Who Owns That?
Federal Land Grants for Railroads in Wisconsin After the Railroad Leaves

SC Johnson Trust v. Bayfield County
634 F.Supp.2d 956 (W.D. Wis., June 26, 2009)
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Introduction & Summary
The American Land Title Association named *Samuel C. Johnson 1988 Trust, et al v. Bayfield County* as one of the six lawsuits in the US with “significant ramifications on the title insurance industry” in 2009.
Who Owns the Land Grant Railroad Right-of-way Today?

• In the 19th century Congress granted lands for railroad construction. The grants included rights-of-way for the actual route of the line.
  – Who owns the right-of-way after the railroad has left?
  – What, if anything, did Congress retain?
The US provided two public domain lands to aid in the construction of railroads in two ways.

From 1850 to 1871, Congress provided grants of land (In Wisconsin, 6-10 square miles of land for each mile of track). These are the **land grant routes**.

Congress also provided right-of-ways through public lands both before and 1871.

Congress retained a reversionary interest in **land grant rights-of-way**.

Federal courts are divided on whether Congress retained an interest in rights-of-way granted after 1871.
Summary

• This document includes:
  – A brief overview of the historical background of the Congressional land grants in aid of the construction of railroads
  – The legal status of such corridors, including a review of two federal court cases coming out of Wisconsin involving ownership of former federally-provided railroad routes.
  – Discussion of the 1871 legal split regarding ownership of right-of-way lands provided under the 1875 General Railroad Right-of-way Act.
  – Maps of the land grant routes.
  – List of Wisconsin session laws affecting land grant routes.
  – List of pertinent federal statutes and some federal caselaw.
  – List of resources and suggested readings.
Summary

• One of my goals was to determine where the federally granted routes were, how many were still in operation, and how much land was potentially subject to reversion. I have identified most parts of the land grant lines that are out of service.

• However, there are at least 12 Wisconsin railroads that obtained right-of-way under the 1875 General Railroad Right-of-way Act.

• The locations of these routes has not yet been determined. This research is still very much a work in progress in terms of identifying what land is potentially involved.

• I want to thank the Wisconsin Historical Society for granting me permission to use many of the map images included in my presentation.
“If a former right-of-way was not declared abandoned before 1988, it is no longer possible for adjacent landowners to claim a right to the property.”


- Parcel is subject to *reversion* to the United States if the right-of-way was:
  - granted *by the US prior to 1871*
  - formerly operated by a *railroad*
  - not abandoned or forfeited
    - by *Congress* or a *court of competent jurisdiction*
    - prior to October 4, 1988.
How much land is potentially at stake?

- In **Wisconsin**:
  - 970 total miles of land-grant railroad lines
  - 660 miles are **in service**
  - 90 miles are **Rails-to-Trails**
  - 220 miles are **out of service** and potentially subject to reversion

  - But there are also an **undetermined number of right-of-way miles**
    granted by the US to 13 Wisconsin railroads under the **1875 General Railroad Right-of-way Act**.
    - At the end of 1875, there 2566 miles of track in Wisconsin (only 20 miles built in 1875, all by the Wisconsin Central for a section of the land grant line between Stevens Point and Portage).
    - Almost 4000 miles of track were constructed in Wisconsin after 1875. Railroad miles peaked around 1920 at 7500.

How many of these miles were built on federal right-of-way???
On Appeal

  - The case is currently on appeal to the 7th Circuit (Case no. 09-2876).
Disclaimer

- My research has identified specific portions of railroad land grant corridors where parcels may be subject to reversion using a variety of sources (e.g., old Wisconsin session laws, scholarly articles, old & new state railroad maps, reports of the Wisconsin & federal agencies).
- I have not examined specific land records and reversion is parcel-by-parcel analysis.
- The views expressed are solely my own and not the official position of the Office of the Commissioner of Railroads or the state of Wisconsin generally.
Land Grant Background
• By 1850, the United States had added about 2,425,000 square miles to its territory and owned nearly all of it.

• In the 19th century, the United States provided grants of public lands for a variety of activities:
  ▪ Canals, Education, Homesteads, Wagon roads, Plank roads & Macadamized roads
  ▪ *And Railroads*
Wisconsin Public Land Survey Grid
At the urging of Thomas Jefferson, the US began to survey public lands and that was the beginning of the Public Land Survey System (PLSS).

The PLSS is used to divide public domain lands, which are lands owned by the Federal government for the benefit of the citizens of the United States.
• Congress provided *subsidies* in the form of *land grants* and *rights-of-way* to aid in the construction of rail lines.
  
  • *Grants* of land *only* from 1850 to 1871
  • *Rights-of-way* through public lands *before and after 1871.*
Using Public Lands for Railroads 1850-1871

- **1850** – Land grant for the *Illinois Central* began the railroad land grant era and set the model for future legislation.
- **1856 & 1864** – Land grants for several states, including *three routes* in *Wisconsin*.
- **1860’s** – Congress approved land grants for 4 of 5 transcontinental routes.
1856 Railroad Map of the Old Northwest
Wisconsin Land Grant Lines
How did it work?

• **Congress** specified the route and made a grant of public lands to a state.

• **State legislature** then selected the railroad.

• Railroad identified specific route and filed ‘map of definite location’ with the General Land Office.
Public Land Subsidies for Railroads 1850-1871

- In Wisconsin, the 1856 & 1864 land grants gave the railroad six square miles of land for each mile of track built (later increased to 10 miles).

- Congress also provided replacement or indemnity lands for the railroads if insufficient public land was available in the main grant.
What Did the Railroad Get?

• As 20-mile sections were completed, the railroad received the subsidy lands in fee to use:
  ▪ Collateral for bonds
  ▪ Cash from selling the land and stumpage rights
  ▪ Timber and quarried rock to construct the railroad.

