

From: Julie Plachta <[julieplachta.lmt@gmail.com](mailto:julieplachta.lmt@gmail.com)>

Sent: Wednesday, October 1, 2025 12:25 PM

To: Binegar, Brenda <[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)>

Subject: [EXT] EXNI 453

Dear Ms. Binegar:

Please see this form, re: EXNI 453. Brief, regarding Fall River Ordinance

<https://docs.google.com/document/d/1VOrT8SdVlkvXreMRUJkmAEIpxDl4qDOlu3Yi0TKPQn4/edit?usp=sharing>

Thank you,

~Julie Plachta

**From:** [Julie Plachta](#)  
**To:** [Binegar, Brenda](#)  
**Subject:** [EXT] EXNI 453  
**Date:** Wednesday, October 1, 2025 12:24:48 PM

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Dear Ms. Binegar:

Please see this form, re: EXNI 453. Brief, regarding Fall River Ordinance

<https://docs.google.com/document/d/1VOrT8SdVIkvXreMRUJkmAEIpxDI4qDOlu3Yi0TKPQn4/edit?usp=sharing>

Thank you,  
~Julie Plachta

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

IN THE MATTER OF CLEAN	)	
NUCLEAR ENERGY CORP.	)	BRIEF: REGARDING
URANIUM EXPLORATION PERMIT	)	FALL RIVER ORDINANCE
APPLICATION	)	
	)	
EXNI 453	)	

COMES NOW Julie Plachta, an Intervenor in this case, and a resident and registered voter of Fall River County;

On November 8, 2022, there was an election held and vote taken, which led to passing the Fall River Ordinance stating that Uranium Mining is a Nuisance. **The initiated measure: Uranium Mining is a Nuisance, passed 1,993 votes** in favor over 1538 opposed.

It is morally and legally wrong for a state agency to ignore this ordinance or say that it isn't valid, due to it not being on the county website. I am aware that other intervenors in this case are sending all the back up paperwork to show its validation, so I will not be including that in my brief.

Having lived here for several years now and become an integral part of the small local community, I am also aware of the fact that many Fall River County residents agree that protecting our watershed and keeping our waters clean is of utmost importance - and for many legitimate reasons they do not support uranium exploration or mining in this area. This ordinance is the voice of the masses here, and should send a clear message where a majority of us stand on this issue.

Submitted the 30th of September 2025

by Julie Plachta, Intervenor

Hot Springs SD

[Type here]

From: Anna Applegate <[aapplegate@gpna.com](mailto:aapplegate@gpna.com)>  
Sent: Wednesday, October 1, 2025 2:49 PM  
To: Bob Morris <[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)>; Binegar, Brenda  
<[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)>  
Cc: Matthew Naasz <[mnaasz@gpna.com](mailto:mnaasz@gpna.com)>  
Subject: [EXT] Clean Nuclear Energy Corp.

Greetings,

Attached please find Clean Nuclear Energy Corp.'s Supplemental Brief Regarding Fall  
river County's Uranium Ordinance.

Thank you,

Anna Applegate



Legal Assistant to Talbot J. Wieczorek and Matthew E. Naasz

Phone: (605) 342-1078 | Fax: (605) 342-9503

506 Sixth Street | P.O. Box 8045 | Rapid City, SD 57709

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Gunderson | Palmer | Nelson | Ashmore | LLP • [www.gpna.com](http://www.gpna.com)

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STATE OF SOUTH DAKOTA  
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF CLEAN NUCLEAR	)	
ENERGY CORP. URANIUM	)	<b>CLEAN NUCLEAR ENERGY CORP.'S</b>
EXPLORATION PERMIT APPLICATION	)	<b>SUPPLEMENTAL BRIEF</b>
	)	<b>REGARDING FALL RIVER</b>
EXNI 453	)	<b>COUNTY'S URANIUM ORDINANCE</b>

TO: ALL INTERESTED PARTIES:

COMES NOW, Clean Nuclear Energy Corp., by and through Matthew E. Naasz of Gunderson, Palmer, Nelson & Ashmore, LLP, its attorneys, and respectfully submits its Supplemental Brief Regarding Fall River County's Uranium Ordinance pursuant to the August 28, 2025 Order on Pre-hearing Motions and Procedural & Scheduling Order.

**ARGUMENT AND AUTHORITIES**

**A. Validity of the Fall River County Ordinance addressing Uranium Mining.**

Pursuant to SDCL § 7-18A-14, Applicant Clean Nuclear Energy does not challenge the validity of the Fall River County Ordinance addressing uranium mining. For the reasons set forth below, however, the ordinance does not apply to this application for an exploration permit pursuant to SDCL ch. 45-6D, and the ordinance is preempted by state law. As such, the ordinance has no applicability to the instant proceedings.

**B. The ordinance does not apply to this Application for a Uranium Exploration Permit**

The Fall River County Ordinance at issue reads in its entirety: "Uranium mining is a nuisance in Fall River County." The ordinance does not mention exploration at all. When

interpreting ordinances, the plain meaning of the language used controls. See, *Stockwell v. McCook County Board of Commissioners*, 2024 S.D. 2, ¶ 21, 2 N.W.3d 236, 241. Pursuant to the plain meaning of the ordinance it is mining – not exploration - that the ordinance seeks to declare a nuisance.

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 Clean Nuclear Energy’s exploration project ever lead to uranium mining, an application will need to be submitted pursuant to SDCL 45-6B, at which time the Board of Minerals and Environment can consider application of whatever Fall River County ordinances are then in place regarding mining.

The plain language of the Fall River County ordinance makes clear that it does not apply to uranium exploration.

**C. the Board/Hearing Chair has jurisdiction to decide whether the Ordinance is preempted by State Law.**

Should the Hearing Chair determine that the Fall River County mining ordinance applies to this exploration project, the Board/Hearing Chair have jurisdiction to decide whether the Ordinance is preempted by State law. SDCL § 1-26-18 allows an Agency in a contested case proceeding to “dispose of any defense or claim” following argument on issues of law or policy. This authority makes clear that the Agency may determine legal issues which may dispose of any such claim or defense. Here, several intervenors have raised the issue of the effect of the Fall River County mining ordinance on this uranium exploration permit application. This legal issue will need to be addressed prior to moving forward to a hearing on this matter. Pursuant to SDCL § 1-26-18, the Board and the Hearing Chair have jurisdiction to consider and determine this legal issue.

The chair of the hearing is authorized to, in the first instance, “rule on all prehearing motions[.]” ARSD 74:09:01:08. Such decision by the chair of the hearing “is a final decision of the board unless the board overrules the decision of the chair of the hearing.” *Id.* The ordinance at issue clearly does not apply to this exploration permit application; but if it did, the Board and Hearing Chair would have jurisdiction to determine that the ordinance is invalid as it is preempted by State law.

**D. Fall River County’s Ordinance is invalid as preempted by South Dakota Law.**

Even if the Fall River County Ordinance applied to this uranium exploration permit, it is preempted by state law and invalid. The South Dakota Supreme Court recently reiterated that “a county may not enact an ordinance which conflicts with state law.” *Preserve French Creek, Inc. v. County of Custer*, 10 N.W.3d. 233, 2024 S.D. 45, ¶ 9. “When an ordinance conflicts with state

law, ‘state law preempts or abrogates the conflicting local law.’” *Id.* at ¶ 10 (citing *Rantapaa v. Black Hills Chair Lift Co.*, 2001 S.D. 111, ¶ 23, 633 N.W.2d 196, 203). Counties may not act contrary to state law because counties are creatures of statute which possess no power unless such authority is granted to them by the State Legislature. *Schafer v. Deuel Cnty. Bd. of Comm’rs*, 2006 S.D. 106, ¶ 15, 725 N.W.2d 241, 248 (citing *Pennington County v. State ex rel. Unified Judicial System*, 2002 S.D. 31, ¶ 10, 641 N.W.2d 127, 131). As further described in *Tibbs v. Moody Cnty. Bd. Of Comm’rs*, 2014 S.D. 44, ¶ 25, 851 N.W.2d 208, 2017:

A county is a creature of statute and has “only such powers as are expressly conferred upon it by statute and such as may be reasonably implied from those expressly granted.” *State v. Quinn*, 2001 S.D. 25, ¶ 10, 623 N.W.2d 36, 38 (quoting *State v. Hansen*, 75 S.D. 476, 68 N.W.2d 480, 481 (1955)). Article IX, section 2 of the South Dakota Constitution provides that counties have the authority to “exercise any legislative power or perform any function not denied by its charter, the Constitution or general laws of the state.”

*Id.*

In *Preserve French Creek* the Court noted the ways in which a local ordinance can conflict with state law:

First, an ordinance may prohibit an act which is forbidden by state law and, in that event, the ordinance is void to the extent it duplicates state law. *Second, a conflict may exist between state law and an ordinance because one prohibits what the other allows.* And, third, state law may occupy a particular field to the exclusion of all local regulation.

*Id.* at ¶ 10 (citations omitted) (Emphasis added). An ordinance that conflicts with state law is preempted even if the ordinance was passed by initiative measure. *See Rantapaa*, 2001 S.D. 111, ¶¶ 22-23, 633 N.W.2d at 203; *Heine Farms v. Yankton Cnty. ex rel. Cnty. Comm’rs*, 2002 S.D. 88, ¶ 16, 649 N.W.2d 597, 601 (“[i]t is fundamental that an ordinance or resolution proposed by the electors of a municipality [or county] under the initiative law must be within the



power of the municipality to enact or adopt.”); *see also In re Yankton Cnty. Comm’n*, 2003 S.D. 109, ¶ 15, 670 N.W.2d at 38.

