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## Chapter 5.0

# Consultation and Coordination

### 5.1 Introduction

During development of our Environmental Impact Statement (EIS) for Eagle Take Permits (ETPs) for the Chokecherry and Sierra Madre (CCSM) Phase I Project, we, the U.S. Fish and Wildlife Service (USFWS), engaged the public, agencies, and tribes in the National Environmental Policy Act (NEPA) process. The first formal step in the NEPA process is the scoping phase, a process used by federal agencies in the early stages of preparing an EIS. Scoping gives individuals and organizations the opportunity to comment and offer input on alternatives, issues, concerns, and opportunities that should be considered in a NEPA document. We documented the verbal and written input received during the scoping phase (see Section 1.8). Then we applied the input to our consideration of alternatives for evaluation, and to the scope of our effort for describing the affected environment and predicting environmental consequences of the Proposed Action and other alternatives carried forward for detailed evaluation.

Following scoping, we prepared the Draft EIS and conducted the second formal step in engaging and soliciting public, agency, and tribal participation in the NEPA process by releasing the Draft EIS for review. The Draft EIS review period is used to gather input from interested parties on the alternatives and resources analyzed in the document. We notified the public, agencies, and tribes of the availability of the Draft EIS for review and comment, and held public and agency meetings during the comment period. Draft EIS review comments were considered during development of our Final EIS.

This chapter includes relevant coordination and consultation information (in addition to that provided in Section 1.8), and responds to public, agency, and tribal input received on the Draft EIS document.

### 5.2 Public Involvement

During the scoping phase, we used a variety of outreach methods to raise the public's awareness of the EIS and solicit comments for our consideration. We issued a Final Scoping Report in April 2014 that documents the outreach, summarizes public input, and includes as appendices the Notice of Intent published on December 4, 2013, in the *Federal Register* (78 *Federal Register* [FR] 7296–7298), our press release, and newspaper notices. The Final Scoping Report is available on our website (<https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/>). Additional outreach methods and the public scoping meetings are discussed below.

During the Draft EIS review phase, we notified the public (as well as agencies and tribes) of the availability of the Draft EIS for review and comment via publication of the Notice of Availability in the *Federal Register* on April 29, 2016 (81 FR 25688-25690). An amended notice was published in the *Federal Register* on July 15, 2016 (81 FR 46077) to announce the reopening of the EIS review comment period. The public review periods and public

meetings for the Draft EIS were also announced in press releases and newspaper notices, as described below.

## 5.2.1 Scoping Phase

### 5.2.1.1 Press Release

A press release announcing the scoping phase of our EIS for ETPs for the CCSM Phase I Project was developed and published on our website on December 3, 2013. The press release announced two public meetings to discuss the proposed ETPs for the CCSM Phase I Project. The press release also provided relevant background about the CCSM Phase I Project; our responsibilities under NEPA; the dates, times, and locations of both public meetings; and information regarding the public comment period and how to comment.

### 5.2.1.2 Newspaper Notices

Newspaper notices were published in two local and two regional newspapers of record to provide awareness of our intent to prepare an EIS for ETPs for the CCSM Phase I Project and the associated scoping phase. The newspapers were chosen based on their proximity to the CCSM Phase I Project in order to raise a strong local awareness of the open comment period. Table 5-1 identifies each newspaper in which notices were published and their corresponding publication dates.

**Table 5-1. Newspaper Notice Publication Details for the CCSM Phase I Project in Wyoming**

Newspaper of Record	Notice Publication Date(s)
Rawlins Daily Times	January 21–23, 2014
Casper Star-Tribune	January 21–23, 2014
Saratoga Sun	January 21, 2014
Wyoming Tribune-Eagle	January 19–21, 2014

### 5.2.1.3 Project Website

We established a website for our EIS as a way to provide the public with background information and documents regarding our consideration of whether or not to issue ETPs for the CCSM Phase I Project and the associated NEPA analysis. The EIS website offers contact information for public comment, information on the two public scoping meetings held, and links to all published information at the scoping meetings, specifically the Notice of Intent, press release, fact sheet, and a copy of the poster boards from the public scoping meetings. A link to the Bureau of Land Management (BLM) NEPA Review documents is also available on the website. The Record of Decision (ROD) and other publically released EIS-related documents will be provided on the website as they are completed. The website can be found at <https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/>.

### 5.2.1.4 Social Media

We used social media to raise awareness of the public comment period during the scoping phase for this EIS. Approximately 15 Tweets were published on Twitter advertising the public comment period with an accompanying link to our EIS website. These Tweets were retweeted by several followers.

### 5.2.1.5 Public Scoping Meetings

We held two public scoping meetings for our EIS in conjunction with the BLM's scoping meetings for an Environmental Assessment (EA) for the CCSM Phase I Project. Table 5-2 identifies the date, time, location, and number of attendees at each public scoping meeting. The number of attendees listed for each meeting does not include our staff and contractors, staff from the BLM and the Power Company of Wyoming LLC (PCW), and their contractors who were present at the meetings.

**Table 5-2. Public Scoping Meeting Details for the CCSM Phase I Project in Wyoming**

Date and Time	Location	Attendees
Monday, Dec. 16, 2013 4:00–6:30 p.m. <i>Presentations at 4:30 p.m. and 5:30 p.m.</i>	Jeffrey Center 315 West Pine Street Rawlins, Wyoming 82301	Public – 21 Agency – 7
Tuesday, Dec. 17, 2013 4:00–6:30 p.m. <i>Presentation at 4:30 p.m.</i>	Platte Valley Community Center 210 West Elm Street Saratoga, Wyoming 82331	Public – 29 Agency – 8

The meetings were organized in an open house format during the scoping period. We, along with representatives of the BLM and PCW, gave brief formal presentations at each meeting to provide general information on the CCSM Phase I Project, as well as our role and that of the BLM in considering issuing permits for the CCSM Phase I Project. The purpose of these meetings was to provide information to the public, to answer questions regarding the NEPA process and the agencies' roles, and to receive input regarding any issues and alternatives recommended for evaluation in our EIS.

A fact sheet was provided at the public scoping meetings, and poster boards were on display in the meeting locations, explaining the CCSM Project background and the need for our EIS for ETPs for the CCSM Phase I Project. Our EIS team members were available for personal, one-on-one interaction during the meetings to answer questions or clarify project details.

## 5.2.2 Draft EIS Review Phase

### 5.2.2.1 Draft EIS Notifications

A press release announcing the availability of the Draft EIS and the corresponding review period of the EIS was distributed to 94 media contacts representing 35 different media

organizations. The press release was also published on the USFWS' Mountain-Prairie Region website on April 20, 2016. The press release provided information on how to access the Draft EIS documents. The press release also provided relevant background about the CCSM Phase I Project; Draft EIS alternatives, our responsibilities under NEPA; the dates, times, and locations of Draft EIS public review meetings; and information regarding the public comment period and how to comment.

A press release announcing the reopening of the CCSM comment period was distributed to the same 94 media contacts representing 35 different media organizations as the original Draft EIS press release. The press release announcing the reopening of the comment period was also published on the USFWS' Mountain-Prairie Region website July 15, 2016. The press release explained that the comment period was reopened after it was discovered that a hyphen replaced an underscore in the public comment email address in several outreach materials. Once we discovered the error, we promptly changed our electronic inbox so that it could receive comments sent to either the hyphen or underscore address (either [ccsm-eis@fws.gov](mailto:ccsm-eis@fws.gov) or [ccsm\\_eis@fws.gov](mailto:ccsm_eis@fws.gov)). However the comment period was reopened to allow members of the public a chance to resubmit comments if there was a possibility that they sent their comments to the incorrect email address.

On April 20, 2016, we sent an email notification to interested stakeholders, as well as congressional staff, cooperating agencies, and the Wyoming Governor's office to notify them of the release of the Draft EIS, public meetings, and how members of the public may provide comments. On July 14, 2016, we sent an email notification to the same 79 individuals potentially affected by the project explaining that the CCSM Draft EIS comment period was reopened.

On April 21, 2016, a postcard notice was sent to all contacts on our project mailing list announcing the availability of the Draft EIS, the Draft EIS review period, and the public meetings. The mailing list includes 471 individuals identified as being potentially interested in the EIS. Individuals on the mailing list include elected state, federal, and local officials; agency contacts; special interest groups; community businesses and gathering places; and interested members of the public that have contacted us throughout the NEPA process. On July 19, 2016, another postcard notice was sent to the 471 individuals potentially interested by the project. The postcard included information on the CCSM Phase I Project, why the comment period was reopened, and how to provide comments.

We sent letters to 73 Native American tribes and tribal organizations inviting input and notifying them of the availability of the Draft EIS. Notification letters were sent on April 28, 2016, to 46 Native American tribes in USFWS Regions 1 and 6 identified as project stakeholders. An additional letter was sent to these tribes on July 22, 2016, notifying the tribes of the reopening of the Draft EIS comment period.

Following the close of the Draft EIS comment period, we became aware that notification of the Draft EIS did not go out to all potentially interested tribes as soon as intended. On July 22, 2016, letters were sent to 27 Native American tribes in USFWS Region 2 notifying them of the release of the Draft EIS and the reopening of the comment period until July 29, 2016. The letter informed tribes that due to the government-to-government relationship between the

tribes and the federal government, they could continue to provide comments beyond the public comment period. Although outreach provided tribes with several months for coordination outside of the public comment period, we heard from some tribes that they may not have had sufficient time to review and respond to the Draft EIS.

### 5.2.2.2 *Newspaper Notices*

Newspaper notices were published in two local and two regional newspapers of record to provide awareness of the availability of the Draft EIS and the associated comment period. The newspapers were chosen based on their proximity to the CCSM Phase I Project in order to raise a strong local awareness of the comment period. Table 5-3 identifies each newspaper in which notices were published and their corresponding publication dates during the original 60-day comment period.

**Table 5-3. Publication Details of Newspaper Notices for Draft EIS Comment Period**

Newspaper of Record	Notice Publication Date(s)
Rawlins Daily Times	April 28–30, 2016
Casper Star-Tribune	April 28–30, 2016
Saratoga Sun	May 4th, 2016
Wyoming Tribune-Eagle	April 28–30, 2016

A second round of newspaper notices was published in the same newspapers of record to provide awareness of the reopening of the CCSM Draft EIS comment period. Table 5-4 identifies each newspaper in which notices were published and their corresponding publication dates during the reopening of the comment period.

**Table 5-4. Publication Details of Newspaper Notices for Draft EIS Comment Period Reopening**

Newspaper of Record	Notice Publication Date
Rawlins Daily Times	July 16, 2016
Casper Star-Tribune	July 19, 2016
Saratoga Sun	July 20, 2016
Wyoming Tribune-Eagle	July 20, 2016

### 5.2.2.3 *Availability of the Draft EIS*

The Draft EIS was made available for review and comment during the public comment period. Copies of the Draft EIS, as well as the permit application and the supporting Eagle Conservation Plan (ECP), were made available during the public review period at the Carbon County Library System at 215 West Buffalo Street, Rawlins, Wyoming; the Saratoga Public Library at 503 West Elm Street, Saratoga, Wyoming; USFWS Wyoming Ecological Services Office at 5353 Yellowstone Rd, Suite 308A, Cheyenne, Wyoming; and USFWS Region 6 Office at 134 South Union Boulevard, Lakewood, Colorado.

An electronic version of the Draft EIS was made available for online review or download from our website at <https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/>. The Draft EIS was filed electronically with the U.S. Environmental Protection Agency (USEPA) and can also be accessed at USEPA's NEPA website at <https://www2.epa.gov/nepa>.

#### 5.2.2.4 Draft EIS Review Meetings

We held two public Draft EIS review meetings and one cooperating agency Draft EIS review meeting. Each public meeting shared the same format: one hour of informal open-house style conversation followed by a formal presentation and question-and-answer session. The purpose of the meetings was to share information about the Draft EIS and solicit feedback. Information was provided to the public at the meetings related to: project background, purpose and need, Draft EIS alternatives, Draft EIS findings, the ETP process, project schedule and additional opportunities for public involvement.

