

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

IN THE MATTER OF CLEAN	)	
NUCLEAR ENERGY CORP.	)	
URANIUM EXPLORATION PERMIT	)	<b>CLEAN NUCLEAR ENERGY</b>
APPLICATION	)	<b>CORP.'S MOTION IN LIMINE TO</b>
	)	<b>PRECLUDE EVIDENCE</b>
	)	<b>REGARDING MINING</b>
EXNI 453	)	
	)	
	)	

Clean Nuclear Energy Corp. (“CNEC”), by and through its undersigned counsel of record, hereby moves the Board of Minerals and Environment of the Department of Agriculture and Natural resources (“Department”) to preclude evidence and argument at the hearing on this matter regarding potential future mining activity at or near the exploration project.

**1. Introduction**

CNEC, a seeks a Uranium Exploration permit to allow exploration for uranium on State lands in Section 36, Township 7S, Range 2E, Black Hills Meridian. As stated in the application on file, the exploration program consists of 38 potential drill sites. This motion seeks an order formally precluding evidence and argument regarding potential future mining at or near the proposed exploration project. As evidence on potential future mining is not of consequence to this Board’s decision, any such evidence is not relevant and therefore not admissible. *See* SDCL § 19-19-401 - 402.

**2. Evidence and argument regarding mining is not relevant**

Many of the intervenors’ petitions mention opposition to large scale mineral mining. *See*, e.g., petitions of intervention from Gena Parkhurst, Marla Cooley, Sanders Schaller, Oglalla Sioux Tribe, Ben Sharp, Jean Roach, Ailine Maea, and Beverly Larson. This is not an application for a permit for a mining operation.

The South Dakota statutes regulating uranium mining are found in SDCL ch. 45-6B. Pursuant to SDCL 45-6B-5, any person desiring to “engage in a mining operation” must apply to the Board of Minerals and Environment for a permit for each mining operation. The definition of a “mining operation” includes both surface mining and in situ mining. SDCL § 45-6B-3(11). The contents of an application for a mining permit are set forth in SDCL § 45-6B-6. SDCL ch. 45-6B goes on to discuss the process for obtaining a mining permit, which would include a permit to mine uranium.

The current application of Clean Nuclear Energy Corp. requests a uranium exploration permit. The statutes governing this application are found in SDCL ch. 45-6D. The Uranium Exploration application process is not connected in any way to an application for a large-scale mining permit.

Should a mining operation be considered in the future, the applicant would need to file a new application pursuant to SDCL ch. 45-6B. Interested parties could petition to intervene, and a hearing will be scheduled. Evidence relevant to the application for a mining permit would be presented and considered by the Board. At that time, and not until then, this Board will be tasked with determining whether the specific application for a mining permit satisfies the standards of SDCL ch. 45-6B.

It is altogether possible that no application for mining at this location is ever sought. And if it is, only then will the scope and scale of the application for a potential mining operation be made known. As this Board considers the current exploration application, however, guessing at what a future mining operation may look like is wildly speculative and wholly irrelevant.

As noted above, when evidence and argument is not of consequence in determining the action, it is irrelevant and must be excluded. SDCL § 19-19-401 – 402. The issue of potential in situ mining is not of consequence to the present uranium exploration permit application. Therefore, any proffered evidence or argument regarding potential mining is irrelevant, and must be excluded.

### **3. Conclusion**

The possibility of future mining at the project location is not relevant to the inquiry before this Board. As such, evidence regarding mining is inadmissible and must not be heard or considered by the Board of Minerals and Environment. CNEC respectfully requests an Order precluding evidence or argument on potential uranium mining from the hearing on this matter.

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

By: /s/ Matthew E. Naasz

Matthew E. Naasz  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 342-9503  
E-mail: mnaasz@gpna.com

## **CERTIFICATE OF SERVICE**

I hereby certify on December 1, 2025, a true and correct copy of **CLEAN NUCLEAR ENERGY CORP.'S MOTION IN LIMINE TO PRECLUDE EVIDENCE REGARDING MINING AND SURFACE WATER DISCHARGE** was served upon the following individuals as indicated below:

Brenda Binegar  
Department of Agriculture and Natural Resources  
523 East Capitol Avenue  
Pierre, SD 57501  
[Brenda.binegar@state.sd.us](mailto:Brenda.binegar@state.sd.us)  
Secretary, Board of Minerals & Environment

Further, the undersigned certifies that a true and correct copy of the above-referenced document was served via U.S. First Class Mail, Postage Prepaid upon the following:

