

Review of the Operation of the Cap
Draft Overview Report of the Cap Project Board
Draft response
Murray and Murrumbidgee Valleys
July 2000

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1. ABOUT THIS DOCUMENT

The following document developed by organisations representing irrigators (“Southern NSW Irrigators”) from across the Murray and Murrumbidgee Valleys. The document is not an attempt to cover all the individual issues inherent to each group or valley but to provide the MDBC Cap Project Board (“The Project Board”) with a set of agreed principles from irrigators across these valleys in relation to the operation of the Cap and to suggest a framework to address key equity issues within these valleys.

The submission has been developed in order that the Project Board may understand regional implications and management issues in relation to the implementation of the Murray Darling Basin Cap.

It is also intended that individual and valley submissions will expand in more detail in relation to these principles. There is broad agreement amongst the group that while there are many Cap issues which are common to all irrigators across the region, there are also many issues can only be managed and therefore commented on at an individual valley level.

This document was developed by the following groups:-

Ricegrowers’ Association of Australia
Murrumbidgee Irrigation Limited
Murray Irrigation Limited
Southern Riverina Irrigation Districts Council
Murrumbidgee Irrigation Area Council of Horticultural Associations
West Corurgan Irrigation
Murrumbidgee Licensed Pumpers
Yanco Creek Pumpers
Coleambally Irrigation
Hay Water Users
Moir Private Irrigation
Murray Valley Licensed Pumpers.

2. INTRODUCTION

NSW irrigators support the need for some form of sustainable extraction limits. It is widely recognised by irrigation groups that a limit on extractions provides a foundation for secure, long-term access to water. However, as The Project Board suggested within the Draft Overview, the Cap has been an “essential first step” and only one means of achieving these limits. This document will expand an alternative and/or conjunctive means of achieving sustainable extraction limits through key principle statements.

Southern NSW Irrigators recognise that many of the major costs incurred by irrigators in recent times have stemmed, not from the Cap in isolation, but from the concurrent implementation of several other water reform initiatives. The Cap has defined the property rights between states and river valleys but has done nothing to define the rights of the individual except to quantify the aggregate.

It is therefore not appropriate for the Project Board to consider the Cap in isolation. It has been the cumulative effect of all of these reforms which threatens the social and economic viability of our regions.

Southern NSW Irrigators have consistently supported community resource planning in consultation with government. We believe, on the understanding that each valley’s obligations to the health of the Basin are met, that valley ownership and therefore responsibility for management of natural resources will provide solutions appropriate to those affected by any decision making process. In addition, we believe that the current Cap should be set as a point of reference for the future by which any increases or decreases in extraction limits can be benchmarked by individual valley communities.

It is proposed that valley communities, in partnership with government, would be responsible for the development and implementation of individual valley Water Management Plans. Valley communities, State governments and the Independent Audit Group (“IAG”) need to agree on methods for assessing compliance within each valley in addition to agreements on what if any sanctions will be applied as a result of breaches of agreed conditions. Application of sanctions can only be effective with:-

- individual property rights in place.
- individualisation of the Cap within the individual property right.

The Water Management Plan would incorporate the environmental needs of a river and recognise an individual river valleys’ obligation to the downstream environment and the overall health of the Basin. These needs must be scientifically defined, locally driven, outcome based and able to be audited. Under this framework, there would be no purpose served by imposing extractable limits in addition to a Water Management Plan. This issue is explored further in our additional comments and in the NSW Irrigators Council Blue Paper (reference – page 14 “An Industry Proposal For water Rights in NSW – A Blue Paper”).

3. RESPONSE TO KEY PRINCIPLES / ISSUES

3.1. Ecological Sustainability of Rivers

Southern NSW Irrigators commented on the level of integrity and presentation of information in the “Ecological Sustainability of Rivers” report developed by the CRC for Freshwater Ecology. It is a comprehensive discussion and is welcomed as a step forward in ensuring that the water reform process is underpinned by credible science.

Southern NSW Irrigators agreed to support a limit on diversions based on a framework for water management involving valley communities.

The group is in general agreement with the definition of sustainability for the purposes of the Cap (outlined on page 31 of the review document) so long as the application of the definition is through protocols and rules determined at the regional level.

However, the group also cautions that defining sustainability is inherently problematic. The definition of sustainability and the administration of the Cap should be based on tangible and measurable objectives.

Individual valley communities (based on an agreed framework for water management which includes consultation with government, commitment to overall Basin health requirements and recognition of interstate obligations) should decide as to the appropriate upper boundary of the Cap. Whilst recognising the need for limits and the need for enforcement between states and valleys, there must be times and/or events where the Cap becomes unnecessary.

