

109TH CONGRESS
2D SESSION

S. 2589

To enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to ensure 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 SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. DOMENICI (for himself and Mr. INHOFE) (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to ensure 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) DEFINITIONS FROM NUCLEAR WASTE POLICY
 3 ACT OF 1982.—In this Act, the terms “Commission”,
 4 “disposal”, “Federal agency”, “high-level radioactive
 5 waste”, “repository”, “Secretary”, “State”, “spent nu-
 6 clear fuel”, and “Yucca Mountain site” have the meaning
 7 given those terms in section 2 of the Nuclear Waste Policy
 8 Act of 1982 (42 U.S.C. 10101).

9 (b) OTHER DEFINITIONS.—In this Act:

10 (1) PROJECT.—The term “Project” means the
 11 Yucca Mountain Project.

12 (2) SECRETARY CONCERNED.—The term “Sec-
 13 retary concerned” means the Secretary of the Air
 14 Force or the Secretary of the Interior, or both, as
 15 appropriate.

16 (3) WITHDRAWAL.—The term “Withdrawal”
 17 means the withdrawal under section 3(a)(1) of the
 18 geographic area consisting of the land described in
 19 section 3(c).

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

21 (a) LAND WITHDRAWAL, JURISDICTION, AND RES-
 22 ERVATION.—

23 (1) LAND WITHDRAWAL.—Subject to valid ex-
 24 isting rights and except as provided otherwise in this
 25 Act, the land described in subsection (c) is with-
 26 drawn permanently from all forms of entry, appro-

1 priation, and disposal under the public land laws, in-
2 cluding, without limitation, the mineral leasing laws,
3 geothermal leasing laws, and mining laws.

4 (2) JURISDICTION.—

5 (A) IN GENERAL.—Except as otherwise
6 provided in this Act, the Secretary shall have
7 jurisdiction over the Withdrawal.

8 (B) TRANSFER.—There is transferred to
9 the Secretary the land covered by the With-
10 drawal that is under the jurisdiction of the Sec-
11 retary concerned on the date of enactment of
12 this Act.

13 (3) RESERVATION.—The land covered by the
14 Withdrawal is reserved for use by the Secretary for
15 the development, preconstruction testing and per-
16 formance confirmation, licensing, construction, man-
17 agement and operation, monitoring, closure, post-
18 closure, and other activities associated with the dis-
19 posal of high-level radioactive waste and spent nu-
20 clear fuel under the Nuclear Waste Policy Act of
21 1982 (42 U.S.C. 10101 et seq.).

22 (b) REVOCATION AND MODIFICATION OF PUBLIC
23 LAND ORDERS AND RIGHTS-OF-WAY.—

24 (1) PUBLIC LAND ORDER REVOCATION.—Public
25 Land Order 6802 of September 25, 1990, as ex-

tended 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 land and interests in land covered by the Withdrawal 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 land covered by the Withdrawal; and

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

1 (3) TECHNICAL CORRECTIONS.—The maps and
2 legal description referred to in this subsection have
3 the same force and effect as if included in this Act,
4 except that the Secretary of the Interior may correct
5 clerical and typographical errors in the maps and
6 legal description.

7 (d) RELATIONSHIP TO OTHER RESERVATIONS.—

8 (1) IN GENERAL.—Subtitle A of title XXX of
9 the Military Lands Withdrawal Act of 1999 (Public
10 Law 106–65; 113 Stat. 885) and Public Land Order
11 2568 do not apply to the land covered by the With-
12 drawal and reserved by subsection (a).

13 (2) OTHER WITHDRAWN LAND.—This Act does
14 not apply to any other land withdrawn for use by
15 the Department of Defense under subtitle A of title
16 XXX of the Military Lands Withdrawal Act of 1999.

17 (e) MANAGEMENT RESPONSIBILITIES.—

18 (1) GENERAL AUTHORITY.—The Secretary, in
19 consultation with the Secretary concerned, as appli-
20 cable, shall manage the land covered by the With-
21 drawal in accordance with the Federal Land Policy
22 and Management Act of 1976 (43 U.S.C. 1701 et
23 seq.), this Act, and other applicable law.

24 (2) MANAGEMENT PLAN.—

1 (A) DEVELOPMENT.—Not later than 3
2 years after the date of enactment of this Act,
3 the Secretary, after consultation with the Sec-
4 retary concerned, shall develop and submit to
5 Congress and the State of Nevada a manage-
6 ment plan for the use of the land covered by
7 the Withdrawal.

