From: Neyhart, Melissa <Melissa.Neyhart@state.sd.us>
Sent: Tuesday, September 2, 2025 1:56 PM
To: Binegar, Brenda <Brenda.Binegar@state.sd.us>
Cc: bobmorris@westriverlaw.com; McVey, David <David.McVey@state.sd.us>
Subject: In the Matter of Clean Nuclear Energy Corp. Uranium Exploration Permit Application; EXNI 453

Dear Ms. Binegar:

Attached please find the Notice of Entry of Order on Pre-Hearing Motions and Procedural & Scheduling Order and Certificate of Service that I am sending on behalf of Assistant Attorney General David M. McVey in the above matter. We are sending you the original documents via inter-office mail. We are also providing a courtesy copy of the documents to Hearing Chair Bob Morris via this email.

Melissa Neyhart, Paralegal
Office of the Attorney General
1302 East SD Highway 1889, Suite 1
Pierre, South Dakota 57501-8501
Telephone: 605-773-3215
Facsimile: 605-773-4106

The information contained in this communication is confidential, is intended only for the use of the recipient named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please resend this communication to the sender and delete the original message or any copy of it from your computer system.

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

September 2, 2025

Brenda Binegar
Department of Agriculture
& Natural Resources
523 East Capitol Avenue
Pierre, SD 57501
Email: 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 the original Notice of Entry of Order on Pre-Hearing Motions and Procedural & Scheduling Order 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.

Sincerely,

David M. McVey
Assistant Attorney General

DMM/mn
Enclosures
Via electronic mail and U.S. mail
cc/encs: Parties on Attached Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF CLEAN NUCLEAR ENERGY CORP. URANIUM EXPLORATION PERMIT APPLICATION EXNI 453	NOTICE OF ENTRY OF ORDER ON PRE-HEARING MOTIONS AND PROCEDURAL & SCHEDULING ORDER

TO: ALL INTERESTED PARTIES:

Please take notice that on August 28, 2025, Hearing Chair Bob Morris entered his Order on Pre-Hearing Motions and Procedural & Scheduling Order in the above-referenced contested action. A copy of the signed Order is attached to this Notice and hereby served upon you.

Dated this 2nd day of September 2025.

David M. McVey
Assistant Attorney General
1302 East SD Highway 1889, Suite 1
Pierre, South Dakota 57501-8501
Telephone: (605) 773-3215
Email: David.McVey@state.sd.us
Counsel for the Board of Minerals and Environment

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the NOTICE OF ENTRY OF ORDER ON PRE-HEARING MOTIONS AND PROCEDURAL & SCHEDULING ORDER was served via electronic mail and inter-office mail upon the following to be filed in the above captioned matter:

Brenda Binegar
Department of Agriculture
& Natural Resources
523 East Capitol Avenue
Pierre, SD 57501
Email: Brenda.Binegar@state.sd.us
Secretary, Board of Minerals & Environment

Further, the undersigned certifies that a true and correct copy of the above referenced document(s) was served via United States Mail, First Class, Postage Prepaid or hand-delivered upon the following:

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

Beverly Katz
Assistant Attorney General
1302 East SD Highway 1889, Suite 1
Pierre, SD 57501-8501
Counsel for Department of Agriculture & Natural Resources Minerals, Mining, & Superfund Program
HAND-DELIVERED

Matthew Naasz
Attorney At Law
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Rapid City, SD 57709
Counsel for Clean Nuclear Energy Group

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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
PO Box 1204
Pine Ridge, SD 57770

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

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

Dated this 2nd day of September 2025.

David M. McVey
Assistant Attorney General

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF CLEAN NUCLEAR ENERGY CORP. URANIUM EXPLORATION PERMIT APPLICATION EXNI 453	ORDER ON PRE-HEARING MOTIONS AND PROCEDURAL & SCHEDULING ORDER

On August 21, 2025 a pre-hearing conference was held on this matter to resolve pre-hearing motions and to set a procedural and scheduling order. After approximately three hours of discussion and upon consideration of the Hearing Chair, the motions and requests for orders are resolved as set forth herein.

It is hereby **ordered:**

I. PENDING MOTIONS

1. All motions for a pre-hearing conference are denied as moot.
2. All motions and requests regarding the location of the hearing are denied. The hearing will be held in Pierre, South Dakota at a date and time to be set by the Hearing Chair.
3. On August 15, 2025, Elizabeth Lone Eagle filed a motion requesting "that the Hearing Officer enter a procedural order requiring the State to provide, at its expense, Lakota language interpretation services as [described therein] for the benefit of intervenors and witnesses throughout all phases of this proceeding." This motion will be held in

abeyance until such time as the scope of the services needed, the proposed procedures to be followed at hearing, and the availability and feasibility of such services is determined.

