

# East End Mine Action Group (Inc)

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8/2/2016

Submission to Select Committee on Unconventional Gas Mining

P O Box 6100, Parliament House,

Canberra ACT 2600

Dear Sir,

Thank you for accepting our submission to your Inquiry.

The East End open cut limestone mine is located at Mt Larcom in Central Queensland. EEMAG has existed an environmental group since 1995.

The East End Mine Action Group Inc has no direct involvement with any unconventional gas mining project. We have contact with other individuals and organisations who have involvement and exchange information with them.

Our submission therefore comes under (j) any related matter.

It is our observation that many of our long standing political, regulatory, scientific and stakeholder experiences of limestone mining have commonality with the way potential impacts and adverse impacts from CSG and shale mining etc are assessed and administered.

## **Project approval process**

1. State Government, or its Executive may enter into confidential, legally binding contractual agreements with proponents and thereby short circuit the integrity of normal project assessment, objection and consultative processes i.e. a technical report for the Environmental Impact Statement may be shaped to suit an agreement for "minimum compliance" between Executive Government and the proponent instead of the best available science being used for valid risk analysis. Our evidence shows this happened with the East End Mine 1995/96 Impact Assessment Statement.
2. In instances where Significant Project Status is given and project evaluations and approvals are granted by the Coordinator General the project is not open to challenge by potentially affected stakeholders or other parties who may ultimately be disadvantaged.

So, how accountable are processes 1 and 2?

1 From EEMAG's 20 years' experience and accrued evidence, the political and administrative processes may have an appearance of normality but in actual fact they have no operational accountability what-so-ever. The policy setting by the State Government Executive binds not only the government but *all* its agencies to the confidential contractual arrangement with the proponent. This includes the Ombudsman's Office who cannot investigate a decision of Cabinet or a Minister. The Criminal Justice Commission (or whatever it may be called) is much too worldly wise to get involved and will offer lame excuses why it should not do so.

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The public service will never admit that they are legally forced to comply but they must. (Public Servants' role is to administer Government Policy, including unofficial Policy established under a confidential contract.) The end result is false benchmarking of the science (that is based exclusively upon company and departmental science) through choice of the wrong methodology and selective interpretation of the monitoring data so that the mine's environmental approvals remain "officially in compliance". There are no mechanisms such as an independent appeal on the merits available to challenge these outcomes, other than to sue the (multinational) proponent through the Courts. Cost and common sense decrees that this is fraught and not practical.

2 It has been demonstrated that this process expedites project development at the expense of other stakeholders who have little or no voice. Under Qld EPA law the granting of the original Environmental Authority in those instances when it is inadequately assessed means that defects embedded within the original EA remain unchallengeable when an *amendment* is sought for the Environmental Authority, for example, when a project expands. This particular provision allows an original inadequate environmental assessment to remain uncorrected for the life of the project.

## **Monitoring**

The East End limestone mine has been correctly described as one of the most monitored mines in Australia. Data has been collected since 1977, equating to almost forty years. The data collected has been evaluated by the company and government departments using Darcian Flow methodology (think uniform, predictable flow as in a sand aquifer.) Since 1995 some forty odd hydrology studies have been compiled. Many of these have been prepared, independently of the company or departments by internationally recognised experts for EEMAG Inc. Although sometimes consulted, EEMAG or its expert limestone hydrogeologists and geomorphologist have never been empowered in decision making and their experts' findings are not incorporated into official reports.

In contrast to the Darcian Flow methodology utilised by the mine and departments; EEMAG and its experts maintain that local limestone aquifers are an unpredictable, complex Karst aquifer system with a secondary network of conduits, sinkholes with surface flow and groundwater connections and all other characteristics applicable to viable karst. It is recognised in Australia and internationally that Darcian flow methodology is not a valid means of assessing groundwater flow in a Karst aquifer system.

The water monitoring scheme was developed in the pre-computer era and has never been upgraded to gather the essentials necessary for the complexity of modelling. More particularly for a karst aquifer so as to limit the use of assumptions. The mine and the departments keep developing standard Darcian Flow models that produce the findings they want. However when placed under challenge, three different models have been unable to evolve to the next generation because they were defective and inapplicable for the purpose.

The water monitoring data has degenerated into the proverbial "magic pudding" where selective data analysis is the order of the day for political purposes, environmental misrepresentation and project approvals.

There appears to be a parallel in coal and coal seam gas developments where healthy scepticisms of EIS, company and departmental findings about the veracity of the science being relied upon for project approvals is warranted. The EEMAG experience provides a valid case study in how monitoring was \ is being misused to lull stakeholders into a false sense of security. Monitoring in

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the absence of objective, genuine analysis, stakeholder empowerment and participation (with inclusion of their own experts) is doomed not to fulfil the expectations of those relying on it for protection of their assets and welfare. In those cases where the science is generated and interpreted by the company the proposition is hopeless.

