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Sacred site to Indians should be respected as such

By Charles Levendosky

In a court of law, nesting falcons have far greater legal leverage than the spiritual needs of the Northern Plains Indian tribes. That sad fact tells us something about skewed priorities in our nation.

The National Park Service can stop recreational climbing at a monument or a park in order to protect nesting falcons, but it cannot do so to accommodate religious ceremonies of American Indians. At least, that is what some climbers argue.

On March 10, the 10th U.S. Circuit Court of Appeals in Denver heard oral arguments concerning climbing on Devils Tower National Monument in northeast Wyoming. The monument has a reputation as one of the best climbing sites in the world.

Devils Tower is considered a sacred site by Northern Plains Indian tribes. The National Park Service, which manages the monument, had put a voluntary climbing ban in place for the month of June to accommodate the spiritual ceremonies of the Lakota, Crow, Arapaho, Cheyenne, Kiowa, Shoshone and other Indian tribes. June and the summer solstice



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Native Americans say visitors to the monument operated by the National Park Service desecrate the site. Native Americans request that the monument be closed to recreational climbing. The Native American request for "religious accommodation" of their "religious freedom" to "conduct religious ceremonies there in private." Devils Tower National Monument in 1999? No, Rainier National Monument in 1979.

Two decades ago, the issue was decided by the 10th U.S. Circuit Court of Appeals. In the Devils Tower case, the court ruled, in 1980, to exclude tourists from the monument for the religious ceremonies of the Native American tribes.

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In 1996, U.S. District Judge William Downes of the federal district of Wyoming had ruled that the ban on climbing during the month of June was constitutional, as long as the ban remained voluntary.

Commercial climbing guide Andy Petefish and the Bear Lodge Multiple Use Association appealed, claiming the voluntary ban wasn't really voluntary because the government could use its enormous influence to coerce climbers into accepting the ban whether they wanted to or not.

The central issue in the appeal, however, is whether the National Park Service can constitutionally accommodate the religious beliefs of American Indians in managing the monument.

The Denver-based Mountain States Legal Foundation, which represents Petefish and the association, argues that such an accommodation violates the First Amendment's establishment clause, that the federal government is showing a preference to a religious belief and thereby violating the Constitution.

POINT

The appeal overlooks the fact that the NPS accommodates Christian religious ceremonies at numerous other national parks. The Park Service asks visitors not to disrupt Catholic services in the San Antonio Missions in Texas. The NPS closes the Ebenezer Baptist Church, a National Historic Site in Georgia, to visitors during special services.

When High Mass is held at the Franciscan church in the Tumacacori National Historic Park in Arizona, the NPS asks visitors to remain quiet and respect the ceremony. Do these accommodations violate the establishment clause? They have not been challenged in court.



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Illustration by Tim Williams/News S

It's reasonable to respect Indian rites, too

POINT from **1B**

A reasonable person must insist that if it is constitutional to accommodate Christian religious ceremonies on federal lands, then it is constitutional to accommodate American Indian spiritual ceremonies on these same lands. No one is forced to participate in another's religion.

No one is even asked to participate — only to respect another's religion. The land is spacious enough to accommodate all religions.

Less than a week after the 10th Circuit Court heard the appeal, the National Park Service closed 20 climbing routes on Devils Tower to protect nesting prairie falcons. The ban on those routes is mandatory.

The presence of climbers nearby could cause the falcons to abandon their eggs or their chicks. No one has challenged the right of the NPS to protect falcons. Nor should anyone.

The spiritual needs the same protection.

Those who have lived in the West, on the high plains, understand the spiritual nature of the land and its wildlife. One has a sense of awe when watching hawks and eagles in their high gyrations, when seeing a red fox across a river, when witnessing a flight of white pelicans circle in an upward spiral until they disappear into the sky, or a great blue heron lift off a dead branch. One learns a sense of place within nature, within the landscape. The landscape feeds the deepest part of ourselves.

And there are places on the land that call to each of us, that in some way announce their sacredness to us.

With the same reverence that we protect our wildlife, we must protect the spiritual wherever it is found. If we can ban climbing to ensure the nesting of falcons, we should be able to ban climbing to ensure that religious beliefs and ceremonies have a rightful place in the world.

Charles Levendosky is editorial page editor of the Casper (Wyo.) Star-Tribune.

Religious use loses, climbing wins at Devils Tower

Ceremonies won't stop commercial climbing

By David Melner
Indian Country Today

CHEYENNE, Wyo. — A federal court said no to mandatory climbing restrictions at Devils Tower.

A ban on commercial climbing at Devils Tower during the month of June, which was designed to protect American Indian religious ceremonies, was rejected June 6, in federal District Court in Casper, Wyo.

Judge William F. Downs put a stop to a proposed ban on commercial climbing, saying that such a ban

would violate the First Amendment's separation of church and state. He upheld the refusal of a Final Climbing Management Plan. A voluntary June climbing ban is still in place.

"We are disappointed," said Deborah Liggett, superintendent of Devils Tower National Monument.

"But we argue that the case is three-fourths full. All aspects of the climbing management plan were upheld except for climbing for profit. We were ordered to issue commercial licenses."

The Multiple Use Association,

through the Mountain States Legal Foundation of Denver, Colo., filed a complaint asking for injunctive relief to stop the implementation of the park's climbing plan; to allow for commercial licenses and no restrictions on climbing during the month of June; and to prevent the park service from using religious reasons for banning climbing on the tower.

June is the month when many tribes in the region use Devils Tower, known to tribal members as Bear Lodge or Gray Horn Butte. This year on the summer solstice on June 21, a world gathering for peace and prayer will be held at the tower.

"We are gratified that the federal District Court has agreed with us that the closure of Devils Tower for religious purposes violates the First Amendment of the Constitution,"



For more on religious use of Devil's Tower see B1.

said William Perry Pendley, president and chief legal officer of the Mountain States Legal Foundation, who filed the suit on behalf of its clients, Bear Lodge Multiple Use Association.

"We support and defend the right of Native Americans to engage in the free exercise of their faith whenever and wherever they wish. However, when the federal government engages in action that appears to promote a particular faith, including that of Native Americans, the government has run afoul of the Establishment Clause," Mr. Pendley said.

A Final Climbing Management Plan for the tower was developed by a work group that supported the voluntary ban on climbing during the month of June. Commercial climbing licenses would have excluded the month of June to respect the reli-

gious practices of American Indians.

"I have talked with Interior and Justice Department officials, and they are reviewing options," Ms. Liggett said.

The officials in the Interior and Justice departments will make the decision to either accept the court's ruling or appeal, according to Carol Statkus, U.S. attorney who represents the National Park Service.

Ms. Liggett said that through June 9, climbing statistics were identical to those of 1995. The difference, she said, is that 70 percent of the climbers are local with very few out-of-state and no international climbers.

"The weather has been better, making the temptation better, but the majority of climbers continue to support the voluntary closure. Eighty

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Devils Tower:

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percent of the climbing community supports the ban," Ms. Liggett said. Judge Downs, in his ruling, said there was no objective reason for denying a commercial climbing guide license during the month of June.

Therefore he prevented the National Park Service from restricting commercial use licenses for June activities "solely out of respect for American Indian religious/cultural values."

The Final Climbing Management Plan was developed in an attempt to establish criteria for preserving the tower and to serve the religious beliefs of the Lakota, Crow, Arapaho, Northern Cheyenne, Kiowa and Shoshone tribes.

The working group that developed the FCMP was made up of climbers, tribal leaders, environmentalists and the park service.