

## ABEYANT STATE LANDS: PROBLEMS AND WAYS OF THEIR SOLUTION

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*At the beginning of 1990s land reform was carried out in Russia. After long and very heated debates private ownership of land was permitted giving start to its privatization. Mainly lands of agricultural destination and lands of settlements were transferred to private ownership. As of January 1, 2012 lands of agricultural destination accounted for 128.6m hectares out of 133.1m hectares of privatized lands, lands of settlements – for 4.3m hectares thereof (Table 1). The rest of lands (1576.7m hectares) remained in the state and municipal ownership.*

The problems of privatized land use are being scrutinized by the authorities, mass media and scientists. Far less attention is being paid to the management and use of lands that remain in the state ownership. Russian statistical records lack data allowing to calculate the comparative use efficiency of private and state lands of agricultural destination. Special studies revealed that corporate farms instituted by the state and municipal authorities and situated on the state and municipal lands lag far behind other corporate farms by the rate of profitability<sup>1</sup>.

According to the Land Code, the land that remained state-owned should have been divided and transferred to the ownership of either the Russian Federation, a constituent member of the Russian Federation, a municipal area or a rural municipality. The need to split state land ownership into the federal, regional and municipal components was declared back in 2001. Soon afterwards the procedure of such delineation was defined. However, as yet the most part of state land areas remain non-delineated. The owners of these plots are not established and lands remain “no-ones”.

As evidenced by *Table 1*, over one half of state-owned lands in Russia are “no-ones”. The biggest advance is made in delineating forest lands: 2/3 of them have already been registered as federal property. The remaining areas raise no concern as well – according to the law they belong to the Federation even in case delineation and registration procedures have not been completed. The situation is far more complicated with other categories of lands: they can be owned by the Russian Federation, constituent members of the Federation or municipalities but over 90% of their areas have not been delineated as yet.

How can one use state lands if it is not clear whose property they are? The Law on enacting the Land Code

of the Russian Federation envisages that “the tenure of non-delineated state land plots lies within the jurisdiction of local administrations of municipal areas and urban districts...” (Article 3, Paragraph 10).

After acquiring such right, municipal areas should have become the owners of all non-delineated state lands and manage them at their own discretion. However, the analysis of Rosreestr statistics shows that it never happened. Only 3.9m hectares of land are in municipal ownership although as of January 1, 2012 the total area of non-delineated lands amounted to 831.3m hectares. Despite the granted title to dispose of all non-delineated lands, municipal administrations actually cannot dispose of non-delineated forest areas since these lands are *a-priori* federally-owned.

The non-delineation of state lands has the decisive impact on the development of agriculture and rural areas.

### Rural municipalities are deprived of forests

In Tsarist Russia rural communities in forest and forest-steppe zones had their own woods that were used both for the construction of wooden dwellings and household outbuildings and for the procurement of firewood. Villagers took care of their wood and preserved it since they understood its importance for the living and future generations. In the times of New Economic Policy rural communities also obtained operating control over former landlords’ forests. Probably, this is the key to explaining the building boom that was observed then in rural areas.

After the collectivization rural woods became the property of collective farms. Rural communities’ rights to dispose of forests were curtailed but villagers still continued to use them. In the post-reform period corporate farms became private. The titles to some rural forests were withdrawn while a part of them was transferred for use to private entities. Rural communities were completely deprived of actually all titles to forests except for the right to visit them and pick mushrooms and berries.

1 V. Ya. Uzun, E.A. Gataulina, V.A. Saraykin et al. Tendentsii razvitiya i mekhanizmy vzaimodeystviya krupnogo i malogo biznesa v agropromyshlennom komplekse. [Developments trends and mechanisms of interaction between large and small business in the agro-industrial sector]. Moscow, ERD, 2009, p.160.

