



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ENVIRONMENT, COMMUNICATIONS AND THE ARTS  
REFERENCES COMMITTEE

**Reference: Impact of mining in the Murray-Darling Basin**

THURSDAY, 19 NOVEMBER 2009

CANBERRA

BY AUTHORITY OF THE SENATE



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## SENATE ENVIRONMENT, COMMUNICATIONS AND THE ARTS

### REFERENCES COMMITTEE

Thursday, 19 November 2009

**Members:** Senator Birmingham (*Chair*), Senator McEwen (*Deputy Chair*), Senators Boswell, Ludlam, Troeth and Wortley

**Substitute members:** Senator Siewert to replace Senator Ludlam

**Participating members:** Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Mark Bishop, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Trood, Williams and Xenophon

**Senators in attendance:** Senators Birmingham, Ludlam, McEwen, Troeth, Williams and Wortley

#### **Terms of reference for the inquiry:**

To inquire into and report on:

- a. the potential impacts of current and projected mining operations on all environmental values in the Murray-Darling Basin and, in particular, the potential impacts upon surficial and groundwater flows and quality in the alluvial flood plains at its headwaters in the Namoi Valley and the Darling Downs catchments; and
- b. evaluation of the potential impacts in the context of the Murray-Darling Plan and agricultural productivity.

In these terms of reference, 'mining operations' includes all minerals exploration and all minerals extraction including exploration for and extraction of gas.

**WITNESSES**

**Mullard, Mr Brad William, Executive Director, Mineral Resources Branch, Industry & Investment NSW ..... 2**

**Newberry, Ms Elise, Director, Environmental Sustainability Unit, Mineral Resources Branch, Industry & Investment NSW ..... 2**



**Committee met at 12.49 pm**

**CHAIR (Senator Birmingham)**—I declare open this public hearing of the Senate Environment, Communications and the Arts References Committee in relation to its inquiry into the impacts of mining in the Murray-Darling Basin. The committee's proceedings today will follow the program as circulated, with one group of witnesses from the New South Wales government. These are public proceedings. The committee may also agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[12.51 pm]

**Mullard, Mr Brad William, Executive Director, Mineral Resources Branch, Industry & Investment NSW**

**Newberry, Ms Elise, Director, Environmental Sustainability Unit, Mineral Resources Branch, Industry & Investment NSW**

**CHAIR**—Welcome. The Senate has resolved that an officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. The committee has received your submission as submission No. 34. Do you wish to make any amendments or alterations in that regard?

**Mr Mullard**—No.

**CHAIR**—I invite you to make a brief opening statement.

**Mr Mullard**—Thanks for the opportunity to appear before the Senate inquiry. The New South Wales government is committed to ensuring the long-term viability of mining in the state. Mining provides many benefits to the communities of New South Wales and to Australia. More broadly, the New South Wales submission to the inquiry highlights a number of these benefits. One of the key points to include is that the estimated value of royalties from the Murray-Darling Basin for 2008-09 is approximately \$175 million. Mining underpins towns in western New South Wales in the Murray-Darling Basin such as Broken Hill and Cobar. Mining royalties in the whole of New South Wales were almost \$1.3 billion in 2008-09 and are forecast to be around \$1 billion in 2009-10. These royalties help fund vital infrastructure such as hospitals, schools and roads for the benefit of all residents of New South Wales. Mining also provides major economic stimulus to agricultural service centres such as Orange, Mudgee, Parkes, Dubbo, West Wyalong, Gunnedah, Nyngan and Narrabri.

Also highlighted in our submission is the level of confidence that the New South Wales government has in its regulatory framework. Its framework ensures the impacts of mining activities on the environment, including agricultural land and water resources, are considered and minimised. The regulatory framework also enables appropriate balances between competing land uses to ensure they can be achieved. This framework comprises legislation, regulations, environmental planning instruments, policies, guidelines and supporting information. The legislation of primary importance for mining and exploration are the Environment Planning and Assessment Act 1979, the Mining Act 1992 and the Petroleum (Onshore) Act 1991. Interlinked with the EP&A Act are the Water Management Act 2000 and the Water Act 1912. The Protection of the Environment Operations Act 1997 is also important, particularly in the control of noise, dust and water quality.

Mining developments in the Murray-Darling Basin are also required to comply with the Commonwealth Water Act 2007. The Water Act 2007 includes requirements that relate to mining, particularly the provision to promote use and manage the basin's water resources in a way that optimises economic, social and environmental outcomes. The New South Wales Water Management Act 2000 and the Water Act 1912, administered by the New South Wales Department of Environment, Climate Change and Water, regulates rights to surface and ground water resources via a licensing and approvals regime which is integrated with the Environmental and Planning Assessment Act. This regime limits the volume of natural water that can be extracted from water sources and imposes conditions to protect the water resource.

While the area of current mining activity might be small, mining can have an intense but transient local land use. Standards in rehabilitation ensure that mining affected land is rehabilitated to produce sustainable post-mining land uses. The New South Wales government currently holds around \$1.12 billion in security deposits from mining companies. These security bonds can be used by government to carry out rehabilitation work in the event that the titleholder defaults on its rehabilitation obligations.

It is important to recognise that an exploration licence, which our department currently administers, is not an approval to develop a new mine; rather, an exploration licence allows a company to only undertake exploration and environmental feasibility studies and is subject to stringent environmental controls. As well as responding to this Senate committee, the New South Wales government has also provided a submission and evidence to the Senate inquiry into food production in Australia.

