



JUNE 10, 2022

VIA E-MAIL: fgc@fgc.ca.gov

California Fish and Game Commission
P. O. Box 944209
Sacramento, CA 94244-2090

Re: Renewables Comments on June 15 Meeting Agenda's Item 5 re Petition of Center for Biological Diversity (CBD) to List the Western Joshua Tree as a Threatened Species

Dear President, Vice President, and Members of the Commission:

These comments are submitted on behalf of the Large-scale Solar Association (LSA), Solar Energy Industries Association ("SEIA"), and the California Wind Energy Association ("CalWEA") to express our opposition to listing the Western Joshua Tree (Joshua Tree) as a threatened species under the California Endangered Species Act (CESA) at this time.

The renewable energy industry has long been committed to conserving the earth's resources and protecting its biodiversity; fighting climate change is at the core of that commitment. In fact, the *raison d'être* of our companies is the development of renewable energy sources to combat climate change. The Petition by the Center for Biological Diversity (CBD) identifies climate change as a threat to the Joshua Tree. Nowhere is the nexus between climate action and conservation more complex than in the California desert – home to both rare desert habitat and species, and to some of the highest solar radiance in the world. What is most unique about this region is its proximity to major load centers – making it the ideal area for siting clean energy projects to meet California's electricity needs and ensuring reliability.

In February of this year, the California Public Utilities Commission issued a decision¹ calling on the State to more than double its current utility-scale solar portfolio and add 3,500 megawatts (MW) of terrestrial wind by 2032. Modeling for SB 100, which requires the state to decarbonize the electricity grid by 2045, shows that at least 53,00 MWs of utility-scale solar will be needed by 2040 – forming the backbone of the state's grid. This is in addition to tripling the amount of rooftop solar installed today. Though of course not all of the projects will be in the desert, the desert region must be a part this crucial effort if we are to succeed in meeting our goals and tackling the biggest causal threat to the Joshua Tree: climate change.

¹ CPUC Decision 22-02-004, February 10, 2022

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M451/K412/451412947.PDF>

Our member companies believe in science, and it is on this ground that we ask the Commission to base its decision in science and defer listing the Joshua Tree for five years to allow the basic field-based research to be conducted that is needed to determine the population trend of the species.

During those five years, we ask the Commission to instruct the Department to use a portion of the funds in the Joshua Tree Mitigation Fund to:

1. Conduct a population viability analysis or similar study to determine if Joshua Tree populations are declining, holding, or increasing, and the rate of any change.
2. Identify Joshua Tree refugia and expansion territory in latitudes and elevations not currently occupied Joshua Tree and devise a conservation and assisted migration/dispersal strategy for these areas.
3. Build the regulatory infrastructure needed process permit applications and mitigation land packages, should the science determine listing is warranted.

We hope the Commission shares our commitment to letting science steer the decision-making process and ask you to consider the below points.

Science Should Drive the Decision

CBD's Petition as well as the California Department of Fish and Wildlife's (the Department) Status Review lack basic population trend data that is surely prerequisite for a decision by the Commission to list the Joshua Tree. Prior to the work of the renewable energy industry's Joshua Tree Working Group, both the number of individual trees and the size of the Joshua Tree's range were unknown. After a comprehensive analysis of the available information, including the renewable industry's work on population and range, the Department's 150-page Status Review recommends not to list. The Department's Report concluded that Joshua Trees are "abundant and widespread, which lessens the overall relative impact of the threats to the species."² While the Commission will make its own determination as to whether listing the Joshua Tree is warranted, the Department's Status Review and recommendation are firmly grounded in the available science. The Status Review goes on to find that none of the primary threats to the species – climate change, wildfire, or development (individually or cumulatively) – is likely to place the Joshua Tree in serious danger of becoming extinct throughout all, or a significant portion of its range, by 2100 (the foreseeable future.)³ As the only sector to conduct scientific studies to inform the Department's Status Review, we ask that you endeavor first to answer the pivotal question: Are Joshua Trees declining, and if so, how fast?

