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Our ref: 20180019:BST

30 May 2018

By Email: AboriginalLandCommissioner@network.pmc.gov.au

Aboriginal Land Commissioner
Office of the Aboriginal Land Commissioner
GPO 9932
Darwin NT 0801

Dear Commissioner Mansfield

RE: MATARANKA AREA LAND CLAIM NO 69 (REPORT NO 29)

I write on behalf of DK Pastoral Company Pty Ltd (DK), who operates Lonesome Dove pastoral lease, PPL 1185. DK received an invitation to participate in the detriment review for Mataranka Area Land Claim No 69 (**Land Claim**).

Lonesome Dove is potentially impacted by the Land Claim, specifically "[t]he portion of the Urapunga Stock Route comprising Northern Territory Portion (NTP) 2193 and NTP 1718 (which traversed the former Roper River Station)'. Lonesome Dove is part of the former Roper River Station.

This correspondence provides notice of DK's intention to provide detriment information with respect to the Land Claim. The information may relate to:

- Loss of access between grazing lands and stockyards on opposite sides of Land Claim;
- Loss of access to the Roper Highway from significant portions of the pastoral lease;
- Increased need for fencing along the Land Claim; and
- Cumulative detriment resulting from this Land Claim and the Upper Roper River Land Claims, which also affect Lonesome Dove.

A detailed response and any evidentiary material will be provided to you by 21 June 2018. Other detriments may be identified in that correspondence.

I am also copying Kelly White of DK on this correspondence.

Yours faithfully
WARD KELLER


BRADLY TORGAN
Senior Lawyer

Secretary: Stella Noor

Direct Line (08) 8946 2939

Email bradlytorgan@wardkeller.com.au

cc: Elena Zola, Office of the Aboriginal
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Kelly White
DKGrazing@bigpond.com

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By Email: AboriginalLandCommissioner@network.pmc.gov.au

The Hon John Mansfield AM QC
Aboriginal Land Commissioner
GPO 9932
Darwin NT 0801

Dear Commissioner Mansfield

MATARANKA LAND CLAIM (LAND CLAIM REPORT NO 29)

Please find attached the statement of Kelly White on behalf of DK Pastoral Company Pty Ltd in the above-referenced matter.

Yours faithfully
WARD KELLER



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Senior Lawyer
Secretary: **Stella Noor**

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ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976


**STATEMENT OF KELLY WHITE IN REGARDS TO
THE MATARANKA LAND CLAIM**

1. My name is Kelly White. I am a director for DK Pastoral Company Pty Ltd, as trustee for the DK Family Land Trust (**DK**), owner of the Lonesome Dove Pastoral Lease, PPL 1185 (**Lonesome Dove**).
2. This statement is based on my personal knowledge and belief, except as to that which is based on information and belief. As to those matters, I believe them to be true based on that information and belief.
3. Lonesome Dove will suffer detriment if the Mataranka Land Claim (**Land Claim**) is granted. I understand the part of the original claim at issue is NTP 2913, a portion of the Urapunga Stock Route (**stock route**) The purpose of my statement is to update the detriment that was identified in 1988 Mataranka Land Claim Report No 69 (**Land Claim Report**).
4. As I will discuss at the end my statement, this detriment is magnified because of a second land claim that affects Lonesome Dove, the Upper Roper River Land Claims.
5. Lonesome Dove is a perpetual pastoral lease of approximately 723 square kilometres. The Roper River both bisects the property and forms a portion of its border with the Flying Fox and Big River pastoral stations. To the south of the river, between the Roper River and the Roper Highway, is the stock route. It also cuts Lonesome Dove in two. The effect of that bi-section is described below.
6. DK acquired Lonesome Dove in early 2016. We were not aware of any land claims adjoining Lonesome Dove at the time the property was acquired.
7. I have come to learn that Lonesome Dove was part of the larger Roper Valley Station at the time the Land Claim Report was issued. According to the Land Claim Report at page 96, the effects of the Land Claim on the larger Roper Valley Station "could be disastrous for the profitable operation of the Station unless the lessee were to be given a lease of the Stock Route on terms not less favourable than those he enjoys now, including a term commensurate with that for which he holds the pastoral lease." The Land Claim Report further at page 96 went on to say "only a lease back of substantial parts of the claim area on very favourable terms to the lessee would produce a workable result so far as the continued operation of the Station under the present regime is concerned".
8. That conclusion has not changed, although some of the facts leading to that conclusion have.
9. As the attached map at **Annexure 1** shows, there are 14 paddocks on Lonesome Dove. All of them are fenced and all of them are utilised. If the Land Claim is granted and reasonable access arrangements cannot be reached, DK would be in a position of having to install approximately 30 kilometres of fencing to keep cattle out of the Land

