



Caution Ahead: Reservoir Roadblocks and Detours

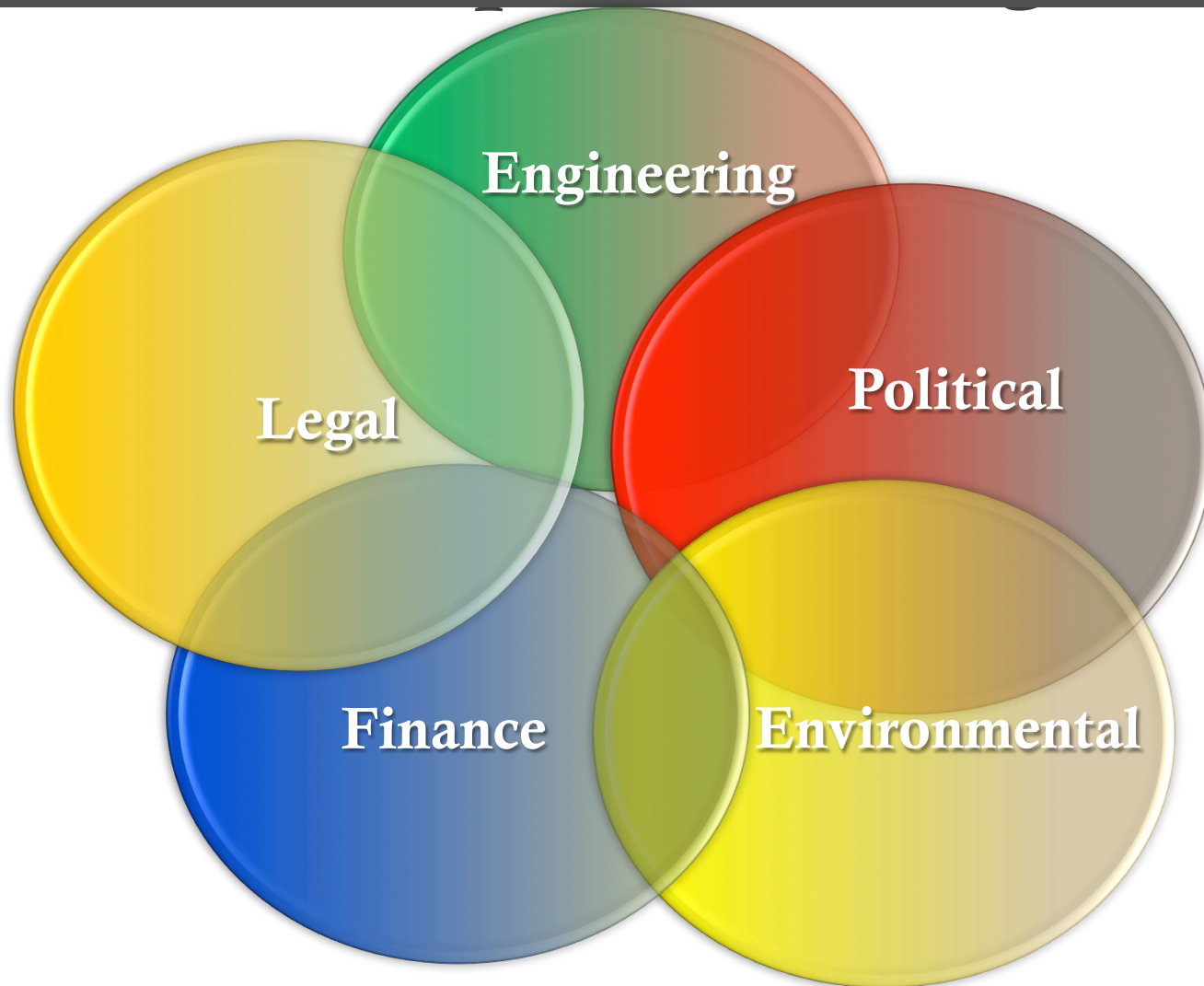
February 27, 2015

Laura Wahoske Benz

Laura@LWBenz.com

678-778-2448

Multi-Discipline Management





We can't discuss anything fairly - He just keeps moving the goalposts!



