

Carbon Sinks + Justice to Help Achieve Dual Carbon Goals

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Abstract: With the establishment and improvement of the environmental civil public interest litigation system and the ecological environment damage compensation system in China, the ecological environment restoration has become one of the core responsibilities in environmental justice. At present, China's national and local judicial application of carbon sinks is in the preliminary stage of exploration, document guidance and judicial cases are still in the groping stage, this paper through the carbon sinks of judicial guidance documents and judicial practice analysis, to explore the carbon sinks in the judicial field of the application of the norms, so that the carbon sinks to give full play to the civil, administrative and criminal environmental justice in the implementation of the concept of restorative justice an important tool for the role of the concept of restorative justice.

Keywords: Carbon Sink Subscription; Carbon Sink Justice; Carbon Emissions.

1. Normative Basis for Carbon Sinks + Justice

1.1. Provisions for "Subscription to Carbon Sinks" at the National Level

Currently, there is no direct legislative basis for the application of subscription of carbon sinks at the national level, and only some of the judicial interpretations and judicial normative documents issued by the Supreme People's Court are involved. Article 20 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Civil Disputes over Forest Resources published by the Supreme People's Court on 13 June 2022 states, "If the parties request to subscribe to certified forestry carbon sinks instead of fulfilling the responsibility of compensating for the damage to the forest ecological environment, the people's court may give comprehensive consideration to the opinions of the parties, the reasonableness of the different methods of responsibility, and other factors. reasonableness and other factors, and grant permission according to law." The Opinions of the Supreme People's Court on Providing Judicial Services and Guarantees for Accelerating the Construction of a National Unified Big Market, issued by the Supreme People's Court on 14 July 2022, proposes to "study the application of alternative means of compensation, such as subscription of carbon sinks and technological reform offsets" On 5 December 2022, the Supreme People's Court issued the Judicial Protection of Biodiversity in China , proposing the implementation of the concept of restorative justice, exploring and innovating a variety of unique adjudication and enforcement methods for environmental resources trials, such as replanting and re-greening, stock enhancement and releasing, compensating for labour, offsetting technological reforms, and subscribing to carbon sinks, so as to provide a full range of restoration options for different ecosystems. The Opinions on Establishing and Improving the Collaboration Mechanism between Forestry and Grassland Administrative Law Enforcement and Procuratorial Public Interest Litigation issued by the Supreme People's Procuratorate and the State Forestry and Grassland Administration on 15 August 2023

proposes that "in cases where ecological functions cannot be repaired or are difficult to be repaired in a short period of time, the ecological function can be repaired through the forms of offsite restoration, subscription of carbon sinks, and compensation of labour services, and other forms of restoration." The Opinions of the Supreme People's Court on Providing Judicial Services and Guarantees for Guangzhou Nansha to Deepen Comprehensive Cooperation among Guangdong, Hong Kong and Macao in Facing the World, issued on 11 October 2023, proposes to "carry out the concept of restorative justice, and explore and innovate such methods of adjudication and enforcement as replanting and re-greening, breeding and releasing, compensating for labour, offsetting technological reforms, and subscribing to carbon sinks."

1.2. Provisions Related to "Carbon Sink Subscription" at the Local Level

In June 2022, the first environmental criminal case applying the subscription of carbon sinks appeared in China, i.e. the case of Wu Mouhui's abusive logging by the People's Court of Shunchang County, Fujian Province.2022 In August 2022, the People's Court of Ninghua County, the People's Procuratorate and the Forestry Bureau of Ninghua County, Fujian Province, established the Ninghua County "Eco-Justice+Carbon Sinks" working group, which is responsible for the local.

In September 2022, the Fujian Provincial Higher People's Court and the Fujian Provincial Forestry Bureau jointly issued the "Working Guidelines on the Application of Forestry Carbon Sink Compensation Mechanism for Ecological Restoration in Ecological and Environmental Criminal Cases (for Trial Implementation)" , which is the first of its kind in the country to create a mechanism for the measurement of and compensation for the loss of forestry carbon sinks, and to explore the difficulty in cracking the measurement of compensation for the loss of carbon sinks.

On 12 December 2022, the Guizhou Provincial Forestry Bureau, together with the Guizhou Provincial Development and Reform Commission, issued the Action Programme for the High-Quality Development of Forestry Carbon Sinks in Guizhou Province, which proposes to explore "forestry

carbon sinks + eco-justice (enforcement of forestry administrative penalties)", and to unify and standardise the province's eco-justice carbon sinks measurement standards and methods.

On 20 June 2023, the Standing Committee of the Shanghai Municipal People's Congress issued the "Several Provisions of Shanghai Municipality on Improving the Ecological Environment Protection System in Pudong New Area", which proposed "the baseline level before ecological environment damage or the acceptable level of ecological environment risk. If the ecological environment damage can be repaired, the responsible person shall repair it to the extent that the ecological environment damage cannot be repaired, under the premise of complying with the relevant ecological environment restoration regulations, policies and plans, alternative restoration can be carried out or obligations can be fulfilled by subscribing to carbon sinks and other means of improving ecological benefits, so as to achieve equal restoration of the ecological environment and its service functions."

