

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

Who owns lands within the “right-of-way” after the railroad has left?

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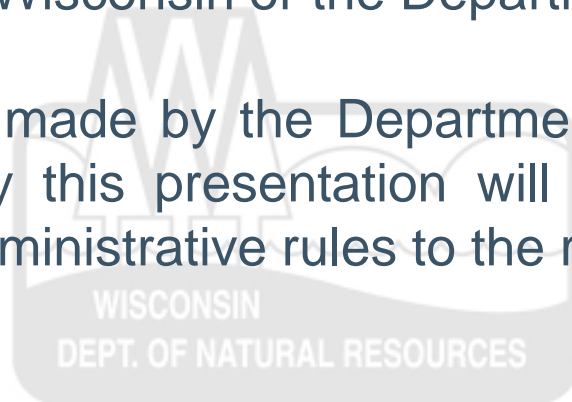
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RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

- On March 10, 2014, the U.S. Supreme Court handed down a decision in the *Marvin M. Brandt Revocable Trust et al. v. United States* case involving an abandoned railroad corridor formerly on federal land that is now privately owned
- In an 8-1 decision the Supreme Court held that when a railroad abandons the right of way granted under the General Railroad Right-of-Way Act of 1875, the landowner who acquired the underlying fee title obtains full rights over the former right of way, because the railroad simply had an easement interest which was terminated by the railroad's abandonment

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- **CAUTION – DON'T PANIC:** At this time it is difficult to tell whether this ruling will have an impact on any Wisconsin trails
- The DNR will be working with the Wisconsin Department of Transportation and Office of Commissioner of Railroads to try and determine the impact
- Due to the complicated nature of railroad law and circumstances surrounding each individual rail line, it will take a fair amount of research to determine which, if any, corridors in Wisconsin were granted under the 1875 Act and may be affected by the Supreme Court's ruling
- Once more complete information is developed, options will be investigated and more information will be forthcoming at that time

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*



Wisconsin has approximately 80 former railroad corridors, for a total of over 2,000 miles, that are now recreational trails



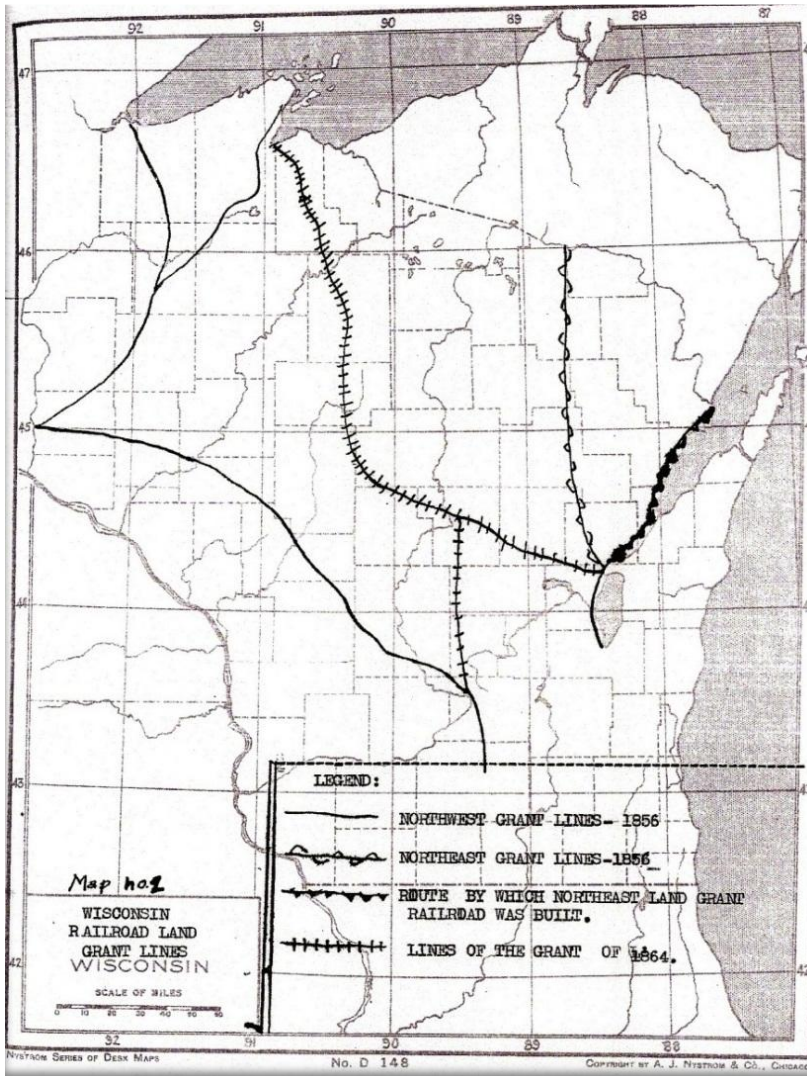
HISTORY OF RAILROAD CORRIDORS

- In the 19th century in order to aid in the settlement of the country, Congress granted substantial amounts of land directly to railroad companies in aid of railroad construction
- Up until 1871 the federal government granted public lands to the railroads to spur development under the federal Right-of-Way Act of 1852

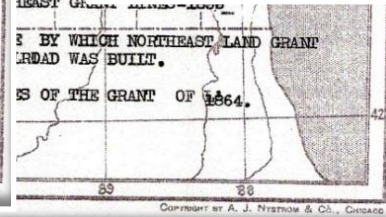
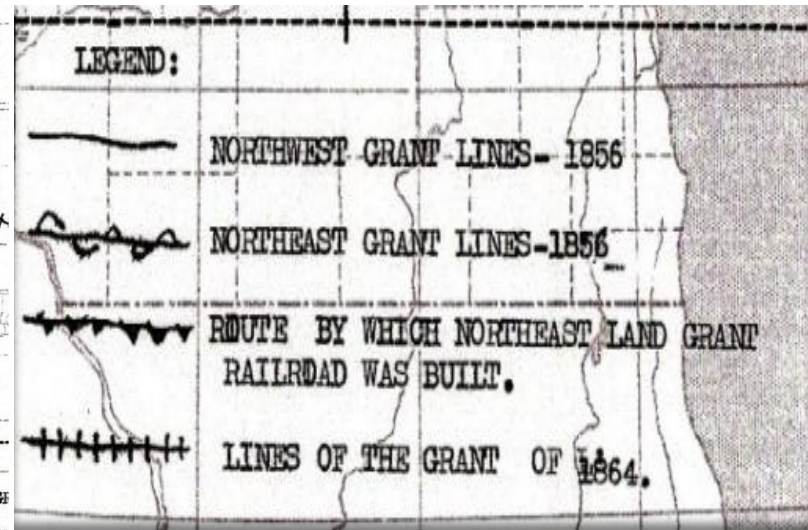
HISTORY OF RAILROAD CORRIDORS

- In 1856, and then again in 1864, the federal government gave land grants to Wisconsin to distribute to various railroad companies upon meeting certain requirements (locating the route, filing a map, actual construction of the line within a specified time frame)
- The 1856 and 1864 land grant acts did not grant a “right-of-way” rather they provided fee title lands to Wisconsin to give to railroads to aid the construction of the railroad

