S. HRG. 109–38

CONFIRMATION HEARING ON THE NOMINATION OF WILLIAM G. MYERS III, OF IDAHO, TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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NOMINATION OF WILLIAM G. MYERS III, OF IDAHO, TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT COURT OF APPEALS

TUESDAY, MARCH 1, 2005

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Hatch, Coburn, Leahy, Feinstein, Feingold, and Schumer.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Good morning, ladies and gentlemen. The hour of 9:30 having arrived, we will proceed with the Senator Judiciary Committee on the nomination of Mr. William Myers for the United States Court of Appeals for the Ninth Circuit. Senator Craig and Mr. Myers, will you sit down, and after brief opening statements, we will come to you.

The President resubmitted the name of Mr. Myers on Monday, February the 13th, along with other resubmissions, and the schedule was established the very next day, on February 14th, to have a hearing the first week we were back after recess. And we have decided to begin with Mr. Myers among those who have been renominated, quite candidly so we can count 58 votes for cloture, that is, to cut off debate and to move forward the confirmation process. And we have had a very contentious 108th session with the filibusters being employed for the first time in the history of the Republic, but the filibusters did not spring up without quite a considerable background, which I think is important to keep in mind.

In the last 2 years of the Reagan administration when I was on the Judiciary Committee, as I have been for 24 years and 2 months, the Democrats slowed down the confirmation process, as they did during the tenure of President Bush I. And then during the 6 years of President Clinton, after we Republicans took control in 1995, we slowed down the process again. So it was ratcheted up during Reagan, Bush, even more during Clinton, and then the Democrats took it to what I thought was an unparalleled height, or depth, in the filibuster. And then Republicans responded with the interim appointment.

So we have a situation where it is very, very contentious, and I have talked to many of my colleagues about this issue, and I sense a lot of concern among both Republicans and Democrats to try to avoid the controversy if we can. But no one wants to back down, and no one wants to lose face. So that is the tough issue which we face at the present time.

There was talk about a rule change, the constitutional option. There was talk about the so-called nuclear option where there would be a change in cutting off debate from 60 to 51 votes. And there are precedents for that approach, but it is one to be taken with great reluctance, if at all. I have not yet taken a position on the matter. With some tenure in the Senate and with a very high regard for the history and tradition of the Senate, which saved judicial independence in the impeachment trial of John Jay shortly into the 19th century and Presidential authority with the defeat of the impeachment of President Johnson in 1868, the Senate has been the guardian of minority rights, which is rockbed Americana.

We have to consider this issue, which is very, very important to us today, in a historical perspective as to what the view might be a century from now as to the weighing of the minority rights and the tradition of the Senate, contrasted with the very important matter of getting judges confirmed and the President's authority to appoint the judges and the Senate's constitutional authority to confirm.

So with that brief background, let me ask you to stand, Mr. Myers, for the oath. Do you, William Myers, solemnly swear that the evidence testimony you will present before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MYERS. I do.

Chairman SPECTER. We are pleased to welcome back our distinguished colleague, Senator Larry Craig, who served on the Judiciary Committee, and elected, I believe, in 1990 after having served extensively in the House of Representatives, a senior member of the U.S. Senate, a very distinguished member and a good friend of mine. Senator Craig, you have the floor.

PRESENTATION OF WILLIAM G. MYERS III, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT COURT OF APPEALS, BY HON. LARRY E. CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Well, Mr. Chairman, first and foremost, thank you very much for that kind introduction but, more importantly, I am extremely pleased to see you looking healthy today, and I say as a friend that I pray for you and your health situation. We need you to stay healthy for lots of reasons: first of all, because you are my friend; but, secondly, your importance to this Committee and to this Senate at this very important juncture is extremely valuable. And I do appreciate that necessary and appropriate introduction as to the circumstances we find ourselves before this morning.

Mr. Chairman, I have the honor of introducing my friend and fellow Idahoan, the former Solicitor of the Interior, William Myers, who was nominated by the President to serve in the Ninth Circuit Court of Appeals. Bill is not a stranger to this Committee, but let

me recap a few of those important factors for all of us and for the record.

He has had a distinguished career as an attorney, particularly in the area of natural resources and public land law, where he is nationally recognized as an expert. These are issues of particular importance to the public land States of the West, which are represented on the Ninth Circuit. These issues are not just professional business issues to him. In his private life, he has also long been an outdoorsman, and he has spent significant time as a volunteer for the National Park Service.

The majority of Bill's career has been spent in public service, including working as legislative counsel for former Senator Alan Simpson, deputy general counsel to the Department of Energy, and assistant to the Attorney General of the United States. The Senate confirmed him by unanimous consent to the post of Solicitor of the Interior in 2001.

The entire Idaho Congressional delegation supports him. Our colleague Mike Crapo would be seated beside us this morning, but you know Mike also has a health challenge and is currently taking treatment for that. Our colleagues in the House, both Congressman Mike Simpson and Congressman Otter, extend their full support.

But Bill's supporters are not limited to just Republicans. They also cross political and ideological lines, and this Committee has received letters from many of them. For instance, Mr. Chairman, the former Democrat Governor of Idaho, Cecil Andrus, who was Secretary of Interior under President Carter, said that Bill has the necessary personal integrity, judicial temperament, and legal experience as well as the ability to act fairly on matters of law that will come before him on the court.

Bill's supporters also include the former democratic Governor of Wyoming, Mike Sullivan; the Attorneys General of 15 States, including three Democrats; and the Governors of five States in the Ninth Circuit—Alaska, Hawaii, Idaho, Montana, and Nevada.

I stress the breadth of Bill's support because it demonstrates what some members of this Committee have said, and I know—I once served here as you mentioned—how important it is that the nominees are viewed as mainstream. We may not be able to agree on the objective standards of mainstream, but I think we can agree that when individuals with strongly differing political points of view recognize and support the same person, as is clearly demonstrated by the supporters of Bill Myers, this can be recognized as part of mainstream.

What are some of the indicators that a nominee is mainstream? Let me suggest a few. Has the nominee been unanimously confirmed to some other position by the Senate? Did the ABA determine he is qualified for the judgeship? As a lawyer, did he zealously represent his clients, as required by the Rules of Professional Conduct for attorneys? Would his addition to the court to which he has been nominated help to bring the court into the mainstream? Do the people who know him best from all walks of life support him? Has he received the Federal Government's highest security clearance after half a dozen background checks by the FBI and the Secret Service? Have his clients' positions been vindicated by the U.S. Supreme Court in more than 75 percent of his cases?

In Bill's case, the answer to all of these questions is yes, Mr. Chairman. Last year, a bipartisan majority of the Senate voted to cut off the filibuster of the Bill Myers nomination. While we fell short of the number needed to actually get an opportunity to vote up or down on this nominee, that kind of bipartisan support is not given to a nominee who is unqualified and far out of the mainstream.

Even the Washington Post has backed off from its recent criticism of Mr. Myers. I am sure some members of the Committee saw the story last month entitled "Judicial Nominee Criticized; Actions at Interior Department questioned by Inspector General." That story dealt with a statement reached—a settlement, excuse me, reached by the BLM with a rancher named Harvey Frank Robbins. Well, as they said, the rest of the story came out a week later, with an article entitled "Judicial Nominee Cleared in BLM Case, Interior IG's Report Critical of Others." And the next day, the Washington Post even printed a retraction, stating that its first article had incorrectly characterized a letter from Interior Department's Inspector General as directly criticizing Bill Myers when in reality that IG letter did not say Mr. Myers was responsible.

It is a new day in Washington when the Post sets the record straight by dismissing criticism of a Bush nominee. I hope the new day means the Judiciary Committee will conclude that the few issues dredged up to throw at Mr. Myers are nothing more than red herrings.

Bill Myers is a fine man, a talented public servant, a skilled lawyer, and he will be an outstanding judge of the Ninth Circuit. And I ask you and this Committee to support his nomination.

Thank you very much, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Craig.

Regrettably, Senator Mike Crapo, the junior Senator from Idaho, could not be with us today, but without objection, his full statement will be made a part of the record.

Now I turn to the distinguished Chairman of the Courts Subcommittee—the Ranking Member, Senator Schumer.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Chairman would be nice.

Thank you, Mr. Chairman. First I want to say it is good to have you back feisty and thinking, as you always are, and we are glad you are here and doing the good job that you have always done.

And, Mr. Myers, I want to say to you I know you are a hardworking, decent man, and I know this process has been difficult to you and your family. Unfortunately—and I know you understand this, having allowed yourself to be renominated—you are one of the handful of nominees who are part of a real constitutional struggle between the branches of Government. So while I know many of the comments regarding your nomination and the nominations process as a whole will be tough, I want you to know they are not personal but arise from concern about the process and from a sincere difference in viewpoints about judicial philosophy.

Now, it did not have to be this way. The President has left us with no choice. His actions show Democrats that he is taking a "my

way or the highway" approach to judicial nominees. The President set the tone in this debate, and many others, after he won re-election. He said, "I've earned political capital, and I'm going to spend it." His nomination of seven judges that were blocked in the last Congress is a thumb in the eye of bipartisanship. It should not be. That should not be the way.

The President has put nothing new on the table. He has effectively said let's have another fight. That does not accomplish anything. There is simply nothing to be gained from the President's unfortunate decision to play a game of judicial chicken.

The renominations are a particular and deliberate affront. The handful of men and women who were rejected were not rejected casually. They were rejected because, after full and fair consideration of their records, they were found to be extreme. They are only among ten of 214 who have been rejected. Repeated accusations of obstruction are ludicrous, and they are counterproductive. We confirmed fully 95 percent of the President's nominees. Democrats merely blocked by constitutional means only a handful of perhaps the most intemperate and immoderate judicial nominees ever sent our way.

Mr. Chairman, the President and the Senate both have a vital constitutional role to play in this process. Just as the President does not shrink from his, we will not shrink from ours. When the President sends us a radical and regressive nominee, one so far out of the mainstream he cannot even see the shoreline, we as Senators have no choice but to return to sender—once, twice, or ten times, if need be.

At the same time, we too regret the breakdown in relations within the Senate. We also long for a return to bipartisanship. As much as anyone, I would like to see an end to rancor. Recently, Mr. Chairman, you have spoken in a voice of comity and conciliation. I agree with you that, "The advice clause in the Constitution has been largely ignored." After you became Chairman, about 2 months ago, you invited me to your office and you asked how could we work together. Well, the first thing I said is something that should not be done. The President should not renominate the seven nominees or the ten nominees who were rejected. The next day he did the same thing, and I was heartened to hear that you suggested that these renominations were not the best idea.

You have a long history of fairness when it comes to approaching the judicial nominations process. And like you, I do not want to see the Senate or the Nation torn apart over the next Supreme Court nomination.

Fortunately, there is a simple solution, and it does not require Democrats to take the highway. The solution lies in consultation. We are right now so far apart it seems hard to bridge the gap. But both sides should start talking so that we can step back from the brink.

As I wrote to you in a letter last week, Mr. Chairman, I urge you to put together a small bipartisan group of Senators to ensure that the Constitution's advice role is truly meaningful during the lead-up to the next Supreme Court nomination. The group should meet with the President in the next few weeks and could eventually make joint recommendations to the President of highly qualified,

mainstream judicial nominees who would receive broad support in the Senate.

In this way, we can choose discourse over demagoguery, harmony over acrimony, bipartisanship over one-upsmanship. To us, to many of us, receiving 51 percent in the election is not a mandate and not an imperative for one-party rule. We believe we have an important and active role to play, and we will play it.

The Founding Fathers, whom many of us like to cite, foresaw just such a collaborative relationship between the President and the Senate in the appointment of judges, especially to the highest Court of the land, the Supreme Court. Significantly, the Founding Fathers expected that because of the advise and consent clause, the President would take great care and be judicious in his nominations. As Hamilton wrote in the Federalist Papers about the importance of the Senate's role in approving nominees, "The possibility of rejection of nominees would be a strong motive to care in proposing."

Alexander Hamilton, who believed more in Presidential power than, say, Jefferson, was saying that the Senate ought to be able to reject nominees as a check on the President. He did not say do it by a majority vote or a two-thirds vote or anything else. He said the possibility of rejection will temper the President, and any reading of what the Founding Fathers did in Constitutional Hall in your State, Mr. Chairman, corroborates that view. It is food for thought. The President should take care in the proposing of nominees.

But when a President repeatedly offers radical and regressive candidates, he is not taking care in the proposing and must shoulder much of the blame for the impasse. One need not look so far back in time for answers about how to mend relations and avoid this legislative and clash of branches Armageddon. Recent history provides a perfect model for getting back on track. As my colleagues know, scores of President Clinton's nominees were blocked by many of the same Republican Senators who now cry, "Obstruction, obstruction." They used a different means, the means at their disposal—not bringing them up. But the effect is the same.

Even so, even when all that happened, President Clinton consulted with the Senate about potential nominees. As documented by then-Chairman Hatch himself, President Clinton proposed various names and, rather than select the most radical or extreme judges, chose mainstream or moderate liberals for the court. These people did not have the same views as Senator Hatch, but they were acceptable to him. We do not expect that the nominees the President makes will have the same views as Senators Feingold or Feinstein or Leahy or myself. But we expect some degree of moderation.

This country is a divided country right now. There is no question about it. But we can come together, and there is no better forum than this.

President Clinton worked with the Senate, not against it. It is not too late for President Bush to do the same. We are ready. We hope he is.

Now let me turn to the nominee before us, William Myers, who has been nominated to be a judge on the Ninth Circuit. Mr. Myers,

your nomination was defeated in the Senate last year because of deep-seated concerns about your documented hostility towards environmental laws and because of doubts about your ability to be a neutral arbiter on environmental issues and other matters. And as far as I can tell, little has changed.

To the extent anything is different, it is that new questions have been raised in an Inspector General's report about activities undertaken by your Department under your watch, which allowed a sweetheart deal for a rancher with political connections. I will not belabor that here, as I expect you will get some questions about it, about your role in the negotiations of the deal, what measures were taken to ensure—even if you weren't involved, did you take measures to ensure that political dealmaking would not be repeated. But, if anything, your nomination should be in more trouble now than it was last time, at least on the record.

And in reviewing the record in preparation for this hearing, I am struck once again, as I was last year, by your extremism on environmental and land issues. This is of particular concern, of course, because of the importance of the Ninth Circuit on these issues. The circuit encompasses nine States. These States contain hundreds of millions of acres of public land, Indian reservations, and many of the most spectacular lands in America in our great West. Given that judges in the Ninth Circuit have extraordinary power to shape the laws on critical environmental land use issues, we should be careful. That is why your record concerns me so.

It seems as if before, during, and after your time as Interior Department Solicitor, you bent over backwards to be solicitous of every ranching and grazing interest you came across, never mind the effect on the environment. As I said, your record screams passionate activist. It does not so much as whisper impartial judge.

You have spent the majority of your legal career promoting the interests of grazing and mining companies as a lobbyist and advocate. That alone does not bother me, and I experienced my own little epiphany. My family and I go hiking out West every summer, and about 10 years ago, we were driving in northeastern Arizona to Monument Valley. It was a flat road. It was early in the morning. I looked at my speedometer. We were going 95. It did not seem it. I said, "Ooh, we better go at 55." That was then the law. And I said, "It is crazy to make people drive at 55 on this highway," and I sort of got a glimpse of the anger of some people in the West that Washington would tell them what to do. But that does not mean that all our environmental laws should be thrown out the window. And that seems to be what you have advocated and said.

You have, for example, advocated a radical expansion of the Takings Clause of the Fifth Amendment. In an amicus brief you filed with the Supreme Court of the United States you argued that habitat protection laws are unconstitutional in every instance, no matter how minor the impact on property rights. In so advocating, you wrote, "The constitutional right of a rancher to put his property to beneficial uses is as fundamental as high right of freedom of speech or freedom from unreasonable search and seizure."

As you know, that is not mainstream. That is far away from our judicial interpretations and legislative interpretations for 50 years.

Chairman SPECTER. Senator Schumer, how much longer do you intend to take?

Senator SCHUMER. About 3 or 4 more minutes.

That would be a radical expansion of the Takings Clause that no court has ever accepted.

I appreciate that reasonable people may have differences of opinion on matters of law and public policy. You, however, have heaped such scorn on environmentalists of all stripes that I think it has to call into question your impartiality on such matters.

I want to remind the Committee of some of your written statements. It was you who compared the Federal Government's management of public lands to "the tyrannical actions of King George over American colonies." You called the Desert Protection Act, authored by my colleague from California, an example of "legislative hubris." You said that environmental legislation "harms the very environment it purports to protect." You have called environmental laws "outright top-down coercion." You have criticized "the fallacious belief that centralized government can promote environmentalism."

You have said that the biggest disaster now facing ranchers is a flood of regulations designed to turn the West into little more than a theme park. You have said derisively that environmentalists are mountain-biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety, and welfare. You have accused members of certain groups of having an agenda that has "more to do with selling memberships and magazines than protecting the environment."

These are not isolated comments. They are not mainstream comments. They are not judicious comments. They are part of a disturbing pattern. Based on these comments, I have questions about whether you have the appropriate judicial temperament and impartiality to be a judge on the Ninth Circuit, which is so important to the adjudication of environmental matters. The bottom line is that there has been nothing to soothe our fears about the kind of judge you would make.

Now, one other point before I close. We have talked and Senator Specter has talked a little bit about balance on the courts. I believe there should be balance on the courts, the Supreme Court and the circuits. I have said before that a Supreme Court with one Scalia and one Brennan would not be a bad Court, although we should not have five of each. It is suggested that because the Ninth Circuit is viewed by some as more liberal than the other circuit courts, we should support every conservative nominee to that circuit. Of course, recognizing the value of balance on the circuit does not mean we should support any extreme ideological nominee whose views are off the deep end. And in any event, we have already moved some measure towards balance in the Ninth Circuit. President Bush has nominated and we have confirmed four conservative judges to the circuit. Perhaps it is time for a moderate nominee in the interest of balance.

And my colleagues across the aisle tend to talk about balance when it suits their purposes. Where is the more liberal or even moderate nominee to the highly conservative and unbalanced Fourth and Fifth Circuits? If we want to do balance, let's do it

hand in hand, not just more conservatives on the one more liberal court, but some liberals on the two or three very unbalanced, more conservative courts as well. So balance is a two-way street, not just used for one purpose.

Mr. Myers, I look forward to your shedding new light on some of the concerns my colleagues and I have expressed.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Schumer.

Our custom, as is well known on the Committee, is to hear from just the Ranking Member. I had thought that Senator Leahy was going to defer to Senator Schumer to serve as ranking, and in a moment, I am going to call on Senator Leahy to speak as the Ranking Member of the Committee. And the practice has been followed not to time the statement of the Ranking. But if, as, and when Senator—

Senator SCHUMER. Admirably so, I would say.

Chairman SPECTER. Well, I can understand why you say so, having gone on for about 20 minutes.

Senator SCHUMER. Exactly.

[Laughter.]

Chairman SPECTER. But if, as, and when Senator Schumer becomes Ranking Member of this Committee, there is going to be a rule change. There is going to be a rule change as to how long the Ranking Member can speak.

Senator SCHUMER. As long as it goes for the Chairman as well, that is fine with me.

Chairman SPECTER. Well, I observe the 5-minute rule meticulously.

Senator SCHUMER. Well, since you have become Chairman, you have become far more judicious in your remarks.

Chairman SPECTER. Before I became Chairman, I observed the 4-minute rule.

Senator SCHUMER. Right. Over and over again.

[Laughter.]

Chairman SPECTER. I am sure this group and C-SPAN do not want to see any more jousting.

On to the merits, Senator Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. I love listening to the guys from the big States.

Chairman Specter has been very, very fair. I have been four or five times Chairman of committees, four or five times ranking on committees. I have noticed most Chairmen and ranking try to help each other out, try to make it short.

I was going to note that last week Chairman Specter held a news conference, and he demonstrated his determination, his statesmanship, his ambitious agenda for the Committee in the months ahead. Mr. Chairman, I am glad to see you back in such good form and such good humor.

Chairman SPECTER. Thank you.

Senator LEAHY. And as I have told you privately, and I will say publicly, I want to do everything possible on this side of the aisle to help move things along to help you. We have a lot of things. We

have privacy and identify theft issues, asbestos legislation where the Chairman has probably spent more time personally on that than I have seen any Senator spend on any single issue since I have been here. He has talked about the conflict between the White House and the Senate over controversial judicial nominees, as he has again this morning. I am hoping that in our meeting with the President this afternoon this may come up.

I know when the President met with President Putin of Russia last week, President Bush emphasized our separation of powers, our checks and balances, our openness in Government. I agree with him on that. We have to preserve this. We have to preserve the independence of our courts. I totally agree with President Bush on that, as I said when I applauded at his Inaugural address.

But I welcome the improved tone that the Chairman has brought to this last topic. I think it is a very good thing. I think we should try to work together as we try to figure out the best way to handle lifetime appointments of Federal judges. As one of the new Senators, Senator Isakson, explained just a few weeks ago in remarks on the Senate floor, preserving minority rights is extremely important. In fact, overseas he praised our filibuster as a way of maintaining minority rights.

Now, we Democrats have tried to cooperate with the President since he began his first term. We have cooperated to a remarkable degree in confirming 204 of the President's judicial nominees to the Federal circuit and district courts. That is far more than were confirmed in his father's term, more than either of Ronald Reagan's terms, more than President Clinton's second term. There is no longer a vacancy crisis. We deserve some credit.

When I became Chairman, albeit for 17 months—and in some ways it felt like the longest 17 months of my life because, among other things, we had the 9/11 attacks during that time, a deadly attack on my office and Senator Daschle's through anthrax, deadly enough that an envelope addressed to me was touched by two or three people—touched by two or three people and they died. It does get your attention.

But notwithstanding that, and notwithstanding that there had been a pocket filibuster of President Clinton's judges, 61 of President Clinton's judges had a pocket filibuster because of one or two Republicans opposed to them, they were just never allowed to have a vote. Sixty-one. I wanted to change that. In 17 months, I move through, with the help of the Democrats and Republicans on this Committee, 100 of President Bush's nominees in 17 months. To put this in perspective, another 103 were put through under Republican control in 31 months. So it is kind of hard to say anybody is dragging their feet. Actually, as I pointed out to President Bush before, the Democrats moved his judges a lot faster than the Republicans did.

But we have to work together on this. I do not think the President should continue to insist on a handful of extreme activist nominees to key positions in some circuit courts. When he sends these nominations back to the Senate, he is choosing partisan politics over good policy.

I worry about the nominee before us today—William Myers. He has already been examined. The Senate withheld its consent to his

lifetime appointment. He was rejected for his partisanship. Instead of trying to change the vote on this, we ought to be looking for a new consensus nominee. There are plenty of Republicans who would get votes of every single Republican and every single Democratic Senator.

I believe Mr. Myers to be perhaps the most anti-environmental judicial nominee sent to the Senate in my 30 years here. And I think this shows how the appointment process has been misused. Senator Schumer spoke about "the tyrannical actions of King George."

I come from the part of the country that fought a revolution against King George. We have that in our bones and in our soul. My State was involved in some of the critical battles in that Revolution, and we do not think of our Government, whether headed by Democrats or Republicans, as being akin to King George. I think of our Government as the most representative, democratic Nation on Earth.

Now, we have had more questions that have come up. I have questions about Mr. Myers' relationship with and role in rewarding a lawyer who worked for him who was recently found by the Department of Interior's Inspector General, by President Bush's Inspector General, to have been responsible for arranging a sweetheart deal to a politically well-connected rancher. It was not found that way by a Democrat. It was found that way by President Bush's own Inspector General.

For 23 years, Mr. Myers has been an outspoken antagonist of long-established environmental protections, usually wearing the hat of a paid lobbyist. He has a right to do that. He also has an absolute right to speak out and say anything he wants. But we also have a right to look at what positions he has taken when we think of him going on a court in an area of the country which contains hundreds of millions of acres of national parks, national forests, and other public lands, tribal lands, and sacred sites.

We have a Federal judiciary today which in many instances has prevented this administration's attempts to roll back important environmental laws and protections put in by both Republican and Democratic administrations. We have to make sure we don't put judges on the bench whose activism and personal ideology would circumvent environmental protections that Congress has put in.

I look at 172 environmental, Native American, labor, civil rights, disability rights, and other organizations formally opposing this nomination. The National Congress of American Indians, a coalition of more than 250 tribal governments, unanimously approved a resolution opposing this nomination. The National Wildlife Federation, which has never opposed a judicial nomination by any President in its 68-year history—never has—opposed this one.

Now, I have great regard for the Senators from Idaho, both of them. I have huge affection for the former Senator from Wyoming, who is a close personal friend. In deference to them, I examined and re-examined Mr. Myers' record. I asked myself whether I could support this nomination. But I did not come back with a positive answer.

Mr. Chairman, you have been more than kind letting these statements come out. As I said, we will try to work hard with you to move things along, and I will stop.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Senator Leahy.

Mr. Myers, we would be pleased to hear from you on the traditional opening statement.

STATEMENT OF WILLIAM G. MYERS III, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. MYERS. I appreciate that, Mr. Chairman. I do not have an opening statement. I want to thank the President for nominating me, and I want to thank this Committee and you, Mr. Chairman, for hosting this hearing.

With that, I would be happy to answer any questions you might have.

[The biographical information follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

William Gerry Myers III (a/k/a Bill Myers)

2. **Address: List current place of residence and office address(es).**

Residence: Arlington, VA

Office: U.S. Department of the Interior
Office of the Solicitor
1849 C Street, NW, Room 6352
Washington, DC 20240

3. **Date and place of birth.**

July 13, 1955, Roanoke, VA

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Susan Benzer Myers (nee Susan Louise Benzer)
Spouse is unemployed.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

College of William and Mary, September 1973 - May 1977; B.A. May 1977
University of Denver College of Law, September 1978 - May 1981; J.D. June 1981

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Entity	Dates	Position	Location
Ukrop's Supermarkets, Inc.	6/77-8/78	Ass't Frozen Foods and Dairy Manager	Richmond, VA
f/k/a May Department Stores	12/78-12/78	Santa Claus	Denver, CO
University of Denver, College of Law	2/79-5/79	Law Library Filing Clerk	Denver, CO
f/k/a Mulligan, Reeves, Teasley & Joyce	8/79-2/80	Law Clerk	Denver, CO
f/k/a Hultin & Driver	2/80-3/80	Law Clerk	Denver, CO
Isaacson, Rosenbaum, Woods & Levy	3/80-5/81	Law Clerk	Denver, CO
f/k/a Holmes & Starr	5/81-7/81	Law Clerk	Denver, CO
Davis & Cannon, f/k/a Burgess & Davis	8/81-1/84	Associate Attorney	Sheridan, WY
U.S. Senator Alan K. Simpson (Ret.)	2/85-6/89	Legislative Counsel	Washington, DC
U.S. Department of Justice	6/89-2/92	Assistant to the Attorney General	Washington, DC
U.S. Department of Energy	2/92-2/93	Deputy General Counsel for Programs	Washington, DC
National Cattlemen's Beef Association and the Public Lands Council	5/93-7/97	Director, Federal Lands and Executive Director (respectively)	Washington, DC
Holland & Hart, LLP	8/97-7/01	Of Counsel	Boise, ID
U.S. Department of the Interior	7/01-Present	Solicitor	Washington, DC

7. Military Service: **Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

None.

8. Honors and Awards: **List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Former member of two collegiate scholastic fraternities: Omicron Delta Epsilon (Economics), Alpha Kappa Delta (Sociology)

9. Bar Associations: **List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

- Sheridan County Bar
- Wyoming State Bar
- Denver Bar Association
- Colorado State Bar
- Idaho State Bar
- District of Columbia Bar
- American Bar Association: Vice-Chairman, Public Lands Committee, Section of Environment, Energy, and Resources. Approx. 1998 - 10/25/00

10. Other Memberships: **List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I do not belong to organizations active in lobbying before public bodies. I belong to First United Methodist Church, Boise, Idaho and Lewinsville Presbyterian Church, McLean, Virginia; the Chesterbrook Swim & Tennis Club, McLean, Virginia; and the Hulls Grove Homeowners Association, Boise, Idaho.

11. Court Admission: **List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the**

reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

- Colorado Supreme Court, October 26, 1981
- United States District Court for the District of Colorado, October 26, 1981
- Wyoming Supreme Court, May 3, 1982
- United States District Court for the District of Wyoming, Dec. 15, 1983
- United States Court of Appeals for the Tenth Circuit, January 25, 1984
- District of Columbia Court of Appeals, March 9, 1987
- Supreme Court of the United States, January 8, 1990
- United States Court of International Trade, March 26, 1993
- Idaho Supreme Court, September 25, 1997
- United States District Court for the District of Idaho, September 25, 1997
- United States Court of Appeals for the Ninth Circuit, December 7, 1999
- United States District Court for the District of Columbia, March 5, 2001

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Books, Articles, Columns or Publications

Title/Subject	Publication	Date
Andrus v. Shell Oil Co.: The Marketability Standard and the Oil Shale Exception	58 Den. L.J. 453	1981
Advice and Consent on Trial: The Case of Robert H. Bork	66 Den. U.L. Rev. 1	1989
The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork	17 Hastings Const. L.Q. 399	1990
Reforming the American Civil Justice System	5 Geo. J. Legal Ethics 879	1992

Title/Subject	Publication	Date
Environmental Command and Control: The Snake in the Public Lands Grass	Farmers, Ranchers and Environmental Law 191	Roger Clegg ed. 1995
Western Ranchers Fed Up with Feds	Forum for Applied Res. & Pub. Pol.	Winter '96 at 22
Water Allocation	Idaho Cattle Association "Line Rider"	October 1997
Environmentalists More Concerned with Membership than Environment	Idaho Wool Grower Bulletin	November/ December 1997
Environmentalists More Concerned with Membership than Environment	Idaho Cattle Association "Line Rider"	December 1997
Grazing Legislation Roundup	Holland & Hart Environment and Resources Update	January 1998
Kids, Cars and Commodities	Idaho Cattle Association "Line Rider"	February 1998
Kids, Cars and Commodities	Idaho Wool Grower Bulletin	February 1998
Public Service in the New Year	ABA Public Lands and Land Use Committee Newsletter	February 1998
New Forest Service Policy Restricts Access to Roadless Areas	Holland & Hart Environment and Resources Update	February 1998
How to Turn a Big Buck into a Little Dough	Idaho Wool Grower Bulletin	March 1998
Forest Road Closure Loses Path in Woods	Jackson Hole Guide	March 11, 1998
Forest Road Policy is Lost in the Woods	High Country News	March 19, 1998

Title/Subject	Publication	Date
How to Turn a Big Buck into a Little Dough	Idaho Cattle Association "Line Rider"	April 1998
Property Rights in the Legislature	Idaho Wool Grower Bulletin	April 1998
Property Rights in the Legislature	Tellsride Daily Planet	April 22, 1998
Litigation - Happy Environmentalist Need Reform	Moab Time-Independent	April 30, 1998
Ranchers and Other Endangered Species	Idaho Wool Grower Bulletin	May 1998
Clean Water Act Section 401	The Advocate	May 1998
Ranchers and Other Endangered Species	Idaho Cattle Association "Line Rider"	June 1998
Supreme Court Rejects Challenges to Forest Plan	Holland & Hart Environment and Resources Update	July 1998
Clean Water Act § 401	Western Livestock Reporter	July 8, 1998
Clean Water Act § 401	Western Livestock Reporter	July 15, 1998
Clean Water Act § 401	Western Livestock Reporter	July 22, 1998
Feedlots in the Spotlight	Idaho Wool Grower Bulletin	August 1998
Ninth Circuit Calms Troubled Waters for Federal Land Permittees	Holland & Hart Environment and Resources Update	August 1998
To Tell the Truth	Idaho Wool Grower Bulletin	September 1998

Title/Subject	Publication	Date
To Tell the Truth	Western Livestock Journal	September 7, 1998
Laws About Truth do Matter	Recorder Herald	September 17, 1998
To Tell the Truth	Idaho Cattle Association "Line Rider"	October 1998
Administration Rolls out Feedlot Strategy	Holland & Hart Environment and Resources Update	October 1998
Supreme Court Rejects Challenges to Forest Plan	Idaho Wool Grower Bulletin	November 1998
Uncommon Sense	Idaho Cattle Association "Line Rider"	December 1998
Uncommon Sense	Idaho Wool Grower Bulletin	December 1998
Protecting Your Water Rights	Idaho Wool Grower Bulletin	January 1999
Clash of the Titans	Idaho Wool Grower Bulletin	February 1999
Protecting Your Water Rights	Idaho Cattle Association "Line Rider"	February 1999
BLM Charges Ahead on Mining Regulations	Holland & Hart Environment and Resources Update	February 1999
Road Warriors	Holland & Hart Environment and Resources Update	February 1999

Title/Subject	Publication	Date
TMDLs and the Big Picture: Federal Authority over Nonpoint Source Pollution	Course Materials, ABA 17th Annual Water Law Conference	February 25-26, 1999
State Grazing Lands Decision Requires a Close Read	Idaho Wool Grower Bulletin	April 1999
State Grazing Lands Decision Requires a Close Read	Idaho Cattle Association "Line Rider"	Summer 1999
Road Construction is up in the Air	Associated General Contractors of Idaho Magazine	August 1999
Forest Service Proposes Overhaul of Planning Process	Holland & Hart Environment and Resources Update	October 1999
Idaho Court Grants Federal Government's Claim to Wilderness Water	Holland & Hart Environment and Resources Update	October 1999
Supreme Court to Hear Federal Land Ranching Case	Holland & Hart Environment and Resources Update	October 1999
Supreme Court to Hear Federal Land Ranching Case	ABA Public Lands and Land Use Committee Newsletter	January 2000
Protecting Your Property Without a Fence	Idaho Cattle Association "Line Rider"	Spring 2000
Whoa, NOAA	Idaho Wool Grower Bulletin	March 2000
Supreme Court Hears Arguments in Federal Lands Ranching Case	Idaho Wool Grower Bulletin	April 2000
Raining on EPA's Parade	Holland & Hart Environment and	May 2000

Title/Subject	Publication	Date
	Resources Update	
Raining on the Regulators' Parade	Idaho Cattle Association "Line Rider"	Summer 2000
Is a Conservation Easement Right for You?	Range Magazine	Summer 2000
Raining on the Regulators' Parade	Idaho Wool Grower Bulletin	June 2000
Managing Federal Lands Creatively	Idaho Cattle Association "Line Rider"	Fall 2000
Study Materials	Course Materials, ALI-ABA Federal Lands in the West: Embarking on the New Millennium	October 5-6, 2000
Why Not Change Rallying Cry to "Condos for Cows?"	Nevada Appeal	October 20, 2000
Condos for Cows	Headwaters News	October 24, 2000
Condos for Cows	Livingston Enterprise	October 26, 2000
Whoa, NOAA	Idaho Cattle Association "Line Rider"	Winter 2000
The Department of the Interior's Role in National Emergencies	Natural Resources and the Environment (ABA Section Magazine)	Winter 2002

Letters to Newspaper Editors

Title/Subject	Newspaper	Date
What price grazing on public rangelands?	The Washington Times	July 4, 1993
Raising costs will drive out ranchers	The Arizona Republic	July 7, 1993

Title/Subject	Newspaper	Date
Raising grazing fees won't fatten the treasury	The Denver Post	August 26, 1993
Grazing fee hike will hurt ranchers	The Des Moines Register, The Baltimore Sun, Newsday, Greensboro News & Record	On or about August 26, 1993
Cattlemen have a beef	Los Angeles Daily News	August 26, 1993
Grazing fees: Babbitt wrong; plan will hurt land, treasury	The Phoenix Gazette	August 27, 1993
Ranchers crying foul, not wolf, at proposal to increase grazing fees	Rocky Mountain News	August 29, 1993
Cattle vs. condos	Christian Science Monitor	August 31, 1993
Ranchers can't afford grazing fee plan	The New York Times	September 1, 1993
Babbitt's grazing fees increase will hurt ranching, public lands	The Salt Lake Tribune	September 6, 1993
Babbitt's plan flawed	The Daily Oklahoman	October 8, 1993
Babbitt's proposal hit	St. Petersburg Times	October 9, 1993
Small Ranchers Can't Pay More for Arid Lands	The New York Times	November 10, 1993
Too late?	The Las Vegas Review-Journal	November 10, 1993

Title/Subject	Newspaper	Date
Grazing issue proves how rigid national environmental groups are	The Washington Times	January 9, 1994
Wolves on the Range	The Washington Post	May 21, 1994
Wildlife Federation's Anti-Grazing Report Not Good Science	The Arizona Republic	August 16, 1994
Grazing Land	Chicago Tribune	January 1, 1995
Grazing pays its own way	USA Today	February 6, 1995
GOP West test	Chicago Tribune	February 10, 1995
Violence Grows Against Ranchers	The New York Times	July 15, 1995
Let ranchers keep working	USA Today	July 26, 1995
Don't Fence Us Out	The Wall Street Journal	August 7, 1995
Ranchers will still share	Pittsburgh Post-Gazette	August 7, 1995
Ranchers Haven't Been Linked to Bombings	National Law Journal	August 14, 1995
Livestock Grazing Act	Chicago Tribune	August 23, 1995
Realities of Ranching	The Omaha World-Herald	August 23, 1995
There is a proper federal role in Western land management	The Washington Times	August 30, 1995

Title/Subject	Newspaper	Date
Changes in grazing rule	Los Angeles Times	September 8, 1995
Conservation mantle rests uneasily on shoulders of green alarmists	The Washington Times	May 9, 1996
The real story down on the range	The Washington Times	September 8, 1996
Uncle Sam unleashes wolves on livestock, but he doesn't pay for damages	The Washington Times	September 12, 1996
Bet Your Boots We're Environmentalists	The New York Times	September 27, 1996
Cowboys of the West - - Don't Blame Livestock Grazing for Pacific Northwest Flooding	The Seattle Times	February 8, 199
Readers surely saw column as nonsensical	Rocky Mountain News	April 13, 1997
Environmental lawsuits excessive	The Idaho Statesman	April 27, 1998
Home on the Range: Discouraging Words	The Wall Street Journal	October 6, 1999
Bush/Cheney importance	Western Livestock Journal	January 1, 2001
Agency lawyer has obligation to speak on behalf of a client	The Idaho Statesman	November 26, 2002

Speeches (copies are not available; I speak from talking points and extemporaneously, not from prepared text. I have not retained copies of the talking points.)

Subject	Event	Location	Date
Current Issues Concerning Public Land Management	International Society for Ecological Modeling	Providence, RI	8/11-15/96

Subject	Event	Location	Date
Environmental Command and Control: The Snake in the Public Land Grass	ABA Conference on Developments and Trends in Public Land, Forest Resources and Mining Law	Scottsdale, AZ	3/8-9/96
Policies and Actions Needed to Sustain Grazing Land Landscapes and Lifestyles	11th Annual Grazing Lands Forum	Washington, DC	12/5/96
Grazing on Federal Lands	Federal Lands Task Force Meeting	McCall, ID	10/10/97
Estate Planning for Ranchers	Estate Planning Seminar	Ft Collins, CO	11/3/97
Update on Grazing Issues	Idaho Cattle Association Convention	Coeur d'Alene, ID	11/7/97
Update on Grazing Issues	Idaho Wool Growers Convention	Sun Valley, ID	11/15/97
Grazing Issues Update	Oregon Cattlemen's Association Convention	Bend, OR	11/22/97
Ranchers' View of Rangeland Reform Regulations	BLM Standards and Guidelines Workshop	Denver, CO	12/9/97
Grazing Issues Update	National Cattlemen's Beef Association Convention	Denver, CO	2/4/98
Interior Columbia Basin Ecosystem Management Plan	Idaho Council on Industry and Environment	Boise, ID	2/12/98
Public Lands Issues	Idaho Agricultural Summit	Boise, ID	2/18/98

Subject	Event	Location	Date
Grazing Reform Legislation	Idaho Bankers Association Agricultural Forum	Twin Falls, ID	5/7/98
Feedlot Issues	Arizona Cattle Feeders Seminar	Phoenix, AZ	9/3/98
Concentrated Animal Feeding Operations	Holland & Hart/Idaho Cattle Association Seminar	Twin Falls, ID	9/30/98
Opportunities in the Practice of Law	Idaho State Bar, Young Lawyers Division, CLE	Boise, ID	11/16/98
Concentrated Animal Feeding Operation Issues	Association of Idaho Cities Environmental Forum	Boise, ID	2/3/99
TMDLs and the Big Picture: Federal Authority over Nonpoint Source Pollution	ABA 17th Annual Water Law Conference	San Diego, CA	2/25-26/99
Legal Issues and Careers	Law Day School Outreach Program	Eagle, ID	4/30/99
Endangered Species Act Issues	Wyoming Stock Growers' Association Convention	Casper, WY	6/99
Use of Federal Lands	Boise Leadership Conference	Boise, ID	6/12/99
Estate Planning for Ranchers	Western Folklife Center Meeting	Elko, NV	1/29/00
Update on Federal Lands Issues	AgAmerica/Western Farm Credit Bank Meeting	Washington, DC	6/7/00

Subject	Event	Location	Date
Public Lands Council v. Babbitt	ALI-ABA Conference: Federal Lands in the West: Embarking on the New Millennium	Jackson, WY	10/5-6/00
Update on Federal Lands Task Force	Idaho Cattle Association Convention	Boise, ID	11/16/00
Public Lands Grazing	University of Idaho Wildlife/Range 493 Class	Moscow, ID (via audio/visual link)	11/30/00
Federal Lands Task Force Working Group Report	Idaho State Land Board Meeting	Boise, ID	12/12/00
Endangered Fish	Idaho Cattle Association Meeting	Salmon, ID	1/8/01
Federal Regulation of Concentrated Animal Feeding Operations and the View from the Hill	Idaho State Bar Continuing Legal Education Program	Boise, ID Pocatello, ID	3/9,16/01
Federal Lands Task Force Working Group	Idaho Environmental Forum	Boise, ID	1/18/01
Endangered Species Update	National Cattlemen's Beef Association Annual Meeting	San Antonio, TX	1/31/01
FOIA Litigation Update	National Cattlemen's Beef Association Annual Meeting	San Antonio, TX	2/1/01
Federal Lands Task Force Working Group Report	Idaho State Land Board Meeting	Boise, ID	2/13/01
Federal Lands Task Force Working Group Report	Priest Lake Management Committee	Priest Lake, ID	3/21/01

Subject	Event	Location	Date
Federal Regulation of Concentrated Animal Feeding Operations and the View from the Hill	Idaho Cattle Ass'n Seminar on Feedlot Regulations	Boise, ID	3/29/01
Clean Water Act Update	Montana Water Law Seminar	Helena, MT	4/18/01
Federal Land Legal Issues	Conference of Western Attorney Generals Annual Conference	Sun Valley, ID	7/15/01
Indian Water Law Update	Indian Water Law Conference	St. George, UT	10/11/01
Department of the Interior Mining Issues Update	National Mining Association Mining Lawyers Conference	Key West, FL	10/19/01
View from D.C.: Inside the New Interior Department	Idaho Environmental Forum Meeting	Boise, ID	1/15/02
Mining Issues in the Department of the Interior	Society for Mining, Metallurgy & Exploration Conference	Phoenix, AZ	2/25/02
Department of the Interior Legal Issues	American Bar Association Conference on Environmental Law	Keystone, CO	3/14/02
Department of the Interior Legal Issues	Conference of Western Attorney Generals Annual Conference	Monteray, CA	7/29/02
Public Land Law	Department of Justice Public Lands and Natural Resources Law Seminar	Columbia, SC	9/5/02

Subject	Event	Location	Date
Federal Administrative Process	Holland & Hart Partners' Meeting	Vail, CO	9/27/02
Public Land Grazing	Western Watersheds Project Conference	Boise, ID	10/10/02
Department of the Interior Legal Issues	American Bar Association Conference	Portland, OR	10/11/02
National Wildlife Refuge Systems Centennial	Long Lake National Wildlife Refuge Centennial Celebration	Long Lake NWR, North Dakota	10/19/02
Department of the Interior Grazing Issues Update	Nevada Cattlemen's Association Annual Meeting	Winnemucca, NV	11/15/02
Grazing Issues	Idaho Cattle Association Conference	Sun Valley, ID	11/19/02
Department of the Interior Mining Issues Update	Northwest Mining Association Conference	Spokane, WA	12/6/02
Introduction to the Solicitor's Office	D.C. Bar Luncheon	Washington, DC	2/6/03
Mining Update	Ad Hoc Mining Interests Breakfast Meeting	Anchorage, AK	3/12/03

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Generally excellent health. Date of last physical exam, March 27, 2003

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

Not Applicable.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Appointed by the Idaho State Land Board to serve on the State of Idaho Federal Lands Working Group, 10/99 - 3/01.

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

2. **whether you practiced alone, and if so, the addresses and dates;**

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

a. **Associate Attorney**, Davis & Cannon (f/k/a Burgess & Davis) 8/81 - 1/85; 40 S. Main Street, Sheridan, WY 82801

General civil litigation practice including appellate advocacy.

Legislative Counsel for Senator Alan K. Simpson (ret.), 2/85-6/89; 261 Dirksen Senate Office Building, Washington, DC 20510

Served as principal adviser to Senator Alan Simpson of Wyoming on public land issues including energy development, national forests, water development and allocation, wilderness areas and wildlife habitat. Also counseled the Senator for his duties on the Senate Judiciary Committee pertaining to the Constitution, judicial nominations, antitrust and criminal law matters.

Assistant to the Attorney General, 6/89-2/92; U.S. Department of Justice, Office of the Attorney General, 10th and Constitution Avenue, NW, Washington, DC 20530

Prepared the Attorney General for his responsibilities as chairman pro tem of the President's Domestic Policy Council. Represented the Attorney General on departmental working groups and joined him in advising the President and the Cabinet. Issues included global climate change, wetlands policy, Clean Air Act amendments, the National Energy Strategy, civil justice reform and tort reform.

Deputy General Counsel for Programs, 2/92-2/93; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585

Served as DOE's legal adviser on matters pertaining to international energy, government contracting, civilian nuclear programs, power marketing and intervention in state regulatory proceedings. Supervised 35 staff attorneys as well as various field counsel and private counsel under contract with DOE.

Executive Director, Public Lands Council and **Director, Federal Lands**, National Cattlemen's Beef Association, 5/93-7/97; 1301 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20004

Principal adviser and representative on all aspects of public land law, regulations and governmental processes affecting federal land ranching. Regular congressional, administrative and media interaction. Worked closely with allied industry organizations. Managed all Public Lands Council business.

Of Counsel, Holland & Hart, LLP, 8/97-7/01; 101 South Capitol Boulevard, Suite 1400, Boise, ID 83702

Represented a broad range of commodity-based clients regarding public lands, natural resources and environmental law. Practice encompassed state and federal litigation, appeals, administrative proceedings and lobbying.

Solicitor, U. S. Department of the Interior, 07/01 - present, 1849 C Street, NW, Room 6352, Washington, DC 20240

Appointed by President George W. Bush, with the advice and consent of the Senate, to serve as the chief legal officer and third-ranking official at the Department of the Interior. Responsible for managing over 300 attorneys, a $47 million budget, and 19 offices nationwide. Responsible for providing legal advice to the Secretary and Interior's offices and bureaus on issues such as endangered species, water rights and allocation, on and offshore minerals, Indian affairs, federal land grazing, national parks and wildlife refuges.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

b. 1. Civil practice in both public and private sectors. See also responses to 17(a), (b)(2), and (c).

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

b. 2. My typical former clients can be divided into public sector and private sector clients. Public sector clients include high ranking government officials in the executive and legislative branches of the federal government. Generally, my role was and is to provide advice to these senior officials as part of their decision-making process and typically related to natural resources and environmental matters, with a particular focus on natural resources managed by the federal government. I also provided wide-ranging advice on other legal issues in order to facilitate the senior officials' performance of his or her duties. In the private sector, I typically represented small and medium-sized companies in federal and administrative litigation and as a lobbyist before Congress and the Administration. I also assisted clients with transactional matters.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

QUESTIONNAIRE FOR NOMINEES REFERRED
TO THE
UNITED SATES SENATE COMMITTEE ON THE JUDICIARY
(Updated from May 21, 2003)

William Gerry Myers III

I. BIOGRAPHICAL INFORMATION (PUBLIC)

2. **Address: List current place of residence and office address(es).**

Residence: Boise, ID

Office: Holland & Hart LLP
Suite 1400
101 S. Capitol Blvd.
Boise, ID 83702

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Spouse is a substitute teacher with the Boise School District, 8169 W. Victory Rd. Boise, ID 83709

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

U.S. Dept. of the Interior	7/01-10/03	Solicitor	Washington, DC
Holland & Hart LLP	10/03-Present	Of Counsel	Boise, ID

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I do not belong to organizations active in lobbying before public bodies. I belong to First United Methodist Church, Boise, Idaho and Lewinsville Presbyterian Church, McLean, Virginia; the Hulls Grove Homeowners Association, Boise, Idaho; and United States Tennis Association

17. **Legal Career:**

a. **Solicitor**, U. S. Department of the Interior, 07/01 – 10/03, 1849 C Street, NW, Room 6352, Washington, DC 20240

Appointed by President George W. Bush, with the advice and consent of the Senate, to serve as the chief legal officer and third-ranking official at the Department of the Interior. Responsible for managing over 300 attorneys, a $47 million budget, and 19 offices nationwide. Responsible for providing legal advice to the Secretary and Interior's offices and bureaus on issues such as endangered species, water rights and allocation, on and offshore minerals, Indian affairs, federal land grazing, national parks and wildlife refuges.

Of Counsel, Holland & Hart, LLP, 10/03 – Present; 101 South Capitol Boulevard, Suite 1400, Boise, ID 83702

Represent a broad range of commodity-based clients regarding public lands, natural resources and environmental law. Practice encompasses state and federal litigation, appeals, administrative proceedings and lobbying. I also represent tribal, state and local governments.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

b. 2. My typical former clients can be divided into public sector and private sector clients. Public sector clients include high ranking government officials in the executive and legislative branches of the federal government. Generally, my role was to provide advice to these senior officials as part of their decision-making process and typically related to natural resources and environmental matters, with a particular focus on natural resources managed by the federal government. I also provided wide-ranging advice on other legal issues in order to facilitate the senior officials' performance of his or her duties. In the private sector, I typically represented small and medium-sized companies in federal and administrative litigation and as a lobbyist before Congress and the Administration. I also assisted clients with transactional matters.

c. 1. I occasionally appeared in court on behalf of clients in both the public and private sector. Much of my litigation practice has involved a motions practice and settlement. The frequency of my appearances in court varied. I was more actively involved in courtroom matters as Solicitor and when associated with private law firms from 1981-1985, 1997-2001, and in my current position. I did not appear in court while serving as a Legislative Counsel to Senator Simpson, as an Assistant to the Attorney General for

the United States, or as a Deputy General Counsel at the Department of Energy.

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

I have lobbied Congress and the Executive Branch on behalf of American Indians who seek water resources for tribal use including restoration of endangered species habitat.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I am currently representing, pro bono, a poor, elderly couple in a property dispute with their neighbor. Litigation is imminent. To date, I have spent 42.9 hours on the case. I spent approximately 60 hours in 2004 in pro bono activities.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

My nomination expired at the end of the 108th Congress. In December 2004, members of the White House Counsel's office asked if I would like to be re-nominated. I said yes. I subsequently updated forms and was interviewed by the FBI to update my background investigation.

Chairman SPECTER. Well, thank you, Mr. Myers.

We are going to proceed with 5-minute rounds, and there will be multiple rounds. I had initially thought about 7-minute rounds, but we consumed so much time at this point that we are going to go to 5-minute rounds with, as I say, multiple rounds.

Mr. Myers, you have heard already this morning a long litany of charges, really, practically indictments as to what you have done. It is not uncommon for nominees to appear before this Committee and have this Committee appropriately go into great detail on their records and also on the floor of the United States Senate. And then the traditional pattern has been, when confirmed and when sworn in, that the individual reads the law, follows the law, especially in a position not on the Supreme Court but on the court of appeals or the district court, and that the judicial record is significantly different because of the change in position as to where the individual stands, the difference in roles which he has as a jurist.

My question to you is: What assurances can you give to your critics as well as to the American public at large, which does not know the details of your record, that you will be fair minded, that you will observe the law, that you will do your utmost to follow the decisions of the Supreme Court, the statutes enacted by Congress, and the precedents in the judicial process, and that you will follow the law as contrasted with any personal views you may have—not that I give credence to what has been said, but that you will observe the law?

Mr. MYERS. I appreciate the question, Mr. Chairman, and it is the fundamental question that this Committee needs to address.

Really, you have done an excellent job of stating my view, which is it is the paramount responsibility of a judge to dispassionately review the law and the facts of the case before him or her without regard to political persuasion or public opinion. This is not a recent thought of mine. The first time I expressed this in writing was in 1990 in an article I wrote where I said essentially that.

It is my view, Mr. Chairman, that to do anything other than that would be complete dereliction of duty. I have been a lawyer in my private practice, of course. That's what I was trained to be. That's what I have been. I have not been on a bench. I have not served as a judge. And so I've been an advocate for clients. If I were to be confirmed, I would be an advocate for the law, and I would take that with the utmost seriousness to try, to the best of my ability, to discern the law and the facts, apply them fairly, consider with utmost respect the precedent of the Supreme Court and the Ninth Circuit, to consider the precedent of other circuits where Ninth Circuit was absent, to look into the legislative history of a matter if necessary, and discern what Congress intended in the passage of a law, and to render a decision with my colleagues on the panel.

Chairman SPECTER. Mr. Myers, a good bit of criticism was leveled in your earlier hearing for your advocacy when you undertook in the private practice of law the representation of individual interests, and very successfully in many cases. And I think it is important to put on the record and to draw the distinction between the role of an advocate, a lawyer who represents a client in private litigation, with a judicial official or a quasi-judicial official. And perhaps I should not, but one of the best illustrations of that that I

know from my own personal background was my representation between being district attorney and coming to the Senate of a man named Ira Einhorn, whom I do not have to describe because he is pretty well known.

I was asked to represent him at a bail hearing, and thinking that everybody had a right to counsel, I undertook the representation to that extent. And had I been district attorney, I would have opposed bail. But when the district attorney did not and the question was how much, I brought in the character witnesses, et cetera.

But that is a firm distinction, and I would like your distinction between advocacy and the judicial function. Let the record note that I stopped in mid-sentence at 5 minutes, Senator Schumer.

You are not limited, Mr. Myers, in your reply time. You have Senator Schumer's status for this limited period.

Mr. MYERS. As an attorney, I am bound, of course, by the Rules of Professional of the bars to which I belong. I will use the Idaho rules as the example for my answer to your question.

Under the Idaho Rules of Professional Conduct, as an attorney, as an advocate for individuals and companies, businesses, I am required to zealously represent those clients, to advance every legitimate, good-faith argument that I can that is in their best interest. And that is the very essence of advocacy.

That is, of course, not the role of a judge. That is contrary to a judge's role, who listens to the advocates, both for and against, and then tries to ferret out the realities of the law and the facts.

Chairman SPECTER. Thank you, Mr. Myers.

