

Waterways Junction

An Inland Waterways Association Publication. Price 10p.



Waterways Junction

A Report by the Inland Waterways Association Ltd.
proposing an alternative to the inclusion of the
amenity and commercial uses of the Inland Waterways
in the proposed Regional Water Authorities.

May, 1972

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Cover: Boats and towpath walkers on the Welford Arm, Leicester Section—restored to navigation by the British Waterways Board in 1969. Will the Government's R.W.A. proposals affect the further restoration and development of Britain's inland waterways? (Photo—Robert Shopland.)

The Rt. Hon. Peter Walker, P.C., M.B.E., M.P.,
Secretary of State for the Environment,
Department of the Environment,
2 Marsham Street, London, S.W.1.

10th May, 1972

Dear Minister,

**Reorganisation of Water and Sewerage Services (Circular 92/71).
Proposed Alterations in the Administration of Inland Waterways.**

We have considered the proposals outlined in your Department's Circular and, as requested, are forwarding to you our views on them. They are set out in the enclosed report, entitled *Waterways Junction*.

We do not claim to have a very detailed knowledge of the organisation and requirements of water supply, sewage disposal, pollution control, etc., but the main proposals to reorganise the industries by the creation of single authorities dealing with the control of the water cycle seem to be highly desirable and to be a major step forward.

We do not believe that there is any fundamental difference between the Government's policy and our views. We are, we believe, agreed that our water space must be better used for all amenity purposes and for commerce—the fourth dimension of the Government's national water strategy. Our differences lie in the implementation of that policy. The question to be resolved is whether the interests of amenity and commerce will be better served by being under a separate authority or by being controlled by very much larger authorities where they will naturally be a very small—and conflicting—part.

It is difficult to see what part navigation and the use of water for amenity and commerce play in the water cycle. The requirements of users *on* water are different from and conflict considerably with those who make use *of* water, e.g. for extraction. We feel that one body cannot effectively cope with both.

It is of the greatest importance that the authority in charge of the inland waterways should be keenly interested in developing them for the future. A body which merely maintains the *status quo* will not be sufficient. The authority must be an executive body with powers and adequate money. It must be able to see that its wishes are carried out. We believe that the National Waterways Conservancy we suggest in Chapter 4 of the enclosed report meets these requirements, whilst leaving control of the actual water substantially in the hands of the proposed Regional Water Authorities.

During our 26 years of existence, we have wished to be helpful to the Government whenever possible. We shall be very willing to place at the Government's disposal our considerable experience of the problems which face the inland waterways. The decisions to be taken this year will affect the inland waterways for a very long time and must be right.

Our report is intended to be helpful and constructive and we hope that you will find it so. We should emphasise that this report does not answer every conceivable question; we are not drafting the Bill. We should, though, welcome the opportunity to amplify any points and to discuss this report with your staff.

Yours faithfully,

(signed) Lionel Munk, *Chairman*.

(signed) John Dodwell, *General Secretary*.

Waterways Junction

Chapter 1: Introduction

The Government are proposing to set up ten Regional Water Authorities to take over the affairs of water supply, sewage disposal, flood and pollution prevention, sea defence, etc.—the hydrological cycle—which are at present run by over 1,400 authorities.

The Government's proposals (which were set out in the Department of the Environment Circular 92/71, published on 2nd December, 1971) also suggested that the Regional Water Authorities should take over the navigations

controlled by the British Waterways Board or by the river authorities. All other navigations are understood to be unaffected by these proposals.

This Association thinks that the basic proposal to have one authority to look after water, etc., is sound but considers ill-conceived the Government's proposals to place the amenity and transport use of the navigations under the control of R.W.A.s. which will have far greater matters to cope with.

Chapter 2: Regional Water Authorities—why they will be insufficient

Three basic objections to the handing over of the inland navigations to the Regional Water Authorities are that, first, they are highly unlikely to have the time, will or money to give the inland navigations the care which they need; secondly, there are basic conflicts of interest; thirdly, it will mean the splitting up of the national inland waterways system.

(i) Navigation's Financial Insignificance

The CAWC* report shows that in the year 1968/69 the water supply, sewerage and river authorities' gross expenditure amounted to £400 million (excluding statutory water companies). By contrast, the British Waterways Board and those river authorities providing figures for navigation spent about £5½ million on revenue and capital accounts; a considerable proportion—at least £1½ million—of the British Waterways Board

expenditure was spent on work considered to be essential for water supply, drainage and safety.

Circular 92/71 states that *capital* expenditure on water supply, sewerage and sewage disposal will be about £280 million in the year 1971/72—nearly double the 1968/69 figure. Furthermore, the Circular states that the forecasts in the White Paper on Public Expenditure in 1969/70 to 1974/75 allow for an average increase of 7% in real terms per annum.

Whilst the 1968/69 figures show that navigation forms an extremely small part—1%—of the total expenditure of the authorities to be taken over by R.W.A.s, the figures forecast indicate that navigation will become an even smaller part of the annual budget.

Inadequate attention likely

The amenity and navigation aspects of the waters under the control of the R.W.A.s will therefore be a very small part of their total operations. It is highly unlikely that there will be any

* *The Future Management of Water in England and Wales—a Report by the Central Advisory Water Committee H.M.S.O. April 1971.*



incentive to ensure that they will be developed properly. We fear that they will not receive the time, care or attention they merit, and will be the very poor relation. We suggest that the figures above show this to be more, rather than less, likely.

The number of staff in the proposed R.W.A.s who will be dealing with amenity and navigation is likely to be extremely small; it is improbable that anyone wishing to further his career within an R.W.A. will welcome being employed on this work. Thus, low, rather than high, calibre staff may be expected.

Nor is it likely that R.W.A.s will promote and encourage the carriage of goods by water—a function far removed from water supply and sewage disposal. Paragraph 25 of Circular 92/71 states: "The main activity of each Regional Water Authority will be the provision of water and the reclamation or disposal of used water." We consider that R.W.A.s will find it easier to carry out these vital tasks if they are not distracted by the important needs of amenity and commercial uses of the inland waterways.

(ii) The Need for a Separate Authority and Conflicts of Interests

We believe that the Government's admirable policy of ensuring the better use of the inland navigations will be best implemented by having a separate body which is solely devoted to the execution of this task and unencumbered by other duties. It is only common sense to say that people care most about what it is their primary duty to do; the secondary or less duty usually secures only secondary attention and secondary call upon people's time and money.

The history of inland waterways bears this out. When they were independent (before the railway interests took over) they flourished. From the 1840s onwards, there was a long decline; one of the principal reasons being that the railway companies acquired control over many inland waterways. Almost the only modernisation which has taken place on

the inland waterways in the last 100 years has been on independently controlled navigations.

In the 1962 Transport Act, the then Conservative Government set up the British Waterways Board. Despite the Board's failings (many of which it claims are due to being starved of money), the inland waterways have begun to flourish. Unlike other navigation authorities, B.W.B. has put a considerable amount of effort into increasing the use of its inland navigations both for amenity and commercial use. It can safely boast a better record in trying to implement what is now Government policy (making better use of water space) than any other navigation authority.

Conflicts of Interests

There tends to be a basic conflict of interest between (a) those who find pleasure on or beside water or carry on a trade on the water, and (b) those who extract water, discharge effluent or operate flood controls. We do not believe that these conflicts will be best resolved if one authority is in overall control—particularly as the amenity and trade use will constitute less than 1% of the R.W.A.s' affairs.

For example, how will it be decided how low the water in a canal reservoir may fall without prejudicing supplies for navigation?

When a new sewer or water pipe crosses a canal, will there be unduly lengthy temporary closures to facilitate the contractor's work (whether in summer or winter) or will the proper interests of those using the canal be protected, as they are now, to a certain extent, by navigation authorities? We feel the former is more likely. How will finance for improvements be allocated? How much attention will amenity get from the Publicity Department—if an R.W.A. has one? Who will ensure that sewage works do not pollute rivers?

