

**This Land is Our Land: The Multiple Claims of Devils
Tower**

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An inspiring dome-shaped rock, Devils Tower rises 1267 feet about the Belle Fourche River in Northeastern Wyoming. Its unique silhouette and football field sized base are the defining features of the surrounding 1345 acre park.¹ The imposing and enticing rock along with the endless forests, grasses, sagebrush, and woodlands make Devils Tower and its National Park the perfect attraction for many people, for many different purposes.

When Deborah Liggett transferred from the Everglades National Park to become superintendent of Devils Tower National Monument in 1994,² conversations regarding cultural and religious claims on the monolithic structure were already brewing. Since its cameo in Stephen Spielberg's *Close Encounters of the Third Kind*, the number of visitors to the tower skyrocketed from 300 in 1973 to an average of 16,000 a year in 1994.³ A seventeen-year veteran of the National Park Service (NPS), Liggett had a sizable amount of park management experience under her belt. She considered herself to be very capable of holding different viewpoints.⁴

Regardless of her experience or worldview, Liggett was inheriting a difficult situation: mediating opposing uses of Devils Tower from Native American Indians and recreational climbers. Park officials had been aware of the conflict as far back as the early 1980s.⁵ During the two years leading up to Liggett's transfer, conversations between NPS officials, climbers, and Native American leaders were growing. Now, as more and more visitors enjoyed the monument, the sanctity of the tower for many Native American peoples became compromised. The burden was on Liggett to find a solution.

Bear's Lodge - Devils Tower

In 1906, President Theodore Roosevelt established Devils Tower as the country's first national monument. At the time, it was simply an incredible natural phenomenon. Few tourists visited the area or enjoyed its potential for outdoor recreation. Many Native American Indians, however, have called this site Bear's Lodge and have recognized it and visited it as a sacred site for centuries. Bear's Lodge is located within the Black Hills, an area of the Great Plains that resonates deeply with certain Native American tribes

¹ Statistics regarding Devils Tower from the National Park Service website. www.nps.gov/deto/index.htm. Last updated Sept 2009. Visited Apr 2011.

² "Standing Witness: Devils Tower National Monument: A History. Chapter X: 1991-2000." National Park Service website. Last updated Jan 2009. http://www.nps.gov/history/history/online_books/deto/history/chap10.htm. Accessed Apr 2011.

³ National Park Service Statistics, <http://www.nps.gov/deto/parkmgmt/statistics.htm>.

⁴ Deborah Liggett, "Mutual Respect Costs Us Little and Gains Us Much." *High County News*. Issue 109. May 26, 1997. <http://www.hcn.org/issues/109/3426>.

⁵ Dustin, Daniel et. al. "Cross-Cultural Claims on Devils Tower National Monument." *Leisure Sciences*. Vol. 24 (2002), p. 79-88.

because of its role in many cultural folk tales, religious origin stories, ceremonies, and the general history of their people.

Over twenty tribes have cultural or religious affiliation with Devils Tower, including the Lakota, Arapaho, Cheyenne, Crow, and Kiowa, all of which maintain a sacred origin legend focusing on Bear's Lodge.⁶ While each of these legends is unique, most include a similar account of a bear chasing a group of young girls until the girls were safely atop the tower. The sacredness of the tower does not end with religious folk-tales, however. Many Native American tribes actively participate in the holiness of Bear's Lodge today.

Personal and group rituals, ceremonial worship of the Great Spirit, and personal prayer are only a few of the occasions in which people use Devils Tower as a religious site. The Cheyenne hold ceremonies there to worship the Great Spirit; the Crow occasionally hold spiritual fasts and build stone dream houses at the base of the Tower to use during vision quests, a spiritual rite of passage in many different tribes. These are intense forms of prayer that may involve solitude, fasting, and use of sweat lodges or dream houses. These personal and spiritual journeys are frequently said to be an integral part of Indian identity. The Lakota tribe traditionally holds vision quests at Bear's Lodge, along with healing ceremonies and sweat-lodge ceremonies. They leave small offerings and prayer bundles to the "Great Mystery" during worship, both during ceremonies and as personal prayer. The Sun Dance ceremony, cited as the most important ceremony of the Lakota, is conducted during June. Many Native American Indians make the annual pilgrimage on the summer solstice to Devils Tower in order to celebrate this event.

