

**San Juan River Work Group
Supplementary Information to Address Needs
Identified during November 29, 2010 Meeting.**

Deed restrictions

What are they? How are they put in place?

Deed restrictions are private agreements that restrict the use of the real estate in some way, and are listed in the deed. The seller may add a restriction to the title of the property. Often, developers restrict the parcels of property in a development to maintain a certain amount of uniformity. A deed restriction is a clause in a deed that limits the use of land. However, restrictions that are against public policy are unenforceable, such as those that prohibit people of certain ethnic groups from using a property. Deed restrictions placed within a deed control the use of the property. The restrictions travel with the deed, and cannot generally be removed by new owners. (definitions.uslegal.com).

These restrictions govern certain uses of the property and can limit the value. An example would be that the groundwater cannot be used because it was found to be contaminated. (www.tax-deed-sales.com)

It may include subdivision or similar restrictions common to many properties in the neighborhood, or it may be something personal to the grantor such as a requirement that the purchaser resell to the seller before offering to anyone else. (The Complete Real Estate Encyclopedia by Denise L. Evans, JD & O. William Evans, JD. Copyright © 2007 by The McGraw-Hill Companies, Inc.)

How Wild and Scenic suitability could be taken off the table permanently if they were in place?

To be discussed.

Minerals

Mineral Extraction on Public lands

Minerals are classified as locatable, leasable and saleable. Allowing extraction of locatable and leasable minerals are typically not discretionary actions while allowing the removal of saleable minerals is a discretionary action by the federal government. Locatable minerals include hard rock minerals such as gold and silver. A person files a mining claim as the first step to extracting federally owned locatable minerals. Leasable minerals include oil and gas, coal, and geothermal. A person purchases a lease as the first step to extracting federally owned leasable minerals. Saleable minerals include sand, gravel, and building stone. A person acquires a permit as the first step to extracting federally owned saleable minerals.

1. Where are the federally owned mineral rights in the East Fork and West Fork watersheds (including both public and private land)?

A map is available at the meeting which shows the mineral ownership in the watersheds. The federal government owns all of the mineral rights under the Forest Service lands in these watersheds and some of the mineral rights under the private lands (see large USFS map at meeting).

2. What portions of these areas are currently open to mineral extraction?

The Weminuche Wilderness and San Juan Wilderness areas are withdrawn from mineral entry, meaning that no mining claims can be filed nor any minerals leased. All other areas on Forest Service land within the watersheds are available for mineral entry and extraction. These areas that are currently open to mineral entry outside of the Wilderness overlap with the geology ORVs on the East and West Forks.

There are two areas in the East Fork watershed and one area in the West Fork watershed which are designated as unavailable or “no surface occupancy” under the current 1983 Forest Plan.

3. How does this picture change under the draft Land Management Plan?

The draft Forest Plan makes no changes to what areas are available or unavailable for mineral entry. It does make changes to the stipulations for mineral leasing, including “no surface occupancy” requirements. Alternative B (preferred alternative) would change most of the areas available for mineral entry in the two drainages from areas where “standard leasing stipulations” apply to areas of “no surface occupancy” (see figures 3.15.6 and 3.15.7 in the Draft Environmental Impact Statement).

4. Do areas of federally owned mineral rights that are currently open to mineral extraction overlap with the geology ORVs on the East and/or West Forks? Would withdrawal of these areas protect the geology ORV?

Yes, the areas that are currently open to mineral entry outside of the Wilderness areas do overlap with the geology ORVs on the East and West Forks. Withdrawal of these areas from mineral extraction would eliminate any surface disturbance that would otherwise be associated with mineral extraction (locatable, leasable and/or saleable).

5. What is the mineral potential on the East Fork? On the West Fork?

The draft Forest Plan identifies the East and West Forks watersheds as part of the San Juan Sag with a high to moderate potential for **oil and gas**. However, the highest potential in the San Juan Sag is in the southern and southwestern portions, which are outside of the East and West Forks watersheds. An area of no oil and gas potential is mapped in the very northeastern portion of the West Fork watershed.

The draft Plan does not identify any potential areas for **locatable minerals** in the East and West Forks watersheds. However, there are a few active mining claims in the watersheds. These are located in the Treasure Mountain area where exploratory mining is occurring, near Wolf Creek above the switchbacks on Highway 160 and south and east of Borns Lake. **Saleable minerals** may occur throughout the area.

