

## Blueprint for Water coalition response to Defra's abstraction reform consultation

### 1. Summary comments

We welcome the Government's proposals set out in *Making the Most of Every Drop: Consultation on Reforming the Water Abstraction Management System*. We are broadly supportive of the proposals outlined, and we believe that, when implemented, the proposals will go a long way towards ensuring that we have a sustainable and resilient water management system that protects the environment.

The case for reforming the existing abstraction system is compelling. It is rigid and cumbersome, and lacks the flexibility needed to: protect the environment where and when it needs it most; meet the needs of current and future water abstractors; provide signals to abstractors (and to end users) about the availability (and hence the scarcity, and hence the variable value) of water; and deal with the challenges of increased variability and change in the demand for water.

There is much to applaud in the proposals: the linking of abstraction to availability; the introduction of smart and graduated abstraction limits; protection for the environment at low flows; charges related to use and availability; and increased public transparency about arrangements and procedures. All of these things will address some of the many shortfalls in the current system. Significantly the proposals will encourage flexibility and efficiency and enable collaboration (including through shared use of resources and trading) to maximise the value of water and increase resilience among water abstractors.

The consultation proposes two options: 'Current System Plus' and 'Water Shares'. Both options are a significant step forward from the current system. We would be supportive of implementation of either option. However, providing it is adequately resourced, we believe that 'Water Shares' offers a future where there is stewardship of a shared resource and where water is more highly valued. 'Water Shares' will promote attitude and behaviour change - directly through 'sharing of the risk' and increased collaboration (including development of shared resources and trading) and indirectly through development of responsive tariffs for water customers.

### 2. Issues in the consultation to be addressed

#### 2.1. Timing and legislative timetable

A fundamental issue with the consultation is timing and the legislative timetable. The Government opens *Making the Most of Every Drop* by saying:

'We are committed to introducing a reformed water abstraction management system able to promote resilient economic growth while protecting the environment.'<sup>1</sup>

The consultation states:

- 'in advance of reform we must continue to tackle the problem of abstractions that are causing damage now to our rivers and groundwater'<sup>2</sup>;
- '[the Government] anticipates that abstraction reform should be in progress by the early 2020s for England'<sup>3</sup>; and
- 'the requirement for primary legislation, which is subject to space in the legislative programme, makes it difficult to be any more specific about the timetable for implementation.'<sup>4</sup>

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<sup>1</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop: Consultation on Reforming the Water Abstraction Management System*, [https://consult.defra.gov.uk/water/abstraction-reform/supporting\\_documents/abstractionreformconsultcondoc20131217.pdf](https://consult.defra.gov.uk/water/abstraction-reform/supporting_documents/abstractionreformconsultcondoc20131217.pdf), p.3.

<sup>2</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.4.

<sup>3</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.55.

We are extremely concerned that the Government has delayed legislation on abstraction reform until the next Parliament. Despite assurances from the Government and the Opposition that they will bring in abstraction reform and the recent amendment to the Water Bill which requires the Government to report progress in five years' time, postponing the required legislation until after the election makes the likelihood and timescales for reforms extremely uncertain.

We would like to see the current Water Bill amended to give greater certainty that abstraction reform will happen. Echoing the existing Government commitment through an amendment in the Water Bill currently before parliament will also send a clear signal to abstractors that the Government does intend to reform licences, providing greater certainty and a longer lead-in period to adapt. This has the potential to reduce the cost of the transition to the new abstraction regime.

It is vital that the Government sets out further clarity on the timescale in its response to the consultation, using scenarios to illustrate the consequences of different legislative timetables.

## **2.2. The legacy of over abstraction**

There is an urgent need to ensure the legacy of unsustainable abstraction is addressed before transitioning to any new regime. The consultation document references 77 licences that have been amended since 2008. This is welcome, but the pace of change needs to be significantly increased. There are at least another 450 to go (411 under the Restoring Sustainable Abstraction (RSA) process, as of March 2014, according to Environment Agency advice). In addition, there are many more water bodies impacted by water abstraction that are currently not even considered as part of RSA and it is uncertain how these will be dealt with. It is essential that the legacy is addressed prior to transition to the new regime, in order to ensure that unsustainable quotas are not embedded in the new system, and give current abstraction licence holders reassurance that the transition will not be used as an opportunity to 'claw back' volumes for the environment.

