

SERVICE DATE - JUNE 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: June 24, 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). The exemption is scheduled to become effective on June 27, 1997.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served June 6, 1997. In the EA, SEA indicates that the U.S. Army Corps of Engineers, New Orleans District, states that a firm determination of the Department of Army permit requirements require much better detailed maps, identifications and descriptions of both the on-and off-site areas that will be affected by the abandonment. Therefore, SEA recommends that a condition be imposed requiring L&D to 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.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed May 5, 1997, the Terrebonne Consolidated Government (TPCG) filed a request for the issuance of a notice of interim trail use/rail banking (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, so that it could negotiate with L&D for acquisition of the right-of-way for a trail.¹

By facsimile dated June 23, 1997, L&D states that it is not willing to negotiate with TPCG for interim trail use agreement. L&D asserts that the right-of-way is "presently under agreement of sale" to a contractor, including materials and land. 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*, 2 I.C.C.2d 591 (1986) (*Trails*).

As an alternative to interim trail use under the National Trails System 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 at 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 to time requested. *See* 49 CFR 1152.28(a)(2). A 180-day public use condition will, therefore, be imposed to control disposal of rail properties being abandoned. L&D 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 appropriate for public purposes.

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

It is ordered:

¹ The notice of exemption indicated that the NITU request would be addressed in a subsequent decision. By facsimile dated June 20, 1997, TPCG reiterated its request.

1. This proceeding is reopened.
2. The request for issuance of a notice of interim trail use is denied.

3. The request for public use condition is granted. The exemption of the abandonment of the line described is subject to the conditions that L&D shall: (1) 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; and (b) leave intact all of the right-of-way underlying the tracks, including bridges, culverts and tunnels (but not track or other rail assets), for period of 180 days from the June 27, 1997 effective date of the exemption (i.e., until December 24, 1997) , to enable any State or local government agency or other interested persons to negotiate the line's acquisition for public use.

4. This decision is effective on the service date.

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

Vernon A. Williams
Secretary