6. What is "mineral withdrawal"? What does it mean?

A mineral withdrawal withdraws a defined parcel of land from mineral entry. Mineral withdrawals can be for all types of minerals, which is typical, or just for some types of minerals. If a parcel of land is withdrawn from all mineral entry it means that no new mining claims or mineral leases can be granted, and no saleable minerals can be extracted from the parcel. Mining claims, mineral leases, or saleable mineral permits that are active at the time of the mineral withdrawal are considered valid existing rights and extraction may continue, subject to federal permitting requirements and in compliance with local, state and federal laws and regulations.

Mineral withdrawals apply to federal minerals (regardless of the surface ownership). They do not apply to privately owned minerals. Whether or not privately owned minerals are developed is up to the private mineral owner (in compliance with local, state and federal laws and regulations). A mineral withdrawal does not apply to, and therefore cannot restrict mineral development on, a patented mining claim where the surface and mineral ownership has been transferred to a private entity.

7. How is "mineral withdrawal" accomplished?

Under the Federal Land Policy and Management Act (sec. 204), lands proposed for withdrawal are immediately segregated for up to two years during which a decision on the proposed withdrawal may be made. During the two-year segregation, studies and analyses are conducted to determine if the lands should be withdrawn to protect the area from mineral entry. In accordance with the National Environmental Policy Act, this process includes participation by the public, tribes, environmental groups, industry, state and local government, as well as other stakeholders. These efforts will be undertaken under the leadership of the Bureau of Land Management in cooperation with the U.S. Forest Service (for Forest Service lands), and will be used in support of a final decision on the withdrawal. By law, the Department of the Interior can withdraw lands for a maximum of 20 years. Only Congress can initiate a permanent withdrawal.

8. Can "mineral withdrawal" keep a patented mining claim from being developed? If not, what tool can?

No. A patented claim is private property (private surface rights and private locateable mineral rights). Deed restrictions and/or conservation easements can address extraction of minerals, if those mineral rights are owned by the surface property owner.

9. Can "mineral withdrawal" keep an un-patented mining claim from being developed? If not, what tool can?

No. Existing mining claims at the time the minerals are withdrawn would be valid existing rights and not subject to the withdrawal. There are various FS approval processes on activities on mining claims, but to completely shut them down would be difficult or impossible.

10. How would "mineral withdrawal" affect/not affect the ability to stake new claims?

Following withdrawal of an area from entry for locateable minerals, no new claims may be staked.

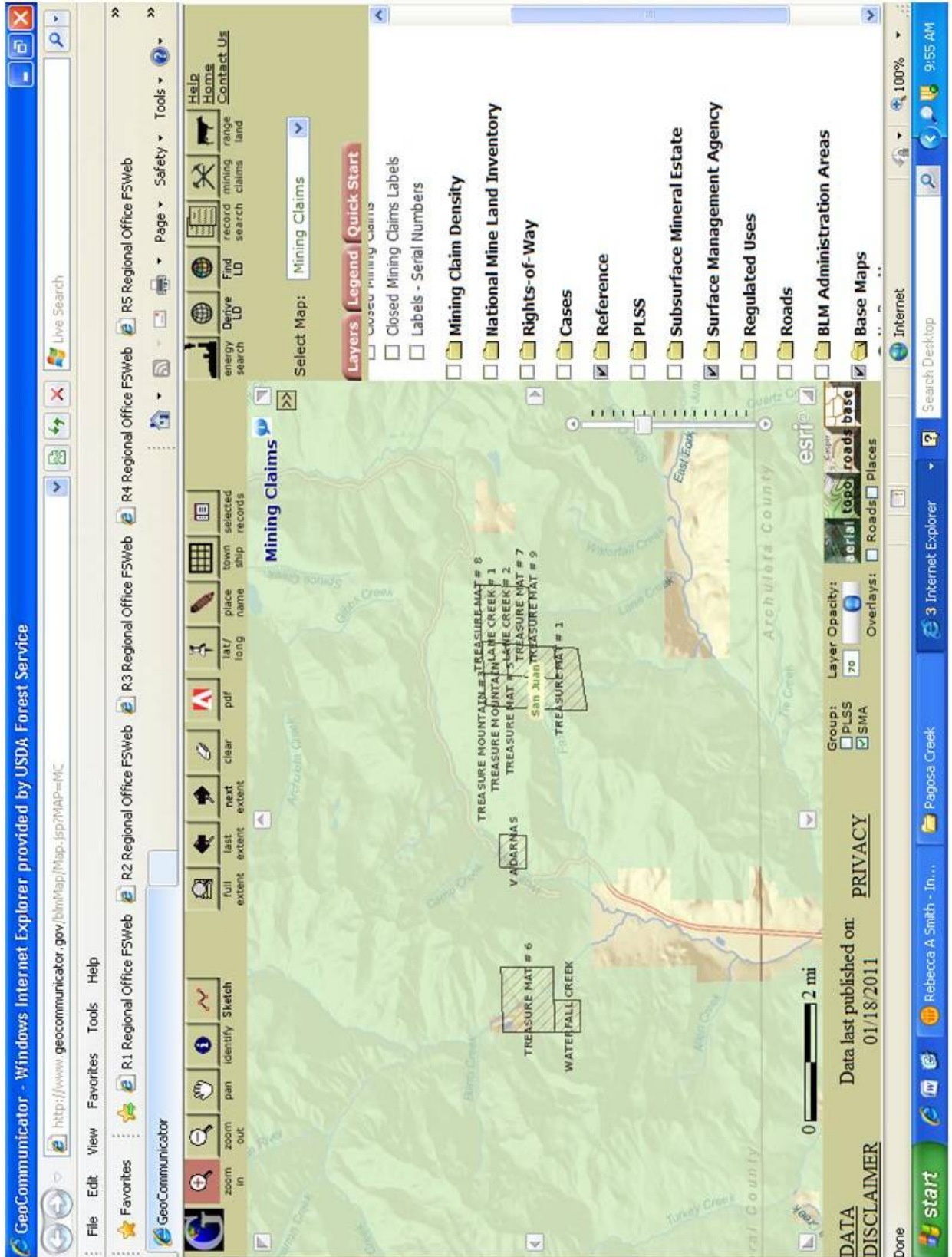
11. Where are the patented and unpatented mining claims in the East and West Fork watersheds?

