

# INSPECTION & SANCTIONS IN THE FIELD OF WATER POLICY – HISTORY & PRESENTATION OF THE FRENCH SYSTEM-

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# INTERVENTION PLAN

I) HISTORICAL SUMMARY

II) INSTITUTIONAL & JURISDICTION SUMMARY

III) PRESENTATION OF INSPECTION & SANCTIONS

# I) HISTORICAL SUMMARY

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# HISTORY OF THE WATER LAW IN FRANCE

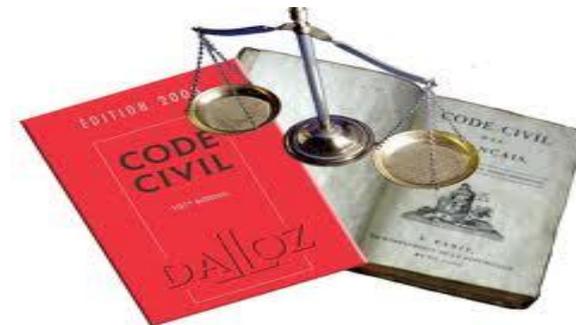
## ROMAN LAW



ROYAL DECREES  
(see Dec. Moulins 1566)



**CIVIL CODE (1804)**  
**RURAL CODE (1807)**  
Local uses



# HISTORY OF FRENCH LAW ON WATER

ROMAN LAW

Royal Decrees

(see Decrees of MOULINS 1566)  
"Ownership rights" **1789 REVOLUTION**

CIVIL CODE

Law on the state of waters

**1898**

Quantitative aspects, hydraulic works

**Law on energy**

1919

Utilization of water energy

**LAW ON WATER POLLUTION**

1964

**Discharge authorization**  
**Water basin financial agencies / Water basin committees**  
**"The polluter pays" principle**  
**Financial unity/ Users of the water basin**

**Law on floods**

1973

**Decree**

**Prefect as coordinator of the water basin**

1987

## WATER LAW

1992

- § Unity of resource and habitat, common heritage...
- § Global & balanced management
- § Planning
- § Reinforcement of State power

## LAW ON THE PREVENTION OF MAJOR NATURAL AND TECHNOLOGICAL RISKS

2003

Constraints on good water flow

## FDW transposition law

2004

Quality & quantity objectives

## Law on water & aquatic habitats

2006

- Priority of drinking water
- Climatic change
- Sustainable management

## **GRENELLE laws**

**2009 and 2010**

**Conservation of biodiversity conservation & aquatic ecosystems**  
(“Blue and green field”) → “Ecological continuity”

**Prevention of health risks (pharmaceutical residues)**

**Network water leaks**



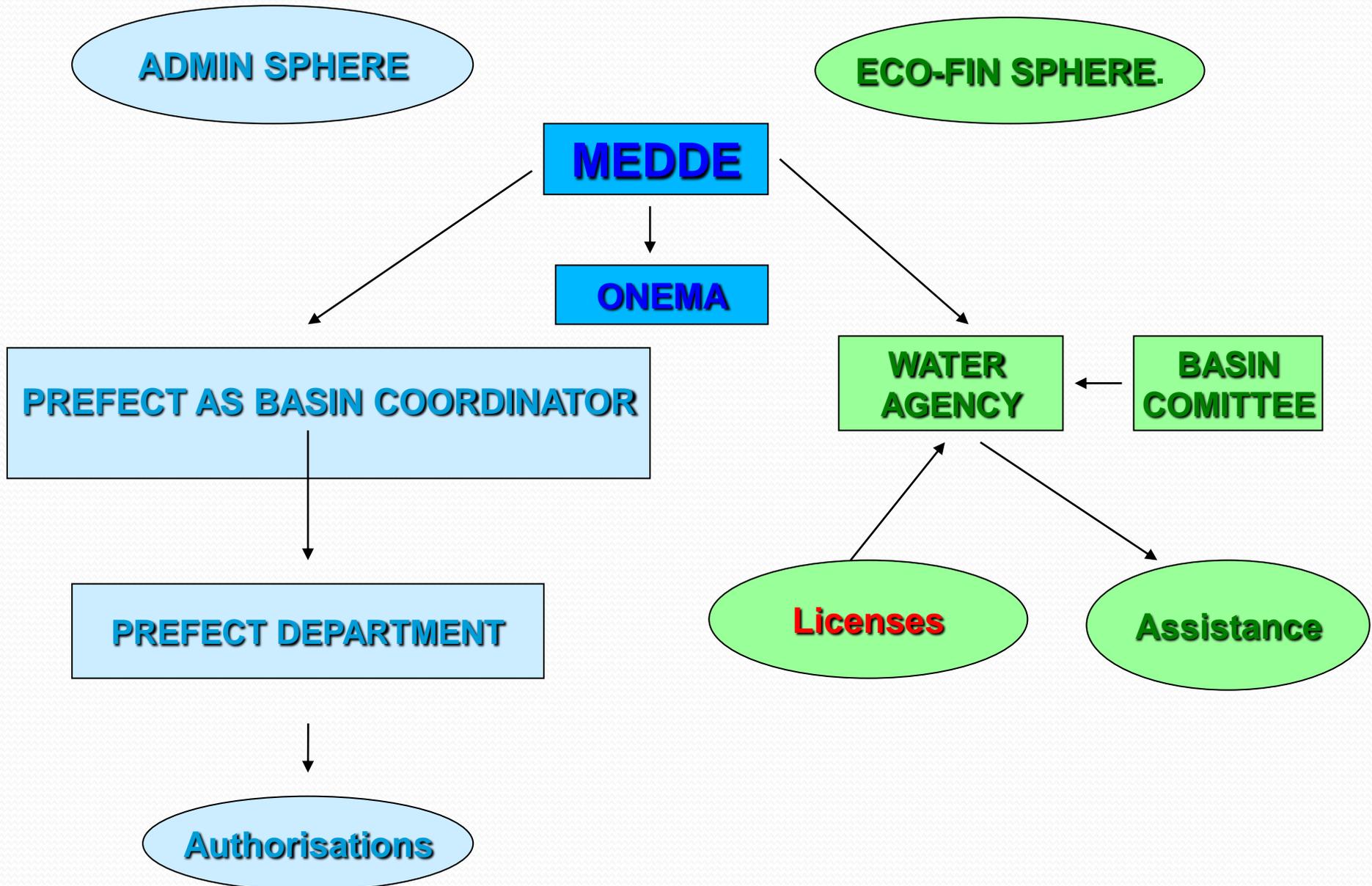
## **II) INSTITUTIONAL & JURISDICTION SUMMARY**