We are convinced that conflicts of interest will be best resolved if there are separate authorities to speak for them.

Although a similar argument could be put forward for other R.W.A. duties, amenity can far more easily be put at the bottom of the priority list.

These conflicts of interests and the realisation that R.W.A.s would mean the loss of independent control which we consider vital to the future of the inland navigations leads us to the conclusion that a separate authority must be maintained. It will be unhindered by the vast and complicated duties involved in administering and controlling the water cycle.

(iii) Why a National Separate Authority is Needed

The number of people involved in controlling the inland waterways is relatively small. B.W.B. have a little over 3,000 staff, half of whom are involved on maintenance. The staff having the required technical knowledge to run inland navigations is therefore limited, even when one takes into account those with these responsibilities with other navigation authorities. It seems unwise to dissipate this small number of people over seven areas. Seven amenity development offices, seven publicity departments, seven head offices, seven licensing departments, seven legal departments; the situation would obviously lead to duplication and administrative inconvenience.

If there are seven authorities responsible for maintenance, there will, inevitably, be seven—probably differing—standards of maintenance. The standards between existing different navigation authorities are marked. It would be naïve not to expect the problem to be aggravated by the existence of seven new authorities whose primary interests will be elsewhere.

There would also be seven repair programmes including seven lists of temporary closures due to repairs. These would be likely to be uncoordinated and lead to several closures at the same time without leaving an alternative route open. Even under the

present navigation authorities, the position is far from perfect.

There is a great need for central publicity and information services. The number of people who went on an inland waterway by boat last year is estimated to be over 2,000,000. The increase in the number of boats licensed on British Waterways Board navigations is in the order of 10% per annum. An English Tourist Board survey shows that the number of people going on hire cruisers has trebled during the last decade even though the domestic holiday market has, as a whole, stayed static. There is a greatly increasing public interest in the inland waterways and their uses. There must be a central organisation to cope with the many phone calls and letters of enquiry.

It is vital that there should be a central marketing organisation. The water supply, sewage disposal and river authority industries are not in a competitive business. Leisure, amenity and the commercial activities of inland waterways are. People have a wide choice as to what they do in their leisure time (which is increasing as working hours decline) and where they go on holiday; a central marketing effort is needed to attract them to the waterways. Likewise a central marketing team is needed for the commercial activities. We think it is essential, too, that there should be a national organisation to undertake both commercial and amenity research.

(iv) Some Arguments in Favour of R.W.A.s

One of the arguments put forward in favour of the R.W.A.s is that they will be under a statutory obligation to maintain the inland navigations; another is that they will have more money than the present navigation authorities; a third is that each R.W.A. will have appointed to it a member with a special knowledge of sport and amenity use.

We do not think that any of these three submissions stand up to close examination.

Statutory Duty no Safeguard

Unfortunately a legal obligation can sometimes be interpreted in a number of ways. Certainly it does not oblige the responsible authority to *promote* and *develop* the use of a navigation.

An R.W.A. would be within the law even if locks only work with difficulty and one has to force a way through a weedy and badly silted channel; legally the waterway would be navigable. The result would almost certainly be that people would be discouraged from using the navigation which could enable the R.W.A. to seek an Order closing it on the ground that it is little used. It may be thought that this is a fantastic idea but those who know the history of inland navigations are only too aware that precisely this has happened in the past.

Section 38 of the 1959 Highways Act obliges local authorities to maintain public footpaths; yet there are countless examples where this is ignored. We have no confidence, therefore, that a statutory obligation to maintain an inland navigation, will ensure the continued existence of the navigations in such a condition as to meet the Government's far-reaching hopes.

More Money

R.W.A.s will certainly have a far larger income than the present navigation authorities; on the other hand, their expenditure will be vastly more. However, most of this expenditure will be on water supply, sewage disposal and pollution prevention work. There is no

reason to suppose that there would be any more money available for navigations than there is now. Whether an R.W.A. made a special effort to ensure that more money was made available would depend entirely upon the people controlling the R.W.A.

Paragraph 35 of the Circular states the Government's view that, in principle, apart from Exchequer grants for specific purposes, the revenues to enable the new authorities to discharge their main functions should come from charges for the services they provide. Paragraph 39 states that there will be "statutory safeguards to ensure that the cost of an R.W.A.'s operations are distributed equitably between different categories of water user". It does not therefore appear likely that R.W.A.s will have any more money to spend on the navigations.

One Amenity Member

The suggestion that each R.W.A. will have on it a member with special knowledge of sport and amenity use is quite inadequate. Those present at the Minister's Conference on 'The Better Use of Water Space' will have realised just how many vast and varied different amenity and sporting interests there are. It is not possible that one person can represent adequately the interests of wild-fowlers, sub-aqua divers, water skiers, rowers, canoeists, anglers, boat users, towpath walkers, naturalists, etc.

We do not feel convinced by these three arguments.

Chapter 3: Comments on Government Documents

The Government's proposals in Circular 92/71 arise from their consideration of the Central Advisory Water Committee's report, *The Future Management of Water in England and Wales*.

No Reference

It should be appreciated that CAWC

had no member truly representing navigation interests, nor did its terms of reference include navigation. Not surprisingly, the Committee made no recommendations about navigation.

It came therefore as a surprise to read that the Government think that the CAWC suggestion that the R.W.A.s

might take over the British Waterways Board navigations is right, particularly as only one sentence in the 315 paragraph report refers to the future of the inland waterways.

More than "A Few Short Lengths"

Circular 92/71 suggests that the navigations fulfilling a transport function are but "a few short lengths". In fact, B.W.B.'s major commercial waterways are about 315 miles long (House of Commons, *Hansard*, 16th February, 1972, column 401). In addition, there are over 200 miles of independently managed commercial waterways. We think that the aggregate of over 500 miles can hardly be referred to as "a few short lengths".

"Local and Regional Significance"

Circular 92/71 suggested that the inland waterways are "mainly of local and regional significance". We do not agree.

A considerable number of boat users navigate large mileages during a year. Often, they take their annual holiday cruising around the country. There are also numerous people who, whilst living in one part of the country, moor their boat in another, particularly in the south where there are fewer inland waterways and a shortage of moorings.

Anglers are also mobile. The Sheffield and District Anglers' Association rent waters in the Fens and the Birmingham Angling Association has fishing rights on waters in Wales. Many anglers travel considerable distances to matches.

The inland navigations, and particularly the canals, form a very interesting part of our industrial archaeological heritage, especially since they are recognised as having been the start of the modern civil engineering profession. In this and in many other ways there is a tremendous national interest in the future of our inland waterways.

The remark that canals today are "mainly of local and regional significance" is not, in our opinion, accurate.

The February Memorandum

In February 1972, the Department of the Environment issued a memorandum, *The Proposed Reorganisation of the Waterways*. Regrettably, this showed that not all the very many complex and varied problems about the inland waterways are appreciated yet. The British Waterways Board have commented forcefully on this and we would like to draw attention to the following points:

Commercial tolls

The memorandum shows that in 1970, 22% of the Board's income came from water sales and 16% from commercial traffic tolls, suggesting that water sales are now a more important part of the Board's business than commercial traffic. However, the income from commercial traffic tolls (£659,000) arose on only 315 miles of the Board's waterways, whereas the income from water charges (£899,000) arises on all of the 2,000 miles of the Board's waterways. Only £200,000 of the water sales income arises from commercial waterways and thus on those navigations, commercial traffic is a far more important revenue earner than water sales.

