

Analysis on the Theoretical Basis of the Validation of Mountain Property Rights

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Abstract: Among the many natural resources, the mountain is an important carrier and natural ecosystem. In the community of shared life, it is a vast space for the free growth of forests and grasslands, a high-quality living environment for wild animals, and an important river source. However, for a long time, the unhealthy and green economic development model has seriously damaged mountain resources, and the layout of "Sansheng Space" has been seriously unbalanced. Although China has enacted the Law on Land Management, the Law on Water, the Law on Forests and other special laws on resources, there is not yet a comprehensive national legislation on the mountain, a natural complex with specific environmental elements.

Keywords: mountain property right; natural resources; ownership; usufructuary right

1. Background and Significance of the Study

1.1. Research background

The property right of natural resources is a general term for the legal norms on the ownership and use of natural resources and their rights [1]. Article 9 of China's Constitution stipulates: "Mineral deposits, water flows, forests, mountains, grasslands, wasteland, tidal flats and other natural resources are all owned by the state, that is, the entire people; Except for forests and mountains, grasslands, wasteland and tidal flats which are owned by collectives as prescribed by law. "In the ownership of natural resources, the state and the collective are the main body of the property rights of natural resources assets; At the level of the right to use natural resources and the right to operate and manage, the subject of property rights may be a unit legal person or a natural person [2]. The Ministry of Land and Resources under the State Council is responsible for regulating the management of the ownership of land and resources and protecting the legitimate rights and interests of the owners and users of natural resources such as land resources, mineral resources and marine resources according to law [3]. At the operational level, the National People's Congress authorizes the State Council to exercise specific state ownership, local governments are responsible to local people's Congresses and governments at the next higher level, and sub-regions exercise management rights over natural resources assets. The central government controls

important and cross-regional natural resources assets, local governments control natural resources assets in the region, and the government has the power to control natural resources assets, but it can not only maintain assets or preserve assets and add value, We must also create material wealth for the whole society by expanding production and management. The fact is that the government does not have production and operation functions. Therefore, it is necessary to hand over this responsibility to enterprises and allow them to use the assets of natural resources to conduct operations and management in order to obtain the economic benefits needed for the production and life of human society. Enterprises have the right to operate natural resources, and the entrusted agency relationship has also emerged at the same time as the property right is granted. The ultimate agent is the enterprise. The property rights chain and the agency chain are: "People-Government-Enterprise." Because of the public nature and scarcity of natural resources assets and the limited rationality of operators, the central government not only acts as the agent of the ownership of natural resources, but also exercises management power over them on behalf of the people. In an ideal state, the government will determine the assets of all-natural resources and truly formulate the balance sheet of natural resources. In the end, the company is exercising the right to operate. The government will collect taxes and levies on natural resources assets to achieve the right to determine natural resources assets. The purpose of development, use, and maintenance.

1.2. Research significance

For a long time, humans have used the mountain as a "cash cow" to ask for resources and services. People felled and cleared at will. However, since this century, the protection of mountain resources has received attention. For example, in Jiangsu Province, where mountain resources are precious, the provincial and provincial governments attach great importance to the protection of mountain resources. They pointed out: "Like the protection of cultural relics, the mountains of the province are classified and graded, and the mountains of the province are marked with numbers.", "The provinces need money, the most missing mountains in Jiangsu are mountains." Now the mountains in Jiangsu are the ugliest. The province can hardly find a complete

mountain.” “In the future, mountains and fields are precious ... Tian can be rehabilitated year after year. But after the mountain was dug, there was no more. “Wait. Therefore, the protection of mountain resources is more important than the development of mountain resources. The protection of mountain resources is of great significance for maintaining the diversity of Chinese landforms and protecting the ecological environment and natural landscapes.

The core goal of mountain resources registration is to promote the formation of a new model of mountain resources management through the publication of legal information such as natural conditions, tenure conditions and restrictions. At present, China's mountain resources property rights system is not perfect, the unified management system has not yet been established, the development and protection system lacks coordination, and the cross-responsibility of the supervision and maintenance mechanism is outstanding. This is the challenge and direction of the unified registration of mountain resources.

