

April 7, 2014

Honorable Scott Pruitt
Attorney General
The State of Oklahoma
313 NE 21st Street
Oklahoma City, Oklahoma 73105

Dear Attorney General Pruitt,

As you are no doubt aware, many Oklahomans have become increasingly concerned with the fact that Mr. Tom Buchanan has become *not only* a vocal advocate on controversial water policy issues but that he has become so while serving *both* as the Vice Chair of the Oklahoma Water Resources Board (OWRB) *and* as professional and management staff of the Lugert-Altus Irrigation District and the Oklahoma Farm Bureau (OFB). We have grown to share those concerns, and furthermore, we believe as a general matter that careful scrutiny and consideration are more than merited when a person plays an active advocacy role on matters that relate directly to the scope of his or her responsibilities as a member of a State regulatory board—in this instance, water.

We have accordingly reviewed the publicly available facts on this subject, several of which we outline in this letter. Based thereon, we hereby request of you, in your capacity as Oklahoma Attorney General, a legal opinion on the following questions:

- First, 82 O.S. § 1085.1(A) (*see* ¶1) provides that an OWRB member may not be removed from that position except “for cause”; for purposes of evaluating the present situation, what constitutes sufficient “cause” under this statute and any other relevant Oklahoma law?
- Second, with reference to that same statute (*see* ¶2) and mindful of the fact that OWRB members are state officials whose actions constitute “an essential governmental function of the State of Oklahoma,” *id.*, is an OWRB member authorized to *represent* and/or *advocate* on behalf of an employer or a specifically alleged constituent interest group with respect to proceedings and other activities of the regulatory body on which he or she serves (*see* ¶¶3, 11-16; *cf. also* ¶¶ 4-10)?
- Third, if members *are* allowed to *represent* and/or *advocate* in that manner and capacity, what legal and oversight mechanisms are available to safeguard the public’s trust by *preempting* any apparent or actual conflict of interest, as such conflict would

be defined by the Oklahoma Constitution and the rules promulgated by the Oklahoma Ethics Commission?

- Fourth, with respect to the facts documented below (*see* ¶¶1-16), does this letter document sufficient “cause” for purposes of justifying removal of Mr. Buchanan from his position on the OWRB?
- Fifth, if your answer to the preceding question is “no,” why?
- And finally, if your answer to the fourth question is “no,” what mechanism exists for conducting or compelling further investigation into the circumstances so that the public’s faith in the integrity of our regulatory system might be affirmed?

In your review and response to those questions, please recognize that our concerns are not particularly driven by the positions that Mr. Buchanan advocates or which he uses to drive his work in a regulatory agency. Nor are our concerns driven simply by the fact that Mr. Buchanan happens to be affiliated with and employed by other organizations. Instead, our concerns are driven by specific facts that tend to show that Mr. Buchanan is using his regulatory appointment to influence official state action in furtherance of private interests, thus converting his government appointment into a private interest advocacy position. We support Oklahoma’s system of citizen boards as valuable tools of public accountability and engagement in our regulatory systems, but at the same time, we believe that it is our duty to the public that we ensure that service on those boards is not misused for private or special interest. We now seek your help in our effort to fulfill that duty.

For purposes of illustrating the basis of our concerns and to ground your analysis of the questions outlined above, please accept our summary of the following documented or documentable facts:

1. Oklahoma law provides that, once appointed, OWRB members “may be removed only for cause.”¹
2. Oklahoma law further provides that “[a]t all times the membership of the [OWRB] shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, irrigational, municipal, rural residential, agricultural and soil conservation work. Not more than two members may be selected representing any one of the major types of water use.”²
3. On May 5, 2011, Governor Mary Fallin appointed Mr. Buchanan to serve as a member of the OWRB, and the OWRB website identifies him as an “At Large

¹ See 82 O.S. §1085.1(A).

