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## BREAKING: Giant L.A. Development Blocked Over Enviro Concerns

By **Juan Carlos Rodriguez**

Law360, New York (November 30, 2015, 1:36 PM ET) -- The California Supreme Court on Monday stopped for now a massive mixed-use residential project along portions of a river north of Los Angeles, ruling that the state improperly found that greenhouse gas emissions would have no significant impact and that a plan to move endangered fish was flawed.

The 5-2 ruling overturned an appellate panel's judgment that the state appropriately approved the plans, and means developers face further delay of the already 15-year-old proposed project. Petitioners, including the Center for Biological Diversity, sued the California Department of Fish & Wildlife in 2011 after it waded through the 11,999-acre Newhall Ranch development. They argued that the state's fully protected species laws supersede California Endangered Species Act and parts of the California Environmental Quality Act.

The state and the developers claimed that a proposal to move the endangered unarmored threespine stickleback fish didn't count as an illegal "taking" under state statutes, and that moving the fish will protect them. But according to the CBD and the other groups, the Newhall Ranch stickleback plan constitutes an "eviction," not conservation, and argued that relocating the fish could wind up harming them because of their sensitive nature.

Fish & Wildlife **told the state's high court** that the mitigation measures don't involve "taking" the stickleback, arguing that to constitute a "taking," it must result in harm to the species; it can't be a move designed to protect them. The agency said it is using the same measures it has used since the 1980s to protect species.

The environmental groups also alleged the Newhall project's environmental impact report impermissibly assessed future greenhouse gas emissions under a "business as usual" standard and will increase emissions twentyfold. They said Newhall developers didn't use the proper baseline for measuring the project's emissions, allowing for increased emissions when state law requires reductions.

Newhall countered that agencies have wide discretion regarding their methodology on calculating emissions, and the courts are required to give those decisions deference. At the time the Newhall EIR was approved, there was no accepted scientific model for reducing emissions, the developers said.

Newhall Ranch has been in the works for years. The Los Angeles Board of Supervisors approved the project in 1999, and the project saw its first of many challenges in 2000, when the United Water Conservation District sued the city to stop the project.

The plaintiffs are Wishtoyo Foundation's Ventura Coastkeeper arm, California Native Plant Society, Friends of the Santa Clara River, and Santa Clarita Organization for Planning and the Environment. They have filed other lawsuits to stop the project, as well.

The plaintiffs are represented by John T. Buse and Adam F. Keats of Center for Biological Diversity, Jan Chatten-Brown and Douglas P. Carstens of Chatten-Brown & Carstens LLP, Sean B. Hecht of University of California at Los Angeles School of Law and Jason Adam Weiner of Wishtoyo Foundation/Ventura Coastkeeper.

The Department of Fish and Game is represented by its own Thomas Ray Gibson and John H. Mattox, and by Tina Anne Thomas, Ashle T. Crocker and Amy Rachel Higuera of Thomas Law Group.

Newhall is represented by Mark Joseph Dillon of Gatzke Dillon & Ballance LLP, Arthur George Scotland of Nielsen Merksamer Parrinello Gross & Leoni LLP, Miriam A. Vogel of Morrison & Foerster LLP and Downey Brand LLP.

--Additional reporting by Beth Winegarner.

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