

MIA Council of Horticultural Associations Response to the Review of the Cap.

Att: Tony McLeod
MDBC
Canberra

Dear Sir,

Thank you for the opportunity to make comments on the draft review of the operation of the cap on diversions. The MIA Council of Horticultural Associations represents 1000 high security water users within the Murrumbidgee River system.

We have participated in the development of the response paper from the NSW Irrigators Council and fully support the comments contained in that paper. As noted in that response however, we would like to make comments about individual aspects of the review as they pertain to the high security water users we represent.

Over all the review is welcomed by our group and we particularly appreciate the companion paper on ecological aspects of the cap and water management. This is the first time, that we are aware of, where such a comprehensive and well written paper has been made available to the public relating to any water reform issue. The review team is to be commended for the inclusion of this paper.

On the other hand, we strongly object to the paper on economic and social impacts of the cap. This paper is below our expectation and does not cover many aspects of economic or social impacts of the cap or the combination of the cap and other water reforms. The conclusions from this paper are difficult to derive from the information contained within and we believe should be disregarded in your deliberations. We support the call in the NSW Irrigators Council paper for the letting of a comprehensive study into the full social and economic impacts of the cap and the other water reforms being undertaken.

Our particular comments are made on the reply sheet attached.

We look forward to the final document and would be willing to provide the review team with additional information if required.

Yours sincerely,

Belinda Wilkes
Chief Executive Officer

	Cap Project Board Position	Comment
	<p><i>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.</i></p>	
<p>Ecological Sustainability of Rivers</p>	<p><i>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.</i></p>	<p>We remain concerned that in the Murrumbidgee Valley at least, the current cap long term diversion number does not accurately reflect the rules and operating conditions existing in 1993/4.</p> <p>It is our understanding that the IQQM development will be able to better account for the original cap requirements, but until we are able to establish this with some confidence, we will remain skeptical of the cap numbers.</p> <p>It is our view that the current long term diversion number should have included up to 100 GL in available inter valley transfer which was not taken up in the starting year due to wet conditions. If the IQQM is not available for the coming irrigation season, then the consideration should be given to raising the Murrumbidgee long term diversion number by 100 GL.</p>

	Cap Project Board Position	Comment
	<p><i>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.</i></p>	<p>In our view the board opinion is misplaced. The assumption that there have been economic benefits is not based on any facts and is not supported in the text of the document.</p> <p>The assumptions contained in the Marsden Jacob and Associates paper on Economic and Social Impacts are based on the difference between full development and the cap. While this may be a correct assumption over the long term, the introduction of a market in water dramatically accelerated the full development scenario, which in turn has caused economic hardship to many individual producers who are struggling to cope with the rate of change.</p> <p>This is not to say however that industries and/ or other individuals have not benefited. In fact those with water licenses in excess of the current usage have had a new source of income made available due to the market in water. It must be recognised however that the water market currently operates on water previously regarded as “sleeper and dozer” (including high security) and not on any significant water savings. The market does though, provide an incentive to water use efficiency.</p> <p>The comments in both the Ecological Sustainability of Rivers and the Economic and Social Impacts reports suggesting that the cap has improved the property right of water users is also misplaced. This statement reflects the belief that if all licences were exercised, there would be vastly less water available to current users. Unfortunately, with the advent of the water market all of the licenses are active and so the cap has not in fact provided any security that would not have occurred naturally.</p>

