

MINUTES
STATE BUILDING COMMISSION
Executive Subcommittee
March 15, 2013

The State Building Commission Executive Subcommittee met this day at 2:00 p.m. in Senate Hearing Room 12, Legislative Plaza, Nashville, Tennessee. Chairman Mark Emkes called the meeting to order at 2:02 p.m. and noted a quorum with the following members in attendance:

- Vice-Chairman Tre Hargett, Secretary of State
- David Lillard, State Treasurer
- Justin Wilson, Comptroller of the Treasury

He introduced representatives from the University of Tennessee, Robbi Stivers, Office of Capital Projects, and Dr. Larry Arrington, Chancellor of Agriculture, to present their request. Mr. Stivers stated that the University was requesting approval of an RFP for disposal by lease of mineral rights with waiver of appraisals. Dr. Arrington proceeded to give a description and history of the property since acquiring it in 1937. He stated it was considered to be a large research center and listed examples of several past and existing research projects. Comptroller Wilson asked if there were any deed restrictions on the property when it was acquired, and he was told "no".

Mr. Stivers stated the University's purpose for proposing this transaction was for investigating the impacts of natural gas as the research will seek to answer questions in several areas. He said that this information is baseline information and the use of the data will be critical. The University of Tennessee has a vested interest in this property and the lease term would be as follows: five years with three five-year options. He said, if there is a well, it will continue on until it fails to produce in a paying quantity. He described the diverse group and makeup of the advisory committee. The University will retain all its rights to the property and will continue to use it as it has been used.

Dr. Arrington stated that the University has a responsibility to teaching students on campus and conducting research by operating field studies as well as on campus in labs. There is an increasing area of interest in oil and gas, but the most interest goes to water quality ground water and movement of surface water. Commissioner Emkes asked if any testing was being done on the over 700 wells in the vicinity. Mr. Stivers responded that the Department of Environment and Conservation (TDEC) issues permits and does testing and monitoring of wells. Secretary Hargett asked if fracking is occurring on those other properties, and he was told "yes".

Dr. Arrington began a discussion regarding their plan to use Best Management Practices, and Comptroller Wilson asked if that was consistent with the land grant purpose. Dr. Arrington responded that they have owned the property since it was a strip mine and it is now a protective forest. Commissioner Emkes asked who did the strip mining and was told "the previous owners". Dr. Arrington stated that they will have an industry partner who will work collaboratively and the research will be conducted by University of Tennessee scientists. They will be seeking grants for something that is very common, and it is also common for the University to create income from its research. He said, in working with industry partners, UT has very strict conflicts of interest policies and has engaged the public, which was the purpose of the advisory committee.

The Subcommittee discussed 'baseline' data. Commissioner Emkes asked if they know the lay of the land underneath, and Dr. Arrington said they will have data before they drill the well. Secretary Hargett stated that this

was an exceptional opportunity to obtain baseline data. Dr. Arrington commented that all the research projects on this property will continue to go forward even while this project is going on.

Comptroller Wilson asked if the RFP was properly drafted. Mr. Stivers responded that the document was prepared in 2009 with the addendum being later added. He confirmed Comptroller Wilson's statement that the University has been contacted by a number of companies who have expressed interest, but that the RFP is not designed for any particular company. Comptroller Wilson asked Mr. Stivers if they were going to have a pre-proposal conference, and stated he thought it would be a good idea to do so.

Commissioner Emkes asked if, to UT's knowledge, any research on fracking had been done to the extent that they are proposing. Mr. Stivers responded that at least half of the 700 wells in Morgan and Scott Counties have been fracked since 1969. Secretary Hargett asked if UT had any knowledge of water contamination, and Mr. Stivers responded that TDEC has not reported any. Secretary Hargett asked if the State would have the opportunity to halt the contract should there be a reason or need to do so. Mr. Stivers stated that the spirit and language of the contract is that the operator will follow Best Management Practices (BMP) and that every aspect of the research will be highly visible.

Secretary Hargett asked what expectations they should have as far as collecting and reporting data to the public. Dr. Arrington responded that the science will be peer reviewed when they get to the end of those studies. The Subcommittee asked a variety of questions, which were responded to by Dr. Arrington, including the handling of bi-products, if other Universities were conducting sophisticated research, and if the University had procedures in place to handle conflict of interest situations like the one reported in Texas.

Commissioner Emkes then opened up the meeting for public comment.

Elizabeth Barger (American Forum) - expressed concern about BMPs and TDEC's regulations. She stated that the way the regulations are set up, they don't require any real oversight and that most of the fracking in Tennessee will not be monitored. She also voiced concern about the exploitation of hardwood forests being impacted by the building of roads.

John Bonar (Atlas Energy) - commented that he has been involved with the fracking of over 1,000 wells in 30 years and has seen the benefits oil & gas drilling provides for a country. He said there are risks, but the risks are small and the rewards immense. He commented that the University of Tennessee has the expertise and that his company would be a potential proposer.

