



Reference No. 262/U/594

In the Matter of Dufton Fell,
Dufton, Eden District, Cumbria

FIRST DECISION

This reference relates to the question of the ownership of the part ("the Referred Part") hereinafter defined of the land known as Dufton Fell, Dufton, Eden District being the land comprised in the Land Section of Register Unit No. CL81 maintained by the Cumbria (formerly Westmorland) County Council. The Referred Part means the part of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference: (a) in letters dated 22 April and 7 June 1988 the Chief Estates Surveyor of Northumbrian Water Authority, enclosing a plan showing their land ownership at Cow Green Reservoir, said that the freehold interest had been acquired by them in 1969 in four separate conveyances, and that a part of such land had been acquired from Mr P B Oughtred who was, as far as the writer was aware, still the owner of the adjoining land; (b) in a letter dated 6 July 1988 Solicitors for Mr P B Oughtred claimed he owned all the rest of the Referred Part other than that which belongs to the Water Authority and the "Proboscis to the North West of Meldon Hill"; and (c) in a letter dated 11 July 1988 the Regional Land Agent (North West England) of Nature Conservancy Council said:

"I confirm that I have checked the Nature Conservancy Council's Deeds and have also looked at the position on the ground and as a result of this it is quite clear that we cannot substantiate any claim to the ownership of any of the land shown bounded green on your plan. I am fairly certain that the area shown coloured pink on the plan ... (meaning the said "Proboscis to the North West of Meldon Hill") ... will be owned by the Appleby Castle Estate. This Estate may now go under a different name. Land immediately to the north of this area was conveyed by the Appleby Castle Estate to the Nature Conservancy Council in the 1950s, and land immediately to the south of this area was conveyed to Broadlands Properties, again by the Appleby Castle Estate. It appears probable that an error arose in the Estate's drawing office when the plans were prepared for these respective sales, resulting in this small area of land being retained unintentionally by the Appleby Castle Estate.

I have today written to Mr D A Pattinson, formerly Chief Agent to the Earl of Lonsdale's Estates, who I believe retains some connection with the Appleby Castle Estate and the Tufton family interests".



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No other person claimed to be the freehold owner of the land in question.

I held a hearing for the purpose of inquiring into the question of the ownership of the Referred Part at Appleby on 19 July 1988. At the hearing: (1) Mr Peter Bentham Oughtred who applied for the registration at Right Section Entry No. 1 (Birkdale West Farm, Dufton) was represented by Mr R Gaynham solicitor of Little & Shepherd, Solicitors of Appleby as agents for Denison Till, Solicitors of Beverley, North Humberside; (2) Northumbrian Water Authority were represented by Mr M C Stoker FRICS, a senior estates surveyor of their Newcastle upon Tyne office; (3) Mr James Dennis Johnston who with Mr Cyril Johnston applied for the registration at Rights Section Entry No. 7 (Dufton Wood Farm, Brownber Hill, Dufton together with OS No. 818 in Long Marton) attended in person; (4) Mr Alec Christopher Allan of Greenhow Dufton who is concerned with the registrations at Rights Section Entry No. 11 (OS Nos in Dufton) and 12 (Greenhow, —————> OS Nos in Dufton and Long Marton) made on the application of Mr Stephen Allan (5) Mr John Tatters who with his brother Mr William Tatters applied for the registration at Rights Section Entry Nos. 13 (OS Nos in Dufton) and 14 (Coatsyke and Midtown Farms and three allotments in Dufton) attended in person and as representing Mr William Tatters; (6) Mr Trevor Alexander Mason of Midtown Farm, Brampton who was concerned with the registration at Rights Section Entry No. 19 (Midtown Farm, Brampton) — made on the application of his father Mr James Amos Mason (he died in 1987) attended in person; (7) Mr William Richardson and Mr John Michael Richardson who with their father George Richardson (he died in 1970) as tenants applied for the registration at Rights Section Entry No. 20 (Land in Hoff), as owners applied for the registrations at Rights Section Entry No. 21 (Ghyll House Farm, Dufton), No. 23 (OS Nos in Long Marton) and with Mrs Elsie May Richards (she died 1984) as owners and tenant applied for the registration at Rights Section Entry No. 22 (Fawcett Farm, Dufton), attended in person; (8) Mr Joseph Shepherd Dargue who with his brother John Watson Dargue (he died between 1971 and 1975) applied for the registration at Rights Section Entry No. 29 allotment in Dufton) and who as a tenant with John Watson Dargue who applied for the registration at Rights Section Entry No. 28 (OS Nos in Dufton) attended in person; (9) Mr John Alfred How and Mrs Mary Ada How who applied for the registration at Rights Section Entry No. 33 (Dufton Hall Farm) were represented by their son Mr Robinson David How; (10) Mrs Sheila Edwards who applied for the registration at Right Section Entry No. 39 (Pussgill Farm, Dufton) which together with Entry No. 40 (Long Hurning) made on the application with the said John Tatters and William Tatters replaced the registration at Entry



