SPC Guiding Case No. 257: [X] Environmental Research Institute, Changping District, Beijing v. [X] River Basin Hydropower Development Co., Ltd. (Ecological Damage Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / ecological damage civil public interest litigation / construction project / major risk of harming the social public interest

Holding

When hearing environmental and resource cases, a people's court shall correctly handle the relationship between high-quality development and high-level protection. Where a construction project has lawfully undergone environmental impact assessment and the construction entity has already adopted targeted protection measures to prevent or mitigate, to the greatest extent possible, the adverse effects on the ecological environment, it shall be lawfully found that the project does not carry a major risk of harming the social public interest.

Basic Facts

The hydropower station involved was developed and constructed by [X] River Basin Hydropower Development Co., Ltd. (“the Hydropower Company”), with a total investment of approximately RMB 8.15 billion. The river reach being developed is a habitat of the Sichuan-Shaanxi taimen (Hucho bleekeri), a species endemic to China. The Sichuan-Shaanxi taimen is a rare and endangered fish in the upper reaches of the Yangtze River and is listed as a national first-class protected wild animal.

In September 2010, the Hydropower Company commissioned a survey and design institution to conduct an environmental impact assessment of the hydropower station construction project and to prepare the Environmental Impact Report for the Hydropower Station (the “EIA Report”). In December 2016, the former Ministry of Environmental Protection issued the Reply Concerning the Environmental Impact Report for the Hydropower Station (the “EIA Reply”), approving the EIA Report in principle, pointing out that the river reach where the hydropower station is located is an important habitat of the Sichuan-Shaanxi taimen, requiring strict implementation of the various environmental protection measures proposed in the EIA Report and mitigation of adverse effects to the greatest extent possible, and setting specific requirements for habitat protection, fish-passage measures and stock enhancement and release. In May 2018, the construction of the hydropower station project was approved to commence in accordance with the law; in November 2021, river closure was carried out; and at the time of the trial of this case, the dam of the hydropower station was still under construction.

In accordance with the requirements of the EIA Report and the EIA Reply, the Hydropower Company carried out the following work: (1) in terms of habitat protection, it prepared the Master Plan and Implementation Plan for Fish Habitat Conservation, which was approved by the Department of Agriculture and Rural Affairs of Sichuan Province and the Department of Ecology and Environment of Sichuan Province; conducted scientific surveys of the resources and key habitat distribution of the Sichuan-Shaanxi taimen; completed the construction of landmark facilities of the habitat conservation area and allocated funds for its construction and operation. (2) In terms of artificial stock enhancement and release, it conducted research on the fully

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artificial breeding technology and large-scale seed cultivation technology of the Sichuan-Shaanxi taimen and obtained a national patent; completed construction of and put into operation a Sichuan-Shaanxi taimen stock enhancement and release station, and completed three artificial releases. (3) In terms of fish-passage facilities, it completed the preliminary design and preparatory work for fish-passage facilities such as the fish lift and fish collection and transport system. At the same time, artificial breeding work continued at two Sichuan-Shaanxi taimen domestication bases.

In 2021, the Hydropower Company and its commissioned construction entities were separately subject to administrative penalties for dumping spoil down the slope, failing to complete the construction of the fish stock enhancement and release station on time, and failing to construct a temporary storage room for hazardous waste. The relevant administrative authorities required the Hydropower Company and its commissioned construction entities to complete rectification of the temporary hazardous waste storage room by July 31, 2021, complete rectification of the slope spoil dumping violation by October 31, 2021, and complete construction of the fish stock enhancement and release station by December 31, 2022. Thereafter, the Hydropower Company and its commissioned construction entities completed the rectifications within the time limits specified in the Decision on Ordering Correction of Illegal Acts and passed regulatory acceptance.