Table 1

**RUSSIAN FEDERATION: DISTRIBUTION OF LANDS BETWEEN OWNERS AS OF JANUARY 1, 2012,  
MILLION HECTARES**

	Total area	including						
		Private ownership	State ownership	Owned by				
				RF	RF constituent members	municipalities	Non-delineated	Non-delineated areas as % of state-owned lands
Land area	1709.8	133.1	1576.7	745.4	8.8	3.9	831.3	52.7
including:								
Lands of agricultural destination	389.0	128.6	260.4	8.3	7.7	3.4	241.0	92.5
of them:								
lands of re-distribution fund	46.0	-	46.0	0.5	1.1	0.2	44.2	96.1
Lands of forest fund	1120.9	-	1120.9	698.6	0.3*	0.006*	422.0	37.6
Lands of settlements	19.7	4.3	15.4	0.7	0.2	0.3	14.2	92.2
Reserve lands	98.8	-	98.8	0.06	0.001	0.07	98.7	99.9

\* According to the law lands of forest fund are owned by the Russian Federation. The Rosreestr staff must have made a mistake when collecting or processing data.

Source: Land fund of the Russian Federation as of January 1, 2012. Moscow, Rosreestr, 2012.

The program for sustainable development of rural areas for 2014–2017 and the period till 2020 envisages allocation of over Rb 170bn to the improvement of living conditions in rural areas and complex compact development of rural settlements. There are plans to commission (acquire) 5.4m square meters of living space (or on the average 0.2 square meters per one rural resident).

The effect can be much greater if forests are returned to rural municipalities<sup>1</sup>. This would help to improve their economic performance, to raise budget receipts, to provide rural population with construction materials and fuel, to get assistance of rural community in fighting forest fires, etc. Such a solution would encourage much faster development of construction in rural areas.

The transfer of forests to the ownership of rural municipalities can involve both the lands of forest fund and the forest areas situated close to rural settlements and currently controlled by private enterprises. Municipalities and rural communities are interested in and have more opportunities for the rational utilization and preservation of their forests as compared with federal authorities residing in the faraway capital. Private entrepreneurs use forests pursuing their own commercial interests. Meantime, rural municipalities can provide for their utilization in accordance with the public interests.

There is a threat that in case rural communities are passive, corrupted local officials will abuse

<sup>1</sup> As of January 1, 2013 there were 18,722 rural municipalities and 1,817 municipal areas in Russia. According to the effective legislation rural municipal units are parts of municipal areas.

their powers, strip and kill out forests. But, first, the scopes of abuse by higher ranking officials are far more outreaching as the latter are less controllable by civil society. Second, this threat can be diminished by means of thoroughly elaborated legislative rules of rural woods use and the control over their observation.

#### **Constituent members of the Russian Federation are barred from the disposal of forest fund lands**

In the course of discussing patterns of forest fund lands ownership the idea of their privatization was rejected although in many countries including our neighbors (e.g. Finland) forests are privately owned. It helps to retain population in villages situated in forest regions, improves sustainability of rural development and ensures additional personal incomes.

But when adopting the RF Forest Code it was decided to concentrate the lands of forest fund in the federal ownership. The concentration of control over these lands in the federal center inhibits regional authorities from fully exploiting their opportunities for the improvement of utilization and protection of forests situated on their territory<sup>2</sup>. There is concern that the partial transfer of powers to constituent members of the Russian Federation may result in bigger corruption and abuse. This problem can be tackled by means of control over regional officials on the part of civil society and federal authorities.

<sup>2</sup> Lands of forest fund comprise 1,120.9m hectares of land which is almost 2/3 of the country's territory. Federal ownership of this land seriously limits the autonomy of Federation's constituent members as component parts of the federal state.

### Lands of agricultural destination

As of January 1, 2012 there were 389m hectares of lands of agricultural destination in Russia. 1/3 of this area (128.6m hectares) was privately owned by legal bodies and individuals while 2/3 (260.4m hectares) were in state ownership. Only 7.5% of state lands (19.4m hectares) were delineated. The Federation owned 8.3m hectares of lands of agricultural destination, its constituent members – 7.7m hectares, municipalities – 3.8m hectares. These are largely the lands of state unitary agricultural enterprises instituted by the governing bodies of the Russian Federation and its members and those of municipal enterprises.

241m hectares of lands of agricultural destination remained non-delineated. Local municipalities transferred most part of them to farm producers for permanent (perpetual) use or lease. Nearly 30m hectares of farmlands have not been transferred to agricultural producers and are not used according to their destination.

