

# Towards a new drinking water governance in France? From Europe to local scale

*Roussary, A., Ph. D. Student*

*CERTOP, Université Toulouse le Mirail*

*Maison de la Recherche, 5 allées Antonio Machado, 31058 Toulouse, FRANCE*

## **Abstract:**

Drinking water resource management owes today integrate: on one hand, statutory orders (sanitary, environmental, transparency of service, the new code of public market) and the other parts, the economic stakes (mutualization and rationalization of the costs of infrastructure), politics (legislative, local) and social (solidarity, access and price of water acceptable for all).

Two logics of management emanate: a logic of river basin, to reinforce the status of the Water Agencies and their financing capacity (Water Law, 2006); and a logic of local government (*départementalisation*), based on an «intensification of the role of *département*».

Those logics fit into a long term process, implying various scales of management (European-national-regional-local), engage the implication (administrative, technical and financial), the responsibility and the partnership between multiple actors of the public and private sphere.

We make the hypothesis that the heterogeneousness - of orders, of stakes and the modalities of articulation of these logics according to scales and contexts of management - draws new forms of drinking water territorial governance that we want to describe and analysis.

The objective of the research is to unwind the thread of the governance of drinking water quality by putting a glance crossed at several levels of structuralization of the public action (national, regional, departmental and local).

A transversal analysis of this multi-level approach has to allow understanding the variety, complexity and redefining of drinking water resource management. Through this research, we intend to seize tensions between stability and social change at various scales of implementation of health-environment public policies.

## **Introduction**

In France, if quality of tap waters globally improved for 20 years, quality of ground and superficial waters did not stop degrading. But, the European Water Framework Directive (WFD) (directive 2000 / 60 / CE) defines a frame for the management and the protection of waters by large catchments basins to the European plan and imposes, on the horizon 2015, the good ecological status of water. “*The good status of surface water is reached when its ecological state and its chemical state are at least good. The good state of a groundwater is reached when its quantitative state and its chemical state are at least good.*” (<http://www.eau-adour-garonne.fr/>).

Concurrently, the territorialisation of water policy saw itself strengthened by an institutional context which promotes the subsidiarity principle as a condition of public policies effectiveness.

In what measure do sanitary and environmental objectives re-configure traditional relations between actors of territorial resource management? How do “new” resolution modes of environment and public health problems shape?

## **1. The institutionalization of health and environment politics : a multi-level governance**

We are interested in conditions of public policies production and appropriation in a context of health-environment policies institutionalization. These politics are part of a long-term process of *political modernization* (Leroy and Arts, 2006). They re-configure themselves through structural changes such as the Europeanization of public policies. In this context, the conditions of resolving public problems within modern societies are presented as the necessity of making interact several actors; by mobilizing their capacity of responsibility to act with efficiency (Salles, 2006); in a democratic frame; in various scales of space (Europe, State, region ...) and of time (intergenerational solidarity).

“Public action” in drinking water field is marked by an increase of actors and interests coalitions. In every territorial scale of production and implementation of devices, appears new political configuration where the relations between State, market and civil society are less hermetic (Theys, 2002). It gives place to *political arrangements* which in turn are going to act on the structuralization of environmental public action.

For example, the European Water Framework Directive (WFD) appears as “an *answer to recent economic, political and social changes relative to water management, including change of government with governance, liberalization of market water and emergence of new institutions, actors, etc. and their respective relations. [...]*” (Kaika, 2003).

Multi-level governance seems to be relevant to report this complex profusion. It aims to approach the dispersion of responsibilities and accountability in public action of the central government in two directions: vertically, to actors localized at other territorial levels; but also horizontally, to non-state actors (Bache and Flinders, 2004).

Nevertheless, if it allows a global approach of public policies, it can lead to remain focused “*on power mechanisms independently of material on which they are applied*” (Marcou, 2006). That is why, we could not ignore the “*policy substance*” (including the public problem posed in political authorities). The policy substance constitutes the anchorpoint of the analysis of public policies: of their institutionalization (Duran and Thoenig, 1996), of their instruments (Lascoumes and Le Galès, 2004), of their actors, of the logics of territorialisation (decentralization, subsidiarity). They are themselves constituent elements of stability-change process in the modes and levels of governance.

