

Association of Drainage Authorities

TECHNICAL AND ENVIRONMENTAL COMMITTEE

Minutes of the Meeting held on Tuesday 9 September 2014 at The Farmers Club, London

Present: **Graham Littleton (GL) (Chairman)**

Ian Benn (IB), Andy Carrott (AC), Cliff Carson (CC), Rob Cathcart (RC), Henry Cator (HC), Gordon Hunt (GH), Andrew Newton (AN), John Oldfield (JO), David Sisson (DS) (Honorary Secretary), Nick Stevens (NS), David Thomas (DT), Jean Venables (JV) (Chief Executive)

Apologies: Andrew Morritt (AM), Innes Thomson (IT)

In Attendance: Sharon Grafton (SG) ADA, Chris Trotman (CT) ADA, Ian Russell (IR) EA/ADA, Ian Moodie (IM) NFU

Ref	Minute	Action
1315	Declarations of interest None	
1316	Minutes of the meeting held on 14 May were agreed as a true and fair record and signed by the Chairman	
1317	Matters arising 1305 JO said that the focus on agricultural land and rural maintenance should be filling a local need. 1307 NS stated that this should state that only £5 million of the £10 million given to Somerset by Defra was spent on dredging. The remainder has been spent on maintenance. 1310 AC explained that funding has been received from a majority of the IDBs involved in this project but they are currently waiting for Jonathan Newman 1314 AC said that although the draft handbook was due in June it was only received in September. It has been circulated for comment but comments will be required quickly.	
	Matters arising: Min 1308: IDB operations and agri-environmental agreements IM explained that cross compliance is a basic form of payment which farmers receive. It is not a pre requisite but many receive the payment so they have to meet the requirements. Good Agricultural practice does put some restrictions in place eg 1m buffer strips around water courses. Hedge cutting is currently restricted to starting from 1 August but this will be pushed back to 1 Sept from 2015, due to a change in the definition of the breeding season to include both nesting and rearing. This has the potential to cause problems for IDBs as this may form part of bank maintenance. Two further rules which have the potential to cause problems: an increase in spread zones to not within 10 metres from bank and nitrogen vulnerable zones, which may require monitoring. Environmental stewardship is also changing: moving from entry and high level to new environmental land management schemes. These will require an additional buffer strip on top of what is already in place, so will increase from 3m to 6m. This is aimed at farmers, but IDBs will have to reference it when carrying out maintenance. This needs to be tied into existing guidance for farmers, who should either comply or seek an exemption. RC thanked IM for a good summary of the issues and said that it would be	

	<p>useful to clarify any issues which IDBs were finding at an early stage for inclusion in guidance. Currently Natural England are in the process of producing guidance for the new Environmental Land Management Scheme for 2015 and beyond, and Natural England should also look at getting appropriate wording regarding new Environmental Stewardship Schemes and discussing with RPA any new issues. It is possible that any guidance will be included in existing manuals as the Government has put restrictions on the production of any new guidance.</p> <p>HC said that the inclusion of hedges alongside roads could cause road safety issues and lead to increase in road accidents.</p> <p>GL said out that in previous years IDBs were pushed into starting weed cutting earlier and asked how the changes would affect this.</p> <p>IM pointed out that this was best practice. If IDBs were to cut hedges before 1 September it could potentially put the farmer in risk of breach of cross compliance. However the farmer could apply for derogation, either before the cutting or immediately after.</p> <p>IM said that this interferes with cropping practices but hadn't been perceived as impinging on water level management. It would be helpful for ADA to be involved in discussions both regarding this and cross compliance guidance with RPA and Defra.</p> <p>IB told the committee that cutting hedges was discouraged by Shire Group as it is very costly and should be the responsibility of the riparian owners. JO warned that this could be a dangerous path, and could lead to problems maintaining channels.</p> <p>AC pointed out that a lot of the work IDBs carry out doesn't cause damage to the environment. This tends to occur if work is carried out when the ground is too wet, leaving ruts where vehicles have been travelling. A very small percentage of all watercourses are in these areas and perhaps IDB activities should be exempt.</p> <p>RC said that it was good to keep perspective. So far in this year there have not been any problems leading to penalisation for breach of agreement and Natural England have been content to say that IDB activity is not considered regular activity. Many of the cases last year were as a result of the wet weather and a more varied implementation approach by RPA. It is important for ADA and Natural England to talk to Defra about clearer guidance.</p> <p>JO said that ADA should have a voice regarding the changes for hedge cutting dates but cross compliance is the responsibility of farmers. IDBs are carrying out their statutory duty and should be specifically excluded because of this.</p> <p>DS said that the inclusion of IDB activities in guidance for NELMS is good for the new scheme but there is a concern that this won't work with existing schemes.</p> <p>IM stated that it is important to separate NELMS from Cross Compliance; the first is an optional scheme while the second is basic. Discussions regarding Cross Compliance will be with RPA</p> <p>DT said that the approach will need to be pragmatic with the aim being focussed on the conservation benefits rather than the threat of legislative action.</p> <p>GL thanked the committee for the debate, saying that the issue was not likely to go away.</p>	
1318	Water voles	