Regulation Roadmap



§ 404 Permitting

- Clean Water Act (CWA) prohibits discharge of any pollutant into waters of the United States
- Dam by definition is a water-dependent activity

Endangered Species Act 7(a)(2):

- Federal agencies shall insure actions not likely to:
 - Jeopardize continued existence of species OR
 - Result in destruction/adverse modification of designated critical habitat

NEPA (42 U.S.C. § 4321 et seq)

Section 408



- Circular issued July 31, 2014 (expires 7/31/16)
- Proposed alteration does not impair the usefulness of the USACE project, which includes retaining the project's authorized purpose, and is not injurious to the public interest.
- Must be requested by or come through the non-federal sponsor. If a USACE project has multiple non-federal sponsors in this category, concurrence in writing must be obtained by all non-federal sponsors prior to USACE approval of a Section 408 request.
- Routine operations and maintenance (O&M) activities specified in the O&M manual and performed by the non-federal sponsor or USACE do not require permission from USACE under Section 408.
- 9 step process

Before you start:



- Minimization Audit/Guidelines:
 - Region IV - EPA 2010 Water Efficiency Guidelines –
 - Compliance with
 - GA EPD audit checklist &
 - Respective Water Basin Plans
- 2004 Partnering Agreement
 - Establishes division of oversight between agencies within 404 process
 - New agreement to be released soon - may modify responsibilities or process



Start the Journey: Develop Project Purpose

- **Define Service Area**
 - HB 406
- **Determine Water Supply Need**
 - Population & Demand
 - 50-year planning horizon





Population & Usage = Need

Which Way? What Data?

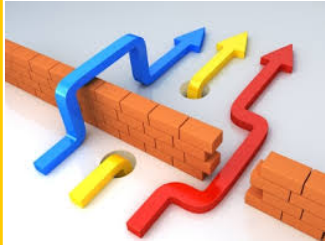
- Population: OPB 2012 projections vs. independent study vs OPB 2015 projections?
- Usage: Actual, projected, contained in regional plans (ex. 130 pgcd w/conservation)
- Expiration dates for Need Letters? Reliance??
 - Continuous modification of population projections results in having to reassess “need” that drives project purpose analysis under NEPA
- Environmental vs Political Boundaries:
 - Interbasin Transfer – acceptability is project specific
- Purpose
 - Water supply vs multi purpose (Supplemental downstream flows)



Technology & Alternatives

- Water Conservation – EPA guidelines / State protocols
- Groundwater – Agency perspective on investigation differs
 - Piedmont vs Coastal
- Recycle and Reuse of Wastewater –
 - Omniprocessor?
- Purchase of Water – Amount of Supply vs length of availability. Attempts to force the purchase of water to delay permanent long-term solutions





Downstream Flow

Method of Analysis:

- Hec -5 & Res Sim vs. EPD simple model

Factors for Consideration:

- Drought Contingency
- Economic Development

Reviewing Agency:

