

William & Mary Environmental Law and Policy Review

Volume 32 (2007-2008)
Issue 1

Article 3

October 2007

The Little Engine That Could: The Success of the Stewardship Contracting Authority

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THE LITTLE ENGINE THAT COULD: THE SUCCESS OF THE STEWARDSHIP CONTRACTING AUTHORITY

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INTRODUCTION

For decades, environmentalists and local forest communities have resented the manner in which United States Forest Service personnel have managed the national forests.¹ Environmentalists point to the destruction of endangered species and their habitats, the commercial sale

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¹ See, e.g., Randal O'Toole, *The Forest Service*, CATO INST. (June 13, 2007), available at http://www.cato.org/downsizing/agriculture/forest_service.html.

of timber found in old-growth forests, and the dangerous amount of fuel load on the ground in many national forests as evidence of Forest Service mismanagement.²

Similarly, local forest communities have often found themselves in conflict with the United States Forest Service.³ The economic and social stability of a forest community is heavily dependent on management decisions made by the Forest Service because Forest Service personnel possess the power to grant or deny permission for community members to access and benefit from valuable national forest resources.⁴ The lack of input that forest communities have had in managing their most valuable natural resource has led to distrust of the Forest Service and significant animosity towards the agency.⁵ And, like environmentalists, local forest communities are constantly concerned about the acres of national forest land at risk of catastrophic fire because of the threat fire represents to their homes and their lives.⁶

These longstanding conflicts can be resolved. A temporary and experimental measure, enacted by Congress in the FY 1999 Omnibus Appropriations Act,⁷ has shown significant potential to improve the Forest Service's ecological administration of the forests and repair its tattered relationship with local forest communities. This legislative action, which merely changed the manner in which the Forest Service can contract for goods and services with the public,⁸ has quietly been altering the culture within the Forest Service and the landscape that the Forest Service manages. Referred to by Congress as "Stewardship Contracting," the legislative authority is, unfortunately, temporary.⁹ This article argues that the Stewardship Contracting Authority has been so successful in fulfilling its legislative purpose that Congress should make the authority permanent and encourage the Forest Service to increase the use of stewardship contracts.

² Dominick A. DellaSala et al., *A Citizen's Call for Ecological Forest Restoration: Forest Restoration Principles and Criteria* 21 ECOLOGICAL RESTORATION 14, 14 (2003).

³ See generally COMMUNITIES AND FORESTS: WHERE PEOPLE MEET THE LAND 10-11, 116-30, 163, 170, 172-74 (Robert G. Lee & Donald R. Field eds., 2005).

⁴ *Id.*

⁵ *Id.*

⁶ *Stewardship Contracting: Hearing Before the Subcomm. on Department Operations, Oversight, Nutrition, and Forestry of the H. Comm. on Agriculture*, 107th Cong. 8 (2002) (statement of Bob Goodlatte, Chairman, H. Comm. On Agric.) [hereinafter *Stewardship Contracting*].

⁷ Omnibus Consolidated and Emergency Appropriations Act of 1999, Pub. L. No. 105-277, § 347, 112 Stat. 2681, 298-300 (1998).

⁸ *Id.*

⁹ *Id.*

I. BACKGROUND OF THE STEWARDSHIP CONTRACTING AUTHORITY

Stewardship contracting in the National Forest System traces its history back to the 1980s, when reduced federal appropriations inspired the development of creative cost-cutting devices within the United States Forest Service.¹⁰ The original stewardship contracts were called “land management services contracts” or “LMSCs.”¹¹ LMSCs were utilized, on a test-case basis, from 1984 to 1991 in several “national forests in the western United States.”¹²

Prior to the development of the LMSCs in the 1980s, the Forest Service only had two types of contracts with which to manage the national forests: timber contracts and service contracts.¹³ Timber contracts are authorized and regulated under the National Forest Management Act, a statute that applies only to the Forest Service.¹⁴ Timber contracts are used by the Forest Service to sell federal government property, specifically the timber growing on Forest Service lands.¹⁵ Timber contracts describe, in rigid detail, the manner in which a “purchaser buys, pays for, harvests, and removes [the wood].”¹⁶

Service contracts are those contracts used by all federal agencies to purchase goods and services from the public.¹⁷ Often referred to as “procurement contracts,” service contracts are authorized and regulated under the Federal Acquisition Regulations.¹⁸ Procurement contracts are used by the Forest Service to purchase a “specific good or service for the direct benefit of the Forest Service.”¹⁹ Projects that the Forest Service commonly uses procurement contracts for include paying businesses to engage

¹⁰ PAUL RINGGOLD & MARY MITSOS, *LAND MANAGEMENT STEWARDSHIP CONTRACTS: BACKGROUND AND LEGISLATIVE HISTORY* 1 (1996).

¹¹ *Id.*

¹² *Id.* at 2.

¹³ SUSTAINABLE NORTHWEST ET AL., *FOREST SERVICE CONTRACTING: A BASIC GUIDE FOR RESTORATION PRACTITIONERS* 1 (2006) [hereinafter *SUSTAINABLE NORTHWEST*], available at <http://sustainablenorthwest.org/pdf/policy/contract/fscontractingguide.pdf>.

¹⁴ 16 U.S.C. § 472a(a) (2000).

¹⁵ SUSTAINABLE NORTHWEST, *supra* note 13, at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ CASSANDRA MOSELEY, *ECOSYSTEM WORKFORCE, BRIEFING PAPERS: INNOVATIVE CONTRACTING: TIPS FOR RURAL COMMUNITIES AND AGENCY PARTNERS* 5 (2001), available at <http://ewp.uoregon.edu/pdfs/bp3.pdf>.

¹⁹ U.S. DEPT OF AGRIC., *FOREST SERVICE, AGREEMENTS DESK GUIDE INSTRUCTOR GUIDE* 8 (2003), available at http://www.fs.fed.us/business/standards/Agreements_Desk_Guide.doc.

in "tree planting, pre-commercial thinning, trail maintenance, and stream restoration" on national forest lands.²⁰ Procurement contracts typically state the Forest Service's requirements for a project, and the "terms and conditions" that apply to the project.²¹

When the LMSCs were instituted in the 1980s, they differed from the timber contracts and service contracts in an important respect: flexibility.²² Instead of describing in rigid detail the particular activities that a contractor had to perform on Forest Service land and the manner in which the contractor had to perform each activity, the LMSCs held the contractor responsible for the end result of the project.²³ This shift of focus from controlling the means in which a contractor executed a project, to evaluating the "end result" of a project, was intended to improve the productivity of the contractor, and hence, reduce the expenditure of public funds on the chosen Forest Service projects.²⁴

The limited use of the LMSCs was successful enough that in 1992 Congress decided to augment this new approach to contracting.²⁵ Congress first changed the name of the LMSCs to "stewardship end result contracts."²⁶ This change reflected Congress's belief that the new method of contracting could be used not only to reduce costs in the National Forest System, but also to provide for a more comprehensive approach to Forest Service ecosystem management than was permissible under the traditional timber and service contracts.²⁷ The name change also reflected Congress's anticipation that the stewardship contracts would support the development of additional recreational facilities in the national forests and help build stronger relationships between the Forest Service and local communities.²⁸

Congress then authorized pilot projects in two forests, the Kaibab National Forest in Arizona and the Dixie National Forest in Utah.²⁹ Finally, Congress introduced the idea of exchanging timber for services.³⁰ This was a radical departure from previous statutory requirements that forced the

²⁰ SUSTAINABLE NORTHWEST, *supra* note 13, at 2.

