



Consultation Response

Southern Water's Water Resources Management Plan 2024

WildFish

WildFish is a charity which fights to protect the streams and rivers in the UK from pollution and over-abstraction. We have particular experience of the damage caused by over-abstraction in Southern Water's (SW's) Western and Central areas, particularly on the river Test Site of Special Scientific Interest (SSSI) and the river Itchen Special Area of Conservation (SAC).

Here we respond to the draft SW Water Resources Management Plan 2024 (WRMP). We address in particular the West and Central area arrangements as we believe these contain the most sensitive waterbodies affected by water resourcing.

Above all, in summary,

- There is a lack of transparency in the way in which information is presented;
- There are unreasonable delays in the predicted timeframe for the creation of alternative long-term supply sources;
- There is an absence of explanation for the extended time frames for alternative long-term supply sources;
- There is a lack of objective commitment to long-term projects and schemes to ensure environmental protection from abstraction;
- The current approach is a result of endless delay with a ceaseless shifting of targets;
- There are no alternative long-term supply options proposed in case the recycling and reservoir options are delayed or abandoned;
- The environment is used in the assessment as just one counter in a set of economic determiners;
- The WRMP is not consistent with the 2018 section 20 Water Resources Act agreement between the Environment Agency (EA) and SW;
- The Strategic Environmental Assessment (SEA), Habitats Regulations Assessment (HRA) and the Water Framework Directive (WFD) assessment

are defective because they do not properly consider the impacts of, in particular, increased abstraction from the chalk streams and their aquifers;

- The environmental assessments do not deal with the consequences of the EA's identification of a salmon *metapopulation* in the Test, Itchen and Meon;
- The WRMP therefore fails on all fronts: clarity, deliverability, environmental assessment and environmental protection.

Transparency

We note that this is the second incarnation of the report and that, although it is dated July 2024, it was only released publicly in September 2024.

The Aarhus Convention (which requires access to environmental information and public participation for such projects) dictates that where there is a "Collection and dissemination of environmental information" the process should be "transparent" and the environmental information should be "effectively accessible" (Article 5).

Where the public needs to participate in the preparation of a plan, under Article 7, then there should be a "transparent and fair framework".

The WRMP and its technical documents are made up of thousands of pages of dense, impenetrable text supported by spreadsheets. Although the detail is important, there is a lack of real overview. Headline issues are therefore masked or even absent from the documents.

In order for the WRMP to have a practical effect in the real world, it needs to have a clear strategy that is at once workable and understandable; understandable in so far as it is vital that OFWAT, the Secretary of State, the Environment Agency (and indeed all public participants in the consultation) are able to understand the calculations and headline figures for cost, deficit and surplus in supply as well as the environmental impacts of all the measures and projects contained within the documents. Ofwat, for instance, need to know where the investment will be made. They need to understand the timeframes and risks. They need to see a timetable for outcomes. It is not possible to approve an investment unless that is so.

There is no over-arching calculation of volume (both in terms of supply and demand) to explain (for instance) shifts in deficits as new sources come on-line. The technical reports such as "Growth Forecast Methodology"; "Demand Forecast"; "Supply



Forecast”; “Demand Management Strategy”; “Baseline Supply Demand Balance Situations” are obviously not meant to be read by the public as they are essentially opaque and unreadable. It is difficult to identify really basic issues such as the contribution and necessity of each water resource input and so on.

It is notable that there is no “critical pathway analysis” as far as we can understand. That means that projects that are planned in the WRMP have arbitrary end-dates applied. That also means that any statutory consultee or regulator (or indeed the public) is left without a full understanding of process and outcomes including objectively defined time-frames.

We struggle to see how the consultation is, for that reason, open and fair in terms of public participation.

Delay

We have also been unable to determine, essentially, the specific reasons for the target dates for completion of the long term projects and measures and why, and by what timetable, the deadlines for completion have been extended (i.e. we have the dates but not the reasons). There is absolutely nothing in the documents we have seen submitted for the consultation that actually set out the specific reasons for delay and timetables for review moving forwards. So the extended dates, for instance, of 2034/2035 appear to be plucked from nowhere.

Nevertheless, from the main WRMP document, the headline points are that since the last version, there have been increased delays in delivering four large projects.

The new version contains suggested “*mitigations*” including, “Promoting greater savings in water used in homes and businesses”, “*Delivering two groundwater schemes in Hampshire and one groundwater scheme in Sussex by 2030.*”; “*increasing the bulk import from SES Water into Sussex*”; “*Importing water from Norway*” and the Hampshire Water Transfer Project.

According to the WRMP, the reason for its redrafting and re-consultation was that it had to be amended to allow for delays to these key water resource supply long-term projects including the Havant Reservoir and the Hampshire Water Transfer and



Water recycling Project which would mean the reliance on drought permits and orders up to 2034.¹

The previous draft of the WRMP did not allow for reliance on these drought permits beyond 2029/30. It is notable that even the previous draft does not meet with the requirements of the s 20 WIA91 agreement where there is an obligation for the water company to use its best endeavours to cease reliance on the drought measures after 2027 (see below). The changes therefore required a new consultation.

