



Severed Mineral Rights: How they affect Conservation Easements

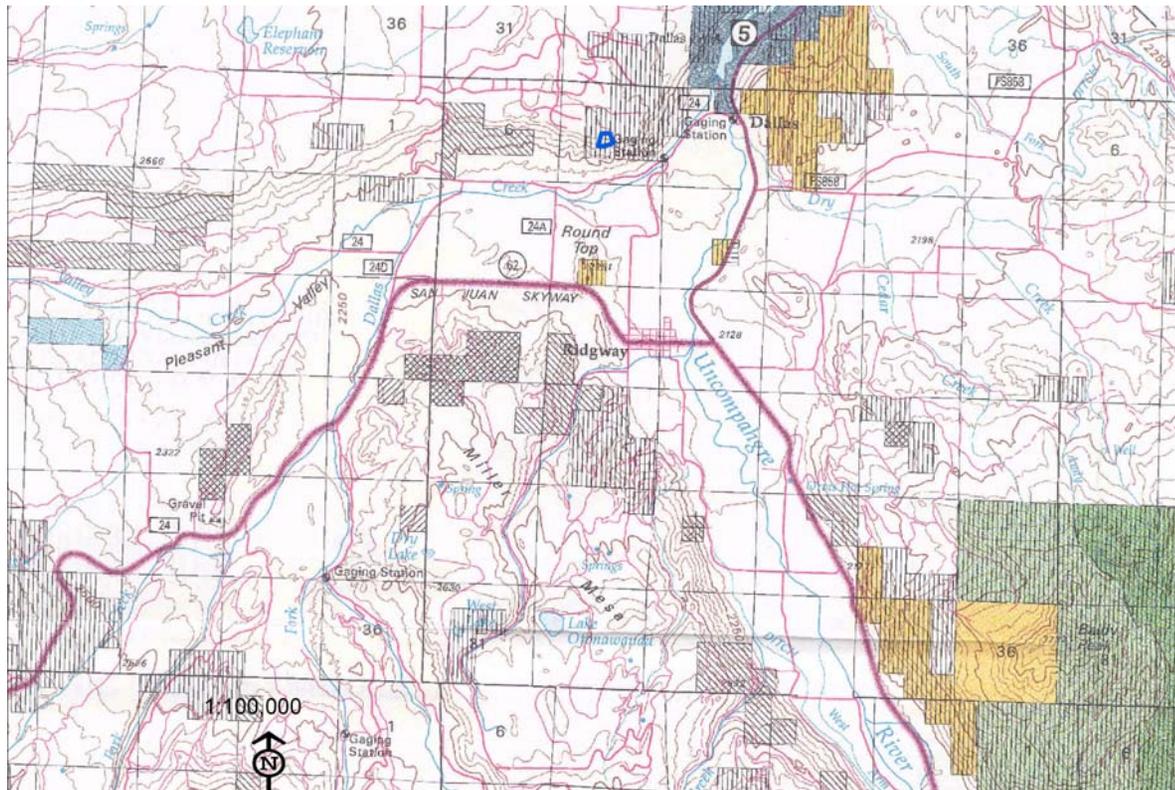
- Determining Severed Mineral Rights
- Deductibility of Charitable Donations
- Determining the Mineral & Mining Potential
- Impacts to Conservation Values

Definition of Severed Mineral Rights (Split Estate)

- Mineral rights are the right of ownership of the mineral resources under/in a tract of land (generally subsurface).
- A mineral interest is severed if the surface owner does not own all or part of the minerals. Called split estate since portions or all of subsurface estate is not owned by the surface estate owner. Surface owner cannot deny mineral owner right to their mineral estate.
- Land surface (surface estate) can be owned by federal, state, local governments and agencies such as BLM, USFS, DOE, Colorado, Municipalities or “Private” landowners.
- Mineral estate can also be owned by federal, state, local governments and agencies such as BLM, USFS, DOE, Colorado, Municipalities or “Private” owners.

Mineral Estate ownership can be very complicated.

- Different owners can own all the rights to specified minerals, a percentage of the rights to all the minerals, or a combination. Portions of a property can have privately reserved mineral rights or government-reserved rights. Sometimes only royalties are reserved.



- Private reservations are trumped by government reservations made when land was patented.

Two Ways to Split or Sever



Mineral Rights

- Split by **Deed** --party owning both the surface and subsurface rights sells or grants by deed all/part of the mineral rights. Recorded by county register of deeds. (Generally used by private parties.)
- Split by **Reservation** --party owning both the surface and subsurface rights sells or grants by deed or patent the surface rights of the property but retains all/part of the mineral rights. Recorded by county register of deeds, if Federal Patent then also at General Land Office. (Used by federal & state governments, railroads, lending institutions, private parties.)
- Surface owner cannot deny mineral estate owner's property rights.



