

TOOLKIT

Promoting Health and Sustainability

(Watershed, People, Community)

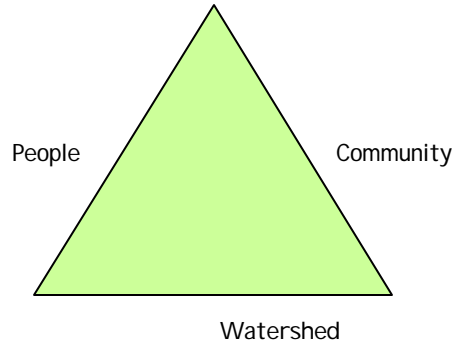
A Stewardship Approach To Ecosystem Management

**Using Existing Authorities to
Improve the Linkage Between
Local Social and Economic Needs
and
The Management of our Natural Resources**

Version 1.0

USDA Forest Service
Pacific Northwest Region (Region 6)
Date: 5/8/2001

The triangle on the cover symbolizes Region 6's vision of and commitment to a comprehensive ecosystem approach that recognizes that healthy ecosystems must be responsive to the watershed, the communities, and the people. Our collective challenge is to maximize the balance and benefits to these three components



Acknowledgement:

While the cover of this "toolkit" indicates it's a product of the USDA Forest Service, Pacific Northwest Region, that is a very misleading reflection. This product is a result of our long and extensive partnership and discovery among many key partners. We thank these partners for their dedication, patience, wisdom, and persistence in helping to promote these concepts and this associated toolkit. While our challenges ahead to realize the principles and goals outlined may be long, our continued efforts to work together will ensure success. We thank:

*Maia Enzer, Sustainable Northwest
Diane Snyder, Wallowa Resources
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Lynn Jungworth, Hayfork Alliance
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Beverly Thacker, OECD
Denny Scott, Brotherhood of Carpenters
Fred Weatherill, Contract Officer, Region 5 (#1.2#)
Jim Beltram, GCAP
Jeff Oveson, Grand Ronde Model Watershed
Cassandra Moseley, Marcus Kauffman, Lakeview, Oregon*

We hope this product reflects the value of your efforts.

"One of the anomalies of modern ecology is the creation of two groups, each of which seems barely aware of the existence of the other. The one studies the human community, almost as if it a separate entity, and calls its findings sociology, economics, and history....

The other studies the plant and animal community and comfortably relegates the hodge-podge of politics to the liberal arts. The inevitable fusion of these two lines of thought will, perhaps, constitute the outstanding advance of present century."

Aldo Leopold

"It is in our long-term interest to foster and maintain the economic viability of local contractors who will be there for the agency during both good and lean budget years. In many locations these kinds of contractors no longer exist. To rebuild our "industrial base" will require a long-term commitment by the agency."

Fred Weatherill, Procurement Analyst, Region 5

Message from Regional Forester's Office

Reply To: 1310

Subject: A Stewardship Approach to Ecosystem Management – Toolkit (Version 1.0)

To: Forest Supervisors

Over the last 5 years, we learned a lot about the value in linking management actions to local social and economic needs. We have seen the value of watershed-wide approaches and the benefits of working closely with local communities. These experiences reinforced our interest and commitment to promote, support, and maintain the economic viability of local communities and workforce capability to support our collective needs. It's a win-win approach for all.

We have enormous existing ability and authorities to achieve many of these goals, but often times it requires new and different thinking and approaches to solving problems. To assist you, we have completed the enclosed toolkit that begins to outline the legal basis, authorities, and tools available to support your management activities in ways that contribute to the health and sustainability of local rural communities. This "toolkit", designed for line officers, resource managers, and our partners, presents an overview of the general aspects of the program and provides a very basic overview of associated administrative opportunities and authorities. As you implement your programs, you will undoubtedly discover other methods and approaches.

What has become obvious over the last few years is that units that have been most successful stay focused on the desired outcomes and work collaboratively (both internally and externally) in determining the best means to accomplish desired outcomes. We encounter problems when management creates and focuses on a defined method rather than the outcome. We strongly encourage you to engage the right people upfront in your processes to develop the best approaches that apply the most effective tools to meet your defined outcomes.

The toolkit will hopefully be a tool for line managers, resource managers, and administrative personnel. It summarizes possibilities on how to better incorporate local social and economic needs into your management actions.

If this effort to incorporate social and economic needs in our management decisions is to succeed, it needs your wholehearted commitment and support. We know from experience that when planned management actions are the right thing to do (logical, prudent, etc), generally there are authorities. However, many of these authorities may not be obvious, previously used, or readily apparent; it takes your commitment.

The Regional Office is dedicated to work with you to resolve barriers that may arise. We are confident that the tools and approaches outlined in this toolkit provide you the wherewithal to effectively manage these goals. We are also fully aware that new challenges and possible barriers and conflicts will surface as you proceed ahead. Please communicate any questions or issues to Ron Ochs (503 808-2647 rochs@fs.fed.us). Ron will coordinate issues that you identify with the appropriate staff in this office.

NANCY GRAYBEAL
Deputy Regional Forester

Certification:

I have reviewed this toolkit, Version 1.0, dated May 8, 2001 and certify that the tools and authorities outlined in this toolkit accurately reflect and are consistent with existing authorities. I recognize this toolkit does NOT summarize all of the methods and tools available, and thus, the user is encouraged to follow the principles outlined in the "Guiding Principles" section of this report; specifically engage the right people and pursue solutions. Also as stated in this toolkit, please work with us if you believe there are errors and/or major omissions. Only by working together can we create a product that will serve our partners and our agency.

I have reviewed Version 1.0 and it is my belief that it is accurate and consistent with current laws and regulations:

Certified:

LISA E. FREEDMAN
Director, Strategic Planning
Pacific Northwest Region
USDA Forest Service

Date

RONALD ESCANO
Acting Director, Natural Resources
Pacific Northwest Region
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Date

M. W. WOLFE
Director, Property and Procurement
Pacific Northwest Region
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Date

CHARLES F. KREBS
Director, Cooperative Programs
Pacific Northwest Region
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Date

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(Watershed, Community, People)

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Note About The Toolkit: This current version (1.0) is largely the ideas and opinions derived from extensive research, and past and present regional experiences in this area over the last 5-6 years. Goals, objectives, definitions, tools, and authorities are not definitive or inclusive at this point AND are primarily included to begin the collective process of dialogue, discovery, and refinement. For example, the definitions provided are based on Region 6's experience and will not be identical, or may not even be consistent with accepted textbook versions. We believe through the collective process, we can generate a product that contains general acceptance and support from both internal and external partners and provides a clear vision of what we should do, and sufficient tools and authorities to move this vision to reality.

This product must always be a work in progress - changing as our needs, abilities, experiences, and opportunities change. As a user and practitioner, PLEASE help by providing new thinking and new tools, OR new needs, goals, or expectations. A challenge is provided to you - for every item you find in this draft that you believe is in error, spend an equal amount of time adding a tool, authority, or method. For those items you view as errors, please be specific as to what aspects are in error and exactly why - you might want to re-examine the legal basis of your opinion if you haven't done it recently. PLEASE work with us to create a product that will serve our partners and us and will improve our ability to be successful!

We hope that this toolkit generates discussion, learning, discovery, and change. As reflected in some of the quotes in this toolkit, these pages of methods and authorities are not the answer, they are just avenues. **Your creativity and actions are the answers** to these challenges and opportunities. Please share your efforts and approaches with us so that we can all be enriched.

THANKS
Ron Ochs, Margaret Petersen
Strategic Planning Staff, Pacific Northwest Region

Guiding Principles:

The following “toolkit” was assembled to assist units in carrying out the Regional commitment that “by the year 2002, all management actions must incorporate local social and economic needs”¹ (reference: FS 2500 February 5, 1999). This toolkit does not and cannot summarize or outline all possible options and authorities, but attempts to demonstrate that by using existing authorities differently we can create different and desirable results.

“Sustaining our environment and our communities is very attainable if we come together and work at it.”

Tony Incashola, Salish Culture Committee

We strongly encourage users of this toolkit to consider adopting a series of principles:

1. **You can make a difference to the health and sustainability of rural communities by how you think, act, and connect.** It is highly unlikely that you will be able to solve the problems and challenges of your rural communities but you can and must be part of the solution.
2. **Suspend disbelief with respect to what you can and cannot do** – if the action you are considering is logical, defensible, and the right thing to do, there generally is a way to accomplish it within existing authorities OR new authorities can be obtained.
3. **Engage the right people and make them part of generating the solution.** If you are attempting to respond to community needs, involve them and involve the people within the organization who have the networks and expertise to effectively work with local communities (Rural Community Assistance Coordinators and other Cooperative Program staff). DO NOT prescribe solutions for others – work with them to define and implement actions. Also engage those that will be responsible for carrying out decisions and agreements early on in the development of strategies (e.g. procurement, budget, personnel, timber contracting officers).

“You yourselves are the tools. You’ve got the know-how, the energy, and the ability. You are the tool because of who you are.”

Patricia Woods, Woods Institute

4. **Pursue Solutions:** You will encounter bumps in the road, especially if you are pursuing new strategies and approaches. If you encounter obstacles to achieve an action that is logical, prudent, and defensible DON’T give up. We are in an environment open to change. Work within the system to highlight and seek needed changes.

¹ This 2002 commitment does not mean that all management actions will be directed or even be responsive to local communities BUT it does mean that every action (procurement or otherwise) will consider local needs and opportunities and to the extent practical be responsive to them.

"No one knows what they can do until they try "

Publius Syrus

5. **Achieving different results requires different actions, thinking, and values.**
6. **Being legal is not a consideration, it's an absolute!!**
7. **Your decision space is you** - getting involved is your choice and your opportunity.

"A wise person will make more opportunities than they
find.."

Francis Bacon

TOOLKIT

Linking Natural Resource with Local Communities' Capability

CHAPTER 1: GOALS, AUTHORITIES, EXPECTATIONS

Introduction:

The purpose of this toolkit is to assist agency and partners to improve the linkage between the needs and capabilities of local communities and the management of our natural resources. The title of this toolkit could have assumed many names such as COLLABORATION, PARTNERSHIPS, TRUST, or STEWARDSHIP. It's a toolkit about working together to achieve shared and mutual goals. It is not meant to all-inclusive and provide you all the knowledge and authorities BUT rather to encourage increased use of our greatest asset; thought and discovery. Moving forward with these concepts requires active involvement from many internal and external partners.

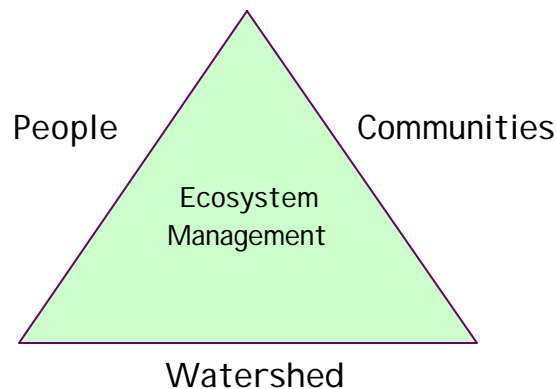
Desired Outcomes:

1. Restored, functioning, and productive natural systems; water, air, terrestrial, soils.
2. Effective collaborative partnerships.
3. Skills and abilities exist within an ecosystem to meet current, emerging, and future needs across the landscape.
4. Workforce and processes (internal and external) represent, support, promote, and recognizes the value of diversity.
5. Healthy and sustainable rural communities.
6. Utilize local skills and abilities.
7. Quality natural resource jobs..
8. Equitable access to all economic opportunities (jobs, skill development, etc.).

"Collaboration is about people and building relationships."
Steve Selin, West Virginia University

Ecosystem Challenge:

The following "ecosystem triangle" recognizes the interdependence of each of the three components: people, watershed, and communities.



Each side of this triangle is dependent of the other sides. For example:

- Healthy watersheds (the water, air, vegetation, land, etc.) depend on skilled and available workers who understand and can care for these complex systems.
- Quality workers depend on quality communities to support their livelihoods and basic needs.
- Quality communities depend on quality watersheds to sustain their existence – clean water, tourism, natural resource based income generation.

Managers and partners should use this ecosystem triangle in planning, analyzing, and evaluating their actions and plans to ascertain how they can best contribute and support all three aspects of the triangle; people, communities, and watersheds. Our management responsibilities must include and be responsive to all three aspects simultaneously.

When taking any management action, consider:

- Are there ways to be more effective in achieving defined outcomes?
- Are there opportunities to promote a watershed-wide approach?
- Can work be planned and designed to improve quality jobs? By packaging with other disciplines or with other partners?
- How can programs be implemented to improve local community social and economic conditions?
- What are the overall benefits: to the watershed? To the communities? To the needs of the people within these ecosystems?

In summary, ask, *“how can I better achieve the greatest benefits to the government that includes and recognizes the effects on the watershed, to the communities, and the people?”*

Legal Basis, Authorities, and Mandates:

The following section provides a summary of some of laws, authorities, and mandates that encourages and supports our efforts to address the community and people aspects of our ecosystem management challenges.

1 Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624) – commonly referred to as the “1990 Farm Bill”.

Section 2371: “... the Forest Service shall establish and implement educational programs and provide technical assistance to assist businesses, industries, and policymakers to create jobs, raise incomes, and increase public revenues in manners consistent with environmental concerns.”

Section 2372: “This chapter may be cited as the National Forest Dependent Rural Communities Economic Diversification Act of 1990.”

Section 2373 Findings:

- (a) The Congress finds that -
- (1) **The economic well being of rural America is vital to our National growth and prosperity;**
 - (2) The economic well being of many rural communities depends upon goods and services that are derived from national forests.
 - (3) The economies of many of these communities suffer for the lack of industrial and business diversity;
 - (4) This lack of diversity is particularly serious in communities whose economies are predominantly dependent on timber and recreation resources, and where management decisions made on the national forests by Federal and private organizations may disrupt the supply of these resources;
 - (5) **The Forest Service has the expertise and resources** that could be directed to promote modernization and economic diversification of existing industries and services based on forest resources;
 - (6) **The Forest Service has the technical expertise to provide leadership**, in cooperation with other governmental agencies and the private sector, to assist rural communities dependent upon national forest resources to upgrade existing industries and diversify by developing new economies in non-forest related industries; and
 - (7) Technical assistance, training, education, and other assistance provided by the Department of Agriculture can be targeted to provide immediate help to those rural communities in greatest need.

Section 2373 (b) - Purpose:

1. To provide assistance to rural communities that are located in or near national forests and that are economically dependent upon forest resources.
 2. To aid in diversifying such communities' economic base; and
 3. **To improve the economic, social, and environmental well being of rural America.**
- 2 Technical Assistance (Public Law 106-113):** Appropriation language (contained each year in the appropriation act). "Funds appropriated to the Forest Service shall be available for interactions with and providing technical assistance to rural communities for sustainable rural development purposes." (Reference Chief's 3600 memorandum of May 27, 1994 - "Agency-wide Rural Community Assistance Efforts")
- 3 Jobs in the Woods -- 2001 Appropriation Act (H.R. 4578):** "The Secretaries shall consider the benefits to the local economy in evaluating bids and designing procurements which create economic opportunities for local contractors."

- 4 Wildland Fire Management (H.R. 4578):** "...the Secretary may consider the enhancement of local and small business employment opportunities in rural communities, and that in entering into procurement contracts under this section on a best value basis, the Secretary may take into account the ability of an entity to enhance local and small business employment opportunities in rural communities..."
- 5 Secure Rural Schools & Community Self Determination Act of 2000 (H.R 2389):**
Reference Section 204 (e)(2)(D) "The Secretary shall determine best value based on such factors as: ... (D) the commitment of the contractor to hiring highly qualified workers and local residents."
- 6 Regional Program Direction (FY 2000 and 2001):** "All units should take aggressive action to better integrate our programs and management actions with local needs and interests. By 2002 all management actions must incorporate local social and economic needs." (3) Use best value contracting mechanisms to ensure that we are obtaining the best actions that contribute to our ecosystem approach; examining and evaluating actions with respect to what/how they contribute to the watershed, to the community, and the people within these ecosystems. (4) Maximize the reliance on the local work force capabilities and interests..." "Units are encouraged to work with local communities and other federal and state partners to develop local skill base that can effectively contribute to our program needs; (5) Work to ensure that skills and abilities are in place and available within the ecosystem/communities to meet the highest priority needs of the ecosystem."
- 7 Watershed MOU (State of Oregon and 10 Federal Agencies – signed 4/30/1997):**
"Whereas it is recognized that health of watersheds includes and must respond to the social and economic needs and issues of the people of the watershed." Reference FS, R6 2500/2600 6/11/1997, "Local line officers can support this MOU by: ..." "managing from a total ecosystem perspective that recognizes and responds to needs of the watershed, the people, and the communities within the watershed."

"Social capital is one of the primary types of capital available to communities, along with physical, financial, environmental, and human capital. Social capital revolves around: mutual trust, a willingness to share, participation in formal or informal groups, an understanding of and respect for the benefits of others, and a collective identity that results in pride for the community. Social capital enables a community to produce new energy, new dollars, and new cooperative ways of solving common challenges."

"Tools for Transition – Building Community Capacity", August 1996 FS-580

- 8 **Quality Job letter (Governor Kitzhaber, FS Regional Forester Robert Williams, and BLM State Director Zielinski - dated June 1, 1998):** "work with your partners in your local jurisdiction or agency to promote the creation of high quality natural resource jobs for local workers." Reference FS, R6 2500, 2/5/1999. "We request that all line officers in both Oregon and Washington support the proposed goal that by the year 2002 all procurement and management actions will incorporate local social and economic needs..." (Note: The words used in the above guidance seem to generate considerable confusion. When it states "all procurement and management actions will incorporate local social and economic needs", that does NOT mean that all actions will be responsive to these needs and utilize local capacity but that all actions will be analyzed to determine if there are ways to improve and respond to local needs and opportunities. We need to "incorporate local social and economic needs" into our thought process and actions.)
- 9 **USDA GPRA (Reference "USDA Forest Service Strategy (2000 Revision) (FS-682 October 2000) - Objective 3.a:** Better assist in building capacity of Tribal governments, rural communities, and private landowners to adapt to economic, environmental, and social change related to natural resources. "The agency plays an important role in ensuring that these forest resources are managed sustainably and in a manner that provides environmental, social, and economic values for the communities."

"Each community is part of a larger natural and human community. Our success will depend on our ability to recognize connections and generate a "whole that is greater than the sum of the parts." The key to healthy communities may lie in creating links or bridges between seemingly opposite or unrelated elements. Some key linkages?

- ❖ Between rural and urban communities
- ❖ **Between natural and human communities**
- ❖ Between private and public sectors
- ❖ Between polarized groups between nearby communities
- ❖ Between the powerful and the powerless
- ❖ Between rural communities and the rest of the world"

"Tools for Transition - Building Community Capacity", August 1996 FS-580

Regional Direction/Guidance:

- By 2002, all procurement and management actions will incorporate local social and economic needs (reference FS/R6 2500 2/5/1999).
- Manage from a total ecosystem perspective that recognizes and responds to the needs of the watershed, the people, and the communities within the watershed (reference FS/R6 2500/2600 6/11/1997).
- Work with local partners to ensure a highly skilled workforce is available and utilized to respond to the needs of local ecosystems (reference FY2000 and 2001 Program Direction).
- Improve the quality of natural resource related jobs by improving duration of work, predictability, pay, benefits, and mix and utilization of skills (reference FY2000 and 2001 Program Direction).

Stewardship -- Definition/Attributes:

There are many varying definitions of "stewardship;" it means a lot of different things to a lot of people. To some, stewardship is the process of linking or combining service contracts with goods, thereby enabling the contractor to manage both aspects in a coordinated and congruent way. For purposes of this toolkit, "stewardship" is a more encompassing concept rather than a specific process or approach such as linking goods with services. Stewardship is a governance strategy (how we manage and the attainment of desired results) that utilizes partnerships and empowerment to achieve desired social, biological, and economic outcomes. Stewardship is not just about getting resource work and activities completed, but rather achieving OUTCOMES in such a way that contributes maximum social, economic, and biological benefits. It's about protecting the land, water, air, species, and all other natural resources for future generations BUT it also entails the human and social aspect – protecting communities, people, and families. While the linkage of goods and services may be a great example and opportunity to meet some of these underlying goals/objectives, we suggest it is an approach, not the end-result. We are hopeful that this toolkit and associated planned training sessions will increase our organizational understanding of the vision, goals, opportunities, tools, and authorities available.

"Stewardship..... a way of governing ourselves that creates a strong sense of ownership and responsibility for outcomes at the bottom of the organization. Its means giving control to customers."

"Stewardship begins with the willingness to be accountable for some larger body than ourselves – an organization, a community."

"Stewardship forces us then to yield on our desire to use good parenting as a basic form of governance..... Our difficulty with creating partnerships is that parenting – and its stronger cousin, patriarchy – is so deeply ingrained in our muscle, memory and armature that we don't even realize we are doing it."

"Stewardship is the choice for service
We serve best through partnerships rather than patriarchy.
Dependency is the antithesis of stewardship and so empowerment becomes essential."

Peter Block, author of "Stewardship – Choosing Service over Self-interest (1993) selected excerpts:

Whether it is linking goods and services or some other means, stewardship efforts share in some common attributes:

- ❑ Increase in responsibility, ownership, and empowerment
- ❑ Improved utilization of skills and abilities
- ❑ Establishment of quality jobs
- ❑ Effective partnerships
- ❑ Outcome focused

"Healthy and prosperous communities do not just happen"

Communities by Choice; An Introduction to Sustainable Community Development

We have titled this toolkit as a "A **Stewardship** Approach to Ecosystem Management" to reflect the above definition and principles. Our primary message and recommendation by addressing "stewardship" is for users NOT to get and stayed focused on applications (for example – a goods for service contract – which some refer to as "stewardship contracting") but rather stay focused on the inherent goals and desired results. Being effective and responsive to these goals and principles does not dictate or require any one program, approach, or component.

Sustainability

“Always looking for ways to improve a community by strengthening the links between its economy, environment, and society”

Maureen Hart, Hart Environmental Data

A Hypothetical/Anecdotal Example

DOING BUSINESS DIFFERENTLY TO MEET DIFFERENT OUTCOMES

Possible Scenario:

District receives an annual budget that provides for a rather normal array of projects; includes \$500,000 pre-commercial thinning (PCT); \$100,000 stream surveys; \$200,000 recreation maintenance; \$100,000 reforestation surveys; \$250,000 riparian restoration.

A Traditional Method/Approach:

Management:

- Preparation, administration, and management largely an internal organizational responsibility.
- Projects are selected to maximize biological outcomes and assigned targets.
- District aligns projects by functional area, awarding a few large PCT contracts with a window of performance from Feb-Apr of the fiscal year in order to maximize biological outcomes. The remainder of projects utilizes the same basic approach – like work scheduled and packaged together to maximize operational and contract cost efficiencies.
- Projects are designed to effectively meet resource objectives, which generally mean it ends up employing a large number of workers over a short period of time.
- Contract specifications are extremely prescriptive, outlining very detailed actions required on the acreage being treated. The impact of doing such prescriptive work resides with internal specialists.
- Planning and implementation primarily, if not entirely, a FS activity

Implementation:

- District generally utilizes lowest cost procurement measured by total contract costs, not necessarily reflecting lowest overall cost or best value to government.
- Very prescriptive and accountability based on prescribed outputs (e.g. did acres get completed?)

