

# Arizona Daily Star

August 23, 2005

## Ruling on water permits alarms home builders

**By Howard Fischer**  
*CAPITOL MEDIA SERVICES*

A new federal appeals court ruling strips Arizona of its authority to issue water discharge permits, a move that an attorney for home builders said could paralyze development in the state.

In a divided ruling Monday, the 9th U.S. Circuit Court of Appeals in San Francisco said it was a mistake for the U.S. Environmental Protection Agency in 2002 to cede its authority to issue these permits to the state Department of Environmental Quality. The court agreed with environmental groups that the action failed to consider the effect giving that responsibility to the state would have on endangered and protected species.

The decision, unless overturned, removes the authority of DEQ to issue any more permits for water discharge. That mainly affects the more than 20,000 general permits issued every year every time a developer wants to bulldoze property in any way that it will affect storm water runoff.

But DEQ Director Steve Owens said the decision may also invalidate permits already issued by his agency for projects under way. That would be based on the court's decision that EPA acted illegally in letting the state deal with the issue.

"We could have a number of projects just stop," said Norman James, a Phoenix

attorney for the National Association of Home Builders.

He said the decision means the state can't issue the permits necessary for any project of at least an acre. But James said there no longer is any authority for the EPA to issue those general permits in Arizona.

James said he intends to appeal the decision.

Monday's ruling is a big victory for two environmental groups that said Arizona state law, and the procedures used by DEQ, provide less protection for endangered and threatened species than federal statutes.

Owens said that's true, but that his agency provides adequate protection.

If Monday's ruling holds, DEQ's Owens said, Arizona legislators may need to alter state law to give his agency more authority.

For example, David Hogan of the Center for Biological Diversity said California law specifically requires that permits be reviewed on a cumulative basis to determine if they will harm threatened species.

"At this point it really is a case-by-case approach on the permits," Owens acknowledged. "We don't have the authority to do a cumulative approach."