

Review and Improvement of Provincial Legislation on Watershed Environmental Protection in Sichuan

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ABSTRACT

Legislation on watershed environmental protection is an integral part of China's ecological civilization legislative system. As the "province of thousands of rivers", Sichuan Province has numerous water networks in its watersheds, and has achieved certain results in provincial-level legislation on watershed environmental protection. It continues to develop in exploring cross regional local collaborative legislation and combining local characteristic legislation. However, there are still problems such as legislative gaps in the regulatory system, poor operability of provisions, and insufficient innovation in cross regional collaborative legislative systems. The reasons for this are the lack of consideration for the actual situation of the watershed in legislation, the imperfect legislative evaluation mechanism, and the limited scope of collaborative legislation, which contradict the overall environmental governance of the watershed. To this end, it is necessary to improve provincial-level legislation through strengthening the construction of a legislative system, researching relevant technical standards, improving pre-legislative procedures, and deepening cross regional collaborative legislation, in order to enhance the quality of legislation and promote the construction of ecological civilization.

Keywords: Watershed environmental protection, Provincial legislation, Collaborative legislation, Three water co-governance.

1. INTRODUCTION

In 2018, during his inspection tour of Sichuan Province, General Secretary Xi Jinping emphasized: "Building an ecological barrier in the upper reaches of the Yangtze River and safeguarding national ecological security must be prioritized in ecological civilization construction." Against the backdrop of building a new development pattern based on the new development stage, implementing the new development concept, and constructing a new development pattern, the Sichuan Provincial Party Committee, Provincial People's Congress and its Standing Committee, and Provincial Government focus on the overall situation of the 14th Five-Year Plan and promote the construction of ecological civilization in the basin from multiple levels. By issuing a series of legislative documents on watershed environmental protection, new impetus has been injected into it. However, there are still shortcomings in the relevant provincial legislation, and it is urgent to analyze the causes and solutions to improve the legislation related to watershed

environmental protection, in order to provide scientific, reasonable, and feasible normative guidance for watershed environmental protection issues at the legislative level.

2. OVERALL SITUATION AND DEVELOPMENT HIGHLIGHTS OF PROVINCIAL-LEVEL LEGISLATION ON WATERSHED ENVIRONMENTAL PROTECTION IN SICHUAN

In recent years, Sichuan Province has attached great importance to the construction of ecological civilization, formulated many normative documents in the legislative field, and formed a series of institutional guarantees. The provincial-level legislation on watershed environmental protection in Sichuan is showing a trend of gradual improvement, and some legislative highlights are also evident.

2.1 Overall Situation

The legislation of watershed environmental protection is an important component of local ecological civilization construction and an important area for local exercise of legislative power. This article mainly discusses the legislation on watershed environmental protection at the provincial level in Sichuan, including local regulations formulated by the Sichuan Provincial People's Congress and its Standing Committee, as well as local rules formulated by the Sichuan Provincial Government. Legislation below the provincial level is not covered.

Overall, in 1988, the Sichuan Provincial People's Congress and its Standing Committee formulated the "Regulations on the Conservation and Protection of the Yangtze River Source in Sichuan Province", in 1997, the Sichuan Provincial Government formulated the "Management Measures for the Adjustment Benefits of Reservoirs between Cascade Hydropower Stations in Sichuan Province", in 2012, the Sichuan Provincial People's Congress and its Standing Committee formulated the "Implementation Measures for the Water Law of the People's Republic of China" and the "Implementation Measures for the Soil and Water Conservation Law of the People's Republic of China", and in recent years, the Sichuan Provincial People's Congress and its Standing Committee successively formulated the "Regulations on the Protection of the Water Environment in the Tuojiang River Basin in Sichuan Province", "Regulations on the Protection of the Chishui River Basin in Sichuan Province" (hereinafter referred to as the "Chishui River Regulations"), "Regulations on the Protection of the Ecological Environment in the Jialing River Basin in Sichuan Province The" Lingjiang Regulations "and the" Sichuan Provincial Water Resources Dispatch and Management Measures "formulated by the Sichuan Provincial Government, and so on, several dozen effective local regulations and government rules have been formed, and the legislation on basin environmental protection in Sichuan Province has never been interrupted, advancing in an orderly manner through continuous exploration.

