SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE INQUIRY INTO PUBLIC GOOD CONSERVATION

IMPACT OF ENVIRONMENTAL MEASURES IMPOSED ON LANDHOLDERS

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I am a beef cattle producer from Toodyay, Western Australia. Our property is mostly hilly non-arable land that requires regular clearing of regrowth timber to maintain carrying capacity, and it is unlikely that I will be able to continue to do this. Neither salinity nor threatened species are present and our locality has been grazed since the early 1800's, so biodiversity can hardly be argued. However, I find myself in increasing conflict with bureaucrats who wish to remove my right to manage our land in a way that optimises its carrying capacity, and this includes the need to remove regrowth timber.

There are several state agencies that have the power to prevent the removal of native vegetation from our property and they include Agriculture Western Australia, the Environmental Protection Authority, the Water and Rivers Commission, and the Toodyay Shire Council. Eighteen different parameters can be used in assessing an application to clear and any one of those could be used for refusal. However, no mechanisms exist to provide me with compensation for the devaluation of our asset and income in the name of Public Good Conservation. An exception could be the refusal to clear as a result of a change in a Town Planning Scheme if the refusal is successfully challenged as a refusal to allow continuance of a non-conforming use. This has never happened, and the Planning Commission argues that it could not happen.

The impetus for this attack on our farming enterprise comes from Federal Government initiatives arising from the 1992 *National Strategy for Ecologically Sustainable Development.* Governments and their agencies have a responsibility to present their policies in a fair and balanced way. In Western Australia the Public Service Code of Ethics demands this, and yet it is repeatedly ignored. The Federal Government's environmental publications encourage the belief that agriculture is the scourge of our nation and not entitled to any sympathy when individuals are punished for having native vegetation on their land.

This submission will therefore be directed towards restrictions imposed on the clearing of vegetation on agricultural land in Western Australia, and will be ordered within the four terms of reference of the Committee.

The impact of public-good conservation measures and their costs.

In July 1993, Dr Brian O'Brien presented a paper on Federalism and Ecopolitics to the Twelfth Annual Conference of the National Environmental Law Association in Canberra; and it was amazingly prophetic in its content. In the opening abstract to his paper Dr. O'Brien said:

> *In 1992 the nine Australian Governments endorsed an Intergovernmental Agreement on the Environment, a National Greenhouse Response Strategy, and a National Strategy for Ecologically Sustainable Development. These, and related Agreements of '92, have added ill-defined and wide-ranging "green-letter laws" to the black-letter laws of governments and the Constitution, and the grey-letter laws of government administrations. These "green-letter laws" have no proven value to environmental protection but are a source of great uncertainty in future decision making.*
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> *The interactions of ecopolitics and federalism, driven by global forces associated with the United Nations Conference on Environment and Development, made many of the flaws of these Agreements inevitable once the decisions were made to formalise New Federalism in the environmental field.*

He went on to say:

> *The principles, policies, and hundreds of commitments (384 in fact) of these and companion documents are now "green-letter laws", put in place without parliamentary scrutiny, but as binding on all bureaucracies of each of the nine Australian Governments as the signature of a Prime Minister or Premier can make them.*

He continued:

> *It is unclear how they should be added on to the black-letter laws created largely by Parliament and the grey-letter administrative controls, and how, or if, they modify the more conventional laws. There can be no doubt that they will increase government interventions, influence decisions, and introduce unnecessary additional environmental bias into interpretations and conditional approvals. They give an anti-development ethos to notions of sustainable development, with opportunistic social engineering in many areas.*
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> *There seems no direct legal accountability or redress against green-letter laws in the way that there is for black-letter and grey-letter laws. The latter and their applications can be challenged by bringing procedures before a judge and the legal system can progress towards a solution. Evidence and proofs of reality can be used to challenge government's decisions, conditions, and approvals, and determine an outcome.*
> *But can there be legal challenges against green-letter laws of the Agreements of '92, which give policies and directives?* Dr. O'Brien asks and he later adds that:
> *The demonstrable fact that some of these green-letter laws are remote from reality adds to the difficulty of dealing with them. The only redress seems via the*

political process and ecopolitics, perhaps case by case.

