Preventive Environmental Public Interest Litigation: Reflection and Restructuring — Beginning with the "Green Peafowl Case"[1]

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Abstract: Triggered by the "Green Peafowl Case," the preventive environmental public interest litigation system has increasingly become a routine subject of legal governance. Through the practical concerns exposed in this case, such as "inaccurate environmental impact assessments" and "ineffective internal and external administrative oversight," its core issues can be identified across three dimensions: litigation requirements, types of litigation, and power conflicts. These include the ambiguity in the legal-interest attributes of lawsuits against fault-free administrative acts, the functional misalignment between civil and administrative systems, and the overlapping, redundant division between administrative and judicial powers. Consequently, preventive environmental public interest litigation urgently requires the application of the ARI model as its research methodology. Internally, it should adopt wrongfulness based on fault liability as its key, achieving a dual translation of major environmental risks and scientifically uncertain matters from scientific expression to normative interpretation. Externally, it should balance the dual horizontal coordination mechanism of "administrative supervision as the mainstay and judicial litigation as the supplement", promoting a profound transformation of administrative agencies from traditional elitist indirect democracy to modern populist deliberative democracy. Internally, a legislative proposal for preventive environmental administrative public interest litigation should be advanced, establishing a sequential litigation order that prioritizes administrative actions and uses civil litigation as a fallback. This will ultimately form an "effective and gap-free" framework for rights protection.

Key words: Green Peafowl Case; Preventive Environmental Governance; Environmental Civil Public Interest Litigation; Environmental Administrative Public Interest Litigation; Major Environmental Risks

Preventive environmental public interest litigation, distinct from remedial environmental public interest litigation, embodies proactive characteristics that align with the intrinsic requirements of environmental law order and efficiency. Currently, China lacks independent and systematic legislative frameworks for preventive environmental public interest litigation, and judicial practice remains underdeveloped. The case of Friends of Nature v. Xinping Company and Kunming Survey and Design Company (hereinafter referred to as the "Green Peacock Case") marked the first preventive environmental public interest litigation. It was recognized as the top case among the world's top ten biodiversity cases by the World Conference on Environmental Justice and the Supreme People's Court, and was also listed as one of the "Top Ten Cases Promoting the Rule of Law in the New Era 2021".

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1 Introduction

From a timeline perspective, between 2011 and 2014, multiple government agencies including the National Development and Reform Commission and the Ministry of Ecology and Environment approved the Jiasa River First-Level Hydropower Station Project (hereinafter referred to as the "Hydropower Project") by the defendant (the construction entity Xinping Company) during its preparatory stages, construction phase, land use pre-review, and environmental impact assessment (EIA). In March 2016, construction commenced. By March 2017, environmental organizations like Friends of Nature Environmental Research Institute (hereinafter "Friends of Nature") urged the Ministry of Ecology and Environment to suspend the project. In July 2017, the ministry mandated Xinping Company to conduct a post-environmental impact assessment, prohibiting water storage and power generation until completion. In August 2017, Xinping voluntarily halted construction, prompting Friends of Nature to file a preventive environmental civil public interest lawsuit. In March 2020, the first-instance court ordered Xinping to immediately cease construction until completing the post-environmental impact assessment and filing procedures, with subsequent decisions to be made by relevant authorities. Both parties appealed. In October 2020, Xinping's parent company terminated its investment, with the company handling post-construction matters[2]. In December 2020, the Yunnan High Court upheld the original verdict in its final ruling, rejecting Friends of Nature's retrial application[3]. In November 2021, the Supreme People's Court ruled that major environmental risks in the project area had been effectively controlled, dismissing the retrial request[4].

Analyzing the case holistically, three key aspects emerge: First, the construction entity's actions presented a legally compliant facade. Second, the court's ruling demonstrated non-finality, with overlapping elements from the administrative body's lawful duties prior to case acceptance. Third, the construction entity had halted operations before litigation, ensuring manageable environmental risks. While prior academic research has thoroughly examined the institutional challenges and refinement of preventive environmental public interest litigation—covering criteria for identifying "significant risks to environmental public interest" (hereafter "major environmental risks"), evidentiary rules, injunctions, and protective measures, as well as using this case to demonstrate risk prevention's value, regulatory framework, functional positioning, and application conditions—explorations into procedural legitimacy, power boundaries, institutional coordination, and stakeholder interest balancing remain incomplete or controversial. From a micro-level perspective, should litigation require the construction entity's faultless compliance? If not, could preventive environmental civil litigation replicate the effects of administrative litigation? For long-term planning, what specific actions warrant preventive environmental litigation, and how to synergize both systems' preventive functions? At the macro level, does premature judicial intervention create conflicts between judicial and administrative powers? How to balance these dual authorities? How to coordinate multi-stakeholder oversight of environmental violations, ensure administrative compliance, and maintain corporate construction operations? All these problems need to be reflected.

Accordingly, beginning with the "Green Peafowl Case," this paper focuses on the following three dimensions. Regarding litigation requirements, it questions the legality of filing preventive environmental civil public interest lawsuits against fault-free administrative acts in the environmental domain. Regarding litigation types, it delves into the root causes of functional misalignment between civil and administrative systems and the failure of administrative agencies to fulfill their statutory duties, beyond the superficial

[2] Civil Judgment No. (2017) Yun 01 Min Chu 2299 issued by Kunming Intermediate People's Court of Yunnan Province.
[3] Judgment of the Second Instance in Civil Case (2020) Yun Min Zhong No.824 issued by the High People's Court of Yunnan Province.
[4] Civil Ruling (2021) Zui Gao Fa Min Shen No.3881 issued by the Supreme People's Court.

inaccuracies in environmental impact assessments. In terms of power conflicts, it discusses the overreach and substitution of judicial power over administrative power from the perspectives of functional authority and systemic structure in environmental risk prevention. Finally, regarding the path of return and direction of development, the ARI model is adopted as the research methodology, corresponding to the three aforementioned aspects respectively. The intent is to provide a framework for analyzing, reflecting upon, and reconstructing the existing preventive environmental public interest litigation system, to illustrate the internal and external, horizontal and vertical landscapes in which administrative agencies, judicial organs, environmental organizations, citizens, and enterprises exercise their respective powers/rights, to construct a preventive environmental legal system that is both necessary and reasonable, and ultimately to achieve the inheritance and innovation, the sublation and transcendence of the traditional remedial environmental public interest litigation.

2 The Confusion of Legal-Interest Attributes in Lawsuits Against Fault-Free Environmental Administrative Acts

Legitimacy forms the bedrock of institutional development. In this case, the Environmental Impact Assessment Report for the Jiasa River First Hydropower Station on the Honghe (Yuanjiang) Mainstream in Yunnan Province (hereinafter referred to as the Report) has been approved by the competent ecological and environmental authorities. The approval process constitutes an administrative license, indicating that the hydropower project construction constitutes a faultless act governed by administrative licensing, rather than an illegal act of 'construction without prior approval.' Defendant Xinping Company had legitimate reliance on the EIA Report, rendering the lawsuit against this lawful act legally untenable.

2.1 Unclear Distinction Between Public and Private Law Liabilities: The Source of Confusion in Legal-Interest Attributes

The distinction between fault and illegality serves as the key to differentiating liability between unlawful and lawful enterprises. In environmental tort cases, environmentally innocent lawful actors should not bear equal or higher duty of care than unlawful actors. Legal determinations of major environmental risks must be based on the environmental actor's fault, not inferred from the objective negative impacts on public interests. Environmental private tort liability, which addresses the remediation of personal and property rights of private right holders, has reached consensus in both normative and theoretical frameworks regarding the application of the no-fault liability principle. However, preventing major environmental risks falls under public law liability in environmental tort cases. The punitive, educational, and law-rehabilitative characteristics of public law liability necessitate the application of the fault-based liability principle, with the burden of proof for causation inference allocated accordingly. The primary reasons are as follows.

2.1.1 A Perspective from Comparative Law Research

The essence of American civil litigation's "privatization of public law" dictates that its targets are environmental violations. The scope of litigation is limited to specific unlawful acts explicitly defined by law, which serve public interest protection purposes, restore public order, and necessitate legal compliance (i.e., injunctions and fines), thereby indirectly compensating personal damages. If the defendant's actions lack illegality and the plaintiff's interests are not legally protected (such as viewing shared wildlife), the law cannot protect the plaintiff's adverse effects. In such cases, plaintiffs may seek remedies through private tort litigation not constrained by illegality. In contrast, China's environmental public interest litigation exhibits "privatization of public law" characteristics. Since environmental public interests and private civil rights protection are fundamentally separate, although environmental civil public interest litigation retains the essence of private interest litigation emphasizing autonomy of will, it does not constitute a specific type of civil litigation. It merely adopts civil procedural forms, utilizes private law instruments, and applies civil

law rules. The fundamental differences in tort liability structures are evident in both legal frameworks and logical systems. Articles 1229-1233 of the Civil Code constitute general provisions using the term "injured party" to address environmental torts without representative relationships. Here, procedural and substantive legal subjects are unified: as long as an actor pollutes the environment or damages ecosystems, and the victim suffers harm with a causal link between the act and the damage, the actor bears tort liability regardless of violating state regulations. Articles 1234 and 1235, however, apply to environmental public interest torts. These cases require statutory authorities or organizations to claim damages through the objective fault-based approach of "violating state regulations," where actors only incur liability for environmental pollution or ecological destruction. The legislation explicitly categorizes environmental public interest torts under the "fault" interpretation, excluding private environmental torts. Thus, rigidly transplanting traditional private environmental tort theories into preventive environmental public interest litigation lacks legal basis. Imposing liability on non-fault lawful acts in such cases not only confuses with the public law nature of private environmental torts but also risks reducing preventive environmental litigation to mere mechanical replication of private torts.

