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Mineral rights complicate conservation easements

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Wrangling with rogue mineral rights is old hat for many land trusts in the West.

Most private landowners in the mineral-rich region simply don't own their subsurface rights because a previous owner held onto them, or because the federal government never let go of them, according to Martha Cochran, executive director of Carbondale-based Aspen Valley Land Trust.

The situation is commonly known as "split estate."

Cochran said 80 to 90 percent of the properties AVLTL looks at for potential easements are split estates, be they in Marble, Carbondale or unincorporated Garfield County.

In order for landowners with split estates to officially conserve their property with associated tax benefits, she explained, they must demonstrate that their property does not have accessible, economically viable mineral resources that could be developed through permanently destructive activities such as strip or shaft mining.

But "the IRS considers oil and gas temporary and reclaimable," Cochran said.

That's one reason why AVLTL made sure to acquire mineral rights for a conservation easement on a 45-acre parcel of riparian habitat near Carbondale where there was significant potential for a gravel pit, but it "doesn't bother" with subsurface rights for properties where oil and gas development is possible or likely.

AVLTL holds 18 easements donated by ranchers south of Silt in the Divide Creek and Dry Hollow areas where there are already gas wells or a significant potential for energy development.

Right now, natural gas rights are so valuable that "the cost would be too high. We're not in a position to do stuff like that," Cochran said.

To complicate matters, mineral rights are often scattered far and wide and held by so many people that they are nearly impossible to find or acquire.

The disturbance is relatively brief, she pointed out, and said that some energy companies like EnCana stand out for working with landowners to minimize impacts regardless of whether an easement is involved. Plus, private agricultural properties such as gently sloping hayfields are easier to reclaim after companies drilling wells than the native plant communities and steep slopes of nearby public land, she said.

Some people question whether such properties should earn owners tax incentives, she admitted. AVLTL staffers frequently debate the conservation value of such arrangements, she explained, and they usually come back to what Cochran calls

"the long view."

"In 30 years, is it better to have a subdivision, or a gas well that's hopefully gone? Is it better to have a subdivision, or to still be able to grow local food?"

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