

Thursday 17th September

Dear Mr Lockyer,

RE: CANOEING ON THE RIVER TAWE

It was a matter of great interest for me to receive your letter, dated 22nd July 2009, of which I kindly acknowledge receipt. As you suggested, I have indeed taken the opportunity to share the letter with my three companions who accompanied me on 17th July at the Glais weir on the River Tawe.

Setting aside the legal situation for the moment, the aspect of your letter which we find to be the most unacceptable is your assertion that the River Tawe is “our river” and the numerous references to “our water”. This would seem to typify the attitude of some members of the angling community who find the idea of sharing access to a river as an incomprehensible concept - a selfish mindset which seeks to exclude all others who might seek to enjoy the many and varied benefits of experiencing river life at river level. As such I have attached your original letter and this written response, to my response to the National Assembly for Wales’s inquiry into access to inland water¹.

Rivers are natural resources, which as such ought to be open to all who wish to responsibly benefit from them. As canoeists (or kayakers, as the jargon sometimes dictates) we seek access to inland waterways in a manner which is fair and equitable to all. In the 4 years that I have lived in Swansea I have enjoyed the rivers of various watersheds, in particular those draining the Tawe, Neath and Afan valley systems. Interactions with anglers on these rivers have been incredibly varied: from friendly chats; to civilised discussions about access; to less friendly encounters where my friends and I have been sworn at; and at the most extreme where threats of physical violence have been voiced by anglers towards kayakers. I should add that some of these extreme examples have occurred when I have been involved in supported guided youth groups. The majority of encounters are quite polite and civilised, as they were when I met with your colleague Phil Jones, however, these are tarnished by the more extreme experiences which understandably contribute to a confrontational atmosphere.

I take issue with your viewpoint that migratory fish can be issue signals to each other – please do reply to this letter and let us know if you can reference any peer reviewed, independent, scientific papers to prove otherwise. At present the only relevant documentation I can view on this would appear to be a study by the Environment Agency on “*The Effects of Canoeing on fish stocks and angling*” which would seem to contradict your point of view.²

In relation to your legal arguments, I would point out that there would seem in little in the way of substantial legal precedent since 1972.³ Additionally the lack of any prosecutions, failing to result in fines or any other sanctions against canoeists, for the use of inland water (as opposed to trespass) would seem to highlight that the legal situation is far from straightforward. The Environment Agency as a modern enforcer of regulatory

¹ National Assembly for Wales. Sustainability Committee - Inquiry into access in inland water in Wales. 24 June 2009.

Available from:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sc-home.htm>

² Environment Agency R&D Technical Report W266 – The Effects of Canoeing on Fish Stocks (Angus and Hendry) Bristol: 2000.

³ Lord Denning judgement, Court of Appeal case: Rawson and Others v Peters (1972) 116 SJ 884; 225 EG 89

Damages of 50p were awarded. More recent research into the effect of kayakers on spawning beds would suggest that the judgement is dubious to say the least.

environmental law enacts its powers in a highly discretionary manner, one which is proportional to environmental risks. It is my understanding that the Environment Agency is currently reviewing the scientific evidence of the impact of canoeist on migratory fish and as kayakers we keenly await the results.

In relation to the Salmon and Freshwater Fisheries Act 1975⁴ I would again take issue with your highly selective quote: - if any *person* “*uses any contrivance or does any act whereby salmon or trout may be scared , deterred or in any way prevented from freely entering and passing up and down a free gap at all periods of the year*” – surely this particular quote could also be used against anglers? I would suggest that there are better sections of the statue from which you might quote, that is should you wish to distort a statue which was originally intended to prevent industrial dredging of rivers beds by construction companies wishing to source cheap aggregates and infill materials.

I would also like to take the opportunity to highlight the Environment Agency’s guidance to river bailiffs⁵. This EA guidance document suggests that Bailiffs, many of whom act of behalf of angling clubs historically to prevent poaching, should only ask canoeists to leave the water if “*there is a real risk of disturbing spawning fish or spawning beds*”. It is my understanding that no fishing goes on during the spawning season. As kayakers we would appreciate if your club might follow the guidance issued, as a matter of club policy, and do not attempt to enforce a policy of no kayaking when a) you have no legal rights of enforcement to do so, and b) the legal situation is far from clear.

As canoeists we are willing to take into consideration the wishes of other river users. Previous voluntary access agreements have failed due to failings on both sides. We would like to see a situation whereby canoeists are allowed free access so long as this doesn’t interfere with spawning fish or their spawning beds. This would be based on science rather than single group interests, and would be dependent on rivers levels and spawning seasonality variations, tailored to individual river catchments to as not to interfere with spawning fish. We would like to see this situation appear though reasonable and facilitated negotiation between angling groups, the Welsh Canoe Association, and the Environment Agency.

Yours sincerely,

J Williams M.Eng

⁴ Salmon and Freshwater Fisheries Act 1975.

⁵ Guidance for Environment Agency Fisheries Bailiffs – Canoeing and Fisheries. EAS/3001/4/1. 1999.