2.1.2 A Perspective from Balancing Subject Interests

In private environmental tort cases, the aggrieved party is in a relatively disadvantaged position. The law measures the economic value of ecological elements through strict liability, prioritizing the protection of damaged private interests. The resulting public interest protection effect merely serves as a subsidiary to private interest protection. However, environmental public interest torts related to major risk prevention tend to safeguard the environmental public interest of the general public based on the value of ecological services. Since the litigating parties lack the characteristics of legal subjectivity, they cannot freely dispose of litigation interests according to the principle of freedom of will. Instead, they bear responsibility through the principle of liability for damages, internalizing external costs through fair means such as implementing environmental tax systems. Adopting strict liability to allocate risks and pursue environmental public interest tort liability for non-fault actors not only lacks inherent legitimacy, but also creates an imbalance by excessively internalizing environmental external costs, contradicting the compliance incentive objectives of non-fault actors. Firstly, this violates the principles of fairness and proportionality in legal systems. Samuelson posited that environmental public interest constitutes a holistic public good, where all individuals benefit without regard to others 'will. This is akin to a "sunshade" covering the entire territory, whose "sun-shading benefits" cannot be altered by anyone. Aristotle's assertion that "justice lies in proportion" also reveals the ancient origins of proportional principles. As the cornerstone for reconciling power and rights, and resolving rights conflicts, its legal rationale lies in maintaining rational connections between public authority measures and legitimate purposes. This makes it irreplaceable for achieving substantive justice. Therefore, legal obligations requiring faultless individuals to safeguard collective sunshade interests would create severe inequality, leading the public to adopt a wait-and-see attitude toward environmental public interests and foster a "free-rider" mentality of profiting at others 'expense. Secondly, it violates the substantive protection of environmental public interests. According to Mansel Olson's collective action logic theory, any collective member tends to prioritize personal interests during group actions. Rational individuals pursuing self-interest typically lack motivation to voluntarily contribute to collective welfare. Consequently, lawsuits against environmentally responsible actors may backfire, causing them to abandon beneficial production activities or shift significant environmental risks and costs to society through price hikes, ultimately resulting in the "tragedy of the commons" for environmental public interests.

2.2 The Particularity of Major Environmental Risks: The Objective Inducement for Lawsuits Against Fault-Free Acts

Certainty is the mother of stability, and the law must comply with the legitimate demands arising from progress built upon these two foundations. However, the identification of major environmental risks remains as elusive as the Goldbach Conjecture in environmental science—though experts from various disciplines have weighed in, no definitive conclusion has been reached. Legislation also lacks a preventive civil claim basis, and the absence of normative guidance for "environmental public interest" and "major environmental risks" leaves room for interpretative flexibility, allowing for "self-directed exploration" in practice.

The crux of the issue lies in the fact that, as a "new phenomenon under the sun," major environmental risks are characterized by scientific uncertainty, complexity, latency, and irreversible damage, with potential harm being difficult to verify or completely rule out scientifically. To minimize factual errors, substantial professional resources are required to determine the sources and probability of major environmental risks, their development process, whether damage results will occur, and the "threshold" for such occurrence. However, due to the increased requirements, depth, and breadth of environmental impact assessments, environmental assessment agencies, environmental organizations, construction units, administrative bodies, and judicial authorities all face challenges in making decisions based on incomplete information, constrained by limited expertise, tight budgets and time, insufficient basic data, and inadequate scientific basis, leading to evaluation and cognitive biases. This results in disputes over whether, how, and to what extent environmental risks caused by enterprises 'faultless actions should be regulated. For example, in the case of "China's Top Ten Environmental Judicial Cases" —a lawsuit filed by an environmental research institute in Beijing's Chaoyang District against a Shanxi-based aluminum company for environmental pollution—the institute initiated a civil public interest lawsuit against the company. During the litigation, both parties reached settlement and mediation agreements. However, the court reviewed the case and concluded that the settlement agreement failed to address the pollution of the red mud storage, was insufficient to protect public interests, and could not effectively eliminate the risk of ecological damage. Therefore, the court did not confirm or issue a mediation document.

3. The Functional Misalignment Between Preventive Environmental Civil and Administrative Public Interest Litigation

While this case falls under preventive environmental civil public interest litigation, its most glaring flaw lies in the environmental protection authorities' improper exercise of administrative powers, particularly their environmental impact assessment approval authority. Judicial practice reveals that the absence of a preventive environmental administrative public interest litigation system has forced most such civil cases to fall under the purview of administrative litigation, thereby impeding judicial oversight of administrative enforcement[5].

3.1 Inaccurate EIA as the Apparent Cause of Major Environmental Risks

From the specific details of this case, the environmental impact assessment report on the green peafowl and its habitat contains inaccuracies. It fails to adequately address reasonable doubts about the existence of significant environmental risks, and the predictive judgments in the report have not been translated into known information. The defendant has struggled to prove the non-damaging nature of its actions.

[5] The following are cases demonstrating the administrative function in preventive environmental civil public interest litigation, see (2015) Gan Min Chu Zi No.45, (2017) Yun 01 Min Chu No.2299, (2020) Yun Min Zhong No.824, (2021) Supreme People's Court Min Shen No.3881, (2017) Yun Min Zhong No.417, illegal construction and operation of a waste incineration plant, the Green Foundation filed another environmental public interest lawsuit with the Changzhou Intermediate People's Court [EB/OL], January 29, 2018, https://mp.weixin.qq.com/s?__biz=MzAxOTExMzM4Mg==&mid=2649600575&idx=3&sn=c349cd5d75c60aca3a3b9895c267f0be&chksm=83d2e6f6b4a56fe0d9cbeefc87ac66d3fd030d36fd6404fd94094a49901cd9547fc2044ee528&scene=27.

According to the "Notice of the Yunnan Provincial People's Government on Issuing the Yunnan Ecological Protection Red Line," the report explicitly lists the green peafowl among the national terrestrial species in the construction reservoir's inundation and affected areas, proposing conservation requirements to prevent species extinction in related regions[6]. It even mentions that reservoir construction might force green peafowl to abandon their riverside feeding sites[7]. The EIA agency had already predicted potential threats to the green peafowl's survival in the inundation zone. However, the report still claims that differences in habitat conditions across various water levels in the reservoir's inundation area are insignificant, and that reservoir flooding would not alter regional flora and fauna. It ultimately concludes that the adjusted construction project's reservoir inundation area does not involve ecologically sensitive zones like green peafowl habitats or affect their breeding. This demonstrates that the EIA report merely adheres to the ecological function zone system without integrating the ecological red line system or wildlife protection regulations.

