

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 4 September 2002
(Morning)

Session 1

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CONTENTS

Wednesday 4 September 2002

Col.

ITEM IN PRIVATE.....	3353
WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL: STAGE 1	3354
HIGHLANDS AND ISLANDS FERRY SERVICES	3386

TRANSPORT AND THE ENVIRONMENT COMMITTEE

23rd Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

Robin Harper (Lothians) (Green)

Mr Adam Ingram (South of Scotland) (SNP)

*Angus MacKay (Edinburgh South) (Lab)

*Fiona McLeod (West of Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Des McNulty (Clydebank and Milngavie) (Lab)

*John Scott (Ayr) (Con)

COMMITTEE SUBSTITUTES

Bruce Crawford (Mid Scotland and Fife) (SNP)

David Mundell (South of Scotland) (Con)

Iain Smith (North-East Fife) (LD)

*attended

WITNESSES

Ralph Baillie (Scottish Quality Salmon)

Pat Mennie (Malt Distillers Association of Scotland)

Ray Mountford (BP Grangemouth)

Graeme Neillie (Highland Spring Group)

David Sigsworth (Scottish and Southern Energy plc)

CLERK TO THE COMMITTEE

Callum Thomson

ACTING SENIOR ASSISTANT CLERK

Alastair Macfie

ACTING ASSISTANT CLERK

Rosalind Wheeler

LOCATION

Committee Room 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 4 September 2002

(Morning)

[THE CONVENER opened the meeting in private at 09:36]

09:43

Meeting continued in public.

The Convener (Bristow Muldoon): I welcome Ray Mountford of BP Grangemouth, David Sigsworth of Scottish and Southern Energy plc, and Pat Mennie of the Malt Distillers Association of Scotland. We look forward to hearing the witnesses' evidence on the Water Environment and Water Services (Scotland) Bill.

I have received apologies from Adam Ingram and Robin Harper. However, I am pleased to note that Adam is fit and working again. I send him my best wishes for his return to work. Robin Harper has been to the earth summit in Johannesburg and is not yet back.

Item in Private

The Convener: Before we move to our main item of business, I invite members to consider whether we want to discuss an item in private. Agenda item 5 is consideration of our work programme, which we would normally undertake in private. Do committee members agree to do so today?

Members indicated agreement.

Water Environment and Water Services (Scotland) Bill: Stage 1

The Convener: That brings us to stage 1 consideration of the Water Environment and Water Services (Scotland) Bill. We will take evidence from the three witnesses in our first panel. I understand that you all want to make brief introductory remarks on the bill; you have the opportunity to do so before we begin our questions.

Ray Mountford (BP Grangemouth): Good morning. I am the commercial development manager for the BP petrochemical complex at Grangemouth. As the largest water user in the United Kingdom, BP Grangemouth spends about £10 million a year on water supply and another £10 million on treating that water before it is used and before effluent is discharged into the River Forth. BP Grangemouth is pleased to have been asked to give evidence to the committee.

As members may be aware—we have shared this information several times with the Scottish Executive—BP Grangemouth is striving to regain its competitiveness under difficult economic conditions. We must regain that competitiveness if the plant is to have a future. The supply of water is one of the biggest of our variable costs—we use drinking water for all our processes, which costs us about five times as much as the water that is used by our competitors in the global market in which we compete. To be frank, we do not need that quality of water, so we expect not to use any drinking water in our processes within two years.

For the past two years, I have been working on opportunities to reduce significantly the site's water and waste-water costs. Those solutions are being worked out with the private sector, in the shape of Ondeo Industrial Solutions, and the public sector, in the shape of British Waterways. We have attempted to work with the public sector water authority—Scottish Water—but we have found that difficult because of that organisation's monopoly of the water supply in Scotland. BP Grangemouth supports the way in which the bill seeks to incorporate the European Union water framework directive into Scots law, which is in line with our group goal of causing no harm to the environment. Nonetheless, we ask that due consideration be given to the drafting of the bill to ensure that no unnecessary hurdles will prevent us from achieving our economic goals.

I turn specifically to part 1 of the bill, which addresses river basin management. We responded to the consultation in 2001 and continue to support the principle that a single river basin area should be adopted for Scotland. We support the recommendation that the Scottish

Environment Protection Agency, as the environmental regulator in such matters, should take the lead role in river basin management planning. We also believe strongly that the formation of local advisory groups is a positive way in which to enable public participation, and BP Grangemouth would be willing to join local advisory groups when it has operations in an area. Indeed, we do so in what we consider to be an embryonic forum for the Forth estuary environmental assessment programme.

BP Grangemouth supports the introduction of controls on the abstraction of water, which should ensure that sustainable and economic abstraction schemes are delivered with no negative environmental or financial impact. The current uncontrolled approach could lead to an aquifer, for example, being overabstracted. However, the drafting of the bill should ensure that any licence is granted for long enough to ensure the commercial viability of any sustainable environmental solution. In England and Wales, the Environment Agency renews licences every five years. That is of concern to us because we consider it to be too short a time to implement a sustainable environmental solution.

BP Grangemouth is active in support of the intention of the EU water framework directive. We are looking for competitive alternative water schemes for industrial use in order to maximise the value of the available drinking water resources to all stakeholders. We are also studying the best options for re-use of our industrial waste water to minimise the demand for water and to reduce our aquatic discharge. BP Grangemouth believes that the Competition Act 1998 will continue to attract the private sector to the provision of industrial water and waste-water services in Scotland. Therefore, we believe that the bill should be drafted to ensure that any responsible authority, as defined in the 1998 act, is restricted to providing advice on environmental and sustainable issues only. For example, Scottish Water should not be able to intervene on purely commercial issues.

Part 2 of the bill concerns the duty of Scottish Water to provide mains water and sewerage services and it is not regarded as being strictly relevant to BP Grangemouth. BP Grangemouth treats most of its own industrial waste water and is controlled through industrial pollution control authorisation or corporate consents.

However, BP Grangemouth has some concerns about the drafting that grants Scottish Water certain powers in respect of private sewers and sewage treatment works that do not connect to Scottish Water assets. Although that provision appears to be directed towards municipal waste, and therefore would have little direct impact on BP

Grangemouth, it could be construed as being anti-competitive and could set a precedent that could be extended to privately owned industrial waste plants such as our own. In our view, Scottish Water should have no involvement in the design of such plants, unless it is requested to tender.

Finally, BP Grangemouth found the supporting documentation useful in reviewing the bill. The policy memorandum, in particular, was very informative. I thank the committee for its invitation.

David Sigsworth (Scottish and Southern Energy plc): Good morning, I am the generation director and lead director for the environment for Scottish and Southern Energy plc. Our particular interest in the bill lies in the possible impact on the generation of renewable energy from the hydroelectric schemes that we own and operate in Scotland. SSE is responsible for 66 hydroelectric plants, which have a capacity of more than 1,000 megawatts. That makes us by far the largest generator from renewable sources in the UK. We own and operate about half the UK's total renewable generation capacity. We have identified a number of concerns and, in particular, two significant issues for Parliament to consider during its deliberations on the bill.

The first issue concerns the regulation of water abstraction and water-impoundment control regimes. Section 20 of the bill gives ministers the power to establish the detailed provisions of both regimes by secondary legislation. Section 22 provides in effect that SEPA will regulate both those regimes. SEPA will also have the duty to determine what level of controls is required on each abstraction and impoundment. We believe that there are inherent risks in combining the policy-making and regulatory roles. In order to mitigate that risk, we believe that there is a clear need for SEPA to be required formally to address the risks from its regulatory proposals and decisions. Those assessments should consider whether the proposals or decisions would help to achieve the Executive's wider environmental policies.

The second and more fundamental issue concerns the river basin planning process. We acknowledge that at this stage sections 10 to 17 of the bill outline the process for determining and approving the form and final content of the plans. Nevertheless, members of the committee ought to be aware that river basin management plans have the potential to reduce the output of renewable energy from existing hydroelectric schemes. That is because they could, for example, impose restrictions on reservoir ranges or require increased compensation flows, beyond the levels that are already managed by current legislation, which has established a regime that controls the majority of our hydro assets.

