

The Future of the National Forests

Who Will Answer an Uncertain Trumpet?

Following is part one of a two-part series based on a presentation given by B&C Emeritus member Jack Ward Thomas at a conference sponsored by the University of Montana's O'Connor Center for the Rocky Mountain West and an article co-authored by Thomas and Alex Sienkiewicz in the *Public Land and Resources Law Review*. Thomas is a past chief of the U.S. Forest Service and retired Boone and Crockett Professor at the University of Montana.

There are rare times in my life when I realize how important an article is. This was one of them! Thomas represents the pinnacle of one whose knowledge and experience with the Forest Service deserves our full attention when he speaks or writes on the subject. When you read this article, you will come to understand the tangled web that is strangulating the agency's ability to manage our national forests. Importantly, Thomas provides suggestions for "cleaving" the Gordian knot. This two-part article should inspire us—members of the Boone and Crockett Club and other conservation groups—into action!

Howard P. Monsour, EDITOR-IN-CHIEF

It is late 2011, and the nation is engaged in two—maybe two-and-a-half—wars. With long-lingering high unemployment, jobs creation has emerged the highest political priority amidst calls for dramatic reductions in federal spending and increases in taxes. The

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huge national debt has grown dramatically and increasingly held by foreign entities. Cost for Medicare continues to grow. Social Security faces long-term insolvency. Crumbling infrastructure demands attention. Energy costs are at all-time highs and destined to increase. The environmental/economic/social consequences of nuclear power generation gone wrong are significant. There is an ongoing crisis in housing. Human populations—and their quest for the good life—continue their inexorable increase. Political divides resulted in downgrades in the credit and credit-worthiness of the United States in summer 2011. The esteem of the citizenry for members of Congress and the president spiraled downward.

*“...if the trumpet
give an
uncertain sound,
who shall prepare
himself for battle?”*

I CORINTHIANS 14:8





The Future of the National Forests

For the foreseeable future, the U.S. Forest Service seems likely to face reductions in already inadequate funding and personnel levels while demands for goods and services increase. The Forest Service desperately needs a crystal-clear mission, which it cannot provide for itself. Forest Service leaders can only propose (if allowed to do so) and multiple layers of appointed and elected officials will dispose—if they act at all.

Coherent focus requires new—or refocused—constituents to effectively birth the evolving “new Forest Service.” New notes are desperately needed for the trumpets’ renewed clarion call to service. That will require a mixed bag of potential constituents to develop and unite around a new vision. Then, they must work to assure that the needed resources are made available. That new vision must include means of realizing significant income from provision of goods and services from national forest management beyond timber and grazing—such as recreational uses. Such ideas are not new, but now the need is obviously dire.

New Goals, Products, and Missions

As the good old/bad old days fade away, new days and new ways lie ahead. For example, as populations grow and demands for energy increase, fossil fuels will continue to ratchet up in economic and ecological costs. As the search for alternative sources of energy accelerates, the potential for bio-fuels looms larger.

The first thrusts in biofuels production involved federal subsidies to derive ethanol from grains to be added to gasoline—an effort more focused on the welfare of grain growers than a realistic solution to soaring fuel costs. Increased use of fertilizers (largely derived from natural gas) to produce food grains to convert to biofuels for internal combustion engines—in the face of rapidly growing human populations who need the food—begged social, economic, and ethical questions.

On the other hand, cellulosic ethanol derived from waste plant materials ranging from grasses to wood, has potential to provide such fuel. The 2007 Energy Independence and Security Act required an increase of renewable fuels (9 billion gallons in 2007 to 36 billion gallons by 2022). Cellulosic ethanol

was mandated to increase from 100 million gallons in 2010 to 16 billion gallons in 2022 (44 percent of the renewable fuels mandate). Extant technology, which is constantly improving, has the potential to meet those targets in an economically/ecologically rational fashion. But, to accomplish such will require infrastructure close to the source of raw materials, and that will require some certainty of a flow of raw materials over a defined time period. In the absence of certainty there will be no such investment from the private sector.

As consequences of global climate change become more obvious, forests will play an increasing role in carbon sequestration. Over the long run, demand for traditional wood products will increase as human populations increase, economies rebound, and there is increased focus and reliance upon renewable resources. A new mix of forest products—in new combinations—lies ahead in the dense political/legal fog that clouds our vision at the moment.