²¹ *Id.* at 3.

²² RINGGOLD & MITSOS, *supra* note 10, at 1.

²³ *Id.* at 1-2.

²⁴ *Id.*

²⁵ *Id.* at 2.

²⁶ Department of the Interior and Related Agencies Appropriations Act of 1992, Pub. L. No. 102-154, tit. II, 105 Stat. 990, 1019 (1991) [hereinafter Appropriations Act of 1992].

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Forest Service to send all profits from timber sales back to the Treasury General Fund.³¹ Instead, the pilot projects were authorized to keep all of the profits received from removing timber under a stewardship contract and use the profits to pay for stewardship services such as wildlife habitat enhancement, construction of recreational trails and vista viewpoints, and road construction, maintenance, or obliteration.³²

After 1992 there were several, mostly unsuccessful, attempts by Congress to enlarge the number of Forest Service pilot projects nationwide, and the scope of the projects.³³ Eventually, in 1999 Congress authorized stewardship contracting in order “to perform services to achieve land management goals for the national forests that meet local and rural community needs.”³⁴ While the 1999 legislation ambitiously paved the way for eighty-four demonstration projects in the national forests,³⁵ the 1999 authority was good for only five years, until 2003.³⁶ In 2003, however, Congress renewed the temporary authority until September 30, 2013 and gave both the United States Forest Service and the Bureau of Land Management general authority to engage in stewardship contracting without limitation.³⁷ The lessons learned from 1999 to the present indicate that the temporary stewardship contracting authority issued by Congress should be made permanent, and that the Forest Service should improve its efforts to incorporate stewardship contracting into the culture of the National Forest System.

³¹ *Stewardship Contracting*, *supra* note 6, at 58-59 (statement of Carol Daly, President, Flathead Economic Policy Center).

³² Appropriations Act of 1992, Pub. L. No. 102-154, tit. II, 105 Stat. 990, 1019 (1991).

³³ California Desert Protection Act of 1994, Pub. L. No. 103-433, 108 Stat. 4471; Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 315, 110 Stat. 1321; Crop-Sharing Hunger Relief Act, H.R. 3944, 102d Cong. (1991); Stewardship End-Result Contracts Demonstration Act, S. 2100, 103d Cong. (1994); Sustainable Ecosystems and Economies Demonstration (SEE) Act of 1994, S. 2385, 103d Cong. (1994); National Forest Stewardship Contracting Act of 1994, H.R. 5007, 103d Cong.; Forest Ecosystem Stewardship Demonstration Act, H.R. 1682, 104th Cong. (1995); Forest Ecosystem Stewardship Demonstration Act of 1995, S. 1259, 104th Cong. (1995); Omnibus Consolidated Rescissions and Appropriations Act of 1996, H.R. 3019, 104th Cong.; Public Participation in Timber Salvage Act of 1996, S. Amdt. 3493, 104th Cong. (1996).

³⁴ Omnibus Consolidated and Emergency Appropriations Act of 1999, Pub. L. No. 105-277, § 347, 112 Stat. 2681, 298 (1998).

³⁵ PINCHOT INST. FOR CONSERVATION, STEWARDSHIP CONTRACTING: A SUMMARY OF LESSONS LEARNED FROM THE PILOT EXPERIENCE 5 (2006) [hereinafter PINCHOT]. The eighty-four demonstration projects were authorized from 1999-2002 through several appropriations bills, including Pub. L. No. 105-277, Pub. L. No. 106-291, and Pub. L. No. 107-63. *Id.*

³⁶ Omnibus Consolidated and Emergency Appropriations Act of 1999 § 347.

³⁷ Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, § 323, 117 Stat. 11, 275 (2003).

A. *Mission of the 1999 and 2003 Stewardship Contracting Authority*

While the original impetus for creating a new contracting method in the 1980s was to reduce costs and improve fiscal responsibility,³⁸ by the late 1990s stewardship contracting had become synonymous with several other goals as well. Primary among them were: 1) "to improve the efficiency and effectiveness of ecosystem restoration"³⁹ in the National Forest System; 2) to meet "the needs of local and rural communities"⁴⁰ in the vicinity of national forests; and 3) "to conduct thinning and hazardous fuels reduction activities to reduce the threat of wildfire"⁴¹ in the National Forest System. Essentially, stewardship contracting was viewed as having the potential "to provide [significant] social, ecological, and economic benefits to public lands and nearby communities."⁴²

B. *Stewardship Contracting Tools*

In crafting the stewardship authority to respond to the concerns expressed by environmental groups and local forest communities, Congress endowed the United States Forest Service with a number of unique and powerful tools.⁴³ Primary among them are: 1) Integrated Resource Contracts (Goods-For-Services Contracts);⁴⁴ 2) End Results Contracting;⁴⁵ 3) Best-Value;⁴⁶ 4) Retention of Receipts;⁴⁷ and 5) Multi-Party Monitoring.⁴⁸ While each tool alone provides an incentive for the Forest Service to move away

³⁸ U.S. DEPT OF AGRIC., FOREST SERV., FOREST SERVICE IMPLEMENTATION DURING FY 2004 OF THE STEWARDSHIP CONTRACTING AUTHORITY PROVIDED BY SECTION 323 THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003 (AS CONTAINED IN DIVISION F OF PUB. LAW NO. 108-7; 15 U.S.C. 2104 NOTE): A REPORT TO THE APPROPRIATIONS COMMITTEES OF THE U.S. HOUSE AND SENATE (2005), available at http://www.fs.fed.us/forestmanagement/projects/stewardship/reports/documents/FY_04_programmatic_report.pdf.

