

The Aqua Mangrove Mitigation Bank Is Still A Bad Thing. Here's Why.

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Andy Mele

There has been a steady, cumulative erosion of this beautiful state's environmental quality by economically driven events impacting its rivers and springs, its lakes and coastlines, its native habitat and biological diversity. Some of those events have been purely market-driven, and some have been political in nature. But all of those events have one thing in common. In every case – thousands of them, large and small – the destruction and degradation are accompanied by an FDEP permit.

The [Bradenton Herald](#) has continued the news of the trial, where, ironically, the DEP was working hard to allow

developers to destroy wetlands.

Comments by OSFR historian Jim Tatum.

-A river is like a life: once taken, it cannot be brought back-

Whatever the judge said, the Aqua mangrove mitigation bank is still a bad thing. Here's why.

By Andy Mele And and Justin Bloom

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At trial ([Suncoast Waterkeeper v. FDEP and Long Bar Pointe LLP](#)), we, as the plaintiffs, were not allowed to enter into evidence the fact that the U.S. Army Corps of Engineers, Environmental Protection Agency and National Oceanographic and Atmospheric Administration all examined Carlos Beruff's proposal for a mitigation bank and deemed it unworthy of processing as a credible permit application.

And yet, there was our own Florida Department of Environmental Protection standing beside Beruff's attorneys, zealously defending the extraordinarily inflated number of wetland mitigation credits (18.01, probably representing more than \$2 million in profits) that it said could be allowed for that site. The same credits that three federal agencies rejected out of hand. Credits that will allow for the destruction of other wetlands, on other sites. And, quite possibly, allow Beruff to

bury wetlands on the Aqua site itself, on the cheap.

The most generous figure our expert witness could defensibly come up with was 4.17 credits.

Unfortunately, the combination of barred evidence, dueling expert witnesses of (apparently) equal credibility, a dense thicket of arcane rules for determining the value of banked wetlands, and a judicial system that will invariably offer deference to state and federal agencies, all added up to a miscarriage of justice. The losers are the people of Florida.

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And now the Florida Legislature has passed a bill granting FDEP approval to take over federal jurisdiction of Section 404 of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the United States, including wetlands.

Considering FDEP's role as willing handmaiden to the forces, both market and political, that are draining and polluting our aquifers, despoiling the state's waters, and encouraging the wholesale destruction of native habitat, does it make sense to give that agency the power to do even more damage?

The FDEP regulates wetlands (and most environmental elements in the state) based on Clean Water Act, Clean Air Act and other authority delegated to it by the federal agencies responsible

for administering those laws. This delegated authority is common, and most states have similar arrangements. A state is required to exercise its delegated authority on a level that is at least as stringent as the federal statutes and regulations, and preferably more stringent.

So why was FDEP fighting against us in court to justify an overtly bloated wetland score for one of its most politically connected clients? Staunchly fighting for a less stringent interpretation of the federal policies that guide wetlands mitigation? Should FDEP be enjoying any delegated federal authority, let alone expanded authority, after a performance like that?

For now, Governor Scott, in your zeal to suddenly become the environmental governor you should always have been, veto the bill granting FDEP enforcement authority over dredge and fill activities.

Then restore the roughly 500 FDEP staff you fired as one of your first sentient acts in office – the very people who were the most highly motivated, who believed in the agency's mission.

Hopefully, a subsequent administration will be able to return FDEP to that mission.

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