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Public participation in water management in France

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## **Project TIGER**

**“Policy decision-making and public participation on energy, chemicals  
and water management: an international comparative study”  
(Global Initiative Program)**

**Osaka University**

## **Public participation in water management in France**

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To start, let us set out the basics of French law on water.<sup>1</sup> While some of the foundations of water policy date back to the sixteenth century, the current legal system is based on the Law of 16 December 1964, which has since been regularly amended, supplemented and modernized, in particular under the influence of European Union law.

The law of 1964 sets out an original administrative framework for water management, delineating administrative districts in terms of ecological criteria, namely watershed basins that correspond to the wider area basins. Thus, it creates a system of both decentralized and collaborative management. This law has been filled out by other important water protection texts such as the Fisheries Law of 29 June 1984, the Water Law of 3 January 1992, the Law of 21 April 2004 transposing the European Framework Directive on water of 23 October 2000 and the Water and aquatic environments law of 30 December 2006.

The 1992 Law sets out the principles of true integrated water management, recognizing that water is part of the “common heritage” of the Nation, but it also goes further, designing a system of balanced management by taking into account the different uses of water and, above all, creating planning instruments. As for the 2000 Directive, it lays down an obligation to achieve results, compelling Member States to ensure a good general state of all water by 2015; it demands that the chemical quality of water be improved; and it provides for concerted and integrated management, largely inspired by the French approach. It therefore includes watershed management – requiring the identification of watershed basins –, management through planning and programming, and public consultation efforts. Of course, the Directive goes even further on some points, particularly with regard to public participation in planning, and French law has therefore had to make certain changes. Still, the French system of water management remains a model – albeit with imperfections – which has in large part inspired European Union law in this area.

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<sup>1</sup> Sur le droit de l'eau, B. Drobenko ; Introduction au droit de l'eau, 1<sup>ère</sup> éd., Johannet ; A. Van Lang, Droit de l'environnement, PUF, 2012, p. 392 ; v. aussi les rubriques eaux *in* Dictionnaire permanent et Lamy droit de l'eau.

The purpose of our intervention is not to present management in general, but to present the role of public participation in management.

**The question is: what is the place, the role and the types of public participation in water management, under this framework or not?**

It is necessary to remind that, under French law, the Constitutional Charter for the Environment recognizes in Article 7 that, “Everyone has the right, in the conditions and to the extent provided for by law, to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment.”

**With a wide view of the topic, to appreciate the public participation, a distinction can be made between two major types of public participation in water management: managing through consultation and managing through contract. These two types of participation give some indications on the place, the role, the influence, the consequences of the public participation for water management and the type of person among the public.**

### **1. Public participation in water management via consultation**

The consultation has the goal to involve the public by asking it its advice concerning water management.

The use of public consultation in the French system of water management seems obvious at first. The French law on water uses a system of management based on “joint planning”, associating all users. Thus, while water policy is decided by the State, this decision feeds on the participation of a wide range of actors: the State, local government and the public.

However, it is important to distinguish between two types of participation: indirect (A) and direct participation (B).

#### **A/ Indirect participation**

**First, the public is represented by various organizations, some of which have both a consultative and a decision-making role.** At the national level, one example of a consultative body is the National Water Committee. It is chaired by a parliamentarian but is composed of representatives from State and local authorities, NGOs, Basin Committees, Economic and social Council, and from among water users: more precisely, 50 users and two qualified persons.

These Users are appointed by order in French Ministry of Ecology, Energy and Sustainable Development.

We can find (art. D. 2013-3 Environmental French Code): 5 member of the Chamber of agriculture, 8 members of various NGO's concerning protection of water and fisheries, one representative of fish farming operation and aquaculture, 4 representative of consumer associations, 6 representative of environmental associations, one representative of Water sports, two representative of the associations of inland navigation, one representative of tourism associations, one representative of water supplier, two representative of residents associations, one representative of the professional fishing, one representative of the shellfish farming, , one representative of the sea fishing, one representative of the sea transports, two representative of the Trade and Industrie Chamber, 3 representative of industrial residents, 2 representative of companies of electricity production, one representative of very special types of users, such as the food and feed industries, the chemical industries, the paper industry, oil industries, metalurgical industries, extractive industries.