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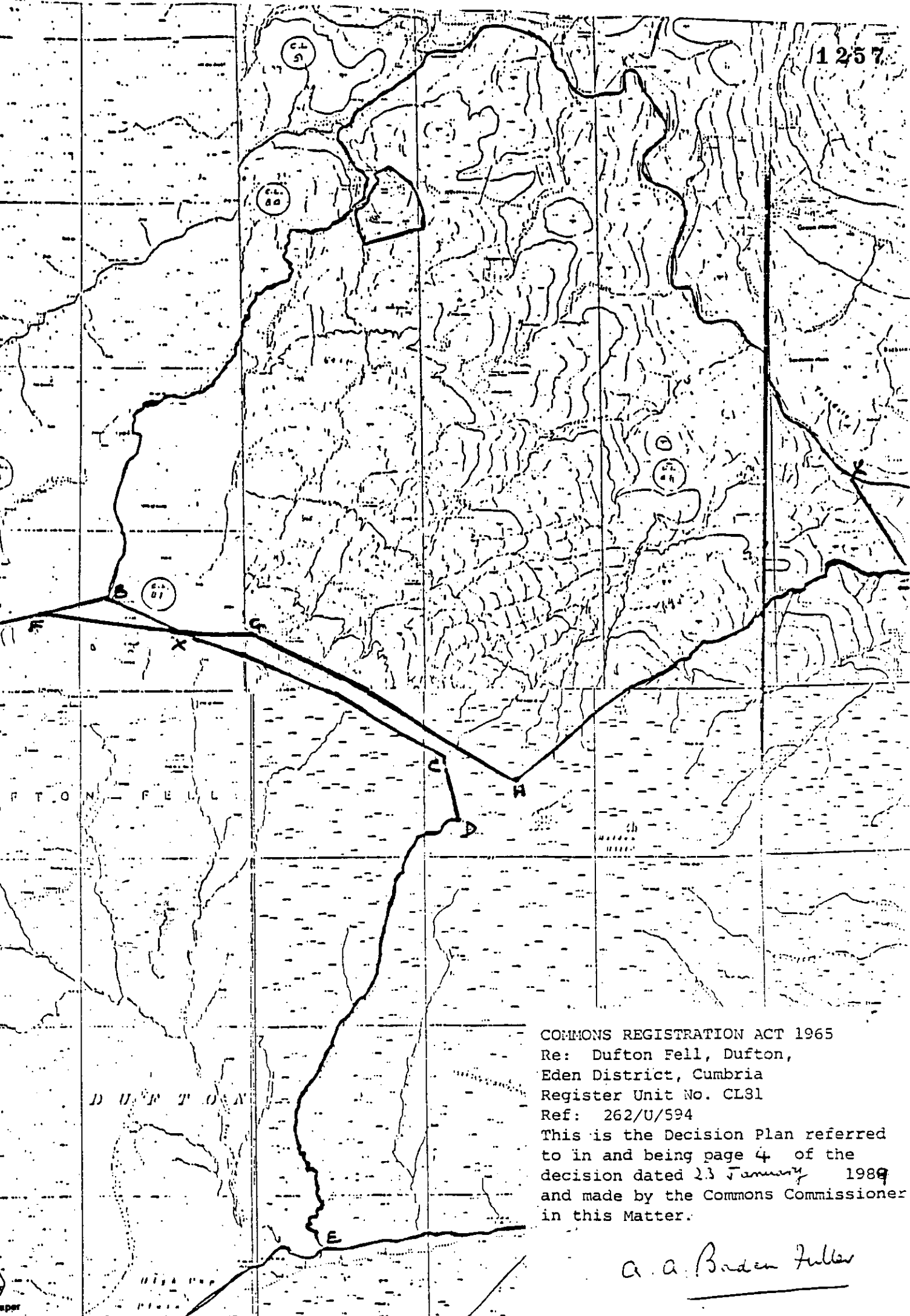
No. 5 made on the application of Mr Charles Lancelot Raine, attended in person; and (11) Cumbria County Council as registration authority were represented by Mrs J H Simpson administration officer in their department of property and services.

