

# C A M P A I G N F O R ACCOUNTABILITY

July 6, 2016

**BY EMAIL: (dthinkins@le.utah.gov)**

Sen. David P. Hinkins

Chair

Commission for the Stewardship of Public Lands

P.O. Box 485

Orangeville, UT 84537

**BY EMAIL: (kstratton@le.utah.gov)**

Rep. Keven J. Stratton

Chair

Commission for the Stewardship of Public Lands

Utah House of Representatives

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P.O. Box 146030

Salt Lake City, UT 84114

**BY EMAIL: (mchristensen@le.utah.gov)**

Michael E. Christensen

Director

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John L. Fellows

General Counsel

Office of Legislative Research and General Counsel

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Salt Lake City, UT 84114

## **Re: Request for Investigation of Expenditures**

Dear Sen. Hinkins, Rep. Stratton, Mr. Christensen, and Mr. Fellows:

As chairs of the Commission for the Stewardship of Public Lands (the “Commission”) and director and general counsel respectively, of the Office of Legislative Research and General Counsel (“OLRGC”), you have assumed control of the \$2 million the Utah Legislature appropriated to the Commission in March 2014, to carry out its statutory duties. Campaign for Accountability (“CfA”),<sup>1</sup> based on our review of publicly available records of how that money has been spent so far, requests that you initiate an audit, reconcile all irregularities, and take other actions as warranted, including a referral to the Utah attorney general.

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<sup>1</sup> Campaign for Accountability is a 501(c)(3) project that uses research, litigation, and communications to expose misconduct and malfeasance in public life.

## Background

The Commission's statutory duties include, *inter alia*, receiving reports from and making recommendations to the attorney general and other "stakeholders involved in litigation on behalf of the state's interest in the transfer of public lands to the state[.]"<sup>2</sup> The legislature directed the Commission specifically to consider the following:

- (i) preparation for potential litigation;
- (ii) selection of outside legal counsel;
- (iii) ongoing legal strategy for the transfer of public lands; and
- (iv) use of money appropriated by the Legislature for the purpose of securing the transfer of public land to the state.<sup>3</sup>

On December 9, 2015, the Commission voted in favor of a lawsuit against the federal government challenging its authority to retain federal public lands in Utah.<sup>4</sup> The lawsuit is estimated to cost the State of Utah nearly \$14 million.<sup>5</sup> The Commission has already logged over \$900,000 in expenses related to the lawsuit, documented in the invoices posted on its website.<sup>6</sup> The posted invoices expose a number of significant problems in the expenses incurred and apparently reimbursed, although records showing exactly how much was paid have not been made publicly available.<sup>7</sup>

Five months before the December vote, OLRGC entered into an agreement with Davillier Law Group, LLC, a firm based in New Orleans, LA, for legal consulting services and relations services.<sup>8</sup> The contract calls for Davillier to provide the Commission with research and consult with the Commission on legal theories the State could pursue in a lawsuit to get control and ownership of federal public lands; to draft a legal brief and recommend legal strategies the State could use; to identify potential attorneys and expert witnesses for such a lawsuit; and to provide

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<sup>2</sup> H.B. 151, Commission for the Stewardship of Public Lands, *available at* <http://le.utah.gov/~2014/bills/hbillenr/hb0151.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.*, Brian Maffly, [Republicans OK \\$14M Land-Transfer Lawsuit, Say Utah Must Regain Sovereignty](http://www.sltrib.com/news/3287281-155/utah-commission-votes-to-sue-feds), *Salt Lake Tribune*, December 9, 2015, *available at* <http://www.sltrib.com/news/3287281-155/utah-commission-votes-to-sue-feds>; Brady McCombs, [Utah Voting on Lawsuit to Seize Control of Federal Lands](http://www.standard.net/Government/2015/12/09/state-utah-lawsuit-us-government-federal-lands?printFriendly=201512090121), *Associated Press*, December 9, 2015, *available at* <http://www.standard.net/Government/2015/12/09/state-utah-lawsuit-us-government-federal-lands?printFriendly=201512090121>.

<sup>5</sup> *Id.*

<sup>6</sup> <https://le.utah.gov/asp/interim/Commit.asp?Year=2016&Com=SPESPL>.

