

Aboriginal Land Rights (Northern Territory) Act 1976
Report no. 20

Gurindji Land Claim to
Daguragu Station

Further report
by the Aboriginal Land Commissioner,
Mr Justice Maurice, to the Minister for
Aboriginal Affairs and to the Administrator
of the Northern Territory

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MR JUSTICE MAURICE
ABORIGINAL LAND COMMISSIONER
GP 0 Box 487
Darwin, N T 5794
Telephone 81 1799

The Hon. Clyde Holding, M.P.,
Minister for Aboriginal Affairs,
Parliament House,
CANBERRA A.C.T. 2600

Dear Minister,

GURINDJI CLAIM TO DAGURAGU STATION

In accordance with S.50(1) of the Aboriginal
Land Rights (Northern Territory) Act 1976,

I present a further report relating to part
only of the area the subject of this claim.

Yours sincerely,

MICHAEL MAURICE
ABORIGINAL LAND COMMISSIONER



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ABORIGINAL LAND COMMISSIONER
G.P.O. Box 487
Darwin, N.T. 5794

Telephone 81 1799

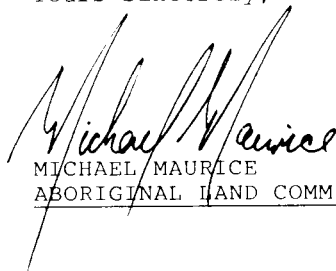
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Introduction

1. In 1981 Mr Justice Toohey heard a claim by twelve separate groups of Gurindji people to Daguragu Station. Each group claimed to be the traditional Aboriginal owners of a discrete area on the station; the totality of their claims covering the whole property. The Commissioner presented his report to the Minister for Aboriginal Affairs and the Administrator of the Northern Territory under cover of letters dated 18 November 1981. He recommended to the Minister the grant of the whole of the Station save for that area of land comprising the south-western corner immediately adjacent to the Victoria River.

2. This small pocket of land had been claimed by a group referred to as Group II in the Claim Book (Exhibit 21) and the earlier report. The Commissioner's reasons for not recommending a grant of this part of the claim area are set out in paragraphs 114 to 120 of his report. Whilst he specifically found that 'this portion is part of a larger area traditionally owned by Group II', he came ultimately to the conclusion that Traditional ownership in terms of the Act has not been established' (Daguragu Report para. 120). Shortly stated, the reasoning behind this conclusion was that as a matter of construction the Act required that there be a site or sites on the land claimed. Group II has sites around the south-western corner of the Station, but none actually on it.

3. The Commissioner's view was challenged in the High Court of Australia in *Re Kearney, - Ex parte Jurlama* (1984) 58 ALJR 243; an application made to the Court in the exercise of its original jurisdiction for the issue of a writ of mandamus against Toohey J's successor. The Court was unanimous in rejecting Toohey J's interpretation of the Act. Gibbs CJ, with whose judgement Brennan, Deane and Dawson JJ agreed, concluded:

There can be no sensible reason why an application and a recommendation should not be made in respect of a piece of land which forms part of an area of which the claimants are the traditional Aboriginal owners, and which is land available to be claimed under section 50(1)(a), simply because, by an accident of boundaries, the sites which give the land its character fall outside the part of the land which is available to be claimed (p. 245).

4. It has therefore been necessary to reopen the inquiry into Group II's claim and consider it in the light of the High Court's ruling. To this end, a hearing was conducted by me at Wattie Creek on 19 October 1984. Those who had taken part in the original hearing were notified directly, as were the owners of the land adjoining the south-western portion of the Station. In addition, the hearing was twice advertised in the Northern Territory News.

5. Mr Ross Howie, the lawyer who had represented the claimants at the original inquiry did so again. Mr David Barrett appeared for the Attorney-General of the Northern Territory and Mr Peter Carroll on behalf of the Department of the Chief Minister. The Northern Territory supported the claim. No one opposed it. No matters of detriment were brought to my attention.

6. Most of the Aboriginal people who spoke at the recent hearing referred to Group II's country as 'Yarri' country. I shall refer to it as such.

