

LOSING THEIR RELIGION?

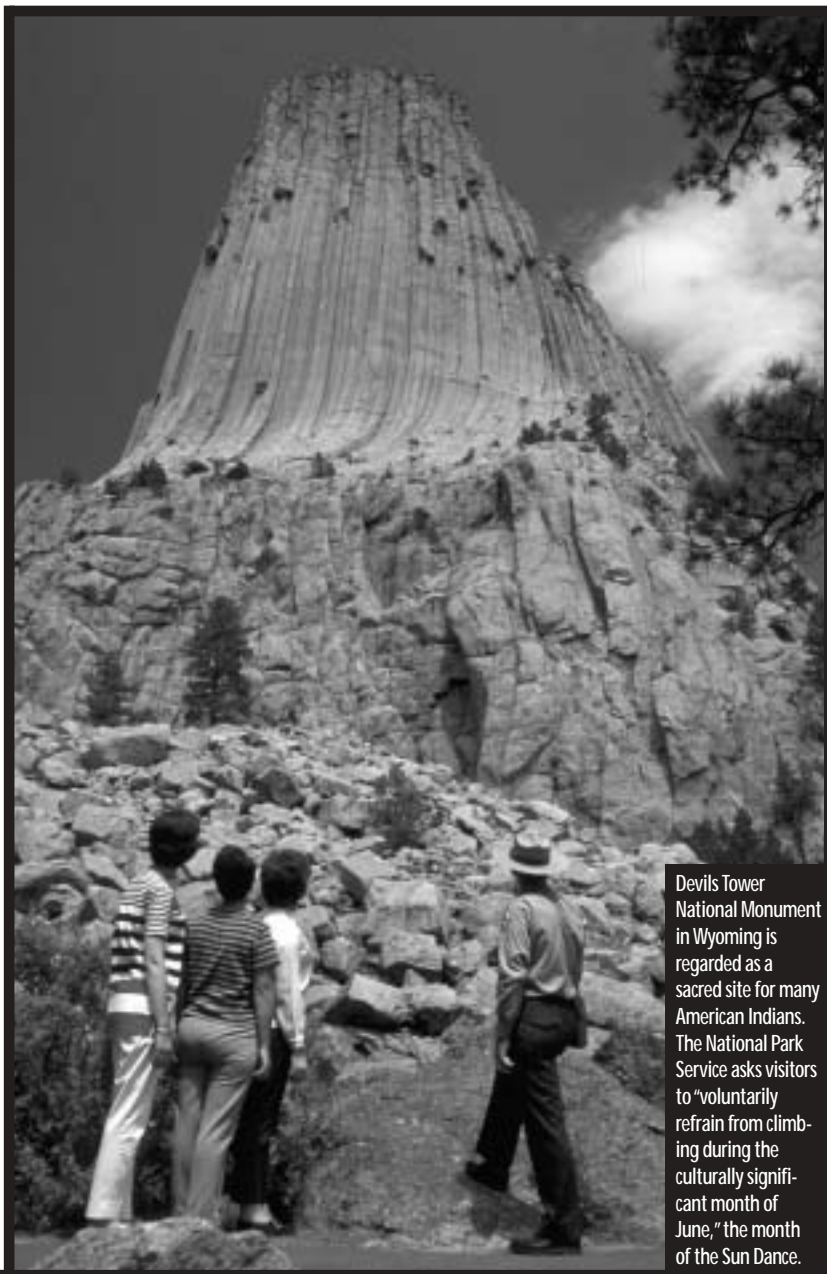
When sacred places become public lands, conflict and competition go hand in hand

BY ERIC FREEDMAN

Devis Tower — Mato Tipila — is a rugged 1,267-foot-high butte, a magnet for climbers and a sacred place steeped in American Indian culture and history. It's a natural wonder, a monolith that literally towers above the Belle Fourche River, America's first national monument and an economic asset for the northeastern corner of Wyoming.

Roughly 850 miles to the south, New Mexico's

Sandia Mountain lures 1 million hikers, birders, rock climbers, cable-car riders and other recreational users each year — as well as members of the Sandia Pueblo and other tribes who worship at shrines and sacred spots there. The mountain within Cibola National Forest rises from the desert in natural contrast to the artificiality of the office buildings that tower high above the asphalt of downtown Albuquerque, a short drive away.