• The railroad also received a limited fee in the 100’-wide right-of-way.
In 1856 & 1864, Congress provided lands for three routes in Wisconsin, including a Northwest route:
- Madison-Portage-Hudson-Superior & a branch to Bayfield
- S.C. Johnson & Mauler involved lands on the Northwest route.
- 1864 act extended time & split Northwest grant
As rail lines on federally-provided rights-of-way fell into disuse, Congress looked for ways to dispose of these rights-of-way.
Congressional Policy toward Disused Rail Corridors

• A 1922 law allowed adjacent landowners a way to acquire title to the right-of-way when the railroad ceased operating.
  • Abandoned Railroad Right of Way Act 43 U.S.C. § 912

• In 1988, Congress changed policy with regard to the disposition of federal lands.
  • National Trails System Act (Rails-to-Trails) 16 U.S.C. § 1248
National Trails System Act (Rails-to-Trails)  
16 U.S.C. § 1248

• The Rails-to-Trails law preserves the United States' interest in the rights-of-ways for use as recreational trails unless the right-of-way was abandoned or forfeited prior to October 4, 1988.
• Treated by 7th Circuit as an amendment of the Abandoned Railroad Right of Way Act.
1871 - End of the Grants

- Public land grants for railroads had always been controversial.
- Congress issued no new land grants after 1871.
- Congress did continue to provide public lands for railroad rights-of-way. For example, in the General Railroad Right-of-way Act of 1875.
Mauler v. Bayfield County
Mauler – Prior 7th Circuit Rails-to-Trails Case

- **Mauler v. Bayfield County, 309 F.3d 997 (7th Cir.2002)**
  - same railroad line as *S.C. Johnson*
  - *Abandoned Railroad Right of Way Act* (43 U.S.C. § 912) and *National Trails System Improvement Act* (16 U.S.C. § 1248(c) and
  - reversionary interests of the US on a land grant route.
  - Maulers claimed trail use was a taking.
Factual background

Mauler v. Bayfield County

- Chicago & North Western **stopped using the corridor in 1978**.
- Railroad **sold** the right-of-way to Bayfield County in **1989**.
- Maulers bought land in 1994 and 1996 "**subject to...all easements**, restrictions, reservations, and exceptions as may constitute or otherwise affect the chain of title to said premises" and "less any rights of way of record."
- Railroad **expressly reserved the railroad right of way** when it originally conveyed the parcel **in 1884** to the Maulers’ predecessors.
Holding of *Mauler v. Bayfield County*

“We find that [43 U.S.C. § 912](https://www.law.cornell.edu/uscode/text/43/912), as modified by [16 U.S.C. § 1248(c)](https://www.law.cornell.edu/uscode/text/16/1248), vests a reversionary interest in the strip of land in the United States and not the Maulers, that § 913 authorizes the Railroad's transfer of the land to Bayfield County and validates the county's use of the land as a public recreational trail, and that the Maulers' takings claim must fail because they hold no valid legal interest in the strip of land.”

*Mauler v. Bayfield County*, 309 F.3d 997, 1002 (7th Cir.2002)
SC Johnson v. Bayfield County
Extending Mauler

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<td>Railroad ceases operations.</td>
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<td>1978</td>
<td>ICC approves abandonment.</td>
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<td>1979</td>
<td>State releases interest in the R-O-W.</td>
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<tr>
<td>1979</td>
<td>County declines to buy the R-O-W.</td>
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<tr>
<td>1980</td>
<td>Railroad pulls tracks.</td>
</tr>
<tr>
<td>1980</td>
<td>SC Johnson Trust bought their land.</td>
</tr>
<tr>
<td>1989</td>
<td>County begins to acquire R-O-W for a public trail.</td>
</tr>
</tbody>
</table>
• In 2006, claiming that they own the land, plaintiffs sue Bayfield County to ‘quiet title’.


• In round two, US filed “statement of interest” under 28 U.S.C. § 517, but was not a named defendant and did not seek to intervene.
• SC Johnson Trust bought their land from the C&NW in 1980. Location: Township 44 North, Range 7 West in Section 21

• The other plaintiffs traced their title back to the first settler, Amos Jefferson. Location: Township 44 North, Range 7 West in Section 32

• Railroad ownership will not show up on title for even-numbered section under land grants.
Checkerboards

- The US land grants were provided in a checkerboard pattern of alternating township sections.
- **Odd-numbered** sections went to the railroad.
- **Even-numbered** sections were retained by the US for sale to others.
- Impossible for a railroad right-of-way to cross a township without crossing both odd and even sections.
Judge Crabb concluded that the railroad obtained a limited fee from the US either explicitly under the 1852 Right-of-way Act or implicitly under the 1856 & 1864 grants.

“Thus, if the Chicago and North Western Railroad did not take its interest in the right-of-way under the Right of Way Act of 1852 through its predecessor, the La Crosse and Milwaukee Railroad, it had an implicit grant of a right-of-way in the 1856 and 1864 Land Grant Acts.” 634 F.Supp.2d at 973.
“The…railroad filed a map of definite location with the General Land Office of the Department of the Interior in July 1858…As filed, the map did not include the lands now owned by plaintiffs; the actual route departed from the 1858 map and included the lands at issue. In a decision issued in 1887, the Department of the Interior held that the map as filed encompassed the line as actually built.”

1. Some “deflections” must be expected;
2. Department of Interior determines whether the actual route substantially conforms to the “line of definite location”;
3. Provided the actual route stays within the limits of the grant (including indemnity lands), deflections are acceptable to:
   a. avoid engineering obstacles,
   b. avoid high costs, or
   c. remedy defects in the original location.

Indefinite Line of Location?

The acceptance of these deviations creates some uncertainty today as to whether property is or is not located within the right-of-way of a land grant railroad.
“Thus, in this case, if the right-of-way is declared to have been abandoned by the Chicago and North Western, it would revert to the United States under the express terms of 16 U.S.C. § 1248(c) (right-of-way not declared abandoned before 1988 or abandoned and not used for public highway within one year of abandonment reverts to United States).”

Whose land is it?

_SC Johnson v. Bayfield County_

- **On land grant routes**, unless the federally granted right-of-way was abandoned or forfeited prior to October 4, 1988, the US has a reversionary interest in the right-of-way.

