

# Chapter 1.0

## Purpose and Need

### 1.1 Introduction

We, the U.S. Fish and Wildlife Service (USFWS), have prepared this Draft Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) (42 United States Code [U.S.C.] 4321 et seq.). This EIS evaluates the effects of issuing both a standard and a programmatic Eagle Take Permit (ETP) for non-purposeful take of eagles that is incidental to otherwise lawful activities under the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668d and 50 Code of Federal Regulations [CFR] 22.26) for construction and operational activities associated with the Chokecherry and Sierra Madre (CCSM) Phase I Wind Energy Project.

On June 16, 2015, the Power Company of Wyoming LLC (PCW or the Applicant) requested a standard ETP for 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. PCW's Eagle Conservation Plan (ECP), provided in Attachment A, is the foundation of PCW's ETP applications. Our consideration of whether or not to issue ETPs constitutes a discretionary federal action that is subject to NEPA. In this EIS, we independently analyze the risk of eagle take associated with the construction and operation of the infrastructure components and the CCSM Phase I Project and assess the potential effects of the proposed action and alternatives on the human and natural environment.

### 1.2 General Project Overview

PCW is proposing to construct, operate, and maintain the CCSM Phase I Project in Carbon County, Wyoming, south of the city of Rawlins, as shown in Figure 1-1. As stated in Section 1.1, PCW has applied for a standard ETP and a programmatic ETP under BGEPA for construction of the Phase I wind turbine development, and infrastructure components and operation of the CCSM Phase I Project, respectively. The infrastructure components associated with the CCSM Phase I Project include the Phase I Haul Road and Facilities, West Sinclair Rail Facility, and Road Rock Quarry. The CCSM Phase I Project would consist of approximately 500 wind turbines capable of producing 1,000 to 1,500 megawatts (MW) of wind energy, and a variety of supporting infrastructure. PCW has applied for ETPs for the CCSM Phase I Project as a viable stand-alone project, independent of Phase II. The CCSM Phase II Project, which could be developed at a later date, would consist of up to an additional 500 wind turbines. The CCSM Phase II Project is analyzed in the Cumulative Impacts section of this EIS and would also be subject to additional environmental review at the time an ETP application is received for that project.

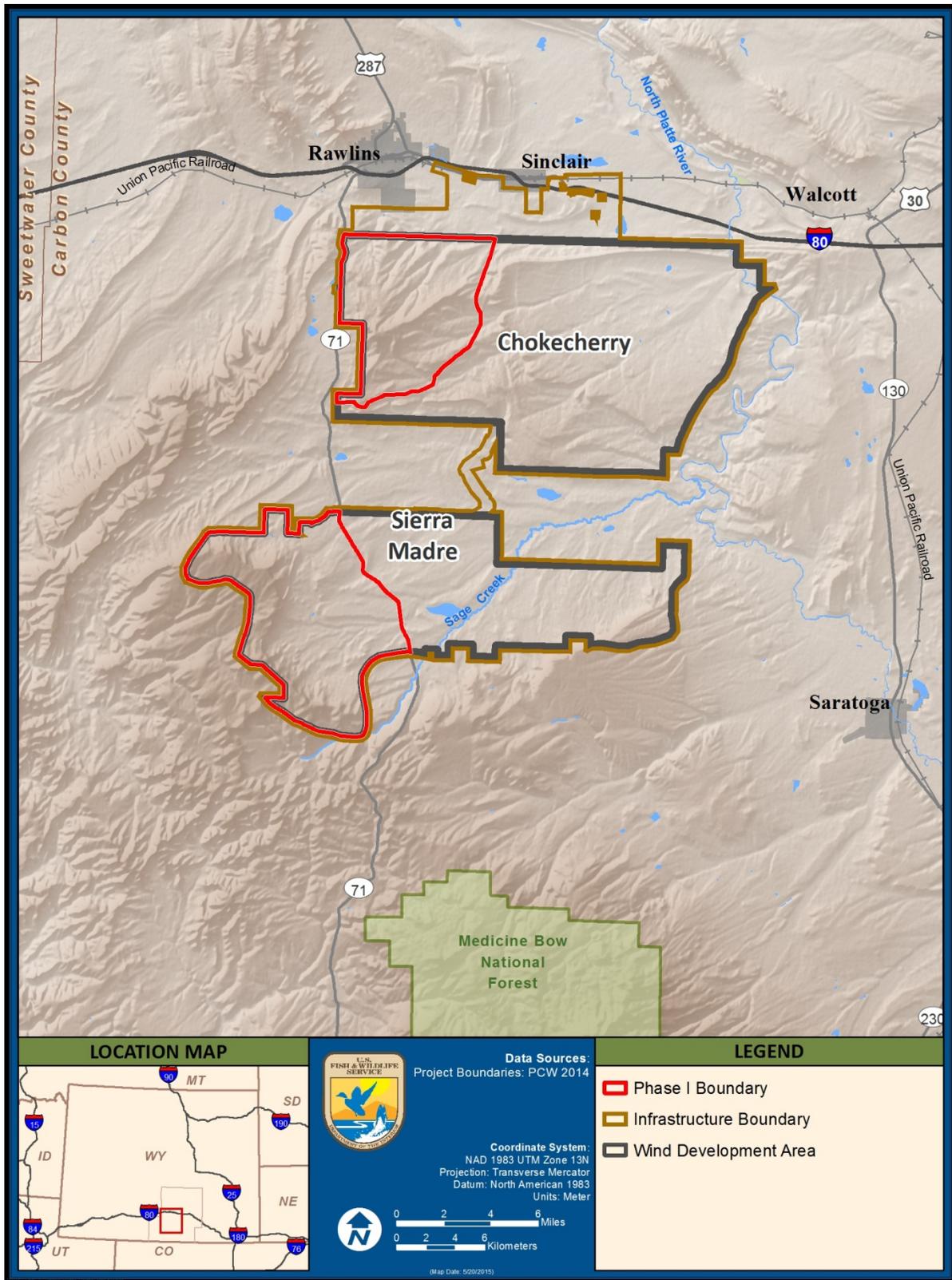


Figure 1-1. Location of the Chokecherry and Sierra Madre Phase I Wind Energy Project in Carbon County, Wyoming

