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Equality Under the First Amendment: Protecting Native American Religious Practices on Public Lands

Fred Unmack

NOTES

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I. INTRODUCTION

The First Amendment to the United States Constitution forbids Congress from making any law "respecting an establishment of [a] religion or prohibiting the free exercise thereof."[1] Like all United States citizens, Native Americans are guaranteed the right to practice their religions free from governmental interference. Yet not until the recent decision in *Northwest Indian Cemetery Protective Association v. Peterson*[2] has a Native American site-specific religion received the protection afforded by the First Amendment. In *Northwest Indian*, the Court of Appeals for the Ninth Circuit affirmed the grant of a permanent injunction barring completion of a road through a northern California national forest. The court found the road would violate the religious freedom of the Yurok, Karok and Tolowa Tribes whose members used the area for religious purposes. This case is noteworthy not only because it is the first case in which a Native American religious freedom claim has prevailed against the federal government, but also because it illustrates that traditional First Amendment analysis remains an appropriate means of resolving such claims.

II. THE FIRST AMENDMENT

Traditionally, courts have applied the Free Exercise Clause of the First Amendment to protect religious beliefs and practices.[3] Native

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1. U.S. CONST. amend. I.

2. 795 F.2d 688 (9th Cir. 1986), *aff'g but modifying on reh'g*, 764 F.2d 581 (9th Cir. 1985), *aff'g* 565 F. Supp. 586 (N.D. Cal. 1983), *cert. granted sub nom.* Lyng v. Northwest Indian Cemetery Protective Ass'n, 55 U.S.L.W. 3741 (U.S. May 5, 1987)(No. 86-1013). The Ninth Circuit addressed several issues besides First Amendment protection of Native American site-specific religions practiced on public land, *see infra* note 46, but the United States Supreme Court granted certiorari solely to address the First Amendment issue.

3. *See* Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963); School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963).

American religions differ from other religions in that their practitioners often require the use of specific natural sites to discover personal truth and power.[4] Conflicts may arise when a particular religious site is located on public land. If the sanctified and pristine nature of the site is essential for the successful completion of the religious ceremony, then any governmental decision authorizing development of the site may burden the religious practice.

Past federal public land policy often abridged Native American religious practices when land use conflicts arose.[5] In an effort to reverse that policy, Congress passed the American Indian Religious Freedom Act of 1978 (AIRFA).[6] AIRFA acknowledged the past inequities of federal policy and directed federal agencies to protect and preserve Native American religious practices in future planning decisions. Significantly, AIRFA explicitly recognized that the First Amendment guaranteed religious freedom to Native Americans.[7] Concurrently with the new policy directives announced in AIRFA, Native Americans began asserting First Amendment claims against federal agencies whose actions impaired the practice of Native American religions on public lands.

The first claim to surface in a federal circuit court of appeals was *Sequoyah v. Tennessee Valley Authority*.[8] The Cherokee Nation alleged its religious uses of the Little Tennessee River valley would be destroyed by the flooding behind Tellico Dam.[9] The Court of Appeals for the Sixth Circuit used the Free Exercise Clause test developed by the United States Supreme Court to resolve the issue. Under that test, a complainant must prove the existence of a legitimate religion and that the government's action will burden the religious practice.[10] Once the complainant proves such an abridgement, the burden of proof shifts to the government to show a compelling interest for the action which cannot be achieved by less burdensome means.[11] In *Sequoyah*, the court found the existence of a

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4. FEDERAL AGENCIES TASK FORCE, AMERICAN INDIAN RELIGIOUS FREEDOM ACT REPORT 10 (1979).

5. *Id.* at 5.

6. 42 U.S.C. § 1996 (1982).

7. Several complainants have asserted claims under AIRFA, but federal courts have held that AIRFA is a statement of federal policy and not grounds for a cause of action. Any claim for an infringement of a religious belief or practice must be asserted under the First Amendment. Badoni v. Higginson, 638 F.2d 172, 180 (10th Cir. 1980), *cert. denied*, 452 U.S. 954 (1981); Wilson v. Block, 708 F.2d 735, 747 (D.C. Cir.), *cert. denied*, 464 U.S. 956 (1983).

8. 620 F.2d 1159 (6th Cir.), *cert. denied*, 449 U.S. 953 (1980).

9. *Sequoyah*, 620 F.2d at 1160.