³⁹ *Stewardship Contracting*, *supra* note 6.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² RURAL VOICES FOR CONSERVATION COAL., STEWARDSHIP CONTRACTING ISSUE PAPER 1 (2006), <http://www.sustainablenorthwest.org/pdf/policy/contract/stewcontract.pdf>.

⁴³ See 16 U.S.C. § 2104 (a) (Supp. IV 2004).

⁴⁴ *Id.* § 2104(c)(3).

⁴⁵ *Id.*

⁴⁶ 42 U.S.C. § 2104(c)(1) (2000).

⁴⁷ 42 U.S.C. § 2104(d), (f)(2) (Supp IV. 2004).

⁴⁸ *Id.* § 2104(g).

from its traditional focus on forest resource extraction, the entire box of tools, packaged together, has provided the Forest Service with the opportunity to dive head first into the forest restoration and community forestry fields.

1. Integrated Resource Contracts (Goods-For-Services Contracts)

Integrated Resource Contracts, or Goods-For-Services Contracts, do not “replace timber sale contracts or service contracts.”⁴⁹ Unlike timber sale contracts, which sell government property, and service contracts, which purchase goods and services for the government, however, an Integrated Resource Contract is meant to “achieve land management goals for the national forests and the public lands that meet local and rural community needs.”⁵⁰ Thus, the Integrated Resource Contract can be used when the Forest Service has determined, in conjunction with local community interests, that an area of a national forest could benefit from ecological restoration work.⁵¹ The types of ecological restoration work that an Integrated Resource Contract is authorized to provide include: restoring and maintaining wildlife and fish habitat;⁵² controlling noxious weeds and reestablishing native plant species;⁵³ restoring or maintaining water quality through the maintenance or destruction of roads and trails;⁵⁴ restoring or maintaining a watershed;⁵⁵ and removing vegetation and setting prescribed fires to improve the health of the forest and reduce fire hazards.⁵⁶ Additionally, any ecological restoration work performed pursuant to an Integrated Resource Contract must comply with all applicable environmental laws and regulations, including the National Environmental Policy Act with its required “environmental assessment” or “environmental impact study.”⁵⁷

⁴⁹ ECOSYSTEM WORKFORCE PROGRAM ET AL., TWENTY FREQUENTLY ASKED QUESTIONS ABOUT STEWARDSHIP CONTRACTING 1 (2003), <http://www.sustainablenorthwest.org/pdf/policy/contract/faqs.pdf>.

⁵⁰ 16 U.S.C. § 2104 (a) (Supp. IV 2004).

⁵¹ RICH LANE & ASSOCS., LLC, LINCOLN COUNTY FOREST STEWARDSHIP GUIDE 10 (2006), <http://www.welcome2eureka.com/PDF/LincolnCountyForestStewardshipGuide.pdf>.

⁵² 16 U.S.C. § 2104 (b)(6) (2000).

⁵³ *Id.* § 2104(b)(7).

⁵⁴ *Id.* § 2104(b)(1).

⁵⁵ *Id.* § 2104(b)(5).

⁵⁶ 42 U.S.C. § 2104(b)(3)-(4) (2000 & Supp. IV 2004).

⁵⁷ Larry Kaiser, BLM's Idaho State Forester, Presentation, “Stewardship ‘End Result’ Contracting Projects”: Conference, Stewardship End Result Contracting and Forest Restoration, June 22, 2006.

After an ecological restoration project is identified, the Forest Service can then enter into an agreement with a contractor to provide the necessary ecological restoration services. The contractor need not be paid with cash for his services, however. Instead, the contractor may be paid with the timber that is removed from the targeted forest restoration area as a by-product during the stewardship contracting project.⁵⁸ The contractor can then sell the timber for cash as compensation for services rendered. This "goods-for-services" bartering approach has permitted the Forest Service to "implement resource management projects that it would not have been able to carry out or [that] would have been delayed due to lack of funding."⁵⁹ Thus, because Congress has not yet appropriated to the Forest Service enough funds to implement many important forest restoration projects,⁶⁰ the Integrated Resource Contracts serve the critical role of permitting the Forest Service to preserve and improve the health of the national forests and surrounding local communities, without being subject to, and restricted by, the budgetary foibles of Congress.

2. End Results Contracting

Under the stewardship contracting authority, the Forest Service can, in an Integrated Resource Contract, simply describe the end result desired on the forest land targeted for restoration, and it is not required to state the precise methods and techniques used by a contractor to achieve the desired end results.⁶¹ This permits flexibility for the contractor to choose the best methods and techniques to remove vegetation and timber from the targeted area, to service the area, or to build in the area, as the project progresses over time and conditions on the ground change.⁶² This type of flexibility is not found in the traditional timber sale contract or service contract.⁶³ Notably, the flexibility of the end result contracting translates into increased efficiency, because it "allows [for the] accomplishment

⁵⁸ 16 U.S.C. § 2104 (c)(3)(A) (Supp. IV 2004).

⁵⁹ DOUG MACCLEERY, STEWARDSHIP CONTRACTING ASSESSMENT (2004) [hereinafter MACCLEERY], available at http://www.fs.fed.us/forestmanagement/projects/stewardship/assessment/final_assessment.shtml.

⁶⁰ *Stewardship Contracting*, *supra* note 6, at 75 (statement of Lynn Jungwirth, Executive Director, Watershed Resource and Training Center).

⁶¹ Fred Fischer & Marge Schafer, U.S. Forest Service, Presentation, "Stewardship Contracts": Conference, Stewardship End Result Contracting and Forest Restoration, June 22, 2006.

⁶² *Id.*

⁶³ *See id.*

of more work with less money”⁶⁴ in those situations where a contractor is paid in cash for his restoration services, instead of with timber.

3. Best Value

A significant change in the way that the Forest Service manages the National Forest System, the “best value” requirement that Congress placed in the stewardship contracting authority, has freed the Forest Service from having to award contracts to the lowest bidder. Perhaps understanding that the old adage, “Buy Cheap, Get Cheap,” is often true, Congress now requires that the Forest Service must, when using an Integrated Resource Contract, evaluate a contractor’s bid or proposal based on both “price and non-price criteria.”⁶⁵ The goal of best value contracting is to provide the “greatest overall benefit”⁶⁶ to the government by placing “a premium on quality and competency.”⁶⁷

The Forest Service will evaluate a contractor’s bid or proposal for a stewardship contracting project by reviewing a number of factors other than price, including: the “experience” and “work quality” of a contractor;⁶⁸ the contractor’s “past performance,”⁶⁹ and the benefits that the contractor can provide to the local community,⁷⁰ such as the employment or training of local workers,⁷¹ or the creation of a local infrastructure that would support a forest restoration economy.⁷² The Forest Service has successfully used the best value contracting requirement to increase collaboration between the Forest Service, contractors, forest communities, and environmentalists during the development and evaluation of proposed restoration projects,⁷³ and to enhance the sense of “ownership” and responsibility that contractors have for the outcome of a restoration project.⁷⁴

⁶⁴ MACCLEERY, *supra* note 59.

⁶⁵ U.S. DEP’T OF AGRIC., FOREST SERVICE STEWARDSHIP HANDBOOK § 60.5 (2005) [hereinafter HANDBOOK].

⁶⁶ *Id.*

⁶⁷ FLATHEAD ECONOMIC POLICY CENTER, BEST VALUE & STEWARDSHIP CONTRACTING GUIDEBOOK: MEETING ECOLOGICAL AND COMMUNITY OBJECTIVES (Maia Enzer et al. eds., 2006) [hereinafter FLATHEAD], available at <http://www.sustainablenorthwest.org/pdf/policy/contract/bvrw.pdf>.

⁶⁸ HANDBOOK, *supra* note 65, § 60.5.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ FLATHEAD, *supra* note 67, at 19.

⁷² *Id.* at 4.

⁷³ *Id.*

⁷⁴ MACCLEERY, *supra* note 59.

4. Retention of Receipts

Retained receipts are essential components of the Integrated Resource Contracts in which the Forest Service exchanges timber and other forest products for forest restoration services. When the value of the timber or other goods created as by-products of a stewardship contracting project exceeds the cost to the Forest Service of the restoration services provided by a contractor, the excess value generated is not given to the contractor.⁷⁵ Instead, the Forest Service can retain these "residual receipts" to help pay for the costs of additional work on the same stewardship contracting project, or the receipts can be transferred to help pay for another approved stewardship contracting project.⁷⁶ Additionally, the residual receipts can be used to fund the multi-party monitoring process required on stewardship contracting projects.⁷⁷

The ability to retain the value of excess receipts under a stewardship contract, instead of being compelled to send the money back to the Treasury General Fund, as is done under timber sale contracts, has enabled the Forest Service to complete a number of forest restoration projects that would not have been possible without this particular tool.⁷⁸

5. Multi-Party Monitoring

Multi-party monitoring, like best value contracting, is required under the Stewardship Contracting Authority.⁷⁹ The multi-party monitoring process is intended to "[assess] the effectiveness of stewardship contracting projects in meeting" forest restoration goals and community needs.⁸⁰ Monitoring groups are generally comprised of representatives from the Forest Service and other governmental agencies, environmental and other non-profit organizations, and individual community members.⁸¹

The multi-party monitoring process has seen significant success. The new process of collaboration "has been well received by the local

⁷⁵ HANDBOOK, *supra* note 65, § 67.1.

⁷⁶ *Id.* § 67.1-67.2.

⁷⁷ *Id.* § 67.2.1.

⁷⁸ *Stewardship Contracting*, *supra* note 6, at 74 (statement of Dale Bosworth, Chief, U.S. Forest Service).

⁷⁹ 16 U.S.C. § 2104 (g) (Supp. IV 2004).

⁸⁰ HANDBOOK, *supra* note 65, § 60.5.

⁸¹ *Id.*

public,”⁸² allowing traditionally adversarial groups to come together to propose, implement, and evaluate forest restoration projects. Some of the primary benefits achieved by the multi-party monitoring process include: 1) improved “trust” and “communication” between the Forest Service and the public; 2) recognition of the contributions that local community members can make to the health of national forests; 3) opportunities for “learning” and sharing information between the diverse participants; 4) positive feedback on the projects, both within the Forest Service and in the community, thereby improving the morale of Forest Service personnel; and 5) more comprehensive and better designed projects that simultaneously address “environmental, social, cultural and economic needs.”⁸³

II. A SAMPLE STEWARDSHIP CONTRACTING PROJECT

In 1999, Congress approved a stewardship project in Missoula County, Montana, in the Lolo National Forest, Seeley Lake Ranger District.⁸⁴ The project was located on 640 acres in the East Fork of the Clearwater River drainage, and hence, was titled the “Clearwater Stewardship Project.”⁸⁵ A number of goals were identified for the Clearwater Stewardship Project; among them, protecting grizzly bear habitat, improving water quality and bull trout habitat, maintaining general forest health, treating noxious weeds, and enhancing views along a scenic byway.⁸⁶

A. *History of the Clearwater Stewardship Project*

A multi-party monitoring committee was formed on June 12, 2001,⁸⁷ staffed by seven volunteers from the local community.⁸⁸ Heading the committee was Jim Burchfield, Director of the Bolle Center for People and Forests at the University of Montana.⁸⁹ Tim Love, the Seeley Lake District

⁸² MACCLEERY, *supra* note 59.

⁸³ PINCHOT, *supra* note 35, at 10.

⁸⁴ Sherry Devlin, *Model of Stewardship*, MISSOULIAN, June 16, 2003, available at <http://www.missoulia.com/articles/2003/06/16/news/local/news01.txt>.

⁸⁵ U.S. DEP'T. OF AGRIC., USDA FOREST SERVICE STEWARDSHIP CONTRACTING PILOTS: MONITORING/EVALUATION REPORT, CLEARWATER STEWARDSHIP PROJECT 2 (2003) [hereinafter USDA].

⁸⁶ *Id.*

⁸⁷ *Id.* at 4.

⁸⁸ Clearwater Stewardship Contracting Comm., Charter, at 1 (Jan. 2, 2002).

⁸⁹ *Id.* at app. 1.

Ranger, represented the Forest Service on the committee.⁹⁰ They were joined by Mary Mitsos of the National Forest Foundation, Jim Stone of Trout Unlimited, Sterling Millers of the National Wildlife Federation, Jack Copps of the Seeley Lake Water District Board and John Manz, a retired executive of the Weyerhaeuser Company.⁹¹ The committee also had one ex-officio member, Carol Daly, of the Flathead Economics Policy Center.⁹²

The Clearwater Stewardship Project contract was offered to the public on July 19, 2001,⁹³ and it generated three bids.⁹⁴ On September 7, 2001,⁹⁵ the contract was awarded to Pyramid Mountain Lumber Company,⁹⁶ a small,⁹⁷ family-owned⁹⁸ business located right in the Seeley Lake Ranger District.⁹⁹ Pyramid Mountain was selected using the "Best Value" method,¹⁰⁰ and its success in obtaining the stewardship contract was based primarily on its well-deserved reputation as a company "committed to economically and environmentally responsible sustainable forestry practices."¹⁰¹

The interesting thing about the Clearwater Stewardship Project is that precisely \$0.00 was appropriated by Congress to the Forest Service to carry out the ecological restoration activities proposed by the project.¹⁰² Indeed, "the appropriated funds to accomplish this work were not available."¹⁰³ The project instead relied entirely on the goods-for-services Integrated Resource Contract by exchanging timber for ecological restoration services rendered by Pyramid Mountain.¹⁰⁴

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ USDA, *supra* note 85, at 4.

