

The cowboy judge

Environmentalists hope Senate Democrats will block Bush's new ranch-friendly judicial nominee, but a filibuster might suit the Bush administration just fine.

By Amanda Griscom

February 12, 2004 | Environment advocates are bristling over President Bush's nomination of William G. Myers III to the San Francisco-based U.S. 9th Circuit Court of Appeals, calling Myers the most anti-environment judicial candidate the president has ever put forward. With rhetoric like that being thrown about, don't be surprised if Myers becomes the latest in a string of right-wing jurists stymied by Democratic filibusters in the Senate.

Myers, a spitfire critic of environmentalists, hails from Boise, Idaho. A longtime lawyer and lobbyist for the mining and cattle industries, he recently served as a Bush-appointed senior solicitor at the Department of the Interior. Conservatives would love to see him seated on the bench at the 9th Circuit, which has a liberal reputation and reviews more high-profile environmental cases than any other federal appellate court.

But Myers faces a tough battle: More than 60 environmental, Native American, civil rights, labor and women's organizations have formed a united front to push for his defeat in the Senate. Many of their concerns were aired last Thursday when the Senate Judiciary Committee held a hearing on Myers' nomination. Glenn Sugameli, senior legislative counsel for Earthjustice, said the committee took up "a fundamental question of American justice: Is a man who has advanced an absolutist ideological viewpoint throughout his entire career fit to be a federal judge?" (Sugameli has compiled info on the professional track records of Myers and other Bush judicial nominees on Earthjustice's [Judging the Environment](#) Web page.)

Democrats on the Judiciary Committee -- including Sens. Patrick Leahy of Vermont, Ted Kennedy of Massachusetts, and Dianne Feinstein of California --roasted Myers for his explosive anti-environment diatribes over the past few years, in which he used the inflated cowboy rhetoric of Western landowners who consider themselves browbeaten by federal law.

In a public policy journal, Myers compared the government's management of public lands to the "tyrannical actions of King George in levying taxes [against the American colonies] and turning even the simplest enterprises into exercises in bureaucratic and regulatory entanglement." In a speech before a cattle industry association, he said, "The biggest disaster now facing ranchers is ... a flood of regulations designed to turn the West into little more than a theme park." At a legal conference, he slammed a federal rule protecting wetlands used by migratory birds as a "despotic intrusion by the federal government over every brook, creek, cattle tank, mud puddle, slough, or damp spot in every landowner's backyard." And he once blasted the Clinton-era rule that banned logging in roadless areas of national forests as "a narrow path toward economic and environmental destruction."

Unafraid to attack the legitimacy of federal environmental protections at large, Myers penned a treatise entitled "Environmental Command and Control: The Snake in the Public Lands' Grass," decrying "the fallacious belief that centralized government can promote environmentalism" and calling environmental command-and-control regulation "outright, top-down coercion."

When pressed during the Senate hearings to defend his pro-industry track record, Myers insisted that the positions he had taken in the past as a lobbyist and lawyer were not relevant and would not play a role in his decision-making as a judge. When Sen. Dick Durbin, D-Ill., asked Myers, "Are you in the mainstream on environmental thinking?" Myers hesitated for a moment. "Yes, senator," Myers said at last. "The only reason I pause is my statements have been on behalf of clients. These clients are in the mainstream, for the most part."

Things heated up further when Democratic presidential candidate John Kerry, D-Mass., jumped into the fray with a statement on Thursday demanding that the Bush administration revoke the Myers nomination. "Myers has devoted his career to favoring corporate special interests seeking to exploit public lands and sacred sites over the interests of ordinary Americans who want to preserve and protect our national heritage and great wild places," said a release issued by Kerry's campaign.

Officials at the Interior Department hold a different view. "Bill has served this administration with professionalism, intellect and grace," intoned Interior Secretary Gale Norton in a farewell statement to Myers. "I have come to rely on his counsel and advice. He will be greatly missed. I wish him Godspeed in his confirmation process."

In response to criticisms from environmental groups that Myers curried favor with the ranching industry while at Interior, agency spokesperson Mark Pfeifle told Muckraker, "The charges from these partisan special interests who are targeting Myers' nomination are about as credible as Britney Spears saying till death do us part." The department's inspector general has officially dismissed some charges against Myers of inappropriate activity during his tenure at Interior.

Still, it's hard to deny the bias Myers has plainly stated in his own unbuttoned and impolitic writings and speeches -- bias that hardly seems appropriate for a federal judge. "Don't forget this is a lifetime appointment," said Sugameli. "The longest legacy of an administration is its influence on lifetime federal judges. Myers is still in his 40s, so he could be deciding the fate of major decisions on environmental protections for another 30 to 40 years. The senators get one chance to look at this. That's why it's so important that they do so with extreme caution."

So far, leading Senate Democrats have been clear that they intend to take a hard look at the nominee. Sugameli hopes they will be no less willing to block Myers' appointment than they were to wield the threat of a filibuster in recent months against other controversial, high-profile judicial nominees, such as Priscilla Owen and Miguel Estrada. The matter is expected to come before the full Senate before the end of the month.

According to Elliot Minberg, vice president and legal director of the People for the American Way Foundation and a founding member of the Coalition for a Fair and Independent Judiciary, a filibuster might suit the Bush administration just fine. "There's little chance Myers will make it

through, and I think [presidential advisor] Karl Rove knows that," he said. "This is more likely a symbolic political gesture. He's using judicial nominations to make a statement to the right-wing base. Whether they win or lose, Rove can say, 'Look, these are the kinds of people Bush wants to put in the courts.'" In other words, Mincberg argues, by championing a cowboy hero like Myers, Bush can lock in his Sagebrush Revolution constituency. But the staunch right-wingers are seeing through the façade, too. In a San Francisco Chronicle opinion piece titled "Conservatives Wonder If Bush Is Their Guy," Quin Hillyer, a columnist for the Mobile Register in Alabama, wrote, "Conservatives would be right to wonder if this president prefers to use filibustered nominees as a campaign issue [rather] than to actually put them on the bench."

[The mercury mutiny](#)

States pick up the ball on mercury The mercury mutiny is gaining force on the state level, galvanizing some unlikely rebels. Eastern states including Massachusetts, New Hampshire, New Jersey and New York were the first to jump into the fray, launching efforts to reduce mercury pollution in response to the Bush administration's widely criticized plan for dealing with mercury. Then last week, a new regional effort was announced by a coalition of state legislators from six Midwestern states -- Illinois, Iowa, Michigan, Minnesota, Ohio and Wisconsin -- many of which have economies reliant on coal, a major culprit in mercury emissions.

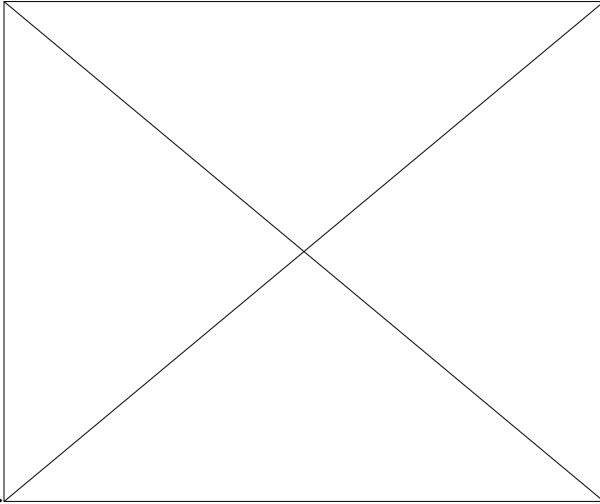
"You might expect this kind of action from Northeastern states, but now even Midwestern states are mobilizing," said Jane Krentz, a former state senator from Minnesota and the Midwest coordinator of the National Caucus of Environmental Legislators, the group that organized this regional initiative. "We can't ignore the science any longer. The federal government's rollback on mercury is very disturbing -- it will set us back decades -- so we've got no choice but to take things into our own hands." The state senators and representatives plan to introduce bills in their legislatures that would curb mercury emissions from coal-fired power plants.

