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DEC 11 2025

Department of Agriculture  
and Natural Resources  
gjnlaw@gmail.com

December 1, 2025

Chairperson Bob Morris  
South Dakota Board of Minerals and Environment  
Dept. of Agriculture and Natural Resources  
523 E. Capitol Avenue  
Pierre, SD 57501

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

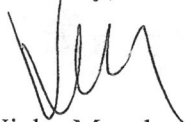
Dear Chairperson Morris:

Pursuant to the Board's directive at the August 21, 2025 pre-hearing conference, the  
Black Hills Group of the Sierra Club and Jeremiah Davis respectfully submits the enclosed:

1. Sierra Club's Witness and Exhibit Lists;
2. Intervenors' Motion to Strike or Limit CNEC's Assertions of "No Adverse Effect";
3. Brief in Support of Motions to Strike or Limit CNEC's Assertions of "No Adverse Effect";
4. Motion to Deny Permit as a Matter of Law Under SDCL § 45-6D-29; and
5. Brief in Support of Intervenors' Motion Summary Judgment, or in the Alternative, Partial Summary Judgment.

Thank you.

Sincerely,



Vicky Murphy, CP  
Certified Paralegal to George J. Nelson  
Attorney for the Black Hills Group – Sierra Club  
And Jeremiah Davis

Enclosures

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Department of Agriculture  
and Natural Resources

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  
APPLICATION

EXNI 453

SIERRA CLUB'S WITNESS AND  
EXHIBIT LISTS

Intervenors The Black Hills Group of the Sierra Club and Jeremiah "Jay" Davis intend to call the following witnesses:

1. Jeremiah "Jay" Davis;
2. Linea Sundstrom;
3. Greg Peterman;
4. Sue Hey; and
5. Any Rebuttal Witnesses as necessary.

**COMES NOW**, Sierra Club, by and through its attorney of record, George J. Nelson and submits the following exhibits:

**EXHIBITS\***

Exhibit No.	Exhibit Description	Deny	Admit
501	Expert Report of Linea Sundstrom		
502	Interrogatory Responses from CNEC		
503	Criminal Docket: Case#: 5:05-cr-50046-MPY		

\*Defendant reserves the right to offer any exhibits identified by Plaintiff and/or as required for impeachment purposes.

Dated this 1<sup>st</sup> day of December, 2025.

LAW OFFICE OF GEORGE NELSON

/s/ George J. Nelson

George Nelson  
Attorney for The Black Hills Group  
of the Sierra Club  
2800 Jackson Boulevard #3  
Rapid City, SD 57702  
(605) 719-9470  
gjnlaw@gmail.com

## CERTIFICATE OF SERVICE

I certify that on the 1<sup>st</sup> day of December, 2025, I caused to be served via U.S. mail, postage prepaid, a true and correct copy of *Sierra Club's Witness and Exhibit List* to:

Brenda Binegar Department of Agriculture & Natural Resources 523 E Capitol Ave Pierre, SD 57501	Denise Giago 221 E Jackson St Rapid City, SD 57701
Steven R. Blair Deputy Attorney General Counsel Minerals, Mining, & Superfund Program PO Box 70 Rapid City, SD 57702	Taylor Gunhammer 221 E Jackson St Rapid City, SD 57701
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BOARD OF MINERALS AND ENVIRONMENT

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

EXNI 453

INTERVENORS' MOTION TO  
STRIKE OR LIMIT CNEC'S  
ASSERTIONS OF "NO ADVERSE  
EFFECT"

COME NOW the Intervenors, the Black Hills Group of the Sierra Club and Jeremiah "Jay" Davis, by and through undersigned counsel, and move the Board to strike or limit the Applicant's blanket assertions that the proposed uranium exploration project will cause "no adverse effects." This motion is made under the Board's statutory authority and the procedural standards governing contested-case hearings before the Board.

**I. STATUTORY AND REGULATORY FOUNDATION**

1. Under SDCL § 45-6D-29, the Board is explicitly empowered to deny a permit if the proposed uranium exploration operation will cause adverse effects to "historic, archaeologic, geologic, scientific, or recreational aspects of affected or surrounding land," or will result in loss or reduction of long-term productivity of waterways, aquifers, agricultural lands, or adversely affect threatened or endangered wildlife.
2. The statutory scheme places the burden on the Applicant to demonstrate that exploration will not cause disproportionate or irreversible harm and that the benefits justify any potential adverse effects.
3. Under the agency's own rules, including ARSD 74:55:01:01, operators must employ the "best practicable technology" to minimize disturbances and adverse impacts on environmental values, including wildlife, water, and cultural resources.

