

Southern Water – River Test drought order applications 79A of the Water Resources Act 1991 (WRA) dated 31 July 2026

WildFish OBJECTION to Drought Order application - 11 August 2026

1. WildFish is an environmental charity dedicated, *inter alia*, to preventing harm to the ecology of rivers from over-abstraction. We have been involved in campaigning to end abstraction on Chalk Streams such as the Test and the Itchen for some time including providing evidence at an inquiry in 2018 and a Drought Order application hearing last year.¹
2. A statutory notice application for a drought order (DO) has been made by Southern Water Service Ltd (SWS) under 79A of the Water Resources Act 1991 (WRA) to abstract over the licensed amount dictated by the hands-off-flow (HoF), reducing it from 355 Ml/d to 265 Ml/d.² The disapplication of the HoF may take effect for 6 months.³ At the same time, SWS is making an application for a non-essential use ban (NEUB).
3. We do not object to the NEUB application. We do object to the Drought Order application for the reduction of the HoF.
4. Abstraction beyond the current hands-off limit would have a very significant effect on the river and its ecology particularly in times of high temperature and low flow. The Test SSSI is a chalk stream which supports a highly sensitive ecological system that requires healthy flows of clean water for invertebrate and fish life to thrive.
5. If water is abstracted from the Test and it sends the river levels way below the HoF safeguards, the water shallows, increases in temperature, decreases in oxygen levels, stresses fish and causes fish-mortality, prevents migration and

¹ At a one-day hearing in September last year, in which WildFish was the sole objector actually taking part, we argued that the water company had found itself in this situation because it had not done enough to offset demand and to put in place long-term and alternative measures for water resourcing early enough. We also said that there were defects in the way that the water company had assessed the impact on the river in its assessment as well as the uncertainty in compensation and mitigation measures suggested. The EA later added in their Advice note, “*the rushed nature of this application by SWS has failed to demonstrate the need at this present time.*”

² SWS’s River Test Stage 0.1 Drought Order Application – *Part 1 Documentation*, 31 July 2026, page 5.

³ The draft order suggests up to 6 months, as per the legislation, or an earlier end date. But see the HRA which seems to threaten a longer duration if an extension is required “The proposed end date would be six months after the date that the order starts, or a date mutually agreed with the EA when the threat to public water supply has passed [1.3].”

wipes out invertebrate communities with short and long-term effects on the river ecology.

6. The application must also be seen in the supply-side 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.⁴
7. Since then, the long-term strategies referred to in the 2019 WRMP have evolved into completely different schemes or have lapsed. 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. 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. That in turn means continuing reliance on unsustainable DOs with no significant indication that this will end before the stated 2027 cut-off date in the s.20 agreement.

(A) Delay in reducing demand

8. Aiming to reduce demand in times of drought is a requirement that rests on the shoulders of the water company. SWS make much of the reduction in leakage and the work to inform customers of the shortage of water as a soft option for changing habits. However, there seems to be a lack of publicity to educate consumers in their understanding of the impacts of abstraction in times of drought on the rivers themselves.
9. SWS have argued that Temporary Use Bans (TUBs) or hosepipe bans are not effective and taken early they have even less effect.⁵ But even if it is correct that their impact is low, it still helps to reduce demand and delays the impact on the river. We believe, however, that if applied correctly and early, they can be effective.

⁴ An agreement (made under section 20 WRA) was reached between the EA and SWS to allow the EA to reduce the amount the water company could abstract from the Test and Itchen and from groundwater. But the bargain struck maintained that the water company could continue to use drought permits and orders only 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 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.

⁵ Despite this, SWS provided a Powerpoint for the hearing last year that explained, “TUBs “*Demand in Hampshire has fallen more than in other regions since 21 July, suggesting TUBs are having a positive and increasing effect*”.