² *Id.*

member” (as opposed to a member who is selected from within a congressional district) and indicates that he “represents irrigation water use interests.”³

4. At the time of his appointment and, it is our understanding, to this date, Mr. Buchanan is employed as the General Manager of the Lugert-Altus Irrigation District, which is located in Altus, Oklahoma.⁴
5. Also at the time of his appointment, Mr. Buchanan served on the OFB Board of Directors, but in November of 2013, the OFB’s voting delegates narrowly elevated him to head that organization’s executive staff as President,⁵ a position we understand to offer a salary and significant benefits such as travel expenses and the use of housing and a dedicated motor vehicle; notably, the delegates elevated Mr. Buchanan to this position only *after* he campaigned in a manner that “highlighted his understanding of water issues,” his position “as the current Vice Chairman of the [OWRB],” and “his understanding of Farm Bureau insurance issues, which he reminded delegates was the ‘cash cow’ for the farm organization.”⁶
6. During regular OWRB meetings, Mr. Buchanan has been documented acting expressly as an OFB representative with respect to agency activities.⁷
7. Furthermore, Mr. Buchanan has taken specific actions during his time on the OWRB that have been *at least consistent with* if not *in express furtherance of* the OFB’s legal and policy positions—by, *for example*, using his position on the OWRB’s rules committee⁸ to strike a proposed provision of chapter 30 rules relating to implementation of the Arbuckle-Simpson aquifer maximum annual yield

³ See <http://www.owrb.ok.gov/about/management/board.php>. Note that Mr. Buchanan’s position is *not* described as embracing “agricultural water use,” which qualification is stated in relation only to fellow board member Ford Drummond, *see id.*, and conflicts with his recent public statements, *see* ¶¶14-16, *infra*.

⁴ See, e.g., <http://newsok.com/qa-with-tom-buchanan/article/3882889> (noting his employment, drought conditions, and associated financial impacts suffered by irrigation district and those who rely on its waters). *Cf. generally also* http://www.usbr.gov/projects/Project.jsp?proj_Name=W.C.%20Austin%20Project (describing generally the associated U.S. Bureau of Reclamation project).

⁵ *Cf.*, e.g., <http://www.okfarmbureau.org/index.php?action=about.staff>.

⁶ See http://www.oklahomafarmreport.com/wire/news/2013/11/06536_BuchananNewOFBPresident11172013_145813.php#.UzmU1s5p4u4.

⁷ See, e.g., the Jul. 2012 regular meeting of the OWRB, during which “Mr. Buchanan stated the Oklahoma Farm Bureau will be working with [OWRB executive staff] to better understand the issues and inform their members,” http://www.owrb.ok.gov/news/meetings/board/board_pdf/2012/bdminutes_0712.pdf at p.3.

⁸ Mr. Buchanan’s role on the rules committee was confirmed during the OWRB’s Mar. 2014 meeting, though minutes of those proceedings are not yet available on-line.

after the OFB had “adamantly opposed” that same provision,⁹ which action the agency documented as taken in furtherance of such opposition.¹⁰

8. Mr. Buchanan has also consistently argued for the sale of water from southeastern Oklahoma to Texas and then using the proceeds from such sales to pay for infrastructure to move other southeastern Oklahoma waters to his home region of Altus,¹¹ a general policy that the OFB has increasingly advocated¹²—and which policy, if implemented, would presumably benefit both of Mr. Buchanan’s employers, *i.e.*, the Lugert-Altus Irrigation District, which would have a firmer supply of water, and the OFB, which would have reduced financial burdens associated with drought-related insurance claims.¹³
9. In apparent association with this policy argument, Mr. Buchanan has used his position on the OWRB to advocate for the lowering of the agency’s recommended policy priority for instream flow protections, a priority of significant importance to ecological and recreational water use values in eastern Oklahoma but which interferes with the OFB’s apparent goal of maximizing the volume of water that could be deemed available for transport for the ostensible benefit of western Oklahoma and OFB financial interests; notably, he simultaneously moved to elevate the agency’s recommended policy priority for firming up reservoir yields, a position that would benefit the Lugert-Altus Irrigation District as well as Farm Bureau interests in avoiding drought-related insurance claims.¹⁴

