



**4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R6-MB-2017-N008; FF06M0000-XXX-FRMB48720660090]**

**Availability of Record of Decision 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 (Service or USFWS), have prepared a record of decision (ROD) on the final environmental impact statement (Final EIS) for Eagle Take Permits for the Chokecherry and Sierra Madre Phase I Wind Energy Project (CCSM Phase I Project). The ROD and Final EIS were prepared under the National Environmental Policy Act of 1969 (NEPA), as amended, in response to an application from Power Company of Wyoming LLC (PCW) for eagle take permits (ETPs) pursuant to the Bald and Golden Eagle Protection Act (BGEPA) and its implementing regulations. PCW has applied for both a standard and a programmatic ETP for the CCSM Phase I Project in Carbon County, Wyoming. The ROD is a concise statement of the purpose and need for the action, description of the project, the action alternatives considered, decisions made, and acceptable mitigation measures identified and committed to for avoiding or minimizing environmental impacts. The ROD also summarizes potential effects of the selected alternative, the public involvement process, and comments on the Final EIS.

**ADDRESSES:** Copies of the ROD are available 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 USFWS Wyoming Ecological Services Office at 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming (contact Nathan Darnall to coordinate access, at [nathan\\_darnall@fws.gov](mailto: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](mailto:louise_galiher@fws.gov) or 303-236-8677). The ROD, the Final EIS, the permit application and the supporting eagle conservation plan 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 ROD via the following methods:

- *Email:* [CCSM\\_EIS@fws.gov](mailto: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](mailto:louise_galiher@fws.gov) (email); or Clint Riley, at 303-236-5231 (phone) or [clint\\_riley@fws.gov](mailto: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 ROD on the Final EIS under NEPA, as amended (42 U.S.C. 4321 et seq.), in response to an application from PCW for ETPs pursuant to BGEPA, (16 U.S.C. 668–668c) and its implementing regulations. PCW has applied for both a standard and programmatic ETP for the CCSM Phase I Project in Carbon County, Wyoming.

### **Public Coordination**

As noted in the notice of availability for the Final EIS (81 FR 89133, December 9, 2016), the public was notified of the intent to prepare an EIS, and was earlier notified of the availability of the Draft EIS for review and comment. 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, and the Final EIS via mail and email.

### **The Selected Alternative**

In the Final EIS, the Service analyzed four alternatives as described below. The Service identified the proposed action as the preferred alternative. In the ROD, the proposed action was identified as the selected alternative for implementation.

*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. As compensatory mitigation PCW has proposed to retrofit existing high-risk power poles, thereby reducing ongoing eagle mortality from electrocution.

### **Other Alternatives Considered**

Four alternatives, including the proposed action, were analyzed in the Final EIS. The other three alternatives analyzed included:

*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 considered 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 Only the Phase I of Sierra Madre Wind Development Area.* 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 represented 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 was 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 included 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 Council on Environmental Quality (CEQ) regulations (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 analyzed both a "No Build" scenario and a "Build Without ETPs" scenario.

### **Environmentally Preferable Alternative**

After review of the programmatic ETP application and completion of the NEPA process, we determined that Alternative 3 (Issue ETPs for Only Phase I of Sierra Madre Wind Development Area) and the No Build option of Alternative 4 (No Action: Denial of ETPs) are the Environmentally Preferable Alternatives. Although Alternative 3 would result in lower eagle take and fewer environmental impacts than Alternative 1, we have not received a permit application for this or any other smaller subset of the CCSM Phase I Project. As described in the Final EIS, we considered Alternative 3 as

an example of a different development scenario and stated that Alternative 3 would have been eligible for selection only if we were to determine that Alternative 1 did not meet regulatory criteria for a standard ETP and programmatic ETP. Because Alternative 1 did meet regulatory criteria, we did not select Alternative 3 for implementation.

Because the Alternative 4 No Build option would result in no construction or operation impacts from developing the proposed CCSM Phase I Project, including no take of eagles, we have identified the No Build option as an Environmentally Preferred Alternative. However, because we find that Alternative 1 meets permitting regulatory criteria, and have identified no other basis for denying the ETP applications, we are not selecting Alternative 4. In addition, the No Build option of Alternative 4 would be inconsistent with Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States. We also note that Alternative 4 would deny the ETP applications, but would not necessarily result in the No Build scenario, and that if Alternative 4 would result in the CCSM Phase I Project being built without conservation measures that would otherwise be required by an ETP, it would not constitute an environmentally preferred alternative.

### **Minimization of Impacts**

The Final EIS addresses public concerns, potential impacts, and methods to minimize impacts. The Service considered that all identified practicable means to avoid or minimize environmental impacts associated with implementing the selected alternative will be utilized.

### **Decision**

The Service's decision is to implement Alternative 1: Proposed Action, and issue a standard and a programmatic eagle take permit for the CCSM Phase I Project.

This decision is based on the information contained in the Final EIS for Eagle Take Permits for the CCSM Phase I Project, which updated and supplemented the information contained in the Draft EIS.

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

Our decision of whether to issue standard and programmatic ETPs to PCW triggered compliance with NEPA. NEPA required the Service to analyze the direct, indirect, and cumulative impacts of the CCSM Phase I Project before we made our decision, and to make our analysis available to the public. We 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.

### **Authorities**

This notice is published in accordance with NEPA; 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.

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**Noreen Walsh,**  
***Regional Director,***  
***USFWS Mountain-Prairie Region.***

