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By Email: wtreview@environment.gov.au

Mr Stephen Hunter
Water Trigger Review
GPO Box 787
CANBERRA ACT 2601

Dear Mr Hunter

Thank you for this opportunity to provide a submission to the review of the Water Trigger legislation that you are currently undertaking.

Despite having been less than three years since the passing of the Water Trigger Act through the Australian Parliament, there appears to exist, a degree of confusion surrounding both the reasons and intent associated with its establishment. We would like to take this opportunity to provide you with documentation, as well as a first-hand account of some of the processes associated with its creation, so as to clarify the context for both the introduction and successful passage of the Water Trigger legislation.

It is also timely to discuss performance of the legislation to date. The role of the Independent Expert Science Committee includes improving the body of knowledge required to carry out proper assessment of the very complex interaction between groundwater and surface water systems with the sheer scale and rapidity of modern coal mining and coal seam gas developments. In discussing its performance, it is necessary to point out that the Committee's capacity to perform its role has been both limited and hampered by the Government, thus leading to adequate assessments having been impossible to achieve.

The political system and in particular, the planning system, has not responded to the sheer capacity of these new developments to impact and alter the entire landscape in a three-dimensional sense. The concepts and knowledge that are required to assess cumulative impacts and carry out appropriate risk assessment of these impacts across landscapes (in a three-dimensional sense) simply does not exist. The current response of planning agencies and the weak defence of under-informed politicians is to suggest that site-by-site assessment is still the best approach to use. The reality, however, is that this approach is used because more comprehensive assessment models and data do not currently exist.

It is interesting to note, however, that the current Murray Darling Basin Reform, as far as rivers are concerned, does include the development of new models and risk assessment processes, together with sustained investment in the delivery of new data that is capable of assessing impacts across

vast distances. It is telling that the political and planning process is stubbornly opposed to seeking the same data for something as invasive and disruptive as longwall mining, the huge voids created by modern open-cut techniques and the de-watering of coal seam gas aquifers, with its subsequent creation of hydraulic and geological imbalance.

The pretence of concern and attention played out by many politicians, who should be representing impacted communities, is supported by agencies willing to limit their capacity to deliver full and proper assessment.

Both signatories to this submission have had many years' experience and involvement in the water reform process and through that involvement, have always endorsed the pursuit of better risk assessment and cumulative impact assessment. We would note that rural communities and particularly farmers, have engaged willingly in these processes to ensure that the water resources that are the life-blood of the farming industry and all rural communities, are sustainable and protected. It is insulting to the people who have committed themselves to these rural water reforms to see politicians and the planning process deliberately limit the capacity to properly assess the impacts of an industry that employs less people than agriculture and has very little genuine economic engagement with the communities and towns that exist near their mining camps.

Prime Minister Gillard's commitment to resolving concerns over impacts on water resources:

The capacity of the mining and gas sectors to gain legislation and regulatory process that suits them is on display regularly when proposed new coal and coal seam gas developments are in close proximity to, or actually displace agriculture. As they moved into the Liverpool plans and Namoi Valley generally, the mining companies and coal seam gas companies came up against an agricultural sector that had just emerged from a long and very arduous water reform process.

As such, the farmers and farming communities have been remarkably well-equipped to understand the risks that these proposed mining and gas developments pose to water resources and recognise the unusually close relationship of the extractive industry to both politicians and the planning process.

The very lax processes, applied by governments and certain politicians, to the approval and planning criteria required of these extractive industries is in stark contrast to the rigour of water reform.

This is the backdrop to the Water Trigger. An informed, educated and literate rural sector was and still is, outraged at the disparity in treatment of agricultural water resources that, by law and community commitment must be sustainable, with an extractive industry that is used to having its own regulations rubber-stamped by weak politicians and subsequently weak planning processes.

There is no doubt that without the hung Parliament, the Water Trigger legislation would never have been enacted. It is equally true say, however, that as the issue was explored and forcefully put forth by the Member for New England and his policy staff, there came a grudging respect and finally understanding of the issue. Prime Minister Gillard and Environment Minister Burke, in the end, became actual supporters of the legislation. Although it may have started as an inconvenience of the regionally held balance of power, it evolved into both a respect and understanding of the issue.

We have attached for your perusal, a letter from the Prime Minister to Tony Windsor, Member for New England. Contained within this document is a commitment to the establishment of an Independent Expert Science Committee, funding the work of this Committee and providing funding for an assessment capability to State governments through a National Partnership Agreement.

The backdrop to this letter was the tabling of a Private Members' Bill by the Member for New England, which was the first attempt to legislate for a Water Trigger. The push back from the mining sector, State governments and elements within the Gillard Government was significant enough that the Prime Minister requested we agree to a National Partnership Agreement as a means of resolving the planning and assessment problems. We agreed to this on the basis that there would be rigorous oversight of the National Partnership Agreement and that any indication or finding of failure to meet the terms of the Agreement, by particularly New South Wales, would result in the Gillard Government bringing forward the Water Trigger legislation as a Government Bill. Although we were concerned about timing, we held confidence that Prime Minister Gillard would stick to her commitment as detailed in the attached letter and that a failure of the States to meet the terms of the National Partnership Agreement would lead to the Gillard Government introducing the Water Trigger legislation.

