Effects of Change: Implementing 20-Year Stewardship Contracting Authority on Arizona National Forest Timber Sales

Executive Summary

Hundreds of thousands of acres of western National Forests are at-risk due to degraded conditions and potential impacts, including unwanted wildfire, insect and disease, changing climate, and the lack of adequate thinning treatments. Federal land management agencies are under pressure to implement effective science-based treatments to restore ecosystems that have become greatly departed from their Natural Range of Variation (NRV); often in an atmosphere of public scrutiny, with diverse and conflicting opinions.¹

Of Arizona’s 11.25 million acres of National Forest land, roughly five million forested acres contribute to this urgent challenge of achieving restoration before negative impacts take its toll. Arizona’s restoration issues have been compounded in the last two decades by losing most of the wood product industry’s infrastructure, due to so-called “Timber Wars” between aggressive environmental organizations and managers of public land resources.²

The United States Forest Service (Forest Service) mission is dependent on outsourcing most timber harvest treatment projects by utilizing a dozen separate types of specific Timber Sale Contracts or permits designed for specific outcomes. The contracts are steeped in policy, statute, regulations, and contain specific authorities and requirements. These contracts can only be modified in extreme circumstances by those with delegated authority from the Chief of the Forest Service. In the past, Agency managers were required to apply decades-old policies and guidelines, resulting in contract documents that often were outdated, narrowly focused, and occasionally resulted in significant barriers to achieving desired outcomes.

This paper examines the specific direction and requirements regarding term-limited Timber Sale Contracts, including newly legislated Stewardship Contract mechanisms and newly legislated increased 20-year contract term limits. Stewardship Contracts provide greater flexibility, authority, and term-limits that Forest Service managers can utilize if certain conditions are met. These contracts can be effective in the quest to increase the scale and pace of forest restoration in these degraded forests.

Introduction - Need for change

The Forest Service (Agency) mission, in part, is to improve the condition, health, and resiliency of forests. However, there have not been significant changes in its processes, contracts, or technology in the last 30 years. In response to accomplishing the Agency’s mission more effectively, the focus includes

¹ Toward Shared Stewardship: An Outcome-Based Investment Strategy, U.S. Forest Service FS-118, August 2018
² 4FRI Green Light Signals Truce in Timber Wars, Arizona Daily Sun, Apr 23, 2015
the review and updating of the forest products delivery processes to meet obligations of caring for the land through effective, science-based ecological stewardship.

Many of the management policies, processes, and contracts were designed decades ago and were based on the harvest of large diameter, high-value timber, and are not in-sync with needed tools to meet today’s efficiency requirements. Today’s forest health treatments remove small diameter, lower-value timber. The Agency’s response, in part, is an effort to identify and develop updated harvest planning strategies, design of contracts, timber sales, and delivery of forest products through the Forest Product Modernization (FPM) initiative. This approach is a strategic effort to create a comprehensive national approach to modernizing and standardizing wood product delivery contracts and logistics of forest products to the diverse industry interests by the end of 2019.

Forest restoration strategies on public lands need to evolve to keep up with the best available science, changes in authorities, technology, markets, and stewardship goals. Achieving sustainable, healthy, resilient forests is dependent on successful outcomes to increase the pace and scale of restoration.

**Evolution of Legislative Options: Laws, Policy, and Current Agency Directives**

In 1998 Congress authorized “stewardship end-result contracting,” commonly referred to as Stewardship contracting, on a limited demonstration basis, “to perform services to achieve land management goals for the National Forests, that meet local and rural community needs.” This soon proved to be a flexible implementation tool well-suited to accomplishing restoration work. In 2003, under the Omnibus Appropriations Act, Stewardship contracting demonstration status was removed. The Forest Service and the Bureau of Land Management (BLM) were granted general authority until September 30, 2013, to enter into Stewardship contracting projects via agreement or contract “with private persons or other public or private entities.”

The 115th Congress passed H.R.2613 - The Agriculture Improvement Act of 2018, and the 2018 Consolidated Appropriations Act (Section 207), which extended contracting authorities under Section 604 of the Healthy Forests Restoration Act of 2003 (HFRA). This extended authority for Stewardship Contracts increased contract term-limits from 10-year to a maximum of 20-years, on areas where wildfire is a significant risk and where other specific conditions exist.