# INSTITUTIONAL FRAMEWORK, LEVELS OF ACTION AND STAKEHOLDERS: THE EXAMPLE OF FRANCE

- Levels of action:
  - **national**,
  - **basins** (6 large basins + 5 overseas basins),
  - **regional** (26 regions),
  - **departmental** (100 departments),
  - **community** (36,000 communities approximately),
  
- A collection of stakeholders in the watershed level for concerted and coordinated action



# THE 2 INSTITUTIONAL SPHERES



***THEORIES  
de  
l'INCITATION ECONOMIQUE***

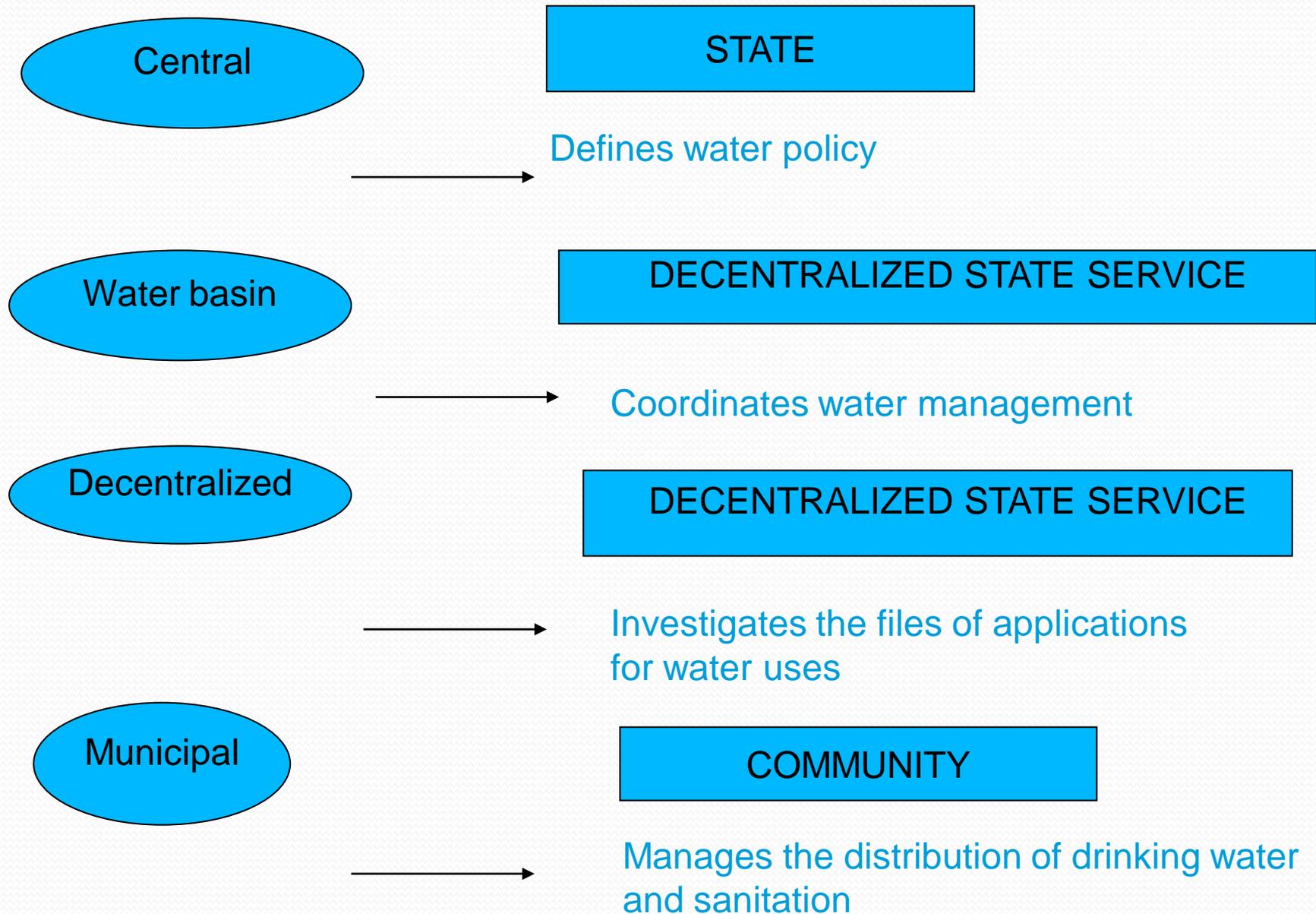
***Arthur Cecil PIGOU  
Allen V. KNEESE  
Hubert LEVY-LAMBERT***

**LES PRINCIPES**

- ‘Qui prélève, pollue ou utilise, paie’**
- ‘ Qui fait un effort pour diminuer sa consommation d’eau ou diminuer la pollution qu’il rejette voit sa redevance réduite et une aide accordée’**

$$\text{REDEVANCE} = \text{ASSIETTE} \\ \times \\ \text{TAUX}$$

# LEVELS OF ACTION TYPE



# COMPETENCES ENVIRONMENT/HEALTH

**RAW WATER RESOURCES  
HABITAT AND AQUATIC  
ECOSYSTEMS**

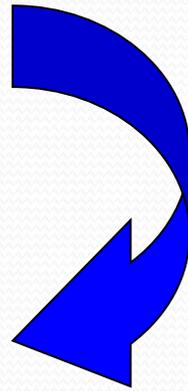
**DRINKING WATER**



**MINISTRY OF THE  
ENVIRONMENT**

**MINISTRY OF  
HEALTH**

# WATER JURISDICTION STATUS



**PUBLIC DOMAIN**

**PRIVATE PROPERTY**

## RIVERS AND NATIONAL WATER

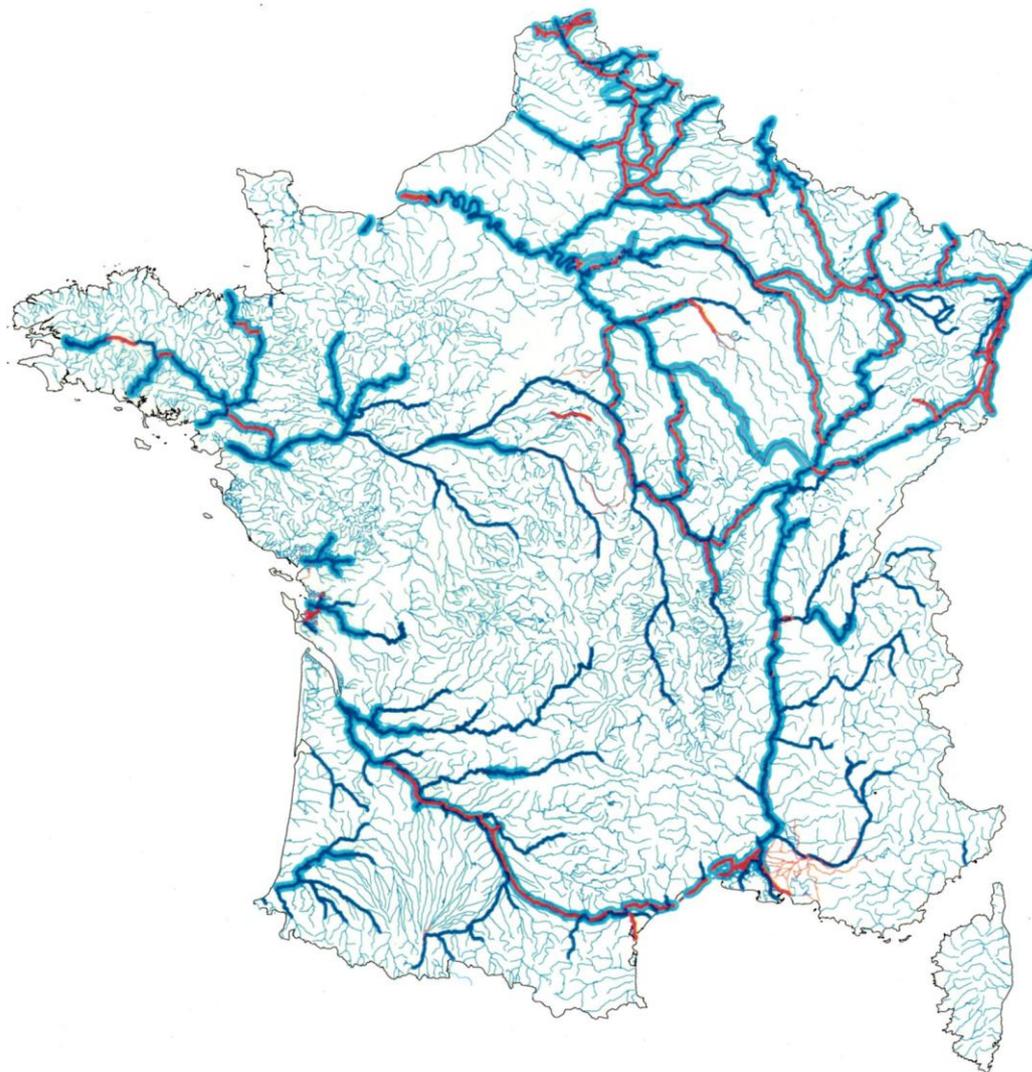
- Classification
- Bed + Right to use
- Delineation/*Plen.Flumen*
- Maintenance obligation
- Special protection (AOT/CGV)
- Ownership rights (tow/way)
- 16,500 km
- DOM = national waters
- PUBLIC LAW STATUS

## RIVERS AND NON-NATIONAL WATER

Private property bed + banks

- Right to use water
- Maintenance obligation
- 250,000 km
- GROUNDWATER
- PRIVATE LAW STATUS

# INLAND WATERWAYS



- Legend
- Public rivers
  - Rivers
  - Public canals
  - Canals
  - Waterways

# WATER POLICING

**POLICING = MONITORING**

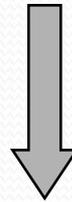
**1 GENERAL POLICY**

**MAYOR/PREFECT by default**

**Hygiene/Security**

# 6 SPECIAL POLICE UNITS

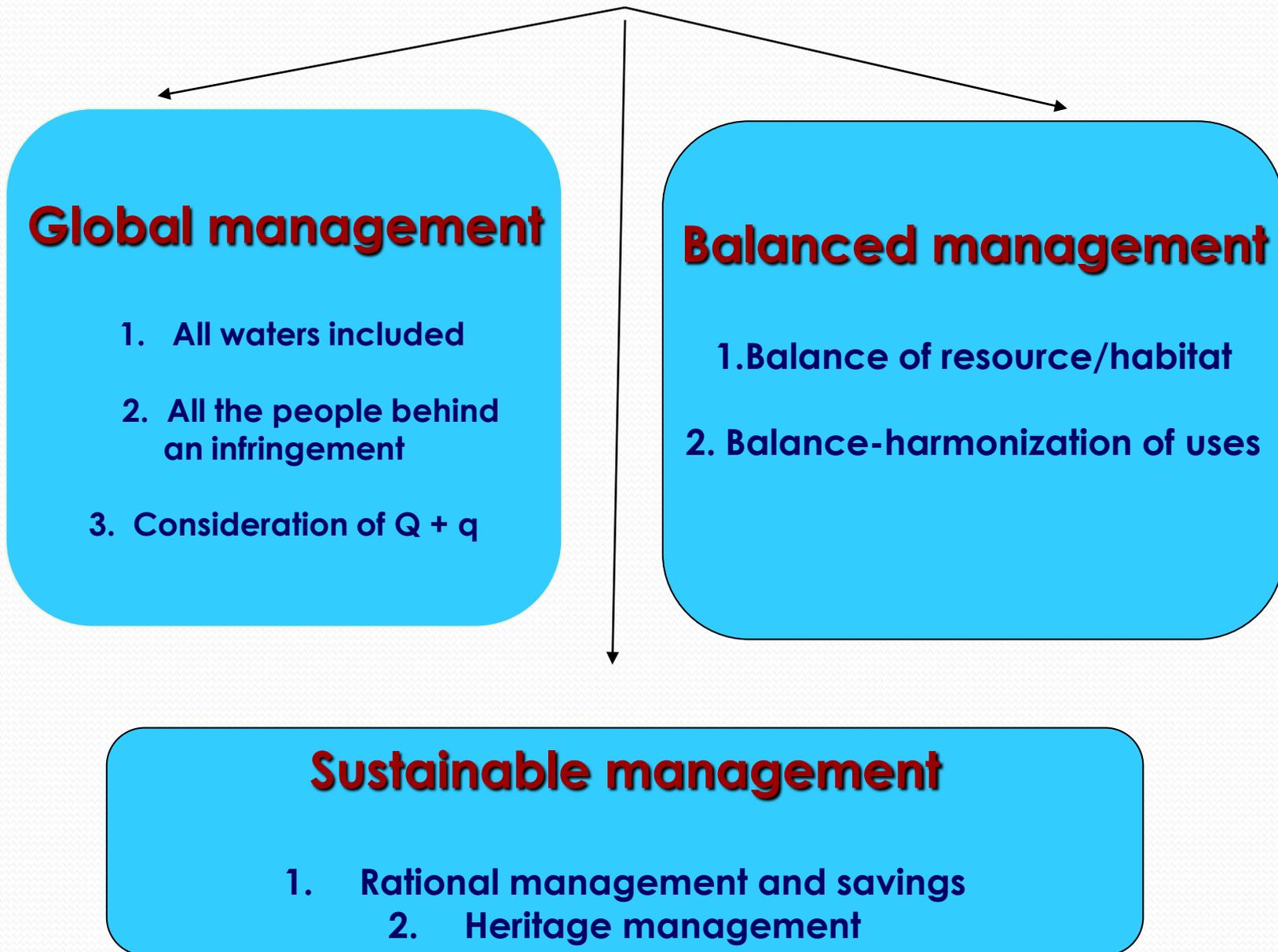
**PREFECT**



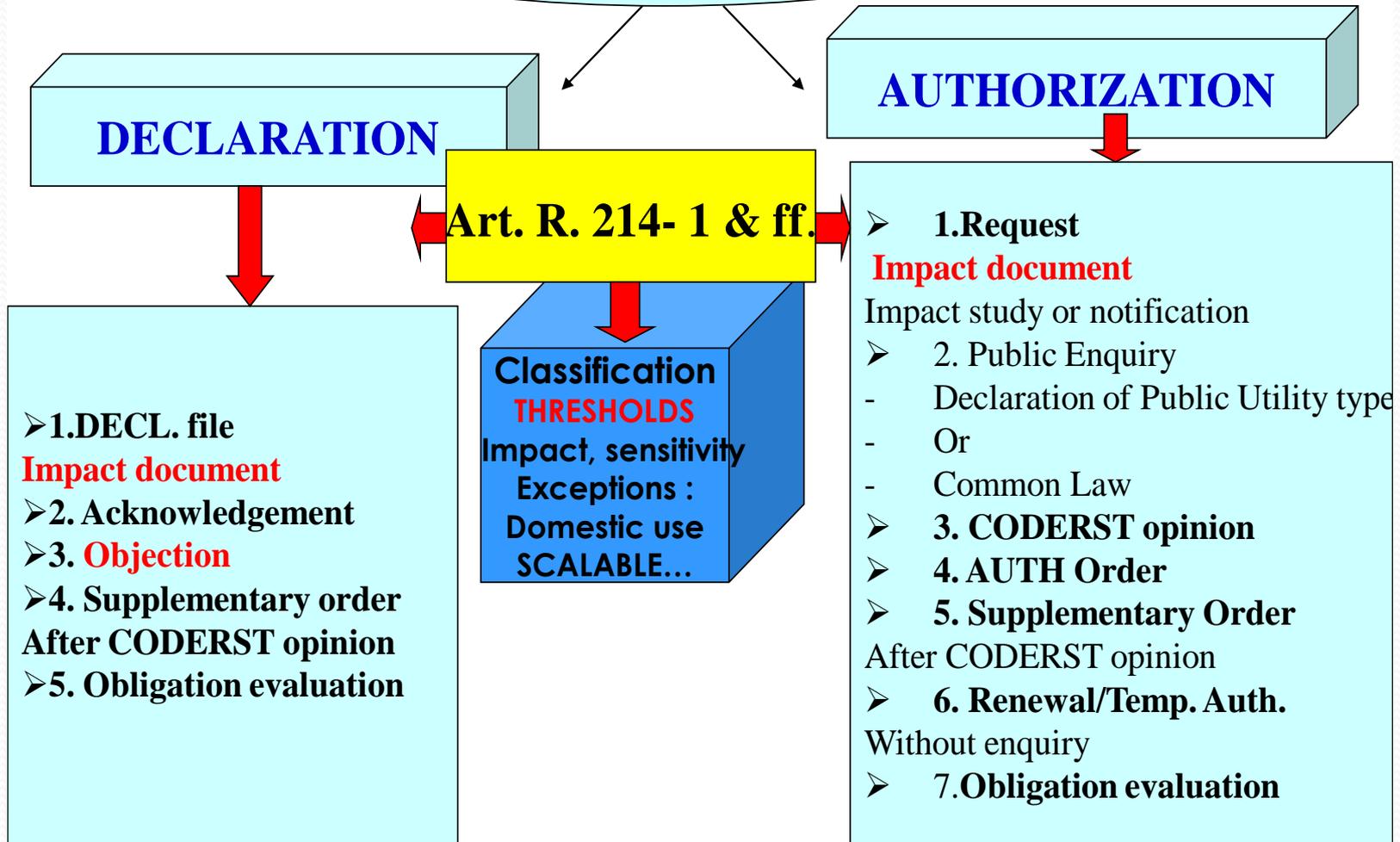
# THE MAJOR PRINCIPLES OF WATER LEGISLATION OF 1992 AND 2006

- 1) UNITY OF THE WATER RESOURCE
- 2) WATER AS NATIONAL COMMON HERITAGE
- 3) WATER CONSERVATION = GENERAL INTEREST
- 4) DRINKING WATER PRIORITY
- 5) GLOBAL MANAGEMENT + BALANCED and SUSTAINABLE MANAGEMENT
- 6) CONSIDERATION OF CLIMATIC CHANGE
- 7) PLANNING FOR THE WATER RESOURCE
- 8) REINFORCEMENT OF STATE POWERS
- 9) REINFORCEMENT OF THE WATER BASIN
- 10) ASSERTION OF LOCAL COLLABORATOR COMPETENCES

# INTEGRATED MANAGEMENT OF WATER RESOURCES



**Global, balanced, sustainable management  
Art. L. 210-1 and ff**



- 1. DECL. file  
**Impact document**
- 2. Acknowledgement
- 3. **Objection**
- 4. Supplementary order  
After CODERST opinion
- 5. Obligation evaluation

**Classification  
THRESHOLDS**  
Impact, sensitivity  
Exceptions :  
Domestic use  
SCALABLE...

- 1. Request  
**Impact document**  
Impact study or notification
- 2. Public Enquiry
  - Declaration of Public Utility type
  - Or
  - Common Law
- 3. CODERST opinion
- 4. AUTH Order
- 5. Supplementary Order  
After CODERST opinion
- 6. Renewal/Temp. Auth.  
Without enquiry
- 7. Obligation evaluation

# Classification: some examples (1)

## 1.1.2.0 Collection from subterranean water



## 2.1.1.0 Treatment stations



# Classification: some examples (2)

3.1.1.0 Installation in the minor bed of a river → Flood barrier **A**

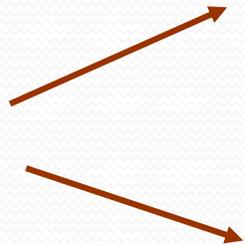
Barrier to ecological continuity

≥ 50 cm **A**

> 20 cm  
50 cm **D**

# Classification: some examples (3)

3.2.3.0 Water plan



$\geq 3$  ha

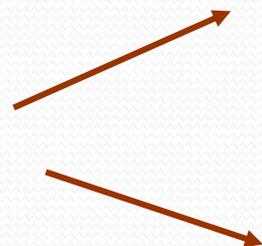
A

$> 0.1$

$< 3$  ha

D

3.3.1.0 Dry-out of wet zone



$\geq 1$  ha

A

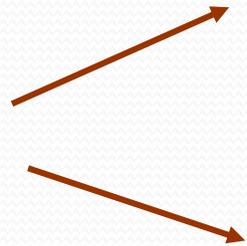
$> 0.1$

$< 1$

D

# Classification: some examples (4)

## 3.3.2.0 Drainage



≥ 100 ha

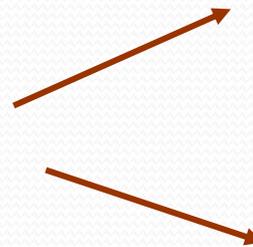
A

> 20

< 100 cm

D

## 4.1.2.0 Port planning



≥ 1.9 million €

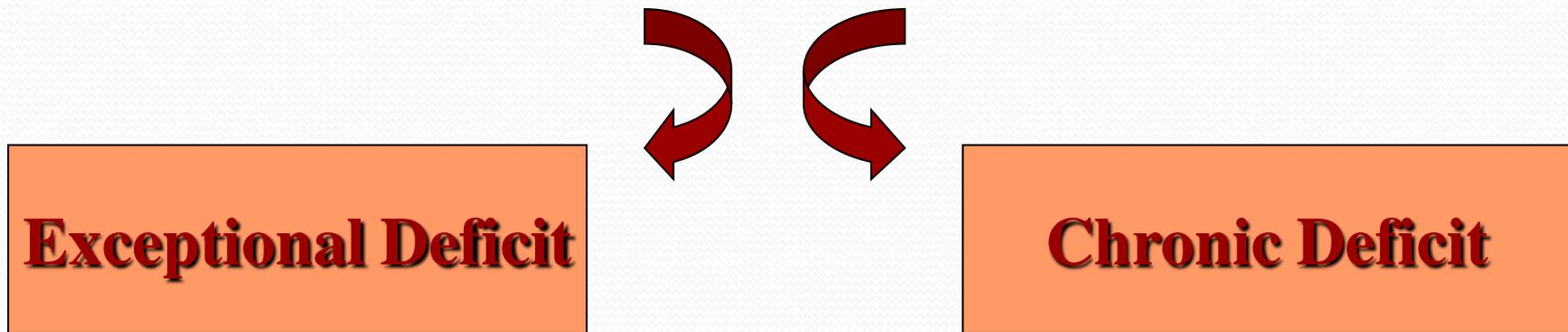
A

> 160,000

< 1.9 million €

D

# SCALABLE IWRM



# LIMITATION OF USE SYSTEMS

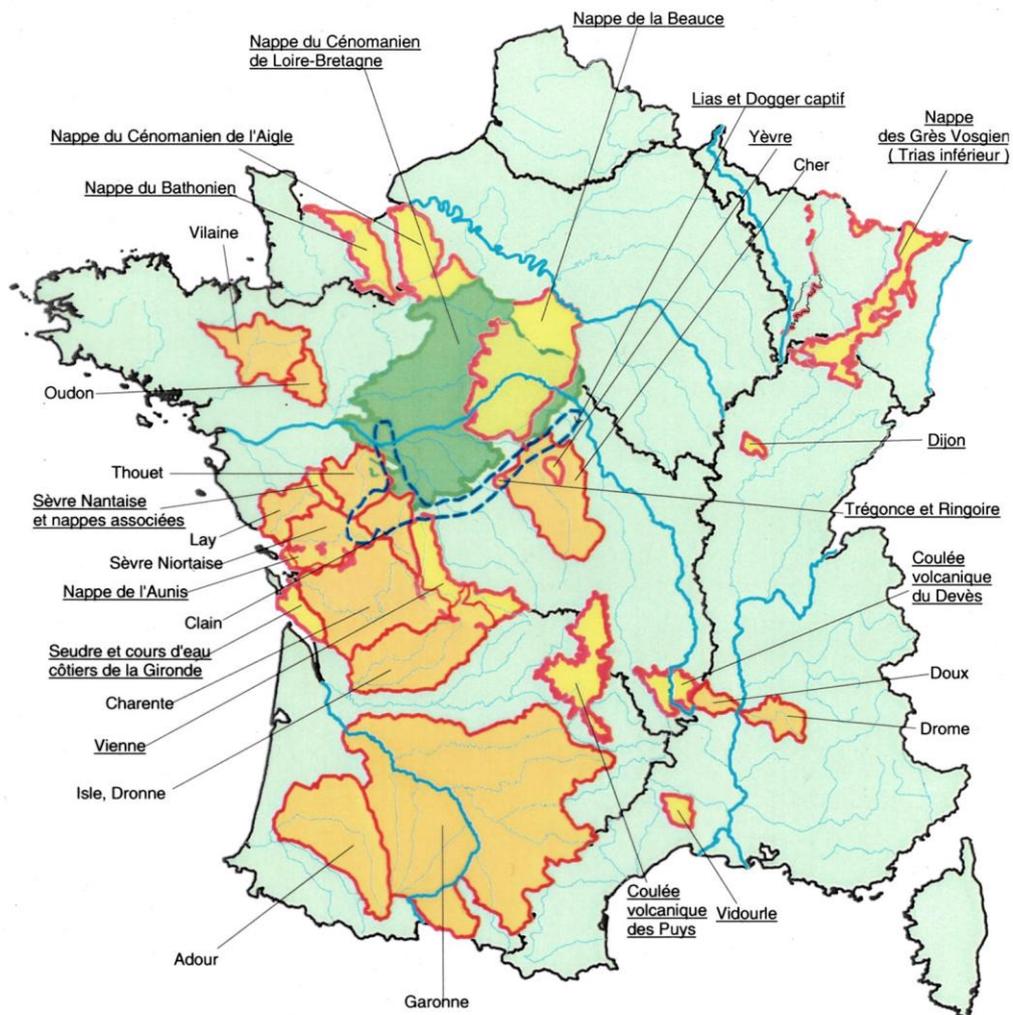
## Exceptional water deficit

- Temporary zoning
- Gradual provisional limitations
- Temporary suspension
- Temporary ban

## Chronic water deficit

- Fixed zoning
- Fixed limitations

## ZONES DE REPARTITION DES EAUX



Arrêtés préfectoraux pris en application de l'article 2 du décret du 29 avril 1994



Extension proposées par les SDAGE, les DIREN, les Préfets de Région.

