SUBMISSION TO THE PEOPLE'S COMMISSION

Introduction

Clean River Kent Campaign (CRKC) is a group of volunteers who live in communities near the River Kent in Cumbria. CRKC is not allied to any political party. CRKC has links with other river groups (such as the Ilkley Clean River Group), water campaigns (including Save Windermere and Surfers Against Sewage) and has joined the Sewage Campaign Network.

Having consulted volunteers and other supporters, in early April this year CRKC adopted a *Policy Statement on the Future of the Water Industry in England* (Appendix 1). Subsequently, CRKC made a submission to the Government's independent Water Commission on the Water Sector Regulatory System (the Cunliffe Commission). We have shared our submission on the Clean River Ilkley Group's Google Drive and (in the main) do not repeat our responses here.

We welcome the setting up of the People's Commission and its vision:

> 'The People's Commission is ambitious for a water system that is commensurate with a developed country, that secures our water quality, and that ensures our supply and sewage treatment is resilient in the context of our population and climate, and where water bills deliver clean water for our rivers, lakes and seas. In this respect this commission shares the government's vision.
>
> ...The People's Commission will be solution focused, facing immediate and future problems. We know this is possible. Other countries have water systems that provide better quality affordable water outcomes that are resilient for the future' (*Terms of reference for the People's Commission*).

We support the stated objectives of the People's Commission:

'The Commission will make recommendations to the UK government and Welsh Government to ensure that the water system delivers the following outcomes:

1. Secures a resilient water system fit for now and the future
2. Provides a model of ownership, governance and operations that delivers the Vision as described.
3. Ensure affordability for customers including vulnerable and non-residential customers' (*Terms of reference for the People's Commission*).

CRKC agrees with the People's Commission that the water system in England is a failure and requires more than a regulatory 're-set' (as envisaged by Steve Reed, Secretary of State for Defra)[i].

The call for evidence by the Cunliffe Commission offered the first opportunity since water privatisation for citizens in England and Wales (and other interested parties outwith the industry) to at least contribute their views on (to quote Defra) 'a water sector fit for the future' to an independent body. Hence it was extremely disappointing that the Government drew up narrow terms of reference for the Commission. In our view, such narrowness is a lost opportunity. Consequently, we would endorse the People's Commission submission to the Cunliffe Commission that:

'The Independent Commission on Water Regulation should recommend:

- continuing its work with a widened scope to address issues beyond regulation;
- [and] …that an independent, authoritative review of the financial results of privatisation should be commissioned;
- consider alternative forms of ownership, specifically in relation to financial efficiency (total finance cost of capital expenditure) and financial resilience (volume of debt);
- …steps [to be taken] to reduce companies' snowballing debt burden and increase the influence of customers over environmental performance.'

<u>Clean River Kent Campaign policy on the future of the water industry</u>

Collectively, CRKC has not developed its policy on the future of the water industry (as yet) beyond the position set out in our *Policy Statement*. Respecting the democratic ethos of CRKC, we (the authors) feel constrained (rightfully) as to the extent to which our submission can respond in detail to issues raised by the People's Commission, at this time.

We can affirm, however, that responses to the draft CRKC *Policy Statement* showed that, in principle, public ownership is widely supported, not necessarily (or even primarily) on so-called ideological grounds but because it makes sense; and as opinion polls show, the majority of the UK public agrees. Water is essential to life; fundamentally, it is not a tradeable commodity to be privately owned; and a market-based response to the climate change emergency does not guarantee that the common good will prevail over profit. If water is to be thought of as an 'industry' (as is the current reality), then the Government should treat it as a 'sovereign industry' no less crucial to the nation's health, well-being and security than the energy supply, steel or defence industries, for example.

It is also evident from responses to our draft *Policy Statement* from CRKC supporters that there are a range of favoured alternatives to the status quo; and a small number of respondents commented that 'there is no silver bullet' which would resolve all the industry's problems, irrespective of whatever alternative model may be adopted in future for the water sector. (Our submission expands on this feedback in the penultimate section.)

