From: Anna Applegate <aapplegate@gpna.com>
Sent: Monday, December 15, 2025 2:11 PM
To: Binegar, Brenda <Brenda.Binegar@state.sd.us>
Cc: Bob Morris <bobmorris@westriverlaw.com>; Matthew Naasz <mnaasz@gpna.com>
Subject: [EXT] Clean Nuclear Energy Corp.

Good afternoon,

Attached please find Clean Nuclear Energy Corp.'s responses to the Motions from the Sierra Club, Cheyenne River Sioux Tribe and Oglala Sioux Tribe.
Thank you,

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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 APPLICATION EXNI 453	)	**CLEAN NUCLEAR ENERGY CORP.'S RESPONSE IN OPPOSITION TO MOTION TO STRIKE**

Clean Nuclear Energy Corp. ("CNEC"), by and through its undersigned counsel of record submits its Response in Opposition to Black Hills Group of the Sierra Club and Jeremiah "Jay" Davis' ("Intervenors") Motion to Strike.

I. INTRODUCTION AND SUMMARY

Intervenors appear to have filed a motion attempting to strike Applicants' assertions of no adverse effect regarding the issues to be considered by the Board during the contested case hearing on this matter. While the authority in support of Intervenors' motion is difficult to follow, it appears as though Intervenors have essentially requested an order preventing Applicant from supporting its application with facts relevant to the Board's consideration under SDCL § 45-6D-29. Intervenors provide no legal or factual support for their motion. All parties should be allowed the opportunity to present evidence relevant to the standard articulated in SDCL § 45-6D-29 at the contested case hearing on this matter.

II. GOVERNING LAW

Consistent with its application of the relevant authority in its other motions filed in this matter, Intervenors consistently misrepresent the burden of proof in this matter. SDCL § 45-6D-29 provides:

Grant of permit if application in compliance with law--Grounds for denial.

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.

SDCL § 45-6D-29 (emphasis added).

This statute clearly directs the Board to grant the application unless at least one of the considerations identified in that section are met. Obviously, at this point there has been no contested case hearing in this matter. At the contested case hearing, the various parties will present their evidence on the relevant factors identified in SDCL § 45-6D-29. Unless it has been established that one of the grounds for denial identified in that statute has been conclusively established, the Board "shall" grant the application.

Intervenors cite SDCL § 1-26-36 regarding the burden in this matter. SDCL § 1-26-36 governs circuit court review of state agencies' conclusions following a contested case hearing. The time to consider application of this statute will not arise until the conclusion of the contested case hearing and final decision by this Board.

III. ALLEGED DEFICENCIES IN DISCOVERY RESPONSES

Intervenors take issue with CNEC's responses to Interrogatory Nos. 6, 7, 8, and 15. It is worth noting that Intervenors' discovery requests do not include interrogatories with those numbers. If Intervenors are referring to CNEC's responses to Cheyenne River Sioux Tribe's and Oglala Sioux Tribe's responses with these numbers, CNEC responded to those requests. Neither the CRST nor the OST filed a motion regarding CNEC's responses to those interrogatories.

As it relates to the disclosure of survey data, those surveys are also in the possession of the State Historic Preservation Office. It is CNEC's understanding that those reports are confidential, pursuant to state statute. As stated in the Motion of the CRST and OST, the parties contemplate disclosure of these documents upon entry of a protective order agreeable to all parties. Absent such a protective order, it is CNEC's understanding that these reports must remain confidential pursuant to SDCL § 1-20-21.2.

IV. LEGAL AUTHORITY

Intervenors cite two South Dakota Supreme Court cases: *Matter of SDDS, Inc*., 472 N.W.2d 502 (S.D. 1991), and *Application of Union Carbide Corp*., 308 N.W.2d 753 (S.D. 1981), as authority for their motion. Those decisions have no application to this matter at this stage in the proceedings. First off, *Matter of SDDS, Inc*., stands for the proposition that even when potentially significant effects on the environment may exist, there is no requirement for an environmental impact statement to be ordered. 472 N.W.2d 502, 508. This issue has not been raised in this matter.

