

Confirming statements on the LTDLE factor development

This document contains a list of queries or concerns raised by stakeholders in relation to long-term diversion limit equivalence (LTDLE) factor development and implementation that can be addressed by a confirming or clarifying statement.

It looks like the reliability of stock and domestic and local water utility entitlements has been decreased by these factors.

The allocation reliability of all entitlements is not affected by LTDLE factors as these factors are not used in the resource assessment process for available water determinations. The LTDLE factors are lower than the allocation reliability because these types of entitlement are usually not fully utilised, and the LTDLE factors reflect this systematic underuse. This past underuse has no bearing on the future allocations that will be made to stock and domestic or local water utility entitlements.

Changing the LTDLE factors has changed the sustainable diversion limit (SDL) and/or altered the environmental outcomes of the Basin Plan.

The SDL is set by schedule 2 of the Basin Plan as being the baseline diversion limit (BDL), minus a volume of long term recovery. LTDLE factors are not used anywhere in the calculation of the BDL, nor the volume of long-term recovery.

The environmental outcomes of the Basin Plan are derived from the volume of long-term recovery, which will be enforced by the SDL.

LTDLE factors are **only** used to allow governments to understand how many entitlement shares need to be purchased to represent the long-term recovery volume being sought.

LTDLE factors will alter the 'book value' of entitlements for financial accounting purposes.

The NSW Government continues to advise that LTDLE factors should **not be used** for financial valuing purposes as they have not been designed for this reason. Water-trade markets are a much better source of information on the likely price of an entitlement.

Individuals can use information supplied by the government in whatever way they choose, but the government is not responsible for the results of unintended uses. Nor is it appropriate for government to respond by altering policies and rules to support and enable those unintended purposes.

LTDLE factors will not alter the NSW share of Murray River available resources.

On the Murray, the Murray–Darling Basin Authority (MDBA) calculates state shares on behalf of NSW, Victoria and South Australia under the rules in the Basin Plan. States then distribute the state share to entitlement holders according to the rules of their own water sharing plans or equivalents. LTDLE factors are not a part of the procedure to calculate state shares.

LTDLE factors are not set to maximise/minimise environmental water recovery.

There is inherent uncertainty in the calculation of LTDLE factors, and many arguments have been put forward that the LTDLE factors should be estimated ‘high’ or ‘low’ by using different estimate methods or using expert judgment. NSW has carefully considered these views and believes that there are negative consequences for **all** stakeholders where the LTDLE factors diverge from a ‘true’ value.

For example if we increase the factors to reduce the number of entitlements purchased by the Commonwealth, the outcome is a greater number of entitlements remaining for consumptive use. As the SDL limits will still apply, there is an increased chance that use of the ‘additional’ consumptive entitlements could result in a breach of the SDL. This could trigger a compliance action based on apparent growth in use, which could reduce the maximum allocation that can be made to an entitlement.

Reduced allocations will also affect the choices of environmental water managers, and the consumptive sector will ultimately lose the volume of water for productive use that resulted from the misrepresentation of the LTDLE factors. In this scenario water won’t be bought back, and the sector won’t be financially compensated for the loss.

On the other hand, if we decrease the factors in order to increase environmental entitlements and reduce the risk of future SDL compliance action, this will force the Commonwealth to buy more entitlements than is required to implement the Basin Plan. That has a direct financial cost to taxpayers. There are also likely to be increased socio-economic impacts that were not considered as part of the triple-bottom-line outcome for the Basin Plan.

Finally, the SDLs will still apply, so there would be no way to prevent growth in consumptive water use, which would be able to grow into the ‘gap’ of water use caused by the over purchase.

In light of these considerations, NSW’s policy is to apply a consistent method in all systems and use the best available information to set the most accurate LTDLE factors that we can. This is in everyone’s interests.

What about other state’s methods and consistency?

NSW has adopted a consistent method for determining LTDLE factors across the state. Other states will use different methods based on their own water management frameworks.

Environmental water use is not counted against the SDL and annual permitted take.

S10.10 of the Basin Plan requires a water resource plan to ‘determine the maximum quantity of water that the plan permits to be taken for **consumptive** use’. Consumptive use is defined in the *Commonwealth Water Act 2007* at s4 to mean ‘the use of water for a private benefit’.

This categorically means that environmental water use is not counted towards the SDL and is not part of Basin Plan compliance. Environmental water use must be reported separately each year to MDBA under matter 9, Schedule 12 of the Basin Plan.

LTDLE factors for entitlements held for the environment are different to those held for irrigators.

One stakeholder has asserted that different factors are applied depending on the purpose of the holding. This has never been the policy, intent or practice of either NSW on the use of LTDLE factors and we are unclear how this conclusion was reached.

Does the method of determining supplementary licence usage in calculating LTDLE factors influence growth in use responses specified in NSW water sharing plans?

NSW confirms that the growth in use provisions are unaffected by these factors and that supplementary allocations will continue to be reduced before general security allocations if a growth-in-use action is required.

The LTDLE factors are calculated using past data to understand how water has been actually used, while the growth-in-use rules look into the future to specify if there is a need to prioritise ongoing water use between types of entitlement. There is no connection between the two.

The NSW LTDLE factors should be independently reviewed.

The MDBA commissioned an independent review of the LTDLE factors, which was completed while the public consultation was taken place. The review was completed by Mr Drew Bewsher and Mr Greg Clayton, and was delivered on 31 July, 2018.

The conclusion of the report is:

Based on the information provided to the independent review panel (IRP), and the IRP’s assessments, the IRP concludes that the method used in NSW to derive updated LTDLE factors:

- appropriately incorporates results from the approved and accepted BDL model runs that are consistent with the Basin Plan level of baseline data, conditions and assumptions that informed the Basin Plan;
- is based on the best available data and information, and, where, assumptions have had to be made about that data or information, those assumptions are reasonable, robust and defensible based on the available evidence;
- considers and treats entitlement classes appropriately and consistently;
- has been applied in a repeatable and consistent way across the NSW valleys in the Murray-Darling Basin;
- can be used to further update the LTDLE factors should new data or information from the current stakeholder consultation process provide justifiable evidence.

The IRP agrees that the methodology is appropriate to use in NSW for determining and accounting the volumes to “bridge the gap” between the SDLs and the BDLs.

Further details regarding the report can be found on the MDBA website: mdba.gov.au/basin-plan-roll-out

There is additional recovery in my valley. What will be done about this?

The Basin Plan specifies a local reduction amount and a default shared reduction amount for recovery from each WRP unit. The local reduction amount must come from the specific valley(s). The shared reduction volume is a distribution of that valley's share to either the northern or southern region target.

NSW is able to nominate a different distribution of shared reduction amounts to the MDBA that will be considered in terms of meeting the objectives of the Basin Plan.

NSW considers that the Commonwealth Environmental Water Holder is an entitlement holder with the same rights and freedoms as any other entitlement holder, and for the same reasons that the NSW Government does not tell irrigators how much entitlement to own in what valleys, it has no right to require a change in the Commonwealth's holdings.