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Judge to Rule in Ages-Old Indian Land Dispute

By JAMES BROOKE

PHOENIX, Feb. 14— As an airconditioner purred quietly in a seventh-floor Federal courtroom, Navajo and Hopi voices rose over an ancient land dispute that stretches back before Kit Carson, before the Spanish conquistadors and beyond recorded time in the high desert mesas east of the Grand Canyon.

At issue is a Rhode Island-size chunk of desert that Congress assigned to the Hopi tribe in 1974, despite the presence there of about 12,000 Navajo shepherds.

In the most expensive Indian relocation in American history, the Federal Government has already spent \$330 million moving about 11,000 Navajos from the land. Only 10 percent of the Navajos remain, but they form a hard core of "resisters" who say their ancestral claims long predate the rule of American law in what is now Arizona.

"My family has been there for 25 generations," Sam Tso said shortly before his mother, Mae, testified against a new Government-brokered settlement intended to resolve what may be the longest and largest land title fight in the West.

Judge Earl H. Carroll of Federal District Court is scheduled to hear final arguments in the matter on Friday. If Judge Carroll affirms the settlement's fairness, decades of mediation would end on March 31, when the 1,200 Navajos would have to make a choice: move off the land, sign 75-year rental leases with the Hopi or face eviction by Federal marshals. A ruling is expected within days.

"This is our last offer," said Ferrell Secakuku, the chairman of the Hopi Tribe, who, at a court recess, distributed leaflets stating that his ancestors had settled the area 2,000 years ago. "If the Navajo families don't sign leases by April 1, they will be trespassers subject to eviction."

Last October, President Clinton signed into law the Navajo-Hopi Land Settlement Act in an effort to defuse the problem of the Navajo holdouts. The settlement also calls for the Federal Government to give the Hopi Tribe a total of \$50 million, largely to recompense the tribe for lost rents and enable it to expand the reservation by purchasing new land. In

return, the Hopi would drop four lawsuits pending against the Federal Government relating to the dispute.

The Navajo Tribal Council has voted to oppose the deal, and only one-fifth of the affected Navajo families have said they would sign leases.

In the past, elderly Navajo women, the clan leaders in this matriarchal society, have shot rifles over the heads of government surveyors and assessors. But Lee B. Phillips, the lead lawyer for the Navajo families, warned: "I have talked to several people, both outsiders and members of the Navajo government, who talk of forcing the U.S. Government into another Wounded Knee."

That battle -- the last major confrontation between the United States Army and Indians -- took place in Wounded Knee, S.D., in 1890, with 29 soldiers and about 200 Sioux men, women and children killed.

As in the Balkans or the Middle East, this land dispute turns on competing histories and maps. In 1540, Francisco de Coronado became the first European to venture into this serene and desolate area about 80 miles east of the Grand Canyon. According to the Hopis, the Spanish general encountered Hopis living in many of the farming villages they occupy today. Indeed, one Hopi village, Old Oraibi, dates to A.D. 1,300 and is considered the oldest continually inhabited site in the United States.

A sedentary and nonviolent people, the Hopi "were plagued by Navajo depredations" during the time of Spanish and Mexican rule, asserted a Hopi pamphlet distributed today. The pamphlet included a map depicting the Navajo nation as a red blob that, in 130 years of American rule, gradually engulfed "Hopiland."

Today, with 10,000 members living on 2,300 square miles, the Hopi reservation is surrounded by the largest Indian nation in North America -- 110,000 Navajos living on 26,000 square miles.

The Navajos, who traditionally have followed a shepherd's nomadic way of life, say they have wandered the disputed lands for centuries. The number of Navajos in Arizona increased in 1863, they say, when Kit Carson led an Army cavalry unit on a scorched-earth campaign against Navajos in neighboring New Mexico.

"My parents and grandparents have performed special ceremonies there," Mrs. Tso, a 58-year-old weaver and sheep herder, said in court, her Navajo speech echoing off the wood-paneled courtroom. With one of her sons translating, she said: "All of our beliefs, all of our ceremonies are tied to this land."

The Navajos say that for centuries they have coexisted peacefully with the Hopis, typically trading mutton for corn. Now, they say, Hopi "progressives" seek to evict the Navajos to make way for multibillion-dollar energy projects. A major electricity source

for the Southwest, the Navajo reservation has four coal strip mines and five coal-fired power plants.

"The Hopi want that money," said Mr. Tso, the spokesman for Sovereign Dineh Nation, a traditionalist Navajo group. "They want that dollar. Greed has taken over."

Black Mesa, an important site in the disputed area, contains vast quantities of coal as well as gas and uranium deposits, Mr. Tso said.

During a break in court, Mr. Secakuku, the Hopi leader, dismissed this assertion. Referring to the disputed area, he said: "We have a 20-year moratorium on mining and development. Our attempt is to take jurisdiction of our own land."

For both sides, land has been a constant source of intertribal tension. Last May, Navajo police officers in six vehicles surrounded and arrested two Hopi tribal officials and nine members of a Hopi spiritual brotherhood after they captured two golden eaglets from a cliff nest on Navajo land. Eagles are central to Hopi religious ceremonies, and the tribe is the only one in the nation that the Federal Government permits to capture the birds.

The Navajos maintain that the Hopis did not have a Navajo permit. Charges were dropped after Judge Carroll drafted a compromise.

Later in the summer, the Hopis retaliated, blocking a traditional Navajo sundance that was to be held on Hopi land. Leonard CrowDog, the leader of the annual gathering, was fined \$10,000 by the Hopi for cutting down a juniper tree. In other confrontations last year, Hopi workers filmed sacred Navajo ceremonies and tore down a century-old Navajo hogan, or sacred building.

"The Hopi Rangers feel free to walk into people's homes, to go through their land," Bruce Ellison, the South Dakota lawyer representing the Navajo holdouts, said of the tribal police officers. "They have mounted armed roadblocks."

Indeed, the Hopi, whose name means "peaceful" in their language, are increasingly aggressive in asserting sovereignty in lands occupied by what they call "Navajo squatters."

In the disputed area, some Navajo families live in caves or under plastic tarpaulins because Hopi Rangers have enforced a 23-year-old Federal ban on Navajo home improvements or construction. Knowing that the Navajo consider junipers to be sacred trees, the Hopi require them to obtain permits to cut even branches for religious ceremonies.

"When a lady is going into labor, and the baby is about to be born, we need a fresh green branch from a juniper tree," Mrs. Tso told the court, which was filled with Navajo men holding cowboy hats and women in voluminous traditional dresses. "Who would want to run to the Hopi tribe to get a permit while your daughter or your wife was in labor?"

Loathe to recognize Hopi sovereignty over the land, the Navajo Tribal Government is about 10 years delinquent in its annual rent payment of about \$100,000, levied by the Federal Government to compensate the Hopi for the Navajos living on the land.

Like a landlord in a long-running eviction battle, the Hopi now are restricting the Navajo's livelihood -- flock size and grazing areas. Forecasting a hot summer on the mesas, Mr. Secakuku, the Hopi leader, warned, "If the court decides that the settlement is not fair, the Hopi Tribe will not mediate again."

Photo: Navajos demonstrated last week in Phoenix against a Government-brokered land settlement that says they are on Hopi land. (Jeff Topping for The New York Times) Map of Arizon: A Federal judge in Phoenix is trying to resolve a long dispute over Navajos who are living on Hopi land surrounded by the Navajo nation.