

ON THE LEGISLATION OF ENVIRONMENTAL RIGHTS:  
RELATIONSHIP BETWEEN ENVIRONMENTAL  
RIGHTS AND PROPERTY RIGHTS

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ABSTRACT

At present, environmental legislation and jurisdiction, as well as the difficulties inherent in protecting the environment, all call for the legal confirmation of environmental rights. However, due to the uncertainty, multi-properties, and antagonism related to environmental rights, future legislation faces a bottleneck. One effective path to solve all aforementioned problems is to make the ownership of environment distinct through a reference to the bundle of rights theory of property, as well as through an imitation of the rights of condominium owners.

I. NECESSITY FOR THE LEGISLATION OF ENVIRONMENTAL RIGHTS

On March 10th, 2011, the chairman of National People's Congress ("NPC") Standing Committee, Wu Bangguo, declared in the second plenary meeting of the eleventh NPC's fourth meeting that the socialist law system with Chinese characters had been established. Seven sections compose this law system, to the exclusion of the environmental law. Consequently, how environmental law is to develop in the future has been a hot topic for the academic discussions.

*A. Dislocation of Chinese Environmental Law in the Legal System*

In the socialist legal system with Chinese characteristics, environmental law is forced to break down into administrative law and economic law. But in fact, there is little content related to environmental protection in either administrative or economic law provisions. Instead, there are many provisions in civil law relating to environmental protection, including general principles of civil law,

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property law, and tort liability, which involve a large number of specific provisions on environmental protection.<sup>1</sup> From a legislative perspective, environmental law and civil law are linked more closely. But in a socialist legal system, environmental law is attributable to the economic and administrative law departments. As far as the author is concerned, the location of environmental law within the legal system is not accurate. This dislocation is mainly due to China's tradition of environmental protection and legislation. From the beginning, China's environmental protection has adopted a planned, top-down approach. It depends more on the government instead of public participation, resulting in citizens who have a weak awareness of environmental rights. Accordingly, environmental legislation, especially pollution prevention and control legislation, has a strong administrative image. For example, the Constitution of the People's Republic of China ("PRC"), Article 26, stipulates that "The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollutions and other public hazards."<sup>2</sup> It shows that in China the duties and rights concerning environmental protection are given to the state rather than to the citizens. This is why the legal system places part of environmental law under administrative law. In addition, because China's environmental legislation was influenced by the former Soviet Union, whose environmental law system only contained the natural reservation part, the main content of natural reservation law is limited to specific development and utilization of natural resources, which are

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1. Property Law of PRC art. 90 (promulgated by the National People's Congress, Mar. 16, 2007, effective Oct. 1, 2007) LAWINFOCHINA, <http://www.lawinfochina.com> (last visited Aug. 25, 2012) (stating that "[a] holder of real property may not discard solid wastes or discharge atmospheric pollutants, water pollutants, or such harmful substances as noise, light and magnetic radiation by violating the relevant provisions of the state"); Property Law of PRC art. 120 (promulgated by the National People's Congress, Mar. 16, 2007, effective Oct. 1, 2007) LAWINFOCHINA, <http://www.lawinfochina.com> (last visited Aug. 25, 2012) (stating that "[a] usufructuary right holder shall, when exercising its or his right, abide by the provisions on protection, reasonable exploration and utilization of resources as prescribed in the laws. An owner shall not intervene in the exercise of rights by the usufructuary right holder"); Tort Law of PRC art 65 (Promulgated by the Standing Committee of the National People's Congress, Dec. 26, 2009, effective July 1, 2010) LAWINFOCHINA, <http://www.lawinfochina.com> (last visited Aug. 25, 2012) (stating that "[w]here any harm is caused by environmental pollution, the polluter shall assume the tort liability").

2. THE LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS, CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA 155 (Beijing: People's Publishing House 2004).

typically economic activities. This is why many Chinese economic law scholars believe that China's environmental law could feasibly be incorporated into economic law. Because the adjustment object of environmental law is contained within the adjustment objects of economic law, environmental law should be a branch of economic law.<sup>3</sup> It is for this reason that the legal system puts the remaining parts of environmental law into economic law.

Based on the above analysis, it is obvious that the dislocation of environmental law in the legal system will inevitably lead to two incorrect tendencies. First, China's environmental protection will continue to develop in the single government-led direction. Second, China's environmental protection will continue to bear a strong planned-economy image. These two tendencies directly and indirectly exacerbate China's environmental crisis. The limited rationality and limited neutrality of the government will lead to its failure in the field of environmental protection, reflected by its environmental decision-making mistakes, poor supervision and management on environmental issues, rent-seeking, and other opportunism behavior.<sup>4</sup> Furthermore, the planned economy will lead to high economic costs of environmental management and the promotion of short-term behaviors of general entities within the market. This explains why, although over time the Chinese government has made environmental commitments and environmental laws, initiated environmental actions, and invested environmental protection funds, the speed of pollution exceeds regulation.<sup>5</sup> According to the theory of modern environmental law, public participation and the introduction of market mechanisms are the most effective ways to solve the above problem. Public participation in environmental protection can compensate for the weakness of a single administration. Such supervision to the government's environmental management can promote a more scientific and democratic outcome, while reducing government mistakes. The premise of effective public participation in environmental

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3. See YANG ZIXUAN, *ECONOMIC LAW* (Beijing: Peking University Press, Higher Education Press 1999).

4. Some academics point out that the malfunction of government in the environmental protection may cause difficulty in eradicating the five typical types of opportunistic behavior. See WANG RONG, *ECONOMIC ANALYSIS OF CHINESE ENVIRONMENTAL LEGAL SYSTEM* 12-23 (Beijing: Law Press 2003).

5. Qie Jianrong, *Why There Are More Environmental Law and Regulations and Less Legal Effect*, *THE LEGAL DAILY*, July 26, 2007, at 8.

protection is giving the public a clear understanding of their legal rights, as well as how to participate and bring suit. The market mechanism is the basic form of optimal allocation of resources; it can reduce the cost of government environmental management and protection, and stimulate the passion of stakeholders involved into the market to maximize the efficiency of resource allocation. The market mechanism is a prerequisite to running the system of clear property rights. It is necessary to adopt laws on environmental resources for a complete definition of property rights, and for the environment, so as to pave the way for market transactions involving such rights. This market mechanism would allow environment externalities, to be more internalized, and to achieve the optimal allocation of environmental resources.