**Administrative Authorities Process**

Forest Service contracts are guided by the Federal Acquisition Regulations (FAR), and other U.S. Department of Agriculture and Forest Service rules and policy. These rules and regulations are different from private contracting practices, and are based on public laws instead of the Uniform Commercial

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3 Forest Products Modernization Factsheet, US Forest Service, FS-1116g, June 2018
4 U.S. Forest Service Discussion Paper: Implementation of the 20-Year Stewardship Contract Authority, April 26, 2018
Code (UCC), first published in 1952, and put into law with the goal of harmonizing the contracts and other commercial transactions across the United States.

For the past several decades, the U.S. Forest Service has been required by statute (16 U.S.C. 472a(14)(c) & 36 CFR 223.31), to utilize about a dozen specific contract formats and limit the duration of Timber Sale Contracts to a maximum of ten years. Only the Chief of the Forest Service had the authority to approve timber sales of durations longer than ten years, but this authority was seldom executed.\

**Federal Agency Contracting Processes: Timber Sale Contracts**

The Forest Service depends primarily on contracts with various businesses to implement the Agency’s mission and to achieve appropriate outcomes. The Agency uses three basic methods to acquire needed goods and services: simplified acquisition procedures, sealed bidding, and contracting by negotiation. There are also three general types of contracts utilized in FAR:

- **Construction Contracts**: Involves the construction, alteration of buildings, structures, or other real property.
- **Service Contracts**: Directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task (rather than to furnish an end item of supply).
- **Supply Contracts**: Furnishing of a commodity, product, or equipment. This also includes the manufacture, fabrication, or processing of raw material into a finished product, and may also include procurement of raw materials.

When the Forest Service sells timber from National Forest lands, it most often does so through a Timber Sale Contract, which is a form of a Service Contract, and is “an agreement entered into between the Forest Service and the timber purchaser with specific expectations of benefits to be received and obligations to be performed.” The contract establishes the terms and conditions under which the Agency sells the timber and the purchaser buys, pays for, harvests, and removes it.

As the Forest Service has intensified its focus on restoration activities, new Stewardship contracting formats have been developed that combine the purchase of goods and services (Service Contracts) with the sale of timber. In addition, there are six “2400-type” Timber Sale Contract formats for harvesting standing trees, as well as one for the sale of cut and decked timber. The type of contract used depends upon the volume and complexity of the sale, whether the timber is measured for payment before or after it is harvested, the length of the contract, and other factors (Exhibit 1). There is no regulatory limit on the volume or value of a timber sale, but a Timber Sale Contract cannot be in effect longer than ten years.

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7 U.S. Forest Service Manual FSM 2430.41
8 FSH 2409.18 - Timber Sale Preparation Handbook (FSM 2400 – Timber Management); FSM Chapter 2430-Commercial Timber Sales
9 National Forest Management Act, 16 U.S.C. 472a(14)(c) and 36 CFR 223.31
Innovative and New Contracts to Address Need for Change:

Integrated Resource or Stewardship Contracts

When the Forest Service trades goods for services, most projects are incorporated into a single Integrated Resource Contract (IRC). An IRC includes forest product removal (goods) and restoration projects (services), which are offset by the value of the goods. One contractor is responsible for completing all the work, but the contractor may use subcontractors. The Forest Service solicits proposals from individuals and groups to accomplish land management goals. The quality of a proposal, expertise, and past performance of a contractor, as well as price, are key factors in awarding a contract or entering into an agreement on a “best value” basis. IRCs combine aspects of both Timber Sale and Service Contracts and must be awarded on a “best value” basis. They may also include provisions for the exchange of goods-for-services, the retention of receipts (contractor payments), utilize multi-year (up to 20-year) contracting, designation of timber removal by description or by prescription, and other special stewardship authorities.

Unique features of Stewardship Contracts include the ability to “bundle” several contract types into one contract. Contract objectives include treating a landscape, trading timber products for services, and retaining receipts from forest products that need to be removed to meet restoration objectives, and applying the receipts to needed service work within the stewardship project area. Another unique element of an Integrated Resource Contract is the use of “stewardship credits.” Credits are earned by the contractor upon completion of each service activity and can then be exchanged for timber of equal value. When the total value of the timber exceeds the total service costs, the contractor may either be required to perform additional service work or to provide a cash payment for the additional timber value. When the cost of the services exceeds the value of the timber, the Forest Service pays the contractor the difference.

Many Stewardship contracting restoration projects include a variety of activities. These include timber harvest, road construction, tree removal, treatment of noxious weeds, stream restoration, fisheries or wildlife habitat improvement, and prescribed burning. Simply put, Stewardship end-result contracting is focused on what will be left – a restored and improved landscape, rather than on which trees, and how many trees are to be cut. There is no limit on the size of timber sales by volume or value of timber, but authority of Agency Line Officers is limited to sales of specific sizes or value.

The Northern Arizona Forest Restoration Experiment

Northern Arizona is part of a six-million-acre expanse of ponderosa pine forest, much of which is managed by four of Arizona’s National Forests (Apache-Sitgreaves, Coconino, Kaibab, and Tonto). These four National Forests joined forces to implement the Four Forest Restoration Initiative (4FRI) to collaboratively restore 2.4 million acres of northern Arizona’s ponderosa pine forest and associated

10 Stewardship Contracting: Basic Stewardship contracting concepts, U.S. Forest Service Brochure FS-893, August 2009
11 U.S. Forest Service Manual FSM 2404.28
This collaboration effort includes planning, implementing, and monitoring outcomes with thinning and restoration treatments across this landscape. This initiative is the largest undertaking of its kind and scale ever attempted by the Forest Service. This unique project is an attempt to conduct National Environmental Policy Act (NEPA) analysis at a scale of over a million acres. This is to be done on an accelerated schedule, to seek solutions and approval to harvest timber, and treat associated ecosystems across a challenging landscape.

Management of these forested lands, including timber harvest, was substantially reduced during the 1990’s due to the advent of the Endangered Species Act of 1973. Through the following decades, a plethora of litigation and appeals from environmental organizations were brought against the Forest Service. As a result, needful management of forest vegetation was all but stopped. Wood product industries were closed and sold, and mega-wildfires damaging well over a million acres occurred in the largest contiguous ponderosa pine forest located in northern Arizona.

Restoring these ponderosa pine forests is a complex undertaking — one that is costly and time-intensive. To accomplish restoration across such a large landscape, the approach is to involve agencies, environmental organizations, wildlife conservation groups, science providers, wood product industries, NGO’s, as well as the public and other partners. This approach is accomplished throughout the planning, implementation, and monitoring phases of the project through a collaborative process. The objective of the first 4FRI contract secured in May 2012, was to accomplish 300,000 acres of restoration-based thinning. This was to be done over ten years, thus improving forest health, reducing the risk from wildfire to communities, creating jobs, and improving local economies. Six years into the project, the harvesting contract is now under its third operator and thinning treatments are woefully short of the planned acreage.

Collaboration involving such a diverse array of interested parties can be difficult. This often results in challenges or barriers in achieving desired outcomes. Even though collaboration is not mandated by law, it is evident that a planning effort such as 4FRI could be quite difficult to accomplish without substantial public involvement. In the recent past, the 4FRI collaborative group has engaged in requesting various legislative "fixes" to current Federal Agency policy and directives, including an extension of the current contract guidelines to increase term-limit authorities to a 20-year duration.

4FRI planners have been considering additional, large thinning contract(s) to treat an additional 200,000 to 500,000 acres primarily on the south Kaibab and Coconino National Forests, and possible areas in eastern Arizona. They published a Request For Information (RFI) for the Westside Acceleration Project on August 3, 2017. The information gathered is being considered during the development of a future Request For Proposals (RFP) for forest restoration work. The objective is to gather input from industry professionals on the aspects of a contract that would help them successfully complete forest restoration projects. Some respondents to the RFI indicated that in order to attract and retain the needed wood product industries in northern Arizona, the need to change contracting requirements, including longer term-limits, must be a priority.