- **Forfeiture or abandonment** must have been decreed by a **court of competent jurisdiction or Congress**.
• **Interstate Commerce Commission** was not a court of competent jurisdiction nor were its decisions acts of Congress.

• **State court** finding of abandonment could be a decree by a ‘court of competent jurisdiction’.

• An **ICC certificate** of abandonment is a **necessary, but not sufficient condition** to establish an “abandonment”.

• Any such order would have to **pre-date October 4, 1988**.

  — Note: ICC no longer exists. The Surface Transportation Board has replaced the ICC.
• Determination of abandonment or forfeiture is made on a parcel-by-parcel basis.

• The reversionary interests only applies to the right-of-way, which is usually 100’ wide, but can be 200’ depending on terrain, not the subsidy lands.
“If a former right-of-way was not declared abandoned before 1988, it is no longer possible for adjacent landowners to claim a right to the property.”

The 1871 Divide in Policy
• The “1871 divide” refers to the end of Congressional grants of land in addition to the right-of-way to aid the construction of railroads.

• Two lines of types of cases: Right-of-way-Only Cases & Land Grant Cases.
1871 Divide

- **Townsend** – a 1903 US Supreme Court decision held that the railroad got a **limited fee over the right-of-way**, not a mere easement, but not an absolute fee either. *Northern Pacific Ry. Co. v. Townsend*, 190 U.S. 267, 23 S.Ct. 671, 47 L.Ed. 1044 (1903).

- **Great Northern** – a 1942 case held that after 1871 the railroad only received an **easement**. *Great Northern Railway Co. v. United States*, 315 U.S. 262, 273, 62 S.Ct. 529, 86 L.Ed. 836 (1942).

- The Supreme Court has not addressed how the 1871 policy shift affects **43 U.S.C. § 912**, as modified by **16 U.S.C. § 1248(c)**.
1871 Divide

- The **circuits are split** on whether the US retains a reversionary interest in **post-1871 railroad rights-of-way**.


- *Mauler & SC Johnson* each dealt with **land grant lines**.
1871 Divide in Wisconsin?

*Mauler* Distinguishes *Pollnow*

- **Pollnow**: “[I]f the railroad was granted its right of way by the Railroad Right of Way Act of 1875, it was granted only an easement, not a fee. *Great Northern Railway Co. v. United States*, 315 U.S. 262, 271, 62 S.Ct. 529, 86 L.Ed. 836 (1942).” *Pollnow v. State Dept. of Natural Resources*, 88 Wis.2d 350, 355, 276 N.W.2d 738, 741 (1979).

- **Mauler**: “…unlike *Pollnow*, the original grants of land in this case were grants to the Railroad in fee simple that included an implied right of reverter to the United States under the rationale first espoused in *Townsend*…” *Mauler v. Bayfield County*, 309 F.3d 997, 1002 (7th Cir.2002).
1871 Divide in Wisconsin?

*Mauler Distinguishes Pollnow*

- *Mauler* contains language that could support either outcome.
  - Distinguishes *Pollnow* in a way that suggests the US would not retain a reversionary interest in right-of-way obtained under the 1875 act.
  - *Mauler*’s finding of a reversionary interest under the Abandoned Right-of-way Act and the National Trails System Act would seem to apply to *any* federally-provided railroad right-of-way, whether as part of a land grant or separately.

- The 1852 Right-of-way Act relied upon in *SC Johnson* contained an express reversion clause. The 1875 General Railroad Right-of-way Act did not.
“The courts have interpreted the right of way interests conveyed to railroads in various ways, and it has become increasingly difficult to reconcile the sequence of congressional enactments and judicial holdings into a coherent body of law.”

• CRS Report, *Federal Railroad Rights of Way*
  Updated May 3, 2006
Legal Nature of “Rights of Way”

The Constitution gives Congress special powers with regard to the disposition of “Property belonging to the United States.”

Art. IV, § 3, cl. 2

“When Congress grants a property interest, Congress is free to specify terms or elements different from those that otherwise would apply either by virtue of the common law or in other statutes. This fact seems to have been lost in some of the discussions of congressional railroad grants. A railroad grant may also be both a grant of a property interest and a contractual agreement between the federal government and the railroad.”


• Determining which tracks were built on the 1875 right-of-way is difficult. Federal archives may hold the necessary records.
Railroad Land Grant Routes in Wisconsin
Railroad Land Grant Routes in Wisconsin

• Three routes & all served northern Wisconsin.

• 1856 land grant authorized a northwest route and a northeast route.

• 1864 land grant authorized a central route.

• Routes all completed by 1884.
1866 Land Grant Survey Map
• *SC Johnson* involved the Northwest Route branch to Bayfield.

• **1856 Northwest Route** became the subject of the biggest political scandal in the history of the state.

• Byron Kilbourn’s *La Crosse & Milwaukee Railroad* obtained the Northwest Route by wholesale bribery of state officials.
Land Grant Scandal

- Governor Coles Bashford, a Supreme Court Justice, 13 senators and 59 assemblymen implicated, plus
  - State bank comptroller, the lieutenant governor, the private secretary of the governor, three officers of the assembly, and 23 persons engaged in lobbying.

- Legislature rescinded the grant to the La Crosse & Milwaukee in 1858.
Dividing the Northwest Route

• **Northwest route** was later awarded **piecemeal** to several railroads.

• **Madison to Portage:**
  - *Madison & Portage Railroad* (later the *Chicago, Milwaukee, St. Paul and Pacific Railroad* or “*Milwaukee Road*”)

• **Portage to Tomah:**
  - *Wisconsin Railroad Land Mortgage Co.* received the *La Crosse & Milwaukee* grant lands for this section to recompense farmers for mortgages lost in the railroad-farm mortgage crisis.
Northwest Route Split into Three Separate Routes

• **Tomah to Hudson** conferred on *West Wisconsin Ry.* (former Tomah & Lake St. Croix)
  - later the *Chicago, St. Paul, Minneapolis & Omaha Railway Company* (“Omaha Road”) and the *Chicago & North Western Railway* in 1972.

• **Route North of Hudson split**
  - **Superior Jct. (Trego) to Superior** conferred on Chicago & Northern Pacific Air Line Ry.
  - **Hudson to Bayfield Branch** conferred on the *Omaha Road*.  


