

Sustainable Agriculture and Environmental Regulation

There are Environmentalists and there are Greens!

Informed Greens make use of what have been called “Useful Innocents”, those who can provide noise to support a political argument against the best scientific knowledge and if that fails call on the precautionary principal! Greens have no respect for private property rights. They believe that if it is a natural resource, even on freehold land, it belongs to the State.

Environmentalists belong to all political groups and take the view that man is part of the environment. They realize that if man kind is to improve its’ life style above the cave dweller that the natural world can and should be changed. They value the natural world and believe our lives are improved with the correct management and protection of reasonable areas for the preservation and enjoyment of flora and fauna. Most importantly they have learnt that property in private hands is usually better managed than that managed by government departments, that the environment can only be cared for by a prosperous community and prosperity can only be maintained if property rights are secure. They believe that environmental regulation should be judged against the triple bottom line, Environmental, Social and Economic consequences

Australia had developed two of the worlds’ most sustainable primary industries, Forestry and Fishing. Both were well managed, based on best scientific principles.

Sustainable forestry depended on logging a large proportion of the resource on a long cycle. For our Western Australian species perhaps 1% a year for the best compromise between quantity and quality combined with correct silviculture, clear felling and fire control.

The Green movement has been able to reduce this industry to the point that it can no longer provide Australias’ timber needs, much of which is imported from non-sustainable sources. They have reduced protective burning and as forestry workers and resources have left the industry, wild fires have become devastating to fauna and Flora.

Similarly, fishing which was managed by estimated sustainable yield, moved to huge marine reserves, and saving the whale. Despite our huge coast line and relatively small population, we only produce about 35% of the fish we eat. Even sharks, not the most cuddly of animals, are considered more important than human life.

Western Australia has enormous reserves of natural gas. We could have had a prosperous on shore processing industry; it will now be done at sea with less benefit to the State. There is now a campaign to ban fracking which, if successful would lock up a world class resource.

I raise these issues to demonstrate that agriculture is not immune from the same environmental attack which is far more dangerous and advanced than most realize.

Many farmers suffer financial difficulty because of poor management, mainly by successive governments and bad regulation.

There are problems with salinity, acidification, Biosecurity, trade barriers and transport to name but a few but environmental regulation requires urgent attention. Already the American farm state of Oklahoma has passed legislation in an endeavor to protect its’ farmers from United Nation’s instigated policies which erode property rights. This information is available on line.

Traditionally property was well protected in Australia, by State and Federal law. Farming came under attack with the growth of environmental controls, particularly stemming from International Agreements on Biodiversity and the Kyoto Agreement on Climate Change.

The Federal, State and Territory Governments signed an agreement to protect a proportion of the native plant species that were in existence at British settlement. The agreement was signed by the

Prime Minister, Paul Keating, Premier Court and the other Premiers and Chief Ministers. It promised compensation to those land owners who lost the right to clear. The proposals were enshrined in the Federal "Environment Protection and Biodiversity Conservation Act 1999". The Act had no mention of compensation and enquiries were met with the explanation that the Agreement was not the Law!

The Federal government gave administration of the clearing controls to the States. The question remains whether this was because of the States' responsibility for land management or a deliberate attempt to avoid compensation under 51 XXX1 of the Australian Constitution.

The clearing controls were introduced in W.A. by a Memorandum of Understanding (MOU) between Government Departments, with Agriculture the lead Department. The document claimed that the proposals were in accord with a Cabinet Minute. My pursuit of the matter through Freedom of Information revealed that not to be the case, and senior public servants resigned.

Instead of the protection of rare individual species that the Act was supposed to save, it became almost impossible for farmers to clear, as the biodiversity on one hectare was different to every other. With the election of the State Labor Government in 2000 and their need of support from the Greens, the W.A. Environmental Protection Act 1986 received major amendment which included changes to the clearing controls.

The problem became bizarre when farmers with a legal permit to clear were requested to advise the Agricultural Department of their progress. Those trusting souls who complied were then issued with a Soil Conservation Notice and if they continued to clear, were charged with disobeying an order. At least one farmer who won in the Court was still informed he could not clear.

It has now come to light (although, it appears never to have been publically announced) that the Howard Liberal Government and Minister Hills saw the clearing controls as a way of meeting Australia's Kyoto targets, even although they had not signed off on them. Queensland suffered more than WA as pastoralists were clearing Brigalow regrowth. When the aborigines were managing the country with a fire stick it had been open grass land.

Property Rights are a bundle of rights and includes far more than property in land. The Federal Constitution makes it clear that property can only be "Acquired" on just terms (Magna Charter). The problem is that Acquired is defined as ownership being transferred from one party to another. In the case of the clearing controls, the land owner lost the use of the land but retained the title.

New South Wales farmer Peter Spencer, having discovered that the Commonwealth Government had claimed carbon credits for vegetation that had not been cleared because of the controls, has taken the matter of compensation to the High Court.

