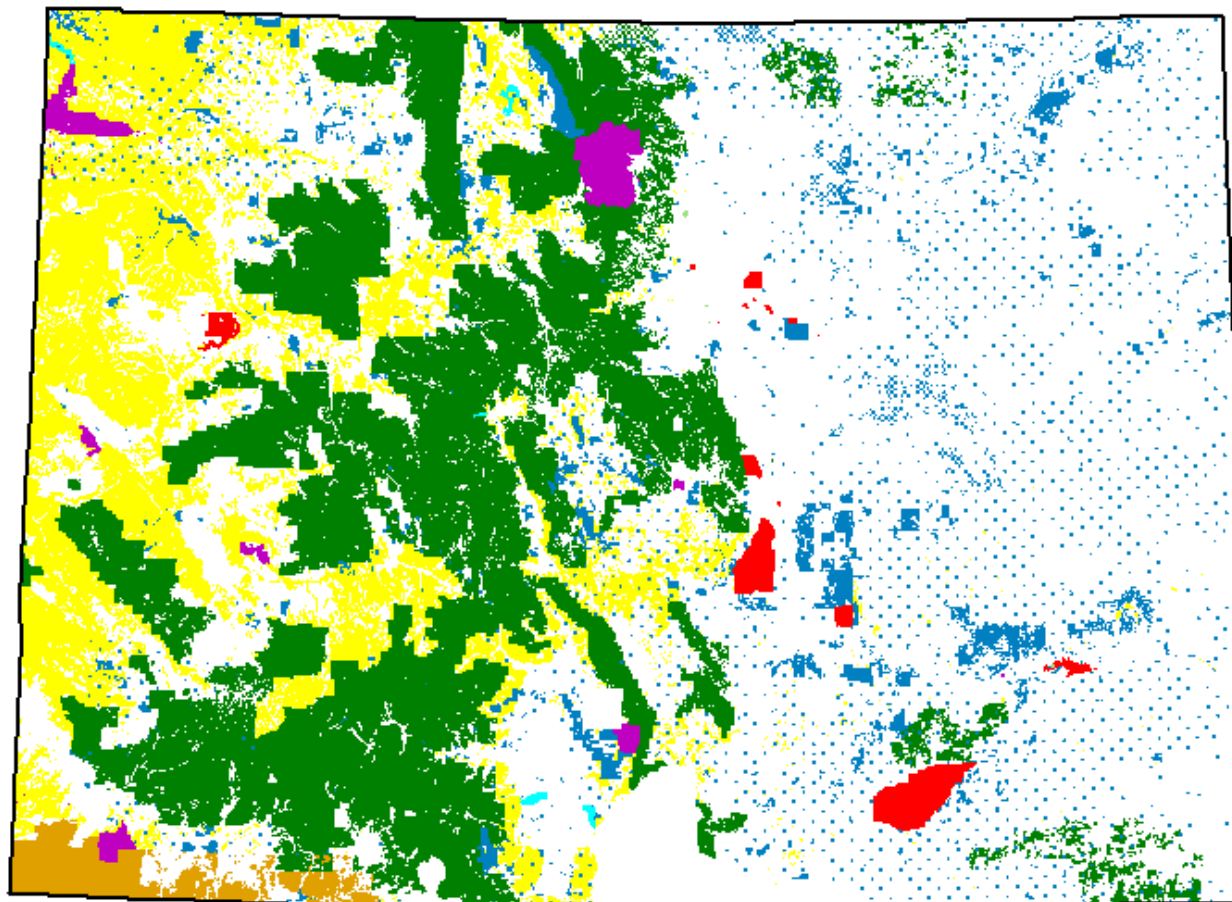


An aerial photograph of a vast mountain range. The foreground and middle ground are dominated by steep, rugged mountains covered in dense, dark green coniferous forests. Some peaks are rocky and appear reddish-brown, possibly due to exposed soil or rock. The mountains recede into the distance, creating a sense of depth with layers of peaks under a bright sky with scattered clouds. The overall scene is a dramatic landscape of natural beauty.