The tower itself is necessary for the ceremonies and prayers conducted around Bear's Lodge. "Our traditional cultural, and spiritual use of Mato Tipila [Bear's Lodge] is vital to the health of our nation and to our self-determination as a Tribe. Those who use the Butte to pray become stronger. They gain sacred knowledge from the spirits that helps us preserve our Lakota culture and way of life. Without their knowledge and leadership we cannot continue to determine our own destiny," states Romanus Bear Stops of the Lakota.⁷ The tower itself is holy, not just the rituals surrounding it. Johnson Holy Rock of the Oglala Sioux, claims that, "It's the center of life. All around it, those areas are considered sacred. They were kept in light of reverence."⁸

⁶ My information about the use of Devils Tower in traditional Native American groups is cited from George Miguel, "How is Devils Tower a Sacred Site to American Indians?" National Park Service website. August 1994. www.nps.gov/deto/historyculture/sacredsites.htm. Accessed April 2011. See also J.R. Hanson and S. Chirinos, "Ethnographic Overview and Assessment of Devils Tower National Monument." University of Texas, Arlington, Texas, 1991.

⁷ "Court Rules for Indian Religious Freedom." *Native American Rights Fund, Legal Review*. Vol 23, Number 1 (1998).

⁸ Christopher McLeod, director. *In Light of Reverence*, Sacred Land Films Project, 2001. Film.

"Climbing Is My Religion"

While Bear's Lodge plays an integral part in Native American identity and religion, Devil's Tower is home to some of the best rock climbing in America.⁹ For over 100 years, hikers have tested their skills on Devil's Tower's with its challenging vertical grooves and its steep incline. Many climbers enjoy its perfect conditions for "crack-climbing," a specialized form of climbing involving the Tower's rivets. A typical climb usually takes four to six hours, but many climbers do not choose to summit the peak. There are over two hundred potential climbing routes on Devils Tower, and their varying difficulty appeals to climbers of all skill levels. Every year, 400,000 visitors come to Devils Tower to climb, hike, and enjoy its beauty as our first National Monument.

Many climbers take their hikes seriously. Andy Petefish, owner of Tour Guides and avid defender of climbers' rights, asserts that for him, "climbing lifts spirits more than any other activity I've participated in. When I climb the tower and I get up on there and I'm actually feeling it and touching it, it's very spiritual."¹⁰ Hikers have claimed that climbing the tower is itself a religious experience. However, a resident of the surrounding area, Winnie Bush, makes a disclaimer: "But it's not like a church. It has no similarities at all."¹¹

An "Escalating" Conflict

As an increasing number of Native Americans made the journey to Devils Tower to worship during the month of June, the two groups came increasingly into contact and conflict. "We can hear them [the climbers] cussing and shouting. Sound really carries from that high," says a Lakota woman who has led a religious ceremony at the tower for the past 10 years. "The tower looks trashy with abandoned pitons and ropes, some fluorescent. It's not treated respectfully. We have no contact with them, but the attitude overflows."¹²

Johnson Holy Rock compares climbing on the tower to climbing on the National Cathedral,¹³ while Arvol Looking Horse compares hammering objects into the butte like "pounding stakes into our bodies."¹⁴ The steel pitons used to climb were hurting the mountain, litter was increasing in the park, prayer bundles were disregarded, and the

⁹ All information about climbing and climbing techniques is from: "How Do They Get Up There?" National Park Service website. <http://www.nps.gov/deto/historyculture/how-do-they-get-up-there.htm>, Accessed April 2011.

¹⁰ McLeod, *In Light of Reverence*.

¹¹ McLeod, *In Light of Reverence*.

¹² Candy Hamilton, "One Man's Rock is Another Man's Holy Site." *Christian Science Monitor*. Vol. 88 Issue 138 (1996).

¹³ McLeod, *In Light of Reverence*.

