

**PUBLIC PARTICIPATION
AND THE
EUROPEAN
WATER FRAMEWORK DIRECTIVE**

Developing water citizenship

French National Report

French Report of the HarmoniCOP project
Harmonising COLlaborative Planning

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1 Introduction to country and general history

1.1 Country profile

France is one of the largest European member States (550,000 km²), has high mountains (Alps, Pyrenees, Massif Central and Vosges), large plains, and four types of climate (oceanic, continental, mediterranean and alpine), with a predominance of oceanic climate. It has abundant and regular rainfall.

With a low population density compared to other countries in Europe, France is relatively rich in terms of per capita water resources : according to statistics by IFEN (the French environmental statistics institute), average rainfall yields 440 km³, of which 270 evaporate or are consumed by vegetation, 100 form a basic controllable flow, and the other 70 are direct surface flows and floods. Not including the 30 km³ of the Rhine, 14 extra km³ are imported mainly through the Rhone (Switzerland) and the Garonne (Spain).

With these regular resources the country is self-sufficient : per capita potential annual availability is 3 000 m³ and, on average, continental and coastal water quality is good.

Influences and significant change

Compared to natural yield, the principal offstream water demands remain moderate : in the middle of the 1990's, they totalled 6 km³ for public water supply, 4 for industry, 4.5 for agriculture (only abstraction still growing, now reaching 4.9), and 24 for power plant cooling.

This important water abstraction linked to the nuclear power plant choice makes the pattern of water demands very specific: 76% of abstraction are from surface water; and bird's eye view comparisons with other member States in the E.U. (in particular Mediterranean ones where irrigation takes the lion's share) usually lead to misunderstanding, since water abstracted for cooling purposes is not evaporated.

The total is well under the available resource, and only 8 km³ are consumed, i.e. not returned to rivers or aquifers (evaporated by irrigation and cooling processes ...). However, the development of varied water uses has led to water stress situations in quantity or quality in various areas: the nuclear power plant program on the Loire and the growth of Paris megalopolis made upstream reservoirs necessary, to increase summer flows.

Irrigation leads to overexploitation and conflicts between users in the summer in south western rivers. The rapid urbanisation and industrialisation in the 1950's to 1970's also led to tremendous increase of pollution discharges. More recently, like in the rest of Europe, contamination of rivers and aquifers by diffuse pollution from agriculture has become a major threat.

The following data of ground and surface water is presented by water authority regions

Table 1: water volumes abstracted per sector and per Agency (in km³), and % from groundwater

Water user	Public water supply	Industrial processes	Agriculture irrigation	Power plant cooling
Artois-Picardie	0.36 – 88%	0.27 – 41%	0.026 – 94%	0.002 – 17%
Rhine-Meuse	0.38 – 85%	0.88 – 49%	0.064 – 93%	3.61 – 1%
Seine Normandy	1.69 – 53%	0.75 – 32%	0.074 – 93%	0.99 – 0%
Loire-Brittany	1.00 – 55%	0.21 – 34%	0.62 – 71%	2.45 – 0%
Adour Garonne	0.70 – 38%	0.59 – 22%	0.78 – 34%	0.34 – 0%
Rhone-Med.-Cors.	1.74 – 73%	1.13 – 52%	0.99 – 11%	11.81 – 0%
Total	5.87 – 62%	3.83	2.55	19.20

Source: BRGM and Agences de l'eau, 2000.

Note that these very recent data do not correspond to our national sources above. On the one hand there has indeed been a reduction of water demand for all uses in the last decade. However, the statistics for water use in agriculture are usually grossly underestimated, since they are built from official estimates for the payment of water levies, and farmers do underestimate their abstractions, all the more so that they are only now in the process of installing meters. Also note that the percentage of potable water abstracted from groundwater has been growing steadily since the early 1970's, because aquifers were generally less contaminated by agriculture. Then it was about 50/50.

The geographic, hydrological and climatic diversity of the French territory results in the diversity of water-related issues, which are all well represented in France. However, the importance of these issues varies locally.

1.2 Background to Water Bodies within region or country

Main water bodies

The Rhone is the largest river in France, with an average 57 km³ flow in the Mediterranean through the Camargue delta. Other important rivers are the Loire (longest French river, but with severe low flows and floods), the Garonne and Dordogne with their common estuary Gironde, the Seine, the Meuse, and of course the Rhine, which is the major international river in Western Europe. The Rhone is shared with the Swiss, but the huge Geneva lake makes a sort of buffer between both countries, and it is managed by a common institution the CIPEL.

Water stocked in French aquifers is estimated at 2000 km³ and the average yearly natural yield at 100 km³.

Upstream reservoirs have been built mainly to sustain summer flows for nuclear power plant cooling; they total 12 km³ in capacity but can yield 15 times more per year, like in other temperate climate areas. (Spain has a cumulated reservoir capacity of 54 km³, but can yield only twice that amount, due to Mediterranean climate). The major aquifer systems are under the Paris geographic basin, the geographic basin north of Lyon and in the South West Aquitaine (multilayer aquifers).

An important aquifer half confined and half free is shared with the Belgians in Flanders, and is overexploited; there are also large alluvial aquifers in Alsace (Rhine), along the Garonne and the lower Rhone, and karstic aquifers in Burgundy between Paris basin and the Vosges, in Jura close to Switzerland, in the Cevennes south of the Massif Central, in the Dordogne, and in the Charentes

Significant alterations

As far as **qualitative issues** are concerned, it is necessary to draw a line between three domains. Industrial pollution is particularly salient in North, North-East and the Rhone Valley. Reduction of industrial discharges is generally considered as one of the main successes of the water policies conducted since the 60's, but toxic (heavy metals) and accidental pollution remains important and have yet to be seriously addressed.

The first region to be concerned with diffuse pollution problems (mainly nitrates) is Brittany, where intensive agriculture (especially pig-farming) is largely developed at an industrial level. Due to geological conditions similar to England, and massive investment in the agro-industrial sector for 20 years, this area experiences increasing quantity and quality problems. Numerous municipalities have had water supply difficulties due to excessive nitrates levels.

More generally, the improvement of sewage system, particularly for rainfall overloads, is still high on the agenda of the local authorities all over the country.

Regarding **quantitative issues**, the main problems are localised in the south-west, where water stress remains important, due to widespread agriculture (with water intensive crops like corn) and lack water resources in a climatically dry area. The gap between user needs and available resources has resulted in an overexploitation of groundwater and depleted water tables.

Urbanisation also leads to water stress: in the Paris region, water demands have risen to the point where the low summer flow of rivers was insufficient in case of drought. Large upstream reservoirs have been built on the Seine and its tributaries. Most polluted waters are conveyed to the Acheres sewage treatment plant. This plant is so big, and so saturated, that it seriously damages the water quality of the Seine, despite its level of performance.

Irrigation developments have on the whole remained moderate, and there are very few cases where water transfers from basin to basin have been made necessary : namely in Provence and Languedoc, where regional transfer systems with corresponding public companies to handle them have been set up around 1950-1960.

However, irrigated surfaces are growing rapidly, and have doubled in surface in the last 20 years to reach 2 million ha . This induces new stresses: if unchecked, the development of corn crops may request similar investments in the Garonne and Adour basins north of the Pyrenees, and it is now recognised that the aquifer is overexploited in the rich agricultural area around Paris (Plaine de la Beauce)

On the Loire, other large upstream reservoirs have been built to raise the summer flow and support the nuclear power plants program.

Major **floods** periodically occur in the south-east with devastating 'flash-floods'. Due to the Mediterranean climate and a lack of maintenance of river-beds and banks, these floods

threaten human life as well as goods. On the contrary in the north, the issue at stake remains the urbanisation of floodplains and the damage costs induced by exceptional swells.

1.3 Socio/Economic/Political Context

1.3.1 Cultural Background

Traditionally, the "public" has no real role in water policy (except in very specific areas like wetlands with human occupation).

When there remains drainage or irrigation associations, small water users, farmers in particular, will play their role. In opposition with the idea of a golden age of rural participation, these communities have long been reduced in importance both by centralisation (control by the Prefects) and by the development of private property and liberalism.

In urban areas, the public participation presents the same profile for another reason ; in these domains the technologies operate as a filter and people usually pay no attention to these systems, functioning for so many years that they think they have a right to use the service at their will. They will actually complain only about the quality of the service or the prices going up, even when they are in fact unaware of the real level of their bill. It is largely a consequence of the supply-side, technical approach generally adopted by policy-makers, engineers and local elected officials.

The general public knows very little and public concern is seen as the indication of a problem. At the same time, the press which, except for specialised periodicals, did not deal with water in the past, covers since the 90's the issue, but often in an adversarial and provocative manner rather than in the spirit of a collective learning process.

For instance, most journalists ignore the very existence of institutions like the *agences de l'eau*, and tend to consider that high prices are the consequence of corruption and private profits rather than environmental policy.

Altogether, in France water policy started being an issue more open to the public in the early 1990's when more stringent potable water criteria combined with a long drought period and the disclosure of political corruption. Public and private water operators were made more accountable under press control.

This opening of the policy network to the public was reckoned by the Parliament at the request of the ministry of Environment. The 1992 and 1994 laws recalled that the sampling results for drinking water had to be advertised in the town halls, and added the obligation to publish a yearly financial report. A general effort has been made on explaining the breakdown of the water bills, some large undertakings provide brochures on domestic water savings, others have set up a minitel / internet service giving the daily samples.

Involvement of the public is however often irrelevant as consumer movements and environmental associations lack the requested technical knowledge to discern the most significant challenges facing future water supply. As a consequence, press articles released by pressure groups do not always address interesting issues; the major issues in terms of costs are still handled by closed policy communities.

The public perception of water issues is consequently very controversial, with quite contrasted opinions, when the topics enter the public sphere. To take a very politically salient

example, in Brittany, the degradation of both the aquatic environment and potable water has negatively impacted the tourist image of the region, pushing water consumers and environmental NGOs to court. In a little city called Guingamp, where tap water became both expensive and contaminated with nitrates, a local consumer association has successfully sued the local private supplier, Lyonnaise des Eaux (which in turn, decided to sue the State ...). The press widely covered this event which increased the feeling of a water supply "scandal" among the public. However, in other cases, one can notice some progress in the public's knowledge of water environmental problems. In another part of Brittany, 2 000 people refuse to pay the Water authority's charge until an enforcement policy is developed on agriculture pollution. And all over France, the public and the press contribute to end the traditional protection provided to farmers.

1.3.2 Legal and Institutional background

Historically, the absolute Monarchy, followed by the great 1789 Revolution, and by Napoleon's creation of the modern State, resulted in vesting most of sovereignty in the central State. Representing the Nation the State ("*l'Etat*" with a capital "E") and its agents are considered as legally superior to the citizens ; hence the dual court system, with a separate administrative court to handle cases involving the State.

At the same time, relatively important local sovereignty was given to the communes, i.e. (for the most part) the ancient local peasant communities, turned into "citizens' societies". More than 36.000 of these remain today, with their elected municipal councils and mayors. The sheer number of commune is an extreme case in Europe ; in the seventies authoritarian attempts at merging communes failed, and so voluntary concentrations have been limited.

The counterpart of this extensive local democracy is the economic weakness of communes, which have remained under the control of the *Préfets* who represent the central State and command to the territorial services of various ministries at the level of the 95 *départements*. The need for public management and rationalisation of State investments led to a Regional reform in 1963, when all *départements* were grouped into 22 regions.

Similarly, several formulas of joint boards between communes (*intercommunalité*) have been invented (*syndicats intercommunaux, communauté de communes, districts urbains etc.*) but with mixed results. [figures on joint boards]

Recently , the French government has proposed a package of reforms to take the decentralisation process further, like projects to transfer new competencies and staff from the State to Regions (in the environmental policy area) and to *départements* (concerning public works, water supply systems, irrigation..). These reforms are nonetheless harshly debated between promoters of the State, the Region and the *département* levels, and their practical results remain uncertain at this time.

On a more analytical level, the relationship between the central State civil servants, and local elected representatives has been described by political science as a stable system called *régulation croisée* (crossed regulation). In the interplay between the prefect and the local leaders (*le préfet et les notables*), both parties have leverage on the other : the former bring the rule and demand a good level of compliance, meanwhile the latter argue for eventual *dérogations* (pass through) to the rule, for the sake of local peculiarities or priorities.

