Appendix M

Resources for Local Governments
to Address Energy and Mineral Impacts

Appendix M

RESOURCES FOR LOCAL GOVERNMENTS TO ADDRESS ENERGY AND MINERAL IMPACTS

This section outlines financial and programmatic resources available to help local governments address the impacts of energy and mineral extraction industries.

Attachments, Other Resources

This section includes excerpts from text found at web sites listed at the end of this section. Several attachments have also been copied from documents posted at agency web sites, as noted on each image.

The graphics in Attachments M-1 and M-2 provide an overview how federal and state funds are distributed and used, as defined by statutes. Attachment M-3 is an Excel workbook with worksheets that demonstrate how state severance tax revenues and federal mineral leasing royalties are distributed, including funds that are available for local governments.

Overview

There are three primary revenue sources that are directly affected by the activity level of energy and mineral industries operating within Colorado:

- Local Property Tax
- State Severance Tax
- Federal Mineral Lease Royalties

Severance Tax Credits are also available, allowing corporations to divert pre-tax dollars into local public/private partnerships for managing future impacts.

Local property tax revenues are administered by local governments.

Colorado state statutes define how federal mineral lease royalties and state severance tax revenues are administered through state agencies. Portions of the funds are distributed to affected local governments through:

- Direct distribution
- Severance Tax Credits
- Discretionary grants and loans

Other portions of the funds are used by state agencies to support programming that can benefit local governments that are directly affected, as well as programming that is less specific to affected communities, including:

- Technical assistance to affected local governments
- Programming in areas with affected local governments
- Education programming throughout the state.

Funding for local governments is administered through the Department of Local Affairs (DOLA). DOLA is charged to integrate tax operations with local government impact assistance programs through the Energy and Mineral Impact Assistance program. The program distributes related funds to local governments as direct allocations, grants and loans. The largest portion of the program funds are distributed through grants and loans.

Colorado agencies that receive a portion of the funds to provide technical assistance and support other programming include:

- Department of Local Affairs (DOLA)
- Department of Natural Resources (DNR)
- Colorado Water Conservation Board
- Department of Education (CDE)
-

More than half of all revenues are distributed to Colorado Department of Education

Following is a summary of how funding sources are distributed and how they can be accessed by local governments. The graphics in attachments M-1 and M-2 provide additional detail.

Statute Stipulated Distribution Points

	Local Government		State Agencies				
	COUNTIES	Towns; School Dist's	Dept of Educ.	DOLA		DNR	
			State School Fund	Impact Assistance Fund		DNR Trust Fund	
REVENUE						CWCB	Ops Acct
Federal Mineral Leasing	X	[as available in 2nd 'cut']	X	X		X	
State Severance Tax	X			X	X	X	X

Potential Sources of Funding for Local Government

<table>
<tr><td rowspan="3">REVENUE</td><td colspan="2">Local Government</td><td colspan="5">State Agencies</td></tr>
<tr><td rowspan="2">COUNTIES</td><td rowspan="2">Towns; School Dist's</td><td>CDE</td><td colspan="2">DOLA</td><td colspan="2">DNR</td></tr>
<tr><td>State Fund</td><td colspan="2">Energy Mineral Impact Fund</td><td>CWCB</td><td>Ops Acct</td></tr>
<tr><td>Federal Mineral Leasing</td><td>Direct distribution</td><td>[direct distrib. as available in 2nd 'cut']</td><td rowspan="2">General DOE grants</td><td colspan="2" rowspan="2">Grants and Loans</td><td rowspan="2">Grants and Loans</td><td></td></tr>
<tr><td>State Severance Tax</td><td>Direct distribution</td><td></td><td>Grants</td></tr>
<tr><td>State Severance Tax Credit</td><td colspan="2">Any local jurisdiction is eligible to partner with companies on tax credit project.</td><td></td><td></td><td></td><td></td><td></td></tr>
</table>

State Severance Tax Revenues

1977 the General Assembly found that "when nonrenewable natural resources are removed from the earth, the value of such resources to the state of Colorado is irretrievably lost." The Legislature established a severance tax on development, processing, or energy conservation of certain minerals and mineral fuels, declaring the tax to be means for the state "to recapture a portion of the lost wealth". The legislature also expressed its intent that "a portion be made available to local governments to offset the impact created by nonrenewable resource development."

