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Kayla Stevenson

Jordan Wildish

Department of Ecology
Climate Pollution Reduction Program
PO BOX 47600
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Re: Informal Comment for Chapter 173-446 WAC — Cap and Invest Offsets – US Forest Protocol

Dear Ms. Stevenson:

The Tulalip Tribes thank you for the opportunity to submit the following comments on the Department of Ecology's draft rules for the Climate Commitment Act Program, Chapter 173-446 of the WAC.

We would first like to acknowledge and offer our appreciation for the hard work undertaken by Ecology staff to develop these proposed changes. Overall, the changes positively address many of the challenges in the existing protocol in ways that foster increased integrity, transparency, and accessibility for underrepresented market participants. Many of our comments should be viewed as supportive of the specific revisions and encourage integration into the adopted rule.

Executive Summary

The Tribes support the Department of Ecology's intent to strengthen methodological rigor and enhance the environmental integrity of forest offset projects. However, some proposed revisions could create unintended barriers to the participation of tribal landowners in particular. To maximize the involvement from Tribal Nations, small landowners, and underserved rural communities, adjustments will be essential to maintain project feasibility and ensure equitable program access. The Tulalip Tribes provide comments on specific proposed revisions, along with recommendations and suggestions.

Relevant Background on the Tribes

The Tulalip Tribes are the successors in interest to the Snohomish, Skykomish, Snoqualmie, and other allied bands signatory to the 1855 Treaty of Point Elliott. In the treaty, our ancestors ceded land in exchange for the recognition of our inherent rights and the guarantee from the United States that those rights would be protected and upheld into perpetuity. Included in those guarantees are the right to hunt, fish, and gather in our usual and accustomed grounds and on all open and unclaimed lands. We continue to exercise those rights today as we have since time immemorial, and offer these comments in the spirit of exercising those rights for future generations to come.

The Tribes currently provide natural resource management, including watershed restoration work and forest management, across a variety of lands within the Tulalip Reservation, the Quilceda Creek Watershed, the Snohomish River Basin, and the broader Washington region. Recognizing the importance of scalable growth opportunities within a finite land base, the potential to create a standalone carbon offset project or to potentially aggregate tribal lands with other lands for common carbon sequestration and economic development goals is a uniquely valuable opportunity, which is of interest broadly speaking to the Tribes. However, the Tribes' interests in the carbon sequestration arena continue to be driven by the same multi-generational view of preserving the environment that the Tribes' ancestors carried when they negotiated the 1855 Treaty of Point Elliott.

This background regarding the Tribes' approach to natural resource management and interest in carbon sequestration activities is offered as context for these comments and as an indication of the Tribes' multi-generational philosophical approach regarding the preservation of forests and watersheds so that future generations of Tribal citizens and our neighbors have a clean environment in which they can thrive as our ancestors did.

Structural Overview

These comments address the following issues:

1. Revision 2
2. Revision 3
3. Revision 5
4. Revision 6
5. Revision 7
6. Revision 8
7. Revision 12
8. Revision 14
9. Revision 15
10. Revision 16
11. Revision 18
12. Revision 19
13. Topics for Further Investigation
14. Topic 8

Detailed Comments

Revision 2: Revise IFM – private lands projects baseline quantification and crediting approach

The Tulalip Tribes support this revision but as discussed below, the Tribes are concerned that the proposed language could pose obstacles to small-scale projects, unless further changes are made. Overall, we believe this revision enhances program integrity and transparency, while generally reducing barriers for small forest landowners by eliminating the need for complex and expensive modelling processes. In particular, we support lowering the crediting period to 10 years to better reflect both typical harvest activities and changing conditions that impact the baseline. We are also generally supportive of proposed changes that allow the utilization of remote sensing tools. However, its use for dynamic baseline tracking requires high-resolution, calibrated, and costly data (in relation to LiDAR or drone imagery). However, for small landowners, the burden of acquiring and validating these datasets is a major feasibility hurdle, which could require landowners to incur additional costs, just as part of the feasibility process. Ecology could offset those costs by making such datasets publicly or easily accessible through a common State portal.

Generally speaking, other publicly available datasets derived from remotely-sensed data products (e.g., TreeMap, LANDFIRE) are often too coarse in resolution to capture stand-level variation required for crediting decisions. We recommend that baseline implementation be paired with robust uncertainty protocols and data availability standards, especially if remote sensing is involved. We conceptually support the proposed change to utilize the EVALIDator tool for the baseline, thereby ensuring more timely updates to common practice values in baseline calculations. This is a more adaptive approach than the existing protocol; however, we are not yet familiar enough with its application to fully support its adoption outright.

