

Research on the legal issues of the government's responsibility for ecological restoration in mining areas

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Abstract. Due to historical reasons, the existing large number of mines in China leave serious ecological and environmental problems after mining, so it is urgent to clarify the responsibility subject and carry out ecological restoration. In reality, the local government assumes the responsibility for ecological restoration, but this may confuse the first responsibility of the environmental damage with the government's responsibility to fill the burden, which is inconsistent with the basic principle of the "damage responsibility" of the current environmental law. The specific situation of the government's responsibility for ecological restoration in mining areas should be clarified through legislation. On the occasion of the revision of the Mineral Resources Law of the People's Republic of China, this paper discusses the theoretical basis of the government's responsibility of ecological restoration in mining areas, the nature and specific application of the responsibility of restoration, and finally puts forward the institutional suggestions for improving the Chinese government to undertake the responsibility of ecological restoration in mining areas.

Keywords: mining area ecological restoration government responsibility to fill the responsibility.

1. Introduction

China is rich in mineral resources, the total amount of proven mineral resources ranks among the top in the world, the total amount of mineral resources exploitation ranks the second in the world, and China has become one of the major mineral resources countries in the world. China's mineral development has made an irreplaceable contribution to China's national economic and social development. On the other hand, with the exploitation of mineral resources, the problem of ecological destruction in mining areas has gradually emerged. Especially in the early process of mineral development, due to the limited level of scientific understanding, low mining technology, imperfect laws and regulations, and lax supervision, the ecological problems of the old mining areas are particularly prominent. Many abandoned mining areas after mining have a series of ecological and environmental problems such as soil pollution, geological loosening and water pollution, which have caused a serious impact on the production, life, life and health of the surrounding people, and also bring great obstacles to the economic development of the mining area.

At present, the discussion on the responsibility subjects of mine ecological restoration in China mainly focuses on the mine ecological restoration problems of mining development subjects, and there are relatively few studies on the ecological restoration of mines left over from history and when developers cannot take responsibility. Under the guidance of General Secretary Xi Jinping's "Two Mountains theory", the development of green mining and the construction of green mines have become a new benchmark for the government to control mine environmental problems and protect mine environmental resources[1]. In 2019, China launched the revision of the Mineral Resources Law of the People's Republic of China. This paper studies here and discusses the theoretical basis, legal situation and specific system of responsibility respectively.

2. Ecological environment and restoration status of mining areas in China

2.1 Ecological environment status of mining area in China

In our country, the mid-1960s mineral resources were predatory exploitation, which not only caused serious waste of resources and environmental damage, but also increased the environmental

pollution, for some mineral concentrated areas, causing large subsidence, subsidence, cracks, vegetation stripping, ecological damage, damaged farmland, ecosystem damage, mining geological environment deterioration, cause heavy losses to human production and living, and even directly harm the human living space[2].

China is rich in mineral resources, mainly distributed in northeast China, North China and southwest China. In the 1960s, China's mineral resources development policy advocated "large mines opening, small mines open, water flow, the state, collective, individual together", the phenomenon of mineral resources mining is serious, unlicensed, illegal, cross the border, looting and mining can be seen everywhere. Mineral resources have been mined in disorder, and the ecological environment of mines has been seriously damaged.

China's Mineral Resources Law has the concept of using "mining area". Article 32 of the Measures for the Registration and Administration of Mineral Resources Mining stipulates the mining area, which refers to "the scope of recoverable mineral resources, the distribution range of roadway engineering facilities or the three-dimensional space area delimited by the registration and administration authority".

There are many ecological and environmental problems in the mining area brought about by the development of mineral deposits, including the pollution or damage to the environmental natural factors such as water, soil, atmosphere, animals and plants, but also the permanent damage caused to the geological structure and ecosystem. If not repaired in time, it will lead to more serious ecological problems, not conducive to the local economic development, people's life, serious cases will lead to geological disasters, environmental events and other serious consequences.

2.2 Ecological restoration status of mining areas in China

Research on mining ecological environment and governance in China started in the 1980s, in the late 1990s began to introduce ecological compensation mechanism, into the 21st century, the decline and revitalization of the old industrial base, mineral development resources ecological environment and governance gradually by academic attention, in recent decade, environmental protection problem has been raised the national policy level, for protection and development balance, is the focus of the research, mine pollution control is the key area of environmental protection.

In 2018, our country actively promote the mine ecological restoration, from the management level actively improve the management system, for the old mines, research and formulate to encourage and guide social capital in old mining area ecological restoration, actively strive for the central government award funds, the implementation of the major decisions, for the Yangtze river economic belt, Beijing-Tianjin wing and fenwei plain and other key areas of abandoned open-pit mine ecological restoration. The ecological environment problem in mining area has always been a difficult problem in China and even the world, but in the deployment of the central government and the specific implementation of the local government, the ecological environment management in mining area has achieved remarkable results.

