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American Petroleum Institute

WESTERN ENERGY ALLIANCE

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Via Regulations.gov Portal
U.S. Fish and Wildlife Service
Attn: FWS–R7–ES–2024–0117
MS: PRB/3W, 5275
Leesburg Pike, Falls Church, Virginia 22041-3803

Re: Comments of the North Dakota Petroleum Council, American Petroleum Institute, and Western Energy Alliance on the U.S. Fish and Wildlife Service's Proposal to List Suckley's Cuckoo Bumble Bee as an Endangered Species Under the Endangered Species Act of 1973, as Amended. Docket No. FWS–R7–ES–2024–0117

Dear U.S. Fish and Wildlife Service,

The North Dakota Petroleum Council (NDPC), the American Petroleum Institute (API), and Western Energy Alliance (collectively, the "Associations") appreciate the opportunity to provide comments regarding the U.S. Fish and Wildlife Service's (FWS's or the Service's) proposed rule to list Suckley's cuckoo bumble bee (Bombus suckleyi) as an endangered species under the Endangered Species Act (ESA). We urge the Service to reconsider this proposed listing, as it is not supported by sound science and lacks practical conservation benefits.

Established in 1952, the NDPC is a trade association that represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Our members have an extensive history of responsible oil and gas development and environmental stewardship in North Dakota, which boasts some of the cleanest air and water in the country.

API is the national trade association representing America's oil and natural gas industry. Our industry supports over 11 million U.S. jobs and contributes approximately 8 percent of U.S. GDP. API's nearly 600 members, including producers, refiners, pipeline operators, and service providers, have a long-standing commitment to environmental stewardship and responsible resource development.

Working with a vibrant membership base for over 50 years, Western Energy Alliance stands as a credible leader, advocate, and champion of independent oil and natural gas companies in the West. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

I. The Proposed Listing is Unwarranted Due to the Species' Functional Extirpation in North Dakota

The Service has provided no verifiable evidence of Suckley's cuckoo bumble bee in North Dakota for at least two decades, possibly even since the 1920s. Based on available species assessment data, this species is functionally extirpated not only from North Dakota but potentially from the entire Upper Great Plains region and much of its historical range in the lower 48 states.

The Service's own Species Status Assessment[1] (SSA) acknowledges that the species has suffered an 85% decline in occupancy probability since 1900 and has disappeared from multiple analytical regions, with some areas lacking confirmed sightings for more than a century. The SSA further indicates that suitable habitat loss, declining host species populations, and climate-related changes have contributed to a steep reduction in viable breeding grounds.

If the species has not been observed in North Dakota in several decades and has been functionally extirpated from the region, a belated attempt to list it as endangered and impose regulatory burdens in the state does not serve an achievable conservation goal and is therefore unfounded and unjustified. Further, the prospect of recovery is unrealistic given that its essential ecological conditions have been degraded beyond reasonable restoration thresholds, according to the SSA. This listing would place unnecessary restrictions on land-use activities and industry operations in an area where Suckley's cuckoo bumble bee no longer exists, where its recovery is highly improbable, and where regulatory interventions would serve no meaningful conservation purpose.

Moreover, given the species' decline across much of its historical range, including in the western United States and parts of Canada, there is increasing scientific consensus that Suckley's cuckoo bumble bee may no longer maintain viable populations anywhere within the lower 48 states. If this is the case, then efforts to list the species under the ESA would represent a misallocation of conservation resources, prioritizing a functionally extinct species overactive and impactful pollinator protection efforts that benefit remaining, ecologically significant populations of native bumble bees. The fact that the last confirmed sighting in the United States was as distant in time as 2016 in Oregon further indicates a listing is unwarranted.

[1] U.S. Fish and Wildlife Service. (2024). Species Status Assessment for Suckley's cuckoo bumble bee (Bombus suckleyi). Retrieved from https://iris.fws.gov/APPS/ServCat/DownloadFile/263505.

II. The Species is a Parasitic Bumble Bee that Threatens Beneficial Native Pollinators

Suckley's cuckoo bumble bee is an obligate social parasite, meaning it does not build its own nests or contribute to pollination. Instead, it infiltrates and takes over the colonies of native bumble bee species, such as the western bumble bee (Bombus occidentalis), Nevada bumble bee (Bombus nevadensis), and red-belted bumble bee (Bombus rufocinctus). The SSA confirms that this species kills or subdues host queens, destroys host eggs, and forces host worker bees to raise its own offspring, ultimately reducing the reproductive success of its host populations.

