

The Discuss of Some Legal Question about the Pearl River Estuary River and Sea Boundaries

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Abstract: the management of Pearl River estuary relates to water agency, ocean agency, land use agency, maritime agency and traffic agency. Due to the overlap in the management scope of the Pearl River estuary, the responsibility in estuary is unclear and the management is confusion over the years. How to define beaches, estuaries and seas scientifically is the key to administration according to law. The author verified a large number of the domestic and foreign legal definition and other relevant documentation to make a detailed discussion for the laws and regulations relating to the boundary between river and sea in estuary area. It proposes some solutions accordingly, for the existing management problems.

Keywords: the Pearl River estuary; River and sea boundaries; Management; Law

The Pearl River is one of the seven rivers in China. The Pearl River Estuary has superior natural conditions and abundant resources. The management of Pearl River estuary involves water conservancy, ocean, land, maritime, waterway and other departments ^[1~2]. Over the years, due to unclear management responsibilities, the management is very confusing ^[3].

1 The definition of the name of the boundary between river and estuary related and relevant laws involved

1.1 The meaning and interpretation of water

a) The explanation of internal water in “interpretation of international law”: Internal water refers to all waters within a country's territorial sea baseline, including lakes, rivers and estuaries, bays and inland port.

b) The explanation of internal water in “The United Nations Convention on the law of the sea”: water for the landward side of the baseline of the territorial sea waters constitutes a part of the national water.

c) The explanation of internal water in “The People's Republic of China sea use management law”: water, refers to China's territorial sea baseline to all waters of the Inland side.

It can be concluded that the international definition is a wide range of water in the water, including all waters, both freshwater rivers, estuaries, lakes; there are waters on the landward side of the baseline of the territorial sea. But the “sea use management law” defines the water equivalent to the sea; there are obvious conflicts with international practice.

1.2 The definition and interpretation of estuary

a) In Britain and the United States “Encyclopedia”, the river estuary is known as the transition zone between rivers and marine rivers and sea water mixed waters. “The British Concise Encyclopedia”, II 1018, clearly states that the estuary area is generally determined by salinity rather than by geographical boundaries.

b) “Chinese Encyclopedia - Geography volume” (published in September 1990) page 197-198 and “Chinese water encyclopedia volume second” 744 pages and related Monographs on the estuary range and has the same definition: section from the estuary to the downstream tidal limit is divided into three sections, namely near the estuary, also known as River Estuary;, also known as the transition section; offshore area, also known as the tide section. To be clear: the so-called “face” refers to the river estuary, and “seaside” also known as “beach”, not “sea”.

c) The 2251 pages in the “word” at 1999 years published explain that “a large river can be divided into Heyuan, upstream, midstream and downstream and estuary of five parts”.

d) The “People's Republic of China Encyclopedia of law international volume” pointed out that “river from the source of the river to the estuary are in a Country”.

e) The first volume of second volume 175th in “Oppenheim international law” pointed out that “if all the rivers (Heyuan estuary)..... , rivers and estuarine waters is the water or water”.

Thus, the estuary is an important part of the river, the management of the river

should include the management of the estuary.

1.3 The related meaning and interpretation about beach

The coastal beach is in the transition section between the shallow sea and inland, when the tide flooded, low tide exposed, which is the tidal flat in the intertidal zone. In this case, some domestic and international academic monographs and industry technical literature have been clearly expounded.

a) In the coastal protection manual (1997) compiled by the coast engineering research center of the United States Army Corps of engineers, the area above the low tide line to the inland side is called “Shore”, but be translated into the beach or beach in 1998. That also provides a definition of the word “Shore”, that is, “beach - a narrow strip of land that directly touches the area of the sea, including high and low tide lines”. The description has defined beaches as land. Outside the low-tide line to the broken wave zone (location varies, usually in the depth of 10 ~ 20m) as the coastal area, outward called offshore. In essence, the sea can only be outside the foreshore and other parts.

