

**M e m o r a n d u m**

Date: April 19, 2006

To: Commercial Vehicle Section

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**  
Commercial Vehicle Section

File No.: 062.A9455.

Subject: SB 2589, NUCLEAR FUEL MANAGEMENT AND DISPOSAL ACT

United States Senators Domenici and Inhofe introduced Senate Bill (SB) 2589, Nuclear Fuel Management and Disposal Act, the transportation portion of which amends Title 42 of the United States code (42 USC), Sections 10101 – 10270, The Nuclear Waste Policy Act of 1982. Attached, you will find information on Senate Bill (SB) 2589, Nuclear Fuel Management and Disposal Act, as it relates to the transportation of nuclear waste, including letters sent from the governors of the states of Arizona and Oregon as well as bullet points put together by the Western Interstate Energy Board, outlining their concerns with the transportation section of this Bill.

This Bill raises numerous concerns about authority States currently have over the transportation of nuclear waste through their respective areas of jurisdiction. It allows the Secretary of Energy to determine the extent to which the transportation of nuclear waste is required to comply with the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA), and to which extent this transportation will be regulated exclusively by 42 USC, Sections 2011-2023, The Atomic Energy Act of 1954. (AEA) Furthermore, SB 2589 permits the Secretary of Transportation, upon request from the Secretary of Energy, to preempt any State requirement relating to transportation, regardless of whether the transportation would otherwise be subject to regulation under the HMTAA.

The Nuclear Regulatory Commission (NRC) was given the authority by the AEA to regulate all aspects of nuclear fuel with little oversight. While there is no requirement the NRC work in cooperation with the States to regulate the transportation of nuclear waste, the AEA does recognize the need for cooperation between the States and the NRC with respect to the control of radiation hazards, promotion of an orderly regulatory pattern, and creation of additional legislation relating to source materials and byproduct materials.

With respect to the transportation of nuclear waste, the AEA does little more than require the transporter to have a license issued by the NRC. It authorizes the NRC to designate routes to be traveled when transporting nuclear waste. The HMTAA, on the other hand, requires shipping papers and training as well as the allocation of inspectors to inspect shipments of radioactive

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waste at the place of origin. It prohibits the misrepresentation of hazards through placards, labels or markings. Furthermore, the HMTAA recognizes the state's right to designate specific routes over which hazardous material may or may not be transported, and gives guidelines for the risk assessment and analysis of these routes.

States, for many years, have had a working relationship with the Department of Transportation forged in a spirit of cooperation. The passing of this SB 2589, the Nuclear Fuel Management and Disposal Act, would appear to take authority away from both the States as well as the Department of Transportation, favoring instead the Department of Energy and the Nuclear Regulatory Commission, by exempting shipments of nuclear waste and spent nuclear fuel from hazardous material regulations. Furthermore, it would leave the potential problem of one or two agencies regulating and policing themselves.



Jim McNeill  
Motor Carrier Specialist I

Attachments: Record of SB 2589, The Nuclear Fuel Management and Disposal Act  
Letter to authors of SB 2589 from AZ Governor, Janet Napolitano  
Letter to authors of SB 2589 from OR Governor, Theodore Kulongoski  
Bullet points outlining concerns, as seen by Western Governors' Association

disproportionately represented in traditionally low-growth and low-opportunity service sectors. Promoting entrepreneurial education to undergraduate students at colleges and universities expands the pool of potential business owners to technology, financial services, legal services, and other non-traditional areas in which the overall development of minority firms has been slow. Growing the size and capacity of existing minority firms and promoting entrepreneurship among minority students already committed to higher education will have a direct relationship on the employment rate, income levels and wealth creation of minorities throughout the nation.

The funds are also to be used to open a Small Business Development Center (SBDC) on the campus of the institution to assist in capacity building, innovation and market niche development, and to offer traditional business counseling, similar to other SBDCs. The one-to-one counseling offered by the business specialists at these centers has proven to be the most effective model available for making entrepreneurs run more effective, more efficient, and more successful businesses. By placing the centers on campus, the institutions will be able to leverage the \$1 million grant for greater returns and coordinate efforts with the school's academic departments to maximize the efficacy of the program.