The objective is to bring a contribution to the analysis of environmental governance (Leroy and Arts, 2006; Jordan, 2005) through drinking water, major stake in the interface of public health and environment questions.

## **2. Drinking water resource management in heart of sanitary, social, economic, political and environmental stakes**

The awareness of sanitary stakes connected to drinking water quality is ancient in France as in Europe. When the awareness of the degradation of water resources settled down more recently since the 90s. Gradually, European and national water resource policies of sector-based type followed by “integrated management” have being built. Those policies produced and implemented an arsenal of devices.

In France, after more than 40 years of Water Law (1964-2007), the report is severe. If the quality of distributed waters globally improved for 20 years, thanks to improvement and generalization of treatment, the quality of ground and superficial waters did not stop degrading (IFEN, 2006).

However, there is an “interdependence” between environment and public health policies. Drinking water stake can be a mainspring of the preservation of water resources quality. Nevertheless, the discount of “the national fund for water conveyances development” (FNDAE), today disappeared, over the period 1995-1999, indicates that investments assigned to resource improvement are essentially dedicated to installation or to modification of treatment stations and to creation of new water catchments.

From an economic point of view, these curative solutions imply more and more raised investments often not accessible to small communities, while private enterprises of public utility delegation administrate considerable sums. These phenomena have for logical consequence a strong increase of price paid by user and the question of drinking water accessibility for the poorest families settles with acuteness. Today the daily management of drinking water service has to compose with complex stakes and political logics which overflow municipal frame.

The organization of the public supply of drinking water, water production and water distribution are since the French revolution under municipality responsibility. Mayors are penally responsible for the quality of service, for information and for price rates. Today, their control of water price is strongly questioned, notably in the case of delegation to private enterprises.

In consequence the increase of a political speech presenting municipal frame as “maladjusted” to drinking water management (Miquel, 2003) and insisting as such on the “pivot role of the *département*”.

The *Département* is a territorial and administrative division of France. It in account 100 since 1985. Every *département* is managed by a prefect appointed in a discretionary way by the government. The *département* is also a decentralized local authority steered by the General Council. The General Council is the deliberative assembly of the *département*, elected by half every 3 years in the direct universal suffrage by the voters of the *département* during the cantonal elections.

The law gives only a limited power to the *département* in drinking water policy, while it is one of main funders through subsidies to local authorities (ADF and CFE, 2006).

At the same time, we note nowadays in France a tendency towards a social demand in determination of responsibilities. On April 18th, 2001, the French State was condemned by the administrative court of Rennes, at the request of the *Lyonnaise des Eaux*, to pay off the compensation paid by the same company to consumers of *Côtes-d'Armor* in 1995.

It ensues from it a certain crisis of consumer confidence towards public utilities of drinking water distribution and quality of distributed waters, which echoes on the consumption of mineral water or spring water.

The problem posed by the generalization of curative measures, to cure the sanitary imperative of a water distribution corresponding to quality standards, is their temporary character towards the quick degradation of raw waters and the increase of drinking water consumption (Villey-Desmeserets and Ballay, 2001). Some municipalities deliver regularly a water non-corresponding to sanitary standards which can lead authorities to forbid the consumption

during several months putting them in front of the management of a sanitary and political crisis (Bosc and al ., 2005).

But, the European Water Framework Directive (WFD) imposes, on the horizon 2015, the good ecological status of water. In addition, it implies the necessity of an overall policy of protection to assure the present or future resources conservation intended for the production of drinking water (Art. 7, directive 2000/60/CE). In a requirement of means is so added a requirement of concrete efficiency of devices.

### 3. When subsidiarity confronts with decentralization ...

The French decentralization and the European construction lean on different political stakes and logics of action. Nevertheless, these processes produce locally a similar effect, a “*radical transformation of the State place but not its disappearance*” (Duran and Thoenig, 1996). The evolution of water management territorial frame for the 18th century is revealing there (Ghiotti, 2004).

