Planning Inspectorate
Arolygiaeth Gynllunio

Hearing Transcript

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Date:	12 November 2026

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FULL TRANSCRIPT (with timecode)

00:00:05:09 - 00:00:15:11
It's thirteen forty five, and this hearing is now resumed. We're going to start with the agenda item five.

00:00:18:17 - 00:00:49:22
Responsibilities for interfaces with Portsmouth Water assets. The examining authority regards the interfaces with Portsmouth Water's assets as a principal issue and expect expect the parties to continue to work constructively towards resolving outstanding matters during this examination. The national policy state... Policy statement for water resources infrastructure emphasizes the expectation that neighboring companies...

00:00:49:24 - 00:00:54:08
Water companies will work together in planning water resources.

00:00:56:01 - 00:01:13:01
Bearing in mind that we will be holding a DCO hearing in January If Portsmouth Water Limited wants to touch on some of the key concerns related to the DCO today, we will appreciate those submissions at this early stage.

00:01:16:08 - 00:01:35:26
I've got questions to both Portsmouth Water Limited and the applicant, special directed to the applicant. Can the parties provide an update on engagement to date and progress in resolving the interfaces between the proposed development and ports of water assets and operations?

00:01:39:09 - 00:02:17:07
Robbie Owen, for the applicant, I can give you an update on some of those elements, and then I'll ask Mr. Winteringham to come in and talk particularly about questions relating to the current position relating to PSA two, that's the second proposed bulk supply agreement, and also discussions relating to George Reservoir. But before he does, I can just say that we are having productive and collaborative discussions with Ports of Water at a regular cadence.

00:02:17:23 - 00:02:22:03
They have to date particularly focused on Article five,

00:02:23:26 - 00:02:54:14
which we've heard about a little bit earlier today. And we are discussing a number of modifications to Article five to deal with the concerns that Portsmouth Water have on it. We've also discussed, because it's relevant clearly to them, the issue of Article five with Ofwat, and we will be including them in future discussions with Portsmouth Water on Article V.

00:02:54:16 - 00:03:21:20
And the hope is that we can get to a position where Article V, which as I said earlier, is there as a backstop to provide ultimate assurance that the scheme can be delivered and operated in the way that we envisage. But the hope is that we can get to a position where ports of water are content with Article five with some modifications.

00:03:23:09 - 00:03:25:09
Secondly, we have

00:03:27:14 - 00:04:07:05
had initial discussions with Ports of Water about the protective provisions that are included in the draft development consent order for their benefit. Those discussions are continuing. They're obviously quite complex, as you will appreciate, but we are making some progress there. And thirdly, we are also in discussion about a statement of common ground. And as I said, I think it might have been yesterday, feels a long time ago now, we are hoping to get to a certain common ground we can submit, if not at deadline one, then at deadline two.

00:04:08:19 - 00:04:27:13
So that's a brief summary of where we are on sort of DCO specific matters. Mr. Winteringham, would you please update the hearing on the matters I mentioned earlier, namely BSA two, first of all, and secondly, the issues relevant to George Reservoir?

00:04:28:01 - 00:05:00:25
Okay. Mark Winchkin for the applicant. Yeah. I'm going to say that I think the relationship between Portsmouth and Southern, you know, should bring together something which is really, really complex. Think a number of people have mentioned complexity. So probably, no one should say that. We're bringing together two different regulatory constructs. So we have the reservoir which has delivered through a business as usual type of arrangement with Portsmouth. And we have the actual transfer scheme, which we're looking to do through the DPC, the direct procurement for customers.

00:05:00:27 - 00:05:21:06
So two very different routes that we're bringing together. The regional reservoir scheme was delivered through BSA one, which is the first bulk supply agreement. And the bulk supply agreement is essentially there to determine the water that is traded between the entities.

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With the schemes coming together, we have now been for a number of years working on BSA2, so the second bulk supply agreement. Those conversations are ongoing. There are many elements that we have actually got to a point where we have agreement on, albeit there are some outlying issues that are still being talked about on a weekly basis between the parties to in order to get to a point of resolution where both parties are very much focused on achieving that.

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So that's the BSA2 element.

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I think it's probably to say as well that PSA two will enable the reservoir to be used to give the real benefit to the customers that we're looking to try and achieve through the scheme. So that's the kind of background too. Rob, you also mentioned George Reservoir. So there are ongoing discussions around George reservoir with regard to the long take on that. Those are again happening on a very frequent basis and we are both looking to try and get those resolved prior to the end of the DCO examination.

00:06:41:17 - 00:06:45:27
You. I direct the same question to Portsmouth Water.

00:06:46:18 - 00:06:50:01
You, Madam. Harry Wood Philpott on behalf of Portsmouth Water.

00:06:51:22 - 00:07:27:27
I'd to start that the high level summary that's been provided of what we're discussing and the sort of broad nature of those discussions, I'm happy with that. That's a reasonably accurate summary. So I won't go over those maths again. I just want to provide a few additional points. The first point is this. As you'll have seen from our relevant representations, Ask five is a principal point of concern for us, and I want to say a bit more about that in due course.

00:07:27:29 - 00:08:05:00
But it's important to understand that this novel and complex set of provisions was not shared with my client in the version of the draft DCO that was provided to us ahead of the application for us to comment on. The version that we had at the pre application stage, I'm told, did not include paragraphs three to seven of Article five, which are the ones that are of principal concern.

