

Access to Water

*Sharing access on
rivers and reservoirs*

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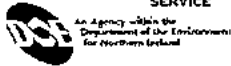
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A UK-wide Network, CRN gives easy access to information and people concerned with countryside and related recreation matters. The Network helps the work of agencies and individuals by:

1. identifying and helping to meet the needs of CRN members for advice, information and research;
2. promoting co-operation between member agencies in formulating and executing research on countryside and related recreation issues;
3. encouraging and assisting the dissemination of the results of countryside research and best practice on the ground.

The Countryside Recreation Network is committed to exchanging and spreading information to develop best policy and practice in countryside recreation

Published by The Countryside Recreation Network (CRN)
© 1997 the Countryside Recreation Network (CRN)
ISBN 0 948502 41 X

Recycled paper

Copies cost £8
and are available from:

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October 1997

CONTENTS

Welcome and introduction	6
<i>Richard Broadhurst, Chairman of CRN</i>	
The legal situation	9
<i>Robert Lewis, Barrister</i>	
Current situations and conflicts in the UK	13
<i>Craig McGarvey, Head of Recreation and Navigation, Environment Agency</i>	
Passion and prejudice	
<i>Anglers, Mark Hatcher</i>	19
<i>Angling Governing Bodies, Chris Poupard</i>	23
<i>British Canoe Union, Carel Quaije / Colin Kempson</i>	25
<i>Canoeists, Stuart Fisher</i>	29
<i>National park visitors, Colin Beard</i>	36
<i>Riparian owners, Alan Woods</i>	41
<i>Water authority, Chris Spray</i>	45
Reaching Consensus through Byelaws	53
<i>Geoff Hughes, English Sports Council (North)</i>	
Where Do We Go From Here?	
<i>Allan Patmore, Countryside Commissioner</i>	57
Programme	61
List of participants	63
Appendix:	67
<i>Summary of 'Water' Booklist</i>	

INTRODUCTION & WELCOME

By Richard Broadhurst

Chairman of the Countryside Recreation Network

Good morning, and a very warm welcome, to this the first Countryside Recreation Network workshop of the year – ‘Access to Water: Sharing Access on Reservoirs and Rivers’. To those of you for whom this is the first contact with the Network, an especially warm welcome. By the end of today, if you play your cards right, you will have a room full of new friends, and new friends throughout the UK.

The Countryside Recreation Network is a UK-wide Network of the principal agencies (about 30 or so at the last count) involved in countryside and related recreation matters. We take a very broad view of what constitutes countryside – land, air and water; ‘environment’ really; and an equally wide definition of recreation, because that is the way in which the people who take part in it define recreation. As a Network we are committed to exchanging and spreading information to develop best policy and practice.

The Countryside Recreation Network works to champion countryside recreation, through:

- helping to meet the information needs of people in the Network;
- encouraging member agencies to collaborate and save public funds; and through
- disseminating widely the results of research and best practice.

We do this by exchanging information and pooling our ideas and resources – in person, via publications, through the internet, through the Network Manager and Assistant, through meetings of representatives from the agency members, and through conferences and workshops. This workshop is an expression of that effort.

We are very lucky to be here today thanks in large part to the Environment Agency who have generously supported this workshop. The event has been oversubscribed and regrettably we could not accommodate everyone. Nevertheless we hope to arrange other similar events, including one in Scotland later in the year.

The organisers have arranged a feast, not only in the range of speakers and facilitators but in the range of participants, which will ensure good work today and better networking

thereafter. That will be important, as you will hear from Allan Patmore in a moment, after I have said a word or two about water, the subject of our interest.

Its properties mark water out as an extremely useful, beautiful, delicious and of course vital component of our lives; something to look at or look through; to magnify or change our view. A little brightens colours and enhances smells. We would literally collapse without it. We need it for support, as a solvent, as a reagent, for transport at the intracellular scale, and for transport at the human scale, and much in between. We colonised areas of Britain by travelling up rivers and settling in the forest, finding twice the interest and value of being at the edge of two systems.

Rivers and reservoirs are for life, full of life, and at the same time, remarkably vulnerable. Think of everything we throw down the kitchen sink or worse. Where does it end up? Some very nasty substances are poured down domestic and indeed industrial sinks. The Environment Agency and the Water Companies (Boards in Scotland) will help us out here. In Britain we are lucky. In some parts of the world people are less so. Perhaps it is a question of 'out of sight, out of mind'. No doubt this view is enhanced by our predilection for walking on dry land rather than on water...although, especially at this time of year and traditionally in more northern climes, there are plenty of people walking on water, in various frozen states (the water as well as the people). In fact people walk on it, skate on it, ski on it, climb on it as well as canoe, raft, boat and sail on it and swim in it, and eat it!

Water is truly magnetic – literally and figuratively. People are drawn to the waters edge, whether puddle, stream, river or coast. We are restricting our interest to inland waters today. Rivers though connect us to the last great freedom, the sea. Richard North, the journalist, speaking at a recent seminar on English Nature's Beyond 2000 Strategy, urged us to adopt the phrase 'the wilderness is in the detail'. We have all been mesmerised by water: reflections, fountains, rain drops, thin film interference and wavelets.

The utility of water is remarkable. If you have not already done so, read the leaflet prepared by the Water Services Association describing some of its uses. More remarkable still though, is the way water has been an inspiration to artists, composers, poets, writers, thinkers and every one of us. Think of the Impressionists, of Handel, and of that Scottish literary giant, Robert Louis Stevenson (RLS). RLS captured the special qualities, the rhythm of water in motion, in several of his verses for children, e.g. 'Where go the Boats?' which was recently and so beautifully put to music by Howard Blake. RLS writes of adventures as a young man canoeing in Europe and of course later acts out great adventures in sailing to the South Seas where he would eventually die, altogether too young.

What relevance has any of this. Well it is this. Each of us will appreciate water for its different properties, at different times. To it we will attach different, personal and sometimes conflicting values. With the mounting pressures of population growth and climate change, water is becoming increasingly scarce and valuable. If we are to make the best of what we have then we will need to think carefully and act responsibly, as individuals and as a society.

What would RLS have made of windsurfers, water skiers or jet-skis? Irrelevant? Off the wall? Well maybe, but when looking for new solutions it helps to look, listen and think from a slightly different angle. To help this process along I would ask you to contribute to a booklist on the topic of water, so that we can start thinking from different perspectives. The list is bound to prompt some of us to take another look and to think again. At some stage during the day, write down the titles and authors of at least three books which focus on, or were inspired by water.

Keeping with RLS, I will start by adding three:

Robert Louis Stevenson: 'A Child's Garden of Verses'

Robert Louis Stevenson: 'An Inland Voyage', T Nelson & Sons, London

David Daiches: 'Robert Louis Stevenson and His World', Thames & Hudson, 1973

Where go the Boats?

Dark brown is the river
Golden is the sand.
It flows along for ever,
With trees on either hand.

Green leaves a-floating,
Castles of the foam,
Boats of mine a-boating -
Where will all come home?

On goes the river
And out past the mill,
Away down the valley,
Away down the hill.

Away down the river,
A hundred miles or more,
Other little children
Shall bring my boats ashore.

From 'A Child's Garden of Verses' by Robert Louis Stevenson.

THE LEGAL POSITION

By Robert Lewis

Barrister

The Sea and Tidal Waters

In considering the legal position on access to water it is necessary to distinguish between the sea and other tidal waters on the one hand, and fresh waters on the other. Under common law (i.e. judge-made law as opposed to statute law made by parliament) the general public enjoys two rights in respect of the sea and tidal waters:

- the right of navigation; and
- the right to fish.

Provided the right is exercised reasonably (e.g. without causing obstruction) the public is allowed to navigate the entire area over which the sea and tide flow (*Denaby and Cadeby Main Colliers v Anson* [1911] 1KB). The public may also exercise rights that are incidental to the right of navigation, such as a right to anchor overnight or to stop to carry out repairs. A more prolonged period of anchorage, however, such as over-wintering, would amount to an obstruction and is not allowed. This right stems from the law that the bed of the sea and tidal parts of rivers is owned by the Crown. However, the rights subsist even where the Crown has sold off its interest. Similarly, the public has a right to fish in the sea and tidal waters subject to limitations which may be imposed by statute (e.g. to maintain fish stocks) or by custom (*Mercer v Derne* [1904] 2 Ch 534.).

There is an important caveat to both these rights in that they do not include a general right of access – i.e. a right to go over land to reach the water. Thus there is no right to embark or to load from the foreshore or from the banks of tidal rivers. It is, however, possible to fish from the foreshore (the strip of land between high and low water marks) unless the area is subject to a private and exclusive right of fishery. But again, there is no general right of access. Access is only possible at points appointed for that purpose by necessity and usage or by private agreement with the landowner.

Most people visiting the seashore do so for purposes other than navigation or fishing (e.g. walking, sea bathing and sun bathing). What rights, if any, do these people have?

This question was considered in the case of *Blundell v Catterall* [1821] 5 B & Ald 268. In 1815 a hotel had been built above the foreshore at Great Crosby on the river Mersey. The defendant was a hotel servant who drove visitors to the water's edge in bathing machines. The Lord of the Manor, who owned the foreshore, claimed that this activity constituted trespass. On a 3 – 1 majority the court found in favour of the landowner. Although not strictly a legal right, activities such as walking, bathing and beachcombing are generally tolerated by the Crown and other owners of the foreshore. In many cases the foreshore is owned by local authorities and the public is expressly permitted onto it subject to local regulations and byelaws.

The existence or non-existence of any right for the public to use the foreshore is a separate question from the existence of a public right of way. The principles governing the creation of public rights of way, such as footpaths, apply in relation to the foreshore as they do elsewhere. So, for example, use of a particular route by the public as of right may lead to an implied dedication of that way by the landowner. In order to amount to a public right of way, however, the route must be along a specific line. English law does not recognise a general 'right to roam', (*Att. Gen. v Antrobus* [1905] 2 Ch 188).

Fresh Waters

In contrast to the sea and tidal parts of rivers, the public has no right to navigate or to fish in fresh waters, either rivers (including tidal rivers above the point of high tide) or lakes. This difference can be attributed to the fact that land below fresh waters is owned privately, not by the Crown. In the absence of evidence as to who does own a river or lake bed, the law presumes that they are owned by the owners of the banks on either side (the riparian owners) who are assumed to own up to the 'land middle line'.

The public cannot claim a right to get access to a stretch of fresh water belonging to another except through the use of a public right of way. Correspondingly, there is no right to disembark onto private land or to launch boats from private land, only from an adjoining highway. In practice, the local authority may enter into an access agreement with the landowner (or, if it is impractical to secure an agreement, make an access order) under Part V of the National Parks and Access to the Countryside Act 1949. Access agreements and orders enable the public to have access to 'open country' for the purpose of recreation. 'Open country' is defined as land consisting wholly or predominantly of mountain, moor, heath etc. and also (by the Countryside Act 1968) rivers, canals and lakes. This definition does not extend to reservoirs owned by a statutory undertaker.

Rights of Navigation over Fresh Water

There are three ways in which a right of navigation may be created over fresh waters:

1. **By immemorial user.** According to legal theory, the ownership of the bed of a river only became vested in the riparian owners in the reign of Henry VII. Before that time, flowing rivers were regarded as belonging to the public (*res it publicae*) and were therefore considered available for all to use. Where navigation rights had in fact been exercised by the public at the time of vesting, the owners were presumed to have taken the bed subject to those rights. In practice today, all that one needs in order to demonstrate the existence of a right of navigation, acquired through immemorial user, is evidence of actual use of a navigable river as of right as far as living testimony can go (e.g. 60-70 years). In the case of highways on land, the common law of presumed dedication (which is similar to the above) has been modified by statute so that one need only establish public user for the limited period of 20 years in order to create public rights. In the case of *Att. Gen. ex rel Yorkshire Derwent Trust Ltd v Brotherton* [199] 3 WLR 1126, the House of Lords held that this statute law did not apply to navigation rights over rivers. In order for the use to be exercised 'as of right' it must not have been carried out through the use of force, or secretly, or with the express permission of the landowner. Once established, the right of navigation is applicable for all types of craft and for all purposes.

2. **By express grant.** Private rights of navigation can, of course, be granted expressly by the owner of the river or lake bed. Public rights can be created through agreement with the local planning authority under the National Parks and Access to the Countryside Act 1949, as described above.

3. **By statute.** When, in former times, rivers were an important means of transport for people and goods they were often improved, e.g. by deepening or by the construction of locks. Frequently, Acts of Parliament were passed to create new companies for this purpose and to enable works to be carried out on private land. In a number of cases (e.g. the River Thames Act 1623) Acts recognised, in express terms, the existence of public rights of navigation which already existed. In other cases Acts created rights where none had previously existed (e.g. the River Trent Act 1699 – "*the King's subjects might have and lawfully and rightfully enjoy their free passage in, along and through and upon the said river*"). In other cases, Acts gave public rights subject to the payment of tolls (e.g. the relatively recent Upper Avon Navigation Act 1972). Where navigation rights do exist they are rights of navigation only – they do not imply for example, a right of portage or a right to fish.

Rights to fish and other recreational rights

Unlike navigation rights, rights to fish, to swim, to picnic on banks etc. cannot be acquired through prescription (use over time as of right) Such rights, therefore, only apply where granted by the owner and on whatever terms (e.g. as to payment) that he imposes. Of course, where an access agreement or order is in force, the public is entitled to wander over the land and to enjoy normal countryside recreation such as picnicking.

CURRENT SITUATIONS AND CONFLICTS IN THE UK

By Craig McGarvey

Head of Recreation and Navigation, Environment Agency.

Introduction

Demand for access to water-based recreation seems almost certain to increase. Deciding how we prepare for and handle this increase must be one of the challenges for this seminar. But as I will explain later (and I am sure we will hear much of this in the 'Passion and Prejudice' session) some recreation groups feel that the current, never mind the future situation, is untenable. So, another challenge is to address the tensions and pressures that currently exist. We must also consider the environmental benefits and disadvantages of our deliberations.

Participation Trends

Let me begin by talking about participation. The 1994 UK Day Visits survey emphasises the importance of water as part of the leisure experience. In 1994, for example, more than 120 million leisure day visits were made to canals and rivers. Of these, 59 million were made for walking. In 1994 there were 3.3 million anglers aged 12 and over in Great Britain, of which 2.3 million participated in coarse fishing and 0.8 million in game fishing. The British Canoe Union estimates that each year more than 100,000 people go canoeing. There are approximately 100,000 boats registered on the inland waterways network, the majority of these being motor boats, used by more than 750,000 people. Water-skiing attracts about 400,000 participants each year. Estimates for the number of people involved in water sports vary from 5 to 7 million, but this includes participation in all forms of water environment (e.g. the coast, public rights of navigation, lakes, lochs, gravel pits, reservoirs, private rivers, and canals). The coarseness of our research makes it difficult to accurately assess the true nature of supply and demand.

Outdoor pursuits in general are showing a gradual, if undramatic growth, in terms of overall participation levels. This could be set to continue and possibly increase if the Government's recent report on climate change is correct. The report suggests that as our climate becomes warmer and drier so participation in outdoor recreation will become more popular and accessible, especially water-based recreation.

It is important to understand that recreational pursuits are constantly evolving. In particular, patterns of participation show a higher and more significant degree of change than overall numbers of participants.

Technological advances have brought change with new water sports appearing such as jet-skiing and windsurfing. Existing pursuits have been revitalised or even revolutionised by the use of modern materials. Canoeing, for example, has made two enormous advances, first with the introduction of fibreglass and then with the advent of the plastic canoe. Almost indestructible, these plastic canoes have opened up more challenging white-waters to a greater number of people. Dinghy sailing has been given a new lease of life by the use of materials such as kevlar and mylar in hull and sail making. Light weight, high speed, designer dinghies have attracted young people who demand thrills, spills and lifestyle image.

If our understanding of quantitative changes is in its infancy, then our appreciation of qualitative issues is hardly in gestation. There are some interesting indicators. For example, in recent years there has been a growth in and demand for still-water fisheries. The water utilities are the largest provider of still-water trout fisheries, where high stocking rates ensure good catches. More dramatic product development is being experienced in coarse fishing, where still-water carp fisheries have been expanding rapidly. Still-water coarse fisheries in general are proving extremely popular. Carp fisheries in particular demonstrate modern day demands for a high quality recreational experience. These fisheries provide easy access to the water and plenty of hungry fish. Angling success is immediate and almost guaranteed but it is not yet clear whether this heralds a decline in the popularity of river fishing for coarse fish. However, such a correlation may be too simplistic given that most recreational pursuits have a highly segmented range of participants. Each segment pursues a particular aspect of the sport, say canoe touring, and within that aspect may participate in a particular manner or discipline. As such, demands will be quite unique and it would be erroneous to assume that each recreational pursuit is amorphous. Policy makers and land & water managers need to appreciate that access to water involves an extremely diverse and complex group of users and that finding a solution to existing conflicts will not be easy.

So, in general terms there are sufficient indicators to suggest that overall demand for access to water will increase. It also seems likely that the quality and diversity of recreational experiences will be increasingly important. At the same time we appear to lack detailed and consistent data concerning participation trends and demands, a fact which could hamper our response at all scales from local to national.

The Environmental Resource

What of the resource that we use. In England and Wales there are more than 140,000km of rivers, approximately 3,000km of canals, and 1,650 lakes and reservoirs larger than 5 hectares. At first glance that actually appears to be a huge amount of inland water offering a wide range of opportunities.

Public rights of navigation give access to more than 4,000km of rivers and canals. The vast majority of these rivers are managed by a navigation authority: there are 27 inland navigation authorities. Most navigations were created before this century, generally as commercial ventures to transport goods and people. They are now used, almost exclusively, for recreational purposes, and in general, access is extremely good and well managed. However, there are navigations which are not managed by a navigation authority, usually where the navigation has fallen into disrepair, or where the authority ceased trading with the demise of water-borne freight. There are also some disputed rights of navigation. Navigations lacking an authority, or where rights of navigation are in dispute often host the greatest challenges and conflicts, and may potentially be very expensive to resolve. Positions are often polarised with views ranging from a need to overhaul legislation to those who prefer local solutions within the current legislative framework.

The greatest proportion of rivers do not have a public right of navigation or right to fish. Access to these waters can only be gained with the permission of the landowner. It is on these waters that the big access challenge awaits. For example, how can the differing needs of anglers and canoeists be met? There are significant tensions here; many canoeists being disappointed at the lack of progress being made through access agreements, and many anglers concerned at challenges to their well-established, exclusive and paid-for rights. However, there are also examples around the country of model access agreements where anglers and canoeists co-exist in harmony and without detriment to each other's pursuits. The River Tyne access agreement is a good example of harmonious use which has been in operation for many years. This allows canoe access at times of flood flows or in the closed season for fishing.

Public bodies tend to make their riparian land available to the public. The National Trust, a significant landowner, recently produced an excellent set of policies relating to access, and in particular, shared use of water. In recognition of the ever increasing demand for access, the Country Landowners Association (CLA) has launched its 'Access 2000' initiative.

This aims to "*...achieve a net increase in the quantity, quality and diversity of access opportunities*" (CLA, 199c).

The problems and issues surrounding access to still-waters are quite different. The Countryside Act 1964 meant that all public reservoirs built after that date must provide for public access. The water companies also have statutory duties in relation to recreation and are required to observe a Ministerial Code of Practice for Conservation, Access and Recreation. Although most of the water companies have invested in and improved recreational facilities on their reservoirs, they have tended to preserve traditional recreational uses such as fishing and sailing. They have all tended towards provision for the quieter and less controversial activities, with hardly any provision being made for the needs of powerboat racing, water-skiing and jet-skiing. Yet these entirely legitimate activities probably face the largest shortfall in access provision. Moreover, there is little evidence that the water companies, either in concert with each other or with statutory agencies, are planning how reservoirs can contribute to access opportunities at a strategic level.

Conflict – Human and Environmental Aspects

There are a range of subtle sociological forces at work affecting patterns of participation in water-related recreation. Being a predominantly urban or suburban population, we have come to realise that there are significant physical and mental benefits from engaging in countryside recreation. The CPRE in its report 'Leisure Landscapes' suggest that leisure has become a key element of meaning in people's lives. If true, and I must say their arguments find some resonance with me, this may help us to appreciate the intensity of feelings held by the participants.

It is difficult to estimate whether conflicts between various water sports groups is decreasing or increasing. What is certain is that conflicts do occur – a quick search through the specialist monthly magazines will usually unearth tales of conflict or letters of complaint about other user groups. Many conflicts are localised and result in disputes about particular stretches of water or certain individuals. What is more, they can often be resolved at this level. However, this site-by-site process can mask the underlying and endemic issues. We must begin to address strategic and long-term solutions.

And what of the environment itself, are these recreational activities causing damage? The Environment Select Committee, in its report 'The Impact of Recreation on the Environment' concluded that recreation-related impacts were negligible and usually more perceived than real. In spite of this, many people still feel that we need to improve our scientific understanding. There is much myth and supposition surrounding the impacts of water sports on the environment, a great deal of which is fuelled by a poor body of research. In particular, research programmes which relate specifically to access to water, or impacts of one

activity on another are lacking. This is an area of research in which the Environment Agency (EA) has engaged and intends to do more of.

Access to Water -- Key Challenges

There appear to be two major areas of concern. The first relates to demand from canoeists for greater access to rivers where a public right of navigation does not exist, and the second concerns provision for motorised water sports, such as water-skiing, powerboat racing and jet-skiing.

The EA has a general duty to promote recreation on waters and associated land throughout England and Wales. We wish to see an increase in access opportunities, and we support the use of access agreements as a means of increasing provision of facilities for canoeists. In 1995 we re-established the Angling and Canoeing Liaison Group as a means of improving communication between anglers, canoeists and riparian owners. The Group has begun work on a guide to access agreements which will be of use to land owners and managers and should encourage greater shared use of natural resources.

Information and communication provide the key to success, and lack of understanding between the various interests is currently a major stumbling block. Each group needs to be aware of the others' requirements, and the nature and practices of their sport. There is an important role here for clubs and sports' governing bodies to encourage information exchanges between the various sports. Perhaps angling and canoeing clubs should arrange inter-club talks to increase understanding of each others' sport.

Throughout the country there are many examples of model agreements where canoeing and angling happily co-exist, even when heavy use is made by both parties, if such good practice exists it needs to be promoted and extended into other areas.

What is needed is a strategic approach which provides for all water sports. This might comprise a mix of single and multi-use facilities, both natural and man-made, some close to conurbations and some in remote rural settings. To plan at this level requires basic information about patterns of supply and demand. In 1993 the NRA and Sports Council commissioned just such a research project for the North of England. However, detailed information of this nature is either scarce or non-existent for most other parts of the UK.

Conclusion

In summary I would contend that we cannot leave the management of existing and future demand for access to water to chance, we need to be proactive. This requires a partnership approach, no single body or organisation can succeed alone. We need to influence Lottery distributors, and in the longer term the structure of agri-environmental grants. We need to adopt a strategic approach to ensure that a broad range of recreational opportunities are available around the country, this will need the support of land-owners, public bodies, governing bodies and users to bring together all of the constituent parts of a water sports plan for England and Wales. We need a national plan implemented through local action.

And finally, in the general hum of countryside management there is a tendency to focus on land-based recreation, and as a result water-related recreation frequently gets overlooked. I would ask you all to ensure that this doesn't happen. Today is one good step in the right direction, and hopefully the first of many.

THE PERSPECTIVE OF AN ANGLER

By Mark Hatcher

Something New?

There has been much talk, particularly in recent years, about demands for access to water space and how agreements have to be made for it, as if it is something new. This is not so. Anglers have been making their own arrangements to go fishing for generations. They've used their own initiative, without fuss, and without the support of bodies like the Sports Council, the Environment Agency, or the Department of National Heritage.

Anglers have secured access to fisheries by entering voluntarily into binding agreements, accepting responsibility for the behaviour of those benefiting from access, protecting the landowner's interests, protecting the fisheries resource, and paying for it – a successful and well developed model. With the growing interest in recreation over the last two or three decades it might have been assumed that such a successful and well developed model would have been taken, both by other interests and by the proponents of recreation management theory, as an excellent and practical example which should be emulated by other activities. Sadly, this does not appear to be the case.