Partnerships and Collaboration:

- Preparation, administration, and management largely an internal organizational responsibility.
- A very independent management approach exists between the program/project manager and procurement officer; program/project manager submits need, procurement procures

identified services working with the project manager to gain basic level of needed information/data.

- Planning and implementation primarily, if not entirely, a FS activity

Building and Sustaining Capacity (human and business):

- Little to no effort – unit adopts an “open-market” approach (i.e. businesses and workers will appear if demands surface).

Goods AND Services:

- Totally separate actions

Outcomes: 1. Outputs (acres, miles, etc.) accomplished; 2. Generation of short-term, low-salary, prescriptive work opportunities; 3. Increased opportunity for contractor and employed workers to be imported from nearby communities since tenure of assignment is short – resulting in economic benefits being largely exported (e.g., local taxes paid elsewhere and thus not available to support local infrastructure).

PEOPLE POWER

The biggest benefits of pooling resources include the energy and enthusiasm generated in folks who might not have felt so needed before. Anna Neal tells the story of a building project the Clifton-Choctaw Tribe in Louisiana undertook: “When they asked for help, they just didn’t ask for money. They asked for people to help swing hammers. After the day was over, the volunteers said, “people usually want to see our money, but they don’t want to see us. Thanks for letting us help.”

Collaboration. It works!

“Tools for Transition – Building Community Capacity”, August 1996 FS-580

A Comprehensive Ecosystem Method/Approach:

Incorporating Social/Economic and Longer Term Operational Considerations (i.e. what’s most beneficial for the long term)

Management:

- Increased use of locally available expertise in all appropriate and allowable facets of projects and programs; less reliance on internal workforce.
- Projects are selected to maximize all outcomes, which might mean selecting some acreage in PCT that is in the same watershed or better contributes to overall management goals (not just biological).

- All work within a given watershed is packaged with maximum timeframes provided to enable operational flexibility. For example – unit will consider a different window for thinning if proposal submitted generates more overall benefits to defined management objectives.
- Contract solicitation is outcome focused and requires proposals based on past performance, knowledge, and capability.
- Unit adds portions of workload that have been traditionally completed in-house to meet longer-term work duration goals and better utilize and promote skills.
- Unit aligns projects with local partners to maximize watershed and social/economic goals.
- Planning done in coordination, or even consolidated, with other Federal agencies or groups dedicated to similar goals (e.g. watershed councils).
- Projects are designed to meet all desired outcomes, not just biological, resulting in the employment of a small number of workers over a long period of time.
- Minimum guarantees are incorporated into contracts (IDIQ), ensuring awardees some minimum level of guaranteed work/projects over a set period of time. Thus, the agency assumes and shares in some risk and responsibility.
- Our Rural Community Assistance and other community diversification/development funds and priorities are well integrated into an overall strategy that enables communities to capitalize on economic opportunities that may be available within the local ecosystems.

“A vital rural community has the capacity to use, sustain, and renew the resources and skills it needs to thrive over time.

-- from Working Toward Community Goals: Helping Communities Succeed

Implementation:

- Unit uses best value approach in awarding contracts (rather than sealed bid procedures or evaluating only on price). Negotiated procedures (Requests for Quotes or Requests for Proposals) that includes criteria that reflects our interest and commitment to quality jobs, quality workers, and community health and sustainability. Responses that can provide the greatest benefit to workers and affects to local communities would be given added consideration during evaluation.
- Contracting Officer considers using indefinite quantity, multi-year contracts that enables subsequent work to be accomplished in succeeding years.
- Unit aligns projects with local partners to maximize watershed and social/economic goals.

Partnerships and Collaboration:

- Strong partnership and coordination effort exists with other partners and landowners.
- Work is designed and packaged around a geographic area rather than from a specific program perspective.
- Strong collaborative/team effort between program managers and procurement officers; planning and implementation (project, program, procurement) integrated into one comprehensive approach that results in actions that maximize the collective good not solely project and/or biological.

- Unit meets periodically and systematically with local communities on current, future, and emerging work demands and adjusts plans and strategies accordingly.
- Agency works with communities to seek and obtain needed resources (training investments, etc) to develop and maintain needed skills, abilities, and capabilities – using existing Community Economic Revitalization Teams and processes and Rural Community Assistance programs. Agency assumes responsibility and provides assistance to help ensure trained and qualified workforce is available.
- Unit aligns projects with local partners to maximize goals – watershed and social/economic.

Building and Sustaining Capacity (human, financial, and business):

- Portion of program (e.g. survey) is inserted into contract for training experience whereby the agency will work with contractor to assist in the development of techniques and skills that will be needed in the future.
- Unit meets periodically and systematically with local communities on current, future, and emerging work demands.
- Periodic weekend training sessions are provided with documented completion of training recognized in future procurement competitions.
- Agency works with communities to seek and obtain needed resources (training investments, etc.) to develop and maintain needed skills, abilities, and capabilities – using existing CERT processes, rural community assistance programs. Agency assumes responsibility and provides assistance to help ensure trained and qualified workforce is available.
- Agencies work with communities to develop new resource related industries to capitalize on existing or emerging opportunities.

Tips for Successful Facilitators and Leaders

- Facilitate, don't do it to them
- Select leaders from the community
- Be the teacher, not the artist
- Seek out diverse views
- Champion those who raise issues before they become crises
- Respect grassroots innovation and creativity
- Remember that conflict can be an energizer
- **Build community capacity - don't give handouts**
- Know when to lead and when to manage
- Maintain objectivity
- Believe in the competence of the group
- Share authorship of ideas

"Tools for Transition - Building Community Capacity", August 1996 FS-580

Goods AND Services:

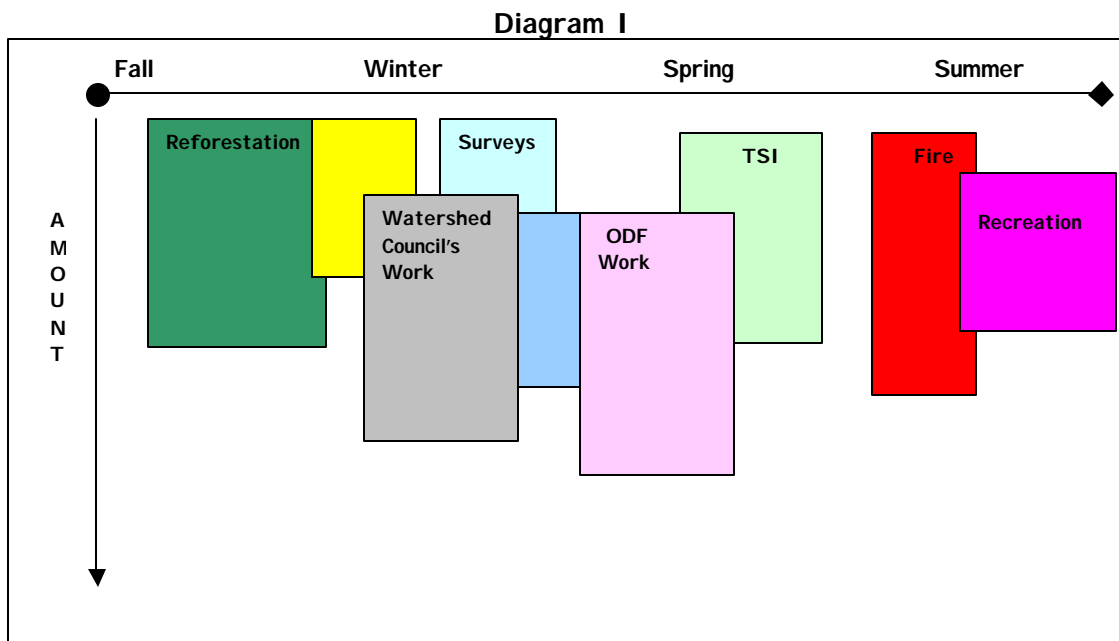
- To the extent allowed by current laws, management activities (good and services), to the extent possible and practical, are linked into a coordinated action when appropriate to improve desired outcomes (watershed, people, community).

Outcomes: Promotion of strong partnerships; outcome focused, acre/outputs accomplished but might not all be on FS lands – focused on projects/areas that maximize outcomes; quality jobs are created measured by duration, pay, and benefits; Local skills and abilities are utilized to the extent available and practical; economic benefits are retained in the community (to the extent possible); improved technical and operational ability and flexibility (more skills within ecosystem).

Thinking and Planning Work Differently – A Visual Depiction

The following depiction (Diagram I) reflects a functionally and operationally focused approach to management; whereby each functional or programmatic entity identifies and processes their needs with the goal to maximize resource operational effectiveness and efficiency – i.e. get the most acres, miles, units, or widgets completed at the lowest costs. Each of the boxes depicted below represents a potential contract that tends to employ a large number of people for a short period of time. Since many of the small rural communities bordering National Forest lands do not have the capability or capacity to respond to these types of contracts, many of these contracts end up being awarded and completed by contractors outside the local area.

Results of this approach are reflected in “Outcomes” on page 18: outputs accomplished, generation of short-term, independent, low quality work opportunities (most times without benefits or work tenure), importation of workers and contractors, resource focused. Affects to communities are unpredictable.

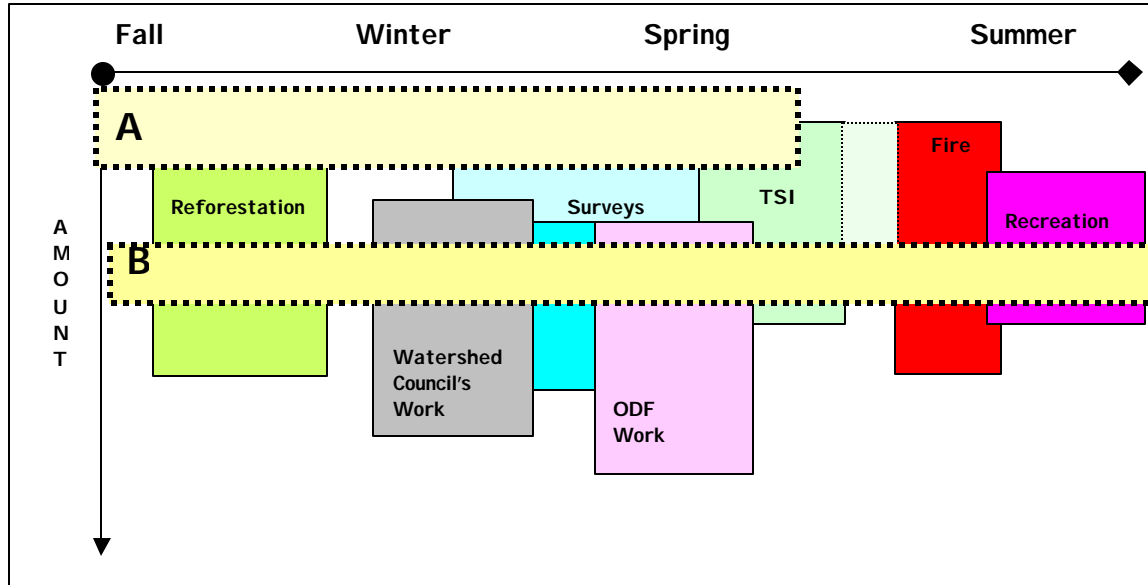


Planning Work Differently:

Diagram 2 reflects a different approach to program design and implementation; an approach that attempts to recognize and respond to local social and economic needs. Rather than design projects and award contracts based on functional or program areas (reforestation, TSI, recreation), the following approaches may be used:

1. Designing a program of work (and associated contracts) such as Project "B" whereby different disciplines are aligning projects to generate a contract that spans many program areas and employs a relatively small number of people for a long period of time.
2. Combining projects with other partners to generate more sustainable employment
3. Expanding the operational window - performance time (such as depicted in the TSI portion) to support longer duration employment opportunities - to fill possible gaps, to provide for increased flexibility.
4. Designing contracts such as "A" that, while may be over the interest and capability of local workforce/business, but still provides more sustainable employment for some non-local workforces/businesses BUT doing so has more positive affects to the local community (sustainability). Its NOT just a challenge to quality employ local workers BUT to create positive benefits to the local communities.
5. Possibly adding a segment of work that historically has been done internally in order to fill work gaps while freeing up scarce employee time and resources to work on other priority projects.

Diagram II



CHAPTER 2: TOOLS/AUTHORITIES/METHODS

Executive Summary of KEY Tools/Methods:

The following pages outline a sampling of the tools, authorities, and available methods to achieve the goals and objectives outlined in Chapter 1 of this toolkit. In these pages, we have attempted to communicate the tools, legal basis, application, examples, and possible contacts within the Region to seek advice or gather additional information. All these pages can be summarized into a short series of options and approaches.

We Seek to:

Build Local Capacity: Working with tribes and communities to identify workforce and business opportunities needed and available to meet ecosystem needs and working together to promote the use and development of these capabilities.

Utilize Local Capacity: Promoting the utilization and retention of local skills and abilities by creating quality and sustainable employment opportunities PLUS working with local businesses to better improve the connection between the management of the resources and business capacity/capability.

Contribute to Local Social and Economic Goals: Being part of communities and having a positive affect on the community's well being.

Achieve Watershed Outcomes: Applying our expertise and resources to maximize desired outcomes (clean water, clean air, diverse forests/rangelands, etc).

Achieving Them BY How WE:

Plan, Design and Package Work to Meet All Objectives: Both internally and by working with partners. Through the ways we design, schedule, and package work we can create longer duration work opportunities and improve utilization of local skills.

Recognize and Reward Results: Ability and responsibility to consider all aspects in implementing work – specifically analyzing affects to people, communities, and watersheds. When we recognize and reward people for skilled/trained workers, training becomes an investment in these businesses not a cost. Actions such as this create a win-win for all.

Create and Maintain Substantive Partnerships: Ability to create comprehensive partnership and utilize resources anywhere appropriate to maximize shared outcomes. Major new opportunities exist in this area with the passage of the Wyden Amendment.

Promote and Support Watershed-wide Plans and Strategies: Development and/or implementation of commonly shared plans and strategies.

Work with Communities to Build and Utilize Local Capacity: Meeting these goals requires a partnership with local citizens, communities, tribes, and all levels of government – we must work together.

Management: Planning, Design, Implementation

Designing Work to Meet Overall Management Objectives

Tool/Issue: Design and package projects to meet identified/defined management needs INCLUDING social and economic factors.

Perceived Issue (“Myths”):

1. Agency lacks authority to design and package work to meet management’s objectives other than solely getting the actual resource work completed most economically.
2. No authority exists to create the size of projects to meet management’s defined needs.
3. SBA regulations prohibit bundling of needs.

Resolution: Management has full authority **AND responsibility** to design and package projects to meet their defined/identified management objectives. Designing work to meet management objectives is fully authorized. While there are laws and regulations that prohibit “splitting purchases” and “bundling work”, these prohibitions are have very specific intents and do not prevent us from designing work to meet overall needs.

Authority does not exist to “split purchases” (defined as breaking apart projects to avoid mandatory procurement thresholds). But for a manager to break apart a traditionally 1000 acre TSI contract so that segments of this work can be inserted into a more stewardship type (multi-task, multi-skill) contract is NOT ‘splitting” purchases.

The same holds true with “bundling”. Recent regulations were issued to prevent agencies from aggregating many small contracts into contracts that are over the capability of small businesses – thus, by doing this type of bundling was counterproductive to the government’s commitment to small businesses. Management may and should “bundle” needs when it makes sense to do so. Bundling should not be done in a manner that has no adverse impact on small businesses. In the past, management needs have largely been to meet defined outputs in terms of acres and miles. Thus, a prudent way to package work was to aggregate similar work into a large single task contract; thereby, receiving maximum effectiveness and cost efficiency. Our desire to improve the connection to rural communities requires different thinking and approaches.

Under a comprehensive ecosystem approach that recognizes all three aspects (watersheds, people, communities), work can and should be designed differently. Management has the authority, actually the responsibility, to package and design projects so that it accomplishes ALL of management’s defined objectives. While it is imperative that units work with local communities to define specific needs and opportunities, generally it is advantageous to design projects that generates longer duration, higher skilled, and prevailing wage and benefit.

Work can be packaged across disciplines and among partners using existing tools and authorities.

Consideration: While the responsibility of design rests with management, it is highly advised that procurement specialists be active partners in the planning and deliberations from the onset.

It is a team effort to meet management needs and Procurement Officers should be a part of the team. We urge you to include procurement personnel during the planning process. Procurement Officers can offer valuable information on the many ways to shape a contract and the effects of one course of action as compared to another. The determination of whether to include a variety of projects under one contract or to handle each separately is one that should be analyzed to determine which approach makes the most sense and provides a benefit to the Government while creating a reasonable project for contractors.

Contribution/Applicability to Objectives: *Design and packaging work is one of the most effective means to address local social, economic, and quality job goals.* Rather than creating short-term work opportunities for a lot of people, proper teamwork and design can generate more sustainable work, thereby creating substantive job opportunities rather than simply short-term project work.

Also, the creation of long duration, sustainable work promotes community stability and sustainability. Workers who successfully obtain quality job opportunities generally are local workers or, by default, become citizens of the local community by the very nature of the work.

Specific Authorities:

Management prerogative.

Federal Acquisition Regulations 13.003, 19.202-1

Regional Contact: Ron Ochs (503-808-2647)

Examples: Sweet Home Effort (Willamette Province Workforce Project): Work was designed and aggregated to generate what we refer to as narrow but long contracts (employing a relatively small number of workers over a longer period of time). Rather than designing a pre-commercial thinning (PCT) contract that aggregates all PCT into 1-2 contracts (to maximize cost and resource objectives), work is designed and packaged with the goal of providing longer-term employment opportunities. Including all thinning, surveys, monitoring, from 1-2 watersheds into one comprehensive contract that will employ 2-5 people 8-10 months over the year. With respect to Sweet Home, all program/functional disciplines and at least two agencies worked collaboratively to integrate projects to achieve year-round contract work.

The results and benefits derived from this approach are numerous: 1. Agency promotes and fosters local skilled workers who are retained in the area, and are available to assist all landowners in the ecosystem; 2. Contractor is able to retain and actively train employees (training becomes an investment to the contractor rather than a cost); 3. Community has more sustainable, predictable jobs thereby enabling workers to stay and contribute to the health and vitality of the community, and 4. Trust, alliance, reliance is generated with local citizens and communities.

Contact: Brad Leavitt or Darrel Kenops, Willamette National Forest for additional information or assistance

BEST Value = Watershed + People + Community

Tool/Issue: Obtaining services and products based on the overall benefits and costs – including biological, social, and economic.

Perceived Issue (“Myths”):

1. Perception that government must meet its needs using lowest price techniques to achieve defined government resource outputs.
2. Criteria that can or should be used are limited to meeting defined resource objectives.

Resolution: Contracting Officers and Resource Managers are encouraged to use best value. Reference FAR’s 13.106-1 (a). Also refer to Fred Weatherill’s April 6, 2000, letter attached in appendix.

Best value mechanisms have been a tool for many years. However, since past management actions were heavily focused on accomplishing well-defined outputs on the ground (acres, miles, etc), the agency historically tended to use sealed bid procedures.

Sealed bid may have been a proper and effective tool when our organizational focus and intent was activity (acres, miles, etc) driven. However, under a stewardship (triangle) approach, it’s more than just getting an activity accomplished. It must be responsive to the other organizational goals and mandates – communities, jobs, watersheds. We suggest that sealed bidding may have some limited value and utility but, generally cannot assure that the government is getting the best overall value nor does it promote the attainment of desired outcomes (quality jobs, local ownership, use of skills).

We recommend that units include one additional evaluation criteria when using best value; in addition to the three prescribed criteria of technical capability, past performance, and price:

“Effects to local communities”, with all proposals analyzed as to how they will affect the local communities. While aspects such as local hiring would be a key consideration and contributor to this criterion, we strongly urge that the focus stay outcome oriented. Hiring local has a positive effect to local communities and must be analyzed in relationship to “effects to local communities,” but there are other ways to have a positive effect to local communities (investment, local expenditures, local capacity building, etc.) and we should consider all – not solely local hiring.

Quality Workers is NOT a criterion but is of value: Maintaining a highly qualified workforce is of great value to the agency and to the entire ecosystem. Our short- and long-term ability to have a positive and lasting affect to the ecosystem depends on highly skilled and knowledgeable ecosystem workers. Quality workers is not a defined criteria but should be a consideration in any evaluation – quality workers has an effect to many of the prescribed criteria:

- o **Technical capability** -- contractors who deploy highly skilled workers are generally more capable to achieve our desired results
- o **Effects to Communities** – maintaining a highly skilled workforce in the area is beneficial to the entire ecosystem since capability is available to respond to all needs across the ecosystem in a consistent manner.

We have found over time that when contractors are evaluated on the skills of their workers, that training becomes an investment NOT a cost to them. Maintaining this type of relationship between the agency and the contractor is a win-win for all.

Contribution/Applicability to Objectives

Contrary to sealed bid approach, best value enables and promotes the inclusion and subsequent evaluation of other defined management goals and considerations; such as, the quality of workers, retention of workers, training of workers, past performance, and contribution to community stability/health. In addition, a best value approach that seeks proposals to meet defined outcomes rather than simply respond to well defined actions, promotes and enables government to better utilize the skills and expertise of local workers by requesting specific proposals as to how contractor will satisfy the “outcomes” desired. By promoting the generation and application of more self-defined approaches/proposals/methodologies creates ownership and better utilizes available skills, abilities, and talents (included attributes of “stewardship”).

Regional Contact

Craig Phillips or Debbie Duperon, RO Contracting/Procurement Group Leaders (503-808-2809 and 503-808-2370, respectively)

Specific Authorities

Federal Acquisition Regulations 13.106-1, Part 15.1 and Part 37.6. (Note: FAR's can be obtained @ www.arnet.gov/far/)

Example(s)

Solicitation for a request for proposal is issued using a performance-based statement of work that outlines the desired results. *NOTE: It is imperative that management clearly defines and communicates ALL desired results – people, community, and watershed. Being comprehensive and clear on desired results is not and should not be the responsibility of Procurement Officers.*

Offerors are expected to submit proposals addressing the five evaluation criteria specified in the solicitation -- technical capability, past performance, experience, price, and effects to local communities.

Hypothetical Offers:

	Contractor A	Contractor B
Price	\$80,000	\$95,000
Technical capability	good	good
Past Performance	good	good
Experience	good	good
Affects to Community	weak	excellent

Without consideration of the offeror's proposed actions to enhance affects on the local community, award would be made to Contractor A since it is the lower price offer and is rated equal in all other aspects to Contractor B.

However, Contractor's B proposal clearly shows a superior course of action to enhance the effects to the local community and is rated very highly in this area. "B" might be using all workers for the local area that they have kept employed for years, consistently promotes equal opportunity hiring practices, has invested considerable time and money into training employees, and plans to use some of the byproducts of the contract to generate additional local jobs. Contractor A is rated lower since it only proposes to hire a few workers from a non-local area for the project and has no intentions to utilize any byproducts from the project. Given the overall benefits and costs, Contractor B's proposal may be of better value to the government.

Establishment of Collaborative (Substantive*) Partnerships

Working Together to Achieve Common Shared Goals

Tool/Issue: Establishment of partnerships to achieve mutual goals

Perceived Issue ("Myths"):

1. Government's only avenue to get work done is through competitive procurement processes.
2. Government ability to create financial arrangements with non-profits and other entities are extremely limited and restricted.

(*See Chapter 4 for definition of "substantive")

Resolution: Agency has enormous authorities to enter into substantive partnerships to achieve mutually shared goals and objectives.

With the passage of the Wyden amendment (Title III, Section 323, Public Law 105-277), the Forest Service has greatly broadened authority to enter into cooperative arrangements when such action is logical, prudent, and the most effective means to achieve goals. Wyden provides us the authority to enter into these types of arrangements with "state, federal, local governments, private and non-profits entities, and landowners". "Entering into cooperative arrangements" means that when two or more parties have common goals and objectives, and actions, which are interdependent (i.e. the actions of one party contribute or influences other parties' goals), a partnership can be and often times should be established. Prior to the Wyden Amendment, the authorities available to the agency to enter into cooperative arrangements were very narrow and focused. For example, Cooperative Deposit Act of 1975 provided the agency the authority to enter into these cooperative arrangements with other private or public partners for only 4 very specific purposes; pollution abatement, manpower and job training, environmental education, and forestry protection.

The Wyden Amendment enables the Forest Service to create a partnership arrangement with any entity that has a shared goal for the purpose of restoring, managing, or improving aquatic/wildlife or other resources. The "other" portion was inserted to enable agreements where mutuality of interest included such goals as social or economic – example quality jobs.

NOTE: Wyden provides the authority to establish the partnership but does not dictate a specific mechanism (cooperative agreement, grant, participating agreement) to share costs or transfer finances. The mechanism deployed varies, depending on the relationship established. Check with your local procurement or agreement specialist.

Contribution/Applicability to Objectives: Authority to enter into agreements with other partners who share and desire to collaborate on biological, social, or economic needs and issues. Can be used to create a stewardship relationship whereby parties are working collaboratively to achieve shared goals (see examples below).

Regional Contact: Ron Ochs or Margaret Petersen, RO Strategic Planning Staff (503-808-2647 and 503-808-2414, respectively).

Specific Authorities: Many agreement authorities exist. Please contact your local grants and agreement specialist for other specific authorities, such as the Cooperative Deposit Act (P.L. 94-148). However, we suggest that Wyden is the most encompassing one (see section on Wyden Amendment).

Wyden - Forest Section - Title III, Section 323 P.L. 105-277

Example(s):

(1) LaGrande Landscape Stand Treatment: Forest Service has been coordinating with Oregon Department of Forestry (ODF) in order to maximize the results of stand treatments within a watershed. Both parties have determined that packaging/aligning projects together it would improve the delivery of shared biological, social, and economic objectives; i.e., work would be done consistently by utilizing the same skill base, improved quality of jobs, reduced costs, more effective and efficient attainment of outcomes.

The FS and ODF have generated a cooperative agreement under the Wyden Amendment whereby the local FS District is providing ODF with funding to implement stand treatment across an entire landscape. In this case, the agency is providing the partner (ODF) with NFS acres and associated dollars so that these acres can be aggregated with ODF funded and managed acres (this is an example whereby Wyden is being used that does not entail the expenditure of NFS dollars off of NFS lands). By doing this, actions on the ground are more efficient and effective, PLUS aligning this work enables the establishment of higher quality jobs and direct benefits to local community(ies).

Contact Stan Bird, Malheur NF Supervisor's Office or Dennis Rino, Wallowa Whitman NF Supervisor's Office for additional information or assistance

(2) Confederated Tribes of the Grand Ronde example (Siuslaw National Forest); FS and local tribe enter into an agreement via Wyden to coordinate implementation actions across adjoining lands to improve delivery - effectiveness and efficiency - whereby the tribe will be completing an overall coordinated implementation plan across each respective ownerships and coordinating the actual implementation. Per terms of the agreement, the Forest Service is providing the tribe with specific amount of dollars via a cooperative agreement to complete the initial implementation plan and will complete other agreements as needed to promote coordinated implementation.

Benefits Derived: Coordinated plan and implementation; creation of higher quality jobs by linking projects across watershed and improved use of existing skills and abilities.

Contact: Don Gonzalez, District Ranger, Hebo RD for additional information on the Confederated Tribe example.

Wyden Amendment
An Empowering New Tool

Tool/Issue: Wyden Amendment -- A Tool with Many Benefits

Perceived Issue ("Myths"): Government lacks ability to deploy our resources where most needed and to develop substantive partnerships with state, local, and tribal partners.

Resolution: Wyden, authority provided to the agency beginning in FY1998, is one of the most empowering, encompassing, flexible, and responsive authorities available to support many of the goals and challenges inherent in this "stewardship approach" to ecosystem management.

Specifically, Wyden enables the agency to:

1. Deploy resources (financial, human, other) anywhere within the ecosystem provided doing such contributes to the accomplishment of NFS defined outcomes.
2. Enter into cooperative agreements with any existing or potential partner. This specific aspect greatly increases our ability to work with non-profits and other groups dedicated to restoring and maintaining the health of ecosystems (people, watershed, community).

Note: Most of the implications of the Wyden Amendment are individually addressed in the other sections, such as the "Creation of Partnerships" and "Using Resources Across Ownerships". This is repeated under this title to promote improved understanding and appreciation of the breath and utility of this authority. The passage of the Wyden amendment has greatly broadened the agency's authority to not only utilize its resources anywhere within the ecosystem, but ALSO as important, it has greatly increased our ability to establish and maintain financially based cooperative arrangements (substantive partnerships) with state, local, and tribes. See above mentioned sections and GET TO KNOW and UNDERSTAND the empowering aspects of the Wyden Amendment.

Contribution/Applicability to Objectives:

- o Authority to enter into agreements with other partners who share and desire to collaborate on biological, social, or economic needs and issues (non-profits, states, watershed councils, etc.).
- o Ability to deploy resources anywhere to maximize attainment of goals.

Specific Authorities: Title III, Section 323 P.L. 105-277

Example(s): See other sections and annual Wyden reports for uses and examples; specifically, "Establishment of Partnerships" and "Using Resources Across Ownerships"

Contact: Ron Ochs, RO, Pacific Northwest Region for additional information, training, and support on Wyden Amendment possibilities.

Using Resources (Financial and Human) Across Ownerships

Tool/Issue: Ability to use resources (human or financial) to support watershed wide efforts or specific projects off of NFS lands.

Perceived Issue ("Myths"): Forest Service has very limited ability to deploy its resources off of NFS lands.

Resolution: The Forest Service has two significant authorities that enable us to use resources across ownerships.

- 1 Wyden Amendment (P.L. 105-277, Section 323) authorizes the agency to use any funds appropriated by Congress on PRIVATE or public lands PROVIDED that any expenditure of NFS funds that are off of NFS lands contributes to the attainment of the Forest Service's goals and objectives.
- 2 Technical Assistance provisions (P.L. 106-113) – also reference WO memorandum 3600 5/27/1994). Specific language; "Funds appropriated for the Forest Service shall be available for interactions with and providing technical assistance to rural communities for sustainable rural development." This 3600 memo states: "it allows us to spend National System dollars to help foster vital communities adjacent to National Forest System lands."

NOTE: Wyden provides the authority to use our resources off of NFS lands. The actual instrument used (cooperative agreement, grant, procurement, participating agreement) to share costs or transfer finances varies, depending on the relationship established. Check with your local procurement or agreement specialist.

Contribution/Applicability to Objectives: Authority to enter into agreements with other partners who share and desire to collaborate on biological, social, or economic needs and issues. Can be used to create a stewardship relationship whereby parties are working collaboratively to achieve shared goals (see examples below).

Specific Authorities: Title III, Section 323 P.L. 105-277

Example(s): Reference Region 6's annual report of Wyden uses for actual uses (1998, 1999, and 2000). A few examples:

Siuslaw Watershed Approach (Reference R6's 1999 Report of Uses 11/23/99 – Projects 1-7)

The Siuslaw National Forest identified, via watershed analyses, that some of the most significant barriers to improving their aquatic systems were located off of NFS lands. In an effort to direct their limited resources to maximize outcomes, the Forest, under the authority of the Wyden Amendment, entered into a cooperative agreement with Cascade Pacific Resource Conservation and Development District (RC&D), to identify the highest priority restoration projects across the coastal range by soliciting projects from the neighboring watershed councils. The RC&D solicited grant proposals from the watershed council, convened a group to analyze project proposals, and

financed projects based on the final analysis and to the extent funding was made available by the Forest (estimated at \$400 thousand plus over the last 2 years).

Benefits Derived: Highest priority work financed; work stayed within local communities; local involvement and empowerment; improved connection with communities and associated trust, partnerships, etc.

Contact: Karen Bennett, Siuslaw NF Supervisor's Office for additional information on this project.
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Chewaucan Hazard Fuels, Fremont National Forest

Forest goal is to reduce fuel load hazard within a given area that has some private land inholdings. To meet overall desired outcome (e.g., reduce hazard) it is imperative that the entire area be treated. Also, efforts to avoid treatment on this inholdings would increase overall operational costs. Results: the Forest entered into a "Restoration Agreement" with landowners that enabled the agency to treat the entire area. All costs in this situation were born by the Forest Service with the associated landowners providing only access and permission to treat their lands. No cost sharing was required since it was advantageous to the government to treat the entire area.

Watershed-wide Planning, Implementation, & Monitoring

Tool/Issue: Completion of watershed wide plans and strategies

Perceived Issue (“Myths”): Because of federal legal requirements (NEPA, FACA, etc) we are unable to undertake watershed wide efforts; from comprehensive plans, to coordinated implementation or monitoring.

Resolution: In most cases (especially in community-based and driven efforts – watershed councils, WRIA’s etc), the above issues are very manageable. The primary issue or consideration is that decisions that affect federal lands remain with the responsible federal decision-maker. Any watershed wide effort does not preclude us from meeting existing laws and regulations. Regarding FACA, see FACA write-up in this toolkit

Contribution/Applicability to Objectives: Watershed wide plans and strategies are very effective at supporting, simultaneously, all three sides of the triangle. Clearly, watersheds can be most effectively restored or maintained if done in a watershed context. It also enables the creation of more and better jobs since all partners are able to integrate and link projects to create quality and sustainable employment.

Specific Authorities:

Example(s): See Confederated Tribes of the Grand Ronde collaborative effort (under “Establishment of Partnerships”).

Agreement between Grand Ronde and Forest Service to develop and implement a coordinated implementation plan for the shared portions of the Grand Ronde Watershed.

Combining Projects and Actions Across Agencies and Partners

Tool/Issue: Acting as one government - linking procurement actions where/when appropriate

Perceived Issue ("Myths"): Inability for different government agencies to link projects into one contract.

Resolution: We have numerous agreement authorities whereby we can combine projects across agencies or with other partners.

For Example:

1. Economy Act of June 30, 1932:

An Interagency Agreement, using the authorities contained in the Economy Act of June 30, 1932 (31 U.S.C. 1535), was signed by the State and Regional Offices that will provide all BLM/FS units within the area of the Forest Plan to link projects and award only one contract where and when appropriate to attain program goals.

2. Wyden Amendment, Section 323 P.L. 107-277:

Enables us to align projects and actions with any partner provided we have a shared and mutual objective. The relationship CAN NOT be business or financial in nature; i.e., an agreement with a partner whose main interest in getting work and associated payment.

***CHECK with your local procurement/agreement specialist for the authority that best meets the specific needs.

Contribution/Applicability to Objectives: Government can and should work together when doing such improves the delivery of desired outcomes; biological, social, economic. While most agencies and partners lack sufficient financial resources and projects to meet these quality job objectives, partners working together, combining abilities and opportunities leads to maximum benefits. In addition to jobs, combining work generally improves both the effectiveness and economic efficiency of our collective actions.

Specific Authorities:

Economy Act of June 30, 1932

Wyden Amendment, Title III, Section 323, P.L. 105-277

Examples: Federal and state partners have been working together to improve the health of the neighboring ecosystems and mutually share quality job objectives. By combining projects, increased efficiencies and effectiveness can be realized; biologically, socially, and economically. Using one of the available agreement authorities, the District enters into an agreement with one of their partners whereby FS projects will be included into an overall award that includes all the partner's projects.

Multi-year Authorities/Options

Tool/Issue: Utilize conditional authorities to expand contracts across fiscal years

Perceived Issue (“Myths”): Uncertainty of funding limits the extent and duration of contracts, which limits our ability to meet some of the social and economic objectives (e.g., increasing work duration, etc).

Resolution: To meet identified needs, resource and procurement managers can and should consider, when appropriate, multiple year contracts and funding using either conditional language (i.e. dependent upon availability of funds) or contract extension authorities (i.e. ability to renew contracts through the use of options).

This is a very powerful authority and can be very useful in helping us to achieve many of the espoused goals BUT it must be used properly since improper applicable can actually be counterproductive to these goals. In an effort to establish long-term contracts, we must be careful not to adversely affect or impact communities by limiting the number and quality of procurement opportunities available for competition. This will only serve to diminish the local workforce.

Contribution/Applicability to Objectives: Extending contracts across fiscal years, even if they are conditional upon funding being made available, promotes more predictability and sustainability of work and community stability.

Note: Also refer to Indefinite type contract options.

Specific Authorities: FAR Part 17

Examples: Award a comprehensive ecosystem health contract that can be renewed the following year provided funds are available and the contract continues to provide the best value to the government.

Federal Advisory Committee Act (FACA)

Tool/Issue: Meeting the Spirit and Intent of FACA within Partnerships

Perceived Issue ("Myths"): FACA prevents full and active partnerships

Resolution: See OGC's legal opinion (Binder 6/20/2000 - included in appendix) or R6's 1300 memorandum of 8/1/2000. Three concurrent conditions are required in order to create a FACA issue:

1. Group/committee is formal - convened regularly, have set membership, charter, goals, and objectives.
2. Group/committee is under the management control of the agency - specifically determines or has disproportionate share in determining who, what, why, when.
3. Group/committee is providing input specifically to the agency.

While the above guidance greatly eliminates any conflict between partnerships and FACA, it should be viewed as the absolute minimum requirements in managing partnerships. Units should be guided by FSM 1300 dated 08/01/2000. FACA was never intended to discourage collaborative partnerships.

Contribution/Applicability to Objectives: Partnerships are critical to meeting these management goals. Partnerships can normally be fostered and maintained within the spirit and intent of FACA by following the Binder's guidance referenced above.

Specific Authorities:

Example(s):

1. FS line officer is a board member on local watershed council. Council discusses general restoration needs and strategies and often times tend to focus on FS related issues since FS lands comprise a major portion of the local ecosystem.
FACA Analysis: Clearly not a FACA issue since two of the three concurrent factors are not present. Group was not established for the purpose of providing advice to the agency NOR is the group controlled by the agency.
2. FS line officers meets monthly with local mayors to discuss FS issues.
FACA Analysis - NOT a FACA issue; none of the factors are present
3. Local non-profits offer the agency one of their specialists to assist FS in getting NEPA work completed.
FACA analysis: All three concurrent factors are present - it appears to be a potential FACA issue.

Linking with Another Agency - Using Their Authority/Process

Tool/Issue: Ability to use the same grant/agreement authorities among the FS and BLM

Perceived Issue ("Myths"): The FS and BLM are utilizing different authorities or interpretation of existing authorities within Grants/Agreements.

Resolution: Provided either agency has the basic authority to undertake the project or effort (ie. authority exists to accomplish stated task), either agency can align projects with another agency, even if the agency utilizes a tool or authority not available to the other.

Contribution/Applicability to Objectives: Working together to achieve mutual, shared benefits often times provides us new approaches, methods, and tools that may maximize the overall benefits.

Specific Authorities:

Examples: Southwest Oregon Partnership: The BLM has an authority to enter into partnership agreement with local partners whereby cost sharing is not required. While the FS lacked similar authority, the FS entered into an agreement with BLM whereby the BLM included and administered the project under the terms and conditions of their existing authority. However, FS cannot simply use the BLM's authority to circumvent our FS lack of authority; a collaborative relationship must exist where both parties are engaged in the effort. Plus, the agency using another agency's methods MUST have legal authority to undertake the basic activity (i.e., there must be mandated authority and funding provided by Congress to undertake the action).

Contact: Randall Wood, RO Agreement Specialist for information on the above example or other possible uses of this provision.

Cooperative Arrangements

Tool/Issue: Establishment of a financial partnership with other state, federal, local government, or other partners.

Perceived Issue (“Myths”): FS does not have the ability to enter into financial partnerships (agreements between agency and one or more parties that involves the transfer or exchange of funds) except for a few limited exceptions (e.g. Ulman Bill 94-148).

Resolution: There are a few but very specific authorities provided to the agency, other than those provided to Research and State and Private, where the agency can enter into cooperative agreements (a form of financial assistance whereby the agency is providing a partner with financial resources). However, with the passage of the Wyden Amendment, P.L. 105-277, the agency can also utilize financial assistance mechanisms (cooperative agreement or grant) for a very broad and encompassing range of projects, partners, and types of funds (specifically: restoration, protection, or enhancement of fish, wildlife, or other resources”, “tribal, state, local, private, non-profit”, and authorized to use “any appropriated funds”).

The agency has authority within the Ulman Act (PL 94-148) to use “cooperative agreements”, 94-148 restricts use to four very specific areas: forestry protection, manpower and job training, environmental education, and pollution abatement. (Note: Implement of 94-148 resulted in the creation of a new form of agreement – “participating agreement” – which is the instrument usually applied under this authority).

** Contact your local contact/agreement specialist for the best authority to accomplish your intended task.

Contribution/Applicability to Objectives: Financial assistance instruments enable the agency to create comprehensive partnerships that allows for the exchange of money and other resources.

Specific Authorities:

94-148 - Cooperative Funds and Deposits Act of 1975 (a.k.a. Ulman Act)
105-277 - Wyden Amendment

Example(s): Watershed Example: See Siuslaw Watershed Approach (an example in “Using Resources Across Ownerships”)

Landscape/Quality Job Example: See LaGrande Landscape (an example in “Establishment of Collaborative Partnerships”)

Working With Non-profits

Tool/Issue: Ability to collaborate and work with non-profits

Perceived Issue ("Myths"): Government lacks the authority to procure and otherwise deal with non-profits

Resolution:

- Use of agreements (grants and cooperative agreements) to align efforts with non-profits.
- Non-profits and educational institutions may compete in procurements that are not set-aside for small businesses
- Language is contained in the National Fire Plan (NFP) that authorizes procurements with non-profits under specific circumstances.

Our relationships with non-profits through agreements should not be to acquire goods and services BUT rather the establishment of collaborative partnerships whereby both parties share in common goals and objectives. Under the Wyden Amendment, Title III, Section 323, Public Law 105-277, the agency has great latitude in using financial assistance with non-profits when our relationship is collaborative in nature. The basis of this partnership must be collaborative, both parties share in a common goal, and working together improves the delivery/accomplishment of the desired result.

Contribution/Applicability to Objectives: Working with non-profits, which have common goals and mandates, is imperative. Often times these groups have needed contacts and networks that are needed to ensure overall success.

Specific Authorities: Wyden Amendment is the most empowering and encompassing - Title III, Section 323, P.L. 105-277.

Other specific authorities exist - please check with your local procurement officer and/or grants and agreements specialist. Authorities exist to create partnerships with non-profits and other partners; your local agreement specialist will assist you in determining the best approach. IF you encounter a situation where an avenue does not appear to be available PLEASE contact Ron Ochs in the Regional Office.

Example(s): Willamette National Forest entered into a cooperative agreement with a local watershed council whereby the forest provided the council \$10,000 to support the completion of the overall watershed assessment. The agreement established outlined specific roles and responsibilities in addition to the exchange on financial resources.

Contact Randall Wood, RO/PNW Region for additional information or support in using financial assistance with non-profits. Signing authority for this instrument is currently retained in the RO so local knowledge may be limited at this point.

Sharing Skills and Positions

Tool/Issue: Sharing of skills and positions

Perceived Issue ("Myths"): Agency lacks authority to share positions and expertise with other partners.

Resolution: The Intergovernmental Personnel Act, Mobility Program (reference 5 USC sections 3371 through 3375 and CFR, part 5, chapter 334) provides the agency the authority to share positions and skills with other state or local governments, tribal governments, and "other eligible" organizations.

There are two approaches to sharing positions: 1. partner employs individual and FS contributes portion of the funding based on the benefits received; and 2. Agency employees individual with partner(s) contributing funds based on benefits received.

While the above mentioned law, Intergovernmental Personnel Act, seems to address the first scenario, we are still researching whether this authority can be used with non-profits. Until this is finalized *please contact your local personnel office for possible options and opportunities under this authority*. Since watershed councils are recognized as local governmental organizations, we believe, but need to validate, that they would be consistent and covered under this law.

With respect to scenario 2, Section 1 of the Granger-Thye Act provides the agency the needed authority.

"Sec 1. (a) The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on land in State, county, municipal, or private ownership, situated within or near National Forest, for which the administrative agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done for the benefit of the depositor....."

Contribution/Applicability to Objectives: Benefits all three aspects of the triangle --- watershed is benefited by having needed skills and expertise, community benefits by having a sustainable/predictable, a quality job is created, partners benefit by maximizing the benefits of their constrained dollars.

Specific Authorities: Intergovernmental Personnel Act – 5 U.S.C.

Building Community Capacity

“Building Capacity” is about working with local communities and tribes to develop and use local skills, abilities and interests. Building capacity is about better aligning local ability with the demands of the ecosystem. Our visions and hopes are not based on generating local preference, limiting competition, or providing a handout but rather about making it a win-win for all. It’s about local focus, local alliance, and local reliance. For it to work, everyone (agency, community, et.al.) must step forward and make a legitimate effort. Giving communities handouts is not sustainable; helping them to develop and retain skilled local capacity is sustainable and desirable.

Many tools and approaches throughout this toolkit can be used to help build local capacity BUT we have separated the following and proceeding tools to reflect those that are most effective in helping to build capacity. Including:

Mobilization costs: Assisting new businesses by potentially improving cash flow by paying for upfront mobilization costs

Training: Helping communities develop local workforces by providing a variety of training opportunities and strategies.

Incentives: Rewarding contractors for exceeding desired and defined outcomes

Bonding: By not adversely affecting businesses by placing unnecessary demands on them

HUB Zones: Working with local businesses to make sure there are certified as HUB contractors

Incentives

Tool/Issue: Use of Incentives to Meet Identified Management Needs.

Perceived Issue ("Myths"): Authorities do not allow or provide managers with the ability to issue financial or other forms of incentives.

Resolution: Management can utilize incentives (pay additional money if defined conditions are exceeded) to encourage contractors to exceed our minimum needs specified in the contract(s).

Contribution/Applicability to Objectives: This enables management to consider and reward extra that contribute to such management goals as quality jobs, community stability, etc.

Specific Authorities: Federal Acquisition Regulations Parts 16 & 17

Examples: Contractors who exceed their goals in hiring workers and/or in promoting training and skill development may receive additional payments.

Mobilization Costs

Tool: Compensation of mobilization costs.

Perceived Issue (“Myths”): Businesses in effected communities often cannot compete due to the lack of start-up capital (tooling, fuel, bonding, supplies, etc.).

Resolution: We can and should utilize payments to compensate contractors for mobilization costs early in the process when appropriate or needed. Having mobilization as a separate line item will help facilitate such a payment. This cost item can include numerous things such as any reasonable costs associated with contractors moving in/out of a project.

What can be included? Anything it takes to mobilize, including transportation, equipment, and personnel.