b) The definition of the beach is also illustrated in the book “An Introduction to Coastal and Coastal Geomorphology” published in 1984 in the United Kingdom. That is, “the beach is the area between the low-water surface line and the inland boundary where the waves reach effectively”, while the low-water bitline is called coastal waters. This shows that the beach is not the sea; coastal waters are not actually sea.

c) On the “Shore” the Chinese translation of the word, according to Liang-Shiqiu editor of “the latest edition of English Dictionary” (1984) Notes: ① shore;② land; ③ tide line and low tide line in the middle of the area. Shore line translated coastline, the other English-Chinese dictionary comments are basically the same. Shanghai Ze Wen Press, published in August 1989, “English-Chinese Dictionary” 3175 pages of examples will shore base translated as “land base”; Shanghai Science and Technology Literature Publishing House in March 1990 edition of “Comprehensive English-Chinese Dictionary” 2165 pages of examples of the words Shore line translated as “coastline”.

d) The “Coastal Engineering in China” (1992), edited by Yan Kai, clearly states: Three zones of tidal (land), intertidal (tidal) and tidal (shallow) Indicating that the beaches and shallow sea belong to two areas, not the same meaning.

e) All the existing sea areas are marked with water depth, that is, the water depth below zero meters, and the areas above zero meters are marked with no water depth to indicate the scope, as the general land area treatment.

In summary, the relevant explanations and notes of the above literature together illustrate a basic concept: tidal zone tidal flats and sea areas are two distinct areas, and therefore cannot be mixed and replaced. Therefore, the international tide on the tidal zone cannot be identified as the waters to be controversial. The management of the intertidal zone as a sea area is only a clear distinction between the sea and the land and does not delineate the river and the sea in the estuarine area.

1.4 Relevant meanings and interpretations of territorial waters and sea areas

a) Interpretation of territorial sea under international law: territorial sea means the territorial sea adjacent to the territorial sea and beyond the territorial waters along the

coast.

b) Article 2 of the United Nations Convention on the Law of the Sea explains the territorial sea: the sovereignty of a coastal State and the area adjacent to its land territory and internal waters, in the case of an archipelagic State, is an area adjacent to the waters of the archipelagic sea, Known as the territorial sea.

c) Article 2 of the “Law of the People's Republic of China on the Administration of the Use of Sea Areas” refers to the waters, seabed and subsoil of the water and territorial waters of the People's Republic of China, The territorial waters of the territorial sea from the land side to the shoreline, the sea area is owned by the State and the State Council exercises sea ownership on behalf of the State.

It can be seen that the waters under the Law of the People's Republic of China on the Administration of the Use of Sea Areas include internal water, whereas the territorial sea of international law has no internal water and the internal water covers a wider area.

1.5 Baseline and Coastline: Implications and Explanations

Article 5 of the United Nations Convention on the Law of the Sea explains the normal baseline: Except as otherwise provided in this Convention, the normal baseline for the measurement of the breadth of the territorial sea is the coastal low tide indicated by the official recognition of large coastal charts.

So far, China has not yet clearly defined the provisions of the coastline. In the “China chart”: “Coastline refers to the average tide climax when the land and water boundary of the traces .Wall tide of the sea-land sub-line for the low shoreline”. “China's bay” said: “China, the average the high tide line is the shoreline”.

It can be seen that the international common law is the coastal low-tide line as the demarcation line between the land and sea, and our country is a high tide line as the coastline.

1.6 The Meaning and Interpretation of Tidal Flat

Beach is a transitional zone between land and water, attached to the land area, continuous siltation extends to the sea. It is a kind of dynamic regenerated natural resources, which is a reserve land resource with high quality. It is a kind of high-quality reserve land resource, which is the sediment of silt, clay and microbe in water.