The National Forests—Use Them or Lose Them?

Even as the “new” Forest Service evolves, it is enmeshed in debilitating political and economic turmoil. These forests and rangelands are too valuable, for social and economic reasons, to remain in relatively unmanaged, increasingly expensive limbo. The Forest Service has long been ranked among the most-effective of government agencies according to research by Jeanne Nienaber Clarke and Daniel McCool. A refocused and revitalized Forest Service can regain “bureaucratic superstar” status if only it is allowed to let go of the past and move on to the future. Winston Churchill observed that, “Of this I am certain, that if we open a quarrel between the past and the present, we shall find that we have lost the future.” We need to move on to the future and let go of the past, but not lose the lessons learned.

As the nation’s economic, social and political stresses increase, it will seem more and more rational to shed economic and political liabilities—especially those that can be converted to revenue. It will seem, at least to some, evermore reasonable to sell, trade or transfer the national forests for pottage.

Such moves are being actively discussed. Just pick up a copy of *Who is Minding the Federal Estate?* by Holly Lippke Fretwell (2009) to read more about this topic.


Addressing a “Gordian Knot”

More legislation, e.g., the recent Healthy Forest Restoration Act of 2005, is a grossly inadequate and likely further confusing response to the worsening stalemate. That was just one more patch on top of other patches (laws) that haphazardly reside atop even older patches. Each of those laws must have seemed a good idea in the context of time and circumstances. Yet, in totality and considering interactions that evolved (especially as variously interpreted by the courts), they formed the threads of a now intractable Gordian knot (an intricate problem insoluble in its own terms) rendering national forest planning and management ever more costly and ineffective.

An answer to the quandary may reside in legend. Alexander of Macedonia was presented with such a puzzle knot and told that only the future ruler of Asia could undo it. He didn’t fuss, fume and dither. He drew his sword and cleaved the knot in two.

Creation of a new Forest Service and new approaches to national forest management requires changes in thinking and direction that produces clear vision, well-defined missions, sustained adequate financing, significant revenues from sustainable utilization of national forest resources, a rejuvenated and reinvigorated work force, and cultivation, development and sustenance of supportive constituencies. Failing that, three fates loom large—singly or in combination.

The first is continuing the ongoing reversion to custodial management with increasing emphasis on wildfire prevention and suppression focused largely in the wildland-urban interface. The second is devolution of management responsibilities to other federal agencies with custodial missions (e.g., the National Park Service or the U.S. Fish & Wildlife Service). Lands deemed worthy of “zoning” for production of commodities might go to the states or Bureau of Land Management, who have track records of land management to produce revenue. The third is the sale of national forest lands to the highest bidders—carried out over many



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years to prevent depressing markets. Purchasers would be well aware of Mark Twain's advice to "buy land—they ain't making any more of it." Each of these options would cut federal expenditures and provide revenues to service burgeoning debt.

Attributes of "Bureaucratic Superstars"

In 1996, among the seven federal natural resource management agencies, the Forest Service was identified as a bureaucratic superstar based on seven factors identified by Clarke and McCool. These factors included: a pro-development multiple-use mission; a pragmatic, utilitarian philosophy; a clear beginning; a scientific basis of expertise; internal recruitment to leadership; a coherent well-defined public image; and strong support from Congress (sometimes from the chief executive) emanating from well-organized constituencies.

What happened in the intervening 16 years?

Public and political support for the pro-development multiple-use mission collapsed and shifted more toward preservation. Pragmatic utilitarianism was eroded by legislation, case law, changes in public opinion coupled with shifting, confused, inconsistent and dysfunctional political direction. The clear beginning evolved into a "creation myth," then faded into memory. Scientific expertise increased—though support eroded, largely due to the quasi-independent research arm—and new knowledge became more fiscally and politically difficult to integrate into management. Internal recruitment to leadership positions continued while more and more decision authority shifted to politically appointed undersecretaries of the U.S. Department of Agriculture (USDA). And, Forest Service chiefs, though selected from the ranks of Forest Service leaders now routinely change with administrations. Significant, often inconsistent, shifts in policy and focus became more common with changes of administrations. Consistent support from Congress, responding to well-organized constituencies, eroded, and effective new constituencies did not arise to replace those that faded away.