The local descent group

7. In his report Mr Justice Toohey found that the land-owning groups for this area were composed of persons recruited in two different ways: 'clan members' received their rights from father and father's father, while 'workers' received theirs through their mother and mother's father (para. 54). His Honour was satisfied that both clan members and workers met the requirements of the Act with regard to traditional Aboriginal ownership (para. 64).

8. However, the earlier report also recognised a degree of flexibility in the application of descent principles by these people. In the particular instance there dealt with, the only surviving clan member for an area contiguous with Yarri was an old woman who had no children. To ensure continuous ownership of the country, a decision had been made to augment the clan group by recruiting persons who could trace descent through their mother's mother's brother (paras 1-11-3). It is apparent that the Commissioner was satisfied that this decision was in fact a particular application of local tradition to meet special circumstances.

9. On the genealogy presented for Group 11 (Exhibit 45), the bulk of the claimants are represented as being members of one patrician, of which George Kalipirri, Smiler Kartarta and George Manyu are the surviving members of the most senior generation. Between them and their deceased brother they have fathered many children who in turn have given them grandchildren, some patrician members and others, by virtue of their being the children of daughters, persons who fulfil the role of kurdungurlu-or 'workers' as they were called in the previous report. But, because these three men did not have any sisters, there was no one in the generation immediately below them to be their kurdungurlu. Nor, apparently,, were there any surviving children of female members of the patriline-or at least their branch of it-in the previous generation to fulfil that role.

10. Another much smaller group was shown on the genealogy in a way which at first sight suggested that seven of its members constituted a patrician for Yarri country, and that another three were kurdungurlu for that country. It is the legitimacy, of this smaller group's claim to membership of the local descent group which has proved problematical for me.

11. The smaller group's line is shown as going back four generations to a woman (now deceased) whose father country was Yarri. She had one child, a daughter now deceased, and four grandchildren: Mick Janjinin, Peter Jalngi Nirri, Monday Ninnga Jipuntuwula and Linda Lapngarri. Each of these grandchildren together with the children of Mick and Monday were put forward as a second patrician or sub-branch of the larger patrician for Yarri. Linda's son Jerry Rinyngayarri together with her deceased sister's sons, Donald Nangkayarri and Paddy Jurlama were put forward as kurdungurlu. It was obvious that Donald Nangkayarri is a very senior man, both in terms of his age and the position which he holds in relation to Yarri country, its dreamings and ceremonies.

12. At the original hearing primary evidence about the local descent group for Yarri was led from Donald Nangkayarri in the presence of Paddy and Jerry and, for the main patrician, George Manyu and Smiler Kartarta. No other members of this smaller group appear to have been directly involved in the giving of that evidence. Donald Nangkayarri described Yarri as his mother country without elaboration. He was asked: 'Who is the main boss of your mother's country?', and replied:

George [Manyu] and Smiler and George Kalipirri. He's not here. They own the country. I'm only just guard him for them, you know, but we all same group, same local mob I start the business, all the same country (transcript p. 346).

No questions were asked about the position of the other members of this small sub-group; in particular, the precise basis for their inclusion in the local descent group did not emerge.

13. At the reconvened hearing before me the same men were present along with Mick Janjinin and Monday Ninnga Jipuntuwula. These last two men were described by Mr Howie as claiming through their father, but the evidence which was led was confusing and confused and would not support a claim through their father. The assertion made in the genealogy that their deceased father was a member of the patrician was not borne

out by the evidence. At the end of the day, neither Mr Howie nor Dr McConvell was able to provide a satisfactory analysis of the Aboriginal evidence about this smaller group, nor did they claim to.

14. So far as the smaller group clanspersons are concerned, despite what appears at some places in the transcript, I am not completely satisfied that they were accepted by the members of the larger patrician as having the same responsibilities for Yarri as they did. About Donald Nangkayarri, Jerry Rinyngayarri and Paddy Jurlama I do not entertain the same doubt. During the second hearing George Kalipirri was asked whether I should put these three men down for Yarri and he replied, 'yes'-indicating that they were kurdungurlu for the country.

15. What I think has happened is that a time came when there were no male persons to act as kurdungurlu for Yarri; that is to say no men whose mothers were members of the patrician. So it became necessary to find someone else to fulfil that vital responsibility. Of course it had to be someone of the opposite patrimoiety, which would seem to rule out Monday and his brothers and sisters, but not Donald, Paddy or Jerry. It was only they who were clearly described in the evidence as being kurdungurlu. And, while it may be the case that other factors played a part in their selection for this role, the fact of their being kinsmen of the patrician was undoubtedly important.