3.2 Administrative Agencies' Failure to Perform Duties According to Law as the Deep-Seated Cause of Inaccurate EIA

3.2.1 Inadequate External Preventive Approval Supervision Mechanism for Administrative Agencies

The "Observation Permeation Theory" proposed by American philosopher of science Hanssen posits that observation is never purely objective or neutral, but rather profoundly influenced by the observer's existing knowledge structure and value system. Consequently, different subjects or the same individual may draw diametrically opposed conclusions about the same object under varying circumstances. When observers rely on incomplete knowledge systems, this can easily lead to flawed observations. Comparative risk studies in West Germany, the Netherlands, the UK, and the US have revealed that experts' utilitarian tendencies in knowledge creation may turn science into a direct producer of environmental risks. The new historical characteristics of risks originate from internal decision-making processes, which are socially and scientifically constructed. By analogy, the regulation of major environmental risks involves social, legal, and policy issues related to professional democracy, demonstrating subjectivity and social constructiveness. Although China's environmental impact assessment (EIA) reports are approved by environmental protection authorities, the EIA Center issues these reports based on commercial consulting contracts with these authorities. When administrative agencies lack external approval and supervision mechanisms, private commercial interests may conflict with environmental public interests. To pursue short-term economic growth, administrative agencies may engage in disguised "EIA sales" or other behaviors characterized by an undue preoccupation with GDP, along with rent-seeking practices.

3.2.2 Ineffective Internal Enforcement Within Administrative Agencies

The Environmental Protection Law defines the environmental responsibilities of local governments and establishes environmental monitoring systems with early warning mechanisms. Even if administrative agencies fail to identify significant environmental risks during environmental impact assessment approvals, other functional departments may still implement controls during their duties. In the Green Peafowl Case, the appellate court consulted the Yunnan Provincial Forestry and Grassland Bureau on professional matters. Based on their official correspondence and investigation reports, the court concluded that the hydropower project had caused substantial damage to the green peafowl and their habitats. This case highlights the lack of enforcement motivation among administrative agencies in routine environmental supervision. While the

[6] China Hydropower Consulting Group Kunming Survey and Design Institute Co., Ltd.: "Environmental Impact Report of the First-Class Hydropower Station on the Jiasa River, Main Stream of the Honghe (Yuanjiang) River, Yunnan Province", page 28, Table 1.8-1.

[7] China Hydropower Consulting Group Kunming Survey and Design Institute Co., Ltd.: "Environmental Impact Report of the First-Class Hydropower Station on the Jiasa River, Main Stream of the Honghe (Yuanjiang) River, Yunnan Province", page 143.

agencies may have recognized the environmental risks of the challenged actions, their environmental enforcement outcomes were unsatisfactory. When the inherently inaccurate report was approved through the review process, the construction of the hydropower project gained justification for its perceived "legitimacy" despite the environmental hazards.

3.3 The Absence of Preventive Environmental Administrative Public Interest Litigation as the Essential Cause of Administrative Dereliction

3.3.1 Lack of Clear Normative Guidance for Preventive Environmental Administrative Public Interest Litigation

In cases like the "Green Peacock Case" where environmental administrative agencies fail to fulfill their legal duties, leading to significant environmental risks, the fundamental solution should be to initiate preventive environmental administrative public interest litigation. However, the absence of such a system creates loopholes for administrative agencies to evade responsibilities. This functional mismatch between preventive environmental civil and administrative mechanisms essentially represents a "reluctant choice" where civil litigation serves as a substitute for administrative measures. From a legal perspective, current preventive environmental public interest litigation operates under a "single-track system" framework. Existing environmental administrative public interest litigation primarily focuses on post-harm remedies, while preventive environmental administrative public interest litigation remains unestablished institutionally. There are no detailed legislative or judicial interpretations clarifying whether preventive environmental civil public interest litigation provisions can be directly "borrowed." Consequently, environmental organizations and judicial authorities lack statutory claims against administrative dereliction of duty. Considering the nature of environmental civil public interest litigation, courts in the "Green Peacock Case" were unable to conduct judicial reviews of environmental assessment and licensing administrative acts due to jurisdictional limitations. Thus, despite facing systemic constraints and continuously exposing its limitations, preventive environmental civil public interest litigation has been forced to limp forward. To address deficiencies in environmental administrative performance, the only alternative is to resort to civil public interest litigation that restricts civil subjects, achieving indirect effects through "striking a bull from afar." This has resulted in institutional distortion where "preventive environmental civil public interest litigation" is nominally used to implement "preventive environmental administrative public interest litigation" in practice.

3.3.2 The connection between civil and administrative litigation in preventive environmental public interest litigation may have institutional competition

The handling of civil-administrative cross-jurisdictional cases remains a persistent challenge in China's legal theory and practice. Currently, there is no clear legal basis for coordinating the two litigation procedures. From a long-term institutional perspective, when administrative agencies fail to fulfill their statutory duties alongside corporate violations, the existing preventive environmental civil public interest litigation lacks mandatory pre-trial procedures. Plaintiffs need not exhaust administrative remedies, as they may initiate either preventive environmental civil public interest litigation against corporate violations or administrative public interest litigation against administrative agency misconduct. This creates overlapping jurisdictions and content conflicts between the two preventive litigation types, potentially triggering jurisdictional disputes among different judicial bodies or parallel trials leading to conflicting rulings. Simultaneously, this dual regulatory pressure from both judicial and administrative authorities exacerbates legal risks and operational burdens for involved enterprises.