00:08:06:11 - 00:08:41:17
Therefore, the response you see in the relevant representations is a response to those having not previously been engaged in relation to them, which one might regard as rather surprising given their nature. But in practical terms, the consequence is that we are still actively grappling with the full implications of them. I'll touch on some of those matters in due course. So you will see when we get to deadline one, a more detailed explanation of our concerns.

00:08:41:29 - 00:09:03:24
We're also going to put forward our own version of that. We are, as it was rightly pointed out by the applicant, engaging with them on that. We're not trying to take them by surprise. We have identified ahead of these hearings the essential nature of the changes we're going to put forward.

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The

00:09:07:27 - 00:09:28:05
second point that I want to explain is that when one looks the at relationship between the discussions on Bulk Supply Agreement II, or we call it BSA II, to distinguish it from the existing Bulk Supply Agreement I, under which the reservoir is being constructed,

00:09:29:26 - 00:09:40:23
That contains a whole series of provisions, which govern the relationship between the parties as it relates to this scheme,

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including a number of the matters that will be picked up by the proposed scheme of operations under Article five,

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but it goes much beyond that. And that is one of the essential difficulties with the version of Article V that has been put forward. It is intended to cater for circumstances where either there is no BSA2 or for some reason BSA2 no longer has an effect.

00:10:13:18 - 00:10:26:24
But in doing so, what it does is it substitutes a much stripped down and we say heavily slanted in the applicant's favor alternative means

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of regulating that relationship at the moment with no involvement of Ofwat, no commercial terms, nothing to govern what we are paid for the water or how we deal with it, completely inadequate safeguards. And so it is a very unsatisfactory alternative from our perspective to the bulk supply agreement.

00:10:56:24 - 00:12:10:22
But the risk is that it's a very attractive alternative to a bulk supply agreement for the applicant, precisely because it strips out all of those safeguards, it weighs things in their favor, provides no commercial terms. And you will see in the changes that we propose, and we hope we're able to get some agreement to weaving some of those into the draft DCO that the applicant promotes. But what we will seek to do is to address that imbalance, to seek to create something which is a much more satisfactory alternative so far as we're concerned and so far as the public interest is concerned to a bulk supply agreement, but also to avoid the risk of whether deliberately or inadvertently creating a more attractive alternative to the applicant than the process of dealing this through a bulk supply agreement, which is the way that the system is currently set up to govern these matters.

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And that, as you'll see, when the complexity of Article V necessarily increases as one builds in those safeguards, points heavily in the direction of the bulk supply agreement and the right approach in

order to govern that relationship because it brings into play a whole series of things which are not easy to accommodate. They will need to be accommodated if there is a pullback, but they're not easy to accommodate. So that's an overview of what we're discussing, but also what you should expect to see coming out of either a revised version of Article five from the applicant and or an alternative revised version coming from Portsmouth Water.

00:13:01:22 - 00:13:25:22
It's true to say that we are discussing these things. We're also discussing protective provisions, and we're also discussing the bulk supply agreement. But I hope that gives some insight into what lies behind a lot of the concerns that we'll articulate. I'm happy to go into more detail on individual concerns, but that's my answer to your question in the first instance.

00:13:27:28 - 00:13:55:18
Thank you. Turning to the regulators then. Can the regulators comment on whether, and if so, how the interfaces with Portsmouth Water's assets, operations and statutory responsibilities affect their respective regulatory roles in relation to the Havant Pickett reservoir, water quality, obstruction, and public water supply environment... I'd like environment agency to answer this one first.

00:13:57:21 - 00:14:02:17
Thank you very Thank you very much, Sarah Clark, for the environment agency.

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I suppose what I'm about to say is quite similar to what we've just heard on behalf of Portsmouth Water. We, the environment agency, received some of the provisions in the DCO very close to the submission of the application, notably Article five and Shade Elite to the DCO.

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Like Portsmouth Water, the environment agency has been grappling with the substance of those provisions, which seek to modify the regulatory regimes that we spoke about this morning.

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I think it's fair to say that the environment agency has been questioning the need for and acceptability of these provisions. We have been engaging positively with the applicant about these provisions, and a number of meetings have taken place. And we did provide having had those meetings, we did provide the applicant on the sixteenth of October with some detailed comments on our concerns about those provisions. And our intention is to put those detailed concerns to the examination at deadline one in our written representations.

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I think if it's helpful, we thought it might be useful today just set to out some of those high level concerns. And this goes, I think, to your question. So firstly, we're not persuaded that the existing regulatory regimes cannot be deployed in order to come up with the solutions required for this particular project. I understand the applicant takes a different view on that, and no doubt we will all be putting evidence on those points as we move forward. We see there is already significant flexibility within those regimes in order to come up with appropriate solutions.

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Therefore, we see it's premature for the applicant to have come up with these modifications. And as I mentioned a moment ago, these modifications were presented to the environment agency late in the day. If, for example, we came to the conclusion that modifications were required to the existing regulatory regimes, as indeed sometimes they are, we submit that those solutions should be developed in careful consultation with the environment agency, not solely by the applicant in the manner that has happened in this case.