As can be seen from the current state of the system, there are currently no laws or regulations on the subscription of forestry carbon sinks in China. At the national level, only some judicial interpretations and normative documents of the Supreme People's Court have been mentioned; at the local level, only individual provinces have issued normative documents on the subscription of carbon sinks. The lack of a system makes the application of carbon sinks in forestry cases insufficient, which can lead to large differences in case decisions and affect the credibility and authority of the judiciary.

2. Review of Judicial Practice on "Carbon Sinks"

By searching for cases on the China Judicial Instruments

Network and WK first with the keywords "carbon sinks" and "subscription of carbon sinks", a total of 13 cases were found in Table 2 after screening. Through analysis, it can be found that: firstly, the trial location of the cases is concentrated in Fujian Province and most of them are criminal cases; the first case of "subscription of carbon sinks" in China took place in Shunchang County of Fujian Province, which is a province that benefits from the advantages of unique natural resources, and has a remarkable effect in the development of carbon sink projects and the elimination of carbon sinks; secondly, the objects of the subscription are forestry carbon sinks and most of them are self-developed carbon sink projects, such as the development of the carbon sink project, which is a forestry project. Secondly, the subscription objects are forestry carbon sinks and are mostly self-developed carbon sink projects, such as the "One Yuan Carbon Sink" project in Shunchang County; thirdly, in the reasoning of the judges, the subscription of forestry carbon sinks is regarded as an alternative way of restoration and it is written that the defendants have alternatively restored the damaged forestry ecological environment through the purchase of carbon sinks, and at the same time, as the first instance of the criminal cases, the defendants are all considered as repentant for their acts of subscribing to forestry carbon sinks. At the same time, as criminal first-instance cases, the defendants' subscription to forestry carbon sinks was found to be a sign of remorse and leniency was granted; fourthly, the adjudicative documents of the cases did not indicate the procedures and effects of subscribing to forestry carbon sinks, and the part on subscribing to forestry carbon sinks was all skimmed over in a few sentences, making it difficult to obtain more applicable information from the cases, for example, the choice of the alternative restoration programme, the identification of the loss of forest carbon sinks, and the determination of the amount of money to be paid for subscribing to the carbon sinks.

Table 1. Summary information on cases of carbon sink subscription

Number	Name of case	Trial court	Time	main points of a case
1	Lin Mou Illegal Occupation of Agricultural Land Criminal Judgement in One Trial	Changshan County People's Court, Zhejiang Province	2024	Illegal occupation of agricultural land
2	Criminal Judgement of the First Instance on Deforestation by Shi Mou	People's Court of Jinggu Dai and Yi Autonomous County, Yunnan Province	2023	unlawfully fell trees
3	Jiangsu Province, Suzhou City, Jiang Mouzi, Sheng Moubin deforestation criminal incidental civil public interest litigation case	Suzhou Huqiu District People's Court	2023	unlawfully fell trees
4	Huang Zhizhong 4521 Criminal First Instance Judgement	Fujian Province Jiangle County People's Court	2021	Illegal acquisition, transport, processing and sale of plants under key state protection
5	Criminal Judgement of the First Instance on the Crime of Indiscriminate Logging of Forest Trees by Xu Chunrong	Fujian Shunchang County People's Court	2020	Indiscriminate logging

3. Deficiencies in "Carbon Sinks"

3.1. Lack of Clarity on the Scope of Application of "Carbon Sink Subscriptions"

In judicial practice, cases in which a clear judgement is

available belong to forest-related crime cases, in which the defendant's criminal behaviour caused damage to the forestry ecosystem and led to the loss of carbon sinks, and in which the application of subscription to forestry carbon sinks has a certain legitimacy. In a case of environmental pollution handled by a county prosecutor's office in Guizhou Province, a land mining company contracted a construction company to

carry out alteration works, and the mine sewage treatment facilities did not operate during the alteration works, resulting in sewage overflowing into the river, the environmental pollution of the enterprise in question infringed on the public interest, and the two companies paid RMB 116,744 in carbon emission reduction funds for alternative restoration after public interest litigation was filed. The application of subscription forestry carbon sinks in areas where no carbon sink losses have occurred, such as illegal hunting and environmental pollution, will blur the boundaries of the scope of application, affecting the accurate application of subscription forestry carbon sinks and the effective compensation for carbon sink losses. Relying too much on the "subscription of carbon sinks" to restore the ecological environment makes it difficult to ensure that the "right medicine" is applied to the ecological damage, resulting in the failure to restore the original function and value of the ecological environment.

