

# Staff Report 31

## **PARTY:**

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California State Lands Commission

## **PROPOSED ACTION:**

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Authorize staff to take title to, remove, and dispose of two abandoned vessels in Sevenmile Slough, Sacramento County; contract for removal and disposal; and seek to recoup costs.

## **BACKGROUND:**

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The Commission has long advocated for a state-level program to address abandoned and derelict vessels (ADV) in state waters. A significant step was taken in 2011 when the Legislature vested the Commission with the power to declare certain vessels abandoned property and to take title and direct their disposition (Wolk, [SB 595](#)). This occurs through a public process at open meetings and with required notice and waiting periods to protect private property and due process interests. Depending on the circumstances, ADVs may either be removed immediately or posted with a notice of trespass and allowed to remain for later removal by the owner or the Commission. In addition to notice posted on the vessel, notice is given to the owner if the owner is known or can be determined, and if the Commission has not previously removed the vessel, the owner is given 30 days to remove it. ADVs not removed or claimed within 30 days are deemed abandoned by law, and the Commission may then take possession and dispose of them in any manner it deems appropriate.

The Commission's authority is based on its jurisdiction over state sovereign lands underlying historically navigable waterways and its right as the property manager on behalf of the state to remove trespassers. The Commission has had that right since its inception in 1938. Existing law, Public Resources Code section 6302, was enacted in 1941 (Stats. 1941, Ch. 548) and provides a general right to evict trespassers. The specific right to deal with vessels was first codified in section 6302.1 in 1987 (Stats. 1987, Ch. 969). SB 595 amended section 6302.1 and added sections

6302.3 and 6302.4 to the Public Resources Code, which provides for an administrative process to remove and dispose of vessels. Prior to SB 595, any action to remove and dispose of vessels required litigation.

The Commission used this authority most notably in collaboration with local, state, and federal agencies to clear the Oakland-Alameda Estuary of nuisance vessels and debris in late 2013 ([Item 112, December 2, 2013](#)). That project was funded by one-time grants.

In 2018, the Legislature directed the Commission to prepare a plan for the removal of abandoned commercial vessels in the Sacramento–San Joaquin Delta ([AB 2441, Frazier](#)). The Commission prepared and adopted its [Abandoned Commercial Vessel Removal Plan](#) (Plan) in [Item 100, June 28, 2019](#). The Legislature did not provide funding to implement the Plan, and Commission staff has therefore been restricted to participating when other agency funds are available or in emergencies.

The outlook changed significantly with the [Budget Act of 2021](#), when the Legislature allocated \$12 million to the Commission to remove commercial ADV from the Sacramento–San Joaquin Delta region. Commission staff has begun preparing recommendations to update and implement its 2019 Removal Plan. Staff will bring the update and its recommendations to the Commission for consideration at a future public meeting.

## PROJECT DESCRIPTION:

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Staff is requesting authorization to immediately begin a removal action at the “Skarry” debris site, a cluster of ADVs in the heart of the Delta, placed there by the vessels’ deceased owner, Mr. Michael Skarry. The Skarry debris site has been a significant concern to the Commission and local, state, and federal agencies since 2013. At least five vessels owned by Mr. Skarry are abandoned, and are either grounded or sunk in Sevenmile Slough, a waterway directly off the San Joaquin River in southern Sacramento County. The known vessels are: 93-foot-long tug *Standard No. 2*; 60-foot-long tug *Valiant*; former military 120-foot-long crane barge *BD-245*; 40-foot-long crane barge *Peanut*; and a 60- to 80-foot-long sunk barge.

The Commission authorized staff to compel Mr. Skarry to remove his property in 2013 ([Item 93, February 22, 2013](#)). The Sacramento County District Attorney’s office had begun legal process against Mr. Skarry to require him to properly remove or dispose of the debris, but he died in late 2019, without taking responsibility for his ADVs or leaving resources capable of addressing the debris. Since then, staff has collaborated with the Sacramento County Sheriff’s Marine Patrol, California

Department of Fish and Wildlife and its Office of Spill Prevention and Response, California Department of Toxic Substances Control, U.S. Coast Guard, and U.S. Environmental Protection Agency to monitor the debris for stability and safety.

