A BILL

To enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nuclear Fuel Management and Disposal Act”.

SEC. 2. DEFINITIONS.

(a) NUCLEAR WASTE POLICY ACT OF 1982 DEFINITIONS.—For purposes of this Act:

(1) “Commission”,
(2) “disposal”,
(3) “Federal agency”,
(4) “high-level radioactive waste”,
(5) “repository”,
(6) “Secretary”,
(7) “State”,
(8) “spent nuclear fuel”, and
(9) “Yucca Mountain site”

have the meaning given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) OTHER DEFINITIONS.—For purposes of this Act—
(1) “Withdrawal” means the geographic area consisting of the land described in section 3(c);

(2) “Secretary concerned” means the Secretary of the Air Force or the Secretary of the Interior, or both, as appropriate; and

(3) “Project” means the Yucca Mountain Project.

SEC. 3. LAND WITHDRAWAL AND RESERVATION.

(a) LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.—

(1) LAND WITHDRAWAL.—Subject to valid existing rights, and except as provided otherwise in this Act, the lands described in subsection (c) are withdrawn permanently from all forms of entry, appropriation, and disposal under the public land laws, including without limitation the mineral leasing laws, the geothermal leasing laws, and the mining laws.

(2) JURISDICTION.—Except as otherwise provided in this Act, jurisdiction over the Withdrawal is vested in the Secretary. There are transferred to the Secretary the lands within the Withdrawal under the jurisdiction of the Secretary concerned on the date of enactment of this Act.

(3) RESERVATION.—The Withdrawal is reserved for use by the Secretary for the development, preconstruction testing and performance confirmation, licensing, construction, management and operation, monitoring, closure, post-closure, and other activities associated with the disposal of high-level radioactive waste and spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).
(b) REVOCATION AND MODIFICATION OF PUBLIC LAND ORDERS AND RIGHTS OF WAY.—

(1) PUBLIC LAND ORDER REVOCATION. —Public Land Order 6802 of September 25, 1990, as extended by Public Land Order 7534, and any conditions or memoranda of understanding accompanying those land orders, are revoked.

(2) RIGHT OF WAY RESERVATIONS.--Project right-of-way reservations N-48602 and N-47748 of January 5, 2001, are revoked.

(c) LAND DESCRIPTION.—

(1) BOUNDARIES.--The lands and interests in lands withdrawn and reserved by this Act comprise the approximately 147,000 acres of land in Nye County, Nevada, as generally depicted on the Yucca Mountain Project Map, YMP-03-024.2, entitled “Proposed Land Withdrawal” and dated July 21, 2005.

(2) LEGAL DESCRIPTION AND MAP. —As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall:

(A) publish in the Federal Register a notice containing a legal description of the Withdrawal; and

(B) file copies of the maps described in paragraph (1) and the legal description of the Withdrawal with the Congress, the Governor of the State of Nevada, and the Archivist of the United States.

(3) TECHNICAL CORRECTIONS. —The maps and legal description referred to in this subsection have the same force and effect as if they were included in this Act. The Secretary of the Interior may correct clerical and typographical errors in the maps and legal description.
(d) RELATIONSHIP TO OTHER RESERVATIONS. —The provisions of subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (sections 3011-3023 of Pub. L. No. 106-65) and of Public Land Order 2568 do not apply to the lands withdrawn and reserved by subsection (a). This Act does not apply to any other lands withdrawn for use by the Department of Defense under subtitle A of title XXX of the Military Lands Withdrawal Act of 1999.

(e) MANAGEMENT RESPONSIBILITIES.

(1) GENERAL AUTHORITY.—The Secretary shall manage the lands withdrawn by subsection (a) consistent with the Federal Land Policy and Management Act of 1976 (43 USC 1701 et seq.), this Act, and other applicable law. The Secretary shall consult with the Secretary concerned in discharging that responsibility.

(2) MANAGEMENT PLAN.—

(A) DEVELOPMENT. —The Secretary, after consulting with the Secretary concerned, shall develop a management plan for the use of the Withdrawal. Within 3 years after the date of enactment of this Act, the Secretary shall submit the management plan to the Congress and the State of Nevada.

(B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED ISSUES. —Subject to subparagraphs (C), (D), and (E), any use of the Withdrawal for activities not associated with the Project is subject to conditions and restrictions that the Secretary considers necessary or desirable to permit the conduct of Project-related activities.
(C) DEPARTMENT OF THE AIR FORCE USES. —The management plan may provide for the continued use by the Department of the Air Force of the portion of the Withdrawal within the Nellis Air Force Base Test and Training Range under terms and conditions on which the Secretary and the Secretary of the Air Force agree concerning Air Force activities.

(D) NEVADA TEST SITE USES. —The Secretary may allow the National Nuclear Security Administration to continue to use the portion of the Withdrawal on the Nevada Test Site and may impose any conditions on that use that the Secretary considers necessary to minimize any effect on either Project or Administration activities.