10. We note that this year SWS were clearly aware of the impending drought like most of the nation (with the warmest spring on record for England and Wales after an “*exceptionally early and record-breaking heat spell at the end of May*”⁶). Yet SWS delayed putting TUBs in place until 10 July 2026. Had they been introduced earlier, accompanied by an effective public information campaign to highlight impacts on the chalk streams, they could have made a significant difference.
11. With regard to NEUBs, the application could clearly have been made earlier. SWS’s draft Drought Plan for 2027-2032, which seeks to follow up on some points made in the Report by B Davies (an inspector appointed by the Secretary of State) (the *Inspector’s Report*),⁷ includes the Inspector’s recommendation that NEUBs should now be repositioned as a “*protective, not optional measure*”.⁸ Indeed, so important is this as a measure that SWS include NEUBs in the DO application as a mitigation measure.⁹
12. SWS is clearly lacking the required alacrity and sequencing as outlined in the Water company drought plan Guideline 2025 which states that water companies should ‘*ensure that a drought order to implement non-essential use restrictions on business customers is in place before making any further drought permit or order applications that may be more environmentally damaging. This includes drought permits and orders with the potential to have major environmental impact*’.¹⁰ The argument that the s.20 sequence must be adhered to is out of step with the clear requirement of the Guideline.

(B) The Inspector’s Report to the Secretary of State 2025

13. The application for both the DO and the NEUB have significant overlaps and similarities to last year’s applications. After the 2025 Drought Application Hearing, the Inspector’s Report provided recommendations to the Secretary of State (which has since been disclosed to WildFish), despite the fact that the application was withdrawn soon after.

⁶ As reported by the Met Office on 1 June 2026, <https://www.metoffice.gov.uk/about-us/news-and-media/media-centre/weather-and-climate-news/2026/warmest-spring-on-record-for-england-and-wales--third-warmest-for-uk>.

⁷ Report to the Secretary of State for Environment by B Davies MSc FGS CGeol, dated 15 September 2025, *Application by Southern Water Services Limited for the Southern Water Services Limited (River Test) Drought Order 2025 and The Southern Water Services (Hampshire and the Isle of Wight) (Non-Essential Use) Drought Order 2025 (the Inspector’s Report)*.

⁸ See SWS’s Annex 5: Lessons Learned, <https://www.southernwater.co.uk/media/rxkanwhg/draft-dp27-annex-5-lessons-learned-2025-drought.pdf>, page 9.

⁹ Section 4.10, of SWS’s Document 2.2. Environmental Monitoring, Mitigation and Compensation Plan July 2026.

¹⁰ See <https://www.gov.uk/government/publications/water-company-drought-plan-guideline-2025/water-company-drought-plan-guideline-2025> (Accessed 7 August 2026).

14. In addition to finding that the proposed DO could cause harm to the habitats and interest features (as well as the species of principal importance on the Test and Itchen), the Inspector made a number of findings of fact and law and was critical of the approach taken by SWS. In particular, the Inspector's Report stated:
- The Drought Orders may not have been correctly notified (paragraph 264);
 - The large bulk supply from Portsmouth Water had not been implemented and a satisfactory explanation for this has not been provided (paragraph 266);
 - There was no clear link between the effects of the Drought Order and the proposed mitigation (paragraph 268);
 - The EAR was not up-to-date and did not adequately address the risks to several species of principal importance (paragraph 268);
 - The Inspector could not conclude that the proposed mitigation is optimised or sufficient (paragraph 268);
 - The NEUB Order should be in place prior to a Drought Order (paragraph 271);
 - The required compensatory measures under the Habitats Regulations had not been secured [...] and it had not been demonstrated that they would fully offset the damage that could be caused and the requirements of the Habitats Regulations were therefore not met (paragraph 274-275);
 - The requirements of Regulation 18(2) of the Water Framework Directive 2017 (WFD) had not been met because not all practicable steps, to prevent deterioration in the status of a water body had been taken (paragraph 276);
 - The duty to further the conservation and enhancement of a SSSI under the WCA 1981 would not be met (paragraph 277);
 - The duty to conserve and enhance habitats and species of principal importance under the NERC Act (2006) have not been met for the same reasons (paragraph 278);
 - The compensation and mitigation measures should be given consideration to ensure it is linked to the effects of the Drought Order and that actions are enforceable (paragraph 279);

- It had not been demonstrated that the required steps of the Drought Plan had been completed (paragraph 199);
 - Not all reasonable steps have been taken to conserve and enhance the SSSI, and biodiversity, with reference to NERC section 41 (paragraph 221);
 - Although a temporary deterioration under 18 WFD “is allowed” due to “exceptional” circumstance, “the conditions attached to Regulation 18 of the WFD have not been met” (paragraph 242).
15. Given the similarity of the applications from 2025 and this year, it is important that there is consideration given to whether SWS has striven to correct the faults raised. We would assert that the questions have not been properly addressed. Those issues centre on the assessment of damage, the mitigation and compensatory measures and the timing of the applications.

