

Conservation Easements in the Ecology of Sustainable Land Conservation, Ownership and Regulation –

{ Diversity, Synergy, Serendipity and
Conflict

Professor Federico Cheever

University of Denver Sturm College
of Law

May 8, 2015

National Gap Analysis Program (GAP) | Protected Areas Data Viewer

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Build a Map

Select a Protected Land View

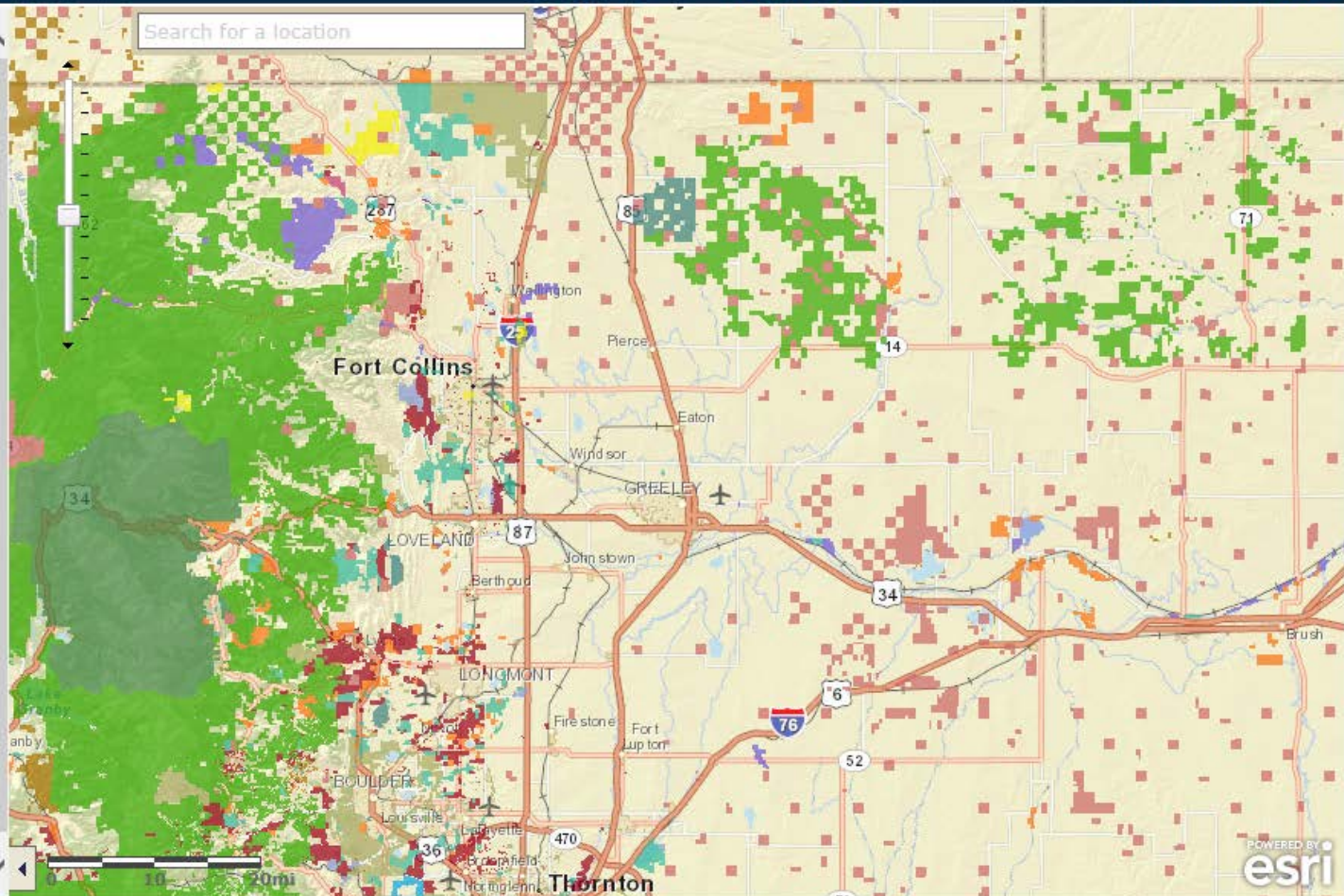
- ☒ By Owner
☐ By GAP Status

Legend

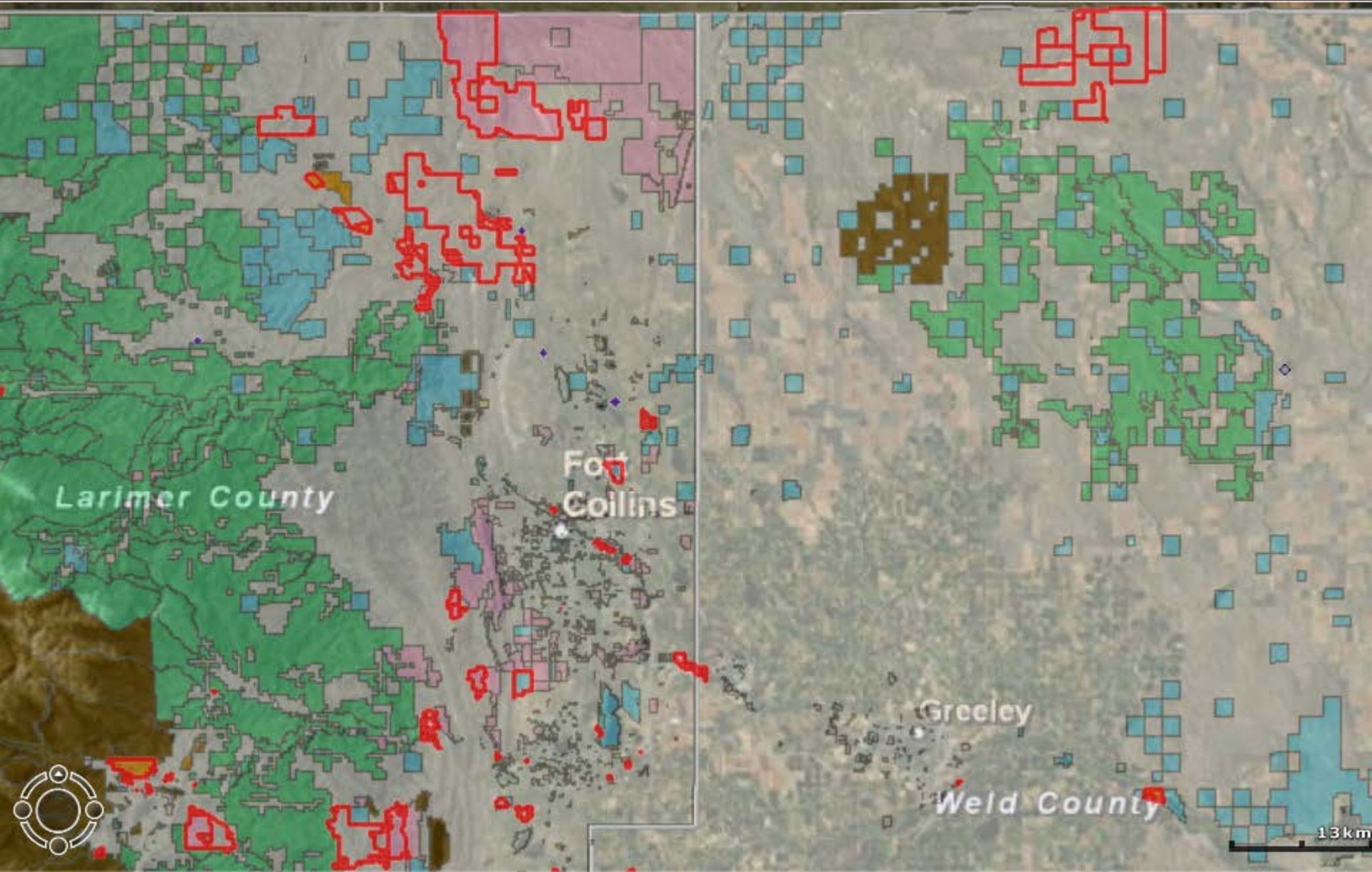
- OWNER NAME**
- Bureau of Land Management (BLM)
 - Forest Service (USFS)
 - National Park Service (NPS)
 - Fish and Wildlife Service (FWS)
 - Bureau of Reclamation (BOR)
 - Department of Defense (DOD) and Department of Energy (DOE)
 - Other Federal (TVA, NRCS, NOAA, etc.)
 - Tribal Land
 - State Fish and Wildlife
 - State Parks and Recreation
 - State Trust Land
 - Other State (NHP, DOT, HS, etc.)
 - Territorial Land
 - County/Regional Agency
 - City
 - Private Conservation
 - The Nature Conservancy
 - Joint, Other, or Unknown Landowner

