

Mr Mick Bates AM,
Chair,
Sustainability Committee,
National Assembly for Wales,
Cardiff Bay,
CARDIFF
CF99 1NA

16th November 2009

Dear Mr Bates,

SUSTAINABILITY COMMITTEE INQUIRY INTO ACCESS TO INLAND WATER

Thank you for the opportunity to give evidence to the National Assembly for Wales' Sustainability Committee on the 5th of November.

During the course of our session we undertook to write to you on a number of matters that required investigation or clarification:

The Committee wanted to know whether Scottish Water's reservoirs are included within the Scottish Government's land reform Act which established a statutory right of responsible access to land and inland waters. If so, has this caused any problems for Scottish Water?

We have made some enquiries with our counterparts in Scotland and can report on this as follows:

Scottish Water's reservoirs fall within scope of the Land Reform (Scotland) Act 2003. As such canoeists and other users of unpowered craft have (in the language of the Committee) 'unfettered access' for recreation. Fishing is however an excluded activity so whilst access for canoeists is free, anglers are still required to buy a fishing permit where the activity is permitted.

Overall, Scottish Water report 'no major issues' arising from introduction of open access. They have had to revise signage and other information to comply with the change in legislation, and it was necessary to revise byelaws over a period to achieve full compliance with the law.

In the context of the issues we discussed when giving evidence, I was surprised to learn that Scottish Water has no power to prohibit access for health and safety reasons (except access to built structures such as dams, intake towers and access bridges); rather people are generally expected to take responsibility for their own actions, though there remains an obligation to point out any dangers that may be present in the area.

Scottish Water has published its position with regard to access at the following internet address,

Scottish Water supports the Scottish Outdoor Access Code, a copy of which is attached to this correspondence for reference.

To then comment upon the situation on Scotland from the Dŵr Cymru position: Scottish law differs in many respects from the law of England and Wales and the apparent inability to prohibit certain activities taking place on Scottish Water's land may well be a case in point (we have not researched this).

In the context of a conflict between duties around the promotion of recreation activities and our other statutory and regulatory duties, we always look at the particular circumstances before deciding whether water quality, health and safety or environmental risk considerations take priority over other obligations. Generally, we are committed to and encourage recreational activities on our land, but only where the activity has been risk assessed and we are satisfied that there are no overriding concerns. We believe that we have a right and duty to prohibit access to recreation facilities where, for example, health and safety concerns dictate.

Our written evidence referred to "...£1.3m was recovered in charges and income from other associated activities such as forestry etc." The Committee wanted more detail about where this income comes from.

The income received by Dŵr Cymru from recreation and associated activities in the last financial year was as follows:

Dŵr Cymru Recreation Income	2008-2009 £000's
Fishing permits	£ 405
Cafe income	£ 290
Shop income	£ 160
Timber sales	£ 150
Fishing boat hire/competition	£ 60
Lease/rental income	£ 50
Recreation areas + parking	£ 60
Revenue grants	£ 25
Other	£ 20
Income from Elan Valley Trust Fund	£ 85
Total external income	£ 1,305

The Committee asked whether we could provide more detail about assessing environmental impacts from recreational activities

As we stated in our oral evidence most of the activities that take place on-site are well established and so it has been a number of years since we last undertook any direct assessment of activities on a Dŵr Cymru site.

The most recent example we have been able to uncover is from the early 1990's when Llandegfedd Sailing club wanted to use the reservoir for winter sailing.

To determine if there would be any adverse impact upon the environment we consulted with the Countryside Council for Wales (CCW), who requested an impact assessment to establish the level of disturbance that would be caused to over wintering wildfowl before making a decision. We therefore commissioned the Gwent Ornithological Society to carry out a study over three consecutive winters where they compared wildfowl movements and locations on the Saturday (when no sailing was permitted) and Sunday (sailing between 11:30 – 15:30 only), the Saturday being used as a control.

Following this study CCW determined that sailing for only four hours on a Sunday in the southern half of the reservoir could be tolerated by the wildfowl using the site, but it was doubtful whether any longer periods of sailing or additional days could be permitted without long term effects upon the bird life of the reservoir. We have implemented a regime along these lines on Sundays during November. We have found little demand for sailing in later months due to low water temperatures.

This example illustrates the principle we follow in undertaking any assessment which is to consult with the appropriate regulator and to make decisions based upon evidence gathered.

Assessment of environmental impacts forms part of the wider assessment for any new activities at our recreation sites. A generic illustration of this process, as implemented by United Utilities Operational Services (UUOS) on behalf of Dŵr Cymru, is attached below.

The Committee asked whether Dŵr Cymru's land holdings included any natural watercourses and, if so, whether they would be covered by the same legal duties as our reservoirs: we replied that we could not think of any that were in our control.

This was an unexpected question and has subsequently stimulated an interesting discussion within Dŵr Cymru. Since giving evidence we have uncovered one example which is the Taff Fawr watercourse between our Beacons, Cantref and Llwyn On reservoirs. For health and safety reasons we do not allow canoeing on this stretch; fishing is permitted but rarely takes place.