¹⁴ "Court Rules for Indian Religious Freedom."

perceived disrespect to Devils Tower was impeding the worship of the sacred site for many Native Americans.

Climbers, too, felt their claim to the tower as a National Monument and as public land to enjoy was being compromised. Prayer bundles left around the trails combined with a general sense that they were intruding cultivated the feeling among some climbers that Indians have special privileges as the monument's First People. Winnie Bush explains that the prayer bundles offend her, and adds, "we don't go out and hang our dirty laundry at Devils Tower. Our culture is as important as the Indian culture. And we people who have lived here all our lives we have our own cultures that is being invaded by the Indians coming here all the time and taking over."¹⁵

A Historical Precedent

This sort of conflict is nothing new to practicing members of indigenous religions. In trying to find a solution, Liggett needed to consider the recent legislation that was specifically targeted at protecting Native American culture. In the past half century, an increased push for tolerance of Indian cultural and religious beliefs resulted in the 1978 American Indian Religious Freedom Act,¹⁶ the 1990 Native American Graves and Repatriation Act,¹⁷ and President Clinton's 1996 Executive Order that requires federal agencies to "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."¹⁸

However, in the 1988 case of *Lyng v Northwest Indian Cemetery Protective Association*, the Supreme Court rejected a tribe's request for a court order to stop the U.S. Forest Service from building a road through sacred lands in a national forest.¹⁹ The case concludes that a federal court may not compel the government to protect sacred sites when they are on public land. These contradictory legal precedents confuse a clear decision to be made in the case of Devils Tower. In such a murky situation, Liggett's solution could only come after engagement and discourse with the people this decision would affect most.

A Group Council

¹⁵ McLeod, *In Light of Reverence*.

¹⁶ American Indian Religious Freedom Act, PL 95-341, 92 Stat (1978). This can be accessed at the National Park Service website. www.nps.gov/history/local-law/fhpl_indianrelfreact.pdf.

¹⁷ Native American Graves Repatriation Act, PL 101-601, 104 Stat (1990).

¹⁸ Executive Order No 13007: Indian Sacred Sites. May 24, 1996. National Historic Preservation Program. <http://www.achp.gov/EO13007.html>.

¹⁹ *Lyng v. Northwest Indian Cemetery Protective Association* (1988).

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0485_0439_ZS.html. Accessed April 2011.

Two years before Liggett arrived as superintendent, a working group had convened as a response to the growing unrest of the different groups who use Devils Tower. It was comprised of tribal leaders, nearby community leaders, climbing groups, environmentalists, local business people, and NPS officials.²⁰ Now, Liggett set out to find the root of the issue. She claims the group worked extremely hard to come to a resolution, and tried very hard to understand the conflicting viewpoints and perspectives.²¹ Things looked optimistic, and consensus seemed like a very real possibility as the group discussed solutions.

It was established that the heart of the issue was climbing during the month of June. The Sun Dance, a religious ceremony lasting four to eight days celebrating spiritual and natural renewal, is the most important ceremony of the Lakota people and other tribes.²² Additionally, the summer solstice coincides with a very holy time for many Native American groups.²³ Deborah Liggett and other NPS officials were ready to enforce Native American religious observance with an outright climbing ban during the month of June. Liggett recalls the respect given to many other National Monuments that goes unquestioned: "I was struck when the president spoke from Arlington National Cemetery last Memorial Day. He spoke of hallowed and sacred ground. We prayed together as a nation and in the amphitheater there at Arlington. No one flew kites or roller-bladed during the ceremony."²⁴

Compromising for a Solution

Although the NPS was willing to simply ban climbing during the month of June to accommodate Native American beliefs, both the Access Fund, the primary interest group on behalf of climbers, along with tribal elders disagreed with this solution.²⁵ The elders opted for a voluntary ban, partly out of respect for the climbing community and partly because they preferred a solution based on personal respect and tolerance of their traditions, rather than an outright ban. Similarly, the Access Fund upheld the need for general cooperation and education over a coercive policy. Self-regulation was the consensus.