10. The United States Supreme Court has defined a "burden" as a "coercive effect [that] . . . operates against [the practitioner] in the practice of his religion." *School Dist. of Abington Township*, 374 U.S. at 223.

11. The compelling interest must be an interest of the "highest order." *Yoder*, 406 U.S. at 215.

Cherokee religion, but also found that practice of the religion did not require the use of the Little Tennessee River valley.[12] The court stated the site must be central to the religious practices of the Cherokee Nation in order to establish a First Amendment claim.[13] This requirement comported with the principle enunciated by the United States Supreme Court in earlier First Amendment cases that a religion must represent the shared convictions of a group to qualify for protection under the First Amendment.[14] Since the Cherokee Nation could not prove the necessary connection between its religion and the valley, the Sixth Circuit denied the First Amendment claim.[15]

The Navajo and Hopi Tribes raised the First Amendment in *Wilson v. Block*.[16] There, the United States Forest Service authorized the expansion of an existing ski area in the San Francisco Peaks of Arizona which encroached on land used by the Tribes for religious purposes.[17] The Court of Appeals for the District of Columbia Circuit found religious use by the Tribes of the entire San Francisco Peaks, but did not find the disputed area of expansion to be essential to the Tribes' religious practices;[18] the same religious ceremonies performed in the affected area could be done elsewhere on the San Francisco Peaks.[19] Therefore, the court held the site was not central to the Tribes' religions and denial of religious use of the area would not violate their First Amendment rights.[20]

The Navajo and Hopi Indians also argued that disturbances from the ski area would burden religious practices performed in other locations on the Peaks.[21] The court dismissed this claim, noting that for forty years the skiing facility had operated with no evidence of any prior interference with the Tribes' religious practices.[22] The Navajo and Hopi Indians failed to prove how expansion would alter this situation and lead to new sources of interference.

In *Crow v. Gullet*,[23] the Lakota and Tsistsistas Nations alleged the temporary disruption of access to religious sites at Bear Butte in South Dakota during construction of a parking lot and other facilities interfered

12. *Sequoyah*, 620 F.2d at 1163.
13. *Id.* at 1164.
14. *Yoder*, 406 U.S. at 216.
15. *Sequoyah*, 620 F.2d at 1165.
16. 708 F.2d 735 (D.C. Cir.), *cert. denied*, 464 U.S. 956 (1983).
17. *Wilson*, 708 F.2d at 740.
18. *Id.* at 744.
19. *Id.*
20. *Id.* at 745.
21. *Id.* at 744.
22. *Id.* at 745.
23. 541 F. Supp. 785 (D.S.D. 1982), *aff'd*, 706 F.2d 856 (8th Cir.), *cert. denied*, 464 U.S. 977 (1983).

with their religious practices.[24] The State of South Dakota expressly created a park at Bear Butte to facilitate the practice of Native American religion. The construction work was intended to improve usage of the park. The federal district court for the District of South Dakota viewed the construction as a disturbance but not as a "burden" for First Amendment purposes.[25] This finding would normally conclude the First Amendment analysis. However, the district court still applied the second part of the Free Exercise Clause test and searched for evidence of a compelling governmental interest. Balancing the interference against the interest, the court found the government's interest sufficient to justify the slight infringement on the religious practices of the Lakota and Tsistsistas Nations.[26] Therefore, the First Amendment did not bar completion of the construction work.

The most thorough analysis of a Native American religious freedom claim is found in *Badoni v. Higginson.*[27] In *Badoni*, the Navajo Tribe claimed the waters behind Glen Canyon Dam on the Colorado River would inundate religious sites along the riverbed and would indirectly disrupt religious practices at another religious site, Rainbow Bridge, by providing easier access for tourists.[28] The Court of Appeals for the Tenth Circuit found a system of sincerely held beliefs sufficient to satisfy the definition of a religion and recognized the centrality of the sites to the Navajo religion.[29] Without determining whether the religious practices were in fact burdened, the Tenth Circuit found that any burden was justified by the government's compelling interest.[30] The federal government had spent millions of dollars on Glen Canyon Dam, the dam could not feasibly have been relocated elsewhere, and large revenue losses would have resulted had the dam not been filled to capacity. Furthermore, the government was unable to achieve its goal of flood protection and electrical generation by any means other than a dam. Although the religious practices of the Tribe may have been burdened, the government's interest outweighed that burden and the Navajo Tribe's First Amendment claim was denied.[31]

