

**AN ANALYSIS OF *QUID PRO QUO* “WILDERNESS” BILLS
CURRENTLY BEFORE THE 109TH CONGRESS**

**Compiled by Janine Blaeloch, Western Lands Project
based on analysis from Western Watersheds Project, Western Lands Project,
Wilderness Watch, and Friends of the Clearwater¹
August 2006**

This paper provides a summary and analysis of four public land-related bills currently in the U.S. Congress. These bills fall into a category that we have come to call “*quid pro quo* wilderness,” a type of legislation that proposes large-scale privatization of public land; water and land development; local subsidies funded by the sale or giveaway of public land; and wilderness designations with wilderness-degrading provisions.

These bills tend to be long, detailed, and extremely complex, sometimes containing cryptic language and/or amendments to previous acts of legislation the effect of which may not be immediately apparent.

This analysis does not cover every provision of each bill, but emphasizes the major provisions plus the trade-offs, circumventions of existing law, and other elements characteristic of the *quid pro quo* trend.

A detailed analysis of the trend, with case-studies, entitled “Quid pro quo wilderness: a new threat to public lands,” can be found at www.westernlands.org/assets/quid-pro-quo.pdf paper.

**CENTRAL IDAHO ECONOMIC DEVELOPMENT AND RECREATION ACT
(CIEDRA), HR 3603**

Rep. Mike Simpson, R-ID

Land Disposal and Development

CIEDRA would transfer, for free, some 5,100 acres of federal land to Custer and Blaine counties, several towns in central Idaho, and the State of Idaho. The bill passed by the House in July does not give full information on what and how much land would be given away. Some 2,500 acres that would go to Custer County were left out of the bill that passed the House, apparently due to an oversight. A press release issued by Rep. Simpson on the day the bill passed out of the Resources Committee does include the Custer County transfers.

Once privatized, much of the land will be used for economic development, including second-home development and "future growth and infrastructure needs." Giveaways would convert open land managed by the Bureau of Land Management to residential

¹ Some of the Washington County bill analysis is taken from materials compiled by the Utah Wilderness Coalition.

development and other uses. Some of the land giveaways are for public purpose uses and could be accomplished through existing law, e.g., the Recreation & Public Purposes Act.

Four parcels comprising 162 acres of National Forest land in the Sawtooth National Recreation Area (SNRA) would be targeted for residential and commercial development.

Some \$65 million have been spent since the SNRA's establishment to purchase protective easements and control development. The transfers were originally all free, but the bill that passed was amended to require that the City of Stanley pay the government for one of the SNRA parcels once sold. However, payment would be equal only to what the federal government paid for the parcel when it was acquired in 1989. The bill also includes 15 pages of detailed development restrictions applying to the SNRA parcels, concerning such matters as outdoor lighting, building design, and the allowable size of satellite dishes.

The land disposals do not conform with management plans under the Federal Land Policy & Management Act (FLPMA). Of the more than 5,800 acres of BLM land Custer County requested, only 534 acres were on the list of lands identified as potentially suitable for disposal in the Challis BLM's Resource Management Plan. The SNRA is a congressionally-protected area, so land within its boundaries could not under current law be exchanged, sold, or given away.

The land giveaways will not undergo environmental or alternatives analysis under the National Environmental Policy Act (NEPA), since the lands to be given away were identified by the recipients and Rep. Simpson, and CIEDRA does not provide discretion for the government not to transfer the lands.

CIEDRA is the first *quid pro quo* bill to enact a large-scale giveaway to local government, with no claim to serving any larger public interest, but only to aiding local economic development. Past *quid pro quo* bills have earmarked land for disposal through sale (Clark County, NV 2002; Lincoln County, NV 2004) or exchange (Steens Mountain, OR 2000). The Clark County bill included slightly more than 800 acres of free "public interest conveyances" to a state college, the University of Nevada Las Vegas, a police shooting range, and affordable housing.

Water

Because of a 2000 Idaho Supreme Court decision against implied water rights in wilderness, there are currently no federal reserved water rights that attach to the public lands in CIEDRA. The bill expressly denies a federal water right for all lands covered by the bill.

For the new wilderness areas, CIEDRA does contain some protective language that would largely prevent water development in the upper watersheds. However, for the new BWC Management Area (see below) there is no similar language. These lands without water protection are in the lower elevation watersheds and stream corridors where fish

including endangered chinook salmon are spawning and rearing.

