
STATUTORY INSTRUMENTS

2011 No. 3059

WATER RESOURCES, ENGLAND

**The South East Water Ltd (River
Ouse, Barcombe) Drought Order 2011**

Made - - - - *21st December 2011*
22nd December
Coming into force - - *2011*

South East Water Ltd (“the Company”) has made an application for an ordinary drought order under section 73(3)(b) of the Water Resources Act 1991 (“the Act”)(1).

The Secretary of State is satisfied that proper notices of the application have been published and served by the Company in accordance with paragraph 1 of Schedule 8 to the Act(2).

Certain objections to the application have been made to the Secretary of State, which have not been withdrawn.

It appears to the Secretary of State that a drought order is required to be made urgently to enable the deficiency of supplies of water in the Sussex region of the Company’s area of supply to be met effectively. The Secretary of State has directed that the requirements of paragraph 2(1) of Schedule 8(3) to the Act be dispensed with in relation to the application in accordance with paragraph 2(2) of that Schedule.

The Secretary of State has considered the objections to the proposed drought order.

The Secretary of State is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water exists or is threatened in the Sussex region of the Company’s area of supply.

It appears to the Secretary of State expedient to modify the restrictions to which the Company is subject as respects the taking of water from the River Ouse at Barcombe with a view to meeting the deficiency of supplies of water in that area of supply.

The Secretary of State makes this Order in exercise of the powers conferred by sections 73(1) and (4) and 74(2)(f) and (5) of, and paragraph 2(5) of Schedule 8 to, the Act(4).

(1) 1991 c. 57. Section 73(3) of the Water Resources Act 1991 was amended by paragraphs 128 and 139(1) and (3) of Schedule 22 to the Environment Act 1995 (c. 25).
(2) Paragraph 1 of Schedule 8 to the Act was amended by paragraph 128 of Schedule 22 to the Environment Act 1995 and paragraph 3(7) of Schedule 11 to the Local Government (Wales) Act 1994 (c. 19).
(3) Under paragraph 2(1) of Schedule 8 to the Act, the Secretary of State is required, before making a drought order, to cause a local inquiry to be held or to afford an objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
(4) Section 73(1) of the Act was amended by paragraph 139(1) and (2) of Schedule 22 to the Environment Act 1995.

Citation and commencement

1. This Order—
 - (a) may be cited as the South East Water Ltd (River Ouse, Barcombe) Drought Order 2011; and
 - (b) comes into force on 22nd December 2011.

Interpretation

2. In this Order—
 - (a) “the Company” means South East Water Ltd;
 - (b) “the Licence” means abstraction licence numbered 21/128 granted and reissued by the Agency on 30th March 2004 authorising the Company to abstract water from the River Ouse at Barcombe, subject to the terms and conditions set out in the Schedules to that licence⁽⁵⁾.

Modification of authorisation to abstract water from the River Ouse at Barcombe

3.—(1) Until 31st March 2012, Schedule 2 to the Licence is modified as follows.

(2) In the section headed ‘Maximum quantity of water to be abstracted’, in point 1 (Of the Natural Flow), in the first two rows (natural flow less than 20,000m³ per day, and natural flow more than 20,000m³ but less than 40,000m³ per day), any reference to 20,000m³ is read as a reference to 5,000m³.

(3) This article is subject to the conditions in article 4.

Conditions

4.—(1) The Company must—

- (a) within 10 working days of the day this Order comes into force, submit to the Agency an environmental monitoring, mitigation and remediation plan, in such format as is required by the Agency;
- (b) keep the plan under review to ensure it remains appropriate;
- (c) agree any changes to the plan with the Agency;
- (d) follow the plan, as amended from time to time.

(2) The Agency may—

- (a) at any time, require such changes to be made to the plan as it deems appropriate;
- (b) keep the plan under review to ensure it remains appropriate.

(3) The Company must produce a weekly report, in such format as the Agency may require, detailing—

- (a) the results of the Company’s monitoring;
- (b) how the Company has complied with the conditions of this Order;
- (c) information on how the company has operated its water sources in accordance with the Licence and this Order.

(5) Available for public inspection at Environment Agency South East, Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD.

(4) The Company must provide such further information relating to the weekly report as the Agency may require.

(5) The Company must provide to the Agency all such information, in such format as the Agency may require, as is relevant (or is further requested by the Agency) in order for the Agency to conduct, or commission, a review into the supply/demand balance of water resources and water source operation and drought management for the whole or any part of the Company's supply area.

(6) The information provided to the Agency may be shared with such third parties as the Agency deems appropriate.

Modification of Operating Agreement for Ardingly Reservoir

5. Until 31st March 2012, Schedule D, paragraph D5.2, of the Agreement Relating to the Maintenance and Operation of the Ardingly Reservoir Scheme dated 30th March 2004 and revised in July 2004(6) is modified to read as follows—

“**D5.2.** The Agency may accordingly request that a volume of 200,000m³ be released per annum for the benefit of fisheries or to alleviate a pollution incident. The Company will make the release as requested by the Agency unless prevented from doing so by virtue of an accident or unavoidable operational reasons.”.

Supplemental provision

6. For the purposes of regulation 19(3)(d) of the Environmental Damage Regulations 2009(7) nothing in this Order is to be taken as authorising any event causing environmental damage.

Signed by the authority of the Secretary of State

John Bourne
Deputy Director for Water Supply and
Regulation
Department for Environment, Food and Rural
Affairs

21st December 2011

(6) Available for public inspection at Environment Agency South East, Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD.

(7) [S.I. 2009/153](#).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of South East Water Ltd (“the Company”), makes provision to meet a serious deficiency of supplies of water which exists or is threatened in the Sussex region of the Company’s area of supply by reason of an exceptional shortage of rain.

The Company is authorised to abstract water from the River Ouse at Barcombe, East Sussex under abstraction licence numbered 21/128. Under this abstraction licence, the Company may not abstract water from the River Ouse at Barcombe if the minimum residual flow over the weir at Barcombe is less than 20,000m³ per day.

The effect of this Order is to temporarily reduce (until 31st March 2012) the minimum residual flow which the Company is required to allow to flow over the weir in the River Ouse at Barcombe from 20,000 to 5,000 m³ per day (and hence permit more abstraction by the Company than would be permitted if the licence were left unmodified) (article 3). This is subject to the conditions listed in article 4.

Article 5 modifies (until 31st March 2012) the Operating Agreement for the Ardingly Reservoir to prevent the Company relying on drought as a reason to refuse a request made by the Environment Agency under that Agreement to release water.

Article 6 provides that the modifications made by this Order are not to be taken as authorising any environmental damage for the purposes of the Environmental Damage Regulations 2009 ([S.I. 2009/153](#)) (and accordingly the Company may not rely on this Order to support grounds for an appeal against a notice relating to remediation of environmental damage).

The abstraction licence and Operating Agreement are available for public inspection at Environment Agency South East, Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD.

Changes to legislation:

There are currently no known outstanding effects for the The South East Water Ltd (River Ouse, Barcombe) Drought Order 2011.