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Senate Standing Committees on Environment and Communications
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CANBERRA ACT 2600

**Submission to the inquiry into the
Environment Protection and Biodiversity Amendment Bill 2013**

NSW Farmers appreciates the opportunity to address issues of relevance raised by the above inquiry. NSW Farmers welcomed the announcement of the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (EPBC Amendment Bill) proposed to amend the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). NSW Farmers supports the regulation of coal seam gas (CSG) and large coal mining development which has or is likely to have a significant impact on water resources.

NSW Farmers' support of these amendments stems from dissatisfaction in current state-based water policy in meeting the needs of the agricultural industry. NSW Farmers and farming communities alike are bitterly disappointed with the current policy protecting agricultural water from the impacts of coal seam gas activity and large coal mining development in NSW, expressing particular dissatisfaction with the:

- Strategic Regional Land Use Plans;
- proposed 'Gateway Process'; and,
- the Aquifer Interference Policy.

Federal oversight of mining and CSG activity which could have a significant impact on water resources is required in NSW to place sensible limits on mining and coal seam gas activities, and provide peace of mind to the industries and communities which rely on those resources.

Inadequacies of the Strategic Regional Land Use Plans

The Strategic Regional Land Use Policy was aimed at restoring the balance between agriculture and the extractive industries.

NSW Farmers played a key role in the development of the *Strategic Regional Land Use Policy* – which committed to introduce aquifer interference approvals for mining and CSG activities. This was in response to community concern about the unprecedented scale and pace of mining and coal seam gas development in NSW and its potential to impact on the water resources relied on by agriculture and regional communities.

During the development of Strategic Regional Land Use Plans across the state, the Department of Primary Industries mapped areas of ‘strategic agricultural land’. Strategic agricultural land is land that either has unique physical characteristics which lead to high agricultural productivity, or land that is home to a high value ‘critical industry cluster’¹. Mining and petroleum developments in these areas are subject to the Gateway Process before entering the planning system. NSW Farmers has strongly rejected this on the basis that allowing potentially damaging exploration to proceed in areas where mining may be prohibited causes unnecessary risk and uncertainty.

The ‘Gateway Process’ does not have the power to prevent damaging activity

The ‘Gateway Process’ consists of a Gateway Panel, which assesses the land and water impacts of proposals which fall on strategic agricultural land. While this incorporates advice from the Minister for Primary Industries and the Commonwealth’s Independent Expert Scientific Committee, there is no requirement for that advice to be given a certain weighting by the panel.

The Gateway Panel does not have the power to reject any project, but rather can grant a ‘conditional certificate’ which contains recommendations to be addressed in the proponent’s development application. Neither the Department of Planning and Infrastructure or Planning Assessment Commission are under any obligation to enforce the recommendations of the Gateway Panel when granting project approvals.

¹ See NSW Department of Planning and Infrastructure’s ‘Strategic Regional Land Use’ available at: <http://www.planning.nsw.gov.au/srlup>

The Aquifer Interference Policy has no regulatory force

The Aquifer Interference Policy has two main functions. Firstly, it recommends volumetric use over 3 mega litres be licensed and accounted for, and secondly it sets minimal harm criteria which projects should not exceed. The minimal harm criteria set non-binding standards for impacts on the water table, water pressure, and water quality.² Whilst originally envisaged that the Water Minister would be responsible for taking advice from the NSW Office of Water and determining whether to issue an authority under the *Water Management Act 2003*, the process has been amended to only require the Minister to give non-binding advice to the Gateway Panel and Planning Assessment Commission.

In practice there is no requirement on proponents to meet the minimal harm requirements of the policy and certainly for communities impacted by developments that their water will be protected. Impacts considered unacceptable by communities and existing industries could be traded off for short term economic gains associated with coal and gas proposals. As a non-binding instrument, communities and farm businesses will be denied the level of protection and certainty they were promised - undermining the relationship between the extractive industries and broader community.

Federal assessment and approval requirements for CSG and large coal mining developments having potential significant impacts on our water resources under the EPBC Amendment Bill is welcomed by NSW Farmers. Until such time that NSW Farmers has confidence in the level of rigour applied through state water assessments, we will support this federal intervention.

NSW Farmers is aware of concerns that this level of oversight on mining and CSG marks the potential for that level of regulation to extend to agricultural uses of water. However NSW Farmers is confident that the rigorous and well-established frameworks already in place for agricultural water use would leave no impetus for future governments to expand these provisions.

NSW Farmers has consistently stated strong regulatory frameworks are required to place sensible limits on mining and coal seam gas activities. Improvements are still needed at a state level to give farmers and rural communities confidence that the risks to their land and water

² See NSW Department of Primary Industries' Office of Water's 'Aquifer Interference Policy' available at: <http://www.water.nsw.gov.au/Water-management/Law-and-policy/Key-policies/Aquifer-interference/Aquifer-interference>

from CSG and large coal mining developments will be managed. The proposed provisions in the EPBC Amendment Bill instating a new matter of 'national environmental significance' and the protections and penalties offered therein offer a critical level of protection to NSW water resources not currently offered by State water policy.

NSW Farmers appreciates the opportunity to have input on the EPBC Amendment Bill and would be happy to provide any further input the Committee requires.

Yours sincerely

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President