

GREAT ARTESIAN BASIN COORDINATING COMMITTEE

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SUBMISSION IN RELATION TO THE FIRST EXPOSURE DRAFT OF THE NATIONAL HARMONISED REGULATORY FRAMEWORK FOR COAL SEAM GAS

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CONFIDENTIALITY OF SUBMISSION – Not confidential

BACKGROUND

I make this submission as Chair of the Great Artesian Basin Coordinating Committee (GABCC) against a background of considerable earlier Committee input to the consultation process leading to development of the First Exposure Draft. That input commenced with a major presentation on the SCER initiative by Tim Mason, Manager CSG, DRET, at GABCC meeting 25 in Canberra in late May 2012. The subsequent discussions, including from our peak NGO partner organisations, provided an opportunity to canvass a range of perspectives around the current challenges and opportunities facing the GAB, including the extractive industry sector.

Consistent with undertakings given at GABCC 25, a range of reference material in relation to extractive industry development in the GAB was made available. Two GABCC Briefing Notes were also provided, detailing a range of key policy, regulatory and community issues in relation to CSG extraction in the GAB.

The GABCC's Extractive Industries Working Group also took part in a teleconference on 23 April 2012, organised with Ray Evans, SKM's Principal Hydrogeologist.

During the consultations with DRET and SKM, undertakings were given that the GABCC would be specifically notified as soon as the Exposure Draft became available. I regret to say that did not occur and I was not made aware of its release until very late January. This timing prevented the GABCC from collectively

considering the Exposure Draft and providing a comprehensive whole-of-Committee response.

The GABCC has diverse membership and our jurisdictional and industry sectoral members will no doubt be providing separate input to the submissions of their respective organisations.

Given these circumstances, I make this submission as GABCC Chair but not on behalf of the whole GABCC. In developing this submission, I have sought to provide specific comment from a whole-of-Basin perspective, drawing on my own long experience with the GAB, community concerns expressed directly to me in relation to development of the CSG industry and valued advice from GABCC members representing the regional and state community sectors.

THE CHALLENGE OF CATCH-UP

Before going to the detail of the Exposure Draft, it is instructive to provide the following context, synthesised largely from informed feedback received across GAB communities.

It is 17 years since the first commercial extraction of CSG took place. During that time governments have, for the most part, encouraged / facilitated the development of the CSG industry well ahead of the robust, precautionary frameworks needed to minimise risk and achieve sustainable co-existence. As a consequence:

- the scientific community continues to scramble to get the science done;
- governments continue to scramble in terms of getting the regulatory and compliance measures in place and operating in a comprehensive, consistent and transparent way; and
- industry continues to scramble in terms of securing its legitimacy and social licence.

While this may not be unique to the CSG industry, what makes this catch-up challenge so significant and of concern is the sheer scale, intensity and speed of CSG industry development and strong community perceptions that governments have tended to believe industry assurances that:

- there is already sufficient knowledge and leading practice to underpin industry development;
- industry can be trusted to operate with a significant degree of self-regulation and reporting;
- adjustments that might need to be made to avoid major legacy problems will be identified and addressed – even those that might emerge decades after the industry is gone; and
- in any event, there are appropriate “make good” provisions in place if all else fails.

While these concerns are not universally shared across the GAB, they are held by significant sections of the GAB and broader community, notwithstanding recent

significant progress made by governments and industry to strengthen the rigour and comprehensiveness of CSG regulation and practice. They therefore provide a salutary challenge to the development of a harmonised framework that seeks to improve public discourse, and enhance public confidence in the effective regulation of the CSG industry.

SPECIFIC COMMENT ON THE FIRST EXPOSURE DRAFT

SCER is to be congratulated on the release of the Exposure Draft. It is a significant body of work that, when completed, has the potential to make a significant contribution to improving standards and practices and enhancing the work already underway by state and territory jurisdictions.

However, in my view, the potential of the framework would be better realised if it moved beyond its present focus on “not lowering jurisdictional standards and practices” to be more forthright on critical issues in terms of challenging current thinking and discourse on standards and practices and adding more “stretch”.