As discussed above, the present application seeks a permit for uranium exploration pursuant to SDCL ch. 45-6D. Mining operations are also permitted by the South Dakota Board of Minerals and Environment. SDCL § 45-6B-5. A permit for a mining operation “if approved, authorizes the operator to engage in the mining operation on the affected lands described in the application for the life of the mine.” *Id.* Prior to any mining occurring, a large-scale mining permit would need to be issued by this Board pursuant to SDCL 45-6B. Such permit would expressly authorize the mining activity, pursuant to SDCL ch. 45-6B. *See, French Creek* at ¶ 12 (“The City’s actions with regard to the discharge of treated wastewater from the Facility are expressly authorized under state law through the Permit granted by the DANR.”). Pursuant to SDCL § 21-10-2, such activity could not then be a nuisance (“Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.”).

The Supreme Court recently confirmed preemption of state law in a similar context.

Here, the City’s actions in constructing, establishing, operation, and maintaining the Facility and obtaining a permit to discharge wastewater into French Creek were likewise done pursuant to express statutory authority. Thus, pursuant to SDCL 21-10-2, the City’s actions cannot constitute a nuisance. The Ordinance plainly conflicts with state law, as it seeks to declare the City’s actions a nuisance when state law declares those actions are not a nuisance. Because the Ordinance attempts to prohibit what state law permits, the Ordinance is preempted by state law and invalid.

*Preserve French Creek* at ¶ 14. Any potential mining activity performed pursuant to a large scale mining permit approved by this Board, would be performed pursuant to express statutory authority, and as such cannot constitute a nuisance.

This Board need not determine Fall River County's ordinance to be invalid at this point as the ordinance addresses mining, not exploration. But should the time come when Clean Nuclear Energy receives a mining permit pursuant to SDCL ch. 45-6B, the Supreme Court's analysis in *Preserve French Creek* will control. When sought to be applied against a state-issued licensee, the ordinance is preempted by state law and invalid.

Dated: October 1st, 2025.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

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*Attorneys for Clean Nuclear Energy Corp.*

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that October 1, 2025, the original of CLEAN NUCLEAR ENERGY CORP.'S SUPPLEMENTAL BRIEF REGARDING FALL RIVER COUNTY'S URANIUM ORDINANCE was electronically, and via U.S. First Class Mail, Postage Prepaid upon the following to be filed in the above-captioned matter:

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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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704 7th Avenue, Suite 2  
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Belle Fourche, SD 57717  
[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)

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

From: Blair, Steven <[Steven.Blair@state.sd.us](mailto:Steven.Blair@state.sd.us)>  
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<[David.McVey@state.sd.us](mailto:David.McVey@state.sd.us)>  
Cc: Lees, Michael <[Michael.Lees@state.sd.us](mailto:Michael.Lees@state.sd.us)>  
Subject: Clean Nuclear Uranium Exploration Permit

Brenda,

Good morning! Attached please find the Department's brief discussing Fall River County's uranium ordinance. Also attached is a Notice of Appearance updating my contact information for this file. These documents will be served today upon Hearing Chair Morris and the parties as indicated in the attached certificates of service. If you have any questions please let me know.

Thanks!



Steven R. Blair  
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221 Mall Drive, Suite 201  
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**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

221 MALL DRIVE, SUITE #201  
RAPID CITY SD 57701  
605-394-2229  
danr.sd.gov

October 1, 2025

Brenda Binegar  
Dept. of Agriculture & Nat. Resources  
523 E. Capitol Ave.  
Pierre, SD 57501

Re: In re Matter of Clean Nuclear Energy Corp. Uranium Exploration Permit  
Application

Dear Ms. Binegar:

Enclosed please find the Department's Brief Concerning the Fall River County Uranium Mining Ordinance intended to be filed in the above referenced matter. Also enclosed please find a Notice of Appearance updating my contact information. Copies of these documents will be served upon the parties and Hearing Chair Morris, as indicated in the attached Certificate of Service.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Steven R. Blair  
General Counsel – Dept. of Agriculture & Natural Resources

Enclosures

Cc/encl: Mike Lees – DANR Minerals, Mining, & Superfund Program (via email only)  
David McVey – Counsel, Brd. Of Minerals & Environment (via email only)

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

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IN THE MATTER OF CLEAN	)	DANR BRIEF CONCERNING FALL
NUCLEAR ENERGY CORP.	)	RIVER COUNTY URANIMUM
URANIUM EXPLORATION PERMIT	)	MINING ORDINANCE
APPLICATION	)	
	)	
EXNI 453	)	

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The Minerals, Mining, and Superfund Program of the Department of Agriculture and Natural Resources (Department), through the undersigned counsel of record, hereby files this brief concerning the applicability in the above captioned matter of Fall River County’s uranium mining nuisance ordinance.

BACKGROUND

The above captioned matter concerns an application by Clean Nuclear Energy Corporation for a state uranium exploration permit. The area to be explored under the permit, if granted, falls in Section 36, Township 7 South, in Fall River County. In August 2022, the Fall River County Commission voted to place an initiated measure on the November 2022 election ballot declaring uranium mining in Fall River County to be a nuisance. *See Fall River County Commission Minutes of August 11, 2022*, <https://fallriver.sdcounties.org/files/2022/08/8-11-22-FR-Minutes.pdf> (a copy of which is attached). The voters in Fall River County subsequently passed the initiated measure. *See Abstract of Votes Cast for Initiated Ordinance*, <https://sdsos.gov/elections-voting/assets/ClayFaulkgen22.pdf>, pg. 207 &

231 (copies of identified pages attached). The ordinance became effective the day after Fall River County canvassed the returns of the November 2022 general election. SDCL § 7-18A-14.

## LEGAL ARGUMENT

### I. **The Ordinance Does Not Apply to Uranium Exploration Activities.**

The initiated ordinance, as passed by the voters of Fall River County, states that “[u]ranium [m]ining is a nuisance in Fall River County.” *See Initiated Measure Concerning Uranium Mining*, <https://fallriver.sdcounties.org/files/2025/09/Initiated-Measure-adopted-by-Fall-River-Commission-on-8-11-2022-1-1.pdf> (website link contains an uncertified copy of the Ordinance – a copy of which is attached).

County ordinances are interpreted according to the same rules of construction as are used to interpret statutes. *Stockwell v. McCook County Board of Commissioners*, 2024 S.D. 2, ¶ 21, 2 N.W.3d 236, 241. “[T]he language expressed in the [ordinance] is the paramount consideration.” *Olson v. Butte County Commission*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in [an ordinance] is clear, certain and unambiguous, there is no reason for construction[.]” *In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (internal citations omitted).

The plain and unambiguous language of the Fall River County ordinance declares the mining of uranium to be a nuisance in Fall River County. The plain



language of the ordinance does not declare uranium exploration to be a nuisance in Fall River County. To interpret the Ordinance to apply to uranium exploration would be to add words to the Ordinance that do not exist. This is something that cannot be done. *Olson*, 2019 S.D. 13, ¶ 10. If applicable at all, the Ordinance is only applicable to uranium mining in Fall River County.

## **II. The Ordinance Can Not Be Enforced Against a Properly Permitted Uranium Exploration Permit.**

As discussed above, the Fall River County ordinance declares uranium mining to be a nuisance in the county.

Counties have been granted the authority to pass ordinances declaring public nuisances and authorizing abatement of said nuisances. SDCL § 7-8-33. The people within a county have also been granted the right to initiate county ordinances. SDCL § 7-18A-9. Placed upon that authority, however, is the basic limitation that “the proposed ordinance ... must be within the power of the county board to adopt.” *Schafer v. Deuel County Board of Commissioners*, 2006 S.D. 106, ¶ 16, 725 N.W.2d 241, 249 (citing *Heine Farms v. Yankton County ex rel. County Commissioners*, 2002 S.D. 88, ¶ 18, 649 N.W.2d 597, 602).

Nuisances are defined in state law. SDCL § 21-10-1. However, it is expressly established that “nothing which is done or maintained under express authority of statute can be deemed a nuisance.” SDCL § 21-10-2.

Counties have no inherent authority; counties are creatures of statute and have only those powers expressly or impliedly granted to them by state law. *Schafer*, 2006 S.D. 106, ¶ 15. The Legislature has prohibited a county from

declaring anything authorized by statute to be a nuisance. SDCL § 21-10-2.

Uranium exploration is expressly authorized by state law. SDCL ch. 45-6D. As such, the Fall River County Commission is prohibited from enforcing an ordinance declaring uranium mining to be a nuisance – the county ordinance is preempted by state law.

Preemption of county ordinances was recently discussed by the South Dakota Supreme Court in *Preserve French Creek, Inc., v. County of Custer*, 2024 S.D. 45, ¶ 9, 10 N.W.3d 233. There the Court reviewed a Custer County initiated ordinance declaring the discharge of wastewater by the City of Custer into French Creek to be a nuisance. *Id.* ¶ 4. The City of Custer had properly obtained a state surface water discharge permit authorizing the discharge into French Creek. *Id.* ¶ 3. In reviewing the ordinance, the Court noted that “a county may not enact an ordinance that conflicts with state law.” *Preserve French Creek*, 2024 S.D. 45, ¶ 9 (cleaned up). The Court recognized that conflict between an ordinance and state law may exist when the ordinance prohibits what state law allows. *Id.* at ¶ 10. The Court found the Custer County ordinance to be preempted because it attempted to prohibit what state law allowed. *Id.* at ¶ 14.