Broadly speaking, the tidal flat, farmland, woodland, grassland, marshes, wasteland, low mountain slope is the land of the area. In particular, the reclamation process of the tidal flat resources completes the regeneration of the source land, so that the land resources are continuously supplemented. Therefore, "Land Management Law Implementation Ordinance", the beach is defined as land resources, and not as a sea area. “Zhejiang province reclamation management regulations” eighteenth “form of land reclamation, according to the relevant provisions on the management of the national and provincial land management”. To link up reclamation and land resources management is also precisely that beach land has, with natural and functional attributes and different waters. So tidal flat cannot be identified and treated as sea area.

2 The basis of water resources management for Pearl River Estuary

The Department of water administration in our country is mainly based on the “People's Republic of China water law”, “People's Republic of China”, “People's Republic of China River flood prevention management regulations”, “management measures” and “the Pearl River Estuary in Guangdong estuary of the Pearl River Estuary Management Regulations”.

2.1 “People's Republic of China water” (adopted in August 2002) and the “People's Republic of China flood prevention law” (by August 1997)

“People's Republic of China water law” is the utilization and protection of water resources, the prevention and control of water disasters, give full play to the comprehensive benefits of water resources, and develop to meet the needs of national economic development and people's life.

The “water law” articles twelfth, the national implementation of river basin management with administrative region management combining the management system of water resources. The Department of water administration under the State Council shall be responsible for the unified management and supervision of water resources throughout the country.

Rivers and lakes administrative agencies set up by the Department of water administration under the State Council (hereinafter referred to as the watershed management institutions), in the scope of jurisdiction exercised within the provisions of laws and administrative regulations and the State Council authorized by the Department of water administration and water resources management and oversight responsibilities. The water administrative department of the local people's governments at or above the county level in accordance with the provisions of the authority, unified management and supervision shall be responsible for the administrative areas of water resources.

“The people of flood prevention law” in order to prevent the flood defense, reducing flood disaster, protect people's lives and property safety, guarantee the smooth progress of the socialist modernization construction and the development.

“Flood prevention law” article fifteenth, the Department of water administration under the State Council shall, in conjunction with relevant departments and provinces, autonomous regions and municipalities directly under the central government, the development of the Yangtze River, Pearl River, Liaohe River, the Yellow River, Huaihe, Haihe River Estuary Regulation planning. Estuaries shall conform to the planning for controlling estuaries.

Thus, the management of the Pearl River estuary region is given to the State Department of Water Resources a sacred duty.

2.2 “Pearl River Estuary Management Measures” (adopted in September 1999)

“Pearl River Estuary Management Measures” is to strengthen the Pearl River estuary and its remediation development management, protection of the Pearl River estuary flood control, play an integrated function of the estuary, in accordance with the “People's Republic of flood control”, “People's Republic of river management regulations”.

“The Pearl River Estuary Management Measures”, a total of five chapters 26, the

Pearl River estuary eight mouth areas and estuary extension area of the renovation planning, construction project management and river protection and so made specific provisions. "The Measures" clear Pearl River Estuary development activities by the Pearl River Water Resources Commission of the Ministry of Water Resources and the Guangdong Provincial Water Administration departments in accordance with the unified management and classification management system of combining the implementation of supervision and management requirements of the Pearl River estuary remediation development must follow in favor of floods, Improve the ecological environment, unified planning, strengthen supervision and management, to ensure the extension of the Pearl River Estuary, the development process into the sea, smooth flow of tail. It is emphasized that the development and utilization of tidal flats within the management of the Pearl River Estuary must meet the requirements of flood control in the river basin, and scientific demonstration, unified planning and clear development procedures shall be carried out in accordance with the principles of development, renovation, renovation and development.

The second section of the "The Measures" on the scope of the Pearl River eight big estuaries of the general provisions: the Pearl River estuary from Humen, Jiaonan, Hong Qimen, Wangmen, Modaomen, Jitimen, tiger jump door and Yamen Eight door to the composition of the sea.

