

Secretary of State for Business, Energy and Industrial Strategy

By email:
SouthamptontoLondonPipeline@planninginspectorate.gov.uk

Julian.boswall@burgess-salmon.com

Our ref: PM08/JB13/46307.147/MCGEA

Your ref:

10 July 2020

When telephoning please ask for: Julian Boswall

Dear Sir,

Southampton to London Pipeline DCO Application (the “DCO”)

Planning Inspectorate Application reference: EN070005

We act for Affinity Water Limited (“Affinity”). Affinity is an appointed water undertaker and has a statutory duty under s.37 of the Water Industry Act 1991 to develop and maintain an efficient and economical system of water supply within its area. Affinity’s infrastructure will be affected by the DCO.

We understand that your Inspectors have now submitted their recommendation on the Southampton to London Pipeline DCO Application to you for your determination. In making your decision, we would like to highlight inadequacies in the protection afforded by the draft DCO to Affinity Water’s apparatus, and request that you correct these deficiencies by amending the protective provisions set out in Schedule 9 of the draft DCO.

Affinity participated in the Examination and did not object to the protective provisions because a superseding voluntary agreement to protect Affinity’s apparatus was anticipated to be put in place. That agreement is not yet in place, and while parties are in negotiation, that has not yet been concluded. Accordingly, in order to protect the water supply, Affinity are seeking protection through the DCO to ensure that if agreement cannot be reached, Affinity’s infrastructure is fully protected.

Within the area affected by the proposed pipeline, Affinity has a number of assets including:

- Ground water sources (gravel boreholes), (the order limits are, in places, within source protection zones 2 and 3 and are in close proximity to zone 1;
- Water pipelines, the project will cross between 40 to 60 water mains (depending on final design), including plastic pipelines, which can be more susceptible than mains constructed of iron to ingress of petroleum products in the event of a leak.

Affinity requests that protective provisions in its favour are added to the DCO in order to provide more detail than the generic provisions set out in schedule 9 part 1 of the draft. This is necessary because the project promoter has, in July 2020, provided details which show a gap in their investigatory borehole programme in a location of considerable sensitivity. A map showing this can be provided but is confidential; Affinity is happy to provide that for information but would not wish this to be made publically available. The promoter has recently also provided a

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crossing schedule showing up to 60 locations in which the oil pipeline will cross water pipes. Those water pipelines are a mix of size and materials including plastic pipes constructed of PVC and polyethylene.

The DCO project has the potential, without protections above the standard protective provisions, to adversely affect the availability and quality of the water resource available to Affinity (both treated and raw water). Affinity has considerable constraints on its water resources at times of high demand as it is primarily reliant on direct groundwater or river abstraction to meet its statutory supply duties. Any risk to its abstraction sources must be mitigated and managed to ensure that Affinity can continue to supply its customers.

Affinity is requesting the following additions to the standard protective provisions, and has submitted herewith a draft set of protective provisions in its favour which would secure these. The additions and their reasons why we are requesting them are:

Requested addition	Reason
<p>The undertaker, before construction commences must install at least one new observation borehole in the vicinity of WS253 or WS252B (which is the nearest point between the pipeline and the Chertsey 4th Wellfield).</p> <p>That borehole is to be:</p> <p>(a) maintained as a monitoring point throughout construction; and</p> <p>(b) equipped with a level and turbidity logger on a standalone telemetry system to capture baseline data before the construction and monitor throughout construction with early warning triggers in place for turbidity.</p>	<p>This is necessary to address the gap in the ground investigation borehole programme. This 'gap' is within the stretch of the oil pipeline closest to Affinity's abstraction source and is a concerning gap in the data.</p> <p>This additional monitoring borehole is required to act as a sentinel borehole. This will enable Affinity to have an early warning mechanism in place, in case turbidity is generated throughout the construction of the pipeline, which could cause outages at the Chertsey gravel boreholes (particularly in the 4th Wellfield).</p> <p>Turbidity adversely affects the quality of raw ground water and can render the water unfit for disinfection, leading Affinity to fail in its duties. Any increase in turbidity must be identified quickly in order that the cause can be investigated and addressed.</p>
<p>The undertaker to monitor existing boreholes BH26 or BH13 close to Affinity's abstraction wells for 6 months prior to construction in the area, during construction, and for 12 months post construction.</p>	<p>This is the zone where works are most likely to generate turbidity.</p> <p>This monitoring is necessary to allow timeous identification of any changes in water quality in the water source protection zone, allow the cause to be investigated and allow for appropriate mitigation.</p>
<p>The undertaker must not undertake any works between boreholes BH26 to the south and BH13 to the north during the period 01 June to 31 August inclusive.</p>	<p>To ensure these works, which are in close proximity to Affinity's groundwater sources, do not coincide with peak water demand for Affinity.</p> <p>This source is necessary to meet peak demand, and in order to protect and manage this source construction works cannot be carried out during the peak demand period.</p>
<p>The oil pipeline to be constructed will be a continuously welded 11.9mm thick steel pipeline.</p>	<p>To minimise the risk of leaks in the vicinity of water assets. A continuously welded pipe, of substantial wall thickness (rather than mechanical jointed pipe) offers greatest protection against leakage or damage and subsequent contamination</p>