4 The Overlapping Division in the Exercise of Administrative and Judicial Powers

During the pre-litigation phase of the Green Peacock Case, China's Ministry of Ecology and Environment

initiated post-environmental impact assessment procedures to compel Xinping Company to comply. Despite the environmental authorities' lawful enforcement—resulting in the construction company's suspension and withdrawal of investment, along with effective mitigation of major environmental risks—judicial rulings persistently reaffirm the administrative decisions already made by the ministry. This phenomenon highlights a striking convergence between administrative and judicial powers in both implementation methods and regulatory outcomes. Such procedural redundancy, however, offers no substantive resolution to the dispute and risks undermining the rule of law principle of power division.

4.1 Leading to the Overreach and Substitution of Environmental Administrative Enforcement by Environmental Judicial Adjudication

The fundamental distinction between administrative and judicial powers reveals a critical oversight: administrative authority's proactive nature versus judicial power's neutral, reactive role. While both exercise enforcement functions, judicial power fundamentally involves cognition and prioritizes "minimum rule of law," serving as a passive, final, and neutral decision-making body that adheres to the principles of administrative maturity and judicial restraint. Administrative power, conversely, is action-oriented and proactive, operating under the principle of administrative priority. Once issued, administrative decisions take immediate legal effect, demonstrating higher preventive efficiency. The landmark "Green Peacock" case exemplifies this dynamic: when an administrative authority prioritizes enforcement, the concerned party must first comply with corrective orders from environmental fines or administrative penalties. As a unilateral action, the authority can directly organize and direct compliance with environmental risks without complex procedures or intermediaries, significantly enhancing enforcement effectiveness. This demonstrates the administrative power's exceptional management capabilities. Within the environmental risk regulatory framework, administrative enforcement and corporate pollution create a cat-and-mouse dynamic of supervision. As the first line of defense in risk prevention, environmental impact assessment approval should serve as a critical control point at the outset. However, excessive expansion of judicial initiative—intervening prematurely in environmental governance processes and even supplanting administrative bodies—may lead to judicial arbitrariness, undermining the lawful and orderly conduct of administrative activities. In this case, the court delegated the final decision on hydropower project construction to administrative authorities. When administrative regulation fails, courts constrained by the "one case, no retrial" principle struggle to fulfill their supplementary remedial role. Moreover, the absence of robust judicial review and oversight mechanisms for administrative actions results in delayed judicial supervision over administrative power.

To elaborate, when judicial authorities transform public policy decisions—originally within the purview of administrative discretion—into legal application matters, they effectively restrict the exercise of administrative power, blur the boundaries between legality review and rationality assessment, and imbue judicial proceedings with a pronounced authoritarian hue. Environmental decision-making inherently demands thorough scientific justification due to its nature of interest balancing. Yet judicial bodies frequently resort to subjective inferences when evidence is insufficient. Such deviations not only undermine the legitimacy and efficacy of major environmental risk identification mechanisms but also erode the objective foundation and impartiality of judicial decisions, ultimately triggering a dual credibility crisis in both environmental adjudication and administrative enforcement.

4.2 Exposing the Homogenization of Legal Application Paths and the Waste of Judicial Resources

In terms of liability allocation mechanisms, preventive environmental justice and administrative enforcement share convergent applications. Measures such as injunctions for cessation of harm and obstruction removal in environmental litigation, alongside administrative penalties including fines,

production suspension orders, construction halt directives, and business closure requirements in environmental enforcement, all effectively prevent major environmental risks. The "Green Peacock" case exemplifies this overlap with routine enforcement practices. From a systemic perspective, environmental public interest litigation was originally designed to supplement judicial oversight of administrative agencies' handling of complex or dysfunctional cases. Judicial authority should function as a "minute hand" complementing and supervising administrative power, operating in coordinated synchronization like clock gears. However, current judicial practice demonstrates a distorted power division, where administrative authority becomes a "suboptimal arrangement" characterized by redundant judicial intervention and excessive procedural overreach. Judicial bodies, leveraging administrative resources to guide and participate throughout the process, assume the role of "protectors" in advancing environmental risk prevention. This reveals a pragmatic orientation in contemporary preventive environmental public interest litigation, where the system, while retaining procedural formality, has essentially evolved into an administrative enforcement framework. This phenomenon stems from the path dependence dilemma of the "problem-response theory" in environmental governance. To address the failure of existing local systems, legislators often resort to mechanically stacking new external institutions rather than optimizing the system. This "matryoshka doll" approach of layer-by-layer embedding triggers domino-like institutional inflation. Such "pass-the-buck" institutional involution not only wastes limited judicial resources, but also traps the prevention mechanism for major environmental risks in a vicious cycle of inefficiency and duplication.

5 The Path of Return and Direction of Development Based on the ARI Model

Some scholars have employed the ARI model to explain the evolutionary trajectory of environmental law: based on ecological rationality and environmental ethics, it drives the "Application" "Reform" and "Innovation" of principles and theories from public law, private law, international law, and other domains. Further narrowing the focus to the field of preventing major environmental risks, the ARI model can also be applied for analysis. Under the premise of respecting and reflecting the environmental public interest litigation system, the risk prevention concept, and the laws of natural science, it organically integrates three key elements: litigation requirements, the hierarchy of powers, and types of litigation. Specifically, litigation requirements correspond to "A (Application) ", the hierarchy of powers corresponds to "R (Reform) ", and types of litigation correspond to "I (Innovation) ".

