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U.S. to get reins of clean-water program EPA erred in giving Arizona control of regulating pollution discharges

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Arizona must relinquish control of a clean-water program to the federal government, a change that could affect development statewide and benefit endangered species.

The decision this week by the 9th U.S. Circuit Court of Appeals found that the Environmental Protection Agency erred when it transferred to the state a program that regulates pollution discharges into Arizona waterways.

Defenders of Wildlife and the Tucson-based Center for Biological Diversity argued in a federal lawsuit that the EPA failed to take into account how handing the program off to Arizona would affect endangered species.

The three-member Appeals Court agreed and ordered the program, called the Pollutant Discharge Elimination Program, be returned to EPA control. The discharge program affects anyone developing one acre or more of land where runoff from storm water or other sources pours into a waterway.

"This case shouldn't be about some broad prohibition on development in Arizona," said David Hogan, urban- wildlands coordinator for the Center for Biological Diversity. "It really should be about the state and federal governments doing what they can and should to protect

endangered species."

The controversy swirls around protections for plants and animals on the endangered-species list. They get a measure of protection from development if the permit program is run by the federal government but not if it is under state control.

For example, if a housing subdivision were to create heavy runoff into a nearby wash or river, federal program administrators would have to weigh how such a development might affect any endangered plant or animal in the area. They might require changes in development plans before issuing the discharge permit.

But the state has no comparable program.

Spencer Kamps, vice president of legislative affairs for the Central Arizona Homebuilders Association, said his group, along with its counterpart in southern Arizona, disagrees with the ruling but is unclear on how it will affect development.

"All we know is that we will be getting our permits from the EPA," he said.

The home builders, along with state and federal environmental officials, are reviewing the complex decision and weighing whether to ask for a fuller review.

The program will shift back to the EPA within the next two months unless EPA or other defendants succeed in getting an "en banc" review, in which all judges sitting on the 9th Circuit Court review the case.

Steve Owens, director of the Arizona Department of Environmental Quality, said that, philosophically, the state believes the permit program should continue under state control.

"We believe it's best to have these types of decisions made locally, because we're close to the situation," Owens said.

However, the program has been underfunded and understaffed from the beginning, due to budget cuts from the state Legislature.

"It's been such a drain on the agency and such a cause of concern since I've been in office," said Owens, who started the job in January 2003, one month after the program transferred to state control.

Owens said that any of the approximately 200 general permits currently before his agency will move forward under the state rule. Also, he said state lawyers have determined that the roughly 5,600 permits issued by the state will stand, despite some initial concerns that they would be considered moot in light of the appeals ruling.

The court's decision could have implica-

tions for the 44 other states where the EPA has given state environmental regulators control over the discharge program.

However, no one Wednesday was sure of its broader implications.