(E) OTHER NON-YUCCA MOUNTAIN PROJECT USES. — The management plan shall provide for the maintenance of wildlife habitat and shall provide that the Secretary may permit non-Project-related uses that the Secretary considers appropriate, including domestic livestock grazing and hunting and trapping in accordance with the following requirements:

(i) GRAZING. —The Secretary may permit grazing to continue where established before the date of enactment of this Act, subject to regulations, policies, and practices that the Secretary, after consulting with the Secretary of the Interior, determines to be necessary or appropriate. The management of
grazing shall be conducted in accordance with applicable grazing laws and policies, including—

(I) the Act commonly known as the “Taylor Grazing Act” (43 U.S.C. 315 et seq.);

(II) title IV of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1751 et seq.); and

(III) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

(ii) HUNTING AND TRAPPING. —The Secretary may permit hunting and trapping within the Withdrawal where established before the date of enactment of this Act, except that the Secretary, after consulting with the Secretary of the Interior and the State of Nevada, may designate zones where, and establish periods when, no hunting or trapping is permitted for reasons of public safety, national security, administration, or public use and enjoyment.

(F) MINING. —

(i) IN GENERAL. —Except as provided in subparagraph (B), surface or subsurface mining or oil or gas production, including slant drilling from outside the boundaries of the Withdrawal, is not permitted at any time on lands on or under the Withdrawal. The Secretary of the Interior shall evaluate and adjudicate the validity of all mining claims on the portion of the
Withdrawal that, on the date of enactment of this Act, was under the control of the Bureau of Land Management. The Secretary shall provide just compensation for the acquisition of any valid property right.

(ii) CIND-R-LITE MINE. —Patented Mining Claim No. 27-83-0002, covering the Cind-R-Lite mine, shall not be affected by establishment of the Withdrawal, unless the Secretary, after consulting with the Secretary of the Interior, determines that the mine’s acquisition is required in furtherance of the reserved use of the Withdrawal set forth in subsection (a)(3). In that event, the Secretary shall provide just compensation.

(G) LIMITED PUBLIC ACCESS. —The management plan may provide for limited public access to the portion of the Withdrawal under Bureau of Land Management control on the date of enactment of this Act. Permitted uses may include continuation of the Nye County Early Warning Drilling Program, utility corridors, and other uses the Secretary, after consulting with the Secretary of the Interior, considers consistent with the purposes of the Withdrawal.

(3) CLOSURE.—If the Secretary, after consulting with the Secretary concerned, determines that the health and safety of the public or the common defense and security require the closure of a road, trail, or other portion of the Withdrawal, or the airspace above the Withdrawal, the Secretary may effect and maintain the closure and shall provide notice of the closure.
(4) IMPLEMENTATION.—The Secretary and the Secretary concerned shall implement the management plan developed under paragraph (2) under terms and conditions on which they agree.

(f) IMMUNITY.—The United States and its departments and agencies shall be held harmless and shall not be liable for damages to persons or property suffered in the course of any mining, mineral leasing, or geothermal leasing activity conducted on the Withdrawal.

(g) LAND ACQUISITION.—The Secretary may acquire lands and interests in lands within the Withdrawal. Those lands and interests in lands may be acquired by donation, purchase, lease, exchange, easement, rights-of-way, or other appropriate methods using donated or appropriated funds. The Secretary of the Interior shall conduct any exchange of lands within the Withdrawal for Federal lands outside the Withdrawal.

SEC. 4. APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.

(a) APPLICATION.—Section 114(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(b)) is amended by adding the following sentence after “such application.”:

“An application for construction authorization need not contain information on surface facilities other than surface facilities necessary for initial operation of the repository.”.

(b) APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) is amended by--

(1) inserting “(1)” after “ACTION. —”;

(2) striking the last two sentences; and
(3) inserting the following new paragraphs (2) and (3) after paragraph (1) as designated and amended in paragraphs (1) and (2) of this subsection:

“(2) If the Commission approves of an application for construction authorization and the Secretary submits an application to amend the authorization to obtain permission to receive and possess spent nuclear fuel and high-level radioactive waste, or to undertake any other action concerning the repository, the Commission shall consider the application using expedited, informal procedures, including discovery procedures that minimize the burden on the parties to produce documents that the Commission does not need to render a decision on an action under this section. The Commission shall issue a final decision on whether to grant permission to receive and possess, or on any other application, within one year of submission of the application, except that the Commission may extend that deadline by not more than six months if, not less than 30 days before the deadline, the Commission complies with the reporting requirements of subsection (e)(2).

“(3)(A) At any time before or after the Commission issues a final decision on an application from the Secretary for construction authorization under this subsection, the Secretary may undertake infrastructure activities that the Secretary deems are necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high level radioactive waste. Infrastructure activities include, but are not limited to, safety upgrades; site preparation; the construction of a rail line to connect the Yucca Mountain site with the national rail network, including any facilities to facilitate rail operations; and construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, rail lines, and non-nuclear support facilities.
“(B) The Secretary shall comply with all applicable requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an infrastructure activity undertaken under this paragraph. If the Secretary determines that an environmental impact statement is required in connection with an infrastructure activity undertaken under this paragraph, the Secretary need not consider the need for the action, alternative actions, or a no-action alternative. To the extent a Federal agency must consider the potential environmental impact of an infrastructure activity undertaken under this paragraph, the agency shall adopt, to the extent practicable, an environmental impact statement prepared under this paragraph without further action. Adoption satisfies the responsibilities of the adopting agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and no further action is required by the agency.

