

S. Korean Litigation against Australian Barossa Gas Project

SFO°C
Solutions for Our Climate

Date 15th Dec, 2023
Speaker SFOC Jihyeon Ha

SFOC: Shaping Climate Solutions



Renewable Acceleration

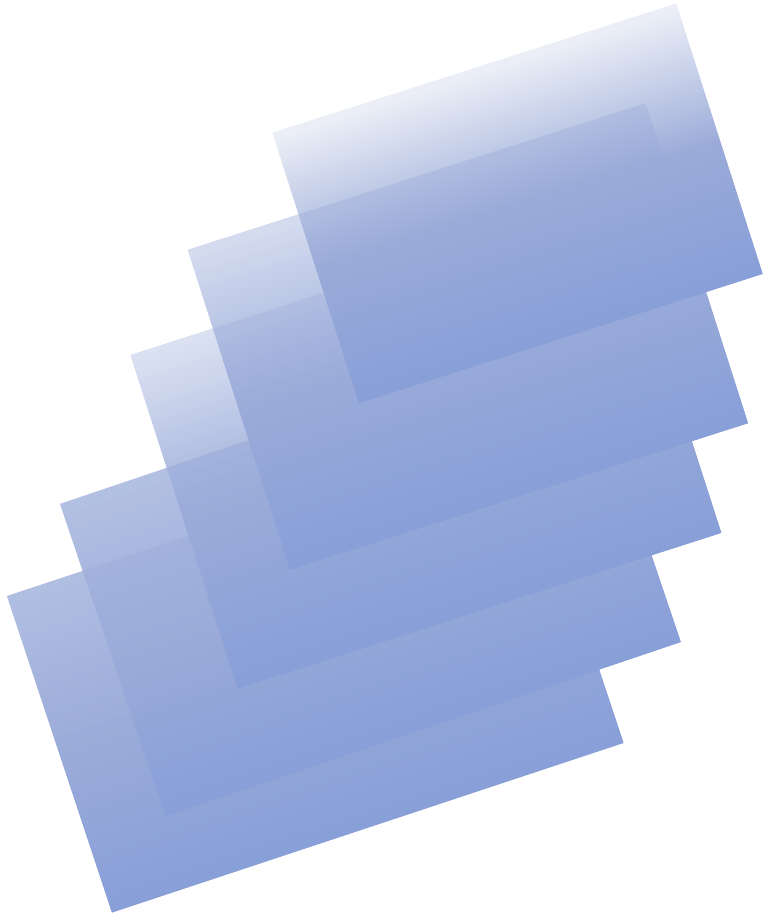


Net-zero Finance



Industry Decarbonization

SFOC: Shaping Climate Solutions



Litigation

Policy / Diplomacy

Comms

Campaign

Research

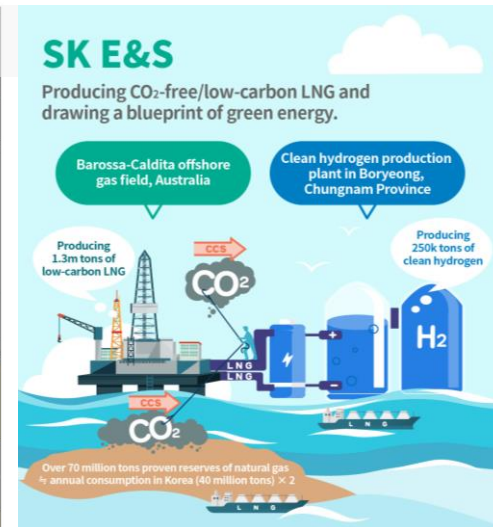
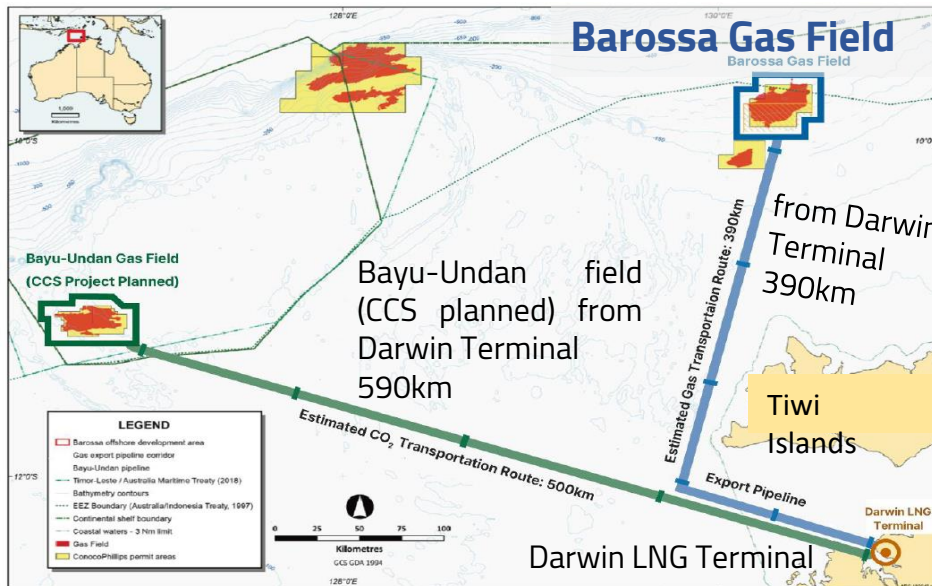
Overview: Barossa Gas Project (the "Project")

