



Australian Government

Department of Climate Change, Energy,
the Environment and Water

PDR: IS24-000007

Mr Gerry McInally
Committee Secretary
Senate Standing Committees on the Environment and Communications References Committee
Parliament House,
Canberra ACT 2600

By email: eec.sen@aph.gov.au

(cc: References Committee Chair, Senator Hanson-Young, senator.hanson-young@aph.gov.au)

Dear Mr McInally

Thank you for your letter of 9 April 2024 to Secretary David Fredericks inviting the Department of Climate Change, Energy, the Environment and Water to make a submission to the Environment and Communications References Committee in relation to the Senate Inquiry into Glencore's proposed carbon capture and storage (CCS) project in the Great Artesian Basin (GAB). In providing this submission, the department notes that legal proceedings currently before the Federal Court may limit the capacity for departmental officials to provide evidence in relation to term (a) of the terms of reference of this Inquiry. This matter is further detailed below.

Administration of the EPBC Act

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) is the Australian Government's central piece of environmental legislation. It provides a legal safeguard to protect and manage matters of national environmental significance (MNES). Any action likely to significantly impact MNES must be referred under the EPBC Act for assessment and approval before the action can be taken.

The department assesses referrals to determine whether an action is likely to have a significant impact on MNES. The department provides a recommendation to the Minister or Minister's delegate on whether the action should be a controlled action, because it is likely to have a significant impact, or not a controlled action, because it is unlikely to have a significant impact.

The matters considered under the EPBC Act are limited to impacts on specific MNES prescribed under the EPBC Act. At the time of Glencore's referral decision, a 'water resource' was prescribed as a protected matter under the EPBC Act in circumstances where it related to a coal seam gas development or a large coal mining development. This clause is commonly referred to as the water trigger. For matters outside the water trigger, potential impacts to water resources, including groundwater, can be considered when they are likely to result in impacts to other prescribed MNES, such as listed threatened species and communities. In 2023, the EPBC Act was amended to expand the scope of the water trigger to include unconventional gas proposals.

Referral decision

On 9 February 2022, the Minister's delegate determined that the proposed action by Glencore's subsidiary, Carbon Capture and Storage Corporation (CTSCo) to conduct a carbon dioxide test injection demonstration, including construction of a transportation facility, flowline, and associated infrastructure (EPBC 2021/9122), was not a controlled action under the EPBC Act (the referral decision).

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A statement of reasons (SOR) for this decision was produced, upon request, on 20 February 2024, detailing the delegate's consideration under the EPBC Act. It is attached and available online at:

<https://epbcpublicportal.awe.gov.au/all-referrals/project-referral-summary/project-decision/?id=e52dfabd-64d0-ee11-9079-0022489332c3>.

The department notes that the proposed action did not involve a coal seam gas or large coal mining development and therefore did not meet the requirements of the water trigger.

The role of the Independent Expert Scientific Committee

Under Section 505D(2)(b) of the EPBC Act, states who are 'declared states' are able to request advice on a state matter that may impact water resources from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development (IESC). Advice provided to the Queensland Government under this provision is published on the IESC website at

<https://www.iesc.gov.au/sites/default/files/2023-02/iesc-advice-surat-basin-carbon-capture-storage-project-2022-139.pdf>.

Federal Court Proceedings

On 15 March 2024, Agforce Queensland Farmers Limited (Agforce) commenced judicial review proceedings against the Minister for the Environment and Water in the Federal Court of Australia (reference QUD147/2024) seeking to have the referral decision set aside.

On 11 April 2024, Justice Collier of the Federal Court listed the matter for hearing on 1 and 2 August 2024 and ordered CTSCo to be joined to the proceedings as Second Respondent.

Depending on the nature of the questions being asked of officials, the department considers that the legal proceedings may impact officials' ability to respond to these issues, particularly item (a) of the terms of reference, which seeks to explore the decision not to classify the project as a controlled action under the EPBC Act, noting this is subject to judicial review.

The department considers that any information provided in relation to this term of reference may prejudice the proceedings and undermine the integrity of the Federal Court process. Participation by the department and its officials may prejudice the position of the Minister and individual officials in the proceedings. It is therefore not in the public interest for the department to provide evidence or a submission in relation to that item at this time. I also note, as mentioned above, a SOR for this decision is attached and is available on the department's website.

Water impacts

In addition to administering the EBPC Act, the department has a leadership and coordination role in the GAB as it is a significant, cross-jurisdictional groundwater system. The department is working with the governments of New South Wales, Queensland, South Australia, and the Northern Territory (Basin governments) and stakeholders to implement the non-statutory, GAB Strategic Management Plan (2019) (GAB SMP). Further details are available at <https://www.dcceew.gov.au/water/policy/national/great-artesian-basin/strategic-management-plan>.

As part of the implementation of the GAB SMP, the department coordinates and provides secretariat support to the GAB Senior Officials Committee who have a key governance role; and GAB Stakeholder Advisory Committee who provide advice to Basin ministers on whole of basin policies and initiatives and present the views of industries, communities and stakeholders. The department also manages the co-funded, Improving Great Artesian Basin Drought Resilience (IGABDR) program which is reducing unnecessary water wastage to protect and restore the artesian pressure. Information on the program can be found at <https://www.dcceew.gov.au/water/policy/national/great-artesian-basin/commonwealth-funding>.

All aspects relating to the on-ground management of groundwater resources in the GAB is regulated by each Basin government in accordance with their respective state water management plans. This includes management of water licencing and extraction compliance with consideration to water volume and quality available, the environmental and cultural needs as well as assessment and regulation of impacts from any new project proposals.

CCS Projects

The Australian Government's primary focus for CCS is to provide the regulatory and policy settings to enable and create a stable business environment for investment in CCS to occur. CCS needs to be effective, safe, and environmentally responsible. A fit-for-purpose CCS regulatory regime will provide a pathway for certain critical sectors to decarbonise, particularly those that are considered 'hard-to-abate' industries, including cement and chemicals.

The Australian Government does not have primary regulatory oversight of onshore CCS projects, which is the responsibility of State and Territory Governments.

Reports from the Climate Change Authority ([Sequestration Insights Paper - Publication Report.pdf](#) (climatechangeauthority.gov.au)), the International Energy Agency ([CCUS in Clean Energy Transitions – Analysis - IEA](#)), and the Intergovernmental Panel on Climate Change (ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf) all agree that CCS technologies will be a critical part of achieving net zero climate goals.

Thank you for the opportunity to provide a submission to this Inquiry.

The relevant department officials will be available to appear if required, noting as outlined above the limitations to evidence that may be provided due to the legal proceedings before the Federal Court.

Yours sincerely,

Rachel Parry
Deputy Secretary

24 April 2024

Att. Statement of reasons for the decision on referral EPBC 2021/9122