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Blueprint for Water coalition Briefing on the Water Bill

House of Lords, second reading, January 2014

1. Executive summary

The Water Bill has now raced through its Commons stages with just six weeks passing between second and third readings, including the Christmas Recess. The Blueprint for Water Coalition now looks to Peers to provide further scrutiny of the central provisions of the Bill.

The Government's amendments, tabled at Report Stage, to Ofwat's new resilience duty satisfy our call for Ofwat's secondary sustainable development duty to be raised to a primary one. By articulating the need for environmental resilience and demand management, we believe it will make a positive impact on Ofwat's decision-making and guidance in the Price Review process.

The Bill also proposes welcome legislation to tackle current over-abstraction, by ending the right for water companies to be compensated if an abstraction licence is withdrawn or amended after being deemed to be causing environmental damage.

Upstream competition & abstraction reform - The Government's reassurances have not satisfied our concerns on the opening of the upstream wholesale water market while the abstraction licensing system remains unreformed. The existing licensing system, which underpins all water supply sources, is fundamentally broken. A third of river catchments in England and Wales are either 'over-licensed' or 'over-abtracted' according to Environment Agency figures, with more water taken out than the environment can sustain. We therefore believe that it is inappropriate to put a framework for liberalising water trading between water companies in place before the abstraction regime that underpins water supply has been placed on a sustainable footing.

We welcome Defra's recent consultation on reforming the abstraction regime, but are concerned that the powers to enact its conclusions will require new primary legislation in the next Parliament; which is not certain to happen.

As a result, we believe the Water Bill should be amended to:

- include a commitment to introduce abstraction reform ; and
- introduce a series of environmental safeguards to upstream competition.

Affordability & metering. To tackle the problems of customer water bill affordability we believe reform of the household charging system is needed.

The Water Bill should be amended to:

- allow water companies, when supported by customers, to introduce water meters where there are clear social benefits in doing so (as part of a package including water efficiency measures and social tariffs that protect the most vulnerable).

Fracking. Fracking for shale gas poses significant risks to our rivers and groundwater. These include the potential for contamination of groundwater and increased pressure on water resources in certain catchments at certain times¹.

If properly implemented and enforced, the current regulatory regime will mitigate some of these issues. However fracking is a new technology in the UK, and groundwater contamination poses a low probability high impact risk if not fully addressed by the current regulatory regime. The consequences of groundwater pollution of a primary aquifer, for example from well failure, could be severe with potentially devastating impacts on the supply of water, the natural environment and with a lengthy and expensive clean-up. Current liability arrangements create a significant risk that taxpayers would have to foot the clean-up bill if something did go wrong.

The Water Bill should be amended to:

- introduce a liability guarantee that would ensure fracking companies have the funds available to pay for the cost of clean-up, should an accident occur during the entire lifetime of the well.

2. Increasing competition in the water sector

The Water Bill's primary function is to increase competition in the water industry. As well as increasing competition in the retail side of the business (by allowing commercial customers to switch supplier), the Bill takes forward recommendations from the Cave Review² to introduce competition in the 'upstream' market (i.e. the part of the business associated with water abstraction, and the treatment and disposal of sewage).

The clauses proposed on upstream competition will:

1. Open up the upstream market to new entrants through new powers which would allow all abstractors (including farmers, industrial users and private land owners) to gain Water Supply Licences and sell the water they abstract to the incumbent water company (Part 1 of the Bill); and
2. Encourage increased trading of bulk water supplies between water companies through a standardised set of Operational Agreements overseen by Ofwat (also Part 1 of the Bill).

In theory, this could have environmental benefits:

1. Competition can lead to greater innovation and efficiencies which could mean less water abstracted overall; and
2. New Water Supply licences could mean more sources of water to choose from, and thus the selection of water-abundant sources over sources where water is scarce.

¹ CIWEM, Shale Gas and Water: An independent review of shale gas exploration and exploitation in the UK with a particular focus on the implications for the water environment. 2014.

² Cave Review: Competition and Innovation in the Water Sector, 2008.

However, the Bill as it stands will result in greater environmental damage because the abstraction licensing system which underpins all water supply sources is fundamentally broken.

The Bill will incentivise existing abstraction licence holders to sell their water to water companies, even when the catchment is already “over-abstracted” or “over-licensed” according to the Environment Agency. Where such trades occur between water companies through Bulk Trades there are no safeguards in place to prevent greater environmental damage to our already stressed river systems.

To bring about the benefits of upstream competition, whilst ensuring that the Bill does not inadvertently cause significant environmental problems, the following amendments are needed:

1. A commitment to introduce long-promised abstraction reform once the public consultation launched in December 2013 is complete.
2. Safeguards to upstream competition:
 - a. Requiring parties entering into bulk supply agreements to consult with the Environment Agency;
 - b. Giving the Environment Agency powers to intervene to vary or terminate bulk supply agreements if they are contributing to over-abstractation and environmental damage;
 - c. Requiring applicants for new Water Supply Licences to consult with the Environment Agency (the Government has conceded this and amended the Bill); and
 - d. Requiring full public consultation prior to new regulations relating to water supply arrangements between water companies and other abstractors.

3. Customers’ water bills and affordability

Water charging in England and Wales urgently needs to be brought up to date. Thousands of customers struggle to pay their water bills, current water consumption is unsustainable, wastage is high and our natural environment is under significant stress – all problems that will be exacerbated by climate change and an increasing population.

