

Climate Action Reserve
Proposed Amendments Relative to Baseline Determination
Forest Project Protocol Version 3.1 Public Comment
July 30, 2010

John and Derik,

CFA sent a formal letter of comment into the CAR process, which I fully support.

While the weighting makes small changes the resulting outcomes are still not rational. I am attaching two similar work sheets [see *Example1_3%* and *Example2_50%* under Public Comments]. In example 1 I have a project of 20,000 acres and an entity of 800,000 acres (3%). I also ran an example of a 10,000 acre project with a 20,000 acre entity (50%) again the values change but what I consider the odd behavior is still there. I believe that fundamentally this approach fails because there is not necessarily a simple way to relate Entity averages to projects, simply because there are a myriad of real world reasons that a project area can differ from an entity wide average. These being recent purchase, purchase from different past owners, individual location history that is different. All these and many more can result in a location being different than an entity, but none of them change the real outcome of permanence and atmospheric removal of CO₂ once a project is developed. Nor do any of them represent cherry picking.

Thanks for looking at these.

Ed Murphy
Manager, Resource Information Systems
Sierra Pacific Industries





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July 30, 2010

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

Re: Comments Concerning Climate Action Reserve (CAR) Proposed Amendments to Forest Project Protocol (FPP) Version 3.1

Dear Gary,

On behalf of the California Forestry Association, which represents approximately 4 million acres of private forest landowners, 90 percent of California's primary wood-products producers, as well as professional foresters and other natural-resource managers throughout the State of California, we would like to thank you for the opportunity to provide input on your current proposed amendments to FPP 3.1.

After nearly three years of dedicated work by the Climate Action Reserve (CAR) and their Forest Protocol Workgroup, we believe that the current FPP 3.1 has been fully vetted via the open and transparent stakeholder workgroup process with full evaluation via a public input and hearing process, subsequently being adopted by the CAR board, and ultimately heard and preliminarily adopted/endorsed by the California Air Resources Board (ARB) itself for use as early action in the voluntary carbon off-set markets.

Having been participants in that process, both you and I are well aware of the depth of scientific review, consideration of environmental co-benefits, social responsibility and economic feasibility that went into the creation of version 3.0, and subsequently 3.1 which included minor adjustments suggested by ARB.

The final result of that grueling 2½ year process was the issuance of CAR's Forest Project Protocol Version 3.1. Version 3.1 was originally commissioned by ARB with the intention of creating a forest protocol for use in the voluntary carbon markets, but with the stated goal of creating a protocol that could be directly converted into an AB 32 compliance-grade protocol, including AB 32's early action provisions.

Version 3.1 is the only version that has been fully vetted through a transparent stakeholder-driven process and originally endorsed by ARB for use in the voluntary arena (even though ARB endorsement was later rescinded due to California Environmental Quality Act process litigation concerns).

Subsequent to its adoption by CAR and by ARB, CAR conducted hearings and public input concerning guidance related to a California-only issue: separation of the mandatory regulations and voluntary provisions of the various documents describing Maximum Sustained Production (MSP)/Long-term Sustained Yield (LTSY) calculations that forest owners must file when seeking a permit to harvest timber. You have now proposed amendments to Section 6.2.1.1.

CFA fully endorses CAR's interpretation that certain voluntary provisions of MSP/LTSY documents constitute additionality. We also believe that this interpretation can be fully addressed via guidance to verifiers, without amending FPP Version 3.1; as you have already recommended for early action pursuant to Version 3.1.

We also strongly disagree with your recommendation concerning “voluntary agreements” of Section 6.2.1.1. This issue was thoroughly vetted by the CAR Forest Protocol Workgroup and the outcome of those discussions is represented by Version 3.1. CAR is now apparently proposing that **voluntary agreements** be considered a part of the project baseline, including Habitat Conservation Plans (HCP) and Safe Harbor Agreements. Considering rescindable and non-binding agreements in a baseline will result in inaccurate and inconsistent baseline scenarios. Each HCP is a unique discretionary agreement between the landowner and the government with provisions that can be wholly or partially rescinded by either party. HCPs should therefore be analyzed individually to identify any binding requirements. For accuracy and consistency across sectors and programs, it is therefore strongly recommended that CAR require only legally binding agreements to be considered in project baselines, as provided in CAR Protocol Version 3.1.