As far as the academics are concerned this can be attributed to a superficial level of understanding of what the recreation of angling is about; its relationship to the natural environment, and the discipline which is enforced on anglers. This isn't really surprising, given that many recreational studies owe a great deal to the sociology of the 60s and 70s, where 'demand', 'need', and 'want' were uncritically assumed to be synonymous and should automatically be satisfied. But the real root of dispute and disharmony over access to water space arises from the unwillingness of a lot of us to accept the constraints on activity and behaviour that the model implies – concepts unfashionable in sociology then, and in surprisingly large areas of activity today. In other words, it's attitudes which count.

Statutory Regulation of Fishing

Fishing is an ancient activity. Because of its age it is strongly regulated by common law, statute and byelaws. Anglers are used to such limitations and by and large do not find them particularly irksome. Indeed, a substantial portion of the angling public feels that recent

relaxations in the rules are detrimental to fisheries and the sport and would like to see tougher controls re-introduced. They are also not slow in letting us know.

Different Approaches

What we find in other recreations is somewhat different. A couple of years ago I was assured by the editor of a canoeing magazine that *"because it's so difficult to get permission from all the landowners on a river when we want to go canoe touring we have to do it illegally."* If an individual angler wishes to fish any particular bit of water he too faces the same difficulties in obtaining permission. For that reason anglers get together to form clubs, because in so doing they can negotiate jointly for fishing. It can be difficult, for perfectly legitimate reasons, to gain admittance to those clubs, but even when membership is obtained it only gives access to certain places. To fish elsewhere anglers have to join other clubs, or obtain day tickets or short-term memberships, and this can develop into a pretty expensive exercise if pursued with enthusiasm.

Leading Others

The canoe editor isn't entirely unique in his approach. Common law is quite clear that there is no general right of navigation on inland waters, and in the absence of evidence to the contrary it has to be assumed that without express permission from the owner of the riparian rights you can't take your boat onto any water -- just like fishing in fact. However this does not satisfy everybody. Current British Canoe Union policy states that *"Where there is uncertainty as to whether there is a navigation right or not, assume that there is no objection unless and until challenged, when the authority of the challenger will be requested."* (BCU, 1996). Without going into the question as to in whose mind the uncertainty lies, it is hard to think of a more confrontational approach, and one more likely to inhibit workable access agreements. The BCU's 1996 Handbook contains a milder form of this: *"If you are accused of trespass and genuinely believe you are exercising a public right of navigation, or are within the terms of an access agreement, you should say so and refuse to admit trespass"* (BCU, 1996). There is no angling official who has ever tried to deal with the problem of disturbance from trespassing boats who has not been confronted with this argument. Michael Gregory, formerly legal advisor to the Country Landowners Association, has commented that *"This will undoubtedly be interpreted by canoeists as advice to insist that they are not trespassing, even if it is demonstrated that they are. A great deal of trouble in the past has been due to the attitude of certain trespassers -- 'I am right because I say so' "*.

A Multitude of Forms

Problems of access are not confined to unnavigable waters. Many people using navigations don't know, or don't wish to know, that there are constraints on their activities, including where it is permissible to moor and where it is not; what their obligations are towards other legitimate users; and safety. It is often assumed that where there is a right of way alongside or close to a water body, anybody can fish, launch a boat, have picnics, throw stones, ride bikes at breakneck speed, park, obstruct gateways, or allow dogs to roam uncontrolled.

The right approach

It all comes back to the same basic issue: attitudes. If we are to have greater harmony in the use of water space, and this is essential if greater numbers of participants are to be accommodated, we all have to address the problem of generating the right attitudes. These can be summed up as a willingness of participants, and intending participants:

- to acknowledge and stick to rules and agreements;
- to respect other people, their activities, their interests and the environment;
- to acknowledge that other people and other interests may have prior legitimate claim to access to water space; and
- to recognise that self restraint is often necessary.

How we achieve this state is perhaps what this seminar is all about, but it is essential that all of us involved in managing and supporting sport and recreation should be promoting these values all the time, and seeking to identify and eliminate the causes of attitudes obstructive to harmony.

Eliminating Causes

In some respects, anglers have created their own problems in being so ready to accept responsibility. A booklet, 'The Fisherman's Struggle Against Pollution' published by the Trent Fishery Board in about 1947, quotes a statement first made ten years earlier: "*The first (and only) effective step taken by the Government to identify and control sources of river pollution was the statutory authority given in 1923 to 'worm and bent-pin' anglers to levy a rod tax on themselves.*" It is the protection of waters, actively pioneered by anglers, which has opened up the possibilities of recreation on or alongside water from which other interests are now benefiting.

The anglers' record is quite remarkable, and something of which to be proud. Their attitude towards the sport, and to the environment upon which it depends, has over time contributed to the development of the Environment Agency -- through fisheries boards, river boards, water authorities and the National Rivers Authority. Anglers remain entirely self-supporting today, and they have continually levied approximately £12 million a year for environmental protection. There is no other recreation, as far as I am aware, which has made, and continues to make, a similar contribution. The enormous difference between this and the high levels of subsidy and support received by other activities has to be taken into account when considering access issues. Governments seem to have been remarkably improvident in providing high levels of support to activities which appear to be unable to attain a realistic level of self-sufficiency, and it is unfortunate that the impact of subsidy on demand for any given activity, and the resulting potential for conflict, has as yet received scant attention. This is an issue that we may wish to think about today.

Not Always a Country Problem

Access issues are not confined to the countryside, but wherever they occur they have a common thread running through them. Perhaps the position that many anglers find themselves in today, and not just in urban areas, is well illustrated by a letter published in the Anglers Mail in April last year:

"My early days of angling were over 50 years ago on the Lea. The only disturbances were the occasional horse drawn barge with its friendly bargee and the very occasional considerate cyclist. As the years have progressed so have the number of other water users. Now there is always some individual disturbing the water without giving any consideration whatsoever to the hapless individual sitting quietly with rod and line.

I remember the number of times when thoroughly browned off with some aspect of life, I'd make my way to the bankside and spend a number of tranquil hours. In recent years, I've returned with blood pressure up on the roof after having spent time getting my gear out of the way of boats, bikers and inquisitive dogs. And of course don't forget the occasional 'brick throwing little angel' whose parents were so proud he or she nearly hit the little red thing in the water! I fear the relaxing element may have gone for ever."

THE PERSPECTIVE OF THE ANGLING GOVERNING BODIES

By Chris Poupard

Anglers feel under threat due to increasing pressure from other water users to gain access to rivers, lakes and reservoirs. The pressure comes from three main directions:

- organisations representing users;
- individuals; and
- government agencies.

How should organisations representing anglers, like the governing bodies, respond? We are in favour of negotiated access agreements, but with strict pre-conditions:

We insist that other user groups and individuals recognise the common law relating to rights of navigation, and the civil law regarding access to and trespass upon private property. It is also imperative that people recognise existing and often long-standing agreements negotiated with land-owners, and riparian owners in respect of fishing rights. Anglers, by and large, are licensed to fish with rod and line and have organised themselves into clubs to negotiate these agreements; they have paid rent and have a good record of policing agreements themselves. There is concern at the willingness, and ability, of other groups to comply with these precepts. We seek reassurance on these points.

Whilst some of these attitudes might be understandable with individuals and user groups, we are also concerned about the attitude and intentions of certain statutory agencies. The Environment Agency (EA) has a duty to maintain, develop and improve fisheries, but also to promote conservation, recreation and navigation. It is also subject to financial memoranda from the Department of the Environment (DoE) and Ministry of Agriculture, Fisheries and Food (MAFF) concerning its expenditure and the need to maximise licence income. We are concerned that in its desire to promote these other functions, EA might have forgotten the £12m annually that it obtains from anglers' licence income, and that angling is worth, from its own figures, some £3 billion to the UK economy. Both English Nature and EA might be forgiven for forgetting the several hundreds of thousands of pounds spent every year by the Anglers' Conservation Association on private prosecutions against polluters and abstractors, as well as the huge and unsung contribution to the maintenance and improvement of fisheries by angling clubs the length and breadth of the UK

It may be relevant to ask here what contribution other user groups have made in terms of either finance, or environmental improvement? I suspect that, with the notable exception of wildlife trusts, the answer is a very round figure. English Nature might be forgiven for not recognising the enormous contribution that anglers have made to fisheries conservation, wildlife management and wetland habitat improvement, but it would be unforgivable if EA did not recognise this. We seek assurances from both agencies in this respect.

What Are the Prospects for Negotiated Agreements to Resolve Conflicts with Other Water Users?

Many agreements have been drawn up in the past enabling anglers to co-exist with other water users, but they tend to be on the larger reservoirs and gravel pits, many of which have been constructed in the last few decades, and where representative user panels have been established; in other words, where there has been no long-standing historical right of use, and where all the parties can sit round the table and compromise. The governing bodies are represented on, and support these panels.

Conflicts tend to arise on rivers and established water bodies where the historical right and enjoyment of anglers has been threatened by pressure from other users. The recent Windermere Inquiry is a classic example, and one which has yet to be resolved. Conflicts on rivers can be sorted out; I take great heart from the recent agreement between rafting interests and riparian owners on the River Tay in Scotland. This example points the way forward – despite our historical rights, anglers recognise that we live on a small island, and acknowledge the aspirations of others to share in the use of limited resources. The governing bodies are quite prepared to sit down with other water users to seek solutions to access problems, provided other users are prepared to recognise and acknowledge those historical rights and remain within the law.

I hope that some of the assurances we seek may be forthcoming today so that we can make some progress towards avoiding more conflict in the future.



THE PERSPECTIVE OF CANOEING'S GOVERNING BODY

By Colin Kempson and Carel Quaife

What is the Background?

The law regarding the right to navigate is based on statutory rights or 'ancient user' under common law. The latter requires proving that this use existed from 'time immemorial'. In legal terms that means proving usage in the year 1189. Proof of continuous use, overtly and without objection during living memory might also succeed in establishing a public right of navigation in the courts.

Statutory rights have normally developed into licensed navigations on which payment has to be made for their use. With a few exceptions the BCU has been able to arrange block coverage for their members. Outstanding navigations are likely to come within this coverage in time. However this will only account for some 4,450 kms of very placid water.

The BCU considers that there are some 17,500 kms of possible canoeing waters. Of these there are public rights or access agreements for just 350 kilometres, some 2%. We find this to be inadequate and represents inequitable access to the countryside for canoeists.

How did this Come About?

Canoes have been widely used from early history, as exemplified by both American Indians and the Eskimos. However, as a recognised activity canoeing itself only came to Britain around the middle of the nineteenth century. It is therefore not surprising that canoeists have difficulty proving use in 1189.

Let us look back to that time in history. What were the roads like? Apart from the contribution made by the Romans, which soon fell into disrepair, it was not until an Act of Parliament in 1555 that an attempt was made to make parishes responsible for the upkeep of the tracks. This initiative having failed, the turnpikes were introduced in the late

seventeenth century and funded by tolls. The use of wheeled transport itself was not common until the seventeenth century.

However, the use of water for transport goes back to well before Roman times. They themselves used water routes to supply their military bases. The introduction of canals at the end of the eighteenth century was to provide new routes for heavy transport, extending and continuing on from the previous river routes. They allowed a new form of transport in the form of 'fly boats' which were faster than any other vehicular transport then available. The use of water was so common that it was never questioned and therefore few records were created.

Let us put the current need to prove our case into reverse. How would those opposed to canoeing on their waters prove that these were not in use in 1189? It is the BCU's belief that all waters capable of navigation by small boats in 1189 were so used and that, except where overtaken by statute law, they should be seen as public rights of way. It is for these reasons that the BCU has a long term policy to seek a change in the law.

Proving a Right of Navigation

If the right of navigation is challenged, it is up to the navigator to prove that there is a right. This means that the matter must be brought before a court. Because this comes within the area of public interest, canoeists are obliged to persuade the Attorney General to bring the matter to court on their behalf. This he will only consider if canoeists have the financial resources to meet the legal costs of both sides should they lose. Costs for such actions, often only affecting a few kilometres of water, can run into six figures – canoeists simply do not have these resources. The legal system therefore effectively prevents canoeists from proving common law rights which they believe exist.

Canoeists Need a Change in the Law

The Government is unwilling to change the law at this time and advises that canoeists should first seek voluntary agreements. Most other official bodies support this approach. The Country Landowners Association has recently launched its 'Access 2000' initiative which advocates the use of permissive access agreements as opposed to the imposition of a general statutory 'right to roam'. The BCU is happy to adopt this approach provided that sufficient equitable agreements are actually secured.