More Bribery

- In 1874, the legislature and transferred the Trego to Superior branch from the Omaha Road to the Chicago & Northern Pacific Air Line Ry. (C&NP).
- To regain control of the entire grant Omaha Road bribed the C&NP’s own directors to repudiate construction contracts in 1882, throwing 1600 men out of work and ruining the C&NP’s reputation.
- The Omaha Road then rushed to Madison where the state legislature to repealed the grant to C&NP and transferred it to the Omaha Road.
- See Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway Company, 151 US 1, 14 S.Ct. 240 (1894) for more details.

Details of the Wisconsin Land
Grant Routes
Wisconsin Dates of Completion

- **Northwest** route completed:
  - 1872 to Hudson
  - 1883 to Bayfield
  - 1884 to Superior

- **Northeast** route completed
  - 1871 to Marinette

- **Central** route completed
  - 1877 to Ashland
• Northwest grant **Superior Branch:**
  — Northline to Gordon, except Spooner to Trego
  — Trego to Gordon is Rails-to-Trails
• Northwest grant **Bayfield Branch:**
  — Northline to Bayfield, except Trego to Hayward
• Northwest grant – Tomah- Hudson
  — Elroy to Warren (Rails-to-Trails)
• Central grant:
  — Medford to Prentice (Rails-to-Trails)
  — Portage to Stevens Point
Wisconsin Land Grant Lines
Public Land Grants of 1856

- **1856 Northwest Route**: “from Madison, or Columbus, by the way of Portage City to the St. Croix River or Lake between townships twenty-five and thirty-one and from thence to the west end of Lake Superior; and to Bayfield”;

- **1872** – Completed to Hudson

- **1883** – Bayfield

- **1884** – Superior
Tracks Out – Northwest Route

• Superior Branch:
  – Northline to Gordon, except Spooner to Trego
  – Trego to Gordon is Rails-to-Trails

• Bayfield Branch:
  – Northline to Bayfield, except Trego to Hayward

• Tomah– Hudson
  – Elroy to Warren (Rails-to-Trails)
  – Camp Douglas – Wyeville (recently out of service)
1884 Map - Northwest Route
Hudson to Shell Lake
1884 Map - Northwest Route
Shell Lake to Superior & Bayfield
(Note: Trego is located at Superior Jct.)
1884 Map – Northwest Route
Tomah – Camp Douglas – Elroy
• Authorized a **third central route**.

• “From **Portage City**, Berlin, Doty's Island or **Fon [sic] du Lac**, as said state may determine, in a northwestern direction to **Bayfield**, and thence to Superior, on Lake Superior.”

• 1877 – Completed to Ashland.

• 1890 – Congress declared forfeit Ashland to Superior portion.

• Also amended and extended 1856 northwest grant.
1891 Wisconsin Central Railway
- Central Route -
Tracks Out – Central Land Grant Route

- Parts of Central route **no longer in service**:
  - Medford to Prentice (Rails-to-Trails)
  - Portage to Stevens Point – Still in service in 1929 and gone by 1964.
1884 Map - Central Route
Stevens Pt. to Coloma
(Out of Service)
1884 Map - Central Route
Medford to Prentice
(Rails-to-Trails)
Public Land Grants of 1856

• Lands granted to aid the construction of railroads on **two routes** in Wisconsin.

• **Northeast Route**: “from *Fond du Lac* on Lake Winnebago, **northerly to the State line...**” at Marinette.

• Completed by 1871 and is still in service in its entirety.
1884 Map – Northeast Route
Fond du Lac to Green Bay
(dark blue line)
1884 Map – Northeast Route
Green Bay to Marinette
Wisconsin 1884 Railroad Map Data

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State Law History of the Federal Land Grants
Early Railroads in Wisconsin

• Prior to 1872 railroads in Wisconsin were created by legislative charters with specific powers and routes.
• First railroad chartered in 1836 by territorial legislature was the LaFontaine Railroad with James Duane Doty was a director.
• First tracks and laid and operated in 1850 from Milwaukee to Elm Grove by the Milwaukee & Mississippi Railroad.
About Old Wisconsin Statutes

• Prior to 1911, the statutes were published at irregular intervals. State statutes were compiled and published in 1849, 1858, 1871, 1878, 1889, and 1898. The statutes have been published annually since 1911.

• Prior to a constitutional amendment in 1871, the legislature adopted *General Acts* and also *Private and Local Laws*. The private laws were often much longer than the general laws.

• Railroads were granted charters as private laws. A law providing for the incorporation of railroads was adopted in 1872.

More about Old Wisconsin Statutes

• These old statutes are available through Google Books. Be aware that the title displayed in search results is not always accurate. Searching through an academic library like MadCat is more reliable.

• Digest of laws 1858-1868 Wisconsin
  
  http://books.google.com/books?id=9ELTAAAAAMAAJ&dq=private%20and%20local%20laws%20of%20wisconsin%201864&pg=PA65#v=onepage&q&f=false

• Synoptical Index of Wisconsin laws up through 1873
  
  http://books.google.com/books?id=7HgZAAAAAYAAJ&ots=pOTiCzfuG&dq=synoptical%20index%20of%20wisconsin%201873&pg=PA83#v=onepage&q=railroad&f=false
## Northwest Grant

### Madison to Portage Segment

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<th>State Law</th>
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<tr>
<td>1856</td>
<td>Ch. 118</td>
<td>137</td>
<td>None</td>
<td>State accepts 1856 grant from US</td>
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<tr>
<td>1856</td>
<td>Ch. 122 General</td>
<td>217</td>
<td>La Crosse &amp; Milwaukee (L&amp;M)</td>
<td>For entire NW route; Later revoked</td>
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<tr>
<td>1861</td>
<td>Ch. 233 P&amp;L</td>
<td>333</td>
<td>Sugar River Valley Railroad</td>
<td>Partially revokes grant to L&amp;M &amp; confers partial NW grant – Madison to Portage City</td>
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<td>1866</td>
<td>Ch. 542, P&amp;L (Part Two)</td>
<td>1345</td>
<td>Sugar River Valley Railroad</td>
<td>Extends time to 1869 and don’t have to build Columbus-Portage</td>
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<td>1870</td>
<td>Ch. 117 P&amp;L</td>
<td>284</td>
<td>Madison &amp; Portage Railroad</td>
<td>Confers all rights of Sugar River Valley Railroad to Madison &amp; Portage</td>
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## Northwest Grant

