Issues of protection of the Lake Baikal legal regime

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Abstract. Conceptual provisions of the Federal law “On protection of Lake Baikal”, adopted in 1999, have never been disputed during the last 20 years: legal regime primarily of the central ecological zone is supported by regulatory acts, the state ecological expertise is in place. Current ecological crisis of ecosystem, actual failure of the approved target federal projects, ecological catastrophe threats due to possible technological consequences of delay in the Baikal paper plant waste liquidation are consequences of lack of scientific cover in program action projects, as well as refusal of preliminary open discussion on possibility of legislative and other initiatives with regard to Baikal. In the sphere of scientific support of measures on the Lake Baikal preservation the following points are suggested: 1. Scientific research is to be included into the Russian national scientific projects as a mandatory stage of formation and implementation of state regulation measures. 2. Normative setting of requirements of mandatory scientific expertise for projects that can significantly impact the Lake Baikal preservation. 3. Institution of “Expertise of the Russian Academy of Sciences” is to be used for expert assessment of the most significant projects in the sphere of the Lake Baikal protection.

1. Introduction

Lake Baikal is the World natural heritage site (1996)³: with regard to “universal world value» Russia as a party to the Convention for the Protection of the World Cultural and Natural Heritage pledged (article 4) to “detect, protect, preserve, popularize and pass cultural and natural heritage, mentioned in article 1 and 2, located on its territory, to new generations. Federal law 01 May 1999 №94-FZ «On protection of Lake Baikal» 1999 Collection of Legislative Acts of the Russian Federation 03 May 1999, N18 article 2220; 2004, №35, article 3607; 2011, №30, article 4590; №48, article 6732; 2014, №26, article 3387 (hereinafter – Baikal Act) together with subordinate legislation comprise legal base and determine institutions of state regulation in the sphere of the Lake Baikal protection.

Modern initiatives of authorities and their certain representatives on amendments to the Baikal legislature create prerequisites to elimination of unique legal status as such. Simultaneously there are several draft amendments to the Baikal Act under consideration: with regard to introduction of so called “special zones” – creation of exclaves inside the Baikal nature territory, including the World heritage site “Lake Baikal”; legitimization of settlement expansion using forest lands; exclusion of

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³ Convention for the Protection of the World Cultural and Natural Heritage, adopted at the 17th session of the United Nations General conference on education, science and culture (Paris, 16 Nov 1972). Ratified by Decree of the Presidium of the Supreme Soviet of the USSR dated from 09.03.1988 № 8595-X
settlements from the protected area territories (hereinafter – Protected Areas) and the Central ecological zone of the Baikal nature territory (hereinafter – CEZ). Serious corrections were suggested for key normative acts of the Russian government. Danger of such legislative initiatives has found a wide a response in scientific society⁴, as well as in speeches of parliamentarians³ and the public⁶.

In ecological crisis situation in riparian zone of Lake Baikal⁷ it is unacceptable to adopt said legislative changes which significantly reduce the legal protection of unique ecosystem. The necessity of multidisciplinary research of biology in the Lake Baikal riparian zone was justified by scientists in 2011 [1]. The authors justified the indicator role of a lake splash zone as “fast and sensitive” [1] in reaction to anthropogenic changes of ecosystem. During 8 years of scientists’ appeals, justifications [2-5], speeches, including those made at competent authorities meetings, have not brought practical results: actions of authorities to reduce threat to the Lake Baikal ecosystem are ineffective, scientific researches on this global problem have not been included in the Federal program on the Lake Baikal protection, as well as in the Federal project “Preservation of Lake Baikal”; monitoring of the riparian zone is not carried out and has not been included in work of the competent authorities.