Unlike courts in previous First Amendment cases brought by Native Americans, the Tenth Circuit in *Badoni* also examined the tension between the Free Exercise Clause and the Establishment Clause. The Navajo Tribe requested governmental regulation of tourist access to the Rainbow Bridge

24. *Crow*, 541 F. Supp. at 788.
25. *Id.* at 791.
26. *Id.* at 792.
27. 638 F.2d 172 (10th Cir. 1980), *cert. denied*, 452 U.S. 954 (1981).
28. *Badoni*, 638 F.2d at 176.
29. *Id.* at 177.
30. *Id.*
31. *Id.* at 180.

religious site to reduce the intrusions on tribal members practicing religious ceremonies.[32] The government argued and the court agreed that managing the area for the benefit of specific religious users violated the Establishment Clause, since such management did not have a secular purpose.[33] Thus, the First Amendment prohibited the government from mitigating the interference it caused.

The Free Exercise Clause of the First Amendment requires the government to accommodate a Native American site-specific religion unless the government proves a compelling interest. The Establishment Clause, however, prohibits the government from preferring one religion to another. In *Northwest Indian*, the parties addressed both conflicts inherent in the First Amendment: the tension between a burden and a compelling interest and the tension between an accommodation and preferential treatment.

III. CASE HISTORY

The controversy in *Northwest Indian* centered on the United States Forest Service's proposal to rebuild and pave the seventy-five miles long Gasquet-Orleans (G-O) road.[34] The final six miles of the road, known as the Chimney Rock Section, lay within the 76,500 acre Blue Creek Unit of the Six Rivers National Forest in northern California.[35] The existing road in this section remained unpaved and generally fit for four-wheel drive vehicles from June through October.[36] In 1977, the Forest Service issued a draft Environmental Impact Statement (EIS) that proposed alternative routes for the G-O road in the Chimney Rock section.[37] After evaluating the environmental and cultural impacts of the G-O road, the Forest Service chose its preferred route and issued its final EIS in 1982.[38] In a separate planning process, the Forest Service drafted an EIS to cover its management plan for the Blue Creek Unit. That plan proposed harvesting 733 million board feet of timber from the Blue Creek Unit over an eighty year period.[39]

The proposed route of the G-O road was to traverse an area known to the local Native Americans as the "high country,"[40] which consisted of

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32. *Id.* at 178.
33. *Id.* at 179.
34. *Northwest Indian*, 795 F.2d at 689.
35. *Id.* at 690.
36. D. THEODORATUS, CULTURAL RESOURCES OF THE CHIMNEY ROCK SECTION, GASQUET-ORLEANS ROAD, SIX RIVERS NATIONAL FOREST 1 (1979).
37. *Northwest Indian*, 795 F.2d at 690.
38. *Id.*
39. *Id.*
40. *Id.*

virgin country flanked by two roadless areas.[41] The Yurok, Karok and Tolowa Tribes used certain sites within the high country for religious practices but needed the pristine nature of the entire area to complete successfully their ceremonies.[42]

In an administrative appeal to the Forest Service, the Northwest Indian Cemetery Protective Association (Association)[43] claimed both the proposed road and the proposed logging would burden the religious practices of the Tribes. After exhausting administrative remedies, the Association sought a preliminary injunction in the federal district court for the Northern District of California.[44] The district court denied a preliminary injunction,[45] but after a trial on the merits,[46] held the proposed construction of the G-O road violated the First Amendment rights of the Native Americans.[47] The court then permanently enjoined the Forest Service from completing the G-O road. The Forest Service appealed the district court's decision to the Court of Appeals for the Ninth Circuit.

While the appeal was pending, Congress enacted the California Wilderness Act of 1984.[48] This Act placed most, but not all, of the high country into wilderness classification.[49] Specifically excluded from the Act was a 1200 foot wide corridor through the wilderness, ostensibly for the route of the G-O road.[50] The Act rendered the issue of logging the high

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41. *Id.*

42. *Id.*

43. The seven organizations comprising the Association were the Northwest Indian Cemetery Protective Association, the Sierra Club, the Wilderness Society, California Trout, the Siskiyou Mountains Resource Council, the Redwood Region Audubon Society, and the Northcoast Environmental Center. *Northwest Indian*, 565 F. Supp. at 590.

44. Four individuals of Native American heritage and two Sierra Club members joined the suit. The state of California brought a separate action against the federal government through its Native American Heritage Commission and the actions were consolidated for trial. *Id.* at 589-90.

