

# Water Resources in the South East of England Memorandum of Understanding

April 2012

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## Introduction

This memorandum of understanding sets out the objectives, principles and commitments that the members of the Water Resources in the South East Group (the Group) will make during the period of 2011 to 2015 to determine a water resources strategy, which will contain a range of strategic options to find the best solutions for customers and the environment in the South East of England. This regional strategy will not override the statutory duties of the participating companies in the derivation of their own final Water Resources Management Plans (WRMPs) and Business Plans.

### 1. The purpose of this Memorandum of Understanding

- 1.1 This Memorandum of Understanding (MoU) is between the Environment Agency, Ofwat, Portsmouth Water, South East Water, Southern Water, Sutton and East Surrey Water, Thames Water, Veolia Water Central and Veolia Water Southeast (hereinafter referred to as "the Water Resources in the South East Group" or "the Group").
- 1.2 The purpose of this MoU is to record the intent and commitments of the members of the Group to achieve the objectives of the Group in the manner which is fully compliant with all applicable legal obligations.
- 1.3 To help achieve the Group's objectives, its members will encourage the active involvement of any other licensed water undertaker or potential licensed water undertaker.

### 2. The membership of the group

- 2.1 Membership of the Group is open to water industry regulators<sup>1</sup>, owners of water supply licences, or a party who has submitted an application for a water supply licence in England and Wales. Membership of the Group is either as an Observer or a Participant. Participants of the Group will be interested parties that:
  - 2.1.1 (i) have a water supply licence, or have submitted an application for a water supply licence, to operate in, or adjacent to a water resource zone in the South East of England<sup>2</sup>; and
  - 2.1.2 (ii) are able to provide potential options / schemes to the WRSE strategy model; and
  - 2.1.3 (iii) are able to provide the required information to the consultancy teams to enable any proposal to be modelled; or

- 2.1.4 (iv) are a regulatory<sup>1</sup> body of the water industry.
- 2.2 If a body does not meet these criteria they will not be able to be a Participant of the Group, but as an Observer will be able to request a copy of all meeting minutes and any results from the modelling work that has been signed off by the Group.
- 2.3 All members of the Group must ensure that they are compliant with the law, both EU and domestic law, this includes the provisions in the Competition Act 1998 and the Enterprise Act 2002.
- 2.4 Any organisation fulfilling the above membership criteria and wishing to join the Group shall contact the Chair of the WRSE Senior Management Group in the first instance.

<sup>1</sup> Where Regulators are defined here as Ofwat, Consumer Council for Water, Natural England, Defra and the Environment Agency.

<sup>2</sup> Where the South East is defined as the Environment Agency's South East region.

### **3. Status of the MoU**

- 3.1 This MoU is a public document.
- 3.2 This MoU is not intended to have and does not have binding legal effect and is not intended to and does not create any legal relationship between the members of the Group.
- 3.3 No provision of this MoU will affect the statutory powers and obligations of the members of the Group. In the event of a conflict, the statutory obligations will take precedence.
- 3.4 This MoU is without prejudice and subordinate to any other agreement between the members of the Group in relation to the subject matter of this MoU.
- 3.5 The members of the Group agree that this MoU may be reviewed at any time at the instigation of any member should there be difficulties in delivery of the work as envisaged. In this case all members will give reasonable notice of any difficulties and will help to develop alternative options.

### **4. The intent and objectives of the Group**

- 4.1 The intent of the Group is to determine a regional water resources strategy which will contain a range of strategic options to find the best solutions for customers and the environment in the South East of England. This strategy will be a public document. The options that form the strategy can then be considered by individual water companies when identifying their next set of water resource investments (years 1 to 5) and their preferred option strategy (years 6 to 25). These decisions will be based on an objective set of company data and assumptions. The Group will consider all options including those to share existing or future resources between companies.