From the specific documents, there are two main aspects of provincial-level legislation on environmental protection in the Sichuan Basin. The first is to refine the relevant documents of central legislation through provincial-level legislation. The second is to combine with the local situation in Sichuan Province, and formulate new laws by the

Provincial People's Congress and its Standing Committee, as well as the Provincial Government, without conflicting with higher-level laws. For example, three separate laws have been formulated for the three key river basins of Tuojiang, Chishui, and Jialing in Sichuan Province, as well as management measures for water resource allocation and water governance supervision.

2.2 Development Highlights

2.2.1 Promoting Cross-regional and Provincial-level Collaborative Legislation

Sichuan Province is known as the "province of thousands of rivers", with a developed water system and numerous rivers. The watershed system has natural systematicity, integrity, and fluidity, and its governance boundaries are not affected by administrative divisions. On the contrary, due to the complexity of cross regional governance, cooperation between left and right banks, upstream and downstream, and nearby areas can achieve good results.¹

In May 2021, people from Guizhou, Yunnan, and Sichuan provinces respectively passed the "Chishui River Regulations" and the "Decision on Strengthening the Joint Protection of the Chishui River Basin" (hereinafter referred to as the "Decision"). This is the first joint legislation among local river basins in China, and the Chishui River Basin has shifted from "separate governance" to "joint governance". The three provinces have reached consensus and legislation on common issues such as planning and control, resource and ecological protection, pollution prevention and control, and regional cooperation in the Chishui River Basin.

In the same year, Sichuan Province and Chongqing City carried out collaborative legislation on the protection of the Jialing River Basin. In September, Sichuan Province passed the "Jialing River Regulations" to improve the protection system of drinking water sources in the Jialing River Basin, the operation and maintenance mechanism of urban sewage treatment facilities, and relevant regulations on agricultural non-point source environmental protection in the form of legislation. In particular, detailed provisions were

1. He Junyi, Normative Construction and Mechanism Guarantee of River Basin Collaborative Legislation [J]. Modern Law Science, 2024,46(03): 113-128.

made for the prominent environmental problems of tailings ponds in the basin.

In addition, Sichuan Province and Yunnan Province have also carried out collaborative legislation for the protection of Lugu Lake. In September 2023, the Sichuan Provincial People's Congress passed the "Regulations on the Protection of Lugu Lake in Sichuan Province", which stipulated the common problems of Lugu Lake under the joint jurisdiction of the two provinces, clarified the coordination mechanism and communication and negotiation mechanism of the joint meeting, and changed the problems of incomplete coordination mechanism and different legal responsibilities in the previous collaborative legislation of Lugu Lake.

2.2.2 Legislation Based on Local Characteristics

The provincial-level legislation on watershed environmental protection in Sichuan seeks common ground while reserving differences in terms of clause design, respects the principle provisions of higher-level laws, and carries out characteristic legislation based on local conditions. Sichuan Province elevates the mature experience of unique natural landscapes, traditional folk culture, and other aspects within the province into laws, empowering the value of local legislation. As stipulated in Article 34 of the Regulations on the Protection of Lugu Lake in Sichuan Province, the county government shall strengthen the protection of ethnic traditional culture and the inheritance of endangered intangible cultural heritage projects in Lugu Lake. At the same time, traditional villages, ancient roads, bridges and culverts, ancient trees and famous trees, as well as intangible cultural heritage project sites along the watershed are all listed as protected objects and subject to listing protection; For example, the Chishui River Regulations establish a special chapter on "Cultural Protection and Inheritance" to emphasize local characteristics, and Article 52 implements archival protection for specific representative buildings such as traditional dwellings, ancient roads, and cliff carvings. Article 54 mentions incorporating the protection of red culture into the important scope of public cultural construction, and encourages the development of the Four Crossing Chishui Site.

