

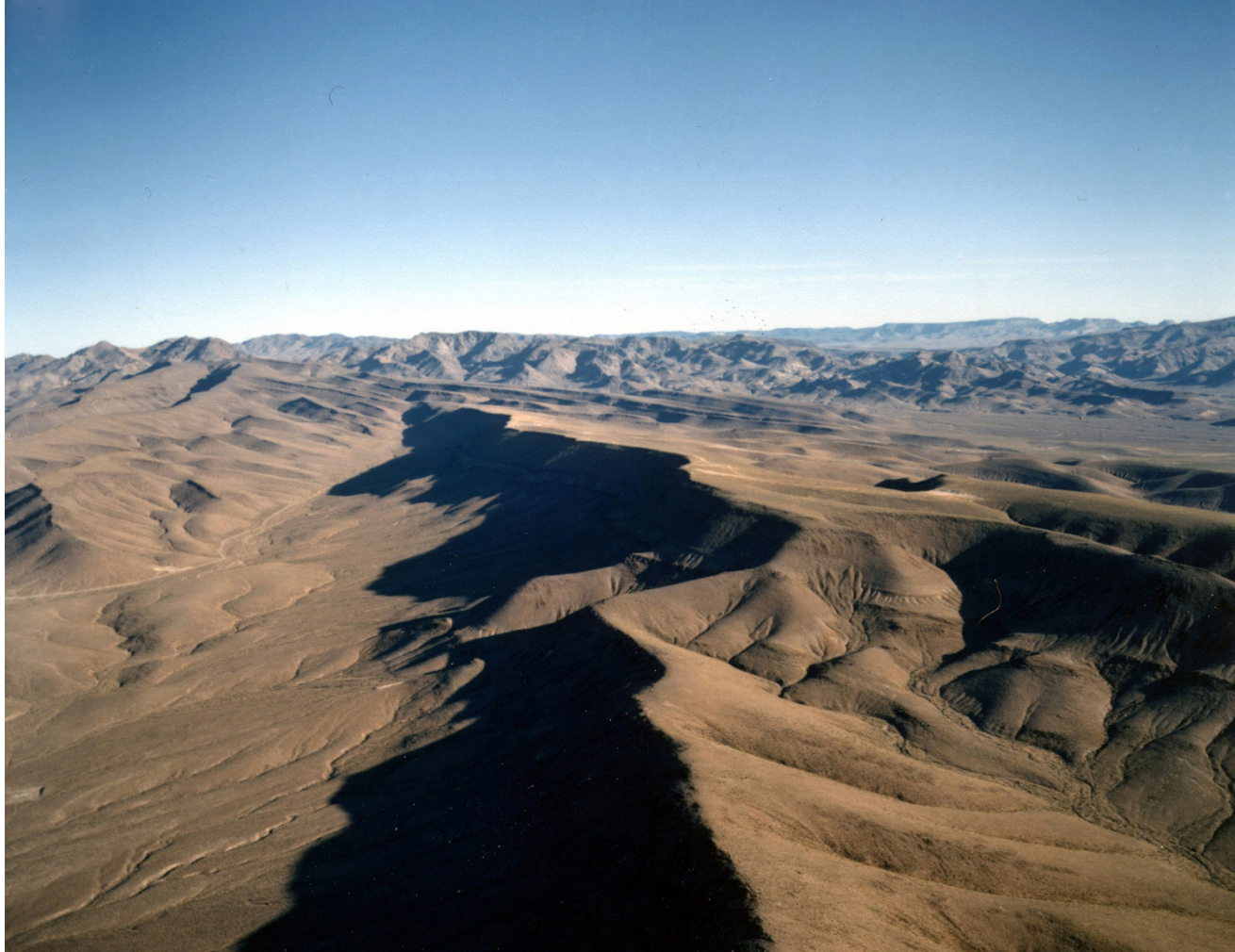
# Yucca Mountain Litigation - Aiken County