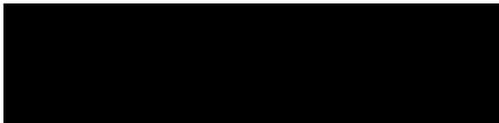
<p>The details to be provided for approval by Affinity prior to works being carried out, must be designed, wherever possible to meet the following standards:</p> <ul style="list-style-type: none"> • A minimum of 28 days notice is to be given of each crossing or phase of crossing works; • A minimum separation distance of 600mm between the undertakers pipeline and Affinity's pipes; • All crossings to be at 90 degrees where possible and at no less than 60 degrees; • at all pipeline crossings, the oil pipeline is routed underneath the water main with a minimum distance between the invert of the water main and the crown of the oil pipeline of 300mm; and • the structure of the pipeline and the means by which leaks will be detected. 	<p>Affinity requires these details in order to be able to ensure the ongoing integrity and stability of its pipelines.</p>
<p>Once in operation, should a water main leak occur with 3 metres of the oil pipeline, the undertaker must allow Affinity quick and unhindered access to repair Affinity's water main.</p>	<p>The undertaker requires that any works within 3 metres of the oil pipeline must be agreed in advance. That is not appropriate where a water main leaks, which should be treated as an emergency and works require to be undertaken as soon as possible.</p> <p>Affinity would report any emergency works required to the undertakers control room which operates 24 hours a day.</p>
<p>If a leak from the oil pipeline were to occur, whatever the cause, a prompt assessment of impacts would be carried out by the undertaker, including public water abstractions, ground water and surface water receptors.</p> <p>The undertaker is to notify Affinity as soon as possible of any leak suspected or detected between boreholes BH26 and BH13.</p> <p>Appropriate mitigations and protections would be agreed with the relevant agencies and Affinity in respect of public water supply protection.</p>	<p>Given the interaction with water infrastructure and in particular the location of part of the pipeline within source protection zones 2 and 3, it is vital that any leak is assessed quickly and addressed as soon as practicable.</p> <p>Affinity wish to be notified in order to be able to carry out their own investigations as soon as possible.</p>
<p>The undertaker to provide copies of the hydro testing outcomes and whether there is a pass/fail.</p>	<p>This is required because at the testing stage the fuel detection systems will not be operational on the pipeline. Pipes can fail at this time and sometimes it can be an issue to detect the point of the leak. Affinity needs to be aware of any issue to inform its own monitoring.</p>

The changes requested by Affinity would affect the undertaker only in so far as is necessary to protect our apparatus. They would not affect any other party, do not affect or change the environmental impact assessment carried out for the project or the conclusions thereof, and do not require any change to the compulsory acquisition proposals.

Although this is requested at a late stage, in light of the very limited practical effects on the undertaker and there being no third party effects, Affinity respectfully request that you consider this amendment and insert the specific protective provisions sought.

We have copied this letter to Esso's legal advisors.

Yours faithfully,

A large black rectangular redaction box covering the signature area.

BURGES SALMON LLP

Cc: Gareth Leigh, Head of Infrastructure Consents, BEIS

Angus Walker, BDB Pitmans

Enc: Protective Provisions in favour of Affinity Water Limited

PROTECTIVE PROVISIONS

PART 11

FOR THE PROTECTION OF AFFINTY WATER LIMITED AS A WATER UNDERTAKER

Application

1. For the protection of the Affinity Water Limited, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Affinity Water Limited.

Interpretation

2. In this Part of this Schedule—

“BH13” mean borehole 13 of the undertaker’s phase 1 GI boreholes situated within the source protection zone 3 for Chertsey Gravels, to the north-east of Laleham and the south-west of Scrubbing Mill;

“BH26” means borehole 26 of the undertaker’s phase 1 GI boreholes situated within the source protection zone 3 for Chertsey Gravels, to the south of the M3 motorway and Bridge Road, and to the north of Cherts Meads;

“Affinity Water Limited” means Affinity Water Limited a company registered under company number 02546950 and having its head office at Tamblin Way, Hatfield, Hertfordshire, AL10 9EZ;

“alternative apparatus” means alternative apparatus adequate to enable Affinity Water Limited to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means water sources, boreholes, mains, pipes or other apparatus belonging to or maintained by Affinity Water Limited for the purposes of water supply and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; “in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; “plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“WS252B” means borehole WS252B of the undertaker’s phase 2 GI boreholes situated within the source protection zone 3 for Chertsey Gravels, between BH13 and BH26, to the north of the M3 motorway and to east of Laleham park and west of Shepperton Green;

“WS253” means borehole WS253 of the undertaker’s phase 2 GI boreholes situated within within the source protection zone 3 for Chertsey Gravels, between BH13 and BH26, to the north of the M3 motorway and to east of Laleham park and west of Shepperton Green;

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Affinity Water Limited are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), Affinity Water Limited is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under

any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of apparatus

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Affinity Water Limited's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Affinity Water Limited to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Affinity Water Limited in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Affinity Water Limited 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Affinity Water Limited the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Affinity Water Limited must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Affinity Water Limited and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) Affinity Water Limited must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to Affinity Water Limited of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Affinity Water Limited that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by Affinity Water Limited, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Affinity Water Limited.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Affinity Water Limited facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Affinity Water Limited or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Affinity Water Limited than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that Affinity Water Limited as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to Affinity Water Limited plans of the works to be executed.