4. Further, the state's administrative-procedure framework (see SDCL § 1-26-36) requires that agency decisions in contested cases be supported by substantial evidence, and prohibits arbitrary or capricious determinations lacking an evidentiary foundation.

## **II. BASIS FOR STRIKING OR LIMITING “NO ADVERSE EFFECT” ASSERTIONS**

5. In response to Interrogatories Nos. 6, 7, 8, and 15, CNEC asserts that there will be “no anticipated effects” on cultural, hydrologic, ecological, and wildlife resources. But these statements are conclusory and devoid of evidentiary support, as demonstrated by the following:
  - CNEC admits that groundwater depths at drill sites are unknown and will only be determined after drilling. Yet it claims there will be no impacts to groundwater or aquifer recharge areas.
  - CNEC has produced no baseline groundwater or hydrologic data, no water-quality analyses, and no monitoring-well plans.
  - CNEC's statements rely on internal assumptions rather than independent field surveys, hydrologic modeling, or third-party review.
  - For cultural and archaeological resources, CNEC has refused to produce site-specific survey reports or maps, citing confidentiality — while at the same time denying any possibility of adverse impacts. That renders its “no effect” claim undocumented and untestable.
6. Because of these evidentiary gaps, CNEC's blanket “no adverse effect” assertions offer no meaningful basis for the Board to assess the statutory factors under SDCL § 45-6D-29. Reliance on such unsubstantiated assertions would be arbitrary, capricious,

and in contravention of the Board's statutory duty to protect significant natural, cultural, hydrologic, and ecological resources.

7. Permitting the applicant to rest on a "no effect" conclusion without supporting data would also undermine the requirement under ARSD 74:55:01:01 that the operator use technology and practices to minimize adverse impacts. Without disclosed methods, site-specific environmental data, or monitoring plans, there is no assurance that "best practicable technology" will be applied or will succeed.

### **III. PREJUDICE TO INTERVENORS AND PUBLIC INTEREST**

8. Intervenors and other concerned parties, including tribes, have presented credible expert testimony and substantial documentary evidence indicating significant risk of irreversible harm to irreplaceable cultural resources, groundwater integrity, habitat, and public values. To allow CNEC's undocumented "no effect" assertions to stand would deny meaningful adversarial hearing and effectively shift the burden onto objectors to disprove a non-evidenced claim — contrary to the statutory scheme and fair-hearing principles.
9. If the Board permits CNEC to rely on unsupported "no effect" statements, it denies itself the factual foundation necessary to engage in its statutory duty under SDCL § 45-6D-29 to balance benefits and harms, and to condition or deny the permit accordingly.

### **IV. REQUESTED RELIEF**

WHEREFORE, Intervenors respectfully request that the Board:

- a. Strike or disregard CNEC's generalized statements in its discovery responses that the project will cause "no adverse effects."
- b. Prohibit CNEC from relying on such assertions at hearing, or require CNEC to supplement its record with factual, site-specific data prior to being allowed to present

such conclusions.

c. Order CNEC to produce any underlying data, reports, survey results, monitoring plans, and drill-fluid chemical compositions that support its conclusion, so that intervenors may meaningfully challenge or verify them.

d. If necessary, treat certain sensitive cultural-resource or site-location materials under a protective order, consistent with confidentiality concerns and public-interest considerations, while still making them available for the Board's review.

Dated this 1<sup>st</sup> day of December, 2025.

LAW OFFICE OF GEORGE NELSON

/s/ George J. Nelson

George Nelson  
Attorney for The Black Hills Group  
of the Sierra Club  
2800 Jackson Boulevard #3  
Rapid City, SD 57702  
(605) 719-9470  
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I certify that on the 1<sup>st</sup> day of December, 2025, I caused to be served via U.S. mail, postage prepaid, a true and correct copy of *Intervenors' Motion to Strike or Limit CNEC's Assertions of "No Adverse Effect"* to:

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

Department of Agriculture  
and Natural Resources

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

EXNI 453

**BRIEF IN SUPPORT OF MOTION TO  
STRIKE OR LIMIT CNEC'S  
ASSERTIONS OF "NO ADVERSE  
EFFECT"**

Intervenors the Black Hills Group of the Sierra Club and Jeremiah "Jay" Davis respectfully submit this Brief in Support of their Motion to Strike or Limit Clean Nuclear Energy Corporation's (CNEC) blanket assertions of "no adverse effect." The motion arises in the context of CNEC's permit application for uranium exploration near Craven Canyon in Fall River County, South Dakota, under SDCL Chapter 45-6D.

