



Policy Memorandum

To: **ALL PROJECT DEVELOPERS AND VERIFICATION BODIES**
Date: **NOVEMBER 15, 2012**
Re: **FOREST PROJECTS WITH EASEMENTS AND OTHER ENCUMBRANCES THAT IMPACT THE FOREST CARBON**

The Reserve, in an ongoing effort to ensure that its policies maintain the highest standards of environmental integrity and rigor, while being sensitive to on-the-ground realities that impact protocol functionality, announces the following policy update that clarifies our September 12, 2011 email to Account Holders (“September 2011 Account Holder Policy”) regarding forest projects with one or more recorded conservation easements or other recorded agreements that impact the management or ownership of the forest Carbon Pools (for example forest management easements or timber rights agreements) (collectively “Easement or Agreement”).

This Policy Memo is meant to explain the rationale behind the Reserve’s September 2011 Account Holder Policy while also clarifying and refining it.

September 2011 Account Holder Policy Summary

In the Reserve’s September 12, 2011 Forest Project Announcement, the Reserve stated as follows:

Forest Projects must clarify carbon offset credit rights ...[P]rior to registering a forest project, the Reserve will require documentation explaining which party has the right to be issued carbon offset credits (in this case, Climate Reserve Tonnes [CRTs]) in support of the Attestation of Title. If an Easement or Agreement is not clear on this point—with the Reserve holding the exclusive right to determine clarity—the Reserve will require that an Easement or Agreement be amended to clarify which party has the exclusive right to be issued carbon offset credits from an entity such as the Reserve. Presumably, the party with the right to be issued any carbon offset credits will be the “Project Developer” and “Forest Owner.” (Note: the Easement or Agreement should address which party has the right to be issued carbon offset credits without restricting who may otherwise own, sell, trade, etc. the offset credits. Draft amendment language is included as Attachment B to this communication.) Such Easement or Agreement amendment will be required prior to Forest Project registration with the Reserve.

The following are exceptions to the Easement or Agreement amendment requirement:

- Forest projects that are listed by Monday, December 12, 2011 will not be required to amend their Easement or Agreement.

Attachment B, referenced in the above language, reads as follows:

DRAFT LANGUAGE: CONSERVATION EASEMENT AMENDMENT CLARIFYING PROJECT DEVELOPER AS OWNER OF CARBON OFFSET CREDITS

“TITLE TO CARBON OFFSET CREDITS. The [grantor/grantee] (i.e., project developer): hereby retains, owns, and holds legal title to and all beneficial ownership rights to the following (the “Project Reductions”): (i) any removal, limitation, reduction, avoidance, sequestration or mitigation of any greenhouse gas associated with the Property including without limitation Climate Action Reserve Project No. [____] and (ii) any right, interest, credit, entitlement, benefit or allowance to emit (present or future) arising from or associated with any of the foregoing, including without limitation the exclusive right to be issued carbon offset credits or Climate Reserve Tonnes (CRTs) by a third party entity such as the Climate Action Reserve.”

Background and Rationale

In defining Forest Owner, the FPP does not explicitly define what rights an entity must hold to act as a Forest Owner for the purposes of undertaking forest carbon projects with the Reserve in order to be issued CRTs from these projects. While the protocol does not explicitly state the rights an entity must possess to act as a Forest Owner, the intent is that they hold at least some control over the forest carbon (i.e., an ability to effectuate change with respect to the carbon stocks). This definition of Forest Owner is implied through the following statement contained in Section 2.2 of both versions 3.1 and 3.2:

In some cases, the Reserve may determine that an entity or individual that is not the owner in fee nonetheless does have a complete and perpetual interest in the trees on the property that allows for complete management of the trees and sufficient access rights to the property, such that it is the appropriate entity to execute the Project Implementation Agreement.

The notion that the Forest Owner also controls (or owns) at least some of the forest carbon (if not all of it) is implied in the term, “Forest Owner.” Where a party does not appear to actually control any forest carbon, it is not appropriate-- absent compelling assurances, such as an amendment to a pre-existing Easement or Agreement or inclusion of such language in the first instance—to allow such an individual or entity to proceed as the Forest Owner for purposes of undertaking a forest project. In such instances, the Forest Owner should have received explicit approval from the other party/ies to the Easement or Agreement to undertake the forest project and receive any carbon credits associated with a forest project.

Explicitly including language in the Easement or Agreement that a carbon project is contemplated, and identifying which party to the Easement or Agreement may receive credits for the carbon project, minimizes the risk of a disagreement over the right to be issued carbon credits later; reduces the likelihood of incompatible activities on the project site; and helps prevent overpaying for the Easement or Agreement by incorporating (conceptually, if not concretely) the potential revenue of the carbon project into the purchase price of the Easement or Agreement. This last reason is particularly important in the context of an Easement or Agreement where public funds are involved so as to mitigate the risk that public funds are used for conservation or sequestration activities on forest lands that would otherwise have occurred even in the absence of those funds due to carbon credit revenues. Regardless of whether public funds were utilized in the negotiation of the Easement or Agreement, acknowledging within the actual Easement or Agreement itself that carbon credits and a carbon project are contemplated and permitted should mitigate concerns relating to additionality.

The Updated Policy

An Easement or Agreement must make explicit that the Forest Owner has the right to be issued any and all carbon credits that may flow from the forest project. If the other party/ies to the Easement or Agreement (i.e., the party/ies not undertaking the forest project) is/are not willing to amend the Easement or Agreement to grant this right with respect to the forest carbon controlled by this/these other party/ies, the encumbrances placed by this/these other party/ies on the forest carbon must be considered a legal constraint when modeling the baseline, and the Forest Owner may only receive CRTs for the carbon reductions above and beyond this modeled baseline.

Sample language for inclusion in the Easement or Agreement, which is essentially the same as the language provided in the Reserve's September 12, 2011 Forest Project Announcement as Attachment B, follows:

"TITLE TO CARBON OFFSET CREDITS. The [grantor/grantee- i.e., whichever party to the Easement or Agreement is the Forest Owner]: hereby retains, owns, and holds legal title to and all beneficial ownership rights to the following (the "Project Reductions"): (i) any removal, limitation, reduction, avoidance, sequestration or mitigation of any greenhouse gas associated with the Property including without limitation Climate Action Reserve Project No. [____] and (ii) any right, interest, credit, entitlement, benefit or allowance to emit (present or future) arising from or associated with any of the foregoing, including without limitation the exclusive right to be issued carbon offset credits or Climate Reserve Tonnes (CRTs) by a third party entity such as the Climate Action Reserve."

Applicability

A Forest Project utilizing Forest Project Protocol (FPP), versions 3.1 or 3.2, that has an Easement or Agreement that was not listed as of December 12, 2011 must comply with the Reserve's September 12, 2011 email requirements, as clarified herein.