Record of Decision

for Eagle Take Permits for the Chokecherry and Sierra Madre Phase I Wind Energy Project

U.S. Fish and Wildlife Service
Mountain-Prairie Region

January 2017

Record of Decision

1.0 Introduction

This Record of Decision (ROD) was prepared by the U.S. Fish and Wildlife Service (USFWS) in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [U.S.C.] 4321 et seq.). The purpose of this ROD is to document the decision of the USFWS to issue both a standard and a programmatic Eagle Take Permit (ETP) for the Chokecherry and Sierra Madre Phase I Wind Energy Project (CCSM Phase I Project) for non-purposeful take of bald and golden eagles that is incidental to otherwise lawful activities under the Bald and Golden Eagle Protection Act (BGEPA) for construction and operational activities associated with the CCSM Phase I Project. The NEPA documentation was prepared in response to an application from the Power Company of Wyoming LLC (PCW), containing an Eagle Conservation Plan (ECP). The ECP applies to both the standard ETP (for construction activities), and the programmatic ETP (for operational activities).

This ROD: (1) documents the USFWS decision and presents the rationale for the decision; (2) identifies the alternatives considered in the Draft and Final Environmental Impact Statement (EIS) in reaching the decision; and (3) states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not (40 Code of Federal Regulations [CFR]§ 1505.2).

The USFWS has based its decision on the analysis completed in the Draft EIS and appendices released on April 29, 2016 (81 FR 25688-25690), and the Final EIS and appendices released on December 9, 2016 (81 FR 89133). In making our decision, we incorporated information and analysis performed by the Bureau of Land Management (BLM).

2.0 Background

About half of the CCSM Project would be located on federal lands and would require a right-of-way grant from the BLM. The BLM NEPA review for the right-of-way grant is a tiered review. In 2012, the BLM completed a Final EIS and a Record of Decision (BLM 2012a, 2012b) for the CCSM Project as it was proposed to them at that time, a 2,000 to 3,000 megawatt wind development consisting of up to 1,000 wind turbines over 209,707 acres in the Sierra Madre and Chokecherry Wind Development Areas (WDAs). The WDAs encompassed the CCSM Phase I Project and included additional lands east of the CCSM Phase I Project.

Starting in late 2013, the BLM began conducting detailed NEPA review of PCW's (or the applicant's) site-specific plans of development for the CCSM Phase I Project, which includes the development of approximately 500 wind turbines and a variety of supporting infrastructure, in the form of two Environmental Assessments (EAs). The first EA, called EA1 and titled "Environmental Assessment for Infrastructure Components: Phase I Haul

Road and Facilities, West Sinclair Rail Facility, and Road Rock Quarry," was finalized in December 2014 (BLM 2014). The second EA, called EA2 and titled "Environmental Assessment for Phase I Wind Turbine Development," is for the 500 wind turbines and pads, access roads, and associated components for the CCSM Phase I Project (BLM 2016). The CCSM Phase II Project, which is not part of this permit action but could be proposed at a later date, would consist of up to an additional 500 wind turbines east of the Phase I WDAs.

We have an independent obligation to comply with NEPA. The analysis in our Draft and Final EIS incorporates by reference many portions of BLM's documents in accordance with 40 CFR 1502.21. Our Draft and Final EIS explicitly state what documents are incorporated by reference wherever that occurs and describe the information that we have determined to be adequate for our analysis. New analysis provided in the USFWS Draft and Final EIS focuses primarily on eagles and related resources (such as habitat and prey), as well as migratory birds and other wildlife that would potentially be affected by our decision to issue ETPs, including compensatory mitigation, for the CCSM Phase I Project. Although we have prepared a separate NEPA document for the CCSM Phase I Project, we coordinated closely with the BLM.

3.0 Purpose and Need

On June 16, 2015, PCW applied for two ETPs: a standard ETP for eagle take associated with construction of the wind turbine development and infrastructure components for the CCSM Phase I Project, and a programmatic ETP for eagle take associated with operation of the CCSM Phase I Project. PCW's Eagle Conservation Plan (ECP), provided in Attachment A to the Draft and Final EIS, is the foundation of PCW's ETP application.

We, the USFWS, are obligated to review the application package, complete the associated NEPA process, identify a Preferred Alternative, and decide whether or not to issue ETPs under BGEPA for the CCSM Phase I Project. To issue ETPs, we must determine that the CCSM Phase I Project is consistent with the BGEPA regulatory standards, defined in applicable regulations as maintaining stable or increasing breeding populations of bald and golden eagles. In making this determination, we have endeavored to follow Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States.

4.0 Description of the CCSM Phase I Project

The CCSM Phase I Project would include up to 500 wind turbines in the western portions of the Chokecherry and Sierra Madre WDAs. The northern portion of the proposed project is termed Chokecherry, and the southern portion is termed Sierra Madre. PCW would construct 202 turbines within the Chokecherry WDA and 298 turbines in the Sierra Madre WDA. In addition to the turbines, the Phase I wind turbine development would include roads, laydown yards (including a temporary construction camp and parking areas), electrical systems (including electrical lines and substations), water facilities, operation and maintenance

buildings, meteorological towers, utilities, and other temporary features. PCW would also construct the following infrastructure components that would be covered by the ETPs:

- Phase I Haul Road (Haul Road) and Facilities: The Haul Road would begin at the North Entrance to the CCSM Phase I Project area, off of I-80, connect to the West Sinclair Rail Facility, and continue south through the center of the Chokecherry and Sierra Madre WDAs. Associated facilities would include access roads, water stations, a water extraction facility (including pump stations and buried water pipeline), and laydown yards.
- West Sinclair Rail Facility: The West Sinclair Rail Facility would consist of a rail connection to the Union Pacific Railroad main line between Rawlins and Sinclair, consisting of approximately 14 miles of new track. The facility would include a laydown area and an access road.
- Road Rock Quarry: The Road Rock Quarry would provide a local source of aggregate and most of the road construction material for the CCSM Phase I Project. The quarry would be within the Chokecherry WDA and would include the excavation area, material processing area, material storage piles, and a 5-mile-long quarry access road.