<sup>7</sup> The *Salt Lake Tribune* has reported that the Commission already has paid the invoices. The "commission has spent more than \$900,000 for a legal analysis of the argument that Utah is entitled to claim ownership of federal lands in the state and for the drafting of the complaint." This number matches with CfA's own calculation of the publicly available invoices, totally over \$904,000. *See* Robert Gehrke, [Utah's Lawsuit Over Federal Lands Nearly Ready, Expenses Questioned](http://www.sltrib.com/news/3984279-155/utahs-lawsuit-over-federal-lands-nearly), *Salt Lake Tribune*, June 8, 2016, *available at* <http://www.sltrib.com/news/3984279-155/utahs-lawsuit-over-federal-lands-nearly>.

<sup>8</sup> Legal Consulting Services and Relations Services Agreement: 2015-01 ("Davillier Contract") (attached as Exhibit A), *available at* <https://le.utah.gov/interim/2016/pdf/00002618.pdf>.

all necessary support staff for these legal services.<sup>9</sup> In addition to providing legal services, the contract calls on Davillier to provide relations services, including overseeing the work of stipulated relations services providers, such as Foxley & Pignanelli and other consultants.<sup>10</sup> The contract expressly acknowledges the statutory prohibition on using public funds for lobbying and charges Davillier with ensuring its relations services providers do not engage in such conduct.<sup>11</sup>

The 13-page contract also specifies hourly rates for legal services, which range from \$950 for Ronald Rotunda, a law professor at Chapman University School of Law, to \$125 for paralegals.<sup>12</sup> Under the contract, travel time is not reimbursable unless legal work is actually performed. Further, Davillier is permitted to bill only for standard coach class fares, “reasonable and necessary food while traveling,” and “standard size and type hotel rooms.” The contract expressly prohibits billing for tobacco, alcohol, medication and other “luxury items.”<sup>13</sup>

The specified hourly rates for relations services range from \$375 for the lead provider Doug Foxley to \$75 for support staff.<sup>14</sup> The contract places the same travel and billing restrictions on the providers of relations services as it does on the providers of legal services.<sup>15</sup> For both types of services, the contract specifies that detailed bills are to be submitted to the Commission chairs and an OLRGC designee, and for legal services, places the responsibility on the lead attorney – designated as John Howard<sup>16</sup> – to communicate biweekly with the Commission chairs “to determine, and receive approval for, the maximum amount of fees and expenses chargeable to the OLRGC.”<sup>17</sup> The OLRGC, not the chairs, has final approval and makes payments.<sup>18</sup> Finally, the contract forbids Davillier from either providing or billing for any services other than legal and relations services.<sup>19</sup>

OLRGC entered into a similar contract with Strata Policy to provide the Commission with relations services, working with Davillier and the legislative general counsel.<sup>20</sup> The Strata contract has identical provisions regarding travel, food, and lodging,<sup>21</sup> and specifies hourly rates ranging from a high of \$150 for the lead provider to a low of \$25 for certain support staff.<sup>22</sup> The billing practices for Strata mirror those for Davillier, and the contract specifies Strata is to bill only for relations services.<sup>23</sup>

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<sup>9</sup> *Id.*, at ¶ 2.4.

<sup>10</sup> *Id.*, at ¶ 2.11, 3.2.1.

<sup>11</sup> *Id.*, at ¶ 3.2.2.

<sup>12</sup> Davillier Contract, at ¶ 4.1.

<sup>13</sup> *Id.*, at ¶ 4.1.2.

<sup>14</sup> *Id.*, at ¶ 4.2.1.

<sup>15</sup> *Id.*, at ¶ 4.2.2.

<sup>16</sup> Davillier Contract, at ¶ 3.1.

<sup>17</sup> *Id.*, at ¶¶ 4.1.5, 4.2.5.

<sup>18</sup> *Id.*, at ¶¶ 4.1.5, 4.2.5.

<sup>19</sup> *Id.*, at ¶ 4.4.

<sup>20</sup> Relations Services Agreement: 2015-01 (“Strata Contract”) (attached as Exhibit B), available at <http://le.utah.gov/interim/2016/pdf/00002622.pdf>.

<sup>21</sup> *Id.*, at ¶ 4.2.

<sup>22</sup> *Id.*, at ¶ 4.1.

<sup>23</sup> *Id.*, at ¶¶ 4.7, 4.8.

