Supreme Court Opines on Water – Again
In its second water decision of the 2012-13 term, the United States Supreme Court has concluded that water flowing downstream from a concrete channel to an unimproved segment of the same river does not constitute a “discharge” for the purposes of the Clean Water Act.

For much of its length, the Los Angeles River and its tributaries flow in concrete channels. (You may have seen the River in Grease or 24.) LA County operates a stormwater system that takes urban runoff out to coastal waters via the River. Water quality monitoring stations in the lined segments showed exceedances of stormwater quality standards. Natural Resources Defense Council et al. argued that those exceedences demonstrated that LA County’s operations had violated its permit.

The federal district court granted summary judgment to LA County, but the Ninth Circuit reversed, holding that when the River flowed from lined segment to unlined segment, there was a “discharge” under the Clean Water Act. The Supreme Court reversed, holding that there was no discharge when the water flowed downstream in the same river, relying on its 2004 Miccosukee decision. For more information on this case, visit the Dividing the Waters resource webpage: DTW Resource Webpage.

Supreme Court Takes Texas-Oklahoma Water Case
On January 4, the Supreme Court granted cert in Tarrant Regional Water District v. Herrmann, which involves a dispute on the Red River bordering Oklahoma and Texas. At issue is whether a Texas water supplier may obtain Texas’ allocation of a shared river from within Oklahoma. The Court also may rule on constitutionality of Oklahoma statutes restricting out-of-state water exports.

From A Colleague in The Network:
National Climate Assessment Data Now Available
The “National Climate Assessment and Development Advisory Committee”) has just issued a new climate change report for public review. The report includes sections on changes (past and future) in the hydrology across the nation. Go to: http://www.ncadac.globalchange.gov and click on Chapters 3 (Water Resources) or 10 (Water, Energy, Land Use). For more information on how to incorporate climate change into water adjudication, see the DTW article on the DTW Resource Webpage.

Do You Have a Water Science Dispute?
This year, Dividing the Waters is considering offering a 1-1/2 day workshop on water science and technology. In addition to introducing new science and technology, the Program seeks cases where science is in dispute. If you are adjudicating one of those cases, we encourage you to share with us and possibly with workshop participants the lessons you have gained from that experience. Share at ALFIII@sbcglobal.net.

In Focus: DTW Convenor Vickie Gabin
Vickie Gabin’s fascination with water matters began when she worked as a secretary for a New Mexico hydrologist just after college. A stint as an attorney working with Steve Reynolds, the legendary western water buffalo and New Mexico’s State Engineer, deepened her appreciation for the complications of water rights and New Mexico’s centuries old water traditions.

Gabin was appointed a federal Special Master for various northern New Mexico water rights adjudications in 1994, and currently serves as Special Master for the Taos River Stream System, in addition to consulting with the New Mexico state courts on adjudications and the New Mexico Law School’s Utton Transboundary Resources Center. She finds the special master work endlessly challenging – from dealing with thousands of unrepresented defendants, to crafting administrative procedures suitable for complex cases, to walking the near-invisible pathways of old acequias (ditches), which have been displaced by modern highways.

She has been attending DTW conferences and workshops since 1995, and was invited to join DTW as a co-convenor in 2011. “I didn’t appreciate how isolating judicial work can be until I became involved with DTW. Along with the excellent conferences and workshops, the camaraderie and frank exchanges of experiences and advice have been invaluable and a great personal source of enjoyment. Several years ago, for example, I was involved with a group looking at adjudication reforms. My DTW colleagues from Montana, Idaho, and Colorado hosted the group for several days, generously sharing their insights and invaluable ‘lessons learned’ about adjudications and adjudication reform.” Gabin is currently helping to develop DTW’s mentorship program.

Gabin is a co-founder of Cooks With Altitude, one of the volunteer groups feeding trail crews who build the Continental Divide Trail. She travels as much as she can. Have something to share? ALFIII@sbcglobal.net

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Dividing the Waters
A resource for judicial officers presiding
over complex water litigation