- Past: USACE & EPD
- Now: EVERYONE

Jurisdictional Determination

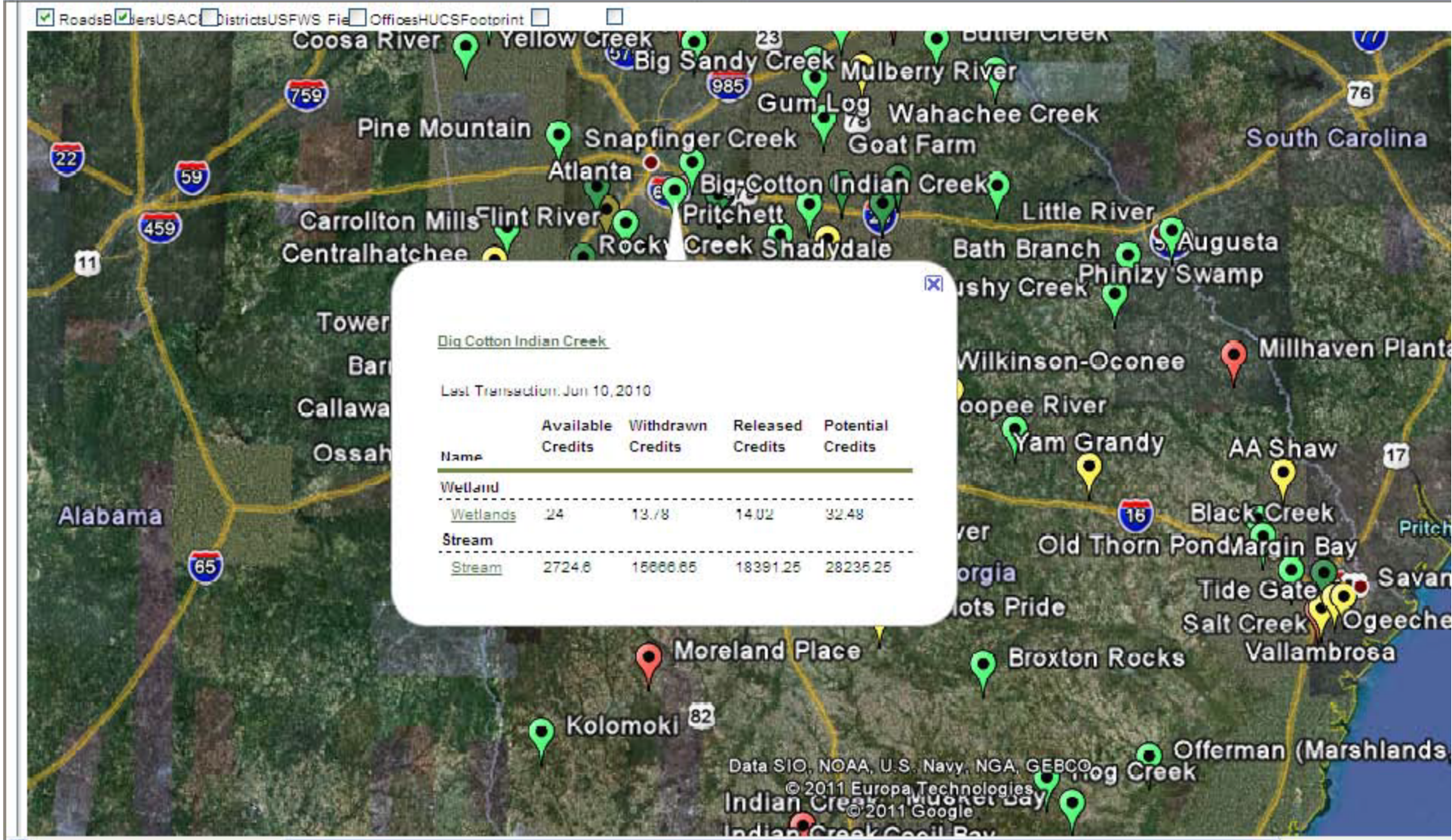
- Current:
 - 1987 Corps Manual
 - Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region
 - Expanded Preliminary Jurisdictional Delineation
- Future:
 - April 27, 2011 EPA guidance on jurisdictional waters

2011 Standard Operating Procedure

- According to the Rule, “the amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions. In cases where appropriate *functional or condition assessment methods* or other suitable metrics are available, *these methods should be used* where practicable to determine how much compensatory mitigation is required.”

