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SERVICE DATE - AUGUST 4, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-318 (Sub-No. 4X)

LOUISIANA & DELTA RAILROAD, INC.--ABANDONMENT  
EXEMPTION--IN LAFOURCHE AND ASSUMPTION PARISHES, LA

Decided: July 29, 1998

By decision served August 26, 1997, the Board granted Louisiana & Delta Railroad, Inc. (L&D) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad, the Napoleonville Branch, extending from milepost 1.0 near Thibodaux, Lafourche Parish, LA, to milepost 15.28 near Supreme, Assumption Parish, LA, a distance of 14.28 miles, subject to a public use condition, an environmental condition, and standard labor protective conditions.<sup>1</sup>

On October 24, 1997, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use and rail banking under 49 CFR 1152.29 and provided for a period of time in which L&D could negotiate an agreement with American Trails Association, Inc. (ATA). ATA has advised us that it has reached an agreement with L&D for the rail banking of the right-of-way.

On May 26, 1998, Acadia Plantation (Acadia) filed a petition asking us to reopen and reconsider the October 24, 1997 decision. In its petition Acadia alleges that there is no likelihood of the railroad right-of-way ever being used for a trail and that no local governmental body has indicated its willingness to assume full financial responsibility for the right-of-way. Acadia states that it has a reversionary interest in the right of way and wants to exercise that right. Acadia claims that ATA intends to attempt to sell the right of way to the adjacent landowners.

On June 22, 1998, ATA replied to Acadia's petition. ATA notes that Acadia does not even allege, much less demonstrate, that ATA has failed to fulfill the commitments it made to manage the right of way, assume legal liability arising out of the interim trail use, and to pay the taxes on the right of way. ATA further states that Acadia is relying upon an expression of disinterest by the Mayor of Thibodaux to argue that there is no likelihood that the right-of-way will ever be operated as a trail. ATA states that simply because the mayor may not be inclined to assume responsibility for the right-of-way does not mean that others, such as Lafourche or Assumption Parishes or

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<sup>1</sup> The August 26, 1997, decision denied the issuance of a notice of interim trail use filed by the City of Thibodaux, LA (City) because L&D was not willing at that time to negotiate for trail use.

recreational groups located within them, may not want to do so. ATA states that this is what it is striving toward.

#### DISCUSSION AND CONCLUSION

We will deny the petition to reopen. Under 49 CFR 115.4, a petition to reopen must state in detail the respects in which the decision sought to be reopened involves material error, new evidence, or substantially changed circumstances. Petitioner has failed to submit new evidence, nor has it demonstrated that circumstances have changed substantially since we issued the NITU in this case on October 24, 1997. The petitioner has also failed to demonstrate that we committed material error in issuing the NITU. ATA made the representations required by 49 CFR 1152.29(a)(2). As we have often stated, our role in administering the Trails Act is ministerial. Once a proponent of a trail makes the representations required by subsection 1152.29(a)(2), we are required to issue an NITU.

The record shows nothing to indicate that ATA has done anything to date to compromise the integrity of the rail-banked line. Acadia asserts that ATA seeks to sell the right-of-way to the reversionary property owners, which is a serious charge. But the petitioner offers no support for this assertion. Accordingly, there is no basis for reopening, and the petition to reopen will be denied.

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

It is ordered:

1. Acadia's petition to reopen the NITU served October 24, 1997, is denied.
2. This decision is effective on the date served.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary