



Illinois Department of Natural Resources

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JB Pritzker, Governor
Colleen Callahan, 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 BP US Pipelines and Logistics, Inc. (hereinafter referred to as BP) for the incidental take of the State-threatened Franklin's Ground Squirrel (*Poliocitellus franklinii*). BP holds an easement executed on July 26, 1929, and allowing the right upon, over, and through the proposed action area to construct, operate, or maintain the pipeline; including the right of ingress to and egress from such pipeline with no defined width. Most of the proposed work, as well as ingress and egress, will occur within the 50-foot-wide right-of-way, except as needed for additional workspace and as permissible by easement. The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that this taking is incidental to corrosion prevention maintenance repair on the petroleum products pipeline near Wilmington, Will County, Illinois.

Procedural History

A Conservation Plan prepared by Parsons on behalf of BP, was submitted to the Department on October 19, 2018, as a request for authorization for the incidental take of Franklin's Ground Squirrel. The Department requested additional information on November 28, 2018 as well as April 26, June 25, and July 5, 2019, to make the Conservation Plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on March 28, June 25, and July 11, 2019. The final Conservation Plan was accepted as complete by the Department on July 11, 2019. The public notice period and public comments 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 the Department's determination for each 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 to perform maintenance, such as installation of anode beds and pipeline recoating, to three distinct areas of the pipeline for corrosion prevention. The pipeline project is located within a utility corridor approximately between Manhattan and Symerton

in Will County, Illinois. The utility corridor is located along the eastern boundary of the Midewin National Tallgrass Prairie, a prairie reserve managed by the United States Forest Service (USFS). The Wauponsee Glacial Trail, a 22-mile current multi-use recreational trail on a former railroad bed owned by the Forest Preserve District of Will County, is approximately 35 feet east and runs parallel to the pipeline. No excavation work or vehicular/equipment passage will occur on the raised trail berm, except to cross the trail for the purpose of site access utilizing public roadways, specifically at Doyle Road and Offner Road. Heavy machinery and equipment will be used to complete this project, which includes excavation to depths of 4-5 feet and soil stockpiling. A total of 57,450 square feet (ft²) may be temporarily impacted by the project workspace. An additional 25,600 ft² may be temporarily disturbed by vehicular access to the workspaces. Proposed activities may result in direct burial or crushing of, and/or noise and vibration disturbance to the Franklin's Ground Squirrel during project activities.

Total estimated area of impact within species habitat for the immediately proposed actions is **83,050 ft² (1.91 acres)**. The Department concurs that the take of Franklin's Ground Squirrel that could result from the proposed project is not the purpose of the BP'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:

Proposed avoidance, minimization and mitigation were included in BP's Conservation Plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by BP, based on the life history needs of the Franklin's Ground Squirrel. **All required minimization and mitigation measures are presented under the Authorization section below.**

3. The parties to the Conservation Plan will ensure that adequate funding for the Conservation Plan will be provided.

BP states that the project will be fully funded by themselves, BP US Pipelines and Logistics, Inc. Further, the Conservation Plan will be fully incorporated into construction plans and training programs.

The Department accepts this provision as assurance that adequate funding will be available to carry out the terms of the Conservation Plan.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered species

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.

Franklin's Ground Squirrel (*Poliocitellus franklinii*)

Franklin's Ground Squirrel is an Illinois state-threatened mammal species.

Habitat: Franklin's Ground Squirrel is most often found in tallgrass and mid-grass prairies. The species also inhabits forest-field edges, fields, and unmowed strips along railroad rights-of-way. Within Illinois, they are positively related to the presence of smooth brome (*Bromus inermis*). They hibernate in underground burrows from September to April, although sporadic daytime emergence may occur with warm temperature fluctuations. Once out of hibernation they forage above ground on plants, insects, amphibians, other small mammals, ground-dwelling birds and their eggs, and carrion during the day and return to their burrows at night.

Reproduction: Breeding occurs immediately after Franklin's Ground Squirrels emerge from hibernation. Gestation lasts 28 days and litters of 5-11 young are born in the burrows from May to June. Adults may hibernate as early as July, but juveniles may remain active until September or October. During the early fall, juvenile males will disperse to different populations or attempt to colonize new areas.

Population: Populations are declining due to habitat loss from urban development and agricultural expansion. Conversion of historical prairie habitats to intensive human use has contributed to the decline of the Franklin's Ground Squirrel in Illinois.

Range in Illinois: The Franklin's Ground Squirrel is found sparsely throughout the northern two-thirds of Illinois. Most recent records in Illinois are from railroad corridors, fence rows, and roadsides. The species has been observed in 8 of 102 Illinois counties. There are currently ten (10) extant Element Occurrence Records for Franklin's Ground Squirrel in the Illinois Natural Heritage Database. The Department is currently embarking on a comprehensive species survey effort to determine whether any historic records (greater than 10 years) are still viable.

