BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

April 6, 2017

VIA E-MAIL
Mr. Dan Blankenship
CEO
Roaring Fork Transportation Authority
1340 Main Street
Carbondale, CO 81623

Re: Proposed Access Control Plan

Dear Mr. Blankenship:

As an attorney who specializes in railroad transportation law, especially with respect to regulation of the rail industry by the Surface Transportation Board ("STB"), you have asked me to review the proposed Access Control Plan ("ACP")(dated 2-28-17). The ACP provides guidance with respect to the management and use of the Roaring Fork Transportation Authority's railbanked corridor between MP 360.22 (at Glenwood Springs, CO) and MP 393.66 (at Woody Creek), in Garfield, Eagle, and Pitkin Counties, CO (the "Railroad Corridor"). You have asked my opinion as to whether the ACP would, if implemented, provide sufficient protection so that the Railroad Corridor would remain within the jurisdiction of the Surface Transportation Board.

As we have discussed before, once a rail line is properly railbanked, for that railbanked corridor to remain within the jurisdiction of the STB consistent with the National Trails System Act ("Trails Act")(16 U.S.C. 1247(d)), and thereby prevent that corridor from being considered abandoned, several conditions must be met. First, the trail sponsor must assume full responsibility for management of the corridor and for any legal liability arising out of its use, and it must pay all applicable taxes that may be levied or assessed against the corridor. Second, the line must remain connected to the interstate rail system, i.e. it cannot be severed from a connection with the interstate rail system. Finally, the width of the corridor must be sufficient to accommodate the potential restoration of future rail service. See generally, Sunflower Rails-Trails Conservancy, In. – Petition For Declaratory Order – Sale Of Railbanked Right-of-Way, FD 36034 (STB served Feb. 21, 2017); Idaho Northern & Pacific Railroad Company – Abandonment And Discontinuance Exemption – In Washington And Adams Counties, ID, AB 433 (Sub-No. 2X) (STB served Apr. 1, 1998); and Jost v. STB, 194 F.3d 79 (D.C. Cir. 1999).

The ACP, if implemented as written, would meet the requirements of the Trails Act and applicable STB precedent.

I note, however, that in granting easements, licenses, permits, crossings, or other potential uses of the Railroad Corridor (collectively for ease of reference, "Easements"), there is no specific requirement that the Authority include language in any grant of an Easement that requires the grantee to acknowledge that the Authority can require such a grantee to modify, relocate, or even terminate that Easement in the event it is necessary to do so in order to restore rail service. The ACP clearly contains that concept, but in implementing the ACP, it is important that the Authority continue to ensure that it has the ability to restore future rail service.

Section 17 of the ACP does include specific agreement language that provides protections to the Authority, however, that language seems to be limited only to crossings. If the Authority wanted to provide itself with even stronger protections in any future Easement agreements, the Authority may want to consider including similar language to that contained in Section 9 of the May 16, 2016 Roaring Fork Transportation Authority To City Of Glenwood Springs 8th Street Easement Agreement.

Respectfully submitted,

William A. Mullins

cc: Angela Henderson
Paul Taddune
Walter Downing