Wild Cemeteries?

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Abstract — One aspect of wilderness often not considered by managers is that of how to manage cemeteries within wilderness boundaries. In wildernesses where humans have left their mark, particularly such as those found in the eastern United States, wilderness staff may find themselves in the role of cemetery manager as well as wilderness manager. The challenges are many. A manager must balance wilderness values with the deep emotional need of people to bury and honor their dead. This may require making decisions regarding requests for motorized access, burial, maintenance, and reconciling national wilderness laws with local laws. In this case study, wilderness managers developed a policy for motorized access to cemeteries that preserved wilderness character but still met the intent of the legislation that created this wilderness. Wilderness staff, upon request, will provide motorized transportation for cemetery visitors. Visitation criteria are in place, and routes to the cemeteries are maintained to a minimal level for motorized use. Regular wilderness users are educated as to the rationale behind this apparent conflict with wilderness character. The results have been positive due to a sense of understanding by cemetery visitors and wilderness visitors, and by the diligence of wilderness managers to be responsive to all concerned parties.

Introduction

In the United States, the concept of wilderness is encased in the Wilderness Act of 1964. Among other things, it prohibits roads, motorized vehicles, mechanical transport, and motorized equipment. This even applies to the managing agency, which must use primitive tools and techniques when accomplishing management functions. These restrictions can be problematic for some special situations regarding wilderness management, particularly in the eastern portion of the United States.

Designated wilderness areas in the eastern United States offer a markedly different setting than what one might find in the West. Typical wildernesses in the East have no towering mountain ranges, no vast acreages of land, and no pristine areas that were untouched by humans. They do, however, provide visitors with at least some level of a wilderness experience in a landscape often characterized by urbanization, crowding, and many remnants of previous human occupation.

One specific issue unique to eastern wilderness is that of what to do with cemeteries. If the law were taken to the extreme, a wilderness would not have any permanent evidence of human presence. Indeed, the Wilderness Act contains text such as “….without permanent improvements….” and “….with the imprint of man’s work substantially unnoticeable…..” (Wilderness Act 1964). Fortunately the law is not applied to that extreme, but one would have to admit that a cemetery is a relatively permanent establishment and it is certainly a noticeable imprint of man’s work.

When eastern wildernesses were designated, most came with many noticeable imprints of man’s work since most were previously occupied in one form or another. The laws creating eastern wildernesses generally recognize and accept that, and rightfully so, since to do otherwise would essentially eliminate the concept of wilderness in previously inhabited areas. Fortunately, many of these remnants of civilization can be dealt with. Old roads and pastures will eventually be reclaimed by the forest. Old buildings, car bodies, fences, and the like can be left to deteriorate or can be removed (using primitive means of course). In some cases, non-native species such as fruit orchards can be allowed to reach the end of their lifespan to be replaced by naturally occurring vegetation. But cemeteries have another dimension in addition to the mere physical presence of grave markers. That dimension is the human dimension; the still living souls who wish to visit and honor their deceased ancestors on a regular basis.

Case Study

The Charles C. Deam Wilderness is a relatively small wilderness of 13,000 acres (5,260 ha) located on the Hoosier National Forest in south central Indiana in the Midwestern United States. Managed by the U.S. Department of Agriculture (USDA) Forest Service and designated by Congress in 1982 with the passage of the Indiana Wilderness Act, it is Indiana’s only wilderness. That designation included approximately five cemeteries (the exact number is still in question), and old roads that at one time provided access to these cemeteries.

The cemetery issue is just one of numerous challenges facing this small but heavily used wilderness, which only raises the importance of trying to make the right choices in the context of the other issues. The reader is referred to Management Actions to Protect Wilderness Experiences and the Resource (Wadzinski 2003) for more details regarding specific management issues in this wilderness.

Problems and Difficult Questions

Need for Access. In the 1930s the area was populated with 78 homes and farms, and many of those former residents are buried in the cemeteries. These properties (including cemeteries) were purchased by the USDA Forest Service in the late 1930s. Although these home sites have long been vacated, many of the descendents of these residents still live...
in the area and still wish to visit these cemeteries. Many of those desiring visitation are elderly, and are not physically able to walk the distance needed to get to the cemeteries. Some of these people have requested motorized access and at least one person has demanded that the routes be upgraded to a standard to accommodate passenger vehicles. Oftentimes an extended family of 10 to 12 people will request motorized access.