While the funding in this bill is modest relative to the multi-billion dollar budgets we discuss on a daily basis, these funds can go a long way and be leveraged to create economic growth in the most needed areas of this country. With this legislation, we will help foster long-term innovation and competitiveness in the small business sector. Mr. President, this bill is a small investment in the future of this country that I am sure will do much to foster economic growth in our minority communities and beyond. I urge my colleagues to join me as cosponsors of this important piece of legislation.

By Mr. DOMENICI (for himself and Mr. INHOFE) (by request):

S. 2589. 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; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I am pleased to rise today, on behalf of myself and Senator INHOFE, to introduce, at the request of the administration, legislation to further the development at Yucca Mountain of the national repository for nuclear spent fuel and defense nuclear waste. This bill is a good start on the road to enactment of legislation that will resolve issues critical to the construction, licensing and operation of the facility.

I hope to begin hearings on this issue in the Energy and Natural Resources

Committee shortly after the conclusion of the upcoming recess. I look forward to working with the administration, Senator INHOFE, and other interested Senators to facilitate the construction and operation of the repository, a project so important to the continued development of safe, clean, and efficient nuclear power in this country.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2589

*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) DEFINITIONS FROM NUCLEAR WASTE POLICY ACT OF 1982.—In this Act, the terms "Commission", "disposal", "Federal agency", "high-level radioactive waste", "repository", "Secretary", "State", "spent nuclear fuel", and "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.—In this Act:

(1) PROJECT.—The term "Project" means the Yucca Mountain Project.

(2) SECRETARY CONCERNED.—The term "Secretary concerned" means the Secretary of the Air Force or the Secretary of the Interior, or both, as appropriate.

(3) WITHDRAWAL.—The term "Withdrawal" means the withdrawal under section 3(a)(1) of the geographic area consisting of the land described in section 3(c).

#### SEC. 3. LAND WITHDRAWAL AND RESERVATION.

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

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

(2) JURISDICTION.—

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

(B) TRANSFER.—There is transferred to the Secretary the land covered by the Withdrawal that is under the jurisdiction of the Secretary concerned on the date of enactment of this Act.

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

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

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

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

(d) RELATIONSHIP TO OTHER RESERVATIONS.—

(1) IN GENERAL.—Subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (Public Law 106-65; 113 Stat. 885) and Public Land Order 2668 do not apply to the land covered by the Withdrawal and reserved by subsection (a).

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

(e) MANAGEMENT RESPONSIBILITIES.—

(1) GENERAL AUTHORITY.—The Secretary, in consultation with the Secretary concerned, as applicable, shall manage the land covered by the Withdrawal in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), this Act, and other applicable law.

(2) MANAGEMENT PLAN.—

(A) DEVELOPMENT.—Not later than 3 years after the date of enactment of this Act, the Secretary, after consultation with the Secretary concerned, shall develop and submit to Congress and the State of Nevada a management plan for the use of the land covered by the Withdrawal.

(B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED ISSUES.—Subject to subparagraphs (C), (D), and (E), any use of the land covered by the Withdrawal for activities not associated with the Project is subject to such conditions and restrictions as the Secretary considers to be necessary or desirable to permit the conduct of Project-related activities.

(C) DEPARTMENT OF THE AIR FORCE USES.—The management plan may provide for the continued use by the Department of the Air Force of the portion of the land covered by the Withdrawal within the Nellis Air Force Base Test and Training Range under terms and conditions on which the Secretary and the Secretary of the Air Force agree with respect to 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.—

(1) 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 (i) 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 grazing on land covered by the Withdrawal to continue on areas on which grazing was established before the date of enactment of this Act, in accordance with applicable grazing laws and policies, including—

(I) the Act of June 28, 1934 (commonly known as the "Taylor Grazing Act") (43 U.S.C. 315 et seq.);

(II) title IV of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1761 et seq.); and

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

(iii) **HUNTING AND TRAPPING.**—The Secretary may permit hunting and trapping on land covered by the Withdrawal on areas in which hunting and trapping were permitted on the day before the date of enactment of this Act, except that the Secretary, after consultation with the Secretary of the Interior and the State of Nevada, may designate zones in which, and establish periods during which, no hunting or trapping is permitted for reasons of public safety, national security, administration, or public use and enjoyment.

**(F) MINING.**—

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

(ii) **VALIDITY OF CLAIMS.**—The Secretary of the Interior shall evaluate and adjudicate the validity of all mining claims on the portion of land covered by the Withdrawal that, on the date of enactment of this Act, was under the control of the Bureau of Land Management.