Of the factors identified by Clarke and McCool, only scientific expertise remains

largely intact. That begs a question. Can Americans afford, or even long tolerate, their national forests being condemned to a future of muddling through?

Today's Forest Service employees are subject to criticism by some now-retired Forest Service veterans who served during the "good old days." Today's employees are as dedicated, hard-working, well-educated, and technically skilled. However, the circumstances under which they serve are much different. The Forest Service, if it ever was, is no longer a quasi-independent agency, much less an elite agency. Today, there are many more, often conflicting, laws and regulations coupled with a drumbeat of court guidance along with partners from various regulatory agencies that can and do, rather routinely, overrule actions proposed by the Forest Service.

Forest Service budget requests are reviewed and altered by a USDA undersecretary before presentation to the USDA secretary. Then, the budget is sent to the Office of Management and Budget (OMB) which makes changes—some quite dramatic. The president presents a proposed budget to the House budget committees. The revised budget then goes to the Senate budget committees who revise the budget to their satisfaction. Then, the Senate and House committees negotiate a final budget which, when passed (it is subject to revisions on the floor of both houses), goes to the president for acceptance or veto. So, the Forest Service chief recommends budgets and policies while final decisions are made elsewhere—actually, by five entities. That does not count earmarks by various members of Congress.

Homo sapiens, as all species must, exploits its environment to survive and, perhaps, thrive. Long-term survival requires that exploitation by humans be politically and socially acceptable, science-based, economically rational and economically and ecologically sustainable. That requires flexibility and agility to routinely make mid-course corrections as informed by new ecological/economic/political knowledge, social circumstances, and availability of resources.

Depending on "Elsewhere"

Americans are using less and less of our own resources to satisfy increasing

demands of a growing population while importing what we need or want from other nations—known here as "elsewhere." In general, elsewhere is less well-equipped than the United States—scientifically, socially, economically, and technically—to sustainably manage forests and rangelands. Jobs and money are exported to elsewhere as our unemployment rises and balance of trade problems grow worse. Then, elsewhere absorbs the ecological and social consequences—many quite negative—of supplying our needs and desires. At least in the short run, elsewhere gains jobs and profits in the process. Collectively, this is, and should be, questioned as ecologically irrational, morally bankrupt, economically shortsighted, socially irresponsible, and, in the long run, unsustainable.

Who Pays the Tab?

Income from national forest management is needed to help cover costs of multiple-use management. For example, recreationists, including hunters and fishers (consumptive users), should, to their long-term advantage, give up their "free lunch" and pay fees for the old reason that "he who pays the piper calls the tune." Clearly, while all citizens pay for national forest management, benefits accrue disproportionately to those who actually utilize those lands and their products, thereby creating a need for management. Logically, the buck stops, and should rest, disproportionately, with users.

As an example, visitors to national parks pay fees to fund management and rarely suggest that such is inappropriate. Interestingly, national forests provide more person-days of recreation per year than national parks. Should recreational users of national forests pay similar fees? Why not? Perhaps a single permit should be mandatory for anyone utilizing public lands and those funds apportioned to the various agencies managing federal lands.

Future national forest managers will be expected to effectively and efficiently control stand replacement fires, create and maintain habitat for fish and wildlife; manage grazing, including for domestic livestock, assure high quality water, produce wood products—including biofuels—protection and enhancement of watersheds, roads and

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facilities management, and facilitate recreational uses of various (and sometimes conflicting) kinds. Such requires communication, negotiation and ongoing compromises between interest groups. Special interest gladiators who battle for single outputs while thwarting “multiple-use” management are in the process of losing credibility, and that seems likely to continue. Future success in “multiple-use management” will require, from interested citizens, sustained intelligent involvement, conversation, cooperation, collaboration, and the mustering and sustaining of support across political parties.

Piecemeal Solutions to General Problems

In 2009, following a long-term and dramatic decline in the Forest Service’s timber program in Montana—somewhat related to conflicts between interest groups, Senator Jon Tester introduced legislation dictating management of a cluster of national forests in his home state. This legislation emerged from a self-appointed coalition of wilderness advocates, timber interests, labor, recreationists, environmentalists and others. These self-selected few sliced, diced and cut a deal amongst themselves, trading wilderness designations for a prescribed number of acres to be “treated” per year.