Split Estate may affect Tax Deductibility part 1

- IRS regulations deny deductibility of a charitable donation where the possibility of surface mining is NOT found by a geologist to be **“so remote as to be negligible.”**

- IRS code Title 26 Subtitle A Chapter 1 Subchapter B Part VI Section 170 (h) (5)
 - (A) “A contribution shall not be treated as exclusively for conservation purpose unless the conservation purpose is protected in perpetuity”.
 - (B) “No surface mining permitted”



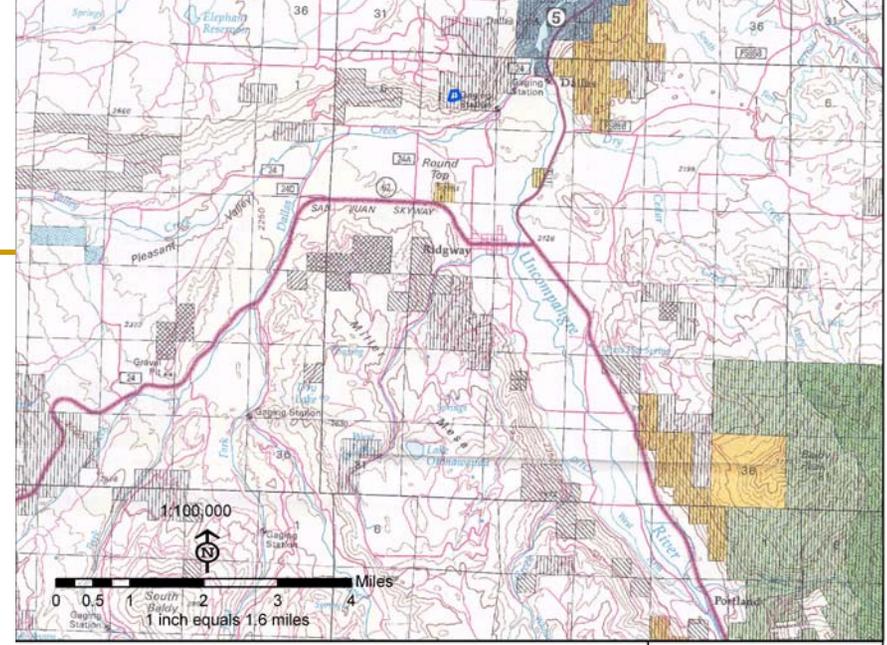
Split Estate may affect Tax Deductibility part 2

- (A) “A contribution shall not be treated as exclusively for conservation purpose unless the conservation purpose is protected in perpetuity”.
- (B) “No surface mining permitted”
- (I) Where there is a retention of any “qualified mineral interest, subparagraph (A) will not be treated [by IRS] as being met if at any time there may be extraction or removal of minerals by any surface mining method.”
- ***Qualified mineral interest = subsurface oil, gas, or other minerals and the right to access such minerals***



Split Estate may affect Tax Deductibility part 3

- U.S. Treasury Regulations Section 1.170A-14: “...The requirement that the conservation purposes be protected in perpetuity is not satisfied if any method of mining that is inconsistent with the particular conservation purposes of a contribution is permitted at any time.”
- “A deduction will not be denied in the case of certain methods of mining that may have limited, localized impact on the real property but that are not irremediably destructive of significant conservation interests.”

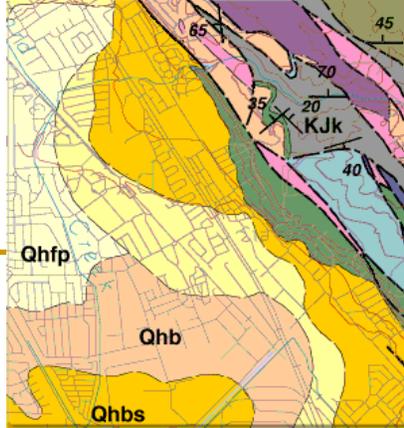


Identify Severed Mineral Rights (Split Estate)

Find severed mineral rights early! If there are severed mineral rights there is no guarantee of remoteness.

- BLM 100K Mineral Management Status Maps (show private, state, federal mineral estate).
- Recent Title Commitment/Insurance with correct legal descriptions (shows private party reservations & other government reservations).
- County Assessor's Office—mineral estate holder should be paying taxes
- General Land Office Patent Records

<http://www2.nature.nps.gov/geology/usgsnps/gmap/gmap1.html>

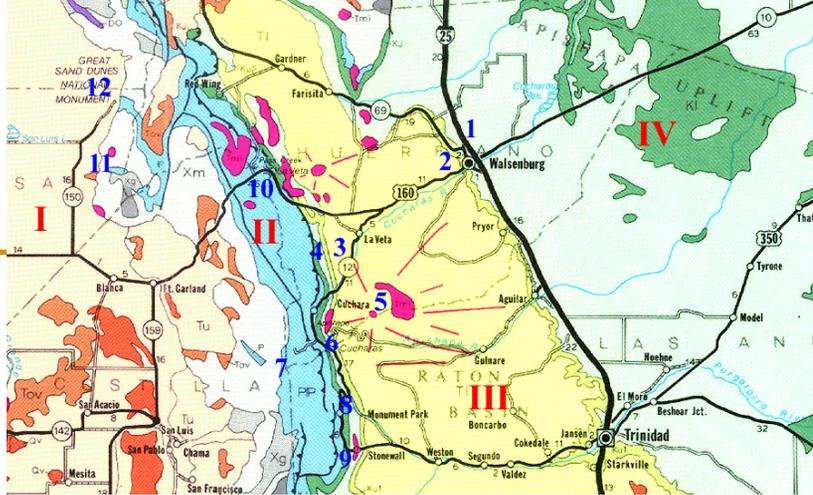


Minerals Assessment Report ("Remoteness Letter")

MA should research Locatable, Leasable, & Salable Resources (if severed)

- Opinion should be based on geologic potential and potential for economic reserves: resources having economic quality, quantity, and conditions of accessibility.
- "Remoteness" opinion is driven by science and data.