**In particular, the role of the National Water Committee is consulted concerning national water policy.** Its advice is required by the French Ministry of Environment concerning various water issues. It can also give an opinion on proposed reforms and, through an advisory committee, make suggestions concerning the price of water and the quality of public services.

Quantitatively, if you observe the website of the Committee, we can notice a number of 4 reports of advice in 2014 and 6 in 2013, concerning the main water national problems, such as the development of hydropower and the flooding.

To conclude, in one hand the place of the public participation seems to be important because it's covers a broad number of bodies. However, on another hand, we must take into account the influence of this Committee is restricted to a consultation.

**It is also interesting, to note that this consultation procedure also exists at the local level, outside of any national and European regulation. The Parisian Water Observatory in Paris is a very interesting example of this.** The Paris City Hall manages the public water service in Paris. An extra-municipal commission – the Parisian Water Observatory – was set up by the Mayor of Paris in 2006 in order to organize the public consultation process and citizen control over municipal water policy, through the consultation and also various forms of opening debate. Thus, the Observatory is informed of all important deliberations regarding the management of water, on which it issues an opinion before they are passed on to the Council of Paris. This is the case for the Annual Activity Reports, of *Eau de Paris* and on the price and quality of public drinking water and sanitation services. This Observatory consists of four teams of experts, including the “Representatives of Parisian water users: one representative per consumer association, tenants association, or environmental protection agency, per property owners’ and managers’ association, per social housing landlord, association, major water consumers’ group, professional organization, trade union, etc.”

The president of the Parisian Water Observatory is, by the way, a member of very important consumer associations: UFC Que choisir.

Everybody can participate voluntary in the debate organized by the Observatory. It is just required to be registered. The participation is quite open.

Looking into the website, we can note the various advices and reports. For instance, one is called “Objectives contract”. Its goals is to assess the water management set up by the city of Paris, the role of the users within the management, and in particular their role in the quality of water, its price and the possibility to monitoring the consumption. The different reports transcribe precisely the oral exchanges and debates. We can see that all the users have the possibility to give their opinion.

However, in any case, here again, public participation remains weak in Paris as it has no mandatory bearing on policy making; the public merely provides an opinion.

**That's why it is important to note that other institutions are not just consulted; they have normative co-decision power.** This is the case of the Basin Committee, which implements water policy priorities at the level of the district, called a basin. It is this committee that participates in drawing up the Master Plan for Water Development and Management (SDAGE), a very important planning tool at the regional level. The Committee is chaired by an elected local official and is composed of representatives from local authorities (40%), the State (20%) and users and associations (40%). We should also mention the Local Water Commission, again composed in part by users, which participates in drawing up the Plan for Water Development and Management (SAGE, the equivalent of SDAGE at the local level).

Here we can find again the areas of the agriculture, the fishing, the tourism, the suppliers of electricity and water, the consumer and fisheries associations. And here again we can find some qualified persons.

What about the direct participation?

## **B/ The direct participation**

Apart from these institutions, the public may be consulted more generally on national or local water policy. This consultation often takes place during the drawing up of a SDAGE plans. Indeed, the Basin Committee, a key player in planning, is responsible for summarizing the major issues raised by water management and carrying out public consultation on these issues. The summary is made available to the public, in the Head office of the water agency and online, at least six months prior to the Plan being drawn up by the Prefectures, and on internet, notably in the website of the Committee and the French Ministry of Environnement. The public is also informed through the newspapers. We should bear in mind that the European directive is more demanding in terms of the length of the consultation period. Once the SDAGE has been drawn up on the basis of the consultation results, the public is consulted again, one year prior to the implementation of the SDAGE. This second consultation is a type of environmental assessment. Associations must, for their part, apply to receive the documents necessary to give their opinion, while the European Directive requires active participation by associations... At the local SAGE level, public consultation is repeated after the SAGE has been drawn up by the Local Water Commission (CLE).

