

Meeting No. 1,005

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

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April 27, 2006

Austin, Texas

MEETING NO. 1,005

THURSDAY, APRIL 27, 2006.--The members of the Board of Regents of The University of Texas System convened this special called meeting via telephone conference call at 9:03 a.m. on Thursday, April 27, 2006, on the Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Huffines, presiding (in person)

Vice Chairman Clements

Vice Chairman Krier

Regent Barnhill

Regent Caven

Regent Craven

Regent Estrada

Regent Haley (in person)

Regent McHugh

Regent Rowling

Counsel and Secretary Frederick

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Huffines called the meeting to order.

U. T. System: Authorization for the U. T. System to join the State of Texas in responding to a Request for Proposal from FutureGen Industrial Alliance, Inc., for the purpose of offering two alternative sites in the University Lands in West Texas (West Texas Lands) in Pecos County for long-term lease for the injection and storage of carbon dioxide (CO₂)

Upon motion by Regent Estrada, seconded by Regent McHugh, the Board voted unanimously to authorize actions as necessary to allow The University of Texas System to join the State of Texas in responding to a Request for Proposal (RFP) from FutureGen Industrial Alliance, Inc. (FutureGen) for the purpose of offering, through a 50-year lease term, two alternatives for a site in the University Lands in West Texas (West Texas Lands) in Pecos County for the injection and storage of carbon dioxide (CO₂). The two alternative sites referred to as Area 1 and Area 2 are illustrated in Exhibit A on Page 9. Approval was conditioned upon the provisions set forth on Page 2.

- a. The response to the RFP is contingent upon the State of Texas legislature enacting a statute that would indemnify and hold harmless all other parties, including instrumentalities, subsidiaries, and agencies of the State of Texas from all liability, damages, and harm, whether accrued directly or arising by third party action, suffered associated with the handling, transportation, injection, storage, or release of CO₂ generated by the FutureGen project. In the event such a provision is not enacted into law, U. T. System will not be obligated to lease either site to FutureGen.
- b. The response to the RFP is contingent on the value of any lease being determined by the U. T. System obtaining independent appraisals and gathering other valuation information and will be negotiated with FutureGen. If Area 1 is chosen, the value and terms of the lease will be reviewed and approved by the Chancellor based on review and recommendation from the Vice Chancellor and General Counsel. If Area 2 is chosen, the value and terms of the lease will require the approval of the Board for Lease of University Lands and the U. T. System Board of Regents.
- c. The response to the RFP is contingent on the lease of any injection and storage site for Area 1 allowing for horizontal drilling from adjacent tracts to access oil and gas resources beneath the CO₂ storage area and other agreed activities that will not disturb CO₂ storage.
- d. Acting through the Chancellor and the Vice Chancellor and General Counsel, U. T. System will be given the opportunity to review and approve all provisions of the Texas RFP response that relate to site selection or the terms of any lease.

FutureGen is a \$1 billion public-private partnership to locate, design, build, and operate the world's first coal-fueled, zero-emissions power plant. The partnership is comprised of American Electric Power, Anglo American llc, BHP Billiton, China Huaneng Group, CONSOL Energy Inc., Foundation Coal Corporation, Kennecott Energy Company, Peabody Energy, and Southern Company. FutureGen has released an RFP for the FutureGen Host Site. Responses to the RFP are due by May 4, 2006.

One of the requirements set forth in the RFP is the ownership of or access to property suitable for siting a CO₂ injection facility and the long-term underground storage of a large quantity of CO₂. Acting through the Bureau of Economic Geology at The University of Texas at Austin's John A. and Katherine G. Jackson School of Geosciences, the State of Texas has developed two site proposals in response to the RFP. Both sites are in the Permian Basin region proximate to oil and gas producing lands (West Texas Lands), the surface of which is owned and controlled by U. T. System and the mineral rights to which are subject to lease by the Board for Lease of University Lands. An interagency cooperation contract will be entered into with the State of Texas for preparing a response to the RFP.

On April 19, 2006, the Board for Lease of University Lands passed a resolution concurring in the decision of the U. T. System to join the State of Texas in submitting the Texas response to the FutureGen RFP and setting conditions to protect the value of the Permanent University Fund (PUF) minerals. A copy of the resolution is attached on Pages 5 - 7.