45. Northwest Indian Cemetery Protective Ass'n v. Peterson, 552 F. Supp. 951 (N.D. Cal. 1982).

46. The Association alleged the Forest Service violated: (1) the First Amendment of the United States Constitution, (2) the American Indian Religious Freedom Act of 1978 (AIRFA), 42 U.S.C. § 1996 (1982), (3) the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370 (1982 & Supp. III 1985), (4) the Wilderness Act, 16 U.S.C. §§ 1131-1136 (1982 & Supp. III 1985), (5) the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985), (6) the Multiple Use Sustained Yield Act (MUSY), 16 U.S.C. §§ 528-531 (1982), (7) the National Forest Management Act of 1976 (NFMA), 16 U.S.C. §§ 1600-1614 (1982 & Supp. III 1985), (8) the Administrative Procedure Act (APA), 5 U.S.C. § 706 (1982), and (9) the government's trust responsibility to protect the water and fishing rights reserved to the Native Americans on the Hoopa Valley Indian Reservation. *Northwest Indian*, 565 F. Supp. at 590.

47. The district court also found the Forest Service violated the NEPA, the FWPCA, the APA, the Wilderness Act, and the government's trust responsibility to protect the Native Americans' reserved water and fishing rights on the Hoopa Valley Indian Reservation. *Id.* at 591.

48. California Wilderness Act of 1984, Pub. L. No. 98-425, 98 Stat. 1619.

49. *Northwest Indian*, 795 F.2d at 691.

50. The Court of Appeals for the Ninth Circuit did not find clear Congressional intent

country less significant since logging and mining were prohibited within the wilderness boundary.

IV. THE COURT'S REASONING

The Ninth Circuit affirmed the district court's holding. In doing so, it relied heavily on the Theodoratus Report,[51] the compilation of which had been authorized by the Forest Service. The purpose of the Report was to gather ethnographical information as part of the forest planning process.[52] The Theodoratus Report identified the ethnography of the Yurok, Karok and Tolowa Tribes as being an "on-going indigenous religious system" that incorporated "elements of daily life, ritual practice, geographic locale, and ideas of origin and World Renewal."[53] In addition to using specific sites for specific religious purposes, tribal religious practitioners utilized the entire high country for their religious training and experience.[54] The Report concluded the privacy, silence, and undisturbed natural setting of the high country provided the most important qualities for successful religious use.[55] The district court accepted the Report's findings to prove the presence of a legitimate religion that utilized specific sites,[56] and the Court of Appeals for the Ninth Circuit agreed that the high country was central to the Tribes' religious practices.[57]

The district court also accepted the conclusion of the Theodoratus Report that the impacts caused by any proposed route of the G-O road and by the logging, mining, and recreating activities that would follow from the completion of the road would be "potentially destructive of the very core of Northwest [Indian] religious beliefs and practices."[58] The Ninth Circuit noted the intervening passage of the California Wilderness Act lessened the potential impacts from logging and mining activities, but found the "geographic and design features of the Road [sic] itself" would interfere with the visual and aural qualities necessary for the practice of the religion.[59] Indeed, the court found this interference "would virtually destroy the plaintiff Indians' ability to practice their religion."[60]

This conclusion shifted the burden of proof to the Forest Service to

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mandating completion of the G-O road through the corridor. *Id.*

51. D. THEODORATUS, *supra* note 36.

52. *Northwest Indian*, 795 F.2d at 693.

53. D. THEODORATUS, *supra* note 36, at 105.

54. *Id.* at 415.

55. *Id.* at 105.

56. The Forest Service conceded the Yurok, Karok and Tolowa Tribes used the high country for religious purposes. *Northwest Indian*, 565 F. Supp. at 594.

57. *Northwest Indian*, 795 F.2d at 692.

58. *Northwest Indian*, 565 F. Supp. at 595 (quoting D. THEODORATUS, *supra* note 36, at 420).

59. *Northwest Indian*, 795 F.2d at 693.