The analysis from *French Creek* plainly applies to the Fall River County ordinance. State law has authorized uranium exploration, and any activity by Clean Nuclear would presumably be conducted under a state uranium exploration

permit. The Fall River County ordinance, if deemed applicable to these proceedings, is preempted by state law and is invalid.<sup>1</sup>

#### CONCLUSION

The Department asserts that the Fall River County ordinance declaring uranium mining to be a nuisance is textually inapplicable to the present matter. However, if the Ordinance is deemed applicable to these proceedings, the Department contends that the Ordinance is preempted by state law, and there is no clear legal right to enforcement of the ordinance.

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



---

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*Counsel for Department of Agriculture  
and Natural Resources – Minerals, Mining,  
& Superfund Program*

---

<sup>1</sup> While the Department has centered its arguments concerning preemption on uranium exploration as that is the pending application, the Department asserts the same preemption argument would apply to any future uranium mining activities carried out under properly issued state permits.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the Department of Agriculture & Natural Resources' BRIEF re FALL RIVER COUNTY URANIUM MINING ORDINANCE was submitted electronically, and via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

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*Secretary, Board of Minerals & Environment*

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*Hearing Chair – Brd. of Min.  
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*Intervenor*

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*Counsel for Intervenor – Great  
Plains Tribal Water Alliance*

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Rapid City, SD 57701  
*Intervenor*

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

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



---

Steven R. Blair – DANR

## **FALL RIVER COUNTY APPROVED MINUTES OF AUGUST 11, 2022**

The Fall River Board of County Commissioners met in a special session on August 11, 2022. Present: Joe Allen, Les Cope, Joe Falkenburg, Heath Greenough, Deb Russell and Sue Ganje, Auditor.

The Pledge of Allegiance was given, and the meeting called to order at 1:00 p.m.

The agenda was reviewed for conflicts; none were noted. ALL MOTIONS RECORDED IN THESE MINUTES WERE PASSED BY UNANIMOUS VOTE, UNLESS OTHERWISE STATED. The full context of the meeting can be found on the county website under Commissioners at <http://fallriver.sdcounties.org>, or, under Fall River County Commission, SD at <http://www.YouTube.com>.

Motion made by Russell, seconded by Greenough, to approve the agenda as written.

Discussion was held on the Initiative Measure petitions filed in the Auditor's office that request an ordinance proposing that Uranium Mining is a nuisance in Fall River County. State's Attorney Lance Russell spoke and referred to SDCL Chapter 45-6D – Uranium Exploration; SDCL Chapter 7-18A-13 Ordinances and SDCL 7-8-33 – Public Nuisance. Numerous individuals attended the meeting.

Motion made by Russell, seconded by Allen, to accept the petitions to put an Initiated Measure for an Ordinance declaring uranium mining a nuisance in Fall River County, to be put on the General Election ballot, November 8, 2022, as per SDCL 7-18A-13.

The motion was retracted by Russell and Allen.

Motion made by Russell, seconded by Allen that, pursuant to SDCL 7-18A-13, the board moves to submit the petitions to referendum consistent with the statute.

With Greenough voting no, all others voting yes, by roll call vote, motion carried.

Motion made by Russell, seconded by Greenough, to adjourn at 1:42 p.m.

/s/Joe Falkenburg  
Joe Falkenburg, Chairman  
Board of Fall River County Commissioners

ATTEST:  
/s/Sue Ganje, Auditor  
Fall River County Auditor

STATE OF SOUTH DAKOTA

COUNTY OF: Fall River

CERTIFICATE

We, Joe Allen, Les Cope, Joe Falkenburg, Heath Greenough, Deb Russell, the County Board of Canvassers in Fall River County for the General Election held on November 8, 2022, hereby certify that the foregoing is a true abstract of the votes cast in the jurisdiction of Fall River County, South Dakota, at the election as shown by the returns certified to the person in charge of the election.

Joe A Falkenburg

Deborah Russell

Heath Greenough

Les Cope

Joe Allen

Sworn to before me this 10 day of Nov, 2022.

M. J. [Signature]

County Auditor

Fall River County, South Dakota



# General Election - November 8, 2022

## Fall River County

Precinct Name	Initiated Measure : Uranium Mining is a nuisance in Fall River County	
	Yes	No
BEA	52	80
CAS	109	60
EDA	194	329
HS 1	268	161
HS 2	237	174
HS 3	210	123
HS 4	224	134
JAC	622	379
Oelrichs Area	77	98
<b>Total</b>	<b>1,993</b>	<b>1,538</b>



Ordinance: Initiated Measure adopted by Fall River Commission on 8/11/2022

Initiated Measure- Uranium Mining is a nuisance in Fall River County

State's Attorney Explanation: The initiated measure would make uranium mining an unlawful nuisance in Fall River County.

**Total:**

Yes: 1,993

No: 1,538

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

---

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

---

TO THE BOARD OF MINERALS & ENVIRONMENT & ALL PARTIES OF  
RECORD:

The undersigned hereby gives notice in the above captioned matter of his change in contact information. Counsel maintains his appearance as counsel for the South Dakota Department of Agriculture & Natural Resources' Minerals, Mining, & Superfund Program, and requests that copies of all further pleadings, filings, or other documents related to this matter be served upon him at the address indicated below.

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



---

Steven R. Blair  
Dept. of Agriculture & Natural Resources  
221 Mall Drive, Suite 201  
P.O. Box 6221  
Rapid City, SD 57709  
605-394-2229  
[steven.blair@state.sd.us](mailto:steven.blair@state.sd.us)  
*Counsel for Department of Agriculture  
and Natural Resources – Minerals, Mining,  
& Superfund Program*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the undersigned's NOTICE OF APPEARANCE was submitted electronically, and via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar  
Dept. of Agr. & Nat. Resources  
523 E. Capitol Ave.  
Pierre, SD 57501  
brenda.binegar@state.sd.us  
*Secretary, Board of Minerals & Environment*

Further, a true and correct copy of the above referenced document(s) was served by United States Mail, First Class, Postage Prepaid, upon:

Matt Naasz  
Gunderson, Palmer, Nelson, &  
Ashemore, LLP  
506 6<sup>th</sup> Street  
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*Counsel for Applicant – Clean  
Nuclear Energy Corp.*

Bob Morris  
704 7<sup>th</sup> Avenue, Suite 2  
P.O. Box 370  
Belle Fourche, SD 57717  
*Hearing Chair – Brd. of Min.  
& Env.*

Kimberly Craven  
Attorney General – Cheyenne  
River Sioux Tribe  
P.O. Box 590  
Eagle Butte, SD 57625  
*Counsel for Intervenor –  
Cheyenne River Sioux Tribe*

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514 Americas Way, #20805  
Box Elder, SD 57719  
*Intervenor*

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



---

Steven R. Blair – DANR

From: Peter Capossela <[pcapossela@nu-world.com](mailto:pcapossela@nu-world.com)>  
Sent: Wednesday, October 1, 2025 4:05 PM  
To: Binegar, Brenda <[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)>  
Cc: bobmorris <[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)>; gablum <[gablum@abe.midco.net](mailto:gablum@abe.midco.net)>;  
ggreenfield <[ggreenfield@grlaw.us](mailto:ggreenfield@grlaw.us)>; Matthew Naasz <[mnaasz@gpna.com](mailto:mnaasz@gpna.com)>  
Subject: [EXT] EXNI 453 Brief of Great Plains Tribal Water Alliance

Brenda -- attached is a legal memo re: the applicability of the Fall River County Nuisance Ordinance in the above-referenced docket, for filing and posting on behalf of the Great Plains Tribal Water Alliance. Thank you very much.

Peter

--

Peter Capossela  
Attorney at Law PC  
Post Office Box 10643  
Eugene, Oregon 97440  
(541) 505-4883

This is a transmission from a law office and may contain information which is privileged, confidential, and protected. If you are not the proper addressee, note that any disclosure, copying, distribution, or use of the contents of this message or any attachment is prohibited. If you have received this transmission in error, please destroy it and notify this office immediately.

IN THE MATTER OF CLEAN NUCLEAR )  
ENERGY CORP.URANIUM EXPLORATION )  
;

1

1979) (courts lack authority to issue certification, which is the role of the Board of Canvassers).

There is a contention that the Nuisance Ordinance is invalid because it is not uploaded on the Fall River County site on the world wide web. <https://fallriver.sdcounties.org/commission-2/county-ordinances/>. That confuses a jurisdiction's process for publishing and codifying its laws, with the legislative process to enact those laws.

South Dakota law provides citizens a role in legislating through the referendum initiative process. SDCL Chap. 12-13. In 2022, the citizens of Fall River County complied with that process and enacted a Nuisance Ordinance by referendum vote. Exhibits A & B. The Election Code authorizes appeals of the Secretary of State's certification of an initiated measure. SDCL §12-13-26.2. Yet there were no appeals or other challenges to the petition process that put the Nuisance Ordinance on the ballot in Fall River County. *See e.g. Corbly v. City of Colton*, 278 N.W.2d 459 (S.D. 1979) (without circulator verification, signatures on initiative petition deemed invalid). There have also been no legal challenges or judicial review of the 2022 election that enacted the legislation. *McIntyre v. Wick*, 1996 S.D. 147 ¶ 19, 558 N.W.2d 347 (“We [the courts] are required to enforce state procedures designed to ensure the legal outcome of elections”).