Federal Mineral Lease Royalties

Since the 1920's: Federal government has charged royalties on mineral production from federal lands and returned a portion of the revenues to the states, counties and school districts from which the minerals were withdrawn. In 1977 and 1982, the Colorado General Assembly passed legislation with a provision designating a portion of these federal funds to be deposited in a Local Government Mineral Impact Fund.

DOLA manages this fund through the Energy and Mineral Impact Assistance Program, including direct distributions and grants and loans for local governments.

Energy and Mineral Impact Assistance Program

The Energy and Mineral Impact Assistance program was created in 1977 by the General Assembly to provide funds and technical assistance to "local governments to offset the impact created by nonrenewable resource development."

Designated Agency:
The Department of Local Affairs (DOLA) is designated as the agency responsible to integrate tax operations with local government impact assistance programs through the Energy and Mineral Impact Assistance program.

Funding:
Funding for the program is drawn from state severance tax revenues and federal mineral lease royalties. Being a federal royalty payment, many local governments have determined that federal mineral lease funds are exempt from TABOR limitations.

Administration:
Related funds are deposited into separate management funds:

- Local Government Severance Tax Fund, for state severance taxes
  [C.R.S. 39-29-101 through 39-29-114.]
- Local Government Mineral Impact Fund, for federal mineral lease royalties
  [C.R.S. 34-63-101 through 34-63-104]

Statutes governing the Energy and Mineral Impact Assistance program are broadly constructed to:

- Prioritize funding for "public schools and political subdivisions socially or economically impacted by…development, processing or energy conversion of fuels and minerals leased under said Federal Mineral Lands Leasing Act"
- Use funds for "planning, construction and maintenance of public facilities and for public services.

As prescribed by state statutes, DOLA ensures that portions of these two funds are distributed to local governments through: direct distributions, severance tax credits and grants and loans.

Direct Distribution to Local Governments

Colorado's Energy and Mineral Impact Assistance program distributes a portion of the federal mining lease royalties and state severance tax revenues directly to local governments, using formulas defined by related statutes and regulations.

Employee Residence Reports

Based on state statute C.R.S. 39-29-110 severance tax payers submit reports detailing the area of residence for their employees that qualify as "resident production employees". This does not include all persons employed by a company or by auxiliary service businesses. The count also does not include employees working on "stripper wells".

State Severance Tax Revenues

- No application is required for direct distributions.
- DOLA makes this distribution in August of each year.
- Attachments M-1 and M-2, illustrate the formulas stipulated by state statute C.R.S.39-29-101 and used distribute funds to local governments and state programs.
    - Initially, 50% is distributed to DOLA's Local Government Severance Tax Fund and 50% to Department of Natural Resource's Trust Fund,
    - 15% of the DOLA's Local Government Severance Tax Fund is then distributed directly to local governments,
    - DOLA calculates, by mineral type (Coal, Metals, Oil and Gas),:
        - the 15% severance tax pot that will be distributed to local governments, based on the number of "resident production employees" that were reported to Department of Revenue by severance tax payers through Employee Residence Reports,
        - adds the prorated share of interest earnings that these funds have earned in the fiscal year,
        - adds any penalty collections,
        - calculates the specific payments to towns and counties.
    - At the conclusion of the exercise, the Department of Revenue sends the operator name and address list back to the COGCC with suggested updates for the next cycle in January.

Federal Mineral Leasing Royalties

Mineral Lease Payments from the State Treasurer (CRS 34-63-101)

- No application is required.
- Depending on when information is received from the federal government, the State Treasurer makes quarterly payments to local governments.
- Attachments M-1 and M-2 illustrate the formulas stipulated by state statute [C.R.S.34-63] and used distribute funds to counties, towns, school districts and state programs. The distribution formula is set up in a cascade format, which provides a first cut share to the parties and then allocates residuals in a second and third cut.
    - The largest share of the funds goes to the State School Fund for distribution to school districts throughout the state under the School Finance Act,
    - 10% of the total goes to the Colorado Water Conservation Board for funding of local water supply development,
    - Local Government Distributions,
    - At each point in the formulas, distributions to counties are calculated based on the number of "resident production employees" reported to the Department of Revenue through annual Employee Residence Reports,
    - Counties, cities and school districts in counties with federal mineral leases receive direct payments on a quarterly basis, up to $1.2 M,
    - Another portion is distributed to local governments through the DOLA 's Energy and Mineral Impact Fund which has two distribution shares within the cascade formula,
    - The statute requires Counties to share their total distribution with schools and towns, based on a set formula. This minimum required split can be increased by the county commissioners and therefore varies from county-to-county and year-to-year.
        - Distributions to school districts are based on reported enrollment.
        - Distributions to towns are distributed proportional to population

