

Date of Hearing: April 8, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 1089 (Carrillo) – As Amended March 24, 2025

SUBJECT: Western Joshua Tree Conservation Act: industrial projects and commercial projects

SUMMARY: Authorizes the Department of Fish and Wildlife (CDFW) to enter into an agreement with any city to delegate to the city the taking of a western Joshua tree associated with commercial and industrial projects. Specifically, **this bill:**

- 1) Prohibits the taking of more than 10 individual trees for commercial or industrial projects that are permitted through the delegated authority to cities.
- 2) Prohibits commercial and industrial projects permitted through delegated authorities to cities, from using the reduced in lieu mitigation fees, unless those projects are within a certain boundary, as specified.
- 3) Makes technical and conforming changes.

EXISTING LAW:

- 1) Specifies that CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species [Fish and Game Code (FGC) § 1802].
- 2) Defines “take” as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (FGC § 86).
- 3) Prohibits the taking of an endangered or threatened species, except in certain situations (FGC § 2080 *et seq.*).
- 4) Allows CDFW to authorize the taking of listed species pursuant to an incidental take permit if the taking is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the issuance of the permit would not jeopardize the continued existence of the species (FGC §§ 2081; 2084).
- 5) Establishes the Western Joshua Tree Conservation Act (WJTCA) that enacts the following (FGC § 1927 *et seq.*):
 - a) Prohibits any person or public agency from importing into the state, exporting out of the state, or taking, possessing, purchasing, or selling within the state, a western Joshua tree or any part or product of the tree, except as provided pursuant to existing law or by paying a specified fee;
 - b) Specifies that certain take authorizations apply during any period in which the western Joshua tree has been designated by the Fish and Game Commission (Commission) as a candidate for listing under the California Endangered Species Act (CESA), if the Commission lists the western Joshua tree as endangered or threatened pursuant to the

CESA, and upon the approval of a natural community conservation plan in which the western Joshua tree is a covered species;

- c) Authorizes CDFW to issue a permit for the taking of a western Joshua tree if specified conditions are met, including, that the permittee mitigates all impacts to, and taking of, the western Joshua tree;
- d) Authorizes a permittee, in lieu of completing the mitigation measures on its own, to elect to satisfy the mitigation obligation by paying a fee pursuant to a specified fee schedule;
- e) Requires CDFW to annually adjust the fees for inflation, and to review the fees by December 31, 2026, and every four years thereafter, to ensure the conservation of western Joshua tree;
- f) Requires all fees remitted to CDFW to be deposited into the Western Joshua Tree Conservation Fund (Conservation Fund), as provided, and requires the moneys in the Conservation Fund, upon appropriation by the Legislature, to be used solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree.
- g) Exempts CDFW from the State Contract Act; requirements related to state acquisition of goods and services; requirements related to contracts with private architects, engineering, land surveying, and construction project management firms; and the California Environmental Quality Act (CEQA) for the expenditure of moneys in the Conservation Fund;
- h) Authorizes CDFW to enter into an agreement with any county or city to delegate to the county or city the ability to authorize the taking of a western Joshua tree associated with developing single-family residences, accessory structures, and public works projects, as defined, concurrent with the city's or county's approval of the project;
- i) Authorizes CDFW or its designee to issue a permit to authorize the removal or trimming of a dead western Joshua tree or the trimming of a live western Joshua tree, as provided;
- j) Requires CDFW to develop and implement a western Joshua tree conservation plan in collaboration with governmental agencies, California Native American tribes, and the public. Specifies that CDFW shall present the final conservation plan at a public meeting of the Commission, for its review and approval, by December 31, 2024, and requires the Commission to take final action on the plan by June 30, 2025;
- k) Requires CDFW to submit an annual report to the Commission and the Legislature addressing the conservation status of the western Joshua tree, as provided; and
- l) Requires the Commission, beginning in 2026, and at least every four years thereafter, to, at a public meeting, review the status of the western Joshua tree and the effectiveness of the conservation plan, as specified.

