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# The Federal Government Appeals Denial of Yucca Mountain Water Permits

The U.S. Department of Justice, acting on behalf of the U.S. Department of Energy (DOE), filed an appeal Thursday in U.S. District Court in Las Vegas, NV, on the Nevada State Engineer's recent decision to deny water permits requested for the Yucca Mountain Project.

Today, the federal government also filed a Protective Notice of Appeal and Petition for Judicial Review in the Nye County District Court in Tonopah, Nevada. It was filed as a protective matter only because the issues are already pending in the Federal District Court. In it, the Justice Department stated that it will soon file a motion to stay proceedings in the State Court.

The Justice Department is asking the Federal Court to set aside the State Engineer's ruling and order him to act on the applications in accordance with the Court's rulings and other applicable law. Additional requests for relief include a declaration that NRS 459.910, as applied by the State Engineer, violates the Supremacy Clause of the United States Constitution.

In February, the Nevada State Engineer denied the DOE's applications to appropriate 430-acre feet of water annually for use by the Yucca Mountain Project beginning in 2002. These five permit applications for water rights were submitted by the DOE in 1997 in order to perform activities mandated by the Nuclear Waste Policy Act (NWPA).

The State Engineer denied DOE the permits based on his opinion that Nevada law NRS 459.910, which purports to prohibit the storage of high-level radioactive waste in Nevada, establishes that the requested use of water threatened to prove detrimental to the public interest and was vetoed by the State. The Federal Court complaint states: "NRS 459.910 stands as an obstacle to the Congressional mandate in the NWPA that the DOE continue activities related to the potential siting, construction and operation of a repository for storage of nuclear waste at Yucca Mountain, including, but not limited to, performance confirmation testing and supporting activities and thus violates the Supremacy Clause of the United States Constitution."

The NWPA established the Federal responsibility and Federal policy for the disposal of high-level radioactive waste and spent nuclear fuel. It provides a specific opportunity for the State of Nevada to file a notice of disapproval to Congress if the President recommends Yucca Mountain for development as a repository.