The potential impact of the bill can be seen in a recent study, which was chaired by the Executive. That study estimated that when generic assumptions about mitigation were applied in one river catchment area—the Tummel valley in Perthshire—the loss of renewable energy production, even if the waters that are affected by hydroelectric schemes were classified as heavily modified, was likely to be about 19 gigawatt hours per annum. If we were to extrapolate that finding to cover all the hydroelectric schemes in Scotland, the result would be a loss of renewable energy equivalent to the output of a large wind farm that had 80 or 90 wind turbines. That could affect the economic viability of Scottish and Southern Energy's plans to invest £250 million in the refurbishment of hydroelectric power stations. That risk could be mitigated by taking two steps, which in our view could be taken without prejudicing the need to meet the requirements of the water framework directive.

First, section 9 refers to the environmental objectives that should be set for particular stretches or bodies of water. That section describes the process for determining those objectives and allows for "particular circumstances". We believe that the "particular circumstances" that apply to hydroelectric schemes are the wider environmental benefits that they offer. Those are such that they make an important contribution to avoiding emissions of CO₂, which should help to ensure that the wider environmental benefits of the maximum output of hydroelectric power generating stations are not diminished as a consequence of the bill.

Secondly, we believe that the Parliament should ensure that the highest standards of decision making are applied to the river basin management planning procedure. That is why we believe that the appeals section, which is included in the list of purposes, is so important. The planning process that is outlined in the bill should culminate in some form of arbitration mechanism that would allow organisations and individuals that might be affected by the process to have the fullest confidence in it. If it would be helpful, I can develop each point in response to the committee's questions.

Pat Mennie (Malt Distillers Association of Scotland): I represent the solicitor's practice, Grigor and Young of Elgin. We are the secretaries to the Malt Distillers Association of Scotland. The association submitted written evidence to the committee and I would be pleased to provide such additional information as may be required. I will submit at a later date any technical information that I cannot provide today.

Water is one of the three key ingredients in the production of malt whisky. The new legislation will affect the industry's private water supply interests.

Malt distilling is unique in Europe in the way in which its water is sourced. The industry is of major importance to Scotland, comprising 12 per cent of its exports and £2.3 billion of its foreign earnings last year. The industry's direct labour force is 11,000, with an additional 30,000 people working in support industries. The United Kingdom Government receives £2 billion a year in taxation from home sales.

We are aware that the Parliament and the Scottish Executive recognise the importance of the industry and that the transposition of the water framework directive will be implemented in the way that best suits Scottish circumstances. However, the origins of the directive should be remembered as it is implemented: it was promoted to deal with water shortages in the southern European states, but we do not have such problems in Scotland. The impact of the legislation that is before the Parliament should be restricted to situations in which it can be demonstrated that controls are necessary. To go beyond that would lead to over-regulation—indeed, it would amount to a waste of administrative resources.

The Convener: I thank all three witnesses for their introductory remarks. We will go over some of the areas that you have covered in our questioning. The first group of questions is directed at all three witnesses, but we do not require each of you to answer every question. Please indicate when you wish to respond and I will bring in each of you in turn. Following the general questions, we will put specific questions to each organisation.

John Scott (Ayr) (Con): Following on from the Scottish Executive's consultations, are you happy with the way in which the bill has been drafted? Were you concerned that you did not have an opportunity to comment on the draft bill?

Ray Mountford: I think that, in general, BP is happy. We were consulted in detail on part 1 of the bill, but I cannot recollect being asked to comment in detail about part 2. However, as I said in my opening statement, we do not think that part 2 of the bill applies to us.

10:00

David Sigsworth: Scottish and Southern Energy was generally pleased with the way that the bill was drafted following the consultation document.

However, one key issue for us is section 9 of the bill, in which there are environmental obligations to draw up plans for each of the river basins or sub-basins. It is a general commitment. In the consultation document, it was quite clear that those policies would be drawn up against social, wider environmental and economic considerations.

Section 9 of the bill makes none of those provisions. It says that we must have due regard to environmental issues, but it does not specify whether it means the wider environmental issues that the Executive wants to pursue, as well as social and economic issues.

John Scott: Are you concerned about the cost of drawing up those plans or just the implications of them?

David Sigsworth: The process has still to be defined. At the moment, the bill is at a high level and we do not even know what a river basin management plan will constitute. In our hydro schemes, there are thousands of abstractions and the general assumption is that any catchment that drains more than 10km² of ground and produces an outfall into our scheme will have to have a compensation flow. At the moment we have no control whatever; there is no measurement. The costs of that sort of measure will be immense and I cannot see what benefit that will offer us.

Pat Mennie: As far as the bill is concerned, the Malt Distillers Association is reasonably happy. The key will be the secondary legislation that will flow from the bill. That is going to be very important, so considerable input from interested parties is obviously desirable.

I also support my colleague from SSE on the economic and social aspects. They are important and should be dealt with specifically in the primary legislation.

John Scott: I know that some of you have already commented on the next question, but some of you have not. The bill does not specify the number of proposed river basin districts. Should it? Should there be an explicit duty on SEPA to establish sub-basin plans? Do you think that the relationship between river basin districts and sub-basin plans is set out clearly enough in the bill?

Ray Mountford: I said that we support the single river basin area for Scotland. However, if three areas were proposed, we would not be against that, either. We just think that, compared with what is being set up elsewhere in Europe, the size of the country lends itself to one river basin area for the whole of Scotland.

What was the second part of the question?

John Scott: Should there be an explicit duty on SEPA to establish sub-basin plans?

Ray Mountford: As SEPA is the environmental agency, I think that there should be.

John Scott: Is the relationship between river basin districts and sub-basin plans set out clearly in the bill?

Ray Mountford: No, because it is not yet clear whether there will be one, two or three river basin districts. That must be decided quickly. We must have some form of plans by the end of 2004, but we still do not know how many areas there are going to be.

David Sigsworth: Until we see how SEPA draws up those plans, it is difficult to tell what one, two or three areas will mean. Broadly, we think that one is probably the right number. The sub-basin plans are important. At present, SEPA has the dual duty of telling us what the controls are in any area, and of policing those controls. As we said in our opening statements, we are concerned by that dual function. We want to see SEPA's controls and suggestions and we would like to ensure that the bill allows us to appeal against and arbitrate those conclusions, should we feel that that is necessary.

We want the mechanisms that exist in other environmental legislation for the UK and for Scotland, which make such appeals available to users, to be built in through a determinations team and due consideration by the major opinion formers in Government, with an appeals and arbitration process at the end of that. The sub-basin plans are important from that perspective. They must be specific about what will be done and they must address the wider social, environmental and economic issues, as well as the aquatic environment issues.

John Scott: You are obviously concerned about SEPA's conflict of interests in creating policy and being regulator. How might that be done differently?

David Sigsworth: As an organisation, we meet and talk to SEPA daily at all levels. We acknowledge that it has significant expertise in regulation of the Scottish environment. However, we are less comfortable with the fact that that has spilled over and that SEPA has become an environmental adviser to the Government and to ministers.

SEPA's aspirations for implementing the water framework directive might come at the expense of the wider balance of the other issues that we mentioned—particularly the wider environmental issues. At present, SEPA has no control over fulfilling the needs of renewable generation, yet many measures that it might take under the bill could rob Scotland and the UK of existing renewable generation. We must ensure that that is not allowed to happen.

Angus MacKay (Edinburgh South) (Lab): I had planned to ask a question later, but my question seems relevant to what you are saying now. All three introductory statements were useful. Mr Sigsworth's statement was interesting and

persuasive. It opened up a different perspective for me. Your opening statement and what you have just discussed made it clear that you are keen for regulatory impact assessments to be used to broaden SEPA's role and what it considers in relation to the environment. What assessment tools do you use when considering the effect of your business's activities on the ecological potential of water, for example, on the River Garry, where flow rates seem to be particularly low? What tools do you use to measure the impact on your reservoirs, whose water levels fluctuate?

David Sigsworth: Specific legislation exists in the Hydro-Electric Development (Scotland) Act 1943 and the acts that followed that for the construction schemes that produced the hydroelectric schemes in Scotland. Less specific, but still quite meaningful, issues are covered by the Electricity Act 1989. That legislation describes fully the water that we can harness for electric power generation and the accompanying mitigations, which include compensation water, ranges on reservoir movements, flow rates and ecological issues such as fish management, fish passes and fish ladders.