As noted, my time has expired, and now I turn to Senator Schumer, who has a time limit.

Senator SCHUMER. Thank you, Mr. Chairman.

My question is this, and this is the dilemma that we are in. You do not have judicial writings, and so for those of us who want to scrutinize your record, the public statements, which are extremely disparaging of various environmental laws, are all we have.

Now, it seems to me—or let me ask you this question: Aren't these pronouncements deliberately made over the course of an entire career, not one or two or three but over and over again that do not just defend a position but really go out of their way to mock people on the other side, aren't they a better gauge of your beliefs about such laws, their wisdom, their applicability than statements about your fealty to the law at the last minute when you are appearing before a Committee who obviously you want to get the support of?

So let me ask you a few questions in regard to that, and you can also answer, as you answer these questions, why we should believe your statements right here at the Committee rather than a career of statements that quite conflict with them, at least by any fair reading of what mainstream law is on these issues.

First, do you think that the Clean Air Act harms the environment or that the Clean Water Act harms the environment? You have said that environmental legislation harms the very environment it purports to protect. Can you name the environmental laws you had in mind when you said that?

Mr. MYERS. Senator, I do not think that the Clean Air Act or the Clean Water Act harm the environment.

Senator SCHUMER. Okay. So when you said that environmental legislation harms the very environment it purports to protect, what were the laws that you had in mind?

Mr. MYERS. At the time that I made that comment, I believe I was advocating on behalf of the National Cattlemen's Association, for whom I worked. I was employed by them. And I was talking about at the time legislation that was pending in Congress to variously regulate the use of about 270 million acres of Federal land by ranchers in the West. It was a theme that I carried forward during the time that I was employed by that organization, and the essential idea was that a one-size-fits-all approach to regulating Federal lands issues was difficult at best because it is 270 million acres and every acre has its own distinct character.

And so an attempt to try to regulate all that landscape through a legislative approach often was unwieldy and sometimes had a consequence of harming good actors who were providing good stewardship.

Senator SCHUMER. So, in other words, you do not believe that legislation harms the very environment it purports to—environmental legislation harms the very environment it purports to protect? Obviously legislation is not written acre by acre.

Mr. MYERS. Right.

Senator SCHUMER. You made a much broader statement than that. What you said here is not what you said there.

Mr. MYERS. I was making a generalized point there in a generalized writing, and not a legal writing, that a one-size-fits-all approach often does not work on the Federal landscape.

Senator SCHUMER. You are not really answering my question directly unless you just said it—you are saying you said it rhetorically, you do not really believe what you put in that brief?

Mr. MYERS. I believe that—

Senator SCHUMER. You said environmental legislation. You did not say application. You did not say apply it differently in different places.

Here is another one you said: "the fallacious belief that centralized government can promote environmentalism." Is that your belief?

Mr. MYERS. That's the same—

Senator SCHUMER. Is it a fallacious belief that centralized government—is the belief that centralized government, which passed the Clean Air and Clean Water Act, for instance, can promote environmentalism fallacious?

Mr. MYERS. It's my belief that centralized government can do a great deal of good for the environment, and the example is the two that you mentioned—the Clean Water Act and the Clean Air Act—for reasons that we discussed in the previous hearing about, for instance, air and the ability of smog to travel interstate.

Senator SCHUMER. So what did you mean when you said this statement?

Mr. MYERS. I was again on that same theme, which is sometimes a one-size-fits-all approach does not work well in legislative enactments.

Senator SCHUMER. In all due respect, sir, what you are saying now is not addressing what you said there and what you really

meant. You did not say one size fits all. It is a broad, sweeping statement that centralized government can't promote environmentalism.

Mr. MYERS. Senator, I don't have the article with me, but I think the context was that we need to work as a government with the people who are on the ground to promote environmentalism, that environmentalism and environmental stewardship is good citizenship and good business. And those were quotes that I also think may be in that article.

Senator SCHUMER. Here is another one—

Chairman SPECTER. Senator Schumer, we will have a second round. Your time has expired.

Senator Hatch?

Senator HATCH. From what I have seen about your tenure here in Government, you have been one of the better people who has worked here, one of the more knowledgeable people, but you have represented clients in the West, right?

Mr. MYERS. That's correct.

Senator HATCH. And the West does have differing viewpoints in many instances from those who live in the East because of the huge ownership of Federal lands and a whole raft of other issues that really are peculiar to the West. Isn't that true?

Mr. MYERS. That is true.

Senator HATCH. And as an attorney, you have had to represent your clients to the best of your ability, and that sometimes means arguing against even laws that currently exist that may be injurious in the eyes of your clients to the West. Is that correct?

Mr. MYERS. I had a duty to try to promote and push every legitimate, good-faith argument that I could on behalf of those clients.

Senator HATCH. That is right. Let me talk briefly about a Solicitor opinion you issued in October 2002 regarding the Bureau of Land Management's grazing permits on Federal lands. Now, correct me if I am wrong, but what your opinion concluded was that BLM does have the authority to retire permits at the request of a permittee, but only after compliance with statutory requirements and a BLM determination that the public lands associated with the permit should be used for purposes other than grazing. And BLM's decision to retire grazing permits is subject to reconsideration, modification, or reversal.

Now, what prompted you to issue this opinion?

Mr. MYERS. The Federal Land Policy Management Act. That statute puts forward a structure in which land use plans are created by the Department of the Interior, and specifically the Bureau of Land Management in this case, for the management of the Federal landscape. It is my opinion that if a permittee wanted to temporarily retire a permit, they could do so, but it had to be in compliance with the land use plan promulgated pursuant to the statute.

Senator HATCH. As you know, some found this opinion controversial. Some saw it as a shot across the bow against environmental activist groups to try to buy up grazing permits and then seek to retire them permanently in order to shut ranchers off from those permitted areas. But at least in the case of a dispute over a portion of Utah's Grand Staircase Escalante National Monument, a spokes-

man for the environmental group that sought to buy and retire grazing permits had this reaction to your opinion. He said, "What the Solicitor's memo sets up is an acknowledgment of what we have already known. Once an area is closed to grazing, someone could still come along later and say we want to graze here, and the BLM could reopen the area to grazing. What people consider new about the memo is that plan amendments are not permanent, but that was not new to us."

Now, would you agree with this assessment of your opinion?

Mr. MYERS. I would, Senator. I think that the writer of that letter was basically confirming my view as I stated to your earlier.

Senator HATCH. And he was an environmental leader in the Intermountain West.

Mr. MYERS. That's correct.

Senator HATCH. In fact, a portion of the 1999 Tenth Circuit in *Public Lands Council* v. *Babbitt* that the U.S. Supreme Court did not review found that there is a presumption of grazing use within grazing districts, and that BLM could not unilaterally reverse this presumption. Now, that finding supports your opinion, doesn't it?

Mr. MYERS. It does, and I cited that opinion in my—

Senator HATCH. Well, then, you should not be criticized for something that is accurate, and admittedly accurate by the so-called environmentalists. Right?

Mr. MYERS. That is correct.

Senator HATCH. Okay. Now, let me also note that your opinion supersedes a prior memorandum issued by former Secretary Babbitt's Solicitor on January 19, 2001, during the final hours of the Clinton administration. Now, had that memorandum failed to consider a critical factor in any analysis of grazing permits under the Federal Taylor Grazing Act, namely, that the Secretary of the Interior has deemed lands within existing grazing districts "chiefly valuable for grazing and the raising of forage crops."

Mr. MYERS. You're referring to a memorandum and an opinion that was written by my predecessor, Solicitor Leshy.

Senator HATCH. Right.

Mr. MYERS. I read that and essentially agreed with his analysis. What I did was take it a step or two farther to address particular issues that were coming up in the context of the Grand Staircase.

Senator HATCH. And good legal consideration allowed you to do that, in your opinion, right?

Mr. MYERS. That's correct, yes.

Senator HATCH. Okay. Now, Mr. Myers, you and many others have criticized the Endangered Species Act for its basic failure: the very small percentage of species that actually have been recovered during the law's 30 years, and for functioning in practice as tool for land use control by Federal agencies and environmental activists. Clearly, many of your private clients were and are adversely impacted by the ESA, which is why you have spoken out against its abuse, as any advocate would argue, and would. But when you became Solicitor General of the Department, you had to and did defend the ESA. Is that right?

Mr. MYERS. That's right. And, Senator, I want to make one clarification, if I might. I don't think I've ever been critical of the En-

dangered Species Act. The reference you make is criticism to misuse of the Act.

Senator HATCH. Okay. Could I ask one further question, Mr. Chairman?

Chairman SPECTER. Certainly.

Senator HATCH. Moving to just a more concrete example of an abuse of the ESA that you successfully fought, can you tell us about the 1998 Arizona Cattle Growers' Association case in which the Federal district court judge noted that he did not believe that Congress intended "to have good people who were trying to make a decent living for themselves and their families in a hard business put out of business based on mere speculation" that an endangered species might be harmed?

Mr. MYERS. That was a decision of the Ninth Circuit on review of the district court's opinion.

Senator HATCH. The Ninth Circuit affirmed that decision in 2001, right?

Mr. MYERS. That's right, and I agreed with the Ninth Circuit's decision.

Senator HATCH. It was a 3-0 panel decision.

Mr. MYERS. Correct. Basically what the Ninth Circuit held was that land use managers in the Federal Government should not use the Endangered Species Act and that provision within the Act regarding takings and issuing of permits where there are no endangered species.

Senator HATCH. And the panel was composed of two judges appointed by President Clinton and one judge appointed by President Reagan. And one of the judges appointed by President Clinton wrote the following, "The Fish and Wildlife Service acted in an arbitrary and capricious manner by issuing incidental statements imposing terms and conditions on land use permits where there either was no evidence that the endangered species existed on the land or no evidence that a take would occur if the permit were issued. We also find that it was arbitrary and capricious for the Fish and Wildlife Service to issues terms and conditions so vague as to preclude compliance therewith."

So basically abuses of the ESA by Federal agencies are not just figments of the fevered imaginations of property rights zealots as many leftist environmental groups would have us believe. Was it abuses of this kind—and I am sure you can cite others—that led to your reported statement at the Nevada Cattlemen's Association meeting in 2002 to the effect that the ESA ought not to be used by Federal agencies as a land management or zoning tool?

Mr. MYERS. That's right. I was referring to the Ninth Circuit decision that we've been talking about when I made that comment.

Senator HATCH. You would be heck of a poor intermountain lawyer if you did not make that argument. Would you agree with me?

Mr. MYERS. Well, I felt like I was on pretty good ground since the Ninth Circuit had decided it.

Senator HATCH. I think you are on good grounds, and some of the criticisms that are used against you have not acknowledged the fact that you are one of the experts in these areas and, frankly, a very honest, decent, competent man. And I just wanted to bring some of these things out. I wish I had a little more time.

Mr. MYERS. I appreciate it.

Chairman SPECTER. Senator Hatch, a little extra deference on time as an ex-Chairman and somebody who did not get to make an opening statement. And Senator Hatch knows an intermountain lawyer when he comes up against one.

Senator HATCH. I do, and this is a very good intermountain lawyer, but really a good lawyer for our country as a whole, even though he undoubtedly has differed with some of our folks on this Committee from time to time. But, gee, that is not unusual either.

Chairman SPECTER. Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

Let's go into this Inspector General report. We have talked about it. The press has certainly carried a lot about it. The Inspector General of the Department of the Interior issued a report on the results of its investigation into a settlement reached between BLM and Harvey Frank Robbins, a rancher in Wyoming.

Incidentally, Mr. Chairman, before I go on, I have got—Senator Hatch spoke of people who may oppose or not oppose. I would want to put into the record the letters and editorials in opposition.

Chairman SPECTER. Without objection, they will be made a part of the record.

Senator LEAHY. But I know the press reports say you have been absolved of blame in the Robbins settlement. I still have a couple of questions about the role of political influence in this case, especially your role in the hiring and the supervising of Robert Comer. He is the lawyer whom the investigation, as you know, squarely blamed for this mess. He is responsible for what apparently the Inspector General and just about everybody else regards as a sweetheart deal made for Mr. Robbins. Mr. Comer was at that time a political appointee in your office working as just one of a few Associate Solicitors.

What was your role in recruiting and getting approval for Mr. Comer's hiring at the beginning of the administration?

Mr. MYERS. It was the same process, Senator, that was used for political hires in my office. I had a handful out of the 300—

Senator LEAHY. I am asking about him specifically.

Mr. MYERS. Right. I understand. I would look for candidates who would fill various Associate Solicitor positions, and the one that he filled was Associate Solicitor for Land and Water.

Senator LEAHY. Why did you pick him?

Mr. MYERS. Based on my understanding of his work in the past, his resume, he came with good references.

Senator LEAHY. How did he first come to your attention?

Mr. MYERS. I had known Mr. Comer prior to becoming Solicitor because he worked in Federal land issues, as had I. That's a fairly small bar, so to speak. I don't recall precisely how he came to my attention. Often these people would put their resumes into the White House for positions. The White House then sends them out to the various agencies for review. I don't recall if that's how I got his resume or not.

Senator LEAHY. The reason I ask you, at your first hearing you testified you specifically authorized a subordinate to negotiate the Robbins settlement. Was that subordinate Mr. Comer?

Mr. MYERS. Yes, it was.

Senator LEAHY. Did you ask him to work on this matter, or did he ask you to—

Mr. MYERS. No, he came to me. The BLM, the client agency, came to him and said, "Would you help us settle this matter?" Mr. Comer came to me and said, "The client wants me to help settle this matter, and I'd like to work on it." He didn't need to ask my approval. He already had that authority under the Solicitor's manual that was in place.

Senator LEAHY. But you said you specifically authorized a subordinate to negotiate—

Mr. MYERS. I said it was okay because it was okay for him to try to settle an administrative case.

Senator LEAHY. When I read the IG report, it makes a pretty mysterious reference to some friends of Mr. Robbins and his father, one of whom the IG refers to as a political consultant who had known Mr. Robbins since their childhood.

Now, one of these friends seems to have been the one to arrange a meeting Robbins had in Washington with the chief of staff of the BLM and some Congressional staff to discuss the problems he was having with the Wyoming BLM. These friends attended the meeting. Mr. Comer was there, too. Did you know about these friends of Mr. Robbins and their role in helping Robbins out with these components of the Department of Interior?

Mr. MYERS. No, Senator. The first time I learned about that was when I read the redacted report of the Inspector General.

Senator LEAHY. Do you know who they are now?

Mr. MYERS. I have no idea who they are.

Senator LEAHY. Did anyone either outside or inside the Department of Interior, including Mr. Comer, ever speak to you or let you know in any way that Mr. Robbins' problems with BLM in Wyoming should be taken care of because of his political considerations?

Mr. MYERS. No, sir.

Senator LEAHY. What about once you learned of the problems with the Robbins settlement? You said you were aware of the problems about 6 months after the settlement was signed. We know the IG investigation was already going by June of 2003. So I assume that means you were aware in the late spring of that year at the time you started asking questions about the settlement and its unfair terms, the Wyoming U.S. Attorney's objections to it.

So with all that, what kind of disciplinary action did you take against Mr. Comer?

Mr. MYERS. Well, let me first say that I was very concerned by what I read in the IG's report. It disturbed me greatly.

When I saw the reports that there was potentially something amiss—and obviously there was—I asked a senior attorney in my employ to work with the Assistant Secretary, who was also concerned about it. She had assigned someone to look into this on her behalf. I asked a senior attorney not involved at all in the discussions or the negotiations to assist her to see if we could figure out what was going on.

Senator LEAHY. Did you help Mr. Comer, to use the expression, burrow into a career position in the Solicitor's Office. You know, he had been a political appointee. At some point somebody agrees to

take him out of that and put him into a career safer position. Did you have anything to do with that?

Mr. MYERS. I made sure that that process followed the civil employees statutes.

Senator LEAHY. What does that mean?

Mr. MYERS. Well, he had to compete for that position. He had to compete against other candidates who also wanted the same opening.

Senator LEAHY. Who made the final decision? Were you involved in the final decision?

Mr. MYERS. I was. Yes, I was. I'm trying to remember how this works. A panel was put together to review the candidates. They picked out the top three or so. I think they made a recommendation to me as to who they thought would be best. I signed off on the recommendation. Then it goes through the Office of Personnel Management and through the departmental Office of Personnel Management, and then—

Senator LEAHY. Who picks one out of those top three? Did you?

Mr. MYERS. I'm trying to recall how that—really, how that works. I think that the ultimate decision—my review of it is near the end of the pipe. And then there's an executive official within the Department who actually signs off on it after getting OPM clearance.

Senator LEAHY. I want to go back to that, Mr. Chairman. Thank you.

Chairman SPECTER. Thank you, Senator.

Senator Coburn?

Senator COBURN. Thank you, Mr. Chairman. Good to see you. Sorry I missed the opening statements.

Just a couple of questions. One of the things that I have noted is there is a lot of criticism of your words, but very little criticism of your actions. And at your time while you were Solicitor for the Department of Interior, was there ever a time at which environmental groups praised your work in terms of your carrying out of your duties and responsibilities to where it benefited the environment and the environmental groups?

Mr. MYERS. Often what I did, Senator, was fairly behind the scenes, so I did not appear in the marquee credits, but the actions that I took advanced environmental causes and issues that were praised. I think, for instance, of a settlement that we worked out on the Lower Penobscot River in Maine that was roundly applauded by the environmental community. I think of actions I took in Dinali National Park in Alaska to prevent gold-mining activities within the boundaries of the park on patented mining claims; preventing trespass in Wrangell-St. Elias by an inn holder who had access to a bulldozer; by prosecuting through the Department of Justice trespass actions of ranchers in California and in Nevada; by seeking a record-breaking monetary penalty against an oil company that was illegally flaring gas in the Gulf of Mexico.

That is a rough run around the country.

Senator COBURN. The question has been made of frivolous lawsuits. It may not be a question you necessarily want to answer, but I think it is important to recognize that there are frivolous lawsuits in environmental areas that were never intended by the Congress

to use as a method to delay an action in some way that has nothing to do with the environmental action or the lawsuit at the time.

Did you see that frequently, one? And, number two, are there things that should be changed in terms of, for example, ESA and the Clean Air Act and the Clean Water Act that would make them more pro-environment but at the same time release the freedom of time in which we can accomplish things that are better for the environment and better for the country as a whole?

Mr. MYERS. Generally with regard to litigation reform, those issues do not go to the substantive statutes themselves. They go more to management of court dockets, to filings, trying to reduce both the time and expense that litigants face when they want access to the courts. Obviously, every litigant deserves that access. But some are barred simply because they have neither the time nor the money to pursue it, and that is a factor which I think is widely recognized and was recognized by the Congress in the Judicial Improvements Act of 1990 and at other times.

As to the specific substance of statutes, my only comment there would be a generic one, which is, of course, Congress always needs to look at how statutes which, when they are passed, have marvelous and laudatory goals, how those statutes are being implemented by the agencies, whether the agencies are getting it right in compliance with Congressional mandate, and whether some amendments are useful.

Senator COBURN. One final question if you could. Can you tell me why you would like to have this position?

Mr. MYERS. Yes, Senator, I can. For an attorney who works in the judicial branch of the three branches of our Government, this would be the penultimate opportunity for public service. I have always enjoyed public service. I think that's probably clear from my record. I've been in three Cabinet-level agencies, and I've worked as a staffer for this body. So it is something that appeals to me. It's an opportunity to give back and an opportunity that would be tremendously humbling to me if I were so fortunate as to be confirmed.

Senator COBURN. All right. Thank you.

Mr. Chairman, I yield back.

Chairman SPECTER. Thank you very much, Senator Coburn.

Senator Feinstein?

Senator FEINSTEIN. Thank you, Mr. Chairman, and welcome back, and welcome back, Mr. Myers.

Mr. MYERS. Thank you, Senator.

Senator FEINSTEIN. Mr. Chairman, I want to just say one thing about the Ninth Circuit, just for the record. There are 28 judges. Four appointments have already been made by the President serving. That is 14 percent of the circuit. There are another four openings. When the President fills them, that will be 30 percent of the circuit filled. So, you know, I think many of us are concerned that the circuit remain a mainstream circuit. And I think the concern over Mr. Myers is really the environmental record, not only as an advocate but as the Solicitor for the Department of Interior. And so I would like to ask this question of Mr. Myers. It is along the line of what Senator Leahy has asked you, and that is the Inspec-

tor General's recent report on your office and the settlement of the Robbins case.

I think the report called your deputy's work "disconcerting." The report goes on to say that Mr. Comer entered the Federal Government into a settlement that was essentially not supported by law. And Mr. Comer told the Inspector General in its 2003 investigation of you that he had briefed you on the settlement. And you testified at your hearing last year to Senator Durbin that you were not aware of the terms of the settlement in Wyoming.

Have you read the settlement now?

Mr. MYERS. Yes, I have.

Senator FEINSTEIN. And what do you think of it? Is it a settlement that you think your office should have entered into?

Mr. MYERS. Well, I think there are problems with that settlement. There's one good provision in it, and that was that provision which said that if the rancher violated any terms of the agreement, it could be withdrawn. And it was.

Senator FEINSTEIN. Is it a settlement that you think your office should have entered into?

Mr. MYERS. No, Senator, not the way it was done. I think from my reading of the IG's report, there were serious concerns raised by the U.S. Attorney's Office that apparently were not adequately considered in that settlement.

Senator FEINSTEIN. I appreciate that.

In 1988, in discussing judicial activism, you wrote the following quotation in the Denver University Law Review on page 22: "Interpretism does not require a timid approach to judging or protecting constitutionally guaranteed rights. Interpretism is not synonymous with judicial restraint and may require judicial activism if mandated by the Constitution." That is a direct quote.

Does that mean you will be an activist judge?

Mr. MYERS. No, it doesn't. What I was trying to convey in that quote was that a judge should not have a crabbed interpretation of a statute that he or she may be reviewing in a particular case, that the judge should give it a full and fair and reasonable meaning, and that that's the right approach. And, therefore, if a judge is presented with a particularly egregious activity of a defendant, perhaps in a criminal setting, that the judge should not be timid or restrained about bringing the full force of the law down to bear on a convicted criminal.

Senator FEINSTEIN. Thank you.

In that same Denver University Law Review article, on page 25, you wrote, and I quote, that "the Supreme Court has started to retreat from the generalized right of privacy set forth in *Griswold* and *Roe* v. *Wade*." As evidence, you cited *Bowers* v. *Hardwick*.

As you know, since you wrote your article in 1988, the Supreme Court has affirmed *Roe* in *Planned Parenthood* v. *Casey*, and it has overruled *Bowers* in *Lawrence* v. *Texas*.

What do you think about the Casey and Lawrence decisions? Are they examples of, as you wrote, situations where the Court departs from the laws—this is your quote—"the Court departs from the laws as embodied by the Constitution and the statutes and supplants the individual morals of the Justices"? If you were—well, perhaps you could just answer that?

Mr. MYERS. Okay. No, I don't think it's an example of judicial activism. I think that was your question. When I wrote that comment about *Bowers* v. *Hardwick*, it was shortly after that case had been decided, and many scholars, academics, in my review of the literature suggested that it was a retreat from where the Supreme Court had been prior to that decision. As you note, in *Lawrence* v. *Texas*, the Supreme Court has overruled *Bowers* v. *Hardwick*, and, of course, *Lawrence* v. *Texas* is the law of the land.

You also mentioned *Griswold* v. *Connecticut*. I consider that to be a bedrock of our privacy standards through the Supreme Court and, frankly, one that I am enamored with. I don't know if I've ever put it in writing, perhaps somewhere, but there was a quote by Justice Brandeis in a 1928 dissent that he wrote in *Olmstead* v. *United States*, where he said, "The essence of privacy is the right to be let alone." And it's one of the most cherished of all rights.

Senator FEINSTEIN. Okay. Let me say this: Virtually every environmental organization that I know of opposes your nomination. They essentially, I think, feel that your views on takings as well as other subjects are such that environmental law wouldn't stand a fair shake in the Ninth Circuit.

I would like you to make the case as to why you believe you could provide a fair and open and just hearing in environmental matters, particularly when your tenure as an advocate and your tenure in the Department seemed to favor the opposite side.

Mr. MYERS. Senator, I would start with another writing of mine from 1990, when I said that it's the essence of judging to dispassionately review the case before that judge and regard for the law and the facts, without regard for political persuasion or public opinion.

I move forward from that to my private life. A good indication of a person is what they do on their free time. I've spent a lot of my free time working for the environment, volunteering for the Forest Service, volunteering for the Park Service, volunteering for the local city Department of Parks and Recreation. So I think that is where I would tell my environmental friends to look first because that is, I think, a true mark of an individual, what they're doing when they're not on the clock.

Then I would take them through decisions I made as Solicitor, and I mentioned several of these to Senator Coburn, decisions which based on my neutral reading of the law were compelled to reach a conclusion that was pro-environmental, and I did so and I didn't faint from that obligation.

Yes, I have an extensive record. Sometimes I came down with decisions which environmental advocates did not like. Sometimes I came down with decisions that they did like. And I would ask them to look at the entire picture and judge me on that.

Senator FEINSTEIN. Thank you.

Thank you very much, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Feinstein.

Senator Feingold?

Senator FEINGOLD. Thank you for appearing before us, Mr. Myers. You have been asked about your role in the Robbins settlement agreement, and I was surprised that a rancher who moved to Wyoming from Alabama in 1994—we are not talking here about

a family who had ranched this land for decades—and who had a RICO suit pending against BLM employees would be able to arrange such a high-level meeting to discuss his case.

From 1996 to 2001, the BLM cited Robbins for 25 different trespass violations, more than half of which were classified as "repeated willful violations." In fact, a local BLM official declared that "Mr. Robbins' conduct was so lacking in reasonableness and responsibility that it became reckless or negligent and placed significant undue stress and damage on the public land resources."

Yet, in February 2002, Mr. Robbins, Jr., his father, Mr. Robbins, Sr., the chief of staff of BLM, a political appointee, other BLM officials, Mr. Robert Comer of your office, a political appointee, the DOI Congressional liaison, and Congressional staff from Wyoming met at DOI headquarters in Washington to discuss the possibility of a settlement.

After this high-level meeting in Washington, the Department entered into an illegal settlement agreement with Mr. Robbins in January 2003. The agreement forgave 16 grazing violations dating back to 1994 and gave him preferential grazing fees. Even more unusual, Robbins obtained a special status whereby only the Director of the BLM, also a political appointee, or her designee may cite him for future violations. According the Inspector General, your employee and political employee Robert Comer "failed to act impartially and gave preferential treatment to Mr. Robbins in negotiating and crafting the settlement agreement."

According to the Center for Responsive Politics, Mr. Robbins' father, Harvey Frank Robbins, Sr., of Muscle Shoals, Alabama, donated $25,000 in soft money to the Republican Party in 2000. According to the Inspector General's report, Harvey Frank Robbins, Sr., also attended the February 2002 meeting at DOI headquarters with your office.

Would someone whose father had not contributed $25,000 in soft money to the RNC receive this type of preferential treatment Mr. Robbins received from the Department of Interior headquarters?

Mr. MYERS. Senator Feingold, I want to correct one thing I thought you said, which was a meeting arranged in my office. It was not in my office. It was, I believe, in the offices of the BLM.

I didn't know Mr. Robbins prior to that meeting. I have never met him or talked to him since, and I was unfamiliar with whatever experience he has or political connections he might have. So from where I sat, he was an unknown. He was a rancher who was in a dispute with the BLM over his grazing permits in Wyoming.

You cited the IG's report that said that that meeting occurred and included staff members from the Wyoming Congressional delegation. I do not know this, but I infer from the IG's report that perhaps those staffers asked for the meeting to occur.

Senator FEINGOLD. But do you think somebody who had not contributed $25,000 in soft money to the RNC would have received this kind of meeting?

Mr. MYERS. I would hope that political contributions would have no effect whatsoever.

Senator FEINGOLD. But is that your view that they have no effect whatsoever in a situation—

Mr. MYERS. Yes.

Senator FEINGOLD. In an unusual meeting as this?

Mr. MYERS. Yes, that's my view.

Senator FEINGOLD. Well, this meeting and this settlement disturbs me, not just because of the influence peddling it speaks of and its reflection on how your office operated, but because it underscores a concern I have about your ability to be impartial. It seems that only certain interests had access to your office under your tenure as the Department's top lawyer.

You testified previously that you did not meet with the Quechan tribe before you issued your legal opinion and the resulting decision to approve the highly controversial cyanide heap leaching Glamis Mine which rests on sacred tribal land. Tribal leaders have called your legal opinion "an affront to all American Indians." Yet you were able to meet with mining industry officials 27 times during the first year of your tenure as the Solicitor. In response to Senator Feinstein's written questions, you said that you didn't meet with tribal leaders involved in the Glamis Mine because of the September 11th tragedy. Yet you met with mining officials from the company who wanted to develop the mind on September 13, 2001. The tribe has termed your written responses to Senator Feinstein in the Glamis matter and your use of the September 11th tragedy as the reason that you did not meet with the tribe as "highly offensive."

If you are not willing to meet with both parties involving a controversial decision where the Interior Department has tribal trust responsibility, will you please tell the Committee why we should believe that you will be impartial as a judge?

Mr. MYERS. Senator, regarding the meeting with the representatives from the Glamis Mine, that occurred in my office here in Washington, D.C., on the 13th of September. That invitation that I received from the tribe was to travel to California. I believe I'm correct in stating that planes were all grounded at that time, and they could not have traveled here to meet with me, and I could not have traveled there to meet with them. Had they wished to meet with me in my office as the mining company did, I would have welcomed them into my office.

I subsequently did meet with them after I issued my opinion, and they presented to me a PowerPoint presentation of their concerns. That presentation affirmed for me the facts that I knew about that situation prior to the time that I wrote my opinion.

Senator FEINGOLD. Well, as I understand it, your predecessor at least gave them a call before he issued his ruling, and I would submit that even if you could not have met with them, if that is true, you could have at least picked up the phone.

Mr. MYERS. Senator, on that point, I don't know, of course, what my predecessor did, but I did read a review from the Inspector General of that question, and he said that my predecessor had never met with the tribe. He issued a legal opinion, and I reviewed his legal opinion to determine whether I agreed with it. It was a discrete legal issue, and in my mind fairly akin to a summary judgment motion in that the facts were not in dispute from any side, and the question was, as a matter of law, was my predecessor's opinion correct. I decided it wasn't.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Feingold.

Mr. Myers, in your long career in public service, you have made many decisions. It is perhaps more interesting to be critical of some of them, but I would suggest for the record that there are many which you have made which support the pro-environmental position. And as Solicitor for the Department of the Interior, you have been involved in some of the settlements of cases which were very favorably reported by environmental protectionist groups such as the Shell Oil-based activities on the Gulf of Mexico and the Governors Island National Monument in New York Harbor.

Would you expand upon those particular items and other high marks which you have weighed in on for environmental protection?

Mr. MYERS. I will, Senator.

Chairman SPECTER. I think, Mr. Myers, there is a real balance in your record if we were to spend the next month with you on the witness stand.

Mr. MYERS. I would be happy to give you the citations.

Chairman SPECTER. Well, how about next month.

Mr. MYERS. Senator, I will talk to you about the two that you mentioned and add maybe one or two other examples.

The first one you talked about was the Shell Oil matter in the Gulf of Mexico. The Shell Oil Company had for some time been flaring gas from its platform. Before a company can flare gas from a platform in the Gulf, it has to keep records of that flaring. It has to report it to the Minerals Management Service within the Department of the Interior.

Investigations revealed that they had neither kept the records nor informed MMS about their activities. These were violations of the law. We set about to correct that and imposed upon them a $49 million payment, a duty to keep adequate records and to follow up with the Department of Justice on how they were complying with that settlement.

You also mentioned the Governors Island matter in New York Harbor. Governors Island is a wonderful piece of Federal land in the harbor off of Manhattan Island. You see it as you travel from Manhattan Island to Ellis Island or Liberty Island. But most people probably don't know what's there. It is an island that has been in the ownership of the United States for over 200 years. It has Castle William and Fort Jay, I think it's called, on that site, all embattlements created for the protection of the harbor against warships of the day.

President Clinton designated it as a national monument, but there was a problem with the statute that required the sale of the island, including the national monument, to the city or the State of New York, giving them the right of first refusal on the bid. We didn't want to see that monument lost out of Federal hands, so we worked with the city and the State and with an intervening environmental group to arrange a transfer of the island to us via that intermediary. At the same time we increased the size of the monument to add additional protection.

I had the opportunity while I was Solicitor to go to the monument and to look at it. It's an amazing piece of property. I'm excited about the opportunities there. There's a huge amount of rehabilitation because many of the buildings have fallen into complete

disrepair. But we enhanced the size of that monument and protected it.

Chairman SPECTER. And pardon my interruption, but a couple of points I want to make, and we are going to conclude this hearing hopefully reasonably soon. That action was very highly praised by environmental groups and it has protected a great U.S. national asset.

Mr. MYERS. That's right. No one wanted to see the loss of Governors Island.

Chairman SPECTER. You have, in Colvin versus Snow and other similar cases, specifically authorized the regional solicitors to seek enforcement action against ranchers who refused to pay applicable grazing fees for their use of public lands?

Mr. MYERS. Correct.

Chairman SPECTER. So you have taken some stands against ranchers—

Mr. MYERS. Impoundment of livestock.

Chairman SPECTER.—whom you are generally charged with having unduly favored?

Mr. MYERS. Right. Impoundment of livestock for sale by the BLM because of trespass, actions by the U.S. Attorney's Office, preliminary injunction sought in District Court in California against a rancher who decided to use a bulldozer.

Chairman SPECTER. Pardon the interruption again, but I only have time for one more question if I squeeze it.

That is your advocacy in urging young people to take up public service and your service on the American Bar Association's Public Lands Committee and the article you published in the American Bar Association publication on public lands and land-use relating to public service, could you state for the record what you did in that respect?

Mr. MYERS. Yes. I was assisting the Chairman of that ABA Committee in writing an occasional column in the newsletter that the Committee put out. My particular focus was on public service and I think you are referring to an article that I wrote that it was important for lawyers to give back to their community, not just in typical pro bono legal activities but also in going into classrooms, in helping devise easy to read and understandable environmental codes, and in working with the community on environmental issues.

Chairman SPECTER. Thank you, very much. Senator Leahy.

Senator LEAHY. Thank you and I will be brief.

I am just still on this Comer. There are three people there. Which one of the three did you recommend?

Mr. MYERS. Bob Comer.

Senator LEAHY. Would it be safe to say your recommendation would carry a fair amount of weight?

Mr. MYERS. Probably, yes, sir.

Senator LEAHY. Considering some of the things that came out in the IG's report, how do you feel about that?

Mr. MYERS. Well, Senator, had I known then what I know now, I would have made a different decision.

Senator LEAHY. But he came in with a lot of political power behind him and he is now ensconced in a nice safe position; is that not correct?

Mr. MYERS. I do not know that he came in with a lot of political power. There were a lot of good candidates that I reviewed for that position.

Senator LEAHY. But he has got himself in a nice safe position now. If he is a political appointee he could be easily fired for the things that went on.

Mr. MYERS. Right. When I hired him, he came into the office as a political appointee.

Senator LEAHY. Lucky Mr. Comer.

Mr. MYERS. Well, after reading that report I am not sure I would say lucky Mr. Comer.

Senator LEAHY. You have been asked a lot of questions about not meeting with the Quechan Tribe. Am I pronouncing that correctly?

Mr. MYERS. Quechan.

Senator LEAHY. Quechan Tribe. You allowed a permit for a mine which destroyed land sacred to them. Obviously your answers, both your answers in the earlier hearing, your written answers, have not satisfied them.

You are a Westerner. You deal a lot with the tribes. You look at the National Congress of American Indians. I met up with them in one of their meetings here. I was really impressed with the intensity of their feeling. They have never taken a position on a judicial nominee before you and they are opposing you. Why do you feel that is so? Here is your chance to say something.

Mr. MYERS. I think that the opposition is based on that Glamas matter that we have already discussed.

I would submit to you and to that group if they looked at my entire record they would find a Solicitor who was very much an advocate for Indian matters and tried to deal fairly with Indian matters. As examples, I would cite probably first and foremost my work regarding the Sandia Pueblo.

Senator Bingaman had proposed legislation after two different solicitors prior to my arrival had issued opposing opinions on whether that Sandia Pueblo had any right or access to 10,000 acres in the National Forest, an area which was of great significance and sacred sites to that tribe in an issue that went back to the 1700's when the King of Spain issued a patent to the Pueblo.

I came in, I was asked by various factions who were debating this question to issue my own opinion. I did not do so. Instead, I came to this Senate and I testified in favor of Senator Bingaman's legislation. It passed and resolved the problem.

As part of that process I went out to the Sandia Pueblo. I talked to the Pueblo leaders. I looked at the landscape, both from the air and on the ground. And I talked to the others who were concerned about as well, and came to the conclusion that the legislation was the best approach.

Senator LEAHY. Let me ask you about another one involving some of these same subjects. In November 2002 you convinced the Department of Justice to file a friend of the court brief in State Court of Nevada to argue against the State's right to deny a permit to the Oil-Dri Company that wanted to mine clay on Federal lands.

You did this even though the Department of the Interior, your department, had a trust relationship with the Reno-Sparks Indian Colony. They, of course, strongly oppose the mine. Late last year the Nevada court rejected your argument that Nevada could not have local control over this decision. They said that Federal regulations recognized the State law applies.

Do you agree with that decision or do you think the Bush Administration should continue to oppose the Reno-Sparks Indian Colony and support the mining company?

Mr. MYERS. The court dismissed that action without prejudice, based on lack of subject matter jurisdiction.

My involvement in that was to review the question specific to whether a State or local Government could exercise regulatory control over Federal lands and to what extent they could. In the amicus brief that we filed we said that State and local Governments can enact environmental regulations specific to mining, as long as those regulations are reasonable because of the primacy of the Federal Government on Federal land issues. That was, I think, consistent with the Supreme Court's decision in the California Coastal Commission versus Granite Rock case.

As far as the concerns of the tribal entities, I did take those into consideration and specifically in this manner. I was being pushed by the Oil-Dri Company, through the Secretary in that they contacted the Secretary and I saw the letter to her, to intervene in that case and become a party on their side of the matter against the county. I did not intervene. My recommendation to the Department of Justice was to file an amicus brief, thereby foregoing an opportunity to become a party in the case and simply acting as a friend of the court on the particular issue of Federal environmental regulation.

Senator LEAHY. The other part of my question, should the Bush Administration continue to oppose the Reno-Sparks Indian Colony and support the mining company?

Mr. MYERS. I think the Administration should continue to support the Supreme Court's decision in the Granite Rock case. And in comment this case that means that environment regulation imposed by State or local Governments is okay as long as it is reasonable. And of course, the flip side of that coin is you do not want State and local entities coming in and trying to undermine Federal law on environmental issues that affect Federal lands. It is the same principle that applies.

Senator LEAHY. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, very much, Senator Leahy.

I have good news before turning to Senator Schumer. He has only one question. Senator Schumer.

Senator LEAHY. However, it is 14 minutes long.

Senator SCHUMER. Right. It has three parts.

Chairman SPECTER. He just raised the ante to two. And he can ask as many as he wants within 5 minutes.

Senator SCHUMER. Thank you, Mr. Chairman.

Let me just, the places where I had asked you about the statements which seemed rather extreme, you and some of your defenders here seem to indicate well, when you are an advocate, that is what you do.

But the statement, for instance, that environmental legislation harms the very environment it purports to protect is not from your arguing as a lawyer for somebody, but was in an article you had written in the—it is called Environmental Command and Control: the Snake in the Public Lands Grass. It is in the Farmer, Ranchers and Environmental Law Journal of 1995.

I believe the other quote comes from either that article or another article, as well.

Are you saying when you wrote these articles these were not your beliefs?

Mr. MYERS. I was on the staff of the National Cattlemen's Beef Association when I wrote that article and I was advancing the concerns of the ranchers that were members of that organization.

Senator SCHUMER. In other words, this article was not your views but the views of the cattlemen? Does it say that? I mean, I do not know law journals, and I am not familiar with this publication, but I do not know law journals where people submit articles, lawyers, distinguished lawyers, and simply represent a client, rather their views.

Did it say anywhere in there that these are the views of the Cattlemen's Association and not of Mr. Myers?

Mr. MYERS. I do not know for sure without looking at it, but I think it indicated that I was employed by those organizations and that I was not writing in my individual capacity. And part of my job at that time, Senator, was to advocate the constituents' concerns in the public media.

Senator SCHUMER. I want to ask you a question. So are you saying you did not believe these things? That you only believed part of what you wrote? That it was just hyperbole to make the point? Or that you were just representing the Cattlemen's Association? Would you write articles where you did not believe what was said but you were just representing your client in law reviews?

Mr. MYERS. Writing articles was part of my job.

Senator SCHUMER. I did not ask that. I asked you do you believe these statements that you have written? Do you stand by them?

Mr. MYERS. I stand by the statements that include that environmentalism is good citizenship and good business and that ranchers and environmentalists ought to work together.

Senator SCHUMER. I understand you stand by those. That is not the question I asked you. I asked you do you stand by the statement that environmental legislation harms the very environment it purports to protect? You were not arguing a case there. That was an article.

Mr. MYERS. That is right.

Senator SCHUMER. Do you stand by—do you believe that statement?

Mr. MYERS. The statement was meant to suggest—

Senator SCHUMER. Do you believe it? I did not ask what it was meant to suggest or who. I want to know if you believe it?

Mr. MYERS. I believe that sometimes environmental legislation has a blunt sword approach to particular problems and that working with the regulated community can result in better environmental protection than legislation, on occasion.

Senator SCHUMER. So in other words, you left out the words sometimes, on occasion? You just wrote a sweeping statement?

Mr. MYERS. Right.

Senator SCHUMER. How about this one? Do you believe the statement you wrote that the fallacious belief that centralized Government can promote environmentalism—do you believe that statement?

Mr. MYERS. It is the same answer, Senator. It is the point that centralized Congressional action sometimes is not the best result for an environmental problem.

Senator SCHUMER. I think you will admit that what you are saying, if someone read this article and heard what you were saying here, they would say those are two different things.

Mr. MYERS. I am no longer employed by the National Cattlemen's Association.

Senator SCHUMER. I understand that, but would they not say they are two different things?

Mr. MYERS. I think they are sympathetic.

Senator SCHUMER. I would think any reading of this would say there is quite a bit of divergence: a judicious statement that sometimes any law does not get applied right, as opposed to statement after statement, broad sweeping statement basically holding in ill-regard—and that is not as strongly as you put it—all environmental laws.

Did you ever write anything when you wrote—you said you support the Clean Air and Clean Water Act. Was that written in your writings back then?

Mr. MYERS. I submitted a brief to the Supreme Court in support of—

Senator SCHUMER. I said in your article writings, you know, where you are saying your own views or whatever?

What do we have? What can we cling to here, should we want to support you, where you on your old, independently or while you were working for the Cattlemen's Association, which shows that you were somewhat moderate and judicious? All of your statements are over-the-top.

Mr. MYERS. Well, you asked on my own and when I was working for the cattlemen. On my own, that would be my free time when I volunteered for agencies to help environmental causes and to clean up the environment that others had trashed.

In my capacity as an employee of the cattlemen, I wrote that cattlemen, for instance feedlot operators, should get permits under the Clean Water Act and comply with them. Those are the examples.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, very much, Senator Schumer, for those two questions.

Senator SCHUMER. No comment, Mr. Chairman.

Chairman SPECTER. It is too late now not to make a comment. You just did.

I think that this has been a very useful hearing because while there can be many statements about your position on one side of the advocacy line, there are other actions on your part which show grave concern for environmental protection and public service.

It is not unusual to have nominees appear before this Committee who are controversial. But you can go back over statements which I have made in the course of my activities and public service which are subject to challenge. A week does not go by without a challenge to the single bullet theory or Ira Einhorn or have not proved or many, many other things which I have said.

I do not know but it might even be possible to go through Senator Schumer's record and find statements which might bear on Senator Schumer's qualifications.

Senator HATCH. I would be amazed. I would just be amazed.

Chairman SPECTER. Senator Hatch, you might be right. But the point is nobody comes to this hearing room perfect. Nobody comes to this hearing room perfect.

I believe that the deference that the President ought to have is fully within bounds as to your position. It is easier to talk about being outside the mainstream and even poetic, you cannot see the shoreline. But have reviewed your record very carefully. And I have a record for supporting Democrats under the Clinton Administration when they were appropriate. And I have a record for opposing Republicans. And I feel very comfortable supporting your record, although many of my good friends on the environmental line have urged me to the contrary.

I have listened to them and I have reviewed your record, and I think you are fit to be a member of the Ninth Circuit.

Do you have family members with you today, Mr. Myers?

Mr. MYERS. No, Mr. Chairman. My children are in school and my mother is with my children. Excuse me, my children's mother is with them.

Chairman SPECTER. It is my hope, I know this hearing is being very closely monitored. Senators are obviously busy but I know staffs are taking a look at it.

I count 98 votes for cloture—58. I wish I could count 98 votes for closure. So we not have a cloture motion. I count 58 votes for cloture, so hailing distance.

I think that you have helped yourself today, Mr. Myers, and I think you have helped the cause of trying to avoid the Constitutional issues which we are all conversant with.

That concludes the hearing. Thank you.

[Whereupon, at 11:18 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

William G. Myers III

Boise, Idaho

March 9, 2005

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Specter:

Please find attached to this letter my answers to written questions from Senators Leahy, Feinstein, and Feingold following my nomination hearing on March 1, 2005.

Sincerely,

William G. Myers III

cc: Honorable Patrick J. Leahy

Attachments

Responses of William Myers
Nominee to the U.S. Court of Appeals for the Ninth Cicuit
to the Written Questions from Senator Patrick Leahy

1. There have been some questions surrounding your role in supporting legislation that would have given away title to public lands in the Yuba Goldfields in California. In June 2002, you responded to a letter from Congressmen Wally Herger and John Doolittle by asserting that "the Department [of the Interior] would support private relief legislation conveying Lot 5 to [Yuba River Properties] should legislation be introduced." Private legislation was indeed introduced in response to this letter and now the Department of the Interior has withdrawn support for this legislation.

BLM employees in California have been highly critical of your decision to support legislation giving away this land. Deane Swickard, the Director of the BLM Office in Folsom, California, told the LA Times: "There is 1.3 million tons of rock and 200,000 tons of sand [on the land in question . . . Why in the world would we give it up? I'm not here to give away public resources." Timothy Carroll, also of the BLM's Folsom office commented to another BLM staffer, that it "turns out Solicitor William G. Myers III suggested this solution to Herger and Doolittle. Would have been nice if he had asked us first."

Before agreeing to give away valuable public lands, why didn't you make sure you knew everything the local officials knew about the property in question?

Response: I received a letter from two Congressmen stating that Yuba River Properties had a 1943 quitclaim deed from the Secretary of War in their chain of title. The letter also said the predecessors-in-interest had for nearly 50 years paid taxes on the property. I asked attorneys in my Washington, D.C. office and my Sacramento office to look into these claims and draft a response. The draft response was researched by my staff and BLM and reviewed by my office and other offices before it was presented to me for signature.

My letter told the Congressmen that the land was still owned by the United States, regardless of the quitclaim deed and payment of taxes. The letter stated that the matter had been reviewed by BLM and the Regional Solicitor's Office. The letter also summarized the view of BLM and my staff to the effect that the tract was an isolated parcel, not essential to BLM's management of the public lands in the area, and lacking in special environmental value and management goals. I understood this to be the opinion of BLM and my staff as presented to me in the draft letter. Certainly, no one told me the eight-acre parcel was worth hundreds of millions of dollars. I was not informed that the local BLM office opposed the draft letter, nor did anyone raise any objections to me over the 16 months that I remained in office after I signed the letter. Not until I was out of office did I learn that BLM and the Solicitor's Office had new information that cast doubt

on the information I had relied upon 21 months earlier. The Department's March 4, 2004 letter makes clear that the key facts counseling a reversal of position did not come to light until a 2004 report by the same offices I relied upon.

Were you aware at the time that the private legislation could set precedent that would have made it more difficult for the Department of the Interior to resolve similar title disputes for many other properties in the area with a total resource value of hundreds of millions of dollars? Isn't that a critical fact?

Response: I was not informed that this issue could set a precedent. As stated in Interior's March 4, 2004 letter, the information I had suggested that this eight-acre parcel was a "one of a kind problem that could be fixed better by legislation than by litigation." Had I been informed of that precedential value, it is likely my response would have been different.

2. In case after case, it seems that President Bush's campaign promise to give local citizens more control over federal land activities only applies when that local control favors the proposals of polluting industries. This appears to have been the case in both the Glamis and Oil-Dri matters. In other instances, your office in Washington has trumped the decisions of local BLM offices when those field offices have tried to clamp down on the improper or unlawful conduct of polluters and others who want to take advantage of federal land, at the taxpayers' expense. This was the case in both the Yuba Flats and Robbins matters. How do you reconcile this discrepancy between stated policy and actual fact?

Response: My former client, the Secretary of the Interior, had and has a strong emphasis on working with local citizens, communities and groups. I supported that emphasis where and when I could, always bounded by federal law and regulations. Sometimes those laws and regulations were sympathetic to local control, sometimes they were not.

3. In case after case, it also seems that your trust responsibility to the tribes gives way to the interests of polluting industries who want to exploit federal land for their own profit. This was true in the Glamis and Oil-Dri cases. In each of these cases, did you perform any legal research that led you to the determination that your trust responsibility to the tribes was of lesser import than your responsibility to assist polluting industries in making a profit?

Response: No.

4. One of the things that troubles me about your role in the Robbins deal is that by authorizing Mr. Comer to work on the settlement, you signaled that your office was open for use by politically-connected ranchers who want to get around compliance with federal grazing law. There are thousands of ranchers that graze their cattle on public land, Mr. Myers, and thousands of disputes between these ranchers and BLM officials. Isn't it pretty unusual for an Associate Solicitor in the headquarters

office in Washington DC, who is responsible for the legal disputes arising out of the BLM and the Bureau of Reclamation across the country, to get directly involved in settling an administrative dispute between a local BLM office and a single rancher?

Response: I had no information at the commencement of or during Mr. Comer's efforts that this settlement effort would be particularly controversial. The client agency asked Mr. Comer to assist, apparently because of the ill will between Mr. Robbins and BLM field staff. Associate Solicitor involvement in administrative settlements has been sufficiently common to warrant express delegation of that authority in the Solicitor's Manual written by my predecessors and retained by me during my tenure.

5. In your time as Solicitor, were there any similar examples?

Response: Often Associate Solicitors would engage in local issues in an attempt to resolve them. Often that engagement was in concert with one of the 19 field offices of the Solicitor's Office. Like Associate Solicitors, Regional Solicitors report directly to the Solicitor and Deputy Solicitor. I often had Regional Solicitor involvement in local matters that were in various stages of administrative or judicial litigation. One example was the involvement of the Regional Solicitor in Sacramento in pursuing ranchers who trespassed on BLM land. His efforts were undertaken with my knowledge and approval.

6. In answer to my question at your hearing about your selection of Bob Comer for transfer to a career position from which it is more difficult to fire him, you said had you known then what you know now, you would have made a different decision. When was Mr. Comer's transfer to the career position approved and when was it finalized?

Response: The Office of Personnel Management had final approval over Mr. Comer's selection. I believe OPM approved it in March or April 2003.

When did Mr. Comer actually leave your office for the position in Denver? If you do not know for sure, please consult the Office of the Solicitor at the Department of the Interior for that information, including any and all dates relevant to the personnel decisions made about Mr. Comer in relation to his transition to a career position.

Response: I recall that a vacancy occurred in the Regional Solicitor position in Spring of 2002. The personnel contractor for the Solicitor's Office then advertised the opening, solicited applicants and impaneled three Senior Executive Service officials to rank the candidates. The panel presented the top applicants to me, including Mr. Comer. In August 2002, I selected Mr. Comer from the list of top applicants and sent my recommendation to the Department's Executive Review Board for consideration. In December 2002, the Executive Review Board approved the selection of Mr. Comer and sent its recommendation to the Office of Personnel Management for review, including heightened scrutiny of a political appointee seeking a career position. OPM approved the selection of Mr. Comer and he became the Regional Solicitor in early April 2003.

7. When did you first learn that the Interior Inspector General was investigating the Robbins settlement? What actions, if any, did you take when you learned of this investigation?

Response: I do not remember when I first learned about the August 14, 2003, commencement of the Inspector General's investigation. I did not want to take any action that would interfere with the investigation and he did not ask my assistance in his investigation other than to interview me. I left office before his investigation was complete.

8. When did you first learn about the objections to the Robbins agreement expressed by the Wyoming U.S. Attorney's office? What did you do upon learning these concerns?

Response: I remember press reports in early July 2003, at least regarding the RICO claims. I asked Mr. Comer to explain why those claims had not been dismissed as part of the settlement. Later, I assigned a senior attorney in my office to assist Assistant Secretary Watson's efforts to look into the situation. The senior attorney had not been involved in the settlement negotiations.

9. Did you ever recommend or take administrative or disciplinary action against Mr. Comer for his role in the Robbins settlement?

Response: When I left office, the Inspector General had not yet released his report. I did not discipline anyone prior to the time I left office because I thought the investigation should conclude before assessing blame.

10. Based on what you know now about Mr. Comer's conduct in negotiating the Robbins settlement, do you agree with the inspector general that Mr. Comer's conduct cries out for administrative action?

Response: I was very disconcerted by the information contained in the redacted report. I must assume that the Inspector General's recommendation is well-founded based on his access to the full investigation and report.

11. While serving as Solicitor at the Department of the Interior, what contact did you and your office have with Jack Abramoff?

Response: I do not recall having any contact with Mr. Abramoff. I do not know if any employee of the Solicitor's Office had contact with Mr. Abramoff.

Responses of William Myers
Nominee to the U.S. Court of Appeals for the Ninth Circuit
to the Written Questions from Senator Dianne Feinstein

Question 1: Three of President Bush's other nominees apparently asked not to be renominated—Judge Pickering, Judge Kuhl, and Claude Allen. But you stated in your updated questionnaire that when the President asked if you wanted to be renominated, you said that yes, you did. Can you please explain why you responded to the President that you wanted to be renominated, given that you know how many Senators opposed your nomination last year?

Response: Service as a circuit court judge is one of the greatest opportunities for an attorney to engage in public service. I have spent a decade in public service in the United States Senate, the Department of Justice, the Department of Energy, and the Department of the Interior. I find public service to be very rewarding. It is a chance to "give back" something to this great Nation. It is for these reasons that I wanted to be renominated and hope to be confirmed.

Question 2: What is it that you can say to me to persuade me to vote for you, given that I opposed your nomination last year? This is an opportunity for you to help us understand more about you. What new information is there that I, and the Senate, should focus on?

Response: I appreciate this opportunity to discuss my entire record as an attorney in private practice and in the public sector.