Patented mining claims are shown on the USFS map. There are active unpatented mining claims in the Treasure Mountain area where exploratory mining is occurring, near Wolf Creek above the switchbacks on Highway 160, and south and east of Borns Lake (See Map 1 below).

12. How would Wild and Scenic designation downstream of a mining claim affect/not affect the ability to develop that claim?

If a river is designated under the Wild and Scenic Rivers Act, any projects on federal land within the Wild and Scenic River corridor are subject to regulations to protect the river's free-flowing condition, water quality, scenic values, and the ORVs. If a river is designated under the Act and classified as "wild", federal lands (and federally owned minerals) within ¼ mile from the bank on each side of the river are withdrawn from mineral entry. Federal lands within the corridor of a designated river that is classified as "scenic" or "recreational" are not withdrawn from mineral entry. For rivers designated as "scenic" or "recreational", filing of new mining claims or mineral leases is allowed but is subject to reasonable access and regulations that minimize surface disturbance, water sedimentation, pollution, and visual impairment.

Map 1: Active Un-Patented Mining Claims



Roadless Areas

Most of the National Forest lands in the area are in Inventoried Roadless Areas including Treasure Mountain and South San Juan Adjacent with a total of 26,600 acres in the East Fork watershed and Turkey Creek and Treasure Mountain with a total of 16,400 acres in the West Fork watershed. The 2001 Roadless Area Conservation Rule (36 CFR 294) prohibits road construction and timber harvest, with limited exceptions, in Inventoried Roadless Areas. The 2001 rule is currently in litigation with different courts issuing conflicting decisions. It seems very likely that some version of a roadless rule – although it is not clear which one (the Colorado Rule or the Federal Rule) -- will be in place in the future with restrictions on road construction and timber-harvesting.

How permanent is using Roadless as a tool to protect the watershed?

Both Roadless Rules constitute Federal Regulation, which is more permanent than a federal land use plan (e.g. San Juan Public Lands Land Management Plan), but less permanent than federal law (e.g. designation by Congress under the Wild and Scenic Act, Wilderness Act, etc.)

