President-elect Donald Trump is apparently beefing up his transition effort with advocates for federal review of the stalled Yucca Mountain, Nev., nuclear repository — perhaps signaling a future push to revive the project next year.

Jack Spencer of the Heritage Foundation, who was recently tapped to join a team of Trump advisers overseeing the Energy Department's transition, has long called the Obama administration's decision to cut short the Yucca review illegal and a waste of taxpayer funds. Spencer is vice president of Heritage's Institute for Economic Freedom and Opportunity.

"President Obama's attempt to withdraw the Yucca Mountain application from the Department of Energy was not only bad policy but illegal, as a series of court cases eventually determined," Spencer wrote in an *editorial* in *The Daily Signal* in 2014 following the release of a safety report for the repository.

More recently, Spencer laid out the case for federal regulators to complete their review of the repository site — which is roughly 90 miles outside of Las Vegas — to help lawmakers, the industry and stakeholders to make better decisions about managing more than 76,000 metric tons of nuclear waste.

"Finishing the commission's license review does not mean 'Yucca or bust.' It merely brings all of the information to the table for Congress and others, like Nevada and the nuclear industry, to make wise decisions about what's next," Spencer *wrote*.

Trump's choice for attorney general, Sen. Jeff Sessions (R-Ala.), is also an advocate of the project. Sessions has repeatedly called for the Yucca review to commence and criticized the Obama administration for mismanaging the project.

Yet another adviser to the Trump team, nuclear executive Donald Hoffman, who once described himself as the president-elect's "token nuclear guy," has also advocated for the Yucca review to move forward.

As president of the American Nuclear Society in 2013, Hoffman said a permanent repository is critical for the continued viability of the nuclear power industry. "Whether or not Yucca Mountain is ultimately chosen as the permanent repository site, it is vital that the licensing process move forward based on merits and not politics," he said.

Reports have circulated in recent months that Trump advisers are considering reviving Yucca Mountain, a project the Obama administration for the past eight years has said is politically unpalatable and unworkable in a nod to fierce opposition from Senate Minority Leader Harry Reid (D-Nev.) (*Energywire*, Nov. 16).
Under the Nuclear Waste Policy Act of 1982, the federal government was tasked with finding a permanent disposal spot for nuclear waste from U.S. reactors — a job that's only growing in importance as plants go dark across the country. Congress amended the act to designate Yucca Mountain as the national repository, but the DOE would eventually blow past congressional deadlines to collect the waste.

The government is now liable for more than 76,000 tons of commercial nuclear waste, which is housed at reactor sites across the country despite ongoing litigation that has cost DOE billions of dollars. Even so, the Nuclear Regulatory Commission cannot make a final decision on approving the project until it receives funds to hear concerns that parties like the state of Nevada have raised about the repository. Some say that process could take a year or more.

Opponents of the repository say they're ready. Nevada's Agency for Nuclear Projects Executive Director Robert Halstead said that while Trump has not clarified his position on Yucca and it's not clear what steps Congress will take, the state has been preparing for years for a push to revive the repository.

"The state of Nevada has been preparing for a situation in which there might be a DOE that wants to reverse its termination of the Yucca Mountain project, an NRC that wants to lift the suspension of the proceeding, a House and Senate wants to provide new appropriations for the licensing proceeding," he said. "Nevada's strategy since August 2013 has been to prepare for precisely this situation that media reports, that we're going to face when the new Congress convenes and the new administration comes in."

Nevada, he said, is prepared to respond to possible resumption of the Yucca Mountain program, which would include trial-like hearings over more than 200 contentions the state has raised. Halstead said the state is prepared to submit an addition 30 to 40 contentions within 30 days. "This is a strategy that's been approved by the Commission on Nuclear Projects, the governor's office and the attorney general's office," he said.

Halstead said, should the case move forward, it'll be the "mother of all NRC licensing proceedings, and in all reality, it's going to be the mother of all [National Environmental Policy Act] challenges."