5.1 Application: The Translation of Wrongfulness for Major Environmental Risks and Uncertain Matters

The term "Application" denotes both directly applicable regulations and normative provisions requiring contextual interpretation to address emerging environmental challenges. The legislative ambiguity surrounding significant environmental risks and uncertainties aligns with the "indirect application through interpretation" principle. It is crucial to clarify that public law liability must adhere to the fault-based principle in determining illegality, as Rawls argued in A Theory of Justice: humanity should transcend arbitrary control by contingent factors to protect vulnerable groups' rights. In a risk society where laws aim to eliminate such contingencies and suspend all parties under the "veil of ignorance," establishing fundamental criteria for illegality determination becomes imperative. The "Green Peacock Case" exemplifies how significant environmental risks and uncertainties—like the two wings of a bird—validate the illegality of actions. These uncontrollable elements must be translated from scientific discourse into legally binding norms.

5.1.1 Refining Proportional Regulation Through Grading and Classification of Major Environmental Risks

In statistics and insurance science, risk is generally defined as the product of the probability of hazardous

events occurring during a specific period and their consequences. To prevent "one-size-fits-all" environmental administrative measures, it is essential to establish tiered regulatory standards for major environmental risks, incorporating scientific criteria, social standards, and risk thresholds. Drawing inspiration from the safety classification system for genetically modified organisms and the responsive regulation theory proposed by John Bresswitt and Ian Eels, along with the "enforcement pyramid" framework, environmental enforcement should follow a hierarchical approach from bottom to top and from weak to strong. First, when risks are ≤ benefits, the weak risk prevention principle applies. To correct the bias of "heavy penalties over corrective actions," administrative agencies should adopt a balanced, proportionate regulatory approach, starting with flexible interventions such as record-filing, administrative warnings, first-time non-penalties, and production suspension orders. Concurrently, flexible accountability mechanisms should be reserved. For example, in carbon emission trading involving climate-related risks, standardized risk prevention and early warning procedures for market transactions could be implemented, alongside exploring automated monitoring-based carbon accounting systems. Corporate violations should be included in environmental credit evaluation systems, promote the application of certified voluntary emission reductions (CVRs), and consider revoking green product certifications. Second, when risks> benefits and low-level measures prove ineffective (e.g., delayed corporate corrections), the strong risk prevention principle applies. In such cases, progressively escalate to high-intervention regulatory tools including administrative permits, prohibitions, penalties, and mandatory suspensions or revocations. Furthermore, by employing the governance approach of 'hard embedding + soft embedding', external administrative guidance can stimulate enterprises' endogenous self-regulation drive.

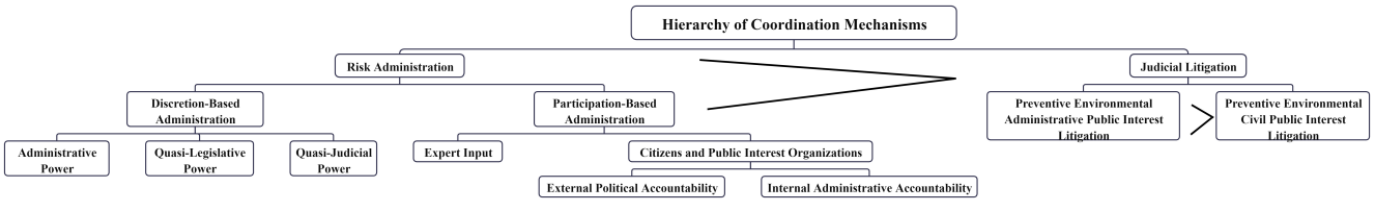
5.1.2 Realizing the Separation of Certain Matters and the Phased Metamorphosis of Uncertain Matters

First, identify the type of environmental damage behavior and isolate certain determinate matters. Using "whether the project has passed acceptance" as a watershed, we can distinguish between the preparatory, implementation, and completion stages of environmental damage: During the "preparation (about to start)" phase before project construction, significant changes causing major environmental risks should trigger re-approval under Article 24 of the Environmental Impact Assessment Law. In the "ongoing" phase during construction, major environmental risks arising from changes (e.g., unauthorized construction) before acceptance also require re-approval under Article 24. When new non-compliance with original EIA documents and major environmental risks emerge ("plans can't keep up with changes"), post-approval environmental impact assessment under Article 27 should be filed, with timely remedial measures ("patching") to address unforeseen defects. In the "post-completion" phase after project acceptance, expansion causing major environmental risks constitutes a new project requiring re-EIA. Second, using technical review as the warp and legal review as the weft, identify the intersection of uncertain matters. Moving beyond absolute objectivity, focus on managing procedural compliance throughout the process. First, enhance the accuracy of preventive targets. Engage multi-disciplinary technical experts to evaluate the rationality of preventive measures. Compare data background values from sites unaffected by major environmental risks and similar locations, analyze trends in regional hydrological, soil, and vegetation indicators before and after project construction, and elevate preventive measures to human health and ecosystem tolerance thresholds based on scientific knowledge and environmental benchmarks. Collect long-term monitoring data and implement real-time online monitoring in accordance with the National Park Law effective January 1, 2026. Second, strengthen procedural standardization. Utilize environmental impact assessments as a framework for addressing uncertainties, drawing lessons from the 2011 European case "Briels et al. v. Dutch Minister of Infrastructure and Environment" and the Habitats Directive. The principle of "environmental integrity" should permeate the entire administrative process of "project review, proper evaluation, and project decision-making," regardless of direct relevance to protected areas, to

prevent permits granted through so-called "preventive measures" that essentially constitute compensatory actions.

