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Energy futures, state planning policies and coal mine contests in rural New South Wales

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HIGHLIGHTS

- Australian energy policies prioritise coal and gas exports to emerging economies.
- Rural landholders are marginalised in mining law, environmental protection legislation and planning regulations.
- Disputes with companies centre on control of natural resources necessary for agriculture.

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ABSTRACT

The United Nations 2015 Climate Change Conference established a framework for keeping global temperature increase “well below” two degrees Celsius through commitments by the parties to significant reductions in greenhouse gas emissions. The agreement has implications for the energy policies of all countries, not least major coal exporters like Australia. By contrast, the government's 2015 *Energy White Paper* lays out the vision for the country's future as a “global energy superpower” dominated by the export of fossil fuels for decades to come. Legislative frameworks around planning, land use, mining, heritage and environment have moved in synchrony with this agenda. Rural landowners in the big coal rich geological basins of Australia are directly impacted by current government policies on energy exports and on domestic supply. This article follows the coal value chain to rural communities in New South Wales where new mines are being built, and analyses the politics of land use, natural resources and energy from the vantage point of landowner engagement with government and corporations in the policy, legislative and regulatory domains. The need for more equitable, democratic and precautionary approaches to energy policy, heritage and environmental planning and agricultural land use is highlighted.

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1. Introduction

In his work on “carbon democracy”, Timothy Mitchell asks the question, “Are [democracies] tied in specific ways to the history of carbon fuels?” (2009: 400). In arguing for the interdependence of carbon and democracy, Mitchell's theory connects attributes of fossil fuels to relations of production and circulation, workforce mobilisation and forms of democratic governance. He focuses on oil and the degradation of democracy; coal is his comparative case. He assumed that the era of coal (mined underground), also the era of industrial democracy and growth of workers' rights, ended in the mid-twentieth century, to be replaced by oil. He also presaged the decline of oil, assuming that there is and will continue to be a decline of carbon-based energy in the twenty-first century. His

view of the waning of coal is shared by critical financial analysts of the seaborne thermal coal trade (e.g. see Buckley (2015)). It seems however that we are in a second era of coal, raising fresh questions about energy policy, sustainability and democratic governance in carbon intensive economies like Australia, complicated by international momentum to address global warming to which the combustion of coal for energy is a significant contributor. In this article I follow the coal value chain to rural communities in New South Wales (NSW) where new mines are proposed, and analyse the politics of land use, natural resources and energy futures from the vantage point of landowner engagement with states and corporations in the policy, legislative and regulatory domains. I focus on the shift from coexistence to conflict as the scale of Australian coal mining has increased. This phenomenon is particularly evident where mines encroach on other land uses in settled agricultural areas (Measham et al., 2013). I argue that the fractious

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politics of coal expose failures of energy policy, democratic governance and citizens' rights that threaten future ecological stability and economic well-being.

The world is experiencing a glut of fossil fuels, attributable as much to geopolitics and competitive overproduction as to new technologies of extraction and the expanding demand for cheap energy in emerging economies. Prices of all fossil fuel commodities are declining (Krauss, 2015; Loh, 2015). Coal is the most abundant fossil fuel, with almost 900 billion tonnes of proven coal reserves (of varying grades and qualities) in 70 countries, enough for 112 years at current rates of consumption (World Coal Association (WCA), 2015). Coal reserves have about twice the lifespan of conventional oil and gas reserves at current rates of usage. In 2013, global production of coal (all types combined) was almost 8 billion tonnes (70 per cent above 2000), and demand is expected to grow by 2.1 per cent through to 2019 (International Energy Agency (IEA), 2014).

In many economies, coal is the cheapest source of energy if toxic externalities – damage to ecologies, human health and well-being, or the atmosphere – are not counted as costs (especially as costs of doing business, or of state formation and power). Coal has been burned in ever increasing quantities since the invention of the coal-fired steam traction engine in the eighteenth century and the associated growth of industrial economies. Most coal is used for energy (thermal coal) and about 15 per cent goes to the production of steel (WCA, 2014a). By 2013 coal accounted for 46 per cent of world fuel emissions, or over 14 billion tonnes of Co₂ (IEA, 2014). Despite initiatives by international bodies and governments to implement emissions reductions policies, persistent coal dependence can be discerned in national energy plans, industry projections and weak international climate change protocols. Based on projections of the United Nations Intergovernmental Panel on Climate Change (IPCC) (2014), global coal consumption would have to fall to 3.3 bt by 2035 to achieve the two degree cap, that is, 4.5 bt below 2013 production levels of 7.8 bt (WCA, 2014b). Current projections of the IEA are for 6.5 Bt of coal consumption in 2040 (IEA WEO 2014 Factsheet). At the same time, critical industry analysts now assert that the seaborne thermal coal trade is in “structural decline” (Institute for Energy Economics and Financial Analysis, 2015) or at least that coal is “losing the public relations battle”, as the president of BHP Billiton's coal business recently commented (Ludlow, 2015).