4. Various motions were filed requesting that service by electronic means including e-mail be allowed. This request contravenes ARSD 74:09:01:07 which states:

> "The original of any petition, motion, or other pleading shall be filed with the secretary of the department. Filing of the pleadings or documents shall be effectuated by delivery in person, by facsimile, by mail, or by courier to the department by the date the pleadings or documents are due. The person filing the pleading shall serve copies of the documents or pleadings on the chair of the hearing, the hearing examiner if applicable, and all parties of record."

The requests are therefore denied. Nevertheless, in the interest of ensuring everyone has access to all motions, pleadings, etc., all motions etc. should be emailed to the Board Secretary at brenda.binegar@state.sd.us who will then make arrangements to post them on the Department of Agriculture and Natural Resources (DANR) Contested case website which can be found at: https://danr.sd.gov/public/ContestedCase.aspx. All filings MUST still be served in a manner set forth in ARSD 74:09:01:15 which states: "The service of all pleadings, notices, or orders may be made by first class mail, personal service, or facsimile. An affidavit of mailing, an admission of service, or other competent evidence is proof of service."

DANR will post a list of the intervenors and their addresses on the contested case website.

5. In advance of the pre-hearing conference, the parties were directed to brief the regarding the issue of the Fall River County Ordinance passed by voters in November of 2022 designating uranium mining as an unlawful nuisance in within the county.

   This issue is deferred, and the parties are directed to further brief the issue to include the following points:

   A. Whether the County Initiative Petition for a proposed ordinance in the form of URANIUM MINING IS A NUISANCE IN FALL RIVER COUNTY passed by majority vote of the Fall River voters, in the November 8, 2022 General Election is an enforceable County Ordinance without further action by the Fall River County Commission. In other words, is the Initiated Ordinance valid when voted on by the people or only when it is published as an official ordinance?

   B. If the Ordinance is valid, is it applicable considering that this application is for an exploration permit not a mining permit.

   C. If the Ordinance is valid and applicable, does Board/Hearing Chair have jurisdiction to decide whether the Ordinance is preempted by state law?

   D. If the Ordinance is valid, applicable, and binding, what are the consequences relating to the instant application.

   All briefs relating to the foregoing must be filed no later than 5:00 P.M. CDT on **October 1, 2025**.

II. PROCEDURAL AND SCHEDULING ORDER

1. Discovery in this matter is limited to the scope of factors set forth in SDCL § 45- 6D-29. Discovery is further limited to the rule of proportionality, *i.e.*, excessive demands will not be allowed.

2. Discovery requests, including Notices of Deposition, must be initiated (served upon the applicable party) no later than **September 30, 2025**. Discovery requests must be served upon all parties including a copy to the Board Secretary at brenda.binegar@state.sd.us who will arrange for posting the documents on the contested case website at the web address set forth *supra*.

3. Each party must disclose in writing no later than **October 14, 2025**, the names of the expert witnesses it intends to call as a witness at the contested case hearing held in this matter. Each party must include in the submission copies of any curricula vitae as well as copies of any expert report prepared by the expert witness.

4. All motions to compel compliance with discovery demands must be filed no later than **November 10, 2025**.

5. Discovery must be completed by **November 17, 2025.**

6. All motions, together with supporting briefs, must be filed and served upon all parties no later than **December 1, 2025**.

Any responding party shall have until **December 15, 2025**, to serve any responsive brief. Rebuttal briefs will be allowed only if requested by the Hearing Chair.

7. Each party must disclose in writing no later than **December 1, 2025**, the name and address of each witness the party intends to call during the hearing of this matter.

8. Each party must provide to all other parties, no later than **December 1, 2025**, a list identifying all exhibits the party intends to offer as evidence in its case in chief. Copies of said exhibits must also be provided; the copies may be provided by electronic means. Exhibit numbers are assigned as follows:

A. 0-100 Department of Agriculture and Natural Resources

B. 101-200 Applicant

C. 201-300 Great Plains Tribal Water Alliance, Inc.

D. 301-400 Cheyenne River Sioux Tribe

E. 401-500 Oglala Sioux Tribe

F. 501 – 600 Sierra Club

G. For all others including individual intervenors, use your last name plus exhibit number starting at 1. For example: Smith 1, Smith 2, and so on.

9. Stipulations may be made at any time and filed with the Board, with service upon all parties and the Hearing Chair.

10. A prehearing conference will be scheduled for **January 6, 2026** to consider any remaining motions filed, to resolve any other item or issue, and to set a final hearing date and time. The parties may appear telephonically or by means of remote video. It is requested and recommended that all counsel appear personally.

11. Each party must mark, in advance of the hearing, all exhibits the party intends to introduce at the hearing.

12. It is anticipated that the hearing of this matter will require 3-4 days. A majority of the Board will be present at the hearing.

13. This scheduling order may only be modified by subsequent Order of the Hearing Chair upon written motion and a showing of good cause.

Dated this 28th day of August, 2025

BOARD OF MINERALS & ENVIRONMENT

Bob Morris, Hearing Chair