



A comparison between French & Chinese Legal Systems in terms of Integrated Water Resources Management

**A study conducted with the International
Network of Basin Organizations (INBO)**

Authors :

- **Mr. Xiaoliu YANG**, Professor at Peking University
- **Mr. Jean-François DONZIER**, Permanent Secretary of INBO
- **Mrs. Coralie NOEL**, Deputy to Permanent Secretary of INBO

PRESENTED BY :

Xiaoliu YANG,

Professor, Peking University

A study conducted with the International Network of Basin Organizations (INBO)

188 members in 68 countries

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Operated by the
International
Office for Water
(Paris, France)



Objective of the study

- Compare the legal systems for water management between France and China
- Focus on integrated water resources management
- 45 years of river basin management in France + implementation of the European Water Framework Directive : how this experience can be transferred to China?



Institutional frame (1/3)



- 65 millions inhab.
- 26 regions, 101 departments, 36 700 municipalities
- Decentralization process since 19th century
- Since 1800 (Napoleon) : State representative in each department = Prefect → deconcentrated State services
- 1982, Decentralization Law: Responsibilities transferred to Departments and Regions becoming autonomous communities



- 1,3 billion inhab.
- 33 provinces (each from 10 to 80 million inhab)
- Centralized State power but subsidiarity to lower Provincial levels
- Decentralization process since the 80's
- Provincial and municipal governments can establish their own legal systems ... leads to differences in implementation and coordination problems



Institutional frame (2/3)



- Water is a « common national heritage » and belongs to nobody, including the State itself
- State : only a regulating and controlling role
- Decentralized water management
 - At municipality level for drinking water supply and sanitation utilities
 - At river basin level for water resources



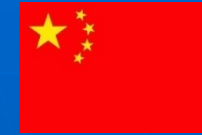
- State ownership of water defined in the Constitution
- Right to use water must be authorized by the central government
- Provincial and lower levels of government can not decide for water allocation



Institutional frame (3/3)



- Competent ministry: Ministry of Ecology merging different sectors (cross-sectoral approach)
- Inter-ministerial coordination
 - At national level: Inter-Ministerial Mission for Water under the Prime Minister
 - At local level : inter-services mission for water under the Prefect of Department



- Competent Ministry : Ministry of Water Resources
- But a number of ministries and bureaus involved in water policy (9 water departments)
- Complicated mechanisms
- Overlapping and fragmentation of responsibilities between ministries
- Insufficient coordination, inconsistent policy
- Regional variation on interpretation & implementation



Legislation



- 1964 Water Law : founder law of basin management, creation of basin institutions (Basin Committee for dialogue between users, Water Agency for funding), cost recovery principle (PP principle)
- 1984 Fishing Law : ecological minimal flow imposed to dam managers to sustain aquatic ecosystems
- 1992 Water Law : planning documents at river basin level, overall management of all waters, balanced management between uses with a priority for drinking water supply
- 2000 European Water Framework Directive : common objectives, methods and deadlines for the 27 Member States of EU ; achieving a good status of waters in 2015 ; applying river basin management to all EU countries
- 2006 Water and Aquatic Environment Law : updating in financing system of Water Agencies, creation of the National Agency for Water and Aquatic Environment



