THE AGE

This land is whose land?

by Jan Mayman

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Andrew "Twiggy" Forrest. Photo: Jacky Ghossein

THE Karijini ranges soar into the Pilbara sky. Two billion years old, the mighty red mountains are split by deep river gorges with gleaming waterfalls and lush vegetation rich in wildlife. Here, a thousand kilometres north of Perth, hidden caves are home to Aboriginal graves and other sacred places adorned with mysterious, magnificent rock art. It is a place of extraordinary beauty.

Karijini is the spiritual homeland of the Yindjibarndi people, the heart of their culture and religion. For more than 35,000 years Aborigines have lived and died in this country.

Karijini's beautiful red rocks are heavy with iron ore, and Australia's richest man, Andrew "Twiggy" Forrest, and his company Fortescue Metals, have leases to mine it as the $5 billion Solomon Hub project, scheduled to produce an initial 60 million tonnes of ore a year, worth almost $1 billion annually at today's prices.

Forrest has offered the Yindjibarndi people compensation worth $10 million a year, but they have rejected it as inadequate. They want four times that amount, in line with compensation being paid by other big mining companies in the Pilbara. One breakaway group wants to accept the lower offer.

Elder Michael Woodley says the higher sum is is justified because the mining project will devastate his people as well as their beloved land and religious sites.

"Ceremony, kinship and tribal law are the heart and soul of our life," he says. "They connect us to the beginning of the world."

 Michael Woodley

He is leading a campaign against Forrest, challenging the legitimacy of the mining leases held by Fortescue over half the Yindjibarndi tribal country.

The leases were granted last year by the West Australian government before the company had reached agreement on compensation with the Yindjibarndi Aboriginal Corporation, whose members are registered as legal traditional owners under federal native title law. These members have asked the full bench of the Federal Court to declare that the leases were invalidly granted by a WA government minister in 2010. A judgment is due later this year.

At 38, the charismatic Woodley has earned the high status of elder and senior law man. As chief executive of the Yindjibarndi Aboriginal Corporation, he is determined to get a high price for his ancestral land.

Under WA law, Aboriginal traditional owners have no legal right to stop mining, but they can negotiate land access compensation. A few confidential deals have been settled for multimillion-dollar sums — 0.5 per cent of production value — with protection for important sacred sites agreed to by big miners keen to avoid costly legal delays like the prolonged Yindjibarndi dispute.

But according to a Fortescue spokesman, Andrew Forrest does not believe in big dollar "mining welfare", saying it doesn't help Aboriginal people, and this is why Fortescue is offering an annual compensation package of $10 million for the Solomon mine project.

The offer comprises $4 million a year in cash, with the remaining $6 million to be provided in "housing, training and employment". Details of this last broad provision have not been made available by Fortescue, despite requests from *The Age*.

Woodley says he has tried to negotiate with Fortescue over several years but describes the company's compensation offer as "insulting".

"They say they will mine 60 million tonnes a year at first, rising to 100 million tonnes or more in future. That 60 million is worth around $10 billion at today's prices and these are rising all the time.

"Fortescue's $4 million a year cash offer was for a fixed payment of just 0.057 per cent of the mine income. Rio [Tinto] would give us 10 times that amount." (The Yindjibarndis are discussing another deal with the giant mining company.)

Woodley rejects Andrew Forrest's offer of jobs and training as "just another attempt at white assimilation" that would not help his people.

"We don't want to be trained as labour for Fortescue's mines," he says. "We want a fair share in the mineral wealth of our traditional country, to create our own businesses and jobs, to deliver better healthcare and educate our children.

"We are doing that already, through our Juluwarlu organisation, recording our languages, history and culture in books, CDs and films." Partly funded with money earned from earlier deals with resource companies, Juluwarlu also runs a small, popular local TV station. Frequent pilgrimages by Yindjibarndi people to their homelands, led by centenarian elder Ned Cheedy, have inspired an extraordinary cultural renaissance in recent years.

There is strong support for the legal challenge against Fortescue, even though the company's final offer included a $500,000 cash payment on signing that was highly tempting to the impoverished community of about 1000 people.

Amid all the heady talk of multimillion-dollar compensation deals, most Yindjibarndis live in Third-World conditions at the Roebourne Aboriginal village, 36 kilometres from the booming Pilbara town of Karratha, where white mine workers earn more than $100,000 a year.

The Aboriginal families of Roebourne exist mainly on social security, with 20 or more people sharing each shoddy rented government house. Many turn to drink or drugs to escape the bleakness of their lives. Rates of imprisonment are high, while school attendance is low. Debilitating illnesses such as diabetes are common, with many people too frail to handle tough mining jobs with their 12-hours-a-day, seven-days-a-week shifts.

Too many are unemployable because they are illiterate and innumerate, their spoken English poor. And the idea of working to mine their tribal land is horrifying many of the deeply traditional Yindjibarndis.

Michael Woodley says the mining project will devastate his people as well as their land and religious sites. He gave evidence to a Native Title Tribunal in 2009 to explain why the Yindjibarndis opposed granting mining leases to Fortescue, explaining how he had tried to lift the spirits of his people by maintaining their law and culture.

He said he had found it difficult dealing with developers who he felt were intent on destroying the Yindjibarndi people and the sacred sites, rivers, trees and hills that gave meaning to their lives.

