



北京林业大学经济管理学院

“英才计划”出版工程

编委会主任：陈建成

主编：温亚利 张卫民

# 集体林改视角下的 森林资源物权制度构建

STUDY ON LEGISLATION OF CHINESE FORESTRY PROPERTY-RIGHTS SYSTEM  
RESTRUCTURE -PERSPECTIVE FROM COLLECTIVE FOREST PROPERTY RIGHTS REFORM

◎ 侯 宁 著

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# 出版说明

## Publication Introduction

为加强学院科研团队建设，培养经济管理青年英才，扩大学院学术交流和学术影响，产出高水平标志性成果，促进学院重点学科与基础学科的协调发展，全面提升学院整体学术竞争力和影响力，北京林业大学经济管理学院制定了“英才计划”，该计划由“创新团队工程”、“出版工程”、“奖励工程”和“论坛工程”四个建设项目组成。

“英才计划”出版工程是对学院教师完成的，以农林经济管理学科领域为主、包括学院其他学科领域中的具有重要理论意义或重大应用价值及前景，或具有独到见解或新颖体系，对科学发展有重要作用的专著出版提供资助，目的是鼓励学术创新、传播学术思想、加强学术交流、繁荣学术研究、促进学术研究更好地服务社会。

“英才计划”出版工程得到了北京东方园林股份有限公司副总经理梁明武、湖南省汨罗市长江铜业有限公司董事长余方然以及中国林业出版社的大力支持，特此鸣谢！

School of Economics and Management(SEM) of Beijing Forestry University (BFU) launched Cultivating Talents Programs including Innovation Team Project, Publication Program, Award Program and Forum Project, which aims to enhance the research team of school, to cultivate young faculties in economics and management to output high level benchmark achievement.

Cultivating Talents Program-Publication Program provide support to manuscript with significance or critical application value or prospective, or with original idea or innovative system mainly agro-forestry economics and management field and other fields completed by school faculty members

Publication Program acknowledge the great support of Mr. Liang Mingwu ( Vice president of Beijing Oriental Garden Shares Co. Ltd), Mr. Yu Fangran (Chairman of Changjiang Copper Product Co. Ltd in Miluo city) and China Forestry Publishing House.

北京林业大学经济管理学院  
“英才计划”出版工程编委会  
2011年5月10日

# 序 言

多年来,北京林业大学经济管理学院以建设和培育国家重点学科——林业经济管理学科为目标,抢抓机遇,深化改革,瞄准学科发展前沿,凝聚全院师生智慧,激发一切可利用资源的活力,团结一致,与时俱进,精思厚德,以人为本,科学发展,敢为人先,在教学、科研、人才培养和社会服务诸方面取得了显著进步。仅2010年,学院在高层次科研项目数量、科研经费总量、高质量学术论文数量、学生获奖层次、本科教学质量评价、专业学位建设等6方面实现突破,创学院历史最好成绩。2010年学院获得国家自然科学基金、国家社科基金和教育部人文社科基金等国家级课题7项;被SCI、EI和ISTP三大检索系统检索的论文共33篇;学院教师获全校理论课教学质量评价第一名;学院学生获“全国先进班集体”称号和58项省级以上学科竞赛奖;学院新增工商管理硕士(MBA)、应用统计硕士、会计硕士、国际商务硕士四个专业硕士学位授权学科点。这些成绩的取得,为学院的改革和发展奠定了良好的基础。

为了进一步推动学院在“十二五”期间快速发展,从2010年起,学院计划用五年时间,在全院推进“英才计划”建设项目。该计划包括“创新团队工程”、“出版工程”、“奖励工程”和“论坛工程”四个建设工程。“创新团队工程”旨在林业经济管理重点学科和其他具有优势和潜力的学科领域,以突出重点团队建设及领军人才培养、突出高水平标志性成果产出为原则,组建学术研究团队,择优提供研究费用资助。“出版工程”旨在鼓励学术创新、传播学术思想、扩大学术影响,资助学院教师多出具有影响力的学术专著。“奖励工程”旨在引导和激励教师申报高层次科研项目、产出高水平学术成果,鼓励教师关心学院发展、积极投身学院教学和科研工作,对在科研、教学和学院发展中取得突出成绩的教师进行奖励。“论坛工程”旨在营造学术氛围、加强学术交流、凝聚学术智慧、扩大学术视野、提倡学术创新,举办各种形式的学术论坛。

