



March 12, 2010

Mr. Gary Gero, President  
Climate Action Reserve  
523 W. 6th Street, #428  
Los Angeles, CA 90014

Dear President Gero:

We are writing on behalf of the signatory organizations, which collectively represent natural resource owners, carbon market developers, potential greenhouse gas (GHG)-capped businesses, forestry professionals, verifiers and potential producers of carbon credits from more than 5 million acres of private forests in California that would be affected by the Climate Action Reserve's (CAR) draft guidance. It has come to our attention via CAR's newsletter that you have scheduled a workshop on March 18th, to address the issue of Interpretation of California Forest Practice Rules in the Context of the Climate Action Reserve's Preliminary Guidance on Forest Project Protocol, Section 6.2.1.1. As stated in your newsletter, "the Climate Action Reserve staff has drafted preliminary guidance that would require treating Maximum Sustained Production (MSP) plans filed with the California Department of Forestry and Fire (Cal FIRE) as a 'legal constraint.' Under this guidance, project proponents would have to model a baseline growth and harvest regime that reflects the same mix of silviculture and management intensity used in the MSP document."

We applaud the Reserve's stakeholder outreach efforts regarding this interpretation to fully examine and understand this complex issue. But we also have serious concerns that CAR staff's initial interpretation of "legal constraints" misinterprets those actual legal constraints, and could have overwhelming negative consequences to the use of the protocol by California forest owners large and small if not quickly revised. Ironically, forest owners outside of California would not be affected by this interpretation and could likely become the only significant participants in the registry.

Our current understanding of CAR's draft guidance in relation to Section 6.2.1.1, which describes legal constraints for establishing a project's baseline calculation, is that it would dramatically modify the baseline such that it would eliminate any incentive for forest landowner participation by re-interpreting, as a legal mandated minimum, the forest owner's Long Term Sustained Yield (LTSY), as specified through one of three options for demonstrating Maximum Sustained Production (MSP) of high quality timber products. CAR's proposed guidance is being contemplated even though the levels of LTSY are established solely at the landowner's discretion, and can be modified at anytime by the landowner to reflect current economic conditions/investment decisions.

Pursuant to the options for demonstrating MSP, which are provided in the California Forest Practice Rules (CFPR), the two operative issues are: 1) At all times the level at which LTSY is achieved is voluntarily established by the landowner; and 2) It can be voluntarily rescinded and/or adjusted at the discretion of the landowner.



CAL FIRE's memorandum which was included with your workshop notice, clearly identifies the voluntary nature of the projected level of LTSY.

Given the voluntary nature of these LTSY projections, all of the options for demonstrating MSP are consistent with the first paragraph of Section 6.2.1.1, "Consideration of Legal Constraints" of CARs Forest Project Protocol, which was endorsed by your CAR Forest Carbon Workgroup (FCW) and which states:

"In modeling the baseline for standing live carbon, the Forest Owner must incorporate all legal requirements that could affect baseline growth and harvesting scenarios. The standing live carbon baseline must represent a growth and harvesting regime that fulfills all legal requirements. Voluntary agreements that can be rescinded, such as voluntary Habitat Conservation Plans (HCPs), Safe Harbor Agreements, rental contracts, and forest certification are not legal requirements."

Options for demonstrating MSP have always been modeled as having a voluntary component to the forest owner, which is adjustable or rescindable. They also have a mandatory component that must be consistent with the minimum stocking standards of the rules, balance growth and harvest over the 100-year modeling period, and avoid or mitigate potential environmental impacts to a level of insignificance.

However, methods for demonstrating MSP pursuant to Options A or B of California Code of Regulations (CCR) 913.11 et seq. do not provide any vested regulatory responsibility or right to harvest timber, unless they are an addendum to an approved and active Timber Harvesting Plan (THP) or its equivalent. Forest owners have always been encouraged to demonstrate optimum levels of voluntary investment, well beyond their mandatory minimum regulatory requirements, to demonstrate their potential level of LTSY under a high level of voluntary investment – which is subject to change with each THP, depending on national/global economic conditions as well as an individual forest owner's current investment funds and options.