Select a Base Map

- ☒ Streets
☐ Basic Reference
☐ Satellite



CoMaps Conservation Easements



Conservation Easement -- Simple Transaction

The Original Owner Seeks to Keep The Land in a Natural State. The Original Owner will receive market value, less than market value, a tax deduction or nothing

Land Trust
(Received Right to Prevent all/some Development)

DEED OF
Conservation
Easement

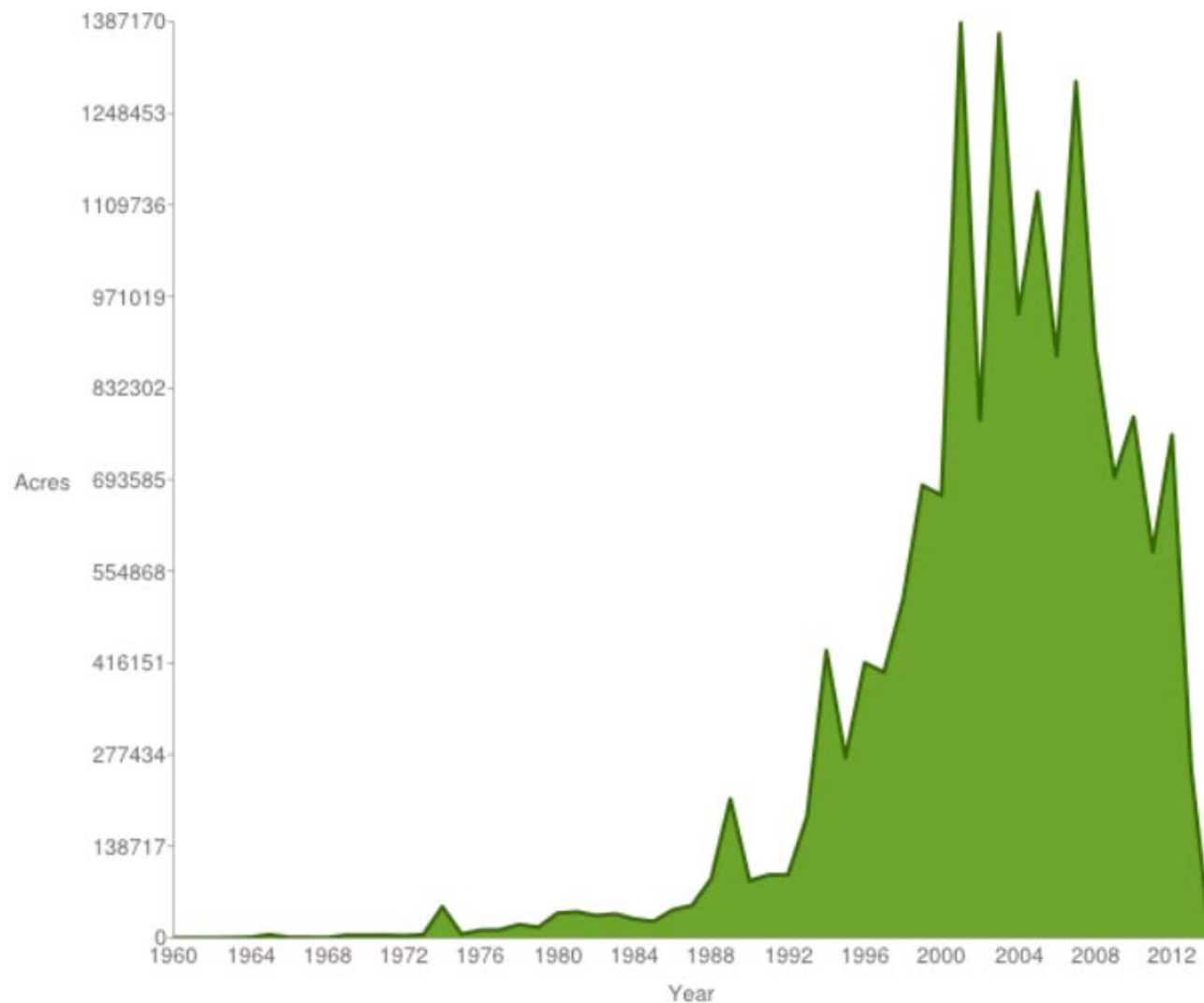
The Land Trust Plans to Hold the Rights

Original Owner
(Retains Right of Access and Right to Exclude)

The Conservation Easement Spells out Exactly What Rights the Owner Retains and What Rights She Conveys