“出版工程”作为“英才计划”的重要组成部分,其实施范围在兼顾学院各学科领域的基础上,适当向林业经济管理学科领域倾斜。众所周知,林业经济管理学科在国家生态建设、低碳经济发展及现代林业体系构建中承担越来越重要的人才培养及科学研究责任。北京林业大学林业经济管理学科作为全国同类学科中唯一的国家重点培育学科,在林业经济理论研究方面长期积累,形

## 序 言

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成具有中国特色的林业经济管理学术体系，在林业经济管理学科发展，以及参与国家林业重大问题、前沿和热点问题研究中发挥了积极作用。为促进学科发展，提升学科服务于社会发展的水平，北林林业经济管理学科正努力开展林业经济理论系统研究，以及林业经济重大问题的持续研究，尝试对中国林业经济发展进行理论与实践的梳理和总结，更好地为中国林业发展发挥理论指导作用。

“英才计划”出版工程项目将系统、全面地向社会介绍北林林业经济管理学科及相关学科领域最新的研究成果。主要涉及林业经济管理基础理论，林业经济重点和热点问题，国内外林业经济与政策比较，以及经济学、管理学和政策学最新研究成果在林业上的应用等方面。这些著作中既有青年教师在博士论文基础上形成的最新著作，也有教师最新科学研究成果。该出版工程不求研究内容及形式的系统性和完整性，更注重创新性及探索性；特别是对于新时期中国林业发展与社会经济可持续发展关系、林业在应对全球气候变化中的经济与生态环境政策、当前中国改革与发展中涉及林业与生态环境的关键经济政策问题的创新性研究给予高度重视。

这些著作大多是我校经管院中青年林业经济工作者的研究成果，在学术上可能还有不尽完善之处，一些问题在学术界可能也有不同观点，我以为，实施该出版工程的根本目的是繁荣中国林业经济管理研究，鼓励学术创新，勇于探索林业经济重大问题，更好地为中国林业经济发展服务，同时使有志于中国林业经济研究的广大中青年林业经济工作者有机会发表自己的成果，与学术界交流、沟通和争鸣，提升他们的学术水平，为中国林业发展奠定人才基础。

北京林业大学校长

**宋维明**

2011年5月16日

# Foreword

Over the years, School of Economics and Management (SEM) of Beijing Forestry University (BFU) has made a great progress with an aim of building and fostering the national key discipline - forestry economics and management. We seize the opportunity, deepen the reform, aiming at the development of frontier subjects and gather all the wisdom and inspire all available resources and energy of teachers and students. We realize a scientific development, going forward with the times and people-oriented in teaching, research, personnel training and social service. In 2010, SEM got a breakthrough of history because we got 7 major projects from National Natural Science Foundation project, the National Social Science Fund and the Ministry of Education, Humanities and Social Science Fund and other national projects. About 33 papers were cited by SCI, EI and ISTP, with students winning the National Advanced Course Collective and more than 58 provincial level of academic competition awards. Four new programs of graduate studies were approved including Master of Business Administration (MBA), Master of Applied Statistics, Master of Accounting, Master of International Business. All the above achievements have laid a good foundation for the reform and development of SEM.

In order to further promote the development of college in the Twelfth Five-Year Period, from 2010, the college plans to use five years to promote Cultivating Talents Programs. The plan includes Innovation Team Project, Publication Program, Award Program and Forum Project. Innovation Team Project aims to focus on economic management in forestry and other disciplines which have advantages and potentials to highlight the building of the key leader in team and personnel training, highlighting the high level output of the principle of the landmark achievements and provide funds to the formation of research teams in the selection of the best research. Publication Program is to encourage academic innovation, disseminate of academic thinking, and expand academic impact of SEM by funding the publication of academic achievements made by teachers. Award Project aims to guide and encourage the teachers to apply for high-level scientific research projects, and academic achievement of high level, encourage teachers to care about development of the institute by taking an active part in university teaching and research work. Forum Project aims to create academic atmosphere, strengthen academic exchanges and combine academic intelligence by expanding academic horizons and holding various forms of academic forums.

