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March 25, 2010

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

Dear President Gero,

As a California forestland owner sustainably managing forestland under an approved NTMP agreement I strongly urge you to reconsider the Climate Action Reserve's initial guidance regarding California's Forest Practice Rules and CAR's Forest Project Protocol Version 3.1 in regards to the issue of utilizing Maximum Sustained Production of High Quality Wood Products (MSP) in establishing baseline.

An interpretation of the protocol which considers MSP agreements, which are voluntary and non-binding in nature, as a legal baseline effectively would prohibit California forestland owners from participating in carbon markets even though the protocols on which those markets would be based were developed in California at the direction of the state of California and presumably for the benefit of Californians. Furthermore, the adoption of such an interpretation would penalize *only* California forestland owners while granting unfettered market access to forestland owners in other states.

We reside on 72 acres that has a 2003 approved NTMP. Our current annual growth rate is 40 mbf per year; including a twenty year old, seven acre plantation, a three acre plantation planted in 2001, a five acre plantation planted in 2002, and a four acre plantation planted in 2007. Above mentioned plantations is the result of converting brushland to tree plantations. The stand is predominately uneven age, ranging from plantation size trees to 40" dbh mature conifers.

Like many small forestland owners, my family has been practicing exemplary sustainable forestry with the goal of improving forest condition and conserving resources for future generations. The voluntary actions of forestland owners that result in considerable carbon benefits should be rewarded, not punished. We have clearly taken early action that goes above and beyond legal minimum set by law and now stand to be precluded from markets as a result. If our baseline and maximum yield are one and the same there is no way we can participate in carbon markets.

I am in full support of the attached revised draft of your preliminary guidance paper and hope you will extend to California families that own forestland the same opportunities being made available to out-of-state landowners.

Sincerely,



Stan Leach



**Guidance Document for Verifiers, Project Developers, and Interested Parties**

*Relationship of Maximum Sustained Production of High Quality Wood Products (MSP) rules in the California Forest Practice Rules to Section 6.2.1.1 (Consideration of Legal Constraints) in the Climate Action Reserve’s Forest Project Protocol (Version 3.1).*

Issue

The Climate Action Reserve’s (the Reserve) Forest Project Protocol Version 3.1 (FPP) requires that baseline standing live carbon stocks for Improved Forest Management projects be determined by modeling a growth and harvesting regime that “reflect[s] all legal constraints” at the time of the project’s initiation. This memo provides guidance for project developers, verifiers, and the public for Improved Forest Management projects in California clarifying the treatment of Timber Harvesting Plans or their equivalent (THPs), submitted to the California Department of Forestry and Fire (Cal Fire) for the purposes of meeting the harvest permit requirements in the California Forest Practice Act and Rules, including those necessary to, achieve the goal, where feasible, of, Maximum Sustained Production of High Quality Wood Products (14 CCR 913.11 (933.11, 953.11)). All legally enforceable provisions of those Timber Harvesting Plans, that are active at the time of a project’s initiation are to be considered a legal constraint under the protocol. The Forest Project Protocol language under Section 6.2.1.1 is as follows:

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**6.2.1.1. Consideration of Legal Constraints**

*In modeling the baseline for standing live carbon stocks, the Forest Owner must incorporate all legal requirements that could affect baseline growth and harvesting scenarios. The standing live carbon stock 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.*

*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. Legal constraints include:*

1. *Federal, state/provincial, or local government regulations that are required and might reasonably be anticipated to influence carbon stocking over time including, but not limited to:*
  - a. *Zones with harvest restrictions (e.g. buffers, streamside protection zones, wildlife protection zones)*
  - b. *Harvest adjacency restrictions*
  - c. *Minimum stocking standards*
2. *Forest practice rules, or applicable Best Management Practices established by federal, state, provincial or local government that relate to forest management.*

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- 3. *Other legally binding requirements affecting carbon stocks including, but not limited to, covenants, conditions and restrictions, and other title restrictions in place prior to or at the time of project initiation, including pre-existing conservation easements and deed restrictions, excepting an encumbrance that was put in place and/or recorded less than one year prior to the project start date, as defined in Section 3.6.*

**Determination**

The Reserve consulted with Cal Fire and other stakeholders to understand and identify the purpose and regulatory nature of MSP documents. Cal Fire has indicated that MSP documents must demonstrate a harvest level defined by the forest owner that can achieve long term sustained yield (LTSY) – defined as “the average annual growth sustainable by the inventory predicted at the end of a 100-year planning period.” (14 CCR 898.1 Definitions). At a minimum they must meet the resource conservation standards of the Forest practice Act.

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All forest owners who chose to voluntarily establish Sustained Yield Plans (SYPs), Non-industrial Timber Management Plans (NTMPs), Programmatic Timber Environmental Impact Reports (PTEIRs) and those over 50,000 acres, must demonstrate MSP in an addendum to the THP. At a minimum the addendum, commonly referred to as “Option A”, must show how MSP will be achieved by:

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 ...
2. Balancing Growth and harvest over time, as explained in the THP for an ownership, within an assessment area set by the timber owner ...

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Small landowners, who chose not to demonstrate MSP via the addendum options listed above, need only meet the resource conservation standards of “Option C”.

The silviculture measures and methods to achieve MSP are subject to change in any proposed THP, but once a THP has been approved, the operational provisions of that THP become legally enforceable until a completion report and stocking report have been filed and approved by Cal Fire. At a minimum, all THPs must meet or exceed the base conservation measures defined in the Forest Practice Rules. Timber Harvest Plans (THPs) must be consistent with the provisions of the option chosen by the landowner to demonstrate MSP.

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The Reserve considers the operational provisions of THPs to be a legal commitment, including those operational provisions of the THP’s MSP analysis, that must be recognized at the time a project is submitted. Therefore, any actively enforceable THP within the project area, that has been approved by Cal Fire and utilizes Option “a” or

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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 reflect all legally enforceable silvicultural and operation provisions 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).

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**Deleted:** Forest carbon projects submitted to the Reserve that are subsets of the landbase for which the original MSP document was approved pursuant to 913.11, 933.11 and/or 953.11 (a) or (b) must model a baseline growth and harvest regime that reflects the same mix of silviculture and management intensity used in the MSP document. The verifier shall review the growth and harvest regime used in the modeling projection for consistency with the approved MSP document with regard to the application of silviculture methods, retention levels of all species following harvest, frequency of harvest, and regeneration assumptions. ¶