

110TH CONGRESS
1ST SESSION

S. _____

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 SENATE OF THE UNITED STATES

Mr. DOMENICI (for himself and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on

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 Waste Access
5 to Yucca Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) DISPOSAL.—The term “disposal” has the
2 meaning given the term in section 2 of the Nuclear
3 Waste Policy Act of 1982 (42 U.S.C. 10101).

4 (2) HIGH-LEVEL RADIOACTIVE WASTE.—The
5 term “high-level radioactive waste” has the meaning
6 given the term in section 2 of the Nuclear Waste
7 Policy Act of 1982 (42 U.S.C. 10101).

8 (3) PROJECT.—The term “Project” means the
9 Yucca Mountain Project.

10 (4) REPOSITORY.—The term “repository” has
11 the meaning given the term in section 2 of the Nu-
12 clear Waste Policy Act of 1982 (42 U.S.C. 10101).

13 (5) SECRETARY.—The term “Secretary” means
14 the Secretary of Energy.

15 (6) SPENT NUCLEAR FUEL.—The term “spent
16 nuclear fuel” has the meaning given the term in sec-
17 tion 2 of the Nuclear Waste Policy Act of 1982 (42
18 U.S.C. 10101).

19 (7) YUCCA MOUNTAIN SITE.—The term “Yucca
20 Mountain site” has the meaning given the term in
21 section 2 of the Nuclear Waste Policy Act of 1982
22 (42 U.S.C. 10101).

23 **SEC. 3. WITHDRAWAL OF LAND.**

24 (a) LAND WITHDRAWAL; JURISDICTION; RESERVA-
25 TION; ACQUISITION.—

1 (1) LAND WITHDRAWAL.—Subject to valid ex-
2 isting rights, and except as otherwise provided in
3 this Act, the land described in subsection (b) is with-
4 drawn permanently from any form of entry, appro-
5 priation, or disposal under the public land laws, in-
6 cluding, without limitation—

7 (A) the mineral leasing laws;

8 (B) the geothermal leasing laws;

9 (C) materials sales laws; and

10 (D) the mining laws.

11 (2) JURISDICTION.—As of the date of enact-
12 ment of this Act, any land described in subsection
13 (b) that is under the jurisdiction of the Secretary of
14 the Air Force or the Secretary of the Interior shall
15 be—

16 (A) transferred to the Secretary; and

17 (B) under the jurisdiction of the Secretary.

18 (3) RESERVATION.—The land described in sub-
19 section (b) is reserved for use by the Secretary for
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.), including—

24 (A) development;

- 1 (B) preconstruction testing and perform-
2 ance confirmation;
3 (C) licensing;
4 (D) construction;
5 (E) management and operation;
6 (F) monitoring;
7 (G) closure and post-closure; and
8 (H) other such activities associated with
9 the disposal of high-level radioactive waste and
10 spent nuclear fuel under the Nuclear Waste
11 Policy Act of 1982 (42 U.S.C. 10101 et seq.).

12 (b) LAND DESCRIPTION.—

13 (1) BOUNDARIES.—The land referred to in sub-
14 section (a) is the approximately 147,000 acres of
15 land located in Nye County, Nevada, as generally
16 depicted on the map relating to the Project, num-
17 bered YMP-03-024.2, entitled “Proposed Land
18 Withdrawal”, and dated July 21, 2005.

19 (2) LEGAL DESCRIPTION AND MAP.—

20 (A) IN GENERAL.—As soon as practicable
21 after the date of enactment of this Act, the Sec-
22 retary of the Interior shall—

- 23 (i) publish in the Federal Register a
24 notice containing a legal description of the
25 land described in this subsection; and

1 (ii) provide to Congress, the Governor
2 of the State of Nevada, and the Archivist
3 of the United States—

4 (I) a copy of the map referred to
5 in paragraph (1); and

6 (II) the legal description of the
7 land.

8 (B) TREATMENT.—

9 (i) IN GENERAL.—The map and legal
10 description referred to in subparagraph
11 (A) shall have the same force and effect as
12 if the map and legal description were in-
13 cluded in this Act.