⁹⁴ *Id.* at 5.

⁹⁵ *Id.* at 4.

⁹⁶ *Id.* at 5.

⁹⁷ See SUSTAINABLE NORTHWEST, *supra* note 13, at 3 (describing the number of employees a company must have to classify as a small business for contracting purposes); see also USDA, *supra* note 85, at 6 (describing the number of employees of Pyramid Mountain Lumber Company).

⁹⁸ Pyramid Mountain Lumber, Inc.: The Stewardship Company [hereinafter PML], <http://www.pyramidlumber.com/index.asp/fuseaction/> (last visited Nov. 4, 2007).

⁹⁹ USDA, *supra* note 85, at 6.

¹⁰⁰ *Id.* at 3.

¹⁰¹ PML, *supra* note 98 (follow "Timber Management" hyperlink; then follow "Stewardship Letter" hyperlink).

¹⁰² USDA, *supra* note 85, at 6.

¹⁰³ *Id.* at 11.

¹⁰⁴ *Id.* at 3.

When the Forest Service initially proposed the Clearwater Stewardship Project, one priority was to address the “abnormally high density of trees within a fire-adapted ecosystem.”¹⁰⁵ The abnormally high tree density was detrimental to the health and vigor of the forest, created a risk of a wildfire,¹⁰⁶ and was contributing to the degradation of the “wildlife habitat for a variety of significant wildlife species, including the grizzly bear.”¹⁰⁷ To reduce the forest density to a more healthy level, a number of trees needed to be cut, providing an opportunity for the Forest Service to trade the thinned trees for additional forest restoration services.¹⁰⁸

After Pyramid Mountain received the stewardship contract, it thinned approximately 600 acres of forest to increase the health of forest stands and it used prescribed fire on another 160 acres to reduce forest fuel-load and the risk of fire.¹⁰⁹ Approximately 4.8 million board feet of timber,¹¹⁰ valued at almost \$1 million,¹¹¹ was produced by this thinning. Pyramid Mountain initially received about \$800,000 worth of the timber receipts, while the Forest Service retained the residual receipts of over \$100,000.¹¹² Subsequently, the Forest Service used its retained receipts to add additional tasks to the original stewardship contract,¹¹³ thereby increasing the effectiveness of the entire Clearwater Stewardship Project.

In exchange for receiving almost \$1 million worth of timber for free, Pyramid Mountain spent the next two years working on several forest restoration projects.¹¹⁴ First, it designed and built seven new bridges with arch pipes to replace small culverts which were insufficient to pass the anticipated sediments that would wash through the forest after a large wildfire. Second, it replaced all of the old toilets in the campgrounds with eighteen modern vault toilets. Third, it created nine scenic turnouts on a popular scenic byway called the Clearwater Loop Road. Fourth, it obliterated fifty miles worth of roads. Fifth, it treated over twelve miles of weeds. Finally, it restored two miles of streams and removed undersized culverts that blocked the migration of bull trout. Most of these restoration activities

¹⁰⁵ *Stewardship Contracting*, *supra* note 6, at 110 (statement of Dr. James Burchfield, Director, Bollee Center, School of Forestry, University of Montana).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Devlin, *supra* note 84.

¹¹¹ USDA, *supra* note 85, at 6.

¹¹² *Id.*

¹¹³ *Id.* at 12, 14.

¹¹⁴ Devlin, *supra* note 84.

moved the lumber company "outside the normal comfort zone" in which it was accustomed to performing.¹¹⁵

B. Benefits of the Clearwater Stewardship Project

The benefits of the Clearwater Stewardship Project are numerous and long lasting. The local economy profited directly when new jobs were created to provide forest restoration services to the Forest Service in exchange for timber. The forest health was enhanced when the project preserved and restored critical wildlife habitat, destroyed noxious weeds, and reduced the risk of wildfire. The relationships between the local environmentalists, loggers, and Forest Service personnel improved dramatically, eliminating decades of hostility between the different parties, and setting the stage for even more promising stewardship contracting proposals in the future. The recreational value of the forest to the public was augmented by the installation of new vault toilets and scenic pullouts. Finally, the project was completed in a manner that saved, and continues to save, "the American taxpayers money."¹¹⁶

1. Economic Benefits

During the course of the three-year stewardship contract,¹¹⁷ Pyramid Mountain employed fifty workers from the local area, paying them \$12-16 per hour.¹¹⁸ Pyramid Mountain also hired ten local subcontractors¹¹⁹ to complete the project. Additionally, the Clearwater Stewardship Project introduced Pyramid Mountain to "new experiences"¹²⁰ in ecological restoration, and gave the contractor the opportunity to train its workers on new types of equipment,¹²¹ thereby helping to develop a local economy more fluent in forest restoration practices.

These economic benefits have remained in the local forest community. Pyramid Mountain recently spent several million dollars to upgrade their mill to remain competitive in the tight wood-products industry in

¹¹⁵ USDA, *supra* note 85, at 15.

¹¹⁶ *Id.* at 12.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.* at 6.

¹¹⁹ *Id.*; see also *Stewardship Contracting*, *supra* note 6, at 37 (statement of Dr. James Burchfield, Director, Bollee Center, School of Forestry, University of Montana).

¹²⁰ USDA, *supra* note 85, at 14.

¹²¹ *Id.*

Montana and to improve its efficiency as “The Stewardship Company.”¹²² Additionally, due to the experience the company gained successfully completing the Clearwater Stewardship Project, Pyramid Mountain has proposed another local stewardship project.¹²³ This new stewardship project, the Blackfoot Stewardship Pilot Program, if approved, will “designate new wilderness tracts in the Bob Marshall, Scapegoat and Mission Mountains wilderness areas; expand stewardship funding to restore watersheds, trout and wildlife habitat; maintain recreational facilities and assist in developing a co-generation plant that would burn small fuels that need to be removed for forest restoration.”¹²⁴

The \$7 million co-generation plant is scheduled to be built by Pyramid Mountain, with a request to Congress for \$4.5 million in federally appropriated funds.¹²⁵ The plant will eventually provide work for twenty to thirty new employees.¹²⁶ More importantly, the plant will help further develop and maintain a forest restoration economy in this small, rural community whose prosperity is directly dependent on the health and well-being of its local forest.