The northern portion of the proposed project is termed Chokecherry. The Chokecherry Wind Development Area (WDA) is situated entirely east of Wyoming State Highway (WYO) 71/County Road (CR) 401. Under the development scenario proposed by PCW, the Chokecherry WDA would be divided east-west by a haul road that would be built to serve construction and operation of the CCSM Project. The southern portion of the proposed project is termed Sierra Madre. The Sierra Madre WDA is divided by WYO 71/CR 401, and the majority of the wind development acreage would be located west of the highway. The CCSM Phase I Project would occur in the western portions of both the Chokecherry and Sierra Madre WDAs. Topographic features of the area and location of the proposed wind turbines are shown in Figure 1-2.

In south-central Wyoming where the CCSM Project would be situated, land ownership is in a checkerboard pattern, where alternating sections of land are federally administered by the Bureau of Land Management (BLM) and privately owned, with a small amount of state land interspersed. As a result, approximately one-half of the CCSM Project would be located on federal lands administered by the BLM and one-half of the CCSM Project would be on privately owned land. The majority of the privately owned land is owned by The Overland Trail Cattle Company LLC (TOTCO), a PCW affiliate, which operates a ranch throughout the area. Additionally, both the State of Wyoming and the Anadarko Land Corporation own small amounts of land underlying the CCSM Project area. Land ownership is shown in Figure 1-3.

PCW has obtained a special use lease from the State of Wyoming, Board of Land Commissioners to use certain state lands for the CCSM Project. PCW and the Anadarko Land Corporation have executed an agreement relating to the Anadarko-owned lands located on the periphery of the northwest boundary of the ranch. The portion of the CCSM Project on BLM administered lands would require a right-of-way (ROW) grant from the BLM.

### 1.3 USFWS Mission

We, the USFWS, are an agency under the U.S. Department of the Interior (DOI). Our primary responsibility is the conservation and enhancement of the nation's fish and wildlife populations and their habitats. Our mission is "working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people" (USFWS 2013a). We also have trust responsibilities for migratory birds, federally listed threatened and endangered species, certain anadromous fish, marine mammals, and National Wildlife Refuge lands, and we are responsible for the administration, implementation, and enforcement of certain federal wildlife laws, including BGEPA and the Migratory Bird Treaty Act (MBTA).

More information on the regulatory framework guiding our development of this EIS, including NEPA, BGEPA, and MBTA, among others, is provided in Section 1.6.