Mitigation

- **March 2008, the *Compensatory Mitigation for Losses of Aquatic Resources: Final Rule* (commonly referred to as the “Mitigation Rule”) was approved becoming effective on June 9, 2008.**
 - **Mitigation Bank Selection**
 - **Bank purchase guidelines (11/18/2009)**
http://www.sas.usace.army.mil/Portals/61/docs/regulatory/MB_creditpurchaseguide.pdf
 - **In Lieu Fee**
 - **Permittee Responsible Mitigation**
- **SOP**



In Lieu Fee

- **1997 In-Lieu Fee Program**
- **May 12, 2010 programmatic revisions were reflected in PN to comply with new rule requirements.**
- **August 22, 2011 “Guidelines to Establish and Operate In-Lieu Fee Programs in Georgia”**
 - **June 2013: GA Land Conservation Center program expired**

Georgia Land Trust In-Lieu Fee Program

Service Area	Stream Credits	Wetland Credits
Upper Savannah 03060102-0105	--	55 (\$21,500)
Withlacoochee 0311xxxx and 0312xxx	1,118 (\$135)	--
Upper Chattahoochee 03130001	--	14 (\$34,000)
Upper Coosa 03150101-0103 and 03150105	--	359 (\$22,600)
Etowah 03150104	--	120 (\$23,000)
Tennessee 06xxxxxx	854 (\$150)	24 (\$34,000)



Financial Assurances

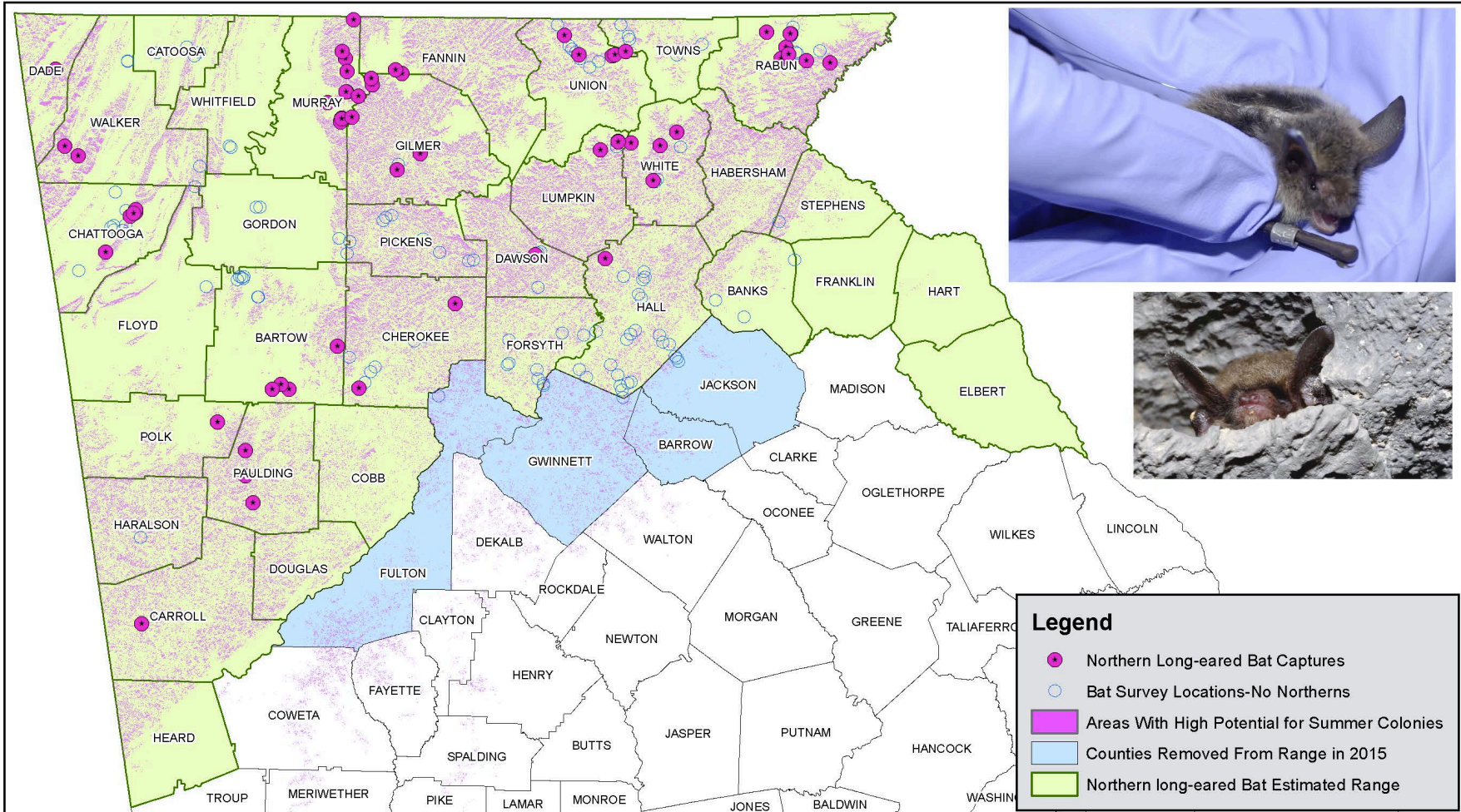
- No flexibility within permit documentation
- During Long Term Monitoring and Maintenance
- Interest rate vs. initial investment
- Administrative Fees & Active portfolio management
- National Fish and Wildlife Fund (Common Fund)
- Not required unless bank sponsor or permittee responsible mitigation