In December 2021, [X] Environmental Research Institute, Changping District, Beijing (“Changping [X] Environmental Research Institute”), believing that the construction of the hydropower station by the Hydropower Company affected the survival of the Sichuan-Shaanxi taimen, destroyed the habitat of a critically endangered species and damaged biodiversity, brought a civil public interest lawsuit with the Aba Tibetan and Qiang Autonomous Prefecture Intermediate People's Court of Sichuan Province, requesting an order that the Hydropower Company cease construction, compensate for losses, change the project site and make an apology.

During the trial, the people's court organized mediation between the parties on several occasions but failed to reach agreement.

Judgment

On December 1, 2023, the Aba Tibetan and Qiang Autonomous Prefecture Intermediate People's Court of Sichuan Province rendered Civil Judgment (2021) Chuan 32 Min Chu No. 28: the litigation claims of [X] Environmental Research Institute, Changping District, Beijing were dismissed. After the judgment was pronounced, [X] Environmental Research Institute, Changping District, Beijing was dissatisfied and appealed. On July 31, 2024, the Sichuan Provincial High People's Court rendered Civil Judgment (2024) Chuan Min Zhong No. 4: the appeal was dismissed and the original judgment affirmed.

Reasoning

High-quality development and high-level protection complement and reinforce each other. Developing the economy must not mean draining the pond to catch the fish with respect to resources and the ecological environment, and ecological environment protection must not mean abandoning economic development by climbing a tree to seek fish. Articles 1 and 4 of the Environmental Protection Law of the People's Republic of China clarify the legislative purpose of protecting the environment, preventing and controlling pollution and promoting sustainable economic and social development, reflecting the principle of coordinated development. In this case, the Hydropower Company, as the construction entity of the project involved, utilized the abundant local hydropower resources to generate electricity, which conformed to the national requirement of developing hydropower according to local conditions and green, low-carbon, high-quality development, suited the needs of local economic and social development and the survival and development of the people, and conformed to the national policy of coordinating the promotion of carbon reduction, pollution reduction, green expansion and growth; it should be supported in accordance with the law. However, the construction of the hydropower station involved must likewise conform to the legal and policy requirements of ecological environment protection, with corresponding measures taken to prevent or

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mitigate damage to, or major risks of damage to, the ecological environment of the relevant river basin, and with high-quality development and high-level protection considered as a whole.

In accordance with Articles 1 and 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases (Fa Shi [2015] No. 1, amended in 2020), with respect to acts of polluting the environment or damaging the ecology that have already harmed the social public interest or that carry a major risk of harming the social public interest, an environmental civil public interest lawsuit may be brought in accordance with the law to require the defendant to bear civil liability. In this case, although Changping [X] Environmental Research Institute produced evidence that the Hydropower Company and its commissioned construction entities had been subject to administrative penalties, in light of the post-penalty supervision by the relevant local administrative authorities, the administrative violations of the Hydropower Company and its commissioned construction entities had been rectified to standard and had passed regulatory acceptance. During the same period, artificial breeding work continued at the two Sichuan-Shaanxi taimen domestication bases, and the delayed construction of the stock enhancement and release station did not affect the normal conduct of stock enhancement and release work. Moreover, the Hydropower Company was not subsequently subject to any further administrative penalty for violating relevant laws and regulations. The evidence submitted by Changping [X] Environmental Research Institute could not prove that the construction of the hydropower station involved had already caused damage to the habitat of the Sichuan-Shaanxi taimen and the surrounding ecological environment, and the situation did not fall within the “already harmed the social public interest” category prescribed by the judicial interpretation.

The focus of the dispute in this case was: whether the construction project involved carried a “major risk of harming the social public interest” to the ecological environment.

