



DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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5903/33-2

From: Commandant
To: Commander, 11th CG District

Subj: Navigable waters of the United States, determination of; Tecolotito Creek/Goleta Slough, Santa Barbara County, California

- Ref: (a) Ltr CCGD 11(o) to Comdt(L), 5903/oan/268-69 dtd 14 July 1969
(b) Ltr Comdt(L) to CCGD 11, 5903/33-2 dtd 27 May 1969
(c) Map; Goleta, California Quadrangle, USGS revised 1967
(d) Corps of Engineers, Interim Report of District Engineer for Flood Control Project Survey-Goleta, California and vicinity (ref. (a) encl. 4 fig. 16) dtd 20 June 1968
(e) Corps of Engineers-Board of Engineers for Rivers and Harbors - review of ref. (d) dtd 29 October 1968
(f) Corps of Engineers - Chief of Engineers - review of refs. (d) & (e) - undated
(g) Walker Tomkins, Goleta, the good land, Goleta Amvets (1966)

1. Reference (a) has been received in compliance with the request made in reference (b) for information regarding the navigability of subject waters so that a determination be made as to whether they are part of the navigable waters of the United States.

2. Tecolotito Creek/Goleta Slough form an arm of a tidal estuary whose waters are almost entirely supplied from the Pacific Ocean. Tecolotito Creek, to be sure, rises in the Santa Ynez Mountains and runs southward to the head of Goleta Slough. Goleta Slough is a marshy area through which Tecolotito Creek flows. The stream above the Slough (see photo 1, page 4-16, reference (d)) is quite small and, except when carrying flood waters, adds little water to the Slough. It passes through the marsh for approximately one mile. Then, leaving the Slough, it becomes deeper and wider as it passes to the east for about 1/2 mile, running under three bridges, the Fowler Street Bridge, the Clarence Ward Memorial Bridge, and the Park Road Bridge in that order. At this point it is joined from the north by Atascadero Creek. The watercourse beyond this junction continues to the east for about 1/4 to 3/8 of a mile. At this point a bar, awash for several months of the year, transversely crosses the watercourse as it passes into Santa Barbara Channel and the Pacific Ocean (see figures 2 and 7, enclosure 4, reference (a), and reference (c)). This latter eastward stretch from the junction of the two creeks becomes progressively more shallow as it approaches the bar (see figures 6 and 7, enclosure 4, reference (a)). This shallowing off of the watercourse may be seen by comparing the depths noted in the profile drawings on plates 3 and 12, appendix 2 in reference (d).

Commandant, to
Commander, 11th CG District

LMI
5903/33-2

3. Figure 10 of enclosure 4 reference (a) depicts a low tidal condition at the Clarence Ward Memorial Boulevard Bridge where the water is 1 foot above sea level. At this point the profile drawing on plate 12, appendix 2 in reference (d) shows the bottom of the channel to be approximately 1 foot below mean sea level. From this it may be seen that at low tidal condition there are approximately 2 feet of water at the bridge. As noted before, the watercourse shallows steadily as it approaches the sea with the result that the stretch of Tecolotito Creek between Goleta Slough and the bar forms a lagoon upon which small motorboats might be navigated at low tidal conditions. Along this same line it may be noted that enclosure 4 to reference (a) notes that this "lagoon" is from 3 to 6 feet deep except for the bar.

4. The area north of the sand spit which forms the southern shore of the watercourse downstream of the marshy area was for a time a sheltered deep water anchorage for ocean-going vessels (see page 7, reference (d)). Use of this area as such an anchorage has been documented from as early as 1543. There was minor shipbuilding activity in the area around 1828. However, during the winter of 1861-1862 severe floods silted the Slough and its entrance to the sea. See generally reference (g). There is no evidence to indicate that the waters above the bar are now being regularly used for navigational purposes as is noted in enclosure 4 to reference (a). However, small boats have been launched into this watercourse.

5. The Corps of Engineers has proposed that an extensive flood control project be undertaken which would include the Tecolotito and Atascadero Creeks. The District Engineer recommended the project (reference (d)) and the River and Harbor Board concurred (reference (a)). Subsequently the Chief of Engineers concurred in the report and its recommendations (reference (f)) noting that the benefit to cost ratio is presently 1.3. As of this date the project has not been authorized or approved by Congress. It is expected, however, that it will appear in the next River and Harbor Omnibus bill for legislative consideration.

6. This report recommends, among other things, that the Tecolotito Creek from the Slough to the ocean be dredged to a design invert depth of 10 feet below sea level at the mouth to 4.25 feet below sea level at the southeast end of Goleta Slough. Included in the report is mention of a plan by the city of Santa Barbara to dredge and construct a recreational lagoon through the marsh to the point where Tecolotito Creek enters it from the north. While this plan is not certain to be carried out and the Corps of Engineers flood control project is not contingent upon it, it is relevant to the subject determination as an indication of probable navigational development in the area.

7. The project would open the subject waters to the sea and it is contemplated that the outlet would be maintained both by tidal action and a

Commandant, to
Commander, 11th CG District

LMI
5903/33-2

maintenance program for which a specific sum has been allotted (page 2-15 reference (d)).

8. As noted in the description above, there are presently three bridges crossing the stretch of Tecolotito Creek from the Slough to the sea, the newest of which was completed in 1963. The Corps of Engineers did not require that the owners obtain permits for any of them. This would indicate that that agency did not consider the Creek to be navigable. Reference (a) recommends that the waters involved be declared non-navigable.
9. The regulation dealing with the Coast Guard determination of tide waters as part of the navigable waters of the United States (33 CFR 2.20-5(a)) provides:

"The waters of the Atlantic and Pacific Oceans which comprise the territorial waters of the United States, the Mississippi River, the Potomac River, the Great Lakes, and many other prominent waterways are unquestionably navigable in fact and navigable in the constitutional sense. Therefore such waters are by common knowledge considered to be navigable waters of the United States. All tide waters whether salt or fresh which are navigable in fact are as a matter of law navigable waters of the United States." (Emphasis added.)

10. Since a distinction is made between "navigable in fact" and "navigable in the constitutional sense", it is not necessary to find past, present, or potential commercial usage of a branch of tide water to determine it to be part of the navigable waters of the United States. The test is whether the tide water area is navigable by the vessels over which the Coast Guard exercises jurisdiction in the enforcement of the navigation and vessel inspection laws for which it is responsible.

11. As noted in paragraph 3 above, there are approximately 2 feet of water at low tide beneath the Clarence Ward Memorial Boulevard Bridge. Above the Fowler Street Bridge (referred to as the abandoned Marine Corps bridge in enclosure 4, reference (a)) there is no information available on the existing ground line of the Tecolotito Creek bed, except for small branches of it which are shown on plate 12, appendix 2, reference (d) to be at or above sea level.

12. In making a determination as to whether a particular body of water is part of the navigable waters of the United States for the purpose of determining the extent of Coast Guard jurisdiction, great weight is accorded the opinion of the Corps of Engineers. In the present instance the Corps has never considered these waters to be navigable and did not issue permits for the existing bridges built during the time it administered the Bridge Acts.

Commandant, to
Commander, 11th CG District

LMI
5903/33-2

However, Congress has placed different responsibilities upon the Coast Guard than upon the Corps of Engineers. As a result, each agency must determine the extent of its jurisdiction in light of these different responsibilities. For this reason the Coast Guard may determine waters to be navigable waters of the United States for the purpose of its jurisdiction when the Corps of Engineers would not have made the same determination when describing its jurisdiction.

13. In a like manner, in making determinations of this nature particular regard is accorded the recommendation of the District Commander. In the present situation, however, the facts submitted by the District Commander relating to the capability of the waters in question to be navigated by vessels whose activities are in part regulated by the Coast Guard seem to militate against the recommendation that the subject waters be determined to be not a part of the navigable waters of the United States.

14. As to the applicability of the proposed flood control project of the Corps of Engineers, reference should be made to United States v. Appalachian Electric Power Co., 311 U.S. 377. There the Supreme Court held that a waterway improvement project which would make the waterway navigable, whether authorized or approved by Congress or not, would make the waterway navigable for the purpose of determining the extent of Federal jurisdiction over it, if its effect would be to make the waterway capable of being used for interstate or foreign commerce and the benefits to be obtained by the improvement would bear a favorable ratio to its cost. To be sure, the project involved there was in part a navigational improvement project, and the waters involved were non-tidal. However, a flood control project such as the one involved in the present situation, which will remove the silt at the mouth of a tidal estuary and coincidentally maintain a seaward navigational access to a presently tidal and navigable in fact portion of the estuary, is completely analogous to the project in the Appalachian Electric Power case.

15. Accordingly, on the basis of the following facts:

- a. Tecolotito Creek/Goleta Slough are tidal waters;
- b. At the present time evidence indicates that Tecolotito Creek from Fowler Street Bridge to its junction with Atascadero Creek is capable of being navigated at low tidal conditions by vessels subject to Coast Guard regulation;
- c. Taking into consideration only the sand bar removal provisions of the project, the need to "portage" over this barrier to reach the waters which are presently navigable for a substantial portion of the year will be alleviated;

Commandant, to
Commander, 11th CG District

LMI
5903/33-2

d. The flood control project proposed by the Chief of Engineers, at a favorable benefit to cost ratio without considering the navigational improvements, will provide a channel for small boat operation from the sea up to at least the Fowler Street Bridge.

e. The burgeoning boating industry and activity in Southern California increase the probability that plans both for the recreational lagoon noted in paragraph 6 above and for a marina to be constructed on the upper portion of Atascadero Creek will reach fruition in the not too distant future with the result that the waters involved here will be extensively used by the motorboating public;

f. The waters involved here were part of a deep water anchorage capable, until they became silted, of being navigated by ocean-going vessels;

it is hereby determined that the waters of Tecolotito Creek from Fowler Street Bridge to its junction with Atascadero Creek and thence to the ocean, since they are tidal and navigable in fact, are part of the navigable waters of the United States for the purposes of Coast Guard jurisdiction. This determination represents the Coast Guard's opinion as to the extent of its jurisdiction and does not represent an opinion as to the jurisdiction of the United States, which can be conclusively determined only through judicial or legislative proceedings.


W. J. SMITH