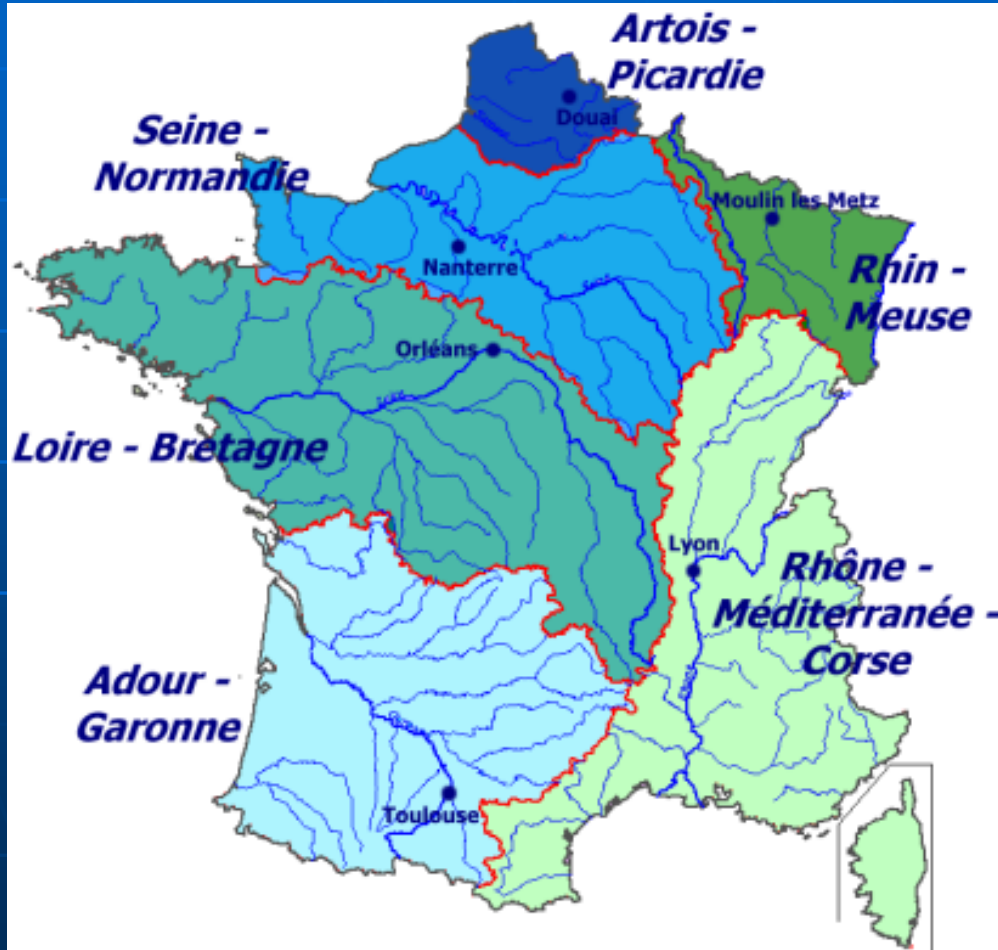
Legislation



- 2002 Water Law of the People's republic of China (on the basis of an older law of 1988) : key law defining nature of water management in China
 - water allocation, rights and permits, river basin management, water use efficiency, protection of water resources from pollution
 - for the first time in China, the 2002 law defines river basin management institutions, requires planning and cost recovery
- 1997 Flood Control Law
- 1996 Law on Prevention and Control of Water Pollution
- 1999 Marine Environmental Protection Law
- Translation of central government laws into each provincial legislation + own provincial regulations : regional differences in the implementation
- Conflicts between ministries over policymaking & implementation
- Difficulty to enforce the laws on water pollution control and water allocation to urban & rural water users



River basin management in France



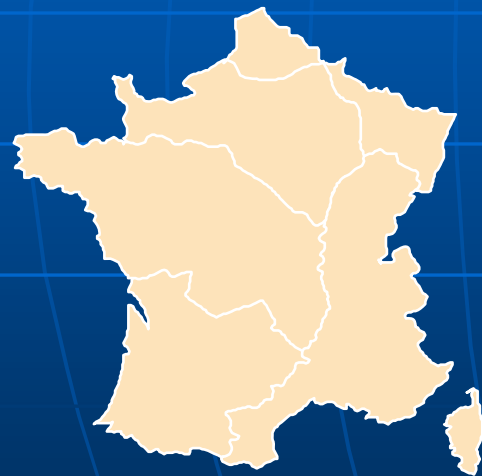
- Established by the 1964 Water Law
- Coordination of State policy and State services in each large river basin : « **Basin Coordinating Prefect** »
- **Financially autonomous Water Agencies** with 2 levers for action (incentive through water taxes, financial assistance through redistribution of funds)
- **Multiyear planning through management plans** for large river basin and sub-basins



Concerted water planning at 3 levels

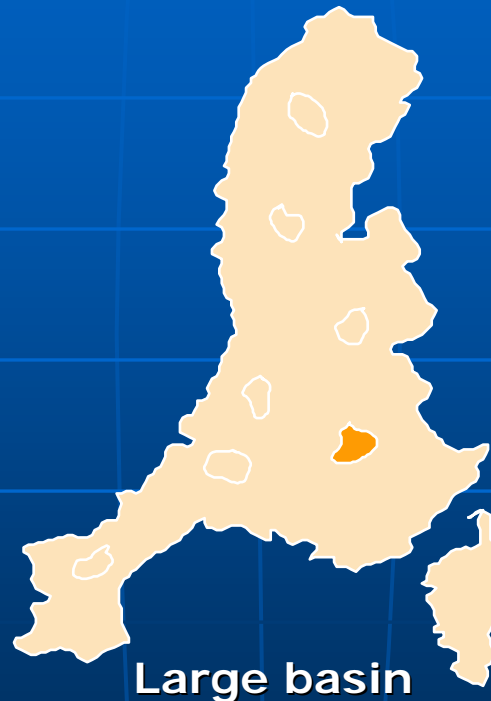


Multi-year management plans : legal status, elaborated in a **concerted way with all users**, endorsed by the State representatives



NATIONAL WATER COMMITTEE ↓

Advice on draft laws,
reforms, national
action plans



Large basin

RIVER BASIN COMMITTEE ↓

Water Management
Master Plan (SDAGE)



Sub-basin

LOCAL WATER COMMISSION ↓

Water Management
Plan (SAGE)

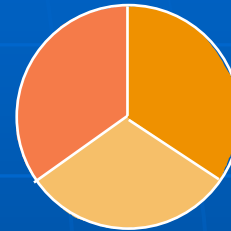


River Basin Institutions involving users



Basin Committee : a "Water Parliament"

Stakeholders



Elected officials

State representatives

Water Agency : a financing institution at river basin level

Implementation of
Polluter pays
principle

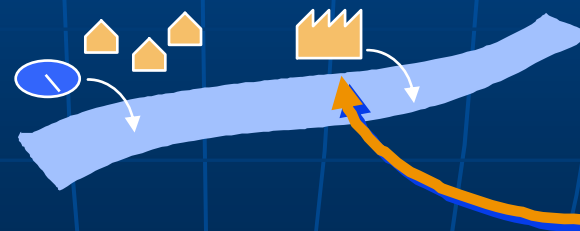
Water charges
(water consumption, pollution, ...)