3. REVIEW OF EXISTING ISSUES IN PROVINCIAL LEGISLATION FOR WATERSHED ENVIRONMENTAL PROTECTION IN SICHUAN

Overall, it can be seen that the provincial-level legislation on watershed environmental protection in Sichuan has formed relatively rich legislative achievements. However, there are still several issues that cannot be ignored.

3.1 There Being a Legislative Gap in the Regulatory System

3.1.1 Lack of Systematic Legislation for the Prevention and Control of Water Pollution, Water Ecological Protection, and Water Resource Management in the Watershed

Overall, provincial-level legislation combines overall legislation with legislation in key river basins. As of now, multiple pieces of overall legislation and multiple separate pieces of legislation have been formed for key watersheds such as the Tuojiang River, Jialing River, and Chishui River basins. However, a comprehensive law covering the prevention and control of water pollution, water ecological protection, and water resource management has not yet been formed, resulting in legislative deficiencies in the protection of some watersheds within the province. Legislative documents with different scope of application and uneven content can also easily lead to difficulties in law enforcement and judicial practice, and cannot truly and effectively meet the legal needs of environmental protection in river basins within the province.

3.1.2 Some Key Environmental Quality Indicators Lacking Corresponding Legal Basis

The ecological flow of rivers and lakes is to maintain the structure and function of aquatic ecosystems such as rivers and lakes, and to retain the water quantity, water level, and processes that meet water quality requirements within the river. "Ecological flow control" refers to the process of organizing and utilizing all material, temporal, and spatial conditions to achieve ecological flow and protection goals through a series of management and regulation measures, provided that the relevant

parties have determined the ecological flow targets mentioned above.

In provincial-level legislation related to water conservancy and hydropower projects, such as the "Sichuan Province Water Resources Regulations", "Sichuan Province Water Resources Engineering Management Regulations", and "Sichuan Province Water Resources Dispatch Management Measures", there are no specific and systematic provisions for "ecological flow control. In recent years, the practice of cleaning and rectifying small hydropower stations in the Chishui River Basin has shown that small hydropower stations in the basin that have not strictly implemented the reduction of ecological flow have dried up rivers, insufficient water volume, and a sharp decline in fish breeding numbers, all of which require a considerable period of time to be effectively restored.

3.2 Some Regulatory Provisions Lacking Practical Operability

3.2.1 Legislative Duplication

Against the backdrop of strict division of local legislative power in China, based on the basic framework of China's Environmental Protection Law, provincial-level legislation on watershed environmental protection presents a characteristic of commonality over individuality, with similar legislative topics and discourse structures, and a high degree of repetition with higher-level laws. The provisions of Chapter 1 "General Provisions", Articles 4, 5, and 6, Chapter 2 "River Regulation and Construction", Articles 7, 8, 10, and 11, Chapter 3 "River Management and Protection", Article 19, Chapter 4 "River Clearance", Articles 24 and 25 of the "Sichuan Province River Management Measures" issued by the provincial government are highly similar to the corresponding provisions of the "Regulations on River Management of the People's Republic of China", with the vast majority or even identical. The lower-level law should have made more detailed and specific regulations within the scope of the upper level law, in order to provide more targeted normative guidance for this region. Simply repeating or copying the content of the upper level law is obviously unable to meet this requirement.

3.2.2 Excessive Punishment

In recent years, China has strengthened environmental protection in the Yangtze River

Basin, severely cracked down on illegal and irregular behaviors, and Sichuan Province has also formulated a series of legislative documents. For key river basins such as Chishui River and Jialing River, strict punishment clauses have been set up, stipulating that those who engage in sand mining without permission or in prohibited sand areas and periods shall have their illegal gains, ships, equipment, and tools confiscated, and be fined between two and twenty times the value of the goods. If the amount is less than 100,000 yuan, a fine of not less than 20,000 yuan but not more than 2 million yuan shall be imposed. However, in law enforcement practice, many illegal sand mining cases often occur in natural persons, especially farmers, who use household vehicles and simple tools to steal sand, often involving small mining output volume, not involving large-scale trading transactions, and the social harmfulness is much lower than the illegal sand mining activities of using high-power sand dredges and other tools organized and frequently. If huge fines are imposed on such cases based on existing legislation, and illegal gains, ships, equipment, and tools are confiscated, it is clearly excessive and inappropriate, lacking practical operability.

