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SERVICE DATE - SEPTEMBER 3, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-318 (Sub-No. 3X)

LOUISIANA & DELTA RAILROAD, INC.--ABANDONMENT
EXEMPTION--IN TERREBONNE PARISH, LA

Decided: September 1, 1998

Louisiana & Delta Railroad Inc. (L&D) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 1.8 miles of its line of railroad known as the Houma Branch between milepost 0.20 and milepost 2.0, in Terrebonne Parish, LA. Notice of the exemption was served and published in the Federal Register on May 28, 1997 (62 FR 28919). The May 28, 1997 notice stated that, if "consummation has not been effected by L&D's filing a notice of consummation by May 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire."

By decision served June 26, 1997, the exemption was made subject to the condition that L&D consult with the U.S. Army Corps of Engineers, New Orleans District, prior to salvaging the right-of-way to determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344.¹

On August 29, 1997, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for American Trails Association, Inc. (ATA) to negotiate an interim trail use/rail banking agreement with L&D for the entire line until February 25, 1998. On August 17, 1998, ATA informed the Board that it had entered into an agreement in principle with L&D to acquire the right-of-way, but that no final agreement for trail use/rail banking was reached by the parties. ATA states that it had informed L&D on July 22, 1998, that it is no longer interested in acquiring the right-of-way for interim trail use.

On August 24, 1998, L&D filed a notice of consummation of the abandonment along with a petition requesting an extension that would permit it to file its notice of consummation later than May 28, 1998. L&D confirmed that it and ATA had reached an agreement in principle but were unable to reach a final agreement for interim trail use. L&D also acknowledged that it was notified on July 22, 1998, that ATA was no longer interested in an interim trail use agreement with respect to the line. L&D further states that it believed that the parties were awaiting only formalization of

¹ The June 26 decision also imposed a 180-day public use condition requiring L&D to leave the right-of-way intact, including bridges, culverts and tunnels and similar structures for a period 180 days from the June 27, 1997 effective date. The 180-day period for the public use condition expired on December 24, 1997.

the documentation for interim trail use and that, because of its belief, it did not request an extension of the NITU negotiating period or file a notice of consummation prior to May 28, 1998.

While the relief L&D seeks has been couched in terms of a request for a retroactive extension of time to file the notice of consummation,² the petition is based on L&D's recognition, on July 22, 1998, that negotiations for trail use were over and would not produce a trail use agreement. Upon its realization that its earlier assumptions about the continuation of the trail use negotiation process were faulty, L&D proceeded to file its notice of consummation and sought relief to permit it to file at that time. Under these circumstances, a retroactive extension will not be authorized, but the notice of consummation will be accepted as having been timely filed.³

While L&D's delay in filing its notice of consummation is understandable under the unique circumstances described in this decision, and thus acceptance of the notice is warranted here, neither L&D nor any other rail carrier should count on the Board's acceptance of late-filed notices of consummation of abandonment authority.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. L&D's notice of consummation is accepted as having been timely filed.
2. L&D may consummate the abandonment on the effective date of this decision, subject to its meeting any remaining conditions on the authority being exercised.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings, but the request must be filed sufficiently in advance of the deadline for notifying the Board of consummation to allow for timely processing.

³ L&D's notice indicates exercise of the abandonment authority as of the date of the Board's acceptance of its notice of consummation.