The land ("the Unit Land") in this Register Unit is from southwest to northeast about $5\frac{1}{2}$ miles long and has a width varying between about $2\frac{1}{2}$ and $4\frac{1}{2}$ miles. Geographically it is divided into two parts by the watershed of the River Eden (Trout Beck) on the west and of the River Tees (between such River and Maize Beck) on the east; it includes the high ground about Little Runsdale Tarn (2,260 and 2,283 feet) on the west and Meldon Hill (2,517 feet) on the east. There were originally 33 registrations in the Rights Section at Entry Nos. 1 and 33; of these Nos. 5, 25 and 30 have been replaced by other registrations. The Ownership Section at Entry No. 1 Natural Environment Research Council is registered as owner of the part of the Unit Land to the north of the line B-X-G-H-J on the Register map. In the Ownership Section at Entry No. 2 Corlands Minerals Limited are registered as the owners as the part of the Unit Land lying to the south of the line B-X-C and to the west of the line C-D-E on the Register map. At page 4 of this decision is a copy ("the Decision Plan") on a reduced scale of the part of the Register map showing these letters. So the Referred Part is that part of the Unit Land which is to the east of the line on the Decision Plan EDCXGHJK.

Oral evidence was given by Mr Roger Gaynham on behalf of Mr P B Oughtred in the course of which he produced the documents specified in Part I of the First Schedule hereto. He claimed (in effect) that under these documents Mr Oughtred is the owner of so much of the Referred Part as was within 1954 conveyance (PBO/2) except the part by the August 1969 conveyance (NWA/2) by him conveyed to the Tees Valley and Cleveland Water Board. He explained that Mr Oughtred made no ownership claim to the area on the Register Map (and the Decision Plan) marked DCXGHD (in the said July 1988 letters called "the Proboscis"): Mr Oughtred's ownership was for grouse shooting.

Mr William Richardson intervened to say that Birkdale (the farm owned by Mr Oughtred) is the only farm on the east side of the Unit Land which has a grazing right.

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COMMONS REGISTRATION ACT 1965
 Re: Dufton Fell, Dufton,
 Eden District, Cumbria
 Register Unit No. CL31
 Ref: 262/U/594

This is the Decision Plan referred
 to in and being page 4 of the
 decision dated 23 January 1989
 and made by the Commons Commissioner
 in this Matter.

