

## **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 Enable Mississippi River Transmission, LLC (hereinafter referred to as MRT) for the incidental take of the State-threatened Illinois Chorus Frog (*Pseudacris illinoensis*). The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that this taking is incidental to activities associated with preconstruction testing and installation of a steel natural gas pipeline in Madison County, Illinois. The work takes place near and within a portion of the Poag Terrace Illinois Natural Areas Inventory (INAI) Site #1302.

### **Procedural History**

A Conservation Plan prepared by Merjent on behalf of MRT, was submitted to the Department on April 24, 2023, as a request for authorization for the incidental take of Illinois Chorus Frog. The Department requested additional information on May 23, and June 16, 2023, to make the Conservation Plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on May 25, and June 20, 2023. The final Conservation Plan was accepted as complete by the Department on June 23, 2023. 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 construct eight miles of new 4.5-inch outer diameter steel pipe from the Ameresco Renewable Natural Gas facility at the Republic Services landfill in Roxana, IL to the existing MRT 18-inch East Line in Madison County. Construction of the gas collection facility is **not included in this Authorization**. The portion of the Project considered in this authorization is anticipated to begin in Spring 2024 for preconstruction

testing, and pending those outcomes, the construction is anticipated to be complete in one year.

Prior to construction, MRT will complete excavations within the work area as part of required preconstruction testing. This testing will result in a maximum of 1.3 acres of disturbance to the plow layer of the soil within the INAI.

The majority of the pipeline will be installed in an open trench approximately 12 to 24-inches wide. Soil conditions are sandy and do not allow for other methods. Approximately 1,848 feet of pipe will be installed via conventional bore or horizontal directional drill in areas of where breeding ponds for Illinois Chorus Frogs exist. In those areas, soil has more silt and clay and will allow for this type of installation. Within the INAI, no permanent aboveground structures or infrastructure will be installed.

Take of Illinois Chorus Frog could occur as a result of crushing or burying by project traffic or heavy machinery during construction, altered predator/prey relationship, and/or dispersal from suitable habitat due to increased noise and/or vibration. If adult frogs are present in the soil during the preconstruction testing, there is the risk of exposure to sunlight, desiccation, disruption of normal feeding behaviors, disruption of habitat structure and burrows, and fatal injury. During pipeline installation, Illinois Chorus Frogs present in the work area may be entombed.

Site restoration and revegetation will be based on the degree of disturbance caused by construction activities and the ecological setting of each site. Where soil disturbance occurs in environmentally sensitive areas, erosion control best management practices will be installed, maintained, and monitored until the area is revegetated.

Total estimated area of impact for the proposed actions is approximately **90.7 acres, and 26.3 acres of impact within habitat for Illinois Chorus Frog from the installation of the pipeline.** The Department concurs that the take of Illinois Chorus Frog that could result from the proposed project is not the purpose of MRT'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 MRT's conservation plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by MRT, based on the life history needs of the Illinois Chorus Frog. **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.

MRT states in their Conservation Plan that they have adequate financial backing to support and implement mitigation activities described in this Conservation Plan. The costs of mitigation activities will be incorporated into the overall Project budget. MRT will provide the Department with a letter certifying that a qualifying monitoring firm has been contracted to complete monitoring.

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.

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**Illinois Chorus Frog (*Pseudacris illinoensis*)** is an Illinois state-threatened amphibian species.

**Habitat:** The Illinois Chorus Frog is found in areas of sandy soil. The frogs spend most of the year buried 4-8 inches below the surface, emerging in February or March only to move to ephemeral ponds where they mate and lay their eggs. The species may intermittently burrow during the day in breeding season. They locally migrate to underground burrows in June.

**Distribution:** The current range of the species is similar to its historic range, but the abundance of the species within that range has diminished. Illinois Chorus Frogs also occur in parts of Missouri and Arkansas.

**Reproduction:** Illinois Chorus Frogs will emerge from their burrows and migrate up to 0.9 kilometers to ponds. Males will call to attract females. They will mate and lay eggs in several clusters of 10-40 eggs. Clutches of 400-700 eggs in total are attached to the underside of submerged vegetation. The species' life span is typically 2-3 years.

**Population:** Illinois Chorus Frogs have declined due to habitat loss caused by the draining of breeding sites for development, chisel-plow cultivation, and road mortality during migration to and from breeding sites.

