

REVIEW OF THE OPERATION OF THE CAP

RESPONSE SHEET FOR COMMENTS ON DRAFT REPORT

The March 2000 draft report on the **Review of the Operation of the Cap** by the Cap Project Board to the Murray-Darling Basin Ministerial Council is now available for public comment. Comments on the draft report are due by **10 July 2000**.



The draft report, and further copies of this response sheet, is available from the Murray-Darling Basin Commission and from the Commission's web site:

www.mdbc.gov.au

If you wish, you may use this form to tell us what you think about the position of the Cap Project Board in their report on the Review of the Operation of the Cap. If there is insufficient space on the form, you may add additional sheets or write a separate submission.

The draft report will be modified to reflect comments received and a final report on the Review of the Operation of the Cap will be presented to Ministerial Council Meeting 29 in August 2000.

Those who provide comments will receive a copy of the final Report once it has been approved by the Ministerial Council.

COMMENTS BY: WEST CORURGAN BOARD OF MANAGEMENT

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DATE: 6 July 2000

The deadline for comment is **10 July 2000**.

Comments (by e-mail if possible – this response sheet is available electronically on the Commission's web site) should be directed to:

- Review of the Operation of the Cap
Murray-Darling Basin Commission
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- or your local member of the Community Advisory Committee (CAC). Those comments made via the CAC that are received prior to **Friday 16 June 2000** will be considered at CAC Meeting 24 – 27 June 2000.

	Cap Project Board Position	Comment
Ecological Sustainability of Rivers	The Project Board has concluded that the Cap has been an essential first step in providing for the environmental sustainability of the river system of the Basin. Without the Cap, there would have been a significantly increased risk that the environmental degradation of the river system of the Murray-Darling Basin would have been worse.	The Principle of a CAP is accepted, however the methodology of CAP application leaves much to be desired. Project Board appears to be saying that a no cap situation would have resulted in massive environmental degradation. This presumption is not sustainable in view of an inability to assess a no cap situation .
	However, the Project Board has concluded that there is no certainty that the Cap on diversions at its current level represents a sustainable level of diversions – the level at which it is set being that which existed at the time when it was decided to introduce a Cap. Further, the Project Board recommends that as better information informs our management of the Basin’s resources, the level at which the Cap is set should continue to be refined to reflect our increased understanding. It is likely that such refinements may lead to the lowering of the level of the Cap in some valleys. Indeed, some jurisdictions have already increased the environment’s share, via access restrictions in addition to that required by the Cap, as part of their longer-term direction of improved water management.	West Corugan concurs that there is no guarantee that Cap limits represent sustainable levels of diversion. Variable levels of diversions are seen to be possible by means of individual valley management tools that may in fact result in higher diversions. This Board sees a major question mark over the validity of current data, modeling accuracy and resource understanding. Whilst an ongoing review process will hopefully enhance management, the 93/94 benchmark should continue to be used as the yardstick for comparative analysis.

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Economic and Social Impacts	The Project Board considers that there is compelling evidence that the Cap has already delivered significant economic and social benefits to the Basin community and that the net benefit will increase over time.	Project Board cannot substantiate this statement. To nominate the Cap as the singular driver of benefit is erroneous. Other water reforms must be assessed in conjunction with the total resource availability. A combination of all factors may lead to net benefit however all reforms need to be assessed to determine socio/economic benefit or otherwise.
	The results of research conducted for the Review make it clear that, in the absence of the Cap, the erosion of security of supply for irrigators and other users would have been significant. These analyses were performed on several systems across the Basin reflecting diverse agricultural practices and climatic conditions.	The Cap provides for valley security but this security does not extend to the consumptive user. The consumptive user can only prevent erosion of security by the attainment of property rights.
	Through guaranteeing security of water supply at the valley level, the Project Board views the Cap as having provided a more certain climate for long-term investment and development, particularly in high value agriculture and value adding processing, as well as providing benefits to the environment.	Individual long term investment has not been fostered by the Cap. Uncertainty is still in the rural sector, property rights are essential to combat the current situation. Movement toward so called "high value" use has not in Corurgan's opinion been a Cap induced element. Short term high value use is not necessarily beneficial to a community when compared to long term sustainability of secure value enterprise.
	The Project Board considers that the Cap has provided a mechanism for restraining, in an orderly fashion, growth in diversions while enabling economic development to proceed.	Growth in diversions was brought to an abrupt halt by Cap implementation, the transition has not been orderly. Stakeholders have been forced to improvise while the current scenario of uncertainty remains in respect of property rights.
	The Project Board recognises that this strong positive conclusion will not be the perception of every stakeholder in the Basin. However, the Project Board concludes that the overall benefit of the Cap, especially from ensuring security of supply at a valley level and providing an environment within which water trading and related reforms could be developed, has been a positive one.	Long term community benefit may be attributable to the Cap in liaison with other water reform. However there are a number of consumptive stakeholders who would claim that perceived existing rights have been eroded by Cap implementation..

