

## THE CONSERVATION FUND

Comments of The Conservation Fund to the Revised Forest Project Protocol Draft, December 2008 (“Draft Protocol”).

Thank you for the opportunity to review and comment on the Draft Protocol. The Draft Protocol represents an important and positive step in the ongoing development of a central role for forest-based carbon offsets that began with the adoption of the September 2007 Forest Protocol by CCAR and the Air Resources Board in October of 2008.

Since its adoption, the 2007 CCAR Forest Protocol has stimulated significant investments in California forest projects by early actors from all over the country. This enthusiastic response is powerful testimony to the important role that forests can play in responding to climate change, and the confidence that markets place in offsets established under a robust, credible and transparent methodology.

Overall, we believe that the Draft Protocol, with some changes and clarifications outlined below, will serve not only to sustain, but also to increase, the momentum created by CCAR and the Air Resources Board’s leadership in this important area.

As an observer of many of the workgroup’s deliberations over the last 9 months, I would like to express my appreciation for the extraordinary investment of time and effort the workgroup and CCAR have made to prepare the Draft Protocol. Their hard work is evident throughout the document.

### **General Comments:**

**General Comment 1:** CCAR should incorporate into the Draft Protocol its previously stated policy that projects verified prior to the adoption of the Draft Protocol may continue to be verified, accepted and credited by CCAR in accordance with the Current Protocol. As a corollary to this principle, CCAR should also indicate that it will treat equally all CRTs verified and listed on the Reserve regardless of the forest protocol under which they are verified.

Discussion: CCAR and ARB’s adoption of the Forest Project Protocol, (“Current Protocol”) has stimulated an active market for CCAR forest-based carbon offsets.<sup>1</sup> Since the adoption of the Current Protocol, The Conservation Fund has donated or contracted to sell more than 630,000

---

<sup>1</sup> We can also say with confidence that CCAR forest offsets command a significant premium over those verified under any other standard. New Carbon Finance’s Voluntary Carbon Index for Sept. – Oct. 2008 reports CCAR offsets trading between \$10.10 and \$10.80 ton, a price significantly higher than that enjoyed by any other offset standard. The NCF report goes on to say: *“Another trend... is the flight to quality, representative of an overall maturation of the market as well as the increasing role of pre-compliance activity in the voluntary markets. This is demonstrated in the reported volume of CCAR and Gold Standard credits, which account for 58% of the volumes tracked.”* (Emphasis added). [Note that the Gold Standard does not have a protocol for forest-based offsets.]

Carbon Reduction Tons generated by its Garcia River Forest project to eight different counterparties. Of these CRTs contracted for sale, more than 230,000 CRTs from vintages 2005 through 2007 have been delivered to donees or buyers through the Reserve. The remaining CRTs are contracted to be delivered for vintages 2008 through 2012. These sales constitute the entire projected volume of the Garcia River Forest (less a reserve amount) through 2012. The Fund is currently negotiating the sale of offsets from our Big River/Salmon Creek projects, for which we received initial verification in December 2008. Buyers are interested in vintages from 2007 through 2015.

During the course of negotiating these “forward” sales, we were confronted with the question of how (and whether) to contract for such future sales in light of inevitable changes to the protocol. This question was tendered to CCAR in early 2008, and we were told then, and subsequently, that projects verified prior to the adoption of a revised protocol may continue to be verified under the Current Protocol, and that CCAR will review, accept and credit CRTs in accordance with that protocol notwithstanding the adoption of a new protocol. It is important that the final form of the Draft Protocol include an explicit and unequivocal statement of this principle. Such a statement will provide critical assurance to participants in the current marketplace that there will be continuity and consistency in the transition to any new forest protocol.

Finally, a clear articulation of the principle that all CRTs will be treated equally by CCAR is essential to maintaining confidence in the “early action principle”. Encouraging early action is fundamental to California’s response to climate change (*see, e.g.*, Health and Safety Code 48210) and other emerging programs to combat global warming.<sup>2</sup> This principle reflects an understanding that stimulating immediate changes in behavior and encouraging innovation is an essential precursor to the adoption of regulations. These benefits clearly have been realized since the adoption of the Current Protocol. Voluntary early action programs like Pacific Gas and Electric’s ClimateSmart®, and the market’s enthusiastic acceptance of forest-based offsets verified under the Current Protocol and brought to market by The Conservation Fund, the Pacific Forest Trust and others, have provided a valuable demonstration to CCAR, ARB and others that forests can, and must, play a meaningful role in a final regulatory program. The early action principle, and the positive activities it has stimulated, would clearly be diminished if the earliest of actions in support of forest-based offsets were not recognized equally with actions taken under subsequent protocols.<sup>3</sup>

**General Comment 2.** CCAR should release for public comment and review the Project Implementation Agreement (“PIA”) referenced in **Section 3.3** of the Draft Protocol.

