

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6133/1998
NNTT Number: WCD2015/008

Determination Name: Wurrunmurra on behalf of the Bunuba People v State of Western Australia

Date(s) of Effect: 22/12/2015

Determination Outcome: Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 22/12/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Bunuba Dawangarri Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 264
FITZROY CROSSING Western Australia 6765

COMMON LAW HOLDER(S) OF NATIVE TITLE:

SCHEDULE FIVE

DESCRIPTION OF THE NATIVE TITLE HOLDERS

Bunuba People (referred to in paragraph 4) are:

- (a) The descendants of the following ancestors:
- Mubu (Banjo Wurrunmurra's MM and David Fairfield's MM);
 - Jaranggu (Johnny Marr's F);
 - Jurrguna (Rita Laylay's MF);
 - Frank Edgar (*Pilot*) (Felix Edgar's F);
 - Limirruwa;

Nindiligali (Nancy Williams' MF and George Brooking's FF);
Dawanjina (Billy Oscar's FM, Lionel Jambara's FFMM);
Ganggula (George Leopold's MM);
Mangalanyi (Adam Andrews' F);
Yambanana (Fred Green's F);
Minyjinyji (Moses Beharrel's M);
Balyburru (Joe Ross' MFF and Wibiy Roger's FF);
Gijalamili (Betty Smith's MMF);
Jingirriban (Rose Benning's MF);
Guburmiya (Barbara Cole's FM);
Bundu (Harry and Lena Skinner's F and Nita Skinner's FF); and
Limadji.

[The Bunuba orthography ng is used to denote the sound heard in the English words 'sing' or 'song'.]

(b) The individuals, and their descendants, who have been adopted or *Marurra* (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba native title claim group, or by their predecessors, in accordance with the traditional laws and customs of the Bunuba People; and.

(c) Aboriginal persons who:

(i) self-identify as Bunuba; and

(ii) are recognised by other members of the Bunuba People as Bunuba under traditional law and custom.

MATTERS DETERMINED:

BEING SATISFIED that a determination in the terms sought by the parties is within the power of the Court, and it appearing to the Court appropriate to do so, pursuant to s 87 of the *Native Title Act 1993* (Cth) and by the consent of the parties:

THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 6133 of 1998 in terms of the Determination as provided for in Attachment "A" hereof.

2. The Bunuba Dawangarri Aboriginal Corporation RNTBC ICN 7813 shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).

ATTACHMENT "A"

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s 225 *Native Title Act*)

1 The Determination Area is the land and waters described in Schedule 1 and depicted on the map comprising Schedule 2.

2 Native title exists in those parts of the Determination Area identified in Schedule 3 (**Native Title Area**).

3 Native title does not exist in those parts of the Determination Area identified in Schedule 4.

Native Title Holders (s 225(a) *Native Title Act*)

4 The native title in the Determination Area is held by the Bunuba People. The Bunuba People are the people referred to in Schedule 5.

The nature and extent of native title rights and interests (s 225(b) *Native Title Act*) and exclusiveness of native title (s 225(e) *Native Title Act*)

Non-exclusive rights and interests

5 Subject to paragraphs 6, 7 and 8, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 (being areas where there has been a partial extinguishment of native title and where any extinguishment is not required to be disregarded) are that they confer the following non-exclusive rights on the Native Title Holders, including the right to conduct activities necessary to give effect to them:

- (a) the right to access and move freely through and within each part of the Determination Area referred to in Schedule 3;
- (b) the right to live, being to enter and remain on, camp and erect shelters and other structures for those purposes on the Determination Area referred to in Schedule 3;
- (c) the right to:
 - (i) hunt, gather and fish for personal, domestic, cultural and non-commercial communal purposes;
 - (ii) take and use flora and fauna for personal, domestic, cultural and non commercial communal purposes;
 - (iii) take, use, share and exchange the natural resources of each part of the Determination Area referred to in Schedule 3 including soil, sand, clay, gravel, ochre, timber, charcoal, resin and stone for personal, domestic, cultural and non-commercial communal purposes;
 - (iv) light fires for domestic purposes but not for the clearance of vegetation;
 - (v) engage in cultural activities in the area, including the transmission of cultural heritage knowledge;
 - (vi) conduct and participate in ceremonies;
 - (vii) conduct burials and burial rites and other ceremonies in relation to death;
 - (viii) hold meetings;
 - (ix) visit, maintain and protect from physical harm, areas, places and sites of importance in each part of the Determination Area referred to in Schedule 3; and
- (x) access, take, use, share and exchange water for personal, domestic, cultural or non-commercial communal purposes.