First, the construction project involved conformed to the national environmental protection laws and regulations, and the protection of the Sichuan-Shaanxi taimen had been incorporated into the environmental impact assessment. Article 6 of the Water Law of the People's Republic of China provides: “The State encourages entities and individuals to develop and utilize water resources in accordance with the law and protects their lawful rights and interests.” Article 19(1) of the Environmental Protection Law provides: “... For a construction project that has an impact on the environment, an environmental impact assessment shall be conducted in accordance with the law.” In accordance with the relevant provisions of the Environmental Impact Assessment Law of the People's Republic of China, environmental impact assessment refers to the method and system of analyzing, predicting and assessing the possible environmental impact of the implementation of plans and construction projects, proposing countermeasures and measures to prevent or mitigate adverse environmental impact, and conducting follow-up monitoring. Accordingly, for a hydropower station construction project, an environmental impact assessment shall be conducted in accordance with the law, construction may commence only after examination and approval by the competent authority, and countermeasures and measures to prevent or mitigate adverse environmental impact shall be adopted.

In this case, the environmental impact assessment of the hydropower station construction project involved conformed to the law, and the EIA Report approved by the former Ministry of Environmental Protection was lawful and effective. In particular, the EIA Report and the EIA Reply had already treated the Sichuan-Shaanxi taimen as an important sensitive protection object of the environmental impact of the hydropower station involved, conducting specialized environmental analysis, impact prediction and assessment and formulating targeted protection measures. The hydropower station involved commenced construction after approval, on the premise of lawfully obtaining the EIA Reply, and adopted effective countermeasures and measures to prevent or mitigate adverse environmental impact, conforming to the law.

Second, the construction project involved adopted effective measures to prevent or mitigate adverse effects on the ecological environment. Article 5 of the Environmental Protection Law establishes the basic principle of “priority to protection and prevention first,” requiring the adoption of comprehensive means before and

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during the implementation of environmental resource utilization acts to prevent environmental pollution or ecological damage caused by such acts. Environmental impact assessment is not merely an assessment of the possible environmental impact of a construction project; its emphasis lies in adopting targeted measures to prevent or mitigate adverse environmental impact to the greatest extent possible.

In this case, the hydropower station construction project involved adopted targeted measures for habitat protection, fish-passage measures and stock enhancement and release in accordance with the requirements of the EIA Report and the EIA Reply, and carried out artificial breeding of the Sichuan-Shaanxi taimen. The Hydropower Company had commissioned relevant entities to complete the design of fish-passage facilities such as the fish lift and fish collection and transport system, satisfying the requirement that environmental protection facilities be “designed simultaneously” with the main works; it continuously carried out artificial breeding technology research, successfully achieving fully artificial breeding of the Sichuan-Shaanxi taimen, and adopted habitat protection and stock enhancement and release measures as required. The targeted protection measures adopted by the Hydropower Company further advanced the scientific research progress of the Sichuan-Shaanxi taimen, expanded the scope of protection, strengthened the intensity of protection, and benefited the survival of the species and the protection of its habitat.

In summary, the evidence provided by Changping [X] Environmental Research Institute was insufficient to prove that the construction acts of the Hydropower Company carried a major risk of causing damage to the Sichuan-Shaanxi taimen and the surrounding ecological environment, and the litigation claims of Changping [X] Environmental Research Institute were dismissed in accordance with the law.

It should be noted that, although the litigation claims of Changping [X] Environmental Research Institute could not be established, the subsequent ecological environment protection responsibility of the Hydropower Company is not reduced or exempted by the judgment in this case; it should pay greater attention to ecological environment protection, continue to perform its ecological environment protection responsibility in accordance with the EIA Reply and the relevant legal provisions, proactively accept supervision by the competent authorities, and ensure that the various environmental protection measures are implemented on schedule.

Relevant Legal Provisions

Article 1234 of the Civil Code of the People's Republic of China

Articles 1, 4, 5 and 19 of the Environmental Protection Law of the People's Republic of China

Articles 2 and 25 of the Environmental Impact Assessment Law of the People's Republic of China

Article 6 of the Water Law of the People's Republic of China

Article 32 of the Fisheries Law of the People's Republic of China

Articles 1 and 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases (Fa Shi [2015] No. 1, amended in 2020)

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