The failure of the current regulatory regime – new evidence from the National Audit Office

In our *Statement* and submission to the Cunliffe Commission, CRKC said that the state of the water industry (as outlined) was attributable to a systemic failure on the part of the water companies in tandem with the regulatory bodies, Ofwat and the Environment Agency (EA). In respect of the regulators, on 25 April this year, the National Audit Office (NAO) published its report, *Regulating for investment and outcomes in the water sector*[ii]. It provides independent validation of many of the concerns and criticisms raised by water campaigning groups and others. For example, NAO's examination of the effectiveness of the regulatory regime found that:

- Performance of the sector has led to a decrease in consumer trust (para 10)
- There is no consideration of planning solutions at a national level (para 11)
- Defra's regulatory framework for the water sector is complex and there are inconsistencies in approaches and processes (para 12).
- The regulators have inconsistent responsibilities and there are gaps in oversight of the sector (para 13).
- EA has duties to the water environment but is not required to balance them with net zero or cost considerations (para 14).
- Ofwat sets how much water companies can charge customers via the price review process, which is complex and difficult for investors to understand (para 15).
- The regulators do not have a shared understanding of the condition of water and wastewater assets, and the level of funding needed to maintain them (para 17).
- Performance [of the water companies] has not been consistent or significantly improved in recent years (para 19).
- The financial resilience of the sector has weakened (para 20).
- Costs are increasing for customers as the credit-worthiness of the sector has declined (para 22).

NB: The paragraph references above and below relate to the *Summary* document which accompanies the main NAO report.

Of course, given its remit, the NAO report's recommendations (para 25) do not countenance radical change in the management of the water system. Nevertheless, in our view the report amounts to a serious indictment of the regulatory system, including the role of the Defra. What emerges is a picture of organised chaos, to put it charitably. Astoundingly, 'none of the regulators have a duty to ensure there is a coherent national plan for the water sector' (para 11). At the very least, the NAO's findings cast serious doubt over whether a 're-set' of regulation and largely permissive legislation (such as the Water (Special Measures) Act 2025) can deal effectively with the challenges facing the water sector. Indeed, 'challenges' can be regarded as a euphemism – 'potential crisis' does not seem to be a far-fetched description. (Possible areas for ongoing or further work by the People's Commission are outlined in the next section of our submission.)

The NAO report lays bare what it considers to be the 'challenges' facing the industry. They include:

The need to secure the water supply for the future[iii]

a) A shortfall of nearly 5 billion litres of water per day is expected by 2050, based on current usage rates. This is more than a third of the 14 billion litres currently used daily (para 1).

The need to replace ageing water mains

b) The rate of replacement of water mains has been 0.14% a year over the first four years of the PR19 control period, which – if maintained – would mean the entire network would be replaced once every 700 years. Ofwat allowed expenditure for a replacement rate of 0.4% per year over the PR19 control period and is expecting companies to raise the rate further in future. The average rate of replacement since privatisation was 0.83% or replacement once every 125 years (para 17).

The scale of additional investment needed over the next 25 years (according to the companies and Ofwat)

c) Companies estimate almost £290 billion enhancement spend will be needed over the next 25 years (to meet environmental ambitions as well as other sector challenges such as cyber security and net zero); and Ofwat estimates a further £52 billion will be needed to deliver up to 30 water supply projects, including nine reservoirs (para 8). 'Enhancement spend' is that which is additional to day-to-day spending.

The need for a national plan for the water sector

d) None of the regulators have a duty to ensure there is a coherent national plan for the water sector. Despite increasing pressures on water supply and unprecedented investment in new infrastructure, there is no coherent national system where integrated decision making can take place (para 11).

Determining / balancing environmental priorities

e) The NAO said that companies felt that, in regulatory decisions, EA prioritises meeting legislative water quality targets over innovative solutions with better nature and net zero implications (para 14).

The role of competitive procurement in the future

f) Major projects, such as the construction of new reservoirs, will take a long time to deliver and cover multiple price review periods. Ofwat has allowed specific funding in price reviews for companies to develop their plans for these projects. It is setting up new processes to manage the projects outside price reviews. Ofwat expects companies to use competitive procurement where possible to deliver these projects. Ofwat expects that this will reduce risks to both delivery and value for money. However, it raises new risks for both water companies and the regulator as to the skills needed to manage, deliver, and regulate such contracts (para 16).

The financial stability and viability of the water companies

g) In 2023-24, 10 companies did not generate enough income to cover their interest payments. Three companies out of 16 are in 'cash lock-up' because their credit rating is lower than Ofwat's minimum required rating. Ofwat has signalled concerns about the financial resilience of 10 of the 16 major companies, up from eight in 2021-22 (para 20).

