

# River Test Stage 0.1 Drought Order Application

## 1.12 Appendix 2: Summary of the Section 20 Agreement

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from  
**Southern  
Water** 

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# 1 Summary of the Section 20 Agreement

## 1.1 Origin and function of the Section 20 Agreement

A Public Inquiry was instigated following objections by Southern Water to the Environment Agency's (EA) proposed changes to the Southern Water abstraction licences for the River Itchen and the River Test, and to hear objections from Third Parties. Southern Water's concern was that the proposed immediate licence changes would prevent Southern Water from meeting its statutory duties to maintain public water supplies. Third Parties objected on the grounds that the EA proposals were insufficient to protect the river ecology.

The Inquiry opened on March 13, 2018, and focused on a proposed Operating Agreement between Southern Water and the EA under Section 20 of the Water Resources Act 1991 (the "S20").

The S20 was formally signed by the EA and Southern Water in April 2018, shortly after the Public Inquiry. Implementation work package documents were subsequently finalised and signed by the EA, Southern Water, and Natural England (NE) between April 2018 and October 2019.

Following consideration of the Inquiry Inspector's report, the licence changes were approved by the Secretary of State on 25 February 2019, and the new licences were issued by the Environment Agency in March 2019.

The S20 enabled a positive way forward for both parties; for public water supplies and for the habitats and ecology of the River Test and the River Itchen. Southern Water accepts the abstraction licences changes, while the Environment Agency commits to procedural reassurances around how Southern Water can utilise the Drought Permit and Drought Order process to maintain public water supplies pending the implementation of new and reliable water supplies to replace the water resource lost by the licence changes. That is, the S20 is an "interim abstraction scheme". The S20 Drought Permit and Drought Orders were incorporated into the Southern Water final 2019 Water Resources Management Plan and 2019 Drought Plan.

The new abstraction licences significantly reduce Southern Water's previously assumed drought-reliable 'deployable output' from the River Test and River Itchen, such that Southern Water would not be able to legally abstract sufficient water to meet public water supply demand during drought without a Drought Permit and subsequently a Drought Order. The S20 acknowledges that this additional reliance on Drought Permits and Drought Orders will persist until Southern Water is able to complete implementation of the permanent new supply resources necessary to counterbalance the abstraction licence changes. The company is committed to implementing the permanent new supply solution as soon as possible, but it is expected to take many years. The solution is being progressed under the Water for Life Hampshire (WfLH) programme, with information available on our website.

In respect of the new river flow condition (355 Ml/d) included on the River Test abstraction licence, Southern Water has emphasised (before, during and since the Public Inquiry) that it will be encountered relatively frequently, with operational implementation of a Drought Permit expected to be required in drought of severity of only 1 in 10 year to 1 in 20 year return period. Furthermore, once the lead time for preparation, submission and granting of a Drought Permit is considered, some degree of application process is likely to commence almost every year. This has been borne out since the Public Inquiry.

Southern Water has also committed to a significant package of environmental monitoring, mitigation and compensation measures associated with the potential Drought Permits and Drought Orders that may be needed. It has been agreed that many of these measures will be carried out in advance of (and irrespective of the implementation of) any Drought Permit or Drought Order meaning that there is an overall positive benefit to the environment.

The remainder of this document summarises the S20.

## 1.2 Conditions of the Section 20 agreement

The main elements of the S20 agreement are as follows.

**Southern Water** has agreed to:

- Accept all the EA's proposed abstraction licence changes, to be implemented immediately (upon the Secretary of State's determination). [The revised licences were issued in March 2019].
- Use all best endeavours to implement the long-term scheme for alternative water resources [originally intended to be as set out in its final Water Resources Management Plan 2019 but since, as evolved in the Water for Life - Hampshire (WfLH) programme].
- Rely on the use of Drought Permits and Drought Orders on the River Test and River Itchen during the interim period while long-term resources are developed, by following the procedure as set out in the S20. For the avoidance of any doubt, the agreed procedure does NOT vary the statutory requirements for such applications but agrees the timing of drought permit applications to the Environment Agency and a set of principles to ensure that this process can be used and relied on more effectively.
- Ensure that the River Test Drought Permit is reviewed every 6 months, to ensure that it is 'application ready'.
- Accept that on the basis of current ecological evidence, a likely significant effect and adverse effect on the integrity of the Itchen Special Area of Conservation (SAC) cannot be ruled out from the operation of the Candover Drought Order.
- Commit a substantial package of environmental monitoring, mitigation and potential Imperative Reasons of Overriding Public Interest (IROPI) compensation measures in respect of the Drought Permits and Drought Orders.