(C) Habitats and Conservation Law

16. The Conservation of Habitats and Species Regulations (the Habitats Regulations) 2017 requires that the appropriate nature conservation body and any competent authority “*must exercise their functions. . .so as to secure compliance with the requirements of the Directives.*”¹¹
17. Under Article 6(2) of the Habitats Directive (HD), “*appropriate steps*” should be taken:
- “to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive”.*
18. The duty includes the degree of oversight that needs to be exercised. Article 6(3) HD requires that appropriate assessments are carried out where plans or projects not directly connected with the management of the site are likely to have a significant effect “*either individually or in combination with other plans or*

¹¹ In *Harris & Anor v EA* [2022] EWHC 2264 (Admin), it is made absolutely clear that “*the scope for departure*” from such obligations “*is considerably narrowed*”³

³ Johnson J in *Harris* confirmed that the Habitats Regulations which transcribe the Directive are retained EU Law.

projects”. The authority should then only agree to a plan or project where there will be no “adverse effect” on the “integrity of the site”.

19. Where a likely adverse effect cannot be screened out, an appropriate assessment is required.

“The assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned” [People over Wind]

20. In *Holohan v. An Bord Pleanala (C-461/17)* (request for a preliminary ruling from the High Court in the Republic of Ireland) it was explained by the ECJ that:

“Article 6(3) of the Habitats Directive must be interpreted as meaning that an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site”.

21. The emphasis is then on certainty and comprehensive assessment of impacts. That is obviously important as even where significant adverse effects cannot be ruled out – as in the present situation – an understanding of the scope and extent of the impact is necessary in order to understand that amount of mitigation and compensation required where the imperative reasons for overriding public interest (IROPI) ‘trigger’ is met under Article 6(4) and Regulation 64.

22. Article 68 explains that –

“Where in accordance with regulation 64—

(a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or

(b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.
[emphasis added].

23. In brief, where it is established that there are significant adverse effects established through a detailed analysis in the appropriate assessment, and the authority relies on IROPI, the compensation must be “secured” – which means that it should not be subject to change and uncertainty.

(D) Habitats Regulations Assessment and Appropriate Assessment

24. The advisory Habitats Regulations Assessment and Appropriate Assessment 2026 (2026 HRA/AA),¹² like the 2025 analysis, explains in the Stage 2 assessment that it is not possible to conclude there will be no adverse effect on site integrity for the River Itchen SAC, even with mitigation measures in place.¹³
25. A key factor for both the 2025 and 2026 applications has been the metapopulation of salmon for both the Test & Itchen which means that the Test and the licensing for water abstraction will need to be considered under the relevant conservation law. The general effect is that the decision maker is required to treat the shared metapopulation of salmon from Test and Itchen as if they were part of the Itchen SAC. The same population breeds in both rivers. It migrates up both rivers, requires adequate flow, habitat etc, and damage to one means an impact on the other river. That means in effect SWS must treat the Test as if it were an SAC.
26. Although the 2025 application was complemented by a fisheries technical note, we see that this has now been replaced in the 2026 report with just the executive summary.¹⁴ It is therefore difficult to follow the arguments for the scope and degree of the extent of the potential damage to the fishery.¹⁵ The APEM Technical Fisheries report from 2025 pointed out that *“it has not been possible to quantify the level of losses potentially attributable to the DP because the assessment has been constrained by lack of data and reliable observations on almost all key*

¹² Test Surface Water Licence 11/42/18.16/54 Stage 0.1 Drought Order - Report to inform an assessment under Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017 July 2026 - Version 1.1

¹³ It is not clear whether the HRA/AA 2027 has been approved by the EA and NE – especially with regard to the mitigation, compensation etc. The HRA explains that, *“A River Test Stage 0.1 Drought Order specific consultation meeting was held on the 13th May 2026 with the EA and NE, to discuss the comments and updates to the assessments from the 2025 Drought Order submission, and for SWS to provide an update on the progress of the enhanced list of mitigation and compensation measures. [1.5]”* But there is no further detail as to whether the HRA and the EAR/ Mitigation documents have been approved.