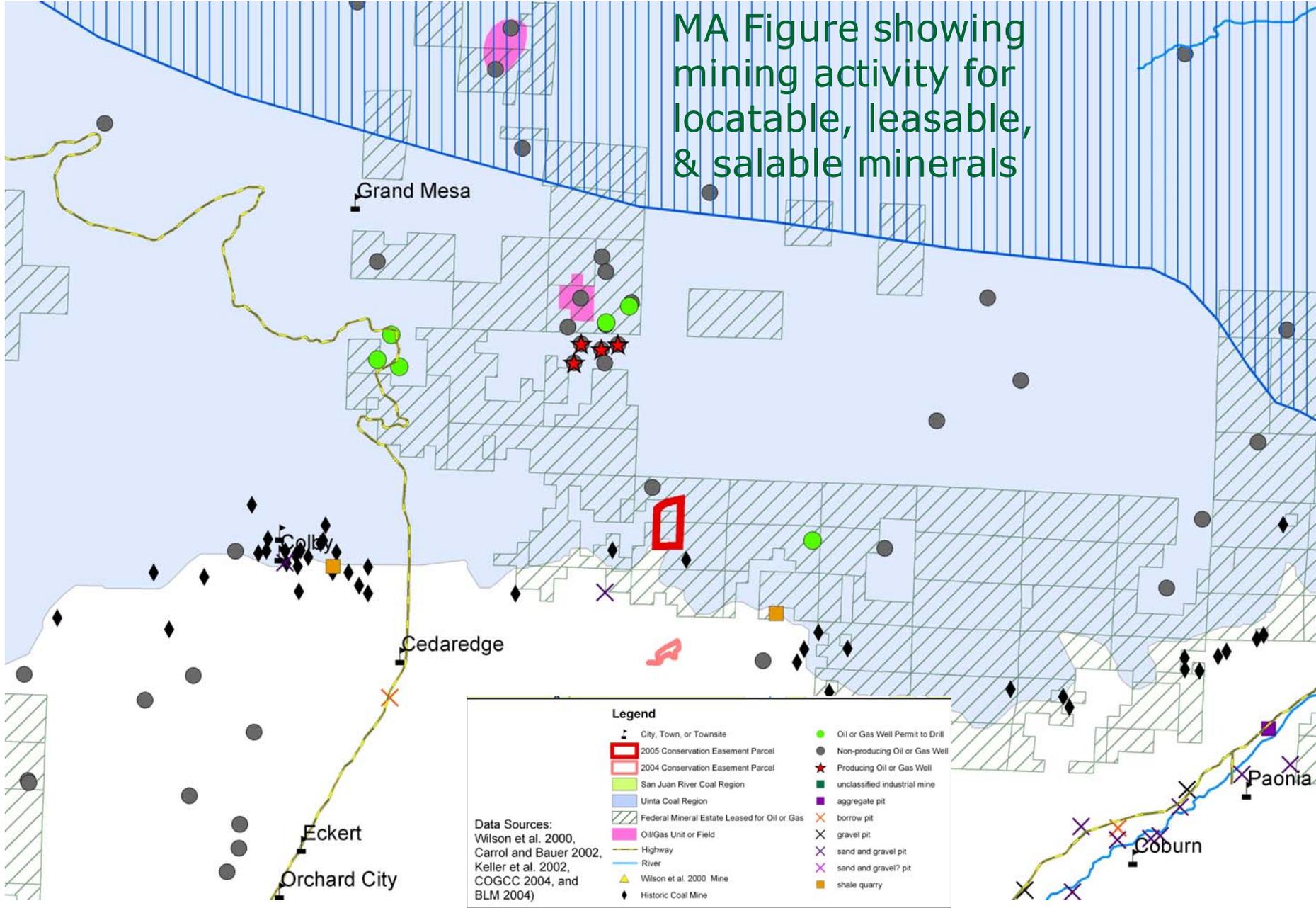
[http://academic.emporia.edu/abernjame/field/rocky_mt/rocky.htm](http://academic.emporia.edu/abernjame/field/rocky_mt/rocky_mt/rocky.htm)



Locatable, Leasable, & Salable Mineral Resource Potential

- Acceptable data include published U.S.G.S. reports/maps; C.G.S. reports/maps; National Coal Resource Assessment (NCRA) on-line; National Oil Gas Assessment (NOGA) on-line; COGCC well, facilities, and permit data; federal leasing activity, mining claims info (BLM); Geocommunicator mapper; Division of Minerals & Geology databases; mining databases.

