



National Farmers' Federation

Submission

Senate Standing Committee on Rural Affairs and Transport Inquiry

Management of the Murray-Darling Basin: Impact of Mining Coal Seam Gas

30 June 2011



Member Organisations



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1. The National Farmers' Federation

The National Farmers' Federation (NFF) is the peak national body representing farmers and, more broadly, agriculture across Australia. It is one of Australia's foremost and respected lobbying and advocacy organisations.

Since its inception in 1979, the NFF has earned a formidable reputation as a leader in the identification, development and achievement of policy outcomes - championing issues affecting farmers and dedicated to the advancement of agriculture.

The NFF is dedicated to proactively generating greater understanding and better-informed awareness of farming's modern role, contribution and value to the entire community.

One of the keys to the NFF's success has been its commitment to presenting innovative and forward-looking solutions to the issues affecting agriculture, striving to meet current and emerging challenges, and advancing Australia's vital agricultural production base.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

The NFF recently implemented a re-structure of the organisation. Through an associate category, this has enabled a broader cross section of the agricultural sector to become members of the NFF, including the breadth and the length of the supply chain.

Each of the state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

2. Introduction

The NFF welcomes the opportunity to make a supplementary submission to the Senate Inquiry into the management of the Murray-Darling Basin (the "Inquiry"). NFF has previously made a submission on the original terms of reference that arose from the release of the Guide to the proposed Murray-Darling Basin Plan. This submission will specifically deal with the additional terms of reference referred to the Committee in relation to the impact of the mining of coal seam gas.

The NFF and its Members, particularly those in Queensland, NSW, Victoria and Western Australia, are facing an increasing numbers of issues relating to the mining of coal seam gas. Moreover, the Australian Farmers' Fighting Fund has and continues to receive a significant number of applications for financial assistance for legal cases relating to issues arising from coal seam gas exploration and production as these affect landholders.

Because of this, the NFF has established a Mining and Coal Seam Gas Taskforce to look at the role that NFF might have in seeking resolutions to these issues at a national level, as well as how the NFF might assist our Members through a coordination role. This Taskforce has now met twice and will again meet in August to further progress its work.

This Inquiry is timely in that these issues are escalating, and landholders are seeking legal avenues to address their concerns. Nevertheless, while supporting the move to broaden the terms of reference for this Inquiry to examine coal seam gas, the NFF are concerned that the Inquiry will not study the effects of more conventional mining on water and land use within the Basin.

The NFF and its Members are not advocating the prevention of mining and coal seam gas exploration or extraction. However, the NFF and its Members are concerned to ensure that these industries' can work constructively together to deliver balanced outcomes for Australia from social, economic and environmental perspectives. The Commonwealth and the States and Territories need to ensure that wherever possible, the respective industries can coexist but recognise the food production needs in a global context. This may require an altered and more considered approach rather than a mad rush towards resources extraction.

3. Heading for the coast

The extraction of resources has occurred historically in more remote areas of Australia. In these areas, the major interface with agriculture has been with the grazing industries and a very small population base. As a result, any issues arising have been easily resolved through a range of agreed initiatives.

The move in more recent years to take up mining and petroleum leases for exploration and production/extraction in the closer settled areas of Australia has resulted in a new range of challenges for the mining and petroleum industries, agriculture and the affected communities.

For agriculture in particular, the closer settled areas have higher population bases, have higher valued agricultural land and typically have more cropping and intensive uses than the rangeland areas. Moreover, landholders have held their properties for several generations resulting in a very strong attachment to their land.

The mining and coal seam gas industries have underestimated this connection and should consider this in their interactions with the agricultural industry and their communities.

4. Consultation and Engagement

NFF has had firsthand experience in various consultations undertaken by Government and others. It is fair to say that this varies considerably – with many being less than successful. The most recent failure was the Guide to the proposed Murray-Darling Basin Plan. A better approach is now being undertaken by the Murray-Darling Basin Authority (“MDBA”) Chair Craig Knowles whose approach to engendering changes in the way the MDBA does business. It also relates to the culture of the organisation that must come from the top of an organisation right through to the bottom.