Construction of certain of the infrastructure components, beginning with Phase I Haul Road and Facilities and the West Sinclair Rail Facility, began in 2016 when BLM issued a limited right-of-way grant and notice to proceed for these facilities. We concurred on August 9, 2016, that with the BLM's measures in place, initiation of the specific activities to be authorized by these BLM actions was not likely to take bald or golden eagles and that no ETP was required for initiating these activities. Construction activities that have the potential for take of eagles, including disturbance take, were not included in that BLM authorization, and would be the subject of the standard ETP applied for by PCW. Construction of the infrastructure components is expected to continue through 2018. PCW would install turbines in 2018 to 2020, beginning with Phase I of the Sierra Madre WDA. The peak construction workforce is anticipated to be up to 761 workers in 2018. The construction schedule would comply with the requirements of the BLM NEPA process and with applicable wildlife timing stipulations.

The CCSM Phase I Project would include implementation of bird and bat conservation strategy, conservation measures, best management practices (BMPs), and adaptive management to assist in the avoidance and minimization of impacts to bald and golden eagles and other species, and compensatory mitigation for unavoidable take of eagles. Additionally, monitoring of eagle fatalities would be conducted, and the results would be documented to assistant in the evaluation of ETP compliance. Adaptive management would be applied to adjust operational practices when take of eagles is determined to be approaching permit limits.

5.0 Alternatives

5.1 Alternatives Considered and Dismissed

Fourteen conceptual alternatives were identified during preparation of the Draft and Final EIS. We developed the following screening criteria to determine the alternatives that would be considered in full:

- Meet the purpose and need
  - Be consistent with BGEPA regulatory standards
  - Endeavor to follow Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States while protecting and enhancing the Nation's water, wildlife, and other natural resources
- Pose a clear choice for the decision maker
- Be reasonable
  - Be consistent with laws and regulations
  - Be technically feasible (that is, would use commercially available technology)
  - Be implementable by the project proponent
  - Represent an action for which we could issue Eagle Take Permits

Ten alternatives were eliminated from further analysis because they did not meet the screening criteria. The ten alternatives considered but not analyzed in detail were the following:

(1) Full Site Build out (1,000 Turbines)
(2) Variable Eagle Take Permit Durations
(3) Macrositing (Consideration of Development Outside of CCSM Boundaries)
(4) Macrositing (Adjustments to Turbine Numbers and Layouts within CCSM Boundaries)
(5) Additional Avoidance and Mitigation Measures
(6) Certain Compensatory Mitigation Measures (Expand Captive Eagle Breeding Program; Increase Public Education; Research; Mitigation Banks)
(7) Monitoring (Other than that in the Eagle Conservation Plan)
(8) Adaptive Management Strategies
(9) Different Technologies
(10) Issue Either Standard Eagle Take Permit or Programmatic Eagle Take Permit

Four alternatives were carried forward and analyzed in the Draft and Final EIS. Each of these alternatives is summarized below.

5.2 Alternatives Carried Forward for Detailed Analysis

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

Alternative 1 (Proposed Action) is for the USFWS to issue two ETPs for the CCSM Phase I Project based on the ETP application. The standard ETP would cover the activities that would result in the unavoidable disturbance of eagles (including nest disturbance) during the construction of the infrastructure components and Phase I wind turbine development. The programmatic ETP would cover the ongoing take of eagles that is projected to occur during the operation of the CCSM Phase I Project.

Eagle Fatality Predictions: We used a peer-reviewed model to predict the annual fatality rate for bald and golden eagles for the CCSM Phase I Project. The model incorporates site-specific values such as eagle use data collected during pre-construction monitoring efforts, turbine rotor radius, and the number of daylight hours in a year that turbines could be spinning when eagles may be active. Our model also incorporates exposure rates and collision probability for eagles based on data collected at existing wind energy facilities.

We used our eagle fatality prediction model to estimate programmatic eagle take for bald and golden eagles separately, as described in Section 2.2.1.3.3 and Attachment C of the Draft and Final EIS. Because the wind turbine blade diameter has not been finalized, the fatality modeling for the CCSM Phase I Project used rotor diameters of 338 feet (103 meters) and 394 feet (120 meters), which would likely be the smallest and largest sizes used. The estimated annual take for the 120-meter-diameter turbine would be 2 bald eagles and 14 golden eagles. The estimated annual take for the 103-meter-diameter turbine would be 1 bald eagle and 10 golden eagles. The different eagle take predictions do not represent a "range" or an uncertainty factor, but rather are specific take predictions for those two turbine diameters. If the programmatic ETP is granted, PCW would provide us with the exact turbine blade diameter, and the predicted annual eagle take would be recalculated accordingly.

The standard permit would cover any disturbance take that occurs at four golden eagle nests and one bald eagle nest until construction is completed. Disturbance take would include injury to eagles at these nests, any reduction of productivity at these nests, or abandonment of these nests. Because all nests could be occupied during construction by eagle pairs, the maximum potential disturbance take that could occur annually is 8 golden eagles and 2 bald eagles. PCW will monitor these nests to determine whether a disturbance take occurs during construction activities. If a disturbance take of a golden eagle occurs, the permit would require PCW to offset that take by retrofitting power poles in the same manner as described under the programmatic permit. Other avoidance and minimization measures may also be required should a disturbance take occur. The term of the standard ETP would extend from the time it is issued through construction (until the first turbine is operating), but would not exceed 5 years.

Compensatory Mitigation: PCW would retrofit high-risk power poles within the four Bird Conservation Regions (BCRs) contiguous with the CCSM Phase I Project to compensate for

predicted golden eagle fatalities during wind facility operations. The four BCRs are the Eagle Management Unit (EMU) for golden eagles potentially impacted by the Proposed Action.

Several cooperating agencies and scoping comments expressed a preference for retrofitting power poles near the CCSM Phase I Project area, in particular within Carbon County. Retrofitting power poles with a high risk of avian electrocution in accordance with Avian Power Line Interaction Committee (APLIC) guidelines is the only form of compensatory mitigation for eagle take that has been approved by the USFWS at this time, though other mitigation approaches are considered under Alternative 2. We will continue to explore additional forms of mitigation. As discussed in Section 2.2.1.4.5 of the FEIS, the number of power pole retrofits that would be needed to offset the take of golden eagles from Alternative 1 of the CCSM Phase I Project would be between 1,492 and 3,778, depending on the turbine blade diameter and the number of years for which the retrofit would prevent loss of eagles. PCW would work with us and with utilities to identify power poles with high risk to eagles and then develop a power pole retrofit plan for our approval before we would issue the programmatic ETP.

