

**EARTHJUSTICE • COMMUNITY RIGHTS COUNSEL
PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY**

February 15, 2005

The Honorable Arlen Specter
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

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

RE: William G. Myers III re-nomination to a lifetime seat on the
United States Court of Appeals for the Ninth Circuit

Dear Chairman Specter and Ranking Member Leahy:

Significant new information regarding William G. Myers III's record as Interior Solicitor has surfaced in the year since the initial hearing on his nomination to a lifetime judgeship on the Ninth Circuit U.S. Court of Appeals. Earthjustice, Community Rights Counsel and Public Employees for Environmental Responsibility (PEER) are extremely concerned by press reports that the Judiciary Committee may consider Mr. Myers' re-nomination without a full and fair investigation of his record, including a new hearing.

After the Judiciary Committee's hearing on Mr. Myers' nomination, a major new issue was revealed that raises very serious questions regarding his competence, integrity, or both. On March 8, 2004, the *Los Angeles Times* reported that as Interior Solicitor, Myers had supported introduction of a bill to give valuable public land to a mining company without checking with the Interior Department's local Bureau of Land Management (BLM) office, which strongly opposed the giveaway because records showed the company lacked any lawful claim to the land. Solicitor Myers' June 6, 2002 letter to Congressmen Doolittle and Herger concluded that "Unfortunately, while BLM does not have legal authority to convey Lot 5 without compensation, the Department would support private relief legislation conveying Lot 5 to YRP" A March 4, 2004 letter from the Interior Department to the Congressmen repudiated Myers' position and stated that "the Department withdraws its support for private relief legislation to resolve the title dispute to Lot 5"

Further, we have just learned of a major new development in an Interior Department Inspector General investigation regarding a stunningly one-sided and apparently illegal settlement agreement negotiated on Mr. Myers' watch as solicitor. When local BLM

officials cited rogue rancher Harvey Frank Robbins, Jr. for repeatedly violating federal grazing laws, Robbins retaliated by filing a racketeering counter-suit against them.

When the Interior Department's top lawyers—under Myers' supervision—intervened, they negotiated a settlement that not only absolved Robbins of his criminal behavior, but rewarded him by granting him more freedom to violate grazing laws in the future, and allowing his counter-suit to go forward. The events that precipitated the settlement agreement have been the subject of a two-year investigation by Interior Inspector General Earl Devaney, referenced in the attached July 19, 2004 Letter to Senators Opposing the Nomination of William Myers, which was signed by a coalition of over 180 environmental, Native American, civil rights, disability rights, senior citizens, women's rights, human rights, and planning organizations.

In the attached letter dated February 10, 2005 to Public Employees for Environmental Responsibility (PEER), Inspector General Devaney summarized his completed but yet-to-be-released investigation.

According to Inspector General Devaney:

“in the negotiation and crafting of the settlement agreement, normal processes were circumvented; negotiations were conducted by the Office of Solicitor (SOL) without involving BLM in the process; concerns articulated by the Department of Justice and the BLM field office were ignored by the SOL and were not communicated to the BLM decision-maker; and the interests of the BLM and those of individual BLM employees were not adequately protected by the terms of the settlement agreement.”

Inspector General Devaney also found:

“an inappropriate level of programmatic involvement by the SOL, and a profound lack of transparency in the overall negotiation and agreement process.”

A complete, full and fair investigation of Mr. Myers' record is necessary for the Senate to exercise its constitutional advise-and-consent responsibility for lifetime nominations to the United States Courts of Appeals. We request, therefore, that you schedule a new hearing on the Myers re-nomination, including a full evaluation of this new information and any other significant information about Mr. Myers, including his actions since the last hearing and any new information about his prior actions. We also request that you include this and the attached letters in the record of all proceedings on the Myers nomination to be conducted during the current Congress, before both the Committee on the Judiciary and the full Senate.

Thank you for considering our views on Mr. Myers' re-nomination to the Ninth Circuit Court of Appeals.

Sincerely yours,

Glenn P. Sugameli
Senior Legislative Counsel
Earthjustice

Doug Kendall
Executive Director
Community Rights Counsel

Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility

cc: Members, Senate Committee on the Judiciary