This parasitic behavior poses a significant threat to the already declining populations of native bumble bees, many of which serve crucial pollination roles in North Dakota's ecosystems. Unlike typical pollinators, Suckley's cuckoo bumble bee does not collect pollen or contribute to the reproduction of plants, making its conservation largely counterproductive to overall pollinator health. Additionally, if conservation efforts successfully increase its numbers, the resurgence of this species could create additional pressure on struggling host populations, exacerbating declines in beneficial bumble bee species that are vital to agriculture and natural habitats.

Efforts to "recover" Suckley's cuckoo bumble bee populations could be actively detrimental to native pollinators, which play a vital role in North Dakota's and other western states' ecosystems and agricultural economies. With nine bee species currently listed as endangered and others such as the American bumble bee, Western bumble bee, and southern plains bumble bee under review, conservation efforts should focus on protecting native, beneficial pollinators—not reintroducing a species that could further destabilize already declining host populations. Given the importance of maintaining balanced pollinator ecosystems, any conservation measures should prioritize species that provide essential ecosystem services, rather than those that disrupt existing populations

III. The SSA Acknowledges Severe Data Gaps and Scientific Uncertainty

The Service's own SSA[2] admits that data on Suckley's cuckoo bumble bee is extremely limited, making any regulatory action highly speculative and premature:

- Only 2,317 total occurrence records exist for the species, compared to an average of 18,756 records for other bumble bees, indicating a severe lack of verifiable data.

- The SSA relies heavily on assumptions and extrapolations from research on other bumble bee species, rather than direct, species-specific studies.

- The Service itself concedes that there are no species-specific studies on Suckley's cuckoo bumble bees' ecology, behavior, or conservation needs, which raises questions about the accuracy of the available information.

[2] U.S. Fish and Wildlife Service. (2024). Species Status Assessment for Suckley's cuckoo bumble bee (Bombus suckleyi). Retrieved from https://iris.fws.gov/APPS/ServCat/DownloadFile/263505.

- Surveys in historically occupied regions have failed to produce consistent or recent observations of the species, suggesting that its presence is highly fragmented or nonexistent across large portions of its range.

- The SSA lacks clarity on the primary drivers of decline, meaning that even if conservation efforts were enacted, they may not effectively address the species' actual threats due to limited scientific understanding.

Given these uncertainties, listing the species under the ESA is premature and unsupported by robust scientific evidence. The decision to impose regulatory restrictions should be grounded in concrete, peer-reviewed data, not assumptions, speculative conclusions, or unreliable extrapolations from unrelated species. Additionally, dedicating limited conservation resources to a species with such significant data gaps may divert attention from efforts that could more effectively benefit native pollinators with clear ecological and economic importance.

IV. The Species' Cryptic Nature Makes Survey and Regulatory Compliance Impossible

Unlike traditional pollinators, Suckley's cuckoo bumble bee does not actively forage on the landscape. Instead, it lives almost entirely within the nests of the host species, making it extremely difficult to detect. The SSA acknowledges that even in historically occupied areas, extensive surveys have failed to detect the species, further reinforcing the notion that it is functionally extirpated across large portions of its historical range. This elusiveness complicates any potential monitoring or conservation efforts, as traditional survey methods used for other bumble bee species are ineffective in identifying or tracking Suckley's cuckoo bumble bee populations.

Because this species is so difficult to identify and track, implementing any ESA-related regulatory measures would be impractical and unenforceable. Landowners and industry operators would face compliance challenges in determining whether their activities impact a species that cannot be reliably surveyed in the first place. Any regulatory framework requiring monitoring or habitat protections would be logistically infeasible, as there is no effective method to confirm its presence in a given area. This uncertainty could lead to unnecessary restrictions on land use and industry operations, creating broad regulatory burdens without any tangible conservation benefit. Additionally, because the species is dependent on the viability of its host species, its presence is inherently linked to broader ecosystem conditions that may not be influenced by direct regulatory action.

V. Unnecessary Listing Could Disrupt North Dakota's Energy Sector and Land Use

The oil and gas industry is an integral part of the U.S. economy, and environmental stewardship is a priority of our members. In 2022, oil and natural gas accounted for 72.5% of the energy consumption in the U.S. (Source: U.S. EIA), an increase of 5% since 2021 (68.5%)[3].