Concurrently, the territorialisation of the water policy saw itself strengthened by an institutional context which promotes the subsidiarity principle (Barraqué, 1997) as a condition of public policies effectiveness.

In the contexts of the WFD, the “French environment Charter” and the relaunching of the decentralization movement, the answer of the French authorities gets organized gradually. The “French environment Charter” “guaranteed in every person “the right to live in a well-balanced and respectful environment of his health” and it imposes to have to “participate in the conservation and in the improvement of environment” ” (IFEN, 2006).

If the necessity of rethinking the national water policy is presented as imperative, the institutionalization and the concrete implementation of change is more problematic.

Various devices were mobilized such as the evaluation of preservation policies of drinking water resource, the national debate in 2003, the National Plan Health-environment in 2004 and the Water law on aquatic environments in December, 2006. The question of modes and scales of management (Mermet and Treyer, 2001) appears as a fundamental stake in drinking water policy field.

It ensues from it that drinking water resource management owes today integrate: on one hand, statutory orders (sanitary, environmental, transparency of service, the new code of public market) and the other parts, the economic stakes (mutualization and rationalization of the costs of infrastructure), politics (legislatives, locals) and social (solidarity, access and price of water acceptable for all).

We note two logics which can have varied modalities of coordination. They emanate from the analysis of parliamentary works, from debates of the Water law and from empirical researches:

- The first one corresponds in a subsidiary logic of river basin, and of management mainly “fluxial” (Narcy, 2004), to reinforce the status of the Water Agencies and their financing capacity (Flory, 2003).

Six French water agencies established by the water law of 1964, clarified by law of January 3rd, 1992. They correspond to six big hydrological French basins. Every agency is a public establishment placed under the double supervision of the ministry of Ecology and Sustainable development and the ministry of Economy, Finances and

Industry. They are managed by a board of directors which defines the multiannual program of intervention and votes the budget. They implement the orientations of water policy, in agreement with the basin committee, expressed in the guiding plan of waters management (<http://www.eau-adour-garonne.fr/>). “However, in accordance with the French administrative tradition, agencies have neither police power, nor project ownership: they do not punish, they build nothing by themselves. They can only incite the water users, included in basin committees, to tax themselves of royalties to be able to obtain helps to improve their environmental performances. We say that they apply the polluter-payer principle, because of royalties system. Really, the economists discovered that the level of royalties was far too much weak so that this principle applies.” (Barraqué, 2004).

- The second recovers from a logic of local government (Launay, 2003) (*départementalisation*), based on an intensification of the role of the *département* (departmental funds, departmental syndicate of drinking water supply).

The *département* is presented as the relevant scale of management to conciliate the stakes relative to drinking water and territory.

Those logics fit into a long term process, implying various scales of management (national-regional-local), engage the implication (administrative, technical and financial), the responsibility and the partnership between multiple actors of public and private sphere (Ghiotti, 2004).

We make the hypothesis that the heterogeneousness - of the orders, the stakes and the modalities of articulation of these logics according to scales and contexts of management - draws new forms of drinking water territorial governance that we want to describe and analysis. At the same time, we attend a tightening of political choices on sanitary questions and an assertion of the sovereign regalian missions of delegated State services. This is to reach objectives defined by law (Law of public health of 2004, application of European directives). The third hypothesis is this situation leads to a dissolution of environmental stake in the local and sanitary stakes.

This leads us to an intermediate questioning, which is to seize in different territorial scale of production and implementation of drinking water policy:

- How and through which political coalitions can we articulate two logics of management: one which is coming from principles of the European Community management, and another one which is coming French decentralization?
- What are the production and distribution modalities of resources (financial, organizational)?
- How do the stakeholders justify their positions and legitimize their speeches?

We suggest putting a more specific glance on three levels (national, regional, departmental and local) of the structuralization of the public action in conservation of drinking water resource.

Two points have to be underline. First of all, every axis cannot be analyzed outside global political, institutional and organizational frame in which it joins. Furthermore, following the example of WFD elaboration process, filtering processes in decision exist within, but also between, every level of governance, both by ascending and descending transfers. That is why these three approaches are complementary.

