




OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2021-008

TO: Mayor and Council

FROM: Kelea Fisher
Deputy City Attorney 

DATE: May 14, 2021

MEETING: June 8, 2021

RE: Damage claim of
Patsy Wetmore
6822 SW Drakestone Boulevard
Lawton, OK 73505

Submitted in the amount of \$2,817.36 on March 19, 2021

RECOMMENDATION: Approval in the amount of \$2,817.36

BASIS OF CLAIM: Patsy Wetmore is the owner of the property at 6822 SW Drakestone Boulevard and alleges on February 18, 2021, the City's water main busted, causing water and red mud to gravitate toward her house. According to the Claimant, the water and mud entered the house through the north, south and west walls, causing damage to the linoleum in the bathroom, kitchen, computer room and dining room and also soiling a portion of the carpet in the home. Mrs. Wetmore has filed a claim in the amount of \$2,817.36, and submitted two estimates with her claim: one from Bubba's rug shower in the amount of \$55.00 for carpet cleaning, and the other from Classic Carpet in the amount of \$2,762.36 for replacement of vinyl flooring in the kitchen, dining room, computer room and bathroom.

DATE OF DAMAGE: February 17, 2021

FACTS: According to Water Distribution records, on February 17, 2021 at 7:00 a.m., Water Distribution received a call reporting a possible water main break at Drakestone and 70th Street. Water Distribution responded to the call and arrived at 7:30 a.m. The Water Distribution crew killed the City's water main and called in emergency locates. The crew started the excavation of the City's main at 12:43 p.m. and completed repair at 10:15 p.m. the same day. Water Distribution researched their records and have verified prior history exists on the water main segment in question.

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 City had prior notice of an issue with the water main on the segment in question and would be liable for the damage to Claimant's home.

KELEA FISHER
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CLA
Claims Investigator

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