Making the Most of Every Drop acknowledges that 'the current process to change most licences that are causing damage to the environment is expensive and time consuming.'<sup>5</sup> Despite welcome amendments in the Water Bill to change funding mechanisms, given the current scale and pace of change, it is now extremely unlikely that even a proportion of current abstraction will be addressed by the early 2020s (i.e. new sustainable licence levels in operation). It is therefore essential that the abstraction reform process acknowledges this, and, as part of that agenda, the Government renews leadership and scrutiny of Environment Agency progress to inject vigour into the process. In its response to the consultation, we would like the Government to set out the specific measures that will ensure that the legacy of unsustainable abstraction is addressed with the aim to achieve Good Ecological Status by 2021, clarifying the number and timetable for necessary licence changes. In addition, we would like to see the draft River Basin Management Plans include summaries of measures and timetables with the aim of achieving Good Ecological Status for the 13% surface water bodies, 4% Highly Modified Water Bodies and 39% ground water bodies which are currently failing to meet Good Ecological Status linked to abstraction pressures.

## **2.3. Setting environmental flows**

An underpinning principle of the proposed system – and one we strongly support – is systematically linking access to water to water availability with the setting of minimum environmental flow requirement on every licence. The assessment of water availability (what is available to abstract after the environment has its share) is crucial to achieving the Government's aspiration to 'better protect the environment.'<sup>6</sup>

There is a lack of clarity over how the environment's 'share' of water is set. We need 'environmental flows' to perform as the best possible proxy for the environmental health of a river basin or

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<sup>4</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.55.

<sup>5</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.3.

<sup>6</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.46.

groundwater body. Whether accomplished by local expert judgment or nationally set standards, this share needs to adequately protect our water environment for many decades to come. Our argument is that the environment should be granted a fixed volume, dependent on the requirements of the catchment, not a variable share, and that this should be set at a suitably high level. In addition to protecting the environment at low flows, the system also needs to put in place procedures to protect critical high flows. High flows are necessary not only for some fish migration but also to allow for essential overflow of banks to maintain floodplain wetlands.

#### **2.4. The definition of environmental protection**

The consultation says that one of the aims of reform is to 'protect water ecosystems in line with legal requirements, particularly ensuring that reform does not create risks of environmental deterioration.'<sup>7</sup>

This definition of environmental protection is too narrow, and is insufficient for an abstraction system that will be in place for decades to come. As well as ensuring that the proposals are able to 'avoid environmental deterioration' (as required under the Water Framework Directive), the proposals must also reflect the legal obligation to restore water bodies to Good Ecological Status.<sup>8</sup> The amount of water required to ensure that the ecosystem is healthy and functioning must be assessed, but it is essential that this has no relation to the current (healthy or unhealthy) state of the water body and should not be restricted to those rivers and groundwaters which currently have the greatest legal protections.

The reforms should deliver a new licensing regime that protects the environment: ensuring that our ecosystems function now and as the climate changes. This requires more than a 'hold the line' approach. This is particularly concerning because since, unless the pace of change is ramped up, we could see abstraction reforms rolling out while current levels of unsustainable abstraction are in place.

#### **2.5. Avoiding a two tier system and ensuring that the 'basic' reforms will protect the environment**

The consultation includes proposals for 'basic' and 'enhanced' catchments. While we recognise that certain elements, such as trading arrangements, may not be appropriate and best value everywhere at the same time, we feel that it is important that a two tier system (which is one of the failings of the current arrangements) does not develop by accident. Clarification is needed to show that reforms to protect the environment and reflect availability are to be rolled out everywhere, with additional 'enhanced' arrangements when and where needed.

We understand from the consultation that the 'basic' reforms include a fixed minimum flow for the environment on every licence and a regular review period to ensure that this continues to be appropriate to protect the environment. This is very welcome. However, such a welcome proposal could easily be missed. We would like the Government's response to the consultation to explicitly state the environmental protections implicit in its basic reforms.