The water special administration regime

h) Ofwat has extended its powers, including to prevent companies paying dividends when they are below Ofwat's minimum required credit rating. Three companies currently cannot pay a dividend without Ofwat's permission. In addition, recent changes to the special administration regime enable a company's assets to be sold on more easily and mean that debt investors might receive less than in a normal insolvency. These changes are affecting how investors view the riskiness of the sector. In the event of insolvency, the government can recover its costs associated with special administration through customer bills if it cannot recover the costs elsewhere (para 21).

Value for money for bill payers

i) The NAO report concluded that Defra and the water sector's regulators have not encouraged water companies to spend what they need to deliver the performance expected. The sector now faces significant environmental and supply challenges. To meet these challenges, it will need to attract investment and spend at a rate not seen before. The regulators must understand the scale of the challenge in terms of cost and deliverability and the condition of assets across the sector, ensure the sector raises the investment needed and meets government outcomes, and achieve value for money for bill payers (para 23).

The NAO remit was limited and the above list is not exhaustive. (A more holistic approach to the problems and finding solutions is reflected in the objectives of the People's Commission.)

Having said that, we have quoted the above extracts from the NAO report because (at face value) they highlight some of the key issues that must be grappled with (including, we suggest, by the People's Commission) in recommending or promoting what should replace the status quo and in empowering water campaigners to make the case for change. We recognise that a lot of work has been initiated by - and continues to be done by - campaigners and our (academic and other) supporters on these issues already. The next section of our submission outlines some particular issues where, we suggest, further inquiry and analysis by the People's Commission would be beneficial in bolstering the case for change and addressing reservations about public ownership that have been expressed to us. (These relate to the 'there is no silver bullet' theme mentioned earlier.) They are probably not atypical of unanswered questions or doubts that members of the public elsewhere might have.

Some questions to answer in relation to alternative models for the water sector

Before turning to some specific questions arising from the extract from the NAO report cited above, we think that there is still work to be done, particularly in respect of public awareness, to counter the Government's mantra that '...if you wanted to buy back the companies, it would cost in excess of £100 billion – and that's money that would have to be taken away from schools and the health service' (Steve Reed).[iv] A persuasive counter to this is that the £100bn figure has been debunked by both proponents and opponents of restoring public ownership - Professor Dieter Helm being prominent in the latter category.[v]

There was also a view expressed by a CRKC supporter that taking the water industry back into public ownership by special administration might jeopardise the current Government's industrial growth strategy owing to the importance placed on partnerships with private investors. The authors of this submission do not have any expertise in this field and this may be a matter that the People's Commission could look into. We would just observe, however, that no other country has applied the UK model of water privatisation – in that sense, it is exceptional - and public support for 'taking it back' can scarcely come as a surprise to investors and the financial markets. Moreover, it is likely that any form of 'renationalisation' or certainly 're-municipalisation' will take time – it would not come as a shock to the markets, compared (for instance) with President Trump's 'reciprocal tariffs'.

Of wider concern to CRKC supporters who commented on the alternative model of public ownership is whether there would be sufficient (and secure) future funding for the industry given the state of the UK economy, the Chancellor's 'iron rules' vis à vis the scale of needed investment in water infrastructure (mentioned earlier). One CRKC supporter warned of the risk of central government under-funding of water and sewerage public undertakings, as happened in respect of the previous water authorities. Also, in the light of the experience of European re-municipalisation (featured in some of the People's Commission sessions), UK consumers could expect to pay less for water under public ownership. This can be achieved largely because public undertakings are run on a not-for-profit basis and can borrow at lower cost than private companies. What is noticeable, however, is that the experience of Glas Cymru (Welsh Water), a not-for-profit company,[vi] and publicly owned Scottish Water are rarely mentioned in support of taking the water industry in England back into public ownership. Why is this? We suggest that this is a topic that the People's Commission might explore (if it has not done so already), particularly as the Government claims that the real issue is not ownership but regulation. To quote Steve Reed again, 'Scotland has a nationalised water company and they've got the same problems with sewage'.[vii] In regard to Scottish Water, an alternative analysis (2023) is that 'Scottish Water is one example of a nationalised company that tells a relatively strong story about state control'.[viii] While Scotland and Wales are nations, the size of their populations is more akin to that of the European city-based examples of successful re-municipalisation, when compared with the population of England. This indicates that a regionally-based model could be a viable option for England in preference to a 'renationalised' water industry for the whole country, run from Whitehall. (We do, however, support the need for central governments to set the high-level strategic direction and priorities for the sector.)