At present, China is still exploring and initiating the process of balance sheet preparation of natural resources. At present, there is no similar practice in the world, that is, the institutional innovation of natural resources balance sheet is not combined with China's unique institutional background and era background. In 2013, for the first time, China introduced the concept of a balance sheet for natural resources, which has attracted wide public attention. China proposes to “explore the balance sheet of natural resources and carry out the exit audit of natural resources assets for leading cadres”, which is inseparable from China's unique natural resources property rights system and the requirements of the times for national governance and economic transformation. The balance sheet of natural resources is an important system to promote the construction of ecological civilization in China. However, the current research failed to correctly grasp the institutional background of China's natural resources situation, failed to break through the ideas of international national balance sheets and environmental-economic accounting, and paid less attention to China's current background. The important role of natural resources balance sheets has not been seen from the perspective of national governance and economic structural transformation and upgrading. Due to the limitation of research starting point and perspective, it is difficult to reveal the institutional innovation of natural resources balance sheet, which will inevitably affect the theoretical understanding and practice of natural resources balance sheet.

With the deepening of ecological civilization system reform in our country, especially the investigation of mountain resources, the integration of planning functions and the construction of national park system, the basic conditions of mountain resources registration will change greatly. We will gradually expand the scope of application of the results of mountain resources registration, keep updating the operational framework, coordinate with the related work of mountain resources

survey and protection, and finally complete the ultimate purpose of reforming the governance system and the natural resources property rights system.

In practice, the United Kingdom promulgated the Green Belt Act and the National Park and Rural Passage Act in 1938 to preserve and protect ecologically functional mountain forests on the edge of the city through the carrier of country parks. Through the overall planning and design of the city, the United States San Francisco manages the urban space from the perspective of grasping the overall principle, controlling the height and volume of the building, and shaping the overlooking landscape to promote the healthy development of the city. In 2000, Quanzhou city of China compiled the “protection plan of two rivers and four mountains”, which emphasized highlighting cultural characteristics, reasonably guided the relocation and rectification of “mountain villages”, and played an important role in the protection and utilization of the mountain in Quanzhou city. Subsequently, cities such as Wuhan, Fuzhou and Zhuhai have also carried out related work on the delineation of mountain protection lines.

Coase believes: “Property rights are a kind of legal behavior rights that the subject of property rights owns at the same time because they own certain property. “Aerqian proposed that” property rights are the right to choose an economy that is enforced by a society. It is used to define the rules of how people benefit from economic activities, how they are damaged, and how to compensate. “Compared with general property rights, the property rights of mountain resources not only have their common characteristics, but also have their particularity in terms of property rights arrangement, definition of ownership rights, and definition of transfer rights. It is actually the definition, exercise and protection of mountain resources rights. The key is mutual exclusion. The fundamental reason for determining mountain resources is the lack of natural resources. With the rising price of resources, the cost of establishing ownership is lower than the gain, which will certainly inspire people to clarify the ownership of mountain resources.

2. The Object of the Mountain Right

As the basic landform of the mainland, the mountain is a very valuable non-renewable natural landscape resource. It highlights the natural characteristics more directly and plays a pivotal role in improving the natural landscape environment. Mountain resources are an important geographical space for the accumulation of space resources, biological resources, water resources, landscape resources and mineral resources. They are an important support for regional economy and an important resource base for sustainable social development. The traditional location of cities in China attaches great importance to the distribution pattern of landscapes. The common feature of the urban spatial pattern is “walking on mountains and walking on water”. These mountains have a place in geomantic that can't be ignored. It is also an important node and protected object in the urban

landscape. They are the embodiment of the city's vitality and can't be reborn.

So far, mountain resources have not been listed separately in the scientific literature of resources, and there is no special academic meaning to describe mountain resources. For a long time, in the geographical classification of natural resources, most people only agree with five types of resources, namely, land resources, water resources, climate resources, biological resources, and mineral resources. However, based on the traditional classification of resources, marine resources have developed into category 6 resources. Taking this as an example, after humans have deeply understood the particularity of the natural attributes of the mountain and continuously revealed the special resource value of the mountain, the independent resource status of the mountain has gradually become prominent in the resource system, and the category of mountain resources constituting an independent resource has become a general trend.

As one of the basic landforms of the mainland, the mountain is one of the main places for human activities. People's knowledge of the mountain is more derived from the geography of the "mountain". Geomorphologists divide the earth's land surface into five major types: plains, hills, basins, mountains, and plateaus. They think that mountains are distinguished from plateaus by smaller peaks, and they are distinguished from hills by larger Heights and slopes. The phenomenon that a mountain exists alone is rare. Almost all of the mountains are continuously distributed in veins, strips, and sheets to form mountains. It can be seen that the concept of mountains and mountains in geomorphology is clear [4]. The "Geography Dictionary" gives the most scientific and normative definition. It believes: "Mountain is a general term for many mountains. It has a large absolute height and relative height, deep cutting and high cutting density, and is composed of mountains and valleys. According to this understanding, mountains are a type of area with a mountainous background that consists of a variety of landforms and landforms. Although the term "mountain resources or mountain resources" appears in different documents, no clear definition has been given in the academic community. Mountain (land) resources are different from natural resources such as land resources, water resources, climate resources, biological resources, and mineral resources [5]. They belong to a combination of resources. In addition to including five types of factor resources, they also include the plains and even hills and plateaus. The resources of special attributes. At the same time, the mountain (ground) is a special natural complex that has special socio-economic value for humans, and this special value is the result of the coupling of various elements within the mountain, including the single element resources carried by the mountain. There is relatively little research based on this aspect. This article defines "mountain" as "an area with certain elevations, relative Heights, slopes, and related valleys, mountains, and resources with ecological, economic, social, and cultural values. The mountain resources are defined as the

