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Far From the Reservation, but Still Sacred?

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Yuma, Ariz.

SQUINTING against the harsh desert sun, Mike Jackson, leader of the Quechan Indians, looks out past his tribe’s casino and the modern sprawl of Yuma and points to the sandy flatlands and the rust-colored Gila mountain range shimmering in the distance. “They came this way,” he says, describing how his ancestors followed the winding course of the Colorado River and ranged over hundreds of miles of what is now western Arizona and southeastern California. “There’s a lot of important history here, both for the Quechan and the U.S.”

And if it’s up to him, that history will go a long way in determining the future of this corner of the West, one of the fastest-growing parts of the country and a place where developers are increasingly running up against newly powerful but tradition-minded American Indian leaders like Mr. Jackson.

As president of the Quechans over the last decade, Mr. Jackson is leading a new kind of Indian war, this time in the courts. The battlegrounds are ancient sites like the religious circles, burial grounds and mountaintops across the West that Indians hold sacred and are protected by federal environmental and historic preservation laws. After successful smaller battles, Mr. Jackson is now challenging a bigger project, arguing that the construction of a planned $4 billion oil refinery in Arizona could destroy sites sacred to his tribe.

What makes this case different from more traditional fights between Indians and developers is that the refinery isn’t on the Quechan reservation or even next to it. In fact, the refinery is planned for a parcel of land some 40 miles to the east of the reservation, on the other side of Yuma and the Gila mountain range. But Mr. Jackson and the tribe’s lawyers argue that before the land can be transferred to the company building the refinery, Arizona Clean Fuels, or construction can start, an exhaustive archaeological and cultural inventory must take place.

The Quechans are not a large tribe. Also known as the Yuma Indians (they prefer the name Quechan, which means “those who descended”), they number about 3,300 and their reservation on the California-Arizona border covers roughly 70 square miles. That is a small fraction of the size of lands the federal government set aside more than a century ago to better-known nations like the Apaches or Navajos. Mr. Jackson has already stopped two planned projects — a low-level nuclear dump and a $50 million gold mine on the California side of the border — both also well away from the Quechan reservation. This year, he helped defeat the nomination of a Bush administration official who favored the mine to a federal appellate court.

LIKE the land itself, the fight over the refinery reflects a tangle of cultures and centuries of bitterness between Indians and newcomers. Mr. Jackson says it’s about respect for Quechan culture, and a new willingness on the part of Indians to stand up to the local establishment after centuries of not having a say. Business and political leaders in Yuma argue that it’s little more than a land grab by Mr. Jackson, a dubious attempt by the tribe to block much-needed development and assert claims to territory lost long ago.

What’s more, says Glenn McGinnis, chief executive of Arizona Clean Fuels, a preliminary inspection failed to turn up evidence of ruins near the site, which was privately owned for decades by local farmers but was later bought by the federal government to acquire water rights.

In any case, Mr. McGinnis says he’s committed to protecting any sacred remains that turn up once construction begins. But doing the more extensive survey sought by Mr. Jackson and the Quechans now would not only delay the project by months, it would also cost about $250,000, which Arizona Clean Fuels would be obligated to cover.

The dispute is about more than money, though. It has also brought resentment of the tribe’s newfound clout to the surface. David Treanor, vice president of Arizona Clean Fuels, calls the Quechans’ stance “psychological imperialism” and compares Mr. Jackson to Hugo Chávez, Venezuela’s left-wing leader.

Casey Prochaska, chairwoman of the Yuma County Board of Supervisors, adds: “My grandmother probably went across here in a covered wagon. This country didn’t stop because they walked over this land.”

Indeed, the refinery isn’t even the main issue for some business leaders. “It’s a question of how far does their sphere of influence go,” says Ken Rosevear, executive director of the Yuma County Chamber of Commerce. “Does it go clear to Phoenix? To Las Vegas? The whole West?”

Mr. Rosevear may be exaggerating, but his fear illustrates just what’s at stake. If the Quechans’ lawsuit succeeds, it would bolster the efforts of other, larger tribes to block development on territory where they also once lived and prayed.

ALREADY, in northern Arizona, Navajos, Hopis and other Indians have effectively stopped plans to expand a ski resort roughly 50 miles from the nearest reservation, after convincing a federal appellate panel in March that using wastewater to make artificial snow would desecrate peaks long held sacred.

Leaders of the Northern Cheyenne tribe, meanwhile, have been using similar arguments to block drilling for coal-bed methane near their reservation in Montana. Pumping water out of underground aquifers to extract natural gas will harm the spirits that inhabit the springs and streams where the Northern Cheyenne worship, says Gail Small, a Northern Cheyenne tribe member who heads Native Action, an environmental group she founded after graduating from law school.

Adding weight to her argument is the American Indian Religious Freedom Act, passed by Congress in 1978, which acknowledges the link between native American religion and land both on and off the reservation.

“You’re seeing a real renaissance of tribes becoming aware of their cultural resources and heritage, and reclaiming that heritage even when it’s off the reservation,” says Robert A. Williams Jr., a law professor at the University of Arizona who has advised tribes on the legal issues surrounding off-reservation sacred sites.

And, thanks to the rise of casino gambling on Indian reservations, many tribes now have the money to challenge natural resource companies, real estate interests and other wealthy players who have long held sway in the West.

“Tribes no longer have to hope for or rely upon the efforts of outside environmental groups or pro bono law firms,” says Joseph P. Kalt, director of the Harvard Project on American Indian Economic Development. “Not only are they much more sophisticated, but they have the money to fight for themselves.”

Mr. Jackson doesn’t dispute that the opening of the popular Paradise Casino on his reservation in 1996 has shifted the balance of power in these parts. “It’s made all the difference in the world,” he says. “We didn’t have the money to hire attorneys before; we didn’t have the tools. We also learned how to play the political game in America that’s been played against us in the past.”