The Texas RFP response will designate two proposed areas as potential sites for CO₂ injection and storage within the West Texas Lands as illustrated on Page 9. Those two areas are as follows:

1. **Area 1.** As designated on Page 9 by the red cross-hatched circles, Area 1, comprising up to 6,300 acres in seven different injection sites each of which will be up to 900 acres in area, will be described as the primary and adequate CO₂ injection and storage site. U. T. System will offer a 50-year lease term on Area 1 according to the general terms and procedures set forth in Item 3 below. The areas designated for Area 1 are hypothetical at present, and the actual sites will be determined after seismic and other studies are conducted.
2. **Area 2.** As designated on Page 9 by the blue cross-hatched circle, Area 2, comprising approximately 45,000 acres (including those areas included within Area 1), will be described in the Texas RFP response as an available CO₂ injection and storage site if required by FutureGen. U. T. System will offer a 50-year lease term on Area 2 according to the general terms and procedures set forth in Item 4 below. Because the RFP actually asks for an area larger than the size of Area 2, that area is being offered as an alternative. However, the U. T. System believes that the cost of a greater area for Area 2 would be prohibitive.
3. **General terms for lease of Area 1.** The Board for Lease of University Lands has authorized a proposed 50-year lease of Area 1 as the FutureGen CO₂ injection and storage site. The U. T. System will obtain independent appraisals and gather other valuation information and such lease will be negotiated based on such then current valuations, but not less than fair market value. The lease of Area 1 as the FutureGen CO₂ injection and storage site will allow for horizontal drilling from adjacent tracks to access oil and gas resources beneath the CO₂ storage area and other agreed activities that will not disturb CO₂ storage. The terms and conditions of a 50-year lease term of Area 1 will be reviewed and approved by the Chancellor based on review and recommendation of the Vice Chancellor and General Counsel. The U. T. System Office of University Lands - West Texas Operations estimates that the proposed 50-year lease may be priced as follows: 1) an upfront bonus payment of \$1,000/acre; and 2) an annual lease payment of approximately \$1.7 million based on injecting 1 million metric tons of CO₂ per year (based on injection estimates in the RFP).
4. **General terms for lease of Area 2.** If required by FutureGen as a condition of award of the FutureGen project to the State of Texas, U. T. System will undertake to establish and have approved the terms of a 50-year lease of

Area 2 for a CO₂ injection and storage site. The U. T. System will undertake a study and propose a market value of such a lease of Area 2 and have such fair market value confirmed by independent appraisals. The terms and conditions of a 50-year lease of Area 2 as a CO₂ injection and storage site will then be presented to the U. T. System Board of Regents and the Board for Lease of University Lands for approval.

**RESOLUTION OF THE BOARD FOR LEASE OF UNIVERSITY LANDS
REGARDING THE UNIVERSITY OF TEXAS SYSTEM'S
PARTICIPATION IN FUTUREGEN TEXAS**

This resolution sets forth the general principles and key terms pursuant to which the Board for Lease of University Lands concurs with The Board of Regents of The University of Texas System (UTS) in considering UTS' participation in the response of the State of Texas to the Request for Proposals for the FutureGen Facility Host Site (RFP) released by the FutureGen Industrial Alliance, Inc. (FutureGen). To the extent necessary or advisable, this resolution may serve as the basis for an interagency cooperation contract between UTS, and as necessary, the Board for Lease of University Lands, and the appropriate state agency pursuant to the provisions of The Interagency Cooperation Act, *Texas Gov't Code*, §§ 771.001, *et seq.*

RECITALS

A. FutureGen is a \$1 billion public-private partnership to locate, design, build and operate the world's first coal-fueled, zero-emissions power plant.

B. FutureGen has released the RFP and responses to the RFP are due by May 4, 2006.

C. Considering its coal production and consumption, existing infrastructure, industrial, economic and population profile, and overall prominence in the energy industry, among other factors, the State of Texas is uniquely positioned with respect to the site selection criteria identified in the RFP.

D. Acting through the Bureau of Economic Geology at The University of Texas at Austin's John A. and Katherine G. Jackson School of Geosciences, the State of Texas has developed two site proposals in response to the RFP.

E. One of the Texas site proposals is in the Permian Basin region proximate to oil and gas producing lands (West Texas Lands), the surface of which is owned and controlled by UTS and the mineral rights to which are subject to lease by the Board for Lease of University Lands.

F. One of the requirements set forth in the RFP is the ownership of or access to property suitable for siting a CO₂ injection facility and the long-term underground storage of a large quantity of CO₂.

G. UTS, through its ownership and control of the West Texas Lands, has available an appropriate CO₂ injection and storage site.

H. UTS is expected to support the State of Texas in its bid submission for FutureGen.

General Terms of Understanding

1. UTS' Participation in the FutureGen RFP Response. UTS is expected to join the State of Texas in submitting the Texas response to the FutureGen RFP for the purpose of nominating certain property in the West Texas Lands as a suitable CO₂ injection and storage site. The Texas RFP response will designate two proposed areas for CO₂ injection and storage within the West Texas Lands as illustrated on Exhibit A to this resolution.

