

## YUCCA MOUNTAIN

# NRC ordered to resume licensing work

Claiming that the agency is “simply flouting the law,” the U.S. Court of Appeals for the District of Columbia Circuit on August 13 issued a writ of mandamus ordering the Nuclear Regulatory Commission to resume its review of the Department of Energy’s license application for the Yucca Mountain nuclear waste repository, as mandated by the Nuclear Waste Policy Act. Along with other plaintiffs, the states of South Carolina and Washington brought the suit against the NRC after the agency ceased work on the license application in October 2010. The DOE asked to withdraw the application in March 2010.

The decision comes more than a year after the court held the case in abeyance while it waited for Congress to either formally terminate the licensing process or appropriate additional funds for the project (*NN*, Sept. 2012, p. 70). Noting that Congress has not acted and that the NRC still has \$11.1 million in Yucca Mountain-related funds, the court, in a two-to-one decision, found in favor of the plaintiffs.

In writing the ruling opinion, Circuit Judge Brett Kavanaugh said the court’s decision rests on the constitutional authority of Congress, and until that branch of government “says otherwise or there are no appropriated funds remaining, the Nuclear Regulatory Commission must promptly continue with the legally mandated licensing process.”

In a concurring opinion, Senior Circuit Judge A. Raymond Randolph said, “The commission’s duty is to comply with the law, and our duty is to make sure it does so.” In providing some background on the case, Randolph said that former NRC Chairman Gregory Jaczko “orchestrated a systematic

*More than a year after it put the case on hold while awaiting congressional direction, a federal court has said that the NRC can no longer ignore its obligations under the Nuclear Waste Policy Act.*



The Nuclear Regulatory Commission has been issued a writ of mandamus, compelling the agency to use its remaining \$11.1 million in appropriated funds to continue its review of the license application for the Yucca Mountain repository in Nye County, Nev.

campaign of noncompliance” by terminating the review process.

Chief Judge Merrick Garland dissented, saying that the remaining funds are not enough to significantly move the licensing process forward and that the order “amounts

to little more than ordering the commission to spend part of those funds unpacking its boxes, and the remainder packing them up again.”

In a joint statement, the Nuclear Energy Institute and the Nuclear Waste Strategy

Coalition said that the ruling “is a clear signal regarding the NRC’s obligation to review the Department of Energy’s license application for a repository at Yucca Mountain and to issue a final decision granting or denying the license. . . . Further, we encourage Congress to provide appropriate funding in FY 2014 and beyond to facilitate completion of the NRC’s independent safety review.”

Sen. Dean Heller (R., Nev.), however, called for Yucca Mountain to be “taken off the table once and for all” and a new consent-based siting process to be implemented. “This ruling is an exercise in futility that will ultimately waste resources that could be better used elsewhere,” Heller said in a statement.