

# Sustainable Water Network (SWAN)

## Response to Public Consultation on Reform of the Water Sector in Ireland



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# TABLE OF CONTENTS

<b>1. Introduction to SWAN .....</b>	<b>1</b>
<b>2. Background &amp; Context to SWAN Submission .....</b>	<b>1</b>
2.1 SWAN 2010 Proposal for a New System of Water Governance .....	1
2.2 Challenges of meeting Water Framework Directive obligations .....	1
<b>3. Overarching Comments .....</b>	<b>2</b>
3.1 Limitations of water sector review .....	2
3.2 Urgent need for a review of wider water governance structures .....	2
3.3 Relationship between the present SWAN submission & SWAN's 2010 ' <i>Proposal for a New System of Water Governance</i> ' .....	3
<b>4. Updated SWAN governance proposals for integrated management of the water environment .....</b>	<b>5</b>
4.1 Key components/ prerequisites of an effective water governance system .....	5
4.2 SWAN Core Proposal: One state agency with ultimate responsibility for integrated management of water .....	5
4.3 SWAN proposed system of water governance: Enforcement .....	5
4.4 SWAN proposed system of water governance: Environmental Ombudsman .....	8
4.5 SWAN proposed system of water governance: Licensing .....	8
4.6 SWAN proposed system of water governance: Licensing Appeals .....	8
4.7 SWAN proposed system of water governance: Regulation .....	8
4.8 SWAN proposed system of water governance: Other proposed changes .....	8
4.9 SWAN proposed system of water governance: Public Participation & access to information .....	9
<b>5. Specific comments in relation to the establishment of Irish Water &amp; water charging .....</b>	<b>9</b>
5.1 Importance of a well-resourced environmental regulator .....	9
5.2 Environmental protection during transition .....	10
5.3 Water charging .....	10
5.4 Water Services operating regions .....	10

5.5 Septic tanks.....	10
5.6 Leadership & coordination of Irish Water.....	10
<b>Appendices .....</b>	<b>11</b>
I.    SWAN Partner Groups .....	11
II.   SWAN Board of Directors .....	11
III.  Significant water management issues in the context of the Water Framework Directive .....	12

## 1. Introduction to SWAN

The Sustainable Water Network (SWAN) is an umbrella network of 25 of Ireland's leading environmental NGOs, national and regional, working together to protect and enhance Ireland's aquatic resources through coordinated participation in the implementation of the Water Framework Directive (WFD) and other water-related legislation. SWAN member groups are listed in Appendix I. SWAN has been actively engaged in Water Framework Directive (WFD) and other water policy implementation at both national and River Basin District (RBD) level since 2004, responding to water-related public consultations and representing the environmental sector on WFD River Basin District (RBD) Advisory Councils, the South Eastern RBD Management Group and other water policy-related fora. SWAN is also actively participating in the Catchment Flood Risk Management (CFRAMS) process and representing the environment sector at CFRAMS stakeholder meetings in all RBDs.

## 2. Background and context to SWAN submission

### 2.1. SWAN 2010 '*Proposal for a New System of Water Governance*'

In December 2010, SWAN submitted a detailed '*Proposal for a New System of Water Governance*', in response to the requirement in the River Basin Management Plans (RBMPs) for a review of water governance, and in anticipation of a consultation on this. This proposal highlighted the need for, and the benefits of, an integrated, catchment-based approach to the management of the water environment, if Ireland is to meet the challenges identified in the River Basin Management Plans and thus the requirements of the EU Water Framework Directive. SWAN still stands by this 2010 proposal but has tailored it in light of the current consultation on Irish Water. The relationship between the current document and the 2010 'Proposal' is clarified in Section 3.3.

### 2.2. Challenges of meeting Water Framework Directive obligations

The key requirement of the EU Water Framework Directive and the criterion by which compliance will be adjudged is the achievement of 'good ecological status'<sup>1</sup> for all waters by 2015<sup>2</sup> and the prevention of deterioration of ecological quality of waters in the meantime. EPA and other monitoring data presented in the River Basin Management (RBM) Plans indicates that only 38% (by number) of the surface (fresh)water bodies in Ireland are currently achieving good status, illustrating the scale of activity that will be required in order to meet the objectives of the Directive.

In assessing the potential for implementing the necessary measures, the Irish RBM Plans identified the current fragmented administrative system as a barrier to successful implementation of the RBM Plans themselves and also to the successful implementation of the WFD.

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<sup>1</sup> Defined as biological conditions deviating only 'slightly' from those found under undisturbed conditions

<sup>2</sup> It applies to surface waters, i.e. lakes, rivers, transitional waters (estuaries) and coastal waters (up to one nautical mile from land) and to ground waters

## 3. Overarching Comments

### 3.1. Limitations of water sector review

SWAN's believes that it is highly regrettable that the review of the water services sector and the consultation on the 'Reform of the water sector in Ireland' and the establishment of Irish Water proceeded in the absence of a review of wider governance of the whole water environment. (This is evidenced by the brief mention of river basin planning in the terms of reference for the review.) It is especially regrettable given that such a review is a requirement of the River Basin Management Plans<sup>3</sup> which are statutory documents, adopted by all Local Authorities, and which is now 14 months overdue.

### 3.2. Urgent need for a review of wider water governance structures

It is extremely important that management of natural waters must be given equal priority to water and wastewater service provision in order to deliver sustainable water management and to ensure compliance with the WFD. Therefore it is vital that a review of administrative structures and arrangements for the management of the wider water resource, similar to that carried out for water services, is also conducted to address the current fragmented, ineffective system and that a revised system for the integrated management of our water resources is put in place alongside the establishment of Irish Water. This should be done in consultation with key experts, officials, stakeholders, the public and experts from other jurisdictions e.g. SEPA.

Many of the weaknesses in the current water services system identified in the '*Irish Water: Phase 1 Report*', in relation to lack of coordination, apply equally to management of the wider water environment. The River Basin Management Plans clearly state that implementation of the Plans will be a significant challenge because river basin management is "*currently assigned across a range of organisations with no single body having ultimate responsibility*". In addition they recognise that because water management is currently "*fragmented along administrative lines*" it does not "*facilitate analysis, identification and implementation of the most cost-effective solutions to manage water quality at river basin level*". To address this issue, the Plans contain a requirement that the (then) Department of the Environment, Heritage and Local Government would review by the end of 2010 the governance and structures for implementation of the river basin management plans.

It is SWAN's firm position that current structures are unable to effectively implement the challenging requirements of the Water Framework Directive (WFD) and that unless these structures are subject to a radical restructuring Ireland will suffer severe failures in WFD compliance. This reflects the consensus view, expressed in the public arena by officials of DECLG, the EPA and Local Authorities at the annual EPA Water conferences in 2010 and 2011.

Under the WFD, all activities which pose a potential risk to the water environment, must be controlled or addressed as part of an integrated programme of management measures. These issues are extremely diverse, often with complex inter-relationships between them, ranging from land use planning and the impacts of climate change to pressures from agriculture, invasive alien species and on-site waste water

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<sup>3</sup> To achieve the targets of the directive, the WFD requires the production and implementation of River Basin Management Plans (RBMPs). These must *inter alia* set out the current condition of the waters in the RBD; and where these are not reaching WFD levels, set out a summary of measures to be implemented in order to achieve the objectives of the Directive, including how these measures will be effective.

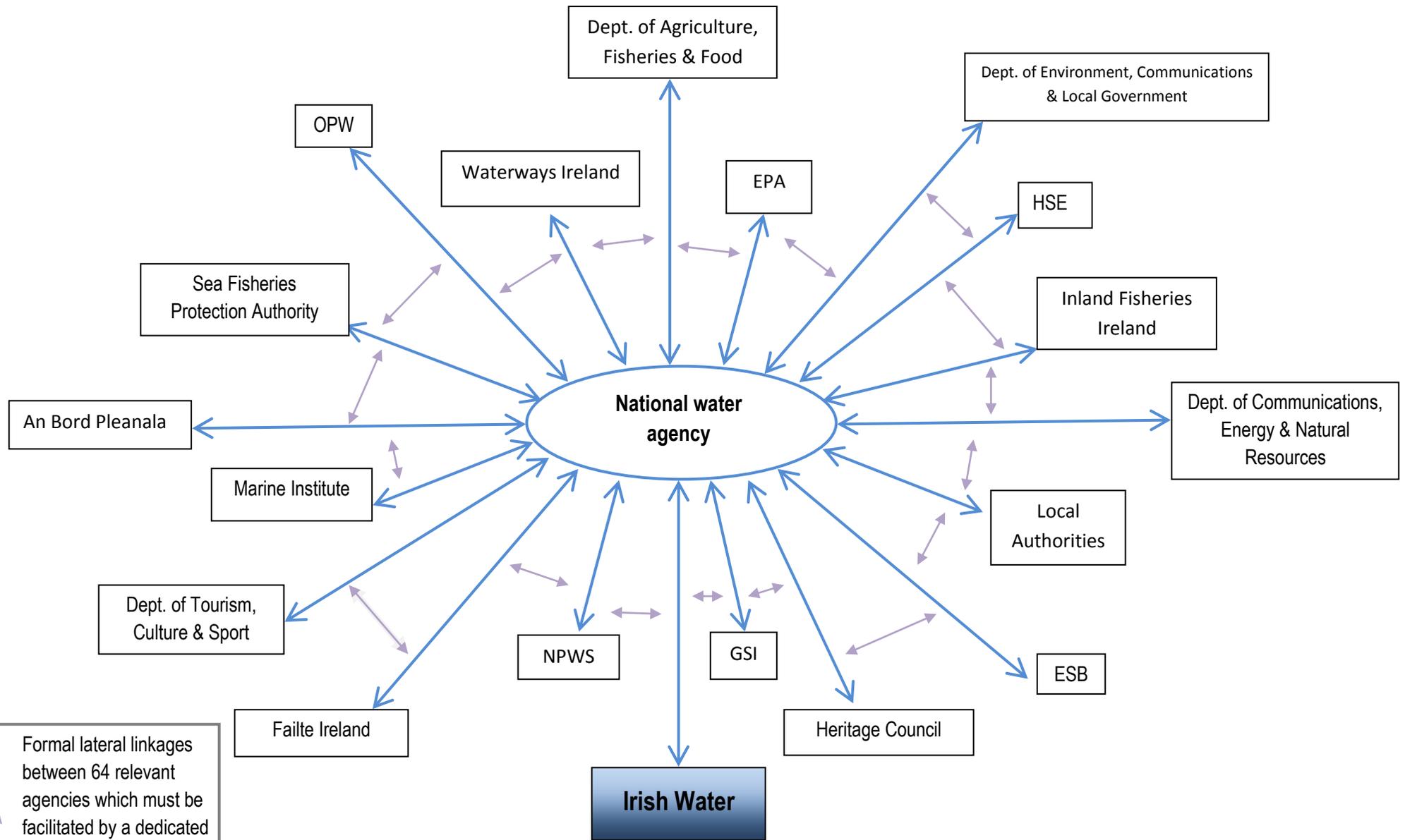
treatment systems. (See Appendix III) and currently involve an estimated 64 public bodies, ranging from 34 Local Authorities, to the Department of Agriculture, Food & the Marine to the OPW, EPA and Inland Fisheries Ireland (see Figure 1 for graphical representation of these bodies).

The diversity of these pressures and issues, set against the current fragmented, inefficient structures involving multiple agencies, many of which have no formal lines of communication regarding water management, highlights the urgent need for a consolidated, integrated approach if Ireland is to comply with WFD requirements.

### **3.3. Relationship between the present SWAN submission on *'The reform of the water sector in Ireland'* and our 2010 *'Proposal for a New System of Water Governance'***

Whilst SWAN still stands by the comprehensive governance structures we proposed in December 2010, we acknowledge that new political realities exist and this submission is a direct response to the consultation on *'The reform of the water sector in Ireland'* and on the current situation as we understand it. We believe it is relevant and appropriate to re-iterate our recommendations in relation to revised structures for wider water governance at this time, for the reasons set out above and also because an integrated functioning wider water governance 'landscape' will be vital to the effective functioning of Irish Water. These recommendations, set out in Section 4 also address the "boundary issues" between Irish Water and other agencies, identified in the consultation documents.

**Figure 1. National water agency co-ordination & integration role**



Formal lateral linkages between 64 relevant agencies which must be facilitated by a dedicated water agency. Arrows are indicative & signify links between each agency with every other

## 4. Updated SWAN governance proposals for integrated management of the water environment

### 4.1. Key components/ prerequisites of an effective water governance system

SWAN is aware that political circumstances and public finances are significantly changed from when our proposal was developed in late 2010 and we have updated it to take account of these changed circumstances. However, it is SWAN's position that whatever structures are chosen, there are a number of key overarching requirements/prerequisites of an effective water governance system which must be ensured, if we are to meet EU requirements. It must:

1. Deliver integrated water management i.e. co-ordinated and collaborative operation of the work of different agencies involved as part of a coherent system;
2. Provide a regulatory system for effectively controlling all pressures on water so as to ensure adequate protection for all the State's aquatic resources;
3. Be successfully enforced (and enforceable in a cost-effective manner);
4. Deliver & facilitate public participation in water management issues.

### 4.2. SWAN Core Proposal: One state agency with ultimate responsibility for integrated management of water

To ensure that these core elements of an effective water governance system are delivered, SWAN proposes that:

1. One state agency (current or new) is assigned ultimate responsibility for:
  - o ensuring compliance with all water-related legislation,
  - o implementation of river basin planning;
  - o facilitating integration between all relevant agencies and
  - o ensuring the co-operation of all government Departments (e.g. Department of Agriculture, Food & Marine) in achieving compliance with EU & national water-related legislation
  - o delivering access to information and public participation in water management
2. This agency must be given the required resources and the legal underpinning/authority to deliver on these responsibilities, including the legal power to sanction any government department found to be non-compliant with water-related legislation, or failing to execute its functions in relation to water-related obligations
3. The legal framework/underpinning should come in the form of a Consolidated Water Act (or other equivalent statutory change) which sets out wide-ranging powers of enforcement for the designated agency.
4. This state agency should co-ordinate activities at national level but it is vital that it be delivered primarily at the RBD level, with RBD offices and staff in each RBD and with the RBD as the management unit, as is required by the WFD. These offices would replace the current RBD 'Projects', which are in any case, being 'wound down'.

### 4.3. SWAN proposed system of water governance: Enforcement

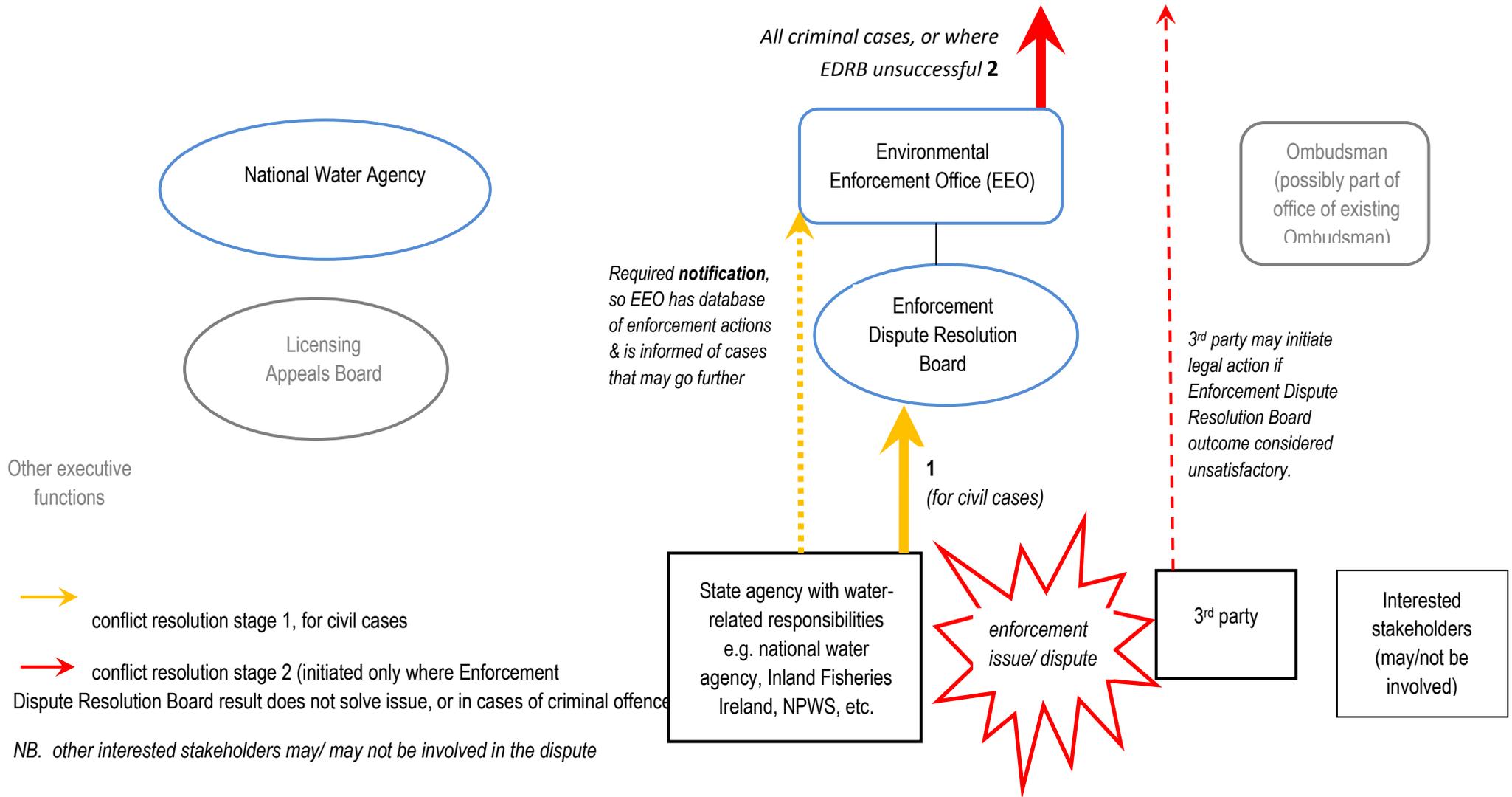
SWAN stands by its proposal for an Independent Environmental Enforcement Office, as set out in our 2010 proposal. We acknowledge that under the current political and fiscal circumstances it is unlikely that a separate independent office will be established. However, the following new cost-effective, streamlined system for environmental enforcement remains relevant. This structure could be established, as an interim measure within the EPA Office of Environmental Enforcement, which should be provided with the necessary additional resources, including personnel with specific expertise in arbitration and conflict resolution, in addition to legal expertise.

An Environmental Enforcement Office (EEO) and an Environmental Dispute Resolution Board would take enforcement referrals from agencies with responsibility for water and related matters such as NPWS, Local Authorities, and Inland Fisheries Ireland. The EEO will be ultimately responsible for pursuing cases through legal channels, however, in the interests of cost-effectiveness and efficiency, the first stage once an enforcement referral comes to the EEO will be an Enforcement Dispute Resolution Board (EDRB). (See Figure 2.) Where an offence cannot be resolved here, a wide suite of administrative sanctions should be considered. As a last resort, or if the case is criminal (and therefore beyond the remit of the EDRB), then the EEO will be responsible for pursuit of the matter through legal channels.

Using a model such as the Private Residents' Tenancy Board, the Enforcement Dispute Resolution Board within the EEO will offer timely, swift and cost-effective alternative dispute resolution techniques in order to avoid if possibly, costly court proceedings. Multiple dispute resolution options (such as mediation and arbitration) will deal swiftly and effectively with disputes over civil offences.

The proposed enforcement process is set out graphically in Figure 2.

**Figure 2. Proposed new structures for water governance showing enforcement dispute resolution process (in 2 stages)**



#### **4.4. SWAN proposed system of water governance: Environmental Ombudsman**

If, due to current circumstances, it is not politically acceptable to establish a separate Environmental Ombudsman's office, as proposed by SWAN, then specific responsibilities regarding the administration of environmental policy and legislation should be assigned to a dedicated section within the current Ombudsman's office, as an interim measure. The Ombudsman shall be empowered to review and report on submissions and complaints from individual citizens and relevant public authorities on the conduct of the administrative responsibilities of competent authorities. The Ombudsman will notify its findings to the agency charged with national water management, which shall in turn act to ensure there is no recurrence of maladministration identified. The Ombudsman may also recommend that the Environmental Enforcement Office take on the task of resolving outstanding civil issues.

#### **4.5. SWAN proposed system of water governance: Licensing**

SWAN proposes that the EPA be given a significantly enhanced role in licensing:

- All water-related licensing functions currently with Local Authorities should be transferred to the EPA including:
  - Licensing of discharges to water under the Water Pollution Acts
  - Abstraction licensing, including by Irish Water
  - On-site wastewater systems
  - Land drainage
- Licensing of Physical modifications to, or impacting upon, water bodies, when the required prior system of authorisation is introduced, should be done by the EPA

#### **4.6. SWAN proposed system of water governance: Licensing Appeals**

Whilst SWAN acknowledges that it is unlikely that the separate Licensing Appeals Board proposed in the 2010 document will be established in the short term, it is our belief that this is a vital element of our proposed structures, in light of the enhanced licensing role proposed for the EPA. When one agency is invested with such comprehensive licensing responsibilities, it is important to also establish an independent means of appeal. In the interim the current licensing appeal structure should be reviewed with the objective of enhancing independent oversight of the appeals process.

#### **4.7. SWAN proposed system of water governance: Regulation**

SWAN supports the proposal that the EPA acts as the environmental regulator for Irish Water, but submit that it will need substantial additional resources to carry out this role effectively (See Section 5.1 for more on this)

#### **4.8. SWAN proposed system of water governance: Other proposed water governance changes (See 2010 Proposal for a comprehensive treatment of proposed changes to roles and responsibilities of various agencies)**

The OPW should no longer have sole responsibility for policy decisions in relation to flood control and related measures. They should only undertake significant drainage activities that have been notified to and licensed by the EPA

The ESB fisheries functions should also be removed and transferred to Inland Fisheries Ireland.

#### 4.9. SWAN proposed system of water governance: Public Participation & Access to Information

SWAN proposes that public participation in water management should take place at the following three levels: national, RBD and sub-basin. It is important that the agency vested with responsibility for water management is provided with the resources and expertise to facilitate this, and that it be seen as a key element of their work. Access to information on all aspects of water management and in particular water quality data, must be at the core of this public participation programme. SWAN recommends an online GIS system which shows all point source pressures (discharge points) to surface waters in addition to real-time water quality data for all surface water, generated by the EPA WFD water monitoring programme. In the context of Irish Water, access to drinking water quality data should also be provided by this system.

In relation to active public engagement, SWAN recommends the following:

- At national level, a National Water Forum should be formed to represent the three pillars of sustainability (economic, environmental and social). This forum would work with the agency charged with national coordination of river basin management.
- Priority should be given to structures for public participation at RBD level. Management groups modelled on the South East RBD Management Group should be established for all RBDs with stakeholders and practitioners/officials working together and jointly making decisions to deliver required objectives of RBM Plans and other water related legislation.
- Active involvement and education initiatives are also vital at levels below the RBD. Active participation in the drawing up of local river management plans and monitoring of local waters should be considered. Initiatives such as the River Fly project in the UK<sup>4</sup> should be implemented using angling clubs and environmental NGOs as delivery partners.

### 5. SWAN specific comments in relation to the establishment of Irish Water & proposals for water charging.

#### 5.1. Importance of a well-resourced environmental regulator

The establishment of Irish Water as a public utility will create an extremely large and powerful public company, which will become eventually (by 2017) the nation's largest abstractor of water and also the largest source of wastewater to surface waters. This poses a potentially very significant environmental pressure especially in the context of:

1. The current lack of a comprehensive abstraction licensing system ('prior authorisation system'), as required by the WFD;
2. The high level of non compliance with the EU Urban Waste Water Treatment Directive. In their 'Focus on Urban Waste Water Discharges in Ireland', this month<sup>5</sup>, the EPA reported that '*Nearly half of Ireland's wastewater treatment plants serving urban centres are failing to achieve national and EU standards*'. It further reported that 11 large urban areas do not meet the Urban Waste Water Treatment Directive (UWWTD) requirement to have secondary treatment in place.

Therefore, there needs to be very strict environmental regulation of abstractive and discharge activities of Irish Water. Whilst a good deal of emphasis is put on economic regulation in the PwC review, there is insufficient emphasis on the need for a strong environmental regulator. For the EPA to carry out this role effectively, it will need to be provided with extra resources and robust legal powers.

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<sup>4</sup> [www.riverflies.org](http://www.riverflies.org)

<sup>5</sup> [www.epa.ie/downloads/pubs/water/wastewater/uww/UWW\\_Report.pdf](http://www.epa.ie/downloads/pubs/water/wastewater/uww/UWW_Report.pdf)

## 5.2. Environmental protection during transition

It is not within SWAN's area of expertise to comment on logistical and technical arrangements during the transition from the current water services system to the establishment of Irish Water. However, it is our position that during this transition phase, the protection of the natural water environment must be a priority at all times. A smooth transition in the operation of wastewater treatment plants will be especially important in this regard and it will be important that the EPA has an enhanced oversight role during this time to ensure that wastewater discharge authorisation licenses are not breached during the transition phase. It is recommended that extra resources are provided to the EPA to execute this.

## 5.3 Water charging

The emphasis in the consultation documents is on the necessity of domestic water charging to recover the cost of the provision of water services. However, it is vital that a significant portion of the revenue from water charging is allocated to wider management of the water resource; implementation of the Water Framework Directive and river basin planning. Without this source of funding, Ireland will not achieve compliance with the WFD and will face the threat of non compliance action by the Commission and ultimately daily fines. SWAN also believes that issues of social justice and ability to pay must be considered when charging for domestic water and that a free allowance be provided, with a waiver scheme for households unable to pay.

## 5.4. Water Services operating regions

SWAN welcomes the fact that the consultation report broadly recommends that the operating regions for Irish Water should align with the Water Framework Directive river basin districts (RBDs). However, we believe that these regions should be fully consistent so that there are 7 operating regions fully consistent with RBD boundaries. We do not agree with the 'mid-point' proposal for 5 regions.