In summary, mining brings significant economic and employment opportunities to people living in regional and rural centres throughout the state through job creation, investment and regional development. Mining underpins towns in western New South Wales. Mining must be undertaken in such a way that minimises impacts on other land uses and the environment. Mining occurs across the state in many different types of environments. Each application to mine is assessed individually. New South Wales is confident that our regulatory framework will ensure careful consideration of agricultural, mining and environmental values and will result in appropriate outcomes.

**CHAIR**—Thank you very much, Mr Mullard. Ms Newberry, do you have anything to add?

**Ms Newberry**—No.

**Senator WILLIAMS**—Welcome to both of you. Mr Mullard, you said there is mining in Broken Hill and Cobar in the Murray-Darling catchment area. I am very familiar with them but the Liverpool Plains is a very different circumstance because of the quality of the land and the underground water attached to that land being linked to the Murray-Darling Basin. You also went on to say that there are stringent environmental regulations in New South Wales. Can you inform the committee of what environmental regulations under New South Wales legislation are there to protect the underground water in areas such as Liverpool Plains? Can you explain any of those?

**Ms Newberry**—There are a number of acts that regulate that, in particular the Water Act 1912 and the Water Management Act 2000. We are in a phase of transitioning from the Water Act to the Water Management Act. Also, because every expression of mining—

**Senator WILLIAMS**—Under that 1912 act, can you just explain how that act would relate to somewhere like the flood plains at Liverpool Plains if they wish to mine coal there?

**Ms Newberry**—It has got a number of different licences contained within the Water Act. I must say that the Water Act is administered by different departments, so I can only give you a general overview of that legislation. It contains a number of provisions and licences that are required; in particular, open-cut and underground mining are required to get licences under that legislation from the Department of Environment, Climate Change and Water. They regulate potential impacts on those groundwater sources through that legislation. In addition, mining proposals have to get an Environmental Planning and Assessment Act approval, and the water and the ground water sources are also considered there.

**Senator WILLIAMS**—What assessment would the department do before issuing a mining licence in the Liverpool Plains in New South Wales? Do you say you will forward a mining licence on the Liverpool Plains knowing full well that it will not disrupt, interfere with or pollute the underground aquifers—not only under the plains but also in the catchment areas in the surrounding hills? What would be the process there? Would you undergo studies?

**Ms Newberry**—Yes, prior to us issuing a mining lease for a new development, that development is required to get approval under the Environmental Planning and Assessment Act. With respect to the coal mining developments in the Liverpool Plains they are clearly a part 3A of the Environmental Planning and Assessment Act and they are assessed by the Department of Planning. That is a very strong, rigorous process that normally takes more than a year. They are required to do detailed studies, predict in great detail the likely impacts—

**Senator WILLIAMS**—By ‘they’ do you mean the exploration company?

**Ms Newberry**—They being the company. They are assessed by the government and generally, with major mining developments, we also call a planning assessment commission inquiry where independent experts are appointed to inquire into that development, and they are public hearings.

**Mr Mullard**—I should point out that the company has to undertake an environmental assessment. That is an assessment of all impacts. It is not only an assessment of the impacts on the mining lease; it actually has to assess all impacts including those on the mining lease but any impacts that might extend, however great the distance, from the mining operation. So it is actually an assessment of all impacts, not just of the particular area where the mine is. It has to address the full impacts of that mining operation including looking at cumulative impacts across the region.

**Senator WILLIAMS**—Have you ever issued a mining licence when all the environmental plans and research have been carried out and something has gone wrong afterwards? Are you familiar with any case of a mine having been approved but where later on there has been damage

to the environment and they have said, 'We did not foresee this in the course of our environmental impact study'?

**Mr Mullard**—There are examples.

**Ms Newberry**—Yes, there are examples. I guess subsidence would be a key one. I think most people would be aware of cracking of creeks, particularly in the southern coalfields in the Illawarra area where mines have had approvals and then have gone on to have unforeseen impacts on rivers. That is obviously a breach in the planning framework and you kick into enforcement proposals. Those incidents are then taken into account in all other mining development applications from that moment on.

**Senator WILLIAMS**—With mine subsidence, the land above the mine might drop a metre and a half over a period of time. If creek beds are cracked, what action is then taken? I am thinking about springs which may be reliable sources of water for stock. What action does the department take then?

**Mr Mullard**—I should point out that these fall under the Department of Planning who issue the approvals to mine. But basically, if there is this sort of damage occurring, the company is required to undertake appropriate remediation. In the case of some of the issues in the southern coalfields the companies came in and undertook works to address the cracking. Some of the cracking is the reopening of existing fracture systems, so the companies can do various works to actually seal those cracks to make sure water flows are not lost. But more importantly there is an adaptive management type framework that kicks in whereby the company needs to say, 'Okay, it is different to what the predictions were.' They then need to look, in their future planning, at the way they actually operate in the mine, and they might need to change the way they mine to minimise or eliminate these sorts of impacts.

**Senator WILLIAMS**—If the coal bed where they wish to carry out their longwall mining is 200 metres deep and above that are underground aquifers that are tied to the Murray River or whatever, when the dirt and the coal are removed and the land drops down, wouldn't that have some effect on those underground aquifers above the mine? Surely it has to affect them?