As the invoices reflect,<sup>24</sup> Davillier added Salt Lake City attorney James Jardine of Ray Quinney & Nebeker, John W. Howard of JW Howard Attorneys, Ronald Rotunda of the Chapman University School of Law, and Richard Seamon of the University of Idaho School of Law to the legal team. In addition, the Commission hired lobbyists from Foxley & Pignanelli, one of Utah's "most connected lobbying firms"; a polling firm, Y2 Analytics; and San Francisco-based public relations firm, Nuffer Smith Tucker Public Relations.<sup>25</sup>

### **Billing Problems**

The invoices submitted to the Commission reflect prohibited travel expenses; what appear to be prohibited lobbying expenses; work that appears to exceed the scope of the contracts; bills for relations work at the higher hourly rate for legal services; billing discrepancies; and numerous instances where invoices were not accompanied by receipts and expenses were not itemized, suggesting that, in at least some instances, the service providers are being paid pursuant to a retainer agreement, rather than at the hourly rates the contracts require. There is no evidence the Commission flagged any of these extensive and continuing improper practices.

### *Travel Expenses*

Although the contracts expressly authorize billing only for coach fares, standard hotel rooms, and reasonable and necessary food, both Davillier and Strata have billed for lavish travel that contravened these contractual requirements. As a result, the taxpayers of Utah have likely footed the bill for things like luxurious accommodations at a private club, first-class airline tickets, and expensive meals that went well beyond what is "reasonable and necessary."

The lawyers have billed the Commission for a number of first-class flights, in clear violation of their contracts, leaving Utah taxpayers to subsidize their luxurious travel to the tune of over \$5,700. For example, John Howard billed for a number of first-class flights totaling over \$4,800.<sup>26</sup> George Wentz, who was responsible for signing the contract on behalf of Davillier that expressly required billing for flights at standard, coach class rates, billed the Commission for a first-class flight costing \$900.<sup>27</sup>

These unjustified travel expenses did not stop with first-class flights. John Howard was equally lavish with meals, including billing a \$175 dinner, \$90 at a steakhouse, a \$69 lunch, and one \$50 dinner.<sup>28</sup> Collectively, he billed over \$384 for four meals, a sum that far exceeds what is

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<sup>24</sup> Invoices for Davillier can be found at <http://le.utah.gov/solrsearch.jsp?request=Davillier>, and invoices for Strata can be found at <http://le.utah.gov/solrsearch.jsp?request=Strata>.

<sup>25</sup> See Robert Gehrke, *State Paid \$640 K for Public Lands Analysis; Dems Want All the Info*, *Salt Lake Tribune*, February 2, 2016, available at <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=3487535>; Paul Rolly, *Rolly: Utah Taxpayers are Helping Out the Koch Brothers*, *Salt Lake Tribune*, March 11, 2016, available at <http://www.sltrib.com/home/3639091-155/rolly-utah-taxpayers-are-helping-out>.

<sup>26</sup> Copies of the relevant invoices are attached as Exhibit C

<sup>27</sup> *Id.*

<sup>28</sup> Copies of the relevant invoices are attached as Exhibit D.

“reasonable and necessary.” Mr. Howard also explicitly billed a \$21 charge for beer, violating the contractual provision that prohibits billing for alcohol, and lumped the expense into a \$656 lodging charge in January 2016.<sup>29</sup> Furthermore, because Mr. Howard did not submit itemized receipts for these high-priced meals, it is unclear whether this was the only instance where Mr. Howard violated the contractual provision prohibiting billing for alcohol.

Mr. Howard also incurred excessive lodging expenses, including nearly \$1,300 for a three-night stay at the Grand American Hotel.<sup>30</sup> Mr. Howard spent \$725 for four nights at the exclusive private Alta Club in Salt Lake City, returning to the Alta Club for an additional three nights in January 2016, at a cost of \$631.<sup>31</sup> During his first stay at the Alta Club in November 2015, Mr. Howard checked into the club on Saturday, November 7, but did not list any meetings on his invoice until the next Tuesday, November 10. This at least suggests Mr. Howard billed the Commission (and ultimately Utah taxpayers) for lodging for two unnecessary weekend nights. Mr. Howard also billed a hotel stay in October 2015 in Salt Lake City of \$139 per night (exclusive of taxes) – a rate that exceeds the 2015 federal government per diem of \$108.<sup>32</sup> Collectively, these excessive hotel expenses leave Utah taxpayers with a bill of nearly \$3,100.

Strata also incurred excessive travel expenses, including a lodging expense for two totaling \$947, meals for three totaling \$366, mileage for two totaling \$278, and transportation for four totaling \$1,538.<sup>33</sup> The invoices do not include receipts (another problem discussed *infra*), making these charges difficult to fully evaluate.