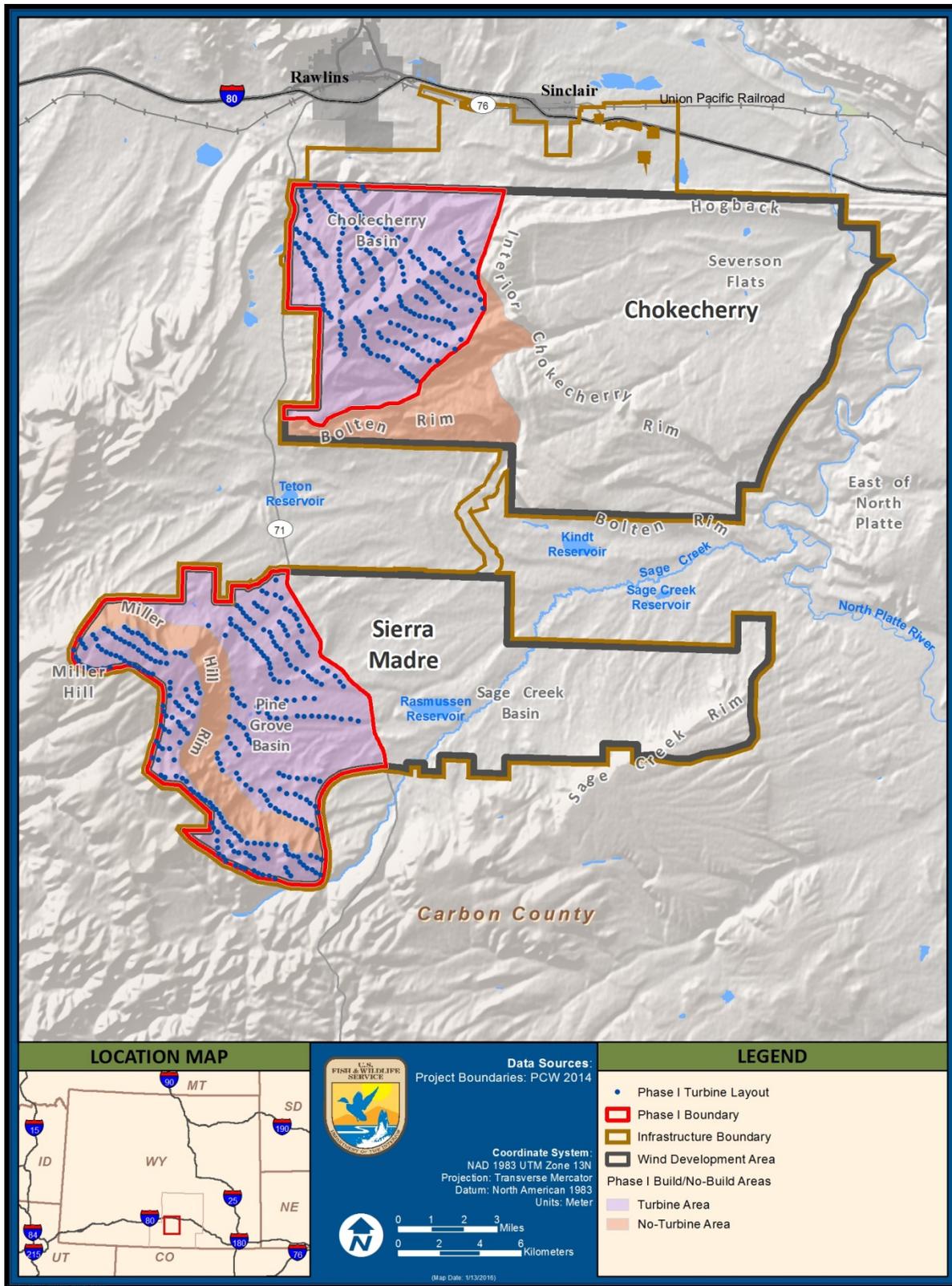


Figure 1-2. Land Features in and near the CCSM Phase I Project in Wyoming

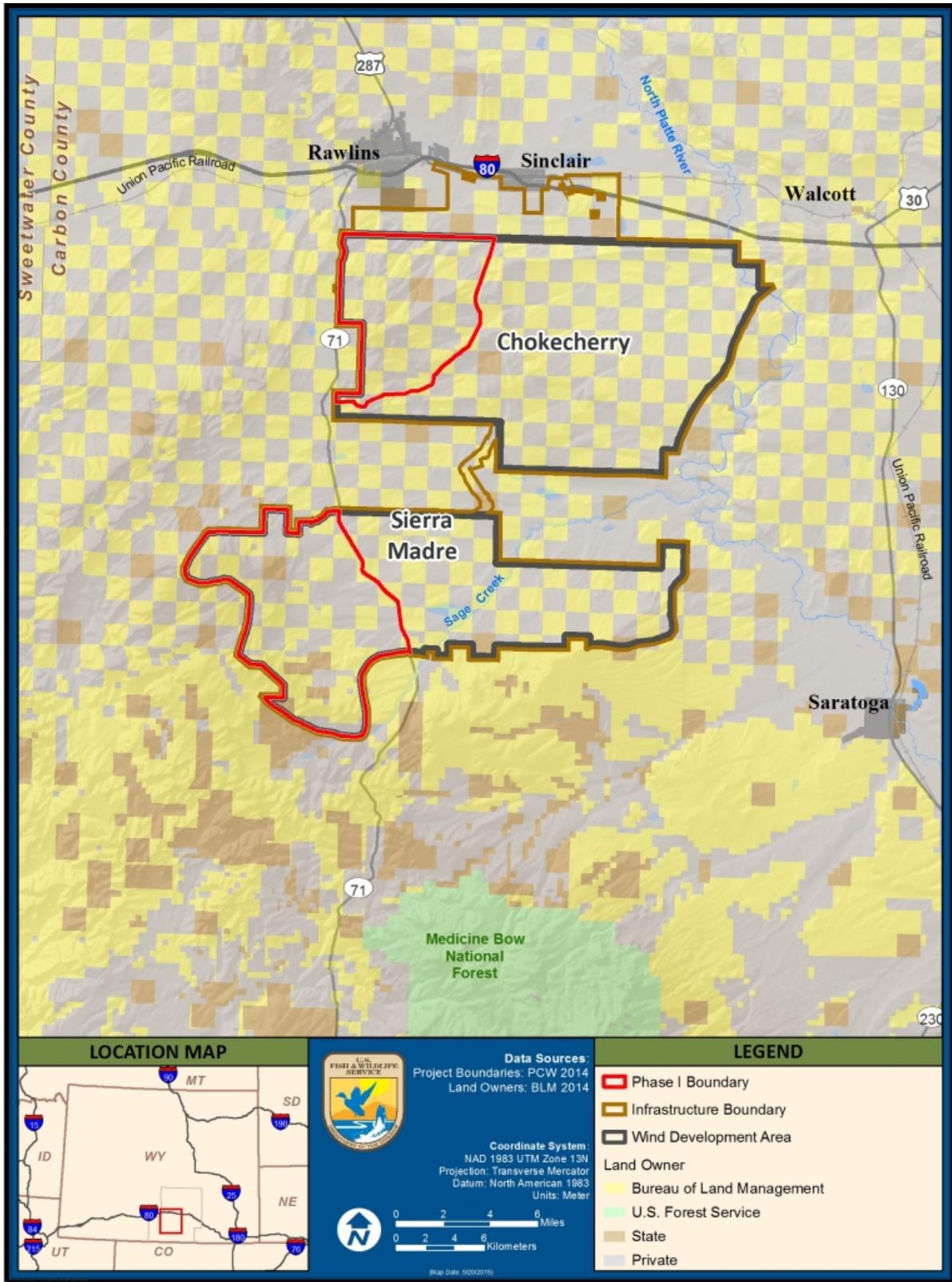


Figure 1-3. Land Ownership in and near the CCSM Phase I Project in Wyoming

## 1.4 Purpose of and Need for Action

On June 16, 2015, we received an application package from PCW for two ETPs under BGEPA for the CCSM Phase I Project. As the action agency, we are obligated to review the application package. Upon completion of our review of the application package and the associated NEPA process, we are also obligated to decide whether or not to issue ETPs under BGEPA for the CCSM Phase I Project and, if so, under what conditions. To issue ETPs, we must determine 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 will endeavor to follow Secretarial Order 3285, which encourages development of renewable energy generation projects in the United States.

We will consider alternatives to the proposed action that meet our purpose and need and reduce potential adverse effects of the proposed action on the human and natural environment.

## 1.5 Previous and Ongoing Environmental Review

As noted in Section 1.2, approximately half of the CCSM Project would be located on federal lands and would require a ROW grant from the BLM. The BLM review under NEPA for the ROW grant is a tiered review. In 2012, the BLM completed two Final Environmental Impact Statements (FEISs) and a Record of Decision (ROD) for the CCSM Project, as described in Section 1.5.1. Starting in late 2013, the BLM began conducting detailed NEPA review of PCW's site-specific plans of development (SPODs) for the CCSM Phase I Project in the form of two Environmental Assessments (EAs), as described in Section 1.5.2.

