

**<http://tinyurl.com/Brian-Bolves-Wins-Again>
Judge Finds Sierra Club's Fla. Mitigation Bank Suit Unclear**

By **Nathan Hale**

[Law360](#), Miami (July 28, 2015, 4:08 PM ET) -- A Florida federal court on Monday dismissed the [Sierra Club's](#) amended complaint in a suit over the [St. Johns River Water Management District's](#) release of conservation easements in a Central Florida mitigation bank, finding it fails to state an adequate claim and is too vague.

U.S. District Judge Paul G. Byron of the Middle District of Florida gave the environmental group 14 days to file a second amended complaint. He granted motions for dismissal from the water management district and intervenor Miami Corp., which owns the disputed land, and found a dismissal motion from the U.S. [Army Corps of Engineers](#) to be moot.

“Sierra Club's imprecision is particularly problematic given that the first paragraph of the amended complaint appears to challenge five distinct actions, each of which involves different defendants to different degrees,” Judge Byron wrote in part of his analysis. “Though Sierra Club might be correct in observing that the district is a necessary party to this litigation, Sierra Club must nonetheless make clear which defendants it expects to answer which counts.”

The Sierra Club sued in November after the district authorized the removal of 1,116.35 acres from the Farmton Mitigation Bank, a 24,000-acre piece of land within the larger 57,000-acre Farmton tract owned by Miami Corp. The Farmton bank, spanning into parts of Volusia and Brevard counties, is the largest mitigation bank in the United States and has been operated as both a state and federal mitigation bank since 2000, according to the suit.

Volusia County approved a comprehensive land use plan change to authorize 23,000 residential units and 4.7 million square feet of non-residential space on the Farmton tract, a significant portion of which is authorized to occur within the mitigation bank, according to the suit.

In addition to finding “fatal ambiguity flaws” regarding which parties the Sierra Club intends to target with each of its claims, Judge Byron also said the environmental group failed to sufficiently link the laws it cites to the actions it says violated them.

“Although the amended complaint spends seven pages exhaustively citing the [Clean Water Act], [National Environmental Policy Act], the [Administrative Procedure Act], and the statutes’ respective implementing regulations, there is a disconnect between the cited regulatory provisions and the defendants’ allegedly violative actions,” he said.

The first three counts of the complaint claim that the Army Corps violated Clean Water Act regulations, “However, Sierra Club leaves the court to guess as to how each supposedly illegal action violates those regulatory strictures, even though each count seemingly takes issue with distinct actions involving different defendants to differing

extents,” the judge continued.

While acknowledging that the plaintiff may lack the information it needs to make definitive allegations at this stage, he said it is not enough to extensively cite law without providing factual allegations linking them to the defendants' actions.

“We view the lawsuit by the Sierra Club as being an improper collateral attack on a number of approvals obtained by the property owner over the last several years. This ruling of the court is consistent with our view,” Miami Corp. counsel Brian A. Bolves of Manson Bolves PA told Law360, adding that he expects a second amendment will be filed but ultimately dismissed because the case is based on a flawed premise.

Counsel for the Sierra Club and the district did not immediately respond to requests for comment Tuesday.

The Sierra Club has previously said it sued the county unsuccessfully in 2011 in an attempt to stop the planned development.

Judge Byron in January allowed the Miami Corp. to intervene in the suit. The company says that the Sierra Club has put at issue its right to manage the mitigation bank.

The Sierra Club successfully moved to amend its complaint in March to **bring** the Army Corps into the suit. That move came in response to the district's **motion to dismiss**, in which it argued that the federal government, through the Army Corps, approved of the state agency's actions, so there could not be a conflict between the application of the federal and state regulatory schemes as stated by the Sierra Club.

The Sierra Club said the Corps had to be brought into the suit because it is the federal agency directly charged with administering the federal law governing the mitigation bank. The Corps has the independent authority under federal law and regulations to reject the removal of any acreage from the mitigation bank, the Sierra Club argued.

Miami Corp. is represented by Brian A. Bolves of Manson Bolves PA.

The Sierra Club is represented by Lesley Gay Blackner of Blackner **Stone & Associates**.

The district is represented by in-house counsel William H. Congdon.

The case is Sierra Club Inc. v. St. Johns River Water Management District et al., case number [6:14-cv-01877](#), in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Carolina Bolado. Editing by Kelly Duncañ.