

WATER'S EDGE: TRANSCRIPT

S1, Episode 2 – SDL compliance

Speaker: *Water's Edge* podcast acknowledges the traditional owners of country throughout the Murray-Darling Basin and Australia, and recognises their continuing connection to lands, waters, and community. We pay our respects to Aboriginal and Torres Strait Islander cultures and to the elders past, present, and emerging.

AH: Coming up, learning about sustainable diversion limits.

EC: That's why they're called sustainable diversion limits. It's about having a sustainable mix between use and the environment.

AH: Why some areas are thriving while others are lagging.

TG: Well, it's for New South Wales to provide to the MDBA plans that can be accredited.

EC: New South Wales has said that it's an issue with metering

AH: And how it can affect everyone in the Basin.

TG: Often, you get irrigators, who produce food and fibre, pitted against environmentalists.

TG: I'm your host, Annabel Hudson. I'll be speaking to experts in the field alongside the Inspector-General of Water Compliance, Troy Grant,

Speaker: This is *Water's Edge* and welcome to the conversation.

AH: And today we're joined by Edwina Carter. Edwina, can you tell us what your role is with the Inspector-General's office?

EC: So, I'm the Director of Compliance Monitoring. Part of that is looking at SDL compliance and if states are compliant with their sustainable diversion limits. I've been doing that for the last year, since moving from the MDBA.

AH: Today, we are kicking off the first of a series of podcasts looking at some of the big projects and investigations that the Inspector-General of Water Compliance has carried out over the last 12 months. And one of the things that we're talking about today is the statement of compliance for sustainable diversion limits. So, would you mind telling us what is an SDL?

TG: It's a great question.

AH: Keep it simple.

- TG: Yeah. So, the sustainable diversion limits are contained within the Basin plan. It's a construct on how to measure and report against water take across a defined area. So, within the Murray-Darling Basin plan, we have water resource plans that go across each of the jurisdictions that take in a geographical area that surface water and ground water travel through. So, for the extraction of that water, there've been limits that have been set and they're tied to legislation. So, there's accountability for water extraction to remain within limits - and Edwina will be able to explain this - and there's a percentage of an allowance.
- EC: Before you get into non-compliance or non-compliance with a reasonable excuse, you have to have a 20% excess.
- AH: How does a state or territory become SDL compliant?
- EC: So, there's a formula in the Basin plan that talks about two specific things. One is the annual actual take, and one is the annual permitted take. So, the annual actual take talks about how much water is expected to be used in a year against how much water is expected to be taken in a year. The annual permitted take is how much water should be taken in a year - like, the maximum amount of water that should be taken. And so, there's a very long process of modelling and working out the annual actual takeout, and the annual permitted take, to come up with whether a state has been compliant with their SDL or non-compliant with their SDL. And it just depends on where the take sits.
- AH: Can you give us a bit of a summary on what this most recent statement of compliance has found?
- EC: Yep. So, pretty much all areas with accredited water resource plans are compliant with their SDLs. So, 55 areas are compliant with their SDLs and those are in Queensland, Victoria, South Australia, and the ACT. So, they've all had annual permitted take which is compliant with their annual actual take.
- AH: Obviously New South Wales doesn't have any water resource plans in place yet. Troy, is that something that is concerning to you as the Inspector General?
- TG: Yeah, it is concerning on a couple of fronts. So, just to give everyone an assurance there, the process of SDL accounting has still occurred in New South Wales. There's a set of figures that have been arrived at against modelling. But the concern I have with the water resource plans not being accredited is that it impacts our ability to hold that jurisdiction to account for any non-compliance. So, until the water resource plan is accredited, which is a process that the states go through with the MDBA - the Murray-Darling Basin Authority - then we as the Inspector-General can't hold that jurisdiction and/or that particular SDL accounting outcome to account. To either make good if it's gone over, and or to officially report that they are compliant. There are administrative arrangements that are currently in place that allow the data to be supplied to the MDBA, to put into their water accounting and processes and modelling. But none of that is legally enforceable and none of it can be held under law, which is a requirement of the Basin plan, and nobody can be held to account for those results.
- AH: And just to clarify, is this a reflection on individual irrigators and water users, or is this a bit bigger picture?

