



## STATEMENT ON THE NOMINATION OF WILLIAM G. MYERS III

The National Partnership for Women & Families opposes the nomination of William G. Myers III to the Ninth Circuit Court of Appeals. We are troubled by many aspects of Myers' record, including his failure to respect the rule of law, his disregard for the concerns of the Native American community, and his troubling legal philosophy. We believe that he is the wrong choice for a lifetime appointment to the Ninth Circuit Court of Appeals and urge you to oppose his nomination.

### **Failure to Respect the Rule of Law and the Rights of Native American Communities**

Myers' opinion in a case involving the Quechan Tribal Nation<sup>1</sup> is both troubling and illuminating. In the fall of 2001, Myers released a legal opinion in his position as the Secretary of the Interior that overturned an earlier decision protecting Native American sacred sites from mining interests. He ignored the plain meaning of the law and used a tortured analysis to allow a mining project to go forward.<sup>2</sup> Not only did he overturn an opinion issued during the Clinton administration taking the opposing view, but he approved of a project that would destroy the ancestral lands of the Quechan Indian tribe. Further, although he met with the business interests seeking to move the mining project forward, he issued his opinion without any input from the Quechan tribe. In advancing such interests, he displayed a tremendous lack of respect and commitment to the interests of the Native American community, a community whose interests the Interior Department is charged with protecting. Myers' action in this case reveals an activist preference for natural resource extraction and also serious questions about his ability to fairly respect the rule of law and impartially decide cases.

### **An Extreme Legal Philosophy that Would Threaten Civil Rights and Other Protections**

Myers has advocated an extreme legal philosophy that would threaten civil rights and undermine many laws and regulations critical to women's and civil rights. First, his nomination raises the same type of concerns regarding federalism principles raised by a list of troubling judicial nominations made by President Bush since he took office in 2001. Myers has compared the federal government's management of public lands to King George's "tyrannical" rule over the American colonies and he claimed that public land safeguards are fueling "a modern-day revolution" in the American West.<sup>3</sup> He also denounced the California Desert Protection Act as

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<sup>1</sup> See ABQ-03-061 (2003), available at <http://www.ncai.org/data/docs/resolution/annual2003/03-061>

<sup>2</sup> A recent federal court decision rejected the result that Mr. Myers' reached and harshly criticized his reasoning. *Mineral Policy Center v. Norton*, 2003 WL 22708450 (D.D.C. Nov. 18, 2003). Mr. Myers' opinion relied on twisting the meaning of statutory word "or" to mean its opposite: "and."

<sup>3</sup> William G. Myers III, *Environmental Command and Control: The Snake in the Public Lands Grass*, in FARMERS, RANCHERS & ENVIRONMENTAL LAW 209 (1995).

“an example of legislative hubris” and argued that many environmental laws have the “unintended consequence of actually harming the environment.”<sup>4</sup> Myers’ view of the federal government as an “enemy” to be feared rather than a protector of rights and the public interests, if applied more broadly, would erode many important laws and regulations.

Second, Myers’ extreme legal philosophy elevates individual property rights over other rights, and he argues for the narrowest of interpretations of the Commerce Clause. While much of this analysis has taken place in the environmental context, the principles he articulates would have devastating consequences if applied in other contexts. For example, Myers once 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.”<sup>5</sup> The Supreme Court has held that very few “fundamental” rights are entitled to “strict scrutiny” and Myers’ elevation of personal property over other rights would place many civil rights in jeopardy. In another instance, Myers argued that Congress lacks 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. He argued that “federal regulation of land use” is beyond Congressional power because that area is “traditionally regulated by state and local governments.”<sup>6</sup> His extreme views on property rights, individual rights, and the federal government threaten basic fundamental safeguards that are of critical concern to millions of Americans.

### **Conclusion**

Myers’ record of hostility to the interest of Native American communities and his extreme legal philosophy calls into doubt his ability and willingness to apply the law in a fair and even-handed manner. We call upon the Senate to reject the nomination of William G. Myers III to the U.S. Court of Appeals for the Ninth Circuit.

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<sup>4</sup> *Id.* at 208.

<sup>5</sup> 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). Myers filed this *amicus* brief on behalf of the National Cattlemen’s Association before coming to the Interior Department.

<sup>6</sup> 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.