Westcountry Rivers Trust

Water Net Gain – Frequently Asked Questions

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General questions about Water Net Gain (WNG)

Is this a live scheme that I can apply for?

Water Net Gain is currently a project in its development phase. This means that it is not an operational scheme for which farmers can sign up. We are rather creating a business case for the scheme, and trying to find the best solution for all stakeholders, so that WNG can become a live scheme.

Which areas/ catchments will be applicable?

This will depend on the buyer's focus areas and will likely be restricted to catchments where water abstraction for public water supply is occurring.

Payments and agreements

How would WNG differ to existing payment schemes for pond creation?

There are payments for pond maintenance and settling ponds under the Environmental Land Management schemes (ELMs). However, these do not cover payment for pond construction of a larger pond. Furthermore, WNG aims to have an agreement between the farmer/ landowner (seller) and a buyer, so that a more long-term management is secured. Furthermore, the WNG ponds have the purpose of water use, and therefore during its operational phase the water will be required to be used, either on farm, or to deploy off-site, rather than being a feature in the landscape or a wildlife pond.

How would the payment work (e.g. per volume or annual)?

At this stage, we think that there would be several payment mechanisms:

- An upfront payment for the construction works for the pond. This could either be re-imbursed after the construction cost has been paid for by the farmer. Or there could be a staggered payment (partially before and the remainder after construction), if that would increase uptake by farmers. The capital costs for pond installation could be fully covered by the water company, or there might be a requirement for farmers to partially invest in it. These points will have to be negotiated when water companies adopt the scheme.
- A payment for a *once and for all realization* of part of the capital value of the land will be an additional capital payment which will compensate the landowner for taking the land out of agricultural production, and is an acknowledgement that the presence of the pond will preclude any other opportunities to use the land. However, this will mean that the water within the pond (but not the pond and land itself) will be owned by the water company.
- An annual fixed payment would include a water attenuation and maintenance payment. The water company pays for the service of maintaining the land, in order to have a maximum potential for water stored within the pond.
- In the case where the water is released offsite, e.g. into a waterbody for ecological compensation or downstream abstraction, the water company can initiate this action when required without any payment streams, as the water company owns the water. Where water is to be used on farm, the water company will ask the farmer to use pond water instead of tap or borehole water, and the farmer will buy back the water at the market value of pond water. This value must be significantly lower than mains water, due to lower water quality and additional requirements for cleaning/ filtration, as well as to make the switch attractive to farmers.

How will insurance / liability be dealt with?

The sellers will be responsible for the land management needed for the pond system. This will follow a maintenance plan developed by WNG. Further maintenance requirements may exist depending on the stacking of separate income streams, for example if the pond maintenance payment is covered by the Sustainable Farming Incentive.

There may be events where a WNG pond system is destroyed or damaged through no fault of the farmers/land managers. This is termed a “Force majeure” event. For WNG it is not envisaged that an overarching entity such as a CIC would be established which could hold this risk because of safety-in-numbers

(see The Wyre Catchment Natural Flood Management Project for an example of this mechanism). Therefore, the default position would be that both parties can walk away at that point without consequence, but that both would have the right to replace the destroyed interventions if they wanted to do so. There might also be an option of insurance where the broker might be able to arrange a block policy to cover all of the schemes it manages. Such an insurance policy would likely only cover physical damage, but not other force majeure events like catastrophic climate change effects, or a change in government policy.

The broker is responsible for the monitoring, adaptive management, and technology maintenance.

How would the conflict of use be dealt with – in a drought both farms and the water company would require additional water sources?

This would be considered during the contract set-up, and the contract requirements would need to be adhered to. However, it is unlikely that this conflict of use will materialize in practice, as the ponds will be set up to *either* provide water on the farm, *or* to deploy the water off-site. Therefore, the infrastructure installed during pond construction would determine the use of that water during drought conditions.

What would be the cost of installing a pond?

Costs can vary depending on the location and area, geology and hydrology of the chosen site. This would determine the amount of earthworks and whether a lining is needed. Further considerations are where the water is used and what kind of infrastructure will need to be installed, as well as monitoring and fencing costs. Furthermore, WNG ponds will be large ponds in comparison to smaller wildlife ponds and will require additional infrastructure which would not be required for a wildlife pond. Therefore, cost estimates for WNG ponds vary significantly, and start at approximately £25,000.