Private Sector: I have worked approximately 14 years in the private sector. In the course of my career in the private sector, I zealously represented clients according to the Rules of Professional Conduct by advancing "whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." Throughout my career, it has been important to me to give back to the profession and community through some sort of public service. To that end, I served as Vice-Chairman of the Public Lands and Land Use Committee of the American Bar Association Section on Environment, Energy, and Resources. I also chaired the Idaho State Bar Board of Land Commissioner's Federal Lands Task Force Working Group and the Boise Metro Chamber of Commerce's State Affairs and Natural Resources Subcommittee. I have lobbied for varied interests including ranchers and I currently lobby for an Indian Tribe on water and salmon habitat issues.

Public Sector: Another decade of my career has been devoted to public service. I was a legislative counsel to Senator Simpson and I served in the Departments of Justice and Energy. Most recently, I served as Solicitor at Interior. I believe a review of my tenure as Solicitor shows that I was balanced in my advice to my client, the Secretary of the Interior. The Department manages 20% of the United States and much of its minerals. A unanimous Supreme Court recently opined that "'multiple use management' is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.'" *Norton v. Southern Utah Wilderness Alliance*, 124 S.Ct. 2373 (2004). Like Solicitors before me, I strove to perform that "enormously complicated task" in a manner consistent with my client's goals. One indicator of my success is this: As Solicitor, I was involved in 8 cases decided on the merits by the U.S. Supreme Court. In 7 of those 8 cases, the Court ruled in a manner favorable to my client.

Finally, I would point to (1) widely-respected Republican and Democrat leaders who support my nomination, including former Secretary of the Interior Cecil Andrus and former Wyoming Governor Mike Sullivan, (2) the fact that a substantial majority of the ABA committee thinks I am qualified for the job, (3) the support I enjoy from my tribal clients, and (4) my personal devotion to our environment.

Question 3: Do you agree with Chairman Specter that we should confirm your nomination in order to give ideological balance to the Ninth Circuit? In light of Chairman Specter's comment, if the Senate does ultimately confirm you to the Ninth Circuit, do you think that you will have a mandate from the Senate to be an ideologically conservative judge?

Response: I do not believe that confirmation provides a judge with any mandate other than to uphold the oath of office without regard to political ideology.

Question 4: You told me at last week's hearing that, in retrospect, you do not think that that your office—the office of the Solicitor of the Department of the Interior—should have entered into the Robbins settlement. Specifically, you told me, "I think from my reading of the IG's report, there were serious concerns raised by the U.S. Attorney's Office that apparently were not adequately considered in that settlement." The Inspector General found in its 2003 investigation of some of your activities that you had been briefed on the Robbins Settlement. Is that true? Please provide describe in detail what you knew of the settlement before your office approved it. As part of your answer, please state whether or not you read the actual settlement before your office approved it. If you did not read the settlement before your office approved it, please explain why.

Response: I had brief discussions with Mr. Comer several times during the course of the settlement negotiations to the effect that he was still negotiating. He did not brief me on the substance of the negotiations or any terms of the settlement. I did not know the details of the settlement prior to its approval. I did not read the settlement before it was signed by the client agency because the Solicitor's Manual expressly permits Associate Solicitors to settle administrative litigation. I had no information prior to its execution to suggest that there were problems with the terms of the settlement. I did review the settlement in July 2003 after the media reported on it.

Question 5: At your hearing last week, I asked you about a quotation from an article that you authored, where you wrote, "Interpretivism does not require a timid approach to judging or protecting constitutionally guaranteed rights . . . interpretivism is not synonymous with judicial restraint and may require judicial activism if mandated by the Constitution." I would like to follow up on your answer. Do you understand the Constitution to sometimes "require judicial activism?" If so, please tell me which section or sections of the Constitution you are referring to, and please explain why, in your opinion, that section or those sections of the Constitution require judicial activism.

Response: Thank you for this opportunity to expand on my answer to your question in the hearing. The Judiciary Committee's questionnaire for nominees asked me to discuss my views on "judicial activism." My answer concluded by stating, "Judges must discern the fair meaning and intent of the

laws they interpret without substituting their individual political philosophy for the will of the legislature." I stand by that answer. The passage to which you refer is in an article I wrote 16 years ago on the nomination of Robert Bork to the Supreme Court of the United States. The passage discussed Judge Bork's statements in his hearing and was intended to convey the idea that the opposite of activism, that is "judicial restraint", is not an excuse to timidly interpret the Constitution or statutes so as to deny them their fair meaning. In other words, judicial activism is not a license to substitute the will of a judge for the Constitution or the will of the Congress and judicial restraint is not a license to shy away from a full, fair interpretation of the Constitution or the will of Congress.

Question 6: You commented last week on your decision to reopen the question of whether to permit mining on lands sacred to the Quechan Tribe in California. Regarding the fact that you did not meet with representatives from the tribe before making your decision, you made the following comment to Senator Feingold last week: "It was a discrete legal issue, and in my mind fairly akin to a summary judgment motion in that the facts were not in dispute from any side." Federal Rule of Civil Procedure Number 56, which governs summary judgments in federal courts, refers twice to "the hearing." Black's Law Dictionary (Sixth Edition) defines "hearing" in part by stating, "The parties proceeded against or otherwise involved have [a] *right to be heard*, in much the same manner as a trial . . . ." (emphasis added.) I would ask you to examine Rule 56, and then please tell me whether you still believe that the method you used to make your decision regarding the Quechan Tribe is "akin" to what Rule 56 calls for. Is it your contention that judges who hear summary judgment motions should not hold hearings? If you believe that judges should hold hearings pursuant to Rule 56, do you wish to offer another explanation for why you did not meet with representatives from the Quechan Tribe before issuing your opinion about their sacred lands?

Response: My comments were intended to analogize to Rule 56(c) of the Federal Rules of Civil Procedure where a court may render a decision on a matter if there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law. I did not discern a material factual dispute that was relevant to the proper interpretation of Federal Land Policy and Management Act Section 601(f). I was fully aware of the Tribe's view of the facts and the law from its filings in litigation on the subject, its August 2001 letter to me, and conversations with career attorneys in my office. I therefore focused on the proper interpretation of the statute regarding mining in the California desert. My opinion did not authorize mining at the area in question. That would have been under BLM's authority. No mining occurred at the proposed mine site while I was in office. I do not know if any mining has occurred since I left office.

When factual issues were in dispute, I did not hesitate to investigate them. For example, I traveled to the Sandia Pueblo in New Mexico to see first-hand the 10,000 acres of National Forest land in dispute and their proximity to the crest of Sandia Mountain. These were key factual questions that led me to side with the Pueblo and support legislation to give them the land.

I believe that hearings on Rule 56 motions should occur more often than not. Most, if not all, circuit courts have held that a district court may render summary judgment without a hearing if no useful purpose would be served by a hearing. Rule 78 permits courts to determine motions without a hearing and is sometimes cited as the basis for a district court's discretion to forego a hearing.

Responses of William Myers
Nominee to the U.S. Court of Appeals for the Ninth Circuit
to the Written Questions of Senator Russ Feingold

ROBBINS SETTLEMENT

1. As you know, the Inspector General of the Department of Interior recently released a report about its 15-month investigation into a settlement with the Department and Harvey Frank Robbins, a Wyoming rancher who failed to comply with federal grazing laws. In your testimony before this committee in February 2004, you testified that you authorized Associate Solicitor Robert Comer, a Bush Administration political appointee who reported to you directly, to negotiate the settlement of the Robbins matter.

You told the Inspector General that you were not accurately informed of what was going on in the Robbins settlement, and that you were unaware that local BLM officials and the Department of Justice were concerned about the settlement. The Inspector General, in a recent press release, stated that "Myers was, in fact, victimized when he was given a distorted explanation by one of his senior associate solicitors."

However, Rule 5.1(b) of the Model Rules of Professional Conduct states that a supervising attorney "shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." Furthermore, The Solicitor's Manual allows you to delegate authority to associate Solicitors to execute settlement agreements, but with limited exception, including:

> **The delegated authority of Associate and Regional Solicitors is limited by the following requirements:**
>
> **1. Controversial Matters. Associate and Regional Solicitors must notify the Special Assistant to the Solicitor, the Staff Assistant to the Solicitor, and other affected Associate and Regional Solicitors when any matter is likely to generate significant controversy or attention from the public, press, interest groups, state or tribal governments, or Congress. When possible, this notification will take place prior to any potentially controversial action.**

a) Wouldn't this settlement be "likely to generate significant controversy or attention" given the fact that Mr. Robbins filed a RICO claim against BLM employees, and that two congressional offices were involved in the initial settlement meeting?

Response: During the time of the negotiations, I was not informed that RICO claims were pending or that congressional offices were involved. Certainly, under the provisions of the Solicitor's Manual cited in your question, these issues should have been brought to my attention.

b) Were you briefed on this settlement agreement before it was entered into? If yes, by whom and when?

Response: I had brief discussions with Mr. Comer several times during the course of the settlement negotiations to the effect that he continued to be involved in the negotiating process. He did not brief me on the terms of the draft settlement.

c) Did Mr. Comer brief you? If yes, how many times, during the course of the negotiations, did Mr. Comer provide you with a briefing on the agreement? What did Mr. Comer tell you during these updates about the status of the negotiations?

Response: Yes, Mr. Comer had brief discussions with me several times. He did not brief me on the terms of the draft settlement. He told me he was continuing to work on the settlement in the hope of resolving the disputes between the rancher and the BLM.

d) Did you ever ask Mr. Comer whether anyone at BLM had expressed concern about the terms of the settlement agreement?

Response: Not that I recall. As far as I was aware, the BLM had asked Mr. Comer to help settle the case and was working with him to do so.

e) After you reviewed the Robbins settlement agreement, did you have any concerns about the terms of the agreement? Specifically, were you concerned about the alternative dispute process that only allowed the Washington DC Bureau of Land Management Director or her designee to cite Robbins for grazing violations, a provision that is unique to this politically well-connected rancher?

Response: I did not review the settlement agreement until after it was signed. In conformity with the Solicitor's Manual, I authorized Mr. Comer, as an Associate Solicitor, to negotiate the settlement. When I did review the agreement, shortly after media reports were published, I was primarily concerned about the existence of RICO claims against BLM employees and a failure of the agreement to dismiss those claims. As to the specific clause you reference, I read the BLM Director's "designee" to mean that any BLM employee so designated was authorized to cite Robbins for grazing violations, including appropriate field office staff. This reading is reinforced by the clause that the Director's Office was not at any time foregoing its authority to enforce BLM regulations or protect public land resources.

f) Do you believe that Mr. Comer lied to you or misled you about the course of these negotiations during his updates to you?

Response: Based on the Inspector General's redacted report, I believe there was additional information about the course of the negotiations that should have been brought to my attention by Mr. Comer.

2. You testified that you did not meet with the Quechan Tribe before you issued your legal opinion and the resulting decision to approve the highly controversial cyanide-heap leaching Glamis mine, which rests on sacred tribal land. As you know, tribal leaders have called your legal opinion "an affront to all American Indians." In response to Senator Feinstein's written questions, you said that you didn't meet with the tribal leaders involved in the Glamis mine because of the September 11 tragedy. Yet, you met with mining officials from the company who wanted to develop the mine on September 13, 2001.

At your March 1, 2005 hearing, you stated that the Glamis matter "was a discrete legal issue, and in my mind fairly akin to a summary judgment motion in that the facts were not in dispute from any side, and the question was, as a matter of law, was my predecessor's opinion correct. I decided it wasn't." You then stated "I subsequently did meet with [the Tribe] after I issued my opinion, and they presented to me a PowerPoint presentation of their concerns. That presentation affirmed for me the facts that I knew about that situation prior to the time that I wrote my opinion."

a) Could you please explain when it would be appropriate for a judge to conduct *ex parte* communications with only one side of a matter when considering a summary judgment motion?

Response: The local rules for the federal district court in Idaho are instructive. Pursuant to local civil rule 77.4, all parties should refrain from writing letters to the judge or otherwise communicating with the judge, unless opposing counsel is present. If I had been a judge reviewing the Glamis matter in litigation, then each party would have refrained from writing to me or discussing their point of view with me or my staff in the absence of opposing counsel. Were this matter before a court, as a judge I would have refrained from such communications. Generally speaking, it is appropriate for the public to communicate with members of the Executive Branch of government without the presence of opposing parties.

b) Please explain your comparison to the Glamis matter as a "summary judgment" motion.

Response: My analogy to summary judgment was meant to convey that I understood the facts, they were not in dispute, and that I focused on the proper interpretation of Federal Land Policy and Management Act Section 601(f) as a matter of law. My opinion did not authorize mining at the area in question. That would have been under BLM's authority. No mining occurred at the proposed mine site while I was in office. I do not know if any mining has occurred since I left office.

CLEAN WATER ACT

3. In a 1994 article for the National Cattlemen's Association, you wrote: "The word 'wetlands' cannot be found in the Clean Water Act. Only through expansive interpretation from activist courts has it come to be such a drain on the productivity of American

agriculture."

I have asked you twice before, but I still have not received an adequate answer. Could you please list any of the cases you referred to in this article or any cases of which you have become aware in which there has been an "expansive interpretation from activist courts" of "wetlands regulation"?

Response: I cannot recall if I had particular cases in mind when I wrote that short article 11 years ago. The Supreme Court's decisions in *Riverside Bayview Homes* and *SWANCC* leave no doubt that wetlands regulations are "inseparably bound up" with waters of the United States and Congress' protection of those waters. If confirmed, I would respect and follow those precedents.

4. As you know, in *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985), the United States Supreme Court unanimously upheld the Reagan Administration's application of the Clean Water Act to protect wetlands.

Is the *Riverside* case an example of an "activist" Supreme Court? Why or why not?

Response: No. The unanimous Court grounded its decision in the Clean Water Act and the agency regulations without attempting to substitute its will for the will of Congress or the agency.

UTAH SETTLEMENT DEAL

5. During your February 2002 hearing, I asked you about the Administration's controversial wilderness settlement with the State of Utah. As you will recall, the Tenth Circuit Court of Appeals had dismissed Utah's lawsuit in 1998 because the court found that Utah did not have standing to sue the Department over its wilderness inventory. The settlement was officially entered just two weeks after the lawsuit was refiled. Internal agency documents, however, have recently surfaced. These documents show that Interior was close to settling even before Utah revived its lawsuit. One internal document notes that the parties almost reached a deal before the lawsuit was even re-filed. Yet, the attorney for the State of Utah stated in her amended complaint that the negotiations "have borne no fruit." Documents indicate that only two outstanding issues remained and that the pre-settlement talks went vastly beyond what was alleged in Utah's amended complaint.

a) Why did the Department enter into a settlement agreement with Utah when the Tenth Circuit Court of Appeals had previously ruled that the State did not have standing to sue the Department?

Response: The Department of Justice, acting through the U.S. Attorney's office and the Assistant Attorney General's office, entered into the settlement because they and their client, the Department of the Interior, thought it was the best way to resolve the pending litigation. I do not have the internal agency documents you refer to, so I am unable to comment on what light they may shed on the process.

b) What legal basis did you rely upon in your decision that this settlement was appropriate even though the state's suit against the Department could not have prevailed in a court of law?

Response: I reviewed the relevant sections of the Federal Land Policy and Magagement Act ("FLPMA") when I considered the Department's posture in the settlement. Specifically, I focused on FLPMA Sections 201, 202, 302 and 603. The district court agreed with all of the conclusions of law set out in the settlement agreement, as indicated by its order approving all of the provisions of the agreement.

c) Do you agree that the government should settle cases with entities where the entity could not have possibly prevailed in a court of law? Why or why not?

Response: There are risks of losing associated with any pending litigation. Opposing parties often settle litigation to avoid litigation risks. If the government concludes, from the entirety of the facts and its understanding of the law, that it is in its best interest to settle a case, that is a reasonable decision.

6. You have previously stated that that you approved this widely criticized settlement that reversed 26 years of agency wilderness policy. Tens of thousands of acres of wilderness-quality lands have been opened up to oil and gas leasing since the deal was struck. According to recently released documents, it appears that Associate Solicitor Robert Comer, who authored the Robbins settlement, was also in charge of this controversial settlement agreement. At last week's hearing, you admitted that you recommended Comer for the position of Regional Solicitor.

a) What was your role in supervising attorney Comer in this instance?

Response: This case was within Mr. Comer's responsibility as Associate Solicitor. He was among the government lawyers that worked on the settlement along with other lawyers in the Solicitor's Office and lawyers from the Department of Justice in Utah and Washington, D.C. As with all of the approximately 300 attorneys in the Solicitor's Office, Mr. Comer ultimately reported to me.

b) What was your role in approving this settlement agreement?

Response: I believe I became involved toward the end of the settlement negotiations. I reviewed the relevant statutes and the draft settlement and advised departmental officials on my understanding of the law as it applied to the draft settlement.

c) Did you ask Mr. Comer to prepare legal memoranda for you to support the settlement's position that the Department had no authority to protect wilderness study areas?

Response: I asked for Mr. Comer's advice and the advice of other attorneys in the office on their understanding of FLPMA as it related to the draft settlement. Whether that advice came to me in writing or orally or both, I cannot recall.

d) Did Mr. Comer keep you updated on the status of the settlement agreement?

Response: The settlement agreement was forged from a series of discussions between the attorneys representing the parties. Mr. Comer updated me more fully and frequently as the agreement neared completion.

e) Do you have any reason to believe that Mr. Comer lied to you or mislead you about the course of these negotiations during his updates to you?

Response: No.

f) During November 2002, you received a memorandum from Mr. Comer suggesting reforms to federal wilderness policy. Six months after this memo, you approved the settlement with Utah that led to sweeping changes in federal wilderness policy. What role, if any, did this memorandum have in the crafting of this settlement agreement?

Response: I do not have a copy of the November 2002 memorandum to which you refer. I cannot remember it sufficiently to state what role it may have played, if any, in crafting the settlement agreement.

YUBA PROPERTIES MATTER

7. During your tenure as Solicitor of the Department of Interior, you wrote a letter to Yuba Properties, a California company, about BLM land. In a June 2003 letter, you lamented the fact that the Department of the Interior "unfortunately" did not have the legal authority to turn over valuable public lands and mineral resources to a private California company, but you committed the Department to "support private relief legislation" that would have the same effect. The land in question contains rock and salt that the BLM says could be worth hundreds of millions of dollars for construction projects. On the basis of your recommendation, two California Congressmen introduced legislation that would have given the public land to the private company.

As you know, a month after last year's nomination hearing, the Interior Department had to formally reverse your position and withdrew its support for the legislation. The Department made this determination when it became clear that you had failed to check with the Department's local office, which strongly opposed the land giveaway, and you failed to do basic title research that would have cast serious doubt on the company's claim to the land.

Please explain your rationale in supporting legislation for the federal government to turn over this land to the private company and why you didn't conduct a title search to investigate whether the company's claims were valid.

Response: I received a letter from two Congressmen stating that Yuba River Properties had a 1943 quitclaim deed from the Secretary of War in their chain of title. The letter also said the predecessors-in-interest had for nearly 50 years paid taxes on the property. I asked attorneys in my Washington, D.C. office and my Sacramento office to look into these claims and draft a response. The draft response was researched by my staff and BLM and reviewed by my office and other offices before it was presented to me for signature.

My letter was addressed to the Congressmen and told them that the land was still owned by the United States, regardless of the quitclaim deed and payment of taxes. The letter stated that the matter had been reviewed by BLM and the Regional Solicitor's Office. The letter also summarized the view of BLM and my staff to the effect that the tract was an isolated parcel, not essential to BLM's management of the public lands in the area, and lacking in special environmental value and management goals. I understood this to be the opinion of BLM and my staff as presented to me in the draft letter. Certainly, no one told me the eight acre parcel was worth hundreds of millions of dollars. I was not informed that the local BLM office opposed the draft letter, nor did anyone raise any objections to me over the 16 months that I remained in office after I signed the letter. Not until I was out of office did I learn that BLM and the Solicitor's Office had new information that cast doubt on the information I had relied upon 21 months earlier. The Department's March 4, 2005 letter makes clear that the key facts counseling a reversal of position did not come to light until a 2004 report by the same offices I relied upon.

OIL-DRI CASE

8. You testified that you recommended that the Department of Justice file an amicus brief in support of Oil Dri Corp. in *Oil Dri Corp. v. Washoe County*. Oil Dri wanted to mine kitty litter clay on federal lands and process that clay in a processing plant on private lands in Washoe County. Washoe County zoning laws prohibited heavy industrial uses in the area where the processing plant was proposed. To get around this prohibition, Oil Dri sought a special use permit to build the plant as an ancillary use to the mining activity on federal land. Considering the project as a whole, the County denied the permit, in part because of the damage the project would do to land considered sacred by the Reno Sparks Indian Colony. Washoe County only became involved in this matter because of the processing plant proposed on private land within the county, and it was the company that proposed that the project as a whole be considered (in order to qualify the plant as an ancillary use). What precisely did the county do here that you believed was unreasonable?

Response: The United States filed an amicus brief in part to address the legal issue of federal preemption as it related to the County's authority to regulate mining operations on federal lands when those operations were authorized under the relevant statutes. The government argued that the County's denial of Oil-Dri's application for a special use permit was preempted by federal

law as it applied to mining operations on federal land.

9. *California Coastal Commission v. Granite Rock* involved an attempt by California to apply California regulations to mining activity purely on public lands. The Supreme Court ruled that California could regulate activities on public land as long as its regulations were reasonable. In the *Oil Dri* case, the situation was very different. Washoe County was concerned with the impacts of the processing plant on private lands within the county and only considered the mining impacts on federal land because the mining company sought to permit the plant as an ancillary use. Do you think Washoe County's actions are prohibited by the Supreme Court's opinion in *Granite Rock*? Explain

Response: The government argued that by denying the special use permit, the County had issued a de facto ban on mining on the federal land in question. That implicated the *Granite Rock* holding that county governments can impose environmental requirements on mining on federal lands as long as those regulations are reasonable. The government argued that the County's de facto ban on mining on the federal lands was not reasonable.

10. In December 2004, a Nevada state court rejected Oil Dri's claim against Washoe County, finding that the County's actions in this case were not prohibited by federal law. Indeed, as the court recognized, the Bureau of Land Management specifically recognized in its Record of Decision for Oil Dri's permit that the company was obligated to comply with applicable state and local laws.

a) Do you agree with the Nevada court's decision?

Response: I have not read the 2004 decision and therefore cannot comment on it. In addition, it would not be appropriate for me, as a nominee, to comment on legal issues that could arise in the Ninth Circuit in the future.

b) During your tenure as Solicitor, did you recommend that the Department of Justice file an amicus brief in any other case pending before a federal district court? If so, state the case and the position you recommended.

Response: I recommended that the Department of Justice file an amicus brief in Oil-Dri, rather than seek to intervene, out of deference for the concerns of the Tribe. I knew that amicus status was significantly less than intervenor party status, but I thought that was appropriate in light of the Tribe's concerns. I do not recall whether or not I recommended amicus briefs in other federal district court cases.

William G. Myers III

Boise, Idaho

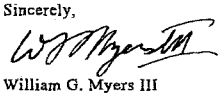
March 9, 2005

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Specter:

Please find attached to this letter my answers to written questions from Senator Kennedy following my nomination hearing on March 1, 2005.

Sincerely,



William G. Myers III

cc: Honorable Patrick J. Leahy

Attachments

Responses of William Myers
Nominee to the U.S. Court of Appeals for the Ninth Circuit
to the Written Questions from Senator Edward M. Kennedy

1. **When your nomination came before the Judiciary Committee last year, many of us were concerned about your relative lack of litigation experience.**

a. **Since you returned to private practice in 2003, have you tried any cases in federal court? If so, please identify the case(s), describe your role in the trial, and state whether you served as lead counsel.**

Response: No. I am lead counsel in a pending case that has not proceeded to trial.

b. **Since returning to private practice, have you briefed or argued any case in a federal appellate court? If so, please identify the case, describe the role you played in the trial, and whether you were lead counsel on the case.**

Response: I supervised and edited a junior colleague's preparation of a brief in opposition to a petition for writ of certiorari in *Goodyear Tire and Rubber Co. v. Malek*, 540 U.S. 1149 (2004). The petition was denied. I was not a counsel of record. I reviewed draft appellate briefs in *Davis Mountains Trans-Pecos Heritage Assn v. Federal Aviation Admin.*, 2004 WL 2295986 (5th Cir. 2004). I was not lead counsel.

c. **Since returning to private practice, what proportion of your time has been billed to lobbying work? How much of your time has been billed to litigation?**

Response: 15% of my time has been billed to lobbying on behalf of an Indian Tribe; 30% of my time has been billed to litigation. The balance of my time has been devoted to transactional work, pro bono clients, and other matters.

2. **In 2001, as Solicitor of the Interior Department, you issued a formal opinion that undercut the Interior Department's ability to limit mining that harmed public lands. Your position paved the way for a foreign company to erect a huge open-pit gold mine in the heart of a California desert conservation area. The Clinton Administration had refused to allow the mine, because of its harsh impact on this unique area and on Native American traditions that were such a key part of the area.**

You met personally with representatives of the foreign mining company before issuing your decision. But you never met personally with the Native American tribes even though the Interior Department has a special trust responsibility toward Native Americans. You had correspondence with them, but that's hardly the same as giving them an equal hearing.

3. At the very least, didn't you have an obligation to meet personally with the Native American tribes after you met personally with the mining company representatives?

Response: I would have welcomed the Tribe to my office had they sought to meet with me there. I did not think it was necessary to travel to California because I was fully aware of the Tribe's view of the facts and law from its filings in litigation on the subject, its August 2001 letter to me, and conversations with career attorneys in my office. I therefore focused on the proper interpretation of the statute regarding mining in the California desert. My opinion did not authorize mining at the area in question. That would have been under BLM's authority. No mining occurred at the proposed mine site while I was in office. I do not know if any mining has occurred since I left office.

When factual issues were in dispute, I did not hesitate to investigate them. For example, I traveled to the Sandia Pueblo in New Mexico to see first-hand the 10,000 acres of National Forest land in dispute and their proximity to the crest of Sandia Mountain. These were key factual questions that led me to side with the Pueblo and support legislation to give them the land.

4. The Inspector General of the Interior Department recently issued a report about an improper settlement negotiated by the Interior Department's Office of the Solicitor on your watch. That agreement has been widely criticized as providing a sweetheart deal to a Wyoming rancher – Frank Robbins – who repeatedly violated grazing regulations over many years. The settlement created a special dispute resolution process that would make it harder to cite Robbins for regulations violations than to cite other ranchers for identical conduct.

According to the Inspector General, in negotiating the settlement, your office bypassed the normal process, ignored the Justice Department's objections, and "placed the Department [of Interior] at unnecessary litigation risk, as well as in a position of potential public embarrassment." An Administrative Law Judge later called the conduct by your office in the case "shocking," "disturbing" and "disappointing."

The Inspector General's report raises more questions than it answers about your role in this very serious matter.

a. When you authorized Mr. Comer to negotiate a settlement with Frank Robbins, what were your instructions to Mr. Comer on the negotiations?

Response: I did not instruct him. My authorization was consistent with the delegation of settlement authority to him in the Solicitor's Manual to the effect that he had authority to try and settle the disputes as requested by the client, BLM.

b. The recent Inspector General's report says that Mr. Comer was "persistently vague and ambiguous about how and at whose direction he became involved

in this settlement process." Do you know why Mr. Comer would be reluctant to acknowledge that you authorized him to negotiate the agreement? Do you have any reason to think he was asked not to mention your involvement?

Response: No. No.

c. **An earlier Inspector General report released in 2003 stated that you met with Mr. Comer about the settlement on more than one occasion. What did Mr. Comer tell you about the settlement before it was signed?**

Response: I had brief discussions with Mr. Comer several times during the course of the settlement negotiations to the effect that he continued to be involved in the negotiating process. He did not brief me on the terms of the draft settlement.

5. **The Justice Department personnel in the Bureau of Land Management, and even the Administration Law Judge handling the case found serious problems with the settlement. At any time – either before or after the agreement was finalized – did you personally have any concerns about the settlement?**

Response: Yes.

a. **If so, what were those concerns, when did they arise, and what did you do about them?**

Response: I remember press reports in early July 2003 that RICO claims were pending against BLM employees. I asked Mr. Comer to explain why those claims had not been dismissed as part of the settlement. Mr. Comer responded that the Department of Justice did not want to settle because it thought it had a clearly winnable case on behalf of the BLM employees and that it wanted the employees to be vindicated in open court, not by settlement. The Inspector General's report indicated that Mr. Comer's response to me was a misrepresentation of the facts. Later, I assigned a senior attorney in my office to assist Assistant Secretary Watson's efforts to look into the situation. The senior attorney had not been involved in the settlement negotiations.

b. **At any time – either before or after the settlement – did you ask Mr. Comer whether the Justice Department had signed off on the settlement? If not, why not?**

Response: After the settlement, I reviewed the agreement and saw that the Department of Justice signed the agreement as to paragraph 2.b. I thought that was the extent of their interest in the agreement and at the time I had no reason to believe they were concerned about other parts of the agreement.

c. **Did you ever discuss the settlement with anyone at the Justice Department? If so, state when and with whom you did so and describe those discussions in detail.**

Response: No.

d. The Bureau of Land Management gave your office five pages of its objections to the settlement in September 2002, long before it was finalized. Did you ever see those objections, or ask anyone whether the Bureau objected to the settlement? If so, when, and what was the response to your inquiry? If not, why not?

Response: I did not see those objections. As far as I was aware, the BLM had asked Mr. Comer to help settle the case and was working with him to do so.

6. During the summer of 2003 – after the settlement took effect – several news articles criticized it for giving favorable treatment to Robbins without requiring him to dismiss his own lawsuit against federal officials. You heard about the press reports and emailed Mr. Comer to ask why the settlement didn't require Robbins to drop his lawsuit. Mr. Comer replied that the Justice Department had objected to settling Robins' suit against federal employees.

a. Did you think it was unusual when Mr. Comer told you that the Justice Department was taking a position so clearly against the interests of the federal government? What did you do to respond?

Response: I understood Mr. Comer to say that the Department of Justice did not want to settle because it thought it had a clearly winnable case on behalf of the BLM employees and that it wanted the employees to be vindicated in open court, not by settlement. I took Mr. Comer at his word.

b. Wouldn't it would have been basic due diligence to call the Justice Department and ask why they would object to such an important aspect of the settlement?

Response: Mr. Comer's explanation made sense to me because I had had clients in private practice who did not want to settle a case so their position could be vindicated by court order. Having no reason to suspect at the time that Mr. Comer was misrepresenting the matter, I saw no need to call the Justice Department.

c. After the press criticized the settlement, did you go back and look to see if there were problems with the agreement besides the RICO issue?

Response: After the press reports, I read the agreement and assigned a senior attorney who was not involved in the matter to look into the criticism and to assist the Assistant Secretary's review of the matter.

d. Do you agree now that the settlement was seriously flawed?

Response: Having read the Inspector General's redacted report, I do not think BLM should have signed the agreement.

7. At the recent hearing on your nomination, you were asked what disciplinary action you took, if any, against Mr. Comer after learning about problems with the Robbins settlement. You did not specify any disciplinary action against Mr. Comer, but stated that:

> **"When I saw the reports that there was potentially something amiss--and obviously there was--I asked a senior attorney in my employ to work with the Assistant Secretary, who was also concerned about it. She had assigned someone to look into this on her behalf. I asked a senior attorney not involved at all in the discussions or the negotiations to assist her to see if we could figure out what was going on."**

a. Did you ever take any disciplinary action against Mr. Comer as a result of his role in the Robbins settlement? If so, please specify what actions were taken. If you never took such action, please explain why not.

Response: When I left office, the Inspector General had not yet released his report. I did not discipline anyone prior to the time I left office because I thought the investigation should conclude before assessing blame.

b. After you assigned a senior attorney and the Assistant Secretary to look into the Robbins settlement and Mr. Comer's involvement in that settlement, did they ever provide you with more information? If so, when? Please describe that information in detail.

Response: I left office before their inquiry was complete.

c. Please set forth in detail all actions you took to discover the facts related to problems with the Robbins settlement after concerns about that settlement came to your attention.

Response: I have described above the assignment of a senior attorney to look into it. In mid-August, the Inspector General began his investigation. I did not want to take any action that would interfere with his investigation and he did not ask my assistance in his investigation other than to interview me. I left office approximately 2 months after his investigation commenced and before it was complete.

8. You testified that you were involved in the process of selecting Mr. Comer for a career position in the Department of Interior. After reviewing any records or calendars you may have related to that process, please specify when your involvement in that process began. When was Mr. Comer selected for the career position?

Response: I recall that a vacancy occurred in the Regional Solicitor position in Spring of 2002. The personnel contractor for the Solicitor's Office then advertised the opening, solicited applicants and impaneled three Senior Executive Service officials to rank the candidates. The panel presented the top applicants to me, including Mr. Comer. In August 2002, I selected Mr. Comer from the list of top applicants and sent my recommendation to the Department's Executive Review Board for consideration. In December 2002, the Executive Review Board approved the selection of Mr. Comer and sent its recommendation to the Office of Personnel Management for review, including heightened scrutiny of a political appointee seeking a career position. OPM approved the selection of Mr. Comer and he became the Regional Solicitor in early April 2003.

a. When you learned of Mr. Comer's interest in a permanent position with the Interior Department, did you already know about the problems with the Robbins settlement?

Response: No.

b. When did you first learn about possible problems with that settlement?

Response: Early July 2003.

9. In June 2002, you urged Congress to pass a private relief bill that would have given public lands worth hundreds of millions of dollars to a private company, named Yuba River Properties. You wrote to members of Congress that Yuba River Properties was entitled to the land. As it turned out, the company clearly had no right to the land. It had never paid taxes on the property, which had been listed as public land since at least 1993. In 2004, the Department reversed its position, and withdrew its support for the bill. The facts about the land were publicly available, and were known to Bureau of Land Management officials. But, according to press reports, you "acted without consulting the federal government's land managers on the scene."

a. Why didn't you do a basic check of public documents before urging Congress to give away hundreds of millions of dollars in public land?

Response: I received a letter from two Congressmen stating that Yuba River Properties had a 1943 quitclaim deed from the Secretary of War in their chain of title. The letter also said the predecessors-in-interest had for nearly 50 years paid taxes on the property. I asked attorneys in my Washington, D.C. office and my Sacramento office to look into these claims and draft a response. The draft response was researched by my staff and BLM and reviewed by my office and other offices before it was presented to me for signature.

My letter was addressed to the Congressmen and told them that the land was still owned by the United States, regardless of the quitclaim deed and payment of taxes. The letter stated that the matter had been reviewed by BLM and the Regional Solicitor's Office.

The letter also summarized the view of BLM and my staff to the effect that the tract was an isolated parcel, not essential to BLM's management of the public lands in the area, and lacking in special environmental value and management goals. I understood this to be the opinion of BLM and my staff as presented to me in the draft letter. Certainly, no one told me the eight acre parcel was worth hundreds of millions of dollars. I was not informed that the local BLM office opposed the draft letter, nor did anyone raise any objections to me over the 16 months that I remained in office after I signed the letter. Not until I was out of office did I learn that BLM and the Solicitor's Office had new information that cast doubt on the information I had relied upon 21 months earlier. The Department's March 4, 2005, letter makes clear that the key facts counseling a reversal of position did not come to light until a 2004 report by the same offices I relied upon.

b. Your June 6, 2002 letter supporting the private relief bill makes clear that the federal officials in the Bureau of Land Management opposed the company's claim to the property. Specifically, your letter stated that the Bureau "has provided a detailed and concise explanation of why the United States owns Lot 5." Yet press reports say you didn't ask Bureau staff before deciding to support the private bill. It "would have been nice if he asked us first" said a staff member who found out about your proposal too late. Since you knew the Bureau didn't think the company had a right to the land, why didn't you ask them before supporting the give-away?

Response: My June 6, 2002, letter also summarized the view of BLM and my staff to the effect that the tract was an isolated parcel, not essential to BLM's management of the public lands in the area, and lacking in special environmental value and management goals. I understood this to be the opinion of BLM and my staff as presented to me in the draft letter. I had never seen or heard of an appraisal or estimate of the value of the eight acres to suggest it had significant value to the United States. As stated in Interior's March 4, 2004, letter, the information I had suggested that this eight-acre parcel was a "one of a kind problem that could be fixed better by legislation than by litigation."

c. Has the Department ever before had to withdraw support for a private bill because it failed to check with its own people about whether property belonged to the public?

Response: I explained to the Congressmen that the parcel belonged to the public. I do not know if there have been other matters analogous to this one.

d. Among the reasons cited in your letter supporting the private relief bill, you state that "this area does not have any special environmental value . . . . " The press has reported that the area is home to a variety of bird life, including wild turkeys, and one of the last pure lines of Chinook salmon. How did you decide that the area had no special environmental value?

Response: This passage was in the draft letter I received from the Regional Solicitor's Office that I believed was prepared in conjunction with local BLM staff. I had no reason to doubt it.

William G. Myers III

Boise, Idaho

March 14, 2005

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Specter:

Please find attached to this letter my answer to a written follow-up question from Senator Leahy.

Sincerely,

William G. Myers III

cc: Honorable Patrick J. Leahy

Attachment

Response of William Myers
Nominee to the U.S. Court of Appeals for the Ninth Circuit
to Written Follow-Up Questions to William Myers from Senator Patrick Leahy

1. In answer to question 11 of my written follow-up questions, you said you do "not recall having any contact," with Jack Abramoff. I would like you to search your memory and consult any necessary records and files and give me a full and complete answer to my question.

Response: I have searched my memory and files. To the best of my recollection, I have never had any contact with Mr. Abramoff. I do not recall ever meeting him, speaking to him by phone, corresponding with him at any time, or otherwise having any contact with Mr. Abramoff.

William G. Myers III

Boise, Idaho

March 15, 2005

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Specter:

Please find attached to this letter my answers to written follow-up questions from Senator Kennedy.

Sincerely,

William G. Myers III

cc: Honorable Patrick J. Leahy

Attachment

Responses of William Myers
Nominee to the U.S. Court of Appeals for the Ninth Circuit
to Questions of Senator Edward M. Kennedy

1. In 4.a. of my written questions to you of March 8, 2005, I asked what instructions you gave Mr. Comer when you authorized him to negotiate a settlement with Wyoming rancher Frank Robbins. You stated that you "did not instruct him," Please clarify this response by describing any written, or oral communications you had with Mr. Comer when you authorized him to conduct settlement negotiations.

Response: I did not provide any written instructions or other written communications to Mr. Comer authorizing him to conduct settlement negotiations or instructing him how to negotiate. He came to me to briefly describe the dispute and to tell me he wanted to try and settle it at the request of the BLM. I responded orally that he could try to settle the dispute. I did not orally instruct him on how to negotiate. Based on my understanding of the dispute at the time of that conversation, my oral response was consistent with the written delegation of authority in the Solicitor's Manual.

2. In 6.d of my written questions to you, I asked whether you now agree that the settlement agreement was seriously flawed. You stated that you do not think the Bureau of Land Management (BLM) should have signed the settlement agreement, but did not specify whether this is because you believe the settlement was flawed, because Mr. Robbins later breached the agreement, or for some other reason. Please clarify whether or not you agree that the settlement was seriously flawed.

Response: Thank you for the opportunity to clarify my answer. The agreement was seriously flawed at a minimum due to the failure to dismiss the RICO complaint against BLM employees. That failure was premised on the idea presented to me by Mr. Comer that neither party wanted to settle that issue. The Inspector General's report makes clear that premise was wrong at least regarding the U.S. Attorney's position.

3. In your answers to question 8.b., you stated that you learned about possible problems with the Robbins settlement in early July 2003. Please clarify whether you had ever read the settlement agreement before early July 2003, and if so, when you did so.

Response: No. I did not read the settlement agreement before early July 2003. That was when I first learned about possible problems with the settlement. I then asked for a copy to read. As I noted above, the Solicitor's Manual,

which was created by my predecessors and retained by me, specifically allowed an Associate Solicitor to settle a case on his or her own, without final approval from the Solicitor.

4. In question 9.c., I asked about a press report that you had failed to consult local BLM officials before supporting a private relief bill that would have transferred public land worth hundreds of millions of dollars to a private company. As part of your answer, you stated that "you had never seen or heard of an appraisal or estimate of the value of the eight acres to suggest it had significant value to the United States." Is it fair to conclude from this response that before deciding to support the private bill, you did not ask for such an appraisal or estimate of the land's value? If not, please clarify your answer and specify when and to whom you directed your request for an estimate or appraisal for the land.

Response: I did not request an appraisal. It was my understanding, however, that local BLM officials, who would be familiar with the land in question, were consulted in the drafting of the letter ultimately signed by me. At the time of my letter, I understood the value of the parcel to the United States to be insignificant because the parcel (1) was isolated thus increasing management problems and associated costs, (2) was not essential to BLM's management of the public lands in the area, (3) lacked management goals, (4) lacked special environmental value, and (5) consisted of mining waste rock that had some, but not significant, market value to the United States. I do not know the source or accuracy of the estimate that the eight-acre parcel is worth hundreds of million of dollars. According to press reports, this parcel constitutes less than 1/10 of 1 % of the area that was mined in the 19th century.

5. On. March 13, 2005, the Washington Post reported on a legal review conducted by Interior Department's Office under the Indian Gaming Regulatory Act of the Jena Indian tribe's plan for a casino in Louisiana. This review appears to have been conducted by the Interior Department while you served as Solicitor of Interior. Questions have since been raised about the propriety of certain lobbying efforts connected with that review. When you served as Solicitor of Interior, did you have any role in reviewing the Jena tribes casino proposal? If so, please describe that role in detail.

Response: I do not recall having any role in reviewing the casino proposal and have no notes or documents reflecting that I played any role.

6. Have you ever been a member of, or contributed to, the Council for Republicans for Environmental Advocacy? Were you aware of that organization's role in lobbying the Interior Department regarding the Jena tribe's plans to construct a Louisiana casino? If so, please describe the information you had about that role.

Response: No. No.

7. Do you know Jack Abramoff? Did you ever communicate with Mr. Abramoff, Todd Boulanger, or any of Mr. Abramoff's other associates regarding the Jena casino proposal? If so, please describe the substance of those communications and when they occurred.

Response: I searched my memory and files. To the best of my recollection, I have never had any contact with Mr. Abramoff. I do not recall ever meeting him, speaking to him by phone, corresponding with him at any time, or otherwise having any contact with Mr. Abramoff or his associates regarding any issues including the Jena casino proposal.

8. Did you ever communicate with J. Steven Griles, then-Deputy to Secretary of Interior Gale Norton, regarding the Jena tribe's proposed casino? If so, please describe the substance of those communications and when they occurred.

Response: Not that I recall.

9. The press has reported that Mr. Griles and Secretary Norton met with Choctaw Chief Philip Martin in February 2002. Were you aware of that meeting and did you participate in it? If so, please, describe the nature of your knowledge or participation.

Response: I have searched my memory and files and have no recollection of being invited to attend or actually attending the meeting.

SUBMISSIONS FOR THE RECORD

Affiliated Tribes of Northwest Indians

Senator Ted Stevens
522 Hart Senate Office Building
Washington, DC 20510

Senator Daniel K. Inouye
722 Hart Senate Office Building
Washington, DC 20510

Senator Harry Reid
528 Hart Senate Office Building
Washington, DC 20510

Senator Lisa Murkowski
322 Hart Senate Office Building
Washington, DC 20510

Senator Daniel K. Akaka
141 Hart Senate Office Building
Washington, DC 20510

Senator John Ensign
364 Russell Senate Office Building
Washington, DC 20510

Senator John McCain
241 Russell Senate Ofc. Building
Washington, DC 20510

Senator Larry E. Craig
520 Hart Senate Office Building
Washington, DC 20510

Senator Ron Wyden
516 Hart Senate Office Building
Washington, DC 20510

Senator Jon L. Kyl
730 Hart Senate Office Building
Washington, DC 20510

Senator Michael D. Crapo
111 Russell Senate Office Building
Washington, DC 20510

Senator Gordon Smith
404 Russell Senate Office Building
Washington, DC 20510

Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

Senator Max Baucus
511 Hart Senate Office Building
Washington, DC 20510

Senator Patty Murray
173 Russell Senate Office Building
Washington, DC 20510

Senator Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Senator Conrad Burns
187 Dirksen Senate Office Building
Washington, DC 20510

Senator Maria Cantwell
717 Hart Senate Office Building
Washington, DC 20510

March 19, 2004

Re: Opposition to the Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senators:

We write to you today as leaders of tribes within the jurisdiction of the 9th Circuit Court of Appeals to express our strong opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. As President of the Affiliated Tribes of Northwest Indians/Chairman of the Coeur d'Alene Tribe in Idaho, and as Treasurer of the National Congress of American Indians/ Chairman of the Jamestown S'Klallam Tribe, respectively, we represent a broad base of tribes in the Northwest who would be directly impacted by this nomination.

We have never before stepped forward to oppose a judicial nominee. We believe that the President is entitled to receive the consent of the Senate for his judicial appointments unless there are serious concerns regarding judicial fitness. However, former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

1827 NE 44th Ave., Suite 130 * Portland, OR 97213
Phone: 503/249-5770 * Fax: 503/249-5773

The U.S. government, as steward for million of acres of Western lands, has accepted responsibility for maintaining and protecting religious sites of significance to Native Americans. This responsibility is clearly recognized not only by treaty and custom but also in laws such as the Federal Land Policy and Management Act (FLPMA).

Unfortunately, the nominee, while serving two years in the Bush administration as solicitor of the Department of the Interior, trampled on law, religion, and dignity. In his official capacity he orchestrated a rollback of protections for sacred native sites on public lands, although such places have been central to the free exercise of religion for many American Indians for centuries.

Most notably, despite his stewardship responsibility, with the stroke of his pen Myers reversed a crucial departmental decision that had been arrived at over a period of years with substantial public input. His action cleared the way for a massive hardrock mining operation employing cyanide to extract gold from enormous heaps of rock. This mine, run by Canada's Glamis Imperial Gold Company, stands to contaminate thousands of acres and destroy a vast swathe of land in the California desert that is sacred to the Quechan tribe.

In one of only three formal opinions in his two-year tenure at Interior, Myers argued that the agency's Bureau of Land Management did not have authority under the FLMPA law to prevent the undue degradation of public lands that sometimes accompanies such mining operations. But this is contrary to the specific wording of the legislation, which requires the Department of the Interior to protect against public land degradation that is "unnecessary or undue."

Myers simply concluded that any practice necessary for a mining operation was, by definition, not undue. Such reasoning stands contrary to common sense and turns legislative statute on its head. While specifically addressing only the Glamis project, Myers's opinion, if followed, would block the Bureau from preventing undue degradation across millions of acres of public land.

It's hard to imagine a more fundamental misreading of the language and intent of the law. As federal district Judge Henry Kennedy Jr. -- the only judge to have reviewed Myers's handiwork -- declared, "The Solicitor misconstrued the clear mandate of FLPMA."

Furthermore, the court held: "FLPMA by its plain terms, vests the Secretary of Interior with the authority -- and indeed the obligation -- to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land." No wonder the American Bar Association questions Myers's legal qualifications for a position on the federal appellate bench.

Equally troubling to tribes in the 9th Circuit is the shameful exclusion of the Quechan Indian Nation from the decision to reconsider the Glamis project. Neither Myers nor Interior Secretary Gale Norton engaged in government-to-government consultation with the Quechan Indian Nation or other Colorado River tribes before reopening and reversing the Glamis debate.

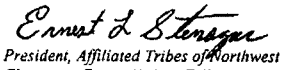
The Ninth Circuit Court encompasses a huge area. It contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. Because so few legal cases ever reach the U.S. Supreme Court, the Ninth Circuit is often the court of last resort for deciding critically important federal and tribal land management issues.

1827 NE 44th Ave., Suite 130 · Portland, OR 97213
Phone: 503/249-5770 · Fax 503/249-5773

Judges on this court must understand and respect tribal values and the unique political relationship between the federal government and tribal governments. Myers' actions and legal advice in the Glamis matter trample on tribal values, raise serious questions about his judgment, and demonstrate a clear lack of the impartially necessary to decide cases affecting public lands.

We ask that you stand with us in opposing this nominee. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and our sacred places, we must speak out.

Ernest L. Stensgar



President, Affiliated Tribes of Northwest Indians
Chairman, Coeur d'Alene Tribe

W. Ron Allen

Chairman, Jamestown S'Klallam Tribe
Former President, National Congress of American Indians

Cc: Judiciary Committee Chairman Orrin Hatch
Judiciary Committee Ranking Member Patrick Leahy
The National Congress of American Indians

1827 NE 44th Ave., Suite 130 · Portland, OR 97213
Phone. 503/249-5770 · Fax. 503/249-5773

AK-CHIN INDIAN COMMUNITY
Community Government
42507 W. Peters & Nall Road • Maricopa, Arizona 85239 • Telephone: (520) 568-1000 • Fax: (520) 568-4566

February 3, 2004

Dear Senator Hatch:

The Ak-Chin Indian Community writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protection for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance of Native Americans.

Myers' opinion-which overturned a well-reasoned legal opinion by his predecessor-wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue". It is hard to imagine a more fundamental mis reading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers' nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

for Terry O. Enos, Chairman
Ak-Chin Indian Community

March 10, 2004

The Honorable Orrin Hatch
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member,
Senate Judiciary Committee
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Leahy:

On behalf of the 13 million working men and women represented by the unions of the AFL-CIO, I am writing to express the AFL-CIO's opposition to the nomination of William G. Myers to a lifetime appointment on the United States Court of Appeals for the Ninth Circuit.

Mr. Myers' writings, public statements, and legal work contain very troubling, and in some cases radical views on property rights, individual rights, and the reach of the federal government's authority. His legal philosophy appears to elevate property rights to a level of constitutional scrutiny reserved for fundamental rights, such as the right to free speech and equal protection. We are also concerned by his limited view of Congress's commerce power, and the implications that flow from that view as it impacts workers' rights and protections. Mr. Myers' poor ABA rating is further reflection of his weak qualifications for a lifetime seat on this crucially-important court.

The Ninth Circuit is home to more Americans than any other circuit, with more than 54 million Americans living in the nine states within the Ninth Circuit's jurisdiction. It is imperative that judges on this court reflect mainstream values and a deep commitment to equal and fair justice under the law. We urge you to reject William Myers' nomination in favor of a more moderate nominee with a less troubling record.

Thank you for your consideration of our views.

Sincerely,

William Samuel, Director
DEPARTMENT OF LEGISLATION

c: Members of Senate Judiciary Committee

CECIL D. ANDRUS

August 19, 2003

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
104 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senators Hatch and Leahy:

I write in support of the President's nomination of William Myers of Boise, Idaho to a position on the United States Court of Appeals for the Ninth Circuit.

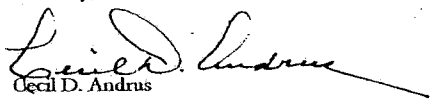
It is my judgment that Mr. Myers possesses the necessary personal integrity, judicial temperament, and legal experience appropriate to a nominee to the federal bench, and particularly the federal Court of Appeals. Further, it is my judgment that, while Mr. Myers has been an effective advocate in the past for specific public policy positions with which I may have personally disagreed, he also possesses the ability to act fairly on matters of law that will come before him on the court.

My old friend, and occasional political adversary, and your old colleague, Senator Al Simpson of Wyoming, speaks very highly of Bill Myers and has known him for years. I know Senator Simpson to be a good judge of character and his endorsement carries great weight with me, as well.

I hope you will look with favor on Bill Meyer's nomination to the Ninth Circuit Court of Appeals.

With best regards,

Sincerely,



Cecil D. Andrus

cc: Department of Justice – Office of Legal Policy

OFFICE OF THE GOVERNOR
The Chickasaw Nation
Post Office Box 1548 • Ada, Oklahoma 74821
(580) 436-2603 • Fax (580) 436-4287
http://www.chickasaw.net/~cnation

BILL ANOATUBBY
GOVERNOR

January 30, 2004

Honorable Orrin G. Hatch, Chairman
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510-6275

Via Facsimile: 202-224-9102

Dear Mr. Chairman:

Please allow me this opportunity to highly recommend your consideration of Mr. Bill Myers, whom we understand is being considered for appointment to the U.S. 9th Circuit Court of Appeals.

Based upon Mr. Myers' work as solicitor in the U.S. Department of the Interior, we know him to be fair and impartial. He listened to our concerns and acted upon them. He is extremely well-qualified to fill the post in the 9th Circuit, and has demonstrated his ability to listen and to reason. We believe Mr. Myers will be an asset to the Court.

Your consideration of Mr. Bill Myers will be appreciated.

Sincerely,

Bill Anoatubby

Bill Anoatubby, Governor
The Chickasaw Nation

cc: Senator Patrick J. Leahy

A Communication from the Attorneys General of
Alaska • Colorado • Delaware • Guam • Hawaii
Idaho • Nevada • North Dakota • Ohio • Oklahoma
Pennsylvania • South Dakota • Utah • Virginia • Wyoming

BY TELEFAX: 202-228-1698

January 30, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch:

We, the undersigned state Attorneys General and chief legal officers of our states, strongly support the confirmation by the United States Senate of the President's nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

Mr. Myers most recently has served with distinction as Solicitor for the United States Department of Interior, handling with great care and attention legal matters that necessarily involve and impact the States of the Union. These matters concern numerous federal interests such as endangered species, Indian affairs, federal lands, water allocation and distribution, timber, fish and wildlife, and minerals. These interests often exist in a delicate balance with state and local interests that we are charged with protecting. As Attorneys General, we observed that Mr. Myers, while dutifully representing his client, the federal government, always maintained an objectivity and practical understanding of the conflicting demands relating to those interests. In our view, his thorough understanding of relevant legal precedents, decisions and key policy interests and his outstanding legal reasoning as Solicitor demonstrate his keen intellect, sound judgment and the skills suitable for the bench.

it is also our experience that Mr. Myers has acted with the highest standards of integrity, competence and good judgment. His ability to objectively evaluate cases with calm deliberation and thoughtful analysis is precisely what we, as government officials, lawyers and citizens, expect from our appellate judges. As Attorneys General, we appear before the Circuit Courts of Appeal with considerable frequency. Clearly, we value judges who display a temperament that is even-handed, respectful and thoughtful - the temperament displayed by Mr. Myers. Mr. Myers would bring to the Ninth Circuit strong intellectual skills, combined with a strong sense of civility, decency and respect for all.

We therefore urge the United States Senate to favorably consider and confirm Mr. Myers as a judge on the United States Court of Appeal for the Ninth Circuit. Please do not hesitate to contact us for further views or information, or contact Tom Gede, Executive Director, Conference of Western Attorneys General (CWAG) at 916-323-1939.