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<td>Ch. 118</td>
<td>137</td>
<td>None</td>
<td>State accepts 1856 grant from US</td>
</tr>
<tr>
<td>1856</td>
<td>Ch. 122 General (Gen’l) 1856</td>
<td>217</td>
<td>La Crosse &amp; Milwaukee (L&amp;M)</td>
<td>For entire NW route; Later revoked</td>
</tr>
<tr>
<td>1857</td>
<td>Ch. 230 Private &amp; Local (P&amp;L) 1857</td>
<td>529</td>
<td>St. Croix &amp; Lake Superior</td>
<td>Partially revokes grant to L&amp;M &amp; confers partial NW grant – Lake St. Croix to Bayfield &amp; Superior</td>
</tr>
<tr>
<td>1863</td>
<td>Ch. 243 SUPP. TO P&amp;L</td>
<td>47 (Online version has pages missing)</td>
<td>Tomah &amp; Lake St. Croix</td>
<td>Partially revokes L&amp;M grant and confers partial NW grant – Tomah to Black River Falls to Lake St. Croix</td>
</tr>
<tr>
<td>1865</td>
<td>Ch. 232 Gen’l.</td>
<td>265</td>
<td>Tomah &amp; Lake St. Croix</td>
<td>Confirms Tomah to Black River Falls to Lake St. Croix grant after Congress Act of 1864 amended the 1856 grant.</td>
</tr>
<tr>
<td>1865</td>
<td>Ch. 174 Gen’l.</td>
<td>153</td>
<td>St. Croix &amp; Lake Superior Railroad</td>
<td>Confirmed Partial NW grant – Lake St. Croix to Bayfield &amp; Superior under grants of 1856</td>
</tr>
<tr>
<td>1865</td>
<td>Ch. 175 Gen’l.</td>
<td>154</td>
<td>St. Croix &amp; Lake Superior Railroad</td>
<td>Conferred Partial NW grant – Lake St. Croix to Bayfield &amp; Superior under grants of 1856 &amp; 1864.</td>
</tr>
</tbody>
</table>
## Northwest Grant

### Portage - Tomah – Hudson – Superior & Bayfield

<table>
<thead>
<tr>
<th>Year</th>
<th>Act No.</th>
<th>Page No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1871</td>
<td>Ch. 113 P&amp;L</td>
<td>168</td>
<td>Tomah &amp; Lake St. Croix (West Wisconsin) Repeals grant of Tomah-Lake St. Croix portion of route.</td>
</tr>
<tr>
<td>1872</td>
<td>Ch. 46 P&amp;L</td>
<td>138</td>
<td>Tomah &amp; Lake St. Croix (West Wisconsin) Reinstates land grant that was repealed in ch. 113, P&amp;L 1871.</td>
</tr>
<tr>
<td>1872</td>
<td>Ch. 83 P&amp;L</td>
<td>176</td>
<td>St. Croix &amp; Lake Superior Railroad Repeals charter in ch. 74 of 1854 for this railroad.</td>
</tr>
<tr>
<td>1872</td>
<td>Ch. 89 P&amp;L</td>
<td>181</td>
<td>St. Croix &amp; Lake Superior Railroad Revokes land grant in ch. 175 of 1865 above</td>
</tr>
<tr>
<td>1872</td>
<td>Ch. 98 P&amp;L</td>
<td>192</td>
<td>Wisconsin Railroad Land Mortgage Co. Named successor to lands granted to L&amp;M Railroad.</td>
</tr>
<tr>
<td>1873</td>
<td>Ch. 31 Gen’l.</td>
<td>33</td>
<td>West Wisconsin Ry. (former Tomah &amp; Lake St. Croix) Relay the tracks Warrens Mill to Tomah or lose grant from ch. 243 of P&amp;L laws of 1863; references earlier construction from Warren’s Mill to Camp Douglas to Elroy.</td>
</tr>
<tr>
<td>1873</td>
<td>Ch. 176 Gen’l.</td>
<td>406</td>
<td>Milwaukee &amp; St. Paul Railroad Conferred NW grant – Lake St. Croix to Bayfield &amp; Superior under grants of 1856 &amp; 1864. Forfeited by failure to meet conditions.</td>
</tr>
</tbody>
</table>
## Northwest Grant

### Portage - Tomah – Hudson – Superior & Bayfield

<table>
<thead>
<tr>
<th>Year</th>
<th>Act</th>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1874</td>
<td>Ch. 126 Gen’l.</td>
<td>186</td>
<td>No. Wisc. Ry (later Chicago, St. Paul, Minneapolis &amp; Omaha Railway Company or “Omaha Road”) Conferred NW grant – Lake St. Croix to Bayfield under grants of 1856 &amp; 1864.</td>
</tr>
<tr>
<td>1874</td>
<td>Ch. 126 Gen’l.</td>
<td>186</td>
<td>No. Wisconsin Ry. (Omaha Road) &amp; Chicago &amp; Northern Pacific Air Line Ry. Conferred NW grant – Lake St. Croix to Superior under grants of 1856 &amp; 1864.</td>
</tr>
<tr>
<td>1877</td>
<td>Ch. 218, Session laws</td>
<td>474</td>
<td>No. Wisconsin Ry. (Omaha Road) Extend time to meet 20-mile construction requirement by 1 year.</td>
</tr>
<tr>
<td>1878</td>
<td>Ch. 213, Session laws</td>
<td>425</td>
<td>No. Wisconsin Ry. (Omaha Road) Extend time to meet 20-mile construction requirement by 1 year.</td>
</tr>
<tr>
<td>1878</td>
<td>Ch. 229, Session laws</td>
<td>442</td>
<td>Chicago &amp; Northern Pacific Air Line Ry. Extend time to construct by 3 years.</td>
</tr>
<tr>
<td>1882</td>
<td>Ch. 10, Session laws</td>
<td>11</td>
<td>Chicago &amp; Northern Pacific Air Line Ry. (later the Chicago, Portage, &amp; Superior) Revokes 1874 grant and confers grant to Omaha Road</td>
</tr>
<tr>
<td>1883</td>
<td>Ch. 29, Session laws</td>
<td>19</td>
<td>Omaha Road Confirms 1882 grant to Omaha Road and revocation of Air Line grant</td>
</tr>
</tbody>
</table>
## Central Route under 1864 Grant