Devils Tower National Monument in Wyoming is regarded as a sacred site for many American Indians. The National Park Service asks visitors to "voluntarily refrain from climbing during the culturally significant month of June," the month of the Sun Dance.

Photo courtesy of National Park Service

At places like Devils Tower and Sandia Mountain throughout the country, American Indian religions and cultures are inextricably interwoven with the physical attributes and history of the land. “The Euro-American concept of what is sacred is vastly divergent from the Native American concept,” commentator Rayanne Griffin writes, with sites deemed “sacred because of their relation to the concepts of sacred time and creation.” And a judge who handled a lawsuit that challenged climbing restrictions at Devils Tower said he was “not persuaded that a legitimate distinction can be drawn in this case between the ‘religious’ and ‘cultural’ practices of those Native Americans who consider Devils Tower a sacred site.”

Like Devils Tower and Sandia Mountain, many sacred sites are on public land. That creates potential — and actual — conflicts among indigenous peoples, government, commercial interests, recreational users — and environmentalists. Those conflicts reflect clashes in social values, in economics and in how the nation makes tough political and policy decisions about our natural resources.

Conflicts aren’t surprising. After all, there were repeated government-backed and government-financed efforts to destroy American Indians’ religions and cultures and to convert them to Christianity in the 1800s. Only much later did government policies evolve to recognize and then try to accommodate diverse religious-cultural practices and beliefs. But by enacting culturally supportive laws and regulations, the government set the stage for disputes over incompatible competing uses of public lands.

The country has witnessed growing American Indian self-identification, recognition of legal rights (including property rights), political activism and more favorable media coverage. Contributing factors include rising ethnic consciousness triggered by such incidents as the 1969 takeover of Alcatraz Island in San Francisco Bay, the African-American civil rights movement, the development of college-level American Indian studies programs and reduced media stereotyping. With revenues from casinos of \$12.7 billion annually, plus income from natural resources and business activities on reservation land, many tribes can now afford to actively participate in litigation, lobbying, administrative rulemaking and other policymaking processes.

GREEN INTERESTS, TRIBAL INTERESTS

Tribal and environmentalist goals sometimes coincide directly when both groups pursue a shared purpose: reduced user impact on natural resources. Such alliances sometimes influence decisions by land agencies, legislators, judges, journalists and the public. For instance, the management plan for Devils Tower requires the National Park

Grounds for dispute

Devils Tower National Monument in Wyoming and Sandia Mountain in New Mexico’s Cibola National Forest — both public lands — are considered sacred sites by many American Indians.



Service to analyze the impact of climbing on natural and cultural resources, and it requires the agency to consult with tribes. As the plan notes, climbing activities “have affected nesting raptors, soil, vegetation, the integrity of the rock, the area’s natural quiet and the rock’s physical appearance.”

In a climber-versus-American Indian conflict at Cave Rock in Nevada’s Humboldt-Toiyabe National Forest, a U.S. Forest Service environmental impact statement recognized the need to preserve both “the physical and spiritual characteristics” of the site, which is sacred to the Washoe. The rock on the eastern shore of Lake Tahoe is the eroded neck of an extinct volcano that the Advisory Commission on Historic Preservation says has ceremonial value, and more: Climbing threatens the rock’s integrity, and installation of permanent climbing hardware “directly affects the property’s physical integrity.” Similarly, the Park Service management plan for Utah’s Rainbow Bridge National Monument at the foot of Navajo Mountain emphasizes the sacred character of the world’s largest natural bridge to the Navajo, Hopi and San Juan Southern Paiute, as well as environmental

concerns such as erosion, noise, trampling of vegetation, litter, graffiti and vandalism.

Sometimes tribes and greens litigate or lobby together. Meanwhile, the Sierra Club is promoting such alliances when preservation of sacred sites and preservation of natural resources serve overlapping purposes. The November-December 2002 issue of its magazine, *Sierra*, devoted two articles totaling 13 pages to the common ground between environmentalists and American Indians in protecting sacred sites.