Claim area; and that only if DK could continue to run stock. As I will explain below, however, the likelihood of being able to successfully operate the station without access across the stock route is almost nil.

10. Twelve of the 14 paddocks are completely north of the stock route. Without being able to cross the stock route, there is no access to Roper Highway on Lonesome Dove from those paddocks. Simply put, grant of the Land Claim without reasonable accommodation would leave Lonesome Dove with no realistic way to transport stock to market.
11. Two paddocks, Road and Fizzer, are bisected by the stock route, but the amount of land south of the stock route between the two is only in the tens of hectares. The water sources for Road and Fizzer paddocks are also either in or south of the stock route.
12. Even the homestead is north of the stock route, and could be cut off from Roper Highway in the Land Claim is granted and a reasonable access agreement cannot be reached.
13. We currently run approximately 5500 head of cattle at Lonesome Dove. If the Land Claim is granted and reasonable access across the stock route to allow access to the Roper Highway is not granted, DK would have to destock. We could not undertake a successful pastoral operation.
14. I am also concerned that the detriment to Lonesome Dove if the Land Claim is granted could be magnified by another claim that negatively impacts the pastoral lease, Lonesome Dove, the Upper Roper River Land Claims, more specifically portions of the Roper Valley Area Land Claim No 164 that border Lonesome Dove; Land Claim No 164(i) which is the bed and banks of the Roper River the separate Lonesome Dove from Flying Fox pastoral station, and Land Claim No 164(ii) which is the bed and banks of the Roper River the separate Lonesome Dove from Big River pastoral station.
15. While the Mataranka Land Claim cuts off Lonesome Dove from the Roper Highway, the Upper Roper River Land Claims cut off Lonesome Dove from its most reliable water source. Additionally, if the claimants in the Mataranka Land Claim are different from the claimants in the Upper Roper River Land Claims affecting Lonesome Dove we would be in the position of having to negotiate with more than one claim group for access rights critical to the viability of Lonesome Dove, each with potentially competing interests.
16. I submitted a detriment statement for the Upper Roper River Land Claims detriment review and have attached a copy to this statement as **Annexure 2**. I respectfully ask that the combined effect of this Land Claim and the Upper Roper River Land Claims on Lonesome Dove be taken into account and addressed. Without reasonable and timely accommodation, the combined effect of granting the land claims will end the viability of Lonesome Dove as a pastoral operation.

I declare that I have read this statement carefully before signing and believe it to be true and correct.