Gwen Parker (Southern Environmental Law Center) - commented that TDEC has inadequate resources and staff for the inspection and enforcement of gas monitoring, stating that they have had only two enforcement records in their database for the last few years. Ms. Parker cited other concerns, such as: the basic financials needing closer scrutiny, the State needs an independent appraisal because of the preferred industry partner there was no evidence that the University considered other State lands as viable locations; and the research projects offer no justification for waiving appraisals. She asked that the matter be elevated to the full Commission. When Comptroller Wilson asked why she thought Knox Energy was a preferred bidder, Ms. Parker responded because there has been a lot of communication between them and the University of Tennessee.

Scott Banbury (Sierra Club) - stated that fracking is occupying a lot of discussion in Tennessee and nationwide. He said he believes Tennessee is positioning itself for when the price of gas goes up and that the research could be done at those sites where the State owns the mineral rights. He expressed concern over public/private partnerships and that the deliverables are not defined. He cited cases in Arkansas where the public's only recourse is through the civil courts, and commented that construction of wells will be under less scrutiny than Halliburton was in Gulf.

Kelly Poole (TN Environmental Council) – stated she was not advocating a full ban on fracking, but was advocating that the research be peer reviewed before the RFP is issued and that the research be held to the finest scientific standards.

Kathleen Williams (TN Parks & Greenways) – urged the Subcommittee to learn more about hydro fracking and asked whether it should be known what lives there before it is found out if fracking destroys it. She expressed concerns of contamination, seismic risks, well casings and cement deteriorating over time, and 2,000 truck trips required per year per well. She mentioned the EPA study due out in 2014 and asked why this couldn't wait for those results.

Sandra Goss (TN Citizens for Wilderness Planning) – thanked the Subcommittee and University of Tennessee for holding the meeting and stated that she was on an advisory council. She stated that the BMPs do not meet American Petroleum Institute's standards, which leaves them slightly tarnished in obeying TDEC's rules. She said The Clean Water Act does not apply to ground water, and the Safe Drinking Water Act is exempt by oil and gas. She invited the ESC members to visit Morgan County.

Eric Lewis (Coalition for Frac-Free Tennessee) – stated that the RFP is ill-advised and there is no need to do fracking since the EPA study will be released in 2014. He expressed concern over the 1000 cases of contamination around the country including the risk of trucks hauling bi-products. He said that 7% of wells leak methane immediately and all leak over time, and the precedent will be set over State-owned land.

Cora Wisser – commented that she realized the ESC had a lot on their plate and felt they did not consider it lightly. She expressed concern that gas output from the wells will be going down and it will be going to other countries and asked if a research plan has been seen by the members.

Ita Hardesty Mason – stated she hoped the University of Tennessee would lead the way to safe alternative energy options and mentioned that Governor Bredesen had stopped an earlier energy deal in 2009.

Susan Shann – stated that there are seven regulations from which hydro fracking is exempt. She questioned UT's geological data and the revenue income that has a vested interest in the data outcome. She said she would like to see a better direction from the University and thought many Tennesseans would be willing to reduce energy consumption if given a choice.

Beverly Sweeton – Asked if the University of Tennessee had done their homework regarding the problems experienced in other states. She said she could not bear to see Tennessee destroyed as is occurring in North Dakota, and that leaving future generations in debt is nothing compared to leaving it without clean water or a clean planet.

Danville Sweeton – asked why the University of Tennessee wants to study fracking when it is known to cause problems.

Douglas Clark – voiced his support stating that gas drilling has been done in Tennessee since 1908. He said that natural gas is clean burning, abundant, provides jobs, and is American.

Eugene Lackey (Lackey & Associates) – a land surveyor since 1969, stated that there are many advantages to a joint effort. He said he has known the University of Tennessee to be good stewards of the land and that rebuilding roads in Morgan & Scott Counties could be a boon to their economy.

Ashley King – expressed hope that the University of Tennessee will be able to extract gas without damaging the environment and that the risks should be weighed against the benefits. He said UT has an opportunity to carefully study the effect of fracking, and he suggested a middle ground by having the State fund and set up a demonstration project. He suggested that the University could put together a team of scientists to produce a world

class study. He said there is no pristine way to extract fuel, so the goal should be to utilize it as transition fuel. He said he supports a well-regulated fracking process with fracking rules that were constructed on BMP.

Lance Baldwin – voiced his support as a 10 year employee with Noah Horn Well Drilling Inc, a company that has been in the oil & gas drilling business for 50 years.

John Dales (P & C Well Service Inc) – stated that there had been a lot of good points made, but with high unemployment, he felt this could be a good opportunity for Morgan and Scott Counties. He would like to see the University of Tennessee make this research a beacon.

Lonnie Jeffers (Packers Plus) – stated that he thought they needed to come to a common ground and that the University of Tennessee was doing a good thing to study this. He expressed to the Subcommittee that they have a hard decision to make, and hoped they pushed this through.

