



## KEYSTONE XL:

### Interior ignored swift fox in pipeline review -- lawsuit

Phil Taylor, E&E reporter  
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An environmental group today sued the Interior Department for the release of documents it claims will prove the agency failed to evaluate how the Keystone XL pipeline would affect an endangered fox.

The Center for Biological Diversity filed two complaints in the U.S. District Court for the District of Columbia, hoping to open a new front in the lengthy battle over the planned 1,179-mile pipeline connecting Alberta's carbon-rich oil sands with Gulf Coast refineries.

The lawsuits seek to compel the release of documents from the Fish and Wildlife Service concerning the legal status of the northern swift fox under the Endangered Species Act. CBD is trying to prove the speedy fox, known for its large ears and bushy tail, is endangered in the U.S. and therefore requires formal consultation by FWS.

The Tucson, Ariz.-based group filed Freedom of Information Act requests to FWS in April and August last year seeking copies of a 2009 memorandum and legal documents that it said would prove its case, but it argues it was illegally rebuffed.

CBD said the State Department in its environmental impact statement acknowledged swift fox dens along the project route could be crushed during construction, killing foxes and their young.

"Proponents of Keystone XL assure us the pipeline has been studied extensively, but incredibly, some of the pipeline's worst impacts to the nation's endangered wildlife have been given short shrift," said Amy Atwood, a senior attorney at CBD. "We can only assume Fish and Wildlife is trying to sweep the impacts of Keystone on this unique fox under the rug."

Atwood said FWS has conducted formal consultation with the State Department, the lead permitting agency, on impacts to the American burying beetle and informal consultation for species including the whooping crane, piping plover and interior least tern, which resulted in mitigation measures.

The issue with the swift fox is whether it is indeed protected in the U.S., or only in Canada, as FWS's website currently indicates.

CBD argues the fox was listed in 1973 when the Endangered Species Act was passed but then had U.S. protections erroneously stripped from it, the thick-billed parrot and other species in 1979.

Interior's 2009 policy memorandum, which CBD is requesting be disclosed, acknowledged U.S. protections for the thick-billed parrot had been erroneously removed in 1979, CBD argued.

"Upon information and belief," CBD said, the 2009 memorandum also concluded that the northern swift fox is protected wherever it occurs in the U.S.

"The rationale set forth in the 2009 memorandum and 2009 Federal Register notice for the thick-billed parrot also applies to the northern swift fox," the complaint reads.

CBD's other lawsuit seeks to obtain that 2009 memo.

Moreover, the group provided an Aug. 27 screen shot of the FWS website that showed the northern swift fox to be protected "throughout its range" in the U.S.

Today, that same site indicates the fox is only protected in Canada.

"The issue here is it's protected in the U.S., and they haven't accounted for that in any of these reviews," Atwood said.

A Fish and Wildlife spokesman said the agency was reviewing the two complaints but could not comment on pending litigation.

It's unclear how approval of the pipeline would be affected if CBD wins its case and FWS determines the fox is protected in the U.S.

Under ESA, FWS must determine a project will not jeopardize the continued existence of a listed species. The agency commonly requires projects to mitigate their impacts.

At the very least, a CBD victory could further delay the project's approval.