No "extra cost" for navigation

We believe that the Government currently considers that the extra cost of maintaining the nationalised navigations for cabin cruisers is about £500,000 per annum. We have never accepted that the so-called extra cost of maintaining navigation for cruisers is solely for the benefit of cruisers. The Angling and Canoeing Associations will, we think, agree that the passage of a cruiser immeasurably improves the waterway for them; the water is aerated and weed growth is kept down. The British Waterways Board state that "navigation improves the conditions for fishing and canoeing".

Once a navigation becomes un-navigable, then nature takes over; after a while, nobody can gain much pleasure,

whatever their interest. On the other hand, an inland waterway which is used by boats provides pleasure for all others who wish to find it there. For example, people walking on a towpath have the visual pleasure of seeing a navigation used, whether by boats or anglers; it makes for greater interest.

The alleged extra cost of maintaining the navigations for cruisers is in fact the cost of maintaining them for all kinds of amenity.

No loss—cost

There has been talk of the loss which is incurred by the British Waterways

Board. We do not consider that any loss is made; rather it is a *cost*. The Government has not suggested closing down Hyde Park or the national parks because of their cost. There is a cost incurred in maintaining the ancient historic monuments of our country but this does not give rise to complaint. Likewise, local recreational parks. Why, therefore, should the cost of maintaining the inland navigations for amenity be picked out for special complaint?

The grant to maintain the navigations should be seen in the same way in which grants to the Sports Council and the Arts Council are viewed.

Chapter 4: The National Waterways Conservancy

In this chapter, we suggest an alternative to the Government's proposals.

Navigation and amenity not part of the water cycle

The Government's declared purpose is to reorganise the management of the water cycle so that single authorities shall be responsible for water "from the raindrop to the water glass". We can see where water supply, sewage disposal, pollution control and possibly land drainage come into this but we have not yet been able to discover the place of navigation and amenity. We believe they are not an integral part of the water cycle. (This view is supported by the fact that it is not at present proposed that independent waterways should be brought within the R.W.A.s' jurisdiction.

The part played by rivers is obvious but that of the canals needs further investigation. The British Waterworks Association has said that the canals are of no great interest to the water supply industry. We believe there are only four water undertakers which abstract water directly from a canal and only four sewage stations which discharge effluent

into a canal; there are, of course, many instances of industrial firms using and returning non-drinkable canal water. The part that the canals play in land drainage is considerably greater. Canals have in the past been filled in without due regard to their land drainage functions, with consequent flooding problems.

We return, then, to our view that navigation and amenity have nothing to do with the water cycle. We do, though, understand the Government's wish to ensure that R.W.A.s have a basic overall control of water. We believe the National Waterways Conservancy as outlined below would achieve this whilst providing amenity and navigation with the separate authority which we think is so vital.

Control over water

We understand that at present all extractions of water from inland waterways (even if returned) are licensed by a river authority. On rivers, the navigation authority or other interested parties may lodge objections if they think their interests may be adversely affected by any proposed extraction. On canals, the

navigation authority initiates extractions and thus controls them (other than statutory extraction).

We also understand that river authorities control discharges into navigable rivers but that canal authorities control discharges into canals; pollution control rests ultimately with river authorities.

The present position therefore appears to be that river authorities (and thus R.W.A.s in the future) have adequate control over water in navigable rivers. We think R.W.A.s could have a similar control over canals without adversely affecting the interests of amenity and navigation.

We suggest that all extraction from canals of water for sale (e.g. to industry) should be made by or on behalf of R.W.A.s subject to the consent of the National Waterways Conservancy. Such consent should not be unreasonably withheld; the R.W.A. should be able to appeal if it so wished to the Secretary of State for the Environment who may order a Public Enquiry to be held.

We also suggest that discharges should be controlled by R.W.A.s, not navigation authorities. There would have to be adequate financial safeguards in respect of the capital cost of any extra flood weirs needed or the cost of dredging out silt brought in as a result of the discharge.

It is important to appreciate that there is no surplus water in the canals. Any water not needed for navigation passes into local streams. The reason why B.W.B. have been able to sell water is because most of it is returned. Where they sell to water undertakers, the canal acts as a water carrier from a river, rather than as a supplier in its own right.

The kind of arrangement suggested above would, we think, give R.W.A.s the desired control over water in inland waterways. It has the advantage that it could also be applied to the independent waterways.

National Waterways Conservancy

1. In order to provide the amenity and commercial uses of the inland water-

ways with the separate authority which we think they need, a National Waterways Conservancy (N.W.C.) should be established. It would have transferred to it the duties, staff and assets (including the reservoirs) of the British Waterways Board and the other navigation authorities being taken over. It would be responsible to the Secretary of State for the Environment for all matters relating to navigation and amenity on all navigable waterways, other than the independent waterways (*they are referred to in Chapter 12*). It would therefore carry out the functions of the navigation authorities from whom it was taking over—with the exception of water sales which would become an R.W.A. responsibility.

2. The R.W.A.s would pay the N.W.C. for the land drainage and water supply aspects of inland waterway costs. *The financing of the N.W.C. is further discussed in Chapter 5.*
3. The N.W.C. would be eligible to receive a 75% capital works grant from the Government and to borrow money from the Government for capital purposes.
4. The N.W.C. would be responsible for initiating development and restoration schemes in all parts of the country (other than for commercial waterways—*see Chapter 8*); the N.W.C. would need the reserve power to obtain any extra water needed for restored or modernised waterways; if a dispute arose, it could go to a public inquiry.
5. In view of the fact that the British Waterways Board recently estimated that the cost of carrying out current arrears of maintenance work would be around £22 million, we think that the Government should make available to the N.W.C. a similar sum of money over the next ten years (to be adjusted for inflation) which can be

drawn on for all back maintenance work, e.g. dredging and bank protection. These are the two major items of back maintenance indicating that previous Governments have substantially reduced their financial commitments to the waterways. We think it vital that the new organisation starts with a clean slate and should not be encumbered by the past.

Management

It is vital that the N.W.C. should fully represent the people who use the inland waterways in every aspect. Accordingly, we feel that there should be representatives from the Inland Waterways Association, the National Association of Inland Waterway Carriers, the Association of Pleasure Craft Operators, the Association of Waterways Cruising Clubs, the National Anglers' Council, the British Canoe Union, the Ramblers' Association, and such like.

There is the question of how these representatives should be appointed. We suggest that each organisation should put forward a list of possible names (say three or four people) from whom the Minister may select the representative(s). We understand that a similar method is used in the appointment of members of a River Authority at present.

Obviously, the Government should appoint members if Government money is to be forthcoming. We suggest they should include people with a general and wide knowledge of transport and amenity. Likewise, R.W.A.s should be represented if their money is to be used, although probably this representation

could be achieved by a member of the National Water Council. If local authority money is used then we suggest that representation comes from local authority associations rather than directly from local authorities themselves as this would avoid the number of Conservancy members being excessive.

B.W.B. and other navigation authorities' assets

The "track" would obviously be owned by the N.W.C. We feel that it is most important that the property itself should remain under the control of the N.W.C. B.W.B. have complained that they do not own enough waterside property to be able to plan the future of an area and we feel that such waterside property as is owned should be retained to make easier the planning of the waterside aspect.

The docks and warehouses at present owned by B.W.B. should be transferred to the N.W.C. They are a vital part of the commercial operations and generate traffic. To separate them has been likened to taking the stations away from British Railways.

Summary

The organisation we have proposed above, coupled with the control over water we have advanced, would we think be satisfactory to all concerned. It gives R.W.A.s adequate control over water whilst establishing the separate organisation for the amenity and commercial uses of inland waterways that we and many other organisations are convinced is crucially important.

Chapter 5: Finance

Circular 92/71 stated in paragraph 38 that the "extra costs" of navigation would have to come from tolls, contributions from local authorities, national park authorities, the Sports Council, etc., after a fixed transitional period in which tapering Exchequer grants would be made. (*In Chapter 3 we explain why*

we think the extra costs are incurred for all amenity uses, not just navigation.)

