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12 September 2009

Dear Dr. Hawkins,

Inquiry into Access to Inland Water in Wales

The following is the submission to the inquiry into Access to Inland Water in Wales on behalf of Conwy Valley Fisheries & Conservation Association (CVF&CA).

The rivers Conwy, Lledr and Llugwy suffer from unlawful access by canoeists which is causing significant nuisance to our members and has the potential for environmental damage. Under question 5 we offer a possible solution to the problem of access for canoeists.

Q1. What is your interest in the issue of access to inland waterways

I am submitting this as Secretary of CVF&CA on behalf of the Chairman and members of the Association. In total CVF&CA represents some 600 members made up of riparian owners, hoteliers, anglers, and private individuals who have an interest in the welfare of the river Conwy and its major tributaries the rivers Lledr, Llugwy and minor tributaries such as the Afon Ddu from the tidal reach up to the rivers source. Members of the association provide lawful access to the river for fishing to angling clubs, hotels and the general public, fishing on these rivers is mainly for salmon and sewin (sea trout) with some brown trout fishing on the upper reaches. Access is based on payment to the riparian owner and is for the most part available to members of the public who can purchase day permits.

Our association carries out environmental projects to maintain the river system and its unique eco system and has been assisting the Environment Agency (Wales) in the re-introduction of fresh water pearl mussels through our smolt (young salmon) rearing program. All of this work is undertaken on a voluntary basis. As with many other angling groups in Wales our stocking programme is funded from member contributions.

Q2. Are you a member of an organisation related to your use of water?

The Chairman of CVF&CA is a riparian owner of an upper stretch of the river Lledr which he maintains as a conservation area and does not permit any adventure activity or fishing. Our members operate three smolt (young salmon) rearing ponds one of which is situated on our Chairman's land.

I am on the committee of the Conwy and Clwyd Rivers Trust (CCRT), Secretary of CVF&CA, Treasurer and past Chairman of WGFC and represent the CVF&CA at Local Fisheries group meetings with the Environment Agency (Wales).

Q3. Which stretch/es of water do you own/use/manage?

Members of CVF&CA have control of access over virtually all of the Conwy river system with numerous access agreements for fishing. Agreements also exist for

Canoeing on parts of the upper reaches and tributaries above impassable barriers for migratory fish. In total some 60% of the Conwy system is presently available for canoeing.

Q4. Legal Rights

The law is perfectly clear i.e. there is no right of navigation beyond the tidal limits of rivers or upon inland waters without agreement of the landowner. It is interesting that you seem to consider the evidence presented by the Welsh Canoe Association/Canoe Wales (WCA/CW) as to be true. It is not. The WCA/CW implies that rights under Roman Law for access to waterways should be upheld and refer to Magna Carta as if in some way these references provide evidence that canoeists are deprived of a right. Historically the treaty of Rhuddlan post dates Magna Carta and re-affirms the rights of landowners and access to inland water. There is absolute clarity backed up by legal precedent over the past 800 years on the legal ownership of rivers and the rights of navigation beyond tidal limits. The WCA/CW argues that water does not belong to anyone and that once they are on the water they are not trespassing and all they need is the right of access/egress to and from the river - this is incorrect; water passing over land is classified in law as land. Interestingly the Scottish Land Reform Act felt the need to define this fact and whilst the water does not belong to the landowners they have beneficial rights to it in a similar way they have beneficial rights to any fish in the water or fowl upon it. It is this fact which has required Acts of Parliament to enable navigation beyond tidal limits on rivers and for that matter to enable navigation upon canals. This is fully known to the UK Government and as such this must be known to WAG.

Unfortunately riparian rights are enshrined in civil law and the canoeing fraternity make use of the difficulty in applying this law to pursue their unlawful activity. They hide their unlawful acts by using terms such as ‘stealth’ and ‘de facto’, they claim that their unlawful activity is ‘tolerated’ and therefore they have, in some way, a ‘presumed right’. Nothing is further from the truth. Under civil law individual offenders have to be brought to court. It is almost impossible to identify individuals due to the fact that when challenged about their trespass on private land [private water] they are not obliged to give their names or addresses. It is only possible to take out injunctions on organised groups such as University canoe clubs. Canoeists are fully aware of the difficulties of bringing prosecutions and openly flout the law in the almost certain knowledge that nothing will be done.

To consider supporting petitioners who openly promote and incite civil disobedience in support of their claim beggar’s belief.