The bill directs federal agencies to use Idaho state water law where any water right is needed. This would suffice for drilling a well or an outhouse, for example, but Idaho water law does not allow for the protection of water instream, except under very limited circumstances.

Wilderness and WSA releases

The bill gives wilderness designation to 309,800 acres in three separate areas. CIEDRA would release more than 130,000 acres of Wilderness Study Areas and recommended wilderness, opening these lands to new or more intensive land uses or developments.

The wilderness proposed by CIEDRA is inconsistent with the Wilderness Act, to such an extent that even the Forest Service expressed strong reservations about it in its October 27, 2005 testimony. Objectionable provisions include:

- ✍ giving special rights to horseback users and outfitters--including automatic reauthorization of outfitter permits—and elevating these uses above other recreationists'
- ✍ permitting non-conforming activities such as poisoning, predator control, and use of motorized equipment (including landing of helicopters) for routine wildlife management
- ✍ requiring the agency to build specific facilities—trailheads and wheelchair-accessible trails— in and near the wilderness
- ✍ expanding wildfire control to include pre-emptive action and devolving authority to State and local officials
- ✍ loosening protection on access to mining claims and their development
- ✍ promoting military overflights;
- ✍ loosening management of livestock grazing

Off-Road Vehicles

One of the stated goals of the bill's proponents is to control off-road vehicle use in the Boulder-White Clouds. However, the bill creates a new management designation, the Boulder-White Clouds Management Area, that prioritizes ORV use by instituting a no-net-loss policy regarding vehicle trails, undercutting land managers' existing authority to close damaging trails. The 550,000-acres BWCMA overlays the eastern half of the SNRA, encompassing about 200,000 acres within the SNRA.

**WHITE PINE COUNTY CONSERVATION, RECREATION AND
DEVELOPMENT ACT OF 2006, S. 3772**

Sen. Harry Reid, D-NV

Sen. John Ensign, R-NV

Land Disposal

The bill orders the sale of more than 45,000 acres of federal land, to be sold competitively at auction. White Pine County and the Interior Department will jointly select the lands to be sold at each auction. The first sales are to occur within one year of the Act's passage, with annual sales thereafter until all of the land is disposed of. Only White Pine County can postpone the sales.

Proceeds from sales of the federal land will be divided as follows:

- ? 5% to Nevada for general education
- ? 10% to White Pine County (WPC) for funding its public safety and social services programs
- ? 85% in a special account to cover the costs of offering/selling the land (including NEPA and FLPMA compliance); processing subsequent public land use authorizations and rights-of-way (for development of public lands sold under the Bill); inventorying and managing archeological resources in WPC; studying the route of the Silver State Off-Highway Vehicle Trail; processing the WPC wilderness designations; and studying and assessing non-motorized recreation opportunities in the County, among other things.

White Pine County is currently under state receivership due to financial mismanagement.

Three previous Nevada land bills—the 1998 Southern Nevada Public Land Management Act, Clark County bill of 2002, and Lincoln County bill of 2004—allocated the same percentages of land sale proceeds to the local, state, and federal governments. However, the SNPLMA and Clark County bill authorized (and emphasized) use of the federal proceeds to acquire environmentally sensitive lands in Nevada. This bill does not authorize such use of the funds, but keeps expenditures even of the federal proceeds within White Pine County.

The White Pine County bill also amends the Southern Nevada Public Land Management Act (SNPLMA), mentioned above. It allows proceeds from federal land sales in Clark County to be used:

- ✍ to develop and implement a hazardous fuels and wildfire prevention plan (including biomass and biofuels energy production) for the Lake Tahoe Basin and the Spring Mountains
- ✍ to fund a Clark County program for removal of lawn/turf by public institutions to conserve water
- ✍ to fund a Clark County program for improving wastewater management systems for the Las Vegas Valley, and
- ✍ to develop and administer state parks in Clark County.

The SNPLMA created a special account for the sales proceeds (into which proceeds from sales of lands released in the subsequent Clark County bill also are deposited). Much was made of the bill's promise to use the funds to purchase environmentally sensitive lands throughout the state, but much of the funding has gone to expanding the network of Clark County trails and parks. The amendments will divert even more funds away from land acquisition and subsidize local infrastructure and development.