What do Canoeists Actually Need?

Canoeists do not need access to all the water, all the time. We seek to co-operate with other users and to recognise their interests, providing these do not combine to totally exclude use of the water by canoeists. Sharing use by time zoning is therefore a concept that canoeists can support. Zoning by location can be difficult as canoe touring requires the facility to make a through journey. It should be remembered that in seeking access, canoeists do not wish to exclude other users whilst canoeing is taking place. What we need is sufficient water at any one time and in each geographical area to meet our collective needs. In particular we need more access to the upland (fast moving and usually rough) waters which offer so much challenge to canoeists. They are important training grounds for future international medal winners.

Payment

Canoeists recognise that costs may be incurred in providing access to water and that reasonable charges may be appropriate. This is especially true when necessary facilities are provided, such as car parking and access routes to the river bank or for portaging around obstacles. However, canoeists want the minimum provision and prefer, as far as possible, that everything is left in its natural state.

It is important to find simple means of collecting and distributing any payments. Due to most stretches of water having many riparian owners, this can be difficult in practice; it is easier when there is some co-ordination between riparian owners. Touring canoeists only use any given facility for a very short time as they launch and pass down a river and this needs to be borne in mind if charges are levied. Where canoeing activities, such as slalom competitions, take place at a specific location it is normal for a more direct relationship to exist between the canoeists and riparian owners.

Agreements

The BCU believes, on the basis of experience, that the best agreements are simple ones which can be understood by everyone. They should be made without prejudice to the legal position so that nobody loses or gains legally by making an agreement. They should provide for the specific conditions that apply to a particular river and allow for review by both sides. In practice such infringements as do occur (we are human beings after all) can usually be resolved locally and without threat to the on-going good relationship between canoeists and riparian owners.

Summary

- All inland waterways, used for navigation in 1189, are Common Law public rights of navigation.
- In 1189 land based communications were very poor.
- The inescapable logic is that all watercourses were used to the full in 1189, including by small vessels.
- Therefore it is the belief of the British Canoe Union that all watercourses existing in 1189 and capable of navigation by canoe are Common Law public navigations except where over-ridden by Statute Law.
- The law requires canoeists, if challenged, to prove their claims in court.
- Because navigation is a matter in the public interest, canoeists are obliged to persuade the Attorney General to bring the matter to court.
- The Attorney General will only initiate action if canoeists have the resources to meet the costs of both sides if they lose.
- Costs per action, each covering probably only a few miles of watercourse, can run into six figures. Canoeists do not have these resources.
- The legal system denies canoeists the possibility of proving common law public rights, which they believe to exist.
- Canoeists need a change in the law.
- The Government is unwilling to change the law. The opposition is only committed to improving land access.
- The Government says that canoeists should seek voluntary agreements. The main agencies including the Country Landowners Association support this view.
- The BCU is happy to accept this approach provided that sufficient equitable agreements are secured - the scarce waterway resources of our crowded island need to be shared on an equitably agreed basis.

THE PERSPECTIVE OF A CANOEIST

By Stuart Fisher

Introduction

The subtitle of this workshop uses the words 'sharing access'. Unlike some other river users, canoeists do not seek exclusive use of rivers but simply the right to share our rivers.

The law governing access to inland water in this country is probably the most repressive of any country in the world. Paddlers from Britain go to enjoy the freedom that exists behind the former Iron Curtain. They go to paddle under the liberal regime in Chile. Paddlers from abroad are unable to understand why they cannot come here and paddle as they do in the rest of the world.

Legislation formulated centuries ago was never intended to give those undertaking one recreational activity the right to prevent others from undertaking their own recreational activities. Recreational canoeing has been enjoyed in Britain for over 130 years. As recently as the post-war years there were no access problems in Britain. It is only within the last few decades that existing legislation has been used to prevent canoeists and other boat users from sharing the great majority of rivers in this country. Replacement of that legislation with legislation suitable for the needs of the 20th century is seriously overdue.

The Realities of Access in this Country

Access Agreements

Access agreements apply to only a few tens of kilometres of river in Britain, mostly in short lengths. While some agreements suit the needs of white water playboaters who are happy to stay in one spot and play repeatedly on a short stretch of rough water, none of them addresses the needs of the serious touring canoeist. Frequently they are only for BCU members, excluding the great majority of British paddlers as well as overseas paddlers. They often require booking to be made a long way in advance, perhaps resulting in unpleasant weather on the day and no chance to alter plans. Sometimes numbers can be extremely restricted

It is several years since we have seen any new access agreements, during which time we have seen tens of kilometres of new public footpaths dedicated along riverbanks, frequently along sections of river still closed to canoeists.

Deep Water Navigations

Deep water legal river navigations account for some 4% of rivers in England and Wales. By definition they exclude all white water, all headwaters, most fast moving water and most clean rivers. While they have attractions for many, they do involve sharing with powered craft which give out exhaust fumes; disturbing wildlife, and being at the mercy of larger, craft.

Asking Permission

Asking permission works for very limited sites and is worth the effort for concentrated use of small stretches of water – it is quite impossible for touring canoeists who wish to make long runs across country every weekend. There is no register of landowners and the chances of all interests along the length of a river giving their approval is negligible, even if it was possible to find out who to ask. One person saying “no” or not replying to a request breaks the chain and so the trip cannot legally take place. Many landowners do not want the inconvenience of having to reply to requests and would simply prefer canoeists to pass with the minimum of fuss. The permissive route for touring canoeists is a non-starter in the real world and anyone who suggests it as an option has clearly never tried it.

Buying or Leasing Land

Becoming riparian owners has often been suggested by those who think in terms only of using a short length of river on a regular basis (like anglers) rather than passing once and moving on (like canoeists). A canoe club in Yorkshire put in a bid for the local fishing rights near their club when they came up for renewal, making the highest bid with the intention of including a clause permitting canoeing and then letting on the angling rights to the previous users. The Council rejected the bid because the canoeists were not anglers and so would not know how to manage the fishery. Even if canoeists had the resources to buy up rivers, this would not be desirable from the viewpoint of anglers.

Trespassing

Trespassing is the only realistic option for touring canoeists on some 96% of the non-tidal rivers in England and Wales. That is why the majority of canoe touring takes place outside the law. A Sports Council survey of public attitudes in 1995 showed that 95% of the public believe there should be general river access while only 2% were opposed. Being faced by the occasional unpleasant person on the riverbank is often less daunting than trying to get on the right side of an impossible legal situation.

If Canoeists Have Public Support, Who Objects?

Wildlife interests

A Ramblers' Association survey showed that people moving past cause less disturbance to wildlife than people sitting still, including anglers and ornithologists. Canoes paddled quietly cause less disturbance than people on foot. Some ornithologists have discovered that they do not need to take binoculars with them if they approach by kayak because they can get so much closer without causing disturbance. Indeed, wildlife will often approach of its own accord. On the sea, seals frequently follow me a couple of metres behind the kayak and birds such as fulmars will pass within a metre of my head. On the west coast of America paddlers go out whale watching. The whales approach the kayaks and often show off, one paddler even had a killer whale jump cleanly over his kayak.

Landowners

It is very rare to meet an objecting landowner unless there are angling interests somewhere in the background; there are places where co-operative landowners are being pressured by anglers to prevent canoeists from passing.

Fish

While the view is sometimes expressed by anglers that boats frighten fish, there are plenty of anglers who believe the converse to be true. A study currently underway at John Moores University shows that coarse angling is not affected by the presence of canoes, reflecting similar results from a study of salmon passing Chester Wen. Europe's most canoed stretch of river is the Ardèche gorge at Vallon Pont d'Arc. At the height of the summer 2,000 canoes each day pass yet anglers still choose to fish and still catch fish. In North America you would expect to hire your

canoe and fishing tackle from the same shop and you would be laughed at if you suggested that canoes frighten fish. Around the world people fish from canoes and other boats, large and small.

Anglers

The Sports Council survey (referred to earlier) shows that even the majority of anglers are not opposed to our right to enjoy our own sport. When canoeists talk of anglers being the problem we are inclined to forget that the great majority get along with us without any difficulties. However, a significant minority use the existing law to try to exclude all other river users. As canoeists are capable of passing along rivers which are not physically navigable by other craft, it is canoeists who most often come into conflict with this minority of anglers, although the problem is not exclusive to canoeists.

It is said that people who can afford to pay large sums for their angling licences buy the right to exclusive use of rivers, and that this shapes their attitudes towards other river users. I do not believe this to be so. I have had anglers on expensive highland salmon beats raise their deerstalkers to me and I have been scowled at by anglers sitting shoulder to shoulder on deep water public navigations in the English Midlands.

Representation

Who do I represent?

I hear the views of paddlers both inside and outside the BCU and am putting forward concerns that I hear, particularly those of touring canoeists, but I have no mandate. Nobody has a mandate for the views of most recreational canoeists; I feel that the BCU does not even have direct knowledge of the views of its members. Competition canoeists, for example, are a minority group with special requirements. They are all BCU members and their interests are strongly represented within the BCU.

One significant group not represented by anyone is the general recreational and touring paddlers (the majority of British canoeists) who often find themselves excluded from what few access agreements do exist.

The British Canoe Union

The BCU says that closed-shop agreements for its members are often requested by anglers. Such agreements bar the great majority of canoeists from a river. There is no incentive for the canoeing public to support agreements which exclude them. Moreover, the BCU has very few access agreements (those that do exist usually only cover short stretches of river) and little has been achieved by way of extending and adding to existing agreements.

The Environment Agency (EA)

The EA has a statutory duty to promote recreation. Canoeists are not the only boaters who consider they have consistently given preference to angling interests. Under the EA the Regional Fisheries Advisory Committees have been given an extended remit to cover recreation, navigation and conservation. Chair persons are required by MAFF to understand and have an interest in freshwater fisheries – their priority is unambiguous. We do not want the EA to match the millions of pounds that it spends on angling and fisheries each year but just to support our right to exist.

The EA says that it encourages boating in situations where it is the navigation authority. This is not the case everywhere, however, as can be seen in the Fens where boating is not allowed on a cut-off channel which runs for many kilometres. There have been positive actions however, one such positive move came following an article we published in 'canoeist' about boating restrictions on a West Country river. This prompted the then local NRA official to offer an access agreement along a 2km stretch of the river.

Former NRA chairman, Lord Crickhowell, informed me that he was happy with the balance of river use between anglers and canoeists. However, the fact remains that there has been almost no help for touring canoeists from the NRA or its successor the EA.

The Government

The Houses of Parliament are well stocked with angling interests. Indeed, they even have their own angling club. Canoeists in Government are very much scarcer. The views of the members, and their electorate on river access seem to be very largely mismatched, and it is unlikely that the Government will make any changes unless pressed to do so by a suitable authority.

Holes in the Law

The existing legal position is surprisingly unclear on many rivers. In the Middle Ages many rivers were used as the only practical means of transport for goods through the forests which covered this country. This would make them legal navigations if we could produce documentation. We are denied access to the majority of our rivers because no-one thought to keep written records. The Romans are reported to have used coracles to carry lead down the full length of the Teme, a river which has large navigation arches on all its lower bridges, yet the NRA guide to the river has pages on angling and conservation but never once mentions navigation past or present.

Ten or so years ago, a legal expert examined the legislation pertaining to more than thirty rivers in the Wye catchment. His conclusion was that existing legislation effectively gave a right of passage to canoes over the whole catchment. The EA does not know whether or not existing legislation gives a right of passage, but it has sought to have these findings repealed as being 'inappropriate'. The Scottish Canoe Association believes all Scottish rivers are public rights of way, but others disagree. The truth is that no one really knows the true position. It is hardly surprising that we have so many confrontations when everyone has to go out as an amateur lawyer to undertake his sport and there are so many unknowns about the present legal position.

Legal action after the Seiont demonstration cost the Campaign for River Access for Canoes & Kayaks (CRACK) a three figure sum. The Itchen navigation case cost the BCU a five figure sum. The Spey case cost angling interests close to a six figure sum. Trying to resolve inadequacies in the law within the courts is not in the interests of either anglers or canoeists.

The Future Legal Position

The fundamental basis of river access needs to change from not being able to go unless every single person along the way gives approval, to a situation where unpowered craft may go unless somebody can offer a good reason to the contrary. This would bring inland rivers in line with the situation on tidal waters (and on most of the rest of the world's rivers).

In line with footpath law, there should be a simple right of passage, not a right to stop and play. If paddlers want to spend time playing on rapids they should do so when others are not present or should need to ask permission. Likewise, those organising competitions should need to continue to obtain suitable permission.

There should be an ombudsman to whom interested parties should be able to appeal either to prevent or to call for navigation rights. The ombudsman should be unbiased, not having a legal requirement to place angling first. He/she should call together interested parties and make his/her judgement. He/she should have powers to close a river, in certain circumstances, e.g. for military or security reasons, or during the breeding seasons of fish and other wildlife. Most of our rivers would see little use, as now, but canoeing would be legalised and unhindered on the great majority of our rivers. Pressure would be taken off the few honeypot sites because paddlers would disperse more readily onto other rivers. This would still provide a suitable mechanism for withholding navigation rights when there is a valid reason for doing so.

It would help considerably if the body looking after navigation interests differed from the one which oversees angling interests.

Summary

Canoeing is green tourism at its best; quiet, clean and more compatible with wildlife than most other outdoor activities. Access agreements and permissive use have proved to be abject failures. Tinkering at the edges of the problem is simply a distraction from the main issue which has to be resolved nationally. The problem has been left too long, and it is time that the law be re-written to give the public at least the same level of freedom to move on water as the walker has on land or the glider pilot in the air. Nothing less will address the issue of the most confused and repressive river access legislation in the world.

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THE PERSPECTIVE OF A NATIONAL PARK VISITOR

By Colin Beard

What recreational activities do you think of when the Peak District National Park (PDNP) is mentioned? Walking, cycling, picnicking, hang-gliding, car touring perhaps? But what else is there?

There are many attractive reservoirs in and around the PDNP but few people appear to know exactly how many and what facilities are available. Although some reservoirs are major visitor 'attractions', and one reservoir (just outside the Park) has become a prestigious water sports centre, angling appears to be the sole water-based activity permitted on many of the water sites in the PDNP. What are the possible reasons for this lack of our activities? Certainly there are overcrowding problems in certain locations and at certain times of the year – indeed the PDNP claims to have the second highest 'visitor-day' numbers for a National Park anywhere in the world. Sure there are concerns about conservation of the natural environment and possible disturbance of wildlife. But to my mind some of the facts and figures and stories being offered as to why we cannot do more on our many lakes and local reservoirs just don't add up. So what is the problem with allowing more water-based recreation in our National Parks?

Yorkshire Water, in its 'Water For Leisure' leaflet, points out that it is doing a great deal to promote outdoor water sports on the 71 sites under its jurisdiction. The leaflet states that in many cases it has gone well beyond its statutory remit to care for the environment and provide access opportunities for public enjoyment. However on closer examination of the wording in the leaflet it is clear that it is its land that is accessible; the reservoirs merely offer 'ideal facilities' (see table 1). Canoeing, for example, is on offer on just two of Yorkshire Water's seventy-one sites. Angling is on offer at 28 sites, and car parking comes a close second at 21 sites – you can't beat a good days car parking! Such public promotional information can of course be misleading. In 1993 a Government Standing Committee criticised 10 of the water and sewerage companies on account of the lack of information contained in various promotional 'glossies'. The Committee suggested that standards should be imposed and more detailed information made available to the public.

Table 1: Recreational Use of Yorkshire Water Sites

Activities allowed	Sites	% of total
Angling	28	39.4
Sailing	16	22.5
Sub-aqua	3	4.2
Model Boating	1	1.4
Picnic facilities	16	22.5
Car Parking	21	29.6
Canoeing	2	2.8
Public Access	64	90.1

Source: Harrison, 1995.

When I tried to find out just how many lakes and reservoirs there are in National Parks throughout the UK, and what activities are available, I was surprised at the number of park and water authority officials who didn't know. The following two charts are our best estimates.

Table 2a: Lakes and Reservoirs in 10 National Parks

	<i>Brecon Beacons</i>	<i>Pembrokeshire Coast</i>	<i>Snowdonia</i>	<i>Yorkshire Dales</i>	<i>Peak District</i>
<i>Reservoirs</i>	18	0	Lakes & reservoirs	5	48
<i>Lakes</i>	4	1	118 total	2	0
	<i>Exmoor</i>	<i>Dartmoor</i>	<i>Northumberland</i>	<i>Lake District</i>	<i>North York Moors</i>
<i>Reservoirs</i>	2	8	0	9	4
<i>Lakes</i>	0	0	4	35	0

At one of the newest reservoirs in Britain, Carsington Reservoir, which lies just outside the PDNP, a privately-operated Water Sports offers facilities for canoeing, sailing, wind-surfing and a host of other activities. Carsington also has restaurants, children's play areas, craft shops, and a large car park which generates considerable income each year. It is a place for people of all ages to enjoy a range of outdoor activities. Many local people in the PDNP want to see more suitable recreational facilities on offer, both for themselves and for visitors because of the boost it can bring to local economies. Are other water companies

missing out by not allowing us to swim or canoe or windsurf or carry out any other recreational activity other than fly-fishing?

Table 2b: Total Provision Available for Water-Based Recreation Within the English and Welsh National Parks.

Activities on Reservoirs and Lakes	Total number of Lakes and Reservoirs (259)
Angling	81
Sailing	23
Sub aqua	12
Windsurfing	18
Water-skiing	2
Rowing	11
Jet skiing	1
Canoeing	22
Model Boating	4
Picnic Facilities	87
Opportunities for informal recreation	58

Source: J. Downing, 1996.

Approximately 13,000 anglers each year are allowed at the reservoir edges and on boats in the PDNP, and nationally angling appears to be widely accepted as an appropriate form of recreation within many of the other National Parks. However, the reasons given by the water companies for this bias towards fishing on reservoirs in the National Parks are rather interesting (see table 3).

Table 3: Reasons for the Preferential Treatment of Fishing by Water Companies Over Other Activities Within the National Parks

Reason	% responses
Lack of noise	19%
Greater income	0%
Less erosion	6%
More traditional sport	25%
A strong fishing association	12.5%
Less water pollution	19%
Size of water restricts other activities	12.5%
Restricted access	6%

Source: J. Downing, 1996.

When water authority officers were asked about the potential to increase recreational use of water, most expressed concern about the likely impact on nature conservation. This perception appears to be at odds with the conclusions of the Environment Select Committee Report which claimed that the overall impact of water-based recreation was relatively minor when compared to other potential causes of environmental disruption. The overriding historical and current evidence suggests that greater recreational use could be made of water without significant environmental disbenefits. We appear to have made little progress despite a great deal of debate over the years. In 1960 the Wolfenden Committee stressed that access to inland waterways and reservoirs should be increased, and that the responsibility for doing so should rest primarily with the water industry.

Today recreation policies on reservoirs appear to have progressed very little, and in many cases, the opportunities for recreational access on these water bodies has changed little too. Ladybower Sailing Club was created in 1908 but only exists on paper – the Peak Park Joint Planning Board and the then Nature Conservancy Council refused to allow the application to proceed, opposing the views of the Severn Trent Water Authority and the Sports Council. When interviewed recently, a senior PDNP officer commented that the Peak Park Planning Board assumes a co-ordinating role in the development and provision of recreation at reservoirs. The provision of ‘quiet recreation’ is the Park’s secondary *raison d’être*. He commented that there was an increasing demand for water generally as part of the recreation experience, whether active or not. In contrast, water company recreation officers operating within the PDNP felt largely that there was no noticeable increase in demand for water-based activities.

But to what extent do recreation researchers reinforce prejudices, adopting self-fulfilling prophecies. What, for example, is this thing called ‘quiet recreation’? A survey of visitors to the Linacre reservoirs, carried out by academic colleagues for Severn Trent Water Authority, reported that most visitors came to walk. In fact, over 90% of respondents named this as an activity in which they had engaged during their visit. Given that ‘walking’ was only one of a number of listed activities, one is tempted to think that few other recreational activities are on offer.

Access to land currently receives a great deal of attention and money through various UK Government and European schemes. This far outweighs the amount of attention and money directed towards access to water – perhaps it is time to change this state of affairs! With some creativity the landlords, waterlords and National Park officers might be able to join forces to offer something more to the millions of visitors without harming the environment.

In the future more of our water may be bought up by overseas private investors – the UK's largest water company, Northumbrian Water, is now owned by Lyonnaise des Eaux, a French group. Maybe the French might be more successful in the negotiations over water recreation? Perhaps the new arrangements for the administration of the National Park Authorities which come into force in England in April 1997 will present an opportunity for the PDNP (and various other National Parks) to rethink the way forward with the new waterlords. We must wait and see.

THE PERSPECTIVE OF RIPARIAN OWNERS

By Alan Woods

This note presents a CLA view of issues surrounding access to land and water. It draws on the CLA policy statement 'Access 2000: Countryside Recreation and Access into the Next Millennium', published in May 1996.

The Perspective of Landowners

Land (including water) is an important business asset for landowners. It is often the sole source of their livelihoods and provides income and collateral. Landowners are also attached to land, especially if it has been cared for by successive generations. Heather moors, woods or downs are valued by owners just as highly as their gardens. Owners have firm views on how their land should be treated. These perspectives underlie their concerns over access which are often both material and cultural. For example, it may be easier to accommodate access in a large woodland managed for amenity than in a small one managed for game and wildlife. Public use of rights of way on the other side of the hill may be viewed quite differently from public use of the path which passes the back door. The impacts, summarised broadly, include:

- inconvenience and expense where land management is disrupted;
- loss of revenue through damage to crops, livestock or game;
- damage to infrastructure, requiring costly replacements or repairs;
- time needed for business management lost in managing access;
- uncertainty over returns affecting future investment planning.

Most landowners recognise that damaging impacts arise through the activities of inconsiderate, ignorant, irresponsible or criminal minorities. However, one bad experience can sometimes colour general attitudes – even the most tolerant landowner will be reluctant to welcome walkers after his gates have been left open and he has had to spend hours chasing his sheep flocks. Some impacts are positive: having more visitors (e.g. more pairs of eyes) can improve security and offer opportunities to establish new business enterprises.

Landowners as Multi-Purpose Managers

Most landowners are involved in managing a range of enterprises. Unlike those seeking access for a single purpose they have a wider range of interests: e.g. producing food and timber, rearing pheasants for shooting, managing fisheries, or conserving wildlife.

Landowners have to make the best use of the variety of assets which they own. In so doing they often have to balance competing requirements. They have to respect the rights vested in others (whether a water company with an easement for a pipeline across the land, or the public with a right of way) and honour any responsibilities towards others (e.g. keeping rights of way unobstructed).

The range of interests which need to be considered in improving access opportunities, if conflicts are to be avoided or minimised, and if that access is to be economically, environmentally and socially sustainable, include:

- the rights and interests of landowners;
- the rights and interests of all groups of visitors, which may conflict;
- the needs of farming, forestry, game and fishery management;
- the needs of wildlife and the landscape;
- the needs of the architectural, historical and archaeological heritage; and
- the needs of people in local communities.

Careful planning is essential: consulting neighbours, local user groups, local authorities or the nature conservation agencies as necessary; assessing which of the above issues are relevant; considering both immediate and future needs; and seeking widespread agreement. The process need not be formal or exhaustive but should be sufficient to identify interests which could be affected, assess impacts, and propose management measures. Proposals should be modified, or if necessary abandoned, unless it is clear that damaging impacts can be avoided.

Access needs to be managed just as much as any other land-based activity such as farming, forestry, game and fishery management, wildlife conservation and so on. Management involves adopting a precautionary approach where impacts are uncertain, monitoring impacts, and taking appropriate action to tackle problems. Doing so will help improve confidence about access, reduce the need for costly repairs, avoid long-term environmental damage, and ensure that the access is economically, environmentally and socially sustainable.

