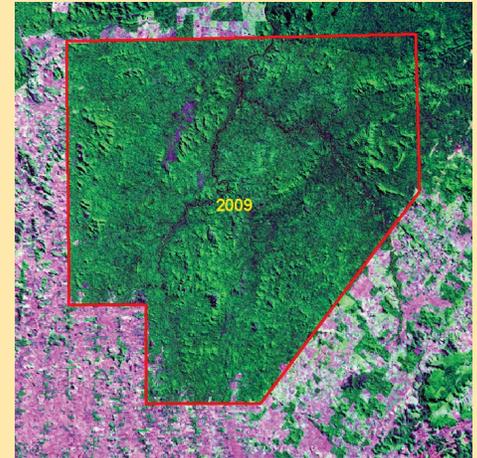


# Baker & McKenzie Legal Analysis - Surui REDD Project

Forest Trends has received a new analysis commissioned from Baker & McKenzie on the legal aspects of the “Surui Community Reduced Emissions from Deforestation and Degradation – REDD Carbon Project,” involving approximately 248,000 ha of their traditional territory located in the states of Rondônia and Mato Grosso in the Brazilian Amazon. This Surui REDD Carbon Project is being developed by the Surui as project proponents with technical assistance from Forest Trends, the Katoomba Incubator, Amazon Conservation Team, IDESAM, Google Outreach and Carbon Decisions. The team will be completing a PDD in the next few months, aiming at avoiding over 16 million tons of CO<sub>2</sub>-eq in the next 44 years. Last fall, Baker & McKenzie reviewed the Surui rights for carbon sequestration through reforestation in their lands and concluded they have carbon ownership rights.



The new study, focusing on the evolving REDD market, came to the same conclusion, positioning the Surui with exclusive carbon ownership rights: “... the Project activities related to sustainable management of the forests and consequent economic benefits to be reverted to the Surui Community is in accordance with the legal object protected by the Constitution and legislation when it reserves to the Brazilian Indians (i) the exclusive use and sustainable administration of the demarcated lands as well as (ii) the economic benefits that this sustainable use can generate.”

By identifying the Brazilian Indians’ Constitutional exclusive rights over the sustainable use of their traditional lands, Baker & McKenzie concludes that the economic benefits from payments for carbon credits deriving from CDM or Voluntary Market forest projects belong to the Surui. “A pre-condition to the fulfillment of this economic benefit guaranteed by the Brazilian Constitution is the recognition of CER (Certified Emission Reductions under the Clean Development Mechanism of the Kyoto Protocol) and VERs (Verified Emission Reduction under the Voluntary market) ownership to the Brazilian Indians: The international regime on climate change, specially the UNFCCC and the Kyoto Protocol, defers to national legislation of host countries the issue of ownership of the CERs. In the same way, On the other hand, the ownership of VERs, as a result of a voluntary practice, will follow the same path.” These unprecedented findings serve as a strong legal basis for other indigenous communities in Brazil as well since they share the same constitutional rights as the Surui.

These legal studies by Baker & McKenzie are attracting a lot of attention from indigenous organizations and indigenous rights advocates in the Amazon and beyond. The studies establish a solid baseline of information on the legal aspects of developing carbon credits within indigenous lands and by indigenous peoples themselves. Forest Trends is seeking support to continue to work with Baker & McKenzie to expand this type of legal analysis to other countries in the Amazon Basin and elsewhere. Establishing clear carbon ownership rights for indigenous peoples can be an effective instrument to increase forest governance and strengthen their land tenure rights, contributing to the recognition of the stewardship role of indigenous communities in offsetting climate change. As of 2008, 27% of forests in developing countries is either owned or administered by indigenous peoples.