Finally, CAR has proposed a totally new concept based upon your concern that a project that does not include the entire forest ownership within an assessment area may somehow allow “cherry picking” project areas to gain credits that were not earned pursuant to the protocol’s goals. We strongly disagree that projects were ever intended to include the entire forest ownership; this was fully vetted by your stakeholder workgroup. Moreover, all possibilities for potentially “gaming the system” were fully vetted and accounted for via an array of protection measures provided in the protocol. But to ensure full protection, we have suggested language for your consideration addressing this issue, in the form of guidance to verifiers in Attachment A to this letter. This would surely eliminate any real or perceived “cherry picking.”

CAR’s Forest Project Protocol Version 3.1 was developed with a general understanding that it would likely provide a basis for both recognizing early action carbon credits pursuant to AB 32’s early action provisions, as well as be the basis for ultimate adoption by ARB of a compliance-grade protocol.

There has yet to be a single project that has been fully processed through FPP 3.1, yet you are proposing major adjustments just as ARB begins their regulatory process for compliance-grade protocols. Parallel protocol-adjustment processes are problematic at best. This point is critical to the stability and acceptance of this program by the producers, users and market developers of carbon credits.

We ask that you stand firmly behind your FPP 3.1, and recommend that the CAR Board endorse the attached guidance to verifiers, which will allow ARB to complete their regulatory process.

Please do not hesitate to contact me if you have any questions.

Sincerely,



David A. Bischel
President

Attachment

Attachment A

The following guidance will be provided to verifiers to clarify provisions of FPP Version 3.1

Clarification for Section 6.2.1.1 - Considerations of Legal Constraints

For Maximum Sustained Production of High Quality Forest Products (MSP): For forest projects located in California, the baseline must be modeled to reflect all silvicultural treatments associated with Timber Harvest Plans (THP) active within the Project Area at the time of the project's initiation. All legally enforceable silvicultural and operational provisions of a THP – including those operational provisions designed to meet California Forest Practice Rules requirements for achieving Maximum Sustained Production of High Quality Wood Products [14 CCR 913.11 (933.11, 953.11)] – are considered legal constraints and must be reflected in baseline modeling for as long as the THP will remain active. For portions of the Project Area not subject to THPs (or over time periods for which THPs will not be active), baseline carbon stocks must be modeled by taking into account any applicable requirements of the California Forest Practice Rules and all other applicable laws, regulations and legally binding commitments that could affect onsite carbon stocks. On a case-by-case basis, the California Department of Forestry and Fire Protection may assist Forest Owners in identifying minimum carbon-stocking levels that would be effectively required under California Forest Practice Rules.

For Conservation Agreements: Verifiers shall review Habitat Conservation Plans (HCP), Candidate Conservation Agreements with Assurances, Safe Harbor Agreements, and equivalents under state law (each, a "Conservation Plan") and the accompanying Implementation Agreement to determine if they contain a termination clause that could be exercised by the property owner without post-termination mitigation measures that would survive the termination and affect the baseline (such as retained habitat above the state or federal requirements without the HCP or equivalent). If a Conservation Plan may be terminated without post-termination mitigation, the conservation measures in the Conservation Plan shall not be deemed to be part of the baseline for carbon credits. Verifiers shall also review Conservation Plans to determine if any of their measures are mandated by statute or rule and therefore have the full effect of regulation. Verifiers also may deem a Conservation Plan to be a new Conservation Plan that is beyond the carbon credit baseline when the property owner proposes amendments to an existing Conservation Plan that require federal approval after public review and comment on an Environmental Assessment or Environmental Impact Statement prepared in compliance with the National Environmental Policy Act.