How does a manager balance wilderness values with the deep emotional need of people to visit and honor their dead? Wilderness values and law dictate that transportation should not involve motorized vehicles. Yet no one wants to keep an elderly person from visiting the gravesite of a loved one because they can no longer walk long distances. In this case, the cemetery visitor is not coming for a wilderness experience; they simply want to visit a gravesite with minimum inconvenience. It is just a matter of happenstance that the gravesite is now in a designated wilderness, but that happenstance does complicate the situation. Managers needed guidance in resolving this conflict.

There was also the question of upgrading the old roads to passenger vehicle standards. Since wilderness designation, some of the old roads have been converted to trails while others became overgrown with vegetation. To meet this request, approximately 5 miles (8 km) of road would need to be reestablished within the wilderness. The cost would be astronomical, not to mention the impacts on the wilderness setting in this small wilderness. A feasible solution was not apparent.

**Private Inholding.** One of the cemeteries, the Terril Cemetery (fig. 1), is privately owned and excluded from the wilderness designation. It still accepts burials and is located on a gated road that is maintained as an all weather road so the cemetery owners may drive on it. The owners have a key to the gate and regularly drive back to it and mow it with power equipment. The road doubles as a trail used by wilderness hikers and horseback riders. These arrangements were made immediately upon designation of the wilderness.

The cemetery owners have a legal right to access and maintain their land. In conflict with this, visitors trying to have a wilderness experience may have to deal with the sound of lawn mowing equipment, or share the access road (also a trail) with a vehicle if they happen to be on it when the cemetery owners are accessing their property. In addition, the road is maintained on a regular basis by the USDA Forest Service. Because it is used by vehicles, it is necessary to use motorized equipment for this maintenance. Managers wanted to promote the concept of wilderness to users, but found it hard to explain when motorized use occurs on a regular basis.

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**Figure 1**—The Terril Cemetery was excluded from wilderness designation in 1982 (photo courtesy of the Hoosier National Forest).
Forest Service staff were sometimes tempted to use the road when needing to get into the interior. Local law enforcement also requested use of the road for search and rescue and other purposes. It had been suggested by some that these other uses should be liberally granted because, it was noted, the cemetery owners are allowed to drive on it on a regular basis just to cut the grass. Again, a clear policy was needed.

**Vague Legislation.** The legislation that created the Charles C. Deam Wilderness in 1982 contains vague and very brief text thus offering little guidance in regard to cemetery access. The Act states: “…..Nothing in this Act shall affect the right of public access to cemeteries located within the Charles C. Deam wilderness, including the Terril Cemetery” (Indiana Wilderness Act 1982) (fig. 2).

Taking the text at face value, it does not specify if that means motorized or foot access. The Forest allows any member of the public to visit any cemetery at any time without the need to obtain permission. You can’t drive a car to it, but yes, the right of access is present. Managers needed clarification on this issue.

**Legal Entanglements.** Several years prior to wilderness designation, agreements with the local county government further complicated things. These agreements stated that the routes to the cemeteries would be transferred from the county to Forest Service jurisdiction, and that the Forest Service would keep those routes open and maintained. At the time of transfer the roads were in bad shape and the Forest Service lacked the resources to bring them back to serviceable condition. In the meantime, along came the wilderness designation, which to some Forest Service officials meant there was no longer a need to worry about roads. The upshot was that the Forest Service acquired several miles of roads that hadn’t been maintained in years, and managers were unclear as to their current responsibility after wilderness designation.

Another legal unknown was that of whether or not someone had the right to be buried in the cemeteries that were on National Forest System (NFS) lands. Again, there were no textbook answers.

**Who Gets Access?** Members of the public and even elected officials sometimes asked for special consideration for cemetery access. Youth groups, university classes, and others had all asked for motorized access. Forest Service managers needed to decide if the request was legitimate or simply someone looking for an excuse for easier access. A clear policy did not exist and managers needed a good basis from which to say yes or no.

**Wilderness Versus Cemeteries.** Some wilderness advocates had suggested letting the cemeteries become overgrown...
and return to nature while cemetery advocates argued for regular maintenance and restoration work. Taken to the extreme, one would actually remove the gravestones to erase all evidence of human presence. On the other extreme wilderness managers would spend vast resources manicuring cemeteries that were miles from nowhere. A sensible middle ground was needed.

