

Clean Water Act News

Mitigation Guidelines

Local practices released in Nov 2009 to ensure bank proposals in the State of Georgia comply with National Mitigation Rule.

Draft Guidelines to Establish and Operate Mitigation Banks in GA



Courtesy of photo: Gregg Smith

“The purpose of this document is threefold: (1) to aid potential mitigation bank sponsors in the development of successful banking instruments (BI); (2) to present the roles of the interagency team in the approval process; and (3) to lay out the operational considerations in managing a bank,” said Russell Kaiser, Chief, Regulatory Division, Savannah District (SAS), U.S. Army Corps of Engineers (USACE).

Under these recommended guidelines, the Bank Sponsor is required to prepare and submit the following documents to the USACE.

The first submittal, ***Draft Prospectus***, should include information that characterizes existing site conditions; identifies potential site challenges/opportunities in the watershed; and discusses the overall feasibility of using the proposed site as a mitigation bank.

The second submittal, ***Prospectus***, should include information on the proposed mitigation plan. That is, what type of work will be proposed on the site, what data collection efforts are needed to demonstrate hydrologic conditions will support proposed work, and what long term monitoring efforts will be implemented to demonstrate success and warrant release of credits.

The third submittal, ***Draft BI***, should include a discussion on the findings of the data collection efforts proposed in the prospectus. Additional information to be included in this document is the legal provisions and operational mechanics of the mitigation bank.

Legal Provisions. “Bank sponsors will need to present a strong rationale for why they are not subject to holding a Financial Assurance (FA) that adequately covers the costs of work, including construction, monitoring and long-term maintenance/management,” said Kaiser.

The USACE will make a case-by-case determination on all proposed mitigation banks concerning the need for a FA.

If the USACE determines that a FA is required, it is the bank sponsor’s responsibility to secure the FA.

A FA may be in the form of a performance bond, escrow account, casualty insurance, letter of credit, legislative appropriation for government sponsored project, or other appropriate instrument, subject to the approval of the USACE.

Where a FA is required, it will be linked to the credit release schedule (the systematic release of credits during the construction phase and the monitoring period). However, the FA may be structured so that partial monetary release occurs after construction and/or monitoring requirements have been met.

Operational Requirements. For each bank proposal, the sponsor and the Interagency Review Team (IRT) shall identify specific bank objectives, which will be used to identify monitoring requirements.

For streams, monitoring metrics will assess physical, chemical and biological success.

For wetlands, metrics will assess buffer, abiotic, and biotic success.

Success for each variable will be measured based upon a pass/fail approach. The percentage of variables with a passing score will be used to determine if the bank has met the performance standards required for a credit release.

To achieve a 50% credit release, the cumulative score must achieve a mean score of 60%. If this minimum score is not obtained in any one year, no credit will be released. If all credits are not released during a monitoring cycle, those credits withheld may be eligible for release the following year.

If the mean score is greater than 79%, the USACE may release 100% of the total credits scheduled for release during that monitoring period.

The fourth submittal, ***Final BI***, is the compendium of all of the aforementioned documents. After the Final BI is signed by the sponsor and the USACE, it is a legal, contractual document that provides information on how the bank will be operated, monitored and tracked.

Kaiser indicated “that after the Final BI is signed and all other site protection measures are in-place, work efforts may initiate on the site, with the understanding that all other obligations will be implemented in accordance with the Final BI.”

Inside this Issue:

Mitigation Rule	3
RIBITS Rollout	3
ARRA RGPs Issued	4
2010 Initiatives	6
Personnel Changes	6
Regulatory Says Goodbye	6
Celebrations	7
Regulatory Offices and Profile	8

Mitigation Guidelines Released

What's the BIEF?

BI Evaluation and Findings



According to Justin Hammonds, Mitigation Liaison for Regulatory Division, "the BIEF, BI Evaluation and Findings, is an internal document that is used by regulatory project managers/specialists to ensure a mitigation bank proposal is consistent with the criteria provided in the Rule and across the district."

