



Rationale for Proposed Amendments Relative to Baseline Determination, Forest Project Protocol Version 3.1

June 24, 2010

Background

The Climate Action Reserve's (the Reserve) Forest Project Protocol Version 3.1 (FPP) requires that baseline carbon stocks for Improved Forest Management projects be determined by modeling a growth and harvesting regime that "reflect[s] all legal constraints." In December 2009, the Reserve determined that there was insufficient guidance in the protocol regarding how this requirement should be interpreted with respect to management plans submitted by large landowners (> 50,000 acres) to the California Department of Forestry and Fire Protection (CAL FIRE) indicating how they will achieve Maximum Sustained Production (MSP) of High Quality Wood Products (14 CCR 913.11 (933.11, 953.11)). To determine whether such plans should be considered "legal constraints" in the context of the FPP, the Reserve consulted with CAL FIRE in January 2010. Based on this consultation, the Reserve drafted preliminary internal guidance indicating that such plans (either a "Sustained Yield Plan" or "Option A" demonstration – referred to hereafter as "MSP plans") are to be considered legal constraints under the FPP.

On February 3, 2010, after review of the preliminary guidance, the Reserve's Board instructed staff to hold a workshop to solicit public input on the guidance and possible alternative proposals. The guidance was posted on the Reserve's website on February 24, 2010 for public discussion, and a public workshop was held on March 18, 2010. At the workshop, an alternative proposal was introduced by the Pacific Forest Trust (PFT). Under PFT's proposal, Timber Harvest Plans (THPs) active within a project area would be treated as legal constraints for the purpose of modeling baseline carbon stocks. In areas without active THPs, legal constraints would be modeled to reflect "compliance with all forest practice rules and other applicable laws, regulations and legally binding commitments that could constrain areas available for timber harvest." The contents of MSP plans, however, would not be considered binding legal constraints for the purpose of modeling baseline carbon stocks under the FPP. PFT's proposal was supported by the California Forestry Association and 17 other organizations.

In addition to the March 18, 2010 workshop, the Reserve asked for written comments from stakeholders on both the Reserve's preliminary guidance and the alternative guidance proposed by PFT. Public comments were received until April 30, 2010. During the formal public comment period (February 24, 2010 through April 30, 2010) the Reserve received 12 sets of written comments. The Reserve has reviewed these public comments and is now proposing a package of amendments to the FPP that it feels will address both Reserve staff concerns and the concerns raised by stakeholders. The full package of

proposed amendments is provided in a separate document. This document explains the reasoning and rationale behind the new proposal.

Underlying Issues: Legal Constraints and Additionality

Legal constraints are a critical component of determining the “additionality” of Improved Forest Management projects. The GHG reductions and removals achieved by a forest project are only additional if they would not have occurred in the absence of the incentives provided by a carbon offset market.¹ In general, legal requirements dictate what landowners *must* do (or not do) to manage their lands, regardless of carbon market incentives or any other incentives, and therefore provide a lower bound for the sequestration landowners might have achieved in the absence of such incentives. The difficulty arises when laws or regulations have limited or ambiguous applicability and enforceability, in which case they may be imperfect indicators of landowner activity in the absence of a carbon market.

Application to MSP Plans

As a general principle, the Reserve errs on the side of being conservative wherever significant uncertainties arise in the quantifying GHG reductions or removals, or in determining whether projects should be considered additional.² Although the Reserve recognizes that MSP plans have limited enforceability because they can be rescinded and modified at the discretion of landowners, the Reserve initially proposed to consider them as legal constraints in order to be conservative. The presumption was that since MSP plans are legally required and are used by CAL FIRE as the basis for approving or rejecting THPs, they offer a reasonable projection of how landowners would manage their lands in the absence of carbon market incentives. This interpretation was further grounded in the FPP’s stipulation that “legal requirements” include “all laws, regulations, and legally-binding commitments applicable to the Project Area *at the time of the project’s initiation*” (Section 6.2.1.1). The underlying premise is that legal requirements may change over time (and indeed are likely to change over a 100-year time horizon), but reasonable projections of baseline carbon stocks may be constructed according to the legal requirements in place at the time a project is initiated.