---

<sup>2</sup> See for example, *Blueprint for Legislative Action*, United States Climate Action Partnership, January 2009 at page 15.

<sup>3</sup> We understand that the recognition of voluntary reduction or offset methodologies does not in any way guarantee that these offsets can be used for compliance purposes. We also understand that the “market” may distinguish between offsets verified under different protocols or methodologies. However, the market reaction will be heavily influenced by any distinctions drawn by CCAR or ARB.

Discussion: The PIA lies at the heart of the Draft Protocol’s permanence mechanism. Recorded agreements affecting real property, such as the PIA, may have very significant consequences to a landowner’s ability to manage, sell, finance or gift property to their heirs. Taking public comment would ensure that the PIA is generally acceptable to project developers and landowners before it becomes embedded in the Draft Protocol. It is therefore important that there be an opportunity for public review and comment of its contents.

It is also critically important that the PIA be identical for all projects, for several reasons. First, all project developers need to know that they will be treated equally with respect to the substantive provisions of the PIA. Leaving open the possibility that CCAR could negotiate different terms with different landowners presents the possibility of creating competitive disadvantages among projects. Second, landowners should know what will be required of them under the PIA before they begin the process of developing a project. Otherwise, they could spend considerable time and money only to reach an impasse over the terms and conditions of the PIA. Finally, significant variation of contract terms will hinder the eventual development of an insurance product that many see as an important, perhaps even a preferred, permanence mechanism in the future.

### **Specific Comments:**

**Specific Comment 1.** The provision in **Section 3.2** allowing for a project initiation date as early as 2001 does not seem to conform to the additionality principle stated in **Section 3.1**.

Discussion: **Section 3.1** states in part that:

“The Reserve strives to register only projects that yield GHG reductions that are additional to any that would have occurred in the absence of the Reserve’s programs and, more generally, a market for GHG reductions.”

“For forest projects, ‘additionality’ determined by reference to a discrete, *forward-looking*, quantitative baseline estimate of business-as-usual carbon stocks....” (Emphasis added.)

There were very few indications that programs or markets would emerge for forest-based GHG reductions in 2001. Accordingly, allowing projects to elect an initiation date as early as 2001 is inconsistent with the principle that GHG reductions should be based on changes in behavior that are planned and implemented in response to a program and a market for offsets. At a minimum, it would seem appropriate to require a project developer seeking such an early initiation date to provide evidence that their project was initiated in response to a reasonable expectation of an emerging market for forest based GHG reductions.

**Specific Comment 2.** **Section 6.2.1.1**, Estimating the Baseline, subparagraph 3.a, raises additionality issues by seeming to allow a project developer to ignore conservation easements and other binding legal restrictions entered into before project listing.

Discussion: **Section 6.2.1.1**, Estimating the Baseline, subparagraph 3.a, states:

“Previously existing legally binding and irreversible requirements are accepted (*sic*) if they were put in place after the historical initiation dates as identified in Section 3.2.”

If the drafters intended the word “accepted” to be “excepted”, then this provision raises the same additionality concerns discussed in the preceding comment. It is not clear what atmospheric benefit is obtained by allowing a landowner to ignore binding legal restrictions that constrain their management options.

**Specific Comment 3.** While The Conservation Fund has addressed permanence and permanence risk in its contracts with buyers, the permanence mechanism described in **Section 7** is an important additional tool for ensuring permanence of CRTs and we urge its inclusion in the final form of the Draft Protocol, subject to the following recommendations.