(iii) **COMPENSATION.**—The Secretary shall provide just compensation for the acquisition of any valid property right.

**(iv) CIND-R-LITE MINE.**—

(I) **IN GENERAL.**—Patented Mining Claim No. 27-83-0002, covering the Cind-R-Lite mine, shall not be affected by establishment of the Withdrawal, unless the Secretary, after consultation with the Secretary of the Interior, determines that the acquisition of the mine is required in furtherance of the reserved use of the land covered by the Withdrawal described in subsection (a)(3).

(II) **COMPENSATION.**—If the Secretary determines that the acquisition of the mine described in subclause (I) is required, the Secretary shall provide just compensation for acquisition of the mine.

(G) **LIMITED PUBLIC ACCESS.**—The management plan may provide for limited public access to and use of the portion of the land covered by the Withdrawal that is under the jurisdiction of the Bureau of Land Management on the date of enactment of this Act, including for—

(i) continuation of the Nye County Early Warning Drilling Program;

(ii) utility corridors; and

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

(H) **CLOSURE.**—If the Secretary, after consultation with the Secretary concerned, determines that the health or safety of the public or the common defense or security requires the closure of a road, trail, or other

portion of land covered by the Withdrawal, or the airspace above land covered by the Withdrawal, the Secretary—

(1) may close the portion of land or the airspace; and

(ii) shall provide public notice of the closure.

(3) **IMPLEMENTATION.**—The Secretary and the Secretary concerned shall implement the management plan developed under paragraph (2) in accordance with terms and conditions on which the Secretary and the Secretary concerned jointly agree.

(f) **IMMUNITY.**—The United States (including each department and agency of the Federal Government) shall be held harmless, and shall not be liable, for damages to a person or property suffered in the course of any mining, mineral leasing, or geothermal leasing activity conducted on the land covered by the Withdrawal.

**(g) LAND ACQUISITION.**—

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

(2) **METHOD OF ACQUISITION.**—Land and interests in land described in paragraph (1) may be acquired by donation, purchase, lease, exchange, easement, right-of-way, or other appropriate methods using donated or appropriated funds.

(3) **EXCHANGE OF LAND.**—The Secretary of the Interior shall conduct any exchange of land covered by the Withdrawal for Federal land not covered by the Withdrawal.

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

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

(1) by striking "If the President" and inserting the following:

"(1) **IN GENERAL.**—If the President"; and

(2) by adding at the end the following

"(2) **REQUIRED INFORMATION.**—An application for construction authorization shall not be required to contain information any surface facility other than surface facilities necessary for initial operation of the repository."

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

(1) in the first sentence, by striking "The Commission shall consider" and inserting the following:

"(1) **IN GENERAL.**—The Commission shall consider";

(2) by striking the last 2 sentences; and

(3) by inserting after paragraph (1) (as designated by paragraph (1)) the following:

"(2) **AMENDMENTS TO APPLICATION FOR CONSTRUCTION AUTHORIZATION.**—

"(A) **IN GENERAL.**—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.

"(B) **FINAL DECISION.**—The Commission shall issue a final decision on whether to grant permission to receive and possess spent nuclear fuel and high-level radioactive waste, or on any other application, by the date that is 1 year after the date of submission of the application, except that the Commission may extend that deadline by not more than 180 days if, not less than 30 days before the deadline, the Commission com-

plies with the reporting requirements under subsection (e)(2).

**"(3) INFRASTRUCTURE ACTIVITIES.**—

"(A) **IN GENERAL.**—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 determines to be necessary or appropriate to support construction or operation of a repository at the Yucca Mountain 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 National Environmental Policy Act of 1969 is required in connection with an infrastructure activity undertaken under this paragraph, the Secretary shall not be required to consider the need for the action, alternative actions, or a no-action alternative.

**"(iii) OTHER AGENCIES.**—

"(I) **IN GENERAL.**—To the extent that a Federal agency is required to consider the potential environmental impact of an infrastructure activity undertaken under this paragraph, the Federal agency shall adopt, to the maximum extent practicable, an environmental impact statement or similar analysis prepared under this paragraph without further action.

"(II) **EFFECT OF ADOPTION OF STATEMENT.**—Adoption of an environmental impact statement or similar analysis described in subclause (I) shall be considered to satisfy the responsibilities of the adopting agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and no further action for the activity covered by the statement or analysis shall be required by the agency.

