

STATE OF SOUTH DAKOTA



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CHIEF DEPUTY

January 20, 2026

Brenda Binegar
Department of Agriculture
and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501
Email: Brenda.Binegar@state.sd.us

Re: *In the Matter of Clean Nuclear Energy Corp. Uranium Exploration Permit Application; EXNI 453*

Dear Ms. Binegar:

Enclosed please find the original Notice of Entry of Order on Pre-Hearing Motions and Certificate of Service intended for filing in the above referenced matter. True and correct copies have been sent to those individuals listed in the attached Certificate of Service.

If you have any questions, please don't hesitate to contact me.

Sincerely,

David M. MeVey
Assistant Attorney General

DMM/mn
Enclosures
Via electronic mail and U.S. mail
cc/encs: Parties on Attached Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

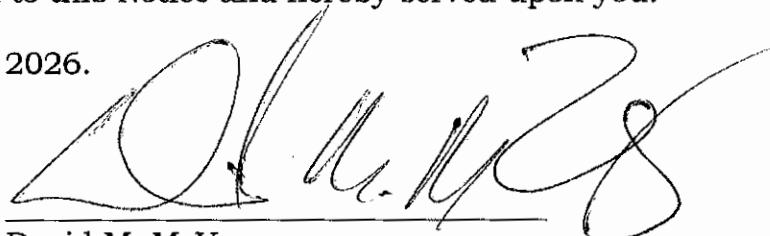
IN THE MATTER OF CLEAN NUCLEAR)
ENERGY CORP. URANIUM)
EXPLORATION PERMIT APPLICATION)
EXNI 453)
)

NOTICE OF ENTRY OF ORDER
ON PRE-HEARING MOTIONS

TO: ALL INTERESTED PARTIES:

Please take notice that on January 20, 2026, Hearing Chair Bob Morris entered his Order on Pre-Hearing Motions in the above-referenced contested action. A copy of the signed Order is attached to this Notice and hereby served upon you.

Dated this 20th day of January 2026.



David M. McVey
Assistant Attorney General
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Telephone: (605) 773-3215
Email: David.McVey@state.sd.us
Counsel for the Board of Minerals and Environment

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the NOTICE OF ENTRY OF ORDER ON PRE-HEARING MOTIONS was served via electronic mail and inter-office mail upon the following to be filed in the above captioned matter:

Brenda Binegar
Department of Agriculture
and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501
Email: Brenda.Binegar@state.sd.us
Secretary, Board of Minerals & Environment

Further, the undersigned certifies that true and correct copies of the above referenced document(s) were served via United States Mail, First Class, Postage Prepaid, upon the following:

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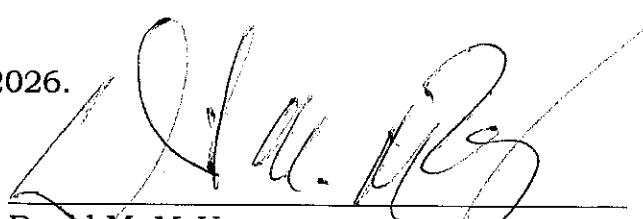
Tonya Stands
202 Bald Eagle Lane #8
Rapid City, SD 57701

Steven Gunn
Oglala Sioux Tribe
Oglala Sioux Tribe Legal Department
P.O. Box 1204
Pine Ridge, SD 57770

Courtesy copies of the above referenced document were served via electronic
mail upon the following:

Bob Morris, Hearing Officer
704 7th Avenue, Suite 2
P.O. Box 370
Belle Fourche, SD 57717
bobmorris@westriverlaw.com

Dated this 20th day of January 2026.



David M. McVey
Assistant Attorney General

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF CLEAN)
NUCLEAR ENERGY CORP.)
URANIUM EXPLORATION PERMIT) ORDER ON
APPLICATION) PRE-HEARING MOTIONS
EXNI 453)
)
)

On January 6, 2026, a pre-hearing conference was held on this matter to resolve procedural questions and to argue pre-hearing motions before Bob Morris, Hearing Chair, who was duly appointed as Hearing Chair in accordance with ARSD § 74:09:01:08 on June 12, 2025. Appearances were made by Steven R. Blair, General Counsel, South Dakota Department of Agriculture and Natural Resources, Matthew Naasz and Marcus Hluchy of Gunderson, Palmer, Nelson & Ashmore, on behalf of Clean Nuclear Energy Group ("CNEC"), Peter Capossela and Chase Iron Eyes on behalf of Great Plains Tribal Water Alliance, Inc., George Nelson, on behalf of Black Hills Sierra Club and Jeremiah Davis, and Steven Gunn, Oglala Sioux Tribe Legal Department, on behalf of the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe. The intervenors who were present in person, online, or by telephone were: Thomas O'Connor, Bruce Ellison, Lilias Jones Jarding, Denise Giago, Taylor Gunhammer, Sarah Peterson, Reno L. Red Cloud, Caryn Lerman, Ben R. Sharp, Jeremiah Davis,

Tonya Stands, Michael Melius, Marla Cooley, Gena Parkhurst, Julie Plachta, and Tonya Stands.