We, as a permitting agency with jurisdiction by law over the ETP, have an independent obligation to comply with NEPA. As part of our NEPA review, the BLM NEPA documents provide a foundation for the assessment of many elements of the CCSM Project related to the human and natural environment. Consequently, the analysis in our EIS incorporates by reference many portions of BLM's documents in accordance with 40 CFR 1502.21. New analysis provided in this 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 ETPs for the CCSM Phase I Project and other alternatives. The documents incorporated by reference are discussed below.

### 1.5.1 2012 BLM Final Environmental Impact Statements and Record of Decision

In 2012, the BLM issued two FEIS documents relating to the CCSM Project. The first was an FEIS to amend its existing Visual Resource Management (VRM) plan in the area of the CCSM Project and is referred to as the VRM Plan Amendment FEIS. The second was an FEIS to evaluate the CCSM Project at a broad level of review. The VRM Plan Amendment FEIS was Volume I and the CCSM Project FEIS was Volume II, collectively referred to as the BLM FEIS (BLM 2012a). The BLM ROD, signed in October 2012, addressed whether portions of the Chokecherry and Sierra Madre WDAs are suitable for wind development, and

identified design features and mitigation to be incorporated in future BLM authorizations (BLM 2012b).

The physical components of the proposed CCSM Project were described in the BLM FEIS as follows:

- A 2,000- to 3,000-MW wind farm consisting of approximately 1,000 wind turbine generators with a nameplate capacity ranging from 1.5 to 3 MW
- Step-up transformers, underground and overhead electric collection and communication lines, electric substations, rail distribution facility, operations and maintenance facilities, and laydown areas
- A haul road dedicated to transporting project materials during construction and for project access during operation
- An overhead transmission line connection between the Chokecherry and Sierra Madre sites
- A network of new access roads and turbine pads and upgrades to existing roads
- Overhead electric transmission lines connecting to a new substation to be constructed in the CCSM Project area
- Construction of an operations control center
- An onsite quarry that will supply road rock for project roads

The BLM ROD does not authorize site-specific construction associated with the siting or location of individual project components. Rather, the ROD stipulates that BLM will conduct subsequent detailed NEPA reviews of SPODs before issuing ROW grants.

The ROD signed by the BLM (2012b) states:

It is my decision that portions of the Chokecherry and Sierra Madre (CCSM) Application Area are suitable for wind development and that design features and mitigation measures must be incorporated into any future CCSM wind energy development authorizations. The decision is made to accept and evaluate future right-of-way applications for wind energy development and facilities on public lands subject to the requirements for all future wind development as described herein and under the Preferred Alternative in the CCSM project Final EIS, herein referred to as the Selected Alternative. This decision is effective on the date this Record of Decision is signed. [BLM Acting Director, September 28, 2012]

In the BLM ROD, Appendix C contains a plan for BLM's subsequent detailed NEPA review and permitting of the CCSM Project. Under the procedures outlined in the BLM ROD, PCW will submit SPODs to the BLM for detailed NEPA review that will be tiered to the BLM FEIS. The BLM ROD, Appendix C, Section 4.1 describes our review process and how it relates to the BLM's NEPA review and the overall CCSM Project. In particular, the BLM ROD, Appendix C, Section 4.1.3 outlines our requirements under BGEPA for considering the adequacy of ECP(s) developed for the CCSM Project. The BLM ROD, Appendix C, Section 7.0 outlines the anticipated coordination between our review of ETP applications and BLM's review of the ROW grant application.

As described further in our EIS, Chapter 2.0, the general permitting and coordination process outlined in the BLM ROD has been implemented, and the result is the ECP and ETP applications that we are currently evaluating in this EIS.

### 1.5.2 2013-2015 Tiered BLM Environmental Assessments

In 2014, PCW submitted SPODs to BLM for the Phase I wind turbine development (PCW 2014a), the Phase I Haul Road and Facilities (PCW 2014b), the West Sinclair Rail Facility (PCW 2014c), and the Road Rock Quarry (PCW 2014d) under the selected alternative in the BLM FEIS and ROD. The CCSM Phase I Project is proposed to be developed in the western portions of both the Sierra Madre and Chokecherry WDAs. The BLM has completed the first EA tiered to the 2012 BLM FEIS; the second tiered EA is in progress. 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 2016a). The two EAs are further described below.

EA1 covers the following major components of the CCSM Project infrastructure:

- Phase I Haul Road and Facilities
- West Sinclair Rail Facility
- Road Rock Quarry

The BLM held public scoping meetings for EA1 on September 23 and 24, 2013, in Saratoga and Rawlins, Wyoming, respectively.

EA2 is based on the SPOD for the Phase I wind turbines and associated site-specific impacts of supporting infrastructure. The BLM initiated its review for this EA in fall 2013. EA2 involves detailed review of the following physical components and associated construction impacts:

- Approximately 170 miles of access roads
- 500 wind turbines and pads
- Laydown areas and construction staging areas
- Approximately 65 miles of overhead and underground electrical and communication lines
- A temporary construction camp in the CCSM Project area

The BLM held public scoping meetings for EA2 on December 16 and 17, 2013, in Rawlins and Saratoga, respectively. The BLM held public Draft EA review meetings for EA2 on March 28 and 29, 2016, in Saratoga and Rawlins, respectively.

Although we are preparing separate NEPA documents from the BLM for the CCSM Phase I Project, including the Phase I wind turbine development and supporting infrastructure

components, we are closely communicating with the BLM. The BLM is a cooperating agency on our EIS, and we are a cooperating agency on the BLM's tiered EAs.

## 1.6 Regulatory Framework

Federal energy regulations and policies have led to an increased demand to develop cleaner, more reliable domestic supplies of energy. We consider these policies as part of the overall purpose of our action and analysis. One of the main directives related to our consideration of the ETPs is the DOI's Secretarial Order 3285.

*Secretarial Order 3285, Renewable Energy Development by the Department of the Interior:* This Secretarial Order was signed on March 11, 2009, to call on DOI agencies to prioritize development of renewable energy. The Secretarial Order identifies "encouraging the production, development, and delivery of renewable energy" as one of DOI's highest priorities, and directs the agencies and bureaus within the DOI to work collaboratively to "encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources" (DOI 2009).

