

Institutional Innovation in the Context of Ecological Civilization Construction: A Study on the Concession of Giant Panda National Park

Yihang Feng, Shujun Liu, Yuwei Li, Zuhongye Huang, Keyan Yu, Jinxing Cui *

Law School of Southwest Petroleum University, Chengdu, China

* Corresponding Author Email: 1372626528@qq.com

Abstract. The national park franchise system is an important management mechanism for the government to authorize the recipients to carry out non-resource-consuming business activities through the competition mechanism, aiming to balance ecological protection and resource utilization. This paper discusses the practical progress and optimization path of the franchise system. It is found that the current system has problems such as absence of special legislation, fuzzy business scope, lack of performance evaluation and poor community participation. In 2017, the Overall Plan for the Establishment of a National Park System clarified the important position of national parks in the construction of ecological civilization, emphasized the establishment of a community participation mechanism, and supported local residents to participate in franchising. The Pilot Program for the Giant Panda National Park System was subsequently implemented, proposing a governance framework of "government-led, separation of management and economy, franchising and multi-party participation". The Regulations on the Administration of the Giant Panda National Park further clarify the legal status of the franchise system. Based on the legislative opportunity of the draft National Park Law, this paper analyzes the legal attribute and value of the franchise system from the legal perspective, draws on the international experience of the United States, New Zealand and other countries, and puts forward the optimization strategies such as improving the legal framework, clarifying the access boundary, constructing the income distribution mechanism and improving the community co-governance. The conclusion can provide theoretical support for the franchise system innovation of giant panda national park, and have legislative reference value for the legal construction of national parks in China.

Keywords: National park, franchise system, ecological protection, resource utilization, community participation, legal framework, Giant Panda National Park.

1. Overview of the Giant Panda National Park franchise

1.1. The legal nature of a national park franchise

Franchise is divided into commercial franchise and government franchise according to its legal attributes. Government franchise department is that the government, as the franchisor, licenses the management right of public resources and public goods of the state to the franchisee, and the franchisee shall pay the franchise fee to the government. Among them, the "license" is the administrative license, which has a strong public law and administrative nature. National park franchise refers to the management purpose of national parks, in order to improve the quality of public recreation experience, the government selects the recipients through competitive procedures and authorizes them to carry out non-resource consumable business [1] activities of the prescribed period, nature, scope and quantity under the control [2] of the government. This shows that its essence is still the government franchise system.

At the same time, the government franchise system is [3] different from the general administrative license. First of all, the franchise operation of the giant panda National Park should sign the administrative agreement. The administrative agreement is still a contract in essence, and both parties reach an agreement on the premise of voluntary, and both parties have equal legal status. And the administrative licensing two sides in the upper and lower order relationship, has obvious mandatory color. Secondly [4], under the government franchise system, the franchisor and the receiving party

take the expression of intention on the record and franchise agreement as the main code of conduct and the means of regulation, which is different from the general administrative licensing government to adopt compulsory order and administrative power as the means of regulating and supervising the franchisee. On the one hand, the system needs to adjust the administrative legal relationship between the government and the operators; on the other hand, its operation mechanism must consider the ecosystem integrity maintenance and the protection of indigenous development rights.

1.2. Scope of the Giant Panda National Park franchise

According to the Regulations on Scenic and Historic Interest Areas, the transportation and service projects in scenic areas shall be selected by the administrative agencies of scenic areas in fair competition (and bidding) according to relevant laws, regulations and plans. The regulation makes it clear that the franchise content is limited to the specific service projects of the scenic spots, and the operators must be selected through public bidding and other forms.

Article 40 of the Regulations on the Administration of Giant Panda in Sichuan Province defines the scope of franchise as a for-profit project involving the management and utilization of resources and environment in the general control area. In addition, energy, transportation, water conservancy, environmental protection and other infrastructure and public utilities projects shall be managed in accordance with the Infrastructure and Public Utilities Franchise Management Measures. The regulations also prohibit the transfer or monopoly of public welfare projects as a whole to ensure effective government supervision.

