



## **William Myers' Nomination to a Lifetime U.S. Court of Appeals Judgeship Threatens a Wide Range of Environmental and Other Protections**

William G. Myers III has been nominated to a lifetime seat on the Ninth Circuit Court of Appeals, which decides the fate of environmental and other safeguards in nine western states. After a career as a grazing and mining industry lobbyist, Myers worked as the top lawyer for the Interior Department, responsible for Indian Affairs and most federal lands. Myers' official actions and his statements attacking environmental protections indicate that he is an ideologue who would use a judgeship to promote his personal agenda of attacking safeguards for tribal rights and the environment in order to favor the grazing and mining industries. Over 140 environmental, tribal, labor, civil rights, disability, women's and other groups have opposed Myers' nomination, including the National Wildlife Federation, National Congress of American Indians and others who have never before opposed any judicial nominee.

### **As Interior Solicitor, Myers Overrode Safeguards for Tribal Rights and the Environment in Order To Benefit Industries He Used To Represent**

- As Interior Solicitor, Myers repudiated his predecessor's formal legal opinion to clear the way for reversing Secretary Babbitt's rejection of the Glamis Mining Co.'s proposed cyanide heap-leach gold mine. The mine, which is opposed by Senators Boxer and Feinstein (both D-CA), would pollute the environment and destroy the Quechan Indian Nation's vital sacred sites. (*Is Gold More Sacred than Religion?* [http://www.sacredland.org/levendosky\\_article2.html](http://www.sacredland.org/levendosky_article2.html))
- For the first time, the National Congress of American Indians, which represents more than 250 tribal governments, passed a resolution opposing a judicial nominee cited this action by Myers, who met with the mining company but failed to consult with the Quechan Indian Nation which had requested a meeting.
- In order to reverse his predecessor's opinion, Myers resorted to interpreting the word "or" in a statute to mean its exact opposite—"and." A federal judge found that in doing so Myers violated three separate rules of statutory interpretation and "misconstrued the clear mandate of . . . FLPMA, [which] by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove" mines that "would unduly harm or degrade the public land." (*Mineral Policy Center v. Norton*, (D.D.C. 2003)) Myers' legal opinion broadly eviscerated the Interior Department's authority to limit mining.
- Myers also benefited his former grazing industry clients by issuing a formal Solicitor's legal opinion that interpreted a court decision in a challenge Myers himself had brought to Interior Department grazing rules before becoming Solicitor. Myers' opinion made it harder for conservation groups to buy and retire federal grazing permits. He soon concluded that his opinion was flawed and revised it. (Op. M-37008, *clarified by* Memo, 5/13/03, from Myers to Director, BLM et al.)
- Myers argued that neither the Reno-Sparks Indian Colony nor local officials had the authority to prevent a kitty litter mine from permanently endangering the quality of life of the Colony and nearby residents. (AP, 3/4/03; "Your Turn Arlan Melendez," *Reno Gazette-Journal*, 12/30/02)

### **Myers' Nomination Threatens a Wide Range of Federal Safeguards**

- Myers has argued that property rights are as fundamental as free speech and privacy rights; if accepted, this would invalidate as unconstitutional a vast range of labor, health, environmental, disability, civil rights and other limits on property use and would reduce protections for speech and privacy. In broadly attacking Endangered Species Act safeguards as unconstitutional, Myers argued that "the Constitutional right of a rancher to put his property to beneficial use is as fundamental as his right to freedom of speech or freedom from unreasonable search and seizure." (Amici Brief, *Babbitt v. Sweet Home*, 1994 U.S. Briefs 859) Senators rejected this same view in opposing Justice Janice Rogers Brown's D.C. Circuit nomination; Brown "argued that the 'free use of property' is 'as important' as freedom of speech or religion." (<http://feinstein.senate.gov/03Releases/r-brown2.htm>)
- Myers' judicial philosophy is revealed by his praise of Judge Bork, and Myers' conclusion, despite the Senate's bipartisan vote to reject the nomination, that "Judge Bork's judicial philosophy was well within the parameters of acceptable constitutional theory, worthy of representation on the Supreme Court." (*Advice and Consent on Trial: The Case of Robert H. Bork*, 66 DENVER L. REV. 1, 25 (1988))

