

Environment and Communications Legislation Committee - 17/04/2013

GREGSON, Mr Andrew, Chief Executive Officer, New South Wales Irrigators' Council

MOORE, Mr Mark, Policy Analyst, New South Wales Irrigators' Council

SIMSON, Mrs Fiona, President, New South Wales Farmers

[14:23]

CHAIR: Thanks for talking to us today. The committee has received your submissions as submission 41 from New South Wales Farmers and submission 1 from the New South Wales Irrigators' Council. Do you wish to make any amendments or alterations to your submissions?

Mrs Simson : No, thank you.

Mr Gregson : None from us, thank you.

CHAIR: Do you wish to make a brief opening statement before we go to questions?

Mrs Simson : I would, thank you.

CHAIR: Both?

Mr Gregson : Yes, please.

CHAIR: Could you make them brief, then, please.

Mrs Simson : Certainly. New South Wales Farmers appreciates the opportunity to be here today and address issues of relevance raised by this committee. New South Wales Farmers welcomed the announcement of the Environment Protection and Biodiversity Conservation Amendment Bill 2013, which is proposed to amend the Environment Protection and Biodiversity Conservation Act 1999. New South Wales Farmers supports the regulation of coal seam gas and large coalmining development which has or is likely to have a significant impact on water resources. New South Wales Farmers' support of these amendments stems from dissatisfaction with current state-based water policy in meeting the needs of the agricultural industry.

NSW Farmers and farming communities alike are bitterly disappointed with the current policy protecting agricultural water from the impacts of coal-seam gas activity and large coalmining development in New South Wales, expressing particular dissatisfaction with the strategic regional land use plan, the proposed gateway process and the Aquifer Interference Policy. Federal oversight of mining and coal-seam gas activity, which could have a significant impact on water resources, is required in New South Wales to place sensible limits on mining and coal-seam gas activities and provide peace of mind to the industries and communities which rely on those resources. Any further protection granted by federal government intervention at this time is most welcome. Of course, we would prefer to have adequate state systems in place that adequately protect our land and water but, until this occurs, it is in our members' best interests to place our support behind this bill.

CHAIR: Mr Gregson?

Mr Gregson : Thank you, Chair. First of all, given that NSW Farmers is a member of ours, it would be career-limiting of me not to say that we agree with everything that Fiona just said wholeheartedly! From the position of the Irrigators' Council, we do not oppose the development of mining or coal-seam gas operations—never have; never will—for a whole lot of reasons, not least of which is that it would be pointless to oppose them. They occur and will continue to occur. Our whole approach to this process has been to find a way that irrigated agriculture, in particular, and mining and coal-seam gas operations can coexist. The way that that needs to happen is to ensure that our most useful and precious asset—that is, water—is protected beyond reasonable doubt in development of mining and coal-seam gas operations, and we have been pretty consistent with that commentary from the start of the process.

The last time I was in this room discussing this very subject, in fact, was with a New South Wales upper house inquiry where we said that it would be our great preference for state legislation to control the issue. Unfortunately, what was to be legislation, what was to be a regulation, in fact ended up being a policy and, as a result, we are now reliant on the Commonwealth to ensure that our natural resources are protected and, as a result, we have not objected to the passage of this bill to date.

CHAIR: Thank you. Senator Waters?

Senator WATERS: Thanks for being here today. Mrs Simson, firstly, thanks for your submission. Can you walk us through your concerns with why the state laws are not working to protect water and communities and agriculture and why you think we need the federal government to step in here?

Mrs Simson : It relies basically on the Strategic Regional Land Use Policy which has two main elements that could provide the certainty that we are seeking but has failed to do so. One is the gateway process, and one is the Aquifer Interference Policy. We were involved extensively in the negotiation of these policies, both before the government came into power and after they took power, and were part of the strategic regional land use stakeholder group.

We had confidence that some of these interventions, some of these pieces of legal instrument, would actually have some legislative force; unfortunately, neither of them do have the power to actually protect water—particularly underground water, above all else—and have an absolute power to do that. For example, the gateway process only gives the independent gateway panel two options, and those are to approve a development or to approve a development with conditions, and that recommendation can go through to the PAC, the Planning Assessment Commission. But the independent gateway panel is not given the power, under the current regime, to actually refuse a development or say that it is not the right thing to do in that area of land.

The Aquifer Interference Policy, again, is quite sensible in some of the things that it seeks to impose, but it is only a policy; it is only a guide. We were led to believe that the minister 's advice would be binding—that the policy would be an enforceable instrument—and it is not. Unfortunately, that does not provide the certainty that landholders in New South Wales, particularly those with water rights, need, to carry on their business.

Senator WATERS: We have heard a lot of claims about the number of conditions that are placed on coal and coal-seam gas companies, as if it is some kind of badge that the companies like to trumpet about. Do you have any comments on or experience of whether those conditions are properly monitored and enforced by the state agencies?

Mrs Simson : Up until now, most certainly there were very limited resources to audit and inspect the conditions and whether they were actually achieved in developments across the state. I am certainly aware of—but I can get more information on, should the panel require it—a number of projects within the Hunter, for example, where the

conditions of consent have been routinely overlooked and, unfortunately, not picked up along the way because of the inadequate resources provided to police those conditions. Sometimes I think it is the sheer weight of the conditions, and sometimes I think, on the other side of it, it is just that the government has not provided the resources to properly police those conditions.

Senator WATERS: I think there has been a similar experience in Queensland, at least in my experience. There was an amendment made to this bill before it passed the House which removed the ability of the federal government to give away this new power, should it pass the Senate, to state governments to administer. What was your reaction to that?

Mrs Simson : We are supportive of that. At this point in time the state legislation, as we have put forward in our submission, is inadequate to provide the certainty that our water resources will be protected in the face of large coalmining or coal-seam gas development, and it is for that reason that we would support the federal government having oversight of this.

Senator WATERS: Do either of your groups support the landholders being given increased rights to be able to refuse coal or coal-seam gas on their land?

Mrs Simson : Yes, we do have a position of supporting those rights. But, to us, the primary protection is actually for the water and the upfront scientific knowledge and data assessment that is required to give community certainty that the natural resources will be protected into the future.

Mr Gregson : On that issue, whether an individual landholder is given the opportunity to say no is largely irrelevant to the water resource because it likely spreads across far more than one property. As a result, if an aquifer is damaged elsewhere other than on their property they still face the same consequences.

Senator WATERS: That is a good point.

Mrs Simson : If I may add, the problem with that of course is that the right to say no is also the right to say yes. So we could have landholders who were agreeing to developments who, without this proper legislative environment, could actually be damaging the water resources of that region, yet they may have had the right to say yes. So I think this overarching legislative reform is what is actually needed upfront, before anything else.

Senator WATERS: I assume that you are across this issue. There have been some recent approvals in New South Wales, issued by the federal government: Gloucester, Boggabri, Maules Creek and Tarrawonga. Are you generally across those four approvals or are you aware of them?

Mrs Simson : I am aware of one of them in particular but not across the detail particularly.

Senator WATERS: My understanding is that they were approved maybe a month or six weeks ago. I cannot recall the date; I think it was 13 February. What is your response to the contention that these new laws should be applied to those projects that have only been so recently approved and have not yet begun?

Mrs Simson : I think retrospectivity is always a difficult thing for legislation and for governments. However, I can totally understand the community wishing that if there is new evidence, new science, new legislation that would protect their water resources, that that should be applied. I am also of the opinion, however, that the approval be given in stages. So I see no reason at all why, if it is not possible to actually apply the

new approvals standard ahead of time before the projects actually starts, it should be able to approve it to future stages of the development.

Senator WATERS: Finally, your position seems to be somewhat different to the National Farmers' Federation, from whom we are hearing tomorrow. Can you flesh out why you think that is and what the points of difference are?

Mrs Simson : I think, ideally, all farmers would always sing from the one sheet. But it does not always happen. My primary responsibility is to my members. In New South Wales we have very strong policy about this issue. The National Farmers' Federation is a federated model and if it chooses to dabble in policy that is primarily state set, then I think that is what is going to happen. On this occasion we make no apology at all for standing up for our members and it is my responsibility to do so. If the state policy is not actually fulfilling the needs of my members, then we need to make that stand. It is for that reason that we disagree with our national body.

Senator RUSTON: You made a comment that federal organisations dabbled in state policy, but you are actually asking the state government to deal with a state based issue. Could you explain that?

Mrs Simson : I think the federal government is well recognised through legislation, such as the EPBC Act, that the federal government does have responsibility for some of these areas of federal significance. Water and the way that water moves underneath state boundaries is clearly one of those areas where in this case the federal government should have oversight of the protection of some of those valuable water resources, and that is the intent of this bill. Primarily it is much easier if the state deals with the protection of these resources, and it is envisaged generally through legislation that the state should. But, if the state fails to do so, as we believe has happened in New South Wales, then the federal government must indeed step in and make a decision. That is what is not happening here in New South Wales at the moment.

Mr Gregson : We are not a member of the National Farmers' Federation, so perhaps I can give a different view on this. I do not think it is so much a disagreement as differing perspectives. I think the National Farmers' Federation's concern is the introduction of a water trigger into the EPBC Act. I think that that concern is legitimate, and quite a number of farmers would see that concern as legitimate. However, those with a perspective, particularly in New South Wales, looking at the lack of a regulatory regime which we now face, simply place greater weighting on the requirement to protect the natural resource in the first place rather than accept the risk of the EPBC Act water trigger.

Senator McKENZIE: Mrs Simson, can I take it from your submission that this is not your preferred option for how to deal with the issues within New South Wales?

Mrs Simson : No. My preferred option, and our association's preferred option, remains that the state government provide the protections that it promised it would prior to coming into office. We feel that that could quite easily happen through some of the instruments are currently in place—by making the aquifer interference policy enforceable, for instance.

Mr Gregson : What we ended up with in New South Wales was a good set of rules that do not apply to anybody. As a result, we are now having to rely on the Commonwealth to fix the problem. I think it would be our preference if New South Wales were to revisit its perspective and make its good set of rules applicable to at least someone so that we do not have to have the difference between the two jurisdictions. But unfortunately that is where we have found ourselves.

Senator McKENZIE: Would you recommend the current strategy that both your organisations are pursuing in relation to this particular bill as a model for how industries or individuals should pursue grievances they have against their state governments?

Mrs Simson : I will comment briefly on that, but I am sure that my colleague will as well. We will continue to work with the state government. In the meantime, the federal government has stepped in and is providing a level of control that we certainly feel is necessary given the legislative environment in our state. However, we would still prefer that the state actually applied these controls, and we are continuing to work with them to implement those sorts of rules and make these pieces of legislation enforceable. I think the point to make here is that this is to give not just agriculture the certainty that we need and the communities the certainty that they need but also the mining and coal seam gas companies the certainty that they need.

Senator McKENZIE: Will that incentive remain if this bill gets through—for the state government to deal with what seems to be a flaw in their own regulatory environment, in the New South Wales case?

Mrs Simson : For a state government's perspective, you would probably have to ask them, but I would imagine that they would much prefer to be making their own legislation and their own rules and have that ticked off in the state.

Senator McKENZIE: In terms of consultation, we have heard a lot of critique around the process of this amendment's construction. It seems to be endemic of this particular government's approach to their legislative agenda. Could you please comment on the consultation that your organisations have had in the development of this bill with the federal government.

Mr Gregson : We are an apolitical organisation, so I will leave the frontispiece of your question, as it were, alone if I can be so bold.

Senator McKENZIE: That is fine.

Mr Gregson : We became aware of the details of the bill at the same time the parliament did.

Mrs Simson : We were the same. However, we had been consulted earlier about the actual thought of an EPBC amendment, and there were discussions about it sometime ago. We had had some broad discussions about that trigger. As we have already commented, we would much prefer that these sorts of legislative arrangements take place in the states, and that was certainly the position. But, at the time when the national farmers body discussed it, it was the same position.

Senator McKENZIE: You have made some comments about your confidence, I guess, in the politicisation of decision making of other levels of government. Are you confident in this particular amendment to the EPBC Act and the EPBC Act more generally and the ministers that administer it not politicising the issue that affects your members?

Mrs Simson : I think for my members the primary concern here is the natural resources. They are not so interested in the politics at play; they are interested in a binding instrument that will protect the water resources in the face of this development.

Mr Gregson : Our organisation is solely about outcomes. I have always found it a little trite to accuse politicians of playing politics. That is what you do; we do what we do.