TWO BATTLEFIELDS

In 2002, after eight years of litigation — and 19 years after the tribe submitted its formal land ownership claim to the U.S. Interior Department — the Sandia Pueblo accepted a proposed settlement that would give it varying degrees of control over land in Cibola National Forest. Their claim stems from a 1748 Spanish colonial land grant that ambiguously defined the eastern border of the pueblo near Sandia Mountain. The lawsuit alleged that Forest Service activity makes it “more difficult for the Sandia to worship in privacy” as tradition requires. U.S. District Judge Harold Greene weighed competing testimony about centuries-old documents and accepted the interpretation of a New Mexico historian retained by the tribe. As a result, he ordered the Forest Service to hand over the land, including the western face of the mountain. Negotiation and lobbying then began in earnest involving U.S. senators, pueblo and local officials, the major concessionaire and owners of adjacent homes. Congress enacted a settlement that the president signed in February 2003.

More than a half-day’s drive to the north, Devils Tower is regarded as a place of creation and religious practice by many American Indians, as well as a secular, athletic pilgrimage site for more than 6,000 climbers and an uncounted number of climber-watchers annually. Recognizing a conflict, the Park Service’s climbing management plan cites “the reverence many American Indians hold for Devils Tower as a sacred site” and asks visitors to “voluntarily refrain from climbing during the culturally significant month of June,” the month of the Sun Dance. The Park Service hopes to educate the public about the site’s sacred character so the number of climbers each June voluntarily drops to zero.

A users’ association, a commercial guiding service and recreational climbers sued the government to challenge the plan. The Cheyenne River Sioux Tribe intervened on the side of the Park Service; tribal, Christian and Jewish groups also backed the Park Service in friend-of-the-court briefs. U.S. District Judge William Downes and the 10th Circuit U.S. Court of Appeals upheld the voluntary policy.

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BALANCING COMPETING DEMANDS

Disputes about access or use of sacred sites mirror sometimes-competing, sometimes-incompatible demands from tribes, government, businesses interests, environmentalists, the tourism industry and recreational users such as climbers, hunters and campers. In dozens of ongoing and potential sacred site conflicts nationwide, a common question is whose preference counts and how much it counts in setting public policy.

It's largely been up to formal institutions of government — courts, Congress and state legislatures, and federal and state agencies — to answer that question. Attempts by all sides to secure an answer favorable to themselves have also involved informal activities to build public and political support.

Land ownership claims may be based on treaties, colonial and post-colonial documents, oral and written history and custom. To pursue such claims and to press for other measures to protect sacred sites, American Indian groups are using formal and informal rules to change the rules, including litigation, lobbying, rulemaking, negotiation and media coverage with varying success.

In response, government entities may reject or accept tribal claims in whole or in part. If ownership is transferred, tribes can exercise sovereignty over the land, including restricting non-members' access to sacred sites.

As an alternative, government may reject ownership demands but recognize cultural-religious claims. Resulting policies may include interpreting a site for non-American Indian visitors through signs, brochures and ranger presentations. Agencies also may decide against interpreting a sacred site — in other words, to avoid drawing visitors' attention to it — to prevent disrespectful behavior or physical damage. That happened in Minnesota's Chippewa National Forest, where the Forest Service removed an interpretive marker at Turtle Mound, a wooded place sacred to the Dakota and Chippewa, at the Leech Lake Tribal Council's request.

The voluntary ban on climbing in June at Devils Tower and a similar voluntary discouragement of climbing year-round at Cave Rock are administrative actions that are site-specific, meaning they apply only to an individual piece of public land. Similarly, Congress has legislatively protected cultural-religious assets at individual sites in the Southwest such as El Malpais National Monument and Grand Canyon National Park, and has legislatively guaranteed Hopi and Navajo access to and use of sacred sites.

However, the federal government has also taken steps to recognize sacred sites on a systematic basis. Congressional measures

include the American Indian Religious Freedom Act, the Religious Freedom Restoration Act and the Native American Graves and Repatriation Act. President Bill Clinton issued a 1996 executive order requiring agencies to accommodate ceremonial use of sites. Individual agencies can issue rules, such as one empowering the Bureau of Land Management to temporarily bar the general public from parts of wilderness areas "to protect the privacy of native people engaged in religious activities."