If CAR were to now re-interpret a forest owner's LTSY analysis as a mandatory regulatory baseline, all forest landowners over 50,000 acres in size, and all small and mid-sized landowners who have Sustained Yield Plans (SYP), Programmatic Timber Environmental Impact Reports (PTEIR) or Non-industrial Timber Management Plans (NTMP) regardless of management regime would be precluded from creating forest carbon credits because the baseline and project line would be one-in-the-same. This would affect nearly all of California's 5 million acres of actively managed productive private forest.

Moreover, this interpretation could actually encourage landowners to demonstrate LTSY at the lowest legal level, instead of encouraging them to make voluntary investments in their forests to increase carbon sequestration, whether or not they submit CAR forest carbon projects; ultimately contributing to a stagnation of forest inventory levels, and actually encouraging increased levels of harvest in the short-term (since in most cases long-term increases in standing inventory are enhanced by reduced levels of harvest in the short-term).

Therefore, as a broad group of stakeholders, we have come together to support a revision to your interpretation of the legal constraints provision of the CAR Forest Project Protocol that is consistent with actual legal constraints, recognizes the early voluntary action of many forest owners in California, and continues to incentivize future investment in their forests. A revised draft of your preliminary guidance has been pro-offered by the Pacific Forest Trust, and is attached for your reference.

Since options for determining LTSY are voluntary and only become an additional legal constraint when attached to an active THP; and the level of LTSY is neither a vested right nor legally enforceable unless it is an addendum to an approved and active THP; then only those acres in active THPs within a proposed project area on the date of project submittal need to provide additional enforceable regulatory requirements beyond the minimum resource conservation standards of the law. As such, the increases in sequestration associated with investments on these acres would be subject to inclusion in the project's baseline calculation during the active life of these THPs. Once all THPs have been closed, future investments above regulatory minimums are voluntary and contribute to additionality.

There has been much discussion about the concept of "business as usual" in the context of forest carbon credits. Early on, CAR's Forest Carbon Workgroup recognized the impossibility of getting into an individual landowner's mind for determining a future "business as usual" baseline. As such, the decision was made to create a "common practices" baseline which reflects average private forest practices within a forest eco-region that is constrained by various legal, ecological and economic restrictions from which additionality is to be determined. The best and most accurate representation of common practice, that is replicated nationwide, is the USDA Forest Service Forest Inventory Analysis (FIA) permanent plot data for private landowners, delineated by forest eco-type. This was recognized as the best representation of average private activities within that region, and became the baseline for that region, with multiple constraints.

Moreover, provisions were included to recognize early action and to provide alternatives for creating credits even if a forest owner were either above or below the baseline, with further constraints. This was designed to provide incentives for forest owners to enter into projects regardless of their starting forest carbon inventory, if their motive was to increase forest carbon sequestration in the long-term, and if they are willing to commit to keeping their starting inventory for at least 100 years, despite NEVER getting any credit for this retention. Committing to keep one's forest intact for 100 years is a huge and risky decision that in itself is well beyond any construct of "business as usual."

We have also looked at the FIA data nationwide, and found that of the 491 eco-regions delineated by CAR nationally, California forests have six of the highest eight initial levels of standing forest carbon – demonstrating that California forests generally start with a baseline that is much higher than that the rest of the nation (without any recognition of that higher baseline being carried for 100 years).

As always, we strongly encourage participation by all interested parties and organizations at your planned workshop and consideration of their perspectives. We do ask that since several of our members in this adhoc group participated for two years as members of your forest carbon workgroup, that you include a copy of our letter and proposed revised guidance with your workshop notice for the public's consideration.

Thank you for your serious consideration of our revisions to CAR's Preliminary Guidance.

Sincerely,

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