Senator McKENZIE: Keep irrigating, Mr Gregson! Senator Waters was talking about our international agreements and what defines a water resource of national significance. I would be really keen to get your perspective on that in particular, and whether you

have any comments on what we heard this morning about the cease-to-pump provisions and how they affect agriculture and mining operations differently.

Mr Gregson : They are two quite distinct issues that you raise. The first one goes to the construction of the bill to make the amendment itself. I think it is broader than just the water trigger. The fact that there is no clear and objective definition of what a significant impact is after that act has been in place for so long—and indeed since the Federal Court gave a virtually indefinable interpretation of it—is a massive weakness of the act and as a result is going to be visited upon the water trigger as well. I would have thought it was worth some time for this committee and indeed the parliament to consider coming up with a definition of what significant impact is, because that is the greatest uncertainty that anybody who is going to face the EPBC Act will face.

In terms of cease-to-pump regulations, I would refer to a specific example, because I'm allowed to talk about specific examples, unlike your previous witnesses. The rules in New South Wales have been fiddled to such an extent that rules that apply to water extraction are different for mining operations and irrigation operations, despite that fact that, frankly, it is the same litre of water. The alluvial aquifers in the Hunter are a specific example—alluvial aquifers are those that are connected, necessarily, to the stream flow itself. There are cease-to-pump rules when flow is at a defined low point—that is, irrigators cannot turn their pumps on and cannot extract water. But those that are operating mines that are necessarily extracting water through their very operation have just been excused in a new regulation from those same considerations. They are not required to cease to pump. We are advised by the minister that they will be finding different ways for them to store and later release water, but from our perspective a water user is a water user and they should abide by the same rules. The fact that the government is prepared to make exceptions for mining and coal seam gas operations is why we are here in the first place. They got it wrong.

Senator BIRMINGHAM: Mrs Simson, how does this legislation to amend the EPBC Act provide any greater protection, at least in law, than the existing laws in New South Wales do?

Mrs Simson : From a layman's perspective, and this is the understanding that my members have of it, it will give the power to say no. That currently is not apparent in New South Wales. It gives the water resource such importance that the protection of it is enshrined in legislation that will give the regulator the power to say no.

Senator BIRMINGHAM: So the New South Wales regulator cannot on the basis of impact on water reject a development application?

Mrs Simson : My understanding is no. The Office of Water will issue advice according to the aquifer interference policy and that will then be assessed in terms of the overall development.

Senator BIRMINGHAM: Mr Gregson, you look like you are about to add something.

Mr Gregson : From a layman's perspective it gives somebody the opportunity to say no. From a legal perspective it gives somebody the opportunity to say no. At the moment, water resource impacts are merely advisory and part of the mix of making a determination. This bill will allow water solely to say no to a proposal. Frankly, that is what we wanted in New South Wales.

Senator BIRMINGHAM: Yes, that is correct in terms of how it will change the EPBC Act, my question was how, compared with existing New South Wales legislation, it makes that change.

Mr Gregson : By our understanding there is no opportunity based solely on water for the water minister to say no to a proposal.

Senator BIRMINGHAM: Obviously, this won't change that at a state level anyway.

Mrs Simson : No.

Mr Gregson : Sorry, I understand. Yes, it will not give any additional power or change the New South Wales process; it adds in what should have been there in the first place.

Senator BIRMINGHAM: In terms of the rigours of assessments that are undertaken and so on, obviously there have been some significant changes with the advent of the independent expert scientific committee and it providing input to both the state and Commonwealth processes. Do you think there has been significant and fair enough opportunity for those reforms to be trialled and tested?

Mr Gregson : Possibly not, but from our perspective the quality and provision of information is not the key; it is how and whether that information can be used to determine an application. One of the things that I have been fascinated to watch is the reaction of the mining and coal seam gas industry in saying that, on the one hand, this burdens them with a great deal more regulatory and administrative process but, on the other hand, all of that information that they have to provide to one process is already provided to the others anyway—so, on the one hand, it creates a heap of additional work and, on the other, it creates none whatsoever. From our perspective, the same information is provided, expert information is provided from the Commonwealth panel for both the state and the federal government, and the information would, you would hope, be complete to the best of its capacity. What we need is the opportunity, based on that information, for somebody to say yes or no.

