

November 04, 2021
Case #: K00016

LISA THOMAS

PHILIP GAMAGHELYAN

MARÍA HELENA JAÉN

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

As a native San Diegan and property developer, James (Jim) Thomas spent much of his life living and working near the beaches of La Jolla. His family, including his grandparents and great grandparents, were developers who contributed to making San Diego what it is today. For as long as he could remember, his family had instilled in him a commitment to a healthy local community and love for the environment. As a long-time La Jolla resident, Jim lived this family principle and stayed involved in his local community to help protect the natural resources around him. Around 2020, however, Jim grew increasingly concerned about the ongoing conflict and tensions among neighbors revolving around the La Jolla Children's Pool, a small, local beach augmented by a man-made seawall. On the one hand, there were those who wanted the beach to stay primarily accessible to people as it was intended by Ellen Browning Scripps, who spearheaded the development of the manmade cove in 1931. On the other hand, there were groups of people who believed the beach should be protected for the seals that had arrived in the 1990s. It was hard to find anyone in the community who did not hold a strong opinion. Positions were voiced in public forums, newspaper opinion pieces, and town hall meetings from multiple groups, including local residents, the La Jolla Tourism Association, the merchant association, swim and dive clubs, scientists, animal rights activists, lifeguards, journalists, and San Diego County elected representatives.

Saddened to hear news reports of arrests, animal abuse, and heated disagreements among his neighbors, Jim believed he had a responsibility to do something so everyone could get back to enjoying what La Jolla had to offer while preserving "the natural beauty that is stark and vast" (Sharfstein, 1996). Jim undertook some preliminary research and, in September 2021, decided his best hope was to become more educated on what the City of San Diego was doing to address the concerns more proactively and effectively. He was aware that each group brought different perspectives. For many, the management of the conflict impacted their livelihoods, property values, and to some extent their quality of life.

He felt strongly that one more court case, followed by an appeal and then more bad press, would do nothing for his community. After years of little progress it was time to do more than allow the confrontational approach to dictate progress. The question he needed to decide was, could he propose a model for mediating in this ongoing conflict for a sustainable solution?

Before addressing the local council, Jim thought it best to be fully informed in what it meant to suggest a meditative approach. With limited experience in mediation on this scale he wanted to be sure he was suggesting the most effective approach for the conflict. Should it be two-party, bringing together a pro-seal group with a group that advocates for full beach access to humans? Or would the conflict be best served by a multi-party mediation. If the two sides involved could find common ground to stop the conflict, what would that look like? Could this be done and would it have more chance of a sustainable solution being proposed?

People or Seals at the La Jolla Children's Pool?

La Jolla is a small, coastal town a few miles north of San Diego in Southern California. On a quintessential warm, clear day, as Jim would tell you, "It was hard not to fall in love with it." According to Jim, over the years, many tourists became enamored with it, many returning and a lucky few buying property to capture the feeling on a more permanent basis. On the surface, La Jolla lived up to its name as The Jewel, but a long-standing conflict lurked under the surface, at times breaking the facade of idyllic calm to stir trouble among locals and tourists alike.

Around 1994, controversy started to build over who or what got priority use over a small stretch of protected beach nestled among the rocky bluffs bordered by the Pacific Ocean. The small stretch of beach wrapped by a man made cove was known in La Jolla as the Children's Pool. The Children's Pool came about in 1931, when Scripps, a local philanthropist and founding donor of several important Southern California institutions ("How One Woman Shaped La Jolla: The Legacy of Ellen Browning Scripps," n.d.) commissioned a sturdy seawall with the intention of making the cove safe for children to swim. Historically, cross currents and undertow around the cove rendered swimming unsafe at times, with children especially vulnerable. Intervening with the natural landscape was, Scripps proffered, a much-needed solution to guard against the hazards of swimming in the open ocean. According to the Summer/Fall 2005 edition of *The Journal of San Diego History*, Scripps exclaimed, "I have always had an innate interest in children, particularly those handicapped in life's game" (Hollins, 2005). Although the creation of the breakwater would ultimately benefit all visitors to La Jolla's beaches, she wanted "the children to have a primary claim" (Hollins, 2005) to such a structure.