In this context, and under the influence of the Framework Directive on water, public consultations on the future of water and the aquatic environment were carried out by the largest Basin Committees between 1 November 2012 and 30 April 2013. They were intended to gather public input on key issues identified by stakeholders and experts, which was to help prepare water management plans (as required under the regulatory framework) for the period 2016-2021. The responses are summarized on the website of the Ministry of Environment, where we also learn that the responses were collected via internet surveys. The summary also suggests that more than 25 000 people from civil society were consulted. While the Ministry congratulates itself, other sources – and in particular the European Water Movement (organization for the improvement of water management in Europe and promotion of public participation via the Framework Directive) – suggest that the French consultation was a “fiasco”!

Another consultation is now underway on new plans concerning the management of water, flood risks and the marine environment. This consultation is meant to help prepare the new plans for management of marine regions. It is interesting to look more closely at the questions to which the public may respond on the website of the Ministry. It states that before accessing documents relating to each region, the public may answer seven questions:

***In your opinion, does climate change have an impact on water resources and the risks of flooding?***

*-No, none*

*Yes, it most certainly has an impact on water resources and the risk of flooding*

*Yes, it has an impact on water resources*

*Yes, it has an impact on the risk of flooding*

*No, I don't think so*

*I don't have sufficient information to say*

*I have other concerns*

***What do you know about marine and freshwater pollution caused by pesticides, drugs, hazardous substances, and their effects on human health, biodiversity...? (Two answers possible)***

*I am aware*

*I am not informed*

*I've heard of it*

*I find it worrying*

*I'm not worried*

*I have other concerns*

*I'm ready to take action to reduce such pollution*

*Do you know if your home is in a flood-risk area and do you feel well-informed about the risk of flooding? (Two answers possible)*

*Do you think that the action taken to manage water, floods and the marine environment creates jobs and is a source of innovation?*

*Did you know that the National Observatory of Water and Sanitation Services provides information on the price and quality (such as network leaks) of such services?*

*Did you know that plastic waste is one of the main causes of degradation of the marine environment and its biodiversity?*

*Do you think that marine energy could play an important role in the development of renewable energy in France?*

We can see that the questions are not uninteresting and they are very broad and have only the goal to give to the some indication about the level of public interest for the problems concerning water. Above all, this participation has any influence on the setting up of the SDAGE.

For this reason, it is interesting to consider an alternative form of participation in water management: contracting.

## **2. Public participation in water management via contract**

In French law, water management is also a prime example of management via contract. The aim is to involve different stakeholders in water management through the use of a contractual agreement. More precisely, it is important to distinguish between two types of participation: the contracting “process” (A) and and the contract concluded (B).

### **A/ The contracting process**



First, we can notice a form of contract exist to implement management plans, in particular SDAGEs at the regional level (or SAGEs at the local level). Even French Law talks here about contract, in reality, this contract is called contract only because there is a process of negotiation to implement a national or regional plan. That's why it is better to talk about contracting process.

These are Master Plans for Water Development and Management, for each basin, which set out the objectives for balanced management of water resources and fish stocks, and goals for the quantity and quality of water taking into account hydroelectric potential. To implement these plans, French legislation authorizes the conclusion of certain contracts generally called "Environment contracts" (*contrat de milieu*). Among these, the "river contract"<sup>2</sup> is the most well-known and was explicitly acknowledged in a 1981 Memorandum. Nowadays, the contract is covered by a Memorandum of 30 January 2004. The "river contract" enables work to be carried out or actions performed for the benefit of the river over a period of several years using a financing plan and a contracting authority. It relies on a specific procedure. Any local authority or user of the river may submit an application for approval to the Basin Committee. If it is approved, a River Committee is formed by order of the Prefect to draw up the contract and monitor its implementation. This Committee is composed of three teams, including one composed of users and associations. Still, the "river contract" is concluded only between the Prefect of the department (on behalf of the State), the Water Agency and local authorities. Moreover, on closer inspection, in the vast majority of River Committees, users are only moderately represented and potentially active environmental protection associations are often excluded, while farmers often have the upper hand!<sup>3</sup>

## **B/ Contracts concluded**

Second, there are contracts that directly seek out the consent of those interested in water management. This is some real contracts concluded with users of water. This contracting is therefore a form of public participation.