"(C) **DENIALS OF AUTHORIZATION.**—The Commission may not deny construction authorization, permission to receive and possess spent nuclear fuel or high-level radioactive waste, or any other action concerning the repository on the ground that the Secretary undertook an infrastructure activity under this paragraph."

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

(1) by striking "or"; and

(2) by inserting before the period at the end the following: ", or an action connected or otherwise relating to the repository, to the extent the action is undertaken outside the geologic repository operations area and does not require a license from the Commission".

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

(1) in subsection (a)(1)—

(A) in the first sentence, by inserting ", or the conduct of an infrastructure activity," after "repository";

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

(C) in the second sentence, by striking “repositories” and inserting “a repository or infrastructure activity”;

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

(3) by adding at the end the following:

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

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

“(1) beneficial, and not detrimental, to the public interest and interstate commerce; and

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

#### SEC. 5. NUCLEAR WASTE FUND.

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

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

#### SEC. 6. REGULATORY REQUIREMENTS.

(a) MATERIAL REQUIREMENTS.—Notwithstanding any other provision of law, no Federal, State, interstate, or local requirement, either substantive or procedural, that is referred to in section 6001(a) of the Solid Waste Disposal Act (42 U.S.C. 6961(a)), applies to—

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

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

#### (b) PERMITS.—

(1) IN GENERAL.—The Environmental Protection Agency shall be the permitting agency for purposes of issuing, administering, or enforcing any new or existing air quality permit or requirement applicable to a Federal facility or activity relating to the Withdrawal that is subject to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).

(2) STATE AND LOCAL ACTIVITY.—A State or unit of local government shall not issue, administer, or enforce a new or existing air quality permit or requirement affecting a Federal facility or activity that is—

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

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

#### SEC. 7. TRANSPORTATION.

The Nuclear Waste Policy Act of 1982 is amended by inserting after section 180 (42 U.S.C. 10175) the following:

#### “SEC. 181. TRANSPORTATION.

“(a) IN GENERAL.—The Secretary may determine the extent to which any transportation required to carry out the duties of the Secretary under this Act that is regulated under the Hazardous Materials Transportation Authorization Act of 1994 (title I of Public Law 103-311, 108 Stat. 1673) and amendments made by that Act shall instead be regulated exclusively under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

“(b) DETERMINATION OF PREEMPTION.—On request by the Secretary, the Secretary of Transportation may 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 carried out by or on behalf of the Secretary in carrying out this Act is preempted, regardless of whether the transportation otherwise is or would be subject to regulation 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

“(B) does not threaten to prove detrimental to the public interest.

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

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

#### SEC. 9. CONFIDENCE IN AVAILABILITY OF WASTE DISPOSAL.

Notwithstanding any other provision of law, in deciding whether to permit the construction or operation of a nuclear reactor or any related facilities, the Commission shall 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 related facilities.

By Mr. COBURN (for himself, Mr. OBAMA, Mr. CARPER, and Mr. MCCAIN):

S. 2590. A bill to require full disclosure of all entities and organizations receiving Federal funds; to the Committee on Homeland Security and Governmental Affairs.

Mr. COBURN. Mr. President, today, along with Senators BARACK OBAMA, THOMAS CARPER, and JOHN MCCAIN, I

introduced legislation to create an on-line public database that itemizes Federal funding.

The bill ensures that the taxpayers will now know how their money is being spent. Every citizen in this country, after all, should have the right to know what organizations and activities are being funded with their hard-earned tax dollars.

The Federal Government awards roughly \$300 billion in grants annually to 30,000 different organizations across the United States, according to the General Services Administration.

This bill would require the Office of Management and Budget, OMB, to establish and maintain a single public Web site that lists all entities receiving Federal funds, including the name of each entity, the amount of Federal funds the entity has received annually by program, and the location of the entity. All Federal assistance must be posted within 30 days of such funding being awarded to an organization.

This would be an important tool to make Federal funding more accountable and transparent. It would also help to reduce fraud, abuse, and misallocation of Federal funds by requiring greater accounting of Federal expenditures. According to OMB, Federal agencies reported \$37.3 billion in improper payments for fiscal year 2005 alone. Better tracking of Federal funds would ensure that agencies and taxpayers know where resources are being spent and likely reduce the number of improper payments by Federal agencies.