Contribution/Applicability to Objectives: Supports local capacity to compete on projects by providing needed upfront costs; improves payment timing and flow.

Specific Authorities:

Examples: A separate line item is included to cover mobilization costs associated with getting the necessary equipment and personnel to the project. Thereby, enabling payment on this portion when contractor meets defined set-up requirements. First payment does not need to be based on work completed on ground.

Note: It is imperative to realize the difference between paying mobilization costs and advance of payments, which is prohibited. Paying mobilization cost must be based on the completion of something tangible and payment can be made as soon as the “gate” is met.

Protecting Government Interest

With and Without Bonding

Tool/Issue: Require bonding only in those cases where it is essential to protect Government interests.

Perceived Issue ("Myths"): Bonding is always required and often times makes submitting a bid or an offer prohibitive for contractors.

Resolution: Require bonding only when essential to protect government's interest and where specifically required by Federal Acquisition Regulations.

Consideration: Under this comprehensive ecosystem approach, the government's interest is twofold: 1. Achieve the desired resource outcomes AND, 2. contribute to quality jobs and community stability. If the use of bonding prevents the agency from accomplishing these objectives, then the use of bonding would actually be counter to its purpose in that government interest would not be protected.

Since bonding requirements are an additional cost to contractors, we strongly recommend that bonds only be used when absolutely required by the FAR's and in order to meet management needs and protect government's interest.

Contact local procurement officer for advice on bonding matters.

Contribution/Applicability to Objectives: Improving the financial ability and competitiveness of local small contractors.

Specific Authorities: FAR part 28

Training/Skill Development

Tool/Issue: Providing training to local workers

Perceived Issue ("Myths"): Forest Service lacks any authority to provide training opportunities since our appropriations do not enable such.

Resolution: The Forest Service has a legal mandate to promote community stability and well-being (see legal mandates in Chapter 1; specifically the 1990 Farm Bill) and since FY1996 has had general authority in our appropriations to use any funds appropriated by Congress to promote community stability.

Appropriation language (contained each year); for example, reference Congressional Record – House November 17,1999 "Funds appropriated to the Forest Service shall be available for interactions with and providing technical assistance to rural communities for sustainable rural development purposes".

There are many ways to help support and promote skill development, from conducting weekend training sessions to comprehensive partnerships to implement training and employee development. This is an area limited only by one's imagination. Please work with your local Procurement Officers, Agreement Specialists, Training Coordinator, and Rural Community Assistance Coordinators to develop an approach or series of actions to achieve your desired results. Creativity not legal inability is our limiting factor.

Contribution/Applicability to Objectives: Being a partner in developing or refining local skills and abilities is a paramount challenge, opportunity, and responsibility of the organization. Proactively ensuring skills and abilities exists is a good, prudent business practice and approach. It's a win for the watershed, for the workers, for the community(ies), and the general public.

Specific Authorities: Other authorities are applicable to this issue in addition to the appropriation language mentioned above. In addition, be guided by:

Cooperative Funds and Deposit Act of 12/12/1975 (a.k.a. Ulman Act), Public Law 94-148:
".....Secretary is authorized to enter into cooperative agreements with public or private agencies, organizations, or persons to to engage in cooperative manpower programs..."

Wyden Amendment – Title III, Section 323, P.L. 105-277: Authority to enter into cooperative agreements with about anyone for the purpose of "restoring, protecting, or enhancing fish and wildlife and other resources". The legislative intent of "other" was to be inclusive of other biological but also social and economic needs and issues.

Example(s):

1. Rogue River Partnership: Large set of partners collaborated on providing comprehensive ecosystem training to local displaced workers. An agreement was established with local partners whereby the FS would provide projects and associated funding to local non-profit to enable on-the-job training in conjunction with classroom training provided by the local community college. Enrollees received certification of training upon completion of the year program.

Contact Tom Dew or Paul Galloway on the Rogue River NF SO, or Charles Spencer, Ecosystem Workforce Program, University of Oregon.

2. Unit is conducting specific ecosystem related training for internal employees. Since this knowledge is critical to overall ecosystem, unit broadens training session and invites partners to participate.

Indefinite Delivery/Quantity Contracts Options

Tool/Issue: Creating a flexible business relationship that enables both a guarantee of work to contractors and provides government with flexibility to adjust work.

Perceived Issue (“Myths”):

1. Government's only avenue to accomplish work is to receive bids on specific amounts of work.
2. Government can only award contracts for work that are prepared and ready to go.
3. All uncertainty (budgets, programs, appeals, etc) must be absorbed by the local contractors and external workers.

Resolution: Utilize ID/IQ arrangements whereby projects/work can be accomplished as they surface; enabling quick, effective, and efficient means to accomplish work. There are many versions of this type of arrangements so users are encouraged to work with your local contracting officers to determine which options and versions best satisfy your specific needs.

In establishing long-term IDIQ contracts, we must be careful not to cause adverse impact on the local community by limiting the number and quality of procurement opportunities available for competition. This will only serve to diminish the local workforce.

Contribution/Applicability to Objectives: This approach provides some major opportunities with respect to quality work, quality workers, and local reliance. It also enables the government to provide a minimum guarantee, provides ready access to resources to get new projects accomplished, and since it requires the contractors to be able to respond to changes, it encourages local businesses and workers.

Specific Authorities:

FAR 16, Contract Types

(Note: Consider multiple award IDIQ to preclude effects on some small businesses ability to compete for awards).

Example(s): District advertises a general restoration contract that covers a large spectrum of possible restoration tasks, including for example, thinning, riparian restoration, surveys, planting, etc. While sufficient projects have not yet been through the entire planning process (e.g., NEPA) to specifically identify all the work in the initial contract solicitation, the District provides a minimum work guarantee that assumes additional work will become available PLUS enables the generation of 1 or more quality jobs (thus, government shares the burden/risk with local contractors; i.e., we get work done and included in the contract or else we must pay minimums).

An additional option would be to award 2-3 such contracts with work completed among the multiple awardees – thus, having a series of contractual arrangements to rely upon.

Advance Payments

Tool/Issue: Helping business to become operational and/or maintaining workable cash flow.

Perceived Issue: Agency cannot assist businesses to become operational by advancing payments.

Resolution: A complex issue with complex solutions. With the exception of financial assistance, the agency does not have the authority to advance payments to contractors. However, there are methods and ways to assist local businesses by considering actions such as mobilization costs to working with local state and other federal partners, such as the Small Business Administration and economic development agencies, to assist these businesses with cash flow problems. Please work with you local Rural Community Assistance Coordinators and Procurement Officers to develop the best approach to specific needs and issues.

Also, if the collective, agreed upon goal of the partners is to help promote and develop local business infrastructure to meet emerging and future needs, consider options and opportunities available under grants and agreements to help businesses and workers to create a solid foundation.

Contribution/Applicability to Objectives: Cash flow is a major stumbling block for many small businesses and can mean live or death to their business survival. While the agency lacks any specific authority to assist these local businesses, we believe that through comprehensive partnerships with other federal and state efforts, we can provide responsive assistance.

Specific Authorities: Federal Acquisition Regulations 32.4

Example(s): In the community of Tillamook, Oregon partners worked together to establish a revolving loan fund to assist local natural resource businesses with cash flow and investment needs. This was/is an extensive partnership that engaged many different federal, state, and local entities to support the needs of local businesses.

HUB ZONES

Historically Under-Utilized Business

Tool/Issue: Ability to direct work to businesses that reside in historically under-utilized zones.

Perceived Issue ("Myths"): Agency lacks authority to provide any form of local preference

Resolution: HUB Zone or any other SBA program does not provide resolution to this Perceived Issue ("Myths"). As reflected throughout this document, we do not believe "local preference" is the logical or desirable solution but rather, through collaborative efforts, creating mutual interdependence, aligning local skills with local demands and establishing a local focus.

HUB supports businesses that have been designated as qualifying businesses within identified and recognized Hub (Historically Under-utilized Business) Zones. To be qualified, the business must

1. Have its primary office located with the zone;
2. Be a small business;
3. At least 35% of employees reside in the Zone; and
4. Is owned and operated by a US Citizen

A certified HUB Zone contractor is eligible for HUB Zone preferences regardless where the contract work will be performed. So, it is possible that a HUB Zone contractor from Texas could be awarded a contract in Oregon that has been set aside for HUB Zone contractors.

For additional information on the implications of HUB Zones contact your local contracting officer and/or check www.sba.gov for specific rules, forms, and processes

Areas that are designated as HUB Zones, (most of rural Oregon and Washington), should work with partners to get local contractors to apply for and get certified as qualifying HUB contractors (reference www.sba.gov for the required forms and process).

It is highly recommended that all units become knowledgeable of what this program does and does not do to support the goals and objectives outlined in Chapter 1 of Toolkit. Without management attention, this provision and requirement could actually be counter-productive to the cause and disable rather than enable local contractors. You must work closely with Procurement Officers to avoid problems in this area.

Contribution/Applicability to Objectives: Tool to enable workers who reside in areas that have been historically challenged to get work to improve skills and competitiveness.

Specific Authorities: Historically Underutilized Business Zone Act of 1997

Example(s):

For example: Tillamook, Oregon is not a currently identified HUB Zone and therefore contractors in this area do not qualify as HUB contractors. Therefore if the FS designed a multi-task, multi-year contract that exceeded \$100,000, the award would be required to be a HUB set aside and non-HUB contractors would be unable to compete.

We suggest that the potential issues that may arise with HUB Zone set aside requirements are manageable if managed properly.

Seeking New Tools and Authorities

Tool/Issue: Utilize the right tool to get the job done

Perceived Issue (“Myths”): Management lacks authority and tools to achieve desired outcomes and no way to effectively pursue needed changes in policies, laws, and regulations.

Resolution: If the proposed action by management makes sense and is authorized as a role/mission of the organization, we generally can find tools and authorities to support the effort. But it requires a team approach, resource people working upfront with administrative/support personnel; we must make them part of the solution, not part of the problem.

If local managers are unable to find a workable solution, it is imperative that efforts be undertaken to elevate the issue/need Regional Office for action. The climate is right to seek change BUT we must work together at all levels of the organization to pursue positive actions.

Contribution/Applicability to Objectives:

Specific Authorities: NA

Example:

Recent examples that demonstrate our collective ability to timely seek changes in tools and authorities when we work together:

1. Wyden Amendment
2. WO Deskguide

Contact Ron Ochs in the RO if you encounter problems or need possible changes.
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Goods and Services

Preface:

The issue of linking goods and services is extremely complex and extensive and users are encouraged to engage the right people (local and regional timber and service contract contracting officers) to determine the best approach to deal with your specific needs and circumstances. This section is not meant to provide an operational knowledge of tools and authorities in this area BUT rather a general overview of possibilities and items to consider. The WO Deskguide, "Contracting Task Force Report" (1/11/01 version) provides an in-depth and comprehensive process and sample contract for management's use. However, the deskguide (while effective in many circumstances, comprehensive, and available) should be viewed as an approach to consider and apply NOT as the only means to achieve your objectives in this area. BUT the deskguide is also a proven and tested product (a bird in the hand) and should be given due consideration. We believe there are authorities available that provide other means and considerations that may be applicable in some circumstances where the deskguide approach may not be a desired or ideal approach. Since this is a relatively new area for the Region, PLEASE engage the right people AND share your experiences via this toolkit so that we can all be enriched.

Trading Goods for Services

Tool/Issue: Ability to trade goods for services.

Note: "Goods" are defined as an asset of the federal government that has economic value; i.e., something the public is willing to pay for. For example, harvesting trees when the public is willing to pay for them is "good." Harvesting the same trees at a different period of time where value may be reduced and does not generate interest from the public is not a "good." Whether something has "economic value" depends on many factors including market conditions, business capability, demand, etc.

Perceived Issue: Inability to trade goods for services.

Resolution: NONE if the objective is to apply the value of goods to offset the cost of service work. With the exception of some limited pilots, the agency does not have the authority to trade goods for services. Doing so would be a direct augmentation of appropriations; circumventing Congressional role in determining federal outlays and expenditures.

However, the agency does have limited authority to LINK goods and services. See "WO Deskguide", "Service Contracts with Removal Rights" and "Service Contracts with Embedded Timber Sales/Bill for Sale".

Also, if the objective is to realize efficiencies by having a contractor simultaneously perform both goods and service related work, the agency does have additional options; i.e., negotiating service work with a successful bidder if advantageous to government and agreeable with the timber contractor. See negotiated authority.

Contribution/Applicability to Objectives: N/A

Specific Authorities: NONE

Example(s): Unit plans to incorporate timber volume into a service contract in order to offset the cost of the treatment planned for the area. If the volume can be packaged as a viable timber sale, such action would constitute augmentation of appropriation; such actions are illegal. However, additional management options may be available, see other options.

WO Desk guide

Tool/Issue: Ability to link commercial forest products within a service contract

Perceived Issue (“Myths”): Agency lacks any authority to link commercial forest products (e.g. timber or special forest products) with service contracts.

Resolution: A team of timber and service contract experts from the WO and field assembled a process and associated sample contract that is available to support treatment of medium to large landscapes when the appraised value of the area is negative. This recommended approach enables units to treat landscapes but combining the essential elements of a timber sale contract with a service contract.

Contribution/Applicability to Objectives: This approach is very supportive of the principles and desired outcomes outlined in this toolkit. When areas meet the requirements outlined in this deskguide (e.g. negative appraisal, commercial product removed, etc.), this method provides the manager with the opportunity to treat landscapes and incorporate a wide variety of activities; thus, enabling the creation of more quality jobs, use of skills and abilities, etc.

Considerations:

Specific Authorities: Deskguide can be obtained via
<http://fsweb.wo.fs.fed.us/us/fm/stewardship/contractdeskguide>

Example(s):

Service Contract with Removal Rights

Tool/Issue: Ability to link commercial forest products within a service contract

Perceived Issue (“Myths”): Agency lacks any authority to link commercial forest products (e.g. timber or special forest products) with service contracts.

Resolution: If the commercial product does not have economic value; i.e., can not be reasonably sold since the costs of operation exceeds the economic value (a negative appraisal and clearly no value based on market experience and conditions), the agency can provide removal rights to any successful bidder. Often, if not most times, providing removal rights will reduce the costs of the bid on the service portion of the contract since while the commercial product has a negative appraisal, it does have some form of commercial value to the contractor. The fact that it reduces the costs does not constitute augmentation of appropriations since it is not trading “goods” for services.

Contribution/Applicability to Objectives:

Considerations: Can the products, or a subset thereof, be packaged as a viable timber or special forest products sale? If yes, than this option is not applicable. If the entire area being treated OR a subset of products could be a viable sale, see service contract with embedded timber sale as an option. Otherwise follow normal commercial timber or products sale processes and authorities.

This option enables contractor to perform variety of services, including the removal and use of commercial products.

Specific Authorities: CFR 36 223.2

FSH 2409.18.83.2 “Timber may be disposed of through service contract procedures by including salvage rights privileges in the service contract if it is to the advantage of the Government.”

Example(s): Blackpine Campground project, Okanogan National Forest. Forest goal was to reduce safety concerns within the campground by removing danger trees and completing needed fuel treatments. Volume was not a viable timber sale given appraisals and forest efforts to sell volume under commercial timber sale. Service contract was awarded providing contractor with removal rights. While the estimated \$35,000 worth of service work only ended up costing \$25,000, this is not trading goods for services nor an augmentation of appropriations since the volume was not a “good” since it did not have stand alone economic value; i.e., could not be sold.

Service Contract with Embedded Timber Sale Or Bill for Sale

See WO Deskguide for Sample Contract and Process

Tool/Issue: Ability to Link (combine NOT trade!) Goods and Services into one contract

Perceived Issue ("Myths"): Agency lacks any authority to link/combine goods (e.g., timber sales) with service contracts.

Resolution: Authority exists for the agency to link (embed timber sale contract or issue a bill of sale) into a service contract IF:

1. Conditions are consistent with terms and requirements under 36 CFR 223.2 – "disposal of timber for administrative use"

Per 36 CFR 223.2 "Administrative Use shall be limited to following conditions and purposes:

- (a) for construction, maintenance, and repair of roads, bridges....
- (b) for fuels in federal camps....
- (c) For research and demonstration projects
- (d) For use in disaster relief....
- (e) ***For disposal when removal is desirable to protect and enhance multiple-use values in a particular area"***

AND

2. Appraised value of the products is below \$10,000.

OR

3. Separating proposed management action into two separate actions (a sale and a separate service contract) is not feasible or logical (Can NOT or should NOT be done).

In either of the above cases, units must embed a timber sale or bill of sale and collect and return to treasury funds at the fair value of the products being removed (see FSM 2463.1 for specific methods). Authority does not exist to utilize the value inherent in the goods portion of the contract to offset the cost of treatment.

In conjunction with "administrative use" authorities and provisions, "Forest Officers must ensure that sound justification exists for disposing of timber by administrative use rather than using a commercial timber sale."

Generally, this option can and should be used only when the *volume being removed is incidental to the management objectives*. In other words, the volume is a byproduct in meeting the management objectives NOT the primary objective. If the purpose is to remove volume, then this option is generally not appropriate; if the purpose is to meet some protection or enhancement purpose and the volume is simply a byproduct of the action, then generally this option is available. It is imperative that FSM 2463.03 is met, that sound justification is documented, logical, prudent, and defensible.

Contribution/Applicability to Objectives:

Specific Authorities: 36 CFR 223.2 Disposal of timber for administrative use.

FSM 2463.01 – 2463.1 “Uses of timber other than commercial timber sales.”

Example(s): Starkey Project, Wallowa-Whitman N.F. A large landscape was planned to be treated for ecosystem health purposes; primarily fuel loading and stand health/growth. The area has a negative appraisal and does not appear to have market interest (based on current market interest and recent experience). A subset of the area (either geographically or components within the stands) could be packaged and awarded as a commercial timber sale but doing so would not meet management objectives and would be detrimental to meeting the overall management goals outlined in NEPA analysis and decision. Forest Officer has determined that the volume planned to be removed, if removed separately, would have detrimental affect to the area and to the interest of the government.

In the above situation, the forest utilized a service contract with an embedded timber sale contract that required the collection of funds based on fair market value on that portion and products that has stand-alone appraised value, or in the case of the desk-guide collection for any product that has a commercial market. The receipts CAN NOT be used to offset service work BUT must be managed in accordance with normal timber sale receipts; with receipts returned to the treasury.

Contact: Stan Bird, Contracting Officer, ZAP Leader, Malhuer N.F.
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Chapter 3: Questions and Answers

Q. Is this an effort to create a social/economic program whereby local preference is provided?

A. Absolutely NOT. These goals and desired outcomes are based on prudent business principles; that it makes good business sense to have the skills and abilities locally to accomplish desired ecosystem desired outcomes. Having and using local ability makes sense operationally, economically, socially, and ethically:

1. Operationally -- skills are available to meet both our own internal needs and the collective needs of the nearby ecosystems. Given the interdependence of the ecosystems themselves requires consistent efforts across the landscape.
2. Economically -- capability is in place enabling less mobilization costs and enabling more responsive ability to react.
3. Socially -- contributes to the well being of rural America which S2830 recognizes as "vital to our National growth and prosperity"; and,
4. Ethically -- government is a major landowner in many of these rural communities and employees live in local communities, and as such share the responsibility for the health and vitality of rural communities.

Q. Is this just an issue of hiring local?

A. Absolutely NOT. There are two major goals or challenges: 1. Establishment and retention of a highly skilled and high-wage workforce to meet existing and emerging demands; and 2. To the extent possible, maintain this workforce as close to the demand as possible (local). Ideally it is advantageous that these goals are concurrent to the degree possible (a highly skilled local workforce) BUT this is not always possible. Sometimes it may require the creation of highly skilled jobs where local capacity is not available.

The reasons for these goals are hopefully obvious. First, our ability to maintain these complex systems requires highly skilled workers that will exceed the capability of our agency. Secondly, other landowners in the area will need these skills in order to be able to respond to their needs and thus having these skills locally is advantageous. And last but not least, locally available is desired for a variety of reasons -- operational and economical efficiency/effectiveness and to assist in community health and sustainability.

Our advocated quest can probably be best summarized as establishing and/or retaining quality jobs with a local focus

Q. A public interest waiver was obtained for the NW Forest Plan; will a similar waiver be sought for the entire Region?

A. The public interest waiver provided some added authorities and abilities, such as reduced need for procurement notification; however, contrary to general perceptions, the waiver did NOT enable the agency to restrict competition to a local or specific area. It simply enabled the agency to restrict competition to any businesses that resided and

operated within the area of the NW Forest Plan. Since historically 90% plus of procurement is made to businesses within close proximity to the work, this added ability contributed little. We are convinced from our past efforts that proper design and implementation is far more effective and politically defensible than obtaining such waiver language. Our intention is NOT to create local preference but to improve mutual reliance.

Q. If our goal is to use local workers and capability, why not just seek authority to limit/target these individuals and enterprises?

A. Creating a preference is not logical or desirable for either the receiver of the services or the provider of the services. Sustainability requires that we do whatever is possible to align supply with demand; ensuring that skills needed locally are available locally. Our goal is to maximize the benefits to the ecosystem, the watershed, the people, and the communities. Providing a preference, at the costs of possibly not generating the best benefits to the land, or not using the best skills and abilities, is neither prudent nor sustainable. Per quote above "Build community capacity – don't give handouts"

Q. What is the rationale for possibly paying more for the same acres and outputs?

A. BEST VALUE. The government receives additional benefits that are not measured by output indicators; i.e., acres, miles. Benefits, including but not limited to, improved quality of work, less administrative costs, improved retention of skills in area to respond to other partner's needs and future ecosystem needs, improved operational flexibility, reduced social and community ills.

"People want to see the relationship between human and natural ecosystems restored. Reknitting ecosystems is the way to a healthy economy ---- there is no distinction between the two"

-- Daniel Kemmis, Mayor Missoula, Montana

Q. I have been told that there is new federal guidance that restricts our ability to "package" projects – anti-bundling type guidance. What does that mean and how does it influence our efforts?

A. This new guidance prohibits agencies from packaging projects together that would result in the elimination of small business awards/competitiveness. The goals, objectives, and guidance provided are intended to promote, not eliminate, small business competitiveness. If your efforts result in the elimination of small business competitiveness then your efforts are not in accordance with direction and the program goals.

Q. Many of my local contractors do not have the wherewithal to submit bids on larger contracts due to bonding requirements and diversity of skill needs. What do I or can I do to assist them?

A. Management can and should consider a number of actions, from working with local or regional economic development agencies to assist contractors to working in an incremental manner to develop needed capacity (e.g., slowly increasing the size of contracts consistent with contractor capacity development). Also, managers should only apply bonding when specifically required and needed to protect government's interest. The key is to work with neighboring rural communities to develop this needed local capacity.

Q. My budget and opportunities are so limited, what good does it do to even consider these goals and objectives (e.g., quality jobs, community stability)?

A. We suggest that in nearly every situation, working with other partners, who also may have small to non-existent budgets, can generate improvements in the quality of jobs, which in turn generates improved community stability and sustainability. The number of jobs created will not change unless increased investments are made; our opportunity is to improve quality. Example: Three entities in an area completing \$10,000 of work independently will generate very short and often times overlapping work opportunities. By working together and packaging work, they may be able to generate one quality job with sufficient duration, pay, and maybe even benefits to support a local citizen. One job may seem insignificant BUT clearly it is not insignificant to the worker, his family, or the community. Often times we may not be able to do MORE but can do BETTER.