It is not my intention here to revisit the substantial input provided by the GABCC during the early development of the Exposure Draft but, rather, to briefly highlight some areas where I believe the Exposure Draft should be more forthright and challenging. In that context, I provide specific comment on five critical areas /issues as examples:

- Leading practice water management
- Adaptive management
- Monitoring, assessment and enforcement compliance
- Social licence
- Frameworks for other extractive industries

Leading practice water management

There are a number of issues here where I believe the Exposure Draft needs to be more forthright. The first relates to management of co-produced water through licensing or conditioning access.

Under key finding 4.2, it is pleasing to see that the Exposure Draft draws directly on the wording of GABCC’s Briefing Note No.2 in terms of recognising that, while there are differences between the Queensland conditioning access and NSW / SA water licensing approaches, they have the same strategic intent of achieving balanced consistent outcomes, including protection of the environment and the rights of water users. That said, I consider (as do NSW, SA, the National Water Commission and the majority of GABCC members) that water licensing is the more robust approach and should become the national standard.

The second relates to the NSW Aquifer Interference Policy. Given the detailed briefing provided to the GABCC on this initiative, it would seem to me that consideration should be given to better highlighting this Policy as contemporary leading practice, recognising its integrated approach to recognising the importance of

maintaining the integrity of aquifers, regulating diverse aquifer interference activities, outlining preferred disposal options for co-produced water and providing a mechanism for equitable and accountable water sharing.

The third relates to references in the Exposure Draft (page 45) to Clause 34 of the Intergovernmental Agreement on a National Water Initiative. I consider that the Exposure Draft provides a timely and important opportunity to argue for a review of the scope of this Clause and tighten the “special circumstances” facing the minerals and petroleum sectors that need to be addressed by policies and measures beyond the scope of the NWI agreement.

This leads me to the fourth issue, which is the reference to GABSI on page 45 of the Exposure Draft. I am pleased that GABSI is recognised. However, given its significance to the long-term sustainability of the GAB, the scale of investment being made by governments and landholders and the potential impact of the CSG industry, I consider this critical program should be given significantly more prominence than is presently the case in the Exposure Draft.

The fifth issue is management, re-use and disposal of co-produced water and associated contaminants, including salt. This is a major issue of community concern and one where there needs to be more certainty and clarity, particularly in relation to reinjection into targeted geological formations. Clearly, the science for this option must be significantly more advanced before it is broadly mandated, particularly recognising the key finding 4.3 that “disposal of waste water and brine into underground systems is a method that has not been widely considered in Australia”. The exposure Draft therefore needs to be more forthright in stressing to governments and industry that evaluating international leading practice and accelerating the local science must both be pursued as critical priorities.

Adaptive management

Adaptive management underpins the policy planning and regulatory regimes that control CSG industry development and operations. It is reflected in the extensive development approval conditions imposed on CSG operations under state and Australian government legislation.

However, it is not without its critics, who point to the following:

- the scale and pace of CSG industry development across the GAB landscape and beyond has few historic parallels;
- significant knowledge gaps still exist, including in terms of more comprehensive understanding of the hydrogeological complexity of the GAB and aquifer connectivity and the potential cumulative impact of CSG extraction over space and time; and
- cumulative impacts to GAB aquifers and groundwater-dependent ecosystems, to water supply bores and to individual enterprises and communities can occur long after extractive operations have ceased.

I recognise that governments and the CSG industry are making considerable effort and investment to ensure adaptive management is applied with a high level of precaution, predictive capability and transparency. In this regard, I particularly note:

- the management, monitoring, accounting and reporting requirements now being imposed on CSG operators in terms of the GAB water and pressure resource; and
- the research and investigation that is underway, including work to assess the state of the GAB water and pressure resource and more accurately assess and predict cumulative impact.

That said, considerable doubt has been expressed within the community as to whether adaptive management will be applied in a sufficiently robust and precautionary way over the life of the CSG industry to minimise the risk of unacceptable impacts – especially taking into account the National Water Commission December 2010 Position Paper, which highlighted the need for industry, water and land use planners and governments to adopt a precautionary approach to CSG developments. This should be more explicitly acknowledged and addressed in the Exposure Draft.