Q5. Voluntary Agreements

Voluntary agreements are the crux of the matter after all this is how angling clubs gain access; they negotiate voluntary agreements with landowners for access to rivers for fishing. The WCA/CW has withdrawn from long standing agreements with fishing clubs and landowners in Wales stating that they were no longer prepared to accept conditional access, the claim that these agreements have been broken by the fishing clubs is patently untrue. We are aware that some access agreements with private estates e.g. Forestry Commission and National Trust have been withdrawn on some rivers due to the conduct of some canoeists who fail to observe conditions and yet the WCA/CA state that it is anglers who prevent them gaining access to rivers.

The problem canoeist’s face is caused by the WCA/CW policy of unconditional access and their intransigent stance on this issue. It is interesting to see that prior to submitting the petition WCA/CW removed the launch fees for canoeists at their white water centre on the River Tryweryn (Canolfan Tryweryn). From what I have read the decision to withdraw charges on their own facility was taken as it was though to

weaken their case for free access in their petition. Withdrawal of charges was done prior to the WCA/CW presenting their petition to WAG last year, prior to this date they charged for using their facility. It should also be noted that the WCA withdrew from voluntary agreements on many rivers for the same reason i.e. to strengthen their case. The WCA then submit their petition to WAG saying that they are prevented from accessing rivers by anglers.

As an example of what can be achieved with regard access the club I belong to started over 30 years ago with four members who went fishing together and has grown to 150 members; at its formation the club had no access to water. The fact that the club has purchased water and has access agreements on the rivers Dee, Clwyd, Elwy, Conwy and Lledr proves that by organising into a club and making conditional agreements it is possible to gain access, albeit restricted, to short stretches and subject to payment.

Unlike fishermen who share opposite banks, canoeists have a problem with river navigation as there must be agreement with both banks before they can navigate as in law there is no such thing as 'part navigation', this makes access for canoeing difficult but not impossible as there must be agreement from both banks before navigation can take place. Had canoeists formed into organised groups and approached landowners/angling clubs it would have been possible for them to obtain conditional access on payment of a fee, in fact there were many such agreements which have been broken by the WCA. It is the intransigent stance by both the WCA/CW and the English governing body the BCU which is causing problems, it is not that canoeists are short of water upon which to canoe, it is access to 'white water' which is causing the problem as this puts them in conflict with anglers. This issue is clearly identified in the Brighton report where they state the problem exists at 'local hot spots'. On the Conwy System canoeists have access to over 60% of the river, of the remaining only some 30% is fished extensively but includes some white water sections that the canoeists want access to and this brings them into direct conflict with anglers during the [short] fishing season.

For voluntary agreements to work there has to be two parties who are prepared to agree to conditions. Unfortunately there is no one on the canoeing side to negotiate with, the WCA/CW having withdrawn from existing agreements and refused to discuss renewal of these.

For our part CVF&CA has written to Canoe Wales (CW) to offer assistance in brokering conditional agreements (CCRT have done the same), in response CW stated that it is not their role to negotiate access agreements on behalf of canoeists, perhaps they are correct in saying this as the Federation of Welsh Anglers does not negotiate access agreements for angling clubs.

The question therefore is how will voluntary agreements be negotiated?

It appears that canoeists turn to WAG to resolve an issue of their own making.

This stance by the WCA/CW has lead to stale mate and ever increasing unlawful access which is now causing significant nuisance to lawful users. There is no doubt that something has to be done to reduce the level of unlawful access now taking place and the consequential nuisance to lawful users. There is also the potential for significant environmental damage should this not be brought under control.

There is a solution but I doubt it is what CW/BCU wants or for that matter many angling clubs however we table it for consideration. At the end of the day there must be compromise on both sides, unless we do something there will be all out war on the rivers of Wales.

Possible Solution

First and foremost our concern is for the protection of the migratory fish spawning grounds in order to allow fish to breed in peace and this requires a complete close season over known breeding areas from any invasive water borne activity – and that includes angling on mixed fisheries (fisheries which contain both game and coarse fish e.g. grayling).

Angling is easy to deal with as spawning areas can be declared as no wading areas during the breeding season and covered by fisheries by-laws.

Controlling adventure activity such as canoeing and gorge walking will be more difficult but not impossible.