6 The native title rights and interests referred to in paragraph 5 do not confer:

- (a) possession, occupation, use and enjoyment of those parts of the Determination Area on the Native Title Holders to the exclusion of all others; nor
- (b) a right to control the access of others to the land or waters of those parts of the Determination Area.

7 Notwithstanding anything in this Determination there are no native title rights and interests in the Determination Area in or in relation to

- (a) minerals as defined in the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA); or
- (b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
- (c) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
- (d) water lawfully captured by the holders of Other Interests,

except the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA).

8 Native title rights and interests are subject to and exercisable in accordance with:

- (a) the laws of the State and the Commonwealth, including the common law; and
- (b) the traditional laws and customs of the Native Title Holders for personal, domestic, cultural and non-commercial communal purposes (including social, religious, spiritual and ceremonial purposes).

The nature and extent of any other interests

9 The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 6.

Relationship between native title rights and other interests

10 The relationship between the native title rights and interests described in paragraph 5 and the other interests referred to in paragraph 9 ("**the other rights and interests**") is that:

- (a) to the extent that any of the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the other rights and interests to the extent of the inconsistency during the currency of the other interests; and otherwise,
- (b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the other rights and interests, and the other rights and interests, and the doing of any activity required or permitted to be done by or under the other rights and interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to the operation of s 24JB(2) of the *Native Title Act*, do not extinguish them.

Definitions and interpretation

11 In this Determination, unless the contrary intention appears:

"Determination Area" means the land and waters described in Schedule 1 and depicted on the map at Schedule 2;

"flowing water" means the following water within the Determination Area:

- (a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook; and
- (b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows;

"land" includes the airspace over, or subsoil under, land, but does not include "waters" and, for the avoidance of doubt, includes any natural collection of water found on the land which does not fall within the definition of "waters";

"Native Title Act" means the *Native Title Act 1993* (Cth);

"non-commercial communal" includes social, cultural, religious, spiritual and ceremonial purposes;

"underground water" means water from and including an underground water source, including water that percolates from the ground;

"waters" has the same meaning as in the *Native Title Act*, and includes flowing and underground water.

In the event of any inconsistency between the written description of an area in Schedule 1 or Schedules 3 and the area as depicted on the map at Schedule 2, the written description prevails.

SCHEDULE ONE

DETERMINATION AREA

The Determination Area, generally shown as bordered in blue on the maps at Schedule 2, comprises all that land

comprising those portions of Reserve 31107 that are wholly within the area defined by the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
17.415261	124.934616
17.431927	124.934616
17.448594	124.934616
17.465261	124.934616
17.465262	124.951283
17.465263	124.967949
17.465263	124.984615
17.465264	125.001281
17.448597	125.001281
17.431930	125.001281
17.431929	124.984615
17.431928	124.967949
17.415262	124.967949
17.415261	124.951283

EXCLUSIONS

Fairfield-Leopold Downs Road being Road No. 229 as shown on Deposited Plan 52596.

PART B

All that land comprising those portions of Pastoral Lease N050174 (Brooking Springs) that are wholly within the external boundary of Exploration Leases E04/726, E04/1089 and E04/1098 (as defined by Department of Mines and Petroleum as at 17th July 1999).

PART C

General Purpose Lease G04/38 (as defined by Department of Mines and Petroleum as at 17th July 1999)

PART D

All that land commencing at Latitude 17.948590 South, Longitude 125.334617 East and extending generally southeasterly and generally easterly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
17.965257	125.334617
17.965257	125.351284
17.981923	125.351284
17.981923	125.367950
17.981923	125.384616
17.998590	125.384616
18.015257	125.384616

18.015257	125.401283
18.015256	125.417950
17.998589	125.417950
17.998589	125.434616
17.998589	125.451283
18.015256	125.451283

Then easterly to a southeastern boundary of the northernmost severance of Pastoral Lease N050174 (Brooking Springs) at Latitude 18.015256 South; Then northeasterly, westerly and northerly along boundaries of that severance to Latitude 17.948589 South; Then westerly back to the commencement point.

EXCLUSIONS

All that land comprising Reserve 12475.