a. a. Baden Fuller



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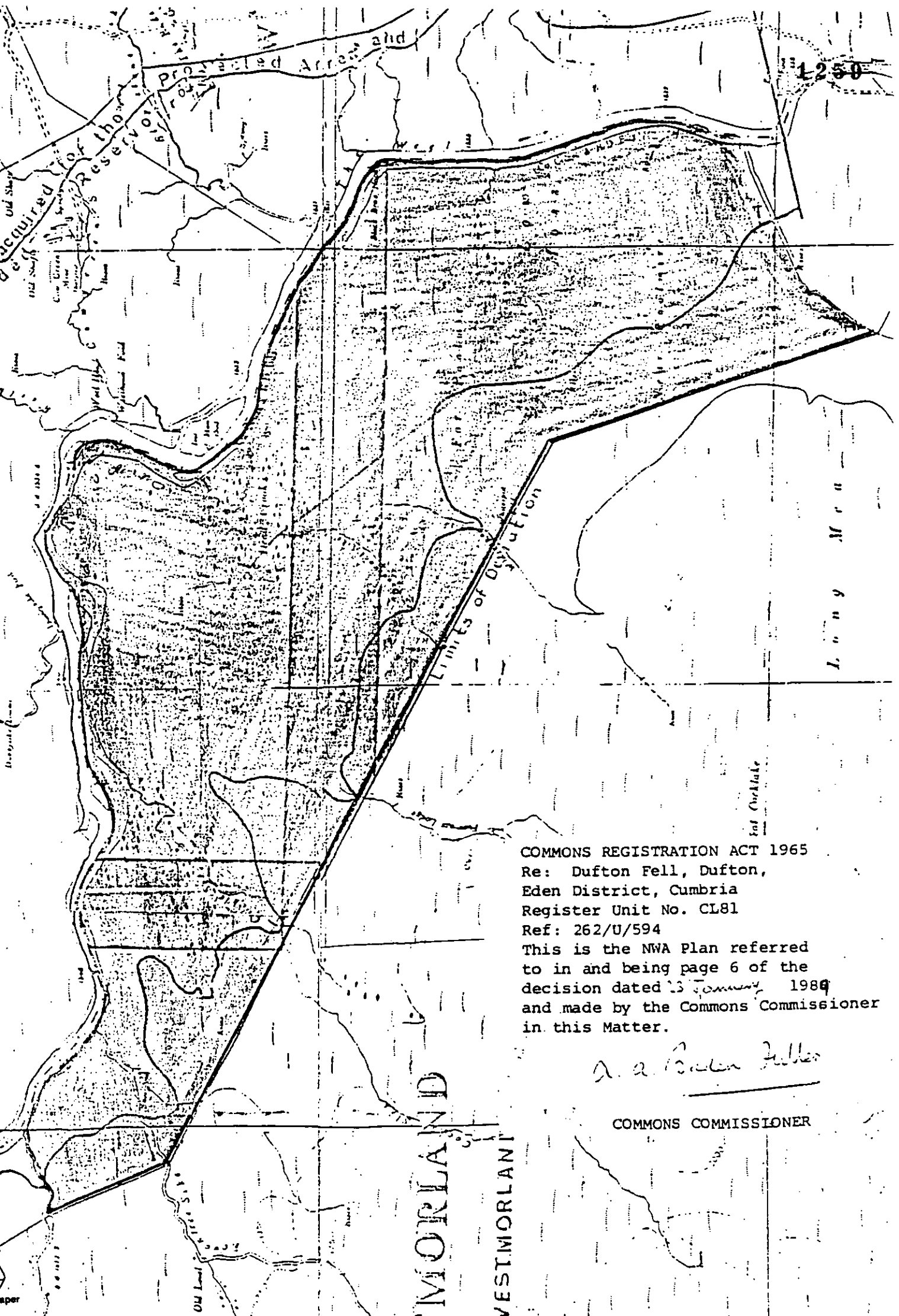
Oral evidence was given by Mr Michael Charles Stoker on behalf of the Northumbrian Water Authority in the course of which he produced the documents specified in Part II of the First Schedule hereto; at page 6 of this decision is an uncoloured copy ("the NWA Plan") of the plan annexed to the August 1969 conveyance (NWA/2), the land on the original coloured pink thereon appearing as darkly shaded. Mr Stoker said (in effect):- The Cow Green Reservoir is now owned by the Northumbrian Water Authority ("NWA"); it is an operational impounding reservoir. The NWA own it as successor of the Tees Valley and Cleveland Water Board under the Water Act 1973. This ownership of the Reservoir was acquired under four conveyances, which include some of the foreshore of the Reservoir (subsequently constructed). The land comprised in the June 1969 conveyance (NWA/1) is within the Referred Part, and adjoins the north-west end of the north boundary of the land within the 1954 conveyance (PBO/2). The land within the August 1969 conveyance (NWA/2) is within the Referred Part and also within the December 1954 conveyance (PBO/2). The land within the May 1969 conveyance (NWA/3) may or may not be within the Referred Part; it is southeast of the land hatched red on the 1954 conveyance plan (PBO/3).

