



October 4, 2024

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

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

Re: Large-scale Solar Association's Comments on October 10 Meeting Agenda – Western Burrowing Owl Listing Petition (Agenda Item 14)

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

On behalf of the Large-scale Solar Association (LSA), we write to you regarding the petition to list the Western Burrowing Owl (BUOW) as a threatened or endangered species under the California Endangered Species Act (CESA). We strongly disagree with the unsupported assertion in the petition that large-scale solar projects are killing thousands of owls annually. While passive relocation of owls and removal of habitat has occurred in connection with some solar projects, thousands of acres of at-risk native desert and grassland habitats have been permanently protected as a result of these projects. Additionally, artificial burrow construction has in some cases provided supplemental habitat for Burrowing Owls in connection with solar project development. Furthermore, Burrowing Owls have been known to reoccupy solar energy development sites during the post-construction phase.

Despite our disagreement with the petitioners' contention regarding impacts to owls by solar projects, we are supportive of the petitioners' conclusion that the Western Burrowing Owl warrants listing in all or a portion of its range. We therefore write to support advancing the Western Burrowing Owl to candidacy under CESA and to offer continued collaboration to advance the science and conservation practices to benefit Western Burrowing Owls.

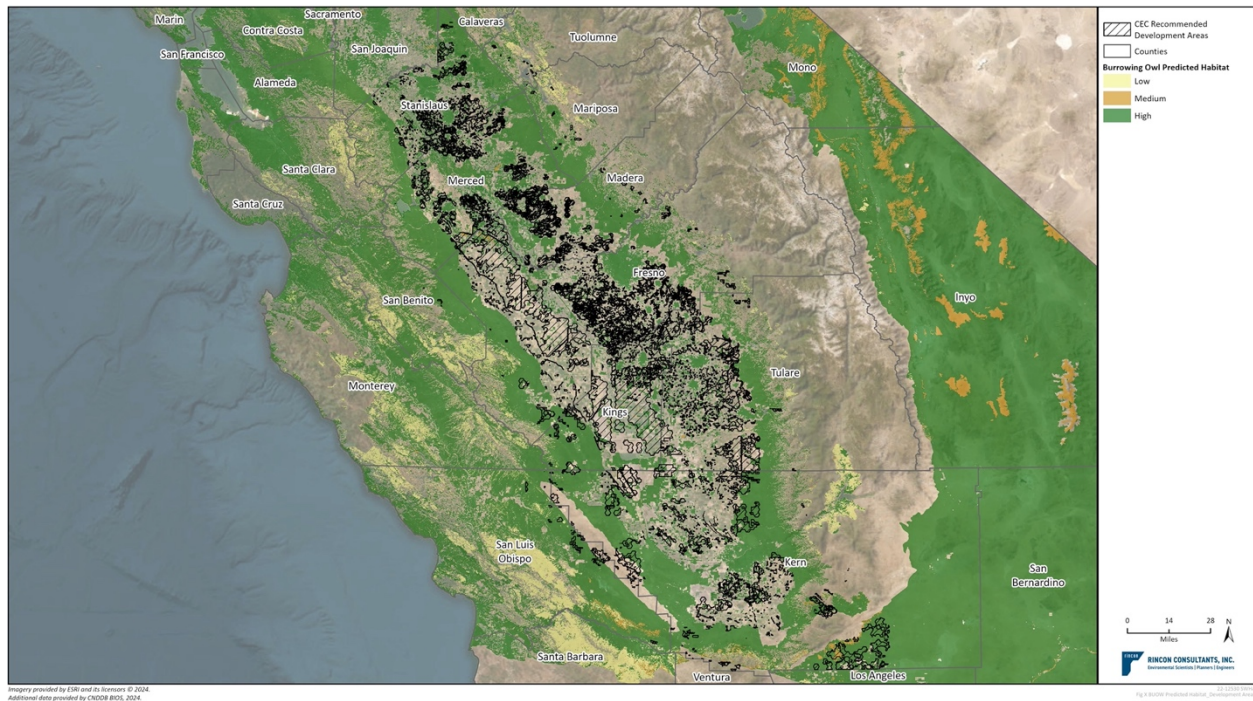
LSA is a non-partisan association of solar and battery storage developers that advocates appropriate policies to enable market penetration of utility-scale solar technologies in California and the Western United States. LSA's members are leaders in the utility-scale solar industry with extensive technical experience in all disciplines necessary to site, develop, engineer, construct, finance and operate utility scale solar and battery storage systems. LSA's member companies are principally responsible for developing much of the operational and planned large-scale solar and storage capacity in California today. Our member companies have environmental experts on staff and as part of project teams who provide natural resources knowledge that is used in support of creative conservation solutions at their project sites. In particular, owl biologists are working closely with LSA member companies to recommend new Western BUOW habitat improvement opportunities at solar sites.