Access-related impacts vary greatly, for example, they differ greatly between 'honeypot' and urban fringe areas on the one hand, and remoter countryside areas on the other. Two of the most important influences are the type and scale of the land. For example, there are substantial differences in the way in which moorland is used by landowners and visitors in comparison with their use of woodland. Likewise there are differences between small and large woodlands. Very different approaches are often needed in improving access opportunities to different types of land. In relation to access to water, the main considerations are as follows:

Foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore)

- Earth sea walls ('barriers') can be vulnerable to damage by vehicles and horses hooves.
- Dunes are vulnerable to damage by high levels of use
- Shooting (wildfowl)
- Livestock rearing (on adjacent land)
- Protection of wildlife.
- Beaches at or near coastal resorts can be very heavily used.
- Dogs: fouling on beaches and paths and safety (e.g. when near children)

Rivers and canals (including commercial or cruising waterways and adjacent strips on both sides)

- Game fishing
- Coarse fishing
- Arable farming on adjacent land
- Livestock rearing and fattening on adjacent land
- Protection of wildlife (e.g. otters)
- Navigation
- Wildfowling in estuarine rivers
- Access to rivers and their banks can be dangerous when rivers are in spate.
- Dogs (fouling on paths and towpaths and disturbance to riverine wildlife)

Reservoirs and lakes

- Conflicts between different watersports
- Fishing
- Arable farming on adjacent land
- Livestock farming on adjacent land
- Protection of wildlife
- Wildfowling
- Water storage (for drinking water or to regulate rivers)

The Way Forward Proposed by the CLA

The CLA wants to eliminate the prejudice from debates about public access to land and water (and also to eliminate the passion in so far as it clouds judgement and hinders progress). We consider that the aim should be to secure a continuing net gain in the quality, diversity and quantity of access opportunities. This applies equally to access to water as it does to access to land. We consider that this aim can be secured through the use of voluntary agreements between landowners and others, provided that these agreements stress the need to manage access. Access needs to be integrated with other activities on land and water, not superimposed regardless of them, if conflicts are to be avoided or minimised and access is to be sustainable.

We do not rule out the use of existing legal procedures, e.g. the creation of new rights of way, provided that every attempt is made to secure the prior agreement of landowners to the proposed changes. Nor do we rule out any changes in the law, indeed, in some areas, such as the law relating to public liability, changes are urgently needed. There is tremendous scope for voluntary agreements, either as part of Government or local authority incentive schemes, or direct between user groups and landowners (e.g. canoeing on rivers). This potential needs to be tapped through positive partnerships between all interests.

A WATER COMPANIES' PERSPECTIVE

- a personal view

Dr Chris Spray and Anna Bacon

England and Wales are served by 29 different water companies (Scotland has an additional 3 water authorities). These are made up of the 10 original regional water authorities, as they were prior to privatisation in 1989, and the 19 smaller private water supply companies. These 10 largest companies supply both water and sewerage services (9 being members of the Water Services Association (WSA)) whilst the majority of the other water supply companies are members of the Water Companies Association (WCA). Both the WSA and WCA are essentially trade associations, the companies themselves being entirely independent. Whilst most companies are still owned by English or Welsh shareholders, recent market activity has seen the takeover of some (Northumbrian, Southern, etc) by French or Scottish owners. At the same time, mergers between adjacent companies and the formation of multi-utility companies (containing water, power and electricity concerns) has occurred.

Together the 29 companies look after and manage some 370 reservoirs over 2 hectares in size. Of these, over 330 belong to the ten largest water service companies (see table 1), with only 34 managed by the 19 other water supply companies (see table 2).

Table 1: Number and Size of Reservoirs Owned by the 10 Largest Water Service Companies

Company	Size of Reservoir (hectares)					Total Number	Total Area (ha)
	2.0 - 9.9	10.0 - 19.9	20.0 - 99.9	100.0 - 199.9	200.0+		
Anglian	1	1	3	2	3	9	2894
Northumbrian	2	1	12	4	5	24	2612
North West	23	18	26	2	3	72	2584
Severn Trent	3	4	13	0	4	24	2082
Southern	0	0	2	1	1	4	515
South West	6	3	10	2	2	23	1076
Thames	2	0	4	4	2	12	1213
Welsh	35	15	18	5	7	85	3702
Wessex	5	1	5	0	0	11	212
Yorkshire	18*	20*	31*	1*	0*	70*	1696*
Total	95	67	124	21	26	332	18586

*Unconfirmed figures

This unique wetland resource, although largely manmade and operational in nature, forms an important asset not only for domestic and industrial use, but also for recreation and conservation interests. Along with the reservoirs themselves the companies also own, or have certain rights over, areas of surrounding land. The actual extent of land ownership, however, may be much less than initially supposed – around Kielder Water for instance (at 1093 hectares N.W. Europe's biggest manmade reservoir) Northumbrian Water owns only a strip of land extending in most places to just 50 metres from the water's edge.

Table 2: Number and Size of Reservoirs Owned by Water Supply Companies

Company	Size of Reservoir (ha)					Total Number	Total Area (ha)
	2.0 – 9.9	10.0 – 19.9	20.0 – 99.9	100.0 – 199.9	200.0+		
Bournemouth & West Hampshire	0	0	0	0	0	0	0
Bristol	1	2	2	1	1	7	831
Cambridge	0	0	0	0	0	0	0
Chester	0	0	0	0	0	0	0
Cholderton & District	0	0	0	0	0	0	0
Essex & Suffolk	0	0	0	0	2	2	844
Folkestone & Dover	0	0	0	0	0	0	0
Hartlepool	1	1	1	0	0	3	40
North Surrey	1	3	1	0	0	5	103
Portsmouth	0	0	0	0	0	0	0
Mid Kent	0	0	0	0	0	0	0
Mid-Southern	0	0	0	0	0	0	0
South East	1	1	2	0	0	4	144
South Staffordshire	0	0	1	0	1	2	365
Sutton & East Surrey	0	0	0	1	0	1	116
Tendring Hundred	0	0	1	0	0	1	52
Three Valleys	0	0	1	0	0	1	46
Wrexham	8	0	0	0	0	8	39
York	0	0	0	0	0	0	0
Total	12	7	9	2	4	34	2580

Reservoirs form a significant and very public contribution to the total number of still waters in the country. However, even leaving aside rivers, canals, estuaries and coastal waters, other private and public bodies control more wetland sites, many much more easily accessible and appropriate for general public use. The Environment Agency (formerly National Rivers Authority), British Waterways, gravel, sand and mineral companies, hydro-electric companies and power stations, British Rail, conservation organisations,

wildfowling associations, sports and recreation bodies, and local and regional Councils all control access to waters in their ownership. Furthermore, many of these waters are closer to large areas of population and it is in these areas that we are seeing the creation of new waters, often in great numbers (for instance the Cotswold Water Park), providing new access opportunities.

In attempting to describe the nature and extent of access to reservoirs, we have undertaken an analysis of the 10 largest Water Service Companies. This has inevitably meant that some significant reservoirs for recreation, such as Chew (Bristol Water) or Hanningfield (Essex and Suffolk) have been omitted. In addition to analysing the data presented in each company's annual 'Conservation, Access and Recreation Report', we undertook a questionnaire survey. The number of reservoirs varies widely between companies, as indeed does the size of individual reservoirs. The draft results of this work are presented here.

If one was able in some way to define the potential value of freshwaters for recreation, it might be possible to assess the performance of the water companies in meeting this in respect of access to their own reservoirs. However, one would have to remember that, almost without exception, these are manmade wetlands, designed, built and managed originally and primarily for the purpose of water supply. Potential access and the actual availability (or value) of a reservoir for recreation are two very different facets. Amongst the many reasons for this are:

- physical size, structure and shape of the site
- location, vis-à-vis centres of population
- operational requirements and drawdown regime
- water quality issues
- security/safety
- overriding conservation interests
- planning constraints
- local opinion
- tenancy agreement
- access rights
- land ownership
- conflicting recreational uses

The current provision of public facilities on and adjacent to reservoirs is extensive (see table 3).

In most cases these are provided free of charge to the on-site user; capital and revenue costs being met by all through general water charges across the region. There is a trend for facilities to be present and to be more modern at sites closer to the main centres of population. Mains water supply, sewerage and electricity are often unavailable at upland reservoirs in areas such as the Pennines.

The range of recreational opportunities offered at reservoirs is similarly extensive (see table 4), with fishing being available at over 70% of all sites. Sailing (24%), windsurfing (17%), canoeing (14%) and water-skiing (4%) are the next most widespread activities. Sports such as sub-aqua diving are generally not represented, due to the turbidity and lack of visibility in the water. In terms of the sheer number of visitors to reservoirs though, all of these activities are dwarfed by informal general day visits. At Kielder, for instance, the ratio of informal day visitors to anglers is roughly 300,000 to 5,000, or 60:1. Access for these visitors is represented by the opportunity to park a car, enjoy the local scenery, use the toilets, buy a snack, meal or souvenir, and take a gentle walk near the water's edge.

Table 3: Availability of Public Facilities at Water Service Company Reservoirs

Company	Public Facilities				
	Toilets	Disabled Facilities	Picnic Sites	View Points	Visitor Centre
Anglian	6	5	7	6	5
Northumbrian	18	10	8	4	4
North West	20	25	20	9	11
Severn Trent	15	12	15	15	7
Southern	1	1	1	1	1
South West	18	20	17	14	3
Thames	8	2	1	0	0
Welsh	16	12	20	22	5
Wessex	6	3	2	3	0
Yorkshire	11	11	16	*	*
Total	119	101	107	74	36
% Total Sites Offering Facilities	36	30	32	22	11

Despite their artificial nature, many reservoirs have developed as important conservation areas, achieving various designations and categories of protection for key species and habitats (see table 5). In such instances disturbance to breeding birds or wintering flocks of ducks may lead to the need for severe seasonal restrictions on access. At Bakethin in Northumberland, for example, fishing was banned on the reservoir to enhance opportunities for otters and other wildlife.

Table 4: Availability of Recreational Facilities at Water Service Company Reservoirs

Company	Fishing	Sailing	Windsurfing	Canoeing	Water Skiing	Guided Trails	Cycling
Anglian	7	6	6	4	3	3	3
Northumbrian	21	4	4	4	2	6	1
North West	47	15	17	17	2	7	36
Severn Trent	21	11	8	4	2	11	5
Southern	4	2	2	2	0	1	1
South West	28	6	6	8	1	0	0
Thames	4	7	7	3	1	1	0
Welsh	65	8	7	9	1	15	9
Wessex	9	3	1	1	1	4	0
Yorkshire	25	18	*	1	*	*	*
Total	231	80	58*	53*	13*	48*	55*
% Total Sites Offering Facilities	70	24	17*	16	4*	14*	17*

At Scaling Dam in Yorkshire, sailing and canoeing is not allowed in winter because of the large number of wildfowl; and at Cow Green in County Durham, access to the reservoir edge for all but anglers is discouraged to protect the delicate sugar limestone and rare Alpine flora. Similarly, clashes between conservation interests and ramblers have occurred on upland gathering grounds where rare birds of prey and waders nest on water company landholdings.

Table 5: Conservation Interests in the Different Water Company Regions

Company	Bird Watching	Bird Hides	Nature Reserves	SSSIs
Anglian	8	4	5	8
Northumbrian	21	5	8	10
North West	13	3	25	19
Severn Trent	20	6	16	19
Southern	2	2	10	12
South West	17	6	11	2
Thames	7	2	7	39
Welsh	34	9	2	60
Wessex	10	3	10	n/a
Yorkshire	*	*	*	15
Total	132	40	94	184

One area of concern has been the balance between open access for the general public to enjoy water sports as individuals, and restricted access, imposed either directly by water companies or via lease arrangements, to specific clubs. The nature of access arrangements varies considerably between companies, between sites and between activities (see table 6). With the exception of general public access walking around the reservoir, restrictions on access to the water via a club membership or permit allocation system are common. To the water company it has the attraction of allowing a measure of control over the numbers and behaviour of participants. It encourages responsible use, self-policing and consideration of other users sharing the water space. By comparison, uncontrolled access raises not only safety issues, but can also lead to problems where individual windsurfers, jet skiers or users of other similarly portable equipment flout established zones, times or other standards of behaviour.

A more detailed analysis of access restrictions within the Northumbrian Water sample shows that one underlying problem is that at certain reservoirs access rights are not, and never were, under the full control of the water company. Existing landowners at the time of purchase (often over 100 years ago) retained certain rights, meaning that the company is in no position to grant these to others even if they wished to do so. This can lead to apparent anomalies where a small private angling club, for example, may have exclusive rights to a reservoir; or in another case, where the local hunt has access to hunt foxes around a reservoir irrespective of the views of the company; or in a third case where there is no vehicular access for the general public along a road to the reservoir. Existing tenancy agreements, shooting rights and restrictive covenants may not be obvious to the outsider.

