

NATURAL ENGLAND'S PRELIMINARY VIEWS ON THE PROPOSED TERMS OF SETTLEMENT

Introduction

1. Natural England is grateful to have been granted Rule 6 status in this inquiry. Because of that status we are now in a good position to understand the stances of the Environment Agency and Southern Water in this case, the strength of their evidence, their legal positions and now, this agreement that they have reached.
2. From Natural England's point of view, as statutory advisor to Government on conservation issues, this case is about two main things:
 - a. firstly the effects of water abstraction during drought on the rivers Test and Itchen and the Candover Stream;
 - b. secondly, whether it is appropriate, in times of drought and in the years before its long term plans come into being, for Southern Water to have a special condition in their abstraction licences to allow them to further draw down the levels of the two rivers and to top up the Itchen from the Candover aquifer.
3. Natural England's position on the first of these matters – effects of abstraction on the conservation status of the rivers – has been fully supportive of the Environment Agency. But that support was always qualified by us saying that we would prefer an even more precautionary approach and that we reached our position of support by way of a somewhat different way of thinking about the conservation of rivers, based on the need to return them, as far as ever possible, to their natural state.
4. On the second of these matters – Natural England believes that the existing legal mechanisms for Drought Permits and Drought Orders, under the Water Resources Act 1991, were enacted for their purpose and should not be bypassed by way of a special condition. The environmental effects of drought, and any necessary compensation, should be assessed immediately before drought decisions are taken, rather than dealt with hypothetically in advance.

The main terms of settlement

5. When looking at the agreement that has been reached between the Environment Agency and Southern Water it is important to understand what this inquiry could have achieved if it were allowed to run. Only with an understanding of that is it possible to know whether this is a good deal for the environment, or not. Put at its simplest, what was on the table was a specific set of abstraction limits, put forward by the EA, against the proposal, put forward by Southern Water, that there should be a special condition allowing those limits to be breached by the water company in times of drought.

6. What has happened in the last few days is that Southern Water has accepted all of the Environment Agency's proposed licence changes for abstraction at Testwood, the River Itchen at Otterbourne and Twyford and the Candover aquifer. These are changes that Natural England has supported from the start and our support therefore continues.
7. The agreement also accepts that until Southern Water puts into place its "Long Term Water Resources Scheme" there may be a need, in times of drought, for more water to be taken from these catchments. This is a pity, but Natural England does not doubt this conclusion and hopes that a satisfactory Long Term Water Resources Scheme will be finalized and put in place as quickly as possible. If extra water is needed, the agreement then confirms that the necessary permission will be requested through the existing statutory Drought Permit and Drought Order mechanisms. Natural England fully supports this, as being greatly preferable to the carte blanche special condition originally proposed by Southern Water. Needless to say, where Natural England is involved in the Drought Permit or Order process it will behave reasonably, in accordance with the law and the scientific evidence, and promptly.
8. When thinking about the statutory Drought Order process, what must not be lost sight of is the fact that in relation to the River Itchen SAC the Habitats Directive and its associated Regulations will still apply to the process of obtaining a Drought Order. The potential need for a Drought Order is an unfortunate reality. If the need for water from the River Itchen in time of drought is considered imperative the Habitats Directive requires and ensures that the harm caused by taking extra water will be compensated for, probably by way of habitat creation and improvement works that would not otherwise be done.
9. Similarly, in relation to the River Test SSSI, the authority making any Drought Order or Permit decision will be under a duty to exercise those powers with regard to the need to conserve and enhance the special features of the SSSI.
10. So, there is potential for the Environment Agency's abstraction terms to be breached. But if that happens it will be because (a) there is a serious drought and (b) because a further statutory evidence-based decision process will have been undertaken, in circumstances where conservation will be very high on the agenda and Natural England will be engaged. This settlement takes away none of the statutory protections available to protect the rivers from over-abstraction in a future drought and no conceivable alternative outcome of this inquiry could have put a bar on abstraction during drought.
11. The proposed agreement contains a quantity of detail about how the water company and the Agency will work together in the run-up to any application for a Drought Order or Permit, and the sorts of information that must be available before the application can be considered as ready to go. All of this seems to Natural England to be the reasonable application of common sense – if an application to take extra water is being made, the authority taking the decision needs to have the right information at the right time, and the water company needs to know what it has to do and how long it is all going to take.

12. And there's also a quantity of detail in the agreement about force majeure events affecting water supply. Again, this is no more than good sense. It can only be helpful for the parties to know what may or may not amount to a force majeure event and how the parties will work together if there is one.

Other key issues

13. Natural England is pleased to see that Southern Water accepts that abstraction from the River Itchen below the hands off flow figure of 198 Ml/day at Allbrook and Highbridge can only happen if suitable (conservation based) compensatory measures are first put in place.

14. Natural England is also pleased to see that it is now admitted that the state of the evidence at Candover is such that likely significant effect, indeed actual adverse effect, of the augmentation scheme cannot be excluded and that suitable (conservation based) compensatory measures will be put in place before the scheme is used again.

15. Natural England is involved in the ongoing discussions about suitable compensatory measures and will continue to provide advice on the basis of scientific understanding.

16. Natural England is also pleased to see agreement, commitment and funding for further work on ecological assessment of the effects of drought, and the implementation of river restoration measures on the River Test. These were not matters that could have been imposed as a consequence of a formal decision on these cases, and are therefore doubly welcome.

Conclusions

17. In recent years, Natural England has developed and rolled out a new and, in its way, revolutionary approach to understanding the conservation status of rivers. This approach treats the river as a whole as the feature deserving of protection, and has as its goal the achievement of maximum naturalness. In a fully natural river the numerous different species of animal and plant will exist in a natural equilibrium with each other and the many different habitats in the river, as those factors vary naturally over space and time. This contrasts with prior, somewhat reductive, approaches that look at some, but never all, of the biological components of the river and consider harm or benefit taxon by taxon. If Natural England's new approach to river assessment were to be applied here it would have to be concluded that any reduction of more than 10% against the naturalized flow regime would be unsatisfactory.

18. However, it isn't Natural England who sets abstraction limits and, with the best will in the world, the most environmentally satisfactory outcome that was ever actually available in this inquiry was the set of limits put forward by the Environment Agency. Those limits have been accepted one and all, and the possibility of an over-riding special

condition has been removed. This therefore represents a highly satisfactory outcome, for which Natural England congratulates and thanks Southern Water and the Environment Agency.

19. As we can see from the draft agreement, more details remain to be ironed-out. Natural England is happy to be involved in that process, if that would be helpful, and of course I can confirm that we will return to give our views on the final documents.

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