2. Ecological Benefits

A primary goal of the Clearwater Stewardship Project was to protect threatened grizzly bears¹²⁷ by eliminating vehicle access to their forest habitat.¹²⁸ The goal was met when the Forest Service first decommissioned ten miles of road in the forest, and then Pyramid Mountain obliterated another fifty miles of road under the stewardship contract.¹²⁹ The Forest Service has stated that “[w]ithout the resources made available

¹²² Perry Backus, *Seeley Lake's Pyramid Lumber Upgrades Computer System*, MISSOULIAN, available at <http://www.missoulain.com/articles/2007/01/16/news/local/news02.txt>.

¹²³ PML, *supra* note 98 (follow “News & Events” hyperlink; then follow “Noteworthy News” hyperlink; then follow 6/6/07 hyperlink).

¹²⁴ Perry Backus, *Land-Use Coalition Rolls Out Blackfoot Valley Proposal*, MISSOULIAN, available at <http://www.missoulain.com/articles/2007/05/10/news/mtregional/news06.txt>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Grizzly bears in the lower forty-eight states were removed from the “threatened list” under the Endangered Species Act by the United States Fish and Wildlife Service in 2007. Press Release, U.S. Fish & Wildlife Serv., *Successful Recovery Efforts Bring Yellowstone Grizzly Bears Off the Endangered List* (Mar. 22, 2007), available at <http://www.fws.gov/news/NewsReleases/showNews.cfm?newsId=7A76B25D-CF90-9315-EB129326FCDD4ADC>.

¹²⁸ USDA, *supra* note 85, at 11.

¹²⁹ *Id.*

in this exchange [of goods for services], the road density targets would likely not have been met, because the appropriated funds to accomplish this work were not available.”¹³⁰

While assisting in the grizzly bear recovery plan, Pyramid Mountain also helped to improve the bull trout habitat when it conducted its road work.¹³¹ The roads were a source of sediment that decreased water quality,¹³² affecting the survival rate of the bull trout and the success of their reproductive efforts.¹³³ Additionally, Pyramid Mountain removed forty-five culverts that previously interfered with bull trout efforts to migrate and spawn, and replaced thirty-two others.¹³⁴

Small and medium size trees, especially lodgepole pine and Douglas fir, were cut down and removed by Pyramid Mountain to protect a venerable stand of old-growth western larch that, because of the overcrowded forest conditions, was becoming susceptible to bark beetle infestations and was unable to regenerate.¹³⁵ Additionally, “nineteen different stands” of trees were protected from attack by insects and disease by culling lodgepole pines that were at risk of succumbing to bark beetles.¹³⁶ Over eighty acres of noxious weeds were treated to preserve the native terrestrial habitat.¹³⁷ Finally, Pyramid Mountain reduced the risk of wildfire by using prescribed fires to eliminate almost 10,000 tons of vegetative fuel.¹³⁸

3. Sociological Benefits

The sociological benefits produced by the Clearwater Stewardship Project are impressive. The contracting authority required the formation of a multi-party monitoring committee to track the progress of the stewardship project.¹³⁹ The committee created to assess the Clearwater Stewardship Project represented the interests of the Forest Service, environmentalists,

¹³⁰ *Id.*

¹³¹ *Id.* at 2.

¹³² *Id.*

¹³³ Press Release, U.S. Fish & Wildlife Serv., U.S. Fish and Wildlife Service Designates Critical Habitat for Bull Trout (Sept. 23, 2005), *available at* <http://www.fws.gov/news/NewsReleases/showNews.cfm?newsId=F0E6823C-65BF-03E7-21348B612A1081D7>.

¹³⁴ USDA, *supra* note 85, at 9.

¹³⁵ Hutch Brown, *Ecological Restoration in Montana's Western Larch*, 65 FIRE MGMT. TODAY 28, 31 (2005), *available at* http://www.fs.fed.us/fire/fmt/fmt_pdfs/FMT65-4.pdf.

¹³⁶ Devlin, *supra* note 84.

¹³⁷ USDA, *supra* note 85, at 9.

¹³⁸ *Id.*

¹³⁹ Devlin, *supra* note 84.

the logging industry, and the general public.¹⁴⁰ It was comprised of individuals who were not only “professional,” but also “independent,” “curious and beyond intimidation.”¹⁴¹

Over the course of the three years, the Forest Service engendered a “strong level of trust” among the Seeley Lake community by being open and honest with the public, admitting when mistakes were made and learning from those mistakes.¹⁴² Additionally, the Forest Service and the monitoring committee worked together on identifying needed forest restoration projects, completing NEPA analyses, educating the public, and developing the monitoring plan.¹⁴³ The Forest Service also arranged regular, on-site field trips for the monitoring committee members to review all aspects of the stewardship project.¹⁴⁴

This was a new way of doing business for the Forest Service that insured that community members were able to have their voices heard by the federal government in a practical, meaningful manner. At the end of the project, the Forest Service declared that the monitoring committee had added “tremendous value” to the stewardship project.¹⁴⁵ It also reported that the monitoring committee’s “oversight generated a level of trust both within and outside the community that the stewardship project was meeting its purposes.”¹⁴⁶ In other words, the Forest Service was no longer the “bad guy” in the local community.¹⁴⁷

¹⁴⁰ USDA, *supra* note 85, at 13-14.

¹⁴¹ *Id.*

¹⁴² *Id.* at 15-16.

¹⁴³ *Id.* at 10.

¹⁴⁴ *Id.* at 15.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See *Stewardship Contracting*, *supra* note 6, at 71 (statement of Dr. James Burchfield, Director, Bollee Center, School of Forestry, University of Montana). Dr. Burchfield states that:

Well, I just want to hearken back to a recent comment that you made that I think is the core benefit of stewardship contract, which is reinstating trust between the American people and the agency. For many years the Forest Service operated in a rather insular fashion. They thought they knew what they were doing and they are professionals. And in some respects, with hindsight now we can see that some mistakes were made. And right now stewardship contracting gives us this opportunity to engage in this reciprocal dialog that is creative, that is experimental, and I would really encourage us to continue the stewardship contracting program.

Id.