- 4.2 The objectives of the Group are to provide the customers of the South East of England with:
  - 4.2.1 a set of potential developments and investigations; and
  - 4.2.2 a model configuration that will inform an objective assessment of options for meeting demand in the South East of England, covering both resource development and demand management.
- 4.3 These objectives will take into account the need for a sustainable supply of water as currently defined through Water Framework Directive and supporting information and the impact on customers' bills taking into account and balancing the needs of consumers and the environment.
- 4.4 The individual WRMPs of each of the companies will be assessed based upon their own merits and the relevant legal and statutory requirements governing the development and production of WRMPs.
- 4.5 In order for the Group's work to conclude and recommend options which companies can compare and use directly in their WRMPs and Business Plans, the Group's work will be conducted to satisfy the water resources planning guideline and supporting methodologies, with particular reference to balancing supply and demand economically, and will have regard to the requirements of the Business Plans. The work will also comply with the principles under the Strategic Environmental Assessment and Habitat Directives. The approach will consider risks and uncertainties and potential responses to them, including the incorporation of climate change. The approach will also consider the social and environmental costs and benefits of each option and these will also be assessed as part of a cost consistency check.

## **5. The commitment by the members of the Group**

### 5.1 The Group will aim to:

- 5.1.1 ensure that adequate resources are available to deliver our contributions to meet the objectives to the agreed timescales;
- 5.1.2 provide timely, accurate data in the agreed format. No commercially sensitive information will be shared between companies unless they are also willing to share this data with the public. Commercially sensitive data in the context of the WRSE Project is defined as water company (water resources) option cost data (fixed and variable operational costs (Opex) and capital costs (Capex)) for all possible future water resources options belonging to those companies listed as a signatory to this MoU. Such data can only be supplied to the regulators or the designated independent third-party consultants to the group, who will be subject to confidentiality agreements. Safeguards and protocols will be incorporated within the project, with regard to data handling, transfer and visibility. Individualised and non-aggregated data will not be shared with, or available to, other Group participants.
- 5.1.3 actively seek to reach agreement through co-operative decision making. In the event of any disagreement, a simple means for resolving/ escalating any dispute will be applied. This shall be through the relevant Sub-Group in the first instance, followed by the Programme Management Board and finally the Senior Management Group. Extra-ordinary meetings can be convened where resolution of disagreements are time critical.
- 5.1.4 communicate with other members of the Group and third parties in an open and transparent manner within the law, both EU and domestic law, this includes the provisions in the Competition Act 1998 and the Enterprise Act 2002.
- 5.1.5 reach a consensus on the conclusions and recommendations of the Group's work to be represented in a Water Resources Strategy. The Strategy, a public facing document can then be used as an information source to be used consistently within and across companies WRMPs and Business Plans.

## **6. Work programme**

### 6.1 The key areas of work for the Group, and its consultants, are as follows:

- 6.1.1 develop a new regional, peer-reviewed, least-cost option selection optimisation model to explore options and scenario solutions across the companies of the Group to balance supply and demand across the South East of England;
- 6.1.2 provide option cost data to an appropriate and consistent level of detail and consistent assumptions with company policies so that options are assessed (in the regional modelling and in discussions) on a 'like for like' basis;
- 6.1.3 complete consistency review(s) of companies' option cost data and use this to refine option cost information as appropriate, by agreement of the companies;

This activity will be led by the designated independent third-party consultants on a one to one basis with the water companies. The designated consultants will produce an overall report on their findings and recommendations, but this will be anonymised with respect to company by company detail and written so as not to reveal commercially sensitive data or data that would breach confidentiality requirements of Group members and the Group overall;

- 6.1.4 review new and existing water resource, water supply and demand management options, including inter-company transfers or other resource sharing options;
- 6.1.5 review the barriers to progress of the WRSE work and its implementation, and work to remove these barriers;
- 6.1.6 recognise the potential impacts of licence sustainability reductions that may be needed to deliver the requirements of the Habitats and Water Framework Directives which are intended to protect water environments; and
- 6.1.7 take account of social and environmental costs and wider benefits including willingness to pay and value of water as appropriate to ensure an overall cost benefit approach of finding proposed solutions.

