

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.

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DATE: 28 June 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

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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
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 Board has conflated a lot of processes in an attempt to claim more for the Cap than is warranted. The Marsden Jacobs report reasonably well sets out the socio-political environment in which this has all occurred.</p> <p>This is not to say the Cap is a bad thing merely that some of the claims are spurious and that some of the outcomes due to other processes which makes it difficult to claim that it significantly reduced risk.</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>I think all irrigators would agree that there is a distinct paucity of hard information on which a ‘capping’ exercise can be based. Although we would concur with the need for a cap we would like to see a lot more resources devoted to serious science on the hydrology of the MDB so that we felt there was a rational basis for the decisions rather than the ‘gut feelings’ reported to us by State officers which lead to the decisions they make, and which are always attributed to ‘the cap’.</p> <p>Funds for this work could easily be found by cutting down on some of the extravagant glossy publications and too frequent meeting and conferences held on the MDB with considerable “flow-on” into state budgets as most participants come from there. It seems to an ‘outside’ observer that there is very little research being done on the hydrology of the MDB as it is ‘more fashionable’ to research the flora and fauna than it is to research the fundamental flow regimes. Many water agencies lack people with skills in the relevant field.</p>

	Cap Project Board Position	Comment
Economic and Social Impacts	<p>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.</p>	<p>It would be difficult to rely too much on Marsden Jacobs to reach this conclusion. Our company has undertaken very significant investments within the MDB using river licences, ground water, irrigation area licences and private schemes like Barossa Irrigation Ltd. There is no doubt that one of the principal causes of true risk in capital raising and investment in the MDB is the uncertainty caused by the cap AND associated processes. We would be happy to elaborate on this.</p>
	<p>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.</p>	<p>We doubt that you would find any irrigation farmers or agribusinesses who feel that there is more security of supply now as a result of the cap than before. This is an assertion based on our experience and extensive discussion with neighbours but we would suggest is just as valid as any of the assertions in Marsden Jacobs. To suggest that the cap has somehow made better relations between city and country is quite extraordinary and requires evidence not assertion.</p>
	<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>We would strongly dispute this from the point of view of a company which has invested upwards of \$ 70 million in the MDB. It is not the view of our shareholders either.</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>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>This is just rhetoric. Like several assertions in the Project Board's report it seems if they are repeated they must be true!</p>
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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>Because of the cap, and this is the excuse always given by DLWC in NSW, a large number of ‘equity’ issues have NOT been resolved. We would cite conversion of area to volumetric licences as one example and would be happy to document this history.</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>	<p>Well the MDBC can act like Pontius Pilate but its constituent parts, eg the State of NSW and its instrumentality DLWC, attributes most of the problems in this area, and their lack of resolution, to the difficulties associated with the cap. To a farmer the view from either Macquarie St or the MDBC offices seems rather remote as you are unaware of what regional officers give as excuses for inaction, the cap being the most frequent.</p>

	Cap Project Board Position	Comment
Implementation and Compliance	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.	The IAG writes off 'intra-jurisdictional' issues as not their business. But some equity issues in NSW are definitely attributed by DLWC to problems with' the cap'. Is this the run-around?
	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.	Do you have any confidence that this 'view' will carry any weight with anyone? We wholeheartedly agree with the sentiment but cannot see it ever being realised as more and more state research activities like this are reliant of NHT Funds or they will not be done. And the NHT funding is about to conclude.
	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
Schedule F to the Murray-Darling Basin Agreement	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"> Removal of references to end-of-valley flows as a method for Cap compliance. 	While it is probably easier to model end-of-valley-flows it is not necessarily related to the outcomes that are sought for ensuring healthy rivers. As it has been so difficult for jurisdictions to develop models using this relatively unsophisticated tool how long would it be to develop models which comprehend the true hydrological picture, including in stream losses?
	<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>”. 	
	<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. 	We would want to see the pros and cons of this issue much more carefully articulated than they are in this paper before commenting.

	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.</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>	<p>This feels like another big-ticket exercise to duplicate other public sector audits under way.</p>

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Any Other Issues	<p>Are there any other issues raised in the draft report that you wish to comment upon?</p>	<p>The Review does make some extraordinary statements that simply do not appear to be correct. Eg on page 7 in claiming that “the Cap has guaranteed security of supply at the valley level” there is an assertion about ‘sleepers and dozers’ which is simply not true in NSW. I know of no evidence that sleepers and dozers have been ‘inactivated’ by the Cap??</p> <p>Marsden Jacobs and the Project Board seem to assume that because the Cap exists and because there has been some economic development in the MDB that the cap, itself, has had some economic positive consequences. I suggest they do not understand how entrepreneurs work as certainly this company has proceeded with considerable concerns about the meaning, spirit, interpretation and management of the cap that have made us very anxious.</p> <p>Page 8 virtually writes off making any call about ‘social impacts’ because it is too difficult given all the other processes at work and then simply says the social impacts were probably positive because of thinly documented economic gains!</p>
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