The group considered six options, ranging from totally unrestricted access to the tower to a permanent and yearlong climbing ban.²⁶ In March 1995, a Final Climbing Management

²⁰ Dustin, "Cross-Cultural Claims on Devils Tower National Monument."

²¹ Liggett, "Mutual Respect Costs Us Little and Gains Us Much." *High County News*. Issue 109. May 26, 1997. <http://www.hcn.org/issues/109/3426>.

²² Tollefson, "Wyoming Climbers Win Equal Footing." *High County News*. Issue 62. June 24th, 1996.

²³ Miguel, "How is Devils Tower a Sacred Site to American Indians?"

²⁴ Liggett, "Mutual Respect Costs us Little and Gains Us Much."

²⁵ Miguel, "How is Devils Tower a Sacred Site to American Indians?"

²⁶ *Ibid.*

Plan²⁷ (FCMP) was put into place that chose the option most suited to the responses of both climbers and Native Americans. This plan ended issuing commercial climbing licenses in June, and established a voluntary ban on recreational climbing during that month. If climbers chose to scale the tower regardless, no recourse would be held against them. However, the plan stipulated that the voluntary ban would be reevaluated in 3-5 years based on its effectiveness. No new bolts or pitons would be allowed under the FCMP, to prevent physical damage to the tower. Additionally, efforts to educate visitors on Native American cultural and religious traditions would be put into place. Liggett characterized the plan as one based on mutual respect of a cultural resource that is holy to Native Americans.²⁸

Liggett was optimistic about the plan: "It has the support of the climbing community. I expect most people to continue to respect [the June voluntary ban]."²⁹ National Monument staff soon began to include the cultural significance of the tower in their presentations, and for the first time an American Indian was employed within the NPS staff to tell the story of the tower to its visitors.³⁰ Liggett felt this plan was in accordance with the responsibility of the NPS. "What we're accommodating here at Devils Tower is Indian peoples' rights to their culture. They're here for the long haul and they know it. These sacred sites are central to the perpetuation of their culture and one of our jobs here at Devils Tower is to protect that."³¹

An Unexpected Suit

For Andy Petefish, guiding climbers up the steep routes of Devils Tower is his livelihood. As the owner of Tower Guides, his main source of income is from the summer months when tourism and climbing is at its peak-- in June 1995 alone, his profits were \$2,355.³² He opposes the Final Climbing Management Plan, however, not because of money. "It's about freedom that is guaranteed in the Bill of Rights. What is at stake is not simply the ability of 'a few rock climbers' to climb on federal land set aside for, among other purposes, climbing, but the ability of the Clinton Administration to deny public access to federal land because the land is 'sacred.'"³³

²⁷ "Devils Tower National Monument, Final Climbing Management Plan." National Park Service. www.nps.gov. Visited Apr 2011. See appendix for full text.

²⁸ Liggett, "Mutual Respect Costs Us Little and Gains Us Much."

²⁹ Tollefson, "Wyoming Climbers Win Equal Footing."

³⁰ "Standing Witness: Devils Tower National Monument: A History. Chapter X: 1991-2000." National Park Service website. Last updated Jan 2009. http://www.nps.gov/history/history/online_books/deto/history/chap10.htm. Accessed Apr 2011.

³¹ McLeod, *In Light of Reverence*.

³²⁻³⁴ Mindy Sink, "Religion and Recreation Clash at Park." *The New York Times*. 1 July 1996, late ed.

³⁵ *Bear Lodge Multiple Use Association v. Babbitt et al*, 2 F. 2d 1448 (US Dist. 1998).

Petefish claims that the equivalent would not be to allow climbing on National Monuments, but to demand excluding visitors and even barring their approach to any sort of religious structure within park units.³⁴

In the spring of 1996, the Federal District Court in Cheyenne, Wyoming granted an injunction against the commercial ban on climbing during the month of June.³⁵ The suit was filed by Mountain States Legal Foundation, a property-rights group, on behalf of a group of climbers and commercial guides, including Petefish. It alleged that the FCMP violated the Establishment Clause by promoting religion at the expense of climbers' freedom. The plaintiffs argued that the educational program and newly erected signs clearly promoted indigenous religion, while discouraging others from enjoying the monument while a specific group continued to use it for religious purposes promoted a particular religion. The defendants in the case were Secretary of the Interior Bruce Babbitt, various NPS Directors, and Deborah Liggett.

