



Guidelines for Water Trading Rules

Trade of groundwater water access rights

Rules covered by this guideline

The water trading rules covered by this guideline are contained in sections 12.24 – 12.26 of Chapter 12 of the Basin Plan. Application of the rules may occur through sections 10.37 – 10.39 of Chapter 10 of the Basin Plan. This guideline should be read together with these sections and the [Handbook for Practitioners – water resource plan requirements](#).

Purpose of the rules

The purpose of sections 12.24–12.26 is to ensure groundwater trade occurs in a manner that adequately manages the risks associated with trade and considers the potential for third party and environmental impacts.

Defined terms

This guideline contains a number of defined terms. These terms are defined in the *Basin Plan 2012*, the *Water Act 2007* or the *Water Markets Rules 2009*. An explanation of these terms can be found at the end of this document.

Explanation of the rules

Sections 12.24–12.26 set out the conditions that must be met in order for groundwater trade to be permitted. These requirements vary depending on whether the trade is within a groundwater sustainable diversion limit (SDL) resource unit, between two groundwater SDL resource units or between groundwater and surface water SDL resource units.

- Section 12.24 applies to trades of water access rights between locations within a groundwater SDL resource unit (this corresponds with the accreditation requirement in section 10.37).
- Section 12.25 applies to trades of water access rights between two groundwater SDL resource units (this corresponds with the accreditation requirement in section 10.38).
- Section 12.26 applies to trades of water access rights between groundwater and surface water SDL resource units (this corresponds with the accreditation requirement in section 10.39).

Who do these rules apply to?

These rules apply to:

- Basin States
- the Murray–Darling Basin Authority (MDBA), which must consider the requirements of these rules in the course of preparing recommendations to the Commonwealth Minister for Water about whether a proposed Water Resource Plan should be accredited.

Scope of the rules

Sections 12.24–12.26 apply to trades that involve a change of location of a water access right.

These sections do not require that groundwater trade occur; rather they prohibit groundwater trade from occurring unless certain conditions have been met.

Basin States should consider these rules as part of the preparation of water resource plans for accreditation. The groundwater trading rules must comply with the Basin Plan:

- where there is no accredited Water Resource Plan in place for the relevant SDL unit or units, or
- if the groundwater trade rules are part of a state plan or instrument with transitional status but the original expiry date has passed.

Rule requirements

Each of the groundwater trading rules contain a number of key terms that describe the conditions that must be met for groundwater trade to be permitted. The requirements of each section are set out below.

Trade within a groundwater SDL resource unit (section 12.24)

Section 12.24 of the water trading rules states that trade of a water access right between two locations within a groundwater SDL resource unit is prohibited unless certain conditions are met. The conditions that must be met include:

- sufficient hydraulic connectivity between the two locations
- any resource condition limits in the SDL resource unit specified in a water resource plan will not be exceeded as a result of the trade
- water access rights in the two locations have substantially similar characteristics of timing reliability and volume, or measures are in place to ensure the water access right will maintain its characteristics of timing reliability and volume
- measures are in place to address third party impacts as a result of trade.

The requirements for a water resource plan as set out in section 10.37 include that the water resource plan must:

- set out the circumstances in which trade between two locations in a groundwater SDL resource unit is permitted; and
- ensure that each condition in section 12.24 will be met for any proposed trade.

If a water resource plan applies a conversion rate to address potential third party impacts, it must either specify the conversion rate or set out how the conversion rate will be determined from time to time and made generally available.

Note: The term generally available is considered in more detail in *Guidelines for Water Trading Rules: Restrictions on trade when water announcements are not generally available*. See also *Defined terms* at the back of this document.

Trade between groundwater SDL resource units (section 12.25)

Section 12.25 of the water trading rules states that trade of a water access right between groundwater SDL resource units is prohibited unless certain conditions are met. The conditions that must be met include:

- sufficient hydraulic connectivity between the two SDL resource units
- any resource condition limits in either of the SDL resource units specified in a water resource plan will not be exceeded as a result of the trade
- measures are in place to account for the trade
- water access rights in the two units have substantially similar characteristics of timing reliability and volume, or measures are in place to ensure the water access right will maintain its characteristics of timing reliability and volume
- measures are in place to address third party impacts as a result of trade.