All Parties having had a full and fair opportunity to submit motions and responses, and have their arguments heard on the pending motions. Upon consideration of the Hearing Chair, the motions, requests for orders, and miscellaneous matters are resolved as set forth herein.

It is hereby **ORDERED**:

I. MOTIONS BY BLACK HILLS GROUP OF THE SIERRA CLUB

A. **Motion** to Strike or Limit CNEC's Assertions of "No Adverse Effect" and **Motion** to Deny Permit as a Matter of Law Under SDCL §45-6D-29, both timely filed on December 1, 2025. Memoranda in opposition were filed by CNEC on December 15, 2025.

1. Counsel for the Sierra Club, upon question from the Hearing Chair, asserted that the listed motions are "one and the same" (T-9, line 19) and as such the motions will be treated together here as either motions for summary judgement or motions for partial summary judgement.

2. SDCL §45-6D-29 states:

The Board of Minerals and Environment shall grant a permit to an operator if the application complies with the requirements of this chapter and all applicable local, state, and federal laws. The board may not deny a permit, except for one or more of the following reasons:

- (1) The application is incomplete or the surety has not been posted;
- (2) The applicant has not paid the required fee;
- (3) The adverse effects of the proposed uranium exploration operation on the historic, archaeologic,

geologic, scientific, or recreational aspects of affected or surrounding land outweigh the benefits of the proposed uranium exploration operation;

(4) The proposed uranium exploration operation will result in the loss or reduction of long-range productivity of watershed lands, public and domestic water wells, aquifer recharge areas, or significant agricultural areas; or

(5) The proposed uranium exploration operation will adversely affect threatened or endangered wildlife indigenous to the area.

3. SDCL §45-6D-29 outlines five areas whereby the Board may deny an application which otherwise comports with state law. Upon consideration of the motion, supporting documentation, evidence and the memorandum in opposition, in the light most favorable to the Sierra Club, there remains genuine issues of material fact therefore, both Motions are therefore **DENIED**.

II. MOTIONS BY CLEAN NUCLEAR ENERGY CORP.

- A. **Motion in limine** to Preclude Evidence Regarding Mining, timely filed on December 1, 2025.

1. SDCL §45-6D-29(3-5) states three bases under which the Board may deny a uranium exploration permit, specifically:

(3) The adverse effects of the proposed uranium exploration operation on the historic, archaeologic, geologic, scientific, or recreational aspects of affected or surrounding land outweigh the benefits of the proposed uranium exploration operation; (4) The proposed uranium exploration operation will result in the loss or reduction of long-range productivity of watershed lands, public and domestic water wells, aquifer recharge areas, or significant agricultural areas; or (5) The proposed uranium exploration operation will adversely affect threatened or endangered wildlife indigenous to the area.

2. This hearing and this matter generally, are limited to a permit application to conduct proposed mining uranium exploration.

In the event CNEC or its successor files an application to mine uranium, there will be a new application process with its own case number, subject to the laws, rules, and regulations relating to mining uranium, which includes an opportunity for a hearing on the application. The application before the Board is for proposed mining exploration, and on that basis, the CNEC Motion *in limine* is **GRANTED**.

B. **Motion** to Preclude Consideration of Treaty Rights, timely filed on December 1, 2025. On December 15, 2025, the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe filed memoranda in opposition to the applicant's motion. On January 5, 2025, the Great Plains Tribal Water Alliance, Inc. filed a memorandum in opposition to the applicant's motion.

1. The ruling on this motion is **DEFERRED** and counsel for the Great Plains Tribal Water Alliance, Inc. and Counsel for the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe are directed to brief, either together or separately, (1) what treaty rights affect this area and (2) how those treaty rights should be viewed by the Board regarding their determination of the application under SDCL 45-6D-29. The brief must be served upon the parties, the Hearing Chair, and Board Counsel within

21 days of the date of this order, in the same manner in which a motion is served.

2. On this issue, the Great Plains Tribal Water Alliance filed a **Motion** to allow for the filing of an opposition brief out of time to the applicant's motion. Hearing no opposition, the motion is **GRANTED**.

III. MOTIONS BY THE CHEYENNE RIVER SIOUX TRIBE AND THE OGLALA SIOUX TRIBE

- A. **Motion** to order Clean Nuclear Energy Corp. to produce all documents responsive to the Tribes' third request for production directed to CNEC, timely filed on December 1, 2025.

1. Ruling on the motion is **DEFERRED** until the Hearing Chair receives and considers a protective order, agreed upon among the Parties, which agreement shall not be unreasonable withheld. The proposed protective order must be served within 21 days of the date of this order, in the same manner in which a motion is served.

- B. **Motion** to order CNEC to permit access to the exploration area and surrounding lands for the purpose of inspection, as requested in the Tribes' fourth request for production directed to CNEC, timely filed on December 1, 2025. On December 15, 2025, CNEC filed a memorandum in opposition to the Tribes' motions.