The granting of mining leases, he said, would "demonstrate once again to my countrymen that our rights, our religious beliefs and practices are not equal to the rights, religious beliefs and practices of those who rule us, and that we are not worthy of protection.

"We are one with our country and what affects it affects us."

The Yindjibarndis, he said, felt a deep religious obligation to protect and care for their land, including the area Fortescue planned to mine. They believed they were obliged to perform regular religious rituals in sacred places, to ensure the survival of their land and all its living things.

In his judgment, tribunal member Daniel O'Dea agreed that mining would damage the Yindjibarndi country, but granted lease rights to Fortescue in "the public interest", writing that it would "create considerable positive economic benefit for the state and the nation, and that same positive effect may be experienced by the local economy including local Aboriginal people".

The Yindjibarndis appealed to the Federal Court, and lost again before appealing to its full bench, seeking a declaration that the three leases had been granted invalidly to Fortescue by the West Australian government. Its three judges have still to hand down their decision.

The Yindjibarndis' legal team includes Melbourne barrister Bryan Keon-Cohen, QC, a leading authority in both native title and constitutional law, Perth barrister George Irving and the national law firm Slater & Gordon.

They claimed the leases were invalid because of flaws in the Commonwealth Native Title Act, which must be complied with, when mining leases were granted by the state government over country owned by registered traditional owners.

The Native Title Act provisions were unconstitutional, the lawyers argued, because they prevented the Yindjibarndi from exercising their traditional religious customs and practices, contrary to section 116 of the Australian constitution.

Because of the legal precedent it might create, a Yindjibarndi win could be a serious problem for Fortescue and other miners holding leases granted by the WA government; it could lead to legal challenges to the validity of those leases.

The Yindjibarndi Aboriginal Corporation has launched a sustained attack against Fortescue on its website. It includes a hymn to their land, the Gambulaynha song.

Now renamed the "Song for the Country FMG wants to destroy', it is accompanied by scenes from the documentary film *Exile and the King-dom*, a story of colonial dispossession and triumphant Aboriginal survival.

West Australian film director and academic Frank Rijavec, and his wife Noelene Harrison, made the film with local Aborigines, including the late Roger Solomon, a revered elder who

helped write the script. Rijavec has since spent considerable time in Roebourne, helping educate the Yindjibarndis in filmmaking and other digital media.

He says he saw divisions appearing in the small, close-knit township after Fortescue set up an office in Roebourne, and began making contact with the Aboriginal population last year, after negotiations between the company and the Yindjibarndi Corporation had broken down.

"People began to talk about meetings at the FMG office, with cash payments for attendance. Opposition to the main Yindjibarndi group began developing. I tried to attend one of the meetings, after being invited by some Aboriginal friends. But before it began, I was ejected after 10 minutes on the advice of a lawyer who was present.

"It was clear that this meeting was a special briefing to a splinter group. Then I realised what was going on. I felt very sad about it all."

A BREAKAWAY section of the Yindjibarndis publicly friendly to Andrew Forrest, the Wirrlu-Murras, organised a controversial meeting in Roebourne last week. It voted to drop all legal action against the mining company, as well as accepting the Fortescue compensation package.

The corporation plans to mount a legal challenge to the decisions, claiming many present at the meeting had no right to vote.

In an audio recording of the meeting obtained by *The Age*, Andrew Forrest makes an emotional appeal to the crowd.

"The more you know Aboriginal people, the more you love them . . . I deeply respect Aboriginal people . . . my heart will always be with Aboriginal people."

Forrest said his company employed 350 Aborigines earning a total of $24 million a year in Port Hedland, and he wanted to help give jobs to people in Roebourne, as well as providing assistance with housing and training, and support for those who could not work.

He accused Woodley of lying when he said an offer of $4 million in cash for half the Yindjibarndi country would mainly benefit him and his company's shareholders, saying the accusation was "complete and utter bulldust".

Later asked to comment on Yindjibarndi claims that Fortescue had paid his fees to help organise the splinter group, lawyer Ronald Bower said: "All arrangements made by clients of this firm for the payment of fees for legal services provided by the firm are confidential."

He said there was a general acceptance in the Australian mining industry that native title groups needed adequate resources, including legal representation, to negotiate over mining issues.

When the claimant groups did not have financial resources to meet the costs of the negotiations, these were customarily met by mining companies.

A Fortescue spokesman said the company's mission at all times was to help create a productive and sustainable future for all communities and their children in agreement with those communities.

That future could only be achieved through funding for education, training, jobs, safe and clean living environments and opportunity — not straight cash payments — although they formed part of the contribution.

The Yindjibarndis have made another documentary film about their struggle, and it is now on the corporation's website.

Now the recent discovery of Aboriginal remains in a cluster of ancient burial caves on the proposed mine site has sent waves of distress and fear through the Yindjibarndi community. Woodley describes it as a bad omen for all concerned, including Forrest.

"Our Skygod will punish us all if we do not protect our sacred land," he says.

Woodley worked on a mine site for three years, earning big money, until his life was changed by a vision in the red hills one night.

"It was a group of our Old People, spirit people, standing there with their tall spears, just looking at me. I knew what they were telling me. It was time for me to go back and save our country."

Jan Mayman is a WA writer. She has reported on Aboriginal issues and mining in Western Australia for more than 30 years.