<u>Energy Mineral Impact Assistance Fund Distributions</u>

- No application is required for direct distributions.
- DOLA makes this distribution in January of each year
- Based on C.R.S. 34-63-102 (3), a portion of the federal mineral leasing funds deposited in the Local Government Mineral Impact Fund are distributed directly to municipalities and counties. The calculations is based on:
    - A local government's "share" of the final residual overflow in the cascading formula.
    - The count for "resident production employees" (as reported in Employee Residence Reports to the Department of Revenue.

Diverting Pre-Tax Funds to Local Governments

Severance Tax Credits

Based on C.R.S. 39-29-107.5, the State allows severance taxpaying corporations to make contributions for local public facility and service projects and to convert a contribution into a severance tax credit if:

- The credit is taken on taxes for new or increased energy/mineral production, and
- The contribution is intended for use in addressing front-end impacts that will be associated with the new or expanding production.

<u>Contribution Agreement</u>

The severance taxpayer can create this kind of severance credit by forming an agreement with a local government for the contribution and submitting the agreement to DOLA for review and ensuring that the agreement specifies the following six items:

1. The taxpayer from which the contribution is being made and credit claimed.
2. The local jurisdiction to which the contribution is being made.
3. The need for such contribution relative to impacts from a new or expanding mineral operation.
4. The nature of the contribution in the form of a specific description of the quantities, term, and conditions which make up the contribution and procedures for conveyance. This may include cash transfers, properly valued materials and services, and losses from the purchase of public bonds issued by the jurisdictions.
5. The purpose of the contribution in the form of a description of the relationship of the contribution to need and its role in local government planning and mitigation programs.
6. The amount of the contribution as determined by fair market value of the contributed property and/or services at the time of the execution of the agreement.

<u>Contribution Agreement Review and Tax Credit Decision</u>

The submitted agreement will be reviewed by the state Energy and Mineral Impact advisory committee. The DOLA Executive Director will make the final decision.

- The criteria for review of agreements by the state advisory committee and executive director are similar to the funding guidelines used for the grant and loan program except for a greater emphasis on the need for front end financing <u>before</u> the new/expanded ad valorem tax base is established.

- Credit agreements must be reviewed and prioritized locally with other credit agreements and grant/loan requests submitted during a grant review cycle.

Approved Contribution Agreements

- If approved, the contribution agreement is sent to the State Department of Revenue as documentation for future credit claims by the corporation.
- Municipalities, counties, school districts and other special districts may use such a credit agreement to obtain industry contributions.

Before You Apply

More complete written information on the severance tax credit is available upon request from DOLA. Local units of government considering this mechanism are encouraged to their Department of Local Affairs' regional manager to discuss procedure and technical requirements.

Grants and Loans

The largest distribution of funds from the Energy and Mineral Impact Assistance program occurs in the form of discretionary grants and loans.

Technical Assistance for Prospective Applicants

Application forms, program guidelines and technical assistance are available from department regional managers. The application form and program guidelines are also available DOLA home page, www.dola.state.co.us.

Application Deadlines

Three Funding Cycles
Applications are accepted continuously and considered in the course of three regular funding cycles each year.

Deadlines Posted and Announced
The application deadline for each of the funding cycles is posted on the Department of Local Affairs home page (www.dola.state.co.us) and announced through the Colorado Municipal League, Colorado Counties, Inc., and the Special District Association.

Types of Financial Assistance Available

Grants for the:

- "planning, construction and maintenance of public facilities" and
- "provision of public services."

Loans
In 1985, the Energy Mineral Impact Assistance program was expanded [C.R.S. 39-29-110] to include loans or combinations of grant and loan funding for the "planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion" of:

- "domestic wastewater treatment works", and
- "potable water treatment facilities."