• **Water Vole Mitigation Guidance**

RC updated the committee on current water vole mitigation guidance. The current guidance now requires update due to change in legislation. Natural England has been working with a group of IDB ecologists, co-ordinated by Chris Manning of Lindsey Marsh Drainage Board. There is concern that the Countryside Act states that it is an unlawful act to intentionally displace water voles, which could mean an IDB infringes legislation. NE are putting together guidance and are looking into providing a voluntary licence to IDBs to cover the work they do. A first draft has been produced and commented upon at two IDB ecologist meetings.

CC explained that the meeting was useful both to make sense of the draft and ensure that it is effective and practical. A recent paper had suggested that there was no proof displacement activities worked and that translocation was a better method: however, this paper was sponsored by a company which provides translocation services, therefore should be considered carefully.

IB agreed that displacement was logical and it worked and supported the work being carried out by CC and the ecologist group.

JO said that Bedford Group of IDBs had sought advice from Diana Ward, who questioned whether a blanket licence would be required. There is a need to define whether carrying out lawful work would be classified as “intentional”.

RC replied that this was an important point and something which had been discussed. The class licence would be helpful and would indemnify IDBs against legal action. Natural England’s view is that if the displacement of water voles is intentional then a breach has occurred. IDBs would not have to sign up to the licence; they could rely on the incidental clause in the legislation.

JO asked whether ADA should get a legal opinion as to whether a licence would be required as Diana Ward is not satisfied that there is a need for it.

JV asked for clarification on the two view points: one view was that as the work carried out is a statutory requirement the action is not to intentionally disturb the water vole, while Natural England take the view that the work will intentionally disturb the water voles.

RC confirmed this, saying that the Act says that there is no liability if disturbance or damage is due to otherwise lawful activity, as the disturbing is a by product. The Act requires reasonable care to be taken, so the early vegetation cutting ahead of the main works could fall foul of the Act, as the intention here is to displace the water voles.

JO said that concerns are centred on going down the licensing route without exploring whether it is necessary. CC said that he felt that the licence offered protection which would avoid going to court.

AC was concerned that the two pages which have come out seemed to be quite prescriptive of the type of equipment which can be used. RC said that the wording required refinement, which will be done when the ecologist group returns its comments to Natural England. There is an understanding that this will be a rolling annual licence and not a demanding chore. It is planned that the licence will cover the whole drainage district.

JV asked whether a class licence would require anything to be done differently. Would it be like the badger licence or just a permit to carry out work?

DT was concerned that there was a push to reduce red tape but more seemed to be appearing, asking whether there was no other option than a class licence.