The Local Role in Federal Mineral Development

Chris Seldin, Assistant Pitkin County Attorney

STATE OF COLORADO LAND OWNERSHIP/LAND STATUS

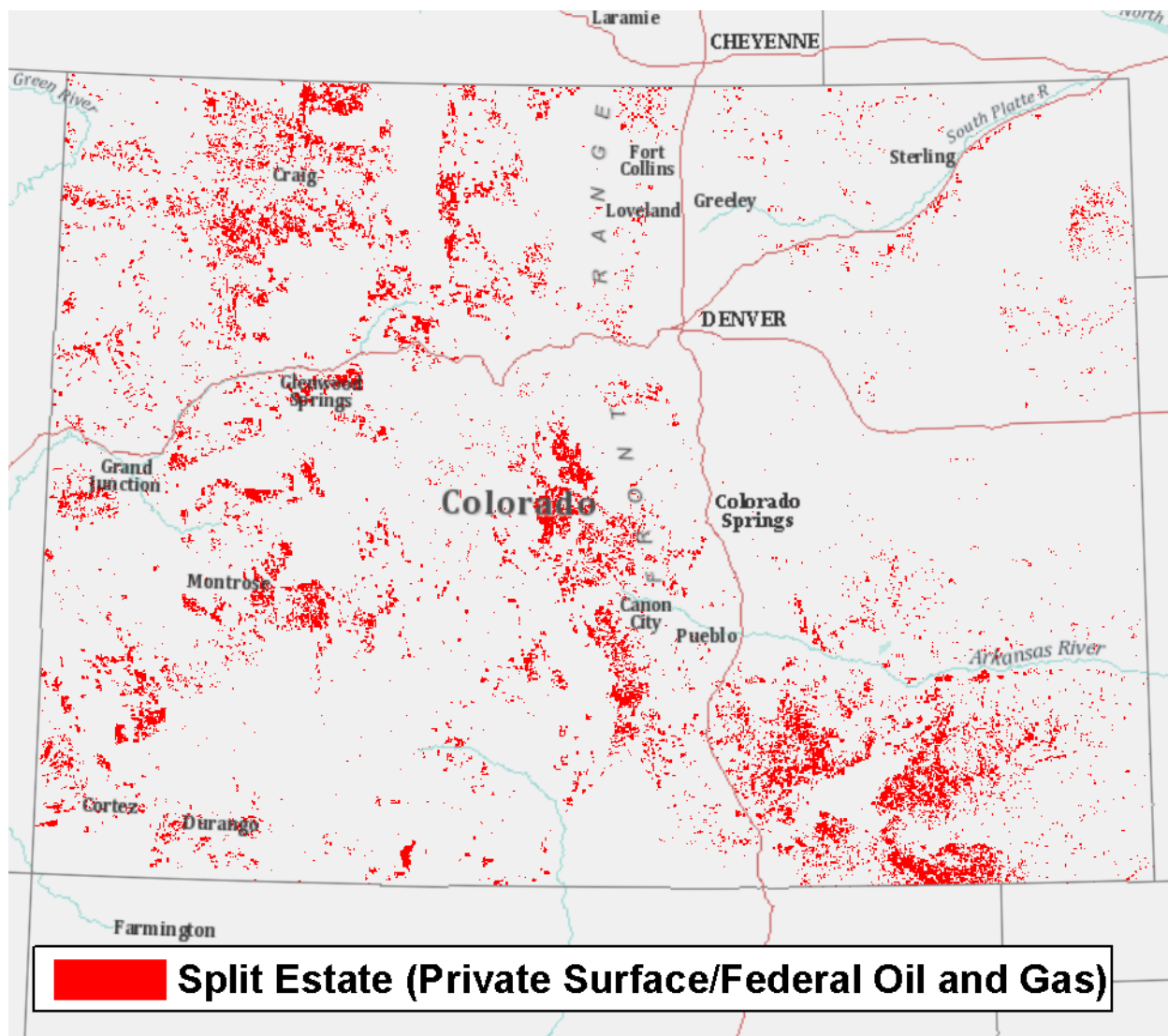


- PRIVATE
- BUREAU OF LAND MANAGEMENT
- STATE
- INDIAN
- NATIONAL PARKS
- MILITARY
- OTHER FEDERAL
- U.S. FOREST SERVICE
- U. S. FISH and WILDLIFE

100 0 100 Miles

Universal Transverse Mercator Projection
Zone 13





43 C.F.R. § 3100.0–3 Authority.

(a) Public domain.

(1) Oil and gas in public domain lands and lands returned to the public domain under section 2370 of this title are subject to lease under the Mineral Leasing Act of 1920

(2) Exceptions.

(iii) Incorporated cities, towns and villages.

See also Estate of D.A. Moore, 120 IBLA 271, 272 (1991) (holding that there is no exception to this rule prohibiting leasing that would allow lands to be leased with No Surface Occupancy Stipulations that might permit accessing minerals directionally).