PART E

All that land commencing at the intersection of an eastern boundary of the eastern severance of Reserve 43101 with a line joining coordinate positions Latitude 17.948589 South, Longitude 125.501283 East and Latitude 17.948588 South, Longitude 125.517950 East and extending easterly, generally southerly, again easterly, generally northeasterly and again easterly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
17.948588	125.517950
17.948588	125.534617
17.948588	125.551284
17.948588	125.567951
17.965255	125.567951
17.965255	125.584617
17.981921	125.584617
17.998588	125.584616
17.998588	125.567950
18.015255	125.567950
18.031921	125.567950
18.048588	125.567950
18.048588	125.584616
18.048588	125.601283
18.048588	125.617950
18.048588	125.634616
18.048588	125.651283
18.031921	125.651283
18.015255	125.651283

17.998588	125.651284
17.998587	125.667951
17.981920	125.667951
17.981920	125.684616
17.981920	125.701283
17.965254	125.701283
17.965254	125.717950
17.965254	125.734616
17.965254	125.751283
17.965254	125.767950
17.965254	125.784616

Then south to a southeastern boundary of Pastoral Lease N050174 (Brooking Springs); Then generally southerly along the boundaries of that pastoral lease to Latitude 17.998587 South; Then westerly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
17.998587	125.767950
17.998587	125.751283

Then southerly to a northern boundary of Pastoral Lease N050174 (Brooking Springs) at Longitude 125.751283 East; Then westerly, generally southwesterly, southeasterly and again generally southwesterly along boundaries of that pastoral lease to Latitude 18.148588 South; Then westerly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
18.148588	125.617950
18.148588	125.601283
18.148588	125.584616
18.148589	125.567950

Then westerly to an eastern boundary of the northeastern severance of Pastoral Lease N050571 (Jubilee Downs) at Latitude 18.148589 South; Then northerly and westerly along boundaries of that severance to Longitude 125.534616 East; Then northerly and westerly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
18.048589	125.534616
18.048589	125.530510

Then westerly to a southeastern boundary of Reserve 43101 at Latitude 18.048589 South; Then generally northeasterly, generally northwesterly, westerly and northerly along boundaries of that reserve back to the commencement point.

EXCLUSIONS

Dedicated Road within the external extent being Road No. 3179.

All that land comprising those portions of Pastoral Lease N050221 (Fossil Downs) that are westerly of a line joining coordinate positions Latitude 17.965254 South, Longitude 125.784616 East and Latitude 17.998587 South, Longitude 125.784616 East.

Note: Geographic Coordinates provided in Decimal Degrees.

All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 3rd August 2015.

Mining Tenements sourced from Department of Mines and Petroleum as at 17 July 1999.

For the avoidance of doubt the determination excludes any land and waters already claimed by:

Native Title Determination Application WAD6133/1998 Bunuba (Area A) (WC1999/019) as Determined in the Federal Court on the 12th December 2012.

Native Title Determination Application WAD94/2012 Bunuba #2 (WC2012/004) as Registered in the Federal Court on the 10th May 2012.

Native Title Determination Application WAD95/2013 Bunuba #3 (WC2013/001) as Filed in the Federal Court on the 5th April 2013.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 11th December 2015

Use of Co-ordinates:

Where co-ordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

SCHEDULE TWO

MAPS OF THE DETERMINATION AREA

[See NNTR attachment 1: Schedule Two - Maps of the Determination Area]

SCHEDULE THREE

NON-EXCLUSIVE NATIVE TITLE AREAS

Areas where native title comprises the rights set out in paragraph 5

The following land and waters (generally shown as hachured blue on the map at Schedule 2):

Portion of Pastoral Lease N050174 (previously 3114/573, Crown Lease 865/1967), Brooking Springs falling within the Determination Area.

SCHEDULE FOUR

AREAS WHERE NATIVE TITLE DOES NOT EXIST

Native title does not exist in the following land and waters by reason of extinguishment, being those areas shown as green on the maps at Schedule 2.

Vested Reserves

Portion of Lot 340 on DP 52596	Reserve for the purpose of National Park (Windjana
RES 31107	Gorge) vested in National Parks Board of WA

SCHEDULE FIVE

DESCRIPTION OF THE NATIVE TITLE HOLDERS

Bunuba People (referred to in paragraph 4) are:

(a) The descendants of the following ancestors:

Mubu (Banjo Wurrunmurra's MM and David Fairfield's MM);

Jaranggu (Johnny Marr's F);

Jurguna (Rita Laylay's MF);

Frank Edgar (*Pilot*) (Felix Edgar's F);

Limirruwa;

Nindiligali (Nancy Williams' MF and George Brooking's FF);

Dawanjina (Billy Oscar's FM, Lionel Jambara's FFMM);

Ganggula (George Leopold's MM);

Mangalanyi (Adam Andrews' F);

Yambanana (Fred Green's F);

Minyjinyji (Moses Beharrel's M);

Balyburru (Joe Ross' MFF and Wibiy Roger's FF);

Gijalamili (Betty Smith's MMF);

Jingirriban (Rose Benning's MF);

Guburmiya (Barbara Cole's FM);

Bundu (Harry and Lena Skinner's F and Nita Skinner's FF); and

Limadji.