Clarification for Section 4 - Identifying the Project Area

For Improved Forest Management Projects: For a proposed project whose Project Area is less than the entire entity's timberland ownership within an assessment area, the Project Area's average above-ground live carbon stocking cannot be more than 20 percent below the entity-wide average above-ground live stocking within the assessment area. The verifier shall compare the project's average above-ground live carbon stocking to the entity's average above-ground live stocking within the assessment area to confirm this requirement.

If a proposed project does not meet the above requirement, it may still be acceptable as a project if upon request by the entity further analysis by the verifier confirms the following:

1. It is a logical management subdivision of the entity (e.g. planning watershed or contiguous ownership, etc).
2. It is representative of the silvicultural and management practices applied across the entity's ownership within the assessment area.
3. It is demonstrated to be a representative part of a sustainably managed unit (e.g. via an entity-wide certification or a Long-Term Sustained Yield Plan).
4. Explain and justify why the project area's inventory is 20 percent or more below the entity-wide inventory and demonstrate that the project as proposed meets all other protocol tests including high stock reference, maintenance/increasing live stocking and legal constraints.



February 2, 2010

Ms. Linda Adams
Climate Action Reserve Chairperson
Cal/EPA Secretary
California Environmental Protection Agency
1001 "I" Street, 25th Floor
Sacramento CA 95814

Dear Chairperson Adams,

We are writing on behalf of the signatory organizations, the California Forestry Association (CFA), the California Farm Bureau Federation (CFBF), and the Forest Landowners of California (FLOC), who collectively represent more than 5 million acres of private forests in California. It has come to our attention that a serious potential misinterpretation of the Climate Action Reserve's (CAR) Forest Project Protocol baseline by CAR staff could have overwhelming negative consequences to the use of the protocols by California forest owners large and small if not immediately addressed. Ironically, forest owners outside of California would not be affected by this interpretation and could likely become the only significant participants in the registry.

Now, in an apparent pending action by CAR staff, the current interpretation for establishing a project's baseline calculation would be modified to eliminate forest landowner participation simply by re-interpreting, as a legal mandated minimum, the state's requirements that forest owners must submit a modeling analysis for Long-Term Sustained Yield (LTSY) and Maximum Sustained Production (MSP). This interpretation is apparently being contemplated even though the levels of MSP/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 in the California Forest Practice Rules (CFPR), CCR Section 913.11 a-c, the two operative issues are that at all times the level at which MSP is achieved is voluntarily established by the landowner, and that it can be voluntarily rescinded and adjusted at the discretion of the landowner, as long as it is consistent with the minimum stocking standards of the rules, balances growth and harvest over the 100-year modeling period, and avoids or mitigates potential environmental impacts.

Therefore, all options for achieving MSP are consistent with the first paragraph of Section 6.2.1.1, "*Consideration of Legal Constraints*" of CAR's Forest Project Protocol, which was endorsed by the 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.**"

To conclude, options for establishing MSP levels have always been modeled as discretionary to the landowner and therefore considered as rescindable voluntary agreements, just as HCPs are voluntary at the federal level. This interpretation is so fundamental to the establishment of these forest protocols that the forest landowner representatives on CAR's Forest Carbon Workgroup would have immediately reached irreconcilable gridlock on this issue alone, and not dedicated over 2 years of their time to this endeavor.

If CAR were to now re-interpret the methodology for determining 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 MSP at the lowest legal level, instead of encouraging them to make discretionary investments in their forests to increase carbon sequestration, whether or not they submit CAR forest carbon projects.

We do not believe that an issue of this magnitude should be delegated to CAR staff guidance. We would like to meet with you at your earliest convenience, but would ask that you consider the following two actions:

1. Refrain from having CAR staff issue guidance on this interpretation under item "IV. F. Update on Forest Project Protocol" at your February 3rd board meeting agenda.
2. Reconvene an urgent meeting of CAR's Forest Carbon Workgroup for review and advice to the CAR Board and staff on this issue prior to the next CAR Board meeting.

As always, we also strongly encourage participation by all interested parties and organizations at the FCW meeting, and to provide their perspectives to the discussion.

Thank you for your serious consideration of our concerns.

Sincerely,

David Bischel, President

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Ralph Gaarde, President

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