EDWARD J. MARKEY OF MASSACHUSETTS
RANKING DEMOCRATIC MEMBER

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

August 26, 2011

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Clinton,

I am writing to express my concerns regarding your determination that the proposed Keystone XL pipeline will cause "no significant impacts to most resources" prior to even receiving the input of the U.S. Fish and Wildlife Service (FWS) on the potential impacts of the pipeline on endangered species. I also request information from the State Department on how it will move forward in the next several months with its final decision on the Keystone XL pipeline project.

Under the National Environmental Policy Act (NEPA), the State Department is required to examine all potential environmental impacts of the proposed Keystone XL pipeline, which would transport oil from the tar sands of Alberta to refineries along the Gulf Coast, prior to making a decision on whether to allow the development of the project or not.[1] Part of this review process includes fully complying with the requirements of the Endangered Species Act (ESA), which requires the receipt and consideration of the expert views of the FWS on any potential impacts of the proposed pipeline on endangered species. I have been informed that FWS has not yet provided this information to the State Department.

By concluding that the pipeline will have minimal environmental impact, absent the expert opinion from our government's wildlife experts, it appears that the State Department has not taken a comprehensive look at the potential impacts of this project to our nation's most vulnerable wildlife. Given recent oil spills from pipelines across the country, the impacts to wildlife from possible spills along the Keystone XL pipeline route cannot be ignored.

For example, there are at least ten endangered species that may be impacted by this project, including the whooping crane.[2] After decades of work to recover the whooping crane, the wild population of the cranes has increased from just 15 individuals in 1940 to over 260

[1] Robertson v. Methow Valley Citizens Council, 490 US 332 (1989).
[2] State Department biological assessment. http://www.entrix.com/keystone/XL/May192010/Appendix%20T.pdf

today.[3] Each spring, whooping cranes migrate from Texas to their breeding grounds in Northern Canada. The proposed pipeline route falls within the migration corridor for the crane and the will cross the Platte River dangerously close to one of most important feeding and resting locations during the cranes' 5000-mile annual migration route.

In early July, a 12 inch pipeline breached under the Yellowstone River in Montana, and within hours, an estimated 1,000 barrels of oil spilled into the Yellowstone River. The proposed Keystone XL pipeline is three times as large and will carry 600,000 barrels of oil per day at full capacity. In the last two years, there have been five major oil spills from pipelines within the United States, including from the Trans-Alaska Pipeline and from other locations within the Keystone pipeline network. If a similar pipeline breach were to occur at the Platte River at the wrong time, the whooping crane could be put at severe risk of extinction. I remain concerned that the risks of these types of spills have not been fully considered by the State Department when it initially evaluated the threats to endangered species and requested the opinion of the FWS.

Under normal circumstances, NEPA serves as the primary vehicle for all federal agencies to submit recommended changes and mitigation measures to the primary agency reviewing the project to ensure that a project complies with *all* environmental laws. The Council on Environmental Quality's regulations implementing NEPA state that "to the fullest extent possible" agencies shall prepare an EIS "concurrently with and integrated with…the Endangered Species Act and other environmental review laws."[4] My staff has been told by the Fish and Wildlife Service that it is nearly complete with its work on the biological opinion regarding the Keystone XL pipeline and that it anticipates submitting it to the State Department within the next two to three weeks. Since this information will not be included in the EIS, due to the State Department's decision to prematurely publish the final EIS today, essential mitigation measures for endangered species are likely to now be left out of the final EIS. It is also unclear to me how the State Department will incorporate any information it may receive from the FWS on the impacts to endangered species, or additional mitigation measures that might be required, into its final decision on whether to grant the permit for the Keystone XL pipeline.[5]

By publishing the EIS without the benefit of the FWS's input, the State Department has also negatively impacted the public's ability to comment on the adequacy of any environmental safeguards for endangered species. The publication of a final EIS usually triggers the last period of public comments prior to an agency's decision on a project.[6] Unfortunately, if the EIS is published without a meaningful analysis of the impacts to endangered species, then the public will not have sufficient time to provide its input on whether endangered species have been addressed sufficiently.

As the State Department moves towards its final decision on the Keystone XL pipeline, I urge you consider the threats to endangered species to the fullest extent possible. Today's action

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[3] http://www.fws.gov/southwest/refuges/texas/aransas/pdf/wcqtrOct09Sept10rerport.pdf
[4] 40 C.F.R. § 1502.25
[5] 40 C.F.R. § 1502.14
[6] 40 C.F.R. § 1503.1(a)(4)

did not set the stage for achieving this goal. I request that you respond to the following questions by the close of business on Friday, September 16, 2011.

1) Please provide the full basis for the State Department's conclusion that there will be "no significant impacts to most resources" to endangered species without the input of a biological opinion from the FWS. Please include in your response copies of any reports, analysis or other materials used to inform this determination.

2) Since FWS is nearing completion of its analysis, please explain why the State Department chose not to wait to receive and analyze it before publishing the Final EIS for the proposed Keystone XL pipeline.

3) What procedural steps will the State Department take to consider and, if it approves the Keystone XL pipeline, incorporate the information provided in the biological opinion once it is submitted by FWS, including any required or recommended conservation and/or mitigation measures to protect and conserve endangered species?

4) What steps will the State Department take to provide for meaningful public comment on any required or recommended conservation and/or mitigation measures submitted by the Fish and Wildlife Service? Please explain how these public comments will be considered and, if applicable, incorporated into any final decision for the Keystone XL pipeline.

I ask that you please provide a full and complete response to the questions contained in this letter by close of business on September 16, 2011. Should you have any questions about this request, please have your staff contact Brett Hartl of the Natural Resources Committee Democratic Staff at 202-225-6052.

Sincerely,

Edward J. Markey

Edward J. Markey
Ranking Member
Committee on Natural Resources