Members of our project team provided information about the Draft EIS and answered questions. Suggestions and concerns about the project voiced by the meeting participants were collected for incorporation into the development of the Final EIS. The Draft EIS review meetings were held at the locations identified in Table 5-5. The number of attendees listed for each meeting does not include the staff from the BLM, the USFWS, PCW, or their contractors who were present at the meetings.

Table 5-5. Public Meeting Details

Date and Time	Location	Attendees
Monday, June 6, 2016 4:30–6:30 p.m. <i>Presentation at 5:30 p.m.</i>	Platte Valley Community Center 210 West Elm Street Saratoga, Wyoming 82331	40
Tuesday, June 7, 2013 4:30–6:30 p.m. <i>Presentation at 5:30 p.m.</i>	Jeffrey Center 315 West Pine Street Rawlins, Wyoming 82301	24

As noted in Section 3.1, the emphasis in this EIS is on biological resources, with other resources described and evaluated in detail with regard to their potential for being affected by the take of bald and golden eagles and other special status species. Consequently, we focused on comments and questions that may affect our responsibility to review the application for CCSM Phase I ETPs.

All comments received during the comment period were reviewed prior to preparing the Final EIS.

## 5.3 Agency Coordination

We have coordinated with federal, state, and local agencies throughout the NEPA process. In addition, we have coordinated with cooperating agencies (that is, a group of agencies that were more closely involved in our NEPA process through their legal responsibilities and their special expertise), as discussed in Section 1.8.4.

### 5.3.1 Agency Notification

Agency notification letters included information on the CCSM Phase I Project, the EIS scoping and Draft EIS review periods, and how to provide comments. A copy of a generic scoping notification letter is included in the Final Scoping Report. Agencies and other interested parties were also encouraged to stay informed on the status of our EIS by visiting our website (<https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/>).

### 5.3.2 Cooperating Agency Coordination

Based on feedback from agency notification and internal discussions, we extended an invitation to 19 agencies to become a cooperating agency on our EIS for ETPs for the CCSM Phase I Project. A copy of the letter sent to cooperating agencies is included in the Final Scoping Report.

Five agencies are recognized as cooperating agencies to this EIS: the BLM, Carbon County, the Saratoga-Encampment-Rawlins Conservation District, Wyoming Game and Fish Department (WGFD), and Wyoming Industrial Siting Council. The input from the cooperating agencies was documented in a Final Cooperating Agencies Meeting Report (USFWS 2014f) and was considered when we developed our range of alternatives in the Draft EIS. The cooperating agencies were also offered a chance to review and provide input on the Draft and Final EIS prior to the respective public review periods.

## 5.4 Tribal Coordination

We recognize that tribal governments are sovereign nations located within and dependent upon the United States. Because of this, we have a responsibility to tribes when considering our actions that may affect tribal rights, resources, assets, and traditions. Specifically, we recognize that bald and golden eagles are of great spiritual and cultural importance to many tribes. These species have migratory ranges extending well outside of the vicinity of the CCSM Phase I Project in Carbon County, Wyoming. As a result, we have identified Bird Conservation Regions (BCRs) as an appropriate scale for addressing many migratory bird populations. We provided notification to tribes with land located in the boundaries of BCRs 10, 16, 17, or 18, which are the regions through which potentially affected golden eagles may migrate.

Consistent with the National Historic Preservation Act of 1966 and Executive Order (EO) 13175, Consultation and Coordination with Indian Tribal Governments, we invited 72 tribes to participate in government-to-government consultation (see Section 1.8.4). The Final Scoping Report provides additional information on early coordination with tribes. In this EIS, Section 3.9.2.4 describes the consultation process and includes a list of tribal

concerns and comments on the effects on eagles, effects on cultural and religious resources and traditions, and opportunities for mitigation.

Nine tribes have been engaged in ongoing consultation: the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, Chippewa Cree Indians of the Rocky Boy's Reservation, Comanche Nation, Eastern Shoshone Tribe/Eastern Shoshone Business Council, Northern Arapaho Tribe/Northern Arapaho Business Council, Northern Cheyenne Nation, Pueblo of San Felipe, Santa Clara Pueblo, and Shoshone-Bannock Tribes of the Fort Hall Reservation. We have held consultation meetings or teleconferences with each of these tribes, and many participated in a roundtable discussion held in partnership with the BLM in Rawlins on October 16, 2015.

The USFWS has also engaged Native American tribes in programmatic consultation on eagle policy through webinars and a series of Eagle Summits. This outreach extended to tribes beyond the regions with potential impacts from the CCSM Phase I Project. A webinar concerning proposed changes to eagle regulations was held on November 19, 2013, and attended by nine representatives from eight tribes, as shown in Table 5-6. Eagle Summit III was held in Denver, Colorado, on March 20 and 21, 2014, with an opportunity for government-to-government consultation on both days. Representatives from 29 tribes attended the summit, with representatives from 19 tribes present at the consultation sessions, as shown in Table 5-6. Several tribal representatives indicated that their involvement did not constitute formal government-to-government consultation, but they did participate in the ensuing discussion (USFWS 2014d). A description of the CCSM Project and consideration to issue ETPs for the CCSM Phase I Project was presented at the summit, and comments were solicited. The CCSM Project was also discussed at 2015 Eagle Summit IV in March 2015.

**Table 5-6. Tribal Representation at Eagle-Related Meetings and CCSM Consultations for the CCSM Phase I Project in Wyoming**

Tribe	Eagle Policy Webinar (Nov 19, 2013)	Eagle Summit III (March 20-21, 2014)	Eagle Summit III Consultation Session (March 20-21, 2014)	Individual Consultation Meetings (various dates)	Tribal Roundtable (October 16, 2015)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation		X		X	X
Chippewa Cree Indians of the Rocky Boy's Reservation		X	X	X	X
Comanche Nation		X	X		X
Confederated Salish and Kootenai Tribes	X	X	X		
Crow Tribe		X	X		

Tribe	Eagle Policy Webinar (Nov 19, 2013)	Eagle Summit III (March 20-21, 2014)	Eagle Summit III Consultation Session (March 20-21, 2014)	Individual Consultation Meetings (various dates)	Tribal Roundtable (October 16, 2015)
Eastern Shoshone Tribe/Eastern Shoshone Business Council		X	X	X	X
Gros Ventre and Assiniboine Tribes of Ft. Belknap	X				
Kiowa		X			
Lower Brule Sioux Tribe	X	X	X		
Navajo Nation		X			
Northern Arapaho Tribe/Northern Arapaho Business Council		X	X	X	X
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation		X	X		X
Northern Ute Tribe		X			
Oglala Sioux	X				
Osage Nation		X	X		
Paiute Indian Tribe of Utah	X				
Ponca Tribe of Nebraska		X	X		
Prairie Band Potawatomi Nation		X	X		
Pueblo of Pojoaque		X			
Pueblo of San Felipe		X	X	X	
Pueblo of Santa Ana		X	X		
Pueblo of Santa Clara		X	X	X	X
Rosebud Sioux Tribe		X			
Santee Sioux Nation		X	X		

Tribe	Eagle Policy Webinar (Nov 19, 2013)	Eagle Summit III (March 20-21, 2014)	Eagle Summit III Consultation Session (March 20-21, 2014)	Individual Consultation Meetings (various dates)	Tribal Roundtable (October 16, 2015)
Shoshone-Bannock Tribes of the Fort Hall Reservation	X	X	X	X	X
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation	X	X	X		
Southern Ute Indian Tribe	X	X			
Spirit Lake Tribe		X			
Taos Pueblo		X			
Te-Moak Tribe of Western Shoshone Indians of Nevada		X			
Ute Indian Tribe of the Uintah and Ouray Reservation		X	X		
Ute Mountain Ute Tribe		X	X		

As discussed in Section 5.2.2.1, we notified 73 tribes of the release of the Draft EIS and the opening or reopening of the comment period. Although our tribal outreach provided several months for coordination outside of the public comment period, we heard from some tribes that they may not have had sufficient time to review and respond to the Draft EIS.

## 5.5 Scoping Comments

An overview of comments received during the scoping phase for this EIS is provided in Section 1.8.2. A detailed compilation of individual scoping comments received, organized by comment topic, is provided in an appendix to the Final Scoping Report. This section of the EIS focuses on the consideration of the comments and their application to development of the EIS.

### 5.5.1 NEPA and EIS Processes

We coordinated with BLM regarding the scope of the BLM NEPA documents and the ETPs, and we decided that our EIS should be a separate document from the BLM FEIS. We and the BLM have separate responsibilities and separate actions regarding the CCSM Project. We have used data and analysis performed by the BLM as much as possible to reduce duplication

and redundancy, and much of the information from BLM FEIS was determined to be adequate for our analysis and incorporated by reference in accordance with 40 Code of Federal Regulations (CFR) 1502.21.

### 5.5.2 Statements of Opposition and Statements of Support

Commenters provided statements against and for permitting of the CCSM Phase I Project. We did not have a preferred alternative at the time of scoping or in the Draft EIS, and instead awaited input from the public, agencies, and tribes on the Draft EIS to determine our course of action.

### 5.5.3 Purpose and Need

In consideration of comments, our purpose and need statement addresses statutory authorities and goals, and also allows the consideration of alternatives that differ from the current plan of development. As noted in Section 5.5.4 below, we considered several alternatives, ultimately screening out alternatives that would not meet the purpose and need (other than the No Action alternative, as required by Council on Environmental Quality [CEQ] regulations) using screening criteria described in Section 2.1.1.

### 5.5.4 Alternatives

We considered comments when we developed the range of alternatives as well as when we selected alternatives to carry forward for detailed analysis. Chapter 2.0 explains how potential alternatives were identified, how several alternatives were screened out prior to detailed analysis, and the rationale for carrying forward particular alternatives. Regarding the permit time frame, at the time of scoping, the duration for a programmatic permit was considered to potentially be up to 30 years (the proposed duration of the CCSM Phase I Project). Subsequently, a recent court decision set aside the rule authorizing 30-year permits (see Section 2.3.2), so this EIS reviewed impacts associated with a 5-year duration for the standard and programmatic ETPs.

### 5.5.5 Eagle Conservation Plan and Eagle Take Permits

Although the ECP has been developed with input and recommendations from us, the ECP was prepared by PCW. The ECP is included in this EIS as Attachment A.

The ETPs, if granted, will state how eagle fatalities will be documented and disclosed, and will include adaptive management over the life of the permit. We will take an oversight and enforcement role under any ETPs granted.

### 5.5.6 Eagles and Eagle Data

Eagle data used for our analysis were based on information gathered over several years (see Section 3.8.2.1), and were considered to be the best available data for considering impacts on eagles and estimating allowable take numbers during construction and operation of the CCSM Phase I Project. The data included nest locations, migratory pathways, and habitat for

eagles and eagle prey species. We considered both direct and indirect impacts on eagles during construction and operation of the CCSM Phase I Project.

### 5.5.7 Wildlife

Based on our role regarding permitting for the CCSM Phase I Project, our EIS focuses on potential impacts on bald and golden eagles. As noted in Section 3.1, emphasis in our EIS is on biological resources, with other resources described and evaluated in detail based on their potential for being affected by the take of bald and golden eagles and other special status species. Consequently, we also address impacts on other birds, fish, bats, and many other species, as well as their habitats. Greater sage-grouse were considered in their role as prey for eagles, and Alternative 2 (Proposed Action with Different Mitigation) would involve habitat enhancement, with prey enhancement as an essential component. Separately, the BLM has established requirements for PCW regarding protection of greater sage-grouse habitat.

### 5.5.8 Additional Resource Areas

Many of the specific comments pertaining to resources not evaluated in detail in our EIS apply to the purview of the BLM and were addressed in the BLM FEIS and in BLM's site-specific EA1 and EA2, as appropriate. Tribal input was considered in identifying and evaluating mitigation options. Ongoing consultation with tribes may provide further input on permit conditions if we grant ETPs. The cumulative impact analysis in Chapter 4.0 of our EIS considers other major projects currently located, or reasonably foreseeable, near the Phase I development and infrastructure areas. Our cumulative impact analysis specifically addresses potential impacts from the CCSM Phase II Project.

### 5.5.9 Construction and Decommissioning

The site-specific plans of development (SPODs) developed by PCW include our input on the locations, footprints, and timing of construction activities in an effort to reduce construction-related impacts on eagles. As noted in our EIS in Section 2.2.1.2.2, decommissioning activities are not covered under the scope of the ETPs currently being applied for and are therefore not evaluated in this EIS.