Eligible Activities

Examples of public facilities:

water and sewer infrastructure, town/city halls, county courthouses, community centers, public roads and streets, emergency medical and fire protection facilities and equipment.

Examples of public services:

community development assistance to local governments, internship programs and community revitalization assistance.

Guideline for Maximum Grant or Loan Amounts

Maximum grant request: $500,000

While there is no absolute limit to the amount of funding an applicant may request, $500,000 is the suggested guideline.

NOTE: It is recognized that areas with the heaviest production incur unique impacts. DOLA may consider increasing the grant guideline when a project presents a compelling need, is critical to addressing significant impacts, represents a unique opportunity for enhanced quality of life, or is of monumental significance in strengthening a community for the future.

Maximum water and sewer loan request: $1,000,000

Eligible Recipients

By statute, eligible recipients are:

- **Municipalities, counties, school districts and most special districts**, as "political subdivisions" that are "socially or economically impacted by the development, processing or energy conversion of fuels and minerals".
- **Non-profit corporations** that are being used by local government recipients to provide a public service, but the local government must assume responsibility administering funds that may be awarded and ownership for any real and/or tangible assets acquired with the funds awarded.
- **State agencies** are eligible recipients (of federal mineral lease funds), if they:
    - have specific spending authority from the General Assembly,
    - have the support of benefiting local governments, and
    - work on projects that addresses adverse impacts from energy and mineral development at local, regional or statewide level.

Grant Project Selection Criteria

Following is an abridged version of the criteria or guidelines that DOLA staff and the state advisory committee use to review applications and making funding decisions. A full set of current guidelines is available at the DOLA home page [www.dola.state.co.us]:

a. The range and extent of impacts associated with energy and mineral development, processing or energy conversion affecting the applicant's jurisdiction, including areas indirectly affected. [The program maintains flexibility to respond to areas throughout the state with lesser impacts.]

b. Extent to which project addresses existing/projected community impacts.

c. Availability of alternative funding. Priority or level of funding may be adjusted, based on degree project relates to energy/mineral impacts.

d. Amount of local cash and other funds relative to the grant request amount. Larger matching amounts are generally more competitive.
e. The level of in-kind contributions committed to the project.
f. Local priority as designated by jurisdiction or by a countywide impact team.
g. Relationship of project to identified community goals and/or documented public health and safety issues.
h. The applicant's fiscal capacity and ability to pay, reviewing "the extent of local tax resources local tax effort in solving energy impacts."
i. Consistency with local/regional plans. Department staff will work with appropriate parties to resolve any conflicts before a decision.
j. Likelihood and urgency of timely implementation of the proposed project.
k. The overall feasibility of the proposed project.
l. The extent to which the proposed project may duplicate other efforts or is not coordinated with other related efforts.
m. Likelihood the project can be completed within the proposed budget.
n. The management capability of the applicant/implementers.
o. The consequences of not providing funding.