Dr. O'Brien's prophecies are now with us. The concept of 'public good conservation' has become a nightmare for many rural landowners who had a legitimate expectation of being able to develop their farm to its full potential but are now fighting to protect their investment and their livelihood. From the outset the rights of the private landowner have been ignored as the bureaucratic avalanche has been swept along by the green revolution. Farmers now have to fight for equity at all levels of government – right down to the smallest local government committee.

The debate has been engulfed by the "committee syndrome" whereby no person or organisation can put an opposing view without incurring a 'redneck' tag. Many practical, conservation minded farmers are deeply offended by this attitude.

At a March 1998 briefing session held at Forrestfield, WA, for the Planning for Agriculture and Rural Land Use Discussion Paper, a representative from the agency conducting the briefing said:

> *"We are under fire from 'property rights' groups who want the right to change and do what they want on their land even if it is to the detriment of their neighbours or to the detriment of long term agriculture"*

I have rights as a property owner and it includes the right to manage my farm to achieve optimum productive capacity, and it is offensive to be told that I would do this regardless of the impact on my neighbor or on the well being of the land. To try to gain support for ambitions of control by denigrating those who have a different view, exposes the bias to be found amongst those within the bureaucracy who have a specific view on how the environment should be managed; and who regard those who oppose that view as philistines.

Public opinion has been engendered to regard private farmland as public domain and government agencies and conservation organisations believe they have a right to take by regulation the rights of rural private land in a way that could not be contemplated in an urban situation.

This comment is well founded and only tells half the story. In Western Australia there is documented evidence of collusion, if not conspiracy, within and between agencies to achieve a particular conservation outcome when dealing with applications to clear land for agricultural production. It seems that agency officers have assumed that any means will justify the end in their crusade to turn private land into conservation estates. Fact or science no longer has a role in the debate. The 'Precautionary Principle' has been escalated to a new level.

Federal Policies

The Federal Government's role in creating this climate of hostility to the farming community has been significant. The Australian farming community has been severely

penalised by efforts to capture the 'green' vote by political parties.

An example of this can be found in the Federal Government's targets for greenhouse emissions under the 1997 Kyoto agreement. Australia won the right to include the treatment of forests and land clearing in the baseline 1990 measurement of emissions. At the time Senator Hill said that the inclusion of land clearing gave Australia the chance to "restructure other aspects of energy production". This inclusion is a dreadful and draconian impost on those landowners whose life and income is intricately bound to a partly developed farm. They are few and their votes don't count so they are made to carry the can for fossil fuel consuming industries and the government. Further evidence of the appalling bias against the agricultural community can be found in the structure of the Greenhouse Gas Inventory Table. The laws of physics have been thrown out and agriculture has been debited with carbon that has been seemingly newly created. My cattle are badmouthed for creating greenhouse gases, but no one cares that the carbon they are emitting was taken from the atmosphere a few months earlier. It is a fraud on the public and nobody seems to know or care.

Anybody with a passing knowledge of the carbon cycle would wonder who was responsible for such a fraud as the inclusion of this short-term sequestration of carbon in the equation. To claim that vegetation controls would have any effect on long term climate change is a dream that cannot be supported by fact. The earth has been warming and cooling for millions of years without assistance from any government authority.

This fraud is now compounded by the boast that we are spending more than $400m on establishing carbon trading in Australia, and yet the arguments against the worth of controlling greenhouse emissions are considerable. Scientists from the Harvard-Smithsonian Center for Astrophysics and the Oregon Institute of Science and Medicine published a substantial review of 159 papers on the subject of global warming in "Climate Research" Oct. 26, 1999. It's abstract states:

> *A review of the literature concerning the environmental consequences of increased levels of atmospheric carbon dioxide leads to a conclusion that increases during the 20th century have produced no deleterious effects upon global climate or temperature.*

The review paper also states that there is "*substantial evidence for a host of beneficial effects of increased atmospheric* CO_2 *on plant growth and development"*. More importantly it also finds that changes in atmospheric CO_2 show a tendency to follow rather than lead global temperature changes.

