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6/24/03
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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Division of State Lands

June 24, 2003

Jeff Weeks
Bureau of Land Management
Ely Field Office
HC 33, Box 33500
Ely, Nevada 89301

Dear Jeff:

First, we want to thank you for all the assistance you have provided to the state and our agencies on the **Duckwater Reservation expansion** proposal. We appreciate your efforts and those of the Duckwater Tribal Council very much. This letter expresses many of the concerns various state agencies have regarding an expansion of the reservation. It also is intended to inform you of what we feel should be addressed in any feasibility study the BLM may develop regarding a reservation expansion proposal.

We feel the feasibility study should address the reservation expansion issue by evaluating and studying various alternatives in addition to the latest proposal of the Duckwater Tribe. These alternatives could include: (1) the expansion which reflects the most recent boundary adjustment proposed by the tribe (elimination of non-Indian grazing allotments and wilderness study areas); (2) no expansion, to serve as a baseline; (3) a smaller expansion area such as that proposed by the Nevada Division of Wildlife (NDOW) that substantially reduces impacts on other uses and resources on those public lands (this is an area of about 19,000 acres-see attached map); and (4) the NDOW proposal with a reduction of the current reservation to remove Big Warm Springs and Little Warm Springs from tribal jurisdiction (see comment from NDOW below). If other areas of consideration are proposed different from those above, those areas should also be considered as alternatives.

If the feasibility study leads to possible congressional legislation addressing reservation expansion the state will request that a legislative environmental impact statement be prepared. A feasibility study that is comprehensive and inclusive of all issues will provide much of the material and issues the LEIS will later address.

Jeff Weeks, BLM

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Following are the questions, comments and concerns that were provided to us from various state agencies to be sent to you for consideration in the proposed feasibility study.

Division of Wildlife

The Nevada Division of Wildlife states it does not support an expansion of the Duckwater Reservation. However, if there will be expansion certain considerations should be made. Comments from that agency are:

- This expansion of the Duckwater reservation could jeopardize the continued access of the many publics using the area. If an expansion does take place appropriate public access through the new area would need to be assured.
- Antelope movement corridors would be impacted by development in the area, which could include fencing, residential sprawl, and agricultural uses.
- Re-introduction of bighorn sheep into the area is an objective for the future. The expansion of the reservation in this case would provide for no assurances on the class of livestock to be run in the area. This would result in no re-introduction because of domestic sheep/bighorn disease problems.
- There is the concern of undesirable draw down of groundwater. Should the tribe develop additional lands for agricultural production through this expansion process, and fund water acquisition and conveyance via underground sources, an impact assessment should be undertaken. Loss of flows and natural springs and seeps could have significant consequences on both ESA listed and non-listed, native terrestrial and aquatic wildlife and their habitats.

If expansion of the reservation must occur the Nevada Division of Wildlife would offer an alternative to the proposal. This alternative area is shown on the attached map.

Also recommended is that a portion of the existing eastern reservation boundary be moved westward, thereby opening the opportunity for federal land managers to more adequately address habitat needs of ESA-listed, endemic fish that occur in Big Warm Springs and Little Warm Springs and associated outflows. Based on an assessment of the habitat needs of ESA listed species it is their recommendation that this boundary be retracted to a point which is 500 meters and 100 meters below each of the Big Warm Springs pools respectively and 100 meters below Little Warm Springs pool. While the tribe could retain water rights, the critical habitats associated with these fishes could be managed to a greater extent by the appropriate federal agencies.