<p style="text-align: center;">Impacts</p>	<p><i>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.</i></p>	<p>The water market has enabled previously unused portions of licenses to become active. This has effectively eroded the access to water previously enjoyed by other irrigators due to the socialisation of water under use by the DLWC in years gone by.</p> <p>This means that the effect of full development is being felt by irrigators, however this is then exacerbated by the cap which limits the access to water above this in some years</p> <p>The report findings are simply that the present state of access reflects full development and not the cap security implied.</p>
<p style="text-align: center;">Economic & Social</p>	<p><i>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 processes, as well as providing benefits to the environment.</i></p>	<p>Once again, we are concerned about this attitude displayed by the review board. The fact that irrigators can now see where the bottom line is (presently) in terms of the cap provides no additional security. Suggestions are already being made that the cap level will need to be lowered. This combined with other water reforms such as the market development, trade restrictions and environmental flows continue to provide uncertainty for investors in NSW. The investment climate is in no way secure under the present arrangements.</p>
	<p><i>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.</i></p>	<p>The cap does provide a restraint on overall diversions, however within that individual irrigators are coming into conflict due to access to the cap limit. Some growers are being severely disadvantaged at the expense of others who are able to activate the water first. These equity issues were not considered by the Ministerial Council and they must be considered in this context, not fobbed off to each state to address.</p>

	<p><i>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.</i></p>	<p>In our view the project board is misconceived. The comments on the left seems to give the board an “out” so that they can dismiss any comments made to the contrary. The board would be wise to take notice of the other issues raised by various groups, or face continuing community resentment of the reforms. It is important that reforms bring people along, not just be imposed at great individual costs.</p>
--	--	--

	<p>Cap Project Board Position</p>	<p>Comment</p>
	<p><i>The Project Board identified several equity issues (notability Cap arrangement 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.</i></p>	<p>The Ministerial Council must take a leading role in ensuring that all of the equity issues raised in the review are considered and dealt with in a satisfactory manner. It is not good enough to fob issues off as “outside the jurisdiction” of the MDBC of the Ministerial Council.</p> <p>The Council agreed to the cap on behalf of all of the relevant states, and by implication (in our view) also agreed to address the issues arising in all jurisdictions from this decision.</p> <p>The Murrumbidgee equity issue raised in our earlier submission is that the rules applying to the 1993/4 year (and before and after) were not fully taken into account in the cap numbers. In particular 100 GL of inter valley trade is not included, which means that the Murrumbidgee cap is too low and explains why the valley often runs at or near annual cap levels.</p>

Equity	<p><i>The Project Board focused on equity issues arising from the implementation of the Cap between river valleys within States. In several cases, the submission 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 verses 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.</i></p>	<p>See comments above.</p> <p>The NSW Irrigators Council have a long standing policy that entitlement takes precedent over history of use.</p> <p>Under full development, all licenses will be activated. The water market is providing a surrogate for full development, however the speed of the change is causing hardship to individual irrigators, combined with other changes such as the introduction of environmental flows.</p> <p>A structural adjustment package must be developed to assist those individuals who have had a previous reliance on high water use, to allow them to adjust to the speed of the changes.</p> <p>It is the duty of the Ministerial Council to take responsibility at that same level for the unintended consequences of their decisions.</p>
---------------	--	---

	Cap Project Board Position	Comment
	<p><i>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.</i></p>	<p>We agree, however we would like to see a broadening of the role of the IAG to include audits to ensure that the cap reflects all of the conditions for establishment of the cap stated in the <i>Setting the Cap</i> document.</p>

And Compliance	<p><i>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.</i></p>	<p>We agree.</p>
Implementation	<p><i>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.</i></p>	<p>We reiterate our comments that the long term diversion number for the Murrumbidgee system does not fully reflect the operating rules and conditions for the 1993/4 year. The Murrumbidgee cap should be lifted by 100 GL to reflect the transfer rules in that year.</p>
	<p>Cap Project Board Position</p>	<p>Comment</p>
Agreement	<p><i>The most important challenge in Cap implementation is to finalise the arrangements under ‘Schedule F – Cap on Diversions’ to the Murray-Darling Basin Agreement. This schedule is the primary tool for defining Cap arrangements especially those concerned with assessing compliance and its consequences.</i></p>	<p>Schedule F provides some flexibility in the management of the cap and this is welcomed, however the application of penalties needs to be further considered. If a penalty is to be applied, under what circumstances should it be applied, what right of appeal will exist, will the penalty be on the State or the individual, and how will the board propose to ensure that State governments don’t simply apply draconian penalties on individuals as a flow through of the penalty?</p>