It is indubitably the case that the wholesale failure in developing strategies for water provision in the past have meant that the situation has become complex and urgent with so many changes to be assessed in the WRMP and the associated technical SEA, WFD assessment and HRA/AA, that this makes the job of understanding and commenting on their efficacy extremely difficult.

Statutory basis

It is important to understand the statutory basis for the WRMP. The Water Industry act 1991 (WIA) instructs the water undertaker to “*maintain* a water resources management plan” (37A (1)), with annual updates on progress (37A (5)). But what we have in practice is not a maintained plan but a rattlebag of substantial revisions which mean that at every stage of review, there are new strategies and targets.

Furthermore, this must be put in the context of the 2018 Test and Itchen abstraction licensing appeal and the statutory agreement which committed the water company to stringent targets and to put in place long term measures. WildFish took part in an inquiry initiated by the EA’s intended “*variation*” of abstraction licences on the Test SSSI and Itchen SAC – iconic chalk streams.

Under pressure from WildFish, the EA had said it needed to vary the licences as they could not be certain that the existing abstraction limits were not having a significant adverse effect on these protected rivers.

An agreement (made under section 20 WIA) was reached between the EA and SW to allow the EA to reduce the amount the water company could abstract from the

¹ See, for instance, p 23, SW WRMP



Test and Itchen and from groundwater. But the bargain struck maintained that the water company could continue to use drought permits and orders on condition that it had in place long term measures such as desalinisation so that the need to take extra water above normal abstraction levels would end by 2027 when the long-term measures would be in place.

WildFish and some other NGOs put forward an amendment to the agreement to prevent the avoidance or delay of “*urgent and necessary investment*” and for the water company “*to use all best endeavours to implement the long-term scheme for alternative water resources*” with an objective to stop using drought permits and orders except in extreme events by 2027.

Post s 20 agreement

As the WRMP explains in its potted history, the outcome of 2019 Price Review following the inquiry and the signing of the s 20 agreement then fed into the WRMP through an ironically named, “*gated process by the Regulators’ Alliance for the Progression of Infrastructure Development (RAPID)*”. This was then followed by a “*Future Needs Assessment*” (p.49); more distractions which no doubt led to further delay and reversals in strategy.

Since then, the long-term strategies referred to in the 2019 WRMP have morphed into completely different schemes or have lapsed: the desalinisation project has been dropped (taking until 2021 for SW to decide it was not a runner under the “RAPID” system (see p 50)); Havant reservoir which was due for completion in 2029, has been pushed further back; long-term goals for reductions in leaks and reduction in demand have not been met. Even in the last iteration of the WRMP 2024, the Havant Reservoir and Hampshire scheme were said to have a target of 2029-30 and 2030-31 respectively. Now the target has slipped to 2031-32 and 2034-35 in the new version of the WRMP24, with a long-term strategy of terminating the use of all supply-side drought permits and orders dragged-out to almost 20 years from now (p 26). We effectively have a new suite of measures when compared to the 2019 WRMP that will necessitate large scale regulatory and permissive hurdles to be crossed.

The consultation on the Hampshire Water recycling, for instance (with its planning and DCO requirements and incomplete, high level environmental assessments) was



only recently convened. The question arises, what has been happening in the last 6 years?

Compliance of WRMP with WIA 1991

The problem with the endless shift in dates is that it is not what is meant by “*maintain a water resources management plan*” under s 37A WIA 1991. If that were the case, we would never have an end goal as it would be continually deferred when the company simply changes the strategies and the dates for completion. The aim of this section is for the water company to apply itself to the goals – not to move them. It also begs the question, how many iterations and across how many years does it take for a water company to select a viable long term strategy or project?

Understandably, the water company has Ofwat on one shoulder calling for costs to be kept to a minimum with a vaguely aligned Price Review process, and a reluctant EA on the other, weakly exercising its regulatory and consultee function.

But the fact is that there has been very limited progress from 2018. It is difficult to think of what has actually progressed in 6 years, other than some initial work on Havant and a number of consultations with little in the way of planning steps being taken. It is also disappointing that nowhere in the documents, despite the endless lists and graphs provided for the consultation, is there a full explanation of the causes of delay for the projects and how the goals will be achieved.

Using process to delay

The document claims that it conforms with the National Framework (which introduced the regional planning programme); “Best Value Planning” (a cost benefit analysis with many different inputs of which the environment is just one); the “adaptive planning approach” which makes good use of “uncertainties” to vary targets; and the Water Resources Planning Guideline (see page 39 WRMP onwards).

Although the document at page 28 discusses the problem of uncertainty, it is treated almost as a reason to vary the obligations to build schemes to meet demand. We are told that



“to manage uncertainty, we have used an adaptive planning approach. . . . We are therefore also developing a Monitoring Plan that will allow us to accelerate and/or pause activities to adjust to and manage these uncertainties. We recognise that many of these solutions may not have been tested at the scale we are proposing, and we will work with customers, suppliers, stakeholders and regulators to improve the maturity and deliverability of these ambitious schemes.”