5.2 Reform: The Benign Coupling of the Division Mechanism Between Administrative and Judicial Powers

"Reform" is defined as change through quantitative accumulation, specifically referring to the adaptation and application of existing rules to accommodate new environmental and social relations. Externally, the exercise of administrative and judicial powers should be adjusted and recalibrated in their order of precedence, extending into risk administration based on "discretion + participation" social construction, administrative accountability, and political accountability, thereby addressing the complexity of major environmental risks. Olson's Second Law reveals an inherent tension between individual rationality and collective rationality, which cannot be spontaneously reconciled; its resolution depends on a "guiding hand" or appropriate institutional design. In environmental governance, this "guiding hand" manifests as "cooperative complementarity between administrative and judicial powers", aligning the individual rationality of enterprises with collective rationality and reconciling private interests with the public interest of environmental governance. The legal safeguarding of major environmental risks encompasses both objective physical and subjective psychological dimensions. A simplistic, reactive approach-akin to "treating the head when the head aches, and the foot when the foot hurts"-must be avoided. Instead, an integrated governance framework should be established, centered on environmental public interest and radiating outward based on societal needs, thereby achieving methodological consensus that "sees both the trees and the forest".



Graph 1 Hierarchy of Coordination Mechanisms Diagram (">" indicates the order of precedence)

5.2.1 Balancing the Dual Horizontal Coordination Structure of "Administrative Supervision Dominance, Judicial Litigation Supplement"

Judicial organs should be responsible for the review of procedural legality, while leaving substantive assessments to administrative agencies. The prevention of major environmental risks should be premised on the principle of exhausting administrative remedies. Given their nature, functions, and core missions, administrative powers are best suited for risk prevention. Environmental hazards should be equated with major environmental risks. Environmental justice is constrained by the inherent logic of case-by-case discretion, aiming to achieve justice in specific legal relationships. In contrast, environmental administration inherently possesses functionalist advantages. China's current environmental laws exhibit an "administrative-led" legislative attribute, with departmental regulations classifying risk sources through "generalized + enumerated" provisions. Administrative agencies have established mature assessment and hazard supervision systems in environmental health monitoring, air, soil, and water pollution control, solid waste management, and biosafety. Moving forward, administrative agencies should build a closed-loop management model integrating "regional environmental impact assessments," "planning environmental impact assessments," "project environmental impact assessments," "emission permits," and ultimately linking "supervisory enforcement" with "inspections and accountability". The focus should be on constructing a "full life cycle" preventive system for major environmental risks, encompassing risk

assessment and control, emergency response plans, and early warning mechanisms. This system should identify and predict environmental risks through three dimensions: major risk sources, diffusion pathways, and protection objectives. By addressing recurring common issues in major environmental risks through "batch processing," universal and repeatable reference rules can be formulated.

5.2.2 Promote the in-depth transformation from "administration according to law" to "administration according to discretion + participation in risk"

First, administrative power should break free from the "conveyor belt" model centered on command-and-control mechanisms. Legislative bodies should adopt a framework-oriented approach that "establishes fundamental principles while empowering administrative agencies to formulate specific standards and implementation rules." Administrative agencies should integrate administrative power, quasi-legislative authority, and quasi-judicial power. State functions should transition from passive defense to proactive provision, shifting from direct provision to indirect provision, and transforming public administration from an order-based management system to a service-oriented welfare administration, ultimately evolving into risk-based governance. Second, risk-based governance should deepen the multi-dimensional social construction through "discretion + participation." The theory of social construction reveals that risks are essentially products of social definition and cognition. Combining this with Habermas's communicative action theory, the regulation of major environmental risks relies on establishing a "coordination mechanism cluster" that integrates "expert advice" and "public participation." Various stakeholders should, based on their knowledge reserves, thinking patterns, and self-worth, engage in candid communication to evaluate their verbal actions through three dimensions: objective reality (facts), social order (rules), and subjective perception (individual feelings). This process helps reach consensus on prevention standards for major environmental risks, achieving "social construction" of risk regulation through "consultative procedural justice." Third, social construction should incorporate supervisory channels of "external political accountability" and "internal administrative accountability" for public power. To prevent preventive measures or institutional decisions from becoming second-order risks of "unsupervised supervisors", it is essential to expand the transparency of accountability targets, grounds, methods, and outcomes. By employing methods such as interviews and field investigations, we can ensure decision-makers actively create conditions within their "constructed" authorization scope, as outlined in Party policies, intra-Party regulations, normative documents, and diverse "policy clusters," thereby enabling public participation in administrative decision-making processes in accordance with the law. In the report of the Standing Committee of the National People's Congress, the progress of major environmental risk prevention measures and environmental impact assessments for key construction projects has been summarized and incorporated into local governments' ecological civilization construction and cadre performance evaluation systems. Relying on the environmental supervision system of "dual responsibilities for one post" and "shared responsibility between Party and government", this approach corrects the "dual systemic failures" between market and government caused by regional parochialism, economic development-oriented ideologies, and bureaucratic tendencies.