Actually, authorities do not recognize ecological crisis and practically do not use scientific data on ecology of the Lake Baikal riparian zone: the Russia’s report on preservation of the World heritage site “Lake Baikal”, which was submitted to UNESCO in December 2019, has this conclusion – “3. Serious changes within the given world heritage site are not expected”⁸. According to leading scientists’ opinion, these changes have already happened and continue happening increasingly [6]. In some regions of Baikal (for example, beaches in northern Baikal around Severobaikalsk town, benthic biocenosis in Listvyanchiny bay) those changes can be considered as catastrophic for unique communities. Results of these researches, in particular, made by the Limnological institute of Siberian branch of the Russian Academy of Sciences, are published in leading world journals of limnological profile, as well as in popular scientific reviews on this topic [4, 5, 7-16].

2. Typology of instruments of destructive changes in legal status of Lake Baikal

The most dangerous type of reduction in ecological requirements for activity on the Lake Baikal territory is a direct abolishment of existing legal regimes. The first legislative act, which implemented this instrument, was the Federal law, dated 31 July 2020, № 254-FZ “On peculiarities of regulation of certain activities for the purposes of modernization and extension of trunk infrastructure, and on amendments to certain legislative acts of the Russian Federation”. It not only lifts a ban on clear cutting for trunk infrastructure purposes, but also cancels the necessity of state ecological expertise of such projects in CEZ (temporarily till Dec 31, 2024), as well as state ecological expertise in regional Protected Areas (permanently) without reference to the trunk infrastructure construction plans, etc.

Currently new amendments to the Federal law “On protection of Lake Baikal” dealing with creation of “special zones” are being prepared. The proposed deletions from the current legal regimes will be replaced with uncertain legal norms of the draft law. Moreover, creation of legal exclaves gives unequal conditions for nature management on the Baikal nature territory and raises social strains since it is expected that significant mitigation of legal regime in such “special zones” will be compensated by strict legal regimes on other part of the Baikal territory.

⁴ Joint appeal of Scientific councils of the Russian Academy of Sciences to Minister of nature resources and ecology of the Russian Federation dated 02 August 2020http://rbf-ras.ru/news-2020-08-03/, http://www.sev-in.ru/n/node/1770, http://cepl.rssi.ru/news-2020-08-03/
⁵ Joint appeal of Scientific councils of the Russian Academy of Sciences to Russia’s President, 31 July 2020 r. http://rbf-ras.ru/news-2020-07-31/, http://www.sev-in.ru/n/node/1761, http://cepl.rssi.ru/news-2020-07-31/
⁶ Burmatov asks the Ministry of ecology not to allow disposing wastes and forest cutting in the Baikal zone, 17 July 2020, TASS https://tass.ru/obshhestvo/8989799
⁷ #SaveBaikal. Vladimir Putin signed “indulgence for any ecological violations”. Siberia. Realities. 2 August 2020. https://www.sibreal.org/a/30762640.html
⁸ Baikal does not require permissions, “Kommersant”, 26 June 2020 https://www.kommersant.ru/doc/4391809
⁹ Results of multiey researches show: climate change does not influence the growth of spirogyra in Baikal. Gazetairkutsk.ru Irkustk news, 24 July 2020 https://www.gazetairkutsk.ru/irkutskaya-oblast/rezultaty-mmogoletnih-issledovanij-pokazyvayut-izmenenie-klimata-ne-vliyaet-na-ravitse-spirogyra-v-bajkale
¹⁰ UNESCO web-site: https://whc.unesco.org/en/list/754/documents/
Draft decree of the Russian government on list of activities prohibited in CEZ has been submitted for consideration within the framework of public hearing. Article 2 of the draft decree says that the list of activities, which was set by article 1 of the current decree, “does not apply to investment projects, which are implemented in accordance with acts of the Russian government, orders and instructions of the president of the Russian Federation”\textsuperscript{9}. Thus, all types of economic activity are becoming possible in CEZ. In other words, currently there are more than 13,000 investment projects with state participation and more than 1,000 of them are connected with fully prohibited activities. This approach can lead to emerging of chemical, oil, mining and other dangerous industries.

