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TUCSON REGION

Court hears of homes vs. species

By Tony Davis
 ARIZONA DAILY STAR

Tucson, Arizona | Published: 04.18.2007

The U.S. Supreme Court heard arguments Tuesday over a complex legal case involving permitting of new homes that could lead to tougher requirements for new developments in Arizona to protect endangered species.

At issue in Tuesday's hearing is an effort by environmental groups to overturn a 2002 Environmental Protection Agency decision giving the power to Arizona to issue permits to protect rivers and washes from storm runoff generated by new developments.

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The environmentalists are in a protracted legal dispute with the EPA, the Arizona Department of Environmental Quality and the National Association of Home Builders. The debate: whether the EPA should have consulted more thoroughly with the U.S. Fish and Wildlife Service over whether the transfer of permitting power would harm endangered species and thus violate the Endangered Species Act.

An attorney for the Environmental Protection Agency, Edwin Kneedler, told the high court it was legally unnecessary for the agency to check with the wildlife service. No only that, he said, it

would have been a waste of time as long as the state permit program met numerous other requirements under federal law. State officials and developers have argued that requiring endangered-species reviews for issuing these permits would be time-consuming and costly.

But environmental groups say that getting these formal reviews for new projects is essential to ensure the species' survival. The Defenders of Wildlife and the Tucson-based Center for Biological Diversity persuaded the 9th U.S. Circuit Court of Appeals to toss out the transfer in August 2005. Now the EPA, the state and the home builders are appealing that decision.

Arizona was the 45th state to secure power over the permitting program. Environmentalists opposed transferring it to the state out of concern that its rules wouldn't be as strict as federal rules for protecting species. In particular, they're concerned about the effects of groundwater pumping for new homes on the San Pedro River, where the endangered Huachuca water umbel lives.

If the court were to impose additional requirements on Arizona, the state wouldn't have the staff and resources needed, said Steve Owens, director of the Arizona Department of Environmental Quality.

"We don't have enough staff to implement this program as it should be implemented now," Owens said.

But continuing to let the state run the program would imperil not just the water umbel but the river it lives in that is threatened by groundwater pumping for new development, said Robin Silver, board chairman of the Center for Biological Diversity.

Since the state took over the program in December 2002, it has issued 313 permits for developments in the Sierra Vista area, said Courtland Coleman, Department of Environmental Quality spokesman. The state couldn't say how many individual homes were built in these projects.

Silver submitted an affidavit to the court saying these permits represent 5,580 homes.

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