It is also fair to say that the mining and coal seam gas companies are learning from their bad experiences in consultation in closer settled regions of Australia that their previous consultation does not work well everywhere. A change is being seen as these companies suffered community backlash however, the damage then has to be undone.

Another important issue is the changing nature of the ownership of exploration and production tenements/leases. This creates continual change for landholders and that landholders are

constantly dealing with new mining companies and their representatives. Notably this leads to frustration and fatigue hence why some landholders just accept terms and walk away.

Moreover, the NFF is still hearing from landholders about disrespect, bullying and misleading behaviour by such companies. Such behaviour and culture must change to one of respect so that the other issues can be resolved.

It has been suggested that landholders and community would be best served if companies could commence their interaction by holding a community meeting to outline their exploration and extraction plans and seek community views. This is in contrast to the current approach that appears to be to deliver each landholder an individual letter requesting access as the first approach with community consultation occurring when significant community and landholder angst has occurred.

It is suggested that a code of practice is developed on consultation and that the mining and coal seam gas companies adhere to best management practice in this regard. There is a significant literature that supports a better approach than is currently undertaken (e.g. the 2001 OECD Citizens as Partners Handbook).

5. Key Issues

While the NFF is still refining its approach to mining and coal seam gas, issues can be grouped into a number of themes, which NFF will outline.

Land Access

While landholders cannot prevent use of their land for exploration or production, the negotiation of land access arrangements across jurisdictions varies considerably. A more consistent approach across jurisdictions is warranted. Moreover, the flexibility for landholders to negotiate commercially realistic compensation arrangements is needed.

Land Access is normally negotiated for easements for roads, wells and pipes. With the coal seam gas industry, this will mean a network over a landholder's property. In some cases, the extent of such networks has meant the need to establish "give way" signs on individual properties. Where such networks interfere with normal farming operations (e.g. in the middle of a paddock for cropping or irrigation as opposed to a fence line), higher compensation arrangements ought to be due.

Common issues that arise in relation to access arrangements include:

- biosecurity provisions;
- imposition of confidentiality clauses;
- a lack of environmental benchmarking;
- lack of clarity around OHS requirements and indemnity; and
- willingness to cover a landholder's legal expenses.

Landholders also need the ability to negotiate operational arrangements with companies where normal farming operations intersect with exploration and extraction activities. For example, if a company has staff on the ground and a farmer has already booked an aerial chemical spraying job, there are real concerns for occupational health and safety (OHS) of those staff.

A further issue is the need for public liability and environmental insurance. Unlike usual commercial arrangements where one party may have regard to the ability of the other party to meet its obligations, a landholder will not have the ability to refuse entry to a CSG company because of financial insecurity. Many jurisdictions do not require security deposit from proponents prior to commencing mining operations which leaves landholders exposed in circumstances where companies are incapable of meeting their obligations to the landholder, the landholder's property, or their own staff.

To remedy this, CSG companies should be required to maintain public liability insurance to cover any liabilities they incur as a result of their activities on the landholder's land. Common public liability policies have two deficiencies; they do not cover environmental damage, and they do not cover liability incurred under a contract (such as a land access agreement) unless specifically approved. Accordingly, to adequately protect the landholder the CSG company must:

- Submit the landholder's access arrangement to their insurer for approval; and
- Take out separate environmental insurance; and
- Note the landholder as an interest holder on the property (which will enable the landholder to seek payment even where the policyholder ceases to exist).

Mining Best Practice

One of the major concerns for landholders and the wider community is the effect that mining activities have on aquifers also used for stock and domestic water or irrigation. These impacts occur in a number of ways, including the use of chemicals in the drilling or fracking process and cross-aquifer contamination. NFF's Members suggest that there needs to be a mining code of practice to ensure that these risks are managed and minimised as much as is possible.