In the absence of the South Dakota courts' vacating the Fall River County Nuisance Ordinance for a procedural defect or election law violation, it is a valid ordinance. *See Jensen v. Turner County Bd. of Adjustment*, 2007 S.D. 28, ¶ 4, 730 N.W.2d 411 (describing judicial review as limited to “some act forbidden by law or neglect[ed] to do some act required by law”). Neither the county web master, nor any

other county officer for that matter, have nothing to do with it. Some jurisdictions may be more conscientious than others in publishing their codes and regulations. But the *validity* of local ordinances is determined by the courts and by state law, not by local staff responsible for posting ordinances. *Id.*

The contention that the Nuisance Ordinance may be invalid because it is posted with other ordinances on the county web site is disrespectful to the voters in Fall River County. “[V]oting is of the most fundamental significance under our constitutional structure.” *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Petitioners succeeded in getting the question to qualify for the 2022 ballot, and a majority of Fall River voters enacted the Nuisance Ordinance. Exhibit A. There were no challenges to the petition or the certification of the election. The argument that the county web master possesses a *de facto* veto of a citizen-passed referendum lacks any merit whatsoever.

“In matters of statutory interpretation, [this court] begins with the plain language and structure of the statute”. *State ex rel. Dept. of Transp. v. Clark*, 2011 SD 20, ¶ 10, 798 N.W.2d 60 *citing State v. Miranda*, 205 SD 29, ¶ 24. The plain words of the Uranium Exploration Act, including its name, require the statute to be applied to exploration. Section 5 of the act makes clear “All uranium exploration operations on state-owned land shall comply with the applicable prospecting and exploration permit requirements of chapter 5-7 and this chapter.” SDCL §45-6D-5. As a public health and welfare statute, the Uranium Exploration Act is to be liberally construed “to achieve its purposes.” *Olson-Roti v. Kilcoin*, 2002 SD 131, ¶ 23, 653 N.W.2d 254. Clearly, any refusal by the Board to apply the statute to exploration would enervate its purpose “to



prevent the waste and spoilage of the land.” SDCL §45-6D-2. The plain language and structure of the statute mandate application of the Uranium Exploration to the exploratory permit at issue in this matter.

## **II. The Fall River Nuisance Ordinance is Enforceable and is not in Conflict with or Preempted by State Law**

Under section 25 of the Administrative Procedures Act, a final decision in this matter “shall include findings of fact and conclusions of law.” SDCL §1-26-25. The Board may consider the legal issue of whether state law preempts the Fall River Nuisance Ordinance. *Boomsma v. Dakota Minnesota & Eastern RR*, 2002 SD 106, ¶ 14, 651 N.W.2d 34. The sound use of discretion would suggest that the state Uranium Exploration Act does not preempt the county Nuisance Ordinance.

“Federal statutes and regulations preempt state law under the Supremacy Clause *Id. at* ¶ 13 *citing Louisiana Pub. Service Com’n v. F.C.C.*, 476 U.S. 355, 368-369 (1986). “State preemption of county ordinances is analogous to federal preemption of state law.” *In re Yankton County Com’n*, 2003 S.D. 109, ¶16, 670 N.W.2d 34. The preemption analysis is generally the same.

In *Rantapaa v. Black Hills Chair Lift Co.*, 2001 SD 111, ¶ 23, 633 N.W.2d 196, 203, the Court identified three ways in which state statutes may preempt local ordinances:

There are several ways in which a local ordinance may conflict with state law. In that event, state law preempts or abrogates the conflicting local law. First, an ordinance may prohibit an act which is forbidden by state law and, in that event, the ordinance is void to the extent it duplicates state law. Second, a conflict may exist between state law and an ordinance because one prohibits what the other allows. And, third, state law may occupy a particular field to the exclusion of all local regulation.

*Id.*

The Fall River County Nuisance Ordinance need not be read to conflict with the South Dakota Uranium Exploration Act, SDCL Chap. 45-6D. As stated above, the Fall River Nuisance Ordinance prohibits uranium mining, but the Uranium Exploration Act does as well, when:

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. SDCL §45-6D-29(3);

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. SDCL §45-6D-29(4); or

The proposed uranium exploration operation will adversely affect threatened or endangered wildlife indigenous to the area. SDCL §45-6D-29(5).

“The conflict test is whether compliance with both laws is a ‘physical impossibility,’ or whether the state law ‘stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives’” of the legislature. *Barnett Bank of Marion Co. NA v. Nelson*, 517 U.S. 25, 32 (1996). Here, the local ordinance provides definitive input into the statutory inquiry mandated in SDCL §45-6D-29.

Indeed, state preemption of local public health and welfare ordinances is disfavored. A prominent legal commentator urges:

... closer state court scrutiny of preemptive measures, scrutiny grounded in; (i) the values of local self government; (ii) the crucial role local governments play in our governance structure; and (iii) the widespread state constitutional provision for home rule... [L]ocal autonomy can reduce conflict by permitting diverse communities to take different approaches to different problems while also generating usable information about how debated public policies work in practice.

Richard Briffault, *The Challenge of the New Preemption*, 70 Stanford L. Rev. 1995, 1998 (2018).

That is precisely the situation here. The fact that the residents of the county where the proposed project is located have determined that the activity constitutes a nuisance directly relates to the inquiry before the Board: whether “the adverse effects of the proposed uranium exploration operation... outweigh the benefits.” SDCL §45-6D-29(3).

The local residents arguably possess the best information on the “historic, archaeologic, geologic, scientific, or recreational aspects,” *id.*, of the proposed activity in their county. Their defining the proposed activity as a nuisance is relevant to the application before the Board, regardless of whether the ordinance may or may not be ultimately declared to be preempted by state law. *Preserve French Creek Inc. v. County of Custer*, 2024 SD 45, ¶ 14 (denying writ of mandamus to close sewage plant whose operation was required by state law, and which was declared a nuisance by ordinance passed after it commenced operation). The fact that local residents approved the ordinance is *relevant* to the inquiry before the Board under the Uranium Exploration Act. SDCL Chap. 45-6D. Any exclusion of evidence regarding the ordinance would constitute reversible error.

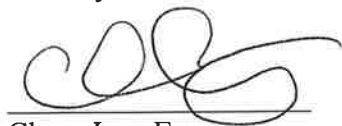
“The ultimate touchstone of statutory preemption is Congressional intent.” *Boomsma v. Dakota, Minnesota & Eastern RR*, 2002 SD 106, ¶ 15, 651 N.W.2d 34 quoting *Medtronic Inc. v. Lohr*, 518 U.S. 470, 485 (1996). The Uranium Exploration Act does not reflect a legislative intent to preclude local regulation. The stated legislative purpose in section 2 of the Uranium Exploration Act refers to “Proper safeguards (to) be

provided by the state,” SDCL §45-6D-2, but there is no suggestion that additional safeguards are not to be countenanced. That stands in contrast to, for example, casino gaming, where state regulation is embedded in the South Dakota constitution, and whose regulatory statutes refer to “management solely resting” with state regulators who are to make “all decisions.” *Law v. City of Sioux Falls*, 2011 SD 63, ¶¶ 11-12, 804 N.W.2d 428, 432 (local regulation of casino preempted by state law). The Uranium Exploration Act contains no comparable language – so there is no express preemption. *Id.* There is no overwhelming, comprehensive regulatory scheme under the Uranium Exploration Act to *imply* a finding of preemption. *See Pickerel Lake Outlet Ass’n v. Day County*, 2020 SD 72, ¶ 13, 953 N.W.2d 82, 91 (county tax on cabins leased on Indian trust land not preempted by federal law).

The burden of proof to demonstrate preemption is on the applicant. *Boomsma v. Dakota, Minnesota & Eastern RR*, 2002 SD 106, ¶ 24. For the reasons stated above, the applicant cannot meet its burden. The Board need not find that the Uranium Exploration Act preempts the Fall River County Nuisance Ordinance. The ordinance should require denial of the present application. The ordinance is relevant evidence to be given very substantial weight in this contested case, in any event.

RESPECTFULLY SUBMITTED this 1st day of October 2025

By:



Chase Iron Eyes  
Attorney at Law  
Post Office Box 393  
Pine Ridge, South Dakota 57770  
(605) 415-9238  
[Chase@Lakotalaw.org](mailto:Chase@Lakotalaw.org)  
S.D. Bar No. 3981

*Peter Capossela*

---

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Pro hac vice pending

---

Susan McPhail Pang  
28017 Cascade Road  
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(314) 606-1833  
[Sownative@gmail.com](mailto:Sownative@gmail.com)

### **Certificate of Service**

The afore was served on this day by the undersigned by electronic mail to:

Brenda Binegar

[brenda.binegar@state.sd.us](mailto:brenda.binegar@state.sd.us)

Bob Morris

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Gregg Greenfield

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Glenn Blumhardt

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Matthew Naasz

[mnaasz@gpna.com](mailto:mnaasz@gpna.com)

Dated this 1<sup>st</sup> day of October 2025



---

Peter Capossela

STATE OF SOUTH DAKOTA

COUNTY OF: Fall River

CERTIFICATE

We, Joe Allen, Les Cope, Joe Falkenburg, Heath Greenough, Deb Russell, the County Board of Canvassers in Fall River County for the General Election held on November 8, 2022, hereby certify that the foregoing is a true abstract of the votes cast in the jurisdiction of Fall River County, South Dakota, at the election as shown by the returns certified to the person in charge of the election.