Another amendment to SNPLMA re-defines the term "affordable housing" from housing that serves individuals or families 'whose income does not exceed 80 percent of median income for the area' to housing that serves individuals or families 'with an income of not more than 120 percent of the median income.'

The amendment requires that 5 percent of total housing units be developed as affordable housing for land sales of 200+ acres. Previously SNPLMA authorized, but did not require, the Interior Secretary to sell public lands for affordable housing at less than market value to government entities. Thus with the new amendment, local entities can receive a discount on land while meeting a more lenient standard for affordability.

It is not clear whether the sales of public land in White Pine County will be conducted in compliance with the National Environmental Policy Act (NEPA). The one-year deadline for sales may allow adequate time to conduct NEPA, and there is no overt waiver of NEPA in the bill. However, since the bill states that Interior "shall" offer the land for sale within one year of the Act's passage, it suggests that there would be no discretion not to sell the land as a result of NEPA analysis.

The sales would comply with the Federal Land Policy & Management Act (FLPMA) to the extent that sale lands are to be taken from lands already identified for disposal in the BLM's Ely Resource Management Plan "or a subsequent amendment to the management plan."

A new RMP is actually in progress and expected to be finalized in Spring 2007. The draft of the new Ely RMP identifies approximately 23,000 acres as suitable for disposal, so the amendment referred to is likely already being contemplated in order to add enough disposal lands to make available the full 45,000 acres cited in the bill. The fact that an

acreage goal for disposal is being dictated in the legislation undermines the FLPMA planning process.

It is unlikely that much, if any, of the land to be privatized in the WPC bill is intended for residential or small-scale commercial development. However, there are several large-scale energy, utility corridor, and industrial development plans already underway in the county that could be facilitated by the land sales.

Land conveyances

BLM is to give 6,900 acres to the State of Nevada for free, for expansion of a wildlife area and a historical site. An unspecified amount of additional federal land is to be conveyed for the expansion of a state park. The land is to be used for wildlife/natural resources conservation or for a public park, and reverts to federal ownership if used for other purposes.

BLM is also to convey 1,500 acres for free to WPC to expand the county airport and 200 acres to expand the County Industrial Park. WPC can then re-convey the 200 acres, provided it is sold competitively, for non-residential development, and for at least market value, with the sale proceeds to be distributed in the same manner as those from the land sales. The land conveyed to the County will also have a reversionary clause.

Wilderness and WSA Releases

Fifteen wilderness areas, totaling more than 545,000 acres, are designated or expanded. The existing Mt. Moriah Wilderness Area will have its boundary adjusted to exclude some ranchers' livestock water pipelines.

The bill releases 67,000 acres of WSAs from interim protective status and into expanded or more intensive uses or development.

The bill specifically authorizes motor vehicle and helicopter use in wilderness to manage wildlife; allows unlimited military overflights in wilderness airspace; allows state and local government to fight fire in wilderness; and authorizes construction of wildlife guzzlers in wilderness.

These special provisions are typical of recent wilderness/land development legislation, but inconsistent with the Wilderness Act.

Water

Like CIEDRA and previous quid pro quo bills, the WPC bill designates no reserved water right in the wilderness, and also requires Interior to apply for water rights under Nevada water law. Current Nevada water law contains provisions making it difficult for the federal government to obtain water for conservation uses.

White Pine County will also be affected by water pipelines now being planned to transport water from northern Nevada to Las Vegas. The Lincoln County bill of 2004 dedicated 448 miles of free public right-of-way for water pipelines that will stretch through that county, and more are proposed to extend to White Pine County, where water officials say there is a vast supply.

Off-Road Vehicles

The Act directs Interior to complete a study of possible routes for the Silver State Off-Highway Vehicle Trail and identify a preferred route within three years of the Act's passage. Ninety days after the study is completed, the BLM will designate the Trail in WPC. This extends a trail created under the Lincoln County bill of 2004.

WASHINGTON COUNTY GROWTH AND CONSERVATION ACT OF 2006, S. 3636, HR 5769

Sen. Bob Bennett

Rep. Jim Matheson

Land Disposal

The Washington County bill proposes the disposal by auction or exchange of not less than 24,300 acres of federal land around the fast-growing town of St. George, Utah. Most if not all of the land sold would go to residential and commercial development. Some could be acquired at a discount for public purposes by the county or state under the Recreation & Public Purposes Act. All is currently managed by the BLM. The BLM's 1999 Resource Management Plan identified 18,000 acres for disposal, of which about 13,000 acres have been privatized so far.