The recast cove was heralded in the press as a wonderful improvement, and, over the years, it became a favorite destination for many local families, scuba divers, and open water swimmers, all of whom enjoyed the protection of the concrete breakwater (see Exhibits 1-5). However, this charming seaside setting began to take on an altogether different purpose 60 years after construction, when a colony of harbor seals started to call the calm waters and adjoining beach their new home. In 1994, seals started to be spotted in the area, and, by 1996, the seals made it evident that the beach was more attractive than the rocky outcrops nearby. By 1999, over 100 seals took up residence on the beach, and seal pup births were noted for the first time in the area. This, along with evidence of seal harassment, prompted San Diego Parks and Recreation to install a rope barrier to protect the seals from beachgoers ("New Video Shows More Harbor Seal Harassment at La Jolla's Children's Pool," 2013).

There has been a highly publicized feud over the rope barrier that escalated from public outrage to arrests and at least one emailed death threat directly targeting a pro-seal volunteer (Marosi, 2008). On the one hand, there were multiple groups and individuals fighting for the maintenance of

the cove for human use, like local Steve Roberts who wrote a letter to the La Jolla Light in June 2019. Steve wrote:

The Children's Pool was created as a resource for all who enjoy the ocean and has historically been a location where individuals—young and old—who enjoy the ocean but due to age or infirmity or other reasons, cannot do so at many of our beaches, which are typically exposed to wave action. (para. 1)

On the other hand, there were locals speaking out for the protection of the pinnipeds; for example, local business owner, Sally Buffington, voiced her opinion in the same La Jolla Light edition in June 2019:

Many letter writers cite the original intention of Miss Scripps, that there be a dedicated and safe place for children to engage with the ocean. I suggest that it is a lovely, kind thought on her part! She was altruistic indeed.

But the times, and the waters, have changed. Her intent does not hold up very well anymore and I feel it has led us to a viewpoint that might be stated as "Oh, Nature, well, that's inconvenient, we'll just do what we want and keep using the place no matter what."

I don't think that the Children's Pool works well as a beach. It feels small, as well as extremely dicey due to the rocks and currents. Though its sandy section is pleasant enough, actual swimming there seems appropriate only for strong swimmers. The Children's Pool works best as a great scenic place, which is the way my family most often uses it and has done for a long time. Also, every time I go there, I meet yet another visitor who adores watching the seals and sea lions, and often tell me how fortunate I am to have them. (paras. 4-6)

In addition to the newsworthy tensions, the seals were blamed for high levels of bacteria in the water, a stench that emanated from the cove impacting residents and merchants alike, and sporadic reports of aggressive behaviors toward swimmers and divers. In their opinion letter to La Jolla Light in June 2019, Stephan and Susan Medak shared such a view:

Children's Pool has been stolen from us by some "seal crusaders" who have promoted an ecological disaster. Turning the Children's Pool into a rookery for harbor seals has devastated the area's offshore plant life, including coral as well as fish. You can no longer take your children to the Children's Pool or the surrounding park. The water, the sand, and the very air you breathe, are polluted. (para. 1)

The seals had conversely been credited with attracting thousands of tourists a year to La Jolla, who marvel at the opportunity to watch wildlife up close and to see firsthand newborn seal pups making some of their very first attempts to move awkwardly along the sand. According to the San Diego Regional Economic Development Corporation (n.d.), San Diego attracted over 38 million tourists with an annual spending in the range of \$11 billion. La Jolla was said to draw about 10 million of those visitors, many of them attracted to the area to see the seals.

Few solutions stuck for long. As soon as one decision was made or court order handed down, someone or some group protested or appealed. As Pam Thomas of The Seal Society in La Jolla said, "As soon as one court order is handed down, someone is unhappy, which leads to an appeal. We put up a fight each time we disagree with a ruling." Positions were voiced from multiple groups, including local residents, the La Jolla Tourism Association, the merchant association, swim and dive clubs, scientists, animal rights activists, lifeguards, journalists, and San Diego County elected representatives. Jim thought, "Each stakeholder brought a different perspective to the conflict. For many, the resolution or management of the conflict impacted their livelihoods, property values and to

some extent their quality of life.” Jim thought it would prove more productive to bring the two sides together and proposed inviting Pam Thomas from The Seal Society and John Leek from Friends of the Children’s Pool for a mediation session.

