

C A M P A I G N F O R

ACCOUNTABILITY

March 12, 2019

By First Class Mail

The Honorable Julie E. Adams
Secretary of the Senate
Room S-312
U.S. Capitol
Washington, D.C. 20510-7116

The Honorable Cheryl L. Johnson
Clerk of the U.S. House of Representatives
Room H154
U.S. Capitol
Washington, D.C. 20510-6601

Honorable Jessie K. Liu
U.S. Attorney for the District of Columbia
555 4th Street, NW
Washington, DC 20530

**Re: Lobbying Disclosure Act Violations/Faegre Baker Daniels
Consulting/Andrew Wheeler**

Dear Secretary Adams, Clerk Johnson, and Ms. Liu:

Campaign for Accountability (“CfA”) is writing to call your attention to a serious violation of the Lobbying Disclosure Act (“LDA” or “the Act”) by the lobbying firm of Faegre Baker Daniels Consulting (“Faegre Baker”) and one of its lobbyists, Andrew Wheeler, in connection with their representation of Energy Fuels Resources, Inc. (“Energy Fuels”). CfA respectfully requests that you investigate Faegre Baker and Mr. Wheeler and take all appropriate action to ensure compliance with the Act as required by 2 U.S.C. § 1605(a)(7)&(8). Additionally, given Faegre Baker’s continued failure to file accurate disclosure reports, CfA respectfully requests that you investigate whether the firm, and Mr. Wheeler, knowingly and willfully filed inaccurate disclosures in violation of the False Statements Act, 18 U.S.C. § 1001(c)(1).

Background

On August 10, 2018, CfA asked the Secretary of the Senate and the Clerk of the House of Representatives to open an investigation into Faegre Baker’s lobbying work on behalf of Energy

Fuels.¹ The company is a U.S. subsidiary of a Canadian mining company that owns the now-dormant Daneros uranium mine located within the original boundaries of the Bears Ears National Monument in Utah. In addition, Energy Fuels owns the nation's only uranium processing mill, located just outside the original boundaries of the Bears Ears National Monument. Energy Fuels told regulators that the construction of nuclear plants in Asia would lead to higher prices for uranium in an effort to justify the reopening of the Daneros mine. The mine would not be allowed to reopen, however, as long as it remained within the boundaries of the Bears Ears National Monument.²

CfA requested an investigation to determine whether Mr. Wheeler and Faegre Baker violated the LDA by failing to file a timely lobbying registration report regarding its work for Energy Fuels and whether the firm and Mr. Wheeler violated the LDA by filing an inaccurate Third Quarter 2017 Lobbying Disclosure Report.³ By its own admission, Faegre Baker was retained to lobby on behalf of Energy Fuels on February 1, 2017, but the lobbying firm did not file its Lobbying Registration with the Senate and House of Representatives until April 12, 2017.⁴ Faegre Baker should have registered to lobby on behalf of Energy Fuels no later than March 16, 2017, failing to meet the statutory deadline for nearly a month. Despite CfA's complaint, the firm still has not filed any amended or updated forms regarding its registration on behalf of Energy Fuels.

Additionally, on July 17, 2017, Faegre Baker lobbyists Mr. Wheeler and former Rep. Mary Bono, along with Energy Fuels Vice President for Operations William Paul Goranson, met with Interior Department Deputy Chief of Staff for Policy Development Downey Magallanes and Energy Policy Counselor Vincent DeVito to discuss changing the boundaries of the Bears Ears National Monument.⁵ When Faegre Baker filed its initial Third Quarter 2017 Lobbying Disclosure Report on October 20, 2017, however, the report did not name Mr. Wheeler as a lobbyist, and it disclosed only that Faegre Baker lobbied the House of Representatives and the Senate, but failed to disclose contacts with the Department of Interior.⁶ Following CfA's complaint, on August 29, 2018 – nearly one year after Faegre Baker filed the original report –

¹ Letter from Daniel Stevens, Executive Director of Campaign for Accountability, to Julie E. Adams, Secretary of the Senate, and Karen L. Haas, Clerk of the U.S. House of Representatives, August 10, 2018, *available at* <https://campaignforaccountability.org/government-watchdog-calls-for-investigation-of-acting-epa-chief-andrew-wheeler-for-multiple-lobbying-disclosure-violations/>.

² Juliet Eilperin, *Uranium Firm Urged Trump Officials to Shrink Bears Ears National Monument*, *Washington Post*, December 8, 2017, *available at* https://www.washingtonpost.com/national/health-science/uranium-firm-urged-trump-officials-to-shrink-bears-ears-national-monument/2017/12/08/2eea39b6-dc31-11e7-b1a8-62589434a581_story.html.

³ Letter from Daniel Stevens to Julie E. Adams and Karen L. Haas, Aug. 10, 2018.

⁴ Faegre Baker Daniels Consulting *Lobbying Registration Report on behalf of Energy Fuels Resources Inc.*, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=650CA957-C312-43BF-9030-BBCAB46D09D5&filingTypeID=1>.

⁵ Eilperin, *Washington Post*, Dec. 8, 2017.