MA Figure showing mining activity for locatable, leasable, & salable minerals



Locatable Minerals



Locatable Minerals include all minerals subject to exploration, development, and production under the 1872 Mining Law. Includes metals (gold, silver, lead, zinc, copper, etc) and industrial minerals (sulfur, fluorspar, gypsum, etc). Basically everything not excluded by other laws.

Usually claims are in mining districts.

- Lode claim—hard rock, veins, fissures, lodes, disseminated ore bodies (metals, uranium); 1,500' x 600'
- Placer claim—unconsolidated material (gypsum, limestone); 20 acres
- Can be mined using surface or subsurface methods depending on geologic factors.
- It is common for the U.S. Government to reserve the “right of the proprietor of a vein of lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises...” at the time of granting a land patent. This is not “viewed as a grant of a right for surface extraction” (Kueter 2002)



Mining Districts of Colorado and Colorado Mineral Belt

- Areas containing coal-bearing geologic formations
- Active Mine
- Inactive Mining District



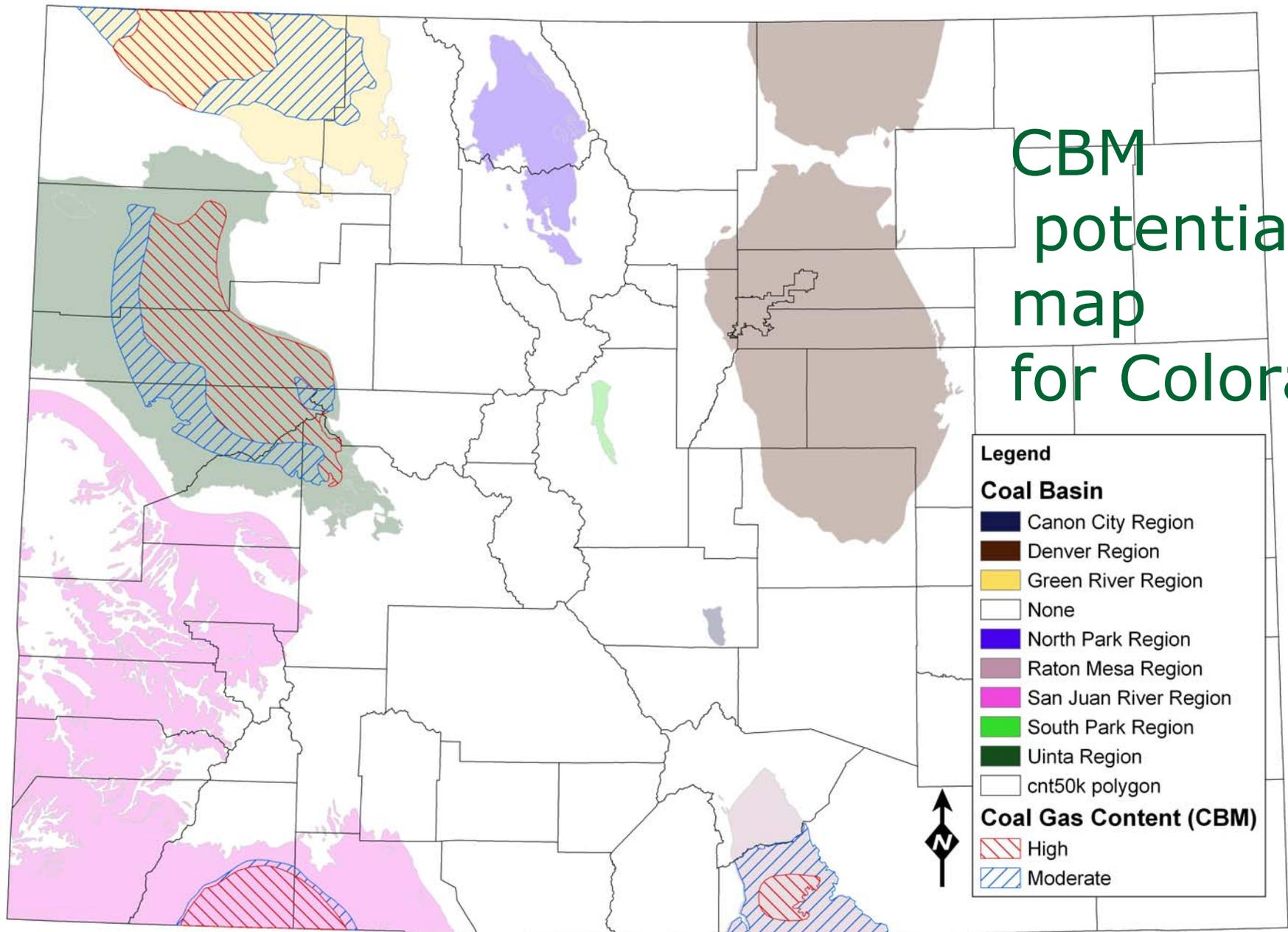
Leasable Minerals

Leasable Minerals include fuels and certain other minerals regulated under the Mineral Leasing Act of 1920 which excluded them from the 1872 Mining Law. Geothermal Steam Act of 1970 added Geothermal Energy to list of Leasable Minerals.

Usually occur in “fields”.