Division of Water Resources

- The lands within the original expansion proposal of approximately 428,000 acres and those currently within the existing boundaries of the Duckwater Reservation have water rights in both surface and underground sources that were granted in conformance with State Water Law, which are used primarily for stock water and irrigation purposes. Any reservation expansion proposal and legislation to accomplish this should be explicit that access to points of diversion and places of use for these water right holders must be allowed.
- One major source of water within the existing reservation and within the proposed expansion area is Duckwater Creek. The waters of Duckwater Creek are distributed by the office of the State Engineer as an officer of the court according to the state law decree issued by the Fifth Judicial Court of the State of Nevada in and for the County of Nye (1909). The ability to distribute said waters by a water commissioner requires that ingress and egress be maintained at all times. The decree provides for the ability to assess all water users annually for the distribution of the water.
- If federal legislation withdraws additional lands to be held in trust for the Duckwater tribe, there needs to be explicit language that the tribe and the United States are subject to the decree and cannot interfere with the administration of the decree. This includes payment of assessments, ingress and egress to the point of diversion of the water source and the place of use described, whether on or off the reservation and shall include maintenance of the works of diversion.
- Any legislation should include specific language that the withdrawal of the land shall not affect any water rights in existence prior to the date of enactment. Further, a recent review of the existing groundwater appropriations within the hydrographic basins affected by any withdrawal, indicates there are some limited amounts of underground water that may be available for appropriation. Therefore, any legislation should be explicit that any appropriation of water be obtained in the manner prescribed in Chapters 533 and 534 of the Nevada Revised Statutes.
- Any legislation affecting the boundaries of the reservation should contain language that does not preclude any federal or state agency, or other group at the state's direction, from installing and operating climatological, hydrological and meteorological facilities and associated communication equipment with such devices, or any combination of the foregoing. Access to such facilities and equipment must also be assured.

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Nevada Natural Heritage Program

- A search of databases for information on sensitive species in the area being considered for reservation expansion has revealed a substantial list of sensitive taxa within the area. A listing and map of these taxa is attached.
- There is concern about the long term management of the resources within any reservation expansion area that could impact these sensitive species.
- In addition to the taxa compiled, there are early records for some native fishes in the area that have not been surveyed for decades. These populations, if extant, may be increasingly valuable as there have been serious losses elsewhere caused by the introductions of exotics and habitat modifications.

Division of Minerals

The Division of Minerals is responsible for regulating oil, gas and geothermal activities associated with drilling wells. The state receives 50 percent of the revenues generated by the leasing and production of oil, gas and geothermal resources located on federal mineral estate. Currently, the BLM has not been able to provide an accurate accounting of what lands are currently leased for oil, gas and geothermal that reside within the expansion area originally proposed nor that of the current proposal. Without that information it is difficult to evaluate the impact a reservation expansion could have on the state's mineral program. There are also questions regarding the feasibility study, and any later environmental impact statement, needs to address the issues to help the state evaluate impacts. These questions are:

- Will the state continue to receive its 50 percent share in the revenues associated with the leasing and production of oil, gas and geothermal resources?
- Will the division continue to permit and inspect oil, gas and geothermal wells if the lands and or mineral estate become tribal lands?
- Will the BLM continue to regulate the oil, gas and geothermal if the land and or mineral estate is transferred to the tribe?
- If the mineral estate is severed from the surface ownership will industry have surface access to the minerals for development purposes?
- What will be the status of the valid and existing oil, gas and geothermal leases if expansion happens?

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Wild Horse Commission

Impacts of a reservation expansion on wild horse populations need to be evaluated. There are many questions that need to be answered before an adequate response to the proposed reservation expansion can be made. These questions are:

- Are tribal lands subject to the Wild Horse and Burro Act?
- What federal agency will have jurisdiction within the expanded reservation area?
- How will wild horse herds be managed within any reservation expansion area?
- If not subject to the Wild Horse and Burro Act, what will prevent the tribe from "harvesting" wild horses that come onto the reservation?
- To prevent "harvesting", if that could occur, will the new tribal lands have to be fenced to prevent horses from entering the reservation, and if so, who will pay for the fencing and its maintenance?

Responses to these questions in the feasibility study will help determine the wild horse protections that will need to be addressed in any proposed legislation on reservation expansion.

Department of Agriculture

The Department of Agriculture previously sent you a letter dated April 21, 2003 expressing their concerns regarding reservation expansion. At that time they were responding to the original proposal of an expansion of about 428,000 acres. Their concerns would also include expansions of the reservation that may be smaller in area. These concerns are included in this letter so as to be part of the state's unified response.