The right balance must be struck between added value and costs associated with complexity. However, we must not simply choose the cheapest option – the new regime will be in effect long into the 21st century, in the context of significant changes in climate and water availability. We need to ensure that the system is based on the best available science and technology and is adequately resourced. We therefore have questions over the ability of the EA to resource and manage a two-tier system, given the cuts they are facing.

### **3. Responses to specific questions**

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<sup>7</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.7.

<sup>8</sup> Defra/ Welsh Government (2013) *Making the Most of Every Drop*, p.20.

## **1. What are your views on the proposal to convert seasonal licences into abstraction permissions based on water availability?**

We fully support this proposal as it will enable water to be taken when it really is available, as opposed to when it is expected to be available. It allows 'environmentally-safe water' to be taken when it is there, and it restricts the taking of water when damage could result.

Those Link members with abstraction licences for nature reserve management particularly welcome this proposal, as it will allow the flexibility needed to help meet site conservation objectives. Currently, many nature reserve licences are 'seasonal', with abstraction having to cease on March 31<sup>st</sup> even if water is still available and good conditions, for example for breeding wading birds have not been achieved.

Defining which and how many high flows would be open for additional abstraction is important. Threshold values would need to be set on a site by site basis, and consideration would need to be given to disallowing abstraction in (some) high flows at some times of the year. High flows are needed to maintain spate flows that are important for fish migration, silt movement and riffle winnowing (p.25, p.28), as well as for important bank overflows and high groundwater for the health of connected wetlands. We think that additional abstraction at high flows should be permitted in all catchments, not just in 'enhanced' ones (which would risk creating a two-tier system) (ref Table 4.2).

The means of defining how much water is available at a particular time and place is a critical underpinning issue. A well-founded basis for setting environmental-flows (e-flows) and environmental levels (e-levels), and hence the water available for use above those thresholds, is of fundamental importance across the whole of the reform agenda. Better use needs to be made of available research, for example on the flows required for fish migration into rivers from estuaries. Methods used to determine naturalised flows must be carefully validated.

## **2. What do you think about the different proposed approaches to linking abstraction to water availability for surface water and groundwater abstractions?**

We fully support the need for abstraction to be linked to water availability: setting appropriate e-flows and e-levels is of critical importance. We believe that this principle of linking availability to abstraction should be applied to every licence (not just 'enhanced' catchments). Groundwater needs to be maintained at a level adequate to provide for the needs of neighbouring or connected habitat that is dependent on the groundwater source.

We agree with the proposed distinction between 'basic' and 'enhanced' catchments under the Water Shares option, where allocation of water could be turned on or off according to water availability in 'basic' catchments, but where it is linked to sophisticated, real time data on water availability (and hence variable) in 'enhanced' catchments. This approach provides nuanced protection for the more vulnerable 'enhanced' catchments (Table 4.2).

However, we disagree with the proposal that graduated controls on abstraction would only apply to sites that currently have 'hands off flow' conditions. This is not a good basis for separating sites that have need of and would benefit from smart (graduated) abstraction controls; 'hands off flow' conditions now apply to only a fifth of abstraction points, and exclude many vulnerable sites that require better protection than just a regulatory minimum threshold on abstraction. We think that graduated controls should be applied in all sites now classified as being at risk from abstraction pressures (i.e. areas where recent actual flows are lower than the Environmental Flow Indicator (EFI) percentage deviation from natural river flow (that is, in the EA's EFI categories 1, 2 and 3).

The proposed arrangements for managing abstraction from groundwater recognise that groundwater levels and volumes respond slowly to rainfall inputs and abstraction removals. Since groundwater resources are slow to decline and also to replenish, if abstraction from aquifers (and rivers fed by them) is permitted to continue until too low a level is reached stocks will take a long

time to recover. Abstraction control levels for managing groundwater resources and base flow-fed river resources therefore need to be set high, to provide time for managing depletion and recovery.

The example quoted on p.30 contains an unsafe equivalency between groundwater levels and volume or yield; the percentage change in extractable volume of water for a given percentage change in water level is neither equivalent nor constant through the profile.

**3. Would it be helpful if abstraction conditions required abstractors to gradually reduce their abstraction at low flows before stopping, rather than being just on or off?**

In principle, yes; but it depends upon the position of the threshold where the controls start and at what level they prohibit any abstraction.