During the winter months, when snowbirds fill local hotels, it’s hard to find a spot in the Paradise Casino parking lot on some nights, and the casino generates an estimated $45 million a year in net revenue for the Quechans.

Mr. Jackson isn’t always against new development. The Quechans are considering building a second casino on the California side of the border, and he has faced protests of his own from tribal elders who argue that the $200 million project also happens to be on sacred ground. In June, the Quechan police force arrested tribe members protesting at the site of the new casino. Yuma officials like Ms. Prochaska call that hypocrisy, but Mr. Jackson says it’s not up to them to decide what is sacred to Indians and what’s not.

The son and grandson of tribal leaders, Mr. Jackson, who is 60, says that in the past, “the government gave us funds just to survive and they didn’t hear a word from our people.” Now, he says, local leaders like Mr. Rosevear have to come to him. “They come, smile, and shake my hand, but they don’t like it. Too bad. That is how the process is now.”

Glamis Gold, the Canadian mining company that sought to build the California mine, learned that the hard way several years ago. After investing $15 million, the company watched Mr. Jackson tie up the project with regulators. It was finally killed when Gray Davis, then the governor of California, issued an emergency order.

Charles A. Jeannes, an executive at Glamis at the time, says the company tried to negotiate with Mr. Jackson. “We’d told them we’d discuss any number of kinds of compensation,” says Mr. Jeannes, now executive vice president of Goldcorp, which acquired Glamis in 2006. “But we never got specific because they made it clear they wouldn’t accept the mine.”

Mr. Jackson has a slightly different recollection. “They came and offered money, trucks and other things,” he says. “I told them I’m not going to take one penny, and to get out of my office.”

In Quechan lore, dreams are sacred — they are a literal path to knowledge and power. So perhaps it’s fitting that the refinery has been a business dream in Arizona for two decades, a long-talked-about project that if completed, would be the first new refinery constructed in the United States in more than 30 years.

It’s also a vision that could prove hugely profitable. Refining margins in the Southwest are among the healthiest in the country, while gasoline demand in Arizona, Nevada and California has been growing at twice the national average. And until Mr. Jackson and the Quechans challenged their plans, the 1,400-acre site seemed like the rare spot in America where a refinery might actually be welcomed.

The last fruit orchard on the site died out decades ago, after the federal government acquired the land and bought up the water rights. The nearest homes are miles away. Now the silence is broken only by the sound of passing freight trains and the occasional rumble from the Army’s Yuma Proving Ground.

Earlier this year, the government transferred the land intended for the refinery to the local irrigation district, which in turn sold it to Arizona Clean Fuels for $15 million in March. It’s this transfer that the Quechans are challenging in their suit, arguing that procedures required under federal law to protect Indian sites were not followed properly.

Mr. McGinnis, a soft-spoken veteran refining executive who retains the accent of his native Toronto, says he is sensitive to the tribe’s worries. And unlike other officials, he shies away from criticizing Mr. Jackson or the Quechans.

“But there’s not a whole lot here,” he says, pointing to the furrowed ground and a few remaining tree stumps bleached white by the sun. “The probability of finding any relics is next to zero because the land has been disturbed and farmed for a long, long time. But we’ll bring in surveyors to walk the site, and I committed to that two years ago.”

Bringing in experts once the project is under way isn’t enough for Mr. Jackson. He says that he’s not against the refinery but merely wants experts to survey 100 percent of the land now, before any land transfer is approved by the courts. Still, it’s clear he’s not happy that the government is selling land to private buyers like Arizona Clean Fuels. “If they have no use for it, give it back to us,” he says of the federal government’s move. “We know how to protect it; it’s our ancestral land.”

FOR Arizona Clean Fuels and Mr. McGinnis, the Quechan lawsuit couldn’t have come at a worse time. After years of negotiations, the company renewed its state emissions permit last September. Now, Arizona Clean Fuels, which is owned by individual investors in the Western United States, is seeking an outside institutional backer with deep-enough pockets to put up the initial $1.5 billion to start construction and eventually borrow an additional $2.5 billion to finish the refinery by 2011.

Mr. McGinnis says he’s negotiating with two investor groups over that crucial $1.5 billion initial investment. But the lawsuit is a distraction for him, and a worry for any potential financial backer. “We spend half our time dealing with our attorneys on this when we should be dealing with other things,” he says.

The tribe’s effort to seek a preliminary injunction was rejected in federal district court in late June, but now the Quechans are appealing to the United States Court of Appeals for the Ninth Circuit in San Francisco, a traditionally liberal panel that has been sympathetic to Indian claims in the past, including the suit over the ski resort.

Both sides seem to be digging in, even though Mr. Jackson has never visited the refinery site, and Mr. McGinnis has never spoken directly to Mr. Jackson. “We’ve had many doors slammed in our face in the past,” says Mr. Jackson, sitting in the tribe’s council chambers on the reservation. “But that’s the old way. Today, my foot is in the door and I’m going to kick it wide open for my people.”

Mr. McGinnis avoids responding to that challenge. Because of the lawsuit, he says he hasn’t picked up the phone to call Mr. Jackson directly, but adds that “our attorneys have requested meetings and I’ll sit down with him anywhere and anytime he wants.”

That’s not likely to happen soon, and Mr. Jackson says he is willing to take the suit to the Supreme Court if necessary. As was the case with the gold mine, he doesn’t seem interested in a financial settlement with Arizona Clean Fuels but is focused on the land itself. “We’re a tenacious people,” he says, citing earlier fights of a different kind between the Quechans and the Spanish, the Mexicans and the United States cavalry. “We’re still here. The cavalry is gone.”