Through this stable and local bargaining process, the two partners can obtain some independence from both the general local public and the central government. Consequently, one of the characteristics of this system is secrecy.

Thus, it does not adapt very well to new policies like the environment, which imply an acceptance of the breakdown of power, open bargaining, and collective learning processes.

1.4 History of RBMP

Implemented for 30 years, one of the more advanced in Europe, the French RBM system merits an in-depth analysis of its historical sources.

After an overview on the major water laws in France, and a presentation of the genesis of a pivotal institution, the water authority, this section will examine the current institutional framework.

1.4.1 Legal and institutional framework of water policy and RBM.

Throughout the XIXth century and the IIIrd Republic, the liberal form of the State and the importance of (small) private property in political alliances left less room than in other European countries for the maintained local management of common properties, among which environmental and water resources.

Typically, **the 1898 water law** placed all non-navigable rivers under the category of *res comunis omnium* to be shared through usership rules ; consequently, it proposed to set up systematic river boards, but they were usually not implemented. When the State adopted a Keynesian involvement in the economy, it came to actively support what was called *aménagement du territoire*, with a rather low priority on the environment.

However, it is significant that the decision in 1921 to create the *Compagnie nationale du Rhône*, a multipurpose project similar to the Tennessee Valley Authority, was not implemented until after the second World War with *SCP (Société du canal de Provence)* and *BRL (Bas-Rhône Languedoc)*, two state companies in charge of regional water transfers in the downstream part of the Rhône basin, one in Provence and the other in Languedoc.

Taken all together, despite the existence of an ancient and relatively appropriate legal set-up, the environmental dimension of water resources management was not given more attention for half a century. After the second world war, the increasing importance of these issues led to a steady production of legislation for fifty years : two framework laws in 1964 and 1992, supplemented with implementation decrees, and several other laws and technical regulations.

The **1964 framework** law is very important in that it recognises the need for a more systematic control of pollution by point sources in rivers. Until then, the lack of a real policy resulted in dramatic increases of pollution discharges, both from industry and from cities extending their sewer systems without having a treatment plant. The law developed two water policy tools

. Firstly, a regulation tool, based on EQO's and including an important planning part. The enforcement of the regulation would supposedly derive from the quality targets fixed for each stretch of river or each watertable. However, it was not really put into practice, because local actors were not conscious enough of being part of an integrated approach. The procedures were also heavy and relied on the Prefects who were usually not very motivated.

The EQO procedure ended up in water quality maps for rivers (measurement and objectives) at the level of the *département*. However, through the general development of decentralisation, the mapping system eventually evolved into a set of river charters (*contrat de rivière*): initially aimed at a better management of river beds and banks, these charters sometimes ended up being contractual but integrated catchment plans, and made the way for the 1992 reform.

This regulatory part of the 1964 law was later supplemented with the 1976 law on IPPC, modernising the listed premises (the most polluting ones), and subjecting them to extended control by the prefects. Nonetheless the officers in charge of control were located in the ministry of Industry, and therefore tended to implement pollution control in a manner non detrimental to economic development. Moreover, these laws, and others until 1992, left the administrative organisation untouched, with water police services scattered under several ministries' authority.

. Secondly, the 1964 law introduced an administrative innovation the Agences de l'eau, which became the major source of economic incentive for water policies in France (this important point is more developed below).

In the eighties, after this major progress, various pieces of legislation tried to address new issues through a sectorial approach. After the official planning failure of the seventies, many *contrats de rivières* between State, water and local authorities allowed the development of a bottom-up approach for a better maintenance of river banks, and eventually led to integrated local management. The contracts allowed curbing point-source pollution from industry and towns (e.g. to multiply the number of public sewage treatment plants by five in 15 years), and also extended and improved the sewer systems.

The success of the policy disclosed nonetheless other problems, more difficult to solve : non point source pollution from agriculture and from urban run-off, flood control, and above all the protection of floodplains and conservation areas like wetlands

An important **law on natural disasters prevention (1982)** was voted, allowing for strengthened building regulations on flood prone areas. As a counterpart, the creation of a national super-fund based on a 9% tax on insurance premiums, intended to pay damages to flooded families and businesses.

Two years later, a **law on fishing (1984)** started to change the status of "closed" or stagnant water, towards common property subject to no appropriation, by changing the definition of the limit between closed and flowing : hydrological connection to flowing water, even on a part time yearly basis, replaced the former limit in terms of fish migration. The law also created the notion of minimal reserved flow for ecosystem needs, to be imposed on Electricity company derivations.

In 1988, a governmental coalition of ecologists and socialists came to the government and proposed in 1991 a "**Plan vert**" (green plan). They were supported by an increased consciousness of water problems, surfacing again in the 80's, like flood damages (partly due to the urbanisation of "protected" floodplains), increasing agricultural pollution of watertables, extension of water stress areas due to agricultural policies, etc.

The main diagnostic was that the legal framework and the public works policies were unable to resolve many of these problematic situations ; the incentive tool of the Water Authorities did well in the funding of water resource project or the protection against floods but they

lacked a legal frame and a firm orientation, due to the weakness of the State's regulatory tool (*police des eaux*).

After many years of reflection on these grounds, and many negotiations, a water law was voted in 1992 by the Parliament. **The 1992 water law** was both the outcome of several years of intense debates triggered by the need to adapt the environmental policy to institutional decentralisation decided by the socialist government in 1982, and to the growing pressures of European Directives.

It aimed to tackle the aforementioned problems through renewed basin planning and through better rationalisation of water policing (permits, enforcement).

The most important feature of this framework law is to unify the legal regime of all categories of water under the heading "*patrimoine commun de la Nation*", i.e. common property subject to users rights regulations (whichever their appropriative status). This allowed the unification of the various regimes of water police into a single *police de l'eau et des milieux aquatiques*, with a unique decree defining levels of abstraction subject to permits (regardless of use, groundwater and surface) and the constraints on discharges. The law, and its complementary decrees, also strengthened the constraints on public water services (accountability, transparency), but gave an official possibility to local authorities to create a public service for the management of decentralised sewerage. Lastly, the law set up a two step planning procedure (see "SAGE and SDAGE", below).

The *Plan vert* also proposed other measures, like concentrating all services dealing with water into one single *Direction de l'Eau* at the central level (Environment Ministry), and regulatory and enforcement tasks at the level of the 22 regions, in the newly created *Directions Régionales de l'Environnement* (DIREN), with local services in each of the French *Départements*. This ambitious administrative project did not fully succeed.

The *Direction de l'Eau* was created, but drinking water quality standards and control remained with the ministry of Public Health. The *DIREN* were set up, and all the licensing systems for abstractions and discharges were unified and collected into one single *décret d'application*, but the unified *police de l'eau et des milieux aquatiques* stayed with the Agriculture, Industry, Public Works, Public Health services at the level of the *départements*, as earlier.

On the grounds that all waters (underground, flowing, domaniaal...) are now part of the common heritage of the nation and held in public trust by the State, it was decided that all these services would be associated in a *Mission Inter-services* (MISE).

The Ministry of the Environment however did not obtain direct control on all the civil servants in charge of the water police. The next step however will be for the Ministry of the Environment to procure more civil servants positions from the Budget ministry, since water regulations have long been poorly enforced, and now they are enlarged (in particular as concerns groundwater).

The institutionalisation of water : the invention of water authorities

When General de Gaulle returned to power in 1958, technocrats around him wanted to have more planning. They developed a new tier of government at the regional level to foster local planning with the support of several neo-corporatist boards mixing local elected representatives with professionals, workers' unions, associations.

To create the French Water Authority system, the Gaullist technocrats followed the example of the Ruhr Genossenschaften basin boards, while also picking up in the American idea of the

polluter-payer principle. At last, they proposed to develop rational water resources management at the level of the main river basins.

The advantage was to better follow the natural constraints on resources, while escaping the traditional political boundaries and the related central vs local political struggles. France was split into 6 groups of river basins, each of these new territories managed by a basin board (*Comité de bassin*) and a Water authority (*Agence financière de bassin*).

Splitting the national territory in no more than 6 groups of catchments allowed a large degree of equal opportunity and fair competition between industrial premises subject to the same discharge regulations but to varying levels of economic incentives. The basin board was given the responsibility to vote the level of pollution and abstraction charges (collected into a special fund).

The Water Authority used these charges to subsidise or give low interest loans to water users willing to reduce their abstractions or discharges.

When they voted the 1964 law on *le régime et la répartition des eaux et la lutte contre leur pollution*, French members of Parliament certainly did not fully appreciate the importance of their own creation of the *Agences financières de bassin*. At the beginning, most local actors viewed them as another trojan horse of the Gaullist government to increase centralisation. However, in 30 years they have gained recognition and widened their scope of action, justifying a change of name in 199. The *Agences de l'Eau* have gained a wide support from those very actors who were initial opponents.

This is true in particular of local elected representatives, who finally discovered that the Agences could provide subsidies and cheap loans with no political control, contrary to what happened previously with State money. Initially, local authorities tended to reject what they considered as technocratic institutions with no legitimacy. They sometimes even contended that they were not responsible for polluting discharges, since the public sewers only transferred pollution from domestic polluters and connected industrial premises. Fortunately, most people in France are metered, and sewerage charges are usually added to the water bills, in proportion to individual abstraction of drinking water. It was simple to add the Agences' charges on top of the water bills, and thus waive local authorities' opposition.

Even though the abstraction and pollution charges were gathered directly from water users through the water bills, elected representatives realise that local authorities (and not individual users) would get easily subsidised as soon as they proposed a good investment.

Attitudes within the industrial community were more contrasted. Some of them decided to sue the Agences de l'Eau or refused to pay. However, in twenty years of operation, they have consistently lost their cases and most industrial users now stand in favour of the Agences de l'Eau. In fact, they greatly benefited from the financial support brought by the Agences, at a time where more stringent standards in environmental policy began to appear, backed by a public opinion mobilised on this issue.

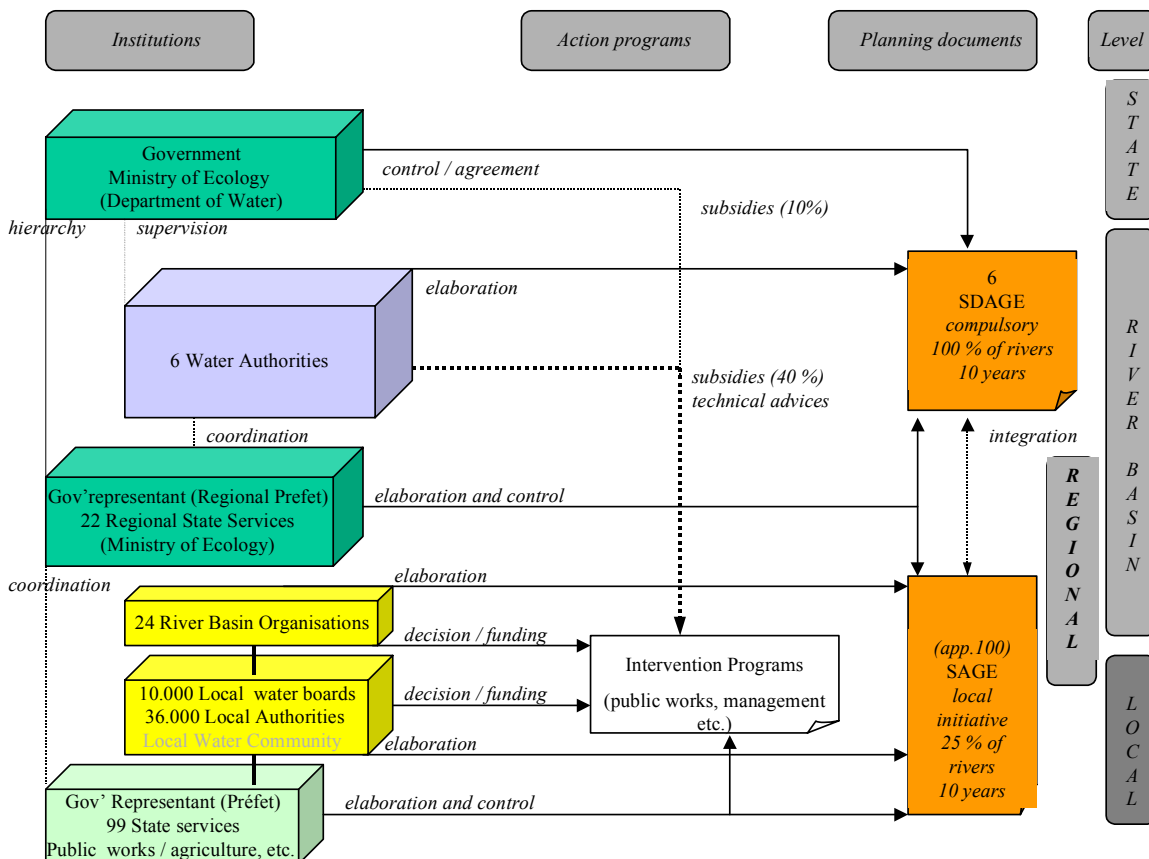
At the end of the day, the Agences de l'Eau now appear as decentralising institutions, conversely to the English and Welsh Regional Water Authorities created approximately at the same time (1974).

In 1992, the Agences de l'eau should have been changed to face the new problems and given the right to levy new charges and thus generate an incentive policy in new areas of pollution control or water abstraction. However they were not mentioned in the law because they had been charged of unconstitutionality by their opponents. In France, taxes others than national revenue tax or local authorities' rates can be collected only by the State or by public quangos, and are subject to annual review by the Parliament. Public services charges, conversely, must be levied by commercial status Quangos. The Agences fees are considered as (state) taxes, and should be reviewed by Parliament every year. As it is not the case, opponents claim that the system is unconstitutional.

However, until now, most Parliament members, who also are local councillors, preferred, and still prefer to stay with the present stalemate than risk to destabilising the system.

1.4.2 Current legal and institutional framework

Taken as a whole, the RBM institutional framework is in France rather intricate with its several layers and various connections between layers and institutions. As in many other countries, this framework results from an accumulation of reforms, creation of institutions, at the national, basin, regional and local level, without a single, global rationality.



[RBM in France : the institutional structure ...]

Two institutions play a pivotal role in River basin management, on which it is important to focus now : on the one hand, the Water authorities ; on the other, the River basin organisations and the Local water boards. After doing that, we will examine the system of water planning documents which should organise the work of these institutions.

The Water Authorities (*Agences de l'eau*)

The main role of the French water authorities is financial. The Agences de l'eau do not operate either like the Ruhr Genossenschaften, or like the English and Welsh National Rivers Authority (now Environmental Agency). Instead they provide low interest loans and grants tax-payers who want to make an effort in water resource conservation (quantity and quality). They cannot directly build or operate works, and they are not in charge of enforcement.

Officially, the Agences de l'Eau operate under the "polluter-pays-principle" (PPP). In fact the level of the charges was not raised to reach the incentive level of the PPP, so that the

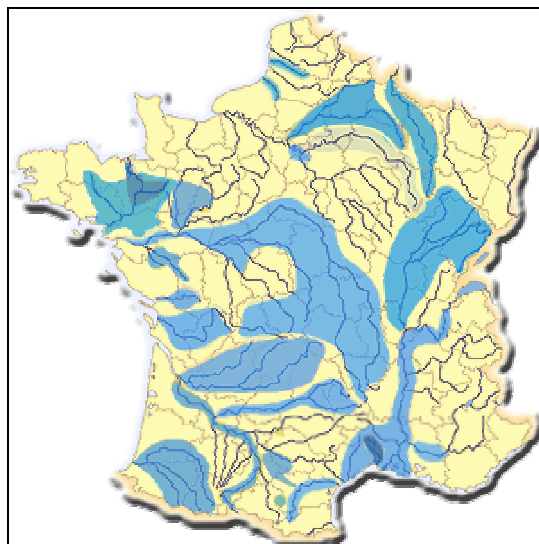
Agences de l'Eau operate in fact under another principle, which could be called solidarity or mutuality : all abstractions and degraded water discharges, and potentially all damages caused to, or risks aggravated from, the natural water cycle, are subject to various elements of charges, the level of which is voted by the community of water users represented on the board of the Agences de l'Eau.

The collected funds are used to subsidise water users who are willing to reduce their impact on the resource. The Agences de l'Eau thus become the financial tool of a compromise between water users ; they allow to reach a level of water quality accepted by most of them ; this does not mean restoration to a natural original state. State subsidies disappeared progressively, even before decentralisation laws of 1983.

The water policy is almost exclusively funded through the Agence de l'eau, i.e by the various water users (except for the agriculture sector, which has always been protected in the French political system and benefit from a special status with lower charges and/or exemption).

The River basin organisations and local water boards

The name " *établissements publics territoriaux de bassin* " has been coined in 1997, when an association of 24 major water joint boards was created (officially in 1999) to promote their interests and vision of water policy (which can be different from Ministry of Ecology's or Water authorities').



[Water boards (EPTB) in France (may 2003 ; Association EPTB)]

These regional water boards are very different from one another. They may be a few years-old or exist for several decades ; organisationally, their staff range from 1 to 130, their size from 1000 km² to 100.000 km² ; their missions include public works (flood prevention, irrigation, renaturation, water supply) for the most part, but also river management and protection, data collection on water, information and communication etc.

They share however the same administrative status, as transboundary coalitions uniting communes, *départements* (2 at least) and/or region. (called "*syndicat mixte*" or "*institutions interdépartementales*")

Once simple public works and technical agencies without a real political role, they campaign for a few years to be more directly associated with the planning process in general, and the making of the SAGE more particularly. In 2002, a water legislation (*petite loi sur l'eau*) recognised their legal existence and mentioned their role in the SAGE process. In 2003, 11

EPTB participated in various SAGE, covering the same area in half of these cases, and leading the process in two cases.¹

The planning system

The main planning tools in water management are currently the *SDAGE* (*Schémas Directeurs d'Aménagement et de Gestion des Eaux*) and the *SAGE* (*Schémas d'Aménagement et de Gestion des Eaux*).

One of the major innovations of the 1992 Water Law was the idea of integrated water planning, which had failed after 1964. After important debates between the Ministry of the Environment advocating a centralised and top-down approach, and the Senate defending a local-based approach, it was agreed that there would be two levels of planning.

SDAGE are made at the level of the 6 Agences de l'Eau, with the basin board and the State.

SAGE are developed at the local level, following river basins or sections of river basins, or even aquifers. Their boards, the commissions locales de l'eau (CLE) include elected representatives, water users and State services.

The **six SDAGE** provided for by the 1992 law were developed and approved within the anticipated time limits, i.e. in 1997. These institutions are directed toward each of the six catch basins, serving as the main policy "orientations" and judiciary "provisions" for water management in river basin regions. As stipulated by the 1992 law, such "provisions" must be taken into account in the administrative decision-making process related to water (known as the "conformity" requirement).

The first stage involves drafting a general overview of water issues in the basin : inventory of water resources, users, problems, related jurisdiction and policies, occasionally economic and financial aspects. This overview is based on existing data and supplemented by specific studies if necessary. This enables a diagnosis of water resources conditions in the river basin and the development of draft policy proposals about the "orientation" to follow in water management.

Their overall design of the documents remains the same. It includes a number of "orientations", "provisions" and also "measures" in water management. They are intended to address a wide scope of issues and deal with more general water policy, i.e. water supply, water quality and quantity, surface and underground water, wetlands and ecosystems, coastal regions, flooding, etc. They include very detailed map appendices listing water resources, mains users, pollution discharges, EQO, etc. Some SDAGEs also define SAGE boundaries.

SDAGE elaboration has taken different directions for each river basin. Generally speaking, the Water authorities have lead the process, in collaboration with the DIREN (Regional deconcentrated service of the Ministry of Environnement). Starting in 1994, projects proposed in each basin entered lengthy deliberation, according to various methods by actors involved in water issues (see below, 2.3.2 and 2.3.3 for an example).

They were finally approved by Basin Committees and authorised by the *Prefet de Bassin* (State representative, Basin level) in 1997. The SDAGEs will be superseded by the Water management plans of the WFD.

It is important to note that the legal importance of their various "provisions" remains unclear, with only a few courts decisions to light their precise meaning. Usually, the SDAGEs do not include precise recommendations by sub-zone and most often appeal to SAGEs in the implementation of official measures. As a matter of fact, the SDAGEs offer more a synthesis of existing water legislation, applied to regional situations, than new rules or new standards.

On this point, Water authorities maintain the same position as the Ministry of Ecology. The SDAGEs are above all "prospective documents", ie official documents of reference for water

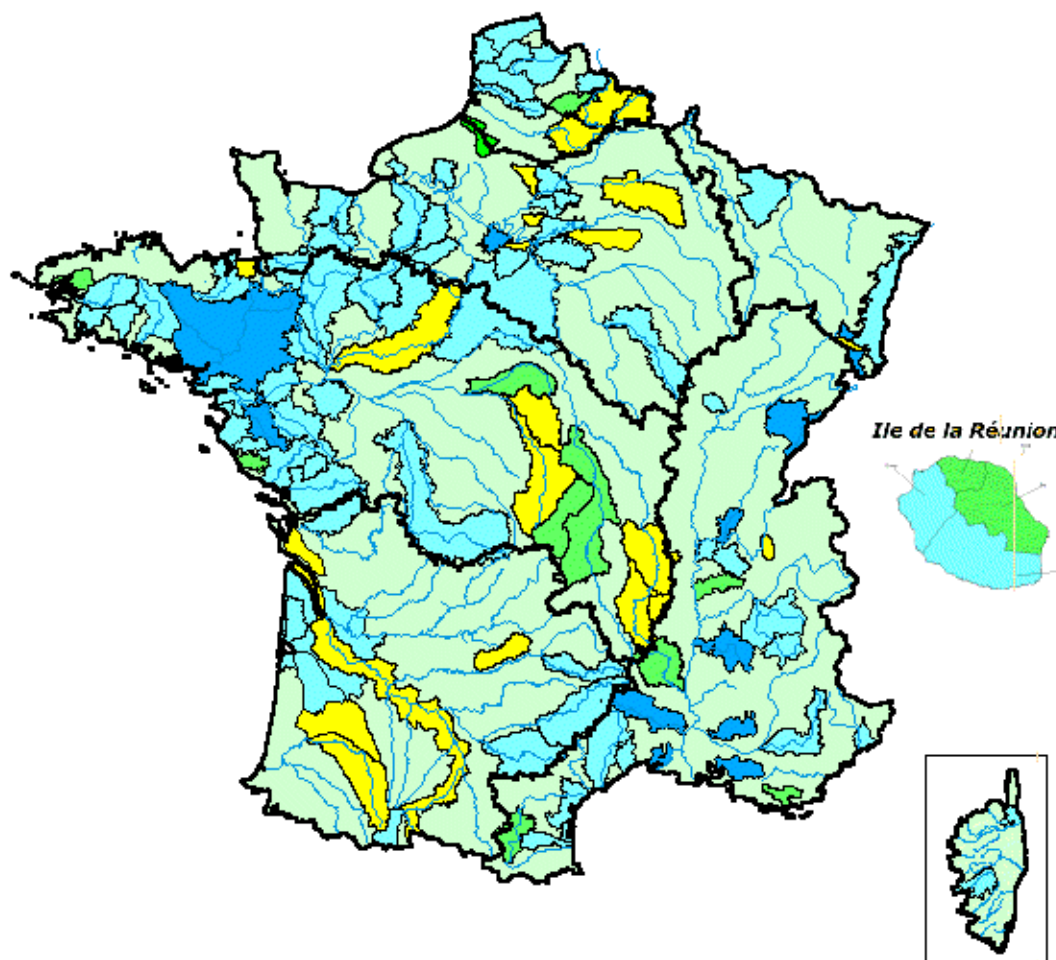
¹ Association des EPTB, "Implication des EPTB dans les démarches SAGE, mai 2003

policy actors. They are intended to serve as a framework for future discussion, more than as a precise agenda. That can explain why environmental organisations have adopted a critical stance on most of the SDAGE (FNE, 2002).

Concerning the **SAGE process**, in the ten years since the January 1992 water law, 81 Local Water Commissions (CLEs) have been established in France to produce these documents. 33 are still under administrative development and an additional 23 are projected (Ministry of Ecology figures, Septembre 2003). Of these, only 14 SAGE, the planning document produced by the CLE, have been approved to date, even if several more are close to their final stage of validation.