Mrs Simson : I totally agree with that. At the moment, what we are lacking in New South Wales is that we are yet to see the gateway panel appointed, but we believe that they are going to be independent scientific experts. We also have the IESC. But, in New South Wales, when we bring those experts and that advice, data and knowledge back into the state process, we will still have a process that does not recognise the enforceable right to protect water in a mining or coal seam gas development.

Senator BIRMINGHAM: Mrs Simson, to paraphrase your response to Senator McKenzie, I think you indicated you would rather this Commonwealth intervention—that it is not necessary but you would rather the state laws and application of them were satisfactory. That is not an inaccurate paraphrasing of you, is it?

Mrs Simson : No, I think that is correct.

Senator BIRMINGHAM: If state laws were at some later stage amended and strengthened in ways that would satisfy your members, would you then think that it is reasonable to have overly similar if not identical processes operating simultaneously at state and federal levels?

Mrs Simson : I think I would have to cross that bridge when I came to it. At this point in time we do not have that in the state, so until we actually got to that position it would be very difficult to comment on it. I would have to defer my opinion on that. Do you have a comment on that, Andrew?

Mr Gregson : To date the state government have been fairly forthright that they do not intend to change anything material in the process. As a result, into the medium term we can see that this is the necessary solution to it, but we cannot look any further down the track than that, as I am sure you cannot either.

Senator BIRMINGHAM: I go to a statement in your submission, Mr Gregson:

When first advised of the approach to the matter by the Commonwealth, we were concerned that it may affect users of water resources other than mining and CSG extraction.

Why were you concerned?

Mr Gregson : We were concerned at what the constitutional head of power would be. In particular, we were concerned it would be external affairs, in the same way that we faced the basin plan and came out very poorly indeed. In looking at the way the bill was eventually constructed to use interstate trade and the corporations power, we were reasonably content.

Senator BIRMINGHAM: Why were you concerned if you had been captured?

Mr Gregson : Because we believe that at the moment the regulation of water resources in terms of irrigated agriculture is sufficiently and well regulated by the state and indeed by the Commonwealth Water Act.

Senator BIRMINGHAM: So you would not have wanted and would not want to see irrigation developments subject to EPBC assessment insofar as it touches on water usage?

Mr Gregson : We are already regulated at both state and Commonwealth level. We did not need a third layer.

Senator BIRMINGHAM: That, of course, is the response of the mining industry as well. They say, 'We are already regulated at a state and Commonwealth level as well.'

Mr Gregson : To which we would respond, 'Not in respect of water resources.'

Senator BIRMINGHAM: At a Commonwealth level, for your members, obviously this is a very large part of irrigation in Australia, but the Commonwealth regulation of irrigation extends only to one very large basin. But it does not capture all of the country under the Water Act, does it?

Mr Gregson : Large parts of the Water Act do apply nationally, but certain aspects of it, of course, apply only to the Murray-Darling Basin. Those sections of the Water Act in respect of basin planning obviously apply only to the basin, but others apply nationally.

Senator BIRMINGHAM: The imposition of those is rather dramatically different, though, isn't it?

Mr Gregson : I imagine it depends entirely on which particular part of it you are talking about. But, in terms of basin planning, yes, it only applies to the Basin Plan.

Senator BIRMINGHAM: That is fine.

CHAIR: Senator Waters, I can give you a couple of minutes.

Senator WATERS: There were a few great remarks that you made, Mr Gregson, that I want to follow up. Pardon me for being distracted now that I have the opportunity. It is important; I have to get the message out. It will come back to me; hopefully my thought will return.

CHAIR: I have a few questions. In the federal parliament debate on this, Mr Hunt, the opposition spokesperson—the member for Flinders—said:

... water is not just a precious resource; it is ... the lifeblood of Australian community, economic and social life.

If there are eight matters of environmental significance, why wouldn't this be a matter of national environmental significance if it is the lifeblood of Australian community?

Mrs Simson : My members absolutely agree with you and Mr Hunt, Chair. Water does need protecting, and it needs enforceable protection in the face of some of these developments that pose unacceptable impacts on this resource over the long term.

Mr Gregson : I am a little uncomfortable with the use of the word 'protecting', because it seems to give an indication that it must be reserved and not used, and from our perspective—

CHAIR: Not necessarily. That is not the proposition I am putting.