Joe A. Falkenburg

Deborah Russell

Heath Greenough

Les Cope

Joe Allen

Sworn to before me this 10 day of Nov, 2022.

[Signature]

County Auditor

Fall River County, South Dakota



EXHIBIT A

# General Election - November 8, 2022

## Fall River County

Precinct Name	Initiated Measure : Uranium Mining is a nuisance in Fall River County	
	Yes	No
BEA	52	80
CAS	109	60
EDA	194	329
HS 1	268	161
HS 2	237	174
HS 3	210	123
HS 4	224	134
JAC	622	379
Oelrichs Area	77	98
<b>Total</b>	<b>1,993</b>	<b>1,538</b>



# INITIATED MEASURE : URANIUM MINING IS A NUISANCE IN FALL RIVER COUNTY - FALL RIVER

FOLLOW THIS CONTEST

PRECINCTS FULLY: 9 / 9 |  
PARTIALLY: 0 / 9

EXPORT

✓ YES



56%

1,993

NO



44%

1,537

TOTAL VOTES

3,530

MAP

COUNTY RESULTS

## FALL RIVER COUNTY

PRECINCTS FULLY: 9 / 9 |  
PARTIALLY: 0 / 9

YES



56%

1,993

NO



43%

1,537

PRECINCT RESULTS

TOTAL VOTES

3,530

FALL

## RIVER COUNTY

BEA

YES



39%

52

NO



60%

80

CAS

YES



64%

109

NO



35%

60

EDA

YES



37%

194

NO



62%

329

HS 1

YES



62%

268

NO



37%

161

HS 2

YES



57%

237

NO



42%

174

HS 3

YES










63%

210

11/9/22, 6:41 AM

South Dakota Secretary of State

NO		36%	123
HS 4			
YES		62%	224
NO		37%	134
JAC			
YES		62%	622
NO		37%	378
OELRICHS AREA			
YES		44%	77
NO		56%	98
TOTAL VOTES			3,530

INITIATED MEASURE : AN ORDINANCE OF

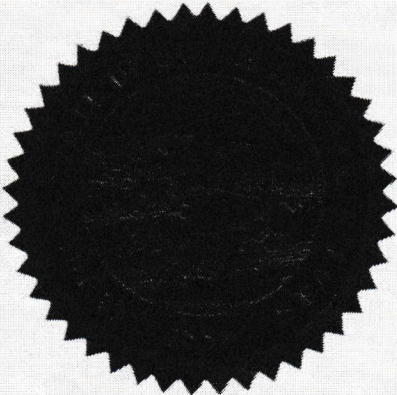


STATE OF SOUTH DAKOTA

COUNTY OF HUGHES

CERTIFICATE

We, Steve Barnett, Shirley Jameson-Fergel, Charles McGuigan and Steven Kohler, the Board of Canvassers in the State of South Dakota for the General Election held in said state on November 15, hereby certify that the attached is a true and correct record of the votes for the candidates as shown by returns certified to the Secretary of State of South Dakota.



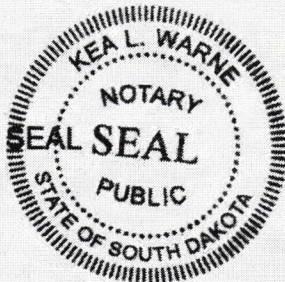
Steve Barnett  
Secretary of State

Shirley Jameson-Fergel  
for the Supreme Court

[Signature]  
for the Governor

Charles McGuigan  
for the Attorney General

Sworn to before me this 15<sup>th</sup> day of November, 2022.



Kea L. Warne  
Notary Public

My commission expires 1-21-27



# General Election - November 8, 2022

## Fall River County

Precinct Name	Initiated Measure : Uranium Mining is a nuisance in Fall River County	
	Yes	No
BEA	52	80
CAS	109	60
EDA	194	329
HS 1	268	161
HS 2	237	174
HS 3	210	123
HS 4	224	134
JAC	622	379
Oelrichs Area	77	98
<b>Total</b>	<b>1,993</b>	<b>1,538</b>

From: Rajni Lerman <[rajni1love@gmail.com](mailto:rajni1love@gmail.com)>

Sent: Tuesday, September 30, 2025 10:17 PM

To: Binegar, Brenda <[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)>

Cc: Bob Morris <[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)>

Subject: Re: [EXT] Quick question re:The Matter of Clean Nuclear Energy Corp.  
Unranium Mining Exploration Permit Application; EXNI453

Dear Brenda,

After reading through the 'Procedural & Scheduling Order' again, I noticed there are sections where certain items require the documents to be sent to everyone, however on this specific issue (#5 D, regarding Fall River County nuisance ordinance) it states... *"All briefs relating to the foregoing must be filed no later than 5pm CST on October 1st 2025."*

Since it does not require service to others, I am therefore, please find attached a copy of my brief for filing. The original will be mailed in the morning (10/1/25) via US postal service.

Respectfully,

Caryn Lerman, Intervenor

337 S. 5th Street

Hot Springs, SD 57747

303-564-0787

On Tue, Sep 30, 2025 at 7:03 AM Binegar, Brenda <[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)> wrote:

You can email it to me now, but it still needs to be served on all parties by first class mail, personal service, or facsimile.

From: Rajni Lerman <[rajni1love@gmail.com](mailto:rajni1love@gmail.com)>

Sent: Tuesday, September 30, 2025 10:23 PM

To: Binegar, Brenda <[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)>

Cc: Bob Morris <[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)>

Subject: [EXT] In The Matter of Clean Nuclear Energy Corp. Uranium Mining  
Exploration Permit Application; EXN1453 - COPY OF FILING BRIEF

Dear Brenda,

Please find attached a copy of my BRIEF: REGARDING FALL RIVER COUNTY  
ORDINANCE.

Respectfully,

Caryn Lerman, Intervenor

337 S. 5th Street

Hot Springs, SD 57747

303-564-0787



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

IN THE MATTER OF CLEAN	)	
NUCLEAR ENERGY CORP.	)	BRIEF: REGARDING
URANIUM EXPLORATION PERMIT	)	FALL RIVER ORDINANCE
APPLICATION	)	
	)	
EXNI 453	)	

COMES NOW Caryn Lerman, an Intervenor in this case, and a long time resident of Fall River County, and an active voter in our county electoral process;

On November 8, 2022, the County Board of Canvassers in Fall River County for the General Election held hereby certified that the foregoing is a true abstract of the votes cast in the jurisdiction of Fall River. **The initiated measure: Uranium Mining is a Nuisance passed 1,993 votes** in favor over 1538 opposed.

It is reprehensible for a state agency to ignore and pretend this ordinance isn't valid due to it not being on the website. A county website is not an indication of whether an ordinance is valid or not. I am aware that other intervenors in this case are sending all the back up paperwork to show its validation, so I will not be including that in my brief.

Furthermore, I was one of the people in my county that collected signatures for that ordinance. My time is a precious resource and volunteering to help voters understand the issue and have input is essential to our democratic freedom. I recall the many conversations while collecting signatures, people were grateful to make this statement as they are frustrated that we are continually being bombarded with requests to mine in this area. Fall River County residents have been showing up in mass over and over again for many years to protect our clean water in this pristine watershed. This ordinance is our voice, and clear message where we stand on this issue.

Submitted the 29th of September 2025

by Caryn Lerman, Intervenor

Hot Springs SD

[Type here]

From: Sarah Peterson <[hummingbirdpottery@yahoo.com](mailto:hummingbirdpottery@yahoo.com)>

Sent: Wednesday, October 1, 2025 1:15 PM

To: Binegar, Brenda <[Brenda.Binegar@state.sd.us](mailto:Brenda.Binegar@state.sd.us)>

Subject: [EXT] Sarah Peterson's FRC Ordinance Brief

See attachment.

Thank you, Brenda



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

<b>IN THE MATTER OF CLEAN</b>	)	
<b>NUCLEAR ENERGY CORP.</b>	)	
<b>URANIUM EXPLORATION PERMIT</b>	)	<b>Brief Re: Fall River County Ordinance</b>
<b>APPLICATION</b>	)	
<b>EXNI 453</b>	)	

COMES NOW, Sarah Peterson, Intervenor in this case, a 23-year resident of Fall River County, and an active voter in our county electoral process.

On November 8, 2022, the County Board of Canvassers in Fall River County for the General Election certified that the foregoing is a true abstract of the votes cast the jurisdiction of Fall River: **The initiated measure: Uranium Mining is a Nuisance passed 1,993 votes in favor over 1,538 opposed.**

1. In May 2025, four Fall River County residents and a lawyer met to discuss writing an ordinance to stop uranium mining in Fall River County. The lawyer researched the Case Law and found in Yankton County a similar Ballot Initiative passed. Our lawyer and the people present agreed the Citizen-initiated ordinance would be “Uranium Mining is a Nuisance in Fall River County”. The campaign committee invited me to become a member. That small group wanted our group, “It’s All About the Water,” to help with the campaign.
  