60. *Id.*

show a compelling interest which could not be achieved in a less burdensome manner. But instead of proving its compelling interest to complete the G-O road, the Forest Service argued that the court should defer to the "judgment of the Secretary [of Agriculture] as to the proper purposes and management of the National Forest in light of the generality of congressional discretion over the uses of the Forests."[61] By "urg[ing] its prerogative to manage its forest in the usual way," the Forest Service failed to argue the basic constitutional question and the court dismissed this argument as "yield[ing] nothing to the free exercise clause."[62]

The Forest Service did offer some evidence of a compelling interest by arguing that the G-O road would increase employment in the area, would make forest management functions easier, and would give the public greater recreational access to the area.[63] The Ninth Circuit compared this interest to the interest found to be compelling in *Badoni*. In the *Badoni* decision, the Court of Appeals for the Tenth Circuit found the magnitude of the Glen Canyon Dam project justified the destruction of the Navajo religious sites.[64] In *Northwest Indian*, the Ninth Circuit found the religious practices of the Yurok, Karok and Tolowa Tribes would also be destroyed if the G-O road were completed. The court, therefore, required an interest as compelling as Glen Canyon Dam. The court concluded the Forest Service's reasons fell "short of demonstrating the compelling interest required to justify its proposed interference with the Indian plaintiffs' free exercise rights."[65]

The Forest Service countered by arguing that protecting the high country as a religious preserve violated the Establishment Clause.[66] The Ninth Circuit, however, did not perceive the district court's injunction as creating a religious preserve. The court noted the Forest Service remained "free to administer the high country for all other designated purposes including outdoor recreation, range, watershed, wildlife and fish habitat and wilderness."[67] Managing the high country for a variety of uses evinced a policy of neutrality and followed the intent of AIRFA.[68] Furthermore, the injunction merely prohibited the government from acting. Unlike the *Badoni* case, where the Navajo Tribe wanted the federal government to regulate access to religious sites for the specific benefit of tribal religious

61. *Id.* at 694.
62. *Id.* at 695.
63. *Id.*
64. *Badoni*, 638 F.2d at 177.
65. *Northwest Indian*, 795 F.2d at 695.
66. *Id.* at 694.
67. *Id.*
68. *Id.*

practitioners,[69] the injunction imposed by the district court in *Northwest Indian* did not require the Forest Service to police the area. The remedy granted to rectify the government's violation of the Tribes' free exercise rights did not amount to a violation of the Establishment Clause.[70] Therefore, the Ninth Circuit affirmed the permanent injunction prohibiting completion of the G-O road.

The dissenting opinion claimed the Theodoratus Report focused on five side effects of the G-O road, none of which justified the imposition of a permanent injunction.[71] The impacts caused by construction and management activities did not support issuance of a permanent injunction, and the impacts caused by logging, mining and recreating were distinct from the road and could be separately enjoined. The dissent concluded that certain activities could be permanently enjoined, but completion of the road itself should not be enjoined.[72]

The dissent also noted that only small parcels within the high country remained open for development. Since the district court did not make findings on the indirect impacts of development in those localized areas, the dissent suggested the case be remanded for further factual findings on this issue.[73]

The dissenting opinion further urged a reconsideration of the government's compelling interest. The dissent claimed "[t]he government's interest in putting public lands to productive use must be weighed carefully . . ."[74] and the examination should include the government's interest in achieving economic benefits. According to the dissenting opinion, the district court failed to give "proper respect to the government's ownership rights in public lands."[75]

V. ANALYSIS

The Court of Appeals for the Ninth Circuit remarked in *Northwest Indian* that the Free Exercise Clause test was "strained" when applied to Native American site-specific religions,[76] but the court's application of the test belied that comment. The first step of the test required the Association to prove the existence of a religious practice and that the site on public land was central and indispensable to the practice. Although this "centrality" requirement is viewed by some as a virtually insurmountable hurdle for

69. *Badoni*, 638 F.2d at 178.
70. *Northwest Indian*, 795 F.2d at 694.
71. *Northwest Indian*, 795 F.2d at 701 (Beezer, C.J., dissenting in part).
72. *Id.* at 703.
73. *Id.* at 704.
74. *Id.*
75. *Id.*
76. *Id.* at 695.

complainants seeking protection of site-specific religions,[77] the requirement flows directly from the United States Supreme Court's concern to protect only legitimate religious beliefs and practices.[78] Native Americans practicing site-specific religions should not be exempt from the "centrality" requirement. Like other religious practitioners who claim an abridgement of essential religious practices, Native American religious practitioners should be required to show the natural environment at issue is unique and essential to a valid religious practice. This requirement ensures that mere personal preferences for certain natural sites do not receive First Amendment protection. The Ninth Circuit in *Northwest Indian* properly adhered to the requirement that specific sites be central to the Native Americans' religious practices.