Loan Project Selection Criteria

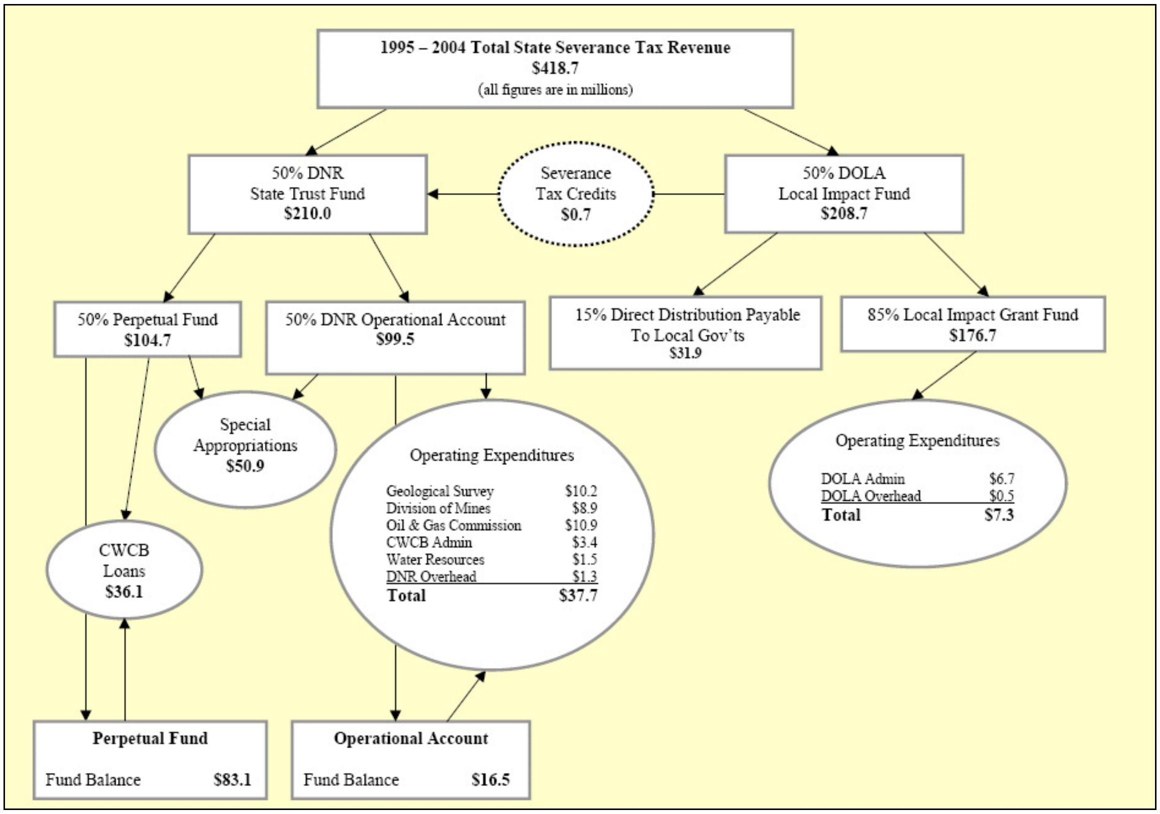
Following is an abridged version of the criteria or guidelines that DOLA staff and the state advisory committee use to review applications and making funding decisions. A full set of current guidelines is available at the DOLA home page [www.dola.state.co.us]:

a. By statute, the minimum interest rate is 5 percent. The loan term will generally not exceed 20 years. Payments are scheduled on an annual basis, with a principal and interest payment due September 1.
b. Loans will be authorized for only those parts of a domestic water or sewer system specified in C.R.S. 39-29-110(1)(b)(II). Raw water storage or transmission to a treatment facility cannot be considered for loans.
c. Loans generally will be the first option looked at for deferred maintenance and growth-related sewer and water projects.
d. The staff will identify for the state advisory committee those projects which appear to warrant a loan as a reasonable alternative to full grant funding.
e. Loan participation may be used as a means to increase local match for a project when local cash on hand is minimal.
f. Debt refinancing is generally not eligible.
g. Loan authority is not intended to deter communities from using traditional funding sources for projects.
h. The department will perform a community fiscal analysis to determine loan feasibility. The analysis will include a review of user rates, tap fees, overall community tax burden and fee structures, population statistics, existing debt service, financial statements, fund balances and anticipated capital improvements.

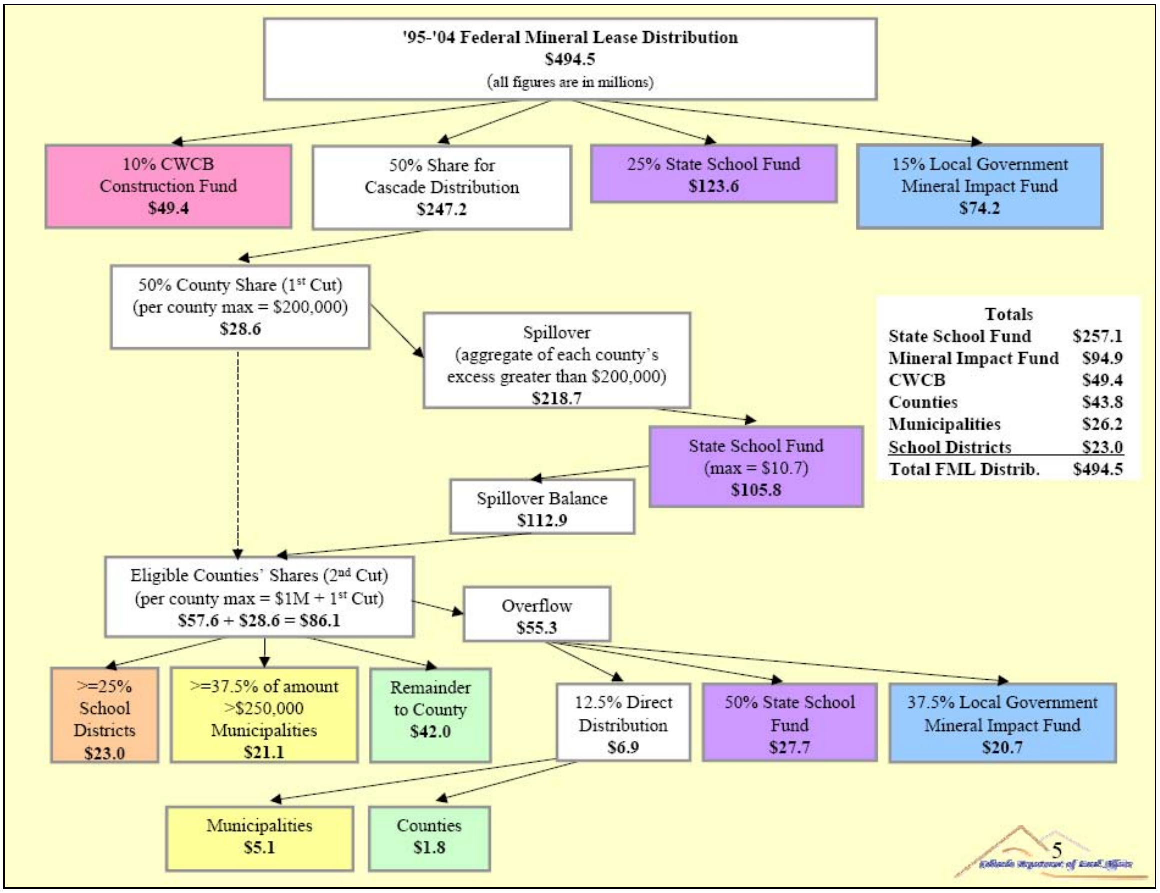
Appendix M

Attachment M-1
State Severance Tax Revenue Flow Chart
From: Colorado Department of Local Affairs

http://www.dola.state.co.us/LGS/FA/EMIA/Documents/0511-EIAF-RoadShow-for-WEB.pdf



Attachment M-2
Federal Severance Tax Revenue Flow Chart
From: Colorado Department of Local Affairs
http://www.dola.state.co.us/LGS/FA/EMIA/Documents/0511-EIAF-RoadShow-for-WEB.pdf



Attachment M-3
Energy and Mining Impact Mitigation Funding Sources
Workbook Estimate for Local Governments

SUMMARY:
Mining Impact-Related Revenues and Funding Sources

County **Garfield**
Tax Year **2003**

	General Fund	Capital Budget
LOCAL TAX REVENUES		
Property Tax on Oil and Gas **	$ 3,400,000	*at County's discretion*
REVENUES DISTRIBUTED TO LOCAL GOVT		
State Severance Tax Revenue	$ 1,128,000	*at County's discretion*
Federal Mineral Leasing Revenue *5.5% of funds must go to Capital Budget*	$ 1,200,000	$ 66,000
BLM - Payment in Lieu of Taxes	$ 1,200,000	
TOTAL	$ 6,928,000	$ 66,000

GRANTS and LOANS
Revenues administered by state agencies as part of competitive grant and loan programs*

Department of Local Affairs (DOLA)		
Energy + Mineral Impact Fund	$ 45,712,500	*at County's discretion*
Department of Natural Resources (DNR)		
DNR Operations Account	$ 8,000,000	*at County's discretion*
Colorado Water Conservation Board	$ 14,300,000	*at County's discretion*
Department of Education		
State School Fund [governed by School Finance Act]	$ 39,400,000	
TOTAL	$ 68,012,500	

State Severance Tax Revenue Distribution

*** Required Fields*

State Severance Tax Rate

[Source: DOLA]

TAX YEAR	2003	
TAX RATE	2.2%	(NOTE: rate varies annually, based on value of production)

State Severance Tax Revenues

(source: DOLA 2004)

Net Colorado Severance Tax	$ 32,000,000

Employee Residence Reports**

Number of Employees Residing within the County

As Reported to the State Dept of Revenue by Companies Paying Severance Taxes

(Source: DOLA, Garfield County)

TAX YEAR	2003
Resident Production Employees Reported	470
Total Production Employees in Colorado	1000

**** NOTE:** DOLA calculates the County's share, based on Employee Residence Reports and a set of other variables (like tax penalties paid by companies, etc.) that cannot be meaningfully projected.