Although state lands of agricultural destination are situated on the territory of rural administrations, rural municipal bodies have no powers of disposal thereof. Even if arable land is not used for decades and gets covered with shrubs, rural municipalities can but view this process without any right to interfere and alter the situation.

With the purpose to allot land to individual private farms, the land re-distribution fund was set in the period of reforms. First of all, it is intended for allotting land to beginning farmers. As of January 1, 2012 there were 46m hectares of lands of agricultural destination in this fund. However, almost all this area is not delineated; rural municipal bodies have not registered property rights to these lands and therefore cannot allot them to farmers.

In order to get land a beginning farmer should apply to municipal authorities. They do not have any titles to lands from the re-distribution fund either but are entrusted with the powers to dispose of non-delineated state lands. In this situation local government bodies of a municipal area will suggest that an applicant should parcel out the selected plot and register it as a property of the municipal area at his own expense.

After the farmer has spent a lot of money on parceling out the plot, he will get a suggestion to lease it or buy it out. According to the law, both lease and buying out of a state-owned plot requires holding a tender. There is no other way. Since the farmer who has parceled out the plot can lose this tender, measures are taken to make it a mock auction, to prevent participation of other real bidders, etc.

This entire scheme is non-transparent and corrupt from the beginning to the end. And the cause of it is

the non-delineation of state lands, the lack of funds in the budgets of all levels for the registration of land plots and preparation of them for lease or sale. Being short of small money for registering plots, budgets lose big money due to the non-use of land.

The same is true for the reserve lands. A large part of them are farmlands that are neither delineated nor registered. Due to that such plots are lingering on in reserve for years as it's hard to find users who will agree to spend large amounts of money on parceling out and registration of plots in the situation when the risk of losing the following tender is not ruled out. And indeed, who is to search for such users: federal authorities, constituent members of the Federation, regional administrations or rural municipalities? It's not clear as the land is not delineated.

The situation is aggravated by the fact that not a single institution in the country is charged with the mission to carry out this work; thus, there will be no discernible progress even if budgets of all levels find the funds for delineating and registering land plots. Roskomzem that used to be in charge of management of the country's land resources and had a net of local divisions was closed down 6 years ago. At the moment no one is responsible for land in the country. There are only institutions that gather statistics, register plots and transactions therewith, exercise control and impose penalties, but none of them is ready to take up the difficult and cost-consuming work of delineating state lands between the Federation, its constituent members, area and rural administrations.

An even more meticulous work is to be done after the delineation: each plot should be prepared for lease or sale as no one will take it if there is no road infrastructure, no electricity network, etc.<sup>1</sup> In addition to preparing the plot, the search for potential users should be launched and in case there are no local applicants, terms for inviting outsiders from other regions and even countries should be elaborated. Only a special institution whose main mission is to dispose of land for the public good can cope with this set of complicated tasks. It's at least naive to believe that a small team of officials sitting in their Moscow offices of the Federal Agency for State Property Management is able to take care of billions of hectares of land.

The above analysis leads to the following conclusion: to date the system of managing state lands has not been formed in Russia. They turned out to be abeyant. Due to that budgets of all levels suffer great losses in the amount of received taxes (no one pays taxes for land with non-documented use titles; taxes for a large part

<sup>1</sup> In the times of Stolypin's reform the state treasury bore the expenses on registering plots, building roads, digging dwells, etc. before allotting land to peasants.

of documented but non-used lands are not paid either), lease payments (only land tax is imposed on lands transferred for permanent (perpetual) use) while in case of leasing them out at market prices budget receipts could be much higher), revenues from the selling of land.

The establishment of the system of state land management should start with the delineation of titles to this land and the forming of land plots to be owned by the Russian Federation, its constituent members, area and rural municipalities. Depending on the area of lands at each level (conditioned by local specifics)

agencies, institutions and organizations capable to ensure the rational utilization of available lands should be formed.

In case state and municipal bodies are unable to manage lands under their jurisdiction, the latter should be gradually privatized. Each piece of land should have a particular owner (physical or legal body, rural municipality, governing bodies of an area, a constituent member of the Federation or the Russian Federation at large) responsible for its maintenance and development. ●