Of the five known Skarry debris vessels, only two are currently floating: the *Standard No. 2* and the *Valiant*. Both are unmaintained and deteriorated. If either were to sink, the difficulty and cost of removal is expected to increase dramatically.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6302.1, 6302.3, and 6302.4.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Public agencies have expended considerable time and tens of thousands of dollars securing the Skarry debris. In 2016, the United States Coast Guard removed fuels and oils from the vessels. In 2019, the Department of Toxic Substances Control removed loose hazardous waste from the deck of the floating vessels, gathering a dozen drums of various fluids, containers of grease, paint, batteries, and propane cylinders. In 2020, the U.S. Environmental Protection Agency contracted for a hazardous materials analysis that showed the *Standard No. 2* to contain asbestos tiling, both tugs to contain residual petroleum products, and all sampled vessels to contain metals (lead, copper, zinc, and others) in paint chips. A light fuel or oil sheen was observed recently near the *Valiant* and *BD-245*. Removal from the water is the only complete solution to abate these environmental threats.

The debris also poses a threat to any person who attempts to board or salvage the vessels. The vessels are deteriorated and unsafe to board, with rusted decks and railings and potential voids. Sacramento Sheriff's officers have warned off people attempting to tow the *Valiant* away using a small motor craft. The *Valiant* is near the mouth of the San Joaquin River, a major commercial and recreational waterway. If it were to break free of its mooring, the *Valiant* could drift into the shipping lanes. Removing the debris will abate a threat to public safety.

Additionally, ADV, whether floating, grounded, or sunk, block light from reaching the bottom and occupy space in the water. This decreases usable habitat for plants and animals.

The debris site at Sevenmile Slough near the San Joaquin River affects an already disproportionately impacted community. The census tract for the site receives a score of 90 out of 100 for Impaired Water, according to CalEnviroscreen. This

indicates that the site is in the 10th worst percentile in the entire state for polluted water. Poor water quality affects the residents' ability to fish or recreate.

For all these reasons, the Skarry debris site—and especially the two floating tugs—is a priority abatement for Commission and other State and local agency staff. Commission staff is still working with its local, state, and federal agency partners, including the U.S. Environmental Protection Agency, ~~are on~~ cost allocation and contribution for subject removal. However, staff believes it is prudent to remove the subject vessels from the water while they are still floating, and costs are relatively less than if the vessels sink. If authorized, staff will use its allocated funds to contract to remove and dispose of the vessels from the water and dispose of the cleaned solid waste.

Staff recommends removing the vessels safely from the water as soon as possible. Staff will seek authorization to remove the three remaining Skarry vessels, if found to be feasible and prudent, at a future public meeting.

### CONCLUSION:

For the reasons stated above, staff recommends that taking title to, removing, and disposing of the tugs *Standard No. 2* and the *Valiant*; and authorizing staff ~~to contract~~ up to \$900,000 ~~to contract~~ for removal and disposal activities and to share costs with partner local, state and federal agencies will not substantially impair the public rights to navigation and fishing or substantially interfere with, and will substantially enhance, Public Trust needs and values at this location, at this time, and for the foreseeable future; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

### OTHER PERTINENT INFORMATION:

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1. The recommended authorization is a discretionary action by the Commission. Each time the Commission approves or rejects an action on sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. On September 10, 2021, Sacramento County Sheriff's staff posted trespassing signs on the two tugs. Staff has been unable to identify a responsible party to send notice by mail. Pursuant to Public Resources Code section 6302.3, an action regarding the disposition of a vessel must be delayed for 30 days following Commission decision to allow the owner to pursue any legal action or remedy. Staff recommends that authorization to take title be delayed until this period has passed to minimize the period of State ownership.

3. Pursuant to Public Resources Code section 6302.4, subdivision (b), a Commission action regarding a vessel declared abandoned is exempt from the State Contract Act. Staff intend to solicit offers to remove and dispose of the vessels.
4. This action is consistent with the "Meeting Evolving Public Trust Needs," "Prioritizing Social, Economic, and Environmental Justice," and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
5. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 4, Minor Alteration to Land, California Code of Regulations, title 2, section 2905, subdivision (d)(3), and Class 30, Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances; California Code of Regulations, title 14, section 15330.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## **EXHIBITS:**

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- A-1. Site and Location Map – Tug *Valiant*
- A-2. Site and Location Map – Tug *Standard No. 2*
- B. Photographs of Tug *Valiant* and Tug *Standard No. 2*