Signed: 
Kelly White

Date: 2/07/2018

ANNEXURE 1

MOUNTAIN VALLEY
NT Por 582

URAPUNGA
NT Por 745

FLYING FOX
NT Por 4775

BIG RIVER
NT Por 4973

LONESOME DOVE
NT Por 4972

ROCK
FOX
PDK
181 Km²

GROWN
HILL
PDK
93 Km²

JALBOI
PDK
85 Km²

CAMBANA
PDK
44 Km²

DONKEY
DAM
PDK
63 Km²

BIG ISLAND PDK
33 km²

CHANNEL PDK
53 km²

FIZZER PDK
40 km²

TOP PDK
30 km²

ROPER
NT Por 2193

CHEON
86 km²

MOUNT McMINN
NT Por 4971

ROAD
PDK
42 km²

FLY CREEK
PDK

MOUNT ELEANOR
PDK
89 km²

MUDBUGGA
PDK
29 km²

- LEGEND**
- Highway
 - Highway unsealed
 - Road
 - Road unsealed
 - Track
 - Track
 - Track
 - Railway
 - Cadastral Boundary
 - Force
 - Water Pipeline
 - Channel Line
 - River
 - Lake
 - Lake No. Lake No. Permaculture
 - Open Area/Community Area
 - Permaculture Sub-Region
 - Bores/Tank/Turkey Nest
 - Dam/Trough/Jump Out Point
 - Stocking/Stocking Site
 - Rail Crossing/Land Grant/Permit
 - Monitoring Site/Well/Stock



Northern Territory Government
Department of Planning and Infrastructure
Produced by Land Information Services
Department of Planning and Infrastructure
Department of Natural Resources, Environment and The Arts

Approved by: R. Hoeges 16/06/2008
Drawn: R. Hoeges 16/06/2008
Scale: 1:250,000
Map Series: 320310 - Linsprug
Sheet: 1

Cadastral Licensed: 24/06/2008
Historical Datum: GDA 94

FOR N.T. GOVERNMENT USE ONLY

DEPARTMENT OF NATURAL RESOURCES, ENVIRONMENT AND THE ARTS
Rangelands Management Branch

LONESOME DOVE
N.T. Por 4792 P.P.L. 1159

Scale: 1:250,000
Map Series: 320310 - Linsprug
Sheet: 1

WARNING - The position of cadastral boundaries in relation to the map grid may be outside accepted map accuracy standards and can only be regarded as APPROXIMATE

Drawing No: LSD

8420000 N
8410000 N
8400000 N
8390000 N
8380000 N
8370000 N
8360000 N
380000 E
380000 E
400000 E
400000 E
420000 E
420000 E

ANNEXURE 2

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

**STATEMENT OF KELLY WHITE IN REGARDS TO
THE UPPER ROPER RIVER LAND CLAIMS**

1. My name is Kelly White. I am a director for DK Pastoral Company Pty Ltd, as trustee for the DK Family Land Trust (**DK**), owner of the Lonesome Dove Pastoral Lease, PPL 1131 (**Lonesome Dove**).
2. This statement is based on my personal knowledge and belief, except as to that which is based on information and belief. As to those matters, I believe them to be true based on that information and belief.
3. Lonesome Dove will suffer detriment in the Upper Roper River Land Claims are granted, especially what I understand to be the portions of the Roper Valley Area Land Claim No 164 that border Lonesome Dove; Land Claim No 164(i) which is the bed and banks of the Roper River the separate Lonesome Dove from Flying Fox pastoral station, and Land Claim No 164(ii) which is the bed and banks of the Roper River the separate Lonesome Dove from Big River pastoral station. The purpose of my statement is to update the detriment that was identified in 2004 Land Claim Report for the Upper Roper River Land Claims.
4. As I will discuss at the end my statement, this detriment is magnified because of a second Land Claim that affects Lonesome Dove, Mataranka Land Claim No 69.
5. Lonesome Dove is a perpetual pastoral lease of approximately 723 square kilometres. The Roper River both bisects the property and forms a portion of its border with the Flying Fox and Big River pastoral stations. The Roper River boundary with Big River is approximately 4 kilometres. The Roper River boundary with Flying Fox is approximately 6 kilometres. DK acquired Lonesome Dove in early 2016. We were not aware of and land claims adjoining Lonesome Dove at the time the property was acquired.
6. We currently run approximately 5500 head of cattle at Lonesome Dove. As I noted above, the Roper River bisects Lonesome Dove. The only way to get stock from the grazing lands on the northern side of the river to the stockyards on the southern side of the river is along the river at the boundary with Flying Fox, an area subject to the Land Claim.
7. The evidence as to use of the river for the purpose of watering cattle was given by the proprietor of Big River and explained as follows at paragraph 56 of the 2004 Land Claim Report made available to me:

'He presently does not pump water from the river which apparently is directly accessed by his stock but under the Roper River Landcare Scheme it is anticipated that funding will be provided to fence off this section of the river which will then necessitate the pumping of water from the river. Other parts of Big River station have been fenced off for environmental purposes pursuant to funding arrangements that restrict the use of the river for watering stock except in the case of drought or fire'.