## 5.6 Draft EIS Review Comments

Following the Draft EIS public review period, the Draft EIS was modified based on the public, agency, and tribal comments received. We received a total of 36 comment letters from project stakeholders and agencies. These letters contained information and input that was sorted into 366 discrete comments within 28 topic categories that we considered in the Final EIS. Comments received that directly informed the content of the Final EIS included, but are not necessarily limited to, comments on eagles and eagle data, monitoring, advanced conservation practices, compensatory mitigation, avoidance and minimization measures, and adaptive management.

### 5.6.1 NEPA and EIS Process

We received 15 comments related to the NEPA and EIS process, including the following:

- Request to extend the comment period
- Recommendations that the USFWS and the BLM conduct a coordinated review for CCSM Phase II and concern that more coordination on CCSM Phase I is needed
- Recommendation to put the project permitting question to a public vote
- Question on how future ETP applications will be handled
- Request for us to address the needs of the Applicant, provide a full implementable framework for the permit, and accurately reflect wind energy's impacts on and benefits to wildlife and their habitats generally, and eagles specifically

The original comment period on the Draft EIS was 60 days. We subsequently reopened the comment period for 14 days to provide an opportunity for anyone who submitted comments during the early window, in which they may have been using an incorrect email address, to resubmit their comments. We believe this was adequate time to submit comments on the document.

The BLM has jurisdiction for reviewing permits for development on BLM-managed public lands per the Federal Land Policy and Management Act (Public Law 94-579). Public voting is not a component of the law. We are coordinating with the BLM in our review of the potential impacts of our respective federal actions, and we believe we are identifying and analyzing relevant impacts. We plan to conduct a coordinated review with the BLM should PCW submit an ETP application for the CCSM Phase II Project to us. We will respond to any potential future ETP applications in accordance with the Bald and Golden Eagle Protection Act (BGEPA), the Migratory Bird Treaty Act (MBTA), relevant implementing permit regulations, and the 2009 EA supporting establishment of eagle permitting regulations or forthcoming EIS addressing revisions to those regulations. Priority for all current and future ETP decisions will be focused on promoting sustainable bald and golden eagle populations.

The Applicant's purpose and need are addressed in the description of the Proposed Action in Section 2.2.1, and we have added information to the description of Alternative 3 (Issue ETPs for Only the Sierra Madre Portion of the CCSM Phase I Project) concerning how that scenario would affect the Applicant. The framework for permit implementation is addressed throughout the document. The discussion of climate change in Chapters 3.0 and 4.0 has been revised to better acknowledge potential impacts and benefits from wind energy development. However, we have little specific information about quantifying those effects directly or indirectly in Chapter 3.0 or cumulatively in Chapter 4.0, especially concerning how eagles would be affected. The extent to which eagles would be affected by the CCSM Phase I Project, including potential benefits from conservation measures or mitigation, is analyzed in both Chapters 3.0 and 4.0.

## 5.6.2 Scope of EIS

We received 14 comments regarding the scope of the EIS. Several commenters identified sections where the Draft EIS could be altered or updated. These comments included the following:

- Recommendation to limit review of the potential impacts analyses to big game, sage-grouse, vegetation, and other peripheral related topics
- Recommendation that this analysis provide only new information, incorporate existing information by reference, and stick more closely to the stated purpose and need
- Recommendation to reduce or eliminate Section 2.2.1.1, Overview, and Section 2.2.1.2, Covered Activity, as they discuss actions previously analyzed under the BLM review
- Request to remove analysis of Wildfire Emergency Stabilization and Burned Area Rehabilitation
- Request to remove analysis of species that have been determined to not be present in or near the project vicinity
- Recommendation to include acronym definitions in all section titles
- Recommendation to identify areas where wind energy should not be developed due to unacceptable risk to eagles, raptors, and other federally and state-protected wildlife
- Recommendation that the purpose and need be amended to include language related to preservation of eagles as part of the purpose of the federal action

Regarding comments that our scope of analysis is too broad, we respectfully disagree. First, with respect to summaries of information from the BLM NEPA Review documents that we have provided in this EIS, we have summarized relevant information that we are incorporating by reference to provide additional context for those who would not prefer to obtain and review the original documents (which are available through a link on our website at <https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/>, as well as on the BLM's website at <https://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/Chokecherry.html>). Although this approach inherently creates redundancy, we believe the added context is beneficial for most readers because it avoids the need to cross-reference the BLM documents while reviewing our EIS. Second, with respect to resources included in our EIS beyond bald and golden eagles, these resources (that is, water resources, vegetation and wetlands, mammals, and birds [other than eagles]) comprise the local habitat for eagles, influence eagle productivity and success, and are therefore relevant to the analysis of impacts on eagles from the CCSM Phase I Project. While some individual species of mammals and birds discussed in the EIS may not represent prey species or food sources, we would be remiss in our responsibilities not to disclose potential impacts on these trust resources, or to include new data relevant to the resource discussed.

In response to comments received on the Draft EIS, we have reduced descriptions of certain elements of the proposed covered activities in Sections 2.2.1.1 and 2.2.1.2, removing some redundant text and unnecessary detail while keeping the information needed for context and a

complete analysis. The section on Wildfire Emergency Stabilization and Burned Area Rehabilitation was deleted from Chapter 2.0, as were references to it in Chapters 3.0 and 4.0. A portion of the language was inserted in Section 4.3.1.5.2 in the Cumulative Impacts chapter. Mention of species that have been determined to not be present in or near the project vicinity (including medusahead) has also been deleted from the Final EIS. We reviewed all analysis provided in Chapter 3.0 and streamlined discussions where appropriate.

Acronym use has been revisited in the Final EIS; all acronyms are now spelled out at first use within each chapter.

We are developing tools that may lead to better landscape planning by the wind industry by identifying areas inappropriate for wind development early in the planning process. While this may assist in future project development, our role in these current permit applications is to review whether the applications meet existing permit criteria and, if so, issue the permits with appropriate conditions.

In regard to our purpose and need statement, we agree that conservation of eagles is fundamental to our role in implementing and enforcing BGEPA and believe the statement accurately reflects our purpose and need as we understand it. Our definition of purpose and need for this EIS in Chapter 1.0 states that the CCSM Phase I Project must be consistent with BGEPA regulatory standards.

### 5.6.3 Eagle Conservation Plan and Eagle Take Permit

We received 15 comments that offered suggestions or asked questions related to the ECP and the standard and programmatic ETPs. These comments included the following:

- Requests for clarification on what take would be allowable under the standard and programmatic ETPs, if issued, and suggestions to review the time period of the programmatic ETP, saying that “the current timeframe does not seem reasonable and consistent with DOI Secretarial Order 3285.” It was suggested by some commenters that future programmatic ETPs be issued for a longer time frame; however, other commenters suggested that the possibility of 30-year ETPs is far too long and would make consistent monitoring infeasible.
- Requests for additional details describing the permit renewal process and how future ETPs will be issued, and the consequences of exceeding permitted take limits.
- Recommendations that as the project proceeds, adaptive management and compensatory mitigation should be mandated by the programmatic ETP in conjunction with new scientific evidence to reduce eagle fatalities.
- Suggestions that consequences of exceeding established ETP limits be further explained.
- Expression of doubt concerning the likelihood of take of raptor species in the CCSM Project region because of the lack of major nearby flyway or water resource.

Although new revisions to eagle take permit regulations may allow for permits of longer durations, the CCSM Phase I Project permit application is subject to, and is being reviewed under, the regulations existing previously, which limit the permit duration to 5 years.

Therefore, concerns regarding a longer time frame are not relevant to this potential permit issuance; at the same time, we are not authorized to issue this permit for a time frame exceeding 5 years without re-initiating review of the permit application on that basis, as well as with any other regulatory revisions that might be applicable if assessed under a revised Eagle Take Rule.

Throughout the EIS, including sections cited below, we have added language to clarify our permit processes, including the steps if eagle take were to be exceeded and the processes for renewing the permit. The programmatic ETP, if issued, would include specified thresholds and clear action if the thresholds are exceeded. Predicted eagle take, which is described in Section 2.2.1.3.3, is a limit that PCW is required to not exceed. As stated in Section 2.2.1.3.4, if actual take from the project exceeds the allowable take under the permit, PCW would be liable for the additional take. However, if fatalities identified during post-construction monitoring are on a trend to exceed this limit or the limit has been exceeded, advanced conservation practices may be required to prevent future eagle take. This is discussed in Section 2.2.1.4.2. We would remain engaged with eagle take and, if issued, the programmatic permit for the CCSM Phase I Project through the adaptive management process. We retain the right to amend, suspend, or revoke an eagle take permit if new information indicates such action is necessary to protect local or regional eagle populations. This has been clarified in Section 2.2.1.4.1.

If we were to issue a standard ETP for disturbance take of eagles, it would in this case cover 4 golden eagle nests and 1 bald eagle nest. This standard ETP would also cover the potential take of young eagles in each of these 5 nests (on average a range of 1 to 3 eaglets in each nest). The take of young eagles in the nest is an implicit part of a standard ETP if it were issued, but the take listed on the permit itself is in terms of the number of adults or nests that could be taken. Although we anticipate that take of eagles due to various types of disturbance activities associated with project construction could occur for these 5 nests, it is important to keep in mind that it is not certain that this take will actually occur. Individual eagle pairs vary considerably in their tolerance of human activities, such as constructing a wind energy facility, with some pairs being extremely tolerant of such development to the point it does not compromise nesting activities or success in any way. The research on eagle take due to various types of projects that could result in disturbance take is rather limited, so there is no way to predict with certainty whether a given project type will result in take or not. This is why we include a condition in standard ETPs that requires monitoring over several nesting seasons to determine nest occupancy, productivity, and nest success for all eagle nests covered under the permit. Over time, we want to acquire data from actual development projects, or other human actions, that have the potential to cause disturbance take of eagles to better inform future decisions about how likely such take is to occur, to determine if certain types of human actions consistently cause or do not cause eagle take, and to assist in designing conservation measures that could be applied to projects to avoid and minimize take. The standard permit is a type of ETP that could be viewed as an assurance for a proposed project in that if such disturbance take did occur, then the proponent is covered legally for that take.

We have used information available to us to assess potential impacts on raptor species. Explanation of uncertainties inherent in estimates generated from available information has

been added to discussions of impacts on other bird species, including other raptors, in Chapter 3.0.

#### 5.6.4 Eagles

We received 33 comments regarding eagles during the comment period. These comments covered many issues, but primarily focused on concerns with the modeling used to predict eagle fatality. The following are among the concerns that were identified:

- Concern that the model underestimated eagle fatality for reasons such as year-to-year variance, unaccounted-for migratory or wintering eagle populations, total exposure time between dawn and dusk when eagles are known to fly, and the potential increased numbers of fatalities associated with including up to four chicks per nest when counting numbers of nests that might be lost
- Concerns over the baseline used in the Local Area Population (LAP) to determine eagle fatality, with several commenters noting that eagle populations have been steadily growing in and around the vicinity of the project for decades, and that the LAP analysis used summer survey data
- Observation that the computer modeling for eagle fatality is complicated and request for clarification whether the 5 percent benchmark is the loss the local area populations can sustain and still remain viable
- Suggestion that the fatality model be re-evaluated over time
- Question whether the model reflects the loss of production and future recruitment of eagles from nests within the boundaries of the CCSM Phase I Project
- Request for clarification about why the Executive Summary states that PCW agreed to curtail operations of wind turbines within 1 mile of unoccupied golden eagle nests
- Multiple observations of the discrepancy between the BLM FEIS estimate of 64 golden eagle takes annually, and our assessment of either 10 or 14 (depending on turbine size) golden eagle fatalities annually for the project

We acknowledge that there are uncertainties inherent in this and any fatality estimate. The model used to generate our fatality estimate underwent an independent third-party peer review, and was found to be appropriate for the purpose for which it is being used. We are unaware of any alternative method to predict fatalities from wind energy facilities that has undergone a similar review. As part of the application of our model, we intentionally apply a conservative approach of using the 80 percent upper credible limit (80<sup>th</sup> quantile) of the model output to calculate potential annual take, to increase confidence that the resulting take will not exceed predicted take. Consequently, while we recognize that factors not addressed in the model may lead to errors in its estimate, we believe it is the most reliable and objective model available, and are applying it in a manner intended to limit the likelihood of underestimated eagle fatalities.

Depending on the size of the turbine blades ultimately selected by PCW, our model predicts either 10 or 14 golden eagles will be killed each year (see Section 2.2.1.3.3). We will update our eagle fatality prediction model based on the actual blade diameters used. This information would be specified in the ETP, if issued. Many of the predicted fatalities are likely to be eagles nesting in close proximity to the CCSM Phase I Project because these

eagles are likely to spend more time near the turbines. Fatalities may also include other local non-breeding birds (adult floaters and immature eagles) as well as juveniles that fledge from nests in the vicinity of the CCSM Phase I Project. We also recognize that some fatalities may include eagles from outside of the LAP, such as birds migrating through the area or eagles from elsewhere that winter in the vicinity; however, the best available data suggest that the vicinity of the CCSM Phase I Project is not a substantial migration corridor or wintering area for golden eagles. We have added clarification to the Final EIS on our expected demographics of eagle fatalities.

The fatality estimate was based on eagle use data collected over 2 full years, including the post-fledging period in both years. It can be difficult to make accurate distance measurements, but the biological monitors were trained in taking distance measurements, and we have no reason to believe the data were flawed. The cutoff for eagle height did change during the surveys, but we were able to adjust the model to account for the different methods.

Because of our concerns with spatial coverage provided by the point counts in the first year of eagle survey data, we asked for and received substantially more spatial coverage in the second year of monitoring to better ensure the data would be representative of the entire area covered by the project. The amount of eagle use was lower in the second year, but we expect eagle activity will vary among years; therefore, we recommend project proponents collect at least 2 years of pre-construction data. It is possible that eagle use could be higher in some future years due to better prey availability and higher density of eagles; however, some future years might have even lower eagle use. Because there is uncertainty, we have taken a conservative approach in calculating the fatality estimate, such as using the 80th percent upper credible limit rather than the 50<sup>th</sup> percent (average) to estimate the amount of eagle take. In addition, PCW would be required to conduct rigorous post-construction fatality monitoring to evaluate the accuracy of the fatality estimate.

Day length is influenced by latitude, so we used Teton Reservoir as a north-south mid-point to represent the CCSM Phase I Project. Day length was derived from the time of sunrise to sunset for Teton Reservoir as determined by the National Oceanic and Atmospheric Administration solar calculator. While eagles may fly in low light conditions prior to sunrise or after sunset, the best available information shows eagle activity before sunrise and after sunset is negligible and that eagle activity in the first few early morning hours is considerably less than mid-day. Therefore, using daylight hours between sunrise and sunset is a reasonable representation of the time eagles are at risk.

The 5 percent benchmark is not the loss the local area populations can sustain and still remain viable. Rather, we use the 1 percent and 5 percent benchmarks as a guide to ensure that at the LAP level, eagle populations are preserved. The ECP guidance defines these benchmarks as the eagle harvest rates at the LAP scale that should trigger heightened scrutiny. We developed the LAP analysis approach, and the related 1 percent and 5 percent benchmarks, in response to concerns expressed to us from state fish and wildlife agencies regarding possible loss of eagle populations at a local scale. The primary purpose of the approach is to help us ensure that this does not happen. We do evaluate and consider the effects of programmatic ETPs on eagles at the EMU, LAP, and project-area population scales. However, the thresholds for eagle populations in terms of viability are those for the

eagle EMUs established in the Eagle Take Permit Final EA (USFWS 2009) completed for the 2009 BGEPA regulations that allow for non-purposeful take of eagles. Many of these fatalities may be for eagles nesting in close proximity to the project because these eagles are likely to spend more time near the turbines. We anticipate, however, that eagle fatalities for the CCSM Phase I Project will also likely include other local non-breeding birds (adult floaters and immature eagles), juveniles that fledge from nests near the CCSM Phase I Project, and eagles from outside of the local area population, such as birds migrating through the area or eagles from elsewhere that winter in the vicinity of the CCSM Phase I Project. We have clarified this in the Final EIS. Our eagle fatality prediction model does not account for lost productivity that occurs from an eagle fatality nor does it account for the future recruitment from nests if breeding eagles are killed. However, the resource equivalency analysis (REA) model (used to calculate required numbers of power pole retrofits to offset the take of eagles when compensatory mitigation is required) does take into account this loss of productivity and impacts on future recruitment.

In regard to development of the population estimates of golden eagles, between 2006 and 2012, we funded annual, late-summer aerial golden eagle surveys over four BCRs in western North America. This includes three of the four BCRs contiguous with the CCSM Phase I Project and almost all of Wyoming. Other population estimates throughout the nation are available from various sources. The surveys in the four western BCRs between 2006 and 2009 were the basis for population estimates and take thresholds established in the Eagle Take Permit Final EA (USFWS 2009). We are fairly confident in the population estimates of golden eagles within the LAP and EMUs, and we will continue to incorporate survey results to improve our population estimates. However, we acknowledge that eagle density estimates are not uniform across the BCRs. Given better information on resource selection, seasonal variation in density, and an improved understanding of seasonal changes in eagle density and population-specific movement patterns, we will refine the LAP analysis in the future to better assess potential impacts of projects.

There are numerous reasons why our eagle fatality estimate is different from the estimate presented in the BLM FEIS, which was a range of 46 to 64 golden eagle fatalities per year. First, the proposed action analyzed in the BLM FEIS was twice the size proposed for the CCSM Phase I Project (1,000 turbines rather than 500). Second, the area analyzed in the BLM EIS is much greater than the project area analyzed for the proposed CCSM Phase I Project. Third, between preparation of the BLM FEIS in 2012 and our EIS in 2016, at least 2 years of eagle use surveys were completed within the area of the CCSM Phase I Project. These surveys were designed in close cooperation with us, and adhered to draft and final ECP guidance. The results of these surveys that were specific only to the area of the CCSM Phase I Project were incorporated into our fatality estimate.

During the development of avoidance and minimization measures, we confirmed that PCW agreed to curtail operation of turbines within 1 mile of unoccupied golden eagle nests between February 1 and April 30. This time period is when golden eagles generally establish nest sites and territories. The intention of this measure is to allow a certain level of protection for nests that, while not occupied, may become occupied later. We have added additional text to the Executive Summary in order to clarify this statement.

### 5.6.5 Avoidance and Minimization

We received 10 comments related to avoidance and minimization measures. These included suggestions that inconsistencies in the buffer distances and time frames offered in the ECP and Draft EIS be reconciled. Additionally, several comments supported our plans to continue to develop additional avoidance and minimization measures in conjunction with PCW, and a means to comply with the ETP avoidance standard.

Other commenters suggested that specific avoidance and minimization measures be considered, including the following:

- Turbine curtailment should be extended through the post-fledging period instead of when only applying when young fledge.
- Bubblers should include escape ramps for eagles because bubblers and tanks have been known to cause mortality for eagles.
- The USFWS should require PCW to perform targeted curtailment of turbine operations during July and August.
- Monitors should include trained experts who have authority to shut down turbines when eagles are present and displaying behaviors that put them at risk of collision.
- The Final EIS should discuss why increased cut-in speed and other minimization measures are not practicable or how uncertainty as to their effectiveness makes them more appropriate as part of adaptive management.
- The USFWS should explain why restricting construction within the 0.5-mile buffer zone of occupied bald eagle nests during fledging of young eagles (June and July) would not be required to avoid eagle take.

The closest occupied bald eagle nest to the North Platte River Water Extraction Facility is within 530 feet of the facility. The other occupied bald eagle nest is greater than 0.5 mile away from the North Platte River Water Extraction Facility. Hence this nest was not included as a consideration for coverage under a standard ETP in relation to disturbance take.

Regarding golden eagle nests in relation to possible disturbance effects for nests within 1 mile of construction activities, only one golden eagle nest (nest #162) is of concern. This golden eagle nest is over 0.5 mile from construction activities, but it is within 1.0 mile of these same activities. This is the only golden eagle nest that would be subject to the BLM's no-disturbance buffer for golden eagles per the Best Management Practices (BMPs) specified in the BLM ROD. The BLM would implement its 1.0-mile no-disturbance buffer for this golden eagle nest.

We have corrected text in Section 3.8.3.2.1 to agree with the BLM FEIS, which in Appendix Table D-1 states that a 1-mile buffer would be required around any Occupied golden eagle nests between February 1 and July 15 on BLM land. Our standard ETP would retain this stipulation for all golden eagle nests regardless of land ownership.

PCW has committed to numerous avoidance and minimization measures, as well as conservation measures and BMPs, as described in Sections 2.2.1.3.2 and 2.2.1.3.4, respectively. These measures must be clearly defined, as they are in the ECP submitted by

PCW, before an ETP can be issued and must demonstrate that the Applicant has eliminated all possible eagle mortality except that which is unavoidable.

Sections 3.8.3.2.1 and 3.8.3.2.2 specify the timing windows for construction and operation relative to eagle nests. We have determined that the current timing windows are appropriate for the documented nesting periods of eagles in southern Wyoming. We intend “fledge” to mean when a young eagle leaves the nest, as the purpose behind this avoidance measure is to lessen risk of eagles when they are known to be tied to the nest location. We recognize that fledging may occur during a broad window, and that eagle young remain dependent on the adults for some time after leaving the nest, and will work with PCW on a case-by-case basis to determine when fledge has occurred. Risk of eagle take will continue after fledging, and effective post-construction monitoring will be used to identify whether those risks are notably higher immediately after fledge for either young or adults, and this information could be used to identify additional measures through adaptive management.

We are aware of ongoing efforts to develop technological avoidance measures such as mechanically triggered, temporary turbine curtailment in response to detected eagle presence. At this time, however, we are aware of no such systems that have been demonstrated to be effective. We are aware of existing efforts to use observer-based triggers to avoid take of eagles, with mixed success to this point. Turbine curtailment could be included as an experimental Advanced Conservation Practice (EACP), but this would be guided by adaptive management and the results of post-construction monitoring. Additionally, any required EACPs would need to be proven effective. Seasonal curtailment is indicated as an example of an EACP that could be implemented. This has been clarified in Section 2.2.1.4.2.

We are uncertain if bubblers will be a component of PCW’s proposed habitat improvements. However, PCW has indicated in their ECP that they have already constructed and installed escape ramps for wildlife in water tanks on the privately owned ranch land, and they will continue to install escape ramps across the ranch wherever there is an identified risk to wildlife.

Cut-in speeds are avoidance measures that have been shown to be relevant to protection of bats, but have not been shown to have documented benefits to eagles or other migratory birds. We have added information about cut-in speeds to Section 2.3.5. Bats are not within our jurisdiction unless they are listed under the Endangered Species Act. If cut-in speeds are shown to be useful in limiting impacts on migratory birds, and especially eagles, we would assess their use in the CCSM Phase I Project through adaptive management.

### 5.6.6 Monitoring

We received 24 comments regarding the monitoring program discussed in the Draft EIS. These comments covered a range of topics, including the following:

- Encouraging the concept of using a third-party group of monitors to observe and document eagle kills.
- Concerns over how to conduct monitoring while minimizing disturbance of habitat and wildlife behavior caused by human observers.

- Desire for all monitoring data to be made publicly available.
- Desire for metrics such as eagle displacement, nest success, habitat loss, and potential habitat competition to be used to determine CCSM impacts. Trending these factors over time and through project phases is also suggested and should be made publicly available.
- Suggestion that there be a mechanism to report if and when eagle kills regularly exceed ETP limits.
- Request for us to keep accurate, real-time data on eagle mortality at large commercial wind projects and their associated infrastructure, locally, regionally, and nationally.
- Suggestion that the once-per-month monitoring discussed in the Draft EIS may not be realistic through winter conditions and that it be mindful of potential wildlife, soil, water, and vegetation impacts.
- Request that we reject the notion of third-party monitors and rely on the professional ethics of consultants hired by PCW.
- Suggestion that we, in collaboration with WGFD, impose a bounty on reports of eagle kills, payable to any person that submits photographic or physical evidence of the discovered kill. The bounty would incentivize such reports and may be preferable to monitoring by consultants or third-party monitors.

