



MEMORANDUM

Date: August 4, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Ninth Circuit Court of Appeals decision regarding Broadway-Pantano WQARF Site**

A three-judge panel of the Ninth Circuit Court of Appeals issued a ruling today in favor of Pima County and several other parties that challenged the Arizona Department of Environmental Quality's (ADEQ) "de minimis" early settlements with 22 alleged responsible parties for contamination at the Broadway-Pantano WQARF (Water Quality Assurance Revolving Fund) site. The Ninth Circuit found that, before approving the settlements, the US District Court should have independently scrutinized the terms of the proposed settlements to determine whether the proposed settlements were fair, reasonable and consistent with federal law.

This ruling agrees with the County's position that ADEQ should have disclosed the factual and legal basis for the settlements, including the underlying elements of the estimated remediation costs and the basis for the allocation of percentages of liability to each party. The Ninth Circuit said a District Court's review of a consent decree in this type of case may not be made in an "informational vacuum" or where the record contains no evidence at all on an important point. The Court noted that ADEQ did not provide any evidence supporting its estimates of liability or information from which the District Court could confirm the settling parties were, in fact, "de minimis" contributors to the total alleged damages.

This ruling is important to the County and other non-settling parties because ultimately under federal environmental laws, a non-settling party could be held liable for a disproportionate share of remediation costs if the settling parties pay less than their share. While the County believes it has little or no liability with respect to the Broadway-Pantano Site, this decision is welcome and confirms our position that ADEQ cannot refuse to disclose the basis for its allocation of liability.

CHH/mjk

c: Ellen Wheeler, Assistant County Administrator
Lauren Eib, Risk Manager, Finance and Risk Management