Q. Accomplishing these stated goals might lead to increased operational costs and might be viewed as a form of aid to communities. How can I justify such an increase?

A. Paying more for the same is not logical or defensible and should not be done. Our actions must be based on receiving more – biologically, economically, socially – BEST VALUE. The change that this program is trying to communicate and promote is that we have responsibilities other than biological/resource and as such, we must begin to examine all benefits and costs. Comparing costs per acre may be an indicator BUT does not do justice to our vision, goals, and challenges. There is social and economic value/benefits to quality workers, to quality jobs, to community health and stability, to improved trust, respect, to partnership.

Q. Is this an aid program to rural communities?

A. Absolutely NOT. It's a win-win approach whereby work needs are better aligned with local skills and abilities. The receiver of the service obtains better and more predictable results while the workers and communities receive more sustainable and quality work opportunities.

- Q. Why should the Forest Service direct work to rural communities (including tribes)?
- A. It makes good business sense. A quality accessible workforce is available to meet immediate, emerging, and future needs of the entire ecosystems. It's available not only for the government needs but also available to other landowners within these ecosystems. We also suggest that this improved alliance/reliance with local community capability improves trust, respect, teamwork, communications, understanding, etc.
- Q. Why hasn't the Forest Service created more jobs to offset jobs lost due to reductions in timber sales?
- A. Creating jobs is a by-product of the financial investments and economic opportunities generated. For example, the money redirected under our watershed restoration/jobs in the woods (JITW) program was aligned with these rural communities but jobs can only be created at a level consistent with investments. Also, largely this investment was not new funds but redirected funding so creation of new jobs is highly suspect. Based on our analysis, it requires an investment of approximately \$750,000 in restoration to offset the jobs created, directly and indirectly, from 1 million board feet of timber volume sold and harvested. Therefore, if the 68 million dollar investment made in JITW (FY94-99) was new funds (which clearly it wasn't), it would have been able to offset job losses of only 90 or so million board feet reductions. Jobs are a function of investments; quality of jobs is a function of management and our actions.
- Q. How can designing and packaging work create benefits to local communities or for the land?
- A. Packaging work to create long duration and quality employment improves community sustainability, predictability, and manageability while at the same time providing highly qualified workers to accomplish the needs of the land (both federal portion and non-federal). Jobs that are designed with quality employment in mind (duration, pay, benefits) reside, by default, in the local or nearby communities; thus needed skills are available for all. The quality jobs created support a family, a family supports a community, and the economic affects are retained in the area.
- Q. I've been told that meeting these new and surrogate outcomes (social/economic) is illegal. What do or can I do?
- A. You must work with procurement to implement any of these actions consistent with current laws, authorities, and regulations. But management, not procurement, has the responsibility to define and work to ensure that your mandated objectives are accomplished. Management must take action to ensure that these objectives are well defined and described. Many of the problems we have encountered in the past have arisen when management only defined and focused attention on their biological/natural resource objectives and then assumed procurement would define and achieve these other objectives. This approach has and will continue to cause problems. Management must manage fully by defining and ensuring that all objectives are clearly defined, implemented, and monitored.
- We will continue to experience areas or challenges where existing authorities may not be supportive of all needs. Please make the Regional Office aware of these as soon as they are

identified so that we can work with you to resolve the issue(s) or seek needed changes in authorities.

Q. Many business enterprises in my area specialize and do not desire nor can they respond to integrated, multi-disciplinary, long-term contracts. How do I balance the need and desire of the local available workforce with guidance/direction to generate quality jobs?

A. Our efforts must be guided by the long-term desire and need to create and sustain/retain a quality local workforce to meet existing and emerging demands within the neighboring ecosystem. One solution does not fit all; each situation must be analyzed separately and appropriate action taken.

Chapter 4: Definitions

MANAGEMENT/COMMUNITY TERMS AND TERMINOLOGY:

The following is a start at defining terms. This section is being provided to assist all in of us in generating common understanding and appreciation of the issues and opportunities. We do not suggest that the current definitions provided are absolute and definitive – just a beginning. For example – See “quality job” and “quality worker”. Quality job contains the same characteristics that we all seek in employment; good pay, benefits, predictability, sustainability, and the ability to personally grow and prosper.

Acquisition: the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Agreements: Legal and documented agreement between two or more entities that outlines terms and conditions

Agreement Types:

Cooperative Agreement: A form of financial assistance whereby the government provides another entity dollars and/or other resources to support the implementation of their program and government is substantially involved in funded activities.

Memorandum of Understanding (MOU): An agreement between two or more parties that outlines general agreements, commitments, roles, responsibilities, and expectations. With respect to the Forest Service, an MOU is NOT a legal financial document. It cannot be the source to transfer funds. Financial transactions can only be accomplished via procurement actions or financial assistance (grants or cooperative agreements).

Grant: same as cooperative agreement except government is not substantially involved.

Best Value: Decisions or actions that contribute the most benefits in relationship to costs, maximizing “benefit/cost” ratio. Benefits MUST acknowledge and include benefits and affects to all three components: the watershed, the communities, and the people. For example, there are benefits to the government for the retention and use of quality workers, there are benefits to the government for healthy, stable communities, etc. Cost must also acknowledge all three components.

Bond: means a written instrument executed by a bidder or contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

Bundled contract: means a contract where the requirements have been consolidated by bundling. (See the definition of bundling.)

Bundling: means consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern

"C's":

Communicate - to share information and knowledge.

Coordinate - to align efforts, to make independent actions complimentary/consistent.

Collaborate - to become one with a shared goal and focus, to adjoin.

Commercial value: Estimated value of the material in a commercial market; e.g., at the mill.

Commercial market: Existence of production and/or manufacturing capability and demand to process material.

Community: A group of people who live in a particular area who share common interests (social, cultural, economic) and common challenges and opportunities.

Community Capacity: Financial, human, and business ability/capability to respond to demands and opportunities.

Contract: means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.*

Contracting: means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of

sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contracting officer: means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Ecosystem Management: Integration of ecological, economic, and social principles to manage biological and physical systems in a manner that safeguards the long-term ecological sustainability, natural diversity, and productivity of the landscape.

Financial Assistance: Providing an entity financial and/or other resources to implement their plan or program. Financial assistance is in the form of either “grants” (when the government does not have substantial involvement) or “cooperative agreements” (when the government does have substantial involvement).

Good: Defined as an asset of the federal government that has economic value; i.e. something the public is willing to pay for.

HUB Zone: means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, or lands within the external boundaries of an Indian reservation.

HUB Zone small business concern: means a small business concern that appears on the List of Qualified HUB Zone Small Business Concerns maintained by the SBA.

Indefinite Delivery Contract: means a contract for supplies or services that does not procure or specify a firm quantity (other than a minimum or maximum quantity) and that provides for the issuance of orders during the period of the contract.

Lowest bid: Also referred to as lowest cost bids. They are actions whereby the government awards contracts or procurements to the contractor who provides the lowest cost bid. It can reflect “best value” in those cases where the deliverable is absolutely identical; which generally is not the case.

Non-profit: Business entity that has received 501c3 status from the Internal Revenue Service whereby the entity is NOT in business for the purpose of generating profit but rather providing a public service or good.

Outcomes v. Outputs: Outcome equals “desired results” whereas output equals “measurable amount of implemented management actions” (acres, miles, etc). Outcome would be reduced stream temperature while associated output is miles of riparian treated.

Performance-based contracting: means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

Procurement: Acquisition of a good or service, a deliverable. A “procurement” is a business transaction between the receiver of goods and services, and an entity that provides those goods and services for compensation. The relationship is the transaction; parties of the transaction do not share in a common goal/objective.

Public Interest Waiver: Waiver received during implementation of the watershed restoration/jobs in the woods program (component of the NW Forest Plan) whereby the agency was authorized to restrict competition to contractors and entities within the geographic area of the NW Forest Plan. It did NOT allow for competition to be restricted below this level; e.g., cannot restrict to a community or to a smaller geographical delineation.

Quality Job: Creation of natural resource based jobs that provide sustainable and predictable employment at wages and benefits consistent with local area.

Quality Community: Governor Kitzhaber defines a ‘quality community’ as a place “that provides good jobs for its citizens; has affordable and well-located housing; has an efficient transportation system that provides transportation choices; possesses a sewer and water system that supports the community and maintains a clean environment; and has a vision for its future to manage growth and development as well as a plan to deliver it.”

Quality Workers: Skilled, trained workers who have sufficient knowledge of the local ecosystems to implement projects with little oversight; understanding the relationships and the dynamics of the ecosystems, and extensive knowledge of approaches and methods.

Stewardship: A governance strategy that is based on trust, respect, and outcome focused.

Sustainability: “...to meet the needs of the present without compromising the ability of future generations to meet their needs.”

Chapter 5: APPENDIX

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Watershed MOU
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Wyden Amendment Guidance
Managing Partnerships
FACA - OGC Opinion
FS Mission, Vision, Guiding Principles
FS Works to Strengthen Rural Communities
Federal Acquisition Regulation Principle

Weatherill's Wisdom (April 6, 2000)

Note: The attached is a memo drafted by Fred Weatherill, Contracting Office, Shasta-Trinity N.F. It is provided in this packet because we believe it offers great wisdom and great insights from a FS Contracting Officer. Mr. Weatherill has been one of the leaders in promoting and realizing success in the principles outlined in this toolkit.

6300 Procurement

April 6, 2000

Rural Economic Development

Doug MacCleery, WO and Darrel Kenops, Williamette NF

It was a pleasure to meet both of you at the Stewardship Workshop. After my comments on procurement reform you asked that I reduce my views to writing and to share them with you. I have done so.

As is usual in matters of this kind, one word leads to another and pretty soon you are up to nine pages. In order to preserve a reader's interest, I have divided my comments into two parts. First, there is a discussion of the policy implications of the regulations, and second, there is a recitation of the regulations with some brief explanatory notes.

I believe that this paper is really the beginning of a discussion and internal debate on a major policy initiative. I stand ready to assist each of you in your efforts to bring this proposal to the attention of the decision makers in the agency.

So let us begin.

Acquisition After Procurement Reform

Reform of the Federal acquisition process has been both ongoing as well as fundamental. Any employee who has not kept up with the changes made between 1994 and today is carrying obsolete information in their heads. Any employee in this group, who is also in a position to make local, regional, or national policy, runs the risk of making policies that may ignore, or frustrate the significant opportunities for change that are present in acquisition reform.

The new approaches to doing work and the tools of the new acquisition processes include simplified acquisitions, indefinite delivery indefinite quantity, and stewardship. Our experience in the last few years has made it clear that the choices that we make in how we conduct our acquisitions have consequences that work at cross purposes with our desires to foster rural economic development. By the same token, processes that assist in economic development have their own set of consequences. The question before us is whether we wish to use the tools provided by the "new" acquisition to assist the agency in, nothing less than, the renaissance of our local rural economies.

The starting point for answering the question is a knowledge of the Federal Acquisition Regulations, specifically Part 13 Simplified Acquisition Procedures, Part 19 Small Business Programs, and USDA Procurement Advisory (AGAR) No. 23. See the appendix for selected citations.

The key phrases that come out of these regulations are the following:

- “Avoid unnecessary burdens for agencies and contractors” 13.002 (b)
- “...maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the trade area” 13.104 (b)
- “...consider solicitation of at least three sources to promote competition to the maximum practicable extent.” 13.104 (b)
- “Contracting officers are encouraged to use best value...” 13.106-1 (a)
- “The contracting officer shall solicit quotations orally to the maximum extent practicable.” 13.106-1 (c)
- “...in an effort to increase employment opportunities, investment, and economic development in those areas.” 19.1301
- “...a firm on the list is eligible for HUBZone program preference without regard to place of performance.” 19.1303 (b)
- “...at the sole discretion of the contracting officer...” 19.1305 (c)
- “...requirement to synopsis ... actions in excess of \$25,000 is waived...” AGAR 23
- “... a minimum of five small business...” AGAR 23

Taken as a whole, these provisions will permit the agency to target contractors in local forest communities as the preferred suppliers of goods and services to be used in accomplishing the Forest Service mission.

Our situation is analogous to the principle that guided the Department of Defense for many years. The principle was to target acquisitions so as to maintain the industrial base that would be needed in the event of a mobilization in defense of the nation. While we are not in the national defense business, we do have an ongoing mission from the Congress that requires its own kind of industrial base; tree planting, tree thinning, clearing, site preparation, bio-mass removal, etc. It is in our long term interest to foster and maintain the economic viability of local contractors who will be there for the agency during both good and lean budget years. In many locations these kinds of contractors no longer exist. For reasons that will be explained below, our choice of acquisition types has seriously depleted the ranks of local contractors. To rebuild our “industrial base” will require a long term commitment by the agency. We will have to win back the confidence of the market place. We will need to become a dependable customer with a dependable supply of work. If we can regain the trust of the market place, then it will re-invest in equipment and labor to meet our needs.

It is helpful to look at the acquisition realities of a region to get an idea of what has happened in the field. Since data exists for Region 5, that information will be used. The data for FY 1999 is as follows:

- Micro-purchases under \$2,500 total 117,506.
- Simplified acquisitions between \$2,500 and \$100,000 total 491.
- Task orders placed between \$2,500 and \$100,000 total 228.

- I D I Q contracts under \$100,000 total 79.
- Acquisitions over the simplified acquisition threshold (\$100,000) total 123.
- Task orders placed that were over \$100,000 total 41.
- I D I Q contracts over \$100,000 total 6.

It is instructive to look at the data for task orders. These are orders placed against indefinite delivery indefinite quantity contracts that run for up to five years. Many of these contracts are for resource type work, construction, and other recurring tasks. These contracts became very attractive several years ago in reaction to staffing reductions at the field level. Under this type of contract the agency puts out one solicitation, makes multiple awards, and then orders work against the contract until the maximum is reached and or all the option years have been exercised. Under this type of contract the lead time between identifying the resource need and starting work is as little as one day. Other benefits include; planning time is shortened, the contractor is familiar, and the paper work is much reduced. However, one of the consequences of this type of acquisition is the extremely diminished number of opportunities to compete. Once the multiple awards are made, it may be as long as five years before anyone else gets to bid the work. Using Region 5's data we can see that there were 269 (228+41) task orders issued. From the perspective of the unsuccessful contractors, these are 269 lost opportunities to get work. Without the opportunity to compete, contractors perish. When the agency goes out for new competition it will find that the market place has been constricted. With constriction comes less competition and higher prices. This is not to say that there would not have been contractor attrition due to reduced programs of work. Rather, what it says is that the agency may be unintentionally exacerbating the effect.

As the timber program atrophied, local forest communities lobbied the agency for alternate work programs that would have the effect of re-employing woods workers. Stewardship in its varied definitions was the result. Generally, this means that included in a contract for services there is a commodity component in an imbedded timber sale. It soon became apparent that to make this kind of project economically viable it would have to be very large; several thousands of acres. As these project grew they became less and less doable by small local contractors. The result has been that in some situations, large entities win the contract and then they bring in sub-contractors as needed to do the work. The agency attempts to protect the local workforce by using evaluation criteria which encourage the use of local resources. It now seems that, rather than providing work directly to small entrepreneurs, the stewardship program may have breathed new life into the old timber sale sub-contractor system. Whether this is a positive or negative outcome remains to be seen.

There is an alternative approach that would better enable the agency's acquisition dollar to be leveraged for the benefit of local community development. It too has its consequences and they will be discussed later. The "new" acquisition can help re-engage the Forest Service as a partner in rural redevelopment. The three part proposal effectively marries local community support with acquisition management.

1. Acquisitions between \$2,500 and \$25,000. For these procurements the plan would be to use the "rule of three" for competition, limit the competition to the local trade area, and select contractors based on best value. These projects would be accomplished using oral quotations to the extent possible. Projects estimated to exceed \$10,000 would need to be posted at the acquisition office.
2. Acquisitions between \$25,000 and \$100,000. By using AGAR 23 and five concerns from PRO Net we will be able to waive the synopsis requirement for the Commerce Business Daily. The actual

competition may be oral or written depending on the complexity of the work. Competition could be directed at the local trade area, and award would be on the basis of best value. As above, projects estimated to be over \$10,000 would need to be posted at the acquisition office.

3. Acquisition over \$100,000. These procurements could be set aside for HUBZone small business if and when there are two in the area to do the work. The HUBZone program, by definition, is aimed at underutilized areas. Depending on the success of listing HUBZone concerns in the local area, it may be possible to target local trade area contractors. In addition, a HUBZone set aside can be used to accomplish work in a non HUB area, thus providing a direct benefit to the qualified HUBZone. These acquisitions would be done as negotiated actions using evaluation criteria and awarded on best value.

This program has its own mix of consequences. From one perspective it would act to spread the work around, expand the business base, build greater depth in the market place, and target the local area. On the other hand, under this plan, Indefinite delivery indefinite quantity contracts would be significantly reduced, with the result of having to prepare a lot of additional quotations or offers. These would require increased effort by the requisitioner in project set up and planning, and may increase lead times. It also looks inefficient.

Again we come to the question. Are the consequences worth the effort needed to economically rebuild the Forest local communities? The answer is ultimately up to the Chief of the Forest Service.

Finally, in dealing with this policy issue it must be stated that the agency must employ a mix of sizes and types of contracts in order to accomplish its mission. Therefore, even though a process may have a set of adverse consequences, its positive elements may make it useful in a specific application. Given the choices, there is no substitute for an informed judgment. What the agency should strive for is a balance between the policy of "increasing employment opportunities, investment, and economic development" in forest communities, and the organizational costs to do it.

Fred Weatherill
Procurement Analyst
4-6-00

APPENDIX X

Federal Acquisition Regulations

Part 13—Simplified Acquisition Procedures

13.002 Purpose. The purpose of this part is to prescribe simplified acquisition procedures in order to -

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged and women-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting and ;
- (d) Avoid unnecessary burdens for agencies and contractors.

13.102 Source List.

(a) Each contracting officer should maintain a source list... A list of new supply sources may be obtained from the Procurement Marketing and Access Network (PRO-NET) of the Small Business Administration...

Note. PRO-NET is basically an electronic bidders list. Any small business may put themselves on the list. Full information is available at the Small Business Administration web site; www.sba.gov

13.104 Promoting Competition. The contracting officer shall promote competition to the maximum extent practicable to obtain supplies and services from sources whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

(a) ...

(b) If using simplified acquisition procedures ... maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the trade area. Unless the contract action requires synopsis pursuant to 5.101 and an exception under 5.202 is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.106-1 Soliciting competition.

(a) Considerations.

(1) ...

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offers of the basis on which award will be made (price alone or price and other factors, e.g. past performance and quality) Contracting officers are encouraged to use best value...

(b) ...

(b) Soliciting orally.

(1) The contracting officer shall solicit quotations orally to the maximum extent practicable

Note. Simplified acquisitions are subdivided by dollar ranges. If the value is under \$2,500 for service and supplies, or \$2,000 for construction, the acquisition is considered to be a micro-purchase and is to be accomplished by using the Government Purchase Card. Between \$2,500 and \$100,000 the contracting officer may use the acquisition techniques of part 12, 13,14,15, and 36. Within this range, if the action is over \$10,000 but under \$25,000 it is to be posted in the acquisition office for 10 days. When the action goes over \$25,000 it is to be published in the Commerce Business Daily. Commercial items between \$2,500 and \$5,000,000 for services or supplies may be acquired using simplified acquisition procedures. Special procedures are applicable to commercial items which make this procedure especially attractive in those situations when it can be used.

Note. The concept of "best value" is the *sine qua non* of simplified acquisitions. The use of best value allows the contracting officer to award a contract to a vendor that is not the lowest bidder. The idea is that contractor experience, past performance, and quality are legitimate trade offs against price. Thus a higher price may be paid for a superior vendor. Best value is the ally of responsible contractors who do the work well, pay their employees, hire eligible workers, and generally act professionally. The benefit to the agency is that superior contractors require less supervision, less administration, and return overall better performance for the dollar.

Part 19—Small Business Programs

19.1301 General.

(a) ...

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

Note. The requirements to be met in order to participate in this program are the following; 1. the small business must be located within a HUBZone location, 2. 35% of the business's work force must reside within a HUBZone location, and 3. the business must be owned and operated by a U.S. citizen. Full information as well as sign up procedures are available on the Small Business Administration web site at; www.sba.gov

19.1303 Status as a qualified HUBZone small business concern.

(a) Status as a qualified HUBZone small business concern is determined by the Small Business Administration.

(b) ... A firm on the list is eligible for HUBZone program preference without regard to place of performance.

19.1305 HUBZone set-aside procedures.

(a) A participating agency (USDA) contracting officer shall set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirement of paragraph (b) of this section can be satisfied. The contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards ... of small business set-asides...

(b) To set-aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—(1) Offers will be received from at least two or more HUBZone small business concerns; and (2) Award will be made at a fair market price.

(c) A participating agency may set aside acquisitions exceeding the micro- purchase threshold but not exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

Note. In Region 5 there are 17 counties listed as qualified as HUBZones in California. There are Forest Service offices and lands in each of them. The counties are uniformly rural and coincide with our land ownership pattern. This same correlation can be expected to exist in other parts of the nation. In other words the Forest Service will be heavily impacted by the whole HUBZone program. In addition, businesses located within the boundaries of Indian Reservations are considered to be qualifying concerns.

Forest Service Acquisition Regulation 4G19.501 General.

(a) Subject to the conditions in FAR Subpart 19.5, all supply and service contracts, including construction of public works, should be set-aside for small business concerns.

USDA Procurement Advisory (AGAR) 23

Summary: Contracting activities are not required to synopsise acquisitions for services between \$25,000 and the SAT (Simplified Acquisition Threshold, \$100,000) in the specific circumstances listed below. (Expires on December 1, 2000)

Note. The Federal Acquisition Regulations require that any procurement estimated to be \$25,000 or over is to be published in the Commerce Business Daily (CBD). This is done to spread the word nationally that a requirement exists, and to encourage bidders to respond. The theory is that increased competition yields better quality at lower prices. The regulations require that the requirement be in the CBD for 15 days before the solicitation is issued and that the response time

be at least 30 days. Thus the total time is 45 days. AGAR 23 effectively reduces the time to what is reasonable to get adequate competition.

Specific issues: FAR Subpart 5.2 requirements to synopsise, in the Commerce Business Daily, proposed contract actions in excess of \$25,000 is waived under the following circumstances

1. The acquisition is for services...of which supply items are expected to constitute less than 20 percent of the total value of the contract;
2. The acquisition will be set aside for small business;
3. Quotes or offers will be solicited from a minimum of five small business concerns;
4. SBA's PRO-Net will be used to identify a minimum of five small business, which will include, if available, at least one small disadvantaged and one women-owned firm; and
5. If practicable, two sources not included in the previous solicitation for the same services will be solicited.

