

GROWING OPPORTUNITIES IN THE CARBON FIELD FOR AGRICULTURE AND FORESTRY

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By: Ankur K. Tohan, Marisa N. Bocci, Alyssa A. Moir, Matthew P. Clark, Natalie J. Reid, Kellen J. Holgate

Environmental sustainability and carbon management are increasingly part of the lexicon in corporate boardrooms around the world. Private industries around the globe are investing in voluntary efforts to manage their carbon footprint to satisfy corporate mission statements, account for customer demand, and attract investment. No less surely, many of these industries are seeking to get ahead of potential compliance obligations in anticipation of carbon regulatory regimes. On a parallel track, nations, states, and municipalities are grappling with thorny questions about how and whether to regulate carbon, the result of which has been a patchwork regulatory and policy initiatives.

The agricultural and forestry industries are no strangers to these dynamics, and have been leaders in sustainability practice, standards, and accountability.¹ As such, agriculture and forestry are well positioned to leverage new opportunities in the carbon management sector. Some of these opportunities include carbon sequestration, carbon banking, and climate-friendly farming and forestry practices. In addition, as market appetite for environmentally responsible investments increases, the agricultural and forestry industries may capitalize on shifting investor demands seeking eco-friendly returns.

This alert gives a brief overview of trends in the public and private sectors and then digs into more details regarding specific policies and efforts around carbon.

TRENDS IN CARBON POLICY IN THE PUBLIC SECTOR

The growing trend towards carbon-conscious policies are clear in the public and private sectors. In the public sector, legislative proposals signal an interest in carbon conscious policies. For instance,

- In March 2020, Washington legislators passed H.B. 2528 recognizing and supporting the efforts by timber companies to reduce carbon emissions through restoration and other management practices.²
- In May 2020, California legislators introduced the “Natural and Working Lands” amendment to the 2006 California Global Warming Solutions Act, which seeks to take advantage of the ability of lands to sequester carbon.³
- In June 2020, the U.S. Senate introduced the Growing Climate Solutions Act,⁴ which seeks to create a role for the United States Department of Agriculture (USDA) in the emerging carbon credit marketplace and to allow owners of agricultural, forestry, and ranch lands to participate in these markets.

While it remains to be seen whether these bills will become law, they certainly demonstrate an increased focus on carbon policy.

State Carbon Initiatives

Focus on climate change and carbon credits is reflected at the state and local levels, where agencies and municipalities are seeking to manage their carbon footprint through a variety of policies ranging from low carbon fuels, building practices, energy portfolio standards, and electrification. One example is California's "Natural and Working Lands" amendment to the 2006 California Global Warming Solutions Act (the Amendment).⁵ The California legislature is considering a bill aimed at reducing greenhouse gas (GHG) emissions from "working" and "natural" lands by identifying an overall climate goal for these properties to sequester carbon and reduce greenhouse gas emissions.⁶ The bill would declare that natural and working lands are a priority for the California legislature and ensure that such lands are a major component of the state's climate plan.

While the Amendment is currently on hold in the senate, it reflects a growing trend within the agricultural and forestry industries towards sustainability as a business practice.⁷ With increasing support (and pressure) from state and local governments to reduce carbon emissions, the trend towards sustainable land management practices is likely to continue to grow.

In addition, Washington recently enacted a law recognizing the forest products industry as a net sequesterer of carbon and setting a state policy of basing forest carbon accounting on international standards.⁸ This is a significant step toward integrating forestry into Washington's emerging carbon economy and establishing a policy foundation for expanding the role of the forest products industry as part of Washington's global climate response.

Growing Climate Solutions Act

The goal of the Growing Climate Solutions Act (the Act) is to facilitate the participation of farmers, ranchers, and private forest landowners in greenhouse gas credit markets while encouraging sustainable, climate-friendly farming and forestry practices.⁹ The Act seeks to accomplish this by creating the Greenhouse Gas Technical Assistance Provider and Third-Party Verifier Certification Program (the Verifier Program), to be administered by the USDA.¹⁰

Under the Act, the USDA would vet private third-party assistance providers to ensure that those firms can (1) provide technical assistance to farmers, ranchers, and private forest landowners on generating greenhouse gas credits, and (2) verify that greenhouse gas credits produced by these agricultural entities meet defined standards. The Act contemplates a USDA badge of approval (e.g., "USDA Certified") for technical assistance providers that meet certain requirements.¹¹ The USDA would also administer a new website to serve as a "one-stop shop" for potential market participants.