In our view, none of that need frustrate the application of the water directive. We believe that the water framework directive says specifically that some processes that modify water and water use are so important in their own right that they will be allowed to continue. Electric power generation is one of those processes. We believe that by giving our schemes heavily modified status and by retaining all the adequate controls that I have described, we will fulfil the needs of the water framework directive.

Angus MacKay: I am not unsympathetic to the case that you make, but I would like to know a bit more about the issues that you talk about. The question I asked was particularly about tools for assessing the ecological effects of your business on waters that you control. Perhaps you could forward more detail on that to the committee at a later stage.

David Sigsworth: The thing is—

Angus MacKay: Sorry, I just want to supplement what I said. The other thing that I am interested in is that you set out clearly the sort of legislation that affects the parameters within which you operate. I wonder whether that legislation has been subject to any amendment or evolution. You referred particularly to the Hydro-Electric Development (Scotland) Act 1943—which is obviously some time ago—and to more recent legislation. I just wondered whether the legislation has been subject to any change.

David Sigsworth: The only modifications have been by subsequent legislation, some of them

around the Electricity Act 1989. I will provide details of the things around the fringes that may have changed. However, the mitigations are broadly much as they were in the original acts.

On your point about what we do to gauge our impact—we do a great deal. We have our own fisheries biologist, Alistair Stephen, who is a leading figure in Scottish environmental thinking, particularly on fish. He has recently published an impact statement, as part of his work with Scottish and Southern Energy, about fish management over the past five years. Again, we can provide you with a copy of that report, if you wish. We also work with many other agencies, such as RSPB Energy, the Woodland Trust and others.

Let us take one example of that work. We have a dam up the Tummel valley called Dunalistair. At certain times of the year it is managed so that the movement of the water level is kept within six inches to ensure that certain duck species have the proper environment for breeding. We find on other lochs that water level movements would affect birds like red-throated and black-throated divers. We have provided special environments on the loch surface—floating platforms on which we put sods of earth to provide the right environment for nesting. We are sympathetic to such environmental concerns at local and at national level.

We are keen to demonstrate such water management and we have published a thorough environmental report for several years. The most recent one was published two months ago. If you do not have a copy, we can furnish you with one.

Angus MacKay: That is very helpful. Thank you.

The Convener: Before we come back to John Scott's last area of questioning, it might make some sense to bring in Fiona McLeod in relation to the Scottish Environment Protection Agency.

Fiona McLeod (West of Scotland) (SNP): Yes, my questions flow on. Mr Sigsworth, do you think that there is anything in the bill before us that will supplant the mitigations in the hydroelectric acts?

David Sigsworth: Do you mean override them?

Fiona McLeod: Yes.

David Sigsworth: There is certainly the opportunity to seek further mitigation that would seriously impact the current economic and ecological benefits. The bed of the River Garry has been the same for the best part of 50 years. What is natural? When people talk about returning rivers to their natural form, what do they mean? Nature moves on all the time. The bill will impact on the output of hydroelectric generation, which forms half of the UK's base of renewable energy generation. How do we square that with Ross

Finnie's statement that the Executive wants 40 per cent of Scotland's generation to come from indigenous renewable sources by 2020? Those two facts do not square.

10:15

Fiona McLeod: I appreciate that. The Malt Distillers Association of Scotland has concerns that some of the regulation that might flow from the bill will impact on what it considers to be good environmental practice. Is the issue straightforward? Do the witnesses think that the regulation that will flow from the bill will impact on their present activities?

Pat Mennie: Yes. The bill has the potential for serious regulation, but there is also the potential in the bill and in the water framework directive for exemptions where there is no impact on water status. The approach must be one of proportionality. There should be regulation only where regulation is necessary. In many parts of Scotland, regulation might not be necessary.

Nora Radcliffe (Gordon) (LD): One aspect of the water framework directive—which is where all this began—is that it states explicitly that all stakeholders should be actively involved in deciding how the framework is implemented. Do you feel protected by that clear direction from the European level?

Pat Mennie: That is a precise and laudable statement, but the practicalities must be considered. When the regulations are in place, it will be for the regulator—presumably SEPA—to make various judgments and to take all the factors into account. When we reach that stage, everyone will be exposed.

Maureen Macmillan (Highlands and Islands) (Lab): I have another question on the European dimension. Scotland is not the only country that has hydroelectric generation. Have you been in contact with similar countries, for example France, to discover what is happening there with the status of hydroelectric schemes?

David Sigsworth: They are at the same stage as we are. They are in the early stages of formulating the river basin management plans.

Maureen Macmillan: The concern is a common one throughout Europe.

David Sigsworth: Yes. The issue is about regulation and whether the draconian suggestions for the measurement and control of small abstractions in wide catchment areas will do anything to improve the environment.

Our worry is that, when the bill is enacted, ministers will forget about it and leave the secondary legislation to SEPA. It is important that

there is a mechanism for ministers to make secondary legislation to ensure that the environmental issues are addressed. That was one recommendation of the better regulation task force. We have talked about accountability and transparency. We must be sure that SEPA addresses those issues when it proposes secondary legislation.

John Scott: It is probably fair comment that the secondary legislation may well not be subject to the same level of scrutiny as the primary legislation.

The Convener: It is up to individual parliamentarians to ensure that they are vigilant.

Fiona McLeod: Can we perhaps round off the discussion on SEPA's regulatory role? All three of you have expressed reservations about the fact that SEPA will be developing the policy and policing it. Why is that a conflict, given that SEPA is an environmental regulator and therefore should have the expertise to advise the Government on policy? What is the alternative?

Ray Mountford: I am not sure that I can tell you the alternative yet. I do not think that BP has a concern about SEPA being the regulator. That is SEPA's job. We accept that and we work very well with SEPA, especially at the Grangemouth site. Our concern is that the bill mentions responsible authorities giving advice. As I said, we spend far too much on our water and we have water that is of a higher quality than we need. As we have heard, Scotland has an abundance of water of the quality that we can use. Our concern is that the way in which the bill is drafted means that there could be some mechanism that could prevent a good environmental solution being put in place, which is also economic for us.

Pat Mennie: From our industry's point of view, we work closely with SEPA and have had considerable experience of its approach to environmental regulation, some of which we agree with and some of which we do not agree with. We have concerns about the strong implementation of the letter of the regulations in some instances when, taking a holistic view, it may not necessarily be in the best interests of all concerned. The distilling industry has been working with SEPA on the development of the current legislation and has provided it with information as to where the abstractions are and information about volumes and so on. We are developing that relationship and are trying to assist in the creation of what is required, particularly on river basin planning. We still have concerns.

It is difficult to suggest an alternative, because SEPA has a strong history of environmental development. It is continuing to develop and we hope that over a period we will be able to develop

and improve the relationship that the industry has with SEPA. It is essential that, when it comes to matters of policy, SEPA gets a strong steer from the Parliament and the Scottish Executive about what it should look for and what matters it requires to take into consideration in the interests of industry and the public overall.

David Sigsworth: I do not have a better suggestion than SEPA having the regulatory role. I am interested in how the regulator will be regulated. I have mentioned a prime example of a circle that SEPA cannot square. If SEPA's focus is the aquatic environment, it has no locus on renewable energy, but the two are very much connected. We want to be sure that the reasonableness of SEPA's regulation is directed strongly by the Executive to take account of the social, economic and wider environmental issues. We want to be sure that SEPA is pushed into helping us, the Parliament and the Executive reconcile contradictory policy objectives. SEPA is in a difficult situation and only the Parliament and the Executive can help it out. That strong direction will help us understand the reasonableness of the regulation. If we still do not think that the regulations are reasonable, we want to ensure that we can appeal and go to arbitration. Those are the measures that we think will give us confidence in the legislation.

Nora Radcliffe: I return to my initial point that the intention was that stakeholders should be involved. Everything that you say seems to suggest their involvement after regulation, not before it. Do you not agree that it would be in your interests to be much more involved at the stakeholder input stage? Do you feel that you are banging the drum loudly enough on your behalf?

David Sigsworth: That is why we are here this morning.