3.3 The Institutional Construction of Cross-regional Collaborative Legislation for Common Environmental Affairs in River Basins Being Relatively Single

As an environmental unit beyond the jurisdiction of a single administrative region, the protection affairs of watershed environment can be divided into environmental common affairs and environmental common affairs. Environmental common affairs refer to common affairs that commonly occur among environmental units within each administrative region, while environmental common affairs require attention from the perspective of the overall environmental unit.

Taking the coordinated legislation of environmental protection in the Chishui River Basin by the three provinces of Yunnan, Guizhou, and Sichuan as an example, the formation of the "Decision" by the three provinces actively responds to the practical dilemma of long-term damage to the environment in the same basin, and is a model of cross regional local coordinated legislation. However, "collaboration" mainly manifests in the coordination of legislative processes and working mechanisms, focusing only on common

environmental affairs related to the Chishui River, such as water resource supply and demand adjustment, biodiversity protection, and hydropower resource development and utilization that are closely related to the overall basin, without providing constructive normative guidance.

4. ANALYSIS OF THE CAUSES OF EXISTING PROBLEMS IN WATERSHED PROVINCIAL LEGISLATION ON ENVIRONMENTAL PROTECTION IN SICHUAN

The above-mentioned problems exposed in the practice of provincial-level legislation on watershed environmental protection in Sichuan not only affect the implementation effect of legislation, but also restrict the in-depth development of basin governance work. It is necessary to conduct a thorough analysis of the causes of the current problems in provincial-level legislation in order to propose targeted solutions to the existing problems.

4.1 Lack of Consideration for the Actual Situation of the Watershed in Legislation

As a complete ecosystem, the watershed has the characteristics of systematicity and integrity. Therefore, the environmental governance legal system formed by the single environmental element pollution prevention and control law and protection law as the main body is difficult to cope with the environmental harm mechanism of multi-media transmission and spatial transfer of environmental pollution. There is a must to promote the construction of watershed legislation through a holistic system approach, treating the watershed ecological environment as a whole system.² The lack of the concept of co governance will lead to the failure of the regulatory system to fully cover water resource protection, water environment governance, and water ecological restoration, and cannot provide comprehensive guidance for watershed governance work.

In addition, the social relationships regulated by the law are constantly evolving and changing, and legislation cannot keep pace with social

development. This lag can also lead to legislative gaps. For a long time, most regions have been influenced by the concept of economic priority, and their awareness of watershed environmental protection has been relatively weak. In addition, the specialized legislation for watershed protection in China started relatively late, so the provincial legislation for watershed environmental protection lags behind the actual needs due to objective and historical factors.

4.2 The Legislative Evaluation Mechanism Being Not Perfect, and Legislative Techniques Needing to Be Improved

The specific goals, approaches, and means of environmental legislation vary among legislative bodies at different levels and in different regions, and the provisions of relevant legal documents may lack overall consideration in the formulation process. In the pre-legislative preparation, insufficient argumentation and evaluation of legislative projects resulted in legislative duplication. Local legislation often chooses to continue higher-level laws due to high political rigor and conservative restraint, without refining legislation on relevant key indicators and environmental elements. This results in limited legislative resources at the local level being unable to truly realize their value and lacking specificity. The shortcomings in legislative technology urgently need to be addressed.

4.3 The Limited Effectiveness of Collaborative Legislation Conflicts with the Overall Nature of Environmental Governance

Watershed governance is complex and cannot be achieved solely through self-prevention and control by a province within the watershed. It requires legislative consensus among all parties along the watershed to jointly protect and manage the ecological environment of the watershed. A watershed is an environmental unit with strong mobility and integrity, involving multiple parties such as the left and right banks, upstream and downstream, and nearby areas. Any action taken by any province or city along the watershed may affect the entire watershed and all parties along the watershed. Therefore, a "global planning" approach should be adopted instead of a "regional planning" approach for overall planning and governance. The current approach adopted by Sichuan Province to

2. Chen Haisong, Zhang Gaorong, The Development Direction and Legislative Focus of Watershed Legislation in China in the New Era [J]. Hebei Law Science, 2024, 42(02):55-78.

divide the same watershed into different river sections based on administrative divisions and have provinces and cities along the line carry out legislation separately cannot provide a practical and feasible solution for the common environmental affairs of the watershed.

5. EXPLORATION ON THE IMPROVEMENT COUNTERMEASURES OF PROVINCIAL LEGISLATION ON WATERSHED ENVIRONMENTAL PROTECTION IN SICHUAN

As a key part of watershed governance, the legislation on watershed environmental protection is directly related to the long-term development of the watershed ecological environment through its improvement and optimization. In response to the many problems and causes under the current provincial legislative framework for watershed environmental protection in Sichuan, corresponding measures should be explored in a timely manner, in order to provide more solid legal protection for environmental protection in the basin.

5.1 *Enhancing the Scientific Level of Legislation on Watershed Environmental Protection*

5.1.1 *Strengthening the Construction of a Provincial-level Legislative System for Watershed Environmental Protection*

At present, the provincial-level legislation on water environmental protection in Sichuan mainly revolves around a single water related element, namely water pollution prevention and control, and there is no comprehensive law that systematically regulates the "three water co governance" of water pollution prevention and control, water ecological protection, and water resource management in the basin.

There are two feasible legislative models to strengthen the systematic construction of provincial-level legislation on watershed environmental protection in response to this issue. Mode 1- "One Thousand Rivers, One Law" refers to the unified application of a comprehensive watershed legislation for all watersheds in Sichuan Province to achieve overall protection, while separately formulating separate legislation based on the characteristics and specific needs of different

watersheds. Mode 2- "One River, One Law" refers to designing relevant watershed regulations based on the natural geographical conditions and socio-economic development status of each watershed, covering multiple aspects such as water resource protection, development, utilization, water pollution prevention and control, water quantity scheduling, and water ecological restoration.

The author tends to adopt the "one river, one law" mode, which only requires further improvement of current legislation, filling in relevant legislative gaps. The legislative cost is relatively low, but it can achieve systematic protection of the ecological environment in the watershed, taking into account the development status of different regions to the greatest extent possible, in order to achieve the integration and unity of ecological, economic, and social benefits.

5.1.2 *Researching and Developing Relevant Technical Standards and Solutions*

In response to the practical problem of the lack of legal basis for relevant technical standards, the legislative body should conduct in-depth research, collect extensive information, and work with relevant departments to establish a special working group to fully listen to their opinions and suggestions. It is also possible to establish expert think tanks, invite experts and scholars with rich relevant professional knowledge and practical experience to participate, and form professional and representative technical committees to provide guidance for standard setting work. On the basis of sufficient research and demonstration of relevant technical standards, relevant regulations will be introduced to address the shortcomings in watershed environmental governance. At the same time, after formulating relevant technical standards, the legislative body can also request the government or relevant functional departments to carry out supplementary legislative processing, such as formulating implementation rules, implementation measures and other supporting normative documents to ensure the correct implementation of the law.

5.2 *Improving the Quality of Legislation and Enhancing the Operability of Legislation*

The quality of local legislation for watershed environmental protection is related to people's well-

being, and ecological damage is often irreversible, which may have long-term or even permanent impacts on ecosystems and human life. Legislation should adhere to the basic principle of ecological environment protection of "prevention first, comprehensive governance", and strengthen the construction of pre legislative procedures. Before drafting a bill, it is necessary to collect social information, mobilize public participation, analyze and evaluate whether the goals to be achieved by the bill and the measures to be promulgated are thorough and complete, the difficulties that may be encountered, and the effectiveness of implementation, in order to eliminate or reduce institutional risks, social risks, etc. that may arise from legislation. To improve the quality of legislation and ensure that it is in line with the current situation of watershed governance, it can start from the following two aspects:

Firstly, in the stage of regulatory approval, the necessity of legislation must be fully demonstrated, and efforts must be made to avoid duplicate topics and cross-project approval for watershed environmental protection legislation. Specifically, to prevent phenomena such as "scattered legislation by the same legislative body targeting different types of the same object" and "duplication and conflict between element legislation and watershed protection legislation", a cautious attitude should be upheld from the beginning of legislative work, and a comprehensive analysis and review should be conducted to ensure the quality of legislation.

Secondly, during the drafting stage of the bill, it is necessary to verify whether the legislation is suitable for practical needs and has operability. It is a must to conduct a systematic study of legal drafts, evaluate the operability of legislation, and avoid duplication with existing legal norms and disconnection from local law enforcement and governance work. The supplementation and refinement of higher-level laws should be based on local realities and address prominent issues. On the basis of a deep understanding of the basic principles and legislative spirit of higher-level laws, formulate specific and detailed measures and provisions. Regarding the establishment of administrative responsibilities in watershed environmental protection, the principle of proportionality should be followed, and the scope and standards of punishment should be reasonably stipulated to avoid excessive punishment. It is also necessary to widely solicit public opinions during the drafting stage of the bill, especially from

potentially affected enterprises, environmental organizations, and community residents.

5.3 Further Promoting Cross-regional and Provincial-level Collaborative Legislation

5.3.1 Taking Local Regulations as the Leading Factor, Comprehensively Considering and Advancing as a Whole

The cross-regional collaborative legislation for watershed environmental protection in Sichuan Province belongs to the "joint consultation mode" in the regional collaborative legislation operation mode. This choice is relatively reasonable, adopting the form of "decision"+"regulation", but the actual operation should be further optimized. The implementation of collaborative legislation for watershed environmental protection should adhere to the dominance of local regulations. The principle provisions and legislative spirit in joint decisions should be implemented as soon as possible in the local regulations issued by each province. The provisions for the adjustment of water resources supply and demand, biodiversity protection, and the development and utilization of hydropower resources, which are common affairs of watershed environmental protection, should be transformed and implemented, and relevant work should be carried out in accordance with the law.

5.3.2 Improving Supporting Mechanisms and Strengthening Communication and Exchange

Sichuan Province can collaborate with other provinces in the basin to establish a cross filing and review system for collaborative legislation in the basin. After the collaborative legislative body in the basin reviews and approves the collaborative legislative documents, it can file with other legislative bodies in the basin for review. If it is found that the relevant provisions of the collaborative legislative text conflict with the principles and spirit of previous coordination and communication, which may harm local interests, common interests of the basin, or seriously violate the results of previous coordination, a system of legislative coordination requirements can be proposed and negotiated for handling. It will be a necessity to timely identify and correct problems in collaborative legislation, and improve the quality of collaborative legislation.

6. CONCLUSION

The legislation of watershed environmental protection is a key institutional support for Sichuan Province to build a strong ecological barrier in the upper reaches of the Yangtze River and promote the construction of ecological civilization. In the future, Sichuan Province needs to be guided by the concept of "three water co governance", strengthen the construction of the legislative system, and fill the gaps in technical standards such as ecological flow control; By improving legislative evaluation and pre procedure, the province should enhance the pertinence and operability of provisions, and deepen cross-regional collaborative legislation to achieve overall governance of river basins. To provide a more solid legal guarantee for watershed ecological protection and high-quality development in Sichuan, and to achieve the unity of ecological, economic, and social benefits.

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