In addition to the Verifier Program and website, the Act would also create an advisory council made of up agricultural experts, scientists, producers, and others to advise the Secretary of Agriculture with respect to the certification program. The Act would require the USDA to report to Congress regarding further development in this policy area.¹²

The roster of organizations and groups that have signaled support for the Act is notable in that it represents a broad spectrum of climate and industry perspectives.¹³ From the conservation perspective, supporters include environmental nonprofits like the National Wildlife Federation, World Wildlife Federation, and the Nature Conservancy. Existing private technical assistance providers, like IndigoAg, also support the legislation. From the producer perspective, support comes from agricultural, dairy and forestry trade groups, co-ops, and large producers. Sustainably minded technology companies have also signaled their support for the legislation.¹⁴

The Act shows a legislative intent to pave the way for farmers, ranchers, and private forest landowners to participate in the expanding carbon credit marketplace. By creating a standard program for certifying agricultural carbon credits, the Act may allow landowners to monetize unproductive land by leveraging its potential to sequester or reduce greenhouse gases. While the Act is currently in the Senate Committee on Agriculture, Nutrition, and Forestry, if it passes out of the Senate, this will be a clear indication that sustainable land management practices are a growing federal legislative priority.

TRENDS IN CARBON POLICY IN THE PRIVATE SECTOR

In the private sector, investors and corporations are increasingly climate conscious. For instance, a recent high-level survey shows that institutional investors and advisors are revising their environmental, social, and governance (ESG) policies to align with the market preference for carbon-neutral policies,¹⁵ and many of the world's largest investment managers have responded by incorporating carbon-specific policies into their sustainability standards.¹⁶ Corporations are also investing more and more in renewable energy as well as carbon reduction efforts, including participation in the carbon credit marketplace.¹⁷

Carbon credit credits are one way to address concerns about sustainability. Entities ranging from the 2014 Winter Olympics, NASCAR, the ESPY Awards, Stanford University, Disney, Microsoft, and Chevrolet have participated in voluntary carbon markets to offset their carbon footprint.¹⁸ The mechanics of these markets are described below; further, some examples of companies that are working to leverage the emerging carbon credit marketplace to meet their sustainability goals.

Carbon Credit Markets

Carbon credit markets are market-based means of incentivizing reduction in carbon emissions. There are two broad categories of carbon credit markets: compliance and voluntary. Compliance markets stem from governmentally imposed limits on carbon emissions. For example, in California's Cap and Trade Program,¹⁹ the State of California auctions "authorizations" to emit carbon. Market participants can then buy and sell authorizations with each other. Emitters can also purchase a limited number of carbon "offsets" from landowners, farmers, and other firms that have altered their practices in such a way that their carbon emissions are reduced. Emitters pay for the privilege of generating greenhouse gases, and landowners are paid to implement practices that reduce carbon emissions.²⁰ In theory, these dual incentives lead to lower carbon emissions across the board. On the other hand, voluntary carbon credit markets are not imposed by a government authority. Rather, buyers in voluntary markets seek to offset carbon consumption for altruistic or market reasons.²¹ Similar to compliance markets, an "offset" or credit is created when a landowner alters its practices in a way that reduces its carbon footprint.²²

Both compliance and voluntary markets create demand for carbon offsets. The complex process of generating and marketing carbon credits is a mature practice in some resource industries. Starting in 2009, the Climate Action Reserve (Reserve) created a voluntary carbon market in which owners and developers of carbon offset projects can register project information and demonstrate GHG emission reductions.²³ Those emission reductions are verified as "Climate Reserve Tonnes" (CRTs) that can then be bartered in the offsets marketplace.²⁴ Each CRT represents one metric ton of carbon dioxide equivalent emissions, reduction, or sequestration. Prior to the issuance of any CRTs, projects must be verified.²⁵ To deal in the Reserve's voluntary carbon market, a project developer must first select an approved third-party verifier or verification body. That verifier will then submit a

notification of verification activities and conflict of interest form to the Reserve. After reviewing the form, the Reserve sends approval to the verifier who conducts verification activities on the project to evaluate a project's ongoing eligibility and the GHG emissions, reductions, or removals to report to the Reserve. A verification document is prepared by the verifier for the project developer, who then submits the document to the Reserve. Once approved, the Reserve issues the appropriate amount of CRTs based on the results from the verification process.²⁶

However, as mentioned above, the carbon credit market is still largely unregulated. In the absence of federal guidance, many industry participants have developed additional strategies to create and exchange carbon credits.

