

ACTION ELEMENTS OF THE FINAL CLIMBING MANAGEMENT PLAN

The following actions are the chosen elements of the FCMP. These action elements were derived from Alternative D, the Preferred Alternative from the DCMP, though some modifications have been made as a result of public comments and other factors which the NPS has taken into consideration.

A VOLUNTARY CLOSURE TO CLIMBING IN JUNE

A voluntary closure to climbing at Devils Tower for the entire month of June will be encouraged beginning in 1995. The NPS will not enforce the closure, but will rely on (a) climbers regulating themselves and (b) a new educational program to motivate climbers and other park visitors to comply. The closure zone will include all areas inside the loop of the Tower Trail. Efforts will be made to encourage climbers, hiker/climbers, and anyone else from approaching the tower or wandering off the Tower Trail each year from June 1 through June 30.

The value of a voluntary closure is that individuals can make a personal choice about climbing. Climbers can regulate themselves by deciding if they want to refrain from June climbing out of respect for American Indian cultural values.

The voluntary closure gives the NPS time to conduct an intense cross-cultural education program as part of the broader goals of the FCMP. We are hopeful that a successful cross-cultural education program will lead to better understanding about climbing and the sacred site issue and the values of American Indians, climbers, and the general public. A significant aspect of a successful educational program is developing a better understanding, among all visitors, of the tower as a sacred site and as a recreational resource.

Because the NPS plans to fully comply with the June closure, NPS staff will not climb on the tower in June except to enforce laws and regulations or to perform emergency operations. In 1994, Devils Tower had seven climbing guide services under commercial use licenses in the monument. Commercial use licenses for climbing guides have been issued for June 1995. The NPS plans to fully comply with the June closure. For this reason, commercial use licenses for June climbing guide activities will not be issued for June 1996 and beyond.

A set of quantitative benchmarks for determining the effectiveness of a voluntary closure will be developed by the NPS. The NPS will determine the exact criteria for defining success for the voluntary June closure after observing conditions during June 1995. The NPS will seek input in defining success from members of the climbing management plan work group and other monument user groups.

The current climbing registration system will be used to measure compliance with the closure. Generally, closure success is expected to be determined by evaluating climber registration data and conferring with the work group members and other monument user groups including climbers and American Indians. The following factors will be considered in evaluating success.

- Some elements of a successful voluntary closure will include:
 - a) a continuous, significant reduction in the number of climbers on Devils Tower each June in comparison to the number of climbers from the previous June
 - b) an increase in awareness among all monument visitors of the cultural significance of Devils Tower to American Indians and the conflicting values between recreational climbing and the sacred site

The voluntary closure will be fully successful when every climber personally chooses not to climb at Devils Tower during June out of respect for American Indian cultural values. This is the ultimate goal of the voluntary June closure.

- Some elements of an unsuccessful voluntary closure will include:
 - a) an increase, no change, or insignificant decrease in the number of climbers on Devils Tower each June in comparison to the number of climbers from the previous June
 - b) an increase in the number of unregistered climbers at Devils Tower
 - c) an increase in conflicts between user groups
 - d) disruptions of park activities
- A determination of success by the NPS for the voluntary June closure is not expected for at least three years or as long as five years. Time is needed to insure the concurrent educational program has a chance to perform its mission. If the voluntary closure is determined to be unsuccessful, several actions by the NPS could take place including, but not limited to the following:
 - a) revise the climbing management plan
 - b) reconvene a climbing management plan work group
 - c) institute additional measures to further encourage compliance
 - d) change the duration and nature of the voluntary closure
 - e) convert the June closure to mandatory
 - f) write a new definition of success for the voluntary closure

The language regarding the voluntary closure has changed between the DCMP and the FCMP. The DCMP stated that the June closure "would become mandatory" if

unsuccessful. This has been changed here in the FCMP to read "could" become mandatory. This will provide the NPS more management flexibility in the future.

It is within the existing authority of the monument superintendent to close areas to certain activities to protect natural and cultural resources. The NPS believes that self-regulation by climbers, augmented by the cross-cultural education program, is a preferable course of action. Neither the NPS or the Department of the Interior's Office of the Solicitor believes the FCMP will violate the constitutional rights of any citizen.

The closures described in the FCMP are for managing an activity, climbing, not general access to national park land. The NPS maintains that future management actions could take place including a mandatory closure. The mandatory closure language is present to show that we are seriously committed to protecting a cultural resource and to acknowledge American Indian concerns. The NPS has the authority to implement a mandatory June closure, but hopes this will not be necessary. The climbing community has repeatedly asked that they be permitted to self-regulate. The FCMP gives climbers the opportunity to do so.

The reasons for the June closure are not tied directly to religious ceremonies at Devils Tower, however, the summer solstice, which occurs in June, is a very culturally significant time to American Indians. The 30-day June period was selected as a compromise in the modern world. A predictable voluntary closure fixed on a modern calendar month has a better chance to be communicated and understood and to be successful than dates based on a shifting lunar calendar.

The reason why the NPS has decided to advocate a voluntary June closure to climbing is to promote understanding and encourage respect for the culture of the American Indian tribes who are closely affiliated with Devils Tower as a sacred site. Until very recently, the importance of American Indian cultural values at Devils Tower has been neglected by the NPS. Recreational climbing, which has been highlighted here in the past, derogates these cultural values to many. The closure period is a time when the monument's interpretive program emphasizes American Indian culture. The monument will present a balanced interpretive program on a year around basis. In so doing, the NPS hopes to help preserve a part of America's cultural heritage and promote amicable relations between American Indian societies and the prevalent western society in America.

NO NEW BOLTS OR FIXED PITONS

No new bolts will be permitted on Devils Tower and its adjoining rock formations, but the replacement of existing bolts will be allowed. It is the intent of the NPS to not allow an increase in the number of bolts on the tower beyond the 1994 level. The NPS will allow for the replacement of all existing bolts including rappel

Public Law 95-341
95th Congress

Joint Resolution

American Indian Religious Freedom.

Aug. 11, 1978
[S.J. Res. 102]

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

American
Indian Religious
Freedom.
42 USC 1996.

42 USC 1996
note.

Presidential
report to
Congress.

SEC. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

Approved August 11, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1308 accompanying H.J. Res. 738 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-709 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 3, considered and passed Senate.

July 18, H.J. Res. 738 considered and passed House; proceedings vacated and S.J. Res. 102, amended, passed in lieu.

July 27, Senate concurred in House amendment.

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

A handwritten signature in black ink, reading "William J. Clinton". The signature is written in a cursive, flowing style with a large, prominent "W" and "C".

THE WHITE HOUSE,
May 24, 1996.

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