

4 July 2000

Review of the Operation of the Cap
Murray-Darling Basin Commission
GPO Box 409
Canberra ACT 2601

Attention: Dr Tony McLeod, Project Manager

Dear Dr McLeod

RE: REVIEW OF THE OPERATION OF THE CAP – ON THE BARWON – DARLING SYSTEM

The Western Division Group of the Shires Association of NSW welcomes the opportunity to provide the following comments on the Review of the Cap on the Barwon-Darling System which has been obtained from the various stakeholders represented through Local Government, Western Catchment Management Board, the Barwon-Darling River Management Committee and the Mungindi-Menindee Advisory Council.

There is a commitment to a Cap in this system but “how” has to be worked through very carefully. With the 93/94 levels of development not finally determined it has proven to be a more complex process than originally envisaged, is an event based-unregulated system, relying on allocation from the tributaries and receives 37% of those tributary flows from the Queensland catchment regions. With the Dumaresq-Barwon Border Rivers Act being reviewed and the Queensland Water Allocation Management Plans (WAMP) in particular the Border-Rivers Wamp process having not made their final recommendations, it is all adding to the complexities of the “how” to manage the CAP in this system.

Please find attached comments in the seven sections as requested and please do not hesitate to contact me if you have any further queries.

Yours Sincerely

Clr Jenny McLellan
President
Western Division Group of the
Shires Association of NSW

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:

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DATE: 4 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
CANBERRA ACT 2601
Attn: Dr Tony McLeod, Project Manager
Tel: 02 6279 0144
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Email: tony.mcleod@mdbc.gov.au
- 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	<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>The introduction of the Cap was done in an ad hoc manner in 1995 with the first Audit document which was based on elementary information. Since that time, very little has been done to obtain additional information to verify that the Murray-Darling Basin was under the degree of risk specified, or that the Cap was based purely on the precautionary principle. No consideration has been given to the fact that the population is now 19 million people and it is impossible to maintain the environment in the form that existed 200 years ago or even 20 years ago. There is a need for a more practical approach to the fact that increased population requires ongoing development and resource management, as well as maintaining the environment. It is felt the environmental flow rules implemented in the respective valleys where designed to satisfy ecological requirements.</p> <p>It is also felt the CAP is being introduced to create more water to address the salinity problems created in the Southern rivers in particular by poor Government and Departmental policy and supervision, with no consideration being given to existing future plans by water users as it is a finite resource and must be used more wisely.</p>

	Cap Project Board Position	Comment
Ecological Sustainability of Rivers	<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>At no time to date has there been any determination of the environmental needs other than to state that all flows are required for this purpose. Until such time as the Qld section of the catchment is controlled and managed, it will be impossible to decide whether more or less water can be made available for extraction. The whole process needs to be considered on the basis of sharing the available resources in the most practical way to provide the most benefit for all concerned rather than giving all preference to an unknown and undetermined environmental requirement and surely the Precautionary Principle should apply in this situation. We must all be aware that we are controlled by nature in regard to the basic availability of water and priority needs to be given to developing a “sharing” policy.</p> <p>There are community thoughts that it could also lead to raising the level of CAP in some valleys. This should also include mitigation strategies to achieve the best ecological outcomes in the Basin as a whole and in individual valleys, <u>socio and economic outcomes must also be taken into account in any management strategies.</u></p> <p>The average annual flow over 100 years is 1.6 million megalitres in the Barwon-Darling River. With present diversions at close to 300,000 megalitres, this constitutes 18% of total flows, which in relation to other rivers is very small but the broader context of floodplain effects must also be considered, not just the river channels.</p> <p>Removing all sleeper and dozer licences by <u>compensation</u> means only could be one option for allowing present development to be sustainable.</p> <p>Regulated rivers may have further CAP shrinkage (with dam storage headwaters) and reduction of “off allocation” pumping, but unregulated systems eg: Barwon-Darling could not sustain any further shrinkage.</p>