Sincerely,

GREGG RENKES
Attorney General of Alaska

KEN SALAZAR
Attorney General of Colorado

M. JANE BRADY
Attorney General of Delaware

DOUGLAS MOYLAN
Attorney General of Guam

MARK J. BENNETT
Attorney General of Hawaii

LAWRENCE WASDEN
Attorney General of Idaho

BRIAN SANDOVAL
Attorney General of Nevada

W.A. DREW EDMONDSON
Attorney General of Oklahoma

LARRY LONG
Attorney General of South Dakota

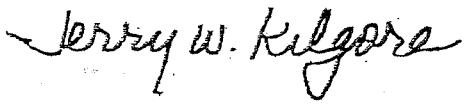
MARK SHURTLEFF
Attorney General of Utah

PATRICK CRANK
Attorney General of Wyoming

GERALD J. PAPPERT
Attorney General of Pennsylvania

WAYNE STENEHJEM
Attorney General of North Dakota

JIM PETRO
Attorney General of Ohio



JERRY KILGORE
Attorney General of Virginia

cc: The Honorable Patrick Leahy, Ranking Minority Member, Committee on the Judiciary

WILLIAM P. BARR

July 14, 2003

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of William Gerry Myers, III

Dear Orrin:

It is my understanding that Bill Myers, currently serving as Solicitor of the United States Department of Interior, has been nominated by President Bush to serve on the United States Court of Appeals for the Ninth Circuit.

I have known Bill since 1989 when Bill served on Attorney General Dick Thornburgh's staff. I believe Bill is exceptionally well qualified to serve as a member of the Federal Judiciary. Apart from his outstanding legal ability and intellect, Bill represents the epitome of judicial temperament. He is fair-minded, careful and balanced. He has good judgment and the highest integrity. He would make a great judge.

If you would like to discuss this further, please do not hesitate to contact me.

Sincerely yours,

William P. Barr

cc: The Honorable Patrick J. Leahy

1200 Daleview Drive, McLean, VA 22102

BEAR RIVER BAND of ROHNERVILLE RANCHERIA
32 BEAR RIVER DR. LOLETA, CA 95551 707.733.1900, fax 733.1972

February 2, 2004

The Honorable Patrick J. Leahy
152 Senate Dirksen Office Building
Washington, D.C. 20510

Via Fax: (202) 224-9516

Re: Opposition to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leahy:

On behalf of the Bear River Band of Rohnerville Rancheria Tribe, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

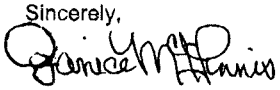
Solicitor Myers and the Department of Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.
2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.
3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.
4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Bear River Band of Rohnerville Rancheria Tribe respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,



Janice McGinnis
Tribal Vice-Chairperson

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

QUAPAW TRIBE OF OKLAHOMA

O. Box 765
uapaw, OK 74363-0765

(918) 542-1853
FAX (918) 542-4694

Via Facsimile 202/228-1698

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member,
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of William Gerry Myers III

Dear Chairman Hatch and Ranking Member Leahy:

I am writing this letter to express my support for William Myers nomination as United States Circuit Judge for the Ninth Circuit.

Mr. Myers has a long history as a public servant; he was a former aide to Senator Alan Simpson, and practiced law in Boise, Idaho for twenty years before joining the Interior Department in 2001 as Solicitor.

His writings, public statements and legal work also reveal his sharp legal mind. Mr Myers appears to be a qualified choice for this court. I support this nomination.

Sincerely,

John L. Berrey
Chairman, Quapaw Tribe

BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY
Big Pine Indian Reservation

July 16, 2004

The Honorable Patrick Leahy
Ranking Member
Committee On the Judiciary
United States Senate
Washington, DC 20510

Re: William G. Myers Confirmation

Dear Senator Hatch:

The Big Pine Paiute Tribe of the Owens Valley writes to express our opposition to the confirmation of William G. Myers III to the Ninth Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American People. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers's opinion-which overturned a well-reasoned legal opinion by his predecessor-wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue". It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers's legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of

P.O. Box 700 • 825 South Main Street • Big Pine, CA 93513 • Office: (760) 938-2003 • Fax: (760) 938-2942

Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers's nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

Jessica L. Bacoch

Jessica L. Bacoch,
Tribal Chairperson

BIG SANDY RANCHERIA

Monday, January 26, 2004

The Honorable Patrick J. Leahy
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510

RE: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leahy;

On behalf of the Big Sandy Rancheria, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interest of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, either Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed-door meeting in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

33041 Auberry Road, Suite 104 • P.O. Box 337 • Auberry, California 93602
Phone: 559.855.4003 • Fax 559.855.4129

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

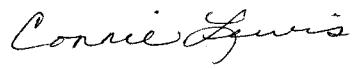
2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and trial lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishments of the Quechan people's tribal heritage and sacred place.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he ahs recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Big Sandy Rancheria respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,



Connie Lewis
Big Sandy Rancheria

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

January 27, 2004

The Honorable Patrick Leahy
United States Senate Judiciary Committee
Dirksen Senate Office Bldg. #152
Washington, DC 20510 Fax: (202) 224-9516

Re: OPPOSITION to Nomination of William G Myers III to the 9th Circuit Court of Appeals

Dear Senator Leahy:

On behalf of the Cabazon Band of Mission Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, was granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

84-245 INDIO SPRINGS DRIVE □ INDIO, CALIFORNIA 92203-3499 □ (760) 342-2593 □ FAX (760) 347-7880

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

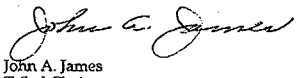
2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Cabazon tribe respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,



John A. James
Tribal Chairman
Cabazon Band of Mission Indians

cc: California Nations Indian Gaming Association
Quechan Indian Nation

JAJ/dm

COLUSA INDIAN COMMUNITY COUNCIL
CACHIL DEHE BAND OF WINTUN INDIANS

January 29, 2004

The Honorable Patrick J. Leaby
U.S Senate Judiciary Committee
152 Senate Dirksen Office Building
Washington, D.C. 20510
Fax: 202-224-9516

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leaby,

On behalf of the Cachil DeHe Band of Wintun Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal scared place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River Tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group were granted extensive and exclusive access to the decision makers and their course prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal

3730 Highway 45, Colusa CA 95932 Phone: (530) 458-8231 Fax: (530) 458-4186

governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and Indian lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and scared places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contracts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Cachil DeHe Band of Wintun Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian Tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian Tribes be invited to provide testimony on this important matter.

Sincerely,

Wayne R. Mitchum
Cachil DeHe Band of Wintun Indians

Cc: California Nations Indian Gaming Associations
Quechan Indian Nation

California Nations Indian Gaming Association

NEWS RELEASE

FOR IMMEDIATE RELEASE

Contact: Susan Jensen
Director of Communications
(916) 448-8706

Tribes Oppose Myers Nomination to 9th Circuit Court

Washington DC, March 25, 2004- CNIGA has joined a growing list of organizations across America opposed to the nomination of William G. Myers, III to the 9th Circuit Court of Appeals. This court reviews the most appellate cases dealing with issues effecting tribal governments.

Yesterday Anthony Miranda, Chairman of the California Nations Indian Gaming Association participated in a press conference in Washington D.C. along with other national leaders to voice their opposition.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southwestern California, which would have destroyed Indian Pass, a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

"As Solicitor General Mr. Myers' prime responsibility was to advise the Secretary of the Interior of the obligation to consult with tribes on matters of such importance as protecting sacred sites," said CNIGA executive secretary Michael Hunter, "Mr. Myers' failure to consult with the Quechan Indian Nation prior to issuing a permit for a massive cyanide heap leach gold mine on acreage that includes lands sacred to the Quechan Indian Nation illustrates his disregard for federal law and government to government relations."

(more)

"Former Solicitor Myers tried to destroy the Quechan culture, history, and religious places without meeting with the Quechan people. The Quechan got no hearing – let alone a fair hearing from Solicitor Myers' office. The Quechan Nation and tribes across the country are unified in a very powerful way to oppose Myers' confirmation to the 9th circuit. His confirmation would be detrimental to all of Indian country," said Mike Jackson Sr., president of the Quechan Nation.

Over 70 leaders and organizations oppose Myers nomination, some of which include: California Senator Dianne Feinstein, Sierra Club, Arizona Wilderness Coalition, Committee for Judicial Independence, Endangered Species Coalition, Forest Service Employees for Environmental Ethics, League of Conservation Voters, National Forest Protection Alliance, Natural Resources Defense Council, Society of American Law Teachers, National Indian Gaming Association, National Congress of American Indians.

The California Nations Indian Gaming Association consists of 62 gaming and non-gaming tribal governments. The purpose of CNIGA is to preserve and protect the sovereign rights of Indian tribes including gaming on Indian land.

# # #

CALIFORNIA NATIONS INDIAN GAMING ASSOCIATION

1215 K Street
Suite 1020
Sacramento, CA
95814

phone 916-448-8706
fax 916-448-8758
www.cniga.com

October 24, 2003

Hon. Orrin G. Hatch, Chair
Hon. Patrick J. Leahy, Ranking Member
Senate Judiciary Committee
Dirksen Building Room 224 FAX: 202.224.9102
Washington, DC 20510

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Hon. Chair, Ranking Member, Senators Feinstein and Kyl and Judiciary Committee:

This letter is on behalf of the California Nations Indian Gaming Association (CNIGA) member tribal nations, a non-profit organization of 57 federally-recognized tribal governments.

We oppose the confirmation of William G. Myers III to the 9th Circuit federal bench. Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass and was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely ignored the rights and interests of the Quechan people and other Colorado River tribes.

In deciding to rescind the denial of the mine, neither Secretary Norton nor Solicitor Myers' offices, unlike their predecessors, engaged in government-to-government consultation with the Quechan Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Those offices did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

- Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

- As DOI Solicitor, it was his duty to advise DOI to consult with the tribe, a duty which he either incompetently understood or intentionally ignored. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of reservations, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

- Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places, an outcome that is simply unacceptable to California tribes and reveals an activist point of view that wholly disrespects tribal values that should not be reflected on the federal bench.

- As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, CNIGA respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers for this important lifetime appointment. We also respectfully ask that CNIGA be notified prior to the date of confirmation hearings, should they be scheduled, so that California tribes may attend. Finally, we ask that a representative of California tribes be invited to provide testimony on this important matter.

Letter unanimously approved October 23, 2003 by CNIGA, and signed by authorized tribal signators.

Big Sandy Rancheria

Cabazon Band of Mission Indians

Chemehuevi Indian Tribe

Coyote Valley Band of Pomo Indians

Greenville Rancheria

Los Coyotes Band of Indians

Mesa Grande Band of Mission Indians

Mooretown Rancheria

Morongo Band of Mission Indians

Pechanga Band of Luiseño Indians

Redding Rancheria

Redwood Valley Little River Band of Pomo Indians

Smith River Rancheria

Table Mountain Rancheria

Tule River Indian Reservation

Cc: Hon. Barbara Boxer, CA Senator
Hon. John McCain, AZ Senator

CALIFORNIA RURAL INDIAN HEALTH BOARD, INC.
4400 Auburn Blvd.*2nd Floor *Sacramento, CA 95841*(916) 929-9761*Fax (916) 929-7246

January 30, 2004

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: CRIHB's Opposition to William G. Myers III to the 9th Circuit Court of Appeals

Dear Chairman Hatch and Ranking Member Leahy:

On behalf of the California Rural Indian Health Board (CRIHB), a tribally-controlled organization which advocates for the needs and rights of thirty-three Indian tribes in California on health issues, I am writing to express strong opposition to the confirmation of William G. Myers III to a lifetime seat on the United States Court of Appeals for the Ninth Circuit. Mr. Myers has neither obtained the qualifications necessary to serve on the Ninth Circuit nor demonstrated the ability to be fair and impartial as an appellate judge. He has devoted his career to advancing the interests of grazing and mining industries at the expense of the environment and the rights of Native Americans and tribal governments. His pursuit of that agenda continued unabated during his tenure on the public payroll as Solicitor of the Department of the Interior. His writings, public statements and legal work also reveal radical views on property rights, individual rights, and on federal government authority—views that broadly threaten basic safeguards that are of critical concern to the thousands of members represented by the CRIHB organization.

Mr. Myers lacks the qualifications necessary to serve on the Ninth Circuit. More than one-third of the panel of the American Bar Association's Standing Committee on the Federal Judiciary rejected Mr. Myers as "unqualified" for the bench, while not one considered him "well-qualified" for the position. Mr. Myers does not have significant litigation experience at either the trial or appellate level, and has not generated any important legal scholarship. In more than two years as Solicitor of the Interior Department, he produced just two formal legal opinions and one "correction" of his second opinion. By contrast, his predecessor produced 28 formal opinions during an eight-year tenure.

Even more troubling than what his record lacks is what it contains. As the Interior Department's chief lawyer, Mr. Myers regularly favored the interests of the mining and grazing industries over the rights of American Indian tribal governments, Native Americans, and the

environment. One of his two formal solicitor opinions reversed a detailed opinion by his predecessor in order to pave the way for Secretary Gail Norton to reverse the decision of former Secretary Bruce Babbitt and approve the Glamis Company's proposed cyanide heap-leach gold mine on lands sacred to Native Americans. A recent federal court decision rejected the result that Mr. Myers reached and harshly criticized his reasoning. Mr. Myers' opinion relied on twisting the meaning of the statutory word "or" to mean its opposite: "and."

Although Glamis' representatives were granted meetings to urge their points of view on top Interior Department officials, Myers' legal opinion and Secretary Norton's subsequent decision to approve the Glamis mine were issued without any input from the Quechan Indian Nation, which by law is entitled to government-to-government consultation. This is especially disturbing in light of the Interior Department's responsibility as the lead agency in the federal government's trust and treaty relationship with the American Indian tribes.

A similar reversal was used by Solicitor Myers in the final agency action by the Department of Interior to the Pit River Nation relative to a Medicine Lake Highlands geothermal project which occurred during the same period. In Northern California, the US Forest Service and Bureau of Land Management illegally leased 66 square miles in the sacred Medicine Lake Highlands and approved geothermal development by the State of California-funded Calpine Energy Corporation. Calpine proposes to build a network of geothermal power plants to produce electricity for the Bonneville Power Administration, transforming this pristine area into a contaminated industrial zone and irreparably destroying conditions for continuation of spiritual, cultural and religious practices there.

The Pit River Nation and other affected Indigenous Peoples were not consulted about this geothermal project until 1996, and have continued to vehemently oppose such development. Calpine Corporation, in its filings with the California Energy Commission, and in its US Department of Energy application, admitted the irreparable damage that geothermal development will inflict on the cultural and spiritual uses of the Sacred Medicine Lake Highlands. Nevertheless it has not withdrawn its plans.

The National Congress of American Indians (NCAI), a coalition of over 250 tribal governments, unanimously approved a resolution opposing Mr. Myers' nomination. This is the first time NCAI has opposed one of President Bush's judicial nominees. NCAI explained that Mr. Myers' actions as Interior Solicitor "show a deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments." Considering Mr. Myers' administrative and legal work history, his confirmation to the Ninth Circuit Court of Appeals could directly contribute to the extinguishment of the Pit River, Quechan and other Indigenous People's tribal heritage.

Particularly for organizations concerned about environmental protection for health of human beings and the important natural resources within the Ninth Circuit, Mr. Myers' intemperate criticism of environmental safeguards and environmentalists provides further reason to question his capacity to serve as an impartial judge in environmental cases. Mr. Myers has compared the federal government's management of the public lands to King George's "tyrannical" rule over the American colonies and claimed that public land safeguards are fueling

"a modern-day revolution" in the American West. He has denounced the California Desert Protection Act as "an example of legislative hubris" and claimed that many environmental laws have the "unintended consequence of actually harming the environment." He has called environmental critics of his Department's policies the "environmental conflict industry" and he has stressed the "importance of . . . rejecting [their] scheming."

Mr. Myers' record as Interior Solicitor of favoring the interests of the grazing and mining industries over the rights of Native Americans and the environment, coupled with his long history as an extreme advocate for the those industries, cast serious doubts on his willingness or ability to put aside his personal views in performing his official duties. His disturbing legal philosophy threatens a broad range of civil rights, labor, health, disability, and environmental protections. His poor ABA rating reflects his weak qualifications for a lifetime seat on the Ninth Circuit. In all respects, Mr. Myers appears to be a singularly poor choice for this critical court. I strongly urge you to reject this nomination.

Sincerely,

James Crouch
Executive Director

Cc: Indian Tribes in California
Tribal Health Programs

CIRCLE TRIBAL COUNCIL

Senator Orrin Hatch (Chairman)
104 Hart Office Building
Washington, DC 20510
Tel. (202) 224-5251
Fax. (202) 224-6331

Circle Tribal Council
Box 89
Circle, AK 99733
Tel. (907) 773-2884
Fax. (907) 773-2823

Dear Senator Hatch:

Circle Tribal Council writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William B. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued my Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLMPA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers's opinion-which overturned a well-reasoned legal opinion by his predecessor-wrote the term "undue " out of the statutory test, concluding that any practice necessary for the mining operation was by definition not "undue". It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers's legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

P. O. Box 89 Circle, Alaska 99733 Phone: (907) 773-2822 Fax: (907) 773-2823 E-mail: circletribalcouncil@yahoo.com

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction and disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers's nomination to the Ninth Circuit. We don not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,
Circle Tribal Council

July 19, 2004

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Leahy,

We, the undersigned civil rights, disability rights, senior citizens, women's rights, human rights, Native American, planning and environmental organizations, are writing to express our strong opposition to the confirmation of William G. Myers III to a lifetime seat on the United States Court of Appeals for the Ninth Circuit. Mr. Myers has neither obtained the qualifications necessary to serve on the Ninth Circuit nor demonstrated the ability to be fair and impartial as an appellate judge. He has devoted his career to advancing the interests of grazing and mining industries at the expense of the environment and the rights of Native Americans and tribal governments. His pursuit of that agenda continued unabated during his tenure on the public payroll as Solicitor of the Department of the Interior. His writings, public statements and legal work also reveal radical views on property rights, individual rights, and federal government authority—views that broadly threaten basic safeguards that are of critical concern to the millions of members represented by our organizations.

Mr. Myers lacks the qualifications necessary to serve on the Ninth Circuit. More than one-third of the panel of the American Bar Association's Standing Committee on the Federal Judiciary rejected Mr. Myers as "unqualified" for the bench, while not one considered him "well-qualified" for the position. Mr. Myers does not have significant litigation experience at either the trial or appellate level, and has not generated any important legal scholarship. In more than two years as Solicitor of the Interior Department, he produced just two formal legal opinions and one "correction" of his second opinion. By contrast, his predecessor produced 28 formal opinions during an eight-year tenure.

Even more troubling than what his record lacks is what it contains. As the Interior Department's chief lawyer, Mr. Myers regularly favored the interests of the mining and grazing industries over the rights of American Indian tribal governments, Native Americans, and the environment. One of his two formal solicitor opinions reversed a detailed opinion by his predecessor in order to pave the way for Secretary Gale Norton to reverse the decision of former Secretary Bruce Babbitt and allow reconsideration of Glamis Gold's proposed cyanide heap-leach gold mine in the Imperial Valley of California on lands sacred to the Quechan Indian

Nation and other Colorado River Tribes. A recent federal court decision rejected the result that Mr. Myers' reached and harshly criticized his reasoning.[1] Mr. Myers' opinion relied on twisting the meaning of the statutory word "or" to mean its opposite: "and." Mr. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

Although Glamis' representatives were granted meetings to urge their points of view on top Interior Department officials – an Inspector General report details numerous contacts with representatives of the mining industry on the subject – Mr. Myers' legal opinion and Secretary Norton's subsequent decision to approve the Glamis mine were issued without any input from the Quechan Indian Nation, which by law is entitled to government-to-government consultation.[2] This is especially disturbing in light of the Interior Department's responsibility as the lead agency in the federal government's trust and treaty relationship with the American Indian tribes.

The National Congress of American Indians (NCAI), which was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments, unanimously approved a resolution opposing Mr. Myers' nomination. This is the first time NCAI has opposed one of President Bush's judicial nominees. NCAI explained that Mr. Myers' actions as Interior Solicitor "show a deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments" and "could result in the extinguishment of the Quechan people's tribal heritage." *See* NCAI Resolution ABQ-03-061 (2003), *available at* http://www.ncai.org/data/docs/resolution/annual2003/03-061.pdf.

Mr. Myers' second formal opinion – and his subsequent correction to it – prevents even the voluntary retirement of federal grazing permits relinquished by ranchers in co-operation with groups like the Grand Canyon Trust, which has invested more than $1.5 million in its effort to retire grazing permits and reduce grazing impacts on publicly owned lands. These voluntary transactions enjoy wide, bipartisan support, but are opposed by the grazing industry. Mr. Myers went to great lengths to support the grazing lobby and undermine the efforts of environmentalists to use the free market to achieve conservation goals. Indeed, Mr. Myers has been so one-sided in his support of his former grazing clients that his actions have been the subject of two additional ethics investigations by the Interior Department's Inspector General. While the first of these investigations closed without finding actionable wrongdoing by Mr. Myers, the report painstakingly documents the continuous intimate contact between Mr. Myers and the industries he once represented, which shows, at the very least, poor judgment on the part of Mr. Myers. The IG is still working on an investigation into a stunningly one-sided and apparently illegal settlement agreement with a rogue grazer named H. Frank Robbins that was negotiated under Mr. Myers' watch.

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[1] Mineral Policy Center v. Norton, 2003 WL 22708450 (D.D.C. Nov. 18, 2003), *available at* http://www.dcd.uscourts.gov/01-73.pdf.

[2] The Department's role, and Mr. Myers' involvement, in the validity determination, finding Glamis Gold's mining claimed to be valid, was the subject of an Inspector General investigation in October 2002 through March 2003.

Especially for organizations concerned about environmental protection and the important natural resources within the Ninth Circuit, Mr. Myers' intemperate criticism of environmental safeguards and environmentalists provides further reason to question his capacity to serve as an impartial judge in environmental cases. Mr. Myers has compared the federal government's management of the public lands to King George's "tyrannical" rule over the American colonies and claimed that public land safeguards are fueling "a modern-day revolution" in the American West.[3] He has denounced the California Desert Protection Act as "an example of legislative hubris"[4] and claimed that many environmental laws have the "unintended consequence of actually harming the environment."[5] He has called environmental critics of his Department's policies the "environmental conflict industry" and he has stressed the "importance of . . . rejecting [their] scheming."[6]

Beyond the environmental arena, Mr. Myers has advocated an extreme legal philosophy that would also seriously threaten civil rights and other protections. This is illustrated by a Supreme Court "friend-of-court" brief Myers filed in *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt* on behalf of the National Cattlemen's Association. His status as both client and counsel in the case precludes an assertion that he does not espouse the views expressed in the brief and was merely representing his client. In *Sweet Home,* Mr. 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."[7] The Supreme Court has held that a very limited number of "fundamental" rights, including freedom of speech, are entitled to the highest level of protection ("strict scrutiny"). Such rights can be limited only if there is a compelling governmental interest, using means that are "narrowly tailored" to address the government's interest.

Mr. Myers' argument for elevating ranchers' property rights would place these rights above the vast majority of other rights, including many aspects of the right to privacy. Indeed Mr. Myers has praised what he called the Supreme Court's "retreat" from the protection of privacy.[8] His approach apparently would apply strict scrutiny to federal and local laws and regulations that limit the use of property. This revolutionary theory would return the federal courts to their discredited pre-New Deal role in which they stood as the guardians of property to the exclusion of almost all government reform and thus could lead to the invalidation as unconstitutional of a vast range of labor, health, environmental, disability, civil rights, zoning, and other basic laws that Americans have come to take for granted.

---

[3] William G. Myers III, *Western Ranchers Fed Up with Feds*, FORUM FOR APPLIED RES. & PUB. POL., Winter 1996 at 22.

[4] William G. Myers III, *Environmental Command and Control: The Snake in the Public Lands Grass*, *in* FARMERS, RANCHERS & ENVIRONMENTAL LAW 209 (1995)).

[5] *Id.* at 208.

[6] William Myers, *Agency Lawyer Has Obligation to Speak on Behalf of a Client*, IDAHO STATESMAN, Nov. 26, 2002, *available at* http://www.idahostatesman.com/Search/story.asp?id=26580.

[7] Brief of the National Cattlemen's Association and the CATL Fund, Babbitt v. Sweet Home Chapter of Communities for a Great Or., 515 U.S. 687 (1995).

[8] William G. Myers III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 DENVER U. L. REV. 1, 24-25 (1988); *see also*, William G. Myers III, *The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork,* 17 HASTINGS CONST. L.Q. 399 (1989-1990).

Challenges under the Takings Clause ordinarily focus on the impact of a regulation as applied to a particular claimant, but Mr. Myers argued in *Sweet Home* that key Endangered Species Act safeguards that apply to private property are facially unconstitutional. In other words, Mr. Myers believes that government lacks the authority to enact these safeguards under any circumstances. Mr. Myers thus proposed a radical extension of the Takings Clause that no court has ever countenanced. If accepted, Mr. Myers views could well require taxpayers to pay corporations simply for having to comply with health, labor, civil rights, and environmental protections.

The constitutional argument advocated by Mr. Myers in his "friend-of-court" brief to the Supreme Court in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* is equally extreme. Mr. Myers argued that Congress does not have the power under the Constitution's Commerce Clause to prevent a waste disposal facility from destroying waters and wetlands that serve as habitat for migratory birds. His brief suggests that "federal regulation of land use" is beyond congressional power because that area is "traditionally regulated by state and local governments."[9] The Commerce Clause is the authority upon which many of our most essential health, safety, environmental, and anti-discrimination laws are based. If protection of waters from pollution caused by a commercial waste disposal operation that threatens the interstate flight of migratory birds does not fall within the scope of the Commerce Clause, then a wide array of protections could also be subject to attack. That is why a large coalition of civil and human rights organizations filed a brief in *SWANCC* arguing that such a narrow interpretation of the Commerce Clause would "cast serious doubt on the previously well-accepted foundations of some of the central civil rights laws of our time."[10] Indeed, although the Court did not specifically rule on the constitutional issue in SWANCC, four justices dismissed the argument that Congress did not have power to regulate the wetlands as having "no merit."[11] This aspect of Mr. Myers' philosophy is extremely troubling, as is his claim that Robert Bork's judicial philosophy was "well within the parameters of acceptable constitutional theory, worthy of representation on the Supreme Court," despite the Senate's bipartisan rejection of Judge Bork's legal philosophy as out of the mainstream.[12]

Mr. Myers' record as Interior Solicitor of favoring the interests of the grazing and mining industries over the rights of Native Americans and the environment, coupled with his long history as an extreme advocate for the those industries, cast serious doubts on his willingness or ability to put aside his personal views in performing his official duties. His disturbing legal philosophy threatens a broad range of civil rights, labor, health, disability, and environmental protections. His poor ABA rating reflects his weak qualifications for a lifetime seat on the Ninth Circuit. In all respects, Mr. Myers appears to be a singularly poor choice for this critical court. We strongly urge you to reject this nomination.

---

[9] Brief of the American Farm Bureau Federation, the National Cattlemen's Beef Association, and the North Dakota Farm Bureau, *SWANCC*, 531 U.S. 159 (2001), *available at* 2000 WL 1059641.
[10] Brief of the Anti-Defamation League, et al, *SWANCC*, 531 U.S. 159 (2001), *available at* 2000 WL 1369409.
[11] 531 U.S. at 197 (Stevens, J. with Souter, Ginsburg, and Breyer,, J.J. *dissenting*).
[12] William G. Myers, III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 DENVER L. REV. 1 (1988) at 25.

Sincerely,

Caroline S. DuBois, Water Quality Coordinator,
Action for Long Island

Jim Ward, President,
ADA Watch/ National Coalition for Disability Rights

Laird J. Lucas, Executive Director,
Advocates for the West

Randy Virgin, Executive Director,
Alaska Center for the Environment

Tim Bristol, Executive Director,
Alaska Coalition

Michael Finkelstein, Director,
Alaska Rainforest Campaign

Nan Aron, President,
Alliance for Justice

Mark Salvo, Grasslands and Deserts Advocate,
American Lands Alliance

Jeff Soule, FAICP Policy Director,
American Planning Association

S. Elizabeth Birnbaum, Director of Government Affairs,
American Rivers

Amy Isaacs, National Director,
Americans for Democratic Action

Don Hoffman, Director,
Arizona Wilderness Coalition

Larry Fahn, Executive Director,
As You Sow Foundation

Jack Trope, Executive Director,
Association on American Indian Affairs

Susan Ash, Assistant Director of Conservation,
Audoben Society of Portland

Susan Heitker, Executive Coordinator,
Buckeye Forest Council

Cal Ryder, President,
Cabinet Resource Group

Phil Horowitz, Chairman,
California Employment Lawyers Association

Carol Witham, President,
California Native Plant Society

Mary L. Wells, Executive Director,
California Wilderness Coalition

Patty Clary, Director,
Californians for Alternatives to Toxics

Peter Altman, Director,
Campaign to Protect America's Lands

Martin Hayden,
Cascadia Wildlands Project

Daniel R. Patterson, Ecologist,
Center for Biological Diversity

John L. Wathen, Chair,
Citizens Coal Council

Donna Charpied,
Citizens for the Chuckwalla Valley

Bill Clymer, President,
Citizens for Victor!

Paul Schwartz, National Campaigns Director,
Clean Water Action

Rebecca Katers, Executive Director,
Clean Water Action Council (Oregon)

Dawn Hamilton, Executive Director,
Coast Alliance

Chuck Willer, Director,
Coast Range Association

Susan Lerner, Executive Director,
Committee for Judicial Independence

Douglas T. Kendall, Executive Director,
Community Rights Counsel

Bob Shavelson,
Cook Inlet Keeper

William Snape, Vice President and Chief Counsel,
Defenders of Wildlife

Steve Tabor, President,
Desert Survivors

Julia Epstein, Director of Communications,
Disability Rights Education and Defense Fund

Christopher McLeod, Sacred Land Film Project,
Earth Island Institute

Buck Parker, Executive Director,
Earthjustice

Dan Silver, Executive Director,
Endangered Habitats League

Beth Lowell, Policy Director,
Endangered Species Coalition.

Gordon R. Hensley, Executive Director/Coastkeeper,
Environment in the Public Interest

Linda Krop, Chief Counsel,
Environmental Defense Center

Meaghan Goodwin, President,
Environmental Law Association, University of Georgia School of Law

Environmental Law Caucus, Lewis and Clark Law School

Iryna Kwasny, Senior Staff Attorney,
Environmental Law Foundation

Environmental Law Society, Vermont Law School

Scott Greacen, National Forest Program Coordinator,
Environmental Protection Information Center

Ken Cook, President,
Environmental Working Group

Patrick Diehl, EWP Secretary,
Escalante Wilderness Project

Eugene Free Community Network

Russ Lehman, Managing Director,
First American Education Project

Jennifer M. Williams, Executive Director,
Florida Environmental Health Association, Inc.

John Horning, Executive Director,
Forest Guardians

Andy Stahl, Executive Director,
Forest Service Employees for Environmental Ethics

The Freedom Center

Timothy J Flood, Conservation Coordinator,
Friends of Arizona Rivers

Nathan Baker, Staff Attorney,
Friends of the Columbia Gorge

Sarah Zdeb, Legislative Director,
Friends of the Earth

Paul McFarland, Executive Director,
Friends of the Inyo

Tom Budlong, President,
Friends of the Panamints

Justine Thompson, Executive Director,
Georgia Center for the Law in the Public Interest

David Jennings, Chairman,
Gifford Pinchot Task Force

Bill Hedden, Executive Director,
Grand Canyon Trust

Susan Czopek, Political Director,
Great Basin Mine Watch

Veronica Egan, Executive Director,
Great Old Broads for Wilderness

Kathleen Henry, President,
Great Rivers Environmental Law Center

Dick Dolan, GYC Program Director,
Greater Yellowstone Coalition

Lynn Baker-Reynolds, President,
Headwaters

Leslie Mintz, Law and Policy
Heal the Bay

Ric Bailey, Executive Director,
Hells Canyon Preservation Council

Steve Glazer, Water Program Director
High Country Citizens' Alliance

John McCarthy, Policy Director,
Idaho Conservation League

Tom Goldtooth, National Director,
Indigenous Environmental Network

Nora McDowell, President,
Inter Tribal Council of Arizona
Chairwoman, **Fort Mojave Tribe**

W. Ron Allen, Executive Director,
Jamestown S'Klallam Tribe

Jonathan K. Osorio, Interim Director,
Kamakakuokalani Center for Hawaiian Studies, University of Hawai`i

Tom FitzGerald, Director,
Kentucky Resources Council, Inc.

Timothy J. Coleman, Executive Director,
Kettle Range Conservation Group

Klamath Forest Alliance

Spencer Lennard,
Klamath Siskiyou Wildlands Center

David Coyte, President,
The Knob and Valley Audubon Society of Southern Indiana

Barry Rosenberg, Executive Director,
Kootenai Environmental Alliance

Lake County Center for Independent Living

Mike Petersen, Executive Director,
The Lands Council

Kelly M. Dermody, Co-Chairwoman,
Lawyers Committee for Civil Rights of the San Francisco Bay Area

Wade Henderson, Executive Director,
Leadership Conference on Civil Rights

Betsy Loyless, Vice President for Policy,
League of Conservation Voters

Robin Bayer, President,
Magic

Sarah Standiford, Executive Director
Maine Women's Lobby

Jim Baker, President,
McKenzie Guardians

Lexi Shultz, Legislative Director,
Mineral Policy Center/ Earthworks

Dave Blouin, Coordinator,
Mining Impact Coalition of Wisconsin

Francisco Apodaca,
Mining Reform Campaign Manager
Mining Impacts Communication Alliance

Anne Hedges, Program Director
Montana Environmental Information Center

Suzan Shown Harjo, President,
The Morning Star Institute

Andy Lange, President,
National Association of the Deaf

Tex Hall, President,
National Congress of American Indians

Frederick M. Gittes, President,
National Employment Lawyers Association

Kevin S. Curtis, Vice President,
National Environmental Trust

Andrew George, Campaign Coordinator,
National Forest Protection Alliance

Kim Gandy, President,
National Organization for Women

Jocelyn C. Frye, Director of Legal and Public Policy,
National Partnership for Women & Families

Ed King, Executive Director,
National Senior Citizens Law Center

David F. Conrad, Executive Director,
National Tribal Environmental Council

Manu Ka`iama, Director,
Native Hawaiian Leadership Project

Gregory A. Thomas, President,
Natural Heritage Institute

David McIntosh, Staff Attorney,
Natural Resources Defense Council

Joshua R. Daniels, Chair,
New Leadership for Democratic Action

David R. Parsons, Executive Director,
New Mexico Wilderness Alliance

Aileen Martin, Executive Director,
Northern Regional Center for Independent Living

Dave Werntz, Science Director,
Northwest Ecosystem Alliance

Nina Bell, Executive Director,
Northwest Environmental Advocates

Mark Riskedahl, Executive Director,
Northwest Environmental Defense Center

Rion Ramirez, President,
Northwest Indian Bar Association

Jasmine Minbashian, Coordinator
Northwest Old-Growth Campaign

Kathy Rodgers, President,
Legal Momentum, formerly NOW Legal Defense and Education Fund

Ellen M. Athas, Program Counsel & Director,
The Ocean Conservancy

James R. Cox, President,
Oilfield Waste Policy Institute

David Kleigman, Executive Director
Okanogan Highlands Alliance

Teresa San Miguel, Program Coordinator
Ola'a Community Center

Bonnie Phillips, Conservation Chair,
Olympic Forest Coalition

Bill Marlett, Executive Director,
Oregon Natural Desert Association

Jay Ward, Conservation Director,
Oregon Natural Resources Council

Stephanie M. Parent, Acting Director,
Pacific Environmental Advocacy Center

Donald E. Heacock, President,
Pacific Islands Community EcoSystems Kauai District Aquatic Biologist, Hawaii Dept. Land & Natural Resources

Ralph Neas, President,
People for the American Way

Robert Hancock, President,
Placer Independent Resource Services, Inc.

Daniel J. Sokatch, Executive Director,
Progressive Jewish Alliance

Jeff Ruch, Executive Director,
Public Employees for Environmental Responsibility

Mike Jackson, Sr., President,
Quechan Indian Nation

Arlan Melendez, Chairman,
Reno-Sparks Indian Colony

Jim DiPeso, Policy Director,
REP America

Huey Johnson, President,
Resource Renewal Institute

Mary C. Mitchell, Executive Director
Rock Creek Alliance

Bruce Reznik, Executive Director,
San Diego BayKeeper

Mark Pearson, Executive Director,
San Juan Citizens Alliance

Tracy J. Egoscue, Executive Director
Santa Monica Baykeeper

Richard Hill, President,
Save the Valley, Inc.

Mark Sprengel, Executive Director
Selkirk Conservation Alliance

Carl Pope, President,
Sierra Club

David Johns, President,
Siskiyou Project

Kenyon Fields, Executive Director,
Sitka Conservation Society

Holly Maguigan and Beto Juarez, Co-Presidents,
Society of American Law Teachers

Heidi McIntosh, Conservation Director,
Southern Utah Wilderness Alliance

Kevin Bixby, Executive Director,
Southwest Environmental Center

Harold Phillips, President,
St. Lucie Audubon Society

Renée Victoria Hoyos, Executive Director,
Tennessee Clean Water Network

Penny Lind, Executive Director,
Umpqua Watersheds

John Fortuna,
University of Georgia School of Law, Environmental Law Association

Anna Aurilio, Legislative Director,
U.S. Public Interest Research Group

John Blair, President,
Valley Watch, Inc.

Stacy Sproat, Executive Director,
Waipa Foundation

Joan Crooks, Executive Director
Washington Environmental Council

Robert Pregulman, Executive Director,
WashPIRG

Shana Lazerow, San Francisco Baykeeper Program Director,
Waterkeepers Northern California

Jeremy P. Muller, Executive Director,
West Virginia Rivers Coalition

Greg Costello, Executive Director,
Western Environmental Law Center

Janine Blaeloch, Director,
Western Land Exchange Project

Douglas Parham, President,
Western San Bernardino County Landowner's Association

Jon Marvel, Executive Director,
Western Watersheds Project

Leslie Jones, Deputy General Counsel,
The Wilderness Society

Bethanie Walder, Executive Director,
Wildlands CPR

Vince Meleski, Program Director,
Wild South

Dan Heilig, Executive Director,
Wyoming Outdoor Council

Bill Calvert, Treasurer,
Yuba Goldfields Access Coalition

2/18/2005 9:36 AM FROM: Fax Colorado Cattlemen's Association [redacted]

February 14, 2005

The Honorable Orrin G. Hatch
United States Senate
224 Dirksen Senate Office Building
Washington , DC 20510

Via Facsimile: 202-228-1698

Dear Chairman Hatch:

On behalf of the more than 2,500 members of the Colorado Cattlemen's Association (CCA), I would like to strongly support the confirmation of the President's nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

Mr. Myers' experience and proven record qualify him for this distinctive seat in the ninth Circuit. Mr. Myers' integrity and competency is well known, and most recently exemplified in his service as Solicitor for the United States Department of the Interior. In this position, Mr. Myers was tasked with numerous issues that carried a significant degree of complexity for the Department of the Interior and those it serves. The very issues Mr. Myers worked with as Solicitor have presented, and will continue to present themselves in the Ninth Circuit. The distinctively well-balanced approach that Mr. Myers exercises will bode well in his duties as a judge on the United States Court of Appeals, if confirmed.

On a personal note, I am assured that Mr. Myers' integrity and ethic are second to none. It is these values that our judiciary has required, and continues to require, at the highest of levels. In closing, the Colorado Cattlemen's Associations asks that the Senate favorably consider Mr. Myers as a judge to the United States Court of Appeals Ninth Circuit.

Greatest Regards,

Lucy C Meyring

Lucy Meyring
President

cc: Senator Wayne Allard
Senator Ken Salazar

8833 Ralston Road, Arvada, CO 80002-2239 – Phone (303) 431-6422 – Fax (303) 431-6446
info@coloradocattle.org – www.coloradocattle.org

Confederated Tribes of Siletz Indians
P.O. Box 549 Siletz, Oregon 97380
(541) 444-2532 • 1-800-922-1399 • FAX: (541) 444-2307

February 2, 2004

Senator Ron Wyden
United States Senate
Washington, DC 20510

Senator Gordon Smith
United States Senate
Washington, DC 20510

Dear Senators:

I am writing on the behalf of the Confederated Tribes of Siletz Indians to express our opposition to the confirmation of William G Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

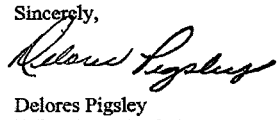
As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Meyers' opinion-which overturned a well-seasoned legal opinion by his predecessor-wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FMLPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska and Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and million of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reason, we formally oppose Myers's nomination to the Ninth Circuit. We do not take this step lightly-but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,



Delores Pigsley
Tribal Council Chairman

cc: Members of the Senate Judiciary Committee

Congress of the United States
Washington, DC 20515

March 31, 2004

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Leahy:

We write as concerned members of Congress to respectfully urge you to reject the nomination of William G. Myers III to a lifetime seat on the United States Court of Appeals for the Ninth Circuit. Many of us represent districts within the Ninth Circuit, and we are particularly concerned about Mr. Myers' ability to set his personal views aside and serve as a neutral arbiter on the federal appellate court that is our nation's largest.

Specifically, we believe that Mr. Myers' lack of relevant judicial experience, combined with his record of marked hostility toward the vital role the federal government plays in safeguarding our environment – especially in California and the West – do not reflect the qualifications and values that a federal court judge should embody.

Mr. Myers has spent significantly less time in a courtroom than the vast majority of those nominated for similar positions – including Janice Rogers Brown and Carolyn Kuhl, neither of whose nominations was approved by the Senate. And by virtually any measure, he has had fewer years of relevant experience than any of the current judges of the Ninth Circuit, having never served as a judge at any level, nor clerked in a court, nor conducted a jury trial. Indeed, his objective credentials are extremely meager. The American Bar Association's Standing Committee on the Federal Judiciary gave this nomination its lowest passing grade, with over one-third of the reviewing committee awarding an unqualified rating, and not one member of the committee rating him "well-qualified."

Because Mr. Myers does not have a judicial record to review, we must look at his career as Interior Solicitor and as a lobbyist and lawyer for industries with an interest in the development of public lands. In these capacities, Mr. Myers demonstrated that his views on the key constitutional questions concerning our environment are at odds with prevailing law. Specifically, he has put forward extreme views on property rights, and has suggested that the Commerce Clause should be read so narrowly as to preclude Congress' ability to protect water resources and endangered species. Especially because Mr. Myers' only published legal opinions as Interior Solicitor directly catered to the very industries he used to represent as a lobbyist and lawyer, we think it is reasonable to conclude that these stated positions represent Mr. Myers' own viewpoint.

PRINTED ON RECYCLED PAPER

Of particular concern to us was the opinion issued by then-Solicitor Myers that paved the way for Interior Secretary Gale Norton's decision in the case of the Glamis mine. The decision by then-Secretary Bruce Babbitt to deny a permit was made after nearly six years and hundreds of hours of consultation. Mr. Myers' reversal of his predecessor's detailed opinion, and Secretary Norton's decision to reverse course and issue a permit, was made in only a few months and did not include any public input, other than meetings with mining industry officials. The Interior Department did not meet with representatives of the Quechan Tribe, to whom they owe a legal trust responsibility, even though the site of the proposed mine lies on the Tribe's ancestral land. According to the Advisory Council on Historic Preservation, the mine would be "so damaging to historic resources that the Quechan Tribe's ability to practice their sacred traditions as a living part of their community life and development would be lost."

In December 2001, many of us wrote to Secretary Norton urging her not to reverse the Interior Department's policy on the basis of Mr. Myers' new opinion. Last fall, a federal district court harshly criticized the basis of Mr. Myers' reinterpretation of the Federal Land Policy and Management Act (FLPMA). The judge held that Mr. Myers' attempt to interpret FLPMA's "unnecessary or undue" degradation standard as having the same meaning as the term "unnecessary and undue" was "erroneous," and that Myers "misconstrued the clear mandate of FLPMA" by failing to apply three "well-established canons of statutory construction." (Mineral Policy Center v. Norton, 2003 WL 22708450 (D.D.C. Nov. 18, 2003)).

We are also concerned that as an advocate for the beef industry, Mr. Myers wrote that the California Desert Protection Act was an act of "legislative hubris." The bill passed the Senate by a vote of 69-29, and the House version passed by the overwhelming margin of 298-128. Those of us who held our current offices during the 103rd Congress all supported this landmark conservation measure. We are extremely troubled by Mr. Myers' characterization, particularly as we know California's Senior Senator went to great lengths to ensure that grazing privileges could continue at then-current levels. There are few places in the nation where grazing interests enjoy the statutory considerations provided by the Desert Act. In addition, although Mr. Myers has claimed that the basis for his "hubris" comment was his concern for ranchers' potential loss of watering sites, the Act specifically provides for the maintenance of "guzzlers" (watering devices) in the desert that are utilized by both livestock and wildlife. We believe that this disconnect between the legislative evidence and Mr. Myers' interpretation raises a number of disturbing possibilities: either Mr. Myers did not read the law before he wrote his hyperbolic article, he failed to grasp what he was reading, or he believes that any efforts by Congress to promote environmental protection constitute hubris.

You have no doubt seen for yourself many other examples of Mr. Myers' extreme and ideological approach to land use and the stewardship of our environment, issues that we and our constituents value highly. Because the Ninth Circuit has such an important role to play in these critical issues, Mr. Myers' record as an advocate for special interests – even

The Honorable Orrin Hatch
The Honorable Patrick Leahy
March 31, 2004
Page 3

when he was tasked with overseeing those interests for the public good – is deeply disturbing to us. We are led to the conclusion that Mr. Myers is a poor choice to be granted a lifetime appointment to the circuit court that contains more National Parks, National Forests, and other federal public lands than any other circuit. We respectfully, but strongly, urge you to reject his nomination.

Thank you for your consideration.

Sincerely,

George Miller, M.C.

Nancy Pelosi, M.C.

Peter A. DeFazio, M.C.

Raúl Grijalva, M.C.

Xavier Becerra, M.C.

Earl Blumenauer, M.C.

Luis V. Gutierrez, M.C.

Grace F. Napolitano, M.C.

Jane Harman, M.C.

Adam Smith, M.C.

Tom Lantos, M.C.

Anna G. Eshoo, M.C.

Ed Pastor, M.C.

Susan A. Davis, M.C.

The Honorable Orrin Hatch
The Honorable Patrick Leahy
March 31, 2004
Page 4

Dennis A. Cardoza, M.C.

Jim McDermott, M.C.

Jay Inslee, M.C.

Barbara Lee, M.C.

Zoe Lofgren, M.C.

Brad Sherman, M.C.

Bob Filner, M.C.

Ellen O. Tauscher, M.C.

Henry A. Waxman, M.C.

Hilda L. Solis, M.C.

Joe Baca, M.C.

José E. Serrano, M.C.

Linda T. Sánchez, M.C.

Lois Capps, M.C.

Lucille Roybal-Allard, M.C.

Lynn C. Woolsey, M.C.

Maxine Waters, M.C.

Michael M. Honda, M.C.

The Honorable Orrin Hatch
The Honorable Patrick Leahy
March 31, 2004
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Mike Thompson, M.C.

Diane E. Watson, M.C.

Robert T. Matsui, M.C.

Sam Farr, M.C.

Pete Stark, M.C.

Juanita Millender-McDonald, M.C.

Neil Abercrombie, M.C.

Adam B. Schiff, M.C.

Rick Larsen, M.C.

Loretta Sanchez, M.C.

MIKE CRAPO
U.S. SENATOR
IDAHO
DEPUTY WHIP
CO-CHAIRMAN, WESTERN WATER CAUCUS
CO-CHAIRMAN, SPORTSMEN'S CAUCUS
CO-CHAIRMAN, COPD CAUCUS
Internet/e-mail:
http://crapo.senate.gov

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
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Statement from Senator Mike Crapo

Senate Judiciary Committee hearing on the nomination of William G. Myers III to be a Circuit Judge on the U.S. Court of Appeals for the Ninth Circuit

Mr. Chairman, I apologize to you and to Bill Myers that I am not able to make this statement in person to the Committee. Like you, Chairman Specter, I am currently undergoing treatment for cancer, and that treatment schedule has prevented me from appearing before the Committee this morning.

While I am pleased to have this opportunity to once again speak to this Committee in support of Bill Myers, it is unfortunate that Bill must sit through this again, instead of sitting on the 9th Circuit, where he should be. As evidenced by last year's cloture vote, it is already clear that Bill's nomination has the support of a majority of the members of this Senate to be confirmed on an up or down vote.

Former Solicitor of the Interior, Bill Myers of Idaho, is a highly respected attorney and has extensive experience in the field of natural resources, public lands and environmental law. His nomination enjoys widespread support from across the ideological and political spectrum. Bill Myers was confirmed by this Senate by unanimous consent to serve as the third-ranking official at the Department of Interior. He served in this position from July 2001 to October 2003. From 1989 to 1992, Bill Myers served as Assistant to the Attorney General of the United States. Before entering the Justice Department, Bill served for over four years as Legislative Counsel for our former colleague from Wyoming, Senator Alan Simpson.

Former Democratic Governor of Idaho Cecil Andrus, who also served as Interior Secretary in the Carter Administration, says that Bill Myers possesses "the necessary personal integrity, judicial temperament and legal experience" as well as "the ability to act fairly on matters of law that will come before him on the court." Former Democratic Governor of Wyoming Mike Sullivan, who also served as Ambassador to Ireland during the Clinton Administration has endorsed Bill Myers. He calls Mr. Myers "a thoughtful, well-grounded attorney who has reflected by his career achievements a commitment to excellence." He also says

WASHINGTON, DC
239 Dirksen Senate Office Bldg.
Washington, DC 20510
(202) 224-6142

BOISE
251 East Front Street
Suite 205
Boise, ID 83702

CALDWELL
524 E. Cleveland Blvd.
Suite 220
Caldwell, ID 83605

COEUR D'ALENE
610 Hubbard
Suite 208
Coeur d'Alene, ID 83814

IDAHO FALLS
490 Memorial Drive
Suite 102
Idaho Falls, ID 83402

LEWISTON
313 D Street
Suite 105
Lewiston, ID 83501

POCATELLO
275 S. 5th Avenue
Suite 226
Pocatello, ID 83201

TWIN FALLS
202 Falls Avenue
Suite 2
Twin Falls, ID 83301

Bill Myers "would provide serious, responsible and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedents or the merits of a given matter." As a nominee to fill an Idaho seat on the 9th Circuit, Bill Myers has the full support of the entire Idaho congressional delegation.

I am also aware that there are certain special interest groups out there that are expressing some criticism over this nominee. It is important to note that this criticism is largely over the policies advocated by the Administrations or the clients he served as a requirement of his job. Such criticism has no bearing on the experience, temperament or overall qualification of Bill Myers, himself, to capably serve on the 9th Circuit.

As I said earlier, Bill Myers has already won the support of a majority of members of this Senate. I have the fullest confidence that he possesses the qualities necessary to capably serve all citizens of the 9th Circuit and I join my colleague, Senator Craig, in urging this Committee to vote favorably on this nomination.

Thank you Mr. Chairman.

CHARLES D. CUDDY
DISTRICT 8
CLEARWATER, IDAHO, LEWIS & VALLEY COUNTIES

HOME ADDRESS
P.O. BOX 84
ORDFINO, IDAHO 83544
WORK (208) 476-4843
HOME (208) 476-3729

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
TRANSPORTATION & DEFENSE
LEGISLATIVE COUNCIL

House of Representatives
State of Idaho

January 23, 2004

Honorable Orrin G Hatch
Chairman, U.S. Senate Judiciary Committee
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510
(F) 202-228-1698

RE: Mr. William Myers, Senate Confirmation to the U.S. 9th Circuit Court of Appeals

Dear Honorable Orrin G Hatch:

I believe Mr. William Myers would full fill the office and duties of a U.S. Court of Appeals Judge located in the 9th Circuit Court, with the upmost honesty and integrity.

Since becoming an Idaho State Legislator 13 years ago, I have had the opportunity to work with Mr. Myers on federal land management issues. This committee attempted and succeeded at facilitating management policies and procedures, providing efficiency, product production, and healthy forests in an environmentally sound manner.

This project involved discussions regarding endangered species, old growth timber, water quality, local economics and implementing land management processes and procedures. Mr. Myers was the chairperson of this committee which consisted of environmental advocates, recreationist, industry and labor, as well as national, state and local Representative.

As expected, this committee had to deal with controversial issues that required thoughtful deliberation in order to compile acceptable resolutions. As chairperson of this committee, Mr. Myers held the discussions on a very professional level with high quality and standard, while maintaining congressional order and produced workable conclusions.

Mr. Myers' capability to conduct these meetings in a positive and forward-moving manner without indicating bias convinced me that he is a very disciplined person and would work to gain conclusions based on factual evidence.

It is my pleasure to endorse the confirmation and appointment of Mr. William Myers to the U.S. 9th Circuit Court of Appeals. I also believe that it is very important to Idaho's citizens and the West as a whole to maintain integrity within the 9th Circuit.

Sincerely,

Honorable Charles Cuddy, Idaho State Representative

CC: Honorable Pat Leahy, Ranking Member-U.S. Senate,
U.S. Senate Judiciary Committee (F) 202-224-9516

BC: Legal Policy (F) 202-353-6192
B.C. Bob Maynard (F) 208-343-3434

DELAWARE TRIBE OF INDIANS

220 N.W. VIRGINIA • BARTLESVILLE, OKLAHOMA 74003
TELEPHONE: (918) 336-5272 • FAX: (918) 336-5513

February 12, 2004

The Honorable Orrin Hatch
104 Hart Office Bldg.
Washington, DC 20510

Dear Senator Hatch,

The Delaware Tribe of Indians writes to express its opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. We believe that the President is entitled to receive the consent of the Senate for his judicial appointments unless there are serious concerns regarding judicial fitness. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As you know, the United States government has acquired ownership of hundreds of millions of acres of land formerly occupied by American Indian and Alaska Native tribes. Among these lands are sacred sites that are essential to the practice of numerous Native American religions. With this ownership, the government has assumed a vital stewardship responsibility for the maintenance and protection of sites of religious significance, a responsibility recognized in basic land management statutes such as the Federal Land Policy and Management Act (FLPMA).

As Solicitor of the Department of the Interior for the first two years of the Bush Administration, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the free exercise of religion for many Native American people. A glaring example is the recent decision by the Department of Interior to reconsider the denial of a permit for a massive cyanide heap leach gold mine that would destroy thousands of acres of land in the California desert. The original denial of a mining permit to Canada's Glamis Imperial Gold Company was the result of a multi-year process in which several tribes actively participated.

In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the sweeping and clearly erroneous conclusion that the Glamis permit denial had to be reconsidered because the Bureau of Land Management (BLM) did not

have authority under the FLMPA to prevent undue degradation of public lands that was necessary to a mining operation.

The issue concerns the meaning of the word "or" in the requirement of FLPMA that the Department of the Interior protect against public land degradation that is "unnecessary or undue." Myers' opinion, which overturned a well-reasoned legal opinion by his predecessor, wrote the term "undue" out of this statutory text, concluding that any practice necessary for a mining operation was by definition not "undue". While specifically addressing only the Glamis project, Myers' opinion will block BLM from preventing undue degradation of millions of acres of public land.