Secondly, in *Application of Union Carbide Corp*., the Supreme Court reversed the grant of an exploration permit because there was no contested case proceeding at the agency level. 308 N.W.2d 753, 761. The Court was concerned with the due process considerations being provided

to Intervenors. *Id.* at 758. Here, in sharp contrast, the Board has extended the deadline for making a decision on this matter well beyond the 90 days from the date of receipt of the application authorized by statute. *See*, SDCL § 45-6D-28. The application was deemed complete several months ago, and the hearing on the merits of this application won't be heard until at least January of 2026. No argument can be made that intervenors are not being provided adequate opportunity to be heard.

Finally, and most importantly, Intervenors Motion wholly lacks any legal authority supporting the request they seek. Such an unsupported Motion filed without any legal authority cannot be granted.

V. CONCLUSION

For the foregoing reasons, the motion should be denied.

Respectfully submitted this 15th day of December, 2025.

By: */s/ Matthew E. Naasz*

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CERTIFICATE OF SERVICE

I hereby certify on December 15, 2025, a true and correct copy of **CLEAN NUCLEAR ENERBY CORP.'S RESPONSE IN OPPOSITION TO MOTION TO STRIKE** was served upon the following individuals as indicated below:

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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:

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

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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. URANIUM EXPLORATION PERMIT APPLICATION EXNI 453	)	**CLEAN NUCLEAR ENERGY CORP.'S BRIEF IN OPPOSITION CHEYENNE RIVER SIOUX TRIBE AND OGLALA SIOUX TRIBE MOTION FOR ORDERS**

COMES NOW, Clean Nuclear Energy Inc. ("CNEC"), by and through its attorney of record, Matthew E. Naasz of Gunderson, Palmer, Nelson & Ashmore and hereby submits this Brief in Opposition to Cheyenne River Sioux Tribe and Oglala Sioux Tribe (collectively "Tribes") Motion for Orders.

INTRODUCTION

1. The Tribes seek disclosure of Vantage Point reports concerning cultural resources in the project area. As stated in the Tribes' Motion, CNEC continues to work with counsel for the Tribes and DANR on this matter. When a protective order agreeable to the parties has been entered, CNEC will provide the documents requested. Absent such a protective order, it is CNEC's understanding that SDCL § 1-20-21.2 prohibits their disclosure.

2. The Tribes seek access to the exploration area and surrounding land for the purpose of inspection. CNEC does not object to the Tribes' access to the exploration area while there is no exploration activity occurring. CNEC is not the fee owner of the land however and cannot authorize such an inspection. Any such inspection could have been requested from the South Dakota Department of School and Public Lands at any time. CNEC would object to any delay in these proceedings created by any inspection.

3. CNEC is working to obtain the information requested during the deposition and will be providing that information subject to applicable objections. CNEC anticipates having this issue resolved prior to the prehearing conference on this matter.

4. CNEC does not object to 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 matter.

Respectfully submitted this 15th day of December, 2025.

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CERTIFICATE OF SERVICE

I hereby certify on December 15, 2025, a true and correct copy of **CLEAN NUCLEAR ENERGY CORP.'S BRIEF IN OPPOSITION TO CHEYENNE RIVER SIOUX TRIBE AND OGLALA SIOUX TRIBE MOTION FOR ORDERS** was served upon the following individuals as indicated below:

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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 APPLICATION EXNI 453	)	**CLEAN NUCLEAR ENERGY CORP.'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

COMES NOW Clean Nuclear Energy Corp., by and through Mattthew E. Naasz of Gunderson, Palmer, Nelson & Ashmore, LLP, and hereby submits this Response to Motion for Summary Judgment filed by Black Hills Group of the Sierra Club and Jeremiah "Jay" Davis ("Intervenors").