1.1. Coal and energy: policy directions and legislative frameworks

In Australia's fossil fuel intensive economy, black coal is the second-largest export commodity and the source of most domestic electricity. The coal rich regions of NSW and Queensland are zones where the costs and benefits of coal for human health, employment and livelihoods, state revenue, electoral outcomes, economic growth and ecological sustainability are all contested (Carrington and Pereira, 2011; Duus, 2013; Loechel et al., 2013; Moffat and Baker, 2013; Cheshire et al., 2014; Colagiuri and Morrice, 2015; Everingham et al., 2015). The Australian “resources boom” which took off in the first few years of the millennium (Garnaut, 2008; Saunders, 2015) was largely dependent on exports of coal and iron ore to growing Asian economies. The percentage of coal exported has steadily increased, reaching 88 per cent (375 million tonnes) of total production in 2013–14 notwithstanding the official end of the resources boom in 2011 (Bureau of Resources and Energy Economics (BREE), 2014: 70). Australia ranks fourth for world black coal production, with mining dominated by a small number of transnational corporations (including Peabody, BHP Billiton, Rio Tinto, Glencore, Anglo American and Mitsubishi Corporation) which account for about three-quarters of production (BREE, 2014: 70–3).

The Australian government's *Energy White Paper* (Department of Industry and Science, 2015) lays out the vision for the country's energy future as a “global energy superpower” dominated by the export of fossil fuels for decades to come. The *White Paper* pre-figures a policy framework prioritising deregulation of energy industries, increased productivity and workforce skills, investment in new technologies, and growth of fossil fuel exports to the expanding economies of Asia. In the wake of the December 2015 United Nations Conference of Parties 21 (COP21) in Paris, there is no sign of an alternative being flagged for the Australian economy despite the consensus agreements to limit global warming to two degrees or less.

In the state of NSW, where the research for this article was undertaken, coal has been mined since the first years of British settlement in the late eighteenth century (Connor, 2016: 46–9). In 1945 regulation of mining resided in planning amendments to the *Local Government Act* – mine proposals were the responsibility of council authorities, elected by local residents and responsive to their expectations. Policies and legislation have become progressively more centralised at the state government level and distant from the local. Policies regulating mining and transport infrastructure for coal are now embedded in dedicated environmental planning legislation that was first introduced in the *Environmental Planning and Assessment Act (EP&A Act)* in 1979 (Park, 2010) and associated Environmental Planning Instruments. This legislation has been amended many times, with several waves of major reform. The stated objectives of the original EP&A Act prioritised economic growth and social welfare through environmentally responsible development of the state's “natural and man made resources”, allowing for community participation in proposal development, and shared coordination of planning among state, local government and private stakeholders (Park, 2010: 2). The federal government vision of a “global energy superpower” status was just over the horizon at this time. This vision has subsequently become a prominent part of NSW government planning and economic strategy, as black coal has become the state's premier export and the industry has expanded its contribution to revenue flow, Gross Domestic Product, and terms of trade, in concert with the rapid industrialisation of Japan and then other East Asian nations. I contend that the priority placed on fossil fuel commodities in economic development and export growth now overshadows the other objectives of the original legislation – social welfare, environmental protection and shared coordination – to the detriment of rural communities and agricultural producers who, as Everingham et al. argue, are experiencing “a systematic loss of control over resources” (2015: 42).

Within the EP&A Act, coal mine proposals were defined as “major projects” and were removed from Local and Regional Environmental Plans, coming under the aegis of State Environmental Planning Policies (SEPPs). A uniform system of environmental, social and economic impact assessment was introduced, with Ministerial authority to override local government consent authorities when deemed “in the public interest to do so, having regard to matters of significance for State or regional environmental planning” (Section 101 EP&A Act 1979, cited in Park, 2010: 3). As the scale of coal mining expanded to meet rising East Asian demand, and more productive but environmentally destructive open cut mines replaced worked-out underground mines, land-use conflicts intensified. Landowners' common law rights to subsurface minerals were progressively diminished. In 1981, the NSW government passed the Coal Acquisition Act, followed by the Coal Ownership (Restitution) Act 1990 vesting ownership of coal deposits in the Crown. Rights of the Crown to minerals including coal were applied to Aboriginal lands under section 45(2) of the *Aboriginal Land Rights Act (1983)*. A new planning category, State Significant Development (SSD), was introduced as part of 1997

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