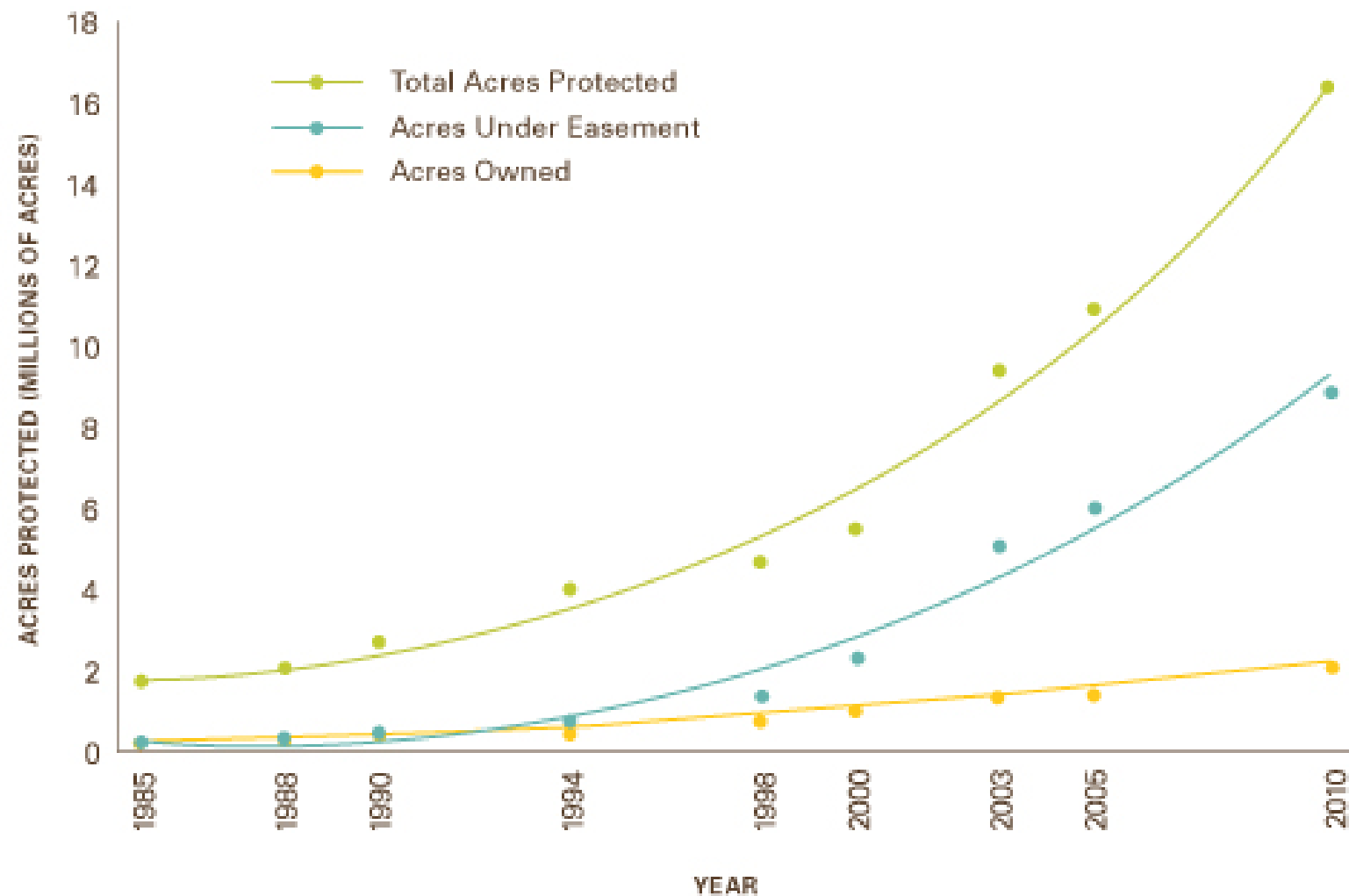
Easements by Acquisition Date



Total Easements: 61903

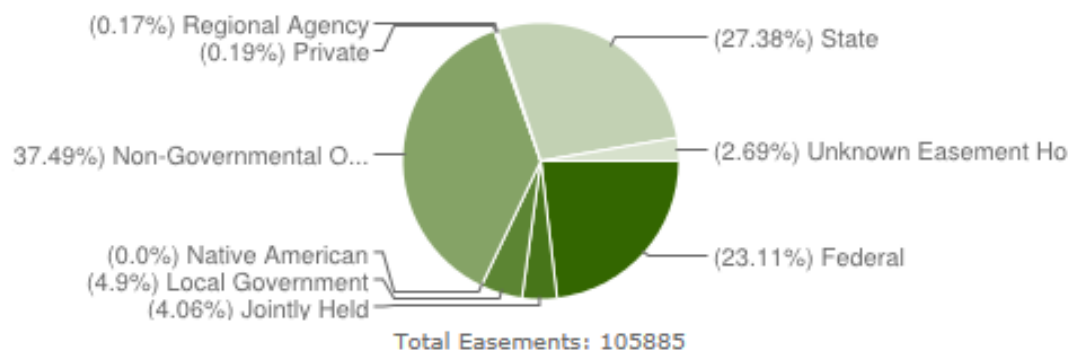
[Show Table of Data](#)

Private Land Conservation by State and Local Land Trusts



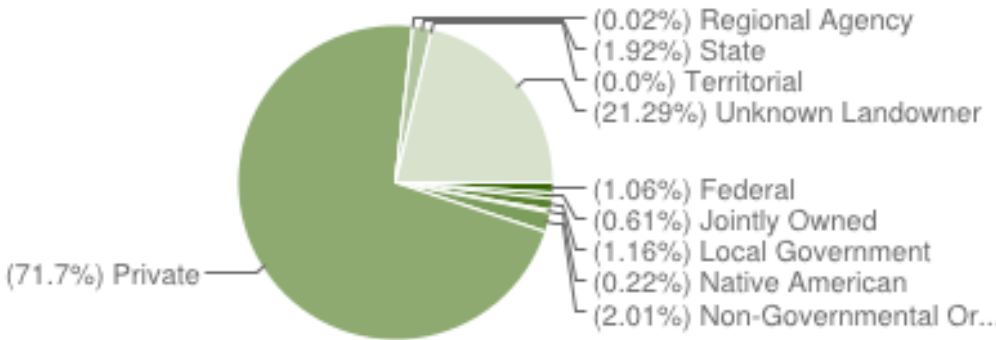
All States and All Easements

Easements by Easement Holder Type



▲ Easement Holder	◆ Count	◆ Acres
Federal	26,289	5,201,830
Jointly Held	1,257	914,812
Local Government	13,817	1,102,952
Native American	2	116
Non-Governmental Organization	33,081	8,437,677
Private	33	43,776
Regional Agency	248	37,905
State	29,386	6,162,349
Unknown Easement Holder	1,772	604,732

Easements by Landowner Type



Total Easements: 105885

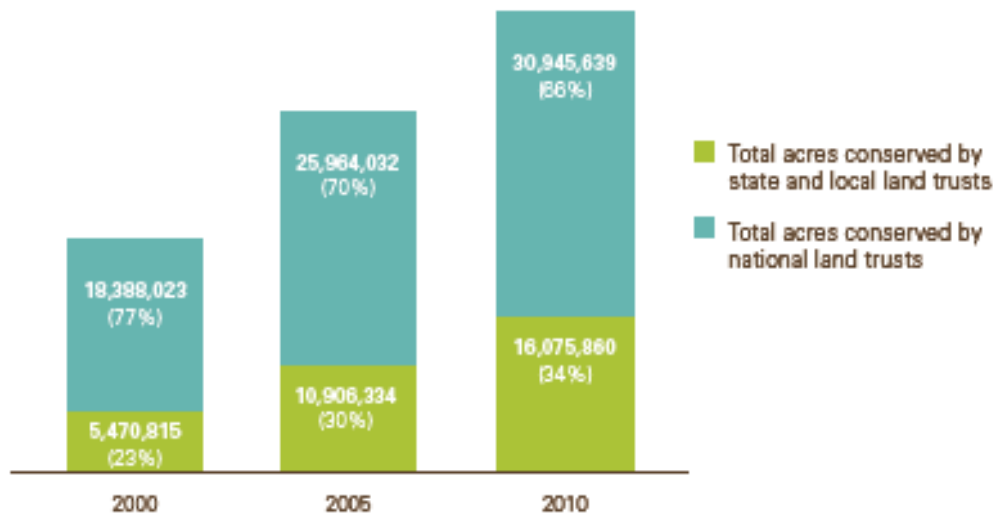
▲ Landowner Type	◆ Count	◆ Acres
Federal	1,080	239,354
Jointly Owned	1,188	137,625
Local Government	3,822	261,672
Native American	10	49,547
Non-Governmental Organization	2,670	452,145
Private	81,182	16,135,864
Regional Agency	52	5,508
State	1,894	432,283
Territorial	1	137
Unknown Landowner	13,986	4,792,015

Colorado's Trends in Conservation: 2005–2010

- Land trusts in Colorado have **protected 1,225,050 acres**—this represents a **53% increase in acres conserved since 2005**. Colorado ranks third in the nation in acres conserved, and first in the Southwest.
- There are now **38 land trusts operating in Colorado**, including 29 staffed groups and 5 all-volunteer groups.
- Colorado increased their full- and part-time staff and contractors 60% in 5 years, for a total of 152 paid positions in 2010.
- Land trusts in Colorado drew upon the work of 1,529 active volunteers (an increase of 21% since 2005) and the contributions of 13,456 members and financial supporters.
- As a signal of the land trust community's commitment to excellence, there are now 13 accredited land trusts in Colorado. Together, these 13 groups have protected 948,323 acres as of 2010.

Private Conservation in the “Big League”

Total Acres Conserved by All Land Trusts:
State, Local and National



National land trusts conserved almost twice as much land as state and local land trusts, but the percentage of total land saved by state and local land trusts grew to more than a third of total acres protected in 2010, up from less than a quarter in 2000.

National Park System (Including Alaska) 1872-2013—
81 Million Acres

National Forest System (Including Alaska) 1891-2013
191 Million Acres

“Dependent” Servitudes

{ The Scope of Statutory
Authorization in a
Changing World

Colorado § 38-30.5-102. Conservation easement in gross

"Conservation easement in gross", for the purposes of this article, means a right in the owner of the easement to prohibit or require a limitation upon or an obligation to perform acts on or with respect to a land or water area, airspace above the land or water, or water rights beneficially used upon that land or water area, owned by the grantor **appropriate to the retaining or maintaining of such land, water, airspace, or water rights, including improvements, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value.**

UNIFORM CONSERVATION EASEMENT ACT 1981

§ 1. [Definitions].