**Mr Mullard**—It may not. It will depend very much on the nature of the geology. It does get very technical, but when you get cracking it is normally very superficial cracking at the surface. The intervening layers normally do not crack. In fact, if you have clay layers, they tend to be more plastic so you do not actually see cracking. You tend to see the cracking in the southern coalfield where you have a lot of sandstone in these deeply incised valleys. It is those things that have caused some of the cracking in the creeks.

What normally happens, provided you have sufficient distance between the aquifers and the area of the coal being mined, is that the level of the ground will drop and the aquifers will drop but you do not necessarily see any impact on the aquifers, because the aquifers remain intact. The actual cracking around the mining areas normally only extends for a few tens of metres, so you do not normally see impacts there. Probably by far the biggest impact that you see is on surface water flows, because obviously in very flat, low-lying country you can get a drop in levels at the surface, and that can create areas of ponding and so on.

These are the sorts of things that the company has to look at and examine in a lot of detail as part of its environmental assessment. There may be areas, because of the geology conditions and the elevation of the land—it may be very flat or whatever—where subsidence should not occur or should be minimised to a level where you do not have long-term adverse impacts on the environment.

**Senator WILLIAMS**—Former Minister Macdonald, in conjunction with BHP Billiton, has said that there will not be mining carried out under the Liverpool Plains area of the exploration licence area of BHP Billiton. Is that correct?

**Mr Mullard**—What he said was that there would be no longwall mining under the alluvial flood plain.

**Senator WILLIAMS**—What about open-cut mining? Does it exclude it?

**Mr Mullard**—He also said there would be no open-cut mining on the alluvial flood plain.

**Senator WILLIAMS**—Is that just in the BHP area? What about the Shenhua exploration area?

**Mr Mullard**—What you need to realise is that a lot of these areas have quite different geology. The Shenhua area has very little flood plain.

**Senator WILLIAMS**—It has some on it, though.

**Mr Mullard**—It just has a little bit of flood plain. The agreement between BHP and the former minister was specific to the BHP title area.

**CHAIR**—Just to be clear, when you were talking about flood plain, did that include the ridges between the flood plains?

**Mr Mullard**—No, it is essentially the blacksoil plains, the high-quality agricultural land.

**Senator WILLIAMS**—No doubt if subsidence mining were carried out under those blacksoil plains it would leave those blacksoil plains in a very different state from what Mother Nature has left them in over thousands of years.

**Mr Mullard**—That is why BHP has agreed to not undertake longwall mining under those blacksoil plains.

**Senator WILLIAMS**—How many acres of the Liverpool Plains are in the exploration area zoned out for Shenhua?

**Mr Mullard**—I do not have the exact number, but I believe it is probably less than 20 per cent. But I am not sure of the exact number.

**Senator WILLIAMS**—I am just trying to get a vision of the area and the hectares or acres. ‘Less than 20 per cent’ means little to me because I do not know the area. If the area is 1,000 hectares, that means less than 200 hectares of plains country, which is still 450 acres.

**Mr Mullard**—It is actually hundreds of square kilometres, I believe.

**Senator WILLIAMS**—Yes, that is an example.

**Mr Mullard**—The areas that are being examined for mining are essentially in the ridge country.

**Senator WILLIAMS**—Has your department discussed with Shenhua the attitude if they did seek to mine under the Liverpool Plains country or in the plains country?

**Mr Mullard**—I believe that Shenhua have advised—they did this recently publicly—that they do not intend to mine the blacksoil plains?

**Senator WILLIAMS**—Have they put anything in writing?

**Mr Mullard**—Not specifically; not that I am aware of, anyway.

**Senator WILLIAMS**—I will close by asking a question in relation to the water study that this parliament passed last December. In the areas of the plains we are talking about, especially the Liverpool Plains, you cannot proceed to mining until an independent hydrological study has been carried out to see the ramifications of mining. The federal minister, Penny Wong, has committed \$1½ million to contribute to the funding of that study. I believe your department has collected some \$400 million from exploration tenders from both companies to explore that area. Has there been any commitment to funding of the independent water study by the state government?

**Mr Mullard**—Not in terms of absolutes. The department is funding it. In fact, we are actually the only ones who have put money in at the moment. We have funded all the lead-up work, which is developing the terms of reference. We are putting significant resources into providing secretarial support. Currently we have the Ministerial Oversight Committee developing the full terms of reference for the water study, and that includes representation from all the stakeholders who have an interest in the outcomes of that study. So, effectively, for the final quantum of funding we are still waiting on the outcomes once we go out to the market, which we are about to do in the near future, and we get a pricing of what this water study might cost.

**Senator WILLIAMS**—The figure I have had thrown at me is around \$5 million. We know that the federal government is committed to \$1½ million; I do not know if that is conditional on the state contributing. The point I make is that the New South Wales government have collected some \$400 million and I would like to know, for the committee’s sake, what the minister said in answer to Trevor Khan MLC in the New South Wales parliament recently. I believe he stated that they will not be contributing anything towards the independent water study. If that is the case I think that is very wrong.

**Mr Mullard**—I cannot comment on government policy. I think you are getting into an area where—

**Senator WILLIAMS**—We should say ‘the former minister’. Has the former minister indicated to you in any way whatsoever that the New South Wales government would not be contributing money to carry out that independent water study?

