



This document is scheduled to be published in the Federal Register on 12/04/2013 and available online at <http://federalregister.gov/a/2013-29005>, and on [FDsys.gov](http://FDsys.gov)

**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R6–MB–2013–N241; FF06M01000–145–FXMB12310600000]**

**Bald and Golden Eagles; Migratory Birds; Phase I Development of the  
Chokecherry–Sierra Madre Wind Energy Project**

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

**ACTION:** Notice of intent; announcement of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our intent to prepare a draft Environmental Impact Statement (EIS) for Phase I of the Chokecherry-Sierra Madre Wind Energy Project. Our draft EIS will analyze the environmental impacts associated with our decision on whether to issue a permit authorizing take of eagles for Phase I of the project. Programmatic eagle take permits are authorized under the Bald and Golden Eagle Protection Act (BGEPA), and its implementing regulations. We are requesting public comments on issues that should be addressed in our draft EIS.

**DATES:** This notice initiates the public scoping process. To ensure consideration in developing the draft EIS, we must receive your electronic or written comments by the close of the scoping period on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The public is invited to submit comments and resource information by mail or in person, and identify issues or concerns to be considered in the National Environmental Policy Act (42 U.S.C. 4231–4347) (NEPA) compliance process.

The Service will host public scoping meetings, where you may discuss issues with Service staff. The time, date, and specific locations for these meetings will be announced through the Service’s Web site: <http://www.fws.gov/mountain-prairie/wind/ChokecherrySierraMadre/index.html> as well as via press releases, local newspapers, radio announcements, and other media, at least 10 days prior to the event.

If you require reasonable accommodations to attend the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

**ADDRESSES:** You may submit comments in writing by one of the following methods. At the top of your letter or in the subject line of your message, please indicate that the comments are “Chokecherry-Sierra Madre Wind Energy Project Comments.”

- Email: Comments should be sent to: *CCSM\_EIS@fws.gov*.

- U.S. Mail: Written comments should be mailed to Chokecherry–Sierra Madre EIS, U.S. Fish and Wildlife Service Mountain-Prairie Region, P.O. Box 25486 DFC, Denver, CO 80225.

- Hand-Delivery/Courier: Chokecherry–Sierra Madre EIS, U.S. Fish and Wildlife Service Mountain-Prairie Region, 134 Union Blvd., Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** David Carlson, (303) 236-4254 (phone); *Dave\_E\_Carlson@fws.gov* (email); or Mike Dixon, (303) 236-8132 (phone); *Michael\_D\_Dixon@fws.gov* (email). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

- I. The Federal Action
- II. Background on the Project
- III. Intergovernmental and Interagency Coordination
- IV. Alternatives and Related Impacts under Consideration
- V. Public Comment Procedures
- VI. Authorities

## **I. The Federal Action**

The Service is considering a decision whether to issue a programmatic permit authorizing take of eagles under the Bald and Golden Eagle Protection Act for Phase I of the Chokecherry–Sierra Madre Wind Energy Project (CCSM Project or Project) in Carbon County, Wyoming. The Federal decision by the Service whether to issue a permit to take eagles triggers the need for compliance with the NEPA.

The Service intends to gather information and prepare a draft EIS. Our draft EIS will analyze the direct, indirect, and cumulative impacts of Phase I of the Project to support a Service decision to approve or deny an eagle take permit (ETP). The draft EIS will also analyze a reasonable range of alternatives, including a no-action alternative, for the potential issuance of a programmatic ETP.

The Project would be situated in an area of alternating sections of private, State, and Federal lands administered lands by the Bureau of Land Management (BLM) commonly referred to as the “checkerboard,” and, in 2012, the BLM completed a final EIS (FEIS) to evaluate whether the Project area would be acceptable for development of a wind facility. The Service intends to incorporate by reference information from the BLM FEIS into our environmental analysis 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). The decision to incorporate by reference sections from the BLM FEIS into the

draft EIS will be based on our evaluation of the BLM FEIS and our consideration of public comments.

## **II. Background on the Project**

**A. Power Company of Wyoming proposal.** As proposed by the Power Company of Wyoming, the CCSM Project will consist of two phases of development. When both phases are completed, the CCSM Project will consist of up to 1,000 wind turbines capable of generating a total of 2,000 to 3,000 megawatts (MW).

Phase I of the CCSM Project, to which this notice primarily pertains, would 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. For Phase I, PCW is preparing a detailed eagle conservation plan (ECP) that it intends to submit to the Service to support its application for an ETP. The ECP will identify measures that PCW proposes 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, PCW is also preparing an avian protection plan containing measures that PCW proposes to implement to avoid or minimize impacts of the Project on other migratory birds. The Service will consider the information presented in the ECP and avian protection plan when we analyze environmental impacts in our draft EIS.

PCW has indicated it will submit a separate plan of development for CCSM Phase II, which will consist of about 500 additional wind turbines (roughly 1500 MW), at a later date. At this time PCW has not determined when development of Phase II of the CCSM project would occur. The Service intends to address impacts of CCSM Phase II (a reasonably foreseeable future action) as cumulative impacts in the draft EIS for Phase I, and will conduct further NEPA review of Phase II if and when a take permit application for Phase II is submitted.

The CCSM Project has a proposed life of 30 years, after which, subject to market conditions, the CCSM Project may be repowered as necessary to continue its operations.