Article 34 of the Sichuan Provincial Measures for the Administration of the Giant Panda stipulates that the general control areas of the Giant Panda National Park can implement a negative list and a franchise management system. The Master Plan for Giant Panda National Parks (2023-2030) calls for the establishment of an industry guidance catalogue and a negative list for the industry of national parks. Therefore, the franchise scope of Sichuan Province Giant Panda Park is mainly managed through a negative list.

The Opinions of Sichuan Provincial People's Government on Strengthening the Construction of Sichuan Area of Giant Panda National Park proposes to cultivate and develop green ecological industries that are consistent with the protection goals. According to the Decision of the Standing Committee of the Sichuan Provincial People's Congress on Strengthening the Collaborative Protection and Management of the Giant Panda National Park, the people's government of the place where the Giant Panda National Park is located should formulate industrial development policies in line with the protection goals in combination with rural revitalization. According to the guideline on promoting the Construction of the Deyang Area of the Giant Panda National Park, green ecological industries, such as nature education, forest health care and ecological experience, should be consistent with the protection goals. It can be seen that the scope of giant Panda National Park should be "consistent with the protection goal of giant Panda National Park".

To sum up, the scope of the franchise of the Giant Panda National Park should be defined as "non-public welfare specific services projects outside the negative list involving the management and utilization of resources and the environment in the general control [5] area consistent with the [6] protection objectives". In practice, the franchise mode of national parks [7] mainly include ecological product certification of giant panda National Park, carbon sequestration forest franchise industry, supporting tourism service and ecological experience industry, and popular science popularization industry provided by nature education popularization and cognitive ecology.

1.3. The significance of the establishment of the giant Panda National Park franchise

1.3.1 Operating funding "engine"

The funding source of national parks is financial input as the main body, and a diversified [8] ecological compensation financing system is constructed. The single fiscal supply [9] mode is restricted by the difference in fiscal capacity. Generally speaking, the more developed the economy, the more government allocation will allocate. This spatial differentiation of fiscal capacity may

aggravate the regional imbalance of ecological protection input. In this context, the franchise mechanism effectively bridges the financial supply gap through the market path, and fits the diversified fund raising mechanism advocated by the central government. The administrative agency of giant Panda National Park can obtain non-financial revenue through ticket operation, franchise fees and other channels, and feed back most of the national parks according to the proportion and scope, so as to improve the level of visitor services and ecological protection.

1.3.2 The system led by the state policy has "set sail"

The Guidelines clearly state that education is an important part of the core function of national parks. Known as a "university without walls", the national park has rich natural and humanistic educational resources, including [10] geology and landform, animal and plant resources, indigenous knowledge, cultural landscape, religion and belief culture and so on. Through ecological tourism projects such as franchise activities, the natural ecology, natural resources and other knowledge into the environment explanation, studies course, to deepen visitors ecological cognition, guide the public ecological protection consciousness into environmental supervision, low carbon practice concrete actions, eventually form the collaborative pattern of social forces to participate in ecological governance.

2. Progress of the franchise system of Giant Panda National Park

2.1. Existing legal institutional framework

Although China's national park franchise legislation has made initial progress, there are still many urgent problems to be solved. Up to now, the National Park Law, as the superior law, is still in the draft review stage, and the absence of special legislation on franchise operation leads to the dilemma of insufficient core legal basis for franchise activities. The franchise management measures issued at the local level generally have the problems of relatively low legal rank, too high proportion of temporary norms, and insufficient authority and stability of the system effectiveness.

2.1.1 The National Park Draft"

The catalogue of the Draft National Park [11] Law (second Review) includes seven chapters: general provisions, layout and establishment, protection and management, participation and sharing, guarantee and supervision, legal liability, and supplementary provisions. The draft innovatively defines the connotation of national parks, breaks through the singleness and geographical restrictions of environmental factor protection, and coordinates the existing protected areas and cross-environmental elements in China, which is scientific and systematic.

The draft provides detailed provisions on the ecological and environmental protection of national parks, but only advocates for third-party intervention activities such as public participation. At present, the draft does not specify specific provisions on national park franchising, which also leaves a blank on the basic legal basis for giant panda national park franchising.