Steven R. Blair  
Deputy Attorney General  
P.O. Box 70  
Rapid City, SD 57702  
*Counselor for Department of Agriculture & Natural Resources Minerals, Mining, & Supeifund Program*

Cheryl Angel  
1212 Columbus Street  
Rapid City, SD 57701

Elizabeth Lone Eagle  
P.O. Box 656  
Kyle, SD 57752

Thomas O'Connor  
4601 Mohawk Street  
Lincoln, NE 68510

Candi Brings Plenty  
725 Saint Charles Street  
Rapid City, SD 57701

Robert Bordeaux  
740 University Street, Apartment 3  
Spearfish, SD 57783

Denise Giago  
221 East Jackson Street  
Rapid City, SD 57701

Taylor Gunhammer  
221 East Jackson Street  
Rapid City, SD 57701

Jean Roach  
3711 Ivy Avenue  
Rapid City, SD 57701

Caryn Lerman  
337 South 5th Street  
Hot Springs, SD 57747

Helen Red Feather  
P.O. Box 173  
Wounded Knee, SD 57794

Ailine Maea  
715 Haines Avenue  
Apartment 3  
Rapid City, SD 57701

Darlene Hawk Wing  
P.O. Box 25  
Wounded Knee, SD 57794

Beverly Larson  
P.O. Box 82  
Wounded Knee, SD 57794

Ruddell Bear Shirt  
P.O. Box 88  
Wounded Knee, SD 57794

Mashanaposhe Camp  
P.O. Box 339  
Porcupine, SD 57772

Seth Eagle Bear Jr.  
P.O. Box 44  
Wounded Knee, SD 57794

Sanders Schaller  
322 4th Street  
Smithwick, SD 57782

Sarah Peterson  
510 Jennings  
Hot Springs, SD 57747

Julie Plachta  
P.O. Box 635  
Hot Springs, SD 57747

Susan McPhail Pang  
28017 Cascade Road  
Hot Springs, SD 57747

Ben R. Sharp  
28290 West Flagpole Road  
Hot Springs, SD 57747

Great Plains Tribal Water Alliance, Inc.  
P.O. Box 271  
Pine Ridge, SD 57770

Chase Iron Eyes Attorney at Law  
P.O. Box 393  
Pine Ridge, SD 57770  
*Counsel for Great Plains Tribal Water Alliance, Inc.*

Jeremiah Davis  
130 East Centennial Street  
Rapid City, SD 57701

Michelle Tyon  
P.O. Box 1838  
Pine Ridge, SD 57770

Susan Hey  
312 North 40th Street  
Rapid City, SD 57702

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

Law Office of Bruce Ellison  
P.O. Box 2508  
Rapid City, SD 57709

Lilias Jones Jarding  
P.O. Box 591  
Rapid City, SD 57709

Marla Cooley  
145 South Garden Street  
Hot Springs, SD 57747

Michelle Melius  
Black Hills Group Sierra Club  
P.O. Box 1624  
Rapid City, SD 57709

Reno L. Red Cloud  
P.O. Box 4052  
Pine Ridge, SD 57770

Cheyenne River Sioux Tribe  
Kimberly Craven, Attorney General  
P.O. Box 590  
Eagle Butte, SD 57625

Peter Capossela Attorney At Law  
P.O. Box 10643  
Eugene, OR 97440

George Nelson  
Attorney at Law  
2640 Jackson Boulevard, Suite 1  
Rapid City, SD 57702

Brenda Gamache  
2337 Wilson Avenue  
Hot Springs, SD 57747

Gena Parkhurst  
514 Americas Way #20805  
Box Elder, SD 57719

Steven J. Gunn  
Attorney for Cheyenne River Sioux Tribe and Oglala Sioux Tribe  
1301 Hollins Street  
St. Louis, MO 63135

A courtesy copy of the above referenced document(s) was served by electronic mail upon the following:

Bob Morris, Hearing Chair  
704 7th Avenue, Suite 2  
P.O. Box 370  
Belle Fourche, SD 57717  
[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)

By: /s/ Matthew E. Naasz  
Matthew E. Naasz



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

IN THE MATTER OF CLEAN	)	
NUCLEAR ENERGY CORP.	)	<b>CLEAN NUCLEAR ENERGY</b>
URANIUM EXPLORATION	)	<b>CORP.'S MOTION TO PRECLUDE</b>
PERMIT APPLICATION	)	<b>CONSIDERATION OF</b>
	)	<b>TREATY RIGHTS</b>
EXNI 453	)	
	)	
	)	

---

Applicant Clean Nuclear Energy Corp.'s ("CNEC"), moves that the Board of Minerals and Environment of the Department of Agriculture and Natural resources ("Department") preclude evidence and argument regarding Tribal treaty rights at the hearing on this matter.

