

06-549 EPA V. DEFENDERS OF WILDLIFE

DECISION BELOW:420 F3d 946

LOWER COURT CASE NUMBER: 03-71439, 03-72894

QUESTIONS PRESENTED:

Whether Section 7(a)(2) of the Endangered Species Act of 1973, 16 U.S.C. 1536(a)(2), which requires each federal agency to insure that its actions do not jeopardize the continued existence of a listed species or modify its critical habitat, overrides statutory mandates or constraints placed on an agency's discretion by other Acts of Congress.

CERT. GRANTED 1/5/2007

THE CASES ARE CONSOLIDATED AND A TOTAL OF ONE HOUR IS ALLOTTED FOR ORAL ARGUMENT.

IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITIONS, THE PARTIES ARE REQUESTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: "WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE ENVIRONMENTAL PROTECTION AGENCY'S DECISION TO TRANSFER POLLUTION PERMITTING AUTHORITY TO ARIZONA UNDER THE CLEAN WATER ACT, SEE 33 U.S.C. §1342(b), WAS ARBITRARY AND CAPRICIOUS BECAUSE IT WAS BASED ON INCONSISTENT INTERPRETATIONS OF SECTION 7(a)(2) OF THE ENDANGERED SPECIES ACT OF 1973, 16 U.S.C. §1536(a)(2); AND, IF SO, WHETHER THE COURT OF APPEALS SHOULD HAVE REMANDED TO THE ENVIRONMENTAL PROTECTION AGENCY FOR FURTHER PROCEEDINGS WITHOUT RULING ON THE INTERPRETATION OF SECTION 7(a)(2)."