



July 6, 2017

Mr. Thomas L. Tidwell, Chief
USDA Forest Service
National Office
1400 Independence Ave., SW
Washington, D.C. 20250-0003
ttidwell@fs.fed.us

re: Breeding Bird Survey Information in the Hyde Park Inventoried Roadless Area,
Santa Fe National Forest

Dear Mr. Tidwell,

This letter provides data on breeding bird populations in the Hyde Park Inventoried Roadless Area on the Española Ranger District of the Santa Fe National Forest. This supplements information submitted in our April 10, 2017 letter concerning your on-going roadless area review of Hyde Park.

Hyde Park was recognized as nationally significant habitat for breeding birds in 2010 when it was selected as one of three sites in New Mexico to survey hummingbird population trends. As noted by the Hummingbird Monitoring Network, forests are the primary habitat for over 80% of hummingbird species and have the highest number of at-risk hummingbird species. In addition to hummingbirds, the local birding community has long appreciated the wide diversity of breeding bird habitat in Hyde Park.

To document the exceptional bird diversity of Hyde Park, we engaged an experienced birder, Mr. Bill West of Wings West Birding Tour, to conduct a survey of the bird population.

Two surveys were conducted. The first on July 24, 2006 identified 23 species. The second on June 9, 2017 identified 37 species, a more than 60 percent increase in eleven years. Both surveys included several pairs and juveniles, indicating that the project area provides excellent bird breeding habitat. The complete list of identified bird species is found below.

Earlier this year Mr. West also observed a Northern Goshawk in the Hyde Park area. The Northern Goshawk was designated by the Forest Service as a sensitive species in 1982 to meet the agency's duty under the National Forest Management Act to provide for the diversity of animal communities. The Santa Fe Forest Plan was amended in 1996 with guidelines to protect Goshawk habitat.

As you are aware, the Goshawk, and all the bird species listed below, are protected by the Migratory Bird Treaty Act ("MBTA") 50 C.F.R. 10:13 and the international migratory bird treaties implemented through the Act. Under the MBTA it is unlawful "at any time, by any means or in any manner to . . . kill . . . any migratory birds" 16 U.S.C. 703-711.

This applies to federal agencies and their employees who may not intend to kill migratory birds but whose actions nonetheless result in unauthorized "incidental take" of migratory birds (incidental take is the unintentional death of adults, juveniles, nestlings, fledglings or eggs resulting from an activity although that is not the purpose of the activity). Humane Society v. Glickman, 217 F. 3d 882 (D.C. Cir. 2000). A more detailed explanation of MBTA's incidental take provisions can be found at <https://solicitor.doi.gov/opinions/M-37041.pdf>.

Nestlings, fledglings, juveniles and eggs may be destroyed by mechanically clearing vegetation during the breeding season. It is a violation of the MBTA to cause the unintended but foreseeable death of individuals of protected species. The Forest Service must obtain a "take" permit from the U.S. Fish and Wildlife Service ("FWS") and abide by its conditions (such as only cutting trees and burning outside the nesting season) to avoid unintentional harm to individual birds and maintain avian diversity in Hyde Park.

FWS is developing regulations to provide legal authorization of incidental take in circumstances in which the take is consistent with the purposes of the MBTA. (see Migratory Bird Permits; Programmatic Environmental Impact Statement, Notice of Intent, 80 Fed. Reg. 30,032: May 26, 2015).

To assist you in complying with the FWS permit, we have located nests of protected birds that utilize the project area and plan to monitor these nests during the breeding season. Any willful violations of the permit will be fully documented and become evidence for review by a federal court.

Species found in the Hyde Park inventoried roadless area on June 9, 2017.

Broad-tailed Hummingbird NM	Common Raven PR
Mourning Dove AM	Clark's Nutcracker PR
Hairy Woodpecker PR; CN	Steller's Jay PR
Northern Flicker PR; CN	Pinyon Jay PR
Western Wood Pewee NM	Orange-crowned Warbler NM
Cordilleran Flycatcher NM	Yellow-rumped Warbler AM
Plumbeous Vireo NM	Grace's Warbler NM
Warbling Vireo NM	Virginia's Warbler NM
Violet-green Swallow NM; CN	Black-throated Gray Warbler NM
Mountain Chickadee PR; CN	MacGillivray's Warbler NM
White-breasted Nuthatch PR; CN	Western Tanager NM
Pygmy Nuthatch PR; CN	Black-headed Grosbeak NM
Red-breasted Nuthatch PR; CN	Spotted Towhee PR
Bushtit PR	Chipping Sparrow AM
Brown Creeper PR	Dark-eyed Junco AM
Townsend's Solitaire AM	Cassin's Finch PR
Hermit Thrush AM	Pine Siskin PR
American Robin AM	

Additional species from the July 24, 2006 survey:

Red-tailed Hawk PR	House Wren NM
Williamson's Sapsucker NM; CN	Western Bluebird PR; CN
Red-naped Sapsucker NM; CN	Ruby-crowned Kinglet AM; CN
Olive-sided Flycatcher NM	Evening Grosbeak PR
Hammond's Flycatcher NM	

Key: PR=permanent resident; NM=neotropical migrant; AM=altitudinal migrant; CN=cavity nester. Note: cavity nesters that are permanent residents often roost in cavities in fall and winter.

Please let us know if you have any questions concerning this information.

Respectfully submitted,

Sam Hitt /s/

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cc: Mr. Cal Joyner, Regional Forester, Southwestern Region
Mr. Sandy Hurlocker, Española District Ranger, SFNF
Congressman Ben Ray Lujan
Senator Tom Udall
Senator Martin Heinrich
Santa Fe Mayor Javier Gonzales