As used in this Act, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

RECITALS:

A. **Description of Property.** Grantor is the owner of the fee simple interest in the subject Property legally described in **Exhibit A** and depicted in **Exhibit B**, both attached hereto and made a part of this Deed, which consists of approximately ___ acres of land, together with

Insert as appropriate: existing improvements (as further described in Section 4(A)), water and mineral rights, and grazing or other permits associated with or appurtenant to the Property]

located in _____ County, State of Colorado (the "Property").

B. **Qualified Organization.** Grantee is a "qualified organization," as defined in §170(h) of the Internal Revenue Code and a charitable organization as required under §§38-30.5-104 (2), Colorado Revised Statutes (C.R.S.).

C. **Conservation Values.** [Insert descriptive narrative and identification of Conservation Values addressing the reasons for preservation. See IRS Regs 1.170A-14(d)]

“B. Special Resource Areas. Portions of the Property are valuable habitat for **Gunnison sage grouse** (*Centrocercus minimus*) (the "Grouse" or "Gunnison sage grouse") . . .

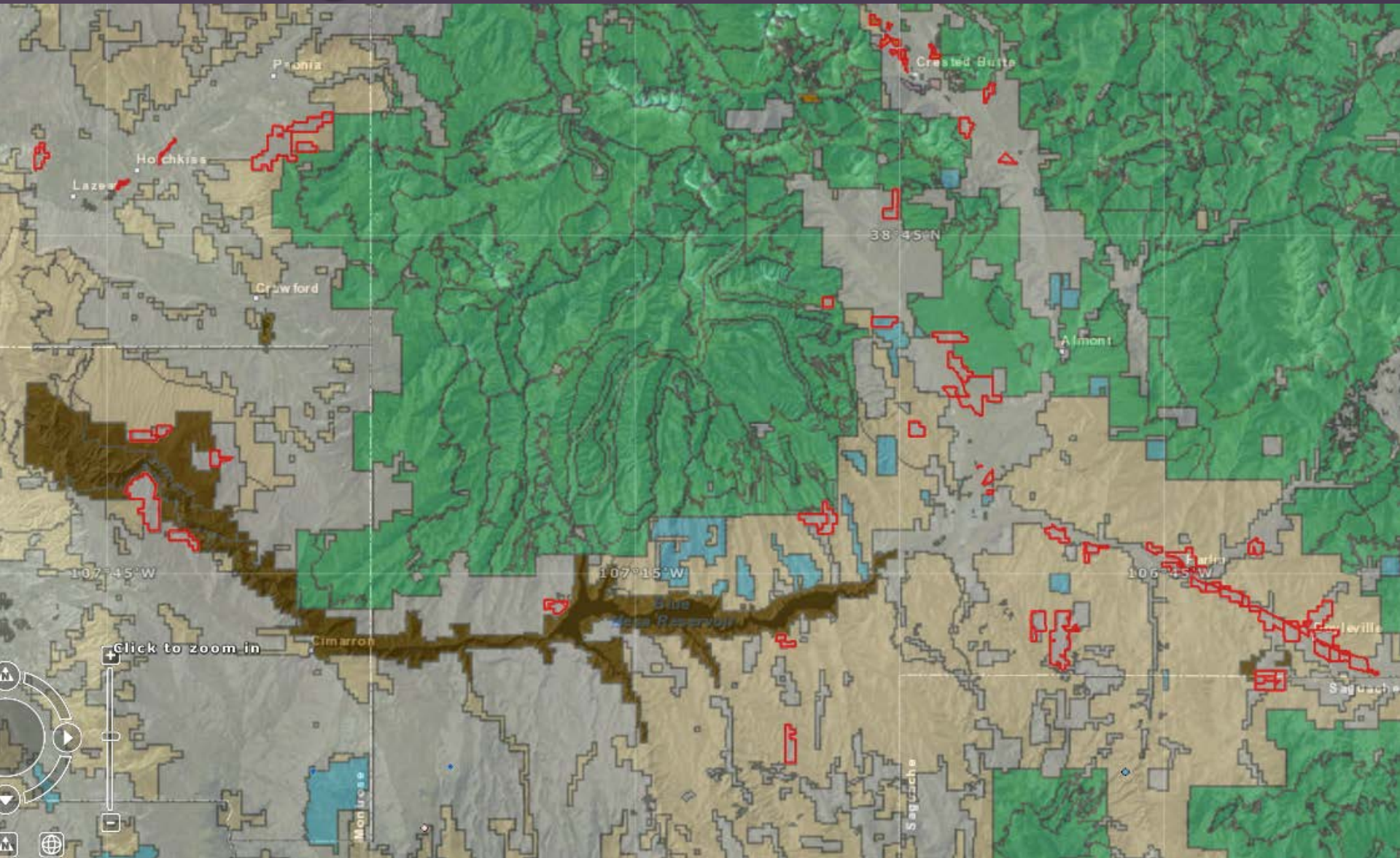
D. Conservation Values. . . . The ---- Ranch is comprised of several independent parcels lying adjacent to public lands, private land protected with conservation easements, and other private lands . . . The various portions of the ranch contain **irrigated meadows**, upland sagebrush habitats, and a diversity of natural montane grassland and riparian vegetation. The Property offers several conservation values. Among these is the agricultural resource associated with irrigated hay meadows and productive grazing uplands. . . . **In particular, the Property provides significant resources for wildlife, and the Special Resource Areas provide valuable habitat for the Grouse. . . .”**

Conservation Easement, Colorado, 2003

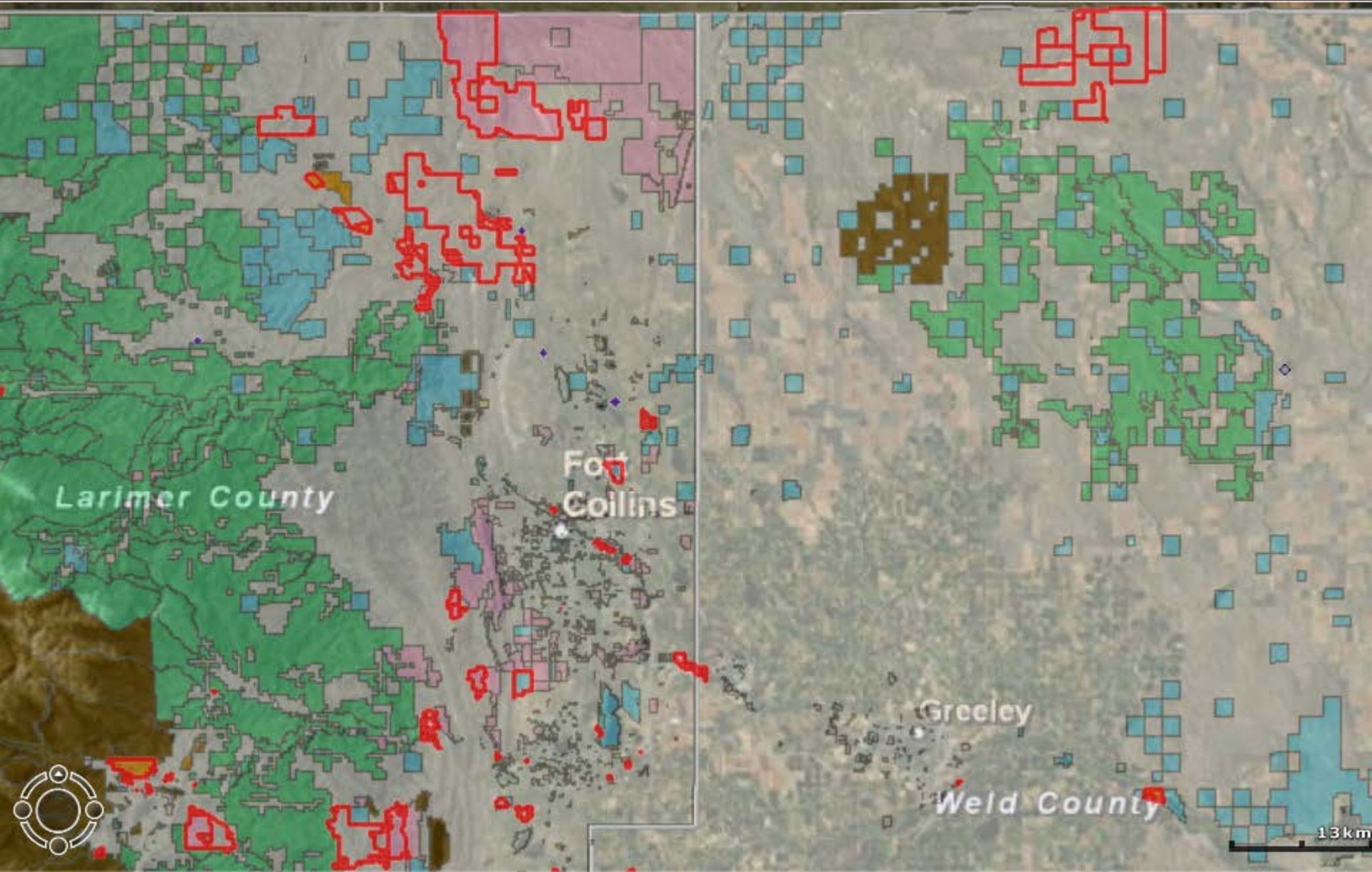
11. ***Termination of Easement.*** If, at the joint request of Grantor and Grantee, a court with jurisdiction determines that conditions on or surrounding the Property change so much that the Purpose cannot be fulfilled, the court may terminate this Easement. The total loss of all the Conservation Values is the only grounds under which this Deed can be terminated. Upon such termination, Grantee may use the endowment funds associated with this Deed for purposes consistent with Grantee's organizational mission. Grantor and Grantee agree that the granting of this Deed immediately vests Grantee with a property right. Grantor and Grantee also agree, as to the value of the Property, an appraisal has been completed that indicates the fair market value of this property right is ____% percent of the full fair market value of the Property. Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant. Should this Easement be extinguished, sold for public use, taken for public use, or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the aforementioned percentage of the fair market value of the Property. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