14 (ii) TECHNICAL CORRECTIONS.—The
15 Secretary of the Interior may correct any
16 clerical or typographical error in the map
17 and legal description referred to in sub-
18 paragraph (A).

19 (c) REVOCATIONS.—

20 (1) PUBLIC LAND ORDER.—Public Land Order
21 6802, dated September 25, 1990 (as extended by
22 Public Land Order 7534), and any condition or
23 memorandum of understanding accompanying the
24 land order (as so extended), is revoked.

1 (2) RIGHT OF WAY.—The rights-of-way reserva-
2 tions relating to the Project, numbered N-48602
3 and N-47748 and dated January 5, 2001, are re-
4 voked.

5 (d) MANAGEMENT OF WITHDRAWN LAND.—

6 (1) IN GENERAL.—The Secretary, in consulta-
7 tion with the Secretary of the Air Force and the
8 Secretary of the Interior, as appropriate, shall man-
9 age the land withdrawn under subsection (a)(1) in
10 accordance with—

11 (A) the Federal Land Policy and Manage-
12 ment Act of 1976 (43 U.S.C. 1701 et seq.);

13 (B) this Act; and

14 (C) other applicable laws.

15 (2) MANAGEMENT PLAN.—

16 (A) DEVELOPMENT.—Not later than 3
17 years after the date of enactment of this Act,
18 the Secretary, in consultation with the Sec-
19 retary of the Air Force and the Secretary of the
20 Interior, as appropriate, shall develop and sub-
21 mit to Congress and the State of Nevada a
22 management plan for the use of the land with-
23 drawn under subsection (a)(1).

24 (B) PRIORITY.—Subject to subparagraphs
25 (C), (D), and (E), use of the land withdrawn

1 under subsection (a)(1) for an activity not re-
2 relating to the Project shall be subject to such
3 conditions and restrictions as the Secretary con-
4 siders to be appropriate to facilitate activities
5 relating to the Project.

6 (C) AIR FORCE USE.—The management
7 plan may provide for the continued use by the
8 Department of the Air Force of the portion of
9 the land withdrawn under subsection (a)(1) lo-
10 cated within the Nellis Air Force base test and
11 training range under such terms and conditions
12 as may be agreed to by the Secretary and the
13 Secretary of the Air Force.

14 (D) NEVADA TEST SITE USE.—The man-
15 agement plan may provide for the continued use
16 by the National Nuclear Security Administra-
17 tion of the portion of the land withdrawn under
18 subsection (a)(1) located within the Nevada test
19 site of the Administration under such condi-
20 tions as the Secretary considers to be necessary
21 to minimize any effect on activities relating to
22 the Project or other activities of the Adminis-
23 tration.

24 (E) OTHER USES.—

1 (i) IN GENERAL.—The management
2 plan shall include provisions—

3 (I) relating to the maintenance of
4 wildlife habitat on the land withdrawn
5 under subsection (a)(1); and

6 (II) under which the Secretary
7 may permit any use not relating to
8 the Project, as the Secretary considers
9 to be appropriate, in accordance with
10 the requirements under clause (ii).

11 (ii) REQUIREMENTS.—

12 (I) GRAZING.—The Secretary
13 may permit any grazing use to con-
14 tinue on the land withdrawn under
15 subsection (a)(1) if the grazing use
16 was established before the date of en-
17 actment of this Act, subject to such
18 regulations, policies, and practices as
19 the Secretary, in consultation with the
20 Secretary of the Interior, determines
21 to be appropriate, and in accordance
22 with applicable grazing laws and poli-
23 cies, including—

24 (aa) the Act of June 28,
25 1934 (commonly known as the

1 “Taylor Grazing Act”) (43
2 U.S.C. 315 et seq.);

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

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

10 (II) HUNTING AND TRAPPING.—

11 The Secretary may permit any hunt-
12 ing or trapping use to continue on the
13 land withdrawn under subsection
14 (a)(1) if the hunting or trapping use
15 was established before the date of en-
16 actment of this Act, at such time and
17 in such zones as the Secretary, in con-
18 sultation with the Secretary of the In-
19 terior and the State of Nevada, may
20 establish, taking into consideration
21 public safety, national security, ad-
22 ministration, and public use and en-
23 joyment of the land.