A. Area 1. As designated on Exhibit A by the red cross-hatched circles, Area 1, comprising up to 6,300 acres in seven different injection sites each of which sites will be up to 900 acres in area, will be described as the primary and adequate CO₂ injection and storage site. The exact locations of the sites must be determined prior to September 1, 2006. UTS will offer a 50-year lease on Area 1 according to the general terms and procedures set forth in Section 2A of this resolution.

B. Area 2. As designated on Exhibit A by the blue cross-hatched circle, Area 2 comprising approximately 45,000 acres (including those areas included within Area 1) will be described in the Texas RFP response as an available CO₂ injection and storage site if required by FutureGen. Until September 1, 2006, UTS will offer a 50-year lease on Area 2 according to the general terms and procedures set forth in Section 2B of this resolution. From and after September 1, 2006 and until the execution of the lease, the 45,000 acres may be held for an annual payment of \$100 per acre.

2. Offering Terms of Property in the West Texas Lands. A 50-year lease of either Area 1 or Area 2 requires the approval of both the UTS Board of Regents and the Board for Lease of University Lands. In support of the Texas FutureGen RFP Response, UTS will offer for lease Area 1 or Area 2 as follows:

A. Area 1. The Board for Lease of University Lands hereby authorizes a proposed 50-year lease of Area 1 as the FutureGen CO₂ injection and storage. Before a final lease of Area 1 for FutureGen, UTS will obtain independent appraisals and gather other valuation information and such lease will be negotiated based on such then-current information, but not less than fair market value¹. The lease of Area 1 as the FutureGen CO₂ injection and storage site will allow for horizontal drilling from adjacent tracks to access oil and gas resources beneath the CO₂ storage area and other agreed activities that will not disturb CO₂ storage.

B. Area 2. If required by FutureGen as a condition of award of the FutureGen project to the State of Texas, UTS will undertake to have approved and establish the terms of a 50-year lease of Area 2 for a CO₂ injection and storage site. UTS will undertake a study and propose a market value of such a lease of Area 2 and have such fair market value confirmed by independent appraisals. The terms and conditions of a 50-year lease of Area 2 as a CO₂ injection and storage site will then

¹ West Texas Operations estimates that the proposed 50-year lease may be priced as follows: 1) an upfront bonus payment of \$1,000/acre; and 2) an annual lease payment of .10/mcf of CO₂ injected approximating \$1.7 million/year based on injection estimates in the RFP, subject to periodic escalations based upon market factors.

be presented to the UTS Board of Regents and the Board for Lease of University Lands for approval.

3. UTS Review of Texas RFP Response. Acting through its Office of the Chancellor and the Office of General Counsel, UTS will be given the opportunity to review and approve all provisions of the Texas RFP response that relate to Sections 1 and 2 of this resolution.

4. Indemnity and Hold Harmless of UTS. It is the understanding of UTS and other concerned parties that the Texas Legislature may enact a statute that would declare all CO₂ generated by the FutureGen Project in Texas owned by the State of Texas and would indemnify and hold harmless all other parties, including instrumentalities, subsidiaries and agencies of the State of Texas from all liability, damages and harm suffered associated with the handling, transportation, injection, storage and release of CO₂ whether accrued directly or arising by third party action. In the event such a statute is not enacted into law, UTS will not be obligated to participate in the Texas RFP response and the West Texas Lands will not be available for nomination as a CO₂ injection and storage site.

Regent Estrada explained he attended the Board for Lease meeting on April 19, 2006, with Mr. Jerry Patterson, Commissioner of the General Land Office and Chairman of the Board for Lease, and Mr. John D. White, Vice Chairman of the Board for Lease and Chairman of The Texas A&M University System Board of Regents, wherein the resolution on Pages 5 - 7 was approved.

Executive Vice Chancellor Kelley clarified the two alternate U. T. locations proposed will provide access to surface minerals and he clarified a second site, not owned by U. T., in East Texas will also be proposed by the State. In response to a question from Chairman Huffines, Dr. Kelley explained the response to the RFP will be submitted by May 4, 2006, a short list of sites will be identified in Summer 2006, followed by a year of due diligence by FutureGen. Selection of the sites is expected in Spring 2007.