¹⁴ See Document 2.3 of SW’s Drought Order, Report to inform an assessment under Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017, *“Testwood Stage 0.1 Drought Order – Fisheries Technical Note Summary”*, p.122; and Document 2.4 Environmental Assessment of Test Surface Water Stage 0.1 Drought Order 2026, p.382.

¹⁵ *“Whilst the full updated report is a work in progress at the time of writing, the Executive Summary is provided in Annex B.”* [HRA 2026 4.3.1]

questions that it has addressed.”¹⁶ This year, that scepticism about the level of certainty is missing – as indeed is the detail.

27. Nevertheless, the Annex B executive summary concludes that impacts on the integrity of the site cannot be ruled out:

“Assessment of potential impacts of the DP on Itchen SAC salmon feature, given potential straying and exchange levels and risks of exposure to harmful environments in the ZoI, indicates that there is a risk of loss of salmon spawners due to DP-related effects acting on fish of both Itchen and Test origin. Therefore, given the already critical state of Itchen salmon and the necessity to apply the Precautionary Approach, the conclusion is that impacts on the integrity of the SAC salmon feature cannot be ruled out without effective mitigation.

28. The executive summary also notes that:

– “Mortality and sublethal effects would reduce spawning in the year of a Drought Order and exert lagged effects on stock levels in later years. There is high certainty that some effects will occur but low certainty in their scale and thus SAC population effects. Consecutive year Drought Orders would magnify any effects [HRA 4.3.2]

“Therefore, it can be concluded that, in the absence of mitigation, it is not possible to conclude that the loss of a probable small number of salmon would not be an adverse effect on integrity of the River Itchen SAC HRA 4,3,2.”

29. As with the documents from 2025, the 2026 DO fisheries analysis in the HRA / Environmental Report contain gaps in so far as they do not consider impacts on other species of fish. With salmon, there is a concentration on the straying behaviour of adults and little on the impacts on juveniles and life-cycle stages and therefore the long-term impacts.
30. But nowhere in the HRA document which appends the executive summary is there evidence that the issue of consecutive and temporally linked combined effects of further year on year drought orders is considered properly.

¹⁶ P.44 *Technical note on the effects of the Test drought permit on salmon in the River Itchen, 2025* Nigel Milner.

31. We note that impacts on the Middle Test compensatory (SAC) habitat are “screened out” *“due to a lack of pathway for effect on the features for which it provides compensatory habitat”*.

32. The reasoning for this is given as follows:

“The compensatory SAC habitat is located in the middle reaches of the River Test (upstream of Kimbridge) and a number of tributaries and so is not directly affected by changes in flow related to the Drought Permit. Furthermore the River Test Compensatory SAC Habitat has been identified as compensation for Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation (chalk stream habitat) and Southern damselfly (Coenagrion mercuriale), but not salmon. Therefore it is considered appropriate to screen out this site due to a lack of pathway for effect on the features for which it provides compensatory habitat.” [3.5.2 to 3.5.3 2025 HRA – now Table 3.2 in 2026 HRA]

33. The exclusion appears to be at odds with the advice of the regulators that the Test must be treated as an SAC in its entirety because of the metapopulation of salmon, whatever the compensatory purpose of the Test. Migratory fish still swim up the Middle Test. If there is a metapopulation and it is not able to breed or migrate in the Middle Test, that would be an impact on the SAC. The HRA muddles compensatory habitat with metapopulation SAC issues.

(E) In combination effects

34. As with last year’s application, it is notable that the in-combination effects section of the HRA/AA is defective as it does not take into account other abstractions apart from some analysis of drought orders or potential drought orders. There is a temporal exclusion as future orders are not considered. Nor does SWS’s analysis take into account the impact of variation in uptake of existing abstractions within licence parameters, not least if there is an intention to increase abstraction up to existing licensed thresholds or “headroom”. This is a potential in-combination effect on the SAC, whether directly or indirectly. Such impacts have not been considered so the in-combination assessment is incomplete.¹⁷ NE commented last

¹⁷ One issue that came up in SWS’s WRMP 2024 consultation was that the water company insisted that the take up of headroom in existing licences was not subject to the HRA/ AA process as the proposals for increased abstraction did not go beyond what was permitted. It is notable that such a position is certainly wrong in the current circumstances. See [WildFish-Response-to-SW-WRMP-Consultation_-19.11.24.pdf](#), pp20-23.

year in their letter of 14 August 2025 in response to the SWS evidence that the in-combination assessment of dredging in Southampton harbour requires “*further discussions*” to ensure the in-combination impacts “*are fully understood*”.

