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Justice Rachel Pepper
Chair, Scientific Inquiry into Hydraulic Fracturing in the Northern Territory
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30th April 2017

Dear Justice Pepper,

As the owner of North Star Pastoral holding a number of pastoral leases in the Northern Territory, I write to provide feedback on the potential risks, or issues, that the independent scientific panel has documented in the Background and Issues Paper ('Paper') dated 20th February 2017.

By way of introduction, North Star Pastoral ('NSP') holds approximately two million acres across the Northern Territory and runs a cattle herd of approximately 80,000 head. NSP exports some 10,000 live cattle per year plus 6,000 head are sold domestically. The NSP stations include:

- Limbunya Station (Victoria River District);
- Hodgson River Station and Maryfield Station (Mataranka); and
- Wubalawun Station (Mataranka).

Our comments are ordered as per the themes listed in the Paper and the risks/issues identified within each theme.

As a general comment, sustainable groundwater and surface water supplies are vital to sustaining the significant and growing pastoral industry. NSP also has major concerns regarding land surface activities and the attendant risks and liabilities, and the lack of insurance for damages.

NSP has no confidence that the gas industry will protect our interests therefore we have no option but to adopt the Precautionary Principle and support a ban on unconventional exploration and development, as per the recent Victorian Government decision.

1. Water Resources Theme

NSP concurs with the Paper's summations of the risks relating to this topic. We recommend however that more attention be given to salt/brine management than appears suggested in the Paper.

2. Land Resources Theme

NSP recommends that a new risk be added, namely **biosecurity**.

When one examines the list of ‘non-pastoral’ works a gas company can impose on a pastoral property (see listed below) the biosecurity risks are likely to rise significantly and the pastoralist runs the risk of losing control of affairs on his/her property. The risk of pests and disease are likely to escalate significantly as a result of increased access points to the property, with the added risk of non-pastoral workers introducing weeds via vehicle tyres, unauthorised entry and cattle theft.

We also highlight that a gas company has unacceptable power to impose unreasonable demands on a pastoralist’s land, as listed below:

- Clearing of land (seismic and exploratory activities)
- Tracks and roads
- Production wells
- Exploration wells
- Gas pipelines
- Clean water pipelines
- Dirty water pipelines
- Powerlines
- Clean water dams
- Dirty water dams
- Reverse osmosis plants
- Gas compressor stations
- Brine encapsulation facilities
- Work offices
- Gas burning (flares) equipment

The pastoralists ability to control his cattle management business is also at risk. For instance, the gas industry’s standard procedures are that a certain number of the pastoralist’s own activities would require the prior approval of the gas company, including:

- Construction of buildings, yards, dams, table drains, troughs or tanks;
- Driving vehicles exceeding 10t over gas pipeline;
- Constructing a new track over gas pipeline;
- Installing a farm pipeline over a gas pipeline; and
- Farming/deep ripping/grading over pipeline to depth > 200mm.

NSP strongly recommends the laws be changed to balance the powers between the two parties. At present there is an imbalance in favour of the gas companies.

NSP concurs with the Paper’s other summations on the land resources topic.

3. Air Quality Theme

NSP recommends that the risk currently labelled ‘climate change’ be amended to read ‘**carbon footprint**’. The reason being that the issue with the industry and its operations is the matter of fugitive gaseous emissions all along the extraction, processing and transportation chain. The ‘carbon footprint’ is in our view a more concise description of the risk; calling it ‘climate change’ is too broad.

There is a growing weight of evidence that fugitive emissions are significantly understated. **We believe this risk is a key ‘sleeper’ in the debate and we recommend the Panel exhaustively examine the likely fugitive methane emissions as we understand that if more than 4% of the gas produced leaks into the atmosphere then the industry is as dirty as coal from a carbon perspective.**

NSP concurs with the Paper’s summations of the other risks associated with this topic.

4. Public Health Theme

NSP concurs with the Paper’s summations on this topic.

5. Impacts on Aboriginal People and their Culture Theme

NSP concurs with the Paper’s summations on this topic.

6. Social Impacts Theme

NSP notes that under Theme 5 above there is a risk labelled ‘**community wellbeing**’. We think that wording is preferable to ‘community cohesion’ as is currently listed in this theme, so we recommend a change.

Humanistic and cultural aspects, that is the social sciences, are a vital and pivotal aspect because the values and aspirations of local communities are crucial to future land use planning and need to be given just as much weight as the natural and engineering sciences.

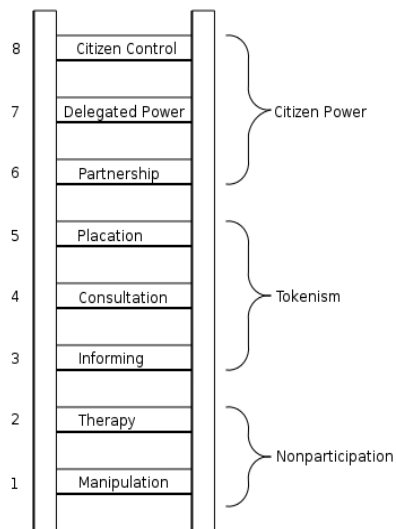
What is key is that any assessment of the unconventional gas industry must respect and protect stakeholder’s intangibles such as:

- the sense of place (ie natural and built landscapes that affect resident’s sense of identity and place, and level of satisfaction with their surrounds);
- shared norms of behaviour and values, social /community cohesion;
- the things that give meaning to life in the district/region; and
- cultural heritage matters.

The whole deliberation process, both by the Panel and later the Northern Territory Government, should in our view be based on the values of trust, respect, openness, transparency and accountability.