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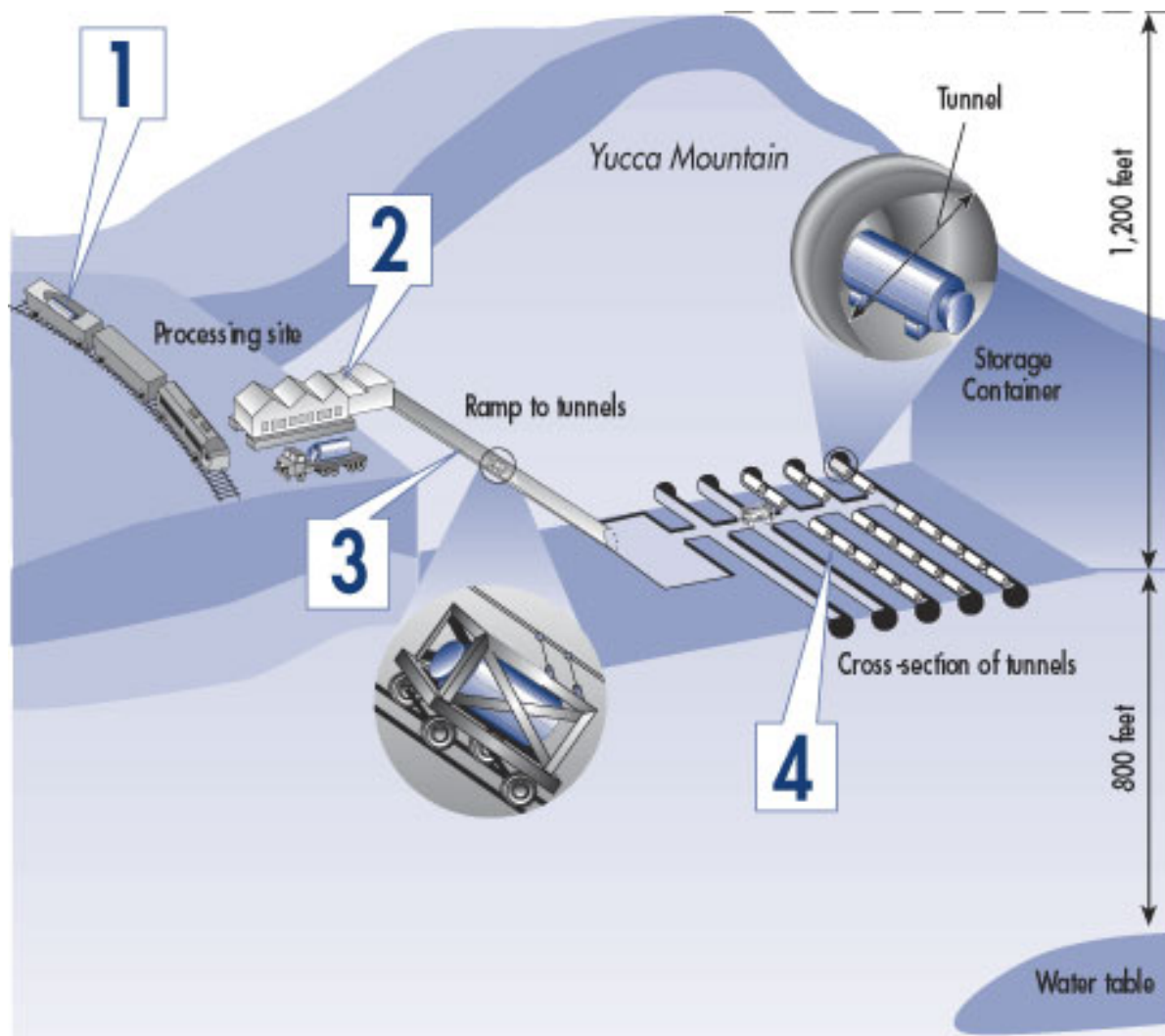


