

Basin Plan Water Resource Plan Requirements Position Statement 3J Limiting take

POLICY ISSUE	How should a WRP limit take to the SDL? What sort of rules are required?
REFERENCES	<i>Basin Plan 2012 (Cth)</i> (s10.11 and s10.13(1))

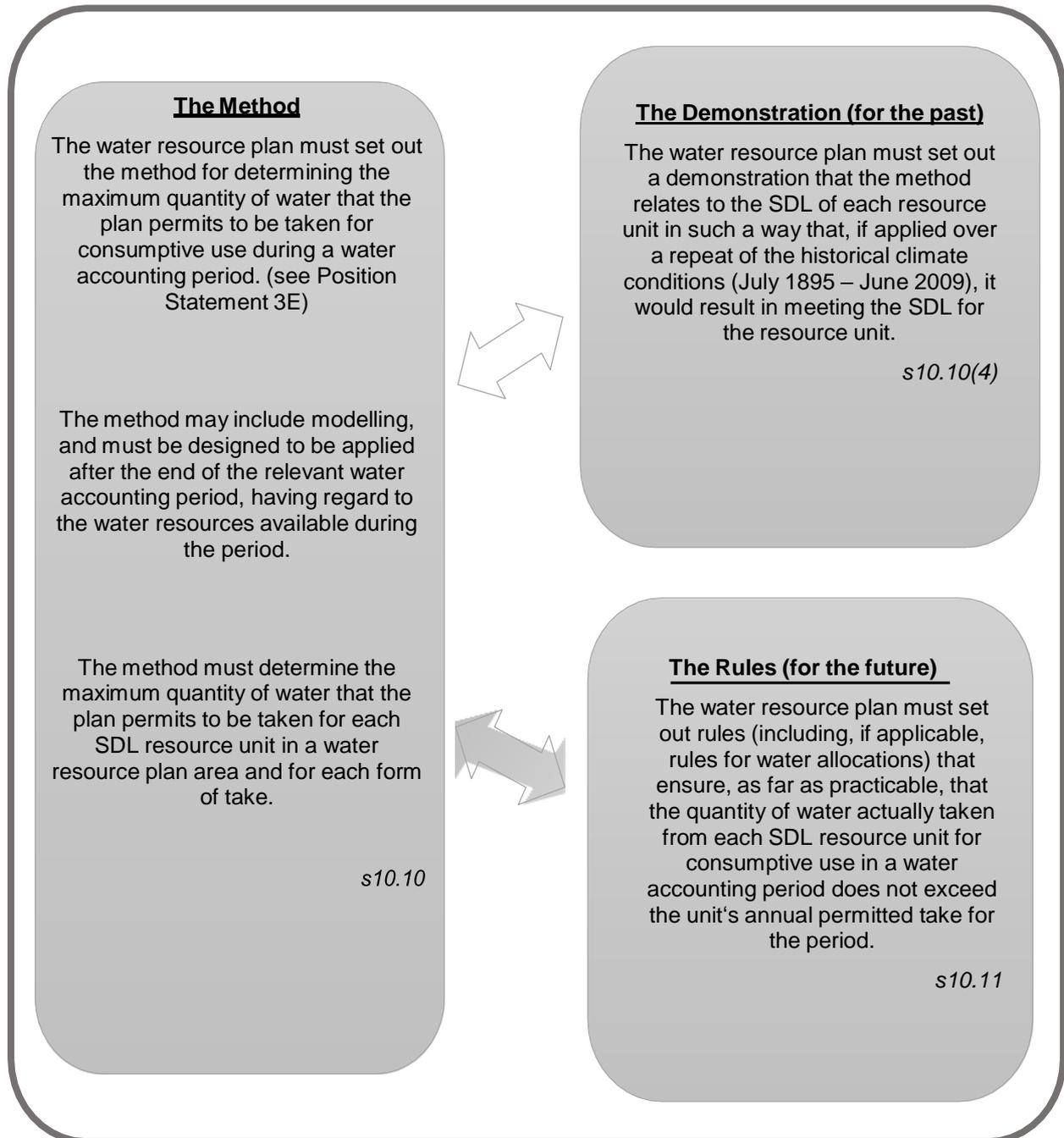
MDBA POSITION STATEMENT
<ol style="list-style-type: none"> 1. The WRP must set out rules that ensure, as far as practicable, that from 1 July 2019, annual actual take from an SDL resource unit does not exceed the annual permitted take for that unit. 2. The WRP must identify all applicable rules and the MDBA will seek supporting evidence from a State that demonstrates how the rules operate to ensure actual take does not exceed permitted take. 3. The rules must cover each of the forms of take (including take by floodplain harvesting, take by runoff dams, net take by commercial plantations, take from groundwater and take under basic rights). The rules may operate differently for different forms of take, or different water access rights (i.e. entitlement, licence, type of permit or type of authorisation), as appropriate for that form of take and in that SDL resource unit. 4. These rules must have effect to the degree necessary to ensure that water users and decision makers are clearly required to operate in ways that ensure actual take does not exceed permitted take. 5. The rules may include, where applicable: <ul style="list-style-type: none"> • a procedure for determining seasonal allocations such as those in many regulated surface water systems, • variable flow access provisions such as in some unregulated surface water systems, • fixed water access arrangements including any drought restriction rules such as in some groundwater units. 6. For surface water forms of take identified at s10.13(1)(a), (b) and (c) [take under basic rights, take by runoff dams and net take by commercial plantations], the WRP must operate to limit take to no more than the BDL. The BDL is the level of development as described in column 2 of Schedule 3 and not the estimated number noted in the Schedule. This limit may be demonstrated by providing clear evidence that the WRP will ensure actual take does not exceed permitted take over a repeat of the historical climate conditions (s10.10(4)). 7. These limits may be subject to any process for adjusting them that are set out in a WRP as allowed for by 10.13(2) (refer Position Statement 3F).