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill authorizes CDFW enter into an agreement with any county or city to delegate to the county or city the taking of a western Joshua tree associated with commercial and industrial projects. According to the author, “The Western Joshua Tree is an iconic symbol of the High Desert region and I support the preservation of this species. Although the state has been moving in the right direction to protect this iconic species while meeting our state’s goals, we still need to address the need to streamline permitting for projects that are vital economic developments for local governments in the growing Antelope Valley and throughout the high desert. With the increased cost of living and lack of space in the metropolitan areas of Los Angeles, more people are continuing to move into the High Desert region. We must strike a balance between conservation and the urgently needed housing and economic development that is needed to address the increases in population.”
- 2) **Background.** The western Joshua tree, *Yucca brevifolia*, is a member of the Agave family. The Joshua tree is a monocot in the subgroup of flowering plants that also includes grasses and orchids. Many birds, mammals, reptiles, and insects depend on the Joshua tree for food and shelter.

The tree’s life cycle begins with the rare germination of a seed—its survival dependent upon well-timed rains. Young sprouts may grow quickly in the first five years, then slow down considerably thereafter. The tallest Joshua trees can be more than forty feet (12.2 meters) high. Determining the age of a Joshua tree is difficult, and rough estimates are often based on height—Joshua trees grow at rates of one-half inch to three inches per year. Some researchers think an average lifespan for a Joshua tree is about 150 years, but some of the largest trees may be older than that.

Western Joshua trees are widely distributed in the Mojave Desert region of California. According to CDFW’s Status Review of the species, estimates indicate that the abundance of the western Joshua tree is currently relatively high, but there is high uncertainty in estimates of population size due to both the uncertainty of density estimates, and uncertainty regarding how much area is occupied by the species. The eastern Joshua tree is also present in California, but is not considered in this bill or this analysis.

Threats to western Joshua trees. Populations of western Joshua trees within California have declined following European settlement of the Mojave Desert region, primarily due to habitat loss and degradation related to agricultural conversion and development. CDFW estimates that approximately 30% of the habitat occupied by western Joshua tree in California may have been modified between European settlement and the present. Habitat loss, wildfires, aridification, and other climate change effects are major threats to the western Joshua tree. For example, in 2020, the Dome Fire incinerated 1.3 million Joshua trees in a part of the Mojave National Preserve called the Cima Dome. While potentially less immediate than other threats, climate change could represent an existential threat to the western Joshua tree. CDFW expects that some of the effects of climate change (e.g., increased temperatures and decreased total water availability locally) will likely contribute to a decline in populations of western Joshua trees within California through the end of the 21st century. CDFW estimated

that 7.2% of the western Joshua tree ranges has been converted (Table 4-3 in the draft conservation plan).¹

Proposed CESA listing. In response to this threat, the western Joshua tree was proposed for listing as threatened under CESA at the Commission in late 2019. The Commission accepted the western Joshua tree as a candidate species in 2020 and has not made a final decision on the listing yet. While a candidate for listing, the western Joshua tree has similar protections to those of a listed species. This includes take prohibitions and take authorization through permits obtained from CDFW. Since becoming a candidate, take permits were issued under FGC § 2081 and § 2084.

The Western Joshua Tree Conservation Act. To provide protections to western Joshua trees and hopefully prevent an official listing while enabling development, WJTCA was enacted in 2023 (see Related Legislation and Existing Law). The WJTCA prohibits the importation, export, take, possession, purchase, or sale of any western Joshua tree in California unless authorized by CDFW. WJTCA authorizes CDFW to issue permits for the incidental take of one or more western Joshua trees if the permittee meets certain conditions. Permittees may pay specified fees in lieu of conducting mitigation activities. WJTCA also authorizes CDFW to issue permits for the removal of dead western Joshua trees and the trimming of live western Joshua trees under certain circumstances.

