

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE
UNITED ORDER OF SOUTH DAKOTA,
APPLICATION NO. 2730-2

REPLY OF APPLICANT TO PETITIONS OF MR.
AND MRS. DAVID ALBRECHT AND LINDA
VAN DYKE KILCOIN

Reserving Applicant's rights to present legal and factual responses to all arguments, petitions, and objections filed in this matter, Applicant through the undersigned counsel herein replies to certain allegations and arguments made by the above-named Petitioners. The above-named Petitioners submit arguments regarding the pending application in this matter which are inflammatory, irrelevant, and immaterial to the matter before the Water Management Board (herein the "Board").

The United Order of South Dakota (the "United Order" or "Applicant") is a religious trust. In her Petition and objections to the application, Petitioner Linda Van Dyke Kilcoin refers to the United Order of South Dakota as a "secretive" organization. "As locals, we know what is going on in there and we don't want to see it expand," she writes. "We value our 12 year old girls in South Dakota. Help us!" Petitioners Mr. and Mrs. David Albrecht in their Petition and objections state that the Applicant's request is "suspect of abnormal activity which is detrimental to our rural community." These statements regarding Applicant's pending water rights submission before the Board are immaterial, inflammatory, accusatory, and irrelevant to the contents of the submission.

The Board has "general supervision of the waters of the state, including measurement, appropriation, and distribution thereof." SDCL 46-2-9. The Board is empowered to hear issues and challenges to applications pursuant to SDCL 46-2-11, which states that the Board shall "regulate and control the development, conservation, and allocation of the right to use the waters

of the state according to the principles of beneficial use and priority of appropriation established by this title.” Under SDCL 46-2A-9, a permit to appropriate water in South Dakota may only be issued if:

1. there is reasonable probability that there is unappropriated water available for the applicant's proposed use;
2. that the proposed diversion can be developed without unlawful impairment of existing rights; and
3. that the proposed use is a beneficial use and in the public interest.

The statutory requirement that the water permit application be in the *public interest*, as found in SDCL 46-2A-9, does not mean the Board should consider Petitioners’ “private opinions” concerning the Applicant. The Board’s consideration of the *public interest* criterion concerning a water application includes reviewing the proposed use of the water, determining the extent to which the proposed use is a suitable use of the existing water supply, and determining the extent to which the use may prejudice other existing uses of the water body. *See e.g., Fraser v. Water Rights Comm'n of the Dep't of Natural Res. Dev.*, 294 N.W.2d 784, 789 (S.D. 1980).

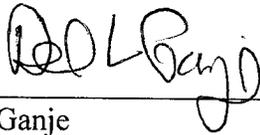
The United Order’s pending application is for an increase of its existing right to appropriation of water from the Madison aquifer and for authorization to construct a new well to serve this purpose. The assertions of the Albrechts and Ms. Kilcoin are an attempt to use this forum for other purposes. The law of South Dakota does not allow prejudice in judgment to have a place before this Board. The South Dakota Supreme Court has stated that prejudice arises when “the record [shows that] under the evidence the [finder of fact] might and probably would have returned a different verdict if the alleged error had not occurred.” *Sander v. Geib, Elston, Frost Profl Ass'n*, 506 N.W.2d 107, 113 (S.D. 1993) (citations omitted). It may be said under

other authority that, "Do not be a witness against your neighbor without cause." *Proverbs* 24:28.

By making the stated assertions, the Albrechts and Ms. Kilcoin are propagating prejudice by asserting matters not relevant or material to the issues before the Board. The Board in this matter sits as a fact-finding and adjudicative body. The anticipated hearing is not the proper forum in which to entertain such prejudicial, inflammatory and irrelevant allegations. *See* SDCL 1-26-19 (1); 19-12-2; 19-12-3. To consider, admit into the record, and include such allegations in any findings of fact or conclusions of law would act to deny the Applicant its right to due process of law. SDCL 1-26-36 (1), (2), (6); *see also* U.S. Const. amend. XIV, § 1; S.D. Const. art. VI, § 2.

DATED: _____

3/15/15



David L. Ganje
Attorney for Applicant
Ganje Law Offices
1830 West Fulton Street
Rapid City, SD 57702
(605) 385-0330
davidganje@ganjelaw.com