Industry Examples

Some private consultants have attempted to fill the regulatory gap by assisting producers in their implementation of conservation practices as well as facilitating the purchase and sale of carbon credits. IndigoAg has created a system to help encourage and cultivate regenerative farming practices.²⁷ Their carbon sequestration program outlines regenerative-farming practices that lock carbon in the soil and then rewards those farmers for successful implementation of those practices.²⁸ To catalyze the program, IndigoAg created a carbon marketplace where growers are paid for every metric ton of carbon dioxide sequestered. Through these initiatives, IndigoAg created a global program for carbon trading that serves as a voluntary market. Notably, IndigoAg has stated its intent to transition its credits to be eligible for trading in compliance and regulatory markets.²⁹

BP plc (BP) has actively engaged in global energy trading program to implement carbon-conscious policies. As part of its "Target Neutral" Program, BP has committed to preserving and growing forest lands in its Finite Carbon-Colville Improved Forestry Management Project by purchasing carbon credits generated from half a million acres of forest land in Washington.³⁰ Outside of Washington, BP has initiated the process of purchasing carbon credits from projects around the world that are reducing emissions, with particular focus on approved projects from the United Nations' independent selection forum, the International Carbon Reduction and Offset Alliance.³¹ With initiatives ranging from carbon credits to investments in carbon sinks, BP is positioning itself to use these carbon credits to advance its future GHG benchmarks or trade them like financial assets on an open, voluntary market.

CONCLUSION

The agricultural and forestry industries are well-positioned to capitalize on the growing trend toward carbon management and ESG-based investments. Federal and state policies and voluntary programs are evolving. Getting abreast or ahead of these trends present opportunities for agricultural and forestry interests to ensure that carbon-centric sustainability measures and regulations are suitable to industry practice and growth. Innovators within ranching, agriculture and forestry, and companies that invest in these sectors, are in a prime position to capitalize on the economic and ecological opportunities in carbon management.

FOOTNOTES

¹ Forestry and agriculture non-profits are actively working to develop sustainable and carbon-friendly practices for each industry. For instance, the Sustainable Forestry Initiative is working to create certification standards for sustainable forestry, and Leading Harvest is likewise developing sustainable farmland practices in the agricultural

sector. See Sustainable Forestry Initiative, *Standards*, here. (last visited Oct. 5, 2020); Leading Harvest, *About the Leading Harvest Farmland Management Standard*, here (last visited Oct. 5, 2020).

² *Senate Passes Bill to Align Timber Industry with State Carbon Goals*, THE DAILY CHRONICLE (Mar. 7, 2020), here.

³ Amendment to California Global Warming Solutions Act of 2006: Climate Goal: Natural and Working Lands, Cal. S. Assemb. B. 2954, 2019–2020 Leg., Reg. Sess. (Cal. 2020) [hereinafter “Assemb. B. 2954”].

⁴ Growing Climate Solutions Act, S. B. 3894, 116th Cong. (2019–2020), here.

⁵ See Assemb. B. 2954, *supra* note 2.

⁶ STATE OF CAL. ASSEMBLY COMMITTEE ON NATURAL RESOURCES REPORT, Assemb. B. 2954, at 5 (May 13, 2020).

⁷ See, e.g., Tyson Foods, *Our Commitment to Sustainability*, here (last visited Oct. 5, 2020); Leading Harvest, *Membership*, here (last visited Oct. 5, 2020); see also, e.g., We Are Still In, *Microsoft’s Climate Action Contribution*, here (last visited Oct. 5, 2020).

⁸ See PR Newswire, *Gov. Inslee Approves Forestry Industry Carbon Bill*, YAHOO!FINANCE (Mar. 25, 2020), here.

⁹ H.R. 7393, Growing Climate Solutions Act of 2020, 116th Cong. (2019–2020) at 2 [hereinafter “Climate Solutions Act”].

¹⁰ Currently, the USDA maintains a reference manual to provide an understanding of how environmental credit trading can be used to “increase the provision of conservation and ecosystem services by agriculture.” See USDA, NATURAL RESOURCES CREDIT TRADING REFERENCE (Oct. 2011), here. However, the Act goes a step further by seeking to turn this guidance into a certification program.

