

STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY GENERAL**

1302 East SD Highway 1889, Suite 1  
Pierre, South Dakota 57501-8501  
Phone (605) 773-3215  
Fax (605) 773-4106  
<http://atg.sd.gov>

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**BRENT K. KEMPEMA**  
CHIEF DEPUTY

May 13, 2026

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)

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

Dear Ms. Binegar:

Enclosed please find originals of Elizabeth A. Cave's Limited Notice of Appearance, Grant M. Flynn's Limited Notice of Appearance, Commissioner Brock Greenfield's Motion to Quash, 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.

Respectfully,

*/s/ Elizabeth A. Cave*

Elizabeth A. Cave  
Assistant Attorney General

EAC/mn  
Enclosures  
By email and interoffice 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.	)	LIMITED NOTICE OF APPEARANCE
URANIUM EXPLORATION PERMIT	)	
APPLICATION	)	
	)	
EXNI 453	)	
	)	
	)	

---

TO THE BOARD OF MINERALS AND ENVIRONMENT:

The undersigned hereby gives notice of her appearance in the above-captioned matter as counsel for Commissioner Brock Greenfield (“Commissioner”) for the limited purpose of the Commissioner’s Motion to Quash, and hereby requests copies of any decision made by the Board and/or sufficient notice of the date and time of any oral arguments for said Motion.

Dated this 13th day of May 2026.

/s/ Elizabeth A. Cave  
Elizabeth A. Cave  
Assistant Attorney General  
1302 East SD Highway 1889, Suite 1  
Pierre, South Dakota 57501-8501  
Telephone: (605) 773-3215  
Email: elizabeth.cave@state.sd.us

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

---

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

---

TO THE BOARD OF MINERALS AND ENVIRONMENT:

The undersigned hereby gives notice of his appearance in the above-captioned matter as counsel for Commissioner Brock Greenfield (“Commissioner”) for the limited purpose of the Commissioner’s Motion to Quash, and hereby requests copies of any decision made by the Board and/or sufficient notice of the date and time of any oral arguments for said Motion.

Dated this 13th day of May 2026.

/s/ Grant M. Flynn  
Grant M. Flynn  
Assistant Attorney General  
1302 East SD Highway 1889, Suite 1  
Pierre, South Dakota 57501-8501  
Telephone: (605) 773-3215  
Email: grant.flynn@state.sd.us

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

---

IN THE MATTER OF CLEAN	)	
NUCLEAR ENERGY CORP.	)	COMMISSIONER BROCK
URANIUM EXPLORATION PERMIT	)	GREENFIELD'S MOTION TO
APPLICATION	)	QUASH
	)	
EXNI 453	)	
	)	
	)	

---

Comes now Commissioner Brock Greenfield ("Commissioner"), by and through undersigned counsel, and moves the Board to grant Commissioner's Motion to Quash Intervenor Bruce Ellison's ("Intervenor") Motion for Subpoena issued by the Board on May 1<sup>st</sup>, 2026, and served upon the Commissioner on May 8, 2026. The Motion for Subpoena seeks the testimony of the Commissioner at the Evidentiary Hearing on May 18, 2026, at 9 a.m.<sup>1</sup> in the matter of Clean Nuclear Energy Corp.'s ("Applicant") uranium exploration permit application.

**I. INTRODUCTION**

Intervenor's Motion for Subpoena seeks the Commissioner's testimony and documentary evidence regarding the underlying lease for the affected land in this matter and Applicant's reclamation plan. Regarding the Commissioner's testimony, Intervenor asserts that the Commissioner's testimony is relevant

---

<sup>1</sup> Intervenor, within conversations with the undersigned, stated that the Commissioner was not required to appear before Friday, May 22, 2026.

because the Commissioner “has significant statutory authority and responsibility in the State’s issuance of permits for mineral exploration and mining on our public lands.” Intervenor’s Motion for Subpoena at 2. Regarding the documentary evidence, Intervenor seeks (1) “all records retained by the Commissioner for School and Public Lands involving communication with surface lessee Tim Allen, Crystal Hocking”; (2) “a copy of [Tim] Allen’s lease agreement with the Commissioner”; and (3) “[Tim] Allen’s lease agreement with the Applicant or Basin Uranium Corp. or Cowboy Uranium on lands sought to be explored by Applicant.” *Id.* at 1. As justification for both the Commissioner’s testimony and document production, Intervenor asserts that the Commissioner “played a significant and direct role in the [Clean Nuclear Energy Corp.] application process.” *Id.* at 2. However, as argued below, both the Commissioner’s testimony and document production is irrelevant, immaterial, unduly repetitious, and, thus, is unreasonable and oppressive. Therefore, the Commissioner moves the Board to quash Intervenor’s subpoena in accordance with SDCL § 1-26-19, SDCL § 15-6-45(b), and SDCL § 1-27-1.9.