natural attributes of the mountain that are different from the plains (natural landscapes composed of relative Heights, three-dimensional spaces, irregular slopes and valleys, etc.) and the social attributes carried by them (by cultural footprints, mountains, etc. Humanities Landscape) [6]. In order to accurately define the object of mountain identification, while referring to the criteria for the classification of related mountain landforms, five basic principles for mountain definition are determined:

Principle of Continuity: the mountain is regional and less common. When defining the mountain range, it should ensure its continuous characteristics; The principle of scarcity: in areas where mountain resources are scarce, attention should be paid to typical and special mountains, such as rivers and lakes, mountains with rivers and seas, and tiny mountains scattered on vast plains. Conceptual consistency principle: The scope of the mountain should conform to the basic definition of the qualitative description of the mountain; the principle of universal cognition: The scope of the power mountain must conform to the general understanding of the public (research experts and surrounding people) [7];

3. Types of property rights in mountains

According to the characteristics of natural resources, different property rights systems and control systems are established under different circumstances, and property rights subjects are concretized to solve the problem of virtual property rights subjects. We will improve the agency system for State-owned natural resources, establish a specific and complete system for the agency or trusteeship of State-owned and collective natural resources assets and their management and management, and clearly specify at which level or agency each type of natural resources asset is represented, and define the corresponding management and administrative subjects. As far as possible, we will improve the right to use, clearly define the various powers, rights, responsibilities and rights such as operating rights, subcontracting rights, transfer rights, lease rights, disposition rights, and income rights, and ensure the standardization of the circulation and management of natural resources. Lead the competition mechanism of natural resources property rights agency and cultivate the natural resources property rights trading market. We will implement a system for registering property rights and licensing the use of natural resources, establish a market for the right to operate natural resources and the right to use them, and encourage and promote non-profit organizations such as business units and enterprises to operate natural resources. We will optimize the management of natural resources and the performance of ecological and environmental protection.

3.1. Ownership of the Mountain

According to the provisions of our Constitution, all natural resources such as mineral deposits, water flows, forests, mountains, grasslands, wasteland and tidal flats are owned by the State, that is, by the whole people, with the exception of forests and mountains, grasslands,

wastelands and tidal flats that are collectively owned as stipulated by law. In the mountain ecological space, the ownership of specific natural resources such as forests, wasteland, and tidal flats owned by the collective has been clearly determined to be directly used.

3.2. Mountain Usufruct

Mountain space contains a variety of natural resources, and its utilization methods are diverse. There are many types of natural resource usufruct rights. The ownership of natural resources and the type of usufruct rights clearly stipulated by laws and regulations should be included in the scope of mountain property rights. Mountain usufruct rights need to pay attention to the following aspects. First, taking into account the diversity and separability of various natural resource usufruct rights in the mountain space, there can be multiple non-conflicting property rights on a specific natural resource. Second, natural resource usufruct rights that should be included in the scope of mountain property rights may be competing or aggregating. For example, the land contract management system stipulated in the Land Management Law and the Rural Land Contract Law has overlapping parts with the aquaculture license stipulated in the Fisheries Law, and the right to land contract management can also coexist with the right to fish in the waters. Mineral water and geothermal water have dual attributes of mineral resources and water resources. They involve the competition of mining rights and water rights. The "Circular on the Division of Responsibilities for the Management of Hot Water in Mineral Water" of the Central Organization Committee actually affirms that the water rights and mining rights can coexist. Thirdly, it is necessary to integrate the usufruct rights of natural resources not specified by law into the scope of mountain property rights. For example, tourism development in mountain space is a comprehensive utilization of various natural resources in mountain space in different forms. It should be determined as different natural resource usufruct rights according to the specific objects and forms of tourism development. For another example, China's current laws and regulations do not have the expression of "shipping water rights" or "water transport use rights". The nature of shipping water rights is similar to that of water rights. It is the use of water energy in water resources. It is a kind of water right in our country's law and is included in the registration of water right. Fourth, if the administrative counterpart engages in specific activities and obtains related economic benefits after administrative permission, it is not considered as a property right if it is not clearly recognized as a right by law. Some administrative licenses allow the use of natural resources to carry out profitable activities. Although it is similar to the form of some natural resource usufruct rights clearly recognized by the law, such as hunting licenses, gathering licenses, etc., according to the legal principle of property rights, it can't be used to establish property rights.

