

**DECLARATION OF RESTRICTIONS**  
(Mitigation)

**0708301**

STATE OF TEXAS           §  
  §  
COUNTY OF BURNET       §

This Declaration of Restrictions ("**Restrictions**") is made and entered into as of the <sup>8th</sup>~~22nd~~ day of June, 2007, by White Water Springs, LLC, a Texas limited liability company ("**WWS**").

**RECITALS**

A. WWS is the owner of certain land located in Burnet County, Texas, which is part of a residential subdivision known as WHITEWATER SPRINGS Subdivision (the "**Subdivision**").

B. In order to proceed with development of the Subdivision and to comply with FWS requirements, WWS applied for and FWS has issued to WWS that certain Endangered Species-Incidental Take Permit Number TE-110131-0, pursuant to 16 USC § 1539(a)(1)(B) (the "**Permit**").

C. As a condition to developing the Subdivision, the Permit requires that WWS provide 138.5 acres of golden-checked warbler habitat within the Subdivision as mitigation by encumbering such area with restrictions on construction of improvements.

D. In accordance with the Permit and the requirements of FWS, WWS imposes these restrictive covenants upon that certain 138.5 acre tract or parcel of land out of the Subdivision, as more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Restricted Property**").

**RESTRICTIONS**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WWS does hereby impose upon the Restricted Property the following restrictions which shall be covenants running with the land and shall be binding upon all subsequent owners of the Restricted Property or any portion thereof:

1. **Clearing of Vegetation.** Except as otherwise expressly permitted in these Restrictions, no vegetation on the Restricted Property shall be cleared, removed or otherwise modified without the prior written consent of FWS and the Association.

2. **Construction of Improvements.** Except as otherwise expressly permitted in these Restrictions, no improvements of any kind or character shall be constructed or installed on

any portion of the Restricted Property. WWS acknowledges and agrees that the Lower Colorado River Authority ("**LCRA**") intends to construct up to twenty (20) water wells and related utility lines, facilities and improvements (collectively, the "**Water Well Facilities**") on those certain tracts of land described in Exhibit "B" attached hereto and made a part hereof for all purposes (the "**LCRA Tracts**"). Notwithstanding any provision herein to the contrary, WWS acknowledges and agrees that (i) LCRA may construct, install, maintain, repair, replace and operate the Water Well Facilities in, under, across and upon the LCRA Tracts; and (ii) WWS may in its discretion grant to LCRA ingress and egress easements in, over, across and upon the Restricted Property as reasonably necessary to facilitate the construction, installation, operation, maintenance, repair and replacement of the Water Well Facilities.

3. **Enforcement.** If any person, persons, corporation, or entity of any other character violates or attempts to violate these Restrictions, FWS and/or the Whitewater Springs Project Owners Association, Inc. (the "**Association**") shall have the right to enforce all of the provisions and covenants set forth in these Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision or covenant. The failure to enforce any provision of these Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of these Restrictions.

4. **Duration.** Subject to the provisions of Paragraph 5A below, these Restrictions shall be effective for such period as the Permit remains in effect.

5. **Miscellaneous Provisions.**

A. **Modification, Amendment and Termination.** These Restrictions may only be modified, amended or terminated upon the filing of a modification, amendment or termination in the Official Records of Burnet County, Texas, executed, acknowledged and approved by (a) the Regional Director or other authorized representative of the FWS (but only with respect to amendments or modifications inconsistent with requirements in the Permit); (b) the Association; (c) the then current owner of the Restricted Property; and (d) any mortgagees holding first lien security interests on any portion of the Restricted Property. Such joint action only becomes effective after it is reduced to writing, signed by the parties set forth above, and filed in the Official Public Records of Burnet County, Texas.

B. **Inurement.** This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind WWS and its successors and assigns. When WWS or any of its successors or assigns conveys all or any portion of the Restricted Property, the former owner is thereupon fully released and discharged from any and all further obligations under these Restrictions; provided, however, no such sale or conveyance releases such owner from any liabilities, if any, actual or contingent, that existed during such owner's ownership of the Restricted Property.

