

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.

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

3 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. DEFINITIONS.**

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

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

17 have the meaning given those terms in section 2 of the Nuclear Waste Policy Act of
18 1982 (42 U.S.C. 10101).

19 (b) OTHER DEFINITIONS.—For purposes of this Act—

1 (1) “Withdrawal” means the geographic area consisting of the land
2 described in section 3(c);

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

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

6 **SEC. 3. LAND WITHDRAWAL AND RESERVATION.**

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

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10 withdrawn permanently from all forms of entry, appropriation, and disposal under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

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

17 (3) RESERVATION.—The Withdrawal is reserved for use by the
18 Secretary for the development, preconstruction testing and performance
19 confirmation, licensing, construction, management and operation, monitoring,
20 closure, post-closure, and other activities associated with the disposal of high-
21 level radioactive waste and spent nuclear fuel under the Nuclear Waste Policy Act
22 of 1982 (42 U.S.C. 10101 et seq.).

1 (b) REVOCATION AND MODIFICATION OF PUBLIC LAND ORDERS AND
2 RIGHTS OF WAY.—

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

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

8 (c) LAND DESCRIPTION.—

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

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

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

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

20 (3) TECHNICAL CORRECTIONS. —The maps and legal description
21 referred to in this subsection have the same force and effect as if they were
22 included in this Act. The Secretary of the Interior may correct clerical and
23 typographical errors in the maps and legal description.

1 (d) RELATIONSHIP TO OTHER RESERVATIONS. —The provisions of
2 subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (sections 3011-
3 3023 of Pub. L. No. 106-65) and of Public Land Order 2568 do not apply to the lands
4 withdrawn and reserved by subsection (a). This Act does not apply to any other lands
5 withdrawn for use by the Department of Defense under subtitle A of title XXX of the
6 Military Lands Withdrawal Act of 1999.

7 (e) MANAGEMENT RESPONSIBILITIES.

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

13 (2) MANAGEMENT PLAN.—

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

19 (B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED
20 ISSUES. —Subject to subparagraphs (C), (D), and (E), any use of the
21 Withdrawal for activities not associated with the Project is subject to
22 conditions and restrictions that the Secretary considers necessary or
23 desirable to permit the conduct of Project-related activities.

1 (C) DEPARTMENT OF THE AIR FORCE USES. —The
2 management plan may provide for the continued use by the Department of
3 the Air Force of the portion of the Withdrawal within the Nellis Air Force
4 Base Test and Training Range under terms and conditions on which the
5 Secretary and the Secretary of the Air Force agree concerning Air Force
6 activities.

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

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

18 (i) GRAZING. —The Secretary may permit grazing to
19 continue where established before the date of enactment of this
20 Act, subject to regulations, policies, and practices that the
21 Secretary, after consulting with the Secretary of the Interior,
22 determines to be necessary or appropriate. The management of

1 grazing shall be conducted in accordance with applicable grazing
2 laws and policies, including—

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

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

7 (III) the Public Rangelands Improvement Act of
8 1978 (43 U.S.C. 1901 et seq.).

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

17 (F) MINING. —

18 (i) IN GENERAL. —Except as provided in subparagraph
19 (B), surface or subsurface mining or oil or gas production,
20 including slant drilling from outside the boundaries of the
21 Withdrawal, is not permitted at any time on lands on or under the
22 Withdrawal. The Secretary of the Interior shall evaluate and
23 adjudicate the validity of all mining claims on the portion of the

1 Withdrawal that, on the date of enactment of this Act, was under
2 the control of the Bureau of Land Management. The Secretary
3 shall provide just compensation for the acquisition of any valid
4 property right.

5 (ii) CIND-R-LITE MINE. —Patented Mining Claim No.
6 27-83-0002, covering the Cind-R-Lite mine, shall not be affected
7 by establishment of the Withdrawal, unless the Secretary, after
8 consulting with the Secretary of the Interior, determines that the
9 mine’s acquisition is required in furtherance of the reserved use of
10 the Withdrawal set forth in subsection (a)(3). In that event, the
11 Secretary shall provide just compensation.

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

19 (3) CLOSURE.—If the Secretary, after consulting with the Secretary
20 concerned, determines that the health and safety of the public or the common
21 defense and security require the closure of a road, trail, or other portion of the
22 Withdrawal, or the airspace above the Withdrawal, the Secretary may effect and
23 maintain the closure and shall provide notice of the closure.

1 (4) IMPLEMENTATION.—The Secretary and the Secretary concerned
2 shall implement the management plan developed under paragraph (2) under terms
3 and conditions on which they agree.

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

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

13 **SEC. 4. APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.**

14 (a) APPLICATION.—Section 114(b) of the Nuclear Waste Policy Act of 1982
15 (42 U.S.C. 10134(b)) is amended by adding the following sentence after “such
16 application.”:

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

19 (b) APPLICATION PROCEDURES AND INFRASTRUCTURE
20 ACTIVITIES.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C.
21 10134(d)) is amended by--

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

23 (2) striking the last two sentences; and

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

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

14 “(3)(A) At any time before or after the Commission issues a final decision on an
15 application from the Secretary for construction authorization under this subsection, the
16 Secretary may undertake infrastructure activities that the Secretary deems are necessary
17 or appropriate to support construction or operation of a repository at the Yucca Mountain
18 site or transportation to such site of spent nuclear fuel and high level radioactive waste.
19 Infrastructure activities include, but are not limited to, safety upgrades; site preparation;
20 the construction of a rail line to connect the Yucca Mountain site with the national rail
21 network, including any facilities to facilitate rail operations; and construction, upgrade,
22 acquisition, or operation of electrical grids or facilities, other utilities, communication
23 facilities, access roads, rail lines, and non-nuclear support facilities.

1 “(B) The Secretary shall comply with all applicable requirements under the
2 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an
3 infrastructure activity undertaken under this paragraph. If the Secretary determines that
4 an environmental impact statement is required in connection with an infrastructure
5 activity undertaken under this paragraph, the Secretary need not consider the need for the
6 action, alternative actions, or a no-action alternative. To the extent a Federal agency
7 must consider the potential environmental impact of an infrastructure activity undertaken
8 under this paragraph, the agency shall adopt, to the extent practicable, an environmental
9 impact statement prepared under this paragraph without further action. Adoption satisfies
10 the responsibilities of the adopting agency under the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4321 et seq.), and no further action is required by the agency.

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

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

21 (d) EXPEDITED AUTHORIZATIONS.—Section 120 of the Nuclear Waste
22 Policy Act of 1982 (42 U.S.C. 10140) is amended—

1 (1) in subsection (a)(i) by inserting “or an infrastructure activity” after
2 “repository”, by inserting “, State, local, or Indian tribe” after “Federal” both
3 places it appears, and by striking “repositories” and inserting “a repository or
4 infrastructure activity”;

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

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

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

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

17 **SEC. 5. NUCLEAR WASTE FUND.**

18 (a) CREDITING FEES.—Beginning on October 1, 2007, and continuing through
19 the end of the fiscal year when construction is complete for surface facilities for the fully
20 operational repository as described in the license application and for the Nevada rail line,
21 fees collected by the Secretary and deposited in the Nuclear Waste Fund under the
22 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) shall be credited to the

1 Nuclear Waste Fund as discretionary offsetting collections each year in amounts not to
2 exceed the amounts appropriated from the Nuclear Waste Fund for that year.

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

8 **SEC. 6. REGULATORY REQUIREMENTS.**

9 (a) MATERIAL REQUIREMENTS.—Notwithstanding any other law, no
10 Federal, State, interstate, or local requirement, either substantive or procedural, that is
11 referred to in section 6001(a) of the Resource Conservation and Recovery Act (42 U.S.C.
12 6961(a)), applies to—

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

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

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

1 existing air quality permit or requirement affecting a Federal facility or activity in the
2 Withdrawal and subject to the requirements of the Nuclear Waste Policy Act of 1982.

3 **SEC. 7. TRANSPORTATION.**

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

6 “SEC. 181. (a) The Secretary is authorized to determine the extent to which any
7 transportation done in carrying out the Secretary's functions under this Act that is
8 regulated under the Hazardous Materials Transportation Authorization Act of 1994 shall
9 instead be regulated exclusively under the Atomic Energy Act of 1954.

10 “(b) On request by the Secretary, the Secretary of Transportation is authorized to
11 determine pursuant to section 5125 of title 49, United States Code, that any requirement
12 of a State, political subdivision of a State, or Indian tribe regarding transportation done by
13 or on behalf of the Secretary in carrying out this Act is preempted, irrespective of
14 whether the transportation otherwise is or would be subject to regulation under the
15 Hazardous Materials Transportation Authorization Act of 1994.”.

16 **SEC. 8. WATER RIGHTS.**

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

20 “(b) BENEFICIAL USE OF WATER.—Notwithstanding any other Federal,
21 State, or local law, the use of water from any source in quantities sufficient to accomplish
22 the purposes of this Act to carry out Department functions under this Act is declared to be
23 a use that is beneficial to interstate commerce and that does not threaten to prove

1 detrimental to the public interest. A State shall not enact or apply a law that
2 discriminates against this use. The Secretary, through purchase or otherwise, may obtain
3 water rights necessary to carry out Department functions under this Act.”.

4 **SEC. 9. WASTE CONFIDENCE.**

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