

**Email to Steven Halls,
Chief Executive: Councillor Ann Shaw,
Leader of the Council, Three Rivers District Council
29th Jan 2015**

Dear Mr Halls,

Further to last years exchange of emails I now have further evidence to demonstrate the existence of public navigation rights on the River Colne. You insisted at the time that there could be no public rights of navigation in non-tidal waters with the exception of a few "Great Rivers" and dismissed the evidence relating to the River Colne which we provided you with. You will remember that the River Colne was describes as "*the water and great river called ' Colneystreme' "*" in the entry in the Calendar Rolls, dated 1433 August 12, which appointed commissioners under the statute of 25 Edward III [Stat 3, c. 4]. This statute only dealt with the protection of navigation.

Since our exchange of emails, our research has continued and as we approach the 800th anniversary of Magna Carta in June there is a natural upsurge in academic comment on Magna Carta and Clause 33 (23 in post 1215 versions) and it's role in protecting public rights of navigation. I would therefore like to draw your attention to the case of [The King v Clark, 1702](#), (12 Mod 615; 88 ER 1558) which established

"And per Holt, Chief Justice, to hinder the course of a navigable river is against Magna Charta, c. 23, and anything that aggravates the fact, though not directly to the issue, may be given in evidence upon it; as here the taking of money to let people pass. And it is no exception to a witness here, that he contributes to carry on the suit, or that this public nuisance (sic) was to his private nuisance (sic)."

I must also draw your attention to academic comment on the subject. In [a lecture to the All Party Parliamentary Group on the Constitution, 26 February 2013](#) (see page 2), Professor Nigel Saul, Professor of Medieval History, Royal Holloway University of London 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."

The [Magna Carta Project academic commentary on Clause 33](#) (at the end of section (b)) confirms that this applied to all rivers -

"Londoners came to believe that this could only be achieved if they had the control of the whole of the Thames. The Charter did not make this sweeping concession, but repeated John's prohibition, without a penalty clause, and extended it to all English rivers."

The [attached document](#) also contains extensive research into statutes and Royal Commissions which demonstrates clearly that the public navigation rights were not subject to any limitation based on their tidal or non tidal nature or the size/status of rivers as part of a limited group of "Great Rivers". The evidence from statute, Royal Commissions, case law and academic research all confirms the existence of public navigation rights in all rivers subject only to the practicality of navigation and the size/nature of the craft able to navigate.

Public navigation rights can only be modified or extinguished by Parliament, either directly or through delegated powers. There has been no such “due legal process” to change the law (if there had been, lawyers or historians could say what it was) so the same public navigation rights must still exist today. The continued refusal of the Three Rivers Council to accept the evidence or offer evidence to the contrary reflects badly on Three Rivers Council.

In 1215, Magna Carta was a sham. King John had no intention of observing the agreement and within weeks he had petitioned the Pope to have it annulled. When we celebrate the 800th anniversary in June will the Three Rivers Council be honouring the spirit and intent of Magna Carta over the centuries by upholding “*the principle of free passage along England's rivers*” referred to by Professor Nigel Saul, or paying lip service in the style of King John?

Regards

Keith Day,
Director, River Access For All