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**PAYMENTS FOR ENVIRONMENTAL SERVICES:  
A WISE USE OF THE MARKET ECONOMY  
OR MISDIRECTED COMMODIFICATION?**

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## **SUMMARY**

This paper reviews “payments for environmental services,” a conservation mechanism with the potential to improve compliance with local, regional, or international law. This paper observes that payments for environmental services programs are most promising when a resource is threatened by current or future development, time is of the essence to protect the resources, and there is a mutually agreed upon contract between a seller of an environmental service and a buyer of an environmental service.

## **1 INTRODUCTION**

As the adage goes, you can give a man a fish and he will eat for a day; you can teach a man to fish and he will eat for a lifetime. Sometimes, however, it is necessary to pay the man not to take the fish for dinner when what you are trying to protect is the fish. Payments for environmental services apply the rules of the market to environmental conservation efforts by paying individuals or communities to protect a resource either by not using it or by restoring it.

This paper first explores an operational definition for Payments for Environmental Services and how Payments for Environmental Services might be an effective strategy in promoting compliance with local and national environmental laws. The paper then briefly describes how a successful Payments for Environmental Services system has been implemented. Finally, the paper addresses some of the limitations on using Payments for Environmental Services as an incentive for environmental compliance.

## **2 INCENTIVE OF PAYMENTS FOR ENVIRONMENTAL SERVICES TO FURTHER ENVIRONMENTAL COMPLIANCE**

There is no single agreed upon definition or name for Payments for Environmental Services. Some of the other names used for projects or ideas that combine economic incentives with obligations for environmental protection or restoration include “markets for environmental services,” “rewards for environmental services,” and “compensations for environmental service.”

Sven Wunder, from Center for International Forestry Research, provides a useful five step conceptual framework for understanding the basic principle of Payments for Environmental Services. For a program to qualify as a Payments for Environmental Services, it should (1) be based on a voluntary contractual arrangement; (2) concern an environmental benefit that can be defined or measured; (3) be bought or exchanged; (4) be from an individual or community; and (5) on the condition that the promised benefit is delivered.<sup>1</sup>

Because it creates a specific incentive for refraining from or performing certain behaviors, Payments for Environmental Services has the potential to accelerate compliance with conservation laws especially where a given environmental resource is either scarce or in demand.

There are a variety of objectives for a Payments for Environmental Services program. Programs can focus on payments for not doing a certain behavior, such as slash and burn agriculture, dynamite fishing, extracting timber, releasing untreated wastewater, or hunting threatened or endangered species in a certain geographical area. Programs can also offer payments for doing certain behaviors, such as actively managing an ecosystem or participating in reforestation efforts.

There is no single formula for creating a successful Payments for Environmental Services program. A program can be managed by the public through its ministries or departments of environment or conservation. Private companies or non-profits can fund and run Payments for Environmental Services projects. Or public private partnerships can operate programs. Sellers can be communities or individuals. Agreements between sellers and buyers can be formal negotiated contracts or simply informal promises. Payments can be in cash or in-kind (e.g., construction materials for a school or beehives.)

Where Payments for Environmental Services programs are designed for furthering compliance with certain environmental laws, the buyer of an environmental service must possess a clear idea of what will be considered an acceptable delivery of environmental services. Laws without specific numerical thresholds can be interpreted in a variety of manners. The expectations of environmental service buyer need to clearly specified in advance of an agreement.

For example, a country may have legal obligations under an international convention to protect a specific sub-species of an animal that happens to be widely and historically eaten by communities within the country. A private philanthropy group wants to create a Payments for Environmental Services program whereby it will pay individuals to protect the animals. Are the communities expected not to hunt any of the animals even though some of the sub-species are plentiful? Or are they simply prohibited from hunting the sub-species listed in the international convention? Are the communities only restricted from hunting or must they also desist from making changes that might also affect the animal's habitat? Concepts of protection are likely to be, in part, culturally-specific and may be difficult to translate.

In addition to spelling out their expectations as an environmental service buyer, a buyer must also be clear about what the standards will be for payments. Is there an agreed upon baseline from which to measure whether a seller has upheld his or her end of the bargain? Who will do the measuring? Will certain environmental conditions, such as a drought or a flood, trigger a seller of environmental services to avoid specific behavior and also take affirmative steps; for example, an individual will not only refrain from hunting a bird but also rescue eggs?