This would be most unsatisfactory. No doubt the Sports Council or the Countryside Commission would like to help but their financial resources simply do not permit them to—unless their own Treasury grants are increased to allow

for this. That seems unlikely if the Treasury is to stop its grant to the navigations.

Local authorities

Given that all inland waterways have an amenity value (and this applies to the "commercial" waterways as well), it seems logical that the amenity users (whatever their particular use may be), should be required to contribute to the costs of running the waterways. However, there is the obvious difficulty of how to charge some categories of users. Turnstiles on towpaths to charge walkers are not really practical and there are other instances of use that cannot be directly charged.

We think that the local authorities ought to contribute (in recognition of the unchargeable amenity provided) towards the cost of maintaining the inland waterways. However, the Government suggestion that local authorities *may* contribute *if they so wish* will not meet the problem. *What will happen if they do not?* In any case, the contribution may vary—or stop—if political control changes. We think local authorities should contribute through a rate precept. It is significant that both the Thames Conservancy and the Lee Valley Regional Park have precepting powers upon the counties bordering their area.

The amount of the rate precept would be small, and, if the counties were to contribute the current Government grant in full, would be in the region of 0.02p in the £; the precise amount would depend on the mileage in each contributing Council's area. Since local authorities would only be contributing a small part of the cost of maintenance, it is not likely that any Council would be called upon to contribute a figure which they would consider excessive. However, it would be wise to put in the forthcoming Act a maximum amount which might be levied.

Boats and Anglers

The suggestion that pleasure craft users

might pay all the "extra costs" betrays a lack of appreciation of the facts of the situation. If boat owners are to be expected to provide the money then licences will have to increase by a little over 2½ times. This would be a very considerable deterrent and instead of increasing, total revenue might well decline. Likewise, anglers should not be expected to pay a vastly higher charge. Nonetheless, boat users (including canoeists) and anglers should provide a fair amount of the required income.

Regional Water Authorities

We have suggested (*in Chapter 4*) that R.W.A.s should be able to extract water from inland waterways (subject to conditions) and keep the revenue arising from its sale. It is reasonable therefore that the N.W.C. should be reimbursed part of its costs. In managing canals, the N.W.C. will also be performing a limited land drainage function and should be likewise reimbursed for this by R.W.A.s.

The detailed basis of the charges would have to be worked out. We do not propose to go into this now but should be happy to give advice on these matters.

Treasury grant

The February memorandum states that the Government is further considering the question of continuing some Exchequer grant. Quite rightly the Government recognise that there is a national interest in the waterway network and that people outside the immediate area of a waterway come to that waterway.

However, an Exchequer grant is not wholly satisfactory; the last few years have shown the result of this when the Treasury has apparently been determined to save every penny. *Dependence* on the Treasury grant could well result in the navigations again being starved of money despite the present Government's intentions that there should be more money provided. There is a difference between "dependence" and "a useful contribution"; the latter is required from the Treasury.

Summary

We agree with the Government's suggestions in the February memorandum about the sources of finance for the inland waterways, but think that the basis must be sounder; we also go further. We feel that these costs should be financed from:

- a. charges made upon the users;
- b. charges to R.W.A.s;
- c. precepts upon the local authorities as discussed above; and
- d. a contribution from the Treasury in recognition of the national importance of the inland waterways.

Chapter 6: Amenity

The amenity uses of the inland waterways are now generally well recognised in Government and local authority circles.

By amenity, we mean every possible non-commercial use of the inland waterways. Examples are: cruising, angling, canoeing, towpath walking, picnicking, camping, nature study, water-based youth clubs and school activities, photography, painting, industrial archaeology, young children fishing for tiddlers, etc.

Amenity use of inland waterways is increasing. The number of pleasure boats on B.W.B.'s waterways regularly increases by about 10% per annum. The number of people taking a holiday on inland waterways is increasing and on B.W.B.'s waterways the figure has doubled in the last five or six years; hirers from overseas are increasing very rapidly. A recent survey by this Association showed that over 2 million people went on a boat on the inland waterways in 1971.

There are nearly 3 million anglers in this country. Canoeing is a rapidly increasing pastime. The number of boat clubs and canal societies continues to grow year by year; so does the number of boat rallies attracting the public's attention to the inland waterways. The Association estimates that the number of people visiting I.W.A. rallies in 1971 was in excess of 250,000.

Problems on the amenity front are mainly those of ensuring that this welcome growth continues and that there are adequate facilities to meet the demand. As far as boats go, there is a pressing need for more mooring sites in suitable places, particularly those lying

off the main line of the canals.

An authority solely concerned with the inland waterways would make every effort to attract private investment to meet the requirements of those using the inland waterways. More fish farms are also needed.

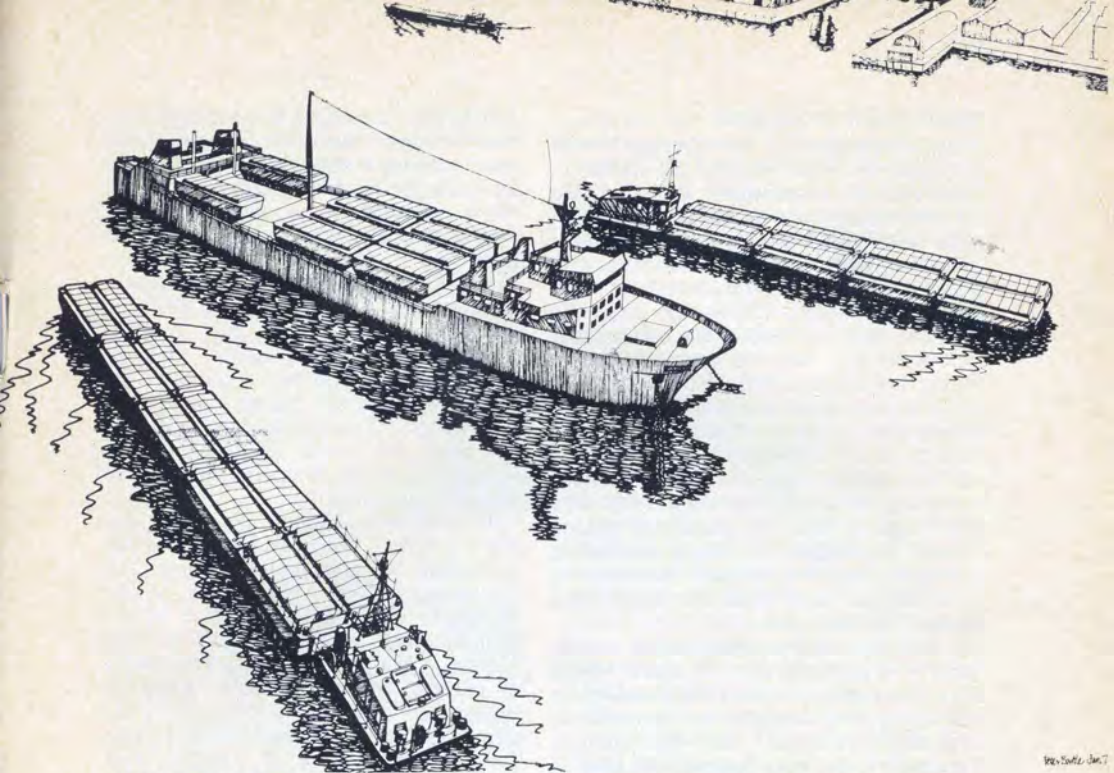
Confidence in the future

The rapid increase of recent years is only likely to continue if the confidence of users and investors is retained. This is especially so in the world of boats, where considerable sums of money are involved. Since the 1967 White Paper which seemed to provide a relatively secure future, investment by individuals and companies (involved in boat building, selling and hiring, as well as moorings and chandlery) has greatly increased.