Some draft normative acts use the instrument of wide interpretation of subject of regulation. In such cases the first initiative is determined by objective concrete needs of local population or business, and the current version of legislative initiative gives wider definition, which realization will completely change the legal regime for Baikal. For instance, draft decree on possibility of changing the category of forest land, covered by protective forests, to other land categories in CEZ allows to change category of such forest lands to the category of tourism and recreation land of special economic zone, created before 01 January 2010 (in addition to Protected Areas and their objects). Moreover, there are suggestions to include new norm to the existing Federal law, which gives priority to a legal regime of special economic zones rather than to other federal and other legislatures which have stricter requirements. The project, which was the aim of the amendments, can be realized in different ways: issue of construction of mountain ski resort can be legally solved without inclusion of this territory into tourism and recreation special economic zone, while hotels and other infrastructure can be easily located in neighboring settlement territories.

An important problem here is the nonsystematic approach of suggested amendments in the sphere of the Lake Baikal protection: each initiative is justified and considered without correlation with other initiatives, in relation to both general legislature and Lake Baikal. This leads to internal contradictions in legislature on the Lake Baikal protection, as well as within the scope of general legislature. A very good example of it is the norms of acceptable impact on the Lake Baikal ecosystem\textsuperscript{10}. Despite the fact that the document was based on suggestions, prepared by scientists and professional community, a set of measures and legal norms for implementation of those norms, was not included into the text of the normative act. Thus, we have a situation when the existing standard process documentations imply institutionally unsupported requirements, for example, lack of transitioning period for active sewage treatment facilities, which have guarantee to meet the agreed requirements after reconstruction or new construction of sewage treatment facilities (instead of existing ones).

3. Productive instruments of impact on the authorities’ decision making

The maximum result can be achieved by official cooperation of the authorities, which have full powers in the sphere of the Lake Baikal protection, with scientific organizations within the scope of implementation of scientific research projects and consecutive realization of scientifically grounded decisions with support of NGOs and the public. Good example of it is the implementation of 2016-2017 Project \textsuperscript{17, 18} “Scientific researches on environmental impact assessment in the transboundary basin of the Selenga river on the Russian Federation’s territory due to hydropower construction plans on Mongolia’s territory” within the scope of the federal target program “Development of water industry of the Russian Federation in 2012-2020”. Results of the scientific project provided the basis for Russia’s position in international talks and enabled to prevent threats to Lake Baikal, coming from the introduction of river runoff regulation in the transboundary basin of the Selenga river.

The most often used instrument of scientific impact on the authorities’ decision making, including normative requirements in the sphere of the Lake Baikal protection, is development of justifications

\textsuperscript{9} Portal of public discussion of normative acts. Draft decree of the Russian government “On the approval of the list of activities, prohibited in the central ecological zone of the Baikal nature territory” https://regulation.gov.ru/projects#npa=102832

\textsuperscript{10} Order of the Russia’s ministry of ecology, dated 21 February 2020, № 83 “On approval of maximum permissible exposures on unique ecosystem of Lake Baikal and the list of hazardous substances, including the categories of extremely dangerous, highly dangerous, dangerous and moderately dangerous for unique ecosystem of Lake Baikal”
and draft documents, done by scientific organizations. The lake Baikal Scientific council of Siberian branch of the Russian Academy of Sciences developed a concept and draft document on environmental impact regulation, which allows to save unique ecosystem and keep civil rights of local population at the same time. In order to develop the document, the Russian Academy of Sciences created a task force consisted of scientists, representatives of the authorities of the Russian regions (Irkutskaya oblast and Buryatia) and professional community (specialists in water supply and water disposal). The developed document, which had been under international and Russian expertise, was submitted to the Ministry of ecology of Russia and its part reflecting regulation of water waste disposal was adopted as a normative act [19].