00:16:31:18 - 00:16:39:22
Finally, we would say that having reviewed those provisions, we remain concerned that they are flawed in a number of key respects.

00:16:41:13 - 00:16:57:08
We consider that they will reduce environmental protection. We consider they will unduly fit our the environment agencies' ability to determine license applications and enforce their terms, and they also create practical difficulties for the environment agency.

00:16:58:24 - 00:17:26:12
Finally, the one point we wanted to make was we do recognize that this is something of a Pathfinder project. We do understand that novel provisions are required as new things come forward. But from our perspective, that only reinforces the importance of making sure that novel provisions are properly developed and tested and supported by all affected by them. I think And that's all we intended to say about that today because there's a lot of detail to come forward in due course, but I hope that's helpful.

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That is helpful. Does Offord or Rapid have any comments on this issue?

00:17:38:15 - 00:18:03:25
Yeah. Hi. Kate Kendall from Ofwat. I think we would agree with Portsmouth Water that the way to resolve the issues that have been laid out is to come to an agreement on the bulk supply agreement too. From Ofwat's perspective, article five, you know, our understanding is that it's a backstop if that isn't agreed.

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It's probably worth mentioning that Ofwat will make it a condition that the bulk supply agreement to is in executable form by a certain deadline when we make final decisions around cost assessment on our Hattonthicket reservoir project, which is due, which is

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a

00:18:28:14 - 00:18:54:26
Portsmouth decision. But that will be a requirement for both parties to come to an agreement on the bulk supply agreement too. So, you know, as a backstop, we think we... It it should be resolved and be presented to the examining authority prior to obviously concluding this this process. But that's our position. Thank you.

00:18:57:20 - 00:19:01:17
Thank you. Does Rapid have any comments on this particular issue?

00:19:04:22 - 00:19:10:19
Fiona Lovely for Rapid. No. Would revert to what my colleague Kate Kendall has said. Thank you.

00:19:11:28 - 00:19:19:16
Thank you. I do have a hand up online, initials m h. So could I please invite you to come in now?

00:19:21:28 - 00:19:52:14
Hello. I'm not sure if this is the right time for me to speak, so I'll be guided by you, please. I'm Maggie Hill, and I'm chair of Colton Common Parish Council, and we have had a number of very serious concerns about the lack of consultation with Southern Water. And you may be aware that they're proposing to build a compound in Colden Common, and there are a lot of very serious concerns about this. Would you like me to to address this now, or would you rather I did it later?

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Not at the moment.

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I would ask you to submit your points in writing because we have moved on from the general water environment issues. So we... We'd appreciate that submission in writing.

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Right. I will do that.

00:20:14:29 - 00:20:16:17
And I will turn to

00:20:16:19 - 00:20:38:10
the applicant now to ask if you have a reply to the regulators at this stage. Sorry. Could I just ask? I appreciate Portsmouth Water submitting detailed comments on Article five at the next deadline. But if you could just highlight your key concerns with the drafting.

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Thank you, madam. Harry Wood Philpot on behalf of Portsmouth Water.

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In order to

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provide some context for this, as I said, the idea, as we understand it, that underlies Article V is that it is a backstop in the event that either there is no BSA2 or for some reason BSA2 no longer has effect. Now, in order to

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have proper sight of the circumstances that might give rise to that, it's important understand the role of Ofwat. And I'll do my best just to summarize what I think is the key point, and Ofwat can tell me if I've got it wrong. But

00:21:33:15 - 00:21:55:04
Sections forty to 40J of the Water Intercept nine ninety one provide Ofwat with an important role in respect of bulk supply agreements. And that includes on the application of either one of the prospective parties of what may order a supply to be given and taken on terms that it specifies.

00:21:57:02 - 00:22:34:17
It can only make such an order where this is necessary or expedient for the efficient use of water resources or the efficient supply of water and where the parties can't reach agreement within a reasonable time. What that means is that the existing statutory regime already provides a mechanism for independent third party resolution of differences over the terms of a proposed bulk supply agreement. And that includes the commercial terms that necessarily underpin any arrangement for one water company to supply another with water.

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That mechanism is available here in the event that the parties fail to agree terms. Furthermore, as Ofwat's guidance explains, there should be no circumstances in which a bulk supply agreement is terminated without Ofwat's prior involvement. And in discussions with the applicant over Article V, it's been agreed in principle that it should be amended to make clear that once BSA two is agreed, it will take precedence over the other provisions in Article V.

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And that and the existing statutory framework to deal with disputes over a prospective bulk supply agreement, and more generally to regulate their use, provide important context when the panel is considering whether the individual provisions Article five are: a, necessary and b, reasonable.

00:23:29:00 - 00:24:18:03
Any provisions that are proposed to be made in the DCO to cater for the circumstances which BSA two no longer has effect have to be shown individually to be necessary, that's the first part, notwithstanding the existing statutory framework. If they're shown to be necessary, they have to be clear, they have to be fair, they have to be appropriate, and they have to be transparently explained and justified. And that is far from the position at present. Now, coming to the concerns, I've tried to articulate one of the things that the overarching reason why I say that there are the flaws that we've identified in our relevant representations because it's trying to do things that it's not immediately suited to.