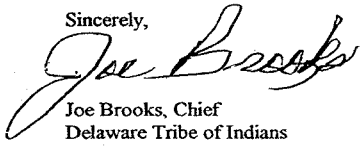
It's hard to imagine a more fundamental misreading of the language and intent of FLMPA. As federal district Judge Henry Kennedy jr., the only judge to have reviewed Myers' handiwork, has stated, "the Solicitor misconstrued the clear mandate of FLMPA" and failed to apply three "well-established canons of statutory construction." Rejecting Myers' analysis, the court held: FLPMA by its plain terms, vests the Secretary of Interior with the authority, and indeed the obligation, to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land." No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench.

Equally troubling to Native Americans is the shameful exclusion of any engagement in government-to-government consultation with the Colorado River tribes before reopening the Glamis debate.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, and Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, the Delaware Tribe of Indians opposes Myers' nomination to the Ninth Circuit. We do not take this step lightly, but when a nominee has acted with such blatant disregard for federal law and our sacred places, we must speak out.

Sincerely,



Joe Brooks, Chief
Delaware Tribe of Indians

Cc: Delaware Tribal Council
Delaware Trust Board

Worldwide Office
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203-1606

tel [703] 841-5300
fax [703] 841-1283
nature.org

January 15, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Honorable Hatch:

It has been brought to my attention that my friend and professional colleague Bill Myers has been nominated to the United States Court of Appeals for the Ninth Circuit. I strongly support this nomination.

I have known Bill for several years during his service to both the public and private sectors. My closest working experience with Bill involved a conservation project in the Southwest known as the Malpai Borderlands Group (MBG) where Bill participated as an advisor. His involvement in this project was significant for two reasons. First it was an opportunity for the MBG to get the benefit of Bill's expertise. More importantly, Bill's balanced approach to the protection of our nation's natural resources further enhanced MBG's ability to work collaboratively with a diverse representation of public and private agencies and individuals.

You have much background material which demonstrates Bill's intelligence, legal acumen and responsible work ethic. However it is Bill's willingness and ability to understand and accept the importance of a fair, evenhanded and inclusive approach to problem solving that will guarantee great performance as a member of the Court of Appeals.

Thank you for this opportunity to support my friend and colleague.

Sincerely,

Michael Dennis
Director, Conservation Real Estate and Private Lands

MICHAEL DENNIS
ATTORNEY AT LAW
POST OFFICE BOX 473
ROUND HILL, VA 20142
540-338-2476

February 17, 2004

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Ranking Member Leahy:

On January 15, 2004, I wrote a letter to you supporting the nomination of William Myers to the United States Court of Appeals for the Ninth Circuit. The purpose of this letter is to confirm that my earlier letter was an expression of my personal support for Bill.

In error, I sent my earlier letter out on Nature Conservancy letterhead which could create the impression that the Conservancy was supporting Bill's nomination. That impression is incorrect because the Conservancy does not endorse candidates for public office or judicial nominees.

I apologize for any confusion or misimpressions caused by my January 15 letter. Do not hesitate to call me if you have further questions concerning this matter.

Very truly yours,

Statement of Sen. Dick Durbin
Senate Judiciary Committee
Executive Business Meeting
March 17, 2005

Nomination of William G. Myers III for the U.S. Court of Appeals for the 9th Circuit

I will vote against the nomination of William G. Myers III for the U.S. Court of Appeals for the 9th Circuit. I voted against him last year and was sorry to see him renominated by President Bush. The Myers nomination is bad for the environment and should not be recycled.

I discussed the reasons for my opposition on the Senate floor on July 20, 2004 and on April 1, 2004 in the Judiciary Committee, when we fully considered this nomination in the last Congress. Nothing has occurred over the past year that changes my opinion of this nominee.

Mr. Myers' loyalty to the grazing and mining industries and to ranchers has been undivided and passionate. If I owned a mining company or a ranch and I needed a lobbyist, Mr. Myers would be the first person I would call. But I have concerns about whether Mr. Myers can walk away from a lifetime of lobbying for these special interests and be fair as a judge on the nation's second highest court.

For example, in a case from my home state of Illinois, *Solid Waste Agency of Northern Cook County v. United States Corps of Engineers,* Mr. Myers argued on behalf of the National Cattlemen's Beef Association that federal regulation of certain land use was beyond the Commerce Clause power of Congress because that area is traditionally regulated by state and local governments. Mr. Myers' narrow reading of the Commerce Clause would jeopardize essential health, safety, environmental, and antidiscrimination laws.

In another Supreme Court case, *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, Mr. Myers argued on behalf of the National Cattlemen again, 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."

He argued that the freedom claimed by a rancher to use his property was equivalent to our freedom of speech under the Constitution. This is an argument that would make any cowboy blush. Mr. Myers should have known better. He should have known that the Supreme Court has held that only a very limited number of rights are so fundamental, such as freedom of speech and the right to privacy. Mr. Myers' celebration of property rights is reminiscent of the *Lochner* decision, an era when our courts held that property and economic rights trumped almost all others. All but the most radical thinkers have rejected this ancient, discredited view.

The 9th Circuit is a crucial battleground circuit. It hears a great many cases pitting property rights against environmental regulation. I have searched in vain for any

evidence that Mr. Myers could rule on such cases with an open mind. I can't find it. In a 1998 article entitled "Litigation Happy," Mr. Myers expressed strong concerns about environmental litigation. He complained: "Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare."

He wrote another article in which he compared the federal government's management of public lands to King George's tyrannical rule of the American colonies, and he claimed that public land safeguards are fueling "a modern-day revolution" in the West.

Mr. Myers has stated that many environmental laws have the "unintended consequence of actually harming the environment."

He has denounced the California Desert Protection Act, a significant environmental law that we passed in 1994, thanks to the leadership of our colleague, Senator Feinstein. Mr. Myers called that particular law "an example of legislative hubris." At his February 2004 hearing he acknowledged his remark was a "poor choice of words," and I appreciated his concession. But as the *San Francisco Chronicle* put it: "Poor choices of words seem to be the rule, not the exception, in Myers' career."

President Bush rewarded Mr. Myers for his track record of advocacy by appointing him to be the top lawyer at the Department of Interior in 2001. While there, he formulated several important policy changes that favored the industries that he traditionally represented in public life.

He issued a controversial legal opinion that prevented the voluntary retirement of federal grazing permits. These voluntary retirements had enjoyed bipartisan political support, but they were opposed by the grazing industry. He also wrote a legal opinion overturning the policy of the Clinton administration and allowed for mining of the 1,600-acre Glamis open-pit gold mine.
This decision was strongly opposed by the Quechan Indian Nation because the mining violates their sacred lands.

Because of his role in the Glamis project, Mr. Myers' nomination has been opposed by the National Congress of American Indians, the first time this organization of 500 tribes has ever opposed a judicial nominee.

In addition, he has been opposed by virtually every major environmental group, including the National Wildlife Federation, which has never opposed a judicial nominee in its history.

I am also concerned about Mr. Myers' leadership and management of the Solicitor's office. A recent report from the Interior Department's Inspector General condemned a settlement agreement that his office reached with Wyoming rancher Harvey Frank Robbins under his watch. Although I will take his word that he did not review the settlement before it was agreed to and that he was unaware of its contents, I believe he

bears responsibility for the actions of his staff. According to the IG's report, Robert Comer, one of his top political aides, acted "with total disregard for the concerns voiced by career field personnel" and "distorted the position of the U.S. Attorney's Office" in reaching the settlement agreement. Mr. Myers acknowledged at his recent hearing that he personally hired Mr. Comer and later promoted him.

A final concern I have about Mr. Myers is his minimal courtroom experience. He is seeking a spot on the second highest court in the land and comes to this nomination with extremely limited experience in a courtroom. Mr. Myers' exposure to the courtroom has apparently been limited to watching the second half of "Law and Order."

He has never handled a case that went before a jury in 24 years of legal practice. He has participated in only three trials and he has no criminal litigation experience whatsoever. His lack of legal experience may explain why Mr. Myers received the ABA's lowest passing grade: "majority qualified" and "minority not qualified."

I believe President Bush can do better by the 9th Circuit. I don't think Mr. Myers should receive a lifetime appointment to the second highest court in the country.

In addition, I note that today's Committee vote seems less about the nomination of William Myers than it is about the detonation of the "nuclear option." Over the past several weeks, Majority Leader Frist, Senator Hatch, and their allies have talked about their plan for judicial nominations. Their design is now painfully clear. They are preparing a frontal assault on one of the most important principles of our Constitution: the checks and balances carefully crafted by our founding fathers to protect the abuse of power in our government. By eliminating the filibuster for judicial nominations, the Senate majority would discard over 200 years of history and destroy the one protection remaining for the minority in the Senate.

ELKO BAND COUNCIL

1745 Silver Eagle Drive • Elko, Nevada 89801
775-738-8889 • Fax 775-753-5439

February 2, 2004

Senator Patrick Leahy (Ranking Member)
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Patrick Leahy:

Elko Band Council writes to express our opposition to the confirmation of Williams G. Meyers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Meyers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

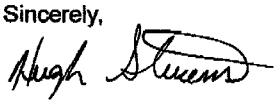
Myers's opinion – which overturned a well-reasoned legal opinion by his predecessor – wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers's legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important

important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers' nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,



Hugh Stevens, Vice-Chairman
Elko Band Council

Over 175 Environmental, Native American, Labor, Civil Rights, Disability, Women's and other Organizations Oppose the Confirmation of William Myers to a Lifetime Seat on the U.S. Court of Appeals for the Ninth Circuit

National Groups (57)

ADA Watch/National Coalition for Disability Rights
AFL-CIO
American Federation of State, County and Municipal Employees (AFSCME)
Alliance for Justice
American Lands Alliance
American Planning Association
American Rivers
Americans for Democratic Action
Association on American Indian Affairs
Bazelon Center for Mental Health Law
Campaign to Protect America's Lands
Citizens Coal Council
Clean Water Action
Coast Alliance
Community Rights Counsel
Defenders of Wildlife
Disability Rights Education and Defense Fund
Earth Island Institute
Earthjustice
Endangered Species Coalition
Environmental Law Association
Environmental Working Group
First American Education Project
Forest Service Employees for Environmental Ethics
Friends of the Earth
Indigenous Environmental Network
Leadership Conference on Civil Rights
League of Conservation Voters
Mineral Policy Center/Earthworks
The Morning Star Institute
NAACP
National Association of the Deaf
National Congress of American Indians
National Employment Lawyers Association
National Environmental Trust
National Forest Protection Alliance
National Organization for Women
National Partnership for Women and Families
National Senior Citizens Law Center
National Tribal Environmental Council
National Wildlife Federation
Natural Heritage Institute
Natural Resources Defense Council
New Leadership for Democratic Action
NOW Legal Defense and Education Fund
The Ocean Conservancy
People For the American Way
The Polio Society
Progressive Jewish Alliance
PEER (Public Employees for Environmental Responsibility)
REP America (Republicans for Environmental Protection)
Service Employees International Union
Sierra Club
Society of American Law Teachers
U.S. Public Interest Research Group
Waterkeeper Alliance
The Wilderness Society

Regional, State and Local Groups (120)

Action for Long Island
Advocates for the West
Affiliated Tribes of Northwest Indians
Alaska Center for the Environment
Alaska Coalition
Alaska Rainforest Campaign
Arizona Wilderness Coalition
As You Sow Foundation
Audubon Society of Portland
Buckeye Forest Council
Cabinet Resource Group
California Employment Lawyers Association
California Nations Indian Gaming Association
California Native Plant Society
Californians for Alternatives to Toxics
California Wilderness Coalition
Cascadia Wildlands Project
Center for Biological Diversity
Citizens for the Chuckwalla Valley
Citizens for Victor
Clean Water Action Council
Coast Range Association
Coeur d'Alene Tribe
Colorado Springs Independence Center
Committee for Judicial Independence
Confederated Tribes of the Colville Reservation in Washington State
Cook Inlet Keeper
Desert Survivors
Endangered Habitats League

Environmental Defense Center
Environmental Law Caucus, Lewis and Clark Law School
Environmental Law Foundation
Environmental Law Society, Vermont Law School
Environmental Protection Information Center
Environment in the Public Interest
Escalante Wilderness Project
Eugene Free Community Network
Florida Environmental Health Association
Forest Guardians
The Freedom Center
Friends of Arizona Rivers
Friends of the Columbia Gorge
Friends of the Inyo
Friends of the Panamints
Georgia Center for Law in the Public Interest
Gifford Pinchot Task Force
Grand Canyon Trust
Great Basin Mine Watch
Greater Yellowstone Coalition
Great Old Broads for Wilderness
Great Rivers Environmental Law Center
Headwaters
Heal the Bay
Hells Canyon Preservation Council
High Country Citizens' Alliance
Idaho Conservation League
Inter Tribal Council of Arizona
Jamestown S'Klallam Tribe
Kamakakuokalani Center for Hawaiian Studies
Kentucky Resources Council, Inc.
Kettle Range Conservation Group
Klamath Forest Alliance
Klamath Siskiyou Wildlands Center
Knob and Valley Audubon Society of Southern Indiana
Kootenai Environmental Alliance
Lake County Center for Independent Living
The Lands Council
Magic
Maine Women's Lobby
McKenzie Guardians
Mining Impact Coalition of Wisconsin
Mining Impacts Communication Alliance
Montana Environmental Information Center
Native Hawaiian Leadership Project
Northern Regional Center for Independent Living
Northwest Ecosystem Alliance
Northwest Environmental Advocates
Northwest Environmental Defense Center
Northwest Indian Bar Association
Northwest Old-Growth Campaign
Oilfield Waste Policy Institute
Okanogan Highlands Alliance
Ola'a Community Center
Olympic Forest Coalition
Oregon Natural Desert Association
Oregon Natural Resources Council
Pacific Environmental Advocacy Center
Pacific Islands Community EcoSystems
Placer Independent Resource Services, Inc.
Quechan Indian Nation
Reno-Sparks Indian Colony
Resource Renewal Institute
Rock Creek Alliance
San Diego Baykeeper
San Juan Citizens Alliance
Santa Monica Baykeeper
Save the Valley, Inc.
Selkirk Conservation Alliance
Siskiyou Project
Sitka Conservation Society
Southern Utah Wilderness Alliance
Southwest Environmental Center
St. Lucie Audubon Society
Tennessee Clean Water Network
Umpqua Watersheds
Valley Watch, Inc.
Viejas Band of Kumeyaay Indians
Waipa Foundation
Washington Environmental Council
WashPIRG
Waterkeepers Northern California
Western Environmental Law Center
Western Land Exchange
Western San Bernardino County Landowner's Association
Western Watersheds Project
West Virginia Rivers Coalition
Wildlands CPR
Wild South
Wyoming Outdoor Council
Yuba Goldfields Access Coalition

Organizations That Have Expressed Concern About the Myers' Nomination

American Association of University Women
Catholics For a Free Choice
Feminist Majority
Human Rights Campaign
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Family Planning and Reproductive Health Association
National Women's Law Center
Planned Parenthood Federation of America
Religious Coalition for Reproductive Choice
Sexuality Information and Education Council of the United States

March 22, 2004

FALLON PAIUTE-SHOSHONE TRIBE

January 30, 2004

Honorable Senator Patrick Leahy, Ranking Member
Senate Judicial Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

The Fallon Paiute Shoshone Tribe writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting native sacred places compels our view that he is unable to apply the law fairly and impartially, thus **should not** be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of the only three formal opinions issued by Myers, in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers' opinion—which overturned a well-reasoned legal opinion by his predecessor—wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska and Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers' nomination to the Ninth Circuit. **We do not take this step lightly**. When a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

Len George

Len George, Vice- Chairman
Fallon Paiute Shoshone Tribe

8955 Mission Road • Fallon, Nevada 89406-9159 • Tel 775-423-6075 • Fax 775-423-5202

FALLON PAIUTE-SHOSHONE TRIBE

RESOLUTION #04-F-031

BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE SHOSHONE TRIBE, THE FALLON BUSINESS

WHEREAS, The Fallon Business Council is the recognized governing body of the Fallon Paiute Shoshone Tribe with the responsibility to exercise the privileges and powers of self government, to conserve and develop our resources, and to secure the social and economic well-being of our Tribe; and

WHEREAS, we, the members of the Fallon Paiute Shoshone Tribe of the United States, invoking the devine blessing the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, on May 15, 2003, President George W. Bush nominated Department of Interior Solicitor William G. Myers, III, to a not yet vacant seat on the Ninth Circuit Court of Appeals to replace Thomas Nelson of Idaho who will be retiring, and

WHEREAS, Solicitor Myers' October 23, 2001, Solicitor's Opinion advising the revocation of the prior Solicitor Leshy Opinion and rescission of the denial of the plan of operations protecting Quechan Indian Pass from the proposed Glamis Imperial Gold Mine in the southeastern California desert was relied upon by Interior Secretary Gale Norton in rescinding the denial of the mine so that it could be reconsidered; and

WHEREAS, neither Solicitor Myers nor Secretary Norton's offices, unlike their predecessor, engaged in government-to-government consultation with the Quechan Indian Nation, a federally-recognized tribe, nor other Colorado River Tribes, before taking action to imperil the sacred places at Quechan Indian Nation, a federally-recognized tribe, and

WHEREAS, a similar reversal of final agency action by Interior to Northern California tribes relative to a Medicine Lake Highlands geothermal project occurred during the same period; and

WHEREAS, the Ninth Curcuit Court of Appeals encompasses nine western states and other territories including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, and Guam, scores of reservations well over one hundred Indian tribes, millions of Indian people, millions of acres of public lands and important federal and tribal lands management issues; and

WHEREAS, an appointment to the federal bench is a lifetime appointment; and

WHEREAS, Solicitor Myers' actions in the Glamis matter show a deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments; and

WHEREAS, by prior NCAI Resolutions NCAI has strongly supported the Quechan people in their struggle to protect their sacred places at Quechan Indian Pass (Resolution #SPO-01-0162 and Resolution #SD-02-018); and

8955 Mission Road • Fallon, Nevada 89406-9159 • Tel 775-423-6075 • Fax 775-423-5202

WHEREAS, Solicitor Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage, actions and advice that reveals an activist point of view that disrespects tribal values that should not be reflected on the federal bench; and

WHEREAS, Solicitor Myers has demonstrated an inability to set aside personal bias to act in a neutral and objective manner and on October 1, 2003, resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contracts with former clients including the National Mining Association; and

WHEREAS, on October 23, 2003, the CNIGA member tribes approved a resolution OPPOSING the nomination of William G. Myers, III, and a letter to be sent to the Senate Judiciary Committee expressing that view and for other related actions to be taken; and

WHEREAS, Fallon Paiute Shoshone Tribe recognizes that the appointment of Solicitor Myers will not be in the best interest of the Tribes of the United States; that Tribes need to become more active in the judicial nomination and confirmation processes especially given recent trends in circuit and the Supreme courts; and that this is another way for tribal nations to protect their sovereignty.

NOW THEREFORE BE IT RESOLVED, that the Fallon Paiute Shoshone Tribe does hereby support the California Tribes and hereby opposes the nomination and confirmation of William G. Myers, III, as Judge for the Ninth Circuit Courts of Appeals or any federal judgeship; and

BE IT FURTHER RESOLVED, that the Fallon Paiute Shoshone Tribe will immediately urge President Bush to reconsider and withdraw Mr. Myers' nomination; and

BE IT FURTHER RESOLVED, that the Fallon Paiute Shoshone Tribe will immediately convey its opposition of the nomination to the Senate Judiciary Committee and request to be made part of the confirmation hearing process; and

BE IT FURTHER RESOLVED, that the Fallon Paiute Shoshone Tribe will work with CNIGA, other interested groups and the media to oppose the nomination; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of the Fallon Paiute Shoshone Tribe until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

At a duly held meeting of the governing body of the Paiute Shoshone Tribe of the Fallon Reservation and Colony, consisting of seven members of which five constitutes a quorum, that was present on this 30th day of January, 2004, and voted 7 in favor, 0 against, 0 abstentions, in the adoption of the foregoing resolutions, according to the powers vested by the Paiute Shoshone Tribe of the Reservation and Colony, Constitution and By-Laws.

Susan Willie

Susan Willie, Secretary
Fallon Business Council

FALLON PAIUTE-SHOSHONE TRIBE

January 15, 2004

To Whom It May Concern:

The following is a updated list of the Fallon Paiute Shoshone Tribe Fallon Business Council:

POSITION	TERM OF OFFICE
Alvin Moyle, Chairman,	Expires 9-04
Len George, Vice-Chairman	Expires 9-06
Susan Willie, Secretary	Expires 9-04
Nevada Iversen, Treasurer	Expires 9-06
Rochanne Downs, Council Member	Expires 9-06
Steven J. Frank, Council Member	Expires 9-06
Daniel R. Allen, Council Member	Expires 9-04

Certified By: Susan Willie
Susan Willie, Secretary
Fallon Business Council

8955 Mission Road • Fallon, Nevada 89406-9159 • Tel 775-423-6075 • Fax 775-423-5202

Statement of Senator Russ Feingold
On the Nomination of William G. Myers
As Prepared for the Senate Judiciary Committee Meeting

March 17, 2005

Mr. Chairman, I will oppose the nomination of William G. Myers to the Ninth Circuit Court of Appeals.

I attended the hearing that was held on Mr. Myers, and I submitted written follow-up questions, as did a number of my colleagues. I have to say after listening to Mr. Myers at the hearing and reviewing his responses to our written questions that both his previously expressed views and his lack of candor in discussing them trouble me greatly. Many times during the nomination hearings in February 2004 and March 2005, Mr. Myers simply evaded or refused to answer questions that were posed to him, claiming that he could not comment on an issue that could come before him if he is confirmed. This was not the approach taken by at least some of President Bush's nominees. Then-Professor, now-Judge Michael McConnell, for example, was forthcoming in his testimony and answers to written questions. He convinced me in his hearing that he would put aside his personal views if he were confirmed to the bench.

In contrast, Mr. Myers has not persuaded me that he can set aside his personal views and objectively evaluate cases that come before him. Since Mr. Myers has never served as a judge, his published articles, his past legal work, his legal opinions at the Department of Interior and his testimony before this Committee are all we have to assess his legal philosophy and views. This nominee did not simply make a stray comment that can be interpreted as indicating strong personal disagreement with our nation's environmental laws; he has a long record of extreme views on the topic. He had the burden to show us that he will be fair and impartial on the court. He failed to carry that burden.

Mr. Myers has called the Clean Water Act an example of "regulatory excess." He has stated that critics of the Administration's policies are the "environmental conflict industry." He has stated that conservationists are "mountain biking to the courthouse as never before, bent on stopping human

activity wherever it may promote health, safety, and welfare." He even compared the management of public lands to King George's "tyrannical" rule over American colonies. Over 175 environmental, Native American, labor, civil rights, women's rights, disability rights, and other organizations oppose the nomination of Mr. Myers, which speaks volumes about the concern that many potential litigants have about his views on a diverse range of issues that would come before his court.

Mr. Myers did not explain his personal views during the nomination hearing. When pressed, Mr. Myers would not say that he personally believed certain environmental regulations were unneeded, but that he was merely advocating on behalf of his clients. This is what all nominees say, of course, when challenged about past statements made on behalf of clients, but since Mr. Myers has never been a judge or a law professor, we have no other record to evaluate. And since he was repeatedly unwilling to tell us about his personal views in his hearing, we certainly cannot ignore his previous published statements on important legal issues he will be called upon to decide.

In addition to being concerned about his views on key environmental statutes and his ability to treat all parties who appear before him fairly and objectively, I am deeply troubled by Mr. Myers's record as Solicitor General at the Department of Interior. During his tenure as the chief lawyer for the Department, Mr. Myers authored a very controversial Solicitor's opinion, and approved two equally controversial settlements.

His legal opinion interpreting DOI regulations is one of the only guides we have to evaluate how a Judge Myers would interpret statutes. The Solicitor's opinion that Mr. Myers authored overturned a previous ruling regarding the approval of mining projects and greatly limited the authority of the Interior Department to deny mining permits under the Federal Land Policy Management Act ("FLPMA"). In 2003, a federal court found that Mr. Myers's opinion incorrectly interpreted this statute and that the opinion violated three separate, basic rules of statutory interpretation. Mr. Myers's legal opinion allowed the Glamis Imperial Mine Project, a 1600-acre cyanide heap-leaching gold mine, to move forward. This mine was part of the sacred lands of the Quechan tribe and was proposed for the ecologically sensitive California Desert Conservation Area (CDCA). After Mr. Myers issued his

opinion, Secretary Norton decided to approve the mine permit. Tribal leaders have called the Mr. Myers' legal opinion and the resulting decision to approve the Glamis mine "an affront to all American Indians."

Before Mr. Myers served as Solicitor General, he was a lobbyist for the National Mining Association, Arch Coal Company, and Peabody Coal Company. Mr. Myers met with mining industry officials 27 times during the first year of his tenure as the Solicitor General. Mr. Myers obviously has very close ties to the mining industry, which is why I am particularly concerned about his meetings with the mining industry before he issued the Glamis mine legal opinion. Despite its specific request, Myers did not meet with the Tribe before he issued his opinion.

At the March 2005 hearing, I wanted to give Mr. Myers the opportunity to clarify why he would meet with one side of the litigation, but not the other. The Tribe specifically requested a meeting with Myers before he issued an opinion on the Glamis issue. Mr. Myers stated at the hearing that he did not meet with the tribe because they would only meet with him in California. In a letter to Chairman Specter, the Tribe rejects this claim, and states that it would have been happy to meet with Mr. Myers in Washington.

I also asked Mr. Myers to explain why he cited the September 11th tragedy as the reason he did not meet with the Tribe. Mr. Myers indicated that he could not travel to California to meet with the Tribe because planes were grounded after the tragedy. He noted that the mining company officials were available to meet with him in Washington on September 13th, 2001. The Tribe calls this response "unseemly" and "patently offensive." Given that the Tribe's meeting request was sent in August 2001 -- a month before the September 11th tragedy -- and given that Mr. Myers could have simply picked up the phone to talk to the Tribe, I share their views about the inadequacy of Mr. Myers's response.

I was particularly concerned with Mr. Myers's statement that the Glamis issue "was akin to a summary judgment motion." I would think that to be fair on this issue, he would have wanted to meet with both sides. In my written follow up-questions, I asked him when *ex parte* communications with one party, such as those he had with the mining industry, would be appropriate when considering a summary judgment motion. Mr. Myers dodged my question. He basically stated that since he was not a judge, it was appropriate for him to

meet with only the mining company.

I find this matter troubling because tribes are entitled to government-to-government consultation. The National Congress of American Indians, which includes more than 250 American Indian and Alaska Native tribal governments, formally opposes the Myers nomination. The Quechan Tribe states that Myers "remains unfit" to serve on the federal bench, that he "exhibits bias," and that as Solicitor, he violated his Department's Trust and other legal responsibilities to protect tribal interests. I ask that the attached March 14, 2005 letter from the Quechan Indian Nation be admitted into record.

As Solicitor General of the Department of Interior, Mr. Myers also approved a settlement with the state of Utah that will remove the possibility of administrative protection for millions of BLM lands. Mr. Myers supported this reinterpretation despite the fact that every Interior Secretary in the previous 26 years – including James Watt – affirmed and used BLM's authority to administratively protect lands as wilderness study areas. Mr. Myers signed off on the settlement even though the Tenth Circuit Court of Appeals had previously ruled that Utah did not have standing to challenge BLM's inventory authority, and that Utah therefore could not have successfully pursued the case. When I asked Mr. Myers how he could have approved a settlement with an entity that did not have standing to challenge the agency's action, he again dodged my question.

In February 2005, the Interior Inspector General released its report on its 15-month investigation into an illegal settlement with a politically well-connected rancher. The report concluded that in negotiating the settlement Myers's office overruled concerns of the Bureau of Land Management and shut them out of the negotiations, ignored concerns raised by the U.S. Department of Justice, and presided over a settlement process that suffered from a "profound lack of transparency." The report declared that the key author of the illegal settlement was political appointee and Associate Solicitor Robert Comer. Mr. Myers hired Mr. Comer as one of his six Associate Solicitors and Mr. Comer reported directly to Myers.

At the March 2005 hearing, Mr. Myers testified that he specifically authorized Comer to negotiate this settlement. I was particularly disturbed that Mr.

Myers could not identify any other example where he authorized one of his Associate Solicitors to negotiate a similar settlement with an individual BLM permittee. Even after the details of the Robbins settlement emerged, Mr. Myers did not indicate that he took any action to discipline Mr. Comer. As Solicitor, Mr. Myers authorized Comer to negotiate the Robbins deal, failed to supervise Comer's actions, and failed to take disciplinary action against Comer once the serious problems with the settlement emerged. It is my view that Mr. Myers's responses to questions about his role in this settlement reflects poorly on his judgment.

I have discussed my concerns about this nominee at some length, Mr. Chairman, because I wanted to show that my opposition to Mr. Myers is not based on a single intemperate remark he has made as an advocate. I simply am not convinced that Mr. Myers will put aside his personal policy views and fairly interpret and apply the law as passed by Congress. He has shown a willingness to disregard clear statutory language as Solicitor General of the Department of Interior.

It is not enough for Mr. Myers to pledge that he will follow Supreme Court precedent. As we all know, the Supreme Court has not answered every legal question. Circuit court judges are routinely in the position of having to address novel legal issues. Mr. Myers's writings and speeches raise the question of whether he has prejudged many important legal questions. His answers to our questions did not satisfy me that he has not. I will vote No.

Economics for the Earth
A Friends of the Earth Publication
On Issues Linking People,
Prosperity and the Planet
January 2004

The Ninth Circuit and William G. Myers

In the coming months, the U.S. Senate will be asked to confirm former Solicitor of the Department of the Interior William G. Myers to the U.S. Court of Appeals for the Ninth Circuit. Based on Myers work at the Interior Department, Friends of the Earth is extremely concerned that he will be an activist judge, seeking to undermine or overturn some of the nation's fundamental environmental laws.

Background on the Ninth Circuit

The U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) is one of 12 regional circuit courts in the United States. U.S. Circuit Courts are the last courts to hear a case before it can be appealed to the Supreme Court. Because the Supreme Court typically considers only a couple of dozen cases annually, Circuit Courts often provide the final ruling on many cases.

On environmental protection cases, the Ninth Circuit may be the most important court in the nation. Currently, the Ninth Circuit has jurisdiction over nine states including Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, as well as Guam and the Northern Mariana Islands. Combined, these states and territories have a population of more than 55 million people and contain more than 485 million acres of federal lands. Due to the large amount of public lands in its jurisdiction, the Ninth Circuit plays a huge role in the protection and management of some of the most incredible landscapes in America. Furthermore, not only is the Ninth Circuit the largest in federal land jurisdiction and population, it also handles the most cases with 12,388 case filings in 2002.

Politically, the Ninth Circuit has been castigated as a liberal court. Unfortunately, this label belies that of the 25 current judges on the court, with at least half of the justices having conservative leanings. An Aug. 23, 2002, article in the *Legal Times* broke down the make-up of the court stating, "Of the [then] 24 active judges, 12 are clearly conservatives, six are moderates, and only six could fairly be characterized as liberals."

William G. Myers

In May 2003, President Bush nominated William G. Myers, former solicitor for the Department of the Interior, to the Ninth Circuit. As solicitor at the Interior Department, Myers was the principal legal adviser to the secretary of the Interior and the chief legal officer of the Interior Department. Among other activities, the solicitor's duties involve drafting and legal review of legislation, regulations, contracts, leases, permits, correspondences and other documents.

For eight years, prior to his 2001 appointment as the Interior Department solicitor, Myers represented industry clients that sought to open public lands to more coal and coal bed methane extraction, as well as cattle grazing. The companies and trade groups he represented, including Arch Coal, Peabody Coal, Kennecott Energy and the National Mining Association, fought to

weaken government regulations and oversight over coal and hardrock mining, as well as natural gas drilling. He was also the executive director of the Public Lands Council and director of Federal Lands for the National Cattlemen's Beef Association, where he sought to weaken environmental laws and regulations that govern grazing on public lands.

As solicitor, Myers advocated to roll back environmental laws. He was involved in the weakening of hard rock mining regulations, reversing a decision to stop a mine on American Indian sacred lands in Southern California and rolling back grazing regulations he once challenged in court. While the Interior Department was weakening environmental laws, Myers was having meetings with his former law firm, Holland and Hart LLP, which represents many of his old clients. In fact, the Interior Department's Inspector General investigated ethics complaints filed against Myers for meeting with former clients despite his ethics/recusal agreements.

On Oct. 10, 2003, soon after the investigation began, Myers resigned his post as solicitor at the Interior Department. Recently, the Interior Department's inspector general released a fact finding report on the ethic complaints against Myers. In total, the inspector general found 16 meetings that Myers' had with his former law firm.

Key Environmental Cases Decided by the Ninth Circuit

If the Senate confirms Myers for the Ninth Circuit Court, he will hear cases that impact roughly 485 million acres of federal lands. These lands are managed by the U.S. Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Reclamation and the Army Corps of Engineers. The Ninth Circuit has decided on significant issues such as whether to protect all of the U.S. Forest Service roadless areas, uphold a precedent setting air pollution law in California and confirm that oil and gas drilling is polluting our nation's waterways. Recent environmental decisions by the Ninth Circuit include:

Defining Coal Bed Methane Wastewater as a Pollutant

The Northern Plains Resources Council filed a claim that Fidelity Exploration and Development Company had violated the Clean Water Act by drilling for coal bed methane natural gas and discharging millions of gallons of the wastewater into the Tongue River without a permit in Eastern Montana. The case, originally brought in the U.S. District Court for the District of Montana, was denied but was won on appeal to the Ninth Circuit. The Ninth Circuit ruled that methane wastewater is a pollutant and states do not have the right to create exemptions to the federal Clean Water Act. Fidelity appealed the case to the Supreme Court, which refused to hear the case (*Northern Plains Resource Council v. Fidelity Exploration and Development Company, 2003).*

Upholding the National Forest Roadless Rule

The Kootenai Tribe of Idaho, as well as the American Council of Snowmobile Association, Boise County Idaho, Little Cattle Company Limited Partnership, Boise Cascade Corporation and others, challenged the Roadless Area Conservation Rule ("roadless rule") in the U.S. District Court for the District of Idaho. The Clinton administration promulgated the roadless rule in order to protect 58.5 million acres of national

forest roadless areas from road building. The case was successful at the district level and the judge suspended the implementation of the roadless rule, however the Ninth Circuit reversed the injunction and the roadless rule was reinstated (*Kootenai Tribe of Idaho v. Veneman, 2002)*.

Allowing Cattle Grazing to Continue Despite Endangered Species
The Southwest Center for Biological Diversity brought a case claiming that cattle grazing in Arizona was harming the endangered loach minnow against the U.S. Forest Service before the United States District Court for the District of Arizona. The district court denied the injunction and the plaintiffs appealed to the Ninth Circuit. The Ninth Circuit affirmed the decision of the district court. The Ninth Circuit upheld that an injunction on livestock grazing was not required to protect the endangered loach minnow (*Southwest Center for Biological Diversity v. U. S. Forest Service, 2002)*.

Upholding a Clean Air Law in California
The Engine Manufacturers Association and other industry interests challenged a California clean air law before the U.S. District Court for the Central District of California. The plaintiffs appealed the district court's decision to the Ninth Circuit, which upheld the district court's opinion that the adoption of rules by a regional air quality management district requiring certain public and private vehicle fleet operators to purchase or replace their vehicles only with the lowest-emission vehicles available under California law, did not preempt the Clean Air Act (*Engine Manufacturers Association v. South Coast Air Quality Management District, 2002)*. The manufacturers appealed to the Supreme Court, which has agreed to hear the case.

Salvage Logging Project Violates the National Environmental Policy Act
The Blue Mountains Biodiversity Project filed a case against the U.S. Forest Service claiming it violated the National Environmental Policy Act. The U.S. District Court for the District Court of Oregon found in favor of the U.S. Forest Service and the plaintiffs appealed to the Ninth Circuit. The Ninth Circuit reversed the lower court's decision and found that the U.S. Forest Service violated the National Environmental Policy Act by failing to do an environmental impact statement (EIS) on salvage logging projects in Oregon. The Ninth Circuit issued an injunction on the salvage logging projects until the U.S. Forest Service completed an EIS (*Blue Mountains Biodiversity Project v. Blackwood, 1998)*.

Conclusion
The Ninth Circuit Court of Appeals is one of the most important courts in ensuring the protection of our environment and enforcement of our environmental laws. If the Senate confirms Myers to the bench, it would be allowing an anti-environmental activist judge to rule over sensitive environmental matters.

For more information, please contact:
Kristen Sykes, (202) 222-0730, email: ksykes@foe.org or
Erich Pica, (202) 222-0739, email: mailto:epica@foe.org
Friends of the Earth, 1717 Massachusetts Ave., NW, Suite 600, Washington, DC 20036
(202) 783-7400

Friends of the Earth is a national environmental advocacy organization with affiliates in 69 countries. For more information on the Internet, check out http://www.foe.org

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(707) 275-0737 - FAX: (707) 275-0757

February 19, 2004

The Honorable Patrick J. Leaby, Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510
Fax: (202) 224-9516

RE: OPPOSITION to nomination of William G. Myers to the 9th Circuit Court of Appeals

Dear Senator,

On behalf of the Habematolel Pomo of Upper Lake, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a Tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered, Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests for the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government- to- government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

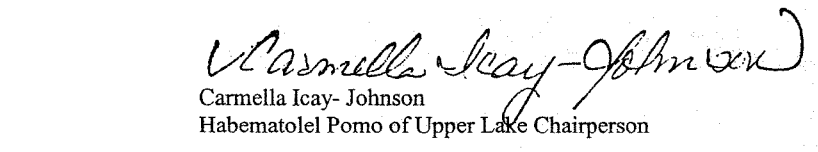
2. As DOI Solicitor, it was his duty to advise DOI to consult with the Tribe. The ability to understand these complex issues is particular important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an ability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Habematolel Pomo of Upper Lake, respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,



Carmella Icay- Johnson
Habematolel Pomo of Upper Lake Chairperson

cc: California Nations Indian Gaming Association
Quechan Indian Nation

HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

April 25, 2004

Dear Senator Orrin Hatch:

We are writing to urge a no vote on the confirmation of William G. Myers III for the Ninth Circuit Court of Appeals or the exercise of appropriate legislative tools. After reviewing the history of political positions and activities that William G. Myers III has taken with regard to environmental issues, we are deeply concerned that there may be a compromise of and adverse impact to our shared environments. While jurist are to interpret the law, in many cases political ideology directly influences those decisions, and the academic and established record of Mr. Myers suggest a candidate who would be proactive in creating law rather than interpreting it.

The Ho-Chunk Nation has a sincere respect for Mother Earth. We also have taken protection of tribal sovereign rights and tribal environmental concerns very seriously. Our tribal headquarters are located in Black River Falls, Wisconsin. Black River Falls and its surrounding communities lie within the heart of cranberry country, prime fishing areas and Wisconsin's rich hunting lands. These are the areas in which our population density is greatest and the majority of our 4,000 employees presently reside. The hunting and fishing grounds are located in and around wetlands, bogs, springs and waterways. In addition, the Ho-Chunk still practice the traditional ceremonies, requiring that our tribal members hunt for seasonal and clan feasts and obtain spring water for our ceremonies.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana,, Idaho, Nevada, Alaska, Hawaii. It also contains scores of Indian reservations, including 100 tribes, millions of native peoples and millions of acres of land. Most importantly, the Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. The Ho-Chunk Nation urges that each member considers how important the Ninth Circuit rulings are used as guidance for other tribal matters throughout the country.

Respectfully, the Ho-Chunk Nation requests that William G. Myers III be opposed for confirmation and urge a filibuster. His disregard for federal law and sacred places is well-known and evidences his insufficiencies to decide fairly upon federal and tribal land issues.

Sincerely,

Vice President Wade Blackdeer
Ho-Chunk Nation

Cc: NCAI

Executive Offices
W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615
(715) 284-9343 Fax (715) 284-3172 (800) 294-9343

Hopland Band of Pomo Indians
PO Box 610, Hopland, California 95449 Phone (707) 744-1647 ext. 1110 Fax (707) 744-1506

February 3, 2004

The Honorable Patrick J. Leahy
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510

Re: OPPOSITION to Nomination of William G. Meyers III to the 9th Circuit Court of Appeals

Dear Senator Patrick J. Leahy:

On behalf of the Hopland Band of Pomo Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan peoples's tribal heritage and sacred places.

Sandra C. Sigala, Tribal Chair; Alice Becerra, Vice Chair; Julie Vedolla Fuentes, Secretary; James "Red" Crandell, Treasurer; Orval Elliott, Sr., Council Member; William Elliott, Council Member; Hale Knight, Jr., Council Member

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Hopland Band of Pomo Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Sandra C. Sigala
Tribal Chairperson

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

HENRY J. HYDE, ILLINOIS
CHAIRMAN

MEB A. LEACH, IOWA
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LIAM J. JANKLOW, SOUTH DAKOTA
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THOMAS E. MOONEY
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BETTY McCOLLUM, MINNESOTA
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DEMOCRATIC STAFF DIRECTOR

PETER M. TEO
DEMOCRATIC DEPUTY STAFF DIRECTOR

DAVID S. ABRAMOWITZ
DEMOCRATIC CHIEF COUNSEL

One Hundred Eighth Congress

Congress of the United States

Committee on International Relations

House of Representatives
Washington, DC 20515

(202) 225-5021

http://www.house.gov/international_relations/

September 15, 2003

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

As you know, William Myers has been nominated by President Bush to be a judge on the Ninth Circuit Court of Appeals. I fully support his nomination, as do many other people whose opinions I hold in high regard. These would include Mr. Myers' home state Senators, former Attorneys General, and especially Alan Simpson, who is his former supervisor and my good friend. Many other people who I know have known Mr. Myers for many years and share my belief that he will be an excellent appellate judge.

I appreciate the many demands on your Committee's calendar as this year comes to a close. But, given the extraordinary importance of a full-staffed and competent judiciary, I hope that you will be able to schedule a hearing on the nomination of Mr. Myers at an early date so that he might receive Senate consideration and a vote before this First Session of the 108th Congress concludes.

With best wishes, I remain

Sincerely,

HENRY J. HYDE
Chairman

HJH:jpm/mco

INAJA COSMIT BAND OF MISSION INDIANS
1040 E. Valley Parkway, Suite A
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(760) 747-8581 • Fax (760) 747-8568

Chairwoman
Rebecca Maxcy Osuna

Vice-Chairwoman
Lisa Contreras

January 21, 2004

The Honorable Patrick J. Leahy
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510
Fax: (202) 224-9516

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Patrick J. Leahy

On behalf of the Inaja-Cosmit Band of Mission Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

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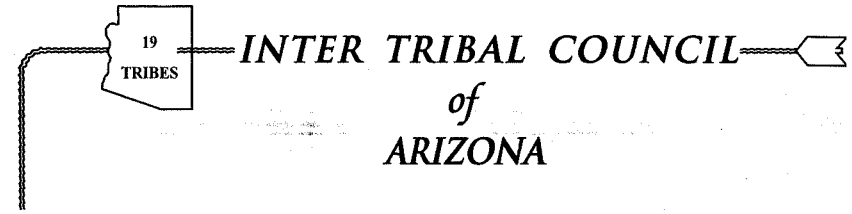
For these reasons, the Inaja-Cosmit Band of Mission Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Rebecca Maxcy Osuna
Tribal Chairwoman
Inaja-Cosmit Band of Mission Indians

Cc: California Nations Indian Gaming Association
Quechan Indian Nation



MEMBER TRIBES
AK-CHIN INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI TRIBE
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PASCUA YAQUI TRIBE
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TOHONO O'ODHAM NATION
TONTO APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI APACHE NATION
YAVAPAI PRESCOTT INDIAN TRIBE

January 29, 2004

The Honorable Patrick J. Leahy
152 Senate Dirksen Office Building
Washington, DC 20510

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator. Leahy,

As President of the Inter Tribal Council of Arizona, comprised of 19 member tribes, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, was granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

2214 North Central Ave. • Suite 100 • Phoenix, Arizona 85004 • (602) 258-4822 • Fax (602) 258-4825

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

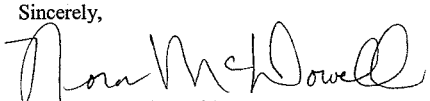
2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

As President of the Inter Tribal Council of Arizona and on its behalf, I respectfully request that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes and tribal governments in Arizona be notified prior to the date of confirmation hearings. We also ask that representatives of the Quechan tribe be invited to provide testimony on this important matter.

Sincerely,



Nora McDowell, President
Inter Tribal Council of Arizona
Chairwoman, Fort Mojave Tribe

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

1033 Old Blyn Highway, Sequim, WA 98382 360/683-1109 FAX 360/681-4643

February 6, 2004

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Opposition to William G. Myers, III to the 9th Circuit Court of Appeals

Dear Chairman Hatch and Ranking Member Leahy:

On behalf of the Jamestown S'Klallam Tribe, I am writing to express our opposition to the confirmation of William G. Myers, III to the 9th Circuit Court of Appeals. We understand that the President is entitled to receive the consent of the Senate for his judicial appointments unless there are serious concerns regarding judicial fitness. We firmly believe that former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As you know, the United States government has acquired ownership of hundreds of millions of acres of land formerly occupied by American Indian and Alaska Native tribes. Among these lands are sacred sites that are essential to the practice of numerous Native American religions. With this ownership, the government has assumed a vital stewardship responsibility for the maintenance and protection of sites of religious significance, a responsibility recognized in basic land management statutes such as the Federal Land Policy and Management Act (FLPMA).

As Solicitor of the Department of the Interior for the first two years of the Bush Administration, William G. Myers, III was the architect of a rollback of protections for sacred native sites on public lands that are central to the free exercise of religion for many Native American people. A glaring example is the recent decision by the Department of Interior to reconsider the denial of a permit for a massive cyanide heap leach gold mine that would destroy thousands of acres of land in the California desert, including 55 acres that are sacred to the Quechan Tribe. The original denial of a mining permit to Canada's Glamis Imperial Gold Company was the result of a multi-year process in which the Quechan Tribe and other concerned tribes actively participated.

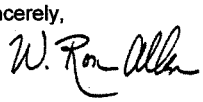
In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the sweeping, and clearly erroneous conclusion that the Glamis permit denial had to be reconsidered because the Bureau of Land Management (BLM) did not have authority under the FLMPA to prevent undue degradation of public lands that was necessary to a mining operation.

Equally troubling to our Council is the shameful exclusion of the Quechan Indian Nation from the decision to reconsider the Glamis project. Neither Solicitor Myers nor Secretary Norton engaged in government-to-government consultation with the Quechan Indian Nation or other Colorado River tribes before reopening the Glamis debate.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter revealed an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we strongly believe that we must express our formal opposition to Myers's nomination to the Ninth Circuit. We do not make this decision lightly. However, when a nominee has acted with such blatant disregard for federal law and our sacred places, we must speak out.

Sincerely,



W. Ron Allen
Tribal Chairman/Executive Director

cc: National Congress of American Indians
Senator Patty Murray
Senator Maria Cantwell

JUSTICE FOR ALL PROJECT

Via Fax (202) 228-2258

January 30, 2004

The Honorable Dianne Feinstein
The United States Senate
Washington, DC 20510

Dear Senator Feinstein:

We are writing, as members of the Justice For All Project, to express our grave concern over the nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit. Myers' record is replete with statements and actions which show a deep-seated hostility to environmental protections, as well as disdain for the public's interest and minority rights. Myers' statements and positions also raise significant questions regarding his commitment to privacy rights and to a woman's right to choose. We urge you to personally attend the up-coming Senate Judiciary Committee hearing on this nominee in order to fully explore the many troubling aspects of his record.

The Justice For All Project is a statewide coalition of organizations which support a fair and balanced judicial nominating process and oppose an extreme right-wing federal bench engaged in ultra-conservative judicial activism. The Justice For All Project supports the appointment of federal judges who are open-minded, who view the Constitution as a living document, and are committed to the role of the federal courts in protecting civil rights, individual liberties and the environment, and in guaranteeing due process, equal protection of the laws, the right of privacy and access to justice.

Myers' record raises grave doubts that he satisfies these standards and would put aside his outspokenly expressed personal extremist ideology if confirmed to the Ninth Circuit bench. He most recently served as Solicitor General of the Interior Department, where he was instrumental in rolling back several important Clinton-era environmental protections, using the result-oriented legal reasoning and deliberate misconstruction of statutory terms that we have come to expect from the far right. For a number of years, Myers represented and lobbied for the National Cattleman's Beef Association, which supports privately owned livestock grazing (for minimal fees if any) on public lands.
The *Idaho Statesman* has described him as having "a reputation for being pro-ranching, pro-grazing and being shaky on the environment," and, in an 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." [1]

[1] "A Rancher's Advocate, or the People's Attorney?" 11/22/02

Our concern centers around three areas:

- Undue Deference for Property Rights: We believe that Myers should be questioned regarding positions he has taken that indicate a belief that property rights must be granted deference on the same basis as individual rights such as freedom of speech.[2] His position that property rights are as "fundamental" as constitutionally protected individual rights such as freedom of speech and freedom from unreasonable search and seizure are all too similar to the extreme views held by another Bush nominee, Janice Rogers Brown. Various statements, such as his comparison of the government's management of public lands to King George's "tyrannical" rule over the American colonies and claim that public land safeguards are fueling "a modern-day revolution" in the American West,[3] raise questions as to whether he adheres to an extremist ideology outside of the mainstream.

- Disdain for the Public Interest and Minority Rights: As Californians, we are grateful for your sponsorship of the California Desert Protection Act, a laudable 1994 federal statute that designated two national parks (Death Valley and Joshua Tree) and one national preserve (the Mojave) and which you have successfully used to protect additional "environmentally sensitive private properties" in order to preserve what you have termed the "scenic, recreational, cultural and scientific value of the California desert." Nevertheless, actions taken by Myers while Interior Department Solicitor General threaten the destruction of thousands of acres of land in the California desert in order to benefit the private interests of a mining company by allowing a permit for a massive cyanide heap leach gold mine to issue. The objective basis of these actions is called into question by Myers' assertion that the California Desert Protection Act is "an example of legislative hubris,"[4] as well as Myers' record of hostility to environmental protections.[5] We are equally alarmed by Myers' active role in seeking to override the local denial of a special use permit to operate two open clay pit cyanide leach mines on federal land north of Reno, Nevada. The clay would be processed into "kitty litter" in a proposed plant on private land adjoining the federal property.

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[2] Amici Brief, Babbitt v. Sweet Home, 1994 U.S. Briefs 859.

[3] *Western Ranchers Fed Up with Feds*, FORUM FOR APPLIED RES. & PUB. POL., Winter 1996 at 22.

[4] Farmers, Ranchers & Environmental Law 209 (1995)

[5] Myers described the ruling in *Appalachian Power Co. v. EPA*, which struck down EPA's reliance on a guidance document it had issued, as "a major victory for any industry, including ranching, that suffers from over-regulation by the federal government." *Raining on the Regulators' Parade*, The Idaho Wool Grower Bulletin, June 2000. He has referred to the Endangered Species Act and the Clean Water Act's wetlands protections as examples of "regulatory excesses" that have the "unintended consequence of actually harming the environment." *Environmental Command and Control* at 208, and asserts that it is "the fallacious belief that centralized government can promote environmentalism." *In* Frmrs., Rnchrs. & Envtl. Law 206 (1995.)

These actions demonstrate Myers' willingness to allow his personal ideology to override clear public policy favoring the public's interest in protecting our scenic heritage, as well as public health and safety. In both instances, Myers' actions have dire ramifications for Native American tribes, whose lands will be significantly impacted by the planned open pit mining operations. In California, the massive gold mine would destroy lands sacred to the Quechan Nation and other Colorado River tribes. Yet Myers refused to even meet or consult with tribal representatives. We commend to you the January 28, 2004 letters of the National Congress of American Indians and the Quechan Indian Tribe opposing Myers' nomination for their detailed discussion of the shaky legal and moral basis for Myers' actions. The kitty litter mine and plant is vigorously opposed by the Reno-Sparks Indian Colony. We urge you to question Myers closely on the basis for his failure to fulfill his obligations to the public and the Interior Department's trust obligations to Native American tribes.

- Narrow View of Privacy Rights: Myers' publicly expressed opinions regarding privacy and the right to choose are more limited than his record on environmental and land use issues, yet nevertheless raise significant concerns. Myers' assertion that Judge Robert Bork should have been confirmed for a seat on the U.S. Supreme Court because his "judicial philosophy was well within the parameters of acceptable constitutional theory,"[6] is surprising, given Judge Bork's well-known position that there is no constitutional right to privacy, a far from mainstream position. Myers has expressed a troublingly narrow view of unenumerated rights and, most particularly, the right to privacy. Myers has argued that the Supreme Court's decisions in *Griswold v. Connecticut* (holding that married people have a right to contraception) and *Roe v. Wade* (establishing a privacy right to safe legal abortion) are based on the "personal moral values of the justices." He contrasts this to the ruling in *Bowers v. Hardwick* (finding anti-sodomy laws constitutional) which he asserts is based on "a neutral reading of the Constitution."[7] Both the *Griswold* and *Roe* decisions remain good law; *Bowers* was overruled last term in *Lawrence v. Texas*. We urge you to fully explore Myers' current understanding of the right to privacy and his ability to safeguard that essential right if confirmed to the Ninth Circuit.

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[6] William G. Myers III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 Denver U. L. Rev. 1, 24-25 (1988); see also, William G. Myers III, *The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork*, 17 Hastings Const. L.Q. 399 (1989-1990).

[7] *Id.*

We believe that Myers' record and statements raise considerable concerns which require extensive exploration. We urge you to carefully question him at his up-coming Judiciary Committee hearing.

Sincerely,

Susan Lerner for

Justice For All Project

Members of the Justice for All Project include:

Vicki Bermudez, RN
Regulatory Policy Specialist
California Nurses Association
Sacramento, CA

Candance M. Carroll, Esq.
President
California Women Lawyers
San Diego, CA

Susan Lerner, Chair
Committee for Judicial Independence
Los Angeles, CA

Elizabeth Sholes
Public Policy Coordinator
California Church IMPACT
Sacramento, CA

Lyn Hilfenhaus, Chair
Women's Caucus, California Democratic Party
Los Angeles, CA

Mark Hull-Richter
California Groups Moderator
Democrats.com
Orange County, CA

Patrisha A. Wright
Director of Government Affairs
Disability Rights Education and Defense Fund
Berkeley, CA and Washington, DC

Sharon Gadberry, PH.D. President
NAWBO-San Francisco Chapter
San Francisco, CA

Ellie Craig Goldstein, President
National Council of Jewish Women/Los Angeles
Los Angeles, CA

Helen Grieco, Executive Director
California National Organization for Women
Sacramento, CA

Marcos Barron, Director
People for the American Way, Western Region
Los Angeles, CA

Martha Swiller, Acting President and CEO
Planned Parenthood Los Angeles
Los Angeles, CA

Anne Patton, Chair
Republicans For Choice
San Diego, CA

Pam Cooke
Stonewall Democratic Club
Los Angeles, CA

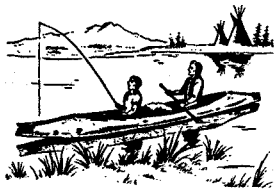
Bill Lakin, Board Member
Unitarian Universalist Project Freedom of Religion
Cambria, CA

Eric Gordon, Director
The Workmen's Circle/Arbeter Ring SoCal District
Los Angeles, CA

John Affeldt, Managing Attorney
Public Advocates, Inc.
San Francisco, CA

Joyce Schorr, President
Womens Reproductive Rights Assistance Project
Los Angeles, CA

cc: Senator Orrin Hatch
Senator Patrick Leahy



KALISPEL TRIBE OF INDIANS

January 27, 2004

Mr. Patrick Leahy
United States Senator
199 Main Street 4th Floor
Burlington, VT 05401

RE: Ninth Circuit Court of Appeals Nominee William G. Myers, III

Dear Senator Leahy:

On behalf of the Kalispel Tribe of Indians, representing more than 360 Native Americans within the interior and exterior boundaries of the Kalispel Indian Reservation located within the Ninth Circuit, we would like to voice our opposition to the nomination of William G. Myers, III to the Ninth Circuit Court of Appeals.

