

## **ENDANGERED SPECIES: Ariz. dispute asks if U.S. housing loans require NEPA analyses (11/06/2009)**

**Debra Kahn, E&E reporter**

SAN FRANCISCO -- Federal housing agencies defended their use of water from an Arizona river in federal court here yesterday against a legal challenge from environmental groups seeking to protect endangered species.

At issue in the 9th U.S. Circuit Court of Appeals case are federal loan guaranties to military veterans who have built houses around an army base on the San Pedro River. The river offers habit for the endangered Southwest willow flycatcher and the Huachuca water umbel, a flower found in wetlands on four rivers in Mexico and Arizona.

Earthjustice, the Center for Biological Diversity and Maricopa Audubon Society first sued the Department of Housing and Urban Development, the Small Business Administration and the Department of Veterans Affairs in 2005 to force them to conduct environmental assessments under the Endangered Species Act and the National Environmental Policy Act.

"We just want them to take a step back and evaluate what impacts they're having," McCrystie Adams, an Earthjustice attorney, said in an interview. The agencies, she said, have never done assessments under the Endangered Species Act or the National Environmental Policy Act.

Development in the San Pedro River Basin has been an issue for years.

Environmentalists lost a battle in 2003 when former Rep. Rick Renzi (R-Ariz.) passed legislation exempting Fort Huachuca from responsibility for water use outside the base (*Land Letter*, July 31, 2003).

The current case targets development outside the base, which has been continuing since a moratorium in the 1980s over water supply concerns. Since 1999, the Department of Veterans Affairs has guaranteed more than 4,000 home loans in the area, Earthjustice said.

The federal agencies argued yesterday that the issuance of loan guaranties is not a "major federal action" that would trigger a NEPA analysis.

"These agencies don't have statutory discretion to tell the veterans that they have to undertake actions to save water," Justice Department attorney David Shilton said. He also argued that housing loans did not lead directly to groundwater depletion. "There is no causal link between these loan guaranties and the status of the aquifer," he said.