

JIM LEGGATE

Submission re Murray Darling Catchment, and
The Impact of Mining

The Committee Secretary,
Senate Standing Committee on Rural Affairs and Transport,
P.O Box 6100,
Parliament House,
CANBERRA. ACT 2600

Date 5.6.11

Dear Sir/Madam,

Please accept my submission presented below.

INTRODUCTION

You won't be allowed to bat for our Australian test team without having runs in the scorebook . Let's open up the scorebook on coal mining. Let's lift the veil off this secretive industry and check the down side. What is the success rate in making good the damage?

Senators, I contend that I am one who does know the down side to mining. Mines in the Murray Darling catchment are very likely to become serious point sources of pollution .The proposed expansion of coal mining and CSG mining onto such vast and important areas of Queensland and NSW is madness, unless there are changes. I appeal to the Australian Senate to instigate those changes, as follows.

At least we should pause, and carefully and deliberately take stock of what mining in Australia actually entails; and we should start dealing in facts rather than spin .The view that such mining may co-exist with other rural interests demands this response. Never before has it been more important to actually **check the environmental credentials of the mining industry**. The mining industry appears to be hiding behind a wall of deafening silence: it won't tell us details of its performance record. It is up to the Australian Senate now to insist on critical information being revealed.

This expansion would be good for the economy, at least in the short term, but there is strong resistance to the proposal and so we should try to find a safe way through this impasse. However, in trying to solve this, we have to be objective and not just bow to the short term interests of business and opportunistic politicians. Objectively, if you look at the facts and the science – **at present the risks are too high**. Rather than slamming the door on the proposal completely we should attempt to reduce the risks so that this expansion may then proceed.

Although it won't please any of the main stakeholders, the current impasse has no immediate solution, and that is because there is too much at stake (permanent loss of underground water resources and prime agricultural land), and because too much is to be taken on trust. **To trust is not in order in the present state of affairs**: and we can

not re-establish the necessary trust without more time. Trust has to be earned – it can not be bought. With the experience that I have, I say - “ we can not trust the mining industry to keep its promises and we can’t trust the government to insist that it does.”

We should remember these mine owners are risk takers, and amongst the risks they take is that there could be irreparable damage to the environment. They have repeatedly **taken risks before** and that is what they will **do again**. They will take risks with the aquifers and with the arable land. They will talk up their projects and we should be very wary and untrusting of the cheap talk about “making good” the environmental damage of mining. Serious irreparable damage has happened many times before as a result of their risk-taking (see the example of the East End mine in Queensland, ref sub48a to this inquiry) ; and mostly the mine owners are laughing all the way to the bank, despite the damage.

Any sensible risk analysis would show the national interest is not served by taking such high risks. The Senate, and all Australia, must be given more faith and trust in the industry before allowing access to any more land, and water resources. Once the gas infrastructure is built, at enormous cost, it is not plausible to talk of shut downs because then the project is too big to fail and gas production will not be halted, not even if operating conditions are breached. **Mine owners will breach the conditions with impunity**. That is the reality. I do not know the legal answer to this but it points to the need for a squeaky clean project, operated by squeaky clean owners. Before infrastructure is built – we need to have complete trust.

SOLUTIONS

Solution : Stage I – To address the question of trust

If this impasse is to be solved, ON THE EVIDENCE , I think the Senate must decide and adjudicate between my allegations on the one hand, and the position that the resources industry takes , on the other.

Quite quickly witnesses and evidence could be sought to allow the correct adjudication. The Senate, however, may have to use its powers to subpoena some critical information, which may not otherwise be forthcoming. eg from the CMLR (Centre for Mined Land Rehabilitation) at the University of Queensland. It is custodian of the most important information; and it should answer some critical questions (see below). Some mine owners may have to be forced into telling us what is happening on their leases. This would not be necessary but for the lack of transparency in the industry’s performance. **I doubt there has ever been an independent audit**. IECA (International Erosion Control Association) in Newcastle could also be consulted.

In contrast, my allegations are well supported, as explained in the footnote below.

1. My allegation – **most of the mining scars will be permanent** – unless environmental performance improves significantly.

Despite all the public propaganda it puts out the resources industry simply will not present the proof of its performance. From 1986-1997 I had inside information, intimate information, about most of the mine sites in Queensland; that was my job. I had proof of things, and because many of those sites are still being mined a lot of that proof is still valid. That is the starting point in this debate – step one is to examine the impact that has already resulted from mining our mineral resources. We must agree, at least broadly, on what it is.

Since 1991 I have presented evidence that there is very little successful rehabilitation of mining waste to a condition where further beneficial land use may arise. Without successful rehabilitation mining becomes a permanent land use and the scars remain. Sandmining may be the one exception but there is growing evidence that other mine sites invariably become point sources of serious pollution in our catchments (CSIRO and other science institutions could be consulted on acid mine drainage, as a start.). The land grab being proposed for new coal and CSG developments is massive; rehabilitation of the scars is a critical issue.

This is not a cheap shot but a message that is in line with all the other submissions I have made to the Federal government since 1995,(see list below). It is also in line with all the evidence and argument I have put before the Qld govt since 1991). **I was the one who gave evidence under oath.**

I SAY THAT MINING IN AUSTRALIA IS BECOMING A PERMANENT LAND USE AND REHABILITATION OF MINE SITES IS , LARGELY, A MYTH.

I say the industry generally has not taken enough care in the way it operates to reliably deliver stabilisation and containment of its wastes, before leases are surrendered.

The rehabilitation of which I am speaking extends to all the toxic and hazardous wastes in dumps and dams, as well as the residual pits and voids . The experts are telling us how problematic are the mining dams that are left behind. We must look at the evidence in all aspects of mine rehabilitation. I am talking about whole sites and not small areas selected for mere window dressing.

If there is no agreement on this past performance there will be no resolution of this impasse. I repeat that this is not a cheap shot at the industry from me , and my questions need to be answered. Returning cropping land to productive use after open cut mining is way off the scale and just wishful thinking; and that is a serious allegation.

I also say – unauthorised environmental harm has been caused to water resources on neighbouring lands. The EEMAG (East End Mine Action Group) has the best documented evidence of this, but it is not the only case. Landholders have been duded all over Queensland, and water resources polluted. I can provide further examples.

2. The industry position-

Mr Ross Dunn from APPEA has said recently, in a seminar, his gas industry wants to be given the opportunity to present its credentials, re its co-existence with others. This Senate inquiry should now insist that both APPEA and ACA (Australian Coal Association) be heard. Let's see if my allegations are successfully refuted. We are seeking verified results, validated with measured data . For a change, **the mining industry must accept the onus of proof and actually measure its rehabilitation results and present them.** I repeat my plea to start dealing in facts rather than just spin.

And so, I could pose the following questions, to start the exercise.....

- Is mining a permanent use of land resources ? To refute my claim that it is mostly permanent- could APPEA and ACA please report on the miles of seismic lines carved across Australia? How good was the rehabilitation of those areas? Please could they report on the rehabilitation of coal mines in Australia- what percentage of land disturbed has been returned to a useful condition? How much grazing land has been restored and how much arable land has been re-instated? It appears there is to be extensive further clearing on farmers' land, but even in the very best rehabilitation conditions, with all the factors of compaction, soil and slope at an optimum, a sixty year old tree still takes 60 years to regrow; and that means there is going to be a lot of disturbance of landscape and vegetation that remains for decades. Do they deny that, or agree?
- Is mining damaging to Australia's surface and underground water resources? Is it true that in many instances it has been so damaging that taxpayers have had to spend millions of dollars cleaning up where mine owners have made record profits, and then walked off their leases to open other mines elsewhere ? If this alleged damage is to be refuted it must be with valid evidence to the contrary, or else accepted as the correct evidence.
- Why do so many mine owners attempt to deceive the public by dubiously claiming that "monitoring is in place" to ensure protection of the environment? I know of at least three large mines in Australia where this was claimed - at Weipa, at East End Mine and at Mt Isa, and yet critical data were collected but never even reviewed, let alone used for corrective action! If these companies try to refute this they might like to release their data for public scrutiny. Will all data from the promised strict monitoring of CSG extraction, and of all coal mines from now on, be readily available for public scrutiny? Monitoring on its own does not necessarily protect anything !
- Is it true that several mine sites, and mine tailings dams, are already deemed impossible to rehabilitate to a stable condition where no maintenance is necessary, and require a trust fund to maintain them indefinitely? Those sites, if they do indeed exist, are proof of the permanent land use that a lot of mining entails. It seems the Rio Woodlawn mine in NSW has finished up as a toxic chemical site.
- What reasons can the industry give why we should trust them?