C. **Notices.** Any Notice to WWS, the Association, or FWS must be in writing and given by delivering the same to such party by personal delivery, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address.

All notices shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Any change in ownership or address requires notice to WWS, the Association and FWS. As of the date hereof, the parties addresses are as follows:

WWS: White Water Springs, LLC  
7400 E. Crestline Circle, Suite 250  
Greenwood Village, Colorado 80111  
Attn: Gary Levine

With a copy to: Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Attn: Jerry Webberman

FWS: U.S. Fish and Wildlife Service  
10711 North Burnet Road, Suite 200  
Austin, Texas 78758  
Attn: Regional Director, Region 2

Association: Whitewater Springs Property Owners Association, Inc.  
P.O. Box 1164  
Marble Falls, Texas 78654-1164  
Attn: President

D. No Rights in Public. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Restricted Property for any purpose.

E. Non-Merger. These Restrictions will not be subject to the doctrine of merger, even though the underlying fee ownership of the Restricted Property, or any parts thereof, is vested in one party or entity.

F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of these Restrictions.

G. Governing Law; Place of Performance. These Restrictions and all rights and obligations created hereby will be governed by the laws of the State of Texas. The Restrictions are performable only in the county in Texas where the Restricted Property is located.

H. Negation of Partnership. None of the terms or provisions of these Restrictions will be deemed to create a partnership between or among WWS, the Association or any Owner in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.

I. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of these Restrictions entitles the owner of the Restricted Property, the Association or FWS to cancel, rescind or otherwise terminate these Restrictions.

J. Severability. The provisions of these Restrictions shall be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.

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**Exhibit "A"**

**RESTRICTED PROPERTY**

The Restricted Property means that portion of each of the following described platted Lots that is the indicated number of feet from the rear boundary line of such Lots, together with those certain portions of the Common Area for the Whitewater Spring Subdivision in Burnett County, Texas, all as illustrated and further described on **Exhibit "A-1"** attached hereto.

1. The following lots out of WHITEWATER SPRINGS, SECTION TWO; as recorded in Plat Cabinet 2, Slide 120D-124A, Plat Records of Burnett County, Texas:

<u>Lot Nos.</u>	<u>Setback Distances from Rear Boundary Line of Lots</u>
178, 179, 198, 200, 201, 202, 203, 210, 211, 212, 213, 214, 215	100 feet
197	150 feet
173, 174, 175, 185, 186, 187, 188, 189, 196	200 feet