Using graduated controls on abstraction could be a significant step forward in managing potentially damaging abstractions at low flows. It sends signals early, and it reflects scientific uncertainty on the potential of abstraction at low flows and levels to create environmental damage. Abstraction quantities would fall in line with flows or levels, calibrated to the risk of adverse environmental impacts. This is particularly important in slow response systems (in groundwater and groundwater-fed systems, with base flow indexes (BFI) of say >0.5), to provide sufficient early warning of impending issues where recovery is a long, drawn-out affair.

We think that graduated abstraction controls should be applied in all catchments where:

- ecological vulnerability to low flows and levels is high (e.g. all abstraction points with designated sites upstream; all sites in EFI category 3 and 2); and
- base flow contributions to flows and levels are important (e.g. sites with BFI >0.5, where at least 50% of the flow comes from groundwater).

If graduated controls are set with their 'no abstraction allowed' line at the same level as a previously defined and well-set 'hands off flow' constraint, with progressive reductions in abstraction entitlements tapering down towards that line, they would provide additional environmental value, whilst sending valuable signals on impending issues to abstractors. If, on the other hand, they are set below a 'hands-off flow' constraint, the environment would be less well protected than previously, posing an unacceptable risk of deterioration.

**4. Do you think the proposal to protect the environment using a regulatory minimum level at very low flows is reasonable? If not, how do you think we should protect the environment at very low flows?**

We think that an environmental minimum flow or level should be a mandatory requirement for all licences in both 'basic' and 'enhanced' catchments.

How beneficial this is depends, of course, on the minimum level set. There is no mention of this critical matter in the consultation document. We believe that a Q95 threshold would be an effective point at which to set the minimum level, rather than, for example, a Q99 threshold.

We think that an environmental minimum flow or level is a necessary but not sufficient for most situations. These minimum levels should be implemented on a risk-related basis, to provide enhanced control and warning potential for slow response and high vulnerability sites.

In all cases, an effective link to drought controls – a connection between dry spell and drought spell arrangements – would be needed.

**5. What do you think of the proposal to require abstractors who discharge water close to where they take it from to continue to discharge a proportion in line with their current pattern?**

We think that water taken from a catchment should be treated (as required) and returned (a) to that same catchment in all but exceptional circumstances, where the net benefits of doing so outweigh the environmental costs, with appropriate provisions to address those costs being made; (b)

upstream of the point of abstraction or as close to it as possible, if the point of discharge is downstream of that abstraction; (c) at a quality as close as possible to that at which it was abstracted; (d) in quantities as close as possible to those abstracted, or otherwise subject to penalties that increase as the proportion of water returned decreases.

We do not think that water abstracted to meet nature conservation objectives, for wetland management for example, should be subject to these rules.

We think that those who now operate under such terms should be required to continue to do so, as a minimum requirement. Wherever practicable, they should be required to improve the value of the water they return, compared to that they take, in terms of location, quality and quantity.

Inter-basin trading could bring problems in this regard, if water is taken from one catchment and returned to another. This practice would alter the natural water balance in those catchments. If water taken from one catchment and used in another had to be returned to its original catchment the transfer costs could prove to be prohibitive in both financial and environmental terms (including in infrastructure, energy and carbon costs). Mixing of water between catchments could also bring ecological and water quality problems.

**6. How best do you think water company discharges should be regulated to provide reliable water for downstream abstraction without impacting on water quality objectives or constraining flexibility in water management?**

Water abstracted should be returned to its catchment as near as possible to the point from which, and at the quality at which, it was abstracted. To aid this, all authorised abstraction and return points would need to be defined, and each would need to have a balance sheet. Flow controls and authorised abstraction and return quantities would also need to be defined for each site. Water quality standards would also need to be prescribed. And all abstractions and returns would need to be recorded (probably at 15 minute intervals, to provide reliable data on daily totals and peaks), and monitored against permissions.

We would not like to see these regulations preventing water companies developing waste water recycling schemes where these have been identified as the best practicable and least environmentally damaging solutions to meeting any deficits between supply and demand in company Water Resource Management Plans.

**7. If you are an abstractor, how would these charging proposals affect your business?**

Many Link members hold abstraction licences for the purpose of site conservation management (the RSPB alone has over 45 licences) and insufficient information has been provided for Link to understand what effect any new charging structure would have on site management and biodiversity delivery costs. However, charging proposals need also to be considered in regard to their possible benefits to the environment, and not just on costs to business.