CLE and SAGE are evenly distributed throughout France, yet with several "voids" (see map) due to the presence, or absence of local will to support this process ; for the same reason, they are more advanced in areas where the Water authority maintains a more voluntarist policy approach (in the "Rhône- Mediterranean-Corsica" region, most notably with 8 out of 14 SAGE).

The SAGE also appears to be more advanced in places where there are already river contracts under way. The surface area of one SAGE is usually between 1000-2000 km² but can range from 200 km² to 11,000 km² (SAGE of Vilaine River, in Brittany).



[SAGE in France (september 03 ; Ministry of Ecology)]

SAGE undertake a wide range of problems and address a number of water policy issues such as quality (water supply, natural aquatic environments, tourism, fishing and bathing waters,

eutrophisation, industrial pollution), quantity (drought, dams and irrigation, conflicts among users), flood protection, urbanisation-related concerns, gravel mining, hydroelectricity, canals, etc.

SAGE set-up and organisation rely heavily on the active participation of local authorities. Although the SAGE procedure was initially held to be under state control, its development over time is typical of a new distribution of power at the local level. A survey based on a sample of 20 SAGEs demonstrated that the State takes exclusive action in only one out of 20 cases, while collaboration between the centralised State and local authorities occurs in 10 out of 20 cases. In nine out of 20 cases, one or more local authorities carries out operations alone and autonomously so.

The results and real efficacy of SAGE measures have not been expressly evaluated as insufficient time has passed and the process is not yet complete. It is nonetheless obvious that at local levels, the pace of implementation is very slow. Difficulties encountered include increased technical complexity, obstacles to collective negotiation and the more incremental than radical nature of the changes taking place.

It is also too early to fully assess the efficiency of this planning tool. Similarly to the SDAGE, only a few judgements have been made explaining inadequate behaviour in regard to the planning obligations.

Nonetheless, most of the case studies (Cergrene, 1998; Allain, 2003 ; Lebourhis 2001) demonstrate that several outcomes are usually observed : an increase in the number of actors and issues taken into account, a growing media attention and a general interest devoted to water issues, a greater visibility of river-related concerns as compared to urban and economic growth concerns.

1.4.3 The organisational structure of RBM

Beyond the institutional and legal structure, RBM covers different areas of public intervention, i.e. different policy subsystems (Sabatier, 1986), which must be taken into account to understand its evolution.

As matter of fact, these subsystems are pivotal in the evolution and the success of the river basin policy.

These relatively stable networks of actors deal with specific issues related to water, which are more or less salient depending on the considered area. In most cases, three networks can be identified : the water supply network , the water pollution prevention network (mostly industrial or agricultural sources), and the floods prevention network. Managing a river basin means concretely intervening in these groups of actors and reorienting their work and outputs in a new direction.

Without detailing too much this dimension, it is useful to give a short presentation of one of these networks to illustrate the organisation basis of the water policy, usually erased by the focus on a undefined and global “water”.

The main actors in the water supply subsystem are the communes, who are in charge of the provision of many public services, like water and sewerage. They usually set up joint boards (*syndicats intercommunaux*), so that there are both very large undertakings in urbanised areas, as well as 14 000 very small municipal water works serving one or two communes, often operated under direct labour. This concerns 40% of the communes, but only 20% of the population. There are practically no systems operated by citizens' associations at infra-municipal levels. Around 1% of the population are on their own well. Conversely, there are

still (in 1995) 17% of French (rural) population on septic tanks and other decentralised sewerage systems.

The historical situation of local authorities having strong political sovereignty but little economic powers resulted in the rise of an original system of "delegation" of public services provision to private operators, which were increasingly able to provide both the construction of new facilities, and their subsequent operation. But conversely to British privatisation, French local authorities retain the ownership of all the infrastructure.

After the second world war, when industrialisation and urbanisation developed rapidly, delegation also expanded fast, while private water suppliers concentrated, got involved into sewage works, and even sewerage, and also in many other urban public services, and even in the building and public works industry.

Today, four remnant water companies deliver 85% of drinking water volumes in France, and have become world leaders in the water and urban services industry.

2 Public Participation

In this section, we cover two quite different forms of public participation: one is the consultation or the intervention of a large public made up with anonymous citizens; the other is the opening of decision making to a qualitative representation of “civil society”, i.e. social, professional interest groups and NGOs. Both types remain a salient issue in France, since all levels of government are run by representatives elected through general elections; hence there are more elected people in France than in all the rest of Europe, due to the small size of communes. This adds to the traditional Jacobinism that questions the need to participative democracy.

2.1 Public participation history and institutional background

Public participation history can be seen as a sequence of four historical phases in contemporary France :

- a first phase, from the French Revolution to the First World War covers a period where the participation of the population is strictly limited and takes two forms, public inquiry process and technical commission ;
- a second phase, from 1918 to 1958, is a period of debate over the possible direct representation of interest groups in public debates, and the appearance of “socio-economic councils”;
- a third phase, from 1958 to 1988, corresponds to the early development of a centralised, state-oriented public participation, for the most part in reaction to the growing demands rising from the civil society ;
- a fourth phase, from 1988 to the present days, brings to the forefront several public participation tools, trying to organise the process, in response to severe criticisms against the former model.

In these phases, it is important to distinguish the evolution of two forms of "public participation" in public decision-making : one aiming at balancing individual and public interest (i.e. primarily private property vs public works) which is traditionally predominant ; the other more directed toward the definition of the common interest in different emerging areas (public health, natural resources management, local environmental quality etc.).

During the four phases, the evolution process differs depending on which one of these types is concerned. They will be therefore analysed in parallel in each phase (see parts A and B)

1st phase : 1789-1918. The first age : public inquiries and technical commissions

The first phase covers a long period where, after the 1789 Revolution, the French state steadily developed its involvement in several areas (infrastructures, education, welfare), increasing progressively its power of social regulation. The principal political institution in charge of representing the general interest is then the state, under the control of a strong central power (first empire until 1815, monarchy, second empire(1851 - 1870) or parliamentary institutions , mainly after 1875, for the IIIrd republic (1875-onwards).

Some very short periods, following uprising and rebellions (the Revolutionary regimes (1789-1799) the IId republic 1848-1851, and the Paris Commune 1870) allow the population

a more or less open access to power, but these moments are systematically followed by periods of "restoration", organizing and limiting strictly the political participation.

In this context, throughout the 19th and 20th century, public participation tools are mainly oriented towards the protection of individual rights, in particular landownership rights. This period is dominated by a reactive mode of public participation, which is well represented by the model of the "public inquiry", i.e. a compulsory procedure when private property interests are threatened by a public action (mainly road construction at this time).

This first form of public participation, created in 1810, has remained the most important mode of discussion between the administration and the population for almost two centuries. It aims to protect the interests of local landowners when a public work is decided, i.e. to evaluate the right level of compensations they can receive - the property being a "*droit sacré et inviolable*" (a sacred and inviolable right) according to the 1789 Declaration of Human Rights. Other types of inquiries followed, organised on the same pattern: "*enquête commodo et incommodo*", concerning pollutions issues nuisances, the "*enquête hydraulique*" (on river works, 1905), the "*enquête forestière*" (on forest management) etc. (for a complete list, approx. fifteen procedure, see *Conseil d'Etat*, 1999).

During this period the "general" interests is not officially a matter of discussion, in the "public inquiry" model or in other forms of public participation. The state speaks for the Nation, represented by the elected members of Parliament or the President - or even the Emperor (like Napoleon III, 1851-1870), whose legitimacy is nurtured by regular "democratic" plebiscites.

Consequently, the state remains the only institution which is legally entitled to formulate the public interest contrary to *Ancien Regime* system, where consultation with the "*corps intermédiaires*" (collective bodies as corporations, professional or religious orders, aristocracy, etc) is at the centre of the political system: as soon as 1601, for example, the commercial policy is decided in concertation with professional orders (Weber, 1968: 8; Delaunay, 1993).

The Revolutionary governments try to eradicate these intermediaries which are perceived as a political threat for the new-born democracy, according to the Rousseauist theory of the "*souveraineté nationale*" (the only source of legitimacy being the People, i.e. the assembly of citizens constituting the Nation, expressing their will through the voice of their elected representatives). Corporations, orders and the like are banned by several laws (1791-1794), leaving only two legitimate entities on the French political scene: the State and the citizen.

This development leaves no room for customary common law and community as a legitimate form of public action. Also it is individuals who are called to give their opinion, not groups of interests. Only in 1901 will a jacobine tradition to forbid reunions of more than 10 persons be changed to a right to create associations to defend private but collective rights.

Such an evolution means that public participation is strictly limited to the "technical" dimension of public decisions, only aiming at "enlightening" the state administration on specialised topics. Usually these commissions intervene at the national level, but also locally, in each "*département*"; they associate State, elected representatives, experts and civil society members so as to give advice (for some quasi-compulsory) on administrative acts. In the environmental area, for example, these administrative specialised commissions are created locally in areas like public health in 1902 or historic monuments in 1889, landscape and natural landmarks in 1906.

These commissions allow the representatives of the central state to discuss and coordinate with local powers. Nonetheless the consultation process is selective: for example there will be no direct interest groups represented, but aldermen and wise people. It is also mainly reactive as these commissions give their advice on existing projects or administrative decisions (licenses and permits). If there is any coordination on public interest matters, it is neither open nor formal but "behind closed doors".

At the local level, when the 1884 law creates the fully democratic municipality, with an elected mayor and an elected council, it also allows municipalities to create "extra-

municipal” committees, where experts can join the discussions between council and civil servants.

2nd Phase: from first world war to 1958: growing criticism on representative democracy

The number of these commissions remains stable during the 19th century, but increases dramatically between the two wars, and after 1945, with the development of state social and economical missions. In the 1950's, a survey estimates their number at 4450 at the national level, and 100-150 in each *département* ; however, many of them could have been rarely active or inexistent (Chenot, 1957). The first World War was the occasion to discover how French society had developed labour divisions and all sorts of differentiations which ruined the paradigm of the sovereign citizen vs the State. Workers unions, later followed by the Planning movement, requested the development of more direct representation of segments of society through the notion of Economic councils, or socio-economic councils (Gaudin, 1978: 208-210).

They also found that the traditional second degree representation mechanism through indirect election of General councillors and Senators led to a dramatic over-representation of peasantry and rural areas. This idea was eventually picked up by the Vichy collaborationist government, because several advocates of corporatist forms of participation promoted the region as an appropriate organising level. Of course, after the Liberation, the return to “*légitimité des institutions républicaines*” led to the classical representative democracy, and only the socio-economic councils survived, along with the development of national and local planning.

But basically this form of participation was still elitist and expertise-based, and was not open to the public in general or even interest groups formed around specific projects.

3rd phase : 1958-1988. The second age : from critics to the early development of public participation

The institutions of the Fifth Republic (1958, until now) are characterised by the prevalence of the executive over the legislative branch : the President, directly elected by the population since 1962, is usually compared to a "republican monarch" ; he/she has power over the Government, without a real counterbalance in the Parliament, whose members lack capacity of initiative, means of control, or even political autonomy (through the "party system" oriented toward the presidential election). During the first decade (1958-1968) of this phase, the political context is structured by the de Gaulle Presidency and his strong will to modernise the economy and the country.

Supported and oriented by a large "modernist" fraction of the state technocracy (engineers, economists, city planners, etc.), this transformation is opposed by the "*France des notables*", i.e. the locally elected representatives of the rural, traditional France (still very influential at this time). The Gaullist government is also criticised for its autocratic leadership by a loose but very extensive coalition of civil society organisations, whose cement is the left-wing, "popular education" pre-war movement, active still after WWII. From this tradition, the "*Mouvement de la citoyenneté active*" (movement for an active citizenship), asked in 1959 for more participation and citizen involvement. Several clubs developed ideas of participative democracy in the middle class: *citoyens '60*, *Vie nouvelle*, etc. And this movement led to the creation in 1968 of the *Groupes d'action municipaux* (or *GAM* - Municipal Action Committees) which presented candidates at the local elections promoting this political platform (with 15-20% of the votes) .

In May 1968, the *contestation* reached its highest level during several weeks of strikes, public protest and street riots. It demonstrates both the rejection of the political system by some components of the population (mainly the young and educated generations and the working class) , and a more general cultural transformation, toward less hierarchical relationships and less authority in the society. This social and political crisis lingers on

during the seventies, after the departure of de Gaulle (1969) and the electoral defeat of its party (1974).

