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THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: COUNTY COUNSEL

BOARD AGENDA # *III.A.

Urgent

Routine

AGENDA DATE August 17, 2004

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

APPROVAL TO SEND A COMMENT LETTER TO THE UNITED STATES BANKRUPTCY COURT,
EASTERN DISTRICT OF CALIFORNIA OPPOSING A PROPOSED CHANGE TO LOCAL
BANKRUPTCY RULE 1002-1 RELATED TO INTRA-DISTRICT VENUE

STAFF RECOMMENDATIONS:

AUTHORIZE THE CHAIRMAN OF THE BOARD TO SEND A COMMENT LETTER TO UNITED STATES
BANKRUPTCY COURT, EASTERN DISTRICT OF CALIFORNIA OPPOSING THE PROPOSED CHANGE
TO LOCAL BANKRUPTCY RULE 1002-1 WHICH WOULD REMOVE SAN JOAQUIN COUNTY
COMPLETELY FROM THE MODESTO DIVISION OF THE BANKRUPTCY COURT

FISCAL IMPACT:

Sending a comment letter to the Bankruptcy Court has no direct fiscal impact on the County.

BOARD ACTION AS FOLLOWS:

No. 2004-620

On motion of Supervisor Simon, Seconded by Supervisor Mayfield
and approved by the following vote,

Ayes: Supervisors: Paul, Mayfield, Grover, Simon, and Chairman Caruso

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

APPROVAL TO SEND A COMMENT LETTER TO THE UNITED STATES
BANKRUPTCY COURT, EASTERN DISTRICT OF CALIFORNIA OPPOSING A
PROPOSED CHANGE TO LOCAL BANKRUPTCY RULE 1002-1 RELATED TO
INTRA-DISTRICT VENUE

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DISCUSSION:

The United States Bankruptcy Court, Eastern District of California has requested comments regarding a proposed change to its Local Bankruptcy Rule 1002-1, Intra-District Venue, a copy of which is included as Attachment 1. Currently, the Modesto Division of the Bankruptcy Court, located at 1130 12th Street, Modesto, California, serves Stanislaus, Tuolumne, and Calaveras Counties, and the southern half of San Joaquin County. The northern half of San Joaquin County already has venue in the Sacramento Division. The Court proposes to shift venue for all bankruptcy petitions and related proceedings in San Joaquin County to the Sacramento Division. If the proposed boundary change is adopted, the Modesto Division would continue to serve only the residents and businesses in Stanislaus, Tuolumne and Calaveras Counties.

The Modesto Division of the Bankruptcy Court used to also serve all of San Joaquin County, and Mariposa and Merced Counties. In 1995 however, the Court changed venue for those counties; transferring the north half of San Joaquin County to the Sacramento Division and Mariposa and Merced Counties to the Fresno Division. Consolidation of the local bankruptcy courts appears to be a trend favored by the Court. Elimination of San Joaquin County entirely from the Modesto Court leaves the Modesto Division vulnerable to future consolidation. If the Modesto Division was eliminated, Stanislaus County residents and businesses would have to conduct proceedings in either Sacramento or in Fresno, which would increase the difficulty and expense for Stanislaus County residents.

An ad hoc committee of local bankruptcy attorneys, including the local trustee, Michael D. McGranahan, oppose the change in venue and a copy of that committee's response and position paper is included as Attachment 2. The Office of County Counsel requests that the Board authorize the Chairman of the Board to comment on the proposed boundary change opposing the elimination of San Joaquin County from the Modesto Division of the Bankruptcy Court. A proposed comment letter is included as Attachment 3.

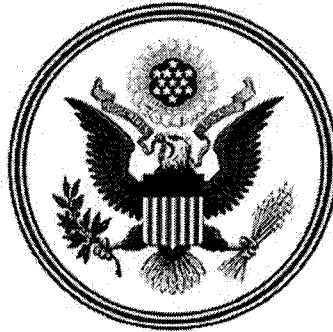
**POLICY
ISSUE:**

Opposing the proposed boundary change supports the Board of Supervisors' stated goals and priorities of facilitating economic development, delivering excellent community services, and promoting efficient government.

