LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

Reply to: Kate Dennehy
Queensland Coordinator
PO Box 8283
Woolloongabba
QLD 4102

9 October 2014

**Submission: *Water Reform and Other Legislation Amendment Bill 2014***

The Lock the Gate Alliance is a network of 230 community groups and thousands of individuals around Australia that are united to protect land and water from inappropriate mining. We write to make strong objection to several aspects of this Bill, and urge the Committee to recommend its substantial revision.

**Introduction**

We would like to draw the Committee's attention to the slew of recent legislation in Queensland that has recently come hurriedly before Committees that have afforded special status and privileges to the mining industry to the detriment of ordinary Queenslanders, their livelihoods and quality of life. Most egregiously, the *Mineral and Energy Resources (Common Provisions) Bill* has excluded people from seeking legal redress when mining projects are approved, but the parliament has also recently seen the introduction of laws to repeal protections from mining for Strategic Cropping Land and hasten environmental assessment decisions. This latest Bill is perhaps the most blatant in its bias towards the mining industry, and will have perhaps the most long-lasting consequence. With *Water Reform and Other Legislation Amendment Bill 2014* (the *Water Reform Bill*), mining companies, both coal and unconventional gas, are largely exempted from the requirement to buy water licences by which every other water user is bound. They are exempted from the volumetric water planning that has been developed over the last decade to balance the many competing demands on our precious water.

At the same time as the Government seeks to establish what it calls a fully functioning water market, it is also creating for one industry extraordinary and unlimited exemptions to the orderly regulation of water removal and use.

The new Bill takes the word "sustainable" out of the long title of the Water Act. We question why Queensland parliament would not want to retain this concept up front in the Water Act: surely we want to be able to maintain our productive use of water, and not deplete it, to the lasting detriment of the state and its people?

Likewise, the new Bill introduces purposes for the Act overall but repeals the current purposes of Chapter 2 of the Act, previously outlined in section 10. These purposes capture the needs of Queenslanders in a robust framework that balances social, environmental and economic demands.

Indeed, section 10 currently provides that the management of water in Queensland should be done in accordance with the principles of ecologically sustainable development. The hostility towards the ESD framework exhibited by the current Government is unwarranted and shows a fundamental lack of respect for Queensland's wellbeing and its fortunes. The principles currently outlined in the Act, which will be omitted by this Bill include: decision-making processes that effectively integrate both long-term and short-term economic, environmental, social and equitable considerations, the present generation should ensure the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations, recognition of the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection and decisions and actions should provide for broad community involvement on issues affecting them. There can be no logical argument against the adoption of these principles for a prosperous Queensland.

Regardless, we do not believe that the changes this *Water Reform Bill* makes to the *Mineral Resources Act* and the *Petroleum and Gas (Production and Safety Act)* are consistent with either the new or the old purposes. Specifically, giving one sector of the economy entitlement to remove huge quantities of groundwater without having to obtain the licences that every other industry would require, is neither fair, sustainable nor orderly.

This approach, of giving special privileges and rights to the mining industry, which already enjoys extraordinary power and special arrangements, is contrary to the long-term and short-term economic, social and environmental wellbeing of Queensland, and we urge the Committee to adopt the following recommendations:

- Remove all of Part 4 of the Bill, which amend the Mineral Resources Act
- Substantially change Part 5 of the Bill, which amends and the Petroleum and Gas (Production and Safety) Act.
- In Part 8 of the Bill, which amends the Water Act, remove section 98.

This Bill aims to create and entirely new water planning system. Such a proposal needs time and consideration to ensure that a framework is in place that is not unduly bureaucratic, but at the same time ensures that we're not depleting our precious water resources and leaving the next general of Queenslanders high and dry. Removal of these outrageous and unnecessary privileges for the mining industry from this Bill from the outset will leave the Committee and the parliament to consider the water planning arrangements proposed in the Bill in detail.

It does seem hasty for an entirely new water planning framework to be introduced in legislation without a review of the Water Resource Plans and Operation Plans being conducted, and while those plans are still being implemented, but we are not able to offer comment on those proposals in this submission. Instead, we are focused on the calamitous blank cheque this Bill would give the mining industry to drain the lifeblood of rural communities and industries.

