

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. U
6/4/2024

TO: Mayor and City Council

FROM: Kenneth Jordan
Municipal Counselor

Enter into executive session on advice of the Municipal Counselor, as authorized by 25 O.S. (2023 Supp.) §307(B)(4), to receive confidential communications from its attorney concerning the case of *Deer Creek Water Corporation v. City of Oklahoma City and Oklahoma City Water Utilities Trust* in U.S. District Court for the Western District of Oklahoma, Case CIV-19-1116-SLP because disclosure of the confidential communications would seriously impair the ability of the public body to conduct such potential litigation in the public interest.

Background:

The Deer Creek Water Corporation sued The City of Oklahoma City and the Oklahoma City Water Utilities Trust in U.S. District Court for the Western District of Oklahoma, Case CIV-19-1116-SLP seeking to preclude the City and Trust from providing water service to a subdivision in Oklahoma City. The City and Trust denied Deer Creek's assertions and counterclaimed challenging the authority for and the existence of Deer Creek's claimed exclusive water service area and requesting definition of the Deer Creek service area and other relief from the Court. The developer, the Bolings, intervened in the case to protect their property interests.

District Court Judge Paulk granted summary judgment to the City, Trust, and the Bolings based upon the failure of Deer Creek to provide or make water service available. Deer Creek Water Corporation appealed and the City cross appealed. The issues were briefed, and the Tenth Circuit panel heard oral arguments. In a split decision, the Tenth Circuit panel, denied Deer Creek's appeal, denied the City's appeal, and remanded the case to the District Court for further proceedings. Legal counsel for the City and Trust has petitioned for *en banc* review of its novel issues of first impression and review of legal issues of exceptional importance. The United States Supreme Court denied the Petition of Certiorari. This case is set for trial November 5, 2024.

The assigned Assistant Municipal Counselors request an executive session to update the Trustees on developments in and status of this case.

Review:

Utilities Department

Recommendation: Enter into Executive Session.