When dry is wet

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First of two parts

Over the past decade, a little-known industry has reaped a billion-dollar bounty by convincing lawmakers it is the answer to saving the nation's wetlands. The promise of the wetland mitigation banking industry - a free-market solution that's good for the environment - pleases politicians of every stripe. "It's a great way to make a living," said Allison DeFoor, who works for a mitigation banker and is vice chairman of the Florida Republican Party. "We're doing the Lord's work and getting paid for it."

The theory goes like this:
Developers are required to replace any wetland they destroy, an expensive task that often fails.

Enter the mitigation banker. He buys land that used to be a swamp and restores it. Regulators calculate how many "credits" the banker can sell, each one equal to an acre of pristine wetlands.

The developer can skip the expense and headache of doing the work himself and simply write a check to the banker.

Congress already has steered billions of federal dollars into the bankers' pockets and has ordered new rules that could double the size of the industry.

But a closer look reveals that the system billed as the best way to save the nation's wetlands often depends on accounting methods that do little to replace what's being lost.

The most flagrant: Dry land masquerades as wet.

Take the Lake Louisa Wetland Mitigation Bank in Central Florida. Its sandy hills rise 140 feet above sea level, as dry a piece of land as you'll find in the state.

But as far as the government is concerned, it's the equivalent of a muddy swamp. More than 90 percent of Lake Louisa's wetland credits are for restoring and preserving its bone-dry uplands.

Who is Lake Louisa's biggest customer? Florida taxpayers.

The state spent $2-million buying credits from the bank to make up for 102 acres of wetlands it destroyed building an expressway around Orlando.

In other words, the state wiped out swamps vital to the water supply and spent tax dollars replacing them with dry land.

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More than 40 banks in Florida cover more than 118,000 acres, from the Panhandle to the Everglades. Bankers set credit prices at whatever the market will bear, as much as $150,000 each.

"A lot of banks are square pegs pounded into round holes," said Chuck Olson, who runs the 2,693-acre Bluefield Ranch Mitigation Bank in St. Lucie and Martin counties. "A lot of them are people looking to cash out on bad pieces of property by turning them into mitigation banks."

Too many banks put turning a quick profit ahead of benefiting the environment, said Jack Allen of the Northeast Florida Mitigation Bank.

"You have to disregard all economic considerations until you've satisfied yourself that the ecology is going to be improved," he said.

Some banks live up to the promise. At Florida Mitigation Bank in Kissimmee, 1,580 acres of ranchland have been turned back into swamp. Stormwater runoff from the Disney World theme parks flows through the bank's restored wetlands, which filter out pollutants before the runoff reaches a creek.

"We're one of the few banks in the state that are 100 percent restored and successful," said owner Dennis Benbow. "All we're doing is cleaning water by pushing it through 2 miles of native vegetation."

Federal rules say that's the point of mitigation banks: "to provide for the replacement of the chemical, physical and biological functions of wetlands," which stem floods, filter pollution and replenish the water supply. When a wetland is destroyed, state and federal governments require that it be replaced, a policy called "no net loss."

Saving dry land is not the goal. The nonpartisan Environmental Law Institute in Washington surveyed the mitigation banking industry in 2002 and recommended that dry land "should not be directly counted as mitigation credits."

It hardly takes a math genius to see why. Said Jessica Wilkinson, who led the survey team: "It's a net loss if you're permitting 5 acres of wetland losses and you're only doing 2 acres of wetland restoration and 3 acres of uplands. That's a net loss of acres."

Yet Florida has allowed 10 mitigation banks to claim a third or more of their credits for saving dry land. Those 10 banks were granted a total of 5,386 wetland credits for dry land - credits that can be sold as if they were the equivalent of saving 5,386 acres of pristine swamps and marshes.

At the Lake Monroe Mitigation Bank, 73 percent of the credits are for dry land. Drier yet are the Barberville and Colbert-Cameron mitigation banks, each at 88 percent.

The driest? Lake Louisa, with 92 percent of its credits for uplands.

Who decides how to grant credits? Bankers get their federal permits from the U.S. Army Corps of Engineers and their state permits from water districts.

For 11 years, Todd Gipe reviewed bank permits for the St. Johns River Water Management District. The reason Lake Louisa got most of its credits for dry land? Gipe said otherwise there wouldn't have been much of a bank.

"More credits were given for uplands because the wetlands themselves

were not greatly improved directly," said Gipe, who last year quit his state job to become a consultant for mitigation bankers.

The designs of Barberville and Lake Monroe were overseen by environmental consultant Stuart Bradow, who said the dry land is as essential as the wet to protecting the ecosystem.

Scientists agree that wetlands benefit from a small upland buffer, but does the dry land deserve more wetland credit than the wetlands? Said Bradow, "It's a little bit of a convoluted logic."

How does giving wetland credits for dry land fit the government's mandate of no net loss of wetlands? Bradow laughed. "Yeah, well, good luck with that."

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The state approved the Peace River Mitigation Bank in Hardee County this year. Not only did the owners get more credits for saving dry land than for the wetlands, they got all 138.82 credits for doing little beyond merely preserving the land.

Because nothing is being restored, each credit sold will equal a lost acre of wetland in the Peace River area - at a time when the river, which supplies drinking water to Sarasota and Charlotte counties, is drying up.

The Peace River bank is owned by EarthBalance, a company headed by Don Ross, a member of the state Environmental Regulation Commission.

Ross said it makes perfect sense to give the Peace River bank more credits for dry land than for wet: "If you develop those uplands, you would degrade those wetlands without putting a foot in them."

Clark Hull, in charge of permitting for the Southwest Florida Water Management District, said it's right to give credit for merely preserving land because it gets paved over so fast in Florida.

In a twist on the rationale for the mitigation business, Hull said that because the law doesn't require permits to develop dry land, it is at a greater risk than

the wetlands - so a wetland mitigation banker should get more credit for saving dry land than for helping wetlands.

"It's going to be something that, you know, if I live to be 90, I'm going to look back on and see that as a good thing to do," Hull said.

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Who polices the industry? After permits are issued, the answer often is: Nobody.

Lake Louisa's owner, a company called Ecobank, founded by a politically connected developer, went bankrupt in 2004. But state regulators didn't notice for two months, and federal regulators remained in the dark for more than a year.

"We're all busy people," said Ron Silver, who oversees mitigation banking regulation for the corps in Florida. "We've got a lot to do. Do I wish they had told us? Yes, absolutely."

It took the corps longer to notice anything amiss at the Sundew Mitigation Bank in Clay County. Silver calls Sundew "the poster child" for his agency's failure to play its watchdog role.

The Sundew bank received its state and federal permits in 2001. The 2,104-acre property was mostly pine plantation, which owner Ernest Hale promised to convert back to wetlands.

Five years passed, during which Hale sold 60 credits to people destroying wetlands; 36 credits were to make up for wiping out a swamp to build a Lowe's home improvement store in Palatka.

But Hale didn't do any of the restoration work he had promised. Last year, just as his permits were about to expire, he asked for an extension so he could finally get started.

Hale said he stalled because he didn't have demand for more than the 60 credits he was given up front, without having to restore anything.

On paper, the credits from the Sundew bank made up for the destruction of wetlands. But because Hale hadn't done the work, in reality those wetlands were a net loss.

No state or federal government agency checked on Sundew, though their offices are all of 16 miles away.

Last year investigators from the Government Accountability Office searched the permit files in vain for any sign that the corps checked up on Sundew.

It wasn't the only bank the corps ignored. GAO investigators searched through 15 mitigation bank files in Jacksonville: 10 contained no evidence that the corps ever inspected them.

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Because a wetland's benefits - flood control and pollution filtering - are local, the law says a mitigation bank can't sell credits to a developer whose project is too far away.

But how far is too far?

One block of credits sold in southern Miami-Dade County went for wetlands destruction in northern Palm Beach County, some 80 miles away.

Then there's the Little Pine Island Mitigation Bank, where developer Raymond Pavelka has restored 1,600 acres of wetlands on a spit of state-owned land 1 mile off the coast of Southwest Florida.

Pavelka's customers are wiping out wetlands on the mainland in booming Lee and Collier counties. One customer bought credits from the island bank to make up for destroying wetlands more than 30 miles inland, near the Hendry County line.

"Admittedly it is somewhat removed from the majority of impacts," Silver said. Told that the island bank sells credits as far inland as the edge of the Everglades, he said, "That's not the kind of thing I like to hear."

Pavelka defended his bank, saying it's helping the entire coastal ecosystem.

But a government-funded study found that the Little Pine Island bank did a poor job of replacing wetlands destroyed on the mainland. Because of its location, the bank could not protect the mainland areas from flooding, recharge the drinking supply or filter pollution.

Said study author James Boyd, of the nonpartisan think tank Resources for the Future, "If people understood what it is we're losing when we lose these wetlands, we'd have a lot less wetlands destruction in this country."

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Bank permits say the land must be preserved "in perpetuity." Most people would take that to mean forever.

In mitigation banks, though, it means until someone needs it.

Benbow, who made the bank near Disney such a success, spent more than $6-million to launch the Wekiva River Mitigation Bank. But as he was trying to get his federal permit, he learned that the state wants to route a four-lane expressway through his bank.

"They're saying it might go through the heart of the property," he said.

If that happens, Benbow could lose as much as a third of his expected credits - enough to doom the bank.

Another Central Florida bank, the preserved-in-perpetuity Reedy Creek Mitigation Bank, is in the path of a road that a developer needs for access to a subdivision. In North Florida, two banks are in the path of a natural gas pipeline.

A less obvious threat to mitigation banks, but potentially far more serious, is what goes on around them.

The granddaddy of Florida's commercial mitigation banks took a weed-choked garbage pit owned by Pembroke Pines and turned it into a 450-acre swamp.

Florida Wetlandsbank rode the post-Hurricane Andrew construction boom and sold all its credits in six years, for $20-million.

But the wave of development that swept Broward County left the bank, once part of the Everglades, an island of green surrounded by sprawl.

"We're adjacent on three sides to areas that were either developed or were going to be developed," said bank founder George Platt, former treasurer of the state Democratic Party. "One is called the Preserve, and the developer charges an extra $10,000 a lot to look out on our swamp."

Sprawl can cut off water to a bank and block wildlife like deer and bear from using it. Because of the threat from sprawl, regulators grant banks extra credit if they're surrounded by preserved land.

In other words, credits for location rather than for restoring wetlands.

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The mitigation banking industry has convinced Congress that it's the wave of the future.

Congress has steered billions of federal dollars the industry's way by writing preferences into key legislation, including pork-heavy highway projects. It also has required the corps itself - the banks' regulators - to use the banks to make up for wetlands destroyed by its dams, canals and levees.

The bankers say their biggest congressional champion is Rep. Walter Jones of North Carolina. He declined to be interviewed.

Two years ago, Jones included language in a defense bill that required the corps to establish new rules boosting the mitigation banking industry. The number of banks, which has surpassed 400 nationwide, is expected to double.

The regulations, which could be approved by early 2007, encourage developers to make mitigation banks their first choice for making up for lost wetlands, ranking banks over previously used methods like creating wetlands on the project site, or preserving wetlands in other places.

The new rules would change how regulators define the areas where a bank can sell its credits. Until now the primary concern has been the impact on the

environment. But the new rules say, "The service area should be large enough to support an economically viable mitigation bank."

An economic viability test likely would lead to far larger service areas. Credits will be sold to developers who destroy wetlands even farther away.

The new rules also allow the corps to grant credits for dry land, as Florida does, though only "under limited circumstances."

Wilkinson, who led the nonpartisan survey of the nation's mitigation banks, said Congress and the regulators are treating the industry as if it has proven to be the best option for dealing with wetland losses.

"If the agencies are building in preferences for one type of mitigation over the other, I believe it should be based on some empirical, field-based research," Wilkinson said.

The first such research was published this year. Ohio's state environmental department studied 12 mitigation banks and found that only three could be called successful. The other nine were partial failures or total flops. Yet the report noted that "half of all credits were released before a demonstration of any ability ... to meet even the limited performance standards in the agreements."

The study concluded: "Too often, mitigation banks have simply meant more acres of poor quality wetland restoration than a comparable, small individual mitigation site. This is clearly not acceptable nor what was intended."

That's beside the point for investors, who just want in on the bonanza.

Platt, the Florida Wetlandsbank founder, said he had been contacted four times in just two months by investors wanting to jump on the mitigation banking bandwagon. He said he understands why:

"The idea is to make money."

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