**Mr Mullard**—I believe the former minister at the time—and I can only go on his statements—had not committed the New South Wales government to providing funding. But I cannot comment on what the current New South Wales policy position may be.

**Senator WILLIAMS**—Since the dismissal of the minister, you mean?

**Mr Mullard**—I do not have a policy direction on this.

**Senator WILLIAMS**—I will give others an opportunity to ask questions and I will seek further information.

**CHAIR**—You indicated that the New South Wales government committed funds for the development of the terms of reference and was supportive in other activities. Have all of those activities, including the development of the terms of reference, been undertaken internally or have you committed funds, by way of external consultants or otherwise, towards those developments?

**Mr Mullard**—It involved the engagement of external consultants and there have been a number of people appointed to independently chair the various stakeholder committees to develop that. That has involved the engagement of external consultants to work through those developments and get agreement on the terms of reference.

**CHAIR**—Are you able to put a budget figure on the cost?

**Mr Mullard**—No, I do not have those numbers in front of me. I can provide them; we can give you the numbers later, but I do not have them with me.

**CHAIR**—If you could. Thank you, Mr Mullard.

**Senator McEWEN**—Thank you very much for appearing before us today. We do not always get state government departments appearing, so we appreciate it. In your submission you mentioned that the New South Wales Mining Amendment Act 2008 was scheduled to commence fully in 2010 and it has significantly strengthened enforcement powers. I have some questions about that: will it apply to existing mining operations, including both exploration leases and mining leases? Why did the government feel the need to strengthen the act? What exactly are the strengthening measures which have been included in the act?

**Ms Newberry**—The amendments to the mining act were the result of a long-term government review. They have taken a long period of time to come to fruition. There has been extensive stakeholder liaison over them. They were passed by parliament in May 2008, as you said. They are bringing a whole range of new enforcement powers. The mining act was last updated in

1992. The regulatory framework has changed dramatically since then and the types of tools you might use to enforce the regulations have changed, so we have amended the act to adopt a lot of those provisions.

Penalty infringement notice powers have been widened, because we not only regulate the large mining companies but regulate 50 metre by 50 metre claims at Lightning Ridge and various other things. We wanted to have the full suite of enforcement powers—warning letters, penalty infringement notices. We have moved the jurisdiction for hearing those offences from the Mining Warden, which has been dissolved, into the Land and Environment Court of New South Wales. We have additional prosecution powers. The courts are now enabled to issue a variety of orders including publicising offences et cetera. We have really modernised the enforcement framework from 20 years ago.

**Senator McEWEN**—Will it apply to existing exploration and/or mining leases?

**Ms Newberry**—Yes, it will apply for the offences post the commencement of the act. We will certainly be able to use our new powers to enforce for existing titles.

**Senator McEWEN**—I notice also in your submission, where you talk about the Protection of the Environment Operations Act, that that regulates the pollution generated by mining activities. Does that pollution include noise and dust pollution?

**Ms Newberry**—Yes: noise, dust and water pollution.

**Senator McEWEN**—Have any of the operations in the Liverpool Plains been subject to action under that act?

**Ms Newberry**—Not that I know of. Again, it is not administered by our department, so I would not have detailed records on that. I do not know of any prosecutions, but there may have been lower level enforcement powers used. Again, I could chase that up and provide it on notice if you would like.

**Senator McEWEN**—All right. That would be useful. You mentioned before that miners who need to use water as part of their operations need to purchase the water licences. Do they purchase the water licences from the landholders?

**Ms Newberry**—New South Wales is moving into a free market approach to it, so they may buy them from landholders where the mine is or they may buy them from licences issued in the catchment. There are a suite of rules about where you can buy licences and how you can transfer them, which again is administered by the Department of Environment, Climate Change and Water.

**Senator McEWEN**—A different department?

**Ms Newberry**—Yes.

**Senator McEWEN**—But there could be a situation where a mining company buys the land from a landholder for the mining operation but picks up the water licences as well?

**Ms Newberry**—That is right. I think that now, with the separation of the water from the land, a landholder has the choice of selling their land with the water or separating the land and the water.

**Senator McEWEN**—You also say in your submission that the landholders have to agree to exploration activities on their land—is that correct?

**Ms Newberry**—That is right. There are access arrangements in place. Again, the mining act amendments have strengthened those powers. Historically, people could rely on verbal agreements, which became a bit problematic in certain circumstances. Once they commence it will be written agreements.

**Mr Mullard**—I should clarify. The companies do have a right of access for exploration, but what needs to be in place before that can be granted is essentially an access agreement which covers a range of issues including compensation. If the parties cannot agree then they can apply to the court to actually have an access arrangement determined. So it is not like a property owner has a veto power for exploration, but there must be an access agreement in place before the company can access that land for exploration.

**Senator McEWEN**—And the agreement is only with the landholder of the land on which the exploration or mining is going to take place; there is no requirement on the company to reach agreement with surrounding landholders?

**Mr Mullard**—It would depend whether they were having an impact in terms of their operations on the surrounding landholder. If they were having some form of impact then there might need to be some agreement. For example, if you needed to access another property to get to a site where you wanted to undertake exploration you would need to reach some sort of agreement with that property owner.