Eight estuaries: since Humen Whampoa (East River North Dasheng, south tributary Si Sheng, North River Sandy Bay waterway Sandy mouth water level station), banana door Nansha, Hong Qimen million dump Shaxi, horizontal water level station, mill The door of the door lanterns, jimi door gold, tiger jump door West Fort, Yamen Huang Chong water station to Lingdingyang Chiwan Peninsula, Inner Lingding, Hengqin, Sanzao, Gaolan, Holland, Dajin Island, Red River The connection between the peninsula between the river, water and shoreline.

The extension area: since the Chiwan, Chi Xi Peninsula connection below the waters and coastline from Shenzhen and estuary along the Guangdong and Hongkong Special Administrative Region Boundary Waters point No. 18 to the South Sea and by 18 points and wailingding Island, Henggang Island, Wanshan Island, South Island is small, Chi Xi the connection of the goose neck peninsula.

Estuary is the sediment in the sea to form long-term deposition of natural, estuary and the sea itself is not clear boundaries. The Pearl River Estuary, as a delta tidal estuary, is a region of the Pearl River connected to the oceans, where tidal current and runoff interact. Due to the influence of the ocean tidal range and the size of the Pearl River runoff, the location of tidal and tidal current boundaries is not fixed. In addition, because of the siltation in the upstream and outside the mouth, the mouth and subaqueous delta front in dynamic change. Therefore, the boundary between the estuary and the sea area should be considered the floods and tide smooth flow and meet the requirements of the smooth delivery of sediment into the sea first, but the Pearl River Estuary management approach to the scope of the Pearl River estuary delimitation of the highest priority is how to ensure that the line of floods and tide and sediment smoothly into the sea, so from the Pearl River Delta to ensure economic development in flood control areas, Pearl River estuary management approach

Delineation of the Pearl River estuary management should deserve the recognition of the relevant departments and regions.

2.3 Regulations on the Administration of Estuarine Shoals in Guangdong Province (Adopted in March 2001)

“Regulations on the Administration of the Estuarine Shoals in Guangdong Province” is to strengthen the management of estuarine shoal, ensure the safety of river and flood, safeguard people's life and property, protect and rationally develop and utilize estuarine resources, promote sustainable economic development. According to the “Water Law of the People's Republic of China”, “Flood Control Law of the People's Republic of China” and the relevant laws and regulations, combined with the actual enactment of the province regulations.

The Regulations on the Administration of the Estuarine Shoals in Guangdong Province have clarified the administrative functions of the relevant departments, the delimitation authority of the management scope, and the examination and approval procedures for the development and utilization of the tidal flats. The “Regulations” provisions, the competent department of water administration is the administrative department in charge of the estuary, responsible for the implementation of these regulations, land resources, marine and fisheries, transportation, planning, construction, environmental protection, civil affairs, forestry and other relevant departments to coordinate the implementation of these regulations according to the division of responsibilities. “Regulations” also stipulates that the “Regulations” the implementation of the project before the reclamation of the retroactive. The seventh emphasized the specific scope of the Pearl River Estuary by the Ministry of water resources “Pearl River estuary management approach” provisions delineated again.

The determination of the estuary management scope and the planning of the Pearl River estuary provide a basis for the comprehensive management of the Pearl River Estuary in the near future. The boundary of the Pearl River Estuary is also defined for the construction activities of the estuary area. And shoreline use has to follow and can operate the scientific basis and legal basis.

After the implementation of the Regulations on the Administration of the Pearl River Estuary and the Regulations on the Administration of the Estuarine Shoals in Guangdong Province, the various industries and departments have been basically curbed by the various departments in their efforts to confiscate the sand, chaos, Of the estuary management and construction project approval process gradually onto the legalization of the track.

3 Management Basis of the Pearl River Estuary by the Marine Department

The current maritime sector is mainly based on the “People’s Republic of China Sea Area Management Law”, “People’s Republic of China Marine Environmental Protection Law” for the Pearl River estuary management.