In *Northwest Indian*, however, the existence of a religion and the centrality of the site were not at issue. The central issue was the magnitude of the burden of road development on the religious practices of the Yurok, Karok and Tolowa Tribes. This latter question became a tangled issue after passage of the California Wilderness Act. The district court, relying on the findings of the Theodoratus Report, concluded that construction of the G-O road would be "potentially destructive of the very core" of the Tribes' religion.[79] The Court of Appeals for the Ninth Circuit found sufficient support in the record to affirm that conclusion.[80] However, as the court noted, the intervening passage of the California Wilderness Act severely curtailed the possible indirect impacts of the road caused by mining and logging.[81]

The Theodoratus Report considered the direct impacts caused by the proposed G-O road and the indirect impacts caused by the logging and mining activities that would follow completion of the road. The Report concluded that "the road itself will generate direct impacts . . . [but] it is those activities which potentially follow from the completion of the road which must be considered as having the greatest potential impact."[82] In rejecting all proposed routes for the G-O road, the Report concluded the direct and indirect impacts combined would irreparably damage the Tribes' religious practices.[83]

The Ninth Circuit accepted the Report's conclusion without distinguishing between the Theodoratus Report's factual findings and its

77. *See* Comment, *Northwest Indian Cemetery Protective Association v. Peterson: Indian Religious Sites Prevail Over Public Land Development*, 62 NOTRE DAME L.J. 125 (1986).
78. *Yoder*, 406 U.S. at 216.
79. *Northwest Indian*, 565 F. Supp. at 595.
80. *Northwest Indian*, 795 F.2d at 692.
81. *Id.* at 692-93.
82. D. THEODORATUS, *supra* note 36, at 417.
83. *Id.* at 422.

conclusion.[84] Since the indirect impacts from the G-O road were minimized by passage of the California Wilderness Act, the court's reliance on the Report's conclusion was misplaced. As the dissenting opinion noted, "[i]t is not clear whether the district court would have issued an injunction" based upon the remaining possible indirect impacts.[85]

While the Ninth Circuit had no evidence before it which actually showed the extent of the interference caused directly by the G-O road or by the remaining indirect impacts, it did examine evidence from the Theodoratus Report suggesting the G-O road itself would interfere with the Tribes' religious practices.[86] Moreover, the Forest Service, by proposing ten steps to mitigate impacts caused by the road, admitted the G-O road interfered with the Tribes' religious practices.[87] The Ninth Circuit concluded such interference would have prevented the Tribes from performing their religious ceremonies.[88] Thus, the court correctly held the Tribes' religious practices were still burdened for First Amendment purposes even after passage of the California Wilderness Act.

Even though the burden on the religious practices may have lessened following passage of the Act, the existence of a burden required the Forest Service to prove a compelling interest of the "highest order."[89] In previous Native American site-specific religion cases, only the Tenth Circuit in the *Badoni* decision found a compelling governmental interest, i.e., the completion of Glen Canyon Dam.[90] Conversely, the federal district court in *Crow* found the state justified to complete the construction work at Bear Butte.[91] But that court did not find a burden on the Native Americans' religious practices, so its finding of a compelling interest was an incorrect application of the First Amendment analysis.

In *Northwest Indian*, the Forest Service argued certain economic gains might be achieved by completing the G-O road.[92] The Ninth Circuit correctly dismissed that argument as falling far short of a compelling interest. Moreover, the Forest Service failed to show why these economic gains could not be achieved in a less burdensome manner. Finally, the Forest Service weakened its argument severely by insisting completion of the G-O road was purely a matter of agency discretion rather than a constitutional dispute. Since the Association had presented a *prima facie*

84. *Northwest Indian*, 795 F.2d at 693.
85. *Id.* at 704.
86. *Id.* at 693.
87. *Northwest Indian*, 795 F.2d at 703.
88. *Id.* at 693.
89. *Yoder*, 406 U.S. at 215.
90. *Badoni*, 638 F.2d at 177.
91. *Crow*, 541 F. Supp. at 792.
92. *Northwest Indian*, 795 F.2d at 695.

case showing a burden, the court could only choose to affirm the injunction.

VI. CONCLUSION

The *Northwest Indian* decision underscores the recent burgeoning awareness of Native American site-specific religious rights. Not only does the decision protect a Native American religion from coercive governmental land management actions, it does so by means of traditional First Amendment analysis. While the burden of proof remains high on Native American religious practitioners, the *Northwest Indian* decision shows that Native American religions can be treated equally with other religions under the First Amendment.