The duties placed on us by the Water Industry Act 1991 in relation to access for recreation (described in some detail in the Annex to our written evidence) do not distinguish between types of water body so it appears that the duties relating to access on our reservoirs would also apply to any such natural watercourses.

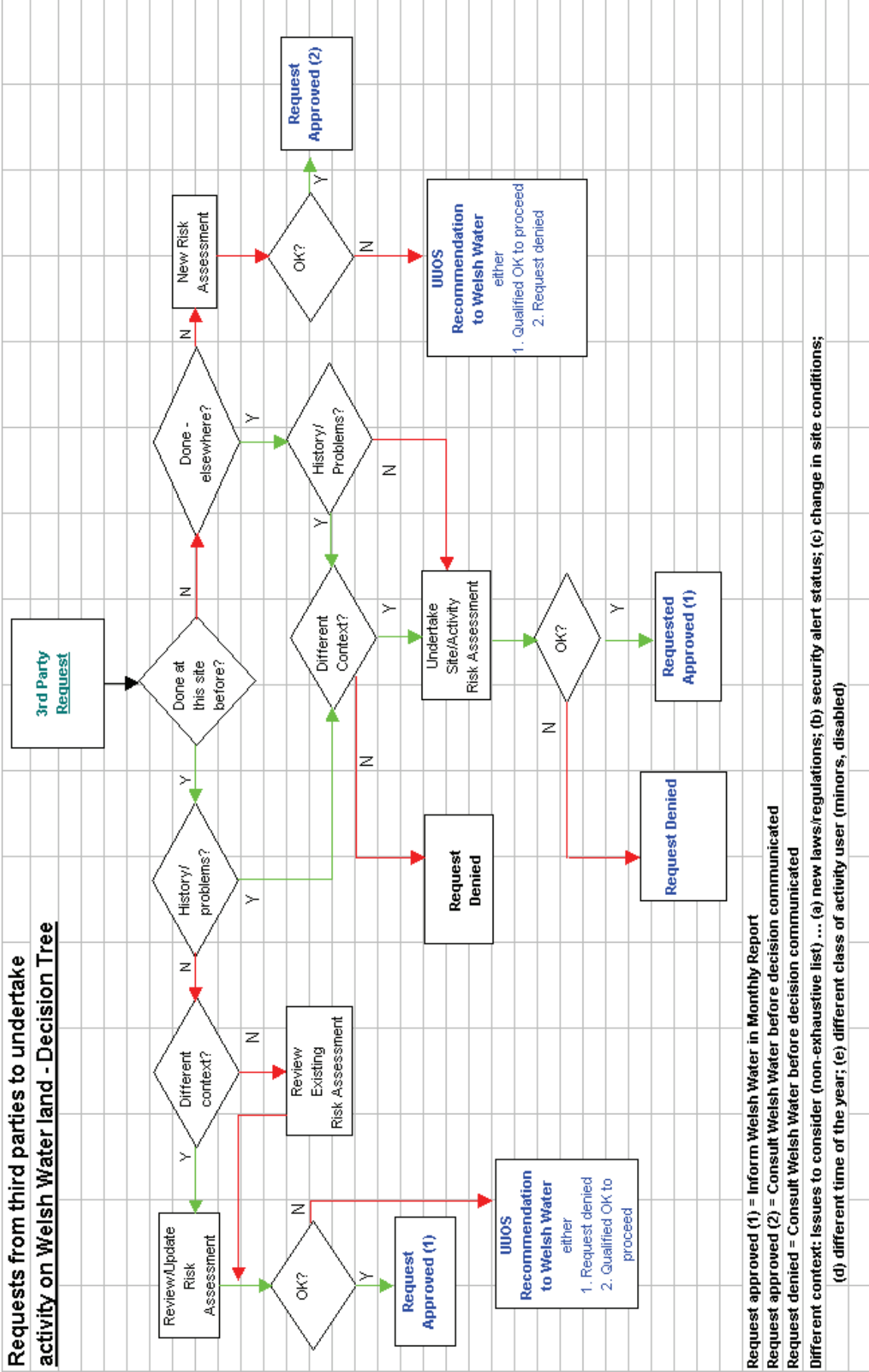
I hope that this reply answers any outstanding queries the Committee may have. If we can be of further assistance please feel free to contact me.

Yours sincerely,

Paul Henderson
Strategic Regulation Manager
Dŵr Cymru Welsh Water

Attachment: Generic Assessment Process for new Activities at DCWW Recreation Sites

Requests from third parties to undertake activity on Welsh Water land - Decision Tree



Request approved (1) = Inform Welsh Water in Monthly Report
 Request approved (2) = Consult Welsh Water before decision communicated
 Request denied = Consult Welsh Water before decision communicated
 Different context: Issues to consider (non-exhaustive list) ... (a) new laws/regulations; (b) security alert status; (c) change in site conditions;
 (d) different time of the year; (e) different class of activity user (minors, disabled)