The **Environment Agency** has agreed to:

- A timetable for the acceptance and determination of the River Test Drought Permit (35 days or less in the case of extreme urgency).
- Accept that at the time of the application:
- Water use restrictions do not have to be in place (and only have to be in place at the time of implementing the permit);
- The case for 'exceptional shortage of rain' can include a forecast component;
- The refusal of access by landowners for monitoring and/or mitigation is not a detriment to being 'application ready';
- Accept that Southern Water's proposed Candover scheme could be implemented under a Drought Order during the interim period.
- Accept a 'Force Majeure' clause within the abstraction licences, so that Southern Water will be allowed to abstract above the new abstraction licence limits, should certain events or incidents (as defined in the S20 agreement) develop outside of Southern Water's control, and it is necessary to maintain public water supplies.
- Use Article 4(6) of the Water Framework Directive in principle to enable the grant of a Test surface water Drought Permit authorising abstraction; and to accept that low flows on the River Test of between 355 MI/d and 265 MI/d are capable of constituting exceptional circumstances for the purposes of Article 4(6) Water Framework Directive (WFD).
- Accept that subject to a material change of circumstances and until long-term solutions are implemented, Southern Water has a good case that it has no alternative solutions to its Candover and Itchen Drought Order schemes in order to maintain public water supply and that the schemes satisfies the test in Article 6(4) Habitats Directive, for an IROPI.

In addition, the S20 agreement establishes a number of principles that are agreed between the Environment Agency and Southern Water. The most significant being:

- The Test, Candover and Itchen Interim Abstraction Scheme – This is the sequencing in which Southern Water plans to implement drought actions. It is subject to the principle that Southern Water will take into account ecological conditions (based on up-to-date monitoring data) in deciding the order of Drought Orders.
- Southern Water to investigate the diurnal variation of abstraction from the River Test to identify any potential impacts on fish migration, the results of which will aim to be utilised when preparing future drought and water resource management, as part of the National Environmental Programme. This project commenced in 2021 and was completed in 2022.

## 1.3 Section 20 agreement and the River Test Drought Permit application process

As noted above, the S20 agreement introduces a number of actions and principles which specifically apply to the process of applying for a Drought Permit on the River Test. These include:

- An agreed timetable for the acceptance and determination of the River Test Drought Permit (35 days or less in the case of extreme urgency).
- Water use restrictions (TUBs) do not have to be in place at the time of application and are only required to be in place in advance of implementing the permit.
- The case for 'exceptional shortage of rain' as made in the Drought Permit application documents can include a forecast component.
- The refusal of access by landowners for monitoring and/or mitigation is not a detriment to being 'application-ready'.
- The EA may use Article 4(6) of the Water Framework Directive in principle to enable the grant of a River Test Drought Permit authorising abstraction; and to accept that low flows on the River Test of between 355 MI/d and 265 MI/d are capable of constituting exceptional circumstances for the purposes of Article 4(6) WFD.
- Southern Water will ensure that the River Test Drought Permit is reviewed every 6 months, to ensure that it is 'application-ready'.
- Southern Water commits a substantial package of environmental monitoring, mitigation and potential IROPI compensation measures in respect of the Drought Permits and Drought Orders.

### 1.3.1 Sequencing of drought actions on the River Test and the River Itchen

The Test, Candover, and Itchen Interim Abstraction Scheme (as defined in the S20) sets out the agreed sequencing of our drought options on the Rivers Test and Itchen. The S20 is summarised in Section 3.3 of our Drought Plan (2019) Technical Summary Report. Drought actions under the S20 agreement are summarised in **Error! Reference source not found..** In addition to being linked to proposed flow and time triggers, a guiding principle of Annex 1 of the S20 is that ecological considerations should be used to decide the order of application for drought permits and orders.

