

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: August 26, 1997

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). By decision served June 26, 1997, the exemption was made subject to the condition that L&D shall 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. In the same decision, a 180-day public use condition was also imposed under 49 U.S.C. 10905 at the request of the Terrebonne Parish Consolidated Government (TPCG). The condition required that L&D keep the right-of-way intact, including bridges, culverts and tunnels and similar structures for a period of 180 days after the June 27, 1997 effective date of the exemption to permit TPCG or any other state or local government agency, or other interested person, to negotiate for acquisition of the line for public use. The 180-day period will expire on December 24, 1997.

By petition filed August 15, 1997, American Trails Association, Inc. (ATA) late-filed a request for a notice of interim trail use (NITU) for the entire line, under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d), so that it could negotiate with L&D for interim trail use. ATA submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. By letter dated August 21, 1997, L&D indicated that it has not consummated the abandonment and that it is willing to negotiate with ATA for trail use/rail banking of the line.

Late-filed trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way<sup>1</sup> and the carrier is willing to enter into negotiations. Inasmuch as L&D has not consummated the abandonment and is willing to negotiate with the ATA for the right-of-way, a NITU will be issued, with the trail use negotiation period running for 180 days from the service date of this decision or until February 25, 1998. If no agreement is reached during this period, L&D may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

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

It is ordered:

1. This proceeding is reopened.

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<sup>1</sup> See Rail Abandonment--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

2. Upon reconsideration, the notice of exemption served and published in the Federal Register on May 28, 1997, is modified to the extent necessary to implement interim trail use/rail banking as set forth below until February 25, 1998.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specific date.

6. If an agreement for interim trail use/rail banking is reached by February 25, 1998, interim trail use may be implemented. If no agreement is reached by that time, L&D may fully abandon the line.

7. This decision is effective on the service date.

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

Vernon A. Williams  
Secretary