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SERVICE DATE - SEPTEMBER 6, 2001

SURFACE TRANSPORTATION BOARD

CORRECTED DECISION*

STB Docket No. AB-318 (Sub-No. 5X)

LOUISIANA & DELTA RAILROAD, INC.—ABANDONMENT
EXEMPTION—IN IBERIA PARISH, LA

Decided: August 22, 2001

Louisiana & Delta Railroad, Inc. (Applicant) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 3.08-mile portion of the Salt Mine Branch line of railroad between milepost 6.72 and milepost 9.8 in Iberia Parish, LA. Notice of the exemption was served and published in the Federal Register on July 26, 2001 (66 FR 39081-82). The exemption is scheduled to become effective on August 25, 2001.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 31, 2001. In the EA, SEA indicated that the U.S. Environmental Protection Agency-Region 6 (EPA) and the U.S. Army Corps of Engineers (Corps) have not completed their evaluation of the potential impact of this project on environmental and water resources. Therefore, SEA recommends that Applicant consult with the EPA Region 6 and the Corps prior to salvage activities. Also, SEA initially recommended that no salvage operations take place until the requirements of section 7 of the Endangered Species Act, 16 U.S.C. 1531, have been completed. However, SEA now states that U.S. Fish and Wildlife Service (FWS) submitted a letter on July 31, 2001, indicating that the proposed abandonment is located in the vicinity known to be inhabited by the threatened Louisiana black bear (*Ursus americanus luteolus*), and recommends steps that Applicant can take to avoid bears and human-bear conflicts. FWS also states that there is a colonial waterbird nesting colony near the right-of-way. Therefore, in response to FWS concerns, SEA now recommends that Applicant: (1) ensure that all personnel remove food-related refuse from the salvage area at the end of each workday to prevent nuisance bear behavior and human-bear conflicts with the threatened Louisiana black bear; and (2) limit salvage activities that occur within 1,500 feet of the rookery on Avery Island to the non-nesting period of September 1 to February 15.

SEA also states that the State of Louisiana Department of Environmental Quality, Office of Environmental Service (OES), submitted comments recommending that Applicant: (1) contact the Corps to determine whether permits are required, and if permits are required,

* This decision corrects ordering paragraph No. 4 in the Board decision served August 24, 2001, to include an environmental condition recommended by SEA that requires Applicant to consult with the EPA-Region 6 prior to salvage activities. All other information remains unchanged.

determine whether OES Water Quality Certification is required; (2) determine whether a Louisiana Pollutant Discharge Elimination System permit is needed; and (3) determine whether a Department of the Environmental Quality stormwater general permit is required. SEA further recommends that Applicant take precautions to protect the groundwater of the region and to control nonpoint source pollution from salvage activities. Therefore, in response to these concerns, SEA recommends that Applicant consult with OES prior to salvage activities to determine if permits are needed.

Finally, SEA states that the State of Louisiana Department of Natural Resources, Coastal Management Division, has indicated that Applicant must submit a Consistency Certification stating that the proposed abandonment is consistent with the Louisiana Coastal Resources Program. Therefore, SEA recommends that Applicant be prohibited from performing any salvage activities until completion of the Coastal Management Consistency Certification and notification to SEA of such completion, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

In the EA SEA indicates that the right-of-way may be suitable for public use following abandonment. On June 18, 2001, the Atchafalaya Basin Program, Department of Natural Resources (Commenter), filed a request for the issuance of a notice of interim trail use (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and a public use condition under 49 U.S.C. 10905, in order to negotiate with Applicant for acquisition of the right-of-way for use as a recreational trail.¹ Commenter requests that Applicant be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that Applicant be barred from removing or destroying any trail-related structures such as bridge, trestles, culverts and tunnels, for a 180-day period.

By letter submitted by facsimile on August 10, 2001, and filed on August 13, 2001, Applicant states that the line is inappropriate for interim trail use and declined to enter into trail use negotiations with Commenter. Applicant also opposed imposition of a public use condition. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment—Use of Rights-of-Way as Trails, I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2. I.C.C.2d 591, 609. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR

¹ The notice of exemption indicated that a NITU request would be addressed in a subsequent decision.

1152.28(a)(2). Commenter has met these requirements. A 180-day public use condition will, therefore, be imposed. Applicant may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes.²

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for issuance of a notice of interim trail use is denied.
3. The request for a public use condition is granted, as discussed in this decision.
4. The abandonment of the line described above is subject to the conditions that Applicant shall: (1) prior to salvage activities: (i) contact the Corps to determine if permits are required, and if permits are required, determine whether OES Water Quality Certification is required; (ii) consult with the EPA-Region 6; (iii) determine whether a Louisiana Pollutant Discharge Elimination System permit is needed; (iv) determine whether a Department of the Environmental Quality stormwater general permit is required; and (v) take precautions to protect the groundwater of the region and to control nonpoint source pollution from salvage activities; (2) ensure that all personnel remove food-related refuse from the salvage area at the end of each workday to prevent nuisance bear behavior and human-bear conflicts with the threatened Louisiana black bear and limit salvage activities that occur within 1,500 feet of the rookery on Avery Island to the non-nesting period of September 1 to February 15; (3) be prohibited from performing any salvage activities until completion of the Coastal Management Consistency Certification and notification to SEA of such completion, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. prior to salvage activities; and (4) keep intact the right-of-way underlying the track, including bridges, culverts, and tunnels (but not track or track material or signal equipment) for a period of 180 days from the August 25, 2001 effective date (until February 21, 2002), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.

² Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period not more than 180 days after the effective date of the decision approving or exempting the abandonment.

5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary