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WATER ● FARMS ● BUSH

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URGENT

20 December 2019

Mr Jim Betts
Secretary
Department of Planning, Industry and Environment
GPO Box 39, Sydney NSW 2001

Email: jim.betts@planning.nsw.gov.au

Dear Mr Betts,

Objection to Whitehaven's Maules Creek Mine Modifications 5 and 6

North West Protection Advocacy wishes to lodge a strong objection to the Modifications proposed by Whitehaven Coal for retrospective approval of a water pipeline and ancillary infrastructure which has been constructed over several weeks in Boggabri, linking farm bores with the Maules Creek coal mine. We also object that a water trucking operation moving 2 Megalitres per day of water to the Maules Creek and Tarrawonga coal mines is not being assessed on the grounds that it is "generally consistent with" the conditions of approval of the Maules Creek Coal Mine.

Before outlining the reasons for our objection, we wish to express our strong opposition to the conduct of your department in relation to this matter. Our level of confidence that the Department of Planning, Industry and Environment is committed to your own Compliance Policy is severely diminished by the farcical conduct of the water pipeline development.

The DIEP **Compliance Policy** states: "The department promotes continuous improvement of the assessment process for state significant projects to reduce the

assessment timeframes whilst ensuring high environmental standards through robust compliance operations.”

Nothing could be further from the truth in regard to the water pipeline development. These are not robust compliance operations. There are the aspects of DIEP conduct that require an urgent independent investigation, not one colleague being appointed to investigate another close colleague as reportedly been the case in previous internal investigations.

Failure to obtain legal opinion and corrupt conduct

In keeping with your Department’s practices, we understand that the Resource Assessments Branch failed to obtain a legal opinion on whether the pipeline and water trucking operation are permissible under the Maules Creek mine approval. We understand that for the entirety of the time that the pipeline was being constructed, the Department made representations to community members and the media that the development does not require a Modification, completely reliant on the proponent’s untested illegal advice.

We would appreciate your specific response to this. Clearly, to rely on the proponent’s alleged legal advice unquestioningly does not represent a “robust compliance operation”.

Now, as a result of the conduct of your staff, Whitehaven Coal is claiming that the pipeline is a “continuing use”. Please see this editorial article from The Northern Daily Leader, which expresses our views on this.

<https://www.northerndailyleader.com.au/story/6547204/mine-pipeline-backflip-reeks-of-easier-to-seek-forgiveness-than-permission>

According to The ND, *“The department was so firm in its belief that the pipeline didn’t need a planning modification it stated ‘any further questions about this matter should be directed to the mining company or NRAR’”*.

Whilst making these public statements, the Department had no legal justification, as demonstrated by the fact that it subsequently called for Modifications.

In other words, the Department deliberately evaded its responsibility to properly regulate Maules Creek mine, whilst allowing Whitehaven to proceed in building and operating a water supply system to its mine, in effect colluding in the granting of continuing use rights where they did not exist, and avoiding assessment of the development under the *Environmental Planning and Assessment Act 1979*.

We believe that in so doing the conduct of the DPIE officers concerned has been corrupt under the Independent Commission Against Corruption Act 1988, in that (and not limited to): “Corrupt conduct is—

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority”

DPIE's misjudgement: the Modification is not of "low environmental impact"

The North West is currently enduring the economic, social and environmental impacts of prolonged drought of which there is no end in sight. To suggest that a major reallocation of groundwater from agriculture to mining of this scale is a minimal significance is a gross error of judgment on the part of the Department.

There is no higher concern in NSW than water. All other concerns, including fire fighting, employment, etc are dependent on water.

Your Department should realise that this is a potentially high impact development, of which few concrete details have been revealed for public scrutiny. A short Modification Report was submitted reluctantly by the proponent but there is no Environmental Impact Assessment. As a result, there is a lack of risk assessment of how the development might affect other groundwater users, not only in Zone 4 where the Brighton and Roma operations are underway, but also Zone 5, as they are known to be highly connected.