1. Ruling on the motion is **DEFERRED**. Mr. Blair, Mr. Gunn, and Mr. Naasz are directed to, collectively if possible, consult with the Commissioner of School and Public lands, or their designee, (1) to attempt to gain access to the 80-acre portion of the 640-acre section designated in the application and (2) to determine what permissions, if any, are required in relation to the surface lessee's rights.
2. If it is not possible to obtain access, the Hearing Chair will re-consider the issue.
3. If access is possible, the parties are directed to submit a proposal as to how there could be a meaningful inspection of the property, to include the intervenors, on one or two days, if necessary, for the cultural experts and the parties to complete their inspection.
4. Any inspection of the parcel must be completed no later than 30 days from the date of this order.

C. **Motion** to order CNEC to provide all information and documents that CNEC agreed to produce during the deposition of CNEC on November 6, 2025.

1. Upon agreement of counsel, the motion is **DEFERRED** until such time as the counsel for the Tribes can reconcile the affidavit provided by CNEC on January 5, 2026, with their requests as set forth in the motion. Counsel for the Tribes is

directed to notify the Hearing Officer, in the same manner in which they filed the motion, of the continued necessity for the motion no later than February 2, 2026.

D. **Motion** to enter an order permitting the Tribes to call as a witness any person listed on the witness list of any other party or intervenor in this case and to introduce as an exhibit any exhibit listed on the exhibit list (or otherwise produced) by any other party or intervenor in this case.

1. Hearing no objection, the motion is **GRANTED** and is further clarified that the order is reciprocal among the parties. As to exhibits, this order is limited to exhibits that have been produced.

E. Upon oral **Motion** by the Tribes and hearing no objection, the witness identified as the historic preservation officer for the Oglala Sioux Tribe is hereby substituted by Reuben Weston, the person currently holding that title.

IV. **Elizabeth Lone Eagle Motions**

A. Elizabeth Lone Eagle timely filed a **Motion** for Reconsideration of Electronic Service on October 2, 2025. The motion is **DENIED** pursuant to ARSD 74:09:01:15 which states:

“The service of all pleadings, notices, or orders may be made by first class mail, personal service, or facsimile. An affidavit of mailing, an admission of service, or other competent evidence is proof of service.”

B. Elizabeth Lone Eagle timely filed a **Motion** for Protective Order on Service and Deadlines on October 2, 2025. The motion is **DENIED**.

C. Elizabeth Lone Eagle timely filed a **Motion** to Reconsider and Modify Scheduling Order on October 2, 2025. The motion is **DENIED**.

V. Miscellaneous Matters

A. The Hearing Date is set for March 18, 19, and 20 at 500 East Capitol Avenue, Pierre SD 57501, Room 414 at 10 A.M. CDT on the 18th. The time of commencement of the hearing for the 19th and 20th will be set on the 18th.

- i. If a party wishes to submit documentary evidence, you must appear personally.
- ii. If a party wishes to testify, you must appear personally.
- iii. Narrative testimony will be allowed at the Hearing subject to limitation as the Board or Hearing Chair deems appropriate.
- iv. The Applicant will present their case first, followed by the DANR, and then the other parties. Parties represented by counsel will proceed as per the Hearing Chair's direction and thereafter parties not represented counsel will proceed in alphabetical order.

B. At least 10 days prior to the hearing, if any party so desires, a party **may** (but is not required to) submit proposed findings of

fact and conclusions of law and serve on all parties, the Board chair (*via* service on Brenda Binegar) and Board Counsel, David McVey.

- C. Within 30 days from the day after the close of the hearing, the applicant shall serve findings of fact, conclusions of law, and a proposed decision (FOF/COL) on all parties, the Board chair (*via* service on Brenda Binegar) and Board Counsel, David McVey.
- D. Within 20 days after the service of FOF/COL is due, any party may serve alternative FOF/COL or may file objections to individual paragraphs of the FOF/COL along with proposed alternative language.
- E. Within 20 days after the alternative FOF/COL and objections are due, Board Counsel will prepare a final FOF/COL to be presented to the Board for their consideration.
- F. It is suggested that everyone review the contested case procedures set forth in ARSD Chapter 74:09:01 and the parties are reminded that the Rules of Evidence apply.
- G. ARSD 74:09:01:12 addresses subpoenas. If a party wishes to obtain the subpoena from the Chair, they must email a written request and proposed subpoena to the Hearing Chair, Ms. Binegar for filing, and Mr. McVey. If the proposed subpoenas are in the proper form, and subject to the discretion of the

Hearing Chair, the Chair will sign and return them to the requestor who must then serve them according to the rules of service.

H. ARSD 74:09:01:08 states in relevant part "Any decision made by the chair of the hearing is a final decision of the board unless the board overrules the decision of the chair of the hearing." Any person wishing to appeal any part or all of this Order to the full Board may do so by filing such appeal on motion to the Board Chair, according to the procedures set forth in ARSD 74:09, no later than February 2, 2026.

Dated this 20th day of January 2026.

BOARD OF MINERALS & ENVIRONMENT



Bob Morris, Hearing Chair