2. It’s All About the Water was formed in 2012 and has worked to prevent uranium mining in Fall River County. I am the chairperson of the group. I set up a meeting for the campaign committee to come and inform us about the Ballot Initiative. Attendees were trained in the legal process for collecting names on petitions. We met every two weeks through the summer of 2022 to hand in petitions and support each other. Petition

gatherers stated that as soon as they explained what the petition was about, people would take the clip board out of their hands and start signing it. We handed in 450 signatures in by the due date and we only needed 260.

3. The campaign committee started fundraising. Donation post cards were printed and mailed to all the people that signed the petitions. We received 100-yard signs “No Uranium Mining in the Black Hills” and 100 Ballot Initiative yard signs, both donated. The Campaign Committee put a 1/4-page ad in the local paper and weekly ads. Local radio stations broadcasted ads for the Campaign.
4. It’s All the Water members started taking signs to place with interested business and property owners all over Fall River County. A schedule was made up to have a person write a Letter to the Editor weekly about the Ballot Initiative and uranium mining. Some people put more ads in the paper on their own dime.
5. Thursday, August 11, 2022 the County Commission met to accept the petitions to initiate on Ordinance declaring uranium mining a nuisance to be put on the General Election ballot, November 8, 2022. Many of us, myself included, were in the court room during that meeting.
6. On November 9<sup>th</sup> at 6:41 am, South Dakota Secretary of State Steve Barnett certified the vote on the Initiated Measure 56% yes and 44% no. We won!

Submitted October 1, 2025

Sarah Peterson, Intervenor

Hot Springs, SD

**From:** Taylor Gunhammer <[taylor@ndncollective.org](mailto:taylor@ndncollective.org)>

**Sent:** Wednesday, October 1, 2025 3:37 PM

**To:** Binagar, Brenda <[Brenda.Binagar@state.sd.us](mailto:Brenda.Binagar@state.sd.us)>; [bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)

**Subject:** [EXT] FRC Ordinance brief/pertinent docs

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 ) **Brief Re: Fall River County Ordinance**  
APPLICATION )  
EXNI 453 )

COMES NOW, Taylor Gunhammer, Intervenor in this case, and a resident of Pennington County.

On November 8, 2022, the County Board of Canvassers in Fall River County for the General Election certified that the foregoing is a true abstract of the votes cast the jurisdiction of Fall River: **The initiated measure: Uranium Mining is a Nuisance passed 1,993 votes in favor over 1,538 opposed.**

1. In May 2025, Fall River County residents and a lawyer met to discuss writing an ordinance to address uranium mining in Fall River County. The lawyer researched case law and found that in Yankton County a similar Ballot Initiative passed. The lawyer and the people present agreed the Citizen-initiated ordinance would be “Uranium Mining is a Nuisance in Fall River County.”
2. Thursday, August 11, 2022 the County Commission met to accept the petitions to initiate on Ordinance declaring uranium mining a nuisance to be put on the General Election ballot, November 8, 2022.
3. On November 9th, 2022 at 6:41 am, South Dakota Secretary of State Steve Barnett certified the vote on the Initiated Measure **56% yes and 44% no.**

I am writing in part to express my profound disappointment that the matter of EXNI 453 is being used in an attempt to strike down a Fall River County Ordinance, first brought as a ballot initiative and then passed by citizens of Fall River County, because a mining company doesn’t particularly like it. There is no higher function of a governmental body than to catalyze the will of its constituents into their democratic reality, and the raising of such a question as invalidating the Ordinance is a blatant attempt to effect the opposite of that function. In the

charge upon FRC's government that it, "promote the general welfare of the public," there is no clause I'm aware of that says, "unless a mining company finds it inconvenient" or, "unless the Webmaster of the County doesn't feel like posting it to the website." I am genuinely stunned that such an outstanding success of the civic engagement process as this Ordinance is being treated as a failure or an error in this scenario. FRC residents have already produced the purest possible outcome of governance "of, by, and for the People" and we as Black Hills residents are being called by an international mining company to undo that, at a County level, simply to accommodate their profit motive. Frankly, it is difficult to imagine a *less* democratic and civic-minded request on CNEC's part, and it should not even be considered by the Board.

Simply put, the context of these proceedings represent neither the venue nor the mechanism to strike down the validity of an Ordinance passed by a vote of Fall River County residents. This process is not an opportunity for CNEC to engage in the legislative function of amending or repealing laws they don't like. And in the first place, the will of the People to protect themselves from dangerous extractive processes cannot be prohibited - only expressed in policy, or not. There is no scenario in which a governing body funded by taxpayer dollars should ever be assisting a private company from outside the country in subverting the clearly expressed will of the very constituents who are affected by this permitting process.

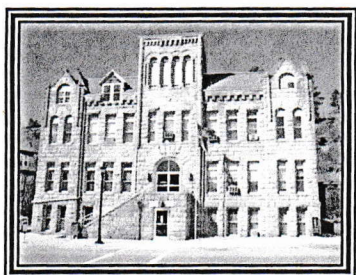
Submitted October 1st, 2025

Taylor Gunhammer, Intervenor  
Rapid City, SD

11	November 8, 2022	South Dakota	Fall River County
<b>OFFICIAL GENERAL ELECTION BALLOT</b>			
<b>INSTRUCTIONS TO THE VOTER:</b> To vote for a person <b>FILL IN</b> the oval (●) next to the name. Use only a pen. If you make a mistake, give the ballot back and get a new one. <b>DO NOT</b> cast more votes than are allowed in each race.	<b>For State Auditor</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Stephanie Marty</b> Democratic Party <input type="radio"/> <b>Rene Meyer</b> Libertarian Party <input type="radio"/> <b>Richard Sattgast</b> Republican Party	<b>NONPOLITICAL BALLOT</b> <b>Supreme Court Justice Retention</b> Shall the justice of the Supreme Court named on this ballot, whose term expires January 1, 2023, be retained in office? <b>Justice Patricia J. DeVaney</b> representing the Third Supreme Court District <input type="radio"/> Yes <input type="radio"/> No	
	<b>For United States Senator</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Brian L. Bengs</b> Democratic Party <input type="radio"/> <b>Tamara J Lesnar</b> Libertarian Party <input type="radio"/> <b>John R. Thune</b> Republican Party	<b>For State Treasurer</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>John Cunningham</b> Democratic Party <input type="radio"/> <b>Josh Haeder</b> Republican Party	<b>Supreme Court Justice Retention</b> Shall the justice of the Supreme Court named on this ballot, whose term expires January 1, 2023, be retained in office? <b>Justice Mark E. Salter</b> representing the Second Supreme Court District <input type="radio"/> Yes <input type="radio"/> No
<b>For United States Representative</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Collin Duprel</b> Libertarian Party <input type="radio"/> <b>Dusty Johnson</b> Republican Party	<b>For Commissioner of School and Public Lands</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Timothy Azure</b> Democratic Party <input type="radio"/> <b>Brock Greenfield</b> Republican Party	Election Official Ballot Stamp <div style="border: 1px solid black; width: 100px; height: 100px; margin: 20px auto;"></div>	
<b>For Governor and Lieutenant Governor</b> To be elected as a team, you may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Jamie Smith</b> for Governor and <b>Jennifer Keintz</b> for Lieutenant Governor Democratic Party <input type="radio"/> <b>Tracey Quint</b> for Governor and <b>Ashley Strand</b> for Lieutenant Governor Libertarian Party <input type="radio"/> <b>Kristi Noem</b> for Governor and <b>Larry Rhoden</b> for Lieutenant Governor Republican Party	<b>For Public Utilities Commissioner</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Jeffrey Barth</b> Democratic Party <input type="radio"/> <b>Chris Nelson</b> Republican Party		
<b>For Secretary of State</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Thomas A Cool</b> Democratic Party <input type="radio"/> <b>Monae Johnson</b> Republican Party	<b>For State Senator, District 30</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Julie Frye-Mueller</b> Republican Party		
<b>For Attorney General</b> You may vote for <u>one</u> or leave it blank. <input type="radio"/> <b>Marty J. Jackley</b> Republican Party	<b>For State Representative, District 30</b> You may vote for up to <u>two</u> or leave it blank. <input type="radio"/> <b>Bret Swanson</b> Democratic Party <input type="radio"/> <b>Dennis Krull</b> Republican Party <input type="radio"/> <b>Trish Ladner</b> Republican Party		
Go to top of next column	Go to top of next column	Turn page	
BEA, CAS, EDA, HS 1, JAC, Oelrichs Area, HS 3, HS 4, HS 2	0001, 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009	Typ:01 Seq:0001 Spl:01	