4. Guidelines for the Establishment of Mountain Property Rights

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Insist on legal rights. In order to promote the law-based process of mountain registration, the types and contents of property rights of mountain should be determined in accordance with relevant laws and regulations.

Stick to clear rights and responsibilities. We shall draw a clear boundary between the ownership of mountains owned by the whole people and collectives, draw a clear boundary between mountains owned by different levels of the state and those owned by different collectives, and draw a clear line for the ownership of usufruct rights of mountain natural resources that have a greater impact on mountain protection and rational use. Clarify the subject, rights and obligations of various mountain property rights.

Adhere to ensure the cohesion of power. Coordinate the promotion of the establishment of mountain property rights with natural resources assets, water flow use, rural land contracting, grassland contracting, and forest rights, etc. The results of various types of property rights that have been clearly identified in the mountain space are directly used, and space for other reform items is reserved. There is an interface with the uniform registration of natural resources.

Uphold continuity of power. In the context of existing mountain management systems and patterns, existing mountain uses and ownership will not change. Collecting and combing the existing certificates of usufruct rights such as forest warrants, land management warrants, water collection certificates, land transport certificates, breeding rights, mining rights, and various types of contract contracts within the mountain area, and clarifying the boundaries between different levels of ownership and usufruct rights, and the relevant issues left over from history. As long as it complies with the regulations at that time, it will not easily deny or change and rationally treat the actual problems existing in the current mountain utilization according to law.

5. The Right to Register Mountain Property Rights

Registration is an important form of mountain property rights. In order to realize the mountain property rights, the natural status and ownership status of the mountain should be recorded in the mountain property rights register.

5.1. Mode of Registration

First, general registration is combined with specific registration. As an ecological space, the mountain includes a variety of natural resources such as mineral deposits, water flow, sea areas, forests, mountains, grasslands, wasteland, tidal flats, and wild animals and plants. The registration of mountain property rights should take the mountain patches with complete ecological function and concentrated area as the registration unit, carry out the general registration, record the main natural attributes of the mountain, and the specific registration details the attributes and ownership status of specific natural resources.

Second, register ex officio. According to the results of the mountain census work and the archives of the relevant

departments, the natural conditions and ownership of the mountain are specifically reviewed, and the relevant departments coordinate and cooperate with each other when the natural conditions or ownership recorded in the register change. Related materials will be required to be registered in a timely manner.

Thirdly, it is based on the registration of immovable property. Coordination within the scope of natural resources assets determination, the realization of mountain identification rights, natural resources unified identification rights, real estate registration links. If the party concerned needs to know more information about the mountain and the natural resources registration in the mountain, he may inquire about the registration status according to the number of the mountain unit recorded by the property rights registration institution in the mountain area.

Fourth, initial registration, change and transfer registration and cancellation of registration. Initial registration refers to the full registration of all-natural resources within the mountain registration unit within a certain period of time. Initial registration includes general and initial registration of the attributes and tenure status of a particular natural resource. Change and transfer registration is due to changes in the contents of the mountain property rights register. Cancellation of registration refers to the cancellation of ownership or usufruct of natural resources in the mountain registration unit by the registration unit for natural and human reasons.

5.2. Mountain Registration Improvement Opinions

First, the division of registration units. Article 8 of the "Measures for the Unified Registration of Natural Resources (Trial)" requires that "natural resources registration units be divided according to different types of natural resources and their importance in ecology, economy, national defense, etc., as well as the principles of relatively complete ecological functions and centralized contiguous areas." "National parks, nature reserves, water flow, etc. can be used as registration units separately." The author believes that this reflects the idea that our mountains, waters, forests, farmlands and lakes form a living community. According to the influence of mineral development and utilization on the life community of our mountains, waters, forests, farmlands and lakes, the spatial scope of mountain resources should be included in the scope of thinking defined by the registration unit as far as possible. The author believes that the mountain space, which is mainly for public welfare, together with the mineral resources that may exist underground, is designated as a registration unit; for other mountain resources, it can be designated as a registration unit according to the mountain area.