2.1.2 The Regulations of Sichuan Province on the Management of Giant Panda National Park

The Regulations of Sichuan Province on the Administration of The Giant Panda National Park have enabled the construction and management of the giant Panda National Park. Article 40 of the Regulations stipulates the franchise system, realizing the transformation of the principle of public participation in the draft to local practice, but the provisions on the core elements such as business scope and business period are still in a blank state.

Next, forestry bureau of Sichuan province will establish the Sichuan panda national park franchise management method ", clear industry development access, encourage residents, collective economic organizations, state-owned forestry management units to participate in the giant panda national park franchise activities, safeguard the natural resources to participate in the franchise income distribution, continue to encourage support relying on the national park, the development [12] of green industry.

2.1.3 Franchise method

At present, only the franchise management Measures of Hainan Tropical Rainforest National Park has formed effective systems and norms. The Measures provide operational guidelines for franchising activities through the systematic provisions of the scope, access conditions, agreement content and regulatory measures, and their institutional framework can provide reference for the legislation of Giant Panda National Park.

At present, only the franchise management Measures of Hainan Tropical Rainforest National Park has formed effective systems and norms. The Measures define the types of franchising, including ecotourism and nature education, in the scope of projects, set qualification review standards in the access mechanism, restrict the operation behavior through the terms of the agreement, and establish a whole-process supervision system. These experiences have direct reference value for the Giant Panda National Park. In the future, when formulating the Franchise Management Measures of Giant Panda National Park, we can learn from its legislative experience, combine the protection needs of giant panda habitat and regional cultural characteristics, and realize the innovative development of franchising.

2.2. Existing procedure and mechanism of the national park franchise system

2.2.1 Access to the Giant Panda National Park franchise

According to the Measures of Chengdu Municipal People's Government on the Administration of Franchise and other local regulations, the administrative agency of Giant Panda National Park mainly selects operators through public bidding, auction and online bidding, and makes them to the public within a certain period of time. By introducing competitive access mechanism, the system design uses market means to ensure the [13] fairness and transparency of the choice of franchisees, and effectively avoid the risk of power rent-seeking. At the same time, the Regulations create differentiated access rules, which "give priority to local residents and their enterprises under the same conditions", to ensure that natural right holders participate in the income distribution of franchise operations in accordance with the law, so that the original residents can actually profit from it and share the fruits of development.

2.2.2 Supervision of the giant Panda National Park franchise

The Regulations of Sichuan Province on the Administration of Giant Panda National Park establish a legal path for public participation through the establishment of a social supervision mechanism, a report acceptance system and a rights and interests protection mechanism. The system requires the management agencies to fulfill the obligation of information disclosure in accordance with the law, guarantee the exercise of the public's right to know and the right to supervise, and strengthen the supervision efficiency through standardized complaint handling procedures. This extensive public participation not only significantly enhances the actual effectiveness of supervision, but also effectively enhances the credibility of the government, and deepens the positive communication and cooperation between the government and the public. At the same time, once the business behavior reaches the protection red line, the relevant departments can respond quickly and intervene in time, stop the spread of ecological damage from the source stage, and maintain the ecological stability of the national park.

2.2.3 Exit of the Giant Panda National Park franchise

The withdrawal of the franchise is the termination of the franchise, and its legal nature is the termination of the management right of the franchisee when the franchise agreement is fulfilled. According to whether the agreement ends naturally after expiration, it can be divided into normal termination and abnormal [14] termination.

Under the normal termination, the administrative department of Giant Panda National Park shall perform the obligation of informing the renewal within the legal period before the expiration of the franchise contract. If the franchisee has the intention to renew the contract, it shall submit an

application for renewal before the expiration of the contract, which shall cover the overall operation situation during the original franchise contract period and the future business plan. The management department shall conduct a comprehensive review based on the ecological impact assessment data, economic contribution degree and compliance records and other indicators during the operation period, and finally decide whether to approve the renewal.

Under the abnormal termination, the management agency will take back the franchise in advance. According [15] to the "Administrative Measures for the franchise of Infrastructure and Public Utilities", in case of legal or agreed early termination, the operator can negotiate with the management agency to terminate the agreement in advance. In case of ecological damage, if the operator violates the ecological protection obligations, causes serious ecological pollution and cannot be normally handed over, the administrative department has the right to implement the temporary takeover and unilaterally terminate the agreement and investigate the responsibility for ecological compensation.

