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# Administration Cannot Drop Bid for Nuclear Waste Dump in Nevada, Panel Finds

By **MATTHEW L. WALD**

WASHINGTON — In a setback for the Obama administration, a panel of judges at the [Nuclear Regulatory Commission](#) ruled on Tuesday that the Energy Department could not withdraw its application to open a nuclear waste dump at [Yucca Mountain](#) in Nevada.

Making good on a campaign pledge by [President Obama](#), the Energy Department had formally sought to drop its plan for [Yucca Mountain](#), a volcanic structure about 100 miles from Las Vegas. But states with major accumulations of waste from [nuclear weapons](#) production had petitioned to prevent the department from doing so.

In a 47-page [decision](#), the three-member panel of administrative judges said the Energy Department lacked the authority to drop the petition because it would flout a law passed by Congress.

In the [Nuclear Waste Policy Act of 1982](#), Congress directed the Energy Department to file the application and the commission to consider it and “issue a final, merits-based decision approving or disapproving the construction,” the judges said. “Unless Congress directs otherwise, D.O.E. may not single-handedly derail the legislated decision-making process.”

The effect of the decision is unclear for now. Congress would have to appropriate hundreds of millions of dollars a year for the Energy Department to pursue the application. But the president’s budget for next year proposes no money at all; and while some members of the House are eager to appropriate funds, the Senate majority leader, [Harry Reid](#) of Nevada, is adamantly opposed to the project.

Yet the decision could keep the application alive long enough for the politics to change.

That would not end the debate over scientific and engineering issues related to the project,

which is markedly different from the waste burial strategy being pursued in other countries. Some experts say the geology of the Nevada site, selected by Congress in 1987, is unsuitable. The Energy Department would have to convince the commission that the repository could contain the waste for hundreds of thousands of years.

The three-judge panel noted that the Energy Department was not claiming that Yucca was unsafe or that there was anything wrong with the 86,000-page application, but was saying only that the site was “not a workable option.”

The decision on Tuesday could be overruled by the five-member Nuclear Regulatory Commission itself. The commission is studying the order, said a commission spokesman, Eliot Brenner.

President Obama had promised in his election campaign to drop the Yucca Mountain plans if he were elected. But the states of Washington and South Carolina, with major stores of waste, had petitioned to prevent the Energy Department from withdrawing the application. So did the [Nuclear Energy Institute](#), the industry’s trade association; several counties in Nevada; and the [National Association of Regulatory Utility Commissioners](#), made up of state officials who sit on public service commissions.

The state officials are concerned because the Energy Department’s waste program has been mostly financed by electricity consumers, who pay one-tenth of a cent per kilowatt-hour into a nuclear waste fund. The state commissioners have also asked that payments to the fund be suspended because there is now effectively no program to find a burial spot. About \$10 billion has been spent so far.

In announcing his intention to give up on the Yucca Mountain plan, Mr. Obama said he would establish a commission to seek solutions to nuclear waste. But the commission, which began meeting this year, is not looking for alternative sites but considering ways of recycling and reusing some of the waste.

That could reduce the number of repositories needed, but at least one would still be required; national policy still dictates that the waste should eventually be buried.

Stephanie Mueller, an Energy Department spokeswoman, said the agency was “confident that we have the legal authority to withdraw the application for the Yucca Mountain repository.”

“We believe the administrative board’s decision is wrong and believe that the Nuclear Regulatory Commission will reverse that decision,” Ms. Mueller said.

But Steve Kerekes, a spokesman for the Nuclear Energy Institute, said the ruling signaled that

**the Yucca Mountain licensing effort would continue.**