So far, the president-elect dodged the question about where he stands on Yucca Mountain. During an interview preceding a rally south of Las Vegas in October, Trump told television station KSNV that he's familiar with the stalled project and has a hotel in Las Vegas, while refusing to say whether the site is appropriate for storing spent reactor fuel (Greenwire, Oct. 6).

"No. 1, you have to worry about safety. It's a little bit close to a very major population base, so I'm going to take a very strong look at it, and I will come very strongly one way or the other," Trump said. "I will have an opinion."
What the Candidates Need to Know About Yucca Mountain

Katie Tubb / Jack Spencer / October 18, 2016 / Daily Signal,
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The final presidential debates take place Wednesday in Las Vegas. Given the location, a controversial issue sure to come up is that of a nuclear waste repository at Yucca Mountain.

The repository is designed to hold spent nuclear materials from national security activities and commercial nuclear power reactors. Billions of dollars have already been spent on exploratory tunnels and other construction at the site, but it has yet to be built.

Yucca Mountain has turned into a political football and a litmus test for many politicians, some of whom have built whole careers around this issue alone. In Congress and especially in Nevada, parties have dug their trenches deep—“Yucca or bust” on one side, and “over my dead body” on the other.

The opposition to Yucca Mountain has a long history but largely boils down to anti-nuclear sentiments and those who have used these arguments to gain political advantage by posturing themselves as protectors of the public.

What’s needed is some new thinking on an issue that is not black and white. Here is what the candidates need to know about Yucca Mountain:

History: How We Got Here
The Nuclear Waste Policy Act of 1982 assigned responsibility for permanent disposal of nuclear waste to the federal government. After evaluating alternative sites, Congress amended the act to designate Yucca Mountain as the site for a national repository.
Congress set a deadline for the Department of Energy to begin collecting waste by 1998, but not a single cask has been collected to date (with the exception of fuel from the Three Mile Island accident).

Today, the federal government remains liable for over 76,000 tons of commercial nuclear waste. The federal government has already paid out $5.3 billion of taxpayers’ money in settlements for failure to collect waste as promised, with tens of billions more expected. The government’s inability to manage waste has also cost Americans heavily in the form of lost opportunity in the nuclear industry.

**The Law: Nuclear Waste Policy Act and the Courts**

Despite the clear direction of the Nuclear Waste Policy Act as amended, and lacking any technical or scientific justification, the Obama administration unilaterally determined that Yucca Mountain was “not a workable option.”

Leaving America with no waste policy at all, the administration embarked on fact-finding missions that gave the appearance of progress but accomplished little beyond more government reports and legal fees. The Obama administration then proposed a new policy that was tall on rhetoric but short on any technical details, calling for interim storage facilities and a permanent repository—just like Yucca Mountain. Regardless of the palatability of the law to the Obama administration, the U.S. Court of Appeals determined in August 2013 that until Congress said otherwise or no funds remained, the president and his administration must promptly implement the law, starting with the completion of the licensing process for Yucca Mountain by the Nuclear Regulatory Commission.

**The Science**

Regardless of what happens with Yucca Mountain, the scientific community and global experience have supported deep geologic storage as critical to any waste management plan.

In 2008, the Energy Department applied for a license with the Nuclear Regulatory Commission to build a facility at Yucca Mountain because the site “brings together the location, natural barriers, and design elements most likely to protect the health and safety of the public, including those Americans living in the immediate vicinity, now and long into the future.”

Once the courts kicked the Yucca Mountain review back into motion, the commission finished its safety evaluation report. It concluded that a facility at Yucca Mountain is technologically feasible and that the design meets all Nuclear Regulatory Commission requirements to protect long-term public health and safety. A license approval is yet contingent on several conditions—including land and water rights, public hearings, and funding from Congress.

**Policy Moving Forward**

Specifically, the commission needs to finish the Yucca Mountain review. The Energy Department needs to rejuvenate the Office of Civilian Radioactive Waste Management, an office that the Obama administration shrunk to near nonexistence. And Nevadans should have more control over the future. Beyond that, Congress needs to recognize that the current system does not work.

