



DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE

**FEDERAL FISH AND WILDLIFE PERMIT**

3-201  
(1/97)

1. PERMITTEE

White Water Springs, LLC  
7400 E. Crestline Circle Suite #250  
Greenwood Village, Colorado 80111  
Phone: 303/224-9271  
e-mail: glevine@merchantsmtg.com

2. AUTHORITY-STATUTES  
16 USC 1539(a)(1)(B)  
REGULATIONS (Attached)  
50 CFR §§ 13 & 17

3. NUMBER

TE-110131-0

4. RENEWABLE

YES  
 NO

5. MAY COPY

YES  
 NO

6. EFFECTIVE  
10/23/2006

7. EXPIRES  
10/23/2036

8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)  
Gary Levine, Manager

9. TYPE OF PERMIT  
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED  
the 1,779-acre Whitewater Springs Property, west of County Road 1174, roughly midway between Farm to Market Road 1431 to the south and Farm to Market Road 1869 to the north in southeastern Burnet County, Texas.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (copy enclosed).

12. REPORTING REQUIREMENTS

Annual reports due October 1 of each year until the development is complete.

ISSUED BY:

TITLE  
Regional Director

DATE

10/12/06

- E. Prior to development activities or issuance of Certificates of Inclusion, the Permittee will provide \$424,000 to purchase mitigation credits from a Qualified Entity. The Permittee will also provide 138.5 acres (56 hectares) of golden-cheeked warbler (GCWA) habitat on-site, as shown in Figure 7 of the EA/HCP, as additional mitigation and will encumber the habitat with restrictive covenants or a conservation easement restricting the construction of improvements in such areas, but subject to the right to construct up to 20 new wells and other utility lines and facilities and operate, maintain, repair, and replace such wells, utility lines, and facilities. The funds obtained from the sale of the mitigation credits will be used by such Qualified Entity to preserve and manage GCWA habitat in Burnet County or immediately adjacent counties, in perpetuity.
- F. The Permittee shall not initiate clearing of vegetation in or within 300 feet (91 meters) of GCWA habitat from March 1 through August 1 of any year unless breeding season surveys performed by a U.S. Fish and Wildlife Service (Service)-permitted biologist indicate that no GCWAs are present within 300 feet of the desired activity.
- G. Building, utility infrastructure, and street construction may be conducted year round as long as the construction activities promptly follow the clearing activities and/or were initiated before March 1, thereby being a continuous activity.
- H. Clearing and construction by the Permittee within proposed development areas shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt.
- I. The use of deer feeders and bird feeders other than thistle seed or hummingbird feeders on the property will be prohibited and recorded as deed restrictions before lots are sold.
- J. Terms and conditions of the permit shall be binding on, and for the benefit of, the Permittee and its successors and assigns. If the permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit providing the new owner agrees to the terms and conditions of the original permit. The construction activities proposed or in progress under an original permit may not be interrupted provided the required terms and conditions of an issued permit are being followed.
- K. Written annual reports of the year's activities, including status of clearing and construction, will be submitted by October 1 of each year until the development is complete to the U.S. Fish and Wildlife Service Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; and to the U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.
- L. Upon locating a dead, injured, or sick GCWA, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office, Austin, Texas, (512) 490-0948, or San Antonio, Texas, (210) 681-8419, for care and disposition

instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and their contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

- M. If, during the tenure of this permit, the project design and/or the extent of the habitat impact described in the habitat conservation plan is altered, such that there may be an increase in the anticipated take of the GCWA, the Permittee is required to contact the Service and obtain authorization and/or amendment of the permit before commencing any construction or other activities that might result in take beyond that described in the Environmental Assessment/Habitat Conservation Plan (EA/HCP).
- N. The authorization granted by the permit is subject to full and complete compliance with, and implementation of, the EA/HCP for the Permittee and the Service; and all specific terms and conditions contained in this permit. These permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the EA/HCP, or other permit documents.
- O. Acceptance of the permit serves as evidence that the Permittee understands and agrees to abide by the terms and conditions of the permit and all applicable Sections of Title 50 Code of Federal Regulations Parts 13, and 17 pertinent to issued permits.

-----End of Permit Terms and Conditions for Permit # TE-110131-0-----