€

Redistribution
according to
priorities in the
basin

€

Financial action programmes (6 years)
→ 12 billion euros (2009-2015)
Financial support to WFD programmes of measures



Subsidies (grants & loans)
(treatments, river restoration, ...)



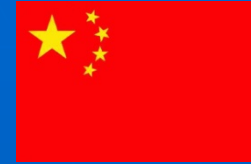
River basin management in China



- Supported by the 2002 Water Law
- Combination between river basin administration and administrative division administration
- Centralized top-down process
- **7 River Basin Commissions** under the Ministry of Water Resources
 - river basin planning, flood control, water allocation, water protection, soil conservation, management and construction projects



Water planning



- 2002 Water Law :
 - National strategic planning
 - River basin planning
 - Regional planning
 - Mid and long-term plan for demand and supply of water
 - Masterplan for integrated management of water environment
 - Annual water allocation plans
- **River basin management holds today a high position in China's water policy system** with specific targets in the national 5-year plan for environmental protection 2006-2010



Information and participation



- **General access to documents**, documentation service in each Water Agency, National Water Information System made available on Internet
- **Active participation of all stakeholders** (national water committee, river basin committees, local water commissions, consultative commissions of users for water supply & sanitation utilities)
- **Consultation procedures of the general public for projects** having environmental impacts
- **Consultation procedures of the general public for the elaboration of river basin management plans** (European Directive) : 3 consultation steps of 6 months each with questionnaires and public debates



- Only consultation procedures of governmental agencies and lower administrative levels
- **No provision for consultation of stakeholders & general public**
- Environmental Impact Assessment Law (2002) allows the public to have access to EIA reports but reluctance of administrative bureaus and local officials
- **Lack of public participation and transparency**, leading to a lack of support from the public to water policy



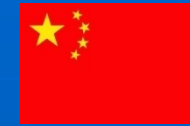
Water permitting system



- « **Water Police** » :
 - **Authorization (or not)** of activities for all abstractions and discharges according to the impacts and the vulnerability of the environment
 - **Decision made by the local government** (Prefect) after coordination between all administrations concerned
 - **Compliance control with regulations** : controllers making reports and sanctions when infringements, penal sanctions by the judge for serious cases
- Permits also required for the right to use water
 - **Local government has no right to allocate or dispose of waters**
 - Water belongs to the State which implements a system combining **control of total water quantity & management by quota**
 - Critical importance because of droughts. Example: water allocation plan for the Yellow River
 - Quotas for industrial water use
 - A **new system of water use permits and payments** is to be implemented by the State
 - **Total load control permit system** for wastewater discharge by firms, **close down policy** for serious polluters



Financing



- **Specific financial resources for water** collected by Water Agencies (polluter pays principle) : water pays for water
 - Multi-year investment program : Action Plan of the Water Agency supports investments to reduce pollution and preserve aquatic environments
 - Current evolution towards a more cost-effective logic and environmental logic (optimizing the investment of each euro, reaching the good water status of the WFD)
- Funds transferred from central government to river basin organizations allowing their development
 - But **lack of basin funding mechanism**
 - 2007 : **environmental protection included as budget item** in national public finance → significant progress in public finance for the environment



Water pricing



- **Average: 3 euros/m³ (1,5 USD)**
- 0,8 % of household budget
- Water bill: a fixed part (covers fixed costs) + a **variable part (proportional to consumption)**
- The water price includes the cost of the drinking water supply & sanitation services + water taxes levied by Water Agencies
- **7 different water taxes** to integrate environmental cost, but level of water taxes remains low for agriculture (political issue)

- New 2002 Water Law
→ **reform of water pricing** from free/cheap pricing in the collective era to commodity pricing
→ **increase in water price**
- 4,5 Yuan / m³ (0,55 USD) for Beijing, **one of the highest in China**
- 1,8 Yuan/m³ (0,22 USD) in Kunming



Concluding remarks

- Development of regulations and financial tools in China, but implementation of IWRM and river basin management faces many challenges
- **Issues to be improved:**
 - clarification of responsibilities between ministries, cross-sectoral coordination, basin-wide structures and systems
 - reinforce polluter-pays principle
 - basin funding mechanisms
 - stakeholder and public participation
- Usefulness of a partnership for **capacity building** with International Office for Water and INBO within the EU/China River Basin Management Program



Thank you for your attention!

The complete study is available on
www.inbo-news.org