00:24:18:12 - 00:25:09:05
But the other point that I think one needs to appreciate about this is that AskA5 is seeking to achieve those things in ways which are inappropriately weighted in the applicant's favor. And it does that by, amongst other things, allowing the applicant to dictate how Portsmouth Water uses its own reservoir. And under Article six, under paragraph six, even to assume direct control over it, And there is nothing

in there to deal with the obvious adverse financial consequences of one undertaker taking control of the viable assets of another, and also no apparent consideration of the adverse financial consequences of that power being available for the financing of a project.

00:25:10:08 - 00:25:47:10
That's all unprecedented. There are two supposed precedents referred to in the expansion memorandum. Those are two bridge development consent orders, but those are fundamentally different to what's proposed here. We'll supply copies of the relevant provisions with our written representations, but I'll just highlight, if I may, a few key points. The articles in those DCOs regulate how the undertaker will use its own proposed infrastructure, I. E, the new bridge, insofar as it affects the operations of another statutory undertake, which was either the Portal or the Harbor Authority.

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What we've got in Article V goes further and directly regulates the other statutory undertaker's use of their own infrastructure and allows for what in our effect step in rights. The provisions in those other orders are also subject to much greater safeguards for the protection of the other statutory undertaker affected. And in both of those cases, the initial scheme of operations, the subject matter of the article, was set out in the schedule to the development consent order.

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So it was available for public scrutiny and testing alongside the article that put the regime in place. Now that's not the case here. And if the scheme of operations was effectively to reproduce the subject matter of the BSA, which it effectively substitutes for, it would need to be very extensive and complex indeed, dealing with subject matter, which is clearly unsuited to forming part of the statutory instrument. And to just pick out a few specific examples of the problems to which it gives rise, The first is in relation to the Reservoirs Act that would apply to this reservoir.

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We've explained that Portsmouth Water has legal duties for the safety of this reservoir under the Reservoirs Act nineteen seventy five. They arise as a result of it being the water company by which the reservoir is managed and operated, that's Section 14A. And that is a critically important safety regime to protect the public from the hazards associated with reservoirs. And it assumes that the company has control of the reservoir, can therefore take whatever measures in the interest of safety may be required from time to time under the system established by that act.

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It doesn't work if some third party is able to direct how the reservoir is operated and maintained and or to step in. The applicant has not so far attempted to address or explain how those duties would apply and to whom in the circumstances contemplated in Article V, or how in practice they would be complied with. We're going to be proposing changes to deal with that. Article V7 is an additional concern that's been identified in our recent discussions with the applicant.

00:28:10:18 - 00:28:34:27
There are a number of issues and concerns which we'll deal within our written representations. And I just want to focus, if I may, on some examples. The first is the scope of the grant of development

consent. Article five-seven needs to be read together with Article three-1B, which grants development consent for any development comprised in the exercise of the functions conferred by Article five.

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That is incidentally a grant of development consent expressed in terms that's not caveated by to be carried out within the order limits.

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In other words, if the exercise of the functions conferred by Article V involves development going beyond the authorized development as defined, the order would grant development consent for that development, whatever it may be.

00:29:02:11 - 00:29:36:26
The nature and extent of the development authorized, not further defined or constrained. Article five-seven allows the applicant to exercise functions under Part VI of the Water Industry Act nineteen ninety one if the undertaker considers it expedient to do so to secure its use and enjoyment of the reservoir. And for those purposes, the reservoir is deemed a relevant pipe for the purposes of the act. It will therefore be necessary for the examination to look closely at the functions in Part VI to understand the full implications of that provision.

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Those functions include, amongst other things, the power to lay pipes, that's Section one hundred fifty eight and one hundred fifty nine, in other words, to carry out the operational development required to put a pipe in place.

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That gives rise to the question, what would the power to lay a reservoir mean? On the face of it, the intention would seem to be to undertake the operational development required to create the reservoir. If that's right, combining that with Article III, the DCO appears to grant development consent for that development to be undertaken by the applicant. Now, when one looks at the works plans, they show the area of the reservoir shaded gray with no works proposed.

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Now, that's not consistent with the way that the DCO is currently expressed.

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As my understanding is, the EIA does not address the works for which development consent is proposed to be granted under Article V7 and Article III.

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It also applies section one hundred sixty eight of that act, giving powers of entry to our land for works purposes. The applicant doesn't need those powers,

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and no justification has been presented for seeking them. MyClient is ensuring that anything the applicant needs to do to meet its own regulatory requirements within our assets, such as monitoring

and sampling, can be done outside of MyClient's operational area. Where access is needed, this will be provided by agreement and under escort in the usual way. The expansion memorandum shed no light on why this provision is needed or what its effect would be, and I refer you to paragraph eight point eight of the expansion memorandum.

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Now, may be unintentional consequences, maybe that we've misunderstood them, but none of that is explained.

00:31:42:18 - 00:31:49:04
That, I hope, gives a flavor of some of the concerns that we have, and we'll provide more detail in writing.

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No, thank you.

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I would like to ask the applicant to respond to some of this, please.

00:31:59:26 - 00:32:11:21
Robbie Owen, for the applicant. Yes. Thank you, ma'am. I won't respond to every single element. I think we better do that in in writing because there's obviously a lot. But I wanted just to make a few

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general, largely contextual points.