2.3. Community, the original residents to participate

The general controlled areas of the Giant Panda National Park carry a large number of original resident communities, most of these areas are poverty alleviation consolidation areas, and the income level is relatively low. At the same time, the construction [16] of giant panda National Park has greatly affected the living environment and lifestyle of the indigenous people, so the ecological protection compensation financing channel including the design of franchise ecological compensation policy should be constructed. On this basis, the original residents of the community [17] are the natural participants of the national park franchise. The Overall Plan for establishing [18] a National Park System said: "We should establish a community co-management mechanism and encourage the joint protection of natural resources around national parks through the signing of cooperative protection agreements." The "Regulations on the Administration of Giant Panda National Park" clearly mentions "give priority to encouraging original residents to participate in franchise activities", promote the integrated development of giant panda National Park and community, realize residents' production and income, and promote the local areas and surrounding areas of Sichuan to take the lead in rural revitalization and make good demonstration.

At present, some giant panda National Park communities have made remarkable breakthroughs in franchising. The management agency of Deyang promotes the establishment of "co-construction [19] and co-management committee" in township (town) and villages, and guides the community producers and operators to actively apply for "original ecological products of giant pandas". Chongzhou city jingjiang town ohtsubo village stock economic cooperation association eight companies [20] (association, cooperatives) production of "worship state cattle" "Sichuan panda shoots" "wu Chinese bee honey" and other 11 products using "giant panda national park" and security code function and digital [21] code identification, national park public brand value conversion, original residents industry income, annual sales of 30 million yuan. In 2019, Qingping Town received 350,000 tourists, with a total income of more than 50 million yuan. The dividend of "promoting agriculture with tourism" totaled more than 1.2 million yuan, building a traditional mining area into an entrance community of harmonious coexistence between man and nature, and realizing a win-win situation of ecological environment protection and green development.

3. The problem of the franchise system of the giant panda national park is attributed to it

3.1. The scope of the national park franchise is ambiguous

At present, the document provisions on the scope of the giant Panda National Park franchise are still in the stage of fragmentation and lack of normative policy guidance. At the same time, the boundary of "non-public welfare specific service projects" outside the negative list is unclear, which can easily lead to arbitrariness and controversy in the implementation [22]. This ambiguity may cause

the following problems: First, the predictability of the law is not strong. It is difficult for market players to predict compliance risks and reduce their investment willingness, which directly affects the value transformation efficiency of ecological products. Second, the management agency discretionary space is too large, easy to breed the risk of power rent-seeking. In the absence of specific restrictions of legal norms, local governments may relax the restrictions on the entry of non-public welfare social capital projects and deviate from the value orientation of national parks.

This ambiguity mainly comes from three aspects: First, the standard foundation of franchise rights is weak. As the core management basis, the Regulations of Sichuan Province on Giant Panda Franchise has not been issued yet, leading to the lack of statutory definition of the scope of franchise projects, and the lack of refinement of the Franchise Catalogue of Hainan Tropical Rain Forest National Park.

Second, the principle of "consistent with protection objectives" lacks operational standards. The key factors such as the damage of the franchise residents and the protection of the parks are in a legislative vacuum, which causes the administrative organs to fall into a subjective dilemma when applying this principle.

Finally, the negative list is not transparent. Sichuan Provincial [23] Forestry and Grassland Bureau pointed out that: Except for the national special strategic needs and the 15 types of activities listed in the Measures for the Administration of Sichuan Provincial Giant Panda National Park, as well as the 8 prohibited items, all human activities will be included in the negative list. Therefore, the negative list of general control areas is stipulated, but for the franchise activities, the negative list of 15 activities still has an institutional blank.

3.2. The incentive policies of national park franchisees are not perfect

National parks aim to protect nature, serve the people and achieve sustainable development. However, there is still [24] a prominent contradiction between protection and development in practice. Especially in franchising, some franchisees, driven by economic interests, tend to weaken the obligation of ecological protection, and damage the rights and interests of residents and tourists, which conflicts with the goal of national parks.

