



Illinois Department of Natural Resources

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Pat Quinn, Governor
Marc Miller, Director

Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (Act)(520 ILCS 10/5.5) and the regulations adopted to implement the Act (17 Ill. Adm. Code 1080), authorization is hereby granted to the Illinois Department of Natural Resources, Office of Mines and Minerals, Abandoned Mined Lands Reclamation Division (hereinafter referred to as OMM) for the incidental take of the marsh rice rat (*Oryzomys palustris*). The Illinois Department of Natural Resources, Office of Resource Conservation (hereinafter referred to as ORC) has determined that this taking is incidental to activities associated with the North Site (impacting 11 acres almost entirely located within the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, both of the Northwest $\frac{1}{4}$ of Section 28, Township 7 South, Range 1 East – as shown on Project Plan Sheet 3 of 22) [hereinafter referred to as North Site] of the abandoned mine reclamation at the Franklin County Coal Company No. 7 Abandoned Mine Reclamation Project in Franklin County, Illinois.

Procedural History

In 2013, OMM retained Midwest Reclamation Resources, Inc. to survey an abandoned mine site northeast of Royalton, Illinois for marsh rice rat (*Oryzomys palustris*). Midwest Reclamation Resources, Inc. reported the capture of three marsh rice rats at the project site in March 2013. OMM prepared a conservation plan per the Act and submitted it to ORC on February 6, 2014, as a request for authorization for the incidental take of the marsh rice rat. After addressing ORC's identification of discrepancies, the final conservation plan was received on February 26, 2014. The final public notice was received on March 17, 2014. The public notice period will be detailed under #6 of the Compliance section below.

Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and ORC's determination for each criteria are listed below.

1. The taking will not be the purpose of, but will be only incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is mine reclamation of the Franklin County Coal Company No. 7 mine on the northeast side of Royalton, Illinois, in the northwest quarter and the north half of the southwest quarter of Section 28, Township

7 South, Range 1 East in Franklin County for public health and safety reasons, as described in the conservation plan. The proposed project will reclaim the abandoned mine to reduce fire hazard, erosion, and downstream flooding. Project activities consist of grading mine waste, treating it with agricultural ground limestone, and covering the site with excavated earth material. Conventional earthmoving equipment including bulldozers and trackhoes will be used. The take that could result from this project is not the purpose of OMM's activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

The conservation plan prepared by OMM describes measures that will be taken to minimize the potential adverse effects of the project on the marsh rice rat. OMM will minimize impacts by staging the reclamation at two sites. The first Main Site area, which was not found to be inhabited by the marsh rice rat, will be cleared, graded, seeded, and revegetated to provide suitable habitat before the second site; also known as North Site; containing marsh rice rats is cleared, graded, and seeded. In addition, erosion control measures will be used, as indicated in the Stormwater Pollution Prevention Plan (SWPPP) to limit off-site impacts.

OMM estimates that 11 acres of marsh rice rat habitat including wetland and grasslands will be impacted by the second phase of reclamation activities. The applicant proposes to create 45 acres of habitat suitable for marsh rice rat including wetland and grasslands on site through reclamation activities. OMM will hire a consultant for annual monitoring for the period of 2 years following reclamation activities. Adaptive management will be used to remedy any unforeseen mitigation issues.

Additional measures, based on the life history needs of the marsh rice rat, may be required under Authorization below.

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided.

OMM has adequate funding for the construction, minimization, mitigation, and monitoring described in this Conservation Plan through funds appropriated by the Illinois General Assembly to the Illinois Department of Natural Resources from the Abandoned Mined Lands Reclamation Federal Trust Fund.

4. Based on the best available scientific data, ORC has determined that the taking will not reduce the likelihood of survival or recovery of the endangered or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois.

The marsh rice rat is listed as a threatened species in Illinois because of its limited range in the State and the continuing loss of its preferred wetland habitats. The marsh rice rat is

a semi-aquatic, nocturnal species with an approximate lifespan of one year. The species is capable of breeding at seven weeks of age, gestation is approximately 25 days, and litters range from one to seven individuals.

