

JULIAN NICHOLAS

Case Officer
Planning and Environment Decisions Wales (PEDW)
Crown Buildings,
Cathays Park,
Cardiff
CF10 3NQ

13 April 2023

Dear Mr Nicholas

NOTICE OF APPEAL UNDER THE WATER ABSTRACTION (TRANSITIONAL PROVISIONS) REGULATIONS 2017 AND WATER RESOURCES ACT 1991 (AS AMENDED BY THE WATER ACT 2003)

With respect to the above Notice of Appeal by the Canal & Rivers Trust (CRT) for two points of abstraction on the River Usk at Brecon and Trosnant, we write to support the proposed licence changes by Natural Resources Wales (NRW) and provide reasons for doing so, below.

Afonydd Cymru is the umbrella body for rivers trusts in Wales. We provide an advocacy role with Welsh Government and NRW on behalf of our trusts. Our vision is for clean and healthy rivers for every community in Wales. Conservation objectives for individual SACs and SPAs are required by the 1992 'Habitats' Directive (92/43/EEC) as implemented through the Conservation of Habitat and Species Regulations 2017 (As amended). The aim of the Habitats Directive is the maintenance, or where appropriate the restoration, of the 'favourable conservation status' (FCS) of habitats and species listed in the Annexes to the Directive (see below). Therefore, FCS provides the overarching framework for defining the conservation objectives for individual SACs. The proposed licence amendments by NRW are the outcome of the 2008 Review of Consents process on SAC rivers across Wales to ensure sustainable abstraction from our rivers.

It has taken 15 years, from 2008 to 2022, for NRW to implement proposed licence reductions on both Welsh Water and CRT for the protection of sustainable flows. These flows were determined following complex modelling through a combined stakeholder group comprising NRW, the Wye and Usk Foundation, Welsh Water, CRT and Severn Trent entitled the Usk and Wye Abstraction Group (UWAG). The purpose of that group was for the members to determine the sustainable abstraction regime for the protection of flows on the Rivers Usk and Wye. Of particular importance, was the protection of flows to support the spawning of migratory fish species, in particular salmon. However, other designated species are also part of the designation of the Usk including lamprey, shad and bullhead. The proposed licence amendments by NRW require a decreasing abstraction from the River Usk, as flows decline. The primary objective is to maintain the naturalised flow

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pattern that would be expected, should no abstractions be in place. These are the **minimum** requirement deemed necessary to protect the ecological requirements of the Directive on the River Usk.

In September 2022, NRW updated its Core Management Plan for the River Usk/Afon Wysg SAC. This report confirms that except for otter, every other designated feature of the catchment is in **unfavourable** condition. The Action Plan for resolution of these features notes that the significant action required to achieve FCS is the **resolution of flow depletion at low flows**.

In January 2021, NRW also published its Compliance Assessment of Welsh River SACs against Phosphorus Targets. Again, the River Usk SAC was noted as being the worst river in Wales for failure to comply with these targets. “The Usk is by some distance the worst performing SAC river in Wales with respect to its phosphorus targets and is the only river where there are extensive failures in the headwaters”. Whilst not directly related to these licence amendments, river flow is a key function of dilution and ability for a river to manage the water quality impacts entering it.

In July 2022, NRW published the 2021 stock assessments for salmon and sea trout in Wales. Ben Wilson, Principal Fisheries Advisor for NRW stated at the time: “This represents the **worst level of salmon** and sea trout stock performance ever recorded in Wales and is of major concern indicating that many stocks are now in serious trouble and at risk of failing to maintain sustainable populations in the future.” The report evidenced that salmon were at risk against their conservation limits on every river in Wales (bar two) including the River Usk SAC.

This report has been followed by an academic research paper in March 2023, ‘The identification and characterisation of small salmon populations to support their conservation and management’ by Nigel Milner and Carlos Garcia de Leaniz. The report considers the forecast decline in salmon populations in rivers across Wales. It concluded that the River Usk SAC would be one of three rivers with the **steepest decline** in numbers over the next 10 years. The report concludes with a set of management recommendations for the protection of salmon. Of particular relevance to this appeal are the following:

- Restore habitat and environmental quality to allow natural breeding
- Maximise natural connectivity to allow adults access to spawning habitat and facilitate smolt migration to sea

Afonydd Cymru are left in no doubt that this evidence provides a robust basis to support the licence reductions proposed by NRW to protect the sustainable use of the river ecosystem. In fact, it could be argued that the most recent evidence since 2021 suggests that even more stringent measures will be required.

CRT have put forward evidence which demonstrates the importance of the canal to local tourism and economy, and to the fish populations within the canal which support their own fishery. Whilst we understand the significance of these, it is a legal requirement under the Habitats Regulations 2017 to implement measures to support the FCS of the SAC river. The outcome of the NRW

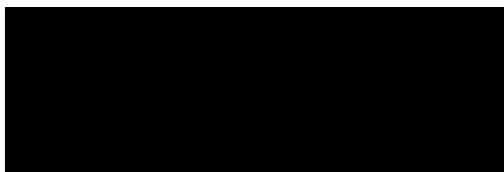
compliance assessments and Habitats Regulations Assessment of these licence proposals are clear that the **current flow regime is having an unsustainable impact** on these features.

Throughout the UWAG process, mitigation solutions were always considered. One of these solutions was for the implementation of a supply of water from Welsh Water to the CRT during periods of low flow. This would enable the canal to stay open for longer, but at a cost to CRT for that water. We would expect the appeals process to ensure that the cost of water was fair both to CRT and Welsh Water and that the supply did not compromise Welsh Water's own ability to supply water. It should also be ensured that the alternative supply of water did not compromise any other river ecosystem. If those elements have been confirmed, then we see no reason why the proposed licence reductions cannot be implemented. Afonydd Cymru believe that a process for mitigation can be put into place which protects the long-term heritage of the canal but ensures that there is no detrimental impact to the River Usk SAC. We would expect all parties involved in the UWAG process to be working to a common goal to protect the SAC.

Afonydd Cymru therefore seeks an **immediate implementation** of the licence proposals. We are aware that whilst this licence is under appeal, NRW are unable to regulate CRT abstractions from the River. We believe this poses an immediate threat to the protection of the SAC features this year.

By means of declaration, the former CEO of Afonydd Cymru, Stephen Marsh-Smith, was instrumental in the original challenges to the Review of Consents outcomes on the River Usk. Both Stephen, and the current CEO of Afonydd Cymru, Gail Davies-Walsh, were members of the original Usk and Wye Abstraction Group and were heavily involved in the development of the sustainable licence proposals.

Yours sincerely,

A large black rectangular box redacting the signature of the CEO of Afonydd Cymru.

CEO, Afonydd Cymru