35. Of course, without understanding the full panoply of *effects* on the integrity of the SAC and salmonids, it is difficult to calculate the required mitigation or compensation.

Water Framework Directive assessment

36. *The Water framework Directive assessment (Environmental Assessment of Test Surface Water Stage 0.1 Drought Order 2026 July 2026 (Test Surface Water Stage 0.1 Drought Order 2026 Appendix D Environmental Features Assessment)* indicates that there are two downstream WFD water bodies that may be affected by the Drought Order: Test (Lower) (GB107042016840); and Southampton Water WFD transitional water body (GB520704202800).
37. The analysis finds that “*given the potential for effects on salmon and sea trout, that may persist over a period of years post-implementation of the Drought Order before recovery, the effects of the Drought Order are assessed as representing a Moderate impact (low confidence) on the fish status, with a medium risk of deterioration in the short term.*”
38. Apart from the difficulty in understanding exactly what this means, the report is defective in that it highlights mostly local potential impacts and fails to discuss or consider fully the impact on other areas of the river due to the impact on migration of salmon.
39. Last year, the Inspector’s Report observed that:

“The River Test Drought Order would potentially cause temporary deterioration of the Test (Lower) Water Body through impacts on fish. The EA advises that there could also be effects on other Water Bodies, but they are expected to be ‘low’ [146]. The EA has not provided a detailed commentary on the WFD assessment.

The Section 20 Agreement allowed that flows down to 265 Ml/d on the River Test are deemed capable of constituting ‘exceptional circumstances’ for the purposes of Regulation 18 of the WFD if caused by an ESoR. The EA does not support the application of the exemption under Regulation 18 of the WFD in this case because

the ESoR case has not been made. For the reasons above I have come to a different conclusion on this matter.

The EA has confirmed that the conditions in Regulations 18(3) and (4) are met [C3] and I agree. However, Regulation 18(2) is that ‘all practicable steps are taken to prevent further deterioration in the status of the affected body of water’. The EA has not provided an opinion on application of Regulation 18(2). For the reasons above, I am not persuaded that all practicable steps have been taken, including mitigation or compensation.

Regulation 3 of the WFD states that ‘the SoS... must determine an authorisation so as, in particular – a) to prevent deterioration of the surface water status... of a body of water (subject to application of regulation 18...)’. If the SoS agrees that deterioration would be caused and not all practicable steps have been taken to avoid this, allowing the draft order would potentially be in breach of these regulations.”¹⁸

40. It is notable that the WFD assessment does not appear to address the issue of Regulation 18 at all.

(F) Mitigation / Compensation

41. As the adverse effects cannot be ruled out and there are (apparently) no alternative solutions that would meet the public interest need, the applicant relies on the “*imperative reasons of overriding public interest*” derogation. That means in turn that compensation must be considered in relation to the potential damage caused by the DO.
42. WildFish does not consider SWS’s mitigation package for the 2026 DO (as set out in SWS’s Environmental Monitoring, Mitigation and Compensation plan (the Plan)) to be sufficient or robust enough to mitigate the detriment that further abstraction from the River Test would very likely cause, particularly with respect to the endangered salmon that rely on this river.

(i) Mitigation

¹⁸ Paragraphs 238-241 of the Inspector’s Report.

