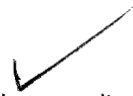




Kimberly Penny
<PennyK@ci.lake-hava
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02/26/2003 01:30 PM

To: CWAwaters@EPA
cc: Jim Keane <KeaneJ@ci.lake-havas
u-city.az.us>
Subject: Attention Docket ID No. OW-2002-0050



<<CWA Definitions LTR.doc>>



CWA Definitions LTR.do

February 26, 2003

Attention Docket ID No. OW-2002-0050
Water Docket, Environmental Protection Agency
Mailcode 4101T
1200 Pennsylvania Avenue. NW
Washington, DC 20460

**RE: Advance Notice of Proposed Rule Making on the Clean Water Act
Regulatory Definition of “Waters of the United States”
Federal Register/Vol. 68, No. 10/Wednesday, January 15, 2003/Proposed
Rules**

The existing Clean Water Act section 404 regulations define “waters of the United States” by listing several criteria that the waterway must meet to be considered a “water of the United States”. One of these criteria is “All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters...” This definition specifically and correctly lists “intermittent streams” as part of the criteria but also, correctly does not list “ephemeral streams” in the definition. Despite ephemeral streams not being part of the definition of “waters of the United States” the Army Corps of Engineers regularly claims jurisdiction over ephemeral streams.

Ephemeral streams, which are located above the groundwater level, only flow for a short time during storm events. In many storm events the water that flows in these ephemeral streams is either absorbed or evaporates before it reaches the “water of the United States” to which it is tributary. These are non-navigable streams (dry washes) not prone to use for interstate or foreign commerce and therefore should not fall under the CWA definition of “waters of the United States”.

Although Lake Havasu City strongly agrees that the Clean Water Act is extremely important for the protection of our water resources and that its application to wetlands whether adjacent or isolated is appropriate, we feel that the Army Corps of Engineers has overstepped their jurisdictional authority by including ephemeral streams as “waters of the United States”. For the

Army Corps of Engineers to use Corps regulations citing the presence or absence of an ordinary high water mark to determine jurisdiction over ephemeral streams is contrary to the definitions in the Clean Water Act. The decision of the Corps to include ephemeral streams as "waters of the United States" has caused this community considerable time and money to obtain a permit to perform the work necessary for the community. One such example is that in order to expand our airport we were required to obtain a 404 permit and provide \$112,981 as mitigation to the United States Department of the Interior, Bureau of Land Management for the ephemeral washes that were disturbed as part of the construction work. The funds for this mitigation came from a combination of Federal Aviation Administration and Arizona Department of Transportation grants and Lake Havasu City.

The water quality from ephemeral streams will be protected with the advent of the National Pollutant Discharge Elimination System Phase II regulations that affect the majority of communities that have ephemeral streams that during storm events have the potential to flow into a water of the United States.

If you have any questions, please contact me at (928) 453-6660.

Sincerely,

Kevin P. Murphy, P.E.
Public Works Director
2330 McCulloch Boulevard N.
Lake Havasu City, AZ 86403

KPM:JK:kp

Attachment

c: Bruce Williams, City Manager
Robert P. Leuck, City Engineer
Pete Manderfield, Assistant Public Works Director
Mark Clark, Transportation Division Manager
Chuck Michalski, Water Division Manager
Ted Swendra, Airport Division Manager Swendra, Airport Division Manager
Doug Thomas, Wastewater Division Manager
Public Works/Engineering Division