**Senator McEWEN**—I understand about the access. What about, for example, if I wanted to do some exploration which was going to be noisy and create a lot of dust? I do not have to go through another property to get to it but it will affect the properties around the property where I am wishing to undertake that activity. Does there have to be any agreement on those impacts with surrounding landholders, or is it only with the landholder on whose property you are going to undertake the exploration?

**Mr Mullard**—If you were undertaking that activity and it were creating a nuisance it would have to be assessed—normally under a part 5 assessment process.

**Ms Newberry**—We assess that and we condition impacts on surrounding landholders as well. If the noise levels exceed a certain accept accepted level consistent with New South Wales government policy, they have to reach agreement with the landholder before they can breach those noise levels. They do that with the landholder affected, with the affected residents, not necessarily on the title. If you have got a house way outside the exploration title the levels of noise are likely to be excessive. We say that you cannot subject that house to that noise unless you have got the agreement of that landholder. So we limit the noise impacts on surrounding residences.

**Senator McEWEN**—On our field trip to the Liverpool Plains region, we got feedback that miners can do whatever they like and there was a sense of powerlessness amongst the community. Can you comment on that? Clearly you have made some changes to the various acts, which I presume is in response to this kind of community sentiment.

**Mr Mullard**—Miners cannot do whatever they like. They are governed by exactly the same laws and environmental regulations as any other sort of activity. In fact in some respects they are placed under even greater scrutiny. They are required to reach agreements with the landowners on whose land they are undertaking exploration work. They are required to get environmental approvals for any sort of surface-disturbing type activity. In fact, we find that in many cases agreement is reached with landholders and there is a very good working relationship between landowners and the mining company. The concern—and we can understand the community concern—is that when exploration happens in an area it does create uncertainty. It creates uncertainty about whether there will be a mine here in the future. That uncertainty does affect a lot of people.

We encourage companies to establish community consultative programs, and we do have those in place for certain areas. They are in place for both Watermark and the BHP titles area. We encourage companies to provide information through those community groups as well as other mechanisms to keep the community informed of the development. We encourage companies to undertake their exploration in an appropriate environmental manner so that we can understand what the outcomes are, where the resources are, where mining will not take place and where mining may take place in the future so that you remove that uncertainty from the community and we move forward. If companies are moving towards a mining development application we also encourage companies to look at addressing any hardships that might be created. If properties cannot be sold because of concern and that is creating hardship in the community we encourage companies to develop those sorts of policies to address those things.

In essence there are a range of frameworks. The community has tremendous power in this. When it comes to the mining approvals, there is a full and open and transparent process. The community can input enormous value and add value to the mining companies' proposals to make sure that those community issues are addressed. There are impacts from mining. The idea is that mining should not take place unless those impacts can be managed and long-term sustainability established. But there are tremendous economic, employment and social benefits from mining in regional centres. It is really a balance between the various community needs.

**CHAIR**—I want to go back to the question Senator McEwen asked about affected landholders on surrounding properties. Ms Newberry, you cited an example of how, if there were large amounts of dust or noise, there would have to be some type of agreement reached with those landholders if such things were impacting on them. What about a change to the surface flow of water? Surface flows might move across adjoining properties, but building works associated with the mine, or the cut of the mine or whatever it might be, might impact on that type of surface flow. Would it be a requirement to deal with that with adjoining landholders?

**Ms Newberry**—I do not know of impacts on surface flows from exploration activities. With mining, those issues would be considered during the development consent or project approval process and planning. If they felt there was a need to regulate that, they would. They certainly often put in land acquisition clauses, and they are based on noise, dust and various other things.

Water would also be an area where they could require compensation for the landholders, I would expect.

**Mr Mullard**—The Mining Act also provides for compensation for impacts from mining activities on landholders. So there are a range of avenues that would address unintended impacts.

**CHAIR**—Are there any circumstances that you are aware of where such compensation has been made in relation to the impact on local water resources?

**Ms Newberry**—I am not sure, with respect to water. I do not know of any. I do not even know that there have been any claims made from landholders under those provisions. Again, I can take that on notice and chase up whether there have been any claims.

**Mr Mullard**—Mining is engineered to try and avoid those sorts of things. They would be quite rare, in the sense that we are not aware of any specific issues or complaints as such. But it would not necessarily come to us. It would perhaps be under the planning approvals. Exploration normally is a very low-impact activity and you do not see long-term impacts on water resources or whatever. It really involves drilling holes. These holes are really not much different to what a water bore would be, except the holes are normally fully grouted up so there are normally no long-term impacts from those sorts of exploration activities.

**CHAIR**—In relation to the new enforcement powers that Senator McEwen was discussing with you, have additional resources been provided or have resources been reallocated to facilitate the use of those enforcement powers?

**Ms Newberry**—The Mining Act amendments are a range of provisions. A number are aimed at removing administrative burden so that we could reallocate resources into the enforcement areas. Certainly that is a process we are going through in my branch. We have reviewed the rehabilitation and environmental management under the Mining Act and we are reallocating resources from administrative functions into compliance.

**Senator LUDLAM**—I join with other senators' appreciation of your giving evidence to the committee and I apologise for missing the first part of your evidence. I am looking for a bit of background. I am quite a lot more familiar with the way the mining act operates in WA compared to New South Wales. Can you tell us precisely—now if you have the numbers with you or on notice if you do not—in the last year how many exploration licences were applied for in New South Wales?