This review paper has impeccable credentials and supports the contention that bad science has allowed "Alice in Wonderland" Federal Government policies to be developed. The paper is not new research; the evidence has always been available but the greenhouse industry does not want to hear it. The gravy train is rolling, and the decision to stop it can only be made by politicians.

It is the greenhouse argument that has been the genesis of public condemnation of

agricultural activity as being responsible for all of Australia's environmental sins, and has created most of the absurdities in Federal Government policies relating to the Kyoto protocol. It may not be on the Committee's "Issues for Inquiry" list, but it is an active ingredient in 'public good conservation' debate. It is one more hurdle that farmers have jump when dealing with agencies in relation to agricultural activities. To again quote Dr. Brian O'Brien prophesy on green-letter laws:

> *There can be no doubt that they will increase government interventions, influence decisions, and introduce unnecessary additional environmental bias into interpretations and conditional approvals. They give an anti-development ethos to notions of sustainable development, with opportunistic social engineering in many areas*

Statutory Planning

At a more local level, planning and local authorities in WA and various state government agencies are flexing their muscles in their new role as protectors of natural resources. This is impacting on the fundamental rights of private ownership and management of farming land and derives its power from various Western Australian Government initiatives, including:

- a December 1994 Cabinet Position Statement providing for the use of planning powers for the protection of productive agricultural land:

- the April 1995 Cabinet endorsement of a series of proposals for the protection of natural resources (soil, water, native vegetation and fauna):

- a March 1997 Memorandum of Understanding between six government agencies for the protection of remnant vegetation on private land in the agricultural regions of Western Australia:

- the November 1997 Western Australian Planning Commission and Agriculture Western Australia discussion paper Planning for Agricultural and Rural Land Use:

- the Department of Environmental Protection's Environment Western Australia 1998 report.

Planners are embracing their new opportunities with vigor. Already Shire town planning schemes are including provision for Shire consent for the construction of farm dams or soaks, and that consent will only be forthcoming if the Water and Rivers Commission approve the proposal. Stock, crop, and fertiliser regimes will be next.

Planning for the conservation of natural resources has pushed the "right to farm" aside. Farmers are told that, for environmental reasons, the days when they had the right to do as they wish on their farms are over (Forrestfield workshop on the discussion paper Planning for Agricultural and Rural Land Use, 25 March, 1998). This not only means the intrusion of a government officer into the decision making process for farming

operations, but it also includes the power to fundamentally effect the value of the farmers assets and profitability.

An example of this is a landowner in the Shire of Toodyay who has a 1600 acre farm that is not yet fully developed. He has owned it for twenty years and during that time the Shire of Toodyay Town Planning Scheme No.1 was put in place and it zoned the farm area 'landscape protection'. At the time this had little significance for the owner and he continues to slowly develop the property. By the time he could afford to clear the remainder of the farm it was too late. The green-letter laws had overtaken him and he was left with 600 acres uncleared. Had he pursued an application to clear he would have had a conservation notice placed on the property. The Commissioner for Soil and Land Conservation had slammed the door on all clearing – possibly illegally, but it was shut anyway.

Since he could not bring this 600 acres into production the landowner applied to subdivide it from the balance of the farm and sell it. The local authority did not support this and the Planning Commission wouldn't approve his application. He is left with a severely devalued asset and no compensation for having to leave a substantial portion of his farm uncleared for "public good"

Further documented examples of farmers being penalised hundreds of thousands of dollars are available. The frustration and feeling of hopelessness is not helped when the genesis for this destruction of private farming assets is to be found in the Federal Government which has no responsibility for providing fair compensation.