Finishing the commission’s license review does not mean “Yucca or bust.” It merely brings all of the information to the table for Congress and others, like Nevada and the nuclear industry, to make wise decisions about what’s next.

There are many different directions we can go from there. Rather than a problem or liability, nuclear waste management has the potential to be an asset in America.
Senator Harry Reid’s (D–NV) re-election campaign against Sharron Angle provides a historic new opportunity to establish a new Yucca Mountain policy that benefits Nevadans and the U.S. Unfortunately, the omnibus spending bill currently under consideration would de-fund the program. While Reid’s staunch opposition to the project has brought it close to the point of termination, the end of Yucca would not benefit Nevada or the nation.

Instead, Reid should use his victory to establish a new path forward. As Angle argued throughout her campaign, science and technology have advanced to the point where Yucca Mountain would not simply be a nuclear waste dump; instead, it could provide the underpinning for a commercial nuclear industrial complex. Such a development would bring jobs to Nevada and help the U.S. solve its used nuclear fuel dilemma.

Wasting Away

Despite growing political and public support for nuclear power, progress toward actually building any new plants has been a struggle. While the blame for this stagnation often goes to inefficient government subsidy programs, the real problem lies in why those subsidies are necessary to begin with. Chief among these structural problems is the nation’s incoherent nuclear waste policy.

This was a problem prior to the Obama Administration. The federal government was legally obliged, according to the Nuclear Waste Policy Act (NWPA) of 1982, as amended, to begin collecting nuclear waste in 1998. Despite collecting approximately $30 billion (fees plus interest) from electricity ratepayers and spending nearly $10 billion, it has not collected one atom of nuclear waste. The one bright spot was the progress on Yucca Mountain made by President George W. Bush’s Department of Energy (DOE).

The Obama Administration’s anti-Yucca policy destroyed this progress. It ignored existing statute, such as the NWPA and the Yucca Mountain Development Act of 2002, which state clearly that Yucca Mountain shall be the location of the nation’s nuclear materials repository. It unilaterally requested the withdrawal of the DOE’s permit application for Yucca to the Nuclear
Regulatory Commission (NRC). Questions over the legality of this policy are currently under review by the courts.

Meanwhile, in October 2010, former Reid advisor and current NRC Chairman Gregory Jaczko ordered a stop to all Yucca-related NRC activities. He argued that his authority to close out the Yucca program was derived from President Obama’s 2011 budget request. The problem is that neither the House nor the Senate passed that proposed budget. Further, the order ignores the fact that the NRC’s own Atomic Licensing and Safety Board agreed unanimously that the DOE lacked authority to withdraw the application. The chairman’s actions were so unusual and contentious that fellow NRC commissioners were compelled to publicly denounce the decision.

The combination of federal promises to store nuclear waste, the Obama Administration’s policy, and the NRC actions has resulted in a complete lack of direction on nuclear waste management and a dereliction of responsibility on the part of the federal government to uphold its obligations. This creates substantial government-imposed risk on the nuclear industry, which is the primary obstacle to an expansion of U.S. nuclear power.

A New Beginning for Yucca Mountain

Reid can continue to oppose Yucca under the current plan and simultaneously offer a better solution that would put Nevada’s interests first. Currently, the DOE controls and manages spent nuclear fuel policy and the Yucca Mountain repository. A new Reid plan should put Nevada in control.

Such a plan could garner support in Nevada. As Angle demonstrated throughout her campaign, Nevadans are at least open to Yucca under different conditions. Thus, Reid should propose a program that places Nevada in control of the future of Yucca Mountain. Under such a program, Nevada could negotiate directly with the nuclear industry to come up with a mutually beneficial arrangement. While Nevada should not be compelled to open the repository, the state could use the prospect of opening it to create a strong negotiating position.

Unfortunately, the Obama Administration and the NRC are about to take that option away from Nevada. To preserve this opportunity, Reid should demand that:

- The NRC finish its review of the DOE’s application to permit the Yucca repository. The NRC’s September 2008 docketing of the DOE’s application to construct the repository at Yucca Mountain began a three-year, two-track review process. One track will determine the technical merits of the facility. The other track consists of hearings where parties can
challenge the Yucca project. Unfortunately, Jaczko ordered NRC staff to discontinue all activities related to Yucca Mountain, effectively terminating the program. Fellow commissioner Kristin Svinicki described this action as “grossly premature.”

- **The NRC publicly release all data, including the Safety Evaluation Report.** The technical and scientific conclusions of the Yucca permit application review were scheduled for release in a Safety Evaluation Report (SER) in November 2010. By closing the books on Yucca now, the chairman prevents this critical document—which taxpayers and ratepayers already paid for—from being published. Publication of the SER is critical because it would provide a final determination on the technical feasibility of the Yucca project. Even if Yucca never progresses, there is no reason to deny Americans access to this informative document.
- **The permit to construct Yucca Mountain be transferred to a third party.** If the NRC issues the permit, Reid should seek avenues to make the license available to a third party, such as a private sector nonprofit or even the state of Nevada. The new permit holder could then negotiate a workable solution that would fully represent the interests of all parties. This process of negotiation was absent from the original decision to name Yucca the waste repository site.
- **The Blue Ribbon Commission on America’s Nuclear Future consider Yucca Mountain.** While the text of the presidential memorandum establishing the commission prudently directs commissioners to consider all alternatives without specifically excluding Yucca, the President’s actions to terminate the program clearly communicate otherwise. Taking Yucca off the table erodes the credibility of both the commission and the President’s ultimate decision and the ability of Nevada to pursue a different Yucca strategy.
- **At least a minimal amount of funding be made available to keep the Yucca project alive.** Instead of starving Yucca of funds, providing funds under the condition that the Yucca program be reformed to better reflect the interests of Nevada would help Nevadans and the broader United States.

**Opportunity Lost, Opportunity Gained**

A long history of opposition to Yucca makes it very difficult for some Nevada politicians to support the project, despite growing evidence of its technical soundness and general safety. This was unfortunate, as Nevada could have benefited greatly from the economic impact of such a facility.

However, this opportunity lost is opportunity gained. While the repository at Yucca would have generated jobs for Nevada, the reality is that the program was still flawed. Reid now has the opportunity to establish a new path forward on Yucca Mountain. Such reform would not only help to establish a new industry in Nevada; it would help bring nuclear power back to the U.S.
Real Consent for Nuclear Waste Management Starts with a Free Market
By Katie Tubb and Jack Spencer, March 22, 2016

Getting nuclear waste management right is important if America is to continue benefitting from nuclear energy, which currently supplies 19 percent of the nation’s electricity. The Department of Energy is seeking to define a consent-based process for siting interim and long-term storage facilities for commercial nuclear waste. Yet the faulty system of misaligned incentives to manage commercial waste remains in place, muddling not only the goal of attaining true consent, but also long-term storage. The nuclear industry is capable of, and should be responsible for, nuclear waste management. This naturally allows “consent” to take whatever shape communities or states deem best, without government coercion, and opens the possibility for innovation. The government should maintain the role of regulator. Finland, as the first country to license construction of a long-term repository, provides a good example.

Fooled Again: The Nuclear Waste Administration Act Preserves Futile Status Quo
By Jack Spencer and Katie Tubb, Aug. 5, 2015

Commercial nuclear power provides 19 percent of America’s electricity and has safely generated affordable, reliable, and clean energy for decades. But nuclear technology and the industry have been held back by the utter dysfunction of a federally controlled, centrally planned program for nuclear waste management and disposal. A new bipartisan Senate bill—the Nuclear Waste Administration Act, intended to reform nuclear waste management—does nothing to fix the basic structure of America’s failed system. While the bill may meet some near-term government and industry interests, at best it delays a permanent waste repository for decades, and at worst makes implementing necessary reforms for rational, long-term management almost impossible. Given developments in the past several years to get nuclear waste management on track, Congress must seize the opportunity to put forth an approach that takes advantage of market forces and that properly aligns incentives and responsibility for lasting reform.