

PRESENTED AT

**18th Annual Renewable Energy Law Institute and Essentials**

January 30, 2023 – February 1, 2023  
Austin, TX

**Renewable Energy  
Texas Case Law Update**

**Gary E. Zausmer**

Gary E. Zausmer  
Enoch Kever PLLC  
7600 N. Capital of Texas Highway  
Building B, Suite 200  
Austin, Texas 78731

[gzausmer@enochkever.com](mailto:gzausmer@enochkever.com)  
512.615-1223

## **Renewable Energy Case Law Update – Texas**

Gary Zausmer<sup>1</sup>  
Sara Berkeley Churchin<sup>2</sup>  
Paula Lear<sup>3</sup>

This case law update describes a selection of renewable energy cases decided in Texas state and federal courts during the timeframe of late 2020 through late 2022.

### **I. SOLAR ENERGY**

Lyle v. Midway Solar, LLC, 618 S.W.3d 857 (Tex. App.—El Paso 2020, pet. denied)

#### **Renewable Energy Leases – Title Examination/Accommodation Doctrine**

The El Paso Court of Appeals begins its *Lyle* opinion reflecting on Texas’s reputation as “a leader in energy.”<sup>4</sup> Acknowledging the dispute’s place in the context of competing policy issues, Chief Justice Jeff Ally writes:

Undeniably, Texas produces the nation’s largest share of oil and gas. At the same time, its public policy favors adding renewable energy sources into the State’s energy portfolio. The central issue in this case raises the potential conflict between the operation of a large-scale solar facility and the owners of the mineral interests on the land where the solar array sits.<sup>5</sup>

The *Lyle* case concerns a dispute between a solar developer, Midway, and mineral owners, the Lyles. Midway developed a 315-acre tract in Pecos County under a 55-year solar development lease with the surface owners. Neither Midway, nor the surface owners, owned the land’s

---

<sup>1</sup> Gary Zausmer is a Member of Enoch Keever PLLC and is a former law clerk to United States District Judge James R. Nowlin. Mr. Zausmer has an extensive state and federal court litigation practice, including trial and appellate matters in the energy, renewable energy, real estate and business dispute arenas.

<sup>2</sup> Sara Berkeley Churchin is a Senior Associate of Enoch Keever PLLC. Ms. Churchin, a former Texas Supreme Court law clerk for the Honorable Phil Johnson, has a broad appellate docket, including in the energy and renewable energy space.

<sup>3</sup> Paula Lear, counsel to Enoch Keever PLLC, is a former staff attorney to the Honorable Bob Pemberton of the Third Court of Appeals. Ms. Lear provides trial court and appellate court representation to clients in varied practice areas, including in the energy, utility, real estate and commercial sectors.

<sup>4</sup> *Lyle*, 618 S.W.3d at 862.

<sup>5</sup> *Id.* (footnotes omitted).

underlying minerals; neither did they possess surface-use agreements or waivers from all the mineral owners.<sup>6</sup>

Without soliciting any mineral owner's input, Midway designated the perimeter of the solar project as an undevelopable area reserved for oil and gas surface operations. Upon completion of construction, Midway's solar facility, covering about 70% of the surface tract, was completely fenced with no public access.<sup>7</sup>



The Lyles sued the surface owners and Midway for damages to the mineral estate, claiming trespass, breach of contract, and impairment of the mineral estate in violation of the “accommodation doctrine.” They also sought a permanent injunction for removal of the panels and transmission lines that were allegedly encroaching on their mineral interests and easement rights.<sup>8</sup>

---

<sup>6</sup> *Id.* at 862–64. Midway had obtained waiver agreements from twenty individuals who owned mineral interests on adjoining property. The waiver agreements purported to give those individuals rights to use the premises for mineral exploration and to give Midway “unfettered access and use of the surface.” *Id.* at 864. After the Lyles filed suit, Midway filed a “Disclaimer of Interest” stating that the waiver agreements did not “grant, convey, or transfer” any rights, title or interest to the Lyles’ mineral estate. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 864–65.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Texas Renewable Energy Caselaw Update

Also available as part of the eCourse

[2023 Renewable Energy Law eConference](#)

First appeared as part of the conference materials for the  
18<sup>th</sup> Annual Renewable Energy Law Institute session

"Texas Renewable Energy Caselaw Update"