Publication Program is an important part of Cultivating Talents Programs, which will put emphasis on economic management disciplines with the scope of all various disciplines in SEM. As we all know, forestry economics and management assumes an



increasingly important responsibility for personnel training and scientific research in the national ecological construction, low-carbon economic development and construction of modern forestry system. Forestry economics and management of BFU, as the only nation greatly supported in all similar universities, has formed an academic system of the forestry economy with Chinese characteristics with long-term accumulation, and played an active role in the development of economic management disciplines and participation in national forestry major issues and hot issues of frontier. To promote academic development and enhance academic services to the community, economics and management disciplines of BFU are working to carry out systematic study on forestry economic system theory and continuous study on major forestry economics issues, trying to summarize and sort out the Chinese forestry economic development in both theory and practice to play a better role in guiding the development of forestry in China.

Publication Program will make a comprehensive introduction of the latest achievements in forestry economics and related disciplines to the society, including forestry management based on economic theory, economic priorities and hot issues in forestry, domestic and international comparison of forestry economics and policy, as well as economics, management and policy studies on the latest academic achievements in the forestry aspects of the application. All of these works include the latest work based on doctoral thesis of young teachers and the latest scientific research of teachers of SEM.

The publication does not seek a systematic integrity in the content and form, just to put more on innovative and exploratory research, particularly focuses on the relationship of forestry development in new period and sustainable economic and social development, including the global climate change in response to the economic and environmental policies, China's current reform and development related to forestry and ecological environment, etc.

These works are mostly works of young research workers in forest economics of SEM of BFU. They may not be quite complete and there may be different point of view in the academia, but our purposes are to make the research of forestry economics more prosperous, encourage academic innovation, the courage to explore major issues of forestry economy and better economic development of China's forestry services, which will give chances to young researchers in forestry economics to publish their achievements, and push the exchanges and communication and contention to improve their academic standards for laying a base of talents for forestry development in China.

President of Beijing Forestry University

**Song Weiming**

May 16, 2011

# 前言

以当前集体林改为背景，对森林资源物权制度进行全面梳理。以福建、江西、辽宁、陕西、湖南5个林改省份案例结合物权基本理论展开对集体林所有权、用益物权、担保物权三大物权展开探讨与论述。通过对江西、福建、辽宁、湖南、云南五省集体林物权制度确立情况的实地调查，分析了物权变动前后农户林地面积、林分构成、林业收入、外出打工、林地流转规模等方面的变化，并采用计量经济模型进行估计。结果表明：集体林物权制度确立对农户生计有显著影响，农户林业收入明显增加，明确农户对物权制度的了解和林权证的发放是影响物权制度确立的重要因素。同时，林地物权制度确立中出现的一个实际问题是林地规模化经营可能受到影响，因此，要进一步规范、完善林地流转市场。

森林资源是自然资源的重要组成部分，也是重要的环境资源。森林资源物权的研究，对于森林资源的优化配置，森林资源利用效率的提高，林业的可持续发展以及生态环境建设有着重要的意义。然而，我国森林资源物权研究刚刚起步，又受多种因素的束缚，森林资源物权制度存在着许多研究空白。随着资源的稀缺，环境问题的严峻，迫切的资源权属改革要求，系统地研究森林资源物权制度显得愈来愈必要和重要。

本书本着理清森林资源物权体系，完善森林资源物权制度框架的目的，采取层层展开、步步深入的研究思路，采用理论综述和实证分析相结合、演绎推理和归纳总结并举的研究方法，较为系统地阐述了物权基础理论，并在此基础上对森林资源物权的内涵、特点、分类、现状和问题进行剖析，进而引出了本书的重点部分第四章和第五章，本文第四章系统地阐述了森林资源物权制度改革的历史进程、动力、基本原则、基本形式，并列举了森林资源物权制度改革的一些实践。第五章首先论述了森林资源物权制度框架构建的意义和目标，并对森林资源物权制度做出了相应的安排，构建了林地资源物权流转机制、林木资源物权交易机制、森林资源环境物权补偿机制和森林资源物权管理机制。

## 前 言

物权权利体系构建与物权变动制度是物权制度设计的最核心内容，也是我国目前正在起草的《民法典》争论之焦点。林地物权，属于特别法上的物权，受行政法理和民事物权法理双重约束，其制度设计更是立法难点。为借鉴国外经验，选择同属大陆法系的俄罗斯与我国大陆地区的林地物权体系和林地变动制度展开对比分析，并对完善大陆林地物权制度提出了几项建议。最后，第六章总结全文，并提出了相应的政策建议。

