



Australian Government



Inspector-
General of
Water
Compliance

Audit of Goulburn–Murray Water disclosure obligations under the Basin Plan

Inspector-General of Water Compliance

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Inspector-General of Water Compliance
Department of Agriculture, Water and the Environment
GPO Box 858 Canberra ACT 2601
Telephone 1800 900 090
Web igwc.gov.au

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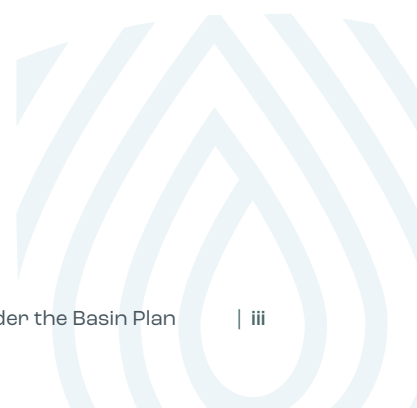
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Summary

This audit was conducted to assess whether an approval authority was meeting its obligations around disclosure of water trades as required by the Basin Plan. Specifically, the audit focused on sections 12.37 and 12.38 of the Basin Plan which define the obligations of an approval authority around disclosure of trades that they, or a related party, have a legal, equitable or commercial interest in.

Approval authorities are entities that have legal powers under the state water management law to approve the trade of water access rights. Under the Basin Plan an approval authority has obligations to disclose their interest in a trade before it occurs and then publish certain information on its website after the trade has been approved. An approval authority's disclosure obligations are an important function designed to help avoid actual, potential or perceived conflicts of interest where the approval authority, or a related party, is conducting and approving trades where it has a commercial, equitable, or legal interest.

Goulburn–Murray Water (GMW) was selected for this audit because it is the largest approval authority in Victoria and an Irrigation Infrastructure Operator (IIO) with over 20,000 customers across northern Victoria. In the 2018–19 water year there were 22,070 water transfers and trades processed within the GMW network totalling 2,980 gigalitres (GL).

The objective of this audit was to assess GMW's compliance with Chapter 12, Part 4 of the Basin Plan, sections:

- 12.37 Approval authority must disclose interest before trade occurs
- 12.38 Approval authority must disclose if it has been a party to a trade.

The audit investigated the type of arrangements in place that GMW have to ensure that all disclosure requirements under sections 12.37 and 12.38 are achieved as well as sample testing the accuracy and completeness of published disclosures on the Victorian Water Register.

Planning and fieldwork for this audit was conducted by the Murray–Darling Basin Authority (MDBA). The final report was prepared by the Inspector-General of Water Compliance (IGWC) following machinery of government changes and a transfer of audit powers from the MDBA.

Findings

- GMW does not have formal arrangements to ensure that all their legal, equitable and commercial interests and those of any related party are identified.
- GMW are unable to verify that their interest in a trade is disclosed to the other party, prior to the trade being submitted for approval.
- GMW do not have complete records for all published trades, making it difficult to reconcile the accuracy of details reported.

Observation

This audit identified that disclosure requirements detailed in sections 12.37 and 12.38 of the Basin Plan do not consider the circumstances where an approval authority also has the dual role of being an IIO. An IIO has information prior to public release that could be used by an approval authority to make trade decisions. This risk would be reduced if an approval authority was also required to publish the date on which the price was agreed, it would be possible to determine whether there is a pattern of contracts being created or amended prior to when IIOs have access to sensitive water market information.

Conclusion

The main finding from this audit is that GMW does not have a formal arrangement to ensure that all their legal, equitable and commercial interests and those of any related party are identified. GMW cannot confidently determine whether disclosure is required under sections 12.37 and 12.38 of the Basin Plan.

In relation to section 12.37, GMW are clearly not meeting their obligation of disclosure to a corresponding party prior to a trade they are involved in. GMW rely on water brokers to conduct these trades and have no formal evidence to provide confidence that disclosures occur.

In terms of GMW meeting their section 12.38 obligations, trades where they have been the buyer or seller have been published on the Victorian Water Register since 2014. The findings from this audit, however, raise questions over the accuracy and completeness of this reporting. The lack of formal arrangements to identify all the legal, equitable and commercial interests of GMW and related parties means that there is potential for a lack of completeness in disclosing historical and future trades conducted by GMW. Finally, sample testing conducted of the published disclosures on the Victorian Water Register, raise questions around the ability to reconcile the published figures.