⁶ Faegre Baker Daniels Consulting, *Third Quarter 2017 Lobbying Disclosure Report on behalf of Energy Fuels Resources Inc.*, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=E1CDED28-0D69-49CC-BEF7-9970EB92BEAE&filingTypeID=69>.

the firm filed an amended report that included Mr. Wheeler's activity and disclosed for the first time that Faegre Baker had lobbied the Interior Department as well as the Environmental Protection Agency ("EPA").⁷

At that time, Faegre Baker also filed an amended Second Quarter 2017 Lobbying Disclosure Report that revealed the firm had lobbied EPA during that quarter as well.⁸ The amended second quarter report did not, however, disclose any lobbying contacts with the Interior Department.

New Information

On March 4, 2019, *Roll Call* reported that documents obtained through a Freedom of Information Act ("FOIA") request revealed that Mr. Wheeler had lobbying contacts with the Interior Department during the second quarter of 2017:

"I worked on energy and environmental policy for Mr. Trump during the campaign. I have a client that I would like to get before the Secretary, Energy Fuels," Wheeler wrote in a March 27 email to Amanda Kaster, at the time one of Zinke's aides.

"They have two uranium facilities bordering each side of Bears Ears national monument in Utah. They can come to DC at any time. What is the best way for me to request a meeting with the Secretary? I'm just not sure who I should reach out to," Wheeler said.

On April 5, Wheeler, Energy Fuels executive William Paul Goranson, and Darrin Munoz, another lobbyist at Faegre Baker Daniels, met with Kathleen Benedetto, at the time a senior adviser to Zinke, according to visitor logs and Benedetto's schedule. Her schedule was first obtained by independent journalist Jimmy Tobias via a public records request.

Through an Interior spokeswoman, Benedetto said she alone took the meeting and Zinke did not participate. Zinke's personal schedule has an hourlong period, 30 minutes after the meeting began, during which his whereabouts are unaccounted for.⁹

⁷ Faegre Baker Daniels Consulting, Third Quarter 2017 Lobbying Disclosure Report, Amended, on behalf of Energy Fuels Resources Inc., Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=CB76DAA2-5261-4B64-883B-F8B13979B539&filingTypeID=73>

⁸ Faegre Baker Daniels Consulting, Second Quarter 2017 Lobbying Disclosure Report, Amended on August 29, 2018, on behalf of Energy Fuels Resources Inc., Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=F2291161-13E6-419A-9B13-6B9016F550EC&filingTypeID=64>.

⁹ Jacob Holzman, Seeking to Shrink Bears Ears, Uranium Firm Met With Interior Before Review, *Roll Call*, March 4, 2019, *available at* <https://www.rollcall.com/news/congress/bears-ears-uranium-firm-hearing>.

Neither Faegre Baker's original Second Quarter 2017 Lobbying Disclosure Report, nor its amended reports, disclose any lobbying contacts with the Interior Department.¹⁰ Notably, the subject of the omitted meeting was controversial, suggesting the omission may have been intentional.¹¹ The matter is currently under investigation by the U.S. House of Representatives¹²

Violations of the Lobbying Disclosure Act

Faegre Baker and Mr. Wheeler appear to be in violation of the Lobbying Disclosure Act despite their amended filings. As you know, the Lobbying Disclosure Act defines the term "lobbying contact" broadly to include "any oral or written communication . . . to a covered executive branch official . . . that is made on behalf of a client with regard to . . . the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government."¹³ Similarly, the definition of "covered executive branch official" is broadly defined to include "any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule" as well as "any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character."¹⁴

Faegre Baker's April 5, 2017 meeting with senior Department of Interior officials clearly constituted a reportable lobbying contact under the Lobbying Disclosure Act. Interior Department Senior Advisor Kathleen Benedetto is a "covered executive branch official" within the meaning of 2 U.S.C. § 1602(3)(D)&(F).¹⁵ Moreover, the express purpose of the meeting was to seek a *modification* of the boundaries of the Bears Ears National Monument established by Proclamation 9558 of December 28, 2016 as part of the review process established by Executive Order 13792.¹⁶

A lobbying firm registered with the Senate and the House of Representatives under the Lobbying Disclosure Act is required to file quarterly activity reports each of which must include (1) "a list of the specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including, *to the maximum extent practicable* . . . references to specific

¹⁰ Faegre Baker filed its initial Second Quarter 2017 report on July 20, 2017. Faegre Baker filed its first amended report on August 11, 2017 and its second amended report on August 9, 2018. See Faegre Baker Daniels Consulting, Second Quarter 2017 Lobbying Disclosure Report on behalf of Energy Fuels Resources Inc., Secretary of the Senate, Office of Public Records; Faegre Baker Daniels Consulting, Second Quarter 2017 Lobbying Disclosure Report, Amended on August 11, 2017, on behalf of Energy Fuels Resources Inc., Secretary of the Senate, Office of Public Records, available at <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=FCFA58F1-E065-479B-B3B4-A22719EC8604&filingTypeID=64>; Faegre Baker Daniels Consulting, Second Quarter 2017 Lobbying Disclosure Report, Amended on August 20, 2018, on behalf of Energy Fuels Resources Inc., Secretary of the Senate, Office of Public Records.