- TG: No, this is a responsibility of the New South Wales state government and the related agencies and the MDBA.
- AH: A majority of states and territories have their WRPs accredited. They are SDL compliant. I guess with New South Wales not having its WRPs accredited, was there any exceedance [sic] in New South Wales, even though they didn't have a WRP?
- EC: So, pretty much all but one of the SDL resource units in New South Wales using the indicative accounting was SDL compliance. It was only the Barwon-Darling that had an exceedance in the whole of New South Wales.
- AH: And was that exceedance below the threshold, the 20% threshold?
- EC: No, it was over the 20% threshold. So, it was 39%. New South Wales has said that it's an issue with metering. So, their actual permitted take isn't properly representative of what they're actually taking out because their meters are reading wrong.
- AH: If that was in an area that had an accredited WRP, and they exceeded by 39%, would that be considered reasonable?
- EC: So, this would depend on what was the content of the accredited WRP. One of the main reasons that you have for a reasonable excuse is the operation of the WRP. So, without an accredited WRP, it's a real chicken and egg issue. Without the accredited WRP, we can't work out whether that would form a reasonable excuse, either.
- TG: So, we've just made the point as to how New South Wales would defend the 39% result, and what they would need to prove to find out if that was part of the reasonable excuse or not. If you are in Victoria or South Australia, or you're in the southern rivers, and you see that exceedance there, the point I was making there is that their view and perception is that that's 39% of water that has been extracted in that area that isn't either going to them, to be part of their SDL, and ability to take water, and/or isn't within the system for environmental outcomes, et cetera. So, it's a perception, right or wrong, accurate/inaccurate, about how much waters they're not getting or that isn't doing its job throughout the system.
- AH: This office can't hold them to account, legally. What sort of consequences does it have if they aren't SDL compliant?
- TG: None at the moment. And that's part of the problem. That's the unfair playing field. The other jurisdictions rightfully say, 'Well, I'm being held to account, why aren't they? We have to operate this particular way, within constraints, yet they are not legally held to any constraints in reality?'
- AH: So, there's no onus to have those make good actions in that particular area because they don't have an enforceable WRP?
- TG: That's correct. We have no legislative base on which to enforce any make good.
- AH: Aside from the legislative or legal consequences, what sort of environmental consequences would there be for people downstream or in the community itself? I guess that's the purpose of an SDL - to ensure that it's environmentally sustainable.

- TG: Well, the answer for that one - and I'll let Edwina elaborate - is that there's 39% of water take above what is considered and been modelled and assessed as the amount of water that shouldn't have been taken, that should be used for other purposes environmental-wise.
- AH: So, for example, if there's been an exceedance, that more water has taken than should have been, does that mean in the following water year they have to come up with ways to return that water? Or take less water in the following water year?
- EC: So, what happens if a state exceeds the 20% compliance limit, they're required as part of that exceedance to provide their reasonable excuse to the Inspector-General. That reasonable excuse is what the Inspector-General assesses, to determine whether that is right or wrong. Is this actually reasonable? Is what the states actually provided the reason for the excess? And, in providing that reasonable excuse, the state has to give us make good actions. And so, one of the things that we would do in looking at those make good actions is to look at, 'Are those make good actions going to actually have an impact and bring the SDL back into compliance?' Because there's lots of different reasons why there might be non-compliance. It really is looking at the individual situation of the excess, understanding the excess, and then working out whether the state has proposed reasonable reasons and ways to bring that area back into compliance.
- TG: I guess for that make good provision, it will be tailored to the various circumstances. So, if there were two different areas that were non-compliant, there may be vastly different reasons for that non-compliance. So, we would work with those jurisdictions to tailor mechanisms and manners of how to get them back to a compliant level.
- AH: Now we're at the point where you can't assess the compliance of New South Wales -or you can assess it based on their own sort of accounting methods - but there's no legally enforceable way to assess them. Where do we go with New South Wales?
- TG: Well, it's for New South Wales to provide to the MDBA plans that can be accredited. So, there's a framework. It's a very complex piece of work, without question, that takes into a lot of factors planned environmental water, socioeconomic factors, potential growth in use. There's a whole range of issues that need to go into the construct of a water resource plan. So, they're not overnight things you can just sort of cut and paste and do. You have to be very considered. And the assessment of them also has to be well considered. And there's a need for the MDBA to have consistency across the plans because you can't set one set of rules for one jurisdiction and have a whole different set for another as well.
- AH: If there is not SDL compliance, what sort of consequences does that have for the community?
- EC: That's why they called sustainable diversion limits. It's about having a sustainable mix between use and the environment and making sure that both are sustainable. So, when you've got one, when you've got the use overstepping or exceeding, that can have an effect on the environment.
- TG: Because the environment affects the community.
- AH: Absolutely.

