

Bluefield Ranch Mitigation Bank Trust v. South Florida Water Mgmt Dist., No. 4D16-3023, 2018 WL 3375373 (Fla. 4th DCA July 11, 2018)

Fourth DCA Permits a Competing Mitigation Bank to Challenge the South Florida Water Management District's Choice to Use a Different Mitigation Bank

In *Bluefield Ranch Mitigation Bank Trust v. South Florida Water Mgmt Dist.*, Bluefield Ranch Mitigation Bank Trust ("Bluefield") sued the South Florida Water Management District (the "District") and the Florida Department of Transportation ("FDOT") after they allegedly failed to comply with statutory requirements governing mitigation banking. When the District issued FDOT a permit for a road-widening project, FDOT was required to utilize a mitigation bank to develop the road. However, FDOT chose a mitigation bank that did not meet requisite statutory criteria since the bank failed to confirm that their processes would not adversely affect the public health, safety, or welfare, or the property of others at the site.

The purpose of mitigation banks is to sell "credits" in exchange for conducting environmental enhancement and preservation. These credits offset unavoidable adverse impacts to wetlands and other property within the mitigation service area from development or construction projects that require a permit from the District. A mitigation bank sells its credits to the permittee of the proposed project, who applies them to meet their mitigation requirements.

Bluefield argued that FDOT was statutorily required to purchase mitigation credits to offset the environmental impact from the road-widening project, and that the mitigation bank chosen by FDOT did not meet the statutory criteria to be considered for the project. FDOT was then required to consider Bluefield for the mitigation credits to remain in compliance with statutory mitigation requirements. When FDOT did not contact Bluefield for the mitigation credits, Bluefield sued the District for issuing the permit because Bluefield had "substantial interest" in preventing environmental harm caused by unlawful mitigation, since the site at issue was in the Bluefield watershed and service area.

The permit appeal was originally dismissed because the District found that Bluefield did not have standing, or a legal right, to challenge the permit. Bluefield asserted that it had standing because they have a substantial interest that would be affected by the District's action, since its watershed could be adversely affected by the selection of an allegedly unlawful mitigation bank. Bluefield appealed to the Fourth DCA, who agreed with Bluefield and reversed the District's decision to dismiss the permit appeal. The case has been remanded for a formal administrative hearing.