Payments for Environmental Services schemes have the potential to boost environmental legal compliance because the schemes introduce a new level of quantifiable value for a given resource. When confronted with making decisions about how to live in a rapidly evolving world, those who reside closest to a resource, irrespective of whether they are the owner of the resource or not, are faced with ambiguous rational economic decisions. Should they give their consent for resource extraction when they stand to benefit monetarily? Or should they leave the resource in situ because otherwise they will be forced off the land that they are now occupying by resource extraction companies? For many, it is a Faustian bargain where law plays only, at best, a marginal role. A proposed Payments for Environmental Services scheme, on the other hand, allows for occupants to remain in place and to receive compensation for keeping a resource in situ. The given resource no longer simply has an inherent value but also has an external value. The shift from an "either/or" paradigm to a "both/and" paradigm creates a new favored position for law where compliance is not considered an obstacle but an opportunity.

In addition to enhancing perceptions about compliance, Payments for Environmental Services schemes have the potential to create new framework for local enforcement. As interested parties, Payments for Environmental Services sellers are more likely to take an active interest in delivering the agreed upon conditions and may activate social enforcement systems such as customary law or social sanctions to ensure that they benefit from their agreement.

Some Payments for Environmental Services sellers may also be more inclined to call upon local or regional law enforcement officials to help them fulfill their protection obligations. If a resource under a Payments for Environmental Services contract is threatened by an individual or group over which the seller has no control, sellers may be willing to enlist external enforcement assistance, assuming the assistance is reliable, to punish bad actors such as poachers or illegal loggers. Calling for backup help would be especially likely in areas locally perceived of as commons, such as government protected areas or reserves.

### **3 COSTA RICA'S PUBLIC SCHEME FOR PAYMENTS FOR ENVIRONMENTAL SERVICES**

Payments for Environmental Services schemes are not theoretical. A leader among the Latin American countries, Costa Rica designed a Payments for

Environmental Services project referred to in Spanish as a “*Proyecto Pago por Servicios Ambientales*”. The project is run by the government and transfers funds to individual farmers who have entered formal contracts to deliver environmental services for five years. These contracts are recorded in the public land register and run with the land. To fulfill their contracts, individual farmers undertake reforestation, forest preservation, or agroforestry efforts.

Much of the conservation success of the program is that it is implementing from the ground level up Costa Rica’s Forest Law, Environmental Law, and Biodiversity Law while providing income opportunities.<sup>2</sup> Some of the greatest lobbyists for enforcing the laws associated with forest protection are now the recipients of the payments who are directly engaged with reforestation, forest protection, and sustainable management of the forests.

The program has had both direct and indirect effects, including offsetting some of the carbon produced in Costa Rica, improving community environmental education in areas such as waste management, and increasing household income.

Participants of the Costa Rica program adhere to the environmental laws that form the foundation of the *Proyecto Pago por Servicios Ambientales* program, in part, so that they can receive their payments. Whether the *Proyecto Pago por Servicios Ambientales* programs have been more or less successful than simply a command and control regulatory program is less clear.

#### **4 PRACTICAL LIMITATIONS ON EMPLOYING PAYMENTS FOR ENVIRONMENTAL SERVICES AS AN INCENTIVE FOR ENVIRONMENTAL COMPLIANCE**

While the Costa Rica program has been successful in creating new value for the forest and providing new incentives to comply with existing laws, not all Payments for Environmental Services programs, including the Costa Rica program, measure up to expectations of a market fix.

There are a myriad of reasons why parties do not comply with environmental laws. Often the costs of non-compliance are minimal and the risks of being caught non-existent. Sometimes, a law is passed but never explained. In other instances, a law is irrelevant because it has not been updated to reflect current resource extraction or industry practices; therefore, it cannot provide protection against the real threats to the environment.

Just as Payments for Environmental Services is not a one formula conservation, it is also not a one-size fits all solution. While Payments for Environmental Services programs are likely to increase compliance with environmental laws, they may also inadvertently create perverse incentives, including rewarding bad actors. As a result, this creates the conditions for “greenmailing” and shifting environmental harm to other locations.

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As best practiced, Payments for Environmental Services programs provide a common language for linking human needs with ecosystem needs. As unintentionally practiced, Payments for Environmental Services programs reward the parties that are most likely to destroy the environment.