Right constitutes the core of the legal system. Many factors of the legal system are derived from the right, decided by it and affected by it. Right plays a very important role in the legal system. When we explain and understand the legal system from an extensive perspective, the right in the initial position, it's the most important and central part, it's the basis and genes of legal rules.<sup>6</sup>

The dislocation of China's environmental law in the legal system has caused various environmental crisis responses and requires the establishment and improvement of public participation and market mechanisms. It also requires that the law give citizens a clear and specific understanding of environmental rights, including clear property rights regarding environmental resources.

### *B. Dilemmas of China's Environmental Civil Liability*

Although the Environmental Protection Law of PRC and the majority of environmental protection have separate edition laws containing provisions of environmental civil liability, strictly speaking, China's environmental law has no independent civil liability of its own. The civil liability for environmental law is contained in the traditional civil liability system. From this perspective, China's environmental civil liability is the subject of environmental legal relations that bear the burden under the framework of civil liability,

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6. ZHANG WENXIAN, RESEARCH ON CATEGORY OF LEGAL PHILOSOPHY 345 (Beijing: China University of Political Science and Law Press 2001).

following the rules of civil law. Civil liability is usually divided into tort liability and liability for breach of contract. In the field of environmental law, environmental responsibility is triggered by tortious behavior. Therefore, the environmental liability in this article refers to environmental tort liability. Moreover, as natural resources have a significant economic value, and have already been included in adjusting the range of property law, their protection is fully applicable to general tort theory. Because the environment as a whole does not have a significant economic value, it cannot be directly adjusted by traditional civil law, so a special tort theory should be applied to environmental pollution prevention and control.<sup>7</sup> Currently, the thoughts of China's legislators on environmental pollution prevention and control tort theory focus on the newly adopted Tort Liability Law of PRC. According to Article 65 of this law, "Damages caused by the environmental pollution, the polluter should assume tort liability." Environmental pollution tort liability consists of damage and the causation, as opposed to traditional civil tort liability, in which the elements of subjective fault and illegal conduct are not included. This dual-element theory of environmental pollution tort liability is a great breakthrough compared to traditional civil tort liability. While it helps citizens protect their environmental rights better, from the perspective of judicial practice, there still remains a big dilemma.

First of all, current environmental tort action in our country does not include the harm relief to the environment itself, which causes difficulties in raising and winning a lawsuit by the public. According to the Tort Liability Law of PRC, Article 2, the civil rights and interests used are restricted to personal and property rights and interests. As per the system interpretation, "harm" in Article 65 only refers to personal damage and property damage. Therefore, rights damaged by "environmental pollution infringement" only include the personal rights and property rights of pollution victims. This means that relief from environmental pollution action only concerns the loss of life, health, or property of the victim caused by the environmental pollution act, and does not include damage to the environment itself. It obviously puts the incidental before the fundamental, as the direct purpose of environmental civil remedy is to maintain

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7. Because the civil law of our nation always places natural resources in the category of property law as a prescription towards property, the torts remedy about natural resources in the legal practices does not meet the problems mentioned in this thesis, which only launches discussions about the theoretical problems concerning torts remedy of environmental pollution.

the public right to live in a healthy and good environment, and the indirect purpose is to compensate the public for personal or property damage caused by environmental pollution. Therefore, in judicial practice, the current environmental pollution infringement system is not suitable to institute legal environmental proceedings when environmental pollution has caused environmental deterioration but has not yet caused actual personal or property damage, until scientific evidence (especially expert testimony) could prove that personal or property damage has indeed occurred. But as environmental pollution has delayed development characteristics, potentialities and scientific uncertainties, this kind of damage could appear several years or several decades later, which would not meet the requirements of maintaining the environmental rights of the public, and is unfavorable for the development of environmental protection in our country. Some scholars suggest that the environmental public interest litigation system should be established in order to solve the dilemma of the environmental pollution infringement system mentioned above. Environmental civil public interest litigation includes any organization or person that could initiate legal proceedings in the People's court against any action that violates or infringes on the public's environment rights and interests according to the law, and the People's court will carry out judicial activity according to the civil litigation procedures of the law. However, as per the basic model of norms and systems of civil law concerning "right-relief," no right means no relief, which also means that if "the damage of the environment itself" does not have the corresponding rights in law, it cannot obtain relief by itself and the polluter need not assume liability for the damage caused to the environment itself. Therefore, the affirmation of the public's environmental rights by law is a prerequisite to establishing environmental public interest litigation. Of course, the environmental pollution infringement relief emphasized herein shall not exclude relief regarding personal damage and property damage of environmental pollution victims, but will extend relief to include damage of the environment itself.

Secondly, current environmental pollution infringement liability implements the principle of liability without fault, which may pose a potential threat to the property rights of numerous enterprises and influence the economic development of our country accordingly. The principle of fault liability is the basic principle within the principle

of imputation in civil liability. This means the injuring party that shall assume civil liability for its actions but if there is no fault, there is no liability. The “fault” refers to the psychological status of blame that the actor has. It includes two forms: the deliberate and the negligent. As fault liability could prompt the personal act yet not blame the actor for every move, it is favorable for the activity of the enterprise and the revitalization of the economy, and could actively promote the development of modern market economy. However, with the high development of large-scale, hazardous industries and transportation industries in modern times, the accidents and disasters caused by related infringement action have become serious social problems. Besides, these infringement acts have gradually overshadowed the fault liability principle due to the complexity of the injuring party, the unclearness of the causality, and the difficulty in identifying the fault; the objective fault principle and the fault presumption principle emerge only as the times require. Objective fault theory functions to determine whether the actor has fault or not in accordance with certain standard of the conduct instead of the special psychological activity of the actor. This kind of standard of conduct is vividly described as the reasonable care liability that shall be fulfilled by the *bonus pater familias*.<sup>8</sup> If this kind of liability is not fulfilled, it is defined as a fault. Assumption of fault means that if the plaintiff could prove that his or her damage is caused by the defendant, and the defendant could not prove he or she does not have fault, the law will assume that the defendant has the fault and shall undertake civil liability. The basic applicable method involves implementing the burden of proof inversion principle. Although these two principles are more favorable for the protection of the victims, they still take fault as the final grounds of argument for the determination of liability. The public environmental hazard problem in modern times has become unprecedentedly serious since 1960. Although the majority of environmental pollution damages are not caused by the deliberate or negligent actions of the polluter, profits obtained through the management of pollution enterprises are to a certain extent established on the basis of environmental pollution. Therefore, replacing

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8. In Roman law, the term *bonus pater familias* refers to a standard of care, equivalent to that of the *reasonable man* in Common law. See Duhaime.org, <http://www.duhaime.org/LegalDictionary/B/Bonuspaterfamilias.aspx> (last visited Aug. 25, 2012).

fault liability with no fault liability at all has become the universal principle of rules governing environmental pollution liability in many countries, including China.<sup>9</sup> The principle of no-fault liability refers to whether the actor has fault and determines whether he or she will assume the liability for the damage caused by his or her action, as long as the law stipulates the actor shall assume the civil liability. As per no-fault liability, the victim does not need to offer evidence for, or assume any fault on the part of the injuring party, nor shall the injuring party demur for reason of having no fault.