¹¹ Growing Climate Solutions Act at 5–6.

¹² Growing Climate Solutions Act at 12–13.

¹³ See U.S. SENATE COMM. AG., LEADERS AT SENATE AG HEARING URGE PASSAGE OF BIPARTISAN GROWING CLIMATE SOLUTIONS ACT (June 24, 2020), here. A full list of the Act’s supporters is available here.

¹⁴ See Mike Braun, *Growing Climate Solutions Act set to be introduced in U.S. Senate* (June 4, 2020), here.

¹⁵ See Harvard Law School Forum on Corporate Governance, *Institutional Investor Survey 2020* (Mar. 25, 2020), here.

¹⁶ See, e.g., Black Rock, Inc., *Sustainability as BlackRock’s New Standard for Investing*, here (last visited Oct. 5, 2020).

¹⁷ See, e.g., Brad Smith, *Microsoft Will Be Carbon Negative by 2030*, OFFICIAL MICROSOFT BLOG (Jan. 16, 2020), here.

¹⁸ See Climate Action Reserve, *Voluntary Offsets*, here (last visited Oc. 5, 2020).

¹⁹ See Cal. Health & Safety Code §§ 38500–38510.

²⁰ See Cal. Code Regs. tit. 17, Ch. 1, Art. 5, California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms.

²¹ For example, companies like TerraPass (terrapass.com) and CoolEffect (cooleffect.org) sell carbon offsets at retail to allow individuals and companies to offset carbon emissions from travel or other carbon emitting practices. Airlines are increasingly offering carbon offsets to customers as a way of mitigating the carbon impact of air travel. See, e.g., jetBlue, *Soaring Toward a Carbon-neutral Future*, here (last visited Oct. 5, 2020); United Airlines, *CarbonChoice Carbon Offset Program*, here (last visited Oct. 5, 2020).

²² ECOSYSTEM MARKETPLACE, VOLUNTARY CARBON MARKET INSIGHTS: 2018 OUTLOOK AND FIRST-QUARTER TRENDS 4 (Aug. 2018), here.

²³ The Climate Action Reserve is the North American offsets program of the California Climate Action Registry, established to “help ensure that the U.S. carbon market provides rigorously quantified environmental benefits while upholding integrity and financial value.”

²⁴ Each CRT is provided with title assurance and a unique serial number to assure that each metric ton is only counted and retired once.

²⁵ CLIMATE ACTION RESERVE, RESERVE OFFSET PROGRAM MANUAL 29-30 (Nov. 2019), here.

²⁶ Climate Action Reserve, *Voluntary Offsets*, here (last visited Oct. 5, 2020).

²⁷ IndigoAg, *Here's How Indigo Carbon Works*, here (last visited Oct. 5, 2020).

²⁸ IndigoAg, *The Terraton Challenge*, here (last visited Oct. 5, 2020).

²⁹ Lora Kolodny, *Indigo Ag Expands its Ambitions to Reward Farmers for Fighting Global Warming, Adds Moderna CEO to Board*, CNBC (Aug. 3, 2020), here.

³⁰ BP plc, *Carbon Sinks*, here (last visited Oct. 5, 2020).

³¹ BP plc, *BP Target Neutral Expands 2019 Carbon Offset Portfolio*, here (last visited Oct. 5, 2020).

KEY CONTACTS



ANKUR K. TOHAN
PARTNER
SEATTLE
+1.206.370.7658
ANKUR.TOHAN@KLGATES.COM



MARISA N. BOCCI
PARTNER
SEATTLE
+1.206.370.7638
MARISA.BOCCI@KLGATES.COM



ALYSSA A. MOIR
PARTNER
SEATTLE
+1.206.370.7965
ALYSSA.MOIR@KLGATES.COM



MATTHEW P. CLARK
ASSOCIATE
SEATTLE
+1.206.370.7857
MATT.CLARK@KLGATES.COM



NATALIE J. REID
ASSOCIATE
SEATTLE
+1.206.370.6557
NATALIE.REID@KLGATES.COM



KELLEN J. HOLGATE
ASSOCIATE
SEATTLE
+1.206.370.7803
KELLEN.HOLGATE@KLGATES.COM

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