3.2. Lack of Clarity as to the Place of Application of "Carbon Sink Subscriptions"

In the current practice of environmental justice, the judicial organs generally apply the subscription of forestry carbon sinks as an alternative restoration method to guide the perpetrators of ecological environment damage to subscribe to forestry carbon sinks and take the initiative to fulfil the responsibility of ecological environment restoration, so as to ensure that the damaged forestry ecological environment is restored in a timely manner. However, the subscription of forestry carbon sinks for alternative restoration has strict conditions, and the payment of subscription money alone cannot achieve the purpose of alternative restoration. Before that, it is necessary to consider whether there is the possibility of in-situ replanting and re-greening, and should not directly guide the responsible person to subscribe to forestry carbon sinks without evaluation. At the same time, if part of the loss of service function during the period is compensated through the subscription of forestry carbon sinks, it is necessary to consider whether there are other ecological damages that need to be repaired and compensated, rather than subscribing to forestry carbon sinks instead of assuming the responsibility for all the restoration and compensation. In the aforementioned cases and other cases reported in the press, there is no evidence of sequential consideration of the application of forestry carbon sinks, nor is there any clarification of the prerequisites for the application of forestry carbon sinks, nor of the process of selecting and determining the remediation programme.

3.3. Lack of Subscription Standards and Technical Regulations

At present, there is no document that specifies the subscription criteria (whether it is required to subscribe to certified carbon sinks; whether it is required to subscribe to the same type of carbon sinks as the type of carbon sinks lost, etc.) and regulates the technical specifications for calculating the amount of carbon sinks. In this regard, we can learn from the practical experience of other provinces, which refer to the relevant forestry carbon sink methodology published by the state, combine with the actual development of carbon sinks in this province, further clarify the measurement type and method of forestry carbon sink loss, as well as the carbon sink capacity parameters of the main tree species, and refine the

measurement method of forestry carbon sink loss, so as to provide a standard for calculating the amount of carbon sinks for the justice of the Fujian Province's "Subscription Carbon Sinks". It further clarifies the measurement types and methods of the loss of forestry carbon sinks, as well as the parameters of the carbon sink capacity of major tree species.

4. Recommendations to Promote the Judicial Application of "Carbon Sinks"

4.1. Limiting the Scope of Application

"Subscribed carbon sinks" generally refer to forests, grasslands, wetlands, atmospheric protection and other ecosystems and natural resources that are closely related to carbon sequestration and emission reduction. Forests, wetlands, grasslands and other ecosystems play a crucial role in water conservation, carbon sequestration, environmental purification and maintenance of biodiversity, and carbon sequestration and emission reduction is one of their important functions. It is worth noting that in the field of wildlife and aquatic life protection, some places are exploring the use of carbon sinks as an alternative to ecological restoration. The ecological environment elements and ecological service functions in the above-mentioned areas have some relevance to carbon sequestration and emission reduction, but they are all in the periphery, and the carrying of carbon sinks cannot achieve the effects of alternative restoration methods such as the release of farmland, so they need to be treated with caution.

4.2. Regulating the Applicable Procedures

Firstly, in situ restoration should be the first option. Only when it is determined that direct in situ restoration is not possible should consideration be given to replacing restoration with carbon sinks; otherwise, carbon sinks will lead to widespread "pocket liability", which will not be conducive to the restoration of damaged ecological environments. Relevant departments should verify whether the offender has the ability to directly repair the damage, and whether the ecological damage occurs in a place where it can be directly repaired. Secondly, improve the registration and assessment mechanism for alternative carbon sink restoration, adopt expert reports, expert opinions and field surveys to conduct assessments, promote the interdependence and interoperability of carbon sink assessment and ecological damage assessment, strengthen cooperation with relevant departments and assessment organisations, and listen carefully to expert opinions, so as to provide the parties concerned with more scientific and practical help in their choices. Finally, combine the actual situation of the case, fully respect the will of the parties. The subscription of carbon sinks to bear the responsibility for ecological restoration is a means of alternative relief to bear the responsibility, in order to achieve the purpose of promoting the effective restoration of the damaged ecological environment, under the premise of assessment and evaluation, the will of the parties must be fully respected.

4.3. Harmonisation of Subscription Criteria

There are three main types of forestry carbon sink projects in China. The first type is forestry carbon sink projects under the Clean Development Mechanism (CDM) of the Kyoto Protocol. This is the most widely used and representative type in China at present. The second aspect is China's voluntary

emission reduction (CCER) projects under the China Carbon Emission Trading System (CETS), which include Beijing Forestry Certified Emission Reductions (BCER), Fujian Forestry Certified Emission Reductions (FFCER), and so on. The third category is regional voluntary carbon sinks projects, including the Guizhou Monoculture Carbon Sinks Poverty Alleviation Project and the Fujian Shunchang "One Dollar Carbon Sink" Project. Whether the subscription of forestry carbon sinks can make up for the loss of forest carbon sinks depends on whether the carbon sink projects have additional project carbon sinks. In the case of human intervention in forest resources by relevant entities, resulting in the loss of forest carbon sink functions, it is necessary to compensate for the loss of carbon sinks in damaged forests by purchasing carbon sink products with incremental activity sinks.

quotation marks, like “this period.” Other punctuation is “outside”! The use of technical jargon, slang, and vague or informal English should be avoided. Generic technical terms should instead be used.

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