I. STANDARD FOR SUMMARY JUDGMENT AND ADMINISTRATIVE PROCEEDINGS

At the outset, and fatal to Intervenor's instant motion, the authority cited by Intervenors for bringing this motion, SDCL § 1-26-36, considers a Circuit Court's deference to findings made and inferences drawn by an agency on questions of fact in an appeal to the Circuit Court from an administrative agency's final decision. Such authority has no application prior to the contested case hearing and the final agency action. Intervenors provide no authority for the relief requested.

II. STATUTORY FRAMEWORK

The full text of SDCL § 45-6D-29 states:

Grant of permit if application in compliance with law--Grounds for denial.

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.

SDCL § 45-6D-29 (emphasis added).

Intervenors consistently misrepresent the burden of proof in this matter. SDCL § 45-6D-29 requires the board to grant the permit for the exploration application unless one of the factors set forth in that section is established. It is incumbent upon those opposing the application in this matter to establish one of these criteria. If not, the permit "shall" be granted.

III. SUMMARY JUDGEMENT IS INAPPROPRIATE

Intervenors' arguments are devoid of merit. Intervenors suggest that applicant has not carried its burden of proof in this matter. First of all, and again fatal to Intervenors motion, the contested case in this matter has not yet occurred. Applicant has submitted an application deemed to be complete by DANR. Discovery in this matter has been conducted. Applicant has identified experts. The merits of this application must be considered at a contested case hearing. Intervenors' conclusory statements to the contrary, without any citation to the record or legal authority, must be dismissed.

A. Intervenors first criticize CNEC for failing to address the historic and cultural significance of Craven Canyon. Buth the South Dakota State Historical Preservation Office has determined, after receiving information provided by CNEC, that "the proposal will not encroach upon, damage, or destroy a historic property which is included in the National and State Register

of Historic Places," provided certain restrictions are followed. CNEC will follow all recommended restrictions.

B. Intervenors' next unsubstantiated criticism of the application focuses on potential impacts to groundwater. In the Uranium Exploration Reclamation Plan, which was part of CNEC's application, CNEC:

> [C]ommits to following all of the South Dakota laws and statutes concerning drill hole plugging and abandonment and would install a full cement grout where needed, such as in any instance where aquifer cross contamination is possible. All of the exploration drill holes will be plugged in accordance with Administrative Rules of South Dakota (ARSD) 74:11:08 and South Dakota Codified Law (SDCL) 45-6D-33 through 45-6D-34. The drill holes plan to penetrate the Inyan Kara Group rocks, which are water-bearing units or aquifers in some locations of the Black Hills. If an aquifer is penetrated, the completed exploration drill holes will be plugged from bottom to top using bentonite grout, which complies with the requirements of ARSD 74:11:08:05 and ARSD 74:11:08:05:01 (i.e., requirements for plugging exploration drill holes that penetrate single unconfined aquifers and confined or multiple aquifers). If a confined aquifer is penetrated, the weight of the bentonite grout column would be either sufficient to overcome formation pressure or the hole will be plugged using cement grout. The collar elevations of the planned holes are higher than the static water level to be encountered in the exploration holes; therefore, no natural artesian discharge from drill holes is anticipated.

C. Finally, Intervenors take issue with potential impacts to threatened or endangered wildlife. On file with DANR, and accessible on the contested case website for this matter are restrictions from the South Dakota Game, Fish & Parks. These restrictions will be followed by CNEC, ensuring no impact to wildlife.

IV. LEGAL AUTHORITY

Intervenors cite two decisions of the South Dakota Supreme Court as ostensible authority for their contention that applicant has not met its burden of proof. Setting aside the issue of the suggestion that CNEC must have met its burden of proof at this juncture in the proceedings, Intervenors' authority is misplaced and inapplicable to the present stage of these proceedings.

