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MANAGEMENT RIGHT

RESEARCH

OF SCENIC SPOT'S

国家风景名胜区
经营权研究

谢茹◎著

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穿透迷雾之作（代序）

谢茹博士的力作《国家风景名胜区经营权》即将出版，拜读之后，作为多年以来在这一问题上的局中人，有一个突出的感觉，豁然开朗。多年争论的问题经过梳理，条分缕析；实践现象的复杂在理论的严谨中，清楚体现。而今后如何发展，也明确了路径和方法。如果没有多年的潜心研究，很难看到这样的著作。

自 1998 年以来，风景名胜区所有权与经营权分离的问题浮出水面，迅即形成社会焦点。政府部门在斗，学术部门在争，中央与地方也意见不合。我曾经看到吓人的题目，如风景名胜资源上市之国家利益权衡，也参加过多次激烈的讨论，甚至“舌战群儒”，也被扣过帽子。在这一过程中，我常常感到一种悲哀，由于论战各方的道理都不够充分，所以时时陷入非此即彼的线性争论，甚至涉及“爱国”和“卖国”这样的立场划分之中。

在这些笔墨官司中，格外感觉到理论研究的必要和研究方法的重要。知识分子并不具有天然的道德优势，人性的弱点也不因为知识的积累而改变，更不能仅凭一句“学者的良心”，所说的话就一定是正确的。某种程度上，专家已经成了部门利益的代言人。目前，垄断无所不在，部门垄断演化为依法打架，行业垄断演化为国家利益至上。总之，所有的垄断都有最堂堂正正的名目，都在这些名目之下维护既得利益，争夺新的利益。专家的局限性恰恰在于专家本身，但专家们却往往认为自己无所不懂，无所不能，所以就无所不



言。这也误事，而且是理直气壮地误事。但情况毕竟在变化。一方面是在实践中，风景名胜区所有权与经营权分离的操作普遍化，相当一些地方已经上升到地方性法规的高度。另一方面，部门意见也在发生变化，有些已经开始松动。但直到目前为止，仍未形成国家意见。

但帽子时代毕竟过去了，发展是硬道理，发展更需要硬道理。在谢茹博士的著作中，对上述争论，尤其是对实际情况，从提出问题入手，从解决问题着眼，充分运用可持续发展理论、公共经济学理论、现代产权理论，现代企业理论与政府规制理论等理论基础和分析工具，通过辨析风景名胜区经营权内涵实质，分析经营权转让现象，以及风景名胜区治理结构，回答如何实现风景名胜区经营权、如何实现风景名胜区企业激励产权有效与资源激励产权有效相统一的问题，进而找到风景名胜区资源保护与开发矛盾的有效解决方法。形

南，更加切合中国国情，也使本书的价值得以提升，将产生普遍性的作用。

从今后看，一是争论尽可以继续，但思路和方法似可调整。如能像本书，即可多一些科学性，少一些道德义愤，至少不必扣帽子。二是政策必须形成，尤其是要明确国家意见，现在这种“部门即国家”的现象不应持续，有这样的制度持续就没有真正的可持续发展。三是需要市场规制，地方各自为政的现象也要在统一大市场的形成中加以调整。四是需要治理优化，这就需要强调“有恒产者有恒心”，仍然要回到本书所论述的根本问题上来。

作为一个政府官员，能够超越部门争议，这是谢茹博士的优势之一。更重要的，则是对真理孜孜以求的态度和严谨的治学方法。看完之后，真是很高兴，乐于写几句话来鼓与呼。不仅是因为朋友，更主要的是希望看到这一穿透迷雾之作在发展中起到越来越大的作用。