However, Southern Water drought monitoring is multi factorial and these flow triggers are used in conjunction with other data (for example rainfall and groundwater levels), and there is no single indicator that is used to classify drought status. The specific actions taken by the company may vary, depending on the risks and uncertainties including hydrological and ecological conditions, time of year, customer response to restrictions and long-term weather forecasts.

Southern Water will apply for the River Test Drought Permit at least 35 days before we predict that the Total Test Flow (TTF) will fall to 355 MI/d. Formal pre-application consultation, based on draft application documentation, will commence with the Environment Agency and Natural England 60 days before the predicted flow. Given our multi-factorial approach, if anything suggests an alternative timeframe for the Drought Permit determination may be needed, this will promptly be discussed and agreed with the Environment Agency during the pre-application period.

In Table 1 and, we have set out how each of the agreed actions under the S20 aligns with our proposed drought triggers for flows in the River Test and River Itchen. These actions relate to both supply and demand interventions. We would implement Level 3 water use restrictions (non-essential use bans) via a phased approach. As these restrictions primarily relate to commercial non-household activity, the phasing is designed to reduce impacts on small businesses. Table 2 provides an overview of the Drought Permit Process.

**Table 1: Sequence of drought actions as specified in the S20 agreement.**

Ref	Activity	Comment		
1	Utilisation of SWS water sources and bulk supplies	Prior to any application for a drought permit or order, SWS will utilise its own existing water sources available to supply the Hampshire and Isle of Wight Water Resource Zones within the terms of their respective licences. This will include water available under the Portsmouth Water bulk supply scheme.		
2	Level 1 water use restrictions	Escalate demand-side water efficiency measures including media campaigns		
3	Level 2 water use restrictions	Implement partial temporary use bans (TUBs) pursuant to section 76 IA 1991 unless it is agreed with the Environment Agency that it is unnecessary because savings will be minimal		
4	River Test Drought Permit	Abstract from River Test Surface Water below the Environment Agency's proposed TTF Hands Off Flow (HOF) of 355 MI/d down to 265 MI/d pursuant to a Drought Permit		
5	Level 3 water use restrictions	Apply for a Drought Order to authorise partial Non-Essential Use (NEU) restrictions (Level 3 phase 1 drought restrictions).		
	Candover augmentation scheme	River Test Surface Drought Order	Level 3 phase 2 drought restrictions	Lower River Itchen Drought Order
6	When flows fall below 205 MI/d at Allbrook and Highbridge on the River Itchen, abstract up to 27 MI/d (limited to 20 MI/d in certain months).	When TTF falls below 265 MI/d, abstract down to a baseline of 200 MI/d pursuant to a drought order.	When flows fall below 200 MI/d at Allbrook and Highbridge implement full TUBS and NEUs (Level 3 phase 2 drought restrictions).	When flows fall below 198 MI/d at Allbrook and Highbridge, as a measure of last resort, abstract below the 198 MI/d HOF to a floor of 160 MI/d. Coincident with this, Portsmouth Water will also need to abstract below the Riverside Park HoF of 194* MI/d.

**Table 2: Drought Permit Process timeline from the S20 agreement.**

Number of days after 35-day trigger is breached*	Action
0	Southern Water applies to the Agency, publishes last advertisement of application (if more than one advertisement is required) and gives notice of hearing on day 11.
1-2	The EA acknowledges receipt, contacts PINS/EA officer from another area/Counsel, and secures potential venues
7	Deadline for any objection
8-9	The EA decides if a hearing is necessary
11	Hearing (into non-ESOR matters). Hearing adjourned.
15	Southern Water gives ESOR update (could be day 16 or 17)
19	Reconvened hearing on ESOR
25	Latest date for the EA to receive report on application.
29	The EA uses reasonable endeavours to issue a decision whether to grant a Drought Permit
34	EA's decision on whether to grant a drought permit (long stop)
35	The Drought Permit is implemented if flows fall below 355 MI/d on the River Test and Southern Water continues abstraction.

\*Note the 35-day trigger for the Drought Permit application was based on an understanding of 'worst case' flow recession. The recession may be slower, or subsequent rainfall events may delay the recession. The day on which the 355 MI/d HOF condition is breached may therefore occur after 35 days or not occur at all depending on subsequent rainfall in the catchment. There is also risk that the recession may fall faster.