Colorado Open Lands Model Deed of Conservation Easement

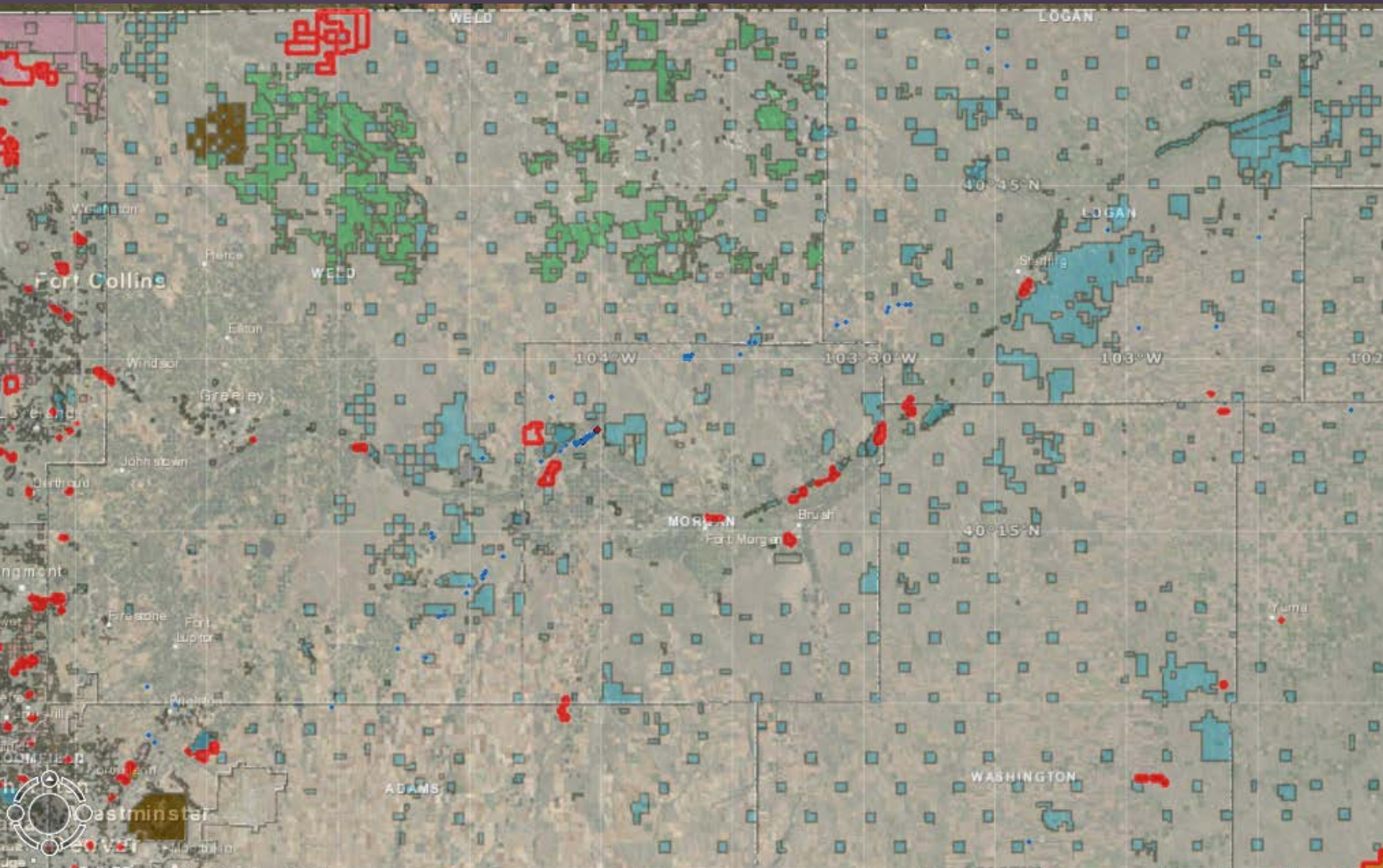
Patching Public Lands



City Buffers and Climate Bridges



Buffering Riparian Areas



Diversity And Its Benefits

{ What Lawyers See
{ And What They Don't

National Gap Analysis Program (GAP) | Protected Areas Data Viewer

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Build a Map

Select a Protected Land View

- ☐ By Owner
- ☐ By GAP Status

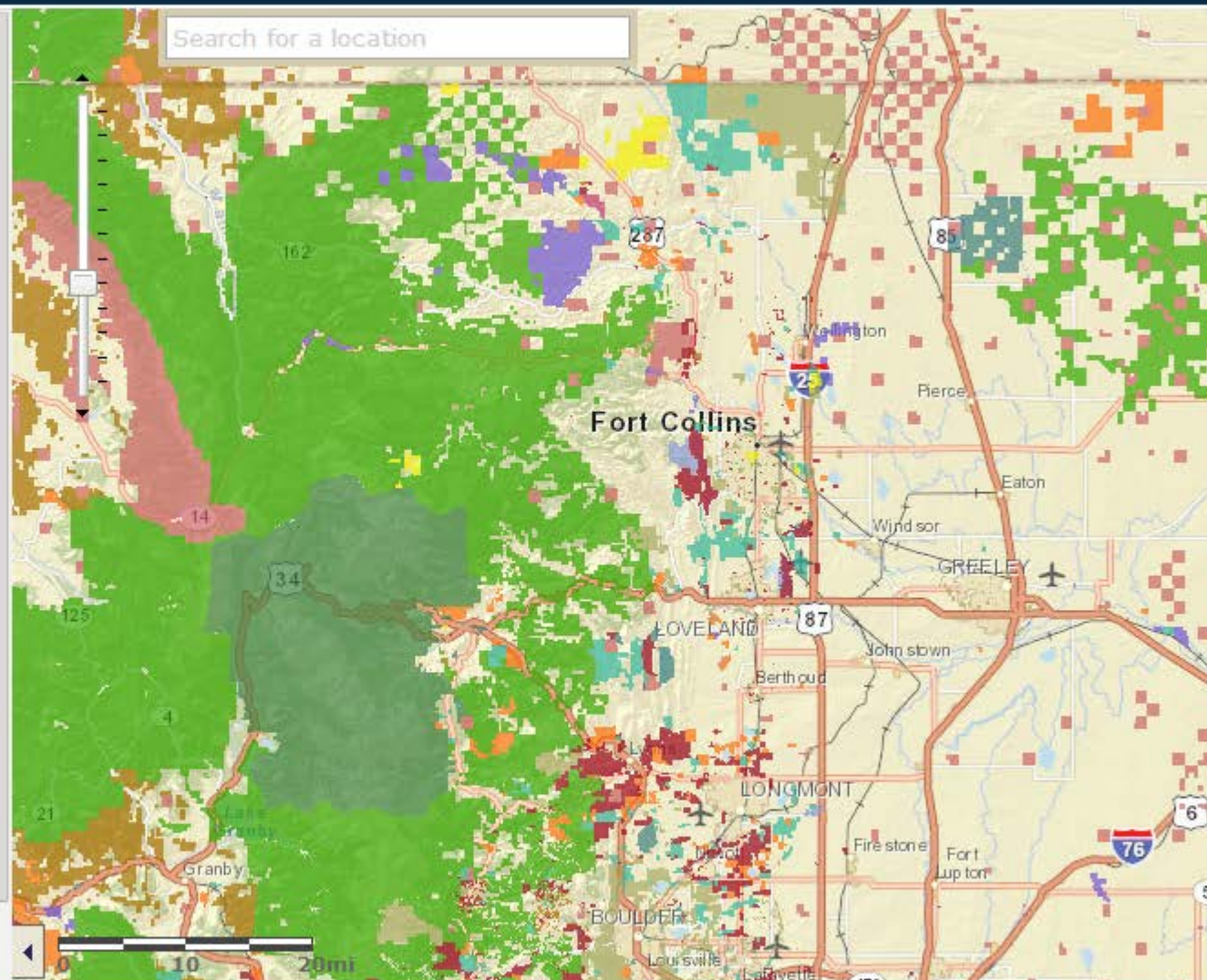
Legend

OWNER NAME

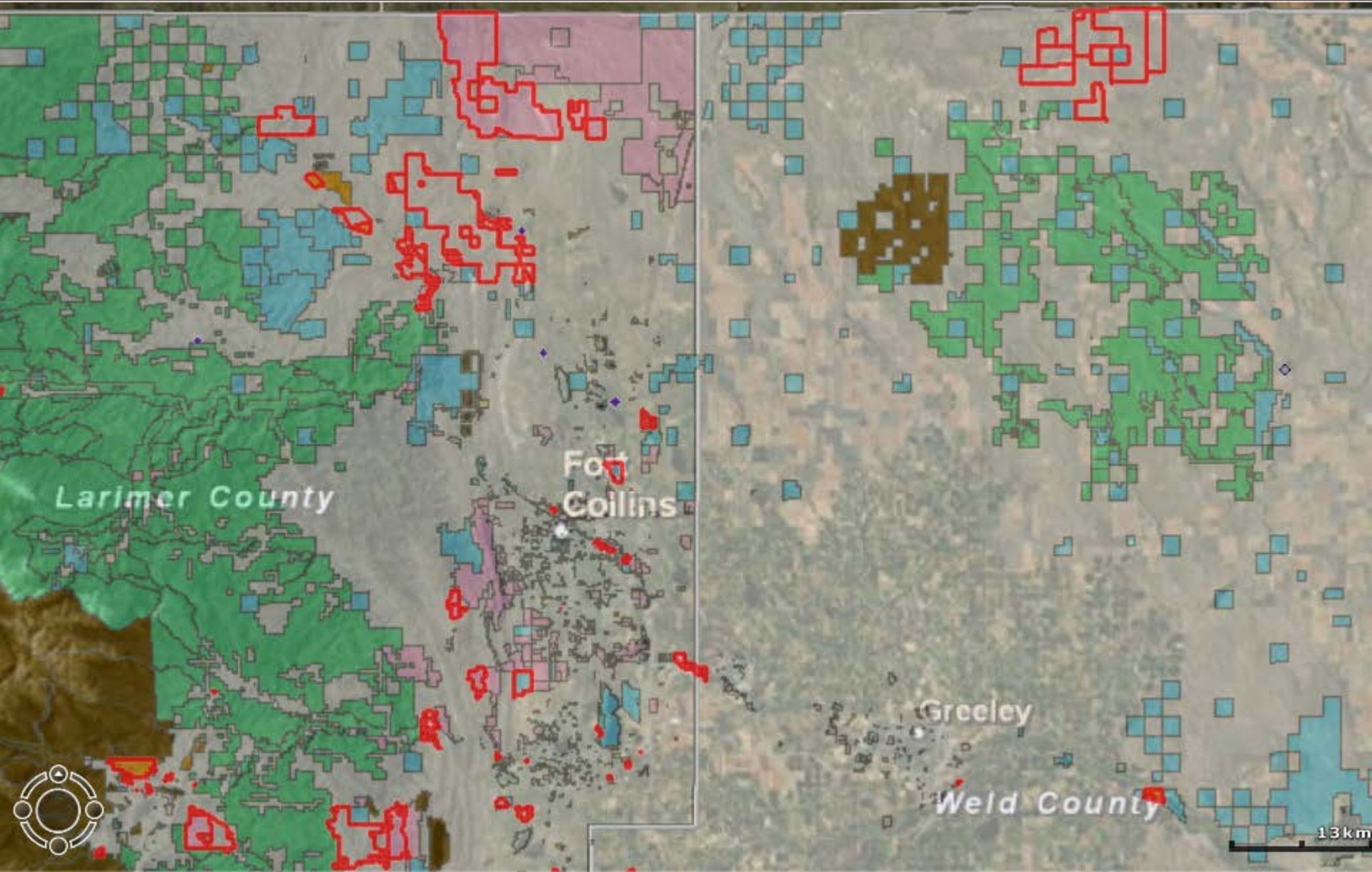
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Select a Base Map

- ☐ Streets



CoMaps Conservation Easements





Larimer County

County in Colorado