8 (B) PRIORITY OF YUCCA MOUNTAIN
9 PROJECT-RELATED ISSUES.—Subject to sub-
10 paragraphs (C), (D), and (E), any use of the
11 land covered by the Withdrawal for activities
12 not associated with the Project is subject to
13 such conditions and restrictions as the Sec-
14 retary considers to be necessary or desirable to
15 permit the conduct of Project-related activities.

16 (C) DEPARTMENT OF THE AIR FORCE
17 USES.—The management plan may provide for
18 the continued use by the Department of the Air
19 Force of the portion of the land covered by the
20 Withdrawal within the Nellis Air Force Base
21 Test and Training Range under terms and con-
22 ditions on which the Secretary and the Sec-
23 retary of the Air Force agree with respect to
24 Air Force activities.

(D) NEVADA TEST SITE USES.—The Secretary may—

(i) permit the National Nuclear Security Administration to continue to use the portion of the land covered by the Withdrawal on the Nevada Test Site; and

(ii) impose any conditions on that use that the Secretary considers to be necessary to minimize any effect on Project or Administration activities.

(E) OTHER NON-YUCCA MOUNTAIN PROJECT USES.—

(i) IN GENERAL.—The management plan shall provide for the maintenance of wildlife habitat and the permitting by the Secretary of non-Project-related uses that the Secretary considers to be appropriate, including domestic livestock grazing and hunting and trapping in accordance with clauses (ii) and (iii).

(ii) GRAZING.—Subject to regulations, policies, and practices that the Secretary, after consultation with the Secretary of the Interior, determines to be necessary or appropriate, the Secretary may permit graz-

1 ing on land covered by the Withdrawal to
2 continue on areas on which grazing was es-
3 tablished before the date of enactment of
4 this Act, in accordance with applicable
5 grazing laws and policies, including—

6 (I) the Act of June 28, 1934
7 (commonly known as the “Taylor
8 Grazing Act”) (43 U.S.C. 315 et
9 seq.);

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

13 (III) the Public Rangelands Im-
14 provement Act of 1978 (43 U.S.C.
15 1901 et seq.).

16 (iii) HUNTING AND TRAPPING.—The
17 Secretary may permit hunting and trap-
18 ping on land covered by the Withdrawal on
19 areas in which hunting and trapping were
20 permitted on the day before the date of en-
21 actment of this Act, except that the Sec-
22 retary, after consultation with the Sec-
23 retary of the Interior and the State of Ne-
24 vada, may designate zones in which, and
25 establish periods during which, no hunting

1 or trapping is permitted for reasons of
2 public safety, national security, administra-
3 tion, or public use and enjoyment.

4 (F) MINING.—

5 (i) IN GENERAL.—Except as provided
6 in subparagraph (B), surface or subsurface
7 mining or oil or gas production, including
8 slant drilling from outside the boundaries
9 of the land covered by the Withdrawal, is
10 not permitted at any time on or under the
11 land covered by the Withdrawal.

12 (ii) VALIDITY OF CLAIMS.—The Sec-
13 retary of the Interior shall evaluate and
14 adjudicate the validity of all mining claims
15 on the portion of land covered by the With-
16 drawal that, on the date of enactment of
17 this Act, was under the control of the Bu-
18 reau of Land Management.

19 (iii) COMPENSATION.—The Secretary
20 shall provide just compensation for the ac-
21 quisition of any valid property right.

22 (iv) CIND-R-LITE MINE.—

23 (I) IN GENERAL.—Patented Min-
24 ing Claim No. 27–83–0002, covering
25 the Cind-R-Lite mine, shall not be af-

1 fect by establishment of the With-
2 drawal, unless the Secretary, after
3 consultation with the Secretary of the
4 Interior, determines that the acquisi-
5 tion of the mine is required in fur-
6 therance of the reserved use of the
7 land covered by the Withdrawal de-
8 scribed in subsection (a)(3).

9 (II) COMPENSATION.—If the Sec-
10 retary determines that the acquisition
11 of the mine described in subclause (I)
12 is required, the Secretary shall pro-
13 vide just compensation for acquisition
14 of the mine.

15 (G) LIMITED PUBLIC ACCESS.—The man-
16 agement plan may provide for limited public ac-
17 cess to and use of the portion of the land cov-
18 ered by the Withdrawal that is under the juris-
19 diction of the Bureau of Land Management on
20 the date of enactment of this Act, including
21 for—

- 22 (i) continuation of the Nye County
23 Early Warning Drilling Program;
24 (ii) utility corridors; and

1 (iii) such other uses as the Secretary,
2 after consultation with the Secretary of the
3 Interior, considers to be consistent with
4 the purposes of the Withdrawal.

5 (H) CLOSURE.—If the Secretary, after
6 consultation with the Secretary concerned, de-
7 termines that the health or safety of the public
8 or the common defense or security requires the
9 closure of a road, trail, or other portion of land
10 covered by the Withdrawal, or the airspace
11 above land covered by the Withdrawal, the Sec-
12 retary—

13 (i) may close the portion of land or
14 the airspace; and

15 (ii) shall provide public notice of the
16 closure.

17 (3) IMPLEMENTATION.—The Secretary and the
18 Secretary concerned shall implement the manage-
19 ment plan developed under paragraph (2) in accord-
20 ance with terms and conditions on which the Sec-
21 retary and the Secretary concerned jointly agree.

22 (f) IMMUNITY.—The United States (including each
23 department and agency of the Federal Government) shall
24 be held harmless, and shall not be liable, for damages to
25 a person or property suffered in the course of any mining,

1 mineral leasing, or geothermal leasing activity conducted
 2 on the land covered by the Withdrawal.

3 (g) LAND ACQUISITION.—

4 (1) IN GENERAL.—The Secretary may acquire
 5 land, and interests in land within the land, covered
 6 by the Withdrawal.

7 (2) METHOD OF ACQUISITION.—Land and in-
 8 terests in land described in paragraph (1) may be
 9 acquired by donation, purchase, lease, exchange,
 10 easement, right-of-way, or other appropriate meth-
 11 ods using donated or appropriated funds.

12 (3) EXCHANGE OF LAND.—The Secretary of
 13 the Interior shall conduct any exchange of land cov-
 14 ered by the Withdrawal for Federal land not covered
 15 by the Withdrawal.

16 **SEC. 4. APPLICATION PROCEDURES AND INFRASTRUCTURE**
 17 **ACTIVITIES.**

18 (a) APPLICATION.—Section 114(b) of the Nuclear
 19 Waste Policy Act of 1982 (42 U.S.C. 10134(b)) is amend-
 20 ed—

21 (1) by striking “If the President” and inserting
 22 the following:

23 “(1) IN GENERAL.—If the President”; and

24 (2) by adding at the end the following

1 “(2) REQUIRED INFORMATION.—An application
 2 for construction authorization shall not be required
 3 to contain information regarding any surface facility
 4 other than surface facilities necessary for initial op-
 5 eration of the repository.”.

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

9 (1) in the first sentence, by striking “The Com-
 10 mission shall consider” and inserting the following:

11 “(1) IN GENERAL.—The Commission shall con-
 12 sider”;

13 (2) by striking the last 2 sentences; and

14 (3) by inserting after paragraph (1) (as des-
 15 ignated by paragraph (1)) the following:

16 “(2) AMENDMENTS TO APPLICATION FOR CON-
 17 STRUCTION AUTHORIZATION.—

18 “(A) IN GENERAL.—If the Commission ap-
 19 proves an application for construction author-
 20 ization and the Secretary submits an applica-
 21 tion to amend the authorization to obtain per-
 22 mission to receive and possess spent nuclear
 23 fuel and high-level radioactive waste, or to un-
 24 dertake any other action concerning the reposi-
 25 tory, the Commission shall consider the applica-

1 tion using expedited, informal procedures, in-
2 cluding discovery procedures that minimize the
3 burden on the parties to produce documents
4 that the Commission does not need to render a
5 decision on an action under this section.

6 “(B) FINAL DECISION.—The Commission
7 shall issue a final decision on whether to grant
8 permission to receive and possess spent nuclear
9 fuel and high-level radioactive waste, or on any
10 other application, by the date that is 1 year
11 after the date of submission of the application,
12 except that the Commission may extend that
13 deadline by not more than 180 days if, not less
14 than 30 days before the deadline, the Commis-
15 sion complies with the reporting requirements
16 under subsection (e)(2).

17 “(3) INFRASTRUCTURE ACTIVITIES.—

18 “(A) IN GENERAL.—At any time before or
19 after the Commission issues a final decision on
20 an application from the Secretary for construc-
21 tion authorization under this subsection, the
22 Secretary may undertake infrastructure activi-
23 ties that the Secretary determines to be nec-
24 essary or appropriate to support construction or
25 operation of a repository at the Yucca Moun-

tain site or transportation to the Yucca Mountain site of spent nuclear fuel and high level radioactive waste, including infrastructure activities such as—

“(i) safety upgrades;

“(ii) site preparation;

“(iii) 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

“(iv) construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, rail lines, and non-nuclear support facilities.