5.3 Innovation: Litigation Priority of Administrative Priority and Civil Subsidiary

The fundamental transformation of innovation orientation lies in achieving refined institutional innovation under the normative constraints of the current legal order. The internal hierarchy arrangement of preventive environmental public interest litigation should transcend the existing "remedial" environmental administrative public interest litigation system, innovatively establishing a "preventive" function through three scenarios: First, when administrative agencies fail to perform their duties legally while corporate actions remain lawful; Second, when both administrative agencies and enterprises engage in illegal acts, preventive environmental administrative public interest litigation should be prioritized; Third, when the

illegal entity is a corporate entity and administrative agencies are lawfully performing their duties with effective administrative power operation, judicial power should adhere to the principle of restraint, prioritizing the safeguarding of administrative authority's exercise space. As environmental administrative public interest litigation constitutes an extension of administrative law enforcement power through supervisory litigation, judicial adjudication should moderately transcend the "primary administrative judgment power." This not only confirms the illegality of administrative acts in individual cases but also provides universal warnings and normative guidance for similar administrative acts, thereby urging government agencies to optimize decision-making procedures and performance standards. Only when administrative power fails should supplementary focus be placed on individual case remedies, serving as final corrective measures and preventive civil environmental public interest litigation as an alternative to enforcement litigation.

5.3.1 Constructing the Preventive Environmental Administrative Public Interest Litigation System

First, enhance the "preventive" function of environmental administrative public interest litigation. At the institutional level, the Environmental Code should comprehensively revise and improve liability provisions for preventive environmental administrative public interest litigation. By employing the legislative technique of "transference," general provisions such as "where other laws have stipulated, such stipulations shall apply" should be established. Through the principle of "comprehensive coverage with prioritized authorization," subordinate laws including administrative regulations, local regulations, and rules should be strengthened. Second, expand environmental organizations as litigants in preventive environmental administrative public interest litigation. Theoretically, the theory of litigated interests requires its scope to extend beyond confirming "established rights" to encompass "emerging rights," thereby constructing a fair interest distribution order. Granting environmental organizations litigation rights against administrative agencies aims to counterbalance the unlimited expansion of national interests. Preventive environmental administrative public interest litigation transforms the prevention of major environmental risks from "implicit" to "explicit," converting "static" legal provisions into "dynamic" norms that adapt to social structural changes. This establishes a two-way conversion channel between public and national interests, alleviating conflicts between officials and citizens as well as class antagonisms. Looking back at legal systems abroad, Western countries generally grant procedural rights to various stakeholders in administrative procedures to enhance scientific decision-making rationality and effectively prevent NIMBY effects and mass incidents, thereby achieving fair representation of diverse interests and consultative democracy. From the perspective of case filing convenience, Article 51 of the Administrative Litigation Law has replaced the case review system with a case registration system, creating space for environmental organizations to participate in preventive environmental administrative public interest litigation. Therefore, rather than eliminating individual pollution sources, environmental organizations should focus their limited resources on urging administrative agencies to improve and enforce environmental laws and regulations, which is more effective in nipping environmental damage in the bud.

5.3.2 Activating the Pre-litigation Announcement Procedure for Preventive Environmental Civil Public Interest Litigation Filed by Procuratorial Organs

In judicial practice, the pre-litigation announcement system remains largely uninvolved by other authorities and organizations, creating a "vacant state". As stipulated in Article 13 of the Supreme People's Court and Supreme People's Procuratorate's Interpretation on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases and Article 285 of the Supreme People's Court's Interpretation on the Application of the Civil Procedure Law of the People's Republic of China, environmental organizations are prioritized to initiate preventive environmental civil public interest litigation. Prosecutorial organs primarily oversee these organizations, while also supporting plaintiffs in participating.

When environmental organizations apply to join litigation after the procuratorial announcement, courts may list them as co-plaintiffs. Through pre-litigation announcements, prosecutorial organs and courts at case acceptance stage safeguard environmental organizations' right to information and procedural participation in litigation, reflecting the principle of public participation and the supplementary exercise of prosecutorial litigation rights.

6. Conclusion

Social evolution and transformations in risk patterns inevitably drive changes in law. Although China's current environmental legislation already incorporates numerous risk prevention measures, their criteria for determination remain inconsistent. Moreover, the positive impact of the "Green Peafowl Case" largely stems from the political orientation, symbolic function, and media effect of preventive environmental public interest litigation, making it difficult to predict whether similar lawsuits will achieve equally ideal outcomes. In the future, the Ecological Environment Code should be grounded in the "dual-track" distinction and systematic construction between "risk prevention" and "damage relief," as well as "administrative priority" and "civil fallback": it should improve the preventive environmental civil public interest litigation system, which takes the wrongfulness of conduct as a constitutive element, thereby completing the institutional demarcation between public interest litigation and private interest litigation. The Code should provide principled, foundational legal grounds for the preventive environmental public interest litigation system, respect the principle of administrative priority, clearly delineate the boundaries between administrative and judicial powers, and eliminate the over-correction from judicial "absence" to judicial "misplacement." Furthermore, it should draw upon and integrate the jurisprudential experience of civil, administrative, and criminal procedure laws, adopting an integrated legislative model to establish a comprehensive and specialized public interest litigation law. This would enable public interest litigation, in terms of implementation principles, value functions, and normative pathways, to move beyond piecemeal amendments and shift toward top-level design in procedural law. Ultimately, this will guide preventive environmental public interest litigation back to systematic coordination and unity, enabling the prevention of major environmental risks to achieve a dual-aspect integration of scientific construction and social construction.

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