The Department has some concern regarding the proposed expansion. While we recognize and appreciate the Tribe's desire to become economically self sufficient, this should not be done at the expense of other local area residents. The proposed expansion area includes both private and public lands that have been utilized by area residents in their agricultural enterprises. Most of these ranches have been in existence prior to the establishment of the Duckwater reservation when the Florio Ranch was purchased for that purpose. The BLM grazing permits and private water rights to both underground and surface waters in this area are held and utilized legitimately. If the Tribe wishes to expand their boundaries and their enterprises they must accomplish this goal as all other citizens of the United States through purchase of land and grazing privileges from willing sellers. If the Tribe wishes to expand their land base for housing or industrial sites this can be accomplished in an area much smaller than 428,000 acres. The grazing

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allotments, both currently used by the Tribe and any other potential purchase of grazing privileges by the Tribe, should remain under the administration of the BLM.

If such a purchase were made by any private entity, the buyer would be subject to the same use restrictions as the current owners. There would be no change in the status for wildlife, mining, oil and gas leasing, recreation, or any other use since the BLM would remain as the land manager. This procedure should be the same for the Tribe. The Tribe should be treated no differently than any other citizen of the United States desiring to use the federal lands.

Division of State Lands

The comments of the Division of State Lands include concerns not expressed by other agencies and should be addressed in the feasibility study and any follow-up environmental documents.

- The loss of revenues and taxes by the federal, state and local governments generated from the lands that will be included in a reservation expansion, both current and potential. This should include payments-in-lieu-of-taxes, mineral leases, oil, gas and geothermal leases, grazing fees, including those portions that are shared with the state, and any other revenues derived from the use of resources from the included lands.
- An analysis of what services are provided to the reservation by federal, state and local governments, including schools, such as road maintenance, health services and police and fire protection. This should be compared to the level of services that may be required with the expanded reservation to show whether such expansion will actually allow the tribe to become more self sufficient.
- An analysis on how the resources that will be transferred to the tribe will be managed and used and how those management proposals will be enforced.
- Any act expanding the area of the reservation should include language that limits certain types of uses that may be detrimental to the state's interest such as nuclear waste storage and hazardous waste disposal or incineration.
- Any expansion of the reservation should assure that all existing access to public lands outside of the reservation are not eliminated or restricted.
- If any non-tribal private lands are included within any reservation expansion, continued access to those lands should be assured.

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- If any portion of the road extending from State Highway 379 to US Highway 50 falls within any reservation expansion area, a right-of-way for that road should be reserved to allow future improvements and maintenance by the state or the county governments involved.

Please keep the state and its affected agencies informed regarding development of the feasibility study. The study should be widely circulated including distribution to affected local governments for public comment and input prior to being considered a final document.

Again, we very much appreciate an opportunity to provide input to you at this stage of study development. Please do not hesitate to contact us or any of the agencies involved if you need further information or clarification on the information provided.