- Coal, oil, gas, oil shale, potash, sodium, native asphalt, bituminous rocks, phosphate coal, geothermal energy
- Can be mined using surface or subsurface methods depending on geologic factors (oil/gas/CBM/geothermal energy mined as subsurface fluids).

CBM potential map for Colorado



Oil/Gas potential map for Colorado

Legend

2002 CGS Oil/Gas Field

BLM Oil/Gas Potential

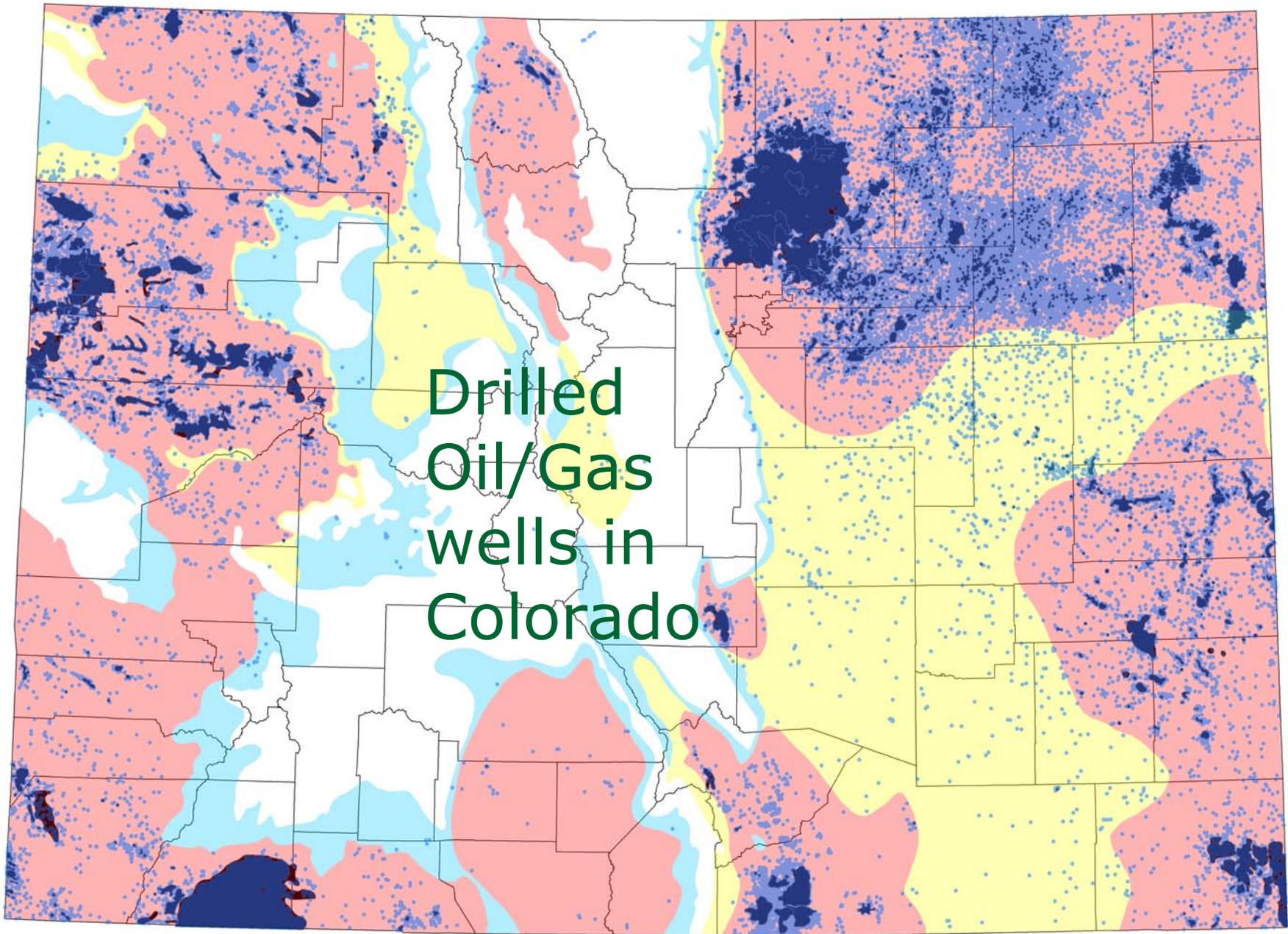
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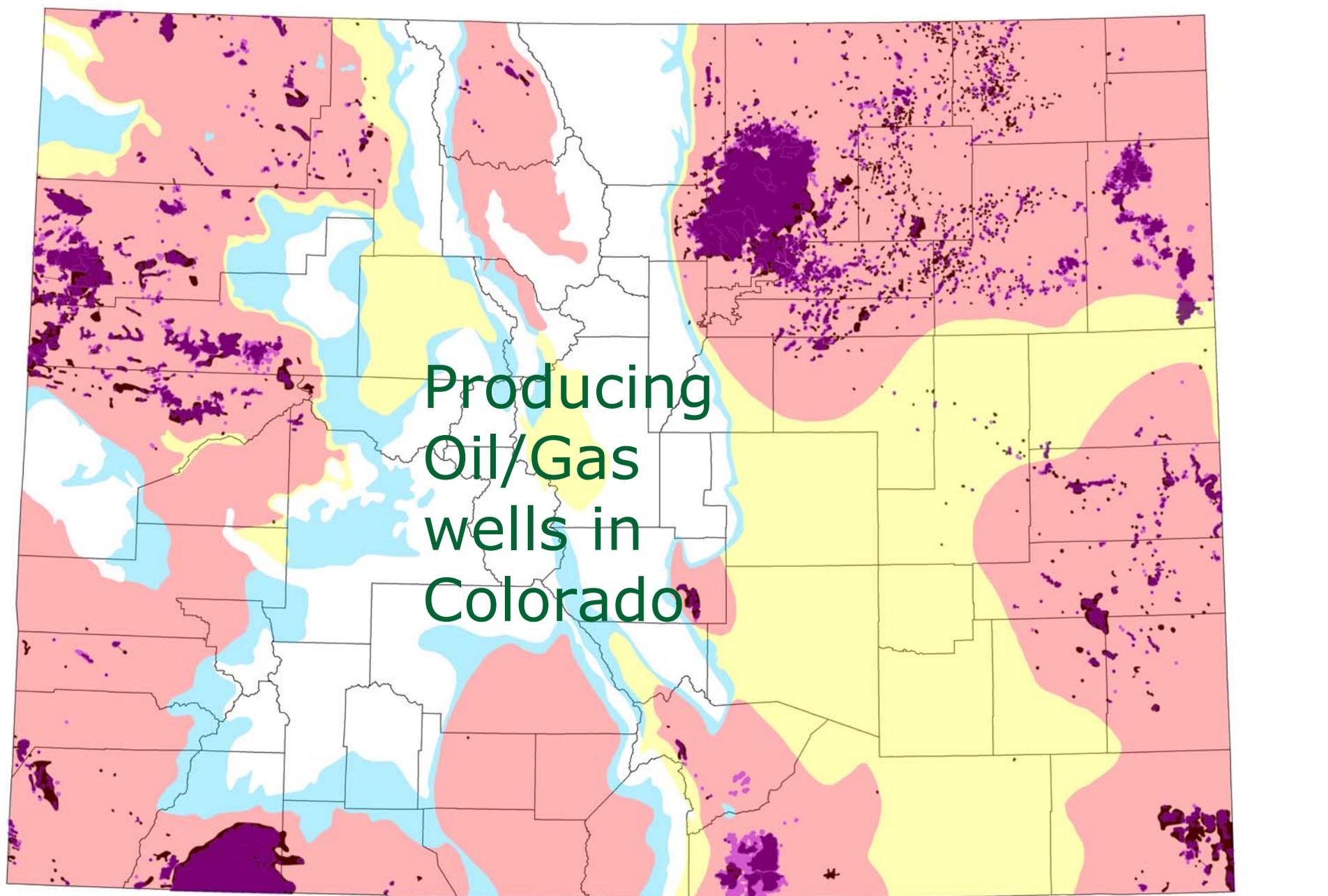
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County Boundary

