

## Ratepayer Gathering Notes

Wednesday, April 17, 2019

The Library – Guest: Ray Shindler

**In attendance: Lee Scharf, Kathy Dice, Ralph Batie, Heather Davidson, Judy Haldeman, Jennie Edwards, Gary Edwards, Susan Bouthwell, Bill Bouthwell, Jan Nicholas, Don Nicholas, Rebecca Falk, Saul Miller, Liesel Paris, Mary Susan Leahy, Ginger Dunlap-Dietz, Jack Sims, Diane Johnson, Jack Laughlin**

Our four main concerns, beliefs, objectives:

- We believe that BWD/Ratepayers should be allocated an initial **minimum** of 1700 AFY; this allocation should be excluded from any reductions.
- We believe that the 20-year implementation period set out under SGMA should be shortened
- We believe that water quality is an essential concern, it should be addressed immediately, and if/when water quality issues are determined, the parties responsible are held to account for any remediation that might be necessary
- We believe that the GDEs (Groundwater Dependent Ecosystems) must be considered in the overall water allocation calculus

### Future scheduled meetings:

Will soon set up an informal meeting to plan the letter-writing campaign

Wednesday, April 24 5-6:00 pm The Library Guest: **Jack Laughlin – Historical perspective** (John Peterson has agreed to assist Jack in this presentation)

Wednesday, May 8 5-6:00 pm The Library Guest: **Bill Berkeley – Hydroponic Farming**

Remember, May is the month we must submit our questions/comments to the GSA.

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These notes are an incomplete recollection of the issues discussed and some reflections on the gathering. Today, thanks to Ray, our topic was the adjudication process in the context of the GSP and before.

## Adjudication (From The Free Dictionary, Farlex) <https://legal-dictionary.thefreedictionary.com/adjudication>

*The legal process of resolving a dispute. The formal giving or pronouncing of a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved. The equivalent of a determination. It indicates that the claims of all the parties thereto have been considered and set at rest.*

Three types of disputes are resolved through adjudication: disputes between private parties, such as individuals or corporations; disputes between private parties and public officials; and disputes between

public officials or public bodies. The requirements of full adjudication include notice to all interested parties (all parties with a legal interest in, or legal right affected by, the dispute) and an opportunity for all parties to present evidence and arguments. The adjudicative process is governed by formal RULES OF EVIDENCE and procedure. Its objective is to reach a reasonable settlement of the controversy at hand. A decision is rendered by an impartial, passive fact finder, usually a judge, jury, or administrative tribunal. The adjudication of a controversy involves the performance of several tasks. The trier must establish the facts in controversy, and define and interpret the applicable law, or, if no relevant law exists, fashion a new law to apply to the situation. Complex evidentiary rules limit the presentation of proofs, and the Anglo-American tradition of **Stare Decisis**, or following precedents, controls the outcome. However, the process of applying established RULES OF LAW is neither simple nor automatic. **Judges have considerable latitude in interpreting the statutes or case law upon which they base their decisions.**

Added this definition as it seems to help me a bit; it's a relatively simple and common process I cannot seem to get my sense of fairness around. Ray, however, gave an impassioned and clear presentation relating the many opportunities we've passed up to resolve our water overdraft through an adjudication in years past, when the process made more sense, would have been quite direct, and especially when we would have stopped the ongoing overdraft and persistent lowering of our water table.

Matters Ray addressed:

- SGMA does provide for adjudication as a path to sustainability
- SGMA does not change water law in any way, it simply provides a framework for its implementation
- Agricultural interests do have a right to water, but only to what's dictated by the basin's sustainable yield
- Tom Bunn's letter of October 24, 2017 (attached) concludes by stating: " Groundwater sustainability agencies are given the authority to determine groundwater extraction allocations. (Wat. Code 10726.4(a).) **A reasonable approach would be to allocate the Water District its historical use**, and allocate the remainder of the safe yield to overlying users, without any compensation to those users. This approach would be consistent with SGMA and California water rights law."
- At some point around the time of this letter, Steve Anderson, the water attorney hired by BWD, agreed with Mr. Bunn's determination. At some point after this, Mr. Anderson has recanted and now holds to a proportional reduction across the board.

Interestingly, at this point, as I understand this discussion, what adjudication would provide for BWD would be the clarity of knowing what the resolutions is; but as far as being able to foresee the results of an adjudication, that is not clear.

Ray referred to Jennifer Harder, Prof. of Water Law at UC McGeorge School of Law, whose conclusion was that we – BWD – would either receive our water up front, or would undergo proportional reductions affecting all ... there is no guarantee.

The next matter Ray discussed was negotiating a stipulated agreement. This simply negotiating a meeting of the minds, in our case, on how we resolve the water issues in Borrego Springs; which, I imagine, translates to agreeing upon our baseline pumping allocations and on the reduction percentages. If an agreement were reached – by all pumpers – the process would proceed from there.

Ray, please forgive the elements I missed in your presentation. It was a gift to all of us and I do think we are closer to understanding this process. On Wednesday, April 24, Jack (with John Peterson's help) will add even further depth to this process.

Activities for upcoming gatherings and breakout groups:

1. I'll be preparing a summary of our position (four points) to be submitted to the GSA for review and comment. Will run this by you in the next month or so for review and comments.
2. Anyone have access to an e-mail list we could use (with permission) to promote our position?
3. Any other ideas as to how to attain our goal? (Such as: tamarisk removal, is there an unknown end-use for the wood; limited replanting with native vegetation; water set-aside for GDEs; local fundraising outside BWD to purchase farmland; ...)

Please go to the BWD website (<http://www.bvgsp.org/>), click on the Ratepayer Gathering tab, and access schedules and notes from each gathering.

Please follow upcoming issues of the Borrego Sun. We will be featured in various ways. Your concerns will now be a regular part of our local paper.

Thanks again for your involvement. Come to our meetings. Voice your concerns. Help us further clarify and draft our objectives. Bring a friend to the next gathering.