Watershed MOU – (June 30, 1997)

(Note: Original copy with signatures is on file in the Regional Office – contact Ron Ochs if you need a signed copy)

MEMORANDUM OF UNDERSTANDING

between

State of Oregon
USDA Forest Service Region 6
USDI Bureau of Land Management - Oregon
USDI Fish and Wildlife Service - Oregon
USDA Natural Resource Conservation Service - Oregon
USDC National Marine Fisheries Service
USDI Bureau of Indian Affairs
Environmental Protection Agency
USDI Bureau of Reclamation
US Army Corps of Engineers
USDI National Park Service

WHEREAS: All parties seek to improve current conditions of watersheds to restore habitat and provide long-term protection to aquatic and riparian resources; and,

WHEREAS: It is recognized that watershed health and vitality depends on all partners working together, collaboratively developing an overall assessment of the watershed, setting mutual goals and objectives, and coordinating implementation of protection, management, and restoration efforts; and

WHEREAS: It is recognized that health of watersheds includes and must respond to the social and economic needs and issues of the people of the watershed; and,

WHEREAS: All parties recognize that success in accomplishing and maintaining watershed health must be achieved at the local level, involving communities and all interested landowners; and,

WHEREAS: It is acknowledged that solutions and opportunities vary community by community, and watershed by watershed, and thus must be designed and catered according to the local needs, desires, and opportunities.

THEREFORE:

The signatories of this Memorandum of Agreement are committed to providing the needed and requested support of watershed and community-based efforts that are committed to improving the health and vitality of the watershed and associated communities.

IT IS MUTUALLY AGREED BY ALL PARTIES THAT:

The effort will be managed at the local level with strategies, priorities, and implementation developed locally to be responsive to the specific needs and desires of the area.

Local commitment will be assumed to be in existence when a more localized agreement has been completed and involves the needed representation of private and public entities.

Implementation of a watershed and community-based effort may require changes in existing processes and policy within each of the participating parties.

IT IS MUTUALLY AGREED THAT EACH PARTY OF THIS AGREEMENT WILL:

Designate a primary contact at the state level to assist local level efforts and needs when such requests are made by the local level.

Empower and expect local efforts to analyze and define their specific needs, desires, opportunities, and formulate associated implementation plans.

Work with the Governor's designate who will be the primary contact and liaison for community-based efforts; responsible for coordinating resolution of issues and opportunities with all of the partners.

Assist local efforts in resolving problems or constraints encountered that may hinder them from achieving their defined and agreed upon desired results.

Promote a partnership approach and concept.

Make every effort to help generate the resources needed and identified to support locally driven and supported efforts.

Delegate authorities and decision making to the lowest level practical and legal.

IT IS UNDERSTOOD THAT THIS AGREEMENT:

Does not commit any signatory to the commitment of funding or resources.

Does not eliminate or relieve participants from any existing rules, regulations, or requirements.

Does not restrict any party from participating in similar activities with other entities.

Can be terminated in whole, or in part, by any party at any time with either written or verbal notification.

Will be reviewed annually along with the overall effort to assess the need for the continuance or modification of such an agreement.

Is executed as of the last date shown below and unless terminated before, will expire 5 years hence.

Can be modified with the universal consent of all parties with modifications not in affect until all parties have approved the changes and been formally notified with a signed addendum to this agreement.

AGREED UPON:

_____/s/ 4/30/1997
Governor (Date)
State of Oregon

_____/s/ 2/20/1997
Director (date)
USDC National Marine
Fisheries Service

_____/s/ 2/20/1997
Regional Forester (date)
USDA Forest Service
Pacific Northwest Region

_____/s/ 2/24/1997
Director (date)
USDI Bureau of Land Management
Oregon/Washington

_____/s/ 3/4/1997
Director (date)
USDI Fish and Wildlife Service

_____/s/ 4/23/1997
Director (date)
USDA Natural Resource
Conservation Service

_____/s/ 3/4/1997
Area Director (date)
USDI Bureau of Indian Affairs

_____/s/ 4/14/1997
Regional Administrator (date)
Environmental Protection Agency
Conservation Service

_____/s/ 3/27/1997
Regional Director (date)
Bureau of Reclamation

_____/s/ 3/17/1997
District Commander (date)
U.S. Army Corps of Engineers
Conservation Service

Quality Job Letter/Commitment (June 1, 1998)

June 1, 1998

US Forest Service Supervisors
Bureau of Land Management District Managers
State of Oregon natural Resource Agencies and GWEB

In April 1997, the State of Oregon, the U.S. Forest Service, and Bureau of Land Management, along with eight other federal agencies, signed a Memorandum of Understanding (MOU) that states our agreement to support watershed and community-based efforts that are committed to improving the health and vitality of watersheds and the associated rural communities. This MOU recognizes that efforts to improve the health and vitality of watersheds must also respond to the social and economic needs and concerns of the people of those watersheds and communities.

Over the past few years there have been many examples of our working better together to integrate these social, economic and environmental components. Through the Jobs in the Woods component of the Northwest Forest Plan, we have learned that aligning our natural resource work to create quality jobs for citizens in these communities benefits the people and the communities within these watersheds.

There continue to be new opportunities to create quality jobs within our regular business practices, and to link our efforts with those of our partners. To encourage and guide these efforts, a federal-state-private working group has developed the attached proposal. This proposal is supported by Region 6 of the U.S. Forest Service, the State Office of the Bureau of Land Management, and the State of Oregon. The proposal describes how we can further the goal of creating quality jobs on public lands. Over the next few months, we will be asking you to work with your local partners and those who have developed the proposal to assess what can be done in your local jurisdiction or agency to promote the creation of high quality natural resource jobs for local workers.

We thank you for your commitment to healthy ecosystems. We know the benefits of this proposal will not be realized overnight, but it is important that we begin our work to meet its goals.

Sincerely

/s/ John Kitzhaber
John A. Kitzhaber, M.D.

/s/ Robert Williams
Robert W. Williams

/s/ Elaine Zielinski
Elaine Zielinski

Quality Jobs
Milestones/Outcomes
Example

Note: The following serves as an example of the defined outcomes to realize the quality job objectives. The actual format and contents must be defined locally to be responsive to your specific issues, needs, and opportunities. We suggest that defining and communicating milestones/outcomes is necessary for a variety of reasons: 1. process used to define outcomes helps promote creative thinking, increases understanding, and hopefully encourages the development of new partnerships; 2. increases visibility of commitment, strategy, and desired results both within organization and among partners; and 3. helps to set some meaningful and measurable milestones so that progress can be monitored overtime -- realizing the quality job objective will take time.

Attributes to Consider in Addressing Quality Jobs:

1. Retention of work within the local area.
Work and other economic opportunities are retained in local communities to the extent possible and practical
2. Duration of Employment
Jobs are created and structured in such ways that enable workers to stay within or nearby the communities.
3. Pay and Benefits
Workers are paid at a level commensurate with their skills and competitive with other state, local, and/or national levels.
4. Skills and Abilities
Local workers are able to expand their skills and abilities commensurate with the workforce needs and their individual desires.

EXAMPLE -- EXAMPLE (short, sweet, and to the point!)

The following milestones and outcomes were developed and are shared between the following parties -- USDA Forest Service Xx District, USDI BLM YY Area, Oregon Department of ZZ, etc. We commit to the following outcomes:

- o Promote the use and development of the local work force capacity to achieve our ecosystem management objectives.
- o Adopt the proposed target for the year 2002 -- all management actions will incorporate local social and economic needs.
- o Local social and economic needs are clearly defined in collaboration among the partners and communicated on an ongoing basis to the appropriate decision makers.
- o Our projects and programs are integrated among partners to improve quality job opportunities for the local work foc.

Milestones:

Fiscal Year 1999 (October 1998 - September 1999)

1. Increase our reliance on local workforce capacity by 25% -- targeting local awards to be 60% of total awards (historically local businesses have been awarded approx 48% of total awards).
2. Package projects in the amount of \$5 million dollars collectively during FY1999 in a multitude of contracts with each contract action containing a mix of projects that provides at least 6 months of employment.

3. Work with the community(ies) to define their specific social and economic needs and desires.
4. Increase the skill reliance on our external workforce by including some higher level projects and work activities -- stream surveys, data collection.
5. Increase use of procurement techniques that support "best value" -- Include quality job criteria as one of the decision considerations.

Wyden Amendment Guidance (May 28, 1998)

The following section contains the guidance provided to the Line Officer in FY1998 in implementing the Wyden Amendment. While over the last 3 plus years in using this authority we have gained additional insights, this initial guidance is still very pertinent. Note: This 1998 memorandum refers to Wyden as Section 334; current authority is contained in Title III, Section 323, Public Law 105-277 (same authority, same language)

File Code: 1580/2000/3000

Date: May 28, 1998

Route To: 2500/2600

Subject: Wyden Amendment Authority, Section 334 of PL 105-83 --

Updated Information

To: Forest Supervisors, RO Directors

We appreciate you taking the time to participate in the May 7th conference call to discuss Section 334, Wyden Amendment authority (reference RO 1580/2000/3000 memo of April 21). Attached is some updated information that surfaced during the call.

Attached are:

1. Updated Implementation Guidelines.
2. Final Watershed Restoration and Enhancement Agreement template which has been reviewed and revised by Office of General Council.
3. Questions and Answers from conference call, including other questions that have surfaced since the call.
4. Summary of provisions and capabilities of Section 334

Please contact Ron Ochs (503 808-2647 or rgochs/r6pnw) if you have any questions or need assistance. If you encounter any problems in using this authority, we need to know so that we can try to assist you. We will be competing a staff paper on NEPA issues and requirements and should have this finalized and distributed to you within the next few weeks.

/s/ Nancy Graybeal
ROBERT W. WILLIAMS
Regional Forester

Enclosures

Attachment 1
Region 6 - Implementation Guidance, Requirements, and Background
Section 334 P.L. 105-83
(Wyden Amendment)
Updated: May 19, 1998

The following requirements and guidance should be used to guide field implementation of Section 334.

Delegation: Authority to use Section 334 (Wyden Amendment) is delegated to Forest Supervisors. Authority may be redelegated to District Rangers if processes are in place to assure authority is used consistent with intent and within established guidance. This authority may not be redelegated to any other position.

Policy and Requirements: In addition to the guidance contained in the aforementioned WO letter, the following applies:

Use and Intent: It is intended to help us achieve our management objectives, NOT achieve others' objectives. Where and how it gets used will need to be determined locally ensuring that any expenditure of government funds off the lands we are responsible for administering is prudent and can be proven to be for the public interest and benefit. Authority may only be used for projects or initiatives that has the goal to either restore, protect, or enhance Ecosystems.

Project or initiatives considered under Section 334 must be identified as a high priority for restoring, protecting, or enhancing resources.

Minimum Requirements:

- a. Funds are available and authorized for the project or initiative.
- b. Project or initiative must have a tangible and documentable benefit to resources on public lands administered by FS and contribute to the accomplishment of management goals and objectives.
- c. Cooperator/collaborator must be willing, voluntary participant.
- d. Project/initiative must comply with all federal, state, and local laws, regulations, policies, and permit requirements.
- e. Documentation of use must be provided to the RO either before, during, or after use of Section 334 authority (see "documentation" below).
- f. To the extent possible, efforts should be coordinated with and through existing watershed council or other collaborative efforts dedicated to restoring, protecting, or enhancing ecosystem health.

In addition, any effort that involves private non-industrial forest landowners should be coordinated with local Oregon Department of Forestry and Washington Department of Natural Resource Service Foresters and NRCS (Soil and Water Conservation Districts) and any other

appropriate State or Federal agency so as to ensure integrated and effective support to the landowner.

Documentation: Units must submit Attachment A, summarizing planned or actual use of this authority to this office (send to the attn: Ron Ochs, Watershed Restoration/Jobs in the Woods Coordinator). Documentation is required for all actions under this authority -- e.g. financing work off of NFS lands, entering into agreements with collaborators that may involve projects on NFS lands, etc.

Accountability: Work accomplished off of NFS lands with FS appropriations should be reported within our Management Attainment Reporting System consistent with how outputs are currently reported. However, units should maintain records to support the breakdown of outputs from NFS and off NFS lands in case they may be needed in the future. At this point, this office will not request any such breakdown.

Funds Available: All appropriations are available for use under the Wyden Amendment. However, while all funds are available and may be used in agreements, some appropriations are not available to be used off of NFS lands. Units should check with their budget and fiscal specialists to determine the actual availability. As a general rule, unless there is specific language in the appropriation that prohibits or restricts its use, the fund would be available. Example: KV is not available for use off of NFS lands since legislatively it is constrained to sale area boundary.

For More Information Contact: Ron Ochs (503) 808-2647 or 615 rochs/r6pnw

Synopsis of Wyden Amendment:

1. Provides FS with the authority to enter into agreements with other landowners for the purpose of restoring, protecting, or and enhancing fish and wildlife habitat and other resources on public and private lands.
2. Authorizes the use of funds appropriated to the FS to be spent off public lands administered by the FS if public lands benefit and is in the public interest.
3. Authority is contained in Section 334 of PL 105-83 FY1998 Appropriations Act
4. Currently limited to FY1998 but anticipate extension for additional 3-4 years
5. Provision requires a formal agreement to be in place between participants prior to expending federal funds on private lands.

Rationale/Justification for Authority:

1. Issues and problems we work with are not solved by federal actions on federal lands alone--water quality, wildlife habitat, fish habitat, watershed restoration, forest health, are across-the-boundary issues.
2. Collaboration benefits all participants when scarce financial resources can be leveraged to address highest priority natural resource needs within watersheds.
3. MOU with the Governor of Oregon and nine federal agencies including the Forest Service commits us to community-based watershed restoration using a collaborative approach (similar agreement has been agreed upon by Wa Forest Supervisors for Wa and is being discussed with State of Wa). Columbia River Basin project also institutionalizes collaboration and partnership as the foundation to restoration of forest and aquatic health.

4. Fluent nature of ecosystems sometimes requires work off of NFS lands. Restoration and enhancement projects off of NFS lands can directly benefit National Forests (e.g. blockages on private lands preventing fish from moving upstream to good upstream habitat).

Potential Positive Implications:

1. Improved watershed conditions.
2. Increased ability to create and maintain collaborative partnerships. Difficult to foster collaboration if a participant is unwilling or unable to contribute their fair share.
3. Increased flexibility to use limited financial resources to accomplish the highest priority work

Potential Negative Implications:

1. Potential to misuse expanded authority -- using limited FS funds in areas that do not maximize public benefit. Implementation criteria needs to be crafted to reduce opportunity for abuse.
2. Increased demand from non-federal interests on the use of federal funds. Authority needs to be clearly described to externals so they understand the limitations of the authority and the implementation criteria.

Identified Examples:

Situation: Landslide on federal lands that caused damage downstream on tribal lands. Efforts to restore the riparian and stream functions will directly benefit NFS lands. In addition to the resource objectives, our willingness to contribute to the restoration efforts will minimize potential conflict between the tribe and Forest Service.

Situation: District is planning fuel reduction treatment of approximately 2000 acres - immediately adjacent and down slope from NFS land is a piece of private land of only 60-100 acres. Failure to treat this land in conjunction with the overall treatment would increase the cost of treatment for the project since additional protection actions would need to be employed PLUS management objectives would not be effectively met.

Situation: The District has been involved in an active stream structure program using helicopters to place log into critical habitat areas. Some of the most critical areas that would improve conditions on NFS lands are downstream outside of our boundaries. Many private landowners are supportive and agreeable to allow placement of structures on their lands

In addition to not being able to place our limited resources where it has the greatest good, recent high water flows have displaced some of these structures to downstream lands. This has generated deep concerns from one private landowners since the current location of these structures is not conducive to his desires and needs. The private landowner is agreeable to having the structures replaced on his land so that they function properly for fish habitat.

WATERSHED RESTORATION AND ENHANCEMENT AGREEMENT

between

and

USDA Forest Service

THIS AGREEMENT, authorized under Section 334(a) of Public Law 105-83, is made and entered into this _____ day of _____ 19____, by and between _____, hereinafter called _____ Landowner and the United States of America, by and through the Forest Service, United States Department of Agriculture, hereinafter called the Forest Service. The Agreement is for the purpose of facilitating cooperation between the Landowner and Forest Service in specific restoration, enhancement, or protection efforts, which are described in Attachment 1, Project Work Plan. The parties have a common interest in improving or protecting the current condition within the _____ Watershed. This Agreement provides for the interchange of services, equipment, and funds as specifically outlined below to meet the mutually agreed upon objectives of the project.

I. PROJECT AREA

This Agreement applies to activities on and relating to the following real property:

(Add legal description; e.g., SW¼NW¼, sec. 12, T. 40 S., R. 2 W., W.M. OR attach a copy of deed whereby landowner acquired property as Attachment 2).

II. DURATION OF AGREEMENT

The term of this Agreement shall run from the date of acceptance of this Agreement by all parties until _____, or until terminated in accordance with the terms of this Agreement.

III. OBJECTIVES

The objectives of this cooperative effort in the project area are:

Insert desired outcomes; e.g., improve stream function, stream structures, fish passage, fish habitat, water quality, whatever. (Note: Outcomes should be consistent with an overall watershed strategy and be tangible and measurable.)

IV. OBLIGATIONS OF THE PARTIES

A. THE LANDOWNER SHALL: (*Insert* obligations in accomplishing this Agreement)

1. Allow the Forest Service, its employees, agents, and cooperators access to the project area for purposes relating to the objectives of this Agreement.
2. Not change, willfully destroy, or authorize or permit others to change or willfully destroy the characteristics of the project area without the express and written consent of the Forrest Service.
3. Not engage in any project activities until the parties agree that all applicable Federal, State, and local regulations have been (or will be) met and all necessary permits have been issued.
4. (*If project warrants insert*): Prior to the commencement of work, execute and file the appropriate County records a binding agreement with the Forest Service to protect the taxpayer's investment
3. (*Insert*) specific provisions regarding landowner project responsibilities -- implementation, funds, monitoring, deliverables, etc. (e.g., Landowner will mangle and oversee the implementation of the project OR whatever their specific role is in implementation in accordance with the terms, conditions, and standards outlined in the Project Work Plan.)

B. THE FOREST SERVICE SHALL: (*Insert* obligations in accomplishing this Agreement)

1. Provide notice to the Landowner before entering the project area.
2. *Insert* Forest Service project responsibilities -- implementation, funds, monitoring, deliverables, etc.

V. MODIFICATIONS

Any modification to the terms of this Agreement shall be in writing upon the mutual consent of the parties. Such written consent shall be obtained prior to performing any changed work.

VI. TERMINATION OF AGREEMENT

This agreement may be terminated under the following conditions:

The Landowner or Forest Service may terminate this Agreement in whole, or in part upon 30 days' written notice to the other party, which notice shall be delivered by certified mail or in person. After sending notice of termination, the parties shall not incur any new obligations related to terminated portion of this Agreement, and shall cancel as many pre-existing obligations as practical.

A. Termination for Cause

If this Agreement is terminated by the Landowner's breach, the Landowner shall pay to the Forest Service damages equal to the full expenditures incurred by the Forest Service

relating to the terminated portion of this Agreement, plus interest and penalties as set forth in the Claims Collection Litigation Standards.

If the Agreement is terminated because of the Forest Service breach, the Forest Service shall be responsible for any damages suffered by the Landowner.

B. Termination for Convenience

If the Agreement is terminated by the Forest Service or the Landowner, but without breach by the other party, the other party shall have no further obligations respecting this Agreement. However, if the termination is by the Landowner, the Landowner shall be responsible to comply with the obligations contained in the agreement mentioned in IV.A.4. above to the extent of activity already performed under this Agreement prior to such termination.

C. Acts of Nature.

Any termination, based upon an act of nature that is outside of the control of the parties and that substantially inhibits the ability of the parties to meet the Objectives of this Agreement or accomplish the Project Workplan, shall be without continuing liability of either party for activities relating to the affected Objectives or Workplan area. Acts of nature include, but are not limited to floods, earthquakes, volcanic eruptions, wind storms, and landslides.

VII. TRANSFER OF OWNERSHIP

In the event the Landowner transfers any of the lands in the project area, the Landowner shall inform the purchaser of the existence of this Agreement and of the agreement detailed in IV.A.4. above, and shall notify the Forest Service, in writing, of any change of ownership;

VIII. LIABILITY

Each party agrees that it will be responsible for his/her own acts and results thereof.

This Agreement becomes effective as of the last date signed below.

LANDOWNER:

BY: _____ Date: _____
(type name and address)

FOREST SERVICE:

BY: _____ Date: _____
(type name and address)

Questions and Answers
Section 334 -- Wyden Amendment

Question: Does Section 334 only expand our authority to spend dollars off of NFS lands?

Answer: No. While one of the implications of Section 334 is the ability to utilize our resources anywhere within a watershed provided doing so contributes to the accomplishment of our goals and objectives, the authority is far more encompassing and enabling. Section 334 provides the authority to enter into collaborative arrangements with State and local government, landowners, and private and nonprofit entities to accomplish high priority work on public or private lands.

Question: What might be some examples where Section 334 is used that does not involve projects and funding off of NFS lands?

Answer: Only one's imagination limits the possible applications. Entering into an agreement with the State for smoke monitoring. Entering into an agreement with a watershed council to link FS projects with existing watershed council projects in order to improve quality of jobs. Entering into an agreement with County to promote recreation opportunities on and off of NFS lands. Entering into an agreement with State to utilize prison labor capabilities. Etc. Etc.

Question: Is Attachment A (required documentation) required to be submitted to the Regional Office for review prior to agreeing to and implementing project/initiative?

Answer: No. This office only needs the information in order to respond to questions that we will encounter from Congressional, Agency, and Department personnel. Authority has been delegated to Forest Supervisors -- decision to use this authority and any associated accountability is at the forest level.

Question Does Section 334 modify existing budget line item (EBLI) authorities and flexibility?

Answer: No. Section 334 does not modify in anyway existing guidance and flexibility with respect to charged as worked, EBLI accountability. We recognize that the existing budget system may hamper/limit the use of this authority in certain cases -- e.g. entering into a generic watershed plan that lacks project specificity.

Question What appropriations are available and can be used under Section 334?

Answer: Depends on the planned use of the fund?? If the intend is to spend funds off of NFS lands, the appropriation that is being proposed must not explicitly prohibit such use. Example: KV funds can not be used outside of the sale area boundary. We recommend that you contact your budget and fiscal specialists for assistance is determining applicability.

If the proposal involves entering into an agreement and is consistent with the legislative intent of the fund, than any fund may be used. Example: Entering into an agreement with watershed council

that involves the linkage of projects between the partners in order to meet local social and economic objectives -- of which one or more of the projects are KV funded (location of project does not change -- simply using Section 334 to enter into an agreement using a KV project).

Question: Are units expected to use this authority?

Answer: Section 334 is a tool and authority that's use must be determined locally. Section 334 should not be viewed as a mandate or evolve towards becoming a "program" with a targeted amount allocated to its use. However, units are expected to support local watershed and other community-based efforts and strive to become full partners and collaborators.

Question: Section 334 is only for FY1998, should we expect that it will be extended?

Answer: For planning purposes, you should expect that this legislation will be extended. However, unless or until it is extended, units cannot enter into agreements that would obligate funds beyond FY1998. If you have identified projects at the end of FY1998 that would be completed in FY1999, you need to wait until authority is provided before entering into any binding agreement.

Question: Davis Bacon requirements -- Does Davis-Bacon apply to Wyden Amendment projects?

Answer: Depends on the nature of the agreement. Davis-Bacon requirements are applicable if the agreement uses normal procurement procedures (i.e. competitive contract, single most reasonable source contract, etc). If the agreement involves a Cooperative Agreement (a grant or financial assistance) whereby the FS does not have significant involvement, generally Davis-Bacon would not apply. You will need to contact and work with your local Contracting Officer for specifics.

Question: English version. Does an electronic version of the "English translated interpretation of Wyden" exist (information provided on conference call)

Answer: Yes, copy will be sent out.

Question: Is this intended to be a waiver to competition?