5.2.2 Alternative 2 – Proposed Action with Different Mitigation

Under Alternative 2, we would issue to PCW a standard ETP for disturbance during construction of the Phase I wind turbine development and infrastructure components for the CCSM Phase I Project, and a programmatic ETP for operation of the CCSM Phase I Project, as described under Alternative 1 (Proposed Action). The net effect on eagles would be the same as under Alternative 1. However, under Alternative 2, we would require PCW to implement a different form of compensatory mitigation within the four BCRs contiguous with the CCSM Phase I Project than proposed in its programmatic ETP application. Compensatory mitigation can address pre-existing causes of eagle mortality, such as eagle electrocutions from power poles, or it can address increasing the carrying capacity of the eagle population in the affected EMU. PCW has indicated in its programmatic ETP application that it would perform power pole retrofits, which would reduce the risk of mortality from existing transmission lines. We considered the following forms of different mitigation and evaluated their applicability and effectiveness in providing for compensatory mitigation for predicted golden eagle take:

- Mitigation of older wind facilities
- Lead abatement
- Carcass removal
- Carcass avoidance
- Wind conservation easement
- Habitat enhancement, with prey enhancement as an essential component
- Rehabilitation of injured eagles

PCW has stated that it would be willing to consider one or more alternative compensatory mitigation measures, either in place of or in addition to power pole retrofits, if the USFWS quantifies the benefit of the mitigation measure to eagles and approves the use of these measures as mitigation for the CCSM Phase I Project. If additional compensatory mitigation measures are approved in the future, we would evaluate the use of those measures for this

CCSM Phase I Project. However, for us to accept a potential compensatory mitigation option when issuing a programmatic ETP, we would need scientifically supportable evidence as a foundation for the conclusion that implementing the alternative compensatory mitigation action would achieve the desired beneficial offset in mortality or an increase in productivity.

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

We received numerous comments during the EIS scoping process requesting that we examine a different development scenario from the one proposed by PCW as part of Alternative 1 (Proposed Action). However, an ETP application identifies a selected layout of turbines, and the USFWS responds with a review of impacts in the proposed configuration to estimate a level of eagle take. In other words, we must analyze a project with specific wind turbines and layout rather than issuing a permit allowing a level of take and then devising a project layout to meet that permit.

During the ETP application review and the associated NEPA processes, it was possible that we would determine that the application would meet the criteria for issuing ETPs, but not at the scale of the proposed project, and the applicant would need to present an alternative project scenario. Consequently, a project with fewer turbines which could result in fewer impacts and meet criteria for issuing ETPs was selected for review. Therefore, we considered Alternative 3 (Issue ETPs for Only the Sierra Madre Portion of the CCSM Phase I Project) as an example of a different development scenario. In other words, Alternative 3 would be eligible for selection only if we were to determine that Alternative 1 (Proposed Action) does not meet regulatory criteria for a programmatic ETP. If, after review of the programmatic ETP application and completion of the NEPA process, we would determine that Alternative 1 meets ETP criteria, Alternative 3 would not be selected.

Activities covered under the standard and programmatic ETPs for Alternative 3 would include the Phase I activities related to only the Sierra Madre WDA and all infrastructure components of the CCSM Phase I Project. Phase I of the Sierra Madre WDA would include 298 turbines, roads, electrical systems (including electrical lines and substations), operation and maintenance buildings, meteorological towers, utilities, and temporary features within the Sierra Madre portion of the Phase I boundary. Alternative 3 would include 27 percent less initial clearing and grading areas than under Alternative 1, 22 percent less long-term modification areas than under Alternative 1, and 35 percent less activity areas than under Alternative 1.

Eagle Fatality Predictions: Using our eagle fatality model, we estimated programmatic eagle take for bald and golden eagles for Alternative 3. The estimated annual take for the 120-meter-diameter turbine would be 1 bald eagle and 10 golden eagles. The estimated annual take for the 103-meter-diameter turbine would be 1 bald eagle and 7 golden eagles. The two predictions are specific to the two turbine diameters and do not represent a "range" or uncertainty factor. If a programmatic ETP is granted and Alternative 3 is selected, the actual predicted take would be determined by the actual turbine blade size used.

The standard ETP for Alternative 3 would cover the same disturbance take as Alternative 1, which would be 2 bald eagles at one nest and 8 golden eagles at four nests on an annual basis until project construction is completed.

Compensatory Mitigation: The number of power pole retrofits that would be needed to offset the take of golden eagles from the CCSM Phase I Project would be between 1,015 and 2,556, depending on the turbine blade diameter and the number of years for which the retrofit would prevent loss of eagles. The actual level of mitigation required would be based on the actual predicted take, the turbine size selected, and the duration the retrofit would prevent eagle loss.

5.2.4 Alternative 4 – No Action: Denial of ETPs

Under Alternative 4, we would deny PCW standard and programmatic ETPs for construction and operation of the CCSM Phase I Project. We could deny the ETPs because the permit application failed to meet criteria under 50 CFR 22.26 or because we have determined that the risk to eagles is so low that ETPs are unnecessary. ETPs are not required in order for PCW to construct and operate a wind energy facility. However, any unpermitted eagle take, if it occurs, would constitute a violation of BGEPA.

If we deny or do not issue ETPs to PCW for the proposed project, PCW may take one of two actions: PCW may decide not to construct the proposed project, which we refer to as the No Build scenario, or PCW may construct the proposed project, as approved by the BLM and other permitting agencies, without ETPs and without adhering to an ECP, which we refer to as the Build Without ETPs scenario.

Under the No Build scenario, no wind turbines or infrastructure components would be constructed, and the ECP would not be implemented. PCW's purpose of generating 1,500 megawatts (MW) of electricity from wind from the CCSM Phase I Project to serve 790,000 households in California, Nevada, and Arizona to help meet the renewable energy mandates of these states would not be met, nor would the goal of Secretarial Order 3285 be met. If not constructed, the CCSM Phase I Project would not contribute direct, indirect or cumulative impacts to the resources assessed in the Draft and Final EIS.

Under the Build without ETPs scenario, PCW would build the CCSM Phase I Project as described in the BLM-approved site-specific plans of development for the project, but we assume that our permit stipulations would not be implemented, including monitoring, adaptive management, compensatory mitigation, and experimental advanced conservation practices. PCW would still be required to comply with BGEPA, and we could make a referral to the U.S. Department of Justice that PCW be prosecuted for any bald and golden eagles taken without a permit.