While these findings identify that there has been non-compliance with sections 12.37 and 12.38 of the Basin Plan, the volume of water traded by GMW is not likely to have had any material impact on the water market. The audit therefore makes a number of recommendations aimed at improving GMW processes for identifying the interests that need to be disclosed, ensuring that other parties are notified of GMW's interest in a trade and reconciling published trade information.

Background

As part of assessing the implementation of the water trading rules in the Basin Plan, the Office of Compliance commenced an audit to assess the compliance of approval authorities with sections 12.37 and 12.38 of the Basin Plan. This part of the Basin Plan requires an approval authority to disclose the nature of any legal, equitable or commercial interests that it or a related party has before a trade occurs, and publish certain information on their website where they or a related party were a party to a trade that was approved. A related party includes any entity in which an approval authority has a controlling interest, or any natural person acting on behalf of an approval authority in return for a commission or fee (see Basin Plan 2012, section 1.07).

Goulburn–Murray Water (GMW) was selected for this audit as it holds a unique role in water trade in the Basin, being both an IIO and an authority whose approval is required under state water management law for a trade to proceed. GMW manages the largest irrigation network in Australia with over 20,000 customers across northern Victoria. In the 2018–19 water year there were 22,070 water transfers and trades processed within the GMW network totalling 2,980 GL. Sixteen trades, totalling a volume of 2,589 megalitres (ML) were conducted by GMW or via a related party to GMW in the 2018–19 water year. GMW trades occur in circumstances where temporary water held, needs to be transferred to avoid the risk of spill from assets held, or as the result of landowner purchases and water share acquisitions aimed at reducing transmission losses in channels used for water delivery.

To create a degree of independence, GMW select from a panel of 5 water brokers for its own water trading activities. The broker arranges the paperwork required and receives payment from the other party. Trade of allocation is processed through a portal where brokers who use this service are subject to an annual independent audit as a condition of an interface access agreement.

Since 2014, GMW have been publishing a report from the Victorian Water Register which lists trades where they have been the buyer or seller to meet the section 12.38 requirement. From this list, the MDBA sampled 50% of historical transactions published over the past 3 years to validate whether disclosures were made to the non-GMW party prior to submission of an application and validate the accuracy and completeness of the trade details that were published.

Planning and fieldwork for this audit was conducted by the Murray–Darling Basin Authority (MDBA). The final report was prepared by the Inspector-General of Water Compliance (IGWC) following machinery of government changes and a transfer of audit powers from the MDBA.

Audit approach

The objective of this audit was to assess GMW's compliance with Chapter 12, Part 4 of the Basin Plan, sections:

- 12.37 Approval authority must disclose interest before trade occurs.
- 12.38 Approval authority must disclose if it has been a party to a trade.

The scope of the engagement included:

- the arrangements in place for identifying any legal or equitable interests that GMW, or a related party, has in water access rights that are the subject of a proposed trade
- the arrangements in place for identifying any commercial interest that GMW, or a related party, has in the activities of any water market intermediary involved in a proposed trade
- documents that evidence the disclosure made to each party where GMW or a related party has a legal, equitable or commercial interest in a trade proposed
- the information that is published where GMW has approved a trade where it or a related party was a party to the trade approved.

Findings

Finding 1 – Lack of formal arrangements for identifying GMW interests

GMW does not have formal arrangements for identifying all the legal, equitable and commercial interests of GMW and related parties. This is because the current processes for water trading only consider the interests that need to be disclosed in circumstances where they are the owners or sellers of a water access right that is being traded.

Finding 2 – Disclosure prior to trade approval

There was insufficient evidence to confirm that other parties to a trade were notified when GMW or a related party had a legal or equitable interest in the water access right, or a commercial interest in the activities of the water market intermediary who submitted the trade for approval. While GMW's contracts with brokers include a requirement that they notify the other party where GMW, or a related party, has a legal, equitable or commercial interest in the trade, there were no physical records to evidence that this was occurring. Some brokers have advised GMW that they provide verbal notification.

In the absence of any records, GMW are not able to verify that their interest in the trade was disclosed before it was submitted for approval, as required under section 12.37.