Guidelines to Evaluate Proposed Mitigation Bank Credit Purchases in the State of Georgia



Courtesy of photo: Murphy B. Winn

These guidelines have been developed to provide the regulated community with recommendations to aid in the selection of a mitigation bank to ensure adequate compensation for USACE permitted aquatic resource losses in the State of Georgia. According to Hammonds, "the Savannah District regulatory program has historically operated upon a conglomeration of both published and unpublished guidelines directing the public's use of mitigation banks to compensate for aquatic resource impacts. This guide captures the District's existing guidelines for bank use, while introducing several new initiatives to enhance the selection of mitigation banks in the State of Georgia. This document will provide increased transparency and clarity to the regulated public regarding appropriate bank selection."

This new guidance requires applicants to investigate the availability of bank cred-

its from the applicable service areas and provide a recommendation to the USACE. It is then USACE's responsibility to conduct a case-by-case review of the facts and provide a final statement on concurrence of the use of a specific mitigation bank for compensation for aquatic impacts.

In accordance with the Rule, bank credits must adequately compensate for aquatic resource functional losses based on a watershed/service area analysis, meaning resource credit trade-offs must be similar in nature and located within the same watershed/hydrologic unit code (HUC).

"Historically, the District has allowed mitigation banks to serve as compensation for aquatic resource impacts in both primary (PSA) and secondary service areas (SSA), which were spatially defined by the boundaries of one or multiple 8-digit HUCs. This guidance specifies that replacement credits should be obtained from a mitigation bank with a PSA that encompasses the impact area, if available and appropriate," said Hammonds.

Further, for banks that were not submitted to the USACE prior to the effective date of the guidance document, and if there are multiple 8-digit HUCs within the PSA, credits must be obtained from a mitigation bank within the 8-digit HUC in which the impact occurred, if available and appropriate. If appropriate credits are not available from a mitigation bank within the impact HUC, replacement credits may be obtained elsewhere in the approved PSA, if appropriate and available.

"In response to comments received from the banking community during our stakeholder coordination, we have provided a grandfathering clause which would not subject banks to the 8-digit HUC impact analysis, if those banks were proposed or authorized prior to the effective date of the guidance," said Hammonds. For grandfathered banks, the analysis may be fulfilled by assessing those banks that have available and appropriate credits within the PSA, as approved in the signed BI.

If appropriate credits are not available within the PSA, replacement credits may be obtained from the SSA. Compensation for impacts at a site that is not within either the PSA or SSA of an approved mitigation bank is not acceptable, unless approved by the IRT.

According to Hammonds, "A new, exciting initiative that has been incorporated as a part of this guidance is the development of a spatial proximity mitigation discount." If an applicant obtains the appropriate

credits from a bank whose PSA encompasses the impact area, and the bank is also located within the 12-digit HUC in which the impact area is situated, the USACE will reduce the overall compensatory mitigation requirement for the proposed impact by 10%.

RIBITS: Regulatory Division has also rolled out an interactive web-based mitigation bank tracking system. RIBITS allows the public to view service area, habitat and credit information on USACE-approved mitigation banks in any locality or watershed in the State of Georgia.

According to Katie Freas, the Regulatory Division RIBITS Program Manager, "RIBITS will allow us to more accurately track the mitigation banking program in Georgia, and increase our transparency to the agencies, as well as the public. We should see many benefits of the switch to RIBITS, including an increase in the involvement of bankers in the tracking process, more continued participation on the part of the project managers once a bank has been approved, and a decrease in time spent responding to information requests on specific banks. Potential permittees will also enjoy the ability to see which banks have credits, as well as which banks have credits that will mitigate for their proposed impacts."