Over the past year, the Senate Federal Financial Management Subcommittee, which I chair along with ranking member CARPER, has uncovered tens of billions of dollars in fraud, abuse and wasteful spending, ranging from expensive leasing schemes to corporate welfare to bloated bureaucracy. This database would ensure that such spending is better tracked and the public can hold policymakers and Government agencies accountable for questionable spending decisions.

The Web site required by this bill would not be difficult to develop. In fact, one such site already exists for some Federal funds provided by agencies within the Department of Health and Human Services, HHS. The CRISP, Computer Retrieval of Information on Scientific Projects, is a searchable database of federally funded biomedical research projects conducted at universities, hospitals, and other research institutions. The database, maintained by the Office of Extramural Research at the National Institutes of Health, includes projects funded by the National Institutes of Health, Substance Abuse and Mental Health Services, Health Resources and Services Administration, Food and Drug Administration, Centers for Disease Control and Prevention, CDC, Agency for Health Care Research and Quality, and Office of Assistant Secretary of Health. The CRISP database contains current and



## WESTERN GOVERNORS' ASSOCIATION

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April 13, 2006

The Honorable Pete V. Domenici  
Chairman  
Senate Committee on Energy and  
Natural Resources  
364 Dirksen Senate Building  
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The Honorable Jeff Bingaman  
Ranking Minority Member  
Senate Committee on Energy and  
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Dear Chairman Domenici and Senator Bingaman:

I write on behalf of Western Governors to express our concern over the Nuclear Fuel Management and Disposal Act recently introduced in the Senate as S.2589. We are concerned that the portions of the bill related to transportation could seriously undermine shipment safety and public confidence, key to successful repository operation.

In a series of resolutions dating back to the 1980s, and most recently re-adopted in June 2005, the Western Governors' Association has supported permanent, deep geologic disposal as the long-term national policy for managing and disposing of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act (NWPA). The Western Governors' objective has been and remains the safe and uneventful transport of nuclear waste. For years, the Western states have worked closely with the Department of Energy (DOE) to develop plans and policies to ensure the safe transportation of spent fuel and high-level waste. These efforts parallel the work we have done with DOE to develop and successfully implement plans and policies for other non-classified radioactive material shipments, such as those to the Waste Isolation Pilot Plant in New Mexico.

S.2589 represents a fundamental departure from this successful partnership between states and the Federal government. It proposes, in fact, an unwarranted change from the way nearly two decades of non-classified DOE shipping campaigns have been planned for and conducted. We note the following concerns in particular:

- **Exemption of Yucca Mountain shipments from existing Federal regulations** – S.2589 would allow the Secretary of Energy to exempt Yucca Mountain shipments from any or all provisions of the Hazardous Materials Transportation Authorization Act (HMTAA) and the Resource Conservation and Recovery Act (RCRA). The result of this would be to make DOE essentially self-regulated for these shipments. Bypassing these proven and widely accepted federal frameworks for transportation safety, particularly at the same time that significant shipment increases of these materials would heighten public concern, is inappropriate.

- **Preemption of state laws** – The bill also authorizes the Secretaries of Energy and Transportation to preempt any state, tribal or local law or regulation, even those permitted under the current regulatory framework. This would effectively eliminate the states' ability to take reasonable measures to ensure the safety and confidence of our citizens, such as carrier and shipment inspections, routing restrictions in high-risk areas (such as roadways determined to be unsafe or heavily congested traffic areas), and shipment escorts. Repository shipments on this scale cannot be made in a vacuum under DOE self-regulation. They must instead be made safely as part of our existing transportation system and regulatory framework.
- **Impacts on other DOE shipping programs** – While the majority of S.2589 applies only to spent fuel and high-level waste shipments, Section 6(a) could be interpreted to exempt all DOE radioactive materials from RCRA if shipped in NRC-approved containers. This could potentially undermine the states' ability to regulate and monitor WIPP shipments and other DOE radioactive material shipping campaigns. Given the widely acknowledged success of WIPP and other shipment programs, we cannot support making such a change.
- **Counter to NAS Recommendations** – The provisions cited above run counter to the recommendations of a recent National Academy of Sciences study which found that transportation of spent fuel could be done safely “when conducted in strict adherence to existing regulations.”