The right-wing, centrist government of the V. Giscard d'Estaing presidency (1974-1981) is more responsive to this societal evolution and tries to develop a more open and participatory administration. However, General de Gaulle, in his ultimate referendum, had proposed to develop the role of the Regions where decisions would be taken by Socio-economic councils qualitatively made up with the *forces vives* (workers and professional unions, consumer and environmental movements, etc.)

But his defeat also drowned the idea of explicit participatory democracy. In the 1970's middle classes were increasingly attracted to the left wing and local democracy. From 1981, this movement is taken even further with the election of F. Mitterand, leading a socialist-communist coalition. The "*alternance*", i.e. the coming to power of left-wing parties after 28 years of right-wing governments, allows structural reforms to be implemented, like the "*Décentralisation*" (1982), giving more powers to the 22 "*régions*", the 99 *départements* and the 36.000 "*communes*".

(A) The association of private, individual interests, even in a reactive way, in a public decision process is not a priority during the first decade of the Gaullist governments (1958-1974). Some progress is made but essentially to give an ad hoc answer to social unrest. The measure "la participation", for example, promoted by de Gaulle after May 1968 aimed at improving consultative participation in factories, although in a rather vague way (see Dezes, Contet, 1990). In the 1970s, several institutional and legal criticisms of the "public inquiry" procedure emerged concerning its lack of consideration for collective interests (mainly environmental). They lead to partial reform in 1976 (Directive "Chirac").

Meanwhile some experiments of "public hearings" or other informal public participation devices are launched (mainly by the Ministry of Public Works (DeFrance, 1981) to improve the communication / on the public utility of the state projects and better manage the confrontation between these projects and the particular interests. Nonetheless, none of these public participation tools is followed by a nation-wide implementation; moreover, their rationale remains state-centered (like the new 1976 "public inquiry"). Their objective is to give the "right information" on state projects or to gain insight on public attitudes or oppositions, without giving away any power (for more on this two-way communication model, see Blatrix, 2002; Fourniau, 1994; DeFrance, 1981). It is typical that the procedure of an Environmental impact statement, imported from the U.S. with the law of 1976, is required only as a formal and short annex to unchanged projects.

Some progress was made in 1982, when a law takes into account multiple criteria in decisions concerning public infrastructures (Law on the Inland Transports), widening the scope of the usual "technical" debate to include the socio-economic dimensions. But the real reform of the public inquiry does not occur before 1983, with a law ("*Loi Bouchardeau*") promoting its "democratisation" (in terms of transparency of the procedure, communication to the public and accountability of the legal authorities).

(B) On the other side, the non-governmental contribution to the definition of the general interest is developed during the gaullist period, with the creation of several neo-corporatist structures at the national or regional level (*conseil économique et social* / social and economic council, *comité de développement régional* / regional development committee). They allow in particular the Government to bypass the "notables" by creating direct links with social and economic actors. These structures offer opportunities for the gaullist "*modernisation*" to find a social basis and enroll groups of interest, unions, economic forces, associations (Dulong, 1997). The Basin board, the users' committee attached to the Water authorities in 1967 are a good example of these institutions, even if their "success" remains paradoxical: the "enrollment" of local powers to break the traditional local vs central opposition turned actually into the appropriation of the *Agences de l'eau* by the civil and local society. The State ultimately lost much of its control.

In the 1970s, in response to social evolutions, political unrest and demands of more power coming from civil society, a tendency emerge towards increasing openness and transparency of the administration. Organised in associations, groups of interest, with new capacities of stopping development projects, (in the streets, the media or the courts) the environmental and antinuclear groups spearheads the movement.

Two main measures must be noted : firstly, a suite of laws which improve the citizen control on personal administrative data (1977), the public access to administrative documents (1978) the justification of public decisions (1979). Other texts promote the production of knowledge-based decisions (law on the protection of nature, 1976 with the Environment impact assessment), and the judiciary rights of the civil society actors (the same law giving legal entitlement to environmental associations to sue polluters) .

Secondly, new commissions are created in several area at the national and local level : in the water domain (1977 : *Conseil national de l'eau*, National council of water), but also on nuclear, energy issues, etc. A similar movement occurs locally : in 1979 Local Quarry Commissions are created, and others follows in 1977 (Urbanism), 1981 (historical monuments), 1985 (tourism), 1986 (hunting and wilderness), etc.

During the eighties, the type of participation in these commissions is modified, towards more democracy (in the selection of representatives, rules of vote, means of control). In the water sector, it is typical that the composition of the Agences de l'eau boards changed progressively from 1/3 elected local, 1/3 professional interests, and 1/3 government representatives, to a significant reduction of the latter for the sake of involving environmental, consumer and fishermen's associations.

Nonetheless, all these changes appear limited, especially in front of the renewal of public dissent and protest at the end of the 1980's. From 1986, and above all, after 1989, major infrastructure projects (dams on the Loire, high-speed train in the south-east) are blocked due to oppositions, both from the local population (landowners, rural inhabitants and mayors) and from associations, openly fighting these projects and their rationale (through various means : violent actions against State symbols, media strategies, judiciary actions etc).

4th phase : 1988-Now: from experiments to institutions

The socio-political context is characterised by a political crisis of the traditional representation (extreme-right vote growing from 1984 -1989 / electoral success of green parties since 1989). Several "scandals" with a large media coverage (the "poisoned blood" affair ; the illegal party funding, 1988-1993) undermine the credibility of the French political representatives. IN addition, a major social and political crisis (winter 1995) and the emergence of the "social movement"(1998-2002) increase the social unrest.

In the environmental area , new connections are made between NIMBY movements, environmental national associations, and local elected representatives (a consequence of decentralisation) which threaten many large development projects (from 1988 onward). New demands of participation from the public goes beyond the tradition consultation to guarantee the protection of private property , towards co-definition of the common interest.

A "new frontier" appears in discourse on public participation: it must include how to balance different sorts of public interest, on which civil society members and organisation also have their say. However, this movement creates many tensions due to resistance of state administrations and its agents, unwilling to let what they see as "private interests" decide public issues.

On the institutional front, in 1988, an administrative reform is launched, (the "Public service modernisation", by the Michel Rocard Government) promoting "users" participation and trying to increase administrative efficiency and accountability (more transparency, information, consultation.).

(A) Concerning the concertation with private interests, the major tendency is the progressive institutionnalization of the debate. In the wake of the reform for the "modernisation of administration" in 1988, several administrations build up tools and techniques of public participation (also called "users involvement") to find an answer to the growing restlessness of the population, especially on infrastructures projects (see Vallemont, 2001) ; this "participationist" trend (Blatrix 2001) is progressively translated into official texts and documents : in 1992, the *circulaire Bianco* (an administrative memorandum) suggest to organise four chronological stages in public works decision (preliminary debate ; project studies ; public inquiry ; project implementation) ; then the 1995 law ("*loi Barnier*") gives a legal framework to the "participation principle" (which receive, for the first time, an explicit legal fomulation).

The "loi Barnier" creates the National Commission on Public Debate - CNDP) whose mission is to organise and control the procedural aspects of the public debates on major infrastructures (since then, several debates have been organised by the CNDP - on highway, canal, airport and railway projects) Other less important steps are taken during the 90's (for example the "Charte de la concertation" in 1996, a non compulsory policy document on this topic)

This non-co-ordinated participationist movement is however subject to criticisms : the "jungle" of tools created produces a lack of credibility due to their multiplication (Conseil d'Etat, 2001) ; the absence of precision on the effects of the consultation introduces an ambiguity concerning the goals of public participation : the public, the associations are wary of the political objectives underlying such tools.

(B) The co-definition, through the public participation , of the " common interest " is also progressing in this period, but it remains hindered by the traditional system of political representation. In this area, the participationist climate engenders a flurry of reforms, devices, but few are considered satisfactory by civil society organisations.

In 1998-1999 several regional and national debate are organised, on Public Health (*Etats-généraux de la santé*) or other issues (called "*débats nationaux*" or "*assises nationales*") A first procedure of "Citizen juries" is tested, on Genetically Modified Organisms, followed by other on Climate, energy, etc. At last, in 2002 a Law on local democracy is voted, ("*Loi Vaillant sur la démocratie de proximité*") strengthening the participation principle through local democratic institutions in cities (*Conseil de quartiers*) and widening the powers of the CNDP)

Although these actions demonstrate an ongoing institutionnalisation of the co-production of the "public interest", it appears that the same "locks" remain : firstly, the aforementioned monopoly of the elected representatives on the interpretation of the public interest ; secondly, their alliance with the state agents to control the implementation of public policies (see the analysis of cross-regulation above).

In this pattern, the participation of new actors, emerging from the civil society, is bound to generate many tensions. The reform creating "local consultations" (1971, then 1990) offers a good example of this obstacle : it remains still uncompleted due to the conflict between the two forms of democracy (representative / participatory) and their competing principle of legitimacy (see Paoletti, 1996, specifically on the *Conseil d'Etat* emphasizing the primacy of the representative form (1905).

Current debates

The discussion around public participation in France can be presented through two main positions (with many intermediary stances in between) :

Firstly, a "round table" type of discourse, promoting the "public participation" as a way to improve decisions, mainly in two areas : their technical dimension, through a better collection of information, the confrontation of various points of view on a specific problems etc. ; their legitimacy, i.e. their acceptability by the population, through the feeling of being

part of the decision process. A large production, both analytic and institutional concerning the public participation tools supported this point of view in the 90's (see Fourniau, 2001; Dzedzicki, 2002). Concerning the extent of the participation, the official position is clear and explicit - even if it is often blurred during the real consultations, by expressions or language which remain ambiguous. The decision remains in the hand of the state/ elected representative, the only legitimate decision-making authorities (on this point, see Zemor, 1999; Conseil d'Etat, 2001; Dauge, 1998)

Secondly, a "smoke screen" type of discourse (la "*concertation paravent*") stresses the limits of the former approach and in some case, the hidden agenda behind public participation tools. The hard core of this discourse comes from civil society organisations which emphasise the lack of real power sharing and sometimes the dysfunction of public participation procedures, which present only the appearance of a democratic process (Gonella, in Vallemont 2001 ; FNE 1999). Academic analysis supports these positions, without sharing the same radical and political perspective ; they shed light on the socio-economic constraints (determining public capacities and skills) and the organisational factors which strongly reduce the effects of the "participation principle" (Blatrix, on participatory democracy; Piechazcyk, on public inquiries) . Other research emphasise clarifying the ambiguities of the procedural aspects (selection of representatives, powers given, transparency and accountability during the process) to build trust between the authority(ies) and the participants (Callon, Lascoumes, 2002). Moreover, the scientific / technical data, their production and their interpretation form an essential part of what has to be discussed (Latour, 2002).

2.2 History and Purpose of participation in RBM

The history of public participation in river basin management is characterised by the parallel development of two forms of tools to implement water policies : concerted central planning and contractualisation. The current predominant form of public participation can be interpreted as a hybrid of these two traditions.

The first tradition of RBM : central planning

In the early period of RBM (the 50-60'), the models applied were still very much the large technocratic multipurpose projects like the Tennessee Valley Authority. The 1964 law contained a section devoted to RBM (water planning) : termed *Schémas d'objectifs de qualité* (quality targets) this approach meant to fix a quality level according to various criteria for each particular reach of river, and then to derive the needed investments in waste water works at each discharge point.

These EQO schemes failed (see the Vire case below, the only project implemented) because the main actors in charge, the Prefects, didn't see in general the environment as a priority. On top of this, V. Giscard d'Estaing was elected president in 1974 and the Government style changed significantly. He was a partisan of liberal *laissez faire* ideologies, and put an end to the planning experiences of the Gaullist era. The major ministries which had been involved in "coordinated planning" with local authorities (in water but also in other areas) had moved back to ordinary governance through shorter term contracts.

Nonetheless, the idea of a centralised planning wasn't abandoned. While contractualisation became progressively more important in the 70' (see below), the new born ministry of the Environment still supported the idea of strong central government intervention to protect nature and to fight pollution. It was as if the supporters of traditional regulatory planning had

found a last holdout in the Ministry of the Environment, which had become a ministry of its own, but a small and weak one. With the *Agences de l'eau*, it maintained the spirit of water planning through the elaboration of “river quality target maps” for each *département* with a consultation of various stakeholders. But the consultation was superficial and this mapping was not followed by integrated water pollution control programs, because the *Agences* were increasingly involved in their contractual relationships with the water users through a case-by-case economic incentives rather than planning.