魏小安

摘 要

风景名胜区经营权问题的提出,直接源于一些国家名胜风景区所有权与经营权分离,并将经营权以合作、合资、租赁、拍卖等形式市场化转让的实践,其初衷是为了解决传统的风景名胜区管理体制问题和经营机制弊端,解决风景名胜区加快发展所面临的资金匮乏、人员素质低下、积极性不高等问题,充分发挥风景名胜区对地方经济发展和社会进步的拉动促进作用。然而,由于目前国家对风景名胜区经营权市场化问题没有相应的法律规定,实践中缺乏明确可循的依据,导致了经营权出让无所顾忌、国有资产监管失控、国有资源利益受到损害的情况。风景名胜区主管部门的担忧和坚决反对,以及社会各界对此问题的极大关注,引发了对风景名胜区经营权出让问题的激烈争论。对这样一个存在诸多争议的问题展开专题研究很有必要,也很有意义,因为它直接关系到在加快建立社会主义市场经济体制以及加入世界贸易组织进一步扩大开放的新形势下,国家风景名胜区可持续发展的路径选择;关系到能否充分发挥市场与政府两方面作用,寻求到资源科学保护与合理开发的制度均衡点;关系到经济转轨时期,对实践中不断出现的体制改革与机制创新举措的鼓励和规范。

本书立足经济学的有关基本原理,依据可持续发展理论、公共经济学理论、现代产权理论、现代企业理论和规制经济学理论,结合旅游业自身的特点,采取理论与实证相结合,比较与鉴别相统一,

以及系统研究的方法，从风景名胜区产品特性、产权内涵及经营权实质、政府规制三方面进行了系统分析，并做出了相应的制度安排。全文的分析遵循提出问题、分析问题、解决问题的经济学一般规律。从分析的逻辑角度看，第一步，通过前言提出问题，通过研究进展评析现有研究成果，阐明对相关问题所持的基本观点；第二步，运用相关经济学基本原理，为进一步系统研究风景名胜区经营权问题所持观点提供理论依据；第三步，从实证分析和理论研究两个方面展开，实证部分旨在说明客观存在的现象，以及现行风景名胜区市场化过程中存在的问题，理论部分则从风景名胜区产品特性入手，通过产权分析，规制举措的拟定等，回答风景名胜区经营权能否市场化、怎样市场化等核心问题；第四步，给出基本结论并提出政策建议。纵观全书，实现国家风景名胜区的可持续发展，力求可持续发展三方面内容（即风景名胜区自身发展、资源有效保护和永续利用以及促进风景名胜区所在地经济发展社会进步）的协调，有效解决风景名胜区发展所面临的保护资金不足与外资进入障碍的矛盾，风景名胜区保护目标与促进地方经济发展、社会进步目标在有限投入下难以兼容的矛盾，风景名胜区发展旅游业过程中的资源保护与资源开发利用的矛盾等，是全部研究的立足点和出发点。

全书由前言和七章构成。

前言部分，对全书的分析思路、结构安排和基本观点作了概括性描述。

第一章为研究进展。主要就风景名胜区产品性质及资源配置方式、风景名胜区产权及经营权转让、风景名胜区经营企业上市、风景名胜区管理体制、风景名胜区公益性保障机制等问题的现有研究成果进行评述。提出风景名胜区产品应定义为特殊的准公共产品，其提供方式不排除市场机制，但经营权市场化转让应遵循区别对待、因地制宜、分步推进、引入竞争的基本原则；对风景名胜区经营企业上市应正视现实，严格规范操作；解决风景名胜区管理体制问题

的关键在于构建统一协调的工作机制、完善立法、加强监管；应始终确保风景名胜区公益性体现等基本观点。

第二章为理论基础。运用可持续发展理论，提出风景名胜区的可持续发展，实质上是包括风景名胜区自身得到发展、风景名胜资源得到科学保护和合理利用以及风景名胜区所在地的经济社会发展得到促进等三方面内容在内的协调统一的有机整体，必须树立科学的发展观、保护观和经营观；运用公共经济学理论，将风景名胜区产品定义为特殊的准公共产品，阐明其与一般准公共产品的区别，以及引入市场机制的可能性及限定性；运用不完全合同的现代产权理论，解析风景名胜区产权的内涵，产权与所有权的区别，以及产权的普遍性、排他性、可分割性、可让渡性特点，提出风景名胜区所有者（公众）的所有权必须通过一定价格支付才能实现的特殊性所在；运用格罗斯曼（Grossman）、哈特（Hart）和穆尔（Moore）共同创立的G-H-M现代企业理论模型，提出风景名胜区经营权的实质是所有权人让渡的部分剩余控制权，风景名胜区经营企业在获取部分剩余控制权的同时，相应获取部分剩余索取权，两者有机搭配构成经营权的本质内涵；运用规制经济学理论，提出风景名胜区政府规制的必要性以及可选择的经济规制和质量规制工具。