William G. Myers, III has been nominated to a seat on the Ninth Circuit Court of Appeals, which hears federal appeals in nine (9) Western States. Mr. Myers is a lawyer for the Department of Interior, which oversees the Bureau of Indian Affairs and the management of federal lands. Based on Mr. Myers' prior legal representations it is inordinately clear that he would use his position on this key appeals court to promote his personal agenda, which favors the interest of private industry over the rights of Native American Tribes and individuals. Court documents demonstrate that he has undermined important legal precedent that protected sacred sites on public lands from undue degradation.

As a tenure employee for the Department of Interior, Bureau of Indian Affairs, Mr. Myers purports to work for the benefit of, and in the best interest of, Native Americans and management of federal lands. However, as evidenced in prior court cases, Mr. Myers actively participated in cases opposing both tribal claims and major tribal issues. For example, Mr. Myers argued on behalf of the Department that the United States was not liable to the Navajo Nation for up to $600 Million Dollars in damages for breach of fiduciary duty in connection with the Secretary's approval of the mineral lease;

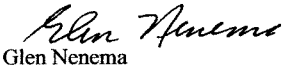
BOX 39 • USK, WA 99180 • PHONE (509) 445-1147 • FAX (509) 445-1705

Mr. Myers repudiated his predecessor's formal legal opinion in order to clear the way for approval of the previously rejected cyanide heap-leach Glamis gold mine that would destroy sacred Quechan tribal lands and pollute the environment; Mr. Myers argued on behalf of the Bureau of Land Management 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 other residents of the vicinity; Mr. Myers delayed conducting a resurvey that Sandia Pueblo Tribe requested, which would have helped to resolve a boundary dispute involving roughly 10,000 acres of land claimed by the Pueblo. The resurvey was needed after a court invalidated an old survey drawing the boundaries of the Pueblo in the wrong place. Mr. Myers' position was to wait to see first what Congress will do; Mr. Myers committed a fraud on the Court by failing to disclose the true status of the TAAMS Project between September 1999 and December 21, 1999; Mr. Myers committed a fraud on the Court by filing false and misleading quarterly status reports starting in March 2000, regarding TAAMS and BIA data cleanup. The Court pointed out the egregious nature of Mr. Myers and the Department's conduct; Mr. Myers argued on behalf of the Department that the Court of Federal Claims had no jurisdiction to hear the White Mountain Apache Tribe's claim that the United States failed to properly maintain lands held in trust for the benefit of the Tribe; and Mr. Myers argued on behalf of the Department that the Paiute-Shoshone Indians of the Bishop Community Tribe could not sue under Section 1983 of the Civil Rights Act where the county had entered upon property belonging to the Tribe to seize employment records.

The United States has an established fiduciary relationship with Native American Tribes. Statutes and regulations assist in defining the contours of the fiduciary responsibilities and duties between the United States and Native American Tribes. It is our opinion Mr. Myers does not support this fiduciary relationship, and if nominated will cause irreparable harm to Native American Tribes. We urge you to oppose the nomination of William G. Myers, III to the Ninth Circuit Court of Appeals.

If you have any questions or would care to discuss this matter further, please contact me.

Sincerely,
KALISPEL TRIBE OF INDIANS



Glen Nenema
Chairman

KAW NATION

Drawer 50
Kaw City, OK 74641
(580) 269-2552 Fax (580) 269-2301

February 2, 2004

The Honorable Orrin Hatch (Chairman)
104 Hart Office Building
Washington, D.C. 20510

Dear Senator Hatch

As Chairman of the Kaw Nation, I am writing to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels us to believe that he is unable to fairly and impartially apply the law and thus should not be confirmed.

While Solicitor of the Department of Interior, William G. Myers reached a clearly erroneous conclusion in one of only three formal opinions issued. He feels that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans. The term "undue" was clearly out of statutory text. Any practice necessary for a mining operation was by definition not "undue." With this it is no wonder the American Bar Association has raised questions about Myers's legal qualifications for a position on the federal appellate bench.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, and Hawaii. It also contains many reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is a critical forum for deciding important federal and tribal land management issues. For these reasons, we formally oppose Myers's nomination to the Ninth Circuit. We do not take this step lightly - but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

Guy Munroe, Chairman/CEO

Statement of Senator Edward M. Kennedy on the Nomination of William Myers to the Ninth Circuit Senate Judiciary Committee March 17, 2005

For the second time, the Committee is considering William Myers' nomination to the Ninth Circuit. The Senate declined to confirm him in the last Congress, and we should do so again.

In fact, the Senate confirmed 204 of President Bush's nominees in the last two Congresses. We rejected only 10, because their records, like Mr. Myers' record, were extreme, and failed to show a commitment to upholding basic protections important to the American people.

Democrats stand ready to work with the President in confirming qualified nominees who will uphold our rights and liberties, but the Administration will have to meet us half way. Renominating persons who have been rejected before does not signal a willingness to do so.

Last year, we voted against Mr. Myers because of his record of hostility to environmental protections, and his failure to respect the

rights of Native Americans during his years as Solicitor of Interior. If anything, the reasons to oppose his confirmation to a life-time position on a federal court are even stronger now, because of new revelations about his record.

It's especially important for a nominee to the Ninth Circuit to be able to impartially review cases affecting issues on environmental law and the rights of Native Americans. The states in that Circuit are home to many Native American tribes and contain vast public lands. The court often has the final word on legal issues affecting the environment and the rights of Native Americans. Mr. Myers' record raises major doubts on these issues.

During the two years he served as chief lawyer for the Department of the Interior, he often failed in his duty to ensure that his decisions properly took into account the Department's unique relationship with Native Americans and to consult with Native American tribes on matters affecting them.

No case better illustrates the problem than his role in the Glamis Imperial Gold Mine project. In 2001, as Solicitor of Interior,

Mr. Myers issued a formal opinion that cleared the way for a foreign company to build a 1,650 acre open-pit gold mine in the heart of the California Desert Conservation Area – one of America's most culturally and ecologically sensitive areas.

The mine project threatened to devastate a local tribe's ability to practice its religion and culture. The Advisory Council on Historic Preservation concluded that allowing the mine to be built would mean that the tribe's "ability to practice their sacred traditions as a living part of their community life and development would be lost."

As a result, the Department concluded that the mine would violate the Federal Land Policy and Management Act, which prohibits mining that causes "unnecessary or undue degradation" of federal lands. But Mr. Myers then issued an opinion reinterpreting the words of the statute in a way that would have allowed the mine to go forward.

A federal court has held that Mr. Myers' opinion "misconstrued the clear mandate" of the Act, and ignored "well-established canons of statutory construction."

Mr. Myers' obvious mis-reading of the law is very troubling, and so is the way he reached his decision. He had an obligation to engage in government-to-government consultation with the tribe before acting against their interests, but he failed to meet with them or with other Colorado River tribes affected by the mine before making his decision. Instead, he met with representatives of the foreign mining company and, in their words, let them "tell their story." But the tribes were not given the same chance for their story to be heard.

His action is analogous to a judge hearing oral argument in a case only from the side he agrees with. In fact, it's much worse, because the side that didn't get a hearing was the side Mr. Myers had a duty to consult.

Mr. Myers says he knew enough about Native American views to make his decision without speaking to the tribes, because he'd read their court filings and a letter from the attorney for the Quechan tribe explaining its concerns. But that letter stated only that the mine threatened areas sacred to the tribe and asked for a meeting with Mr. Myers, which the tribe never got. Six months later, when Mr. Myers finally got around to replying to the letter, he told the tribe he'd already issued his decision permitting the mine.

It's misleading for Mr. Myers to use the tribe's letter asking for a meeting as a way to justify his decision not to meet with tribal leaders. His other reasons for not meeting with the tribe are equally incredible.

In answers to written questions, he used the 9/11 terrorist attack as a reason for not meeting. But two days after September 11th, he met face-to-face with representatives of the mine.

The Quechan tribe has expressed dismay that Mr. Myers would use this national tragedy to excuse his failure to consult with them,

when it never prevented him from meeting with the mining company. Despite many attempts to do so, Mr. Myers refuses to acknowledge that his trust obligation and duty of consultation toward the tribes required that he give them, at the very least, the same hearing he provided the private company.

He also stated in answers to written questions that he would have met with the tribes if they had come to Washington. But he never contacted the tribes to tell them that.

Unfortunately, this is not the only example of Mr. Myers' insensitivity to Native American rights. He also actively supported the efforts of Oil-Dri, the world's largest cat litter manufacturer, to build a kitty litter processing facility on federal land near the ancestral burial grounds of the Reno-Sparks Indian Colony in Nevada. In that case, the Reno-Sparks Indian Colony had asked Mr. Myers, in his role as a trustee for Native American lands, to support the tribe's efforts to oppose permits for the facility. Instead, Mr. Myers urged the Justice Department to file an amicus brief opposing the tribe's interests. Mr. Myers cannot recall a single other instance in which he felt so

strongly that he asked the Justice Department to serve as amicus in a case, yet he did so to assist a private company with interests opposed to the tribe.

In that case, the government argued that federal law prevented a Nevada county from denying a permit for the kitty litter plant on private lands, an argument later rejected by a Nevada court.

As a result of this record, Mr. Myers's nomination has generated wide-spread opposition from Native American tribes. That opposition has only grown stronger since we last considered his nomination. He is opposed by the National Congress of American Indians, the oldest and largest national organization of Native American and Alaska Native governments, which has never before opposed a nomination to the federal courts. He's opposed by the Affiliated Tribes of Northwest Indians, which also has never before opposed a judicial nominee, and by many, many other Native American tribes and organizations.

The concerns about Mr. Myers' record on Native American issues alone should be enough to reject to his nomination. But his environmental record is just as troubling.

As Solicitor of Interior, his decisions on these issues often went hand-in-hand with the interests of his former clients in the mining and cattle industries. He issued a legal opinion undermining an environmental group=s effort to purchase and retire grazing permits on ecologically sensitive public land. After Mr. Myers' first hearing, we learned that as Solicitor, he supported giving millions of dollars' worth of public land to a private company, although readily available public documents showed that the company had no credible claim to the land. He admits that he never sought an estimate of the land's value before seeking to transfer the land to private interests.

In addition, a new report by the Inspector General of the Interior Department raises serious questions about Mr. Myers's failure to supervise an Associate Solicitor, whom he personally authorized to negotiate a settlement with a politically connected Wyoming rancher who repeatedly violated grazing regulations over many years. That

settlement has been widely criticized, including by the Administrative Law Judge in the case, as giving the rancher a sweetheart deal that excused past grazing violations, granted new permits, and made it harder to cite this rancher than other ranchers for identical conduct. The Administrative Law Judge called the behavior by his office in the case "shocking," "disturbing" and "disappointing."

Mr. Myers admits that he was briefed several times about the agreement, but he apparently never asked any question about its substance, and failed to supervise the negotiations. He also admits that he never took any disciplinary action against the Associate Solicitor, Bob Comer, who negotiated the deal, even after problems with the settlement became public. At the very least, the incident raises serious questions about his judgment in selecting and supervising the Mr. Comer in this important task.

Mr. Myers has also criticized environmental protections. In a speech to the Cattlemen's Association, he stated 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." He has made numerous other intemperate statements disparaging environmental laws, which he has called "outright, top-down coercion."

Mr. Myers and his supporters dismiss these statements as off-hand remarks with little or no meaning. Like every other nominee before this Committee, Mr. Myers says that if confirmed he will put aside past views and look at the issues. We are asked to trust that despite the intensity with which he's advocated these views, and the years he's devoted to opposing environmental regulations that restrain the mining and cattle industries, he will still "follow the law" if he's confirmed to the Ninth Circuit. Repeating that mantra again and again in the face of his extreme record does not make it credible that he will do so.

The hallmark of our system of justice is that all who go to court must know that they will get a fair hearing. Even those who are poor and have no political power or influence have a right to judges who respect that right.

Mr. Myers' record does not justify a life-time appointment to the court of appeals. He's free to keep advocating for private interests in his law practice, but I doubt we'd even confirm him now for the Department of Interior, and we certainly shouldn't confirm him for a federal court.

Supreme Court of Wyoming
Cheyenne, Wyoming 82002

MARILYN S. KITE, JUSTICE

TELEPHONE: (307) 777-7422

July 15, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: William G. Myers III

Dear Mr. Chairman:

I understand that William G. Myers III is under consideration for an appointment to serve on the United States Court of Appeals for the 9th Circuit. I have known Bill for over a decade and am pleased to recommend him for your favorable consideration.

I was a partner with Holland & Hart when Bill joined the firm in 1997 and had many opportunities to work with him until May of 2000 when I left the firm to begin my service on the Wyoming Supreme Court. Bill is extremely knowledgeable on the legal issues related to natural resources and public lands. His practical experience in that area provides him with a sound pragmatic base from which to analyze those issues. He often found workable solutions to clients' problems without the need for litigation. I have no doubt about his legal ability and integrity. His successful record before federal and state courts as well as regulatory agencies confirms those attributes.

As far as judicial temperament is concerned, Bill's easygoing, pleasant personality will lend itself well to the proper exercise of judicial duties, if he is confirmed. He has demonstrated his ability to work constructively with people who hold widely divergent views on the issues. As a result, I expect he would demonstrate an appropriate judicial temperament.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Marilyn S. Kite

Marilyn S. Kite
Justice

MSK:gp
cc: The Honorable Patrick J. Leahy

February 5, 2004

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Leahy,

We the undersigned lawyers and professors of law in states within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit write to express our strong opposition to the nomination to that court of former Interior Department Solicitor William G. Myers, III. We have serious concerns regarding his hostile views on environmental protection and the rights of Native Americans. His stated views on property rights and takings not only would affect environmental protections, but would undermine enforcement of civil rights laws, workers' safety laws, and other basic federal laws on which Americans have come to rely. We believe that his record and views make him unfit for a lifetime appointment to a court of appeals seat only one step below the Supreme Court.

Myers lacks the basic qualifications and experience necessary for a federal court judge. He has had little trial or appellate experience, has written only a few law review articles in his career, and has never been a judge. The American Bar Association Standing Committee on the Federal Judiciary gave Myers a split Qualified/Not Qualified rating, the lowest possible rating. A slim majority of the ABA committee found him qualified while six or seven of the 15 members of the committee found him not qualified. No member of the committee rated him well qualified.

Equally troubling is Myers' career-long record of support for industry to the detriment of the public and the environment. In the few cases in which Myers participated in private practice, he attacked the constitutionality of environmental protections and sought to roll back regulation on industry. In his personal capacity, he attacked the federal government and laws protecting the environment in op-ed articles. As a lobbyist for the cattle and mining industries, Myers advocated positions opposing basic regulations that seek to protect the environment from harm by those industries. He then moved seamlessly to the Interior Department where, despite having taken an oath to enforce the laws under his jurisdiction, he used his position as Solicitor to bring to fruition the pro-industry policies for which he had labored as an attorney, lobbyist and private citizen. As Interior Solicitor, Myers overturned policies aimed at protecting the environment and showed his disdain for environmentalists. He wrote during his time at the Interior Department of the "importance of . . . rejecting the scheming of those engaged in the environmental conflict industry."[1] He now asks the Senate to believe that as a federal judge, he could put aside his long-held views and long-advocated positions and approach each case fairly and

[1] William Myers, *Agency Lawyer Has Obligation to Speak on Behalf of a Client*, IDAHO STATESMAN, Nov. 26, 2002.

impartially. You have ample evidence of Myers' misuse of a position of public trust to regard such an assertion with deep skepticism.

I. Myers' Record in Private Practice

Myers' record before becoming Solicitor of the Interior Department presaged his actions as a government official. In litigation and in his writings, Myers has consistently made extreme statements regarding the right to privacy, property rights, takings, environmental protection and states' rights. In two articles commenting on Robert Bork's nomination to the Supreme Court, Myers endorsed an extremely narrow reading of the right to privacy and unenumerated rights. He stated that *Griswold v. Connecticut* and *Roe v. Wade*, which established basic reproductive freedom, were motivated by the "personal moral values of the justices . . . ." In contrast, he argued that the notorious decision in *Bowers v. Hardwick*, which the Supreme Court repudiated last year in *Lawrence v. Texas*, was based on a "neutral reading of the Constitution."[2] These views are especially troubling because, if confirmed, Myers would be responsible for faithfully applying *Griswold* and *Roe* and adjudicating cases involving the rights of gays and lesbians in the aftermath of *Lawrence*.

In briefs he filed challenging environmental protections, he embraced arguments that went far beyond those necessary to challenge the law at issue. In *Sweet Home Chapter of Communities for a Greater Oregon v. Babbitt*, he argued on behalf of the National Cattlemen's Association 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."[3] The elevation of property rights to the level of "a fundamental right" would result in the striking down of almost all government regulations. Such a revolutionary approach would likely return the courts to their discredited pre-New Deal role in which they stood as guardians of property to the exclusion of almost all government reform. Under such a standard, the courts could invalidate a vast array of civil rights, labor, health, disability and other basic laws and protections at the core of our government's regulatory structure.

Myers also filed an *amicus* brief in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* in which he argued that Congress did not have the power to regulate wetlands under the Commerce Clause. He asserted that protecting wetlands amounted to "federal regulation of land use," which constituted an unconstitutional exercise of federal authority in an area reserved for state or local regulation.[4] Like his position on property rights, Myers' argument here sweeps extremely broadly. Just as the elevation of property rights to a fundamental right poses a serious threat to laws protecting civil rights, labor, health, people with disabilities, and

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[2] William G. Myers III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 DENVER U. L. REV. 1, 24-25 (1988); *see also*, William G. Myers III, *The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork*, 17 HASTINGS CONST. L.Q. 399 (1989-1990).

[3] Brief as *Amici Curiae* of the Nat'l Cattlemen's Assoc. and the CATL Fund in Support of Respondents, *Babbitt v. Sweet Home Chapter of Communities for a Greater Or.*, 515 U.S. 687 (1995) (No. 94-859).

[4] Brief for *Amici Curiae* American Farm Bureau Fed'n, *et al.*, in Support of Petitioner, *Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159 (2001) (No. 99-1178).

the environment, an overly restrictive reading of the Commerce Clause severely undermines the ability of Congress to legislate in these areas.

Myers' statements in articles and op-eds leave little doubt that the extreme positions he has taken on behalf of the industries for which he worked reflect his deeply held beliefs. In one article, he compared the federal government's stewardship over public lands to King George III's "tyrannical" rule over the American colonies, claiming that federal regulations are leading to "a modern-day revolution" in Western states.[5] In another article, he stated that the California Desert Protection Act, which set aside millions of acres of wilderness and national parks, was "an example of legislative hubris."[6] He argued that federal regulations are "designed to turn the West into little more than a theme park."[7] Finally, in Congressional testimony, Myers likened the decision to reintroduce wolves into Yellowstone, with the resulting rare incursions onto private land, to the British demands that colonists quarter their soldiers.[8]

II. Favoring Industry over Environmental Protection at the Interior Department

As the Interior Department's top lawyer from 2001-2003, Myers seized the opportunity to give the grazing and mining industries what he had assiduously sought on their behalf in the private sector. Notwithstanding his oath of office to work in the public interest and enforce the statutes that protect federal lands, his short career at the Interior Department was characterized by relentless efforts to undermine federal laws and regulations deemed hostile to industry interests.

In one of two opinions he authored as Interior Department Solicitor, Myers reversed a Clinton-era opinion and reinterpreted the Federal Land Policy and Management Act to pave the way for a controversial Glamis Company mine to operate on sacred Native American grounds. Myers' butchered the language of the statute in order to reach the result sought by the mining industry. According to the district court that reviewed a challenge to the Interior Department's position, Myers' opinion "violated three well-established canons of judicial construction . . . ."[9] In addition, although Glamis Company had meetings with Interior Department officials, Myers issued his opinion and Interior Secretary Gale Norton approved the mine without input from the Quechan Indian Nation,

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[5] William G. Myers, III, *Western Ranchers Fed Up with Feds*, FORUM FOR APPLIED RESEARCH & PUB. POL'Y at 22 (Winter 1996).

[6] William G. Myers, III, *Environmental Command and Control: The Snake in the Public Lands Grass*, *in* FARMERS, RANCHERS & ENVTL. LAW 209 (1995).

[7] Speech by William G. Myers, III, *quoted in* Behind the Curtain, MOTHER JONES (Sept./Oct. 2003).

[8] Testimony of William G. Myers, III, *Reintroduction of Wolves in Yellowstone: Hearing Before the Subcomm. On Parks and Historic Preservation and Recreation of the Senate Energy Comm.*, May 23, 1995.

[9] *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30 (D.D.C. 2003). The court found that Myers' opinion impermissibly interpreted the word "or" to be "'interchangeable with "and"'" and found that Myers also violated the canon requiring the words of a statute to govern and the canon that, if possible, no words should be treated as surplusage. Despite the deficiencies in Myers' opinion, the court upheld much of the regulation Myers' opinion supported on other grounds under the deferential *Chevron* standard for interpreting agency regulations.

which by law is entitled to government-to-government consultation. As a result of Myers' actions, the National Congress of American Indians and the Quechan Indian Nation have opposed Myers' nomination.

In his only other opinion as Solicitor, Myers made it more difficult for environmental groups to purchase and retire grazing permits for a ten-year period even if a permit-owner were willing to sell to them. Such purchases had received wide, bipartisan support, but were opposed by the grazing industry.

When Myers joined the Interior Department, he signed an agreement to recuse himself from any matters on which he worked in private practice and for one year from any matters involving his former law firm or its clients. Nevertheless, he continued to meet with members of his law firm and their clients.[10] While the Inspector General's office closed the investigation without finding evidence of criminal wrongdoing, the report it issued painstakingly documented the numerous contacts between Myers and the industries he once represented, as well as the gifts and trips he received from his former firm. According to the report, he was forced by the Interior ethics office to reimburse almost $2000 to his former firm for a trip he took to a firm retreat in Vail where he participated in a panel discussion and spent an afternoon skiing with a former colleague from the firm.[11] He was also forced to reimburse former colleagues at the firm for various other gifts he received. The report showed, at the very least, poor judgment on the part of Myers. The Inspector General is still conducting another investigation into a stunningly one-sided settlement between the Interior Department and a rogue grazer that was negotiated during Myers' tenure.

Conclusion

The Ninth Circuit has the largest jurisdiction of any appellate court in the United States, covering the states of Alaska, Hawaii, Washington, Oregon, California, Idaho, Nevada, Arizona and Montana. Judges on the Ninth Circuit thus have enormous power over the lives of millions of Americans on critical issues, including land use and environmental issues, about which he has articulated strong views. His inexperience, his undistinguished record as a legal thinker, and the overwhelming evidence of his predisposition in favor of particular interests on important issues lead inevitably to the conclusion that he is unfit for the powerful, lifetime position to which he has been nominated. As law professors residing within the Ninth Circuit, we urge you to reject Myers' nomination.

Sincerely,

Richard L. Abel
Connell Professor of Law
University of California, Los Angeles

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[10] *See* Office of the Inspector General, Report of Investigation, Myers, William G., III, Case No. PI-NM-03-0309-I (Nov. 24, 2003).
[11] *Id.* at 40-43.

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COMPLIANCE ENFORCEMENT COMMITTEE
Karen K. Narasaki
National Asian Pacific American Legal Consortium

(*Deceased)

February 3, 2004

The Honorable Orrin G. Hatch
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Hatch and Leahy:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of William G. Myers to the U.S. Court of Appeals for the Ninth Circuit.

We are very troubled by many aspects of Myers' record including his disregard and disrespect for the concerns of the Native American community and his troubling legal philosophy that would elevate property rights to a level of constitutional scrutiny reserved for fundamental rights, such as the right to free speech and equal protection. We are also concerned with his limited view of Congress' commerce power, and the implications that flow from that view as it impacts civil rights.

In his role as solicitor for the Department of the Interior, and as an advocate and lobbyist for the interests of public land industries, miners, cattlemen, and ranchers, Myers has shown an alarming insensitivity to the heritage and traditions of Native Americans. Myers' pro-industry bias, at the expense of the interest of Native Americans, has led the National Congress of American Indians, the nation's oldest and largest organization of Native American and Alaskan tribal governments, to adopt a formal resolution in opposition to Myers' nomination to the Ninth Circuit. NCAI's 2003 resolution cited Myers' "deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments" as well as his "demonstrated [] inability to set aside personal bias to act in a neutral and objective manner." Myers' nomination is of particular concern, given that the Ninth Circuit is home to over one hundred Indian tribes, millions of Indian people, millions of acres of public land, and has jurisdiction over important federal and tribal lands management issues.

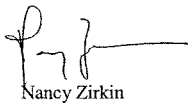
Though most of Myers' legal work has focused on environmental issues, some of his writings raise serious concerns about his legal philosophy more generally. For example in the *amicus* brief he authored in the case of *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers*, 531 U.S. 159 (2001), Myers advocated a very limited view of Congressional power under the Commerce Clause – a view with implications far beyond the environmental policy field. Diminishing congressional authority under the Commerce Clause is a primary goal of the so-called "states' rights" movement that seeks to limit the power of Congress to enact legislation that protects our civil and constitutional rights. Myers' argument in *SWANCC* could be used to strike down a broad range of federal laws protecting the health, safety, and civil rights of all Americans.

In addition to his views on the limited power of the Commerce Clause to support Congressional authority, Myers has also argued for elevated protection for private property "rights" as a method to invalidate environmental and other governmental regulation. In *Babbitt v. Sweet Home Chapter of Communities of Oregon*, 515 U.S. 687 (1995), Myers filed an *amicus* brief that argued, among other things, that a regulation promulgated under the Endangered Species Act was unconstitutional because it violated cattle ranchers' property rights. In support of this argument, Myers claimed that property "rights" of a rancher were constitutional rights that are "as fundamental as his right to freedom of speech or freedom from unreasonable search and seizure." This elevation of property rights to the level of "fundamental" rights could be used to invalidate a wide range of important health, safety, and environmental regulations. LCCR is especially troubled by the implications of Myers' positions on property rights and the Commerce Clause would have for civil rights cases.

In light of Myers' record of hostility to the interest of Native Americans, his limited view of Congress's Commerce Clause power, with its implications for civil rights cases, and his views of property rights as "fundamental" within our constitutional system, we urge the Judiciary Committee to reject his confirmation to the U.S. Court of Appeals for the Ninth Circuit. If you have any questions or need further information, please contact Nancy Zirkin, LCCR Deputy Director/Director of Public Policy, at (202) 263-2880, or Julie Fernandes, LCCR Senior Policy Analyst, at (202) 263-2856.

Sincerely,

Wade Henderson
Executive Director



Nancy Zirkin
Deputy Director

cc: Senate Judiciary Committee

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(*Deceased)

July 19, 2004

Dear Senator:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of William G. Myers to the U.S. Court of Appeals for the Ninth Circuit.

We are very troubled by many aspects of Myers' record including his disregard and disrespect for the concerns of the Native American community and his troubling legal philosophy that would elevate property rights to a level of constitutional scrutiny reserved for fundamental rights, such as the right to free speech and equal protection. We are also concerned with his limited view of Congress' commerce power, and the implications that flow from that view as it impacts civil rights.

In his role as solicitor for the Department of the Interior, and as an advocate and lobbyist for the interests of public land industries, miners, cattlemen, and ranchers, Myers has shown an alarming insensitivity to the heritage and traditions of Native Americans. Myers' pro-industry bias, at the expense of the interest of Native Americans, has led the National Congress of American Indians, the nation's oldest and largest organization of Native American and Alaskan tribal governments, to adopt a formal resolution in opposition to Myers' nomination to the Ninth Circuit. NCAI's 2003 resolution cited Myers' "deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments" as well as his "demonstrated [] inability to set aside personal bias to act in a neutral and objective manner." Myers' nomination is of particular concern, given that the Ninth Circuit is home to over one hundred Indian tribes, millions of Indian people, millions of acres of public land, and has jurisdiction over important federal and tribal lands management issues.

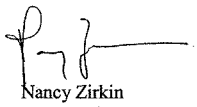
Though most of Myers' legal work has focused on environmental issues, some of his writings raise serious concerns about his legal philosophy more generally. For example in the *amicus* brief he authored in the case of *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers*, 531 U.S. 159 (2001), Myers advocated a very limited view of Congressional power under the Commerce Clause – a view with implications far beyond the environmental policy field. Diminishing congressional authority under the Commerce Clause is a primary goal of the so-called "states' rights" movement that seeks to limit the power of Congress to enact legislation that protects our civil and constitutional rights. Myers' argument in *SWANCC* could be used to strike down a broad range of federal laws protecting the health, safety, and civil rights of all Americans.

In addition to his views on the limited power of the Commerce Clause to support Congressional authority, Myers has also argued for elevated protection for private property "rights" as a method to invalidate environmental and other governmental regulation. In *Babbitt v. Sweet Home Chapter of Communities of Oregon*, 515 U.S. 687 (1995), Myers filed an *amicus* brief that argued, among other things, that a regulation promulgated under the Endangered Species Act was unconstitutional because it violated cattle ranchers' property rights. In support of this argument, Myers claimed that property "rights" of a rancher were constitutional rights that are "as fundamental as his right to freedom of speech or freedom from unreasonable search and seizure." This elevation of property rights to the level of "fundamental" rights could be used to invalidate a wide range of important health, safety, and environmental regulations. LCCR is especially troubled by the implications of Myers' positions on property rights and the Commerce Clause would have for civil rights cases.

In light of Myers' record of hostility to the interest of Native Americans, his limited view of Congress's Commerce Clause power, with its implications for civil rights cases, and his views of property rights as "fundamental" within our constitutional system, we urge the Senate to reject his confirmation to the U.S. Court of Appeals for the Ninth Circuit. If you have any questions or need further information, please contact Nancy Zirkin, LCCR deputy director/director of public policy, at (202) 263-2880, or Julie Fernandes, LCCR senior policy analyst, at (202) 263-2856.

Sincerely,

Wade Henderson
Executive Director



Nancy Zirkin
Deputy Director

Statement Of Senator Patrick Leahy
On The Nomination of William Myers
March 1, 2005

Last week, Chairman Specter held a news conference and demonstrated his determination, his statesmanship and his ambitious agenda for this Committee in the months ahead. Democrats and Republicans on the Judiciary Committee are delighted to see him back so soon in such fine form and good humor.

He outlined the bipartisan progress that we are making together on several efforts, including asbestos legislation and hearings the committee will hold on privacy and identity theft issues. He also talked about the conflict between the White House and the Senate over controversial judicial nominees.

I welcome the improved tone he has brought to this last topic, and I think he and I agree that this conflict is unnecessary. I think we agree that it would serve the country far better to have nominees who do not divide the Senate and the American people, and that the President should -- as I have been urging him to for some time -- work more closely with the Senate to avoid problems before they arise here. The Chairman was correct to recognize the role the Constitution envisions for the Senate in the lifetime appointment of federal judges, and to defend the right of the minority to express itself in a democracy. As Senator Isakson explained just a few weeks ago in remarks on the Senate floor, those minority rights in general, and the filibuster in particular, are crucial to maintaining a democratic government and fair society.

Since the President began his first term, in 2001, Democrats in the Judiciary Committee and in the Senate have been cooperating to a remarkable degree in confirming the President's judicial nominees. In his first term 204 judges were confirmed to lifetime appointments on the federal circuit and district courts. That is more than were confirmed in his father's term, more than in either of Ronald Reagan's terms, and more than in President Clinton's second term. When I became Chairman in June of 2001 and held the first judicial nomination hearing of the term, there were 110 vacancies on the federal courts, most due to the delay and inaction on President Clinton's nominees. Through hard work and cooperation over the last four years, that number has plummeted, and at the end of the last Congress had reached a 14-year low of 27. There no longer is a vacancy crisis in the federal courts, and each of us on this Committee ought to be proud of our part in solving it.

However, much as we have worked together on both sides of the aisle to fill an impressive number of vacancies by any measure, President Bush continues to insist on a handful of extreme, activist nominees to key positions on some circuit courts. Even after the Senate, through the use of long-standing rules, has denied confirmation to these nominees and has made clear that they are highly controversial within the Senate and to the American people, the President has continued to support them and send them back time and again to the Senate. He did it again just a few weeks ago, when he renominated 20 candidates for federal judgeships, seven of whom have already been considered by the Senate, and others about whom he knows there is great controversy and disagreement. By sending these nominations back to the Senate he is choosing partisan politics over good policy and obstructing our ability to fill the few remaining vacancies.

The nominee before us today, William Myers, is among those already examined, and the Senate has withheld its consent to his lifetime appointment. This nomination was rejected for its partisanship and lack of distinguished qualifications. Instead of trying to change the vote on this nomination, the President would be well advised to work with the Senate to find a consensus nominee to fill the vacancy on the Ninth Circuit. That would go a long way toward avoiding the kind of debacle the Chairman so rightly predicts could ensue if we continue on the path this nomination represents.

I agree with what the Democratic Leader has said about the already-considered judicial nominees, and I too expect that the outcome of this nomination will not change if we are pushed to consider it again in Committee and on the Senate Floor. I still oppose the confirmation of Mr. Myers to the Ninth Circuit for all of the reasons I laid out last July. I still believe Mr. Myers to be perhaps the most anti-environmental judicial nominee sent to the Senate in my 30 years in representing Vermont in the U.S. Senate. I still believe that the nomination of William Myers to the United States Court of Appeals for the Ninth Circuit is an example of how this President has misused his power of appointments to the federal bench. I still believe Mr. Myers is not independent enough to receive confirmation for a lifetime appointment to this federal circuit court. Nothing has changed.

To the contrary, since we last had the opportunity to talk about Mr. Myers' nomination, more questions have arisen. Today the nominee will be given another opportunity to make his case and explain why he is entitled to a lifetime appointment to the federal court. Today we will resume the process of seeking answers to questions about this nomination. The Committee is right to follow regular order through this hearing.

In particular, I have questions about Mr. Myers' relationship with and role in rewarding a lawyer who worked for him, and who was recently found by the Department of Interior's Inspector General to have been responsible for arranging a sweetheart deal to a politically well-connected rancher. I was not satisfied with his answers to our previous questions about his total disregard for the concerns of the Native Americans of the Quechen Tribe in the Glamis Mine case, and I have some questions for him about recent developments in the Oil-Dri case where a state court has just rejected his legal arguments that would have protected big business over the objections of another Native American tribe.

Let me remind those listening of the basis for my opposition to this nomination. Mr. Myers' hometown newspaper warned that as Solicitor at the Department of the Interior: "(Mr.) Myers sounds less like an attorney, and more like an apologist for his old friends in the cattle industry." He has a record of extremism when it comes to his opposition to environmental protections, having gone as far as comparing the federal government's management of public lands to "the tyrannical actions of King George" over the American colonies.

Anti-Environmental Activism

I have carefully reviewed the record that Mr. Myers has logged in private practice and in the Bush Administration. I asked him a series of questions at his hearing last February and later in writing, after that hearing. Last year we afforded Mr. Myers the opportunity to be heard and to make his case that he would be a fair and impartial adjudicator if confirmed to the federal bench. Based on the record, the only conclusion I was able to reach was that, if confirmed, Mr. Myers would be an anti-environmental activist on the bench, despite President Bush's claim that the President opposes judicial activism. Apparently not, it seems, when the judicial activism is aimed against the environment or is tinged with ideology that this Administration favors. Today's hearing gives Mr. Myers an additional opportunity to be heard and to make his case. He should explain his consistent record of using whatever position and authority he has had to fight for corporate interests at the expense of the environment and at the expense of the interests of the American people in environmental protections.

For 22 years, Mr. Myers has been an outspoken antagonist of long-established environmental protections, usually wearing the hat of a paid lobbyist for industry. This is not a case of a representation of a defendant in a single case. He has chosen this career for which he has been amply rewarded both monetarily and by positions in the Bush Administration.

An attorney also has a duty to follow the law and, on more than one occasion, Mr. Myers' advocacy has pushed the limits of the law. As *The New York Times* editorialized, Mr. Myers "regularly took positions that. . .would have had a devastating impact on the environment."

As the chief lawyer at the Department of the Interior, Mr. Myers disregarded the law in order to make it easier for companies to mine on public lands – a position consistent with his prior role lobbying for mining interests while he was in private practice. He interpreted the mining law in a way that would have allowed the reversal of Secretary Babbitt's rejection of a permit for Glamis Mining Co. on land in the Southeastern California desert. Fortunately, an independent review by a federal court concluded that Mr. Myers' interpretation was wrong. The court called into question his ability to interpret a statute as he violated "three well-established canons of statutory construction." In addition, he acted without government-to-government consultation with the Quechan

Indian Nation, a federally recognized tribe, or other Colorado River Tribes, before taking action to imperil their sacred places.

As Solicitor General at the Interior Department, Mr. Myers encouraged two Northern California congressmen to sponsor legislation that would have given a private firm eight acres of valuable federal land in Yuba County, California. Recognizing that the government did not have the right to turn over the land without compensation, he told the landowners that the "department would support private relief legislation" to accomplish that goal. The Department has since withdrawn its support for the private relief bill after its own agents produced readily available documents that conclusively proved that the government owned the land.

Mr. Myers' record on the environment would raise serious concerns no matter where he would be sitting as a judge. However, it is especially disturbing given the court to which he has been nominated. William Myers has been nominated to a circuit court with jurisdiction over an area of the country which contains hundreds of millions of acres of national parks, national forests and other public lands, tribal lands, and sacred sites. Judges on the Ninth Circuit decide legal disputes concerning the use and conservation of many of the most spectacular and sacred lands in America and often make the final decision on critical mining, grazing, logging, recreation, endangered species, coastal, wilderness, and other issues affecting the nation's natural heritage. Judges on the Ninth Circuit are also the arbiters on treaty, statutory, trust relationship, and other issues affecting American Indian tribal governments, Native Americans, and Alaska Native groups. The Ninth Circuit plays an enormous and pivotal role in interpreting and applying a broad range of environmental rules and protections that are important to millions of Americans, and to future generations of Americans.

At stake is the longstanding acceptance of the Constitution's commerce clause as the source of congressional authority to enact safeguards to protect our air, water, and land. In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers,* Mr. Myers submitted an amicus brief arguing that the Commerce Clause does not support the United States Army Corps of Engineers' jurisdiction over isolated, intrastate waters on the basis that they are or have the potential to be migratory bird habitat. Mr. Myers' position raises concerns whether his extremely narrow view of the scope of the Constitution's commerce clause would undermine our nation's environmental, health, safety, labor, disability and civil rights laws.

At stake are environmental protections which can be struck down if taxpayers do not pay polluters, according to the extreme expansion of the takings clause that some judges have begun to adopt. Mr. Myers has taken this extreme view by arguing that property rights should receive the same level of constitutional scrutiny as free speech. His position raises concerns that he will interpret as "takings" the very laws implemented by Congress to protect our lands and our environment.

At stake is the true meaning of the Constitution's Eleventh Amendment and the right of citizens to sue to enforce environmental protections. In an era of ballooning government deficits and cuts in environmental enforcement budgets, there is much at stake if courts eliminate or minimize the critical role of "private attorneys general" who are needed to ensure that polluters are complying with federal mandates. Mr. Myers has gone so far as to argue that judges should take a more active role in reducing lawsuits brought by environmentalists by requiring non-profit environmental organizations to post a bond for payment of costs and damages that could be suffered by any opposing party. He wrote: "Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare." These positions raise concerns that plaintiffs in his courtroom who are members of environmental organizations will not be treated fairly.

Systematic Use Of Courts To Undermine Environmental Protection

For the last four years, the Bush Administration has systematically, and often stealthily, set out to undermine the basic safeguards that have been used by administrations of both parties to protect the environment. One way the Bush Administration has demonstrated its contempt for our nation's environmental laws is in the court system. A Defenders of Wildlife study covering the Administration's first two years noted how its agencies argued in court. Amazingly, in cases where the Administration had a chance to defend the National Environmental Protection Act (NEPA), more than 50 percent of the time it presented arguments in court which would weaken NEPA. Similarly, the Administration argued to weaken the Endangered Species Act (ESA) more than 60 percent of the time.

Despite the Administration's arguments against the environmental laws it is entrusted with protecting, and despite the deference customarily paid to Executive agencies in federal court, the independent federal judiciary, thus far, has generally upheld our longstanding environmental laws. The courts ruled against the Administration's arguments to weaken NEPA 78 percent of the time, and ruled against the Administration's arguments to weaken the ESA an astounding 89 percent of the time. Further illustrating how important the judiciary has become for environmental protection -- particularly in the absence of a commitment to environmental protection by Executive agencies -- the League of Conservation Voters for the first time included a vote on a judicial nominee on its 2003 scorecard of Senate votes. In the past few years, our federal courts resisted efforts to weaken the Clean Water Act, the Clean Air Act, and the Endangered Species Act. The courts protected our National Monuments from challenges by extremist groups trying to strip them of their status, upheld air conditioning standards which save energy and money for consumers, and stopped Administration rollbacks that benefited industry at the expense of our forests. The result of these court decisions is that our vital wetlands and rivers are not decimated, diverse species are protected from extinction, and the standards for air quality are brought into compliance with the law.

There are, however, dark clouds on the horizon. There are cases pending where the outcomes could affect whether our air is threatened by toxic chemicals and whether our water and health are threatened by pollution and pesticides. There are cases pending

whether to allow snowmobiles in our National Parks, whether to allow the Administration to open up 8.8 million acres of important wildlife habitat and hunting and fishing grounds in Alaska for oil and gas leasing, whether pumping dirty water into the Everglades violates the Clean Water Act, and whether the Administration can open our nation's largest National Forest to logging.

How will these cases be decided? Will the federal courts continue to stand as a bulwark against the Administration's assault on environmental protection? Consider that in two recent cases, judges appointed by President Bush dissented, arguing against environmental protections. In one case, a Bush-appointed judge indicated that he might find the Endangered Species Act unconstitutional, and, in the other case, a Bush judge would have ruled to make it harder for public interest groups to prevent irreparable environmental harm through injunctive relief while claims are pending. What if President Bush succeeds in appointing more like-minded judges and these Bush judges become the majority next time, positioned to strike down vital environmental protections? This is the type of judicial activism against established precedent that President Bush says he deplores, yet he nominates and appoints judges who engage in wholesale judicial activism.

The Bush Administration has already proposed more rollbacks to our environmental safeguards, aiming to benefit industry at the expense of the public's interest in clean air and water, our public lands, and some of our most fragile wildlife populations. While today we have a federal judiciary which has in many instances prevented this Administration's attempts to roll back important environmental laws and protections, in the future we may not be so fortunate. Today, the appellate courts in this country have tilted out of balance with Republican appointees. The American people expect good stewardship of the nation's air, water and public lands, and the American people deserve that. Judges have a duty to enforce the protections imposed by environmental laws. The Senate has a duty to make sure that we do not put judges on the bench whose activism and personal ideology would prevent fair and impartial adjudication and would circumvent environmental protections that Congress intended to benefit the American people and generations to come.

An editorial in *The Boston Globe* recognized: "When the White House is in the clutches of the oil, coal, mining, and timber companies, as it is now, the best defenders of laws to protect the environment are often federal judges." The editorial concludes that if the Senate confirms William Myers, "the judicial check in this administration's unbalanced policies will be weakened."

For almost his entire 22-year legal career, Mr. Myers has worked in Washington -- in political positions for Republican Administrations and as a lobbyist. He received a partial "Not Qualified" rating from the American Bar Association – the ABA's lowest passing grade. He has minimal courtroom experience – having never tried a jury case and having never served as counsel in any criminal litigation. It seems clear that William Myers was nominated not for his fitness to serve as a lifetime member of the federal judiciary but rather as a reward for serving the political aims of the Administration.

The 'Swoosh' Of The Revolving Door

When Mr. Myers was appointed to his legal post at the Department of the Interior, some described it as putting a fox in charge of the henhouse. Another metaphor that comes to mind is the revolving door that is emblematic of so many of this Administration's appointments, especially to sensitive environmental posts. Mr. Myers' Interior appointment was the first "swoosh" of the revolving door. His nomination by President Bush to one of the highest courts in the land completes the cycle. Mr. Myers is one of several nominees who have come before us because they are being awarded lifetime appointments to the federal courts based not primarily on their qualifications for the office, but as part of a spoils system for those who are well connected and have served the political aims of the Bush Administration.

So many of President Clinton's judicial nominees upon whom the Senate took no action seemed to have been penalized for their government service or for having supported the President. Elena Kagan, James Lyons, Kent Markus and so many others never received hearings, and their nominations were defeated through Republican inaction and obstruction, without explanation. With a Republican President, Senate Republicans have reversed their field and position. We have already confirmed to lifetime appointments a number of Administration and Republican-connected candidates, including Judge Prost, Judge McConnell, Judge Cassell, Judge Shedd, Judge Wooten, Judge Chertoff, Judge Hudson, Judge Clark, and Judge Bybee. On that last nomination, it is clear we moved too hastily and without knowing enough about his involvement in devising legal interpretations governing detention and interrogation that have led to a national and international scandal.

The list of those who are deeply concerned about, and who have felt compelled to oppose this nomination has been long and it continues to lengthen. More than 172 environmental, Native American, labor, civil rights, disability rights, women's rights and other organizations have signed a letter opposing Mr. Myers' confirmation to the Ninth Circuit Court of Appeals.

The National Congress of American Indians, a coalition of more than 250 tribal governments, unanimously approved a resolution opposing Mr. Myers' nomination. The National Wildlife Federation, which has never opposed a judicial nomination by any president in its 68-year history, wrote:

> "Mr. Myers has so firmly established a public record of open hostility to environmental protections as to undermine any contention that he could bring an impartial perspective to the issues of wildlife and natural resource conservation that come before the court. Indeed, Mr. Myers is distinguished precisely by the ideological rigidity that marks his positions on these issues."

A letter from the California Legislature, signed by the Senate President Pro Tem, the Chair of the Senate Natural Resources Committee, and the Chair of the Senate Environmental Quality Committee, strongly opposing Mr. Myers' nomination, told the Judiciary Committee:

> "Mr. Myers' record as Interior Solicitor of favoring the interests of the grazing and mining industries over the rights of Native Americans and the environment, coupled with his long history as an extreme advocate for those industries, cause serious doubts on his willingness or ability to put aside his personal views in performing his official duties."

I have great regard for the Senators from Idaho. I have affection for the former Senator from Wyoming, who was my colleague on the Judiciary Committee for many years and who I consider a friend. In deference to them, I have examined Mr. Myers' record and asked myself whether I could support this nomination. I could not last year, and I cannot now.

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Lewiston Tribune Online

Lewiston, ID | February 20, 2005 | Editorial

Idahoans seek center as Bush pushes hot button

by Editorial Page Editor Jim Fisher

If any Idahoans wonder why a native son from Harvard and some respected former state senators are enlisting moderates to seek centrist solutions to common problems, President Bush provided a good answer Monday.

The president returned to the Senate the names of several judicial nominees whose confirmations were already rejected, mostly by Democratic filibusters. And one of those nominees is Boise lawyer William Myers, whose nomination attracted rare opposition from the nation's Indian tribes.

Bush's move probably will do more than further poison an already unhealthy atmosphere between the two parties in the Senate. The president is daring Democrats to try repeating their filibusters, which block action unless opponents produce 60 votes to override them. And Republican leader Bill Frist has threatened to resort to "the nuclear option" -- wiping out the filibuster through a Senate rule change -- if Democrats do that.

Unlike Bush and Frist, Keith Allred gives more than lip service to uniting opposing groups. The former Twin Falls-area political scientist has returned to Idaho to teach at Boise State University, and to help found The Common Interest. He has been joined in that by three of the state's least confrontational and most respected former senators, Republican Laird Noh of Kimberly and Democrats Bruce Sweeney of Lewiston and Marguerite McLaughlin of Orofino.

The group says the best solutions are often found in the political center, rather than in the extremes that have taken over Congress, the White House and, too often, the Idaho Legislature. You can learn more about it at www.thecommoninterest.org.

You can learn more about what the group opposes from U.S. Sen. Larry Craig's statement welcoming the renomination of Bill Myers.

"Over the years, Bill Myers has impressed me with his professionalism, integrity and ability," Craig wrote. "Most important, he knows and respects the law and will not legislate from the bench -- a lesson many sitting judges should heed."

That's different from the opinion of the federal judge who found that Myers, as the Interior Department's top lawyer in the first Bush term, misinterpreted the law in reversing a past prohibition of a heap-leach gold mine that threatened to destroy sites sacred to the Quechan Tribe in California.

It's also different from that of the National Congress of American Indians, which approved a resolution opposing Myers' confirmation as a federal appeals court judge.

In seeking to force nominations such as Myers', Bush, Frist and Craig serve an extreme end of the political spectrum. In working against extremism from either end, the founders of The Common Interest point to where most Idahoans are, in the center.

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CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

March 15, 2004

U.S. Senator Dianne Feinstein
331 Hart Senate Office Building
Constitution Ave and 2nd St. NE
Washington, D.C. 20510

Re: Confirmation of William Myers

Dear Senator Feinstein:

We are writing to request that you strongly oppose the nomination of William Myers to the Ninth Circuit Court of Appeals, and do all you can to ensure he is not confirmed. Mr. Myers is neither qualified to serve on the Ninth Circuit nor has he demonstrated the ability to be fair and impartial as an appellate judge. Throughout his career he has single-mindedly worked his to advance the interests of grazing and mining industries at the expense of the environment and acted against the interests and rights of Native Americans and tribal governments. His record as Solicitor of the Department of the Interior indicates that if confirmed, he would be a threat to California's strong environmental laws. His writings, public statements and legal work reveal radical views on property rights, individual rights, and on federal government authority that broadly threaten basic safeguards that are of critical concern to the millions of our people.

Mr. Meyers's nomination is opposed by numerous civil rights, disability rights, senior citizens, labor, women's rights, human rights, Native American, planning and environmental organizations, who are troubled by his extremist philosophy, and who doubt he can be relied upon to be an impartial justice on the federal bench. These include every major environmental organization in the nation, the National Congress of American Indians and many others.

We share the concern of the numerous law school professors from more than 72 institutions previously wrote you to question Mr. Myers's qualifications to serve on this critical panel. This opinion is shared by members of the American Bar Association's Standing Committee on the Federal Judiciary. A third of the committee's members rejected Mr. Myers as "unqualified" for the bench, while not one considered him "well-qualified" for the position. Mr. Myers lacks significant litigation experience at either the trial or appellate level, and has not

generated any important legal scholarship. In more than two years as Solicitor of the Interior Department, he produced just two formal legal opinions and one "correction" of his second opinion. By contrast, his predecessor produced 28 formal opinions during eight-year tenure.

We are especially troubled by his record of favoritism for extractive industries and his scorn for legislative protection for public lands, especially those in California. As the Interior Department's chief lawyer, Mr. Myers regularly favored the interests of the mining and grazing industries over the rights of American Indian tribal governments, Native Americans, and the environment. One of his two formal solicitor opinions reversed a detailed opinion by his predecessor in order to pave the way for Secretary Gail Norton to reverse the decision of former Secretary Bruce Babbitt and approve the Glamis Company's proposed cyanide heap-leach gold mine on lands sacred to Native Americans. A recent federal court decision rejected the result that Mr. Myers' reached and harshly criticized his reasoning.[1] Mr. Myers' opinion relied on twisting the meaning of the statutory word "or" to mean its opposite: "and."

Although Glamis' representatives were granted meetings to urge their points of view on top Interior Department officials, Myers' legal opinion and Secretary Norton's subsequent decision to approve the Glamis mine were issued without any input from the Quechan Indian Nation, which by law is entitled to government-to-government consultation. This is especially disturbing in light of the Interior Department's responsibility as the lead agency in the federal government's trust and treaty relationship with the American Indian tribes.

The National Congress of American Indians (NCAI), a coalition of over 250 tribal governments, unanimously approved a resolution opposing Mr. Myers' nomination. This is the first time NCAI has opposed one of President Bush's judicial nominees. NCAI explained that Mr. Myers' actions as Interior Solicitor "show a deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments" and "could result in the extinguishment of the Quechan people's tribal heritage." *See* NCAI Resolution ABQ-03-061 (2003), *available at* http://www.ncai.org/data/docs/resolution/annual2003/03-061.pdf.

Mr. Myers' second formal opinion – and his subsequent correction to it – prevents even the voluntary retirement of federal grazing permits relinquished by ranchers in co-operation with groups like the Grand Canyon Trust, which has invested more than $1.5 million in its effort to retire grazing permits and reduce grazing impacts on publicly owned lands. These voluntary transactions enjoy wide, bipartisan support, but are opposed by the grazing industry. Mr. Myers went to great lengths to support the grazing lobby and undermine the efforts of environmentalists to use the free market to achieve conservation goals. Indeed, Mr. Myers has been so one-sided in his support of his former grazing clients that his actions have been the subject of two separate ethics investigations by the Interior Department's Inspector General. While the first of these investigations closed without finding actionable wrongdoing by Mr. Myers, the report painstakingly documents the continuous intimate contact between Mr. Myers and the industries he once represented, which shows, at the very least, poor judgment on the part of Mr. Myers. The IG is still working on an investigation into a stunningly one-sided and apparently illegal

[1] *Mineral Policy Center v. Norton*, 2003 WL 22708450 (D.D.C. Nov. 18, 2003), *available at* http://www.dcd.uscourts.gov/01-73.pdf.

settlement agreement with a rogue grazer named H. Frank Robbins that was negotiated under Mr. Myers' watch.

Particularly for organizations concerned about environmental protection and the important natural resources within the Ninth Circuit, Mr. Myers' intemperate criticism of environmental safeguards and environmentalists provides further reason to question his capacity to serve as an impartial judge in environmental cases. Mr. Myers has compared the federal government's management of the public lands to King George's "tyrannical" rule over the American colonies and claimed that public land safeguards are fueling "a modern-day revolution" in the American West.[2] He has denounced your own California Desert Protection Act as "an example of legislative hubris (emphasis added)"[3] and claimed that many environmental laws have the "unintended consequence of actually harming the environment."[4] He has called environmental critics of his Department's policies the "environmental conflict industry" and he has stressed the "importance of . . . rejecting [their] scheming."[5]

Beyond the environmental arena, Mr. Myers has advocated an extreme legal philosophy that would also seriously threaten civil rights and other protections. This is illustrated by a Supreme Court "friend-of-court" brief Myers filed in *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt* on behalf of the National Cattlemen's Association. His status as both client and counsel in the case precludes an assertion that he does not espouse the views expressed in the brief and was merely representing his client. In *Sweet Home*, Mr. 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."[6] The Supreme Court has held that a very limited number of "fundamental" rights, including freedom of speech, are entitled to the highest level of protection ("strict scrutiny"). Such rights can be limited only if there is a compelling governmental interest, using means that are "narrowly tailored" to address the government's interest.

Mr. Myers' argument for elevating ranchers' property rights would place those rights above the vast majority of other rights, including many aspects of the right to privacy. Indeed Mr. Myers has praised what he called the Supreme Court's "retreat" from the protection of privacy.[7] His approach apparently would apply strict scrutiny to federal and local laws and regulations that limit the use of property. This revolutionary theory would return the federal courts to their discredited pre-New Deal role in which they stood as the guardians of property to the exclusion of almost all government reform and thus could lead to the invalidation as

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[2] William G. Myers III, *Western Ranchers Fed Up with Feds*, FORUM FOR APPLIED RES. & PUB. POL., Winter 1996 at 22.

[3] William G. Myers III, *Environmental Command and Control: The Snake in the Public Lands Grass The Snake in the Public Lands Grass*, *in* FARMERS, RANCHERS & ENVIRONMENTAL LAW 209 (1995)).

[4] *Id.* at 208.

[5] William Myers, *Agency Lawyer Has Obligation to Speak on Behalf of a Client*, IDAHO STATESMAN, Nov. 26, 2002, *available at* http://www.idahostatesman.com/Search/story.asp?id=26580.

[6] Brief of the National Cattlemen's Association and the CATL Fund, Babbitt v. Sweet Home Chapter of Communities for a Great Or., 515 U.S. 687 (1995).

[7] William G. Myers III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 Denver U. L. Rev. 1, 24-25 (1988); see also, William G. Myers III, *The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork*, 17 Hastings Const. L.Q. 399 (1989-1990).

unconstitutional of a vast range of labor, health, environmental, disability, civil rights, zoning, and other basic laws that Americans have come to take for granted.

Challenges under the Takings Clause ordinarily focus on the impact of a regulation as applied to a particular claimant, but Mr. Myers argued in *Sweet Home* that key Endangered Species Act safeguards that apply to private property are facially unconstitutional. In other words, Mr. Myers believes that government lacks the authority to enact these safeguards under any circumstances. Mr. Myers thus proposed a radical extension of the Takings Clause that no court has ever countenanced. If accepted, Mr. Myers views could well require taxpayers to pay corporations simply for having to comply with health, labor, civil rights, and environmental protections.

The position advocated by Mr. Myers in his "friend-of-court" brief to the Supreme Court in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* is equally extreme. Mr. Myers argued that Congress does not have the power under the Constitution's Commerce Clause to prevent a waste disposal facility from destroying waters and wetlands that serve as habitat for migratory birds. His brief suggests that "federal regulation of land use" is beyond congressional power because that area is "traditionally regulated by state and local governments."[8] The Commerce Clause is the authority upon which many of our most essential health, safety, environmental, and anti-discrimination laws are based. If regulation of a waste disposal operation that threatens the interstate flight of migratory birds does not fall within the scope of the Commerce Clause, then a wide array of protections could also be subject to attack. That is why a large coalition of civil and human rights organizations filed a brief in *SWANCC* arguing that such a narrow interpretation of the Commerce Clause would "cast serious doubt on the previously well-accepted foundations of some of the central civil rights laws of our time."[9] This aspect of Mr. Myers' philosophy is extremely troubling, as is his claim that Robert Bork's judicial philosophy was "well within the parameters of acceptable constitutional theory, worthy of representation on the Supreme Court," despite the Senate's bipartisan rejection of Judge Bork's legal philosophy as out of the mainstream.[10]

Mr. Myers' record as Interior Solicitor of favoring the interests of the grazing and mining industries over the rights of Native Americans and the environment, coupled with his long history as an extreme advocate for the those industries, cast serious doubts on his willingness or ability to put aside his personal views in performing his official duties. His disturbing legal philosophy threatens a broad range of civil rights, labor, health, disability, and environmental protections. His poor ABA rating reflects his weak qualifications for a lifetime seat on the Ninth Circuit. In all respects, Mr. Myers appears to be a singularly poor choice for this critical court. We strongly urge you to reject this nomination.

Sincerely,

---

[8] Brief of the American Farm Bureau Federation, the National Cattlemen's Beef Association, and the North Dakota Farm Bureau, *SWANCC*, 531 U.S. 159 (2001), *available at* 2000 WL 1059641.

[9] Brief of the Anti-Defamation League, People for the American Way, et al, *SWANCC*, 531 U.S. 159 (2001), *available at* 2000 WL 1369409.

[10] William G. Myers, III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 DENVER L. REV. 1 (1988) at 25.

Senator John Burton,
President Pro Tem

Senator Sheila Kuehl, Chair
Senate Natural Resources Committee

Senator Byron Sher, Chair
Senate Environmental Quality Committee

Post Office Box 270
Santa Ysabel, CA 92070
Phone (760) 782-3818
Fax (760) 782-9029

March 22, 2004

The Honorable Patrick J. Leahy, Ranking Member
U. S. Senate Judiciary Committee
152 Senate Dirksen Office Building
Washington, DC 20510

Re: **OPPOSITION** to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leahy:

On behalf of the Mesa Grande Band of Mission Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leahy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of the Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to the Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1) Mr. Myers' actions in the Glamis mater show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

2) As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3) Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places

4) As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former client's underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Mesa Grande Band of Mission Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Very truly yours,

Charlene G. Siford, Chairman
MESA GRANDE BAND OF MISSION IDNAINS

CNIGA/Cg

CC: California Nations Indian Gaming Association
Quechan Indian Nation

Mooretown Rancheria
#1 Alverda Drive
Oroville, CA 95966
(530) 533-3625 Office
(530) 533-3680 Fax

January 28, 2004

The Honorable Patrick J. Leahy
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510
Fax: 202-224-9516

RE: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator:

On behalf of the Mooretown Rancheria, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people, and other Colorado River tribes.

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Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statement and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advise in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

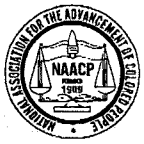
4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Mooretown Rancheria respectfully requests that the Judiciary Committee oppose the conformation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Melvin Jackson
Vice Chairman
Mooretown Rancheria

Cc: California Nations Indian Gaming Association
Quechan Indian Nation



WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1025 VERMONT AVENUE, N.W. • SUITE 1120 • WASHINGTON, D.C. 20005
(202) 638-2269 FAX (202) 638-5936

April 2, 2004

United States Senate
Washington, D.C. 20510

RE: NAACP'S OPPOSITION TO THE NOMINATION OF WILLIAM G. MYERS TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Dear Senator:

On behalf of the National Association for the Advancement of Colored People (NAACP), I would like to express, in the strongest possible terms, our ardent opposition to the nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit. We urge you to defeat this nomination when it comes before the full Senate.

The Ninth Circuit Court of Appeals, which is the largest of the 13 federal circuits, is virtually the court of last resort for the federal civil rights claims of all persons residing in California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, Guam and the Northern Mariana Islands.

After careful review of William Myers' record, we were deeply concerned that he found the fundamental rights of freedom of speech and freedom from unreasonable search and seizure, inferior to other constitutional protections. If this view were promulgated, it would threaten a vast number of labor, voting, and civil rights protections.

Myers' has also espoused a troublingly narrow view of the Constitution's Commerce Clause, which is the basis for fundamental federal civil rights laws. The NAACP, presently and historically relies on the federal government, through the use of the Commerce Clause, to enforce the Civil Rights Act, when states have been unwilling to do so. In *Heart of Atlanta Motel v. United States (1964)*, the Court held that Congress could regulate a business that served mostly interstate travelers. And in *Katzenbach v. McClung (1964)* the Court ruled that the government could regulate Ollie's

Barbecue, which served mostly local clientele but sold food that had previously moved across state lines. In both cases, Georgia and Alabama failed to enforce its state constitution's Equal Protection and Due Process clauses with respect to the civil rights of African Americans and other racial and ethnic minorities. Through the application of the Commerce Clause, the Federal government was able to intervene and prevent further racial discrimination by enforcing the Civil Rights Act. If Myers' view is followed, it would limit the federal government's ability to protect and fully enforce our civil rights laws.

Furthermore, Myers, as Solicitor to the Interior Department, orchestrated the rollback of protections for sacred Native American sites on public lands. The U.S. Government, as a steward for millions of Western lands, has accepted responsibility for maintaining and protecting religious sites of significance to Native Americans. In a formal opinion Myers argued that the Bureau of Land Management did not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent the undue degradation of public lands that sometimes accompanies mining operations. Myers' argument is diametrically wrong as to the specific wording of the legislation, which requires the Department of the Interior to protect against public land degradation that is "unnecessary or undue."

Myers actions do not demonstrate appropriate conduct for a judge on the Ninth Circuit Court of Appeals who has the responsibility of following binding precedent set by his own court, and by the United States Sumpreme Court. His interpretation of FLPMA shows that he is predisposed to disregard established law and precedent and therefore should not be given a lifetime appointment to the federal courts.

Even more troubling is Myers decision to meet only with industry representatives, and not the Quechan Indian Nation, before issuing this opinion, despite the Department's trust responsibility to the tribe. This failure to consult with the Quechan's- despite an invitation by the tribe's lawyer- indicates a disturbing insensitivity to minority concerns that is incompatible with service on the Ninth Circuit.

Based on Myers' views and their implications on the ability to enforce civil rights laws, as demonstrated through his disregard for freedom of speech

and freedom from unreasonable search and seizure, his narrow view of the commerce clause, and his unwillingness to follow established law and precedent as demonstrated through his effort to rollback protection of sacred Native American lands and his unwillingness to protect the degradation of public lands as Solicitor to the Interior Department, we have strong concerns regarding William Myers' commitment to enforcing our nation's civil rights laws.

Finally, we are deeply concerned about Myers' lack of experience. Mr. Myers lacks the minimal significant litigation experience at the trial or appellate level and has produced no major legal scholarship. In fact over one-third of the members of the ABA Standing Committee on the Federal Judiciary rated Myers 'not qualified', the rest of the members merely found him qualified. No member of the ABA committee rated him well qualified. Myers' low rating was apparently based on his lack of significant litigation or other legal experience. The issue of Mr. Myers lack of experience was further demonstrated when he was asked to list the ten most significant litigated matters in which he personally handled. He was only able to mention four, which he argued before a judge, none of which where argued before a jury. William G. Myers III is simply not qualified for a seat on the Ninth Circuit Court of Appeals. We therefore urge you to vote against Mr. Myers' nomination to the U.S. Court of Appeals for the Ninth Circuit.

Thank you for your careful consideration of this crucial matter. Should you have any questions or concerns, please contact me, or my Bureau Counsel, Crispian Kirk at (202) 638-2269.

Sincerely,

Hilary O. Shelton
Director

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE
PRESIDENT
Tex G. Hall
Mandan, Hidasa, and Arikara Nation
FIRST VICE-PRESIDENT
Joe A. Garcia
Ohkay Owingeh
(Pueblo of San Juan)
RECORDING SECRETARY
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Harold Frazier
Cheyenne River Sioux Tribe
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Norman Adams, Jr.
Bois Forte Band of Chippewa Indians
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Kevin Seneca
Seneca Nation
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Ernie Stensgar
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PACIFIC
Leslie Lohse
Pankenta Band of Nomlaki Indians
ROCKY MOUNTAIN
Geri Small
Northern Cheyenne Tribe
SOUTHEAST
Eddie Tullis
Poarch Band of Creek Indians
SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band Potawatomi Nation
SOUTHWEST
John F. Gonzales
San Ildefonso Pueblo
WESTERN
Arlan Melendez
Reno-Sparks Indian Colony
EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

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January 28, 2004

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: NCAI's Opposition to William G. Myers III to the 9th Circuit Court of Appeals

Dear Chairman Hatch and Ranking Member Leahy:

The National Congress of American Indians (NCAI) writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. I am attaching an NCAI resolution to this effect passed at NCAI's 60th Annual Convention this past November. (Resolution #ABQ-03-061).

NCAI believes that the President is entitled to receive the consent of the Senate for his judicial appointments unless there are serious concerns regarding judicial fitness. In our memory, NCAI has seldom, if ever, opposed a judicial nominee of any President. However, former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As you know, the United States government has acquired ownership of hundreds of millions of acres of land formerly occupied by American Indian and Alaska Native tribes. Among these lands are sacred sites that are essential to the practice of numerous Native American religions. With this ownership, the government has assumed a vital stewardship responsibility for the maintenance and protection of sites of religious significance, a responsibility recognized in basic land management statutes such as the Federal Land Policy and Management Act (FLPMA).

As Solicitor of the Department of the Interior for the first two years of the Bush Administration, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the free exercise of religion for many Native American people. A glaring example is the recent decision by the Department of Interior to reconsider the denial of a permit for a massive cyanide heap leach gold mine that would destroy thousands of acres of land in the California desert, including 55 acres that are sacred to the Quechan Tribe. The original denial of a mining permit to Canada's Glamis Imperial Gold Company was the result of a multi-year process in which the Quechan Tribe and other concerned tribes actively participated.

In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the sweeping, and clearly erroneous conclusion that the

Glamis permit denial had to be reconsidered because the Bureau of Land Management (BLM) did not have authority under the FLMPA to prevent undue degradation of public lands that was necessary to a mining operation.

The issue concerns the meaning of the word "or" in the requirement of FLPMA that the Department of the Interior protect against public land degradation that is "unnecessary **or** undue." Myers's opinion—which overturned a well-reasoned legal opinion by his predecessor—wrote the term "undue" out of this statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." While specifically addressing only the Glamis project, Myers' opinion will block BLM from preventing undue degradation of millions of acres of public land.

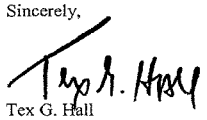
It's hard to imagine a more fundamental misreading of the language and intent of FLMPA. As federal district Judge Henry Kennedy Jr. – the only judge to have reviewed Myers's handiwork – has stated, "the Solicitor misconstrued the clear mandate of FLPMA" and failed to apply three "well-established canons of statutory construction." Rejecting Myers's analysis, the court held: "FLPMA by its plain terms, vests the Secretary of Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land." No wonder the American Bar Association has raised serious questions about Myers's legal qualifications for a position on the federal appellate bench.

Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation from the decision to reconsider the Glamis project. Neither Solicitor Myers nor Secretary Norton engaged in government-to-government consultation with the Quechan Indian Nation or other Colorado River tribes before reopening the Glamis debate.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, at our recent annual meeting, the National Congress of American Indians—the oldest and largest national organization of American Indian and Alaska Native tribal governments—approved a resolution formally opposing Myers's nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and our sacred places, we must speak out.

Sincerely,



Tex G. Hall

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE
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John F. Gonzales
San Ildefonso Pueblo
SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band Potawatomi
ROCKY MOUNTAIN
Geri Small
Northern Cheyenne Tribe
ALASKA
Edward K. Thomas
Central Council of Tlingit and Haida
MIDWEST
Norman Adams, Jr.
Bois Forte Band of Chippewa
EASTERN OKLAHOMA
Jefferson Keel
Chickasaw Nation
NORTHEAST
Kevin Seneca
Seneca Nation
WESTERN
Arlan Melendez
Reno-Sparks Indian Colony
NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe
PACIFIC
Leslie Lohse
Paskenta Band of Nomlaki
SOUTHEAST
Eddie Tullis
Poarch Band of Creek Indians
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The National Congress of American Indians
Resolution #ABQ-03-061

TITLE: **Opposition to Nomination and Confirmation of Interior Solicitor William G. Myers, III, To Ninth Circuit Court of Appeals**

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, on May 15, 2003, President George W. Bush nominated Department of Interior Solicitor William G. Myers, III, to a not yet vacant seat on the Ninth Circuit Court of Appeals to replace Thomas Nelson of Idaho who will be retiring; and

WHEREAS, Solicitor Myers' October 23, 2001, Solicitor's Opinion advising the revocation of the prior Solicitor Leshy Opinion and rescission of the denial of the plan of operations protecting Quechan Indian Pass from the proposed Glamis Imperial Gold Mine in the southeastern California desert was relied upon by Interior Secretary Gale Norton in rescinding the denial of the mine so that it could be reconsidered; and

WHEREAS, neither Solicitor Myers nor Secretary Norton's offices, unlike their predecessor, engaged in government-to-government consultation with the Quechan Indian Nation, a federally-recognized tribe, nor other Colorado River Tribes, before taking action to imperil the sacred places at Quechan Indian Nation, a federally-recognized tribe, nor other Colorado River Tribes, before taking action to imperil the sacred places at Quechan Indian Pass; and

WHEREAS, a similar reversal of final agency action by the Department of Interior to Northern California tribes relative to a Medicine Lake Highlands geothermal project occurred during the same period; and

WHEREAS, Ninth Circuit Court of Appeals encompasses nine western states and other territories including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, and Guam, scores of reservations, well over one hundred Indian tribes, millions of Indian people, millions of acres of public lands and important federal and tribal lands management issues, and

WHEREAS, an appointment to the federal bench is a lifetime appointment; and

WHEREAS, Solicitor Myers' actions in the Glamis matter show a deep lack of respect and understanding of the unique political relationship between the federal government and tribal governments; and

WHEREAS, by prior NCAI Resolutions NCAI has strongly supported the Quechan people in their struggle to protect their sacred places at Quechan Indian Pass (Resolution #SPO-01-162 and Resolution #SD-02-018); and

WHEREAS, Solicitor Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage, actions and advice that reveals an activist point of view that disrespects tribal values that should not be reflected on the federal bench; and

WHEREAS, Solicitor Myers has demonstrated an inability to set aside personal bias to act in a neutral and objective manner and on October 1, 2003, resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contracts with former clients including the National Mining Association, and

WHEREAS, on October 23, 2003, the CNIGA member tribes approved a resolution OPPOSING the nomination of William G. Myers, III, and a letter to be sent to the Senate Judiciary Committee expressing that view and for other related actions to be taken; and

WHEREAS, NCAI recognizes that the appointment of Solicitor Myer will not be in the best interest of the Tribes of the United States; that Tribes need to become more active in the judicial nomination and confirmation processes especially given recent trends in circuit and the Supreme courts; and that this is another way for tribal nations to protect their sovereignty.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby supports the California Tribes and hereby opposes the nomination and confirmation of William G. Myers, III, as Judge for the Ninth Circuit Courts of Appeals or any federal judgeship; and

BE IT FURTHER RESOLVED, that NCAI will immediately urge President Bush to reconsider and withdraw Mr. Myers' nomination; and

BE IT FURTHER RESOLVED, that NCAI will immediately convey its opposition of the nomination to the Senate Judiciary Committee and request to be made part of the confirmation hearing process; and

BE IT FURTHER RESOLVED, that NCAI will work with CNIGA, other interested groups and the media to oppose the nomination; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution; and until the aforementioned nomination is withdrawn from consideration by the Administration.

CERTIFICATION

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.

Tex G. Hall
President

ATTEST:

Juana Majel
Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.

March 31, 2004

Honorable Orrin Hatch
Chairman, Senate Committee on the Judiciary
Washington, DC 20510

Honorable Patrick Leahy
Ranking Member, Senate Committee on the Judiciary
Washington, DC 20510

★ Justice
★ Independence
★ Dignity
★ Security

Dear Senators Hatch and Leahy:

We are writing as representatives of organizations concerned with the interests of senior citizens and with preserving access to health care for all Americans, to express our opposition to the nomination William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

Prior to taking his current position as Solicitor of the Department of the Interior, Myers spent most of his career in private law practice, trade associations, and as a Congressional aide, advocating the interests of the beef and other industries. Myers has urged that the Constitution empowers courts to strike down existing or future laws and regulations that "interfere" with "the beneficial use" of private property. A broad array of safety net, anti-discrimination, and other safeguards, many of them critical to the welfare of senior citizens, could arguably interfere with the beneficial use of private property. If adopted, the doctrine urged by Mr. Myers would radically change constitutional law and nullify advances of great importance to our members.

In a 1995 Supreme Court amicus curiae brief, *Brief of the National Cattlemen's Association and the CATL Fund, Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, Myers contended that application of certain Interior Department regulations necessitated compensation of affected ranchers under the just compensation clause of the Fifth Amendment. Myers' brief endorsed two linked propositions: (1) that property rights protected by this Fifth Amendment provision enjoy equal constitutional stature to other Bill of Rights provisions; and (2) hence, that governmental interference with "the beneficial use" of property should be subject to the same standard of strict judicial scrutiny as interference with free expression or the exercise of religion or freedom from unreasonable search and seizure. Government actions subject to "strict scrutiny" review must further a "compelling" governmental interest and must be narrowly tailored as the "least

1101 14th Street, NW, Suite 400, Washington, DC 20005 202.289.6976 Fax: 202.289.7224 e-mail: nsclc@nsclc.org www.nsclc.org
3435 Wilshire Boulevard, Suite 2860, Los Angeles, CA 90010-1938 213.639.0930 Fax: 213.639.0934 e-mail: nsclc-ca@nsclc.org

restrictive alternative" means to that end. Since the New Deal era, it has been settled law that the judiciary would defer to Congressional judgments about regulation of substantially all social and economic matters, and that strict judicial scrutiny would be limited to actions threatening the civil and political rights of individuals and "discrete, isolated minorities". Were this fundamental principle to be displaced by Myers' concept of strict scrutiny for property rights as well as civil and political rights, significant safety net and anti-discrimination protections critical to the interests of senior citizens and other vulnerable groups – elements of, for example, Medicaid and the Americans with Disabilities Act – could become difficult or impossible to administer and enforce.

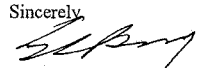
It bears emphasis that Mr. Myers' support for this drastic constitutional change cannot be ascribed simply to advocacy on behalf of a client. In his Judiciary Committee hearing, Myers actually added to concerns about his inclination to extend his expansive view of compensable "regulatory takings" beyond traditional land-use regulation. When asked by Senator Richard Durbin of Illinois whether the Americans with Disabilities Act could damage property rights sufficient to constitute a taking, Myers responded:

> "I think it is fairly obvious that accommodations for persons with disabilities impacts one's property. Whether that rises again to the level of a taking, I don't know."

Mr. Myers here spoke for himself, not as counsel to a private client nor as Solicitor of the Bush Administration's Department of the Interior and its policies. The constitutional ideology he espoused could put at risk long-standing guarantees essential to the health and welfare of older Americans, and all Americans. This is an unacceptable risk, and one that we urge Congress not to take.

We appreciate your consideration of our views.

Sincerely,



Edward C. King
Executive Director,
National Senior Citizens Law Center

FOR:

National Senior Citizens Law Center
Alliance for Retired Americans
AFSCME Retirement Program
National Health Law Program

NATIONAL WILDLIFE FEDERATION®

People and Nature: Our Future Is in the Balance

NATIONAL
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February 15, 2005

The Honorable Arlen Specter
Chairman, Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510-3802

Re: Oppose the Confirmation of William G. Myers

Dear Chairman Specter:

On behalf of our more than four million members and supporters including 294,000 in Pennsylvania, we urge you to not put William G. Myers on the fast-track for confirmation to the Ninth Circuit Court of Appeals. Not only is Mr. Myers among the most controversial nominees of this session, he is the only judicial nominee we have ever opposed in our 68-year history. Only in the rarest of circumstances have we opposed any nominee for a cabinet or other executive branch appointment, and besides Mr. Myers, we have not opposed a single one of President George W. Bush's nominees.

The hasty renomination of Mr. Myers is particularly disturbing given revelations, since his last hearing, that as Solicitor General of the Department of Interior he supported a giveaway of valuable public lands to a mining company without even consulting the department's managers in that area. Mr. Myers' opinion was hastily reversed after consultation with Interior's regional office revealed that the company had no legal claim to the land in question. This incident is just another example of his propensity to place the interests of the industries he represents in private practice above the public interests he swore to uphold as a government official.

We believe that, as a federal judge with life-time tenure, Mr. Myers would present a threat to the common sense conservation values that NWF and the American public have always embraced. Mr. Myers has a long and consistent record of hyperbolic opposition to environmental policies that we regard as fundamental to protecting the nation's wildlife and wildlife habitat. He has compared the federal government's management of America's public lands – a unique part of our national and natural heritage – to King George's tyrannical rule over the American colonies. He has attacked the Endangered Species Act and the Clean Water Act as unconstitutional, writing that "wetlands" should not be protected because the word does not appear in the law.

As Solicitor of the Department of the Interior, where he was charged directly with interpreting environmental statutes, Mr. Myers similarly advocated an extreme theory of private property rights. He weakened the "Rangeland Reform" grazing regulations, which he had previously worked to overturn as an industry lobbyist. He intervened to impose high hurdles on voluntary, free-market conservation efforts, such as those initiated by the Grand Canyon Trust, to protect

sensitive public lands by paying willing ranchers to retire their grazing privileges. NWF has used such voluntary buyouts to protect more than 100,000 acres of grizzly and wolf habitat on national forest lands in Montana and Wyoming– a success story that would not have been possible if Mr. Myers' authority also extended to the national forests.

Finally, as an organization that works closely with tribal governments, we find Mr. Myers' decisions concerning Native Americans particularly troubling. In one of only two major opinions issued during his term as Solicitor, Mr. Myers repudiated an earlier opinion which asserted the authority of the Department to deny mining permits when necessary to protect Native American sacred sites, as well as other cultural and environmental resources on public lands.

While any judicial nominee should be held to the highest standards of temperament and impartiality in interpreting the law, it's worth noting that the Ninth Circuit Court of Appeals plays a powerful role in deciding nationally-significant environmental disputes. With jurisdiction over nine western states and millions of acres of public lands, the Ninth Circuit is often the venue for resolving critical questions affecting the use, management, and conservation of wildlife and wild places across the nation.

Given his track record, we cannot reasonably assume that Mr. Myers would suspend his strongly held beliefs, reflected in a career devoted to advocacy on behalf of mining, grazing, and other development interests, when ruling on the merits of these critical environmental issues. In a variety of roles and venues, he has expressed extreme disregard for and even hostility toward fundamental environmental policies adopted by the Congress, affirmed by the courts, and supported by the public. His views have not been offered solely on behalf of his clients, but have been widely communicated by Mr. Myers as his personal opinions. Further, Mr. Myers has no judicial experience, and has produced no significant independent legal scholarship, either of which might suggest an ability to rule fairly and impartially in environmental cases.

For all of these and other reasons, we respectfully urge you to postpone further consideration of Mr. Myers nomination, affording yourself and other committee members an opportunity to better examine the details of his record. Please see the attached fact sheet and press statement for additional information. Thank you for your consideration.

All the best,

Larry Schweiger
President & CEO

cc: Ranking Member Patrick J. Leahy

February 25, 2004

National Wildlife Federation Statement in Opposition To Nomination of William G. Myers III To Ninth Circuit Court of Appeals

Since our founding 68 years ago, the National Wildlife Federation has never opposed a judicial nomination by any president. As the nation's largest member-supported conservation education and advocacy organization, we give great weight to presidential discretion in judicial and cabinet nominations. We have a long tradition of respecting a diversity of opinion.

However, the nomination of William G. Myers III to serve a lifetime position on the U.S. Court of Appeals for the Ninth Circuit is an exceptional case.

The Ninth Circuit is a precedent-setting venue for disputes involving wildlife conservation, the stewardship of more than 489 million acres of public land and Native American rights, among other issues.

Mr. Myers has so firmly established a public record of open hostility to environmental protections as to undermine any contention that he could bring an impartial perspective to the issues of wildlife and natural resource conservation that come before the court. Indeed, Mr. Myers is distinguished precisely by the ideological rigidity that marks his positions on these issues.

Mr. Myers' record when he served as the Solicitor at the Department of the Interior makes plain that he brought with him and applied the same hostility and contempt for environmental protection and conservation that he had aggressively displayed earlier in his career as a lawyer and lobbyist for the livestock grazing and mining industries.

As Interior Solicitor, Mr. Myers wrote a formal legal opinion that favored the interest of the mining industry over his trust responsibility to protect the rights of Native American tribes and over Congress' decision to prevent undue damage to public lands. Recently, a federal judge strongly rejected Mr. Myers' opinion, which disregards the plain language of a federal statute. Mr. Myers also wrote another Solicitor's opinion in an effort to stop the voluntary sale of grazing permits to groups that intend to retire the land

for conservation purposes. Mr. Myers' three formal opinions written on these two issues, the only ones he wrote as Solicitor, show a clear bias toward twisting the law's plain meaning and unjustifiably creating policy in the service of his former industry clients at the expense of Native Americans and of public lands.

Equally disturbing are Mr. Myers' extreme views on fundamental constitutional principles. His brief to the Supreme Court in the *Babbitt v Sweet Home* case argued unsuccessfully for the position that while the Endangered Species Act (ESA) prohibits killing an eagle with a hatchet, it is perfectly legal to chop down the tree where the eagle nests with an ax; or that while the ESA might bar directly killing an endangered species of waterfowl, a company can wipe out the species by draining the pond that it needs to survive. Mr. Myers' brief also asserted that all protection of habitat on private land under the ESA violates the Fifth Amendment to the Constitution – an extreme position that has never gained acceptance in any jurisdiction in the country. The implications of Mr. Myers' constitutional theory of severe limits on the government's authority to enact needed environmental safeguards are staggering. Such a theory could replace the polluter pays principle with the requirement that taxpayers must pay industry for the costs of preventing pollution.

Mr. Myers' friend of the court brief to the Supreme Court in *SWANCC v U.S. Army Corps of Engineers* argued unsuccessfully that the federal government lacked constitutional authority under the Commerce Clause to enact Clean Water Act provisions that protect vital waters and wetlands that serve as habitat for migratory birds – an extraordinarily narrow view of federal power to enact environmental, health, and safety protections. Again, the implications of this extremist view are staggering and would call into question the constitutionality of a wide range of environmental and other safeguards.

In sum, adoption of the principles Mr. Myers has advocated would significantly dismantle more than 60 years of legal and legislative precedent creating a balance between public interests on the one hand and property interests on the other. Confirming Mr. Myers to a lifetime seat on the appeals court would be tantamount to endorsing a radical form of judicial activism.

For these reasons, the National Wildlife Federation opposes Mr. Myers' nomination.

Contact:

Jim Lyon, Senior Director of Congressional and Federal Affairs: 202-797-6888

JUDICIAL NOMINEE MYERS' POSITIONS ON THE CLEAN WATER ACT AND ENVIRONMENTAL LAW ENFORCEMENT REFLECT LACK OF JUDICIAL TEMPERAMENT

In our 68 year history, the National Wildlife Federation has never chosen to oppose a judicial nominee. However, William G. Myers III has demonstrated such a troubling record and temperament towards important environmental issues that NWF has made an exception and chosen to oppose a lifetime appointment to the important Ninth Circuit Federal Court of Appeals for Mr. Myers. Mr. Myers has made many disturbing statements regarding the Clean Water Act and non-profit groups that take legal action to ensure environmental laws are properly enforced. Not only has he espoused an extreme view that Congress has no authority to regulate isolated, intrastate, non-navigable waters used by migratory birds, but his reasoning and statements have often been flip, unsupported and inflammatory – qualities that shed substantial doubt upon whether he possesses the temperament to serve a lifetime appointment on the bench.

The *SWANCC* Decision

- In a brief filed on behalf of the American Farm Bureau, National Cattlemen's Beef Association and North Dakota Farm Bureau, Myers argued that Congress has no power under the Commerce Clause to regulate waters used by migratory birds. Despite the substantial revenues brought in nationwide by bird hunting and bird watching, and the fact that many migratory birds depend on isolated wetlands for breeding and stopovers on long migration, Myers stated that destroying these wetlands has "no effect on or connection with interstate commerce."

- Myers' brief showed a lack of scientific understanding and a casual dismissal of nature's systems. He stated that migratory birds demonstrate "unpredictable behavior" and are undiscerning in the wetland areas they will call home. However, many migratory species follow very predictable flight patterns and rely heavily on certain types of wetlands. For instance, many ducks need and prefer small isolated wetlands, like prairie potholes, to breed successfully. These are the exact type of "isolated" wetlands Myers believes are beyond the regulatory reach of Congress.

- Myers brief argued that allowing Congress to regulate isolated wetlands would "usurp" land-use planning. This echoes his extreme views on private property rights expressed more vigorously and outrageously in his *Sweet Home* brief and elsewhere.

- In both a speech to other lawyers (ALI-ABA Conf. Jackson Wy) and in his *SWANCC* brief, he borrowed inflammatory language from Sen. Tower that the Migratory Bird Rule will "result in ***unwarranted and despotic*** intrusion by the Federal Government over every brook, creek, cattle tank, mud puddle, slough or damp spot in every landowner's back yard across this Nation."

Other Statements Regarding Wetlands Protection and Legal Actions by Environmental Groups

- Myers has demonstrated extreme views towards environmental organizations that call his impartiality into question. In a 1994 *National Cattlemen* article he stated that environmental groups "aggressively pursue[] their goals before friendly judges who have been willing to take activist positions and legislate from the bench," and that, "No better example can be found than that of wetlands regulation." He thus implies that wetlands were ***never*** intended to be regulated, and are only regulated due to "expansive interpretation from activist courts."

- But when asked in written questions by Senators if the Supreme Court – which directly upheld CWA protection for wetlands nine years prior to his article – was an activist Court of the type described in his article, he said no. He also stated in response to a written question posed by Sen. Feingold that he could not recall which cases he was referring to when he mentioned activist courts writing wetlands protection into the CWA. It is troubling that such a bold statement could not be supported by relevant cases – especially considering that Myers was responding to *written* questions.

- In questioning before a Senate committee hearing, Myers explicitly stated that he reads *SWANCC* to mean that isolated, non-navigable, intrastate wetlands are no longer covered by the CWA. This is not what *SWANCC* held. *SWANCC* only held that an abandoned sand and gravel pit where the only basis for jurisdiction was the Migratory Bird Rule was not covered under the CWA. Rules and guidelines not addressed by *SWANCC* provide protection for isolated, intrastate, non-navigable waters such as those used by endangered species, those used in interstate or foreign commerce, those where fish or shellfish are extracted for interstate or foreign commerce and those where there is extraction of water for agricultural or industrial activities. Myers' statement indicates that he fails to grasp the meaning of the *SWANCC* ruling and/or that he would rule to expand *SWANCC* and further erode CWA protection for important waters.

- In a 1998 article he stated that judges should more readily require that plaintiffs post bond when an injunction is granted to cover damages in the event the activity should later be considered lawful and *criticized judges for not applying this rule to non-profit organizations*. Application of this to NPOs would make it extremely difficult for them to seek injunctions because they don't have the resources to post bond. Black letter law requires that a plaintiff show substantial likelihood to succeed on the merits in order to secure an injunction. This protects against frivolous injunctions. Requiring bond would only pose an unnecessary hurdle for groups who have legitimate interest in preventing irreparable harm by seeking an injunction.

For More Information Contact: Jim Murphy, Water Resources Counsel, (802)229-0650

NATIONAL WILDLIFE FEDERATION®

People and Nature: Our Future Is in the Balance

February 25, 2004

The Honorable Orrin G. Hatch
Chairman, Judiciary Committee
United States Senate
104 Hart Senate Office Building
Washington, DC 20510-4502

The Honorable Patrick Leahy
Ranking Member, Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Dear Chairman Hatch and Senator Leahy:

We want to clarify the National Wildlife Federation's (NWF) position on the confirmation of William Myers to the Ninth Circuit Court of Appeals, especially since our organization was referenced at your February 5th hearing.

As you may know, NWF is the nation's largest conservation organization in the United States with more than four million members and supporters along with 47 state and territorial affiliates that represent a broad cross-section of interests, including those of hunters and anglers. Never in our 68-year history has NWF opposed a judicial nominee and only in the rarest of circumstances have we opposed any nominee for a cabinet or other executive branch appointment. In fact, we have not opposed a single of President George W. Bush's nominees to this point.

Regrettably, after thoroughly reviewing his record, we find we must break with this tradition and oppose Mr. Myers nomination. We believe that, as a federal judge with life-time tenure, Mr. Myers would present a threat to the commonsense conservation values that NWF and the American public have always embraced.

Mr. Myers has a long and consistent record of hyperbolic opposition to environmental policies that we regard as fundamental to protecting the nation's wildlife and wildlife habitat. He has compared the federal government's management of America's public lands – a unique part of our national and natural heritage – to King George's tyrannical rule over the American colonies. He has attacked the Endangered Species Act and the Clean Water Act as unconstitutional, writing that "wetlands" should not be protected because the word does not appear in the law.

As Solicitor of the Department of the Interior, where he was charged directly with interpreting environmental statutes, Mr. Myers similarly advocated an extreme theory of private property rights. He weakened the "Rangeland Reform" grazing regulations, which he had previously worked to overturn as an industry lobbyist. He intervened to impose high hurdles on voluntary, free-market conservation efforts, such as those initiated by the Grand Canyon Trust, to protect sensitive public lands by paying willing

ranchers to retire their grazing privileges. NWF has used such voluntary buyouts to protect more than 100,000 acres of grizzly and wolf habitat on national forest lands in Montana and Wyoming– a success story that would not have been possible if Mr. Myers' authority also extended to the national forests.

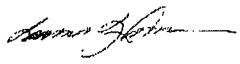
Finally, as an organization that works closely with tribal governments, we find Mr. Myers' decisions concerning Native Americans particularly troubling. In one of only two major opinions issued during his term as Solicitor, Mr. Myers repudiated an earlier opinion which asserted the authority of the Department to deny mining permits when necessary to protect Native American sacred sites, as well as other cultural and environmental resources on public lands.

While any judicial nominee should be held to the highest standards of temperament and impartiality in interpreting the law, it's worth noting that the Ninth Circuit Court of Appeals plays a powerful role in deciding nationally-significant environmental disputes. With jurisdiction over nine western states and millions of acres of public lands, the Ninth Circuit is often the venue for resolving critical questions affecting the use, management, and conservation of wildlife and wild places across the nation.

Given his track record, we cannot reasonably assume that Mr. Myers would suspend his strongly held beliefs, reflected in a career devoted to advocacy on behalf of mining, grazing, and other development interests, when ruling on the merits of these critical environmental issues. In a variety of roles and venues, he has expressed extreme disregard for and even hostility toward fundamental environmental policies adopted by the Congress, affirmed by the courts, and supported by the public. His views have not been offered solely on behalf of his clients, but have been widely communicated by Mr. Myers as his personal opinions. Further, Mr. Myers has no judicial experience, and has produced no independent legal scholarship, either of which might suggest an ability to rule fairly and impartially in environmental cases.

For all of these and other reasons, we respectfully urge the committee to reject Mr. Myers confirmation to the Ninth Circuit Court of Appeals. Our full statement in opposition follows. Thank you for your consideration.

Sincerely,



Lawrence J. Amon
Acting President and CEO

LJA/ak
enclosure
cc: Senate Judiciary Committee Members

Worldwide Office
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203-1606

tel [703] 841.5300
fax [703] 841.8796
nature.org

STEVEN J. MCCORMICK
President and Chief Executive Officer

February 17, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Leahy:

I want to clarify for the record that The Nature Conservancy does not have a position with respect to the nomination of Mr. William Myers III to be a judge on the United States Court of Appeals for the Ninth Circuit. To the best of my knowledge, the Conservancy has never endorsed or opposed any nominee to the federal judiciary nor do we intend to so do in the future.

Unfortunately, in an unauthorized use of Conservancy stationery rather than private stationery, Michael Dennis, our Director of Real Estate and Private Lands, wrote to you on January 15 stating his personal support for Mr. Myers' nomination. I understand this letter is now a part of the formal Committee file on this important matter. In addition, I understand that Senator Craig referred to Mr. Dennis' letter as a statement of the Conservancy's support of Mr. Myers' nomination.

I have enclosed a letter from Mr. Dennis apologizing for his inadvertent use of the Conservancy's stationery.

I apologize for the understandable confusion this situation may have created with the Committee. If you have questions, please do not hesitate to contact me or Karen Berky, Director of Government Relations.

Sincerely,

Steven J. McCormick

SJM/seh
Enclosure

cc: Senator Larry Craig

Nightmute Traditional Council
P.O. Box 90021
Nightmute, Alaska 99690
(907) 647-6215 Fax (907) 647-6112

February 4, 2004

Dear Senator Murkowski

Nightmute Traditional Council a governing body for the federally recognized Native Village of Nightmute writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers disregard for federal law affecting Native scared places compels our view that he is unable to fairly and impartially apply law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for scared native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not authority under the Federal Land Policy and management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers's opinion-which overturn a well-reasoned legal opinion by his predecessor-wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue". It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers's legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indaian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of aces of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For those reasons, we formally oppose Myers's nomination to the Ninth Circuit. We do not take step lightly-but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely
Nightmute Traditional Council
Joseph Post, President

John George, Tribal Administrator

Cc: Senator Orrin Hatch (Chairman), Senator Patrick Leahy (Ranking Member)
Senator Chuck Grassley
Senator Arlen Specter
Senator Jon Kyl
Senator Mike DeWine
Senator Jeff Sessions
Senator Charles Schumer
Senator John Edwards
Senator Lindsey Graham
Senator Larry Craig
Senator Edward Kennedy
Senator Joe Biden
Senator Herb Kohl
Senator Dianne Feinstein
Senator Russ Feingold
Senator Dick Durbin
Senator John Cornyn
Senator Saxby Chambliss

OFFICES OF THE GOVERNORS

March 8, 2004

VIA FACSIMILE and U.S. MAIL

The Honorable Orrin Hatch
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Re: Nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit

Dear Senator Hatch:

We, the undersigned Governors, are writing to express support for the nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

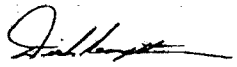
As representatives of States within the largest Circuit Court of Appeals in the nation, we are well aware of the need for quality judges who will provide a balanced perspective to the Ninth Circuit's extraordinary caseload.

Mr. Myers will bring his background and experience in western issues to his fellow colleagues on the bench. These matters are significant to western Governors, and we

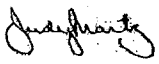
The Honorable Orrin Hatch
March 8, 2004
Page 2

believe Mr. Myers has the temperament and the judicial instincts to serve well on the Ninth Circuit.

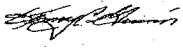
We ask that the Committee closely examine the record of Mr. Myers. We know he is well qualified to serve on the United States Court of Appeals for the Ninth Circuit and we ask that the Committee act favorably on his nomination.



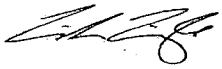
DIRK KEMPTHORNE
Governor



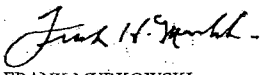
JUDY MARTZ
Governor



KENNY GUINN
Governor



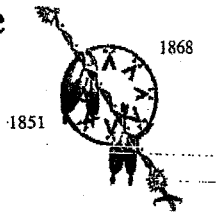
LINDA LINGLE
Governor



FRANK MURKOWSKI
Governor

Oglala Sioux Tribe

Office of the President
PO Box 2070
Pine Ridge, SD 57770
Phone: 605.867.5821
Fax: 605.867.6076
E-mail: johns@oglala.org



John Yellow Bird Steele

April 1, 2004

Senator Patrick Leahy
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

The Oglala Sioux Tribe writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

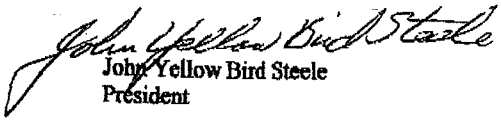
As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers's opinion—which overturned a well-reasoned legal opinion by his predecessor—wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers's legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers's nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,



John Yellow Bird Steele
President

ADVOCATES FOR THE WEST
AMERICAN RIVERS
AMERICANS FOR DEMOCRATIC ACTION
ALLIANCE FOR JUSTICE
CLEAN WATER ACTION
COMMITTEE FOR JUDICIAL INDEPENDENCE
COMMUNITY RIGHTS COUNSEL
DEFENDERS OF WILDLIFE
EARTHJUSTICE
ENDANGERED SPECIES COALITION
FRIENDS OF THE EARTH
LEADERSHIP CONFERENCE ON CIVIL RIGHTS
MINERAL POLICY CENTER
NARAL PRO-CHOICE AMERICA
NATIONAL ABORTION FEDERATION
NATIONAL ENVIRONMENTAL TRUST
NATIONAL ORGANIZATION FOR WOMEN
NATURAL RESOURCES DEFENSE COUNCIL
THE OCEAN CONSERVANCY
PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY
PEOPLE FOR THE AMERICAN WAY
SIERRA CLUB
THE WILDERNESS SOCIETY

October 14, 2003

The Honorable Orrin Hatch
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC 20510

RE: Nomination of William G. Myers III to the Ninth Circuit Court of Appeals

Dear Chairman Hatch and Ranking Member Leahy:

The undersigned organizations, representing countless Americans in the Ninth Circuit and across the country, urge you to consider our views on the nomination of William G. Myers III, who recently resigned his post as Interior Department Solicitor, to a lifetime position on the U.S. Court of Appeals for the Ninth Circuit. Specifically, we urge the Senate Judiciary Committee not to schedule a hearing on this nomination until the issues raised by all relevant investigations into alleged ethical improprieties by Myers and his office, including two concurrent inquiries by the Department of the Interior's Inspector General, are completely resolved.

Myers' record must be carefully scrutinized by this committee, particularly because a substantial minority of the American Bar Association—six or seven of the ABA committee's fifteen members—rated Myers "not qualified" for the job. Not a single member of the committee rated Myers "well qualified." This fits a disturbing pattern—four of the last six appellate court nominees rated by the ABA received a split Q/NQ rating.

Scrutiny of Myers' record cannot meaningfully take place until the conclusion of all investigations into the ethical questions with respect to Myers' conduct as Solicitor. This would seem to go without saying, but we note that this Committee has scheduled a hearing on the nomination of Mike Fisher to the U.S. Court of Appeals for the Third Circuit, even though Fisher was recently found by a federal court jury to have violated the federal civil rights of Pennsylvania state employees. The jury awarded $220,000 in damages against him. The Committee simply should not hold hearings on the nomination of individuals whose records remain under such serious ongoing ethical clouds.

Myers' Contacts with Former Clients

Inspector General Earl Devaney has opened an investigation into whether Myers violated his recusal agreement by holding a number of meetings with former clients during the restricted period. Here is a summary of the relevant facts: Prior to his confirmation as Interior Department Solicitor, Myers entered into an agreement that prohibited him from participating "in any particular matter involving specific parties in which [he knows] that [his former law firm] Holland & Hart, LLP, is a party or represents a party."[1] The agreement took effect upon his confirmation by the U.S. Senate—July 12, 2001—and remained in effect until July 12, 2002. In addition to this one-year ban, Myers agreed to an open-ended ban on substantial participation in any matter or case that he handled at Holland & Hart.

Notwithstanding this ban, there is evidence, obtained through a FOIA request, that Myers directly participated in deliberations that led the Interior Department to give notice, on March 3, 2003, that it was considering revising the very grazing regulations that had been implemented by the Clinton Administration and upheld by the Supreme Court in *Public Lands Council v. Babbitt.*[2] As director of Public Lands Council,[3] and then at Holland & Hart,[4] Myers was involved in challenging these regulations in court. As director of PLC, Myers advocated vigorously against these regulations.[5] At Holland & Hart he was a registered lobbyist for the

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[1] Recusal Letter, William Myers to Wendell K. Sutton, (May 1, 2001).

[2] Documents obtained through the Freedom of Information Act (FOIA) by Friends of the Earth indicate that Myers met with cattle interests and members of his former law firm at least seven times in the fall of 2001 and summer of 2002 in his first year in the post. Immediately after the one-year recusal period expired, Myers' calendar indicates repeated meetings with grazing interests, including meetings concerning potential changes to the Department's current grazing regulations.

[3] Public Lands Council v. Babbitt, 929 F. Supp. 1436 (D. Wyo. 1996).

[4] As counsel with Holland & Hart, Myers authored an amicus brief with the Supreme Court opposing the regulations on behalf of a number of farm credit institutions. *See* Brief of Amici Curiae Farm Credit Institutions in Support of Petitioners, Public Lands Council v. Babbitt, 529 U.S. 728 (2000), *available at* 1999 WL 1128263.

[5] *See, e.g.,* Testimony of William G. Myers III before the Subcommittee on Livestock, Dairy, and Poultry of the House Committee on Agriculture, Sept. 17, 1997.

PLC and National Cattlemen's Beef Association. The Inspector General's office must have time to conduct a thorough investigation to resolve these troubling questions prior to Committee consideration of Myers' appointment to the bench.

The Robbins Grazing Settlement

The Inspector General is also currently investigating whether Myers' office negotiated an illegal settlement agreement between the Bureau of Land Management (BLM) and H. Frank Robbins, Jr., a Wyoming rancher with a long history of range violations and clashes with the BLM. As reported in the press, "the deal is highly unusual within the BLM and appears to depart from long-running requirements spelled out in federal law about who can receive grazing permits."[6] Calendar records obtained by Friends of the Earth note Myers' personal attention to the agreement.

Serious concerns about the legality of this settlement have been raised by both BLM employees[7] and the Bush-appointed U.S. Attorney for the District of Wyoming.[8] As explained in a letter from U.S. Attorney Matthew Mead to an Assistant Interior Solicitor, the agreement's special treatment of Robbins could undermine efforts to enforce rangeland protections against other public lands ranchers throughout Wyoming. "What justification," Mead asks, "is there for prosecuting all permittees other than Robbins for the same conduct?"[9] PEER's analysis of the settlement details seven ways in which the agreement violates federal laws and regulations—among them, illegally ceding a public easement; granting Robbins "additional management flexibility" over certain grazing allotments; conditionally awarding Robbins a new grazing permit; and extending preferential treatment in enforcement decisions.[10]

Myers bears oversight responsibility for agreements negotiated by his office, especially an agreement such as this that sets new and disturbing precedents for public lands. His calendar records suggest that he specifically authorized this settlement. The Inspector General's and other investigations into this settlement agreement could answer serious questions about Myers' involvement and should be completed before further consideration of his nomination to the Ninth Circuit.

Conclusion

The Ninth Circuit acts as the court of last resort for almost all federal cases arising from Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. An important part of its caseload includes deciding the fate of federal environmental and other

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[6] Mike Stark, *BLM, Rancher Settle Grazing Dispute*, BILLINGS GAZETTE, June 13, 2003.
[7] According to published reports, an internal BLM memo documents at length the ways the settlement agreement grants Robbins preferential treatment that potentially violates sections of the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Federal Advisory Committee Act, as well as federal regulations. *Id.*
[8] Letter from Matthew H. Mead, US Attorney, District of Wyoming to John R. Kunz, Assistant Regional Solicitor, Department of the Interior, August 28, 2002.
[9] *Id.*
[10] PEER, Violations of Law Sanctioned within the H. Frank Robbins and Bureau of Land Management Settlement Agreement (2003).

safeguards. The people of these states deserve federal appellate judges whose fairness and integrity are beyond question. Consideration of Myers' nomination must await completion of all ongoing investigations into Myers' conduct.

Sincerely,

Laird J. Lucas
Executive Director
Advocates for the West

Amy Isaacs
National Director
Americans for Democratic Action

Paul Schwartz
National Campaigns Director
Clean Water Action

Doug Kendall
Executive Director
Community Rights Counsel

Vawter Parker
Executive Director
Earthjustice

Sara Zdeb
Legislative Director
Friends of the Earth

Lexi Shultz
Legislative Director
Mineral Policy Center

Vicki Saporta
President & CEO
National Abortion Federation

Kim Gandy
President
National Organization for Women

S. Elizabeth Birnbaum
Director of Government Affairs
American Rivers

Nan Aron
President
Alliance for Justice

Susan Lerner
Chair
Committee for Judicial Independence

William Snape
VP for Litigation
Defenders of Wildlife

Beth Lowell
Policy Director
Endangered Species Coalition

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Kate Michelman
President
NARAL Pro-Choice America

Philip E. Clapp
President
National Environmental Trust

Gregory Wetstone
Director of Advocacy
Natural Resources Defense Council

Julia Hathaway
Director of Legislative Affairs
The Ocean Conservancy

Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility (PEER)

Ralph G. Neas
President
People for the American Way

Pat Gallagher
Director, Environmental Law Program
Sierra Club

Leslie Jones
Deputy General Counsel
The Wilderness Society

CC: Members, Senate Committee on the Judiciary

Paskenta Band of Nomlaki Indians
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Phone: (530) 865-2010 Fax: (530) 865-1870

January 28, 2004

The Honorable Patrick J. Leahy Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510

RE: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals.

Dear Senator Leahy:

On behalf of the Paskenta Band of Nomlaki Indians of California, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review of citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statues, adopted policy statements and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor and federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

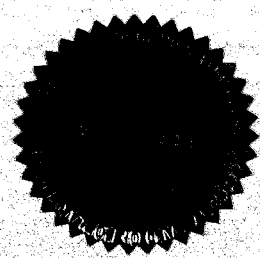
For these reasons, the Paskenta Band of Nomlaki Indians of California respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Everett Freeman

Everett Freeman
Tribal Chairperson
Paskenta Band of Nomlaki Indians of California

Cc: California Nations Indian Gaming Association
Quechan Indian Nation



Pleasant Point Reservation
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Tel. (207) 853-2600

February 2, 2004

Honorable Patrick Leahy (Ranking Member)
433 Russell Senate Office Building
Washington, DC 20510

Re: Opposition to Nomination and Confirmation of Interior Solicitor William G. Myers, III, to Ninth Circuit Court of Appeals

Dear Senator Leahy:

The Passamaquoddy Tribe writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers' opinion — which overturned a well-reasoned legal opinion by his predecessor — wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises

serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers' nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

Melvin Francis
Chief/Sakom

MF/vea

July 30, 2004

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Dear Senator Leahy,

On behalf of the more than 600,000 members and supporters of People For the American Way, I thank you for your careful consideration of the nomination of William Myers to the United States Court of Appeals for the Ninth Circuit, and your vote against the motion to invoke cloture on that nomination.

This nomination was particularly troubling because of Myers's lack of qualifications and his disturbing record on the important issues at stake. His nomination has created intense opposition reaching all of the way to environmental protection advocates and Native American organizations that have never before opposed a federal judicial nominee. With your vote, you demonstrated a commitment to continuing the legal and social progress made in the past 70 years on environmental protection, civil rights enforcement, privacy, reproductive choice, and much more.

We look forward to working with you in the future as we continue to resist efforts to pack the federal courts with right-wing activist judges who would turn back the clock on our civil and constitutional rights.