We note that PCW may also choose to construct the project and voluntarily adhere to the proposed ECP, even without an ETP. In this case, impacts would be sufficiently similar to Alternative 1 that we decided not to analyze that scenario separately in the EIS.

5.3 Selected Alternative

The USFWS's decision is to adopt the Proposed Action (Alternative 1) and issue both a standard and a programmatic ETP for the CCSM Phase I Project. Alternative 1 best fulfills the agency's statutory mission and responsibilities while meeting the purpose and need. We have determined that the CCSM Phase I Project is consistent with the BGEPA regulatory standards, currently defined as maintaining stable or increasing breeding populations of bald and golden eagles. In making this determination, we have endeavored to follow Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States. This decision is based on the review of the alternatives and their environmental consequences described in the Draft EIS and Final EIS, indicating the following:

1. Issuing a standard and a programmatic ETP for the CCSM Phase I Project is consistent with the BGEPA regulatory standards, currently defined as maintaining stable or increasing breeding populations of bald and golden eagles.

2. Issuing a standard and a programmatic ETP for the CCSM Phase I Project is consistent with Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States.

3. The standard ETP will cover disturbance take of 2 bald eagles at one nest and 8 golden eagles at four nests on an annual basis until project construction is completed. Disturbance take would include injury to eagles at these nests, any reduction of productivity at these nests, or abandonment of these nests.

4. The programmatic ETP will cover the annual take of 2 bald eagles and 14 golden eagles if PCW determines that 120-meter-diameter turbines will be installed for the CCSM Phase I Project. However, the programmatic ETP will cover the annual take of 1 bald eagle and 10 golden eagles if PCW determines that 103-meter-diameter turbines will be installed for the CCSM Phase I Project. PCW will not install turbines that are greater than 120 meters in diameter and will provide the USFWS with the turbine blade diameters to be installed as part of the CCSM Phase I Project prior to permit issuance. USFWS will include the predicted annual eagle take in the programmatic ETP.

5. Compensatory mitigation for the take of golden eagles under the programmatic ETP will be required. Retrofitting power poles with a high risk of avian electrocution in accordance with APLIC guidelines is the only form of compensatory mitigation for which we are able to quantify the benefits to eagles with reasonable certainty at this time. PCW will retrofit high-risk power poles within the four BCRs contiguous with the CCSM Phase I Project. Using available information concerning the rate at which golden eagles are likely to be electrocuted by power lines, the USFWS will require PCW to retrofit between 1,492 and 3,778 power poles to offset the take of golden eagles from the CCSM Phase I Project, depending on the final amount of eagle take permitted and the expected duration of the type of power pole retrofits completed.

PCW will identify power poles that are a high risk to eagles and then develop a power pole retrofit plan for our approval before we issue the programmatic ETP. We will only accept a valid power pole retrofit plan that identifies and prioritizes existing high-risk power poles, with a commitment to conduct the retrofitting work. This does not include PCW's own power poles which will be built and operated in accordance with APLIC guidelines. The retrofits that would occur under the mitigation plan will need to be documented as a quantifiable benefit. To be a quantifiable benefit, the power pole retrofit plan must identify a schedule for power pole retrofits that the USFWS agrees is appropriate to address existing high risk poles without PCW's mitigation, and then demonstrate that PCW's mitigation quantifiably accelerates that schedule to provide added benefit to eagles. The power pole retrofit plan must also include measures to monitor and document that retrofits are completed and maintained appropriately. Although all required power pole retrofit mitigation would not have to be complete prior to USFWS issuing the programmatic ETP, power pole retrofits must be completed at a rate such that sufficient mitigation has been accomplished to exceed any eagle fatalities before they actually occur, in order to remain in compliance with the programmatic ETP.

6. Post-construction monitoring will be required to evaluate the appropriateness of our fatality estimates and confirm that the actual number of eagle deaths does not exceed the permitted level of take. The monitoring will be performed in accordance with PCW's ECP. The programmatic ETP will specify additional required measures, including the process of reporting fatalities to the USFWS and an adaptive management process. The monitoring and reporting of eagle fatalities, and adjusting conditions through an adaptive management process, reduce our uncertainty and increases our confidence that our decision will be consistent with the eagle preservations standard.

5.4 Environmentally Preferable Alternative

NEPA regulations require Federal agencies to specify "the alternative or alternatives which were considered to be "environmentally preferable" (40 CFR 1505.2(b)). Based on the analysis of alternatives presented in the Final EIS, the USFWS finds that Alternative 3 (Issue ETPs for Only the Sierra Madre Portion of the CCSM Phase I Project) and the No Build option of Alternative 4 (No Action: Denial of ETPs) are the Environmentally Preferable Alternatives.

As described in the Final EIS, the USFWS will not authorize any additional take of golden eagles without requiring compensatory mitigation that assures us that the net effect on the golden eagle population is zero. Consequently, although different numbers of golden eagles may be taken under different alternatives, the environmental consequences to the golden eagle population is anticipated to remain the same under each alternative. However, the Final EIS identifies a broad range of impacts to resources other than eagles from construction and operation of the CCSM Phase I Project that would be substantially different among the alternatives.

Compared to the other action alternatives, Alternative 3 would result in less overall resource disturbance than Alternative 1 (Proposed Action: Issue ETPs for Phase I Wind Turbine Development and Infrastructure Components) and Alternative 2 (Proposed Action with Different Mitigation), because only 298 turbine locations with connecting infrastructure would be constructed (see Section 4.2.3 for further details). This would result in less overall disturbance to habitat, and decreased take of bats, migratory birds, and other unmitigated resources from turbine operation. Predicted eagle takes would be reduced to 1 bald eagle fatality and 7 or 10 golden eagle fatalities per year, for which only the golden eagle take would receive compensatory mitigation. The reduced number of turbines would also result in less energy from this wind project, which would mean a lost opportunity to reduce greenhouse gas emissions if the same amount of energy is then generated from fossil fuels. However, as discussed in the Final EIS, this benefit is difficult to quantify.