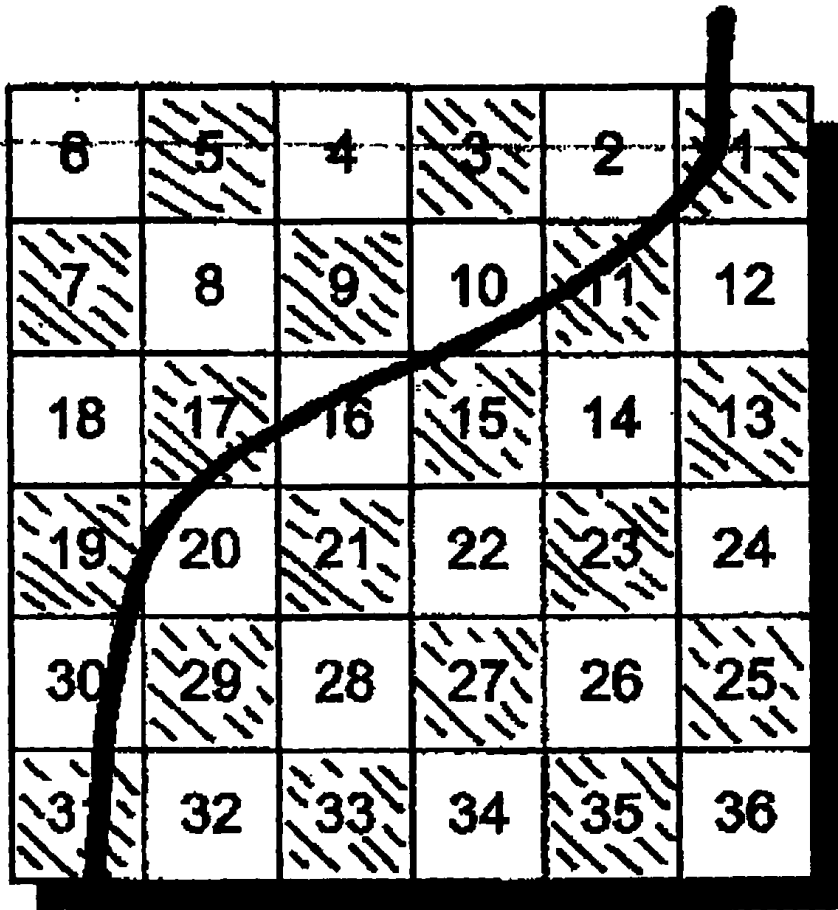
HISTORY OF RAILROAD CORRIDORS



1856 & 1864 Land Grants to Wisconsin



HISTORY OF RAILROAD CORRIDORS



Section Numbering

- Railroads were given the odd-numbered sections on each side of the railroad corridor
- First given up to six miles on either side
- Later increased to 10 miles on either side

HISTORY OF RAILROAD CORRIDORS

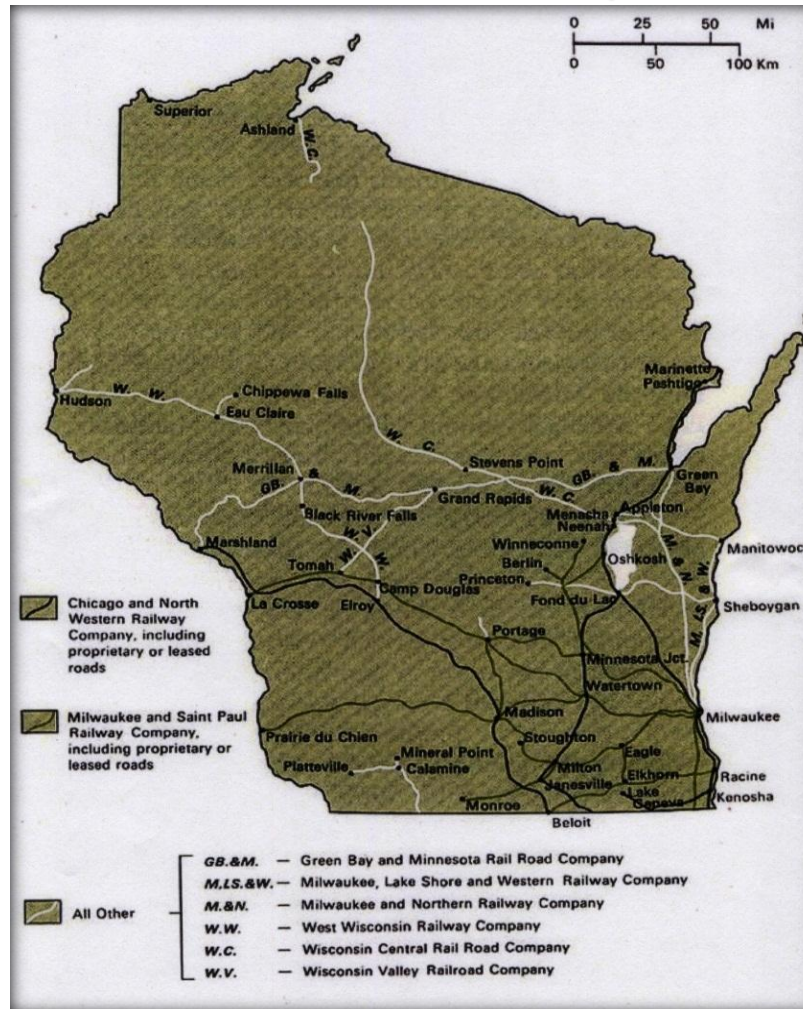
- Public land grants for railroads had always been controversial
- Lots of corruption going on with railroad companies, including Wisconsin, for these valuable land grants
 - Huge scandal involving Byron Kilbourn bribing state officials to be awarded the 1856 land grant for his railroad, LaCrosse & Milwaukee Railroad
 - \$50,000 to the Governor
 - \$25,000 to Wisconsin Supreme Court judges
 - \$10,000 to members of the Senate
 - \$5,000 to members of the Assembly