The Government also claims that 'the money from billpayers is now ring-fenced so it can only be spent on upgrading water infrastructure, never again diverted for multi-million-pound bonuses and dividends to failing water companies'.[ix] Is this strictly true? Are the mechanisms/controls actually in place that would guarantee these outcomes? Proponents of public ownership would find it helpful to be able to give authoritative answers to these types of questions.

Returning to the findings of the NAO report – leaving aside the fact that NAO's working assumption is continuation of the current private industry model - these are the specific questions that might be examined by the People's Commission (following the numbering used above):

(f) The role of competitive procurement in the future: Does the People's Commission foresee any role for this in a re-municipalised or renationalised water industry? (Practically, this may be necessary to some extent, in relation to certain infrastructural projects, for example.)

(h) The water special administration regime (SAR): It appears that the People's Commission envisages that the water industry SAR is a (if not the key) mechanism for taking the water companies into public ownership. Comparisons have been made with SARs in other industries, however the water industry SAR is distinct and (to our knowledge) only the 'insolvency arm' has been examined in the courts – and (recently) not to the advantage of Thames Water customers. We have already suggested to the ICRG that legal advice be sought by the People's Commission on aspects of the water industry SAR (which we do not repeat here) so that we can be confident about the viability of (as it were) 'putting all [or most of our] eggs in the [SAR] basket'.

<u>The public voice and the water industry</u>

Lastly, on a subject not dealt with any depth in respect of the Cunliffe Commission's call for evidence, CRKC agrees with the People's Commission that 'the public needs to be at the centre of the plans for the future, not sidelined into a passive captured customer role. It is the public who are keeping this scandal in the news, it is the public who are uncovering water company illegal activity, it is the public who want to protect our rivers, lakes and seas and it is the public who are paying' (People's Commission). Moreover, under any future system for the management and regulation of the water system, some form of public representation should be mandatory and, importantly, not tokenistic. Under any model of public control or ownership, it is axiomatic that there must be democratically determined public representation to ensure 'the people' are meaningfully involved in the management and oversight of the industry. CRKC has not developed a collective view or detailed proposals on this but as the Cunliffe Commission appeared to at least open the door (slightly) to consideration of the possibility of regional government involvement/control of the water industry in the future, our submission welcomed this as an alternative basis for running the industry, partly because it should enable public/local representation (see our answers to questions 12 – 14).

This proposal has not been discussed within CRKC although it has been aired in some of the People's Commission sessions: on democratic grounds, there is also a case for employees of water and sewerage undertakings to have representation as of right at board or equivalent level. (As anyone who watched the recent fly-on-the-wall TV mini-series on Thames Water will have noticed - frontline workers have invaluable knowledge of the workings of water and sewerage systems which they could 'bring to the table'). The argument that trade union interests (for example) would 'capture' renationalised undertakings is outdated and fails to appreciate that running renationalised/municipalised undertakings would not be the sole preserve of 'workers' and 'managers'.

<u>Conclusion</u>

If the Cunliffe Commission (or Government) proves unreceptive to the People's Commission's recommendations, we hope that it would be feasible for the People's Commission to remain in being (for the short-term at least) in order to continue its work in gathering and sharing examples of public control/ownership of the water industry and drawing on academic and other expertise on environmental, financial and legal issues, to bolster the case for taking water back under public ownership.

A valuable aspect of the Commission's work to date has been the fillip it has given water campaigners. As a CRKC attendee at some of the sessions remarked, the evidence presented, for example, the case studies of re-municipalisation in the cited European cities, shows that radical change is possible if there is the political will to bring it about. The Commission's findings are also valuable in providing water campaigning groups with a launch pad for wider public education and campaigning.

Appendix 1 – CRKC Policy Statement on the Future of the Water Industry in England

CRKC
Clean River Kent Campaign

The Clean River Kent Campaign (CRKC) is a group of volunteers who live in communities along the River Kent. It is not allied to any political party.