Nobody at the hearing disputed the claims made on behalf of Mr Oughtred and NWA, and I said that I was (as I still am) satisfied that they respectively own the Areas of the Referred Part of which at the end of this decision I say I shall direct their registration as owners. But being then at the hearing without any evidence of the ownership of the Area of the Referred Part on the Decision Plan delineated DCXGHD, I adjourned the proceedings for those present to consider.

On resuming:- Mr R Gaynham said he had been instructed by the Commons present or represented at the beginning of the hearing as above recorded to represent them for the rest of the hearing. The Clerk of the Commons Commissioners said she had on the telephone spoken with the Lowther Estate Office about the reference to their Mr Pattinson in the above quoted Nature Conservancy Council July 1988 letter, and been told that he had spoken to Mr Gaynham and that the Lowther Estate did not own the "tongue piece", meaning the DCXGHD Area. Mr Gaynham confirmed that Mr Pattinson had so spoken to him.

Next oral evidence was given by Mr William Richardson of Ghyll House (one of the applicants for the registrations at Rights Section Entry Nos. 20, 21, 22 and 23) in the course of which he said (in effect):- He is now 64 years of age, and had been on the Fell (the Unit Land) for as long as he could remember; this year was his 51st! He was familiar with the area hatched blue on the plan FBO/1 (being the DCXGHD Area). "We have gathered sheep off there". Before the hearing nobody had claimed to own it. It is about 120 acres, rough grazing, rough because of the moss breaks and peat hacks; it could not support more than 30 or 35 sheep and followers at any time; sometimes no grazing at all because

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COMMONS REGISTRATION ACT 1965
 Re: Dufton Fell, Dufton,
 Eden District, Cumbria
 Register Unit No. CL81
 Ref: 262/U/594

This is the NWA Plan referred
 to in and being page 6 of the
 decision dated 13 January 1984
 and made by the Commons Commissioner
 in this Matter.

A. A. Baker Jellies

COMMONS COMMISSIONER

WESTMORLAND



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there is a lot of peat. Other Commoners have registered rights over the area. "We always bring in sheep off there; they come in in the last week of October or the first week in November, and they are turned out in the first week of April". If an owner of the Area could not be found, he for the Commoners claimed that they were the owners.

Questioned by myself, Mr Richardson said (in effect):- The number we put out in the summer is evidenced by the number we can winter. There are marks on the ground dividing Dufton Fell from Knock Fell. As to the Area DCXGHD), the east end is the top from which Great Millstone Sike flows to the south and Matteredgill Sike flows to the north. He could not explain why the ownership had (from the Ownership Section of the Register) been missed out; it is grazed along with the rest (of the Unit Land). Although there are about 40 registrations, only about 12 are grazing at the moment; some of the registrations are in respect of little fields with rights. The Area (DCXGHD) has no fence or boundary (marked on the ground). Sheep from the Unit Land are gathered for shearing in July, and for dipping in August and in November; the lambs are taken in in November.