Larimer County is one of the 64 counties in the U.S. state of Colorado. As of the 2010 census, the population was 299,630. The county seat and most populous city is Fort Collins. The county was named for William Larimer, Jr., the founder of Denver. [Wikipedia](#)

Population: 315,988 (2013)

Unemployment rate: 3.1% (Dec 2014)

County seat: Fort Collins

Points of interest: Horsetooth Reservoir, [More](#)

Rivers: Fish Creek, Spring Creek, Fall River, North Fork Big Thompson River, Roaring River, Wind River

Destinations

[View 5+ more](#)



Fort Collins



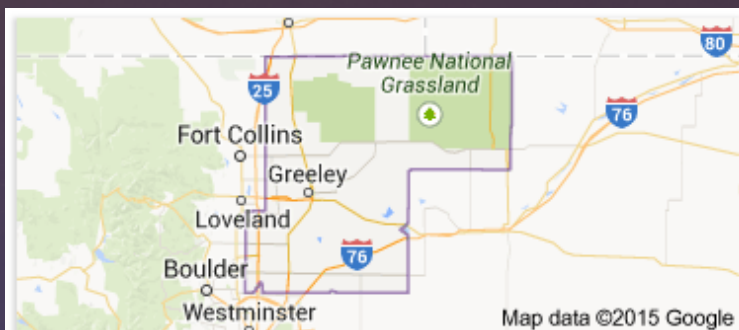
Loveland



Estes Park



Berthoud



Weld County

County in Colorado

Weld County is one of the 64 counties of the U.S. state of Colorado. As of the 2010 census, the population was 252,825. The county seat is Greeley. [Wikipedia](#)

Area: 4,022 mi² (10,417 km²)

Population: 269,785 (2013)

Unemployment rate: 3.9% (Dec 2014)