Stakeholders’ Voices

James (Jim) Thomas

Rights to access the La Jolla Children’s Pool were viewed differently by La Jolla neighbors and San Diegans in general. For instance, Jim Thomas did not have a strong opinion when it came to who or what had the first right to the Children’s Pool. He enjoyed the seals and had always respected marine life. He also saw a lot of value in keeping the beach for families and “honoring Miss. Scripps’ gift.” He did, however, have a problem with the fact that the conflict was allowed to go on, having a negative impact on the community in general. Perhaps he saw things that way because, for four generations, since as early as 1889, Jim’s large family had resided in several of San Diego’s coastal towns that prided themselves on a strong community with an unwavering commitment to conserving the bounties that nature provided. Being responsible for the health of your community was a tenant instilled in Jim, his siblings, and his cousins from a very early age. Jim recalled:

My great-grandfather was one of the early founders of San Diego and spent much of his life advocating for thoughtful development, shared rights to resources and access to open space for all. He set a unique example for us, encouraging us to stand up for what was right and to offer assistance to those who did not have a way to advocate for themselves.

For over 20 years, Jim and his small family called La Jolla home. It was where his daughters went to school and where he established his development and real estate business. Jim loved La Jolla, the access to the beach, and the local village feeling he would get when he walked his dog through the streets saying good morning and checking in with his neighbors. Even in his 50s, he was just as enthusiastic about the ocean as he was as a kid and spent perhaps more than his fair share of time in and around his local beach. Jim shared:

The beach is where families make memories, learn to respect the capricious nature of the ocean, if you're lucky, have an encounter with marine life and pursue a healthy and energetic way of life. The beach and ocean deserve our respect and stewardship.

In addition to being a fan of the beach, Jim was also a real estate developer. He noted:

I am acutely aware of the value of property in and around the coast and what tourism can do for a local economy. However, the persistent tensions and bad national press that come about because of the Children’s Pool threaten to impact business, scare away tourists, pit neighbors against each other, and mandate that resources for the community get allocated to the court cases and legal battles instead of being future focused and productive. Especially galling is the negative press coverage which does nothing for La Jolla. When videos of people harassing the seals on the beach go viral, no-one comes out a winner. This really bothers me.

Jim was aware, however, that there were strong opinions regarding the use of La Jolla Children’s Pool. To better understand some of the positions, he listened to the stories of a few of the stakeholders.

Pam Thomas

Pam (no relation to Jim Thomas) was the duly elected head of The Seal Society in La Jolla and cared deeply about the well-being of the seals that made the Children's pool their home. Among animal activists in the area, she was very well regarded. One of the docents who volunteered for Pam spoke in awe of Pam's knowledge of the history of the Children's Pool, her ability to engage people in the conversation, and her unrelenting pursuit to protect the local marine life. Pam could recite relevant dates, names of supporters and detractors, and the litany of legal claims surrounding the Children's Pool. Pam noted:

I have seen the original maps of La Jolla, drawn up as early as 1887, with clear sections of the area marked with names like Seal Point and Seal Rocks. Why would the map makers use those names if there weren't seals around at the time? This is evidence in my mind that the pinnipeds swam the waters well over a hundred years ago, taking up residence in the area long before Ellen Browning Scripps even came to La Jolla.

Pam went on to say:

Unlike the early 1930s when the sea wall was built, establishing the protected beach, today the general public and locals have a wealth of choices for safe swimming, from backyard pools to many well-guarded swimming areas along the coast. It is my strong belief that this one, small beach is not necessary anymore as a safe access point for children and that the value derived from allowing the seals to habitat safely on the beach far outweighs any advantage to a select few.

She pointed to tourism dollars, education, and family connections as just a couple reasons why the seals should stay, "in addition of course to the unique wildlife conservancy happening before our eyes." Pam noted the many challenging interactions she and her docents had with those who wish to rid the beach of the seals. She recounted:

Some people who disagree with me have yelled at me, called me hateful names, and tried to intimidate me in front of all of these people here on the beach. There have been times when I removed myself from the scene in tears to regroup before returning to stand up for the rights of the voiceless creatures. I am sorry to say that I have seen terrible behavior. People poke, crowd, and jostle the seals and generally ignore any posted signs or ropes.