Adam Schafer, program director for NCEL, admitted that it will be difficult to get the legislation passed, considering the power of the coal industry in the Midwest, "but we hope that working together as a coalition, we'll have more leverage to fight that battle," he said. "More importantly, we're sending a message to Washington, letting the EPA know that we can see the writing on the wall: Mercury threatens the brains of babies. If Washington isn't going to act to protect our constituencies, we won't sit back and let that risk escalate."

Indeed, the writing on the wall got even bolder a couple of weeks ago when the EPA's top mercury scientist, Kathryn Mahaffey, released findings indicating that of the 630,000 babies born in the United States each year, one in six is at risk of mercury-related developmental problems contracted in the womb -- a number nearly twice as high as the EPA's current official estimate. Mahaffey's calculations are based on the finding that mercury concentrates at higher levels in the umbilical cords of pregnant women than in their bloodstreams, indicating that fetuses could be getting higher doses of mercury than previously thought.

Mahaffey's findings are unlikely to sway the administration from its current cap-and-trade program for mercury pollution, which has been derided as too weak by environmentalists and

public-health advocates. And hers is not the only mercury-related science that the Bush administration doesn't seem to want to consider



In late January, "Inside EPA" reporter Liz Heron obtained EPA documents through the Freedom of Information Act revealing that the agency failed to comply with two executive orders requiring it to study how the administration's mercury plan would affect children, minorities and low-income populations.

"What they said to me was that they were trying to protect the entire population, so it wasn't necessary to look at the effects on specific population subsets," said Heron. "Their logic is that if their end goal will benefit everybody, it will help susceptible populations as well."

But environmentalists argue that such studies of potential effects on vulnerable populations are particularly important in the case of mercury pollution, which, as Mahaffey made clear, has disproportionate impacts on children and is widely thought to create toxic "hot spots" in the mostly low-income communities immediately surrounding power plants. Bush's cap-and-trade program -- which would let utilities buy and trade the right to emit mercury -- could exacerbate the hot-spot problem in particular. "The larger point here," said Heron, "is that the Bush administration is shifting away from the emphasis on environmental justice that was prevalent in the '90s."

Parody on parade Beltway insiders waited with bated breath yesterday to see if Sen. Peter Domenici, R-N.M., would succeed in tacking his stalled-out energy bill onto the huge highway transportation bill now wending its way through Congress. The consensus from his Senate Republican colleagues? No deal.

But another cockamamie plan that would mingle energy policy and transportation funding is in the works. In an [open letter](#) prominently featured on the Web site of the House Resources Committee earlier this week, committee chair Richard Pombo, R-Calif., proposed opening Alaska's Arctic National Wildlife Refuge to oil and gas exploration and (here's the new twist) funneling the proceeds toward the whoppingly expensive -- and whoppingly popular -- transportation bill, which congressional leaders are trying to whittle down from its original \$318 billion cost.

Pombo's letter was addressed to Rep. Don Young, R-Alaska, chair of the House Transportation Committee and a big supporter of ANWR drilling. Young himself had advanced a surprisingly progressive proposal to finance the transportation package with an 8-cent-per-gallon increase in the federal gas tax (now 18.3 cents per gallon), but his idea was shot down by House GOP leaders and President Bush, so he's desperate for an alternative. Pombo's plan, though, is unlikely to be the ticket.

"What makes this idea so absurd is that the oil industry itself has admitted that there's no way of getting revenues from ANWR drilling for at least 10 years -- if at all -- and the transportation bill needs funding starting now," said Kevin Curtis, vice president of National Environmental Trust. "It's a nice rhetorical proposal, but Pombo knows it's dead on arrival."

Pombo's plan is so off the wall, in fact, that Curtis thinks it may be a spoof -- just like a tongue-in-cheek announcement last week that Pombo may propose a bill that would ban construction of most tall buildings in response to a study by an environmental group that found a lot of birds are killed every year when they slam into skyscrapers' windows.