

109TH CONGRESS
2D SESSION

H. R. 5360

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2006

Mr. BARTON of Texas (by request): introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Resources, Transportation and Infrastructure, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Fuel Manage-
5 ment and Disposal Act”.

1 **SEC. 2. DEFINITIONS.**

2 (a) NUCLEAR WASTE POLICY ACT OF 1982 DEFINI-
3 TIONS.—For purposes of this Act:

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

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

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

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

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

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

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

25 (a) LAND WITHDRAWAL, JURISDICTION, AND RES-
26 ERVATION.—

1 (1) LAND WITHDRAWAL.—Subject to valid ex-
2 isting rights, and except as provided otherwise in
3 this Act, the lands described in subsection (c) are
4 withdrawn permanently from all forms of entry, ap-
5 propriation, and disposal under the public land laws,
6 including without limitation the mineral leasing
7 laws, the geothermal leasing laws, and the mining
8 laws.

9 (2) JURISDICTION.—Except as otherwise pro-
10 vided in this Act, jurisdiction over the Withdrawal is
11 vested in the Secretary. These are transferred to the
12 Secretary the lands within the Withdrawal under the
13 jurisdiction of the Secretary concerned on the date
14 of enactment of this Act.

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

24 (b) REVOCATION AND MODIFICATION OF PUBLIC
25 LAND ORDERS AND RIGHTS OF WAY.—

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

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

9 (c) LAND DESCRIPTION.—

10 (1) BOUNDARIES.—The lands and interests in
11 lands withdrawn and reserved by this Act comprise
12 the approximately 147,000 acres of land in Nye
13 County, Nevada , as generally depicted on the Yucca
14 Mountain Project Map, YMP-03-024.2, entitled
15 “Proposed Land Withdrawal” and dated July 21,
16 2005.

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

20 (A) publish in the Federal Register a no-
21 tice containing a legal description of the With-
22 drawal; and

23 (B) file copies of the maps described in
24 paragraph (1) and the legal description of the
25 Withdrawal with the Congress, the Governor of

1 the State of Nevada, and the Archivist of the
2 United States.

3 (3) TECHNICAL CORRECTIONS.—The maps and
4 legal descriptions referred to in this subsection have
5 the same force and effect as if they were included
6 in this Act. The Secretary of the Interior may cor-
7 rect clerical and typographical errors in the maps
8 and legal description.

9 (d) RELATIONSHIP TO OTHER RESERVATIONS.—The
10 provisions of subtitle A of title XXX of the Military Lands
11 Withdrawal Act of 1999 (sections 3011–3023 of Public
12 Law No. 106–65) and of Public Land Order 2568 do not
13 apply to the lands withdrawn and reserved by subsection
14 (a). This Act does not apply to any other lands withdrawn
15 for use by the Department of Defense under subtitle A
16 of title XXX of the Military Lands Withdrawal Act of
17 1999.

18 (e) MANAGEMENT RESPONSIBILITIES.—

19 (1) GENERAL AUTHORITY.—The Secretary shall
20 manage the lands withdrawn by subsection (a) con-
21 sistent with the Federal Land Policy and Manage-
22 ment Act of 1976 (43 U.S.C. 1701 et seq.), this Act,
23 and other applicable law. The Secretary shall consult
24 with the Secretary concerned in discharging that re-
25 sponsibility.

1 (2) MANAGEMENT PLAN.—

2 (A) DEVELOPMENT.—The Secretary, after
3 consulting with the Secretary concerned, shall
4 develop a management plan for the use of the
5 Withdrawal. Within 3 years after the date of
6 enactment of this Act, the Secretary shall sub-
7 mit the management plan to the Congress and
8 the State of Nevada.

9 (B) PRIORITY OF YUCCA MOUNTAIN
10 PROJECT-RELATED ISSUES.—Subject to sub-
11 paragraphs (C), (D), and (E), any use of the
12 Withdrawal for activities not associated with
13 the Project is subject to conditions and restric-
14 tions that the Secretary considers necessary or
15 desirable to permit the conduct of Project-re-
16 lated activities.

17 (C) DEPARTMENT OF THE AIR FORCE
18 USES.—The management plan may provide for
19 the continued use by the Department of The
20 Air Force of the portion of the Withdrawal
21 within the Nellis Air Force Base Test and
22 Training Range under terms and conditions on
23 which the Secretary and the Secretary of the
24 Air Force agree concerning Air Force activities.

1 (D) NEVADA TEST SITES.—The Secretary
2 may allow the National Nuclear Security Ad-
3 ministration to continue to use the portion of
4 the Withdrawal on the Nevada Test Site and
5 may impose any conditions on that use that the
6 Secretary considers necessary to minimize any
7 effect on either Project or Administration ac-
8 tivities.