As it stands, the proposed revision lacks a clear pathway or pre-approved method for utilizing remotely sensed data products in small-scale projects. In practice, remote sensing for baselines could reduce field costs for participants with guidance and recommended sources. However, small-scale projects are particularly prone to uncertainties induced through remotely sensed data. Small-scale projects would require a clear, well-coordinated, and sponsored pathway to address this uncertainty to realize cost savings through remotely sensed data applications. We have been working on developing such a framework, and we particularly find the approach being developed by the University of Washington and the Precision Forestry Cooperative, with which we have been actively engaged in these efforts, to be enormously promising and encouraging.

In general, we are broadly supportive of adopting strategies that help reduce legal and financial constraints to baseline quantification. Overall, we believe the proposed changes will improve the timeliness of modifications to the baseline and will enhance responsiveness to the dynamic nature of forest management. This is a more adaptive approach than the existing protocol, and by pursuing this novel approach, Ecology is leading a conversation that can advance adaptive management approaches to IFM projects in the future. To make these novel approaches work over time requires continued investment and open-sourced access to remotely sourced data. To that end, the Tulalip Tribes hope to be a continued partner in this effort and look forward to supporting Ecology's efforts to adopt additional revisions in the future that continue to refine baseline calculations in response to best-available tools and science.

Revision 3: Revise the leakage rate assumption for improved forest management (IFM) projects

We appreciate the increase in the leakage rate in terms of its impact on program integrity, but recognize it may result in pricing impacts that dissuade the development of IFM projects. Pairing this more conservative leakage rate with the addition of the CAR 5.1 leakage carryover would help to balance this approach. The CAR 5.1 updates are logical to include insofar as increased forest carbon tends to correspond with longer harvest rotations that result in higher-value wood products, thus potentially reducing the threat of leakage over time. Adjusting the leakage rate to reflect these circumstances is appropriate.

The meta-analysis cited as the rationale for the leakage rate revision is likely the best available source at this point. However, the 46 studies included in that analysis span the globe. We encourage Ecology to conduct analysis that reflects the specific economic constraints of the markets for Washington forests, especially as federal policies shift pricing and demand for Washington's harvested wood products. We would encourage close collaboration with WA DNR as part of that process. A review of their recent studies into Washington wood product markets concluded this past summer will likely offer some new insights.

Revision 5: Revise property appraisal requirements for avoided conversion projects, including third-party verification of appraisal

The Tulalip Tribes generally support the inclusion of this proposed change on the understanding that it creates better alignment with CAR's 5.1 protocol. However, we are not supportive of requiring two appraisals. The Tribes are concerned that increased property appraisal requirements will pose unnecessary obstacles to the enrollment of smaller projects. Verification costs and the complexity of the feasibility process will likely increase because of the introduction of detailed checklists for baseline and inventory review. The proposed expanded requirements do not scale by project size or complexity, which would result in disproportionately high transaction costs for smaller projects. In our experience, appraisals are expensive, and due to the limited availability of qualified appraisers, this requirement could add considerable burden to small landowners who are considering conversion. Therefore, it creates an additional disincentive to avoid conversation. Our recommendation is to follow standard state and federal grant requirements, which stipulate the use of a principal appraiser and a review appraiser from a qualified third party, rather than two separate appraisers conducting their complete reports. We also recommend that Ecology consider tiered verification pathways for small projects, such as aggregation-based verification or a simplified documentation standard.

Revision 6: Set buffer pool contributions in consideration of regional risks

Revising the buffer pool contribution to reflect localized risks at the HUC-10 level significantly improves program integrity. The Tribes are especially supportive of Ecology's intent to facilitate continual updates to buffer pool contributions through consistently updating datasets. In addition to substantial regional variation in risk, climate change and changing management approaches on adjacent lands may make forests more vulnerable throughout a project's 100-year permanence. Ensuring that buffer pool contributions reflect up-to-date risk potential is critical to ensuring the integrity of the program as a whole.

Further accounting for the need for projects to rely on current risk data, dynamic wildfire risk assessments, as suggested in the protocol, reflect best practices in spatial risk modeling and

acknowledge the increasing impact of climate change on fire frequency and severity. Tulalip Tribes support shifting toward spatially variable risk assignment, particularly when grounded in high-resolution ecological data is available. We understand that Ecology, in partnership with the Spatial Informatics Group (SIG), developed a wildfire buffer pool methodology based on HUC-10 watershed units, incorporating annual burn probability and modeled carbon loss from wildfire to assign risk-informed buffer pool contributions. It is important to note that these estimates do not include any predicted changes in wildfire or insect and disease risk over the project period, including but not limited to climate effects, land-use change, or natural or human disturbance, or stand successional dynamics.