The principle of liability without fault embodies the principle of fairness in civil law from angles of benefit equilibrium within the whole society, including the balance of power of different social groups in the community and compensation for the purpose of a peace-making effect. It reflects the view of equal justice in a modern socialization environment and is evidently marked with the characteristics of sociological jurisprudence. But, to abandon the application of the principle of liability without fault completely, and to apply a no-fault liability principle unconditionally, may bring about overburdened liability for enterprises that promote environmental protection. These enterprises cannot balance benefits between both parties involved and cannot adapt to the current situation of economic development in our country at this point. Especially when environmental pollution infringements involve more than one legal subject, it could probably conceal the subjective malicious fault of the infringers, leading to substantial unfairness, damping down the enthusiasm for production of market subjects, and violating their property rights, if we are to apply the no-fault liability principle completely and indiscriminately. In the first case involving road traffic noise<sup>10</sup> in China, if the developer's fault in the design of the housing estate is not taken into consideration, and the no-fault liability principle is applied exclusively, the property rights of the highway operating companies shall be infringed. So, when selecting civil liability principles for an environmental damage compensation case, the author claims to apply the no-fault liability principle cautiously and selectively. Namely, when its infliction has subjective fault, the

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9. JIN RUILIN, ENVIRONMENTAL AND NATURAL RESOURCES LAW 192 (Beijing: Peking University Press 2006).

10. Fan Yueru, *An Analysis of the First Case of Road Traffic Noise in China*, Nov. 16, 2011, <http://www.chinacourt.org/html/article/200205/21/3414.shtml>.



fault principle should have preference over the no-fault principle.<sup>11</sup> Provisions of this will meet both the needs of the current levels of economic development and the stages of the rules of law, and be more reasonable and achievable in judicial practice. It reveals that environmental protection should be carried out conditionally, or the protection of property rights may risk paralysis. For the same reason, the creation of environmental rights should not only be able to live up to the public pursuit of the environmental value, but also be based on practical demand in the economic sphere. Otherwise, it will not seem to be that powerful and at the same time, the creation of the environmental rights will seem to lack the precondition. This is the main reason why the environmental rights theory is met with legislative bottlenecks in numerous countries. Therefore, if environment right is really to become legal right, it must take property rights into account.

## II. ENVIRONMENTAL RIGHTS LEGISLATION MEETS A BOTTLENECK

Rights to the environment are “the core question of environmental legislation and enforcement, environmental management and public participation, citizen suit and environmental public interest litigation, and [are] also the center of construction and guarantee of environmental legal system for ecological society and Green Civilization.”<sup>12</sup> Among all the theories of creating environmental rights, environmental rights theory is no doubt the most influential one. Environmental rights theory provided a worldwide basis for the environment crisis and the environmental protection movement produced after World War II. That theory was first put forward by an American scholar based on the theories of “public property” and “public trust.”<sup>13</sup>

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11. In order to remedy the information inconformity between the victims and the actors, mistake presumption theory will be adopted to replace the traditional mistake responsibility principle.

12. CAI SHOUQIU, ENVIRONMENTAL LAW 48 (Beijing: Science Press 2003).

13. The theories of collective ownership and public commission put forward by Professor Joseph Sax from the University of Michigan of the United States are very popular. He deems that such environmental elements essential to the existence of humankind as air, sunshine and water should not be viewed as “free property” or the object of ownership. Instead they should be viewed as the “public property” owned by all the citizens within a state and nobody is entitled to occupy, dominate or damage them at will. In order to dominate and protect this “public property” reasonably, the collective owners entrust it to the management of the state. The state as a commissioned agent for the collective owners should be responsible for all the national citizens and should not abuse the commissioned right.

Hereafter, environmental rights were confirmed as basic human rights by lots of international legal documents, the most classic of which is the Stockholm Declaration of 1972, principle 1 which states, "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."<sup>14</sup> From then on, the international community has generally accepted environmental rights as basic human rights, and many countries have tried to confirm this through their constitutions and other domestic laws. But there is no clear and specific regulation of environmental rights in those countries' legal systems, where such rights are only considered "deserved rights"<sup>15</sup> or "moral rights." If the legal protection of environmental rights "remain[] only on paper and cannot influence human behavior or be rigorously observed, then the law is merely a myth and not a reality."<sup>16</sup> So in order for environmental rights legislation to be realized, it must be based on clear and specific subjects, objects, and contents of environmental rights. But these theories have reached no general consensus, and environmental rights legislation continues to bottleneck accordingly.

#### *A. Uncertainties and Generalization of Environmental Rights*

The right's clarity is a precondition to the right's legislation, so only specific "deserved rights," with good maneuverability can be legally confirmed, while ambiguous "deserved rights," cannot.

Firstly, the subject of environmental rights is uncertain. Among domestic legal scholarship, there are "nation, legal person and citizens"

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14. United Nations Environment Programme, <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503> (last visited Aug. 25, 2012).

15. From the perspective of existing forms, the rights can be divided into vested rights, legal rights and practical rights. Among them the deserved rights are "the original form of rights, they are the requirements and demands towards rights of the people in specific society under certain life conditions and cultural traditions and they are the rights thought or admitted for people to enjoy." The legal rights are such rights "prescribed explicitly by the practical law or declared by the legislation guidelines and law principles, and they exist in the form of norms and ideology." The practical rights are the "rights enjoyed and executed by the subject in practice. The practical rights are the end of rights execution as well as the start of new rights execution." See ZHANG WENXIAN, JURISPRUDENCE 113 (Beijing: Higher Education Press 2003).

16. EDGAR BODENHEIMER, JURISPRUDENCE: PHILOSOPHY OF LAW AND THEIR METHOD 232 (Huaxia Publishing House 1987).

theories,<sup>17</sup> “citizens” theories,<sup>18</sup> “human” theories,<sup>19</sup> and “natural rights” theories<sup>20</sup> on the subject of environmental rights. So far, no agreement has been reached in this field. Therefore, environmental rights in theory would have no value without a clear and specific subject. Secondly, the content of environmental rights is uncertain. There have already been great divergences among scholars on the connotation of environmental rights.<sup>21</sup> In addition, some scholars

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17. The typical representatives of this theory are Cai Shouqiu and Tang Pengmin. See Cai Shouqiu, *A Preliminary Study of Environmental Rights*, 3 SOCIAL SCIENCES IN CHINA (1982); Tang Pengmin, *On Environmental Rights*, 1 SEEKER (2002). This theory defines the “nation, legal person and citizens” as the subjects of the environmental right. According to this theory, with the different subjects of environmental right, there are three corresponding kinds of environmental rights, namely the national environmental right, legal person environmental right and citizen’s environmental right. However, this theory does not make a reasonable explanation of the contents of these three kinds of rights, which leads to the inconformity of the nature and content of them as well as the appearance of certain contradictions and conflicts.

18. The typical representatives of this theory are Lv Zhongmei and Chen Quansheng. See Lv Zhongmei, *Citizen’s Environmental Rights*, 2 CHINESE JOURNAL OF LAW 62 (1995); Chen Quansheng, *An Analysis of Environmental Rights*, 2 CHINESE LEGAL SCIENCE (1997). This theory holds that the subjects of the environmental right should be citizens including the “modern people as well as the posterity.” However the admission of the posterity as the subject of environmental right will make the self of environmental right become hollow. For example, how to protect the rights of posterity? How can the posterity claim right for the deceased modern people?

19. The typical representative of this theory is Xu Xiangmin. See generally Xu Xiangmin, *Environmental Rights: Stages of Development in Human Rights*, 4 SOCIAL SCIENCES IN CHINA (2004). Mr. Xu thinks that the subject of environmental right is humankind. Making humankind the subject of right satisfies the objective legitimacy and public article property of the environment as common benefits of humankind. However, in the present international society, it is impossible to find an organization to form, express and execute the ideas of the whole humankind or a general practice of humankind as a specific function of social existence.

20. This theory was initiated by the American scholar and professor Nash and later promoted by Professor P. W. Tyler and Japanese scholar and professor Yamamura Tsunetoshi. See Fan Zhanping, *On the Indefinite Nature of the Environment Right*, 2 JOURNAL OF ZHENGZHOU UNIVERSITY: PHILOSOPHY AND SOCIAL SCIENCE EDITION (2006). According to this theory, all the natural objects have legal rights, especially those animals with life just like the humankind; they grow up in the natural environment and need also the sunshine, air and fresh water, so they also should be the subjects of the environmental right so as to enjoy such right. However, the admission of the status of natural objects will damage the principle of distinction between the objects and subjects which is the basis of the traditional laws. Meanwhile this theory also meets the same predicament on the remedy just as the theory of viewing the posterity as the subjects. The insuperable difficulties in the technology of law will only do harm to the authority of law.

21. At present, there are two relatively typical theories concerning the environmental right in our country. Professor Lv Zhongmei assumes that the environmental right should include at least: the right to use environment, the right to know the environment, and the right to participate in the environmental issues as well as the right to claim the environment objects.

further make the connotation of environmental rights deductive and generalized. Environmental rights are accordingly becoming all-encompassing rights. However, “if a right includes everything without a defined boundary, this right will be meaningless.”<sup>22</sup>

In fact, it is believed this uncertainty pertaining to environmental rights is rooted in the indefinite conception of the environment. Since environmental right is, in essence, the right of allocating environmental elements, the contents and subjects of environmental rights will not be defined without a clear concept of the environment. Therefore, we should make an in-depth analysis on the concept of environment and the relationship between the environment and its resources. As a relative concept, the definition of the environment varies in academic disciplines. Among them, the definitions given by environmental science and ecology are of great importance for environmental law research, because those branches provide the main scientific bases of environmental protection. Within ecology, “environment” is defined as a biosphere that is the center and the subject of an atmosphere that must have necessary conditions and non-living substances around for it to survive biologically. Alternatively, environmental science defines “environment” as the aggregation of the space surrounding people and the various natural factors that could directly or indirectly affect human life and development. This people-centric environment is also known as the “human environment” and is the study of human activity, with strong properties of social science. Compared with “habitat” from an ecological perspective, “environment” in the law is much closer to the “environment” in environmental science with regards to the substance of regulation. The definition of “environment” in environmental law should be based on its definition in environmental science, because, basically, the environment in environmental law is also human environment.

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Among them, the right to use the environment includes, but is not limited to, the sunshine-enjoying right, viewing right, scenery right, serenity right, smoke-resistance right, close-to-water right, park application right, historical environment right, and the nature-enjoyment right. See LV ZHONGMEI, *NEW VISION OF ENVIRONMENTAL LAW* 125 (Beijing: China University of Political Science and Law Press 2000). Professor Chen Quansheng believes that the environmental rights consists of two respects; one is the right of subjects in the legal environmental relationship to enjoy the proper health and pleasant life environment, the other is the basic rights for the subjects in the legal environmental relationship to make reasonable use of the environmental resources. See Chen Quansheng, *An Analysis of Environmental Rights*, 2 CHINESE LEGAL SCIENCE (1997).

22. Xu Xiangmin, *Query to Citizens' Environmental Rights*, 2 LAW SCIENCE (2004).

However, the “environment” in environmental law is different from its definition in environmental science due to its research scope and perspectives. First, the concept and scope of environmental law must be specific and clear, so the abstract and general concepts of environmental science (e.g., hydrosphere) cannot be within the scope of legal “environment.” Second, the environment of law must be composed by natural factors that can be affected, adjusted and controlled by human behavior and activities; otherwise, the law cannot protect it. Therefore, not all of the environmental factors that are directly or indirectly related to human survival and development in environmental science are included in the scope of the “environment” in law. Third, the “environment” in law should be an integral concept. This is because under the basic theory of ecology, the environment is “essential for human survival and development conditions, and is a symbiotic ecosystem with energy flow material recirculation and transmission of information. Here environment is ecological resource which should be understood from ecology . . . as the natural resource, it has integrity and self-adjusting ability.”<sup>23</sup> This integrity means not only the addition but the integration of dynamic natural factors. From this perspective, the environment is a unity composed of a variety of natural factors “having a certain ecological functions of material and energy flow.”<sup>24</sup> Although the legal “environment” is rooted in “human environment” under environmental science, the ecological principles and their interpretation are indispensable to the foundation of human natural science used to solve environmental problems. In summary, it is believed that the concept of “environment” in law can be defined as an entity that is composed of various natural resources or natural factors (including air, water, ocean, land, minerals, forests, grasslands, wildlife, natural heritage, human remains, nature reserves, scenic areas, and urban and rural areas) that affect human survival and development with certain ecological functions in material and energy flow. Such an environment provides the physical infrastructure for human survival and development. In

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23. Lv Zhongmei, *On Trade System of Right to Use Environment*, 4 TRIBUTE OF POLITICAL SCIENCE AND LAW 129 (2000).

24. Chang Jiwen, *Substantial and Contrastive Analysis of Environmental and Natural Resources Rights*, in *Sustainable Development: Thoughts and Practice on Cross Century Environmental Law*, ACADEMIC SEMINAR OF SUSTAINABLE ENVIRONMENTAL LAW (The Academic Paper on the Exchanges of the 1st Congress of Chinese Environmental and Natural Resources Law Society); LV ZHONGMEI, COMMUNICATION AND COORDINATION: ON CIVIL PROTECTION OF ENVIRONMENTAL RIGHT 17 (Beijing: Renmin University of China Press 2005).

order to maintain life, humans must have the right to possess or use the environment, and such rights comprise the “deserved rights” of human beings. Due to the ecological integrity of environment, no subject in the exercise of that right can be excluded, regardless of whether other subjects exercise that same right. In terms of inner environmental rights for all citizens, this right is equal to everyone and inviolable.

Another concept closely linked with the environment is that of natural resources. Natural resources (the resources<sup>25</sup>) are the aggregate of all the material and energy that form the natural world for human use. Clarifying the relationship between the environment and its resources is critical to solving the fundamental, theoretical problems associated with environmental rights. Consequently, an in-depth analysis of basic principles in ecology and environmental science is needed. First, based on the laws of ecology, resources are a static and integral part of the environment. As an entity, the environment is composed of both natural and manmade resources. In other words, resources are the basic factors for the environment. Previous litigators only focused on the usefulness and economic value in developing resources, which were accordingly considered objects of property right, and were separated entirely from the environment. Actually, a natural resource provides the material and energy to humans for their survival and development, as well as broad ecological values including environmental capacity, aesthetic value, and biodiversity. Take forest resources for example: on the one hand, trees and fruits perform different economic functions; on the other hand, they perform the same atmosphere environment function by absorbing carbon dioxide and releasing oxygen. Separating resources from the environment completely can cause the various interests in the same environmental factor to become unbalanced. This relevant legal adjustment leads to conflicting and more serious resource damage, because the environment is an entity dependent on ecological relevancy, system balance, and function coordination. Therefore,

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25. There are two definitions of resources—a wide one and a narrow one. The widely defined resources include natural resources, human resources, intelligence resources and other kinds of resources, while the narrowly defined resources only mean the natural resources. However in the field of environmental law, the resources are commonly taken as the narrowly defined resources, namely the natural resources, if there is no special footnote. Therefore in this thesis, for the convenience of writing, the distinction between the resources and natural resources will not be specially marked out.

resources can be distinguished from the environment based on their independent economic value. Simultaneously, the resources must be an integral part of the environment based on their ecological value. Second, from an environmental, economic perspective, the value contained in the resources remains part of it in the environment. While on this point, scholars, especially those in traditional civil law, hold a different kind of view; their reason is that environment factors are the public goods, not exclusive ones, and accordingly possess only ecological—not economic—values. To support their views, they frequently take atmospheric environment into account. They say that one must breathe in order to survive but that one cannot prevent others from breathing in order to do so. Therefore, the non-exclusiveness or indivisibility of the atmospheric environment proscribes any creation of property rights. That conclusion, which may be correct in the early stage of human society, has been challenged as the environment becomes increasingly scarce due to modern environmental problems. Strictly speaking, the concept of “environment” here refers to environmental capacity, namely the maximum population size of the pollutant that the environment can contain and purify once contaminated. That the concept of environmental capacity was put forward means that some subjects can obtain the right to emit pollutants, while others cannot, even if they lose a right once possessed; otherwise, the environment may happen to be polluted. Therefore, the scarcity of environmental capacity, and the appropriate distribution of benefits, should become the object of the rights defined by the legislature. In other words, the law should confer the right to a specific subject to decide who gets such benefits. Consequently, the scarcity of the environmental capacity causes it to possess economic value similar to that of natural resources. Then the value of the environment shows the diversity not only of its traditional ecological value but also of its economic value with regards to environmental capacity resources. In summary, in terms of the environment, whether in its material form or in its value form, its resources are included. Resources are often based on individual elements of its basic state, and of its physical and chemical forms, so the protection of resources must focus on “quantity” maintenance. The environment is an ecological concept based on a balance system and a number of complex elements; its fundamental objective is to maintain the balance of the human

ecosystem as well as the stability of other ecological systems. To do so, it is necessary to maintain environmental protection “quality,” and this “quality” is based on the maintenance of the resources’ “quantity,” so the level of utilization of resources must be limited so as to not affect the quality of the environment. This is the scientific basis necessary to create the right system.

In summary, the environment includes resources from both a material perspective and a value perspective. The basic state of resources is based on individual elements, physical and chemical forms, so the protection of resources necessarily focuses on “quantity” to maintain the state. “Environment” is an ecological concept based on the balance of a system and is a synthesis of many elements. Its fundamental goal is to maintain the balance of the human environmental system, while maintaining the stability of the ecosystem. As a result, environmental protection means maintaining the “quality” of the environment, and is based on the resources used to maintain this “quantity”; therefore, the level of resource utilization must be limited, without affecting environmental quality, which is also the scientific basis created by the environmental rights system.

After clearing up the concept of the environment and the relation between the environment and its resources, it is not difficult to point out that the environment has two basic values to human beings: one is the environment’s integral, indivisible, and nonexclusive ecological value that can provide essential needs for human survival; the other is the environment’s partial, divisible, and exclusive economic value, which can meet the developing needs for humanity. So the disposition of creating rights to environment must meet the following three requirements so as to effectively realize the aforementioned values. First, the maintenance of the environment at a certain ecological level must be in the hands of the citizens, allowing each common owner to enjoy the whole environment on an individual basis. Second, the property rights of the environment (and its resources) must be clearly defined so that its economic value can be reflected through a pricing mechanism, turning it into an object that embodies specific legal property rights and that may be utilized. The third places the management rights of environmentally related affairs in the hands of its common owners, thus maintaining the whole environment’s quality at a certain level. Accordingly, the content of the rights to the environment in our country should also cover the following rights. Within the concept of a common environmental



right, in which the right is subject to citizen control, the object is necessarily a domestic environment; otherwise, its specific rights can be respectively confirmed by environmental elements, such as the right to clean air, the right to clean water and lighting right, etc. The latter rights are the exclusive rights of specific subjects partial to an environmental resource. According to China's current condition of national economic development and environmental protection, the subject of this right is limited to our country, and collectivity, while the object is a natural resource in its environmental capacity, its specific rights include proprietary rights of natural resources and of an environmental capacity. The last right concerns the management of environmental rights and affairs for citivo. The subject of this right is the citizen while the object includes all juristic acts related to the environment and its specific rights including the right to access information, to participate in decision-making, and to access the judiciary in environmental matters, and so on. The theoretical framework of such rights regarding the environment is based on the fundamentals of ecological and environmental science, which enable it to satisfy the current needs of our country's environmental protection and endure scrutiny both theoretically and practically.

### *B. Pluralistic Attributes of Environmental Rights*

The clearness of a legal property right decides whether this right can obtain legal protection. After the environmental right theory had been proposed, its legal property became the problem that was most frequently discussed by scholars. In its early stages, scholars were more likely to confirm the legal property of environmental rights as a single property. Its representative theories are human right theory,<sup>26</sup> personal right theory,<sup>27</sup> and property right theory.<sup>28</sup> Though the above

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26. In the doctrine, environmental rights are fundamental rights of citizens, as the basis for human survival and development. Environmental rights have been affirmed by a series of international documents, in fact, they have become basic human rights of human society. See Lv Zhongmei, *The Environmental Rights of Citizens*, 2 CHINESE JOURNAL OF LAW (1995).

27. In the doctrine, citizens are subjects to environmental rights. Human environmental rights include personal rights. Because the consequences of violation of environmental rights are often manifested in the damage to the health of citizens, therefore, the environmental rights are rights of personality. See Chen Quansheng, *Analysis of Environmental Rights*, 2 CHINESE LEGAL SCIENCE (1997).

28. Environmental rights are property rights. The doctrine comes from the Public Trust Doctrine, which is transplanted from common law by United States environmental law. See XU XIANGMIN ET AL., *ENVIRONMENTAL RIGHT: BASIC RESEARCH OF ENVIRONMENTAL LAW* 28 (Beijing: Peking University Press 2004).

theories are partially reasonable, they only reveal one or several characteristics of environmental rights. The complexity and value of the pluralistic concept of environmental rights is dispositive of the impossibility of a single property, a point gradually accepted by scholars. However, some scholars hold the idea that environmental rights have properties of human rights, private rights, public rights, ecological rights, and legal rights.<sup>29</sup> But some other scholars consider the existence of a theory that incorporates the tendency of traditional cognition and environmental right nature. This is the logic in pursuing a single correct answer, and this “seat by number logisches Denken” closely covers the complexity of environmental rights. Based on “Comprehensive Logisches Denken,” scholars who endorse this position hold that environmental rights are not only the combination of human rights and common rights, but also the combination of the right to receive and behavior rights according to the property characteristics of environmental rights. It creates a complex right that incorporates due right, customary right, and legal right.<sup>30</sup> Compound right theory shows that scholars have abandoned the logic of pursuing the sole correct answer and now acknowledge the pluralistic attributes of environmental right, which has progressive significance. However, compound right theory just gathers up the threads of related environmental right cognitions, trying to correct the defects of environmental right theory. Obviously, this endeavor is unsuccessful. The main reason is that it simply compiles many specific environmental rights without distinguishing them, thus lacking any basic logical point and creating too many disordered properties to be legally verified. Based on the earlier analysis, the writer makes the environment and his goal of right subject as his starting point, integrating the three aspects of environmental right and property.

Firstly, environmental rights possess human rights but are not limited to this attribute. Common ownership of the overall environment is an obvious human rights attribute. Each person must rely on a certain natural environment, so that they can survive, breath air, and drink water, which are natural, inseparable, and integral rights of humans. Therefore, environmental rights possess human rights attributes that have been generally accepted by the international

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29. Wu Guogui, *The Concept and Property of Environmental Rights*, 4 LAW SCIENCES 68–73 (2003).

30. Wang Xiaogang, *Lifted the Veil of Environmental Rights: the Complexity of Environmental Rights*, 3 SOUTHEAST ACADEMIC 138–40 (2007).

community.<sup>31</sup> But if environmental rights are only regarded as human rights, they can only be incorporated into the law based on the provisions previously mentioned. So the laws should verify other specific environmental rights in order to achieve the reification of environmental rights and to provide the means and ways to achieve environmental human rights. Secondly, environmental rights possess properties of both private and public rights. With environmental rights, everyone enjoys an appropriate, healthy, good living environment, and the basic rights associated with the rational use of environmental resources that significant private owners possess. However, the public goods nature of the environment will lead to a tragedy of the commons before coming under the “Public Trust Theory,” in which citizens entrust individual environmental management rights to the country. The country’s environmental administrative power embodies the public right of property within environmental rights. Thirdly, environmental rights possess both substantive and procedural rights. To ensure the integrity of environmental rights, and to avoid its destruction by human activity, it is necessary to place citizen participation in environmental decision-making, and access to justice and other rights, under the premise that environmental laws inform physical environmental rights. The main procedural recognition of environmental rights is more likely to be accepted than complicated, ambiguous substantive rights.

In summary, the diverse value of the environment defines environmental rights legally, as property. According to the traditional thinking in civil law, it is difficult for multiple rights to form a right as provisions in the law. Environmental issues are also not considered traditional property rights, personal rights, and other theoretical rights that can be handled. Therefore, in order to protect the health of citizens, and the right to practice environmental responsibility, we can only refer to the “bundle of rights” theory in order to express and reflect the environment’s diverse properties. Moreover, conflicts and confrontations between rights make it difficult for environmental rights to be legalized.