Another threat to property rights and productivity comes from Agreements made by the Commonwealth on Wetlands at the Ramsar Convention. Although presented as protecting the wetlands on which migratory birds depend, it has extended far beyond that worthy objective. The Commonwealth compiled "A Directory of Important Wetlands in Australia (2001)".

Our (then) Department of Water and Rivers, State Department of Conservation and Land Management (CALM) that became Department of Environment and Conservation (DEC) and now known as Department of Environmental Regulation (DER) also became enthusiastic and employed a husband and wife team (V&C Semeniuk Research Group) to map wetlands in the South West of this State. It was a massive task, relying mainly on aerial maps, desk top study and there are questions around accuracy.

On the Swan Coastal Plain, important Wetlands had been protected by The Swan Coastal Plains Lakes Policy 1992 (SCPWP), an excellent policy which had clear definition of why a lake was listed. It had caused no problems for land owners. Unfortunately the Policy had a review period and the Department used this as an excuse to list all the Wetlands on the geomorphic maps produced by the Semeniuks.

The draft Swan Coastal Plain Wetland Policy, as it was now called would have had horrific consequences to farmers. It would have prevented the grazing of livestock on perhaps 50% of the cleared land on the coastal plain. The then Minister, Hon Cheryl Edwardes, refused to sign off on the document.

With the change of government in 2000, the draft was slightly modified, put out for comment, and once again caused public outrage. The then Minister, Mark McGowan (now Leader of the Opposition) visited Gingin, met with representatives of the Gingin Private Property Rights Group (Inc) and announced that the Swan Coastal Plain Lakes Policy would remain and the Wetlands Policy dumped.

Land owners thought the land grab was over, however the Environmental Protection Act amendments made in 2004 also included changes to the protection of wetlands. A South West Agricultural Region Wetland Policy (SWARWP) had joined the SCPWP, (once again a good policy) and provision was made for the Minister to issue a Notice to nominate and protect Wetlands. Environmentally Sensitive Areas (ESAs) so declared could not be cleared or grazed because grazing was defined as clearing, they required a 50 metre buffer zone and any land not declared that grew riparian vegetation was also an ESA. This meant most of the high rainfall land in the South West of W.A. that grew rushes or reeds.

The **Environmental Protection (Environmentally Sensitive Areas) Notice 2005** was published in the Government Gazette that April. It declared all the Wetlands identified in the Geomorphic Maps, Environmentally Sensitive Areas. The Notice was tabled in Parliament but, unusually, it seems to have completely by passed any scrutiny by the Joint House Delegated Legislation Standing Committee whose responsibility it is to examine Subsidiary Legislation, no Motion of Disallowance was debated and it became law.

Nothing was heard of the Notice for some time, although it appears that some farmers were prevented from planting perennial pasture on wetlands. In December 2012 a farmer who had been threatened with prosecution for clearing with out a permit, was advised that he had been let off with a caution, but that about 1/3 of his land was an ESA. Enquiries indicated that the land had been declared by the Notice although the farmer had not been advised of the fact. Further enquiries revealed that another farmer, East of Manjimup, was before the Court for clearing an ESA with out a permit.

The GPPRG and others met with the accused, were convinced of his innocence and under took to fund the defence. Mr Swift was found innocent, how ever the prosecution was under Section 51C of the Act, which did not test the validity of the Notice. There is however reason to believe that the correct procedure was not followed before publishing the Notice. Mr Swift was informed by the prosecution that 2/3 of his property was an ESA. He is still trying to establish whether he can legally graze the property, has been physically, mentally and financially destroyed and is facing foreclosure by his bank.

A Petition regarding these matters, calling for the repeal of the Notice was lodged and reported on by the Western Australian Legislative Council Standing Committee on Environment and Public Affairs (Report 41) and makes interesting reading.

Wetlands, world wide have always been highly valued for agriculture. Civilization evolved on wetlands, and in this State, particularly on the Swan Coastal Plain, the “summer country” is the most highly regarded grazing land. The Notice declared over 98,000 parcels of land ESAs on perhaps 2,000 or more properties. No exact figure can be determined because there appears no list was ever produced or location numbers are available. The maps are available with great difficulty on line. Perhaps the best defence for a farmer charged with the criminal offence of grazing a property that may have been grazed for 150 years is not ignorance, but that there is no access to the law!

It is clear that because of the complexity of the Environmental Legislation, very few if any from the Ministers down, under stand the law. In my view those Members of Parliament who let the Notice slip through with out query, would if company directors be guilty of criminal negligence.

If the community wishes to lock up private land as a National Park, it should be purchased on just terms, as if it was acquired for a road.

Environmental Regulation is one of the greatest threats to agricultural profitability and sustainability.

Time will tell whether the world is warming from increasing CO2 levels, or moving to a new ice age. Environmental regulation will cause more trauma than Climate Change!

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President

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