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# Yucca Mountain Litigation

- Nuclear Waste Policy Act
- DOE / NRC actions since 2010
- Efforts to enforce NWPA in D.C. Circuit Court of Appeals

# Nuclear Waste Policy Act of 1982

- a “definite Federal policy” for the disposal of high-level radioactive waste and spent nuclear fuel.
- “Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate.”
  - made nuclear waste disposal a federal responsibility
  - stepwise procedure for a geologic repository
  - told DOE to start investigating sites

# 1987 – Amendment of NWPA

- Congress adopted an amendment to the NWPA that directed DOE to limit its site selection efforts to Yucca Mountain and to “provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.”

# 2002

- Secretary of Energy concludes that Yucca Mountain was “likely to meet applicable radiation protection standards” and recommended to the President that Yucca Mountain be developed as a nuclear waste repository.
- The President then recommended the Yucca Mountain site to Congress.
- Pursuant to NWPA § 116, Nevada filed a notice of disapproval.
- Congress responded pursuant to NWPA § 115 with a joint resolution in July 2002 approving the development of a repository at Yucca Mountain.



# NWPA duties upon site selection

- **DOE** – “shall submit to the Commission an application for a construction authorization for a repository at such site” 42 U.S.C. § 10134(b)
- **NRC** – “shall consider an application for a construction authorization for all or part of a repository” and “shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application” 42 U.S.C. § 10134(d)

# 2008-2009

- **June 3, 2008** – DOE submits Yucca Mountain license application
- **Sept. 2008** – NRC docket Yucca Mountain license application
- **2009** – Atomic Safety and Licensing board admits 300 contentions by 10 parties and initiates discovery phase

# 2010

- **Feb. 1, 2010:** DOE announces that it intends to withdraw Yucca Mountain license application with prejudice, because President's proposed budget directed that the DOE discontinue its application
- **Feb. 19, 2010:** *In re Aiken County* / petition for mandamus filed challenging DOE decision to abandon Yucca Mountain repository

# 2010

- **Mar. 3, 2010:** DOE files motion to withdraw application with Atomic Safety and Licensing Board (ASLB)
- **Mar. 4, 2010:** Aiken County intervenes in NRC proceeding to oppose withdrawal
- **June 3, 2010:** Oral argument before ASLB
- **June 29, 2010:** ASLB rules against withdrawal

# 2010

- **June 30, 2010:** NRC Secretary issues order to parties to brief whether Commission should review / reverse or uphold
- **July 19, 2010:** Completion of briefing to Commission
- **August – September 2010:** NRC Commissioners vote
- **October 2010:** NRC Chairman directs closure of Yucca Mountain program



# 2011

- **March 22, 2011:** Oral Argument *In re Aiken County I* in D.C. Circuit Court of Appeals
- **July 1, 2011:** *In re Aiken County I* opinion issued
  - “no final decision” even though DOE has shut down project
  - invited a petition against the NRC
- **July 29, 2011:** Petition for Mandamus (*In re Aiken County II*) filed in D.C. Circuit Court of Appeals

# 2011-2012

- **Sept. 9, 2011:** Commission announces it is evenly divided, orders ASLB to dispose of all pending matters before the end of the fiscal year
- **Sept. 30, 2011:** ASLB issues order suspending Yucca Mountain licensing proceeding
- **May 2, 2012:** Oral Argument before D.C. Circuit Court of Appeals (*In re Aiken County II*)