That is all very well, especially if it brings back second-choice schemes as an insurance against failure (which has not happened). But the explanation is vague and appears to add yet another “method” to shield the water company from tangible action. The whole approach seems to lack the commitment necessary to progress and meet targets, as per the requirements listed in 37A-D of the WIA 1991.

Part of the difficulty for SW is that it has wholeheartedly embraced the concept and system of “Best Value Planning” (effectively a cost benefit analysis where the environment is just one small part of the metric). In the end, it provides scope for the water company to obfuscate its calculations. The government’s Guideline expects the inclusion of a number of considerations, numbering 20 (21 for Wales) of variables, obligations, concepts and economic considerations with some environmental aspects included; but a strong necessity for *“distributional impacts, societal equity and intergenerational equity considerations transparently discussed.”* So it places the onus on the water company to give what weight it thinks appropriate to environmental factors in its Best Value calculation. In the current draft of the SW WRMP, it appears that the water company has merely gone through the motions to produce a calculation with an outcome that is unsatisfactory for the environment.

The s 20 agreement commitments and progress

As above, the water company is obliged under the statutory s 20 agreement to use its best endeavours to progress matters with regard to the long-term measures; but we see only a lack of progress and further divergence from the 2027 deadline to avoid using drought permits and orders.

The EA has confirmed in a letter to us dated 2 September 2024 that they have *“been in dialogue with Southern Water about re-consultation of their proposed draft*

WRMP24” and that the EA had “reminded Southern Water that they need to consider the s20 Agreement in these programmes of work.” We are unaware of whether there is further progress in such discussions.

The EA also confirmed that there is a public aspect to the agreement which requires further participation in ensuring it keeps to the intended conditions from the 2018 appeal hearings which were compromised by the agreement:

“If we propose to vary the s20 Agreement, we will give the interested parties who participated in the Inquiry the opportunity to provide representations, and we will take any representations into account before any variation is entered into. Given the involvement of the interested parties at the Inquiry, and their input into the s20 Agreement, we accept that this would be the right thing to do.”

We note that the current draft WRMP refers on several occasions to the agreement and the necessity of compliance:

“The process agreed by the Environment Agency and Southern Water by which we will apply for use of drought permits and orders in Hampshire is set out in the agreement we signed with the Environment Agency under Section 20 of the Water Resources Act 1991. The agreement was signed in 2018 and is due to expire in 2030. We will therefore need to discuss any implications of our extended timelines with regard to the Section 20 Agreement with our regulators.” (p 24)

Yet the outcome appears to be that there will be insufficient long term measures in place to cope with demand and future droughts, except for the most unsatisfactory plans:

For instance, we are told at page 28 of the WRMP that reducing abstraction in licences has been the reason for reliance on drought permits (an argument of pure sophistry),

“Without extending the use of the Candover and River Test drought options up to 2033-34, we are unable to meet supply-demand balance in the Western area during a drought for the period 2030-31 to 2033-34. We have included the option of importing up to 45Ml/d of water from Norway via sea tankers in

the event of severe droughts between 2030-31 and 2033-34. This option has significant uncertainties around deliverability and water quality that will need to be resolved by 2029-30. However, even when included, the sea tankering option only serves to reduce to the volume required from the River Test drought option. It does not reduce or eliminate the need for the Candover drought option” (p28)

Therefore, there is an acknowledgment that even if the Norway plan is triggered, there will be a continued use of the drought permit from Candover.

Board “assurance”

At page 29, in the “Board Statement”, it is explained that

“the Board is assuring the differences between the draft WRMP24 and the rdWRMP24. In doing so, we confirm that we are satisfied that the Company’s rdWRMP24 for the period 2025 to 2050:[. . .] . .

- the Company has used all best endeavours to develop a plan to address delivery of the long-term scheme for alternative water resources in accordance with the agreement made on the 29th March 2018 under section 20 of the Water Resources Act 1991 between the Company and the EA;*
- the Company continues to progress with the development and consenting process for the delivery and utilisation of the long-term scheme in accordance with its projected timeframes. Those timeframes, reflecting on-going engagement with the EA and NE, have been agreed by the Board in the expectation that those development and consenting processes will receive support and approval from relevant regulators in order for them to be achieved.*

The conclusion that the Board has reached (that all best endeavours have been used or that progress has been made with long term strategies), can only be correct if the agreement is treated as an empty cipher with no substantive obligations: i.e. that the *proposed* long term measures can change from year to year and extend the deadlines with vague assurances that we have a plan. The test is that (as detailed above) since 2018, there is very little change: one long term measures abandoned;



“uncertainties” over outcome and deliverables; limited groundwork and planning and so on.

We fail to understand how this is using “*all best endeavours*”.

Furthermore, the document at page 30 asserts that:

“the Board fully appreciates that the continued use of drought options (until our longer-term infrastructure is operational) present concern [sic] but understands that their inclusion is aligned with WRPG and in terms of the best value planning requirements, represent the best value option overall.”

The Best Value Planning concept is not, as far as we understand, implied in the s 20 agreement. And the guide certainly does not say that a water company may rely on drought measures to meet deficits because of delays in deciding on and preparing long term measures.

