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Legal System for China's Forest Resource Protection: A Case Study of Poyang Lake Eco-economic Zone

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Abstract Taking Poyang Lake Eco-economic Zone as an example, we analyzed existing problems in China's forest resource protection from the perspective of legal system. The problems include unclear property right system of forest resource, imperfect compensation mechanism for forest ecology, forest cutting quota scheme not resolutely put into practice, legal supervision of forest protection not implemented, and lack of integration in forest protection laws. Based on these problems, we put forward countermeasures and suggestions: establish clear forest resource property system; improve ecological benefit compensation mechanism in legal form; strictly implement forest cutting quota scheme; strengthen legal supervision of forest protection; and keep legal system integral for forest resource protection.

Key words Forest resource, Protection, Legal awareness, Poyang Lake Eco-economic Zone

Forest resource plays an important role in conserving water and soil, purifying water, keeping bio-diversity, adjusting regional climate, and maintaining carbon-oxygen balance of air. Apart from material and technical guarantee, the key to management of forest resource protection is legal protection. In line with this, we analyzed existing legal problems of forest resource protection in Poyang Lake Eco-economic Zone and put forward suggestions for improving laws of forest resource protection.

1 Legal problems of forest resource protection

1.1 Unclear forest resource property system Since 2004, Jiangxi Province has implemented large-scale forest property system reform and made significant achievement. However, there are still some serious legal problems in the forest resource property system.

(i) Definition of property is not clear, mainly shown in unclear ownership, too many disputes over forest property; unclear definition of rights and duties of owners and operators; incomplete ownership, and serious limitation on right of disposition in ownership of forest.

(ii) Property right definition is not scientific. Natural connection between forest land, forest and other forest resources on land is separated. In practice, commercial forest and public welfare forest are not clearly defined.

(iii) Subjects of right are vacant. For collective-owned forest resource, subject of ownership performs practically no function; for state-owned forest resource, status of subject of right is abstract. In the practice of forest ecological environment resource and other economic resources of forest, it lacks operational laws and regulations.

(iv) Government interference is improper, including frequent change of ownership, subject lacking sense of safety and

stability, and excessive interference of government in the right of management. At present, the management method of government in operation is chaotic, and it is not clear which should be managed and which should not be managed by the government.

(v) Legal remedy is not well established. Due to unclear property right, multiple-level management, and careless work, disputes over forest right are complicated. Apart from written laws, common laws, clan influence and authority of the elder, as well as administrative interference, functions of laws are lower than other customs, especially in backward forest areas. Once dispute arises, the final relief result may be varied^[1].

1.2 Imperfect compensation mechanism for forest ecology In the *Forestry Law* of People's Republic of China, it stipulates that the State shall establish the forestry ecological efficiency compensation fund, which shall be used for the building, cultivation and management of protection forests with ecological efficiency and the forest resources and trees with special uses. However, there is still no subordinate law for source of fund, how to subsidize, and how much to subsidize, consequently leading to no return of forest operators.

1.3 Forest tree cutting quota scheme not resolutely put into practice The forest tree cutting quota scheme and administrative permission system are important methods for implementing legal protection of forest resources. In the course of forestry management, the implementation of forest cutting quota scheme and administrative permission system is of great significance. However, from the existing forest resource protection laws and regulations, especially after reform of collective forest tenure, there are mainly following problems. Firstly, social recognition. Legal awareness of cutting by certificate is relatively weak in China. Jiangxi Province also does not pay much attention. In particular, some people in remote areas with rich forest resources have low environmental and legal awareness, and there are serious problems of cutting without license and denudation with license. Secondly, legal coordination. Although there are clear provisions of forest cutting quota scheme and administrative permission system in *Forestry Law*, Regulations

for the Implementation of *Forestry Law*, and *Measures for Forest Cutting and Regeneration*, the provisions are relatively scattered and complicated, and there are many loopholes which are inconsistent with actual living, leading to institutional operation having many conflicts and failing to bring into its play. Thirdly, the cutting quota scheme. After the collective forest tenure reform, the cutting quota scheme limits operating right of forest tenure subject, restricts investment willingness in forestry. In other words, the cutting quota scheme is developed into legal tool of limiting subjects of real right at the same time of containing excessive and random lumbering. Fourthly, cutting permission system. Cutting permission system deprives subjects of forest tenure of income right, and fails to support smooth implementation of forest reform. As to subjects of implementation and permission period, there is no clear provision in *Forestry Law*. In practice, the cutting quota is easily controlled by right groups or financial groups, so it is easy to intensify social conflicts. The multiple operation subjects due to forest reform presents problem of license issue, and especially how to distribute the cutting quota in the condition of same tree age is a hard problem, then cutting without license becomes an inevitable thing^[2-3].