¹¹ Brian Maffly, Oil and Coal Drove Trump's Call to Shrink Bears Ears and Grand Staircase, According to Insider Emails Released by Court Order, *The Salt Lake Tribune*, March 2, 2018.

¹² Holzman, *Roll Call*, Mar. 4, 2019.

¹³ 2 U.S.C. § 1602(8)(A)(ii).

¹⁴ 2 U.S.C. § 1602(3)(D)&(F).

¹⁵ <https://projects.propublica.org/graphics/beachhead>.

¹⁶ 2 U.S.C. § 1602(8)(A)(ii); Holzman, *Roll Call*, Mar. 4, 2019.

executive branch actions,”¹⁷ and (2) “a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client.”¹⁸

It is clear that Faegre Baker and Mr. Wheeler violated both of these LDA reporting requirements. First, Faegre Baker and Mr. Wheeler failed to disclose that they had been retained by Energy Fuels to lobby with regard to the Interior Department’s review of the boundaries of the Bears Ears National Monument. The Secretary and the Clerk have made it abundantly clear in their guidance that when a registrant identifies the specific issue for which it has been retained to lobby “the quarterly activity report must . . . always contain information that is adequate, *standing alone*, to inform the public of the specific lobbying issues.”¹⁹ Describing its work for Energy Fuels as lobbying on “[g]eneral energy issues related to uranium mining and milling” provided absolutely no notice to the public that the firm and its lobbyists would be attempting to influence the Interior Department’s review of the boundaries of the Bears Ears National Monument required by President Trump in Executive Order 13792. Accordingly, Faegre Baker and Mr. Wheeler violated 2 U.S.C. § 1604(b)(2)(A) when they filed the original and amended Second Quarter 2017 Lobbying Disclosure Reports for Energy Fuels.

Second, Faegre Baker and Mr. Wheeler failed to disclose that they had made lobbying contacts at the Interior Department with regard to the boundaries of the Bears Ears National Monument. The Lobbying Disclosure Act requires registrants to provide a statement on each quarterly activity report of the “Houses of Congress *and* the Federal agencies contacted” by lobbyists on behalf of their client.²⁰ Faegre Baker and Mr. Wheeler only disclosed on their Second Quarter 2017 Lobbying Report for Energy Fuels (in both the original report and in the amended reports) that they made lobbying contacts with the Senate and the House of Representatives; their April 5, 2017 lobbying contacts with the Interior Department were not disclosed on the Second Quarter 2017 Lobbying Disclosure Report. Accordingly, Faegre Baker and Mr. Wheeler violated 2 U.S.C. § 1604(b)(2)(B) when they filed their original Second Quarter 2017 Lobbying Disclosure Report for Energy Fuels, and when they filed the Amended Second Quarter 2017 Lobbying Disclosure Report on August 29, 2018.

Finally, the continued inaccuracies of Faegre Baker’s Lobbying Disclosure Reports raise questions about whether the firm intentionally filed inaccurate reports with the House of Representatives and the Senate. Notably, Energy Fuels retained Faegre Baker beginning February 1, 2017, and within two months, lobbyist Mr. Wheeler sent an email to an Interior Department official seeking a meeting on behalf of Energy Fuels. Despite this almost immediate action on behalf of its client, Faegre Baker failed to disclose this meeting for nearly two years. Additionally, the Interior Department’s decision to review the boundaries of America’s national monuments and downsize Bears Ears in a way that would benefit Energy Fuels was so controversial that it is under investigation by a congressional committee and is the subject of several lawsuits. Given that Faegre Baker failed to disclose a meeting about this controversial

¹⁷ 2 U.S.C. § 1604(b)(2)(A)(emphasis added).

¹⁸ 2 U.S.C. § 1604(b)(2)(B).

¹⁹ U.S. Congress, Secretary of the Senate and Clerk of the House of Representatives, *Lobbying Disclosure Act Guidance* at 19 (January 31, 2017)(emphasis added)(hereinafter “LDA Guidance).

²⁰ 2 U.S.C. § 1604(b)(2)(B)(emphasis added).

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topic on its original disclosure report and on its amended reports, CfA respectfully requests an investigation into whether Faegre Baker knowingly and willfully filed inaccurate Lobbying Disclosure Reports in violation of the False Statements Act, 18 U.S.C. § 1001(c)(1).

Conclusion

Faegre Baker Daniels Consulting and Andrew Wheeler committed serious violations of the Lobbying Disclosure Act by failing to disclose lobbying contacts they made with a covered executive branch official at the Interior Department in connection with their successful effort to change the boundaries of the Bears Ears National Monument for the commercial benefit of Energy Fuels Resources, Inc. Therefore, CfA respectfully requests that you initiate an investigation and take all appropriate action to ensure compliance with the Act as required by 2 U.S.C. § 1605(a)(7)&(8), and determine whether Faegre Baker and Mr. Wheeler intentionally submitted erroneous reports in violation of 18 U.S.C. § 1001(c)(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel Stevens
Executive Director