HISTORY OF RAILROAD CORRIDORS

- In the 1870's there was a shift in attitude towards the railroads, partly because of the corruption and lack of actual construction of the railroads
- The sentiment was that public lands should be given to homesteaders rather than railroads to promote development of our county
- Congress issued no new land grants after 1871

HISTORY OF RAILROAD CORRIDORS

Wisconsin Railroad Map - 1873

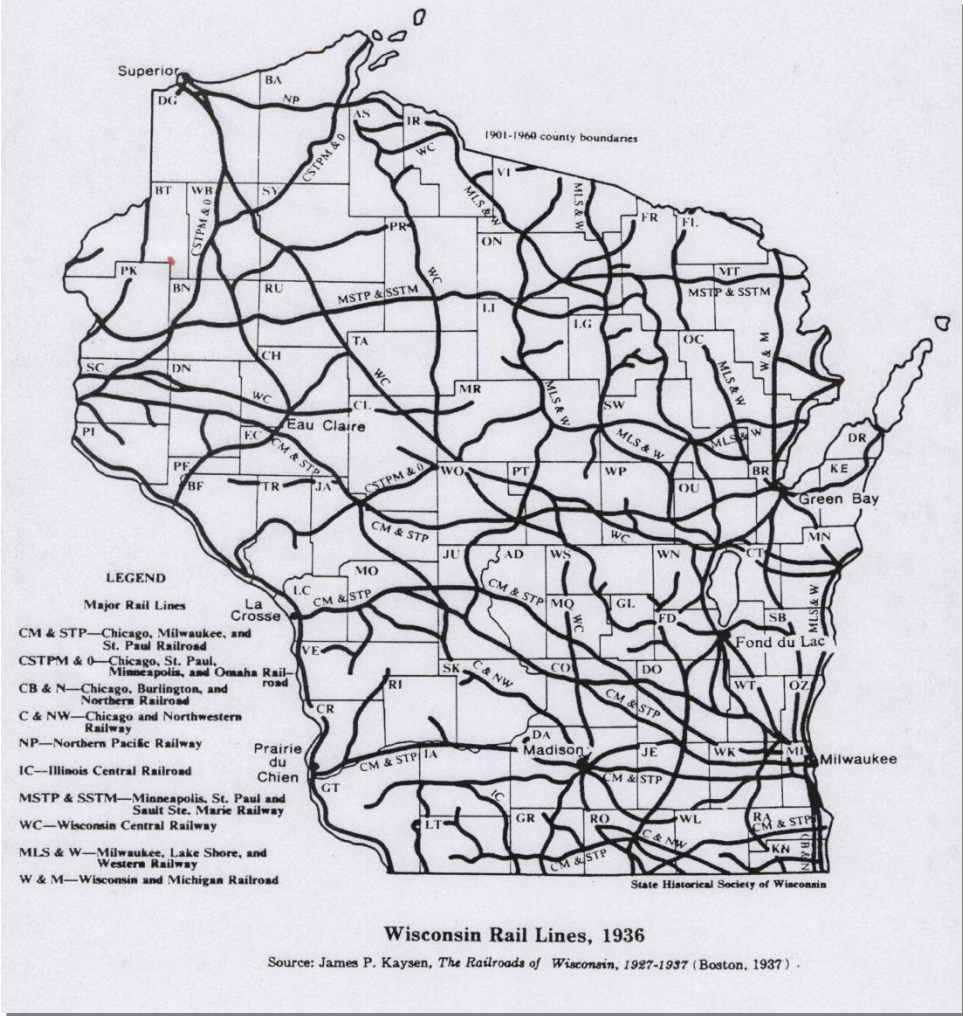


HISTORY OF RAILROAD CORRIDORS

- Rather Congress started just providing a “right-of-way” (i.e. easement) across public lands
- Congress enacted the **General Railroad Right-of-way Act of 1875**
- 11 railroads companies in Wisconsin received rights-of-way under the 1875 Act
- Development of railroads continued into the 20th century