### *C. Confrontations of the Rights*

The multiple attributes of environmental rights will inevitably lead to confrontation within these rights. The “rights confrontation”

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31. For further explanation, see the first paragraph of Part II earlier in this paper.

or called “rights conflict” here means that different rights pointing to a common object, or claims between each other pointing to each other, will result in the rights not being achieved simultaneously. Because the various rights of the environment point to a common object, to the whole or a part, or to their ecological or economic value, there are restrictions and obstacles to environmental rights, although the rights are applicable to each other. This means that if the rights associated with one subject in the law can be achieved, then at the same time, it is certain that the rights of other law subjects cannot be achieved. In accordance with the second inference of Cohen about the restrictions of private property on personal liberty, that is “the protection of private property diminishes the freedom of non-owners,” correspondingly, environmental property rights of some subjects established “the liberty of property owners, but withdraw the liberty from those who do not own it.”<sup>32</sup> Similarly, there is a conflict between common environmental ownership and exclusive resource ownership. On the one hand, citizens own the whole environment based on the right of existence and have the right to maintain a certain level of environmental quality, which is the “due right” of humans. But when the resource is subjected to overuse, they pollute the environment, and the rights cannot be achieved. On the other hand, the resource subjects, especially enterprises, use the resources for production, creating wealth and promoting economic development of the country. The utilization of rights is meant to be justified and not accusatory, under the premise of not violating environment-related legal provisions. Even so, due to the complexity of the environmental problems, such behavior may result in the infringement on citizens’ personal or property rights. So the citizens will assert claims for damage compensation from the enterprise by applying “the principle of no-fault liability,” while the enterprise will limit the acknowledgment of rights when compensating. In addition, in dealing with environmental rights, there are conflicts among substantive rights and procedural rights, public rights and private rights. Because conflicts of rights in the environmental rights system are popular, subjects cannot establish reasonable expectations for acts and the results of acts, resulting in the collapse of the environmental rights system. To add insult to injury, environmental rights still

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32. See G. A. Cohen, *Illusions About Private Property and Freedom*, in JOHN MEPHAM & D-H. RUBEN, *ISSUES IN MARXIST PHILOSOPHY (IV): SOCIAL AND POLITICAL PHILOSOPHY* 225–29 (Harvester Press & Humanities Press 1981).

cannot enter the vision of legislators, which is intolerable. Therefore, it is necessary to bring the rights into a harmonious and orderly state instead of a state of confrontation. The author believes that the key to achieving this state is to grasp the logical structure of the system of environmental rights, and to define the boundaries of these rights clearly.

Through this analysis, it is not difficult to find the theoretical dilemma of environmental rights entering into legislation. The complexity and diverse values of the environment have led to uncertainties regarding environmental rights' subjects universally and domestically, thus determining the diverse properties of these rights. Because traditional and single rights cannot sum up the properties of environmental rights, environmental rights should be recognized as a group of rights constituted by different rights. In addition, because the right conflicts with environmental rights, laws have to take full account of the logical relationship between rights while creating them, and form a bundle of rights with a logical structure. As Lv Zhongmei pointed out, "environmental rights are the bundle of rights with human attribute[s], and are a system of rights. Environmental rights are rights of a compound nature, possessing property rights, personal rights, other economic rights and ecological rights. The rights of different natures form a complex bundle of rights."<sup>33</sup> At this point, establishing environmental rights with property law has become a prime choice.

### III. SOLUTIONS

How can the legalization of environmental rights be achieved? Peter Stan once pointed out: "The existence of [a] right and the degree of its being protected can only obtain guarantee when the general rules of civil law and criminal law are appealed to."<sup>34</sup> Just as the previous paragraph mentioned, if the bundle of rights principle in property law can be used to establish environmental rights, then the defects of single right may be avoided. The concept of human rights is especially general and impractical whereas the entitlement of property rights and management rights to the citizens

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33. LV ZHONGMEI, *COMMUNICATION AND COORDINATION: ON CIVIL PROTECTION OF ENVIRONMENTAL RIGHT* 43 (Beijing: Renmin University of China Press 2005).

34. Peter Stan & John Shannon, 173 (Beijing: Chinese People's Public Security University Press 1989).

cannot only provoke great enthusiasm in the citizens to protect the environment, but also bring the dexterity of the market mechanism into play in the environmental field.

#### A. *Basic Clues*

By means of adoption of the bundle of rights principle in property law,<sup>35</sup> the basic clues for the solution of legalization of environmental rights are, firstly, to define the environmental rights as a set of legal relationships. As mentioned, the environmental right cannot be generalized into a conceptual and united right “type”; on the contrary, it should be expressed as a right system with multiple properties. According to the subjects’ requirements of the environment, this right system can be reflected in three concrete sets of rights. These three sets of environmental rights do not depend on any fixed or abstract type of legal right in traditional law. In theory, they can only be analyzed in relation to concrete forms of rights in order to expose the most fundamental component elements. Therefore, the environmental right is anything but an abstract and general concept; instead, it is usually exemplified in a structure composed of all kinds of concrete categories. In other words, environmental rights do not form a plural noun but are a bundle of rights combination, namely an environmental right which is to be confirmed in the law, that is a somewhat vague bundle of rights that has been broken off from the united concept of environmental rights. Currently, more than one person should commonly own a single environmental element. Under such circumstances, the special and limited right possessed by every common owner of an environmental element becomes the central point. This means the boundaries and structures of this set of rights need to be focused on. Secondly, the law must be certain about the boundaries and structures of internal rights within environmental rights. In modern civil law, the most typical application of the bundle of rights principle is the system for “Owners’ Partitioned Ownership of Building Areas” or “Condominium ownership.”<sup>36</sup> In

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35. See Mei Xiaying, *The Two Metaphors and Interpretations of the Concept “Ownership” in Book One of Civil Law—The Construction of Modern Property Legal Relationship*, 1 JOURNAL OF RENMIN UNIVERSITY OF CHINA (2002).

36. The term condominium ownership of buildings, as one of the vital forms of property ownership in the modern times, has been established in the civil law in many countries and regions. The names of condominium ownership in the different countries and regions are unlike,

defining the structure of this set of environmental rights from a scientific perspective, we may learn to imitate condominium ownership. Owners' partitioned ownership of building areas means that an owner shall have ownership over exclusive parts of the building, such as a residential house or a house used for business purposes, and shall have common ownership and rights of common management over other common, non-exclusive parts. The system of building ownership distinction is divided into three parts, namely exclusive ownership, collective ownership, and member rights.<sup>37</sup> From the perspective of legal theory, the reason why confirmation of environmental rights in law can refer to the division of building ownership is because both are comparable in object and legal nature.

Firstly, this perspective is complex because the object, in question, joint ownership, can be created through the division of ownership within a united and inseparable building. This building can be divided into several independent parts, horizontally and vertically, depending on the length and breadth and each part, each of which can be used separately and owned separately. Similarly, the object incorporating environmental rights is an indivisible whole in its ecological value, but the resource part of it, with obvious economic value, can be set apart singularly and owned by specific subjects. With the object of right as the logical starting point of rights research, this kind of similarity makes it possible to draft a system of distinct environmental rights by imitating the building ownership. Secondly, from a multiple property perspective, the distinction made by building ownership involves a set of rights consisting of exclusive rights, collective rights, and member rights. The exclusive parts are occupied, used, profited on, and disposed with by the particular owners alone; the collective parts such as common walls, roofs, doors and windows, stairways, grass land, and hallways are owned collectively by all proprietors; meanwhile all proprietors enjoy management rights in dealing with the common property and the affairs of the whole building. However, the collective ownership of all the

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such as "condominium ownership" in the United States (some states), "Wohnungseigentum" in Germany, "owners' partitioned ownership of building areas" (Real Rights law of the People's Republic of China contains a special chapter 6 of owners' partitioned ownership of building areas.), etc. See CHEN HUABIN, RESEARCH ON THE SYSTEM OF THE MODERN DISTINCTION OF BUILDING OWNERSHIP (Beijing: Law Press 1995).

37. Chen Huabin, *Talk About the Concept of Distinction of Building Ownership*, 7 CONSTRUCTION OF RULE OF LAW 23 (2010).

proprietors is different from the shared ownership, because all the proprietors maintain perpetual collective ownership without division. This is exactly the multiple property distinction characteristic of building ownership. As mentioned in the previous paragraph, environmental rights also have multiple properties, including citizens' collective ownership of the whole environment, which illustrates human rights through the collective ownership of the state's natural resources and environmental capacity resources; this also illustrates this type of property as a private right that includes the citizens' right to manage environmental affairs within property procedure. Besides, just like the distinction of building ownership, the three kinds of rights within the environmental rights cannot simply be added; they must combine with each other into a tight, inseparable whole with a certain structure. To sum up, the distinction of building ownership is extremely beneficial to the legalization of environmental rights. With the inspiration from the concept of distinct building ownership, this article puts forward the idea of achieving the legalization of environmental rights through the distinction of environmental ownership.

### *B. Establishing the Environmental Districting Ownership*

Ownership of distinct environmental property means common ownership and exclusive ownership that owners distribute between the common parts and the exclusive parts of the environment. Membership rights are based on common matters, such as environmental management, protection, and so on. It includes three specific rights: common environmental ownership, exclusive environmental rights, and members' rights. Through a combination of the foregoing analysis, there are following designs for three kinds of rights.

Firstly, the object of environmental ownership is environment; its subjects are citizens. The content on rights includes rights of use, rights to earnings, and disposition. Obligations include use of ecological environment, sharing of common costs (environmental taxes), and protection and preservation of environmental functions. There is a broad performance power in the environmental servitude, which includes the right to clean air, clean water, and sunlight (the right of ancient lights), as well as the right to ventilation, the right of overlooking and watching the scenery, and the right to be free of



pollutant emissions. Scholars have discussed much of the content of joint ownership in the aforementioned environmental theories, so this article will not give any more unnecessary details though it will discuss the provisions of sharing common costs (environmental tax). From the perspective of environmental economics, the environment has strong positive externalities. Namely, environmental subjects cannot obtain all associated benefits; that is, in order to serve the overall interest of the environment, the subjects must let other subjects obtain ecological benefits, but they could not place claims on the other subjects for reimbursement. Therefore in order to meet citizen requirements for ecological benefits, such incentives can only be realized through reliance on the government, and the financial burden of the government is very heavy. So in joint ownership, obligations to share costs must be required to determine provisions and to reduce government burden.

Secondly, currently, the objects in question are mainly natural resources and environmental capacity resources for exclusive environmental rights. The standard for the confirmation depends on its value, namely its independent economic value and its independent usage of the environment. The possibility for such distinction has been mentioned in the section on the relationship of environment & resources. The subject of the right is limited to the state and the collective group, and the important resources for the basis of confirmation are mainly acquired from the positive externalities of resources, rather than from the understanding of socialist public ownership and collective ownership, complying with a Marxist philosophical conception of our ideology across the Constitution and property law. Due to a lack of any incentive,<sup>38</sup> if resources are distributed to private subjects, then their economic value will be more important to the private parties than their environmental value, and pollution will be maximized. Because a confirmation of public ownership of resources is necessary, even in Western countries with a private-system basis, resources that have positive externalities are all recognized as public properties. The contents of exclusive rights include occupying, using, and handling of resources, and provide that the benefits of the owners will not be violated and that the overall environmental safety will not be damaged. But it is necessary to point

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38. Private parties cannot overprofit for sake of the overall environment.

out that public ownership is usually a virtue and that the real users are the real subjects indeed, and that such utilization is effectuated through an “apply-register-confirm” formality. The environmental capacity is usually allocated like gratuitous sewage, but such a method cannot reflect the economic value of resources as well as their allocation. So we shall establish a complete system through contracts, bidding, and auctions for environmental property as soon as it is possible to create a real “public legal person” environmental patent system in our country.

Thirdly, the basis of membership rights is the common relationship established by all districting owners who share in the production and live together in one environment. A safe and healthy environment is the basic requirement for their performing common rights. So all districting owners form a community, managing the environment as their means, and cover the management of the environment and environment-related acts (including pollution, improper handling and misuse). In order to maintain the safety and health of environment, the membership rights shall include: a right to environment knowledge and rights to strategy participation and requests. Correspondently, the obligations are: accepting the management and complying with management stipulations.<sup>39</sup> The membership rights can be realized through self-management, namely through self-sufficiency by the citizens. But the majority of people are not concerned with the environment, and it is not realistic that such decisions will be made by every citizen, so the people can commission state representatives to make decisions on the environment for them. In this sense, state environmental administration has a reasonable method for such management. Although based on membership rights, citizens nevertheless have a right of access to information, supervision, and participation in decision-making of “management stipulations.” When the environment is damaged the state will give relief to them. So the confirmation of membership is not only connected to common ownership and the exclusive right to make the environment an organic whole, but it also provides a clear basis for an appealing environmental law.

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39. “Management stipulations” in construction classification means that owners, for the mutual benefits of a good environment have established the written regulations on the building, bases and the attached facilities, usage and the differing the relationship between owners, while the regulations in environment classification refer to the relevant laws and standards.

P.S.

From the perspective of environmental right, an integrated environment law is concentrated on its right to construct obligations, so that the ownership of the environment has distinct property rights that shall be confirmed or granted at law. Whether and how it shall be incorporated into the Constitution and if it will prove consistent with current laws, remains to be seen, so incorporation into the Constitution will require the condition of maturity.