

What the BIA Thinks of Carbon Credits (unofficially)

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Who am I?

- Officially:
 - Forester, BIA Central Office
- Recently:
 - BIA Midwest Region Forester
 - BIA Midwest Region Climate Change POC
- Unofficially:
 - Expert in Subjects Other People Don't Want To Do.
 - Examples: TAAMS, trespass, policy development, carbon credits.

What's an Expert?



Some Facts About BIA and Carbon

- Congress has not enacted laws relevant to carbon credits, nor provided funding for developing carbon sequestration projects.
- BIA has not issued regulations concerning carbon credits.
- BIA has no policy regarding carbon credits.



(This is not officially BIA's official stance on carbon credits.)

History of BIA's Carbon Policy

- A Carbon Policy has been in development for a long time.
 - Calls for reviewers in the field have been made by BIA Central Office since at least 2003.
 - Various efforts have been headed up by Central Office Forestry staff.
- The most recent push to complete a Carbon Policy occurred in 2016.
 - This policy went to the DOI Solicitor's Office in April 2016.



Detail from the First Draft of BIA's Carbon Policy

Current Carbon Policy Developments

- The draft Carbon Policy was “rough.”
- The document will be revised and edited and sent forth again.
- The Carbon Policy will not get lost in the process this time.

Main Points of the Draft Carbon Policy*

- Carbon is not a Trust asset.
 - Trust assets are defined as Trust land and anything those lands produce. Value is derived from extraction.
 - Carbon credits are awarded for the accumulation of carbon and are viewed as being similar to a service contract.
 - Carbon not being a Trust asset has implications for BIA.

*Subject to change. Some restrictions may apply. Tax, title and license not included.

Main Points of the Draft Carbon Policy*

- Carbon agreements must be reviewed by BIA to determine whether BIA approval is necessary.
 - 25 U.S.C. §81 requires Secretarial review of contracts greater than 7 years in term to determine whether Secretarial approval is necessary.
 - Secretarial approval may be necessary in certain unusual and potentially controversial situations.

*Subject to change. At participating retailers. Not all options available at all locations.

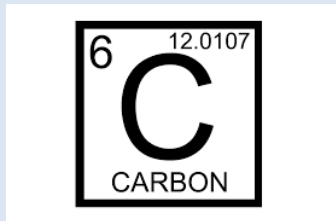
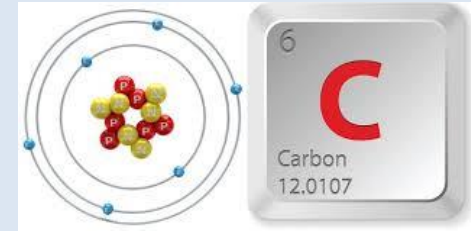
Main Points of the Draft Carbon Policy*

- Carbon credit agreements on fee lands are not considered encumbrances for the purposes of the fee-to-trust process if the agreement is not approved by BIA and is not recorded.

*Subject to change. Contents are sold by weight, not by volume. Some settling may occur. Professional driver on a closed course.

Another Vital Consideration

- Carbon credit agreements must not contradict existing land management plans.
 - Entering into a carbon agreement will result in a review of the agreement by BIA to see if conflicts exist with other land management plans.
 - If the carbon agreement and the land management plan conflict, one or both will need to be modified.



Some Concerns About Carbon Agreements

- The California Air Resources Board (ARB) requires a 100-year commitment for its agreements.
- ARB also requires a waiver of sovereign immunity for its agreements.
- For agreements with ARB, disputes are settled in California state courts, not federal courts.

Some More Concerns About Carbon Agreements

- The cost of exiting an agreement early may be high.
- Carbon agreements may require modification of land management practices and plans.
- BIA expertise, and hence support, is limited.

To Conclude

- BIA doesn't specifically encourage or discourage carbon agreements.
- Tribes are encouraged to proceed with caution.
- BIA probably isn't going to be of much help.