**I. INTRODUCTION AND SUMMARY**

CNEC repeatedly asserts in discovery that its proposed uranium exploration will cause "no adverse effects" to the environment, cultural resources, water systems, or wildlife. Yet these assertions are conclusory, unsupported by credible documentation or expert analysis, and contradicted by evidence offered by Intervenors and other parties.

South Dakota law requires the Board to conduct a substantive review of potential adverse effects when evaluating whether to grant a uranium exploration permit. The Board's duty under SDCL § 45-6D-29 cannot be fulfilled by accepting untested generalizations offered in place of actual data. For the reasons set forth below, the Intervenors request that the Board strike or limit CNEC's unsupported assertions and require disclosure of evidentiary foundations for its claims.

**II. GOVERNING LAW**

**A. Legal Standards Under SDCL § 45-6D-29**

Under SDCL § 45-6D-29, the Board may not issue a uranium exploration permit if:

- The adverse effects of the operation on the historic, archaeologic, geologic, scientific, or recreational aspects of affected or surrounding land outweigh the benefits;
- The operation will result in the loss or reduction of long-term productivity of watershed lands, wells, aquifer recharge areas, or agricultural lands;
- The operation will adversely affect threatened or endangered wildlife.

Thus, the Board must consider adverse effects and weigh them against asserted benefits.

## **B. Procedural Requirements and Evidentiary Standards**

Under SDCL § 1-26-36, administrative decisions must be based on the entire evidence in the record and are reversible if arbitrary or capricious, or clearly erroneous. The South Dakota Supreme Court has made clear that unsupported conclusions are insufficient to support agency action. See *Matter of Homestake Mining Co.*, 472 N.W.2d 766 (S.D. 1991).

The applicant bears the burden of showing that its proposed operations meet the criteria of the law, and assertions must be backed by substantial, competent evidence.

## **III. DEFICIENCIES IN CNEC'S ASSERTIONS OF "NO ADVERSE EFFECT"**

CNEC's responses to Interrogatories Nos. 6, 7, 8, and 15 repeatedly deny that any adverse effects will occur. However:

- CNEC admits it has not yet determined groundwater depth at drill sites (Int. No. 5);
- CNEC refuses to disclose survey data for cultural and historic resources, citing confidentiality (RFP Nos. 1, 3);
- CNEC identifies no studies, analyses, baseline data, or modeling supporting its conclusions;

- CNEC fails to identify any qualified ecological, hydrologic, or cultural expert who authored or reviewed its claims.

CNEC cannot rest on *ipse dixit* generalizations where legal standards require evidence-based findings. Its “no effect” assertions lack foundation, contradict known facts, and prevent meaningful review by the Board or interested parties.

#### **IV. LEGAL AUTHORITIES SUPPORTING INTERVENORS’ REQUEST**

##### **A. South Dakota Supreme Court: Environmental Impact Must Be Taken Seriously**

In *Matter of SDDS, Inc.*, 472 N.W.2d 502 (S.D. 1991), the Court held that where an action “may have a potentially significant effect on the environment,” an Environmental Impact Statement (EIS) may be required—even if such harm is not conclusively proven. The Court emphasized the need for agencies to engage in hard look analysis, not superficial review.

Similarly, in *Application of Union Carbide Corp.*, 308 N.W.2d 753 (S.D. 1981), the Court reversed the grant of an exploration permit because the Commission failed to properly consider objections and environmental concerns.

These precedents underscore the need for the Board to evaluate adverse effects based on evidence—not the conclusory denials of an applicant.

##### **B. Federal Analogs Also Require Evidentiary Basis for “No Impact” Findings**

While this proceeding is governed by state law, federal NEPA case law is instructive. Courts reviewing EISs and permit applications require that agencies take a “hard look” at environmental and cultural impacts. General assertions of “no effect” are insufficient. See § 1:12 and § 1:10 of *Federal Environmental Regulation of Real Estate*.

Where historic or cultural sites are involved, agencies must consult affected tribes, assess alternatives, and provide detailed mitigation analysis. These standards highlight the insufficiency of CNEC's conclusory statements.

## **V. REMEDY REQUESTED**

Because CNEC's unsupported assertions of "no adverse effect" are:

- Not grounded in competent or disclosed evidence;
- Offered in place of required impact assessments;
- Obstructive of the Board's obligation to weigh adverse effects under SDCL § 45-6D-29;

Intervenors respectfully request that the Board enter an order:

1. Striking or disregarding CNEC's "no adverse effect" claims in Interrogatories Nos. 6, 7, 8, and 15;
2. Requiring CNEC to disclose the factual and scientific basis for its impact assessments, including site-specific hydrologic, ecological, and cultural data;
3. Limiting or excluding any hearing testimony from CNEC or its experts that is not supported by timely disclosed documentation and expert analysis;
4. Providing such additional relief as the Board deems appropriate to ensure a full, fair, and informed review under South Dakota law.