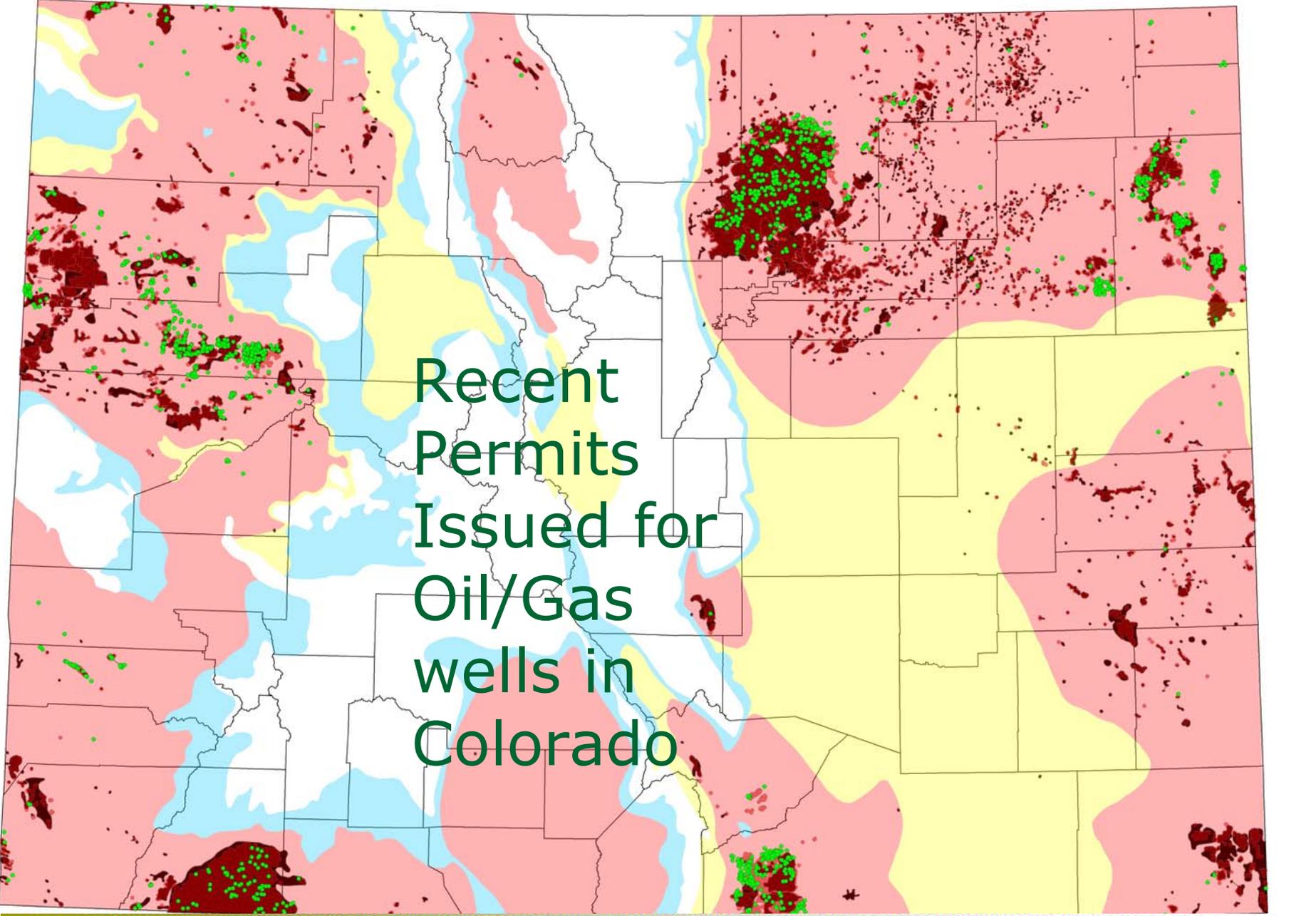




Drilled
Oil/Gas
wells in
Colorado



Producing
Oil/Gas
wells in
Colorado



Recent
Permits
Issued for
Oil/Gas
wells in
Colorado



Salable Minerals

Minerals regulated by the Federal Materials Act of 1947 and the Multiple Surface Use Act of 1955 must be purchased from federal government except where mineral rights are privately owned.

Usually low unit values for short ton, and need to be accessible to be profitable.

- Clay, dimension stone, marble, volcanic rocks, sand, gravel, pumice, petrified wood (since 1963)
- Common minerals (sometimes uncommon varieties may be locatable)
- Sand & gravel are generally considered part of the surface estate in Colorado unless specifically reserved; requires attorney or legal counsel review