24 (F) PUBLIC ACCESS.—

1 (i) IN GENERAL.—The management
2 plan may provide for limited public access
3 to the portion of the land withdrawn under
4 subsection (a)(1) that was under the con-
5 trol of the Bureau of Land Management
6 on the day before the date of enactment of
7 this Act.

8 (ii) SPECIFIC USES.—The manage-
9 ment plan may permit public uses of the
10 land relating to the Nye County Early
11 Warning Drilling Program, utility cor-
12 ridors, and other uses the Secretary, in
13 consultation with the Secretary of the Inte-
14 rior, considers to be consistent with the
15 purposes of the withdrawal under sub-
16 section (a)(1).

17 (3) MINING.—

18 (A) IN GENERAL.—Surface and subsurface
19 mining and oil and gas production, including
20 slant drilling from outside the boundaries of the
21 land withdrawn under subsection (a)(1), shall
22 be prohibited at any time on or under the land.

23 (B) EVALUATION OF CLAIMS.—The Sec-
24 retary of the Interior shall evaluate and adju-
25 dicate the validity of any mining claim relating

1 to any portion of the land withdrawn under
2 subsection (a)(1) that was under the control of
3 the Bureau of Land Management on the day
4 before the date of enactment of this Act.

5 (C) COMPENSATION.—The Secretary shall
6 provide just compensation for the acquisition of
7 any valid property right relating to mining pur-
8 suant to the withdrawal under subsection
9 (a)(1).

10 (4) CLOSURES.—If the Secretary, in consulta-
11 tion with the Secretary of the Air Force and the
12 Secretary of the Interior, as appropriate, determines
13 that the health and safety of the public or the na-
14 tional defense and security require the closure of a
15 road, trail, or other portion of the land withdrawn
16 under subsection (a)(1) (including the airspace
17 above the land), the Secretary—

18 (A) may close the road, trail, or portion of
19 land (including airspace); and

20 (B) shall provide to the public a notice of
21 the closure.

22 (5) IMPLEMENTATION.—The Secretary and the
23 Secretary of the Air Force or the Secretary of the
24 Interior, as appropriate, shall implement the man-
25 agement plan developed under paragraph (2) under

1 such terms and conditions as may be agreed to by
2 the Secretaries.

3 **SEC. 4. RECEIPT AND STORAGE FACILITIES.**

4 Section 114(b) of the Nuclear Waste Policy Act of
5 1982 (42 U.S.C. 10134(b)) is amended—

6 (1) by striking “If the President” and inserting
7 the following:

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

9 (2) by adding at the end the following:

10 “(2) APPLICATION FOR RECEIPT AND STORAGE
11 FACILITIES.—

12 “(A) IN GENERAL.—In conjunction with
13 the submission of an application for a construc-
14 tion authorization under this subsection, the
15 Secretary shall apply to the Commission for a
16 license in accordance with part 72 of title 10,
17 Code of Federal Regulations (or a successor
18 regulation), to construct and operate facilities
19 to receive and store spent nuclear fuel and
20 high-level radioactive waste at the Yucca Moun-
21 tain site.

22 “(B) DEADLINE FOR FINAL DECISION BY
23 COMMISSION.—The Commission shall issue a
24 final decision approving or disapproving the
25 issuance of the license not later than 18 months

1 after the date of submission of the application
2 to the Commission.”.

3 **SEC. 5. REPEAL OF CAPACITY LIMITATION.**

4 Section 114(d) of the Nuclear Waste Policy Act of
5 1982 (42 U.S.C. 10134(d)) is amended by striking the
6 second and third sentences.

7 **SEC. 6. INFRASTRUCTURE ACTIVITIES.**

8 Section 114 of the Nuclear Waste Policy Act of 1982
9 (42 U.S.C. 10134) is amended by adding at the end the
10 following:

11 “(g) INFRASTRUCTURE ACTIVITIES.—

12 “(1) CONSTRUCTION OF CONNECTED FACILI-
13 TIES.—At any time after the completion by the Sec-
14 retary of a final environmental impact statement
15 that evaluates the activities to be performed under
16 this subsection, the Secretary may commence the
17 following activities in connection with any activity or
18 facility licensed or to be licensed by the Commission
19 at the Yucca Mountain site:

20 “(A) Preparation of the site for construc-
21 tion of the facility (including such activities as
22 clearing, grading, and construction of tem-
23 porary access roads and borrow areas).

24 “(B) Installation of temporary construc-
25 tion support facilities (including such items as

1 warehouse and shop facilities, utilities, concrete
2 mixing plants, docking and unloading facilities,
3 and construction support buildings).

4 “(C) Excavation for facility structures.

5 “(D) Construction of service facilities (in-
6 cluding such facilities as roadways, paving, rail-
7 road spurs, fencing, exterior utility and lighting
8 systems, transmission lines, and sanitary sewer-
9 age treatment facilities).

10 “(E) Construction of structures, systems,
11 and components that do not prevent or mitigate
12 the consequences of possible accidents that
13 could cause undue risk to the health and safety
14 of the public.

15 “(F) Installation of structural foundations
16 (including any necessary subsurface prepara-
17 tion) for structures, systems, and components
18 that prevent or mitigate the consequences of
19 possible accidents that could cause undue risk
20 to the health and safety of the public.

21 “(2) AUTHORIZATION TO RECEIVE AND
22 STORE.—

23 “(A) DEFINITIONS.—In this paragraph:

24 “(i) DEFENSE WASTE.—The term ‘de-
25 fense waste’ means high-level radioactive

1 waste, and spent nuclear fuel, that results
2 from an atomic energy defense activity.

3 “(ii) LEGACY SPENT NUCLEAR
4 FUEL.—The term ‘legacy spent nuclear
5 fuel’ means spent nuclear fuel—

6 “(I) that is subject to a contract
7 entered into pursuant to section 302;
8 and

9 “(II) for which the Secretary de-
10 termines that there is not at the time
11 of the determination, and will not be
12 within a reasonable time after the de-
13 termination, sufficient domestic capac-
14 ity available to recycle the spent nu-
15 clear fuel.

16 “(B) AUTHORIZATION FOR DEFENSE
17 WASTE.—At any time after the issuance of a li-
18 cense for receipt and storage facilities under
19 subsection (b)(2), the Secretary may transport
20 defense waste to receipt and storage facilities at
21 the Yucca Mountain site.

22 “(C) AUTHORIZATION FOR LEGACY SPENT
23 NUCLEAR FUEL.—At any time after the
24 issuance of a construction authorization under
25 subsection (d) and the issuance of a license for

1 receipt and storage facilities under subsection
2 (b)(2), the Secretary may receive and store leg-
3 acy spent nuclear fuel and high-level radioactive
4 waste at the Yucca Mountain site.”.

5 **SEC. 7. RAIL LINE.**

6 (a) CONSTRUCTION OF RAIL LINE.—The Secretary
7 shall acquire rights-of-way within the corridor designated
8 in subsection (b) in accordance with this section, and shall
9 construct and operate, or cause to be constructed and op-
10 erated, a railroad and such facilities as are required to
11 transport spent nuclear fuel and high-level radioactive
12 waste from existing rail systems to the site of surface fa-
13 cilities within the geologic repository operations area for
14 the receipt, handling, packaging, and storage of spent nu-
15 clear fuel and high-level radioactive waste prior to em-
16 placement.

17 (b) ACQUISITION AND WITHDRAWAL OF LAND.—

18 (1) ROUTE DESIGNATION AND ACQUISITION.—

19 (A) RIGHTS-OF-WAY AND FACILITIES.—

20 The Secretary shall acquire such rights-of-way
21 and develop such facilities within the corridor
22 referred to as “X” on the map dated **[_____]**
23 and on file with the Secretary as are necessary
24 to carry out subsection (a).