Unfortunately the EA advice to canoeists is that under high water conditions they do no harm to redds (areas where migratory fish lay eggs – equivalent to a birds nest) but the EA do not mention that, as with nesting birds, fish can (and are) being driven away from the redds due to noise and are failing to 'lay their eggs'. In 1999 there was a desk top exercise carried out and a resulting report entitled 'The effects of canoeing on fish stocks and angling', but this report is not supported by any scientific field based evidence. Observational evidence however, over the last three years, indicates that canoeists are driving fish away from the head waters where they breed. This is having an ever increasing impact on the level of successful spawning of migratory fish. Salmon and sea trout cannot gather on their spawning grounds and 'pair up' ready for spawning due to disturbance by adventure activity such as gorge walking and canoeing. Canoeing over narrow, shallow, crystal clear rivers as found in North Wales disturbs fish much the same way as an off-road motorbike would driving through a rare bird's nesting site – it's the noise which drives the fish away; there is field based scientific evidence about the noise produced by canoeing and rafting to back this statement up.

Our proposal would be to split the year into three equal parts, giving the fish, canoeists and anglers equal (negotiable) time periods.

This would see the rivers closed over known migratory fish spawning areas for up to four months, say from 1 October to 31 January to allow migratory fish (Sewin & Salmon) to reach their spawning grounds and breed in peace.

There could be a four month period for canoeing (subject to riparian owner agreement) between say 1 February and 31 May for 'white water' access although this may not be exclusive.

Finally there could be a four month period for anglers from 1 June until 31 September. With the exception of the close period this proposal would not exclude concurrent activity on rivers by canoeists and anglers but such activity must be controlled by legally binding agreements.

Dates can be adjusted to suit individual rivers as spawning times differ and are dependant on water height and temperature. This proposal would not apply to all rivers and would have to be dealt with on a river by river basis, the EA already have experience of doing this via fisheries by-laws however this would inevitably require water users to have some form of registration (not a licence) which must have legally binding conditions or the system will not work.

For agreements to work there must be protection for riparian owners to prevent commercial enterprises utilising rivers for profit at the expense of owners, their tenants, and the environment. This is major issue for some Scottish rivers something that was told to the Petitions Committee on their visit to Scotland but seems to have been ignored.

Fishing clubs in Wales are best placed to mange any such access agreements as uniquely much of the fishing in Wales is controlled through clubs and not by

landowners. Despite what has been said by the WCA/CW and the canoeing fraternity anglers are not against access, it is the unlawful and uncontrolled access which causes much nuisance which anglers object to. Unfortunately canoeists via their governing bodies refuse to accept conditional access and prefer to accuse anglers of preventing them from pursuing their recreational pastime of canoeing – please note we are talking in the main about recreational canoeing, their sporting needs are catered for.

Of course for this to happen there needs to be open discussion with all sides i.e. anglers, canoeists and landowners only when this is achieved can there be any meaningful progress.

It is impractical for WAG to impose a solution as it is unlikely to be accepted by anyone. It is far better to force the parties involved to the table and let common sense prevail, resorting to a change in the law should only be used as a last resort after all the declared policy by WAG is for voluntary agreements.

Q6. Please can you briefly outline what you think are the key issues for recreational access to inland water in Wales and how you would like to see them addressed.

There is no right of navigation beyond the tidal limits of rivers without landowner's permission or appropriate statute. The issue is one of unlawful access and the nuisance it causes to lawful users. Canoeists have little respect for the anglers they meet on their unlawful river journeys, anglers who have lawful access and have paid to fish in peace and tranquillity have to suffer from the nuisance caused by canoeists (deliberately in some cases) and are then accused of being anti-canoeist. You simply cannot have two conflicting activities taking place in such a restrictive space; the rivers of Wales are in many instances less than 5m wide. Playing rugby and football on the same pitch at the same time would not be acceptable, the same applies to anglers and canoeists who use the same space, there has to be time separation of the two activities. Concurrent activity in a confined space is always going to result in conflict.

Scottish rivers cannot be compared with the generally very much smaller rivers in Wales. It should also be kept in mind that in Scotland the population density is much less than that of Wales which also enjoys easy access from three of the four largest English cities.