**This is the case of certain contracts provided for by law: the contract Natura 2000 for example.** The Natura 2000 contract implements the European Habitats Directive of 21 May

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<sup>2</sup> A. Brun, Les contrats de rivière en France, Un outil de gestion concertée de la ressource en local, in G. Schneier-Madanes, L'eau mondialisée, L découverte, 2010, p. 305.

<sup>3</sup> V. les critiques de A. Brun, p. 315.

1992, which sets up a network of European natural sites (terrestrial and marine), identified for the rarity or the fragility of wildlife (animal or plant) and their habitats. Conservation objectives within these areas may be achieved contractually, by agreement between the administrative authority and the holders of real and personal rights located at these sites. Often these contractual obligations prove beneficial for water management. These representatives of civil society therefore participate in the protection of water.

**The same goes for farmers with sustainable farming contracts (Decree of 22 July 2003) and the “agri-environmental contracts” originating in Regulation No 1698/2005 of 20 September 2005 on support for rural development.** These contracts concluded between a local authority and a farmer enable the latter to receive an annual fee in exchange for actions promoting protection of the environment, including water quality. In this case, those clearly involved in polluting water become actors in water management.

**Furthermore, there are contracts originating in practice.** Thus, some authors<sup>4</sup> show how public authorities voluntarily negotiate contracts with farmers and wine-growers, which aim to steer their farming activities towards more respect for water quality.

**Among these contracts involving public participation, we will briefly discuss the well-known example of the “Vittel-Contrexéville (Vosges)” water protection measures.**

The Vittel company, producing mineral water from the Vittel natural sources, had noted an increase in the levels of nitrates in surface water since the 1970s due to the 3500 ha of land being cultivated by 40 farmers on the Vittel plateau. The experts knew that the only solution was to change agricultural methods, but a solution had to be found in order to make those potentially responsible for the pollution take action. In 1992, the Vittel company bought up a majority of the agricultural land in the Vittel area in order to protect water catchments. The company then made this land available to farmers on the condition that they adopt agricultural practices more environmentally favourable to the quality of water catchment. It is now recognized that the contracts between farmers and the mineral water company enabled substantial improvements to water quality.

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<sup>4</sup> V. l'étude de C. Bosc et I. Doussan, La gestion contractuelle de l'eau avec les agriculteurs est-elle durable ?, Agriculture, alimentation, territoires, janv/fev 2009, p. 69 s.

### **Finally, public participation in water management calls for distinctions to be drawn:**

First, it is important to distinguish between the modes of participation, namely general consultation and special contracts, direct and indirect consultation, contractualing by the process or the contractual agreement itself.

Second, it is important to distinguish between the different influences of the participation: participation for giving an advice or for taking part into a public making decision or for implement some environmental measures ...

Third, it is also important to distinguish the different persons involved in the public participation : namely water users, local residents, kind of associations, owners and farmers...

Certainly, environmental protection associations directly concerned with the protection of water appear here to be sometimes relatively not enough. However, it should be remembered that in addition to action of this sort, these associations – depending on their core activities – also have certain rights provided under the law. On the one hand, according to Article L. 141-2 of the Environmental Code, “The environmental protection associations approved under Article L. 141-1 and the associations mentioned in Article L. 433-2 are called upon, within the framework of the laws and regulations in force, to participate in the environmental action of public bodies.” Article L. 141-3 specifies:

May be designated to participate in the environmental debate that takes place in the framework of the advisory bodies set up to deal with environmental policies and sustainable development, without prejudice to the specific measures concerning the Economic, Social and Environmental Council:

- associations working exclusively for the protection of the environment;
- associations of users of nature, or associations and bodies given a public service mission by the legislator to manage fish stocks, fauna, flora or protection of natural environments;
- associations working for environmental education;
- recognized charitable foundations whose principal purpose is the protection of the environment or environmental education.

As such, it would seem that, when recognized as serving the interests of water protection, NGOs are called to serve on advisory committees implementing water policy. On the other

hand, NGOs also have the right to sue for damages arising out of an infringement of the collective interests they defend, especially those related to water. Indeed, Article L. 142-2 of the Environmental Code makes explicit reference to associations defending the quality of the water.

It would seem then that, via such associations, public participation may take on a third form: that of the legal challenge...