**Background**

CNEC, seeks a Uranium Exploration permit to allow exploration for uranium on State owned lands in Section 36, Township 7S, Range 2E, Black Hills Meridian. The project area is not located within the exterior boundaries of any Tribal Reservation. As stated in the application on file, the exploration program consists of 38 potential drill sites. This motion seeks an order formally precluding evidence and argument regarding Tribal Treaty Rights regarding the location of the proposed exploration project. This Board is not the appropriate forum to litigate Tribal Treaty Rights.

Many of the intervenors' petitions mention opposition to the exploration project based on Tribal Treaty rights. *See*, e.g., petitions of intervention from Reno Red Cloud, the Cheyenne River Sioux Tribe, the Oglala Sioux Tribe, Great Plains Tribal Water Alliance, Robet Bordeaux and Denise Giago. For example, the Oglala Sioux Tribe's petition for intervention includes the

following: “The Tribe has treaty rights to land, water, fish, wildlife, and other natural, cultural, and other resources in the Black Hills, and mineral exploration and development in the Black Hills threatens those rights.”

**This Board does not have jurisdiction to consider Treaty rights**

The Fort Laramie Treaties of September 17, 1851, 11 Stat. 252, and of April 29, 1868, 15 Stat. 635, defined the boundaries of the Sioux Nation’s territory. The 1851 Treaty affirmed the signatory tribes’ right to occupy considerable territory, including all of South Dakota, but did not create a reservation. The 1868 Treaty reduced the 1851 treaty territory in South Dakota to areas west of the Missouri River, calling the remainder the Great Sioux Reservation.

In February of 1877, Congress enacted a law effectively “abrogating the earlier Fort Laramie Treaty[.]” *U.S. v. Sioux Nation of Indians*, 448 U.S. 371, 382-83. In 1980, the United States Supreme Court determined that: “the 1877 Act effected a taking of tribal property, property which had been set aside for the exclusive occupation of the Sioux by the Fort Laramie Treaty of 1868. That taking implied an obligation on the part of the Government to make just compensation to the Sioux Nation, and that obligation, including an award of interest, must now, at last, be paid.” *Id.* at 424. After decades of litigation on this issue, the United States Supreme Court determined that the remedy for the taking of the tribal property is just compensation. *Id.*

The Board of Minerals and Environment is not the place to relitigate Tribal Treaty rights issues that have been adjudicated in the Nation’s highest Court. The Board of Minerals and Environment is a quasi-judicial agency with limited jurisdiction. Its jurisdiction in this matter is limited to the criteria set forth in SDCL § 45-6D-29. The Board is vested with authority to decide matters pertaining to the mineral exploration and extraction, not interpretation of treaties. The South Dakota Supreme Court has said the jurisdiction of quasi-judicial agencies is limited to the

board's statutory authority and boards cannot exercise purely judicial functions. In *Petition of West River Electric*, 675 N.W.2d 222, 230 (S.D. 2004), the Court held "The PUC [a quasi-judicial agency] is not a court, and cannot exercise purely judicial functions. Defining and interpreting the law is a judicial function." This Board is not a court and does not have the authority to address and decide treaty right questions. As identified above, the relevant courts have previously weighed in on this issue. The Board simply does not have jurisdiction to hear and decide questions regarding Treaty rights

### **Conclusion**

For all the forgoing reasons, evidence, testimony and argument regarding Treaty rights concerning the property on which the exploration project will be located should be excluded from the hearing on the merits of the application for an exploration permit. CNEC respectfully requests the Board enter an order to that effect.