	Cap Project Board Position	Comment
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.	This evidence may be true for the Basin. However, there is also evidence that CAP could be to the detriment of some individual valley communities and the CAP diversion suggested figures has severe implications for the Barwon-Darling System communities. There is no conclusive data to provide justification for this comment and it has been proven by independent surveys that if the CAP proposals become totally effective, some smaller rural communities and small family operated enterprises will not remain viable or exist. In particular, in the Western part of NSW this will lead to a major reduction in rural incomes and local community's economic base for some will be severely impacted upon.
Economic and Social Impacts	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.	Until such time as property and water rights are determined in the manner required by COAG there will be no changes to security of supply for irrigators on regulated sections of rivers. There is no security of supply to irrigators on unregulated rivers as they are dependent on rainfall or in the case of the event based Barwon-Darling, on excess flows from regulated tributaries of the Queensland catchment which does not provide any security. Unregulated water users on the Barwon-Darling system had agreed to viable sustainable pumping rules prior to current Government changes and the Mungindi-Menindee Advisory Council had played a significant role in addressing environmental and irrigation problems prior to these changes and also formed the licensing policy that is still current for this system with Government and Department. Due to increased development in some unregulated valleys, erosion of security in some valleys has been significant.

Economic and Social Impacts	<p>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.</p>	<p>Unregulated valleys would argue that there is no guarantee of supply. There is no guaranteed security provided by the Cap. It limits the total extraction for a valley system and provides a basis for the sharing of the available water by users, but still directs complete priority to the environment. Long term investment considerations would require great security of supply, such as new storages and better management of the resources. Forcing irrigators to change from conventional crops to high risk and investment crops will cause even greater financial exposure.</p>
	<p>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.</p>	<p>There is no doubt that the CAP restrains growth of diversions, where it has been implemented, but in its present form it is also a limiting factor to any thought of economic development. The question would be asked of, how can economic development take place, without growth and there must be more efficient use of resources and farming techniques.</p>
	<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>There could be benefits from managing the available resource to each valley and ultimately the whole of the Murray Darling Basin Catchment, but to attain this would require more appropriate controls at State level and a better and more practical approach in the methodologies used by the decision makers in the MDBC. There is a need to go out and consult and communicate with the respective communities and users, and NOT to just support the proposition that all the rivers are degraded and that availability of supply has to be reduced to provide for supposed environmental needs on a purely precautionary basis principle. The main benefits appear to be for the environmental needs and could be at a great loss to the irrigation industry, rural urban communities and small family operated enterprises.</p>

	Cap Project Board Position	Comment
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>Until such time as Queensland and to a lesser degree the ACT have suitable controls on extraction and use of water, it will be impossible to have other States accept the extreme controls being proposed. It is not possible to accept that Queensland extracts 6% of the water in the Basin, as they have no acceptable form of management of diversions available under their present system. Overland diversions are not measured and there are virtually no controls. End of valley flows are an important way to assess total usage in all unregulated rivers, and it is essential that this method of determining extraction is retained as an option.</p>
Equity	<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>The equity issues relating to licences and their history of use are being considered in NSW and Qld by River Management Committees, and need to be dealt with at local valley level. Decisions in this respect should rest with the States – not the MDBC. Licences are an equity issue as they are an asset to holders and if Governments are not into compensation for loss, this issue has to be resolved. Legal rights cannot be unilaterally removed without reaction from holders.</p>

Implementation and Compliance	<p>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.</p>	<p>No clear direction for the finalisation of the implementation of the Cap is apparent at this time and there is a need for the Audit Group to seek more opinions from stakeholders or water users, rather than relying on scientific and consultancy opinions which do not appear to understand anything other than the environmental requirements.</p> <p>All extractions should be included, not just the larger properties as surveyed in 1997 for present CAP target diversions.</p> <p>The latest IAG Report criticised the Barwon-Darling for being over CAP in 98/99 when 12,000 GL passed through the system. Common sense and logic indicates that this is clearly an ambid conclusion and leads to a back of faith in option proposed to manage CAP.</p>
	<p>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.</p>	<p>Until such time as modelling is done by highly competent staff who also have a full understanding of the streams they are dealing with, it will not be possible to obtain acceptable results. Insufficient information on flows due to lack of suitable gauging stations and other technical information sources will reduce the credibility of any modelled results. Resources should be made available to achieve this. All indications have shown that models are prone to human error. This irrigation industry is vital to our countries export, so we cannot rely on such a system.</p>

