

November 04, 2021
Case #: K00016

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La Jolla Children's Pool: Who Has Rights to the Beach? (B)

As a result of the initial two-party mediation between Pam Thomas from The Seal Society and John Leek from Friends of the Children's Pool, it became clear to Jim that more stakeholders needed to be included in a multiparty mediation. Although the two-party mediation between Pam and John was productive, in a follow-up conversation with Jim, they agreed they alone could not represent all the voices in the conflict and therefore any solutions they came up with had a limited chance of success. Too many people had strong feelings about the seals at the Children's Pool, and there were voices that needed to be included. So, Jim proposed pulling in a couple more people to represent other perspectives and positions. To the proposed multiparty mediation, Jim invited along with Pam, John, and himself, Jane Fetter, a long-time local and wildlife enthusiast, and David Johnson, an open-water swimmer and firm believer that the Children's Pool best served the community as a place protected for human use.

Stakeholders' Voices: New Perspectives

Jane Fetter

Jane acknowledged many people expected her to advocate for keeping the Children's Pool as Ellen Browning Scripps had intended, but that was not the case. Jane and her family followed her uncle to La Jolla from Detroit in the 1940s. Her uncle had set out to warmer climates and a better quality of life as early 1935. He and his wife purchased two Cliff May houses above what we know today to be the Children's Pool. They took up residence in one, and Jane's family followed a couple years later and settled into the other. Jane's beloved father transferred to a sanatorium in the hopes of treating his tuberculosis, and Jane and her mother stayed in the cottage by the sea. They spent their days discovering the beaches of La Jolla and experiencing the joys of the Pacific Ocean. Over time, they grew to know the area up and down La Jolla, and Jane suggested, out of all the local beaches, La Jolla Shores was by far the safest and most fun for children of all ages, not the Children's Pool. Jane shared, "We were spoiled for choice when it came to beaches. Back then seal and sea lion sightings were rare and when they were on the beach people were respectful and in awe of the wildlife."

Kroc School Master of Science in Conflict Management and Resolution (MS-CMR) graduate, Lisa Thomas, Assistant Professor Philip Gamaghelyan, and Kroc Visiting Scholar and Universidad de Los Andes, Colombia, Honorary Professor María Helena Jaén prepared this case. University of San Diego cases are developed solely as the basis for case discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

Jane's mother became involved in her local community and got to know Ellen Browning Scripps personally, who was, in Jane's words, "understandably very proud of the breakwater she had built and funded."

When Jane and her husband Tom had children of their own in the 1960s, she would often take them to the Children's Pool to play. She shared, "When my grandchildren came along though, I derived even more joy out of taking them to the Children's Pool not for swimming but to see the wildlife" (see Exhibits 1-3).

Jane considered it a great and unique privilege to interact and see wildlife. Jane was vocal in suggesting the transition from yet one more beach access and swimming area to a unique wildlife space should be recognized as a prudent one and be considered a local treasure. She was delighted to think the seals get afforded some protection. She saw it as crucial that the locals, including San Diegans who did not have easy access to see seals and sea lions in their natural habitat, along with out-of-town visitors, got to experience what the Pacific Waters had to offer. Jane suggested:

Divers have so many great and easy points of entry to the water. Swimmers and beach goers need just walk on the other side of the brick wall to enjoy a day on the sand, but to see nature up close and personal as you can at the Children's Pool is rare and something to protect.

Jane recalled being involved in the international sailing spectacle that was the America's Cup. She worked hard to coordinate through community organizations and churches to bring children from noncoastal San Diego to the water to see the racing and experience up close the excitement of the event. She commented:

I have to tell you though; I was disheartened by how hard it was for many to even get to the coast. There is a shocking lack of exposure to the ocean and the nature that surrounds it. As someone who has worked with the San Diego Zoological Society for many years, I have experienced first-hand the life changing moments that happen when people see and start to learn about animals in the wild. Having places for young people to experience animals in their natural habitat is vital and the Children's Pool is one of those rare places.

Like her mother before her, Jane was also committed to participating in her community and prided herself on being informed about what was transpiring in and around La Jolla. She was disappointed that the issues that existed in her backyard were decided by court orders, sometimes courts that were not even local, especially when the people who lived and nurtured the area did not have much of a say in the outcomes.

As a lifelong La Jollan and a lifelong lover of nature, Jane felt her voice should have some weight. Jane summed up her thoughts by sharing:

The beach known today as the Children's Pool has become a unique and wonderful wildlife refuge, and its value far outweighs someone's want to have easy access to the water and a patch of sand to sit on for the day.

David Johnson

David had for many years enjoyed open-water swimming in La Jolla. He shared:

My favorite swim started from the beach of the Children's Pool and would take me around the coast going east. I really liked the challenge of negotiating the different conditions and navigating the rocks. I will happily bend anyone's ear who wants to discuss the benefits of open-water swimming, the physical and mental challenges it poses, and the sense of achievement you get from completing an ocean session.

For decades, La Jolla attracted swimmers to its waters, hosting the annual rough water swim, considered by some as the premier open-water swim in the United States. The race has been in existence on and off since the early 1930s. A polio epidemic in 1948 and unusual shark activity one year in the 1950s convinced organizers to call the race off. In addition to the iconic race, swimming from the many small beaches that dot the La Jolla landscape was a daily ritual for many individuals, swim clubs, and meetups. David's regular swims, however, came to an end when it became what he considered untenable to try to get to the water for his swim via the Children's Pool beach. According to David:

The Children's Pool beach offers the best and safest water entry anywhere along the rocky coastline. What changed for me though was the regular harassment by wildlife activists that accused me and my fellow swimmers of agitating the seals on the beach.

As David suggested, "These are people who have taken it upon themselves to be the so-called protectors of the seals that in the last several years have taken up residence on the beach." He recalled uncomfortable interactions where they yelled at him, called him mean-spirited names, and even, in one instance, physically surrounded him to intimidate him and stop him from entering the water. David was not an easy push over and would often retaliate and, as a result, found himself in hot water a couple of times due to the unpleasant interactions with pro-seal groups. He was cited twice by local authorities and accused of aggressive behaviors directed toward the animal activists. He said, "You know what I find most difficult though, in addition to not swimming here anymore, are the lies that have been told about me. They make me out to be unhinged." No court action has gone against him due primarily to the lack of evidence supporting the claims. He was deeply burdened by the turn of events and the ease at which he became a villain in a story that did not, as far as he was concerned, represent the truth.

Instead of continuing to swim and fight a battle himself, he decided to join forces with the likes of the Friends of the Children's Pool and others who wanted to, in some way, preserve the beach for human use. He said, "I made a commitment to fight against any action that prevents access to the water for swimmers" (see Exhibits 1-3).

David was adamant he was not a seal hater. In fact, he respected the wildlife and the water but what he could not respect was the defiance of the formal designation that set up that specific beach and pool as one for children and people to enjoy. He struggled with the way the conflict escalated and felt he could not give up when the other sides had more money, powerful legal teams, and a city that did not want bad press and was therefore willing to concede to keep agitators quiet. He hoped a future could exist whereby he and his friends could access the water without fear of intimidation, but he feared the whole issue "had become too political, too influenced by money, and was now out of the hands of the people who actually care" (see Exhibit 4, Letter from David Johnson to the California Coastal Commission, April 20, 2019).

Looking for a Solution: A Multiparty Mediation

In September 2021, after the two-party mediation outcome, it was agreed Jim, John, and Pam would participate in a multiparty mediation that included the perspectives of Jane Fetter and David Johnson.

EXHIBIT 1

La Jolla Cove, San Diego, California



Note. Retrieved September 13, 2021, from <https://www.sandiegoreader.com/news/2014/jan/15/cover-la-jolla-cove-sea-lion-cesspool/>

EXHIBIT 2

Signage at La Jolla Cove, San Diego, California



Note. Photograph taken by authors.

EXHIBIT 3

Signage at La Jolla Cove, San Diego, California



Note. Photograph taken by authors.

EXHIBIT 4: LETTER FROM DAVID JOHNSON TO THE CALIFORNIA COASTAL COMMISSION

April 20, 2019
California Coastal Commission
Attn: Melody Lasiter
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Re: Children's Pool

Unscrupulous: Behaving in a way that is dishonest or unfair in order to get what you want.

I believe if you are aware of the history of the Children's Pool and the part the City of San Diego has played you will agree with me that the city has been unscrupulous in its dealings all along.

I have been swimming in the waters off of La Jolla since the 1980's. It was because I found the waters around the Children's Pool (CP) to be the most beautiful and unique that I became involved with the individuals who sought to keep the CP open. Neither the La Jolla Shores nor the La Jolla Cove can match the underwater geography or marine life that exists in such accessible depths perfect for snorkeling or SCUBA. The seawall and protected beach allows for easy and safe access for individuals who are novices no matter their chosen mode of access to the ocean. This beach is a unique asset to the people of California. It provides safety in the ocean not found anywhere else in the area.

Over those years I found myself in danger of violating the law when the Seal Rock was turned into a reserve. During those years the numbers of seals increased and spilled over to the CP as never before. After the Seal Rock preserve expired those of us who enjoyed swimming in the area became open to threats and physical assaults as well as violating the law. Two of us became the target of civil lawsuits by those the city worked with behind the scenes to close the Children's Pool. Their bad behavior was rewarded with a beach closure permit.

Tens of thousands of dollars were spent to keep the right to continue swimming in the area and ten years later I am still swimming but the CP is closed for five months every year. The beach is too often an offense to the nose and eyes. Seals are not as fastidious as cats and do not cover their loose stools but rather leave long stinking black trails of feces all around the beach. City politicians guiding beach use policy have created this situation but have not taken responsibility for the aftermath caused by their actions.

Children's Pool once was the jewel of La Jolla is now an abandoned and walled off wreck of a beach. The ramp access that once was used by families to easily roll strollers down cannot even be used by able bodied individuals due to the concrete abutment and the ruts in the ramp paving due to neglect. This very ramp was at one time the best beach access in all of La Jolla for small children, the elderly and handicapped who were unable to handle the stairs. The City has not made much of an effort to improve access for the disabled as called for in the permit conditions imposed by the CCC in 2014.

I should not have to list the items that the CCC requested that the city fulfill for this upcoming permit renewal. The city has acted in its typical unscrupulous manner in preparing for the upcoming renewal. It has the money and the lawyers and sees that as being all it needs to intimidate and wear down any who dare oppose it.

I pray that you of the CCC do not give in to the city's tactics.

Sincerely,

David Johnson
San Diego, CA