- Myers has espoused an extremely narrow view of the scope of the Constitution's Commerce Clause, which is the basis for fundamental federal environmental, health, safety, labor, disability, and civil rights laws. Myers argued in a Supreme Court amicus brief that preventing destruction of waters and wetlands that served as critical habitat for migratory birds was an unconstitutional, "unauthorized federal regulation of land use." (Brief, *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 2000 WL 1059641)
- In a book chapter entitled *Environmental Command and Control: the Snake in the Public Lands Grass*, Myers denounced command-and-control regulation as "outright, topdown coercion," criticized "the fallacious belief that centralized government can promote environmentalism;" and argued that the federal government's "endless promulgation of statutes and regulations harms the very environment it purports to protect." (Frmrs., Rnchr. & Envntl. Law 198 (1995))

### **Myers' Views are Extremely Hostile to Federal Environmental Safeguards**

- Myers denounced the California Desert Protection Act as "an example of legislative hubris." (*In Farmers, Ranchers & Environmental Law* 209 (1995)). The Act protected 7.5 million acres of wilderness, and another 5.5 million acres that included national park preserves.
- An Idaho Statesman Editorial concluded that as Interior Solicitor, "Myers sounds less like an attorney, and more like an apologist for his old friends in the cattle industry. -- At a Nevada Cattlemen's Association meeting...he promised to ease Clinton-era restrictions on livestock grazing, repeated a Bush administration pledge to look at rolling back environmental reviews, and suggested the Endangered Species Act is applied too broadly to the public lands that fall under his purview." ("A Rancher's Advocate, or the People's Attorney?" 11/22/02)
- As executive director of the Public Lands Council, Myers testified in vehement opposition to the reintroduction of wolves to Yellowstone Park, which he likened to unconstitutionally forcing citizens to house and quarter soldiers. Myers concluded that the program was "unnecessary, unfair and not affordable." (Hearing, Senate Energy & Nat. Res. Comm., Subcomm. On Parks, Historic Preservation and Recreation (May 23, 1995))
- Myers compared the federal government's management of public lands to King George's tyrannical rule over the American colonies, arguing that the government is fueling "a modern-day revolution" in the American West. (*Western Ranchers Fed Up with Feds*, Forum For Applied Res. & Pub. Pol., Winter 1996 at 22)
- The New York Times Editorial on the nomination opposed Myers as "*An Enemy of the Environment*" (2/13/04).
- The *LA Times* reported that Myers supported giving away valuable public land to a mining company without even checking with the local BLM office that opposed the give-away, and had access to the public records that led the Department to repudiate Myers' position. *Interior Attorney Pushed Land Deal* (3/8/04).
- In a speech to the Cattlemen's Association, Myers declared that "[t]he biggest disaster now facing ranchers is not nature, but a flood of regulations designed to turn the West into little more than a theme park." (Mother Jones 9/1/03, [http://www.motherjones.org/news/feature/2003/36/ma\\_534\\_01.html](http://www.motherjones.org/news/feature/2003/36/ma_534_01.html))

### **Myers Is Uniquely Unsited For This Court**

- Myers' extreme record of hostility toward safeguards for public lands, tribal rights, and the environment was apparently why he was selected for the court of appeals that decides these issues for nine western states. Myers' objective credentials are extraordinarily weak, more than one-third of the fifteen-member American Bar Association's Standing Committee on the Federal Judiciary rejected Myers as "unqualified," and no member rated him "well-qualified." (<http://www.abanet.org/scfedjud/ratings108.pdf>)
- During Myers' term as the Interior Department's chief lawyer, the Department launched a series of extreme efforts to repeal or gut a wide range of basic legal environmental safeguards. These include proposed revisions to public land grazing regulations that track changes Myers had advocated as a grazing industry lobbyist. They also include efforts to allow mountaintop coal mining that buries streams; to lift the ban on importing endangered wild animals – dead or alive – as hunting trophies and commercial products; to overturn the ban on snowmobiles in Yellowstone National Park; and to open sensitive areas of our public lands to oil-and-gas drilling. (<http://www.nrdc.org/bushrecord>)