<p style="text-align: center;">Implementation and Compliance</p>	<p>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.</p>	<p>It is not correct to state that the Barwon-Darling system has breached the Cap as to date no Cap figure has been determined by the State Minister for this section and it is still under consideration by the River Management Committee concerned. The original figure quoted in the 1995 Audit document was shown as 274 GL and at no time has this figure been exceeded. SA has unreal expectations regarding its share of the available water when it requires that Lake Alexandrina and Lake Albert are kept in an unnatural fresh-water storage condition rather than being returned to their coastal tidal lake situation. This requires nearly 10 times the Cap figure for the Barwon-Darling and has no relationship to the supply of fresh water to Adelaide and much of southern SA. There has been significant growth in development in Queensland. There has been significant development in the Barwon-Darling since 93/94 of which some occurred between 93/94 and the announcement of CAP in 1995. Consideration should be given to this development being included in CAP.</p>
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	Cap Project Board Position	Comment
Schedule F to the Murray-Darling Basin Agreement	<p>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.</p>	<p>As stated previously – the Barwon-Darling has not exceeded any specified Cap limit on extractions and recommendation VI on the Executive Summary of the Companion Paper should be amended. There is no valid reason for the proposed changes at X1 and XII regarding the deletion of the “End of Valley Flow” option for unregulated rivers, as this is the only practical form of control or limitation until there is a better standard of modelling developed when more information is made available for these streams. Clause 17 in Schedule F should not be modified or the reporting requirements initiated until effective management of extractions in Queensland and the ACT have been developed.</p>

Schedule F to the Murray-Darling Basin Agreement	<p>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:</p>	
	<ul style="list-style-type: none"> Removal of references to end-of-valley flows as a method for Cap compliance. 	<p>As stated above, the end-of-valley flow method of Cap compliance is an effective control for unregulated rivers until such time as more comprehensive information is available to modellers and their techniques are improved. The work and processes needed to arrive at the workable CAP have been more complex than originally envisaged. The end of valley flow option should not be discarded at this stage, as it would be another example of moving goalposts. Despite the reluctance of modellers and water managers, individual flow management may well prove to be the equitable option on unregulated rivers.</p>
	<ul style="list-style-type: none"> 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>. 	<p>There should be no “payback” requirements for States particularly in respect of unregulated river usage which cannot be effectively measured until all extractions are accurately metered. The Cap figure in itself cannot be positively fixed using the present methods, therefore it should not require payback when the resource depends on changes in natural conditions.</p>
	<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. 	<p>The commencement date for accounting should not be fixed until Queensland and the ACT have complied with all requirements</p>

	Cap Project Board Position	Comment
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. 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>A Sustainable Rivers Audit would be an appropriate approach for the future provided the matter is addressed in a reasonable manner and does not give total priority to an undetermined environmental need. The available resource, water, is needed to satisfy the continuing development and growth which will be required to sustain the rural economy in the future as well as providing for the environment. Too much stress is being placed on the “degradation” of rivers which in fact have not suffered to anywhere near the severe extent reported by scientists adopting textbook approaches to the problem.</p> <p>Sustainability should relate to all needs including socio-economic and consider the way in which water has to be shared to satisfy all requirements.</p>
Any Other Issues	<p>Are there any other issues raised in the draft report that you wish to comment upon?</p>	<p>The draft report has failed to consider a number of issues raised in the past, involving the failure of NSW to adequately investigate the figures being used in flow modelling and to provide adequate information to the various committees formed to advise the government on the implementation of the Cap in this State. This has led to a great deal of uncertainty regarding the justification of some of the more severe restrictions being proposed and has made acceptance of changes most difficult. The whole process appears to be addressed to giving full priority to the environmental needs (which have never been accurately determined) rather than to sharing the available resource in the most beneficial way.</p>