
Reconnecting River Country Program - Landholder Negotiation Framework

RGA Submission - 14 April 2022

RGA cannot support the Landholder Negotiation Framework (LNF) in its current form.

1. It will not solve NSW problems with the Basin Plan.
2. The LNF creates a problematic inequity between NSW and Victoria.
3. The LNF could significantly undermine 20 years of environmental watering social licence.

While we appreciate the opportunity to comment on this important piece of policy work, we note that submissions are also likely to be made by individuals and groups who won't be directly impacted by this set of government activities. Advice on the relative weightings that will be applied to comments made by those directly impacted and not directly impacted is needed as a matter of urgency.

1. The LNF Will Not Solve NSW Problems With The Basin Plan.

A time-limited negotiation framework, that's enshrined in legislation and emphatic about the Government's power to do whatever it wants¹, won't fix the major problems NSW faces leading-up to Basin Plan reconciliation in mid-2024. In fact, the LNF is likely to take an already difficult – and highly contentious – policy situation and make it considerably worse.

The government appears to have significantly changed a number of its Sustainable Diversion Limit Adjustment Mechanism (SDLAM) projects over the past 12 months, with no guarantee provided that the 605 GL of off-sets will still be achieved.² This has its own unique implications for the recently re-branded *Reconnecting River Country* (RRC) program.

The projects being focused on under RRC were first proposed by the MDBA in its 2013 *Constraints Management Strategy* (CMS)³. Current NSW information about these projects involves⁴:

1. For the Hume to Yarrawonga reach of the Murray, increasing the flow rate to 40,000 ML/day.
2. For the Yarrawonga to Wakool reach of the Murray River, increased flows of 30,000 ML/day, with a buffer up to 50,000 ML/day.
3. For the Murrumbidgee, increased flow to 40,000 ML/day at Wagga and a buffer of 45,000 ML/day.

Constraints-lifting projects have always been complex and difficult – and are often a very hard-sell for communities.⁵⁶⁷ Not everyone is comfortable to commit to enduring floodplain inundation arrangements, with all compensation estimated and paid-out ahead of time.

¹ The *Water Management Amendment Act 2018* excludes the Crown from any liability arising from the release of water for environmental purposes ([81] [NSW legislation - Water Management Amendment Act 2018 No 31](#))

² To illustrate, Menindee Lakes is a big contributor of off-sets under the SDLAM. It's being rescoped because the NSW Government can't deliver it in its current form by 2024 ([Menindee Lakes Project | Water \(nsw.gov.au\)](#)). NSW hasn't yet publicly confirmed that other Basin Governments have approved this change; or the steps that will be taken so the rescoped project still ensures the full 605 GL of SDLAM off-sets will be achieved.

³ [Constraints Management Strategy \(mdba.gov.au\)](#)

⁴ [Constraints relaxation in the NSW southern connected Murray Darling Basin - Water in New South Wales oct-2013.pdf \(irrigators.org.au\)](#)

⁵ [Plan to help Murray-Darling water flow - ABC News](#)

⁷ [Differences between Victorian, Federal Nationals Water policy acknowledged by State leader | Stock & Land | Victoria \(stockandland.com.au\)](#)

The LNF will take away negotiating time, power and control from all impacted individuals who haven't yet agreed to the RRC in its current form. This means the LNF risks adding additional pressure onto an already arduous community consultation process, likely making it harder for everyone involved.

Also concerning, page 7 of the LNF suggests that all the overarching *Deed of Agreement* will contain is 'an outline of the expected inundation maximum'. This is drastically insufficient given what landholders are supposed to be negotiating. At a minimum, flow rates and duration, extent and timing of inundation, and confirmation of the height of the water must also be fundamental content.

In launching the LNF for comment, it's now apparent that NSW is placing almost the entirety of its SDLAM success on the three projects that will be the hardest to deliver. This is compounded by the fact that, despite these three projects being known about for a decade, the drafting and negotiation of the thousands of agreements needed still hasn't started. In addition, despite SDLAM projects having an immovable 30 June 2024 deadline, these critical negotiations still won't start until a regulation has been drafted, consulted on, submitted and commenced.