Dated this 1<sup>st</sup> day of December, 2025.

LAW OFFICE OF GEORGE NELSON

/s/ George J. Nelson  
George Nelson  
Attorney for The Black Hills Group  
of the Sierra Club  
2800 Jackson Boulevard #3  
Rapid City, SD 57702  
(605) 719-9470

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EXPLORATION PERMIT  
APPLICATION

EXNI 453

**MOTION TO DENY PERMIT AS A  
MATTER OF LAW UNDER SDCL §  
45-6D-29**

COME NOW the Intervenors, the Black Hills Group of the Sierra Club and Jeremiah “Jay” Davis, by and through undersigned counsel, and respectfully move the Board of Minerals and Environment to deny Clean Nuclear Energy Corporation’s (CNEC) application for a uranium exploration permit in Fall River County, South Dakota (EXNI 453), as a matter of law, pursuant to SDCL § 45-6D-29.

**GROUND FOR MOTION**

1. The statute mandates denial where the adverse effects of proposed exploration outweigh its benefits. SDCL § 45-6D-29(3)–(5) authorizes the Board to deny a permit if the proposed uranium exploration operation:
  - Will cause disproportionate or irreversible adverse effects to historic, archaeologic, geologic, scientific, or recreational resources;
  - Will adversely affect aquifer recharge areas, water wells, or significant agricultural lands;
  - Will adversely affect threatened or endangered wildlife.
2. Undisputed evidence in the record shows that Craven Canyon and its rim contain nationally significant cultural and archaeological resources.

- Expert reports from Dr. Linea Sundstrom, together with prior agency findings and public documentation (including National Register nominations and Forest Service EA reports), establish that the area includes fragile rock art, burial grounds, and sacred Indigenous sites.
  - CNEC's own interrogatory responses confirm that no comprehensive cultural or tribal consultation occurred prior to site layout and that disturbance locations were chosen without archaeological verification.
3. CNEC has failed to meet its burden under SDCL § 45-6D-29 to affirmatively demonstrate that the project will not cause such harm.
- CNEC admits it will determine the depth to groundwater *after* drilling;
  - It has not provided baseline species surveys or pre-disturbance hydrologic modeling;
  - Its assertions of "no anticipated impact" are conclusory and unsupported.
4. There is no evidence that the speculative benefits of the project outweigh the likely harms.
- The only "benefit" CNEC identifies is possible future geological data;
  - There is no evidence of economic or scientific return to the State, nor any plan for public disclosure of data;
  - The permanent loss of cultural integrity or aquifer contamination far outweighs the speculative benefit of exploratory drilling in a culturally significant and hydrologically sensitive location.

### **RELIEF REQUESTED**

Intervenors respectfully request that the Board:

- Deny the permit as a matter of law pursuant to SDCL § 45-6D-29(3), (4), and (5); or
- In the alternative, set the matter for limited evidentiary hearing solely on the question of disproportionate adverse impacts to cultural and hydrologic resources.

A proposed order is submitted herewith.

Dated this 1<sup>st</sup> day of December, 2025.

LAW OFFICE OF GEORGE NELSON

/s/ George J. Nelson  
George Nelson  
Attorney for The Black Hills Group  
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/s/ George J. Nelson  
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and Natural Resources

**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  
APPLICATION

EXNI 453

**BRIEF IN SUPPORT OF  
INTERVENORS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

**INTRODUCTION**

Intervenors, the Black Hills Group of the Sierra Club and Jeremiah "Jay" Davis, respectfully submit this brief in support of their motion for summary judgment, or in the alternative, partial summary judgment, to deny Clean Nuclear Energy Corporation's (CNEC) application for a uranium exploration permit in Fall River County, South Dakota. CNEC's application fails to satisfy the mandatory statutory requirements under SDCL Chapter 45-6D and must be denied as a matter of law.

**I. STANDARD FOR SUMMARY JUDGMENT IN ADMINISTRATIVE PROCEEDINGS**

Summary judgment in administrative proceedings is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.

SDCL § 1-26-36 authorizes reversal or modification of an agency decision that is clearly erroneous, arbitrary, capricious, or contrary to law. Where a permit applicant fails to meet the specific legal prerequisites imposed by statute, or where the record demonstrates unavoidable adverse impacts, no trial or further hearing is necessary.