In view of the ecological risks in franchising, Sichuan Province has established a relatively strict supervision system. The Opinions on Strengthening the Construction of the Sichuan Area of the Giant Panda National Park emphasize strengthening supervision over the development and utilization of natural resources and carrying out special law enforcement actions in the Sichuan area. "About establishing a giant panda national park ecological environment resources protection cooperation mechanism opinions (trial)" put forward to establish and improve the giant panda national park within the scope of administrative law enforcement and criminal justice, public interest litigation, ecological environment damage compensation of ecological protection mode, through the way of litigation for the damage of national park.

However, the current policy mainly focuses on rigid supervision and post-accountability, and there is an obvious lack in the construction of positive incentive mechanism. Operators have only the lowest level of social responsibility, and the degree of conscious participation is weak. Operators with a strong sense of social responsibility are difficult to obtain operational advantages due to high costs, forming a distorted phenomenon of "bad money drives out good money". The incentive dislocation of the system design forces the operating subjects to reduce the ecological protection and service investment under the pressure of survival, and finally weaken the foundation of sustainable development of national parks.

4. Suggestions for improving the franchise system of Giant Panda National Park

4.1. We will improve the legal system of national park franchise system

To establish and improve the linkage mechanism of laws and regulations on national park franchising, it is necessary to build a vertical and horizontal [25] coordination system, so as to form a joint force between the central and local governments and between the local and local governments. The construction of this system should not only solve the practical problems of current legislative hierarchy chaos and standard conflict, but also focus on the long-term goal of modernization of national park governance, and realize the dynamic balance between ecological protection and moderate development through scientific design of legal connection path.

At the level of central and local laws and regulations, the vertical allocation and institutional interface of legislative authority should be clarified. The central legislation should play the role of top-level design. As the basic law, the National Park Law needs to establish the core principles and institutional framework of franchise operation, and clarify the priority of ecological protection of national parks. The supporting Regulations on the Management of National Park Franchise should focus on standardizing key systems such as franchise access standards, income distribution mechanism and ecological compensation rules, so as to provide benchmarks for local legislation. Provincial legislators need to formulate implementation rules and local standards in combination with regional ecological characteristics. For example, the Giant Panda National Park can formulate assessment standards for the environmental carrying capacity of franchise projects for animal ecosystems. This hierarchical [26] legislative system requires the establishment of a dynamic adjustment mechanism. The central level should set up a national park regulation review committee to regularly evaluate the fit between local legislation and the upper law, and timely clean up the standard provisions that conflict with the upper law. American experience in this respect is worth drawing lessons from, its through the national park administration organic act to establish basic legal status, the state legislation shall not conflict the federal law established "protection priority" principle, and allowing the local system innovation in tourist management, community participation, the "bottom line control + elastic space" legislative mode effectively guarantee the unity and adaptability of the legal system.

4.2. Build the incentive mechanism of income distribution of national park franchise

4.2.1 Establish the operator performance appraisal mechanism

In the operation evaluation, the gradient system design of the national park franchise incentive mechanism should be established, and a comprehensive evaluation system composed of ecological protection indicators and social responsibility indicators should be constructed. In the design of index system, the ecological protection index should be guided on ecological value, focusing on monitoring the key elements such [27] as pollution control, biodiversity protection and ecosystem stability; Social responsibility indicators require the franchisee to provide benefit compensation, dividends, employment and training, and support and reward for the improvement of community life to ensure that commodity prices are within the range of tourists and residents. According to the total score of the evaluation index, three evaluation grades of excellent, good and unqualified are set, and each level corresponds to a differentiated incentive and restraint mechanism, promoting the improvement of management efficiency through the linkage of performance rewards and punishments.

4.2.2 Improve the reward and punishment mechanism for operators

In the process of improving the reward and punishment mechanism for national park franchisees, the international mature management wisdom and practical results can be integrated. In the United States and New Zealand, for example, the National Park Service allows the annual general assessment standard or satisfaction franchisee to use the "authorized franchisor logo" pattern for business

activities, while the New Zealand Department of Protection uses the "certification label" to prove that the franchisee holder meets [28] the required environmental and safety standards.

