

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 6, 2009

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

VIA FACSIMILE: (512) 239-5533

2009 APR 6 PM 3:02  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: SOAH Docket No. 582-07-2163; TCEQ Docket No. 2005-1686-DIS; In Re  
Application of Galilee Partners, L.P., For Creation Of Maypearl Water Control  
And Improvement District No. 1 Of Ellis County, Texas

Dear Mr. Trobman:

I have read the Applicant's and the Executive Director's (ED's) exceptions to the proposal for decision (PFD) and proposed order and Ellis County's and the ED's replies to the Applicant's exceptions and do not wish to make any substantive changes to the PFD or proposed order. Applicant raises no new issues, and the ED has adequately addressed two additional decisions raised by the Applicant in its exceptions: *Missouri-Kansas-Texas R. Co. of Texas v. Rockwell County Levee Improvement District No. 3*, 297 S.W. 206 (Tex. 1927) and *San Saba County Water Control and Improvement District No. 1 v. Sutton*, 12 S.W.2d 134 (Tex. Comm'n App. 1929, judgment adopted).

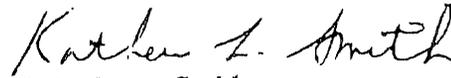
I do wish to address Applicant's claim that it may challenge Ellis County's and EPSWCD's standing to proceed in this matter at anytime based upon the decision in *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440, 443-45 (Tex. 1993). As the court noted in fn 1 at 441, "Standing concerns a party's faculty to invoke the court's subject matter jurisdiction. Once it has been invoked by a plaintiff, a court's jurisdiction is not affected by the status of defendants or intervenors aligned in interest with defendants." Lack of standing of a petitioner would deprive a court, or in this case the Commission, of jurisdiction over the proceeding. That is clearly not what the Applicant intends.

Based on the ED's reply, I do wish to make the following changes, however, to finding of fact no. 38 and conclusion of law no. 10 as set forth below.

FOF 38. EPSWCD and Ellis County do not have the funds with which to make the necessary improvements to the dam. Applicant provided no indication that it is prepared to make the necessary improvements to the dam to meet the high significant hazard criterion prior to starting construction within the breach inundation area.

COL 10. Based on the above Findings of Fact and Conclusions of Law, the Applicant has failed to meet its burden of proof on all the majority of the issues.

Sincerely,



Katherine L. Smith

Administrative Law Judge

KLS/Ls

cc: Mailing List via fax

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**STYLE/CASE:** MAYPEARL WCID NO 1  
**SOAH DOCKET NUMBER:** 582-07-2163  
**REFERRING AGENCY CASE:** 2005-1686-DIS

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**ADMINISTRATIVE LAW JUDGE**  
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REGARDING:

EXCEPTIONS LETTER (BY ALJ)

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582-07-2163

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