3. Theoretical basis for the government to assume the responsibility of ecological environment restoration in the mining area

All countries in the world stipulate that governments should assume the responsibility of ecological restoration in mining areas. There are two main theories on the theoretical basis of the government's environmental responsibility: public goods theory and trust theory.

In the theory of public goods, the government, as the manager of collective products, has the management obligation of public goods. The government is the trustee of natural resource management. The public entrusts the public goods of their own ownership that are difficult to divide to the government departments, and the government part is responsible for unified supervision. Ecological environment belongs to collective common products, and the ownership of environmental resources belongs to every citizen. Citizens enjoy environmental rights in the

environment, and environmental resources should belong to public goods in terms of product attributes. The government has the obligation to manage, that is, the government has the obligation to repair. Are all ecological destruction governments obliged to restore it? This should be analyzed according to the actual situation. If the government department fails to damage the mine ecological environment, it is certainly the responsibility of the government department. If the ecological damage is caused by the developer, the subject should be responsible for repairing it.

In terms of public trust theory, to explore its essence is mainly through abstract legal system, between the public and the government on how to manage environmental resources, environmental protection, natural resources to establish a trust contract, the purpose of the contract is that the public obtained public trust rights to specific natural resources and environment, the right is called "environmental right", the government for the public interest hold, manage and protect the environment and natural resources.[3] The government, as the trustee of environmental protection public trust, agrees to manage public resources, and shall take the public interest as the goal, abide by its due diligence, and fulfill its obligations of honest, credit and effective management. According to the theory of public trust, the government conducts centralized management and unified coordination of public environmental resources, and severely punishes the corresponding acts that damage the environment.

In addition, China's natural resources are owned by the state, except for by law. Therefore, the role of the government is not only the provider and law enforcement of ecological and environmental products, but also the natural resource property rights manager. In the process of natural resource management, due to the imperfect laws and regulations, there are problems in many places, such as inadequate ownership of resource assets and difficult implementation of relevant rights and interests. After the destruction of public land and public resources, the lack of supervision and restoration makes the responsible person escape, resulting in a large number of waste mines can not be repaired. Therefore, the government, as the property right manager of public natural resources, has the obligation to clarify the local ecological environment even after the mining environment is damaged, and the right holder will still have the obligation to restore the local ecological environment. After assuming the responsibility for ecological restoration, the government has the right to claim compensation for ecological damages to the offenders on behalf of the whole people.

No matter based on the theory of public goods, public trust or the theory of natural resources ownership, natural resources belong to the public resources and are the wealth owned by the whole people. When the subject of environmental damage cannot be found or the subject of damage cannot bear the responsibility, the government should bear the responsibility to fill the burden.

4. The legal nature of the government's responsibility for pollution restoration in mining areas

4.1 full liability

This kind of responsibility is mainly that there is no responsible subject or responsible subject to undertake the ecological restoration obligation of the mining area, and the ecological damage of the mining area must be repaired, the people's government at or above the county level shall assume the restoration responsibility of the mining area. In practice, it mainly refers to the mines left over from history. When the responsible person cannot be found due to a long historical time, the government can bear the responsibility for restoration.

After the founding of the People's Republic of China, in order to develop China's economy as soon as possible, the state has made great efforts to develop mineral resources, with backward technology and serious ecological damage. It belongs to the era of planned economy, and all mineral resources are uniformly developed by the state. China has paid little attention to environmental issues related to mineral resources, and China does not have its own Environmental Protection Law. It has a weak awareness of environmental protection, let alone expect the development of mineral resources to cause serious damage to the environment. In this period, there is no clear legal provisions on pollution

subjects. Even in the seventies and eighties, after the environmental protection law, the mining development of ecological damage obligations subject no more requirements, there is no corresponding mining closed the requirements of ecological restoration obligations, resulting to more mine ecological environment damage is serious and no clear obligation subject has even can not find the corresponding obligation subject.

4.2 Supplementary responsibility

This kind of responsibility form first restores the mining area ecological environment in accordance with the principle of "who pollutes, who governs". Because mining people not in accordance with the corresponding environmental protection requirements or ecological damage, the main repair responsibility for miners, but if the miners to governance, or miners for bankruptcy has been unable to mine ecological restoration, and because of mining mine cannot find responsible, the three types of mine ecological damage repair by the government departments as a supplementary responsibility to complete. The government is an administrative organ of public affairs and an organ of state power. In addition to using state funds for repair, it can also mobilize the enthusiasm of social personnel and make social funds contribute their own strength to the governance of the environment.

4.3 Illegal liability

in practice, In many mines and when the closure is closed, Regulatory authorities fail to perform their regulatory duties, Abuse of power, practice favoritism and malpractice, As a result, the mining environment is not timely treated or even does not require mining enterprises to agree to complete the closure procedures after completing the environmental treatment according to the requirements, As a result, environmental pollution can not be repaired in time, To ate environmental pollution in mining area, Pollution that causes personal and property damage to citizens, In this regard, the government should bear the responsibility of restoring the ecological damage caused by the corresponding illegal acts, If there is no obligation subject, Full responsibility for the restoration, If the subject of the obligation, Take on the corresponding supplementary responsibilities.

5. Specific circumstances under which the government assumes the responsibility of ecological restoration in mining areas

5.1 Cases where the government assumes all responsibility for ecological restoration

Government departments manage the obligation of ecological environment, the development of mineral resources, mining ecological environment damage, government departments shall perform their duties, determine repair responsibility main body, for the responsibility of waste mines and responsible subject but unable to repair the ecological environment enterprise even because the government regulation does not reach the designated position caused by private mining ecological environment problems, should be repaired directly by government departments.

5.2 The situation where the government assumes supplementary responsibility for the ecological restoration in the mining area

As can be seen from today's legislative tendency, for mining area ecological environment restoration has been in the discussion, for responsibility subject is constantly clear in the law, legal intention has always adhere to the principle of pollution responsibility, but for no responsibility subject, even unable to bear corresponding responsibility, the government should eventually play their function of managing public affairs, repair ecological damage in mining area. For the responsible subject, if the government has been unable to continue to bear the responsibility after the obligatory subject assumes the responsibility, the government should play its role, mobilize social forces to repair, or use the corresponding restoration funds to repair the ecological environment, so as to supplement the insufficient restoration of the ecological environment in the mining area.

5.3 The restoration of mining areas for which the government undertakes illegal responsibilities

In order to develop the economy as soon as possible, for the development of mineral resources, the illegal approval and supervision of government departments are too loose, and there is no corresponding strict supervision procedure in law. In practice, the local government for economic benefits, the mining development not in accordance with the corresponding environmental requirements, accumulate over a long period of time, mining pollution is more and more serious, for such government departments to ecological damage, responsible subject should still be in accordance with the principle of "who pollution, who control" for ecological restoration, the government is more administrative responsibility. If the subject is pollution-free, the government department should bear the responsibility of ecological restoration and bear the corresponding administrative responsibility, and the serious case should also bear the corresponding criminal responsibility.

6. Improve the government responsibility system for restoration of mining areas

6.1 Improve the environmental management responsibility within the government, divide the types of polluting mines, clarify the subject of treatment and restoration, and supervise the restoration.

The government is the administrative organ of environmental resources, and has the obligation to supervise the environmental restoration of mines. For the ecological damage of mines, the government departments shall classify the polluted mines, order the pollution of the mines subject to repair, and perform the corresponding supervision obligations of restoration. For mines left over from history where the government shall be assuming the responsibility for restoration and polluting mines with no obligatory subject, the restoration obligations of the government shall be clarified and corresponding restoration acts shall be carried out. The obligatory subjects of mines with partial repair capacity shall be ordered to repair them, and the government shall bear the corresponding responsibility for supplementary repair. For the case of mine ecological damage caused by the government's illegal acts of the government, the government shall bear the restoration responsibility of the ecological damage caused by the corresponding illegal acts, and clarify the restoration responsibility of all parties according to whether there is any obligation subject.

6.2 Establish a diversified pollution restoration mechanism in mining areas

The problem of environmental remediation funds has become the bottleneck of mine environmental governance in China, and it is difficult to clarify the capital investment of remediation and governance. China's mine ecological remediation fund is large and difficult. If a single fund investment in governance will cause too much pressure and the governance is backward. Therefore, a diversified financing mode of "central, local and social" should be established in China. As far as possible to mobilize various investment governance, our government has great advantages in financing, and national investment construction generally belong to large and medium-sized mines, mine use area is wide, pollution emissions and mine pollution is more serious, therefore, should be the national mine environmental management special funds investment, but also to delimit the enterprise of mine environmental management repair should repair treatment costs, let the enterprise when its pay fees. For the mines with serious pollution, and it is difficult to clarify the treatment subjects, the rich people around the polluting mines can be mobilized to raise funds, and all forces should be actively applied for environmental governance[4].

6.3 Improve the combination system of mining area pollution deposit system and ecological restoration funds

The environmental administrative department shall establish a perfect supervision system for mine environmental management and restoration. Because the mine ecological environment protection and management and restoration involves many departments. The establishment of the system should determine the leading department, and the department should incorporate mine dyeing and restoration into the whole environmental protection, for comprehensive consideration, otherwise it will ignore one and lose the other, which is not conducive to environmental restoration. For mine pollution control is the lack of corresponding funds, the government in the project examination and approval and subsequent supervision, although know for mine development should pay the deposit, but in practice the government to the actual meaning of the deposit system, no margin standard is larger, causing the enterprise in the deposit always think only belong to obtain mineral resources development formalities, do not know the deposit after development of environmental pollution control can return enterprise. At the same time, many government departments only have a symbolic collection of margin charges, and do not really assess the cost of environmental pollution caused by the development of mineral resources that need to repair and treatment, so there is no deterrent to enterprises. Therefore, we should establish a perfect deposit system, the corresponding provisions, charging standards, charging methods and governance standards, illegal responsibility, so as to urge enterprises to protect the environment in the development process, at the same time while development, restore the ecological environment of the mining area.

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