**STAFFING
IMPACT:**

There are no staffing impacts associated with this action.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**



**NOTICE OF PROPOSED
CHANGE TO LOCAL BANKRUPTCY RULES**

In accordance with Federal Rule of Bankruptcy Procedure 9029, the Court proposes to revise Local Bankruptcy Rule 1002-1, Intra-district Venue.

If enacted, this change would shift venue from the Modesto Division to the Sacramento Division for all petitions and related proceedings emanating from San Joaquin County.

A copy of the proposed revised local bankruptcy rule is attached to this notice.

Public comments on the proposed revision are invited. Comments should be directed to the Court, care of Richard G. Heltzel, Clerk of Court, U.S. Bankruptcy Court, 501 I Street, Suite 3-100, Sacramento, CA 95814, or by e-mail to LBRcomments@caeb.uscourts.gov, no later than August 16, 2004.

PROPOSED CHANGE TO LOCAL BANKRUPTCY RULE 1002-1

Intra-district Venue *

Petitions for relief under Title 11, United States Code; shall be filed in one of the three divisions of the Eastern District as determined by the following:

(a) Fresno Division. Petitions from the Counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, shall be filed with the Office of the Clerk, United States Bankruptcy Court, 2656 Federal Building, 1130 O Street, Fresno, CA 93721.

(b) Modesto Division. Petitions from the Counties of Calaveras, Stanislaus, and Tuolumne, ~~and all Postal Zip Codes within San Joaquin County except those listed in (c), below,~~ if presented by U.S. mail, shall be addressed to the Office of the Clerk, United States Bankruptcy Court, P.O. Box 5276, Modesto, CA 95352, or, if delivered to the court in person or by private parcel delivery service, shall be filed with the Office of the Clerk at 1130 12th Street, Suite C, Modesto, CA 95354.

(c) Sacramento Division. Petitions from the Counties of Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba, ~~and the Postal Zip Codes of 95220, 95227, 95234, 95237, 95240, 95241, 95242, 95253, 95258, and 95686 within San Joaquin County,~~ shall be filed with the Office of the Clerk, United States Bankruptcy Court, 501 I Street, Suite 3-200, Sacramento, CA 95814-2322.

(d) Transfer of Incorrectly Filed Petitions. If the debtor's address on a petition indicates that it should be filed in a division other than the division to which it is presented for filing, the Clerk shall nevertheless accept it, and any other pleadings presented with the petition, for filing on behalf of the proper division. The Clerk shall obtain and place the proper division's case number on the petition and accompanying pleadings and transmit them to the proper division.

(e) Request for Different Venue. If the debtor believes that venue should be in a division other than the division designated for the debtor's address, the debtor may file a motion to transfer the case to another division. The Clerk shall promptly present the motion to any available judge.

* Highlighting indicates proposed new text; strikeout indicates deleted text.

Response to Eastern District proposed rule change

The undersigned submit the following comments on the Court's proposed rule change, Local Rule 1002-1, Intra-district Venue. We are strongly opposed to the proposed boundary changes for the Modesto and Sacramento Bankruptcy Courts and submit that these changes are not in the best interests of the public, whom the Court is bound to serve. More specifically, we make the following observations.

Stanislaus, San Joaquin, and Merced Counties, constitute what is commonly referred to as the San Joaquin Valley. This area is distinct from the Sacramento Valley, which includes the city of Sacramento. It should be noted that the San Joaquin Valley has an economy that is more heavily dependant on agriculture and therefore is less diverse, encompasses smaller population centers, has a lower level of education, and has lower per capita income, than the Sacramento Valley. Sacramento is the state capital and a majority of residents are employed either directly or indirectly by the State of California. For these reasons alone, it clear that a bankruptcy court in Modesto is better able to understand the culture and problems of the San Joaquin Valley, and meet the needs of the public and business community in the context of insolvency and bankruptcy.

