

**CALENDAR ITEM
C25**

A 8
S 5

03/25/08
PRC 519.1
V. Caldwell
J. Frey

CONSIDER AUTHORIZATION OF LITIGATION FOR TRESPASS AND EJECTMENT

PARTIES:

William J. Barker and Carol L. Barker

AREA, LAND TYPE, AND LOCATION:

0.357 acres, more or less, of Sovereign lands in the Sacramento River, near the city of West Sacramento, Yolo County.

ORIGINAL AUTHORIZED USE:

Use and maintenance of a pier and pilings.

CURRENT AUTHORIZED USE:

None.

BACKGROUND INFORMATION:

In May 1950, the Commission received an application from the Time Oil Company, the littoral property owner at the time, requesting authorization to construct, use and maintain a loading wharf and two mooring dolphins on sovereign lands in the Sacramento River. The application was approved, a commercial lease issued and the improvements were constructed.

Time Oil continued its use of the lease premises until the lease expired in 1975. The littoral property was then sold to various individuals over the years. The littoral property was subsequently purchased by Lawrence and Shirley McKinney and the Commission approved the issuance of a 20-year General Permit – Recreational Use to the McKinney’s for the improvements. Prior to the lease expiring on December 30, 1999, William J. Barker and Carol L. Barker (Parties/Barker’s) purchased the upland property from the McKinney’s on March 31, 1998.

OTHER PERTINENT INFORMATION:

1. The Parties own the littoral property identified as Assessors Parcel

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No. 046-040-08-1 that adjoins the State's sovereign land in the Sacramento River.

2. In 1997, the Barkers purchased an 85-foot 100-ton paddlewheel riverboat formerly known as the "Spirit of Sacramento". Since the purchase of the riverboat, the Barkers have continuously and without Commission authorization moored the riverboat to the pier.
3. In 1998, staff became aware that the littoral property had been sold to the Barker's and the first letter was sent to the Barker's advising them of their need to obtain a new lease for the use of State sovereign land for the pier and pilings. Since that time, staff has sent numerous letters to the Barkers. However, the Barkers have not responded to any of staff's letters and they continue to occupy the State's sovereign land in trespass.
4. Since January 2006, several articles have been published in the Sacramento Bee regarding the poor condition of the Spirit of Sacramento and the threat it poses to the public's safety and navigation. The most recent article was published on October 31, 2007. The article included a photograph of the riverboat, which was partially submerged and tied with warped cables to the pier and gangway and appeared to be ready to break loose from its mooring. On November 3, 2007, Commission staff conducted a site inspection to verify the condition of the riverboat and the pier structure. The pier structure was found to be in a poor and derelict condition and the riverboat was partially sunk and listing at a 45 degree angle. On November 17, 2007, after five days of work, the riverboat was raised from its partially submerged state.
5. On December 5, 2007, staff notified the Barkers that they were in trespass and that the derelict condition of the pier and the Spirit of Sacramento posed a nuisance and safety hazard to the public and must be immediately removed from the State's property. The Barkers were given until December 14, 2007 to respond. Staff conducted a second site inspection on December 13, 2007 and found that the riverboat had been raised. The Barkers have not responded to the December 14th deadline. Therefore, because of the poor condition of the pier and the riverboat's potential for sinking and/or breaking loose from its mooring and becoming a navigation and public safety hazard, staff is recommending that the Commission authorize staff of the Commission and the Office of the Attorney General to commence litigation for trespass, damages, and

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ejection, and seek reimbursement for costs expended, and take all other steps as necessary to remove the pier and the Spirit of Sacramento from the State's sovereign land and to have the bed of the Sacramento River restored to its condition prior to the placement of the pier and riverboat.

6. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b)(3).

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site and Location Map
- B. Land Description
- C. Copies of Letters to the Barkers

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b)(3).

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SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. RATIFY STAFF'S FINDING THAT WILLIAM J. BARKER AND CAROL L. BARKER ARE IN TRESPASS ON STATE-OWNED SOVEREIGN LAND LOCATED IN THE SACRAMENTO RIVER AS DEPICTED ON THE ATTACHED EXHIBIT A AND AS DESCRIBED IN THE ATTACHED EXHIBIT B.

2. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EJECT WILLIAM J. BARKER AND CAROL L. BARKER, TO REMOVE THE RIVERBOAT KNOWN AS THE SPIRIT OF SACRAMENTO, THE PIER AND PILINGS AND ALL OTHER IMPROVEMENTS FROM SOVEREIGN LANDS IN THE BED OF THE SACRAMENTO RIVER AS DESCRIBED IN THE ATTACHED EXHIBIT B AND ADJACENT TO ASSESSORS PARCEL NO. 046-040-08-1, YOLO COUNTY; TO RESTORE THE SOVEREIGN LANDS AT THIS LOCATION TO THEIR CONDITION PRIOR TO PLACEMENT OF THE PIER AND PILINGS AND TO RECOVER THE COMMISSION'S DAMAGES AND COSTS.