The protocol also proposes adopting the Vegetation Management Treatment contribution reduction structure from the Climate Action Reserve's 5.1 Protocol. These reductions are framed qualitatively, listing examples such as conservation easements, site-specific vegetation/ fuels management plans, or community-scale mitigation efforts. However, this method lacks a quantitative method for linking these activities to measurable changes in carbon loss risk or buffer pool contributions.

We recommend that Ecology consider adopting a buffer pool methodology that has a future quantitative assessment of the impact of forest management using modeled outcomes in Forest Vegetation Simulator (FVS), combined with spatially variable wildfire risk metrics. This method would produce explicit percentage adjustments to buffer pool contributions based on modeled risk reduction from fuel treatments.

More generally, at this time, there have not been other methodologies developed to support reductions to buffer pool contributions via treatment implementation or similar risk reduction strategies. We recommend creating a process to ensure up-to-date data is available for supporting any adjustments to buffer pool contributions and would encourage Ecology to generally invest in the promotion of risk reduction treatments.

<u>Revision 7: Adopt aspects of project aggregation guidance from CAR 5.1 Protocol</u>

The Tulalip Tribes appreciate and support the proposed revision, which improves access to the market for smaller landholders, and in particular for Tribes with smaller landholdings, and aligns with CAR's 5.1 guidance, but with needed improvements—particularly, the addition of a 10% cap to the project-level target sampling error. Aggregation projects are beneficial for small landowners due to the potential for collaboration with nearby landowners to increase project viability. Aggregation reduces per-acre costs and verification costs to individuals, making carbon markets more accessible to small landowners.

However, the Tulalip Tribes would encourage Ecology to analyze the viability of increasing the 5,000-acre limit for enrollment by non-private entities (Tribal governments, land trusts, community forests, city/county governments, etc.). We believe that non-private entities can play a crucial role in market development by providing critical support for developing and underwriting aggregation projects. The issue of whether to adopt a higher maximum threshold for these entities could be assessed by looking at the landowner's current landholdings and setting the threshold as a percentage of a HUC 10 watershed area.

In addition, to further reduce administrative burdens for project aggregation, we would encourage Ecology to anticipate future land acquisition needs or stewardship/management goals. In this vein, Ecology should consider whether such thresholds could accommodate projects that include a

majority or a significant proportion of Tribal or Tribal member-owned lands, given the long-term management philosophy customarily incorporated into all indigenous land use and planning decisions.

Further, there is a general lack of guidance available in the protocol update for aggregation projects. We encourage Ecology to determine if standardized templates for project development, including rules for buffer pooling and/or verification scaling.

Revision 8: Reduced verification frequency intensity for smaller projects

The proposed change in verification frequency for small offset issuances could be implemented. In its current form, aggregation is administratively burdensome, limiting participation from every 6 years to 12 years for projects generating less than 4,000 credits is welcomed by the Tulalip Tribes. Not only does this align the WA protocols with CAR's 5.1 protocol, but it also provides yet another opportunity to reduce the barriers to market entry for small forest landowners, Tribal and non-tribal landowners who would benefit.

Revision 14: Revise the Definition of Forest Owner

The Tulalip Tribes support this proposed change as it allows for the reduction of uncertainty. Confusion around third-party agreements only acts as a deterrent to market participation.

In addition, we strongly recommend that Ecology further revise the definition of Forest Owner to include Tribal governments and Trust lands more specifically. This language is missing in the definitions and discussion on Pages 16-17 of the proposed revisions.

Revision 15: Require that projects be developed in line with a Protocol adopted by Ecology in order to receive a DEBs designation

The Tulalip Tribes are fully supportive of this issue being addressed in the proposed revisions. We appreciate and understand that this revision would help avoid venue shopping and also exempt "early adopters" in Washington who previously entered the California market from this requirement. This revision also sets a precedent for greater flexibility in developing Washington-specific protocols in the future, and especially as linkage moves forward.

Revision 16: Revise DEBs requirements for Tribal offset usage

The Tulalip Tribes strongly support this revision. In a linked market, there is genuine concern that demand for Tribally supported projects within the Salishan and Sahaptin regions would be reduced. We are equally concerned about the potential reduction of DEBs for these regions in a linked market. This proposed change offers some mitigation to those risks in addition to the proposed 50% and 75% percentage thresholds for the first and second compliance periods, respectively.

