Submission No. 95
11.1.12

Infrastructure, Planning and Natural Resources Committee

From: Devine Jay
Sent: Friday, 18 December 2015 5:53 PM
To: Infrastructure, Planning and Natural Resources Committee
Subject: Submission. Water Legislation Act.
Attachments: Tom_Crothers_WROLA_Exec_Summ_Nov_2015-2.compressed.pdf

Infrastructure, Planning and Natural Resources Committee of the Qld Parliament.

DATE: 18 December 2015

Members of the Committee,

Please accept this as my submission to the Water Legislation Amendment Bill 2015 (WLA).

I note the changes that the WLA makes to the Water Reform and Other Legislation Amendment Act (WROLA). However, I am deeply concerned about one very important amendment to the WROLA Bill which is MISSING from the WLA.

Water Reform and Other Legislation Amendment Act (WROLA) was strongly opposed by the ALP opposition (that is, you people now in government) prior to the State election. It was described by Labor as "shameful" and "an utter disgrace", warning these amendments would have "a detrimental effect on the Great Barrier Reef catchment systems and allow for over-allocation of Queensland's precious water resources".

You are aware that the amendments give foreign owned **resource companies primacy over our water supplies subverting all other users rights**. It is undemocratic at best and fool hardy at worst to risk Queensland's water in this way. It is unbelievable that the ALP would abandon their pre-election promise on such a critical matter. It is not only the Great Barrier Reef and associated catchments at risk from water depletion and contamination resulting from mining operations.

Further, the make good agreement that would apply under circumstances where other landholders water supplies are affected by mining operations have significant shortcomings. The legislation in it's current form favours mining companies.

I have attached the Executive Summary from a report prepared by T. Crothers, one of Queensland's foremost water experts. I urge the committee to read the summary and take this information into account when considering the into account the amendments to the WLA.

The WLA should include an additional section which revokes Part 4 of WROLA. Part 4 of WROLA gives the mining industry a statutory right to take underground water and removes current requirements for them to get a water licence.

Part 4 of WROLA will harm agricultural water users and the environment because it will:

1. Remove the requirement for miners to obtain a water licence for the vast quantities of groundwater that they generally extract during mining operations

2. Reduce the ability of the Qld Government to act transparently to prevent unsustainable levels of water extraction by miners during operations

3. Remove the right for adjoining landholders whose water resources will be affected or lost due to the mining

operations to challenge the grant of a licence

4. Remove the role of the Land Court as final independent arbiter who can rule on appeals against water licences granted to coal miners.

Failure to revoke Part 4 of WROLA represents a very substantial breach of the promises which the Queensland Government made in the lead up to the election, when it promised to 'repeal the Newman Government water laws which allow for over allocation of Queensland's precious water resources'.

Failure to revoke Part 4 of WROLA also breaches promises that were made by the Qld ALP to restore community objection rights against mining, because it removes the right of adjoining landholders to object to the provision of water licences to miners.

Recommendations:

1. I request that the WLA is not passed unless it is suitably amended to revoke Part 4 of WROLA, and thus to prevent the granting of statutory water rights to the mining industry.

2. I generally support other provisions of the WLA, although we believe that the principles of Ecologically Sustainable Development should be extended to apply to the resources sector under Chapter 3 of the Water Act.

It is the twenty first century. Given water security issues in Australia and around the world, (refer to NASA mapping of ground water systems) risking and squandering water supplies, which can jeopardise the production capacity of other sectors and the viability of biodiversity, for an industry that holds no economic or sustainable future is simply a sign of poor governance.

sincerely**,**

Jay Devine

Attachment 1
Executive Summary from a report prepared by T. Crothers

EXECUTIVE SUMMARY

The former Newman LNP Government made substantial changes to the rules governing the impacts of mining operations on Queensland's underground water resources. Most notably, they passed the *Water Resources and Other Legislative Amendment Act (WROLA) 2014*, which included provisions to provide mining companies with a "statutory right" to take or interfere with underground water during mining activities.

However, those changes, contained in Part 4 of the WROLA Act, have not yet formally commenced at law. Therefore, the current Palaszczuk ALP Government has an important decision to make as to whether it goes ahead and implements them or not.

This Report provides a comparison of existing laws pertaining to mining and groundwater resources against the proposed changes. It also compares the water management framework that applies to the mining industry to the water management framework that applies to the petroleum and gas industry, and considers the requirements for each for cumulative impact assessments.

Under the current *Water Act 2000* (Qld), miners are required to obtain a water licence for the taking of or interfering with underground water where the water is:

- Sub-artesian water regulated under a water resource plan or caught by a moratorium notice;
- Sub-artesian water regulated under a Section 1046 regulation; or
- Artesian water.