#### **4. The French Law on Water and Aquatic Environments (LEMA, 2006) : Production and implementation of a political arrangement**

It is a question of seeing how to conciliate these two logics (river basin/*departmentalisation*) of the management in water policy on a national scale. We chose to approach it through the reform of the policy of water in France. After a clarification of the failure of the previous reforms of the Water Law of 1992, we will have to analyse the conditions of the legal formalization of the French Law on Water and Aquatic Environments voted in 2006. That is why we analysed the parliamentary debates.

This work allowed us to update the formalization of a political arrangement (Leroy and Arts, 2006) around status and role of the *département* in water governance. Once dimensions and elaboration process of the arrangement identified, it is a question of seeing how it is appropriated and implemented by the actors within the water policy managed on a regional scale (Midi-Pyrénées/Adour Garonne Basin).

This initiative joins in the continuity of Stéphane Ghiotti's research works. He set as entered the study of legislative and procedural texts to analyse "*territorial actors' games connected to water and to territorial development and various constructed territorial stemming from these two dynamics*" (Ghiotti, 2007). Nevertheless, an approach which would limit itself to the contents of law, that is a strictly legal approach, would be an initiative of an incomplete research initiative in the sense that "*the legal production masks social stakes which show themselves on the occasion of rule definition*" (Salles, 1993). Also, speeches produced during parliamentary debates are inseparable of individual interviews with actors having participated in the process. This work has to allow to decode the real stakes around the governance of drinking water and thus to light the following report.

There is an unmistakable political consensus on the main principles of the LEMA: reach the good status of waters and make users participate in the management of water and purification services and aquatic circles. Nevertheless, discords are obvious, between political groups and chambers, on the definition of financial means (ceiling of royalties and expenses as well as their distribution) and on the actors in charge of implementing them (Generals council, Water Agency, the representativeness of users).

We chose to centre our analysis on the question of the *départements* status and role in "planning and governance" (Title 4 of the LEMA) of drinking water management. This question was widely source of debate in the discussions, within and between the Senate and the National Assembly, and more exactly formalized through 4 articles. The article 28 bis notably was introduced by the Senate in first reading, and then deleted by the National Assembly, reintroduced in the second reading, again deleted by the National Assembly in the second reading, which was confirmed in joint committee of the two chambers. It would have given the possibility to General Councils to create a departmental fund for water supply and purification, intended to finance assistance and technical support for municipalities or for public establishments of intermunicipal cooperation (EPCI). This fund would have been fed by a supplementary tax in water invoice of a maximal amount of 5 cents (euro) per cubic metre of consummate water.

The deletion of this article of the final text, finally compensated with financial and contractual guarantees with Water Agencies registered in other articles, is the result of a political arrangement. This one saw itself institutionalized during the procedure after a "parliamentary conflict". This last one is really the expression of stakes and multiple interests (social, economic, political, environmental) carried by actors (senators and deputies) belonging to one

or several scales (local, national) of definition of problems from part of an accumulation of mandates (councillor, mayor, local councillor), or of function (farmer, manufacturer). That is why, once the legal formalization of this political arrangement (Table 1) is identified, the research work consists in going taking back to the progress of the legislative procedure towards the global context of elaboration. The objective being to identify the political process which led to its execution.

For Michel Foucault, “*we cannot understand pragmatic practices, collective arrangements, the functioning of tools or procedures by isolating them from objectives and values assigned to public action; but especially by forgetting the rationality forms [...] which structure in depth these practices or these arrangements. It is this combination of tools, objectives and systems of rationality which defines the governmentality*” (Theys, 2002). In that, the political arrangement, conceptualized in the works of the research team GAP (Governance and Places) of the Nijmegen University, appears to us as a relevant frame of analysis in this first approach as well as during the research. Understood as a “*process of structuralization and stabilization of the organization of a political given domain*” (Van Tatenhoven J and al., 2000), it declines in 4 dimensions: the actors (the nature of implied political coalitions); the distribution of resources and power between coalitions and their capacity to mobilize them; discourses (substantial / institutional and organizational); nature and game rules.

