

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:

Tim Fisher
Australian Conservation Foundation

CONTACT DETAILS:

340 Gore St
Fitzroy 3065

DATE:

1 August 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
Fax: 02 6230 7579
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>ACF strongly supports the Cap. We note, however, that degradation has continued. Many degrading trends are already present in the Murray Darling River system, and of these the impacts of river regulation and water use are greatest. Furthermore, degrading trends exist as a result of habitat destruction and deterioration, poor water quality, salinisation and exotic fish.</p> <ul style="list-style-type: none"> • Note also that as yet, no cap exists in the following respects: • Condamine Balonne and other Qld streams; • Barwon Darling in NSW; • Lowbidgee irrigation region in NSW; and • The continuing proliferation of farm dams for stock, domestic and ornamental purposes, and under the NSW “10%” rule. • Proposals to allow 20% growth in urban diversions in inland NSW; and • Current practice in giving Cap ‘credits’ for land disposal of sewage effluent.
	<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>Agreed.</p> <p>Note, however, that the ESD precautionary principle requires that a lack of scientific certainty is no reason to withhold or defer measures designed to arrest the continuing decline in riverine ecosystems in the Murray Darling.</p> <p>Note also that, as per ACF’s previous submission, ACF and others continue to hold concerns about the lack of proper accountability in NSW for implementation of agreed environmental flow rules, particularly insofar as these rules should result in a predictable reduction in average diversions from the inland valleys concerned.</p>

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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.	Agreed in principle, but in practice this is debatable, simply because most valleys have been resource constrained – rather than Cap constrained – over the last few years.
	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.	Agreed. No doubt here.
	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.	Agreed
	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.	Agreed.
	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.	Agreed. But the Cap still needs refining.

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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>Agreed. Resolution of these issues should not come at the expense of the integrity of the Cap or environmental flow rules.</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>Fine</p>

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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.	Agreed
	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.	Agreed. Note here that: <ul style="list-style-type: none"> • Penalties must apply if compliance is to be achieved. • ‘End of Valley flows’ is not an acceptable means of compliance with the Cap – it merely represents a minimum flow regime, and does not by any means cap diversions.
	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.	See notes above. I don’t believe that any state has fully complied with the Cap. Note also that SA has benefited by continuing to allow growth in diversions to 90% of allocation, and as yet has no formal position on the environmental flow needs of the Murray in SA.

	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.	Agreed. However, the most important challenge for the rivers is environmental flows.
	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. 	Agreed
	<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>”. 	Agreed
	<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. 	Not agreed. 1997/8 would be acceptable.

	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>Environmental flows is not an opportunity – it is an imperative.</p> <p>Noting my comments on the precautionary principle (above), this process cannot wait for any sustainable rivers audit. This audit should proceed, but not as a precondition or first step.</p>
	Cap Project Board Position	Comment
Any Other Issues	<p>Are there any other issues raised in the draft report that you wish to comment upon?</p>	<p>If I had time, yes!</p>