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06-1142-SA-BIN

FILE

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ORIGINAL

July 24, 2007

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, D.C. 20426

Re: REX-East Pipeline, CP07-208
David McCarroll's Indiana Bat Survey

Dear Secretary Salas:

This law firm has been retained by David McCarroll, an intervener in CP07-208, as his interests relate to the Rockies Express Pipeline project ("REX-East" or the "Pipeline"). As you know, REX-East has notified Mr. McCarroll that his property, located at 4876 West 150 South, Danville, Indiana 46122 (the "Site"), lies in the proposed path of the Pipeline. Mr. McCarroll's property consists of sixty acres, which contain wetland vegetation, a stream, and wooded areas. The wooded areas contain trees with diameters greater than nine inches, including dead trees with peeling bark. Such trees provide the necessary habitat for maternal colonies of Indiana bats (*Myotis sodalis*) during roosting season.

Mr. McCarroll is concerned about the adverse environmental effects of the Pipeline on his property, and he has engaged Keramida Environmental, Inc. ("Keramida"), an environmental consultant, to study the environmental impacts to his property. Keramida contacted Dr. John Whitaker, Ph.D., at the center for North American Bat Research and Conservation at Indiana State University for assistance in conducting an Indiana bat survey. Dr. Whitaker and his staff conducted the survey on June 25 and 26, 2007, using U.S. FWS-approved protocol. As described in their report, two mist nets were used each night and monitored for five hours. The nets were checked every fifteen minutes and any netted bats were removed and identified for species, gender, reproductive condition, and weight. Six Indiana bats were captured during the survey. All Indiana bats netted were lactating females. Dr. Whitaker determined that due to the number of reproductive female Indiana bats captured, a maternity colony likely exists in the immediate vicinity of the net at the Site. I have enclosed for your review a copy of the July 3, 2007 report and Dr. Whitaker's findings.

Because the survey indicates that a maternity colony exists on Mr. McCarroll's property, we are concerned that the proposed pipeline path will adversely affect the endangered species. Furthermore, Mr. McCarroll's property provides suitable habitat for

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Magalie R. Salas, Secretary
Federal Energy Regulation Commission
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roosting, and we are concerned that the proposed activities will adversely impact suitable habitat for maternal colonies of Indiana bats. As maternity roost sites may contain up to 100 bats, loss of a maternity roost site poses a significant threat to population recovery.

As you know endangered species may become extinct without adequate protection. In addition to aesthetic, ethical, and ecological reasons to protect diversity in species, humans are self interested in the survival of diverse species. The natural world supports medical, agricultural, and commercial benefits. Because of the limited distributions and specific habitat requirements, Indiana bats are vulnerable to rapid population reductions due to habitat change, environmental contaminants, and other human disturbances. Mr. McCarroll is concerned that the proper nesting and foraging environments for the endangered species will not be preserved if the REX-East Pipeline is installed on his property.

The Endangered Species Act of 1973 ("ESA"), comprehensive legislation designed to ensure preservation of endangered species, applies to FERC's consideration of the Pipeline project. Its purpose is to conserve ecosystems necessary to ensure survival of endangered and threatened species in addition to providing a program for conservation of the species themselves. 16 U.S.C.A. § 1531(b). Section 7 of the ESA requires that federal agencies ensure their actions do not jeopardize endangered wildlife and flora. *Id.* § 1536(a). "[T]he ESA's no-jeopardy mandate applies to every discretionary agency action—regardless of the expense or burden its application might impose." *Natl. Assoc. of Home Builders*, 127 S.Ct. at 2537; *TVA v. Hill*, 437 U.S. 153, 189-93 (1978); *California Gas Producers Assoc. v. FPC*, 383 F.2d 645, 648 (9th Cir. 1967) ("The granting or denial of a certificate of public convenience and necessity is a matter peculiarly within the discretion of the Commission."). As explained in the report, permitting REX-East to install the Pipeline on Mr. McCarroll's property will jeopardize an endangered species and the habitat required for roosting.

Accordingly, due to the environmental impacts the Pipeline will cause to Mr. McCarroll's property, Mr. McCarroll demands that FERC deny the REX-East application to the extent that it impacts his property. Other suitable routes exist that would not result in taking an endangered species or its habitat.

Very truly yours,



Robert R. Clark

RRC/kp

Enclosure

cc: David McCarroll
Heather Kendrick, Rockies Express Pipeline, LLC
Forest Clark, US Fish and Wildlife Service, Bloomington Indiana Field Office
Michael Litwin, US Fish and Wildlife Service, Bloomington Indiana Field Office
Glen Salmon, DNR, Division of Fish & Wildlife, Wildlife Diversity Section

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KERAMIDA

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July 3, 2007

Mr. Dave McCarroll
4876 West 150 South
Danville, Indiana 46122

Re: **INDIANA BAT SURVEY**
4876 West 150 South
Danville, Indiana 46122
KERAMIDA Project No. 12217

FILED
OFFICE OF THE
SECRETARY
2007 JUL 30 P 4:03
REGISTRATION DIVISION

Dear Mr. McCarroll:

KERAMIDA Environmental, Inc. (KERAMIDA) is pleased to present this report of findings for the Indiana bat survey conducted at the above-referenced property. The Site is part of a 60-acre residential property in Hendricks County, Indiana. Figure 1 shows the Site location. The property is primarily wooded with some agricultural fields. A stream traverses the southern portion of the property from northwest to southeast and connects to Mill Creek approximately ¼ mile southeast of the Site (see Figure 1). The purpose of the assessment was to determine if the federally endangered Indiana bat was present at the Site.

BACKGROUND

KERAMIDA contacted the United States Fish and Wildlife Service (USFWS) for information on threatened, endangered, or rare species, critical habitats, or other sensitive ecological receptors at the Site and surrounding area. Michael Litwin with the USFWS in Bloomington, Indiana responded to the request via telephone. Mr. Litwin reported that the Federally endangered Indiana bat (*Myotis sodalis*) has been documented within 2 miles of the Site. The Indiana bat uses woodlands during the summer when maternity colonies utilize trees with loose bark for roosting. Based on the proximity of documented Indiana bats, the presence of suitable nesting and foraging habitat for the Indiana bat along the stream at the Site, USFWS considers the potential exists for this endangered species to be present at the Site.

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July 3, 2007

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SURVEY METHODS

Based on this information, KERAMIDA contacted Dr. John Whitaker, PhD, at the Center for North American Bat Research and Conservation at Indiana State University, for assistance in conducting a survey for the Indiana bat. Dr. Whitaker and his staff have the necessary federal permits to capture and handle the endangered Indiana bat.

The survey was conducted on June 25 and 26, 2007, using USFWS-approved protocol for bat surveys. Two mist nets were set-up each night and monitored from 9:00 pm to 2:00 am. The nets were checked every 15 minutes and any netted bats were removed and identified for species, gender, reproductive condition, and weight. The bats were then released.

SURVEY RESULTS

Six Indiana bats were netted during the survey, along with three other species of bats. A fifth bat species was observed flying in the survey area although it was not netted. The Indiana bats netted were all lactating females, indicating the likelihood of a maternity colony at the Site. The ISU report is attached to this letter. KERAMIDA recommends this information be forwarded to the USFWS in Bloomington, Indiana for use in Indiana bat and habitat conservation.

We hope this information will assist you in your dealings with the pipeline project. If you have any questions regarding this information or require further assistance, please contact us (317) 685-6600. It has been a pleasure working with you.

Sincerely,
KERAMIDA Environmental, Inc.



