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Analysis and Discussion on Property Right of Rural Drinking Water Projects

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Abstract Since rural drinking water projects have diversified investment subjects, complex form, and lacks property right system and policy at national level, there are many difficulties in determining property right of projects in many areas. This not only puzzles competent authorities and specific management institution, but also is unfavorable for long-term full play of project benefit. Combining related laws, regulations, and policies, this paper analyzed and discussed property right of rural drinking water projects. It proposed establishing usufructuary right to replace division of property right, in the hope of helping improve management of rural drinking water projects.

Key words Rural drinking water projects, Property right, Usufructuary right, Analysis and discussion

1 Introduction

Rural drinking water project, as an essential rural infrastructure, plays an irreplaceable role in improving rural living environment and promoting social and economic development. According to the *Bulletin of First National Census for Water*, by the end of 2011, there had been 922 500 centralized water supply projects in rural areas of China, benefiting 549 million people. How to ensure benign operation of such numerous rural drinking water projects, bring into play for a long term, and really benefit numerous rural residents, have become a hot research point. Clearly defining property right is to realize reasonable definition of ownership, right to use and right of management, implement supervision subject, and integrate rights, obligations, and benefits. In combination with related laws, regulations, and policies, we analyzed and discussed property right of rural drinking water projects, and proposed establishing usufructuary right to replace division of property right, in the hope of helping improve management of rural drinking water projects.

2 Property right of rural drinking water projects

2.1 Related concepts

2.1.1 Property right, ownership, and usufructuary right. The property right is the ownership of property, generally refers to ownership of immovable property. In recent years, right obtained from intellectual achievement is called intellectual property right. These indicate that property right is the sum of rights of legal subjects over property (including immovable property, movable property and intangible assets), including system of powers and functions consisted of possession, use, usufruct and disposition rights over given property.

According to related provisions in *Real Rights Law of the People's Republic of China*, an owner of an immovable or movable

is entitled to possess, utilize, profit from and dispose of the immovable or movable in accordance with the law. Where an immovable or movable is owned by someone else, a usufructuary right holder is entitled to possess, utilize and seek profit from it in accordance with the law. Besides, the *Real Rights Law* also makes it clear that an owner of an immovable or movable is entitled to establish usufructuary right over the immovable or movable property. When exercising his rights, a usufructuary right holder shall comply with the provisions regarding the protection, exploration and utilization of resources as provided for by law. When the usufructuary right holder exercises his rights, the owner shall not intervene.

2.1.2 Analysis of concepts. From the definition of property right and ownership, we can know that they are two different concepts but interconnected. The ownership features the highest exclusiveness of legal subject over property and belongs to the scope of real rights. The property right takes the ownership as the core, and the ownership nature determines nature of property right or even determines the existence of property right, but the property right is not equal to ownership. There are following main differences between ownership and property right.

Firstly, the difference in right content. Generally, the ownership only considers how an owner disposes his property, but not considers consequence of right disposition to other people. In other words, the ownership mainly stresses right and not duty. In comparison, the property right has wider extension, it not only includes the real right, but also includes stock right, creditor's right, patent right, trademark right, and right of reputation, etc. Besides, arrangement of various rights in property right needs considering interpersonal relationships, apart from property relationship. When exercising rights and performing duties, an owner of property right shall consider how to treat the property he owns, and also consider how to deal with relationship established with others due to the property right, namely, whether the owner has property right to injure rights of others.

Secondly, difference in right defining. The ownership is provision of ownership of property, is collectively reflected in ultimate

ownership of property, so it is easy to determine relationship of exclusiveness. In addition, it takes no transaction cost as prerequisite and does not consider costs for obtaining, transferring and protecting ownership. Therefore, the establishment of ownership less considers various costs in the process of right defining. Different from the ownership, the provisions on property right not only involve ownership of property and various rights therein, but also include rights of tangible and intangible things derived from the property. Apart from determining right boundary of property, it also determines right boundary of derived things.

Furthermore, in the relationship between usufructuary right and ownership, the usufructuary right is a right based on ownership and is a type of limitation to ownership. The usufructuary right holder is entitled to possess, utilize and seek profit from immovable or movable property owned by someone else. Namely, except disposing immovable or movable property at will, the usufructuary right holder has the same rights as the owner.

In these three rights, the ownership is the provisions on property ownership relationship, stresses material attribute of property relationship, and reflects right of certain right; the ownership is an organic combination of a group of rights with property ownership as the core, stresses social attribute of property relationship, and reflects right of using or exchanging certain right; the usufructuary right belongs to *jura in re aliena* (limited real right), is a right set with use value of materials as objective, and reflects right to use certain right.

2.2 Current situation of property right ownership of rural drinking water projects Abstractly speaking, rural drinking water projects are specific things and have ownership, namely, the property right of corresponding property. At present, for most rural drinking water projects, according to the principle of "the project will be owned by the investor", the divisional works funded by government (such as water intake project, water cleaning project, water transmission and distribution project, production and auxiliary structure, *etc.*) will be owned by government and managed by competent authorities of water conservancy or township government; household – entering water supply projects with effort of the masses and fund raising will be owned by farmer households. However, according to provisions of the *Real Rights Law*, state authorities have the power, in accordance with the law and the relevant provisions of the State Council, to possess, utilize and dispose of any immovable or movable property directly controlled by them, and there is no right of seeking profit from the property. The property right without the profit-seeking right can not be deemed as real property right. Thus, it is improper that the property right is owned by the government. If the property right is owned by an enterprise or individual, there may be problem of loss of state-owned funds. In addition, once the property right is lost, government will lose controlling power and fail to effectively safeguard social public interests. Since the ownership stresses belongingness of things, while in the use of things, the concept of property right is too broad, if the property right is possessed, it will

own the rights of possession, use, profit-seeking and disposition. For a long time, various efforts for directly dividing property right of rural drinking water projects are unsuccessful.

3 Solutions to property right problem of rural drinking water projects

3.1 Solutions Dividing property right of rural drinking water projects is to implement supervision and protection subjects and integrate rights, obligations and benefits, and let management institutions (personnel) cast off restrictions and wholeheartedly devote to operation and management of rural drinking water projects. In order to resolve difficulties in theory and operation of division of property right, we propose establishing usufructuary right to replace division of property right. On the basis of making clear the ownership, the owner can establish usufructuary right. Although the usufructuary right holder can own the rights of possession, use and profit-seeking, he can not enjoy the disposition right. In other words, he can not transfer, auction, endow, inherit or mortgage the project. Therefore, given the precondition that state-owned assets are not lost, establishing usufructuary right not only reflects value of rural drinking water projects, avoids various problems due to too broad property right, but also implements supervision and protection subjects and integrates rights, obligations and benefits.

3.2 Implementation subjects According to *Plan on Reform of State Council Organs* approved by the first meeting of the 11th National People's Congress, guiding construction and management of rural drinking water projects are major responsibilities of water conservancy authorities. Thus, for assets funded by government, supervision and administration department of state-owned assets may entrust water conservancy authorities to exercise the ownership on behalf of government. Besides, according to existing liability division of rural drinking water projects, the people's government at county level is liability subject of rural drinking water safety. Therefore, it is feasible to let county-level water conservancy authority to exercise the ownership on behalf of government and take it as implementation subject of usufructuary right.

3.3 Establishment of usufructuary right for various rural drinking water projects In view of public-welfare attribute of rural drinking water projects, government should consider more social benefits rather than economic benefits before establishing the project and during construction. It is important to bring into play value of use, instead of value of exchange. Thus, for medium and small-sized rural drinking water projects with rural residents being major objects of water supply, the construction is not intended to make profits, provided that ownership formed by government investment is owned by government, the county-level water conservancy authorities may establish usufructuary right, take benefited farmer collective as usufructuary right holder, and select proper management institution (personnel) and management method, such as contracting to individuals, management by water user association, or management by village committee. In this way, it is able to minimize operation cost and take the method of government

subsidy as necessary, to make rural people really enjoy welfare of rural drinking water projects.

For water works with certain scale (daily water supply capacity higher than 1 000 m³) and having potential and demand of making profits, provided that ownership formed by government investment is owned by government, the county-level water conservancy authorities may establish usufructuary right, take water supply enterprise as usufructuary right holder of major works and main pipe network, responsible for operation and management of projects within their responsibilities. For other facilities, such as auxiliary pipe network and household – entry facilities, the benefited household collective will be the usufructuary right holder who will select specific management unit (personnel) and management method, for example, handing over to water supply enterprises for management and maintenance, or contracting to individual, water user association, or village committee, responsible for maintenance of pipe network and collection of water charges. In this way, it is not only able to reduce operation cost to a certain degree, but also able to consider profit-making demand of water works, and improve service quality.

At present, rural drinking water projects are mainly newly built large-scale water works, pipe network extension or water works reconstruction projects, centralized water supply project for a single village, and centralized water supply projects for a group of villages. The establishment of usufructuary right can take following methods:

(i) Building new large-scale water works: such projects take towns as the center, have wide coverage area. Some projects can cover several towns, so it is generally able to attract input of social funds and basically form the operation mechanism of using water to foster water. It is feasible to take water supply enterprise as usufructuary right holder of major works and main pipe network; for other facilities, such as auxiliary pipe network and household – entry facilities, the usufructuary right holder can be the benefited household collective.

(ii) Pipe network extension or water works reconstruction projects: such projects mainly involve large-scale water works (including urban water supply projects and privately operated water works), but also include medium and small drinking water projects. According to condition of benefits, for projects with similar scope of water supply to newly built large-scale water works, the usufructuary right for newly increased investment part can adopt

the same method of establishment; for projects that still fail to achieve the purpose of using water to foster water after extension or reconstruction of pipe network, the usufructuary right of newly increased investment part is possessed by the benefited farmer collective.

(iii) Centralized water supply project for a single village: such project is generally small, has low profit-making capability, low participation of social funds, mainly invested by government, and the usufructuary right of assets can be owned by the benefited farmer collective.

(iv) Centralized water supply projects for a group of villages: these projects are slightly larger than centralized water supply projects for a single village, have potential of profit-making, certain participation of social funds, and the establishment of usufructuary right can be carried out with reference to pipe network extension or water works reconstruction projects.

4 Conclusions

Through establishing the usufructuary right, it is expected to let management institutions (personnel) make clear scope of rights, make government free from miscellaneous affairs, deal with industrial supervision and management wholeheartedly, and safeguard social public interest and public security. Besides, it is expected to alleviate the wrong idea that projects are government, so maintenance and management should be carried out by government itself. In addition, operation and management of rural drinking water projects are complicated systematic projects. Establishing usufructuary right is just a beginning, and it is necessary to further study how to properly use the usufructuary right.

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