## **7. Intellectual Property**

- 7.1 The Environment Agency will procure all of the consultants through its framework agreements and will for the purpose of this work act as the "Employer". As such the Environment Agency will own the intellectual property rights over the material prepared under these contracts. However the Environment Agency will provide output data and reports to the water companies derived from this modelling work and permit the companies to reproduce or incorporate such output data and reports within their WRMPs and associated work without charge.
- 7.2 The Environment Agency will also issue licences for rights of access for the water companies to the model, subject to any restrictions water companies place on access to the specific input data they provide to the model. These restrictions can consider which data may be available to other water companies and parties outside the WRSE Group. The restrictions may reflect commercial sensitivity, competition law or security considerations.
- 7.3 Each water company will record the appropriate permissions and restrictions regarding the use of, and access to, the model input data that they provide. This is to be done before or with each provision of data.

## **8. Phases of work**

### **Phase 1: May 2011 to March 2012**

- 8.1 During this phase the Group will develop the new model and run it using the best available data from the previous round of water resources management plans and any

subsequent updates. The Group will include demand management options (requiring new data) and various sustainability reduction scenarios (to be agreed).

**Phase 2: March 2012 – September 2012**

8.2 During this phase the Group will update the modelling work completed in phase 1 with up to date supply-demand data and improved options information, which the companies will have prepared for their WRMPs. Results will be available in time for finalisation of companies draft water resources management plans.

**Phase 3: Nov 2012 – Aug 2013**

8.3 This phase is provisional and further modelling will be dependent on the identification of further changes and updates from the phase 2 modelling work and as a result of consultation on the draft WRMPs, which require inclusion within the study.

The intended key outputs of the WRSE work (bold italics) and wider individual company WRMP planning milestones (non bold, non italics) are<sup>1</sup>:

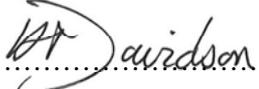
<i>Jun to Sep 2011</i>	<i>Build and validate the new model</i>
<i>Sep 2011 to Feb 2012</i>	<i>Produce Phase 1 model results and draft report (for internal WRSE use only)</i>
<i>Mar 2012 to Sep 2012</i>	<i>Produce Phase 2 model results and report and agree provisional regional strategic options</i>
Oct 2012 to Feb 2013	Individual companies to prepare independent draft WRMP's
Mar 2013	Draft WRMPs out to Consultation
<i>Nov 2012 to Aug 2013</i>	<i>Provisional Phase 3 additional modelling as a result of required updates from Phase 2 modelling work and as a result of consultation on draft WRMP's</i>
Aug 2013	Review of consultation with regard to the individual company plans
Aug 2013	Draft Business Plans (provisional based on Phase 2 work)
Sep 2013 to Dec 2013	Water companies finalise the regional options and their WRMPs (issue Statement of Response and undertake phase three work as required)
Nov 2013	Final WRSE Report
Jan to Jul 2014	Ministerial direction
Mar 2014	Final Business Plans including Final company WRMPs
Aug 2014	Draft Determination Final Business Plans.

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<sup>1</sup> All dates are provisional and dependent on confirmation by Defra (in relation to WRMP) or Ofwat (in relation to Business Plan).

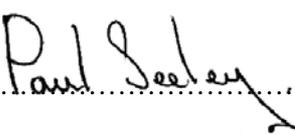
This Memorandum of Understanding (“MOU”) is made on the 13<sup>th</sup> day of April 2012

BETWEEN

The Environment Agency (“the Agency”) .....  ..... HOWARD DAVIDSON

The Water Services Regulation Authority .....  ..... PAUL HOPE

Southern Water .....  ..... MATTHEW WRIGHT

South East Water .....  ..... PAUL SEELEY

Portsmouth Water .....  ..... NEVILLE SMITH

Sutton and East Surrey Water .....  ..... LESTER SONDEN

Thames Water Utilities Limited .....  ..... MARTIN BAGGS

Veolia Water Central .....  ..... MIKE POCOCK

Veolia Water Southeast .....  ..... CHRIS TAYLOR

together (the “Members of the Group”)