Offshore Gas Development Project in Australia

Total cost USD 5.6 billion **Project period** 2025 – 2045 (planned)

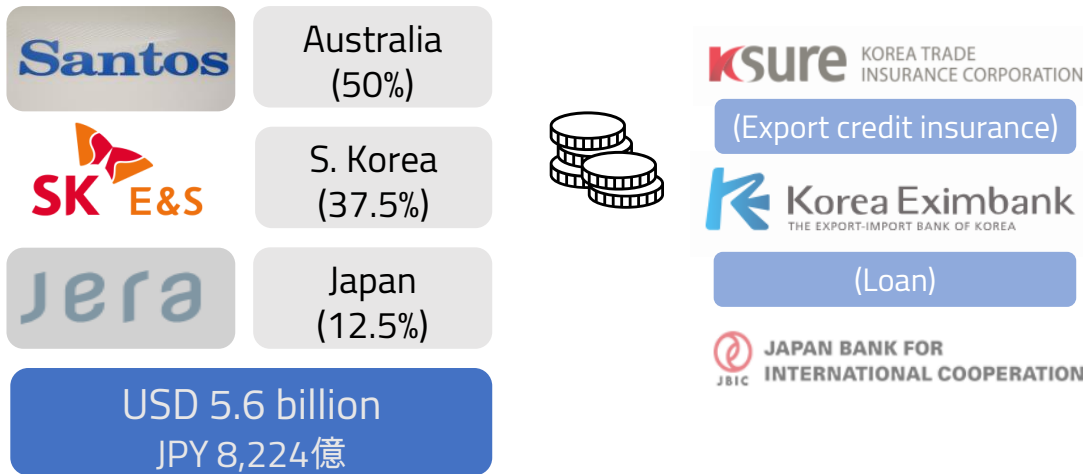
Import to South Korea (SK E&S Offtake) 1.3 million tonnes of LNG per year, for blue hydrogen production **Carbon Capture and Storage ("CCS")**

Companies' claiming that the CO₂ emission will be captured and stored into the depleted Bayu-Undan gas field



[Source: SK E&S website]

Overview: Barossa Gas Field Project (the "Project")



Year	Month	Event
2021	Mar	Barossa Gas Field Project reaches Final Investment Decision (FID)
	May	A <u>letter</u> of concern relating to greenwashing/indigenous rights is sent to SK Group by international civil society organizations
	Dec	JBIC approves financial support
	Dec	K-SURE approves financial support

Tiwi Islanders' Filing Injunction to a S. Korean Court (2022)



Tiwi, Larrakia Traditional Owners Take South Korean Government To Court To Stop Offshore Gas Project



제목 "거북의 섬" 주민들은 SK E&S-산토스의 가스 파이프라인이 들어오는지 물었다

2022.03.21 17:35 일기
정현용 기자



"STOP!"

[Source: JubileeAustralia / Environment Defenders Office (EDO)]

Ksure KOREA TRADE INSURANCE CORPORATION

(Export credit insurance)

K Korea Eximbank
THE EXPORT-IMPORT BANK OF KOREA

(Loan)

"Preliminary injunction against K-SURE and KEXIM not to provide any financial support in relation to the Project."

Plaintiff 3 Tiwi islanders **Defendant** Korea trade insurance corporation ("K-SURE") and the export-import bank of Korea ("KEXIM")

Date March, 2022 **Jurisdiction** S. Korea / Seoul central district court

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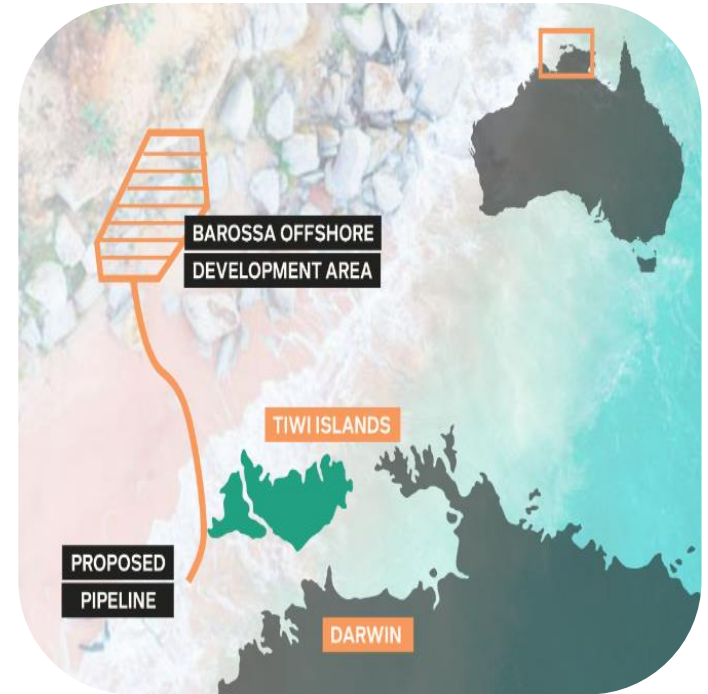
“Environmental Rights”

Infringement of environmental right as a fundamental right (Article 35(1) of the constitution) due to huge carbon emission and harm to marine ecosystem

The Tiwi people have occupied and cared for the Tiwi Islands for upwards of 60,000 years.

