

The Environment Agency
Water Resources Permitting Support Centre Quadrant 2
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Parkway Business Park
Sheffield S9 4WF

Via email: psc-waterresources@environment-agency.gov.uk

26 July 2022

Our ref: LRM/SWS/DP

Dear Sirs

**STATUTORY NOTICE FOR DROUGHT PERMIT APPLICATION SOUTHERN WATER SERVICES LIMITED
TEST SURFACE WATER DROUGHT PERMIT, Sections 79A of the Water Resources Act 1991**

Submission by Little River Management Ltd – As long leaseholders of the Testwood and Nursling Fishery, under a lease granted by the Trustees of the Barker-Mill Estates, who own a significant stretch of the Lower Test River, we wish to object to the above application for the following reasons:

1. No evidence has been provided as to why it is not possible to increase the amount of water that could be supplied through the revising the existing bulk water transfer arrangements with Portsmouth Water.
2. No explanation has been given for why Testwood Lakes is considered unable to or unlikely to be of utility as an alternative/supplementary source of public water supply if the extra abstraction must be halted due to depleted dissolved oxygen levels.
3. SWS have only said they will consider halting or reducing abstraction if oxygen levels reach a critical point. They should have an obligation in the DP conditions to do so.
4. As we stated in our objection to the DP application in August 2019 fish rescue is not a viable mitigation for adult migratory salmonids. No evidence has been provided to counter this point and a fully detailed method statement has not been provided nor submitted to the EA for

approval. SWS have also not engaged with us or any other riparian owner over the last three years to trial and test salmonid rescue, for example with a small number of tagged adult fish, to prove the efficacy of such a mitigation.

5. Despite the three years since the last application, and us having raised the issue, no attempt has been made to contact us with a view to reviewing the design of the fish passes at Testwood Pool and Nursling or the operating hatches to explore and test any changes in design to the passes or plan for a revised hatch management regime during any drought permit periods. For example, water levels are now so low the Test Back Carrier at Nursling is already dry. Historically this has been an important salmonid spawning stream.

6. In addition, due to the very low flows this summer in comparison to last year (River Test water levels at Chilbolton approximately -50% down to July 2021), the statutory salmon passes on both Little Test and Great Test presently have inadequate flow to allow salmonid migration. As we speak, using the hatch complex system here, the river keepers have already closed off some water channels to continue migration routes elsewhere. For example, the Garden Hatch at Testwood Mill is now dry to increase flows over the fish passes in the storm Hatches. Enough flow needs to be maintained to allow salmonid migration, which currently is not even considered in the SWS mitigation plans. These salmon which cannot run upstream out of Testwood Mill pool will effectively be trapped in the estuary where predation and mortality rates are highest. SWS's mitigation plan relies on unproven fish rescue from the river (see above), but if fish are forced out to the estuary they are still at risk. This is particularly unacceptable as SWS undoubtedly has access to excellent hydrological modelling resource and has had 3 years since the last Drought Permit application to engage with us in developing and testing a drought crisis hatch management plan. This modelling work has no bearing on the Access Agreement and did not require the Agreement to be in place to be undertaken. A point we made at the last public hearing.

7. Taken together points 5, 6 and 7 (mitigation issues) mean SWS has not met the requirements of WFD art. 4(6) (or WFD Regulations 2017, reg. 18) that requires '*all practicable steps are taken to prevent further deterioration in status...*' before a Drought Permit, varying an Abstraction Licence, can legally be granted. While it was accepted by the inspector at the public hearing in 2019 that this criterion had been met given the limited time between the s.20 Agreement being put in place and that application, we are now over 4 years on and the 'practical steps' test needs to be made against that passage of time and the missed opportunities described in points 5, 6 and 7. In addition, the 'all

practicable steps' requirement equally applies to the *prevention* of abstraction which lowers flows below the 355 mld HoF (at which point a WFD deterioration is risked, including deterioration of a long-term nature e.g. a reduction in salmon stocks), particularly by 'practicable' demand management measures. See paragraphs 17-18 below.

8. It should be noted that the EA when assessing the 'deterioration in status' element of the WFD concluded in its 2017 report on 'The fish community of the lower River Test that '*... the WFD status for fish of the lower Test waterbody is closely associated with migratory conditions between the estuary and the river for sea trout, salmon and eels and additional pressures constraining the success of one or more of these species can be expected to increase the probability of waterbody status deterioration.*' In other words, the migratory fish stocks in the lower Test water body are already in a vulnerable state close to the WFD status 'boundary', and so are easily susceptible to a WFD status deterioration from 'additional pressures' such as those likely to result from the present application.

9. Despite reassurances given at the last public hearing two years ago no progress has been made in providing real time flow data for public scrutiny.

10. Despite raising the issue at the last public hearing, we see no evidence that SWS are providing the EA with accurate empirical data on the actual levels of abstraction. As we understand it the reported abstraction is still a desktop estimate.

11. In the documents submitted with their application SWS have assigned a MODERATE risk to the likelihood of damaging the salmonid population. There is no definition or risk scale provided to support this conclusion and based on the acknowledged likely impacts and the precautionary principle the risk should be considered MAJOR. In which case the proposed mitigation plans are inadequate.