By commodifying the environment, Payments for Environmental Services programs fail to acknowledge the efforts of those who are already in compliance with environmental laws. Throughout the world, there are individuals who are unintentionally in full compliance with international, national, and regional environmental laws as a result of their lifestyles. Many of these parties are indigenous peoples who have been living for centuries in balance with the land and following their own culturally specific laws. These parties are the least likely to be rewarded with a Payments for Environmental Services project because they have demonstrated that they are the least likely to destroy their resources because of complex personal, social and spiritual reasons.

The parties that are most likely to be rewarded are the parties that are in the process of violating environmental laws, or who threaten to do so. As a result, a strange enforcement dynamic occurs because violators, or would-be violators, receive financial incentives rather rewarding law-abiding citizens that are already conducting sound environmental practices. At an instinctual level, there is something unfair about a system that rewards offenders.

On another level, paying to prevent environmental violations makes policy sense if the parties would have engaged in additional environmentally destructive "but for" the payment. For the individuals who were previously causing or contemplating causing environmental harm, the decision is no longer in a zero-sum result but a positive-sum result.

If the payments for the environmental services are high enough to provide individuals or groups with the opportunity to pursue new, less resource intensive livelihood options, then Payments for Environmental Services projects may serve as the first step to the rehabilitation of certain individuals and groups. A useful comparison is the gang-rehabilitation education programs in the United States. Some high schools with a large population of students at-risk of leaving school spend scarce resources to work with members of gangs to ensure that they get an education. In some instances, these students leave their gangs as a result of the extra attention from the schools. Payments for Environmental Services programs that reward environmental violators might be justified for the same reason. Just as the school programs for gangs lead to shifts in attitudes for some members, Payments for Environmental Services programs have a greater potential for rehabilitating attitudes about the need for complying with environmental laws than incarceration or fines.

In addition to the unfairness aspects, critics also worry that paying violators or would-be violators to refrain from causing environmental harm might

embolden these individuals to “greenmail” already resource-poor programs by demanding excessive money or services in payment for continued good behavior. While “greenmailing” may prove to be a sizable future threat to Payments for Environmental Services programs as they develop, a more direct immediate threat resulting from a Payments for Environmental Services program is the relocation of environmentally undesirable behavior from the Payments for Environmental Services project site to a neighboring area. For instance, if people cannot collect firewood within a preserve, they will go just outside the boundaries to the buffer zones.

Another potential problem is Payments for Environmental Services may challenge existing property regimes. In creating a Payments for Environmental Services scheme, what seems most important to the buyer of an environmental service is stopping undesirable behavior. What happens if the sellers of environmental services are not the owners of the land on which the environmental services are sold?

Imagine an important buffer zone for a world heritage quality tropical rainforest. The land is owned by absentee landlords living hundreds of miles away who have expressed an interest in eventually developing the land for commercial purposes. The land is currently occupied by peasant farmers who intend to use the land for grazing. As a buyer environmental service, who do you work with? Do you contract with the absentee landowner who does not need the small sums of money being offered and has no intention of developing the land in the near future? Or do you contract with the occupiers who have indicated that they intend to use the land in a manner that will reduce the viable buffer with the rainforest that the buyer is trying to protect? If you contract just with the title property owner, how can you guarantee that he or she will enforce the non-use of his land when there is no historical precedent for preventing others from entering his land and the amount of money is negligible? If you contract just with the farmers, do you create the conditions for luring additional needy people to become squatters in hopes of being offered a Payments for Environmental Services contract? Should a Payments for Environmental Services buyer pay both parties? Is this the most effective way of enforcing the law?

## 5 CONCLUSION

Payments for Environmental Services systems are still developing. A Payments for Environmental Services system is most effective when it is clear what environmental services are being contracted for and when the seller of the services has either secure land tenure or an unchallenged occupation of land and is willing to self-enforce the contract in order to receive the payments.

Where the conditions exist for a Payments for Environmental Services system to be effectively implemented, a buyer can demand as one of the terms of the contract full compliance with existing or pending environmental laws. When time is of the

essence to conserve rapidly diminishing habitats or endangered species, Payments for Environmental Services schemes may be the solution for creating long-term shifts in attitudes towards the value of both conservation and legal compliance.

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