**Part 4 of the Bill: the Mineral Resources Act**

In a nutshell, the proposal here is captured in the proposed new section 334ZP of the Mineral Resources Act, which creates "underground water rights" to give holders of mineral development licences and mining leases entitlement to take groundwater without having to obtain water licences. It will apply immediately to all existing mining leases.

*The Galilee and Surat Basins*

For more than a decade, the coal mining industry, like every other water user, has had to comply with the Water Act, and purchase licences for groundwater ingress into open cut pits. This is entirely appropriate. Huge volumes of groundwater are removed in this way by open cut mining, and these volumes must be accounted for in a well-planned water management framework. Now, the largest coal mining projects ever attempted in Australia are approved for construction in Central Queensland. These mines will need to remove hundreds of thousands of litres of groundwater from their combined 34 open cut pits, including water diverted from Australia's greatest underground water resource, the Great Artesian Basin. The list of concessions being offered to the companies behind these mines is out of all proportion with the economic benefits they offer. These include compulsory acquisition of land for railways and royalty discounts for the first company to actually build one of the mines. In addition to all the gifts these companies have already been given, the Government is proposing with this Bill to allow them, and all other coal companies this blanket entitlement to remove huge quantities of groundwater. In the region where these mines are to be built, groundwater maintains the beef industry and the towns, it feeds the rivers, and keeps the bush alive.

Based on the companies' own assessment materials, the overall volume of groundwater ingress into the five Galilee mines with completed environmental impact assessments could be between 700GL and 9,253GL over the life of the mines[1]. Through extrapolation of the modelling and estimates provided by the assessment reports for the five Galilee mines that have been assessed, Lock the Gate has estimated the overall potential removal of groundwater for Galilee mining proposals to be in the order of 1,354GL[2]. Most of this water will be removed from region aquifers that feed towns, cattle stations and the tributaries of the Belyando River, but some of it will be diverted from recharging the Great Artesian Basin. Though the Galilee mine proponents have long denied the GAB will be affected by their proposed activities, the impact was acknowledged this year by the Federal Government when it imposed a condition on the Carmichael mine that it return at least 730ML per annum as a GAB "offset measure." The conditions of the Carmichael mine's Federal approval specified that this offset measure is "to be developed and delivered in consultation with the Queensland Government department administering the authorisation of the water take." If this Bill is passed, the water take will no longer need to be authorised.

To interfere with water in the Great Artesian Basin in Queensland currently requires an entitlement. There are no entitlements available from the Clematis Sandstone, so mine proponents would have to obtain their permits from the Queensland state reserve. An attachment to Queensland's *Great Artesian Basin Resource Operations Plan 2007* notes that: "There is no new water available from either the general reserve or the State reserve in management areas that are heavily allocated." This limitation on GAB entitlements may go some way to explaining why coal mine proponents in the Galilee Basin have tried to avoid admitting that their operations will interfere with water recharging into the Great Artesian Basin. It may also explain why the Government is now changing the law to allow give them blanket entitlement to take whatever groundwater flows into their pits, regardless of whether it has come from heavily allocated zones.

It has long been our view that dewatering for some at least of the Galilee Basin mines would require the proponents to obtain GAB entitlements, because of the potential for GAB water to be diverted

[1] The width of this range is an indication of the huge degree of uncertainty about just how much groundwater is expected to be needed to be removed for these mines.
[2] *Draining the Lifeblood*. Lock the Gate 2013.

from the Clematis Sandstone formation to the mine pits. This view is supported by warnings from the Independent Expert Scientific Committee and the conditions imposed on the Carmichael mine. No general reserve entitlements are available for GAB water from the Clematis Sandstone in the Barcaldine North, unit 3 management area, which is the closest to the proposed Galilee Basin mines (See Schedule 5, *Water Resources (Great Artesian Basin) Plan 2006*). Thus, a water entitlement to interfere with GAB water could only be granted from the Queensland State reserve. If a project is of State or regional significance, and water is available, up to 10GL can be granted from State reserves.

However, attachment C of the *Great Artesian Basin Resource Operations Plan 2007*[3] notes that in light of Section 8 of the *Water Resource (Great Artesian Basin) Plan 2006*: "There is no new water available from either the general reserve or the State reserve in management areas that are heavily allocated."

