



The Secretary of Energy
Washington, DC 20585

April 5, 2006

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed for the consideration of the Congress is a bill entitled "Nuclear Fuel Management and Disposal Act." I recommend strongly that the Congress enact this important legislation as soon as possible.

Events in recent years, including the surge in energy prices resulting from Hurricane Katrina, demonstrate the importance and urgency of efforts to promote a more diverse fuel supply for the Nation. Nuclear energy, which currently accounts for 20 percent of the Nation's electric generating capacity, plays an important role in this effort. Nuclear generating facilities, and the people who operate them, have demonstrated that nuclear energy is a safe, reliable, and efficient source of electric power for the United States. Expanded use of nuclear power can reduce carbon emissions while also making the Nation more energy independent and playing an important role in maintaining national security objectives.

The existence of a repository at Yucca Mountain is critical to the expanded use of nuclear power. In particular, the Yucca Mountain repository is necessary to deal with the more than 55,000 metric tons of spent nuclear fuel and high-level waste currently stored at over 100 sites in 39 States, as well as the approximately 2,000 metric tons being generated annually. Moreover, even with the future deployment of advanced recycling and reactor technologies contemplated in the Global Nuclear Energy Partnership, the Yucca Mountain repository will continue to be necessary to deal with the spent nuclear fuel and high-level radioactive waste that will be generated by those technologies.

This bill contains a number of provisions to facilitate the licensing, construction, and operation of a repository at Yucca Mountain. These provisions will permit the Department to accelerate fulfillment of its responsibilities, without diminishing the protection currently afforded workers, members of the public, and the environment.

The enclosed bill contains the following primary provisions:

First, the bill would withdraw permanently from public use approximately 147,000 acres of land in Nye County, Nevada. Permanent land withdrawal, which can be accomplished only by law, is necessary to assure security and public health and safety around the Yucca Mountain repository. Moreover, this provision would comply with existing Nuclear Regulatory Commission licensing requirements.



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Second, the bill would repeal the statutory 70,000 metric ton capacity limitation on the repository at Yucca Mountain so that the amount of waste material emplaced in the repository would be determined by the actual physical capacity of the Mountain and conditions in the license granted by the Nuclear Regulatory Commission. The Final Environmental Impact Statement that accompanied the Site Recommendation to the President in 2002 analyzed the emplacement of nearly 120,000 metric tons of spent nuclear fuel and high-level radioactive waste. Potentially more than 120,000 metric tons could be emplaced in the repository. Continuation of the current limit would mean that the repository at Yucca Mountain would be oversubscribed with waste materials as soon as it opened. Repeal of the limit would postpone indefinitely the need for the Department to begin a second repository siting and development effort.

Third, the bill would provide that, if the Nuclear Regulatory Commission authorizes construction of the repository, subsequent licensing actions would be conducted using expedited, simplified procedures.

Fourth, the bill also would make clear that the Department could undertake infrastructure activities, including construction of a rail line to connect the Yucca Mountain site with the national rail network, prior to receiving construction authorization for the repository.

Fifth, the bill would direct relevant Federal, State, local, and Tribal officials to grant expeditiously, to the extent consistent with law, rights-of-way and other authorizations for infrastructure activities.

Sixth, the Administration believes that the annual fees currently paid to the Government by utilities to finance radioactive waste disposal activities should be treated as offsetting collections against the appropriations from the Nuclear Waste Fund, and supports reclassifying these fees in a budget-neutral manner. Beginning in FY 2008, section 5 of this proposed legislation would reclassify mandatory Nuclear Waste Fund receipts as discretionary, in an amount equal to appropriations from the Fund for authorized waste disposal activities.