Pursuant to the WJTCA, CDFW may enter into an agreement with any county or city to delegate limited authority to permit the take of a western Joshua tree associated with developing single-family residences, multifamily residences, accessory structures, and public works projects (Delegation Agreements). Delegation Agreements for this purpose limit the number of trees that may be take depending on the type of project. CDFW may similarly enter into Delegation Agreements with any county or city to permit the removal of dead western Joshua trees and the trimming of live western Joshua trees. Delegation Agreements just became available as of February 28, 2024 and CDFW has already begun negotiating agreements with several local agencies.

Under WJTCA, all in-lieu fees collected will be deposited into the Conservation Fund for appropriation to CDFW solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree. Additionally, WJTCA requires CDFW to develop and implement a western Joshua tree conservation plan in collaboration with governmental agencies, California Native American Tribes, and the public. The complete draft conservation plan must be presented no later than December 31, 2024 at a public meeting of the Commission for its review and approval. CDFW must also develop annual reports assessing the conservation status of the western Joshua tree and submit them to the Commission and the State Legislature no later than January 1 of each year, starting in 2025. The Commission is expected to postpone final consideration of the petition to list western Joshua tree until CDFW submits an updated status review to the Commission by no later than January 1, 2033.

¹ California Department of Fish and Wildlife (CDFW). 2024. Western Joshua Tree Conservation Plan. Draft Presented to the California Fish and Game Commission, December 12, 2024.

WJTCA implementation. In July 2024, CDFW released the Western Joshua Tree Relocation Guides and Protocols to guide how and when to relocate western Joshua trees to minimize impacts to populations, prevent habitat fragmentation, and preserve western Joshua tree connectivity. In November 2024, CDFW released the draft conservation plan, which is expected to be finalized by the Commission by June 30, 2025. CDFW also implemented two permitting systems: to date, 25 incidental take permits and 350 hazardous management permits have been issued. The 258 projects authorized during 2023–2024 have resulted in the taking of 3,175 western Joshua trees, the development of 2,888 acres of western Joshua tree woodland and just over \$3 million in in-lieu fees remitted.

To date, no delegation agreements have been approved.

- 3) **Policy considerations.** WJTCA, which this bill is amending, represents a highly negotiated balance between mitigation, in lieu fees, impacted area, allowed activities, and even the definition of an “individual tree.” Modifying WJTCA at this time will likely interrupt current implementation and unsettle the balance struck in the WJTCA. The Committee is unaware of any delegated agreements, so it is unclear what benefit may be realized.
- 4) **Arguments in opposition.** Several environmental groups write in opposition to amending WJTCA less than two years after the bill with into effect and claim the bill is “premature, undermines essential protections for the western Joshua tree, and re-opens a compromise that most environmental groups disliked.” Opposition cites concerns with other actions that they believe have weakened WJTCA standards, such as solar developers, who had secured permits to take Joshua trees under the previous CESA rules renegotiated their take permits at the much lower fee. They state that “If this bill moves forward and re-opens the WJTCA, the undersigned organizations believe that the mitigation fees in SB 122 should be revisited due to the proposed changes to the [WJTCA] and the “changed circumstances” due to the solar industries’ “bait and switch” tactics for fees.”
- 5) **Related legislation.** AB 2443 (Carillo) of 2024 was substantially similar to this bill, but was amended into a bill about transaction and use tax (Chapter 961, Statutes of 2024).

AB 1008 (Bauer-Kahan) of 2023 was the policy bill that established the WJTCA and enabled negotiation. The WJTCA was included in budget bill SB 122, Chapter 51, Statutes of 2023.

AB 1183 (Ramos), Chapter 380, Statutes of 2021, establishes the California Desert Conservation Program at the Wildlife Conservation Board to acquire, preserve, restore, and enhance desert habitat within the California deserts region.

SR 116 (Allen, Hertzberg, Hill, Leyva, and Stern) of 2018 declares the California Desert an ecological treasure, and proclaims we should secure for the American people of this and future generations an enduring heritage of biodiversity, wilderness, national parks, and public land values in the California Desert.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

Audubon California
California Native Plant Society
Center for Biological Diversity
Defenders of Wildlife
Mojave Desert Land Trust
Planning and Conservation League
Sierra Club California

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