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We entirely agree that two is the right approach. We absolutely do. And we're working hard to agree BSA two with

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input from Ofwat and working hard weekly meetings with ports of water to that end. And that's been the position for many, many months.

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Bear in mind, of course, the order was drafted, the DCO was drafted

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back in the spring and before then indeed, and therefore we need to understand the thought process that we were going through at that time,

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where we clearly were contemplating applying for development consent for a project where the reservoir would be sitting in the middle of it, and yet it is not Southern Water's reservoir.

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And yet, use of the reservoir is integral to the project we are seeking. So it is a completely unique situation. And whilst at the time, as we still hope now, we were hoping BSA2 would be concluded swiftly, and that would provide the detail for the interface between the two companies. Clearly, that wasn't the case when we were drafting the order, and therefore, we had to put in as a backstop, and I confirm it is a backstop, the provisions of Article V so that we could say through you to the Secretary of State that if all else failed, if there was no BSA two, if BSA two

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were for some reason to fall away, if ports of water as a company were for some reason to fail, then we would have statutory powers to deliver the project that we're seeking consent for. And that is fundamentally important for us to be able to demonstrate, even if we do agree as we hope we agree BSA too. And it's also important because,

00:34:20:03 - 00:34:44:00
yes, Ofwat have the powers that you have heard, we can't presume or assume that they will necessarily be exercised, and therefore we need a backstop provision, essentially Article five, it's rather more involved than that. But that was the background, that was what we were thinking back in the spring, and we had to do something. Now

00:34:45:29 - 00:35:04:26
much was made of these provisions not having the benefit of any dialogue with Water. It is important for the record just to state that we sent a draft of the development consent order to Portsmouth Water on the second of April.

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It didn't look exactly in terms of Article V, the same as Article V now looks, it's right that the scheme of operational provisions weren't in it. But we had no response at all to the draft DCO before the application or indeed until the middle of August this year. And we had no response at all on the protected provisions until about two weeks ago. So we weren't getting any engagement back from ports of water to the draft that we did show them. So it's important that you have the full story there.

00:35:41:07 - 00:36:15:29
It's also important to understand that the provisions in Article V dealing with a scheme of operation are not intended to be a complete substitute for a bulk supply agreement. The clue is in the name. It was a device that we formulated to allow us to have statutory powers in relation to the operational interface of the project with the reservoir. It wasn't intended to deal with commercial matters and couldn't be used to deal with commercial matters.

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And

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you're also invited to conclude that it was scarcely slanted in our favor. That is just not the case. We put provision in for disputes about the scheme of operation to be referred to the Secretary of for determination.

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We also made

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it

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clear from the beginning in paragraph nine of Article five that all of this was subject to, in effect, the bulk supply agreement. It didn't name BSA two, but Article five, paragraph nine says that the undertaker may enter into agreements with ports of water relating to the exercise by the undertaker of the functions conferred by this article, and the exercise of those functions is subject to the terms and conditions of any such agreement. So that's sort of legislative language for basically BSA two has primacy. And that is our position now as it was then.

00:37:14:10 - 00:37:45:15
Much was also made by Mr. Philpot of the precedents we showed in the expansion memorandum of two bridge scheme of operations. Now obviously, they're not comparable situations. We only referred to them as precedents for a statutory concept of a scheme of operation. That was the purpose of because you're encouraged in writing expansion memorandums to produce what are precedents you can. And we thought, well, are relevant. They're not completely comparable, and we're not saying that they were.

00:37:49:10 - 00:38:13:05
That is essentially how we approached Article V. Now we are in discussion with lots of thought about the detailed provisions, and I have no doubt that we will be prepared to agree to certain changes. And I'm optimistic, I hope that we can find the middle ground on these issues.

00:38:17:03 - 00:38:19:01
I think in essence, that's probably

00:38:20:19 - 00:38:25:23
well, there's one more point actually. In terms of the Reservoirs Act, again,

00:38:27:13 - 00:39:05:00
mentioned earlier the purpose a of scheme of operation if we need one under Article V is to deal with the operational interface. It's not intended, and I don't believe could be used to allow under a scheme of operation Southern Water to take over sort of management and control of the whole reservoir, including its structures. That's not something that would be appropriate or we would wish. We're very happy to have told this to the Portsmouth Water to make it quite clear that the Reservoirs Act can't be undermined, just as if it's necessary, we can make it clear that Ofwat's powers aren't to be undermined by this provision.

00:39:05:02 - 00:39:35:03
But it's fundamentally important to understand why we got to where we did on Article five, and that it's necessary to allow us to say to you and to Defra, through yourself, that this project can be

delivered and operated as intended to provide the much needed water that it would deliver. So that is essentially where we are on that.

00:39:51:04 - 00:40:24:11
Final point just to make and remind those that are already aware of this point is, of course, it's Southern Water's customers that are paying for the reservoir to be built. It's for their benefit. The water in the reservoir is not for the benefit of Portsmouth Water. That's been quite clear through the water resource management planning process. Therefore, that's another reason why it's critical that Southern Water has sufficient

00:40:26:17 - 00:40:32:00
rights, using that term broadly, over the reservoir to allow this project to function.