Fishing in Wales is club controlled unlike fishing in Scotland which is privately owned. Through these clubs access to water has been negotiated and through their subscriptions clubs have been able to purchase the fishing rights from riparian owners, the fishing in Wales is, in many instances owned by the people of Wales. Clubs in Wales are run by local people for the benefit of everyone they enable locals and visitors alike to enjoy game fishing for trout, salmon and sewin and in so doing generate significant income for the rural economy of Wales according to EA(W) circa £165M pa of which £68M stays in Wales; the same cannot be said of canoeing. Fishing is inclusive and is open to all regardless of physical ability this is only true of canoeing in calm water. The start up cost of angling is low unlike the cost of canoeing which requires specialist equipment, wet suit, helmet, canoe/kayak. The carbon foot print of angling in Wales is low as most clubs offer fishing to locals who live close to the rivers unlike canoeists who travel long distances (most are day visitors). Canoeing disturbs fish waiting to spawn. Sewin in particular are easily disturbed and such disturbance disrupts angling. As many Welsh rivers are crystal clear and relatively shallow such disturbance removes any chance an angler may have of catching a fish.

In addition the fishing clubs of Wales provide voluntary management of the rivers they fish, they care about the rivers and the environment.

To reward what can only be described as anarchic canoeists over and above the lawful Welsh anglers is to deprive anglers of their Human Rights. It was interesting to read the response from Dr Siân Phipps Clerk to the Enterprise and Learning Committee with respect to the numbers of WCA petitioners who were Welsh residents we find the following statements worrying:

*"…..*To take a slightly different approach to your questions, we do not exclude petition signatories on account of where they live. As long as a petition is calling for action within the remit or responsibility of the National Assembly for Wales, we do not discriminate against any of its supporters. In this particular case, for example, petitioners might live outside Wales but be of Welsh origin, or they might not be Welsh but still have an interest in the issue because they work in Wales or are visitors to Wales for recreation or tourism. Neither do we discriminate on the grounds of whether a petitioner is a registered voter in Wales or not. The National Assembly's petitions system is open to people of all ages, and many of our petitioners are too young to vote…..".

For a democratically elected government to plan to make changes to legislation which has a direct effect on the people of Wales, your electorate, based upon the wishes of visitors is unbelievable. We doubt that you have a mandate to disadvantage your electorate; we certainly did not elect you to do this. There are over 77,000 fishing licences issued in Wales and according to the terms of reference for the Sustainability Committee you are required to put the needs of the people of Wales first. It is about time you took note of what your electorate are telling you, to do otherwise is tantamount to a dictatorship.

Instead of giving credence to the unlawful actions of canoeists you should be dealing with the nuisance they cause to legitimate users of the environment. It is interesting to read in the recent Environment LCO section 6.3 there is recognition of nuisance this is the description of nuisance used in the LCO:

Meaning of "nuisance"

In this field "nuisance" means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Canoeists are impairing and interfering with the amenity of the environment used by anglers. In addition to this they are causing harm to the environment due to activity over spawning grounds during the breeding season (a Salmon and Freshwater Fisheries Act offence). If in the various committee stages of this bill WAG recognised nuisance to legitimate environment users why are you considering a petition based on civil disobedience which causes much nuisance to lawful users?

Further Comments

I assume you will be taking into account the evidence you already have through submissions to the Petitions Committee. We have already submitted evidence through the Welsh Rivers Preservation Society to the Petitions Committee which covers all of the issues, most if not all of this evidence has been ignored to date. It would be interesting to know if you will take into account the views expressed earlier or are you simply going to ignore this information in the same casual manner the petitions committee did?

You cannot compare rivers in European countries with those in Wales. Many European countries are land locked and to overcome this rivers are used for

navigation in order to move goods across boundaries. The major rivers in Europe are interconnected via a series of canals. Not all rivers are open to canoeists in Europe. I am aware of small rivers in France, Belgium, Austria and Switzerland where rivers are closed to canoes and only fishing is allowed but there is no mention of this in the University of Gloucester report as they give the impression that every river is open for canoeing.

From a riparian owner's perspective allowing access for navigation puts a legal responsibility on the owner to ensure navigation is safe. There is no such legal constraint on a riparian owner leasing water for angling. The activities of kayakers on white water cannot be deemed to be safe – this is an "extreme" activity. It is doubtful if riparian owners could find an insurer to provide public liability cover for such activity or, if they could, the cost would be prohibitive, particularly as canoeists refuse to pay for access: is WAG proposing to underwrite the public liability which goes with such access?