The Alternative 4 No Build option would result in no construction or operation impacts from developing the proposed CCSM Phase I Project, and as a result, no eagle takes would occur from the construction and operation of the turbines. Nor would impacts to other resources occur, including take of bats and other migratory birds from turbine operations. Not building and operating the CCSM Phase I Project would also result in less energy from this wind project, which would mean a lost opportunity to reduce greenhouse gas emissions if the same amount of energy is then generated from fossil fuels. However, as discussed in the Final EIS, this benefit is difficult to quantify.

We also note that Alternative 4 is defined as Denial of ETPs. It is not within the USFWS's authority to enforce the No Build scenario under Alternative 4. If PCW decided to build the CCSM Phase I Project without ETPs, and therefore did not implement mitigation, monitoring, or other conservation measures described in the ECP, then Alternative 4 would not result in an Environmentally Preferable Alternative.

5.5 Rationale for Decision

The USFWS's decision is to implement the Proposed Action (Alternative 1), and issue both a standard and a programmatic eagle take permit for the CCSM Phase I Project. We recognize Alternative 1 will result in impacts to eagles; however, we have determined that all practicable means to avoid or minimize environmental harm from the Proposed Action (Alternative 1) have been implemented. We anticipate that the commitments from PCW in the ECP and the Bird and Bat Conservation Strategy, coupled with the required compensatory mitigation, will address and offset impacts to eagles, resulting in stable or increasing eagle populations. To address future uncertainty, we may implement an adaptive management strategy based on post-construction monitoring results and require operational adjustments to account for actual take if it has potential to exceed the permitted take.

Alternative 2 would involve implementation of various compensatory mitigations for impacts to eagles and other resources. However, under Alternative 2, we would need scientifically supportable evidence as a foundation for the conclusion that implementing the alternative compensatory mitigation action would achieve the desired beneficial offset in mortality or carrying capacity. That means that even if a potential compensatory mitigation option has many qualitative beneficial impacts, we would have to quantify the actual number of eagles

saved by each particular mitigation option in order to establish the validity of the particular mitigation. Consequently, because there currently aren't quantifiable data to account for eagle take mitigation, we can't implement this alternative at this time.

As described in the Final EIS, we considered Alternative 3 as an example of a different development scenario and stated that Alternative 3 would be eligible for selection only if we were to determine that Alternative 1 does not meet regulatory criteria for a standard ETP and a programmatic ETP. Because we have determined that Alternative 1 meets regulatory criteria, we did not select Alternative 3.

Alternative 4, denial of the permit application, was not selected because the USFWS has determined that Alternative 1 meets ETP issuance criteria. Additionally, denial of the permit application would be inconsistent with Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States. However, we may amend, suspend, or revoke a programmatic permit if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary to safeguard local or regional eagle populations.

In summary, we have selected Alternative 1 because we have determined that PCW's ETP permit application for the CCSM Phase I Project meets permit issuance criteria, as long as specific conditions are met. We do not believe Alternative 2 meets ETP issuance criteria, due to lack of quantifiable data concerning the mitigations options described in that alternative. The benefits of Alternative 3 and the Alternative 4 No Build scenario would be achieved only by denying the ETP permit applications we have received, and we have identified no basis for denial.

6.0 Summary of Potential Effects

6.1 Introduction

Emphasis in our Draft and Final EIS is on biological resources, with other resources described and evaluated in detail with regard to their potential for affecting or being affected by the take of bald and golden eagles and other special status species. This focused analysis provided the basis for our decision to issue standard and programmatic ETPs.

The resources evaluated in full in the EIS are water resources; vegetation and wetlands; fish, amphibians, and reptiles; mammals; birds (other than eagles); eagles; and cultural resources. Each of these topics was evaluated in the BLM Final EIS and ROD, EA1, and EA2, and we have addressed each of these resources in greater detail in our EIS for one or more of the following reasons:

- The resource is the subject of our decision to be made regarding potentially issuing standard and programmatic ETPs (that is, eagles because we are permitting take of eagles).

- The resource falls under our trust responsibilities as a result of another federal regulation (such as most birds, for example, because of the Migratory Bird Treaty Act or Endangered Species Act).
- The topic requires discussion to provide background for resources under our jurisdiction (for example, resources that serve as habitat or prey for eagles).

We defined the impact criteria for each resource to evaluate the level of impact of the Proposed Action and alternatives. Impacts were categorized by magnitude, duration, potential to occur, and geographic extent. Within these categories, impact types were defined for each resource, as shown in the impact criteria tables in Chapter 3.0 of the Final EIS.

6.2 Water Resources

Water resources influence habitat for eagle prey species, special status species, and migratory birds. The impact criteria for water resources are defined in Chapter 3.0, Table 3-3 of the Final EIS. Under Alternative 1 (Proposed Action), construction would result in probable, minor to moderate, temporary to long-term impacts on water resources over a limited area due to increased surface runoff, increased erosion, and stream channel instability. Surface water use would have a probable, minor impact over an extensive area that would be temporary (during construction) on prey resources for eagles and on the Colorado and Platte River systems as it applies to Endangered Species Act recovery programs. Potential hazardous materials spills and use of magnesium chloride for dust control could result in possible, minor, temporary impacts on surface water quality over a limited area during construction and operation. Operation under Alternative 1 would result in probable, minor, long-term impacts on water resources over a limited area due to localized increases in erosion and channel instability.

6.3 Vegetation and Wetlands

Vegetation and wetlands provide habitat for eagles, eagle prey species, special status species, and migratory birds. The impact criteria for vegetation and wetlands are defined in Chapter 3.0, Table 3-8 of the Final EIS. Construction of Alternative 1 would affect vegetation communities both directly and indirectly through clearing, grading, cutting, partial cutting, fragmentation, or long-term modification of vegetated areas. The magnitude and duration of impacts would be highest in riparian/mesic lowlands, sagebrush, riparian woodlands, and wetlands. The potential spread of noxious weeds and invasive plants during construction would be limited by weed control measures and site-specific reclamation techniques to probable, minor, medium-term impacts at and immediately adjacent to surface modification areas. During operation under Alternative 1, with implementation of BMPs such as dust control, erosion control, weed management, and reclamation, impacts on vegetation, wetlands, and riparian zones would be negligible. Habitat improvement and reclamation, as proposed in the sage grouse conservation plan, would have probable moderate to major,[1] long-term, regionally beneficial effects on vegetation and wetlands.

