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David J Rowlands AM, Chair; Mike Hedges AM; Janet Finch-Saunders AM; Rhun ap Iorwerth AM; Neil McEvoy AM

Dear Petitions Committee Members

P-05-717 Establish Statutory Public Rights of Access to Land and Water for Recreational and Other Purposes

Thank you for the opportunity to respond to the Written Statement from the Minister for Environment, dated 19 June 2018.

Firstly, we have to say that the Minister's statement totally fails to take on board the needs of the petition, or to address any aspect of access to and along inland water.

The reaction both within the Waters of Wales - WoW community, and beyond, has been incredulity at the Minister's statement that "now is not the right time for substantive reform" citing "strong but differing views" as the reason for continued inaction. It is precisely because of these 'strong but differing views' that legislation is needed.

In the context of the Minister's reference to "strong but differing views" it is important to note that successive Welsh governments have repeatedly used the statement that 'the law is unclear' to justify inaction. Lack of clarity in the law underlies and exacerbates conflict surrounding access, particularly in the case of inland water.

While asserting that the law is unclear, Welsh Government predicates its strategy on one, as yet untested, interpretation of the law, persisting in this, even in the face of a vast and growing body of evidence (see Appendix) that a public right of navigation (prn) exists on all rivers in Britain. This creates, promotes and maintains inequality, preventing meaningful dialogue. It is well documented[i], and Welsh Government has acknowledged, that voluntary access agreements have not, cannot, and will not, deliver the access needed by the public. The claim that voluntary agreements are the way forward is untenable.

Public rights have been enshrined in modern Scottish legislation, giving clarity on both rights and responsibilities. Legislation to enshrine public rights of access to and along inland water would give the same clarity for Wales.

Three successive Welsh Governments have acknowledged the need for change, but subsequently failed to act in the public interest, instead reverting to a process which serves only to maintain the status quo. Previous Welsh Government's 3-year process costing at least £2.4m has failed, by their own admission[ii], to deliver. Rather, it demonstrably reduced access opportunities, for example to inland water. The Minister's response to the latest consultation demonstrates once again, the unwillingness of Welsh Government to act in the public interest in relation to public rights of access to inland water.

The Welsh Assembly petitions committee of 2000 stated that "Access to inland water is a matter of equity and social justice". In 21st Century Wales, continued failure to address a matter of equity and social justice is surely not an option?

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Lack of clarity in the law can only be addressed by a judicial ruling, or by legislation. Welsh Government has stated that seeking a judicial ruling is not within its powers. This makes legislation to enshrine the public right, the only credible option.

Yours sincerely

Pam Bell, Bob Mackay, Andy Quick
On behalf of Waters of Wales – WoW.

Timeline:

- **The Countryside and Rights of Way (CRoW) Act 2000**
  Intended to deliver much-needed public access to the countryside, but was complicated, expensive, and continues to fail to deliver the access to land and water needed by the wider public. Before CRoW was enacted, it had already been stripped of many of its intended public benefits. For example, it sought to exclude the public from inland water. The CRoW mapping exercise alone cost nearly £8m, to address the needs of the small percentage of the public who want to access high mountain areas.

- **In 2003, at the earliest opportunity following devolution, Scotland addressed the issue for its people by passing the Land Reform (Scotland) Act.**
  Scotland implemented a permanent solution through land reform legislation[iii] for the legislative cost of £200,000, with a final cost of approx. £3m including the cost of television campaigning and public education[iv].

- **In 2008, a petition was presented to the Welsh Government:**
  "The Welsh Assembly Government is urged to consider and implement a Bill to benefit Wales that would enshrine access rights and responsibilities for the public to and along natural resources in the same way that the Scottish Land Reform Act encourages co-operative use of the outdoors for healthy, low impact recreation.
  - *"This Bill must provide and permit access to and along non-tidal water in the face of the massive lack of legal clarity and restrictions that exist at present, which act as a barrier to sport and recreation and the promotion of Wales as a place to visit for adventure tourism."*

- **In 2009, following a short Inquiry, the petitions committee said:**
  - *"Access to inland water in Wales is a right of equity and social justice. The current situation regarding rights to inland water in Wales is confusing, untenable and unworkable; there should be the same right of public access as there is in Scotland."* [v]
  - *"We believe that the clear balance of rights in Scotland has inherently moved the access debate forward onto a more productive footing... Different parties in Scotland have been able to leave behind cul-de-sac positions concerning who has which legal rights on their side. We therefore suggest it provides a useful basis from which a unique Welsh model may be developed."* [i]

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- **Welsh Government took ownership of this issue in 2009**[vi], yet mid-way through 2018, recreational access to land still fails to meet the needs of the wider public, and the issue of access to water has not progressed. To the contrary, costly initiatives endorsed and supported by Welsh Government have led, in some cases, to reduced access to inland water.