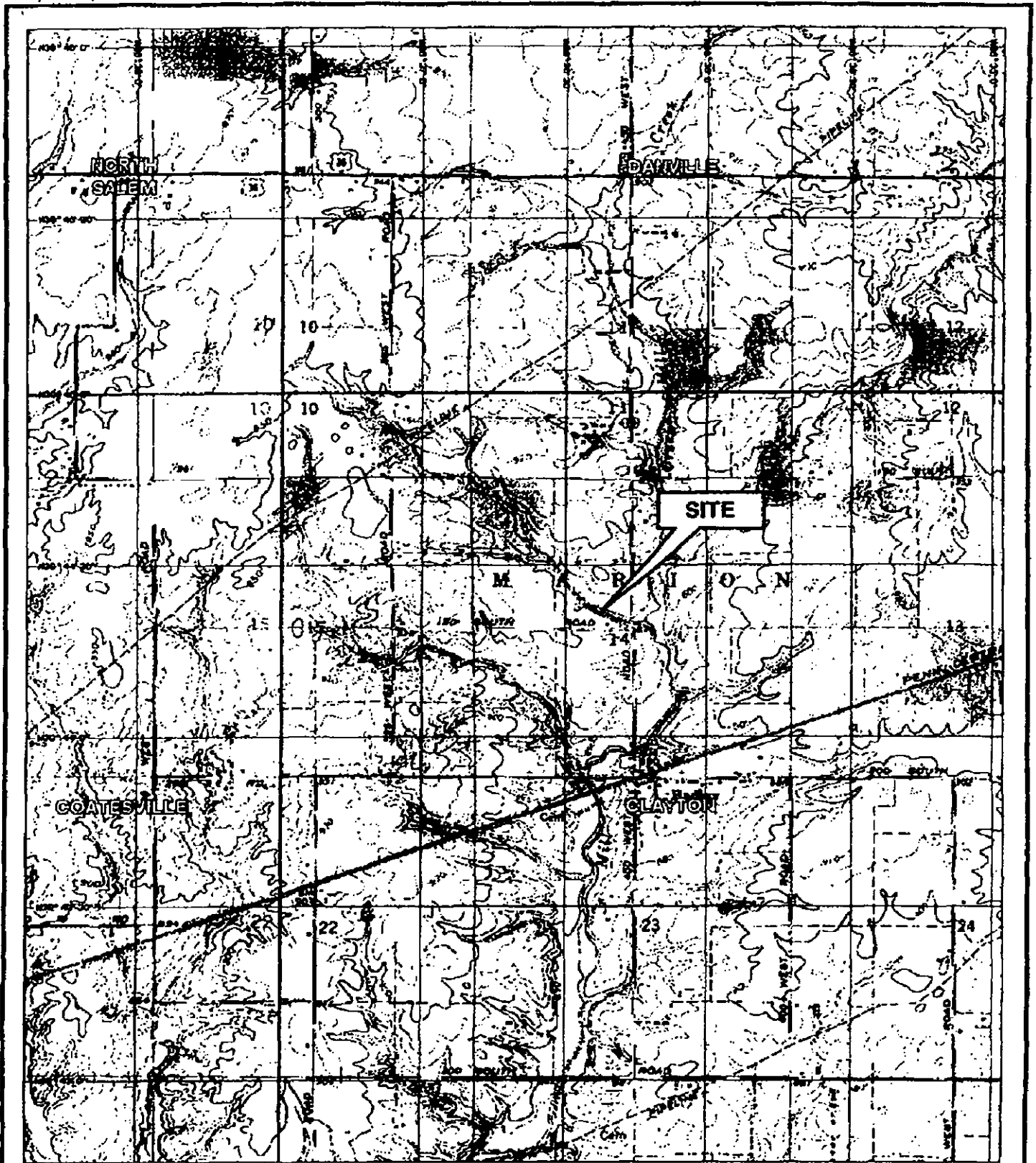
Christina Haviland
Senior Scientist



Kristen Gobbi-Belcredi, PE, CHMM
Vice President, Engineering Services

Enclosures

cc: Bob Clark, Sommer Barnard



3-D TopoQuads Copyright © 1999 Delorme Technical, Inc. Source Data: USGS

150 ft Scale: 1:25,000 Detail: 1:50,000 Datum: NAD83

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Figure 1
Location Map
4876 West 150 South
Danville, Indiana

Prepared by: CH
Approved by: XS
Date: 10/28/2006
Project Number: 11750

N

**SURVEY OF BATS AT 4876 W 150 S DANVILLE,
HENDRICKS COUNTY, INDIANA**

by

JOHN O. WHITAKER, JR

AND

BRIANNE L. WALTERS

CENTER FOR NORTH AMERICAN BAT RESEARCH AND CONSERVATION

DEPARTMENT OF ECOLOGY AND ORGANISMAL BIOLOGY

INDIANA STATE UNIVERSITY

TERRE HAUTE INDIANA 47809

REPORT TO

KERAMIDA ENVIRONMENTAL, INC.

401 NORTH COLLEGE AVENUE

INDIANAPOLIS, IN 46202

28 JUNE 2007

SURVEY OF BATS AT 4876 W 150 S DANVILLE,
HENDRICKS COUNTY, INDIANA

28 JUNE 2007

ABSTRACT: Six Indiana myotis, two northern myotis, one big brown bat and one little brown bat were captured at 4876 W 150 S Danville, Hendricks County, Indiana on 25 and 26 June 2007. A maternity colony of Indiana myotis is suspected to be present on the property.