Constructive position of scientific community, involvement of deputies and actions of the public both at the federal and regional levels, created a platform for interaction of the authorities, business and society using institutions for alignment of positions and draft normative acts within the scope of scientific justification, public hearings, discussions at ministries and agencies. Currently some normative acts, which are being prepared by the Ministry of ecology of Russia, are considered with participation of parliamentarians, science and the public. The last example is the above mentioned draft decree of the Russian government on prohibited economic activities. It is obvious that results of such alignments cannot be predicted, but the fact of the open discussion is a serious “breakthrough” on counting with arguments of the science and the public in preparation of draft legal acts. The last factor had a key influence on decision making on changing of distance of “Eastern Siberia – Pacific Ocean” pipeline from 800 meters to 400 km far from Baikal in 2006 [20], and in today’s situation – the public resonance after adoption of the Federal law on trunk infrastructure (see above) became a trigger for a special address by acting governor of Irkutskaya oblast I.I. Kobzev at the open meeting with the Russian president\(^11\), and an order for preparation of joint additional actions on the project\(^12\).

The maximum result for achievement of scientific credibility of the authorities’ decision makings is possible under conditions of mandatory requirement of the Russian Academy of Sciences Expertise\(^13\), which allows to have the highest expertise qualification, guarantee absence of interest conflict and scientific justification, as well as support of state decisions by the Russian citizens and international institutes, including UNESCO [21, 22]. A project that currently requires the Russian Academy of Sciences Expertise is the assessment of existing proposals on liquidation of accumulated wastes of Baikal paper plant (closed in 2013), selecting technically possible and ecologically acceptable among them. Involvement of more than 800 scientific experts will be required for work on technological proposals, collected by the Government of Irkutskaya oblast and VEB.RF daughter company – VEB Engineering LTD (more than 50 applications with around 150 complex technological conversions). The results of the Russian Academy of Sciences Expertise will allow to exclude a possibility of technical decisions, violating legal regime of the territory and provide the technical feasibility of the project.

4. Conclusion
Changes in legal regime of the Baikal region should be provided with guarantees of no regression in ecological situation on Baikal. The first task for preservation of the Lake Baikal ecosystem is introduction of legislative additions and amendments, which provide realization of measures on reduction of eutrophication of the riparian zone of Baikal, including creation of riparian zone monitoring system, financing of measures on designing and construction (reconstruction) of water

\(^11\) Meeting on the ecological situation in Usolye-Sibirskoye. Vladimir Putin held a video-conference meeting on the ecological situation in Usolye-Sibirskoye, Irkutskaya oblast. 30 July 2020. http://kremlin.ru/events/president/news/63769

\(^12\) The list of orders following the meeting on the ecological situation in Usolye-Sibirskoye. Vladimir Putin approved the list of orders following the 30 July 2020 meeting "on the ecological situation in Usolye-Sibirskoye, Irkutskaya oblast". 2 August 2020 http://kremlin.ru/acts/assignments/orders/63853

\(^13\) Statute on expert activity of the Russian Academy of Sciences, Decree of the Presidium of the Russian Academy of Sciences, 21 May 2019 № 84. Procedure for organizing and conducting expert works in the federal state budgetary institution the Russian Academy of Sciences, Instruction of the Russian Academy of Sciences, 5 July 2019 № 10110-692.
treatment and sewage facilities, firstly – those of the settlements located on the Lake Baikal coastline and sanatorium-health resort objects.

Lack of publicity in preparation of majority of draft legislative acts and draft decrees of the Russian government, lack of scientific expertise of draft normative acts, as well as discussions with the public, lead to ungrounded change in legal regimes and legal status of Lake Baikal what significantly increases risks for ecosystem and creates additional ecological threats.

In order to achieve the balance between solution of ecological problems, granting rights to local population and ensuring economic development, the following actions are to be made: to stop suggesting single shot and not interconnected changes in particular legislative norms; to adopt and secure realization of decision on elaboration of complex program of changes in legislature of the Lake Baikal protection with participation of scientific community and the public; to set a requirement of consideration of any legislative initiatives with support of system scientific expertise and the public opinion, as well as eligibility for Lake Baikal as the World heritage site. Under the circumstances of increasing water conflicts, the issues of preservation of the legal regime of Lake Baikal, which contains 20% of the world’s surface fresh water supply, require a priority in solving ecological problems.

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