2020: Dividing the Waters in Salt Lake City
The Conveners are now developing the next Dividing the Waters General Conference at the University of Utah law school in Salt Lake City for next Fall. (Stay tuned for specific dates.) The conference will consider how prior appropriation has adapted (and may continue to adapt) to the challenges of population growth, global climate change, and environmental degradation. The field day will likely take advantage of the proximity to both mountain streams and the Great Salt Lake.

SCOTUS: Maui Case Still Set for Oral Argument
The Supreme Court will proceed with oral argument on ocean contamination through groundwater discharges, in County of Maui v. Hawai’i Wildlife Fund, despite a letter from the Maui Council Chair requesting dismissal. The Council had passed a resolution approving settlement and withdrawal, but the Mayor rejected it. The Corporation Counsel responded to the Council letter, reaffirming that the County would not withdraw the case. Oral argument is set for November 6.

Federal Government Update
In recent months, the Federal Government has taken several actions to address water issues. The litigation already has started on some of these issues.

- Narrower Definition of “Waters of the United States”
USEPA formally withdrew the 2015 definition of “waters of the United States” (WOTUS) in the Clean Water Act. The 2015 definition relied on the Kennedy concurring opinion in Rapanos (2006), requiring a “significant nexus” to a navigable water body. The Administration is expected to issue new rule narrowing the WOTUS definition, drawing on the Scalia plurality opinion requiring relatively permanent surface flow.

- Accusation of “Significant” Water Problems in CA
USEPA has instructed the State of California to do a better job with how it deals with human waste, lead and arsenic in its water. It threatened to cut federal funding if the State does not remedy certain deficiencies.

- New Regulations for Lead in Drinking Water
USEPA announced its intention to update the Lead and Copper Rule for the first time in 30 years by changing how communities test for lead in drinking water. The proposal calls for water systems to keep a public inventory of lead service lines that carry water from service lines to customers’ homes.

- New ESA Biological Opinions for CA Delta
US Fish & Wildlife Service issued new ESA biological opinions to increase water exports from the CA Delta.

Adjudicating Groundwater Bench Book Still Available
Go to: https://www.judges.org/dtw/adjudicating-groundwater/

In Focus: Judge Consuelo Marshall (C.D. Cal)
When Consuelo Marshall moved from Tennessee to Los Angeles for high school, she was like most LA children – with little knowledge of water’s importance or the distance it had traveled to her tap from the Sierra-Nevada/Owens Valley. She started her legal career as a prosecutor, so she did not encounter water cases until she took the bench. After more than 40 years on the state and federal bench, Senior District Court Judge Consuelo B. Marshall (C.D. Cal.) has seen her fair share of water cases, mostly on the Clean Water Act.

The civil rights movement inspired Marshall to go to Howard University for college, and she stayed for law school. After graduating, she accepted an offer to become the first woman attorney in the LA City Attorney’s office, in 1962. She started around the same time as Johnnie Cochran, who eventually left for private practice, as a leading litigator in criminal defense and civil rights. Marshall joined his firm. While dealing with clients and preparing pleadings, Marshall volunteered as a Juvenile Court referee, the start of her judicial career.

The Los Angeles Superior Court appointed Marshall a court commissioner in 1971. Governor Jerry Brown appointed her to the Inglewood Municipal Court in 1976 and later the Superior Court. President Carter appointed her to the federal bench in CA’s Central District in 1980. When she stepped up as Chief Judge in 2001, she became the Central District’s first woman chief and the first woman of color to take that position west of the Mississippi. After four years as the Central District’s Chief Judge, she took senior status in 2005, but continues to try cases and serve on 9th Circuit panels.

(Editor’s Note: She told the Network Note editor to contact her before 8 am on trial days.)

Marshall learned about the Dividing the Waters conference from the Federal Judicial Center. She recognized the opportunity to gain better insight on the Clean Water Act and other federal court water issues. This year’s conference, however, gave her more than just information. She appreciated the opportunity to meet other judges who had more experience adjudicating water disputes. “The judges who handle water cases for much of their docket impressed me, with their command of water law and their questions about the science.” Judge Marshall knows who to call the next time a water case shows up on her docket.