



**4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R6-MB-2016-N205; FF06M0000-XXX-FRMB48720660090]**

**Availability of Final Environmental Impact Statement for Eagle Take Permits for the Chokecherry and Sierra Madre Phase I Wind Energy Project**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have prepared a final environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended, in response to an application from Power Company of Wyoming (PCW) for eagle take permits (ETPs) pursuant to the Bald and Golden Eagle Protection Act (BGEPA) and its implementing regulations. PCW has applied for standard and programmatic ETPs for the Chokecherry and Sierra Madre Phase I Wind Energy Project in Carbon County, Wyoming. The final EIS is now available for review.

**DATES:** The final EIS is available for public review for 30 days, after which we will issue a record of decision.

**ADDRESSES:** Copies of the final EIS, as well as the permit application and the supporting eagle conservation plan, are available for review at the Carbon County Library System at 215 West Buffalo Street, Rawlins, Wyoming; the Saratoga Public Library at 503 West Elm Street, Saratoga, Wyoming; the U.S. Fish and Wildlife Service (USFWS) Wyoming Ecological Services Office at 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming (contact Nathan Darnall to coordinate access, at

nathan\_darnall@fws.gov or 307-772-2374 ext. 246); and the USFWS Region 6 Office at 134 South Union Boulevard, Lakewood, Colorado (contact Louise Galiher to coordinate access, at louise\_galiher@fws.gov or 303-236-8677). These documents are also available electronically on the USFWS Web site at <https://www.fws.gov/mountain-prairie/wind/ChokecherrySierraMadre/index.html>.

You may contact us regarding the final EIS via the following methods:

- *Email:* CCSM\_EIS@fws.gov.
- *U.S. Mail:* Chokecherry and Sierra Madre EIS, U.S. Fish and Wildlife Service, Mountain-Prairie Region, Attention: Louise Galiher, P.O. Box 25486 DFC, Denver, CO 80225.
- *Hand-Delivery/Courier:* Chokecherry and Sierra Madre EIS, U.S. Fish and Wildlife Service, Mountain-Prairie Region, Attention: Louise Galiher, 134 Union Blvd., Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** Louise Galiher, at 303-236-8677 (phone) or louise\_galiher@fws.gov (email); or Clint Riley, at 303-236-5231(phone) or clint\_riley@fws.gov (email). Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1-800-877-8339 to contact the above individuals. The Federal Relay Service is available 24 hours a day, 7 days a week, for you to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have prepared a final environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in

response to an application from Power Company of Wyoming (PCW) for eagle take permits (ETPs) pursuant to the Bald and Golden Eagle Protection Act (BGEPA, (16 U.S.C. 668–668c) and its implementing regulations. PCW has applied for standard and programmatic ETPs for the Chokecherry and Sierra Madre (CCSM) Phase I Wind Energy Project in Carbon County, Wyoming. The final EIS is now available for review.

### **Public Coordination**

The notice of intent to prepare an EIS for this project was published in the **Federal Register** on December 4, 2013 (78 FR 72926). Two public scoping meetings for the USFWS EIS were held, on December 16 and 17, 2013, in conjunction with Bureau of Land Management (BLM) scoping meetings for an environmental assessment (EA) of the Phase I CCSM Project. A draft EIS was prepared and a notice of availability of the draft EIS was published in the Federal Register on April 29, 2016 (81 FR 25688), opening a 60-day comment period. The comment period was subsequently reopened for 2 weeks after it was discovered that a hyphen replaced an underscore in the public comment email address in several outreach materials. The draft EIS provided discussion of the potential impacts of the proposed action and an analysis of reasonable alternatives to the proposed action. Two public comment meetings for the draft EIS were held, on June 6 and 7, 2016.

The alternatives analyzed in the draft EIS were carried forward for full analysis in the final EIS. Agencies, tribes, organizations, and interested parties provided comments on the draft EIS via mail, email, and public meetings.