The Government's proposals have created a great deal of uncertainty and the trade associations have indicated their opposition to them.

Local authorities have recently shown a welcome and increasing interest in inland waterways. At present they deal with a central organisation, keen to develop the potential of the waterways for amenity. If RWAs take over, the same atmosphere is hardly likely to remain and local authorities are unlikely to be encouraged to join in development schemes.

If there is to be a future for the amenity uses of the inland waterways (and we know that the Government wish there to be one), then the confidence of investors, individuals and local authorities must be regained. A central waterways authority is needed.



BACAT—a revolutionary international barge-carrying ship system. What hopes for its development under R.W.A. control?

Chapter 7: Inland Shipping

(i) The Impact of Regional Water Authorities

The British Waterways Board, which is the only British navigation authority (apart from the Manchester Ship Canal Company) which has done anything in recent years to promote and encourage commercial traffic, has recently put forward three promising schemes (involving the Weaver, Sheffield and South Yorkshire Navigation and the lower Grand Union Canal), which would, if implemented, result in increased traffic on our inland waterways.

We cannot envisage an R.W.A. promoting these schemes. Nor can we see an R.W.A. promoting the central marketing services of B.W.B. The promotion of water-borne cargo hardly

has a close connection with the problems of water supply and sewage disposal.

It is essential that the commercial waterways should be the concern of an organisation which has their future as one of its principal tasks. The National Waterways Conservancy as outlined above would be fully capable of this. We are pleased to know that such an experienced body as the National Association of Inland Waterway Carriers thinks that a national organisation is essential if there is to be a future for commercial waterways. We know that the Government wish there to be a future and we hope that they will follow this to its logical conclusion by establishing the National Waterways Conservancy.

Security for Investments

Not surprisingly, the carriers (who account for over 90% of the traffic on nationalised waterways) feel that the proposed R.W.A.s would not give them the security of tenure that they need. Without this security, private firms can hardly be blamed for investing their money elsewhere. This would mean the decline and final end of the commercial carrying and this, we are told, is not what the Government wishes to see.

It is vital, if the commercial waterways (both the nationalised and independent) are to have a future, that the confidence of the independent carriers should be retained, and that they should feel that the basis of their investment is secure. Their investment in fleets (excluding wharves and warehouses) amounts to £40 million; their boats are depreciated over a 25-year period.

This is an appreciable sum of money and it is essential that the assets which are represented should continually be replaced and brought up to date as required; without security, this is unlikely to happen. Indeed, the lack of security in the past has been responsible for a significant part of the commercial traffic decline.

The confidence of European firms has to be gained. Coastal shipping firms must be encouraged to come as far up our estuarial navigations as possible. The great possibilities of sea-going barges, together with barge carrying ship systems, means that we must be able to compete with Europe in transport terms, by following Europe's example and investing money in modernising and expanding our waterways.

If the confidence of the carriers is to be retained; if a suitable atmosphere conducive to investment is to continue; if modernisation is to take place; a National Waterways Conservancy then must be set up.

(ii) The Present Promising Future

The National Council on Inland Transport has rightly pointed out the financial nonsense of moving a load of

1,000 tons (or more) by ship and then transshipping it into fifty 20-ton lorries, each needing a separate driver, in order to reach the destination. It makes a lot more sense to bring cargoes as far inland as possible in as large a bulk as possible.

The Department of the Environment have pointed out that coastal shipping accounts for 17% of our internal transport. Is it not sensible, then, to encourage these ships to come as far inland as possible before discharging their cargo? Transport costs would be cut and the road haul would be shortened; both financial and social benefits would result.

In Common Market countries and the U.S.A., considerable waterway expansion has and is taking place. The Tennessee River has been made navigable in America (despite expert opinion that it was impossible). The Common Market countries are following a pattern of enlargement, technical innovation and new construction; the completion of the Rhine-Main-Danube Canal will provide a modern link between the North and the Black Seas.

Only in England has nothing happened for years. The annual tonnage carried and the annual ton-kilometre totals have dropped. By contrast, on the Continent, the figures have shot up; over the period 1963-69 the tonnage carried increased by 40% or more in most countries, as the table in Appendix 1 shows. How far behind the Common Market can we afford to fall?

Why has this situation arisen?

Few of our inland waterways have been modernised during their 200 years of life. By contrast, both the railways and particularly the roads have been extensively modernised and many millions of pounds of public money have been spent on them.

More efficient

Water transport is inherently a more efficient means of moving goods. Henry G. Joffray, speaking at an American

Society of Civil Engineers meeting* in 1970 said that "one dollar will move one ton of cargo five miles by air, fifteen miles by truck (lorry), 67 miles by rail and 335 miles by water".

Total tonnage

There is a popular misconception that only 80 million ton miles (or 6 million tons) were carried on the inland waterways in 1970. This is only the total carried on the nationalised inland waterways. As we have stated on page 23, there are over 200 miles of commercially used navigations on top of the nationalised 315. Our investigations show that in 1971, the annual tonnage was well over 30,000,000.

The Future for Carrying

The future of the commercial waterways is considerably brighter than for many years, due to the advent of the LASH ship and similar barge carrying ship systems.

A typical example of a barge carrying ship is this: barges carrying wood pulp are loaded on the Mississippi River and pushed by tug down to New Orleans (pull-towing is now outdated). There, they are loaded on to a "mother" ship which then crosses the Atlantic to Sheerness in the Medway Estuary. The barges are unloaded and pushed up the River to the paper mill wharves. The mother ship does not need a port as it anchors in the Estuary. There are no dock costs and handling costs are dramatically reduced as each LASH barge can carry 435 tons (the conventional standard container carries 20 tons).

We believe the LASH ship could have as revolutionary an effect on the shipping and transport world as the container has had. The portless ship is a novel concept which is rapidly catching on. The British Waterways Board have

initiated the BACAT system (barge aboard catamaran ship) with a Danish consortium; Lykes Lines are introducing their Seabee (each barge carries 1,000 tons). Sea-going barges should not be ignored. There is nothing technically impossible in now constructing barges that will cross the North Sea or the English Channel; costs are very favourable. Development of British waterways towards Continental standards will give an incentive to Continental carriers to build barges for the through run to Britain. There is the prospect of a water-borne roll on/roll off concept—but in far larger units. Transport costs should be cut.

Regrettably, our Government shows little interest in either the LASH ship or sea-going barge concepts, although our soon-to-be Continental partners are already accepting the implications and are modernising their waterways accordingly. One of the more distressing aspects of the Circular 92/71 was the total lack of appreciation of the commercial waterway possibilities. Mr. Peter Walker said in the House of Commons on 2nd March that the Government would put no obstacle in the way of commercial carriers; this strikes us as a negative approach.

The present reaction of the Government to LASH and such like is similar to that of those who saw no future in railways just after Stephenson had developed the locomotive.

* Henry G. Joffray, *LASH Concept and its Impact on River Traffic*, ASCE National Water Resources Meeting, Memphis, Tennessee, 26-31 January 1970.

Chapter 8: Commercial Waterways

The dismal lack of any large modernisation scheme since the War in the U.K. at a time when European countries and the U.S.A. are expanding their inland waterways network suggests that our waterways planning has been sadly neglected and is in need of a radical overhaul.

A quick look at other countries gives the answer: their Governments are responsible for planning and financing waterway modernisation schemes. In this country, this work is left to the individual waterway controllers. There is no central control and little development is carried out. B.W.B., who have shown some interest in the subject, control less than three-quarters of our commercial waterways.

A look at this country's massive major roads development plan in recent years gives the same answer: central planning and financing. Without the immense activity of the former Ministry of Transport, roads now built would never have left the drawing-board.