Discussion:

1. As discussed in **General Comment 2**, the form of Project Implementation Agreement should be subject to public review and comment before final approval of the Draft Protocol.
2. As discussed in **General Comment 2**, to insure fairness, transparency and its utility to the underwriting of a CRT insurance product there should be a single form of Project Implementation Agreement for use by all forest projects. The final form of the PIA should be included as an appendix to the final version of the Draft Protocol.
3. The mechanism for implementation of the buffer pool and the consequences to a project of an unintended reversal needs to be clarified. Specifically,

Section 7.1 states:

“Project owners *must* compensate for reversals by transferring to the Reserve a number of CRTs equal to the *total number of CO<sub>2</sub>- equivalent tons that were reversed*. The CRTs used to compensate for a reversal *may* initially be taken out of the Reserve buffer pool as described below.” (Emphasis added).

Section 7.2.2 states:

“In the event that a reversal of credited reductions occurs, the project’s own buffer pool CRTs will be used first to compensate for the reversal. If the reversal exceeds the buffer pool for the project, the Reserve *will draw* proportionally from other pooled buffers to *fully compensate* the loss.” (Emphasis added).

... [A] project may terminate if a reversal reduces the project activity’s live standing forest carbon stocks below the standing live stocks established for the baseline. If the project is not terminated, the project can begin creating reductions immediately. The project does not have to rebuild the project stocks that existed prior to the reversal, other than restoring the buffer pool for any remaining (non-reversed) reductions. This shall be

done based on calculating the total project buffer ton percentage that existed prior to the reversal and applying it to the remaining reductions....”

The provisions of **Section 7.1** and **7.2.2** are hard to reconcile. **Section 7.1** suggests that a project owner will be liable to replace *all* reversed CRTs, even if that amount exceeds the project’s aggregate contribution to the buffer pool. On the other hand, the first paragraph of **Section 7.2.2** suggests that the buffer pool will provide full compensation for a loss. In addition, the second paragraph of **Section 7.2.2** suggests that a project that has experienced a reversal may continue<sup>4</sup> and does *not* have to rebuild the project stocks, and its only obligation is “restoring the buffer pool for any remaining (non-reversed) reductions.” It is unclear how these latter two provisions can be squared with **Section 7.1**, which seems to leave the project owner on the hook for all reversed CRTs. Finally, it is unclear what is meant by “remaining (non-reversed) reductions”. Are they reductions remaining in the project’s account on the Reserve after the reversal? Do they include reductions previously transferred to 3<sup>rd</sup> parties?

In light of these ambiguities, the mechanism for implementing the buffer pool, and the consequences of a reversal should be more clearly state. Our opinion is that buffer CRTs contributed by a project should (1) be given a designation by the Reserve indicating their status, (2) transferred irrevocably to the Reserve for administration of the buffer pool, and (3) constitute the project owner’s sole obligation for an unintended and unavoidable loss of CRTs.<sup>5</sup> If the risk assessment matrix in Appendix C is well calibrated, the total of the buffer CRTs should exceed the reversals experienced by the participating projects.<sup>6</sup>

Two additional measures would strengthen the reliability of the buffer pool mechanism. First, CCAR should require projects at the time of their initial verification to make an additional contribution to the buffer pool equal to 100% of the contribution required by application of the risk assessment mechanism proposed in **Section 7.3** of the Draft Protocol. For example, if a project’s initial risk assessment prescribes a buffer contribution of 20%, the project’s contribution for the first year during which CRTs are issued would be 40% of the CRTs issued. This additional contribution would be reimbursed to the project after its first required re-verification if the project had no reversals during the period and no change in its overall risk rating.

Second, CCAR should allow projects verified under the Current Protocol to elect to participate in the buffer pool on the following conditions:

- The project is otherwise in good standing with the Reserve.
- The project executes and delivers the Project Implementation Agreement.

---

<sup>4</sup> The effect of a project termination due to a reversal appears to be unaddressed.

<sup>5</sup> The buffer pool is of little use to a project owner if they must compensate the buffer pool for all CRTs that are reversed, as is suggested in Section 7.1.

<sup>6</sup> Clearly, reversals that are the result of intentional acts or negligent omissions of a project owner should not be limited to the total of their contributions to the buffer pool.

- The project contributes buffer CRTs equal to the total amount that would have been assessed under **Section 7.3** from the date of project initiation to the date of execution of the Project Implementation Agreement.
- The project commits to seek verification under the forest protocol in effect on the date of execution of the Project Implementation Agreement within 6 years.

Allowing the inclusion of projects verified under the Current Protocol would provide a relatively large and immediate infusion of offsets to the pool, thereby contributing to its utility and initial viability.

Respectfully submitted,

Chris Kelly  
California Program Director  
January 19 2009