<table>
<thead>
<tr>
<th>Year</th>
<th>State Law</th>
<th>Page #</th>
<th>Railroad</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1866</td>
<td>Ch. 314 P&amp;L</td>
<td>730</td>
<td>Winnebago &amp; Lake Superior</td>
<td>Charters railroad &amp; confers 1864 grant. Route: Doty’s Island-Waupaca-Stevens Pt.-Bayfield-Superior.</td>
</tr>
<tr>
<td>1866</td>
<td>Ch. 362 P&amp;L</td>
<td>869</td>
<td>Portage &amp; Superior</td>
<td>Charters railroad &amp; confers 1864 grant. Calls for route through Ripon if Congress assents to change in terms of grant. Portage-Ripon-Berlin-Stevens Pt.-Bayfield-Superior. Congress agrees in Res. 53, 14 Stat. 360 (June 21, 1866)].</td>
</tr>
<tr>
<td>1869</td>
<td>Ch. 257 P&amp;L</td>
<td>578</td>
<td>Portage, Winnebago &amp; Superior</td>
<td>Consolidates Winnebago &amp; Lake Superior and Portage &amp; Superior.</td>
</tr>
<tr>
<td>1871</td>
<td>Ch. 27 P&amp;L</td>
<td>42</td>
<td>Wisconsin Central</td>
<td>Changes name from Portage, Winnebago &amp; Superior to WC.</td>
</tr>
<tr>
<td>1875</td>
<td>Ch. 6, General</td>
<td>12</td>
<td>Wisconsin Central</td>
<td>Changes route to drop Ripon and Berlin. Congress assents [Ch. 176, 18 Stat. 511 (Mar. 3, 1875)].</td>
</tr>
</tbody>
</table>

Congress extends time to end of 1876 for Wisconsin Central to complete third route. Ch. 82, 18 Stat. 28 (Mar. 3, 1875). All but 10 miles between Butternut Creek & Chippewa Crossing were completed by that date.
# Northeast Grant

## Northeast Route

<table>
<thead>
<tr>
<th>Year</th>
<th>State Law</th>
<th>Page #</th>
<th>Railroad</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1856</td>
<td>Ch. 137 General</td>
<td>239</td>
<td>Wisconsin &amp; Superior</td>
<td>Charters Wisconsin &amp; Superior &amp; confers northeast grant.</td>
</tr>
<tr>
<td>1857</td>
<td>Ch. 17 P&amp;L</td>
<td>25</td>
<td>Chicago, St. Paul &amp; Fond du Lac Railroad</td>
<td>Consolidates with Wisconsin &amp; Superior &amp; transfers grant</td>
</tr>
<tr>
<td>1862</td>
<td>Ch. 34 P&amp;L</td>
<td>36</td>
<td>Chicago &amp; Northwestern (CNW)</td>
<td>Chicago, St. Paul &amp; Fond du Lac Railroad &amp; Consolidates with Wisconsin &amp; Superior &amp; implicitly transfers grant.</td>
</tr>
</tbody>
</table>

A 1862 Joint Resolution authorizes shift in the 1856 Northeast route between ranges 16-23 east of the 4th principal meridian. [Res. 80, 12 Stat. 618 (April 25, 1862)].
<table>
<thead>
<tr>
<th>Case</th>
<th>Decision Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3. Mauler v. Bayfield County</strong></td>
<td>204 F.Supp.2d 1168 (W.D.Wis.2001), affirmed by the Court of Appeals for the Seventh Circuit. Mauler v. Bayfield County, 309 F.3d 997 (7th Cir.2002). Right-of-way was subject to reversion despite claim that the grant to the railroad did not state explicitly that it a “right-of-way.” The land grant was made for the limited purpose of constructing and operating a railroad, and recognized the long-term interest of the United States in the transportation corridor.</td>
</tr>
<tr>
<td><strong>4. Northern Pacific Ry. Co. v. Townsend</strong></td>
<td>190 U.S. 267, 271, 23 S.Ct. 671, 47 L.Ed. 1044 (1903). Held that US gave railroads a limited fee for right-of-way. Right-of-way is subject to reversion to US.</td>
</tr>
<tr>
<td><strong>5. Great Northern Railway Co. v. United States</strong></td>
<td>315 U.S. 262, 273, 62 S.Ct. 529, 86 L.Ed. 836 (1942). Held that after 1871, the US only gave railroads an easement for the right-of-way. No reversion to US.</td>
</tr>
</tbody>
</table>
6. Hash v. U.S., C.A.Fed. (Idaho) 2005, 403 F.3d 1308. Controversial decision by the Federal Circuit held the United States retained no interest in rights-of-way granted after 1871. Successors to original land patentees who took fee title “subject to” pre-existing railroad right-of-way suffered taking when, after their fee title was disencumbered by railroad abandonment of right-of-way, government converted land under former easements to public trail. Concern that the ruling will greatly increase cost for Rails-to-Trails in states that only received post-1871 right-of-way for railroad and no land grant subsidy.


10. *Vieux v. East Bay Regional Park District*, 906 F.2d 1330, 1335 (9th Cir.1990) US retains a reversionary interest in ROW grants under the 1875 act.


2. **1856 Land grant** – *An Act granting Public Lands to the State of Wisconsin to aid in the Construction of Railroads in said State*, Statutes at Large, XI, 20 [Ch. 43, 11 Stat. 20 (June 3, 1856)]. Grants the Northeast and Northwest routes.