<p>Murray-Darling Basin</p>	<p><i>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:</i></p>	
<p>To the</p>	<ul style="list-style-type: none"> <i>Removal of references to end-of-valley flows as a method for Cap compliance.</i> 	
<p>Schedule F</p>	<ul style="list-style-type: none"> <i>Arrangements for remedial actions in the case of Cap exceedence. The recommendation of the IAG is that States be required “to ensure that cumulative diversion are brought back into balance with the cap”.</i> 	<p>The cumulative nature of schedule F allows for a “rolling cap” management protocol. We support this move, but recognition must be given, that with a rolling or moving average, the intra year final diversions may exceed the long term diversion for a number of years before a correction is seen and vice versa.</p> <p>Each State or valley, must be allowed to manage the cap without penalty while establishing the rolling average. See comments on penalties above.</p>
	<ul style="list-style-type: none"> <i>Re-setting the commencement date for accounting for the diversions under the Cap to start with the 2000/01 water year</i> 	<p>The cap should be reviewed against the full 1993/4 rules for each valley and if there is discrepancy, then reset.</p>

	Cap Project Board Position	Comment
Sustainable Rivers Audit	<p><i>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 Basin prospective. 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. Whereas the Cap is seen as the first step towards achieving the longer-term objective of the Initiative, a Sustainable Rivers Audit can be viewed as the next step in the process of achieving this objective.</i></p>	<p>As acknowledged in the review draft report, the cap does not have environmental outcomes as a principle. The other water reforms of trade and environmental flows considerably complicate the assessment of any one initiative in environmental management.</p> <p>We support the concept of a <i>Sustainable Rivers Audit</i> and a similar suggestions has been put forward in the NSW Irrigators Council submission to the NSW Government White Paper, <i>A proposal for updated and consolidated water management legislation for NSW</i>. This submission put forward the proposal that each valley have a five year state of the river type report which can objectively measure progress or otherwise in environmental management and health of our river systems. A five year time frame is seen as necessary as the minimum time for changes to river health to become evident.</p>

Are there any other issues raised in the draft report that you wish to comment upon?

The report indicates a number of times that equity issues within States or valleys are outside the jurisdiction of the MDBC, these issues have been referred to the relevant States. We would like to see the referrals made public and that the Ministerial Council require public responses in a short timeframe. It is not adequate that these issues of major concern to many groups, are just swept under the table. The Ministerial Council must take responsibility for all aspects of the impacts of the cap in all jurisdictions.

Page 56 of the Economic and Social Impacts report prepared by Marsden Jacob and Associates discusses trade by high security entitlement holders and suggested that it is “*clearly inequitable if holders of those licenses were able to claim that water, at the expense of general security licenses, not for use on vulnerable permanent plantings but only to sell it to those lower security license holder whose own allocations had been reduced to provide the high security allocation in the first instance.*”.

This is totally contradicted on page 37, which states that “*by definition, the movement to full development must entail activation of unused rights, entitlements and licenses. This occurs through continued development by existing entitlement holders and/or by the sale of unused entitlements in the market to new entrants seeking to gain entitlements*”, and further, “*sleepers and dozer licenses would also be purchased by existing users as they seek to restore their previous level of security.*” And on page 59 noting that “*demand for water from new developments must also be satisfied by activating previously unused entitlements or by purchasing water that is currently used in lower returning enterprises.*”

Page 84 continues “*the activation of sleeper and dozer licenses is essential for increased development and facilitates the shift of water to higher value activities particularly in years of low allocation due to resource scarcity.*”

In our view the comments in relation to high security trade are not to be countenanced.

In our view the report is fundamentally baseless and factually incorrect and should be dismissed by the project board.

We seek the opportunity to discuss our issues with the project board again in light of the draft review.