



## OFFICE OF THE CITY ATTORNEY

### CLAIMS MEMORANDUM #DC-2024-002

**TO:** Mayor and Council

**FROM:** Garrett Lam  
Assistant City Attorney 

**DATE:** March 13, 2024

**MEETING:** April 9, 2024

**RE:** Damage claim of  
Rebekah Carne  
7206 SW Drakestone Blvd.  
Lawton, OK 73505

Submitted in the amount of \$1,100.00 on January 16, 2023

**RECOMMENDATION:** Approval in the amount of \$1,100.00

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**BASIS OF CLAIM:** Rebekah Carne and Angela Shears are the owners of the property located at 4526 NE Highlander Circle, Lawton, Oklahoma. Rebekah Carne has filed a claim and alleges on October 10, 2023, she turned the water off to the rental property to get some work done and prep for winter and the pipes kept leaking. On November 6, 2023, she called Water Distribution to report water bleeding past the meter and water entering her house. Water Distribution made three trips to the residence, November 7, 2023, December 6, 2023, and again on December 19, 2023, when they changed out the angle valve and the water stopped leaking. Ms. Carne is seeking \$1,100.00 to repair the water damage.

**DATE OF DAMAGE:** October 10, 2023, through December 19, 2023

**FACTS:** According to Water Distribution records, Mrs. Carne called on November 6, 2023, to report water was leaking past the valve. On November 7, 2023, a City of Lawton employee checked the meter and noted on his daily worksheet that the meter was not spinning, locates were marked in blue and it was scheduled for a crew to come back and dig up the meter. On December 6, 2023, a Water Distribution crew dug out the meter and removed it to check it and no problem was found on the City's side of the meter. It was noted that it was possibly on the homeowner's side. On Friday, December 15, 2023, Ms. Carne called Water Distribution back to get a status on the repair because the water was still seeping past the meter and coming out the busted pipe in the garage. Ms. Carne explained to the scheduler that a plumber checked it out and her valve was all the way off and it was still leaking, and continuing to cause damage in her garage and she couldn't get it repaired until the was shut off completely. The scheduler told her she would get

someone back out there on Monday to check it out again. On Monday, December 19, 2023, a Water Distribution crew replaced the angle valve on the meter. According to Water Distribution they did not find anything wrong with the angle valve. According to Rebekah Carne the water has stopped leaking past the meter. Ms. Carne submitted pictures that were taken on November 24, 2023, which is after the initial call and before the repair on December 19, 2023, which show moisture on the floor, for this reason, it recommended that this claim be paid. Claimant has admitted that water was leaking before she called the City, but due to the water continually leaking she is seeking the cost of repairs.

**LEGAL BASIS FOR APPROVAL OF CLAIM:** Pursuant to Title 51, Oklahoma Statutes, §151 et seq., municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. However, negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949). In the case of a defective water and sanitary sewer system, the Oklahoma Supreme Court has held that a complaining party does not meet his burden of proving negligence unless prior notice of the defective condition, actual or constructive, has been received by the entity controlling and managing the system. City of Holdenville v. Griggs, 411 P.2d 521 (Okla. 1966). In that instance, a duty arises to abate the defect within a reasonable time. Id. at 522.

In this instance, the claimant discovered the water leak in her garage on October 10, 2023, and turned her water off at the meter. On November 6, 2023, she was told by a plumber it was the City's angle valve leaking past the meter and not her line. She then called Water Distribution to report the water leaking past the valve. The water continued to leak until the angle valve was replaced by Water Distribution on December 19<sup>th</sup>, 2023.

Accordingly, this office recommends approval of this claim in the amount of \$1,100.00

GARRETT LAM  
ASSISTANT CITY ATTORNEY

  
Mincie Beamesderfer, CLA  
Claims Investigator