November 8, 2022	South Dakota	Fall River County
<b>INSTRUCTIONS TO THE VOTER:</b> To vote for a person <b>FILL IN</b> the oval (●) next to the name.  <b>DO NOT</b> cast more votes than are allowed in each race.	<b>INSTRUCTIONS TO THE VOTER:</b> To vote on a ballot question <b>FILL IN</b> the oval (●) next to "yes" or "no".  <b>DO NOT</b> cast more votes than are allowed in each race.	<b>Initiated Measure</b> The following initiated measure was proposed by petition for submission to the voters. This initiated measure will not become effective unless approved by majority vote.
<b>Judge of the Circuit Court For Seventh Circuit, Position A,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Stacy Vinberg-Wickre	<b>Constitutional Amendment</b> The following amendment to the State Constitution is submitted to the voters by petition. The amendment will not become effective unless approved by majority vote.	<b>Initiated Measure 27</b> <b>Title:</b> An initiated measure legalizing the possession, use, and distribution of marijuana.
<b>For Seventh Circuit, Position B,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Jeffrey R. Connolly	<b>Constitutional Amendment D</b> <b>Title:</b> An initiated amendment to the South Dakota Constitution expanding Medicaid eligibility.	<b>Attorney General Explanation:</b> This initiated measure legalizes the possession, use, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess one ounce or less of marijuana. They may also distribute one ounce or less of marijuana without payment or other consideration. Marijuana plants, and the marijuana produced from those plants, may be possessed under specific conditions. Marijuana plants may only be grown, and the marijuana from those plants may only be possessed, in counties or cities where no licensed retail marijuana store is available or where allowed by county or city ordinances.
<b>For Seventh Circuit, Position C,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Heidi L. Linngren	<b>Attorney General Explanation:</b> Medicaid is a program, funded by the State and the federal government, to provide medical coverage for low-income people who are in certain designated categories. This constitutional amendment expands Medicaid eligibility in South Dakota. It requires the State to provide Medicaid benefits to any person over age 18 and under 65 whose income is at or below 133% of the federal poverty level, plus 5% of the federal poverty level for the applicable family size, as provided in federal law. For people who qualify under this amendment, the State may not impose burdens or restrictions that are greater than those imposed on any other person eligible for Medicaid benefits under South Dakota law.	Certain violations of the restrictions the measure places on the possession, use, and distribution of marijuana and marijuana paraphernalia are subject to various civil penalties. Individuals under age 21 can attend drug education or counseling instead of paying a civil penalty.
<b>For Seventh Circuit, Position D,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Joshua K. Hendrickson	The South Dakota Department of Social Services must submit to the federal government all documentation required to implement this amendment and must take all actions necessary to maximize federal funding for this expansion.	The measure legalizes substances considered felony-controlled substances under State law. Marijuana remains illegal under Federal law.
<b>For Seventh Circuit, Position E,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Jane Wipf Pfeifle	<b>Fiscal Note</b> The proposed expansion of Medicaid could cover an additional 42,500 eligible individuals, with a total estimated cost over the first five years of \$1,515,214,000. For the first five years under current federal law, the state's share of expenses could be \$166,244,000 with the state recognizing additional general fund savings of \$162,473,000.	Judicial or legislative clarification of the measure may be necessary.
<b>For Seventh Circuit, Position F,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Craig A Pfeifle	<input type="radio"/> Yes Vote "Yes" to adopt the amendment.	<b>Fiscal Note</b> The State and counties could see a minimal decrease in expenses due to decreased incarceration for marijuana-related offenses, and the State could see marginal additional revenue in the form of new civil penalty fines.
<b>For Seventh Circuit, Position G,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Robert Gusinsky	<input type="radio"/> No Vote "No" to leave the Constitution as it is.	<input type="radio"/> Yes Vote "Yes" to adopt the initiated measure.
<b>For Seventh Circuit, Position H,</b> You may vote for <u>one</u> or leave it blank.  <input type="radio"/> Matthew M. Brown		<input type="radio"/> No Vote "No" to leave South Dakota law as it is.
Go to top of next column	Go to top of next column	<b>Initiated Measure</b> <b>Title:</b> Uranium Mining is a nuisance in Fall River County  <b>State's Attorney Explanation:</b> The initiated measure would make uranium mining an unlawful nuisance in Fall River County.
		<input type="radio"/> Yes Vote yes to adopt the initiated measure.
		<input type="radio"/> No Vote no to leave the law as it is.
Go to top of next column	Go to top of next column	Turn page
BEA, CAS, EDA, HS 1, JAC, Oelrichs Area, HS 3, HS 4, HS 2	0001, 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009	Typ:01 Seq:0001 Spt:01



**FALL RIVER COUNTY COMMISSIONERS**  
**COURTHOUSE**  
**906 NORTH RIVER ST**  
**HOT SPRINGS, SOUTH DAKOTA 57747**  
**PHONE: (605) 745-5130    FAX: (605) 745-6835**

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**FALL RIVER BOARD OF COUNTY COMMISSIONERS**

**Second Floor Courtroom**

**Thursday, August 11, 2022**

1:00    Call Meeting to Order  
         Pledge of Allegiance  
         Conflict of Interest Items for Board Members

         Action Agenda Items for Consideration:

- \*Agenda
- \*County assistance, death expense applications

(Move any unfinished business to the end of the meeting if needed)

1:05    Accept petitions to initiate an Ordinance declaring uranium mining a nuisance to be put on the General Election ballot, November 8, 2022, as per SDCL 7-18A-13

Executive Session as per SDCL 1-25-2 (1) personnel;  
Executive Session as per SDCL 1-25-2 (3), legal;  
Executive Session as per SDCL 1-25-2(4), negotiations  
Adjourn

Agendas are set 24 hours prior to a meeting, any items added at the meeting will be heard for informational purposes only, If any items require action, such action will be deferred to the next meeting.

Fall River County fully subscribes to the Americans with Disabilities Act. If you desire to attend this public meeting and are in need of accommodations, please notify the commissioners' office, (605) 745-5132, 24 hours prior to the meeting so that appropriate services and auxiliary aids are available.



**FALL RIVER COUNTY APPROVED MINUTES OF AUGUST 11, 2022**

The Fall River Board of County Commissioners met in a special session on August 11, 2022.  
Present: Joe Allen, Les Cope, Joe Falkenburg, Heath Greenough, Deb Russell and Sue Ganje, Auditor.

The Pledge of Allegiance was given, and the meeting called to order at 1:00 p.m.

The agenda was reviewed for conflicts; none were noted. ALL MOTIONS RECORDED IN THESE MINUTES WERE PASSED BY UNANIMOUS VOTE, UNLESS OTHERWISE STATED. The full context of the meeting can be found on the county website under Commissioners at <http://fallriver.sdcounties.org>, or, under Fall River County Commission, SD at <http://www.YouTube.com>.

Motion made by Russell, seconded by Greenough, to approve the agenda as written.

Discussion was held on the Initiative Measure petitions filed in the Auditor's office that request an ordinance proposing that Uranium Mining is a nuisance in Fall River County. State's Attorney Lance Russell spoke and referred to SDCL Chapter 45-6D – Uranium Exploration; SDCL Chapter 7-18A-13 Ordinances and SDCL 7-8-33 – Public Nuisance. Numerous individuals attended the meeting.

Motion made by Russell, seconded by Allen, to accept the petitions to put an Initiated Measure for an Ordinance declaring uranium mining a nuisance in Fall River County, to be put on the General Election ballot, November 8, 2022, as per SDCL 7-18A-13.

The motion was retracted by Russell and Allen.

Motion made by Russell, seconded by Allen that, pursuant to SDCL 7-18A-13, the board moves to submit the petitions to referendum consistent with the statute.

With Greenough voting no, all others voting yes, by roll call vote, motion carried.

Motion made by Russell, seconded by Greenough, to adjourn at 1:42 p.m.

/s/Joe Falkenburg  
Joe Falkenburg, Chairman  
Board of Fall River County Commissioners

ATTEST:  
/s/Sue Ganje, Auditor  
Fall River County Auditor

## Codified Laws

[Home](#) > [Codified Laws](#) > [7](#) > [18A](#) > [13](#)

[PREVIOUS](#)

[NEXT](#)

Go To:(1-1-1) or Google Search



**PRINTER FRIENDLY**

### **7-18A-13. Board action on initiative petition--Submission to voters.**

If a petition to initiate is filed with the auditor, the auditor shall present it to the board of county commissioners at its next regular or special meeting. The board shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the manner prescribed for a referendum within sixty days after the final enactment. However, if the petition is filed within three months prior to the primary or general election, the ordinance or resolution may be submitted at the primary or general election.

**Source:** SL 1975, ch 82, § 23; SL 1983, ch 47, § 1; SL 2016, ch 44, § 49.

STATE OF SOUTH DAKOTA

COUNTY OF: Fall River

CERTIFICATE

We, Joe Allen, Les Cope, Joe Falkenburg, Heath Greenough, Deb Russell, the County Board of Canvassers in Fall River County for the General Election held on November 8, 2022, hereby certify that the foregoing is a true abstract of the votes cast in the jurisdiction of Fall River County, South Dakota, at the election as shown by the returns certified to the person in charge of the election.

Joe A. Falkenburg

Deborah Russell

Heath Greenough

Les Cope

Joe Allen

Sworn to before me this 10 day of Nov, 2022.