**Mr Mullard**—I would have to take that on notice. Normally we would get around 20 exploration titles—new ones and renewals—every month, but we will give you the exact number.

**Senator LUDLAM**—I appreciate that, but it is good just to know the order of magnitude. So you get about 20 ELs a month, and that is right across all the different mining provinces in New South Wales?

**Ms Newberry**—That is new ELs and renewals.

**Senator LUDLAM**—How many of those are rejected for one reason or another?

**Mr Mullard**—Quite a few are rejected, but we will get you the numbers.

**Senator LUDLAM**—All right, but how many out of the average 20—five, 10, one?

**Mr Mullard**—Maybe two or three.

**Senator LUDLAM**—Have they had conditions imposed on them and then reapplied, or are they just knocked out?

**Mr Mullard**—They may be rejected for a range of reasons. It might be that the exploration program may not be sufficient in terms of what we normally require.

**Senator LUDLAM**—So the company is not investing enough in getting it off the ground?

**Mr Mullard**—Yes, basically they just want to hold the title but not do any work. They could be over environmentally sensitive areas, where we are not prepared to grant a title. They may also be rejected because the environmental performance of the company in the past has not been acceptable. There are a range of reasons why companies are rejected.

**Senator LUDLAM**—You will appreciate we are on a fairly tight reporting deadline, so if we are giving you homework it would really help the secretary if you came back to us as soon as possible. I would appreciate it if you pointed us to specific cases, at least over the last 12 months, where applications were rejected on environmental grounds in particular. In the past, have any been rejected on grounds of food security or water security for farming communities?

**Mr Mullard**—I am not aware of any for exploration titles.

**Senator LUDLAM**—Is there anything in the Mining Act that would catch that? Is that what assessors are looking for or is that outside their ambit?

**Mr Mullard**—It is really outside because exploration would not be expected to impact on food security. It is really evaluating or looking at the resource. The impact on food security or water resources would be assessed at the mining application stage.

**Senator LUDLAM**—Let's go there. In an average month, how many mining licences or conversions from ELs to MLs would be applied for?

**Mr Mullard**—Very few, but I will get you the numbers.

**Senator LUDLAM**—Maybe one or two a month? I guess it is a bit variable.

**Ms Newberry**—I would not think it was even that level.

**Mr Mullard**—It would not even be that many.

**Senator LUDLAM**—In an average year how many ML applications are knocked back on various grounds?

**Ms Newberry**—That is a complicated answer because, prior to us being able to issue a mining title, they have to have gained development consent. So, if they do not have consent or it is refused at that stage for some reason, the application just lapses because they cannot ever complete the process.

**Mr Mullard**—In essence, there are a lot of projects that have never made it through to a mining lease application. Once the mining lease application is made, effectively they have met all the environmental standards.

**Senator LUDLAM**—It is virtually an administrative tick in the box?

**Mr Mullard**—Once they get development consent, we really administratively have to grant the lease. It is not really a situation where we reconsider their environmental approvals.

**Senator LUDLAM**—So you would not normally knock out an ML on environmental grounds that would have been caught earlier in the pipeline?

**Mr Mullard**—That would be caught earlier.

**Senator LUDLAM**—Thank you. If you are happy to provide that data for us, we would appreciate that—on the numbers and whether there are any examples that you can point to where an ML might have been knocked back and on what kind of grounds that would occur. In your submission you have provided a lot of detail on the economic benefits to New South Wales from mining. You have also, I would suggest, told us that in your opinion the system works pretty well. This committee is sitting because the system has broken down in one particular case. There is enough concern over the parts of the country that we have visited to warrant a Senate inquiry. Can you tell us whether you think that, with the current legislative protection and safeguards that are already in the New South Wales legislation, this Senate inquiry is wasting its time. Is the safety net already in place or do we need something?

**Mr Mullard**—We believe, as we have said in our submission, that there is a comprehensive planning approvals process that is addressing environmental issues associated with these developments. I suppose this is a point that needs to be explained. The framework we have in place in assessing the environmental approvals is not addressing individual-specific concerns as such in terms of that; it is actually looking at the overall state and economic benefits to the people of New South Wales in a broader stakeholder sense. So clearly individuals, where mining operations will occur in a specific area, will be impacted. We are not saying mining does not have impacts.

**Senator LUDLAM**—No, that was not the question.

**Mr Mullard**—I suppose what you are saying is: yes, there is concern with certain groups or individuals within a specific area.

**Senator LUDLAM**—No, I am saying something different. My proposition—which I suppose I did not really put to you—was that systematically something is quite seriously wrong and that these concerns are being raised, not that this is an isolated case that we need to fix in one instance. A number of witnesses made very strong representations to us that systematically there is something missing. I think these concerns were echoed quite well by the most recent report of the National Water Commission, which said the mining sector has been left out of the way that we address the water draw and water resources in the Murray-Darling Basin. That is very different from saying we may need to handle a few instances better.

**Mr Mullard**—I suppose we believe there is a comprehensive planning framework in place that governs mining. Mining in itself uses about 1.1 per cent of total New South Wales water, so it is a fairly small water usage compared particularly to agriculture and other activities. But, unless you are specific about where this gap might be, I have trouble understanding where the gap is.

**Senator LUDLAM**—The gap in terms of the places that we visited—I will not ask you to speak for Queensland—is that nowhere in the New South Wales Mining Act or related legislation is water assessed, and the National Water Commission has said that has to be fixed.