Solution : Stage II - to address the issue of regulation .

And -- it won't be much of a cricket match anyway if the umpires are just cheerleaders for the one side !

If rehabilitation of mine sites is shown by the facts to be very inadequate, and my assertions above are broadly correct, the next big question is **why has the regulation of this requirement of mining failed** The laws requiring it have been in place for decades, and are all still there, so if they have not been complied with **does that mean that mining is actually above the law?** The answer could be regulatory capture and if that capture is not overcome CSG will go the same way as coal mining in Australia . It too will be disastrous. Will the new CSG industry also be above the law? If it is, it will be a permanent land use; and there will be only one winner - mining. It won't be win win, and agriculture will again be the loser. **There is no way the public should support any further development of our mineral resources if we can not trust regulators to enforce strict conditions on mine owners.** I think the whole industry, including the government authorities involved, has failed its social contract.

* I recognise that if an independent audit were to confirm a sound performance by the mining industry which would give it good credentials for its proposed expansion, then I have no case, and no credibility. There would be no need for this stage II.

Solution - Stage III

To end this submission I offer as a solution the following proposal (based on my allegations above being verified).

- Open the mining scorebook and assemble the facts about mine owners making good their environmental harm. Identify the shortcomings, and openly and honestly address them so that mining is not always a permanent land use. I **think now is the time to stare down the arrogance of an industry refusing to be held to account**; an industry prone to dealing in spin, rather than facts. Mine owners do not own the resources – we do.
- Address and correct regulatory capture, and introduce an independent review panel. Regulators must become more independent and be better protected from bullying.
- Establish clearly, via expert legal opinion, that regulators run the risk of prosecution, if and when they are guilty of misfeasance, breach of statutory duty and non-enforcement.

So – let us look forward to having an industry with runs on the board and to a balanced mining game with fiercely independent umpires. An AFL-type tribunal review system would ensure and protect their integrity, and the interests of all stakeholders.

Footnote.

I am on the record having made the following submissions , all with a consistent message.

- 1995, I wrote letters to Fed. Govt. Minister, Senator Faulkner, about evidence presented to the Qld. CJC re massive non-compliance in the Qld mining industry; and the CJC finding that the mining industry, and its administration by government, needed to be fully investigated. Letters dated 21.7.95 and 4.9.95.
- 1995, Submission on regulatory capture to Senate Select Committee – Unresolved Whistleblower cases. Ref Hansard.
- 1997, Submission 028 into Productivity Commission's inquiry into the Black coal industry. Ref Commission's report.
- 1999, Whistleblowers Action Group submission to House of Reps committee into Catchment Management - outlining my case history and others. Refer EEMAG sub48a to this inquiry.
- 2002 Submission 180 to the Review of ACCC and Trade Practices Act.
- 2003 Submission 79 to Senate Inquiry into The Regulation of Uranium mining.

In addition I have published numerous papers, including those published by AUSIMM (Australasian Institute of Mining and Metallurgy), on mine rehabilitation. I used to be a member of ACA Environment Committee.

JIM LEGGATE