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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA  
TO THE HONORABLE JUDGES OF THE COURT

We, Grand Jurors of the State of Florida, lawfully selected, empaneled and sworn, inquiring in and for Escambia County, for the Fall Term 2003, respectfully present this report.

Report of the Grand Jury  
on  
GROUND WATER CONTAMINATION

The Office of the State Attorney of the First Judicial Circuit, requested an Escambia County Grand Jury, in the interest of the public: (1) to inquire about the extent of the area's ground water contamination, and the sources and effects of such contamination; and (2) to assess the efforts of regulators in protecting the area's ground water.

In the course of our inquiry and assessment, we heard the testimony of numerous witnesses; reviewed hundreds of documents; and considered, weighed, and evaluated the information and evidence presented to us. We also reviewed and considered the work of the 1999 Special Grand Jury on Air and Water Quality.

We find that the area's ground water supply is abundant and is of good quality in its natural state, but it is highly susceptible to contamination. The source of the area's ground water, the Sand-and-Gravel Aquifer, is the sole source for the area's drinking water. The Sand-and-Gravel Aquifer is very near the land surface, which allows it to be recharged easily, but also to be contaminated easily.

In Escambia County, ground water contamination is widespread. There are a number of severely contaminated areas including six Superfund sites, dozens of dry cleaning sites, and hundreds of petroleum storage sites. In southern Escambia County, ground water contamination is substantial and has resulted in a well construction moratorium, well closures, and water filtration. More than one-half of the county's public supply wells has been contaminated with dry cleaning solvents, pesticides, or petroleum products.

The full extent of contamination is not known because it is not apparent until long after it occurs, it is difficult to measure, and it has not been fully assessed. The sources of ground water contamination, however, are generally known. Escambia County has a well documented history of ground water contamination.

Industry is the principal source of ground water contamination, especially in the southern part of the county, where numerous wells have been contaminated by industrial discharges. The most contaminated industrial sites are the Superfund sites. In Florida, only Dade, Hillsborough and Broward Counties have more Superfund sites than Escambia County. Although these sites were proposed for clean up years ago, clean up has not occurred at most of them.

Initially, the EPA questioned the efforts of consultants hired by Conoco and other defendants to study the extent of contamination and their recommendations about clean up. But by 1992, consultants noted the EPA was dependent on them in decision-making.<sup>126</sup>

In April 2004, the plaintiffs announced they had reached a \$70 million settlement with the Conoco defendants. The settlement would include payment of \$65 million for property damage,<sup>127</sup> \$3.5 million for medical monitoring, and \$750,000 to administer the settlement; damages for unjust enrichment were disallowed. The Conoco defendants persuaded the circuit court judge to deny damages for unjust enrichment on the basis the Environmental Protection Agency had approved the "no action" remedy.<sup>128</sup>

These private tort actions, if settlement is finalized, will compensate some individuals; they will not compensate the public for the damage to the water supply. Much of the information about what happened is contained in records the plaintiffs obtained before they agreed to settle their cases, but because the case was not tried, many disputed factual issues were not resolved.

#### VI Recommendations

Based on the foregoing, we, the Grand Jurors of the State of Florida, inquiring in and for Escambia County, recommend:

A. The State reclassify the Sand-And-Gravel Aquifer as a sole source aquifer in Escambia County, Florida;

B. The Northwest Florida Water Management District assess fees for permitted users, other than public water suppliers, based on the amount of ground water used;

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<sup>126</sup>In a memorandum of an August 1992 meeting, Rich Bartelt, vice president of Geraghty & Miller, Inc., wrote "We are pleased the EPA has become dependent on us - working diligently to keep decision making in the companies' hands."

<sup>127</sup>The Conoco defendants agreed, at the request of the plaintiffs, to include the excluded members of CATE in the settlement.

<sup>128</sup>The defendants sought to remove the case from state court to federal court, which the plaintiffs opposed. A federal district judge for the Northern District of Florida remanded the case to state court, holding that because the plaintiffs did not challenge the federal consent decree, there was no federal question and thus no federal jurisdiction. The federal district judge found that the plaintiffs in the Conoco suit did not seek review of, or contest, the remedy selected by EPA; they did not seek an order to direct EPA to select a different remedy; and they did not seek to delay, enjoin, or prevent implementation of the remedy selected by EPA; rather, the plaintiffs sought money damages. On remand, the defendants' filed a motion regarding the plaintiffs' unjust enrichment claim. The circuit judge granted the defendants' motion finding that the plaintiffs could not recover the savings to the defendants for not remedying their contamination by methods not approved by EPA, although he held they could recover money damages for diminution in property value.

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C. The Escambia County Utilities Authority identify and procure property that can be used for well fields;

D. The legislative delegation work to amend the Florida Constitution to obtain increased funding for the Northwest Florida Water Management District;

E. The Escambia County Utilities Authority establish appropriate minimum professional qualifications for its director and other administrators;

F. The citizens of Escambia County re-evaluate the role of, or the need for, an independent utility authority with an elected board;

G. Local governments and the Escambia County Utilities Authority create positions of Environmental Officer, with requisite professional qualifications, to deal with environmental issues relating to Escambia County;

H. Local government establish an environmental hot line for the public to report environmental violations;

I. The Escambia County Utilities Authority Consumer Confidence Reports address water quality at each well, in addition to the distribution system as a whole;

J. The State of Florida provide funding to the University of West Florida sufficient to establish and maintain a regional laboratory to test for toxic and hazardous chemicals and substances;

K. The State of Florida increase funding for the University of West Florida's environmental studies;

L. The State of Florida criminalize the willful failure of public water suppliers to report or to notify the public or customers of violations of primary drinking water quality standards;

M. The State of Florida criminalize dereliction of duty by public officers;

N. The U. S. Congressional representative and senators, in conjunction with the Department of Justice, inquire into the failure of the Environmental Protection Agency to restore the ground water resources at Superfund sites in Escambia County;

O. Local governments evaluate implementing a needs requirement for permitting businesses using underground petroleum tanks;

P. The Escambia County Utilities Authority and local government establish programs to reduce and reuse waste, including a re-cycling program;

Q. The Department of Environmental Protection identify and map all landfills, included abandoned landfills, in Escambia County;

R. The Department of Environmental Protection sample the area of Hagler well for ground water contaminants;

S. The Department of Environmental Protection review the exemptions of dry cleaning facilities;

T. Local and state regulatory authorities review health and safety procedures for removal of soil and debris from Superfund sites, or areas surrounding such sites;

U. Regulatory authorities impose fines and penalties for water quality violations by businesses so that the impact on business operations is commensurate with harm to the resources;

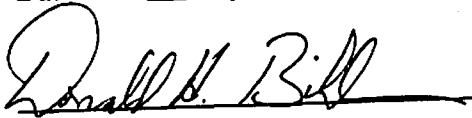
V. Local governments devise written policies and plans concerning ground water resources that will ensure a healthful, sufficient supply of ground water and drinking water for the future;

W. Regulatory authorities enforce environmental laws and allow fewer variances, exemptions, and temporary permits; and

X. Local government, in conjunction with the school district, implement a mandatory program of public information and education about protecting, maintaining and restoring the natural resources of Escambia County;

SO SAY WE ALL

Dated this 30<sup>th</sup> day of April, 2004



Foreperson

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Clerk