

# 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](http://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: Lachlan Valley Water

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DATE: 10 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  
GPO Box 409  
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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
<b>Ecological Sustainability of Rivers</b>	<p>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.</p>	<p>Lachlan Valley water users acknowledge the need for a limit on diversions for both the protection of the riverine environment and to achieve sustainable consumptive use.</p> <p>Our organisation considers that the water sharing system must continually strive to achieve an equitable balance between these two objectives.</p> <p>There is already a process in place in NSW for River Management Committees to work within objectives set by Government and develop Flow Rules to improve the water quality and environmental health of rivers. We support this mechanism, with individual valley communities deciding the appropriate sustainable level for diversions in their valley, having regard to overall Murray-Darling Basin health requirements.</p>
	<p>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.</p>	<p>The Cap, when imposed as a Basin-wide initiative, did not take into account the variations between valleys in terms of existing level of river health and existing level of diversions. There needs to be an acknowledgement of these differences, and any future adjustment of the level of the Cap should give full weight to these differences.</p> <p>Individual valley communities will not have confidence in a Cap unless the process of setting limits is transparent and the limits are set on an individual valley basis by reference to the scientific evidence available.</p> <p>We consider that as better information becomes available on a valley by valley basis, the level at which the Cap is set should continue to be refined. The approach should be that the Cap may be raised or lowered according to the credible, soundly researched evidence available.</p>

	Cap Project Board Position	Comment
<b>Economic and Social Impacts</b>	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.	We do not agree that the Marsden Jacob Report provides compelling evidence of significant benefits. There is no analysis of the costs of the Cap implementation, and little objective evidence to substantiate some claimed benefits. Contrary to claim that the Cap has stimulated the streamlining of property rights, in NSW we are still a long way from a secure water property right for individual water users.
	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.	In the Lachlan valley, which was less developed in 1993/94, and where there was no one dominant crop, the report indicates the erosion of security for irrigators under the extended development scenario was less extreme than for many other valleys. This is not to argue that there is no need for any limit on diversions, but that any limit should be set with regard to individual valley conditions. We believe a process of community consultation through Water Management Committees is the appropriate method for this.
	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.	Guaranteeing security at a valley level has not provided any security at an individual irrigator level. Individual irrigators are the ones that undertake investment and development and until a system of secure water property rights at this level is established we cannot agree that there is a more certain climate for long term investment and development.
	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 has been restrained at the valley level but we do not accept that it has been in an “orderly fashion” at the individual irrigator level. The means of managing water allocation to remain under the Cap in the Lachlan has generally been to limit allocation plus carryover to no more than 100%. Existing users with a history of use of more than 50% have suffered an erosion of security of supply and have been forced to purchase sleepers and dozers to maintain their previous level of security.

<p>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.</p>	<p>We are disappointed that the Marsden Jacob Report acknowledges that some valleys had much lower levels of development in 1993/94 than others and that there are differential impacts in terms of potential level of development foregone, but does not address the economic or social costs of these differential impacts.</p> <p>When many stakeholders share a negative perception of an outcome it indicates the costs incurred outweigh the perceived benefits. Community support for a Cap will be eroded if legitimate concerns of stakeholders are not addressed and remedied.</p> <p>The Marsden Jacob Report concludes that the constraints imposed by scarcity are borne primarily by forgoing potential new developments. We do not believe it is equitable to simply accept this outcome, and that there should be provision for an adjustment package to assist those valleys which bear a significant impact as a result of the Cap.</p> <p>There is an urgent need for assessment of the impacts at an individual valley level where the Cap has significantly limited the potential economic development in a valley such as the Lachlan.</p>
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<b>Equity</b>	<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>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>	

	Cap Project Board Position	Comment
<b>Implementation and Compliance</b>	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.	
	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.	We support this recommendation of the Project Board.
	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.	

	Cap Project Board Position	Comment
<b>Schedule F to the Murray-Darling Basin Agreement</b>	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.	
	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"> <li>Removal of references to end-of-valley flows as a method for Cap compliance.</li> </ul>	
	<ul style="list-style-type: none"> <li>Arrangements for remedial actions in the case of Cap exceedence. 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>”.</li> </ul>	
	<ul style="list-style-type: none"> <li>re-setting the commencement date for accounting for diversions under the Cap to start with the 2000/01 water year.</li> </ul>	

	Cap Project Board Position	Comment
<b>Sustainable Rivers Audit</b>	<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>	

	Cap Project Board Position	Comment
<b>Any Other Issues</b>	<p>Are there any other issues raised in the draft report that you wish to comment upon?</p>	