



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

BOARD MEETING DATE: June 21, 2022

DATE: Tuesday, June 14, 2022

TO: Board of County Commissioners

FROM: Michael Large, Deputy District Attorney
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THROUGH: Nathan Edwards, Assistant District Attorney
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SUBJECT: Recommendation and possible action to approve execution of an "Amendment No. 2 to One Nevada Agreement on Allocation of Opioid Recoveries" which will allow the Nevada Attorney General's Office to divide the Recoveries in accordance with the percentages and terms of the One Nevada Agreement and all Amendments thereto, calculate payments to the Local Governments, calculate attorney's fees for all Local Governments pursuant to the Local Governments' applicable contingency fee agreements with their Counsel or in accordance with Amendment No. 1 where it applies, and remit payments to Local Governments and attorneys' fees to the appropriate Counsel on behalf of the Local Governments. Recoveries means settlement payments totaling \$285,679,409.03 from opioids distributor defendants AmerisourceBergen Drug Corporation, Cardinal Health, and McKesson, and opioid manufacturer defendant Janssen/Johnson & Johnson to compensate for the effects of the nationwide opioid crisis, which are then allocated to both the State and local government entities including Washoe County pursuant to a formula set forth in the original One Nevada Agreement approved by the Board on July 27, 2021, as well as any amendments thereto. Manager's Office. (All Commission Districts.) FOR POSSIBLE ACTION

SUMMARY

Staff recommends approval of the Amendment 2 to the One Nevada Agreement which allows the Nevada Attorney General's Office to divide the Recoveries in accordance with the percentages and terms of the One Nevada Agreement and all Amendments thereto, calculate payments to the Local Governments, including Washoe County, calculate attorney's fees for all Local Governments pursuant to the Local Governments' applicable contingency fee agreements with their Counsel or in accordance with Amendment No. 1

AGENDA ITEM # _____

where it applies, and remit payments to Local Governments and attorneys' fees to the appropriate Counsel on behalf of the Local Governments.

This Board has previously authorized the initiation of litigation against various defendants related to damages incurred due to the opioid crisis. On July 27, 2021, this Board entered into the One Nevada Agreement which provides the allocation model for distribution of any monetary recovery from the defendants between all governmental entities within the state of Nevada. This Board previously entered in Amendment No. 1 to the One Nevada Agreement which reduced Attorneys' Fees to 15%.

Pursuant to WCC 65.240(5), the Board has sole authority to settle any claim or suit for damages in excess of \$24,999. Pursuant to litigation authority delegated to the county manager or Board Chair pursuant to NRS 241.0357, authority is limited to \$150,000. It is expected this settlement will result in substantially more than these cutoffs. An estimate of the distributions to Washoe County is included with this staff report. Accordingly, Board approval has been sought.

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

PREVIOUS ACTION

March 26, 2019 - the Board approved an agreement for legal services for outside counsel to represent the County against manufacturers, distributors and dispensers of opioid-based drugs.

July 24, 2020 - a Complaint was filed against numerous corporate defendants.

June 8, 2021 - the Board received an update on the litigation and bankruptcy cases involving the various opioid defendants and took action to direct counsel for Washoe County to cast its vote to approve a bankruptcy plan consistent with other members of the Multi-State Government Entities ("MSG") in the Purdue Pharma Bankruptcy Case No. 19-23649 filed in the United States Bankruptcy Court Southern District of New York.

July 27, 2021 – the Board approved the One Nevada Agreement on Allocation of Opioid Recoveries ("One Nevada Agreement") which provides the allocation model for distribution of any monetary recovery from the defendants between all governmental entities within the state of Nevada.

January 25, 2022 – the Board approved Amendment No. 1 to the One Nevada Agreement and Execution of "Subdivision Settlement Participation Forms" previously agreed upon for participation in settlements with: (1) the State of Nevada and opioids distributor defendants AmerisourceBergen Drug Corporation, Cardinal Health, and McKesson as listed in Exhibit C to the One Nevada Agreement, and (2) the State of Nevada and opioid manufacturer defendant Janssen/Johnson & Johnson as listed in Exhibit C to the One Nevada Agreement;

BACKGROUND

After the Board hired outside counsel to represent Washoe County in opioid-related litigation matters a complaint was filed in the Second Judicial District Court. Counsel has

filed actions in state district court and claims in bankruptcy actions across the country. Those cases are proceeding, and several are being resolved in the bankruptcy courts.

A settlement agreement has been reached between the State of Nevada and distributor defendants AmerisourceBergen Drug Corporation, Cardinal Health, and McKesson, and opioid defendant manufacturer Janssen/Johnson & Johnson. On January 25, 2022, Washoe County entered into this settlement agreement by agreeing to the subdivision settlement participation forms. Additionally, Washoe County entered into Amendment No. 1 to the One Nevada Agreement which capped attorneys' fees to 15%.

Amendment No. 2 to the One Nevada Agreement allows the Nevada Attorney General's Office to divide the Recoveries in accordance with the percentages and terms of the One Nevada Agreement and all Amendments thereto, calculate payments to the Local Governments, including Washoe County, calculate attorney's fees for all Local Governments pursuant to the Local Governments' applicable contingency fee agreements with their Counsel or in accordance with Amendment No. 1 where it applies, and remit payments to Local Governments and attorneys' fees to the appropriate Counsel on behalf of the Local Governments.

This settlement does not affect the ongoing litigation by Washoe County against the other defendants in the previously filed actions.

FISCAL IMPACT

Although Amendment No. 2 in of itself does not have an associated fiscal impact, it's estimated that Washoe County is potentially eligible to receive in excess of \$10 million dollars over the next 16 years. Attached as exhibit to this Staff Report is an estimate of payments by Johnson & Johnson and the distributors to Washoe County between 2022-2038. These amounts are subject to change based on ongoing federal legislation involving CMS Medicaid Costs. As set forth in the One Nevada Agreement, these payments will be used for abating the opioid epidemic in Washoe County.

Criteria for the uses of settlement funds are likely to vary depending on the timing of receipt of the funds, as well as the source of the funds and any other legal requirements. Therefore, when funds are received, they will be brought to the Board for acceptance and any necessary budget amendments.

RECOMMENDATION

It is recommended that the Board approve Amendment No. 2 to the One Nevada Agreement which allows the Nevada Attorney General's Office to divide the Recoveries in accordance with the percentages and terms of the One Nevada Agreement and all Amendments thereto, calculate payments to the Local Governments, including Washoe County, calculate attorney's fees for all Local Governments pursuant to the Local Governments' applicable contingency fee agreements with their Counsel, or in accordance with Amendment No. 1 where it applies, and remit payments to Local Governments and attorneys' fees to the appropriate Counsel on behalf of the Local Governments

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

"Move to approve Amendment No. 2 to the One Nevada Agreement".