Answer: Absolutely not!! The intent of Section 334 is to authorize the FS to enter into agreements when doing so is beneficial to the public (i.e. makes good business sense). The driving force and rationale for any management action is not and cannot be "to limit competition" - eliminating competition is not of public interest and benefit. However, it is recognized that anytime management either adds criteria or conditions to procurements or enters into agreements, the end-result is that the action reduces competition. While the end-result may be the same, it is important to realize that this is not authority to limit competition but to do what is right.

Question. Does this allow us to supply NFS logs to instream project work off NFS land?

Answer: Clearly Section 334 provides units the authority to use FS resources off of NFS lands. However, Section 334 does change current authorities with respect to disposal of logs/timber under administrative use provisions. This issue will be reserach by Devlin with the assistance of the Oly, Umatilla, and W-W N.F.'s.

Question: If we are investing funds off NFS lands, do we need assurance that the investments will stay there?

Answer: Yes, line officers need to take appropriate action to ensure that government investments are protected which generally will be met by entering into a binding agreement. The agreement that was reviewed by OGC and provided to the field for use is a binding agreement between the landowner and government. Units should consider "conveying" this interest to public land records (land to government agreement) if and only if needed to protect major investments (e.g. fish ladder) by covering our interest if the existing landowner sells the property. The determination as to whether a conveyance is needed must be made locally.

Question: Section 334 states that we must "provide for the sharing of costs", what does this mean? Are there cost sharing guidelines??

Answer: It is intended to be exactly as written -- you must "provide" for cost sharing. Cost sharing depends on the specific conditions of the project or initiative. The extent of cost sharing may range from 0% to 99.9% -- depends on the circumstances. If you are entering into an agreement with an adjoining landowner to complete a project that does not benefit the landowner at all financially (i.e. creating increased value in the property or increasing his/her profits), then cost sharing would not be required. You must determine cost sharing requirements on a case-by-case basis.

Question: I'm confused!! What's new and what's not in Section 334??

Answer:

- New == ability to use resources anywhere within a watershed
- New == ability to grant or provide financial assistance to others using NFS and other appropriations.
- New == increased ability to enter into cooperative agreements/arrangements with partners

Not New == Ability to define and procure management goals and objectives.
Example -- always had the ability to justify sole source or single most reasonable source actions with other partners when conditions warranted -- such as directing NFS projects to a watershed council if it was determined to be the only way to achieve social and economic goals (i.e. quality jobs)

Question: Will these partnerships be given more emphasis for selection with Challenge Cost Share Projects/Program.

Answer: Most of the CCS projects are controlled locally; majority of CCS are going to the forests right now, we are only holding on to the big ticket items.. Units/ Partnership determines which ones we choose/ don't choose. Wyden does change what and where the projects may be located for CCS funding; Section 334 allows us to expand the geographic consideration of projects.

Question: What is the status of the WO implementation criteria?

Answer: We recommend that you be guided by the Region's guidelines.

Question: Section b. of the WO's implementation guidance talks about direct benefits to resources. What does this mean?

Answer: Be guided by regional guidance on this point. Units must be able to demonstrate a tangible and documentable benefit to NFS goals and objectives. In other words, a local line officer should be able to communicate to the public, why the investment made was logical and prudent -- how it helped them achieve their objectives -- and why the public benefitted. If you believe you would be unable to convince a group that it was prudent action, you might want to rethink it!

Question: How does NEPA fit in?

Answer: NEPA depends on what we are funding and what our involvement is. For example, if we fund a watershed analysis, NEPA wouldn't apply. If it is physical restoration and affects federal lands, NEPA would apply. Also how much funding we are contributing, how much decision making authority we are retaining, and whether our funding is significant to ensuring the project is done all determine whether NEPA is triggered. We suggest using the NFS Nepa test.

Decision: Phil Mattson will get this clarified and out.)

Question: If we do things on other lands and there are unplanned consequences, are we liable?

Answer: We need to research this question with OGC but would guess that any effort that we are involved in, we would assume liability to the extent of our involvement. In other words, if we completed a project on private lands, paying 100% of the costs, the project is ours and as such would assume total responsibility.

RO will research this question and provide the field with additional information

**DIRECT ANY ADDITIONAL QUESTIONS TO RON OCHS (503) 808-2647 OR
ROCHS/R6PNW**

**Section 334 Briefing
Conference Call Notes**

The following are notes used by Ron Ochs during the 5/7 conference call that attempts to translate Section 334 into English and communicate its intent.

#####

I suggest to you that this might be one of the most encompassing and enabling authorities that you have in your tool kit. My goal is to successfully communicate/relay this to you.

First -- I do not profess to have the facts and answers -- only opinions. But that is somewhat the challenge to us -- there are no answers -- these concepts and authority has not be road tested. And unlike many similar situations -- the WO is watching us to find the answers . We have a great opportunity NOT to simply justify this authority but justify the need for such authorities through prudent and defensible actions.

Approach of Presentation:

1. cover the legislation -- focus on the authority rather than examples which sometimes cause us to constrain our thinking.
2. provide a series of examples that demonstrate an array of possible concepts

Definitions:

Watershed Restoration -- seems there are at least two definitions floating around for "watershed"

- a. Watershed reflecting the aquatic aspect of the system
- b. Watershed reflecting a geographical delineation

Section 334 intent is the latter. Not limited to aquatic -- per language, fish, wildlife and "other resources" Our intent in using "other" was to include social, economic, and biological aspects - intent was to support ecosystems!!!

SO -- "Watershed Restoration" means restoring, protecting, or enhancing the social, biological, or economic conditions within a defined geographical area.

The Authority -- (Reference first paragraph in Section 334):

Title -- Watershed Restoration and Enhancement Agreement

Reference above definition. Would be more accurate if it was titled ecosystem management agreement "Watershed Restoration and Enhancement" means restoring, protecting, or enhancing the social, biological, or economic conditions within a defined geographical area.

Actual Language: (reference actual language/words in Section 334)

*SEC. 334. (a) WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS-
For fiscal year 1998, appropriations for the Forest Service may be used by the Secretary of Agriculture for the purpose of entering into cooperative agreements with willing State and local governments, private and nonprofit entities and landowners for protection, restoration and enhancement of fish and wildlife habitat, and other resources on public or private land or both that benefit these resources within the watershed.*

"appropriations for the Forest Service may be used by the Secretary of Agriculture"

Translation -- you are authorized to use any of your resources and funds. First -- WO memo is not right -- this is not restricted to NFS funds. Also, do not assume that this authority waives existing legal requirements of funding/appropriations (e.g. clearly you can't use KV funds which by law are collected and constrained to sale area boundary to finance a project outside of the sale boundary) BUT that does not mean you can't use a KV project within one of these agreements to meet other ecosystem needs -- e.g. social/economic goals -- If this is confusing, hopefully one of the examples below will clarify how projects such as KV could be applicable.

"for the purpose of entering into a cooperative agreement"

Translation -- you are authorized to establish a partnership, collaborative arrangement, a business alliance, a joint venture, a team, whatever -- you can align you efforts with others who have vested and shared interest IF by doing so is beneficial to you/public.

"with willing State and local governments, private and non-profit entities and landowners"

Translation -- you can enter into such an arrangement with about anyone provided they have a vested interest and shared goals and objectives. Landowner, watershed council, other community formed groups, State, County, etc. Only aware of one exception (assume there may be more) -- shouldn't (not sure you can't) enter into an agreement with anyone who has a financial/business interest in whatever is being proposed (any situation that might be viewed as a conflict of interest).

"for the protection, restoration, and enhancement"

Translation --- just about everything you do -- can't think of any action or program that does not fit within the above?? if we are not restoring, protecting, or enhancing "ecosystems" than why are we doing it??

"of fish, wildlife and other resources"

Translation --- needs to be responsive to something in the ecosystem -- biological, social, or economic.

"on public or private land or both"

translation -- anywhere within the geographical delineation that you defined.

"that benefit these resources within the watershed"

translation --- needs to have tangible and documentable benefits to the accomplishment of your goals and objectives.

SUMMARY of Authority

- o Use any funds you have to
- o Enter into a collaborative arrangement with anyone who has common vision, goals , and objectives
- o For just about anything you might do
- o for any biological, social, or economic reason
- o on any portion of the watershed - public, private, or both
- o **PROVIDED it has tangible and documented benefits to you and the public**

(logical,

rationale, and defensible)

What New/What I sn't

New:

- Use of most funds beyond boundaries
- Ability to provide financial assistance
- Far more encompassing ability to enter into agreements with partners

Not New:

Ability to include management goals and objectives into any procurement -- realizing that adding goals often times by default restricts who can compete Granting anyone the authority to limit competition (this is not a waiver but an authority to manage ecosystem goals through partnerships.

Ochs's Philosophy -- IS -- CAN -- SHOULD -- often times we spend too much time in the "is" and "can" rather than the "should" -- what have we do (is)?, what can we do? rather than what should we do? Suggest this authority by default places far more emphasis and accountability on the should. The following examples only are meant to address the can to reflect how potentially enabling section 334 is -- leadership has to address the should.

Examples:

1. Stream passage problem immediately downstream from NFS lands -- landowner is willing and interest in restoring passage. High priority and tangible/documentable benefit to NFS systems.

Solution: WR&E Agreement followed by normal procurement practices.
(project on private land)

2. Watershed council needs to complete an overall analysis in order to qualify for numerous sources of funding (NRCS, GWEB, etc. etc.) . FS recognizes the need to correct some major problems off of NFS lands and is confident that completion of the analysis will successfully enable the council to leverage project funding. Completion of projects has a tangible and documentable benefit to NFS systems.

Solution: Cooperative agreement with council -- providing them "financial assistance". If support is only limited to Technical support -- nothing is needed (see flowchart provided)
(initiative on private lands -- no specific project)

3. Watershed council has recruited and trained local citizens to be a primary workforce to achieve their restoration needs within the watershed. The group is highly trained , competent, and essential to meeting ecosystem goals and objectives of the watershed. Council has been encountering difficulties keeping the crew employed long enough do to the varying amount of work. Without improving situation, council crew may be eliminated -- causing many social, economic, and biological problems (e.g. inability of council to respond restoration needs w/i watershed). FS has a few projects that are scheduled to be completed this year (one being a KV and a few others). Linking these projects with the council achieves our quality jobs objectives, improves relationship with council and improves worker skills to meet existing or new demands within the watershed.

Solution: WR&E agreement -- procure NFS projects thru council. Agreement needs to be completed that documents the social and economic needs, objectives, expectations, etc.
(NFS projects aligned via agreement with collaborators to meet local social and economic needs/goals/objectives.

4. FS manages land on the upper part of a watershed, tribe owes lower portion, BLM has numerous intermingled blocks. Local line officers and tribe share a common vision for the watershed and collectively recognize the need to create a collaborative partnership whereby the tribe will facilitate a overall analysis of teh watershed and development of a strategic and operational plans and utilize tribal capabilities to implement projects/actions in an integrated manner. Effort pulls all the ecosystem management pieces together -- watershed wide strategy and integrated actions , increasing involvement from tribe and community, utilization of existing capabilities, increasing ownership, trust, continuity, etc.

Solution: WR&E Agreement among the three entities establishing the terms and conditions of the agreement.
(establishment of a watershed, collaborative stewardship arrangement with adjoining landowners).

5. Community driven Performance based watershed approach/effort whereby all partners seek to achieve 4 benchmarks (all consistent with FS challenges and goals -- fish, water quality, community stability, etc). Developing one assessment, one strategy, and an integrated and collaborative implementation approach that responds to the social, biological, and economic needs of the ecosystem. Two anticipated needs:

- a. pulling funding together to complete overall assessment and plan
- b. implementing a sustainable/predictable, and systematic plan --

Solution: Combination of any and all of the above solutions. Maybe providing the effort financial assistance/grant to complete assessment. Maybe even committing x% of the total cost of the plan over a period of time (contingent upon dollars being available)
(Full collaboration -- watershed plan, watershed strategy, watershed decisions, implementation, et.al.)

"Managing Partnerships" (August 1, 2000):

The attached memorandum (FSM 1300, August 1, 2000) transmitted OGC's FACA opinion plus provided some general principles and advice in managing partnerships.

United States Department of Agriculture	Forest Service	R-6	OR/ WA	Bureau of Land Management	United States Department of Interior
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File Code: 1300 (FS) 1783 (BLM 931)P

Date: August 1, 2000

EMS Transmission

BLM Information Bulletin No. OR-2000-284

Subject: Managing Partnerships

To: USDA Forest Service Forest Supervisors and
USDI Bureau of Land Management District Managers

Over the last few years, field units have been increasingly involved in collaborative efforts with other partners (such as watershed councils and other community-based groups) to work together to achieve common and shared goals. As such, we are routinely involved in meetings and with groups to accomplish the stated goals of these efforts. We have received numerous questions regarding the applicability of the Federal Advisory Committee Act (FACA) in relationship to some of our partnership efforts and just recently received a joint opinion from Forest Service (FS) and Bureau of Land Management (BLM) solicitors (enclosed). Personnel are encouraged to continue to foster these partnerships in ways that are not in conflict with FACA and in ways that promote inclusiveness, fair and equal access, trust, and respect. This most recent joint opinion should enable line managers to implement partnerships within the legal requirements of FACA. We encourage everyone to read the enclosed joint opinion.

The purpose of this guidance is to provide line officers with additional information, knowledge, and insight with respect to managing these existing and emerging collaborative efforts.

FACA - meeting the letter of the law.

As reflected in the June 20, 2000, opinion, FACA guidance is not absolute. The guidance is given to minimize risk.

The Act passed in 1972 had a twofold purpose of reducing the influence of special interest groups, and providing more accountability and public access to policy-making decisions. Three distinct and concurrent tests must be met to implicate FACA:

- A. Must be a committee - "advice from individuals taken either singly or in a meeting are not regulated by FACA." "A committee is any group, that has some formal structure, fixed membership, specific purpose, and seeks to reach a position as a group either by consensus or a majority vote."

- B. Committee must be established and utilized by the agency – “there must be something along the lines of actual management or control before a committee comes under the coverage of FACA.” If you did not establish the group or do not have a disproportionate share of control of the group (setting agenda, determining memberships, etc), then FACA is not involved.
- C. Purpose is to provide advice and recommendations to the agency - note that whether a committee provides advice and recommendations is not the determining factor; it is whether it is targeted/directed to the agency. For example, a watershed council providing general advice or a recommendation is not a FACA issue; providing specific advice to a federal agency may implicate this one of the three tests.

Our efforts and experiences with partnerships have clearly demonstrated that we must not just focus on what is legally required under FACA (outlined above and in recent opinion) but fully promote and support open, participatory processes. While the following is likely elementary to you and may provide little additional knowledge, we are providing this as a reminder. Overall, your efforts are exemplary.

The following basic principles can help avoid some areas that have given us problems in the past. It appeared in these few occurrences, because of our commitment to complete projects, we tried to expedite actions without first making the effort required to earn the trust and respect of both established and potential partners. In nearly every case, when problems surfaced, it required considerable time and energy to correct them.

These principles are:

1. Inclusiveness and Equal Opportunity For All

Even if specific actions are clear of potential FACA implications, we must all continue our efforts to ensure that all of our actions include and/or provide equal opportunity for all our publics to provide input and information. For example, attending and being a full and active member of a watershed council is strongly encouraged; watershed councils provide a great opportunity to achieve mutually shared outcomes. But this opportunity will also generate new responsibilities in keeping other publics aware of issues and actions that may arise from this one forum and that may have an affect on how we manage public lands. Another example is when we meet with selected partners for a specific and mutually shared purpose. While this type of interaction is not likely to be a FACA violation, efforts must be undertaken to ensure that all who may be affected by whatever actions or decisions are made are provided the knowledge and opportunity to be engaged. Generally, your efforts are excellent in this area.

2. Open and Proactive Communication – The three Cs to successful partnerships and trust – Communicate, Communicate, Communicate.

Creating, maintaining, and operating within partnerships is essential to our success. While oftentimes we may not have the latitude and ability to include other publics in these partnership forums (these may not be our meetings and thus we do not manage or control them), it is imperative that our publics are not surprised by our actions. Continuing to create and foster partnerships is paramount, BUT we encourage all to continue to keep affected publics aware of plans, actions, and decisions.

3. Living Up to Commitments

When we make commitments, we must be visibly accountable and responsive to them. Making commitments is the easy part; dedicating the resources and energy to achieve them in an effective and responsive way is the challenge.

4. Decision-making

In any and all cases, operational or otherwise, line officers must retain federal decision-making and NOT authorize any group or individual to assume this inherent federal responsibility. Personally making a decision that affects directly or indirectly a program within your area of responsibility within a group setting is generally not a problem. However, having the group, through consensus, make the decision may be a problem.

5. Contributing Our Fair and Equitable Share

We have found that when our agencies reach out and contribute either technical expertise and/or finances to projects where we will receive benefits, OR simply offer a helping hand, trust and respect are generated. Each agency having and using their authorities, especially under the Wyden Amendment, to contribute to partnership efforts has had incredible results.

6. Get the Right People Involved Up-Front

Getting the right people involved, those who have the expertise, authorities, and responsibilities, and making them part of the solution has proven to be invaluable in accomplishing desired outcomes. This has been especially true with our procurement, fiscal, and agreements specialists. Getting these folks involved before commitments are made has generally resulted in far more effective and efficient implementation.

In summary, partnership efforts and successes have been rewarding; and we encourage you to continue the great work. If you encounter any problems in supporting partnerships (e.g., perceived or actual lack of authority) or have any specific issues or questions with FACA and partnerships, please contact our Community-Based Coordinators (Ron Ochs, FS, or Bill Torgersen, BLM). Ron and Bill will coordinate with affected staffs to seek a solution.

/s/Nancy Graybeal (for)
HARV FORSGREN
Regional Forester, Region 6
USDA Forest Service

/s/ Edward W. Shepard (for)
ELAINE Y. ZIELINSKI
State Director, OR/WA
USDI Bureau of Land Management

Enclosure
OGC (Binder) 6/20/2000 FACA Opinion

cc:
FS Distribution
CP (Ronald Ochs)
RO Directors

BLM Distribution
WO-230 (Room 204LS) -1
OR-120 (Sue Richardson) -1
OR-931 (Judy Nelson) -1
OR-932 (Pat Geehan) -1
OR-933 (Debbie Pietrzak) -1
OR-934 (Terry Hueth) -1

USDA

United States Department of Agriculture
Office of the General Counsel

June 20, 2000

TO: Charles Krebs
Director of Cooperative Programs
US Forest Service - R6
FROM: Timothy J. Binder
Attorney

Concurrence: Roger W. Nesbit, Senior Attorney, Office of the Solicitor

SUBJECT: Ecosystem Workforce Project and the Advisory Committee Act

You ask for our advice on the application of the Federal Advisory Committee Act (FACA), 5 U. S.C. App. 2, to grants given to the University of Oregon's Institute of a Sustainable Environment (the Institute). Questions have been raised about whether the interactions the Federal agencies have with the Institute are consistent with FACA. These questions were articulated in a memorandum issued by the Office of the Regional Solicitor. We have conferred and have come to an agreement on the advice, which follows.

Factual Background:

The Institute, partially operating under a quarter million dollar grant from the United States Forest Service (FS) ¹, has participated in an ongoing effort by Oregon/Washington Bureau of Land Management (BLM) and FS to establish a program for incorporating local social and economic needs, into all agency procurement and management actions. The Institute of a Sustainable Environment has a 3-year strategy to institutionalize the quality jobs approach to ecosystem management demonstrated by the Ecosystem Workforce Project. The Institute believes that widespread adoption of this approach will have significant social and economic benefits for rural communities. The Institute aims to accomplish this

¹ Over a three year period the Forest Service will provide the group a total of \$249,529 out of its total budget of \$534,516, i.e. 47% of its costs. See "Quality Jobs in Ecosystem Management through Systematic Industry Change Strategies", by Institute of a Sustainable Environment, dated June 1998 (hereafter "Quality Jobs Proposal"), p. 12

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goal through liaison and technical assistance to public and private land managers, workers and contractors, Oregon watershed councils, and similar community based collaborative stewardship organizations. In this role they are going to "encourage work design and procurement strategies", and "create networks among land managers and their partners to enhance [these] efforts." The Institute has permanent staff consisting of a coordinator, a principal investigator, a program assistant, and an administrative support person. The Institute also subcontracts with consultants, and sponsors various forums and gatherings. The Institute has no independent legal responsibility to create a jobs program or manage lands. The Institute has no independent, statutory authority or responsibility in regard to the government's procurement of services and materials -to implement ecosystem management on the federal lands. It does not have lands of its own. It has no jobs program. Its own stated purpose is to promote an approach to economic recovery in rural Oregon through influencing Watershed Councils and Federal, State, and private land managers' procurement policies.'

Statutory Background and Court Interpretation:

Congress enacted FACA in 1972 to control the growth and operation of the numerous boards, committees, commissions, councils, and similar groups that had been established to advise officers and agencies in the Executive Branch of Government. 5 U.S.C. Appendix 2. FACA's stated purposes include holding these advisory committees to uniform standards and procedures, and keeping Congress and the public informed of their existence, activities and cost 5 U.S.C. Appendix 2 § 2(b). The Act had a two-fold purpose of reducing the influence of special interest groups, and of providing more accountability and public access to the policy-making process. FACA is a statute, which contains more than its share of ambiguity. Over the years, courts have limited greatly what constitutes "established" or "utilized", and have vacillated on the differences between "policy" and "operational" advice. Thus, almost no advice given on FACA issues is provided without a cautionary note that there may be some risk of litigation. Even, however, when courts have found against the agency, they have seldom found a basis for voiding agency action based upon advice from the group. FACA is not a criminal statute. See, California Forestry Ass'n v. U.S. Forest Service- 102 F.3d 609, 613-14 (D.C. Cir. 1996) (Court discusses proper response to FACA violation.).

To implicate FACA, three distinct tests must be met. First, there must be a committee. Advice from individuals taken either singly or in a meeting are not regulated by FACA. Only collective advice formed by a group into a recommendation or position is subject to the Act. Second, the committee must be "established or utilized" by an agency. If an agency did not form the group or is not controlling the group to obtain advice, FACA is not involved. Finally, the purpose of the

² The Institute identifies the next step in accomplishing its quality jobs agenda is to overcome the obstacles of a lack of consensus in social and economic objectives in ecosystem management and the disarray in contract and labor markets by show[ing] land managers and watershed councils the benefits of rethinking how they structure and procure work, and assist in developing local benchmarks and strategies." . See Quality Jobs Proposal, pp. 3-4.

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committee must be to give advice and recommendations to the agency. If the committee's purpose is other than giving the agency advice or recommendations, there is no reason to regulate its activities under FACA. These tests, as formulated under the case law interpreting FACA, are discussed in more detail below.

Test 1: Is the group a committee?