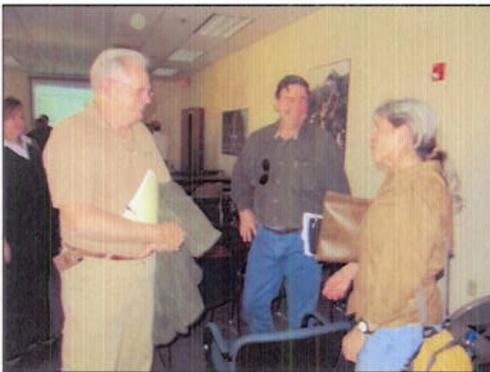
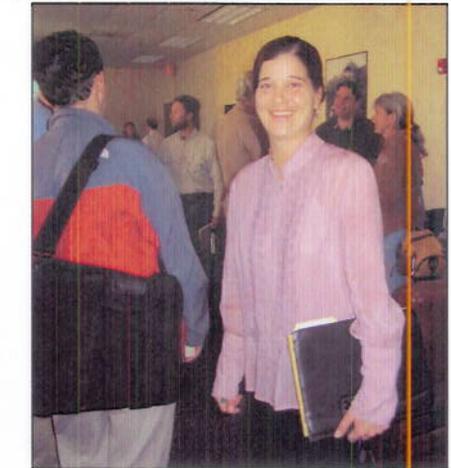
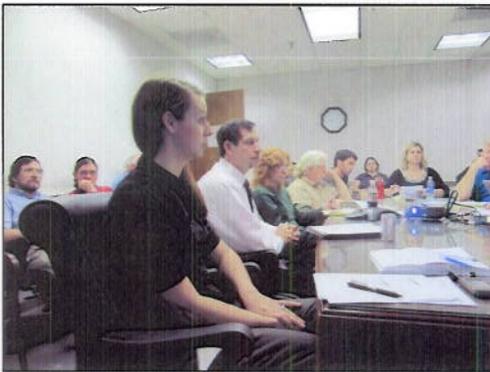
"Right now, we have approximately 70 active banks loaded in RIBITS. RIBITS is also a cyber repository for the electronic copies of all Final BIs and other supporting documentation. Furthermore, we are now beginning the process of adding all of our pending banks to RIBITS. This will allow the public and potential bankers to see what we have in the queue, which should allow for better decisions to be made when prospective bankers are determining where to locate additional banks. "Once we have all of the existing, pending banks uploaded into the system, we will make it our policy to add pending banks to RIBITS as soon as they go out on Public Notice. This should keep everyone as up-to-date as possible with our process and potential additions," said Kaiser.

Steve Martin, RIBITS Program Manager, Institute for Water Resources, indicated that "RIBITS will provide Savannah with a useful tool for managing its large and robust banking program." "I'm very excited about RIBITS as it is today, and even more excited about the new features that will be implemented in the coming months," said Freas.

RIBITS Rollout!



Regulatory Division introduced RIBITS and Steve Martin, RIBITS Program Manager, Institute for Water Resources, USACE, provided implementation workshops on Jan 19-20, 2010, at the District Office. Workshops included participants from the regulated community, bankers, consultants, and resource agency staff. More information on RIBITS is presented on page 2.



Final National Mitigation Rule

The Final Mitigation Rule was published on Apr 10, 2008, and implemented on 9 Jul 2008. Banking Instruments (BI) approved on or before Jul 9, 2008, were grandfathered in that approved BI operations are not subject to the provisions of the Rule. All BIs approved after Jul 9, 2008, must comply with the conditions in the Rule.

The intent of the Final Mitigation Rule was to standardize compensatory mitigation at a national level. *Compensatory Mitigation includes different measures taken to offset unavoidable impacts created by a discharge of dredged and/or fill material in aquatic resources.* In general, mitigation should be located within the same watershed as the impact site, and should be located in the landscape where it will most likely successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, trends in land use, ecological benefits, and compatibility with adjacent land uses. Although permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts, the District Engineer should give preference first to the use of mitigation bank credits where appropriate, second to in-lieu fee programs, and third to permittee-responsible mitigation. Compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular Department of the Army permit.

ARRA RGPs Issued!



U.S. ARMY CORPS OF ENGINEERS

NEWS RELEASE

BUILDING STRONG.

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Contact:
Billy Birdwell, Public Affairs Officer, 912.652.5014/5279
After hours: 912-677-6039, billy.e.birdwell@usace.army.mil
Jeanne Hodge, Public Affairs Specialist, 912.652.5770
Jeanne.hodge@usace.army.mil

Regional General Permits expedite process; protect environment

SAVANNAH, GEORGIA – Officials with the [U.S. Army Corps of Engineers' Savannah District](#) announced today that they will begin accepting applications for several recently approved Regional General Permits for impacts to streams and wetlands. These RGPs allow for expedited consideration of certain types of publicly-funded projects in non-tidal waters throughout Georgia. Many such projects may be funded under the [American Recovery and Reinvestment Act \(ARRA\)](#). These RGPs quicken the permitting process while ensuring only minimal impacts to wetlands and streams. Private and commercial projects cannot use the new permits.

"Projects approved under the new permits must still meet all existing goals of the Clean Water Act and the National Environmental Policy Act," said Russ Kaiser, Chief of the [Regulatory Division](#) for the Savannah District. "This special permit category expedites the process, but doesn't lessen protections."

The RGPs (numbered 105, 106, 107, and 108) support President Barack Obama's efforts to spur employment and economic recovery. The permits allow local governments to move quickly and more efficiently to begin and complete public projects, which meets the basic goals of the ARRA, sometimes known as the Stimulus Package, Kaiser said.

Contrary to some reports, the permits maintain protections for streams and wetlands. Under the new process, certain categories of local government projects that would normally require an individual permit can be accomplished with a general permit – usually a faster process. Conditions limit the types and extent of impacts to the environment authorized under the RGPs on a project-by-project and watershed basis, Kaiser said. They also require mitigation before final approval.

"This is a transparent process," Kaiser said. "The public remains informed. The permits offer balanced protection to the environment, and they may only be used for a limited number of projects and only for a limited time."

To use one of the regional permits, an applicant must receive at least two approvals. One comes from the Corps of Engineers verifying that the project meets to the requirements of the RGPs. The applicant must also obtain an individual Water Quality Certification from the Georgia Department of Natural Resources, Environmental Protection Division. In addition, if the project impacts the coastal area the applicant needs a Coastal Zone Consistency permit from Georgia's Coastal Resources Division before beginning any work under the RGPs.

The Georgia Department of Natural Resources' Environmental Protection Division has agreed to provide an "expedited review" to qualifying projects. The EPD partners with the Corps of Engineers to protect streams and wetlands in Georgia. In addition to a permit from the Corps of Engineers, projects that impact streams, rivers, wetlands or similar environments often need additional permits from the state.

The Corps revised the RGPs after a public comment period and tightened potential thresholds applicants must meet. The Corps then held a workshop to give the public a chance to review and comment on the revised proposals.

"The RGPs won't replace, supersede or increase the scope of any existing nationwide permits," said [Col. Edward Kertis](#), commander of the Corps of Engineers' Savannah District. "Rather, the RGPs make the permitting process more efficient while retaining all environmental protections for publicly funded projects while the ARRA is in effect. It allows the Corps the potential to authorize these activities, as well as other publically funded projects, under an RGP quickly with minimal impact to the aquatic environment."

Applicants can view Regional General Permits 105-108 at the Corps' Web site;
<http://www.sas.usace.army.mil/Regulatory%201.htm>.

– 30 –



ARRA dollars were used also to hire two term employees to process permit applications.

Sherelle Reinhardt joined the Regulatory Division Office located in Savannah, and William Rutlin recently joined the Regulatory Piedmont Branch Office, in Morrow, Georgia.

ARRA RGPs Issued!

Savannah District issued several Regional General Permits (RGPs) to expedite the permit process as a way to further the basic goals of the American Recovery and Reinvestment Act (ARRA). RGPs are as follows:

- 105 - Widening or improvement of existing transportation projects;
- 106 - Bridge replacement projects;
- 107 - Construction of institutional facilities such as governmental offices, schools, libraries, and museums; and
- 108 - Construction of infrastructure projects such as water treatment facilities and storm water management facilities.



Since the last issue, we have held a public workshop in Macon, and taken considerable steps to ensure potential programmatic impacts would result in impacts to waters of the US that are minimal (or less) and thus qualify for coverage under an RGP. Impact thresholds are determined for each (8-digit HUC) watershed in the State based on existing and projected development trends.

The permits may authorize up to 5 acres of wetland impact and/or 1,000 linear feet of intermittent or perennial stream impact for an individual publically funded project. In addition, the permits may authorize up to a cumulative total of 10 acres of wetland impact and/or 2,000 linear feet of intermittent or perennial stream impact for multiple publically funded projects within a single watershed (8-digit Hydrologic Unit Code). As indicated above, certain watersheds have more restrictive individual project and cumulative wetland and stream impact limits.

For streams: 40 watersheds could be impacted at a 2000 linear foot limit; 6 watersheds could be impacted at 1000 linear foot limit; and 6 watersheds would be excluded from impacts. For wetlands: 37 watersheds could be impacted at a 10-acre limit; 4 watersheds at a 5-acre limit; and 11 watersheds would be excluded from impacts. Additionally, for a single linear project, a maximum of 10 acres of wetlands and/or 2,000 linear feet of stream over multiple crossings could be authorized, where no more than 3 acres of wetlands and/or 500 feet of stream could be filled at any one crossing.

Under the new process, applicants will be required to submit, at a minimum, the following information:

- (1) description of the proposed project;
- (2) determination of waters of the U.S., including wetlands, to be filled by the proposed project;
- (3) statement regarding whether the activity would occur in or adjacent to Georgia 303(d) listed waters;
- (4) analysis of both off-site and on-site alternatives, documenting that aquatic impacts have been avoided and/or minimized to the maximum extent practicable;
- (5) confirmation that the work would be performed in compliance with applicable FEMA requirements, if the project involves fill in the 100-year floodplain;
- (6) wetland/ stream mitigation plan that meets the requirements of the new Mitigation Rule;
- (7) endangered species survey;
- (8) Phase I Cultural Resources Survey; and
- (9) documentation that at least one public workshop has been held in the vicinity of the proposed project and copies of all comments received at that meeting be submitting to Regulatory.

Additional information and other conditions are provided at: <http://www.sas.usace.army.mil/News.htm>. According to Kaiser, "only after we confirm that all required information is submitted in the application and the impacts are under the required thresholds will we complete coordination with the Federal and State agencies and determine if unavoidable impacts to aquatic resources are minimal. If minimal and other applicable Federal and State permits have been obtained, then we could authorize work."

The Augusta Chronicle. Stimulus funds to help wetlands projects

Thursday, Feb. 4, 2010

A new regional permitting program funded by the American Recovery & Reinvestment Act will expedite Army Corps of Engineers approval for certain publically funded projects that impact wetlands and streams.

The Regional General Permit program will quicken the approval process for projects in non-tidal waters throughout Georgia, and will also ensure minimal impacts to wetlands and streams. The permits are available only for publically funded projects, and cannot be used for private and commercial projects.

"Projects approved under the new permits must still meet all requirements of the Clean Water Act and the National Environmental Policy Act," said Russ Kaiser, Regulatory Division chief for the corps Savannah District. "This special permit category expedites the process, but doesn't lessen protections."

The permits allow local governments to move quickly and more efficiently to begin and complete public projects, which meet the basic goals of the ARRA, also known as the Stimulus Package, Kaiser said.

To use one of the regional permits, an applicant must receive at least two approvals. One comes from the Corps of Engineers verifying that the project meets to the requirements of the RGPs. The applicant must also obtain a separate individual Water Quality Certification from the Georgia Department of Natural Resources, Environmental Protection Division. In some cases applicants may also need a Georgia Coastal Zone Consistency permit before beginning work.