If this reclassification is enacted into law, the Administration will work with Congress to implement the reclassification in a budget-neutral manner. More specifically, the Administration would net these Nuclear Waste Fund collections against appropriations made from the Fund, reduce the gross budget authority and outlay levels reflected in the budget for the program by the amount of the receipts proposed to be reclassified, and reduce the overall proposed discretionary budget authority levels by the same amount. With the expiration in 2002 of the discretionary spending limits in the Balanced Budget and Emergency Deficit Control Act of 1985, there does not appear to be a mechanism that could be created in this legislation that the Congressional Budget Office (CBO) would score as providing a budget-neutral reclassification of these receipts. Therefore, the Administration's understanding is that in scoring this legislation, CBO will only reflect the loss of mandatory receipts from this reclassification, but not the offsetting reduction in discretionary spending that would result. Nevertheless, it is the Administration's intention to achieve a budget-neutral outcome.

Seventh, the bill would address regulatory requirements and eliminate essentially duplicative regulation of material transported or stored in Nuclear Regulatory Commission certified containers or of material located at Yucca Mountain. It also would specify that the Environmental Protection Agency would issue, administer, and enforce any required air quality permits in connection with activities carried out under the Nuclear Waste Policy Act of 1982.

Eighth, the bill would make clear that the Department has the authority to regulate the safety and security of transportation of radioactive materials to Yucca Mountain in the same manner as it currently regulates the transportation of weapons grade materials. The Department has been transporting these materials safely for decades in accordance with requirements adopted by the Department under its Atomic Energy Act authority.

Ninth, provisions are included in the bill to assure an adequate supply of water to carry out activities under the Nuclear Waste Policy Act of 1982 at Yucca Mountain.

Finally, the bill would require the Nuclear Regulatory Commission, in considering whether to permit the construction or operation of a nuclear reactor or a related facility, to deem, without further consideration, that sufficient capacity will be available in a timely manner to dispose of the spent nuclear fuel and high-level radioactive waste resulting from the operation of the reactor and any related facilities.

In summary, nuclear power has been demonstrated to be a safe, reliable, and efficient source of power. Its expanded use can help spur economic growth in the United States in the 21st century. We must, however, also demonstrate that we can dispose of nuclear materials in an equally safe, reliable, and efficient way. Enactment of this legislative proposal will help advance the Nation's energy independence, energy security, and national security objectives.

For your convenience, I am enclosing a more detailed summary of the bill's major provisions, the bill, and a sectional analysis of the bill.

The Office of Management and Budget advises that enactment of this bill is in accord with the program of the President.

If you or your staff have any questions regarding the bill, please contact Ms. Jill L. Sigal, Assistant Secretary for Congressional and Intergovernmental Affairs, at 202-586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Bodman", written in a cursive style.

Samuel W. Bodman

Enclosures

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nuclear Fuel Management and Disposal Act”.

SEC. 2. DEFINITIONS.

(a) NUCLEAR WASTE POLICY ACT OF 1982 DEFINITIONS.—For purposes of this Act:

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

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

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

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

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

5 (3) “Project” means the Yucca Mountain Project.

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

7 (a) LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.—

8 (1) LAND WITHDRAWAL.—Subject to valid existing rights, and except
9 as provided otherwise in this Act, the lands described in subsection (c) are
10 withdrawn permanently from all forms of entry, appropriation, and disposal under
11 the public land laws, including without limitation the mineral leasing laws, the
12 geothermal leasing laws, and the mining laws.

13 (2) JURISDICTION.—Except as otherwise provided in this Act,
14 jurisdiction over the Withdrawal is vested in the Secretary. There are transferred
15 to the Secretary the lands within the Withdrawal under the jurisdiction of the
16 Secretary concerned on the date of enactment of this Act.

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

1 (b) REVOCATION AND MODIFICATION OF PUBLIC LAND ORDERS AND
2 RIGHTS OF WAY.—

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

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

8 (c) LAND DESCRIPTION.—

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

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

15 (A) publish in the Federal Register a notice containing a legal
16 description of the Withdrawal; and

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

20 (3) TECHNICAL CORRECTIONS. —The maps and legal description
21 referred to in this subsection have the same force and effect as if they were
22 included in this Act. The Secretary of the Interior may correct clerical and
23 typographical errors in the maps and legal description.