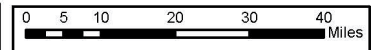
Informal Policies

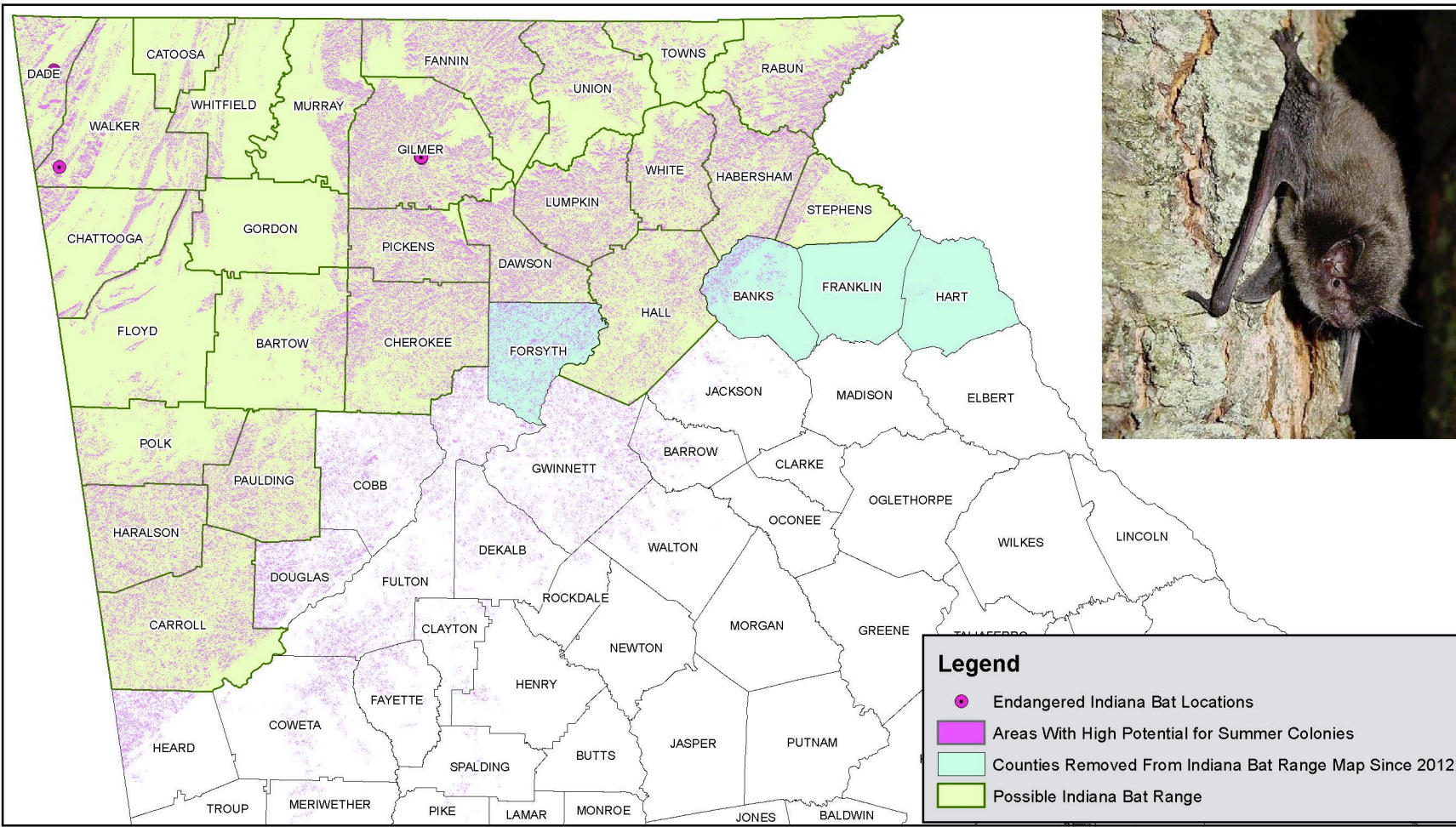


- Personnel turnover & Change in leadership have resulted in the following:
 - Removal of project management level decision making
 - If an agreement was made but not in writing – not honored
 - Limited grandfather designations or ability to maintain reliance upon regulations at time of submission