**8. To what extent would a system that charges abstractors partly on permitted volumes and partly on actual usage (i.e. a two part tariff) encourage abstractors to use less water?**

We welcome proposals to charge abstractors by volume taken, at least in part, and not just by entitlement to take, albeit through a two-part regime. We think this will provide some incentive to abstractors to manage abstraction efficiently.

We support differential (scale) charges, (a) to incentivise abstractors to make best use of low-reliability, high-flow resources; and (b) to signal the higher value of water taken from the environment when and where hydrological levels are low and environmental stress is high.

We think there is a case for graduating the scale charge for abstractions when environmental levels fall below some defined threshold, to strengthen the signal and increase the incentive to take less at

such times. The extent to which it would encourage abstractors to use less water would be dependent on the difference between the usage cost and the volume cost.

We would also like to see a precautionary approach, with charges linked to groundwater to availability in all catchments – with time for water recharge from low levels to be built into groundwater abstraction systems.

**9. Would quicker and easier water trading benefit abstractors now? How beneficial do you think it would be to abstractors in the future?**

We support the move to *enable* water trading, noting the difference between that and *promoting* water trading.

We support in-catchment trading of water within an abstractors' business, and between abstractors, where and when it delivers more efficient and effective use of water, without adverse impact on the environment. We would support inter-basin trading of water on a similar basis, subject to water balance, energy cost, carbon cost and environmental considerations.

We note the fundamental difference between day-in, day-out, year-in, year-out trading (practices which are known by water companies as intra- or inter-company transfers (or bulk supplies)), and event-specific trading which 'evens out' resources when they are short in one place and plentiful in another.

We note that bulk transfers between water companies already occur, but that greater enabling provisions would be beneficial in terms of water resources management, providing that there are sufficient environmental safeguards in place.

We have concerns regarding the trading of water as an economic good, for purely profit motives, by those who may seek to acquire water entitlements for trading purposes, and not to directly deliver services or produce goods directly; we would expect appropriate provisions to be put in place to prevent the use of water entitlements for such ends. However, we would also like the reforms to allow environmental NGOs to participate in trading for example to secure more water to achieve higher environmental standards in river stretches or to meet site management objectives (see also answer to 11).

**10. To what extent do you see additional benefits in the wider range of trades that can happen under the Water Shares option, compared to the Current System Plus option?**

The Water Shares option provides significantly enhanced support to the establishment and operation of a water trading market. If trading is to occur, it would need a dynamic system of this sort, to provide the necessary ledgers of water volumes for trade, on what amounts to a near spot trading basis.

We understand that the EA would be responsible for establishing the near real time information platform and the trading rules needed to support water trades, but that they would not act as system managers, operators or brokers. We have concerns about the capacity of the EA to create and manage the database, even though their responsibilities have been restricted to that function alone. We would expect there to be a need for a system operator, licensed to use and manage data drawn from the EA's monitoring data, and to manage trades between abstractors. There are parallels to this arrangement in those evolving in the real-time flood forecasting and warning market place, with the EA there licensing third party operators to provide added-value information using their base data.

In the long term, we see potential the benefits of 'Water Shares' as wider than just trading. We support the principle of sharing water scarcity risk between abstractors that 'Water Shares' promotes. This is a change to the current mindset (whereby the main risk is to the environment and is controlled/managed by regulators on behalf of abstractors). A shared approach to risk could result in different responses over the medium and longer term, particularly as climate change starts to

impact water scarcity. For example, in South Africa, WWF and SAB Miller are working with local farmers on a project to reduced shared water scarcity risk in two catchments in which they operate. If there is no water available, the brewery cannot function and the farmers cannot irrigate crops. Therefore there is a shared interest in increasing water availability. The project is working to clear water-hungry invasive species (including Scots Pine) to increase overall water availability (with additional environment and social benefits). There could also be potential to work together to reduce shared scarcity risk by increasing aquifer recharge using land management approaches (with additional water quality and flood mitigation benefits).