# Example: COLLECTION

## 1°) NORMAL CIRCUMSTANCES

### ☞ Subterranean water (1.1.2.0)

- > 200,000 m<sup>3</sup>/year AUT
- > 10,000 m<sup>3</sup>/year but
- < 200,000 m<sup>3</sup>/year DECL

### ☞ Surface water (1.2.1.0)

- > 1,000 m<sup>3</sup>/year or 5% c. water flow AUT
- > 400 < 1,000 m<sup>3</sup>/year or 2%  
< 5% c. water flow DECL
- 2% < 5% c. water flow DECL

## 2) OUTSIDE NORMAL CIRCUMSTANCES

### 2-1) Exceptional deficit (Art.R.211-66 to R.211-70)

- \* Gradual provisional limitations
- \* Temporary suspension
- \* Temporary ban

### 2-2) Chronic deficit (Art.R. 211-71 to R. 211-74)

- 8 m<sup>3</sup>/h                      AUT
- Other cases                      DECL (1.3.1.0)

# THE IMPACT FILE AND JURISPRUDENCE

**At the heart of judge control**

**Impact study**

**File of consequences  
on water**

# IMPACT FILE

**1. Origin of chronic, episodic or accidental impact**

**2. Impact**

→ on water

→ on human activities

**3. Influence of variations**

**4. Measures to limit consequences**

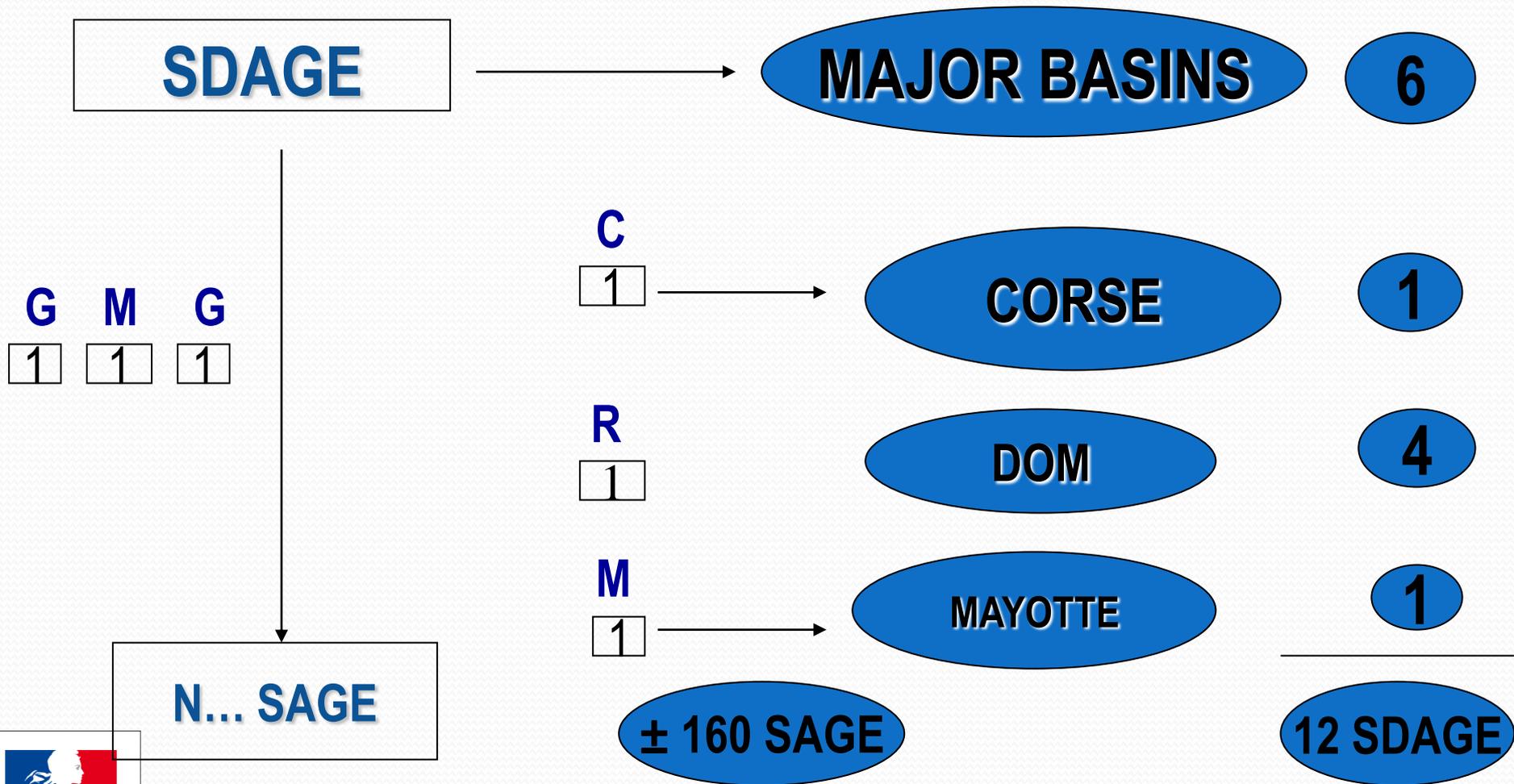
**5. Compatibility**

→ SDAGE      SAGE      OQ

**6. Impact on Natura 2000 site**

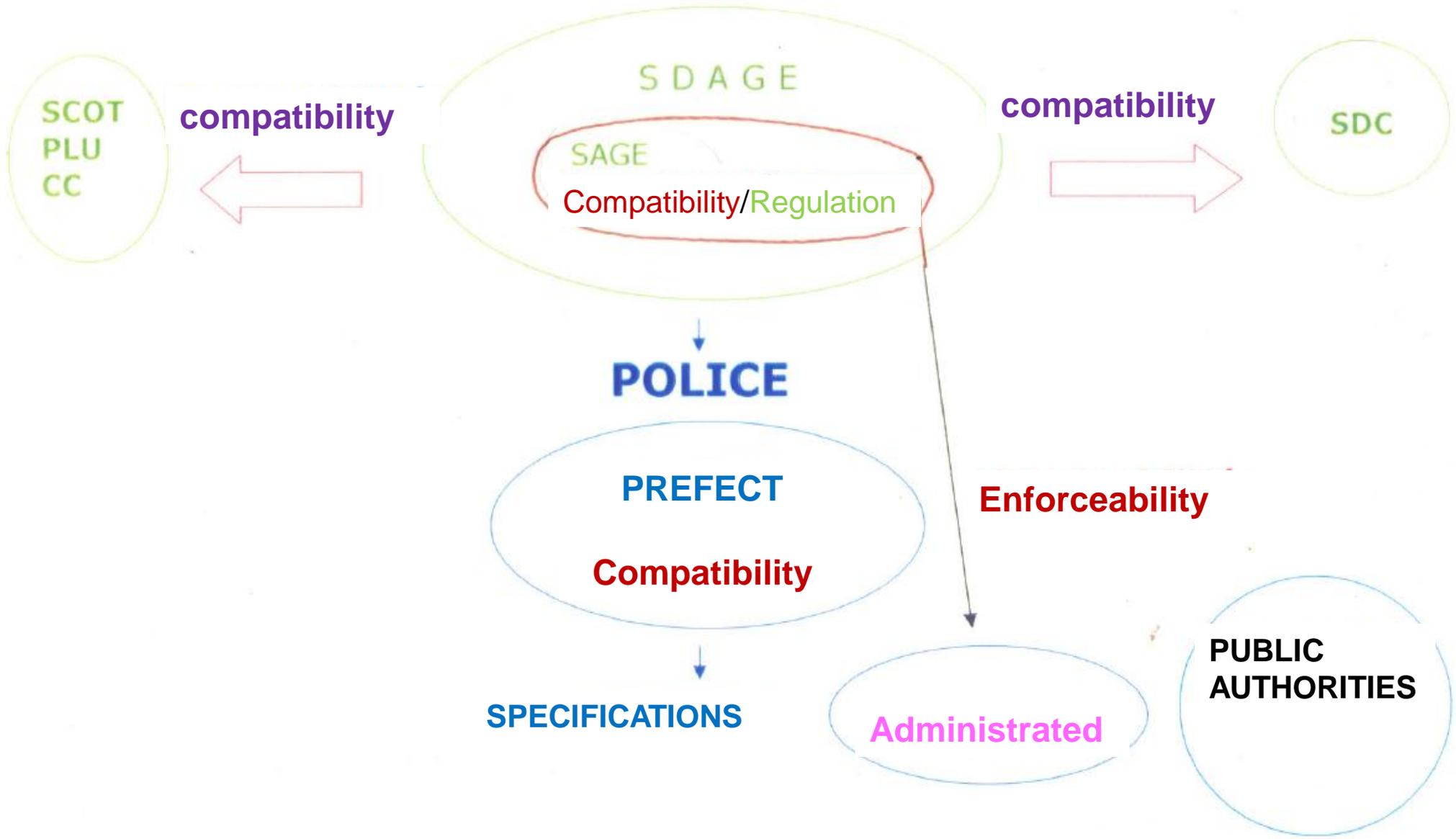
# WATER RESOURCES PLANNING

## I - LEVELS



# POLICING / PLANNING

## PLANNING





## **III) PRESENTATION OF THE INSPECTION & SANCTIONS**

# EVOLUTION OF INSPECTION & SANCTIONS

## BEFORE 1992

- Law of Dec. 16, 1964 on water pollution
- Decree of Dec. 15, 1967 on sanctions for violations of the 1964 law
- Decree of Feb. 23, 1973 on procedure AUT. of discharge
- Orders of May 15, 1975 & Nov. 20, 1979 with exceptions and technical conditions for AUT. of discharge
- Order Jul. 7, 1983 on methods of analysis and inspection



- **No specific set of sanctions provided for**
- **19 years to implement the structure**

## SINCE 1992

- Law of Jan. 3, 1992 on water creates the set of water-specific administrative & **criminal** sanctions (L.216-1 and ff.)
- Since Jul. 1, 2013 a common set of:
  - administrative (L.170-1 and ff.) & **criminal (L.173-1 and ff.)** measures & sanctions for all environmental sectors
  - **conditions for investigation & establishment of violations (L.172-1 and ff.)**

# **SANCTIONS – WATER POLICING**

## **ADMINISTRATIVE**

**Measures that the administration undertakes under the supervision of the administrative judge**

## **CRIMINAL**

**Measures that only the court judge may take**

# ADMINISTRATIVE SANCTIONS

- **Formal notice for regularization of situation (lack of AUT. / non-consideration of objection to DECL)**
- **Protective measures, suspension of operation**