Reservoir Sites

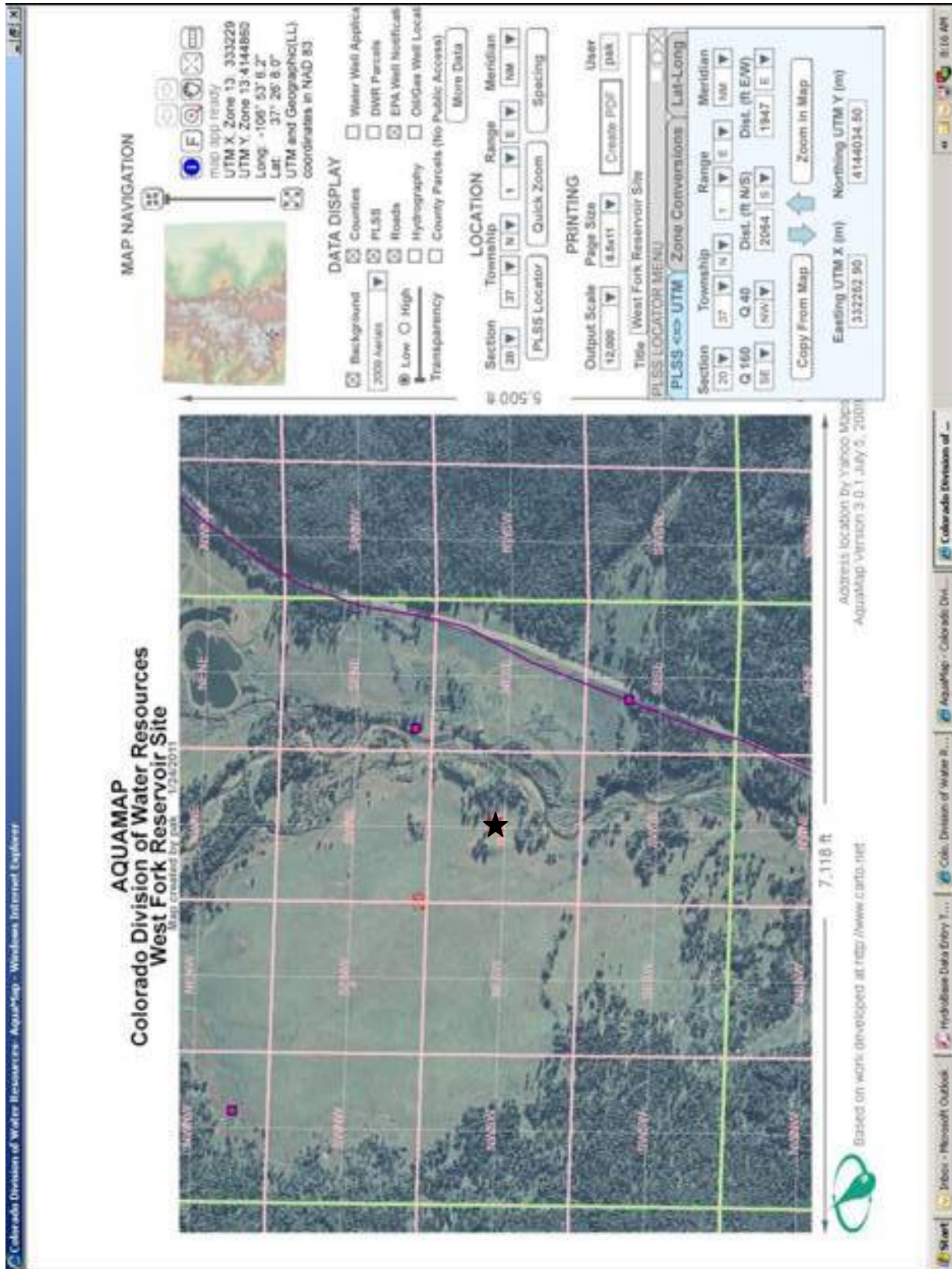
The State Water Supply Initiative ("SWSI") lists the East Fork Reservoir for potential development of 35,200 acre-feet already decreed and up to a potential storage capacity of 147,000 acre-feet. However, the 35,200 acre-foot right was abandoned by the SWCD in 2003.

SWSI also identified two additional potential reservoir sites, one on the West Fork and one on the East Fork, but there are no high-priority projects in the watershed.

Per Division of Water Resources, January 2011, there are no storage water rights, either absolute or conditional on the East Fork.

There is a conditional storage right on the West Fork for about 35,000AF. The location is on the very upper end of the Bootjack Ranch. (See Map 2 below).

Map 2. Location (star) of conditional reservoir site on West Fork of the San Juan River.



East Fork

Extent of Eligible Segment

A 13.12 mile segment of the East Fork of the San Juan River, from the confluence of Elwood and Crater Creeks to its confluence with the West Fork. The eligibility classification is recreational for the whole segment.

Roads and Trails

See USFS map for roads and trails. The East Fork eligible corridor contains 11.3 miles of gravel road and .9 miles of 4WD road. There are 2.6 miles of trail and 7.6 miles of winter trail (road groomed for skiing or snowmobiling) within the eligible corridor (Appendix D, DLMP).

Both the East Fork and West Fork Roads are closed in the winter where the roads first enter Forest Service land (although sometimes the West Fork Road is closed at the highway in the spring). They can be closed any time between Dec. 1 and May 15, depending on conditions. The purpose is to protect the road bed (motor vehicle use in wet weather damages the road). A benefit of the road closures is to allow for winter recreation (both motorized and non-motorized) since the snow on the road remains intact and is not plowed or driven through.