Distribution of Federal Mineral Leasing Funds

*** Required Fields*

Assessed Valuation for Oil and Gas

(Source: DOLA Annual Report, 200__)

Assessed for Fed. Tax	$	130,000,000
Exempted	$	(4,000,000)
TOTAL Assessed	$	126,000,000

Calculation of Federal Mineral Leasing Funds

[Source: DOLA Annual Report, 200__]

Based on the Federal Mineral Leasing Act, rental fees and royalties are collected based on the assessed valuation of a portion of the energy and minerals that are extracted from federal lands. Based on Leasing Act regulations, a substantial percentage of the oil and gas that is extracted is exempted from this assessment (see above).

Quarterly a net return for collected funds is calculated and 50% of the net is distributed to the state. Net return is calculated with deductions for administrative overhead and related claims from agencies like the departments that are managing areas of the Roan Plateau as part of the Naval Oil Shale Reserve.

Return of Federal Mineral Leasing Funds to the Colorado Mineral Leasing Fund

[Source: Department of Revenue]

Net Funds from CO	Colorado Mineral Leasing Fund	US Treasury
$ 126,000,000	50% of Net	50% of Net
	$ 63,000,000	$ 63,000,000

Employee Residence Reports

Number of Employees Residing within the County [Resident Production Employees]

As Reported to the State Dept of Revenue by Companies Paying Severance Taxes

[Source: Department of Revenue]

Year	County Resident Production Employees	State Total Resident Prod. Employees
2003	475	1,000

County's Estimated "Share" of Federal Mineral Leasing Funds**

Figure Estimated by DOLA, using Department of Revenue Reports

(Source: Department of Revenue)

County's Estimated "Share"	NOTE: A local government's share of distributed funds is calculated at several points in this cascading formula based on the number of "resident production workers" that are reported to the Colorado Dept of Revenue by severance tax payers using Employee Residence Reports (see above).
48%	

Distribution of Federal Mineral Leasing Funds through the Colorado State Treasurer and Dept of Local Affairs

Colorado Mineral Leasing Fund	County's Estimated "Share"
$ 63,000,000	48%

	County of Origin	DOLA's Impact Assistance Fund	CWCB Construction Fund	State School Fund
FIRST 'CUT'				
$ 63,000,000	50% of County's Estim 'Share', up to 200K	15% of total	10% of total	25% of total
	$ 0	$ 9,450,000	$ 6,300,000	$ 15,750,000
SPILLOVER				
$ 37,800,000				100% up to $10.7M
	n/a	n/a	n/a	$ 10,700,000
SECOND 'CUT'				
$ 27,100,000	Remaining bal of the 50%, up to $1.2M			
	$ 1,200,000	n/a	n/a	
TOTAL Distribution to COUNTY	$ 1,200,000			

SCHOOLS' Dist fr County $ 1,200,000	Min 25% of County's Total Distrib
	$ 300,000
TOWNS' Distrib fr County (IF County's Total >$250K) $ 950,000	Min 37.5% of County's Total Distrib > $250K
	$ 356,250
COUNTY's Balance $ 543,750	Residual of Total Distrib to County
	$ 543,750

OVERFLOW

$ 25,900,000		50% of overflow [for local govt grants]		50% of overflow
	n/a	$ 12,950,000	n/a	$ 12,950,000

DISTRIBUTION thru DOLA

$ 12,950,000	25% of DOLA funds from Final 'Cut'	75% DOLA Final 'Cut' (Residue to counties that have 'share' in Overflow)
	NO	$ 9,712,500

BALANCE	$ 543,750	$ 32,112,500	$ 6,300,000	$ 39,400,000
PLUS Distrib thru DOLA	**NO**			

www.dola.state.co.us