1.4 Legal supervision of forest protection not implemented In recent years, Jiangxi Province attaches great importance to legal protection of forest resources. In particular, legal supervision of forest resource has been further enhanced and made certain achievement. However, some supervisory and management departments are still not resolute in supervision, and the supervision is not well implemented in forest land purpose management system and approval system for use of forest land for other purposes. Some places have low awareness of legally using forest land. There are serious problems of using forest land without obtaining approval in advance and using forest land in excess of approved area. What's worse, the corresponding legal supervision system has loopholes, the supervision is not resolutely implemented, and punishment is not put in place, which poses great hidden trouble for protection of forest resources.

1.5 Lack of integration in forest protection laws Although the state, provinces and cities think highly of legal protection of forest resources, and have formulated and issued some laws and regulations, from the viewpoint of construction of Poyang Lake Eco-economic Zone and legal protection of forest resources, the relevant laws and regulations are not integrated.

(i) Existing forest laws and regulations are out of date.

For example, in the existing *Forestry Law* and Regulations for the Implementation of *Forestry Law*, there are four kinds of subjects of right: the state, collective, unit and individual. In practice, however, parties engaged in forest operation include the state, collective, natural person, enterprise, non-enterprise organization, and even some foreign investors. Thus, the above laws and regulations are difficult to meet demands of multiple subjects of right. After the *Administrative License Law* is issued, *Forestry Law* and Regulations for the Implementation

of *Forestry Law* still do not separate administrative examination and approval, and some administrative system obviously restricts development of market economy and is inconsistent with the *Administrative License Law*.

(ii) Legal system of forest is imperfect.

At present, the legal system of forest is still not perfect. The provisions of existing *Forestry Law* and Regulations for the Implementation of *Forestry Law* are too general and not comprehensive. Thus, some actions have no laws to abide by. For example, it lacks laws on forest tree and plant breeding, no laws on circulation of forest resources.

(iii) Laws in relevant fields are not coordinated. There is uncoordinated relation between *Forestry Law* and *Civil Law*, *Land Law*, *Water Law*, *Law on Environmental Protection*, *Law of Property*, and related laws.

2 Countermeasures and suggestions for perfecting legal system of forest resource protection

2.1 Establishing clear forest resource property system

Poyang Lake Eco-economic Zone should be established to enhance protection of forest resources. Apart from deepening reform of forest tenure, it is also required to perfect the forest resource tenure system from the perspective of laws.

2.1.1 We should break the structure of state and collective dual ownership of forest and keep forest resource tenure integral, to prevent forest land, forest tree and other forest resources from being separated, so as to form multiple element structure and establish mixed forest resource tenure system. In this situation, it is required to modify following legal provisions. Firstly, Articles 9 and 10 of the *Constitution* and Article 3 of *Forestry Law* can be added with the provision that other forest resources can be owned by individuals. Secondly, according to Articles 34 and 37 of the *Guarantee Law*, forest resources except the forest land can be mortgaged. Thirdly, when formulating the *Real Right Law*, Article 81 of *General Rules of Civil Law* is amended. It stipulates that except ownership of forest land, an individual can own forest resources. Fourthly, when modifying the above legal provisions, exercise of subject right shall not impair natural and ecological value of the corresponding forest resource^[4].

2.1.2 We should completely change the inflexible and backward forest resource management model, do what is appropriate and discard what is inappropriate. If the market can handle well, let it do as much as possible. The *Administrative License Law* was formally implemented on July 11, 2004. At present, the top priority is to revise the existing *Forestry Law* and Regulations for the Implementation of *Forestry Law*, and establish an applicable administrative permission system of forestry in connection with the *Administrative License Law*. Firstly, it is to revise provisions on examination and approval system for forest tree cutting and timber transportation in the existing *Forestry Law* and Regulations for the Implementation of *Forestry Law*, as well as provisions on limitation of forest resource circulation in other relevant laws and regulations. Secondly, for operation

of commercial forest, the state grants decision-making power to operators and does not examine and approve forest tree cutting, transportation and transaction any more. Competent forestry authorities should take charge of the supervision to prevent predatory management. The state should concentrate on managing public welfare forest^[5]. Thirdly, intermediary agencies should be responsible for evaluation, certification and scientific and technological research of some forest resources. Fourthly, the state grants the power of transaction of property right to intermediary agencies through establishing proper administrative license.

2.2 Improving ecological benefit compensation mechanism in legal form

(i) Setting up ecological benefit compensation fund and handing the competent forestry administrative authority to manage. The competent forestry administrative authority should evaluate ecological benefit of forest and allocate the compensation fund in strict accordance with legal procedure, and supervise the use of compensation fund.