Mr Gregson : I understand and certainly concur with your view. We do not oppose the economic development of water, be it for agriculture, for mining or for any other use. But sustaining its ability to continue to provide that economic activity is where our interest lies.

CHAIR: Isn't that what Mr Hunt is saying? He says it is 'the lifeblood of Australian community'.

Mr Gregson : Yes.

CHAIR: Part of that is irrigation. Part of that is farming and industry.

Mrs Simson : It is the sustainability of the resource, perhaps.

Mr Gregson : Agreed.

CHAIR: Yes. So, if it is such an important issue, I understand that you agree, Mrs Simson, that if the state governments do not look after that resource then it is appropriate for the federal government to take steps to protect the resource.

Mrs Simson : That is correct.

CHAIR: Okay. We had some submissions here today from the Australian Coal Association. Mr Greg Sullivan—I think he is the deputy chief executive officer—said that you can get better environmental outcomes by negotiation. Mr Sullivan was formerly a senior public servant in New South Wales; he is now working for the Australian Coal Association. I—probably unkindly—described him as a gamekeeper turned poacher. But he argues that there is this approach of negotiation; that is his experience. Mrs Simson, I know that you are in the Liverpool Plains area. What negotiation have you undertaken to protect the aquifers in the Liverpool Plains?

Mrs Simson : I do not agree with Mr Sullivan, and my members do not agree with Mr Sullivan. What our members want—whether they live in the Liverpool Plains or wherever they live in New South Wales—is certainty provided by a regulatory regime that will protect their water resources for the future. I cannot understand how that certainty can be given by negotiation. Clearly there is a lot of money on the table in some of these coal developments, but that money—whether royalty dollars or dollars paid to landholders for the use of their land—does not in any way provide certainty for the sustainability of the water resource. That is what I believe our members want and the community wants at the moment.

CHAIR: So if the state government fails to take steps to deal with the issue, you did indicate there was an aquifer interference policy. Is it really as bad as we have heard described?

Mrs Simson : The aquifer interference policy is best described as a guide. The minister does make advice but that advice is not enforceable, it is not non-negotiable, and that is what we need. Yes, it is good to have a guide. Yes, it is good to have a policy, but we need to have that policy enforceable. It needs to apply to activities and people and there needs to be a non-negotiable protection of the sustainability of the water resources in

any of these developments. I think that is the standard that is applied to a lot of other industries and a lot of other developments and I cannot see why it should not be applied in this case as well.

CHAIR: The last time I was in the Liverpool Plains, some time ago now, there were concerns in relation to the number of exploratory bores that were taking place; I think it was over 300 just for BHP. The concerns went to the quality of the boring process, the capacity for the boring process to contaminate groundwater for irrigation and for farming use. AGL today have said that they have never experienced a problem with their boring processes, that they use international best practice. I do not want to put words in their mouth but the impression that they leave me with is, 'Don't worry about it, it is okay.' What is your experience of the boring exploration?

Mrs Simson : I do know that there is one bore to by a coal-seam gas company in the Liverpool Plains that was for test pilot production and unfortunately that bore was not properly poured and the bore actually failed after a short period of time. I think it comes back to the standards imposed on these operations. I think it comes back to the regulatory environment in which they operate. I think it comes back to who is overseeing the process. I think it comes back to having confidence in the legislation surrounding it. And I think it comes back also in the Liverpool Plains particularly to an acknowledgement about the environment in which they are seeking to operate. That environment is extremely fragile. It is interlocking aquifers that are high quality and high yielding. It is a matter of not just the quality of the water but the quantity of the water as well that is available. That water supplies not only the irrigation industry but also many of the communities of the Liverpool Plains. That water is absolutely vital for the survival of those communities into the future and it must not be put at risk by processes that are not properly legislated or enforced.

CHAIR: That test production bore, what company was it?

Mrs Simson : It was the Santos project.

Senator McKENZIE: I have a timing question. Was that particular project under the previous New South Wales government?

Mrs Simson : I have to take that on notice. It is in the not-too-distant past but the actual timing of it I would have to take into account. With that bore what happened is that they poured too much concrete into it and closed it up, but again it is a standard of the construction of bores, the transparency around the operation of those standards and the application of those standards in an industry that is seeking to operate in a fragile environment. For the Liverpool Plains it is not just coal-seam gas, it is also the major mining developments such as Shenhua, which is proposing to make a huge impact in that region.