### **Background Information**

*A. Migratory Birds and Eagle Protections.* Raptors and most other birds in the United States are protected by the Migratory Bird Treaty Act (16 U.S.C. 703–711). The President’s Executive Order 13186 directs agencies to consider migratory birds in environmental planning by avoiding or minimizing to the extent practicable adverse impacts on migratory bird resources when conducting agency actions, and by ensuring environmental analyses of Federal actions as required by NEPA or other established environmental review processes.

Bald eagles and golden eagles are provided further protection under BGEPA, which prohibits anyone without a permit issued by the Secretary of the Interior from “taking” eagles, including their parts, nests, or eggs. An ETP authorizes the take of live eagles and their eggs where the take is associated with, but not the purpose of, a human activity or project that is otherwise a lawful activity. Regulations governing permits for bald and golden eagles can be found in the Code of Federal Regulations at 50 CFR 22.26. The Service is in the process of finalizing revisions to these regulations. However, because PCW's application has already been submitted, it is governed by the existing regulations. The proposed new regulations, if finalized, would authorize this course of action, i.e., the new regulations would allow the Service to issue eagle take permits to PCW under the currently applicable regulations.

ETPs authorize the take of eagles where the take is compatible with the preservation of eagles; where it is necessary to protect an interest in a particular locality; where it is associated with, but not the purpose of, an otherwise lawful activity; and where take is unavoidable. The Service will issue permits for such take only after an applicant has committed to undertake all practicable measures to avoid and minimize

such take and mitigate anticipated take to the maximum extent achievable to be compatible with the preservation of eagles. Standard ETPs authorize eagle take in an identifiable timeframe and location. Programmatic ETPs authorize eagle take that is recurring and not within a specific, identifiable timeframe and/or location. Standard and programmatic ETPs may be issued for a period of up to 5 years.

*B. Power Company of Wyoming Application.* As proposed by PCW, the CCSM Phase I Project will consist of approximately 500 wind turbines, a haul road, a quarry to supply materials for road construction, access roads, a rail distribution facility, underground and overhead electrical and communication lines, laydown areas, operation and maintenance facilities, and other supporting infrastructure needed for Phase I to become fully operational. PCW has applied for a standard ETP for disturbance related to construction of CCSM Phase I wind turbines and infrastructure components, and a programmatic ETP for operation of the CCSM Phase I Project.

The applicant has prepared an ECP identifying measures it intends to undertake to avoid, minimize, and compensate for potential impacts to bald and golden eagles. To help meet requirements of the Migratory Bird Treaty Act, the applicant has also prepared a Bird and Bat Conservation Strategy (BBCS) containing measures the applicant proposes to implement to avoid or minimize impacts of the project on other migratory birds. The Service has considered the information presented in the ECP and BBCS in our analysis of environmental impacts in the final EIS.

*C. The BLM's NEPA Review.* The CCSM Phase I Project would be situated in an area of alternating sections of private, State, and Federal lands that are administered by the BLM. In 2012, the BLM completed a final EIS (FEIS) to evaluate whether the

project area would be acceptable for development of a wind facility in a manner compatible with applicable Federal laws. On October 9, 2012, BLM published a record of decision (ROD) determining that the portions of the area for which PCW seeks right-of-way grants “are suitable for wind energy development and associated facilities.” As explained in the ROD, the BLM’s decision does not authorize development of the wind energy project; rather, it allows BLM to accept and evaluate future right-of-way applications subject to the requirements of all future wind energy development described therein (ROD at 6-1).

PCW has since submitted to the BLM site-specific plans of development from which the BLM is developing site-specific tiered EAs. In 2014, the BLM published a final EA 1, which analyzes major components of project infrastructure, including the haul road, rail facility, and rock quarry. On March 9, 2016, BLM published EA 2, which analyzes the wind turbines and pads, access roads, laydown areas, electrical and communication lines, and a construction camp.