CRKC POLICY STATEMENT ON THE FUTURE OF THE WATER INDUSTRY IN ENGLAND

▪ The water industry should be regarded by Government and regulators as a 'sovereign industry', essential to national security and well-being, especially in light of the climate emergency. A country that is not in control of its own water resources is highly vulnerable.

▪ Relating to the climate emergency, the privatised (for profit) model for running the industry is arguably the least compatible with growing requirements for water and sewage undertakings to work cooperatively with public and third-sector organisations on enhancing biodiversity, environmental protection, flood prevention and flood management, including the Environment Agency (EA), local authorities, Natural England and Wildlife Trusts.

▪ The current industry model – private ownership of water companies which are regulated by the Environment Agency and Ofwat – is a failure. This model has failed to deliver clean rivers, lakes and seas. All water and sewerage undertakings in England have been in breach of (multiple) statutory duties. The model has failed to future-proof the water supply. It is a national scandal that since privatisation, money which should have been invested in maintaining and modernising infrastructure and improving water quality has been siphoned off to reward investors, shareholders and executive directors. The regulators have not held the water companies to account. No other country has adopted the English model of privatisation.

▪ On its own, tougher regulation of the private water companies is not the answer. There is an enduring tension between the public interest and private interests, producing financial regulatory systems that are complex, wasteful and lacking in transparency. The corporate structures of most water and sewerage undertakings are complicated and opaque. A growing number are owned by offshore equity funds. The companies are powerful and there are limits to the extent to which a regulator can control private capital. The price review mechanism used by the current regulator, OFWAT (the Office of Water Services), has not safeguarded customers' interests. While water industry debt has been mounting and dividends have been paid out, customers have been left to foot much of the bill for future improvements. Water charges have skyrocketed this year, yet six companies are seeking to charge more than OFWAT has allowed. CRKC calls for the water industry in England to be publicly owned and democratically controlled.

▪ Opinion polls have consistently shown that the majority of respondents support public ownership of the water industry. Water privatisation has never been supported by the majority of respondents to opinion polls. To give an example from the 2020s, a large YouGov poll in October 2022 found only 8% of people supported privatised water, whereas 63% wanted public ownership.

▪ CRKC recognises that there are different means of achieving a transition to public ownership and different forms of public ownership and accountability. At this stage, different structural and financing options (drawing on international examples) should be investigated by the independent water commission (the Cunliffe Commission) set up by the Government.

▪ CRKC also supports more innovative ways of involving members of the public in shaping alternatives to the current water industry model (such as people's assemblies).

This statement (as agreed) can be updated/amended by the CRKC Steering Group in consultation with volunteers, in response to changing circumstances in the water industry, initiatives by sister campaigning groups and/or developments in Government policy. In any event, the statement will be reviewed annually by the Steering Group.

END NOTES

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[i] Interview on the Radio 4 Today Programme, 24 April 2025. 'Defra' is the Department for Environment, Food and Rural Affairs.

[ii] Regulating for investment and outcomes in the water sector - NAO report Please note that the quoted extract are from the *Regulating for investment and outcomes in the water sector – Summary*

[iii] While the bullet points are quotes from the NAO report, the sub-headings in italics are not used in the NAO report. They have been added by the CRKC authors for ease of reference later in this submission.

[iv] Eaton, G. 'Encounter. "Defra can no longer be a blocker of growth". Steve Reed on "green tape" and the threat of Reform', *New Statesman* 25 April – 1 May 2025, pp. 12-13.

[v] Helm, D. (2018) *Water Boarding (Cross Regulation Network Paper: 9* Water Boarding - Dieter Helm

[vi] About us | Dŵr Cymru Welsh Water

[vii] Eaton, G. 'Encounter. "Defra can no longer be a blocker of growth". Steve Reed on "green tape" and the threat of Reform', *New Statesman* 25 April – 1 May 2025, p.13.

[viii] Douglas Fraser, BBC Scotland Business and Economy Editor. Scottish Water: Tuning the pipes - BBC News 4 July 2023. For information on the 2023-24 performance of Scottish Water, see the Water Industry Commission for Scotland (WICS) website.

[ix] Eaton, G. 'Encounter. "Defra can no longer be a blocker of growth". Steve Reed on "green tape" and the threat of Reform', *New Statesman* 25 April – 1 May 2025, p.13.