**11. Do you agree that participation in abstraction trading should initially be limited to those with a direct interest in abstracting water?**

Yes, to eliminate water being used purely as a derivative (see answer to question nine, above), and to enable maximum effective value from available resources to be realised.

The qualifying criteria for ‘those with a direct interest in abstracting water’ would need to be carefully developed, and rigidly applied. For example, we foresee a situation whereby an environmental or angling group may wish to buy abstraction rights, only to leave that water in the river. Trading rules should not prevent this occurring.

**12. Do you support our proposals for a more consistent approach to making changes to abstraction conditions? If not how would you improve the proposals?**

Yes, in principle, subject to the caveats mentioned in our answers to previous questions and to those caveats and suggestions for improvement made (or repeated) here.

We consider that all legacy over-licensing issues (including all over-abstraction ones) need to be resolved before the proposed reforms commence, so as to create a sustainable platform of water available for allocation. Equally, we consider that legacy abstraction issues need to have been resolved before water trading can commence.

We believe that graduated abstraction controls need to be applied to all abstraction points – initially those points in ‘enhanced’ catchments, followed by those in ‘basic’ catchments (with a clear and transparent process outlining when these controls will be phased in to ‘basic’ catchments). Graduated controls need to be set carefully, using best available data and science, to ensure that the water defined as being available for use does not include water that is needed to sustain the environment, particularly where and when water is scarce.

We accept the removal of the time-limited licensing device that has previously been used to review the environmental sustainability of licensing permissions, since we believe the proposed ‘continuous’ review of licences will better achieve the same ends. However, the review process must be transparent and developed in collaboration with experts that reflects the precautionary principle and is able to determine the risk of over abstraction at an early stage, before causing significant damage. The review process will need to be supported by robust and adequate monitoring that accurately links flow to abstraction.

We support the proposed provisions for taking account of changing circumstances – including the effects of climatic variability and change, and other influences upon future water availability – and of changing understanding of the environmental needs, limits and thresholds.

We particularly support the principle that accommodations for changing conditions and needs should be made across all abstractors, rather than being focused upon only some licences. This could foster co-operative and collaborative water stewardship behaviour.

The need for a clear and effective definition of ‘serious environmental damage’ remains as strong under the proposed system as it does now. The threshold for action is currently set far too high with very rigid criteria making it a mechanism of limited utility and value.

### **13. What notice periods do you think would best balance the needs of abstractors and the environment?**

We think that abstractors have a reasonable right to notice of any change in entitlements to abstract water. The longer the notice period, though, the longer the environment stands at risk of damage. Balancing between the two, a notice period of six years between the need for change being determined and its implementation seems appropriate. The time needed to identify problems at the appropriate level of certainty should be reduced as far as possible.

We are concerned that determinations of licence change have to prove damage has occurred. We propose that instead determinations could be assessed by an impartial panel of experts when the risk of damage (under defined and agreed criteria) has been identified. Even where damage is substantial it may be impossible to demonstrate causality due to the large variability of natural systems and excessive costs and time required for assessment. The object should, in our view, be to prevent the occurrence of damage, on a basis of reasonable risk.

If it is necessary to monitor for damage when catchment thresholds are reached then the time before licence change could reach 18 years (six years for the suspicion to give rise to monitoring, followed by six years of monitoring, followed by six years of determination and implementation). This would clearly present an unacceptable level of risk of environmental deterioration.

If a review process identifies environmental damage is occurring, we believe that action to change licences should be applied across the entire catchment.

### **14. Do you support the proposal to remove the payment of compensation for changes to abstraction conditions and to phase out the collection of the Environmental Improvement Unit Charge (EIUC) through abstraction charges?**

We support the removal of compensation for loss of historic abstraction rights. We support the phasing out of the EIUC scheme, conditional not just on the removal of compensation rights, but also upon the implementation of effective abstraction management controls for all at-risk abstraction points, in order of their vulnerability to damage from over-abstraction.

We believe that there may be a loop-hole in the enforcement of compensation for loss of resource, if there is neither a statutory basis nor customer support for the cost of making good the loss of resource (whether through supply, demand or mixed schemes). In such situations, a water company would have no means to finance the loss of yield consequent on a licence revocation or reduction, and that could lead to the licence change being challenged on cost-affordability or cost-benefit grounds, meaning that the environment would suffer by non-implementation of the change. This stalemate outcome could occur if the notice of revocation/ reduction issued by the EA was not deemed to be a statutory driver. This situation merits attention.