- **In 2010, contrary to the advice of its petitions committee:**
  - Unlike every other devolved administration in the World, Welsh Government decided not to pursue legislation to clarify and enshrine public rights with responsibilities, but opted to continue with the strategy that had proved unworkable over more than fifty years, by recommending:
  - "*the setting up of voluntary access agreements by landowners*" … "*that SPLASH funding be targeted at these pilot projects*" … "*the effects of the pilot projects should be closely monitored and the outcomes widely disseminated*".[vii]

- **In 2013, after spending three years and more than £2m of public money on process for access to inland water alone**,
  - Welsh Government acknowledged that the process had failed to deliver, and that legislation would be needed.[viii]
  - "*You will be able to have your say on proposals emerging from this review when a green paper consultation is published in December 2013.*"

- **In 2015 - more than a year after the promised publication date of the green paper,** Welsh Government embarked on a repeat of the consultation, the results of which were repeatedly delayed until just before the election when they were "left on the table to inform the next government". Even while the consultation was in progress, Welsh Government was reported to be trying to rekindle the process which, by its own admission, failed.

- **In 2016 a petition was submitted:**
  "We call on the National Assembly for Wales to urge the Welsh Government to implement a Bill to establish statutory public rights of access to land and water for recreational and other purposes. The bill should enshrine access rights and responsibilities for the public in the same way that the 2003 Land Reform (Scotland) Act encourages co-operative use of the outdoors for healthy, low impact recreation. This Bill must enshrine public rights of navigation for inland water, and permit access to and along water. It must remove the lack of legal clarity and restrictions which act as a barrier to sport and recreation and the promotion of Wales as a welcoming place for healthy recreation, tourism and adventurous activity at all levels of participation and enjoyment."

- **In 2017, Welsh Government embarked on another consultation, following which the Minister issued the statement which is now with the Petitions Committee.**

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Appendix: **The Common Law Public Right of Navigation**

- Under Roman Law (Institutes of Justinian – see page19, Book II, 1-4) all rivers were considered *res publica* and open to reasonable use, including navigation, by all. The Romans considered this a natural law which applied to all permanently flowing rivers irrespective of time or place.
- This public right of navigation was defended by Clause 33 of Magna Carta which stood witness to the existence of navigation rights in all rivers throughout the realm. Professor Nigel Saul - Professor of Medieval History, Royal Holloway University of London, in a lecture to the All Party Parliamentary Group on the Constitution, 26 February 2013) said "*Magna Carta ....., clause 33 was to be of enormous significance in the history of navigation in this country, because it established the principle of free passage along England's rivers, so laying the foundations for transport development in the Industrial Revolution*". (see page 2)
- The protections embodied in Clause 33 of Magna Carta were confirmed and developed in a number of statutes e.g. 1225 9 Henry III cap 23, 1297 25 Edward I c 23, 1350 25 Edward III C 4, 1371 45 Edward III C 2, 1399 1 Henry IV c 12, 1402 4 Henry IV cap 11, 1413 1 Henry V c 2, 1423 2 Henry VI cap 15 etc..
- The intent of Magna Carta was elaborated and confirmed by the 1472 Act for Weirs and Fishgarthes *"Whereas, by the laudable Statute of Magna Carta, among other Things, it is contained That all Kedels by Thamise and Medway, and throughout the Realm of England, should be taken away, saving by the Sea-banks, which Statute was made for the great Wealth of all this Land, in avoiding the straitness* [obstruction] *of all Rivers, so that Ships and Boats might have in them their large and free Passage..."*
- Many Medieval commissions were appointed by the Kings to preserve and protect public navigation rights on a very wide variety of rivers, thereby confirming the existence of the public's navigation rights in all rivers where navigation was then practical. See http://www.riveraccessforall.co.uk/docs/totally_compelling_evidence.pdf (see Page 7)
- The Laws in Wales Acts (1536 - 27 Henry VIII c. 26 and 1542 - 34 & 35 Henry VIII c. 26) specifically extended to Wales the full benefit of the law in England. This applied to all laws then in force in England. All future laws enacted by Parliament in Westminster applied equally to the joint administration of England and Wales. Evidence from England, where the evidence of historic navigation rights is better documented, can therefore be used to demonstrate the existence of public navigation rights in Wales

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[i] Negotiating recreational access under asymmetrical power relations: the case of inland waterways in England http://eprints.brighton.ac.uk/1692/1/UT-SNR-1755.pdf

[ii] https://dl.dropboxusercontent.com/u/62377602/Welsh_Government_Letter_RefTOJG0126513_16Oct2013.pdf

[iii] Land Reform (Scotland) Act 2003 http://www.legislation.gov.uk/asp/2003/2/contents/enacted

[iv] LAND REFORM (SCOTLAND) BILL-EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS) http://www.scottish.parliament.uk/S1_Bills/Land%20Reform%20%28Scotland%29%20Bill/b44s1en.pdf

[v] https//dl.dropboxusercontent.com/u/62377602/WAG_Press_Release_15_Apr_2009.pdf

[vi] Report of the Petitions Committee's Short Inquiry into Access along Inland Water, March 2009

[vii] https://dl.dropboxusercontent.com/u/62377602/Inquiry-Into-Access-to-Inland-Water-In-Wales-Committee_Report-2010-06.pdf

[viii] https://dl.dropboxusercontent.com/u/62377602/Welsh_Government_Letter_RefTOJG0126513_16Oct2013.pdf