As matters stand, with increasingly distant targets for dispensing with reliance on drought measures, the targets will be left unmet before the agreement expires.

That not only means increasing time scales, but also an absence of strategies for dealing with drought (as per the existing s 20 arrangements in the schedule) as that will have lapsed along with the agreement.

Consistency with other plans

We understand that the Business Plan will be signed off by Ofwat before the WRMP is agreed by the secretary of state. The drought plan will not be published until 2026 but it will be “*entirely consistent with WRMP2024*” (p47)

In their response to Ofwat’s draft determination of PR24 investment by the company they make the point that their ability to achieve goals including the construction of projects such as the water recycling and so on are threatened by constraints on spending.

For instance, at page 4 of the response, SW opine that,



“In this response, we outline why essential changes are required ahead of Ofwat’s Final Determination. In its current form, Ofwat’s Draft Determination will not support the sheer size and complexity of investment needed to run the business sustainably, to meet either our legal obligations or our customers’ ambitions. We provide further evidence to inform the right decisions, that sets a fair balance between funding, allowances, and operational targets to ensure we avoid the curtailment of vital investment over the next five years. We would expect to engage with Ofwat over the next few months with a mutual aim to achieve an improved Final Determination. . . .²

Although we believe that the expenditure necessary to meet the targets to protect the environment and reduce environmental damage should be borne by the water company, the priority is that the work is done and the goals are achieved. That priority must be met. Ofwat in their draft determination make it clear that the reduction is not significant enough to prevent SW meeting its targets to provide infrastructure:

“We allow Southern Water to spend a total of £6.9 billion in the 2025-30 period. This is £964 million lower than Southern Water asked for. It is significantly more than Southern Water’s allowance for 2020-25, which was £4.1 billion.”

Of course, we disagree with Ofwat’s approach. But even if the water company is demanding an *“Increase [for] totex allowances to a level where we can sustainably run the business and deliver a step change in investment for customers and the environment”*, it is incumbent upon the water company to meet goals in ending the use of drought orders and producing plans and to find the necessary supply – whatever that takes.

Environmental assessment

It must be remembered that SW take water from some of the most important chalk streams and rivers in England, as well as from the hydrologically-linked groundwaters that surround them. Any effects of such abstraction are therefore likely to have direct

² Our response to Ofwat’s draft determination on our Business Plan for 2025–30 August 2024 [dd-final-sept-2024.pdf \(southernwater.co.uk\)](https://www.southernwater.co.uk/dd-final-sept-2024.pdf)



impacts on those waterbodies. It is worth repeating this as the technical documents dealing with environmental impacts underplay the chalk stream element as a minor consideration within the (over) 600 pages of analysis.

The WRMP at section 8, page 240 of the document, sets out an overview of how the key environmental assessments work in relation to the WRMP.

It is explained at p 241 that, *“Following evaluation, we selected 85 preferred supply options as well as 10 generic drought options and 16 demand management and leakage options for inclusion in our revised best value draft WRMP24 (rdWRMP24).”*

It is notable that “best value” is included here in the summary of the environmental assessment. Yet “best value” is not a determiner or a metric for environmental impact. Matters are further confused as what should be a high-level environmental impact assessment gives parity to supply-side and demand-side options.

As an overview process, the note at page 241 says that, *“Many of the options have been revised from the draft WRMP24, with delivery delayed in the rdWRMP24 to allow sufficient time for investigation and consideration of additional mitigation options.”* But the detail has been left to another day. This effectively admits that the assessment is, on the whole (and despite the sheer length of the documents), cursory, and means that our ability to comment on proposals is difficult.

Metapopulations

We are extremely concerned that the environmental assessments presented with the WRMP treat the rivers Test and Itchen and the species they hold, including salmon, as distinct. The ecological interconnectivity of the rivers has been ignored in the assessments. That means in turn that the assessments contain huge information voids. That is certainly an important oversight.

The report entitled *“Upper Itchen estuary water quality monitoring & relevance to Atlantic salmon conservation”* by the EA February 2024 reaches conclusions regarding the interaction of salmonid populations and relationships between salmonids and their habitats within the Itchen (SAC), the Test and the Meon; this is in the context of potential impacts of permits on all three rivers – particularly drought permits. The report says that *“. . .drought conditions tend to lead to longer estuarine*

residence times for salmon, a higher degree of failed river entry and poorer condition. It is normal for salmon from neighbouring rivers to mix in the estuary and to reside in that of a neighbouring river for a prolonged period (Solomon, 2004). Radio tracking also indicates that they may make extensive upstream and downstream movements with the tide during estuarine residence (Priede, 1988).

The report concludes that *“the Test, Itchen and Meon salmon populations should be conserved collectively, as a meta-population whose component rivers confer a degree of resilience and likelihood of recovery on one another. Harm to one component river inherently reduces collective resilience and stability.”*

In the EA’s response to a WildFish query regarding metapopulations of 4 June 2024, the EA confirmed that:

“Our decision to treat the Itchen, Test and Meon salmon population as a meta-population is a recent one, and we are aware that a consequence is the need to apply the Habitats Regulations to those other rivers, possibly including the Solent too. Furthermore, we are aware that Natural England recommended to Defra that the Rivers Test and Meon be designated as SAC in their own right, for multiple interest features including Atlantic salmon. We are also aware that Natural England has informed both Southern Water and Thames Water that they should treat the Test and Meon as designated.”