In addition to endeavoring to follow the Secretarial Order, we also consider the following policies and orders.

*Executive Order (EO) 13212, Actions to Expedite Energy-Related Projects:* This EO was signed on May 18, 2001, to implement recommendations from the National Energy Policy Development Group to establish a policy that federal agencies should take appropriate actions, to the extent consistent with applicable law, to expedite projects to increase the production, transmission, or conservation of energy.

*Energy Policy Act of 2005 (Public Law 109-58):* This act was signed into law on August 8, 2005. Section 211 of the act states, "It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on public lands with a generation capacity of at least 10,000 megawatts of electricity."

*2009 DOI Adaptive Management Implementation Policy:* This policy states that DOI agencies, including the USFWS, should incorporate the operational components identified in *Adaptive Management: The U.S. Department of the Interior Technical Guide* (Williams et al. 2009). Adaptive management is a process promoting flexible decision making in the face of uncertainties that can be adjusted as results of management actions and other events become better understood through the life of a project. Careful monitoring of the results of management actions and changing circumstances both advances scientific understanding and helps adjust policies or operations as part of an iterative process. We incorporated adaptive management as part of our consideration of the ETPs for the CCSM Phase I Project because of the challenges and uncertainties associated with avoiding, minimizing, and mitigating the take of eagles. Therefore, we have proposed an adaptive management framework by which advanced conservation practices (ACPs) can be applied to this project to address long-term effects. ACPs are defined as "scientifically supportable measures that are approved by the

USFWS and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable” (50 CFR 22.3). Because we have not currently approved any ACPs for wind energy projects, ACPs are implemented at wind energy facilities on an experimental basis and are referred to as experimental ACPs (EACPs). Additional information on adaptive management and EACPs considered in our analysis are provided in Chapter 2.0, Description of Alternatives.

*EO 13604, Improving Performance of Federal Permitting and Review of Infrastructure Projects:* This EO was signed on March 22, 2012, to call on Executive agencies to institutionalize best practices and identify additional actions to improve federal review and permitting of major infrastructure projects. The Federal Chief Performance Officer at the Office of Management and Budget oversees the implementation of EO 13604. The Chief Performance Officer also chairs the interagency Steering Committee on Federal Infrastructure Permitting and Review Process Improvement established under the EO in consultation with the Chair of the Council on Environmental Quality (CEQ). The Steering Committee, which included representatives from the DOI, developed a federal plan titled *Implementing Executive Order 13604 on Improving Performance of Federal Permitting and Review of Infrastructure Projects: A Federal Plan for Modernizing the Federal Permitting and Review Process for Better Projects, Improved Environmental and Community Outcomes, and Quicker Decisions*, published in June 2012, that outlines the approach to implementation of EO 13604.

Subsequently, the DOI developed its own plan (DOI Agency Plan) to implement EO 13604 on July 31, 2012. For purposes of the DOI implementation, “major infrastructure projects” are defined as “renewable energy generation projects, electricity transmission lines, pipelines, surface transportation, aviation, ports and waterways, water resource projects and broadband projects, which provide a regional economic benefit and typically involve multiple Federal, state, local and tribal permitting authorities” (DOI 2012).

Pursuant to EO 13604 and the federal plan (Steering Committee on Federal Infrastructure Permitting and Review Process Improvement 2012), the DOI Agency Plan has the following three overarching goals, which we endeavor to follow in our action on the CCSM Phase I Project (DOI 2012):

1. Implement the Federal Plan.
2. Institutionalize best practices and implement new measures where necessary to achieve a coordinated, efficient and expeditious permitting process for major infrastructure projects, while ensuring appropriate siting and compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA) and other applicable laws.
3. Achieve transparency, predictability, accountability, and continuous improvement of permitting and review processes for major infrastructure projects.

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## 1.7 Policy, Authority, and Legal Overview

NEPA, BGEPA, MBTA and ESA, as well as regulations and guidance under those statutes, provide the primary framework for our review of the ETP applications for the CCSM Phase I Project. The following sections provide information regarding the governing legal authorities and the relationship between this NEPA document, the ETP process, and ECP implementation.

### 1.7.1 National Environmental Policy Act

Our consideration of whether to issue ETPs to PCW for the CCSM Phase I Project is a federal action that triggers the need for compliance with NEPA.

The intent of NEPA is to support decision makers in making well-informed decisions based on an understanding of the potential environmental consequences of their action. NEPA established the CEQ, which was charged with the development and implementation of regulations and ensuring federal agency compliance with NEPA. The CEQ regulations mandate that all federal agencies use a prescribed structured approach to environmental impact analysis. This approach also requires federal agencies to use an interdisciplinary and systematic approach in their decision-making process. This process evaluates potential environmental consequences associated with a proposed action and considers alternative courses of action.

The process for implementing NEPA is codified in Title 40 CFR, Parts 1500–1508, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. The CEQ regulations specify that an EIS be prepared when a federal agency is proposing a major action (such as issuing the ETP) with potential to “significantly affect the quality of the human environment” (40 CFR Part 1501). Significance is determined by evaluating the context and intensity of the impact. We have determined that several factors pertaining to the context and intensity of potential impacts of the CCSM Phase I Project are “significant” (as defined in 40 CFR 1508.27) and warrant the preparation of an EIS for ETPs for the CCSM Phase I Project. These factors include, but are not limited to, the context of impacts on the local and regional eagle populations, the intensity in terms of the degree to which the effects are likely to be highly controversial, the degree to which effects may establish a precedent and represent a decision in principle for future consideration, and whether the action may contribute cumulatively to significant impacts on environmental resources.

Five agencies are cooperating with us in preparing this EIS: the BLM; Carbon County Board of County Commissioners; Saratoga-Encampment-Rawlins Conservation District; Wyoming Game and Fish Department; and the Wyoming Department of Environmental Quality, Industrial Siting Council. A cooperating agency has jurisdiction by law or special expertise with respect to environmental impacts involved with the proposal and is involved in the NEPA analysis. These agencies have cooperated in the preparation of this EIS by reviewing it and providing us with their comments.