The requirements for a water resource plan as set out in section 10.38 include that the water resource plan must:

- set out the circumstances in which trade between two groundwater SDL resource units is permitted; and
- ensure that each condition in section 12.25 will be met for any proposed trade.

If a water resource plan applies a conversion rate to address potential third party impacts, the water resource plan must either specify the conversion rate or set out how the conversion rate will be determined from time to time and made generally available.

Trade between groundwater and surface water (section 12.26)

Section 12.26 of the water trading rules states that trade of a water access right between a groundwater and surface water SDL resource unit is prohibited unless certain conditions are met. The conditions that must be met include:

- sufficient hydraulic connectivity between the two SDL resource units
- any resource condition limits in the groundwater SDL resource units specified in a water resource plan will not be exceeded as a result of the trade
- measures are in place to account for the trade
- water access rights in the two units have substantially similar characteristics of timing reliability and volume, or measures are in place to ensure the water access right will maintain its characteristics of timing reliability and volume
- measures are in place to address third party impacts as a result of trade.

The requirements for a water resource plan as set out in section 10.39 include that the Water Resource Plan must:

- set out the circumstances in which trade between a groundwater and surface water SDL resource unit is permitted;
- ensure that each condition in section 12.26 will be met for any proposed trade.

If a water resource plan applies a conversion rate to address potential third party impacts, it must either specify the conversion rate or set out how the conversion rate will be determined from time to time and made generally available.

Defined terms

The following definitions are contained in the *Basin Plan 2012*, the *Water Act 2007* or the *Water Market Rules 2009*.

Generally available: information is generally available if it has been published in a manner that will, or will be likely to, bring it to the attention of interested members of the public.

Groundwater means:

- (a) water occurring naturally below ground level (whether in an aquifer or otherwise); or
- (b) water occurring at a place below ground that has been pumped, diverted or released to that place for the purpose of being stored there;

but does not include water held in underground tanks, pipes or other works.

Groundwater resource means a Basin water resource consisting of:

- (a) groundwater; or
- (b) an aquifer (whether or not it has water in it).

Hydraulic connectivity means the ease with which, or the rate at which groundwater moves:

- (a) within an aquifer; or
- (b) between aquifers; or
- (c) between aquifers and the adjacent or overlying surface water system.

SDL resource unit means the water resources, or particular parts of the water resources, of a water resource plan area that is either a surface water SDL resource unit or a groundwater SDL resource unit.

Water access right

- (a) means any right conferred by or under a law of a State to do either or both of the following:
 - (i) to hold water from a water resource;
 - (ii) to take water from a water resource; and
- (b) includes the following rights of the kind referred to in (a):
 - (i) stock and domestic rights;
 - (ii) riparian rights;
 - (iii) a water access entitlement;
 - (iv) a water allocation; and
- (c) includes any other right in relation to the taking or use of water that is prescribed by the regulations for the purposes of this paragraph (section 4 of the Act).

Water resource plan for a water resource plan area means a plan that:

- (a) provides for the management of the water resource plan area; and
- (b) is either:
 - i. accredited under section 63; or
 - ii. adopted under section 69;

but only to the extent to which the water resource plan:

- (c) relates to Basin water resources; and
- (d) makes provision in relation to the matters that the Basin Plan requires a water resource plan to include.

Disclaimer: This Guideline is one of a series of guidelines on the water trading rules and as such it may be appropriate to also consider the information that is set out in other guidelines.

The provisions in the *Water Act 2007* and the *Basin Plan 2012* govern the water trading rules. All decisions regarding the water trading rules need to be made by reference to these laws. This Guideline is intended as guidance only and does not constitute legal advice. Users should seek their own legal advice where appropriate. This Guideline has no statutory force.

Whilst decisions in relation to water trading rules may consider this Guideline, decisions will be based on the aforementioned laws. Reasonable care has been taken in the compilation of this Guideline, however the Murray–Darling Basin Authority does not guarantee or warrant the accuracy, or completeness, or currency of its contents and shall not be liable for any loss or damage that may be occasioned directly or indirectly through the use of or reliance on this Guideline.

Note that the Guideline will be a living document, to be updated from time to time, in consultation with relevant stakeholders, in order to incorporate new knowledge and best practice.