1 (d) RELATIONSHIP TO OTHER RESERVATIONS. —The provisions of
2 subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (sections 3011-
3 3023 of Pub. L. No. 106-65) and of Public Land Order 2568 do not apply to the lands
4 withdrawn and reserved by subsection (a). This Act does not apply to any other lands
5 withdrawn for use by the Department of Defense under subtitle A of title XXX of the
6 Military Lands Withdrawal Act of 1999.

7 (e) MANAGEMENT RESPONSIBILITIES.

8 (1) GENERAL AUTHORITY.—The Secretary shall manage the lands
9 withdrawn by subsection (a) consistent with the Federal Land Policy and
10 Management Act of 1976 (43 USC 1701 et seq.), this Act, and other applicable
11 law. The Secretary shall consult with the Secretary concerned in discharging that
12 responsibility.

13 (2) MANAGEMENT PLAN.—

14 (A) DEVELOPMENT. —The Secretary, after consulting with the
15 Secretary concerned, shall develop a management plan for the use of the
16 Withdrawal. Within 3 years after the date of enactment of this Act, the
17 Secretary shall submit the management plan to the Congress and the State
18 of Nevada.

19 (B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED
20 ISSUES. —Subject to subparagraphs (C), (D), and (E), any use of the
21 Withdrawal for activities not associated with the Project is subject to
22 conditions and restrictions that the Secretary considers necessary or
23 desirable to permit the conduct of Project-related activities.

1 (C) DEPARTMENT OF THE AIR FORCE USES. —The
2 management plan may provide for the continued use by the Department of
3 the Air Force of the portion of the Withdrawal within the Nellis Air Force
4 Base Test and Training Range under terms and conditions on which the
5 Secretary and the Secretary of the Air Force agree concerning Air Force
6 activities.

7 (D) NEVADA TEST SITE USES. —The Secretary may allow the
8 National Nuclear Security Administration to continue to use the portion of
9 the Withdrawal on the Nevada Test Site and may impose any conditions
10 on that use that the Secretary considers necessary to minimize any effect
11 on either Project or Administration activities.

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

18 (i) GRAZING. —The Secretary may permit grazing to
19 continue where established before the date of enactment of this
20 Act, subject to regulations, policies, and practices that the
21 Secretary, after consulting with the Secretary of the Interior,
22 determines to be necessary or appropriate. The management of

1 grazing shall be conducted in accordance with applicable grazing
2 laws and policies, including—

3 (I) the Act commonly known as the “Taylor
4 Grazing Act” (43 U.S.C. 315 et seq.);

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

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

9 (ii) HUNTING AND TRAPPING. —The Secretary may
10 permit hunting and trapping within the Withdrawal where
11 established before the date of enactment of this Act, except that the
12 Secretary, after consulting with the Secretary of the Interior and
13 the State of Nevada, may designate zones where, and establish
14 periods when, no hunting or trapping is permitted for reasons of
15 public safety, national security, administration, or public use and
16 enjoyment.

17 (F) MINING. —

18 (i) IN GENERAL. —Except as provided in subparagraph
19 (B), surface or subsurface mining or oil or gas production,
20 including slant drilling from outside the boundaries of the
21 Withdrawal, is not permitted at any time on lands on or under the
22 Withdrawal. The Secretary of the Interior shall evaluate and
23 adjudicate the validity of all mining claims on the portion of the

1 Withdrawal that, on the date of enactment of this Act, was under
2 the control of the Bureau of Land Management. The Secretary
3 shall provide just compensation for the acquisition of any valid
4 property right.

5 (ii) CIND-R-LITE MINE. —Patented Mining Claim No.
6 27-83-0002, covering the Cind-R-Lite mine, shall not be affected
7 by establishment of the Withdrawal, unless the Secretary, after
8 consulting with the Secretary of the Interior, determines that the
9 mine's acquisition is required in furtherance of the reserved use of
10 the Withdrawal set forth in subsection (a)(3). In that event, the
11 Secretary shall provide just compensation.

