

Valley Voices:

“Visiting the Crystal Mill: Whose Road Is It Anyway?”

By Gregory Staple

Recent efforts by CVEPA and others to reduce motorized traffic -- including a proposed ban on Off Highway Vehicles (OHVs) -- along the public roads leading to the historic Crystal Mill outside Marble (chiefly, County Road 3 (CR3) and the Lead King Loop (LKL)) have been hamstrung, in part, by confusion about many of the relevant facts.

Take the basic question raised above: *Whose road is it anyway?* “The Google” will not deliver a ready answer, although pinning down the responsible party (or parties) should logically help one to identify the “who” and the “how” of a solution.

As shown in the annotated map below, the roads in question cross four distinct jurisdictions: the Town of Marble, Gunnison County, the State of Colorado and the United States, represented by the Forest Service, an agency of the Department of Agriculture.



Each of these jurisdiction has its own unique “rules of the road” for motorized vehicles and although they are written down, the relevant documents are not easy to find. They have been adopted at different times, in different ways and for different reasons with scant coordination among the overlapping jurisdictions.

This divided jurisdiction has frequently led to misinformation about the applicable rules as well as ongoing efforts to pass the jurisdictional buck when it comes to reining in OHV traffic. Moreover, absent common knowledge of the applicable rules, or who might enforce them, harmful and frequently illegal OHV operation has gone mostly unchallenged.

Fragmented responsibility has also led to at least one notable regulatory error and several glaring omissions. That is so especially when it comes to public safety and protecting the

rights of non-motorized uses (e.g. walkers, mountain bikers, horse-packers) on the roads in question.

To provide a common starting point for managing OHVs on the Crystal Mill access roads, the remainder of this article provides an annotated primer on relevant laws and regulations. It starts at the state level.

Colorado Law on OHVs

Since July 2008, the State of Colorado, pursuant to [Title 33, Article 14.5](#) of the Colorado code, has prohibited OHVs from operating on public roads (e.g., State highways, such as CO Route 133; County roads, such as CR3; and municipal roads, such as W. Park Street in the Town of Marble, which connects to CR3).

(NOTE: Under Colorado law, and as used here, OHVs include All Terrain Vehicles (ATVs) and Utility Task Vehicles (UTVs), also known as side-by-side (SxS) vehicles.)

Colorado law makes certain exceptions to the general OHV ban. These include: When local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes; when using an off-highway vehicle for agricultural purposes; or when authorized by the federal government (e.g., the Forest Service) on federal lands.

In May 2021, Colorado's OHV laws [were amended](#) to make it clear that the 2008 "no use" rule means that it "is unlawful" for OHVs to use public roads (i.e. unauthorized use is a crime). The Colorado State Police (CSP) as well as local officials (e.g. County Sheriffs) are responsible for enforcing the OHV ban on public roads [as the CSP has stressed](#).

Additional State Laws

The state requires all OHVs to [be registered with Colorado Parks and Wildlife](#) (CPW). All OHVs owned and operated in Colorado also must display current registration stickers. OHVs from out of state must display a current Colorado OHV use permit sticker.

While the state has preempted the licensing and registration of OHVs (through the CPW), [Section 33-14.5-110 of the Colorado code](#) grants local governments considerable leeway in regulating the manner in which OHVs may be operated on public lands and roads under their jurisdiction. [Per the State Legislature](#), localities may, for example, require OHV operators to: have a driver license; carry liability insurance; use seatbelts; use child restraint systems; use eye protection; use a helmet (for riders 18 and younger); or limit the number of occupants in an OHV.

This is a non-exhaustive list and other operational limitations on OHV use of public roads within a locality (e.g. time and place limitations) may be valid.

Town of Marble

In February 2014, the Town of Marble [passed Ordinance Number 3](#) authorizing OHVs to

use Town streets, thus expressly exempting OHV travel within the Town from the 2008 state prohibition. (Note: See the prior map for Town boundaries.)

Notably, the Town's ordinance requires all OHV operators to carry proof of insurance for an OHV with coverage no less than the state minimums for motor vehicles; OHVs must also be registered and operators must have a valid motor vehicle driver's license or be directly supervised by a licensed operator.

In addition, the Town requires OHVs to obey the 15 mph Town speed limit. Parking rules for motorized vehicles also apply to OHVs and the vehicles and trailers used to transport them.