Southern NSW Irrigators recognise that without the Cap there would have been an increased risk of environmental degradation to the river system of the Murray-Darling Basin.

However, the group also agreed that it would be almost impossible to estimate environmental conditions related to a non-cap scenario. To suggest that the Cap “saved irrigators from themselves” by limiting what would have otherwise been an endless free-for-all on water is incorrect and misleading.

For a number of years irrigators have been seeking a limit on diversions. The introduction of the Volumetric Allocation Scheme was supposed to have delivered this limit, however, the NSW government continued to issue licences in excess of sustainable limits despite calls from irrigators for a moratorium. The Cap Project Board will not assist in improving the understanding and image of the Cap through such inferences.

Southern NSW Irrigators agreed that there is no guarantee that current Cap limits represent a sustainable level of diversions but that any refinement should be based on the Water Management Planning process in NSW.

Southern NSW Irrigators believe that the way forward is through review and refinement of sustainable diversion limits based on credible science, managed by valley communities in consultation with governments and informed by an independent valley health audit. This “adaptable” limit on diversions could be **higher or lower** than current Cap levels depending on the individual valley and will be reliant upon:

- Advances in scientific knowledge
- Adequate and accountable researching
- Confidence in a transparent process
- Confidence in the resulting data
- Satisfying contribution to Basin health

Should the above criteria be satisfied and as a result more water is required for the environment, then appropriate measures should be taken to off-set the effects of reduced availability on water users (see page 23 “An Industry Proposal For water Rights in NSW – A Blue Paper”).

Through all of this the 1993/94 Cap benchmark figure should remain as a reference point to our ongoing understanding of sustainable diversion limits.

3.2. Precautionary Principal

The group suggests that the many versions of the precautionary principle only ever view an issue from an environmental perspective and it is at times triggered by perceived threats to the environment without a prior comprehensive search for information. In addition, it is of considerable concern that while the level of threat is often exaggerated, the principle continues to be espoused.

The group favours an equal social precautionary principle, where actions cannot be taken without caution about the economic and social impacts on those who are to be affected. For example;

“That if there are threats of serious or irreversible environmental, social or economic damage, careful assessment of the certainty of the environmental, social or economic outcomes of measures should be undertaken before measures to correct degradation are implemented.”

Under the current water sharing system however, there can only be an ambiguous figure placed on any impact to irrigators in New South Wales because of the lack of a secure property right for the individual. It is difficult to define how much potential earning capacity has been eroded from irrigators while property right and equity issues remains unresolved.

Currently, there are obvious winners and losers when environmental flows and extraction limits are considered. The winners are the whole community who undoubtedly benefits from a healthy river system. However the only group who are contributing to the health of the rivers is the irrigation communities. Unless a

secure and compensable property right is set in place for all irrigators, their contribution environmentally, economically and socially is difficult to measure and will therefore not be recognised for its significant value.

The precautionary principle when implemented therefore is only impacting on one part of the community for the benefit of the whole community.

3.3. Economic and Social Impacts

*Southern NSW Irrigators agreed that the report by Marsden and Jacob offered **NO** compelling evidence in relation to economic and social benefits linked to the Cap.*

While there may be some benefits involved, these are currently impossible to identify given absence of any analysis of the cost of Cap implementation.

All groups agreed that the “Economic and Social Analysis” report contributed by Marsden Jacob Associates is below what is considered an adequate standard. It would be impossible for the Cap Project Board to make well informed comment based on a report that:

- does not mention the costs/potential costs involved with Cap implementation
- does not deliver an in-depth analysis of benefits related to Cap implementation
- only considers the Cap in isolation from other water reform impacts currently affecting irrigation communities.
- The report fails to recognise that “new developments” through the activation of sleeper and dozer licences can only occur at the expense of the existing users and uses.
- the report should identify the difference between full “activation” of the cap and full “development”. It should not be overlooked that many of those who have benefited from water reform have done so at the expense of irrigators who previously relied on larger annual allocation announcements. While this is a widely accepted fact, what Marsden Jacobs have failed to recognise is that the combination of Cap implementation and the promotion of the temporary transfer market has accelerated the rate at which these irrigators have been adversely affected.
- It is not accurate to suggest that prior to the introduction of the temporary transfer market all licenses would have been fully activated in all years, as the reality is that this would only occur in dry years. The implementation of the Cap has accelerated the rate at which the transfer market has developed, and both the MDBC and the NSW Government should have done more to consider the equity issues associated with their decisions.