## **II. LEGAL ANALYSIS**

SDCL § 1-26-19 provides, in part:

In contested cases...Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type

commonly relied upon by reasonably prudent persons in the conduct of their affairs....

Within administrative proceedings, the “[a]pplication of the technical rules of evidence is not constitutionally required....Numerous courts have recognized that this is especially true in administrative proceedings....Yet it cannot be doubted that the applicable rules of evidence must be applied in a fair and even-handed manner.” *Daily v. City of Sioux Falls*, 2011 S.D. 48, ¶ 29, 802 N.W.2d 905, 917 (internal citations omitted) (collecting cases).

Within the State’s rules of evidence, “evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and it is consequential in determining an action.” *Graff v. Children's Care Hosp. & Sch.*, 2020 S.D. 26, ¶ 14, 943 N.W.2d 484, 489 (cleaned up) (quoting SDCL § 19-19-401). “Relevant evidence may be excluded if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *Id.* (cleaned up) (quoting SDCL § 19-19-403).

**A. Intervenor’s Subpoena is Unreasonable and Oppressive because the Information Sought Through the Subpoena is Irrelevant and Immaterial to The Exploratory Permit Before the Board.**

A subpoena may be quashed or modified if it is found to be “unreasonable or oppressive.” SDCL § 15-6-45(b). The party seeking to quash a subpoena bears the “burden of proving the necessity of doing so.” Trial courts have “considerable discretion” as to these types of evidentiary rulings. *Kern v.*

*Progressive N. Ins. Co.*, 2016 S.D. 52, ¶ 29, 883 N.W.2d 511, 518; *see also Lien v. Lien*, 2004 S.D. 8, ¶ 33, 674 N.W.2d 816, 826-27; *Phipps Bros. Inc. v. Nelson's Oil & Gas, Inc.*, 508 N.W.2d 885, 890 (S.D.1993). Intervenor's subpoena is unreasonable and oppressive with regard to the Commissioner. The Commissioner possesses limited knowledge related to the issues currently before the Board, and the information that he does have is available elsewhere in the record. Further, the Commissioner cannot be compelled to testify to anything related to his deliberative process pursuant to SDCL § 1-27-1.9, such questions could easily encroach into any legitimate inquiries that Intervenor may pursue. For these reasons, compelling the Commissioner's testimony for these proceedings is unreasonable and oppressive. SDCL § 15-6-45(b).

**1. Intervenor overstates the Commissioner's role within the Board of Minerals and Environment exploratory permitting process.**

SDCL § 45-6D-5 ensures that "[a]ll uranium exploration on state-owned land shall comply with the applicable prospecting and exploration permit requirements of chapter 5-7..." However, SDCL § 5-7's scope is limited to the leases of State-owned mineral interests. SDCL § 5-7 does not regulate the permits required for the mining of minerals. Thus, SDCL § 5-7 role is ancillary within the larger processes outlined in SDCL § 45-6D.

The processes involved, and the information required, for a uranium exploration permit, as outlined within SDCL § 45-6D, is focused on the technical aspects and environmental impacts that include, but are not limited to, the type of uranium sought; the impacts of the exploratory drilling upon the

affected land; impacts to riparian habitats; archaeological reports of impacts to the affected land; impacts to water quality; surety bonds; determinations of adverse effects of the exploration on historic, archeologic, geologic, scientific, or recreational aspects of the affected or surrounding land; impacts to the watershed lands; and responsible capping, sealing, and plugging test holes. *See generally* SDCL § 45-6D. None of these processes and considerations involve the experience, expertise, institutional knowledge, or information held by the Office of School and Public Lands and, thereby, the Commissioner.

Admittedly, the Office of School and Public Lands engaged in discussions surrounding applicant's reclamation plan in an effort to preserve the rights of the Office's lessee. *But see infra* Discussion II(B). However, this level of involvement is a far cry from Intervenor's unsupported assertion that the Commissioner "played a significant and direct role in the [Clean Nuclear Energy Corp.] application process"—the assertion that forms the basis for his Motion. Intervenor's Motion for Subpoena at 2. Due to the Commissioner's limited knowledge of the specific questions before the Board, it would be unreasonable and oppressive to require him to personally appear and address inquiries related to those questions. SDCL § 15-6-45(b).

## **2. Relevancy and Materiality**

"Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *St. John v. Peterson*, 2011 S.D. 58, ¶ 13, 804 N.W.2d 71, 75 (quoting SDCL § 19-12-1).