The answer to Britain's problems lies in having a similar waterway central planning and financing authority. Such an authority must have development powers over the whole country—like the former MoT did in relation to roads. (B.W.B. have authority only over waterways they control.) Only in this way will a comprehensive look be taken at the planning of the development of our waterways.

This central planning authority should be a section of the Department of the Environment. If it is, it will be in a good position to draw up plans that complement, rather than conflict, with road and rail schemes. The Department as a whole will be better placed to review the whole of our transport and land use policies. We envisage that the maintenance of the nationalised commercial waterways, both existent and future, would be carried out in the same way as

the other waterways. The N.W.C. would also be running what is now B.W.B.'s Freight Services Division and so would be responsible for the central promotion of water-borne freight. It would obviously work closely with the DoE planning section.

Expenditure incurred on commercial waterways for transport purposes, whether capital or for maintenance, should be financed 100% by the DoE as are motorways and major roads.

It is essential that the DoE commercial waterways planning section keeps in close touch with the carrying concerns and their customers. This will enable the DoE to receive the full benefit of their experience and of the industry's needs and suggestions. We suggest that a Consultative Committee should be set up, having representatives from: (a) the British Inland Waterway Carriers; (b) other European Inland Waterway Carriers; (c) National Waterways Conservancy; (d) other European Inland Waterway Administrators; (e) barge carrying shipping companies; (f) other shipping companies; (g) independent but knowledgeable men.

We have suggested representatives from other parts of Europe in view of their experience and of the very great likelihood of their using modernised British inland waterways.

One of the important factors in the development of European waterways has been the planning and financing of local ports, e.g. Duisberg in Germany. The siting of such ports obviously has a significant impact on the locality. We think that local authorities in this country should also have powers to develop river/canal wharves within their boundaries or outside them if their ratepayers are likely to benefit. There is a parallel with their present powers in the 1968 Transport Act to help finance amenity projects.

Chapter 9: The Public Right of Navigation

This is a highly important subject. It has, however, caused confusion and we feel it would be helpful to give some background information in an effort to clarify the issue. In Appendix 2, we have set out a very brief historical note.

Present position

The 1968 Transport Act abolished the statutory right of navigation on all nationalised man-made navigations. It did not affect the statutory right of navigation, for example, on the Bridgewater Canal or the Thames on both of which public rights still exist. Neither did it affect the ancient right to navigate rivers under B.W.B. control. One therefore has the peculiar situation that one has a right to navigate the natural parts of the Rivers Trent and Severn but one has no right to navigate through the locks or lock cuts.

The need for the right

The Government have said they have no evidence of difficulties which have been created by the absence of the public right of navigation.

The main reason why the Bridgewater Canal is being repaired by the Manchester Ship Canal Company (the owners) is that there is a statutory right to navigate along it and the Company is under a statutory duty to maintain it. Without the existence of the right of navigation, there would have been the ridiculous position of the Ship Canal Company being under a duty to repair the Canal but of there being nobody who could sue them in order to enforce that duty.

The following difficulties have also arisen:

a. there is wide disquiet about the length of time taken for repairs to canals and the laying of gas or sewer pipes along or under canals. There

- have been instances where these have taken up to nine weeks which seems highly excessive. Before 1968, unreasonable stoppages were illegal;
- b. lock gates have been padlocked to prevent vandalism. Not only would this have been illegal before 1968, but it is hardly a proper solution to the problem;
- c. it has been the custom of the British Waterways Board since 1968 to close the canal at Little Venice, Paddington, during certain of their Boat Afloat Show events; this would have been illegal;
- d. in 1969, the Oxford Canal was closed to navigation for certain periods so angling matches could take place; this would have been illegal.

Legal actions now avoided

In Appendix 3, we set out the four kinds of legal action which a member of the public could take against a navigation authority before 1968; he cannot now do so in respect of the nationalised canals because of the abolition of the public right of navigation.

Without a public right of navigation, no one may complain legally about bad maintenance. In practice and in law, the duty to maintain and the right of navigation are indissoluble. To give meaning to B.W.B.'s maintenance duty, the right of navigation must be restored.

A legal longstop

There is a similarity between the public's use of the right of navigation and the player who plays longstop in a cricket game. Longstop has no work to do if the wicket-keeper is efficient and carries out his duties properly. If the wicket-keeper is bad then longstop has a lot of work to do. Likewise with the inland waterways. If the authority in charge maintains the waterways properly then

there is no need for the public to take any legal action to which they are entitled because of the existence of the public right of navigation. If, however, the waterway authority begins to fail in its duty, then there is every reason for the existence of the public right of navigation.

It may be argued that the public may safely rely on the goodwill of the navigation authority. Apart from the fact that the evidence since 1968 shows they cannot, it is an inadequate plea. The penalties for treason have not been lessened because few people commit treason; thus the public's safeguard is maintained. So it should be in respect of our inland waterways.

A public right to use public property

The nationalised inland waterways are public property which are maintained for the benefit of the public and the money for the maintenance comes substantially from the public. Why then should the public not have a right to use these waterways? There is a very

close parallel with the position on the roads. These are owned by the public and maintained for the public at the public's expense (whether this arises through licence monies or local authority or Government revenue); there is a right to use the roads. Why not our water highways?

The Conservative Party promise

On the 21st October, 1968, the Hon. Anthony Berry, J.P., M.P., speaking on behalf of the Opposition in the House of Commons, undertook that the Conservative Party would, when returned to office, restore the public right of navigation. Obviously, the Party thought the matter important. We remain confident that Mr. Berry's promise will be honoured. We are reinforced in this belief by a letter of 18th February, 1972, by Mr. Peter Walker, M.P. for Worcester (to our Member, Mr. J. H. Burman), stating that his proposals meant that **navigation rights would be returned.**

Chapter 10: Standards of Maintenance

The Government have said that they intend to place on the R.W.A.s the same standard of maintenance as the British Waterways Board have under the 1968 Transport Act; presumably, they will also impose on the R.W.A.s the standards of maintenance laid on other navigation authorities which are being taken over.

Present duties insufficient

B.W.B.'s maintenance duties are far from satisfactory. Section 105 of the 1968 Transport Act obliges B.W.B. to maintain the commercial and cruising waterways in a suitable condition for use by commercial freight carrying vessels and cruising craft respectively so that the vessels which *customarily* used

the waterway in question during the period of nine months ended the 8th December, 1967, should continue to be able to do so.

No one has yet been able to establish precisely to what standard the Board are obliged to maintain and as time goes on people will be less and less sure what kind of boat *customarily* used the waterway in question during the 1967 period. It would plainly be impossible in ten or twenty years' time to convince a Court what the standard was in 1967; proof would be very difficult. Thus, the likelihood of a prosecution is slim.

B.W.B. have no duty to maintain the towpaths at all; they only have a duty to keep the water in the canal. The maintenance duties should be amended to include the upkeep of towpaths; they

have a wide amenity significance, especially in urban areas.

Whilst the Government have talked of re-enacting Sections 104 and 105 of the 1968 Act, no mention has been made of Section 106. This is the Section which enables the duty in Section 105 to be enforced; the essence of this Section should be re-enacted in the proposed legislation.

Defects of Section 106

Section 106 has some very serious defects. Even if, despite the vagueness of the maintenance standards, a legal action was started, it could be frustrated by Section 106. This is because the Minister is empowered to issue a certificate saying that in his opinion, it would cost the B.W.B. too much to remedy the cause of the complaint. Once such a certificate is issued, the Court is unable to require the British Waterways Board to perform its duty properly. This is very unsatisfactory. It is particularly sad (to put it no more strongly) that there is no appeal from the Minister's decision to issue a certificate of this sort. As he is responsible for the finances of the B.W.B., one feels he is both prosecuting Counsel and judge.