1 (B) RECOMMENDATIONS.—The Secretary
2 shall consider specific alignment proposals for
3 the route for the corridor made by the State of
4 Nevada and the units of local government with-
5 in whose jurisdiction the route is proposed to
6 pass.

7 (C) NOTICE AND DESCRIPTION.—Not later
8 than 180 days after the date of enactment of
9 this section, the Secretary shall—

10 (i) publish in the Federal Register a
11 notice containing a legal description of the
12 corridor; and

13 (ii) file copies of the map referred to
14 in paragraph (1) and the legal description
15 of the corridor with—

16 (I) Congress;

17 (II) the Secretary of the Interior;

18 (III) the Governor of the State of
19 Nevada;

20 (IV) the Board of County Com-
21 missioners of Lincoln County, Ne-
22 vada;

23 (V) the Board of County Com-
24 missioners of Nye County, Nevada;
25 and

1 (VI) the Archivist of the United
2 States.

3 (D) ADMINISTRATION.—

4 (i) EFFECT.—The map and legal de-
5 scription referred to in subparagraph (C)
6 shall have the same force and effect as if
7 the map and legal description were in-
8 cluded in this Act.

9 (ii) CORRECTIONS.—The Secretary
10 may correct clerical and typographical er-
11 rors in the map and legal description and
12 make minor adjustments in the boundaries
13 of the corridor.

14 (2) WITHDRAWAL AND RESERVATION.—

15 (A) PUBLIC LAND.—Subject to valid exist-
16 ing rights, the public land depicted on the map
17 referred to in paragraph (1)(C) is withdrawn
18 from all forms of entry, appropriation, and dis-
19 posal under the public land laws, including the
20 mineral leasing laws, the geothermal laws, the
21 material sale laws, and the mining laws.

22 (B) ADMINISTRATIVE JURISDICTION.—Ad-
23 ministrative jurisdiction over the land is trans-
24 ferred from the Secretary of the Interior to the
25 Secretary.

1 (C) RESERVATION.—The land is reserved
2 for the use of the Secretary for the construction
3 and operation of transportation facilities and
4 associated activities under title I of the Nuclear
5 Waste Policy Act of 1982 (42 U.S.C. 10121 et
6 seq.)

7 (D) MEMORANDUM OF UNDER-
8 STANDING.—The Secretary may also enter into
9 a memorandum of understanding with the head
10 of any other agency having administrative juris-
11 diction over other Federal land used for pur-
12 poses of the corridor referred to in paragraph
13 (1)(A).

14 (e) ENVIRONMENTAL IMPACT.—

15 (1) IN GENERAL.—The Secretary shall comply
16 with all applicable requirements under the National
17 Environmental Policy Act of 1969 (42 U.S.C. 4321
18 et seq.) with respect to activities carried out under
19 this section.

20 (2) CONSIDERATION OF POTENTIAL IMPACTS.—
21 To the extent a Federal agency is required to con-
22 sider the potential environmental impact of an activ-
23 ity carried out under this section, the Federal agen-
24 cy shall adopt, to the maximum extent practicable,

1 an environmental impact statement prepared under
2 this section.

3 (3) EFFECT OF ADOPTION OF STATEMENT.—

4 The adoption by a Federal agency of an environ-
5 mental impact statement under paragraph (2) shall
6 be considered to satisfy the responsibilities of the
7 Federal agency under the National Environmental
8 Policy Act of 1969 (42 U.S.C. 4321 et seq.), and no
9 further consideration under that Act shall be re-
10 quired by the Federal agency.