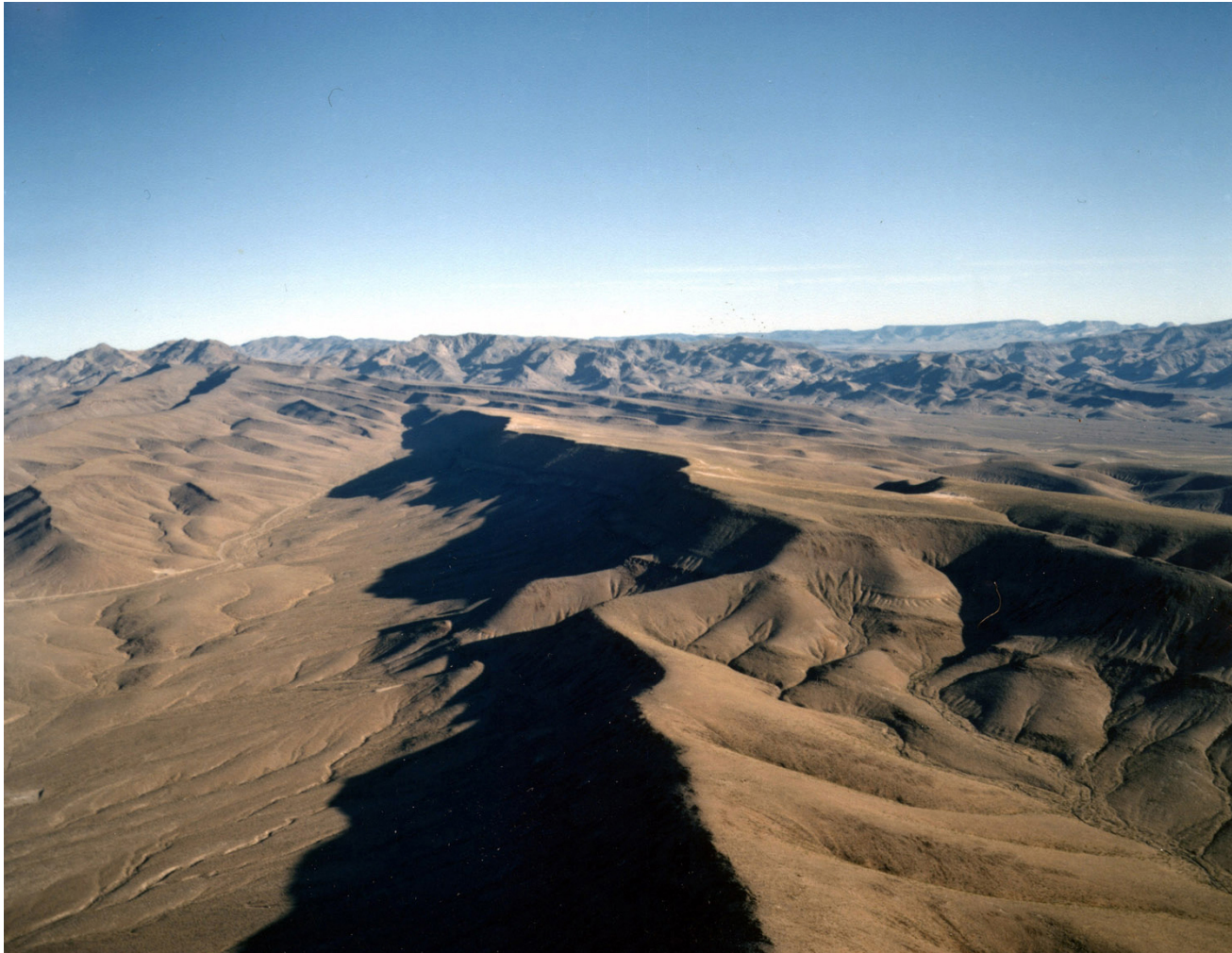
# 2012

- **August 3, 2012:** Order of Court of Appeals
  - case held in abeyance
  - parties directed to file updates on FY2013 appropriations
  - Kavanaugh, J., concurring: *agency has no authority to disregard a statute so long as there is some appropriated money available*
  - Randolph, J., dissenting: *transparent violation of a clear statutory mandate*

# 2012

- **Sept. 22, 2012:** Six-month Continuing Resolution passed
- Future?

# Questions?



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