Sincerely,



Heather Elliott
State Clearinghouse



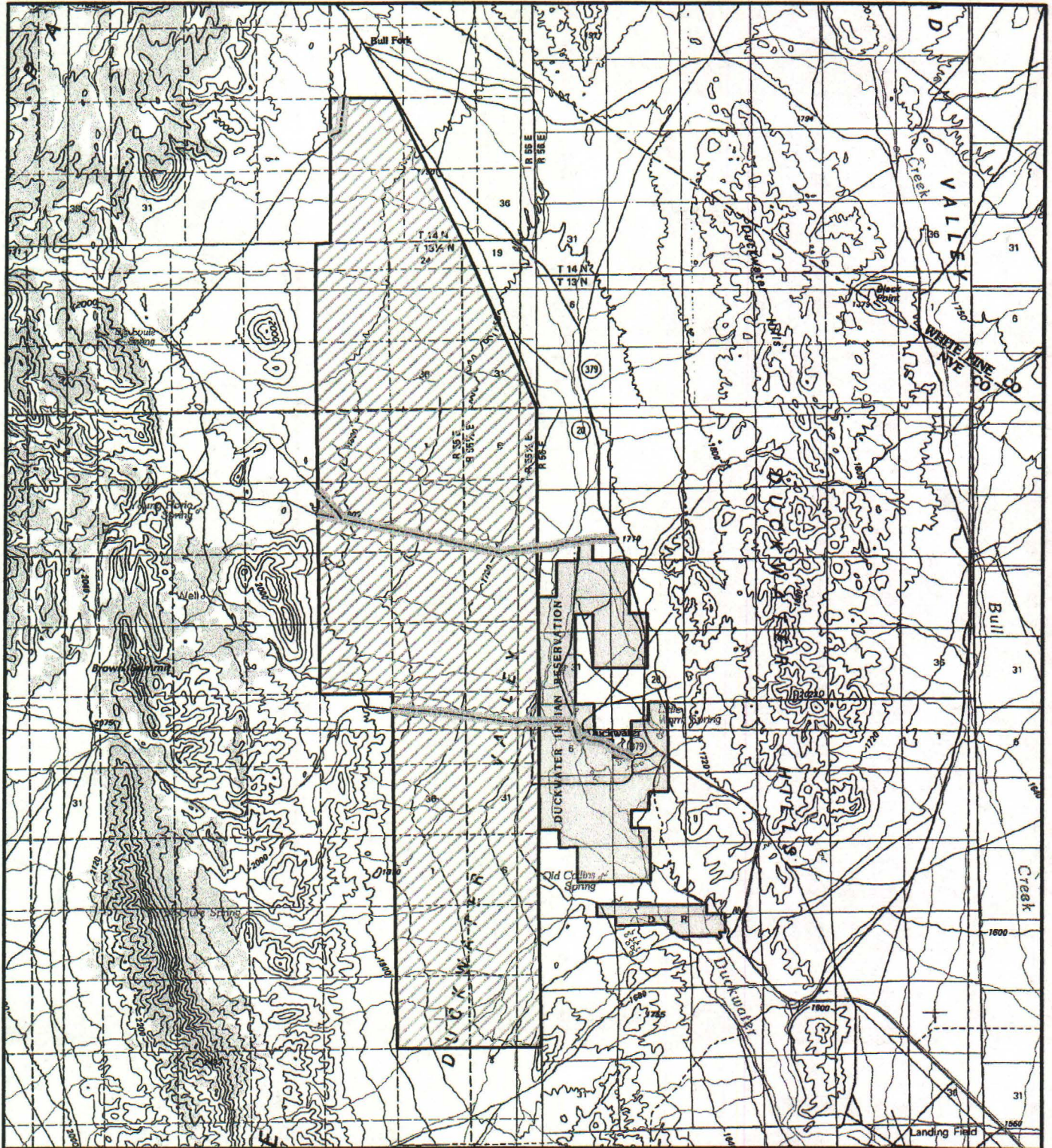
Mike Del Grosso
Division of State Lands

Attachments

cc: Vicky Oldenburg, Office of the Governor
R. Michael Turnipseed, P.E., Department of Conservation and Natural Resources
Wayne Howle, Office of the Attorney General
Division of Water Resources
Division of Wildlife
Division of Minerals
Wild Horse Commission
Natural Heritage Program
Department of Agriculture

Duckwater Reservation Expansion

Nevada Division of Wildlife Recommendation



— — — — —	Public Access Roads
	Present Duckwater Reservation
	Recommended Boundary



PROPOSED DUCKWATER BOUNDARY

Existing Duckwater Boundary

Currant



- Sensitive Species Locations
- UMMZ-Fish Collections
- ▭ Proposed Duckwater boundary