She also recalled families being in awe of the pups, excited to watch nature right in front of their eyes. She thought they brought a lot of joy to many. Pam shared:

I can honestly say that I have tried to see the many different perspectives around this issue. I have reached out to local families who come to the beach, the diving groups, school students, and business owners because I want to make sure that I am not missing something. But you know what, I keep coming back to the same conclusion. The seals should be allowed to stay. The divers can access the water from other safe bays, and the swimmers and the beachgoers need just go around the cove or to any number of beautiful spots within walking distance.

She believed the seals should stay but was concerned she was not making an indent in convincing people of their value. She wished businesspeople who rely on tourism would take more of a stand, recognizing the positive impact the seals have had on the local economy. She shared, "I have even had conversations with Miss. Scripps' relatives, and they agree with me. They believe she would also agree that it is time to give nature a break and do what is necessary to help sustain them."

John Leek

John was a well-known figure around La Jolla Cove. He could be seen most days walking over the rocky cliffs and onto the beaches, tracking seal and sea lion numbers and cautioning unsuspecting tourists to stay back from the seals on the surrounding beaches of the Cove. John was not in favor of making the Children's Pool a place for seals. He did not keep track of the numbers to support their existence. Quite the contrary, he was adamant that the beach should remain a place for people, just as it was intended many decades ago. He shared:

My near obsession with the mammals and this issue is to make it abundantly clear that people and seals/sea lions can coexist. I am focused because I don't want those seal freaks to have any influence on the closing of the beaches.

Despite his light humor, he was seriously concerned that where one beach went the others would quickly follow.

San Diegans believed John was uniquely well informed and well read. His website was full of factual accounts of legal battles, testimonies, videos of altercations, and a litany of digressions by the city, National Oceanic and Atmospheric Administration (NOAA), and the Coastal Commission.

John would walk straight up to a family contemplating how to access the beach and encourage people to get on the sand, despite the ropes and barriers. He wanted people to climb on the rocks and pass through the gates he recognized as illegal structures. According to John, "All of these gates that attempt to stop people from accessing public lands are illegal and have no weight whatsoever. They are simply scare campaigns, propagated by the city." He vigorously noted the public relations campaign or, as he saw it, the propaganda campaign that peppered the paths with warnings not to proceed, not to get too close to the wildlife, or not swim in polluted waters. He noted all but one or two of the posted signs had any teeth at all. He was adamant the posted signs were not ordinances but rather scare tactics with no consequence for those who defy them. The one that had any potential to hold up in court was the federal ordinance prohibiting harassment of wildlife. In his words:

The lack of consistency, the inability to actually have any follow through and the inadequate response from NOAA, make the conflict so much more difficult to manage.

I am continuously frustrated by the attempts to push false scientific declarations as the reasoning behind actions taken by the city. They base decisions on obsolete and lazy data and yet nobody seems to hold them accountable. I track NOAA's science very carefully and frankly their science is flawed. They don't know the seal and sea lion numbers or what size population is needed to sustain a healthy population. This is why I am tracking their numbers, so I can compare and hold them more accountable. And yet, the city and the pro-seal groups continue to use NOAA's obsolete data to support their positions and they are getting away with it.

John was recognized by the local community and pro-seal advocates as defiant and attracted his share of controversy. He had been cited and taken in front of a federal prosecutor. All charges were dismissed, and the run in with the authorities did not shake his resolve. He worked tirelessly to educate the public and hold those in positions of authority, be it rangers or federal officials, accountable for what he saw as falsehoods that were pushed to meet a particular undisciplined agenda.

Looking for a Solution

Since 2019, most people who walked the path that hugs the La Jolla coastline to the Children's Pool would have experienced the local conflict in real time. Jim Thomas was frustrated by the confrontations and felt bad for the uncomfortable tourists who either looked on or, worse yet, bore the brunt of an outburst from one side or the other. In his mind:

Everyday someone attempting to enter the water potentially disturbs a seal, and they are in turn reprimanded by pro-seal activists. It's disheartening. You see people who have camped out with signs declaring their position, some of them very graphic, and they are not reticent to voice their opposition to anyone who'll listen. It is also not unusual to see press at the Children's Pool, interviewing tourists to get their views, capturing altercations on camera, and pushing the story to a broader audience.

By September 2021, Jim became determined, "Something has to change. What we have done up to this point clearly isn't working." Jim invited Pam and John for a mediation session.