**Range in Illinois:** Illinois Chorus Frogs are found at scattered locations in central, southwest, and extreme southern portions of Illinois. They have been observed in 10 of 102 counties, including Alexander, Cass, Fulton, Madison, Mason, Menard, Morgan, Pulaski, Scott, and Tazewell Counties. There are currently 56 extant (within last 10 years) Element Occurrence Records for Illinois Chorus Frog in the Illinois Natural Heritage Database.

**Incidental Take Authorizations:** The Department has thirty-three (33) previously issued or pending Incidental Take Authorizations for Illinois Chorus Frog. This is the third (3) authorization to be granted for the potential take of Illinois Chorus Frog in Madison County.

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Based on the amount of habitat impacted by this project, the number of known occurrences of Illinois Chorus Frog 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 MRT 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 MRT's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on June 30, 2023, and in *The (Alton) Telegraph* on June 30, July 7, 14, and 21, 2023. A copy of the Conservation Plan was deposited at the Roxana Public Library, where it was available for public review. The deadline for public comment was August 21, 2023. No comments were received from the public.

### **Authorization**

It is the determination of the Department that the measures to be implemented by MRT will adequately minimize and mitigate the anticipated taking of Illinois Chorus Frog associated with the preconstruction testing and installation of a steel natural gas pipeline in Madison County, Illinois. Further, the Department has concluded that the taking authorized herein 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.

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

the event there is conflict between the conservation plan and this authorization, this authorization shall control.

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 MRT in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **five (5) 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 MRT has failed to comply with any of these terms and conditions or has been responsible for the taking of Illinois Chorus Frogs beyond that which is incidental to work associated with the preconstruction testing and installation of a steel natural gas pipeline in Madison County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between MRT 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 Illinois Chorus Frog; 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. **MRT 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. Biological consultants employed by MRT 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, a Herptile Scientific Permit as authorized under 17 Illinois

Administrative Code 885, and an IDNR Endangered Species Permit as authorized under 17 Illinois Administrative Code 1070. Gloves shall always be worn when handling any species and properly disinfected or discarded between individuals.

7. MRT shall notify the Department's Endangered Species Program by email correspondence of the preconstruction testing commencement and completion. A **project status report** shall be submitted to the Department within **90 days** following completion summarizing the results and any impact on the route of the project, implementation of minimization and mitigation 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 and/or translocated from the project footprint, description of any injuries or mortalities, and the disposition of any individuals that were injured or killed.
8. MRT shall notify the Department's Endangered Species Program by email correspondence of construction commencement and completion of the project. A **project status report** shall be submitted to the Department within **90 days** following completion summarizing the implementation of minimization and mitigation 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 and/or translocated from the project footprint, description of any injuries or mortalities, and the disposition of any individuals that were injured or killed.
9. 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 (photograph, map, and GPS coordinates).
10. MRT shall conduct, or cause to be conducted, the following pre-construction, construction, or post-construction efforts:
  - a. The project was designed to avoid wetlands, and if sandy soils are encountered, components will be sited to avoid those to the extent practicable.
  - b. Suitable Wetlands and waterbodies, as identified in the Conservation Plan, shall be crossed using Horizontal Directional Drilling (HDD) boring.
  - c. The workspace is narrowed within the Poag Terrace INAI site to as shown in the Conservation Plan supplied by MRT.
  - d. Laydown yards shall be sited outside of sandy soils, to the extent practicable. For this project, the laydown yard has been located outside of the INAI site.
  - e. Within the INAI, temporary exclusionary fencing shall be buried at least six inches in the ground, staked, and maintained in an upright position throughout the duration of the construction activities.
  - f. A biological inspector/monitor shall be present daily for any active construction during Illinois Chorus Frog breeding season (February through April), and weekly during the remainder of construction.
  - g. If large congregations of Illinois Chorus Frogs are observed, the Department shall be notified.