00:40:34:00 - 00:41:05:06
We can comment in writing about some of the other provisions that Mr. Philpotts referred to, including the water industry act powers, but they are in essence intended to back up the step in rights that the bulk supply agreement would include, which I believe have been agreed in principle to allow Southern Water to step in and complete the project, including the pipelines between Abamthicket and Bedhampton Springs, if necessary.

00:41:05:15 - 00:41:18:05
And of course, all of that has planning permission, has been subject to rigorous environmental impact assessment already. So that is why Article five-seven is in there.

00:41:24:21 - 00:41:26:16
That's everything I wish to say, madam.

00:41:27:27 - 00:41:50:05
I have a follow on question. You've addressed Portsmouth Water's limited points. However, earlier in the hearings, you were making a point about not duplicating regulatory regimes. Now you are also seeking to modify environment's agency's powers. Could you comment on that?

00:41:52:03 - 00:42:14:07
Robbie Owen for the applicant. It is perfectly true, again, because this is a novel situation. It's it's a Pathfinder project, as Mrs. Clarke said, that we concluded that the some of the existing regulatory regimes needed to be modified

00:42:15:23 - 00:42:47:22
in terms of how they would apply to this project. That is the abstraction licensing regime, the impounding regime and environmental permitting. And therefore, there are some detailed proposed modifications to those regimes set out in Schedule eight to the draft DCO. They are extensive. There's very detailed explanation of them in the expansion memorandum.

00:42:48:02 - 00:42:59:08
And in general terms, I can summarize why they're there by saying that, again, they're needed to be able to demonstrate

00:43:00:27 - 00:43:14:15
to you and through you to the Secretary of State that this project can be delivered and operated as intended. Otherwise, there is insufficient assurance

00:43:16:15 - 00:43:18:24
Southern Water considers for them to be

00:43:20:10 - 00:43:56:15
spending considerable sums on this project and needing to deliver that certainty in order to get satisfactory tenders received for the competitively appointed provider. So that, in essence, is why we have proposed Schedule eight. We have started discussions with the environmental agency on them, as Mrs. Clarke said. We've received a table. We are about to respond on with it our own comments, and it may well be that we are able to agree that certain provisions in Schedule eight can be changed or removed.

00:43:57:07 - 00:44:20:09
But essentially, we don't consider that the existing regulatory regime unmodified would be entirely appropriate for the project. Now that isn't, you might be thinking, or some of the room might be thinking, isn't that sort of cakism in terms of wanting our cake and eating it because of what we said about Gateshead? It's a different situation.

00:44:22:07 - 00:45:06:16
And we can obviously deal with this in much more detail when we come to the DCO hearing. But we do distinguish between the general Gateshead principle that other regulatory regimes should be allowed to operate as they are. But in this case, we say with some modifications which protect Southern Water, particularly bearing in mind that Southern Water does not own Haven Thicket Reservoir. It's paying for it all, but it doesn't own it. And yet for the life of this project, it needs to be absolutely assured and so does its cap and so does Ofwat, I would suggest, that the reservoir will be available for use and function as intended sitting in the middle of this project.

00:45:11:01 - 00:45:20:21
Thank you. That's helpful and certainly complex. Are there any comments? Yes. Portsmouth Water, please.

00:45:21:06 - 00:45:54:20
You. Harriet Philpott on behalf of Portsmouth Water, just a few points arising that I need to deal with. In my comments, I did not, because of the direction I was given earlier, deal with Portsmouth Water's position on the changes to Schedule eight. And I don't propose to do that now, but I just want to make two short points in response to what's been heard. The first is that the version of the draft DCO that was sent to us in early April, which is the one that Mr.

00:45:55:04 - 00:46:01:28
Owen referred to, not only did it not include paragraphs three-seven of Article five, but Schedule eight was blank.

00:46:07:00 - 00:46:37:18
The second point is that Schedule eight also includes provisions, which privilege the applicant's ability to take water from the reservoir over the ability of my client to do so by permanently enshrining a minimum level at which they're able to take water and putting a permanent cap on my client's ability to take water. So that's another example of the way that the system is proposed to be slanted.

00:46:37:20 - 00:46:42:05
The rest of what we say about Schedule eight, I'll defer to writing.

00:46:43:25 - 00:47:14:28
The second point is this. The position in terms of the financing of the construction of the reservoir is rather more nuanced. We're going to deal with that in writing. Don't want to get into a detailed discussion of financing today. But it's important for the examining authority to be aware of the risks that are presented to my clients' ability to finance the construction of the reservoir by these provisions at the moment. That's one of the things we're seeking to address.

00:47:15:00 - 00:47:57:07
It's not as simple as Mr. Owen might suggest. And the final point is this, in relation to the Reservoirs Act, you're told that the intention is not to allow the undertaker to take complete operational control of the reservoir. But if one looks at paragraph four of Article five and the things that a scheme of operation may include, It includes in item d, operational control of the Hammond Thicket reservoir infrastructure and the circumstances where the undertaken may assume operational control of any part of it.

00:47:58:08 - 00:48:19:20
And then subparagraph six, if the Havant Thicket reservoir infrastructure is not operated and maintained in accordance to paragraph three, the undertaken may take such action as it considers appropriate in relation to the Hammond Thicket reservoir infrastructure to secure its operator maintained in accordance to Paragraph three. Those are unconstrained at the moment.