CHAIR: Do you agree with the government's view that, for instance, BHP's 300 bores could have a significant environmental effect on the Liverpool Plains aquifers?

Mrs Simson : I think that the cumulative effect of a number of bores has to be taken into account in the assessment of any project. Particularly with coal-seam gas it is difficult to envisage exactly the impact that the amount of bores that the industry needs will have on the resource. The Namoi water study that has recently been completed in that area did not study the vertical connectivity of that resource, and that is clearly something we do need to understand before we start looking at these developments.

Senator McKENZIE: Mr Gregson?

CHAIR: Senator McKenzie, once you are the chair of the committee you can do that. Until you are the chair I will do that.

Senator McKENZIE: I stand corrected.

CHAIR: Good try! Mr Gregson and Mrs Simson, you can comment on this. Mr Hunt, in his presentation on this bill to the House of Representatives on Wednesday, 20 March, said:

The Federal Government are overriding the state's sovereign rights for their own political agenda.

Then there is some comment about why the government is doing that. But you are not arguing that this is for the government's political agenda; you are arguing that this is an appropriate environmental proposition, and it is not the government bowing down to Mr Windsor.

Mrs Simson : I had best let my colleague have a go at that.

Mr Gregson : Thanks!

Mrs Simson : No. I would totally agree with that. In this case it is the oversight of the water, the protection of the water and the sustainability of the water resources that is certainly the key issue here, and it is what interests our members and my members. My members are overwhelmingly not interested in playing politics. They are interested in getting some good outcomes, and the outcome they are seeking here is the protection of the water resources.

CHAIR: The other commentary we had on the bill was from Mr Ian Macfarlane, the member for Groom, who, in arguing against the bill, said:

... what are you going to do when the lights go out? What are you going to do when New South Wales does not have enough gas to run its industries?

Have you considered that in your support for the bill?

Mr Gregson : I find that argument fascinating and, in fact, one of the things that we made clear last year in our policy on mining and coal seam gas, well before any of this argument was had, is that we do not, under any stretch of the imagination, understand the headlong rush to develop this industry. These are resources that have been there for, as best I know, hundreds of thousands of years and are not going anywhere. Until such time as we can give an absolute guarantee that there will be no third-party impacts and no long-term damage to resources, why are we in such a headlong rush to develop them?

Mrs Simson : Hear, hear!

CHAIR: So do you not buy the argument that you have to do it for the sustainability of industry and farming in New South Wales?

Mr Gregson : No.

Mrs Simson : We do not buy it either. We believe the state is extremely resource rich, as is the Commonwealth. I think the gas companies certainly do have some export requirements that they would like to fulfil, but at this point in time, if we were to concentrate on resources that did not have underground water resources where there was an issue; we do not buy that argument at all.

CHAIR: Mr Hunt, in the same debate, said:

What I have said to the gas explorers and gas producers with whom I have met is that a significant degree of community concern would be addressed if there were a voluntary arrangement where the large companies said that they would not proceed onto individual land without consent and adopted a standard of voluntary consent.

What are your views in relation to that as an alternative to this legislation?

Mr Gregson : In respect of impact on water resources, it is as absurd as the concept that you can negotiate an outcome to protect a resource. Simply because you can negotiate an access agreement to one piece of land does not in any way, shape or form offer protection to an aquifer which does not respect those same property boundaries. You cannot negotiate with everybody that is in an aquifer, particularly if you are talking about something the size of the Great Artesian Basin.

Mrs Simson : We as landholders do not have the right to do any earthworks or to make any property changes that are going to affect our neighbours downstream or elsewhere in the region or the catchment. I cannot see why that would not apply to this as well. Landholders should not have the right to say yes to a development that is going to impact the water resources for everybody else and for the future. No amount of money will actually pay for that.

CHAIR: You are raising the prospect of a landholder selling out to, say, BHP and then BHP doing 15, 20 or 40 bore holes and commencing, saying, 'We've done the analysis.' It really is a bit like self-regulation, is it not, in how it operates at the moment?

Mrs Simson : I'm just looking to see if he's got his mouth open! Owning the land, Chair, does not give you the right to destroy the resource.

CHAIR: Even if it is BHP?