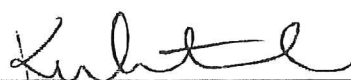
8. Lonesome Dove actually does pump from the river in that Land Claim area for stock use, a change from the situation described in 2004.
9. Where the Roper River forms the boundary of the Big River and Lonesome Dove stations, both sides of the river are now fenced, although we can open the fence on the Lonesome Dove side in dry years to water cattle if nearby reserves are dry. DK maintains the fencing on the Lonesome Dove side of the river.
10. Where the Roper River forms the boundary of Lonesome Dove and Flying Fox, Lonesome Dove has no fencing on its side of the river, which allows direct access to water stock.
11. If the Land Claim is granted, we would lose access to those portions of the river and need install new pumping elsewhere along the river. I estimate that just for the necessary pipes alone we would need approximately 5 kilometres of pipe at a cost of \$2000/kilometre.
12. All watering for our cattle comes from surface waters. There are no bores on the property from which we water stock. We have tried to put down bores before with no success. The river is the only guaranteed water supply for both our stock and domestic use.
13. I noticed that the 2004 Land Claim Report identified the section of the Roper River which separates Lonesome Dove and Big River as a popular fishing spot for the Big River and Lonesome Dove pastoral owners, their family, and friends. This is still the case. It is also true for the section of the Roper River which separates Lonesome Dove and Flying Fox.
14. We have had no contact with any Aboriginal groups or individuals or the Northern Land Council regarding access to any of the Land Claim areas adjacent to Lonesome Dove. This seems similar to what was reported at paragraph 57 of the 2004 Land Claim Report:

'It is difficult to see how a grant of title to the two sections of the river bordering on Lonesome Dove could be of any real advantage to the claimants. Neither section is accessible by road and it would appear that there is no history, at least in recent times, of claimants seeking access to them. To the extent that there may be any sites of significance in the areas claimed, there is no evidence of any difficulty having arisen in connection with them in the past'.
15. I am also concerned that the detriment to Lonesome Dove if the Land Claim is granted could be magnified by another claim that will negatively impact Lonesome Dove, Mataranka Land Claim No 69 which covers the Urapunga stock route.
16. That land claim, if granted, would cut Lonesome Dove in two. It would hinder our ability to move stock not just from the grazing lands to the stock yards, but to the Roper Highway for transport to market.
17. I have not yet read the report for Mataranka Land Claim No 69, but if the claimants are different from the claimants in the Upper Roper River Land Claims affecting Lonesome

Dove we would be in the position of having to negotiate with more than one claim group for access rights critical to the viability of Lonesome Dove, each with potentially competing interests.

18. In conclusion, paragraph 70 of the 2004 Land Claim Report is still correct, '[any such denial or restriction of access to the Roper River as a result of a grant of the Land Claim] could affect the efficiency of the pastoral operations carried on by adjoining pastoralists, particularly the operations of Lonesome Dove and Big River stations'.

I declare that I have read this statement carefully before signing and believe it to be true and correct.

Signed: 
Kelly White

Date: 28/05/2018

Ward Keller

A legal practice conducted by Ward Keller Pty Ltd
ACN 009 628 157, ABN 83 867 405 190

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The Hon John Mansfield AM QC
Aboriginal Land Commissioner
GPO 9932
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Dear Commissioner Mansfield

**ERRATA: UPPER ROPER RIVER LAND CLAIMS
COMPRISING MATARANKA AREA (NT PORTION 916) LAND CLAIM NO
129; WESTERN ROPER RIVER (BED AND BANKS) LAND CLAIM NO 141;
ROPER VALLEY AREA LAND CLAIM NO 164 AND ELSEY REGION LAND
CLAIM NO 245**

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We have discovered an error in the statement of Kelly White on behalf of the DK Pastoral Company Pty Ltd in the above-referenced matter lodged on 29 May 2018. The Perpetual Pastoral Lease for Lonesome Dove identified in paragraph 1 of the statement should be PPL 1185, not 1131.