12 (G) LIMITED PUBLIC ACCESS. —The management plan may
13 provide for limited public access to the portion of the Withdrawal under
14 Bureau of Land Management control on the date of enactment of this Act.
15 Permitted uses may include continuation of the Nye County Early
16 Warning Drilling Program, utility corridors, and other uses the Secretary,
17 after consulting with the Secretary of the Interior, considers consistent
18 with the purposes of the Withdrawal.

19 (3) CLOSURE.—If the Secretary, after consulting with the Secretary
20 concerned, determines that the health and safety of the public or the common
21 defense and security require the closure of a road, trail, or other portion of the
22 Withdrawal, or the airspace above the Withdrawal, the Secretary may effect and
23 maintain the closure and shall provide notice of the closure.

1 (4) IMPLEMENTATION.—The Secretary and the Secretary concerned
2 shall implement the management plan developed under paragraph (2) under terms
3 and conditions on which they agree.

4 (f) IMMUNITY.—The United States and its departments and agencies shall be
5 held harmless and shall not be liable for damages to persons or property suffered in the
6 course of any mining, mineral leasing, or geothermal leasing activity conducted on the
7 Withdrawal.

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

13 **SEC. 4. APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.**

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

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

22 (1) inserting “(1)” after “ACTION. —”;

23 (2) striking the last two sentences; and

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

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

“(3)(A) At any time before or after the Commission issues a final decision on an application from the Secretary for construction authorization under this subsection, the Secretary may undertake infrastructure activities that the Secretary deems are necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste. Infrastructure activities include, but are not limited to, safety upgrades; site preparation; 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 construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, rail lines, and non-nuclear support facilities.

1 “(B) The Secretary shall comply with all applicable requirements under the
2 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an
3 infrastructure activity undertaken under this paragraph. If the Secretary determines that
4 an environmental impact statement is required in connection with an infrastructure
5 activity undertaken under this paragraph, the Secretary need not consider the need for the
6 action, alternative actions, or a no-action alternative. To the extent a Federal agency
7 must consider the potential environmental impact of an infrastructure activity undertaken
8 under this paragraph, the agency shall adopt, to the extent practicable, an environmental
9 impact statement prepared under this paragraph without further action. Adoption satisfies
10 the responsibilities of the adopting agency under the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4321 et seq.), and no further action is required by the agency.

12 “(C) The Commission may not deny construction authorization, permission to
13 receive and possess spent nuclear fuel and high-level radioactive waste, or any other
14 action concerning the repository on the grounds that the Secretary undertook an
15 infrastructure activity under this paragraph.”.

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

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

1 (1) in subsection (a)(i) by inserting “or an infrastructure activity” after
2 “repository”, by inserting “, State, local, or Indian tribe” after “Federal” both
3 places it appears, and by striking “repositories” and inserting “a repository or
4 infrastructure activity”;

5 (2) in subsection (b) by striking “, and may include terms and conditions
6 permitted by law”; and

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

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

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

17 **SEC. 5. NUCLEAR WASTE FUND.**

18 (a) CREDITING FEES.—Beginning on October 1, 2007, and continuing through
19 the end of the fiscal year when construction is complete for surface facilities for the fully
20 operational repository as described in the license application and for the Nevada rail line,
21 fees collected by the Secretary and deposited in the Nuclear Waste Fund under the
22 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) shall be credited to the

1 Nuclear Waste Fund as discretionary offsetting collections each year in amounts not to
2 exceed the amounts appropriated from the Nuclear Waste Fund for that year.