第三章为国内外实践。分析了目前国内风景名胜区经营权市场化的基本现状，剖析了整体租赁、股份合作、上市三种经营权市场化方式，对其成功经验和存在问题进行了客观评价，总结出了应该注意的问题；以美国、加拿大、日本等国的国家公园为例，探析了国外国家公园在经营权问题值得借鉴的经验，如建立健全法律法规体系、严格规划管理、旅游服务特许经营等，得出了不能完全照搬国外国家公园的做法，而应立足我国国情，区分风景名胜区的类别和级别，具体选择与其实际情况相适应的经营方式的结论。

第四章为风景名胜区产品供给。从风景名胜区产品需求与供给的决定，风景名胜区产品市场供给的成本—效益分析，提出风景名



胜区产品公共提供与市场机制相结合的办法；对遗产类风景名胜区的经营制度及经营性项目的经营权市场化转让做出特别限定；对经营权市场化转让后风景名胜区公益性保障机制做出设计和安排。

第五章为风景名胜区经营权研究。这一章是本书的核心，通过解析经营权内涵实质，分析经营权转让现象以及风景名胜区治理结构，回答如何实现风景名胜区经营权、如何实现风景名胜区经营企业产权激励有效与资源产权激励有效相统一的问题。其中，对风景名胜区产权初次分割出来的使用权（经营权）的再分割，是根据产权“由物的存在及关于他们的使用所引起的人们之间相互认可的行为关系……是一系列用来确定每个人相对于稀缺资源使用时的地位的经济和社会关系”的定义，由现有的风景名胜区管理体制决定的所有权代理人与最终所有者之间关系，所有权代理人与经营企业之间关系，经营企业与旅游消费者之间关系的博弈给出；运用现代企业的产权理论及G—H—M模型，具体分析了风景名胜区各类资产项目由谁拥有经营权（即产权意义上的剩余控制权）更优，更有效率和效益，即回答了什么类别的风景区可以转让经营权，什么性质的风景名胜区项目可以引入民营投资企业；对转让的产权市场及产品市场建设提出建议；指出合理的风景区治理结构和富有激励的治理机制，是风景名胜区所有权人让渡部分剩余控制权，风景名胜区经营企业因此而获取经营权（受让的部分剩余控制权）后各自权利得以实现的保证和体现。

第六章为风景名胜区经营权市场化的规制优化。在反思现行规制体制及政府规制面临困境的基础上，提出转轨时期符合我国国情的风景名胜区规制改革的基本思路。从政府调控角度对风景名胜区经营权市场化的规制必要性及可行措施进行阐述。

第七章为结论和建议。通过对风景名胜区经营权问题的理论研讨与实证分析，得出的基本结论为：（1）政府偏好在风景名胜区产

品提供方式的选择上具有决定性作用；(2) 树立科学的风景区发展观和资源保护观；(3) 采取多样化方式解决风景区投入不足的难题；(4) 理顺风景区管理体制；(5) 改革风景区资源开发经营模式；(6) 赋予风景区经营企业具有足够激励的经营权；(7) 促使企业产权激励有效与资源产权激励有效协调一致；(8) 按市场经济规律要求规范转让及经营企业行为。政策建议从四个方面给出：(1) 建立统一的协调工作机制，强化政府的宏观调控能力；(2) 完善相关的法律法规，构建有利于风景区可持续发展的完备法律体系；(3) 强化监督约束，形成多方参与的社会监督体系和机制；(4) 分离风景区基础设施项目和经营性项目，实行不同的引入模式。