HISTORY OF RAILROAD CORRIDORS

Wisconsin Railroad Map - 1936



HISTORY OF RAILROAD CORRIDORS

- With the invention of the car, railroad lines began to fall into disuse and Congress started looking for ways to dispose of these rights-of-way
- In 1922, Congress passed the Railroad Right-of-Way Abandonment Act (43 U.S.C. § 912), to deal with forfeiture or abandonment by a railroad of the land beneath its railroad corridor.
- Railroads, upon ceasing operations on the lands, would give them up (abandon) and once a court or Congress formally recognized that the railroad had left the lands the law provided that the right to use the lands would then be transferred to the owner of the underlying land, unless it was occupied by a public highway or by a local municipal government
- The General Railroad Right-of-Way Act of 1875 was repealed in the 1970's

HISTORY OF RAILROAD CORRIDORS

- In 1988 Congress enacted the National Trails System Act (Rails-to-Trails) 16 U.S.C. § 1248
- The Rails-to-Trails law preserves the railroad rights-of-ways for interim use as a recreational trail
- Under the Rails-to-Trails law the railroad corridor is not formerly abandoned rather it is “railbanked” to be used as a railroad corridor again in the future
- In the interim, the railroad enters into an agreement with a 3rd party to allow that party to assume financial responsibility for the corridor and operate the same for recreational purposes

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

- The *Brandt* case arose out of an 1875 right-of-way grant that the government had given in 1908 to the Laramie, Hahn's Peak, and Pacific Railroad, in southeastern Wyoming
- The right-of-way crossed an 83 acre parcel that was owned by Melvin Brandt, within the Medicine Bow-Routt National Forest
- Mr. Brandt received his land subject to the railroad's right to use the right-of-way bisecting his land
- In November 1987, the railroad, then known as the Wyoming and Colorado Railroad, became the last railroad company to the right-of-way and it formerly abandoned its use of those lands in the 2003-2004

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

- Following the abandonment, the United States sued the Brandt Revocable Trust and other potential property owners under 42 USC § 912
- The government argued that this statute reverts abandoned right-of-ways back to the federal government's exclusive possession
- The Brandt Revocable Trust filed a countersuit seeking full possession of the former right-of-way arguing that the 1875 Act only granted an easement to the United States, not full possession
- The district court granted the interest in the right-of-way to the United States and the US. Court of Appeals for the Tenth Circuit affirmed

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

- The Supreme Court held that the language, legislative history, and subsequent Supreme Court decisions of the General Railroad Right-of-Way Act of 1875 clearly grants only an easement to the railroad
- Furthermore in the case, when the United States gave the land patent to Melvin Brandt, it did not reserve for itself any additional interest in the railroad property
- Therefore, pursuant to the 1875 Act, when the railroad company abandoned the land, it should have been settled as an easement.
- When an right-of-way is abandoned, the easement disappears and the land reverts to its previous owner, so in this case, the land would revert to the Brandt Revocable Trust
- This case did not deal with the Rails-to-Trails conversion since it was abandoned and no interim use was ever sought

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

- Take Away from the *Brandt* decision - the ruling did not address the 1988 Rails-to-Trails conversion law
- Therefore, presumably it does not affect trails that have been “railbanked” – the federal process of preserving former railway corridors for potential future railway service by converting them to multi-use trails in the interim
- Potentially affected corridors are predominantly west of the Mississippi and were originally acquired by railroads after 1875 through federal land to aid in westward expansion

RAILROAD CORRIDORS AFTER *BRANDT et al v. UNITED STATES*

- According to the Rails-to-Trails Conservancy existing rail-trails or trail projects ARE NOT affected by this decision if ANY of the following conditions are met:
 - The rail corridor is “railbanked”
 - The rail corridor was originally acquired by the railroad by a federally granted right-of-way (FGROW) through federal lands before 1875
 - The railroad originally acquired the corridor from a private land owner
 - The trail manager owns the land adjacent to the rail corridor
 - The trail manager owns full title (fee simple) to the corridor
 - The railroad corridor falls within the original 13 colonies

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QUESTIONS