

MEMORANDUM

U. S. Department  
of Transportation

United States  
Coast Guard

Subject: Navigability determination for San Dieguito  
River/Lagoon

Date: MAR 8 1985

5800/A1  
NDT-DIEGUITO

From: Legal Officer

Reply to: (dl), x207  
Attn. of: LCDR Barrier

To: Chief, Aids to Navigation Branch

Via: Chief, Operations Division

Ref: (a) (oan) memo 16500.11 of 26 February 1985  
(b) COMDTINST M16590.5 (CH-2)  
(c) 33 CFR Part 2  
(d) 2 (dl) memos 16594 dated 18 August 1980  
(e) Public Notice 11-41 of 16 February 1982 (withdrawn in August of 1983)  
(f) (dl) memo 16590 of 9 September 1983

1. The information in reference (a) has been considered along with applicable laws and regulations to reach my opinion regarding navigability of subject river.


2. Reference (c) defines "navigable waters of the United States" to include "internal waters of the United States that are subject to tidal influence." Although the San Dieguito River/Lagoon is presently cut off from tidal influence by natural action of wind, tide, etc., it is from time to time subject to tidal influence because of intentional man-made access and occasional changes in natural conditions. Therefore, it is my opinion the San Dieguito River/Lagoon is a navigable water of the United States to a point upstream where the waters are no longer below mean high water.

3. One of the reference (d) memos expressed the opinion that subject river at mile 5.9, at the Via de Santa Fe Bridge is not navigable waters of the United States because the river bed at that location is 32.8 feet above mean sea level and a 1972 Corps of Engineers determination established the river as navigable to a point 2.5 feet above mean sea level. The other reference (d) memo expressed the opinion that the San Dieguito River/Lagoon, up to and including the Jimmy Durante Bridge, is navigable waters of the United States because it is subject to tidal influence. The second memo specifically failed to reach an opinion regarding the area between the Jimmy Durante Bridge and the Interstate 5 Freeway (the area of the present proposed bridge site) because of lack of information. The information in reference (a), however, makes it apparent that the site of the proposed bridge is subject to tidal influence, as is all of the San Dieguito River/Lagoon area inland to and including the Interstate 5 Freeway.

4. In the course of researching and discussing the request in reference (a), the question arose concerning "advance approval," as provided in 33 CFR 115.70. Reference (e) listed San Dieguito River/Lagoon in its entirety as a navigable waterway where the Commandant has granted advance approval for bridge construction. Reference (e), however, was withdrawn for the reasons stated in reference (f).

5. Section 3-F-6(b) through (e) of reference (b) was promulgated a few months after reference (f) and appears, in part, to render reference (f) inapplicable to tidal waterways. I am still of the opinion, nevertheless, that "advance approval" for bridges over such waterways as San Dieguito River/Lagoon places the Coast Guard in violation of Section 4-f of the DOT Act, as discussed in reference (f). If you wish to submit the request in reference (a) to Headquarters for their opinion, their opinion may well differ from mine.

6. To sum up, it is my opinion the San Dieguito River/Lagoon is navigable waters of the United States at least as far inland as Interstate 5, and the proposed bridge discussed in reference (a) requires a bridge permit.

A handwritten signature in black ink, appearing to read 'M. K. Cain', written in a cursive style.

M. K. CAIN