Judge William Downes ultimately asserted that the ban on issuing commercial licenses during the month of June was an inappropriate entanglement with religion, by becoming a *de facto* mandatory ban on climbing through the use of commercial guides. In his ruling, he states:

"While the government has the right and even obligation to accommodate American Indian religious practices at Devils Tower, it cannot do so by forcing guides to refrain from leading ascents of the tower in June solely because some Indians find the activity offensive. ... Such regulations would require climbers to conform their conduct in furtherance of those American Indians' religious necessities. This amounts to impermissible government entanglement with religion."³⁶

Compliance and Disappointment

The other aspects of the FCMP were upheld by the Judge as constitutional, including the voluntary climbing ban. While disappointed that climbing for profit was approved, Liggett was glad the judge supported the rest of the plan.³⁷ She supports the original plan, stating "the basic issue here isn't legal. The basic issue is respect for other human beings. That somehow, we must co-inhabit this planet. And we do that by making accommodations for each other."³⁸ Park officials deliberated whether or not to appeal the decision, as an outcry from Native American communities and climbers alike began to be heard.

³⁶ *Ibid.*

³⁷ Tollefson, "Wyoming Climbers Win Equal Footing."

³⁸ McLeod, *In Light of Reverence*.

Carol Status, who represented the NPS in the suit, believes the plan does not hinder climbers in any way. "Individuals can climb 12 months a year. Commercial climbers can climb 11 months a year. This plan does not deny access."³⁹ Greg Bourland, president of the Cheyenne River Sioux tribe at the time, argues that the judge's orders go directly against President Clinton's recent legislation that specifically protects over 50 Indian sacred sites on federal lands.⁴⁰ A letter to the editor in the *High County Times* by Donald Vickery, a self-described mountaineer, vehemently opposes the court's decision to allow commercial climbing during the month of June. Appalled at the "exploitation and profiteering" at Devils Tower, he asks of Judge Downes: "would he also permit climbers to scale the interior of St. Patrick's Cathedral during High Mass?" And ends by encouraging Petefish to observe the ban, claiming that any climber with "a shred of respect for the mountain and the sport would do the same."⁴¹

Although park officials briefly considered appealing Downes' decision, by November 1996 the ban on commercial licenses was officially removed from the Climbing Management Plan.⁴²

What's In a Name?

Meanwhile, Liggett found herself in the midst of a different debate surrounding the same issues-- the renaming of the very monolithic structure that was causing so much controversy. NPS officials were toying with the idea to rename the rock as Bear's Lodge, its name among Native American groups, in order to acknowledge its origins as an indigenous sacred site. The NPS suggested retaining the name Devils Tower for all purposes except the geographic name on maps. Liggett cited a precedent for balancing two names with Denali National Park in Alaska, where Mt. McKinley (traditionally "Denali," the Great White One) is referred to by both its names.⁴³

Liggett's push to acknowledge Native Americans further alienated some climbers, while others respected and supported the proposal. Jesse Driskill, a resident in the nearby town, claims that park officials like Liggett "don't treat us with the same courtesy and forthrightness that they treat the Indian tribes."⁴⁴ At a preliminary meeting, says Liggett, "I was labeled everything from a left-wing kook to a Nazi."⁴⁵ However, after *The New York Times* published an article about the potential name-change, letters to the editor

³⁹ Hamilton, "One Man's Rock is Another Man's Holy Site."

⁴⁰ "Court Rules for Indian Religious Freedom." Native American Rights Fund, Legal Review. Vol 23, Number 1. (1998).

⁴¹ Donald Vickery, letter. "A Mountain of Money and Sacred Spirit." *High County Times*. 5 July 1996, late ed.

⁴² Daniel, "Cross-Cultural Claims on Devils Tower National Monument."