The groups interested in timber extraction and stand management to produce more timber, desperate in the face of a collapse in the Forest Service’s timber program, took a one-sided deal, whether they knew it or not. Wilderness advocates got their wilderness to be established in law, while the user groups were dependent on the ability of transient elected officials to secure funding via earmarks or some similar vehicle, year after year and decade after decade, to achieve an outcome dependent on changing ecological, economic and market conditions.

A similar situation relative to the management of a cluster of national forests in Oregon was proposed into law (2010) by Senator Ron Wyden. However naive or mistaken they might be, such efforts send a message. At least two senators deem the current situation so dysfunctional that they believe the future of individual national forests (of which there are 154) is best addressed via legislation tailored by

self-appointed coalitions. Therein resides the potential of managerial chaos and a clear message. It seems likely that “they know not what they do.”

Are our country’s forests really “national forests” or 154 individual “fiefdoms” to be ruled by self-appointed coalitions of interest groups with access to a sympathetic legislator(s) with enough clout to get their legislation through? And then maybe (but not likely) those congressmen can assure the needed financing from the general treasury—year after year after year. Are such fixes, made in isolation, realistic and appropriate means of long-term management of the national Forest Service? And, unless such national forests are excused from compliance with laws, regulations, or court precedents that may be contrary to the political deals, legal challenges are likely with unpredictable outcomes. How, in such cases, will or can Forest Service managers react to rapidly changing conditions—wildfires, climate change, insect and/or disease outbreaks, drought, markets and availability of infrastructure?

Is such an approach, however emotionally understandable and politically appealing, a valid long-term way to manage 154 individual national forests? Clearly, new approaches are overdue, but these are fraught with problems that are likely disastrous to the forests and forest management over the longer term.

Change is required. But, the problem is too complex and controversial to be adequately addressed by administrations or Congresses without initial guidance. At present, national forest management is not likely to loom large on congressional radar as wars, the need for jobs, and dealing with budget deficits take up all the political oxygen in the halls of Congress and the White House.

On the other hand, the ongoing shock of deep economic recession, which began in 2008, when coupled with unsustainable budget deficits and stubbornly high unemployment could constitute a wake-up call—and a golden opportunity—for more coherent management of the national forests. So, the old recurrent question, “for whom and for what” from Marion Clawson’s, *The Federal Lands Revisited* (1975) should the national forests be managed, resurfaces and begs answers suitable to new circumstances.

The first Forest Service chief, Gifford Pinchot (1947), recognized that each generation should define “the greatest good for the greatest number in the long run” for themselves. As ecosystem management becomes, through trial and error, more clearly defined, it will be increasingly obvious that people, their vision, needs, and dreams, must be included in the woof and warp of ecosystem management’s fabric. The “for whom and for what” question(s) must be answered anew as generations come and go and circumstances change.

It should be understood that manipulations of ecosystems for the benefit of *Homo sapiens*, while essential, is fraught with both opportunity and danger, in both the short and long term. At the beginning of the 21st century, there is no alternative to utilizing natural resources, and that will be forever the case. Managers of the Forest Service are charged with providing for human needs while conserving the long-term productivity of the ecosystems involved. Continuous learning from experimentation and experience provides the ability to make informed adaptations in management. It is pointless to yell at the tide of humanity—and its needs—to stop and recede.

The key to “intelligent tinkering” with the natural world is to learn from past experiences, develop new knowledge, and make continuous adjustments. Such has always been so and will ever be so. Live and learn—or die.

A New Public Land Law Review Commission?

Honest, clear, and open communication requires good manners, which seem increasingly scarce in today’s public and political discourse. Successful long-term management of national forests depends on rational compromise(s) routinely revisited and renegotiated. The extant Gordian knot of laws, regulations, and court decisions has rendered coherent, effective, predictable, economically rational national forest management increasingly difficult and irrational; hence, intolerable in the long run. It is likely that the situation, at least initially, is too complex to be dealt with intelligently, or effectively, by a Congress too often seemingly at war with itself or the administration. Some other entity must first plow

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new ground and develop a starting point for sorely needed change.