43. It is not clear in all cases as to the progress made by SWS since its 2025 Drought Order application. There is an absence of clarity as to the programmes that have been put in place and what they have achieved in the last 12 months.
44. SWS's proposal includes a number of measures centred around monitoring, auditing, and planning. While all of these aspects are important to the delivery of a project, what is lacking is specific time-bound commitments from SWS to implement and deliver actions that will mitigate harm to the environment.
45. SWS's proposal includes the following:
 - **Section 4.2:** The Lower Test Strategy section notes that *“although not yet fully confirmed, key objectives are likely to include improving floodplain connectivity, fish passage improvements and improvement of fish habitat across the main channels and Wirehouse Stream”*.
 - **Section 4.5:** Lower Test – Pollution Reduction includes catchment monitoring of water quality and an in-depth study into discharges from the estate – however, SWS has not provided insight on actions following these studies.
 - **Section 4.7:** Section 20 Mitigation – the mitigation package agreed in 2018 which SWS notes would *“be considered sufficient to mitigate for the effects of a Drought Permit at the Test Surface Water abstraction”* is incomplete and is in many cases years away from delivery (see page 39 of Drought Order application document 2.2):
 - **Measure 1:** River restoration to improve chalk stream habitat in the River Test – *“ongoing, with options appraisals the current focus of the measure”*.
 - **Measure 2:** River restoration in the Test to improve conditions for the fish community – *“delivered initial phase of the Lower Test Options Appraisal, with further development now underway and progressing towards final options and delivery over the next 4 years.”*
 - **Measure 3:** Increasing shading in the River Test downstream of the lower boundary of the Watercress & Winterbournes HLF Project - Hampshire's Chalk River Headwaters Landscape Partnership Scheme – to the boundary of the M27. – *“not been significantly progressed so far, discussions are underway and currently in the process of formulating a planting strategy*

by overlaying ideal places for trees, existing vegetation and flight lines for birds to identify priority areas in agreement with regulators.”

- **Measure 4:** Significant increase in support to the Watercress & Winterbournes Project - Hampshire's Chalk River Headwaters Landscape Partnership Scheme (which is now complete) and **Measure 5:** Support to the Test & Itchen Catchment Partnership (TICP) – *“really successful in catchment engagement, and measures being delivered more widely”*. However, it is not clear to us as to the steps taken to actually make good the damage that would be caused to the river.
46. It is notable that the Inspector’s Report was critical of the mitigation and compensation proposals which included certain activities that should already have been undertaken as part of the s.20 agreement. The Inspector’s Report also found the mitigation / compensation to be lacking and that there was often no clear connection between the pressure / damage caused by the DO and the proposed measure.
47. Of course, it is positive that, as the Plan explains, there is some work that has taken place with regard to monitoring to establish a baseline. However, there is an absence of proposals for further work to determine the impacts on the salmon metapopulation which may include, for instance, radio tagging to further examine the interconnectedness and impacts on salmon in the Test, Itchen and Meon.
48. Also included in the mitigation section are collaboration with the Atlantic Salmon Trust. We are told that local information displays and drain marking warnings have been introduced to help reduce illegal and inadvertent discharges.
49. Much is made of “Project White Hart”. This mitigation programme appears to be in very early consideration, while stating it will deliver a full catchment audit to diagnose pressures and then deliver a restoration programme focusing on *“improving water quality, reconnecting habitats, ensuring fish passage, improving conditions for juvenile salmon, and establishing sanctuary zones”*. The mitigation proposal fails to provide a committed timeline to delivering change that will lead to improvements to the water and habitat. The initiative is no doubt meritorious by the degree to which it draws in support from ‘stakeholders’ – though the participants may well be slightly unnerved that their work and the SWS funding is being treated as mitigation to justify a drought order to take water when

the river drops below the HoF. It is difficult to see how the mitigation is preferable to keeping the water in the river in assisting to “*halt imminent extinction and restore resilient, thriving salmon populations by 2050*”. The activities listed as mitigation include an audit; the establishment of a salmon recovery fund for NGOs; “Comms”; IT “hardware and software”; an education scheme for the businesses using the Nursling estate relating to pollution (as opposed to proper regulation of trade effluent); a liaison officer for farms; a review of illegal fishing and poaching to enable better collaboration across the EA, police, voluntary bailiffs and community. Much of this is not straightforwardly mitigation and is too uncertain.

