

Dear Policy Group:

I feel it is important that you be aware of concerns that have been brought up surrounding the "Draft Preliminary Guidance on California MSP Requirements" dated February 24, 2010.

In my discussions with a variety of professionals involved in the forest carbon arena, there is a consensus of a discrepancy pertaining to the "legal constraint" on the baseline for improved forest management projects, as specified in Section 6.2.1.1 of the FPP.

The issue of interpretation is unclear. Per the announcement:

The Reserve considers MSP documents to be a legal commitment that must be recognized at the time a project is submitted. Therefore, any plan that has been approved by Cal Fire for utilizing Option "a" or Option "b" [14 CCR 913.11, 933.11, 953.11 (a) or (b)] to demonstrate long-term sustained yield and maximum sustained productivity pursuant to requirements of 14 CCR 913.10, 933.10 and 953.10, and that is in effect at the time the forest carbon project is initiated, must be reflected in the modeling of an Improved Forest Management project's baseline carbon stocks. This finding is based on the provision in Section 6.2.1.1 of the FPP that "Legal requirements include all laws, regulations, and legally-binding commitments applicable to the Project Area at the time of the project's initiation that could affect standing live carbon stocks" (emphasis added).

The statement is very firm in its declaration of a legal commitment, which must be recognized, at time of project initiation, and must be reflected in modeling of

In reviewing California Forest Practice Rule, I have outlined areas where there would be potential of conflict with the interpretation of CAR's February 24, 2010 draft statement:

Per 913.11, 933.11, 953.11 Maximum Sustained Production of High Quality Timber Products

(a) (1) Producing the yield of timber products specified by the landowner, taking into account biologic

and economic factors, while accounting for limits on productivity due to constraints imposed from

consideration of other forest values, including but not limited to, recreation, watershed, wildlife, range and

forage, fisheries, regional economic vitality, employment and aesthetic enjoyment.

(2) Balancing growth and harvest over time, as explained in the THP for an ownership, within an

assessment area set by the timber owner or timberland owner and agreed to by the Director. For purposes of

this subsection the sufficiency of information necessary to demonstrate the balance of growth and harvest

over time for the assessment area shall be guided by the principles of practicality and reasonableness.

There are a few issues, which bring about contradictions.

- (a) (1) ...specified by the landowner.

Logistically, the landowner is the author of the sustained yield and maximum sustained productivity.

- (a)(2)set by the timber owner or timberland owner and agreed to by the Director.

This reinforces the fact that the director has not mandated any measurements or constraints.

The important statement in this rule is *principle of practicality and reasonableness.*
This will lead to an issue of interpretation, which may have to be decided in a court of law.
I am concerned that this guidance creates ambiguity and uncertainty.

The adoption of this new requirement will have long lasting implications regarding the viability of
CAR's FPP.

I would be happy to discuss further.

Sincerely,

Gus Kent
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