[1] For vegetation and wetlands, major is defined as an action that would noticeably change the amount or condition of vegetation or wetlands in the study area. Major beneficial impacts would result in a large

6.4 Fish, Amphibians, and Reptiles

Many of the fish, amphibian, and reptile species present in the CCSM Phase I development and infrastructure areas are prey for eagles and migratory birds. The impact criteria for fish, amphibians, and reptiles are defined in Chapter 3.0, Table 3-12 of the Final EIS. Construction would result in temporary to long-term impacts on amphibian and reptile habitat, and the crossing of streams could directly impact fish, amphibians, and reptiles. Construction-caused disruption, displacement, and fatality would likely result in probable, minor, temporary to medium-term impacts on amphibians and reptiles in a limited area. Surface water use would have a probable, minor, temporary impact over an extensive area on the pallid sturgeon and on fish habitat in the North Platte River. Operation of the CCSM Phase I Project would result in fewer direct and indirect impacts on amphibians and reptiles and aquatic habitat. BMPs would minimize habitat alteration and degradation.

6.5 Mammals

Many mammals found in the Phase I infrastructure and development areas provide prey and carrion for eagles, particularly prairie dogs, ground squirrels, rabbits, hares, and big game. The impact criteria for mammals are defined in Chapter 3.0, Table 3-17 of the Final EIS. Both direct and indirect effects on mammals could occur from construction and operation under Alternative 1 (Proposed Action), including habitat loss, modification, and fragmentation associated with construction clearing and grading; sedimentation, erosion, and runoff during construction and operation; behavioral modification such as avoidance of, and disruption and displacement from, habitats; disruption of suspected migratory routes; and mortality and fatality associated with construction clearing and grading, collisions with construction and maintenance vehicles, and collisions with turbines.

During construction under Alternative 1, the removal and degradation of mammal habitat would result in probable, limited, minor, temporary to long-term impacts on habitat for prairie dogs, ground squirrels, rabbits, hares, big game, bats, and special status mammal species. Several mammal species, including prairie dogs, ground squirrels, rabbits, hares, could be displaced due to construction activities, and their abundance could decrease in the project footprint due to loss of habitat and crushing by construction equipment or vehicles. Minor to moderate behavioral disruption and displacement of big game from suspected migration routes and crucial winter habitat is possible. Injury and fatality of bats are unlikely during construction. Minor impacts on aquatic insects that are prey for bats could occur. Minor, temporary impacts on special status mammals are probable, including behavioral disruption, displacement, injury, and fatality.

During operation under Alternative 1, major,[2] long-term impacts on bats are probable due to fatalities resulting from collision with wind turbines. Injury to or fatality of small mammals and big game would be possible due to collision with vehicles. Moderate, long-term impacts

increase or enhancement of vegetation types and wetlands that provide habitat for special status species, migratory birds, or eagle prey species.

[2] For mammals, major is defined as an action that would result in substantial direct fatality or injury of mammals.

are possible from surface modification in mule deer crucial winter range and from disruption of suspected migration routes for mule deer, elk, and pronghorn. Continued impacts due to the loss, alteration, and fragmentation of habitat range from possible to probable, including changes in foraging areas or emigration to adjacent habitats that may be less suitable. Displacement or disruption of mammals ranges from possible to probable due to operation of turbines or human activity, which could result in increased stress levels or reduced fitness.

6.6 Birds (Other than Eagles)

The impact criteria for birds (other than eagles) are defined in Chapter 3.0, Table 3-23 of the Final EIS. Construction under Alternative 1 (Proposed Action) would result in the following impacts on birds (other than eagles): (1) habitat loss, degradation, and fragmentation from construction of roads, power lines, wind turbines, turbine pads, and other facilities; (2) disruption, displacement, and avoidance due to construction activities and equipment; and (3) injury and fatality due to collisions with construction vehicles or equipment. During construction, injuries and fatalities of birds (other than eagles) are possible for some species. Habitat loss, degradation, and fragmentation would result in direct and indirect impacts on bird habitat. The loss of foraging and nesting habitat would range in magnitude from minor to moderate depending on the range and sensitivity of the species, but would persist for the long-term. The fragmentation of the landscape and associated displacement and disruption would create a gradient of impacts that could extend large distances beyond the construction footprint and is expected to vary by the species. Human development also increases the prevalence of nest predators such as coyotes and ravens, and nest parasites, which could result in moderate, long-term impacts on nesting birds. Additionally, construction would include the use of surface water and potential for increased erosion or chemical spills, which could result in minor impacts on waterbirds, waterfowl, and shorebirds.

No threatened or endangered bird species occur in the Phase I infrastructure and development areas, but other special status species, including USFWS Birds of Conservation Concern and those designated by the Wyoming Game and Fish Department as Species of Greatest Conservation Need could occur there. In general, impacts on these species would be similar to other waterbirds, waterfowl, shorebirds, passerines, and raptors. It is probable that displacement and disruption due to construction could result in major[3] impacts on greater sage-grouse, and associated habitat loss and increases in nest predation could have moderate impacts on this species.

Operation under Alternative 1 (Proposed Action) could result in the following impacts on birds (other than eagles): (1) continued indirect effects from habitat loss, alteration, and fragmentation; (2) continued disruption, displacement, and avoidance due to operation and maintenance of the CCSM Phase I Project; and (3) injury and fatality due to collisions with wind turbines, power lines, meteorological towers, communication towers, operation and

[3] For birds (other than eagles), major is defined as an action that would result in substantial indirect impacts on habitat from a large reduction or alteration of habitat, resulting in a substantial reduction in use by birds for nesting, foraging, wintering, or other life history activities. Major impacts could also include direct injury or fatality of birds, including special status species, resulting in a local population-level effect on a bird species.

maintenance buildings, or maintenance vehicles. We anticipate moderate to major impacts on birds (other than eagles) due to fatalities as a result of collisions with wind turbines and other project infrastructure. Passerines are expected to experience the highest number of fatalities, but raptors, waterbirds, and waterfowl may also experience collision fatalities. The continuation of impacts from habitat loss, alteration, and fragmentation from construction would persist for the long-term. Raptors, passerines, and some shorebirds are particularly susceptible to the indirect and habitat-based impacts of habitat loss, fragmentation, displacement, and disruption. Special status bird species would experience impacts similar to those on more common species, but these impacts could be amplified due to smaller populations, stringent habitat requirements, and restricted ranges.

The compensatory mitigation of power pole retrofits proposed under Alternative 1 (Proposed Action) would primarily benefit large birds, such as raptors, and would provide lesser benefits to other bird species.