Gunnison County

The County has also carved out an exemption for OHV use on a section of County Road 3 east of the Town of Marble. It did so first in a [2015 Resolution](#) and then, to cure a legal technicality (so as to authorize its action under the correct provision of state law), it passed a [second Resolution in 2018](#).

Both Resolutions adopted by the Gunnison Board of County Commissioners (BOCC) permit OHV traffic *"on that certain portion of County Road #3 a/k/a Marble Road, beginning at the town limits of the Town of Marble at Beaver Lake to the bottom of that area known as "Daniel's Hill", a distance of approximately 0.7 of a mile. "*

However, CR3 does not end at the bottom of Daniel's Hill; it runs to the top of Daniel's Hill, another .8 of a mile approximately, where it connects to the junction of Forest Service (FS) Road Nos. 314 and 315, commonly known as the Lead King Loop (LKL). As a result, despite the County's two resolutions, state law still prohibited the use of OHVs on the .8 mile section of County Road 3 along Daniel's Hill.

The geographic extent of the 2018 (and 2015) exemption in the BOCC Resolution appears to be derived from the text of an October 2012 maintenance agreement between Gunnison County and the Forest Service for CR3 and FS Roads 314 and 315. That contract, technically known as Cooperative Forest Road Agreement, No. 12-RO-11021500-043, contains a "Schedule A: Road Summary" detailing the respective responsibilities of the County and the Forest Service for certain roads.

For FS No. 314 which runs past the Crystal Mill (also referenced as CR3), Schedule A refers to seven segments east to west, the last of which (the 7th) has the following description: Crystal River Seg. 7 (of FS 314) - Junction 315W- Beaver Lake is stated as ".070 Length (miles)" and checked as "County Owned". By checked box, the County also assumed responsibility for "Law Enforcement" and "Road Maint. & Signing".

As noted earlier, however, it is actually 1.5 miles on CR3 from the junction of FS Nos. 314 and 315 to the western edge of Beaver Lake where the Town of Marble begins. This Cooperative Agreement is the likely source of the geographic error in the 2015 (and 2018)

Gunnison County OHV Resolutions. (Notably, on June 1, the BOCC voted to approve a new five year Agreement with the White River National Forest with a revised Schedule A correcting the distance on CR3 from Beaver Lake to the top of Daniel's Hill. It can be found in the [BOCC's meeting portfolio](#) at page 240. A letter outlining the partnership is on page 227.)

On May 18, 2021, the BOCC adopted a new [Resolution \(No. 21-12\)](#) to close the Daniel's Hill gap stemming from its prior OHV exemption resolutions. The 2021 Resolution expressly exempts OHV traffic *"on that certain portion of County Road #3 a/k/a Marble Road, beginning at the town limits of the Town of Marble at Beaver Lake to the top of that area known as "Daniel's Hill", a distance of approximately 1.5 miles, and otherwise described as the intersection of Forest Service Roads 314 and 315"*

The Resolution also states that it *"shall remain in full force and effect until midnight Mountain Time December 31, 2021, as which point this Resolution shall expire and no longer remain in effect."* Given this "sunset" provision, absent further action by the BOCC, on and after January 1, 2022, under state law OHV traffic apparently will be prohibited on CR3 east of the Town of Marble.

The BOCC has now voted three times in six years to lift the statewide ban on OHV use for sections of CR3. However, as yet, it has done so without simultaneously adopting any specific public safety or other conditions to protect the public from unsafe, negligent or illegal operation of OHVs on this public road. Compare Marble's [2014 Ordinance](#) above.

The 2021 Resolution was discussed by the BOCC at both of its May meetings. Video recordings can be found at these links: [May 4](#) and for [May 18](#).

The United States Forest Service (USFS)

As noted above, CR3 connects to Forest Service Roads 314 and 315 (a/ka/ the Lead King Loop) at the top of Daniel's Hill. These roads run through the [White River National Forest \(WRNF\)](#) and FS 315 also parallels, in part, the boundary of adjacent federal lands that make up the [Maroon-Bells Snow Mass Wilderness](#), also overseen by the USFS. ([All motorized traffic](#) is generally banned in national wilderness areas.)