“The federal Government has authorized a specific use of federal lands, and Ventura cannot prohibit that use”

***Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, 1084 (9th Cir. 1979) *aff'd*, 445 U.S. 947 (1980)**

“Considering the legislative understanding of environmental regulation and land use planning as distinct activities, it would be anomalous to maintain that Congress intended any state environmental regulation of unpatented mining claims in national forests to be *per se* pre-empted as an impermissible exercise of state land use planning.”

***California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572, 588 (1987)**

“[T]he decision in *California Coastal Commission v. Granite Rock, supra*, demonstrates that Congress did not intend to preempt all local regulation in this area. There, the Supreme Court rejected a facial challenge to a permit requirement imposed by the California Coastal Commission. The Supreme Court concluded that Forest Service regulations implemented under the MLA did not constitute an attempt to preempt state law, but instead appeared to assume that those submitting plans of operation would comply with state laws.”

***Bd. of Cnty. Comm'rs of Gunnison Cnty. v. BDS Int'l, LLC*, 159 P.3d 773, 785 (Colo. App. 2006)**

43 U.S.C.A. § 1712 Land use plans (FLPMA)

(c) Criteria for development and revision. In the development and revision of land use plans, the Secretary [of the Interior] shall--

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of . . . local governments within which the lands are located In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of . . . local . . . land use plans; assure that consideration is given to those . . . local . . . plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of . . . local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. . . . *Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.*

43 C.F.R. § 1601.0–2 Objective (FLPMA)

The objective of resource management planning by the Bureau of Land Management is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management and ensure participation by the public, state *and local governments*, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.

43 C.F.R. § 1610.3–2 Consistency requirements (FLPMA)

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of . . . local governments . . . so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands.

(c) State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans, and programs differ, those of the higher authority will normally be followed.

“The portion of FLPMA that encourages cooperation between BLM and the states, and commands BLM to pay attention to state plans, also grants deference to BLM to decide whether the states’ plans are consistent with the federal goals mandated by FLPMA. In other words, the agencies have the final say over the consistency issue, and only a clear, specific conflict between a federal land use plan and a specific state plan could possibly rise to the level of a statutory violation.”

***New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 459 F. Supp. 2d 1102, 1120 (D.N.M. 2006) aff'd in part, vacated in part, rev'd in part, 565 F.3d 683 (10th Cir. 2009)**

43 U.S.C. § 1712 “gives the Secretary of the Interior discretion to determine the extent to which the agency’s land use plans are consistent with State and local plans. In light of this discretion, it is doubtful that the provision was intended to, or could reasonably be construed as, creating a ‘procedural right’ enforceable by state or local governmental entities. In any event, even assuming that the provision did create some type of ‘procedural right,’ that right was protected in this case . . . ”

***Kane Cnty. Utah v. Salazar*, 562 F.3d 1077, 1088 (10th Cir. 2009)**

16 U.S.C.A. § 1604 National Forest System land and resource management plans (NFMA)

(a) Development, maintenance, and revision by Secretary of Agriculture as part of program; coordination

[T]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of . . . local governments . . .

§ 34-60-120, C.R.S. Application of article

(1) This article shall apply to all lands within the state of Colorado, except as follows:

(a) As to lands of the United States or lands which are subject to its supervision, this article shall apply only to the extent necessary to permit the commission to protect the correlative rights of each owner and producer within a pool and to carry out the provisions of [sections 34-60-106](#), [34-60-117\(4\)](#), [34-60-118](#), and [34-60-122](#); but the other provisions of this article shall also apply to such lands only if the officer of the United States having jurisdiction approves the order of the commission which purports to affect such lands.

40 C.F.R. § 1506.2 Elimination of duplication with State and local procedures (NEPA).

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

From “Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations”

23a. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.

40 C.F.R. § 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

- (1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
- (2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
- (3) Meet with a cooperating agency at the latter's request

See also http://www.blm.gov/wo/st/en/info/nepa/cooperating_agencies.html

2009 MOU between the USFS, BLM and the COGCC “Concerning Oil and Gas Permitting on BLM and NFS Lands in Colorado” expressly contemplates local government participation in onsite inspections and other federal permitting processes.

(Available in the Library section of the COGCC’s website.)

Breaking News: Much of White River National Forest off limits to future oil and gas drilling

by [Collin Szewczyk](#), Aspen Daily News [Staff Writer](#)
[Tuesday, December 9, 2014](#)

Much of the White River National Forest including the controversial Thompson Divide will be off limits to future oil and gas development under a new environmental impact statement issued Tuesday by the U.S. Forest Service.