Between August 7-9, 2018, BP's biological consultants performed visual surveys at and in the vicinity of the three areas proposed for impact to characterize habitat and assess the potential for the species to occur. Visual surveys yielded 17 observations of ground burrows, which were not necessarily attributable to the Franklin's Ground Squirrel. Between May 21-23, 2019, BP's biological consultants performed trapping surveys in the three areas proposed for impact and yielded one (1) Franklin's Ground Squirrel individual.

Incidental Take Authorizations: The Department has ten (10) previously issued or pending Incidental Take Authorizations for Franklin's Ground Squirrel. These include pipelines, transmission and fiber optic lines, recreational use trails, and residential or commercial development projects. A prior authorization for the species was executed in 2009 with Enbridge Pipeline for habitat within the same

footprint of the currently proposed BP project. To the Department's knowledge, no individuals of the species have been lethally taken by any of the projects, however direct take could have occurred within burrows and would remain unknown and indirect take through potential dispersal from preferred habitat has likely occurred. This is the second authorization to be granted for the potential take of Franklin's Ground Squirrel in Will County.

Based on the amount of habitat impacted by this project, the number of known occurrences of Franklin's Ground Squirrel in Illinois, an assessment of the potential effect of this project on individual species in the project footprint, the conservation methods included in this authorization for take and the Conservation Plan, and the understanding that vulnerability and recovery information on the species remains limited; it is the conclusion of the Department that the taking anticipated as a result of this project will not reduce the likelihood of survival or recovery of the species in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species' existence in Illinois.

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 the signature of a representative from BP indicates their commitment to performing those measures.

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

Public notice of the BP's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on July 14, 2019, and in the *The Herald-News* on July 14, July 21, and July 29, 2019. A copy of the Conservation Plan was deposited at the Wilmington Public Library, where it was available for public review. The deadline for public comment was August 28, 2019. No comments were received from the public.

Authorization

It is the determination of the Department that the measures to be implemented by BP will adequately minimize and mitigate the anticipated taking of Franklin's Ground Squirrel associated with the pipeline maintenance in Will County, Illinois. Further the Department has concluded that the taking authorized herein will not reduce the likelihood of survival or recovery of the Franklin's Ground Squirrel 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 BP to the Department 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 Rules for the Incidental Taking of Endangered and Threatened Species [Ill. Adm. Code 1080.40(b)], this authorization is issued subject to the following terms and conditions, which may include additions or modifications to the minimization and mitigation measures proposed by BP in the Conservation Plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **fifteen (15) years** from the date of the Department 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 the Department finds that BP has failed to comply with any of these terms and conditions or has been responsible for the taking of the Franklin's Ground Squirrel beyond that which is incidental to repairing the petroleum products pipeline near Wilmington, Will County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between BP and the Department. The Illinois Endangered Species Protection Board shall be notified 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 affected, will require that a new Conservation Plan be submitted to the Department to initiate the review and public notice process as required by the Act.

3. This authorization may only be transferred upon approval and written authorization by the Department.
4. Notification to all on-site personnel shall be provided on the sensitive biological resources in the area; the identification of Franklin's Ground Squirrel; regulations protecting the species; where the species might be found; avoidance areas; travel restrictions for equipment; how to report sightings or incidents that may involve take; the importance of avoiding take of the species; and response protocol if the species are found, including the chain of response personnel. **BP shall submit a copy of the education materials to the Department.**
5. The Department reserves the right of entry by its staff or representatives to inspect potential habitat and species management practices.
6. Upon request, species researchers shall be provided opportunities to conduct studies, which may include but not be limited to surveys, telemetry, soil temperature readings, and burrow photography within BP's easement in collaboration with the Department, USFS, Forest Preserve District of Will County, and/or Universities to

gather necessary life history data to improve future conservation efforts. Any research activities shall require BP's written consent and follow all safety practices required by BP.