Pat Mennie: Our industry has been heavily involved in the development of this, right from the Brussels time. We have had many communications with the Scottish Executive—and have quite a good relationship with it—on the development of the proposals and on the consultations.

Nora Radcliffe: Do you see yourselves having a strong role in the development of the management plans?

Pat Mennie: Yes, where that is appropriate in the geographical areas concerned.

David Sigsworth: Only if you give us the tools to do that, and we have told you what those are. They are not in the bill at the moment.

Fiona McLeod: Scottish and Southern Energy talks about regulatory impact assessments. Have the other organisations carried out assessments

on the impact that regulation has on the economics of your business and the way in which you can conduct it? If so, it would be useful for us to have a copy of those assessments.

Ray Mountford: I am not sure whether we have. I will check and get back to you.

David Sigsworth: I have explained how, with your assistance, we have examined the Tummel valley impacts, and we have extrapolated that position to the wider environment in Scotland. You have those details. If you would like more details, we will give you whatever you would like.

Pat Mennie: As an industry, we do not have information of the kind that you are seeking. Individual companies undertake their own monitoring and conduct their business with due regard to the water environment in a particular location.

John Scott: Let us go back to general questions. Are you happy that the bill sets out an obvious relationship between the development planning and community planning processes and river basin management plans?

Pat Mennie: The bill sets out reasonably the principles that would have to be taken into account. Secondary legislation will flesh that out.

John Scott: Do you all share that view?

Ray Mountford *indicated agreement.*

John Scott: What about the relationship with areas outwith development planning control, such as agriculture and forestry? What do you think of the impact in those areas? Do you think that the bill can provide a useful tool to pull together flood management and integrated coastal zone management with other areas of water management? Do you have strong views on those matters?

Pat Mennie: Not really. Those areas are outside most of the distilling industry's interest. However, as part of an overall management plan, those points are relevant and part of the bigger picture that will have to be in place.

David Sigsworth: The way in which the authorities deal with flood management planning differs widely between different areas of Scotland. At the moment, there is no specific reference in the bill to that being an issue. However, it comes down to what SEPA suggests that it wants. If the bill is to be an all-encompassing vehicle, we will support it as long as we have the right controls to protect and manage our business too.

Ray Mountford: I am not an expert on flood management. However, at Grangemouth, where we are only 2in or 3in above sea level, flooding is an issue and will be an even bigger issue in the future. Only two weeks ago, we had problems with

flooding at the docks because of high tides. A bill will not prevent such events in future; people will prevent them. The experts must comment on forestry, agriculture and so on.

10:30

Maureen Macmillan: How much interest do the witnesses have in existing catchment management programmes, such as that on the River Spey? Are you involved in such programmes?

Pat Mennie: Yes. The River Spey is important to the distilling industry. I think that there are 45 distilleries within the river's catchment area. We have participated in the Cairngorms Partnership and in the set-up that produced the voluntary catchment management plan that was published the other day. We have been positively involved.

David Sigsworth: We are involved in all aspects of catchment management programmes.

Ray Mountford: We are involved with the Forth Estuary Forum.

Maureen Macmillan: Should the bill be designed specifically to support existing forums that deliver the aims of the water framework directive?

Pat Mennie: Yes. A lot of effort has gone into setting up and developing those forums. They are certainly a useful tool for achieving the sub-catchment plans that will be required.

Maureen Macmillan: Are the other witnesses of the same opinion?

David Sigsworth: It will be part of the on-going development to see how the fishery boards, Scottish Natural Heritage and the other players come together. They all have a role. Given the energy that has gone into creating the forums, it seems silly to throw that away and to start again. We look to SEPA to point us in the right direction.

Ray Mountford: A lot of work has been done with the Forth Estuary Forum. It would be silly to start again. I do not think that anyone is saying that we should start again.

Maureen Macmillan: Is the role of the proposed advisory groups clear and powerful enough? Are you willing to be involved in those advisory groups? There is concern that the centralisation of decision-making powers to SEPA and ministers will lead to apathy in the advisory groups.

David Sigsworth: One benefit of centralisation is that a common standard can be applied in all the catchments. At present, we have to deal with different standards, although I am not saying that that is a problem. Given that the bill tries to upgrade everything in the aquatic environment

along certain lines, a more centralised approach would be useful. However, there is also the issue of how to ensure local input.

Maureen Macmillan: Do you have any ideas on how that could be done?

David Sigsworth: At present, the structures for local input exist. The question is whether that input can be funnelled efficiently and cost effectively into the central debate or whether some of the information flows will have to be changed. I hope that we do not lose the local input.

Ray Mountford: The perception that it is good to have a single standard is perhaps not correct. Maybe a single standard is not the best solution. Local areas actively promote what is best for that area. We should discover whether there is a common standard, but we should not do that thinking that there must be a common standard.

Maureen Macmillan: So there must be some flexibility at the local level.

Pat Mennie: The local level is important because one locality can be different from another that is 10 miles down the road. Local input is vital and should be channelled so that it is taken into account. Our industry wishes to be involved in that.

John Scott: How would SEPA administer such a scheme if uniform standards were not to be applied within a 10-mile area? Could you put yourself in SEPA's position for a minute?

Ray Mountford: The common standard should be that there is no harm to the environment rather than applying a restrictive number and saying that if it were below such a figure you could do it, and if it were above you could not.

John Scott: Should the common standard be whether it makes a difference?

Ray Mountford: Yes. I believe that SEPA takes that approach in Grangemouth. It is not something new; it is already taken on board in local areas.

Nora Radcliffe: This is very much an enabling bill and the secondary legislation will be important. Do you agree with SEPA's comments in the written evidence that it is important that the secondary legislation is brought forward as quickly as possible, because industry needs time to attract capital and carry out mitigation work before European deadlines kick in?

Ray Mountford: Definitely.

Pat Mennie: Yes.

Nora Radcliffe: I will move on to the licensing proposals. Are you happy with the idea of a three-tier scheme of licensing?

Pat Mennie: The three tiers being a water use

licence, then a lower level—

Nora Radcliffe: The tiers are heavily regulated and not so heavily regulated.

Pat Mennie: Yes, and no regulation at all.

Nora Radcliffe: These issues have been touched on, but I will ask the questions so that you can reply to them directly. Do you agree that the plans in the bill will guarantee you a supply rather than threaten it? Will you look for exemptions for any part of your operations? Are you happy with the proposed offence provisions? We have had partial answers to all of those questions, but it would be helpful to pull them all together.

Pat Mennie: So far as the distilling industry is concerned, we will look for exemptions because we consider that the vast majority of the abstractions that are taken in connection with production have no impact on the water status. Provision is made in the water framework directive and in the bill for that.

If anyone commits an offence it is logical that there should be a bottom line remedy to deal with that.

David Sigsworth: Scottish and Southern Energy is looking to gain heavily modified status for the majority of our hydroelectric schemes. If that status is gained, we will be relatively happy with the rest of the licensing regime.

Ray Mountford: I think that I said earlier that we support licensing, but we must ensure that it is not too bureaucratic and that it does not make it risky for us to have alternative water supplies delivered to our site. If you have to spend a large amount of capital on a scheme, but you may not be given a second licence five years down the line, that will cloud your judgment as to whether to build the scheme. That seems to be nonsense. The licence should be for the life of the sustainable project.

Nora Radcliffe: The next question is about data and resources. Again, we have touched on some of the issues already. How much information do you hold on your abstraction and discharge activities? Are you obliged to release that information? Do you agree that a precautionary principle should apply where there is insufficient data to allow SEPA to make informed decisions? Who do you think will bear the brunt of data provision costs?

David Sigsworth: I have outlined the extra costs that could be incurred for us if the abstraction concept—the baseline mitigation that SEPA would be looking for—was to apply. Currently, many abstraction points in our systems are not measured and are not subject to any compensation flows. If the proposed system were to apply, it would add a huge cost and it would be difficult to see what the benefits were for us.

We have full information on the hydrology, the rainfall and the flow rates on our schemes, and SEPA has flow monitoring stations as well. We also get a huge amount of information from the fishery boards on the ecology of the watercourses and on fish management. All that information is either already in the public domain or would be available to the public.

