John Gerard Erbacher
[redacted]
WANDOAN QLD 4419

9th July 2014

The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE, QLD, 4000

E-mail: AREC@parliament.qld.gov.au

Dear Sir/Madam,

**Mineral and Energy Resources (common Provisions) Bill 2014 (the Bill)**

Thank you for the opportunity to provide submissions on the above mentioned Bill **(the Bill)**

**Introduction**

My name is John Erbacher and I own two properties west of Wandoan. I have lived here all my life. My father drew "Tamarra" in a soldier settlement ballot in 1954 and I inherited the property in 2009 after Dad's death. We purchased East Lynne, the adjoining property to the east in 1974, and Terese and I moved into the house at East Lynne in 1980 after our marriage. We have 4 adult children, 3 boys and 1 girl.

In 2007, Glencore Coal(Qld) (formerly Xstrata Coal (Qld)) made application for a Mining Lease over approximately 30,000 hectares west of the Wandoan township, commonly referred to the Wandoan Coal Project. Tamarra and East Lynne are situated virtually in the centre of the Mining Lease Application. (MLA) I have been involved in the Approval Process from the beginning to the end. I made submissions to:

a) The Draft Terms of Reference
b) Environmental Impact Statement (EIS)
c) Supplementary EIS
d) Draft Environmental Authority and Grant of the Mining Lease.
e) Was directly involved with the hearing of the objections in the Land Court.
f) Was directly involved in the Land Court hearing for Determination of Compensation to the Landholders and the subsequent Appeal by Glencore.

I also have a QGC Petroleum Lease over approximately one half of Tamarra, and have been directly involved with negotiating a Conduct and Compensation Aggreement (CCA) that I can live with (with the assistance of Lawyers & Note

that I didn't say I was happy with it) and also negotiating a "Make Good" Agreement for a share bore which includes a monitoring program by QGC. I feel that the knowledge and experience gained from this process will be helpful in formulating workable legislation to minimize conflict.

To achieve this end, I believe the Legislation has to be clear cut, to prevent lengthy delays as lawyers and the Land Court argue about interpretation of the relevant Acts and whether Precedents apply to the case in hand. I believe that any legislation under the present system should at the first instance protect the interests of the Crown, and in the second instance protect the interests of the citizens of the State. I believe that a number of proposed changes to the Resources Acts seem to withdraw a number of fundamental rights to the interests of the Crown and also from its citizens. I have seen a number of submissions from legal firms that deal directly and adequately with this aspect of the Bill, so will restrict my submissions to 3 key areas of which I have direct experience, namely:

**1. Restricted Lands**
**2. Un-cooperative Landholders**
**3 Persons allowed to place objections before the land Court.**

**Restricted Lands- Chapter 3 Part 4**

**I submit that infrastructure such as water bores, dams, tanks, troughs and associated water pipelines, and stock yards (and 50 metres laterally from each), should also be included in the definition of "Restricted Lands". As to the water pipelines, the Land Court came to the same conclusion in its decision to recommend Grant of the Mining Lease over my properties.**

The intent of an exploration permit for coal or Coal Seam Gas (CSG) should not authorize the explorer to restrict the operation or productivity of the agricultural enterprise on the land that is being explored. If a drill hole is placed beside a water trough, cattle are not going to come to drink, sparking animal welfare issues (If the cattle don't perish in the meantime from lack of water.) Similarly, if a drill hole was placed in front of the entry gate to the stock-yards that would prevent the use of the stock-yards. The 50 metre buffer will prevent "accidents" from exploration equipment backing into or damaging existing infrastructure. The inclusion of water pipelines as Restricted Lands is because we don't want polypipe, buried from 300mm to 600mm below the ground, being squashed from heavy equipment driving over it, causing splits in the pipe or restricted flow and blockages,. The 50 metre buffer would also take into account that the exact location of the pipeline may sometimes not be accurately determined without digging up the pipe. With regard to water bores, activities such as seismic exploration, blasting and fracking could have a devastating effect on bores, causing shattering of fragile casing and collapse of the bore hole rendering the bore obsolete. While a 50 metre buffer would not be adequate under these

situations, we have to start somewhere. (600 metres buffer from a bore would be more sensible.)

Resource companies will have to enter into a Conduct and Compensation Agreement(CCA) with the landholder before commencement of Activities, and classing the additions to Restricted Lands as a "Compensatable Effect" should not complicate the process any more, considering that in my experience more time was wasted in an attempt to intimidate me with threats to go to the Land Court, than was actually spent in meaningful negotiations. I suggest that the Restricted Lands be treated as a separate stand alone issue within the broader CCA.

I would concede graciously however, that Restricted Lands should probably not be excluded from the Mining Lease as occurred in our Land Court decision, but continue as Restricted Land retaining its "Compensatable Effect" as long as the landholder retains ownership of the property. Much has been stated about the "bargaining power associated with Restricted Lands", but in my situation, this so called "bargaining power associated with Restricted Lands" has been very limited and I believe this argument should be used sparingly so as not to compromise the Spirit of Intent of the legislation in this respect.