⁴³⁻⁴⁵ Jared Farmer, "Devils Tower May get a Second Name." *High County News*. Issue 89. Sept 02, 1996.

⁴⁶ Michael Coffino, letter. "Indians Have a Right to Their Sacred Sites." *New York Times*. 11 July 1997, late ed.

supporting the idea came in response. One sarcastically mentions that if the tower cannot be renamed with respect to Native American culture, it ought to be renamed "Devil's Tower, granting the devil outright possession of the monument."⁴⁶

The Threat of the Voluntary Ban

Even with the continuation of commercial licenses in June, Liggett felt confident that the voluntary ban would be effective-- and it was. According to the NPS website, June of 1994 saw 1,293 climbers. The next year, June climbers dropped to only 193.⁴⁷ Liggett claims that in the first year of the plan's existence, it registered an 85 percent approval rating with both climbers and the visiting public.⁴⁸ The FCMP was running smoothly, and seemingly all conflicts were resolved. But to the group that had sued the NPS, the court's decision to revoke just the commercial climbing ban was not enough.

"Only in the NPS's Orwellian world could its ban on recreational climbing be called 'voluntary,' since if people climb despite the ban, the NPS will make the closure mandatory," claims Perry Pendley, a member of the Mountain States Legal Foundation that sued the NPS.⁴⁹ Perry worried that making a voluntary ban is a slippery slope, not only with the perceived threat of the ban becoming mandatory, but with religious accommodation going too far. "We see the potential that a mining activity, gas activity, timber harvest, ranching, water development, [activities] that are very important economically, could also be stopped as a result of, 'well, someone thinks its sacred and that's enough for us.'"⁵⁰

Some climbers felt skeptical about the motives behind the voluntary ban. Petefish asserts that Native American religious practitioners are essentially telling him and his customers "to hit the road and get the hell outta Devils Tower and never come back. ... They're not advocating strictly the month of June, if you really talk to them, they don't want climbers here period."⁵¹ Frank Sanders, another member of the community opposed to the voluntary ban, thinks that "this tactic of claiming religious areas is happening all over. ... It's used to stop all kinds of activity. I think that it's just being used as a land grab instead of for actual Indian religious purposes."⁵²

The Appeals

⁴⁷ Statistics regarding Devils Tower from the National Park Service website. www.nps.gov/deto/index.htm. Last updated Sept 2009. Visited Apr 2011.

⁴⁸ Liggett, "Mutual Respect Costs Us Little and Gains Us Much."

⁴⁹ Pendley, William Perry. "National Park Service Shuts Down Devils Tower." *Human Events*. Vol. 53, Issue 23 (1997).

⁵⁰⁻⁵² McLeod, *In Light of Reverence*.

Not satisfied, the plaintiffs appealed Judge Downes' ruling to allow a voluntary ban. In April 1998, they took their argument that the voluntary ban violated the Establishment Clause to the US District Court of Wyoming in 1998. The judge ruled similarly to Downes, stating that the ban was "in the nature of accommodation, not promotion, and consequently has a legitimate secular purpose."⁵³

The plaintiffs were determined. They appealed once again a year later to the US 10th Circuit Court of Appeals in Denver.⁵⁴ This time, the judges cited the plaintiffs' lack of standing to sue. Because they continued to climb during June, the group could not show they had been injured by the FCMP. The "constitutional error" of the NPS did not have negative consequences for them, and thus the judges dismissed their case. Finally, the group came to the Supreme Court, saying that there was the overlooked injury of business owners who lose customers as a result of the ban. The Supreme Court refused to look at the case, and simply reiterated the previous rulings-- it was not a conflict of church and state, but reasonable accommodation.