Finding 3 – Poor record keeping of trade documents

Sample testing identified instances where GMW did not have documents to evidence instructions provided to brokers on applications submitted. In circumstances where GMW did not prepare the application form submitted for approval, it is expected these instructions would be in the form of an authorisation for the broker to act as agent on their behalf and an offer to buy or sell a specified volume of water at the price nominated.

A review of the register published by GMW on their trading activity incorrectly identified a trade of 20 ML where a trade for this amount had not occurred.

Observation

During the course of this audit, the MDBA identified that sections 12.37 and 12.38 of the Basin Plan do not consider the level of disclosure required in circumstances where an approval authority also has the role of an IIO. An IIO has access to sensitive water market information prior to public release, and an approval authority could use this information to determine the timing of their trading activity for financial gain.

In order to improve the level of transparency provided by approval authorities on their trading activity and increase public confidence, section 12.38 of the Basin Plan could be amended to include the requirement for the approval authority to publish the date on which the contract price was agreed. This would assist in tracking whether there is a pattern of an approval authority's contracts being created or amended prior to when IIOs have access to sensitive water market information.

Impacts

As GMW are responsible for managing water licences and trading activity in their region, it is important that they maintain structural separation between regulatory and commercial functions and have arrangements that are adequate for identifying all the actual, potential or perceived conflicts of interest where disclosure to individual water users and the market is required.

The findings from this audit identify that while GMW have a process that requires the use of a broker when affecting the trade of allocation on the public market, this does not consider the extent to which they or a related party may have other legal, equitable or commercial interests that need to be disclosed. As a result, there could potentially be instances where an approval authority holds or possesses inside information that may impact on the worth or future nature of a water share or allocation unknown to the other party.

Disclosure of interests to water users and other stakeholders is fundamental to maintaining the integrity of all approval authorities and ensuring that they are not unduly influencing, or perceived to be influencing, the water market. While GMW trades were only 22,070 ML out of a total of 2,980 GL of all water transfers and allocations traded in the GMW network during 2018–19, the effectiveness of arrangements for managing all legal, equitable and commercial interests is critical to public confidence in the integrity of their trading activity.



Recommendations and management response

Recommendation 1 – Establish formal arrangements for identifying interests

GMW should implement a process that:

- properly identifies the extent to which it, or a related party, has legal or equitable interests in a water access right or a commercial interest in the activities of a water market intermediary
- ensures that there is disclosure to other parties and the public as required under sections 12.37 and 12.38.

Arrangements for considering the legal, equitable and commercial interests of GMW and related parties should be conducted prior to the conclusion of each water year to allow for changes in relation to the business conducted, or the manner in which it is conducted.

Management response

GMW accepts the finding and has implemented processes in line with recommendation.

In September 2021 GMW implemented a check for each water trade undertaken by GMW to confirm whether GMW has any conflict of interest in the transaction that involves any legal, equitable and commercial interests of GMW and related parties.

A review of processes is conducted annually.

Please note that it is almost certain that GMW will never have any legal, equitable or commercial interest in the transaction given that GMW:

- is a single entity that has no subsidiaries, joint ventures or partnerships
- is wholly Victorian Government owned
- does not own or operate any brokering business or entity.

Recommendation 2 – Ensure disclosure of interests prior to trade approvals

Arrangements with brokers should ensure that GMW are able to verify that other parties were notified under section 12.37 where they or a related party have a legal or equitable interest in the water access right subject of the proposed trade, or a commercial interest in the activities of water market intermediary involved in the proposed trade.

Management response

GMW accepts the finding and has implemented processes in line with recommendation.

In September 2021 GMW amended its processes to add an additional step in any trade process to ensure that any approved Broker provides written confirmation to GMW to confirm other parties are notified prior to any trade under section 12.37 that GMW or a related party have a legal or equitable interest in the water access right subject of the proposed trade, or a commercial interest in the activities of water market intermediary involved in the proposed trade.

Recommendation 3 – Keep records of trade documents

GMW maintain records that allow them to reconcile applications submitted for approval with trades published.

Management response

GMW accepts the finding and recommendation.

In September 2021 GMW implemented a process to undertake an annual reconciliation of applications submitted for approval with trades published.

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