Historical perspective : EQO in 70'

The *Schémas d'objectifs de qualité* were developed only once and then abandoned. A small river of Normandy, the Vire, was heavily polluted by dairy production and some open sewer discharges, and the pollution extended to the bay where shell fish were grown; so that the Prefect of Calvados département was obliged to forbid the selling of the oysters and mussels which were contaminated. The conflict then did not involve the public in general, but various categories of professionals, which made the bargaining easier; a pollution removal plan was elaborated, and the *Agences de l'eau* were asked to prioritise the subsidy of sewage works in the catchment. However, this was a heavy procedure, and the exceptional gravity of the situation explains why the Prefect at the time engaged himself into a water plan where the State could be considered responsible in case of failure. And at the time as well as today, water planning is difficult because we lack accurate predictive models which allocate precisely the pollution responsibilities between numerous polluters.

The other way : contractualisation in RBM

The history of public participation in RBM is also the history of several form of contracts, which give to this participation a different turn. Perceived at the beginning as technocratic institutions by local elected representatives, the *Agences de l'eau* became progressively the leaders of this approach.

Firstly, the major role of the *Agences* was to use the money raised through the levies to subsidise environmentally friendly projects which were decided by industry or local authorities. This sort of passive financing role did not place them in a good position to carry out an integrated and planned approach, for lack of legitimacy. Moreover, if the size of the six Water authorities territories was efficient to initiate a reasonable management of water resources, it appeared too wide to stimulate a clear and conscious action at local or catchment level (Martin, 1988). That's the reason why the Water authorities, in spite of their financial capacities, remained marginal actors in the planning process. Nonetheless, from the middle of the 1980's onward, they were able to contribute to a much more bottom-up approach through a procedure called River contracts (*contrats de rivière*).

At the end of the 1970's, it became evident that riparians of non-domanial rivers would participate less and less to the maintenance of the bed and banks. The duty was left to local authorities, which lacked the qualified personnel. They tended to turn towards the local representatives of the ministry of Agriculture, who were not really trained to do river bank maintenance in an ecologically friendly way. The regional branches of the ministry of the Environment, with the financial support of the Water authorities, supported the development

of specific water policy communities at catchment level to collectively organise the river maintenance.

The Water authorities would also sign 'metropolitan areas' contracts with the concerned local authorities (which are usually several) to obtain better integration between sewers and sewage works planning in cities.

A third way : the hybrid of centralised and contractualised approaches

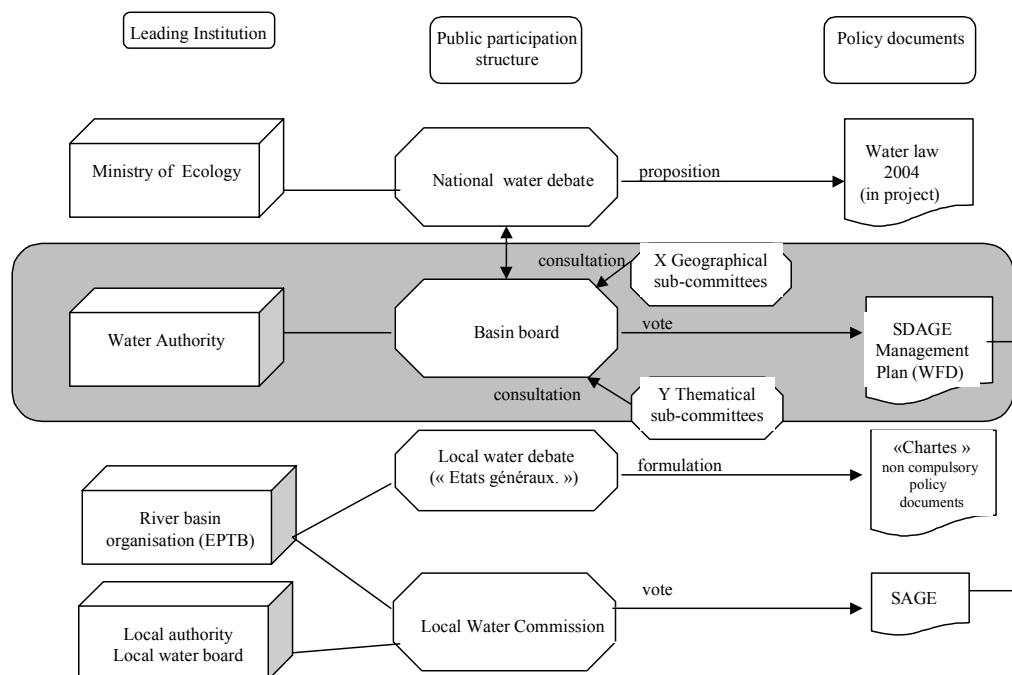
When Brice Lalonde became the first “green” minister of the Environment, the thrust for planning came back, with the idea of the Green plan. A new water law was in project, and the newly created *Direction de l'eau* obtained the decision that a national water plan should be drawn : a SAGE (*schéma d'aménagement et de gestion des eaux*). But the French Congress refused the national approach proposed, and preferred to institute a two tier planning system : the SDAGE (*schéma directeur...*) at the level of each of the 6 Agences de l'eau would be mandatory; SAGE would be a voluntary procedure adopted at catchment level in cases where elected representatives would accept to take the lead.

The SAGE is then a heavier and more formal procedure than a river contract, since the composition of the corresponding arena, the *Commission locale de l'eau* (CLE), is fixed by the law. The commission cannot by itself implement the action program, and the plan is not a legal document that can be opposed to third parties. This is typical French political design to prevent direct manipulation of the planning process by vested interests. However, the local authorities implied in the CLE can later decide to set up a "*Communauté locale de l'eau*", a special joint board or district at catchment level, to implement parts of the plan which are not the duty of private water users.

All this is however still largely in limbo even after more than ten years of implementation.

2.3 Involvement dynamics in RBM

Many procedures of public participation exist in France in the water policy area, due to the layering of administrative structures in water management. The following figure offers a simplified view of this public participation institutional framework.



Choice of public participation procedure for the case-study

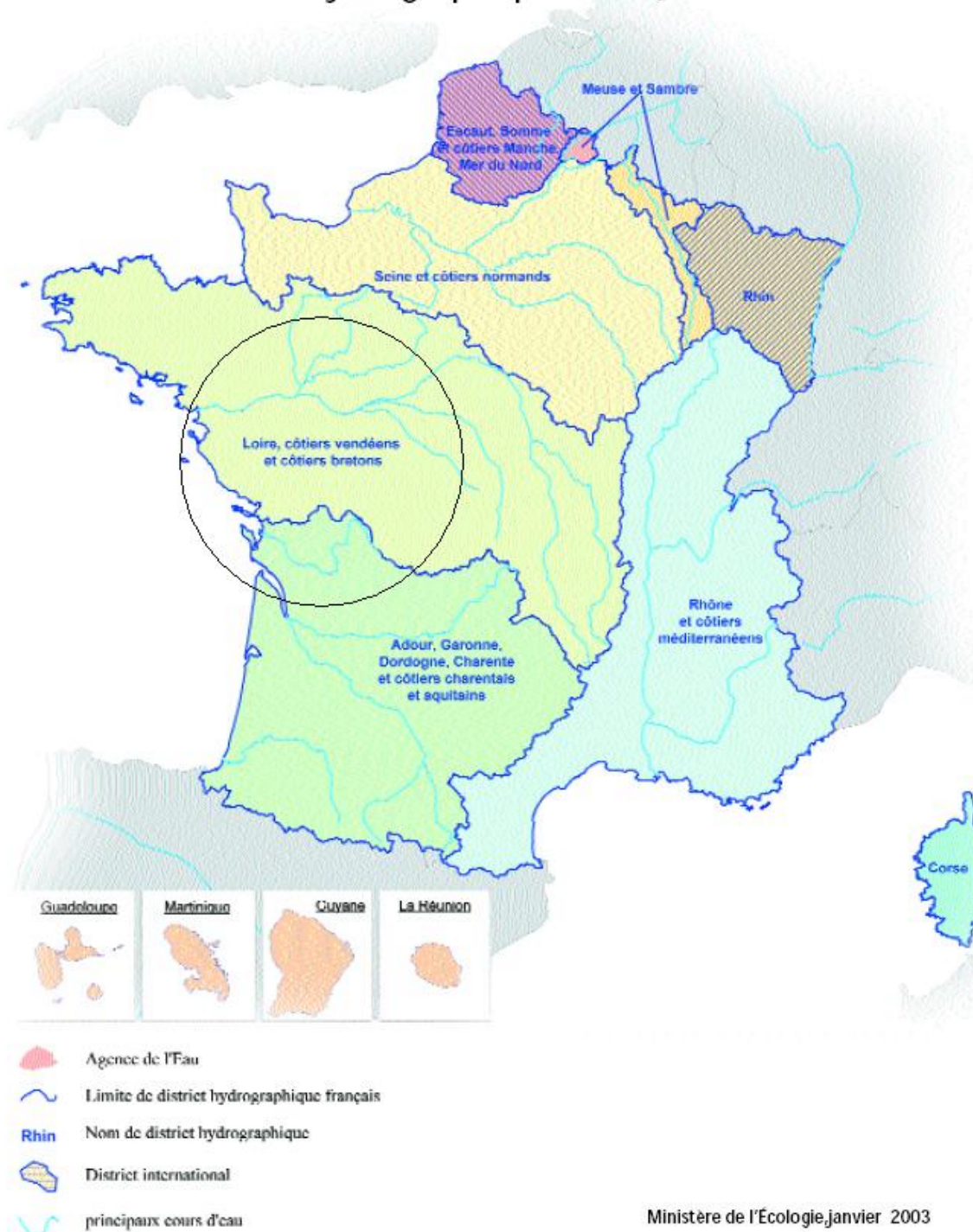
This section will take into account one form of public participation (grey zone of the figure) : the SDAGE process (see before, in chapter on RBMP history).

The SDAGE plays a pivotal role in the French water policy at the regional level ; it is the main tool of the water authorities, themselves an essential component of the French water management structure. The Basin boards are also the key participatory institution intervening in the WFD implementation.

Others forms of public participation have been excluded for reasons of clarity and relevance: the current national debate (2003-2004) is mainly oriented towards the reform of the water law ; the various, often limited, forms of public participation, linked to local water management (River, bay, lake contracts, rural contracts etc). Many land management, or sectoral policy actions related to water (land use procedure, industrial or agricultural best practices operations) present a participatory aspect, but they are not directly concerned by RBM ; the SAGE process, conducted by the local water boards (i.e. local authorities

associated for this purpose) which is the equivalent of the SDAGE "on the field".

Les districts hydrographiques français



Selection of the case study

The scale of the Loire river case is regional, covering a large part of the French territory, (around 25%) and a large population (11, 5 millions) An important factor of choice has been the exemplary nature of this case, regarding public participation objectives. The case can be

considered as a successful experience in this regard, and is viewed as a model by official actors, as well as by NGOs.

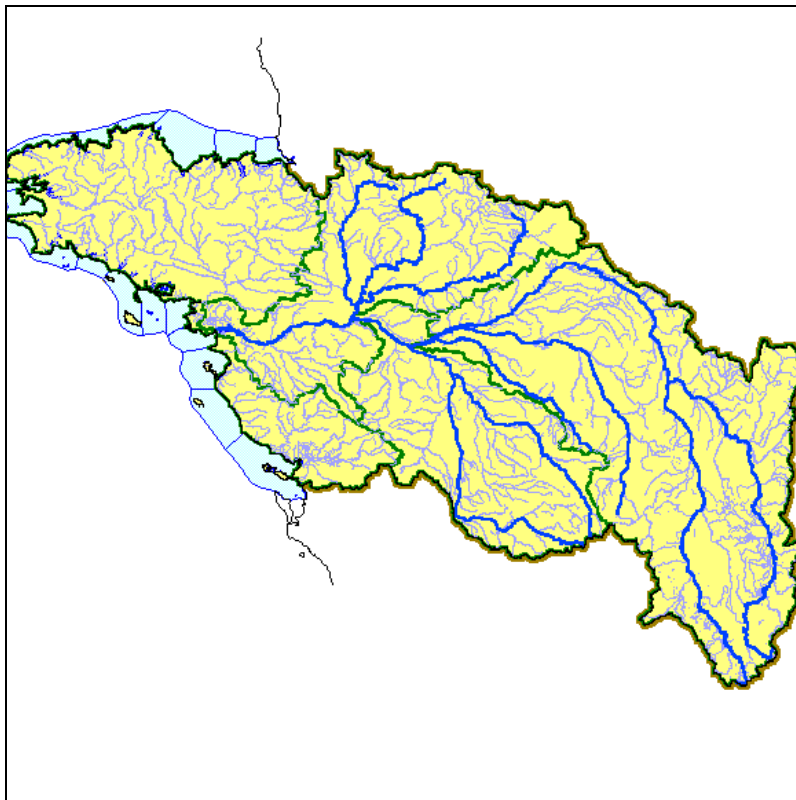
In this case, major policy changes have occurred in the last decade where public participation played a central role : in the Loire area, it was the abandonment of the project to “tame” the river(through more dams and levies) and the implementation of floodplain management solutions After an overview of issues and policy evolution in the area, the case study presents (2.3.1) forms of public participation used, participants levels and decisions (2.3.2) policy change, processes, factors pivotal in evolution, especially in relation with social learning process.

The Loire, “fleuve royal”

The case-study on the Loire focuses on the involvement dynamics in RBM at a regional scale.

The Loire is the main stream of the area covered by the Loire-Brittany Water Authority (LBWA), which is one of the largest in France (155.000 km², 28% of the French territory and 20% of the population). The Loire is 1020 km long, from its source in the mountains of the *Massif Central* (only 150 km north of the Mediterranean sea) to its estuary on the Atlantic coast, at Saint-Nazaire. It flows through several regions (Auvergne, Burgundy, Touraine, Anjou) and cities (Orleans, Tours and Nantes) and receives the waters of major tributaries, like the *Vienne, Indre, Cher, Allier* rivers.

The Loire river basin is the largest in France, covering 115.000 km², with a total amount of 40 billion m³ of water flowing every year. These characteristics and its role in French history as a place of residence for kings, gives to the Loire a special aura in the collective memory : after being the “fleuve royal”, it became the “*fleuve national*”, situated in the heart of the land.



[The hydrography of the Loire-Brittanny Water Basin – The Loire]

An interesting dimension of the Loire RBM history is the recent evolution from conflict to cooperation, from harsh opposition between users to their collaboration in a common decision making process. This section aims to understand how this evolution has been made possible, i.e. what concrete operations have transformed former opponents into partners.

This process of policy change can be summarized in four phases :

1- the conflict has its source in a single decision, taken in January 1986, to build four dams on the Loire River Basin (tributaries included) with several objectives (flood control and prevention, low flow alleviation, water supply for urban and agricultural purposes) for a total budget of 358 millions of euros.

The coalition of actors supporting this project gathered state representatives (environmental and agricultural ministry) ; local forces (the *EPALA – Etablissement Public d'Aménagement de la Loire et de ses Affluents* – Public body for the development of Loire and its tributaries – federating numerous local authorities like *régions, départements etc*) ; and the LBWA (Loire Brittany Water Agency) representing the other water users.

2- A few months later, a first group of local, national (FFSPN, Federation française des sociétés de protection de la nature) and international associations (WWF), , whose number grows rapidly, opposed this decision and started a struggle against the dams, especially one of them (localised at the *Serre de la Farre* site) inundating 600 hectares of environmental sensitive area.

The campaign (called *Loire Vivante*, Living Loire) used all means to promote the cancellation of the project, from lawsuit and building-site occupation, to massive street protest, petition, and media-oriented action. The association also produced or used technical and scientific expertise to undermine the rationale of the dam.

3- From 1986 to 1994, the two coalitions fought for their cause, lobbying and negotiating at the same time, the State (Ministry of the Environment), the intermediary. Eventually, in 1994, a first agreement was signed between these actors, the *Plan Loire Grandeur Nature* (PLGN).

The agreement included the cancellation of the most controversial dam (*Serre de la Farre*), some non-structural actions against floods and a global study, conducted by an independant team (*l'Equipe Pluridisciplinaire Loire*, the Loire pluridisciplinary team), aimed at “establishing the facts” for a future decision.

4. After 1994, this agreement offer a basis on which exchanges and negotiations are taken further. It is especially the case during the elaboration of the *SDAGE* (Water Master Plan, see above) which take into account this agreement. The same can be said for other informal discussions between environmentalists, local authorities and state representants.

In 1999-2001 a second agreement is signed (*Plan Loire Grandeur Nature 2* (PLGN2)) which brings new financial resources to the policy resulting from this process. The main orientations, shared by the major partners, shows an important evolution in comparison with the 1986 project : floodplain management is now predominant, using a method nicknamed 3P (for prevention, protection and prevision), instead of structural solutions (dams and heightened levies).

To understand this evolution and the role of the public participation tools, it is necessary, firstly, to present in detail the various forms of this participation in the process (section 2.3.1) ; after that, it will be possible to analyse how people and organisations have been involved, and the consequences on the change of policy.

2.3.1 Type / level of involvement

During the period 1986-2001, three forms of public participation are used on the Loire-Brittany territory. This section seeks to describe these forms, what kind of public is involved and what are the levels of involvement.

Basin committee

The Basin Committee is the first form of public participation and the most visible at the river basin scale. This committee gathers three types of stakeholders : elected representatives (49 members, representing local authorities : *région, départements, communes*), the water users (consumers, NGOs, agricultural and industrial interests, etc.) ; the state services (departmental and regional directions, public bodies, etc.)

The Loire-Brittany Basin Committee, as other basin committee (see supra) votes taxes on water uses, defines the main orientation of water policy in the area and decides which public works, utilities or purification system have to be subsidized.

Several *commissions* (geographical or thematic) increase the number of participants invited to participate to the works of the Basin Committee; but these commissions have no legal status nor real powers. There are six geographical commissions in the river basin ; the Loire river is cut in three parts, each one covered by a different commission ; the number and topic of the thematic commissions depend on the agenda (except from the funding commission, which distributes subsidies). There is no “scientific” commission or committee in Loire-Brittany.

Although its positive public participation objectives, some aspects of this “water parliament”, as it is sometimes called, are criticized by the participants themselves².

- the Basin Committee members meet together only twice a year, which gives them little time to create productive interactions. As a matter of fact, these meetings are perceived as “*grandes messes*” (solemn ceremonies) in which only a few people talk, the majority listening to their interventions. An important consequence of this is that the members rarely act as relays of the Basin Committee messages toward their organisations, groups or constituencies (local authorities, professions, or even state services).
- the geographical commissions have the same defects. Although they involve more people, they remain distant from the operational level, ie in France the *département* or the *infra-département* level (see figure supra, point 1). They also lack of legitimacy due to their non-official status, which hinders people to participate actively.

For all these reasons, the Basin Committee didn't have a real influence in the making of the 1994 agreement (Lewis, 2001 : 186) even if some of the actors of the controversy were members of this institution. If there is undoubtedly an active form of public participation in the Basin Committee – for example on decision concerning tax levels- , it is necessary to consider other forms to explain the evolution observed in water policies.

The informal negotiation process

The main and the most problematic feature of the conflict triggered by the 1986 decision is that it overflowed the institutional frames and developed itself at various scales :

- concerning the institutional frames, the movement created in response to the 1996 development project by-passed deliberately the official public participation devices : as we said, the Basin Committee was not used by protesters as an arena for expressing their position. They also protested against the procedure of Public inquiry (see supra, 2.2) which validated the project (although 4.000 negative remarks were formulated during the procedure).
- concerning scales, the protestation was, at the same time, very local (the associations on the building site), regional (the federation of association, like the *FRAPNA, Nature Centre*)

² - (Tassili, 2003) . This consultancy report has been elaborated from 35 interviews with Basin Committee members, who were asked to assess this institution, in relation with the public participation objectives.

national (direct intervention of the central administration) and international (with the financial, logistical and symbolic support of the WWF, among others)

Confronted to this overflowing of the traditional institutions and this complicated scale effects, the minister of environment recreated an *ad hoc* participatory device in 1989 (Boddaert, 1998) ; it organised concretely working groups between the mains opponents, which were gathered to solve the main problematic issues. By-passing the ordinary procedures, this action gave a new legitimacy to the environmental movement. At the same time, the dissent was canalised into a new institutional form;

The SDAGE elaboration

The third type of public participation is best viewed as the result of this action to re-enlist non-recognized but central participants. The making of the SDAGE (*Schéma directeur d'aménagement et de gestion des eaux*, Water master plan, see *supra*) from 1993 to 1996 is significant against this backdrop³. Formally the SDAGE aims at opening the consultation to the largest number of participants. The document synthetising the diagnostic and the mains orientation of the water policy was presented in various commissions (the usual geographic and new thematic commissions) and / or sent for comments to the stakeholders (Garin, 2001).

The public consulted is the organisations or groups represented in the Basin Committee, from local authorities to environmental association or business interest. The remarks or proposition of modification are systematically collected. They are synthetised and submitted to the Basin Committee which decide to accept the modifications or not. This process is reiterated with the new version. 140 detailed answers have been received by the LBWA through this process, proposing 700 amendments; (which were at 90% directly introduced in the SDAGE. Once the final version was officially approved, by the state representative , in 1997, the document was sent to the 8000 local authorities of the LBRB for their information.

The SDAGE process appears obviously more oriented toward a large public participation, the exchange of information and the elaboration of a shared vision than the Basin Committee. A further investigation is however needed to analyse the effects of public involvement on the nature of the policy change which occurred in the Loire river management.

2.3.2 How participants are involved

This section focus on the relation between public participation, social learning and policy change. It examines more specifically the influences that determined the forms of public participation in the Loire river management and - and how did this determine the nature, strengths and outcome of public participation.

In the case of the Loire, two major factors have been identified : firstly, the structure of governance, which tend to limit the effects of public participation and social learning ; secondly, the pressure of the public sphere, which produce positive incentives on institutional social learning⁴.

³ - It is not really surprising as the the law creating the SDAGE was elaborated and discussed in 1988-1991, when the struggle against the dams was at its highest intensity – mainly in the Loire area but also in other parts of France.

⁴ - The empirical findings lead to abandon analytical developpment on the role of information and communication tools; as a matter of fact, even the more complex process – the SDAGE consultation – was taken

Limitations due to the governance structure

Public participation is constrained by the governing structure with the effect to limit social learning and policy changes. The dominant form of public participation is strongly determined by the governing structure, which usually resist to external pressure for change (Bachrach and Baratz, 1962).

In the Loire area, until the evolution that occurred in 1986-1994 the main public participation tool – the Basin Committee – appears to be oriented toward specific policy choice, determined by its past history. In 1986, the development project based on dams is supported and partly funded by the LBWA and the Basin Committee, in continuity with previous « developmental » orientation. One of the first decision of the Basin Committee (created in 1968) was to recommend in 1971 the building of several dams on the Loire river basin. Historically the LBWA and the Basin Committee aims at facilitating the funding of economic development project related to water, through local taxes, with a user-taxpayer participation. Consequently, the LBWA remained until 1990 strongly linked to the economic and territorial development lobbies⁵

This governance structure, which includes public participation institutions, produce bias toward the exclusion of some participants and / or issues. Before the evolution engaged around 1990, the main focus of the debates in the Basin Committee or the LBWA remains on technical issues (purification devices or levels, programs of investments, level of taxes and subsidies etc.). There is little reference to the environmental quality objectives and no collective reflection on their value.

This bias is reinforced by the fact that the knowledge base of the water management is produced according to this orientation towards development. During this period, the research and the studies explored the technico-economical faisability of water project, rather than their overall utility. The main expertise comes from the SHC (*Service hydraulique centralisateur*, Central Hydraulic Service), a technical service attached to the Public works ministry.

On the other hand, the water management is not replaced in the context of local development or protection policies, at least not explicitly. Many members, including mayor and elected representatives, regret the lack of explanation concerning water policy measures and actions, which are not connected to the socio-economic and local realities they know. Among environmentalists and users associations, the Water agency is described as a world of engineers, thinking in terms of kilometers of pipes or sewage treatment plant units. Unable to speak about the social or political objectives, technicians makes the policy decision obscure and complicated, even without this goal in mind. The “technical discourse” bias heightens the level of knowledge required to understand what water management is about, and discourages an active participation.