Above all, this has consequences for the WRMP and the s 20 arrangements for drought conditions. For instance, the SEA assessment of the uptake of headroom within licences affecting the Test will need assessing under the Habitats Directive and Regulations in terms of the impacts on the common salmon population it shares with the Itchen; there will also need to be full assessments of the impacts of existing licences on all these rivers and those where the impacts occur on a secondary basis due to abstraction from groundwater affecting the water table and river flow in both rivers.

With the tankering of water from Norway, the receptor streams are at risk of pollution or the spread of disease and water-borne parasites. Assessment must be made on the basis of the interconnectivity of the rivers as habitats (not just the Test). Again, the SEA, HRA and WFD process ignore this crucial point and therefore reach invalid conclusions which downplay risk and potential adverse impacts.



Without such assessment, the SEA and HRA/ WFD assessments are incomplete.

Strategic Environmental Assessment (SEA)

The SEA July 2024 Version 4 explains that it is setting out the baseline conditions and likely evolution (para 3.1). This version is more readable than previous iterations as, for instance, it includes the proper titles of proposals/ schemes and strategies rather than having to cross-reference the annex key. Although it is a high-level document, it is still expected to encompass the projects contained within the WRMP with sufficient detail to understand the totality of the potential effects of the proposals.

The 2024 SEA includes assessment of the more obvious water use / demand reduction measures, leakage reduction and the large-scale strategic proposals such as the reservoir and water recycling options. However, the SEA (which is structured around areas - Western, Central, Eastern - and WPZs) contains randomly-listed options, mixing up demand-reduction, increased abstraction, drought orders, large schemes and so on, into an undifferentiated list, rather than considering similar supply or demand options together.

The SEA also includes a high number of re-instated and new groundwater sources, interspersed with other measures, described in euphemistic and confusing terms (“enhancement”; “removing constraints”; “refurbishing” and “recommissioning”) including the following:

- *“removing constraints at Newbury groundwater source to increase yield (1.2MI/d) from 2027-28;*
- *drilling new boreholes at Romsey to provide 4.8MI/d from 2030-31;*
- *removing constraints and Kings Sombourne groundwater source to provide additional 2.5MI/d from 2030-31;*
- *implementing Test MAR groundwater scheme to provide up to 5.5MI/d from 2035-36;*
- *drilling new boreholes at Newchurch groundwater source to increase yield by 1.9MI/d from 2036-37;*

- *drilling new boreholes at Eastern Yar3 groundwater source to increase yield (1.5MI/d) from 2039-40;*
- *reinstating West Chiltington groundwater source to provide up to 3.1MI/d from 2028-29;*
- *refurbishing Petersfield groundwater source to provide up to 1.6MI/d from 2028-29;*
- *drilling new boreholes at Petworth to provide up to 4MI/d from 2030-31;*
- *asset enhancement at Lewes Road groundwater source to provide up to 3.5MI/d from 2030-31;*
- *Eastern:*
 - *recommissioning Gravesend groundwater source (2.7MI/d) from 2030-31;*
 - *reconfiguring Rye Wells to provide up to 1.5MI/d benefit from 2039-40;*
 - *raising Bewl Water by 0.4m for up to 3MI/d benefit from 2060-61;*

There then follows a table of “Key issues” under various “topics”, some of which are relevant to water resources and some of which are highly peripheral (e.g. “Soil”, “Historic Environment”, “Landscape”) and certainly not key pressures or topics for a WRMP with equal weighting to the environment.

The headings are taken from Annex I of the SEA Directive. However, Annex I (f) is clearly a general, suggestive list. The Directive proffers potential thematic areas for a report including, (“f) *the likely significant effects (1) on the environment, including on issues **such as** biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors*” [emphasis added]).

Clearly, the choice of “topics” should be determined by context. Taking this list at face value means that it is easier to balance environmental harm against economic gain and to avoid proper scrutiny of the issues that matter – i.e. obvious consequences of

removing too much water from groundwater or rivers. But it also leads to absurdities where an obvious environmental harm is also described as a positive gain.

Population, as one such “topic”, for instance, is defined by a list of issues that are not strictly relevant to assessing wider environmental impacts in an SEA:

“The need to ensure water supplies remain affordable especially for deprived or vulnerable communities, reflecting the importance of water for health and wellbeing.

■ *The need to ensure water supplies contribute to improvements in levels of health, particularly in urban areas and deprived areas.*

■ *The need to ensure water quantity and quality is maintained for a range of uses including tourism, recreation, navigation and other use such as agriculture.”*

Affordability is not an environmental issue. It is up to Ofwat and the water company to determine this separately from supply and resourcing. The inclusion of health and welfare components of an assessment (along with tourism and business) simply confuses and skews the outcome of the assessment.