[3] U.S. Energy Information Administration. (2023, December). *U.S. Oil and Natural Gas Wells by Production Rate*. Retrieved from the U.S. Energy Information Administration website: US Oil and Gas Wells by Production Rate - U.S. Energy Information Administration (EIA)

A listing under the ESA could place undue regulatory burdens on industries that rely on land-use flexibility, including oil and gas development. North Dakota's economy is heavily supported by the energy sector, with oil and gas tax revenues contributing more than 50% of the state's local tax collections for the past decade[4]. Since 2008, more than $32 billion in oil and gas tax revenue has been allocated to fund critical infrastructure, public safety, education, tax relief, and economic development initiatives across the state.

The ability of the energy industry in North Dakota and across the entire West to continue generating these benefits depends on maintaining a regulatory framework that is predictable and balanced, rather than introducing unnecessary constraints based on speculative conservation priorities. Requiring industry compliance with an ESA listing for a species that cannot be reliably detected creates an unworkable regulatory framework that could impose unnecessary delays, costs, and operational inefficiencies.

Furthermore, listing Suckley's cuckoo bumble bee under the ESA would introduce additional permitting burdens for industries operating in North Dakota and across the western United States. For example, an ESA listing would likely trigger additional U.S. Army Corps of Engineers (USACE) Pre-Construction Notification (PCN) submittal requirements under Section 404 of the Clean Water Act. These additional permit submittals would increase project review times, add to compliance costs, and contribute to permitting delays that could significantly impact energy infrastructure development, transportation projects, and other essential land-use activities. Given the uncertainty surrounding the species' presence and the lack of a reliable survey methodology, requiring PCNs for projects affecting areas where Suckley's cuckoo bumble bee may be presumed to exist—despite no verifiable records in North Dakota for decades, it would be an impractical and undue regulatory burden on industries that are already highly regulated and committed to environmental stewardship.

North Dakota's energy sector has a proven record of environmental stewardship and voluntary conservation efforts, particularly in habitat protection for pollinators. A Dakota Skipper Habitat Conservation Plan (HCP), being developed in partnership with the NDPC and FWS, is a great example of how the industry is focusing on ESA compliance while actively promoting the conservation and restoration of native prairie habitat, which will benefit all native pollinators without federal regulatory overreach. Similarly, state-driven conservation programs such as the North Dakota State Wildlife Action Plan[5], North Dakota Monarch Butterfly and Native Pollinator Strategy[6], and the North Dakota Meadowlark Initiative[7] have demonstrated effective, targeted strategies for conserving native prairie habitats and protecting beneficial pollinators without unnecessary federal intervention.

[4] Western Dakota Energy Association & North Dakota Petroleum Council. (2024). *Oil and Gas Tax Revenues: 2024 Update*. TaxStudy.NDEnergy.org.
[5] Dyke, S. R., Johnson, S. K., & Isakson, P. T. (2015) North Dakota State Wildlife Action Plan. North Dakota Game and Fish Department.
[6] North Dakota Game and Fish Department, North Dakota Department of Agriculture, North Dakota Department of Transportation, North Dakota State University Extension Service, NDSU North Dakota Forest Service, North Dakota Parks and Recreation Department, U.S. Fish and Wildlife Service, USGS Northern Prairie Wildlife Research Center, USDA Forest Service – Dakota Prairie Grasslands, USDA Natural Resources Conservation Service, Pheasants Forever, The Nature Conservancy, North Dakota Grain Growers Association, & Other Agricultural Organizations. (2018) North Dakota Monarch Butterfly and Native Pollinator Strategy (2nd ed.)
[7] North Dakota Game and Fish Department. (n.d.). North Dakota Game and Fish Department. Retrieved October 1, 2024, from https://gf.nd.gov.

The Service would be better served by partnering and promoting existing state and industry-driven conservation initiatives that benefit all native pollinators, leveraging proven models rather than imposing restrictive ESA regulations that may divert resources away from meaningful habitat restoration efforts.

Listing Suckley's cuckoo bumble bee as an endangered species could divert resources from successful state-led conservation programs, prioritizing federal mandates that conflict with North Dakota's economic and ecological goals. This listing could undermine these effective state efforts by reallocating resources from practical conservation initiatives to compliance with regulations for a species that is essentially absent from North Dakota.

Conclusion

The Associations strongly oppose the proposed listing of Suckley's cuckoo bumble bee under the Endangered Species Act. This listing is scientifically unsupported, lacks practical conservation benefits, and could create unnecessary regulatory challenges for industries operating in North Dakota and across the West.

We urge the Service to withdraw this proposed rule and instead focus conservation efforts on protecting native pollinators that provide real ecological and economic benefits. If listing is pursued, it should explicitly exclude North Dakota, where the species has not been recorded for many decades.

We appreciate the opportunity to provide these comments and look forward to continued engagement on this matter.

Sincerely,

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