Who would be responsible for the maintenance of the pond?

The sellers will be responsible for the land management needed for the pond system. This will follow a maintenance plan developed by WNG. The technical system would be operated by the broker (such as a local rivers trust).

How will the SFI payments fit in?

The Sustainable Farming Incentive (SFI) is currently still in development until 2028. Therefore, options under SFI may change until WNG becomes operational. The following example is based on the current information and options, which may change in future. SFI includes payments for pond maintenance. WNG will

not fund the same as what is funded under SFI, but it will complement these payments where WNG has additional requirements. Sellers would be expected to use the SFI payments where they are available and applicable. For an operational pond system, this might look as follows:

- Pond maintenance payment under WBD1 – Manage ponds = £257 per pond per year, if the pond is eligible under this option (e.g. not largely or fully synthetically lined)
- Pond buffer payment under BFS3 - Buffer in-field ponds on improved grassland = £311 per ha per year, if the buffer is eligible under this option
- WNG payment for water attenuation and maintenance. The value will be determined in future stages of the WNG project.

What would be the tax implications of taking part in Water Net Gain?

We have procured professional tax advice, to avoid setting up a scheme which in the end is unfavourable to farmers. It is important to note that tax considerations vary depending on farmers' business set-ups. The following might be used as a reference, but bespoke accountancy and legal advice must always be taken before any implementation.

The following provides a summary of this tax advice:

The WNG project is an opportunity for some landowners and tenants, but there are many tax implications to consider for these 'Sellers' or 'Receivers', including capital gains tax (CGT), income/corporation tax, value added tax (VAT) and inheritance tax (IHT). Taxation of the Three Likely Payment Types: There are likely to be three payment types made as follows:

1. A re-imbursement or advance payment(s) to the Receiver from the Donor to cover the pond installation costs and the associated equipment on the Receiver's land. As such, a payment or payments will essentially be re-imbursing expenditure already incurred or have to be used for a specific purposes, and there are likely to be few income, corporation, CGT or IHT considerations.

2. A capital payment to the Receiver from the Donor for the change in land use to represent a once and for all realization of part of the capital value of the land which requires more detailed analysis. Provided a series of conditions are met, the tax outcome is usually resolved by the terms of the contract, and it would appear likely this payment would be subject to CGT. The specifics would need to

be discussed with each party's respective legal advisers before implementation of any Agreement.

3. A fixed annual sum for the duration of the Agreement paid by the Donor to the Receiver for ongoing upkeep costs, are likely to be classified as property income and subject to either income tax or corporation tax.

VAT

Depending on the contractual arrangements, the three payments could be consideration for a single supply of land related services which will be exempt, unless the landowner opts to tax the land which would make this a taxable supply subject to 20% VAT. If an option to tax is made, the input VAT incurred and associated with this project would potentially be recoverable provided various administrative procedures, including VAT registration are undertaken. Alternatively, there could be multiple supplies which each attract their own VAT rate and only those which are taxable provide a right to recover related input VAT.

IHT

There are agricultural property relief (APR) and business property relief (BPR) matters to consider but overall, the WNG project may not impact too much on these.

Could farm tenants get involved in WNG?

Tenants wanting to take part in Water Net Gain would require consent and involvement from the landowner, due to potential changes in land use and long-term agreements. Tenants would also need to review their tenancy agreement to identify whether there are restrictions on practices on the land. In addition, clarity needs to be sought between tenant and landowner to ensure that the land in question has not already been committed under other schemes which might restrict the use of the land (such as under ELMs). This might involve legal costs if the farm business tenancy agreement includes a clause saying that the tenant must not take the land out of productive agricultural use, and that clause might need to be varied to allow the use of a specified area for WNG.

WNG ponds and design

What size (area/ volume) would WNG ponds be?

