UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 0 9 2005

Joan Card, Director
Water Quality Division
Arizona Department of Environmental Quality
Mailcode: 5000C-1
Adeq Central Office 1110 W Washington St
Phoenix, Az. 85007

Dear Ms. Card:

As you know, on August 22, 2005, the Ninth Circuit vacated EPA's approval of the Arizona National Pollutant Discharge Elimination System(NPDES) permit program. Defenders of Wildlife, et al. v. EPA, et al., No. 03-71439, 2005 WL 2001100. We are writing to confirm EPA's position that unless and until the court's mandate is issued, Arizona's authorization to issue NPDES permits and implement the program remains in effect.

Under the Federal Rules of Appellate Procedure (FRAP 40 and 41), the earliest the mandate could issue is October 14, 2005. (October 14th is seven days after expiration of the 45 day time period for filing a petition for rehearing in this case.) However, if the United States or another party to the litigation files a petition for rehearing before the Ninth Circuit, the mandate would not issue until the court takes further action. If the court refuses to rehear the case and denies the petition, the mandate would enter seven days from the court's action. If the petition for rehearing is granted, the mandate would issue only if the court's new decision on the merits affirms the panel's decision to vacate EPA's approval. If the decision on rehearing reached a different or contrary result, the mandate for that decision would supercede the mandate issued by the current panel.

EPA, the U.S. Fish and Wildlife Service, and the Department of Justice (DOJ) are currently evaluating the court's decision and deciding whether to file a petition for rehearing with the Ninth Circuit. Of course, we will notify you when that decision is made. Unless and until the August 22 decision becomes effective, EPA's approval of Arizona's NPDES program continues in effect, and the State of Arizona retains authority to administer and enforce the requirements of that program. Dischargers can continue to seek authorization under individual and general permits from ADEQ pursuant to the approved program.

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If you have any further questions, please call me (415/972-3572), or Doug Eberhardt, CWA Office Manager (415-972-3420), or Gail Cooper, the regional attorney on this case (415-972-3880).

Sincerely,

Nancy Wu

for Alexis Strauss, Director
Water Division

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 16 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DEFENDERS OF WILDLIFE; et al., Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent, NATIONAL ASSOCIATION OF HOME BUILDERS; et al., Intervenors.	No. 03-71439 EPA No. 67-Reg. 79629 District of Arizona, Phoenix ORDER

DEFENDERS OF WILDLIFE; CENTER FOR BIOLOGICAL DIVERSITY; CRAIG MILLER, Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ROBERT B. FLOWERS, Respondents.	No. 03-72894 EPA No. CV-02-00195-CKJ

Before: BERZON, Circuit Judge.

Intervenors' joint motion to stay the mandate is GRANTED. The mandate is hereby stayed for ninety days pending the filing of a petition for writ of certiorari in the Supreme Court. FED. R. APP. P. 41(d). If such a petition is filed, and if the writ of certiorari is granted by the Supreme Court, the stay shall continue until final disposition by the Supreme Court.