

Water Trigger Review  
GPO Box 787  
CANBERRA ACT 2601

via electronic mail: [wtreview@environment.gov.au](mailto:wtreview@environment.gov.au)

4 February 2016

Dear Mr Hunter,

**Re: NSW Irrigators' Council Submission to Independent Review of the 2013 Environmental Protection and Biodiversity Act Amendment - Water Trigger**

The NSW Irrigators' Council (NSWIC) welcomes the opportunity to provide comments to the Independent Review of the 2013 Environmental Protection and Biodiversity Conservation Act Amendment - Water Trigger.

NSWIC represents irrigators and the irrigation industry. The Council has 25 member organisations which include valley water user associations, food and fibre producers, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. We support the development and growth of sustainable irrigated agriculture and as such, only will focus on those aspects of the independent review that are of direct relevance to NSWIC's Members<sup>1</sup>. In the context of the independent review of the 'water trigger', NSWIC will focus on members' concerns about mining and Coal Seam Gas activities in NSW and their potential impact on NSW's water resources.

NSWIC' long-standing policy position is that the preservation of sustainable resources for agriculture - including water - must be absolute and unconditional. As such, we have continuously advocated for a strict 'no regrets' approach to mining and Coal Seam Gas (CSG) activities in NSW in order to ensure that the states' water resources remain protected from potential detrimental impacts of these extractive industries. We have reiterated this policy position to the NSW Government and the responsible State Departments in our submissions and briefings. Despite our ongoing engagement in the mining and CSG planning processes and regulatory reform framework, we have been repeatedly disappointed by the rigour of the NSW Government assessment, approval and monitoring work relating to water the impact of mining and CSG on water resources. This disappointment has resulted in the Council expressing a lack of confidence in the State's mining and CSG approval process and its inability to protect water resources from the detrimental impacts of mining and CSG proposals and developments. Furthermore, a range of NSWIC member organisations have expressed similar concerns and for that reason we urge the independent review panel to thoroughly assess the submissions of our member organisations and obtain further detail on industry specific concerns.

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<sup>1</sup> However Each Member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

To emphasise, NSWIC notes that former Environment Minister Bourke stated that there was no point in delegating any of the CSG water safeguards to the States given the point of the legislation (i.e. water trigger) was to act on problems in State safeguards (McCormick, St John. and Tomaras, J, 2013). NSWIC believes this point highlights the issue we have had with the NSW assessment and approval framework and also explains why NSWIC believes the 'water trigger' must remain within the EPBC Act. It must be ensured that the Federal Environment Minister has the capacity to provide protection to water resources that are of national environmental significance especially in those cases where the State Government experiences a conflict of interest between mining and CSG development and the protection of water resources or where State assessment and approval processes are inefficient or insufficient to provide adequate protection for these water resources.

Given the shortcomings of the State's regulatory framework, NSWIC has rejected the 'one-stop-shop' reform process because we believe the State's approval process, while significantly strengthened in the last 12 months, is still considered inadequate to protect the State's water resources. The Federal final approval process under the Water Trigger provisions, being a last line of scientific assessment through the IESC linked to Ministerial approval additional to the State processes - is considered by NSWIC and its members to provide needed extra scientific rigour to the development approval process. If this were not to remain in place, this would result in the State approval of extractive activities without rigorous examination of potential impacts on water resources and important additional conditions on project proponents designed to reduce the risk of negative impacts.

Furthermore, the lack of confidence in the NSW Government approval process appears to occur on both sides - with proponents and community interest groups, as well as industry peak bodies commissioning independent expert reports to justify or contest the findings of the State's approval processes. Needless to say, this shows the ongoing mistrust in the rigour of the scientific analysis of water resource impacts that underpin the NSW Government decision making processes on mining and CSG developments.

Overall, NSWIC has been supportive of the 2013 amendments to the Environmental Protection and Biodiversity Act 1999 (EPBC Act) which acknowledged the importance of water resources as a matter of national environmental significance and provided for the introduction of the 'water trigger' provisions. NSWIC believes the provision for the Federal Environment Minister to add to or vary the conditions of development approval in cases where water resources are threatened is important and must be retained in the EPBC Act.

In addition, NSWIC believes the 2013 amendments to the EPBC Act and the introduction of the 'Water Trigger' overcame challenges posed by the previous iteration of the Act, in that it provided the Federal Environment Minister with the ability to consider the impact on water resources directly and not through the flow-on impacts to matters of environmental significance such as threatened species or Ramsar listed wetlands. NSWIC believes that this is a significant improvement to the Act and a provision which should be retained. Without the involvement of the Federal Government, several NSW mining and CSG projects would have proceeded without consideration of how to monitor impacts to local water resources and the wider cumulative impacts on surface or groundwater.

However, NSWIC believes that further refinement of the 'water trigger' provisions could be made to enhance its effectiveness in protecting water resources. One example that NSWIC highlights is the NSW Gateway approvals process. NSWIC is of the view that the Federal Government should engage in 'closing the loop' within the approvals framework by enabling the Independent Expert Scientific Committee (IESC) to consider whether their advice has been taken into account by mining proponents. We believe that this Gateway loop should also be provided by the Federal Government through the EPBC Act and the water trigger provisions.

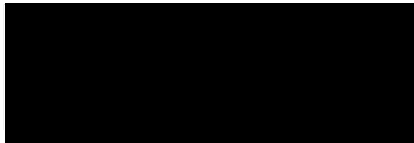
NSWIC supports a rigorous regulatory approach for the assessment of impacts associated with mining and CSG. We have observed that without a rigorous regulatory framework in place, impacts on water resources have not been appropriately considered. Multiple iterations of the regulatory

framework has led to the establishment of the IESC, and the consolidation of existing knowledge through the Bioregional Assessment Program, and a specific focus on water resources when assessing development proposals. In addition, the establishment of appropriately located groundwater monitoring sites, consideration of cumulative impacts, and additional resources to expand the existing knowledge base on risk and impacts of CSG and mining would have not occurred without a strong regulatory framework in place.

In conclusion, NSWIC believes that the benefits delivered through the 'water trigger' provisions in the EPBC Act outweigh the administrative costs of maintaining it in the Act. This is particularly relevant as only a small number of projects have been considered by the IESC compared to the large number of planning applications made to State Governments each year. While It is clear, that only those proposals which have a possible detrimental impact on water resources will go through the IESC assessment process, NSWIC believes it is necessary to maintain the 'water trigger' provisions to ensure that water resources receive an additional layer of protection.

Please do not hesitate to contact 

Yours Faithfully,



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NSW Irrigators' Council