- h. Daily construction activities shall be limited to daylight hours during February, March, and April. Work shall stop before sunset to avoid the time of day when Illinois Chorus Frogs are most active.
  - i. After reptile exclusion fencing is installed, new, clean construction matting will be installed along the existing ROW through wetlands or other unstable soil areas to minimize soil compaction. If netting is used, it should be wildlife-friendly non-plastic netting.
  - j. Trenches shall be refilled within 12 hours of excavation. If left overnight, trenches shall be inspected for animals before refilling. Animals shall be removed.
  - k. If grading and excavation are occurring in sandy soils, then the topsoil shall be segregated from subsoil and placed back in the same order it was removed.
  - l. During species active periods, speed limits of construction vehicles traveling on access roads shall be limited to 12 mph or less to reduce the potential take of listed species.
  - m. All reptile exclusion fence and construction matting (if used) shall be removed from the area upon completion of all construction and restoration activities, and prior to the beginning of the listed reptile species' next active period (February through April).
  - n. No pesticide or herbicide applications shall be made within 48 hours of predicted rainfall.
  - o. Post-construction the project area shall be restored to the same habitat as were present prior to construction. Disturbed areas will be reseeded. However, no turf grass is to be laid to avoid entombing Illinois Chorus Frog.
11. MRT shall conduct, or cause to be conducted, post-construction surveys for Illinois Chorus Frog during the species' active period and in the vicinity project area following construction completion.
- a. All Illinois Chorus Frog surveys shall be coordinated with the Department's survey efforts for this species in the same area.
  - b. Post-construction calling surveys for Illinois Chorus Frogs targeting all ponds/ditches within 0.3 miles of construction (i.e., where landowner permission is granted, and/or where ponds are within 100 ft. of public roads) for two (2) of the five (5) years post-construction. If rainfall is substantially lower than average MRT shall confer with the Department about postponing surveys to a year with better conditions to evaluate the presence of the Illinois Chorus Frog.
  - c. A biologist will conduct call surveys for one night per week for 4-6 weeks during the main breeding season of Illinois Chorus Frog.
  - d. Illinois Chorus Frog call surveys shall be performed during early spring of the year following construction of the project. Nighttime audible call surveys shall be performed by qualified contractors at least 30 minutes after sunset, and end by midnight, during active breeding season (late February to late March, generally, but calls in local areas may only last approximately two weeks). Surveys shall be conducted when the temperature is above 32° F and wind speed is below 18 miles/hour with a lack of heavy rainfall. Listening posts shall be targeted as

provided above in (a.). *Illinois Chorus Frog survey data sheets shall reflect date, location, time, air temperature, humidity, wind speed, moon visibility, precipitation, number of minutes at each listening post (no less than fifteen minutes), number of cars that passed, other human-caused noise, water presence/absence, and a notation of whether the call emanates from within the project boundary or outside (note direction). Mapping of all ephemeral wet areas potentially utilized by Illinois Chorus Frogs in the survey area shall be provided to the Department with notations on depth of water and presence/absence of emergent vegetation and tadpoles, if accessible.*

- e. **A study plan including specific survey methods will be submitted to IDNR prior to the start of the survey and the survey will be conducted within the first half of the permit term.**

**A report including, but not limited to, the survey methodology utilized, area covered and time duration, a description and map of each habitat surveyed, the number of individuals located, the estimated life stage of each individual encountered (juvenile/adult) if possible, and a map of the species locations shall be provided to the Department within 90 days of survey completion.**

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

MRT shall provide compensatory mitigation for the disturbance to these approximately 26.3 acres of Illinois Chorus Frog habitat. MRT has agreed to mitigation in the amount of \$267,267 earmarked for Conservation of Illinois Chorus Frog. The Department has determined that this money shall be deposited with Heartlands Conservancy with the intent to conserve Illinois Chorus Frog habitat within the Poag Terrace. MRT has committed to provide this money within 365 days of execution of this Authorization.

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.ITAcoordinator@illinois.gov

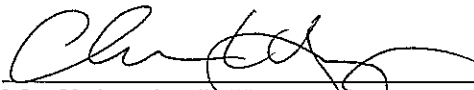


The Department's Endangered Species Program shall provide all reports required under this agreement to the Illinois Endangered Species Protection Board and to the Department's Natural Heritage Database.


14. The MRT official identified below is authorized to execute this agreement. Execution by MRT 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 MRT 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 Enable Mississippi River Transmission, LLC:*

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

  
\_\_\_\_\_  
Mr. Pat Gavula  
Project Director

  
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Date

January 17, 2024  
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Date