Neither of the decisions cited by Intervenors involve adjudications of contested case proceedings prior to the contested case hearing. In both decisions cited by Intervenors the South Dakota Supreme Court affirmed a Circuit Court's decision affirming the state agency's decision to grant the applicable permits following contested case hearings. *See, Matter of Ehlebracht,* 2022 S.D. 46, ¶ 3; *In re McCook Lake Recreation Association* 2025 S.D. 53, ¶ 6-7. Frankly, the decisions cited by Intervenors do not appear to support the assertions for which they are cited and their citation is puzzling at best. Nor do they apply to the present application. Neither of these decisions support, or even consider, a grant of summary judgment in a contested case proceeding.

Finally, Intervenors appear to request this Board grant partial summary judgment on the applicability of certain subsections of SDCL § 45-6D-29. Those subsections of SDCL § 45-6D-29 will be considered by the Board following the contested case proceedings in this matter. Consistently, no authority is provided for this request. Applicant, the State, and Intervenors will all have an opportunity to present evidence regarding those subsections at the hearing on this matter. After such hearing the Board will determine whether to grant or deny the application.

V. CONCLUSION

Intervenors have not presented any relevant legal authority for the requested relief. The motion must be denied.

Respectfully submitted this 15th day of December, 2025.

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IN THE MATTER OF CLEAN NUCLEAR ENERGY CORP. URANIUM EXPLORATION PERMIT APPLICATION **EXNI 453**	)	**CLEAN NUCLEAR ENERGY CORP.'S RESPONSE TO MOTION TO DENY**

Clean Nuclear Energy Corp. ("CNEC"), by and through its undersigned counsel of record, submits this Response to the Motion to Deny.

Without any authority, the Sierra Club and Jeremiah "Jay" Davis ("Intervenors") suggest the instant application should be denied as a matter of law pursuant to SDCL§ 45-6D-29. A common theme throughout the motions filed by the Intervenors is misapplication of the burden of proof in SDCL § 45-6D-29. That statute states:

> **Grant of permit if application in compliance with law--Grounds for denial.**
>
> 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:
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> (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.

SDCL § 45-6D-29 (emphasis added).

The burden falls on any Intervener opposing the application to establish one of the grounds for denial identified in SDCL § 45-6D-29. Absent such showing, the permit "shall" be granted.

Intervenors' sole reason for suggesting that CNEC's application be denied is the proximity of the project to Craven Canyon. This issue has been addressed by the appropriate state agency. In its letter dated February 21, 2025, the State Historical Preservation Officer stated: "Therefore, SHPO had made the following determination that the proposal will not encroach upon, damage, or destroy a historic property which is included in the National and State Registers of Historic Places," provided that certain restrictions are followed. CNEC fully intends to comply with all restrictions of the SHPO.

Intervenors cite no relevant authority for the proposition that this application can be denied as a matter of law. Applicant has submitted a procedurally complete application, engaged in discovery, identified expert witnesses and is ready to proceed with the contested case hearing on this matter. CNEC is entitled to a timely hearing on its application pursuant to SDCL § 45-6D-28. The Intervenors' inclusion in its motion of a request for a separate evidentiary hearing belies its true goal in this matter, which is to delay this application to the point of essentially denying it. The hearing on this matter has already been delayed well beyond the timeframe required by SDCL § 45-6D-28. This Board has only the authority provided to it by statute, there is no authority for further delaying the hearing on this matter.

Conclusion

There is no legal authority which would allow this Motion to be granted, nor is there any factual support for this Motion. Intervenors frivolous motion must be denied.

Respectfully submitted this 15th day of December, 2025.

By: */s/ Matthew E. Naasz*

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CERTIFICATE OF SERVICE

I hereby certify on December 15, 2025, a true and correct copy of CLEAN NUCLEAR ENERBY CORP.'S RESPONSE TO MOTION TO DENY was served upon the following individuals as indicated below:

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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:

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