The local chamber of commerce has estimated that there are more than 200,000 acres of private land already available for development in Washington County.

The bill directs that 4,300 acres of federal land be sold within a year of enactment of the Act. Whether a NEPA analysis would be required is unclear, but a year might be adequate time in which to complete NEPA. However, since the sale of this land is not discretionary the NEPA process would presumably not allow for the consideration of any alternatives nor any challenge of the sales.

The other 20,000 acres, which are to be either sold or exchanged, would probably be subject to NEPA, as the lands cannot be disposed of earlier than January 2010.

St. George has seen furious land-dealing since the 1990s following federal listing of the desert tortoise as a threatened species. The BLM has engaged in numerous land exchanges with private landowners with holdings in the Washington County Habitat Conservation Area (HCA), a protected area for the desert tortoise. Legislation passed in a 1996 omnibus land bill provided that in any federal exchanges or acquisitions in the

County, private lands would be appraised without consideration of the presence of an endangered species—a provision that would significantly inflate the value of private land in the HCA.

A 2001 audit by the Interior Inspector General found that the BLM's head appraiser had inflated land appraisal values in St. George land exchanges to accommodate private landowners. One infamous landowner in the HCA has tried for several years to get a special piece of legislation passed through Congress that would pay him up to \$50 million for a 1,300- acre parcel. (This landowner, James Doyle, could be a beneficiary of the land acquisition provisions in the Washington County bill).

Sales Proceeds

Ninety-five percent of the proceeds from federal land sales would stay within Washington County, 5 percent would go to the State.

- ✍ 5% would go to the state for schools
- ✍ 2% would go to the County for administrative, fire protection, flood control, public safety, and transportation
- ✍ 8% would go the Washington County water Conservancy District
- ✍ 85% would go the fund federal projects within Washington County

The bill directs some of the federal proceeds towards unspecified “projects relating to parks, trails and natural areas;” construction of off-road vehicle trails; and land managers’ administrative costs for disposing of land and authorizing corridors and rights-of-way for utilities, water projects, and transportation. Like the White Pine bill, the Washington County bill keeps expenditure even of the federal proceeds within the county.

Utility Corridors and Land Conveyances

The Washington County Water Conservancy District would be a major beneficiary of the bill, receiving about 9,000 acres of federal land for free. The bill language opens a huge loophole through which the WCWCD can acquire free rights-of-way on federal land for “any” canals, wells, well-fields, ditches, flood control projects, and virtually any water-related purposes. Because the language is so broad, acreage could exceed what is already mapped. In addition, the bill would create 1/2-mile-wide utility corridors, given for free, on public land covering 900 miles. One corridor is intended for a water pipeline running from Lake Powell to St. George.

Water

The bill prohibits any federal reserved water right and requires that Interior apply for any needed water rights under Utah water law.

Wilderness and WSA Releases

The bill gives wilderness designation to about 93,000 acres of the 300,000 acres in Washington County that are part of the long-pending Red Rock Wilderness bill (HR 1774). An additional 2,642 acres of Forest Service land would be designated as wilderness. The bill also overlays wilderness designation on nearly all of the already-protected Zion National Park (approximately 123,743 acres). Essentially, “new” protection is provided on only 95,642 acres.

11,583 acres of BLM Wilderness Study Area (WSA) would be released into more intensive land uses and out of the interim protections provided by WSA status.

The bill includes many of the same harmful provisions for wilderness “management” found in other *quid pro quo* bills pertaining to fire management, wildlife management, and military overflights.

Wild & Scenic Rivers

The bill would give WSR status to about 165 miles of segments of the Virgin River and tributaries. Most protective designations run “rim to rim,” and some define a one-half mile corridor across adjacent land.

National Conservation Area

The bill creates a Red Cliffs National Conservation Area, overlaying the existing Red Cliffs Desert Reserve. Proceeds from the land sales could be used to acquire remaining private inholdings in the NCA.

However, the bill also requires study for a highway corridor and consideration of a route that would cut through the NCA. This is reminiscent of a provision in the Clark County bill of 2002, which established an NCA at Sloan Canyon to protect petroglyphs but also codified a road right-of-way for a commuter route that would cut through the upper third of the NCA.