Arguably the final insult for the NSW irrigation sector is that it will be the only water-using group in the state that will be impacted if the RRC program succeeds, or if it fails. Based on the contents of the LNF, if the RRC program succeeds, many irrigators will have compulsory acquisition of easements on their properties, and an inability to seek recourse if environmental watering damages their farmland and infrastructure. On the other hand, if RRC projects don't go ahead exactly as currently described, then the only current alternative is more environmental water recovery.

Neither outcome is acceptable; nor should it be to any government serious about supporting farmers.

As a matter of urgency, the NSW Government must:

1. confirm publicly that none of its recent SDLAM project changes put the 605 GL at risk;
2. adopt a more appropriate approach to negotiate constraints-lifting projects within the state; and
3. demand a better SDLAM process that is much more fair and reasonable.⁸

2. The LNF Creates A Problematic Inequity Between NSW and Victoria.

As noted RRC covers constraints projects on two reaches of the Murray: (i) Hume to Yarrowonga; and (ii) Yarrowonga to Wakool. Victoria is co-project partner on Hume to Yarrowonga, and some farmers on the Victorian side of the Murray will be impacted by the Yarrowonga to Wakool project.

Since release of the CMS in 2013, Victoria has maintained the following public positions⁹: (i) no flooding of private property without consent; and (ii) no compulsory acquisition of land or easements.

In releasing the LNF, NSW has indicated it's prepared to draw on its considerable legislative powers to ensure the RRC program goes ahead. In taking this explicit step in terms of intent, NSW and Victorian irrigators will now be treated very differently in relation to the same two projects. Victorian farmers will always maintain their right to say 'no'; however, this right will be taken away in NSW.

⁸ It's widely acknowledged that a number of important environmental projects under the SDLAM won't be completed by 2024 ([Inquiry report - Murray-Darling Basin Plan: Five-year assessment \(pc.gov.au\)](#)). For these projects, Basin governments must provide more time, without this reducing the size of the 605 GL SDLAM off-set. Where there's still potential for a 605 GL shortfall, Basin Governments must also supplement existing and amended projects with new projects, drawing on the powers of the Basin Officials Committee to help determine an applicable project assessment method (Basin Plan 2012; s7.15(2)(b) [Basin Plan 2012 \(legislation.gov.au\)](#))

⁹ [Constraints measures: Murray-Darling Basin Plan \(water.vic.gov.au\)](#)

The fact that Victorian farmers will always be able to say ‘no’ also means that NSW will never be able to guarantee delivery of its full RRC program, even if it does draw on its legislative powers.

Once more, this means the LNF may create far worse outcomes for everyone involved in the RRC program, than if a more reasonable and equitable pathway is chosen.

3. The LNF Could Significantly Undermine 20 Years Of Environmental Watering Social Licence.

Strong community support has been a consistent basis of all large-scale environmental watering programs since commencement of *The Living Murray* in 2002.¹⁰ It’s also a fundamental tenet of the Commonwealth Environmental Water Office (CEWO), and has been since its inception, with *awareness, trust* and *acceptance* its core engagement objectives.¹¹

The LNF doesn’t provide for any of the above. Instead, its unreasonable command-and-control approach is likely to undermine the support for RRC that already exists, while also eroding community trust more broadly, and forcing landholders to err on the side of conservatism and risk-aversion.

Good environmental watering practice across the southern Basin has always involved constant consultation, and the mitigation of impacts on an event-by-event basis. This is why an explicitly legislated, compulsory approach has never been needed before.

The LNF will take environmental watering into new ground, by enshrining in regulation a process that goes against the principles of every other successful program to date. Any constraints-lifting at the three RRC sites is more likely to be successful if NSW chooses to continue existing practice, rather than enforcing a bureaucratic misstep that has tied the RRC projects to an arbitrary 605 GL goal.

¹⁰ [The Living Murray story: One of Australia's largest river restoration projects \(mdba.gov.au\)](http://mdba.gov.au)

¹¹ [Our Communication and Engagement Approach 2021 \(awe.gov.au\)](http://awe.gov.au)