

Test Surface Water Drought Permit

1.1 App 3 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 proposed changes to Southern Water abstraction licences for abstraction from the River Itchen and the River Test and, to hear objections from Third Parties. The company's concern was that the proposed immediate licence changes would prevent the company 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 Environment Agency (EA) under Section 20 of the Water Resources Act 1991 (the "Section 20 or S 20 agreement").

The S20 agreement was formally signed by the EA and SWS shortly after the Inquiry in April 2018 and, implementation work package documents were finalised in the period to October 2019, signed by the EA, SWS and Natural England.

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 EA in March 2019.

The **S 20 agreement** enabled 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 EA 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 reliable water supplies to replace the water resource lost by the licence changes. That is, the S 20 agreement is an "interim abstraction scheme". The drought permit and drought orders set out in the S 20 agreement were incorporated into Southern Water's final 2019 Drought Plan 2019 Water Resources Management Plan and, and later into the 2022 Drought Plan and draft 2024 Water Resources Management 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 the company 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 S 20 agreement acknowledges this additional reliance on drought permits and orders will persist, until the company 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 progress as or Water for Life Hampshire (WfLH) programme, with information available on our website.

In respect of the new river flow condition (355 MI/d) included on the River Test abstraction licence, SWS 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 in 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 S 20 agreement.

1.2 Conditions of the Section 20 agreement

The main elements of the Section 20 (S 20) agreement are as follows.

Southern Water has agreed to:

- Accept all the EA's proposed 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 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 surface water 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 SAC cannot be ruled out from the operation of the Candover Drought Order
- Commit a substantial package of environmental monitoring, mitigation and potential 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:
 - (a) Water use restrictions do not have to be in place (and only have to be in place at time of implementing the permit);
 - (b) The case for 'exceptional shortage of rain' can include a forecast component;
 - (c) 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 licence limits, should certain events or incidents (as defined in the S 20 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 Ml/d and 265 Ml/d are capable of constituting exceptional circumstances for the purposes of Article 4(6) 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 satisfy the test in Article 6(4) Habitats Directive, for an imperative reason of overriding public interest (IROPI).

In addition the S 20 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 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 should complete in 2022.

1.3 Section 20 agreement and the River Test drought permit application process

As noted above, the S 20 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 Test surface water Drought Permit authorising abstraction; and to accept that low flows on the River Test of between 355 Ml/d and 265 Ml/d are capable of constituting exceptional circumstances for the purposes of Article 4(6) WFD.
- Southern Water will ensure that the River Test surface water Drought Permit is reviewed every 6 months, to ensure that it is 'application ready'.
- Southern Water commit 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 S 20 agreement) sets out the agreed sequencing of our drought options on the Rivers Test and Itchen. The S 20 agreement is summarised in Section 3.3 of our Drought Plan (2019) Technical Summary Report. Drought actions under the S 20 agreement are summarised in Table 1.

The S 20 anticipates that drought permits on the River Test will be required before drought orders on the River Itchen – and this has been what we have observed in recent years, and is supported by the simulation modelling we have done.

However, our 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.

We will apply for the River Test Drought Permit at least 35 days before we predict that the TTF will fall to 355 Ml/d. Formal pre-application consultation, based on draft application documentation, will commence with EA and NE 60 days before that 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 we have set out how each of the agreed actions under the S 20 agreement 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 (see Table 6 of Annex 3) is designed to reduce impacts on small businesses.

Table 1 Sequence of drought actions as specified in the Section 20 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	Test Surface Water Drought Permit	Abstract from Test Surface Water below the Environment Agency's proposed Total Test Flow (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	Test Surface Water drought order	Level 3 phase 2 drought restrictions	Lower Itchen drought order
6	When flows fall below 205 MI/d at Allbrook and Highbridge on the River Itchen	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 Section 20 agreement.

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