Rivers: Little Thompson River, Boulder Creek, Crow Creek, Owl Creek

Colleges and Universities: University of Northern Colorado, Aims Community College, Academy of Natural Therapy

Destinations

[View 10+ more](#)



Greeley



Longmont



Windsor



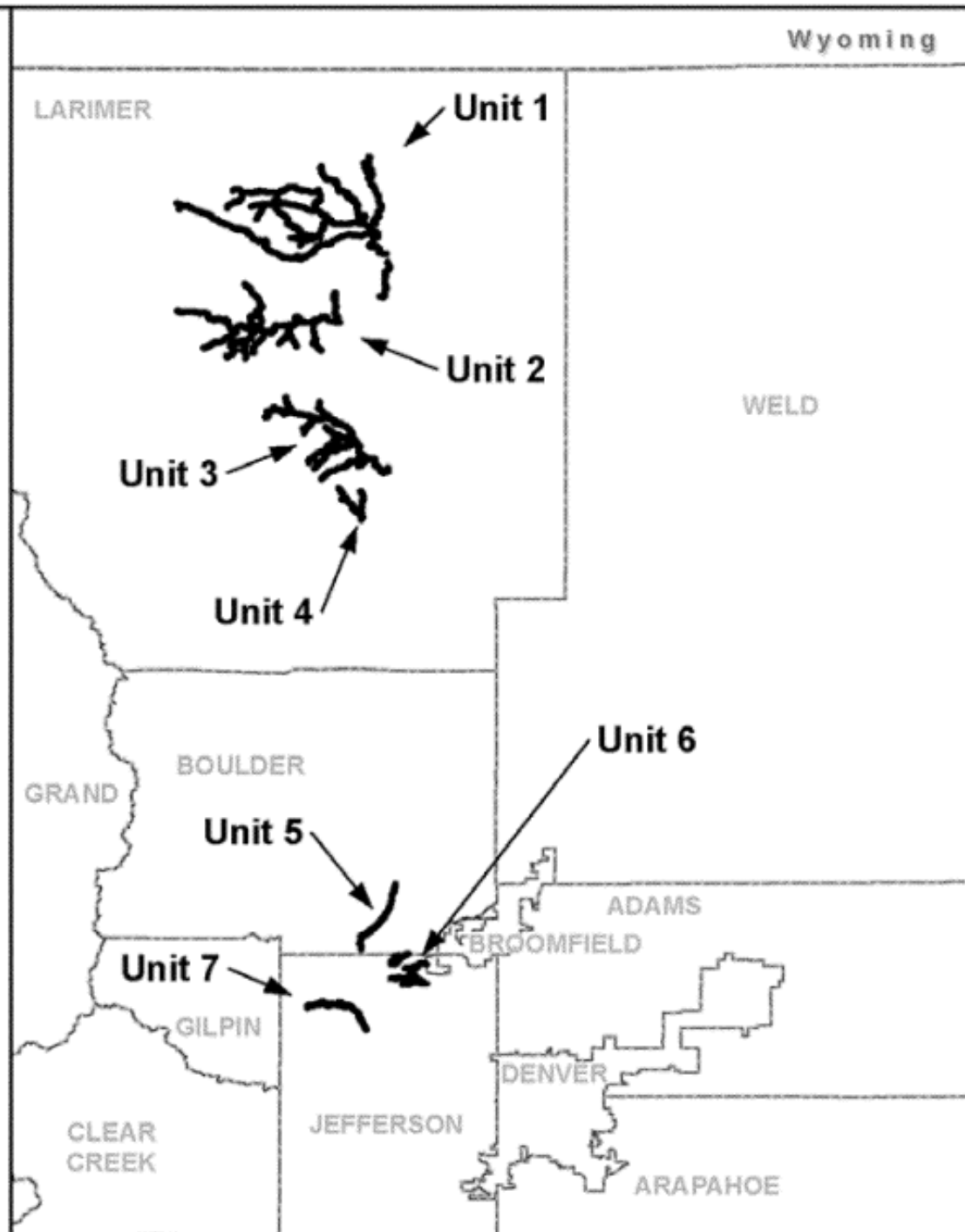
Fort Lupton

Preble's Meadow Jumping Mouse Critical Habitat

Index Map



Colorado



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Colorado Wildlife Habitat Protection Program



Project Highlights • 2006 Through 2012



Colorado Cattlemen's
Agricultural Land Trust



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Photo: Bill Buckley

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al land, heritage and families
apes.

Synergy

{ The Benefits of a
{ System Perspective

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National Gap Analysis Program

