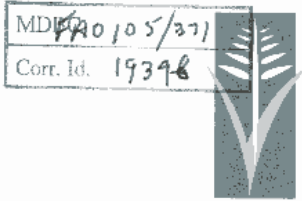


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CS/01/0084

Dear Tony

COMMENTS ON PROPOSED CHANGES TO SCHEDULE F

As you know, Victoria is generally supportive of the Cap review outcomes as they are presently taking shape.

We agree, for example, with the views that have emerged from the Ecological Sustainability component, that to halt degradation, the Cap *may* in the future need to be lower (it's too early to tell yet), and that other things like managing the water remaining in rivers and protecting vegetation are needed as well (these will make it less likely the Cap has to be lowered).

We also support the point made in the same component – though not drawn out in the overview as clearly as it should be – that the Cap will be needed *in the long term*. This is for two reasons: it protects what is left of ecologically important medium to higher flows in the rivers, and it provides a way of making all States accountable.

In connection with this, the adoption of a long-term Schedule F is very important. I would like to make some comments about the three changes to Schedule F that have been put forward by the Independent Audit Group.

The first change – removal of references to end-of-valley flows – Victoria strongly supports. It is far harder to have reliable measurement and modelling of these flows than of diversions. Moreover, using these flows would enable diversions to increase at the expense of floodplains and wetlands, without contravening the cap.

(A less than satisfactory compromise would be, where a cap is expressed in end-of-valley flows, the State must at least *report* against a cap expressed in diversions as well.)

The second change involves dropping the words “makes good the cumulative difference” (from annual diversions exceeding modelled cap targets), and replacing them with the fuzzier words “accumulated diversions are brought back into balance with the cap”. The IAG doesn't say whether these new words mean the same, just that they will be acceptable to all jurisdictions.

These words are not acceptable to Victoria. They would only be acceptable if it was clear that they meant the same as the existing ones, but this is not clear at all. We do not think it is sensible to finesse a legal agreement using loose, ambiguous words.



The firm position of Victoria (and, we understand, most jurisdictions) is that, without payback, the cap would be a farce. It would be possible to keep overrunning "by mistake" and promising to do better in the future, but there would be no real sanction.

Victoria's concerns about these new words were vindicated by discussions in the Water Audit Working Group on 21 June. The NSW representative clearly supported the words as not obliging payback. He said it was going to be hard enough to wrest Barwon-Darling diversions back to cap levels over next few years, without trying to go further and making good overrun.

Victoria appreciates the difficulty in the Barwon-Darling case. But we don't think that's a good reason for having loose words across all river systems. We strongly prefer retention of the existing words, and insertion of a new clause for the Barwon-Darling situation, allowing the Ministerial Council to waive the need for making good overrun incurred in the first five years of keeping tally, where there were exceptional circumstances.

The third change to Schedule F that's been proposed is to put back the starting date for tallying from July 1997 to July 2000. Victoria objects to this. One reason is the 200 GL or so of credit that Victoria has built up – but that's not significant in the long term (say 2 GL a year over the next 100 years).

Much more important is that Council agreed to introduce the cap in 1995, and later decided it should start from 1997. This has been widely accepted and acted on. It just seems weak and bad for perceptions to keep putting things back.

We believe it much preferable to stick with 1997. The suggested waiver clause, above, could be used where exceptional difficulty was being experienced in putting the cap in place. Tallying should start for Queensland and ACT when and as soon as caps for those jurisdictions are agreed.

Yours sincerely



Campbell Fitzpatrick
Director, Water Resources Management