Interesting enough, even if the situation in the LBWA has evolved since the beginning of the 90s, one central concern of the communication specialists in the Water Authority is still to produce “pedagogical translation” of the policy documents, so as to made tangible the management choice for lay persons or representatives⁶

Public space dynamics

in charge by a single person, classifying and synthetising the advice received from the stakeholders. The circulatoin of papers seems to be currently the only communication tool in action.

⁵ - The first president of the Basin Committee was also the President of a major lobbying association (*ANECLA*) ; the executive director of LBWA until 1984 became the director of the EPALA until 1996 ; etc.

⁶ - (Interview LBWA)

The Loire case also demonstrates the positive effect of external changes (in the public space, the opinion, the political field) on institutional social learning through public participation. Actually, according to the new participants of the 90s – the environmental association – these two aspects are interconnected and shouldn't be isolated. (for example when only the organisational dimension of public participation is emphasized).

A successful public participation is determined, according to these actors (a) by the capacity to mobilise constituencies and gain credibility in the public sphere (b) by the aptitude to form alliances through public participation inside the institutions and then get an access to decision making process.

- Firstly, the new stakeholders emphasize the importance of the autonomy and strength of the participants (groups or organisation) to give public participation its full meaning. In the Loire area, the public participation process becomes a tool for policy change and social learning when the environmental organisations are sufficiently organised and powerful. On the contrary, participants to the Basin Committee without political clout or public opinion support can only be passive observers, since they are unable to mobilise larger forces. The members of the “water parliament” don't represent real constituencies (except from the elected representatives). Without any measurement of their legitimacy, their strength in this area is fundamentally uncertain. This could be an explanation for the impact of rhetorical skills or personality of some participants in Basin Committee debates, which seem to have a greater role than in other assemblies. One of the solution for the associations, and more generally for new participants from the civil society, is to build up constituencies on their own. To make public participation work, for example, the new environmental actors of the 80's organised themselves in coalition, between local and regional association, to be able to speak for the whole river, from the source to the estuary. They also made continuous efforts to inform and mobilise the concerned population, to collect petition, organize massive or regular protest, etc.

At last, another mean to consolidate their legitimacy was the production of counter-expertise on regional as well as local issues, from the re-calculation of the precise consequences of a dam on the flood / low water levels, to the assessment of the environmental interest of specific areas.

- Secondly, it also appears that new stakeholders made specific efforts to develop new skills so as to use their external credibility inside the governing structure and intervene in the concrete decision making. In the Loire river management area, this means they had to understand the political and administrative machinery and its requirements (specific rhythms, implicit rules, language, etc.). They also had to find allies and form coalitions in the water management institution, especially in the LBWA, with “engineers who could evolve” (interview excerpt). This demanded to acquire at least some elements of the economical and technical idioms of the Water authority staff, and to develop argument to convince them. Coalition making concerned also the other groups of stakeholders in the Basin Committee, with which environmentalist learn to make temporary alliances, on specific objectives. This required to develop political skills and abandon a sort of otherworldliness (or “political angelism” in the words of the environmental association representative).

These forms of social learning occur between a limited number of key actors – stakeholders and administrative staff – but it was sufficient to trigger the transformation observed during the 1986-1994 period. For the environmental stakeholders, as well as for the water authority agents, this cultural evolution appears irrevocable and make the difference with other water authorities which have not goes through the same evolution, at least for some of them. This question is further explored in the next section, which summarize and generalize the findings of this case-study.

2.4 Impacts and outcome of public participation

This section aims to develop the reflection on the long term effects of public participation. To what extent is public participation in France is politically and culturally sustainable, under what conditions ? The following points present some criteria to answer these questions, using elements from the case-study above and other data⁷.

Cultural influences

Public participation experiences are determined in France by a political and historical background where representative democracy largely prevails on all other forms of citizen participation. Intervention of non-governmental actors are usually perceived as illegitimate and democratically problematic.

A concrete effect is that civil society organisations appear generally divided, ill-organised and dependant *vis a vis* the political forces. Associations lack funds, voluntary staff, and means of intervention. Except for some business organisations, and more recently for the environmental actors, social interests are not organised and have difficulties participating in public affairs. Problems related to participation are partly due to this weakness.

Consequently, when policies or projects provoke opposition, it is more often than not expressed without mediation. The struggle is conducted outside the institutional framework, usually in the streets, where radical discontent can be expressed directly. This situation creates a cultural gap between the civic movement and the governance structure, which hinders discussion and negotiations.

As the Loire case-study demonstrates, informal forms of public participation are very powerful means for citizens to express their opinions, but also an obstacle for social learning if they don't evolve toward more institutional forms. Institutional design that take into account this form of public participation appears an important objective in this cultural context.

Governance structure and institutional framework

The French governing structure in water management is multi-layered and present a complicated design (see supra). The various successes of public participation as a vehicle for social learning can be understood in reference to two states of this governing structure.

- a traditional governing structure, which took a stable form in the post-WWII period in France, globally oriented towards the promotion of economic development; the institutional framework is biased in favor of development actors and policies. As central actors of this framework since the beginning of the 70s, water authorities and basin committees remain structurally biased against the intervention of new interests (through their organizational culture, representative system, etc). In this context, public participation is necessarily limited.

- an emerging governing structure, as seen in the Loire case-study, resulting from major opposition against policies supported by the traditional governing structure. This leads to the insertion of new actors in the institutional framework (essentially, environmental associations) and a transformation of the content of policies. The evolution of the governing structure allows for a better public participation, encouraged by specific efforts towards new actors, and the general public.

Depending on the local history and the strength of the opposition to the traditional governing structure, the situation regarding public participation and its effectiveness vary : it is strongly promoted and in progress where organised environmental associations are considered as key-actors (Loire-Brittany, Rhone-Mediterranee-Corse, and the North) ; it remains weak and

⁷ - Another case study on the River Drôme has been conducted but will be made available in another document (due to the size limits of the present report). For this section, staff from the 5 other water authorities have also been interviewed (see list of contacts in annexe).

superficial where, on the contrary, environmental issues are not a priority (Adour Garonne, Seine Normandy).

Size

How the transformation toward another governing structure occurs is also largely dependant on the size of the territory.

- at local scale (500-2000 km²), the success of public participation in terms of social learning and policy change is related to the existence of a trusted local institution which can lead the procedure. The specific problem, at this small scale, is the creation of this institution devoted to water and the consolidation of its credibility. In most cases, such an institution doesn't exist in France and it has to be built up. As no real public participation can be effective without trust between participants, this creation requires time. Observations demonstrate that a period of 10-15 years appears to be the minimum to create this kind of trust⁸.

- at the regional scale, these institutions already exist in France : the Water authorities for example were not immediately accepted ; it also took several years to implement the 1964 Law creating these Authorities. Today, a certain public participation is effective, even if different levels of involvement are perceivable, as we said in the previous point. The specific problem here, if the objective is to implement a better public participation, is their necessary structural transformation, so as to give a concrete meaning to the expression "water parliament". This can be only achieved at a national scale.

Social Learning

The French experience demonstrate that public participation is a good means to create a social learning process which, in turn, will promote policy change. Nevertheless, it requires more than good will from the participants ; specific conditions have been illuminated by our case-study and the other data collected :

- Firstly, the local basis of public participation is a necessary condition. Even at a regional scale, social learning is possible if the public participation process is rooted in a specific territory, which gives tangibility to the abstract notions of water management. The integration of new actors, like the environmentalists in our case-study, is also a means to create those links between the local and the regional level, and to find adequate, effective translation of concerns between the two levels.

- Secondly, the elaboration of a shared vision, the basis of a social learning process, require an open discussion on the measurement tools, the diagnostic, and more globally on the technical matters. In all the cases, this is an important first step, demanding a strong investment from all participants to adjust methodologies, instruments, frames of interpretation, etc. If this discussion remains purely in the "technical" sphere, the agreement remains partial, and is threatened by a conflict in the "real situation".

⁸ - From the analysis of several local attempts in France, mainly through SAGE procedure, and an in depth investigation of the first case of SAGE, on the Drome river.

3 Conclusions - Overview of national approach

The French national approach is characterised by :

- More than 30 years of public participation through Basin committees ; and 10 years through the SDAGE process. This experience gives the river basin level water authorities a good basis to implement the WFD
- The recent and localised reorientation of the public participation system, towards the insertion of new key-actors with environmental concerns is evolving and introducing differences between water authorities. As a result, it is necessary to distinguish between them, as they are more or less in phase with the spirit of the directive.
- a new frontier in public participation mobilise the water sector. At the local level, the creation of water policy institutions demands time and many human and financial investments.

The main lessons learned are :

- the necessity to extend the participatory approach to technical questions, given their importance in the social learning process
- the importance to link more closely participatory democracy and representative democracy.

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Annex 1 : Some events related to public participation in France

- 1810 Law on expropriation, creating a public inquiry process
- 1901 Law allowing people to organise in associations
- 1902 Commission Départementale d'Hygiène (Local Public Health Commission, a local consultative body)
- 1958 Cinquième République (Fifth Republic : Presidential regime, with a strong technocratic power base and a weak Parliament ; the President is directly elected by the citizens)
- 1959 Emergence of civil society and citizens movements
- 1960 - Neo-corporatist institutions (socio-economic committees, basin boards..)
- 1968 "Mai 68" : street riots and strikes in opposition to the Gaullist government.
- 1968 Creation of GAM ("Groupe d'action municipaux" : municipal action groups) promoting community participation and citizen involvement in cities.
- 1968-1969 The government promotes "la participation" on socio-economical issues
- 1971-1977 Official and judicial critics against the traditional "Public inquiry" system
- 1976 Partial reform of public inquiry process (directive "Chirac")
- 1976 Law on the protection of nature : compulsory Environment impact assessment for some projects ; environmental associations are legally entitled to sue ;
- 1976-1977 Creation of national consultative commissions (nuclear, energy, water etc.)
- 1978 Law on access to administrative documents (right to information)
- 1979 Law on administrative decisions, imposing the justification of public actions
- 1979 Experimental public hearings (audition publiques) set up by the Public works Ministry
- 1979 Commission départementale des carrières (Local Quarry Commission); followed by others, created in 1977 (Urbanism), 1981 (historical monuments), 1985 (tourism), 1986 (concerning hunting and wilderness), etc.
- 1981 Socialist government
- 1982-83 Decentralisation laws
- 1982: Law on Inland Transports (Loi d'orientation sur le transport intérieur,) introducing multi-criteria evaluation of public works projects.
- 1983 Law on the democratisation of public inquiry ("Loi Bouchardeau")
- 1985 onward: rising oppositions against infrastructure projects throughout France
- 1988 Administrative reform ("Public service modernisation") promoting users participation
- 1992 "Circulaire Bianco" improving concertation on transports and infrastructures projects
- 1995 Environmental Law : National commission on public debate - CNDP

1998-1999 : Regional and national debates on Public Health (among many others in the 90's, on energy, industrial risks, education, territorial development etc.)

1998 "Citizen juries" on Genetically Modified Organisms (then on climate, energy, etc.)

1999 Law on the development of the territory ("Loi Voynet") promoting local democracy in public decision.

2002 Law on local democracy creating consultative committees (Conseil de quartiers)

Annex 2 : Interviews (june-november 2003)

M Basserat, Adour Garonne Water Authority, Toulouse

Mr Cameo Pons, Adou-Garonne Basin Committee, Toulouse

Mr Dartout, Seine Normandy Water Authority, Nanterre

Mrs Dericq, Artois Picardie Water Authority, Arras

Mrs Frechin, Rhin-Meuse Water Authority, Strasbourg

Mr Jouve, District Val de Drome, Die

Mr Rakedjian, DIREN Ile de France, Paris

Mr Roy, IFEN, Orleans

Mrs Revot, Loire Brittany Water Authority

Mr Rousseau, FNE Loire Brittany Basin Committee, Orléans

Mr Renard, Nature Centre, Orléans

Mr Salvetti, Seine Normandy Water Authority, Nanterre

Mr Thielleke, EPIDOR, Dordogne

Mr Verrot, Rhone-mediterranee-Corse Water Authority, Lyon