



March 25, 2010

Mr. Gary Gero, President
Climate Action Reserve
523 W. Sixth Street, Suite 428
Los Angeles, CA 90014

Re: Policy Interpretation of California's Maximum Sustained Production

Dear Mr. Gero:

Thank you for affording us this opportunity to comment, both publically at the March 18 workshop, and also in this letter. I know the Climate Action Reserve (CAR) carefully considers the policies that may create a widely accepted Forestry Protocol for carbon sequestration. I have serious reservations however; about CAR's recent course change with respect to the interpretation of baseline. For California timber ownerships over 50,000 acres, the new interpretation of §6.2.1.1 and sustained yield demonstration is particularly problematic.

As you are aware, landowners with over 50,000 acres are required to demonstrate Maximum Sustained Production (MSP), typically under options (a) or (b). These regulations were enacted in 1993 to demonstrate a practical limit to constrain harvesting to that sustainable over a 100-year planning horizon. As such, these are maximums and not minimums. There is never a requirement to harvest the maximum. And the land owner is free to harvest less. MSP has always been an analytical demonstration and never a production requirement. Your quest for clarification should have been directed to the Board of Forestry, who is charged by the legislature to develop policy and promulgate regulations. The Board is superior to the Department as noted by §710 Public Resources Code (PRC). The Director (of CalFire) is charged with implementing the rules and if there is a question, is (supposed) to refer it to the Board (PRC §4555). The Board has not been consulted regarding this MSP issue as of 3/18/10.

Notwithstanding the statutory requirement to consult, the 1/25/10 clarification letter from Deputy Director Snyder provided an extensive explanation of MSP. In fact, the term MSP is used conjunctively with the word *demonstration* over 16 times.

In promulgating the MSP regulations, the Board of Forestry made a specific finding in the Final Statement of Reasons for this regulation (emphasis supplied):

“The amended rule[s] separate timberland productivity from MSP. The Department, timber industry representatives, and others consider this to be a clarification of both concepts. Timberland productivity is specific to what an individual site can produce and whether or not that site is remaining productive. *MSP meanwhile relates to the amount of product an individual ownership can produce.*”

It would be prudent for CAR staff to refer to the Rulemaking Package on file with the Board of Forestry to further understand the regulatory basis.

An unintended consequence to this new interpretation of Forest Protocol 3.1 §6.2.1.1 would put the most productive California timberlands at a competitive disadvantage with other States or Countries that have less enlightened sustainability requirements. As a result, this would penalize intensive sequestration and be a disincentive to productive forest practice.

Since baseline is another important concept, the federal Forest Inventory and Analysis (FIA) program represents the most unbiased standard available. It is based on actual measurements, taken over many decades across the entire county. If the CAR hopes to make these Forest Protocols a national standard, then the FIA inventory levels for non-federal land is the most equitable baseline. A theoretical MSP calculation is therefore not comparable.

The Administrative Procedures Act is another regulation that the CAR protocols may have to go through in the near future. It would makes sense if staff were to voluntarily adopt some of the requirements for clarity, necessity, non-duplication and transparency. If Cap-and-Trade legislation is adopted, then the CAR will enable the Air Resources Board to proceed quickly.

In closing, let me urge the Climate Action Reserve to affirm California's timberlands as some of the most productive in United States, and reward the stewards of those lands for the vital carbon sequestration they provide. Without incentives, CAR's Forest Protocols just become a regulatory hammer driving another nail into the coffin.

Very truly yours,



William E. Hultgren, RPF 2581
Manager - California Lands