⁹ See letter from Oklahoma Farm Bureau Legal Foundation, LeeAnna Covington, dated Feb. 18, 2014, which Mr. Buchanan received twice—first, as an original addressee (due to his OWRB membership) and, second, as a carbon copy (due to his membership in the “OFB Board of Directors”); *see also* http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/bdpacket_0314.pdfs at p.1112 (noting “Ms. Covington submitted a letter of comments on behalf of the Foundation. She supported comments by landowners opposed to the proposed phase in because it eliminates a market for their water rights . . .”).

¹⁰ See http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/Ch30_recommended_amendments_3-12-14.pdf at p.3, n.6 (“Language deleted in response to comments how the original language was unfair and would affect the market for selling water and the value of water rights.”).

¹¹ See, e.g., http://www.altustimes.com/news/home_top/2426577/Mayor:-Conservation-efforts-are-working; *see also* <http://www.mediander.com/connects/19368449/oklahoma-water-resources-board/#!/video/08BSnNjw4eo> (calling for the development of southeast Oklahoma water resources, which he asserted were the property of Oklahoma, “by putting it in a pipeline” and referencing “a willing buyer south of us,” outlining a plan for (i) selling such water to Texas consumers and (2) using proceeds to the move more of such water to western Oklahoma, claiming that “the sky’s the limit”); *see also* n.4, *supra* (pitching water sales and cross-state water transfers).

¹² See, e.g., http://m.tulsaworld.com/opinion/letters/letter-to-the-editor-save-our-water/article_c98cf7f2-b402-11e3-942f-0017a43b2370.html?mode=jqm (opinion piece on this subject, attributed to OFB Vice President John Collison) and <http://newsok.com/wasting-a-valuable-resource-in-oklahoma/article/3946953> (same).

¹³ *Cf.*, e.g., <http://www.okfb.org/index.php?action=news.newsreleasedetail&rowid=637> (noting significance of drought-related crop losses and associated insurance claims); *see also* n.6, *supra*, and accompanying text (highlighting OFB insurance business as the “cash cow” for all OFB activities)

¹⁴ See http://www.owrb.ok.gov/news/meetings/board/board_pdf/2011/bdminutes_0811.pdf at 25 (moving to lower the priority of instream flow and raise the priority of reservoir yield).

10. Additionally, while Mr. Buchanan has served on the OWRB, the OFB has sued the agency at least twice over its actions relating to a final determination of the Arbuckle-Simpson aquifer maximum annual yield.¹⁵
11. Also during this period, the OFB joined an attempt to force the recusal of an agency official based on allegations of bias premised on asserted *ex parte* communications with board staff and relating to an agency matter pending final decision.¹⁶
12. In February of 2014, Buchanan expressly recognized that his ability to serve as a member of the OWRB was limited when the OFB files suit against the agency; for example, he said that “if the OFB Legal Foundation sues the OWRB then Tom Buchanan is suing Tom Buchanan,” which he admitted would represent a conflict of interest, noting however that ““because of that, I have to recuse myself of voting on that issue. However, I still have the opportunity to discuss with the other board members about how it impacts landowners and agriculture in Oklahoma . . .”¹⁷
13. Notwithstanding his recognition of conflict but otherwise consistent with his belief that he can continue “to discuss with the other board members about how [the subject of the litigation] impacts landowners and agriculture in Oklahoma,”¹⁸ Mr. Buchanan has participated in agency deliberations of matters within the ambit of the OFB’s litigation against the OWRB—by, *for example*, questioning staff and members of the public who offered comment at the board’s Oct. 23, 2013, meeting, during which a final agency decision was made on the Arbuckle-Simpson aquifer maximum annual yield.¹⁹
14. And more recently, in direct contradiction to his February 2014 statements, Mr. Buchanan now publicly denies that any conflict of interest arises from his multiple private and public roles—by, *for example*, asserting that “[he] was appointed by Governor Fallin to represent the irrigation and agriculture on the Water Resources

¹⁵ See *Oklahoma Farm Bureau Legal Foundation v. OWRB*, No. CV-2013-2250 (complaint filed Oct. 24, 2014) and *Oklahoma Farm Bureau Legal Foundation v. OWRB*, No. CV-2013-2414 (complaint filed Nov. 19, 2013).

