

Grand Junction, Colorado.

August 19th, 1927.

The City Council of the City of Grand Junction, having been summoned by the President of the Council, met in special session at 7:30 o'clock P.M. Those present were Councilmen Penberthy, Meders, Rogers, Hall, Ellison, Moslander, City Manager Thompson, City Attorney Hinman, and City Clerk Niles. Councilman Bear was absent.

The following resolution was presented and read by the Clerk:

RESOLUTION

Be it resolved by the City Council of the City of Grand Junction, Colorado, that the corner driveways constructed by the Continental Oil Company into the stations at the Northwest corner of Seventh and Main Streets and the Southeast corner of Second and Main Streets in said city be and the same are hereby found and declared to be nuisances and unsafe to the pedestrians and users of said streets for the reasons that traffic upon said streets has increased to such an extent that the lives and safety of pedestrians are endangered at said corners.

And be it further resolved that the City Manager of the City of Grand Junction be instructed to notify the Continental Oil Company to remove said corner driveways and to restore the curbs and gutters at said corners.

It was moved by Councilman Meders, seconded by Councilman Penberthy that the resolution, as read, be passed and adopted. Upon which motion the following vote was cast: Councilman voting YEA, Penberthy, Meders, Rogers, Hall, Ellison, Moslander. All the Councilmen present voting YEA, the President declared the motion carried.

City Attorney Hinman presented the following report:

W. R. HINMAN
ATTORNEY AT LAW
SUITE 303-4 GRAND VALLEY BANK BLDG.
GRAND JUNCTION, COLO.
PHONE. JCT. 281 August 19, 1927

Mr. T. E. Thompson
City Manager
Grand Junction, Colorado

Dear Mr. Thompson:

You have asked me to render an opinion on the legal phases connected with the discharge of reservoir waters containing algae

into Kannah Creek, and the consequent effect upon the public water supply belonging to the City.

I understand that the report of the State Board of Health shows that samples of this water obtained at the most malignant stage is not injurious to health and is, consequently, pure so far as any injurious effect on the human system or any other domestic use is concerned and that the sole cause of complaint is an offensive taste and odor due to the prevalence of blue-green algae therein.

There is ample authority for the statement that our Courts afford remedy by injunction and criminal prosecution against those guilty of willfully polluting the source of supply of municipal water-works and will afford protection against continuance of such pollution, and the sole question is whether or not the conditions complained of would be determined by a Court of Law to be a pollution of such water.

I have made considerable search of authorities for a legal definition of pollution that would embrace that condition complained of, but to date have been unsuccessful. My search has merely disclosed cases which correspond to Webster's definition of the word, namely: "Act of defiling; uncleanness; impurity; to make or render impure or unclean." You will note that all of the words by Webster impute something detrimental to health or morals, and in all the cases I have examined so far, that seems to be the deciding factor in determining whether or not the act complained of amounts to a pollution. In view of that situation it is very doubtful whether or not a Court would rule that this is a pollution, or would grant any adequate relief.

My attention has been called to the three authorities cited in an editorial of the Daily Sentinel some time ago concerning this question. Two of the authorities cited have no bearing on the question at all, Reference is made to Ordinance No. 237 of the City, which prohibits persons from constructing, keeping or maintaining pigpens, etc., within an area of all territory for five miles above the intake on Kannah Creek, and also prohibiting persons within said area from allowing unwholesome or contaminating substances to remain upon the premises, the drainage from which might be carried into Kannah Creek. The reservoirs in question are outside this area.

Section 6893, Compiled Laws of Colorado, provides a penalty if any person or persons throws or discharges into any stream any obnoxious substance such as refuse from a slaughter house, etc., or any other fleshy or vegetable material which is subject to decay in the water, etc. It is my understanding that the algae are not subject to decay so that this section does not apply.

Section 6892, Compiled Laws of Colorado, provides a penalty in case any person shall in any wise pollute or obstruct any watercourse so as to render the same offensive or unwholesome to

the county, town, village, etc. As before indicated we are again called upon for a construction of the word pollution in order to determine the effect of this statute, and unless we can prove a dangerous element in the water it is, in my opinion, improbable that we can secure a favorable ruling from the Court.

I shall continue my search in this matter for authorities and in the meantime it is probable that some solution of the entire matter may be worked out.

Very truly yours,
/s/ W.R. Hinman

WRH/r

Various matters were discussed by the Councilmen, but no action was taken on anything.

There being no further business to come before the meeting, it was regularly moved and seconded that the meeting adjourn.

/s/ Helen C. Niles
City Clerk