It is reasonably clear what those drafting the legislation had in mind. They envisaged a situation where, say, the Pontcysylte Aqueduct collapsed and the British Waterways Board did not feel able to pay for the cost of repairing the severed navigation. They feared litigation would commence and the Board would be obliged to come to the Government for the money for repairs. Accordingly, they drafted Section 106 to avoid this situation.

We think they were wrong in this. There are other ways already in the 1968 Act of avoiding the situation they feared. We suggest that in the situation outlined above the proper course of action would be to seek an Order to close the Canal rather than to avoid being prosecuted by obtaining the Minister's certificate. Such an Order could be opposed at a public enquiry and would be a far better way of dealing with the situation.

As Section 106 stands, it not only covers the Pontcysylte Aqueduct but can cover any situation regardless of the financial burden. It would mean that if a lock gate fell into disrepair, the Minister could issue a certificate saying it would cost the Board too much to repair it. This was obviously not the intention and we feel that this part of Section 106 should be repealed.

Chapter 11: Remainder Waterways

The future of the remainder waterways has been almost totally ignored in the Government's proposals. This is strange and worrying. The Government's policy is to encourage the better use of the inland waterways. It seems a logical step to encourage the restoration of derelict waterways and the retention of those remainder waterways now open.

Restoration is invariably the cheapest course of action to adopt with a derelict canal. The cost of filling in the Ashton Canal has been officially estimated at over £400,000; the official restoration estimate is £180,000. The cost of bringing

the Birmingham Canal Navigations (the vast majority of which are navigable, though in the remainder classification) up to an adequate standard has been officially put at £47,000; the alternative of filling in (which would involve the provision of alternative drainage and supply of water to industry) would cost over £22 million.

The use of inland waterways is increasing rapidly. The number of boats on nationalised waterways increases by 10% per annum. There are over 3 million anglers. Over two million people went in a boat on the inland waterways

in 1971. The waterways at present in the remainder category are needed to cope with this demand for water-based leisure activities.

Local authorities are contributing in some instances to the capital cost of restoration schemes. Others have been held up because local authorities will not provide the capital needed without a guarantee that the waterway will be reclassified as a cruising waterway, or that the central Government will be responsible for subsequent maintenance.

There is an urgent need for the Government to take positive steps—before 1974—rather than to continue

its negative approach of not objecting to restoration. This means the Government must play its part in persuading local authorities to provide money and must be prepared to contribute some money itself.

Restoration costs rise every year. There are two reasons for this. One is that continuing decay means that more work has to be done to achieve restoration. The other is that the cost of materials and of labour increases annually. It is therefore very important that as much work as possible should be carried out as quickly as possible.

Chapter 12: The Independent Waterways

In the long term, all inland navigations ought to come under the control of the National Waterways Conservancy. It may be that some managements will welcome the opportunity to transfer their waterways, particularly where they are suffering financial embarrassments, such as the Bridgewater Canal. The National Waterways Conservancy should be empowered to take over the navigation and amenity aspect of an independently managed waterway if its management is failing to maintain it in accordance with today's requirements.

We do not, though, envisage an independent navigation authority being forced to hand its waterway over to the N.W.C., but their controllers should be encouraged to hand them over to the N.W.C. The N.W.C. should have ample powers to take over the navigations if they are offered.

As indicated in *Chapter 4*, we envisage that R.W.A.s could control the water in independent waterways in the same way as we proposed for publicly owned waterways.

Chapter 13: Conclusions

Our studies of the Government's proposals and our experiences during our 26 years of existence lead us to the following conclusions:

1. As laymen in those fields, we think the proposals to reorganise the administration of the water cycle are basically sensible. However, we do not think that the amenity and commercial uses of the inland waterways play any part in that cycle.
2. The proposal to hand over the inland waterways to the suggested Regional Water Authorities is ill-founded. *Chapter 2* gives some of the reasons. *Chapter 3* gives details of some of the oversights in Government documents.
3. The interests of water users conflict with those of water extractors, effluent disposers and flood controllers. These interests will be better

served by being under a separate authority (*Chapter 2*).

4. As far as canals are concerned, they play a very small part in the supply of drinking water and the disposal of sewage effluent. Their only claim to be part of the water cycle lies in their land drainage function. There is no surplus—no wasted—water in the canals (*Chapter 4*).

5. We are convinced that, if the inland waterways are to prosper (as the Government desires), then a separate authority must be established to look after, promote and develop the amenity and commercial interests. An organisation that only maintains the *status quo* is insufficient.

6. Accordingly, we suggest (*Chapter 4*) that a National Waterways Conservancy should be established in order to promote and look after the interests of inland waterways, whilst leaving the overall control of the water substantially in the hands of the R.W.A.s.

The N.W.C. would be responsible for amenity and navigation on the waterways; it would be reimbursed by the R.W.A.s for the costs applicable to water supply and drainage.

7. Finance is all important (*Chapter 5*). Inland waterways do not lose money: they cost money like other amenities. It is unrealistic to expect users to pay for all the expenditure incurred. We suggest that the necessary money should come from users, local authorities (in respect of local amenities), R.W.A.s and the

Treasury. We also suggest (*Chapter 5*) that Treasury grants should be available to clear the chronic backlog of maintenance work.

8. In *Chapter 7*, we discuss the future of inland shipping with reference to the new barge-carrying ship systems. We are convinced that this country is neglecting a great opportunity by not modernising our inland waterways. The Common Market countries are not making the same mistakes; can we afford to ignore our inland waterways any longer?

9. We suggest the formation of a planning and financing section of the DoE (*Chapter 8*). This would be responsible for the planning of waterway modernisation for cargo carrying and would be able, together with the DoE's other transport planning divisions, to take a comprehensive view of all our transport requirements. In adopting this suggestion, we would be following the European pattern.

10. We are convinced that the statutory right of navigation must be returned (*Chapter 9*). We are confident that the Hon. Anthony Berry's promise, made on behalf of the Conservative Party, will be honoured.

No doubt when the canals were built it was argued there was no need for the right since the canal companies would encourage trade. The emergence of the railway companies showed how vital the existence of the right was.

- This right is a vital safeguard against abuse of the law. Nobody knows the future; the right will ensure there *is* a future for the inland waterways.
11. In *Chapter 10*, we say why we think the existing maintenance standards and the provisions for their enforcement are inadequate. Both should be radically improved.
 12. Remainder waterways (*Chapter 11*) are in urgent need of retention or restoration (as appropriate). Costs are rising every year. Deterioration is increasing. Strangely, the Government appear to have adopted an attitude of non-resistance to restoration schemes rather than the full-blooded support one would expect from a Government anxious to make the best use of the inland waterways.
 13. In *Chapter 12*, we briefly discuss the independent waterways; we think the N.W.C. should have ample powers to take over these navigations if they are offered.
 14. To sum up:
 - a. a National Waterways Conservancy should be set up;
 - b. there should be adequate finance for the waterways;
 - c. the statutory right of navigation should be returned;
 - d. far greater thought should be given to commercial carrying developments. A separate DoE planning section should be established;
 - e. remainder waterways should be upgraded and restored as soon as possible.

Appendix 1: Annual tonnage and ton-kilometre totals

	Goods Carried ('000 tons)		Index (1963 = 100)	Ton-kilometres (millions)	
	1963	1969		1963	1969
Austria	5,793	7,238	125	995	1,194
Belgium	64,801	92,657	143	4,779	6,870
Fed. Germany	167,326	233,800	140	39,513	47,650
France	76,838	110,205*	143	11,358	14,601
Italy	3,209	4,388	137		
Luxemburg	NIL	8,015		NIL	N/A
Netherlands	151,443	237,002	156	20,201	30,077
Switzerland	8,469	8,315	98	36.7	41.1
U.K.	9,258	6,809	74	242	140

*1968.