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 2905, subdivision (d)(3), and Class 30, Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances; California Code of Regulations, title 14, section 15330.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed action will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable future; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize the Executive Officer or her designee to take title to two abandoned commercial vessels on behalf of the State, the tug *Valiant* and tug *Standard No. 2*, last owned by Michael Skarry, deceased, located in Sevenmile Slough, Sacramento County on or after November 22, 2021.
2. After taking title, authorize the Executive Officer or her designee to engender the removal and disposal of the *Valiant* and *Standard No. 2* in any manner determined to be expedient or convenient and, in a manner, least disruptive to the surrounding environment, including contracting up to \$900,000 for removal and disposal or transferring title to another agency or entity capable of removal and disposal.
3. Authorize the Executive Officer or her designee, in cooperation with the Office of the Attorney General, to recoup the Commission's costs through any available administrative or civil means, if determined feasible and prudent.

NO SCALE

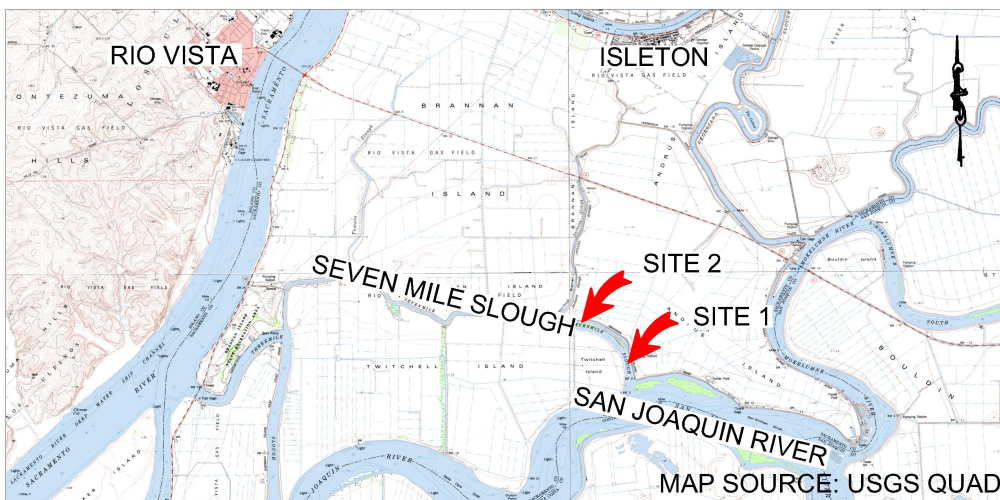
## SITE



### SITE 1 - VALIANT - SEVEN MILE SLOUGH

NO SCALE

## LOCATION



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE PROJECT LOCATION AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