The ECP (see Attachment A) and Bird and Bat Conservation Strategy (BBCS; see Attachment B) outline the post-construction monitoring protocol developed by PCW, partially in response to our technical input. If we issue ETPs, we will specify the approved post-construction monitoring protocol that we believe includes standardized methods based on sound scientific principles, and sufficient to quantify direct impacts on eagles as a result of operation of the CCSM Phase I Project. We also provided comments to PCW concerning post-construction monitoring for other birds and bats based on the same criteria, and substantial changes have been made in response to our comments since we issued the Draft EIS. The final BBCS is available for further public review as Attachment B to this Final EIS.

All monitoring and the results of monitoring required as a condition of the ETP, if issued, would be available to the public. We have not yet determined how results will be made available. However, real-time sharing of in-progress analysis and coordination is unlikely to occur. Annual reports would contain information concerning the timing, age of the eagle, and nature of the take, as well as specific geographic location or season. These data would be important in the consideration of potential management actions that may be implemented through adaptive management. Information concerning other potential impacts that would not constitute “take” of eagles (such as eagle displacement, nest success, habitat loss, and potential habitat competition) is not required to be reported, but as information is developed, we agree it should be incorporated into the larger assessment of the CCSM Phase I Project’s impacts through an adaptive management process. Because annual reports will include eagle fatalities, permit mechanisms will require reporting well before eagle take would exceed ETP limits, and take that does exceed ETPs would be a violation.

The 2009 eagle permitting regulations under which we are considering issuing ETPs for the CCSM Phase I Project do not provide legal authority to require independent or third-party monitoring. Under the ETP regulations at 50 CFR 22.26, the project applicant is responsible

for completing monitoring. However, the applicant must grant the USFWS or parties that we designate access to the facility for the purpose of monitoring eagles. This has been clarified in Section 2.2.1.4.3.

Post-construction eagle fatality monitoring and eagle nest monitoring would be used to quantify actual eagle take as well as to monitor the accuracy of the eagle fatality prediction model, and the effectiveness of any EACPs applied to the project and BMPs implemented to reduce eagle mortality. This has been clarified in Section 2.2.1.4.2. The permit renewal process is discussed in Section 2.2.1.4.1.

We acknowledge concerns about possible unintentional impacts on wildlife species and potentially other resources during winter months in relation to post-construction eagle fatality monitoring that will be required of the project proponent and that such impacts could occur. However, given the size and scope of the CCSM Phase I Project, the predicted level of eagle take, and the need to reliably measure and document eagle take as part of the conditions for issuance of a programmatic ETP, fatality monitoring is necessary as described in the ECP and the BBCS. Post-construction eagle fatality monitoring must be based on a rigorous protocol, which means that all the turbines will need to be searched at least once every 30 days. Fatality monitoring needs to be conducted in this manner so that we have statistically reliable data to document that the take limits on the permit are not exceeded and to properly credit the proponent in the future should project take be documented as less than what is predicted in terms of the compensatory mitigation work they are required to do. After collecting 2 years of post-construction fatality monitoring data, we will evaluate the protocol and the results; based on that review, we may be able to reduce the number of turbines searched, the frequency with which turbines are searched, or both. In various locations in the Final EIS, we have added a discussion and disclosure of anticipated impacts from post-construction avian and bat fatality monitoring where such analysis was previously omitted in the Draft EIS.

We do not have authority to impose “bounties” as incentives to report eagle kills. Moreover, because such reporting would not be systematic, we would not be able to calibrate received reports to determine a reliable estimate of any unreported eagle take. Systemized monitoring protocols include measures to assess effectiveness of the monitoring efforts themselves (including searching efficiency tests), and do not risk variation in monitoring efforts based on weather, season, or other factors. Consequently, it is preferred as a method to accurately determine impacts of a project.

### 5.6.7 Compensatory Mitigation

We received 23 comments regarding compensatory mitigation during the Draft EIS comment period. These comments included the following:

- Suggestions that we better describe the time frame for, geographic range, and expected benefits of compensatory mitigation, including ensuring that the mitigation be additive and that it be a benefit to the impacted eagle population
- Suggestions that compensatory mitigation be undertaken for the duration of the project impacts, not only the duration of the ETP

Several other comments related to risks to eagle populations posed by electrocution and concerns over the methodology used to determine the number and the nature of power pole retrofits as a compensatory mitigation tool. In particular, these comments included the following:

- Concern that retrofits would not necessarily provide additive benefit to eagle populations
- Suggestions that power pole retrofitting should increase additionality (that is, provide a new contribution to conservation values and functions beyond what would have occurred without the mitigation) in the eagle population
- Suggestions to install power lines underground where it is practicable to do so, and support for separating wires on power poles
- Request that we should clarify a standard and criteria for both power pole retrofits and future compensatory mitigation mechanisms
- Recommendation that we provide a substantive rationale describing how proposed compensatory mitigation (1) would not have occurred in the absence of this permit requirement and (2) does more than require permittees to complete actions that a third party is otherwise legally required to complete under federal, state, or local law
- Request for more clarity regarding the time frames associated with power pole retrofits
- Request to require compensatory mitigation for bald eagles as well as golden eagles

Under BGEPA, issuance of an ETP does not require that a permitted action result in a net benefit to golden eagles. Authorized, incidental take of bald and golden eagles is permitted under BGEPA as long as it is found to be consistent with the goal of stable or increasing breeding populations. Permitted take that is in excess of established take thresholds that are determined to ensure this standard is met must be offset through compensatory mitigation. For golden eagles, compensatory mitigation must achieve no-net-loss because the current take threshold for the species is zero. Further information regarding the ETP can be found in Section 2.2.1.4. As discussed further below, retrofitting power poles, in the appropriate circumstances, may meet this standard, but neither this form of mitigation nor other forms would be required to demonstrate a net benefit to eagles.

Similarly, required mitigation must address the impacts of the duration of the ETP, rather than the life of the project. If impacts exist beyond the duration of the ETP, those impacts – if they constitute take – would be in violation of the BGEPA unless a renewed or additional ETP has been issued, and any additional mitigation necessary to address those impacts would be a condition of that additional ETP.

Locating power lines underground would certainly remove risk of electrocution, but is not considered a necessary measure because other recommended measures exist as industry standards that are considered effective at reducing risk of electrocution to a level of risk that approaches zero. Some of these measures include separation of wires on power poles.

Sufficient mitigation to fully offset any eagle take needs to occur before that take occurs. If we issue an ETP, we will require that any compensatory mitigation be in addition to any other planned actions or measures that may have reasonably occurred otherwise. We have

clarified this in Sections 2.2.1.4.5 and 3.8.3.2.2 in the Final EIS. An ETP will not be issued without a mitigation plan that includes compensatory mitigation that meets the requirements of no-net-loss of golden eagles through implementation of measures that would not have occurred in the absence of the ETP and is in addition to any other legally required actions. PCW will be required to submit a sufficient mitigation plan that meets these criteria prior to issuance of the ETP. We have clarified this in several locations throughout the Final EIS.

The EIS described the number of power pole retrofits needed to fully offset the anticipated take during only the first 5 years of operation and not all eagle take over 30 years. PCW would need to apply for another eagle take permit and will need to fully offset through compensatory mitigation any future take of eagles beyond the first 5-year permit. We described avoided loss for two time periods, 5 years and 10 years, to demonstrate how the number of needed retrofits would change depending on the durability (longevity) of the retrofits. If we were confident that the proposed retrofits would continue to function and save eagles for 20 or 30 years, for example, we could use 20 or 30 years of avoided loss in the REA model in place of 5 or 10 years to account for the take that occurs during the 5-year term of the permit.

The eagle fatality model does not account for lost productivity that occurs from an eagle fatality; however, the REA does. The REA assumes a certain amount of lost productivity for every eagle killed, and it also assumes an equivalent amount of productivity gained for each eagle saved by compensatory mitigation (e.g., power pole retrofits). We have stated that the compensatory mitigation could occur anywhere in the four BCRs that overlap the local area population. We also recognize a preference by cooperating agencies and commenters to locate the compensatory mitigation close to the CCSM Phase I Project and in Carbon County. We do not yet know where the compensatory mitigation will occur, and while it can occur anywhere in the four BCRs, we will help PCW identify potential locations in southern Wyoming and northern Colorado where power pole retrofits would benefit eagles.

The number of power pole retrofits that would be required, as noted in Section ES.2.3 and Table 2-10, is between 1,015 and 2,556, depending on the turbine blade diameter. PCW would need to demonstrate adequate compensatory mitigation in its mitigation plan prior to issuance of a programmatic ETP. It would be PCW's responsibility to demonstrate that there are sufficient priority power poles needing retrofits within the four BCRs. Again, in any ETP we issue, we will require that compensatory mitigation be in addition to any other planned actions or measures that may have reasonably occurred otherwise. For example, a company with responsibility to retrofit its own power poles may develop an avian protection plan with our technical input that reasonably establishes a schedule for completing those retrofits, but that still leaves substantial numbers of power poles creating risk of eagle electrocution pending completion of that schedule. A compensatory mitigation plan that quantifiably accelerates that power pole company's schedule would accomplish measurable reduction of risk to eagles that would not otherwise have occurred, despite the power pole company's reasonable intent and legal obligation to do so.

As described in Section 2.2.1.4.5, compensatory mitigation is required for only golden eagles. Predicted fatality rates of bald eagles would not exceed calculated EMU take thresholds. As such, the current eagle rule does not require compensatory mitigation in this

situation. Section 2.2.1.3.1 describes the eagle fatality prediction model used to estimate expected take. This model uses the best available and most relevant golden eagle collision probability data. We have a high level of confidence in this model and the data on which it is based.

### 5.6.8 Adaptive Management

We received 19 comments on the Draft EIS regarding adaptive management, including the following:

- Concerns over the need for establishing and monitoring of the efficacy of mitigation options to best implement a data-driven adaptive management approach supported by science
- Requests for additional explanation of what methodology would be used to determine how new technologies would be implemented as they are developed and how changes in circumstances might be addressed
- Suggestion that the adaptive management framework identify triggers or thresholds based on science that, when crossed or exceeded, would require further mitigation
- Suggestions that ongoing research and analysis be undertaken to test methods to reduce lethal take, including a requirement that the project show progress by reducing its legal take over time or face increased mitigation requirements

If issued, the programmatic ETP would require a post-construction monitoring program that we have approved, and that would be determined appropriate to assess actual impacts from the CCSM Phase I Project in a manner allowing for meaningful adjustments to management action through an adaptive management process.

Adaptive management would be ongoing throughout the life of the ETPs, if issued. We would require PCW to submit annual reports to us and to contact us immediately regarding any fatality. This communication will allow for adaptive management to occur, although management changes would necessarily occur after data are reviewed and therefore would be unlikely during the same year. The conditions for the permit, if it is granted, have yet to be finalized.

As a component of adaptive management, we cannot require PCW to test future new turbine designs. As described in Section 2.2.1.4.4, an adaptive management process is necessary to adjust EACPs, BMPs, additional avoidance and minimization measures, and conservation efforts to reduce risk to eagles and other species to the extent practicable. It is also expected that over the life of the CCSM Phase I Project, additional BMPs and EACPs would become available. As such, adaptive management would be an essential component of the permit stipulations and would be employed to ensure that risk is minimized to the extent practicable.

In general, research and testing of new designs or methods cannot be a requirement of an ETP, as the required measures must be for the purpose of avoiding or mitigating take, and by definition the potential benefits of research or testing cannot be quantified to know how much to require or whether the measures will successfully achieve the required level of mitigation. We agree that additional research and analysis is important, and as effective new

measures are identified can address implementation of such measures through adaptive management.

We would not require mitigation based on triggers focused solely on adaptive management because mitigation would be required only to offset permitted eagle take exceeding thresholds. We may establish triggers as part of an adaptive management framework to assess when other forms of avoidance or minimization would become relevant.