在借鉴和吸收已有研究成果的基础上，本书的主要创新：(1) 分析了依托风景名胜资源建立的国家风景名胜区，作为产品与一般准公共产品的区别，并将风景名胜区产品定义为特殊的准公共产品，指出其特殊性决定了不能完全按一般准公共产品的市场化手段来解决其经营权问题；(2) 借用 G-H-M 现代企业理论模型定义风景名胜区“经营权”，首次提出风景名胜区企业所获的“经营权”，实质上是所有者让渡的部分剩余控制权，更确切地讲，是不完全合同的剩余控制权与剩余索取权，两种权利对应时才能实现企业产权的激励有效，风景名胜区经营权具有完全意义上的产权特性。从而解决了现有研究都在使用“经营权”一词，却未说明“经营权”究竟为何物，为何会受到社会资本青睐、受到政府部门高度关注的问题；(3) 提出风景名胜区可持续发展“三位一体”概念，以及科学的景区发展观、科学的资源保护观、科学的企业经营观的具体内涵，借鉴国外国家公园管理经验，提出了符合我国国情的国家风景名胜区经营权市场化转让的政策界定。

关键词：风景名胜区 经营权 市场化 规制

Abstract

The issue about the management right of scenic spot comes directly from the separation of some scenic spots' property right and management right, and the transformation of management right through market-oriented ways, such as cooperation, joint venture, leasehold, and auction. The original objection of these ways is to solve problems in the traditional scenic spot management mechanism and some problems following the rapid development of scenic spot, including capital storage, unqualified staff, and tepid working attitude, so that we can make full use of the scenic spot's accelerate effect on local economic development and social progress. However, because the shortage of national laws about scenic spot management right marketlization, one can not find clear rules to follow, which lead to ridiculous transformation, out-of-control supervision, and state resources loss; lead to director department's worry and unshak- en objection; also lead to attention from all circles of the society and fireworks about the transformation of scenic spot's management right. Therefore, it's necessary and significant to launch on-the-topic research about the controversial issue. It is straight related to sus- tainable development of national scenic spots under the new situation of constructing socialist market-oriented economic machanism and

further opening to the outside world according to the clauses of WTO; related to whether we can make full use of the energy of both markets and the government to find the balance point of resource protection and reasonable exploitation, and also related to encouraging and normalizing new emerging measures in the practice of reform and creation during economic transformation period.

According to fundamental theories of economics, sustainable development theory, public economics theory, modern property theory, modern enterprise theory and normalizing economics theory, combined with the features of tourism, this book systematically analyzed the features of scenic spots, nature of property right and management right, and government regulation, through theory and practice combined method, comparison and identification consolidated method, and systematic analysis method. This article follows general economics rules of raise problems, analyses problems and solve problems. From the angle of logical analysis, firstly in the preface, the book raises the problem by means of recent research progress, evaluating nowadays findings, and clarifying basic attitude about relevant problems. Secondly, this book provides theoretical evidence for further research of scenery management right using related economics principles. Thirdly, the article develops itself from empirical analysis and theoretical analysis. Empirical part aiming at explaining the feasibility and possible problems of management rights marketlization on the basis of impersonal facts, while theoretical part dealing with can or cannot marketlization and how to marketlization, through scenic spot features, property rights analysis and the corresponding regulation. Fourthly, the book gives basic conclusions and suggested policies. In summary, this whole book is focused on three parts; one

is sustainable development, one is the protection of resources for lasting usage, and another is the development of the local economy. We pursue the coordination of all these three part. All of the research based on solving the contradiction of capital shortage and difficulties in introducing foreign funds, the incompatibility of scenic spot protection and local economy development, and the contradiction of resource protection and resource exploitation.

The book is made up of preface and seven chapters.

The preface makes a brief description about the outline, structure and basic views.

The first chapter introduces recent research progress, mainly on the scenic spots features, resources allocation, property rights and management right transformation, initial public offering of scenic spot, and the corresponding public interest management and protection mechanism. The author put forward that scenic spot products should be defined as special quasi-public products, which can also be provided according to market mechanism, while the management right marketlization should following discrepancies such as making a difference between different scenic spot, adjusting measures to local conditions, step by step progressing, and introducing competition. For the problem of scenic spot's coming into public, we should normalize operation method according to local condition. The key to solving the problem of scenic spot's management mechanism is general points including establishing unified and coordinated operation system, consummating legislation, reinforcing supervision, and maintaining the public interest in scenic spots.