It is interesting to note that, although the assumption is there that the Independent Expert Science Committee was set up as an adjunct to the National Partnership Agreement, this is not correct. Minister Burke was increasingly interested in receiving specific water impact information and that is the basis for the establishment of the Independent Expert Science Committee. It is certainly true that as the Government tried to resolve the concerns over the planning process, the Independent Expert Science Committee was pivotal to its strategy of using the National Partnership Agreement on Large Coal Mining and Coal Seam Gas Developments as a means of resolving the issue.

The National Partnership Agreement on Large Coal Mining and Coal Seam Gas Developments included two reviews by the COAG Reform Council and a third, independent review. The first two reviews were crucial to proving to us information as to whether the states were actually compliant. We have also attached the first two reviews which, in the first review showed New South Wales to be at risk of breaching the Agreement, while in the second review, showed New South Wales to actually be in breach of the Agreement. The third independent review, carried out by Mr Stephen Hunter, very carefully stepped around any reference to the failure of New South Wales to meet the Terms of the review.

There are many hundreds of pages of documentation on these negotiations with the Gillard Government and we were very careful to ensure the National Partnership Agreement was exact in its requirements and therefore could be reviewed in such a way as to allow the commitment to bring the Water Trigger legislation to Parliament as a Government Bill.

As such, portrayal of the Water Trigger as politically driven can be dismissed. The States had every opportunity to work within the National Partnership Agreement arrangements. New South Wales was unwilling to comply. In fact, New South Wales is still non-compliant with the National Partnership Agreement. Calls to wind back the Water Trigger legislation, or hand approval and compliance back to NSW, are inappropriate within the context of the proper protection of water resources, which underpin both the natural environment and the well-being of rural communities and rural industries.

The role of the Independent Expert Science Committee:

The Terms of Reference of the Independent Expert Science Committee and the discussion of its role within the National Partnership Agreement, as well as the minutes of the early Independent Expert Science Committee meetings, all reflect that the responsibility of the Committee was to put forward a comprehensive cumulative risk assessment process. This work would include engagement with Catchment Management Authorities or similar institutions, depending on the State. One of the vehicles to construct this comprehensive cumulative risk assessment process was to be pilot projects. The Namoi is one such case: to date, there has been no engagement with the successor to the Catchment Management Authority, being the Local Land Services. The Local Land Services has failed to continue the significant work of the former Catchment Management Authority on risk assessment at a landscape scale, in regard to coal mining and coal seam gas projects.

Under the existing Water Trigger legislation, the Commonwealth Minister is required to consider a bio-regional assessment where one exists. Clearly no such consideration was carried out by Minister Hunt in assessing the Shenhua Watermark proposition, as the bio-regional assessment has been under-funded and under-prioritised.

Again, the comparison between the work carried out by the Murray Darling Basin Authority on the Murray Darling Basin Plan, under the oversight of the same Minister, is in stark contrast. One process is fully funded, including priority cumulative risk assessment, while the other is completely limited.

The value of the Water Trigger Act, despite the best efforts of the current Government to hand the Water Trigger assessment and compliance role back to a non-compliant State, has been proven in the Shenhua Watermark proposition. The Commonwealth standard, as applied through the Water Trigger Act, is more rigorous and thorough than the standards signed off on by the New South Wales Planning process.

Significantly, although the Commonwealth Minister has signed off on the Shenhua Watermark proposition, we still await provision by Shenhua, of the Water Management Plan required by the Water Trigger process.

Immediately upon it becoming available for examination, it is imperative that the Independent Expert Science Committee is fully engaged in the review of that Water Management Plan. This review by the Independent Expert Science Committee should include the responsibility to advise the Commonwealth Minister as to whether the Water Management Plan complies with and meets standards set by the Commonwealth assessment. The continuing role should also include ongoing monitoring to ensure the Water Management Plan is both properly constructed and followed, as well as whether, at any point, the trigger levels have been exceeded.

Is untenable to hand this process back to New South Wales, which is still non-compliant under the terms of the National Partnership Agreement.

Summary:

The Water Trigger legislation was enacted after extensive consultation with industry, communities and the States, as well as an attempt to resolve any concerns over the planning process through a National Partnership Agreement.

The Independent Expert Science Committee has been hampered through under-funding and under-prioritisation of the risk assessment and cumulative impact work. Comparison with the efforts of the Murray Darling Basin Authority is appropriate, as it clearly shows the Independent Expert Science Committee has not been allowed to carry out its proper work, particularly in the area of bio-regional assessment.

The pilot studies are meant to engage with the Catchment Managers in the catchment community: this is not happening

The Independent Expert Science Committee must be properly charged with reviewing compliance with regard to conditions set out as part of the Water Trigger process

When it comes to coal mine and coal seam gas developments, it is clear the view held by politicians and planning agencies regarding the importance of water protection and sustainability is very different to the one they hold of the Murray Darling Basin Plan.

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Former Member for New England

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