	<p>Would it be possible for Natural England to release a statement?</p> <p>JO added that the badger licence requires an audit trail with feedback and a list of locations of badgers. It may not be so onerous if it was just a one off application. RC said that it would be an annual application process with a nominated person and a report at the end of the year. Natural England will be happy to talk about streamlining the process as much as possible.</p> <p>AN had the impression that cutting is a particular requirement with set dates, so later in the year the initial cut may not have taken place earlier in the season. CC said that this is no different to the past 10 years. The original wording excluded September and October, which is the most important period for IDBs</p> <p>IB asked how many times there have been problems or prosecutions. NS asked who would carry out a prosecution. CC replied, saying that a member of the public could alert the police or a wildlife officer.</p> <p>JV asked the committee whether ADA should take legal advice</p> <p>JO proposed the suggestion, AN seconded. Four of the committee were in favour, two were against and the rest abstained. DT said that he did not feel that he knew enough to vote either way.</p> <p>RC suggested coming back to the next T&E meeting in January after Natural England have received comments from the ecologist group and have a further draft to send out.</p>	
	<ul style="list-style-type: none"> • New Water Vole Licensing Proposals 	RC
1319	<p>Surface Water Development Contribution Rate</p> <p>JV reported that the Surface Water Development Rate was calculated annually by the Water Management Alliance and distributed by ADA to all Clerks for their information. It has been proposed that ADA should produce guidance for IDBs so they can calculate their own rate. This is being raised at the P&F meeting later today.</p>	
1320	<p>Consents charges: S23; S66; and pre-application advice</p> <p>DS told the committee that ADA had drawn attention to potential changes to Development Control Orders. Lindsey Marsh IDB is now dealing with their second one. The first went well requiring both S23 and bylaw consent. The Board sought legal advice and was reimbursed costs, and the second involves several IDBs. The reimbursement of costs is included in the legislation. At present it is up to the IDB to decide whether to allow the developer to include the consent in the Development Control Order or to issue it separately. It is proposed that developers will be able to elect whether to include the consent, although Boards will retain enforcement. At present the requirement for consent means that contractors have to speak with boards. It is understood that Defra have also identified this as a problem but the initiative comes from the DCLG.</p> <p>JO asked whether there would be enough technical detail at an early stage to put the consent in, and if there is the need for approval whether there was an option to give consent after, as the impression is that once approval is granted the developer can do what they like.</p> <p>AC asked who the enforcing authority would be, as a situation where the Local Authority is enforcing for IDBs would be undesirable.</p> <p>JV said that there would be no formal mechanism to make developers go back to IDBs after the initial discussion.</p> <p>NS added that bylaws don't apply to infrastructure, so consent will only be</p>	

	sought if the authority wants to.	
1321	<p>Technical consultation on planning consultation from DCLG</p> <p>JO explained that Ministers are looking at permitting of development and improving planning times. These would change to 6 weeks, after which it would be deemed that permission has been granted, giving a very tight turnaround of information from IDBs, should this be required. This would also increase the thresholds of areas, meaning that in some circumstances less than 30 hectares would be deemed as small and could go via the fast planning process. This could lead to retail outlets extending car parks and adding buildings without the necessity of going through full planning applications.</p>	
1322	<p>Beavers</p> <p>JV explained that following the beaver escapees in Kent more have been discovered in Devon. These beavers cannot be identified as escapees. The local Wildlife Trust has taken the view that it increases biodiversity, and held a public meeting at very short notice which concentrated on the positive points, rather than any problems which could be encountered. The beavers could cause riparian owners problems if fences and trees are brought down and watercourses become blocked.</p> <p>HC added his support to JV, as beavers are no longer appropriate in the English landscape any more, suggesting that ADA write to the new Secretary of State on the matter.</p> <p>IM said that the NFU have not yet come to a definitive view on beavers. It may be that the UK needs to learn from the Netherlands and how they have dealt with them. It is also important to keep in mind that should beavers become established and native they will be subject to a high level of environmental protection, requiring licensing.</p>	ADA
1322	<p>Environment Agency Matters</p>	
a	<ul style="list-style-type: none"> • Water Transfer Licensing <p>IR explained that it is expected around 6,000 activities will require a water transfer licence, in order to comply with the Water Framework Directive. There is no option to not do this, as IDBs are specifically mentioned, but exempted activities are still being interpreted by Defra. The new arrangements will commence from 2015, with costs estimated to be around £1,500, although it has not yet be finalised whether this will be a one off fee or an annual charge, and the charge will be to cover agency costs. Once the licence is granted abstraction will be protected.</p> <p>DT said that in many cases this will be a formalisation of something which has been carried out for a long time, and there are concerns that it could trigger a complete review of environmental impact assessments. IR stated the Government has had to do this, and want to keep a light touch.</p> <p>JV asked what the consequence would be of not having a licence, and said that in the Netherlands this section of the WFD has not been applied to lower order ditches. Is it possible to review what is covered by the licence?</p> <p>DT pointed out that another way of looking at this was that IDBs are moving water, not abstracting, so shouldn't need to make payments, which will be passed on.</p> <p>IR said that Defra is looking into what is included, and that it is a matter of interpretation. It is important that ADA, the Environment Agency and Defra continue to communicate on this issue.</p>	
b	<ul style="list-style-type: none"> • Landowner Maintenance <p>IR explained that the landowner maintenance pilot was set up last year to work with riparian owners. The pilots have been increased to nine and due to the flooding at the start of the year the pilot has been extended to March 2015.</p>	

