



David Melding AM  
Chair  
Constitutional and Legislative Affairs Committee  
The National Assembly for Wales  
Tŷ Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

07 January 2013

Dear David

#### **New Draft Second Order to create Natural Resources Wales (NRW)**

I understand that the Constitutional and Legislative Affairs Committee is currently scrutinising the Final Draft Second Order (laid on 15<sup>th</sup> November) to establish Natural Resources Wales (NRW). RSPB Cymru has taken a keen interest in the process to create this new body as it will determine how the environment in Wales will be managed and protected in the future.

I am therefore writing to you to make you aware that RSPB Cymru has significant serious concerns regarding the current draft Second Order. Primarily we are concerned that the Nature Conservation & Natural Beauty duties, are weaker than the current situation. In light of the importance we attribute to getting the legislation right first time, we have sought legal advice on the Order and we believe that the Nature Conservation duty, particularly when combined with the ambiguous statutory purpose, results in weaker duties for NRW than those currently applying to CCW. As a consequence, it is our view, that this draft Second Order is legally non-compliant with the Public Bodies Act 2011 as it removes "necessary protection" for the wildlife and natural environment of Wales. A further area of concern is the lack of detail on how decision-making within the new body will be open and transparent.

The current EC infraction against the UK with respect to the licensing of Pembroke gas-fired Power Station, as recently revealed by the BBC, shines a spotlight on these two key concerns, drawing attention to the risks for Welsh Government in failing to properly take nature conservation into account. Firstly, it emphasises the need for Welsh Government to have access to and use robust and clear advice from its advisors on nature conservation. Consequently, we believe that by putting caveats and other considerations (e.g. economic factors) into NRW's conservation duties and purpose, WG may not get that robust or clear advice and therefore would be at risk of further and potentially more frequent infraction proceedings. NRW must have strong and clear nature conservation duties and statutory purpose. The current CCW nature conservation duties provide the baseline.

Secondly, the differences in advice from the statutory advisory bodies (CCW and EAW) on Pembroke Power Station were publicly available. The result was it was clear where the disagreements lay and which advice was accepted and which was not taken into account when the decisions were made. Therefore, we are concerned that when CCW's and EAW's functions are subsumed into NRW that without a clear process put

**Wales Headquarters**  
Sutherland House  
Castlebridge  
Cowbridge Road East  
Cardiff  
CF11 9AB

**Pencadlys Cymru**  
Tŷ Sutherland  
Pont y Castell  
Heol Ddwyreiniol y Bont-faen  
Caerdydd  
CF11 9AB

**Tel/ffôn** 029 2035 3000  
**Fax/ffacs** 029 2035 3017  
[www.rspb.org.uk](http://www.rspb.org.uk)



in place in the legislation to ensure openness and transparency, that the public will no longer be aware of these differences of opinion without resorting to Freedom of Information requests.

RSPB Cymru has given both written and oral evidence to the Environment and Sustainability Committee's inquiry into the draft Orders to create NRW. Following the publication of the current iteration of the Draft Second Order by the Welsh Government on 15<sup>th</sup> November, RSPB Cymru submitted a revised evidence paper to the Environment and Sustainability Committee. I have enclosed this evidence for the attention of the Constitutional and Legislative Affairs Committee and hope that this will aid the Committee's scrutiny of the Order.

We have had considerable dialogue with the Welsh Government on these concerns and some alterations have been made but as the Second Order stands, we remain extremely concerned with regard the current drafting. I understand that the Welsh Government will most likely lay the final Second Order in February and we would hope that by this time the Welsh Government will have taken appropriate steps to address our serious concerns. We welcome the Committee's timely scrutiny of the Order which should enable these issues to be addressed and that there will be no dilution of the current protection and management of the natural environment as a consequence of the merger.

If the Committee has any questions relating to the evidence we would very much welcome the opportunity to provide further oral evidence to the Committee.

*Kind regards*

*Katiejo Luxton*

Katie-jo Luxton  
Director, RSPB Cymru