The group accepted that the economic and social costs stemming from the Cap are most likely of lesser significance than other impacts

These include the accelerated activation of “sleeper and dozer” entitlements through transfer and the introduction of environmental flows in the case of the Murrumbidgee valley. Other valleys, particularly the Barwon-Darling and Lachlan have suffered significant impacts as a result of the implementation of the Cap and will require an urgent restructure package. However the Cap may continue to suffer undue criticism unless the cumulative costs and benefits of these reforms are adequately investigated and released to the public.

The group suggests that the Cap Project Board publicly release terms of reference for a consultant (s) to consider:

- the macro and micro economic/social costs and benefits of Cap implementation;
- The relationship between the cost/benefit outcomes of the Cap AND the cost/benefit outcomes related to other water reform issues;
- The relationship between the Cap and available resource.

Southern NSW Irrigators are in general agreement that the net benefit of the Cap will increase over time but that further work needs to be carried out to understand individual valley/irrigator impacts.

Southern NSW Irrigators are in general agreement that the implementation of the Cap should provide a higher security of water supply at the State and valley levels. The group agreed that the Cap has defined State and valley property rights but not those of individual water users. Only with the implementation of a secure individual property right will security for long-term investment be realised (and therefore the perceived benefits of the Cap).

Southern NSW Irrigators also questioned the claim that the combination of the Cap and water trading has moved water to high value production and processing resulting in widespread economic and social benefit.

This may well have occurred, however, the report offers no evidence of high value processing from high value production increasing as a result of the Cap. In addition to this, moving water to its “highest value use” at all costs can be a high risk strategy – after all some high value opportunity crops in one year may be low value in the following year.

We believe “high value” should relate to enterprises providing positive regional and national benefits including:

- *high rates of return to growers*
- *employment through value-added processing and;*
- *underpinned by secure markets*

The group is of the view that the Cap has NOT restrained growth of diversions in an orderly fashion.

The Cap was implemented as a blunt instrument designed to limit total diversions. The constructors of the Cap and implementing authorities essentially left valley communities to “sort out the mess” in relation to equitable sharing of Cap limits without consultation regarding the construction of frameworks for sharing cap limits or a reasonable adjustment period.

The participants agreed that while the Cap will, in the long-term, provide a net benefit to irrigation communities, the Project Board should recognise that the implementation of the Cap has had a negative impact on a previously held expectation of access to water and thus on wealth, prosperity and equity in irrigation enterprises in the short term.

Valley security without individual security is undermining the value of the Cap.

3.4. Water Management Planning

Southern NSW irrigators recognise that there should be an environmental, social and economic audit of each individual river system. However, we agreed that the model for a Sustainable Rivers Audit that was proposed by the Project Board could risk becoming a high-handed approach to the environmental management of the river system unless local communities are intrinsically involved.

Any audit should recognise the value of local knowledge from irrigation communities (including irrigation groups/individuals, environmentalists, universities and so on) who best understand the balance of requirements at a valley level. A strictly “top-down” approach advocated by the Project Board may not allow an individual valley the ability to have input into and therefore ownership of the assessment of that valley’s overall health.

There are many issues with regard to water sharing, environmental priorities and measurement models which are best managed on an individual valley community basis in consultation with government. Such a management framework has been documented in the NSWIC Blue Paper (referenced).

Southern NSW Irrigators view the basis of a Water Management Planning framework as follows:

Developing the Plans :-

- As a general principle, NSWIC favours a less adversarial approach whereby all interest groups within a Valley can reach agreement on the key objectives and strategies for a Water Management Plan. This should be the responsibility of a representative Water Management Committee in each Valley.
- Where Water Management Committees are having difficulty reaching any sort of agreement, an independent body (such as the Healthy Rivers Commission in NSW) will be asked to arbitrate and provide a determination for the Water Management Unit in question.

- Where existing Committee's have reached agreement on most (but not all) of the key objectives and strategies, the Independent body may be called in to mediate differences.
- Where Committees have reached agreement on all objectives and strategies, recommendations may be made direct to the Minister without the need for intervention.

Addressing equity issues :-

- Individual Water Management Plans should define sharing models and priorities as appropriate for communities. It must be mandatory for Plans to consider equity issues at all levels, based on an agreed set of assessment protocols;
- The assessment protocols must be developed and described in a similar manner to the COAG principles on Water Reform, with State sign-off.
- The IAG would then have a responsibility to ensure compliance with equity protocols as part of its annual review of Cap operation.