16. In the result, I am satisfied that these three caretaker kurdungurlu are members of the local descent group but I am not satisfied that the other members of the smaller group ought to be included. This is not to say that further field work and other investigation might not reveal that they are indeed traditional owners of Yarri, but simply that the evidence before me was not sufficient for the purpose.

The land and its sites

17. In *Re Toohey; Ex parte Stanton* (1983) 57 AUR 73, at p. 75, Wilson J said:

If [traditional] ownership has to be proved by reliance on sites located [off the claim area], then cogent evidence would no doubt be required in the form of dreaming tracks or other material to link the land, the subject of the claim, to those sites and so establish a primary spiritual responsibility for it.

This statement was approved of by the court in *Re Kearney; Ex parte Jurlama* (1984) 58 AUR at p. 245.

18. Yarri country is bounded in the north by the Victoria River between the Horse Creek junction (Lumpurrjawung) in the west and Catfish Homestead (Muntuluk) on or near Wiltshire Creek in the east. A little further east Spring Creek flows from the south into the Victoria River. The distance between Lumpurrjawung and Muntuluk in a straight line is no more than about 18 kilometres. Other creeks run from the south into the Victoria River between these two places. The claimants have their own nomenclature: going from east to west they are Wajipirliwuny (Juniper Creek), the junction of which is called Kuwarrirla; Wantinguwuny (Maggie Creek), the junction of which is known as Pu1jankalu; and Punkuwuj (Brown Creek on Exhibit 17 and Stony Creek on the National Topographic 1:100 000 Series, Mount Barton Sheet 4962), the junction of which is known as Kururmarn. From Parntamirn country to the north, two creeks enter this section of the Victoria River: Mawirryawung (King George Creek) at Pikutayawung; and Mountain Creek at Yintiti.

19. From slightly south of the Horse Creek junction to a point only about a hundred metres to the west of the Daguragu boundary fence the Victoria River consists of a long waterhole known to the claimants as Wurruyawung. This feature is clearly shown on the Mount Barton Sheet.

20. Kururrmarn is only a few hundred metres to the south-east of the claim area. There is a small gorge there. Both it and the Horse Creek junction away to the north-west can be seen from a hill on the north bank of the river in the immediate vicinity of the claim area. One of the claimants told Dr McConvell that when he was a young boy he had been involved in 'business' along the river bed at Kururrmarn. The doctor observed that the senior male claimants with whom he had visited the area were reluctant to talk about this place. That same reluctance was manifest in the hearing before me.

21. It is clear that a major site of significance for Group 11 is a big hill at the head of Maggie Creek called Yarri. That is where the claimants start the 'business' (Juju) the details of which are secret. In Maggie Creek itself the claimants have their water goanna dreaming (Wantingu).

22. An important part of the claimants' mythology is the travelling rain dreaming or Janparrung as it is called after the rain stone. The details of this dreaming and the ritual activity associated with it are shrouded in secrecy. It is associated with a number of waterholes in Horse Creek: Pilijkarrawiti, Karnamanyja, Partukurn and Nginyngarrarlarnu. The long waterhole, Wurruyawung, which comes right up to the claim area, is clearly associated with it, but not, I gather, Kururrmarn. Speaking of the way Yarri people follow that rain dreaming, Donald Nangkayarri said, 'When he go up to the rise from that hole he go up near Brown Creek junction, that Kururrmarn. Then he didn't rain him now. He been go, have to go'(transcript p. 21). The dreaming appears again at Yintiti and Muntuluk. There are two girls (Mirnirni) associated with the story of this dreaming so that at Muntuluk it becomes known as girl dreaming as well. When the girls went away from Muntuluk they left a rain stone. Speaking of this stone, Donald said, 'When you grind him, the same as that rain stone we leave this side of the homestead in that Wiltshire Creek, that's where we pick up that rain stone and grind him and make the rain'(transcript p. 337). The rain stone at Muntuluk is called the Mirnirni after the two girls.

