

# ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

## AGENDA COMMUNICATION FORM

<b>AGENDA ITEM DATE:</b> August 28, 2018	<b>ITEM TIME:</b> 1:00 p.m.
--	-----------------------------

<b>FROM:</b>	Erick Knaus
<b>TODAY'S DATE:</b>	August 14, 2018
<b>AGENDA TITLE:</b>	Consideration of and authorization to join the plaintiff class in the Kane County, Utah class action lawsuit involving PILT Act underpayments for fiscal years 2015, 2016 and/or 2017.

<b>CHECK ONE THAT APPLIES TO YOUR ITEM:</b>	
<input checked="" type="checkbox"/> <b>X ACTION ITEM</b>	
<input type="checkbox"/> <b>DIRECTION</b>	
<input type="checkbox"/> <b>INFORMATION</b>	

### I. DESCRIBE THE REQUEST OR ISSUE:

The Court of Federal Claims, in the case of *Kane County, Utah v. United States*, Case Nos. 17-1739C and 17-1991C (Consolidated), directed that a notice be sent to a Class made up of: “All unit[s] of general local government, as defined in 31 U.S.C. § 6901(2), that received payment under 31 U.S.C. § 6902(a) of the Payment in Lieu of Taxes Act [PILT Act] in fiscal years 2015, 2016 and/or 2017.” Routt County, as a member of the Class, received an Official Notice which offers the County the opportunity to join the Class Action Lawsuit to obtain the money that the federal government owes the County, without having to file a separate lawsuit.

The request is to consider whether or not to join the Kane County, Utah Class Action Lawsuit and complete a Class Action Opt-In Notice Form, which must be done no later than September 14, 2018.

### II. RECOMMENDED ACTION:

A motion of the Board of County Commissioners for Routt County to join the *Kane County, Utah v. United States*, Case Nos. 17-1739C and 17-1991C (Consolidated) PILT Class Action Lawsuit and authorization to complete a Class Action Opt-In Notice Form.

### III. DESCRIBE FISCAL IMPACTS (VARIATION TO BUDGET):

**PROPOSED REVENUE:**

**PROPOSED EXPENDITURE:**

**FUNDING SOURCE:**

By opting into the lawsuit, the County has the potential to recover underpayments of PILT Act entitlements for fiscal years 2015, 2016 and/or 2017 in the approximate amount of \$56,200.

**ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AGENDA COMMUNICATION FORM**

**IV. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS  
(IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):**

N/A

**V. BACKGROUND INFORMATION:**

The Kane County, Utah lawsuit was about whether the federal government was required to pay in full the amounts due to units of local government under Section 6902 of the PILT Act in fiscal years 2015, 2016 and 2017. Kane County contended that the federal government underpaid units of local government in those years, and that all Class Members are entitled to recover the underpayment amounts. The Court ruled that provisions of Section 6902 of the PILT Act obligated the federal government to pay eligible units of local government the full amounts calculated by a formula set forth in the Act even though congress failed to appropriate sufficient funds to do so in fiscal years 2015 through 2017. The Court granted summary judgment, in favor of the Class, as to the federal government's liability for underpaying Class Members in those years. The Court has not yet determined the amount by which the Class as a whole, or any individual Class Member, was underpaid in those years. Importantly, the underpayments sought by the Plaintiff class will be reduced by the amount of attorney's fees ultimately awarded by the Court. The attorneys representing the Plaintiff class have requested a fee amount representing 33% of the total award. Assuming the Court grants this request, Routt County's award of underpayment would be reduced to approximately \$37,100.

**VI. LEGAL ISSUES:**

By submitting the Class Action Opt-In Notice Form, the County is asking to be included in the Lawsuit, receive any PILT Act underpayments recovered in the Lawsuit, and be bound by its results. The County will give up the right to sue the federal government on its own, and at its own expense, for the same legal claims made in the Lawsuit. In order to join the Lawsuit, the County must submit the Class Action Opt-In Notice Form by no later than September 14, 2018.

**VII. CONFLICTS OR ENVIRONMENTAL ISSUES:**

N/A

**VIII. SUMMARY AND OTHER OPTIONS:**

**ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AGENDA COMMUNICATION FORM**

If the County does not choose to join the Lawsuit, the County will have no right to any money recovered, but will keep the right to sue the federal government for any alleged PILT Act underpayments in fiscal years 2015 through 2017, on its own and at its own expense.