3. **1862 Joint Resolution** authorizes shift in the 1856 Northeast route between ranges 16-23 east of the 4th principal meridian. [Res. 80, 12 Stat. 618 (April 25, 1862)].


5. **1865** – Extends time for Northeast route completion to June 3, 1871. [Ch. 53, 13 Stat. 520 (Mar. 3, 1865)].
6. **1864 Land Grant Act** – *An Act granting Lands to aid in the Construction of Certain Railroads in the State of Wisconsin, Statutes at Large, XIII, 66. [Ch. 80, 13 Stat. 66 (May 5, 1864)], amended by Ch. 82, 18 Stat. 28 (Mar. 3, 1875). Extends to end of 1876 time for Wisconsin Central to complete third route.*

7. **1865** – Extends time for Northeast route completion to June 3, 1871. [Ch. 53, 13 Stat. 520 (Mar. 3, 1865)].

8. **1866** – Allows adjustment in WC route to include Ripon & Berlin as requested by state legislature. Res. 53, 14 Stat. 360 (June 21, 1866)].

9. **1875** – Authorizes WC to straighten route by dropping Ripon & Berlin as requested by state. [Ch. 176, 18 Stat. 511 (Mar. 3, 1875)].


190.11 Railroad conveyances, how executed and filed. (1) Every conveyance or lease, deed of trust, mortgage or satisfaction thereof made by any railroad corporation shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded, and shall be filed with the department of financial institutions, which shall endorse thereon “filed” and the date of filing.

(2) A record of filing under sub. (1) shall from the time of reception of the instrument have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds has as to property in his or her county, and shall be notice of the rights and interest of the grantee, lessee or mortgagee by such instrument to the same extent as if it were recorded in all of the counties in which any property therein described may be situated.

(3) The department of financial institutions shall collect a fee of $1 per page filed under sub. (1).

(4) The department of financial institutions shall collect a fee at the rate under s. 77.22 and, on or before the 15th day of the month after the fee is collected, shall remit that fee to the department of administration for deposit in the general fund. Sections 77.21, 77.22 and 77.25 to 77.27 apply to the fee under this subsection.

1884 Map - Northwest Route
Madison to Hudson
1884 Map – Northwest Route
Black River Falls to Hudson
1884 Map – Northwest Route
Madison to Portage City to New Lisbon
1884 Map - Central Route
Portage to Stevens Pt. & Menasha to Stevens Pt.
(in yellow)
1884 Map - Central Route
Stevens Pt. to Prentice
(in yellow)
1884 Map - Central Route
Prentice to Ashland
Wisconsin Railroad Map -1865
Wisconsin Railroad Map - 1873
Tracing the Tracks – Methods & Sources
Tracing the Tracks

- Sources and Methods used to trace rail line history:
  - Old Wisconsin session laws
  - Treatises
  - Scholarly articles
  - Old & new state railroad maps
  - Reports of the Wisconsin Commissioner of Railroads
  - Reports of the US government
  - MadCat UW-Madison Library Catalogue (get a UW library card)
    [http://madcat.library.wisc.edu/](http://madcat.library.wisc.edu/)
  - Google books
  - Internet searches
  - National Archives
Public Land Survey System (PLSS)

Section 14 shows both normal division of the section into aliquot parts and the fractional division into government lots.
The Land Ordinance of 1785 which provided for the systematic survey and monumentation of public domain lands, and the Northwest Ordinance of 1787 which established a rectangular survey system designed to facilitate the transfer of Federal lands to private citizens, were the beginning of the Public Land Survey System (PLSS).

Under Congressional mandate, cadastral surveys (surveys of the boundaries of land parcels) of public lands were undertaken to create parcels suitable for disposal by the Government. The extension of the rectangular system of surveys over the public domain has been in progress since 1785, and, where it applies, the PLSS forms the basis for most land transfers and ownership today.

The PLSS is used to divide public domain lands, which are lands owned by the Federal government for the benefit of the citizens of the United States. The original public domain included the land ceded to the Federal Government by the thirteen original States, supplemented with acquisitions from native Indians and foreign powers. It encompasses major portions of the land area of 30 southern and western States…PLSS rules of division are explained below. For areas that were once part of the public domain, legal land descriptions are usually written in terms of PLSS descriptions.

http://www.nationalatlas.gov/articles/boundaries/a_plss.html
Public Land Survey System
Principal Meridians

The PLSS typically divides land into 6-mile-square townships, which is the level of information included in the National Atlas. Townships are subdivided into 36 one-mile-square sections. Sections can be further subdivided into quarter sections, quarter-quarter sections, or irregular government lots. Normally, a permanent monument, or marker, is placed at each section corner. Monuments are also placed at quarter-section corners and at other important points, such as the corners of government lots. Today permanent monuments are usually inscribed tablets set on iron rods or in concrete. The original PLSS surveys were often marked by wooden stakes or posts, marked trees, pits, or piles of rock, or other less-permanent markers.

The PLSS actually consists of a series of separate surveys. Most PLSS surveys begin at an initial point, and townships are surveyed north, south, east, and west from that point. The north-south line that runs through the initial point is a true meridian and is called the Principal Meridian. There are 37 Principal Meridians, each is named, and these names are used to distinguish the various surveys. The east-west line that runs through the initial point is called a base line. This line is perpendicular to the Principal Meridian.

