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By Henry Weinstein

Senate Democrats Block Nominee for 9th Circuit

Senate Democrats on Tuesday blocked the nomination of William G. Myers III, a longtime lawyer for cattle and mining interests, to a federal appeals court after a rancorous debate on his merits and the Bush administration's environmental policies.

The Senate's Republican majority was unable to garner the 60 votes needed to cut off debate on the nomination of Myers, the Interior Department's top lawyer during the first two years of the Bush administration, to the U.S. 9th Circuit Court of Appeals.

Based in San Francisco, the 9th Circuit has jurisdiction over appeals from federal lawsuits in nine western states, including California. It considers more key environmental cases than any other federal appeals court.

Two Democrats - Sens. Joseph R. Biden Jr. of Delaware and Ben Nelson of Nebraska - joined all 51 Senate Republicans in voting to end debate, while 44 Democrats, including Dianne Feinstein and Barbara Boxer of California, voted no.

Myers' nomination drew opposition from environmental, civil rights, labor, women's and Native American organizations, with 180 groups weighing in against naming him to the bench. Virtually every leading environmental organization in the nation - including Earthjustice, the National Wildlife Federation, the Sierra Club and the Natural Resources Defense Council - opposed the nomination, saying Myers had demonstrated a record of hostility to environmental protections and could not be impartial.

Myers' supporters asserted that he was the victim of obstructionist tactics by Democrats and liberal interest groups.

So far, 198 of President Bush's judicial nominees have been confirmed. Myers, who practices law in Boise, Idaho, is the seventh to be blocked by Senate Democrats, and the first whose record on environmental issues played a prominent role in the debate.

Opposition to Myers stemmed from actions he took as a private attorney in the 1990s and as Interior Department solicitor, as well as public statements he made on environmental issues. In a 1996 article, Myers compared federal management of public lands with "the tyrannical actions of King George in levying taxes" on American colonists. He also criticized the 1994 California Desert Protection Act, which created two national parks and carved out millions of acres of protected wilderness in southern and eastern California as "an example of legislative hubris." Myers "epitomizes the anti-environmental tilt of so many Bush nominees," said Sen. Patrick J. Leahy (D-Vt.). "I hope that the Senate's vote today will say something about the higher priority that the Senate makes of environmental quality," Leahy said.

But Sen. Orrin G. Hatch (R-Utah), who supported Myers, said, "Nominees who somehow offend any well-funded liberal interest group are subject to distortions and baseless personal attacks." Hatch heads the Senate Judiciary Committee, which narrowly cleared Myers on a straight party-line vote in April. "The prejudices against Bill Myers reflect today's poisoned confirmation process," he said after Tuesday's Senate vote.

Sen. Larry E. Craig (R-Idaho), another key backer, said Myers "would make a qualified and honorable jurist." Craig said Myers had taken some pro-environmental actions while at the Interior Department, including imposing "record penalties for failure of a company to pay gas royalties."

Senate Democrats said Myers lacked the qualifications and balanced judgment to warrant a lifetime appointment to the bench.

"The problem is that Mr. Myers' record screams passionate activist and doesn't so much as whisper 'impartial judge,' " Sen. Charles E. Schumer (D-N.Y.) said.

Myers' foes noted that more than a third of the American Bar Assn. screening committee rated him "unqualified" and that no member of the committee rated him "well qualified."

Opponents also contended that while serving in the Interior Department, Myers had maintained the pro-industry agenda he had as a private lawyer. "Myers disregarded the law in order to make it easier for companies to mine on public lands," Leahy said, citing a Myers decision that would have paved the way to reverse a decision by Bruce Babbitt, Clinton's secretary of the Interior, to reject a permit for a 1,600-acre open-pit gold mine in Imperial County. The mine had been opposed by the Quechan tribe.

An independent federal agency said the mine would be so damaging that "the Quechan tribe's ability to practice their sacred traditions as a living part of their community life would be lost." Later, a federal judge ruled that Myers' decision had "misconstrued the clear mandate" of the Federal Lands Policy Management Act.

Senate Minority leader Tom Daschle (D-S.D.) said Tuesday that opposition from tribal groups played a key role in his decision to vote against Myers.