On March 26-29, 2013, Midwest Reclamation Resources, Inc. captured three marsh rice rats at the project site in 94.5 trap-nights. The marsh rice rats were occupying the northern portion of the mine site in a large stand of common reed (*Phragmites australis*) near shallow water. While it is likely marsh rice rats that may be present at the time of construction will disperse away from earth-moving activity, it is possible that some individuals, particularly young in the nest, could be incidentally taken.

The Illinois Natural Heritage Database documents 40 element occurrence records of varying numbers of individuals of marsh rice rats across 13 southern Illinois counties (Massac, Pulaski, Saline, Johnson, Williamson, Franklin, Alexander, White, Hamilton, Union, Perry, Jackson, and Pope). Four element occurrence records for Franklin County range from 1-14 in numbers of individuals captured. According to the Natural Heritage Database, marsh rice rats in Franklin County have been found at the edges of shallow ponds with common reed, along drainage channels with shrubby edges, in channels with standing water and emergent vegetation, and in roadside ditches with standing water, sedges, rushes, and cattails. Statewide, ORC has issued four previous Incidental Take Authorizations for marsh rice rats in Alexander, Saline, Union, and Williamson Counties. Marsh rice rats have recolonized both of the project areas that have completed restoration based on post-construction surveys.

Based on the life history needs of the species, the number of known element occurrence records in the State, an assessment of the potential impact to individuals that make up the element occurrence in this project footprint, and the conservation measures outlined herein, ORC has determined that the taking will not reduce the likelihood of survival or recovery of the State-threatened marsh rice rat.

5. Any measures required under Section 5.5(b)(6) of the Act will be performed.

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and official OMM signatures on this authorization indicate its commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before ORC made any decision regarding the application.

Public notice of OMM's request for authorization of incidental take was published in the Breeze Courier (official state newspaper) on March 3, 2014, and in the Southern Illinoisan (Williamson, Jackson, Franklin, Johnson, Perry, Randolph, Saline, and Union Counties) on March 3, 10, and 17, 2014. Public comments were accepted by ORC until April 17, 2014. No public comments were received.

Authorization

It is the determination of ORC that the measures that will be implemented by OMM will adequately minimize and mitigate the anticipated taking of marsh rice rats due to mine reclamation activities on the North Site of Franklin County Coal Company Mine No. 7 in Franklin County, Illinois. Further, it is ORC's opinion that the take authorized herein will not diminish the likelihood of the survival of the marsh rice rat in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois.

All terms and conditions included in the aforementioned conservation plan submitted by OMM to ORC are incorporated into this agreement by reference and are made a part thereof.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5] and the Administrative Rule for the Incidental Taking of Endangered and Threatened Species [Ill. Adm. Code 1080.40(b)], this authorization is issued subject to the following additional terms and conditions, which may include modifications to #2 in the Compliance section above:

1. This authorization is effective upon the signature of ORC and shall remain in effect for a period of 3 years from the date of the ORC signature, unless terminated by written agreement of both parties.

This authorization may be revoked pursuant to the Act and Ill. Adm. Code 1080.80(b) if ORC finds that OMM has failed to comply with any of these terms and conditions or has been responsible for the taking of marsh rice rats beyond that which is incidental to mine reclamation activities in Franklin County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between OMM and ORC. In this event, ORC shall notify the Illinois Endangered Species Protection Board of such alteration.

Any substantive changes, including but not limited to a change in the project footprint or a change in the State-listed species which could potentially be impacted, will require that a new conservation plan be submitted to ORC to initiate the review and public notice process as required by the Act.

3. Incidental Take Authorizations are non-transferrable.
4. OMM shall notify ORC upon commencement of reclamation on the North Site.
5. Twelve days prior to the commencement of any construction activities on the North Site of reclamation, OMM shall conduct, or cause to be conducted, a thorough survey of suitable marsh rice rat habitat to locate any individuals or nests that may contain juveniles. If the threatened species is located, a qualified ecological consultant shall

exhaustively live-trap the individuals and relocate them to suitable habitat outside of the work area, identified prior to trapping.