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

8 **SEC. 6. REGULATORY REQUIREMENTS.**

9 (a) MATERIAL REQUIREMENTS.—Notwithstanding any other law, no
10 Federal, State, interstate, or local requirement, either substantive or procedural, that is
11 referred to in section 6001(a) of the Resource Conservation and Recovery Act (42 U.S.C.
12 6961(a)), applies to—

13 (1) any material owned by the Secretary if the material is transported or
14 stored in a package, cask, or other container that the Commission has certified for
15 transportation or storage of that type of material; or

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

19 (b) PERMITS.—The Administrator of the Environmental Protection Agency shall
20 be the permitting agency for purposes of issuing, administering, or enforcing any new or
21 existing air quality permit or requirement applicable to a Federal facility or activity
22 subject to the requirements of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et
23 seq.). A State or unit of local government shall not issue, administer, or enforce a new or

1 existing air quality permit or requirement affecting a Federal facility or activity in the
2 Withdrawal and subject to the requirements of the Nuclear Waste Policy Act of 1982.

3 **SEC. 7. TRANSPORTATION.**

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

6 “SEC. 181. (a) The Secretary is authorized to determine the extent to which any
7 transportation done in carrying out the Secretary's functions under this Act that is
8 regulated under the Hazardous Materials Transportation Authorization Act of 1994 shall
9 instead be regulated exclusively under the Atomic Energy Act of 1954.

10 “(b) On request by the Secretary, the Secretary of Transportation is authorized to
11 determine pursuant to section 5125 of title 49, United States Code, that any requirement
12 of a State, political subdivision of a State, or Indian tribe regarding transportation done by
13 or on behalf of the Secretary in carrying out this Act is preempted, irrespective of
14 whether the transportation otherwise is or would be subject to regulation under the
15 Hazardous Materials Transportation Authorization Act of 1994.”.

16 **SEC. 8. WATER RIGHTS.**

17 Section 124 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10144) is
18 amended by inserting “(a) WATER RIGHTS ACQUISITION EFFECT.—” after the
19 section number and by adding the following new subsection (b):

20 “(b) BENEFICIAL USE OF WATER.—Notwithstanding any other Federal,
21 State, or local law, the use of water from any source in quantities sufficient to accomplish
22 the purposes of this Act to carry out Department functions under this Act is declared to be
23 a use that is beneficial to interstate commerce and that does not threaten to prove

1 detrimental to the public interest. A State shall not enact or apply a law that
2 discriminates against this use. The Secretary, through purchase or otherwise, may obtain
3 water rights necessary to carry out Department functions under this Act.”.

4 **SEC. 9. WASTE CONFIDENCE.**

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

LEGISLATIVE PROVISIONS SUMMARY

Permanent Land Withdrawal: This provision would withdraw permanently approximately 147,000 acres of land currently controlled by the Bureau of Land Management, the Air Force, and the Nevada Test Site (NTS) and vest jurisdiction over the land in the Secretary of Energy to construct and operate a repository at Yucca Mountain. The area proposed for withdrawal is the area identified in the Final Environmental Impact Statement (FEIS) accompanying the Site Recommendation to the President in 2002.

Enactment of this proposal would satisfy one of the Nuclear Regulatory Commission (NRC) licensing conditions at Yucca Mountain---that the geologic repository operations area (GROA) be withdrawn permanently from public use (only a law can withdraw the land permanently).

Yucca Mountain Capacity: This provision would repeal the 70,000 metric ton statutory limit on emplacement of radioactive material at Yucca Mountain. The current and projected inventory of commercial spent nuclear fuel exceeds the statutory capacity of the repository. Removing this limit would allow the nearly 120,000 metric tons of spent nuclear fuel and high-level radioactive wastes whose potential environmental impact was analyzed in the FEIS to be emplaced safely at Yucca Mountain. Preliminary estimates have indicated that the site could safely isolate the entire commercial spent fuel inventory currently projected from existing reactors, including life extensions for those plants, in addition to all anticipated DOE high-level radioactive waste materials. Enactment of this provision would postpone indefinitely the decision to initiate a second repository program.