00:48:21:16 - 00:48:43:28
So that's hence the comments I made earlier about the need to introduce much more in the way of safeguards and balances to these things, including safeguards of the financial interest of Portsmouth Water in the event that the undertaker, using these backstop powers, steps in and takes control of our asset.

00:48:45:18 - 00:48:47:28
So those are the only points I wanted to make. Thank you.

00:48:48:24 - 00:48:51:28
I will ask the Environment Agency to speak now.

00:48:53:14 - 00:49:39:29
You. Cyr Clarke for the Environment Agency. But just one point we wanted to come back on, it was a point made this morning that Mr. Woon tried to draw some distance between the points that were

made this morning about the ability of the regulatory regimes to look at issues of concern that were discussed and the points we've made about the modifications in the DCO. We do see a close line between those two examples. We will obviously present that in our evidence. But I would just, for example, point out the provision in paragraph twenty four of the Schedule eight, where it talks about the ability of the environment agency to revoke an environmental permit and increase a new imposition on the environment agency's ability to do that by saying that it can only be done with the consent of Southern Water.

00:49:40:17 - 00:50:01:06
So that's just... That's one example of the way in which the environment agency's ability to deal with permits that are issued under those regimes would be constrained by the provisions in the order. We will go into more detail on that, but I just wanted to say that we don't agree with the flavor that has been said that these things are disconnected because we don't think that they are. Thank you.

00:50:02:03 - 00:50:12:03
Thank you. I appreciate that point. Before I open it to the wider public, can I ask the applicant to respond to those two points?

00:50:16:05 - 00:50:25:03
Robby Owens, the applicant. I think just one point in response to what you heard from Mr. Philpot.

00:50:29:06 - 00:50:36:07
very happy to and are discussing adding additional safeguards and balances as it was put to Article five.

00:50:37:29 - 00:51:03:19
As I mentioned before, there is already a role for the Secretary of to determine a scheme of operation if it's disputed. And of course, the Secretary of State in doing so would act in the public interest. That's what they do. That's what they're for to do. And it was said that Schedule eight was slanted in terms of capping ports of water's right to water.

00:51:05:20 - 00:51:35:29
All Schedules is doing is reflecting the current position in BSA one and the position that I'm told has been agreed as part of BSA two, which is that Portsmouth Water has no right to the water in the reservoir except insofar as it has provided a like quantity up to twenty one million liters of water a day to Southern Water from elsewhere in Portsmouth Water's network.

00:51:36:02 - 00:52:11:13
So that is why Hapamthicket Reservoir, and I'll ask Mr. Winterman just to come in a moment to say more about this, but that is why the reservoir was agreed to be built in the first place under the classic scenario, as it's called, to provide water to Portsmouth that it had from other parts of its network in the west supplied to Southern. And that position remains in BSA too, in that there is no separate over and above entitlement to any of the water in the reservoir from Portsmouth.

00:52:11:15 - 00:52:25:02

Yes, it's their reservoir, but it's in effect being paid for by Southern Water for its customers, and therefore the benefit of the water is all Southern Waters. Mr. Wintrium, would you like to just come in on that point, please?

00:52:26:01 - 00:53:01:02
Mark Wintrium, for the applicant. I think it's important context to think about that this reservoir is replacing a decades long reliance on the test and itch in rivers. So we are replacing the abstraction through this mechanism. So the level of certainty that we require for our customers and the customers' investment is really high in that regard because providing that water to customers is the absolute purpose of this endeavor and what we're trying to do.

00:53:01:04 - 00:53:32:14
So I think it's really important that we think about that in terms of this. That is what this endeavor is trying to do. But Mr. Philpot mentioned around unprecedented, I think this is unprecedented. We have one company who is building a reservoir on behalf of another company's customers for us to have reliance on. Now there is a relationship around the funding in terms of it's funded by Portsmouth Water, and that is funded on the basis that our customers will pay for it.

00:53:32:16 - 00:54:00:07
But there is an absolute link between those two things. And therefore, the reliance on that water and some of the things within Article five and Schedule eight do reflect that level of certainty that customers require for this level of investment and the certainty they require for the public water needs. So I think those are the kind of important elements to put out to this.

00:54:01:10 - 00:54:16:25
Thank you, Mr. Wintergeand. And if I can just it might be helpful to see this as the reservoir is being built by Ports of Water and financed by Ports of Water, but it's being funded by Southern Water's customers.

00:54:18:18 - 00:54:19:26
That's the agreed arrangement.

00:54:23:10 - 00:54:29:10
Thank you. Are there any other interested parties that wish to make a comment, please, Mr. Newbury?

00:54:29:29 - 00:54:33:20
Andrew Newbury for Soska and Water Matters community.

00:54:35:13 - 00:55:16:01
Just two points and for you to consider whether you need to examine more fully, and it may help when you get the comments from the EA. I think the backwards and forwards that's going on is helpful in some degree, but we heard from Mr. Philpot earlier that the bulk supply agreement is solely for commercial arrangements. I think you should examine whether the bulk supply agreement itself is a proxy. And just pointing out, for example, that if you look at Schedule eight, certain of the things that have been disapplied go to enforcement of the environment agency.

00:55:16:16 - 00:55:24:01
So it's not just commercial, and I can point you towards it, but it's part one four.