Motorized use of the LKL roads is governed by a 2012 [Travel Management Plan](#) that was adopted after a protracted multi-year public proceeding and environmental assessment. The plan authorizes multiple uses of FS Roads 314 and 315, including unlimited use by "licensed and unlicensed " vehicles, such as ATVs and motorcycles. Unlimited non-motorized use (e.g, by hikers, mountain bikers, horses) is also specifically authorized. See pages A2-21 and 22 of the Plan. (Absent express authorization, [federal law prohibits](#) the use of private motorized vehicles in national forests.)

The foregoing travel plan is also reflected in the Motorized Vehicle Use Maps (MVUMs) which the WRNF issues annually for specific Ranger Districts (the LKL is in the [Aspen- Sopris Ranger District](#)). The Summer 2021 MVUM for this District can be found [here](#) .

Under the Forest Service's rules ([specifically 36 C.FR. Sec. 212.54](#)), the motorized use (and other) designations for roads covered by a Travel Management Plan may be revised by the Service "to meet changing conditions". Under the rules, the following considerations may lead a road to be closed (or open) to one or more categories of motorized vehicles and, consequently, these factors would also be relevant to any decision to change an existing designation.

These considerations include: Damage to soil, watershed, vegetation, and other forest resources; harassment of wildlife and significant disruption of wildlife habitats; conflicts between motor vehicle use and existing recreational uses; conflicts among different classes of motor vehicle uses; and the speed, volume, composition, and distribution of traffic on a road.

Under the rules, *a permanent prohibition* of some (or all) motorized uses on a road where motorized traffic has been previously unrestricted would require prior notice to the public and some opportunity for public input (e.g. written comments); coordination with local governments impacted by any change would also be required. However, the Forest Service has a good bit of discretion on how the foregoing activities are conducted, especially where the revision is being proposed to mitigate adverse impacts on the environment and/or to protect public safety.

There is also precedent for such an action in the WRNF. For example, in 2013, the Forest revised a portion of its Travel Management Plan to meet changing conditions on several roads. See [this 2013 public notice](#).

Temporary and Emergency Road Closures and Restrictions on Motorized Use

Wholly apart from the foregoing, the rules also give the Forest Service ample authority to take temporary action (for up to a year or more) to limit or prohibit authorized motor vehicle travel or other uses of a specific FS road. More specifically, under [Section 212.52 \(a\)\(2\) of the Service's rules](#), if a Forest Supervisor (the most senior manager of each national forest) determines that motor vehicle use on a Forest System road or in an area on Forest System lands "is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, [or] wildlife habitat," then the Supervisor "**shall immediately close that road** ... or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence." [emphasis added]

It bears noting that [USFS information pages](#) on OHV use in forests states that: "*Excessive complaints about Off Highway Vehicle recreation uses such as dust, noise, and speed can force OHV site closures. OHV sites are closed partly because of environmental damage from OHV use such as violation of clean air rules due to excessive dust from vehicles.*"

No public input or proceeding is mandated for an emergency closure. The rules only require that a Supervisor provide public notice of the closure (e.g., by posting notice on the Forest Service's web site and at the affected location), as soon as practicable, pursuant to Section 261.51 of the rules. The notice must include reasons for the closure and the estimated duration of the closure.

Under [Section 261.50 of the Service's rules](#), a Forest Supervisor may also issue an order which closes or restricts motorized access to a road or forest area to safeguard the public or protect forest property. Under the rules, such orders may exempt any of persons with a permit specifically authorizing an otherwise prohibited use; owners or lessees of land in the area; and residents in the area.

Significantly, on May 19, 2021, the Supervisor of the WRNF used his discretionary authority under Section 261.50 of the Rules to effect a peremptory closure of the road to Coulter Lake (outside Rifle) and surrounding areas to all traffic. The order was issued "[to protect public safety and property.](#)" Violation of a Forest Service closure order is punishable as a Class B misdemeanor by a fine of not more than \$5,000 for an individual or \$10,000 for a legal entity other than an individual, or imprisonment for not more than 6 months, or both. ([16 U.S.C. § 551](#) and [18 U.S.C. §§ 3559, 3571, 3581](#)).

Other national forests in Colorado have issued analogous road and camp ground closure orders to protect the public. See e.g. , the [orders issued by the Rocky Mountain Region, Arapaho & Roosevelt National Forests Pawnee National Grassland](#); and this order issued by [the Gunnison National Forest](#) .

*The author, a former Washington D.C. lawyer, lives off CR3 just outside Marble. The opinions expressed here do not necessarily represent the positions of CVEPA and this primer is not intended to provide legal advice to anyone.