With warm personal regards,

Ralph G. Neas

Ralph G. Neas
President

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Public Employees for Environmental Responsibility
2001 S Street, NW • Suite 570 • Washington, D.C. 20009 • 202-265-PEER(7337) • fax: 202-265-4192
e-mail: info@peer.org • website: http://www.peer.org

Senator Orrin G. Hatch
Chairman – Senate Committee on the Judiciary
SH-104 Hart Senate Office Building
Washington, DC 20510

Senator Patrick J. Leahy
Ranking Minority Member - Senate Committee on the Judiciary
SR-433 Russell Senate Office Building
Washington, DC 20510

September 3, 2003

Dear Senators:

Public Employees for Environmental Responsibility (PEER) is writing to communicate our opposition to the nomination of William G. Myers to serve as a judge on the U.S. 9th Circuit Court of Appeals. The basis of our opposition is dereliction of duty by Mr. Myers in his current position as Solicitor to the U.S. Department of Interior.

Specifically, Mr. Myers oversaw and approved a settlement agreement with a Wyoming-based rancher that —

- Violates federal law and regulation;
- Disrupts protection of important public resources while improperly ceding public assets to private use; and
- Fails to protect federal employees from continuing harassment.

In March 2002, a Bureau of Land Management (BLM) review team was dispatched from headquarters to review complaints by a BLM permittee, Mr. Frank Robbins of Thermopolis, Wyoming, that the local BLM office in Worland had abused its authority in enforcing rangeland regulations against him. That review team endorsed the actions of the Worland BLM Office and even recommended the agency consider criminal prosecution of Mr. Robbins [ATTACHMENT I].

Notwithstanding the findings of the BLM review team, Mr. Myers' Office of the Solicitor initiated settlement negotiations with Mr. Robbins that —

- Conditionally forgave Mr. Robbins a string of 16 grazing violations dating back to his first appearance in Wyoming in 1994;
- Awarded Mr. Robbins –

- A new grazing allotment;
- Management control ("additional flexibility" in the words of the agreement) over certain federal lands;
- Rights of way across federal lands without reciprocal easements for the BLM;
- Preferential grazing fees;
- A Special Recreational Permit to run a "dude ranch"; and
- A promise to facilitate a land exchange.

- Accorded Mr. Robbins special status whereby only the Director of BLM, or her designee, could cite Mr. Robbins for future violations. [ATTACHMENT II]

This outrageously one-sided arrangement omitted any settlement of criminal charges Mr. Robbins has been pressing against individual current and former employees. In addition, the agreement did stipulate that, despite the findings of the BLM headquarters review, the Worland Office range conservationist who processed Mr. Robbins' prior citations be reassigned.

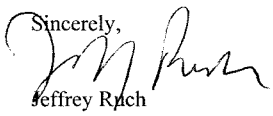
Not only did the Robbins agreement undermine consistent and responsible public lands range management, it impermissibly gave concessions and considerations to Mr. Robbins that are contrary to federal law and regulation. [ATTACHMENT III]

As a former lobbyist for the public lands livestock industry, Mr. Myers would be acutely aware of the significance of the concessions that the agreement his office negotiated awarded to Mr. Robbins. Further, Mr. Myers' calendar records his personal attention to the Robbins agreement. [ATTACHMENT IV]

PEER urges every member of the Senate Judiciary Committee to examine the attached agreement and the included supporting materials. PEER believes that any dispassionate examination of this agreement reveals that Mr. Myers has sacrificed the interests of the people of the United States, who are supposed to be his client as Interior Solicitor, to serve the interests of a private individual — and a livestock industry that he used to represent in private practice.

Precisely because Mr. Myers has chosen to place his private prejudices above his sworn public duties, PEER urges the Judiciary Committee to reject his nomination to serve the 9th Circuit Court of Appeals.

Sincerely,



Jeffrey Ruch
Executive Director

Cc. Members Senate Judiciary Committee

Published Opposition to the Nomination of William Myers to the 9th Circuit Court of Appeals

Editorials

Our View: Fight over Myers Bad for Court, West, Idaho Statesman, February 16, 2005.

Our View: Rejection of Myers for Court Job Shows System Works, The Idaho Statesman, July 21, 2004

Wrong pick for 9th Circuit: Surely the White House can find a more qualified nominee for the appellate court than William Myers, The Oregonian, July 20, 2004

Our View: Judges are judges, and federal law is federal law, The Idaho Statesman, May 24, 2003

A Judicial Failure to Cooperate, The Capital Times (Wisconsin), April 22, 2004

Former Mining Lobbyist Is Wrong Judicial Nominee, The San Jose Mercury News, March 25, 2004

Hostile To The Environment, The San Francisco Chronicle, March 24, 2004

Unfit To Judge, The Arizona Daily Star, March 23, 2004

No Pal of the Environment, Los Angeles Times, March 23, 2004

A Hostile Judge, The Boston Globe, March 22, 2004

It Seems To Us . . . Travel To The Land Of Oz, Foxes In The Henhouse And Back To Anti-Oz, The Buffalo News, March 20, 2004

A Foe Of The Environment, The International Herald Tribune, February 14, 2004

An Enemy of the Environment, The New York Times, February 13, 2004

Eject Bush: Two More Reasons Bush Has To Go, The Hartford Advocate, October 16, 2003

Op-Eds

Fox Leaves Henhouse For Bench, John Aloysius Farrell, Denver Post, April 11, 2004

Court Nominee Would Put Environment At Risk, Eric Palola, The Rutland Herald, April 3, 2004

Courting Big Business: Is The Bush White House Using The Courts As Another Way To Pay Back Special Interests?, Dan Noyes, Salon.com, April 1, 2004

Don't Let Cattle-Industry Lobbyist Stampede Onto Bench, Ralph G. Neas, The Daily Journal, March 29, 2004

Bush's Worst Appellate Nominee, Juan Non-Volokh, The Volokh Conspiracy Blog, March 24, 2004

Myers Is the Wrong Choice For 9th Circuit; He received a tepid endorsement from the American Bar Association, and his environmental record isn't good, Larry Fahn, The Sacramento Bee, March 12, 2004

An Assault on Sacred Lands, Tribes, Tex G. Hall, Billings Gazette, March 7, 2004

Tipping the Scales, Ray Ring, HighCountryNews.org, February 16, 2004

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, Amanda Griscom, Salon Magazine, February 12, 2004

Another Zealot For The Courts, Matt Bivens, The Nation, February 5, 2004

Bush Nominates Controversial Attorney, Loren Webster, Open Source Politics, January 31, 2004

More Bad Judges, Jack Newfield, The Nation, January 8, 2004

Letters to the Editor

Myers' Nomination for 9th Circuit Court, The Los Angeles Times, March 28, 2004

Pueblo of Laguna
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Office of:
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The Secretary
The Treasurer

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(505) 552-6654
(505) 552-6656

February 2, 2004

Senator Patrick Leahy, Ranking Member
Senate Judiciary Committee
433 Russell Senate Office Building
1st & C Street, NE
Washington, D.C. 20510

FAX: (202) 224-3479

Dear Senator Leahy:

The Pueblo of Laguna writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers' opinion – which overturned a well-reasoned legal opinion by his predecessor – wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue". It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the

critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers' nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

PUEBLO OF LAGUNA

Roland E. Johnson
Governor

QUECHAN INDIAN TRIBE
Ft. Yuma Indian Reservation

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Fax (760) 572-2102

Chairman Arlen Specter (By Fax: 202.224.9102)
Ranking Member Patrick Leahy (By Fax: 202. 224. 9102)
Hon. Senator Dianne Feinstein (By Fax: 202.228.3954
Hon. Senator Jon Kyl (By Fax: 202.224.2207)
U.S. Senate Judiciary Committee Members

February 17, 2005

Re: Quechan Indian Nation OPPOSITION to Confirmation of William G. Myers III to the Ninth Circuit Court of Appeals

Dear Honorable Senators:

The Quechan Indian Nation of California and Arizona wishes to express its continued strong opposition to the nomination of William G. Myers III to the Ninth Circuit Court of Appeals. Our opposition letter to his prior nomination, dated January 28, 2004, is attached for your reference. We also provided staff with information in March 2004 regarding where Mr. Myers' February 5, 2004 testimony to the committee was erroneous or misleading.

Nothing has changed over the last year to lift our opposition. The record shows that Mr. Myers is still unqualified for the position, having little relevant experience, earning the American Bar Association's lowest passing grade. There certainly are more qualified individuals for a legal position of such importance. Nor has new information come to light indicating that Mr. Myers has educated himself and changed his ways regarding tribal government-to-government consultation. Any request he may have made to meet with the tribal leaders in 2005 was without purpose: He should have met with the tribal leaders before he took the harmful actions he did while Solicitor. The Quechan received no hearing from Solicitor Myers – let alone a fair one. When Mr. Myers was the Solicitor for the solicitor's office of the U.S Interior Department he mishandled a 2003 grazing deal between a Thermopolis rancher and the Bureau of Land Management, according to the department's inspector general Earl Devaney the Solicitor's office "circumvented" normal negotiation processes, kept the BLM out of negotiations, ignored concerns about the settlement raised by the Justice Department and engaged "in an inappropriate level of programmatic involvement" in settlement talks.

The agreement between the BLM and rancher Frank Robbins, accused of violating a host of grazing laws, is a target of litigation by environmental groups and has raised questions about one of President Bush's nominees for federal judgeship.

In fact, the fruit of Mr. Myers' actions in the Glamis mine matter, to reverse the denial of the mine, has ultimately grown into a NAFTA claim against the United States by Glamis. This claim by the Canadian mining company could cost American taxpayers upwards of $65 million dollars. Moreover, Myer's reasoning in applying the governing federal land management statutes and policies was found to be in error by the United States District Court, District of Columbia. Because of his actions while a government employee, the future of native sacred places at Indian Pass, and elsewhere, remain unresolved.

We respectfully request that you give Mr. Myers another vigorous hearing for clarification purposes and to vet any new issues. We ultimately ask that you oppose his nomination. Should you wish to speak directly to us about our position, please phone me at 760.572.0213 or our attorney Courtney Ann Coyle at 858.454.8687. Thank you for your thoughtful consideration of this nomination of such importance to Indian Country.

Sincerely yours,

Mike Jackson, Sr., President
Quechan Indian Nation

Cc: Members of the Senate Judiciary Committee
Hon. Senator Barbara Boxer (619.239.5719)
Hon. Senator John McCain (202.228.2862)
Pauline Jose, Culture Committee Chair
Emilio Escalanti, Council Liaison

QUECHAN INDIAN TRIBE
Ft. Yuma Indian Reservation

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Phone (760) 572-0213
Fax (760) 572-2102

Honorable Senator Dianne Feinstein
Honorable Senator Jon Kyl
U.S. Senate Judiciary Committee Members

January 28, 2004

RE: Quechan Indian Nation OPPOSITION to Confirmation of William G. Myers III to the Ninth Circuit Court of Appeals

Dear Honorable Senators:

The Quechan Indian Nation of California and Arizona wishes to express its strong opposition to the nomination of William G. Myers III to the Ninth Circuit Court of Appeals. We understand that his confirmation hearing may be held as early as February 4, 2004. Because you both represent many tribes, including the Quechan Nation, and the Ninth Circuit deals with many issues of great concern to all of Indian Country, the Quechan People trust that once you learn of Mr. Myers' poor record on Indian issues, you will agree that he is the wrong person for this important Court and its lifetime appointment.

As you will remember, former Interior Solicitor Myers' controversial 2001 Hardrock Mining Solicitor's Opinion was the legal advice and recommendation that Secretary Norton specifically and solely relied upon to rescind the denial of the Glamis Imperial Mine. Myers' advice, once again put at risk of destruction the sacred places of the Quechan Nation and other Colorado River Tribes. As a result, the National Trust for Historic Preservation listed the Quechan Indian Pass area as one of the eleven most endangered historic places in American in 2002. Myers' legal Opinion was appalling, and result-reaching, for several reasons.

First, he rendered that Opinion without any government to government consultation or even a meeting with the Tribe, despite: Having been requested to do so by the Tribe, the notoriety of the matter and the trust obligation of the Department of Interior to the Tribe. Second, as Solicitor, the people of the United States were his clients: He had an obligation to honor the requirement of the Congressionally-designated California

Desert Conservation Area Plan. Yet, Myers disregarded the Plan, the governing standards and the litany of unmitigable environmental and cultural resource impacts to advance the economic position of one specific company over the broad interests of the public in preserving this irreplaceable desert landscape. Indian Pass remains threatened today because of the Former Solicitor's unsupported legal advice.

Mr. Myers has demonstrated a clear lack of the legal integrity that must be demanded of our judiciary. We respectfully request that you give Mr. Myers a vigorous hearing and ultimately oppose his nomination. Should you want to speak directly to us about our position, please phone me directly at 760.572.0213 or our attorney Courtney Coyle at 858.454.8687. Thank you for your consideration.

Sincerely yours,

Mike Jackson Sr., President
Quechan Indian Nation

Cc: Members of the Senate Judiciary Committee
Honorable Senator Barbara Boxer
Honroable Senator John McCain
Honorable Senator Campbell
Honorable Senator Inouye
Pauline Jose, Culture Committee Chair
Emilio Escalanti, Council Liaison

Ramona Band of Cahuilla Mission Indians

56310 Highway 371, Suite B

P.O. Box 391372 • Anza, CA 92539 • Office (909) 763-4105 • Fax (909) 763-4325 • E-Mail: ramona41@gte.net

January 23, 2004

The Honorable Patrick J. Leahy
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leahy:

On behalf of the Ramona Band of Cahuilla Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Meyers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed-door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also occurred to Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myer's nomination is of great concern for several reasons:

1. Mr. Myer's actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states ad territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice is the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former client's underscores that he is just to close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Ramona Band of Cahuilla Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Tribes be notified prior to the date of confirmation hearing. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Manuel Hamilton
Tribal Chairperson
Ramona Band of Cahuilla Indians

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

January 27, 2004

The Honorable Patrick J. Leahy
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510

Via Fax: (202) 224-9516

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leahy,

On behalf of the Redding Rancheria Tribe, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor a the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

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2000 Redding Rancheria Rd. Redding, CA 96001 Tribal Office: 530-225-8979 Fax: 530-241-1879

Mr. Myers' nomination is of great concern for several reasons:

1. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

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For these reasons, the Redding Rancheria Tribe respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California tribes be invited to provide testimony on this important matter.

Sincerely,

Tracy Edwards

Tracy Edwards
Tribal Chair
Redding Rancheria

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

San Pasqual Band of Mission Indians
Tribal Government – San Diego County, California
P.O. Box 365 Valley Center, CA 92082
PH. (760) 749-3200 - FAX (760) 749-3876

Business Committee

Allen E. Lawson
Spokesman

Patricia Ochert
Vice-Chairwoman

Valerie Juarez
Secretary-Treasurer

Cheryl Calac
Delegate

Catalina Campos
Delegate

January 30, 2004

The Honorable Patrick J. Leaby
Ranking Member
152 Senate Dirksen Office Building
Washington, DC 20510

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Leaby:

On behalf of the San Pasqual Band of Mission Indians, I write to oppose the confirmation of William G. Myers III to 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the could be reconsidered. Mr. Myers' Opinion ignored Congress intent to protect the California desert and completely disregarded the rights and interest of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposals nor engage in any type public review or citizen process.

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Mr. Myers' nomination is of great concern for several years reasons:

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2. As DOI Solicitor. It was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, The San Pasqual Band of Mission Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Allen E. Lawson,
Tribal Chairman

cc: California Nations Indian Gaming Association
Quechan Indian Nation

SANTA YSABEL BAND OF DIEGUENO INDIANS

Johnny M. Hernandez
Spokesman

Brandie S. Taylor
Vice Spokeswoman

Bonnie Salgado
Councilwoman

Tracts 1, 2 and 3
P. O. Box 130
Santa Ysabel, CA 92070
Tele: (760) 765-0845 • Fax: (760) 765-0320

Sylvia Sherbert
Treasurer

H. Lamar Price
Secretary

Rodney J. Kephart
Councilman

January 21, 2004

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Honorable Patrick Leahy:

On behalf of the Santa Ysabel Band of Diegueno Indians, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitor's Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechan Indian Nation and its people and other Colorado River tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard-fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

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Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers' actions in the Glamis matter show a lack of understanding and respect for the unique political relationship between the federal government and tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

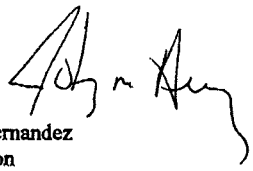
2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective way and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contacts with former clients underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Santa Ysabel Band of Diegueno Indians respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,



Johnny Hernandez
Chairperson

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

JOSEPH L. SAX
1150 LOMBARD STREET, NO. 12
SAN FRANCISCO, CA 94109-9105
TEL: (415) 346-6321
FAX: (415) 346-6240
EMAIL: SAXJ@LAW.BERKELEY.EDU

Senator Feinstein: I am re-sending this letter to you by fax, as I fear my earlier letter may have been destroyed during the Rizin incident last month. As I think this would really be an unworthy appointment, I wanted to be sure to register my opposition. Thanks.

February 12, 2004

Hon. Diane Feinstein
U.S. Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of William Myers for 9th Circuit Judgeship

Dear Senator Feinstein,

I write to urge your opposition to confirmation of William Myers to the 9th Circuit.

I am a law professor at Boalt Hall, U.C. Berkeley. My specialty is environmental and natural resources law. I served in the Department of the Interior in the previous Administration as counselor to Secretary Babbitt. I am fairly familiar with the background and experience of Myers, and have noted with especial dismay the review he received from the ABA committee on the judiciary.

I readily acknowledge the prerogative of a President to nominate judges whose philosophy he shares, and I do not personally oppose the confirmation of even quite conservative judges during Republican Administrations. However, I do strongly believe that we are entitled to have persons of professional distinction appointed to important posts such as that of the U.S. Courts of Appeals. Neither based on his experience as a practicing lawyer, nor while serving as Solicitor at DOI, has Myers distinguished himself, nor has he made any significant contributions to the law in his writings. The rating by a number of the ABA committee of him as unqualified is really distressing, in light of the numerous highly qualified and widely respected lawyers with impeccable Republican credentials who would be a credit to the Ninth Circuit, however much I might disagree with their personal views on any of a range of legal issues.

We can do much better. We deserve better. Please use your standing in the Senate to prevent Myers' confirmation, and let President Bush know that we want the best our profession has in our Court of Appeals.

Thank you for your attention.

Cordially yours,

Joseph L. Sax
House & Hurd Professor of Law (emeritus)
University of California (Berkeley)

Seminole Nation of Oklahoma
POST OFFICE BOX 1498
WEWOKA, OKLAHOMA 74884

Executive Department

KEN CHAMBERS, PRINCIPAL CHIEF
MARY ANN EMARTHLA, ASSISTANT CHIEF

PHONE 405/ 257-6287
FAX 405/ 257-6205

February 02, 2004

Post-it® Fax Note 7671	Date 2-2-04 # of pages ▸ 2
To Sen. Leahy	From Chief Chambers
Co./Dept.	Co.
Phone #	Phone #
Fax # 202-224-3479	Fax #

Hon. Patrick Leahy (Ranking Member)
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

The Seminole Nation of Oklahoma writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myers' opinion—which overturned a well-reasoned legal opinion by his predecessor—wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public land. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myers' nomination to the Ninth Circuit. We do not take this step lightly—but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

Ken Chambers

Ken Chambers, Principal Chief
Seminole Nation of Oklahoma

February 28, 2005

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
711 Hart Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
433 Russell Office Building
Washington, D.C. 20510

Dear Senators:

After reevaluating the record of William G. Myers III, the Sierra Club continues to urge the Senate not to confirm Mr. Myers as a judge on the United States Court of Appeals for the Ninth Circuit. Mr. Myers' views on Congress' powers and avowed hostility to environmental regulation make him unfit to serve on a court that handles an exceptionally large docket of environmental cases. Additionally, recent reports about his conduct while serving as Solicitor of the Interior Department cast further doubt on his qualifications to serve a lifetime appointment on the Ninth Circuit.

Sierra Club's response to Mr. Myers' nomination stems largely from his hostility towards laws protecting the environment. That attitude calls into serious question Mr. Myers' ability to rule fairly and without bias, and suggests that he is well out of step with current law. For example, in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon,* 515 U.S. 687 (1995), Myers argued in an amicus brief that Endangered Species Act habitat protection provisions are facially unconstitutional under the Takings Clause because the government would not compensate property owners for any and all impacts – no matter how minor – on property rights. Myers suggested that property rights are as "fundamental" as rights of free speech, in which case the Government may not intrude upon them, bar the most exceptional and narrowly tailored circumstances. Such a view has not only been rejected repeatedly by the Supreme Court (and in *Babbitt* no justice on either side of the decision even addressed this argument), but it would spell doom for environmental protection.

Mr. Myers also espouses an extremely narrow view of Congressional authority under the Commerce Clause to protect our environment and natural resources. In *Solid Waste Agency of*

408 C Street N. E. Washington, DC 20002 TEL: (202) 547-1141 FAX: (202) 547-6009 www.sierraclub.org

Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001). Myers argued in another amicus brief that Congress does not have authority to protect wetlands used by migratory birds, branding such efforts as nothing more than "unauthorized federal regulation of land use." Apropos of this position, Mr. Myers does not believe that wetlands are even covered by the Clean Water Act, and that "Only through expansive interpretation from activist courts has it come to be such a drain on American agriculture." Remarkably, this statement came almost a decade after *United States v. Riverside Bayview Homes*, 474 U.S. 121, 135 (1985), where the Supreme Court unanimously held that "waters of the United States" included wetlands. Mr. Myers has also called wetlands protection rules an example of "regulatory excess" that have the "unintended consequence of actually harming the environment" (Environmental Command and Control at 208).

Moreover, Mr. Myers' hostility towards environmental protection follows no discernible jurisprudential principles; his views regarding the limited scope of federal authority have reversed themselves to defeat such protections. While Mr. Myers was Solicitor of the Interior Department, for example, the Department took the very unusual step of appearing as an amicus in *Oil-Dri Corporation of Nevada v. Washoe County*, advancing the legal position that federal law applicable solely to federal lands somehow preempts state and local laws that governed adjoining private property. In this case, the Department advocated for the supremacy of federal law over local efforts to regulate a mining project.

Similarly, while Mr. Myers vehemently espouses private property rights, his views do not favor all classes of property owners equally. In 2002, the Grand Canyon Trust spent more than $1 million to purchase grazing rights on federal lands in the Grand Staircase-Escalante National Monument. This approach to conservation – the purchase of property rights from willing sellers – even won praise from Interior Secretary Norton. However, when the Trust asked the Department to then retire the purchased grazing permits, Myers issued a formal opinion (and then a subsequent correction) which together held that the Department had the discretion to continue grazing on this land—presumably by another permittee—regardless of the Trust's interests in retiring the rights it had purchased.

Mr. Myers' public statements amply confirm his distaste Congressional efforts to protect natural resources. In testifying before Congress, he compared forays by a Yellowstone wolf onto private property as akin to the British demand that Colonists "quarter" their soldiers. Myers has compared the government's management of public lands to King George's "tyrannical" rule over the American colonies (Western Ranchers Fed Up with Feds, Forum for Applied Res. & Pub. Pol., Winter 1996 at 22), and has called the California Desert Protection Act, which set aside 7.5 million acres of wilderness, and 5.5 millions acres that included national park preserves, "an example of legislative hubris"(Farmers, Ranchers & Environmental Law at 209 (1995)). He has also written that the federal government's "endless promulgation of statutes and regulations harms the very environment it purports to protect" (Id. at 198), and called environmental regulation "outright, topdown coercion" (Id. at 201, 206).

Furthermore, at least two more controversial aspects of Mr. Myers' record have come to light since his initial hearing before the Senate Judiciary Committee last year. On March 8, 2004, the Los Angeles Times reported that while serving as Interior Solicitor Myers encouraged Congressmen Doolittle and Herger to introduce legislation that would have given valuable public

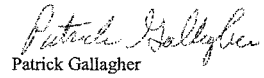
land to a mining company without first fully researching the case or checking with the local Bureau of Land Management (BLM) office which opposed the land deal. After further investigation, a letter from the Interior Department to the Congressmen repudiated Myers' initial position because records showed that the company, Yuba Rivers Properties, lacked any lawful claim to the land.

Perhaps even more controversial is the apparently illegal settlement negotiated by the Office of the Solicitor with rancher Harvey Frank Robbins, Jr. When local BLM officials cited Robbins for repeatedly violating federal grazing laws, Robbins responded by filing a racketeering counter-suit against BLM personnel. With Myers' personal authorization, the Interior Department intervened and negotiated a settlement which not only cleared Mr. Robbins of his criminal grazing behavior, but also rewarded him by allowing him to continue violating grazing laws in the future while allowing Mr. Robbins' suit to continue. The events surrounding the settlement agreement have been the subject of a two-year investigation by Interior Inspector General Earl Devaney, who in his preliminary report concluded that the negotiation bypassed normal processes including involving BLM and addressing concerns raised by the Department of Justice.

Sierra Club asserts that Mr. Myers' views and questionable record cast strong doubt on his ability to render impartial judgments, and render him unfit to serve as an appellate judge. We further note that Mr. Myers does not appear to have any of the other qualifications usually required in a federal appellate judge. He appears to have minimal litigation experience at any level and lacks a record of scholarly legal writings. More than one-third of his American Bar Association review panel deemed him "unqualified" for this post, while the remaining members of the panel gave him a tepid, "qualified" rating. None deemed him "well-qualified" for this position.

In closing, Sierra Club respectfully submits that Mr. Myers should not be confirmed by the Senate as a judge on the Ninth Circuit Court of Appeals. Thank you for your consideration of our views on this nominee.

Sincerely,



Patrick Gallagher
Director of Environmental Law

cc: Members, Senate Judiciary Committee

408 C Street N. E. Washington, DC 20002 TEL: (202) 547–1141 FAX: (202) 547–6009 www.sierraclub.org

N K. SIMPSON

United States Senator (Ret.)
WYOMING

July 8, 2003

Chairman Orrin Hatch
U.S. Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

Dear Orrin:

Hello old friend! I am so very pleased that one fine attorney who worked for me in the Senate has been nominated to serve on the U.S. Court of Appeals for the 9th Circuit. I am referring to Bill Myers who was my Legislative Counsel from 1985 to 1989.

You may remember him...for Bill was my key staff attorney on Senate Judiciary Committee issues pertaining to the Constitution, courts, antitrust, and criminal law matters. His portfolio also included advising me on important public land issues.

From 1989 to 1993, Bill worked at the Department of Justice and also at the Department of Energy. From 1993 until 2001 he was a private sector attorney. Since 2001, he has been the Solicitor at the Department of Interior, and I understand he has done a most outstanding job there.

I have observed Bill closely for nearly 20 years. I can wholeheartedly vouch for his legal competence and his integrity. He has not yet had an opportunity to serve as a member of the judiciary. However, based on my observations of him as an attorney, counselor, and close friend I firmly believe that he would demonstrate superb judicial temperament in the role of a federal judge.

I deeply believe that he would be a "mainstream," and a very balanced Justice and that he would be a great asset to the 9th Circuit Court of Appeals.

Please feel free to contact me if I can furnish any further information regarding this fine person.

Respectfully and sincerely...
and with warm personal regards,

Alan K. Simpson

Cc: Office of Legal Policy
Department of Justice

Not Printed at Government expense

MIKE SIMPSON
Second District, Idaho

1338 Longworth House Office Building
Washington, DC 20515
(202) 225-5531

Co-Chairman
Congressional WTO Caucus for Farmers and Ranchers
Co-Chairman
House Biotechnology Caucus

Committee on Appropriations
Subcommittees:
Energy and Water Development
Labor, Health and Human Services and Education
VA, HUD and Independent Agencies

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

January 6, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
Senate Dirksen- 224
Washington, D.C. 20510

Dear Chairman Hatch:

We are writing today, as Idaho's Representatives to the U.S. House of Representatives, in support of the nomination of William "Bill" Myers to a position on the United States Court of Appeals for the Ninth Circuit. As we both personally know Bill, we know he would make a fine member of the Ninth Circuit.

Having followed Bill's career for several years, we know he would make decisions in a thoughtful and expeditious manner. Bill possesses a strong moral character and can be trusted with decisions of both individual and national importance. His extensive legal background gives him the qualifications he needs for this position. Bill has consistently brought a balanced approach to solving the many and varied issues we have discussed with him over the years. We are confident that his opinions will be well within the mainstream of judicial thought.

Without a doubt, Bill would make an outstanding Judge on the Ninth Circuit. Please feel free to contact either of us if you have any questions regarding Bill's capabilities.

Sincerely,

Mike Simpson
Member of Congress

C.L. "Butch" Otter
Member of Congress

Cc: The Honorable Patrick J. Leahy

TOTAL P.02

Governor Michael J. Sullivan
Attorney at Law
msullivan@rothgerber.com

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Casper, Wyoming 82601-2480
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www.rothgerber.com

Denver • Colorado Springs • Cheyenne • Casper

January 10, 2004

The Honorable Senator Orrin G. Hatch
Chairman, Senate Judiciary Committee
104 Hart Office Building
Washington, DC 20510

Re: William G. Meyers

Dear Senator Hatch:

I am writing to support the nomination of William G. Meyers for appointment to the Ninth Circuit Court of Appeals. I have known Mr. Meyers since he first practiced law with the firm of Davis & Cannon in Sheridan, Wyoming, and worked with him during his service with Al Simpson as Legislative Counsel, which overlapped with my first term as Governor of Wyoming.

Mr. Meyers has a wealth of legal experience in the private practice, in Washington, and in the areas of public lands and the environment. These are areas of extreme importance to the country and those of us in the West, and it is my view that Bill's experience would serve the Court and the Circuit well. While I don't profess intimate knowledge with the nature of all the issues before the Ninth Circuit, I am confident those areas in which Bill has developed an expertise would figure prominently. I believe him to be a thoughtful, well-grounded attorney who has reflected by his career achievements a commitment to excellence. He is, in my view, an individual who would provide serious, responsible and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedent or the merits of a given matter.

I urge your favorable consideration of the nomination.

With best regards, I am

Very truly yours,

Rothgerber Johnson & Lyons LLP

Michael J. Sullivan

MJS:mi
H:\Mswd\corresp 04\Senator Hatch-W.G. Meyers.doc

006 P02 JAN 16 '04 14:52

Michael J. Sullivan
Attorney at Law
msullivan@rothgerber.com

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Denver • Colorado Springs • Cheyenne • Casper

January 15, 2004

The Honorable Senator Orrin G. Hatch
Chairman, Senate Judiciary Committee
104 Hart Office Building
Washington, DC 20510

Re: Nomination of William G. Myers III to the Ninth Circuit

Dear Senator Hatch:

My assistant has called to my attention that we (and I use the editorial 'we') improperly spelled Bill Myers's name throughout my letter of recommendation forwarded earlier this week. While this is truly embarrassing, because it could cast doubt on the seriousness I give or the attention that I paid to my recommendation, more importantly, should Mr. Myers become a Circuit Judge, my inexcusable error would strike fear and foreboding in my legal heart.

Please excuse the error, and accept my request for your serious consideration, the error notwithstanding.

With best regards, I am

Very truly yours,

Rothgerber Johnson & Lyons LLP

Michael J. Sullivan

MJS:mi

cc: Bill Myers

H:\Mswd\corresp 04\Sen. Hatch 1-15.doc

DICK THORNBURGH
2540 MASSACHUSETTS AVENUE N.W.
APARTMENT 405
WASHINGTON, DC 20008

June 16, 2003

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of William Gerry Myers, III

Dear Orrin:

It is my understanding that Bill Myers, currently serving as Solicitor of the United States Department of Interior, has been nominated by President Bush to serve on the United States Court of Appeals for the Ninth Circuit.

I have known Bill for a number of years, dating back to 1989 when Bill served on my staff while I was Attorney General. I believe Bill is exceptionally well qualified to serve as a member of the Federal Judiciary. During the time I worked with Bill, he demonstrated not only an outstanding legal intellect, but also good judgment and exemplary integrity. I have no doubt that these skills, along with his sound temperament and work ethic, would serve him well on the bench, should he be confirmed.

If you would like to discuss this further, please do not hesitate to contact me.

Sincerely,

Dick Thornburgh,

cc: The Honorable Patrick J. Leahy

DC-579872 v1 0942001-0001

Shirley Summers
Chairperson

Patrick Mason
Vice Chairman

Doreen Mason
Secretary/Treasurer

Daniel Shoshone
Executive Councilmember

Mark Lee
Executive Councilmember

January 23, 2004

The Honorable Patrick Leahy
152 Senate Dirksen Office Building
Washington, DC 20510

Re: OPPOSITION to Nomination of William G. Myers III to the 9th Circuit Court of Appeals

Dear Senator Patrick Leahy,

On behalf of the Timbisha Shoshone Tribe, I write to oppose the confirmation of William G. Myers III to the 9th Circuit Court of Appeals.

As Solicitor at the Department of Interior, Mr. Myers handled the proposed Glamis Imperial Project gold mine in Southeastern California, which would have destroyed a tribal sacred place. Mr. Myers' October 2001 Solicitors Opinion revoked the prior Solicitor Leshy Opinion protecting Indian Pass. The revocation was expressly relied upon by Interior Secretary Gale Norton to rescind the denial of the mine, so that the mine could be reconsidered. Mr. Myers' Opinion ignored Congress' intent to protect the California desert and completely disregarded the rights and interests of the Quechen Indian Nation and its people and other Colorado River Tribes.

In rescinding the denial of the mine, neither Secretary Norton nor Solicitor Myers, unlike their predecessors, engaged in government-to-government consultation with the Quechan Indian Nation, a federally recognized tribe of California and Arizona, despite the seriousness of the action undertaken by Norton and Myers to strip away the hard fought protection of this sacred place. Neither did they consult with the State of California who had expressed strong concerns about the proposal nor engage in any type of public review or citizen process.

Solicitor Myers and the Department of Interior did, however, hold closed door meetings in which Glamis Gold, the applicant, and the National Mining Association, its trade group, were granted extensive and exclusive access to the decision makers and their counsel prior to the reversals taking place. A similar reversal also incurred to the Northern California tribes relative to a Medicine Lake Highlands geothermal project during this same period.

Mr. Myers' nomination is of great concern for several reasons:

1. Mr. Myers's actions in the Glamis matter show a lack of understanding and respect for the unique political relationship

TIMBISHA SHOSHONE TRIBE
P.O. Box 736 • 110 Edwards Street • Bishop CA 93514 • tel. 760.873.9003 • fax: 760.873.9004 • www.timbisha.org

Shirley Summers
Chairperson

Frank Mason
Vice Chairman

Doreen Mason
Secretary/Treasurer

Daniel Shoshone
Executive Councilmember

Mark Lee
Executive Councilmember

between the federal government and the tribal governments grounded in the United States Constitution, federal statutes, adopted policy statements and trust responsibility.

2. As DOI Solicitor, it was his duty to advise DOI to consult with the tribe. The ability to understand these complex issues is particularly important for a lifetime judicial seat that encompasses nine western states and territories including California, scores, of Indian reservations and lands, well over a hundred Indian tribes, millions of Indian people and important federal and tribal lands management issues.

3. Mr. Myers' actions and legal advice in the Glamis matter could result in the extinguishment of the Quechan people's tribal heritage and sacred places.

4. As DOI Solicitor, Mr. Myers has demonstrated an inability to put aside personal bias to act in a neutral and objective was and in the public interest. That he has recently resigned his position as Solicitor amid federal investigations into alleged violations of his ethics agreements by having contracts with former clients' underscores that he is just too close to the extractive industries and shows a lack of judicial temperament.

For these reasons, the Timbisha Shoshone Tribe respectfully requests that the Judiciary Committee oppose the confirmation of Mr. Myers to this important lifetime appointment. We also respectfully ask that California Indian tribes be notified prior to the date of the confirmation hearings. Finally, we ask that representatives of California Indian tribes be invited to provide testimony on this important matter.

Sincerely,

Shirley Summers

Shirley Summers
Tribal Chairperson
Timbisha Shoshone Tribe

Cc: California Nations Indian Gaming Association
Quechan Indian Nation

TIMBISHA SHOSHONE TRIBE
P.O. Box 786 • 110 Edwards Street • Bishop CA 93514 • tel: 760.873.9003 • fax: 760.873.9004 • www.timbisha.org

THE TULALIP TRIBES

6700 TOTEM BEACH ROAD
TULALIP, WA 98271-9694
(360) 651-4000
FAX (360) 651-4032

Board of Directors:
Herman Williams Jr., Leib Sil Teed - Chairman
Stanley G. Jones Sr., Scho Hollem - Vice Chairman
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Martin Fryberg Jr., Sxwilus - Board Member
Les Parks - Board Member
Linda L. Jones - General Manager

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliot.

March 9, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Vic Facsimile: 202-224-9102

Dear Honorable Chairman Hatch:
Dear Honorable Ranking Member Leahy:

The Tulalip Tribes is writing to support the nomination of William G. Myers, III to the 9th Circuit Court of Appeals.

Mr. William G. Myers, III served as a solicitor in the U.S. Department of the Interior. We find that he has a balanced record to defend the interest of Native Americans. The 9th Circuit Court of Appeals is in need of an appointment by an individual experienced and knowledgeable in Federal Indian Law.

The appointment of Mr. William G. Myers, III would receive the support of The Tulalip Tribes.

Respectfully submitted,

Herman A. Williams, Jr.
Chairman
Board of Directors

HAW/pcp

U tu Utu Gwaitu Paiute Tribe
Benton Paiute Reservation
(760) 933-2321

JAN 28 2004

The Honorable Patrick Leahy, Senator
United States Senate
Ranking Member of the Judiciary Committee
433 Russell Senate Office Building
Washington, D.C. 20510

RE: Williams G. Meyers III

Dear Senator Leahy:

The U-tu-Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation writes to express our opposition to the confirmation of William G. Meyers III to the 9th Circuit Court of Appeals. Former Solicitor of the Interior Myers' disregard for federal law affecting Native Sacred places and the government to government relationship between Tribes and the United States Government compels our view that he is unable to fairly and impartially apply the law and this should not be confirmed.

As Solicitor of the Department of the Interior, William G. Meyers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Meyers in his two-year tenure at Interior, Meyers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Meyers' opinion—which overturned a well-reasoned legal opinion by his predecessor—wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myers' legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis project.

The Ninth Circuit encompasses nine western states and other territories, including Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, and California. It also contains scores of reservations, more than one hundred Indian Tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the

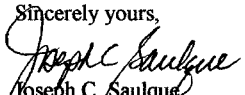
567 Yellow Jacket Road, Benton, CA 93512

critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands and overall American Indian issues that may come before the 9th Circuit.

For these reasons, we formally oppose Myers's nomination to the Ninth Circuit. We do not take this step lightly—but when a nominee has acted with such blatant disregards for federal law and Native American sacred places, we must speak out.

Thank you for your consideration in rejecting this nominee for the 9th Circuit or any other federal court.

Sincerely yours,



Joseph C. Saulque
Tribal Chairman

VAN HYNING

Senator Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510

June 1, 2003

SUBJ: Circuit Court of Appeals Bush Nominatee

Dear Senator Leahy:

I am writing in response to President Bush's nominee William Myers III to the 9th U.S. Circuit Court of Appeals announced May 17, 2003. President Bush should withdraw Myers' name from nomination, or that notwithstanding, the Senate Judiciary committee must vote "not" to move this nomination to the full Senate for conformation. Confirming William Myers to the 9th U.S. Circuit Court of Appeals would be like appointing Saddam Husseine to the U.S. Cabinet post of Homeland Security. Both have long historical records of their personal convictions not being in the best interest of the public.

I grew up on a ranch in the Lewistown, Montana area and have worked as a volunteer with a local conservation organization with grazing issues on public land for many years. I have participated in Forest Service and Bureau of Land Management (BLM) grazing\watershed environmental analyses throughout central Montana. I have worked directly with ranchers who are permittees and agency specialists who are both working to improve multi-use on public lands.

Mr. Myers first appeared on my radar screen when BLM March 3, 2003 published "Notices on Potential Changes to Grazing Regulations". Among other things these proposed rules call for "authorize temporarily locked gates on public lands." Mr. Myers is currently the Interior Department's top lawyer (Solicitor).

In 1994, then Interior Secretary Bruce Babbitt revised the BLM's grazing regulations to ensure that livestock use would be balanced with other resources in order to improve the health of BLM Rangelands. The public lands livestock industry objected strongly to the final rules and challenged them in court, taking the case all the way to the U.S. Supreme Court in 2000. In Public Lands Council et v. Babbitt et (167F.3d 1287-10th Cir 1999), found unanimously on every complaint for the Secretary. Mr. Myers was director of the Public Lands Council and federal lands director of the National Cattlemen's Beef Association when his law firm, Holland & Hart Firm in Boise Idaho filed a friend-of-the court brief on behalf of the Farm Credit Banks in support of the cattlemen's lawsuit.

Mr Myers now as Solicitor of the Interior Department is pushing new grazing guidelines (FR Doc.03-4933 Filed 2-28-03: 8:45am) to reverse the entire Supreme Court 2000 decisions.

Do not confirm Mr. Myers, who has no judicial experience and whose only background is moving public resources to private wealth.

Sincerely,
Dyrck Van Hying

VAN HYNING & ASSOC., INC.
P.O. Box 2931 (59403)
6835 43rd St. S.W.
Great Falls, MT 59404
(406) 453-6039 FAX (406) 452-8565

VIEJAS
TRIBAL GOVERNMENT

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Alpine, CA 91901

Anthony R. Pico, Chairman
Bobby L. Barrett, Vice Chairman
Diana L. Aguilar, Tribal Secretary
John A. Christman, Tribal Treasurer
Virginia M. Christman, Councilwoman
Alan L. Barrett, Councilman
Drucilla L. Espinoza, Councilwoman

Phone: 6194453810
Fax: 6194455337
viejas.com

March 18, 2004

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

VIA FAX: (202) 224-3479

Dear Senator Leahy,

On behalf of our government, the Viejas Band of Kumeyaay Indians, we are writing to register opposition to the confirmation of William Myers to appellate judge on the Ninth Circuit Court of Appeals. The Senate Judiciary Committee has recently held a confirmation hearing on Mr. Myers' nomination and it must now decide whether or not to report the Myers' nomination favorably.

In the long history of the Viejas Band, we have never taken a position on the appropriateness or fitness of any nomination to the Court of Appeals. We do so reluctantly in this case. However, our view is that Mr. Myers is strikingly unsuitable and unqualified for such a lifetime position.

A review of Mr. Myers record, sketchy as it is, reveals the following:

> A bottom line rating of "qualified" by the American Bar. Both majority and minority members of the Senate Judiciary Committee as a meaningful and useful guide as to the quality and qualifications of any particular nominee are highlighting association, which we would note.
>
> A career devoid of any scholarly writings in the fields of natural resources, water law or land use planning, a field Mr. Myers spent the bulk of his legal career practicing.
>
> A review of the record demonstrates only three formal opinions issued by Mr. Myers during his tenure as Solicitor, one of which was sharply overturned with a stinging rebuke by Federal Court Judge William Kennedy, Jr.

We would direct you and committee members towards two particular incidents that constitute our main concerns regarding Mr. Myers nomination.

First, Mr. Myers, during his relatively brief tenure as Interior Solicitor issued an opinion that demonstrated an amazing lack of, or concern for, the Federal Land Policy Management Act (FLPMA). In a reconsideration of a mining permit denial, originally issued to preserve and protect Native American sacred sites in California.

Mr. Myers reversed a well-founded and reasoned agency decision with a complete dismemberment of statutory protections for Native American sacred sites enshrined in FLPMA.

His tortured reasoning in reversing a permit denial that would have subjected sites sacred to the Quechan Tribe to permanent damage from cyanide leach-pad contamination, earned the severest rebuke from Judge Kennedy. This lack of understanding of the importance of FLPMA, or for that matter, the statutory protections of the Archeological Resources Protection Act, to America's Indian Tribes is profoundly disturbing.

We would point the committee to a story reported in the *Washington Post*, dated March 15, 2004, that details wholesale plundering of Native American sacred sites and artifacts. The scale of this cultural devastation only further highlights to us, that only a nominee with a keen and heightened understanding of these treasures, deserves serious consideration. Mr. Myers' decision in the Quechan Tribe issue provides ample evidence that he has no understanding or regard for Native American culture.

Secondly, we would like to direct the committee to an article published in the *Los Angeles Times* dated March 8, 2004, detailing a decision by Mr. Myers, acting as Interior Solicitor, to transfer title of federal property and assets, valued at millions of dollars, to private parties.

Mr. Myers decision was taken - apparently - in the face of continued protests from career federal appraisers who warned, without effect, that the private party's title claims were legally unfounded. As events, detailed in the article show, the career land manager's views were absolutely correct, necessitating an embarrassing reversal of Myers' decision by his former agency.

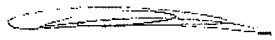
We, like every American citizen, believe that federal assets are to be valued and preserved for the benefit of all Americans. If the federal government is to dispose of the people's assets, we believe that there must be reasonable value received for such transactions. A casual disregard for this fundamental principle should auger poorly for any person recommended for the federal bench, where these kinds of transactions are often reviewed.

For these reasons, we believe that Mr. Myers has neither the depth of legal knowledge or skill to be placed on the federal bench.

We strongly recommend to the committee that he be reported unfavorably. If, he is reported to the full Senate, we are determined to take our concerns to every member prior to a confirmation vote.

Sincerely,

VIEJAS BAND OF KUMEYAAY INDIANS



Hon. Anthony R. Pico
Chairman

cc: Hon. Orrin Hatch, Hon. Dianne Feinstein, Hon. Tom Daschle

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

July 9, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch:

I write to you in support of the United States Senates' favorable consideration and confirmation of the President's nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

As you know, Mr. Myers has served as the Solicitor for the United States Department of the Interior (DOI). In my capacity as Attorney General of the State of Idaho, I have represented the State of Idaho's interests in matters before the DOI. The State of Idaho is frequently involved in legal matters with the DOI due to the large swaths of land managed by the DOI and other federal agencies. I have worked with Mr. Myers in his capacity as Solicitor of the DOI on many of these matters. My unqualified endorsement of Mr. Myers is based upon these personal experiences.

One only needs to read the newspaper to see how polemic natural resource and environmental issues have become. The DOI is often at the center of these multi-issue and multi-party controversies. In Idaho, we have had to deal with the DOI on the Endangered Species Act, federal reserved water rights and Indian law issues. In each of these contexts, I have observed Mr. Myers' ability to set aside the rhetoric and to objectively evaluate the respective interests of the parties. He has been a strong advocate for the interests of his clients, just as a lawyer must be, and he has also been able to find ways to achieve his clients' interests by providing a reasoned means of resolving the conflict.

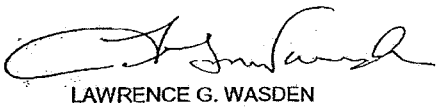
A mark of an outstanding attorney is one who has gained the respect of his peers by what he does, not what he says. Mr. Myers has gained my respect because he has always been willing to listen to the State of Idaho's concerns and provide

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

a timely and reasoned response. His professional competence as a lawyer, his integrity, as demonstrated through his advocacy for his client and his respect for the law, and his temperament in dealing with issues that stir deep feelings throughout Idaho and the West, are traits that Mr. Myers will bring to the Ninth Circuit. These attributes are essential in candidates seeking to serve as a judge on the federal bench.

I urge the United States Senate to favorably consider and confirm Mr. Myers' nomination to serve as a judge on the United States Court of Appeals for the Ninth Circuit.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

LGW:cs:tpo:jc

Cc: The Honorable Patrick J. Leahy
Office of Legal Policy

WINNEBAGO TRIBE of NEBRASKA

WINNEBAGO TRIBAL COUNCIL P.O. BOX 687 WINNEBAGO, NEBRASKA 68071

February 2, 2004

Senator Patrick Leahy, Ranking Member
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

The Winnebago Tribe of Nebraska writes to express our opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. Former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

As Solicitor of the Department of the Interior, William G. Myers was the architect of a rollback of protections for sacred native sites on public lands that are central to the religion of many Native American people. In one of only three formal opinions issued by Myers in his two-year tenure at Interior, Myers reached the clearly erroneous conclusion that the Bureau of Land Management (BLM) does not have authority under the Federal Land Policy and Management Act (FLPMA) to prevent undue degradation of public lands and protect sites of religious significance to Native Americans.

Myer's opinion – which overturned a well-reasoned legal opinion by his predecessor-wrote the term "undue" out of the statutory text, concluding that any practice necessary for a mining operation was by definition not "undue." It is hard to imagine a more fundamental misreading of the language and intent of FLMPA. No wonder the American Bar Association has raised serious questions about Myer's legal qualifications for a position on the federal appellate bench. Equally troubling to Native Americans is the shameful exclusion of the Quechan Indian Nation and other tribes from the decision to reconsider the Glamis mine project.

The Ninth Circuit encompasses nine western states and other territories, including California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii. It also contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. The Ninth Circuit is often the critical forum for deciding important federal and tribal land management issues. Myers' actions and legal advice in the Glamis matter reveal an activist preference for natural resource extraction that disrespects tribal values and raises serious questions about his ability to fairly and impartially decide cases affecting the public lands.

For these reasons, we formally oppose Myer's nomination to the Ninth Circuit. We do not take this step lightly – but when a nominee has acted with such blatant disregard for federal law and Native American sacred places, we must speak out.

Sincerely,

John Blackhawk, Chairman
Winnebago Tribe of Nebraska

ALLIANCE FOR JUSTICE * AMERICAN ASSOCIATION OF UNIVERSITY WOMEN * CATHOLICS FOR A FREE CHOICE * FEMINIST MAJORITY * HUMAN RIGHTS CAMPAIGN * NARAL PRO-CHOICE AMERICA * NATIONAL ABORTION FEDERATION * NATIONAL COUNCIL OF JEWISH WOMEN * NATIONAL FAMILY PLANNING AND REPRODUCTIVE HEALTH ASSOCIATION *NOW LEGAL DEFENSE AND EDUCATION FUND * NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES * NATIONAL WOMEN'S LAW CENTER * PLANNED PARENTHOOD FEDERATION OF AMERICA * RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE * SEXUALITY INFORMATION AND EDUCATION COUNCIL OF THE UNITED STATES

January 29, 2004

Dear Senator:

We, the undersigned women's, reproductive rights and human rights organizations, write to express our concern about the nomination of William G. Myers to the Ninth Circuit Court of Appeals. We ask you to carefully explore his views of the constitutional right to privacy at his upcoming hearing and to seek firm assurances that he will not use a lifetime appointment to the Ninth Circuit to further roll back the right to privacy and a woman's right to choose.

Several of Myers' statements and positions raise serious concerns. He appears to fit the troubling pattern we have seen from the Bush administration of nominating individuals who hold extremely narrow views of personal constitutional rights, especially the constitutional right to privacy, while holding elevated views of property rights and states' rights.

Since most of Myers' legal career has involved environmental and land use issues, he has not often had occasion to express publicly his views on privacy. In two articles defending Robert Bork's nomination to the U.S. Supreme Court, however, Myers endorses an extremely narrow view of unenumerated rights in general and the right to privacy in particular. Of particular concern is a passage in which Myers argues that *Griswold v. Connecticut* and *Roe v. Wade* are based on the "personal moral values of the justices" while *Bowers v. Hardwick* was based on "a neutral reading of the Constitution." (*Griswold* and *Roe*, of course, have stood the test of time, while *Bowers* was overruled last June in *Lawrence v. Texas*.) Myers wrote:

> "There are indications that the Supreme Court has started to retreat from the generalized right of privacy set forth in the *Griswold* and *Roe v. Wade* cases, thus affirming a need to base decisions in a neutral reading of the Constitution without substituting the personal moral values of the justices. In the *Bowers v. Hardwick* decision, Justice White wrote for the majority stating '[t]he Court is

> most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution.' . . . . Whenever the Supreme Court departs from the laws, as embodied by the Constitution and the statutes, and supplants the individual morals of the justices to furnish a remedy because that justice merely "exists," then the laws no longer form the basis for the remedy and the judiciary has become a government of men."[1]

The passage quite clearly shows that, at least at the time of the writing, Myers believed that *Griswold* and *Roe* have no grounding in the Constitution and are therefore illegitimate. At his hearing, recently noticed for this coming Wednesday, February 4, we urge that Myers be questioned about the meaning of this passage and whether he continues to subscribe to these views. Further, we urge that Myers be questioned about his views on *Lawrence*, since this decision overturned *Bowers*. The views expressed in this article, if not repudiated, would place Myers far outside the mainstream of Constitutional jurisprudence.

Judge Bork was rejected for a lifetime appointment to the U.S. Supreme Court because a bipartisan majority of senators determined that his judicial philosophy was outside the mainstream. For example, Judge Bork's record showed that he believed that there is no constitutional right to privacy, that even *Griswold*, which holds that married people have a right to contraception, is "an unprincipled decision" and that there should be no heightened scrutiny for gender discrimination under the constitution's equal protection clause. Myers, however, disagreed with the Senate's assessment and wrote, "Judge Bork's judicial philosophy was well within the parameters of acceptable constitutional theory, worthy of representation on the Supreme Court."[2] Myers should be questioned about whether he continues to believe that Bork's judicial philosophy is appropriate for a Supreme Court justice or a lower court judge.

We believe that the Senate Judiciary Committee should seek assurances from every nominee that he or she poses no risk of rolling back constitutional and civil rights – including the right to choose. Those who would turn back the clock on the rights of women, the lesbian, gay, bisexual, and transgender community and others whose lives have been saved or enhanced by constitutional and civil rights, may object. Nonetheless, for the Senate to properly discharge its constitutional duty of advice and consent, it must seek assurances that nominees to lifetime judicial appointments fully support the constitutional right to privacy. Seeking such assurances is especially

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[1] William G. Myers III, *Advice and Consent on Trial: The Case of Robert H. Bork*, 66 Denver U. L. Rev. 1, 24-25 (1988); see also, William G. Myers III, *The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork*, 17 Hastings Const. L.Q. 399 (1989-1990).
[2] 66 Denver U. L. Rev. at 25.

appropriate in circumstance like these, when the nominee's record raises a genuine question of his or her understanding of the right to privacy.

We hope you will attend the Senate Judiciary Committee hearing on this nomination next week and will raise these issues with the nominee. Thank you for your consideration.

Sincerely,

Nan Aron
President
Alliance for Justice

Jacqueline E. Woods
Executive Director
American Association of University Women

Frances Kissling
President
Catholics for a Free Choice

Eleanor Smeal
President
Feminist Majority

Cheryl Jacques
President
Human Rights Campaign

Kate Michelman
President
NARAL Pro-Choice America

Vicki Saporta
President & CEO
National Abortion Federation

Marsha Atkind
President
National Council of Jewish Women

Judith M. DeSarno
President and CEO
National Family Planning and Reproductive Health Association

Kathy Rodgers
President
NOW Legal Defense and Education Fund

Judith L. Lichtman
President
National Partnership for Women and Families

Marcia Greenberger
Co-President
National Women's Law Center

Gloria Feldt
President
Planned Parenthood Federation of America

Rev. Carlton W. Veazey
President and CEO
Religious Coalition for Reproductive Choice

Tamara Kreinin
President and CEO
Sexuality Information and Education Council of the United States (SIECUS)

○