The Service has incorporated by reference information from the BLM FEIS, ROD, EA1, and EA2 into our environmental analysis in the final EIS in order to avoid redundancy and unnecessary paperwork. Council for Environmental Quality (CEQ) regulations authorize incorporation by reference (40 CFR 1502.21, CEQ 40 Most Asked Questions #30; see also 43 CFR 46.135).

## **Alternatives**

In the final EIS, the Service analyzed the proposed action alternative, the proposed action with different mitigation, an alternative to issue ETPs for Phase I of

Sierra Madre Wind Development Area only, and the no-action alternative. The Service identified the proposed action as the preferred alternative.

*Alternative 1: Proposed Action.* Alternative 1 is for the Service to issue ETPs for the construction of the Phase I wind turbines and infrastructure components and for the operation of the Phase I CCSM project, based on the ETP applications submitted by PCW. The proposed action includes avoidance and minimization measures, best management practices, and compensatory mitigation described in detail in the EIS and in PCW's application and ECP. PCW has proposed to retrofit high-risk power poles as compensatory mitigation, thereby reducing eagle mortality from electrocution.

*Alternative 2: Proposed Action with Different Mitigation.* Under Alternative 2, the Service would issue ETPs for the construction and operation of the Phase I CCSM Project as under Alternative 1, but would require PCW to implement a different form of compensatory mitigation than proposed in its ETP applications. We are considering mitigation of older wind facilities, lead abatement, carcass removal, carcass avoidance, wind conservation easements, habitat enhancement (focusing on prey habitat), and rehabilitation of injured eagles as possible alternative forms of compensatory mitigation.

*Alternative 3: Issue ETPs for Phase I of Sierra Madre Wind Development Area Only.* The Service received numerous comments during the scoping process requesting that we examine a different development scenario from that proposed by PCW. However, to issue an ETP, we must analyze a specific project and ECP to determine if it meets the requirements for an ETP. Alternative 3 represents an example of a different development scenario PCW could present in a new application if the Service were to

determine that the Phase I CCSM Project would meet all the criteria for issuing an ETP, but not at the scale proposed. Alternative 3 is for the Service to issue ETPs for the construction of Phase I infrastructure and the construction and operation of wind turbines only in the Sierra Madre Wind Development Area (WDA) (298 turbines total). This alternative includes avoidance and minimization measures, best management practices, and compensatory mitigation described in PCW's application as they apply to the Sierra Madre WDA.

*Alternative 4: No Action.* Under Alternative 4, the Service would deny PCW standard and programmatic ETPs for construction and operation of the Phase I CCSM Project. In addition to being a potential outcome of the permit review process, analysis of the No Action alternative is required by CEQ regulation (40 CFR 1502.14) and provides a baseline against which to compare the environmental impacts of the proposed action and other reasonable alternatives. ETPs are not required in order for PCW to construct and operate the project; therefore, if we deny the ETPs, PCW may choose to construct and operate the Phase I CCSM Project without ETPs and without adhering to an ECP. Alternative 4 analyzes both a "No Build" scenario and a "Build Without ETPs" scenario.

This final EIS further incorporates information received during the public comment period for the draft EIS, and finalizes the analyses and conclusions in the document.

### **National Environmental Policy Act Compliance**

Our decision on whether to issue standard and programmatic ETPs to PCW triggers compliance with NEPA. NEPA requires the Service to analyze the direct,

indirect, and cumulative impacts of the CCSM Phase I project before we make our decision, and to make our analysis available to the public. We have prepared the final EIS to inform the public of our proposed permit action, alternatives to that action, the environmental impacts of the alternatives, and measures to minimize adverse environmental effects.

### **Public Availability of Submissions**

Before including your address, phone number, email address, or other personal identifying information in your correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information for public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are being submitted.

### **Authorities**

This notice is published in accordance with the National Environmental Policy Act of 1969; the CEQ's regulations for implementing NEPA, 40 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46.

**Stephen A. Smith,**  
*Acting Regional Director,*  
*Mountain-Prairie Region.*