Whether a group of people is a committee depends on the group's nature, rather than on what it is termed. Northwest Forest Resource Council v. Espy, 846 F. Supp. 1009 (D.D.C. 1994)(A team of experts which the Forest Service expressly stated not. to be a committee, in fact was.). A committee is any group of individuals, other than one composed wholly of full-time or permanent part-time Federal employees, that has some formal structure, fixed membership, specific purpose, and seeks to reach a position as a group either by consensus or a majority vote. See Ass'n of Amer. Physicians and Surgeons v. Clinton, 997 F.2d 898, 914 (D.C. Cir. 1993)("[A]n advisory group ... has, in large measure, an organized structure, a fixed membership, and a specific purpose."). That Court said that the purpose, structure, and personnel of a group is best characterized as a continuum ranging from a formal group of a limited number of private citizens brought together to give publicized advice as a group which clearly falls under FACA to an unstructured collection of individuals who do not significantly interact with one another which clearly does not fall under FACA. The Court said that a working group of 340 virtually anonymous individuals resembled more a horde than a committee, but that it may actually be a number of advisory committees, remanding the case to the lower court for more findings on the issue. See also, Huron Environmental Activist League v. U.S.E.P.A. 917 F.Supp. 34 (D.D.C. 1996). However, where an agency relies extensively on the consensus advice of a group, even in the absence of formal structure, FACA may be implicated. National Nutritional Foods Ass'n v. Califano, 603 F.2d 327 (2nd Cir. 1979). An advisory committee requires advice formed from a group dynamic, as opposed to a collection of individual opinions.

Test 2: Is the committee "established or utilized" by an agency?

The United States Supreme Court has limited the scope of FACA to committees established by Federal agencies or established by "quasi-public" organizations for public agencies. Public Citizen v. Dept. of Justice 491 U.S. 440, 109 S.Ct. 2558, 105 L.Ed.2d 277 (1989). The District of Columbia Circuit has stated that the term "utilized" extends also to committees where the Government has taken over the management thereof Animal Legal Defense Fund, Inc. v. Shalala 104 F.3d 424, 430 (D.D.Cir. 1997), cert. denied 522 U.S. 949, 118 S.Ct. 367, 139 L.Ed.2d 285 (1997) (hereafter "ALDF")("We recognized, however, that if a government agency actually took over the management of (a purely private committee), it would be brought under FACA."). There must be "something along the lines of actual management or control" before a committee comes under the coverage of FACA. Washington Legal Found. v. United States Sentencing Comm'n.- 17 F.3d 1446, 1450 (D.C. Cir. 1994)

In a case testing the limits of "utilized," the Court of Appeals for the District of Columbia found that the Environmental Protection Agency (EPA) had not utilized a committee formed by an EPA contractor. Byrd v. U.S. E.P.A., 174 F.3d 239 (D.C. Cir. 1999), cert. denied, ____ U.S.____,120

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S.Ct. 141, 146 L. Ed. 2d 311 (2000). The facts of that case are significant. EPA had prepared a draft update of its interim benzene report, but wanted to subject the update to external peer review before finalizing it. EPA entered into a contract with ERG, a private environmental consulting firm. The contract required ERG to select a panel of qualified experts, organize a public meeting and compile and submit a report to EPA. EPA was to pay ERG a fixed sum and ERG would compensate the panel members. The contract allowed EPA to determine the issues for the panel to evaluate. EPA submitted to ERG for its consideration a list of twenty-four scientists. ERG selected four of them as well as two others to be on the panel. EPA had the authority to give or withhold final approval to the panel. The panelists provided to EPA a copy of their pre-meeting notes. EPA employees attended the meeting and participated in the meeting. No EPA employee supervised the conduct of the meeting. The court concluded that "EPA did not manage and control the benzene panel within FACA's scope, keeping in mind that 'the utilized test is a stringent standard, denoting 'something along the lines of actual management or control of the advisory committee,'" Byrd 174 F.3d at 247, quoting ALDF, 104 F.3d at 30, which in turn was, quoting Washington Legal Found., 17 F.3d at 1450 (emphasis in original). The court noted that its decision was grounded on what EPA did, not what it could have done under its contract. Thus, even though the agency had the authority to have managed and controlled the panel under its contract with ERG, unless it actually exercised this authority, the Court would not find that the agency had established or utilized the committee.³ The word "utilized" as interpreted by the courts is now nearly indistinguishable from the word "established." Earlier case law and agency guidance, which found that an agency could be found to have "utilized" a committee if it formed a habit of obtaining advice on policy from a particular pre-existing group, must now be considered questionable authority. E.g. General Services Administration's Memorandum for Committee Management Officers dated March 21, 1994, p. 4; and Center for Auto Safety vs. Cox 580 F.2d 689 (D.C.Cir. 1978) ⁴.

The Ninth Circuit Court of Appeals has followed the District of Columbia Circuit's FACA analysis. In Aluminum Co. of America v. NNI FS, 92 F.3d 902 (90 Cir. 1996), the Court, in concluding that FACA was not implicated, cited favorably four separate District of Columbia FACA decisions. The court found that groups established by the prevail' parties in litigation for the purpose of giving advice to a Federal agency were not controlled by the Federal agency and therefore did not fail under the ambit of FACA. The groups were not funded by the federal government. The groups were not "subject to the management, much less strict management, of federal agency officials." Aluminum Co. at 906. Though the agency may have utilized the advice, such action does not satisfy the "utilized" test of FACA. Aluminum Co., at 907. "[I]t is a rare

³ There was a dissent on this point by one of the judges on the Court of Appeals panel reviewing the decision. See Byrd at 249.

⁴ See 41 CFR 101-6.1003. The General Services Administration, the agency charged with administering FACA, defines "utilized" as including groups adopted by an agency as a preferred source of advice in the same way that an advisory committee is used to obtain a preferred source of advice. See also, Agriculture Departmental Regulation 1041-1, Section 4.j.

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case when a court holds that a particular group is a FACA advisory committee over the objection of the executive branch." Aluminum Co., at 905, quoting Association of Am. Physicians and Surgeons at 914. Since there would never be a case in which the executive branch was a defendant where it did not object to a finding that a pre-existing group was a FACA advisory committee, this statement means that it will be rare for a court ever to find a pre-existing group to be a FACA advisory committee.

Under the most current case law the "established or utilized" prong will almost assuredly not be met unless the agency exercises substantial and actual management and control over the committee. The courts are far more likely to find a group to be an advisory committee, if it is created and formed by the federal agency. See California Forestry Ass'n, supra, and Alabama Tombigbee Rivers v. Dept. of the Interior 26 F.3d 1103 (11th Cir. 1994).

Test 3: Is the purpose of the committee to give advice and recommendations to the agency? A committee formed for other purposes, such as monitoring activities, conducting investigations, and carrying out activities does not fall within the purview of FACA. HLI Lordship Industries v. Committee for Purchase, 615 F.Supp. 970 (D.C. Va. 1985), rev'd on other grounds 791 F.2d 1136 (46 Cir. 1986). Operational committees are not covered by FACA, even when secondarily they provide advice. Id. A committee formed to coordinate the activities of various entities does not implicate FACA. Natural Resources Defense Council v. E.P.A. 806 F.Supp. 275 (D.D.C. 1992)(a panel of Governors established by EPA to develop a program of federal/state coordination under the Safe Drinking Water Act did not implicate FACA). In PETA v. Barshefsky, 925 F. Supp.- 844 (D.D. C. 1996), the court held that a committee of international experts convened to develop an international humane trapping standard was not a FACA committee. There was no control over the committee and the purpose of the committee was to develop a standard in response to a European Union regulation prohibiting the importation of pelts of animals from countries that do not comply with an internationally agreed upon humane trapping standard. It was not to give advice to a Federal agency. A committee whose purpose is to coordinate functions does not fit within the ambit of FACA.

A committee formed to give advice to an entity other than the agency also does not implicate FACA simply because advice also is given to the agency or because the agency relies on the advice. Sofamor Danek Group, Inc. v. Gaus, 61 F.3d 929 (D.C. Cir. 1995), cert. denied 516 U.S. 1112 (1996) (primary advice went to private entities); Washington Legal Found- supr (committee established to give advice to the courts). Accordingly, FACA is implicated only when there is some group organized in some structural manner that has been established or utilized, i.e. managed or controlled, by the agency for the purpose of providing advice or recommendations to the agency.

Application of legal principles to current factual situation.

The narrowed scope of FACA leaves a great deal of room for the agencies to receive advice from a variety of sources with little fear of coming afoul of FACA. The Institute, and each of the

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groups it has formed, must be evaluated to determine whether there is a FACA issue. Applying the above described state of the law, we will discuss each of these groups in turn.

1. The Institute

The Institute itself is the first group, which should be examined for possible FACA problem. The Institute involves more than one person, and does take an institutional position on issues. Thus it may meet the first test of being a "committee." Second, the Forest Service provides nearly 50% of the funding for the Institute, which factor, in the past, has been important in considering whether the agency managed or controlled the committee. Finally, as to the third test, the Institute provides advice to Federal land managers on policy issues. Nevertheless, we do not believe there is a substantial risk that a court would find the situation to be a violation of FACA.

The Institute was not created or formed by a Federal agency. It is a creation of the University of Oregon. To be established under FACA, the Federal agency must have formed the committee. Byrd at 246. No Federal agency formed the Institute. The Institute was formed by the University of Oregon in 1994, long before any Federal involvement with it. The first Federal grant to the Institute was given in 1998. The Institute therefore cannot be said to have been "established" by the Forest Service.

The Institute also has not been "utilized" as the courts have defined that term. According to the District of Columbia Circuit Court of Appeals, to be "utilized" the Institute must either be a "semiprivate" (read: quasi-public) agency" which "the Federal government helped bring into being," or the Institute must be "so closely tied to an agency as to be amenable to strict management by agency officials."⁵ Since the Federal government had no involvement whatsoever in the creation of the Institute, we need examine only the second possibility.

The "strict management" test requires the locus of control to rest in the hands of the Federal agency. In the present situation, the only evidence of control is the substantial portion of the funding of the Institution, which is provided by the Forest Service. Nevertheless, funding by itself does not necessarily equate with "strict management by agency officials." For example the committee in Rvrd was totally funded by the agency, yet the D.C. Circuit did not find the panel of peer review scientists to constitute an "advisory committee" because the agency did not in fact control the committee, even though it had the authority and power to do so. In the present situation, if funding equaled "control," then we believe that the locus of control resides outside of the Federal government because over half of the funds for the Institute derives from sources outside the Federal government. Given the Byrd decision and others, we believe that something more than substantial funding would be needed before a court would find that the Institute was an advisory committee. For example, if to keep the Forest Service grant, the Institute allowed the Forest Service to select the Institute Coordinator or Principal Investigator, control the meetings by setting the agenda, and the time and frequency of meetings, the participants, and so on, a court

⁵ See ALDF 104 F.3d at 430,

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might conclude that the Institute was controlled by the agency. We have been provided with no evidence that the Forest Service has in fact, or has even attempted to control who directs the Institute, or what it does, or how it conducts itself. Following the Byrd opinion, it is highly unlikely that the Institute would be found to be an advisory committee.

As to the third test on whether the Institute's purpose is to provide advice to a federal agency, there exists an ambiguity. On one hand, the Institute's mission statement does not specifically mention the provision of advice to Federal agencies. It states that the mission of the Institute, for a Sustainable Environment is to:

... foster research and education on environmental issues at the University of Oregon. The ISE's programs encompass environmental themes in the natural sciences, the social sciences, policy studies, humanities, and the professional fields. Because environmental problems are seldom adequately addressed by a single discipline, the ISE is particularly concerned with encouraging cross-disciplinary environmental research, education, and public service.

Nor do the three goals of the Institute or its five-outreach goals mention the provision of advice to Federal agencies. Thus the primary purpose for the existence of the Institute, on paper, does not appear to be the provision of advice to Federal agencies. See, Sofamor Danek. This is not the end of the inquiry, however, because FACA regulates the behavior of federal agencies, in their interactions with groups, not the groups per se. See, Center for Auto Safety. Thus a committee established or utilized by a Federal agency does not escape the operation of FACA simply by proving that providing advice to Federal agencies is not the sole function of the committee. It is clear that the Institute is interacting with Federal agencies. The question then is whether the nature of that interaction is advisory, or operational and whether that interaction is the principle purpose of the Institute. In this case, the nature of that interaction is defined and documented in the grant awarded by the Forest Service. Under the grant document the purpose of the interaction is to give guidance to Watershed Councils and to State, Federal, and private land managers on how they should carry out their responsibilities to better promote the goal of economic recovery to rural areas in Oregon. The document is replete with descriptions of Institute activity which would appear to be in the nature of advising Federal land managers, along with other entities, on how to carry out their responsibilities. For example, encouraging "work design and procurement strategies that lead to quality jobs..."⁶ could well be in the nature of giving advice to land managers regarding procurement policies. On p. 3 of the Quality Jobs Proposal, the Institute references "new opportunities to work with federal land management line officers and Watershed Councils to develop work design and procurement strategies that use quality jobs as a decision criterion". The next step in accomplishing the Institute's quality jobs agenda is described as "show[ing] land managers and watershed councils the benefits of

⁶ See, submission for funding - "Quality Jobs in Ecosystem Management through Systematic Industry Change Strategies", by Institute of a Sustainable Environment, dated June 1998 (hereafter "Quality Jobs Proposal"), p. 1.

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rethinking how they structure and procure work, and assist in developing local benchmarks and strategies." See Quality Jobs Proposal, pp. 3-4. Agency land managers, along with other entities, are going to get advice from the Institute on how to make procurement decisions.

The Institute goes on to say that its goal can only be achieved "through a multi-faceted approach to change in the complex institutional, social and economic processes A "change in the structure of demand in the labor market" is called for. See Quality Jobs Proposal, p. 4. Progress will require, says the Institute, a "shared vision" and a rapid "transfer of knowledge and strategies". Id. In short, the document is replete with references to changing the thinking of Watershed Councils and land management line officers about their procurement decisions. Such constitutes an advisory rather than an operational function. Nevertheless, we do not have enough information to conclude that the principal purpose of the Institute is to provide advice to a Federal agency.

Because the Federal government did not play a role in the formation of the Institute and does not strictly manage its affairs, we conclude that it- is unlikely a court will find that the Institute has been "established or utilized" for purposes of FACA, even if the Institute was found to be a committee whose principal purpose is to give advice and recommendations to a Federal agency. The Forest Service therefore may continue its present relationship with the Institute with little risk that a court would find this relationship to be a violation of FACA.

2. Ecosystem Workforce Team

The second group involved in the Institute is the Ecosystem Workforce Team. This group is no more than the project manager and one assigned graduate student. These two people do not have the indicia of a committee. While it is possible to have a committee of two, generally one does not consider a supervisor and her/his subordinate to constitute a committee. A committee, for FACA purposes, generally constitutes a group of equals gathered to pool their knowledge or information to provide advice. Such a committee is egalitarian, not hierarchical. There is no evidence that Congress intended FACA to cover advice from individuals who happen to consult with the subordinates they employ.

Even if these two people could be considered a committee, it would not have been "established or utilized" by Federal agencies. The Ecosystem Workforce Team was established by the Institute. It is controlled by the Institute. It receives funding from the Ford Foundation, the Oregon Economic Development Department (OEDD), in addition to the funding it receives from the Forest Service. It has been in place since 1994 and was funded from 1994 to 1988 solely by OEDD and the Northwest Area Foundation, not by the Federal government. As with the Institute, the "strict management" required by the courts to meet the criteria of "utilized" is missing.

Because the Ecosystem Workforce Team does not appear to be a "committee", and was not "established or utilized" by a Federal agency even if it were a committee, we conclude that the interaction between the Team and the Federal agencies would not be found by a court to constitute a FACA violation. The Team is even more removed from

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FACA coverage than was the group formed in Byrd and is one more step removed from control than the Institute.

3. Advisory Board The Advisory Board was established by the Ecosystem Workforce Team. That Team sets the Board's agenda, provides for its meetings, determines its membership, and carries all of the indicia of control over the Board. The purpose of the Board is to advise the Ecosystem Workforce Team on how to implement their funding efforts. The Federal agencies do not receive notification of the Board's meetings and have never received any advice from the Board. It appears that the Board's function is an internal one. Advice to a non-federal entity is not covered by FACA, so participation in this advisory council by Federal officials would not be a problem. There are no facts that would support a conclusion that the Advisory Board has been "established or utilized" by a Federal agency or has a purpose of giving advice or recommendations to Federal agencies. The Advisory Board does not implicate FACA.

4. Workforce and Ecosystem Working Group

This group is described in the grant proposal as "a partnership of representatives of the Forest Service, BLM Oregon Economic Development Department, contractors, watershed councils, the United Brotherhood of Carpenters and the EWP." The group's purpose is to develop "a consensus vision for quality jobs in ecosystem management." The outcome from the group was an agreement between state and Federal agencies to make the creation of quality jobs one of the decision criteria in all resource management contracting.

The Ecosystem Workforce Team set up the Group. There is no set membership. The Group met sporadically, and its membership constantly changed depending on the interest the various entities had in attending the various meetings. No Federal agency controlled the meetings or the Group's agenda. Thus, the "strict management" test used by the courts to determine for purposes of FACA whether a group has been "utilized" by a Federal agency has not been met.

Despite the written purpose of the Group in the grant proposal, the actual function of the Group appeared to be more in the nature of coordination than the development of group advice. As long as the Group continues to be limited to a forum for sharing information and coordinating operations with other entities involved in managing the same ecosystem, the third test for determining whether to apply FACA would not be met, i.e. the group would not be providing advice to Federal agencies.

At the present time the interaction with this group is not likely to found by a court to violate FACA. This could change, however, if the Group did begin formulating a group position or policy or actually articulate a "consensus vision", and if the Federal agencies took over actual management and control of the Group.

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5. MOU Partnership Group

_This Group is composed of representatives from each signatory of the Memorandum of Understanding between ten Federal agencies and the State of Oregon. The primary purpose of the Group is the sharing of information and improving intergovernmental coordination. This Group interacts on operational matters, rather than formulating advice to Federal agencies, and as such would not involve FACA. See Natural Resources Defense Council, 806 F.Supp. at 277. Furthermore, FACA has been amended to exempt interactions with state governmental representatives. The Unfunded Mandates Reform Act of 1995 included the following provision:

(b) Meetings Between State, Local, Tribal and Federal Officers: The Federal Advisory Committee Act (3 U.S. C. App.) Shall not apply to actions in support of intergovernmental communications where -

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments(or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

Public Law 104-4, Section 204(b).

Since the only members of this Group are Federal and duly designated representatives of State elected officials, and the purpose of the Group is to foster intergovernmental coordination concerning the management of Federal and State programs, it appears to meet the criteria of this exemption.

Conclusion

Under FACA, as currently interpreted by the courts, the interactions between the Federal agencies and the various groups associated with the University of Oregon's Institute of a Sustainable Environment are unlikely to be consider a violation of that Act. However, the subject matter here involves procurement processes. Litigation by a disappointed bidder or potential bidder on government contract activity is always a possibility.

One possible method of removing any possibility of a FACA violation in the present situation would be to have the Institute work through the FACA chartered group established under the Northwest Forest Plan. The issue of quality jobs is the very kind of proposal envisioned under the Forest Plan to mitigate the economic impacts of the Plan on timber-dependent communities which would be particularly appropriate to present through its formally chartered advisory groups. Nevertheless, we are not in a position to know whether such a procedure would be compatible with the intent of the grant and the practices of the FACA committee. Another action the agencies could take to reduce, if not eliminate, the risk of violating FACA is to function

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agencies could take to reduce, if not eliminate, the risk of violating FACA is to function as closely to the standards applied to FACA chartered advisory groups as possible. In other words, if public notices of meetings of the Institute groups are made, minutes kept, and an attempt at balanced representation is made, there is very little likelihood that a court will issue an injunction against use of information from the group. See, California Forestry Ass'n, 102 F.3d at 614.

We have examined this situation only as to the question regarding compliance with the Federal Advisory Committee Act. We have not reviewed the merits of the Institute's proposals and whether the Federal agencies have the authority to implement these proposals.

If you have any further questions with respect to this matter, you may contact me as set forth above.

TnVpat&77-2000

Forest Service Mission, Vision, and Guiding Principles

Mission: Caring for the Land and Serving People

- The phrase, "CARING FOR THE LAND AND SERVING PEOPLE," captures the Forest Service mission. As set forth in law, the mission is to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of people: It includes:
- Advocating a conservation ethic in promoting the health, productivity, diversity, and beauty of forests and associated lands.
- Listening to people and responding to their diverse needs in making decisions.
- Protecting and managing the National Forests and Grasslands so they best demonstrate the sustainable multiple-use management concept.
- Providing technical and financial assistance to State and private forest landowners, encouraging them to practice good stewardship and quality land management in meeting their specific objectives.
- Providing technical and financial assistance to cities and communities to improve their natural environment by planting trees and caring for their forests.
- Providing international technical assistance and scientific exchanges to sustain and enhance global resources and to encourage quality land management.
- Helping States and communities to wisely use the forests to promote rural economic development and a quality rural environment.
- Developing and providing scientific and technical knowledge aimed at improving our capability to protect, manage, and use forests and rangelands.
- Providing work, training, and education to the unemployed, underemployed, elderly, youth, and disadvantaged in pursuit of our mission.

Vision

- We are recognized nationally and internationally as a leader in caring for the land and serving people.
- We are a multicultural and diverse organization.
- Employees work in a caring and nurturing environment where leadership is shared.
- All employees are respected, accepted, and appreciated for their unique and important contribution to the mission.
- The work is interesting, challenging, rewarding, and fun--more than just a job!
- We are an efficient and productive organization that excels in achieving its mission.
- Responsibility and accountability for excellence are shared by employees and partners.
- The American people can count on the Forest Service to perform.

Guiding Principles

To realize our mission and vision, we follow these 13 guiding principles:

- We use an ecological approach to the multiple-use management of the National Forests and Grasslands.
- We use the best scientific knowledge in making decisions and select the most appropriate technologies in the management of resources.
- We are good neighbors who respect private property rights.
- We strive for quality and excellence in everything we do and are sensitive to the effects of our decisions on people and resources.
- We strive to meet the needs of our customers in fair, friendly, and open ways.
- We form partnerships to achieve shared goals.
- We promote grass-roots participation in our decisions and activities.
- We value and trust one another and share leadership.
- We value a multicultural organization as essential to our success.
- We maintain high professional and ethical standards.
- We are responsible and accountable for what we do.
- We recognize and accept that some conflict is natural and we strive to deal with it professionally.
- We follow laws, regulations, executive direction, and congressional intent.

Forest Service Works To Strengthen Rural Communities (October 31, 2000)

WASHINGTON, Oct. 31, 2000—The USDA Forest Service yesterday announced its plan to assist rural communities in and around Forest Service lands in managing natural resources, while strengthening their economic health and vitality.

The plan, "Working Together for Rural America: 2000 and Beyond," calls for community and Forest Service policy-makers to effectively integrate rural economic, social and ecological concerns. The plan was announced during the national Rural Community Assistance conference in Burlington, Vt.

Forest Service Chief Mike Dombeck said, "Thousands of rural communities all across the country, including those in and around the 155 national forests and 21 grasslands will benefit from effective community-based partnerships. This builds on the Forest Service's long-standing commitment to strengthen rural America through sustainable approaches and collaboration," he said.

Federal Acquisition Regulations – Yes unless Stated No

The following is an excerpt from the federal acquisition regulations (1.102(d)). While any excerpted information needs to be used with GREAT caution, this excerpt is included to encourage and support managers in embracing one of the early advocated operating guidelines, “Pursue Solutions”. We hope that we get accustomed to asking and seeing what law specifically precludes an action deemed to be logical and prudent. This is desirable for two reasons:

1. So that we can identify laws and regulations that may be hindering our actions, and
2. To encourage people to re-examine their knowledge of laws and authorities, and

FAR 1.102(d)

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

A complete list of FARs can be obtained at the following website:

<http://www.arnet.gov/far/loadmain.html>