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I respectfully request that this addendum be considered along with the statement. Please accept my apology for the error.

Yours faithfully
WARD KELLER

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Our ref: 20180019:BST

11 September 2018

By Email: AboriginalLandCommissioner@network.pmc.gov.au

Aboriginal Land Commissioner
GPO 9932
Darwin NT 0801

Dear Commissioner Mansfield

MATARANKA AREA LAND CLAIM NO 69

I Introduction

Pursuant to your correspondence dated 29 August 2018 regarding the Mataranka Area Land Claim No 69, please find below the following responses provided on behalf of DK Pastoral Company Pty Ltd (**DK Pastoral**).

Specifically, we are responding to those items which you have brought to our attention and on which you have invited comment; paragraphs [10], [20]-[22], and [32]-[34], along with general remarks referencing NLC submissions on the Lower Daly Land Claim No 68. You have also invited comment on claimants' general comments on the making of an agreement for the use of the Urapunga Stock Route.

II Paragraph [10]

We agree with what we believe to be the intent of [10]. The detriment to pastoral activities is not mitigated simply by creation of an access route pursuant to section 70(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (**Land Rights Act**).

III Paragraphs [20]-[22]

We reject the implicit allegation in [20]-[21] that the public, including pastoral leaseholders, are required the same level of detailed knowledge of individual land claims as the claimants' counsel and NLC. We further strongly reject any allegation of wilful ignorance levelled at DK Pastoral.

To equate what NLC/claimants' counsel refers to as "readily accessible public information" with actual knowledge of the Land Claim and its status is a leap too far. What claimant's counsel is essentially asserting is 'because we know it, you should have known it'. This is simply not the case. Claimants counsel and NLC operate in a rarefied world of legal practitioners, policy makers, and professional advocates in which Aboriginal Land claims are front and centre and who have a detailed knowledge of the Land Rights Act. Not everyone in the Northern Territory operates in that universe, including adjacent pastoralists.

Persons acquiring a pastoral leasehold are entitled to rely on due diligence prepared for that acquisition. Indeed, we acknowledge that purchasers have an onus of due diligence as part of an acquisition process. As detailed below in section IV B, DK Pastoral met that onus, undertaking due diligence in the process of acquiring Lonesome Dove in 2016. That due diligence did not uncover the adjacent Land Claim nor would it have been expected to. If anything, DK Pastoral was led to believe that there were no potential encumbrances on the stock route. It was not until DK Pastoral received an invitation to participate in the detriment review that DK Pastoral learned of the Land Claim.

In [20], NLC also referenced its submission in the Lower Daly Land Claim No 68, specifically [41]-[53] of that submission. Those paragraphs address submissions by the NT Government and are general observations on pastoral duties and resource management under Northern Territory law. We see no need to address NLC's submission paragraph by paragraph. The sections of the various Acts it describes speak for themselves. We take issue, however, with any suggestion that pastoralist efforts to control weeds or feral animals on adjacent Crown land are somehow less than necessary or required in practical, if not legal, sense. Weeds and feral animals pay no attention to the legal boundaries between Crown land and pastoral leaseholds. Best biosecurity management practices often require activity on adjacent land to protect the health of the stock, protect the health of the grazing lands, and protect the value of the lease to both the pastoralist and the NT Government. This is regardless of whether that management is mandatory, discretionary, or unaddressed by the relevant Act.

IV Paragraphs [32]-[34]

A Cumulative detriment – paragraph [32]

NLC's unsupported assertion at [32] that it does not accept the concept of cumulative detriment arising from two or more separate pieces of Crown land being claimed should be rejected in full.