Phasing out the EIUC scheme also raises the need to resolve where accumulated funds would go. Would those collected from water company abstraction charges go back to customers? Or, with agreement from customers, could the EIUC funds be used either to reduce the costs of schemes that would fall upon customer bills during the next price review, or to invest in additional catchment monitoring to facilitate the efficient management of the new abstraction regime or towards river restoration where this could meet environmental objectives without restraining abstraction.

### **15. Do you agree it is important to take measures when moving licences into the new system that would protect the environment from risks of deterioration?**

We do, but simply looking at deterioration will not be sufficient to assess environmental damage unless all legacy issues have been resolved prior to licence reform. Environmental protection should be framed in terms of the absolute needs of the environment, rather than by reference to existing conditions, which, in the context of the legacy of unsustainable abstraction, may or not be acceptable.

We agree that the proposed reforms should not address current unsustainable abstraction. But as we have said, we believe that such unsustainable abstractions need to be dealt with before abstraction reform, in order that the new system of allocations can be based on a credible level of available water that will not later have to be amended for residual over-abstraction and/or over-licensing issues.

We note the importance attached in the consultation document to the need to ‘better protect the environment in the future’, in the context of the legal basis for not compensating abstractors for the loss of resources associated with the pursuit of that objective.<sup>9</sup> We agree with the primacy of this objective; for it to apply across the proposed reforms, water available for use and for re-allocation must be free of any residual sustainability issues. The consultation states that ‘we would strengthen our approach to using the mechanisms in the current system to tackle this historic legacy in advance of, and alongside, reform.’<sup>10</sup> Given the time it has taken to get only as far as we now have on the Restoring Sustainable Abstractions programme, we are firm in the view that significant strengthening is required, and that the notion that some cases can be pursued ‘alongside reform’ and not in advance of it must be rejected.

We welcome the statements that acknowledge that there is a risk of deterioration at sites that are already at risk of damage if previously unused water is taken in the future; particularly those in the very wide swathes shown in orange and red on the map given as Figure 5 (p.49). We have argued this position strongly, and are pleased to see it now accepted in such clear terms.

We agree that we can increase resilience to higher demand for water brought by climate change and population growth by ‘realigning abstraction limits based on actual abstraction... [by lessening] these risks by reducing the amount of unused water that can be accessed in a catchment.’<sup>11</sup> We support this general principle, as a way of making best use of available resources in a way that does not prejudice environmental protection.

We also welcome the acknowledgement that ‘widespread existence of over-licensing also gives a false sense of security to abstractors and reduces investment in resilience’ and that ‘much of this so called “paper water” could not be used without causing damage to the environment.’<sup>12</sup> We agree that the risk is real and significant, and we support measures to address it. As noted, ‘by removing unused licensed quantities, we would ensure that abstractors have a realistic view of the ‘real’ water that is available.’<sup>13</sup>

That is, of course, the self-same argument for the need for unsustainable levels of abstraction to be removed from the assessment of available water, prior to re-allocation.

**16. Would you prefer us to consider the risks in each catchment when designing the rules for moving licences into a new system, or should we treat all abstractors in the same way regardless of water availability?**

We believe that ‘transition’ should be based on the need to protect the environment from deterioration and ensure that new licences reflect actual patterns and levels of water use by different abstractors. The information from the EA that supports the consultation makes the risk of environmental deterioration from the increased use of much of the apparently unused water very clear.<sup>14</sup> Therefore transition rules should be simple and fairly applied without giving rise to a huge administrative and legal burden that only serves to delay implementation of abstraction reform.

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<sup>9</sup> Defra (2013), *Making the Most of Every Drop*, p.46.

<sup>10</sup> Defra (2013), p.46.

<sup>11</sup> Defra (2013), p.49.

<sup>12</sup> Defra (2013), p.49.

<sup>13</sup> Defra (2013), pp.49-50.

<sup>14</sup> Defra/ Welsh Government (2013) *Annex C: Additional detail on specific elements of reform*, <https://consult.defra.gov.uk/water/abstraction-reform>, pp.22 – 23.