Based on feedback from stakeholders at the March 18, 2010 workshop and submitted in written comments, the Reserve is persuaded that its initial interpretation of MSP plans is overly conservative. Numerous comments suggested that MSP plans not only can be rescinded, but in fact are likely to be rescinded and changed in response to changing economic conditions as long as landowners are not bound by a legally enforceable commitment to maintain carbon stocks, such as that provided by the Reserve’s Project Implementation Agreement.³ The Reserve has therefore concluded that PFT’s alternative proposal, which would treat THPs and California Forest Practice Rules generally as baseline

¹ See, *inter alia*, *Climate Action Reserve Program Manual*, p.2; *Climate Action Reserve Forest Project Protocol, Version 3.1*, p. 6; Three-Regions Offsets Working Group, 2010. *Ensuring Offset Quality: Design and Implementation Criteria for a High-Quality Offset Program*, pp. 4 and 8-10. Available at: <http://www.westernclimateinitiative.org/news-and-updates/110-three-regions-release-joint-offset-quality-white-paper>; and Offset Quality Initiative, 2008. *Ensuring Offset Quality: Integrating High Quality Greenhouse Gas Offsets Into North American Cap-and-Trade Policy*, p. 3. Available at: <http://www.offsetqualityinitiative.org/>.

² *Climate Action Reserve Program Manual*, p.5.

³ See *Climate Action Reserve Summary Of Comments & Responses Draft Guidance On California Legal Requirements For The Forest Project Protocol*.

legal constraints, is a more appropriate approach to modeling baselines for the purpose of establishing forest project additionality.

Further Considerations

Although the Reserve considers PFT's alternative proposal appropriate, it is arguably not as conservative from an additionality perspective as the Reserve's initial interpretation of MSP plans. After reviewing submitted comments on this issue and considering additionality concerns in more depth, the Reserve feels that several modifications to the FPP are warranted should PFT's proposed guidance be incorporated. These modifications are intended to provide appropriately balanced safeguards against the risk of crediting non-additional GHG reductions and removals.

The first proposed modification relates to the treatment of Habitat Conservation Plans (HCPs) as legal constraints in modeling baseline carbon stocks. Version 3.1 of the FPP indicates that HCPs (and Safe Harbor Agreements) are not considered "legal requirements" for the purpose of modeling project baselines because they are "voluntary agreements that can be rescinded." However, as one stakeholder has commented:

Habitat Conservation Plans should be considered as legally binding requirements. Companies that have entered into these agreements (HCP) have done so because they have to in order to continue managing their land. They are generally tied to the management described in an Option A and have been developed to gain approval from the various wildlife agencies and avoid liability under the Endangered Species Act. Trying to operate without an HCP under these circumstances would be next to impossible.⁴

The Reserve generally agrees with this characterization and is therefore proposing to modify the FPP to require treating pre-existing HCPs as legal requirements for the purpose of modeling baseline carbon stocks.

The second proposed modification relates to a larger issue arising from the use of a "performance standard" (or "common practice") approach to determining baseline carbon stocks. Under the FPP, baseline carbon stocks for Improved Forest Management projects are determined through a comparison of Project Area stocks to average stocking levels on similarly situated lands, as calculated using Forest Inventory Analysis (FIA) data. This approach works well when the Project Area itself is varied and broadly representative of the conditions and management practices prevailing within an FIA assessment area. It works less well if forest owners are selective about enrolling acreage in a project, such that broader trends within the assessment area (based on "common practice" stocking levels) are poor indicators of what would happen specifically within the Project Area.

In designing the rules for determining baseline carbon stocks for Improved Forest Management projects, the Reserve's stakeholder workgroup envisioned that such projects would involve most, if not all, of a forest owner's landholdings within an FIA assessment area. In reviewing nearly 140 project submissions

⁴ Comments submitted by Paul Harper, available at: http://www.climateactionreserve.org/wp-content/uploads/2010/02/Paul_Harper_Comment_MSP.pdf

to date, however, the Reserve has noticed that this assumption has not held. Instead, the practice has generally been to submit projects on parcels that constitute a minority of forest owner's landholdings within each assessment area. This has raised concerns about whether forest owners may be selecting projects areas that are not reflective of common practice trends and the FPP's standardized baseline assumptions, which may therefore result in the crediting of non-additional GHG reductions and removals. For example, as the FPP is currently written, forest owners could selectively choose to enroll a small area of under-stocked land whose trees would be expected to grow and accumulate significant amounts of carbon regardless of any carbon offset incentives.

The possibility for forest owners to "cherry pick" project areas in this manner creates a significant potential risk that the Reserve might credit non-additional projects. To reduce this risk, the Reserve is proposing to modify baseline calculations so that baseline carbon stocks are linked to a forest owner's own entity-wide stocking levels within an assessment area. This linkage would occur where: (1) the acreage the forest owner has enrolled in Reserve forest projects is small relative to the forest owner's total landholdings within the assessment area; and (2) the stocking level on enrolled acres is significantly different from the forest owner's other landholdings within the assessment area. This approach is more fully described in the document "Proposed Forest Project Protocol Modifications, June 2010."