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With the recent passage of H.R.1625 - Consolidated Appropriations Act 2018, and the proposal to utilize Integrated Resource or Stewardship Contracts in the future for the 4FRI project, the authorization of up to a 20-year contract duration has now become a concern for some of the established wood product industries in northern Arizona, due to potential competition from new and larger industry competitors.\(^{13}\)

Additional issues identified during the RFI process have not been fully analyzed. Issues include application of the National Environmental Policy Act (NEPA), contracting unknown volumes of wood fiber on undetermined locations, the probability of an inadequate and unskilled workforce to meet the 20-year contract requirements, and impacts on current industry from long-term requirements (Exhibit 2). The Forest Service is currently seeking comments from interested parties to craft Agency guidelines and directives on implementing the newly authorized 20-year Stewardship Contract term-limits.\(^{14}\)

In contrast, with the onset of the new 20-year contract authority, business owners now have a greater propensity to assure lending institutions and investors that barriers of a steady supply of wood over a longer period can be overcome. Reduced risk of obtaining a steady wood supply should prove advantageous to securing needed funding for capital investment of new infrastructure and equipment.

**Conclusion**

Passage of the Agriculture Improvement Act of 2018 has generated concern and questions, in addition to bringing expanded contract authority for 20-year term-limits. The content and intent of the legislation is being analyzed and interpreted by Agency officials, who are currently seeking input from wood product industries and other interested partners, to determine strategies for successful implementation of the Act. Agency officials are working to implement the updated authorities and contract provisions as soon as possible.

Primary concerns for implementing the 20-year term-limit authority highlight the potential for greater competition for the available wood supply between various wood product industries. Concerns also focus on updated Stewardship Contract requirements and how they will affect current markets and profit margins.\(^{15}\) Some local wood product industries responded to the Forest Service RFI process, stating an array of “reservations” in implementation strategies for the new contract parameters and authorities. It does appear, however, that the Forest Service and 4FRI collaborative, in general, view the Act as an “agent for positive change.” This view is not necessarily shared by all 4FRI collaborative members that have waited for “relief” to come.

\(^{13}\) Summary of Responses to the Westside RFI, Four Forest Restoration Initiative, 2018

\(^{14}\) Letter from U.S. Dept of Agriculture Secretary Sonny Purdue to U.S. Representative Tom O’Halloran, July 18, 2018

\(^{15}\) Summary of Responses to the Westside RFI, Four Forest Restoration Initiative, 2018
Exhibit 1\textsuperscript{16}

FS Contract matrix - Appendix.pdf

Exhibit 2\textsuperscript{17}

Issues identified with implementation of 20-year Stewardship Contract provisions, that are yet to be fully analyzed:

- **NEPA Approach For a 20-Year Period**: What options are in place to reduce risk related to acres identified through NEPA analysis, before a project is let?
- **Fixed Location, Fixed Quantity**: How can an award or contract be let in the case where the total area and volume have not been determined? Would the use of harvest area subdivision concept help?
- **Impacts on Small Business Administration (SBA) Program**: How can long-term contracts be managed, and what is their effect (if any) on availability of projects to small businesses?
- **Bonding**: Is performance bonding an issue for industry when the contract term extends beyond the normal three to five years? Should performance bonding be regularly required in Stewardship Integrated Resource Contracts?
- **Market Availability and Stability**: How should a contract be structured to allow for market fluctuations and changes?
- **Workforce**: Are there any internal or external issues that a 20-year contract would contribute to positively or negatively?
- **Technology Changes**: How can a contract be structured to allow for changes in technology – either on the harvest side or on the product manufacturing side?
- **Legal Framework Changes**: How can a contract be structured to accommodate changes in law or regulation?
- **Competition**: What might the Agency want to consider when awarding a long-term contract, so that it minimizes negative impacts on portions of the industry that are not awarded the contract?
- **Program Mix**: What might be a good mix in the overall timber program? What could be a useful mix of long-term and short-term contracts?
- **Financial**: How should the Agency describe the financial ability and responsibility a contractor should demonstrate to qualify for a 20-year contract?

\textsuperscript{16} U.S. Forest Service Contract/Permit Use Matrix (Ecological Restoration Institute, NAU (2007))
\textsuperscript{17} U.S. Forest Service Discussion Paper: Implementation of the 20-Year Stewardship Contract Authority, April 26, 2018