(2) The details in the plans to be submitted under sub-paragraph (1) must specify the structure of the pipeline and the means by which leaks will be detected, and, wherever possible, must comply with the following standards. Where the undertaker cannot comply with the following standards, they must explain why they cannot comply, and how protection of Affinity Water Limited's apparatus is otherwise secured in the submitted plans:

- (a) The oil pipeline to be constructed will be a continuously welded 11.9 millimetre thick steel pipeline;
- (b) A minimum separation distance of 600 millimetre between the undertaker's pipeline and Affinity's apparatus will be maintained other than at crossings;
- (c) All crossings of Affinity's apparatus by the undertaker's pipeline are to be at 90 degrees wherever possible, and at no less than 60 degrees; and
- (d) Where the undertaker's oil pipeline crosses a water main, the oil pipeline is to be routed underneath the water main with a minimum distance between the invert of the water main and the crown of the oil pipeline of 300 millimetres.

(3) The plans required under sub-paragraph (1) may be submitted for each work or phase of works individually, provided that each plan is submitted not less than 28 days before the start of the work or phase of works to which it relates.

(4) All works falling with sub-paragraph (1) must be executed only in accordance with the plans submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) by Affinity Water Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Affinity Water Limited is entitled to watch and inspect the execution of those works.

(5) Any requirements made by Affinity Water Limited under sub-paragraph (4) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(6) If Affinity Water Limited, in accordance with sub-paragraph (4) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case must give to Affinity Water Limited notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (5) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Affinity Water Limited all expenses reasonably incurred by that Affinity Water Limited in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Affinity Water Limited by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Affinity Water Limited in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Affinity Water Limited any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Affinity Water Limited, or there is any interruption in any service provided, or in the supply of any goods, by Affinity Water Limited, the undertaker must—

(a) bear and pay the cost reasonably incurred by that Affinity Water Limited in making good such damage or restoring the supply; and

(b) make reasonable compensation to that Affinity Water Limited for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

(c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Affinity Water Limited on behalf of the undertaker or in accordance with a plan approved by Affinity Water Limited or in accordance with any requirement of Affinity Water Limited or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Affinity Water Limited, its officers, servants, contractors or agents.

(4) Affinity Water Limited must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Boreholes, testing, monitoring and reporting

12 – (1) The undertaker must, before commencing construction, install at least one new observation borehole in the vicinity of WS253 or WS252B.

(2) The borehole required by sub-paragraph (1) must be:

(a) maintained as a monitoring point throughout construction; and

(b) equipped with a level and turbidity logger on a standalone telemetry system to which Affinity Water Limited has access, in order to capture baseline data before the construction and to monitor throughout construction.

(3) Any increase in turbidity monitored in the borehole required by sub-paragraph (1) will be reported to Affinity Water Limited via the telemetry system as an alarm and no later than the next business day after the undertaker becomes aware of the change.

(3) The undertaker must monitor existing boreholes BH26 or BH13 for 6 months prior to construction commencing, during construction and for 12 months post construction.

(4) Once the authorised development is in operation, should a water main leak occur with 3 metres of the oil pipeline, the undertaker must allow Affinity Water Limited immediate, unhindered access to repair the affected apparatus.

(5) If a leak from the oil pipeline occurs, whatever the cause, a prompt assessment of impacts must be carried out by the undertaker, including assessment of any impacts on public water abstractions, ground water and surface water receptors.

(6) The undertaker must notify Affinity Water Limited as soon as practicable of any leak suspected or detected between boreholes BH26 and BH13. Where a leak occurs, appropriate mitigations and protections must be agreed with Affinity Water Limited in respect of water supply protection.

(7) The undertaker shall provide copies of the hydro testing outcomes for the oil pipeline and whether there is a pass/fail to Affinity Water Limited as soon as reasonably practicable following the carrying out of testing.

Prohibition on works during peak demand period

13. The undertaker must not undertake any works within the area between boreholes BH13 and BH26 during the period 01 June to 31 August inclusive.

Cooperation

14. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Affinity Water Limited requires the removal of apparatus under paragraph 7(2) or Affinity Water Limited makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Affinity Water Limited's undertaking, and Affinity Water Limited must use its best endeavours to co-operate with the undertaker for that purpose.

15. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Affinity Water Limited in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.