In 2010, the total annual extraction of water from the GAB was estimated at over 600GL, with Queensland water users accounting for almost 70% of this use, an estimated 450GL.[4] The current entitlements for mining, including quarrying, from the GAB in Queensland amount to about 17GL a year.[5] In this context, the 730ML of GAB water admitted to be affected by the Carmichael mine seems small, but the true scale of loss of GAB water from these mines is not really known, and the combination of lost GAB water from resource activities in the Galilee Basin, Georgina Basin and Surat Basin, if none of it will be subject to any limit, could reverse all the work that has been done to manage and care for the GAB. Furthermore, the CSIRO has modelled future development and climate scenarios for the GAB, and found that under their median scenario, groundwater levels in the eastern part of the Central Eromanga region of the GAB will decrease by 5 metres or more by 2070, mainly as a result of development.[6]

Of course, this reform is not solely about the Galilee and Surat Basins. In the northern end of the Bowen Basin, Glencore and QCoal have new coal mines that are approved, Drake, Byerwen and Sarum, but have not been able to secure the water they need.[7] The Coordinator General's report for the Byerwen Coal mine notes that "The project is dependent upon the ability of the proponent to acquire an allocation of water (4500 megalitres per annum (MLpa)) from externally sourced water over the 50-year life of mine." We consider the availability of water to be a crucial aspect of the environmental assessment of a large-scale industrial project in a rural area, and approval of such a project in the absence of water being available is reckless and should not be done.

*Landholder rights*

Under the proposed changes to the *Mineral Resources Act*, the requirement to obtain water entitlements is replaced by the need to write underground water impact reports and obtain "water monitoring authorities." The new section 334ZT allows mining lease holders to apply for "water monitoring authorities" for land outside their mining lease to enable them to comply with their obligations to monitor the impact of their water extraction. There is a significant gap in this process – rigourous assessment, evaluation and monitoring by the Government. These water monitoring

[3] http://www.nrm.qld.gov.au/wrp/pdf/gab/gab_rop.pdf
[4] GABCC, 2010. p86
[5] ibid
[6] CSIRO December 2012. "Water Resource Assessment for the Central Eromanga Region" https://publications.csiro.au/rpr/download?pid=csiro:EP132681&dsid=DS4
[7] See the Bowen Independent. "Dam project gets a hearing" 8 October 2014.

authorities can be granted over land outside the mining lease area, which reflects the reality that the impact of mine dewatering spreads far beyond mining lease boundaries. However, the new section 334Zw (2) of the Act makes clear that water monitoring activities authorised under one of these authorities "may be carried out despite the rights of an owner or occupier of land on which they are exercised." There is also a blanket authorisation for mining companies to take groundwater on another person's land, not covered by their mining lease, for the purposes of its groundwater monitoring. There is a restriction on carrying out authorised activities if the activities "interfere with the carrying out of an authorised activity for a mining tenement or petroleum authority" (section 334ZZB), but there is no such protection for the agricultural or other business activities of any landholder affected by the company's water monitoring activities. There is no notification or consultation requirement. Here, again, the farmers and graziers that feed Queensland and are part of social and economic fabric of the state are expected to comply with laws and regulations developed for the common good of all, but have their rights and freedoms trampled by a Government determined to privilege the mining industry above all others.

In Part 6 of the Bill, various amendments to the Water Act are proposed that amend the previous regulatory framework for the "underground water rights" of petroleum operators by expanding it to all resource tenures. The effect of this, in part, is that the statutory obligation to enter into "make good" agreements with affected water users is expanded to coal mining companies. Previously, some coal companies were required to enter into such agreements by consent conditions or court decisions, but there was no standard legislative requirement for it. While we support the introduction of statutory make good obligations for coal miners, we do not believe that this should come at the cost of a consistent water management framework applying to all sectors of the economy. Make good arrangements fix short term impacts on individual bores but cannot replace water removed from a resource. Having a "make good" system outside the bounds of a water resource plan fails to address the loss of water from a resource that is shared by all, and owned by the State of Queensland as a common good for all.

Under the terms of the Act, make good agreements are only required for bores that are identified in an "immediately affected area" in an Underground Water Impact Report. For the Surat Basin Cumulative Management Area, bores were identified as "immediately affected" only if they were modelled to experience 2 metre draw down, and of the 21,000 bores in the CMA, only 85 bores triggered this requirement. The trigger levels for identifying bores in "immediately affected areas" is predicted drawdown of 5m for consolidated aquifers, 2m for unconsolidated aquifers and 0.2m for a spring.