Litigation currently underway in the United States¹ also states that there needs to be transparency in the use of any chemicals in the fracking process. The use of chemicals must be authorised under Federal (as is the case for any chemicals used by the agricultural sector) and the development of standards in relation to these chemicals is warranted. Any chemicals must be shown not to affect the aquifer (through movement of water from the extractive point through the ground to aquifers) or the any use of such water (i.e. it must be safe for human and other consumptive uses). The importance of this cannot be underestimated particularly when other countries have taken proactive steps to reduce the unknown impacts, e.g. the United Kingdom has recently banned fracking due to unknown effects on environment and prime agricultural land².

NFF understands that the chemicals used in fracking processes in Australia are listed on the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) but that the majority have not been assessed³. A response to a question without notice in the Australian Senate on 14 June 2011 indicates that assessment is on a priority basis but a large number of chemicals are not assessed. The response indicates that a framework is being developed to provide a more rapid assessment and advice⁴. NFF recommends that this process is expedited as a matter of urgency and that sufficient Commonwealth resources are invested to ensure this occurs.

¹ 2011, *BHP must be wary of how it handles Arkansas farmers in shale oil quest*, The Age, Tuesday 7 June 2011.

² 2011, *CSG 'fracking' suspended in England*, <http://www.abc.net.au/rural/news/content/201106/s3240500.htm>. Accessed 10 June 2011.

³ 2011, Australian Senate Hansard, Senator Ludwig tabling response to a question without notice: additional information from Senator Milne, 14 June 2011, p.30.

⁴ Ibid

A recent major issue resulting in media attention on the industry is the poor standards that have resulted wells that have “erupted”⁵. The reasons for these are not yet clear (a report is being prepared) but could include the drilling practice, inferior quality parts, cost cutting, or simply a build up of pressure that was released when the well was uncapped. However, this incident is unlikely to be the only incident. Appropriate steps must be taken to minimise impacts to the land, environment, water aquifers and of course people (landholder and energy company employees) NFF suggests the development of an industry wide code of practice.

Again, issues arising in the media include leaking wells (gas and water) and contamination of water sources (e.g. from underground coal gasification or UCG operations). An audit of wells in Queensland reported by SkyNews stated that 2% of wells were leaking and were a fire risk and that additional wells were leaking but was not flammable⁶. Of course, leaking wells also have implications for water management in the Murray Darling Basin – potentially removing thousands of megalitres of unaccounted water from the system and having unknown affects on salinity and bore water levels.

This must be addressed with regular inspection and audits with any issues promptly resolved. There must be transparent and immediate reporting of any issues to the landholder due to the risk of explosions and injury or death to the landholder, family, employees or visitors.

NFF suggests consideration of National Drilling Standards, National Coal Seam Gas Industry Code of Practice, National Standards for Fracching Chemicals and the registration and approval of chemicals used for fracching prior to this use commencing (as is the case for agricultural chemicals).

Water Management

There are a number of ways in which mining and coal seam gas affect the water resources in an area, including dewatering aquifers, contamination of aquifers (chemicals, poorer quality water intrusion or cross-aquifer water) and physical collapse of aquifers. A major issue for the coal seam gas industry in particular is the disposal of water from the extraction of gas.

In many cases, state legislation falls short, as does the National Water Initiative to deal with such issues. As an example, water extraction with gas is treated as a waste product in Queensland and therefore, is not accounted for in the water balance of a region.

While there is a “make good” provision, it is difficult to apply if there was no baseline of the resource at the start. The Queensland Government has acted to resolve some of these issues, but data sharing is a problem. For example, how can a company determine its impact, assess the cumulative impact of all activities on an aquifer (landholders and other extractive company’s) if the Queensland Government will not provide the necessary landholder extraction history. There may be sensitivities in providing this information however; it is necessary to understand the historic, current (e.g. reduction through water plans) and future impacts. Water quality also needs to be independently assessed through a benchmarking process prior to establishment of the coal seam gas industry in an area.

⁵ For example, see <http://www.couriermail.com.au/business/coal-seam-gas-well-blowout-near-dalby/story-e6freqmx-1226060860912> and <http://www.theaustralian.com.au/news/breaking-news/coal-seam-gas-well-blowout-near-dalby/story-fn3dxiwe-1226060868637>. Accessed 16 June 2011.