The goodwill engendered by the stewardship contracting authority in the community has continued.¹⁴⁸ Community members have proposed another local stewardship project involving numerous entities.¹⁴⁹ This new stewardship project, the Blackfoot Stewardship Pilot Program,¹⁵⁰ will draw on the lessons learned from Clearwater Stewardship Project. The Forest Service has learned that mutual goals can be accomplished through cooperative conservation.¹⁵¹

4. Recreational Benefits

The Clearwater Stewardship Project generated clear and straightforward recreational benefits to the public. First, all old toilets in the forest recreational areas were replaced with eighteen modern vault toilets, which "had been on the shelf for an extended period,"¹⁵² waiting for appropriations from Congress that never came.¹⁵³ Because the old toilets had been leaking human waste into Seeley Lake for some time, their replacements also provided sanitary benefits.¹⁵⁴ Furthermore, Pyramid Mountain added nine pullouts to the Clearwater Loop Road to enhance the scenic views.¹⁵⁵ And

¹⁴⁸ *Id.* Dr. Burchfield states that:

The creation of a citizen-based, multiparty monitoring committee has made clear a commitment on the part of the agency to engage in active deliberations on the most rational and responsible ways to manage our national forests. The long-term consequences of this process to encourage trusting, mutually-reinforcing relationships are difficult to estimate but they could be profound. Stewardship contracting appears to be one of the most effective tools to continue a trend towards agency integration into community affairs. It may help promote a social environment in rural communities that is far less polarized and position oriented than it has been in the past.

Id.

¹⁴⁹ PML, *supra* note 98 (follow "News and Events" hyperlink; then follow "Noteworthy News" hyperlink; then follow "6/6/2007" hyperlink).

¹⁵⁰ *Id.*

¹⁵¹ See U.S. DEPT OF AGRIC., FOREST SERV., USDA FOREST SERVICE STRATEGIC PLAN FY 2007-2012 6 (2007), <http://www.fs.fed.us/publications/strategic/fs-sp-fy07-12.pdf>.

¹⁵² USDA, *supra* note 85, at 12.

¹⁵³ *Id.* at 11.

¹⁵⁴ Devlin, *supra* note 84; see also *Stewardship Contracting*, *supra* note 6, at 62 (statement of Dr. James Burchfield, Director, Bollee Center, School of Forestry, University of Montana).

¹⁵⁵ Devlin, *supra* note 84.

it improved the Clearwater Lake trailhead by adding parking, better signage, and an information board.¹⁵⁶

Finally, Pyramid Mountain upgraded six of the campgrounds in the forest,¹⁵⁷ improving both the day-use experience of visitors and the overnight camping experience. These improvements included: 1) new pavement at the Lake Alva Campground; 2) new vault toilets, picnic tables, and fire grates at the Lake Side Campground; and 3) new vault toilets at the Seeley Lake, Big Larch, Riverpoint, and Lake Inez Campgrounds.¹⁵⁸ The upgrades to the campgrounds permitted the Forest Service to charge for overnight camping, and thus to recover a part of the cost of the campground's maintenance.¹⁵⁹ Timothy Love, the United States Forest Ranger in charge of the Clearwater Stewardship Project, explained that the project accomplished "[l]ots of good work that benefited the recreational experience, improved resource conditions [and] saved government operational [and] maintenance costs."¹⁶⁰

5. Administrative Benefits

The Forest Service enjoyed significant administrative benefits. The Forest Service reported that the Clearwater Stewardship Project required no appropriations of federal money,¹⁶¹ that the "[m]aintenance costs for the new facilities are lower" than the maintenance costs for the old facilities, and that the road culverts replaced by bridges will not need to be cleaned.¹⁶² Additionally, the Forest Service stressed that the work completed in the forest could not have been accomplished without the use of the stewardship contracting authority, due to the lack of federal funds.¹⁶³

The Forest Service found that the stewardship contracting authority changed "the incentives for managing the land."¹⁶⁴ The new contracting method was beneficial to both environmental quality and social needs.¹⁶⁵

¹⁵⁶ E-mail from Timothy G. Love, District Ranger, Lolo National Forest, Seeley Lake Ranger District, to Kimberly Hausbeck, Author (Sept. 9, 2007, 15:30 EST) (on file with author) [hereinafter Love e-mail].

¹⁵⁷ *Id.* They are the Seeley Lake Campground, Lake Alva Campground, Big Larch Campground, Riverpoint Campground, Lake Inez Campground, and Lake Side Campground.

¹⁵⁸ *Id.*

¹⁵⁹ USDA, *supra* note 85, at 12.

¹⁶⁰ Love e-mail, *supra* note 156.

¹⁶¹ USDA, *supra* note 85, at 6.

¹⁶² *Id.* at 12.

¹⁶³ *Id.* at 11-13, 15.

¹⁶⁴ *Id.* at 16.

¹⁶⁵ *Id.* at 15-16.

And it made people feel good about themselves and each other, as they worked together to resolve the ecological and economic issues present in the Lolo National Forest.¹⁶⁶

III. OTHER STEWARDSHIP PROJECTS

The Clearwater Stewardship Project is not the only successful stewardship contracting project. The Forest Service website lists ten other projects that are currently providing ecological and economic benefits as mandated under the contracting authority.¹⁶⁷ Success stories include the Forest Service's use of the stewardship contracting authority to: 1) control Oak Wilt disease in the Chequamegon-Nicolet National Forest in Wisconsin;¹⁶⁸ 2) rescue native plants from a proposed highway bypass near the Wayne National Forest in Ohio;¹⁶⁹ and 3) remove over 300,000 green tons of vegetative material, presenting a high risk of wildfire, from 16,000 acres of the Apache-Sitgreaves National Forests in Arizona.¹⁷⁰

These ten projects, like the Clearwater Stewardship Project, helped to repair the relationship between the Forest Service and the local community.¹⁷¹ Also, several of the projects, like the Clearwater project, would

¹⁶⁶ *Id.*

¹⁶⁷ U.S. Department of Agriculture, Forest Service, Stewardship Contracting Results, <http://www.fs.fed.us/forestmanagement/projects/stewardship/results/index.shtml> (last visited Nov. 4, 2007).

¹⁶⁸ Cathy Fox, *Controlling Oak Wilt Through Stewardship Contracting*, USDA FOREST SERV., Sept. 19, 2006, <http://www.fs.fed.us/forestmanagement/projects/stewardship/results/chenicOakWilt/index.shtml>.

¹⁶⁹ U.S. DEP'T OF AGRIC., SUCCESS STORIES: REPORTING EXAMPLES OF OUR PROGRESS IN CARING FOR THE LAND AND SERVING PEOPLE, WAYNE NF HOSTS OHIO'S FIRST LADY FOR PARTNER'S SPECIAL PROJECT, *available at* http://www.fs.fed.us/forestmanagement/projects/stewardship/results/documents/Mrs_Taft_story.pdf.

¹⁷⁰ U.S. Department of Agriculture, Forest Service, White Mountain Stewardship Project, Contract Overview, April 2007 [hereinafter White Mountain], <http://www.fs.fed.us/r3/asnf/stewardship/>.