00:55:25:16 - 00:56:00:03
Now we can get this in writing, and it's much more important that EA comes back on this than me. But it's not just about commercial arrangements. It's also about the environment. I actually I think it's so important, actually, that I'll just read that out. In relation to a license to abstract water from the Hammond Thicket reservoir, the condition in subsection two that significant damage to the environment is being caused or is likely to be caused does not apply, and the appropriate agency must instead be satisfied that there is being caused or is likely to be caused at risk to the resilience of the public water supply.

00:56:00:15 - 00:56:34:07
So it becomes much more just about the supply of water, which is extremely important, but it ousters the environment agency. So there's a concern there. The second, which goes beyond the commercial arrangement, is pipelines and the definition of pipelines because there is effectively an expectation amongst some of the local authorities, Havanbara Council, the HDC, that they've given a certain planning permission. The way these things work through, actually, it can drive our coaching horses through the existing planning commission.

00:56:34:09 - 00:56:54:12
So I thought those were two things that I just ought to bring to your attention. Whilst you're waiting for the written documentation from Portsmouth Water and from Southern Water, except for the reservoir point. I think it's all dealt within my r r zero one eight submissions, so you can refresh your mind. I think every every single point is dealt with there. Thank

00:56:55:21 - 00:56:56:22
you. I appreciate that.

00:56:58:08 - 00:56:59:24
I'll turn to the applicant.

00:57:00:23 - 00:57:04:06
Robbi, over to the applicant. Just a couple of points of clarification.

00:57:06:06 - 00:57:13:24
Oh, apologies. Before I turn to the applicant, can we get another submission from Water Matters Committee, please?

00:57:14:24 - 00:57:46:12
Thanks very much, madam. Just wanted to add the point that I was quite concerned about in addition to the points we just made about the planning being undermined and the one zero six agreement particularly being undermined where a lot of the ecological mitigation and compensation applies as well in terms of protecting that long term mitigation. The agreement potentially drives the bus through that. But also on the longevity of the DCO, this effluent recycling scheme has a life speculatively sixty to seventy years. Various documents give different dates.

00:57:47:09 - 00:57:59:00
But the DCO lasts forever. And so the fact that there's no provision in there that says that when the scheme comes to an end, the provisions come to an end seems quite surprising to me. Thank you.

00:58:01:02 - 00:58:06:06
Thank you. We have mister David Jobbins wanting to make a submission online.

00:58:06:17 - 00:58:35:11
Thank you. Yes. David Jobbins on behalf of East Hance District in Heavenborough. I just wanted to come back on that point about an article five eight and the planning conditions and enforcement. We are in active dialogue with the applicants. We've expressed some concerns about the wording of Article five eight, and we understand that we're going to be receiving shortly some further clarifications. So we're essentially reserving our position because I understand there'll be a further hearing on this, which we will attend if necessary. Thank you.

00:58:38:17 - 00:58:41:09
Okay. Now I'll turn to the applicant to respond.

00:58:42:08 - 00:58:46:29
Robby Owen, for the applicant, just a couple of points to to to make.

00:58:50:14 - 00:59:31:02
Just on the planning points, Article five eight, we did have a helpful meeting, I'm told, with Mr. Jobbins and or consultants advising him, and we're able to clarify and point out what that provision of Article V does and doesn't do. And essentially, it is completely necessary because without it, we could not use the reservoir or indeed the pipelines to and from Bedhampton Springs for the project because there was a planning condition imposed on both the reservoir and the pipe saying they can only be used for spring water.

00:59:31:12 - 00:59:34:27
Clearly, that wouldn't work for us. So we absolutely have to

00:59:36:14 - 01:00:08:00
deal with that and DCOs can do that sort of thing. It's been rather overdramatized and there's no impact on the Section one hundred six agreement. We're not giving ports of water, as I think some felt, some sort of carte blanche to conduct any sort of breach of the planning consents and not be subject to enforcement action because of Article five-eight. It wouldn't have that effect. It's a very limited provision carefully drafted to just deal with the planning condition point that I've mentioned.

01:00:08:02 - 01:00:18:09
So there's no need, in our view, to be concerned about it because if the project is to be approved, that is necessary to allow it to go ahead.

01:00:19:24 - 01:00:34:19

I think so far as Schedule eight is concerned, there is a huge amount of detail there. The point made by Mrs. Clark, we have been discussing with her and are discussing a way forward on that. We've explained the

01:00:36:21 - 01:01:14:14
thinking behind those provisions. And to just make a point in response to what Mr. Newbury said, he was rather conflating Article five with Schedule eight. But certainly, eight isn't intended to deal with sort of commercial matters. It's really just dealing with matters that allow the project to be proceeded with, including finance, frankly. And it's in terms of the cap on Ports of Waters entitlement to Waters, I've already dealt with that in terms of it reflects the current position that's been agreed in BSA one and BSA two.

01:01:15:01 - 01:01:18:15
So that's what I wish to say at this moment in time.

01:01:21:00 - 01:01:47:12
Thank you. I propose that we take a short break. This is for us to agree the action points. After the break, we are going to check with the applicant if they have the correct action points. And after that, the hearing will close. So for now, it's fourteen forty six, and we are going to come back at three o'clock. The meeting is adjourned.