Revision 18: Revise the Tribal dispute resolution requirement for the project listing

Ecology has proposed to revise the Tribal dispute resolution requirement for project listing. The stated purpose for the revision is to "reduce barriers to Tribal project enrollment…" Waivers of Tribal sovereign immunity should not be required for enrollment and could be a major obstacle to the enrollment of projects by tribal landowners. Ecology has proposed to amend WAC 173-446-520(1)(iv), which states:

> (iv) For federally recognized tribes who elect to participate as offset project operators pursuant to RCW 70A.65.090(5), the following attestation may be submitted in lieu of the attestation required by (b)(iii) of this subsection: "I understand I am voluntarily participating in this program. I understand that before this offset project applies to Ecology for issuance of offset credits, the tribal government on whose behalf I am authorized to make this submission will establish a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an offset project operator. I understand that if the party(ies) with legal authority to implement the offset project apply for issuance of offset credits before establishment of a dispute resolution process and/or other compliance mechanism, Ecology will decline to make a determination under WAC 173-446-555(3) that the information submitted is complete or that the greenhouse gas reductions meet the requirements of Chapter 173-446 WAC, and therefore Ecology will not issue offset credits for the Project."
>
> [...]
>
> (e) For offset projects located on tribal land, land that is owned by a tribe, or land that is subject to an ownership or possessory interest of a tribe, prior to submitting a request for issuance of Ecology offset credits per WAC 173-446-555 the offset project operator must demonstrate that the tribe has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as the owner of land on which an offset project is located.

While the stated purpose is to reduce barriers to Tribal project enrollment, this could very likely have the opposite effect if dispute resolution agreements required by Ecology include waivers of tribal sovereign immunity. Any dispute resolution process should focus on alternative dispute resolution, such as mediation, and should offer no remedies other than equitable relief. The dispute resolution processes outlined in tribal-state Memorandums of Understanding, Gaming Compacts, or Cannabis Compacts may offer viable models; however, insisting on waivers of immunity will hinder some Tribal projects. Tulalip Tribes suggest that a waiver of sovereign immunity not be required and that the language in the proposed revision contain a statement to the effect of "a waiver of a Tribe's sovereign immunity is not required for this dispute resolution process."

<u>Revision 19: Revise Status and Treatment of Harvested Wood Products</u>

The Tribes respectfully encourage Ecology to make this information accessible to the public as the revision is considered. Additionally, the Tribes recommend that Ecology review "Meeting GHG reduction targets requires accounting for all forest sector emissions" by Tara Hudiburg et al. In

Environmental Research Letters (2019), when considering approaches to harvested waste products.

Additional topics for continued research:

We appreciate having the opportunity to learn about the areas where Ecology is continuing to gather information for future revisions. We offer these perspectives for the State's consideration.

Topic 8. Revise the 100-year project commitment with the U.S. Forest Protocol.

The Tulalip Tribes believe that the project commitment period should be analyzed further. We have seen problems with the potential sustainability of California's buffer pool based on calculations that seemed to fail to account for the full scope of a project's risk profile over 100 years. This systemic dynamic likely resulted in an undercapitalization of the buffer pool as a whole. While committing for 100 years makes sense for permanence issues, it leaves no room for adjustments in the interim, which may be necessary to ensure the integrity of a particular project or of the collective program. And in the State of Washington, this specific rigidity creates tension between east and westside forest super sections and for downstream legal and financial instruments. We are also concerned with how this rigidity plays out in the context of climate change and the relative risk of soil moisture loss region-wide. The topic needs to be explored further, and the Tulalip Tribes respectfully recommend that Ecology explore in greater detail whether the pool should be 100 years or shorter in a manner that is scaled to climate data and best available science.

To this end, the Tulalip Tribes are ready and able to engage in these further investigations, and we are particularly interested in outcomes for the baseline approach for public lands (Topic 2), as well as a protocol geared to small forest landowners (Topic 3). We encourage caution in approaching revisions to the standard of negligence (Topic 6). In investigating planting outside of the current distribution (Topic 7), we would encourage consideration to be especially inclusive of Tribal perspectives.

In addition to these topics, as well as the additional research noted in comments, we recommend that Ecology continue investing in studies that help create a framework that supports the use of a consistent baseline methodology that creates cohesion across the landscape, regardless of land ownership. Such a framework would be consistent with renewing and acknowledging our relationship with the land.

Conclusion

The Tulalip Tribes thank Ecology for the opportunity to submit these comments.

We genuinely appreciate the efforts of the Department of Ecology as well as the members of the US Forests Offsets Technical Working Group and Environmental Justice Working Group in guiding and developing these revisions. As a whole, these changes represent essential steps in tailoring the existing US Forests offsets protocol to reflect better Washington's distinct values and conditions, conversations across a broad cross-section of interested parties, and advances in science and technology. We look forward to seeing the outcomes of Ecology's ongoing analysis and opportunities for further engagement as we work together to shape these essential ecological markets for the betterment of PNW communities.

We welcome the opportunity to provide further comment on future versions of the proposed changes or to answer any questions Ecology may have about these comments or any related issues.

Sincerely,

Steve R Hinton

Steve R Hinton
Conservation Scientist
Treaty Rights and Government Affairs Office