INTRODUCTION

Twelve species of bats are or were recently found in Indiana (Mumford and Whitaker, 1982), 2 species of solitary bats that live among the foliage of trees, 5 species of colonial bats of the genus *Myotis*, and 5 species of colonial bats in other genera. These are indicated below. The nine species that would be most likely found in Hendricks County, Indiana are indicated by asterisk.

Solitary bats

- *Hoary bat, *Lasiurus cinereus*
- *Red bat, *Lasiurus borealis*

Bats of the genus *Myotis* (colonial)

- *Little brown myotis, *Myotis lucifugus*
- *Indiana myotis, *Myotis sodalis*
- Gray myotis, *Myotis grisescens*
- *Northern myotis, *Myotis septentrionalis*
- Southeastern myotis, *Myotis austroriparius*

Other colonial bats

- *Silver-haired bat, *Lasiurus noctivagans*
- *Big brown bat, *Eptesicus fuscus*
- *Pipistrelle, *Perimyotis subflavus*
- *Evening bat, *Nycticeius humeralis*
- Rafinesque's big-eared bat, *Corynorhinus rafinesquii*

The Indiana and gray myotis are federally endangered, and the evening bat and southeastern myotis bat are listed as endangered in Indiana. All other bat species found in Indiana, except the big brown bat, are listed as special concern in Indiana.

SPECIES OF PARTICULAR CONCERN.

Myotis sodalis Indiana bat.

STATUS: FEDERALLY ENDANGERED

The Indiana myotis spends the winter in large numbers in a few caves of southern Indiana and elsewhere. Maternity colonies are nearly always under loose bark of trees, often, but not always, in riparian situations. Relatively few maternity colonies of this species have been found, including only 17 in Indiana (Whitaker and Brack, 2002). Colonies are hard to locate because they are in trees, usually in wooded or semi-wooded areas, and there are relatively few bats in the colony, usually less than 100. The best way to locate maternity colonies is to attach a radio transmitter to an adult female or a juvenile and track it back to the colony. Capture of female or juvenile Indiana bats in nets in summer suggests the presence of a nearby maternity colony, with larger numbers of bats indicating that the colony is quite close. This species has been recorded in Hendricks County in Indiana.

SPECIES MOST LIKELY TO BE PRESENT ON THE STUDY SITE

Eptesicus fuscus. This bat is abundant in Indiana. In summer, most big brown bats form maternity colonies in buildings or other human-made structures. In winter, a few hibernate in caves and mines, but most hibernate in buildings, usually not more than 1 to 5 in any one building, although a few buildings that have been available for a long time have larger numbers (Whitaker and Gummer, 1992). This is the only species of bat that hibernates in buildings in Indiana. Big brown bats have been recorded in Hendricks County and a single individual was captured at the survey site.

Lasiurus borealis. The red bat is solitary, but is abundant in Indiana. It hangs among foliage in summer and migrates south where it spends hibernates in winter. This species hibernates from southern Indiana south in winter, and has recently been found hibernating under surface litter in Missouri. It has previously been recorded in Hendricks County and was seen flying at the survey site.

Lasiurus cinereus. The hoary bat is the largest bat of Indiana and is one of the most colorful. Like the red bat, in summer it hangs in foliage in the daytime, but most individuals migrate far south for the winter, to southern California, Central America and a few to coastal South Carolina. It has been recorded in nearby Hendricks County and is probably present at the study site, but it is uncommon thus likely not to be taken in a limited survey.

Lasionycteris noctivagans. The silver-haired bat is a distinctively colored migratory species. It probably migrates through the study area in spring (most in mid April and May) and fall (September to November) but should not be present in summer much after June 1. It has its young in hollows in trees to the north, then moves south to hibernate. Little is known of its hibernation sites, but the northern edge of its winter range is in central Indiana where a very few hibernate in caves and mines. It has been recorded in Hendricks County.

Myotis lucifugus. The little brown myotis forms maternity colonies usually in buildings or other structures and it migrates to caves to hibernate. It is a common species throughout most of Indiana. It has been recorded in Hendricks County and a single individual was captured during this survey.

Myotis septentrionalis. The northern myotis usually forms relatively small maternity colonies in cracks or crevices or under the loose bark of trees, and occasionally in buildings. In winter, it is solitary and hibernates in caves with most individuals not being seen because they hibernate in tiny cracks or other hidden places. This species has been recorded in Hendricks County and two individuals were captured during this survey.

