



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P.O. BOX 17300
FORT WORTH, TEXAS 76102-0300

March 18, 2013

Planning, Environmental, and Regulatory Division
Regulatory Branch

SUBJECT: Project Number SWF-2012-00240, Edwards Aquifer Habitat Conservation Plan

Mr. Michael Morrison
City of New Braunfels
424 South Castell
New Braunfels, Texas 78132

Dear Mr. Morrison:

Thank you for the letter received November 6, 2012, and subsequent submittal dated March 18, 2013, concerning a proposal by the city of New Braunfels in association with US Fish and Wildlife Service and the Edward Aquifer Authority, to implement the Edward Aquifer Recovery Implementation Program Habitat Conservation Plan located at Landa Park and the Comal River in the City of New Braunfels, Comal County, Texas. This project has been assigned Project Number SWF-2012-00240. Please include this number in all future correspondence concerning this project.

Under Section 404 of the Clean Water Act the U. S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. USACE responsibility under Section 10 of the Rivers and Harbors Act of 1899 is to regulate any work in, or affecting, navigable waters of the United States. Based on your description of the proposed work, and other information available to us, we have determined this project will involve activities subject to the requirements of Section 404. The USACE based this decision on a preliminary jurisdictional determination that there are waters of the United States on the project site.

We have reviewed this project under the pre-construction notification procedures of Nationwide Permit General Condition 31 (Federal Register, Vol. 77, No. 34, Tuesday, February 21, 2012). We have determined this project is authorized by Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities. To use this permit, the person responsible for the project must ensure the work is in compliance with the specifications and conditions listed on the enclosure. Failure to comply with these specifications and conditions invalidates the authorization and may result in a violation.

Our verification for the construction of this activity under this nationwide permit is valid until March 18, 2017, unless prior to that date the nationwide permit is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the

nationwide permit on a regional or national basis. The USACE will issue a public notice announcing the changes when they occur. Furthermore, activities that have commenced, or are under contract to commence, in reliance on a nationwide permit will remain authorized provided the activity is completed within 12 months of the date of the nationwide permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). Continued confirmation that an activity complies with the specifications and conditions, and any changes to the nationwide permit, is the responsibility of the permittee.

In our review of this project we also evaluated the potential effect of the USACE permit action on threatened and endangered species within our permit area. In our evaluation, we have taken into account the direct and indirect effects of our permit action on these species and the effects of other activities interrelated or interdependent with our action that would be added to the environmental baseline. The environmental baseline includes, among other things, the anticipated impact of the U.S. Fish and Wildlife Service's (FWS) issuance of a permit under Section 10(a)(1)(B) of the Endangered Species Act (ESA), for the incidental take of Peck's Cave Amphipod (*Stygobromus pecki*), Comal Springs Dryopid Beetle (*Stygoparnus comalensis*), Comal Springs Riffle Beetle (*Heterelmis comalensis*), and Fountain Darter (*Etheostoma fonticola*). Based on our evaluation, we have determined that Department of the Army authorization of the proposed Edwards Aquifer Recover Implementation Program, Habitat Conservation Plan under Section 404 of the CWA through Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities would have no effect on threatened or endangered species. Please note that the permittee continues to be responsible for meeting the requirements of nationwide permit general condition 17 concerning endangered species.

The permittee must sign and submit to us the enclosed certification that the work, including any proposed mitigation, was completed in compliance with the nationwide permit. The permittee should submit the certification within 30 days of the completion of work.

This permit should not be considered as an approval of the design features of any activity authorized or an implication that such construction is considered adequate for the purpose intended. It does not authorize any damage to private property, invasion of property rights, or any infringement of federal, state, or local laws or regulations.

Thank you for your interest in our nation's water resources. If you have any questions concerning our regulatory program, please refer to our website at <http://www.swf.usace.army.mil/Missions/Regulatory.aspx> or contact Mr. Frederick Land at the address above or telephone (817) 886-1729.

Please help the Regulatory Program improve its service by completing the survey on the following website: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,
ORIGINAL SIGNED

Stephen L Brooks
Chief, Regulatory Branch

Enclosures

Copy Furnished:

Ms. Jenna B. Cantwell
HCP Coordinator – Threatened and Endangered Species
Edwards Aquifer Authority
1615 N. St. Mary's Street
San Antonio, Texas 78215

Mr. Adam Zerrenner
c/o Kevin Connally
U.S. Fish and Wildlife Service
Ecological Services Field Office
10711 Burnet Road, Suite 200
Austin, Texas 78758-4460