We would therefore prefer an assessment of risk at the catchment level within which there are sector-specific rules taking account, for example, the very different demand profiles of the water industry.

**17. What would be the most effective method to calculate the new annual limits to be transferred into the new system (for example average annual, average peak or a combination of actual and licensed volumes)? And what assessment period should be used to calculate them?**

The situation is complicated by differences in the position of individual abstractors. For example:

- Actual annual abstraction volumes vary from year to year for any individual party, because of the different availabilities and demands experienced in a wet year versus normal year versus a dry year versus a drought year. And they differ, in each of those, from user to user, because of the nature of their business and their profiles of their demand.
- Water companies have a statutory duty to supply water, subject to defined levels of service for the use of restrictions and drought permits and orders.
- The percentage of licensed volume taken reflects both the demand for water, and the availability of water in a given year (which in dry and drought years may be hydrologically and not licence or demand restricted to a low volume); so licensed and unused licensed entitlements need to be treated carefully.
- Therefore, consideration might be given to assessing future entitlements on the basis of abstractors' historical use of hydrological yield rather than their licensed yield.

For water companies we suggest that a basket of events be used to calculate the new annual limits. This should include dry and normal years, and at least one recent drought event (of more than one year). As to the assessment period, it needs to be long enough to include a range of weather conditions – including multi-season dry and drought years – and short enough to avoid long-term inconsistencies in demand.

For most other abstraction sectors, the application of a smart transition formula should be acceptable provided that there is an appropriate appeal and review process.

We fully support approaches that deny abstractors' the opportunity to 'game' the situation to their advantage, including using data from historical rather than future years, to avoid any perverse incentives to over-abtract as a means to bid up future entitlements.

**18. Do you support the establishment of a water reserve to support economic growth?**

In principle, yes. But there are some allocation issues associated with the idea, and more importantly there are likely to be some serious issues associated with the use of the so-called 'unused' water that is deemed to be available to support the water reserve.

The means to establish a water reserve without impact on existing abstractors' needs is likely to vary from place to place, with consequent inequity issues. But in practice, the matter rather depends upon:

- where the reserve of water would come from;
- how competing demands for it would be resolved, in over-subscribed situations where a 'first-come, first-served' rule would fall down; and
- whether under situations where allocations were awarded on the basis of some added value use case, there would be any sanction or confiscation penalty if the value advanced in support was not to be delivered upon.

Provision should be made to prevent an abstractor from 'banking' entitlements from the reserve, for later more profitable use or sale, and in the process denying other (perhaps more genuine) users a share of the reserve.

Turning now to the thorny matter of whether ‘unused water’ can be used to create the water reserve. At face value, a large proportion of licensed abstraction entitlements are now not used (55% in 2011/12). But there are two important issues to consider in the use of such water as a re-allocated water reserve.

First, some of the now unused water is over-licensed water. Taking it would entail environmental damage. We are against the use of any over-abstracted or over-licensed water to create a water reserve.

Second, the so-called unused water is not always there, particularly when it is dry, and water is under greatest demand. In a dry year (which 2011/12 certainly was), much of the licensed quantity is not there to be taken. In the main, it is hydrologically-limited, by dry weather. Only in 21% of situations is it further limited by environmental constraints.

It seems clear that any under-deployed and environmentally non-threatening water that now exists will be there when and where it is in least demand, and not there where and when it is most wanted. What potential that does exist for a water reserve seems to be limited to what has been called low reliability resources – those that are there in times of plenty, but not in dry years.

We would also like the use of water to create new wetland nature reserves to be considered as a legitimate use of any established reserve. Newly constructed reserves like WWT's London Wetland Centre and the RSPB's Salthome Nature Centre are important contributors to their local economies while also of course fulfilling their primary role in biodiversity delivery.

### **The Blueprint for Water coalition**

The Blueprint for Water coalition is a unique coalition of environmental, water efficiency, fishing and angling organisations which call on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2015. The Blueprint for Water is a campaign of Wildlife and Countryside Link. More information is available at [www.blueprintforwater.org.uk](http://www.blueprintforwater.org.uk).

This response is supported by the following nine organisations:

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

### **Wildlife and Countryside Link March 2014**



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