

# Activists Keep Up Fight for Fish

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Environmental activists are taking the next step in their fight to stop a planned gravel mining project in Soledad Canyon from killing endangered Santa Clara River fish.

Lawyers for environmental groups filed their final brief late last week in a bid to force the U.S. Fish and Wildlife Service to set aside the Santa Clara River as a habitat for the unarmored threespine stickleback.

The nearly 40-page brief, filed with the 9th U.S. Circuit Court of Appeals in San Francisco, is the last step before oral arguments are presented to a three-judge panel, said Brent Plater, attorney for the Center for Biological Diversity.

The center and Friends of the Santa Clara River hope to overturn the trial judge's ruling in November that said Fish and Wildlife had complied with federal law when it determined it didn't need to designate a "critical habitat" for the fish — even though the fish is presumed to live in the river that flows through the proposed open-pit mine.

The mining firm, Cemex Inc., intervened as a co-defendant in the lawsuit, which was filed in January 2002. The appeal was filed earlier this year.

Peter Galvin, conservation director for the Center for Biological Diversity, said the proposed mine in Soledad Canyon is a hazard for the endangered unarmored threespine stickleback because it would reduce the already-meager water flow in the Santa Clara River, the stickleback's natural habitat.

The stickleback was listed as an endangered species in 1970, but Fish and Wildlife didn't designate a habitat for it. Such a designation would require special consideration of the native fish before any development could be OK'd in the area set aside for it.

Attorneys for the environmental groups claim Fish and Wildlife violated the Endangered Species Act and another law when it decided in 2002 not to set aside habitat for the fish and when it issued an "incidental take" permit allowing Cemex to kill some of the fish as a side effect to its mining project.

U.S. District Judge Robert M. Takasugi ruled against the environmental groups' attorneys in November, saying the proposed mine would kill some of the fish but, "if operations are modified as required by the biological opinion, the (fish deaths) would not cause jeopardy to the continued existence" of the stickleback.

Plater said it could be several months before the 9th Circuit Court of Appeal schedules oral arguments in the case.