In 1962, Senator Wayne Aspinall of Colorado requested President John F. Kennedy to appoint a commission to review public land laws and make recommendations. Four years later (1964), the Public Land Law Review Commission (PLLRC) was established, then delivered its report in 1970. It provided a blueprint for development of legislation governing management of public lands. The Federal Land Policy and Management Act (FLPMA) and National Forest Management Act (NFMA) emerged from that effort. Unfortunately, these new laws added to the confusion, and legal entanglements increased.

In 1994, the Seventh American Forest Congress—a national meeting of forestry leaders, conservationists and policymakers convened to develop a shared

vision for the future of America’s forests—noted worsening discord, confusion, and dysfunction in public land management. The group saw a train wreck looming and made recommendations to avoid the consequences. Somehow, either the handoff was fumbled or nobody picked up the baton. Or the combatants—preservationists and extractors of natural resources—thought total victory was in their grasps. Or perhaps the report was a classic case of premature cognition. In 2008, the National Commission on Science and Sustainable Forestry made the same points. But, again, no one in power seized the momentary opportunity, missing a prime opportunity to clear up the continuing confusion and turmoil.

Yet, those efforts could serve to inform another, now more timely and sorely needed, effort to revoke confusing and confounding legislation, and develop streamlined inclusive

law that clarifies the Forest Service’s mission; streamlines decision making; protects national forests, minimizes court involvement; stabilizes flows of raw materials; helps support and stabilize associated rural communities; creates a more stable and predictable atmosphere for multiple-use management; and provides for sources of revenue. The worsening political and fiscal state of the nation demands new vision for management of the public estate—especially our national forests. The task of such a commission would be much simpler if it concentrated on a single agency—the Forest Service.

Of Gordian Knots and Certain Trumpets

Today, the national forests are increasingly viewed by some as a liability—economic, political, social, and ecological—rather than an asset. National forests should be



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increasing in value as populations increase and forest and rangelands in private ownership are increasingly fragmented while “no trespassing” signs blossom like flowers in the spring.

One of two approaches to that problem seems possible, perhaps likely. The first is to continue to pick around the edges with clarifying adjustments in applicable laws. That approach, if past is prologue, will entail long, drawn-out processes of adjusting myriad laws—and making new laws piecemeal. Such is likely to have predictable consequences; after all, we have been down that road before.

Or, it can be realized that picking, prodding, poking at, and adding to the Gordian knot could and should be replaced by a bold stroke that cleaves the knot. Past efforts to address management of public lands provide insights into reform and why previous efforts have failed. There are only two options—learn to love and appreciate the Gordian knot either as having essentially brought active management to an end or to break new ground. The second will, sooner or later, become mandatory as we struggle with reducing public debt (which will, in the end, involve reducing federal expenditures while increasing revenues). A revised approach to national forest management could contribute to the solution, but only if the Gordian knot is severed, the mission clarified, and achievement of management objectives facilitated.

That task is too complex to be effectively addressed by Congress or the administration without some help. Preliminary efforts by a carefully selected group of knowledgeable individuals experienced in the management of natural resources arena, public land law, and administration of land management agencies, should be charged with developing potential solutions with associated benefits and costs. Those assigned should complete the task in a year or less, given the information and experience already at hand.

Recommendations should focus on revisions of present laws (including repeal of those that are not current with extant situations, redundant, or are not in synch with other applicable laws) and new laws that clearly define the mission and the expectations for the Forest Service. The best of the spectrum of old laws should be incorporated

into new laws so as to clarify intent. Ideally, the result would be the certain trumpet to guide the management of the national forests and the Forest Service.

Land-use planning should be a meaningful guide to management action and funding and achieved within a year at much less cost. Before embarking on new efforts in planning, it is critical to determine why such planning has failed so miserably and shortcomings rectified. Flexibility should be a component to allow forest managers the ability to deal with sudden alteration in conditions such as fires, markets, economics, and insect and disease outbreaks.

New sources of revenues should be explored and instituted. As examples, grazing fees should be adjusted at regular intervals to reflect market conditions on similar private lands, and user fees for recreational activities should be explored, such as fees for hunting access. Methods of dispute resolution, short of resorting to the courts, should be developed. Perhaps those that challenge the agency in court should, when they lose, be held liable for damages, which can be significant in terms of legal costs and delays in executing scheduled operations.