#### 5.6.9 Alternative 1 – Proposed Action: Issue ETPs for Phase I Wind Turbine Development and Infrastructure Components

We received 18 comments related to Alternative 1 (Proposed Action). These included the following:

- Three statements of support for this option
- Two requests that the proposed 27,500-acre conservation easement for prohibition of wind development activities also include restrictions on mineral development of the subsurface
- Question whether our eagle fatality prediction model accounted for the losses associated with proposed power lines needed to carry power to Nevada, Arizona, and California
- Request for more details on how PCW will undertake locating power lines underground to the maximum extent practicable
- Noting the idea of no net loss as setting forth a bare minimum requirement for permit issuance, a request that the USFWS add a requirement for reduction in unauthorized take as well as net benefit to eagles
- Question whether the option to use shorter turbine blades is viable and suggestion that the USFWS is obligated to choose this option if it kills fewer eagles
- Several edits to specific components of the text to rectify inconsistencies
- Requests that predicted take information be made publicly available

The proposed conservation easement in question would not be a feature of the ETP, if one is issued, because it was developed in response to other authorities separate and apart from this application for ETPs. It is addressed in this EIS due to its relevance to analyzing the environmental impacts of the CCSM Phase I Project. Whether additional protection, such as restrictions on development of the mineral estate, should be incorporated would depend on the extent to which the proposed measures meet requirements of other agencies that are requesting such measures.

Power lines constructed or operated as part of this permitted project would be required to meet standards that avoid likelihood of eagle electrocution, regardless of whether they are buried. Any separate power lines that carry power from the CCSM Phase I Project to other parts of the country (such as Nevada, Arizona, or California) would be required independently to meet requirements under BGEPA, which would likely mean complying with similar standards. Additionally, although our eagle fatality prediction model does not account for losses of eagles associated with proposed power lines beyond the scope of the CCSM Phase I Project, our LAP analysis (see Attachment E) described in Chapter 4.0 does

consider the loss of eagles associated with past, present, and reasonably foreseeable future power lines within the local area for golden eagles. Locating power lines underground would certainly remove risk of electrocution, but is not considered a necessary measure because other recommended measures exist as industry standards that are considered effective at reducing risk of electrocution to a level of risk that approaches zero.

Our authorities allow us to require that any take be consistent with long-term stable or increasing breeding populations, and for golden eagles that means that any authorized take must achieve “no net loss” through offsetting mitigation. We are not, however, authorized to require a net benefit to eagles in order to qualify for a programmatic ETP.

While we agree that using smaller turbine blades would likely result in fewer predicted eagle fatalities, we consider imposing that requirement in the decision whether to issue an ETP to be equivalent to requiring that less energy be generated. Fewer turbines, smaller turbines, or fewer wind energy facilities would inherently lead to less impact on eagles, but there is no clear point at which we could determine that the impacts have been reduced sufficiently, without being arbitrary. We use the status of eagle populations to determine whether any take can be authorized without requiring compensatory mitigation, and use LAP calculations to determine whether those impacts would be sustainable at a local level even if mitigated. We use surveys and other site-specific information to determine whether turbine locations, operational systems, and similar measures sufficiently avoid likelihood of take. We lack authority outside of these bounds to determine that projects must be downsized to reduce take, as any project could always be downsized to reduce take further, which would call into question the purpose of ETPs. In addition, NEPA requires that we analyze impacts from a proposed action, but does not require an agency to choose a particular alternative, even if it may result in less environmental impact.

Through this EIS, and associated documents, we are making information concerning predicted take publically available.

#### 5.6.10 Alternative 2 – Proposed Action with Different Mitigation

We received 24 comments on the Draft EIS regarding Alternative 2, including the following:

- Support for Alternative 2 based on its broad array of mitigation options that would address multiple environmental concerns.
- Requests that the USFWS facilitate a process to develop, quantify, and validate a wide variety of compensatory and alternative mitigation strategies.
- Recommendations that until alternative mitigation measures have been validated, we should not authorize them for use on the project.
- Suggestion that bonds be required to ensure that funds are available for alternative mitigation and power pole retrofits.
- Suggestion that due to changes in hunting practices, lead abatement measures may be less necessary than in previous years as many hunters have switched to non-lead alternatives.
- Support for the lead abatement measures and suggestions that hunters be required to use non-lead ammunition in both shotguns and rifles within the LAP area.

- Suggestion that we consider including more flexibility in our requirements for compensatory mitigation to account for both the effectiveness and economy of alternative mitigation strategies, and to undertake a strategy that “would allow PCW and USFWS to work together to determine the best science-based approach to compensatory mitigation based on the most current data available.” This would take the place of a more prescriptive requirement for how to achieve compensatory mitigation.
- Interest in developing an eagle rehabilitation center or possible habitat enhancement project for eagles on the Wind River Indian Reservation in partnership with us.
- Suggestion that carcass removal be expanded to rabbits and other small animals and include the entire area of the project rather than just roadways.

We are interested in expanding the range of options for compensatory mitigation, and the request for comments on that alternative was intended as an opportunity to gain new information to help develop other defensible options for mitigation. We would note, however, that any take above permit levels would first trigger examination of the permit itself, and the first option to address it would more likely be adoption of new avoidance measures if available rather than allowance for new mitigation.

We agree that additional information is important to effectively pursue additional mitigation measure options, and we are pursuing various forms of analysis in conjunction with other partners. We also agree that we will be responsible for determining any relevant guidelines that may be necessary when authorizing other forms of mitigation. If we issue a programmatic ETP, we will consider certain mitigation measures when determining what, if any, additional permit conditions should be imposed beyond the compensatory mitigation measures identified in the existing ECP. We will not require any mitigation option unless we believe that it is likely to quantifiably offset the predicted levels of eagle take, and that it may be feasibly implemented. If no opportunity exists to accomplish a particular form of mitigation within the approved geographic area, it would not be considered feasible. Before issuing a permit, we would require that PCW demonstrate a binding commitment (such as a contract) to complete identified and approved mitigation measures rather than require a bond, which we would consider more relevant if the mitigation commitment was yet to be determined.

Hunting in Wyoming is regulated by WGFD. Laws prohibiting lead shot would need to be passed by the Wyoming state legislature. The alternative compensatory mitigation option of lead abatement could include hunter education programs to voluntarily reduce the use of lead shot. More information about lead abatement as a compensatory mitigation measure is provided in Section 2.2.2.4.2. We have added information from WGFD regarding the lead abatement option in the Final EIS.

While we agree that additional research would be beneficial in identifying and quantifying alternative methods to mitigate for take of eagles, funding that research would not constitute a replacement of the lost resource, and therefore would not itself mitigate for the eagle take.

We have entered into discussions with certain tribes and PCW concerning interest in developing future mitigation measures based on eagle rehabilitation or on habitat

enhancement, but it is not currently feasible for PCW to depend on those measures to achieve required mitigation levels. As with other mitigation methods that may be developed, we would anticipate including provisions in the ETP to allow the Applicant to commit to and adopt different mitigation if proven effective during the life of the permit.

In general, we note and appreciate the interest in developing other forms and methods to offset through mitigation any permitted eagle take. Comments received concerning several mitigation options may assist in developing sufficient information and models that may allow them to be implemented in the future. However, limited information was received through public comment that directly assists in developing quantifiable means to implement new mitigation measures.

Carcass removal along roadways is intended to reduce the risk of vehicle collisions with eagles. This risk is highest for sizable carcasses that are not immediately scavenged and removed by eagles or other predators. Efficiently removing or even finding carcasses of rabbits and smaller animals throughout the project area would be impossible given the size of the project.

#### 5.6.11 Alternative 3 – Issue ETPs for Only the Sierra Madre Portion of the CCSM Phase I Project

Six comments were received on the Draft EIS related to Alternative 3, including the following:

- Several statements that Alternative 3 is not preferable because it does not meet the purpose and need of PCW
- Suggestions that because Alternative 1 is consistent with BGEPA, Alternative 3 should not be a viable alternative
- One preference for the smaller footprint proposed in Alternative 3

We believe that Alternative 3 demonstrates an alternative that would have a significantly different level of impact from Alternative 1. As noted in discussion of Alternative 3, for us to choose to permit a different size project, we would require a specific project to analyze and for which to determine the predicted level of eagle take. The specific Alternative 3 was chosen because available data made it feasible to represent a different project size and design that might be eligible for permitting, and for which we could assess differing environmental impacts from Alternative 1. If Alternative 1 is determined not to be eligible for permitting and a smaller project might be eligible, PCW would need to submit a specific new proposed project for review, for which the specific smaller project may or may not be the exact design as Alternative 3. For purposes of this Final EIS, Alternative 3 demonstrates the level of information and the analysis we would use.

### 5.6.12 Alternative 4 – No Action: Denial of ETPs

Five comments were received on the No Action alternative in the Draft EIS, including the following:

- Statements of support for the non-issuance of an ETP, splitting up or moving the CCSM Phase I Project to a new location, or the option not to build the project
- Support for the non-issuance of an ETP and instead fining PCW for any illegal take
- Several explicit statements of opposition to the No Action alternative because commenters felt it would result in greater impacts than other alternatives

We cannot prohibit PCW from developing a project that was approved through the BLM FEIS and ROD in 2012. If we deny the ETP, the decision to build or not build is up to PCW, and PCW would assume the legal risk if unpermitted take occurs. However, if we determine that the permit application meets regulatory criteria, it would be inappropriate and potentially arbitrary and capricious to deny the application solely on the expectation that the Applicant can afford to pay resultant criminal fines. If no recordable impacts on regulated species occur, of course, no violation would occur.

### 5.6.13 Siting and Other Alternatives

Five comments were received related to siting. The majority of these comments asserted that the siting of the CCSM Phase I Project is extremely poor, noting that large wind projects should adhere to the American Bird Conservancy’s definition of Bird-Smart wind energy, including independent pre-construction risk assessments leading to proper siting, tested effective mitigation, collection of mortality data post-construction by independent, third party experts reporting directly to regulatory agencies, and compensation for unavoidable take of public trust resources. Additional concerns over access to transmission resources were offered as evidence that the project siting is inadequate.

Six comments were received that discussed other alternatives beyond those analyzed in full in the Draft EIS. These included the following:

- The use of polluted, contaminated mine sites for solar or wind energy development
- Vertical-axis wind turbines
- Forest and habitat conservation, energy efficiency, and distributed solar
- Use of larger turbines that would require fewer total turbines and less total take
- Use of nuclear technology
- Bird-friendly generators
- Concerns over recreation in areas subject to the proposed conservation easements

Four comments were received related to concern regarding an ETP time frame of 30 years.

We are aware of ABC’s work to define “Bird Smart” wind energy, and agree that proactive landscape level planning would be likely to help reduce long-term effects on migratory birds. However, our authority does not extend to site selection for wind energy projects, but rather to whether a proposed project meets criteria for an ETP if we receive a permit application. As

a major part of our consideration of the permit application, we review the impacts that may result on eagles based on the project's location, and what the company will do to appropriately avoid those risks.

Over the past several years, PCW has reconfigured the turbine layout to avoid or minimize impacts on eagles and other birds based on pre-construction avian use studies and our advisement. This process is detailed in Section 2.2.1.3.2. As described in Section 2.3.4, our permit review is considering whether the current project layout avoids impacts on eagles sufficient to meet regulatory criteria. Adaptive management would include monitoring to determine the effectiveness of these avoidance and minimization measures. If hazardous turbines are identified during operation, we would work with PCW to address the problem and find a solution. This process is described in Section 2.2.1.4.4. The USFWS is developing tools that may lead to better landscape planning by the wind industry, by identifying areas inappropriate for wind development early in the planning process. While this may assist in future project development, our current role is to review whether this permit application meets existing permit criteria and, if so, issue the permit with appropriate conditions. Concerning requirements that third parties independently conduct monitoring and report directly to the agency, it is not within our current authority to require that for this permit, although revisions to permitting regulations may provide that authority if the permit is renewed.

For these same reasons, use of mine sites for this project would not be within permitting authority and therefore not viable as an alternative. Alternative wind turbines that may result in fewer fatalities to birds or bats are not considered a proven technology that is feasible at a commercial scale at this time, and therefore are not a practicable alternative to the Proposed Action. Further analysis of other alternative forms of energy generation was considered but ultimately dismissed in this EIS. Justification is provided in Section 2.3.9. In this EIS, we analyze the potential for different levels of impacts based on different turbine sizes, but do not determine what level of energy must be generated; rather, we assess what level of impacts may occur due to those turbine sizes, whether the proposal meets criteria for an ETP, and what mitigation may therefore be necessary to obtain an ETP. Societal efforts to reduce energy use, conserve habitat from other negative impacts, or develop new energy distribution systems are likewise not within our authority and therefore not considered as alternatives to the Proposed Action. If conservation easements were required as part of issuing an ETP, we would, to the extent our authority would allow, consider how those impacts would affect other land uses (such as recreation) beyond those directly relevant to eagle conservation.