Analyzing the Situation

As often is the case, these wilderness managers found themselves in the throes of conflicting laws and values, and with plenty of advice and strong feelings from their constituents. It was recognized that some aspects of the Indiana Wilderness Act that established the Deam Wilderness were inconsistent with the Wilderness Act of 1964. Such inconsistencies are common in the process of many wilderness designations, where certain variances were written into the legislation for the sake of local compromise.

Fortunately, at least one of the issues was relatively easy to reconcile. Because the Terril Cemetery was privately owned, clear legal guidance existed. Access to the private property is guaranteed under Section 5 of the Wilderness Act of 1964, and the Terril Cemetery is specifically mentioned in the Indiana Wilderness Act. The all weather road that was in place at the time of wilderness designation simply remained in use and no further action was necessary.

The most difficult issue was that of access and management of the other cemeteries. Managers set out to develop a cemetery policy that preserved wilderness character as much as possible and provided for the human needs of cemetery descendants. The managers’ goal was to meet the intent of the Indiana Wilderness Act, but not end up with an extensive (and expensive) road system in a designated wilderness.

The first step in the process was to investigate the legal background of the Indiana Wilderness Act. Even though laws are often vague, a legislative history usually exists for laws and one can review the hearings, reports, and testimony leading up to the final text. It is here where many issues are discussed in greater detail, and the intent of the lawmakers made known. Here is what the lawmakers said in one of the reports to Congress a few weeks prior to passage of the law:

“The bill would provide for the right of public access to the Terril Cemetery. We recommend continued visitation be allowed to all the cemeteries. However, motorized access should be limited to relatives of the deceased. Uncontrolled public motorized use of the roads would degrade wilderness value. We would gate the roads and allow family access on a request basis” (United States Senate 1982).

After reviewing the legislative history, it became clear that the intent was for relatives of the deceased to be allowed motorized access. To their credit, the lawmakers also recognized that wilderness values could be compromised by keeping roads open in a wilderness, and suggested gating these roads and managing access.

Another step involved asking for legal advice. The USDA Office of General Counsel offered legal opinions and suggestions regarding burial, maintenance, and road access. Based on a review of state law, they offered an opinion that no one had a right to be buried in the cemeteries currently owned by the United States. They also stated that they believed the cemeteries may be maintained with hand tools. They further suggested that access be granted to the same degree as was present when the wilderness was designated in 1982. (USDA Office of General Counsel 1985a,b). With the exception of the Terril Road, the routes were reportedly drivable only in dry weather conditions, and usually required a 4-wheel-drive vehicle (4WD). Overall, the roads were in poor condition at the time of designation and access was sporadic.

Staff also reviewed the USDA Forest Service Wilderness Access Decision Tool, which addresses decision-making regarding use of wilderness by persons with disabilities (USDA Forest Service undated). In this case, the issue was only partially related to disability (one could say getting old comes with disabilities). The issue was more related to the legal question of the right of access, because the Indiana Wilderness Act did not state that one had to be disabled in order to be entitled to cemetery access.

For the reader’s edification, it is noted that another tool has become available since this analysis was conducted. That tool is the Minimum Requirements Decision Guide and is designed to help managers select the minimum action necessary (Carhart Training Center 2004).

Another critical part of the analysis was to connect with potential cemetery visitors. A working relationship already existed with the Terril Cemetery owners, and managers had already been talking to other people who had requested access to the other cemeteries. These people were asked what they would like in terms of an access policy and a sign was placed at the gate to the Terril Cemetery road inviting potential visitors to call the Forest Service.

Managers evaluated the routes to the cemeteries to document their condition and location. A range of conditions were found, from totally impassable to the already serviceable road to Terril Cemetery. In two cases, the route was also a designated trail.

Forest staff also analyzed potential means of transportation for cemetery visitors, and considered horse travel, a custom made ATV with multiple seats, wheelchairs, and a 4WD vehicle. They looked at safety, cost, impacts to the resource, seating capacity, travel time, and the reasonableness of being able to transport elderly people or people with disabilities over several miles of rough terrain. It was determined that a street legal 4WD vehicle was the best conveyance to meet these needs.

Working Toward Solutions

Wilderness managers developed a cemetery policy based on this analysis. The Forest Supervisor required approval because the policy included a need for authorization of limited motorized use. This authorization was granted after a review of the analysis, legal opinion, and legislative history. The policy is summarized below.

