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Wide Bay Burnett
ENVIRONMENT COUNCIL



18th January 2013

Public Submission

Standing Senate Committees on Environment and Communication

Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*

Introduction:

The Wide Bay Burnett Environment Council Inc respectfully submits in favour of the above mentioned Bill. It is essential that the Commonwealth Government retains the power to approve or decline projects that have the potential to impact upon *Matters of National Environmental Significance (MNES)* that are protected under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC)*. We are privileged in Australia to have three tiers of government which ultimately contributes to a functioning democracy and provides some level of transparency and equity when dealing with decisions that impact upon the environment.

1.0 State Assessments:

In terms of environmental assessments, State Governments have a range of legislative mechanisms that are triggered when potential impacts to the environment are identified within a proposed project, extension or infrastructure upgrade. These legislative mechanisms vary from State to State, however most have the capability to ensure that the potential environmental impacts are identified during the assessment of a proposed project. State Governments assess potential environmental impacts to protected species and ecological communities under State Law, however, since the introduction of the EPBC Act in 1999, MNES are now protected under Commonwealth Law and any project that has the potential to impact upon Endangered, Vulnerable and Rare (EVR) species must be referred to the Commonwealth Government for assessment.

1.1 Conflicts of Interest and Assessments:

Environmental protection at a State level can be quite significant when the legislative mechanisms are applied in the correct context. In some instances though, it can be difficult for State Governments to independently assess the potential environmental impacts associated with a project when there is a perceived conflict of interest. For example, State Infrastructure Projects that are assessed by the Coordinator General in Queensland, projects proposed by Corporate Entities of the State and mining/extractive projects that have the potential to provide revenue for the Government are situations that can result in a perceived conflict of interest for the public. When projects such as the above mentioned, are assessed as potentially impacting upon MNES, it is essential that the Commonwealth Government has the ability to assess the impacts independently from the State and decide upon projects without influencing factors such as the necessity for major infrastructure and utility upgrades.



1.2 Economics, Pre-emptive actions and Assumptions regarding Assessments

The proposed Traveston Crossing Dam was a strong example of the necessity for the Commonwealth Government to assess projects independently from the State. The State's assessment of the Dam, given approval by the Coordinator General in September 2009, identified that there would be significant impacts to MNES located within the Mary River Catchment such as the Queensland Lungfish, The Mary River Turtle and The Mary Cod along with many other species. The Coordinator General imposed roughly 1,200 conditions on the project as a consequence of the foreseen impacts to MNES. The project was then referred to the Commonwealth for the final assessment. While the Commonwealth was assessing the project under the EPBC Act 1999 and prior to any decision issued, the Queensland State Government proceeded to resume land, construct a pipeline connecting the proposed dam with Brisbane's water grid, commence earth works around the proposed dam site and influence the design and construction of the Cooroy to Curra Bruce Highway upgrade to ensure it would be constructed above the water level of the dam once complete. On 11/11/2009, then Federal Environment Minister Peter Garrett announced his decision to decline approval for the project as he believed the evidence of the significant impacts to the MNES of the Mary River Catchment outweighed the necessity of the project. The 'Mary River Threatened Species Recovery Plan' has now been drafted as a consequence of the Ministers decision which has been a positive step towards ensuring not only that the MNES of the Mary River Catchment will not be adversely impacted upon in the future but also that the Threatened Species and Ecological Communities within the river system have a chance to recover and continue to improve in health into the future.

However, as a consequence of the State Governments decision to pre-emptively proceed with the project without awaiting the results of the assessment under the EPBC Act given the assumption that the project would be approved, it now carries enormous debt for a project that never eventuated and has been unsuccessful in selling the resumed properties which are now the responsibility of the State.

1.3 Existing issues with EPBC conditions and compliance

Upon receiving EPBC Act approval for a project, conditions are imposed to ensure that the MNES identified is protected and no significant impact occurs as a result of the project. However, in most cases it is the responsibility of the proponent to ensure that compliance of the imposed conditions is achieved and any required monitoring is undertaken and reported to the Commonwealth Government. Periodic audits do occur from time to time and if an audit reveals that any of the conditions have been breached, a non-compliance rating is issued and the proponent is obligated to act in a manner which ensures that compliance of the conditions is achieved. The Commonwealth Government can initiate further action if compliance of one or more conditions is not achieved within a stipulated time frame.

In the instance of the Paradise Dam, EPBC approval was granted in 2003 with conditions imposed to ensure that a fish transfer device was constructed to ensure the Queensland Lungfish could achieve fish passage up and downstream of the dam wall. An audit conducted in 2007 found the proponent to have only achieved 'partial compliance' in terms of the conditions imposed as downstream component of the fish transfer device was not operating. The Commonwealth Government was contacted and urged to initiate compliance action against the proponent for the breach of conditions, as there was concern that the lack of fish passage past the dam wall, would significantly impact upon the ability for the Lungfish population within the Burnett River to gain adequate fish passage and breed accordingly. Compliance action was not initiated by the Commonwealth Government and as a result the former Wide Bay Burnett Conservation Council initiated legal action against the proponent in the Federal Court.

At the close of the case, 3 years after filing the legal action, the Judge ruled the fish transfer device as 'suitable' however monitoring reports for the dam released in May 2012, have indicated that the downstream component of

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the device has not yet transported a single Lungfish and as a result, alternative fish passage options are now being investigated.¹

Compliance of EPBC Act conditions is a complex task and the Commonwealth Government dedicates a significant amount of time and resources to ensuring that imposed conditions are complied with. If State Governments were to assess, approve, monitor and manage projects that require MNES to be protected, it would not only create a financial burden on the budgets of State Governments, but it would also be difficult for State Agencies to prioritise resources accordingly and remain independent when monitoring and auditing projects in which the State itself or a Corporate Entity of the State, is responsible for.

Conclusion:

In closing, the WBBEC supports the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012* as we believe it is essential that the assessment, decision making, monitoring, auditing and compliance program remain under the EPBC Act. It is necessary, in a functioning democracy, to have multi-tiered governments that operate in conjunction with each other but also independently to ensure consistent transparency and that conflicts of interest do not occur. *Matters of National Environmental Significance* need to be governed at a National level. The fact that our EV&R species have been listed under Commonwealth Legislation indicates that the protection of these species must be considered a top priority when assessing projects. It is essential that the EPBC Act 1999 is not weakened in any of its legislative structure as it is powerful piece of legislation that, when triggered via its appropriate mechanisms, ensures that our EV&R species that are renowned worldwide, continue to be protected long into the future.

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¹http://www.sunwater.com.au/__data/assets/pdf_file/0018/9225/Paradise_Dam_Downstream_Fishway_Monitoring_Program.pdf