



Provision M of the Incidental Take Permit





What does Provision M Say...

b. The Permittees will suspend activities such as **habitat restoration and riparian restoration** that may result in **disturbance of the (a) substrate, (b) water quality, (c) plants, and (d) animals or invertebrates** of the Comal Springs, Landa Lake, and the Comal River when Comal Springflows decline to 130 cfs or lower (and San Marcos Springs, Spring Lake, and the San Marcos River when San Marcos Springflows decline to 120 cfs or lower).



Timeline of Events

2013:

Low-Flow memos

- April 1, 2013 – San Marcos / TXState
- May 23, 2013 – San Marcos / TXState
- July 5, 2013 – San Marcos / TXState
- Sept 5, 2013 – San Marcos / TXState
- Sept 9, 2013 – New Braunfels



Timeline of Events

2014

April – preparation of 2014 Low-Flow Memos

May 2nd – Met with USFWS

- Told to stop work and submit variance requests
- Informed New Braunfels and San Marcos / TXState

May 13th – Conf Call w/ USFWS

- Informational Discussion & Variance Request

May 29th – Meeting with USFWS (NB, SM, TXState, HCP, USFWS)

- No “Variance Request” process
- USFWS would not provide confirmation of “no disturbance”
- Follow-Up email from USFWS summarizing the meeting



Where are we Today?

- Due to recent rainfall in late May and early June, springflows have risen above 130 in Comal and 120 in San Marcos.
- Work in both systems has resumed
 - Flow Split Mgmt in New Braunfels
 - Texas Wild Rice and Vegetation Restoration
- When flows again fall below the triggers, work will once again cease



Impacts

- Prevention of needed restoration
 - Flow Split
 - Gardening
- Modified Timelines
- Budget
 - Mobilization
 - Future Costs
 - Duplication of mitigation
 - Modified Annual Costs



Currently Underway

Options for Next Steps

- USFWS Austin Ecological Office is currently seeking Solicitor's Opinion for what the NEPA process would involve to amend the Incidental Take Permit (ITP).
- Permittees submit amendment to the ITP modifying the Provision M triggers or completely removing Provision M.
- HCP Permittees request USFWS initiate an amendment to the ITP modifying the Provision M triggers, as it was USFWS who included Provision M.
- Proceed under Provision M as currently drafted.