NSP also flags that so-called stakeholder engagement practices are typically tokenistic at best and are more likely to sit at levels 3 and 4 in the ladder below, alienating and disempowering communities.

Figure: Eight rungs on the ladder of citizen participation



Sherry Arnstein, "A Ladder of Citizen Participation," JAIP, Vol. 35, No. 4, July 1969, pp. 216-224

NSP concurs with the Paper’s other summations on this topic.

7. Economic Impacts Theme

NSP recommends the Panel include in the economic assessment the matter of the economics associated with ‘**carbon risk**’. The carbon liability associated with fugitive gas emissions is in our view a very substantive issue on two counts. Firstly the fugitive emissions are likely to be comparatively large (more so than what is stated by the gas industry) and secondly the ‘**price**’ associated with such emissions (that is the carbon footprint of the activity) will impact its economic viability, as financial institutions give increasing attention to such liabilities and price them into their economic assessment of such projects.

NSP concurs with the Paper’s other commentary on this topic.

8. Land Access Theme

NSP would like to see considerable attention paid to the **power imbalance** between the gas companies and the pastoralists. The playing field is seriously unlevel with the gas industry holding all the aces. Until this injustice is removed there will be considerable angst and disquiet about the industry. Our comments in Theme 9 below also refer.

NSP concurs with the Paper’s other commentary on this topic.

9. Regulatory Framework Theme

We recommend the Panel give considerable attention to the issue of ‘**power imbalance**’ because, compared the a gas company, the pastoralist is disadvantaged on four grounds, namely

- time;
- technical knowledge;
- economic capacity; and
- political influence.

Two pieces of evidence lending support to this assertion are listed below:

1. Productivity Commission 2013, *Mineral and Energy Resource Exploration*, Inquiry Report No. 65, Canberra. Pages 18, 133. On the topic of land access, rural land holders are disadvantaged due to:
 - limited experience in undertaking such negotiations compared to explorers, who may have negotiated hundreds of such agreements;
 - the asymmetry of information regarding the potential impact of the exploration activity;
 - and an imbalance of power, as in most cases, rural land holders are legally required to allow explorers to access their land.

2. Human Rights Commissioner Tim Wilson, Castan Centre for Human Rights law conference, Monash University, 23 July 2015. He stated:
 - Australian governments must give farmers more rights when energy companies are negotiating access to potential gas reserves on their property;
 - He notes that the cause of the power imbalance is the way the laws are written: *“But the issue is not the miner. The miner is only doing what the law allows them to do. The issue is the law and whether it properly respects the surface property rights of the farmer. Only government can legally facilitate this violation and absent the necessary respect for rights.”*; and
 - He went on to note that, because of the laws as written, access to a farmer's property *“is not done on the basis of consent or respect for the farmer. And that's when you get conflict and I would argue, a human rights violation”*.

Solutions to the power imbalance issue include:

- Having fair and transparent Land Access Principles, modelled on the agreement on land access for CSG operations in NSW signed on 28 March 2014 by Santos and AGL and landholder representatives NSW Farmers, Cotton Australia and the NSW Irrigators Council.
- The abovementioned parties agreed to the following principles:
 - Landholders are allowed to freely express their views on the type of drilling operations that should or should not take place on their land. **Any landholder is at liberty to say "yes" or "no" to the conduct of gas operations on their land.**
 - Santos and AGL agreed to unequivocally respect the landholder's wishes and not enter onto a landholder's property to conduct drilling operations where that landholder has clearly expressed the view that operations on their property would be unwelcome.
- Pastoralists must have right to say ‘no’ to gas operations on their land.

NSP recommends an additional risk/issue be added under this theme, namely ‘**Environmental Assessment and Determination**’. On this matter the system must be open, transparent and inclusive if it is to have any confidence within society. Such a credible system requires:

- early and effective engagement with affected communities;
- EIA documents of high quality and consistency;
- a standard approach for applying conditions to projects;
- a very strong independent performance monitoring and reporting program regarding project compliance; and
- Robust accountability of EIA professionals.

NSP further recommends that NT assessment law be amended so that it mandates an Ecologically Sustainable Development (ESD) approach. Decisions should not be allowed to be made using the mantra that it is *'in the public interest'*. Such an argument is simply code for short term economic development (ie jobs) and is far too simplistic and erroneous to be used in today's world.

On the matter of Approvals & Compliance Management NSP recommends there be:

- Explicit and performance based consent conditions with no 'wriggle room';
- Regulators must have independence and effective staffing levels so they can do their job properly;
- Heavy penalties for non-compliance; and
- Performance and rehabilitation bonds to address closure/post closure management.

Based on the experience in the eastern states of Australia NSP recommends self regulation not be permitted. We also recommend the burden of proof be reversed so that the gas company must prove it has not caused any alleged environmental, social or economic harm.

NSP concurs with the Paper's other commentary on this topic.

Conclusion

In summary NSP encourages the Panel to give careful consideration to the matters raised above.

We also note the view of the Federal Government that the current 'gas crisis' is actually caused by the gas industry itself, over-extending sales to overseas markets rather than firstly satisfying the local domestic and commercial market. Pastoralists in the Northern Territory should not be pressured to make good the gas shortfall, all because of mismanagement by the industry.

Thank you for the opportunity to comment on the NT Shale Gas Inquiry Background and Issues Paper. I'd be delighted to discuss any of the abovementioned matters with you.

I also look forward to you visiting Maryfield Station soon.

My contact details are phone [REDACTED] or email [REDACTED]

Yours sincerely



Colin Ross

Managing Director

North Star Pastoral