At such time that this authorization is in effect, OMM shall provide ORC with their intended methodology and timing for the surveying and relocation of marsh rice rats. OMM shall identify suitable marsh rice rat habitat as release locations in the vicinity and provide ORC with supporting documentation including maps. ORC shall pre-approve proposed sites suitable for marsh rice rat relocation. At a minimum, areas suitable for marsh rice rat relocation must contain semi-permanent hydrology with emergent vegetation and at least 95 meters of grass buffer from the margin of the wetland. All relocations of marsh rice rats shall be reported to ORC within 48 hours of any action. Supporting documentation, including maps, shall be submitted to:

Jenny Skufca, Endangered Species Project Manager
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702
(217)557-8243
jenny.skufca@illinois.gov

ORC's Endangered Species Program shall provide all reports required under this agreement to the Illinois Endangered Species Protection Board and to the Illinois Natural Heritage Database.

6. All personnel working in the vicinity of marsh rice rat habitat shall receive educational materials including identification information, protected status of the species, and protocol in place for when the species is encountered, living or dead. A copy of the educational flyer shall be provided to ORC. ORC shall be informed of any sighting and provided approximate location information within 48 hours of such sighting.
7. OMM will use sediment and erosion control measures to minimize impact off site including riprap, mulches, and vegetative sediment filters as defined in the SWPPP.
8. Based on OMM's estimate of impacted marsh rice rat habitat, 44 acres of suitable marsh rice rat habitat shall be created, restored, acquired, or protected.

A 4:1 ratio has been agreed upon for determining mitigation of suitable habitat impacted [11 acres impacted x 4 = 44 acres]. ORC recognizes that the 45 acres of restored habitat proposed by OMM fulfills this requirement.

9. Upon completion of the reclamation, OMM shall conduct, or cause to be conducted, re-surveys for marsh rice rats within all habitat restoration sites to determine what effect the project has had on the local population. Surveys shall be conducted in year one and year two following restoration. Reports shall be submitted to ORC within 90 days of completion of each survey.

10. Upon completion of the habitat restoration, OMM shall conduct, or cause to be conducted, surveys of vegetation during the growing season in all areas with suitable marsh rice rat habitat. A survey documenting the success of the vegetation establishment shall be performed in year two following restoration. The monitoring report shall be submitted to ORC within 90 days of completion of the survey.
11. The OMM officials identified below are authorized to execute this agreement. Execution by OMM indicates acceptance of all terms and conditions described in this document.
12. The ORC has the right to enter and inspect the species management efforts with 24-hour notice to OMM for the duration of the authorization.
13. The execution of this agreement does not waive or excuse, in any way, the responsibilities of OMM to comply with other Federal, State, or local regulations, including but not limited to obtaining requisite permits.

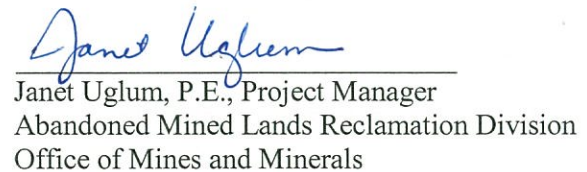
*For the Illinois Department of Natural Resources
Office of Resource Conservation*



Dr. James Herkert, Director
Office of Resource Conservation

7-16-14
Date Signed

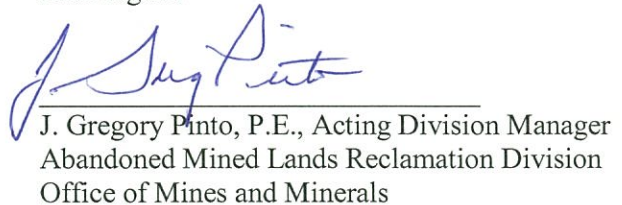
*For the Illinois Department of Natural Resources
Office of Mines and Minerals*



Janet Uglum, P.E., Project Manager
Abandoned Mined Lands Reclamation Division
Office of Mines and Minerals

Janet Uglum, Civil Engineer IV
Please print name and official title

7/7/14
Date Signed



J. Gregory Pinto, P.E., Acting Division Manager
Abandoned Mined Lands Reclamation Division
Office of Mines and Minerals

J. Greg Pinto, Acting Manager
Please print name and official title

7-8-14
Date Signed