

Study on the legal system of the exercise of the state ownership of mountain resources within the framework of power

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Abstract

The total volume of mountain resources in China is rich, however, due to the disordered mining, land reclamation, road and the construction of the cemetery increased, from different aspects of mountain resources caused damage can not be ignored. How to effectively protect the mountain resources through the legal system, from the fundamental is to regulate the country's effective management of mountain resources. First, the exercise of national ownership of mountain resources has its rationality and legitimacy, but the exercise of the state power should have a power to exercise the boundary, that is, can not destroy and interfere with the legitimate rights of private enjoyment and exercise. At last, it puts forward how to construct the legal system of the state ownership of mountain resources in the framework of power.

Keywords

Mountain resources, power frame, state ownership.

1. Introduction

Mountain resources is a gift of nature and our precious wealth. However, in the past, our country mountain resources but due to various reasons was varying degrees of damage, strengthen protection to the natural mountains and sustainable use should be paid more attention to by the government and the social from all walks of life.

2. Current situation of mountain resources in China

2.1 Distribution of mountain resources in China

Resources in the mountains of mineral resources, forest resources, land resources, but not limited to the following. In mineral resources, for example, the world's known minerals can be found in China, and rich in reserves. At present, there are 156 kinds of proven reserves of minerals, the total reserves ranking third in the world. Which the coal reserves of 10033 tons, mainly in the north, especially in Shanxi and the Inner Mongolia Autonomous Region, the most abundant. Iron ore reserves of 457 tons, mainly in the northeast, North and southwest regions. Oil, natural gas, oil shale, phosphorus, sulfur and other minerals are also very rich. The main oil reserves in the northwest region, followed by the northeast, North China and the eastern coastal shelf. Rare earth metal reserves, more than the total amount of rare earth in other countries in the world.

2.2 Causes of the destruction of mountain resources in China

Disordered mining, destruction of the mountain. In the past few decades, the city was once the disorder and excessive exploitation, destruction and devastation. Illegal poaching cases have occurred, the unreasonable exploitation and utilization. Due to the mining industry there is a small scale mining, ore inferior mining, mining rich abandoned the poor phenomenon, deep processing of mineral products of low ore sales or the beginning of the processing level, thus causing resources enormous waste. At the same time, a large number of dust generated in the process of mining in also caused the death of a large area of native vegetation. Due to the expansion of city year after year,

urban and mining area have been connected, windy dust clouds, red rain water flowing everywhere, serious soil erosion, poor living conditions, increase mountain protection, has become an urgent task to improve the living environment of the residents.

"Wasteland", the phenomenon of serious slope. Small wasteland is meant to carry out agricultural activities in woodland, is the main crop planting behavior. At the same time in arbor forest land, shrub land, deforested land, barren land and other forestry land to grow crops belong to "small open up wasteland" behavior. The main damage is the destruction of forest resources and landscape, eroded mountain vegetation, easy to cause soil erosion and landslides. Parts in the forest wasteland farming very serious phenomenon, has led to the forest resources and ecological environment has been greatly damaged, resulting in serious soil erosion. Over the sloping land is above 25 degrees of arable land. High slope and serious desertification of arable land, directly destroyed years of afforestation, the original green and beautiful mountains become scarred.

The road on both sides of the road, and the cemetery also caused the trauma to the mountain can not be ignored. With the rapid development of the city, each city in recent years also increased the construction of roads and highways, however in the construction process, because apart from the supervision of environmental protection departments, renovation along the road quarrying activities are in a state of disorder, caused by the natural landscape and the mountains and vegetation attached to a certain degree of damage.

At the same time, some of the cemetery area Kaijian, large tracts of forest destroyed, if not to be prevented, once the flood season, and it is easy to form secondary landslides, mudslides and other natural disasters, endangering the mountain residents. But because of grave public burning caused by fire is attached to where the mountain vegetation is destroyed. Therefore, should be reasonable layout planning of cemetery, can reduce the occupation of forest land and destruction of the mountain.

