



Murray – Darling Basin Ministerial Council

Review of the Operation of the Cap

Draft Overview Report of the Cap Project Board

Comments by the NSW Farmers' Association

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1. Introduction

The NSW Farmers' Association represents approximately 15,000 farm units across New South Wales, many of whom are irrigators. The Cap and its operation is of significant interest to all our members whose farms are located in the Murray-Darling Basin as it affects the management of the most vital natural resource, water.

The farming community agrees that there is a need for a holistic approach to the management of the water resources in the Murray-Darling Basin, to ensure sustainability of all those who share it. It should be noted that before the cap was introduced, water users called on governments to implement limits on further licences. For some time these call were ignored by governments more keen to ensure the exploitation of the resource for economic gain.

There is debate, however, regarding the use of the Cap as a management tool and it is generally considered that the Cap level is not determined by sustainability, rather an arbitrary setting.

In addition, it has been identified as an instrument that is causing significant detrimental social and economic impacts.

When the Murray-Darling Basin Cap was introduced, it was to be a precautionary, interim measure that would provide riverine environments with a crude level of protection until environmental flows were developed and implemented by communities, at which point the Cap would no longer be needed.

In this regard, the Review acknowledges that the cap is not "an end in itself" but is the first step in the ongoing management of the Murray Darling Basin. The Association argues that the management has now moved on from that first step and attention should now be focused on environmental flows. The measuring and monitoring of environmental indicators to ensure that the flows are achieving their goals and providing environmental sustainability should be a priority.

2. Ecological sustainability of rivers

2.1 Scientific Basis

One of the criticisms from the NSW Farmers' Association of the Cap has always been over using the water usage in a particular year (1993/94) to set the level for future years. This method of setting the Cap, is a blunt tool for providing environmental sustainability. There is no science to support this level as a sustainable extractive limit. It is merely a precautionary initial step.

Nothing has changed in this regard since our initial criticism. There is still insufficient science available to justify the current Cap limits. The review acknowledges this but does little to address the short fall other than to say that as new information comes available the Cap should be flexible to accommodate the new information.

The NSW Farmers' Association believes that there should be more resources spent on the collation of data that could be used enable our rivers to be managed in a way that is sustainable and based on reliable scientific evidence.

2.2 The Cap as an Interim Measure

When the cap was first proposed, farming communities supported the concept as it was understood to be a tool through which security for existing water users, could be provided. It was to be the beginning of a focus on the sustainable management of the Murray-Darling Basin as a whole. This support from the farming community was given on the understanding that the Cap was an interim measure that was not accurate nor scientifically based but would suffice until individual communities could establish an adequate environmental flow program. This tailored environmental flow program would provide individual valleys with accurate management tool that could be based on the best available science.

Many of those programs have now been implemented in New South Wales as part of the NSW Government's Water Reform process, however the Cap is still in force. This in effect is acting as an additional restriction, which is having an impact on regional communities socially and economically.

The Association suggests that the Cap be removed where there is an environmental flow program in place that provides for sustainable use of the resource.

There would still be a requirement for an overseer to ensure that the flow programs compliment each other and that down stream users are not adversely impacted. In short the overseer would ensure that the programs integrated to provide total basin health. The Association believes this function could be done without the use of the arbitrary Cap. The Murray Darling Basin Commission or the Independent Audit Group (IAG) could fulfil this overseer role.

2.3 Highest Value Use

The review makes the assertion that the cap has been the first step in the provision of environmental sustainability and that without it degradation in the Murray-Darling Basin would have been worse. While the NSW Farmers' Association agrees that it has been the first step toward sustainability, it is not clear to what extent the cap has been responsible for reducing degradation.

There are some outcomes from the Cap that may have actually contributed to environmental degradation. The review claims responsibility for providing security for property rights and hence trade in the licences, which has encouraged water to go to its highest value use. This trend, strongly encouraged by the Federal Government's, National Competition Policy, does not always consider what is environmentally sustainable when determining highest value.

It may indeed be that case that the highest value crop may not be appropriate for a particular region or location due to soil type, topography, climate etc. In these cases government policy and the Cap should not be encouraging water users to conduct environmentally unsustainable practices even if it does attract the greatest returns in the short term.

Again the Cap does not allow for such environmental considerations and should therefore not claim that all impacts on the environment have been positive.

When encouraging water to move to its highest value use, consideration should be given to associated costs and variances. Commodities experience market fluctuations, which can convert high returning commodities from one year into low returns the following year. Even this is without consideration for establishment costs.

3. Economic and Social Impacts

3.1 Adverse Impacts

The review asserts that there has been considerable social and economic benefit derived from the Implementation of the Cap. The NSW Farmers' Association freely acknowledges that there have been significant benefits to regional NSW as a result of irrigated agriculture. It is impossible to say if these benefits would have been greater or less had the Cap not been implemented. However there is not sufficient evidence to attribute these benefits to the Cap.