“Right of Possession”

Claiming for removal of disturbance (carbon emission/pollution from gas field) based on plaintiffs' right to possess residence and neighborhood (Articles 214 and 217 of the Civil Act)



The Tiwi Islands lie about 80 kilometres north of Darwin, and are home to some 3,000, mostly Aboriginal people.

[Source: Environment Defenders Office (EDO)]

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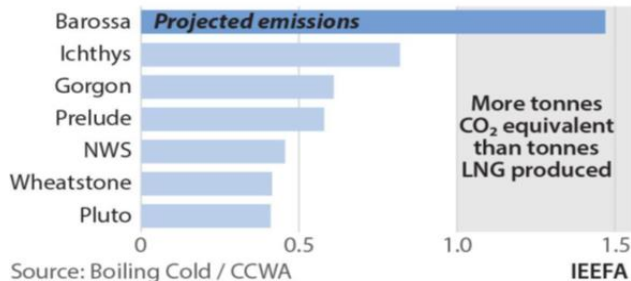
[Source:
JubileeAustralia /
Environment
Defenders Office
(EDO)]

“Irrecoverable Damage”

- Impossible to suspend the operation of the gas field once completed
- Difficult to recover the environment after being destroyed
- Climate impacts because of locking in gas extraction for the next 20 years
- Financial risks from lack of consultation with plaintiffs stipulated in Australian law and regulation

Australia's LNG Carbon Intensity

Emissions from Barossa will be greater than LNG produced



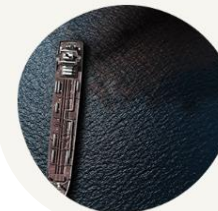
Risks to marine life and culture

Drilling could impact breeding patterns and nesting grounds of turtles, dugongs, whales and other marine species important to Tiwi ceremonies, songlines and cultural practices.



Disruption to traditional practices

Traditional fishing and hunting practices, passed down for countless generations, could be impacted by the industrialisation of Tiwi waters.



Oil spill risk

Santos' own modelling shows that an oil spill could severely impact Tiwi sea country.

[Source: Environment Defenders Office (EDO)]

Tiwi Islanders' Filing Injunction to a S. Korean Court (2022) : Dismissed



"Environmental Rights": Dismissed

Failure to specify a law that embodies a constitutional environmental right.

"Right of possession": Dismissed

Failure to prove that residing inside the subject area directly affected by the gas field development.

"Irrecoverable Damage": Dismissed

- SK E&S's available for executing the project through other fundings / Without SK E&S, JERA and Santos able to attract other companies to implement the project
- Judicial proceedings in Australia still available



KEXIM approved financial support of USD 330 million in May, 2022 (reapproved in 2023)



Public Audit Request dismissed in March, 2023



KEXIM reapproved financial support of USD 330 million in November, 2023.

Tiwi Islanders' Filing Injunction to a S. Korean Court (2022) : Winning in Australia



[Source: Environment Defenders Office (EDO)]



September / December, 2022

"The Federal Court of Australia has invalidated Santos' approval to **drill** for gas in the sea north of the Tiwi Islands"

Tiwi islanders were not properly consulted about drilling that could irreparably damage their Sea Country (EDO).

November, 2023

"The Federal Court of Australia ruled to halt the **pipeline works**" until its impact and risk to underwater cultural heritage were properly assessed. Santos can commence pipeline activities on an 86 kilometer section of pipeline for the project, but not develop around 70 kilometers north of the Tiwi Islands (Reuters).

Takeaways

Meaning of strategic litigation

Injunction as a rapid and flexible legal proceeding

Losing in court but winning out of court

Research, comms and campaign combined litigation

Multi-jurisdiction experience

Respecting communities

Building trusts with global partners with language barriers and difference in culture / legal system

Losing in our jurisdiction but winning in your jurisdiction

Emerging global interests in Korean/Japanese public financiers' fossil fuel investments

Takeaways

Stepping in claims against corporate greenwashing

Legal interventions against SK E&S's "CO2 FREE LNG"
Regulators' administrative guidance and new guidelines,
however greenwashing ads still being seen

Establishing GHG impact assessment practices for public financial institutions

Monitoring practices of GHG impact assessment

Due diligence not limited to financial risks

*S. Korean lawmakers proposing a bill on mandatory human rights and environmental due diligence in September, 2023

Next steps

Ways to pressure KEXIM/K-SURE to divest from the Project

Looking into another overseas gas project in Mozambique

S. Korean export credit agencies are financiers, again

Monitoring LNG terminal projects

LNG terminal plans expansion after Russia-Ukraine war

Thank you!