In the Sandia Mountain settlement, no side won everything and nobody lost everything when the government agreed to accommodate American Indian religious and cultural practices as an alternative to ceding ownership. The tribe failed to achieve its original proclaimed goal of ownership. But through compromise and negotiation, the tribe yielded its ownership claim in exchange for protecting sacred sites and discouraging incompatible competing uses, such as development.

Perhaps the tribe expected to win ownership, or perhaps the claim was intended as a tool to leverage a politically realistic and publicly palatable arrangement. Either way, the settlement guarantees free access for members of the Sandia Pueblo and other federally recognized tribes to a newly designated T'uf Shur Bien (Green-treed Mountain) Preservation Trust Area for religious and traditional uses. Other elements of the deal are designed to give the tribe veto power over any new uses of the wilderness.

ASSERTING COMPETING RIGHTS

It's expensive to press for ownership or restrictions on competing public uses of sacred sites. It may be a protracted process and raises questions of who pays and how much. There are legal fees and court expenses, of course. But the Sandia also retained an expert historian to interpret colonial documents, for example, and incurred travel costs including lobbying trips to Washington to testify at a Senate hearing and to negotiate the settlement.

Often, sites are sacred to many tribes. Even the name for Devils Tower differs among tribes of the Northern Plains: Mato Tipila (Bear Lodge) and He Hota Paha (Grey Horn Butte) to the Lakota; Bear's Tipi to the Arapaho; Bear's House to the Crow; and Tree Rock to the Kiowa.

One tribe generally pays most or all of the costs, although there may be financial or other contributions, such as legal services from pro bono groups. In the Devils Tower case the Indian Law Resource Center provided litigation support alongside tribal attorneys and private law firms. The center offers repre-

sentation to protect the rights, cultures and traditional lands of indigenous peoples. For instance, the Cheyenne River Sioux intervened in the suit between the climbers and the Park Service, while the Northern Arapaho, Sisseton-Wahpeton Sioux and Upper Sioux Indian Community filed friend-of-the-court briefs.

Interestingly, some conflicting uses of sacred sites can be viewed as based in customs and traditions as well, although not with as deep a heritage. While tribal interests — demonstrated by pilgrimages, legends and rituals — are easily categorized as customs, climbers can be seen as practicing customs too. "Climbing at Devils Tower National Monument has roughly a 100-year history. Today, climbers are 'part of a monument culture' and the National Park Service recognizes climbing as an historical activity at the monument," commentator Charlton Bonham notes, adding that, "to be fair, not all climbers disrespect Native American practices at the monument."

Opposition to restricted access to sacred sites may reflect economics because recreational activities support local businesses, fill motel rooms and restaurants, create jobs and produce sales tax revenue. Restraints on public activities may cause management and enforcement headaches, spark public criticism of the land agencies and cut income for those agencies from admissions, campgrounds and concession fees.

These disputes also may attract involvement on more philosophical and political grounds from environmentalists, religious freedom groups, property rights advocates and opponents of government land ownership. Religious-affiliated organizations participated as friends of the court in the Devils Tower litigation, siding with the Park Service and Cheyenne River Sioux. They disputed the climbers' argument that the voluntary no-climbing policy unconstitutionally supports religion in violation of the First Amendment.

Non-governmental, non-tribal interests also may face problems in paying for litigation, lobbying and rulemaking. As one solution, they too may find pro bono lawyers. In the Devils Tower case and in a separate suit over a voluntary policy that discourages non-Indians from walking under Rainbow Bridge, pro-access forces were represented in part by Mountain States Legal Foundation. That pro bono organization supports the property rights movement in conflicts with government.

As pressure builds for more recreational use and development of public lands, conflicts over land and spirit, over environmental protection and cultural preservation will continue in the shadow of Devils Tower, of Sandia Mountain, of Rainbow Bridge, of Cave Rock and of other sites as sacred to the American soul as the Statue of Liberty. 🌐