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

By: /s/ Matthew E. Naasz

Matthew E. Naasz  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 342-9503  
E-mail: mnaasz@gpna.com

## **CERTIFICATE OF SERVICE**

I hereby certify on December 1, 2025, a true and correct copy of **CLEAN NUCLEAR ENERGY CORP.'S MOTION TO PRECLUDE CONSIDERATION OF TRIBAL LAND ISSUES AND TREATY RIGHTS** was served upon the following individuals as indicated below:

Brenda Binegar  
Department of Agriculture and Natural Resources  
523 East Capitol Avenue  
Pierre, SD 57501  
[Brenda.binegar@state.sd.us](mailto:Brenda.binegar@state.sd.us)  
Secretary, Board of Minerals & Environment

Further, the undersigned certifies that a true and correct copy of the above-referenced document was served via U.S. First Class Mail, Postage Prepaid upon the following:

Steven R. Blair  
Deputy Attorney General  
P.O. Box 70  
Rapid City, SD 57702  
*Counsel for Department of Agriculture & Natural Resources Minerals, Mining, & Supeifund Program*

Cheryl Angel  
1212 Columbus Street  
Rapid City, SD 57701

Elizabeth Lone Eagle  
P.O. Box 656  
Kyle, SD 57752

Thomas O'Connor  
4601 Mohawk Street  
Lincoln, NE 68510

Candi Brings Plenty  
725 Saint Charles Street  
Rapid City, SD 57701

Robert Bordeaux  
740 University Street, Apartment 3  
Spearfish, SD 57783

Denise Giago  
221 East Jackson Street  
Rapid City, SD 57701

Taylor Gunhammer  
221 East Jackson Street  
Rapid City, SD 57701

Jean Roach  
3711 Ivy Avenue  
Rapid City, SD 57701

Caryn Lerman  
337 South 5th Street  
Hot Springs, SD 57747

Helen Red Feather  
P.O. Box 173  
Wounded Knee, SD 57794

Ailine Maea  
715 Haines Avenue  
Apartment 3  
Rapid City, SD 57701

Darlene Hawk Wing  
P.O. Box 25  
Wounded Knee, SD 57794

Beverly Larson  
P.O. Box 82  
Wounded Knee, SD 57794

Ruddell Bear Shirt  
P.O. Box 88  
Wounded Knee, SD 57794

Mashanaposhe Camp  
P.O. Box 339  
Porcupine, SD 57772

Seth Eagle Bear Jr.  
P.O. Box 44  
Wounded Knee, SD 57794

Sanders Schaller  
322 4th Street  
Smithwick, SD 57782

Sarah Peterson  
510 Jennings  
Hot Springs, SD 57747

Julie Plachta  
P.O. Box 635  
Hot Springs, SD 57747

Susan McPhail Pang  
28017 Cascade Road  
Hot Springs, SD 57747

Ben R. Sharp  
28290 West Flagpole Road  
Hot Springs, SD 57747

Great Plains Tribal Water Alliance, Inc.  
P.O. Box 271  
Pine Ridge, SD 57770

Chase Iron Eyes Attorney at Law  
P.O. Box 393  
Pine Ridge, SD 57770  
*Counsel for Great Plains Tribal Water Alliance, Inc.*

Jeremiah Davis  
130 East Centennial Street  
Rapid City, SD 57701

Michelle Tyon  
P.O. Box 1838  
Pine Ridge, SD 57770

Susan Hey  
312 North 40th Street  
Rapid City, SD 57702

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

Law Office of Bruce Ellison  
P.O. Box 2508  
Rapid City, SD 57709

Lilias Jones Jarding  
P.O. Box 591  
Rapid City, SD 57709

Marla Cooley  
145 South Garden Street  
Hot Springs, SD 57747

Michelle Melius  
Black Hills Group Sierra Club  
P.O. Box 1624  
Rapid City, SD 57709

Reno L. Red Cloud  
P.O. Box 4052  
Pine Ridge, SD 57770

Cheyenne River Sioux Tribe  
Kimberly Craven, Attorney General  
P.O. Box 590  
Eagle Butte, SD 57625

Peter Capossela Attorney At Law  
P.O. Box 10643  
Eugene, OR 97440

George Nelson  
Attorney at Law  
2640 Jackson Boulevard, Suite 1  
Rapid City, SD 57702

Brenda Gamache  
2337 Wilson Avenue  
Hot Springs, SD 57747

Gena Parkhurst  
514 Americas Way #20805  
Box Elder, SD 57719

Steven J. Gunn  
Attorney for Cheyenne River Sioux Tribe and Oglala Sioux Tribe  
1301 Hollins Street  
St. Louis, MO 63135

A courtesy copy of the above referenced document(s) was served by electronic mail upon the following:

Bob Morris, Hearing Chair  
704 7th Avenue, Suite 2  
P.O. Box 370  
Belle Fourche, SD 57717  
[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)

By: /s/ Matthew E. Naasz  
Matthew E. Naasz