Nycticeius humeralis.

STATUS: STATE ENDANGERED

The evening bat forms maternity colonies in buildings or in hollows in trees. It is interesting that all earlier colonies of this species in Indiana (before 1995) were in buildings, whereas all the more recent colonies have been in trees. It is not known where this species hibernates, but we suspect it may be in hollow trees along larger streams to the south. It has been recorded in Hendricks County so it could possibly be present in the project area.

Perimyotis subflavus. The eastern pipistrelle is the smallest bat in Indiana. It sometimes forms small maternity colonies in buildings, but most individuals in summer are found in woods where they live in clusters of leaves. In winter it is a solitary hibernator in caves and mines. This species has been recorded in Hendricks County and could occur at this study site.

OBJECTIVES OF PROJECT

The principal objectives of this project are to accumulate information on the bat community found at 4876 W 150 S Danville, Hendricks County, Indiana, and specifically to determine if the Indiana myotis occurs there.

METHODS

All methods follow the US Fish and Wildlife's guidelines for mist-netting. Two nights of mist-netting for bats with two nets per site occurred at 1 site on the property. Nets were 6 or 9 meters wide, and were 14 feet high. They were draped across paths through the woods leading to agricultural fields. The nets were on a pulley system so that they can be raised and lowered as necessary to retrieve bats. Nets were erected before sunset and in place for at least 5 hours. The nets were constantly monitored and bat detectors were used throughout the sampling to monitor bat activity in the vicinity of the net. This allows a determination of usage of the areas by bats, and also gives an assessment of how well the trap is doing. Few calls on the detector would indicate little use of the site by bats. Numerous calls on the detector but few bats in the net may mean poor placement of the net. Data on the species, gender, reproductive condition and weight were collected for each captured individual.

RESULTS AND CONCLUSIONS

Six Indiana myotis, 2 northern myotis, 1 big brown bat, and 1 little brown bat were captured at the survey site in Hendricks County, Indiana on 25-26 June 2007. Red bats were seen flying in the field next to the woodlot. Due to the number of reproductive female Indiana bats captured, a maternity colony is suspected to occur in the immediate vicinity of the net in which they were captured. It is our recommendation that a radio transmitter be attached to one of these bats and this maternity roost be located and protected.

LITERATURE CITED

Mumford, R. E. and J. O. Whitaker, Jr. 1982. Mammals of Indiana. Indiana University Press. Bloomington. 537 pp.

Whitaker, J.O. Jr. and V. Brack, Jr. 2003. Distribution and summer ecology in Indiana. Pp 48-54 In: The Indiana bat: biology and management of an endangered species. Eds. A. Kurta and J. Kennedy. Bat Conservation International, Austin Texas. 253 p.

Whitaker, J. O. Jr. and S. L. Gummer. 1992. Hibernation of the big brown bat, *Eptesicus fuscus*, in buildings. *Journal of Mammalogy* 73:312-316.

APPENDIX

Mist netting data for bats at 4876 W 150 S Danville, Hendricks County, Indiana are given below.

Site #1. Indiana, Hendricks County, Danville, 4876 W 150 S. GPS coordinates: N 39°44.514, W 086°36.838. A 30 x 14 foot and a 18 x 14 foot mist net were placed along paths through a woodlot leading to an agricultural field. The site was netted on 25 and 26 June 2007. Netting from 9:00p.m. to 2:00a.m. Temperature stayed in the 70's F both nights. The first 5 bats were captured on 25 June and the last 5 bats were caught on 26 June.

BATS TAKEN	SEX	TIME	WEIGHT	CONDITION
<i>Myotis sodalis</i>	F	22:30	7 g	Lactating
<i>Myotis sodalis</i>	F	00:30	7.5 g	Lactating
<i>Myotis septentrionalis</i>	F	1:20	7 g	Lactating
<i>Myotis sodalis</i>	F	1:50	7 g	Lactating
<i>Myotis septentrionalis</i>	F	2:00	6.5 g	Lactating
<i>Eptesicus fuscus</i>	M	22:15	20 g	Adult
<i>Myotis lucifugus</i>	F	23:00	8.5	Lactating
<i>Myotis sodalis</i>	F	00:30	7 g	Lactating
<i>Myotis sodalis</i>	F	1:30	8 g	Lactating
<i>Myotis sodalis</i>	F	1:50	7.5 g	Lactating