“Any proffered item that would appear to alter the probabilities of a consequential fact is relevant, although it may be excluded because of other factors.” *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, ¶ 46, 764 N.W.2d 474, 484 (quoting 2 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal *Evidence*, § 401.04[2][c] (*Joseph M. McLaughlin, ed., Matthew Bender* 2d ed.2008)). Black's Law defines “immaterial evidence” as “1. Evidence lacking in probative value” and “2. Evidence offered to prove a matter that is not in issue.” EVIDENCE, Black's Law Dictionary (12th ed. 2024).

Here, the determination required by the Board is whether to grant a uranium exploration mining permit. The Board “shall grant a permit to an operator if the application complies with the requirements” of SDCL § 45-6D. SDCL § 45-6D-29. And, the Board “may not deny a permit” except for one or more of the five reasons outlined in SDCL § 45-6D-29. Thus, within this matter, relevant and material evidence applies either to the Applicant's (1) compliance with the application requirements or (2) meeting one or more of the reasons listed in § 45-6D-29.

Intervenor asserts that the Commissioner's testimony will “permit [Intervenor] to present a more complete record on matters and issues under consideration by the Board in determining whether to refuse to grant and therefore deny [Clean Nuclear Energy Corp.'s] Application.” Intervenor's Motion for Subpoena at 2. However, the Commissioner has neither personal knowledge of the sufficiency of the permit application nor the effects of uranium exploration on this property. Regarding SDCL § 45-6D-5, the Applicant's

compliance with SDCL § 5-7 is seen within the issuance of the original lease and then the valid assignment. The Commissioner can, at best, confirm that the Applicants are the assignee for the lease of the affected land. However, this is easily confirmed through other sources.

If the Board were to find that the Commissioner's testimony and document production is relevant, the testimony and document production should still be excluded because it causes undue delay and wastes time. *Graff*, 2020 S.D. 26, ¶ 14 (cleaned up) (quoting SDCL § 19-19-403). The Commissioner has extremely limited information to provide the Board in making its determination regarding whether to approve the Applicant's exploration permit. If the Board requires the Commissioner to testify, the Board is also required to allow, not only Intervenor, but the parties and numerous other intervenors the opportunity to cross-examine the Commissioner on any matter relevant to the application. This would result in undue delay and wastes the time, resources, and energy of the Board, not to mention, oppressive and unreasonable obligations on the Commissioner. SDCL § 15-6-45(b).

**B. The Information Sought Through the Subpoena is Barred by SDCL 1-27-1.9.**

Intervenor seeks, not only any relevant lease agreements, but any communications "with surface lessee Tim Allen [and] Crystal Hocking." Intervenor's Motion for Subpoena at 1. Further, within conversations with the undersigned counsel, Intervenor expressed that he seeks testimony from the Commissioner regarding the Applicant's reclamation plan.

SDCL § 1-27-1.9 provides:

No elected or appointed official or employee of the state or any political subdivision may be compelled to provide documents, records, or communications used for the purpose of the decisional or deliberative process relating to any decision arising from that person's official duties. Any document that is otherwise already public is not made confidential by reason of having been used in deliberations.

The Commissioner's communications prior to either the original surface lease agreement, assigned lease, or communications regarding the Applicant's reclamation plan all fall under "communications used for the purpose of the decisional" process relating to "decisions arising from" the Commissioner's official duties. SDCL § 1-27-1.9.

**1. Intervenor's Motion fails the *Nixon* test.**

If the Board determines that SDCL § 1-27-1.9 is not a complete bar in the present matter, in the alternative, the three-part test the State applies to determine whether a subpoena for documents may be quashed is applicable. *Milstead v. Smith*, 2016 S.D. 55, ¶ 19, 883 N.W.2d 711, 720. The "*Nixon*" test "obligates the requesting party to establish that the desired evidence is (1) relevant, (2) admissible, and (3) requested with adequate specificity." *Id.* Intervenor's request fails the relevancy and adequate specificity factor. *Id.* at ¶ 20.

To reiterate, Intervenor's subpoena of the Commissioner is not relevant to the present matter. *Supra* Discussion (II)(A) (2). Further, Intervenor has not set forth a good-faith, factual predicate demonstrating that the subpoena is reasonably likely to directly bear on the inquiry, as outlined in SDCL

§ 45-6D-29. *Milstead*, 2016 S.D. 55, ¶ 22. Regarding adequate specificity, “[t]he requirement of specificity ensures that the subpoenas are used only to secure for trial certain documents or sharply defined groups of documents.” *Milstead*, 2016 S.D. 55, ¶ 27 (cleaned up) (quoting *United States v. Jackson*, 155 F.R.D. 664, 667 (D.Kan.1994)). Further, this requirement “also prevents a subpoena duces tecum...from being used as a fishing expedition to see what may turn up.” *Id.* (cleaned up) (quoting *United States v. Sellers*, 275 F.R.D. 620, 624 (D.Nev.2011)). “Of the three requirements set forth in *Nixon*, specificity is the hurdle on which many subpoena requests stumble.” *Id.* (quoting *United States v. Ruedlinger*, 172 F.R.D. 453, 456 (D.Kan.1997)). Here, Intervenor’s Motion does not move, with sufficient specificity, his reasoning for the Commissioner’s testimony and document production. Intervenor predicates his Motion upon the overstatement of the Commissioner’s role and, then, attempts a fishing expedition for testimony and documents.

Further, regarding Applicant’s reclamation plan, questions regarding that plan, in accordance with SDCL § 45-6D-8 and § 45-6D-9, are best asked of the Applicant. SDCL 45-6D-16 requires that an applicant consult with the surface owner, however, the applicant is only required to “provide such persons with the opportunity to designate, in writing, preferences for the reclamation of the affected land.” SDCL § 45-6D-16. The Applicant’s application, found within the record, shows that the consultation occurred.

Therefore, Intervenor’s Motion is both barred by SDCL § 1-27-1.9 and the *Nixon* test. To require the Commissioner’s testimony under these

circumstances would be unreasonable and oppressive as contemplated by SDCL § 15-6-45(b).

### III. CONCLUSION

Based on the above-mentioned reasons, the Commissioner moves the Board to quash Intervenor's subpoena in accordance with SDCL § 1-26-19, SDCL § 15-6-45(b), and SDCL § 1-27-1.9.

Dated this 13th day of May 2026.

/s/ Elizabeth A. Cave  
Elizabeth A. Cave  
Assistant Attorney General  
1302 East SD Highway 1889, Suite 1  
Pierre, South Dakota 57501-8501  
Telephone: (605) 773-3215  
Email: elizabeth.cave@state.sd.us

/s/ Grant M. Flynn  
Grant M. Flynn  
Assistant Attorney General  
1302 East SD Highway 1889, Suite 1  
Pierre, South Dakota 57501-8501  
Telephone: (605) 773-3215  
Email: grant.flynn@state.sd.us



Matthew Naasz  
Attorney at Law  
506 6th Street  
P.O. Box 8045  
Rapid City, SD 57709  
*Counsel for Clean Nuclear Energy Group*

Sanders Schaller  
322 4th Street  
Smithwick, SD 57782

Cheryl Angel  
1212 Columbus Street  
Rapid City, SD 57701

Sarah Peterson  
510 Jennings  
Hot Springs, SD 57747

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

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

Thomas O'Connor  
4601 Mohawk Street  
Lincoln, NE 68510

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

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

Susan McPhail Pang  
28017 Cascade Road  
Hot Springs, SD 57747

Robert Bordeaux  
916 Saint Joe Street  
Spearfish, SD 57783

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

Denise Giago  
221 East Jackson Street  
Rapid City, SD 57701

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

Taylor Gunhammer  
221 East Jackson Street  
Rapid City, SD 57701

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

Jean Roach  
3711 Ivy Avenue  
Rapid City, SD 57701

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

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

Peter Capossela  
Attorney at Law  
P.O. Box 10643  
Eugene, OR 97440  
*Counsel for Great Plains Tribal Water  
Alliance, Inc.*

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

Jeremiah Davis  
130 East Centennial Street  
Rapid City, SD 57701

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

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

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

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

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

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

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

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

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

Marla Cooley  
145 South Garden Street  
Hot Springs, SD 57747

George Nelson  
Attorney at Law  
2800 Jackson Blvd., Suite 3  
Rapid City, SD 57702  
*Counsel for Black Hills Sierra Club*

Brenda Gamache  
2337 Wilson Avenue  
Hot Springs, SD 57747

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

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

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

And on the same date copies were hand-delivered to David M. McVey, Assistant Attorney General, Counsel for Board of Minerals and Environment, Office of the Attorney General, 1302 East SD Highway 1889, Suite 1, Pierre, South Dakota 57501-8501.

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

Bob Morris, Hearing Officer  
bobmorris@westriverlaw.com

Bruce Ellison  
bruce.ellison4@gmail.com

David M. McVey  
David.McVey@state.sd.us

Dated this 13th day of May 2026.

/s/ Elizabeth A. Cave  
Elizabeth A. Cave  
Assistant Attorney General  
1302 East SD Highway 1889, Suite 1  
Pierre, South Dakota 57501-8501  
Telephone: (605) 773-3215  
Email: elizabeth.cave@state.sd.us