If a programmatic ETP is issued for the CCSM Phase I Project, it would be for a maximum of 5 years. Any subsequent ETP applications would be evaluated given the regulatory framework, biological information, and technological advances available at the time of the application.

#### 5.6.14 Bats

Six comments on the Draft EIS related to bats were received, including the following:

- Statements that PCW should commit to follow the American Wind Energy Association's voluntary operating protocol for bats, and that we should work with PCW, the Department of Energy, and other researchers currently conducting bat avoidance minimization research to see if the CCSM Phase I Project represents an opportunity to perform applied research to better understand bat mortality, risk, and minimization
- Identification of inconsistencies in the impact threshold criteria applied to bats
- One statement of concern about the bat fatality estimates provided in the Draft EIS

PCW has not committed to follow the American Wind Energy Association's voluntary operating protocol for bats. PCW has committed to numerous avoidance and minimization measures, as well as conservation measures and BMPs, to reduce impacts on bats. Many of these measures are described in Section 2.2.1.3.4 and are also included in the BBCS for the CCSM Phase I Project, provided as Attachment B.

We have no authority to require PCW to adhere to specific operating protocols for the protection of bats. In regards to the impact threshold criteria, we have added intensity and magnitude criteria to the discussion regarding operational impacts on bats from habitat degradation, fragmentation, and disruption/displacement to Section 3.6.3.2.2. We have also revised text in Section 3.6.3 to indicate that conservation easements and habitat enhancements do have beneficial impacts on bats.

Within Section 3.6.3.2.2, we provided additional discussion of the approach we have used to estimate bat fatalities for the CCSM Phase I Project, as well as the uncertainties within that estimate. In doing so, we have reviewed language to clarify and resolve potential inconsistencies in impact criteria. In order to provide a range of predicted fatality rather than a specific number, which is consistent with fatality estimates for birds (other than eagles), we have added the bat fatality estimate considered by the BLM in its FEIS for the CCSM Project to our Final EIS. The recommended caveats and cautions about the use of the fatality rate estimates have been retained in the text immediately following the estimate.

#### 5.6.15 Migratory Birds

We received 11 comments on the Draft EIS that provided input on migratory birds. These comments included the following:

- Several suggestions that impacts on migratory birds could be more significant than predicted in the Draft EIS
- Concerns that survey methods were inconsistent and did not adhere to USFWS standards
- Recommendations that when incidental take permits become available under the MBTA, PCW should be obligated to apply for one

- Identification of a discrepancy in the major impacts on passerines listed by Wyoming as Species of Greatest Conservation Need as characterized as being both regional and limited in extent
- Question as to why other migratory birds were being reviewed in this analysis unless they were being considered as prey or carrion

In Section 3.7.2.2, we provided additional discussion concerning avian surveys used, available baseline avian use data, and the approach taken to generate an estimate of the avian impacts from the CCSM Phase I Project, as well as the uncertainties of these data and our estimates. While we recognize that actual impacts could be greater than current estimates, due to the wide uncertainties, we have intentionally considered those uncertainties in the estimates provided in this Final EIS, to reduce the risk of understating the risk to migratory birds. We are confident that we have reasonably considered available information and potential methods to generate take estimates to inform the material provided in this Final EIS.

At this time, it is not possible for us to require PCW to obtain a permit for incidental take of migratory birds under the MBTA because no such permit is currently available. In 2015, the USFWS issued a Notice of Intent to develop regulations that would include provisions for authorizing the incidental take of migratory birds, but that proposal has not been finalized, and consequently the details of such process have not been defined. If a permit becomes available and the CCSM Phase I Project meets the criteria for the permit, it may be prudent for PCW to submit an application for a permit, which we would then be required to consider.

We reviewed and corrected discrepancies to impact descriptions within this EIS, where they were identified. Resources included in this EIS beyond bald and golden eagles (for example, water resources, vegetation and wetlands, mammals, and birds [other than eagles]) comprise the local habitat for eagles, influence eagle productivity and success, and are therefore relevant to the analysis on impacts on eagles from the CCSM Phase I Project. While some individual species of mammals and birds discussed in this EIS may not represent prey species or food sources, we would be remiss in our responsibilities not to disclose potential impacts on these trust resources, or to include new data relevant to the resource discussed. In response to comments received on the Draft EIS, we have reduced descriptions of certain elements of the proposed covered activities in Section 2.2.1.2, removing some redundant text and unnecessary detail while keeping the information needed for context and a complete analysis.

#### 5.6.16 Greater Sage-Grouse

We received 14 comments on the Draft EIS related to greater sage-grouse populations, including the following:

- Encouragement to review the sharp-tailed grouse and greater sage-grouse analysis in the Draft EIS for consistency with the recent Approved Resource Management Plan Amendment (ARMPA) and the Final Environmental Impacts Statement (FEIS) for the ARMPA that was completed in coordination between the BLM and USFWS.

- Suggestion that greater sage-grouse be evaluated in this Draft EIS only as a prey species for eagles because the project has already been reviewed and approved by the State of Wyoming Industrial Siting Council with regard to greater sage-grouse and the site is consistent with the Governor’s executive order for greater sage-grouse as it occurs outside any greater sage-grouse core area.
- Request for clarification regarding suspension of access by The Overland Trail Cattle Company (TOTCO) for hunting of greater sage-grouse under areas of its control.
- Suggestion that the description of “water development projects” and “mesic habitat improvements” are identical. If there are no other water development projects to which these two categories refer, the commenter suggested removing one of the categories of measures to avoid confusion.

Commenters also offered several suggestions for greater sage-grouse management that are listed below:

- Monitor the degree of displacement and reduced brood success in greater sage-grouse populations so that information can be used at other project locations
- Monitor the effectiveness of the core areas strategy for greater sage-grouse conservation and make changes if the population declines
- Recommend additional conservation measures, including habitat restoration, conservation, monitoring, and threat reduction for greater sage-grouse
- Review the impacts on greater sage-grouse from once-per-month monitoring activity and consider the burden this requirement places on Wyoming private landowners and the livestock industry
- Require monitoring of greater sage-grouse that is transparent to the public and interested conservation organizations

We have reviewed the Wyoming Greater Sage-Grouse ARMPA and added discussion of the ARMPA where appropriate in the EIS to clarify that the CCSM Phase I Project is consistent with the ARMPA goals and objectives. We also had the opportunity to meet and discuss this topic with the BLM since issuing the Draft EIS, and we identified specific locations in the EIS where language was added to increase consistency with the ARMPA. The potential impacts of the CCSM Phase I Project on greater sage-grouse as disclosed in this EIS are not changed in substance as a result of the project’s consistency with the ARMPA.

Additionally, in accordance with the Greater Sage-Grouse Conservation Plan developed by PCW and included in the BLM ROD, PCW will work with the BLM and WGFD to continue to “monitor sage grouse populations within the Ranch to assess population trends and behavioral response [to the project]...for five years post-construction. Monitoring will include annual lek counts in accordance with approved Wyoming Game and Fish Department protocols and a continuation of PCW’s GPS telemetry study.” We have included a brief description of the monitoring in Section 3.7.3.2.2 of the Final EIS. In addition, the BLM and WGFD will continue long-term and large-scale monitoring of sage-grouse population demographics throughout the species’ range in Wyoming. The level of transparency of the results of these studies will be determined cooperatively with the BLM, WGFD, and PCW.

Our analysis, based on available data, does not suggest that local extirpation of greater sage-grouse would occur as a result of the CCSM Phase I Project.

Throughout the Final EIS, we have removed all mention of water development projects and have replaced these where necessary with mesic habitat improvements, which is consistent with what is described in the Greater Sage-Grouse Conservation Plan.

In Section 3.7.3.2.2, we have added a discussion and analysis of impacts on greater sage-grouse due to the increased human activity during post-construction bird and bat fatality monitoring that would be required under an ETP. The post-construction bird and bat fatality monitoring described in the ECP and BBCS are the minimum efforts required to adequately monitor and analyze the impacts from the CCSM Phase I Project on birds and bats as required in the ETP and to guide successful and meaningful adaptive management. We do not find that the disturbance from monitoring, which would be one to two vehicles on 1 day per month during daylight hours, is substantially more of an impact than the presence, operation, and maintenance of the proposed CCSM Phase I Project. We also do not find that the impacts from monitoring, which would occur over 2 years, would be similar in scope to impacts from construction of the CCSM Phase I Project, which would occur over 4 years. We have not found that the post-construction monitoring would be a significant cause of exacerbation of impacts on greater sage-grouse associated with the CCSM Phase I Project.

In response to the comment that discussion of greater sage-grouse be reduced and restricted from the level of analysis provided in the Draft EIS, we believe the information we are providing in this Final EIS is appropriate given the role of greater sage-grouse as a potential eagle prey species and the potential impacts on that species.

#### 5.6.17 Other Wildlife

We received 14 comments on the Draft EIS that discussed impacts on other wildlife. These comments included the following:

- Suggestion that we reduce our analysis of impacts on ungulates beyond reviewing their role as prey or carrion.
- Suggestion that ungulates should be referred to only in the context of serving as carrion because eagles do not take adult ungulates but instead feed on carrion.
- Suggestion to characterize the impacts of the operation of the CCSM Phase I Project as less impactful on ungulates and other mammals than extensive oil and gas development due to greater spacing and the reduced need for road access; suggestion to note that the construction period is the most likely time period for impacts on ungulates to occur.
- Identification of a discrepancy in the possible acreage of long-term modification within mule deer crucial winter range. The Draft EIS indicates that these would be the same under Alternatives 1 and 3; however, Figure 3-4 shows a substantial number of turbines that would be developed under Alternative 1 but not Alternative 3. The commenter recommended that the Final EIS correct this or explain why the impacts would be the same under both alternatives.

- Suggestions that the Final EIS include additional information on the importance of the big game migratory routes that would be disrupted, to what extent the routes would be impacted, and whether mitigation could help avert consequences to these species and, therefore, to eagles.
- Recommendation that classification differences of the operation-based impacts of burrowing owls under Alternatives 1 and 3 be reconsidered. The commenter also noted potential calculation discrepancies in pygmy rabbit burrows and white-tailed prairie dog colonies under Alternatives 1 and 3.
- Concerns regarding our characterization of the methodology used to define the parameters of pocket gopher mounds and suggestion that the Final EIS acknowledge the science and professional judgment used by SWCA and the BLM in developing these parameters.
- Suggestion to remove references to medusahead because it is not found in the vicinity of the CCSM Phase I Project.

We recognize that the permits under consideration for issuance would authorize take only for eagles. Nonetheless, we believe that under our NEPA responsibilities, it is appropriate to share with the public what information we have about the direct, indirect, and cumulative impacts that might arise from the action that we believe may relate to wildlife resources beyond eagles. We have made numerous additions and corrections to text relating to wildlife based on commenter input, including to Sections 3.6.3.2.1, 3.6.3.2.2, 3.6.3.4.1, 3.6.3.4.2, 3.6.3.5.2, and 3.7.3.4.2.

To address comments about eagle preying on big game carrion, we have added “and carrion” to Section ES.3.5 in first sentence, and we have made this change where appropriate in Section 3.6, Mammals. We are confident in the intensity types selected for each impact criteria related to impacts on mammals. We also disclosed in Section 3.6 that studies have shown less displacement of big game in wind energy facilities than has been reported for oil and gas developments. However, given a paucity of data on big game responses to wind energy development, we feel it is prudent to include discussions of oil and gas development as a surrogate.

As described in Section 3.6.3, operation under Alternative 1 would result in long-term modifications to 256 acres of mule deer crucial winter range, and operation under Alternative 3 would affect 222 acres of mule deer crucial winter range. Although fewer turbines would operate under Alternative 3, most disturbance to crucial winter range for mule deer would be associated with the infrastructure components, as shown in Figure 3-4.