The new instructions should prioritize the importance of factors bearing on the Forest Service’s decisions—environmental questions, jobs, welfare of local communities, monetary returns to the treasury and counties, balance of trade, water flows, clearly defined tradeoffs, etc. Besides the author, Forest Service Chief Emeritus R. Max Peterson has also put forth public land management suggestions to correct the shortcomings of previous commissions. Some of those suggestions include:

- 1.) There will be a limited time for execution of six months to one year. The report will be delivered to Congress and the president at the beginning of a new Congress so as to be sheltered from the every second-year fascination with elections.
- 2.) The key members will work full-time on the project.
- 3.) Commission members will be compensated at the rate of the highest level of the senior executive service.
- 4.) Support staff will be made available as requested by the chairperson.

- 5.) The effort will begin with recognition that there are problems that demand adjustments in laws and regulations.
- 6.) Results will take the form of potential alternative courses of action packaged as legislation or amendments to existing law(s), ready for introduction.
- 7.) Clarity of purpose, intent, and required process will be of paramount importance, with limited potential for court interpretation.
8. Efficiency of management (in both time and money) will be of paramount concern.
- 9.) An arbitrations process to handle disputes short of federal court will be determined.
- 10.) The right to appeal proposed agency actions should be preserved. However, processes will be instituted that prevent or discourage game playing to draw out decisions and impose costs that render pending management infeasible. Those who challenge and lose will be subject to economic penalties.
- 11.) It will be recognized that the existing panoply of laws, interpreted variously by the courts over the years, has created an ineffective, burdensome, cumbersome, and inefficient system of accountability that thwarts action by the Forest Service and Congress. Such will be corrected.

Jim Posewitz opined:

“If we are to sustain the legacy that it has been our privilege to enjoy, it is essential that people of principle and idealism respond to the current iteration of the perpetual crisis in public land management. It is time to not only rise in defense for the national forest system, but also in defense of the custodial agency planted in our culture by Theodore Roosevelt and Gifford Pinchot.”

Mitch Friedman (executive director of Conservation Northwest) in 2008, self-identified as a leader of a “green group,” supported Forest Service Chief Dale Bosworth’s proposals for collaborative restoration of national forest lands with forest health and collaboration as guiding principles. What seemed a rational and promising approach failed to yield much success. Funding such activities and keeping involved constituencies engaged in attaining support—the key to success—proved intractable.

Even as the “new” Forest Service evolves, it is enmeshed in debilitating political and economic turmoil. These forests and rangelands are too valuable, for social and economic reasons, to remain in relatively unmanaged, increasingly expensive limbo.

Muddling through is wasteful and should not be tolerated, according to Clark and McCool. As former Congressman Pat Williams of Montana plaintively asked, “Forest Service, where did you come from, with what mission, and where, oh where are you headed?” That cogent, well-informed, plaintive question demands answers.

Char Miller, author of *Gifford Pinchot and the Making of Modern Environmentalism*, believed that a successful future for the national forests lies in: “...the creation of a cooperative conservation strategy in which local governments and organizations,

in combination with federal land managers, develop forest plans. Proponents of collaboration have been inspired by the National Forest Management Act and the Environmental Species Act that require public participation and interagency coordination. They have also been energized by community-based managerial initiatives promoted at the 1997 Seventh American Forest Congress. ...Moreover, although any change in the agency’s land management mission will require internal support from the Forest Service’s leadership and staff, the real locus of any such transformation

lies in Congress and the executive branch...”

Roger A. Sedjo recognized that the Forest Service “...no longer controls national forest policy. Instead, mandatory provisions of the law and regulations...mean that the regional and local landscapes, watersheds, and their resources are now the focus of attention...the Forest Service ... now lacks the institutional capacity and authority to fully develop and implement ecosystem conservation agenda and resource management programs...due to lack of ability ...to interpret and respond effectively to the public’s priorities...”

Enough already, it is way past time to answer those old, up-to-now intractable questions. The future of the national forests and the Forest Service rides on the answers. Obviously, the Forest Service cannot, acting alone, provide such clarity. And, clearly, it is far past time for clarity. *Carpe Diem!* ■

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