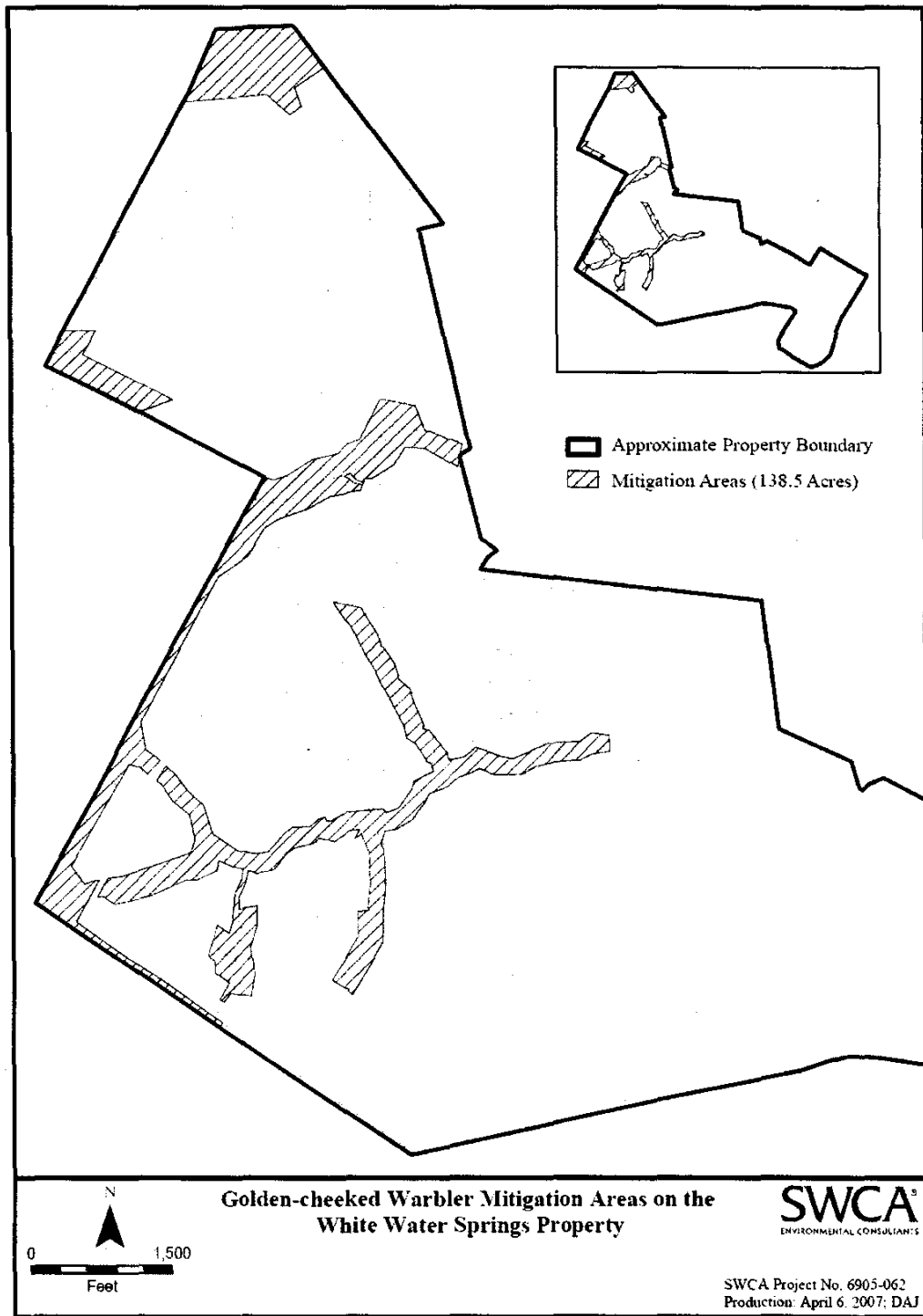
2. The following lots out of WHITEWATER SPRINGS, SECTION FIVE, as recorded in Plat Cabinet 2, Slide 154C-155A, Plat Records of Burnett County, Texas:

<u>Lot Nos.</u>	<u>Setback Distances from Rear Boundary Line of Lots</u>
520, 521	200 feet
505	300 feet

3. The following lots out of Replat of Lot Nos. 501-504, 506-507, 511-512, and 519 WHITEWATER SPRINGS, SECTION FIVE, as recorded in Cabinet 2, Slides 174C-173A, Plat Records of Burnett County, Texas:

<u>Lot Nos.</u>	<u>Setback Distances from Rear Boundary Line of Lots</u>
519B	200 feet
502A, 502B, 503A, 503B	250 feet
506A	300 feet

**Exhibit "A-1"**





STATE OF TEXAS  
COUNTY OF BURNET

I hereby certify that this instrument was FILED on this date  
and at the time stamped hereon by me and was duly  
RECORDED in the OFFICIAL PUBLIC RECORDS  
OF BURNET COUNTY, TEXAS.



Janet Parker  
County Clerk  
Burnet County, Texas  
By *[Signature]*  
DEPUTY

**SCANNED**

0708301

FILED

2007 JUN 29 PM 3:32

JANET PARKER  
COUNTY CLERK  
BURNET COUNTY, TEXAS