For operators with a good assessment level, but who actively participate in ecological environment protection and community development, they can provide policy support such as preferential tax treatment, preferential project approval, and appropriate reduction and exemption of franchise fees. For the national park franchisees with excellent assessment grade, on the basis of enjoying the above preferential policies, they can be further given the priority to renew the contract after the expiration of the franchise contract. In terms of economic rewards, operators with outstanding performance in ecological protection or business performance can also be given a certain proportion of business income return, and they can be authorized to use special marks with high recognition and authorization for commercial activities to enhance their market competitiveness.

For the operators with unqualified assessment grade, they shall first be given an administrative warning and ordered to rectify within a time limit or terminate the franchise agreement according to the specific situation. In order to avoid the waste of resources, the franchise projects with rectification conditions should be given priority to the rectification measures within a time limit. When the franchisor causes serious damage to the ecological environment, the administrative agency shall immediately terminate the franchise agreement, take over a temporary take-over, and investigate the legal responsibility of the operator.

4.3. We will improve the path for community and resident participation

4.3.1 Expand the channels of industry-driven participation

In order to further expand the channels of community participation in national parks, we should adhere to the industrial drive to solve the employment problem of residents, enrich the ways and ways of community residents to participate, and help rural revitalization.

First, innovate the collective land resource utilization mode. Based on the establishment of national park as the main body of the natural protected area system of guidance "proposed" in accordance with the law, voluntary, paid "principle, the local community through land lease, property right replacement, ecological redemption, stock cooperation and diversified ways to revitalize the idle land resources, and based on the" community-enterprise " cooperation mechanism integrating land resources into the franchise system, through guaranteed dividends and profit sharing security residents relying on land resources for income.

Second, strengthen the coordination guarantee mechanism between policy and finance. The local government should strengthen the financial support and policy support for residents and communities to participate in franchise, and encourage the strength and confidence of residents to participate in franchise [29]. For relatively economically backward areas, financial institutions can provide financial services to support the key areas and key links that are conducive to the development of modern agriculture, increasing farmers 'income and improving farmers' production and living environment. In addition, the management agencies can establish an operating risk compensation fund, and provide targeted subsidies to community projects whose returns are damaged due to ecological protection requirements, so as to effectively enhance residents' confidence in participation. Relying on financial support, residents can participate in high value-added projects such as ecotourism to increase their operating income.

Third, establish a diversified community development mechanism [30] according to local conditions. On the one hand, we should support residents to [31] retain the original agricultural planting mode within the scope of environmental permission, develop new ecological agriculture, and ensure the red line of cultivated land. On the other hand, residents' participation in franchise can rely on rich regional resources, such as relying on Sichuan bamboo weaving, Shu embroidery and other characteristic intangible cultural heritage projects to create geographical indication products. At the same time, they can pass the ecological product certification of national park, and use the influence of giant Panda National Park to enhance the added value of products.

4.3.2 Establish a community co-management and information sharing mechanism

We will implement the "community co-management committee" and encourage residents to participate in the management of national parks. The management agency realizes the transparency of the information of the protected area, strengthens the degree of government information disclosure, regularly releases ecological protection policies, project planning and management trends, and guarantees the residents' right to know. At the same time, regular opinion collection channels (such as hearings and online platforms) should be established to incorporate residents' demands into the decision-making process and form a two-way communication mechanism to avoid the disconnection between management decision-making and community interests. In addition, it stipulates that the project review committee must have community representatives involved to ensure the priority of residents to participate in the franchise activities.

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As an important exploration of the national park system with Chinese characteristics, the franchise system of giant Panda National Park has accumulated valuable experience through the pilot practice, and also revealed the practical challenges in the legal system, scope definition, community participation and supervision mechanism. Based on the principle of ecological protection priority, this study systematically sorts out the dual legal attributes and external legislative experience of franchise rights, demonstrates its core values, and puts forward optimization paths such as hierarchical legislation, dynamic list, operator incentive and community co-governance for the problems such as fuzzy access mechanism and absence of reward and punishment system. In the future, the franchise system in the central as a whole and local innovation synergy continue to improve the design, strengthen the multiple subject collaboration, balance of ecological protection and sustainable development, for the giant panda national park and even the national natural protected area governance can copy, can promote practice paradigm, promote the construction of national park ecological civilization to a higher level.

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