“(B) COMPLIANCE.—

“(i) IN GENERAL.—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.

“(ii) EIS.—If the Secretary determines that an environmental impact statement or similar analysis under the Na-

1 tional Environmental Policy Act of 1969 is
2 required in connection with an infrastruc-
3 ture activity undertaken under this para-
4 graph, the Secretary shall not be required
5 to consider the need for the action, alter-
6 native actions, or a no-action alternative.

7 “(iii) OTHER AGENCIES.—

8 “(I) IN GENERAL.—To the extent
9 that a Federal agency is required to
10 consider the potential environmental
11 impact of an infrastructure activity
12 undertaken under this paragraph, the
13 Federal agency shall adopt, to the
14 maximum extent practicable, an envi-
15 ronmental impact statement or similar
16 analysis prepared under this para-
17 graph without further action.

18 “(II) EFFECT OF ADOPTION OF
19 STATEMENT.—Adoption of an envi-
20 ronmental impact statement or similar
21 analysis described in subclause (I)
22 shall be considered to satisfy the re-
23 sponsibilities of the adopting agency
24 under the National Environmental
25 Policy Act of 1969 (42 U.S.C. 4321

1 et seq.), and no further action for the
 2 activity covered by the statement or
 3 analysis shall be required by the agen-
 4 cy.

5 “(C) DENIALS OF AUTHORIZATION.—The
 6 Commission may not deny construction author-
 7 ization, permission to receive and possess spent
 8 nuclear fuel or high-level radioactive waste, or
 9 any other action concerning the repository on
 10 the ground that the Secretary undertook an in-
 11 frastructure activity under this paragraph.”.

12 (c) CONNECTED ACTIONS.—Section 114(f)(6) of the
 13 Nuclear Waste Policy Act of 1982 (42 U.S.C.
 14 10134(f)(6)) is amended—

15 (1) by striking “or”; and

16 (2) by inserting before the period at the end the
 17 following: “, or an action connected or otherwise re-
 18 lating to the repository, to the extent the action is
 19 undertaken outside the geologic repository oper-
 20 ations area and does not require a license from the
 21 Commission”.

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

25 (1) in subsection (a)(1)—

1 (A) in the first sentence, by inserting “, or
 2 the conduct of an infrastructure activity,” after
 3 “repository”;

4 (B) by inserting “, State, local, or tribal”
 5 after “Federal” each place it appears; and

6 (C) in the second sentence, by striking “re-
 7 positories” and inserting “a repository or infra-
 8 structure activity”;

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

11 (3) by adding at the end the following:

12 “(c) FAILURE TO GRANT AUTHORIZATION.—An
 13 agency or officer that fails to grant authorization by the
 14 date that is 1 year after the date of receipt of an applica-
 15 tion or request from the Secretary subject to subsection
 16 (a) shall submit to Congress a written report that explains
 17 the reason for not meeting that deadline or rejecting the
 18 application or request.

19 “(d) TREATMENT OF ACTIONS.—For the purpose of
 20 applying any Federal, State, local, or tribal law or require-
 21 ment, the taking of an action relating to a repository or
 22 an infrastructure activity shall be considered to be—

23 “(1) beneficial, and not detrimental, to the pub-
 24 lic interest and interstate commerce; and

1 “(2) consistent with the public convenience and
2 necessity.”.

3 **SEC. 5. NUCLEAR WASTE FUND.**

4 (a) CREDITING FEES.—Beginning on October 1,
5 2007, and continuing through the end of the fiscal year
6 during which construction is completed for the Nevada rail
7 line and surface facilities for the fully operational reposi-
8 tory described in the license application, fees collected by
9 the Secretary and deposited in the Nuclear Waste Fund
10 established by section 302(c) of the Nuclear Waste Policy
11 Act of 1982 (42 U.S.C. 10222(c)) shall be credited to the
12 Nuclear Waste Fund as discretionary offsetting collections
13 each year in amounts not to exceed the amounts appro-
14 priated from the Nuclear Waste Fund for that year.

15 (b) FUND USES.—Section 302(d)(4) of the Nuclear
16 Waste Policy Act of 1982 (42 U.S.C. 10222(d)(4)) is
17 amended by inserting after “with” the following: “infra-
18 structure activities that the Secretary determines to be
19 necessary or appropriate to support construction or oper-
20 ation of a repository at the Yucca Mountain site or trans-
21 portation to the Yucca Mountain site of spent nuclear fuel
22 and high-level radioactive waste, and”.

23 **SEC. 6. REGULATORY REQUIREMENTS.**

24 (a) MATERIAL REQUIREMENTS.—Notwithstanding
25 any other provision of law, no Federal, State, interstate,

1 or local requirement, either substantive or procedural, that
2 is referred to in section 6001(a) of the Solid Waste Dis-
3 posal Act (42 U.S.C. 6961(a)), applies to—

4 (1) any material owned by the Secretary, if the
5 material is transported or stored in a package, cask,
6 or other container that the Commission has certified
7 for transportation or storage of that type of mate-
8 rial; or

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

13 (b) PERMITS.—

14 (1) IN GENERAL.—The Environmental Protec-
15 tion Agency shall be the permitting agency for pur-
16 poses of issuing, administering, or enforcing any new
17 or existing air quality permit or requirement applica-
18 ble to a Federal facility or activity relating to the
19 Withdrawal that is subject to the Nuclear Waste
20 Policy Act of 1982 (42 U.S.C. 10101 et seq.).

21 (2) STATE AND LOCAL ACTIVITY.—A State or
22 unit of local government shall not issue, administer,
23 or enforce a new or existing air quality permit or re-
24 quirement affecting a Federal facility or activity that
25 is—

1 (A) located on the land covered by the
 2 Withdrawal; and

3 (B) subject to the Nuclear Waste Policy
 4 Act of 1982 (42 U.S.C. 10101 et seq.).

5 **SEC. 7. TRANSPORTATION.**

6 The Nuclear Waste Policy Act of 1982 is amended
 7 by inserting after section 180 (42 U.S.C. 10175) the fol-
 8 lowing:

9 **“SEC. 181. TRANSPORTATION.**

10 “(a) IN GENERAL.—The Secretary may determine
 11 the extent to which any transportation required to carry
 12 out the duties of the Secretary under this Act that is regu-
 13 lated under the Hazardous Materials Transportation Au-
 14 thorization Act of 1994 (title I of Public Law 103–311;
 15 108 Stat. 1673) and amendments made by that Act shall
 16 instead be regulated exclusively under the Atomic Energy
 17 Act of 1954 (42 U.S.C. 2011 et seq.).

18 “(b) DETERMINATION OF PREEMPTION.—On request
 19 by the Secretary, the Secretary of Transportation may de-
 20 termine, pursuant to section 5125 of title 49, United
 21 States Code, that any requirement of a State, political
 22 subdivision of a State, or Indian tribe regarding transpor-
 23 tation carried out by or on behalf of the Secretary in car-
 24 rying out this Act is preempted, regardless of whether the
 25 transportation otherwise is or would be subject to regula-

tion under the Hazardous Materials Transportation Authorization Act of 1994 (title I of Public Law 103–311; 108 Stat. 1673).”.

SEC. 8. CONSIDERATION OF EFFECT OF ACQUISITION OF WATER RIGHTS.

Section 124 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10144) is amended—

(1) by striking the section heading and all that follows through “The Secretary” and inserting the following:

“SEC. 124. CONSIDERATION OF EFFECT OF ACQUISITION OF WATER RIGHTS.

“(a) WATER RIGHTS ACQUISITION EFFECT.—The Secretary”; and

(2) by adding at the end the following:

“(b) BENEFICIAL USE OF WATER.—

“(1) IN GENERAL.—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 and to carry out functions of the Department under this Act shall be considered to be a use that—

“(A) is beneficial to interstate commerce;

and

1 “(B) does not threaten to prove detri-
2 mental to the public interest.

3 “(2) CONFLICTING STATE LAWS.—A State shall
4 not enact or apply a law that discriminates against
5 a use described in paragraph (1).

6 “(3) ACQUISITION OF WATER RIGHTS.—The
7 Secretary, through purchase or other means, may
8 obtain water rights necessary to carry out functions
9 of the Department under this Act.”.

10 **SEC. 9. CONFIDENCE IN AVAILABILITY OF WASTE DIS-**
11 **POSAL.**

12 Notwithstanding any other provision of law, in decid-
13 ing whether to permit the construction or operation of a
14 nuclear reactor or any related facilities, the Commission
15 shall deem, without further consideration, that sufficient
16 capacity will be available in a timely manner to dispose
17 of the spent nuclear fuel and high-level radioactive waste
18 resulting from the operation of the reactor and related fa-
19 cilities.

○