## **"Make Good Provisions"**

Since 1995 when recognition first occurred that widespread dewatering impacts were already entrenched, (whistle blow by the community) some twenty five replacement water supplies have been provided at the company's expense. It generally took three (3) years for an alternative supply to be commissioned, but in the worst case a "like for like" irrigation supply was not provided for thirteen (13) years! These results were hard won. EEMAG (with the generous assistance of some experts/others) has been the driving force behind those outcomes. The salutary lesson is that without the input of stakeholders nothing works or gets done. In spite of *all* the water monitoring data and the forty odd hydrology reports to date, there is still no consensus on the extent of mine's dewatering liability. For landholders outside the official zone of depletion conceded by the mine, there is no affordable scope for redress, regardless of the strength of the evidence in their favour.

## **Challenge to the Science and methodology adopted**

In February 2016 EPA is due to rule on the East End Mine No 5 EIS for Mining Lease Application 80156. EPA is poised to grant an amendment to the East End Mine's EA. The EIS includes a risk analysis based on Darcian Flow with findings that deepening the mine from 45m AHD to a minimum of 90 M AHD (twice as deep as the mine is now) will have negligible additional drawdown effects upon the aquifer. EEMAG contends the Darcian Flow risk analysis is fatally flawed and that the wrong choice of methodology means that there is, in fact, no valid risk assessment what-so-ever. EEMAG intends to contest public objections in the Land Court at the highest level. I.e., Level Three. EEMAG will simplify arguments over the science by presenting expert testimony, documents and other compelling evidence that local aquifers are viable karst aquifers and must be assessed as such.

If the Court agrees that local limestone aquifers constitute a complex karst aquifer system, almost forty years of shonky Darcian Flow science will be overturned.

EEMAG are confident of success as we have a very imposing library of FOI documents, reports, experts and practical on-the-ground evidence to support of our case.

## **Consultation**

The judgement arising from Judicial Review between Metgasco and the NSW government put consultation into perspective. The Court basically ruled that it is a process to be complied with but that the process does not have to deliver. A long time ago we christened the process placebo consultation.

## **Worst case scenario Targinnie Shale Oil Project**

The Targinnie Shale Oil Project site is just a 30 minute drive from the East End Mine. The pilot plant technology did not work effectively and when the plant operated many people in the community got sick due to its emissions. The Regulators failed to act to protect the community through enforcement of atmospheric standards. The Proponents were endorsed in their decision to pay local

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horticulturalists to leave their properties and live in motels until the plant stopped to evaluate the latest performance. Farmers were not paid for lost time or income reduction.

Inevitably confidence was lost in any future prospects and property values collapsed. In what amounted to an admission of abandonment of co-existence, the State in a bid to thwart a class action law suit bought out something like 135 families. Ultimately the Shale Oil project went into receivership and the State ended up with neither a viable community nor the project they tried so hard to protect.

This performance and outcome must surely go down in the annals as one of the worst political and administrative failings of any project and aptly demonstrates the lengths that government and its agencies will go to in protecting the proponent and to try and achieve the outcomes they granted approvals for.

## **Administrative performance**

Community stakeholders are dependent upon the protection of environmental regulation and its enforcement. When the administrative processes fail then law of the jungle takes over. Might is right and heaven help those who are ill equipped to deal with project complexities, corporate / political bargaining power and culture.

## **Self-regulation**

Self-regulation by its very nature is doomed to fail. The formula that has worked best in relation to the East End Mine is valid stakeholder participation coupled with regulatory control. This process could be made much better if the various parties respected and gave weight to each other's role and participated collaboratively in a spirit of genuine and meaningful co-existence

## **COAG Agreements on Water Reform and the National Water Initiative**

State issues translate into federal issues due to the structure of the Water Reform processes. Unfortunately Federal authorities accept State submissions without questioning the veracity of the science. Federal authorities only consider the science on a regional basis and severe defects identified in local science flies beneath their poorly adjusted radar. Falsely based Environmental Authorities therefore allow projects to escape Federal scrutiny or to need to comply with Water Reform guidelines.

We have evidence that an allegedly false and misleading Technical Assessment used for East End Mine's 1995/96 Gladstone Expansion Project IAS flowed into the science used for Calliope River Water Resources Plan (2001) since the mine's Environmental Authority is fixed on the false benchmark of no off-lease mine caused water depletion. (The mine's model consultant in 2000 determined a mine pit zone of influence of 33 square kilometres.) The key document of the Environmental Authority does not recognise off-lease impacts or Karst (interconnection between surface flows and groundwater) and thus Calliope WRP does not require the zone of water loss identified to be returned to environmentally sustainable levels of extraction.

There is no appeal on the merit for science that is demonstrably wrong for a Water Resources Plan under the COAG Agreements on Water Reform and the National Water Initiative. From our perspective this permits landholders' access to water to be traded-off by a State Executive Government agreement with a mining company/CSG etc This is facilitated and legitimised by false

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benchmarking of science and lack of an effective appeals process under COAG Agreements. EEMAG has taken our evidence on these matters to other senate Inquiries, the National Water Commission, the Productivity Commission and others.

## **Human Rights of Affected Parties**

In our view the lack of any opportunity for appeal on the merit under COAG Agreements on Water Reforms/NWI etc amounts to discrimination and breaches of Human Rights against adversely affected landholders for the benefit of powerful resource industries.

Yours sincerely,

Alec Lucke,

Research & Communication Officer

East End Mine Action Group Inc