As the fifth largest economy in the world, California's plan to achieve a net-zero carbon economy by 2045 remains a north star for the nation's effort to meet the climate imperative. To achieve this goal, California is expected to add more than 165,000 Megawatts (MW) of new utility-scale clean energy

to the grid, including approximately 70,000 MW of utility-scale solar.¹ Siting these solar projects will require an estimated 600,000 to 700,000 acres of land in a state wrangling with multiple land-use pressures, visionary conservation targets, and unprecedented climate impacts. This nexus between clean energy goals and land availability demands strategic planning and creativity. With solar as the backbone of California’s energy portfolio, minimizing and mitigating species impacts while siting and operating these projects is key to ensuring California meets its clean energy goals sustainably.

Temporary displacement of Western BUOW from solar energy development can occur during the construction phase of large-scale solar energy projects. However, during the long-term (30-50+) operations phase, solar projects have a high potential to provide a net conservation benefit if sites support, manage, and monitor habitat on the project site, and provide data on owl survival, reproduction, and success. However, such management actions are costly and risky, and therefore must be encouraged and incentivized for developers, owners, operators, and investors to be willing to take them on.

The figure below shows the California Energy Commission’s modeling of locations of solar energy development in the state with the lowest overall impact on natural resources, which is used as a guide for California’s long-term transmission planning process. As is evident in the mapping, the current and recently retired agricultural lands in the San Joaquin Valley demonstrate that Western BUOW habitat has been degraded by commercial agricultural practices prior to the advent of large-scale solar, but remnant owl populations and pockets of habitat persist. This is the case in other intensively cultivated agricultural regions of the state as well.



¹ California Independent System Operator. *2024 20-Year Transmission Outlook*. (2024) <https://stakeholdercenter.caiso.com/RecurringStakeholderProcesses/20-Year-transmission-outlook-2023-2024>.

More than a million acres of commercial agricultural lands are anticipated to be retired as a result of statewide irrigation water pumping curtailments under state law by 2040, and an estimated 600-700,000 acres of land are anticipated to be converted to solar energy production to decarbonize the state's grid in alignment with state policy. Because solar energy and battery storage development includes the cessation of annual and routine harvesting, disking, planting, and herbicide and pesticide use, redevelopment of retired agricultural lands represents an outstanding opportunity for both clean energy and habitat restoration through mitigation in the San Joaquin Valley and in other intensively cultivated agricultural areas for the benefit of BUOW and many other species.

Listing the Western BUOW poses risks to all development in California, particularly utility-scale solar due to the overlap of suitable sites with Western BUOW habitat. Developing solar projects requires exquisite coordination, most notably in the final stages prior to construction. Financing must be secured to fund engineering and construction contracts, as well as procurement and delivery of major equipment – all to enable development to occur on schedule with exacting deadlines that, when missed, can extract costs exceeding \$100,000 per day. The addition of a new CESA listed species puts near-term projects in jeopardy and could stall the development of renewable energy that's critical to meeting the state's multi-sector decarbonization targets, impacting the cost of project development and consequently electricity ratepayer affordability. While we hope that our coordination to date with the California Department of Fish and Wildlife (Department) will ease these challenges, the California Fish and Game Commission (Commission)'s decision could have financial and scheduling impediments to the State's renewable energy portfolio and 2045 clean energy goals.