23. Yintiti is a place for fish dreaming. It is shared by the Yarri and Parntamirn groups.

24. Pikutayawung takes its name from the bush potato, pikuta. The claimants have a dreaming for this area as well. It was simply referred to as bush potato dreaming.

25. I am satisfied that the stretch of country immediately to the south of the Victoria River for its entire length between Horse Creek and Muntuluk is, in the claimants' perception, an integral whole; the integration being conceptually achieved by natural features, dreaming tracks, sites, ritual, and the secular activities of the hunter-gatherers of the region. The evidence linking the claim area to the rest of Yarri country is cogent and persuasive.

Common spiritual affiliations

26. The subject of spiritual affiliations to the sites on Yarri country has really been dealt with above. I am satisfied that the members of the local descent group named in paragraph 29 of this report share a system of beliefs involving the sites on Yarri country such that they may properly be said to have common spiritual affiliations to those sites.

Primary spiritual responsibility

27. I am also satisfied that those persons have the primary spiritual responsibility for Yarri sites and for the land comprising the traditional country of the group including the claim area.

Right to forage

28. The right of the members of the local descent group to forage without let or hindrance over the claim area was established by evidence given at the first hearing. I am satisfied that that right has its origins in Aboriginal tradition. It is a right which is still exercised today.

Formal findings

29. I find that the persons listed hereunder are the traditional Aboriginal owners within the meaning of the Act of the area the subject of this report.

Clan members	Kurdungurlu
George Kalipirri	Donald Nangkayarri Jurlama
Smiler Kartarta Panguya Jangala	Jerry Rinyngayarri Jurlama
George Manyu	Paddy Jurlama
Elaine Smiler	
Lisa Smiler	
Rosie Smiler	Pauline
Johnny Smiler	Sheila
Thelma Smiler	Jamie
Gregory Smiler	Josie
Banyo Rami Smiler Jangari	Lee
Mary Yarri Smiler Nangari	Mary
Gary Smiler Jangari	Pat
William Jangari	Noel
Ryan Jangari	Sammy
Minnie Nangari	Georgie
Janice George	Jimmy Bird
Robert George	Laura Bird
Michael George	Dawn Rook
Gus George Jangala	Tanya Marie
Emily Nangari	Frankie Rook
Elsie	Robin Rook
Pansy	Jimmy Houghton
Suzanne	Barry Houghton
Amarine	Pansy Houghton
Maryann Lirranpa	Cathy Houghton
Marianne Ngurrapiny	Katie
Smiler George	Eileen
Oscar George	Joanne
Harry George	Glenys
Frankie George	Robert
Duncan George	
Sammy George	
Norman	
Frances	
Ena	
Peggy	
Nora	
Isabelle	
Jefferson	
Carmelina	

Catherina

Sanderson
Chrisyine
Thelma
Marcia
Karen
Marilyn

Desire to live on country

30. Neither limb of s.50(4) appears to apply in this case for the reasons set out in paragraphs 135 and 136 of the earlier report.

Strength of attachment

31. I was left with the clear impression that the senior claimants and others for whom they spoke have a strong traditional attachment to Yarri country. No basis for their attachment other than Aboriginal tradition as defined by the Act suggested itself to me. Knowledge of the country and its sites is there, as is knowledge of the dreamings that go with them. This learning is appropriately guarded. The country and its creation are actively celebrated in song and dance and other ritual activity. The importance of genealogical ties is emphasised in discussion about relationships to the land.

Recommendations

32. In the light of the findings I have made as to traditional ownership, the identity' of the traditional owners, and the strength of their traditional attachment to the land claimed, and notwithstanding that the principles specified in s.50(4) do not apply in this case, I recommend that there be a grant to a land trust of the triangular section of land forming the south-west corner of Daguragu Station, being that portion of Pastoral Lease no. 805 living immediately, to the south-west of the Victoria River. The grant should be incorporated with the grant recommended by Mr Justice Toohey in the earlier report. This will avoid any problems associated with the demarcation of Group II's boundary with Group 7 (Parntamirn mob) to the north-east. The grant should be for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

Matters for comment-number of Aboriginals advantaged

33. There are seventy-four persons who qualify as traditional Aboriginal owners of Yarri country. There is reason to think that most, if not all, would be advantaged by a grant. There \was no attempt to define precisely who else may have traditional attachment of a secondary order to that of the claimants to this particular tract of land. It is highly probable that other Gurindji people do have such attachments. For the reasons outlined in paragraph 144 of the earlier report I would expect the total number advantaged to be at least 200 persons.

