



Group Sues Obama Admin Over Keystone XL's Impact on Endangered Fox

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Lawsuit alleges the U.S. Fish and Wildlife Service is withholding information about potential impacts of the pipeline on the northern swift fox.

A leading conservation group is suing the Obama administration over the status of the northern swift fox, an imperiled species whose fragile dens could be destroyed during construction of the controversial Keystone XL pipeline.

The Center for Biological Diversity says the Fish and Wildlife Service has improperly bypassed requirements of the Endangered Species Act, and, along with the State Department in its environmental review of the pipeline, failed to fully consider the harm that would be done to the species if the project goes ahead.

"The State Department has acknowledged this fox could be crushed, with its young, in dens during Keystone XL's construction, but FWS and the State Department neglected to do any of the required analysis for this species under the Endangered Species Act," said Lori Ann Burd, a lawyer



Swift fox/Credit: U.S. Fish and Wildlife Service

working for the advocacy group, which specializes in endangered species litigation.

The fox, hunted and trapped almost to extinction before it was legally protected, has also suffered from conversion of prime habitat to farmland over the decades. A small, elusive relative of the kit fox, which it closely resembles, the swift fox is mainly nocturnal. It spends most of its days huddling in small, shallow dens to stay away from predators like coyotes, whom it can flee at up to 30 miles an hour.

On Thursday, the conservation group went to court to force the federal wildlife agency to release documents in which the agency reviewed the fox's protected status. The agency had claimed it couldn't find any paperwork relevant to its past decisions about whether the fox is legally protected as a listed endangered species.

If it is protected, as the lawsuit asserts, pipeline opponents would have new grounds for trying to block the pipeline, which is meant to carry tar sands crude oil from Canada across the nation's midsection, including regions of Montana and North Dakota that are the home range of the fox. It is also protected in Alberta, Canada, where the Keystone would begin.

The State Department is still finishing up its final environmental impact statement on the Keystone's northern half, and the Obama administration is expected to decide later this year whether to grant a construction permit. The decision is expected to rest mainly on questions of greenhouse gas emissions, but it will also involve risks of spills and dangers to wildlife.

The legal status of the northern swift fox has a tangled history, which predates the Endangered Species Act. It was considered endangered under prior law, so it was automatically protected when the ESA was passed in 1973. Since then, its status has been changed back and forth. According to the lawsuit seeking the agency's records, Fish and Wildlife did not follow proper procedures when it removed protection in 1979, but it later recognized its own error and restored the fox's protection.

As recently as 2013, the northern swift fox was described as "endangered" on the website where the agency keeps track of the endangered species list. But shortly after the conservation group started questioning the implications of the Keystone for the fox's habitat, someone at the agency removed that online designation, without any explanation.

In its lawsuit, the center says it is not credible that the agency has no records of its deliberations on the fox's status, and that a judge

should order the release of the documents since the agency has been dragging its feet.

"Fish and Wildlife's refusal to turn over key documents about the status of the fox suggests the agency may have something unlawful to hide," said Amy Atwood, a senior attorney at the center. "And the review of these documents is the only way the public can have any confidence about the status of this fox and the potential impacts of KXL."

There is some disagreement among taxonomists about the identity of the northern subspecies within the overall population of swift foxes, *Vulpes velox*. There is less concern about the survival of the broader population.

The agency did not immediately reply to requests for comment.

The lawsuit seeks, "at a minimum, Federal Register notices, a 2009 Memorandum by the Assistant Solicitor for Fish and Wildlife, a petition to list the species in the northern portion of its range and subsequent FWS findings in response to that petition, documents relating to programs to restore the species to areas of its former range in Montana and South Dakota, and records related to changes to FWS's web page that documents the scope of the northern swift fox's ESA protection, as well as records that relate to these materials, such as draft documents as well as related correspondence, memoranda, notes, ensuing actions, and electronic mail messages."