⁶ 2011, *Audit finds leaky coal seam gas wells*, SkyNews, 7 June 2011, <http://www.skynews.com.au/eco/article.aspx?id=622459&vId=>. Accessed 16 June 2011.

Any proposals to address impacts must consider mitigation options such as maintaining the water balance of the aquifer through reinjection, substitution and other measures. This must be part of the consultation process to establish any project, and there must be wider landholder support for the measures.

The National Water Commission (NWC) has recognised that mining needs to be better considered under the National Water Initiative (NWI). However, the NFF policy is that the mining (and coal seam gas) industry ought to be considered another consumptive user of water and be required to account for its impact through existing state and federal legislation and water resource plans.

The inclusion of mining and coal seam gas as specific items under the NWI may be warranted. However, if the Council of Australian Governments (COAG) agrees, then each state must be required to lodge an amended NWI Implementation Plan for accreditation as progress is measured against this not the NWI. The Commonwealth Government is a particularly good example as its implementation plan does not include its responsibilities arising from the *Water Act 2007* (Clth), including the Basin Plan.

The *Water Act 2007* (Clth) requires the MDBA to consider interception (s.22(3)) such as mining and coal seam gas activities. At present, it is unclear how the MDBA proposes to deal with this in the Basin Plan. The *Water Act 2007* (s.255A) does require a study prior to the granting of any licences for subsidence mining operations above aquifers.

The Commonwealth Government also has an interest in the Great Artesian Basin (GAB) through its Coordinating Committee (representation and funding activities). NFF understands that there is connectivity between the mining and coal seam gas activities and that GAB. Moreover, the Commonwealth and State Governments have invested, along with landholders, in a capping program to ensure the sustainability of this resource. The mining and coal seam gas activities may undermine this good work.

NFF suggests that the above may require further actions at a Commonwealth level, including cross border groundwater resource plans, a GAB resource plan, aquifer interference legislation and national water testing standards. Dealing with the cumulative impacts on water must be considered and the NWC have completed a project about this for the mining sector⁷. A key finding is that the tools and products are also relevant to the coal seam gas industry.

Environmental Approvals

Prior to mining and coal seam gas activities commencing, the relevant approvals are required under State and sometimes Commonwealth legislation – the latter as it relates to matters of national environmental significance (NES) protected under the Environment, *Protection and Biodiversity Conservation Act 2000* (Clth) (EPBC Act).

From conversations with landholders, it would appear for the coal seam gas industry in particular, to be an extensive learning curve on approvals and any conditions that are attached to those approvals. Landholders have advised that conditions they were successful in obtaining on their property are being replicated for subsequent approvals for other farms.

Moreover, there is some community concern for the auditing of conditions and the monitoring and compliance regimes in place to do so. The concern is that this is just not done on any

⁷ See the NWC Website for the Impacts of Mining on Groundwater Study: <http://www.nwc.gov.au/www/html/629-effects-of-mining-on-groundwater.asp?intSiteID=1>.

legitimate scale. It may also be a reflection of the significant number of conditions. For example, approvals with hundreds or thousands of conditions are nearly impossible to police and are therefore meaningless. However, a small number of conditions that are capable of being policed and audited (i.e. have legislative “teeth”) may better serve affected landholders and the environment.

The consideration of cumulative impacts of each successive project is important from a water, and also a protected matter, perspective. At the Commonwealth level, cumulative impacts are being considered as part of the review of the EPBC Act. It might also be that such issues are dealt with via bioregional or strategic planning processes. To assess these impacts properly, independent benchmarking needs to be undertaken when licences are approved to provide baseline data for comparison over time.

It would also appear that many projects receive “State Significant Project” status. Such projects therefore are treated differently than would apply under normal circumstances. The ability for landholders and other affected stakeholders to get better approval conditions is impaired.

Rehabilitation

The issue of rehabilitation post mining or gas extraction remains a vexed but important issue. For coal seam gas, the issue is removal of wells, roads, and gas and water pipes criss-crossing farms. For the latter, there are different views including short and long-term impacts. As an example, removal at the end of the project may mean short-term degradation and long-term subsidence. Leaving the poly pipes in the ground may resolve the short-term impact but these will collapse in the longer term resulting in subsidence issues. Some examples show that crops cannot be grown on pipes installed 50 years ago so there may also be very long-term production impacts.