Pipeline Location

The Xcel pipeline is not shown on the map, but it roughly follows the road.

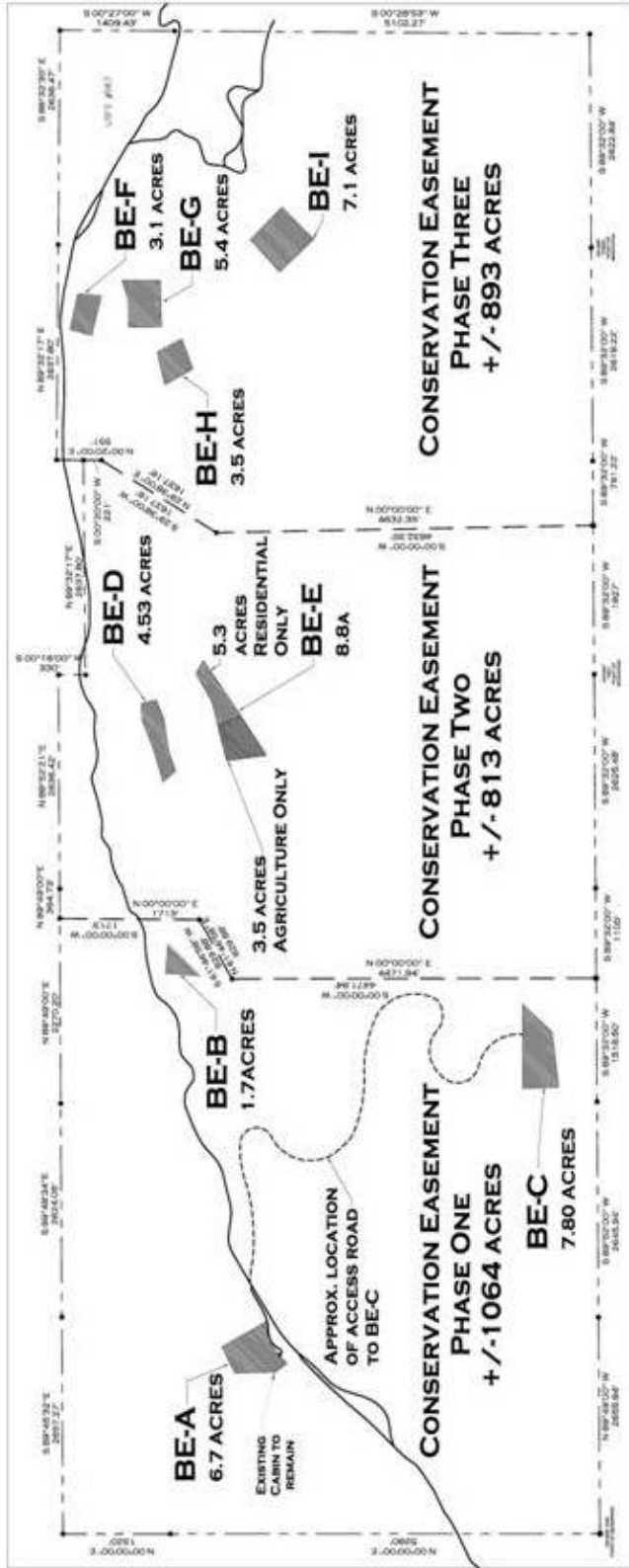
East Fork Ranch Conservation Easement

See map on next page.

Potential development scaled down to 10 homes (max) over three phases plus a small camp.

Mining, commercial logging or gravel operations are not allowed except in limited circumstances related to maintenance of the forest habitat/fire control and the riparian system






Map 3. East Fork Ranch Conservation Easement Plan



CONSERVATION EASEMENT PLAN

EAST FORK RANCH

PAGOSA SPRINGS, COLORADO

-  BUILDING ENVELOPE
-  EXISTING PUBLIC ROAD
-  PROPOSED ROAD
-  CONSERVATION EASEMENT PHASE LINE
-  PROPERTY LINE

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OCTOBER 23, 2009

Snowmobiling

Where they are allowed up the East Fork?

Most of both the East and West Fork watersheds are closed to snowmobiles. Snowmobiles are allowed in the Wolf Creek/Fall Creek area, around West Fork Road, northeast of Bootjack Ranch, and south of East Fork Ranch. On a Forest Visitor map, snowmobiles are allowed in that areas marked "B" on the map. Snowmobiles are also allowed on any road that is open to motor vehicles in the summer such as East Fork, Quartz Creek and West Fork roads.

Impacts of wild and scenic Recreational designation on current ability to snowmobile?

To be discussed.