## 5.5. Septic tanks

SWAN disagrees with the proposal in the '*Irish Water: Phase 1*' report that the issue of septic tanks should be transferred to Irish Water. Septic tanks have been identified as a significant threat to groundwaters and surface waters by the '*Programme of Measures Unsewered Wastewater Treatment Systems National Study*'<sup>6</sup>. It is therefore much more appropriate that unsewered wastewater treatment systems are licensed and regulated by the national agency assigned to manage and protect the natural water resource.

## 5.6. Leadership & Coordination of Irish Water

SWAN believes that it is vital that a broad range of expertise must be represented by Irish Water executive staff. Due to the significant potential environmental impact of the abstractive and discharge operations of Irish Water, it is vital that there is substantial environmental expertise housed within Irish Water, including environmental scientists and environmental resource managers. To facilitate this, SWAN recommends that appropriate recognition of the role of scientists be provided within the staffing structure of Irish Water. A framework within the recruitment process should be established to ensure that environmental scientists' qualifications are recognised on a par with engineers. It is SWAN's experience that the predominance of engineers in senior Local Authority roles has resulted in a bias in water management in Local Authorities in favour of engineering management solutions at the expense of more catchment-based environmental approaches.

SWAN welcomes the proposed Board Advisory Panel for Irish Water. However, we believe this should not be established just for the early years of the company, but rather permanently. Also, we recommend that representation from the environmental sector in addition to customer representatives should be present on the Panel.

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<sup>6</sup> [www.wfdireland.ie/docs/23\\_UnseweredWasteWaterTreatmentSystems/Programme%20of%20Measures%20Unsewered%20Wastewater%20National%20Study\\_v2.pdf](http://www.wfdireland.ie/docs/23_UnseweredWasteWaterTreatmentSystems/Programme%20of%20Measures%20Unsewered%20Wastewater%20National%20Study_v2.pdf)

## Appendix I

### SWAN Member Organisations & Board Members

SWAN National Groups		SWAN Regional & Local Groups	
1.	An Taisce	16.	Carra Mask Corrib Water Protection Group
2.	Bat Conservation Ireland		
3.	Birdwatch Ireland	17.	Cavan Leitrim Environmental Awareness Network
4.	Coastwatch Europe Network		
5.	Coomhola Salmon Trust Ltd.	18.	Cork Environmental Forum
6.	Eco-UNESCO	19.	Longford Environmental Alliance
7.	Friends of the Earth	20.	Macroom District Environmental Group
8.	Friends of the Irish Environment		
9.	Irish Doctor's Environmental Association	21.	Save Our Lough Derg
10.	Irish Peatland Conservation Council	22.	Save Our Lough Ree
11.	Irish Seal Sanctuary	23.	Save The Swilly
12.	Irish Water and Fish Preservation Society	24.	Shannon Whale & Dolphin Foundation
13.	Irish Whale and Dolphin Group		
14.	Irish Wildlife Trust	25.	Slaney River Trust
15.	Voice Of Irish Concern for the Environment (VOICE)		

SWAN Board of Directors:	
Mark Boyden, Chair	Coomhola Salmon Trust
Eamonn Moore, Vice Chair	An Taisce
David Lee, Director	Cork Environmental Forum
Joanne Pender, Director	Irish Wildlife Trust
Joachim Schaefer, Director	Cavan Leitrim Environmental Awareness Network
Karin Dubsky, Director	Coastwatch Europe
Elaine Nevin, Director	ecoUNESCO

## Appendix III

### Significant water management issues in the context of the Water Framework Directive

- Industrial and Wastewater discharges
- Agriculture
- Onsite waste water treatment systems
- Priority Substances
- Abstraction
- Physical alterations/modifications of the aquatic environment (Drainage and navigation; hydroelectric installations; flood defences)
- Aquaculture
- Forestry
- Peat Extraction
- Quarries
- Mines
- Drainage
- Cruising/boating
- Invasive Alien Species
- Land Use Planning
- Flood prevention and management
- Climate change
- Public participation in aquatic resource use & management
- Economic elements of water management – cost recovery, cost-sharing mechanisms, water metering