**B. Migratory Birds and Eagle Protections.** Raptors and most of 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 required by NEPA or other established environmental review processes.

Bald eagles and golden eagles are provided further protection under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (BGEPA), which prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" eagles, including their parts,

nests, or eggs. An eagle take permit 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. The regulations pertaining to eagle take permits can be found in the Code of Federal Regulations at 50 CFR 22.26.

A programmatic take permit authorizes 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 the associated with but not the purpose of an activity; and where take is unavoidable even though advanced conservation practices are being implemented. The Service will issue programmatic permits for such take only after an applicant has committed to undertake all practical measures to avoid and minimize such take and mitigate anticipated take to the maximum extent achievable to be compatible with the preservation of eagles.

**C. The BLM's FEIS.** In July 2012, BLM published its FEIS for the Project. The BLM action evaluated in the FEIS was to decide whether the area identified in PCW's proposal would be acceptable for development of a wind facility in a manner compatible with applicable federal laws. The BLM FEIS included an evaluation of the impacts of issuing the requested rights-of-way (ROW) grants on golden eagles and other raptors and migratory birds based on available data and concluded that the estimated number of raptor fatalities, as well as the impacts of reduced use by passerine birds within the project area, would exceed significance criteria. (pages 4.14-26).

On October 9, 2012, BLM published a Record of Decision (ROD) determining that the portions of the area for which PCW seeks ROWs grants “are suitable for wind energy development and associated facilities and that design features and mitigation measures must be incorporated into any future CCSM wind energy development authorizations.” 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).

Prior to issuing ROW grants, BLM will prepare additional environmental analyses of site-specific plans of development submitted by PCW. The BLM ROD sets forth a framework for conducting additional detailed NEPA review of PCW’s site-specific plans of development (ROD appendix C).

### **III. Intergovernmental and Interagency Coordination**

Federal, tribal, State, and local agencies, along with other stakeholders who may be interested in or affected by the Service’s decision on Phase I wind development of the Project, are invited to participate in the scoping process and, if eligible, may request or be requested by the Service to participate as a cooperating agency.

The Service will conduct consultation with Native American tribes in accordance with applicable laws, regulations, and Department of the Interior policy, and tribal concerns



will be given due consideration, including Indian trust assets and cultural or religious interests.

Interested persons may view information about our environmental review of Phase I of the Project on our Web site, at <http://www.fws.gov/mountain-prairie/wind/ChokecherrySierraMadre/index.html>. The Web site contains information concerning the comment period, during which persons may submit comments, and the locations, dates, and times of public scoping meetings.

#### **IV. Alternatives and Related Impacts under Consideration**

Our draft EIS will address action alternatives, and direct, indirect, and cumulative impacts of the action. Alternatives for the Project will, at a minimum, include:

- (a) An action alternative whereby the Service issues the programmatic take permit with conditions;
- (b) A no-action alternative, which would result in an eagle permit not being issued; and
- (c) Any environmentally preferable alternatives that may be identified in accordance with 40 CFR part 1500.

The Service's draft EIS will consider the predicted magnitude of eagle take within the context of regional eagle populations (Bird Conservation Regions, or BCRs). The analysis also will take into account other factors that may warrant protection of smaller or isolated eagle populations within a region. In addition, our draft EIS will consider:

- Comprehensive analysis of impacts to eagles that addresses not only the predicted take under BGEPA, but also the individual and cumulative habitat (including foraging and roosting) and prey base impacts that may have adverse population impacts but may not constitute take under the BGEPA;
- Potential impacts to migratory birds and their habitats (including thorough fragmentation analysis), and review and analysis of the applicant's avian protection plan;
- Cumulative impacts analyses of eagles and other migratory birds at the local area population scale and at the BCR scale;
- Analysis of effects to wintering golden eagles;
- Analysis of climate change effects, including effects on eagles, their habitat and their prey, and the effect on other migratory bird resources;
- Analysis of effects to eagles and other species as sacred species and as cultural resources. Some tribes and tribal members may consider eagle nests and other areas where eagles are present to be sacred sites addressed in the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996).

The purpose of the public scoping process is to determine relevant issues that could influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS and related compliance efforts. The final range of reasonable alternatives and mitigation to be analyzed in the draft EIS will be determined in part by the comments received during the scoping process.

## V. Public Comment Procedures

### Request for Comments

In accordance with the CEQ's regulations for implementing NEPA and the DOI's NEPA regulations, the Service solicits public comments on the scope of the draft EIS, including alternatives, mitigation, cumulative impacts that should be considered, and issues that the draft EIS should address.

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or other interested parties on this notice. Timely comments will be considered by the Service in developing a draft EIS.

Written comments, including email comments, should be sent to the Service at the addresses given in the **ADDRESSES** section of this notice. Comments should be specific and pertain only to the issues relating to the proposals. The Service will include all comments in the administrative record.

If you would like to be placed on the mailing list to receive future information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, above.

If you require reasonable accommodation to attend one of the meetings, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

#### Availability of Comments

The Service will make comments, including name of respondent, address, phone number, email address, or other personal identifying information, available for public review during normal business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review to the extent consistent with applicable law.

## **VI. Authorities**

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

---

**David McGillivary, Acting Assistant Regional Director–Migratory Birds**

**Mountain–Prairie Region, Denver, Colorado.**

[FR Doc. 2013-29005 Filed 12/03/2013 at 8:45 am;  
Publication Date: 12/04/2013]