Nora Radcliffe: It is helpful to know that.

Pat Mennie: The industry has a lot of data on its abstractions and those data have already been passed to SEPA. Discharges are subject to discharge consents under the Control of Pollution Act 1974, so that information is also available. Would you repeat the other parts of your question?

Nora Radcliffe: I wanted to know about the information that you hold, the release of information, the precautionary principle if there are insufficient data on which to base an informed decision, and who bears the brunt of the cost.

Pat Mennie: On the precautionary principle, a reasonable and practical approach should be taken when there does not appear, on the face of things, to be any environmental impact at all. From time to time, SEPA has asked for information and, when that information has been provided, it has said that the information was insufficient and has asked for further information to allow it to make a decision. It is not possible to prove a negative—that is the problem. Although the precautionary principle is basic, it should be implemented in a practical, appropriate and balanced way. We should not be told, “You cannot prove this so we are not going to allow you to do it.” The principle has to be considered seriously.

Nora Radcliffe: Who do you think will bear the brunt of the cost of data provision?

Pat Mennie: Setting up the catchment management plan is the first step—that is a requirement of the directive that the bill says must be followed. In my view, that should be funded from the centre, because SEPA would not be able to recover their costs. When considering what regulation is required, the regulating authority can say, “You will have to apply for a licence for this so we will have to charge you for processing the information.” There would have to be an element of cost recovery. Until that stage is reached, there is no mechanism to recover the cost of the initial work.

The Convener: Maureen Macmillan has some specific questions for the Malt Distillers Association of Scotland.

Maureen Macmillan: You have already covered part of my question by talking about your concerns about the costs of the provision of information to

SEPA for river basin management plans. Do you know what type of information SEPA would need that it does not already have?

Pat Mennie: No.

Ray Mountford: SEPA should tell us that.

Maureen Macmillan: So it is a mystery to you.

Pat Mennie: Yes, it is. As I said, we have been providing SEPA with information because we know that it will need it. We have not sat around waiting for SEPA to ask; we have, in a spirit of co-operation, tried to provide information.

Maureen Macmillan: I have been in touch with the distillers for the past couple of years, ever since I was on the European Committee and the ideas that we are discussing were first mooted. You lobby on the basis that what you do has little environmental impact. If there is no environmental impact, what are you worried about?

10:45

Pat Mennie: To some extent, we are worried about the precautionary principle.

Maureen Macmillan: As you have explained.

Pat Mennie: Yes.

Maureen Macmillan: So your concern is the idea that there might be something that nobody knows about, and we ought to worry.

Pat Mennie: Yes. The other difficulty is that SEPA may ask for information that the company concerned does not have.

Maureen Macmillan: And you cannot imagine what that information could be.

Pat Mennie: Not really. If SEPA feels that it needs more information, it would have to specify what it is seeking and why it is seeking it.

Maureen Macmillan: Indeed.

David Sigsworth: Through an exercise that the Executive chaired, we know the mitigations that SEPA would apply in the areas of our schemes. For any point of abstraction that drains more than 10km², SEPA would want compensation flows at about the 90th percentile of the annual flow. At the moment, we have no measurements, but hundreds of them would be required.

Maureen Macmillan: That would be horrendously expensive. The malt distillers' written evidence states:

"The use of charges would promote additional energy use against climate change policy and create the risk of exposure to legionellosis and pollution from biocides."

That is not what I want to find in my whisky. Could you explain your evidence?

Pat Mennie: We are talking about the process, not the product. There is provision in the directive and the bill to charge for the use of water. We are not talking about cost recovery for water installations through Scottish Water; we are talking about the possibility of having a charge. I do not think that that is terribly relevant in Scotland. I can see it being relevant in the wider European context, where that approach can be helpful in limiting people's use of water, with a view to saving it and making it available to someone else.

However, if that approach were taken and a levy were charged on the volume of water used, it could be more economic commercially—depending on the rate of the levy—to take a smaller amount of water and recirculate it, using cooling towers, for example. In my view, and in the industry's view, that is bad news. It is not an holistic approach and it would cause problems. It would be contrary to the environmental aim to move away from such measures and contrary to views on climate change, for example.

Maureen Macmillan: In fact, the river or whatever would be polluted by reusing—

Pat Mennie: The issue is not so much the river; it is about using energy that would not otherwise have to be used. Moreover, there would be problems with cooling towers and so on. I do not think that that is a likely scenario, but I felt that it was appropriate to flag it up, because we do not want it and we do not think that it is necessary.

Maureen Macmillan: I think that we have got the message.

The Convener: Finally, John Scott has some questions to put to the representative from BP.

John Scott: I go back to an earlier question. You said that licences running for five years would not afford a sufficient time scale to recoup an investment. What would you regard as an adequate time scale for licences?

Ray Mountford: At least 20 years, although the water industry might say longer.

John Scott: In response to the Scottish Executive's initial consultation on the water framework directive, you expressed concern that point sources of pollution could be an easy target for regulators, even though the environmental burden may lie with diffuse sources. Does the bill address that concern?

Ray Mountford: My honest answer is that I do not know. It must have been one of our environmental people who responded on the detail.

John Scott: Okay.

The Convener: It would be useful if you could get a response on that.

Ray Mountford: I shall do that.

John Scott: Thank you very much. The bill proposes a geographical limit of 3 nautical miles. How much of an impact do you envisage that will have on your water transport activities in the Forth estuary?

Ray Mountford: I do not think that that limit will have an impact.

The Convener: That brings us to the end of our questions for the first panel of witnesses. Thank you very much for the evidence that you have given. It will inform our consideration of the bill.

We welcome our second panel, which includes Graeme Nellie from the Highland Spring group and Ralph Baillie from Scottish Quality Salmon. We look forward to the evidence that you will give. I understand that you both wish to make some introductory remarks.

Graeme Neillie (Highland Spring Group): My name is Neillie, not Nellie.

The Convener: Sorry about that.

Graeme Neillie: That is quite okay. I am here to represent the Highland Spring group. Highland Spring is based in Blackford, Perthshire. It produces about 15 per cent of all UK bottled water sales and employs just under 200 people. The total market for bottled water in the UK is 1,600 million litres and it is forecast to continue to grow at between 10 and 15 per cent for a considerable period. Highland Spring is growing at a considerably higher rate than that.

Natural mineral water is derived from a named source in a specific location. It takes two years to gain recognition of natural mineral water and considerable associated capital expenditure is involved. We fully support policies that are necessary to protect the environment. Protection is essential if our catchments are to maintain the quality of our product. Natural waters cannot be treated, so we have no option but to manage our catchment and abstractions to prevent pollution and to maintain the water table. Nevertheless, we propose that any measures that are introduced to control abstractions should be justified, simple, proportionate and low cost.

With current market growth, significant investment will be required. We are pleased that the Scottish Executive is not applying time-limited licences systematically. Controls should be risk based and should not deter investment, as time-limited licences would. We support the proposal for consultation during the development of river basin management plans and we are keen to take part in that. Finally, we feel that it is justifiable to introduce charges to meet the cost of carrying out control regimes, but we would be against any system that gave such value to licences that they became tradeable commodities.

Ralph Baillie (Scottish Quality Salmon): I thank the committee for inviting us to give written and oral evidence at stage 1 of the Water Environment and Water Services (Scotland) Bill. Scottish Quality Salmon is a quality-assurance-led membership organisation that follows the value chain from the production of the food through to the production of the final product that ends up on people's plates. We represent about 65 per cent of the tonnage of the Scottish salmon industry. Our *raison d'être* is to ensure that the fish that we produce is of a high quality. Everything is audited independently. We compete in a global market.

Although we are a well-established industry, we are also a very young one. Until now, we have been governed and regulated by relatively old and outdated legislation. We welcome the bill, because it will modernise the legislation. It should allow us to compete on a level playing field, both with other users of water resources and with other players in our industry elsewhere in the world. Our industry is dependent on good-quality water and we want that to be maintained.

The Convener: Thank you for your introductory remarks. We will start with questions addressed to both witnesses. If you agree with something that the other witness has already said, you do not need to repeat it. Towards the end of the evidence session, we will ask some questions that are directed specifically at each of the organisations that you represent.

