

<https://www.desertsun.com/story/news/environment/2021/02/24/joshua-trees-can-legally-protected-court-rules/4552210001/>

Joshua trees can be legally protected in California, court rules

Mark Olalde

Palm Springs Desert Sun



A Fresno County Superior Court judge has ruled that the western Joshua tree, the iconic Mojave Desert yucca, will retain the legal protections it received when it was approved as a candidate species for listing under the California Endangered Species Act.

The California Construction and Industrial Materials Association, known as CalCIMA, led a coalition in an October petition opposing the California Fish and Game Commission's decision to advance the gangly plant species through the listing process. The groups asked for a stay — a type of legal pause — on the plant's

protections and argued that insufficient evidence had been provided to prove that Joshua trees were truly in danger.

The species' case for listing under the act — after it was denied federal protection — is important because it represents the first instance in which climate change has successfully been cited as the primary threat to a plant's or animal's survival. Oral arguments regarding the challenge were heard in January, and this most recent decision came on Feb. 17.

"The court has reviewed the administrative record," the February ruling said. "It contains evidence that the Joshua tree is under real, significant and immediate threat from development, fire, drought, and climate change."

Brendan Cummings, conservation director for the Center for Biological Diversity, authored the petition to protect the charismatic megaf flora, and he praised the court's ruling.

"It was a really good decision," he said. "This was the biggest threat to the protection of the Joshua tree because a granting of a stay would've derailed the entire listing process for many months, potentially many years as it went through the various levels of the court."

But Robert Dugan, CalCIMA president and CEO, accused conservationists of falling back on the Joshua tree's popularity instead of focusing on the ramifications of potentially misapplying the act. "We get that the endangered species act is an important guidance document in the state, but it has to be applied consistently," he said.

The group's members mine sand, gravel, rock and other minerals in areas where Joshua trees are abundant, and they need a consistent regulatory regime, according to Dugan. "The integrity of CESA is important so our folks can plan to comply (with the law)," he said.

He also argued that the materials his industry mined would need to come from somewhere, so if they couldn't be sourced locally, then they would bring a larger carbon footprint being shipped across borders.

The Fish and Game Commission voted 4-0 in September 2020 to advance the species to the candidacy stage, where it temporarily is given full protections. At that point, the clock began, giving the Department of Fish and Wildlife a year to study whether the species is at enough risk to warrant full listing as threatened. Cummings said he expects the final vote to come around December 2021.

While this decision threw out CalcIMA's request for a stay on the protections afforded to Joshua trees, there remains an outstanding question over whether the Center for Biological Diversity's petition to protect the species has merit. Both sides were confident in their standing, but a date hasn't been set for that hearing.

Cummings argues that even if that next step happens before a final listing comes out, precedent is clearly in his group's favor. "The main risk this case posed to the protection of Joshua trees is past," he said.

Although the city of Hesperia and trade groups representing industries such as real estate joined CalcIMA's litigation, the industry that would appear to be most influenced by a Joshua tree listing — renewable energy development — came out in favor of keeping protections in place.



Terra-Gen Development Company and Edwards Solar are among the companies developing large solar power projects on thousands of acres in Kern County that could be impacted by the extra protections afforded to Joshua trees. The companies sided with conservation groups on CalCIMA's challenge because sticking with the decision would bring both regulatory certainty as well as exemptions that had been carved out for shovel-ready renewable energy projects.

"An emergency stay would frustrate both the development of much-needed renewable energy projects and the ongoing regulatory and public process associated with the petition to list the Joshua tree," the companies' lawyers wrote in opposing the move to strip away temporary protections.

"Many members of the public (and local governments)," they continued, "are relying on the regulatory status quo and complying with the process established by CESA."

In addition to the leeway granted to some renewable projects, the Fish and Game Commission also greenlit two other exemptions. One made it easier to remove or trim Joshua trees that were too close to infrastructure such as power lines and homes, while

the other allowed for streamlined permitting to remove the plants to aid in the construction of structures such as sewer systems and single-family homes.

While the negotiations surrounding the future of the western Joshua tree have demanded sacrifices from all parties — some much more than others — Cummings is pleased with the balance struck so far.

“If Joshua trees are to survive the inhospitable climate we’re giving them, the most important thing we must do is protect their habitat, and this decision ensures recent protections will remain in place,” he said.