6.7 Eagles

Bald and golden eagles would be affected by construction and operation under Alternative 1 (Proposed Action). The impact criteria for eagles are defined in Chapter 3.0, Table 3-28 of the Final EIS. Potential construction-related impacts on eagles would include (1) injury or fatality due to collision with construction vehicles or equipment; (2) habitat loss, degradation, and fragmentation from construction of roads, power lines, turbine pads, and other surface use facilities; and (3) disturbance and displacement due to construction activities and equipment. Injuries and fatalities of eagles are unlikely during construction under Alternative 1, but would range from minor to moderate in magnitude and limited to the area of the project were they to occur. Construction could also result in impacts on eagle prey base, including deterrence from foraging areas and degradation of habitat for key prey species. While the deterrence of bald eagles from riparian habitat is unlikely, it is possible that construction could result in minor impacts on aquatic habitats in the region. It is also possible that construction could result in minor impacts on golden eagle prey, such as small mammals and ungulates, or deterrence of golden eagles from foraging habitat. Moderate disturbance to one bald eagle nesting pair and four golden eagle nesting pairs due to construction is possible within the Phase I infrastructure and development areas. The standard ETP, if issued, would allow for this level of disturbance take of up to two adult bald eagles (one nest) and eight adult golden eagles (four nests), but would not permit direct injury or fatality due to construction.

Operation-related impacts on eagles under Alternative 1 (Proposed Action) could include (1) injury and fatality of bald and golden eagles due to collision with wind turbines; (2) injury or fatality of eagles due to collisions with overhead power lines, meteorological or communication towers, buildings, or operation vehicles; (3) injury or fatality of eagles due to electrocution from overhead power lines; (4) continued effects from habitat loss, degradation, and fragmentation; and (5) continued disturbance and displacement due to operation and maintenance of the facility. Our eagle fatality prediction model predicts that operation under Alternative 1 would result in 1 or 2 bald eagle and 10 or 14 golden eagle fatalities each year due to collision with wind turbines, depending on wind turbine blade diameter. Issuance of a programmatic ETP would permit this level of mortality, with a number of mitigation and

minimization measures intended to moderate the impacts of fatality on the local bald and golden eagle populations. Continued disturbance at nest sites due to operation activities is possible and would be moderate in magnitude. It is also probable that operation under Alternative 1 could result in minor impacts on golden eagle foraging areas, disturbance to small mammal prey, and an increase in raven abundance at a regional extent. Impacts on big game due to operation under Alternative 1 are unlikely. Operation-related impacts would be long-term in duration.

Under Alternative 1 (Proposed Action), PCW would retrofit existing power poles to compensate for predicted golden eagle fatalities due to operation of the CCSM Phase I Project. Power pole retrofits are a credible, quantifiable, and USFWS-approved form of compensatory mitigation. However, we would consider other forms of mitigation if their benefits to golden eagles were proven credible and quantifiable, and could achieve no-net-loss of golden eagles.

6.8 Cultural Resources

Bald and golden eagles are important symbolic and traditional religious resources for American and Native American cultures. Environmental justice is also considered because potential impacts may disproportionately affect Native American tribes for whom eagles, particularly golden eagles, have a central role in their beliefs, traditions, and worldview.

The impact criteria for eagles are defined in Chapter 3.0, Table 3-29 of the Final EIS. Construction under Alternative 1 is not expected to adversely affect eagles as a cultural resource.

Operation under Alternative 1 is not expected to adversely affect the cultural relationship between eagles and the broader American public. Because any eagle killed by the CCSM Phase I Project would be required to be submitted to the National Eagle Repository, operation under Alternative 1 would have minimal effect on Native American access to eagles, feathers, or parts, other than the potential increase in the supply of eagle parts available for distribution. Requirements for offsetting each golden eagle taken would mitigate impacts on segments of the American population attributing symbolic value to eagles by ensuring that the number of golden eagles remains stable, although this would not eliminate symbolic or cultural impacts attributed to the very fact that eagles are killed. Operation under Alternative 1 would not raise environmental justice concerns.

6.9 Cumulative Impacts

A cumulative impact, as defined in 40 CFR 1508.7, is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" by federal, state, or local agencies or by individuals. Reasonably foreseeable future actions consist of activities that are generally in the planning stage and can be evaluated with respect to their impacts.

Our approach to evaluating cumulative impacts on eagles considers the effects of programmatic take on eagle populations at three scales: (1) Eagle Management Unit (EMU); (2) local area population (LAP), and (3) project vicinity. This approach is consistent with our ECP guidance.

Reasonably foreseeable future actions within the local area scale for eagles include more electric transmission lines, other new wind energy development (including the potential development of additional turbines as part of the CCSM Phase II Project), mineral and energy development, and new transportation infrastructure.

The cumulative effect of past, present, and reasonably foreseeable future impacts on bald and golden eagles in combination with the CCSM Phase I Project were evaluated in detail for the LAP. Reasonably foreseeable future actions that could affect eagles include conversion of habitat to agriculture, fire suppression, water diversion, mineral and energy development projects (including other wind development and transmission line projects), and climate change.

At the LAP level we have established benchmarks to use in our impact evaluation. A benchmark is an eagle harvest rate at the LAP scale that should trigger heightened scrutiny by us. Further we have established that eagle take rates of between 1 and 5 percent of the total estimated eagle LAP as significant, with 5 percent being a level we generally strive to not exceed. However, unlike eagle take thresholds, benchmarks can be exceeded by us when permitting eagle take provided there is a specific rationale for doing so and a related policy call.

The LAP boundary for bald eagles is delimited by a circle with a radius of 43 miles around the Phase I infrastructure and development areas. The current LAP for bald eagles for the CCSM Phase I Project is approximately 117 eagles. At the 1 and 5 percent benchmark levels, this equates to 1 and 6 bald eagles, respectively. When combined with other past, present and reasonably foreseeable future sources of take (including the predicted take for the CCSM Phase II Project), we estimate a combined take of about 7 bald eagle fatalities per year in the LAP, which would be about 6 percent of the LAP (exceeding the 5 percent benchmark). Based on our Final EA for the eagle take permit rule (USFWS 2009), the combined take threshold for the Rocky Mountain and Rocky Mountains and Plains EMUs is 44 bald eagles. It is probable that the CCSM Phase I Project combined with past, present, and reasonably foreseeable future actions within the LAP boundary would result in impacts on bald eagles that are minor to moderate in magnitude, long-term in duration, and extensive in geographic extent.