John Scott: Good morning. Are you happy with the way in which the bill has been drafted following the Scottish Executive's consultations? Were you concerned that you did not have the opportunity to comment on a draft bill?

Graeme Neillie: We are reasonably happy with what has been produced.

Ralph Baillie: Someone had to draft the bill, which takes time. If there were consultation at every stage of the drafting process, that would take far too long. It takes long enough in any case. We regard stage 1 consideration of the bill as a consultation process and are happy with that.

John Scott: So you are not concerned about not having the opportunity to comment on a draft bill.

Ralph Baillie: We are commenting on the bill now.

John Scott: The bill does not specify the number of proposed river basin districts. Do you think that it should?

Graeme Neillie: We operate from one locality, so it would be helpful if more than one river basin were specified. If only one large basin is specified, our voice may be drowned out. If a number of river basins are specified, we may be able to have more input into the river basin management plans.

Ralph Baillie: In the interests of efficiency for Scotland plc, we favour having just one river basin. Until we know the details, it is difficult for us to take a view. However, we favour having one basin because—like the previous set of witnesses—we think that it is the only way of getting a level playing field across Scotland.

John Scott: I take it that you would be happy if an explicit duty were placed on SEPA to establish sub-basin plans.

Ralph Baillie: Yes.

John Scott: Do you think that the relationship between river basin districts and sub-basin plans is clearly set out in the bill?

Ralph Baillie: The bill is not specific enough for us to be clear about the differences between districts and sub-basin plans. However, it is worded adequately to allow processes to be developed for secondary legislation.

Graeme Neillie: I agree with those comments.

John Scott: Are you happy that the bill sets out an obvious relationship between, on one hand, the development planning and community planning process and, on the other, river basin management plans? What about the relationship with areas that are outwith development planning control, such as agriculture and forestry, which affect both of the organisations that you represent?

Ralph Baillie: I assume that the bill takes account of forestry. The salmon industry has suffered for a long time from being regulated by old legislation that takes into account only point source pollution, when the industry is a diffuse polluter, as are agriculture and forestry. The bill allows SEPA to take those industries into account as well, which is important and which we are happy about.

11:00

Graeme Neillie: Agriculture can affect our activities. For example, we have concerns about nitrates. SEPA monitors levels of nitrates—which come from agricultural pollution—in groundwater. We want that monitoring to continue.

John Scott: Will the bill provide a useful tool to pull together flood management and integrated coastal zone management with other areas of water management?

Graeme Neillie: I have no comment on that. We operate in the upper catchment zones.

Ralph Baillie: We are not too concerned with flood management. The bill does not adequately cover coastal zone management, but as long as our members are involved in the consultative

process and the provision of river basin management plans, the bill will give us the voice that we require.

The Convener: Before we proceed to the next group of questions, I take this opportunity to welcome representatives from the Environment Committee of the Estonian Parliament, who are led by the committee chairman, Arvo Haug. I hope that they learn something from their visit to Scotland. We look forward to meeting them later today.

We will now move to questions from Maureen Macmillan.

Maureen Macmillan: The witnesses come from two very different industries. I wonder how much interest they take in existing catchment management programmes. Mr Neillie said that his industry has interests in upper catchment areas. How much do the witnesses interact with others who are involved in catchment areas? I realise that salmon farms are mostly in the sea, but smolts are grown in rivers, which have area management agreements. How much interest does SQS or its components take in catchment management programmes?

Graeme Neillie: As I said, we have little impact on the downstream part of the river basin. We also have good controls over what happens in our catchment area. We have a lot of data on what happens in that area and on the quality of the water. SEPA regulates our discharges. To answer your question, we take little interest in the existing programmes, but that is for the reasons that I have given.

Ralph Baillie: We have a great deal of interest in what is being put into the water that is upstream of us. That is partly because of smolt farms, but also because of what goes into the sea. Several years ago, a tripartite working group was set up to allow the salmon industry to interact with wild fisheries. That working group has resulted in a spate of debates among other users of the river.

The industry set up area management agreements in 1991 to help salmon farmers to get the best use of the water resources, specifically in sea lochs. Those agreements have been developed to include the interests of wild fisheries. Regular meetings on those issues take place throughout the country. We have a great deal of interest in that sort of collaboration.

Maureen Macmillan: Should the bill be designed specifically to support the existing fora, if they deliver the aims of the water framework directive?

Ralph Baillie: Yes, it should.

Maureen Macmillan: However, Graeme Neillie mentioned not being part of any fora—

Graeme Neillie: Not at the moment. However, as I said, we would like to become involved in consultation for management planning.

Maureen Macmillan: Will the proposed advisory groups have a powerful enough voice? You said that you would be willing to be involved with a group, but are you concerned that the centralisation of decision making gives SEPA too much power? If SEPA and the ministers direct everything, will advisory groups be pointless, as they will think that they are unable to exert influence? Where should the balance lie? Other witnesses gave evidence about the need for local flexibility and overall direction from the top. What do you think about that?

Graeme Neillie: We would certainly be concerned if local voices were not heard. From what I have read, we do not know enough about how things will work to tell how much involvement there would be. However, I reiterate that having a voice heard is important for us.

Ralph Baillie: Having local advisory groups that can ensure that everybody who is involved in the use of the resources has a voice is important. I am not particularly concerned that SEPA will have the overall say. We have worked with SEPA for a long time and have a good relationship with it. SEPA is good at seeing through the key issues and focusing on them. However, I worry that the local advisory groups could be used by people who are anti the industry and that those people could create unjustifiable concern about a development, for example. I worry that they would have too strong a voice. I am happy for SEPA to adopt the principle of consultation and work on the principle of good science.

Maureen Macmillan: Are you worried about the possible composition of the advisory groups?

Ralph Baillie: Not particularly. They should be set up to represent everybody's interests. I am worried about the strength of voice that some people might have in advisory groups. At the end of the day, any decisions should be based on good science.

Maureen Macmillan: I understand what you are saying. There must be a range of views on an advisory group and it should not be weighted to one side or the other.

Ralph Baillie: Yes.

Des McNulty (Clydebank and Milngavie) (Lab): If there are different user interests, will science always provide an answer to questions? For example, one could imagine tensions even between your user interests and other user interests in certain circumstances. There will be a range of people with direct commercial interests in water decision making and sometimes what suits

one set of people will not necessarily suit another. You mentioned people who might have an attitude against a particular industry and might have an undue voice. Will science always provide answers or is a dispute resolution mechanism required so that different interests can be reconciled?

Ralph Baillie: Science will not provide all the answers, all the time, when we want them—we know that already. I share the concerns about the precautionary principle that the gentleman from the Malt Distillers Association of Scotland raised, but will not repeat them.

On conflict, David Sigsworth of Scottish and Southern Energy mentioned that there must be a system of appeal in respect of SEPA's decisions. Where science does not have the answer, the bill has a provision requiring SEPA to take account of the economic impact of the actions that it takes. A balance has to be struck.

Des McNulty: I have a supplementary question on economics. Certain kinds of regulatory decisions from SEPA on water abstraction and water management issues could clearly have some financial impacts on, for example, Scottish Water. In your experience, has Scottish Water been willing to pick up new burdens that arise from SEPA's regulatory decisions or has the management of that process been a problem? Perhaps such issues do not have the impact on your organisations that they might have on other consultees.

Graeme Neillie: That issue does not affect us.

Ralph Baillie: Likewise.

Fiona McLeod: SEPA devises policy and also monitors and regulates its implementation. I see that Scottish Quality Salmon is happy with SEPA having that role as long as it is transparent. Does Mr Neillie feel the same way? We heard from the previous panel that there might be a conflict in SEPA's role. However, the previous panel could not see anybody who was better placed to provide the policy.

Graeme Neillie: Our experience is that SEPA has been competent and helpful. We therefore do not have a problem with SEPA's position.

Fiona McLeod: Similarly, there was concern that, as SEPA is an environmental regulator, it might not give economic and social considerations equal weighting and priority with environmental considerations. Is the bill drafted to ensure that SEPA will take those issues into account?

Ralph Baillie: The bill contains a section that states that SEPA must take into account the economic impact. Of greater concern is the fact that we know that SEPA is not yet sufficiently resourced to do that. Up till now, SEPA has—quite rightly—been resourced by scientists and

regulators. It will need economists if it is to take economic impacts into account using the same level of expertise as it has on the science side.

Graeme Neillie: If there were a body, such as the Scottish Executive or something else, to which disputes between a company and SEPA could be referred, that would provide a backstop.

Nora Radcliffe: The bill is very much an enabling bill, but as the saying goes, the devil is in the detail. Is it important that the secondary legislation should be introduced as quickly as possible to allow the maximum time for industry to prepare for the implications of the secondary legislation before the European guidelines kick in?

Graeme Neillie: From our point of view, the sooner that we know what will come out of the bill, the better.

Ralph Baillie: The sooner that we know what SEPA's thinking is on the rest of that, and the sooner that we can consult SEPA and make any necessary adjustments, the better it will be for us.

Nora Radcliffe: So it is important that the secondary legislation is brought in quickly.

Ralph Baillie: Yes.

Nora Radcliffe: Are you happy with the bill's proposal for three tiers of licensing covering simple registration, general binding rules and water use licences? Is that a sensible approach?

Graeme Neillie: Yes. It seems reasonable to us.

Ralph Baillie: Until we know the details of the three tiers and until we know into which category we will fall, we cannot comment on that.

Graeme Neillie: We are happy as long as account is taken of the points that I made in my introduction. The controls must be justified, proportionate, simple and of low cost.

11:15

Fiona McLeod: We are concerned about the bill being an enabling bill, and everyone is saying that we need to know soon what SEPA wants us to do. SEPA has started a consultation. Are you involved in that? Are you aware of it?

Ralph Baillie: Yes, I have been. I was at the workshop that was held in Stirling four weeks ago. I went through the entire document that was produced, which covers annexes 2 and 7 in "The Future for Scotland's Waters—Proposals for Legislation". I have been involved in that.

Graeme Neillie: I have not been involved personally, but someone from Highland Spring has.

Fiona McLeod: Do you think that that aspect is being taken care of comfortably?

Graeme Neillie: Yes.

Nora Radcliffe: Do you believe that the plans in the bill will guarantee you a supply rather than threaten it?

Graeme Neillie: I do not think that they will threaten it, provided that account is taken of the data that we hold, which we can use to justify our use of water.

Ralph Baillie: The salmon industry is heavily regulated at the moment. We believe in creating a level playing field where we will be competing for resources with other people on equal terms. We do not see the bill as a threat. If anything, we see it as positive and we want to ensure that the water stays good and clear, otherwise our industry will not survive.

Nora Radcliffe: Will you be looking for exemptions for any part of your operations?

Graeme Neillie: No.

Ralph Baillie: Not that I envisage.

Nora Radcliffe: Are you happy with the proposed offence provisions?

Ralph Baillie: I am. If someone commits an offence they should have to suffer the consequences.

Nora Radcliffe: Mr Neillie touched briefly on data and resources. How much information do you hold in relation to your abstraction and discharge activities? Are you obliged to release that information? Have you any comments about the application of the precautionary principle in the absence of data?

Graeme Neillie: Of necessity we hold a considerable amount of data on the quality of the water underground, groundwater levels, abstraction rates and discharge consents. We probably hold much more information than would be required for any activities that would go on in catchment management planning. It is essential for us to manage our catchments carefully to maintain the quality of our water. From that point of view, we hold a considerable amount of data. We are not obliged to publish that data.

What was your last question?

Nora Radcliffe: I asked whether you had any comments on when and how the precautionary principle should apply.

Graeme Neillie: Because we use a considerable amount of hydrogeological data, we can make a reasonable case for what we are doing. As I said earlier, that is all wrapped up with the quality of our product. If we do anything that will damage the environment, we will damage our product. We are therefore in an unusual position.

Ralph Baillie: Scottish Quality Salmon does not keep data, but all its members have to do so as part of their discharge consent requirements. There must be sea bed monitoring at least every two years—in many cases it is done annually. Many firms started sea bed monitoring long before they had to because we recognised it as a potential source of measurement of the carrying capacity or assimilative capacity of a loch system.

Beyond that, lots of members have lots of data on the wildlife and flora and fauna around fish farms. Many of our members do annual reports on wildlife activities. We have lots of data already.

As far as the precautionary principle is concerned, I would be repeating the view of the witness from the Malt Distillers Association of Scotland. We agree with the precautionary principle, but some degree of pragmatism has to be applied to a judgment of the real risk of a development. We do not know the answers, because the science has not been able to tell us yet, but in the judgment of everybody who is involved in the management plan, would there be that high a risk and if it were all stopped tomorrow how quickly would it revert? Some pragmatism has to be included in the precautionary principle. We should not just say, "We don't know, therefore don't do it."

Nora Radcliffe: Would either of the witnesses like to comment on who they think would bear the brunt of the cost of data provision?

Graham Neillie: I presume that we will bear the brunt of the cost locally.

Ralph Baillie: Yes. The industry already bears the brunt of the cost of data provision. Like the previous panel of witnesses, I think that the public purse has to bear the cost of setting up the river basin plans, because it is in the interests of the public and Scotland plc. When we know what regulation there will be of every industry or individual, a judgment will be made about what level of financial commitment the industry will have to make.

John Scott: You suggested in your written evidence that the financial memorandum uses outdated techniques to establish that additional pollution controls will be necessary in the aquaculture industry. Are you concerned that the bill does not seem to have due regard to continuing work on the national aquaculture strategy?

Ralph Baillie: We are not concerned so much that the bill does not have due regard to that work, but we were not sure what some of the wording of the bill referred to until we saw the Water Research Centre's paper on the cost and benefit of implementing the water directive. If the points in the bill about which we were concerned refer to

and uphold that research in suggesting that every fish farm will have to put a waste management system costing £3,000 under each pen, we would be concerned. That is outdated science, which has never been followed up, because it is not practical or cost-effective and it is disproportionate to any impact that we make on the environment.

John Scott: You alluded to that when you said that an essentially sensible and pragmatic approach must be taken.

Ralph Baillie: Although I was not referring specifically to the cost of waste management, the same principle applies.

John Scott: In written evidence, the Crown Estates Commission made it clear that it was in favour of the bill being amended to facilitate the transfer of planning powers for fish farming from the commission to local authorities. At phase 1 of the aquaculture inquiry, your organisation indicated that it was in favour of a transfer of planning powers. Would you therefore welcome an amendment to the bill to legislate for such a change and are you still in favour of the transfer of the powers?

Ralph Baillie: I am not sure that the bill is the place to regulate the planning of fish farming; that seems odd to me. If a legal mechanism has to be found to transfer planning powers, and if the bill were deemed the best way of doing it, we would not have a problem with it.

Fiona McLeod: If we did not include such measures in the bill, we understand that we would have to wait for the proposed planning bill in a future session, so the transfer of powers could be delayed for two, three or four years. Would you therefore favour finding a mechanism in the Water Environment and Water Services (Scotland) Bill to ensure that the transfer happens?

Ralph Baillie: In that case, I would support finding such a mechanism. We are looking for joined-up government and the fewer bodies that we have to deal with in making planning applications the better. We have to contend with around 63 pieces of legislation when we are applying to develop new sites. We would be in favour of anything that streamlined that process and we believe that the bill will be part of that.

The Convener: Angus MacKay has some questions on Highland Spring.

Angus MacKay: I will ask the questions in two parts. First, I will quote the British Soft Drinks Association, which states:

"Water bottling companies fully support policies necessary to protect the environment and natural resources."

Are you happy that natural systems of water management are encouraged in the bill? Is your

specific resource currently covered by a catchment management plan?

Graeme Neillie: It depends on what you mean. We have a catchment management plan within our own organisation. It is essential to have such a plan. It is derived from consultation with hydrogeological experts. The plan allows us to define what policies we need to protect the catchment, how much we can abstract and what measures we need to take to protect the catchment area to ensure that the quality of our water is not compromised.

Angus MacKay: So there is an internal catchment management plan, but it is not governed by anything external.

Graeme Neillie: That is right.

Angus MacKay: Secondly, given the length of time that it takes to obtain new licences for mineral water abstraction, are you confident that you can meet the demands of an expanding market? Might any of the provisions in the bill inhibit your ability to compete, bearing in mind that the water framework directive will supposedly be implemented throughout Europe on an equivalent basis?