In closing, past DOE shipping campaigns have demonstrated that public acceptance of nuclear waste shipments is directly related to DOE's cooperation with state and local governments. S.2589 takes us in the wrong direction. We urge you not to enact any legislation that diminishes the states' role in ensuring safe transportation of these materials at the very time that the amount of shipments would dramatically increase.

Thank you for considering the important role of the Western states in these matters of national interest.

Sincerely,

  
Janet Napolitano  
Governor of Arizona

cc: All members of the Senate Committee on Energy and Natural Resources  
All members of the Western States Senate Coalition

Attachment: WGA Policy Resolution 2005-15, “*Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste.*”



THEODORE R. KULONGOSKI  
Governor

April 12, 2006

The Honorable Samuel Bodman  
Secretary, U.S. Department of Energy  
1000 Independence Avenue SW  
Washington D.C. 20585

Dear Mr. Secretary:

I was alarmed to learn that the Administration's Yucca Mountain repository legislation, S.2589, includes provisions that preempt state requirements on transportation of spent nuclear fuel and high-level radioactive waste. I understand your desire to resolve a host of site-related issues through legislation and the need to open a high-level waste repository, but it is counter-productive to circumvent state authority on transportation safety, and to disregard cooperative planning efforts that have taken place between the states and the U.S. Department of Energy (USDOE) for more than 20 years.

Transportation safety for radioactive waste shipments is an issue that Western governors have been addressing for decades. The vast majority of operating or planned radioactive waste disposal and storage sites are located in Western states. Western governors have addressed many of our concerns through a series of governors' resolutions that date back to the 1980s. Our fundamental goal is for the safe and uneventful transport of these materials. That is best accomplished through a cooperative planning and enforcement effort between the states and USDOE.

That cooperative effort has worked tremendously well for transuranic waste shipments to the Waste Isolation Pilot Plant (WIPP). Western states and USDOE worked cooperatively to develop, implement, and maintain a comprehensive transportation safety program. That program has seen more than 4,400 shipments travel safely to WIPP, including more than 230 shipments through my state. Because of the states' participation in developing this program, we are partners with USDOE and have been willing to defend and explain this transportation program to the public. That will not be the case if USDOE preempts state transportation authority for shipments to a national repository.

The Honorable Samuel Bodman  
April 12, 2006  
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I urge you to remove the transportation provisions from this bill. I look forward to working with you on this and other matters.

Sincerely,



THEODORE R. KULONGOSKI  
Governor

TRK:meg  
c: Oregon Congressional Delegation

## The Nuclear Fuel Management and Disposal Act

### TRANSPORTATION IMPACTS FOR WESTERN STATES

- Written by DOE; to be introduced by Senators Domenici and Inhofe. Senators Domenici and Bingaman are reportedly finishing their own version of a similar bill. Rep. Hobson is reportedly considering his own bill for introduction in the House.
- Exempts spent nuclear fuel (SNF) and high-level waste (HLW) shipments from:
  - Hazardous Materials Transportation Authorization Act (HMTAA).
  - Resource Conservation and Recovery Act (RCRA).
  - Any state, tribal or local laws or regulations, even those permitted under the current regulatory framework.
  - Possibly other DOT safety and route-selection criteria.
- Shipments would be controlled by the Atomic Energy Act, under which DOE is largely self-regulated.
- Represents a drastic change from the way all non-classified DOE shipping campaigns have been conducted in the past, by eliminating the states' role in ensuring safe transportation of SNF/HLW.
- Preempts the states' ability to regulate or effectively monitor SNF shipments. May prevent states from:
  - Inspecting shipments in accordance with state and local laws.
  - Restricting routes to avoid population centers or high-hazard areas (tunnels, etc).
  - Collecting shipment fees.
  - Receiving timely and complete shipment notifications.
  - Providing state escorts for shipments.
- While the majority of the Act applies only to SNF/HLW shipments, Section 6(a) appears to exempt all DOE radioactive materials from RCRA if shipped in NRC-approved containers. This could potentially undermine the states' ability to regulate and monitor WIPP shipments and other existing shipping campaigns.
- Raises the repository's statutory capacity from 70,000 metric tons to 120,000 metric tons. Postpones indefinitely the siting of a second repository. Places the entire burden for disposing of the nation's spent fuel and high-level waste on Western states, and nearly doubles the number of shipments through Western states.
- Ignores the recommendation of a recent National Academy of Sciences study, which found that the transportation of spent fuel could be done safely "when conducted in strict adherence to existing regulations."