MDBA Reference	D16/4206	<i>Accessed:</i>
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8. Recognising that the requirement for rules to limit annual take to the annual permitted take is on a “as far as practicable” basis, the MDBA will seek in supporting evidence some assessment or quantification of the expected accuracy of the approach used.

Rationale

1. There are important relationships between the provisions of Part 3 of Chapter 10 that should be understood when preparing a WRP. Some of the key relationships are shown in the figure below.



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2. The method for determining annual permitted take, and the rules governing actual take (including water allocation rules) should relate to one another in a way that makes clear that the rules in the WRP ensure (as far as practicable) that annual actual take does not exceed annual permitted take. This will likely be achieved by the method for determining annual permitted take reflecting the rules that are in place in the WRP.
3. For a WRP to set out rules that ‘ensure’ that annual actual take does not, as far as practicable, exceed annual permitted take, the WRP must -
 - govern the allocation of water to licences or to other rights (eg basic rights); and
 - impose an obligation on a person who takes to not take other than in accordance with an allocation.
4. Simply describing in a WRP what the rules are in some other instrument does not make them rules that are ‘set out’ in the WRP and ‘ensure’ a particular result.
5. Similarly, the WRP cannot (for s 10.13) ‘require that’ take does not exceed a certain amount unless it imposes an enforceable obligation on the relevant State decision maker and water users.
6. Examples of measures that may meet this requirement could include: requiring these water users to hold water rights for these forms of take, stipulating development approvals or land use restrictions to limit construction of runoff dams and commercial plantations, rules that limit take under basic rights to a defined volume.
7. Alternatively, a WRP could include a clause that stipulates that the long-term annual average quantity of water that the plan permits to be taken from the SDL resource unit for consumptive use by net take by commercial plantations/take under basic rights/take by runoff dams is the level specified in the relevant Item of column 2 of Schedule 3 of the Basin Plan.

MDBA Reference	D16/4206
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