It may be that these issues are negotiated with individual landholders. Importantly such agreements must incorporate review provisions and adequate compensation arrangements.

Land values

A looming issue is whether the coal seam gas industry is having an impact on land values. It would appear that prospective buyers are actively seeking farms without any coal seam gas tenements for exploration or production. One individual farmer has noted that a recent valuation resulted in a 15% devaluation purely because of coal seam gas activities on the property. This has obvious implications for the financial arrangements that farmers have.

This is a long-term issue particularly for farmers who may wish to sell in the future. Many are noting that any compensation provisions for land access also ought to be negotiated for an upfront cost and then an annual cost attached to the land (so that future owners will receive appropriate compensation). It should be noted that such arrangements for land access do not include a devaluation of land values arising from the coal seam gas industry operating on the property.

Land values, while probably not a high profile issue now, is becoming so and will continue into the future. The purchase of properties by mining companies at exorbitantly inflated prices (to overcome and/or avoid protracted negotiations), while excellent for the seller, has implications for the purchase of properties by farmers for agriculture.

Moreover, potential purchasers of farming land are actively seeking properties without any gas and mining exploration or production licenses/tenements. This has implications for sellers and buyers of land for agricultural production over the longer term (most wells have a life expectancy of 15-20 years but the entire gas well field may well be much longer due to the continual sinking of wells in the gas field site).

Instances have also arisen where due to confidentiality provisions, purchasers have not been told about exploration activities before purchasing land. Given implications on land value, landholders should not be required to withhold this information during sale negotiations.

6. Community

Our Members' experience in dealing with communities effected by coal seam gas has shown that concerns are not restricted to affected landholders, but to entire communities. Concerns about water supplies and the flow on effects of farmers leaving the land are evident. In many regional communities, the sale of only a handful of properties means families leaving the town and can spell the end of a school bus run, a community health service or even a school.

It would be prudent for benchmarking to be undertaken to measure the effect of the coal seam gas industry on these communities over time and assist with future planning decisions.

7. Conclusion

The pressure on land use change will only increase into the future – whether this arises from mining and petroleum industries, plantation forestry, urban and peri-urban encroachment, carbon sink forests or the transfer of private land to public land for conservation. However, with a burgeoning global population, the ability to produce food is paramount. Moreover, Australia is good at producing high quality food very efficiently. Further reductions in land use for agriculture must be subject to careful scrutiny and in the context of how Australian farmers can meet the challenges of producing 70% more food by 2050 from a reduced resource base. To this end, there must be significantly higher investment in research, development and extension.

The NFF notes that due to the structure of land titles, landholders are unable to prevent the exploration or extraction of minerals or petroleum on their properties. In some instances, farmers support such industries due to the opportunities this provides for employment and the social and economic investment in their local communities. In other situations, there are detrimental effects on landholders and the environment.

Governments are starting to react with Queensland introducing a strategic cropping land policy, the NSW Government placing a moratorium on the issue of new exploration and production (minerals, resources and energy) licenses and the Western Australian EPA refusing a CSG environmental approval. It is unclear how this will assist communities (e.g. the Queensland policy does not commence until 2013 and significant licences already issued in NSW).

The Australian Farmers' Fighting Fund (AFFF) has a number of existing mining and coal seam gas cases. Moreover, the AFFF is receiving new applications as farmers become exasperated with the situation. The NFF has reacted by appointing a Mining and Coal Seam Gas Taskforce to look at the role that NFF might play at a national policy level and where NFF might assist its Members facing this situation.

This submission attempts to summarise the key issues coming to the attention of NFF and makes a number of suggestions to resolve some of the key issues relating to communication, land access, mining best practice, rehabilitation, water management, and environmental approvals.

Moreover, in the coming months, the NFF will determine a solid set of proposals for action and policy and will actively advocate changes to ensure a good outcome for all stakeholders concerned.

NFF Contact

Deborah Kerr
NRM Manager