Monitoring, assessment and enforcement compliance

This is a fundamentally critical issue to the success of the adaptive management approach, the integrity of the CSG policy and regulation and the legitimacy of the industry.

Effective governance of the CSG industry requires policy, planning and regulatory regimes to be complied with through adequate, ongoing enforcement. In this respect, I note continuing community concerns being expressed as to whether jurisdictions are fully committed to effectively enforce compliance with the very extensive approval conditions being imposed on CSG developments. This is a vitally important area of credibility for governments, jurisdictional agencies and for the industry itself, particularly in terms of:

- ensuring adequate compliance/enforcement resources and processes are in place;
- ensuring an appropriate and transparent division of responsibilities between government and industry;
- ensuring adequate on-ground compliance enforcement; and
- effectively communicating the above to the wider GAB community.

It is fundamentally important that governments, jurisdictional agencies and the CSG industry ensure an appropriate and transparent division of responsibility in terms of enforcement /compliance. This is particularly the case in terms of monitoring, accounting and reporting. Within the CSG industry, there is heavy reliance on operators undertaking monitoring and providing data.

While this must remain a core responsibility of CSG operators, I consider jurisdictions have a core responsibility to ensure they have the capacity and processes to independently assess and validate the data provided by operators, recognising that, within the framework of adaptive management, this data is being used to help develop and progressively improve impact assessment processes and refine policy planning and regulatory settings.

In terms of advancing impact assessment processes, the Queensland Government must be acknowledged for developing and implementing a comprehensive process for assessing the cumulative impacts of CSG activities in the Surat and Bowen basins. On a broader scale, the Australian Government also needs to be acknowledged for initiating and coordinating implementation of the GAB Water Resource Assessment (GAB WRA) and the Bioregional Assessment processes. These initiatives must surely be world's leading practice.

That said, while the GAB WRA process is yielding very comprehensive and sophisticated additional information in relation to the GAB, in other big basins where CSG activity is occurring, including the Sydney and Gunnedah basins, the level of information available is nowhere near as comprehensive and sophisticated.

On another salutary note, there are significant community/stakeholder misgivings around the robustness of the numerical groundwater models that are presently being used to conceptualise the hydrogeological environment and underpin impact assessments. The Exposure Draft does point out that ongoing monitoring and adjustments to models are required to address differences between observations and predictions. That said, I consider the Exposure Draft must more clearly acknowledge community/stakeholder misgivings and stress to jurisdictions and industry that much more work needs to be done to allay them.

Social licence

The Exposure Draft highlights the importance for the CSG industry to have a “social licence” to operate; giving social legitimacy for the industry to “co-exist”; and reflecting a shared commitment to informed public discourse, mutual responsibility and mutual benefit. The Exposure Draft also highlights the fact that community engagement and community development must both be key processes underpinning pursuit of a social licence.

This is a very positive and potentially powerful concept and one that the CSG industry (upon reflection) might better have embraced from the outset.

Given that, I consider this concept should be fleshed out in more detail in the Exposure Draft. In that regard, the following questions might assist:

- How would a social licence be defined and what would it look like?
- What form would it take and what parameters would it embrace?
- Are there any leading practice models / examples of effective, long-lasting social licences that can be drawn on?

- Can we draw on the experience of mining companies when negotiating with Aboriginal traditional owners under Native Title legislation?
- Is there any merit in considering a social licence as a formally mandated conditional requirement?
- If so, should key elements of the social licence development process be codified?
- Alternatively, is there merit in a “leading practice manual” approach?
- When and by what means would all the key parties involved know that a social licence has been secured?

Frameworks for other extractive industries

Taking into account the problematic development of the CSG industry and the “catch up” challenge I referred to earlier and the lessons being learnt, it would be sensible to also highlight the critical need for SCER to give priority to extending its leadership role to developing similar frameworks for other extractive industries including, for example, shale gas.



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Chair GABCC
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