We are confident that the Final EIS appropriately describes suspected big game migration routes, their importance, and potential impacts on these migration routes, and therefore eagles, in Section 3.6.3.

We have classified impacts for burrowing owls the same under both Alternatives 1 and 3, and there are no differences to reconsider. We have checked the data for pygmy rabbit burrows and white-tailed prairie dog colonies and corrected the text as necessary in Chapter 3.0 of the Final EIS. It is important to note the buffers described in the text and to understand what infrastructure would be developed under Alternatives 1 and 3 when attempting to compare

the values with the figures. We also note that the scale of the figures may not allow the reader to confirm the numbers of small mammal colonies or burrows described in the text.

We have revised our discussion of operation impacts on big game and greater sage-grouse to include an analysis of impacts from post-construction bird and bat fatality monitoring. The post-construction bird and bat fatality monitoring described in the ECP and BBCS are the minimum efforts required to adequately monitor and analyze the impacts from the CCSM Phase I Project on birds and bats as required in the ETP and to guide successful and meaningful adaptive management. Furthermore, we have not found that the post-construction monitoring would have a substantial impact on big game and greater sage-grouse when considered in proportion to the construction and operation of the CCSM Phase I Project.

We are confident that the Final EIS appropriately describes the importance of and potential impacts on suspected big game migration routes, and therefore eagles, in Section 3.6.3, complete with all necessary impact criteria.

Discussion of whether pocket gopher mounds are more likely occupied by Wyoming pocket gopher or the more common northern pocket gopher is provided in Section 3.6.2.1.4. Griscom and Keinath (2010) developed a diagnostic tool to determine pocket gopher species occupancy by using easily measurable field variables. We are confident that the text in the Final EIS appropriately describes the decision criteria used by PCW's subcontractor (SWCA) when choosing the parameters for the diagnostic tool. The parameters used by SWCA were adopted in the Final EIS, including the appropriate caveats describing their derivation.

Discussion of medusahead has been removed from the Final EIS.

#### 5.6.18 Tribal Concerns

We received five comments on the Draft EIS related to tribal concerns. These included the following:

- Questions about the proposed project's impacts on cultural resources and environmental justice concerns related to Native Americans
- Request for opportunity for us to partner with area tribes on mitigation and monitoring with the creation of a tribal monitor position
- Concerning the handling of dead and injured eagles, a suggestion that appropriate representatives from tribes be offered the opportunity to ceremonially handle dead and injured eagles, including the use and creation of an in-state repository for dead eagles and a rehabilitation program for injured eagles
- Suggestion that priority be given to the Northern Arapahoe Tribe to use feathers and parts of any salvageable eagles that have been killed by wind turbines
- Concern over the tribal consultation process and timely, meaningful involvement of all interested tribes

We expect to continue to work with tribes and with PCW to explore various opportunities that might benefit tribal interests within the context of the regulatory permit conditions. For example, we are currently engaged in discussions with one tribe and PCW regarding the

potential for providing funding to develop capacity for a tribal eagle rehabilitation program. As new mitigation options are developed, some of these may also create opportunities for tribal involvement. We do not have the authority to require PCW to hire or create a position for a tribal monitor; however, we can provide this suggestion as a recommendation to PCW.

Several tribes have requested that salvageable eagles be sent directly to the tribes, with special interest from tribes with a current or historical connection to Wyoming or the specific area of the CCSM Phase I Project. However, in accordance with our regulations, salvageable eagles from the CCSM Phase I Project must be sent to the National Eagle Repository for subsequent distribution for use by Native Americans without regard to the geographic location of the request.

As noted above, following the close of the Draft EIS comment period, we became aware that notification of the availability of the Draft EIS did not go out to all potentially interested tribes as soon as intended. We heard from some tribes that they may not have had sufficient time to review and respond to the Draft EIS. Our consultation efforts with these tribes are ongoing.

#### 5.6.19 Additional Resource Areas

We received 14 comments on additional resource areas. Comments included the following:

- Recommendations that we analyze differences in habitat quality and/or importance between the Chokecherry Wind Development Area (WDA) and the Sierra Madre WDA, especially with regard to vegetation communities and habitat.
- Suggestions that we quantify and disclose the difference in the acreage of both wetland and riparian zones that would be impacted in each WDA, including jurisdictional and non-jurisdictional wetlands. This would help clarify some apparent discrepancies in the Draft EIS over the acreage of wetland impacts.
- Question regarding differences in analyses provided for Alternatives 1 and 3 in the number of turbines and acreage of developed measures. The commenter recommended that the analysis be expanded in the Final EIS to include additional habitat factors.
- Discussion of endangered species anticipated to be impacted by CCSM Phase I Project, including four federally listed fishes of the Upper Colorado River Basin that could be impacted by water depletions associated with the CCSM Phase I Project. These commenters suggested in a few differing contexts that we review and quantify water use associated with construction impacts for Alternatives 1 and 3 to ensure consistency with the Biological Opinion, which allows a maximum of 200 acre-feet of water consumption per year. Additionally, these commenters recommend disclosing our concurrence with the determination that the CCSM Phase I Project may affect and is likely to adversely affect endangered whooping crane, interior least tern, pallid sturgeon, and western prairie fringed orchid, or the threatened northern Great Plains population of the piping plover, in the central and lower Platte River. Finally, these commenters suggested that the Final EIS resolve or explain these differences in conclusions on the impacts on fish habitat and surface water quality.

Section 3.4.3.2 and 3.4.3.4, respectively, describe the differences in impacts to vegetation and habitat from Alternative 1, which would include both the Chokecherry and the Sierra Madre WDAs, and Alternative 3, which would include only the Sierra Madre WDA.

The amount of water use described in the Draft EIS was erroneous. The CCSM Phase I Project would require 336 acre-feet of water, total, during the 5 years of construction. This is estimated at no more than 105 acre-feet per year maximum, with far less during most years of construction. These water consumption estimates are, therefore, in compliance with our Biological Opinion. Water consumption estimates are not readily available for Alternative 3, but we have added text and a range of potential water usage amounts in the Final EIS to help assess impacts on water resources under each alternative.

The acreage of both wetland and riparian zones that would be impacted in each WDA, including jurisdictional and non-jurisdictional wetlands and the amounts of each vegetation type that would be subject to clearing and grading versus long-term modification under Alternative 3, is presented in Section 3.4 and Table 3-9. We have also revised our discussion of impacts on vegetation for Alternative 3 in the Final EIS to include similar analysis methods used for Alternative 1. Specifically, we have included a table and brief discussion in Section 3.4.3.4.1 to illustrate the change in acres of modification between Alternatives 1 and 3.

In Section 3.3.3.2.1 of the Final EIS we state our conclusion that the recovery program for endangered fish species in the Upper Colorado River basin adequately addresses effects on the species, and no additional conservation measures are needed to reduce impacts from the CCSM Project. Similarly, we concurred with BLM's *likely to adversely affect* determinations for Platte River species and critical habitat.

### 5.6.20 Cumulative Impacts

Cumulative impacts of the project were noted in 39 comments on the Draft EIS. These included the following:

- Several concerns that we did not offer a robust enough current and future analysis of the combined impact of the CCSM Phase I Project and other regional threats to eagle populations, including ongoing take in the EMU
- Suggestion to add future monitoring for cumulative impacts and the quantify ongoing take at the EMU level
- Requests for greater clarity on how eagle population estimates within the LAP are derived
- Suggestion that estimates and causes of golden eagle mortality are inadequate and do not take into account of USFWS's Bald and Golden Eagles Population Demographics and Estimation of Sustainable Take in the United States, 2016 Update (USFWS 2016c), which objectively quantifies causes of mortality (page 4-61) and states that electrocutions are not a leading cause of death for golden eagles
- Concern that the Draft EIS failed to account for certain threats known to be major contributors to golden eagle mortality, including rodenticide and lead poisoning

- Recommendation to include sagebrush in the cumulative impacts section due to its vulnerability to development, and to include reduced mule deer winter range impacts
- Suggestion to update discussion of recent fossil energy and mineral drilling, mining activity, and other wind energy projects in the area, and comment on the need to include a broader conversation about the cumulative positive impacts of wind energy on climate change

The LAP is determined by extrapolating the average density of eagles in the pertinent EMU to the LAP area, which is a 43-mile (bald eagle) or 140-mile (golden eagle) buffer around the boundaries of the CCSM Phase I Project. These distances are based on natal dispersal distances of each eagle species (see Section 2.1.2.3). We acknowledge two limitations in using the LAP method to regulate incidental take. First, eagle density estimates are derived from nesting or late-summer population surveys; therefore, estimates do not account for seasonal influxes of eagles that occur through migration and dispersal. Second, eagle density estimates are not uniform across the BCRs. Current LAP take thresholds allow us to authorize limited take of eagles while favoring eagle conservation in the face of the uncertainty. Given better information on resource selection, seasonal variation in density, and an improved understanding of seasonal changes in eagle density and population-specific movement patterns, we will refine the LAP analysis in the future to better assess potential impacts of projects. In addition, our ECP guidance (USFWS 2013, Appendix F) acknowledges that a refined approach should be used in the future in place of the assumption of uniform eagle density within the EMUs.

The cumulative estimates of eagle fatalities in Chapter 4.0 are based on data collected in databases maintained by both us and WGFD, and therefore are based on actual fatality observations. Although they are subject to numerous biases, as described in Section 4.4.6.6, they are the best available eagle fatality data for the state of Wyoming. The role of electrocutions as a leading cause of eagle fatalities is described in Section 3.8.3.2.2, noting that eagles account for the majority of bird electrocutions reported in several studies, and is shown in Table 4-15. Table 4-15 is specific to mortalities within the LAP boundary for golden eagles. Although poisoning and lead toxicosis are documented as causes of mortality in USFWS 2016c, the results are based on satellite-tagged golden eagles throughout North America. Consequently, the LAP data (which includes “unknown” and “other” categories that could include poisoning and lead toxicosis) was used as the best source of relevant information for the projected impacts analysis.

All projects requiring an eagle take permit will conduct regular monitoring to evaluate direct impacts to golden and bald eagles, and the monitoring results would be available to the public. Monitoring is intended to identify if actual eagle take is on a trend to exceed take thresholds and additional actions might be necessary to prevent unanticipated cumulative impacts to these species. Monitoring results may also document impacts to other sensitive and protected bird species.

Additional analysis was conducted and documented in Section 4.4.4 to review potential impacts to mule deer crucial winter range. Section 4.3.1.5.4 and Table 4-4 were updated to account for recent economic changes affecting mineral and fossil energy projects. Table 4-2 was updated with changes in existing and reasonably foreseeable future wind energy

projects. Sections of the Final EIS have been revised to incorporate additional information on cumulative effects in consideration of the contribution of wind energy projects, especially relative to global climate change. Discussion was added to relevant resources eliminated from detailed evaluation in Chapter 3.0 (Sections 3.2.6, 3.2.13, and 3.2.14), as well as to relevant resources evaluated in Chapter 4.0 (Sections 4.3.1.5.5, 4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5.5, and 4.4.6.5).

Sections 4.3.1, 4.4.1, 4.4.2, 4.4.3, 4.4.6.6.1, 4.4.6.6.2, 4.4.5, and 4.4.7 of the Final EIS have also been revised to reflect updated information provided by commenters regarding the status of past, present, and reasonably foreseeable future activities.

### 5.6.21 Statements of Support

We received 19 statements of support for Alternatives 1 or 2. Reasons for support included the following:

- Economic improvement, including jobs, tax revenues, and other economic opportunities that the CCSM Phase I Project will bring to Carbon County
- Support for eagle protection measures and number of birds estimated for take
- Support for renewable and clean energy developments
- Support for the adaptive management and additional monitoring as stipulations for the ETP
- Support for continued partnership with the USFWS

We noted all of the statements of support for various alternatives and for the proposed CCSM Phase I Project.

### 5.6.22 Statements of Opposition

We received 12 statements of opposition to the CCSM Phase I Project based on concerns about eagle fatalities. Several commenters suggested that wind energy projects should not receive priority over wildlife conservation. Another commenter suggested that engineers design a bird-friendly generator in its place. We noted all of the statements of opposition.