The San Joaquin Valley is among the fastest growing areas in the nation. Actual population studies by the Great Valley Center (a non-profit research institution located in Modesto) predict that of all the counties in the State of California, the San Joaquin Valley will grow the fastest. In fact, it is predicted that by the year 2020 the San Joaquin Valley area will command a population in excess of 2 million, up from 1.2 million in 2000; in 2050 the population is predicted to reach 3.2 million. San Joaquin County alone is expecting a population increase from 550,000 in 2000 to 1.7 million in 2050. As submitted by the demographic studies this population trend will continue for many decades with Stockton and San Joaquin County surpassing both Merced and Stanislaus counties.

To compound the problem of population explosion, the undersigned also note the increase in bankruptcy filings in the San Joaquin Valley area. The attached statistics on case filings show that while both Sacramento and Fresno bankruptcy courts experienced reductions in filings from 2001 to 2003, Modesto experienced flat or increasing filings. Given these facts, it is hard to conceive of how the proposed change in boundaries is beneficial to the public and business community. If the court's primary function is to serve the public, this can best be accomplished by maintaining the current boundaries such that ever increasing numbers of debtors and creditors in the San Joaquin Valley are able to access the bankruptcy court system without having to travel greater distances on congested highways, and without having to pay the costs associated with a much less accessible court in Sacramento.

The Eastern District's proposed change in Local Rule 1002-1 is both short-sighted and represents bad planning. This proposed boundary change is the second such change in the past 9 years. The first change, in 1995, removed Merced and Mariposa Counties as well as the northern most portion of San Joaquin County from the jurisdiction of the Modesto court. We note that when that change was instituted it was due to the fact that the Modesto Bankruptcy Court was actually busier and had a statistically higher case load per judge than the surrounding Fresno and Sacramento Bankruptcy Court divisions.

The proposed boundary changes will cause an extraordinary inconvenience and expense to the public and bar of San Joaquin County. The requirement to attend hearings in Sacramento, for both debtors, creditors, and their counsel, is unacceptable given the fact that a bankruptcy court exists in nearby Modesto. The travel time to Modesto from Stockton is approximately 30 minutes; the travel time to Sacramento is almost a hour. These time estimates, however, do not take into account the traffic, which is significantly worse between Stockton and Sacramento. The travel time from Tracy to Sacramento during peak traffic hours can 2 to 3 hours. Furthermore, parking is much more difficult and expensive in Sacramento. What may seem like a minor increase in cost to most of us can be extraordinarily burdensome to a debtor who has no income and perhaps doesn't even own a vehicle. The increased time and expense involved for debtors, creditors, and their counsel to travel to Sacramento instead of Modesto, is not warranted nor in the best interest of the public given the long-standing bankruptcy court location in Modesto.

We request that the Eastern District consider the long term implications of continuing its policy of reducing the size and scope of the Modesto Bankruptcy Court. We submit that as the population of this area grows, the judicial needs of the residents in the San Joaquin Valley will be much better served by the continued presence of a fully-staffed Modesto bankruptcy court, including a full-time judge. With the population explosion taking place in the San Joaquin Valley, we urge that the boundaries of the Modesto bankruptcy court remain the same, if not returned to their original borders to include Merced and northern San Joaquin counties. If the proposed boundary changes are budget driven, then the undersigned suggest that to further reduce the scope of the Modesto court would be imprudent. The short term budget constraints faced by the Court should not dictate boundary changes which would have negative, long-term, ramifications for the San Joaquin Valley residents.

For your review and consideration, we attach the population and demographic study which demonstrate the dramatic population trends referenced in this response.

We strongly urge and implore the Eastern District Bankruptcy Court to reconsider the present proposal advanced, and to maintain the current boundaries of the Modesto Division. In doing so, it will acknowledge the importance of this court to the debtors, creditors, and business community of the San Joaquin Valley. It would also recognize the public's right to an efficient and accessible legal forum, and honor the Court's long-term duty its constituents in this area.



Pat Paul, 1st District
Thomas W. Mayfield, 2nd District
Jeff Grover, 3rd District
Raymond Clark Simon, 4th District
Paul W. Caruso, 5th District

1010 10TH Street, Suite 6500, Modesto, CA 95354
Phone: 209.525.4494 Fax: 209.525.4410

[PROPOSED COMMENT LETTER]

August 17, 2004

Richard Heltzel, Clerk of Court
U.S. Bankruptcy Court
501 "I" Street, Suite 3-100
Sacramento, CA 95814

**RE: LOCAL RULE 1002-1
INTRA-DISTRICT VENUE CHANGE**

Dear Mr. Heltzel:

This letter serves as a comment opposing the Court's proposed change in Local Rule 1002-1, Intra-district Venue. Stanislaus County is opposed to the realignment of the boundaries of the Modesto Division of the Bankruptcy Court whereby San Joaquin County bankruptcy cases will be assigned to the Sacramento Division.

The County points out that Merced, Stanislaus, and San Joaquin Counties comprise what is commonly referred to as the San Joaquin Valley. The San Joaquin Valley is a distinct geographical area distinguished by its agricultural economy, rural nature, lower-than-average income, higher unemployment, as well as its bedroom communities for Bay Area commuters. The population of the Valley is growing by leaps and bounds due to the large number of families moving from the San Francisco Bay Area. As the population grows, it will be essential that the bankruptcy court maintain a strong presence in the Valley to serve the public, as it has done for the last 35 to 40 years in Modesto.

The County notes that the Eastern District realigned the boundaries of the Modesto Division in 1995, which resulted in Merced and Mariposa Counties, as well as northern San Joaquin County, being re-assigned to the Fresno and Sacramento courts, respectively. We are extremely concerned that the current proposed boundary changes move us one step closer to a proposal to close the bankruptcy court in Modesto. To this we strongly object. The court has a long history of serving the public in Stanislaus County and as population of this area grows, the bankruptcy court will be needed more than ever. Stanislaus County values the presence of the federal court in the community and does not wish to see any changes that would jeopardize its continuing service to this area.

Attachment 3

Letter to: Mr. Heltzel
August 17, 2004
Page 2

While Stanislaus County has no immediate stake in the lives of the residents of San Joaquin County, we point out that our counties are growing closer together. Our populations are intertwined and have many things in common. California State University, Stanislaus, for example has a satellite campus in Stockton; many Modesto business people use the Stockton Airport; and many Stanislaus County employers have employees from San Joaquin County, and visa versa. In contrast, the San Joaquin County public has little in common with Sacramento. It makes no sense, therefore, for the residents of San Joaquin County to be forced to use the bankruptcy court in Sacramento when one is available in Modesto.

We urge the Eastern District Court to reconsider its proposal to transfer venue for San Joaquin County to Sacramento and to affirm a commitment to serving the San Joaquin Valley.

Sincerely,

Paul Caruso, Chairman
Stanislaus County Board of Supervisors

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Pat Paul, 1st District
Thomas W. Mayfield, 2nd District
Jeff Grover, 3rd District
Raymond Clark Simon, 4th District
Paul W. Caruso, 5th District

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August 17, 2004

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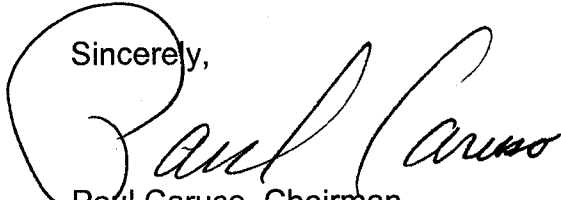
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We urge the Eastern District Court to reconsider its proposal to transfer venue for San Joaquin County to Sacramento and to affirm a commitment to serving the San Joaquin Valley.

Sincerely,

A handwritten signature in black ink that reads "Paul Caruso". The signature is written in a cursive style with a large, looped initial "P".

Paul Caruso, Chairman
Stanislaus County Board of Supervisors