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Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

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By email: ec.sen@aph.gov.au

Water Use by the Extractive Industry NSW Minerals Council Response to Lock The Gate Alliance Evidence

Dear Committee Secretary

The Lock the Gate Alliance (LTGA) made statements regarding the compliance of the NSW mining industry with NSW water regulations to the Senate Environment and Communications References Committee, during the inquiry into water use by the extractive industry.

Following a review of the hearing transcript from 10 September 2018, the NSW Minerals Council (NSWMC) has found some statements made by LTGA to be incorrect and misleading. While NSWMC understands these claims may be further outlined in the LTGA submission that is referred to in the hearing transcript, this submission is yet to be publicly released.

LTGA incorrectly claimed that NSW mining operations are exceeding their licenced allocations for surface water. It appears that LTGA has confused the capture of rainfall and runoff by mines with licensed extraction from the Hunter River and other streams, which is controlled via water access licences (WALs).

LTGA referred to NSW mining companies capturing more than their 'harvestable right', which entitles landholders to capture 10 percent of rainfall and runoff without a WAL. Separate to this harvestable right, Clause 21 of the *Water Management (General) Regulation 2018* (WM Regulation) provides for several exemptions from the requirement for a WAL. One of these exemptions, the Excluded Works Exemption, exempts landholders from the requirement for



a WAL in relation to:

Dams solely for the capture, containment and recirculation of drainage and/or effluent, consistent with best management practice or required by a public authority ... to prevent the contamination of a water source, that are located on a minor stream. (WM Regulation, item 3 of Schedule 1)

The Excluded Work Exemption is available for mining operations (and other landholders) to capture surface water runoff from disturbed areas without the need for a WAL in circumstances where surface water drains from disturbed areas into "dirty water" mine and sediment dams located on a minor stream that are *"solely for the capture, containment and recirculation of drainage and/or effluent ... to prevent the contamination of a water source"*.

In this regard, mining companies are often required to operate such dams, as part of their "dirty water" management systems, under their planning approval, environment protection licences and their associated water management plans approved by relevant regulators.

The use of runoff from mining areas also helps to minimise the amount of water mining operations need to extract from local waterways and Regulated river systems such as the Hunter, a fact acknowledged by LTGA itself in relation to the Hunter River, where they state *"The mining industry doesn't have to pump a lot of water from the river..."*.

Further information on water use by the mining industry in the Hunter and an analysis of LTGA's claims is attached in a letter from Hydro Engineering and Consulting (HEC). This response further clarifies some of the issues and claims raised by LTGA.

Yours sincerely

David Frith
DIRECTOR POLICY

Attachment: Letter of support from Hydro Engineering and Consulting (HEC)

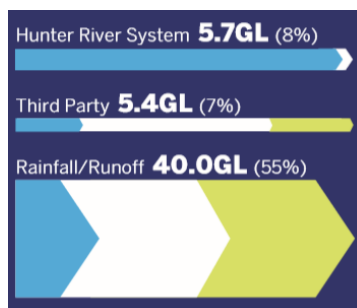
Policy Manager
NSW Minerals Council
via Email
Attention: Craig Milton

Craig,

Re: Response to Lock The Gate Alliance Claims: Surface Water

We understand a senate hearing into the regulatory framework governing water use by the extractive industry was held on the 10th of September by the Environment and Communications References Committee. The publicly available transcript of this hearing included input from Ms Elizabeth Laird (private capacity) and Ms Georgina Woods (NSW Coordinator, Lock the Gate Alliance) from page 12 to page 16. The purpose of this letter is to provide a technical response to a number of claims made by Ms Woods on behalf of Lock the Gate Alliance (LTGA) regarding surface water take by mining operations in the Hunter Valley.

It appears that the main concern of the LTGA with regard to surface water in the Hunter Valley is that mining operations are exceeding their licensed allocations. This is not correct. This concern appears to stem from the incorrect analysis of a publicly available infographic published by the NSW Minerals Council titled "Upper Hunter Water Balance 2016". Upon implicitly referencing the infographic, Ms Woods states, "42 gigalitres is what the mining industry itself reports it captures in rainfall runoff in the Hunter River". This statement is correct¹ however rainfall runoff is being confused with licensed extraction from the Hunter River. Licensed extraction is controlled via water access licences (WALs) which "permit the licence holder to take water from a specified water source in accordance with the licence" (NSW Government, 2018). Rainfall runoff and licensed extraction are reported separately in the "Upper Hunter Water Balance 2016" document which states that licensed extraction from the Hunter River system was 5.7 GL and, immediately below that value, rainfall runoff is stated as 40.0 GL – refer screenshot below.



The LTGA mention the harvestable right allowance which allows dams to be built on minor streams and to capture 10% of the average annual regional rainfall runoff (WaterNSW, 2018). This is correct however, the rainfall runoff volume of 40.0 GL in 2016 reported by the NSW Minerals Council is from disturbed areas. As such, dams capturing this rainfall runoff

¹ To be precise, that number was reported as 40 GL in 2016.

volume are exempt from harvestable rights calculations as they are “special dams” which WaterNSW define in their October 2017 document titled “Do I need a licence?” as including:

“Dams for the capture, containment and recirculation of drainage and/or effluent that conform to best management practice or are required by regulation to prevent the contamination of a water source. The harvestable right is not intended to be contrary to initiatives to prevent pollution of water sources. Many landholders are required to install dams to capture contaminated water or to collect and re-use irrigation tailwater. These dams are not considered in assessing your harvestable right”

We agree with the further information on this exemption available to mining companies that is contained in the NSW Minerals Council submission.

There is a further claim from LTGA that water cannot be pumped from the exempt dams (“because the mines are actually using the water that gets captured to run their mines...we don’t think that that exemption applies”) however the above clearly states that the water from site drainage can be recirculated.

Further to this, all mining operations’ approvals assessments are required to submit a water balance for the site in question within which the expected annual rainfall runoff volume is estimated. LTGA acknowledge this is completed by stating “[t]hey do estimate during the project approval process how much water they expect to take. I guess it is fair to say that what they undertake is generally a modelling exercise and it’s often highly contested, especially in water sources where there isn’t a great deal of data”. Expected or forecast rainfall runoff volumes from disturbed mining areas can only be estimated via modelling as climate is variable. Expected rainfall runoff volumes are usually expressed as an annual average or median as well as estimates for low and high rainfall scenarios to give the assessor and the public an indication of the likely volume of water each site could capture in a given year or over the proposed project life. We are not aware of any more accurate methods by which forecast rainfall runoff volumes can be calculated.

In summary, the capture of rainfall runoff from disturbed areas by mining operations’ exempt dams is permitted separate to licensed extraction which is usually pumped directly from a water source (i.e. the Hunter River) and also separate from harvestable rights.

Please do not hesitate to contact the undersigned if you have any queries.

Yours faithfully,

Dayjil Fincham
Senior Water Resources Engineer

Tony Marszalek
Director

References:

NSW Government 2018, *Water access licences*, Department of Industry, viewed online
<https://www.industry.nsw.gov.au/water/licensing-trade/licences/types/water-access>.

WaterNSW 2017, *Do I need a licence?*, viewed online
https://www.watarnsw.com.au/_data/assets/pdf_file/0003/128352/2.-Dams-in-NSW-Do-you-need-a-licence-V2.pdf.

WaterNSW 2018, *Harvestable Rights – Dams*, <https://www.watarnsw.com.au/customer-service/water/licensing/basic-water-rights/harvestable-rights-dams>.