Mr Gaynham for the Commoners submitted they were the owners in the absence of any persons proving a "paper title"; for such ownership there would have to be a trustee. I mentioned the Public Trustee as a possibility under Part V of the First Schedule to the Law of Property Act 1925. He thought that the Appleby Castle Estate (mentioned in the said Nature Conservancy Council July 1988 letter) had an agent in the office of Gibbings & Thornborrow of Penrith, who might be concerned with such business as the estate had left (in or around Dufton).

I noted:- "I shall direct the Clerk of the Commons Commissioners to get in touch with Appleby Castle Estate. If they claim, then the Commoners, represented by Mr Gaynham do not object to my examining their paper title at an adjourned hearing near Appleby or anywhere else convenient, the paper title intended to be produced to be sent to Messrs Little & Shepherd, Solicitors of Appleby (Mr Gaynham's firm). Otherwise I shall give a decision on the evidence I have had today (20 July)".

In a letter dated 29 July 1988 to the Clerk of the Commons Commissioners G A Property Services (Gibbings & Thornborrow Agricultural Division) wrote a letter as set out in the Second Schedule hereto. From the documents enclosed with the letter, particularly the map of Lot 74 ("Dufton Fell ... 4,000 acres ... great potentiality as a Grouse Moor ... grazed only by sheep owned by Commoners of the Parish of Dufton ... The Mineral Rights are let on a 100-year Lease from the 2nd February 1939 to Laport Chemicals Ltd ..."), I deduce that the Lot included the DCXGHD Area, so the _____ suggestion in the Nature Conservancy Council July 1988 that it had been overlooked may be mistaken or less likely than the suggestion implied by G A Property Services that it belongs to the purchaser of Lot 74. To me it seems likely or at least possible that Corlands Minerals Limited who are in the Ownership Section registered as owners of most of the Lot or somebody connected with Broadlands



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Properties mentioned in the said July 1988 letter or the successor in title of one of them, is the owner of the Area, at least in the sense of having a paper title to it.

In these circumstances, I am in this first decision about the Referred Part only being final as to the areas claimed by Mr Oughtred and NWA, and will later give a second decision when I know the result of any attempts made by the Clerk of the Commons Commissioners to contact persons who might be the owners of the DCXGHD Area as being the purchaser, or the successor of the purchaser of the said Lot 74.

So in the result, I shall pursuant to section 8(2) of the Commons Registration Act 1965 direct Cumbria County Council as registration authority to register: (1) Northumbrian Water Authority of 4 Regent Centre, Gosforth, Newcastle upon Tyne, NE3 3PX as the owners (a) of the Area of the Referred Part which is darkly shaded on the NWA Plan, (b) of the Area of the Referred Part bounded on the west by the line KJ on the Decision Plan and on the south by the north boundary of the Area last mentioned, and (c) of the Area, if any such there be, between the south-east boundary of the land darkly shaded on the NWA Plan, such boundary being in the line of the Reservoir Dam and the continuation of it southward, and the nearby part of the west boundary of the Referred Part; and (2) to register Mr Peter Brompton Oughtred of Raby Lodge, Brough as the owner of all the remainder of the Referred Part except the Area DCXGHD on the decision plan delineated by such letters, for the purpose of such registration the line DH not drawn on such plan shall be considered as a straight line between the points D and H thereon marked.