Water Management Plans will generally provide :-

- all water users with a defined volume or resource share with a probability of supply attached;
- safety mechanisms to avoid unacceptable adjustment issues and provide transition times for communities as a result of separation of access and use rights;
- for an audit against community agreed benchmarks – for example, defined/agreed management rules for each Water Management Plan using reliability described in terms of 100 years modelling of early season and complete season availability;
- the basis of sustainable extractable limits. This would be inherent in the Plan. The plan would incorporate the environmental needs of a river and there is therefore no purpose served by imposing extractable limits in addition to the Water Management Plans; and
- for circumstances where significant flows may result in temporary suspension of sustainable extraction limits. This would also be a matter for individual valley Water Management Plans to manage, but needs to recognise state / valley responsibilities.

3.5. Equity Considerations

The group is of the understanding that approximately 80% of submissions were received from N.S.W. and of those a similar percentage focused on the equity and/or the history of use argument. Irrigators recommend that rather than abrogate responsibility for the effects of Cap implementation the Project Board should seek to address these issues. This is essential as long term support for the Cap has and will continue to be unnecessarily threatened as a result of equity issues. It is important that all stakeholders can see and share in the benefits – not just some.

Southern NSW Irrigators endorse an approach that will provide individual valley communities with the opportunity to resolve equity issues between stakeholders. However, the framework must recognise that in some cases arbitration may be required to resolve such issues.

Section 3.4 Water Management Planning describes a process for the development of Water Management Plans which takes into account equity considerations.

Water Management plans must include consideration of equity issues :-

- At the State level - valley plans must not prejudice the rights established under the 1993/94 MDBC Cap for each State.
- At the Valley level - valley plans must not prejudice rights established under the 1993/94 MDBC Cap for each State.
- At the individual level - there must be a defined set of protocols by which each valley must consider the equity impacts of the proposed Water Management Plan including Cap compliance.

The development of the assessment protocols should be carried out by way of a project initiated by a peak body forum at which key principles can be agreed. These principles would then form the basis of a policy paper that would ultimately require Ministerial Council approval and State sign-off.

The development of this policy paper would be matter for the Murray-Darling Basin Commission. Appropriate stakeholder bodies would include the Federal Government, State Governments and peak water user bodies in each State. The IAG should also be involved.

3.6. Implementation and Compliance

We agree that the Independent Audit Group process for developing and divulging data regarding the implementation of the Cap and compliance on diversions is flawed. The participants recommend that the I.A.G. report should be provided in draft form to relevant bodies such as bulk water distribution agencies to maximize accuracy prior to public release.

We agree that an acceptable compliance tool has not yet been developed for statewide implementation. The group also considered that accountability for previously developed models and monies spent should be demonstrated.

3.7. Schedule F to the Murray Darling Basin Agreement

The participants agreed that the finalisation of arrangements under “Schedule F-Cap on Diversions” to the Murray-Darling Basin Agreement should be given priority.

The group recommends that for improved confidence in and support of the Cap, irrigation communities should be party to these negotiations.

As the definition of Cap arrangements will vary significantly across each valley, the group believed broad principles for these arrangements should be developed at a state level with regional management through Water Management Plans.

Southern NSW Irrigators agreed that the Project Board should not remove end-of-valley flows as a method of CAP compliance unless it can be proved that the removal of this compliance measure will not prejudice the yield and security of another valley.

Southern NSW Irrigators agreed that “Schedule F-Cap on Diversions” is only as effective as an implemented compliance regime. In order that each water user, valley and State is aware of their obligations and rights prior to the enforcement of any sanctions, an individual property right must exist. The group will therefore not condone any remedial action for breach of the Cap in the absence of a secure individual property right.

The application of sanctions will be extremely difficult while ever there is socialisation of the Cap. Provided that individuals (or groups) can be identified, any sanctions should be targeted at those responsible for Cap breach. However the group identified a major flaw with any proposal to implement penalties. Under current conditions irrigators will be penalised for State actions, since the States set the rules for Cap compliance.

These conditions require amendment to reflect our preferred model for water management. Under this model, sustainable limits, contributions to Basin health and compliance measures are agreed between valley groups and government. Under this model any proposed penalties will be as a result of compliance rules agreed to by valley communities.

The group recommends an appropriate adjustment period prior to the implementation of this compliance regime be effected, with sanctions applicable after this time.

In relation to the proposed resetting of the accounting period for the Cap, the participants agreed that:

- A review of data pertaining to accounting for diversions under the Cap is essential .
- Providing this review reveals no outstanding inaccuracies, then the commencement date for accounting should **not** be reset.
- However, if such a review exposed significant inaccuracies in diversion or modelling accounting, then a reset should occur. Any reset should not disadvantage groups that have accumulated credits over the 1993/94 – 1999/2000 period.

4. Appendix 1 :- NSW Irrigators Council Proposed roles & responsibilities in NSW