It bears noting that there is a low bar by which species are petitioned for listing under the Fish and Game Code and subsequently advanced to candidacy status. Application completeness is the sole threshold that, once easily achieved by petitioners, obligates the Commission to advance petitioned species to candidacy, affording them all the protections of endangered species in the state. As such, any species, whether actually under threat or not, could be brought to candidacy since no scientific data or basis is necessary or required by law to support a petition. As observed in the BUOW petition, there is no evidence provided that solar causes Western BUOW mortality; rather, the petitioners state this as fact, and the citations used to support these contentions also do not include any data to support the petitioners' beliefs.

While in many cases (like this one) these protections may well be warranted, they require no consideration by the Commission of the environmental, social, or economic consequences of listing the petitioned species. Such listings result in dramatic effects on California's ability to meet our renewable energy and climate goals by creating new barriers to land development that both slow progress toward meeting these goals and increase the cost of energy to Californians. Such barriers occur without justification that such costs and delays are warranted, are in the public interest, or whether significant adverse impacts to California's people and ecosystems may result. Some listings may very well not be in the public interest as they further challenge (and potentially sacrifice) our ability to meet the decarbonization goals required to prevent the worst effects of the climate crisis, which notably include the predicted decline and extinction of thousands of species native and endemic to the State of California.

Should the Commission advance the Western BUOW to candidacy, LSA, the petitioners, concerned parties, and the Department will have a responsibility not to squander this opportunity. LSA and its member companies are committed to natural resource protection under the law and beyond, and

we are committed to avoiding and minimizing impacts to Western BUOW during construction, operation, and decommissioning of the state's critical clean energy infrastructure. Our member companies are committed to managing infrastructure in a way that creates and enhances Western BUOW habitat where possible. With this in mind, LSA has developed a Western BUOW Conservation Strategy for solar and energy storage developers and will continue to work with the Department and interested parties to refine our approach to create meaningful, long-term benefits to Western BUOW. The Conservation Strategy, which relies heavily on technical support and the scientific expertise of a group of PhD scientists and Certified Wildlife Biologists (some of whom are cited in the petition, including Dr. David Plumpton), includes the following important elements:

- Analysis of thousands of observational field data on BUOW responses to construction activities under reduced buffer conditions and recommendations of standard and minimized activity buffers to avoid and minimize adverse impacts to BUOW;
- Evidence from operational solar facilities of successful BUOW nesting and foraging during long-term operations, and recommended minimization measures to ensure long-term maintenance of suitable BUOW habitat conditions at operational solar facilities;
- Data forms and commitments by LSA member companies to collect and transmit consistent observational data during both construction and operations, where possible, to a centralized database that will be authorized for use by research scientists to help answer key hypotheses about owl behavior in and around large-scale solar facilities;
- A commitment by LSA member companies to offer financial support and/or in-kind contributions toward scientific research on BUOW interaction with solar facilities that help advance a shared understanding of such interactions.

The evidence and commitments provided in the Conservation Strategy represent substantially updated information relative to the 2012 *Staff Report on Burrowing Owl Mitigation*,² and should be relied upon in lieu of the precautionary principle, which is typically relied upon by Department Staff in crafting avoidance and minimization measures in Incidental Take Permits. We're confident that our investments in science and conservation will yield essential ecological benefits to owls and look forward to reporting our progress back to the Commission. We do not want CESA to stand in the way of this important work, and we encourage deep thought and collaboration in the near future about how best to achieve our shared conservation goals.

Conclusion

Meeting California's urgent climate imperatives – including the significant extent to which California relies on utility-scale solar projects to meet energy needs and climate targets – will require unprecedented coordination. This extends to the cooperation needed to ensure that the CESA listing of the Western BUOW does not hinder critical renewable energy projects. To reiterate, LSA supports advancing the species to candidacy and will continue our work with the Department, petitioners, and other interested parties to advance the science and conservation practices to benefit Western BUOW.

We look forward to continued collaboration with the California Fish and Game Commission as a unifying body in the fight against climate change.

² California Department of Fish and Game. *Staff Report on Burrowing Owl Mitigation*. (2012) <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Eddy". The signature is written in a dark ink and is positioned above the printed name.

Shannon Eddy
Executive Director,
Large-scale Solar Association