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☒ By Owner
☐ By GAP Status

Legend

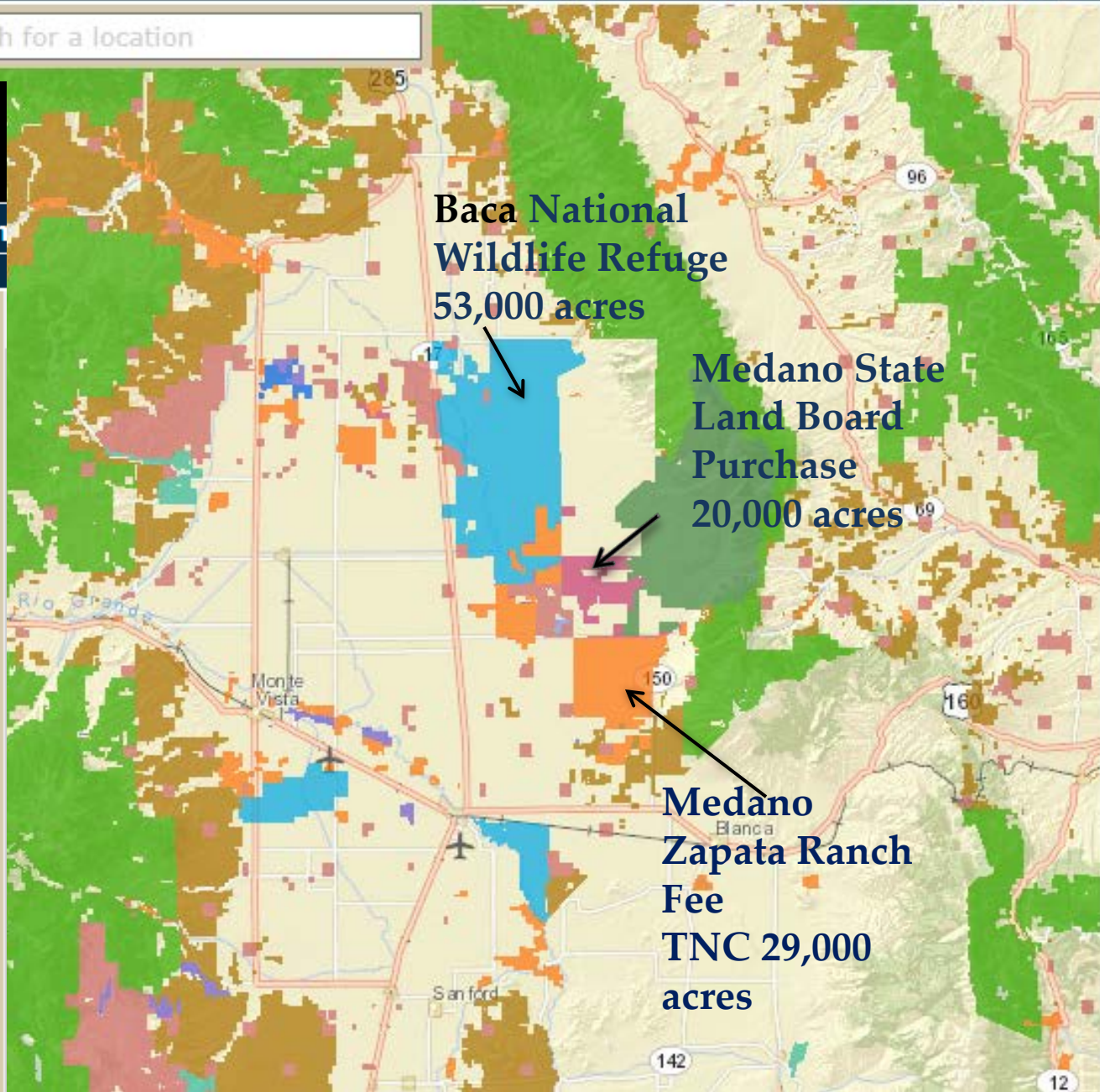
OWNER NAME

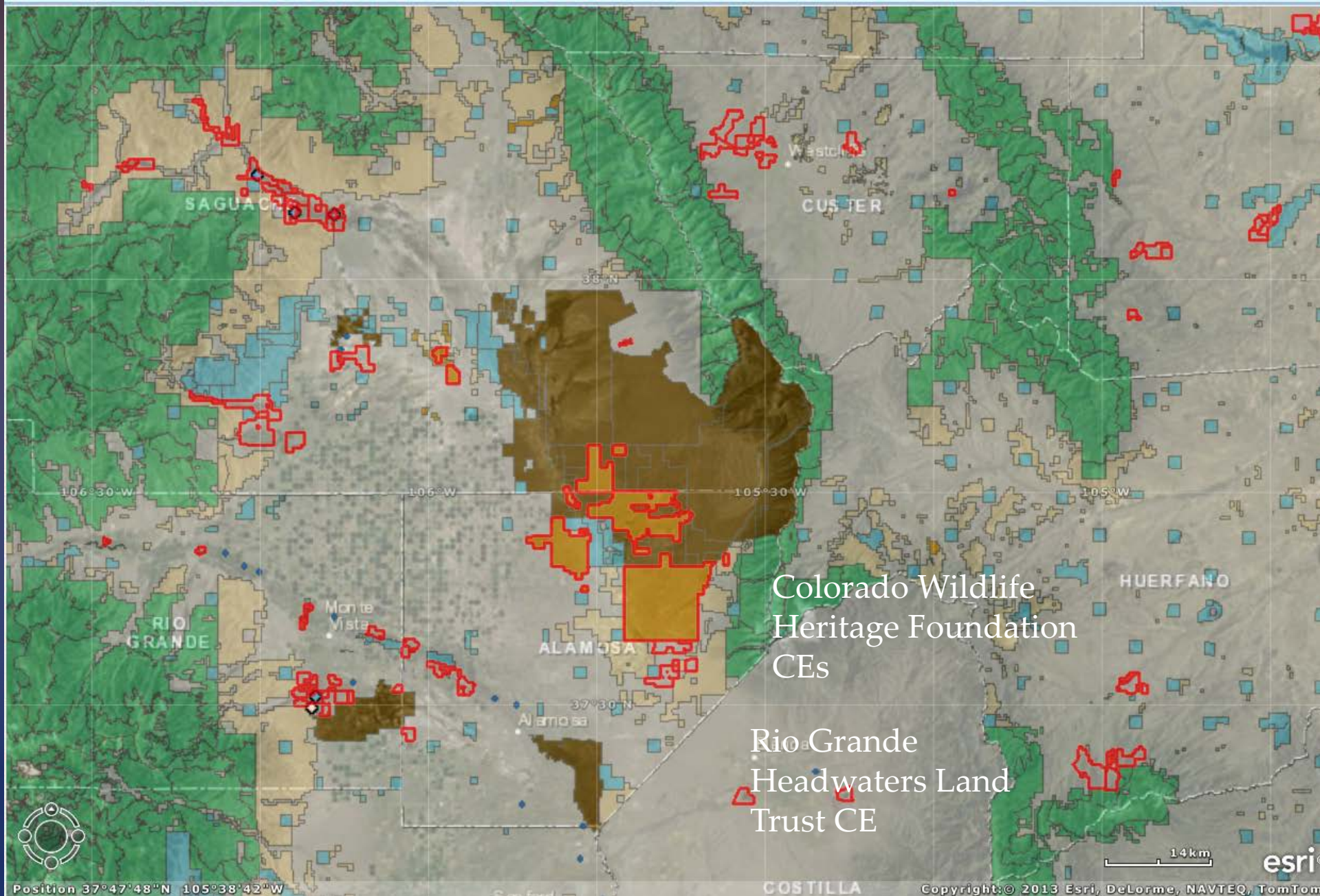
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Baca National
Wildlife Refuge
53,000 acres

Medano State
Land Board
Purchase
20,000 acres

Medano
Zapata Ranch
Fee
TNC 29,000
acres





Colorado Wildlife
Heritage Foundation
CEs

Rio Grande
Headwaters Land
Trust CE



Position 37°47'48"N 105°38'42"W

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Serendipity

{ Unintended Benefits

Researchers in Colorado found that \$595 million investment in conservation easements returned \$3.51 billion in public benefits. A return of \$6 for every \$1 invested.

The Trust for Public Land, *A Return on Investment: The Economic Value of Colorado's Conservation Easements* (2008)

Permanently protected privately-owned lands provide a multitude of public benefits, such as water supply protection; scenic views; flood control; fish and wildlife habitat; recreation . . . aesthetics; carbon sequestration; dilution of waste water; erosion control; and agricultural crop production.

Economists have estimated the monetary value of the benefits provided by land of various ecosystem types.

*The Trust for Public Land, A Return on Investment:
The Economic Value of Colorado's Conservation
Easements*

The Trust for
Public Land, A
Return on
Investment: The
Economic Value of
Colorado's
Conservation
Easements

Ecosystem Type		Ecosystem Service(s)	Value Per Acre Per Year (2008\$)	Source
Barren	None		N/A	
Emergent Herbaceous Wetland	Flood control, water supply; fish and wildlife habitat; recreation; aesthetics		\$784	Roberts & Leitch, 1997
Woody Wetland	Flood control, water supply; fish and wildlife habitat; recreation; aesthetics		\$784	Roberts & Leitch, 1997
Deciduous Forest	Grazing; carbon sequestration; habitat provision		\$879	Ingraham & Foster, 2008
Evergreen Forest	Grazing; carbon sequestration; habitat provision		\$879	Ingraham & Foster, 2008
Mixed Forest	Grazing; carbon sequestration; habitat provision		\$880	Ingraham & Foster, 2008
Scrub/Shrub	Carbon sequestration		\$610	Ingraham & Foster, 2008
Sagebrush	Dilution of waste water; natural purification of water; erosion control; habitat for fish and wildlife; recreation		\$82	Loomis et al, 2000
Grassland/Herbaceous	Grazing; dilution of waste water; natural purification of water; erosion control; habitat for fish and wildlife; recreation		\$85	Loomis et al, 2000
Shortgrass Prairie	Grazing; dilution of waste water; natural purification of water; erosion control; habitat for fish and wildlife; recreation		\$87	Loomis et al, 2000
Open Water	Fresh water regulation and supply; habitat provision		\$267	Ingraham & Foster, 2008
Developed - Low Intensity Urban/Open Space	Gas and Climate Regulation; Water Regulation		\$194	McPherson, 1992
Developed - High Intensity Urban	Gas and Climate Regulation; Water Regulation		\$194	McPherson, 1992
Altered or Disturbed	None		N/A	
Agriculture	Aesthetics; crop production; grazing		\$283	Rosenberger & Walsh, 1997
Developed - Oil/Mine/Quarry	None		N/A	
Note: All grazing values were estimated by TPL using stocking and lease rates from Colorado State University Extension Agents, and land cover data from TNC.				

Conflict

{ Present and Future

ENERGY / NEWS

'Protect the Land Owner': Virginia Farmer Continues Fight Against Environmental Group

Kevin Mooney / @KevinMooneyDC / March 03, 2015 / 16 comments



111



5.9k



I have learned a lot from this experience. I've learned that mean people are alive and well. I've learned that if I stand up in support of freedom and property rights that **Hell hath no fury like an environmentalist scorned.** I've learned that I've become a target to be attacked by **tyrannical environmentalists and the zoning lords.**

<http://prfamerica.org/speeches/17th/ThreatToFamilyFarms.html>



<http://nashobatrust.org/if-your-property-is-affected/>