4 0 4 Miles



Provided by Nevada Natural Heritage Program June 2003

Sensitive Taxa Recorded Within the Proposed Duckwater Boundary Area

Compiled by the Nevada Natural Heritage Program

3 June 2003

Scientific name	Common name	Usfws	Blm	Usfs	State	Grank	Townrange	Section	Lat	Long	Prec	Last observed
Plants												
<i>Asclepias eastwoodiana</i>	Eastwood milkweed	xC2	N	S		G2Q	015N054E	26	39.145000	115.867778	M	2001-06-03
<i>Astragalus eurylobus</i>	Needle Mountains milkvetch	xC2	N			G2	014N055E	36	39.033889	115.729722	S	1983-06-11
Invertebrates												
<i>Hesperia uncas fulvapalla</i>	Railroad Valley skipper	xC2	N			G5T1	012N056E	06	38.929167	115.713333	M	1984-07-10
<i>Polites sabuleti basinensis</i>	pallid skipper					G5T2	012N056E	06	38.929167	115.713333	M	1983-09-10
Gastropods												
<i>Pyrgulopsis aloba</i>	Duckwater springsnail					G1	012N056E	05	38.927222	115.702778	M	1998-PRE
<i>Pyrgulopsis aloba</i>	Duckwater springsnail					G1	013N056E	31	38.946667	115.718611	S	1994-07-12
<i>Pyrgulopsis anatina</i>	southern Duckwater springsnail					G1	012N056E	20	38.892500	115.703611	M	1994-07-12
<i>Pyrgulopsis carinata</i>	carinate Duckwater springsnail					GX	012N056E	05	38.936944	115.696667	S	1973-09-03
<i>Pyrgulopsis papillata</i>	Big Warm Spring springsnail					G1	012N056E	05	38.936944	115.696667	S	1998-PRE
<i>Pyrgulopsis papillata</i>	Big Warm Spring springsnail					G1	013N056E	32	38.950000	115.700833	S	1973-09-03
<i>Pyrgulopsis villacampae</i>	Duckwater warm springs springsnail					G1	012N056E	05	38.936944	115.696667	S	1973-09-03
<i>Pyrgulopsis villacampae</i>	Duckwater warm springs springsnail					G1	013N056E	32	38.950000	115.700833	S	1998-PRE
Fishes												
<i>Crenichthys nevadae</i>	Railroad Valley springfish	LT	S	T	YES	G2	013N056E	32	38.950000	115.700833	S	1992
<i>Crenichthys nevadae</i>	Railroad Valley springfish	LT	S	T	YES	G2	012N056E	05	38.936944	115.696667	S	1992
<i>Siphateles bicolor</i> ssp. 3	Duckwater Creek tui chub	xC2				G4T1	012N056E	17	38.909167	115.699167	S	1934

U. S. Fish and Wildlife Service (Usfws) Categories for Listing under the Endangered Species Act:

- LT Listed Threatened - likely to be classified as Endangered in the foreseeable future if present trends continue
- x C2 Former Category 2 Candidate, now species of concern

Bureau of Land Management (Blm) Species Classification:

- S Nevada Special Status Species - USFWS listed, proposed or candidate for listing, or protected by Nevada state law
- N Nevada Special Status Species - designated Sensitive by State Office

United States Forest Service (Usfs) Species Classification:

- S Region 4 (Humboldt-Toiyabe NF) sensitive species
- T Region 4 and/or Region 5 Threatened species

Nevada State Protected (State) Species Classification:

Fauna:

- YES Species protected under NRS 501.

Precision (Prec) of Mapped Occurrence:

Precision, or radius of uncertainty around latitude/longitude coordinates:

- S Seconds: within a three-second radius
- M Minutes: within a one-minute radius, approximately 2 km or 1.5 miles
- G General: within about 8 km or 5 miles, or to map quadrangle or place name

Nevada Natural Heritage Program Global (Grank) and State (Srank) Ranks for Threats and/or Vulnerability:

- G Global rank indicator, based on worldwide distribution at the species level
- T Global trinomial rank indicator, based on worldwide distribution at the infraspecific level
- S State rank indicator, based on distribution within Nevada at the lowest taxonomic level
 - 1 Critically imperiled and especially vulnerable to extinction or extirpation due to extreme rarity, imminent threats, or other factors
 - 2 Imperiled due to rarity or other demonstrable factors
 - 3 Vulnerable to decline because rare and local throughout its range, or with very restricted range
 - 4 Long-term concern, though now apparently secure; usually rare in parts of its range, especially at its periphery
 - 5 Demonstrably secure, widespread, and abundant
 - A Accidental within Nevada
 - B Breeding status within Nevada (excludes resident taxa)
 - H Historical; could be rediscovered
 - N Non-breeding status within Nevada (excludes resident taxa)
 - Q Taxonomic status uncertain
 - U Unrankable
 - Z Enduring occurrences cannot be defined (usually given to migrant or accidental birds)