**II. STATUTORY FRAMEWORK**

Under SDCL § 45-6D-29, the Board may deny an application for any 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, archaeological, geologic, scientific, or recreational aspects of affected or surrounding land outweigh the benefits;
4. The proposed operation will result in the loss or reduction of long-term productivity of watershed lands, public and domestic water wells, aquifer recharge areas, or significant agricultural areas;
5. The proposed operation will adversely affect threatened or endangered wildlife indigenous to the area.

### **III. SUMMARY JUDGMENT IS APPROPRIATE BECAUSE CNEC'S APPLICATION FAILS TO MEET STATUTORY REQUIREMENTS**

#### **A. CNEC Has Failed to Demonstrate Absence of Adverse Effects on Cultural and Archaeological Resources**

CNEC's discovery responses fail to offer any meaningful assessment of the historic and cultural significance of Craven Canyon, despite undisputed evidence presented by expert witness Dr. Linea Sundstrom establishing that the area includes nationally significant Indigenous rock art and sacred sites. CNEC has provided no archaeological site analysis, no cultural impact study, and no environmental report supporting its position that there will be "no adverse effect."

CNEC's failure to address these impacts renders the application legally insufficient under SDCL § 45-6D-29(3).

#### **B. CNEC Has Failed to Assess or Disclose Potential Groundwater Impacts**

CNEC admits it does not know the depth to groundwater at the proposed drill sites and has not disclosed what additives, if any, will be used in its drilling mud (Interrogatories Nos. 5,

7, 11). The applicant concedes that it may use bentonite or cement grout, but offers no analysis of the potential migration of these materials into groundwater.

This is precisely the type of potential harm SDCL § 45-6D-29(4) was enacted to address: risks to long-term water productivity and aquifer integrity. CNEC's inability to demonstrate safe hydrologic practices mandates denial as a matter of law.

**C. CNEC Has Failed to Establish the Absence of Harm to Threatened or Endangered Wildlife**

CNEC asserts in blanket terms that "there are no anticipated effects" to endangered species, citing unspecified correspondence with South Dakota Game, Fish & Parks. However, Intervenor has raised un rebutted concerns about the presence of species such as the northern long-eared bat and burrowing owl in the exploration area. CNEC has failed to submit any habitat mapping, species survey data, or mitigation plans.

This omission violates SDCL § 45-6D-29(5) and supports summary denial.

**IV. CNEC HAS NOT MET ITS BURDEN OF PROOF UNDER SOUTH DAKOTA LAW**

As the South Dakota Supreme Court held in *Matter of Ehlebracht*, 978 N.W.2d 741 (S.D. 2022), an applicant must demonstrate compliance with legal requirements through substantiated, not speculative, evidence. Assertions of regulatory compliance without factual support do not satisfy the burden of proof.

Similarly, in *Matter of McCook Lake Recreation Area Association*, 26 N.W.3d 711 (S.D. 2025), the Court emphasized that applicants must affirmatively demonstrate no adverse effects on public resources and provide mitigation plans.

Here, CNEC has failed to provide such evidence and has offered no mitigation measures. This failure alone justifies summary denial.

**V. ALTERNATIVE: PARTIAL SUMMARY JUDGMENT SHOULD BE GRANTED**



Even if the Board determines that factual disputes preclude full summary judgment, partial summary judgment should be entered on the following issues:

1. That the project area includes culturally and archaeologically significant sites within the meaning of SDCL § 45-6D-29(3);
2. That the burden of proof remains with CNEC to show that its project will not impair aquifer recharge areas under § 45-6D-29(4);
3. That CNEC has not provided sufficient evidence regarding threatened species protection under § 45-6D-29(5).

Such rulings would narrow the issues for hearing and ensure CNEC's burden is clearly defined.

## **VI. CONCLUSION**

Because CNEC has failed to present evidence sufficient to meet the standards set by South Dakota law, and because Intervenorors have demonstrated uncontroverted adverse impacts on protected resources, the application must be denied as a matter of law.

Intervenorors respectfully request that the Board grant summary judgment or, alternatively, partial summary judgment.

Dated this 1<sup>st</sup> day of December, 2025.

LAW OFFICE OF GEORGE NELSON

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## CERTIFICATE OF SERVICE

I certify that on the 1<sup>st</sup> day of December, 2025, I caused to be served via U.S. mail, postage prepaid, a true and correct copy of *Brief in Support of Intervenor's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment* to:

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