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### **Action taken to end ADEQ San Pedro cover-up** *Lawsuit filed to counter stonewalling*

In order to take over the Clean Water Act construction permitting program from the U.S. Environmental Protection Agency (EPA), Arizona Department of Environmental Quality (ADEQ) promised public notice and hearings for Sierra Vista area construction projects. This promise was necessary to ensure protection for the San Pedro River and its dependent Endangered Species. ADEQ has not kept this promise.

The Clean Water Act's Section 402 National Pollutant Discharge Elimination System (NPDES) requires permits for all construction projects discharging storm water into "waters of the U.S." The San Pedro River is a "water of the U.S." NPDES permits and protection mitigation must be provided for Sierra Vista area construction projects because they result in groundwater-dependent growth that threatens the San Pedro.

"ADEQ has neglected the checks and balances that were created to permit development while protecting the San Pedro River. Now they deny access to the incriminating documentation of their non-compliance," said Dr. Robin Silver, Center for Biological Diversity (CBD) Board Chair.

On September 13, 2002, ADEQ officials were explicitly advised by U.S. Fish and Wildlife Service officials "...about issues of water quantity on species such as Huachuca water umbel..."<sup>1</sup> The Huachuca water umbel is one of the Endangered Species dependent on the San Pedro for its survival.

On December 5, 2002, ADEQ assumed responsibility from EPA for the issuance of NPDES construction permits. With the turnover, the NPDES construction permits became Arizona Pollutant Discharge Elimination System or AZPDES permits.

On December 3, 2002, in order to secure the program, ADEQ promised that:

"...All AZPDES permits and pretreatment programs will be public noticed by ADEQ for 30 days. This period of time provides the opportunity for individuals to become aware of and comment on proposed projects. Public hearings will be held to resolve issues surrounding draft permits if there is significant public interest, or if significant issues or information have been brought to the attention of ADEQ during the comment period that was not considered previously in the permitting process. The permit writer will respond to all comments received during the public notice and hearing."<sup>2</sup> (p. 17)

ADEQ has not kept this promise.

Since the December 5, 2002 transfer, ADEQ has approved construction of at least 2,693 new housing units in the Sierra Vista area.<sup>3</sup> No required mitigation has been provided. The 2,693 housing units translate into approximately between 6,544 and 7,136 new groundwater-dependent people based on Census 2000's Sierra Vista area average household size of 2.43-2.65 people/household.<sup>4</sup>

On August 22, 2005, the Ninth Circuit Court of Appeals found these permitting activities illegal.<sup>5</sup> In spite of this ruling, ADEQ refuses to stop the permitting and refuses to require mandatory mitigation. Since the August 22, 2005 ruling, ADEQ has approved 1,220 new housing units for approximately between 2,965 and 3,233 new groundwater-dependent people.<sup>6</sup>

On January 12, 2006, the Center for Biological Diversity filed a Public Record request for documentation that ADEQ has kept its promise to protect the San Pedro and its Endangered Species with public notice and public hearings. In an attempt to cover up its illegal behavior, ADEQ refuses to answer CBD's request. CBD must now resort to litigation to stop ADEQ's stonewalling. A lawsuit has been filed today in Phoenix in Superior Court.

"ADEQ has become the Arizona Department of Real Estate. ADEQ is primarily motivated to benefit Sierra Vista developers, no matter promise, law, court ruling or San Pedro River peril," says Dr. Robin Silver, CBD Board Chair.

CBD is represented in this lawsuit by Howard Shanker of the Shanker Law Firm.

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ADEQ Director Steve Owens can be contacted at 602-771-2203

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<sup>1</sup> USFWS 2002b. Summary of meeting with U.S. EPA, State of Arizona DEQ, and U.S. Fish and Wildlife Service regarding ESA Section 7 Consultation on EPA's proposed approval of the AZNPDES program, September 13, 2002,

Phoenix, AZ; September 16, 2002.

2 USFWS 2002c. Biological Opinion, 02-21-02-F-0268, regarding the U.S. Environmental Protection Agency's approval of the State of Arizona's Arizona Pollutant Discharge Elimination System and the impacts that may result from the program transfer; Correspondence from Mr. Steven L. Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Phoenix, Arizona; to Mr. Terry Oda, Clean Water Act Standards and Permits Office, U.S. Environmental Protection Agency, San Francisco, California; December 3, 2002.

3 ADEQ 2005. Database, Arizona Pollution Discharge Elimination System General Construction permits, December 8, 2005.; Sierra Vista 2005. UPDATE on Developments & Projects as of September 20, 2005; City of Sierra Vista; <http://www.ci.sierra-vista.az.us/PDF/projects.pdf>; January 2, 2005.

4 ADEQ 2005; Census 2000. Profiles of General Demographic Characteristics 2000, 2000 Census of Population and Housing, Arizona, U.S. Census Bureau, U.S. Department of Commerce, May 2001.; Sierra Vista 2005.

5 Defenders of Wildlife and CBD v. EPA and ACOE 2002. Defenders of Wildlife and Center for Biological Diversity v. U.S. Environmental Protection Agency, No. 03-71439, EPA No. 67- Reg. 79629; and v. U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, No. 03-72894, No. CV-02-01195-CKJ OPINION; U.S. Court of Appeals for the Ninth Circuit; August 22, 2005.

6 ADEQ 2005; Census 2000; Sierra Vista 2005

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