3.1 The law of the People's Republic of China on the Administration of the Use of Sea Areas (Adopted in October 2001)

The Law of the People's Republic of China on the Administration of the Use of Sea Areas is formulated for the purpose of strengthening the administration of sea

area use, safeguarding the ownership of national sea areas and the legitimate rights and interests of the users of sea areas and promoting the rational exploitation and sustainable utilization of sea areas.

“Second provisions of sea area use management law” said: in this Law refers to the People's Republic of China internal water, territorial sea water and water, seabed and subsoil. “Water” as mentioned in this Law refers to the People's Republic of China territorial sea baseline on the landward side to the coast of the sea. Third provisions: Sea belongs to the state, the State Council on behalf of the state exercise sea ownership. Comparison of the “United Nations Convention on the law of the sea” to explain the internal waters and territorial sea, “sea use management law” has a completely different interpretation of the sea water: international law without water and water within the territorial waters, including more widely, and the “management law” refers to the use of sea waters, including water.

The two provisions of the “Law on the Administration of Sea Area Use” specify two points: one is that the waters belong to the State; and the other is from the territorial sea baseline to the land side to the coastline. From the law itself, “the Law on the Administration of Sea Area Use” itself does not have a clear definition of the coastline, so there is no clear beach belongs to the sea or land, and the “Constitution” is not contradictory. The key is in the interpretation of the coastline, according to the interpretation of the marine sector, “the coastline is the average tidal wave when the tide of the boundary line of land and water,” then the beach belongs to the sea, that is owned by the state and not collective ownership, and the Constitution Clearly defined beach belongs to land resources, both countries have collective ownership, which has contradictions. In addition, the United Nations Convention on the Law of the Sea has never mentioned the coastline, but not with the tidal tide definition of the coastline.

3.2 The law of the People's Republic of China on the Protection of the Marine Environment (Adopted in December 1999)

The law of the People's Republic of China on the Protection of the Marine Environment is formulated for the purpose of protecting and improving the marine environment, protecting marine resources, preventing and controlling pollution damage, maintaining ecological balance, ensuring human health and promoting sustainable economic and social development.

Article 2 of the Marine Environmental Protection Law provides that “this Law shall apply to the sea areas, territorial seas, contiguous areas, exclusive economic zones, continental shelves and other sea areas under the jurisdiction of the People 's Republic of China”; At the same time Article 20 of the Law states: “The State Council and coastal local governments at all levels shall take effective measures to protect mangroves, coral reefs, coastal wetlands, islands, estuaries, important fishery waters and other typical and representative Marine ecosystems, natural concentrated areas of rare and endangered marine organisms, marine organisms with important economic value of the living area and a significant scientific and cultural value of the marine natural history and natural landscape”; Article 22 stipulates that “marine nature reserves shall be established for coastal wetlands and estuaries with special protection value”; Article 95 stipulates: “Inland water refers to all sea areas on the inland side of China's

territorial sea baselines” and “coastal wetlands” refers to waters with a depth of 6m or less in the low tide and its coastal wetlands, More than 6m of permanent water, intertidal (or flood zone) and coastal lowlands. Can be seen, “Marine Environmental Protection Law” has been “into the estuary” into the scope of the law.

4 The existing problems

4.1 Different estuarine attribution

Estuary belongs to the river or the sea, has always had different understanding [4~5], resulting in law enforcement difficulties, management difficulties, deterioration of the investment environment and a series of problems [6]. The scope of the Pearl River Estuary, the State Council issued in 1998 to the Ministry of water conservancy and sanding program in 1998 promulgated the “People's Republic of China water law” will be incorporated into the mouth by the Department of water administration management. The Regulations on the Administration of the Pearl River Estuary, the Regulations on the Administration of the Estuarine Shoals in Guangdong Province, and the Regulations on the Sand Mining in the River ways of Guangdong Province have also brought the estuary into the management scope of the water administrative department. The marine sector is based on the “Sea Area Management Law”, “Marine Environmental Protection Law”, its administrative scope has been traced back to the Huangpu waterway. Therefore, according to the different understanding of the estuary and the use of different legal standards, the water sector and the marine sector for the jurisdiction of the estuary there is a clear conflict.

