

**SOAH DOCKET NO. 582-07-3917
TCEQ DOCKET NO. 2007-1012-MIS**

**IN THE MATTER OF THE EXECUTIVE
DIRECTOR'S REPORT AND
RECOMMENDATION TO DESIGNATE
A PRIORITY GROUNDWATER
MANAGEMENT AREA (PGMA) FOR
NORTH-CENTRAL CENTRAL TEXAS
TRINITY AND WOODBINE AQUIFERS
PRIORITY AQUIFERS AREA**

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**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

2008 SEP 22 PM 4:10
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**MUSTANG SPECIAL UTILITY DISTRICT'S AND
MARILEE SPECIAL UTILITY DISTRICT'S
EXCEPTION TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Mustang Special Utility District ("Mustang") and Marilee Special Utility District ("Marilee") file this their exception to the PFD in the above styled proceeding.

EXCEPTION

MUSTANG AND MARILEE EXCEPT THE PROPOSAL FOR DECISION ON THE BASIS THAT IT DOES NOT RECOMMEND BOUNDARIES FOR GROUNDWATER CONSERVATION DISTRICTS THAT WILL FACILITATE DISTRICT CREATION AND CONFIRMAITON.

The Priority Groundwater Management Area Report (the "Report") states on page 97 that an eight (8) county GCD represents the most feasible, economic and practicable option. The Report was prepared and filed prior to any determination of what support, if any, the recommendation would have. The positions taken by the parties to this proceeding, the prefiled testimony and evidence together with the evidence at the hearing make one fact abundantly clear; and that fact is that the only party which favors an eight county goundwater conservation district ("GCD") is the Executive Director.

As demonstrated in Mustang's and Marilee's brief, the testimony of Kelley Mills reveals that the ED has no real preference of which of the two recommendations is selected by this ALJ for incorporation in the ALJ's Proposed for Decision.¹ The fact that the ED has no real preference and the fact that it is impossible for a GCD to be coterminous with the proposed PGMA, necessarily leads to a consideration of which recommendation will best facilitate district creation and confirmation. See Texas Water Code §35.008 (h).

The process to create a GCD is governed by Subchapter B of Chapter 36 of the Water Code. Among other requirements, a GCD is not fully formed unless and until its creation is confirmed by an election held in the area of the proposed GCD. See TWC §36.017. The positions taken and evidence received in this proceeding clearly demonstrate that an eight county GCD as proposed by the ED has no support outside of Travis County. Section 35.008 (h) demonstrates that the legislature knew that the confirmation process is wholly dependent on local support and therefore provided for and encouraged the Commission to use their discretion to "facilitate district creation and confirmation." Therefore, if the ED's witness can support either an eight county GCD or three separate multi county GCD's, then logic and reason dictate that the proposal most likely to facilitate district creation and confirmation be proposed.

¹ Q. And so that alternative approach [the 8 county area divided among 3 GCDs] is equally feasible and practicable from the agency's perspective?

A. Yes, sir, I believe so." Emphasis Supplied (Tr. 38-39)

CONCLUSION

WHEREFORE, for the reasons stated herein Mustang and Marilee pray that you revise your Proposal for Decision to recommend three (3) multi-county GCD's be formed consistant with Figure 16 of the Report.

Respectfully Submitted,

By: 

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ATTORNEY FOR,
Mustang Special Utility District and
Marilee Special Utility District

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2008, a true and correct copy of the foregoing Brief has been sent via facsimile, electronic mail, or by courier service, to the persons on the attached Service List.


John Rapier

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CHIEF CLERKS OFFICE

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MANAGEMENT AREA (PGMA) FOR §
NORTH-CENTRAL TEXAS-TRINITY §
AND WOODBINE AQUIFERS AREA § ADMINISTRATIVE HEARINGS

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QUALITY

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FROM: John Rapier for RE: SOAH Docket No. 582-07-3917
Mustang SUD and Marilee SUD

PAGES: (Including Cover) _____ DATE: 09/22/08

Attached for filing in the above matter is Mustang and Marilee SUD's Exception to the Proposal for Decision

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