The second chapter is the theoretical foundations. Using sustainable development theory, we bring forward that scenic spot's



sustainable development is actually a organic integer composed of scenic spot development, resource protection and reasonable exploitation, and local economic development. It is vital to establish the notions of scientific development, scientific protection and scientific management. According to public economics theory, we defined scenic spot products as special quasi-public products, clarified their difference from ordinary quasi-public products, and explained the feasibility and restriction of introducing market mechanism. Using modern imperfect contracts property theory, resolving the connotation of scenic spot's property right and according to the difference between property right and ownership right, property right's universality, exclusivity, dividability and transferability, the author noticed that scenic spot's property right can only be realized through some kinds of payment. The essential of scenic spot's management right is partial surplus control right over resources transferred from the property owners, according to the theory of G—H—M modern enterprising model co-established by Grossman and Harand Moore. At the same time the scenic spot company obtain surplus control right, it also obtain corresponding surplus gaining rights. Both rights composed the connotation of the management rights. Finally, this chapter illuminated government's obligation to making rules about scenic spot and to choosing corresponding optional economic and qualitative regulation tools from the theories of normalizing regulation economics.

The third chapter deals with the practices in both China and foreign countries. First, it analyses the current situation of domestic scenic spot's management rights, unveil three management right marketlization ways, such as entire leasehold, stock-sharing co-oper-

ation and public offering. Besides, an objective evaluation is made on its successful experience and underlying problems. Taking the national parks management in foreign countries such as Canada, America and Japan as examples, this book use these valuable experience for reference, drawing the conclusions that we should not only establish sound legal regulations, strict systematic management system and special grant for tourism, but also choosing an operation mold of scenic spots fit for Chinese features, not merely according to foreign national park management experience.

The fourth chapter is about the supply of scenic spot products. By analyzing the relation between demand and supply and the cost-return rate, the chapter puts forward a method of combination public products supply mechanism with market mechanism. Moreover, this chapter lodges a special restriction to the operation rules, and scenic spot's management right marketlization. Besides, we designed a public interest security mechanism after the scenic spot's public offering.

The fifth chapter is mainly about scenic spot's management right, which is the core of this book. By means of resolving the essential of management right, analyzing the phenomena of management right dealings and scenic spot companies' governance structure, it answers the questions about how to realize scenic spot's management right, how to unify prompting from scenic spot's enterprise property right and resources property rights. According to the definition of property right("people's bilateral recognized behavior relationship coming form some thing's existence and being usage... is a series of social and economy relationship when everybody uses the relatively scarce resources"), the usage right, which are derived



from the property right, can also be segmented by the relationship between agents and owners(which are determined by the current scenic spot's management mechanism), the relationship between agents of owners and operating enterprises, and the relationship between operating enterprises and tourists. By means of modern property right theory and G—H—M model, this book analyzes in detail who will own the property right (that means surplus control) is optimal, more effective and efficient. This book also gives proper answers to the question that which specific kinds of scenic spot can be given tradable management right, which kind of scenic spot can use private funds, and how to construct property right market and tourism products market, especially the determination of transferring price. It also indicates that reasonable managing structure and stimulating governance mechanics are the guarantees and embodiment for scenic spot owners to sale partial surplus control and let scenic spot operating companies get all the needed assistant rights (mainly control right) after it is given the management right.

The sixth chapter talks about the optimization of the normalizing regulations of scenic spot's management right marketlization, including necessity and feasibility of regulations of management right marketlization from the angle of government macro-control, and corresponding current system reform.

The seventh chapter offers conclusions and suggestions. based on the theoretical research and empirical analysis, this book draws the conclusion that: (1) governments' priority usually plays a vital role on the mode of scenic spot products supply; (2) establish a scientific scenic spot development and resources;(3) take use of various ways to solve the problem of insufficient investment; (4) optimize