



February 20, 2015

Ms. Carol Aron
U.S. Fish and Wildlife Service
North Dakota Field Office
3425 Miriam Avenue
Bismarck, North Dakota 58501-7926

SENT VIA EMAIL: Carol.Aron@fws.gov

RE: RESPONSE TO SPRAGUE'S PIPIT INFORMATION REQUEST

Dear Ms. Aron:

In response to your January 20th Information Request Regarding the Sprague's Pipit (*Anthus spragueii*) and its habitat received by Public Lands Advocacy (PLA), PLA, Western Energy Alliance (Alliance) and North Dakota Petroleum Council (NDPC) submit the following comments. It is our understanding that the FWS is currently seeking to collect additional information to inform its decision whether to list the species as threatened or endangered under the Endangered Species Act (ESA). Due to FWS' recent statements that previously perceived threats to the Sprague's Pipit and its habitat are actually minimal and that its population numbers have stabilized, we are certain that the species does not merit protection under the ESA and should continue to be managed by states. Moreover, it is our belief that when FWS made its warranted but precluded determination, the Service did not have access to adequate data to make such a determination. As pointed out in PLA's 2010 comments regarding the Sprague's Pipit status review, there was a significant lack of information upon which to justify designation of the species as a candidate for listing. Since that time, FWS has obtained data that clearly demonstrate that there is no need to list the Sprague's Pipit as either threatened or endangered under the ESA and that it could justifiably be removed from the candidate list.

PLA is a nonprofit trade association whose members include independent and major oil and gas producers as well as nonprofit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands. The Alliance represents over 450 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. It represents independent companies, the majority of which are small businesses with an average of fifteen employees. NDPC is a trade association that represents more than 500 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota (ND), South Dakota (SD) and the Rocky Mountain Region. Member companies of these organizations have valid existing leases, current oil and gas production, and plans for future leasing, exploration, and production activities in the areas that may be impacted by the potential listing of the Sprague's Pipit and critical habitat designation and, therefore, a direct interest in this matter.

Threats to the Species and its Habitat are Minimal

In its 12-month ESA finding for the species published in 2010, FWS identified oil and natural gas development and associated infrastructure as having a "*strong negative influence on the species based upon the available information at that time.*" 79 Fed. Reg. 72453. However, after further examination, FWS disclosed in its 2014 Review of Native Species That Are Candidates for Listing as Endangered or Threatened (2014 Review) that "*new information suggests that Sprague's Pipit avoidance response of these features is highly variable across*

the range and thus the species' response to oil and gas development and roads does not indicate that these are a threat." 79 Fed. Reg. 72453. The 2014 Review further clarifies that previously identified threats to the Sprague's Pipit and its habitat have actually been determined to be *"moderate to low in magnitude"* 79 Fed. Reg. 72453. In fact, contrary to the findings reported in Sprague's Pipit Conservation Synopsis prepared for North Dakota and Texas, it has been reported by the Oklahoma Department of Wildlife Conservation that the Sprague's Pipit often prefers highly disturbed sites, such as agricultural development, areas of exotic grasses along with parking lots and even airports, which could be construed to mean that the birds are not vulnerable to most, if any, development activities. Consequently, we support FWS's determination that development threats to the Sprague's Pipit are not as abundant or as debilitating to the species as previously assumed.

Populations have Stabilized and Future Decline is Unlikely

FWS also indicated in its 2014 Review that the species' long-term population decline has stabilized: *"...the long-term population decline has leveled off and currently, there is no discernable trend. The Christmas Bird Count data also indicates that the population decline has stopped and the population trend has no direction, either increasing or decreasing between 2003 and 2012."* 79 Fed. Reg. 72453. Consequently, FWS has determined that future decline is doubtful. *"Because of the relatively large population remaining and the stable-to-uncertain (i.e. not showing a clear decline) trends shown by surveys on both the breeding and wintering grounds, the potential decline is nonimminent."* 79 Fed. Reg. 72453. These findings signify good news for the species' long-term sustainability.

Listing under the ESA is Unwarranted

Based upon the data collected over the past 5 years, it is clear that FWS has ample information to conclude that the species does not warrant protection as threatened or endangered under the ESA. We have noted that in its initial 12-Month Finding published in September 2010, FWS assigned the Sprague's Pipit Listing Priority Number (LPN) 2 and determined that a listing was warranted but precluded. This LPN was subsequently revised to LPN 11 (out of 12) because the data demonstrate threats to the species are non-existent to minimal, populations have stabilized, and future population decline is highly unlikely. 79 Fed. Reg. 72453. While we understand FWS' desire to collect the most recent information available regarding the status of the species and its habitat, it is evident FWS already has sufficient data to conclude that the species does not warrant ESA protection.

Conclusion

The above-named trade associations appreciate the opportunity to submit comments to FWS on this matter. It is our hope that FWS, after reviewing all relevant information submitted, will determine that the Sprague's Pipit does not warrant protection under the ESA. If you have any questions regarding our comments or recommendations, please do not hesitate to contact us.

Sincerely,



Claire Moseley
Executive Director
Public Lands Advocacy



Kathleen Sgamma
VP, Government and Public Affairs
Western Energy Alliance



Ron Ness
President
North Dakota Petroleum Council