



April 30, 2010

Via email: [policy@climateactionreserve.org](mailto:policy@climateactionreserve.org)

Derik Broekhoff  
Vice President, Policy  
Climate Action Reserve  
523 W. Sixth Street, Suite 428  
Los Angeles, CA 90014

**Re: Preliminary Guidance on Forest Project Protocol, Section 6.2.1.1  
(Legal Requirements for Project Baseline; Supplemental Comments)**

Dear Mr. Broekhoff:

The Center for Biological Diversity (the “Center”) submits the following supplemental comments on the draft guidance document<sup>1</sup> developed by the Climate Action Reserve (the “Reserve”) regarding the relationship between California forestry regulations and the baseline for forest management projects under the Reserve’s Forest Project Protocol (the “Protocol”).<sup>2</sup>

As you know, we participated in the Reserve’s March 18, 2010 workshop regarding this issue. After considering the various arguments advanced by workshop participants, we continue to believe that a demonstration of maximum sustained production of timber products, in the form of the long term sustained yield (“LTSY”) projections required of large landowners under the California Forest Practice Rules, is a legal requirement that must be reflected in the baseline for forest management projects under the Protocol. Our previous comments on the guidance document, dated March 12, 2010, discuss the legal and policy reasons for this position in detail. Rather than reiterate those reasons in detail here, we hereby incorporate our prior comments by reference.

These supplemental comments identify additional reasons why LTSY projections must be incorporated into the baseline for improved forest management projects. Large industrial landowners, as a legally required condition of timber harvesting, must demonstrate maximum sustained production by representing to CalFire that harvest will not exceed growth over time. Those representations thus presumptively indicate

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<sup>1</sup> Climate Action Reserve, *Guidance Document for Verifiers, Project Developers, and Interested Parties* (Feb. 24, 2010), available at <http://www.climateactionreserve.org/how/protocols/adopted/forest/events/> (last visited March 10, 2010).

<sup>2</sup> All further citations to the “Protocol” herein refer to Climate Action Reserve, *Forest Project Protocol v3.1* (Oct. 7, 2009).

“business as usual” conditions for baseline purposes. Under the Forest Practice Rules, moreover, LTSY projections must consider the same basic factors—growth and harvest projections, economic constraints, and other environmental values—as the financial analysis required as part of the Protocol’s “performance test” for forest project baseline calculation. The text of the Protocol itself thus provides a strong basis for incorporating LTSY calculations into the project baseline.

The primary function of a baseline is to provide a quantitative basis for ensuring the additionality of forest project carbon credits. Under the Protocol, a project is additional only if “it would not have been implemented without incentives provided by the carbon offset market . . .” Protocol at 64. Accordingly, the Protocol requires forest projects to satisfy both a “legal requirement test” and a “performance test,” both of which must be included in the baseline calculation.<sup>3</sup> See Protocol at 5-7, 64. These dual tests underlie the Protocol’s “performance-based” approach to additionality.

As a threshold matter, the Reserve must consider a project proponent’s approved LTSY document to be a presumptive indicator of business as usual. LTSY projections constitute representations to a public agency concerning a landowner’s projected balance of growth and harvest over time, taking into consideration environmental and economic constraints. These representations are legally required in order to gain CalFire’s approval of individual logging plans.<sup>4</sup> Accordingly, the Reserve must presume that a project proponent’s representations to CalFire concerning long-term growth and harvest

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<sup>3</sup> As pointed out in our previous comments, both AB 32 and the Air Resources Board’s draft cap and trade regulations reflect a similar two-part definition: offset projects must result in emissions reductions that are not otherwise required by any law or regulation, *and* must result in emissions reductions that otherwise would not occur. Health & Saf. Code § 38562(d)(2); *see also* Cal. Air Res. Bd., Preliminary Draft Regulation for a California Cap-and-Trade Program (Nov. 24, 2009) at 64 (proposed § 96240(c)(1), (2)).

<sup>4</sup> In comments submitted in advance of and during the March 18, 2010 workshop, industry representatives argued that LTSY projections are “legal constraint[s]” only when incorporated into individual timber harvest plans, and that once a THP is completed and closed, any LTSY projections “above regulatory minimums” revert to being “voluntary.” *See* Cal. Forestry Ass’n et al. (March 12, 2010) at 3. The argument renders the LTSY requirement essentially meaningless. Industry seems to be arguing that individual THPs, which are effective for three to five years, must be logged as if the landowner intends to comply with the 100-year projections contained in the LTSY demonstration submitted with the THP, but that once the THP is completed, the 100-year projections no longer hold. Under this analysis, however, the 100-year LTSY projections as to the entire ownership become utterly illusory; the growth projections in the LTSY document, if effectively abandoned once the THP is complete, cannot guarantee that the logging operations conducted under the THP will not interfere with the long-term balance between growth and harvest. Put another way, if a “long-term” sustained yield document has no real long-term existence, it *cannot* constitute a meaningful demonstration that an individual THP actually achieves maximum sustained production as required by law.

projections are, in fact, true representations, and should incorporate those representations into the forest project baseline. This is consistent with a performance-based (rather than project-based) approach to additionality.<sup>5</sup>

A presumption that LTSY projections must be incorporated into project baselines also finds support in the close agreement between the financial analysis requirements of the Protocol and the LTSY requirements of the Forest Practice Rules. The stated purpose of the Protocol's "performance test" is to ensure that projects "achieve GHG reductions or removals above and beyond any GHG reductions or removals that would result from engaging in Business As Usual activities . . ." *Id.* at 6. The Protocol states that improved forest management projects "automatically" satisfy the performance test if they follow the baseline estimation requirements in Section 6.2.1. *Id.* at 7. Section 6.2.1 requires a demonstration that the project baseline incorporates not only "legal constraints" but also "financial constraints." *Id.* at 47-48. In particular, the project proponent either must provide a financial analysis projecting growth and harvest over time and demonstrating that the baseline is financially feasible considering "all legal, physical, and biological constraints," or must provide evidence that baseline assumptions are similar to practices on comparable properties within the project area. *See id.*

Under the Forest Practice Rules, a landowner's LTSY document must consider the same basic factors as the financial analysis required under Protocol section 6.2.1.2. In order to harvest timber, forest landowners with more than 50,000 acres *must* prepare a document containing LTSY projections, in the form of either an "Option A" or a Sustained Yield Plan ("SYP"). Cal. Forest Practice Rules (hereafter "FPR"), 14 Cal. Code Regs. §§ 913.11(c)(5), 933.11(c)(5), 953.11(c)(5). The LTSY document must project growth and harvest over a 100-year period in light of "biologic and economic factors" as well as "limits on productivity due to constraints imposed from consideration of other forest values." FPR §§ 913.11(a)(1), 933.11(a)(1), 953.11(a)(1) [Option A]; 913.11(b)(2), (3), 933.11(b)(2), (3), 953.11(b)(2), (3) [SYP].

The factors modeled in the LTSY document required by the Forest Practice Rules and the factors considered in the financial analysis required by the Protocol are thus closely congruent. Indeed, given this congruence, Reserve verifiers should view with great suspicion any differences between an approved LTSY document and the financial analysis submitted for a forest project. Project proponents should not be allowed to tell CalFire one thing and the Reserve another. A project proponent's approved LTSY

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<sup>5</sup> We understand that members of the working group who helped to develop the Protocol expressed a strong preference for a performance-based approach; several stakeholders at the workshop feared that consideration of LTSY in baseline calculations would move the Protocol away from a performance-based approach and toward the disfavored project-based approach. The fear is groundless; nothing in the incorporation of LTSY assumptions into a project baseline requires a project-based demonstration of additionality. Indeed, a requirement that LTSY projections be incorporated into *all* forest project baselines is characteristic of a performance-based approach.

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document thus represents financially feasible “business as usual” conditions for purposes of the baseline “performance test.” Accordingly, the Reserve should adopt the presumption that a landowner’s approved LTSY document represents projected “business as usual” conditions in the absence of incentives provided by the carbon offset market.

In sum, LTSY projections are not only “legal constraints” under the Forest Practice Rules, but also strong indicators of “business as usual” activities and congruent with the “financial constraints” analysis that the Protocol requires. These projections must be incorporated into forest project baselines in order to ensure the additionality of forest project credits.

Thank you for your consideration of these supplemental comments. As always, please feel free to contact me at (415) 436-9682 x313 or at [kbundy@biologicaldiversity.org](mailto:kbundy@biologicaldiversity.org) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin P. Bundy', written in a cursive style.

Kevin P. Bundy  
Senior Attorney