Second, the structure design of the register. (a) The format of the register, considered in the direction of the specific analysis of specific issues, as a mountain resource to become an independent resource, should be designed on the basis of statistical information on the type, type and quality of mountain resources in the registry unit; It is not only necessary to improve the

characteristics of mountain resources, but also to increase the number of mountain combinations in statistical classifications. In terms of statistical quantities, measurements are carried out according to different indicators. These methods may not be widely applicable to the statistics of aquatic forests and grasslands in the domain. It is only for the mountain resources to register a single register, but it can accurately register the mountain resources to ensure the right, it is really to do "find out the bottom of the family." For this reason, the author redesigns the style of the register from the content. The first is the addition of secondary elements (registration units as primary elements) for recording specific resource targets in the registration unit, including five secondary elements: water resources, forest resources, grassland resources, land (wasteland and tidal flats) resources, and mineral resources; The second is at the registration unit level, so that the register can record the classified statistical information of natural resources in the landscape forest and grassland mine in the unit. In the registration unit level project arrangement, as far as possible to maintain the consistency of landscape forest and lake grassland mines.

Thirdly, the relation of usufruct rights and the drawing elements of register are selected. According to the Pilot programme, information on related usufruct rights is recorded in the natural resource register. Integrated with the format of the register attached to the Pilot Scheme of the Pilot Scheme, the real estate rights and usufruct rights covered by the registration module are integrated into the register through the placement of the real estate rights and usufruct rights information form on the register. In the attached format of the register attached to the "Trial Measures", we will increase the layer of mountain resources and estimate the range of reserves, and achieve the integration of landscape forest and grassland.

Fourth, the registration procedure and trigger mechanism. There is a great difference between mountain resources and aquatic grassland in the ways of identifying natural resource objects and delimiting range. In a sense, the mountain resources are more specialized and the technical means are more complex. The change of grassland in water forest emphasizes both natural and human factors. The changes in mountain resources are more caused by human factors (such as mining and overlaying). By consulting the pilot data, the author registers the first registration procedure for the known mountain and the new mountain that has been recorded through the new review. Change registration procedures are performed for mountain changes due to various methods. For changes in the mountain, whether it is the first registration or change registration, the mountain estimate date must be clearly recorded.

Fifth, restrictions should be kept on the books. The use of control, ecological protection red lines, public control, special protection requirements and other restrictive measures is an important content in the natural resources register, and it is also an important support for the ecological civilization system as a safeguard measure. In practice, for the registration unit containing mountain

resources, in addition to the content of the overall land use plan and the demarcation of the ecological protection red line, the relevant content of mountain resource planning is also included in the restricted items.

6. Foreign Learning from the Right of Determining Natural Resources

In foreign academic circles, the reason why scholars who advocate the privatization of natural resources property rights put forward a clear division of property rights as a solution to environmental protection is often due to the frequent abuse of natural resources without property rights. Aristotle had long asserted: "The more things are shared by people; the less people will care about them. People are most concerned about their own things, but little about public things. Or, at most, they care about what is in the public interest."

Foreign countries have formed two views on the property rights of natural resources. Free-market environmentalists believe that solutions based on private property rights are a panacea for environmental problems. Governments should not over-regulate environmental issues. Its main function should be to define property rights and to create conditions for their protection. In transactions, market mechanisms are used to solve environmental problems, mainly using price mechanisms to regulate the behavior of producers and consumers spontaneously. Opponents believe that the state-owned and shared property rights of natural resources can also realize the efficient and effective allocation of natural resources, and strongly criticize the commercialization and marketization of natural resources. This kind of dispute can provide some enlightenment for the sound property rights of natural resources assets in China. First, the formation of public property rights of natural resources in China is a natural historical process. The misuse of natural resources is not the result of public property rights over natural resources, but of the lack of natural resource owners. Second, on the basis of the right to natural resources, the government, in the process of making full and appropriate use of market mechanisms, will give full play to the public functions of the public property rights of natural resources and realize the optimal distribution of the economic, ecological and social benefits of natural resources. At the same time, from the above arguments, two points need to be noted. First, trading in rights can't be seen as the only means of using market mechanisms, but should use other market

mechanisms to play a role. The Coase theory of property rights deals excludes the Pygmy tax, but it is undeniable that the carbon tax can correct the wrong price signals in the market to some extent. Government subsidies and incentives for companies that can provide clean energy are a good economic tool. Second, according to the specific system and technical conditions, we will implement the market-based mechanism in a timely and prudent manner on the basis of deepening transactions in the pilot markets. The history of the Clean Air Act has taught us that the cost of rushing through market reforms is enormous and that its success depends on the maturity of many technical and institutional conditions. The differences between the Ministry of Environmental Protection and the Chinese Academy of Sciences in the causes of smog in Beijing indicate that China is not yet mature in terms of technology.

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