[The Bunuba orthography ng is used to denote the sound heard in the English words 'sing' or 'song'.]

(b) The individuals, and their descendants, who have been adopted or *Marurra* (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba native title claim group, or by their predecessors, in accordance with the traditional laws and customs of the Bunuba People; and.

(c) Aboriginal persons who:

(i) self-identify as Bunuba; and

(ii) are recognised by other members of the Bunuba People as Bunuba under traditional law and custom.

SCHEDULE SIX

OTHER INTERESTS

1. Portion of Pastoral Lease N050174, Brooking Springs falling within the Determination Area.

(a) Geike Gorge Road

2. Existing petroleum interests under the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*

Tenement number	Tenement type	Date of grant
EP 453 R1	Exploration Permit	31 May 2013

3. Existing Interests under the *Mining Act 1978 (WA)*

Tenement number	Tenement Type	Date of grant
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E 04/2362	Exploration Licence	10 March 2015
E 04/2367	Exploration Licence	10 March 2015
G 04/38	General Purpose Lease	9 September 1998
M 04/372	Mining Lease	23 November 1999

4. Other Rights and Interests

(a) Rights and interests, including licences and permits, granted by the Crown in right of the Commonwealth or the State pursuant to statute or otherwise in the exercise of its executive power and under any regulations made pursuant to such legislation;

(b) Rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the force and operation of the *Rights in Water and Irrigation Act 1914* (WA);

(c) Rights and interests of members of the public arising under the common law including but not limited to:

(i) the public right to fish;

(ii) the public right to navigate;

(iii) the right of any person to use any road in the Determination Area (subject to the laws of the State) over which, as at the date of this Determination, members of the public have a right of access under common law;

(d) The right to access land by:

(i) an employee or agent or instrumentality of the State;

(ii) an employee or agent or instrumentality of the Commonwealth;

(iii) an employee or agent or instrumentality of any local Government authority;

as required in the performance of his or her statutory or common law duties where such access would be permitted to private land.

(e) Rights of any person to access and enjoy (subject to the laws of the State) Stock Routes.

(f) (i) Without limiting the operation of any other paragraph in the Fifth Schedule, but subject to paragraph (f)(ii), the rights of holders from time to time of existing petroleum interests under the *Petroleum and Geothermal Energy Resources Act 1967* (WA), petroleum pipelines under the *Petroleum Pipelines Act 1969* (WA) and existing mining tenements under the *Mining Act 1978* (WA) including those mentioned at paragraphs 2 and 3 above to use (including by servants, agents and contractors) roads and tracks as are existing at the time of this Determination in the Determination Area to the extent reasonably necessary to have access to the area subject of the petroleum, pipeline and mineral interests for the purposes of exercising the rights granted by those interests;

(ii) Nothing in paragraph (f)(i) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain such road or track in reasonable repair.

(g) So far as confirmed pursuant to s 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) as at the date of this determination, any existing public access to and enjoyment of:

(i) waterways;

(ii) the beds and banks or foreshores of waterways;

(iii) stock routes; or

(iv) areas that were public places at the end of 31 December 1993.

(h) Any other:

(i) legal or equitable estate or interest in the land or waters; or

- (ii) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
 - (A) the land or waters; or
 - (B) an estate or interest in the land or waters; or
- (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.
 - (i) The rights and interests of Telstra Corporation Limited:
 - (a) as the owner or operator of telecommunications facilities within the Determination Area;
 - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth) including rights:
 - (i) to inspect land;
 - (ii) to install and operate telecommunications facilities; and
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (c) for its employees, agents or contractors to, access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties; and
 - (d) under any lease, licence or easement relating to its telecommunications facilities in the Determination Area.

REGISTER ATTACHMENTS:

1. Schedule Two - Maps of the Determination Area, 3 pages - A4, 22/12/2015

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.