Is it any wonder that those farmers that are on the receiving end of this massive attack on their business and asset base are angry? They are resentful of the fact that such an attack on private property in any of the capital cities would be greeted with outrage and demands for compensation from the press. Farmers, however, could not expect such support from the press, as it is the perception of most city dwellers that farmers are the cause of the problem.

Western Australian Environmental Protection Authority

A December 1999 Position Statement published by the Western Australian Environmental Protection Authority makes it clear that the authority will not support any further clearing of land for agriculture premised almost entirely on the protection of biodiversity. The document's attempt to claim this move as being important for agriculture is pathetic and is not supported by the reality of agricultural production. The document asks the key question "how much biodiversity is enough?" but does not answer it and instead states that to correct the salinity problems of the agricultural areas of WA replanting may have to be as high as 85%. It fails to say that this would be the end of agriculture in those areas if that were done. However the Position Statement is perhaps the most significant Western Australian document so far in the destruction of many farmers viability and net worth, and it makes it clear that the Commonwealth Natural Heritage Trust agreements are an important part of the stance it has taken. The Trust, however, has no provision for compensation, only funds to assist reservation.

Land clearing for agriculture in Western Australia has been halted. Not a single statute has been passed by parliament to bring this about. Not a single vote to give effect to a black letter law that halts clearing has been taken in Western Australia. There is a continuing pretence that applications are being "assessed" but the agencies are openly admitting that they will not approve further clearing. As predicted by Dr. Brian O'Brien the green-letter laws have prevailed and nobody seems capable of challenging them. It is ironic that the one public voice pointing out the equity issues for those effected by Public Good Conservation is the Western Australian Environmental Protection Authority. But then they know they have no responsibility in correcting the inequities of their decisions.

Financial assistance for conservation by private landholders.

I have know any landowner who has participated in a voluntary reservation scheme and therefore cannot comment on the level of satisfaction with the financial assistance offered for such things as fencing. I do, however, know several landowners that are insulted by the level of financial assistance offered when they are forced to become compulsory participants in reservation schemes.

Dodging the issue has become a sport for some. Deceptive terminology is used by agencies trying to put a gloss on what is nothing more than the confiscation of a landowners assets by the government. It has become important to avoid using the word "compensation" and instead refer to "adjustment measures" or "minimising the economic burden".

The Final Report of the Government of Western Australia's *Native Vegetation Working Group*, dated 25th January 1999, is mostly about why assistance should not be given and declares that "…*the imposition of* (clearing) *controls fits into the category of a business risk, no different from the everyday risks facing all businesses."* It then proceeds to make recommendations for expanding clearing controls. This committee was established by the Minister for Primary Industry to 'develop mechanisms that minimise the economic burden carried by individual landholders in the protection and retention of privately held bushland in agricultural areas' – and nothing more. Ultimately their recommendations for assistance are pitifully inadequate and total $9.0 million. Of this sum only $2.5 million over 5 years is allocated to assist "difficult cases". These would be most of those who are most severely effected by the present clearing controls and this sum would be consumed by the few existing cases that I know of now. However it is unlikely that anyone could pass the qualifying conditions that have been applied to this assistance. As a matter of contrast, the Perth Bushplan has funding of $100.0 million, which was, of course, announced when the plan was introduced to prevent cries of outrage.

Conclusion

I urge the Committee to recognise the damage that 'public good conservation' is doing to many individuals in rural Australia. It is not acceptable that the Federal Government has used the States to deprive rural landowners of their assets by claiming 'public good' knowing that they are absolved from any issues of compensation by the Australian

Constitution. It is not acceptable that a deliberate campaign has been successfully used to instill in the public mind the belief farmers have themselves to blame and are lucky to get any financial assistance at all. Finally, it is not acceptable that such an outrageous distinction exists between urban and rural landowners in the matter of compensation for the removal of property rights.