OWYHEE INITIATIVE IMPLEMENTATION ACT OF 2006, S. 3794

Sen. Mike Crapo, R-ID

The foundation of the Owyhee bill is the 30-page “Owyhee Initiative Agreement,” negotiated by the Owyhee Working Group, a collaborative group made up of representatives of three environmental organizations, ranchers, off-road vehicle enthusiasts, outfitters, and Owyhee County, Idaho. While the agreement is not actually incorporated into the bill language, the primary stated purpose of the OI Implementation Act is “to provide for the implementation of the Owyhee Initiative Agreement.”

The impetus for the Owyhee Initiative (OI) originated among public land ranchers in Owyhee County. Two environmental groups had successfully litigated to reduce cattle numbers in the area, and drought and poor cattle prices were also causing problems. In addition, ranchers were attempting to prevent future landscape protection for the Owyhee in a proposed National Monument.

The ranchers approached Idaho Senator Mike Crapo, who promised support for whatever consensus proposal for the Owyhees the ranchers and others could come up with. Three environmental groups joined the group in the hope of gaining wilderness designation for some land in the county. Other public land user groups and county representatives also joined. Specifically barred from the OI discussions were the two environmental groups that had successfully sued on grazing issues.

The OI Agreement, finalized in May 2006, was negotiated in private over a period of five years.

The OI's stated goal was:

...to develop and implement a landscape-scale program in Owyhee County that preserves the natural processes that create and maintain a functioning, un-fragmented landscape supporting and sustaining a flourishing community of human, plant, and animal life, that provides for economic stability by preserving livestock grazing as an economically viable use, and that provides for the protection of cultural resources.

Following is a summary of the elements of the OI Agreement, followed by analysis of the legislation.

Local Control

The OI creates a Board of Directors, a Science Review Panel, and a Science Center as apparatus for oversight and planning regarding all public lands in the county. The agreement can be read at www.owyheeinitiative.org.

Board of Directors: the OI establishes permanent membership in a Board of Directors for the groups that negotiated the agreement. Proponents have asserted that the OI board will be advisory only and have stated that the legislation does not bestow any authority on the board. However, it is difficult to understand why a mere “advisory” role would be embodied in such a detailed agreement—or why, if the agreement has no real effect, it was worked up in such detail over a period of at least five years.

According to the Agreement, the Board is to serve as the “institutional memory” for implementation of the OI.

Science Review Panel: This provision gives ranchers the opportunity to seek a separate review where they may disagree with a decision by the BLM regarding livestock grazing

and related developments. The OI allows even preliminary documentation used in a BLM grazing decision to be subject to separate review.

Conservation & Research Center: The Board will oversee a Conservation & Research Center that will provide a vehicle to fund vegetation “treatment” and other development- and livestock-oriented projects. The Center will involve itself in monitoring the condition of public lands, and other key functions of BLM in livestock grazing and public land administration.

Wilderness Management

The OI contains provisions that are similar to other *quid pro quo* bills, but in addition, its appendices incorporate very detailed provisions regarding grazing, juniper management, access, fire management, military activities, outfitting, and other activities.

Like other recent bills, the OI Agreement and legislation incorporate congressional grazing guidelines created to reaffirm the lawfulness of grazing within wilderness and loosen standards, but it also contains copious additional language that appears to give livestock grazing in wilderness primacy over wilderness itself.

The agreement allows Owyhee ranchers to use motor vehicles in wilderness— including driving cross-country to manage cattle—to the extent that is “current and customary.” Even the permissive congressional grazing guidelines allow only for “occasional,” regulated use of motorized equipment.

The agreement authorizes deforestation of wilderness via “juniper tree removal,” as well as re-seeding with non-native grasses immediately after fires.

Provisions for access to private inholdings state that “access to private property within wilderness areas will be maintained and will not be prevented or restricted due to wilderness designation.”

Legislation

Local Control. The bill language concerning the Board of Directors and implementation of the OI does actually ratify the OI Agreement or codify the Board’s role. Interior is merely directed to “coordinate with” the OI Board to implement the Agreement. The bill does not give the Owyhee Board of Directors management authority, but the extraordinary detail of the Agreement language suggests that it is the Board’s intention to exercise authority anyway.