Graeme Neillie: We are in a position to keep up with the rate at which the market is expanding. Considerable work has been done over the past few years to ensure that supplies are available and that they are of appropriate quality to continue our business.

Sorry, what was your second question?

Angus MacKay: I asked whether any of the provisions in the bill would inhibit your ability to compete.

Graeme Neillie: No, provided that time limiting of licences does not come into effect. Time limiting of licences, as is proposed in England—where it is proposed that there will be a 12-year limit on abstraction licences—will inhibit investment. As one of the previous witnesses said, we are looking at a period of at least 20 years to make a return on investment, so 12 years is not long enough. We are happy with the proposals, because there is currently no sign of any blanket application of time-limited licences. We feel that there is no need for that. Our colleagues in England are very concerned about time-limited licences.

Des McNulty: A few years ago, one of your international rivals had its source contaminated, which had considerable impact on its business. God forbid that something of that kind should ever happen in Scotland, but does your company have emergency arrangements in place? How would you relate to SEPA in the context of something like that happening? What kind of preventive measures do you take to prevent the occurrence

of something similar to what happened to Perrier?

Graeme Neillie: What happened with Perrier did not happen at the source; it happened in the plant. It was an unfortunate incident within the plant. Groundwater abstraction and groundwater management is a long-term process. It is unlikely that there would be sudden impacts on our groundwater, which is a well-protected source. We perform regular monitoring for a variety of potential contaminants. It is unlikely that we would see an instantaneous event; it is more likely that we would see a trend towards something happening.

If the concern is about food safety and the public, it is less likely that there would be a problem, from a microbiological point of view. The comments that I have made relate to the chemical attributes of the water. From a microbiological standpoint, things can happen much more quickly. However, our products—this is general throughout the industry—are positively released. In other words, each day's production is held pending the results of microbiological analysis, which takes three or four days, prior to the product being released for sale.

11:30

John Scott: I want to take you back to your comments on licences and the time scales. Both you and Ray Mountford said that a five or 12-year licence is not adequate in terms of a return on capital. That is all very well, but you also said that the licences should not have a value. How would you prevent them from gaining a value, if, for example, they granted abstraction rights for 20 years? That would inevitably have a value and would become an asset of the firm.

Graeme Neillie: It does. However, in our position we would not be able to sell the rights for abstraction to anyone else. Natural mineral waters can be bottled only at source. It is not possible to take the water and bottle it elsewhere. Therefore, any licence that we had would be specific to us and would not be transferable. My comment about licences having a value stems from the British Soft Drinks Association—of which we are members—and concerns that it would have about that. We do not have a specific issue about it, but more generally there is a concern about the creation of a bidding situation if an area were to be developed and a licence application made. That is something that the industry would wish to avoid.

John Scott: I can see why the industry would wish to avoid it, but I do not see how it can. It seems inevitable. All licences, quotas and so on have values; a right to production is a valuable asset.

Graeme Neillie: In practical terms, if a company owns a licence it will not sell it on. In our case,

products have to be bottled at source and our products come from a specific location. If we were to pay a reasonable rate for the cost of setting up the licence, we would really like a body such as SEPA to offer for sale licences to the general industry.

The Convener: Thank you. That brings us to the end of the questions for our second panel.

Highlands and Islands Ferry Services

The Convener: Item 4 is consideration of a paper from the reporters on the Highlands and Islands ferry services. We want to update members on the work of the reporters in considering the draft service specification of the competitive tendering for the Highlands and Islands ferry services. The reporters' paper outlines some of the key issues emerging from recent meetings on the matter. We wanted to update members in advance of our evidence-taking session with the Deputy Minister for Enterprise, Transport and Lifelong Learning at next week's meeting. I invite the reporters to comment briefly on the paper.

Maureen Macmillan: First, I should point out that there is a mistake in the sentence at the bottom of page 2 and the top of page 3 about when the announcement on the Gourock to Dunoon service was made. It was of course made when the draft proposals were published. As a result, that particular sentence should begin with the phrase "At the end of June 2002". Although we believe that the advice came from Europe at the end of 2001, we are not exactly sure when the Executive made its decision. However, the decision was not announced until the end of June 2002.

The paper highlights several areas of substantial disquiet, particularly in relation to the Clyde crossing. I called a public meeting in Dunoon to discuss concerns, which I have outlined in the paper. The principal concern centres on the impact of the loss of the CalMac vehicle service both on the people in Cowal and on the development of the service across the Clyde. Professor Neil Kay has written several papers on that issue that are available for members to read. We need to find out exactly what the European Commission competition rules say about whether one is able to distinguish between a subsidised and an unsubsidised service on the same ship. As there has been a lot of discussion about the matter, we could press the minister on it.

Apart from that, we need to address some issues to do with Gaelic and to do with pensions and the Transfer of Undertakings (Protection of Employment) Regulations 1981. The Scottish Trades Union Congress is quite content about what the specification document says about the TUPE regulations.

Other issues concern other services, mainly to the Argyll islands, and centre on the need to have more frequent services to Tiree, Colonsay and so on. We should also explore substantial concerns about the cost of freight to the islands, particularly

in light of the fact that the development of industries such as salmon farming rely on daily freight services to the mainland.

Des McNulty might have other points to add that I have not mentioned.

Des McNulty: As Maureen Macmillan has pointed out, the most controversial issue relates to the Gourock to Dunoon service. After speaking to many people in different parts of Scotland, particularly in the island communities, we feel that they support the thrust of the Executive's approach of bundling services under one opco, or operating company. They also support the fact that the forthcoming CalMac timetables will form the basis of the service specification, because they feel that that will give the process stability. That said, we also heard very specific concerns about particular islands or aspects of the service.

More generally, the Executive needs to address the point that ferry services are crucial to the broader economic and social development of the island communities. The question is whether we can treat issues such as the future of CalMac purely as transport issues or whether they have a more fundamental role in such social and economic development. We need to raise that point with Lewis Macdonald, perhaps in the context of a discussion about what lies within his area of responsibility and within other ministers' areas of responsibility to take these matters forward.

The service will be tendered out for a five-year period, but much of the development considerations in terms of the long-term future of the service have to be thought about in the context of a longer time frame. Consideration therefore needs to be given to a longer-term development planning framework that will allow the services to be examined in a long time frame.

There was a suggestion that there should be a service enhancement fund so that island communities, the opco, the successors to CalMac, and other interested parties could have some mechanism for implementing ideas for new or improved services outwith the specified contract framework so that we do not end up with a five-year chunk that remains the same irrespective of how circumstances change in a given island or in relation to a specific service. We felt that the idea of a limited service enhancement fund that could be bid for on a competitive basis and which would allow new ideas to be tested out was an idea that should be pursued with the minister.

The Convener: Does anyone have any comments? I remind members that the paper is intended to inform us of the situation in advance of our meeting with the minister next week.

Nora Radcliffe: I comment on behalf of George

Lyon, who has a strong constituency interest. He would have liked to have been here but was at the public meeting in Dunoon last night and is attending a meeting with the minister on this topic this morning. Maureen Macmillan has already covered one of the points that he asked me to raise, relating to the point at which it became known that the intention was to have a stand-alone service, which was when the draft specification was published at the end of June. He also wanted me to raise the issue of the inconsistency between the way in which this issue is being treated and the way in which the northern isles lifeline ferry service is being treated. The northern isles service has run alongside a commercial freight operating company for years and George Lyon asks why, if there is sauce for the goose, there is no sauce for the gander.

John Scott: I note what Des McNulty and Maureen Macmillan have said and commend them on their work and welcome the depth of the report. The crucial issue is the Gourock to Dunoon service and, as Des McNulty implied, an holistic approach needs to be adopted. We need to pursue the issue in Europe. The Gourock to Dunoon service is a starting-off point for many of the services in Argyllshire and the islands. We need to follow this matter up with the minister.

The Convener: Do we agree to note the report and use it as the basis for some of our questions to the minister?

Members indicated agreement.

The Convener: We will move into private session to discuss the committee's work programme.

11:44

Meeting continued in private until 11:58.

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