Mrs Simson : I do not care who it is, owning the land does not give you the right to destroy a resource, particularly for future generations.

Mr Gregson : As I believe the Chief Justice said: I concur.

CHAIR: Say BHP buy a mine. Would this legislation ensure that they could not undertake drilling or mining that would affect other landholders and the aquifers?

Mr Gregson : That is certainly our understanding, yes.

Mrs Simson : Absolutely right.

CHAIR: Is that a good outcome?

Mrs Simson : It depends what outcome you are seeking and what value you place on some of these things. I think the community and certainly my members place a high value on the underground water resources that we have in this state and on the preservation and sustainability of those resources, not just for our food and fibre growing industries but for communities well into the future. I think that that protection and sustainability is non-negotiable for a lot of our communities and they expect the state government to provide that protection. The state government in New South Wales has so far failed to provide that and that is why we are supporting this bill from the Commonwealth.

CHAIR: What is your prognosis of the state government's willingness to make changes consistent with the protection that you require?

Mrs Simson : I think clearly the state government, whilst it does have some environmental ideals, is also conflicted a little with the royalties that it is seeking. In the Liverpool Plains in particular, there has been a large amount of dollars on the table in terms of the exploration licences. That is certainly an incentive for state governments—for the previous state government not this current state government, I must make clear.

Senator McKENZIE: Which political party was in charge of the previous New South Wales state government?

CHAIR: Senator McKenzie, if you could just behave yourself for a minute and not get too excited about making a pretty crude political point.

Senator McKENZIE: Pot calling kettle black!

CHAIR: Mrs Simson, continue.

Mrs Simson : I think I got to the end of that.

Mr Gregson : Our prognosis with respect to this state government is this: we continued to speak in very cordial tone with them, we continue to work with them and we are reasonably confident that they are listening to us and understand our concerns about water resources. However, they have made it very clear quite publicly that they do not currently have an intention of allowing the water minister to be the one who actively manages water resources, which is of great concern to us.

CHAIR: Is it the planning department or state development?

Mr Gregson : Essentially, they have left it to the Planning Assessment Commission, and the water minister solely has the opportunity to provide opinion to that determination, as opposed to making a determination solely on the basis of water.

Mrs Simson : Interestingly, I believe that in New South Wales it is still the case that for exploration activities that do cause impacts, particularly in coal seam gas where we are looking at things like test pilot production, for example, which is an exploration activity, the approvals and assessment is actually done through the department of resources and energy. I would need to take that on advice, Chair, and double-check that that is still the case. But, clearly, we need the people who have the knowledge to be making the advice about these matters. The department of water is the appropriate body, but it needs to have the power to produce binding advice.

CHAIR: Have either of your organisations had discussions with the National Party or the coalition about your concerns in relation to their opposition to this bill?

Mrs Simson : In the Commonwealth?

CHAIR: Yes.

Mrs Simson : Mostly through the National Farmers' Federation. We have talked broadly with some of the members—very broadly, though, not detailed discussions.

CHAIR: I am just a bit perplexed, because the New South Wales farmers federation and the irrigators are here saying, 'If the state government can't do this, it is appropriate and important for you to do it.' What response are you getting from the coalition on that point?

Mr Gregson : We have spoken directly to the coalition in Canberra. We have advised them that we do not see any great danger in the bill for our members, that we are disappointed in the way that regulation has proceeded in New South Wales and that, as a result, we see this as the only option.

CHAIR: Are you getting the same negativity from them as there was in their speeches to parliament on this bill?

Mr Gregson : We did not receive any information from them that you would not have seen in the public domain.

CHAIR: Are you happy with that approach?

Mr Gregson : In general—and I think that the farmers have made this very clear as well—we are disappointed that this has to be in the federal realm, but we accept that our water resources need protection and this is the avenue that is left open to us.

CHAIR: So, as farmers and irrigators, you would like the coalition to support this bill. Is that correct?

Mr Gregson : Yes.

Mrs Simson : I would say yes too. I think their constituents may well expect that they should, and they may well be playing politics otherwise.

CHAIR: A less crude political point, Senator McKenzie, but made.

Senator McKENZIE: Deftly done, Chair!

CHAIR: I thank the irrigators and the New South Wales farmers federation for your input to this committee. It has been very helpful.

Proceedings suspended from 15:11 to 15:22