Meanwhile, Liggett stood firmly behind the plan and reasoned that it was a small minority of climbers who opposed the ban. In an Op-Ed article in the *High County Times*, she defended her position. "I argue that a gesture of respect costs us little and benefits us as a people - first people, most recent people and Americans yet to come. I argue for reasonable accommodation. I argue for mutual respect."⁵⁵

The Support of the Native Community

As the case was making its way through the appeals process, letters to the editor came in support of Liggett's decision. Steven Gunn, a member of the Indian Law Resource Center, wrote to *The New York Times* "this suit reflects intolerance for Indian religions. ... These American traditions [of freedom of religion] must be upheld for our country's first Americans, too."⁵⁶ Vine Deloria, a worshipper at Devils Tower, explained, "It's not that Indians should have exclusive rights there. It's that that location is sacred enough that it should have time of its own."⁵⁷

A strong defense of the plan came from the Native American Rights Fund, which filed an *amicus curiae* brief on behalf of the National Congress of American Indians in the case of Bear Lodge Multiple Use Association *et al* v. Babbitt.⁵⁸ It argued that in light of the recent legislation regarding Native American lands, the United States has a unique obligation to Indians. There is an altered Equal Protection legal test that, once applied,

⁵³ Bear Lodge Multiple Use Ass'n v. Babbitt, 2 F. 2d 1448 (US Dist, 1998).

⁵⁴ Dustin, "Cross-Cultural Claims on Devils Tower National Monument."

⁵⁵ Liggett, "Mutual Respect Costs Us Little and Gains Us Much."

⁵⁶ Steven Gunn, letter. "Indians Have a Right to Their Sacred Sites." *New York Times*. 11 July 1997, late ed.

⁵⁷ McLeod, *In Light of Reverence*.

⁵⁸ "Court Rules for Indian Religious Freedom."

shows the lawfulness of the FCMP. Their position states, "it is appropriate that the federal Indian trust relationship necessarily includes cultural and religious protection, because these dimensions of Indian life play a critical role in the overall sovereignty of Indian nations. As found by the courts and Congress, cultural vitality profoundly influences tribal governance and is essential to the internal functioning of Indian tribes."

The brief also underscores the tension surrounding the perception of Native American beliefs as not "real" religion. It claims that the management of other religious sites on public ground owned and operated by the government sees few problems because of Judeo-Christian normativity.

A Lasting Voluntarism

As of the late 1990s, Tower Guides was the only company of eight commercial guides that continually chose not to honor the ban.⁵⁹ Its website does not mention the voluntary closure nor the controversy surrounding it. The NPS website is very explicit about the June closure, and boasts that the majority of rock climbers have shown respect for Indian traditions. As climber John Gunnels explains: "my favorite spot on the planet is Devils Tower. I choose to go other places in the month of June because I choose to respect Native American beliefs."⁶⁰

With the increased push on education about Native American tradition and culture at Devils Tower, the NPS continues to "reluctantly" issue commercial permits with the hope that people comply.⁶¹ Today, most hikers year round use clean climbing, which does not damage the rock in any way.⁶²

Deborah Liggett transferred from Devils Tower in late 1997 to become the superintendent at a national park in Alaska.⁶³ As the final appeals were being denied to the group of plaintiffs, Liggett saw the controversy coming to a close. She made a decision that she stuck beside throughout, and explains its lasting legacy: "The new order of business at the Tower is that the climbers, neighbors, environmental interests *and* American Indian people are at the table. Not everyone acknowledges their right or welcomes them to table and thus sometimes it has been an exciting ride."⁶⁴

⁵⁹ Sink, "Religion and Recreation Clash at Park." *The New York Times*. 1 July 1996, late ed.

⁶⁰ McLeod, *In Light of Reverence*.

⁶¹ Linge, George. "Ensuring the Full Freedom of Religion on Public Lands: Devils Tower and the Protection of Indian Sacred Sites." *Boston College Environmental Affairs Law Review*, 2002.

⁶² Statistics regarding Devils Tower from the National Park Service website. www.nps.gov/deto/index.htm

⁶³ "Standing Witness: Devils Tower National Monument: A History. Chapter X: 1991-2000." NPS website.

⁶⁴ *Ibid.*

Ancillary Materials

<http://www.mountainstateslegal.org/mission.cfm>

The Mountain States Legal Foundation website. They filed suit on behalf of the defendants in the Bear Lodge Multiple Use Assn. v Babbitt cases.

<http://www.narf.org/>

Native American Rights Fund website. A proponent of the voluntary June closure, they were key players in the court decisions and supporters of the NPS.