Land exchanges and buyouts. The bill seeks to expedite exchanges or sales of land and other privately-owned interests to the government in order to bring inholdings in the proposed wilderness into federal ownership or impose restrictions on their development. Ranchers may exchange or sell rights-of-way, conservation easements, or actual land.

The bill does not provide detailed information on the location, size, or types of land or other interests that could change hands. The legislation contains a reference to a map and document; these materials were made available at an open house Sen. Crapo's staff held in Boise, Idaho.

A list of interests that have been offered for exchange or sale by ranchers shows that a total of 2,618.78 acres of fee-simple land have been offered and one scenic easement of 1,540 acres. It is possible these are only preliminary offers. Ranchers can select federal lands from an approximately 75,000-acre area of public land.

The Owyhee land exchange and acquisition language bypasses several normal requirements, including any requirement that the ranchers provide actual appraisals of lands they wish to trade or sell to the government. It appears the federal government (i.e., taxpayers) simply pays in cash or public land whatever the private land owner demands.

The land owner has only to submit a written notice of intent; an identification of each parcel of land and each interest to be exchanged or sold; a "description of the value" of same, and in the case of exchange, a description of the federal land he seeks.

Press coverage has stated that the ranchers value their land at about \$1,500 to \$2,400 per acre. Typical appraised values for grazing land in eastern Oregon, central Wyoming, and western Utah, for instance, generally range from \$25 to just over \$200 per acre. While there could be higher values in an area, a more than tenfold difference seems extraordinary.

The authorization language says the Secretary "may" complete exchanges and purchases, suggesting that it is discretionary and he is not directed to complete any or all that are offered. However, in provisions pertaining to "conveyance by sale," the Secretary "shall" acquire any land or interests offered for purchase..."as soon as practicable" after enactment of the bill.

The upshot is that it is not clear (1) whether the exchanges and/or sales are required, and (2) whether they must be conducted under the National Environmental Policy Act (NEPA).

The land exchange and purchase provisions contain several requirements for the Secretary or private landowners to complete actions "as soon as practicable" or within 30- or 60-day deadlines for action. The deadlines suggest the intent to bypass NEPA, since these short time frames would not allow for its implementation.

Grazing preferences. The bill allows Owyhee ranchers to voluntarily sell or donate their grazing permits. For those asking for payment, the Secretary is to compensate the rancher according to a payment scheme that is documented in the exchange and acquisition documents cited above. However, these documents give only a total amount to be paid out and do not show how many Animal Unit Months (AUMs) each rancher is selling, nor how many of the permitted AUMs being sold have actually been in use. Press reports have said that the ranchers would receive \$440 per AUM.

In contrast, buyouts that had been considered for CIEDRA, removed when the bill was amended, proposed a price of \$300 per AUM. According to the National Public Lands Grazing Campaign, the market value of grazing permits in Central Idaho is generally \$50 to \$100 per AUM.

Maps for the proposal show approximately 50,000 acres where grazing would cease and approximately 25,000 acres where it would be “reduced.”

Wilderness and WSA release. The bill establishes wilderness on 517,000 acres and removes 200,000 acres of Wilderness Study Areas from interim protection.

The bill contains many of the same provisions found in other *quid pro quo* bills that do not comport with the Wilderness Act. These include previously discussed provisions such as:

- ✍ granting special privileges to horseback users and outfitters
- ✍ permitting activities such as poisoning, predator control, and use of motorized equipment (including landing of helicopters) for routine wildlife management
- ✍ expanding wildfire control to pre-emptive management and devolving such authority to State and local officials
- ✍ promoting military overflights, including low level flying, and other military activity in the wilderness.

Water. The bill defaults to Wilderness Act language and neither claims nor denies a federal water right for wilderness areas. Normally this is interpreted as an implied reserved right, but Idaho courts have interpreted similar language to deny the existence of federal water rights.

The bill also makes Wild & Scenic River instream flows subordinate to future offstream water rights for irrigation, municipal and other uses.

Wild & Scenic Rivers. The bill establishes 384 miles of Wild & Scenic River segments. However, while the typical designation extends WSR boundaries 1/4 to 1/2 mile across adjacent land, the boundary of WSR designations in the Owyhee bill is the ordinary high water mark. The bill essentially establishes a wild and scenic riverbed.