



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

BOARD MEETING DATE: September 18, 2018

DATE: Wednesday, September 12, 2018

TO: Board of County Commissioners

FROM: Paul Lipparelli, Assistant District Attorney, District Attorney's Office
(775) 337-5713, plipparelli@da.washoecounty.us

THROUGH: Christopher J. Hicks, District Attorney

SUBJECT: Recommendation to opt in to the class of claimants in Kane County v. United States (Case Nos. 17-739C and 17-1991C) to recover from the federal government funds that were not paid to Washoe County for fiscal years 2015, 2016, 2017 under the federal Payment In Lieu of Taxes program and to authorize and ratify the actions taken by the County Manager and the District Attorney (or their designees) in pursuing a claim in the case. District Attorney (All Commission Districts) FOR POSSIBLE ACTION

SUMMARY

Washoe County Strategic Objective supported by this item: Stewardship of our Community.

PREVIOUS ACTION

None.

BACKGROUND

The United States Department of the Interior is responsible for the Payment In Lieu of Taxes (PILT) program. The annual PILT program payments help offset losses in property taxes due to non-taxable Federal lands within their boundaries such as BLM lands, Forest Service Lands and some other federal programs. Over 1900 U.S. local governments receive PILT funds annually. The PILT Act, 31 U.S. Code Chapter 69. PILT payments help local governments carry out such vital services as firefighting and police protection, construction of public schools and roads, and search-and-rescue operations. <https://www.doi.gov/pilt>

In fiscal years 2015 – 2017, the amount appropriated by Congress for PILT payments was insufficient to satisfy all statutory PILT obligations. The agency administering the PILT program, the Department of the Interior, is prohibited by law from spending more than Congress appropriates. So in fiscal years 2015 – 2017, Department of the Interior paid out the available funds on a pro-rata basis, but those payments were less than what each unit of local government was entitled to receive. Congress has not made any

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additional appropriation for PILT obligations in fiscal years 2015 – 2017. But Congress has established by law a permanent, indefinite appropriation account called the Judgment Fund, to pay final money judgments against the United States. The Court's final judgment in the Lawsuit will be paid out of the Judgment Fund.

<https://www.smithcurrie.com/piltpaymentsinfo/>

In 2017 Kane County, Utah commenced an action in federal court challenging the federal government's failure to meet its duties under the PILT Act (31 U.S.C. §§ 6901–07). The U.S. District Court has already ruled that the federal government owes each class member PILT funds that were not paid in fiscal years 2015, 2016, 2017. See attached Order. If the Board of County Commissioners accepts the recommendation, Washoe County's opting in to the class action suit will be authorized and already-taken actions in furtherance of those claims will be ratified.

FISCAL IMPACT

The estimated potential recovery for Washoe County for Fiscal Years 2015, 2016 and 2017 is approximately \$134,000. Any costs of the litigation are paid to the attorney for the class from the proceeds of the recovery and Washoe County would not be responsible for additional costs and fees.

RECOMMENDATION

It is recommended that Washoe County opt in to the class of claimants in Kane County v. United States (Case Nos. 17-739C and 17-1991C) to recover from the federal government funds that were not paid to Washoe County for fiscal years 2015, 2016, 2017 under the federal Payment In Lieu of Taxes program and to authorize and ratify the actions taken by the County Manager and the District Attorney (or their designees) in pursuing a claim in the case.

POSSIBLE MOTION

I move that Washoe County opt in to the class of claimants in Kane County v. United States (Case Nos. 17-739C and 17-1991C) to recover from the federal government funds that were not paid to Washoe County for fiscal years 2015, 2016, 2017 under the federal Payment In Lieu of Taxes program and to authorize and ratify the actions taken by the County Manager and the District Attorney (or their designees) in pursuing a claim in the case.