Many access arrangements are already well established and in certain cases jealously guarded by those currently enjoying them. The chance to change them may not be forthcoming and the creation of new reservoirs is rare. Only 7 reservoirs greater than 2 hectares have been built in the last 20 years and only 1 (Carsington) since privatisation. Comparing these sites (which also include Kielder and Rutland) with earlier reservoirs, it is apparent that they are not only generally bigger (100 hectares and above), but that they also have more facilities and provide for more recreational activities than many of their predecessors. For many, recreational access was planned from the outset and the current management regime reflects this. Six of the seven for instance have specially built visitor centres.

Table 6: Areas of Historical Interest on Land Owned by the Water Companies

Company	Scheduled Ancient Monuments	Listed Buildings
Anglian	2	77
Northumbrian	7	16
North West	30	n/a
Severn Trent	6	23
Southern	2	4
South West	113	5
Thames	13	88
Welsh	32	23
Wessex	n/a	n/a
Yorkshire	n/a	n/a
Total	205	236

At the time of privatisation in 1989, there was considerable concern that recreational interests would be damaged due to lack of resources and low priority in management decisions. Furthermore it was felt by some that public access would be curtailed, or new charges would be demanded from those wishing to visit reservoirs. In fact such fears have proved largely groundless, and indeed, as companies began to realise the significance and potential of the resource they had inherited, the reverse has often been true. Public relations, increased visitor numbers, customer satisfaction and service, sponsorship, and in certain areas commercial potential, have gained increased importance.

Our review of expenditure by the water companies on recreation and conservation has shown that all but one has increased expenditure since privatisation (the other decreased only due to efficiency gains). All of them meantime have increased the provision of existing facilities and in some cases greatly extended them. To partly pay for this, charging has been selectively introduced or increased in a minority number of cases. The extent of all this activity can be seen in each company's report on 'Conservation, Access and Recreation', produced annually for the Department of the Environment.

At the time of privatisation the Government set up a Standing Committee to monitor and safeguard conservation, access and recreation within the newly privatised water industry. Such has been the response from the water companies, that this Committee has had very little to do during its 7 year existence. The fears expressed at the time of privatisation have not materialised.

In its latest publication 'Water: Meeting the Challenge' (published in January 1997) the member companies of the WSA describe their vision and set out a strategy for the future. Specifically addressing 'Conservation, Access and Recreation' as one of the eight topic areas, they were able to say that they had:

- attained a balance between environmental, operational and recreational interests on many of their reservoirs and land holdings;
- provided millions of visitors with educational and recreational facilities and access to large areas of countryside; and that they would:
- continue promoting sustainable development and management of their land holdings and properties;
- and expand opportunities for recreation and education facilities where appropriate.

REACHING CONSENSUS THROUGH BYELAWS

By Geoff Hughes

English Sports Council (North)

Introduction

One of the mechanisms used to minimise conflict and secure access is by statutory control. Byelaws can be an effective way of making recreational use acceptable to the organisation responsible for a water body, and of reducing conflict between different groups. Byelaws can also be used to exclude certain types of use. There is an increasing tendency for speed limits to be imposed on water bodies using byelaws. This effectively excludes power boaters, jet-skiers and water-skiers, and yet these are the very groups whose needs are currently being poorly catered for. Displacing motorised water sports from one location (which is inevitable if a speed limit is introduced) will undoubtedly lead to intensified use of other areas, thereby increasing the potential for conflict.

There is a place for byelaws, but consideration needs to be given to ensuring a balanced approach which is sensitive to the needs of sports users and environmental interests. Controls are only effective if they can be enforced and this has implications for manpower and resources. Getting the user to pay the costs of 'policing' is therefore an issue which needs to be considered.

However, it is also important to remember that for many people the spontaneous nature of recreation activity is what they enjoy, and more regulations may detract from this. It is only appropriate to consider byelaws as part of a package of measures proportional to the problem.

Other Mechanisms for Resolving Conflict

Codes of conduct are one commonly-used mechanism to enable different water sports to coexist. This approach has been used successfully for a number of activities, for example, allowing water skiing and non-motorised water sports to take place on the same water body. The English Sports Council has looked at how codes of conduct work for a range of different sports and has shown that this form of self-policing can reduce conflicts. Codes of conduct rely on consensus and on informing all users of the agreed rules - they will have limited effect if they are disseminated only to the members of sports' governing bodies which typically form a small proportion of the total participants in a given activity.

A second widely-used mechanism is zoning, either spatially or temporarily. This works well on sites which are managed independently of the users and where a number of different interests need to be taken to account. Byelaws are often used to enforce zoning by time and space.

Another way of increasing opportunities for water sports is to create new water space. Opportunities for this do exist, but the extent to which they can be realised will depend upon planning priorities and the availability of adequate financial resources. The Lottery Sports Fund, and perhaps the Landfill Tax are two significant sources of money in this regard, and they may have a very important influence on the provision of new water space in the future.

Pricing is another mechanism used both to secure and control access. For example, charging for the launching and retrieval of craft is one way of ensuring that the user pays for the costs of policing byelaws. However, the social equity questions raised by this mechanism cannot be ignored and may become paramount if landowners seek more ways to generate income. There is concern that once a precedent is set, of charging for access which is currently free, those unable to pay will be denied the opportunity to pursue their chosen activity or will be displaced to other, perhaps less desirable locations. There is perhaps a case for finding ways to charge for a service rather than for access which has previously been free.

Primary legislation is a mechanism which can be used to control access. This route was considered by the Lake District Special Planning Board in the context of Lake Windermere but was abandoned because of technical difficulties. Primary legislation has been used, for example, on the River Tees where the 'Tees Barrage and Crossing' Bill (confirmed by an Act of Parliament) allowed the Teeside Development Corporation to impound the river. This created a large body of water which is now a valuable recreational resource.

Windermere Case Study

During the period May 1994 – January 1995, the Sports Council was involved in a major public inquiry (lasting 48 days) into a proposed byelaw which sought to impose a blanket 10 mph speed limit on craft using Lake Windermere in the Lake District National Park.

At face value, a proposed speed limit might not be considered that significant, however it was generally accepted that the decision of the Secretary of State on this matter would have far reaching implications for the future of sport in National Parks and the countryside in general.

Counsel for the Countryside Commission indicated in his closing submission:

"The Countryside Commission asks the Inspector and Home Secretary to note that it regards the issues raised by the inquiry to be of national importance to the future of the Lake District National Park and to National Parks' policy. Indeed, this inquiry provides an important test not only of the purposes of the National Parks, as set out in the National Parks and Access to the Countryside Act 1939, but also a test of the concept of quiet enjoyment" (Windermere Inquiry, 1994).

The Sports Council's role in the inquiry stemmed from its acknowledged position of a planned and managed approach to the reconciliation of recreation and conservation conflicts. This position was substantiated by the policy document, 'A Countryside for Sport', published in 1992.

In making its case, the Sports Council sought to demonstrate that water-skiing and power-boating had a legitimate place on Lake Windermere, primarily as a result of their long-standing presence. In support of this view, the Sports Council proposed a management plan incorporating a package of byelaws and numerous other measures. This was supported by a wide range of organisations, including the Royal Yachting Association (RYA) and the British Water-Ski Federation (BWSF). The management plan was based on a code of conduct and an outline of the disciplinary powers which could be used in the event of the byelaws being violated.

The proposals

The management plan, submitted to the inquiry by the Sports Council and other objectors, highlighted the collective concerns of governing bodies and others, and proposed a number of mechanisms intended to achieve balanced use of Lake Windermere.

The Sports Council and others proposed that if a 10 mph speed limit was introduced, boat owners and operators wishing to exceed this limit should be allowed to do so provided that they registered their craft. As part of this registration process owners and operators would have to show a valid certificate of competence (either RYA Level 2 Powerboat Award, or the BWSF Ski Boat Drivers Award); a certificate of insurance; and a noise emission certificate. The thrust of the argument was that people should be free to decide whether they wanted to comply with these requirements and that registration should not impinge upon the public right of navigation - in other words, an unregistered driver would still be allowed to drive less than 10 miles per hour. It was argued that just as there would be powers to register craft so there must also be powers to de-register them in certain specified

circumstances, perhaps as a means of sanction and control. Overall, it was hoped that these measures would help exclude the 'cowboy' element and allow a balanced use of the Lake.

Inspector's conclusions

In the view of the Inspector:

"...neither the alternative management plan, as it was presented, nor any readily conceivable variant of it, represents a satisfactory way of addressing the problems on the Lake". He concluded that "...there is no attraction at all in the suggestion raised by some parties, that the management plan should be given a fair trial for a number of years". "To delay further the introduction of the simpler and more appropriate speed limit measure, in order to experiment with such a plan, would in my view be wholly unjustified" (Windermere Inquiry, 1996).

The decision of the Secretary of State

The Secretary of State for the Environment decided not to confirm the byelaws. In his letter of decision to the Lake District Special Planning Board, he concluded that:

"Windermere is acknowledged to be one of the few significant areas of non-tidal water in England with a public right of navigation. As such, the Lake is available to the boating public at large and can currently be used, without general restriction, for a wide range of water-based recreation"

The Secretary of State agreed with the Inspector's conclusion that conflict between users existed on Windermere, but, he did not agree that the only solution would be to impose a blanket ban. This approach, he feared would cause irreparable damage to long established local businesses. The Secretary of State's belief was that it would be unreasonable to deny a substantial number of users the full use of an important stretch of water over which there was a public right of navigation.

Where from here?

The Lake District Special Planning Board is seeking to challenge the decision of the Secretary of State through Judicial Review proceedings. The Board is being supported by the Countryside Commission, and the Secretary of State by the Sports Council, British Water Ski Federation, Royal Yachting Association, the Windermere Commercial Lake Users Group and English Lakes Hotels.

WHERE DO WE GO FROM HERE?

*By Allan Patmore CBE
Countryside Commission*

As speakers and discussants made abundantly clear, access to water is a complex theme and the varied afternoon discussion sessions permitted no simple summary. This was particularly the case for the afternoon workshops and the rapporteurs had no easy task. These concluding notes therefore relate largely to the morning session, and the action points perceived by one observer: it was, however, surprising (if reassuring) that the afternoon reports from individual workshops raised few new issues. It is not analysis but consequent action which is the pressing need. Aside from the detailed content of the papers, four broader themes emerged, and I consider each of these in turn.

Roots of Conflict

Many of the conflicts in water-based recreation rest on the legal environment within which it is conducted. Robert Lewis summarised the evolution of that environment with great clarity and not least how so much of it relates to Victorian attitudes with an emphasis on the sanctity of private property. If there is to be progress, these attitudes need to change. Such change will be far from easy, for entrenched vested interests will fight hard for the status quo, but at a time when there is serious political will to re-examine the question of access to open country; there may also be good opportunity to place access to water on the political agenda. If this is to be the case, however, those interested in water access must also have reached a measure of consensus on what is needed in order to make a joint approach to those with the political will and power to make things happen.

Arriving at such a consensus, however desirable, faces many practical hurdles. The first is the need for a common body of knowledge. Providers, users, public agencies and academics need not only to talk to each other but to genuinely communicate with mutual interest and understanding. There will not always be agreement, but there has to be understanding, and understanding based on knowledge of the facts as well as on mutual tolerance and respect. The second is the need for a recognised leader to initiate debate and forward suggestions for action into the political field. Identifying such a leader may well be an appropriate task for the forum afforded by CRN, which has the respect of the agencies and practitioners, and no individual axe to grind.

Resources

The extent of the inland water resource perhaps needs reassessment. Contributors suggested that the Ordnance Survey have estimated that there are some 84,000ha of inland water in England and Wales, with about 25% of this in supply reservoirs of varying kinds. Linear resources are even harder to define. The Environment Agency gave figures, again for England and Wales, of 140,000km of rivers and 4000km of navigable rivers. Reasonably precise figures depend, of course, on definitions used, but it would be helpful to have estimates commonly agreed. This might be a modest piece of desk research for CRN. But whatever the extent of the resource (and current estimates are certainly of the right magnitude) the fact remains that it is both modest and finite. Its availability for recreation depends also on the varying attitudes of supply agencies (in the fullest sense of the term; on its quality; on its location; on its physical characteristics and on the availability of access to its shores. Against a finite resource must be set a growing demand, both for recreational and non-recreational uses. Again, more accurate measures of demand would help. Research in this area is hampered by the English Sports Council's withdrawal from work with much water-based recreation; by the current restrictions on the General Household Survey, and by the very real limitations of the data collected by the UK Day Visits Survey. New, reliable data would be very welcome: funding sources should be explored by CRN.

There was also ample reminder that the water resource is not only used for water-based recreation in the generally accepted sense of the term – informal relaxation, walking and cycling around a water body, or longer distance travel along the length of rivers or canals is also important. For some reservoir owners such recreation can be a welcome source of income: Northumbria Water PLC noted that some 90% of recreation on their supply reservoirs was non-water based with implications for revenue as well as for demand.

Discussion of the extent and use of the water resource is the necessary precursor to a debate on payment for water recreation. The debate echoes the comparable debate on land access, with the advocates of free access ranged against those who are happy to pay reasonable sums for their pleasures. The anglers made clear their historic stance of proper payment for proper facilities whilst canoe interests made evident the near impossibility of identifying all riparian owners on any lengthy journey when "trespassing was the only realistic option". Fortunately, there was little sign of the crude fundamentalism which often invades and obscures these debates on well-worn themes, but equally little new light. There is need perhaps for further workshops on very specific funding themes, themes such as the extent to which payment for use for navigation can be covered by a single national licensing system, and how such a scheme might be simply administered; access managed and

farmers compensated by an extension of agri-environment schemes; and developments for the role of the Environment Agency as a clearing house for recreational payments. Much of the debate on access to water for recreation is concerned not with principles, where agreement is not too difficult to achieve, but with the minutiae of practice where entrenched positions make necessary change hard to realise.

Management

Management translates principles into practice, but the problems of such translation were amply highlighted by the speakers. Effective management is best achieved when ownership underpins control, but this is far from universal in the recreation field. Pleas for co-ordination of interests usually looked to the Environment Agency as saviour, but by remit and resource this could not always be the case. The concern behind the plea remains: there is a real need for a national plan to provide the framework for regional and local plans and for effective delivery. This seems to be another debate for CRN where agencies can clarify responsibilities and make the case for appropriate resources. However, not only must there be co-ordination but also action. A lead agency needs to be identified, with a clear remit and the positive and practical support of others.

Research

Much of the summary has concentrated on the issues which need addressing beyond the workshop, and with the frequently expressed hope that if there is indeed to be a "what next", CRN will both identify the agency to tackle the issue and use its own co-ordinating skills to drive the work to a further conclusion. Such a role may be less than traditional for CRN, but the question must be asked as to who will fulfil it if CRN (for whatever reason) declines.

My final theme is in more traditional CRN territory, but none the less important for that. There were frequent pleas for a clear research agenda, and 'research' in a variety of meanings - information sharing (not least with regard to best practice), data collection and fundamental research and analysis. There is a clear role for CRN to establish, and publish, such an agenda and to indicate the priorities within a programme of research. It would also help if proper resources could be identified!

Suggested themes were numerous. Firm figures were needed for the scale, and growth, of participation and for patterns of water-based recreation at local, regional and national scales. The environmental impact of recreation needed clear assessment beyond the anecdotal. Future scenarios for water recreation needed examination, spurred by such themes as the impact of global warming. Such a list is not exhaustive, nor did the

workshop pretend to provide one: the important thing is to move towards an agenda and develop a programme for its achievement.

The best research programme, however, is of little worth without effective dissemination. This needs much more than a conference report, rapidly gathering dust. CRN should develop a proper programme of publication of formal books, with invited authors and edited volumes to cover the field in an authoritative and lasting way. Such volumes should offer both analysis and solutions – the debate would then go far beyond the workshop which inspired it. It might even achieve practical results!

Access to Water

Programme

- 0930 Registration and coffee
- 1015 **Welcome and introduction**
Richard Broadhurst, Chairman of CRN
Allan Patmore, Countryside Commissioner
- 1030 **The legal situation**
To bring everyone up to date with the relevant issues
Robert Lewis, Barrister
- 1050 **Current situations and conflicts in the UK**
Craig McGarvey, Head of Recreation and Navigation,
Environment Agency
- 1130 Coffee
- 1150 **Passion and Prejudice**
The opportunity for six speakers to role-play the views of
different interest groups in order to highlight main issues,
conflicts and aspirations for these groups:

Anglers, Mark Hatcher
British Canoe Union, Carel Quaife
Canoeists, Stuart Fisher
Reservoir users, Colin Beard
Riparian owners, Alan Woods
Water authority, Chris Spray
- 1330 Lunch and a chance to view exhibitions

- 1430 Reaching consensus – working towards solutions, in five groups, through:
- Byelaws? *Wentworth room 1*
Geoff Hughes, Sports Council
 - Resolving conflicts? *Wentworth room 2*
Catherine Etchell, Countryside Recreation Network;
Carel Quaife, British Canoe Union
 - Paying for access? *Wentworth room 3*
Craig McGarvey, Environment Agency
Alan Woods, Countryside Landowners Association
 - Governing bodies? *Wentworth room 4*
Steven Saddler, CCPR
Roger Orgill, Consultant
 - Zoning? *Harmer room 2508*
Marsailidh Chisholm, Scottish Sports Council

1530 Synthesis
Drawing the threads together
Allan Patmore

1600 Getting results; where do we go from here?
Allan Patmore

1630 Close

The **Countryside Recreation Network** is committed to exchanging and spreading information to develop best policy and practice in countryside recreation.



Access to Water

Delegate List



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Freshwater Officer
Environment and Heritage Service

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Editor - Inland Waterways
Inland Waterways Association

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Yorkshire Water Services Ltd

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Lake District National Park Authority

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British Waterways

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National Assoc of Fisheries & Angling

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English Sports Council Northern Region

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National Trust

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Oxfordshire County Council

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Oxford Brookes University

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Anglian Water

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Conservators of the River Cambridge

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Lee Valley Regional Park Authority

Geoff Nickolds
Development & Conservation Controller
Severn Trent Water Ltd

Barry Odell
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British Water Ski Federation

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British Canoe Union

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Peter Scott Planning Services

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Mike Walker
Policy Executive
Water Companies Association

Malcolm Watt
Countryside and Landscape Manager
Cotswold District Council

John Westlake
River Wye Access Officer
British Canoe Union

Alan Woods
Environment & Water Adviser
Country Landowners' Association

SUMMARY OF 'WATER' BOOKLIST

In response to a request for each participant to list at least three really enjoyable or inspirational books, connected with water, we have been well served. A number of participants have included books inspired by the sea as well as those inspired by rivers and inland waters. As the idea was to share and enrich our access to interesting books, all references have been added. In one instance, the connection related to the books being read on the water rather than being about water, and these have been added too. Thank you to everyone who supplied a title. Happy reading.

Richard Adams	'Watership Down'
Tania Aebi	'Maiden Voyage'
(with Bernadette Brennan)	
Clare Allcard	'A Gypsy Life'
Jim Andrews	'Twelve Ships a-Sailing'
David Archer	'Land of Singing Water'
Clifford W Ashley	'The Ahsley Book of Knots'
Henry Walter Bates	'A Naturalist on the River Amazon'
Raymond Rallier du Batty	'Fifteen thousand miles in a ketch'
Arthur Beiser	'The Proper Yacht'
Arthur Beiser	'The Sailor's World'
Ludwig Bemelmans	'On Board Noah's Ark'
Chay Blyth	'The Impossible Voyage'
Bob Bond	'The Handbook of Sailing'
Chris Bonnington	'Everest the Hard Way'
Peter Brent	'Captain Scott and the Antarctic Tragedy'
Bill Bryson	'Views of Britain from the coast???'
Fred Buller & Hugh Falcus	'Pike'
John Caldwell	'Desperate Voyage'
Dorothy Carrington	'Granite Island'
Francis Chichester	'Alone Across the Atlantic'
Francis Chichester	'Along the Clipper Way'
Francis Chichester	'Gipsy Moth Circles the World'
Erskine Childers (2)	'The Riddle of the Sands'
Brian Clarke	'Trout etc??'
K Adlard Coles	'Heavy Weather Sailing'

K Adlard Coles	'Close-hauled'
G E P Collins	'Twin Flower: A Story of Bali'
Joseph Conrad	'Sea Stories'
John Coote (Ed)	'The Faber Book of the Sea'
David Scott Cowper	'Northwest Solo Passage'
Charles Darwin	'The Voyage of the Beagle'
Ann Davison	'Last Voyage'
Sir Alistair Dunnet	'The Canoe Boys'
Geoffrey Fraser Dutton	'Swimming Free'
George Eliot (2)	'The Mill on the Floss'
Eric Ennion	'Adventurers' Fen'
Hugh Falcus	'Sea Trout'
W E Frost	'The Trout'
Kenneth Grahame (10)	'The Wind in the Willows'
Arthur Grimble	'A Pattern of Islands'
Maurice Griffiths	'Swathways and Little Ships'
Charles Hall	'Water'
Capt Trevor Hampton	'The Master Diver and Underwater Sportsman'
Capt Trevor Hampton	'The Sailor's World'
Wally Herbert	'The Noose of Laurels:'
	'The discovery of the North Pole'
Herman Hesse	'The Glass Bead Game' [?]
	'Steppen Wolf'
	'Marziss & Goldmund' [?]
Thor Heyerdhal	'The Kon-Tiki Expedition'
Thor Heyerdhal	'The Tigris Expedition'
<i>House of Commons Environment Committee</i>	
	'The Environmental Impacts of Leisure'
Naomi James	'At One With The Sea:'
	'Alone around the World'
Jerome K Jerome (4)	'Three Men in a Boal'
Robin Knox Johnson	'A World of My Own'
Dr Mike Jones	'Canoeing down Everest'
Tristan Jones	'A Star to Steer Her By'
Tristan Jones	'A Steady Trade'
Tristan Jones	'Heart of Oak'
Tristan Jones (2)	'The Incredible Journey'
Tristan Jones	'The Improbable Voyage'

Tristan Jones	'Somewheres East of Suez'
Celia Kirby	'Water'
Charles Kingsley	'Water Babies'
Primo Levi	'The Periodic Table'
David Lewis	'Ice Bird'
William H MacLeish	'The Gulf Stream'
John Masefield	'The Nine Days Wonder'
Gavin Maxwell (3)	'Ring of Bright Water'
Derek Mills	'The Salmon'
Frank Mulville	'Dear Dolphin'
Frank Mulville	'Single-handed Sailing'
Merton Naydler	'The Penance Way'
	'The Mystery of Puffin's Atlantic Voyage'
Eric Newby	'The Last Grain Race'
Enda O'Coineen	'The Unsinkable Kilcullen'
LTC Pott	'Narrow Boat'
E Annie Proulx (2)	'The Shipping News'
Arthur Ransome	'Big Six'
Arthur Ransome	'Coot Club'
Arthur Ransome (7)	'Swallows and Amazons'
Fred Rebell	'Escape to the Sea'
Richardson	'Chesterfield Canal'
Dougal Robertson	'Survive the Savage Sea'
R B Robertson	'Of Whales and Men'
Sir Alec Rose	'My Lively Lady'
Viktor Schauberger	'The Water Wizard'
Tim Severin	'The Brendan Voyage'
Tim Severin	'The Jason Voyage'
Tim Severin	'The Sindbad Voyage'
Tim Severin	'The Ulysses Voyage'
Joshua Slocum	'Sailing alone around the world'
Miles Smeeton	'Sunrise to Windward'
Wilbur Smith	'River God'
Gerry Spies	'Alone Against the Atlantic (with Marlin Bree)'
<i>The Sports Council</i>	'Countryside & Water: A policy statement on Sport & Recreation'
	'North of England Watersports Study'
RL Stevenson	'An Inland Voyage'
KL Stevenson (2)	'Treasure Island'

Rosie Swale	'Children of Cape Horn'
Graham Swift (3)	'Waterland'
Nicholas Tomalin & Ron Hart	'The Strange Voyage of Donald Crowhurst'
Voldemar Veedam & Carl B Wall	'Sailing to Freedom'
Bernard Venables	'Mr Crabtree goes fishing'
Jules Verne	'20,000 leagues under the Sea'
Alan Villiers	'Cruise of the Conrad'
J Wallerrhuis	'A Summer on the Test'
William Willis	'The Epic Voyage of the Seven Little Sisters'

Films

'River Runs Through it'
 'On Golden Pond'
 'Tales of the Riverbank'