

January 17, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 201510

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable John Thune
Chairman
Committee on Commerce, Science and
Transportation
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science and
Transportation
United States Senate
716 Senate Hart Office Building
Washington, DC 20510

Dear Senators McConnell, Schumer, Thune and Nelson,

Barry L. Myers, President Trump's nominee to be Administrator of the National Oceanographic and Atmospheric Administration ("NOAA") has an unresolved potential conflict of interest arising out of his family-owned company AccuWeather. Former Director of the Office of Government Ethics Walter M. Shaub, Jr. recently wrote you about this issue, stating that Mr. Myers' "family affiliation and personal hand in building the company" created a "significant unaddressed and largely unregulated conflict of interest for Mr. Myers."¹ Citizens for Responsibility and Ethics in Washington ("CREW") agrees with this assessment and respectfully requests that Mr. Myers, as a condition of his confirmation, be required to recuse from participating in particular matters of general applicability that would affect the financial interests of AccuWeather.

Mr. Myers reportedly earned more than \$900,000 in 2016 as the chief executive officer of AccuWeather,² a private weather forecaster for "media, business, government, and institutions" that was founded in 1962 by Mr. Myers' brother Joel, who serves as its chairman and president.³

¹ Letter from Walter M. Shaub, Jr. Senior Director, Ethics, Campaign Legal Center, to Senators Mitch McConnell, Charles Schumer, John Thune and Bill Nelson, Jan. 5, 2017 ("Shaub letter"), available at <http://www.campaignlegalcenter.org/document/conflicts-interest-noaa-nominee-barry-myers>.

² Robert O'Harrow Jr., NOAA's nominee's financial conflicts, efforts to curb agency's role draw rare criticism from former chiefs, *Washington Post*, Dec. 12, 2017, available at https://www.washingtonpost.com/investigations/noaa-nominees-financial-conflicts-efforts-to-curb-agencys-role-draw-rare-criticism-from-former-chiefs-2017/12/12/c057ec80-de99-11e7-9eb6-e3c7ecfb4638_story.html?utm_term=.36008c64dfd4.

³ AccuWeather website, available at <https://www.accuweather.com/en/about>.

Mr. Myers' brother Evan is the company's chief operating officer,⁴ and at least eleven members of his extended family are reported to have current or former ties to the company or its affiliates.⁵

Mr. Myers also holds stock in the company worth up to \$50 million.⁶ Mr. Myers stated in his ethics agreement that he would divest all his stock and vested stock options in AccuWeather, and that he would resign from his position with AccuWeather and its affiliates.⁷ His spouse also apparently agreed to resign from her salaried position with AccuWeather.⁸ However, Mr. Myers' other family members will continue to own and run the company; their ties will not be severed. According to some reports, even if Mr. Myers sells his own shares, his brothers will continue to own more than 90 percent of the company.⁹

The potential conflict of interest arising from his family's ownership interest in the company is evident from Mr. Myers' own lobbying on behalf of AccuWeather. He previously advocated for limiting the role of the National Weather Service ("NWS"), a line office that will report to Mr. Myers if he is confirmed as NOAA Administrator.¹⁰ According to the *Washington Post*, Mr. Myers has been a "determined force behind efforts to persuade Congress to curb free initiatives" by NWS that "overlap with services provided by AccuWeather and other private weather firms."¹¹ He has "press[ed] for AccuWeather to obtain "expanded access to weather-related data."¹² Mr. Myers has also "opposed" efforts by NWS to expand "use of social media" to spread tornado and other severe weather alerts.¹³

As Mr. Shaub correctly points out, "the link between NOAA's work and AccuWeather presents a problem" because "NOAA can directly affect the interest of this closely held family company which could compete with, or try to gain privileged access to, the agency Mr. Myers would run if confirmed."¹⁴ While Mr. Myers represents that he would recuse from participation in particular matters in which AccuWeather is a specific party or represents one in accordance with 5 U.S.C. § 2635.502,¹⁵ this recusal standard is not sufficient to curtail his involvement in

⁴ *Id.*

⁵ Maggie Koerth-Baker, [Can Trump's Pick to Lead the Weather Service Really Be Independent Of His Family Business](https://fivethirtyeight.com/features/can-trumps-pick-to-lead-the-weather-service-really-be-independent-of-his-family-business/), *FiveThirtyEight*, Dec. 22, 2017, available at <https://fivethirtyeight.com/features/can-trumps-pick-to-lead-the-weather-service-really-be-independent-of-his-family-business/>.

⁶ O'Harrow, *Washington Post*, Dec. 12, 2017.

⁷ Letter from Barry Lee Myers to David Maggi, Designated Agency Ethics Official, U.S. Department of Commerce, Oct. 5, 2017 ("Myers Ethics Agreement"), available at [https://extapps2.oge.gov/201/Presiden.nsf/248887E76166D58C852581CA004B3707/\\$FILE/Myers.%20Barry%20Lee%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/248887E76166D58C852581CA004B3707/$FILE/Myers.%20Barry%20Lee%20finalEA.pdf).

⁸ O'Harrow, *Washington Post*, Dec. 12, 2017.

⁹ Shaub letter, Jan. 5, 2018 ("During the confirmation hearing, Senator Brian Schatz noted that even if Mr. Myers sells his own shares, his brothers will continue to own more than 90 percent of the company.")

¹⁰ Robert P. King, [Feds' weather information could go dark](https://www.billnelson.senate.gov/newsroom/news/feds-weather-information-could-go-dark), *Palm Beach Post*, Apr. 21, 2005, available at <https://www.billnelson.senate.gov/newsroom/news/feds-weather-information-could-go-dark>.

¹¹ O'Harrow, *Washington Post*, Dec. 12, 2017.

¹² *Id.*

¹³ *Id.*

¹⁴ Shaub letter, Jan. 5, 2018.

¹⁵ Myers Ethics Agreement.

The Honorable Mitch McConnell, *et al.*
January 17, 2018
Page 3

particular matters of general applicability, such as rulemaking and other policy matters, that could affect the financial interests of AccuWeather.

In carrying out its advice and consent duties, it is necessary and appropriate for the Senate to demand commitments of more comprehensive recusal in circumstances such as these where the minimum ethical standards are not adequate to address potential conflicts of interest that arise from family-owned companies. To ensure public confidence in the decision-making process at NOAA, it is necessary and appropriate to impose additional requirements on Mr. Myers as a condition of his confirmation. To this end, CREW respectfully requests that you require Mr. Myers to amend his ethics agreement to include a recusal from participating in particular matters of general applicability that would affect the financial interests of AccuWeather.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noah Bookbinder', written in a cursive style.

Noah Bookbinder
Executive Director