在完成本书的同时，对大力支持本书出版的经济管理学院各位领导的支持深表谢意。在完成本书中，国家林业局张蕾研究员对于框架和细节给予全程辅导；辽宁、湖南等地调研工作由国家林业局文彩云一起完成，在此深表感谢。同时本书校对期间，正值本人公派美国任访问学者，所以本书后期工作由杨洋、白帆、许文渊完成。还要感谢胡明形老师和本书编辑完成的相关工作。

本书系教育部人文社会科学研究青年基金项目“中国林权制度研究”（编号 09YJC820008）、国家林业局“集体林权改革与农户生计研究”、中央高校基本科研业务费专项资金资助科技创新计划项目“我国森林法修改相关法律问题研究”（编号 BLRW2010-10）和“林权改革视角下的生态公益林补偿法律制度研究”（编号 BLRW200938）的阶段成果。

著 者

2011年5月30日

# Preface

Background to the current collective forest, property rights system of forest resources to conduct a comprehensive sort. Fujian, Jiangxi, Liaoning, Shaanxi, Hunan provinces in 5 cases of forest tenure reform started with the basic theory of property rights of collective forest ownership, usufruct, security interest and discussion of the three major property expansion. Based on the investigation of collective forest tenure reform in Jiangxi, Fujian, Liaoning, Hunan and Yunnan provinces, this paper analyses the changes of woodland area, the structure of forest, outgoing worker, woodland transfer scale and so on, and estimates the effects of collective forest tenure reform on peasant's livelihood using an econometrics model. The results indicate that collective forest tenure reform has a significant impact on the farmer's livelihood, which enhances the forestry income of farmers. Whether farmers know about the reform policy or not and possesses forest property rights certificates are important factors of the effectiveness about collective forest tenure reform. At the same time, an actual problem during the reform is that woodland scale operation is likely to be affected, thus the woodland leasing market should be further regulated and improved.

The legislation of real-rights is the focus of law today, and it is also an important content of the future civil code. Since forest resources are not only important economical resources, but also key environmental ones. They have economic benefits social benefits and ecological benefits. The study on real-rights system of forest resources (RSFR) combines the legislation concepts system of real-rights (private law) and forestry administration (public management law) system, is one of the heating studies. And it is of significance to allocate forest resources efficiently, enhance the rate of utilization. And it promotes social sustainable development and ecological environmental construction. However, nowadays the research is just a beginning, and needs to be studied deeply. With scarcity of resources, rigor of environmental problems and urgent demand of legislation of real-rights in China, systematical and regular study on it becomes more and more necessary.

The thesis aims to collate real-rights system and perfect the framework of RSFR. It adopts the following methods: combining theoretical summary with practical analysis, synthesizing deduction with induction.

Under the guide of four principles of systematical-thinking, balancing individual benefits and social benefits, law-based and register-showing method, and Ownership-center and utilization, the author draws lessons both from the world and local practice, Combination international experiences with national culture, and makes contrast research



on RSFR of the Germany, Japan, and Taiwan province with that of mainland China.

So the author begins to arrangement the new-style RSFR in China. It concludes three systems: the construction system of RSFR, the real content of RSFR and the change system of RSFR in China.

According to the traditional real-rights system, the author begins to build up construction system of RSFR. It includes ownership systems, usufruct system, which contains new types of the pawn rights and easement rights, and guarantee real right system .

Secondly, the author establishes the real content system of RSFR. It includes logging right, compensation right, picking and collecting right, hunting and Farming rights, planting and specie patent rights, supporting right (subsidy), changeable right. And the recreation right is added.

Thirdly, the author Builds up the change system of RSFR. It includes change mode, administration and registration system.

This paper select Germany, France and Russia as the models of the civil law system, and contrast the legislation in the forestry property of China with them. With analyze the modernization of forestry property , the thesis gives some suggestion about its improvement.

Finally, the fifth chapter summaries the full text, and puts forward corresponding policy suggestions.

Upon completion of this book, I firstly express deep gratitude to leaders of Economics and Management and Dr. Zhang Lei ,researchers of State Forestry Administration, Who have given full details of the framework and guidance. Also I express deep gratitude to Wen-Caiyun, Who have done research work in Liaoning province , Hunan province and other provinces with me . While proofreading the book is the time when I am as a visiting scholar at the U.S. , so the book was edited by Yang Yang, Bai Fan, Xu Wenyan. At last , I give my thanks to Hu Mingxing ,who is the book-related project team leader.

**Author**

May 30, 2011

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