As to the DCXGHD Area:- I give to Broadhurst Properties, Corlands Minerals Limited and/or any other person claiming as or under a purchaser of the said Lot 74, liberty to apply for a re-opening of my July 1988 hearing for the purpose of adducing evidence as to the ownership of this Area, such application to be made within THREE MONTHS of the sending of a copy of this decision to the addresses of Broadlands Properties and Corlands Minerals Limited so far as known to the Clerk of the Commons Commissioners, or within such longer period as a Commons Commissioner may allow. Although I read the July 1988 letter extracted in the Second Schedule hereto and its enclosures as indicating that the writer thinks that the persons for whom his firm are acting as "Managing Agents" have no claim, I give to any such persons a like liberty to be exercised during a like period. If no such application is made, I shall at the expiration of the period give by second decision having regard to the evidence of Mr William Richardson above summarised and any other information then available to me. Any application under the said liberty should be in writing (it may be by letter to the Clerk of the Commons Commissioners), and should summarise the paper title (if any) relied on; to it should be annexed a copy or abstract of the conveyance of any relevant part of Lot 74, and a copy of it should be sent to Messrs Little & Shepherd, Solicitors of Appleby for them to obtain any comments on it any Commoner may wish to make.



I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

FIRST SCHEDULE
(Documents produced)

Part I: for Mr Oughtred

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|-------|----------|---|
| PBO/1 | -- | Plan indicating area claimed by Mr Oughtred (edged green and not hatched red or blue). |
| PBO/2 | 22.12.84 | Conveyance by Rt Hon H H S T Baron Hothfield, Rt Hon H M Baron Terrington and G G Shiel as personal representatives of Rt Hon J S R Baron Hothfield who died 22 December 1952 of first Birkdale Farm containing 90.882 acres as described in First Schedule, and secondly Birkdale Moor containing 4,626 acres and sporting rights over about 250 acres of Murton Herds to John Alwyn Oughtred and Peter Bentham Oughtred on trust for themselves as tenants in common. |
| PBO/3 | 12.11.59 | Assignment by Phyllis Brown Oughtred, Peter Bentham Oughtred and Noel Oughtred Till as grantors and personal representatives of John Elwyn Oughtred who died 14 August 1958 of his half share under the 1954 conveyance (BPO/2 supra) to Peter Bertran Oughtred as beneficiary entitled thereto. |



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Part II: for Northumbrian
Water Authority

NWA/1	19 June 1969	Conveyance by the Natural Environment Research Council to the Tees Valley and Cleveland Water Board of about 44 acres of land delineated on the plan annexed thereto and thereon coloured yellow.
NWA/2	20 August 1969	Conveyance by Peter Bentham Oughtred as vendor with the concurrence of Ruth Rowland as mortgagee to the Tees Valley and Cleveland Water Board of 434 acres of land delineated on the plan annexed thereto and thereon coloured pink.
NWA/3	19 May 1969	Conveyance by Alexander Tarn and Currah Tarn to the Tees Valley and Cleveland Water Board of about 53 acres of land as delineated on the plan annexed thereto and thereon coloured blue.

SECOND SCHEDULE

(G A Property Services July 1988 letter)

We would inform you that we act as Managing Agents for a branch of the family formerly owners of the Appleby Castle Estate.

This firm was involved in the sale of the Estate in 1962 in conjunction with Messrs John D Wood & Co. and at that time the joint Solicitors were Messrs Iliffe, Sweet & Co., 2 Bedford Row, London, WC1, and Messrs Pearsons & Driver, Pump Court, King's Square, York.

We take this opportunity of enclosing a copy of the plan attached to the Sale Particulars with particular reference to Lot 74 together with a copy of the Lot entry in the Particulars of Sale.

The Particulars of Sale are extremely bulky but from an initial perusal, we could see no reference to definition of boundaries on the north side of the Lot, and your attention is drawn to paragraph 8 of the Supplemental Special Conditions of Sale a copy of which is attached.

The Vendors title to Lot 74 appeared to rest on an Abstract of Title commencing with a Conveyance dated 20 May 1926 between Alfred Hoare and William Dawson (1) and Veteripont Estates Ltd (2).



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We are not able to comment on the ownership of the area as set out in your letter but would comment that the small scale plan attached to the Sale Particulars will indicate that the boundary of the land then being sold ran approximately along the line HG and then to a point slightly east of B our interpretation being based on the position of national grid lines on the respective plans.

Dated this 23rd — day of January 1989

a. a. Baden Fuller

Commons Commissioner