Beware of “remoteness” reasoning or findings based on government policies

BLM Management Plans/Forest Service Plans/National Park Service Plans do not regulate private mineral estate, and may effect private surface estate differently then BLM/USFS surface estate.

- **County, State, and Local policies, zoning, codes etc. can change rapidly, especially when there is high demand from the mineral industry or consumers.**
- Access roads and technology advances are likely to increase the potential to exploit remote or deep resources.
- “Public Outcry” is not a valid reasoning.

November-December 2005

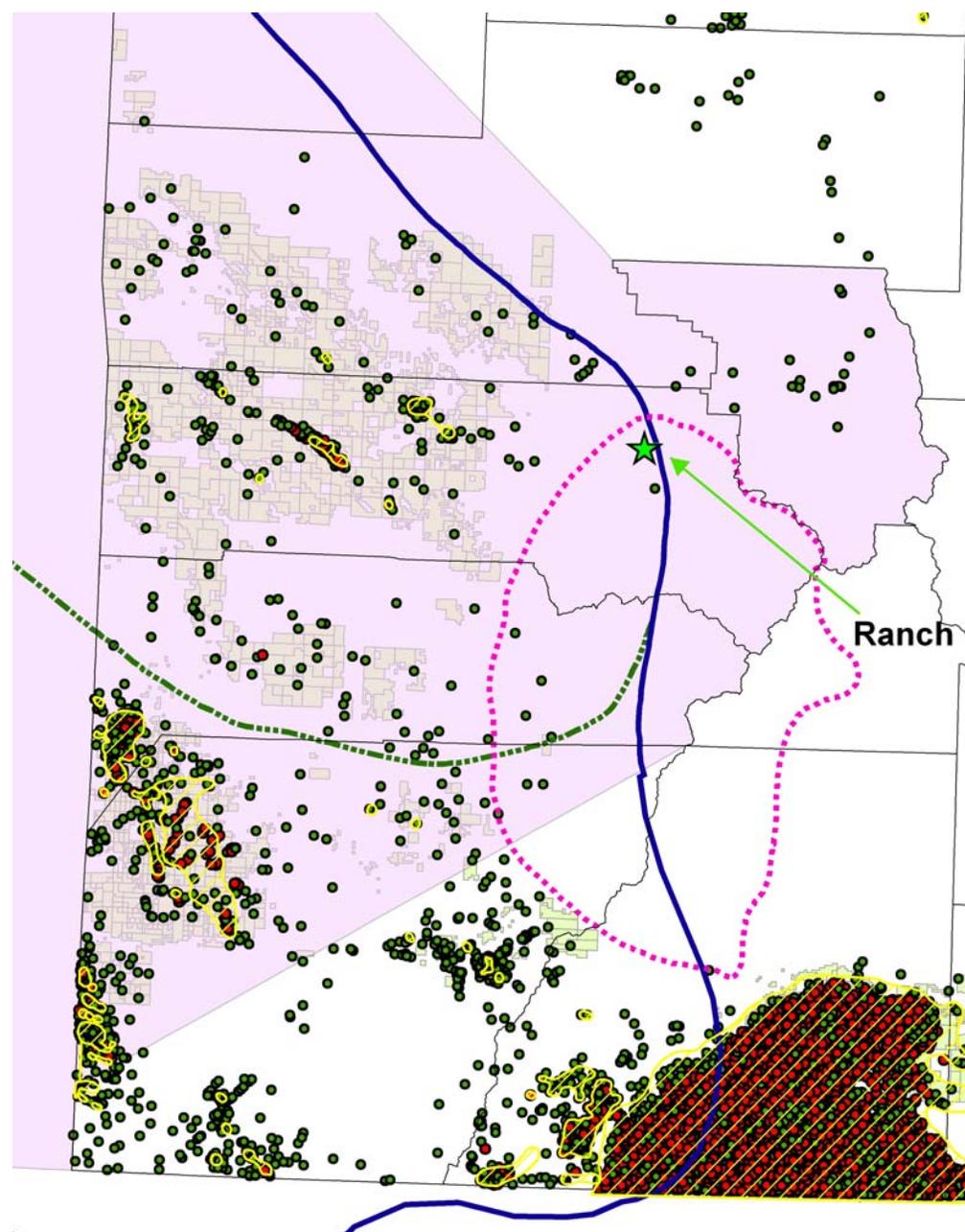
Ranch in San Miguel County.