RGPs were introduced by Richard Morgan, Chief, Special Projects Section, Coastal Branch, at the "Wetlands and Water Law in the Southeast" Conference (Feb 19, 2010). Morgan explained that "process improvements would retain current levels of protection while potentially reduce process and staff time by 50%. He also stated that the RGPs were positively received by the audience."

2010 Initiatives

- Updating the In-Lieu Fee Guidelines.
- Preparing field manuals to assist regulatory staff and private consultants in performing wetland and/or stream delineations. One manual will present common hydrophytic plants as well as identification techniques for hydric soils and hydrologic indicators specific to the state of Georgia and the Savannah District, and a second for identifying stream indicators and limits.
- Developing mitigation monitoring sampling protocol and other assessment tools for monitoring mitigation site performance.
- Deploying AVATAR: an interactive web-based system with human depiction training modules that will utilize the best parts of face-to-face training with computer-based learning techniques. The goals of using an avatar in the regulatory program are to assist applicants in the completion and submittal of a permit application and to enhance their regulatory knowledge by creating a combination of activity-based training videos complimented by an avatar.

Personnel Updates

Justin Hammonds, a native of Plymouth, Minnesota, graduated from Messiah College in 1997, with a B.S. Degree in Environmental Science. Since 2006, he has been working as a Project Manager for the Savannah District, Regulatory Division, Piedmont Branch. Prior to his return to the US Army Corps of Engineers in 2006, he served two years (2004-2006) as Senior Ecologist for Ecological Solutions, Inc., in Roswell, Georgia. In 1999, he began his career as a Department of the Army Intern (Physical Scientist) in the Planning Division, Environmental Branch of the US Army Corps of Engineers, Europe District in Wiesbaden, Germany. In addition to his project manager role in the Piedmont Branch, he is currently serving as the Savannah District's Mitigation Liaison for mitigation banking within the State of Georgia.

Katie Freas, a Cartersville native, graduated from Berry College in 2004, with a B.S. Degree in Environmental Science. Since 2003, she has been working for the USACE; she began her career as a Park Ranger at the Mobile District's Allatoona Lake in Northwest Georgia. In 2007, she transferred into the Regulatory Program as a Regulatory Specialist in the Coastal Branch. She recently served as the Acting Chief of the Permits Section (effective Oct 26 through Nov 30, 2009). Katie recently married Scott Freas, originally of Raleigh, NC, and they reside in Midtown Savannah.

Megan Singleton, a McClellanville, South Carolina native, graduated from Spellman College in 2004, with a B.S. Degree in Environmental Science and from Savannah State University in 2007, with a M.S. Degree in Marine Sciences. Since 2007, she has been working for the Savannah District; she began her career as a Regulatory Specialist in the Coastal Branch. She also recently served as the Acting Chief of the Permits Section (effective Dec 1-31, 2009).

Mark Padgett, a Georgia native, graduated from Shorter College in Rome, Georgia in 1980, with a B.S. Degree in Environmental Science. He worked for the National Park Service as a Park Ranger at Fort Pulaski National Monument from 1980 to 1990 and has worked for the Savannah District Regulatory Division the past 19 years. He is currently a Senior Project Manager in the Coastal Branch. He is currently the Acting Chief of the Permits Section (effective Jan 1, 2010).

Adam White, a New Jersey native, graduated from Rutgers University, with a B.S. Degree in Natural Resource Management. Since 2009, he has been working for the Savannah District as a Regulatory Specialist in the Piedmont Branch.

Regulatory Says Goodbye

William Fonferk retired on Dec 3, 2009, after 37 years of government service.

Bill started his career as an Environmental Specialist with Nashville District in 1978, transferred to Planning Division, Jacksonville District in 1989, and moved to Savannah District in 2005. He retired as the Chief, Special Projects Section, in the Morrow Office.

He has left many footsteps along the way. In Nashville, he developed regional NWP conditions to protect the endangered Nashville Crayfish. In Jacksonville, he was most noted for his contribution for creating the District's Migratory Bird Protection Plan, coordinating sea turtle issues with the NMFS, and representing the District on the Agency on Bay Management. In Savannah, he created several initiatives that would help the Corps with permit compliance. He played on several championship golf and softball teams and was founder of the Chili Cook-off Contest.

Bill graduated from the UW-Green Bay with a B.S. in Environmental Science.



Dr. Jeffrey King recently accepted a position with the Planning Division, Mobile District.

Jeff served the Savannah District for 4 years as a Regulatory Project Manager and 1 additional year as Chief of the Permits Section within the Coastal Branch. As Chief, he worked on several policy issues and supervised a staff of seven. As a Project Manager, he also worked on numerous permitting issues arising from complex projects proposed in the coastal counties of Georgia.

Prior to joining the Corps, he worked as a post-doctoral research engineer/scientist at the Savannah River Ecology Laboratory and Savannah River National Laboratory in Aiken, South Carolina. He has also worked as an environmental consultant with a firm that specializes in coastal-based projects.

A graduate of Florida State University, Dr. King holds a B.S. in Biochemistry. He also holds a M.S. in Environmental Toxicology from Johns Hopkins University and a PhD in Environmental Engineering from Georgia Institute of Technology.



LaNeesha Scott is leaving the Savannah

District to join her husband in Seoul, South Korea. LaNeesha is a Regulatory Specialist in the Piedmont Branch of the Regulatory Division, located in Morrow, Georgia. She has been with the District since October 2008.

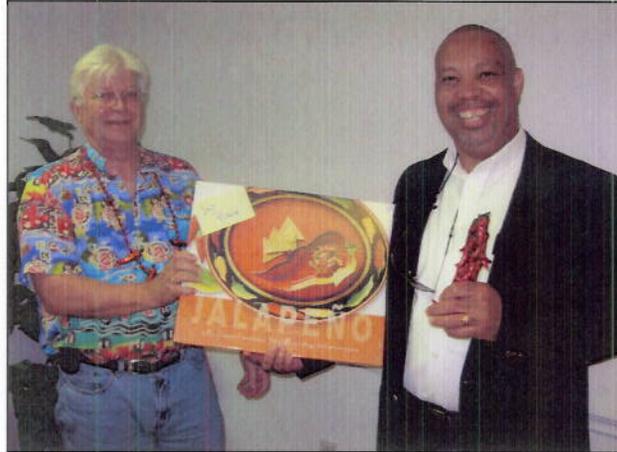
As a Regulatory Specialist for the Piedmont Branch, LaNeesha was responsible for reviewing application requests for Department of the Army authorization to discharge dredged or fill material into waters of the United States and processing permit application requests. She has shown great leadership as a member of the office's Activity Committee by planning special office events as well as managing the funds of the committee.

Prior to coming to work for the District she worked for the Georgia Environmental Protection Division in Atlanta, Georgia, for more than fourteen years, as an Environmental Specialist/Compliance and Enforcement Officer.

LaNeesha has a B.S. in Environmental Health Sciences from the University of Georgia.



4th Annual Chili Cook-off



Piedmont Office held it's 4th Annual Chili Cook-Off on 12 Nov 2009. Judge, COL Brumfield, samples the first bowl (upper left). All judges are presented in upper right photograph. Chili master, Bill Fonferik (left) presents Ed Johnson (right) with the red hot chili-pepper trophy (center photo). Staff are shown in other photos.



Regulatory Division



On 17 Dec 09, Coastal staff celebrate a annual luncheon, sing along, and gift exchange to kickoff the spirit of the holiday season.

