

From: Bridger Advocate <bridgeradvocate@gmail.com>

Sent: Sunday, October 26, 2025 4:17 PM

To: Binegar, Brenda <Brenda.Binegar@state.sd.us>

Subject: [EXT] Motion

My apologies. I intended to email this on Friday. I did mail out on Friday (but missed the outgoing mail cutoff, so I will have either an October 25, or 27 postmark on it) a copy to you and the other parties, as required by the procedures set forth in the ARSD. You should be receiving the hard copy this week, along with the certificate of service. Please let me know if you need a copy of the postal receipt to verify the mailing date.

Respectfully Submitted,

/s/ Elizabeth Lone Eagle

bridgeradvocate@gmail.com

605-200-6800

MOTION FOR EXPEDITED ADMINISTRATIVE REVIEW AND RELIEF FROM DUE PROCESS VIOLATIONS

To:

Hunter Roberts, Secretary
South Dakota Department of Agriculture and Natural Resources
523 E Capitol Ave
Pierre, SD 57501

Re: Request for Expedited Review and Relief from Due Process Violations in Contested Case EXNI 453

I. PURPOSE OF MOTION

Comes now **Elizabeth Lone Eagle**, appearing pro se, on behalf of herself and other pro se intervenors who are First-Language Lakota speakers participating in the contested case concerning *Clean Nuclear Energy Corp.* uranium exploration permit application **EXNI 453**, and respectfully moves for an expedited administrative review and corrective action by the **South Dakota Department of Agriculture and Natural Resources** and the **Board of Minerals and Environment**.

This motion seeks an order directing the Board to convene a hearing to address the following issues and remedy the ongoing due process violations:

1. The Hearing Officer's denial of electronic service;
2. The continued failure to act on the motion for Lakota interpreter services, which has been held in abeyance;
3. The failure of Board Counsel David McVey to comply with the Hearing Officer's instruction to work with me to develop a budget and plan for interpreter services, including access to necessary state budget information and other resources; and
4. The need to review and adjust the **September 2, 2025** Scheduling Order to ensure procedural fairness, meaningful participation, and compliance with due process requirements.

II. BACKGROUND

Multiple motions and communications have been submitted by the undersigned requesting interpreter services for First-Language Lakota speakers and the option for electronic service for all parties. Despite the Hearing Officer's acknowledgment that these matters must be addressed, electronic service has been denied, and the motion for interpreter services remains held in abeyance.

The Hearing Officer further directed Mr. McVey, acting as legal counsel for the Board, to work collaboratively with me to prepare a plan and budget for interpreter services. Mr. McVey has failed to do so, and has not provided the information or cooperation necessary to fulfill the Hearing Officer's instruction.

Meanwhile, procedural deadlines contained in the **Scheduling Order of September 2, 2025**—including the **October 14, 2025** deadline for expert witness disclosure—remain active, despite the continued exclusion of First-Language Lakota participants from equitable access to the process.

III. LEGAL AUTHORITY

This motion is grounded in the following authorities:

- **SDCL 45-6B-11** – authorizes the Board of Minerals and Environment to conduct hearings and issue orders related to permit applications.
- **SDCL 45-6B-33** – empowers the Board to adopt administrative rules ensuring fair and impartial hearings.
- **SDCL 1-26-18** – guarantees all parties in contested administrative cases the right to present evidence and argument on every issue of fact and law.
- **ARSD 74:09:01:04** – authorizes the Hearing Examiner or Board Chair to manage proceedings and rule on motions consistent with fairness and due process.
- **ARSD 74:09:01:09** – grants the Board authority to review or modify decisions or procedures to ensure fairness and compliance with due process.
- **ARSD 74:09:01:10** – allows the Board or Hearing Examiner to grant continuances or modify schedules when necessary to protect due process.

- **Fourteenth Amendment, U.S. Constitution, and S.D. Const. art. VI, § 2** – guarantee due process and equal protection under the law in all governmental proceedings, including administrative.
 - **Precedents from the Public Utilities Commission and the Water Board** demonstrate that electronic service and remote access are established and workable mechanisms within South Dakota administrative practice.
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IV. ARGUMENT

A. Ongoing Irreparable Harm

The denial of electronic service and the failure to act on interpreter services have deprived First-Language Lakota speakers of meaningful participation in this proceeding. Each procedural deadline that continues under these conditions further compounds the deprivation of due process rights.

B. Failure to Follow the Hearing Officer's Instructions

The Hearing Officer expressly instructed Mr. McVey and me to work together to prepare a plan and budget for interpreter services. That directive has not been carried out. Without access to state budget information and collaboration from Board Counsel, it is impossible to provide the Hearing Officer with the information he needs to make a ruling.

The refusal or failure of Mr. McVey to cooperate effectively nullifies the Hearing Officer's instruction and perpetuates inequity in the process.

C. Lack of Adequate Administrative Remedy

Neither the Department nor the Board has established any written mechanism within **ARSD ch. 74:09** to address these due process deficiencies. Consequently, affected parties have no effective remedy within the administrative process itself.

D. Board's Authority to Intervene

Under **ARSD 74:09:01:09** and **74:09:01:10**, the Board of Minerals and Environment possesses full authority to review, correct, or modify hearing procedures to ensure fairness and compliance with due process. A Board-level hearing is therefore necessary to resolve these procedural failures and restore equity to the process.

V. REQUESTED RELIEF

The undersigned respectfully requests that the **Secretary of the DANR**:

1. Accept this motion for expedited administrative review;
2. Refer this matter to the **Board of Minerals and Environment** for a formal hearing to consider the due process violations described herein;
3. That the Board compel Board Counsel **David McVey** to work collaboratively with me to develop the budget and implementation plan for interpreter services as originally instructed by the Hearing Officer, to also include providing access to necessary information;
4. Overrule the Hearing Officer's denial of electronic service and authorize combined electronic and postal service for willing parties; and
5. Suspend or adjust all deadlines under the **September 2, 2025 Scheduling Order** until these due process concerns are resolved and the Board has completed its review.

Respectfully Submitted,

Elizabeth Lone Eagle
c/o Lakota Prairie Ranch
P.O. Box 656
Kyle, SD 57752