“(C) The Commission may not deny construction authorization, permission to receive and possess spent nuclear fuel and high-level radioactive waste, or any other action concerning the repository on the grounds that the Secretary undertook an infrastructure activity under this paragraph.”.

(c) CONNECTED ACTIONS.—Section 114(f)(6) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(f)(6)) is amended by striking “or” and inserting before the period “, or an action connected or otherwise related to the repository to the extent the action is undertaken outside the geologic repository operations area and does not require a license from the Commission”.

(d) EXPEDITED AUTHORIZATIONS.—Section 120 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10140) is amended—
(1) in subsection (a)(i) by inserting “or an infrastructure activity” after “repository”, by inserting “, State, local, or Indian tribe” after “Federal” both places it appears, and by striking “repositories” and inserting “a repository or infrastructure activity”;

(2) in subsection (b) by striking “, and may include terms and conditions permitted by law”; and

(3) by adding after subsection (b) the following new subsections (c) and (d):

“(c) An agency or officer that fails to grant authorization within one year of receiving an application or request from the Secretary subject to subsection (a) shall submit a written report to Congress explaining the reason for not meeting this deadline or rejecting the application or request.

“(d) For purposes of applying any Federal, State, local, or Tribal law or requirement, the taking of an action related to a repository or an infrastructure activity is considered to be beneficial and not detrimental to the public interest and interstate commerce and consistent with the public convenience and necessity.”.

SEC. 5. NUCLEAR WASTE FUND.

(a) CREDITING FEES.—Beginning on October 1, 2007, and continuing through the end of the fiscal year when construction is complete for surface facilities for the fully operational repository as described in the license application and for the Nevada rail line, fees collected by the Secretary and deposited in the Nuclear Waste Fund under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) shall be credited to the
Nuclear Waste Fund as discretionary offsetting collections each year in amounts not to exceed the amounts appropriated from the Nuclear Waste Fund for that year.

(b) FUND USES.—Section 302(d)(4) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(d)(4)) is amended by inserting “infrastructure activities that the Secretary deems are necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste, and” after “with”.

SEC. 6. REGULATORY REQUIREMENTS.

(a) MATERIAL REQUIREMENTS.—Notwithstanding any other law, no Federal, State, interstate, or local requirement, either substantive or procedural, that is referred to in section 6001(a) of the Resource Conservation and Recovery Act (42 U.S.C. 6961(a)), applies to—

(1) any material owned by the Secretary if the material is transported or stored in a package, cask, or other container that the Commission has certified for transportation or storage of that type of material; or

(2) any material located at the Yucca Mountain site for disposal if the management and disposal of the material is subject to a license issued by the Commission.

(b) PERMITS.—The Administrator of the Environmental Protection Agency shall be the permitting agency for purposes of issuing, administering, or enforcing any new or existing air quality permit or requirement applicable to a Federal facility or activity subject to the requirements of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.). A State or unit of local government shall not issue, administer, or enforce a new or
existing air quality permit or requirement affecting a Federal facility or activity in the
Withdrawal and subject to the requirements of the Nuclear Waste Policy Act of 1982.

SEC. 7. TRANSPORTATION.

The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is amended by
inserting the following new section after section 180:

“SEC. 181. (a) The Secretary is authorized to determine the extent to which any
transportation done in carrying out the Secretary's functions under this Act that is
instead be regulated exclusively under the Atomic Energy Act of 1954.

“(b) On request by the Secretary, the Secretary of Transportation is authorized to
determine pursuant to section 5125 of title 49, United States Code, that any requirement
of a State, political subdivision of a State, or Indian tribe regarding transportation done by
or on behalf of the Secretary in carrying out this Act is preempted, irrespective of
whether the transportation otherwise is or would be subject to regulation under the

SEC. 8. WATER RIGHTS.

Section 124 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10144) is
amended by inserting “(a) WATER RIGHTS ACQUISITION EFFECT.—” after the
section number and by adding the following new subsection (b):

“(b) BENEFICIAL USE OF WATER.—Notwithstanding any other Federal,
State, or local law, the use of water from any source in quantities sufficient to accomplish
the purposes of this Act to carry out Department functions under this Act is declared to be
a use that is beneficial to interstate commerce and that does not threaten to prove
detrimental to the public interest. A State shall not enact or apply a law that
discriminates against this use. The Secretary, through purchase or otherwise, may obtain
water rights necessary to carry out Department functions under this Act.”.

SEC. 9. WASTE CONFIDENCE.

Notwithstanding any other law, in deciding whether to permit the construction or
operation of a nuclear reactor or any related facilities, the Commission shall deem,
without further consideration, that sufficient capacity will be available in a timely manner
to dispose of the spent nuclear fuel and high-level radioactive waste resulting from the
operation of the reactor and any related facilities.