(ii) Making clear various channels for raising ecological benefit compensation fund. This includes consumption tax on forest trees and special forest products; selling the right to manage state-owned forest land or uncultivated land that is included into commercial forest; income from ecological tourism of state-owned forest; collecting compensation fund directly from beneficiaries or individuals, *etc.*

(iii) The ecological benefit compensation fund includes general compensation and counterpart compensation. Routine maintenance cost for public welfare forest is suitable for general compensation. Objects suitable for counterpart compensation include recovery compensation for stated-owned forest whose operational right has been sold, compensation for collective-owned forest that has been incorporated into public welfare forest, compensation for valuable tree species, animals, microorganism that has sci-tech or cultural value, and non-living substance, as well as compensation for turning commercial forest into public welfare forest. Payment of compensation fund can be periodic, in installments, or lump sum^[6].

2.3 Strictly implementing forest cutting quota scheme

With deepening of forest property system reform, both change and improvement of forest cutting management system should concentrate on the ultimate objective of "protecting ecology and benefiting farmers", change administrative concept, and turn direct management into high-efficient service and supervision in accordance with laws.

2.3.1 Scientifically preparing forest operating scheme and incorporating cutting quota into the operating scheme. The forest operating scheme is a major legal means of forest management in most countries. Good forest operating scheme can ensure constant operation of forest, so every country attaches great importance. Therefore, change of cutting system should start from preparation of forest operating scheme. In combination with realities of Poyang Lake Eco-economic Zone, it is required to make clear legal provisions of preparation subjects and approval subjects, determine basic contents of the scheme, fund

guarantee and legal effect of the scheme, and incorporate forest tree cutting quota into forest operating and ecological system management.

2.3.2 Taking authentic right and classification as guidance to establish combined approval and registration system. Based on the existing situation of forest ownership and classification in Jiangxi Province, the forest tree cutting permission should be improved in following aspects. Firstly, it is required to make clear functions of forest operating scheme on cutting permission, and stress the status of forest operating scheme. Secondly, it is required to make clear that cutting of non-forest land tree should not be included into quota management, and solve the difficulty of farmers in cutting non-forest land (farmland, for instance) trees due to adjusting planting structure. Thirdly, it is required to simplify forest tree cutting types and management sections, provide one-stop service, and establish high-efficient approval mechanism. Fourthly, it is to promote forest tree cutting publicity system, and ensure scientific, fair, public and just distribution of cutting targets. Fifthly, it is required to change forest tree cutting management methods and allow carrying down cutting targets within the operating period.

2.4 Strengthening legal supervision of forest protection

Forest resource management and supervision authorities should focus on management and supervision of forest resource protection. Besides, it is required to take strict measures to superintend and check forest land reversal due to illegal occupation of forest land and destroying forest for land reclamation, consolidate and expand achievements of forest resource protection, and practically ensure ecological safety of Poyang Lake Eco-economic Zone.

2.4.1 It is required to strengthen supervision of implementation of forest land purpose management system, to prevent reversal and illegal loss of forest land. Local government at different levels should formulate *Plan for Forest Land Protection and Use*, carry out design and survey of forest resource plan, perfect forest resource file, and actually implement forest resource protection and management. In addition, local government should enhance supervision and inspection of forest land use, development and ownership change, urge county-level competent forestry authority to update forest files in time, and inspect the file accuracy through spot check, to provide basic data for forest land protection management. Also, it is required to strengthen supervision of forest resource circulation, and firmly curb and legally rectify loss and destroy of state-owned forest resource assets. Finally, it is required to continue to implement forest right registration, make clear ownership, and fulfill protection of legitimate interests of owners of forest right.

2.4.2 It is required to strictly supervise approval system of expropriation of forest land, and standardize utilization of forest land in compliance with laws. Projects occupying forest land must have legitimate license. Forestry competent authority should carefully perform its obligations, collect, use and manage forest and vegetation recovery costs, to ensure the area of restoration not less than forest land lost due to expropriation, so as to reach dynamic balance objective of total amount forest land.

2.4.3 It is required to strengthen supervising cases of destroy of forest land, to practically safeguard forest resources. Competent forestry authorities at all levels should always keep pow-

erful effort in attacking destroying woods for cultivation and illegal occupation of forest land. For behavior of destroying woods for cultivation and illegal occupation of forest land, the corresponding person and leader should be liable.

2.5 Keeping legal system integral for forest resource protection For construction of Poyang Lake Eco-economic Zone and maintaining its ecological safety, it is required to keep integral legal system of forest resource protection.