**Mr Mullard**—That is not true.

**Ms Newberry**—That is not correct.

**Senator LUDLAM**—Tell us how that has been misdirected.

**Ms Newberry**—As we presented in our submission, there are a number of areas with exploration activities. We certainly have obligations under part 5 of the EP&A Act, which says we have to assess to the fullest extent possible all aspects of the surroundings of humans. We certainly consider water issues in our process under that. When it hits mining, groundwater and surface water are extensively assessed. Most mining developments will have regional water models et cetera. The Water Management Act and the Water Act also have a licensing and water-sharing regime that kicks in which treats miners in the same way it treats agriculturalists.

**Mr Mullard**—I think people think the Mining Act should deal with everything. The Mining Act is dealing with the administration of the mining titles. That is why we have the EP&A Act and the Water Act to really provide a focus on those issues. You cannot look at any particular act and say that, because that act does not address water, water is not addressed. Basically it is the integration of those acts and the planning approvals process that addresses very comprehensively the management of water in the planning approvals process for mining.

**Senator LUDLAM**—This might be a little bit outside your domain, then, but has the New South Wales government ever rejected or recommended the rejection of a coalmine in New South Wales?

**Mr Mullard**—Could you repeat that.

**Senator LUDLAM**—Has the New South Wales government, as a result of all these interlocking processes that you described there, ever rejected the development of a coalmine in New South Wales?

**Mr Mullard**—As we explained before, normally what will happen is—it is outside because we do not approve mining titles. But certainly there is at least one coalmine that I am aware of that was rejected as part of the planning approvals process. But normally what happens is that the project, as it goes through the planning approvals process, is heavily modified. Issues and concerns will be raised and so the mining company will vary the method of mining or vary the impacts or change the way they are going to undertake the work. Because it is an iterative process, as it goes through these planning approvals processes issues will be raised and the company will have to address those issues, modify their development approvals process. Ultimately, what you see could be quite different to what the company initially proposed, but is modified in such a way so as to basically gain approval. It is rare that a project would be rejected outright.

**Senator LUDLAM**—No matter how much you modify it, at the end of the day you either get a coalmine or you do not. There is only so much you can do to modify ways of taking half a billion tonnes of coal out of the ground; it is going to do some harm one way or another. I am very well aware of how environmental assessment processes work to modify, to mitigate, to minimise, but at the end of the day you either get a coalmine or you do not. Have you reviewed the comments on water in the mining sector that were made in that most recent National Water Commission report? There were some quite strong recommendations made there. Our understanding, based on evidence to this committee, is that there will be some guidelines and some proposals put in place early in the new year. Are you aware of those?

**Ms Newberry**—Certainly there is work being done at a Commonwealth level on guidelines for assessing impacts on water, and we are part of that process as well. We are aware of developments at that level and we working with the water agencies, mineral resources and planning agencies that are working on development of those guidelines.

**Senator LUDLAM**—That is great. The officer who spoke to us, and unfortunately I cannot remember his name, mentioned a couple of different assessment tools that would help agencies assess whether areas were amenable to mineral extraction or not. You are involved in the processing and the work towards those tools?

**Ms Newberry**—That are so many different tools being developed that I hope I am talking about the same ones as you. There is the assessment of cumulative impacts of mining on groundwater guidelines being developed. I assume they are the ones—

**Senator LUDLAM**—Yes, that was certainly part of it, cumulative impacts, but also assessing whether particular regions should be amenable to mining at all rather than to modified mining.

**Mr Mullard**—Certainly I am part of that loop about the development of those guidelines.

**Senator LUDLAM**—Okay, so my question then goes directly to the two proposals that we reviewed when we were in the area, one by Shenhua and one by BHP. If you can provide us with an update of where those two companies are in their development proposals and whether they

are likely to be caught by these new assessment tools, or whether they are going to slip through the net and be approved before those tools are developed.

**Mr Mullard**—They are undertaking exploration at the moment, so my understanding is that we would not be the department who would be dealing with any application for that; it would be the Department of Planning. I could not answer whether they would be caught by these tools or not.

**Ms Newberry**—And their tools will supplement the existing assessment processes in New South Wales. We believe we have comprehensive water assessment processes and as I was saying, possibly before you arrived, there are planning assessment commission inquiries into most major coalmine developments and I do not know of one of those that has not had an independent water expert on it to probe in very great detail the assessment work done on the water resources for those developments.

**Senator LUDLAM**—But you would have to say, based on the fact of recent history at least, the details are probed and the assessments are done and then the mines are approved, and that is what has the locals so concerned—that is, we just seem to be engaged in a one-way process of approval that produces glossy reports—

**Mr Mullard**—No, it is a scientifically based and not emotionally based assessment of what are the impacts of mining. Just because a mining approval is approved does not indicate that the process is flawed. It means that there has been an investigation and, as far as possible, we have confidence that we are getting the expert advice that we can about what are the genuine impacts of that mining operation and are those impacts acceptable.

**Senator LUDLAM**—They are not acceptable to the people we met.

**Mr Mullard**—If they are not acceptable, the projects do not get approved. But, as I have said before, just because someone does not want mining, so an individual does not want mining —

**Senator LUDLAM**—What about a whole town rather than just an individual?

**Mr Mullard**—I have never seen an example where a whole town does not want mining.

**Senator LUDLAM**—Can we invite you up to some of the places that we visited a few weeks ago?

**Mr Mullard**—I have been to those places and I can tell you there are groups within a town who do not want mining but there are other groups who actually would want mining because it does bring benefits. There are pros and cons to any mining activity.