Matters for comment-nature and extent of advantage

34. The advantage of a grant from the claimants' point of view is the greater security afforded by a freehold title as opposed to a pastoral lease and the provisions of the Act restricting alienation of Aboriginal land. There is also the fact that the traditional owners will be recognised by law as the ultimate owners of their country, and not merely as holders for a term of years from the Crown. This is, no doubt, a matter of some importance to them. The desirability of Daguragu Station being held by one land trust under one title is obvious.

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Detriment-other Aboriginals

35. There is nothing I can add under this heading to that which is contained in paragraph 149 of the earlier report.

Detriment-non-Aboriginal interests

36. There is no evidence to suggest that any person would suffer detriment if this part of the original claim was acceded to. It is important to recall that the Northern Territory Government supports the claim without reservation.

Effect on land usage

37. I am unable to see how acceding to this part of the claim will have any effect on existing patterns of land usage in the region. So far as I can ascertain, there have been no proposals to alter those patterns save for those mentioned in paragraphs 172 to 174 of the earlier report. There was apparently not sufficient interest in the small area now under consideration to attract comment from any persons interested in mining or other activities in the region.

Costs of acquiring interests

38. It is my understanding based on paragraph 185 of the earlier report that there will be no costs involved in acquiring the Pastoral Lease to facilitate a grant to a land trust under the Act. There are no other interests to be acquired before such a grant may be made.

Public roads

39. There do not appear to be any public roads in the south-western corner of Daguragu Station.

Darwin

April 1985

Representatives (second hearing)