2.5.1 We should take forest, water and soil as a whole, and jointly maintain ecological safety of Poyang Lake ecological system. In this situation, it is required to incorporate forest, water and soil laws into the same legal system, improve related systems, and enhance coordination of legal relationship between them. Preferably, competent authorities should consider status and functions of construction of Poyang Lake Eco-economic Zone, formulate Laws on Poyang Lake Eco-economic Zone, and make overall plans and coordinate its ecological safety.

2.5.2 It is required to enhance coordination between enterprises, companies, government and state assistance organizations engaged in activities that have influence on forest. For example, evaluate long-term impact of all forest projects or hydro-electric generation project that directly influences forest. The evaluation should base on overall analysis of ecology, and consider present and future influence on people living in these areas (or nearby). Relevant laws and regulations and management system of forest protection should stipulate that enterprises, companies, government and state assistance organizations engaged in activities that have influence on forest shall take such evaluation as one of their feasibility researches.

2.5.3 It is proposed to launch a pilot project for establishing forest court in Poyang Lake Eco-economic Zone, and accept and hear forest cases in unison. In view of importance and particularity of forest resource legal protection to ecological con-

struction, it is required to protect forest resource like protecting water resource.

3 Conclusions

As an important means of solving social conflicts, laws play a significant role in maintaining public benefits. Management of forest resource protection mainly has following functions: (i) law is a fundamental means for protecting forest resources; (ii) laws play the role of guidance, leading and evaluation, and encouraging people to protect and take good care of forest resources; (iii) as the most powerful sanction method for protecting forest resources, laws play the role of frightening; (iv) laws standardize forest right system, and make clear rights and responsibilities of principal part of interests. Thus, strengthening the legal protection of forest resources and perfecting relevant systems will play a significant role in maintaining ecological safety of Poyang Lake Eco-economic Zone.

References

- [1] HUANG LY. On forest resource property right system reform[EB/OL] <http://www.eedu.org.cn>, 2008-3-12. (in Chinese).
- [2] MU XJ, GU B, ER JH, *et al.* Problems and suggests of forest cutting quota[J]. Hebei Journal of Forestry and Orchard Research, 2011(1): 31-33. (in Chinese).
- [3] YUAN LH. Legal thought about admission system of forest cutting [C]// Environmental Law Seminar of China Law Society. Thesis collection of Environmental Law Seminar of China Law Society, 2004. (in Chinese).
- [4] WANG LM. Law of rights over things[M]. Beijing: China University of Political Science and Law, 1998. (in Chinese).
- [5] ZHANG WY. Administrative approval law[M]. Hefei: Hefei University of Technology Press, 2003. (in Chinese).
- [6] LEI L, XU JH, HAO T. Thinking on forest ecological benefit compensation[J]. Journal of Northwest Forestry University, 2004, 19(2): 138-141. (in Chinese).

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is required to build a batch of specialized trans-regional wholesale market with high radiation force and unique characteristics. In addition, it is recommended to strengthen infrastructure construction and transformation, including agricultural product wholesale market information, computer network management system, inspection and test system and logistic delivery center, and make effort to build the wholesale market into commodity collecting and distributing centre, information interchange center, price formation center and fund settling center. As to transaction method of agricultural product wholesale market, we suggest establishing auction center at agricultural product wholesale markets where conditions are ripe. Reform of transaction method can learn from experience and practice of Shandong Shouguang Vegetable Network, and actively develop e-commerce, to realize on-line transaction. Through developing e-commerce and modern logistics, it is able to realize separation of physical distribution and logistics of agricultural products, minimize costs for circulation of agricultural products and raise the circulation efficiency.

3.4 Enhancing talent team construction and improving quality of workers engaged in agricultural product circulation service network Through education and training, it is

expected to help farmers, leader and workers of farmers' cooperatives, agricultural product processing enterprises and circulation enterprises, to set up modern circulation service concept, fully understand third-party logistics, and gradually separate logistics from the production and circulation businesses. It is proposed to establish multiple-level and diversified education system to cultivate talents specialized in agricultural product circulation. Colleges and universities should set up agricultural product logistics discipline and e-commerce courses according to demand of agricultural product circulation for talents, to cultivate senior operating and management personnel for agricultural product circulation. Finally, it is recommended to promote qualification certification system for agricultural product circulation workers.

References

- [1] LI SJ. The construction model of rural distribution system in new times[J]. Economy and Management, 2010, 24(3): 87-90. (in Chinese).
- [2] TIAN WD. Accelerating China rural circulation system construction [J]. Popular Business, 2010(2): 168. (in Chinese).
- [3] HU CH. Rural Logistics System Based on Rural Informatization[J]. Asian Agricultural Research, 2010, 2(2): 10-12, 16.