## EXHIBIT A-1

W 27250  
ABANDONED VESSEL  
REMOVAL  
SACRAMENTO COUNTY

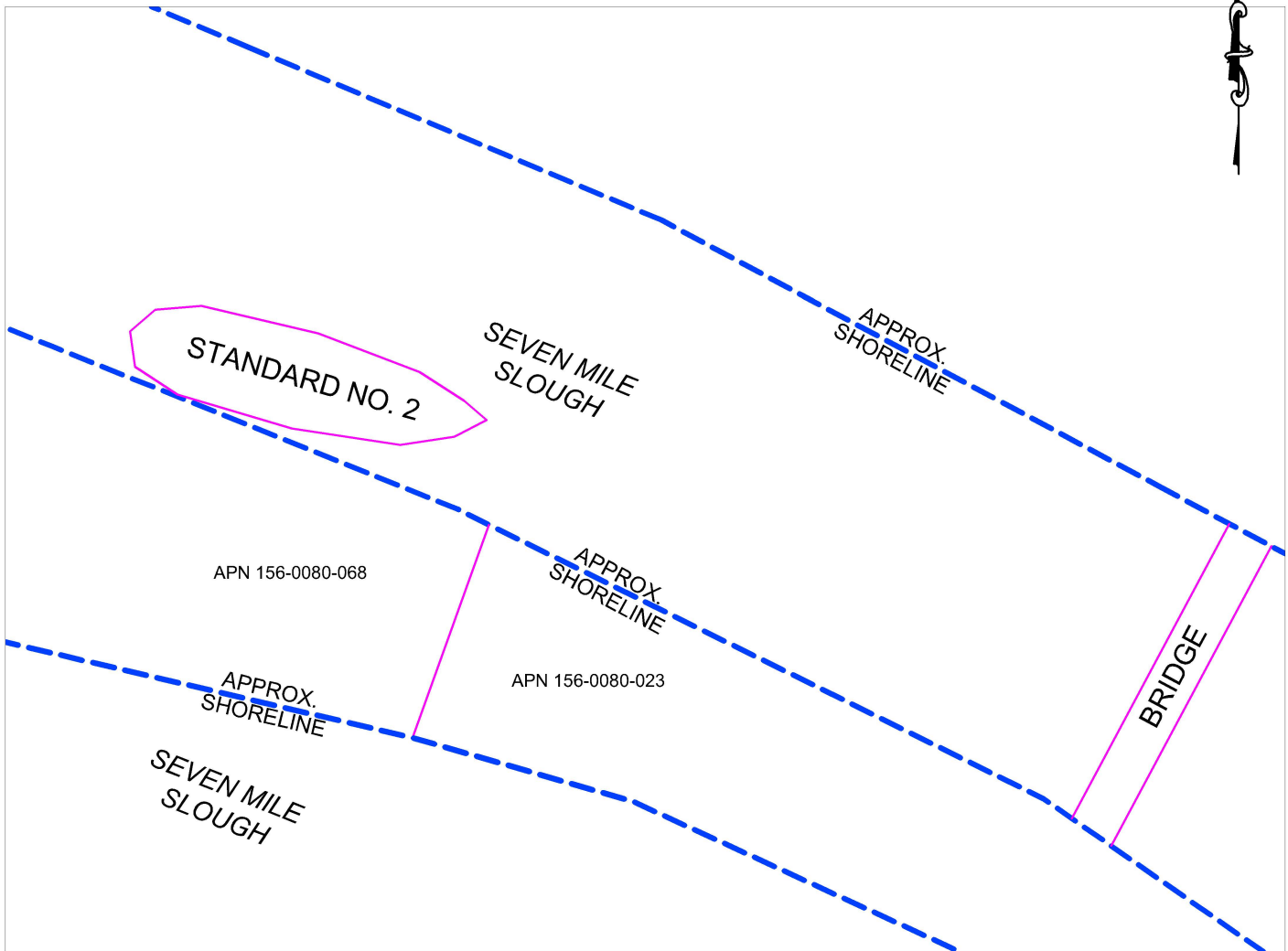


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NO SCALE

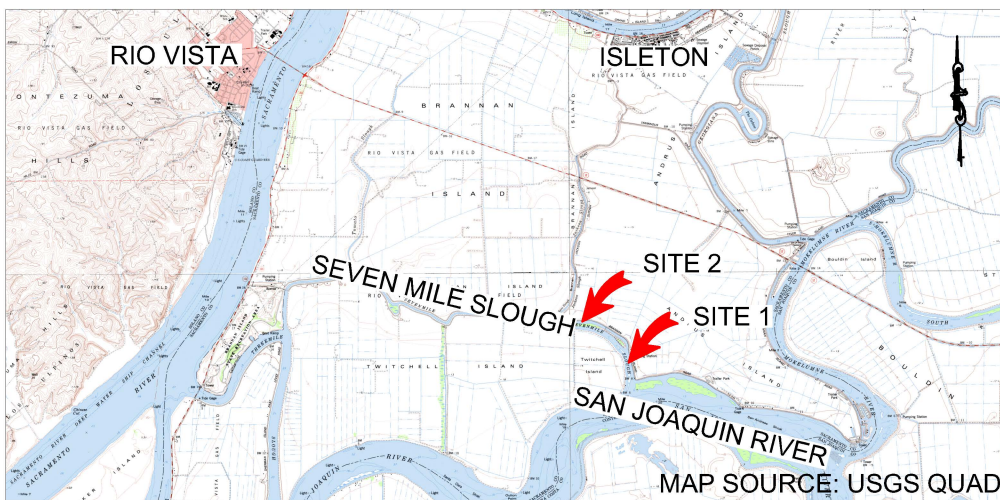
## SITE



SITE 2 - STANDARD NO. 2 - SEVEN MILE SLOUGH

NO SCALE

## LOCATION



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## EXHIBIT A-2

W 27250  
ABANDONED VESSEL  
REMOVAL  
SACRAMENTO COUNTY



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## W 27250 EXHIBIT B - TUG VALIANT



Tug Valiant pictured in previous location in Sevenmile Slough



## W 27250 EXHIBIT B – STANDARD NO 2 TUG



Photograph credit: Sacramento County Sheriff's Department Marine Patrol Unit