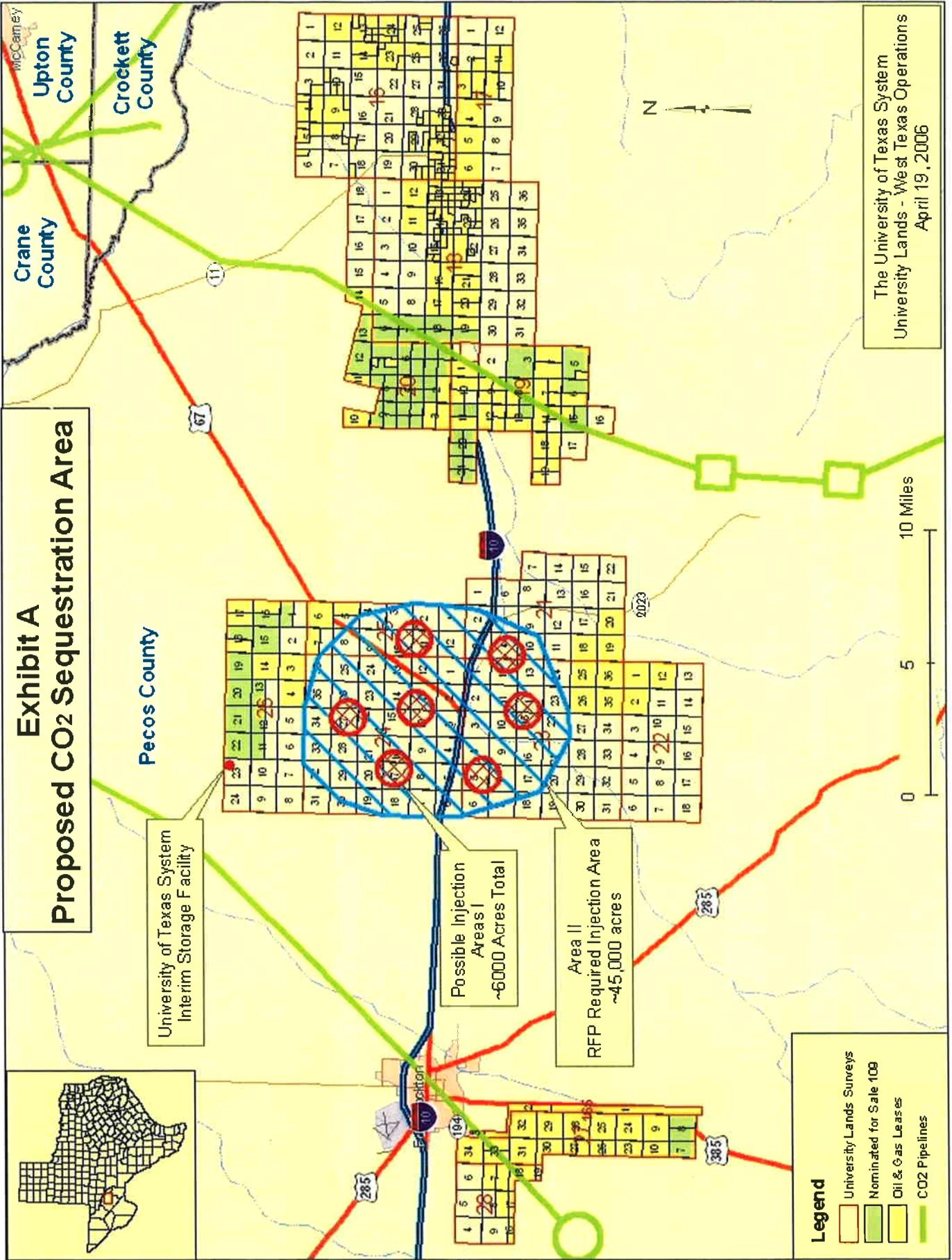
In response to a question from Regent Barnhill asking if there were any reason the item should not be approved, Chairman Huffines said the members of the Board have a fiduciary responsibility to ensure that the University Lands are guarded and are treated as an asset of the U. T. System. In response to a question from Vice Chairman Krier regarding other uses of the lands in addition to oil and gas drilling, Mr. Stephen Hartmann, Executive Director of University Lands - West Texas Operations, said there are wineries, wind power generation facilities, a facility to store low-level radioactive waste generated by the health institutions, utility easements, grazing leases, and recreational activities such as hunting. He said the project would not preclude the current or anticipated uses of the land for those purposes.

Chairman Huffines thanked all those involved for their responsiveness in putting the proposal together to help the State of Texas respond to the RFP.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 9:31 a.m.

/s/ Francie A. Frederick
Counsel and Secretary to the Board

May 4, 2006



The University of Texas System
 University Lands - West Texas Operations
 April 19, 2006

Exhibit A
Proposed CO2 Sequestration Area

University of Texas System
 Interim Storage Facility

Possible Injection
 Areas I
 ~6,000 Acres Total

Area II
 RFP Required Injection Area
 ~45,000 acres

- Legend**
- University Lands Surveys
 - Nominated for Sale 109
 - Oil & Gas Leases
 - CO2 Pipelines

0 5 10 Miles

