

**PRESENTED AT**

**2018 Renewable Energy Law**

January 29-30, 2018

Austin, TX

**Doing Business with the General Land Office –  
Renewable Energy Leases and Surface Use  
(Accommodation) Agreements**

**Ken Mills**

Author Contact Information:

Ken Mills

Texas General Land Office

Austin, TX

# **Doing Business with the General Land Office – Renewable Energy Leases and Surface Use (Accommodation) Agreements<sup>1</sup>**

## **I. Introduction**

The General Land Office (the “GLO”) has a number of important functions, e.g. maintaining the records of original land transfers out of sovereign ownership, managing the real property assets of the Permanent School Fund (the “PSF”), providing home loans to Texas veterans, selling electricity to public retail customers (cities, counties, school districts, etc.), and a relatively new responsibility for the physical management of the Alamo. One of the chief aspects of the agency’s management of the PSF is leasing its mineral and other energy interests to generate revenue. The energy interest subject to that leasing activity includes renewable energy. As the GLO’s website ([www.glo.texas.gov](http://www.glo.texas.gov)) states:

“The Texas General Land Office engages in land leases to support the development of solar, wind, and geothermal power plants. As a large mineral estate owner in West Texas, the agency also considers surface site use agreements for the build-out of utility-scale solar facilities.”<sup>2</sup>

Having said that, the GLO’s exposure to renewables leasing is relatively recent and infrequent. Over the last 10 years, only a handful of ground leases have been entered into for either wind or solar power facilities. That relatively low number is not a result of a lack of interest by the GLO. More often, we’re asked to sign a surface use or accommodation agreement as the owner of the dominant mineral estate under land the surface of which is not owned by the PSF.

## **II. Definitions**

To put the GLO’s renewable energy activities in context, it is useful to lay out some history and terms:

A. General Land Office. The GLO is an old State agency, and dates back to the earliest days of the Republic. The GLO has a number of functions. It is the agency that keeps track of sovereign dispositions of real property interests from the State generally, including from the Permanent School Fund (the “PSF”).

---

<sup>1</sup> Ken Mills, Director, Oil, Gas & Energy Section, Office of General Counsel, Texas General Land Office. The author is not authorized to bind the agency. All information in this article is based on the author’s best understanding and interpretation of the relevant statutes and agency policies, but is subject to the ultimate authority of relevant agency policy and decision makers.

<sup>2</sup> For the quoted language, see the referenced agency website; go to the Energy tab. From the Energy page, click on the “Visit the GLO Energy Business Website” button. Once you click through to that Energy Business Website page, go to the the Renewables tab.

B. Permanent School Fund. The PSF is a Constitutionally-created fund dedicated to the support of public education:

“Sec. 2. PERMANENT SCHOOL FUND. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a permanent school fund.”

Const., art. VII, sec. 2

In addition to the unappropriated lands set aside by art. VII, sec. 2, the PSF also owns the beds and shores of the Gulf of Mexico within the boundary of Texas (being the first three marine leagues from shore), as well as the mineral estate under river beds and channels and in areas within tidewater limits. Tex. Nat. Res. Code (“TNRC”), §11.041.<sup>3</sup>

As the last phrase of the Constitutional section indicates, all of the rents and royalties generated by the real property interests of the PSF are also deposited into the PSF. While the GLO manages the real property interests, the funds in the PSF are managed and invested by the Texas Education Agency. The interest and earnings of the PSF itself are subject to appropriation by the Legislature each session, and constitute a large part of the State’s contribution to funding public education.

The PSF doesn’t have a staff, as such, but is managed by the Land Commissioner and the staff of the GLO. The Land Commissioner (the “Commissioner”), occupying a state-wide elected office with a four-year term, has authority as found various chapters of the TNRC, in particular Ch. 31. See, e.g., §31.051.

C. School Land Board. While the Land Commissioner is authorized by statute to grant certain interests in PSF land (e.g., easements pursuant to Tex. Nat. Res. Code, Sec. 51.291), most sales and purchases involving PSF land, and many leases, must be approved by the School Land Board (the “SLB”), a three-member board consisting of the Land Commissioner, as ex-officio chairman, and two other members, one appointed by the Governor and one appointed by the Attorney General. See, generally, TNRC, Ch. 32, as well as TNRC, Sec. 51.011(a-1). Per TNRC §32.016, the SLB meets “as necessary” on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays of each month, but it is not unusual for one meeting per month to be canceled, so that it actually meets once a month.

### **III. Renewable Energy Leasing**

Again, it is important to note, even in the context of non-hydrocarbon leasing, that the exploration for and production of the oil and gas from the PSF’s mineral estate is a very

---

<sup>3</sup> Note that the PSF is not the same thing as the Permanent University Fund. The PUF was created by the Constitution, art. VII, sec. 11. The two funds have similar goals (PUF – supporting the University system; PSF – supporting public education) but own different assets and are managed by different State agencies.

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: Doing Business with the General Land Office - Renewable Energy Leases and Surface Use (Accommodation) Agreements

Also available as part of the eCourse

[Answer Bar: Navigating a Renewable Energy Project](#)

First appeared as part of the conference materials for the  
2018 Renewable Energy Law session  
"Public Lands"