Terril Cemetery. The policy for the privately owned Terril Cemetery remained the same as it was when the wilderness was designated. The Forest Service maintains the road to the minimum level necessary to provide for all weather use by a passenger vehicle or hearse. Mechanized equipment such as a gravel truck, backhoe, and bushhog are used for road maintenance. The road is gated and the owners have been issued a key and may access the cemetery by vehicle at any time. Requests for motorized visitation by individuals
other than the cemetery owners are coordinated with those owners. Such visitors are generally granted a key on a short-term basis.

Other Wilderness Cemeteries. The policy for the other wilderness cemeteries contains the following guidance:

- Routes to the other cemeteries will remain gated and the routes not upgraded to passenger vehicle status.
- Persons requesting motorized cemetery visitation may be asked to provide proof of being related to the deceased. Forest Service staff will explain wilderness concerns and see if they are willing or able to walk to the site. If not, the Forest Service will provide motorized access in a government vehicle or rent a 4WD vehicle. A Forest Service employee will drive the cemetery visitors to the site. If other wilderness visitors are encountered during the trip, the Forest Service employee will stop and explain the situation. Cemetery visitors will be encouraged to plan their trips during the dry seasons, and will be cautioned that wet conditions may require rescheduling.
- Routes to the cemeteries will be cleared of fallen trees periodically or as needed in response to an access request. This work will be accomplished using primitive methods and tools.
- Routes will be mowed once a year with a motorized tractor to maintain a minimum width for passage by the 4WD vehicle.
- A chainsaw is authorized if during the trip to the cemetery the group encounters a log across the trail. At all other times only primitive methods and tools may be used.
- Cemeteries will have woody vegetation removed as needed and at least every other year using primitive methods and tools. In addition to benefiting cemetery visitors, such maintenance would also help preserve a historical value of the wilderness. This is consistent with the Wilderness Act of 1964 where it states that wilderness may contain features of historic value.
- Other than the conditions specified above, Forest Service staff will not be allowed to use motorized transport on any of the routes for the purpose of more convenient access. This includes the road to the Terril Cemetery. Motorized transport on the routes may be used for search and rescue operations per the guidelines established for such situations (generally a life threatening incident).

Is It Working?

The policy seems to be working fairly well. One key is that Forest Service staff make every effort to provide the trip at the convenience of the requester. The goal is to avoid situations where cemetery visitors are dissatisfied and therefore motivated to request an upgrade of the road system. To keep cemetery visitors satisfied, the Forest will rent whatever type of vehicle is needed to accommodate the group, schedule extra employees, and provide access any time as long as the weather is dry. Fortunately, only a few requests are received annually and the volume is manageable. Other wilderness visitors have occasionally questioned the practice, but seem satisfied when the background information is explained.

Ideally, managers would prefer to let nature be the dominant force as stated in the Wilderness Act. The need to accommodate motorized access results in some “non-wilderness” situations: a wide trail in one area, clearing of routes that would otherwise be allowed to return to nature, and the need to occasionally use motorized equipment for route maintenance. But managers also recognize the needs of the cemetery descendents and the intent of Congress to meet those needs. While not perfect, managers feel they have a workable plan in hand.

Not all cemetery visitors are happy. One cemetery advocate still wishes to have the roads upgraded to all weather passenger vehicle status. Managers have attempted to provide rationale as to why that is not feasible and remind the visitor that the Forest Service does offer a reasonable alternative by providing motorized transportation upon request. Perhaps this is a situation where both parties can only agree to disagree. In the meantime, this individual has taken advantage of the Forest Service’s offer to provide transportation and has been able to visit the cemetery of his choice on numerous occasions.

Looking Forward

For the near term the Forest Service has no plans to change the policy unless new information or changed conditions warrant. But looking into the future, the situation may change and managers need to be prepared. For example, as descendents die out or move away, it is possible that there will eventually be no more requests for cemetery visitation. At that point managers may wish to consider abandoning the policy, and let nature reclaim the cemeteries and the routes.

Another scenario could be increased interest. One example is the recent popularity of genealogy, which has resulted in interest in cemeteries in other parts of the Hoosier National Forest. Other unknown societal changes may also trigger new interest in these cemeteries. Managers may also want to conduct further analysis to determine if the cemeteries should be maintained for their historical value.

In summary, managers of the Deam Wilderness, most cemetery visitors, and most wilderness users are satisfied with the arrangement. An extensive road system has been avoided but the intent of Congress is still being met. Managers feel they have minimized the impact on wilderness values, and have provided reasonable access for cemetery visitors. Things appear to be in balance and wilderness managers plan to adhere to the cemetery policy and do their best to maintain that balance.

References