#### *Apparent Lobbying Expenditures*

The two contracts clearly and unambiguously prohibit the expenditure of state funds for lobbying activities. Nevertheless, there are billed items that appear to be lobbying activities.

On January 20, 2016, Utah Representatives Rob Bishop and Jason Chaffetz made public a “discussion draft” of a bill, the Public Lands Initiative (“PLI”).<sup>34</sup> The PLI has been described as the result of “1,200 meetings by Bishop and Chaffetz over the past three years[.]”<sup>35</sup> One week after the PLI draft was released, John Howard billed \$200 to “review[] and analyze[] PLI further,” and spent the next two days meeting with Utah legislators, including Rep. Bishop on January 29, 2016.<sup>36</sup> He billed over \$4,200 for these meetings.<sup>37</sup> Given their context and the significance of the PLI to what the attorneys are attempting to accomplish, these expenditures should be more closely examined to determine whether they were “communications with

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<sup>29</sup> Copies of the relevant invoices are attached as Exhibit E.

<sup>30</sup> Copies of the relevant invoices are attached as Exhibit F.

<sup>31</sup> Copies of the relevant invoices are attached as Exhibit G.

<sup>32</sup> See <https://www.federalpay.org/perdiem/2015/utah/salt-lake-city>.

<sup>33</sup> Copies of the relevant invoices are attached as Exhibit H.

<sup>34</sup> Brian Maffly, *Conservationists Decry Utah’s Public Lands Initiative, Say Draft Hides ‘Poison Pills’*, *Salt Lake Tribune*, January 21, 2016, available at <http://www.sltrib.com/home/3437267-155/highlights-whats-in-bishops-long-awaited-public>.

<sup>35</sup> *Id.*

<sup>36</sup> Copies of the relevant invoices are attached as Exhibit I.

<sup>37</sup> *Id.*

legislators . . . for the purpose of influencing the passage, defeat, amendment, or postponement of a legislative action” that the contracts and Utah law (Utah Code Section 633-1-210) prohibit.

### *Work Outside Scope of Contracts*

The contracts are equally clear on their scope and prohibit billing for work that is neither legal nor relations services. Yet once again, it appears that reimbursements were made for work that fell outside the contracts’ scope, often at the higher rates of legal services. These expenditures encompassed a range of activities, from assisting with the creation of a video by the Heritage Foundation to attending a speech by Rep. Bishop.<sup>38</sup> Attorney George Wentz billed \$300 for participating in a telephone call with two Strata public relations people regarding the creation of a monument in Utah.<sup>39</sup> Similarly, John Howard, along with Mr. Wentz, billed \$300 and \$250, respectively, for reviewing and analyzing an internal Bureau of Lands Management memo regarding the same subject.<sup>40</sup> It is difficult, if not impossible, to see how these activities pertain to legal theories the State of Utah could use to accomplish its stated goal of taking over control and management for federal public lands.

### *Improper Application of Hourly Rates*

As the contracts make clear, legal work is to be billed at different, higher rates than relations work. The invoices contain multiple instances, however, where lawyers performed relations work, yet billed at the legal services rates. This resulted in the overpayment of thousands of dollars.

For example, John Howard and George Wentz met with Doug Foxley and Frank Pignanelli, both of the lobbying firm Foxley & Pignanelli, in August 2015. Mr. Foxley is also identified in the Strata Contract as the lead relations provider. Although the presence of Mr. Foxley and Mr. Pignanelli necessarily meant the meeting involved relations services, at least to some extent, both Mr. Howard and Mr. Wentz charged their legal hourly fees of \$500 for the meeting.<sup>41</sup>

John Howard billed at his hourly legal services rate of \$500 for a variety of relations work including, *inter alia*, coordinating the filming of an interview with Ronald Rotunda for a Heritage Foundation video, reviewing and responding to comments from the *Los Angeles Times*, locating news articles for the relations team, reviewing correspondence concerning a video, meeting with George Wentz in preparation for relations coordinating, and meeting with the relations team.<sup>42</sup>

George Wentz also overbilled at his hourly rate of \$500 for legal services when he actually provided relations services. Mr. Wentz had numerous meetings with Strata that he

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<sup>38</sup> Copies of the relevant invoices are attached as Exhibit J.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Copies of the relevant invoices are attached as Exhibit K.

