



June 8, 2009

Climate Action Reserve
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RE: Stakeholder Comments Regarding Proposed Draft Project Implementation Agreement and Consequences for Reversals and Early Termination

As a stakeholder and investor, we would like to commend CAR for promoting scientifically rigorous protocols which reliably demonstrate both the atmospheric and additional benefits achieved by forestry offsets projects. We are impressed by the improvements already accomplished given the diversity of interests represented in the Working Group. As we understand, the current review process was initiated with the recognition that designing feasible and effective forest project requirements for all landownership types is critical for meeting the goals of the Reserve and providing a framework for state and/or federal regulatory entities. The purpose of this particular correspondence is to express several concerns and suggest alternatives regarding specific aspects of the draft Project Implementation Agreement (PIA) and the consequences for reversals and early termination document released for public comment on June 2nd.

Equator believes the following strategies would expand the ability for the largest number of landowners possible to initiate forest carbon projects and thus ensure the greatest environmental impact on the aggregate:

- Endorse the permanence of forest based offsets by allowing issued credits to be **compensated on a one to one ratio.**
- Reinforce that forestry offsets are equivalent to all other offsets by allowing the Reserve to be **compensated with any issued tons from any offset type.**
- Increase landowner participation by **requiring identical replacement requirements from improved forest management projects as all other forest project types.**
- **Alleviate the Reserve's responsibility to determine the attainability of replacement forestry offsets,** eliminating the need to rely on third party transactions beyond the Reserve's control in order to enforce PIA requirements.
- Expand program safeguards by permitting **the PIA to contain dispute resolution mechanisms that ensure equal protection for all interested parties.**
- Reaffirm the rights of project participants by **evenly distributing all legal damages and expenses arising from disputes related to this Agreement.**
- Allow the **PIA to be subordinate to any other mortgage or title against the project land** base, since making it superior would hinder participation by commercial landowners who have debt on their land because refinancing and or replacing such debt is customary business for these landowners.
- Provide project proponents their appropriate contractual rights by indicating that **successful completion of early project termination requirements will automatically remove future obligations and invalidate the PIA.**
- Establish a defined program for landowners to **demonstrate sustainable long-term management requirements through public agency endorsement and supervision.**



Equator is pleased by the Reserve's recognition that including a provision for early termination of the PIA is essential to promote widespread landowner program participation. The ability for early termination of the PIA provides landowners with the necessary flexibility and assurance to realize the full future value of their asset while preserving the environmental integrity of the registry through a replacement requirement. Although Equator believes that it is not likely that an early termination provision would be highly utilized due to disincentives such as forfeiture of associated transaction fees, it is critical that the guidelines for this option are equitable to both project developers and to the Reserve. We are deeply concerned that the remedies for an early termination provision be guided by science and focused on securing the permanency of emissions reductions credited by the Reserve. Providing the ability for **early termination of the PIA in instances where the registry can be made whole** achieves both of these aims. In other words, requiring project developers to replace all issued credits to terminate a project early ensures that the project's realized atmospheric benefits are permanently protected.

Further, allowing issued credits to be **compensated on a one to one ratio** not only ensures the atmospheric integrity of forest carbon projects by guaranteeing that any sequestered carbon that may be reemitted would be balanced by a compensated offset, but also provides likely additional benefits in cases where the atmosphere experiences increased carbon reductions from projects that terminate early, but do not actually reverse the sequestration that has accumulated. Therefore, Equator believes the suggested replacement penalty ratio as a consequence for early termination is unnecessary and creates a barrier for landowner participation by placing undue burden on forest carbon project developers. A requirement to compensate the Reserve beyond the quantity of credits issued to a project lacks scientific support as each and every certified emission reduction is replaced regardless of any possible miscalculations or inaccuracies in credit delivery resulting from the strategy of averaging project baselines.

In addition, the Reserve has the opportunity to support forest based emissions reductions by reinforcing that forestry offsets are equivalent to all other offsets by allowing **compensation with any issued tons from any approved offset type**. A forestry offset has the same carbon benefit as any other offset type, and it is critical to secure extensive landowner project development that the Reserve's replacement requirements clearly illustrate this fact. Moreover, **requiring identical replacement from improved forest management projects as all other forest project types** is especially critical to the goal of increased landowner participation as many potential participants are likely to develop this type of project. Also, this strategy avoids creating likely contentious circumstances by **alleviating the Reserve's responsibility to determine the attainability of replacement forestry offsets**. The Reserve lacks the right to force project participants to transact issued forestry credits or to regulate sales prices and thus would not be able to determine the actual availability of forest carbon credits beyond merely confirming their existence.

The Reserve's unilateral ability to find a project developer in breach of the PIA presents another likely barrier to landowner participation. It is customary for agreements such as **the PIA to contain dispute resolution mechanisms that ensure equal protection for all interested parties**. Further, the Reserve has the opportunity to **reaffirm the rights of project participants by evenly distributing all legal damages and expenses arising from disputes related to this Agreement**. The inability to justify project activities or defend against inaccurate claims will deter landowners from developing program participation. Additionally, the Reserve's right to terminate the PIA at their sole discretion regardless of proper fulfillment of termination remedies again denies project proponents of appropriate contractual rights. Project developers require the confidence that **successful completion of early project termination requirements will automatically remove future obligations and**



invalidate the PIA in order to participate in forest carbon projects. Also, many landowners depend on the ability to restructure their debt to achieve their management goals. **Requiring the PIA to subordinate any other mortgage or title against the project land base would eliminate landowner's ability to participate in forest carbon projects by preventing the refinancing or replacement of existing debt.** We believe the current remedies for early termination of the PIA would significantly prohibit meaningful participation by landowners in California as well as throughout the United States. A protocol which allows for only small boutique projects that fit narrow ownership types will prevent the necessary scale of participation to adequately address the problems of climate change.

Another issue vital to landowner participation is the establishment of a practical method for all project proponents to demonstrate sustainable long-term forest management. While nationally recognized certifications such as Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI) are realistic strategies for some landowners, these programs are extremely costly and are not feasible for many potential forest project developers. Commonly, these landowners do manage their forests sustainably, but do not possess the capital to obtain expensive certification. It is unreasonable to expect landowners to participate in forest projects with high-priced requirements that extend beyond their financial means. Accordingly, the Reserve would promote greater program participation by **establishing a method for public agencies to confirm landowner compliance with sustainable management requirements**. Federal, state and local authorities have the experience and expertise to identify sustainable management practices and could provide the Reserve with equal assurances as private certification schemes.

It is our belief that if the current forestry stipulations remain in the PIA, the forestry sector would not be able to play a significant role in achieving the goals of the Reserve. Instead, CAR has the unique opportunity to promote forestry as a credible emissions reduction strategy. Forest carbon projects are invaluable for their ability to mitigate carbon emissions as well as for the additional associated environmental benefits. However, realizing the emissions reductions and other co-benefits of forestry projects depends on ensuring the capacity for widespread program participation by providing program flexibility for all landowners and endorsing the equal value of forestry offsets to all other emissions reductions. We appreciate you considering our comments and would welcome the chance to discuss these issues further with you should you have any additional questions.

Sincerely,

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