In all these instances I work on what I call the "**Fair and Reasonable Principle"; that is, what I could successfully argue as such in the Land Court** and I believe that if all parties used the "**Fair and Reasonable Principle",** litigation and unpleasantness during the negotiation process would be reduced considerably. Maybe a clause to this effect could be included in the Bill.

In the case of a Mining Lease or Petroleum Lease, the "**Fair and Reasonable Principle"** would still apply and it would be hard for a landholder to justify a refusal to negotiate a compromise with regards to access to Restricted Lands. The CCA does not always contain only monetary compensation. An example would be access over a stock-water poly pipeline. A solution could be that heavy equipment travel over a bridge (a steel structure placed on the ground) which would prevent damage to the underlying pipe.

The "**Fair and Reasonable Principle"** would also apply to the 50 metre buffer included as Restricted Land. It would be hard to class a drill hole 48 meters from a trough because of an error by a contractor, as a breach of the Act, however, in my opinion, there would be grounds for a breach if the drilling sludge from an exploration well engulfed a trough preventing cattle access to water even though the drill hole may be outside the 50 metres laterally from the trough.

We must be very careful not to have the concept of **uncooperative landholder** enshrined in the Bill by inference. In my opinion there is no such thing as an uncooperative landholder, if the conditions and compensation in the CCA are satisfactory and the parties treat each other with respect. In one meeting with a

resource company, I thought we had all agreed to have a "frank and honest" discussion. At meetings end, while I did everything in my power to remain respectful, I can only describe the other party's actions as "Hostile". From my experience, a lack of cooperation is more likely to come from the resource company. Landholder's time is treated as valueless and not compensated for. Mining companies are all too willing to waste time, call unnecessary or unproductive meetings, be inflexible with meeting times and offer no new information. These meetings are held by people who, unlike the landholder are on a payroll. Landholder's time should be paid for and it might not be wasted so readily.

**Clause 420 Replacement of s 260 (Objection to application for grant of mining lease)**
***affected person*** means—
(a) an owner of land the subject of the proposed mining lease; or
(b) an owner of land necessary for access to land mentioned in paragraph (a); or
(c) the relevant local government.

**I submit that an additional clause be inserted to include a person or persons in close proximity to a mining lease being classed as an affected person as follows:**
**(d) an owner of land or public use amenity in close proximity to land mentioned in paragraph (a);**

It appears that the intent is that only those landholders within the footprint of the mine site will have the right to object to the Mining Lease. Any landholder who has land over an affected aquifer or is on adjacent aquifer where leakage or depressurisation may occur is an "affected person" and should be recognised as such. This legislation seems tailor made to stop objections such as those already made to the Land Court by landholders who are concerned that they may lose one of their factors of production, namely water. "Quantity" of groundwater is not classed as an environmental value in the Environmental Protection Act (EPA) so cannot be objected to under the EPA. This is a very important issue and landholders should not be disadvantaged to accommodate medium to large mining projects.

"Make-good arrangements" for water loss (Quantity) is not a right prescribed in the Mineral Resources Act and it should be for near landholders for each specified bore and its potentially affected aquifer. Presently, companies are refusing to negotiate "make good" agreements to many landholders because they are nor required to under existing legislation. If the resource authority argues that the bore is not at risk because of their Activities, why do they refuse to enter into Make Good Agreements?

A person in close proximity to a mine, who feels that their property or residence will be devalued, or their business adversely affected by the Activities of a mine

(eg road closures, increased traffic on their road, increased damage to road infrastructure) should be able to object to the ML and present their evidence in the Land Court.

Any potentially affected person should have the opportunity to object to and appeal against a Mining Lease and the attempt to limit the classes of landholders who have these rights does not conform with the principles of natural justice. It has always been up to the Land Court whether to allow certain objections to be heard or have them thrown out and the **"Fair and Reasonable Principle"** would apply here also.

## Additional Points

1. **Legacy bores and drill holes**: A register, probably included in **Resource authority register Section 186: Register to be Kept**, should be compiled to detail information on all exploration and production drill holes, back to a prior date to be determined following advice from a reliable expert. Information on register would include:
   a) Date when hole drilled
   b) Tenement number and Tenement Holder
   c) Drill hole number and GPS coordinates
   d) Status of the drill hole (Capped, Capped and plugged, open and productive etc)
   e) Date when bore hole status is amended

2. **Restricted Lands:** There is a good argument to include irrigation dams and ring tanks, head ditches and tail water drains to reduce the risk of potential damage to this infrastructure from the activities of the authority holder, and the possible contamination from accidental intrusion of toxic drill waste.

3. **Co-ordinator General's Report and Approval.** I believe that a submitter to the EIS and any subsequent supplementary EIS should have the right to object to the ML or draft EA in the Land Court on conditions or statements in the Co-ordinator General's Report, if these conditions or statements are not consistent with the information contained within the EIS

I make myself available for further comment by

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Yours sincerely,

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John G Erbacher