References

- Buffington, S. W. (2019, June 12). *Opinion / letters to the editors / our readers write: Time to update our view of Children's Pool*. Retrieved June 1, 2021, from <https://www.lajollalight.com/news/opinion/sd-cm-ljl-letters-june-13-20190612-story.html>
- Hollins, J. (2005, Summer/Fall). "Until kingdom come": The design and construction of La Jolla's Children's Pool. *The Journal of San Diego History*, 51(3&4), 123–138. <https://sandiegohistory.org/journal/>
- How one woman shaped La Jolla: The legacy of Ellen Browning Scripps. (n.d.). *LaJolla.com*. Retrieved June 1, 2021, from <https://www.lajolla.com/article/ellen-browning-scripps-la-jolla-legacy/>
- Marosi, R. (2008, March 11). Seal harasser faces new charge. *Los Angeles Times*. Retrieved August 9, 2021, from <https://www.latimes.com/archives/la-xpm-2008-mar-11-me-briefs11.s8-story.html>
- Medak, S., & Medak, S. (2019, June 12). *Opinion / letters to the editors/ our readers write: Children's Pool belongs to the community*. Retrieved June 1, 2021, from <https://www.lajollalight.com/news/opinion/sd-cm-ljl-letters-june-13-20190612-story.html>
- New video shows more harbor seal harassment at La Jolla's Children's Pool. (2013, March 20). *ABC 10 News*. Retrieved August 10, 2021, from <https://www.youtube.com/watch?v=Fr2e5QHZ-XM>
- Roberts, S. (2019, June 12). *Opinion / letters to the editors / our readers write: Children's Pool never meant to be a rookery*. Retrieved June 1, 2021, from <https://www.lajollalight.com/news/opinion/sd-cm-ljl-letters-june-13-20190612-story.html>
- San Diego Regional Economic Development Corporation. (n.d.). *Name of article/source*. Retrieved August 10, 2021, from <https://www.sandiegobusiness.org/>
- Sharfstein, D. J. (1996, January 21). SUNSHINE STATES; The shimmering jewel of La Jolla. *The New York Times*. Retrieved August 9, 2021, from <https://www.nytimes.com/1996/01/21/travel/sunshine-statesthe-shimmering-jewel-of-la-jolla.html>

EXHIBIT 1

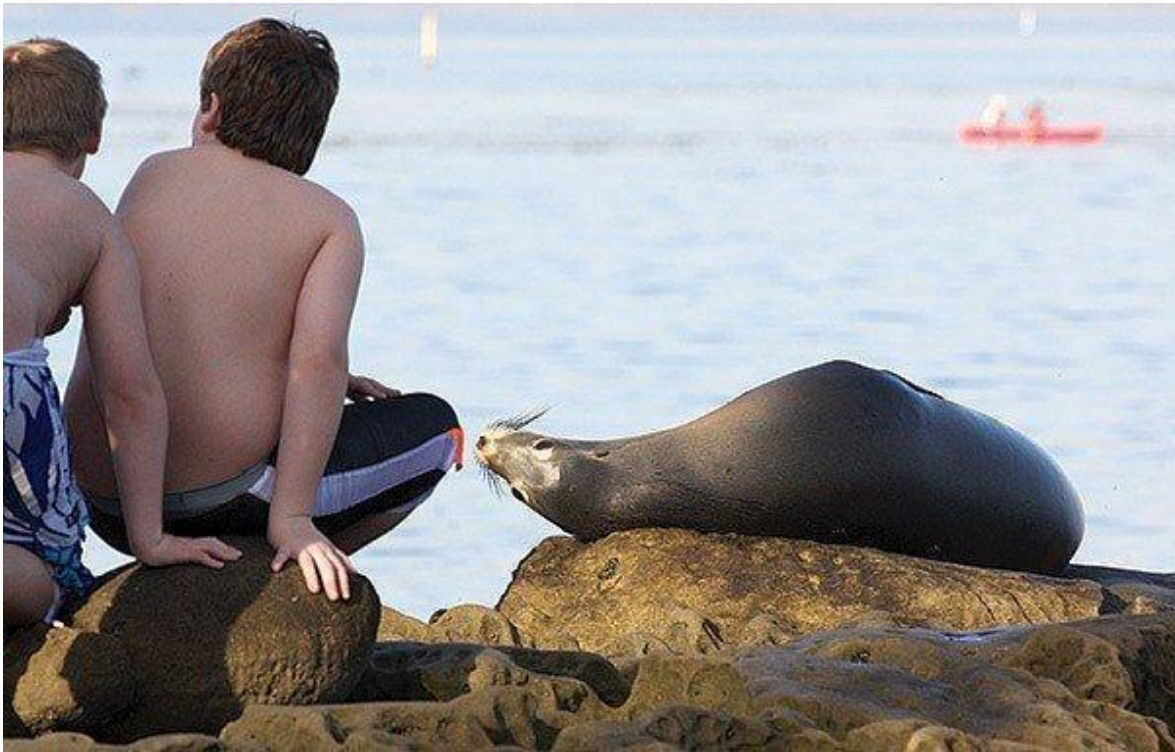
La Jolla Cove, San Diego, California



Note. Photograph taken by authors.

EXHIBIT 2

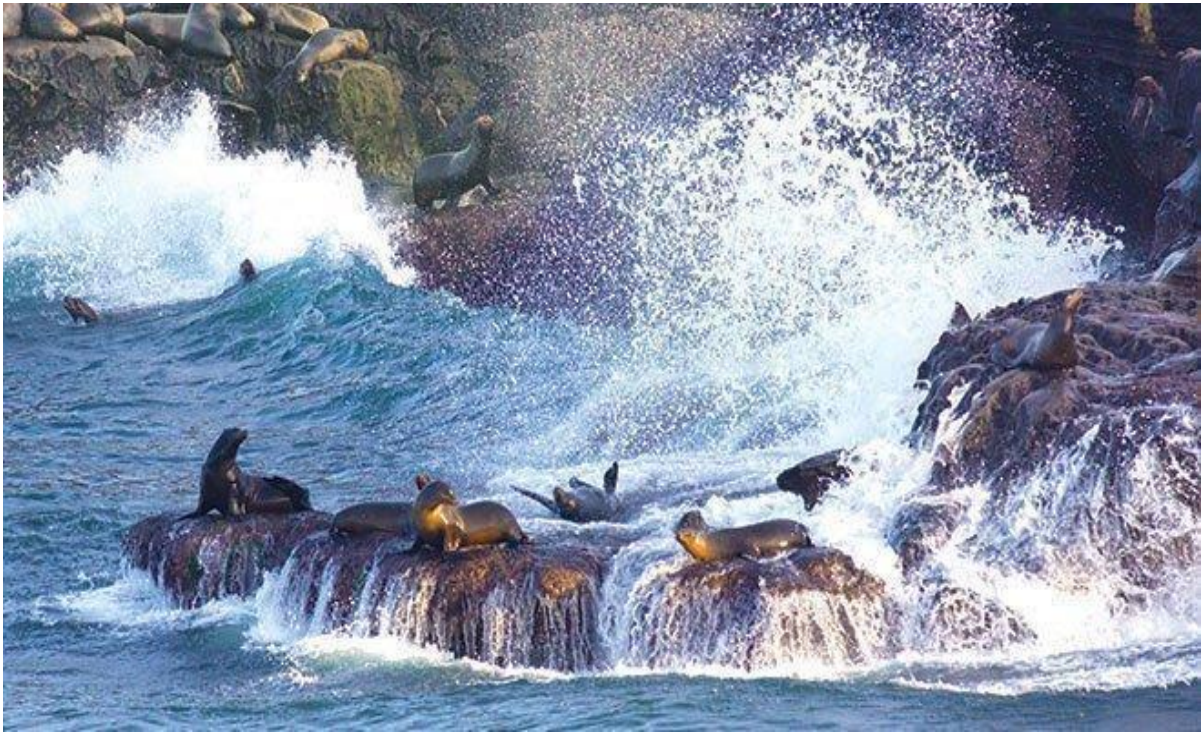
Children at La Jolla Cove, San Diego, California



Note. Photograph taken by authors.

EXHIBIT 3

Seals at 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 4

Signage at La Jolla Cove, San Diego, California



Note. Photograph taken by authors.

EXHIBIT 5

Swimmers at La Jolla Cove, San Diego, California



Note. Photograph taken by authors.