**Table 1.** Attribution of départements: Legal formalization of a political arrangement (LEMA, 2006)

Deleted or modified articles	Articles adopted after the Joint committee of the two chambers (2006)
<p><b>Art.28 bis (deleted):</b> Creation of a departmental Fund for water and purification fed by a supplementary tax in water invoice of a maximal amount of 5 cents (euro) per cubic meter of consummate water.</p>	<p><b>Art.28:</b> Extending the intervention domain of SATESE (Services of technical assistance to the exploitation of epuration station) in the protection of water resource, in the maintenance and in the restoration of aquatic circles.</p> <p><b>Art.35:</b> Water Agencies cross with départements financing drinking water supply and purification an agreement defining the criteria of subsidies distribution.</p>
<p><b>Art.36 (modified):</b> Ceiling of Water Agencies expenses at 12 billion euro.</p>	<p><b>Art.36:</b> - Ceiling of Water Agencies expenses at 14 billion euro. - Contribution paid by Water Agencies in conformance with the solidarity to rural districts in application of VI of the same article cannot be lower than 1 billion euro (2007-2012).</p>

The second axis of the research consists in analyzing the implementation of the politics of the conservation of drinking water resource in regional scale. It is a question of seeing how the political arrangement is suited and implemented by actors within the policy led by the Adour Garonne Water Agency (AGWA).

The Adour Garonne basin and the *Midi-Pyrénées* region appear as symptomatic territories of problems relative to drinking water resource expressed at national level (contagions of water resources, drought). The objectives relative to drinking water resource subscribed in the 9th program of the AGWA and the “Midi-Pyrénées” Health-Environment Regional Plan are to reduce water resources pollution (bacteriological and phytosanitary) and to increase the safety of drinking water supply by water catchments protection and " strategic resources ". As the terms approach, it becomes evident that their obtaining depends for a great part on sociological factors linked to the responsibility of these various actors to resolve sanitary situations already identified as problematic.

One of the main stakes in the LEMA was to renew the institutional organization of Water Agencies by making constitutional the device of royalties voted until today by basin committees. The LEMA gives henceforth to the parliament the power to fix rules concerning the funding, the rates ceiling and the modalities of recovery.

Within Water Agencies, the basin committee defines the priorities of water policy and discusses on its orientations. It is notably going to revise the guiding plan of waters management. The Board of directors defines the program of intervention and implements it essentially by its considerations of subventions attribution (<http://www.eau-adour-garonne.fr/>).

It is still up to basin Committees to modulate rates of royalties which they will propose to the Board of directors to replace, from 2008, the present conditions.

We practice since the beginning of year 2007, a follow-up of the board meetings of the AGWA. In these arena where takes place, among others, the distribution of financing relative to water policy, it is a question of observing and of analysing the interactions between the actors of administrations, of territorial collectivities, of the AGWA, of the representatives of users in order to identify the decision-making of the definition of means.

Furthermore, we dread implementation conditions of sanitary objectives fixed by the law through the analysis of the modalities of actions of the actors responsible for the respect of a water distribution corresponding to drinkability standards (technicians and engineers of health-environment services of regional and departmental sanitary and social action Direction).

We question the interinstitutional organization aims at seizing the changes in the action modalities of institutional actors. For example, we can quote the evolution of functions of technicians and engineers of services delegated by the State (public health, agriculture and equipment). It notably shows itself by the increasing part of the inspection and the use of penalty at the same time as the sub-treatment of activities (water takings, engineering) in private company.

These works showed the significance of local stakes (economic, social, politic ...) in the studied decision-makings. That is why the third axis of the research attempts to see which forms of territorial and institutional organization of drinking water management ensue from confrontation between: European and national orders, appropriation and implementation of the political arrangement at the regional and departmental levels, and local stakes.

## **5. Towards a new territorial governance of drinking water?**

We make the hypothesis that localization of local stakes structures the level of “centralization” and the organization forms of drinking water resource management.

