



News & Publications

Joshua Trees Receive Emergency Endangered Species Protection

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Yesterday, the California Fish and Game Commission (Commission) declared the Western Joshua tree to be a candidate for listing under the California Endangered Species Act (CESA).

Yesterday's action kicks off a process by which the Commission will conduct a more detailed evaluation leading to an ultimate listing decision. In the meantime, Joshua trees immediately will be protected from unlawful take. As of today, any person desiring to harvest or otherwise take a Joshua tree will need a permit from the California Department of Fish and Wildlife (CDFW). The Commission's action protects vast acreages of Joshua tree forest across the California desert.

The Commission's decision was based largely on evidence advanced by the Center for Biological Diversity that climate change presents a serious long-term threat to Joshua trees. This is the first listing decision under CESA that is based primarily about concerns relating to climate change. The Commission's evidentiary conclusions are being questioned by some industries affected by the proposed listing, who have advanced their own science on the underlying question. The scientific debate will continue through the ultimate listing decision and, most likely, in the courts.

At yesterday's meeting, the Commission adopted a special rule (called a "2084 regulation") authorizing fifteen (15) solar energy projects to proceed without individual permits from CDFW. Those projects will be required to pay significant mitigation fees to CDFW, which fees are scaled to the level of impact associated with each project. CDFW will

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Scott B. Birkey

Clark Morrison



pool those fees and spend them on regional conservation efforts to protect Joshua tree habitat. Funding has already been generated for a planning effort intended to establish a regional conservation plan for Joshua trees.

The 2084 regulation was supported by the solar and wind industries, as well as the Center for Biological Diversity. The Center expressed some disappointment with the mitigation ratio imposed under the 2084 regulation, however, and recommended that any projects that receive individual permits to take Joshua trees be required to provide mitigation exceeding that imposed on solar projects under the 2084 regulation.

To date, the counties in which Joshua trees are located have been imposing relatively inexpensive mitigation for effects to Joshua tree woodland, and the CEQA analyses prepared by those counties may not be adequate from CDFW's perspective. Landowners and developers should expect that CDFW may require applicants to provide supplemental biological analyses of Joshua tree impacts, including surveys analogous to those required under the 2084 regulation, and that the price of mitigation may have just gone up given the "full mitigation" requirements of CESA.