¹⁷¹ *See, e.g.,* John Ingebretson, *The Hungry Horse / West Glacier Fuels Reduction Stewardship Project*, USDA FOREST SERV., <http://www.fs.fed.us/forestmanagement/projects/stewardship/collaboration/hungryhorse.shtml> (last visited Nov. 4, 2007). This website notes that:

This [Hungry Horse/West Glacier Fuels Reduction Stewardship] project has helped the Forest staff reconnect with our neighbors, who live literally just across the fence. This connection needs to be promoted and encouraged and continued, even after the project is finished. Promoting such community relationships is a challenge that, as an agency, we should sincerely embrace and pursue.

Id. *See also* U.S. Department of Agriculture, Forest Service: Stewardship Contracting, Lakeface-Lamb Land Stewardship Contract [hereinafter Lakeface-Lamb], <http://www.>

never have been initiated without the stewardship contracting authority, due to the lack of federal funds.¹⁷² Finally, these projects, like the Clear-water project, have boosted the economies of rural, forest communities.¹⁷³

IV. CRITICISM OF THE STEWARDSHIP CONTRACTING AUTHORITY

The stewardship contracting authority is not without its critics.¹⁷⁴ The projects authorized under the stewardship contracting authority have been referred to as an exchange of “trees for toilets.”¹⁷⁵ Environmentalists

fs.fed.us/forestmanagement/projects/stewardship/results/lakeface-lamb/index.shtml (last visited Nov. 4, 2007) (“Broad community support exists for the project. Extensive public involvement between the Forest Service, local residents and recreationists has empowered local citizens. Trust, credibility and support are being built among everyone by directing their economic, social, and environmental concerns towards forest restoration goals.”).

¹⁷² Lakeface-Lamb, *supra* note 171.

The focus of the [Lakeface-Lamb Land Stewardship] project is fuel reduction. The 7-year stewardship contract also includes a variety of land management activities to improve water quality, recreational facilities, vegetative conditions, and wildlife habitat. Specific projects include noxious weed treatment, culvert replacement; road maintenance; road and ATV trail obliteration; trail construction and maintenance; warming hut construction; toilet construction; riparian fencing; interpretive sign construction; fishing access construction; snag creation; precommercial thinning; and white pine pruning. Many of these resource improvement projects will accomplish work that otherwise may not have been accomplished because of lack of funding or personnel.

Id.

¹⁷³ See White Mountain, *supra* note 170.

University of Arizona economic development professor Dr. L.J. Gibson just completed the first year economic assessment of the [White Mountain] Stewardship contract. His analysis reveals that the 13 businesses directly working on the Stewardship contract support 450 full-time jobs in Arizona and 318 of those full-time jobs are in the local area. These 13 businesses spend over \$12 million for goods and services in the local White Mountains region. The forest was awarded the Governor's Award for Excellence in Rural Economic Development in August, 2006.

Id.

¹⁷⁴ See, e.g., The Wilderness Society, Attacks on Forest Management Regulations, <http://www.wilderness.org/OurIssues/Forests/regulations.cfm?TopLevel=Regulations> (last visited Nov. 4, 2007) (stating that, among the present legislative threats facing our national forests, is “[p]ermanent authorization of Forest Stewardship Contracting that could potentially allow for semi-commercial logging without Congressional oversight.”). Additionally, The WildWest Institute calls the stewardship contracting authority “disingenuous” and “almost like extortion.” WILD SOURCE: THE NEWSLETTER OF WILDWEST INSTITUTE, Summer 2006, at 4-5, available at http://wildwestinstitute.org/pdf/Newsletter6_06.pdf.

¹⁷⁵ *Stewardship Contracting*, *supra* note 6, at 36 (statement of Dr. James Burchfield,

worry about the Forest Service's power to pay for services with trees.¹⁷⁶ Environmentalists have also charged that the goods for services power authorized by the stewardship contracting authority

would give the Forest Service unprecedented autonomy over some of the budget and programs allowing the agency to raise a potentially unlimited portion of its budget with trees and pay for whatever programs and projects it wants rather than having to go through the appropriations process and take direction from Congress on its programs.¹⁷⁷

Essentially, the accusation is that the stewardship contracting authority will encourage the Forest Service to sell timber not otherwise needing to be cut for forest restoration or fuel reduction purposes, just to finance recreational projects or other programs that lack federal funds. This activity would then compound the current ecological situation in the forest and create the need for future forest restoration.¹⁷⁸

These fears do not take into account, however, the role that the mandatory multi-party monitoring committee plays in a stewardship project. Multi-party monitoring shows "one of the greatest promises of stewardship contracting."¹⁷⁹ A monitoring committee can be vital at all stages of a project, from designing a stewardship project, to implementing it, to evaluating its final success.¹⁸⁰ Hence, a local community can now oversee the operations of a local stewardship project. This power operates as a check on the Forest Service's ability to sell trees willy-nilly, without a care for ecological considerations. Indeed, monitoring committees appear to be highly successful at holding the Forest Service to the "straight and narrow" mission of the stewardship contracting authority as expressed by Congress.¹⁸¹

Director, Bollee Center, School of Forestry, University of Montana).

¹⁷⁶ See *id.* at 44-45 (statement of Mike Leahy, Natural Resources Counsel, Defenders of Wildlife).

¹⁷⁷ *Id.* at 45.

¹⁷⁸ *Id.* ("This incentivises [sic] forest managers to offer unnecessary timber sales to fund their projects and also perpetuates a never-ending loop of paying for forest restoration with timber sales that will create the need for future restoration.")

¹⁷⁹ *Id.* at 105 (statement of Brett Brownscombe, Conservation Director, Hells Canyon Preservation Council).

¹⁸⁰ *Id.*

¹⁸¹ See *id.* at 17 (statement of Andrea Bedell Loucks, Program Associate, Pinchot Institute for Conservation). ("We are beginning to see some numerous positive trends emerging from community involvement. To date, community involvement in the pilots has resulted

CONCLUSION

The congressional intent in passing the Stewardship Contracting Authority was to promote forest restoration, enhance rural economies, and hold the Forest Service accountable to the public. Congress chose to accomplish these vital goals by simply changing the manner in which the Forest Service may contract for goods and services. The authority, comprised of only a few, brief instructions casually tacked on to the 1999 and 2003 Appropriations Bills, has had remarkable success in serving these objectives. The authority, functioning as “the little engine that could,” should therefore be made permanent. If the authority is allowed to lapse in 2013, the hefty gains made by the Forest Service in preserving the environment, establishing community relationships, and contributing to local economies will be lost.

in improved landscape level management, facilitated site selection, increased trust and support for agency projects, increased economic opportunities and enhanced local workforce capacity.”).