Each township is identified with a township and range designation. Township designations indicate the location north or south of the baseline, and range designations indicate the location east or west of the Principal Meridian. For example, a township might be identified as Township 7 North, Range 2 West, which would mean that it was in the 7th tier of townships north of a baseline, and in the 2nd column of townships west of a baseline. A legal land description of a section includes the State, Principal Meridian name, Township and Range designations with directions, and the section number: Nebraska, Sixth Principal Meridian T7N, R2W, sec5.
<table>
<thead>
<tr>
<th></th>
<th>Railroad Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Chicago, St. Paul, Minneapolis &amp; Omaha Railway</td>
</tr>
<tr>
<td>2.</td>
<td>Chicago, Milwaukee &amp; St. Paul Ry.</td>
</tr>
<tr>
<td>3.</td>
<td>Duluth, South Shore &amp; Atlantic Ry. (successor to Detroit, Mackinac, &amp; Marquette Railroad and Duluth, Superior, &amp; Michigan Ry.)</td>
</tr>
<tr>
<td>4.</td>
<td>Duluth, Superior, &amp; Michigan Ry. (later Duluth, South Shore &amp; Atlantic Ry.)</td>
</tr>
<tr>
<td>5.</td>
<td>Eastern Ry. of Minnesota.</td>
</tr>
<tr>
<td>7.</td>
<td>Princeton &amp; Western Railway</td>
</tr>
<tr>
<td>8.</td>
<td>Menominee River Railroad</td>
</tr>
<tr>
<td>9.</td>
<td>Milwaukee, Lake Shore and Western Railway</td>
</tr>
<tr>
<td>10.</td>
<td>Winona, Alma, &amp; Northern Ry.</td>
</tr>
<tr>
<td>11.</td>
<td>Wisconsin and Michigan Railroad</td>
</tr>
<tr>
<td>12.</td>
<td>Wisconsin Central Railway</td>
</tr>
</tbody>
</table>
II.5 The early corporate history of land-grant railroads is included in the railroad rights-of-way files under the act of March 3, 1875, 1878-1931, in the Records of Division F, Records of the Bureau of Land Management (Record Group 49). Arranged by name of railroad, these records document the granting of rights-of-way to individual railroads across public lands of the United States. The files include articles of incorporation, proof of organization, by-laws, and other records concerning the corporate history of land grant railroads. Additional records are located in the correspondence and reports file of land grant railroad companies, 1892-1935. The Bureau of Land Management records include other series that may be of interest.
http://rlhs.org/narip6.htm

Record Group 49 Records of the Bureau of Land Management

VI.17 Division F: Railroad, Rights-Of-Way, and Reclamation Division was charged with the adjustment of grants, by congressional legislation, of lands for railroad-purpose military wagon roads and of laws relating to the right of way through the public lands...Established in 1872, the duties of the Division were largely the examination of settlers' claims in conflict with those of railroad companies...More specifically, the functions of this division were...registering and examining all articles of incorporation and maps filed by railroad companies claiming rights-of-way over U.S. public lands under the act of March 3, 1875; listing and patenting railroad right-of-way lands, and adjusting railroad and wagon road grants. Numerous series in Division F's records are of interest:

1. indexes to withdrawals of lands for railroads, canals, and other rights-of-way, 1856-83 (0.5 ft.)(MLR Entry 533, UD);

2. letters sent relating to railroad grants and rights-of-way, miscellaneous series, 1856-90 (17 ft.)(MLR Entry 534, UD), arranged chronologically. These 78 volumes (volumes 66-133) contain record copies of letters sent to the Secretary of the Interior, Congress, registers and receivers, officials of railroads, contestants, and private persons relating to railroad grants and rights-of-way.
VI.17 Division F: Railroad, Rights-Of-Way, and Reclamation Division. Numerous series in Division F’s records are of interest:

15. railroad rights-of-way files under the act of March 3, 1875, 1878-1931 (40 ft.)(MLR Entry 571, UD), arranged by name of railroad and thereunder in rough chronological order. These records originated under the act of March 3, 1875, which granted rights-of-way through public lands of the United States to any railroad company duly incorporated in the state or territory to the extent of 100 feet on each side of the central line of track, as well as adjacent areas for stations and yard structures. A typical file contains applications for right-of-way; letters transmitting and acknowledging receipt of maps, plats, and field notes; articles of incorporation; proof of organization; by-laws; affidavits; proof of construction; and miscellaneous correspondence concerning the disposition of the land.

16. records concerning railroad rights-of-way across Indian reservations, 1908-38 (6 ft.)(MLR Entry 573, UD), arranged numerically by number of letter. The records include folders, numbered consecutively, of Division F miscellaneous letters sent to the Bureau of Indian Affairs or the district land office. The cover of the folder lists the letter number, act of Congress under which right-of-way was granted, date and purpose of grant, date filed, date approved, state and land district, land description, name of applicant, and contents of the file.

17. records concerning rights-of-way across forest reserves, 1908-39 (16 ft.)(MLR Entry 575, UD), arranged numerically by letter number. This series is similar to records concerning railroad rights-of-way across Indian reservations, except that the letters were directed to the U.S. Forest Service and concerned railroad rights-of-way through forest reserves.

18. index to railroad maps, 1856-75 (0.2 ft)(MLR Entry 576, UD), arranged by railroad and thereunder chronologically. The maps themselves are among the cartographic materials (See VI.20-VI.22).
1. Railroad Mortgages & Trust Deeds
2. Railroad Patents
3. Railroad Incorporations & Resolutions
4. Index to Vols. 9 & 10 of Railroad Incorporations & Resolutions
5. Railroad Index
6. Corporation Document Files
7. Railroad Stockholders
8. UCC Filings
Resources & Suggested Reading
Key Resources & Suggested Reading


3. Railroad maps at State Historical Society: [http://www.wisconsinhistory.org/libraryarchives/maps/search.asp](http://www.wisconsinhistory.org/libraryarchives/maps/search.asp) (Click on “Type of Map”, choose “railroad map”).


   http://books.google.com/books?id=AGgaAQAAIAAJ&pg=PP4#v=onepage&q&f=false


14. Railroad maps at Library of Congress:

   http://memory.loc.gov/ammem/gmdhtml/rrhtml/rrhome.html
1. Top Lawsuits Impacting the Title Industry, by ALTA Title Counsel Committee, TitleNews, May 2010 - Volume 89, Number 5 at page 10.


Google Books at http://books.google.com/

- Google Books provides free access to millions of original documents, including many old Wisconsin statutes, old Railroad Commission reports, old US government reports, and just about anything in the public domain. You may use it online or download. Text is searchable online.
Douglas S. Wood  
Legal Counsel  
Office of the Commissioner of Railroads  
608-266-9536  
doug.wood@wisconsin.gov