Licensing: The section on application procedures would amend the licensing process in several respects. First, it would make clear that an application for construction authorization need not include information on surface facilities other than those facilities necessary for initial operations. Second, it would establish an expedited one-year schedule and a simplified, informal process (including discovery procedures) for use by the NRC (if the NRC authorizes construction of the repository) to consider an application for permission to "receive and possess" nuclear materials and as well as applications for other license actions. A six-month extension would be allowed under the provision.

Current law sets no limits on this process beyond the construction authorization. If left unaddressed, the “receive and possess” licensing phase could take many years and would make achievement of near-term repository operations extremely unlikely. Finally, it would indicate that the NRC need not consider in its environmental review an action connected or otherwise related to the repository if the action is undertaken outside the geologic repository operations area and does not need an NRC license. This would help focus the NRC’s attention on the matters at the repository of most concern to it.

Infrastructure Activities: This provision would authorize the Secretary to undertake infrastructure activities needed to further waste disposal activities, including the construction of a rail line to connect the Yucca Mountain site with the national rail network. These activities could be undertaken outside or within the GROA and before or after an NRC construction authorization decision. This provision would permit DOE to begin fulfilling its responsibilities as soon as possible by authorizing it to initiate site preparation, utility, communications, and safety upgrades at Yucca Mountain before NRC grants construction authorization for the repository.

The provision would require the Department to conduct environmental reviews of infrastructure activities. The scope of environmental review of infrastructure activities would be limited in a manner similar to the way in which it is limited as to other activities under the NWPA as to need, alternatives, and the no-action alternative and would require other Federal agencies to adopt an environmental impact statement prepared under this provision without recirculation. The bill specifies that the undertaking of an infrastructure activity under this section would not be grounds for NRC rejection of an application for construction authorization for the repository or any other licensing action concerning the repository. The provision would direct relevant Federal, State, local, and Tribal officials to grant expeditiously, to the extent consistent with law, rights-of-way and other authorizations for infrastructure activities. Finally, the provision would make clear that the development, construction, and operation of an infrastructure activity is in the public interest and consistent with the public convenience and necessity.

Funding Reform: This provision, based on legislation the Administration sent to Congress with the FY 2005 budget, would

facilitate adequate funding for the licensing and construction phase of the program by making a technical budgetary scoring change. The provision would reclassify nuclear waste fees, in an amount equal to appropriations for the repository program. Currently, these receipts are recorded as mandatory receipts and do not offset discretionary appropriations for the civilian nuclear waste program. The proposed legislation would shift the classification from the mandatory category to the discretionary category in the Federal budget.

This provision also adds "infrastructure activities" to the list of activities for which expenditures may be made from the Nuclear Waste Fund.

Regulatory Requirements: This provision would exempt material that is owned by the Secretary and transported or stored in NRC-licensed containers or located at the Yucca Mountain site from Federal, State, and local environmental requirements under the Resource Conservation and Recovery Act. It also would designate the Environmental Protection Agency as the appropriate agency to issue, administer, and enforce any air quality permits required in connection with the nuclear waste project. These provisions would simplify the regulatory framework for the repository without compromising environmental protection or safety.

Transportation: This provision would clarify the Secretary of Energy can determine the extent to which any transportation done in carrying out the Secretary's functions under the NWPA would be regulated under the Atomic Energy Act of 1954, as is the case currently with respect to the transportation of weapons grade material. In addition, on request by the Secretary of Energy, the Secretary of Transportation would be authorized to determine pursuant to section 5125 of title 49, United States Code, that any requirement of a State, political subdivision of a State, or Indian tribe regarding transportation done by or on behalf of the Secretary of Energy in carrying out the NWPA is preempted, irrespective of whether the transportation otherwise is or would be subject to regulation under the Hazardous Materials Transportation Authorization Act of 1994.

Water Rights: This provision would declare water in quantities sufficient to accomplish the purposes of the Nuclear Waste Policy Act of 1982 that is used for the repository to be beneficial to interstate commerce and not detrimental to the public interest.

While Nevada has determined there is sufficient water, Nevada State law, in effect, deems that it is not in Nevada's public interest to allow the water to be used for repository development. This provision would result in non-discriminatory treatment of the Department. The provision also would authorize the Secretary to obtain water rights, by purchase or otherwise, to carry out the Department's functions under the NWPA.

Waste Confidence: This provision would require the NRC, in considering whether to permit the construction or operation of a nuclear reactor or a related facility, to deem, without further consideration, that sufficient capacity will be available in a timely manner to dispose of the spent nuclear fuel and high-level radioactive waste resulting from the operation of the reactor and any related facilities.

SECTIONAL ANALYSIS

SECTION 1. — SHORT TITLE.

This section provides a short title for the bill—“Nuclear Fuel Management and Disposal Act”.

SEC. 2. — DEFINITIONS.

This section contains definitions for certain terms used in the bill.

SEC. 3. — LAND WITHDRAWAL AND RESERVATION.

Section 3 deals with the permanent withdrawal from public use of the land on which the geologic repository operations area is located. Section 3 would withdraw permanently from public use approximately 147,000 acres in Nye County, Nevada. The proposed land withdrawal is the one considered as a potential land withdrawal in the Final Environmental Impact Statement accompanying the Secretary of Energy’s 2002 nuclear waste repository site recommendation to the President, which the Congress subsequently approved.

Subsections (a), (b), (c), and (d) would withdraw the land; vest the Secretary of Energy with jurisdiction over the withdrawal; transfer jurisdiction from the Secretary of the Air Force and Secretary of the Interior of lands within the withdrawal currently under their jurisdiction; reserve the land for the Secretary of Energy’s use for activities associated with the disposal of high-level waste and spent nuclear fuel under the Nuclear Waste Policy Act of 1982; and revoke existing land orders and right-of-way reservations over the withdrawn lands.

Subsection (e) would confer general management authority over the withdrawal on the Secretary of Energy. It would require development of a management plan that would be submitted to the Congress and the State of Nevada within three years. It would authorize continued use of the land by the Air Force and Nevada Test Site, and would permit continuation of existing grazing, hunting, trapping, and mining uses of the withdrawn land.

Subsection (f) concerns claims against the United States. It would grant immunity to the United States, its departments and agencies, for any damages to persons or property suffered in the course of any mining, mineral leasing, or geothermal leasing on the withdrawal. This is a standard protection for the taxpayers in withdrawal legislation.

Subsection (g) would authorize land acquisition within the withdrawal. The Secretary of the Interior would conduct any exchange of lands outside the withdrawal for lands within the withdrawal.

SEC. 4. — APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.

Section 4 would amend the Nuclear Regulatory Commission (NRC) licensing process in several respects.

First, section 4 would clarify that an initial application for construction authorization at Yucca Mountain need not include information on surface facilities other than those facilities necessary for initial operations.

Second, section 4 would repeal the 70,000 metric ton limit on the quantity of spent fuel that could be emplaced at the Yucca Mountain repository. Removing this limit would allow the nearly 120,000 metric tons of spent nuclear fuel and high-level nuclear waste whose environmental impact was analyzed in 2002 to be emplaced safely at Yucca Mountain. Enactment of this provision would postpone indefinitely the decision to initiate a second repository program.

Third, section 4 would establish an expedited one-year schedule and a simplified, informal process (including discovery procedures) for use by the NRC (if the NRC authorizes construction of the repository) to consider an application for permission to "receive and possess" nuclear materials, as well as applications for other license actions. A six-month extension would be allowed under the provision. Current law sets no limits on this process beyond the construction authorization.

Fourth, section 4 would authorize the Secretary to undertake infrastructure activities needed to further waste disposal activities at the Yucca Mountain site or transportation to such site of spent nuclear fuel or high level radioactive waste, including the construction of a rail line to connect the Yucca Mountain site with the national rail network. These activities could be undertaken before or after an NRC construction authorization decision on the Yucca Mountain repository.