3. The interpretation of the concept of "state ownership" in the framework of power

About "Mountain". There is no definition of "mountain" in the Chinese dictionary, but can be driven by the definition of the "mountain", "Shuowen Jiezi" will "mountain" is defined as "soil Shi Ergao. It can be seen that only the high pile of debris itself, but from the perspective of legal protection should also include the resources, such as minerals, as well as the vegetation attached to the mountain. In practice for the protection of the mountain resources is mainly for mine resources and environmental protection, also mountain and the vegetation is inseparable and the result of vegetation protection also protects the mountain itself, this is the real intention to the protection of the environment and resources. Of course, for "mountain" the specific definition of the local can in legislation according to the actual local definition, for example in explained "Liaoning Province Qingshan protection planning outline" will be "mountain" consisting of three parts: the top of the mountain, hills and foothills, including Zhongshan, low mountains and hills. The hills were included in the planning of the relative elevation of 50 meters above the low hills. Therefore, the concept of the mountain in the legislation from the perspective of sustainable development and legal function, should be expanded to explain, that is, the mountains and the mountains on the attachment.

About "Mountain resources". The scope of the mountain resources mainly include forest, land, mineral resources, etc.. As an important part of natural resources, all the necessary settings for the country. These resources not only have their own characteristics and the existence of the characteristics of the mountain and the existence of the mountain as a whole, as a whole requires the effective use of national ownership and protection. According to the concept of the mountain, the mountain resources should be defined as the mountain itself and the existence of all resources attached to the mountain.

"State ownership" is a key concept, especially for the understanding and definition of "all" two characters. Established in China's constitution and the law on real right of natural resource ownership patterns is to "state ownership" as the core. However, "property law" Article 45, paragraph 1, of the provisions, "law belongs to the property owned by the state, belongs to all countries namely ownership by the whole people." The ownership of the natural resources real enjoy should be owned

by the whole people and countries just as the role of management. Therefore, we should be a in the interpretation of "state ownership" to "state regulation" is the core of property right model. A dynamic regulation model should be adopted to deal with the rights of natural resources. At the same time ownership should itself be regulation of a tool to in order to prevent private arbitrarily deprived of natural resources, rather than control and possession and deprivation of private rights.

3. Status quo of the exercise of national ownership of mountain resources in China

In our country, mines and other construction project a lot of development and exploitation leads to a sharp deterioration of the ecological environment, mountain resources damage is very serious, deforestation, land reclamation, plant overload, disordered grazing, chaos buried disorderly burial and so on damaged mountain body behavior despite repeated prohibitions. However, in addition to the "forest law", "land management law", "water and soil conservation law" and other relevant laws, there has been no special law for the protection of the mountain. Until the beginning of 2012, Liaoning and Wuhan Province, Hubei province has issued on the mountain to protect local laws and regulations and government regulations. But there are still no clear law enforcement status, supervision system is not perfect, the main responsibility for law enforcement system is missing and other issues, the need to improve the legal system of the exercise of the state ownership of mountain resources.

The goal of national ownership system of mountain resources could not achieve. Envisaged goals established by the system is the guarantee of mountain resources reasonable development and utilization. However, in the practice process, state ownership of natural resources fail to give play to the its function: to protect the natural resources and the ecological environment and promoting sustainable development. In recent years, China's environmental emergencies occur frequently, water resources, mineral situation is grim, a large number of important natural resources related to the national economy and the people's livelihood are not reasonable use, loss, waste and serious damage.V.Coping strategies of China's environmental governance.

4. Theory analysis of mountain resources and the reasonableness of the exercise of state ownership

The establishment and exercise of state ownership should have full and reasonable purpose. Any power conferred and should be set to protect and meet certain interests, set the state power to protect the interests of the ruling class. In socialist society, the people are the masters of the country, the state power should be set up in order to safeguard the interests of the people for the purpose of. And the setting of the ownership of the natural resources is should be attributed to the state or private rights, from natural resources core trace to its source, the so-called "resource" is a useful things, "natural resources" is from the valuable elements in nature and can be used by people. Not all of the natural resources should be nationalized, such as air, sunlight, wind and other non scarcity of resources, there is no need to set the state ownership in law.

State ownership of natural resources set should be due to the scarcity of the natural resources and the need for protection, that is, the protection of natural resources ownership of the enjoyment and exercise of the essence, it should belong to all the people share a common and private rights of the prevention and treatment for a limited resource wanton destruction. Mountain resources as a part of the natural resources, should also belong to the public resources, public all, including in the mountain resources mineral resources, land resources and forest resources are scarce, should be right belongs to nationalization. At the same time the "tragedy of the commons" tells us, the general public resources if there is no effective management, will inevitably lead to damage and destruction. Therefore, based on the "public trust theory", it is reasonable and necessary to exercise the ownership by the state, but this "all" is not "possession" and should be reflected in the regulation and management ".

5. Research on the boundary of the power frame for the state ownership of mountain resources.

Based on a set "the public trust theory" natural resources state ownership is no doubt the rationality of the, but the exercise of ownership must be carried out within the framework of power, otherwise it is easy to cause of damage of freedom of the individual violations of the interests of others and public interest. National existence rationality is undoubtedly to protect all citizens of the safety of life and property safety, and promote the sustainable development of environment and economy, society, and mountain resources in the main resources that soil, forest and mineral resources of the state ownership is built on the basis of limited and rareness of mountain resources. So it is necessary to set up the national ownership of the mountain resources. But the "absolute power corrupts absolutely" power is easy to be abused, to touch the power limit until he was. In order to prevent the unlimited expansion of power and the violation of the right of private rights, it is necessary to define a framework for the exercise of power.

First of all, the framework of the power boundary of state ownership should be clearly defined by law. According to the principle of "power law" in the administrative law, the state, in particular, the power of state organs must be set in accordance with the law, to determine the state ownership of the mountain resources must be given by law. By both "constitution" and "property law" the law of mineral resources, forest resources, water and soil resources, in principle is belongs to a country all, especially mineral resources, due to its scarcity and non renewable, so it belongs to country absolutely everything, but here the "all countries" essence is "all citizens" refers to the power of the boundary is the state to exercise in the management of the boundary shall be legal to be clearly defined.

Secondly, the exercise of power should not infringe upon the exercise of the legitimate private rights. For through the self-discipline of the free market economic mechanisms or the industry itself to achieve good management of social affairs and public power should not touch even to expand; and for civil society to achieve effective management to reach to a certain order of social public affairs shall give positive response.

6. Research on the legal system of the construction of the regulation and protection of the state ownership of mountain resources.

How the exercise of state ownership a good effect to protect the mountain resources are not destroyed, and reasonable development and no private rights and exercise damage and obstacles, as is usually the case, the power exercised inevitably will lead to private rights deprivation and restrictions. Therefore, it is necessary through the system set up to standardize administrative power exercised in accordance with the law and by the law will limit the power in the exercise of reasonable boundary, the power exercised in accordance with legal procedures, which requires the exercise of state ownership of mountain resources of regulation and guarantee of the legal system must be constructed.

6.1 Necessity and legal status of mountain protection law enforcement agencies.

Through the analysis of the functions of the relevant administrative departments of forestry, land resources, water conservancy departments and other relevant administrative departments, these departments are related to the exercise of the relevant resources of the mountain. For example, "forest law" thirteenth provisions "forestry authorities at all levels in accordance with the provisions of this law, the protection of forest resources, use, update, the implementation of management and supervision." "Mineral resources law" Ninth stipulates that the competent department of Geology and mineral resources under the State Council in charge of the supervision and management of mineral resources exploration and exploitation. The relevant competent departments under the State Council shall assist the competent department of Geology and mineral resources under the State Council in charge of supervision and administration of mineral resources exploration and exploitation." Obviously, the law of our country's resources protection department basically is to give each relevant administrative organ to the administrative authority and the administrative examination and approval authority of the relevant special resources.

Our country has no special law for the protection of the mountain, so there is a need to establish a special protective body of the mountain and clear its legal status. This is related to whether the organization has the administrative power, the scope of administrative functions and administrative responsibility. At present, is the practice of Liaoning Province, in accordance with Article 6 of the castle in Liaoning Province Protection Ordinance, "provinces, municipalities and county forestry administrative departments in charge of the Castle Peak protection work within their respective administrative areas, the Castle Peak in the protection and management of institutions bear peak protection concrete work." Description of the Ordinance to the mountain protection management agencies set up a subsidiary of the forestry sector. Therefore, it does not have an independent administrative body position, that is, the administrative act should be representative of the behavior of the forestry sector, and then once the administrative responsibility should be borne by the forestry sector. Of course this institution should belonging to the forestry sector is questionable, as mentioned above, the practice of the United States is the mine protection mechanism is arranged inside the Mines Department. Their reason is mountain protection mainly refers to the mines of the protection of the environment and natural resources, then by work related to the management of government departments and mineral mining is reasonable, they are more familiar with mine construction and production activities, mine environment protection and mineral resources comprehensive utilization, rational development and protection of resources closely together, combine management section, the manpower, the physical resource, management is conveniently. So our country in the local legislation is should the agencies affiliated belongs to the forestry sector or Mines Department should be combined with local conditions to determine the, but only the fold, and two departments all have the power to because only the powers clearly gives a subject, it can really is responsibility.

6.2 Constructing the legal system of protecting the law enforcement agencies of the mountain.

Throughout our country environmental protection laws and regulations, all of which are environmental regulators how to regulate the law, and there is no regulation of the law of environmental regulators. This is because of a talk about environmental pollution, resource damage, investigate its causes, the first is the cause of environmental pollution or resource destruction of the enterprise, that is, the administrative law of the relative person. But in practice many local environmental issues for a long time can not get solved in the root is to blame for the administrative subject, is not an exaggeration to say, development speed of China's environmental protection cause slow and a lot of environmental pollution of local administrative body does not fulfill the responsibility to protect the environment and to fulfill the responsibility of environmental protection does not reach the designated position is closely related to the.

In order to solve this problem, it should be from the orientation of environmental law. At present, China's "environmental protection law" positioning management. On the one hand is due to the official standard thought in our country for a long time, such as the research of basic problems concerning the theory of administrative law in the administrative law circles of our country, stretching so far, never intermittent. There is still debate on management theory, control theory and balance theory. On the other hand, Professor Lv Zhongmei reason more critical thought is the environmental problem only due to the administrative relative person, and the government is assumed to be an ideal person, and all levels of government officials is an ideal person, all acts only a goal is everything for the people. It is concluded that the behavior of the government must be to protect the environment, not to pollute and destroy the environment. This is a kind of idealism, "anyone who is not reliable in the face of great temptation", because "absolute power is absolutely corrupt"; the government is necessary evil, and therefore must be restricted to the public authority.

6.3 Clear the government target responsibility system and the department responsibility system.

Provisions on legal liability in the law of resource protection are mainly concentrated on the legal liability of administrative relative person. This is problem and Chinese traditional ideology and culture, is the concept of "official standard" inseparable, which is administrative law urgently awaits

to be solved, it is because our country has been will environmental law is defined as "regulators". Lead to laws and regulations on the legal responsibility of the majority of the administrative counterpart is responsible for the way of commitment. The administrative subject of the responsibility of the form is very simple, that is, by the environmental protection of specific administrative staff to assume legal responsibility, and as the executive body of the administrative organs itself does not assume legal responsibility. This makes the administrative authorities to escape the blame should not shirk its responsibility. And responsibility for the content of the administrative subject is also very simple, such as the "Regulations" only one provision: "anyone who, in violation of the provisions of this Ordinance, the castle protection management institutions or the relevant administrative departments have one of the following acts, the directly responsible person in charge and the other persons who are directly responsible, by the unit to which they belong, the supervisory organ or the administrative department at a higher level shall be given administrative sanctions; constitute a crime, shall be investigated for criminal responsibility." This makes the administrative accountability system does not play its due role. Therefore in the local mountain protection legislation legal responsibility chapter should increase the provisions of the administrative legal responsibility, not only for the responsibility of internal personnel of accountability, for the administrative subject itself should also be accountability, such as mountain protection and management agencies under the authority should also bear as related legal liability. This is conducive to the protection and management of the mountain to better fulfill their responsibilities.

To integrate the existing legal problems and suggestions for the protection of mountain resources, and then to form a frame system which is suitable for the local mountain protection law system in our country.

7. Conclusion

The mountain resources protection is imperative under the situation, while the national as the owners and managers of resources, voluntary protection intelligent play a key lies in state ownership of the reasonable exercise, can give full play to the state-owned property management authority, but does not touch upon the private rights of the range. Within the framework of the power of legal boundary, the legal system to regulate the exercise of state ownership is constructed, which provides the most powerful guarantee for the protection of mountain resources.

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