Furthermore, the Department has ignored the advice of the Natural Resources Access Regulator which in November 2018 made recommendations as to the Regional Water Strategy which have been comprehensively ignored. Whilst we acknowledge that the NRAR is only an advisory body concerning the Regional Water Strategy, nevertheless the community is outraged that the recommendations have not been adopted.

The good sense recommendations of the NRAR must be adopted as a matter of urgency and be considered as part of a full assessment of Mod 5 and 6.

The community outrage that this Modification has created is unsurprising given that many people in our region have lost groundwater and have to regularly have water delivered. People have scaled back all activities, from agriculture and grazing, to the personal of lifestyle decisions, such as showering, clothes washing and cleaning.

To learn that this amount of water is being diverted to the coal mines is an affront to all of us who had had to adjust our businesses and lives, and who live with the fear that groundwater may not be sufficient for fire-fighting.

Reputation of the proponent

If Whitehaven Coal had been an exemplary company, with a sound track record of environmental compliance, the Department might have been excused for trusting that the pipeline development would be conducted fully in conformance with planning approval. However, Whitehaven Coal is not such a company. For example:

- You would be aware that the company currently faces the possibility of prosecution from three agencies, NRAR (surface water theft) NSW Resources

Regulator (breach of exploration licence conditions) and the NSW EPA (illegal dumping of hazardous waste at Narrabri Council landfill).

- Also another investigation is underway over damage to the Maules Creek aquifer, and a further one underway concerning Whitehaven's Werris Creek mine and the draining of the Quipoly Aquifer.
- The company has received warnings from the NSW Resources Regulator about the poor performance of its mine rehabilitation at two mines Rocglen and Tarrawonga
- The Biodiversity Offset Strategy of the Maules Creek mine has failed, with none of its offsets secured in perpetuity, and all of those proposed for Conservation Agreements with the NSW Biodiversity Conservation Trust rejected due to not satisfying the terms of the offset strategy.
- Prohibition Notice recently imposed due to a large number of workplace accidents.
- Mandatory Noise Audit at Maules Creek mine.

Any developments by Whitehaven Coal should be viewed with profound caution, informed by the above.

Economic impacts

Much has been said of the 600 or so jobs that depend on Whitehaven. Using this figure as a guide (for we do not assume any information from Whitehaven can be believed at face value, based in the company's prior reputation and the lack of disclosure to the ASX) this still does not take into account the jobs that could be lost from other industries such as agriculture and tourism.

The economic impacts of creating a 12km water siphoning network to advantage Maules Creek coal mine have not been assessed. We call for this to be done immediately.

Risk to Boggabri water supply

It is unfortunate that the coal mines share equal first place with critical human water needs under the NSW Hierarchy of Water Priorities. In effect, this gives the coal mines priority over human water needs, because of the information asymmetry between rich Whitehaven and small communities unable to pay hydrogeologists large sums to do reports.

Boggabri town bore is very close and in the same Zone as the Brighton and Roma pumping activities. We learn that the water trucking operation is needed due to the demands placed on groundwater pressure making it impossible to pump enough water 24 hours a day. Additionally, Whitehaven proposes to build a 10-bore borefield in close proximity as part of its Vickery mine. The risks to the Boggabri water supply are real, and the track record of Whitehaven damaging aquifers at Werris Creek and Maules Creek supports the fears that there are inadequate trigger mechanisms to monitor the impacts on critical human water needs.

Referral to the Independent Planning Commission

It is now incumbent on the DPIE to refer the Modifications 5 and 6 to the NSW IPC where they can undergo full assessment, not the summary Modification report which has been deemed sufficient so far.

Your Department has washed its hands of its regulatory duties and gone against its own Compliance Policy, and now must reverse this abandonment of its duty which as we have stated above may have resulted in corrupt conduct.

To conclude, we call on you to halt the development, until a full assessment has been conducted. Failure to do so we believe will not augur well in the light of our corruption concerns.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Rickert', with a stylized flourish at the end.

Maria Rickert
Patron
North West Protection Advocacy