[Signature]

County Auditor

Fall River County, South Dakota



# General Election - November 8, 2022

## Fall River County

Precinct Name	Initiated Measure : Uranium Mining is a nuisance in Fall River County	
	Yes	No
BEA	52	80
CAS	109	60
EDA	194	329
HS 1	268	161
HS 2	237	174
HS 3	210	123
HS 4	224	134
JAC	622	379
Oelrichs Area	77	98
<b>Total</b>	<b>1,993</b>	<b>1,538</b>



# INITIATED MEASURE : URANIUM MINING IS A NUISANCE IN FALL RIVER COUNTY - FALL RIVER

FOLLOW THIS CONTEST

PRECINCTS FULLY: 9 / 9 |  
PARTIALLY: 0 / 9

EXPORT

✓ YES



56%

1,993

NO



44%

1,537

TOTAL VOTES

3,530

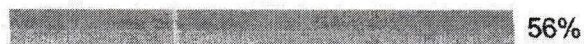
MAP

COUNTY RESULTS

## FALL RIVER COUNTY

PRECINCTS FULLY: 9 / 9 |  
PARTIALLY: 0 / 9

YES



56%

1,993

NO



43%

1,537

PRECINCT RESULTS

TOTAL VOTES

3,530

FALL

## RIVER COUNTY

BEA

YES



39%

52

NO



60%

80

CAS

YES



64%

109

NO



35%

60

EDA

YES



37%

194

NO



62%

329

HS 1

YES



62%

268

NO



37%

161

HS 2

YES



57%

237

NO



42%

174

HS 3

YES










63%

210

11/9/22, 6:41 AM

South Dakota Secretary of State

NO		36%	123
HS 4			
YES		62%	224
NO		37%	134
JAC			
YES		62%	622
NO		37%	378
OELRICHS AREA			
YES		44%	77
NO		56%	98
TOTAL VOTES			3,530

INITIATED MEASURE : AN ORDINANCE OF



STATE OF SOUTH DAKOTA

COUNTY OF HUGHES

CERTIFICATE

We, Steve Barnett, Shirley Jameson-Fergel, Charles McGuigan and Steven Kohler, the Board of Canvassers in the State of South Dakota for the General Election held in said state on November 15, hereby certify that the attached is a true and correct record of the votes for the candidates as shown by returns certified to the Secretary of State of South Dakota.

Steve Barnett

Secretary of State

Shirley Jameson-Fergel

for the Supreme Court

Charles McGuigan

for the Governor

Steven Kohler

for the Attorney General

Sworn to before me this 15<sup>th</sup> day of November, 2022.

Kea L. Warne

Notary Public

My commission expires 1-21-27



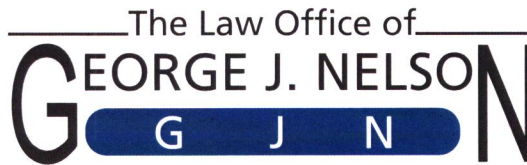


# General Election - November 8, 2022

## Fall River County

Precinct Name	Initiated Measure : Uranium Mining is a nuisance in Fall River County	
	Yes	No
BEA	52	80
CAS	109	60
EDA	194	329
HS 1	268	161
HS 2	237	174
HS 3	210	123
HS 4	224	134
JAC	622	379
Oelrichs Area	77	98
<b>Total</b>	<b>1,993</b>	<b>1,538</b>





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SEP 29 2025

Department of Agriculture  
and Natural Resources

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September 25, 2025

**Via Email and U.S. Mail**

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

Re: Submission of Brief Regarding Validity and Applicability of Fall River County Ordinance

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 respectfully submits the enclosed Brief in Support of the Validity, Applicability, and Enforceability of the Fall River County Ordinance Declaring Uranium Mining a Nuisance.

This brief addresses the specific questions posed by the Board regarding:

- (A) whether the initiated ordinance is enforceable without further action by the County Commission;
- (B) whether the ordinance applies to CNEC's current exploration permit application;
- (C) whether the Board has jurisdiction to consider state-law preemption; and
- (D) the legal consequences of the ordinance on the permit application if deemed valid and applicable.

Should the Board require oral argument or further briefing, we are prepared to appear as requested.

Sincerely,

**George J. Nelson**

Attorney for the Black Hills Group – Sierra Club

Enc. Brief

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SEP 29 2025

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 THE  
VALIDITY, APPLICABILITY,  
AND ENFORCEABILITY OF THE  
FALL RIVER COUNTY  
ORDINANCE “URANIUM  
MINING IS A NUISANCE”**

This brief is submitted on behalf of the Black Hills Group of the Sierra Club in response to the Board of Minerals and Environment’s request for analysis regarding the legal status and effect of the initiated ordinance passed by Fall River County voters on November 8, 2022, declaring that “Uranium Mining is a Nuisance in Fall River County.” The questions presented concern the validity of the ordinance without formal publication by the County Commission, its applicability to uranium exploration activities, the Board’s authority to assess preemption, and the legal consequences for Clean Nuclear Energy Corporation’s pending exploration permit application. The Sierra Club respectfully submits that the ordinance is valid and enforceable by operation of South Dakota’s constitutional and statutory framework governing county initiatives, that it applies in substance to exploration activities as the first step of uranium development, that the Board has jurisdiction to consider whether state law preempts local ordinances, and that the ordinance, if deemed applicable, mandates denial of the permit under SDCL § 45-6D-29.

## **I. Question A: Is the Initiated Ordinance Valid Without Further Action by the County Commission?**

**Answer:** Yes. Under South Dakota law, a properly initiated county ordinance adopted by majority vote of the electorate becomes valid and enforceable immediately upon passage, without further action by the county commission.

### **Legal Basis:**

- The ordinance was adopted by the voters of Fall River County in the November 8, 2022 General Election, pursuant to the people's initiative power under Article IX, § 1 and § 2 of the South Dakota Constitution and SDCL ch. 7-18A.
- Under *City of Colton v. Corbly*, 318 N.W.2d 136 (S.D. 1982), the South Dakota Supreme Court held that referenda and voter-adopted ordinances may be valid despite publication defects, and that an affirmative election result may conclusively validate such ordinances.
- South Dakota law does not impose a publication requirement on initiated ordinances after voter approval. No statute requires the County Commission to take further action before the ordinance becomes law.

**Conclusion:** The ordinance is valid and enforceable as enacted by the voters, without need for additional publication or Commission approval.

## **II. Question B: Does the Ordinance Apply to This Exploration Permit Application?**

**Answer:** Yes. The ordinance prohibits uranium mining, and uranium exploration is an integral and preparatory phase of uranium mining. To give effect to the ordinance's purpose—protection of the land, aquifers, and cultural resources from uranium development—it must be interpreted to also prohibit uranium exploration activities.

### **Legal Basis and Reasoning:**

- While the ordinance uses the phrase "uranium mining," South Dakota statutes distinguish between exploration (SDCL ch. 45-6D) and mining (SDCL ch. 45-6B) only for regulatory convenience. The two activities are functionally connected, with exploration being the first step in a mining operation.
- The South Dakota Supreme Court has long interpreted ordinances in light of their protective purpose, not rigidly by literal phrasing. See *Welsh v. Centerville Twp.*, 595 N.W.2d 622 (S.D. 1999) (upholding township ordinance targeting nuisance effects regardless of form).
- Exploration poses many of the same harms as mining: borehole drilling, contamination risks, aquifer disturbance, and destruction of sacred lands. A narrow reading that allows exploration despite a mining ban would frustrate the ordinance's core protective purpose.
- SDCL § 45-6D-29 recognizes that uranium exploration may cause permanent environmental harm, justifying denial even without transition to mining. That risk aligns with the voter intent behind declaring uranium mining a nuisance in Fall River County.

**Conclusion:** Interpreting the ordinance to exclude exploration would create a loophole inconsistent with its protective purpose. Thus, there is a good-faith and legally supportable argument that the ordinance also prohibits uranium exploration.

### **III. Question C: Does the Board or Chair Have Jurisdiction to Determine Whether the Ordinance Is Preempted by State Law?**

**Answer:** Yes. The Board and Hearing Chair have authority to determine whether the ordinance qualifies as an “applicable local law” under SDCL § 45-6D-29. That inquiry necessarily includes evaluating whether the ordinance is preempted or in conflict with state law.

#### **Supporting Authority:**

- SDCL § 45-6D-29 prohibits issuance of exploration permits unless the application complies with “all applicable local, state, and federal laws.”
- Determining what counts as “applicable local law” necessarily requires an assessment of whether such a law is valid and enforceable.
- The South Dakota Supreme Court has affirmed that agencies have authority to interpret and apply relevant law in the first instance. See *Matter of SDDS, Inc.*, 472 N.W.2d 502 (S.D. 1991).

**Conclusion:** The Board has jurisdiction to evaluate the enforceability of the ordinance, including questions of preemption.

### **IV. Question D: If the Ordinance Is Valid, Applicable, and Binding, What Are the Consequences for the Permit Application?**

**Answer:** If the ordinance is valid and applicable to uranium exploration, then issuance of the permit must be denied under SDCL § 45-6D-29.

#### **Explanation:**

- SDCL § 45-6D-29 is mandatory: the Board may not issue a permit unless the application is in compliance with “all applicable local laws.”
- The Fall River County ordinance, as interpreted in good faith to prohibit exploration, is such a law.
- Issuance of a permit in the face of a valid local ordinance would violate SDCL § 45-6D-29, exceed the Board’s statutory authority, and likely invite judicial reversal.

**Conclusion:** The Board has no discretion to approve the application if the ordinance is deemed applicable and enforceable. The permit must be denied as a matter of law.

## SUMMARY OF RESPONSES (AS ADVOCATED BY SIERRA CLUB)

Issue	Answer
A. Is the voter-adopted ordinance valid without Commission publication?	Yes – Valid upon voter approval; no further action or publication needed.
B. Is it applicable to an exploration permit?	Yes – A good-faith interpretation includes exploration as integral to mining.
C. Does the Board/Chair have jurisdiction to decide preemption?	Yes – As part of applying SDCL § 45-6D-29.
D. If valid and applicable, what are the consequences?	The permit must be denied as noncompliant with local law.

Respectfully submitted,

LAW OFFICE OF GEORGE NELSON

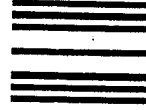
/s/ George J. Nelson

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Chairperson Bob Morris  
SD Board of Minerals & Environment  
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SEP 29 2025

Department of Agriculture  
and Natural Resources