We find the visit to Scotland by the Petitions Committee somewhat disturbing as from reading the minutes they failed to gather any meaningful information such as why the Scottish rivers had a right of navigation; they also failed to ask when told the access code was working well *'for the most part'* what was meant by this. Surely if this was a fact finding visit identifying problems should have been key. Unlike Scotland the rivers in Wales were not used for the removal of timber: use of rivers in Scotland for the removal of timber apparently established a right of navigation. Navigation of this type has never been the case in England and Wales. In fact in order to move materiel from the middle and lower reaches of the Wye for military purposes it was necessary to pass various acts of Parliament to enable navigation. I do not intend to detail these but your researchers have access to all of this information, you appear to choose not to acknowledge the precedents that already exist.

An argument has been put forward by canoeists that the water does not belong to landowners so by being on the water they are not committing an offence. Again this is incorrect. Riparian owners do not own the water but they have beneficial rights to the water and its usage whilst it is on their land. In a similar way riparian owners do not own the fish in the river but they have beneficial ownership. In fact under the 1969 Theft Act water is classified as 'private' there is therefore a legal definition to demonstrate that riparian owners have the right to say who they allow onto their 'private water'. Whilst on the subject of fish, anglers do not pay riparian owners to take fish nor does the Environment Agency stock fish for anglers to catch. Anglers pay riparian owners for access to the river whether or not they actually catch any fish, the payment is solely for the right of access but admittedly permit costs and rents are based on the probability of catching fish i.e. the more you pay the better chance of catching – but there are no guarantees. The fishing licence monies are 'ring fenced' by the Environment Agency for habitat improvement, none of this money is used for stocking fish for angling, anglers pay for their own fish if they carry out any stocking. Irrespective of angling the Environment Agency under the EU Habitat Directive and WAG's own bio-diversity directive would still need to spend the same amount of money on habitat and mitigation stocking. The canoeists make out that angling is in some way subsidised nothing is further from the truth.

The laws of England and Wales differ from those of European countries and whilst it may be useful to compare rivers say in Scandinavia they do not have the pressure on them that the rivers of Wales would suffer due to the population density. It was interesting to read the submission by the Country Land & Business Association Ltd to the Petitions Committee where they define the various population densities. Why is it that WAG has chosen to ignore the information they have been presented? I would suggest that the Sustainability Committee take the time to read this submission as it

deals with facts and not opinion. For the sake of clarity I copy part of the information below to save you looking for it:

"Population

Population levels between the various countries are very different.

The population of Scotland at 5.06 million works out at 160 head/square mile (based on an estimated size of 31510 sq miles).

In contrast, Wales, at 8015 sq miles with a population of 2.9 million works out at 351 head/square mile, and in England, the density is even higher, with 49.13 million crammed into 50,352 sq miles making a staggering density of 975 head/sq mile.

These population densities go a long way to explaining the enormous pressure on the countryside, and why access requires considerably more management within the more densely populated countries of England and Wales, than in the less dense areas such as Scotland.

Sweden – frequently quoted as offering unrestricted open access - is 173,731 sq miles which with a population of 9 million (estimated July 2007), gives an average of just 5 head/sq mile. It is not even comparable to the England and Wales situation".

"….The Scottish Land Reform Act opened up rivers and inland waters to many types of recreational use. Fishing, however, continues to enjoy its historic protection and is only available where duly paid for. Scottish rivers are wide and careful use by fishermen and other users can avoid conflict. However, conflict has not been entirely avoided, and the rights granted under the Scottish Act make these types of conflict hard to resolve. Conflicts occur in certain hotspot areas where fishermen – who have paid to use stretches of river – suffer disturbance from rafting, canoeing and other users (who of course, are exercising their rights under the new act). These conflicts are magnified where the recreational users are gaining commercial benefit from their free access to the river. It is clear that in such circumstances the Outdoor Access Code is of little benefit, as it fails to protect the legitimate interests of those who have paid to fish the river. It is possible that it was intended thus – that fishing interests should not be able to deny access to other users.

"…There is very real disruption to fishing from this type of conflict, and little that authorities – desperate to achieve agreement – can do to ensure that this type of situation is resolved. It could be answered that what is needed is a strengthening in the access code….."

If you take the time to read what has already been presented to the Petitions Committee it becomes quite clear that access to inland water is being pursued on an ideology basis and not factual information. If you wish to make such significant changes to the law then put the details in your manifestos and let the electorate vote upon it. You do not have a mandate at this time for what you propose. The Westminster Government have already dismissed a similar petition by the BCU.

Yours Sincerely

Chris White

Secretary: Conwy Valley Fisheries & Conservation Association

Pp Roger Latham: Chairman