- **Closure, suppression of facility or works, cessation of activity**
- **Consignment of necessary funds for the work**
- **Implementation of specified measures (in lieu, place & cost of operator)**
- **Fine (max. 15,000 €) and penalty payment/day (max. 1,500 €) until meeting the terms of the formal notice**

# CRIMINAL SANCTIONS

- Lack of AUT. or direct/indirect participation (1 year, 75,000 €)
- Violation of the specified measure
- Continuation of operation in violation of objection to DECL., withdrawal of AUT., closure, suspension, suppression, formal notice (2 years, 100,000 €)
- Stricter penalties for operations subject to AUT./DECL. with no fulfillment of set conditions with major impact on health or substantial degradation of fauna/flora (2-3 years, 150,000 - 300,000 €), for legal entities and in the event of recurrence
- Obstructing agents in investigating/ establishing violations
- Order for the cessation of operation
- Adjournment of sentencing and penalty payment/ day of delay (3,000 €)
- Restoration of aquatic environment
- Imposition of additional penalties (display & distribution / conviction)
- Possibility of plea agreement under conditions
- Criminal proceedings: any measure at the request of the Public Prosecutor or the judge

# **ADMINISTRATIVE POLICE INSPECTIONS**

## **Inspection conditions:**

- **Access & visit for inspection agents to closed spaces and locations between 8am and 8 pm and at all times for other spaces**
- **Right to communicate documents relating to inspection**

# **INVESTIGATION & ESTABLISHMENT OF VIOLATIONS**

## **1°) Agents assigned to investigate & establish violations "Environmental inspectors"**

- **Powers**
- **Commissioning (Prefect)**
- **Oath (court)**

## **2°) Operations of investigation & establishment of violations**

- **Obligation to prior notification of the Public Prosecutor (possible objection) prior to access to locations**
- **Hours applicable to commercial premises with parts for residential use (6:00-21:00)**
- **Right to communicate all information & documents**
- **Right to acquire data useful to the investigation**
- **Obligation to send the report to the Public Prosecutor within 5 days**

# PRINCIPLES OF THE PLEA AGREEMENT

## ❑ Object & interest

- Before raising a public action, to compromise with natural or legal persons on continuing violation or offenses
- Ease congestion in the courts

## ❑ Conditions for implementation

- Acceptance of the violation by the perpetrator
- Approval & agreement by the Public Prosecutor
- Adequate seriousness of committed violations (C5 and offenses)
- Nature and resources of the violator



# POLLUTION OFFENSE

## ➤ ARTICLE L.432-2 C.e

- Flow of a substance and harmful effect on the fish
- 2 years imprisonment
- 18,000 € fine

## ➤ ARTICLE L.216-6 C.e

- Flow of a substance and harmful effect on human or animal health, aep, swimming, fauna or flora other than fish and their habitat
- 2 years imprisonment
- 75,000 € fine
- Exemption from sanction if AUT. of discharge is respected
- Restoration of environment (court)

PRESENTATION  
TITLE



RÉPUBLIQUE FRANÇAISE



Ministère de l'Écologie  
et du Développement Durable



# CRIMINAL RESPONSIBILITY

- **ELECTED OFFICIALS,  
PUBLIC OFFICIALS**
- **Mayor's criminal and personal responsibility in case of negligence or carelessness:**  
Cass. Crim. Apr. 3, 1996 Auvergne/ Bretagne water & rivers (step)
- **But mitigation or exemption if "normal procedures [c.t. – territorial collectivity], competences, powers, means and difficulties" + Law of May 13, 1996: if "clear or deliberate violation of a safety requirement by law or regulation" or "serious fault exposing others to risk of particular gravity that could not be ignored"**  
**Elected (chairmen, v-chairmen, delegated elected officials), public officials...**

- **PRIVATE PERSONS**
- **Carelessness of private manager c.t. "high professional competence":**  
Cass.crim. Dec. 9, 1995 Prud'hommie of Palavas  
Idem for carelessness of public agents c.t. means at their disposal and their action "knowingly" (Cass. Crim. Jul. 2, 1998 VNF)
- **Footbridge over stream without AUT (C.A. Paris Nov. 15, 1995:100 KF developer, 50 KF + I KF penalty payment/day of delay)**
- **Dry-out of wet zone without AUT. (Cass. Crim. Rennes March 25, 1998: 30 KF worker/30 KF owner)**
- **Works in bed river and lack of restorariion after adjournment (C.A. Lyon 1998: 6 months + 50 KF)**



# PREVENTION & REPARATION

## **DAMAGES CONCERNED**

*Damages seriously affecting the ecological, chemical or quantitative state or ecological potential of waters caused by professional activities, including cases of no fault or negligence on the part of the operator*

## **PREVENTION**

**In case of imminent threat of damage, the operator takes prevention measures, with no delay and at their own expense, for hindering or limiting the impact. If the threat remains or damage occurs, they notify the Administration with no delay**

## **REPARATION**

- **The administrative authority evaluates the damage**
- **The operator submits reparation measures to the Administration for approval**
- **The Administration may give formal notice to the operator to take the measures and if they do not deposit the necessary funds + proceed to the service and at their expense for the implementation of specified prevention or reparation measures**



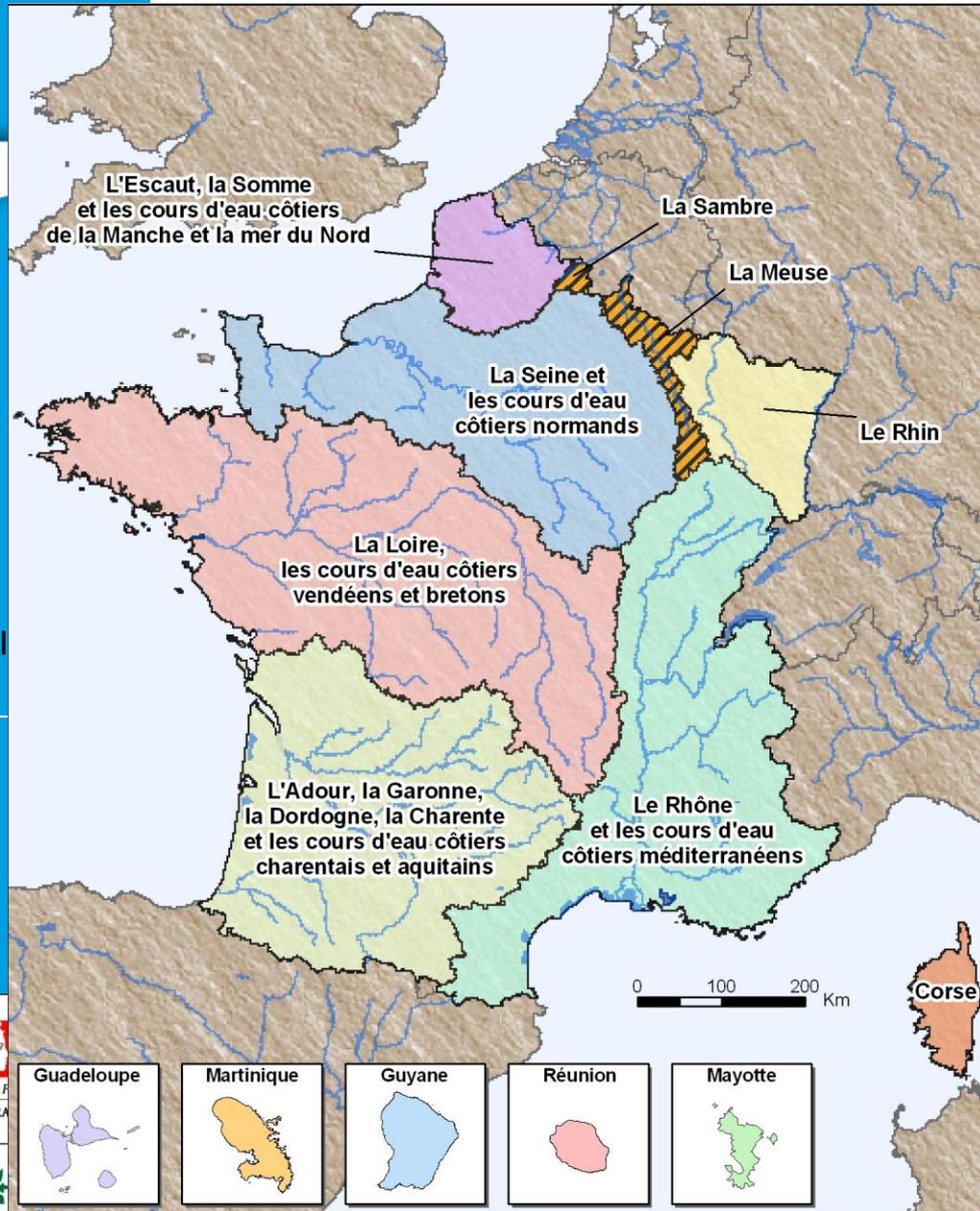
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Water sectors



Water management  
by water basin

**Identification  
of water sectors**

PRESENTATI

08/10/2013



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