50. SWS have apparently worked with trades to help curtail pollution. However, some advertised works are essentially covered by the existing obligations of the water company especially when dealing with trade waste. Nursling Industrial Estate outfall, a source of pollution, was the subject of a recent private prosecution of SWS by the NGO Fish Legal.¹⁹ We understand that the trial was deferred after the pollution reduction scheme was proposed. The proposals for mitigation of the pollution are, in any event, what would be expected of the water and sewage company irrespective of the granting of the drought order application.
51. Also listed in the Environmental Monitoring, Mitigation and Compensation plan is the success in gaining access to the river to conduct monitoring activities; some vague future improvements (“*bringing forward delivery of the bigger scale, complete lower river and floodplain ecological improvements agreed in the strategy, means delivery of ecological improvements of even greater benefit sooner by 2031*”); a walkover survey with potential water pollution sites identified along more than 20km of the river with 10 farm action plans; SWS to fund an EA officer to deal with diffuse pollution but still subject to Defra approval.²⁰
52. SWS has failed to provide a package of time-bound and clear mitigation that will actually offset the impacts of the 2026 DO, especially measures that would have a positive effect in the near term. SWS must be required to deliver measures to counter the potential effects now (rather than in 5 years from now) to ensure that

¹⁹ <https://fishlegal.net/2024/11/30/southern-water-trial-paused-pending-further-action/>

²⁰ See pages 37-38 of the Plan.

the life cycle of the fish populations that inhabit the river are not irreversibly damaged.

(ii) Compensation

53. With respect to compensation, much was made last year of the proposals to buy land at Woodmill on the Itchen. The land had not then been sold to SWS. Nevertheless, the 2025 proposals included improvement of fish passage between Woodmill Salmon Pool and the River Itchen by removing barriers including the sluices, a ban on fishing; and improvements to in channel conditions (e.g. shading).
54. However, now that SWS have assumed control (as of April 2026), the progress has been slow and the changes are minimal including banning fishing in this small area (whereas fish can still be caught and released elsewhere); one sluice board has been removed from the structure and a barrier height has been reduced by 200mm. The habitat improvements appear to have been cursory or non-existent and awaiting outcomes of feasibility studies meaning that the changes will bring little direct impact or compensation related to the pressure from the proposed DO abstraction.
55. As set out in the 2025 Inspectors Report,²¹ compensatory measures must be “secured” and the HRA guidance states that the compensation must be “deliverable and effective”. While the land (the Woodmill Activity Centre) was secured in April 2026, WildFish is concerned that the proposed structural compensatory measures are subject to a significant degree of uncertainty and have not progressed further than the removal of a sluice board and the small reduction of a barrier height. Planning permission applications have not yet been submitted as far as we are aware and the future of implementation of these proposed improvements could still be 4 years away from completion according to SWS’s proposal.²²
56. During the 2025 Hearing, all parties highlighted there was a risk that compensatory measures may not be sufficient due to the level of uncertainty and lack of detail and the EA made it clear that it had been expecting a “*much larger package of compensation and that what was being offered, in its opinion, would*

²¹ The Inspector’s Report, paragraph 231.

²² See page 48 of the Plan.

*not be sufficient to compensate for the effects of the Drought Order and that it does not believe that the definition of compensation has been met”.*²³ Twelve months have passed, and it appears to WildFish that there has been little meaningful progress outside of the property itself being acquired.

57. Overall, we believe that the water company has found itself in the position where it must apply for the DO because it has not done enough to offset demand and to put in place long-term and alternative measures for water resourcing. We would add that there are defects in the HRA/AA process and the proposed compensatory measures are too uncertain and of questionable significance to properly offset the damage that would be caused by lowering the hands off flow.
58. If the Inspector is minded to grant the order on the basis of necessity, the IROPI exemption applying, then we propose that the gaps in assessment and the lack of timely compensatory measures ought to be addressed. We believe that this can be dealt with now rather than later, mainly because, as the EA has demonstrated in their Advice note, *“the rushed nature of this application by SWS has failed to demonstrate the need at this present time.”*

(G) Concluding remarks

59. We therefore believe the application is defective as described above. Certainly, the demand side might have been managed better with more done to push through alternatives to further stressing a river with the continuation of abstraction when the water levels are already low. The mitigation and compensation are clearly inadequate, delayed and do not fully address the potential harm to the river.

Justin Neal
Solicitor
For and on behalf of WildFish

²³ The Inspector’s Report, paragraph 233.