 - Regulations applied when agency decision made NOT when documentation was submitted and request made
- Limited staffing – project manager changes resulting in delays and no continuity
 - No time clock once in the 404 process = inequitable response times of agencies vs applicant

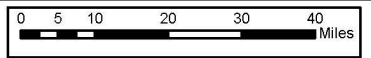


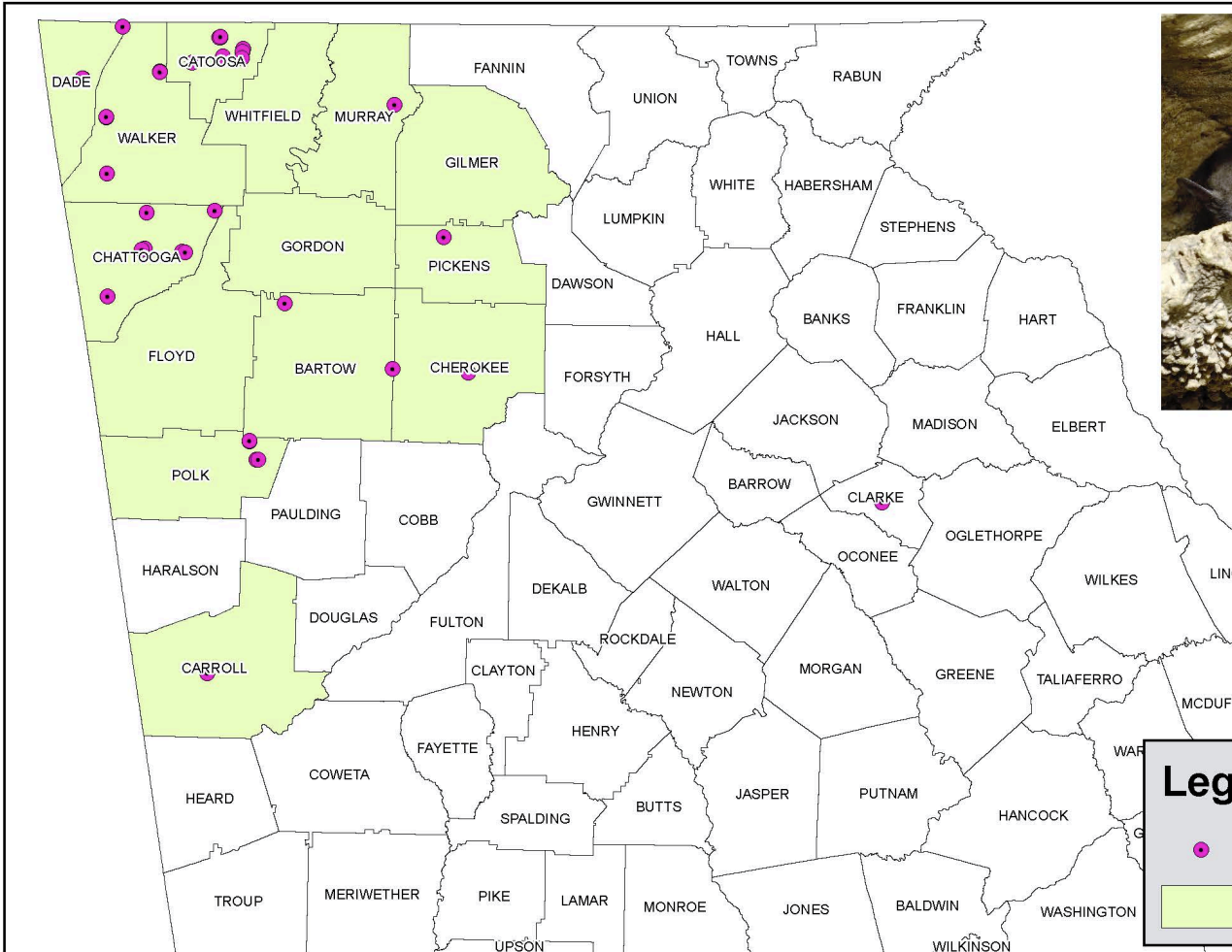
2015 County Range Map for Northern long-eared myotis (*Myotis septentrionalis*), Georgia. Subject to change.