	<p>Typically, the fast track consents are taking 2-3 week and work has been undertaken, with some farmers undertaking dredging. In the River Idle pilot the IDB is doing work on behalf of the riparian owners.</p> <p>DS added that the work being carried out on the River Idle is a 30km stretch of watercourse, something which riparian owner would struggle coordinating.</p> <p>JV said that ADA has asked Defra to look into the problem of watercourses which have been maintained differently in different areas, for example areas flowing through populated areas have been maintained more regularly than more rural area, leading to varying capacity along one stretch of river.</p>	
c	<p>Update on Public Sector Co-operation Agreement</p> <p>IR updated the committee, stating that 23 agreements were now in place, with 30 in development. Work in the 2014-15 financial year currently totals approximately £40,000.</p>	
d	<p>SERR</p> <p>IR told the committee that much of the Environment Agency external guidance needs to be redrafted; some will be put on the new .gov website, but not all. What is going on the website has not been finalised and the Environment Agency are looking to review all documents by March 2015. A consultation began in early August closing on 25 September. Peter Bide is coordinating ADA's response.</p> <p>JV advised committee member to save any guidance which they currently use as they may not be able to access it. If they also contact ADA regarding this ADA will investigate hosting the information on its website.</p>	
1323	<p>Special Dredging Project</p> <p>JO explained that ADA had worked hard with Owen Paterson, who was surprised to hear on his visit to Bedford Group of IDBs that Environment Agency office struggled to get funding for maintenance. IDBs relied upon being able to discharge into main rivers. Thus these needed to be maintained for conveyance, however these are now becoming constricted. Following the visit a six year plan was submitted to get the Great Ouse in order, while at the same time Defra announced the Special Dredging Project. This has no commitment to funding, but is planned to demonstrate the need for work. The deadline for submissions is September, and local PSO teams have been speaking to Boards to collate information as to where dredging is required to try and get a clear picture of what is required. The Environment Agency will still need to find funding and justify any work.</p> <p>DT had been involved in submitting information, but said there as a lack of clarity as to what was required – was the information an ultimate wish list, or just areas which needed dredging to reach minimum standards.</p> <p>JV said that it was to try and identify continuous capacity problems along main lengths: to assist with justification of maintenance and identify the extent of the problem.</p>	
1324	<p>Special Events</p> <p>DS told the committee that the Special Events committee would be taking a pro-active approach, as no one has yet come forward to volunteer for the committee or say what type of event they would like. A decision will need to be made soon and the next Board meeting is expecting a proposal for the next event in 2016.</p> <p>HC added that this ties in with ADA's business plan and the promotion of the work ADA does together with IDBs, EA, LA etc.</p>	
1325	<p>Health and safety issues</p> <p>IB updated the committee on current health and safety issues, beginning on</p>	

	<p>electrical safety, reminding members that it is important to build up information on service maps and keep it up to date. Buried works are more problematic, but in damp weather there can be arcing from electricity pylons.</p> <p>Continuing, there was a reminder that if any boards were to take on apprentices there are age restrictions on many items of large machinery which are used, however there are other areas which apprentices could concentrate on, for example electromechanical engineering or desktop work.</p> <p>Following a query regarding CDM regulations it has been confirmed that these do not apply to IDB maintenance activity.</p> <p>A recent case has highlighted the danger of working at height, not to those at the height but those on ground level, should something be dropped. Following from the May meeting and the discussion regarding hand-arm vibration it should be noted that some machinery can shake drivers about continuously, which can lead to whole body vibration. It is also advisable to get hand held tools checked for Hand Arm Vibration periodically. Finally, it is important to distribute information as widely as possible, and to ensure that accidents are reported in order that Boards know where problems lie.</p>	
1326	<p>Any Other Business GL thanked the retiring members for their involvement in the committee.</p>	
	<p>Date of next meetings</p> <p>Wednesday 21 January 2015 10.45 – 13.00 Wednesday 13 May 2015 10.45 – 13.00 Wednesday 16 September 2015 10.45 – 13.00</p>	