7. Biological consultants employed by BP shall hold the necessary permits for work with non-listed and listed species; these include an Illinois Department of Natural Resources (IDNR) Scientific Collection Permit as authorized under 17 Illinois Administrative Code 520, and an IDNR Endangered Species Permit as authorized under 17 Illinois Administrative Code 1070.
8. BP shall notify the Department's Endangered Species Program by email correspondence of construction commencement and completion of the pipeline project. A **project status report** shall be submitted to the Department within **90 days** following completion of **each maintenance repair episode** (current and future) summarizing the implementation of minimization, mitigation, and restoration measures and evaluating the effectiveness or status of those measures and shall include a project photo log. The report shall also include a map and GPS coordinates of any listed species found within the project footprint, description of any injuries or mortalities, and the disposition of any individuals that were injured or killed.
9. Notification of any Franklin's Ground Squirrel present during performance of the project shall be reported electronically to the Department within 48 hours of discovery accompanied by location information (photograph, map, and GPS coordinates). Any discoveries of additional State-listed species beyond those identified in this agreement **halts work** and shall be reported to the Department within 48 hours accompanied by location information.
10. BP shall conduct, or cause to be conducted, the following pre-construction, construction, and/or post-construction efforts for current and future pipeline maintenance:
 - a. To the extent possible, pipeline maintenance shall be scheduled during the species' active season (May-October) to avoid lethal take within potential burrows. It is understood by the Department that pipeline maintenance activities may be deemed necessary for safety and may therefore be unable to avoid hibernation. However, the pipeline easement occurs on ground level with the surrounding landscape, not along a berm.
 - b. At the start of each work day and as vehicles traverse the access route, a qualified biologist will perform a visual survey of the access path for new burrows or species individuals ahead of the lead vehicle.
 - c. Access lanes shall be mowed ahead of use to enhance the visibility of species.
 - d. All vehicles and equipment shall maintain a speed of 10 miles per hour along access routes.
 - e. Burrows shall be flagged and avoided.
 - f. Soil stockpiles in Areas 1 and 3, shall be less than two (2)-feet tall and dispersed within three (3) days.

- g. Soil stockpiles in Area 2 are understood to be larger, will remain in place for up to two (2) weeks, and shall be inspected daily for burrows. If a recurring colonization of the soil stockpiles is encountered, exclusionary measures shall be implemented.
- h. Once activity is completed at each site, soil and surrounding terrain shall be restored to as good or better condition prior to excavation.
- i. Soil shall be scattered if conditions do not allow for immediate restoration.
- j. Should additional excavation be required, restoration shall be performed immediately upon completion of corrective action.
- k. Post-construction, impact areas shall be successfully revegetated with the seed mix prescribed by and to the satisfaction of the USFS' Midewin National Tallgrass Prairie biologists.
- l. Maintenance of the right-of-way shall include limited frequency mowing to control the colonization of woody vegetation and shall be performed between November and April.

11. BP shall conduct, or cause to be conducted, post-construction monitoring.

- a. A thorough visual survey shall be performed by a qualified biologist for Franklin's Ground Squirrel burrows and individuals **prior to** each future pipeline maintenance project within the right-of-way.
- b. Any future work shall be submitted to the Department's EcoCAT system to verify that no additional listed species are at risk in the proposed action area.
- c. A thorough post-construction presence/probable absence trapping survey shall be performed by a qualified biologist **within 1-2 field seasons** of the initial work and any future pipeline maintenance projects, as well as at the closing of the agreement (Year 15) with no greater than four (4) total trapping surveys required during the term of the authorization.
- d. If no further work occurs on the right-of-way after the initial maintenance activity, performance of the trapping surveys following Year 1 work and during Year 15 shall be adequate for post-construction monitoring compliance.
- e. **A report including, but not limited to, a description of the survey methodology utilized including duration, date, time, habitat description, photographs, and a map of survey locations and the locations of Franklin's Ground Squirrels or burrows shall be provided to the Department within 90 days of completion of each survey.**

12. Mitigation to the maximum extent practicable is required by the Act. Mitigation requirements for this authorization are as follows:

- a. BP shall provide **\$37,178** to the Illinois Wildlife Preservation Fund to be earmarked to bring conservation benefit to the Franklin's Ground Squirrel.
- b. The mitigation shall be provided to the Department **within 90 days of execution of this agreement**. Mitigation payments are nonrefundable, including events of revocation or termination.

Mitigation values are based on the Department's best current understanding of the species life history needs, real estate values, and impact analysis relevant to the project site's proposed conceptual design elements available at the time of review.

13. All reports, notifications, and other project documentation shall be submitted to:

Illinois Department of Natural Resources
Office of Resource Conservation
Endangered Species Program – Incidental Take Authorization Coordinator
One Natural Resource Way
Springfield, IL 62702-1271

(217)557-8243
DNR.ITAcordinator@illinois.gov

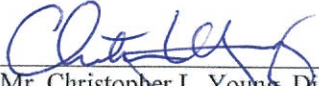
The Department's Endangered Species Program shall provide all reports required under this agreement to the Illinois Endangered Species Protection Board and to the Department's Natural Heritage Database.

14. The BP official identified below is authorized to execute this agreement. Execution by BP indicates acceptance of all terms and conditions described in this authorization.

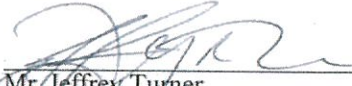
15. The execution of this agreement does not waive or excuse the responsibilities of BP to comply with other Federal, State, or local regulations, including but not limited to obtaining any required permits for the execution of this project.

For the Illinois Department of Natural Resources:

For BP US Pipelines & Logistics, Inc.:



Mr. Christopher L. Young, Director
Office of Resource Conservation



Mr. Jeffrey Turner
Area Manager

1/14/20

Date

1/8/2020

Date