In addition, it must be recognised that there have also been adverse impacts that can be directly attributed to the implementation of the Cap. With the embargo on further licences and the increase in value of existing licences, previously unused allocations have now come 'on-line'. Some have been activated on the property of the owner while others have been realised through water trading.

Regardless on where the allocation is activated, the impact on existing active licences is through a decreased allocation. For those water users that have a high history of use the impacts are significant. In many cases large investments have enabled the maximum utilisation of the entitlement. The reduced allocation results in those investments being under used and hence returns on investments and loans are restricted.

Certainly the report does nothing to quantify either the costs or the benefits of the implementation of the Cap. Without such evidence it is difficult to be sure of the extent of the Caps success or failure at promoting the positive and limiting the negative impacts.

There has been little done to address the undeniable impacts that have been caused in valleys such as the Lachlan and the Barwon-Darling. There is a strong case for these valleys to be given assistance to reach compliance due to their unique situation.

3.2 Property Rights

Property rights cannot be credited to the implementation of the Cap as claimed by the review. Certainly a facet of a secure property right is to ensure that its value is not eroded by over supply which produces a reduced reliability for existing users. However to assume that by fixing this issue in isolation, provides total security for water users is naive. It is not possible to attribute the security, or insecurity, of property rights to the Cap alone. There are other factors that must be considered, such as the broader water reform process.

The security is needed to provide water users with the ability to manage their operations and plan ahead, incorporating basic management tools, such as cropping rotations, in addition to more over arching decisions like investment in infrastructure. While the cap ensures that further licences are not issued, which in part results in increased reliability, it does not address some of these other fundamental issues that underpin a secure property right.

Real security in property rights is determined by state jurisdiction. This raises an interesting dilemma for water users within the Murray Darling Basin. The fact that the resource has been over-allocated in most valleys through NSW has ensured that the

Cap has had substantial adverse impact on existing water users through the activation of sleepers and dozers.

4 Equity

4.1 Sleepers and Dozers

The equity issues already raised that result from the activation of sleepers and dozers have already been dealt with. The Association however does not support the liquidation of these licences as that would be inequitable for those licence holders who have been planning to develop the resource in the future but have not done so to date for a range of reasons.

The over allocation of the resource is a result of:

- lack of information regarding sustainable limits of the resource;
- government departments using a philosophy of mining the resources that is no longer socially acceptable; and
- in some cases government negligence.

It is therefore reasonable to expect that the government should share the cost of the impacts of either reduced allocations or clawing back unused licences. The Association believes that this would provide an equitable method of providing security for water users without adversely impacting on the environment or other non-active licence holders.

This is an issue that the Association has taken up with the NSW Government and realises that such a scheme is beyond the jurisdiction on the MDBC, although it goes to showing that the claim that the Cap provides a secure property right is unfounded.

4.2 Interstate Equity

On the issue of equity between states the Association is concerned that South Australia has been allowed to continue developing while other states have remained stagnant.

A report published by the MDBC¹ identified that while New South Wales was capped at 1993/94 levels of development, South Australia proposed to encourage all existing licence holders to fully develop their allocations. The report then goes on to estimate that this policy represents an increase in use in South Australia of 69 GL, over and above 1993/94 level of development.

This is clearly not an equitable position when compared to the other states. There is little surprised, therefore, that South Australia is one of only two states that have demonstrated total compliance with the Cap.

5. Implementation and Compliance

5.1 Compliance Tools

The NSW Farmers' Association supports the Project Board's recommendation that a high priority be given to the finalisation of computer simulation models to be used as a tool for determining compliance, provided stakeholders are given opportunity to

¹ Setting the Cap, Report of the Independent Audit Group, November 1996, Murray-Darling Basin Commission.

scrutinise the models and are proven to be acceptable. This is a recognition that an acceptable tool has not yet been developed and is needed to provide the Cap with credibility.

6. Schedule F – Cap on Diversions

6.1 End-of-valley Flows

Following on from the comments under section 5.1, Compliance Tools, the use of end-of-valley flows is not appropriate for measuring Cap compliance as the flow does not accurately indicate levels of development. Climatic conditions can have a more pronounced effect. Hence the Association supports the removal of references to end-of-valley flows as a method of cap compliance.

Having said this, it should be ensured that down stream users will not be adversely affected by the removal of this method of compliance before action is taken.

6.2 Re-setting of the Commencement Date

There are several arguments that support the use of re-setting the commencement date for accounting for diversions. However, it has been argued here that the use of a date is inappropriate if the intent is to measure level of development at that date.

The level of development will of course vary in that year depending on the abundance of the resource both on-farm and in storages. The level of development therefore will be much less in a wet year than in a dry year.

Therefore the Association would not support re-setting of the commencement date if it was still based on levels of development rather than on sustainability indicators determined by scientific evidence.