KENT & ASSOCIATES
Forest Resources Planning & Management
P.O. Box 968
Forestville, CA 95436
(707)887-7900
(707)887-7901(fax)
nicholaskent01@gmail.com

February 4, 2010

Linda Adams
Climate Action Reserve
523 W. Sixth Street, Suite 428
Los Angeles, CA 90014

Re: Forest Protocols, Version 3.1, Forest Practice Rules Option A as Legal Requirement for Baseline

Dear Ms. Adams,

It has come to my attention that CAR is defining the Legal Requirement test for additionality (3.1) setting the legal baseline for landowners with over 50,000 acres as the agreed upon limits of the specific Option A, Maximum Sustained Production Plan (14 CCR 913.11 (a)) for their property, and for landowners with under 2,500 acres who have filed a Non-Industrial Management Plan (14 CCR 1090) as the agreed upon limits in that plan. I do not agree with this definition of the legal requirements for baseline as those permits/agreements voluntarily set harvest and growth levels by the landowner not by the State. The State simply reviews those plans to ensure they meet Maximum Sustained Production of High Quality Timber Products (MSP).

I have prepared over 26 NTMPs since 1994, and each one has been filed voluntarily by the landowner. The landowner could have chosen Option C (14 CCR 913.11 (c)), which would have allowed them to harvest more aggressively using a Timber Harvest Plan (THP). The NTMP is a voluntary document, and does not constitute business as usual, as it provides for sustained yield and meeting minimum basal area/acre stocking standards (larger trees left) using uneven-age management on a small tract of land. The landowner could choose to file a THP using Option C, which allows meeting stocking standards using point count (smaller trees left or planted) and can use even-age management such as clearcutting. The NTMP can be cancelled at any time, and a THP can be filed on the same piece of land with the landowner harvesting more trees than a NTMP permit would have allowed. The NTMP may be a permit but it is voluntary and it sets only voluntary standards determined by the landowner as long as it balances harvest with growth over time.

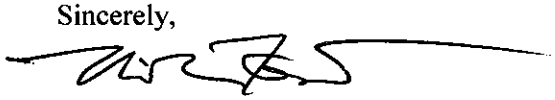
By treating a NTMP as the regulatory legal requirement and equivalent of baseline, CAR is penalizing NTMP owners for voluntarily sequestering more carbon in their trees than required by law. If the NTMP is treated as baseline, the landowner would need to harvest less than they are already voluntarily harvesting to register a carbon project, and it is doubtful many landowners would agree to do this as they have already reduced their harvest level from that allowed under a THP. If CAR continues to determine that a NTMP is the legal baseline then a landowner that has over 2,500 acres and who therefore cannot qualify to submit a NTMP but is practicing sustained yield harvesting which is the equivalent of a NTMP, will have an advantage over the NTMP filer who has a smaller tract of land and is more constrained by NTMP rules they have voluntarily agreed to. Treating a NTMP as legal baseline does not encourage long-term planning by landowners who may decide not to file a NTMP as it then becomes an artificially high baseline for their properties to qualify for CAR rules.

In the case of a landowner owning over 50,000 acres, they must submit an Option A to the State, but they themselves determine how to balance growth and yield, not the State. Some may choose to retain more timber and increase standing volume, and their Option A plan reflects this. If this is a voluntary choice by the landowner then they would be penalized by requiring that their higher retention levels are baseline as those levels are greater than what may be required to meet Maximum Sustained Production of High Quality Timber Products (MSP). This same landowner could sell their land, and the new owner could immediately file a new Option A that has a lower retention level that still satisfies MSP, and this would immediately create a new baseline. So as this illustrates, the Option A is not common practice, as it can vary by landowner and can change with a change in ownership.

A large landowner with less than 50,000 acres does not need to submit an Option A, and with CAR treating an Option A as regulatory baseline allows a landowner that has for example 45,000 acres a competitive advantage over the slightly larger landowner that is required to file the Option A. Also, the out of state large forest landowners that do not have to file an Option A in their states are at a competitive advantage over California landowners that must file an Option A. The same goes for a small landowner out of state which do not have NTMP rules.

In conclusion, if CAR does determine that an Option A or NTMP is the equivalent of a landowner's baseline they are giving a competitive advantage to landowners that have not yet filed these permits/agreements that are less than 50,000 acres in size or are outside of the State of California and do not have similar permits or agreements in their states. These permits/agreements describe voluntary harvest levels that are may be above common practice and should not be treated as a legal constraints (3.1.1.2), as the legal constraint is meeting MSP only. CAR is actually creating a major disincentive for large landowners and small landowners to register carbon projects on well managed lands with increasing inventories, and in effect penalizes those landowners trying to increase the amount of larger trees on their lands. This I think would send the wrong message to landowners trying to improve their forests and improve the diversity of structure on their lands, and will erode the credibility of the registry and the desirability for landowners to register their forest carbon projects with this particular registry.

Sincerely,



Nicholas Kent, ACF, Registered Professional Forester #2418
Member of the Association of Consulting Foresters of America

c.c. Mary Nichols, Air Resources Board
Forest Landowners of California
California Chapter of the Association of Consulting Foresters of America
California Forestry Association
California Licensed Forestry Association
Secretary of Resources Office, State of California
Calfire