Mariah Bragg (Middle Tennessee State University student for Environmental Action) – stated she did not support fracking and that her organization went to West Virginia and saw the effects of fracking. She urged the Subcommittee to talk to the people who have been affected before making a decision. She said if the research is going to be funded, it should be funded by the State. She said that Texas thought they had safe guards in place, but anything funded by the industry could be biased research.

Jacob Rainey (University of Tennessee Knoxville student) – thanked the Subcommittee for holding the meeting. He warned that if this was to go wrong, it would create a negative impact on the University of Tennessee.

Kristen Collins (University of Tennessee Knoxville student) – stated that she stood in solidarity with many University of Tennessee students and that this proposal is an excellent example of conflict of interest. Comptroller Wilson asked her about the conflict of interest, and Ms. Collins responded that if it was sponsored by an oil & gas company, the research would be swayed.

Mike Williams (American Petroleum Institute) – stated they were not afraid of a study that the University of Tennessee or anyone else would do. The API standard is the standard setting for the industry, and the standards are not a “one size fits all”.

Anna Haislip – stated that the energy industry uses the same three words over and over--clean, safe, and jobs—and tells us we’re going to be independent of those oil producing nations, but they don’t mention they will be doing fracking. When Universities are hard-pressed for money, they should not swap their need for money for clean water, because when you are hand in hand with someone involving money, you cannot make an unbiased decision.

Jonathon Burr (Department of Environment and Conservation) – stated TDEC did not have a position on the matter. He said it was his understanding that best practices apply to all wells and that there are extra regulations for large hydro fracking. Upon questioning, he described TDEC’s experience with the existing wells and stated that the bigger polluter they see has to do with roads and erosion. He said there is a lot of misinformation circulating and that the word ‘fracking’ is a broad category because you encounter different situations depending where you are in the country.

Comptroller Wilson stated that there have been allegations of a preferred bidder, that the idea is to have a fair and open competition, and he requested there be a pre-proposal conference. He said that, based on the document they are to utilize, the University will insist on open BMPs. Mr. Stivers confirmed that their goal of the research is to have the BMPs and it will be reiterated in the pre-proposal conference.

Comptroller Wilson asked Dr. Arrington if it was unusual to have research funded by private industries and if they disclosed the process. Dr. Arrington responded it was not unusual, and the process will be open.

Commissioner Emkes stated that it was not an easy decision. He said he has always been data driven and sensitive to environmental issues, but after much thought and discussion, he was going to make a motion to approve the issuance of an RFP.

Treasurer Lillard stated that he took all the comments extremely seriously. He said that due to the amount of activity that is going on in the area, and the fact that the practice has a history in Tennessee, he seconded the motion. He said the burden will be on the University of Tennessee to make sure it works the way it is supposed to.

Secretary Hargett clarified with legal counsel that the action proposed is to approve issuing the RFP for disposal by lease of mineral rights and waiver of appraisals and that approval of any final agreement will have to come back to the Subcommittee for further action. He stated that any final proposed agreement will be reviewed closely to ensure it will be designed to produce the type of research proposed today.

Comptroller Wilson supported the motion stating that there is substantial drilling in the area, and he believed it was appropriate for the University of Tennessee, as a land grant institution, to do the necessary research.

Put to a voice vote, all members voted "aye". The meeting adjourned at 5:17 pm.

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For a complete video recording, click on <http://wapp.capitol.tn.gov/apps/videowrapper/default.aspx?CommID=154>

THE UNIVERSITY OF TENNESSEE

Land Transaction

Requested Action: Approval of an RFP for disposal by lease of mineral rights with waiver of appraisals

Description: Morgan & Scott Counties – 8,636+/-acres UT Forestry Experimentation Station – Trans. No. 13-01-001 (Baugh)

Purpose: Disposal by lease for a Request for Proposal (RFP) to enter into an oil lease, gas lease and coal bed methane lease.

Term: Lease term of five (5) years with three (3) renewals of five (5) years each for a maximum of twenty (20) years, or as long as product is being produced in paying quantities.

Comment: Lease is to cover the leased premises, less and except the existing wells and their associated acreage. The property will continue to be utilized for forestry research purposes.

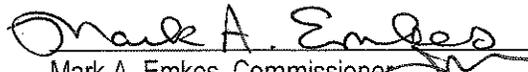
Previous Action: 10/01/2002 Policy to be drafted
03/20/2006 Approved contingent on agreement by Attorney General
04/20/2009 Deferred request

SSC Report: 01/14/2013 Peter Heimbach summarized the transaction. Staff referred to Executive Subcommittee for discussion.

Previous Action: 01/31/2013 At the University of Tennessee's request, the item was deferred.

Minutes: 03/15/2013 Approved issuing an RFP for disposal by lease of mineral rights with waiver of appraisals.

Approved:


Mark A. Emkes, Commissioner
Department of Finance and Administration