12. Insufficient consideration has been given to how the proposed the abstraction can be managed during each 24-hour cycle to minimise the impact of the thermal barrier to salmonid migration caused by low flows. Reference is made to SWS's modelling which suggest no more than 0.5 of a degree difference in water temperature caused by the additional abstraction and there is a further reference to a diurnal difference of 2 degrees. Reference is also made in the MMP to a study on daily

abstraction that started in 2019 and will not be completed until October 2022. This seems an unreasonable length of time to draw any conclusions. Given the sensitivity of salmonids to even the smallest changes to water temperature above 19 degrees the proposals should include more mitigation on how to manage the thermal barrier risks.

13. The presence of a thermal barrier on the Great Test in peak summer months has always led to greater numbers of fish migrating up the Little River from July onwards as evidenced by the EAs fish counters and on-site observations. Both the EA and SWS are well aware of the recent acute and underlying chronic issues of pollution into the Little River from the Nursling Industrial Estate. The chronic issues having been well documented over the last 20 years. The most direct mitigation of the thermal barrier problem on the Great Test, which means the migration has to take place up the little River instead, would be to directly address the Nursling Industrial Estate pollution but SWS's proposed mitigation plan completely ignores this opportunity. This is particularly important because the chronic pollution occurs at a rainfall event after a dry spell, thus washing off the oil and fuel deposits on the hard surfaces of the industrial estate to form a curtain of pollution at exactly the same time as the rainfall also stimulates salmonid migration. Both the EA and SWS have statutory powers to help address the chronic pollution from this site and both have taken insufficient action historically. On this basis we consider the EA is conflicted in assessing whether the submitted mitigation plans are acceptable or not without the inclusion of direct commitments to deal with the chronic pollution.

14. We are pleased to note that since we raised our concerns about the risks to the sea trout population at the last public hearing, and the Inspector's acknowledgement of the validity of those concerns in his final report, a survey of the Blackwater was undertaken in Aug 21. However, while the report contained numerous mitigation proposals, we see no evidence that SWS has undertaken the necessary stakeholder engagement and funding support for most of the recommendations. As a result, the mitigation plans do not satisfactorily address the known risks and are therefore not fit for purpose.

15. SWS claim in their submission it is impossible to know what impact a decline in sea trout stocks would have on the future populations of brown trout. This suggests a lack of rigorous research of the available data sources as various international sea trout symposium reports and Regional sea trout action plans from England, Wales and Scotland are available which clearly state, in river reaches with migratory populations, that 'most' brown trout recruitment is from large female sea trout and in some case up to 80%. Not addressing this issue properly in their Drought Plans

mean SWS are not properly addressing either the environmental nor the economic importance of the wild brown trout population of the lower reaches of the River Test and therefore the MMP is inadequate.

16. Based on their leakage report SWS has missed its leakage target in I.O.W. by c.50%. No explanation has been provided and the failure to achieve the target has created a 2.05 mld deficit. We understand the IOW receives at least 10mld a day of water from Testwood and therefore the failure to hit their own targets by 2.05 mld represents a missed opportunity to make a 20% reduction on the 10 mld demand placed on abstractions from Testwood. The EA's own policy guidance on making Drought Permit applications states that water companies must provide evidence of an acceptable leakage management performance before a drought permit will be considered.
17. SWS has not demonstrated sufficient consumer engagement to reduce water consumption. Their communication plan only refers to a 'potential radio/TV campaign whereas both South West Water and Thames Water are already conducting TV advertising campaigns to highlight the need to protect rivers and explain what their customers can do to help. In addition, we have no confidence the EA will compel SWS to implement Temporary Use Bans (TUBs) when the Drought Permit is likely to be implemented as it did not do so as a condition of the last Drought Permit following representations from SWS that placed its own and the EA's public relations over and above the protection of the environment.
18. We are also very concerned at water levels in the river Dever and whether this river is being monitored as part of the Candover Augmentation Scheme. We have requested information on this several times but had no definitive response. As we understand it the Candover bore holes are pumping water east to the Itchen as part of the augmentation scheme from the same aquifer that also supplies the Dever to the West. The Dever is VERY low. As the Dever is a Test tributary, this is robbing the Test to pay the Itchen at a time when the Test HoF, protecting its ecology, risks being infringed. If this is true, then the issue should be acknowledged and addressed in the Drought Plan for the Test.
19. Finally, we feel duty bound to re-iterate the fundamental issue which formed part of LRMs', BME's, Fish Legal's and HIWWT's objections to the last Drought Permit application, that none of the proposed monitoring and mitigation activity included in SWS's Drought Plan directly address the risks to salmonid populations in the depleted reaches directly below the abstraction point other than untested aeration and questionable fish rescue, both of which are crisis responses rather than long-term and preventative. SWS has provided an update on the progress of the Access

Agreement in their application. On request we would be happy to provide the EA with a chronological timeline of our engagement with SWS that demonstrates the current delay is entirely due to inertia and/or a lack of prioritisation on SWS's part to get the agreement finalised.

As a result of all the above points we believe the EA must refuse the Drought Permit application.