11 **SEC. 8. NEW PLANT CONTRACTS.**

12 Section 302(a) of the Nuclear Waste Policy Act of
13 1982 (42 U.S.C. 10222(a)) is amended by striking para-
14 graph (5) and inserting the following:

15 “(5) REQUIRED PROVISIONS.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), any contract entered into
18 under this section shall provide that—

19 “(i) following issuance of a license to
20 construct and operate facilities to receive
21 and store spent nuclear fuel at the Yucca
22 Mountain site, the Secretary shall take
23 title to the high-level radioactive waste or
24 spent nuclear fuel involved as expeditiously
25 as practicable upon the request of the gen-

1 erator or owner of such waste or spent
2 fuel; and

3 “(ii) in return for the payment of fees
4 established by this section, the Secretary,
5 beginning not later than January 31,
6 1998, shall dispose of the high-level radio-
7 active waste or spent nuclear fuel involved
8 as provided in this subtitle.

9 “(B) EXCEPTION.—Notwithstanding sub-
10 paragraph (A), with respect to a nuclear power
11 facility for which a license application is filed
12 with the Commission after January 1, 2008,
13 under section 103 or 104 of the Atomic Energy
14 Act of 1954 (42 U.S.C. 2133, 2134), a contract
15 entered into under this section shall—

16 “(i) except as provided in clause (ii)
17 and any terms and conditions relating to
18 spent nuclear fuel generated before the
19 date of enactment of the Nuclear Fuel
20 Management and Disposal Act, be con-
21 sistent with the terms and conditions of
22 the contract entitled ‘Contract for Disposal
23 of Spent Nuclear Fuel and/or High-Level
24 Radioactive Waste’ that is included in sec-
25 tion 961.11 of title 10 of the Code of Fed-

1 eral Regulations (as in effect on the date
2 of enactment of the Nuclear Fuel Manage-
3 ment and Disposal Act);

4 “(ii) provide for the taking of title to,
5 and removal of, high-level waste or spent
6 nuclear fuel beginning not later than 30
7 years after the date on which the nuclear
8 power facility begins commercial oper-
9 ations; and

10 “(iii) be entered into not later than 60
11 days after the date on which the license
12 application is docketed by the Commis-
13 sion.”.

14 **SEC. 9. NUCLEAR WASTE FUND.**

15 (a) BUDGET ACT ALLOCATIONS.—Effective for fiscal
16 year 2008 and each fiscal year thereafter, funds appro-
17 priated from the Nuclear Waste Fund established under
18 section 302 of the Nuclear Waste Policy Act of 1982 (42
19 U.S.C. 10222) shall not be subject to—

20 (1) the allocations for discretionary spending
21 under section 302(a) of the Congressional Budget
22 Act of 1974 (2 U.S.C. 633(a)); or

23 (2) the suballocations of appropriations commit-
24 tees under section 302(b) of that Act.

1 (b) FUND USES.—Section 302(d)(4) of the Nuclear
2 Waste Policy Act of 1982 (42 U.S.C. 10222(d)(4)) is
3 amended by striking “with” and all that follows through
4 “storage site” and inserting “with surface facilities within
5 the geologic repository operations area (including surface
6 facilities for the receipt, handling, packaging, and storage
7 of spent nuclear fuel and high-level radioactive waste prior
8 to emplacement, or transportation to the repository of
9 spent nuclear fuel or high-level radioactive waste to sur-
10 face facilities for the receipt, handling, packaging, and
11 storage of spent nuclear fuel and high-level radioactive
12 waste prior to emplacement and the transportation, treat-
13 ing, or packaging of spent nuclear fuel or high-level radio-
14 active waste to be disposed of in the repository, to be
15 stored in a monitored retrievable storage site),”.

16 **SEC. 10. WASTE CONFIDENCE.**

17 For purposes of a determination by the Nuclear Reg-
18 ulatory Commission on whether to grant or amend any
19 license to operate any civilian nuclear power reactor or
20 high-level radioactive waste or spent fuel storage or treat-
21 ment facility under the Atomic Energy Act of 1954 (42
22 U.S.C. 2011 et seq.), the provisions of this Act (including
23 the amendments made by this Act) and the obligation of
24 the Secretary to develop a repository in accordance with
25 the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101

1 et seq.), shall provide sufficient and independent grounds
2 for any further findings by the Nuclear Regulatory Com-
3 mission of reasonable assurances that spent nuclear fuel
4 and high-level radioactive waste would be disposed of safe-
5 ly and in a timely manner.