One assessment of a drought option for abstracting more water from the Itchen, for instance, under the heading “*Population and Human Health*”, “the column headed “*Significant effects identified*”, tells us that:

“A significant positive effect has been identified, associated with the maintenance of public water supplies in drought conditions within the Hampshire Southampton East WRZ as follows:

- *Drought option - supply side (HSE): Lower Itchen.”*

But apart from the fact that it is obvious that more water is welcomed by profligate consumers, the whole point of the SEA is to assess environmental effects (which are in the main those adverse effects on the environment) not to perform a cost-benefit calculation where biodiversity is in the minority of topics.

That is why using this method, it is unsurprising that the findings of the report are that there were 14 significant negative effects relating to non-essential use bans in respect of *health and well-being*, and yet there were only 11 negative effects on



biodiversity found out of all the proposals (drought order measures and permits at Candover and the Itchen included). The take-up of headroom in existing licences did not feature in this list.

It is very apparent that the options appraisals overwhelmingly class the impacts of measures including increased abstraction (by whatever form) as neutral. In the table of impacts, there are very few red-marked, significant negative biodiversity impacts (though there are some absurd positives for the same activities). We struggle to see how a drought option which restricts use could have serious “*health and wellbeing*” impacts.

Under the heading “*Cumulative effects of the revised preferred programme*”, for instance, we are told for environmentally damaging options, “*for the preferred programme of options, cumulative significant positive effects have been identified for the resilient and reliable water supplies SEA objective and health and wellbeing SEA objective in the operation phase*”.

Although “*significant cumulative negative effects*” are identified for the construction phase for biodiversity (which should really be the key topic), we are told that “*the HRA concluded that no adverse effects on European site integrity are anticipated as a result of the options in combination*” though there are some uncertainties with regard to desalinisation.

It is extraordinary that with the renewed use of unused abstraction sources, further boreholes, anticipated use of drought permits and orders, that such a conclusion could follow. It may well be that this is the result of the mixing of advantages with impacts (e.g. the lumping together of real impacts on biodiversity which are underplayed and such positive scores as water “reliability” which in any calculation cannot be signals of environmental benefit).

Time and time again in the WRMP, an increase within licensed abstraction volumes is seen as having a neutral or minor impact for abstractions. That is because it appears to be assumed that licensed volume is the baseline for assessment, when that is clearly not the case.

With Kings Sombourne, the drilling of a new borehole in order to increase the abstracted amount up to a licensable amount is not “neutral” and would presumably require a new licence or variation of the existing one and a proper detailed assessment of impact.

The entry in the table for Romsey says this:

The existing boreholes and well/adits that supply Romsey WSW are either out of service or operating below their full capacity due to water quality issues. This option proposes 3 replacement boreholes to increase and recover DO on site. Total source output on delivery of the scheme would be 13.7Ml/d. No additional treatment is required. Replacement borehole locations are distant from existing borehole locations and require new pipelines to connect to the WSW.

So, there will be new boreholes but they are “distant”. That would presumably entail a new application for a licensable operation and given the impact on groundwater and river levels, a full assessment of impact. But the revised HRA annex does not suggest that there are likely significant adverse effects, which means that the actual impacts of such an uptake of water are ignored.

For the Chilbolton groundwater abstraction point in the headwaters of the Itchen, it is indicated that “*Recommission Chilbolton (0.5Ml/d), has been assessed as having one moderate negative effect against the resource use SEA objective for the construction phase. Minor negative effects were also identified for this option against the biodiversity, soils, air, carbon emissions, landscape, historic environment, health and wellbeing, and tourism and recreation, SEA objectives.*”

As for operational effects, there were “*No significant positive effects [. . .] identified during assessment of the four options for the operation phase.*” That being said, it is concluded counter-intuitively that “*a range of minor positive effects were identified against the biodiversity, water quality, water reliability, carbon emissions, climate change, landscape, historic environment, health and wellbeing, and resource use SEA objectives*”

With Candover/ lower Itchen, the abstraction in times of drought, there is some acknowledgment of impact but, again, that is skewed in the strange balance of

impacts and advantages. The “*demand side*” reductions (NEUBS) in the form of drought options were negative in that they impacted “*health and wellbeing*”, potential “*loss of businesses*”.

For the drought provisions for the Test, it was “*assessed to have a moderate negative effect against the Biodiversity SEA objective during operation, based on uncertainties arising from a paucity of ecological evidence to determine potential impacts on designated sites (i.e. the Revised Draft Water Resources Management Plan 2024 Annex 17: Strategic Environmental Assessment - Environmental Report)*”.

It is surprising that the work has not yet been done to assess impact.

Any intention to abstract water in times of drought would need to comply with the s 20 agreement which requires careful consideration of ecological evidence, baseline surveys and steps to mitigate or compensate. Activities on the Test also impact the Itchen and *vice versa*. There is no evidence of this having been taken into account (see below on metapopulations). There would also need to be a full HRA even if the Test SSSI lacks a Natura designation due to the salmon metapopulation which shares salmon with the Itchen (see below). There is no evidence that that has been the approach here.

Sea Tankering – Norway option

It is recorded that:

“Sea tankering from Norway (45Ml/d) was identified as having a moderate negative effect against the biodiversity and carbon emissions SEA objective during the operational phase. . .

“Moderate negative effects were also identified for Drought option - supply side (HSW): Sea tankering from Norway (45Ml/d) against the water resilience, air, landscape, historic environment and tourism and recreation SEA objectives. Minor negative effects were identified against water quality, carbon emissions, and material assets SEA objectives.

However, there are a number of unanswered questions regarding the unintended transportation of invasive species or parasites. It is not clear that this has been looked at properly. The possible impacts have been downplayed.

With the large-scale measures, the potential impacts of construction phase are more obvious but dealt with more consistently than the other measures though not enough detail to assess impact of, for instance, tunnelling under protected rivers.

Habitats Regulations Assessment

On page 243 of the WRMP we see the following which sets out SW's approach to its assessment of impact on protected sites:

“The HRA screening is precautionary, and to be compliant with case law, does not take into account the effects of mitigation measures. In consequence [sic], the majority of options needed to be screened for the more detailed appropriate assessment as significant effects were considered either likely or uncertain for a range of European sites. However, once the appropriate assessment was able to take into account the nature of the options and the potential for mitigation through scheme design and delivery, the September 2023 HRA (Annex 18), plus the July 2024 HRA Addendum (Annex 18A61), concluded that for virtually all of the rdWRMP24 options, there will be no adverse effects on any European protected sites (and Ramsar sites) that cannot be reliably avoided through scheme design or mitigated with measures that are known to be available, achievable and likely to be effective at the project-level. However, it is recognised that there are some residual uncertainties associated with some options due to the absence of detailed design and the long planning horizon for delivery. In these instances, this does provide substantial time for any residual uncertainties associated with these options to be resolved and (if necessary) the option set aside and replaced in future WRMP cycles. The HRA of the rdWRMP24 provides a strategic, plan-level assessment to support the WRMP. It is not an application-specific ('project' level) assessment. A more detailed, project-level HRA (with Stage 2 Appropriate Assessment where required) will be needed to support any actual planning application and environmental permit or consent.”

It is surprising that increased abstraction from chalk streams would not suggest adverse impacts (or ones which could not be mitigated). That is probably due to the nature of the “strategic level” of the assessment rather than the real potential outcomes of increased abstraction.

We concentrate here on the impacts of the use of existing headroom within licensed abstractions. The approach taken by the water company in the HRA is described here:

3.2.20the HRA of the WRMP is necessarily a forward looking assessment of the specific options (feasible and preferred) proposed by the WRMP to resolve deficits; it does not (and cannot) re-litigate the existing licences agreed for the planning period (and hence the WRMP supply-demand baseline) since there has to be a starting point / basis for the development of the WRMP (i.e. the modelling / optioneering process cannot start with the assumption that no current consents are reliable; and the HRA of the WRMP does not and cannot determine the licensing baseline from which the supply-demand balance is calculated).

3.2.21In some instances, when considering water that may be available from existing sources, consultees have indicated that consideration of ‘recent actual’ abstraction is more appropriate than the currently licenced maximum, particularly for waterbodies that are considered ‘over-licensed’; it is understood that these licences have been identified to SWS during the plan-development process and factored into the supply-demand balance calculations.

As for how such an approach could comply with the Habitats Directive requirements, the HRA explains that it falls back on the existence of a review process:

3.2.17 For existing abstraction licences and their consideration in WRMPs, the requirements of Reg. 9 are in part met by the Environment Agency and the water companies through the licence review arrangements and protocols that are implemented at the start of each WRMP cycle, which also take account of the Environment Agency’s requirements through the Water Industry National Environment Programme (WINEP). This review process (and WINEP) is

undertaken in conjunction with Natural England, which identifies protected sites (including European sites) to the EA where it believes abstraction-related issues are affecting the achievement of favourable conservation status (these may or may not be subject to current WINEP investigations).

With respect, the HRA is of the “plan”: the WRMP and its options for sourcing water. One such set of options in the WRMP is to take the available headroom from the existing licensed abstractions. But for the purposes of the HRA, it matters not whether the extra headroom has been licensed: the plan is to use the headroom to meet demand. So, the HRA needs to look at the impact of taking that extra amount. That has not been done here, so the assessment is incomplete. The approach described at 3.2.27 is clearly wrong and unlawful:

“Options that are within the terms of existing licences and recent actual abstractions (e.g. options to repair underperforming boreholes) are typically considered to be acceptable where these have not been identified to SWS or the EA as licences requiring investigation, and where the Abstraction Licensing Strategy (ALS) indicates water is available for licensing.”

It is not the job of an HRA to ignore impacts and effects where they are licensed

This approach leads to some extraordinary conclusions including with the proposed “increase of yield” at Newbury, that, *“The scheme is an alteration to an existing asset to maximise pumping capacity and within existing licence constraints, therefore no LSEs [Likely significant effects] are anticipated”*.

The *reductio ad absurdum* of such an argument is that the mere lawfulness of an act (by virtue of a permission) means that there can never be a likely significant effect.