Taken from *E.C.E.*, published by the U.N.

Appendix 2: The Public Right of Navigation

A Very Brief Historical Note

The concept of a navigable river as a public highway goes back to before the beginning of legal memory. The monks of Theale made the River Kennet navigable in the 11th century as a work of "public benefit and pious endeavour". Magna Carta confirmed the then law by ordering the removal of fish weirs and other obstructions to free navigation on the Thames and Severn and all the great rivers of the kingdom. Shortly before the beginning of the canal era, there were a number of river navigation improvements which were authorised by Parliament. Such Acts invariably included a section containing words to the effect that the river "shall be and shall forever hereafter be deemed to be a free river and all the King's liege people whatsoever shall have and enjoy their free passage along it". These clauses were in fact confirming what was already law.

The Coming of the Canals

When the building of the artificial canals started, compulsory powers were usually required to acquire land and these were conferred by Acts of Parliament. In exchange for granting these powers, Parliament required that the canals should be dedicated to the public. At the same time a number of Turnpike Acts were passed by Parliament. Turnpike roads were highways by land subject to toll and there was a public right to use them; canals were regarded as highways by water subject to toll and there was a similar right to use them.

The Railways

With the coming of the railways a considerable number of canal and river navigations passed under the control of the railways. This had to be authorised by an Act of Parliament. Parliament were strong believers in competition and opposed monopolies and as they feared

the railway companies would try and strangle canal trade, they required the railway companies to keep and maintain canals they controlled properly repaired and in good order and condition so that they should "*be at all times kept open and navigable for the use of all persons desirous to use and navigate the same and that without any unnecessary hindrance or interruption or delay*". In 1873, Parliament passed the Regulation of Railways Act and incorporated this provision into general law. Section 17 provided that railway companies owning or managing canals should maintain them so that the canal should "*be at all times kept open and navigable for the use of all persons desirous to navigate the same without any unnecessary hindrance or interruption or delay*".

These words mean exactly what they say. The Act talks of "all persons"; there are no "ifs" or "buts", no qualifications.

The leading highway case of *Case v. the Midland Railway Company* in 1859 established the principle that the public right of navigation extended to any vessel with dimensions suitable to the waterway concerned as long as its use did not cause an unreasonable burden on those liable to maintain the waterway. This is a very important principle in highway law and subsequently led to the decisions entitling perambulators to use footpaths and motor-cars to use the roads. The House of Lords has said, "A right of navigation is simply a right of way and with that right you must not interfere."

Section 17 of the 1873 Act applied to the British Transport Commission when it owned canals and subsequently devolved on the British Waterways Board. It was not removed, in respect of nationalised waterways, until 1968.

Right not absolute

The duty imposed by the right of

navigation was not absolute. It was, like a road, subject to the payment of reasonable tolls or licences and it was also subject to reasonable stoppages for repairs. It did, though, mean that a canal manager or owner could not close a canal for repairs for an unreasonable

period. It also meant that he could not refuse entry to a canal to any well-conducted person who offered to pay a proper charge. Further, it meant that the canal company (or later B.W.B.) could not levy an unreasonably high charge.

Appendix 3: The Public Right of Navigation

Legal Actions now Avoided

It may be helpful if we list the four kinds of legal action which we are advised could have been taken against British Waterways before 1968 and which now cannot:

(i) Injury or Damage

The *present* legal position is that one navigates nationalised man-made waterways by consent of the private owners (B.W.B.). One has no right to be there. If, therefore, one's boat is damaged or one suffers personal injury because of negligence by B.W.B., then B.W.B. are not liable to pay damages of any sort. However, if the boat owner is there as of right, then the Board would normally be liable to pay damages.

This surely is only fair. No local authority in its capacity as a highway authority or indeed a landowner over whose land a footpath passes can escape liability for negligence. Why should B.W.B. be placed in a different position? Local authorities and most landowners insure against the risk of paying for negligence. B.W.B. should do the same.

(ii) Failure to Maintain

B.W.B. have a duty to maintain the

nationalised artificial inland waterways. As there is no public right to use these waterways, they are private property. What right, therefore, has anyone to take a legal action against B.W.B. alleging failure to maintain?

(iii) Refusal to Allow Navigation

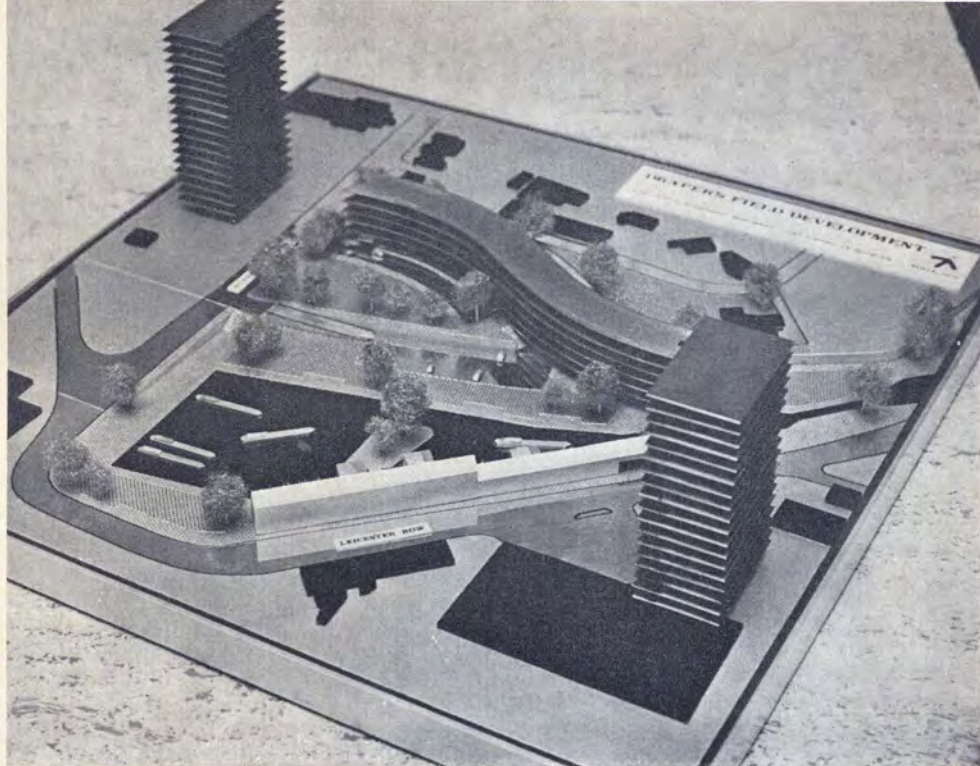
One could take action against the navigation authority if they unreasonably refuse to allow one to navigate, i.e. by padlocking locks or not maintaining a lift bridge in a condition in which it will lift.

(iv) Business Loss

If a person is carrying on a trade, either hiring out boats or carrying goods, and the navigation authority fails to maintain the canal or river in question with the result that the person has to close down his business or suffers other financial loss, he could seek damages for that loss.

Conclusion

Without a public right of navigation, no one is in a position to complain. Therefore, to give meaning to B.W.B.'s maintenance duty, the right of navigation should be restored. In practice and in law the duty to repair and the right of navigation are indissoluble.



A model of the proposed development of the canal basin at Coventry with the improved Coventry Canal as the central feature. Will Regional Water Authorities be interested in promoting such urban improvement schemes?

The Inland Waterways Association Limited

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*Back Cover: Derelict lock gates on a Remainder section of the Kennet and Avon Canal. The canal is gradually being restored but is it likely that Regional Water Authorities will be interested in continuing the restoration of derelict waterways?
 (Photo—Robert Shopland.)*