**Senator WILLIAMS**—Mr Mullard, I want to go back to a comment by Trevor Khan asking a question of former minister Macdonald in the Legislative Council of the New South Wales Parliament. The Hon. Trevor Khan asked a question and then he asked if the minister remembered saying something and the minister said:

I am not writing out any cheque in relation to this matter.

He was referring to funding for the water study in the Liverpool Plains area. He went on to say:

The Government has decided, following discussions with Mr Peters and the department on this matter, that it would not be matching the funds provided by the Commonwealth. Just because the Commonwealth has put up \$1.5 million for this or any other project does not mean that we should have to follow suit.

Did the former minister ever say to you in any way or hint to you or drop a message to you or leave you without much doubt: 'Look, whatever you do, don't put any money into this water study in the Liverpool Plains area'?

**Mr Mullard**—Not specifically, because we are putting money in. We have put money in to date. But what I am saying is I take it, if that is what the former minister said—that we would not match the funding—then that is clearly what the former minister—

**Senator WILLIAMS**—He said in conjunction with Mr Peters and the committee. Who is the committee?

**Mr Mullard**—Mal Peters—

**Senator WILLIAMS**—I know Mal well.

**Mr Mullard**—chairs the ministerial oversight committee. It is a committee that has been established that includes a broad range of stakeholders to advise the minister in terms of the water study. So at this point in time there has been in-principle agreement from the industry players to actually fund the water study. So the petroleum and—

**Senator WILLIAMS**—So Shenhua and BHP Billiton have agreed to fund the water study?

**Mr Mullard**—It is broader than that. Those—

**Senator WILLIAMS**—Santos?

**Mr Mullard**—including some of the petroleum companies in principle have agreed to fund the water study. So there is industry support for the funding of the water study at this point in time.

**Senator WILLIAMS**—That exploration money the state government received was \$100 million from BHP, was it roughly?

**Mr Mullard**—For the grant of the exploration licence; yes, in that order.

**Senator WILLIAMS**—\$100 million from BHP Billiton and \$300 million from Shenhua roughly?

**Mr Mullard**—Roughly.

**Senator WILLIAMS**—Is that the highest amount of money the state government has ever received from a tender for an exploration permit?

**Mr Mullard**—That is correct.

**Senator WILLIAMS**—So it is the highest. Wouldn't it be just natural that when a company puts in \$300 million, such as Shenhua does, to tender for the exploration rights they would expect to be mining at the end of it?

**Mr Mullard**—The conditions of the tender made it very clear that there would be no guarantee of approval of mining, that they would need to meet all of the normal government approvals processes. So we were not providing any assurance that at the end of the day they would be granted a mining lease. That was an absolute requirement and it was made very clear that in granting the exploration licence the government was in no way implying that mining approval would be given at the end.

**Senator WILLIAMS**—I want to take you to one thing in your submission about the value of agriculture in the Murray-Darling Basin. Be aware that I am certainly aware of what mining has delivered as far as the living standards of Australians from this vital export, so I am very aware of that. I have also spent most of my life on the land and I am very aware of the importance of agriculture. You say in your statement:

If mining were banned altogether from prime agricultural land it would significantly impact on NSW regional economies.

How do you define prime agricultural land?

**Mr Mullard**—When we say prime agricultural land we are talking about class 2 and class 1 lands.

**Senator WILLIAMS**—So you have classes in your department to define land. We have been trying to define that for years.

**Ms Newberry**—Certainly in New South Wales we have a definition.

**Mr Mullard**—In New South Wales there is a structure.

**Ms Newberry**—Class 1 through to class six, I think.

**Senator WILLIAMS**—Liverpool Plains is class 1, obviously—one being the highest quality land.

**Mr Mullard**—Parts of it, but not all of it.

**Senator WILLIAMS**—But of all the alluvial plain country—

**Mr Mullard**—Without looking at a map, I could not tell you, but basically the definition of class 1 includes areas where you have sand and gravel on the flood plain that is not necessarily class 1.

**Senator WILLIAMS**—Fair enough.

**CHAIR**—Could you provide us with a summary of the definitions of the different classes. If you could send that through on notice or point to which part of which act or regs they sit within, that would be very useful. One last quick question from me: are there any prohibitions or policy restrictions placed on the approval of mine leases in the Liverpool Plains area—or anywhere else, for that matter—until the completion of this multimillion dollar study on the effects on water of mining activities?

**Mr Mullard**—There is no ban on approvals for the new mining project. There were some blockades of properties that were organised by local community groups and, in fact, one of the requirements was the commencement of the water study. It was agreed that those blockades would be lifted once the water study commenced and that the companies would be allowed to continue with their exploration activities. I understand BHP have made statements that they may await the results of the water study, but the government has not imposed any ban on companies undertaking exploration or applying for approvals within the area.

**CHAIR**—Thank you very much for your time today. I join with other senators in acknowledging that the New South Wales government have allowed you to attend. I express my gratitude to them for doing so and to you too for taking the time to do so.

**Committee adjourned at 1.52 pm**