<sup>42</sup> *Id.*

billed at \$500 per hour, including, *inter alia*, reviewing and analyzing research results from Y2 Analytics, speaking to a *Wall Street Journal* reporter, and attending to a press package and press releases – the very essence of relations work.<sup>43</sup>

### *Billing Discrepancies*

The invoices submitted by Davillier and Strata contain billing discrepancies between what was and was not billed. These discrepancies include an airfare charge by Nuffer Smith Tucker Public Relations for which the airline receipt reflects a charge of \$689, but Davillier billed \$919 to include additional unexplained charges of \$230.<sup>44</sup> In multiple instances, one party in a meeting or conversation billed for the time, while the other party failed to account for the time at all.<sup>45</sup> In another instance, an invoice was submitted for time spent on a meeting held on August 27, while the invoice from another participant showed the meeting occurring on August 30.<sup>46</sup> At best, these discrepancies reflect sloppy recordkeeping practices; at worst, they evidence fraud.

### *Lack of Proper Documentation*

The two contracts require Davillier and Strata to submit monthly “*detailed billing*.”<sup>47</sup> A significant number of submitted invoices contain virtually no detail whatsoever; in some cases they identify the party and a total, with no breakdown by hours.<sup>48</sup>

For example, JW Howard Attorneys submitted an invoice of \$107,400, without providing any accompanying documentation or itemization. The invoice for that large amount of money described the charge only as “Legal services for the period from 09/16/15 to 11/09/15” – hardly an example of “*detailed billing*” that the contract requires.<sup>49</sup>

In at least seven instances, Nuffer Smith Tucker Public Relations submitted bills totaling \$28,240 with no itemization or explanation beyond the description “relations services.”<sup>50</sup> The lack of breakdown of hours spent or specific tasks performed raises questions as to whether the firm was being paid at the hourly rate the Strata Contract mandates or was under some other type of arrangement (*i.e.*, a retainer). A Davillier invoice from October 2015 even describes two expenses from Y2 Analytics and Nuffer Smith Tucker as retainer fees.<sup>51</sup>

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<sup>43</sup> *See id.*

<sup>44</sup> Copies of the relevant invoices are attached as Exhibit L.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> For travel, food, and lodging receipts are not required except upon request.

<sup>48</sup> Our analysis, of course, is based on only those invoices the Commission has made public. Accordingly, if supporting documentation exists, we have not been provided access to it.

<sup>49</sup> The invoice that contains these charges reflects an overall “Courtesy Discount to Legal Fees,” bringing the total expenses down from \$267,344.48 to \$213,598. *See* Exhibit L. There is no further explanation, however, for how this discount was derived and whether it was an across-the-board discount, or applied to specific legal services charges.

<sup>50</sup> Copies of the relevant invoices are attached as Exhibit M.

<sup>51</sup> Copies of the relevant invoices are attached as Exhibit N.

Similarly, the lobbying firm Foxley & Pignanelli submitted invoices totaling \$34,862.50 for which no itemization was provided, and accompanied merely by the labels “Services” or “Professional services.”<sup>52</sup> The excessive nature of these charges coupled with the lack of any detail explaining what specific services were performed and how long each task took makes it impossible to determine whether these charges were reasonable and within the scope of the Strata Contract.

### Conclusion

The legislature entrusted the Commission and the OLRGC with the responsibility to manage \$2 million of taxpayer-funded money, a responsibility that carries with it a fiduciary obligation to both the legislature and the taxpayers. While we have highlighted only the most egregious examples here, there are many more instances of problematic billing practices evident in the publicly available invoices on the Commission’s website. By accepting billing practices that go way beyond mere sloppiness, with no evidence of any follow-up despite the numerous red flags the invoices raise, you have not fulfilled that obligation. Instead, you are allowing the appropriated funds to be turned into a slush fund apparently available to any and all supporting the cause of usurping federal control over federal public lands.

Accordingly, we request that you immediately commence a full audit of all expenditures, reconcile any irregularities or unjustified payments, recoup all overpayments, ensure proper documentation for all expenditures, and refer the matter to the attorney general as appropriate.

Sincerely,



Anne L. Weismann  
Executive Director

cc: Sen. Jim Dabakis  
Sen. Scott J. Jenkins  
Rep. Joel K. Briscoe  
Rep. Melvin R. Brown  
Rep. Ken Ivory  
Rep. Michael E. Noel

Encl.

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<sup>52</sup> *Id.*