The LAP boundary for golden eagles is comprised of eagles within a 140-mile radius around the project footprint. The current LAP for golden eagles for the CCSM Phase I Project is approximately 1,932 eagles. At the 1 and 5 percent benchmark levels, this equates to 19 and 97 golden eagles, respectively. Within the LAP, there were approximately 45 golden eagle fatalities per year due to wind turbines, power lines, and vehicle collisions, which when combined with predicted annual take of either 10 or 14 golden eagles (depending on wind turbine blade diameter) due to the CCSM Phase I Project, results in approximately 55 or 59 golden eagle fatalities annually, or about 2.8 to 3.1 percent of the LAP. When combined

with predicted golden eagle fatalities due to reasonably foreseeable future actions (including the predicted take for the CCSM Phase II Project), there would be an estimated 91 golden eagle fatalities per year (worst case scenario of 59 plus 32 golden eagles per year) in the LAP, which is still below the current 5 percent benchmark level. Based on our Final EA for the eagle take permit rule (USFWS 2009), the combined take threshold for golden eagles is zero; therefore, any predicted golden eagle take would need to be mitigated. It is probable that the CCSM Phase I Project combined with past, present, and reasonably foreseeable future actions within the LAP boundary would result in impacts on golden eagles that are minor to moderate in magnitude, long-term in duration, and extensive in geographic extent.

7.0 Public Involvement

During the scoping phase, the Draft EIS review phase, and the Final EIS review phase, we used a variety of outreach methods to raise the public's awareness of the EIS and solicit comments for our consideration. We also established a website for our EIS, which offers contact information for public comment and links to all published information. A link to the BLM NEPA documents is also available on the website. The website can be found at https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/.

7.1 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). Five agencies are recognized as cooperating agencies to the 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 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.

7.2 Tribal Coordination

We engaged in tribal consultation specific to the issue of eagle take. We invited 72 tribes to participate in government-to-government consultation regarding this action, of which 9 have engaged in ongoing consultation. These tribes are 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, Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Pueblo of San Felipe. We considered tribal input throughout the project, including identification of alternatives, consideration of compensatory mitigation, evaluation of cultural impacts, and selection of the preferred alternative.

7.3 Scoping

During the scoping phase, we published a Notice of Intent to prepare an EIS on December 4, 2013, in the *Federal Register* (78 *Federal Register* [FR] 7296–7298). We held a 60-day scoping period for the EIS, from December 4, 2013, to February 3, 2014. We issued a press release and placed newspaper notices in two local newspapers and two regional newspapers of record to inform the public, including agencies and tribes, of our scoping meetings. The scoping meetings were held on December 16, 2013 in Rawlins, Wyoming, and on December 17, 2013 in Saratoga, Wyoming. We issued a Final Scoping Report in April 2014, available on our website (https://www.fws.gov/mountain-prairie/wind/chokecherrySierraMadre/), which documents the outreach and summarizes public input received at the meetings and during the scoping period.

7.4 Draft EIS

During the Draft EIS review phase, we notified the public, 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). The public review periods and public meetings for the Draft EIS were also announced in press releases and newspaper notices. We held a 60-day public review period for the Draft EIS from April 29, 2016, to June 27, 2016. Additionally, the comment period was reopened July 15, 2016, through July 29, 2016, for members of the public to resubmit comments. 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. On April 21, 2016, and again on July 19, 2016, a postcard notice was sent to all 471 contacts on the project mailing list we maintain announcing the availability of the Draft EIS and the Draft EIS review period. We held two public Draft EIS review meetings on June 6, 2016, in Saratoga, Wyoming and on June 7, 2016, in Rawlins, Wyoming. During the Draft EIS public review period, we received a total of 36 comment letters from project stakeholders and agencies that we considered in making our decision (see Section 5.6 of the Final EIS).

7.5 Final EIS

The Final EIS was published on December 9, 2016 (81 FR 89133). We sent a postcard notice on December 6, 2016 announcing the availability of the Final EIS to 422 contacts on the project mailing list we maintain. During the 30-day Final EIS review period, we received four comment letters from project stakeholders and agencies that we considered in making our decision.

8.0 Summary of Comments on Final EIS

Four comment letters were received on the Final EIS; these included letters from two non-governmental organizations (NGOs), a private citizen, and a cooperating agency.

The cooperating agency recommended moving ahead with issuance of both the general and programmatic ETPs, and stated a preference for selection of Alternative 2. The other letters

included comments similar to those received on the Draft EIS, including: request for public input in the monitoring, mitigation, reporting, and adaptive management throughout the duration of a permit in a fully transparent process; operational minimization measures; small animal carcass removal; uncertainty of the additionality of compensatory mitigation through power pole retrofits; development of additional acceptable compensatory mitigation options; consideration of the 2016 Eagle Take Rule; use of third party monitoring; disagreements concerning eagle population data; and, uncertainty regarding the assumptions used in the fatality modeling, the estimated impacts from the proposed action, and the evaluation of cumulative impacts.

One NGO supported the "No Build" option of Alternative 4, and recommended if the project would move forward to be located at another location in Wyoming with high wind potential that avoids many of the conflicts of the proposed location. The other NGO did not support a particular alternative. The private citizen did not support any specific alternative, but indicated that Alternative 1 did not include use of avian radar for mitigating eagle kills, nor increasing eagle numbers through a captive breeding program.

We have added clarification concerning the requirements for sufficient golden eagle mitigation through power pole retrofits in this ROD. As we have not identified new information from these comments not previously considered in the Final EIS, we are not otherwise addressing each comment specifically in this ROD, but will further address each commenter separately.

9.0 Corrections to Final EIS

There are no changes to the Final EIS.

10.0 USFWS Decision

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

This decision is based on the information contained in the Final EIS for Eagle Take Permits for the CCSM Phase I Project, which updated and supplemented the information contained in the Draft EIS. The ROD was prepared pursuant to the requirements of the CEQ regulations for implementing NEPA at 42 CFR 1505.2 and the Department of the Interior's implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

January 12, 2017

Noreen Walsh Date

Regional Director,

Mountain-Prairie Region, U.S. Fish and Wildlife Service.