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

17 (i) GRAZING.—The Secretary may
18 permit grazing to continue where estab-
19 lished before the date of enactment of this
20 Act, subject to regulations, policies, and
21 practices that the Secretary, after con-
22 sulting with the Secretary of the Interior,
23 determines to be necessary or appropriate.
24 The management of grazing shall be con-

ducted 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 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

1 mining or oil or gas production, including
2 slant drilling from outside the boundaries
3 of the Withdrawal, is not permitted at any
4 time on lands on or under the Withdrawal.
5 The Secretary of the Interior shall evaluate
6 and adjudicate the validity of all mining
7 claims on the portion of the Withdrawal
8 that, on the date of enactment of this Act,
9 was under the control of the Bureau of
10 Land Management. The Secretary shall
11 provide just compensation for the acqui-
12 sition of any valid property right.

13 (ii) CIND-R-LITE MINE.—Patented
14 Mining Claim No. 27–83–0002, covering
15 the Cind-R-Lite mine, shall not be affected
16 by establishment of the Withdrawal, unless
17 the Secretary, after consulting with the
18 Secretary of the Interior, determines that
19 the mine’s acquisition is required in fur-
20 therance of the reserved use of the With-
21 drawal set forth in subsection (a)(3). In
22 that event, the Secretary shall provide just
23 compensation.

24 (G) LIMITED PUBLIC ACCESS.—The man-
25 agement plan may provide for limited public ac-

1 cess to the portion of the Withdrawal under
2 Bureau of Land Management control on the
3 date of enactment of this Act. Permitted uses
4 may include continuation of the Nye County
5 Early Warning Drilling Program, utility cor-
6 ridors, and other uses the Secretary, after con-
7 sulting with the Secretary of the Interior, con-
8 siders consistent with the purposes of the With-
9 drawal.

10 (3) CLOSURE.—If the Secretary, after con-
11 sulting with the Secretary concerned, determines
12 that the health and safety of the public or the com-
13 mon defense and security require the closure of a
14 road, trail, or other portion of the Withdrawal, or
15 the airspace above the Withdrawal, the Secretary
16 may effect and maintain the closure and shall pro-
17 vide notice of the closure.

18 (4) IMPLEMENTATION.—The Secretary and the
19 Secretary concerned shall implement the manage-
20 ment plan developed under paragraph (2) under
21 terms and conditions on which they agree.

22 (f) IMMUNITY.—The United States and its depart-
23 ments and agencies shall be held harmless and shall not
24 be liable for damages to persons or property suffered in

1 the course of any mining, mineral leasing, or geothermal
 2 leasing activity conducted on the Withdrawal.

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

11 **SEC. 4. APPLICATION PROCEDURES AND INFRASTRUCTURE**
 12 **ACTIVITIES.**

13 (a) APPLICATION.—Section 114(b) of the Nuclear
 14 Waste Policy Act of 1982 (42 U.S.C. 10134 (b)) is amend-
 15 ed by adding the following sentence after “such applica-
 16 tion.”: “An application for construction authorization need
 17 not contain information on surface facilities other than
 18 surface facilities necessary for initial operation of the re-
 19 pository.”

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

- 23 (1) inserting “(1)” after “ACTION.—”;
- 24 (2) striking the last two sentences; and

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

5 “(2) If the Commission approves an application for
6 construction authorization and the Secretary submits an
7 application to amend the authorization to obtain permis-
8 sion to receive and possess spent nuclear fuel and high-
9 level radioactive waste, or to undertake any other action
10 concerning the repository, the Commission shall consider
11 the application using expedited, informal procedures, in-
12 cluding discovery procedures that minimize the burden on
13 the parties to produce documents that the Commission
14 does not need to render a decision on an action under this
15 section. The Commission shall issue a final decision on
16 whether to grant permission to receive and possess, or on
17 any other application, within one year of submission of
18 the application, except that the Commission may extend
19 that deadline by not more than six months if, not less than
20 30 days before the deadline, the Commission complies with
21 the reporting requirements of subsection (e)(2).

22 “(A) At any time before or after the Commission
23 issues a final decision on an application from the Sec-
24 retary for construction authorization under this sub-
25 section, the Secretary may undertake infrastructure activi-

1 ties that the Secretary deems are necessary or appropriate
2 to support construction or operation of a repository at the
3 Yucca Mountain site or transportation to such site of
4 spent nuclear fuel and high-level radioactive waste. Infra-
5 structure activities include, but are not limited to, safety
6 upgrades; site preparation; the construction of a rail line
7 connect the Yucca Mountain site with the national rail
8 network, including any facilities to facilitate rail oper-
9 ations; and construction, upgrade, acquisition, or oper-
10 ation of electrical grids or facilities, other utilities, commu-
11 nication facilities, access roads, rail lines, and non-nuclear
12 support facilities.

13 “(B) The Secretary shall comply with all applicable
14 requirements under the National Environmental Policy
15 Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an
16 infrastructure activity undertaken under this paragraph.
17 If the Secretary determines that an environmental impact
18 statement is required in connection with an infrastructure
19 activity undertaken under this paragraph, the Secretary
20 need not consider the need for the action, alternative ac-
21 tions, or a no-action alternative. To the extent a Federal
22 agency must consider the potential environmental impact
23 of an infrastructure activity undertaken under this para-
24 graph, the agency shall adopt, to the extent practicable,
25 an environmental impact statement prepared under this

1 paragraph without further action. Adoption satisfies the
2 responsibilities of the adopting agency under the National
3 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
4 seq.), and no further action is required by the agency.

5 “(C) The Commission may not deny construction au-
6 thorization, permission to receive and possess spent nu-
7 clear fuel and high-level radioactive waste, or any other
8 action concerning the repository on the grounds that the
9 Secretary undertook an infrastructure activity under this
10 paragraph.”.

11 (c) CONNECTED ACTIONS.—Section 114(f)(6) of the
12 Nuclear Waste Policy Act of 1982 (42 U.S.C.
13 10134(f)(6)) is amended by striking “or” and inserting
14 before the period “, or an action connected or otherwise
15 related to the repository to the extent the action is under-
16 taken outside the geologic repository operations area and
17 does not require and license from the Commission”.

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

21 (1) in subsection (a)(1) by inserting “or an in-
22 frastructure activity” after “repository”, by insert-
23 ing “, State, local, or Indian tribe”, after “Federal”
24 both places it appears, and by striking “reposi-

1 tories” and inserting “a repository or infrastructure
2 activity”;

3 (2) in subsection (b) by striking “, and may in-
4 clude terms and conditions permitted by law”; and

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

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

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

19 **SEC. 5. NUCLEAR WASTE FUND.**

20 (a) CREDITING FEES.—Beginning on October 1,
21 2007, and continuing through the end of the fiscal year
22 when construction is complete for surface facilities for the
23 fully operational repository as described in the license ap-
24 plication and for the Nevada rail line, fees collected by
25 the Secretary and deposited in the Nuclear Waste Fund

1 under the Nuclear Waste Policy Act of 1982 (42 U.S.C.
2 10101 et seq.) shall be credited to the Nuclear Waste
3 Fund as discretionary offsetting collections each year in
4 amounts not to exceed the amounts appropriated from the
5 Nuclear Waste Fund for that year.

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

14 **SEC. 6. REGULATORY REQUIREMENTS.**

15 (a) MATERIAL REQUIREMENTS.—Notwithstanding
16 any other law, no Federal, State, interstate, or local re-
17 quirement, either substantive or procedural, that is re-
18 ferred to in section 6001(a) of the Solid Waste Disposal
19 Act (42 U.S.C. 6961(a)), applies to—

20 (1) any material owned by the Secretary if the
21 material is transported or stored in a package, cask,
22 or other container that the Commission has certified
23 for transportation or storage of that type of mate-
24 rial; or

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

5 (b) PERMITS.—The Administrator of the Environ-
6 mental Protection Agency shall be the permitting agency
7 for purposes of issuing, administering, or enforcing any
8 new or existing air quality permit or requirement applica-
9 ble to a Federal facility or activity subject to the require-
10 ments of the Nuclear Waste Policy Act of 1982 (42 U.S.C.
11 10101 et seq.). A State or unit of local government shall
12 not issue, administer, or enforce a new or existing air qual-
13 ity permit or requirement affecting a Federal facility or
14 activity in the Withdrawal and subject to the requirements
15 of the Nuclear Waste Policy Act of 1982.

16 **SEC. 7. TRANSPORTATION.**

17 The Nuclear Waste Policy Act of 1982 (42 U.S.C.
18 10101 et seq.) is amended by inserting the following new
19 section after section 180:

20 “SEC. 181. (a) The Secretary is authorized to deter-
21 mine the extent to which any transportation done in car-
22 rying out the Secretary’s functions under this Act that is
23 regulated under the Hazardous Materials Transportation
24 Authorization Act of 1994 shall instead be regulated ex-
25 clusively under the Atomic Energy Act of 1954.

1 “(b) On request by the Secretary, the Secretary of
2 Transportation is authorized to determine pursuant to
3 section 5125 of title 49, United States Code, that any re-
4 quirement of a State, political subdivision of a State, or
5 Indian tribe regarding transportation done by or on behalf
6 of the Secretary in carrying out this Act is preempted,
7 irrespective of whether the transportation otherwise is or
8 would be subject to regulation under the Hazardous Mate-
9 rials Transportation Authorization Act of 1994.”.

10 **SEC. 8. WATER RIGHTS.**

11 Section 124 of the Nuclear Waste Policy Act of 1982
12 (42 U.S.C. 10144) is amended by inserting “(a) WATER
13 RIGHTS ACQUISITION EFFECT.—” after the section num-
14 ber and by adding the following new subsection (b):

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

1 **SEC. 9. WASTE CONFIDENCE.**

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

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