¹⁶ See http://www.owrb.ok.gov/util/pdf_util/Arbuckle%20MAY%20Hearing/HearingComments/post-hearing/MotionRecuseHearingExStayProceedingBriefSupport.pdf and *Arbuckle Simpson Aquifer Protection Federation of Okla., Inc., v. Okla. Water Resources Board*, 2013 OK 29 (Apr. 23, 2013) (declining to disqualify administrative law judge and concluding that no bias was apparent but otherwise ordering certain disclosures to all parties for purposes of “remedy[ing] any appearance of impropriety”).

¹⁷ See “Farm Bureau president & OWRB member, a conflict?,” *Latimer County News-Tribune* (Feb. 6, 2014) (emphasis added).

¹⁸ *Id.*

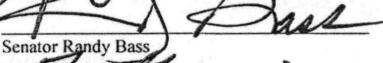
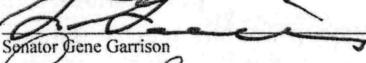
¹⁹ See http://www.owrb.ok.gov/news/meetings/board/board_pdf/2013/bdminutes_1013.pdf at 10, 12; see also ¶5.

Board” and that “[a]s President of the Oklahoma Farm Bureau I represent agriculture and rural Oklahoma, so I see no conflict of interest in representation.”²⁰

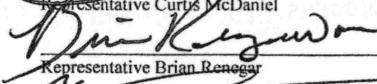
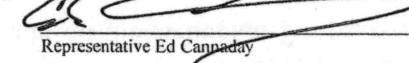
15. Not only has Mr. Buchanan’s public assessment of the conflict inherent in his position fundamentally changed,²¹ but also his more recent statements indicate that he views his role on a state regulatory agency as compatible and, in fact, even coextensive with his role as the chief executive of one of Oklahoma’s largest private advocacy organizations that focuses on water policy.
16. Finally, Mr. Buchanan’s more recent statements suggest that he has no regard for the original purpose for which he was chosen to serve on the board²² and, instead, chooses to expand that purported purpose so that it matches the scope of the OFB’s advocacy interests, which interests include a spectrum of farming, ranching, and affiliated agricultural interests—not to mention the “cash cow” of the OFB’s insurance business interests.²³

We find these assembled facts to present substantial reason for concern, and we believe that if we could ascertain these facts based only on a review of the public record, it is very likely that more relevant facts would likely be brought to light if the matter were the subject of actual oversight and inquiry. As our State’s chief law enforcement official, we therefore turn to you for assistance, which we feel will be necessary for purposes of serving the public’s interest in safeguarding the integrity of our water management regulatory systems.

Respectfully,


Senator Jerry Ellis

Senator Randy Bass

Senator Gene Garrison

Senator Roger Ballenger


Representative Curtis McDaniel

Representative Brian Renegar

Representative Ed Canaday

²⁰ See http://www.altustimes.com/news/home_top/3206368/Buchanan:-I-have-no-plans-to-resign (emphasis added); see also <http://journalrecord.com/2014/03/18/water-official-under-fire-groups-claim-buchanans-posts-pose-conflict-of-interest-capitol/> and <http://journalrecord.com/2014/03/24/group-calls-for-resignation-of-water-board-official-capitol/>.

²¹ Compare ¶9 with ¶11.

²² See ¶3. As the OWRB’s website indicates, Buchanan’s alleged expertise relates to “irrigation water uses,” while it is fellow board member Drummond whose expertise relates to “agricultural water uses.”

²³ See n.6, *supra*, and accompanying text.