The analysis carries in a way more deepened on the study of concrete cases:

- The implementation of policies of drinking water resources preservation of the punctual and diffuse pollutions: protection of drinking water catchments (EVEC, 2006), action plans to incite farmer to modify their practices of phytosanitary treatments (Busca and al., 2006).
- The reorganization process of the services of drinkable water supply: creation of intermunicipal syndicate and the lock of water catchment after bans on consumption of water (Roussary, 2006); and creation of departmental syndicate.

But the objective of research also is to have a wider vision of impacts of local stakes on one hand, on the structuralization of drinking water supply and on the other hand, on water resource management (environmental stake). That is why, in a complementary approach, methodology consists at first in realizing, at the level of eight *départements* of the Midi-Pyrénées Region, a typology of stakes and territorial organization forms. That is to say: cross qualitative and quantitative data on drinking water resource with socioeconomic, demographic, political and administrative data (intermunicipality, others public utility).

The typology in departmental scale allows us to kick away global criteria of the structuralization process which we want to bring to light. But a last level of analysis to local scale, by the monograph, seems to us indispensable. Monograph indeed allows us to illustrate this process but especially to understand more finely the springs.

#### Statutory orders, socioeconomic stakes and local political culture: The example of *départementalisation* of drinking water management in the Ariège (France)

The law 83-8 of January 7th, 1983 relative to distribution of skills between municipalities, *départements*, regions and State, introduced the responsibility for General Councils of the distribution of the National Fund for the Development of Water conveyances. The fund was deleted in 2004 and on January 1st, 2005, Water Agencies took back this competence thanks to the Urban and Rural solidarity. We can note that “*in 2005, the budget lines were not supply and funds did not arrive to Water Agencies*” (Technician of the AGWA).

*Départements* do not have any other solution than to be equipped with voluntary skills (drinking water supply, purification), to keep an "interventionist" role with municipalities in water management.

The Ariège is a *département* with rural dominant traditionally anchored to the left. “Political” or “politician” vision, the General Council claims this “socialist culture” through the federation of public utilities in departmental structures. All the municipalities are joined in a "departmental syndicate of electrified communities ". The president of this syndicate is also vice president of the Council General and administrator to the AGWA. At the same time, there is a departmental syndicate of waste, which a big part of municipalities are members. The Ariège account 332 municipalities. The departmental mixed syndicate of water supply and purification (SMDEA) was created in 2005. It includes 277 municipalities among which 248 of the Ariège (28 of the Haute-Garonne and 1 of the Aude). It manages the complete sectors of drinking water and purification and goes client for the municipalities which subscribed. If the General Council is only member of the mixed syndicate, it is the president of the General Council who is also the president of the SMDEA. The municipalities delegated to the SMDEA the totality of their skills and as such, it invests, manages and exploits networks after an administrative and financial transfer (loans, assets and liabilities of municipalities). The objective of this syndicate is the rationalization: of water distribution, collection, transport and waste water treatment; and later a single price of water on the department. The Ariège signed with the AGWA a strategic framework agreement for the

period 2007-2012 which joins now directly in the LEMA. The protocol was the object of a negotiation between a delegate of the AGWA and the General Council. This one joins directly in the continuation of implementation analysis at local scale of the political arrangement described above.

Through this case of study, it is a question of questioning a phenomenon of "centralization" of drinking water resource management in departmental scale which appears to begin. Various parliamentary reports (Miquel, 2003; Launay, 2005), institutional (ADF, 2006) and empirical works (Grandgirard, 2007; Roussary, 2006) tend to bring to light an institutional will (through notably General Councils) to reorganize a management of municipal and intermunicipal drinking water supply in a departmental scale. Through a pressure by public financing and an order in individual empowerment of elected representatives in front of stakes in public health, the reassurance of supplies and the rationalization of infrastructures are firstly called by administrators to justify the necessity of exceeding the treatment in the local scale of problems connected to drinking water resource.

## Conclusion

A transversal analysis of this multi-level approach has to allow to understand the variety, the complexity and the redefining of drinking water resource management. This management is being set up.

Through this research, we intend to seize tensions between stability and social change at various scales of the implementation of health-environment public policies.

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