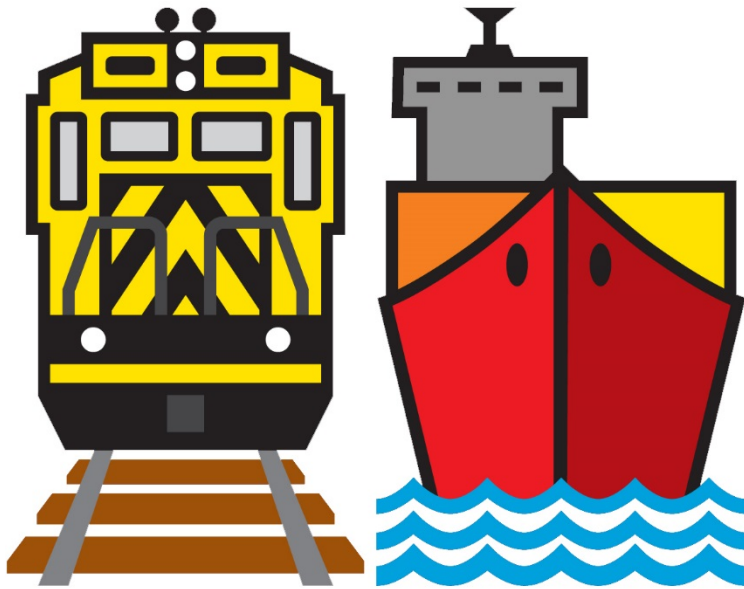


# Indemnification Issues

SHRP2 R16 Community of Interest Meeting



WISDOT

**RAILROADS  
& HARBORS**

Lisa A. Stern, P.E.

Chief of Railroads and Harbors

October 3, 2017





# Wisconsin Railroads & Harbors 2017



- BNSF Burlington Northern-Santa Fe
- CN Canadian National <sup>1</sup>
- CPRS Canadian Pacific
- ELS Escanaba & Lake Superior
- METWR East Troy Railroad Co.
- WN Wisconsin Northern
- TR Tomahawk Railway
- UP Union Pacific
- WGN Wisconsin Great Northern
- WSOR Wisconsin & Southern Railroad

- Port or harbor
- Amtrak Station
- Rails-to-Trails
- Out of service
- RTC-owned <sup>2</sup>
- State-owned

## Publicly-owned lines



### NOTES:

- 1 Canadian National is the parent company of Wisconsin Central Limited and the Sault St. Marie Railroad.
- 2 Rail Transit Commission (RTC) owned

- Switching and terminal operations (Madison Terminal Railway, LLC, Rail & Transload, Inc. in Watertown, and the Port of Milwaukee) are not shown.
- Map displays rail lines and corridors owned by operating freight railroads and government agencies.
- Industrial leads, utility company spurs, museum tracks are not shown.
- Line color represents principal operator, may not be owner.

# Indemnification in Wisconsin

The state cannot indemnify the railroads

- ▶ Such agreements conflict with Wisconsin's Constitution, Article VIII, Sections 2, 3 and 4. WisDOT cannot pledge the credit of the state or contract state debt for payment of indemnification agreements.
- ▶ The State of Wisconsin enjoys sovereign immunity, except as specified by the State Legislature. No agency, employee or officer may waive sovereign immunity without specific statutory authority.

# Indemnification Issues for Wisconsin

Construction Agreements

Training

Inspection

Recreation Trails/Trespassing



# Construction Agreements

Without the authority to indemnify the railroads  
WisDOT has been unable to use Master Agreements.

Have developed standard agreements including  
forcework agreements for  
signals and surfaces, also  
Construction and  
Maintenance (C&M)  
agreements for structures.

Still takes significant time  
but can plan for it.



# Safety Training

Railroad's online safety training requires the trainee check a box indemnifying the railroad.

Typically for crossings have the right to be on the highway easement for construction, maintenance, and survey requirements

Working with CN to develop separate agreement to address indemnification issue without developing separate training.



# **Inspections Right of Entry**

**Issue comes into play especially for structures where the property rights are not well established or documented.**

**Inspection of structures can be done by consultants.**

**Another solution is being piloted in Wisconsin.**



# UAS Used for Inspection

 Topcon Falcon 8

 DJI Inspire



8

The micro drone used for interior framing system inspection.

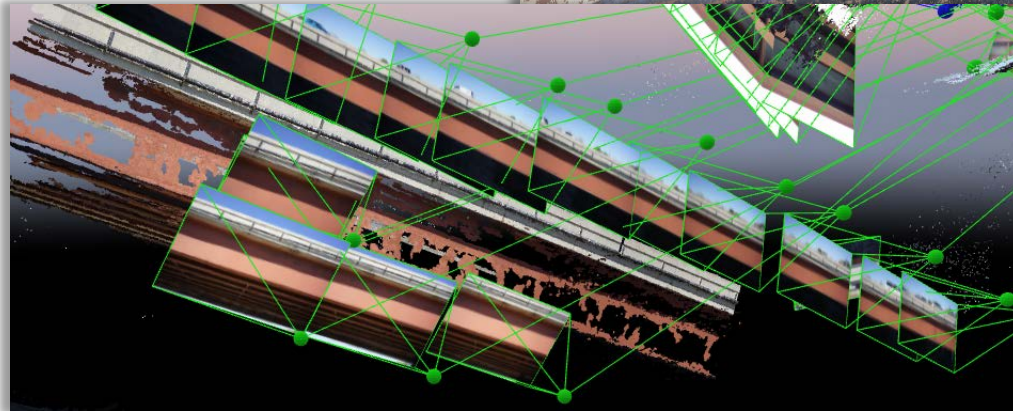


# URT Bridge – Milwaukee, WI

Point  
Cloud



Geolocated Photos



Bridge Inspector with FPV goggles and controller for Falcon 8 camera.

# Recreation Trails And Trespassing

**Other state agencies are under the same rules as WisDOT for indemnification**

**Local municipalities cannot indemnify for a private company's own negligence**

**For crossing may be able to make public if requested by a highway authority (this does not include DNR)**







# Yahara River Trail



# WisDOT Safety Video

<https://www.youtube.com/watch?v=M0iU98VZOs4>

Thanks to Mae Knowles and Michael Denruiter



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