Fifth, section 4 would require normal environmental reviews of infrastructure activities. The scope of environmental review of activities undertaken under this section would be limited in a similar way as certain other activities under the Nuclear Waste Policy Act of 1982 (NWPA) as to need, alternatives, and the no-action alternative, and other Federal agencies would be required to adopt an environmental impact statement prepared under this section. The bill specifies that the undertaking of an infrastructure activity under this section would not provide grounds for NRC rejection of a construction authorization application for the Yucca Mountain repository.

Sixth, section 4 would direct relevant Federal, State, local, and Tribal officials to grant expeditiously, to the extent consistent with law, rights-of-way and other authorizations for infrastructure activities. This section also makes clear such activities are in the public interest and consistent with the public convenience and necessity.

Finally, section 4 would indicate that the NRC need not consider in its environmental review relating to the Yucca Mountain repository an action connected or otherwise

related to the repository that is undertaken outside the geologic repository operations area and does not need an NRC license. This would allow the NRC to focus its time and attention on the matters related to the safety of repository.

SEC. 5. — NUCLEAR WASTE FUND.

Section 5 would facilitate adequate funding for the licensing and construction phase of the Yucca Mountain program by making a technical budgetary scoring change. The annual fees collected from utilities would be classified as discretionary offsetting collections and would be credited against the amount appropriated from the Nuclear Waste Fund each year. Up to now the fees collected have been scored as mandatory receipts (fees required by law), while repository program expenditures have been classified as discretionary expenditures. Under deficit reduction laws, mandatory receipts cannot be used to offset discretionary expenditures. This proposal would correct that structural budget problem.

This section also would add infrastructure activities to the list of activities for which expenditures may be made from the Fund.

SEC. 6. REGULATORY REQUIREMENTS.

Section 6 would exempt from the requirements of the Resource Conservation and Recovery Act (RCRA) any material owned by the Secretary if it is transported in a package, cask, or other container certified by the NRC for transportation or storage of that type of material. Similarly, any material located at the Yucca Mountain site would be exempt from RCRA if managed in accordance with a license issued by the NRC to receive and possess high-level waste and spent nuclear fuel. The NRC licensing process is complex and comprehensive, designed to protect public health and safety. This section would eliminate lengthy, largely duplicative reviews under a different regulatory scheme.

This section also would designate the Environmental Protection Agency as the appropriate agency to issue, administer, and enforce any air quality permits required in connection with the nuclear waste project. This would simplify the regulatory framework for the repository without compromising environmental protection or safety.

SEC. 7. — TRANSPORTATION.

Section 7 would make clear that the Secretary of Energy can determine the extent to which any transportation done in carrying out the Secretary of Energy's functions under the NWSA would be regulated exclusively under the Atomic Energy Act of 1954, as is currently the case with respect to the transportation of weapons grade material. In addition, on request by the Secretary of Energy, the Secretary of Transportation would be authorized to determine pursuant to section 5125 of title 49, United States Code, that any requirement of a State, political subdivision of a State, or Indian tribe regarding transportation done by or on behalf of the Secretary of Energy in carrying out the NWSA is preempted, irrespective of whether the transportation otherwise is or would be subject to regulation under the Hazardous Materials Transportation Authorization Act of 1994.

SEC. 8. --- WATER RIGHTS.

Section 8 would declare the use of water from any source for carrying out Department of Energy functions under the Nuclear Waste Policy Act of 1982 to be beneficial to interstate commerce in quantities sufficient to accomplish the purposes of the Act and would declare that such use does not threaten to prove detrimental to the public interest. The section would prohibit a State from enacting or applying a law that discriminates against that use. The section also would authorize the Secretary to obtain water rights by purchase or otherwise to carry out the Department's functions under the NWPA.

SEC. 9. --- WASTE CONFIDENCE.

Section 9 would require the NRC, in considering whether to permit the construction or operation of a nuclear reactor or a related facility, to deem, without further consideration, that sufficient capacity will be available in a timely manner to dispose of the spent nuclear fuel and high-level radioactive waste resulting from the operation of the reactor and any related facilities.