of the Environment Act 2021: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation": [Environmental principles policy statement - GOV.UK](#).

¹³ See: recital 11 to the Water Framework Directive 2000/60; *Secretary of State for Environment, Food and Rural Affairs v Pickering Fishery Association & Anor* [2025] EWCA Civ 378 para. 124; *R (Misbourne Environmental Protection Ltd) v Environment Agency* [2021] EWHC 3094 (Admin) at para. 29. If the Licence Holder disagrees that the precautionary principle applies, he is invited to set out the rationale in legal submissions in advance of Closings, in order that the Agency may respond prior to the close of the inquiry.

¹⁴ See also, the approach to establishing risk of harm and the burden of evidence in CD58, paras. 26, 37, 68-69.

Fish screening

32. It is not in dispute that some form of improved fish screening is required at Old Walls. The licence holder does not contend that no screening improvement is needed; his objection goes to the location, aperture and cost of the screening the Agency proposes, not to the underlying principle that the existing arrangements — a 10mm set-back screen with a discretionary, manually-operated bywash — no longer meet the standard required to protect migratory salmonids and eels under the Salmon and Freshwater Fisheries Act 1975 and the Agency's published Guidance.
33. Two screening configurations were identified by the Agency as capable of delivering an adequate standard of protection: a 6mm screen at the head of the leat, flush with the river frontage, or a 6mm screen set back within the leat combined with an upgraded bywash. Both options were put to the licence holder for his preference before either was adopted into the Agency's proposal.¹⁵
34. The licence holder expressed a clear preference, communicated in correspondence with the Agency, for head-of-leat screening, on the basis that this option would leave the full volume of abstracted water available to pass through the turbine for power generation, whereas set-back screening with an upgraded bywash would require a dedicated flow allowance for the bywash that could not be used for generation.¹⁶ The Agency's preferred option, reflected in the proposed licence, adopted head-of-leat screening precisely because that was the licence holder's own stated preference.
35. It is against that background that the licence holder now raises the cost and practical difficulty of constructing a head-of-leat screen as a principal ground of objection. The Agency's position is that a complaint about the cost and complexity of the very option the licence holder identified as most advantageous to him cannot fairly be treated as a freestanding objection to the Agency's proposal. If the licence holder now considers set-back screening preferable notwithstanding the flow allowance it would require for the bywash, that is a position he is entitled to put to the Inspector — and the Agency has consistently confirmed that a suitably designed set-back option, meeting the same aperture and improved bywash design standards, remains available to him. What is not open to him, in the Agency's submission, is to treat the cost consequences of his own preferred solution as a reason to resist screening improvement altogether.

¹⁵ [CD52]

¹⁶ [CD53]

36. The Agency hopes that some further matters of detail relating to conditions on the proposed licence can be agreed during the inquiry. The Agency will be pleased to answer any questions the Inspector may have on the conditions. In addition to the matters to be covered in the formal evidence, to make best use of time we would invite the Inspector to flag particular concerns as to the wording of conditions in advance of the round table session where possible.

Conclusion

37. The Agency's case can be shortly stated. The hydrological modelling, unchallenged by any competing model, indicates a severe and chronic deprivation of flow over 600m of the West Webburn River. The deprivation must, on the only reasonable view of the evidence, be affecting the migration of fish through that reach, at a time when the salmon population of the River Dart catchment is already at risk and when low flow is expressly identified among the reasons this waterbody is not achieving good status. The precautionary principle means that it falls to the licence holder, not the Agency, to show that his operation is not contributing to that harm. Screening improvement is accepted as necessary in principle, and the specific option to which the licence holder now objects on grounds of cost and complexity is the option he himself identified as preferable. For these reasons, developed further in the evidence that follows, the Agency invites the Inspector to recommend that the proposed variation be confirmed.

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4 August 2026

APPENDIX 1

PROPOSED LICENCE CONDITIONS

- A hands-off flow (HoF) of 0.146m³/s (Q95)¹.
- A 35% take condition above the HoF.
- (Maximum instantaneous abstraction remains at 0.80m³/s.)
- When the flow upstream of the weir is below the HoF of 0.146m³/s, abstraction is restricted to a sweetening flow of 20l/s.
- When the flow upstream of the weir is < 40l/s, all flow shall be directed to the river.
- Means of controlling and measuring the abstraction at the head of the leat.
- 6 mm permanent screen at head of leat.
- Tail race screen (max 25 mm bar spacing).
- Addition of a time limit to the licence in line with the Catchment Assessment Management Strategies Common End Date (CAMS CED).

APPENDIX 2

APPEARANCES LIST FOR THE ENVIRONMENT AGENCY

1. **Jonathan Welch** of Counsel, Instructed by **Jeremy Graydon**, Solicitor, Environment Agency
2. **Emma Townsend** BSc MSc – Senior Specialist, Water Resources, Environment Agency (Devon, Cornwall and Isles of Scilly).
3. **Harriet Ames** BSc – Technical Specialist in Hydrology, Environment Agency (Devon, Cornwall and Isles of Scilly).
4. **David Bartlett** BSc MIFM – Fisheries Technical Specialist, Environment Agency (Fisheries, Biodiversity and Geomorphology team, Devon, Cornwall and Isles of Scilly).