4.2 Approval permissions overlap

“Pearl River Estuary Management Measures” and “Regulations on the Administration of the Estuarine Shoal in Guangdong Province” clearly stipulate that in the management of the Pearl River Estuary, planning, construction, Before submitting the project proposal, the project planning proposal shall be submitted to the Water Administration Department of the People's Government of Guangdong Province for preliminary examination, and shall report to the Pearl River Water Resources Commission whether it complies with the overall arrangement of the remediation plan, whether it exceeds the planning control guideline, and meets the flood control and estuary water quality requirements And made the Pearl River Water Resources Commission issued the “Planning Opinion”, which oversized projects should be reported to the Ministry of Water Resources for approval. The maritime administrative department shall require the construction unit to apply to the maritime administrative department for the right to use sea areas in the project construction of the estuary in accordance with the provisions of the Law on the Administration of the Use of Sea Waters.

Therefore, the construction units need construction projects in the estuary space, not only need to submit the application to the occupation of shoreline waters tidal water administrative departments also need to submit the application to the use of the waters of the marine sector, caused by the examination and approval authority overlap.

4.3 Paid use problem

The main contradiction is controversial issues of compensation for the use of

coastline, beaches and estuarine waters. From the management practice for many years, by different departments of the pre project are the implementation of administrative approval is not formed in the disputes, in the area of river management does not exclude other departments in the implementation of management responsibilities in accordance with the sector over the years, various departments and according to the management requirements of the implementation of But once the implementation of paid use of resources, which sector on behalf of the State levy paid royalties will form a dispute. Article 17 of the Regulation on the Administration of the Estuarine Shoals in Guangdong Province stipulates that the units and individuals that make use of the estuarine tidal flat for paid use and exploit and use the compensated use of the estuarine shoal shall pay the occupation fee for the river course management according to regulations. Article 33 of the Law of the People's Republic of China on the Administration of the Use of Sea Areas stipulates: "The State shall implement the system of compensated use of sea areas, and the units and individuals shall pay sea use fees in accordance with the provisions of the State Council." In accordance with the provisions of the state "legislative law" principle, law and local regulations have the right to set up a system of paid use, which means that the development and utilization of owners of the estuary, what is the "Regulations" of Guangdong Province estuary to pay management fee, or in accordance with the "key sea use management method" to pay the royalties become contradictory conflict. From the laws and regulations set beach occupation fee and the purpose of the use of gold, both with compensatory and exclusive use of the resources of paid use fees, repeated levy increased the burden on the owners, but also significantly unfair.

5 Conclusion

(1) The relevant laws in inland waters, estuaries and coastal line with the International Convention on the definition of the term is ambiguous, the scope of management and ownership of estuary formed a certain confusion in China.

(2) Because the boundaries of the river and the sea are not specified, the water administrative department in accordance with the "Pearl River Estuary Management Measures", the marine sector under the "Sea Area Management Law", all have jurisdiction over the Pearl River estuary, resulting in the Pearl River estuary administrative jurisdiction overlapping.

(3) Repeated charges are caused by the fuse of the river dispute. According to different laws and regulations, water administrative departments, the marine sector can be charged for the same construction project, resulting in the same construction project double charges, resulting in a dispute between the sea and the sea.

(4) Overall, the level of estuarine management legislation is still not high, the legislation has a small number of estuaries. With the rapid development of China's economy and society, the task of estuarine management in our country will be more arduous, and the problem of estuary management will be more complicated, and the requirements of estuary management legislation will be more urgent. On the one hand, after years of accumulation, the contradiction between estuarine development and protection has been more acute, and the security risks such as flood control and

navigation in the estuary area are increasing. On the other hand, the water pollution degree in the estuary area is beyond the water resources and environment of the estuary area. Ability, if not as soon as possible to rationalize the relationship between the development and protection of estuaries, is bound to affect the socio-economic development of the estuary area.

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