WNG ponds would need to be large enough to store sufficient water for use in periods of low water resource availability. However, they would be smaller than

reservoirs that fall under the Reservoirs Act. Therefore, they would be between 1000 m^2 and 3000m^2 in area, with additional area required for surrounding Nature-based Solutions, such as a pond buffer, swales or sediment traps. The volume of water held would be between 2500m^3 to 9000m^3, of which approximately 1700m^3 and 6600m^3 would be available to be used/ deployed.

Would fishponds be an option for WNG?

Water Net Gain ponds could not contain any fish. There are two reasons for this: 1. The purpose of a WNG pond would mean that the water would be drained from the pond in the summer period. Therefore, fish would not be able to survive in this pond when the water levels are minimal during the summer. 2. Nutrient levels in fish ponds are high, and generally biodiversity within a pond is lower if the pond has a fish population. Therefore, the other objectives of WNG which are water quality and biodiversity would be diminished when fish are stocked.

What would the monitoring set-up/ technology look like?

There are several levels of 'smart' technology. 1. The deployment of a level sensor into the deepest part of the pond could show the level of water in the pond remotely by sending the data to a data platform. 2. The pond level can then be converted into water volume in the pond, which can show the accumulated volume of water stored in all WNG ponds on a dashboard. 3. There is the potential to include a smart release component where the water can be deployed/ used via a remote control system. The final set-up has not been confirmed or fully tested yet.

How will you account for evaporation loss?

The figures for evaporation loss and dead storage (i.e. the water that cannot be used as the ponds are never supposed to be fully drained) have been adopted from the Environment Agency's and Cranfield University's guidance 'Thinking about an irrigation reservoir? A guide to planning, designing, constructing and commissioning a water storage reservoir', online available here: 5187 - Water Reservoir Brochure. This means that 0.8m depth of dead storage needs to always be included in the design of a WNG pond.

How will the site be decided, will the farmer have a say in it, or will the "ideal" site be favoured regardless of farmers preferences?

WNG will be based on the agreement of landowners to create and maintain ponds on their land. Therefore, it is paramount to find the right location, for the functionality of the pond, but also so that it can work for the farmer.

How would the water quality be monitored?

There would be a routine water quality check by the broker each year in spring. Furthermore, part of the monitoring and management plan for the seller would include regular visual monitoring of the water, and it would be important for the seller to comply with farming best practice with regards to fertiliser and pesticide management. The design of the pond system would further aid in filtering out any potential contaminants such as nutrients or sediment.

Could Biodiversity Net Gain be combined with Water Net Gain?

WNG and BNG can work in tandem, if a farm is considered holistically. The pond system/ water storage elements funded under WNG could not be sold as BNG credits, because additionality would not be guaranteed, and there would be a risk of deterioration during phases of water drawdown which would not be acceptable under BNG. Additionally, it is not advised under WNG to actively attract protected species as this might directly oppose the functionality of the WNG ponds when the water is needed. However, additional enhancements such as stepping stones around the farm or potential river works, or additional NbS that increase water holding capacity or function as NFM may be sold as BNG credit, and might be more successful due to the wider habitat works.

Could existing ponds or other existing on-farm water storage systems apply?

Existing, neglected ponds or old farm water infrastructure could be retrofitted to be part of Water Net Gain. However, the current pond quality for biodiversity would need to be assessed, as functional biodiversity ponds could not be converted to WNG ponds.

Regulation – Licensing and planning

When does a pond become a reservoir?

Ponds would currently fall under the Reservoir Act if over 25,000m^3 of water were stored above the surrounding land. In the future, it is likely that ponds with over 10,000m^3 water storage above the surrounding land would also require registration as per the Reservoir Act. WNG envisages all ponds to fall below the 10,000m^3 threshold, so that no registration of them as reservoirs is required and risks associated with bank and dam bursting are minimised.

What would be the planning requirements for installing a pond?

Planning requirements have to be determined on a case by case basis. However, it is likely that a pond with an agricultural use may only require prior approval from the planning authority. However, if the pond does not provide water use for agriculture, or if there are sensitivities associated with the site (such as being located in a National Park), a full planning application would be required.

Would I need an abstraction license or change my current abstraction license to use the pond water?

The following decision tree could help to determine whether an abstraction license might be required for the use of pond water: