



22 March 2013

Mineral Exploration Inquiry
Productivity Commission
GPO BOX 1428
CANBERRA CITY ACT 2601

Submission to the inquiry into non-financial barriers to mineral and energy resource exploration

NSW Farmers welcomes the opportunity to offer insight into the pertinence of regulation on mineral and energy resource exploration in NSW. While NSW Farmers supports appropriate development of mineral and energy resources in NSW, we would not support the relaxation of regulations that could adversely affect farm businesses. With a majority of NSW currently subject to one or more licence or application for exploration activity (see map attached) it is critical that regulations around exploration are appropriate and enforced.

NSW Farmers strongly advocates for regulatory measures which support a positive working relationship between explorers, agricultural landholders and rural communities. The purpose of this submission is to ensure the Productivity Commission understands the reason for regulating exploration activities and considers the possible ramifications of a diminished social licence which could result from decreased regulation.

NSW Farmers supports a number of improvements to regulations on exploratory activities including;

1. More independent assessment of invasive exploration activities by state government authorities;
2. Improved rights for landholders in forming land access agreements;
3. Access to legal advice
4. The option for independent baseline assessment for land values and water resources prior to and after exploration activities.

Outlined below are these key areas of support for farm-specific regulations, containing indications of improved regulation for the benefit of rural communities.

1. Independent assessment of invasive activities

One of NSW Farmers' major concerns in relation to mineral and energy exploration is that highly invasive processes are defined as exploration activity for licensing purposes. Activities such as exploratory drilling, bulk sampling and test pilot production cause major disruption to landholders and pose documented risks to land and water resources - see annexure for a briefing note on this subject.

NSW Farmers submits that the potential detrimental impact to farm land and water in the exploration phase alone is significant enough to require a strict regulatory regime. In NSW, exemptions to local planning laws and the thresholds set for 'state significant development' mean that exploration activities are only approved by the Division of Resources and Energy. NSW Farmers sees an inherent administrative conflict in the role of this agency in both promoting the mining and energy industry and assessing its environmental approvals - despite government expertise in these matters residing in other agencies..

2. Landholders' right to deny access for exploration activities

Current mining and CSG exploration regulations in NSW require access agreements between an explorer and landholder for exploration activity on privately owned land. Failing initial agreement between the parties, arbitration is sought whereby the arbitrator sets out the terms on which access will be granted, rather than decide whether access should be granted. This guarantee of access undermines the landholder's ability to negotiate equitable compensation for interference with their business. It is unreasonable to expect exploration companies to compensate fairly or take all possible steps to maintain positive relations with landholders when legislation ensures that the concerns of the landholder are secondary to the company's right of access.

Access agreement negotiation is a disempowering process for landholders to endure and it is this process that is responsible for a great deal of the present community angst around exploration and mining activity. NSW Farmers believes that amending legislation to give farmers the ability to refuse access is a vital step toward relieving the tension around land access and improving rural community confidence in the process.

3. Access to legal advice

NSW Farmers holds a firm view that farmers should not be required to enter access agreements without having the benefit of independent legal advice on the effect of the document. As indicated above, current land access regulations do not offer scope for landholder or arbitrator rejection of land access for exploration. Access agreements need to cover a range of important and technical issues such as liability, occupational health and safety, dispute resolution, the rights of third parties and the structure of compensation. It is unjust that farmers are asked to meet their own costs in obtaining advice about agreements they are essentially forced into.

NSW Farmers seeks improved measures for legal advice re-imbursement. Re-imbursement as defined in legislation should be forthright in covering the entirety of landholders' legal costs in understanding and negotiating party rights when entering into access agreements, not merely covering the ill-defined 'initial' stage.

Further, current legislation in NSW denies landholders the right to legal representation in arbitration unless it is agreed to by the explorer. NSW Farmers is aware of a number of cases where this has been denied to landholders despite explorers being represented by employees who are highly skilled in access negotiations. This is fundamentally unjust and should be rectified.

4. Property value decline in exploration licence areas

Certainty for the current and next generations about the future of their property and their region is a valuable asset as increasingly ageing farmers plan retirement and intergenerational transfers. Not only does the insecurity associated with exploration create personal stress for the landholders affected, it also acts as a deterrent for potential buyers of affected properties.

NSW Farmers submit that it is prudent for an independent valuation to be conducted prior to invasive exploration being conducted on any land. This would provide a baseline to help landholders seek compensation where devaluation occurs. Reimbursement for the landholder's costs in obtaining an independent valuation should be mandated in exploration regulations.

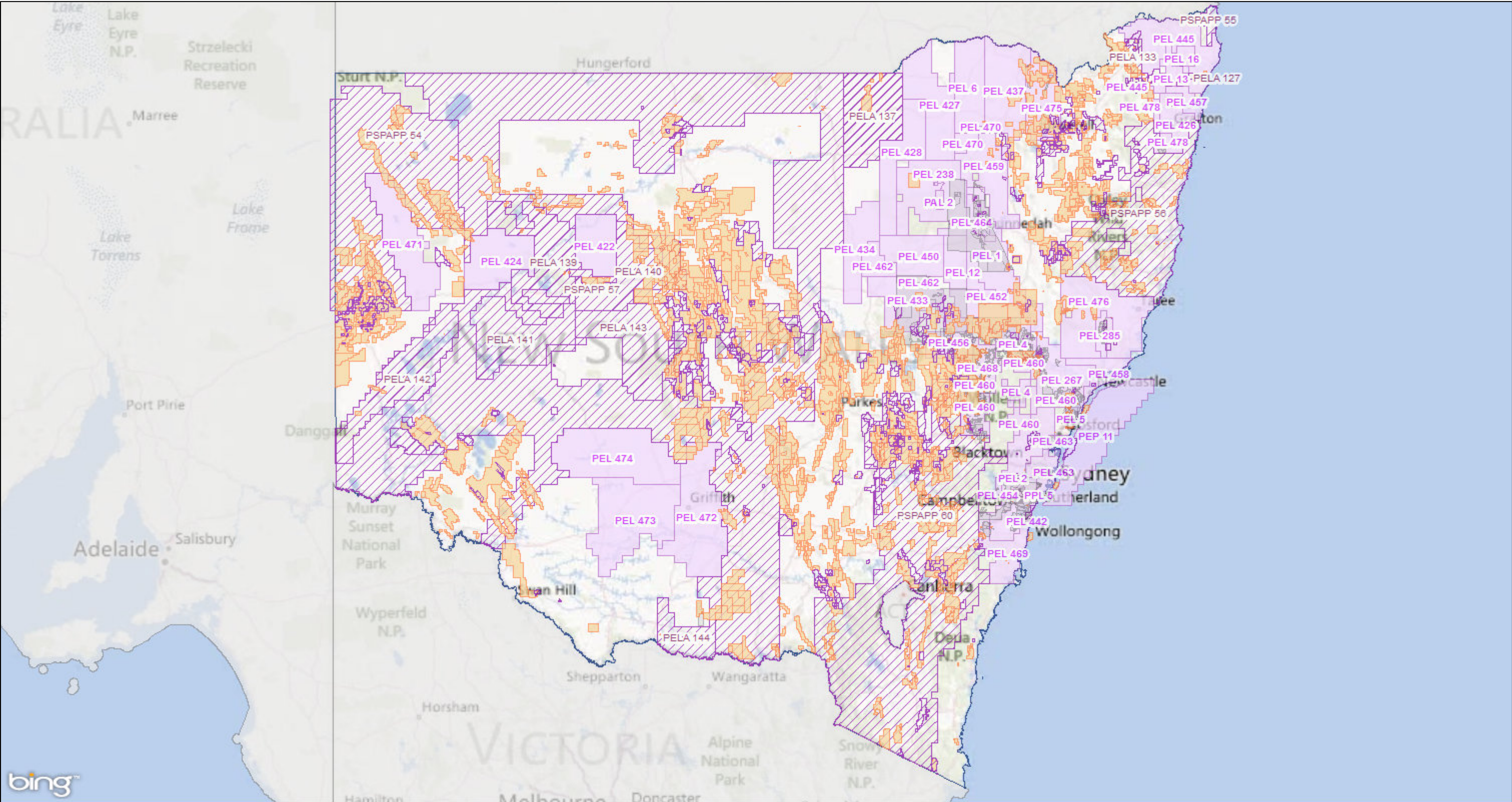
NSW Farmers is pleased to offer insight into exploration regulations from a farming and landholder perspective. Regulations and regulatory advancements are critical in protecting and improving community certainty and landholder rights as to both the implications of exploration activity and forming a positive working relationship between the agriculture and mining sectors.

Yours sincerely








Danica Leys
Policy Director – Environment

Enc. Current mineral and petroleum titles and applications – NSW
NSW Farmers briefing note – Exploration Activities

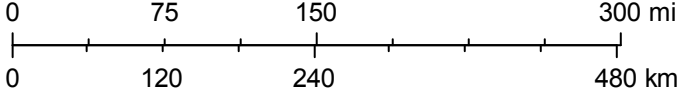
NSW Titles Map - 22 March 2013



March 22, 2013

- | | |
|---|--|
|  Current Mineral Applications |  Current Petroleum Applications |
|  Current Mineral Titles |  Current Petroleum Titles |
|  Current Coal Applications |  State Border |
|  Current Coal Titles |  NSW Coast |

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What is meant by 'exploration'?

ISSUE

The Strategic Land Use Plans and Aquifer Interference Policy proposed by the NSW Government fail to protect land and water from the risks involved in mineral and coal seam gas exploration – in breach of their election promise. This briefing note sets out some of the activities which will not be subject to an aquifer interference approval, and will be allowed to proceed on strategic agricultural land. NSW Farmers is calling on government to apply its gateway process before exploration is undertaken on strategic agricultural land, and to require an independent aquifer interference approval whenever activities like this place water resources at risk anywhere in NSW.

EXPLORATORY DRILLING

In addition to non-invasive exploration techniques, the mining and coal seam gas industries rely heavily on exploratory drilling to assess resources. A typical exploration programme can involve dozens of drill holes, with some such as the current project in Lockhart involving up to 1,500 holes.¹ Drilling can reach depths of over 1km – well past the groundwater systems relied on for agricultural and domestic water supplies. Drilling through these systems presents a number of well-documented risks, including possible depletion and contamination of aquifers.²³⁴⁵

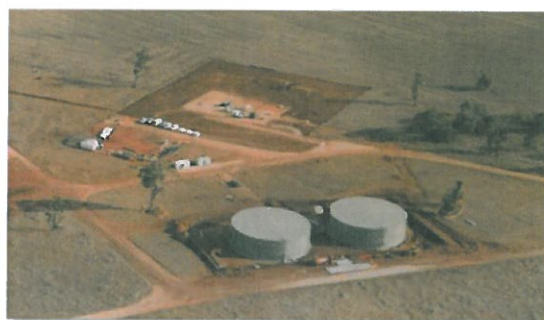


BULK SAMPLING

In the advanced stages of exploration for coal and other minerals, many companies engage in 'bulk sampling' to further test the viability of a resource. Bulk sampling takes the form of a smaller open cut or underground trial project and can vary from trenching to establishment of deep open cut sites. As an example, an approved bulk sample by the Bickham Coal Company involved blasting and a 90 metre deep excavation of 330,000 cubic metres of overburden to remove a 25,000 tonne coal sample.⁶ Proposals like this which intersect the water table present an obvious risk to surrounding water sources.

TEST PILOT PRODUCTION

The regulatory framework for CSG enables 'test pilot production' to be carried out under an exploration licence without a development application. This can involve the construction of holding tanks, workers' accommodation, roads, pipelines and gas flares, and operate around the clock for two years. In addition to the risks of drilling pilot wells, hydraulic fracturing may also be utilised (following the expiry of the current moratorium). Santos' own paperwork for the Kahlua test pilot site (pictured) acknowledges the risk of groundwater contamination or depletion and possible impacts on nearby streams.⁷



¹ Standard Iron Pty Ltd, Review of Environmental Factors for Lockhart Exploration Project – RW Corkery & Co. Pty Limited

² WA Department of Mineral and Petroleum Resources. 2002. *Guidelines for the protection of surface and groundwater resources during exploration drilling*, Page 2

³ SA Primary Industries and Resources. 2006. *Minerals and Energy South Australia, Earth Resources Information Sheet: Mineral exploration drillholes – general specifications for construction and backfilling*

⁴ NT Department of Resources. 2011. *Construction and rehabilitation of exploration drill sites*

⁵ QLD Department of Environment and Resource Management. 1995. *Rehabilitation of areas containing shafts, boreholes or adits*

⁶ Bickham Coal Company Pty Ltd, Review of Environmental Factors for Removal of Bulk Sample – Hunter Development Brokerage

⁷ Review of Environmental Factors, Kahlua Test Pilot Wells – Santos, page 48