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ENEABBA
PROTECT OUR WATER, ENVIRONMENT & RIGHTS

Mr Bill Tinapple

Executive Director

Department of Mines and Petroleum

Mineral House

100 Plain Street

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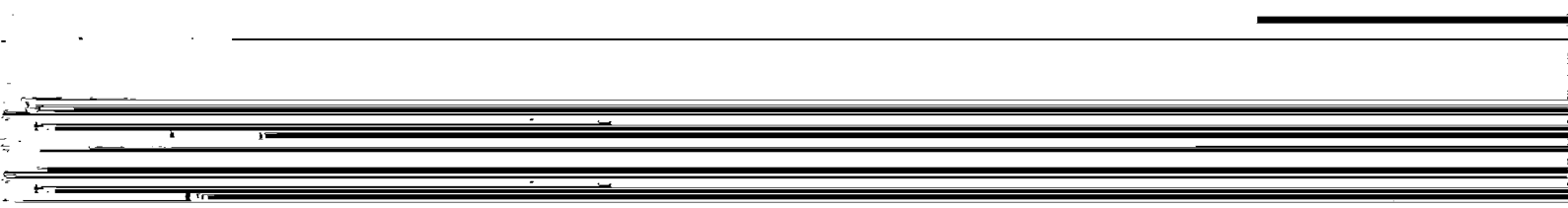
Dear Mr Bill Tinapple,

Following our meeting earlier last year (present were yourself and DMP representatives Mark Gabrielson and Luke Earnshaw, Dale Park and Phil Brunner from the West Australian Farmers Federation and representatives from Power Eneabba) Ray Hortin – chairman of Power Eneabba asked the question to you Bill, "does the landowner have a right of Veto?" Your reply was, "in always yes they do." Phil Brunner than spoke and said that wasn't correct as the permit holder can go to the magistrates court and request access. Discussion took place for some time before you said that you would seek clarification with your legal advisors. To date we have had no response to that initial question asked by Ray Hortin.

Reflecting on the discussion you and Phil had, your understanding was, the landholder in effect had right of veto in a way by the amount of compensation he/she requested for the right to occupy the land eg. PGER Act 1967 section 17(1). You indicated it was a commercial decision for the permit holder.

If it was too high, they walked away or looked elsewhere. This raises four questions which we would like answered:

1. Under the PGER Act 1967 section 17(1) does the landowner have the right to set the amount of compensation for the right to occupy the land, without the threat of having to go to the magistrate's court?
2. Under the PGER act 1967 section 17(2) the compensation referred to is separate to the compensation referred to in 17(1).
3. If either party wanted to apply to the magistrate's court to fix the amount of compensation, which we believe relates to section 17(2), is it right to say the permit holder should cover all lawyer and court costs?
4. Does the DMP acknowledge landholders do have common law rights?



Government of Western Australia
Department of Mines and Petroleum

Your ref:
Our ref: A0491/201001; A0388/20; 101
Enquiries:
Email:

Ms Sewell
Secretary
POWER Eneabba
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Dear Ms Sewell

PETROLEUM LAND ACCESS

Thank you for your letter, dated 24 January 2014, regarding land access provisions within the *Petroleum and Geothermal Energy Resources Act 1967* (PGERA).

As you may not be aware, Mr Bill Tinapple retired from the position of Executive Director, Petroleum in late 2013, after 15 years in the role and more than 40 years in the industry. Whilst I was not present at the meeting you have described, I have been briefed by my staff and would like to take this opportunity to answer the questions you have raised.

In short the answers are:

1. Yes.
2. Yes, where applicable;
3. No, the negotiation process is based on 'good faith'. A permit holder may offer to cover legal costs to expedite the process; this however is not a provision of PGERA.
4. Yes, of course landholders have common law rights. Furthermore, DMP will not condone access agreements that deny common law rights.

Historically issues around land access have been thoroughly explored with a code of conduct drafted in 1999[i], an independent review of PGERA for shale and tight gas in 2011[ii], and two parliamentary inquiries, one in 2004[iii] and the other in late 2013[iv].

For these reasons the Department of Mines and Petroleum (DMP) is confident PGERA provides appropriate protections for the landowner. Moreover, DMP does not require legal counsel on the issue of 'veto'.

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You have mentioned Section 20 which provides that a holder of permit, drilling reservation, lease or licence may not commence operations on private land until compensation is tendered or agreed upon (this agreement is an access agreement, and the process is described under sections 16-19). These access agreements can be negotiated to cover the separate exploration phases (disjunctive agreements) or both exploration and subsequent development phases (conjunctive agreements). This is an important distinction to make during negotiations.

You may be interested to know that as part of DMP's ongoing commitment to community engagement; it is participating in a roundtable group with the Pastoralists and Graziers Association, Western Australian Farmers Federation and Australian Petroleum Producers and Exploration Association on the issue of land access. The group met on 14 October 2013 at what is expected to be the first in a series of ongoing meetings to balance the interests of petroleum and agriculture through the development of template land access agreements and guidelines.

Please do not hesitate to contact me, or my staff, on 9222 3291 if you require any information on the land access provisions of PGERA.

Yours sincerely

Beverley Bower
ACTING EXECTUVE DIRECTOR
PETROLEUM

5 February 2014

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[i] *Code of Conduct for the Owners of Framing Properties and Persons Exploring or Mining on Private (Agricultural) Land in the Central Great Southern* – Department of Workplace Relations and Small Business, and Great Southern Development Commission – September 1999.

[ii] *Regulation of Shale, Coal Seam and Tight Gas Activities in Western Australia* – Dr Tina Hunter, July 2011.

[iii] Standing Committee on Public Administration and Finance, Report 7, the *Impact of State Government Actions and Processes on the Use and Enjoyment of Freehold and Leasehold Land in Western Australia,* May 2004.

[iv] Standing Committee on Legislation, Report 20, *Clauses 11 and 12 of the Petroleum and Geothermal Energy Legislation Amendment Bill,* November 2013.

PETROLEUM AND GEOTHERMAL ENERGY RESOURCES ACT 1967 - SECT 17

17 . Compensation to owners and occupiers of private land

(1) A permittee, holder of a drilling reservation, lessee or licensee may agree with the owner and occupier respectively of any private land comprised in the permit, drilling reservation, lease or licence as to the amount of compensation to be paid for the right to occupy the land.

(2) Subject to subsections (3) and (5), the compensation to be made to the owner and occupier shall be compensation for being deprived of the possession of the surface or any part of the surface of the private land, and for damage to the surface of the whole or any part thereof, and to any improvements thereon, which may arise from the carrying on of operations thereon or thereunder, and for the severance of such land from other land of the owner or occupier, and for rights-of-way and for all consequential damages.

(3) In assessing the amount of compensation no allowance shall be made to the owner or occupier for any gold, minerals, petroleum, geothermal energy resources or geothermal energy known or supposed to be on or under the land.

(4) If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, either party may apply to the Magistrates Court at the place nearest to where the land is situated to fix the amount of compensation.

(5) In determining the amount of compensation, the Court shall take into consideration the amount of any compensation which the owner and occupier or either of them have or has already received in respect of the damage for which compensation is being assessed, and shall deduct the amount already so received from the amount which they would otherwise be entitled to for such damage.

[Section 17 amended by No. 12 of 1990 s. 12; No. 78 of 1990 s. 7; No. 59 of 2004 s. 141; No. 35 of 2007 s. 15.]