Primary conservation value is Gunnison Sage Grouse habitat.

- Ranch is located within the Paradox Basin (pink) and within 4 different oil/gas “plays”.
- Very few wildcat wells within 3-10 miles, all 20 to 40 years old.
- No oil/gas fields within 17 miles (yellow).
- No leases on nearby federal mineral estate.
- **Remote?**

December 2005-February 2006

- About 40K acres up for auction in Feb 2006 in San Miguel County.
- Proposed new leases encircle Placerville and include adjacent lands at request of speculators (about 7,300 acres deferred).
- Wildcat wells, seismic studies possible.



Photos:
www.skytruth.
mediatools.org



Minerals Assessments that find non-remoteness should...

- MAs that find potential for surface mining of locatable, leasable, or salable minerals, or subsurface mining of oil/gas/geothermal or subsurface resources should explain their findings based on geologic data.
- Attempt to spatially delineate portions of the conservation easement having mineral potential and remoteness if findings are mixed.
- Identify & summarize existing lease agreements.
- MAs should leave the decision of whether the mineral potential affects the specific conservation values to Biologists, Land Trust Staff, and Legal Council.



Options for land owners & land trusts when mining potential exists...

- Legal review of deeds reserving mineral rights for specific language.
- Spatially delineate portions of the potential conservation easement having mineral potential and remoteness if findings are mixed. Delineate portions of the potential conservation easement having surface mining potential from subsurface mining potential.
- Carve out problem areas from CE boundary.
- Purchase or acquire severed mineral rights from mineral estate owner(s).
- Negotiate a “donation” of mineral rights to the land trust from the mineral estate owner(s).
- Consider effects on specific conservation values.

Subsurface & Surface Mining Impacts to Conservation Values

Oil & gas development is increasingly coincident with typical Conservation Values:

- Agricultural
- Natural habitats for plants and animals
- Wildlife
- Open space (scenic values)



Post file photo



Surface Impacts Can Result from Each Phase of Surface-Disturbing Actions:

- Exploration (~1 year)
- Development (<1 year)
- Production (20-40 years?)
- Reclamation (1 year)



Common Impacts (intensity varies with type of surface disturbance and human activity level):

- Lost crop or pasture
- Water: wastewater disposal, groundwater contamination, water disturbance, erosion
- Can be positive impacts to roads, fences, etc.
- Rare and sensitive habitats: wetlands, riparian
- Noxious weeds can degrade, especially wetlands and arid sites



Common Impacts continued:

- Surface disturbance can destroy and fragment
- Species that need space (like big game), species easily disturbed (raptors, sage-grouse)
- Mortality from vehicles, avian collisions, avian predation, and poaching
- Disturbance, affecting habitat use or reproduction
- Surface disturbance and noxious weeds can destroy or fragment habitat
- How much do the scenic values depend on “pristine”?



More Information (on-line)

- BLM Geocommunicator www.geocommunicator.gov
- BLM “solid minerals” www.blm.gov/nhp/pubs/brochures/minerals/
- BLM split estate website www.blm.gov/bmp/Split_Estate.htm
- BLM upcoming/recent leases
www.glm.gov/nhp/spotlight/state_info/og_lease_sales.htm
- Colorado Coalition of Land Trusts (www.cclt.org) –links to IRS code
- USGS Colorado State Minerals Information & links to fact sheets
<http://minerals.usgs.gov/minerals/pubs/state/co.html>
- CGS Mineral/Mineral Fuel Resources
<http://geosurvey.state.co.us/Default.aspx?tabid=61>