2015 County Range Map for Endangered Indiana myotis (*Myotis sodalis*), Georgia. Subject to change.

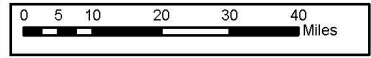




Legend

- Endangered Gray Bat Locations
- Gray Bat Range

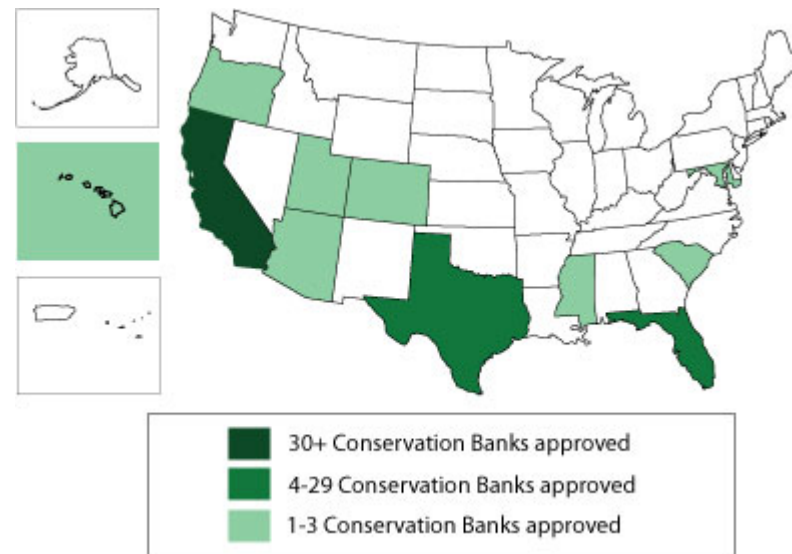
2015 County Range Map for Endangered Gray Myotis (*Myotis grisescens*), Georgia. Subject to change.





Species Mitigation

- Relocation
- Monetary
- Site Restoration and/or Preservation
- Purchase of Species Credits



Financial

- GEFA
- Private-Public Partnership
- Mitigation assistance through virtual banking?
Development of alternative assistance programs

Goal :
Not to feel like this