We Have Time

There is broad agreement that there are millions of Joshua Tree spanning millions of acres. There is similar broad agreement that the species is not likely to be threatened – i.e., in serious danger of becoming extinct throughout all or a portion of its range - for many, many decades, if not longer. This robust population is resilient enough to allow five years for the necessary studies, including a population viability analysis, to be conducted without the threat of Joshua Trees becoming imperiled. The Department's Status Review reflects this: "the scientific information on the status of western Joshua tree will continue to improve in the coming years

² CDFW Status Review p.119

³ CDFW Status Review p.112-117

and decades, with demographic data and species distribution modeling eventually allowing for an analysis of the viability of western Joshua tree populations across their entire California range” (Status Review p.119). There is sufficient time ahead for better-informed decision making and it’s the recommendation of our industry and the Department that additional time is needed to advance the science.

Joshua Trees have survived previous fluctuations in global temperature, respond well to propagation in nurseries, and have ample expansion habitat in higher elevations and latitudes. These factors, when combined with the long lifespans of individuals and their current abundance across a significant range, will allow for effective monitoring of the Joshua Tree while the necessary science is conducted. The Petitioner has been effective in elevating the Joshua Tree to a status where it’s now included in renewable energy project siting decisions. We are confident that, should the additional science review period present new information, a revised Petition to list will be presented, including any information indicating unlawful or irresponsible activities that would warrant immediate Joshua Tree protection. Of course, the Commission or the Department may undertake a review of the species on their own initiative in the absence of a petition, based on information they receive.

Given the increased attention the Petitioner has brought to the species, we’re confident that government, industry, and the environmental community will work together in the coming years to ensure the resulting science is rigorous and reliable.

Only Through Collaboration Can We Address the Climate Challenge and Imperative

As the Commission is aware, the renewables industry has long been the tip of the spear in California’s nation-leading battle to address climate change. Listing the species now will stop renewable energy projects, but it will not stop climate change, which the Petitioner states “is the greatest threat to the continued existence of Western Joshua tree.”⁴ To worsen matters, this hampering of renewables would happen at the very time their development needs to accelerate. Indeed, by listing the Joshua Tree at this time, renewables deployment in the limited areas where existing transmission capacity exists would be materially reduced. It is not possible to both maintain the status quo and expect to meet these accelerated goals.

Given this reality, a vote to list Joshua Tree at this time would have the following impacts:

- Strand 11,000 MW of planned solar power development in the CAISO queue for interconnection between now and 2030 in the range of the Joshua Tree.
- Replace that renewable energy generation with conventional energy sources, thereby increasing California’s dependence on gas generation, further impacting disadvantaged communities, and contributing to the postponement of GHG reductions beyond the point of no return.
- Threaten the reliability of California’s transmission system. As the California Energy Commission’s recent Reliability Workshop highlighted, in the event of extreme weather and fire conditions the State could be short as much as 7,000 MW this summer and 10,000 MW in 2025. We need these planned projects to meet this moment.
- Diminish California’s position as world leader in the fight against climate change by self-inflicted action that is not supported by the science.

⁴ Center for Biological Diversity Evaluation Report at p.23

It's known and accepted that we cannot achieve our climate goals with a single solution. Rooftop solar and storage as well as other sources of distributed generation are important. However, California will not meet its renewables targets and GHG reduction commitments without an unprecedented and immediate increase in the deployment of utility scale renewables. These critical projects need to be sited where existing capacity on the grid currently exists, including within the range of the Joshua Tree.

If Californians truly want to be leaders in the fight against climate change, we need to come together and act now.

The legal standard has not been met

Listing under the California Endangered Species Act is a technical decision that should be made based on the best available evidence regarding the species being considered. The CESA standard is clear (14:670.1(i)(1)(a)):

“A species shall be listed as endangered or threatened...if the Commission determines that its continued existence is in serious danger”

The Department's expert review and the US Fish and Wildlife Service - both agencies with decades of experience evaluating vulnerable species - have concluded that with millions of trees across millions of acres, and virtually no evidence of decline, the standard has not been met at the state or federal level to merit a listing as threatened or endangered. The Joshua Tree is not likely to be in serious danger of extinction in the foreseeable future.

Conclusion

Given California's urgent climate challenges and imperatives, and the extent to which California relies on both solar and wind projects to meet energy needs and climate targets, we cannot emphasize strongly enough the negative impact that listing the Joshua Tree under CESA at this time will have on clean energy development. We encourage the Commission to allow the scientific community the time it required to generate the studies necessary to make a sound determination. Our associations look forward to participating in this effort and supporting the Commission in the fight against climate change.

You may reach us via the contact detail below. Thank you for your consideration.

Sincerely,

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