<http://www.towerguides.com/>

Tower Guides website. Andy Petefish owns this company, and it is the only commercial company that continually does not observe the June closure.

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0494_0872_ZS.html

Lyng v. Northwest Indian Cemetery Protective Association court decision. This case deals directly with the issues in the Devils Tower case study, including protection and accommodation of Indian religious sites.

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0485_0439_ZS.html

Employment Division, Department of Human Resources of Oregon v. Smith. This court case, while not mentioned in the Devils Tower case study, is another example of Indian religious accommodation or lack thereof in the United States. The court ruled that worshipers could not use peyote, an illegal drug, in their religious practices. It is not covered by first amendment rights.

<http://www.usbr.gov/nagpra/>

Native American Graves Repatriation and Protection Act. Another case of sacred physical space and how it is uniquely protected under the United States government.

Final Climbing Management Program (see pdf)

This is the full text of the decision reached by Deborah Liggett and other NPS officials. It is still employed today and came about after much discussion.

Devils Tower National Monument Annual Number of Climbers (Image)

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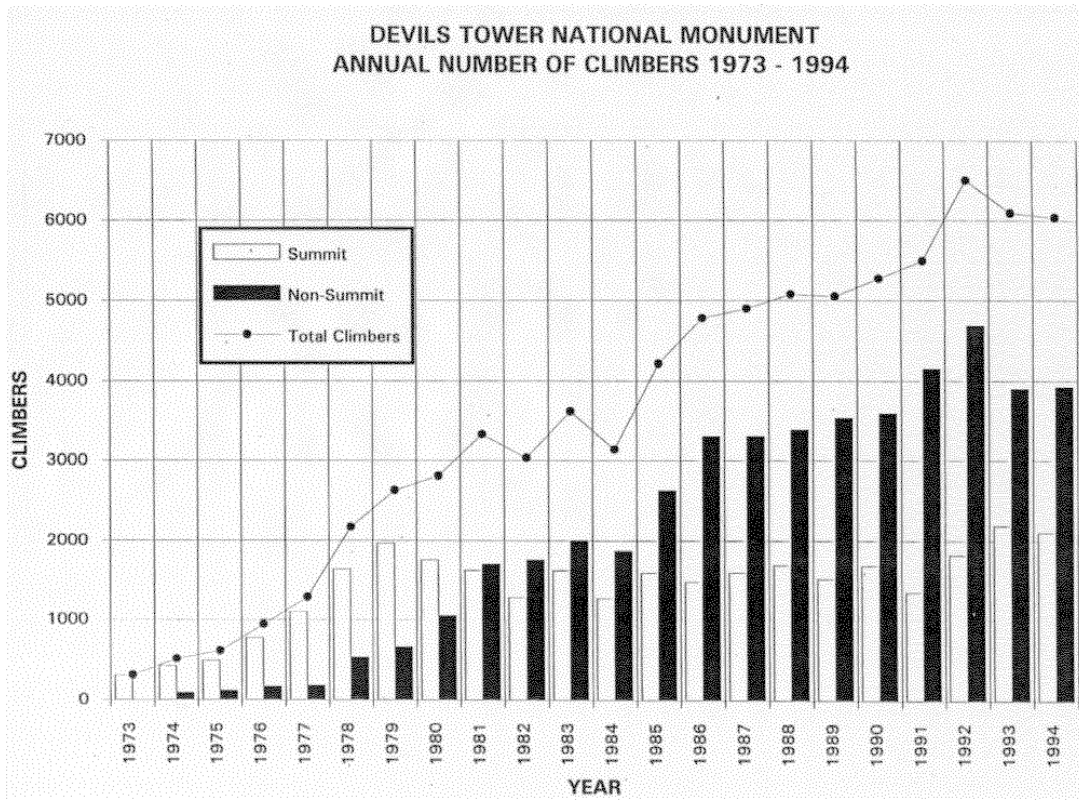


chart graphing the amount of climbers to scale Devils Tower throughout the years. This time frame is previous to the implementation of the FCMP.