Historic Fish Collections Within the Proposed Duckwater Boundary

Provided by Nevada Natural Heritage Program

3 June 2003

GENUS	SPECIES	FISH_ID	X_COORD	Y_COORD	INSTITUTE	DATE	COLLECTION
<i>Crenichthys</i>	<i>nevadae</i>	96	614591.688	4306684.500	MCZ	1930	32948.00
<i>Crenichthys</i>	<i>nevadae</i>	290	614451.188	4316372.500	UMMZ	1930	95024.00
<i>Crenichthys</i>	<i>nevadae</i>	291	614451.188	4316372.500	UMMZ	1938	124941.00
<i>Crenichthys</i>	<i>nevadae</i>	293	614591.688	4306684.500	UMMZ	1934	132175.00
<i>Crenichthys</i>	<i>nevadae</i>	294	614591.688	4306684.500	UMMZ	1934	132176.00
<i>Crenichthys</i>	<i>nevadae</i>	295	614591.688	4306684.500	UMMZ	1934	132178.00
<i>Empetrichthys</i>	<i>latos</i>	374	595053.000	4333790.500	UMMZ	1938	132915.00
<i>Empetrichthys</i>	<i>latos</i>	375	595053.000	4333790.500	UMMZ	1942	140489.00
<i>Empetrichthys</i>	<i>latos</i>	378	595053.000	4333790.500	UMMZ	1967	188863.00
<i>Gila</i>	<i>bicolor</i>	434	614310.438	4326060.000	UMMZ	1938	124944.00
<i>Gila</i>	<i>bicolor</i>	435	614310.438	4326060.000	UMMZ	1938	124945.00
<i>Gila</i>	<i>bicolor</i>	456	614591.688	4306684.500	UMMZ	1934	132174.00
<i>Gila</i>	<i>bicolor</i>	457	614591.688	4306684.500	UMMZ	1934	132177.00



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WILDLIFE

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PETER G. MORROS
Director
Department of Conservation
and Natural Resources

TERRY R. CRAWFORTH
Administrator

KENNY C. GUINN
Governor

April 15, 2003

Jeff Weeks
Ely Field Office, BLM
HC 33, Box 33500
Ely, NV 89301

Re: Duckwater Reservation Expansion

Dear Jeff,

Thanks for requesting our input concerning the Duckwater Reservation Expansion. From our impression of the Tribe's desire to spur economic development, the most feasible sites for development would be in the valley bottom adjacent to existing reservation boundaries. In view of the basic rationale for the proposed expansion, we cite concerns and opportunities with what the loss of public lands will mean to the management of wildlife resources, associated habitat, and public access into this region. Accompanying this letter is a map illustrating an area, should it be taken out of public domain for reservation expansion, we believe would minimize impacts to wildlife resources and related values.

Points explaining our criteria for the area we delineated include:

- Eliminating important wildlife habitats from the proposed expansion area;
- Identifying wildlife use areas that we believe should remain in the public domain;
- Maintaining important wildlife movement corridors, particularly for pronghorn antelope; and,

Our recommended expansion boundary provides the opportunity to address issues related to endemic fish resources coincident to the springheads on and adjacent to the existing reservation boundary. Should additional public lands be transferred to the Tribe, we recommend that a portion of the existing eastern reservation boundary be moved westward, thereby opening the opportunity for Federal land managers to more adequately address habitat needs of ESA-listed, endemic fishes that occur in Big Warm Springs and Little Warm Springs and associated outflows. Based on an assessment of the habitat needs of ESA listed species it is our recommendation that this boundary be retracted to a point which is 500m and 1000m below each of the Big Warm Springs pools respectively and 100m below Little Warm Springs pool. While the Tribe would maintain full control over water rights, the critical habitats associated with these fishes could be managed to a greater extent by the appropriate Federal agencies.

Access to public lands should be retained through the expanded reservation on major, existing roads. We do not request access to reservation lands, but for access through reservation lands to public lands. Major access locations are identified on our map.

Lastly, is the concern for undesirable draw down of ground water. Should the Tribe develop additional lands for agricultural production through this expansion process, and fund water acquisition and conveyance via underground sources, an impact assessment should be undertaken. Loss of flows at natural springs and seeps could have significant consequences on both ESA listed and non-listed, native terrestrial and aquatic wildlife and their habitats.

We appreciate being able to comment on the proposed reservation expansion. Should there be any questions concerning our input, please contact me.

Sincerely,

Steve Foree

Steve Foree
Supervisory Habitat Biologist
60 Youth Center Road
Elko, NV 89801
(775) 777-2300

SF, BH, BH:sf

enclosure

Cc: Administrator, NDOW
USFWS, Reno
USFS, Austin