The definition of 'cumulative' is "increasing by successive additions".¹ Cumulative detriment is the negative impact arising from successive additions, in this case the impacts of successive Land Claims. The detriment is identified in the 2 July 2018 statement of Kelly White at [14]-[16] and the 28 May 2018 statement of Kelly White at [15]-[17], both attached to the correspondence from Ward Keller to the Office of the Aboriginal Land Commissioner dated 2 July 2018. If NLC does not dispute the detriment identified in Land Claim Report No 29 – and NLC does not (see NLC submission at [10]) – then there should be no disputing the cumulative detriment of multiple (or successive) claims impacting an individual pastoral leasehold.

B Due diligence and knowledge – paragraph [34]

We reject NLC's implicit assertion that the pastoralist must have known about the Land Claim because of "readily available" information about it. We expect the NLC and claimants' attorney to be well-versed in that information; in their universe knowledge of land claims looms large. That, however, is not the baseline for the general public, even for purchasers of pastoral property.

¹Merriam-Webster Dictionary on-line, <http://www.merriam-webster.com/dictionary/cumulative> (accessed 30 August 2018); see also Cambridge Dictionary on-line, <http://dictionary.cambridge.org/dictionary/english/cumulative> ("increasing by one addition after another") (accessed 30 August 2018).

The approach taken by the NLC submission reflects a fundamental misunderstanding of transactional due diligence. The requisite due diligence in a real property transaction addresses the subject of the transaction – the property being acquired.

A due diligence enquiry will generally relate to:

- The improvements on the property;
- The property's conformity with the requirements of all relevant Authorities and laws;
- The zoning and/or planning schemes applicable to the property;
- Survey matters, such as encroachments onto the property; and
- Environmental matters, such as the possibility of contamination in the property.

Indeed, this is reflected in the NT Department of Environment and Natural Resources (DENR) due diligence website:²

The Department of Environment and Natural Resources (DENR) receives requests for due diligence relating to a search enquiry for any orders, notices or fees issued or outstanding on a parcel of land. Departmental officers are able to provide information on orders or notices issued or proposed to be issued under the following legislation:

Pastoral Land Act
Soil Conservation and Land Utilisation Act
Weeds Management Act
Bushfires Act
Water Act

Departmental officers are able to provide information relating to any endangered or vulnerable species, endangered populations or endangered ecological communities on, or in the vicinity of a property.

Pastoral lease acquisition due diligence will also include enquiries about exploration and mineral licenses on the property and the existence of bores and/or current water permits and licenses that attach to the property. It also includes a search of native title claims, determinations and ILUAs.

Please note these relate to activity, encumbrances, and entitlements on the property being acquired. A due diligence report would reflect that the stock route was not a part of the lease, but nothing more. It will not capture the legal status of that which is not being purchased. Information on endangered species includes that 'in the vicinity', but that is based on physical/visual identification and the concern that endangered species may ultimately migrate to the pastoral property. Like weeds and feral animals, endangered species do not pay attention to legal boundaries.

Paragraph [17] is of no assistance to the claimants'/NLC's position in this regard. Attachment 5 to the NLC submission is for NTP 2193 – the stock route. The stock route was not being acquired and the Record of Administrative Interests and Information for NTP 2193 would not be part of due diligence for NTP 4172, Lonesome Dove.

I am informed by DK Pastoral that this was, in fact, what occurred as part of the acquisition of the pastoral leasehold. Formal due diligence was conducted for Lonesome Dove that included all these items, but did not include the stock route because the stock route was not being acquired.

²<http://denr.nt.gov.au/land-resource-management/rangelands/information-requests/due-diligence>
(accessed 30 August 2018)

Moreover, the owners were contacted by the NT Government, through the Department of Land Resource Management, prior to the acquisition and asked to request that the stock route be placed in the leasehold, although this never came to fruition. At no time were the pastoralists informed by the NT Government of the existence of the Land Claim.

V Agreement for the use of Urupunga Stock Route

You have indicated your welcome of any comments in respect of making agreement with the claimants for the use of the stock, but it is difficult to provide any comment when Claimant's submission has no discussion of an agreement other than one will be needed to continue pastoral operations if the Land Claim is granted. See submission at [33]. I will simply refer to the statement of Kelly White dated 2 July 2018 at [7]-[8] in this regard.

Yours faithfully
WARD KELLER



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