In other circumstances, water licences are not currently required for the take of or interference with underground water by miners. The conditioning on water licences for dealing with a miner's water impacts can be vague and ineffective, with no reference to volumetric limits and with the monitoring and reporting requirements being totally inadequate.

Under the current regulatory system, the decision to grant a water licence to a miner for mine dewatering is able to be contested. The Chief Executive of the Department of Natural Resources & Mines may refuse to grant a water licence, if the take is considered to be unsustainable. Potentially impacted water users may lodge an objection to the Chief Executive's decision to grant a water licence to a miner for dewatering purposes, as well as appeal the decision to the Land Court. If a Land Court appeal against a water licence is successful, the decision is binding on the Qld Government. This then provides a process for an independent arbiter with the power to protect the State's water resources when required.

However, the current laws do not explicitly require miners to make good on landholder's bores, if they are impaired as a result of mining activities. However, decision-makers like the Coordinator General can impose conditions which require make good agreements for specific mines, and the Land Court can and has recommended them.

In contrast to mining operations, under the current regulatory regime, petroleum and gas operations already have a statutory right to take associated groundwater and a legal requirement to make good on affected water bores. As a result of their statutory right to take, there is effectively no limit to the volume of associated underground water that may be extracted by petroleum and gas operators, and this means that they have the right to drawdown aquifers to any extent, no matter how severe, or to even dewater aquifers entirely.

The consequences of the *WROLA Act 2014* provisions in providing miners a statutory right to take associated underground water are expected to result in significant quantities of water being extracted by miners without any controls or water licence conditions. This may result in existing water user's underground water supplies being impaired and in some cases a total loss of their supplies. It is also highly likely to result in the unsustainable take of groundwater in some areas with associated consequences on the environment.

There is a high likelihood of the proposed changes resulting in insufficient oversight of the cumulative impacts of two or more miners exercising their "statutory right to take underground water", with the cumulative impacts being dire for existing water users and the environment. The Galilee Basin is a prime example of where a huge authorised take of underground water will have significant cumulative impact on the base flows of local steams and deplete flows from natural springs.

Currently, water users who are aggrieved over the potential cumulative impacts of mining operations and a decision to grant a water licence to a miner for the take of underground water, may seek an Internal Review and then have recourse to appeal the decision in the Land Court. The grant of a *"statutory right to take associated underground water"* removes these review and appeal rights.

The removal of powers of an independent authority, that is the Land Court, to hear appeals against the grant of a water licence or the protection of underground water resources or the protection of interests of other water users, is a very retrograde step. Water user's interests and water for the environment will certainly be compromised.

For example, the Acland Stage 3 coal mine is predicted to impact substantially on underground water resources in the vicinity of the mine in the Eastern Darling Downs. The current regulatory framework would require the mine proponent, New Hope, to obtain water licences for artesian and regulated sub-artesian water take, and the local community would be able to appeal the grant of such licences to the Land Court. Furthermore, any limits set on water extraction in the relevant water resource plan would act to limit allowable water take.

The proposed changes to the regulatory framework also include a plan to require miners to enter into make good obligations with bore owners who have their bores impaired through mining operations, equivalent to those which currently apply to petroleum and gas operations under Chapter 3 of the *Water Act 2000*. This is a step in the right direction. However, the make good agreement framework that would apply has some significant shortcomings and is extremely biased in favour of the resources sector. It offers a substandard level of protection to existing water users, who may have their water supplies compromised.

"The make good agreement framework that would apply has significant shortcomings and is extremely biased in favour of the resources sector"

The Qld Government appears to be having a two way wager on whether they should either limit the upfront take of water resources through water licensing provisions OR establish a make good framework to mitigate the impacts of mining operations on other water users. However, any modern regulatory system can and should do both.

This report recommends an approach to regulation which is designed to do both – prevent unsustainable take of water by mining operations and mitigate impacts on other users. It proposes a set of actions to achieve these outcomes, which include, but are not limited to, the following:

1. Revocation of the statutory right to take water for miners.
2. Retaining the requirement for water licences and the independent authority of the Land Court.
3. Strengthening assessment and approval processes relating to groundwater impacts from mining.
4. Declaring Cumulative Management Areas in relevant mining areas.
5. Requiring independent predictive and conceptual hydrological modelling for mining operations. and
6. Dramatically improving the Make Good Agreement framework to improve equity and fairness for landholders.

The recommended changes to Queensland's regulation of mining operations contained in this report need to be progressed by the Palaszczuk Government as a priority before more damage is done to Queensland's precious underground water resources.