*Creek diversions*

Finally, in addition to the blanket entitlement to take groundwater that flows into their open cut pits, mining companies are also given, by this Bill, the right to interfere with and divert surface water courses as an "authorisation that may not be limited by water planning instrument or regulation." The other authorities in this section (subdivision 1 of division 1 of Part 3 of the amended *Water Act*) are basic needs of other water users, stock and domestic use by landholders, cultural use by Aboriginal and Torres Strait Islanders and fire-fighting use, for example. Alongside these basic needs uses is a blank cheque for mining companies to divert creeks and rivers wholly. This comes with the proviso that the activity must have an environmental authority associated with it, but in our view, there must be a Water Act oversight of creek diversions, given the downstream implications. In some cases, multiple resource activities are proposing to divert the same creek in different locations,

compounding the effect on the catchment lower down. The Byerwen Coal mine proposal in the northern part of the Bowen Basin proposes to undertake five creek diversions, which the Independent Expert Scientific Committee has stated, "have the potential to change to catchment hydrology, geomorphology and ecological integrity at a local scale." Creek diversions and the loss of catchment area to coal mines cumulatively have a profound impact on surface water resources and effective water resource planning is not possible without accounting for water lost to these developments.

Mining companies must be required to secure the same permits and licences for creek diversions as any other water user would be.

**Part 5: amendment of the Petroleum and Gas (Production and Safety) Act**

Part 5 amends the *Petroleum and Gas (Production and Safety) Act 2004.* This new Bill ratchets back some of the outlandish privileges given to the coal seam gas industry, in particular, requiring the coal seam gas companies to obtain water licences for groundwater taken and used if that water was not unavoidably removed as part of the gas extraction process. We support the removal of an entitlement for gas companies to take or interfere with an unlimited quantity of groundwater in their tenure for use in the carrying out of another authorised activity for the tenure." However, the new arrangements will not have to be brought into effect in the Surat Cumulative Management Area for five years after the commencement of the new provisions.

In 2012, the Surat Basin Cumulative Management Area Underground Water Impact Report estimated that 1,800ML of groundwater was extracted in the Surat Basin Cumulative Management Area. Based on current intentions, the report also estimated that over the life of the industry, water extraction will average 95GL per year. This represents more than 40% of the annual extraction of all other users.[8] It also exceeds the total amount of unallocated water available in groundwater units in the entire Queensland portion of the Surat Basin under the current Water Resource (Great Artesian Basin) Plan 2006, which is 13.2GL.[9] Of course, most of this water comes from the Walloon coal measures, but it is clear that underground water removal by unconventional gas is expected to occur on a scale that is so large it must be incorporated into volumetric water planning.

Development of extensive coal seam gas fields has not been as rapid as expected, giving Queensland an important opportunity to impose more rigourous regulatory control on the industry's water use and repeal the blank cheque unconventional gas current enjoys for removal of groundwater as part of its mining activity.

As far as we can tell, no review has yet been done of the sixteen Underground Water Impact Reports so far submitted for individual company operations, or the Surat Basin impact report, which is due to be revised next year. We believe that these changes being proposed to the Water Act would be better informed by a thorough investigation of whether the impacts on water have been on the scale that the impact report predicted, the status of the make good agreements, and, indeed, the bioregional assessments being undertaken by the Independent Expert Scientific Committee.

[8] Surat Underground Water Impact Report 2012. page 59.
[9] CSIRO December 2012. Water Resource Assessment for the Surat region. https://publications.csiro.au/rpr/download?pid=csiro:EP132644&dsid=DS4

The changes to the *Mineral Resources Act* in this Bill are dangerous and reckless. They undermine the Government's aim to establish an orderly water market, and give the mining industry privileged status above all other water users. For this wealthy, short-term industry to be given huge quantities of groundwater in regions where Queensland farmers and graziers depend utterly on their bores is unacceptable. Groundwater is our most precious resource, and for Queensland to prosper, its use must be sustainable in the long term. To manage it effectively, all water users must be subject to robust planning and management frameworks.