By 2015 half of the country will be paying by water meter. The rest will be paying by the rateable value system, with charges based on 1974 rateable values that do not reflect current water use, do not incentivise people to save water and do not protect millions of low-income families from unaffordable bills. We simply cannot afford to turn a blind eye and carry on with business as usual.

In 2009 Defra commissioned an independent review by Anna Walker of the household water charging system.³ The Walker Review concluded that the current mixed system of charging was unfair, not progressive and not fit to address affordability issues in the water sector.

After considering the evidence, the Walker Review recommended a widespread switchover to metered charging, considering it the fairest way to pay, and the only way to address the affordability problems inherent in the current system. In response to this, in 2012, the Efra Committee recommended that the *“Government set a clear and ambitious objective to increase levels of metering, taking account of Anna Walker’s recommendation that metering penetration reach 80% by 2020.”*⁴

³ Independent Review of Charging for Household Water and Sewerage Services, led by Anna Walker, 2009.

⁴ Environment, Food and Rural Affairs Committee, Second Report – Water White Paper, 2012.

a. Metering

Under current legislation, water meters cannot be introduced on a universal-basis in large parts of the country, even when it is clear that they could go a long way to address affordability concerns. Broadly, water companies are only able to introduce domestic water meters universally where the Secretary of State has determined that either the whole or part of their area is an “area of serious water-stress.”⁵ To introduce metering, the water undertaker is also required to have planned for metering in its Water Resources Management Plan.⁶

Universal water metering has been successfully introduced in a number of areas in the UK, and has produced savings in customers’ water bills of up to 18%, as well as reducing demand and helping identify leakage through the introduction of smart technology. To increase the uptake of water metering, water companies should be able to introduce universal metering if – after consultation with customers through the existing Water Resources Management Plan and Business Plan processes – it is found to be the most affordable option for customers overall.

To help address affordability in the water sector, the following amendment is needed:

- a. A new clause to remove the current restriction on universal metering in only water scarce areas, to enable affordability benefits to be realised everywhere.

This amendment would not force water companies to bring in water metering. It would simply allow them, in consultation with customers, to consider the wider social benefits water metering can bring in to parts of the country.

4. Fracking and long-term liability

Fracking for shale gas involves injecting fracturing fluid at high pressure down a borehole into a shale formation. Waste fluid will contain various chemical additives, and can pick up other toxins underground such as Naturally Occurring Radioactive Materials.

The potential impact and likelihood of contamination with river and ground water is still highly uncertain. Peer-reviewed evidence of groundwater contamination is emerging and indicates that the risk of groundwater contamination is very much dependent on the specific geology and the shale gas operations^{e.g.7,8}. However, the importance of protecting ground and surface water cannot be over-emphasised. For example, in the southern region of England more than 70% of public water comes from groundwater. We depend on healthy aquifers for drinking water, farming and other industries, and this resource is estimated to be worth £8 billion to the economy. It is therefore essential that we take a precautionary approach.

Groundwater clean-up is costly and can take decades, and companies could go bankrupt even where liability is proven, leaving taxpayers, water companies or others to foot the costs. This is currently a major issue; for example, in the case of Scottish Coal, liquidators have been given permission to abandon coal mines and polluted land without carrying out restoration or controlling pollution from the sites.

⁵ Section 144B Water Industry Act 1999 restricts water undertakers from charging by volume (e.g. metering) except in certain circumstances, which are prescribed in the Water Industry (Prescribed Conditions) Regulations 1999 and Water Industry (Prescribed Conditions) (Amendment) Regulations 2007.

⁶ such plans required by Section 37B(8)(a) of the Water Industry Act 1991.

⁷ Osborn, S.G., Vengosh, A., Warner, N.R. & Jackson, R.B. Methane contamination of drinking water accompanying gas-well drilling and hydraulic fracturing. PNAS 2011 108 (20) 8172-8176;

⁸ Jackson, R.B., Vengosh, A., Darrah, T.H., Warner, N.R., Down, A., Poreda, R.J., Osborn, S.G., Zhao, K. & Karr, J.D. Increased stray gas abundance in a subset of drinking water wells near Marcellus shale gas extraction. PNAS 2013 110 (28) 11250-11255;

Our proposed amendment would ensure we have a plan for the low probability but high risk scenario of a pollution incident. There has been much assurance that the risk of an accident occurring during the fracking process is minimal. We should not therefore be concerned that this amendment would impose unreasonable cost on the industry. It would simply ensure that, if there is an accident, the industry does not impose significant financial and environmental costs on the public purse.

The Water Bill should be amended to include a provision that requires the Environment Agency to ensure onshore oil and gas operators have secured Financial Provisions to cover a range of eventualities, including groundwater pollution, before issuing permits under the Environmental Permitting Regime.

5. Blueprint for Water coalition

The Blueprint for Water is a unique coalition of environmental, water efficiency and fishing and angling organisations that is calling on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2015 (www.blueprintforwater.org.uk). The Blueprint for Water is a campaign of Wildlife and Countryside Link.

This briefing is supported by the following 10 organisations:

- Amphibian and Reptile Conservation
- Angling Trust
- Buglife
- Freshwater Habitats Trust
- The Rivers Trust
- RSPB
- Salmon & Trout Association
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- WWF-UK

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