This EIS has been prepared in compliance with the requirements of NEPA (Public Law 91-190, 42 U.S.C. 4321–4347); the requirements set forth in the CEQ Regulations for Implementing the Procedural Provisions of NEPA relating to USFWS compliance with NEPA for USFWS actions (40 CFR Parts 1500–1508); the DOI NEPA procedures (43 CFR Part 46); and the USFWS NEPA Reference Handbook (USFWS 2005).

To assess the environmental effects, an independent third-party contractor assisted us with environmental analysis and preparation of the EIS. For this project, as in all DOI NEPA analyses where third-party contractors are retained, the independent third-party contractor's scope of work, approach, and activities are administered under USFWS' supervision, direction, and control. Personnel from the independent contractor (HDR) work as an extension of our staff to conduct independent analysis, develop appropriate environmental methodologies, and provide technical support. Use of agency-approved, independent third-party contractors is specifically permitted by the CEQ and the DOI's own environmental regulations (40 CFR 1506.5(c) and 43 CFR 46.105, respectively).

### 1.7.2 Bald and Golden Eagle Protection Act

We oversee the administration, implementation, and enforcement of BGEPA (16 U.S.C. 668–668d), which makes it illegal to import, export, take, sell, purchase, or barter any bald eagle or golden eagle or parts thereof without a permit from the USFWS. Under BGEPA, “take” is defined as to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (50 CFR 22.3). “Disturb” is defined as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior” (50 CFR 22.3).

In 2007, bald eagles were removed from the ESA list of threatened and endangered species. While the bald eagle was listed under the ESA, a permit from the USFWS was available to allow eagle take incidental to an otherwise lawful activity. Because there were no provisions for issuing permits under BGEPA for activities that may disturb or incidentally take bald or golden eagles, we subsequently issued regulations that allow for the limited take of bald and golden eagles under BGEPA, where the take that may be authorized is associated with otherwise lawful activities. We published the Eagle Permit Rule on September 11, 2009 (74 FR 46836–46879; 50 CFR 22.26 and 22.27), and the related Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act (USFWS 2009) to fulfill our NEPA compliance requirements.

Under these 2009 rules, we can issue two types of permits for eagle take: standard permits and programmatic permits. Both types of permits can authorize take of bald and golden eagles or their nests when the take is associated with, but not the purpose of, an otherwise lawful activity and cannot practicably be avoided. To be authorized under a permit, any non-purposeful (that is, incidental) take must result in no net loss (currently defined as maintaining stable or increasing breeding populations) to bald and golden eagle populations.

Standard ETPs authorize individual instances of take (including nest disturbance during construction activities) where the location, timing, and amount of take are all known. Programmatic ETPs authorize take that may recur through the life of a project and are applicable where the location, timing, and amount of take are all unknown. The programmatic ETPs are the most relevant permit type for operation of wind energy facilities, but both types may apply. Under the regulations, any take must be unavoidable even after the implementation of EACPs that are described in the ECP for the project. We developed ECP guidance to provide recommendations for the development of ECPs in support of issuance of programmatic ETPs for wind facilities. The draft ECP guidance was published in the *Federal Register* on February 18, 2011 (76 FR 9529), and a revised version was published on May 2, 2013 (78 FR 25758). Applicants are directed to identify, where appropriate, specific additional mitigation and adaptive management measures that will be triggered if the level of take authorized by the ETP is exceeded, or if new scientific information on eagles demonstrates a need for such actions.

On December 9, 2013, we published a final rule revising the BGEPA implementation regulations (78 FR 73704). The final rule extended the maximum term for programmatic permits for take of bald and golden eagles from 5 years to up to 30 years. However, on August 11, 2015, a court decision (*Shearwater v. Ashe*, Case No. 14-cv-02830-LHK, N.D. Cal. Aug. 11, 2015) set aside the portion of the rule authorizing 30-year permits, finding that we must conduct an analysis under NEPA prior to being able to adopt a longer maximum permit duration. As a result of the court's decision, the maximum duration for ETPs remains 5 years.

### 1.7.3 Migratory Bird Treaty Act

We also administer the MBTA, which protects migratory birds and prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when authorized by our agency under a permit (16 U.S.C. 703; 50 CFR 21; 50 CFR 10). Under the MBTA, "take" is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect" (50 CFR 10.12). Most actions that result in taking or the permanent or temporary possession of a protected species or nests containing eggs or young constitute violations of the MBTA. The list of the bird species protected by the MBTA is located in 50 CFR 10.13. Most of the bird species that occur in the vicinity of the CCSM Phase I Project are protected under the MBTA.

Our Migratory Bird Permit Memorandum (MBPM-2) (USFWS 2003), dated April 15, 2003, states that the destruction of most unoccupied bird nests (containing no birds or eggs) is an allowable action under the MBTA. However, unoccupied nests of eagles and federally listed threatened or endangered bird species are fully protected under BGEPA (16 U.S.C. 668) and the ESA (16 U.S.C. 1531, 1543), respectively, and they cannot be removed without a permit from the USFWS.

We have coordinated for many years with the wind industry to develop guidelines to avoid and minimize impacts on wildlife from construction and operation of wind energy facilities. In our 2012 *U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines*, we urge

“voluntary adherence to the Guidelines and communication with the Service when planning and operating a facility” (USFWS 2012a). We will regard such actions as “appropriate means of identifying and implementing reasonable and effective measures to avoid the take of species protected under the MBTA” (USFWS 2012a). We will also consider such voluntary adherence and communication when exercising our discretion with regard to any potential referrals to the U.S. Department of Justice for prosecution related to the take of species protected under the MBTA (USFWS 2012a).