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Equity	<p>The Project Board identified several equity issues (notably Cap arrangements for Queensland and the ACT) of longstanding duration that require urgent resolution. In addition there are several more recently identified equity issues (floodplain and overland flows and diversions, farm dams and tree plantations) also requiring attention. The effective management of these issues will necessitate a total catchment management approach to water management that embraces both surface and groundwater resources.</p>	<p>Equity issues in relation to State implementation are of major concern and should be addressed by the Project Board via a consultative process involving all stakeholders.</p>
	<p>The Project Board focused on equity issues arising from the implementation of the Cap between jurisdictions and between river valleys within States. In several cases, the submissions received by the Review of the Operation of the Cap raised equity issues that are about the details of implementation within valleys which are outside the jurisdiction of the Murray-Darling Basin Commission and Ministerial Council processes. The vast majority of such issues related to the recognition of licensed entitlement versus history of use, specifically in New South Wales (the “sleeper/dozer” issue). Such issues need to be dealt with by the particular jurisdiction concerned. In order that all submissions receive appropriate attention, these submissions and that of the CAC have been referred to the appropriate Government for consideration and reply.</p>	<p>Equity issues between valleys, internal state implementation must be resolved within each States jurisdiction. However, the Project Board must drive the process because the cumulative flow on effects of Cap reform are as much a responsibility of the Project Board as are the initial regulations. This comment is relevant in relation to interstate issues as well.</p>

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Implementation and Compliance	The work of the Independent Audit Group (IAG) on the ongoing implementation of the Cap and compliance of actual diversions with Cap target diversions has provided a clear direction for the finalisation of the implementation phase of the Cap. The Project Board generally supports the IAG recommendations.	West Corugan has concerns about the accuracy factor when bodies report on issues relating to resources etc. Public draft documents would at least give the community the opportunity to assess the accuracy and methodology of the reports.
	Significantly, effective compliance tools (computer simulation models used to determine Cap target diversions) have not yet been developed and the Project Board recommends that a high priority be given to the finalisation of these models.	West Corugan concurs with this finding.
	The Review has found that Victoria and South Australia have complied with the Cap, while Queensland and ACT are yet to complete the establishment of their respective Caps. Nevertheless, it is apparent that in Queensland there has been significant growth in storage which will impact on the water available for alternative consumptive and environmental uses. In New South Wales, the Cap has been breached in the Barwon-Darling system, with other valleys being within Cap limits.	Interstate non-compliance must be addressed. The Cap is about total resource management, if State participants are not genuine in their approach the cumulative affect on individuals in complying States becomes unacceptable.

	Cap Project Board Position	Comment
Schedule F to the Murray-Darling Basin Agreement	The most important challenge in Cap implementation is to finalise the arrangements under “Schedule F – Cap on Diversions” to the <i>Murray-Darling Basin Agreement</i> . This schedule is the primary tool for defining Cap arrangements especially those concerned with assessing compliance and its consequences.	Definitely a high priority issue. Community involvement should be a prerequisite in the implementation.
	With the intent of improving the operation of the Cap through the development of fair and meaningful compliance arrangements, the Project Board invites comments on the following modifications to Schedule F which have been recommended by the IAG:	
	<ul style="list-style-type: none"> Removal of references to end-of-valley flows as a method for Cap compliance. 	End of valley flows is an issue that should be addressed on a valley by valley basis, bearing in mind the possibility of intervalley relationships..
	<ul style="list-style-type: none"> Arrangements for remedial actions in the case of Cap exceedance. The recommendation of the IAG is that States be required “<i>to ensure that cumulative diversions are brought back into balance with the cap</i>”. 	Remedial action or penalty for exceedance is a necessary tool for implementation of Cap regulations. The format of sanctions whether they be community based, financial or water etc is a question in which the stakeholders should have some involvement. However , the whole process becomes somewhat meaningless without the obvious extension of valley security to individual property rights.
	<ul style="list-style-type: none"> re-setting the commencement date for accounting for diversions under the Cap to start with the 2000/01 water year. 	A review of modeling , available data etc is necessary. A reset is not desirable , but in the event of a reset occurring those valley with current credits must not be disadvantaged.

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Sustainable Rivers Audit	<p>With the implementation of the Cap nearing completion in most jurisdictions, there is now the opportunity to take the “next step” and to consider the environmental outcomes of the Cap from a whole of Basin perspective. The Project Board supports the introduction of a regular Sustainable Rivers Audit which would cast the Cap as an input to Basin health, rather than an outcome in itself.</p> <p>Whereas the Cap is seen as the first step towards achieving the longer-term objective of the <i>Initiative</i>, a Sustainable Rivers Audit can be viewed as the next step in the process of achieving this objective.</p>	<p>Environmental outcomes are best managed , monitored and assessed by the relevant local community on a valley by valley basis. West Corugan does not see the Cap as being the catalyst for environmental management. There are numerous other reforms more specifically directed at environmental flow issues. This organisation does not accept that a Sustainable Rivers Audit being imposed as a Cap implementation tool is an acceptable outcome.</p>

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Any Other Issues	<p>Are there any other issues raised in the draft report that you wish to comment upon?</p>	<p>It is West Corugan's understanding that MDBC will accept the principle of a "Rolling Cap" scenario. If this is correct we see a further equity issue by virtue of the fact that whilst consumptive consumers pay fixed fees based on full entitlement, if conservative methods are implemented the resultant carryover water forms part of next season's allocation this conserved water should be added to next season allocation rather than forming part of it.</p>