- TG: If you don't have enough water going down for the sustainable ecosystem of the river, or the part of the river that the community's attached to, you don't have your fish breeding events. So, your local fishermen are out. They don't have that recreational activity. One of the challenges is that when we're talking about water management, you look at it from a single view at times when the reality is it's all integrated and it's all interdependent. So, often you get irrigators who produce food and fibre pitted against environmentalists. What I've seen and witnessed firsthand that some of the best environmentalist-focused people are farmers because they rely on a really good environment. Not only the water, it's having a really good environment around them to get the best productivity out for what food and fibre they're producing. So, it's in their interests. Yet you often see them pitched against each other. So, access to water is a very contested space, there's no doubt about it, because it's a scarce resource, it's a precious resource. It's also a commodity, which adds another layer of challenge because it can be traded, it's got value. It's all those sorts of things as well. The irrigator, and the community side of it - it's a pretty poor community if you've just got corporations running farms and there's no communities, there's no kids going to school, there's no kids playing sport. What sort of country or community do we have? So, they're all inter-reliant. They're not as competitive as sometimes the politics of water make it out to be.
- AH: It's a very, very complex issue. And that's the purpose of this podcast: to help explain some of these nuances and some of these complexities around SDL compliance and water resource plans. Something that people might often get confused, or see a lot of, is water sharing plans. Can you tell us what is the difference between a water resource plan and a water sharing plan? Because that is something that's been a bit of a hot topic lately.
- EC: Yep. So, a water sharing plan is a New South Wales instrument. There are other kind of instruments that exist in other states, like resource operation plans in Queensland, and things like that. So, again, it's one of those things where something the same has different names depending on where you are. In the case of water sharing plan, it sets out the catchment-based rules for access and water management in a particular catchment in New South Wales. It's designed to meet the objectives of the New South Wales Water Management Act. It's more geared towards individual license management and things like that. So, there is a distinct difference between a water sharing plan and a water resource plan. They're not interchangeable. And the biggest difference is probably the objectives. So, what you've got with a water sharing plan in New South Wales is catchment management and looking at how to meet those requirements in the New South Wales Water Management Act. When you have an accredited water resource plan, it is being assessed for consistency against the Basin plan so that it meets Basin plan objectives and Commonwealth Water Act objectives. So, you might find that there are parts of a water sharing plan which can be used in an accredited water resource plan, but you can't just pick up a water sharing plan and go, 'That's my water resource plan.'
- AH: Okay. Thank you for clarifying that one for us, Edwina. I might wrap it up. Thank you, Troy Grant and Edwina Carter, for your time on the podcast today.
- TG: Thanks for having us.
- EC: Thank you.

Speaker: *Water's Edge* is produced by the Inspector-General of Water Compliance, Australian Government, Canberra. For more information, visit www.iwc.gov.au.