In coordination with us, PCW has prepared a Phase I Bird and Bat Conservation Strategy (BBCS), provided in Attachment B, that addresses migratory birds and sets forth measures to avoid, minimize, and implement voluntary conservation measures to offset effects of the CCSM Phase I Project on those species. The MBTA has no provision for allowing unintentional or unauthorized (that is, incidental) take, and issuance of ETPs shall not be interpreted as providing any authorization for take of migratory birds other than eagles.

Although eagles are protected by both the MBTA and BGEPA, MBTA authorization for eagle take is not required for those who hold ETPs because the Eagle Permit Rule contains an exemption from the requirement to obtain an MBTA permit (50 CFR 22.11[a]).

#### 1.7.4 Endangered Species Act

The ESA was passed by Congress in 1973 to protect our nation’s native plants and animals that were in danger of becoming extinct and to conserve their habitats (16 U.S.C. 1531-1544). We administer the law together with the Department of Commerce National Marine Fisheries Service. We have primary responsibility for terrestrial and freshwater organisms, while the National Marine Fisheries Service has primary responsibility for marine life. Section 7 (a)(1) of the ESA charges all federal agencies to aid in the conservation of listed species, and Section 7 (a)(2) requires the agencies, through consultation with the USFWS and/or the National Marine Fisheries Service, to ensure that their activities are not likely to jeopardize the continued existence of listed species or species that are candidates for listing, or, adversely modify designated critical habitats.

We work with agencies and project proponents to help plan or modify projects with a federal nexus or connected actions to minimize impacts on listed species and their habitats.

#### 1.7.5 Other Federal Environmental Acts and Related Requirements

Other major federal policies, plans, and programs potentially relevant to the CCSM Phase I Project are presented in Table 1-1. The EIS and subsequent ETPs, if ETPs are issued, would not conflict with or supersede those requirements.

Table 1-1. Federal Regulatory Framework Potentially Applicable to the CCSM Phase I Project in Wyoming

Federal Code, Act, or Rule	Legal Citation
American Indian Religious Freedom Act of 1978	42 U.S.C. 1996
Antiquities Act of 1906	54 U.S.C. 320301
Archaeological and Historic Preservation Act of 1974	54 U.S.C. 312505
Archaeological Resources Protection Act of 1979	16 U.S.C. 470a, 470cc, 470ee
Clean Air Act of 1990, as amended (CAA)	42 U.S.C. 7401, 7642
Clean Water Act of 1987, as amended (CWA)	33 U.S.C. 1251
Consultation and Coordination with Indian Tribal Governments, November 9, 2000	EO 13175
Emergency Planning and Community Right-to-Know Act of 1986, as extended to federal facilities, August 3, 1993	EO 12856
Farmland Protection and Policy Act of 1994	7 U.S.C. 4201 et seq.
Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994	EO 12898
Federal Insecticide, Fungicide, and Rodenticide Act of 1947	7 U.S.C. 136 et seq.
Federal Land Policy Management Act of 1976	43 U.S.C. 1701 et seq.
Fish and Wildlife Coordination Act of 1934, as amended 1946, 1958, 1977	16 U.S.C. 661-667e
Floodplain Management, May 21, 1977	EO 11988
Hazardous Materials Transportation Law	49 U.S.C. 5101-5127
Historic Sites Act	54 U.S.C. 320101
Indian Sacred Sites, May 24, 1996	EO 13007
Invasive Species, February 3, 1999	EO 13112
National Historic Preservation Act of 1966	54 U.S.C. 300101 et seq.
National Trails System Act of 1968	16 U.S.C. 1241–1249
Native American Graves Protection and Repatriation Act of 1990	25 U.S.C. 3001
Noise Control Act of 1972, as amended by the Quiet Communities Act of 2005	42 U.S.C. 4901 et seq.
Noxious Weed Act of 1974, as amended by Section 15, Management of Undesirable Plants on Federal Lands 1990	7 U.S.C. 2801-2813
Objects Affecting Navigable Airspace	14 CFR 77

Federal Code, Act, or Rule	Legal Citation
Oil Pollution Control Act of 1990	33 U.S.C. 2701 et seq.
Pollution Prevention Act of 1990	42 U.S.C. 13101 et seq.
Preserve America, March 3, 2003	EO 13287
Protection and Enhancement of the Cultural Environment, May 15, 1971	EO 11593
Protection of Wetlands, May 24, 1977	EO 11990
Religious Freedom Restoration Act of 1993	42 U.S.C. 2000bb et seq.
Responsibilities of Federal Agencies to Protect Migratory Birds, February 10, 2001	EO 13186
Rivers and Harbors Act of 1899	33 U.S.C. 401 et seq.
Safe Drinking Water Act of 1974	42 U.S.C. 300(f) et seq.
Safe Drinking Water Act, Protection of Underground Sources of Drinking Water	42 U.S.C. 300h-7
Soil and Water Conservation Act of 1977	16 U.S.C. 2001 et seq.
Solid Waste Disposal Act of 1976, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous Solid Waste Amendment of 1984	42 U.S.C. 6901 et seq.
Structures Interfering with Air Commerce Act	49 U.S.C. 44718
Taylor Grazing Act of 1934, as amended	43 U.S.C. 315
Toxic Substances Control Act of 1976	15 U.S.C. 2605(e)
Trails for America in the 21st Century, January 18, 2001	EO 13195
Wild and Scenic Rivers Act of 1968	16 U.S.C. 1271 et seq.

## 1.8 Public, Agency, and Tribal Participation

We have completed the scoping phase of the EIS, which is the first formal step in engaging and soliciting public, agency, and tribal participation in the EIS process. 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 held a 60-day scoping period for the EIS, from December 4, 2013, to February 3, 2014. The scoping period was announced through a Notice of Intent published on December 4, 2013, in the *Federal Register* (78 FR 7296–7298), a press release, and newspaper notices. During the scoping period, we administered a variety of outreach methods to the public, agencies, and tribes in order to raise awareness of the EIS and solicit comments for our consideration. Refer to the Consultation and Coordination section of this EIS (Chapter 5) for additional information on the outreach steps we have completed.