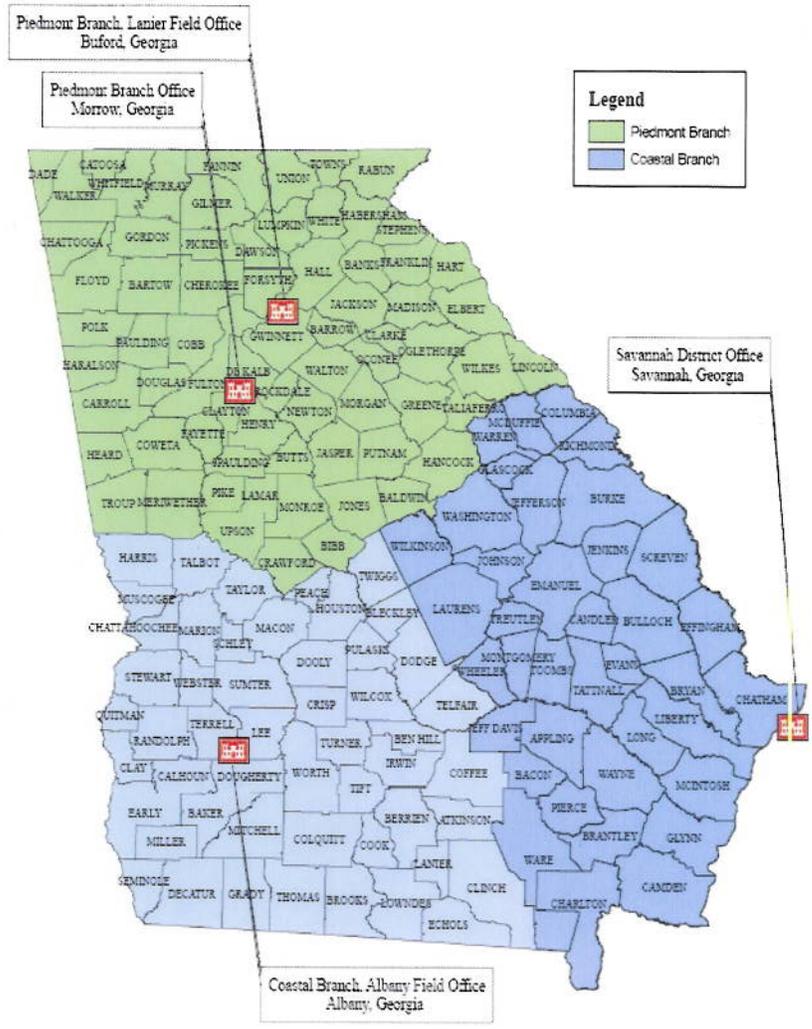
District Offices

ALBANY FIELD OFFICE
 1104 N. WESTOVER BLVD UNIT 9
 ALBANY, GA 31707
 1-229-430-8566/67

SAVANNAH DISTRICT OFFICE
COASTAL BRANCH OFFICE
 ATTN: CESAS-RD-C
 100 W. OGLETHORPE AVE
 P.O. Box 889
 SAVANNAH, GA 31402
 1-800-448-2402

LANIER FIELD OFFICE
 ATTN: CESAS-RD-P
 P.O. Box 528
 BUFORD, GA 30515
 1-770-904-2365

PIEDMONT BRANCH OFFICE
 ATTN: CESAS-RD-P
 1590 ADAMSON PARKWAY, SUITE 200
 MORROW, GA 30260
 1-678-422-2731



Do you know your Regulatory Staff?

Carol Bernstein, a native of Washington, D.C., graduated from John Hopkins with a M.S. in Environmental Science and from the University of Arizona with a B.S. in Renewable Natural Resources. Carol has been working for the Savannah District since 2001.

Carol is chief of the Coastal Branch of the Savannah District Regulatory Division. Last year, she completed a developmental assignment at Headquarters USACE in the Regulatory Community of Practice and earlier served as Acting Chief, Mobile District, Regulatory Division. Ms. Bernstein joined the Baltimore District in 1994 and worked in Planning Division on civil works and military planning projects, and on Hazardous, Toxic and Radioactive waste projects (Superfund, FUDS, FUSRAP) in Engineering Division. She has a total of 16 years with the Corps.



Prior to joining the Corps, she worked as a field biologist, with a local civil engineering/ planning/ surveying firm in Maryland, and as a wildlife biologist with a non-profit membership coalition focused on corporate land stewardship. She also holds professional registration as a certified Professional Wetland Scientist from the Society of Wetland Scientists.