Yet, the authorities are clear that existing licences and permissions should still be subject to full assessment (e.g. pre-existing practices)³ and for reviewing existing licences for abstraction.⁴ It is also clear that there would need to be an assessment of

³ *Dutch Nitrates - Cooperatie Leefmilieu Mobilisation Case Cfor the Environment and 293/17, C Vereniging294/17 CJEU)*

⁴ *Harris & Anor v EA [2022] EWHC 2264 (Admin).*

the cumulative or in combination effects even if the current use (i.e. volume abstracted) is taken separately from the proposed use (the uptake of headroom).⁵

The same approach is taken with Romsey (new boreholes proposed but apparently under the same licence). And the addendum HRA includes the same reasoning for King's Sambourne (i.e. changes to abstraction but within licensed abstraction volume).

WFD

The WRMPG says that the WFD considerations are a constraint on the WRMP schemes, so it is important that they are considered in full by the water company and the EA.

The WFD assessment dated 2022 describes the WFD objectives as follows:

“The WFD’s key objectives are general protection of aquatic ecology, specific protection of unique and valuable habitats, protection of drinking water resources, and protection of bathing water. All objectives are integrated for each river basin, and the last three to specific bodies of water that support special wetlands, are designated for drinking water abstraction, and bathing areas. Ecological protection should apply to all waters”

With respect, this is misleading. The objectives of the directive are set out under Article 4. They do not include protection of drinking water sources or bathing waters. For surface waters, the objectives are to “*protect, enhance and restore all bodies of surface water*” “*with the aim of achieving good surface water status*”. Crucially, “*flow*” is a quality element in establishing status.

We say that not to be pedantic but because the approach to assessment seems to take into account irrelevance that could skew results.

⁵ See for instance *Preston v Cumbria* [2019] EWHC 1362 (Admin) where United Utilities unsuccessfully argued that the permission for a pipe could be separated from its use to discharge treated sewage, avoiding the need for an appropriate assessment).



The addendum document deals with additional schemes but appears also to deal with the absence of drought permit assessment. It indicates that,

“All five options were taken forward from Stage 1 to Stage 2. At Stage 2 the following conclusions were drawn:

■ *One option is anticipated to be potentially compliant (with medium confidence);*

■ *Two options are anticipated to be potentially compliant (with low confidence);*

■ *Two options are anticipated to be potentially non-compliant (with low confidence).*

No options were identified as being non-compliant (high confidence).

We are extremely concerned that the confidence hurdle – roundly criticised by the OEP in their assessment of the EA’s WFD implementation – also infects the SW WFD assessment. Low confidence is far too often used as an excuse for inaction as it effectively says, we cannot say if there is likely to be an impact on the status or to cause a deterioration as we don’t have sufficient information. It kicks the can further down the road and can lead to situations where plans can proceed as impacts cannot be proven. Of course, the inverse is true when the Habitats Regulations are engaged as uncertainty means that a project cannot proceed (though we say the HRA as described above is also defective).

The assessment does not include drought options for permits and orders except for use restrictions (which are obviously beneficial for the environment; not so the abstraction of water in times of drought). That cannot be correct as they form part of the WRMP proposals.

The optimism over new abstractions including at Chilbolton (0.5MI/d), Kings Sombourne (2.5MI/d) and Romsey – that they will not impact status - appears misplaced and unreasoned.



We note that with regard to some of the larger schemes involving river crossings, assessment has been effectively omitted. The 2022 WFD assessment indicates that *“the assessment assumes pipelines are underground (directionally drilled or pipe-jacked beneath any water courses) and therefore will not cross watercourses above ground or cause direct impacts.”*

But it is not clear whether, for instance, areas will need to be cleared in and around crossings which would require assessment due to sediment/ silt run off and so on.

Conclusion

Overall, we say that the WFD assessment, as with the overarching SEA and HRA, is defective. Despite the fact that it leaves assessment of impact to some later date (which is in itself a problem given that the WRMP containing the options is a statutory document which is intended to be signed off by the Secretary of State), the approach that is taken seems to us to be at odds with what is required under the Directive and implementing Regulations.

Our aim is not to defer and delay the progress and the implementation of the schemes discussed in the WPMP. But we are concerned at the lack of commitment and speed with which the options are being implemented, which means that the chalk streams of the south are under increasing threat from existing and future abstractions. These schemes have changed and shifted with increasing delay and no real sense of urgency.

On the other hand, the environmental assessment of impact, particularly of increased abstraction from existing arrangements, drought permits and orders, is defective, lacking in scope and suggests that there are real threats to the health of the rivers in the affected catchments.

We believe that if the Secretary of State is minded to approve the WRMP and its supporting documents, there must be a legally binding requirement for proper assessment and the timetable for the long term measures to be supervised closely by Ofwat and the EA.

WildFish.

The documents will need to be amended to allow for the metapopulations analysis; the section 20 issues will also need to be properly addressed.

As for the options of increased abstraction, they should be abandoned.

Justin Neal
WildFish
November 2024

Admin Office
PO Box 2412, Salisbury, SP2 2QN

T 07496 358 016
E info@wildfish.org

wildfish.org