## 1.8.1 Summary of Public Involvement

We announced the public scoping period for our EIS for ETPs for the CCSM Phase I Project in the Notice of Intent, a press release, and newspaper notices placed in two local and two regional newspapers of record. A website for our EIS, providing background information and documents regarding our consideration of whether or not to issue ETPs for the CCSM Phase I Project, is located on our Mountain-Prairie Region website. Publicly released EIS-related documents will be provided on the website as they are completed.

We held two public scoping meetings for our EIS, on December 16, 2013, in Rawlins, Wyoming and on December 17, 2013, in Saratoga, Wyoming. These meetings were held in conjunction with the BLM's scoping meetings for EA2 on the CCSM Phase I Project. The meetings were organized in an open house format with brief formal presentations.

Additionally, on January 21, 2014, we mailed letters regarding the EIS to 115 federal, state, and local agencies and other potentially interested parties. The letters included information on the CCSM Phase I Project, the scoping period, and how to provide comments.

## 1.8.2 Overview of Scoping Comments

During the scoping period, we received 48 comment letters from project stakeholders (that is, members of the public, non-governmental agencies, and elected officials) and agencies. These letters contained information and input that was sorted into 35 topic categories that we are considering in the EIS process. An overview of the comments received that directly informed the scope of the EIS, by topic, is provided below.

### 1.8.2.1 *EIS Process*

Comments received on the EIS process, in large part, focused on a desire for increased transparency by, and coordination among, involved agencies. Comments noted that the data and analysis contained in the EIS should be accurate and transparent, and available for review by the public as soon as it is generated.

### 1.8.2.2 *Purpose and Need*

Four comments were received regarding the purpose and need for the EIS. These comments all indicated a preference that we define the purpose and need broadly to reflect the statutory authorities and goals applicable under BGEPA, rather than narrowly framed as whether to "approve or deny" the ETPs, in order to allow us latitude to consider alternatives outside of the current plan of development for the CCSM Phase I Project.

### 1.8.2.3 *Alternatives*

Fifteen commenters provided feedback regarding the range of alternatives to be analyzed in the EIS. These comments included suggestions on ETP duration, mitigation measures, monitoring protocols, adaptive management strategies, and project development and siting specifications (including project location and size).

#### 1.8.2.4 *Eagle Data*

Several commenters noted that robust, scientifically accurate, and objective eagle baseline data need to be collected both for the location of the CCSM Project and regionally in order to adequately characterize the affected eagle population. Many commenters noted that these data should be made publically available to help the public make more informed comments. Additionally, many commenters expressed their desire to review the ECP as soon as it is available.

Comments received regarding what eagle data and analysis need to be considered in the EIS included the following:

- Site assessments must examine project impacts on eagle foraging habitat, nesting, roosting sites, wintering habitat, migratory stopover sites, migratory corridors, and defended eagle territories.
- The prey base within the footprint of the development should be considered in the analysis.
- Direct impacts include collisions with the turbines, stabilizing wires, transmission lines, communication lines, and meteorological towers. Other impacts, such as the access roads, power facilities, railroad spur, and quarry, will further contribute to the decline of the local population by degrading habitat and increasing habitat loss and fragmentation, which will move eagles out of their preferred habitat and into marginal habitat.

#### 1.8.2.5 *Wildlife*

In addition to the potential impacts of the project on eagles, several commenters noted that the EIS needs to analyze the project's impacts on, and mitigation measures for, other birds; bats; elk, mule deer, and pronghorn (that is, big game); and aquatic resources. Several comments proposed specific monitoring and mitigation measures to protect greater sage-grouse.

#### 1.8.2.6 *Additional Resource Areas*

Comments on direct and indirect impacts on several resource areas were received, including impacts on tribal resources, historic and cultural resources, visual and recreational resources, and land use. Eleven commenters provided considerations for the cumulative impacts assessment in the EIS. Climate change, other sources of eagle take, the CCSM Phase II Project, and projects such as area transmission lines (including the TransWest Express Transmission Project) and oil and gas drilling and associated infrastructure (including the Atlantic Rim Natural Gas Project as well as the proposed Continental Divide-Creston Natural Gas Development Project) were encouraged to be cumulatively assessed for their impacts on eagles, other wildlife, habitat, and visual and recreational resources.

### 1.8.3 Cooperating Agencies' Roles and Responsibilities

A cooperating agency is defined as any agency, except the NEPA lead agency, that has jurisdiction by law or has special expertise with respect to any environmental issue that should be addressed in the EIS. We sent formal notification of the EIS planning process and subsequent public comment period to 19 federal, state, and local agencies at the beginning of the scoping period. We invited these agencies to become a cooperating agency on our EIS for ETPs for the CCSM Phase I Project. Five agencies requested to be, and have been accepted as, cooperating agencies on the EIS: the BLM; Carbon County Board of County Commissioners; Saratoga-Encampment-Rawlins Conservation District; Wyoming Game and Fish Department; and Wyoming Department of Environmental Quality, Industrial Siting Council.

On September 10, 2014, we held a meeting with the cooperating agencies in Cheyenne, Wyoming, in support of EIS development. The purpose and goals of the meeting were to review our EIS process, engage cooperating agencies further in the EIS development process, and methodically work through all cooperating agency recommendations on the range of reasonable alternatives to analyze in full in the EIS—as well as the list of alternatives that won't be analyzed—and the justifications for each alternative considered.

### 1.8.4 Tribal Consultation

We have engaged in tribal consultation specific to the issue of eagle take, in accordance with our obligations under NEPA; American Indian Religious Freedom Act of 1978; the Presidential Memorandum of April 29, 1994, Government to Government Relations with Native American Tribal Governments; and EO 13175, Consultation and Coordination with Indian Tribal Governments. We have also considered the principles and obligations of EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and the Religious Freedom Restoration Act of 1993.

We invited 71 tribes to participate in government-to-government consultation regarding this action, of which 8 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, Santa Clara Pueblo, and Shoshone-Bannock Tribes of the Fort Hall Reservation. Please see Chapter 5.0 of this EIS, Coordination and Consultation, for additional information.

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