Mr K. R. Howie for the claimants

Mr J. D. Barrett for the Attorney-General of the Northern Territory

Mr P. Carroll for the Department of Chief Minister

Witnesses

Donald Nangkayarri Jurlama

Jerry Rinyngayarri

Mick Janjinin

George Kalipirri

Elsie George

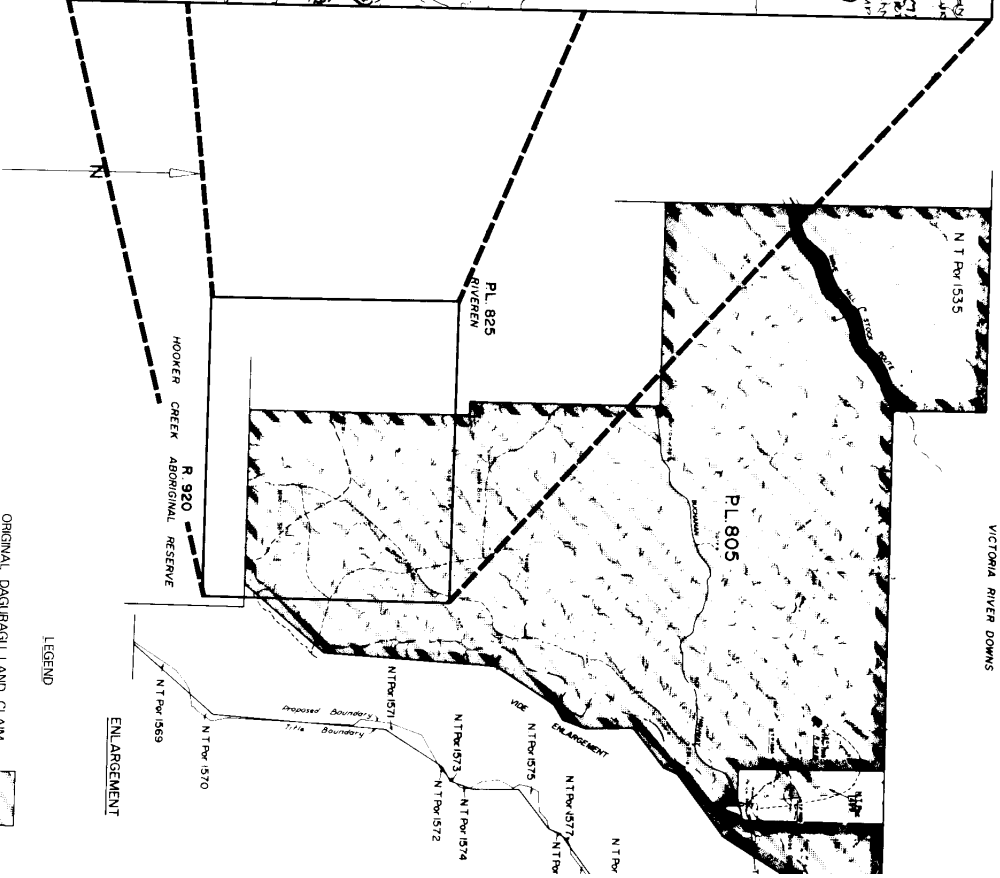
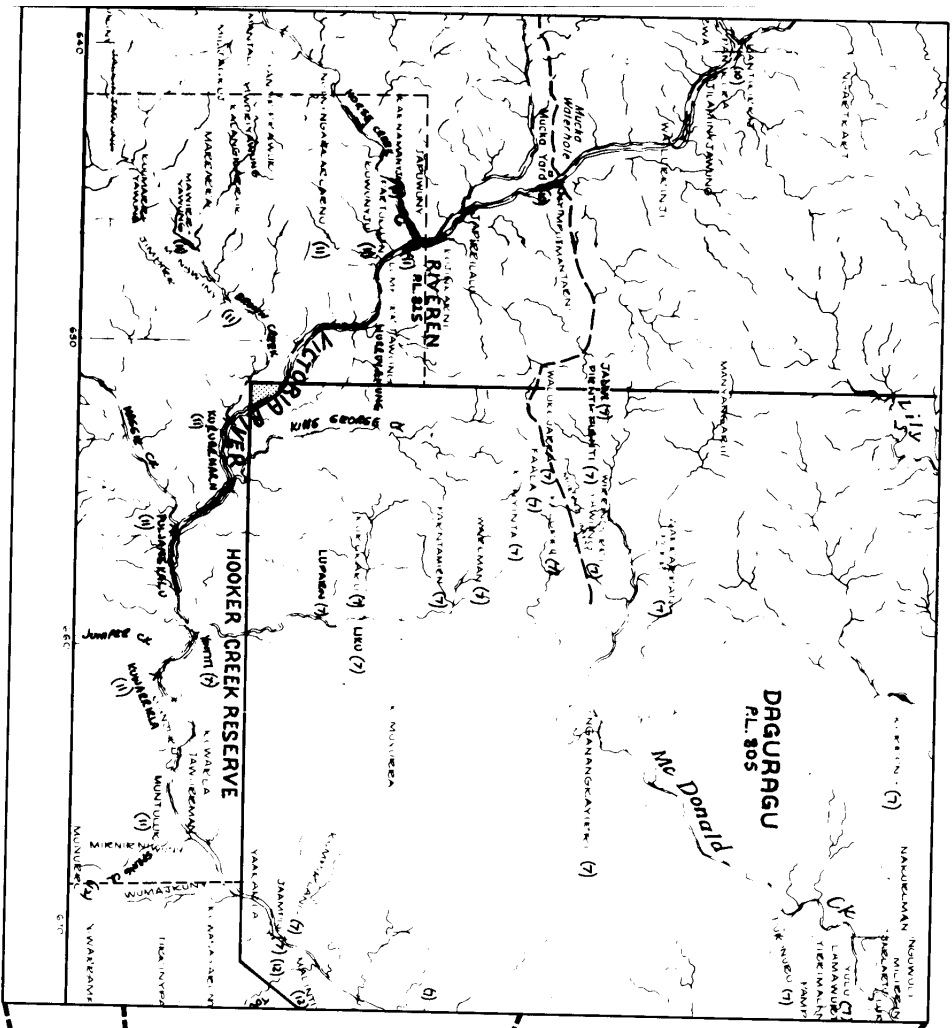
Smiler Kartarta

Frankie George





Susanne George

Patrick McConvell

Monday Ninnga



PL 880
VICTORIA RIVER DOWNS

- LEGEND
-  ORIGINAL DAGURAGU LAND CLAIM
 -  PASTORAL LEASE
 -  RESERVE
 -  PRESENT LAND CLAIM

ENLARGEMENT