

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

DEPT: COUNTY COUNSEL

BOARD AGENDA # *E-2

Urgent _____ Routine x

AGENDA DATE June 5, 2001

CEO Concurs with Recommendation YES _____ NO _____
(Information Attached)

4/5 Vote Required YES x NO _____

SUBJECT: RETENTION OF LEGAL FIRM TO REPRESENT STANISLAUS COUNTY AND OTHER COUNTIES IN THE PG&E CHAPTER 11 BANKRUPTCY PROCEEDINGS.

STAFF
RECOMMEN-
DATIONS:

1. APPROVE AGREEMENT FOR LEGAL SERVICES WITH LAW FIRM OF SULMEYER, KUPETZ & ROTHMAN.
2. PAY OUT OF CONTINGENCIES.

FISCAL
IMPACT:

The County will only be responsible for a pro rata share of the legal fees based on the proportion of the County claim.

BOARD ACTION AS FOLLOWS:

No. 2001-405

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

Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

Motion:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: Deputy

Christine Ferraro

File No.

RETENTION OF LEGAL FIRM TO REPRESENT STANISLAUS COUNTY AND OTHER COUNTIES IN THE PG&E CHAPTER 11 BANKRUPTCY PROCEEDINGS.

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DISCUSSION: The County Counsel Board of Directors formed a litigation overview committee to coordinate County efforts to protect important County interests that may be affected due to PG&E's Chapter 11 Bankruptcy. The litigation Over View Committee concluded that to be effective, it is extremely important for counties to coordinate their efforts and obtain the services of a recognized and respected law firm that specializes in bankruptcy. In order to coordinate our legal efforts with other counties, it is necessary to enter into the attached agreement for legal services.

POLICY ISSUE: Serve the public interest in an efficient cost effective manner.

STAFFING IMPACT: Reduce County staff time.

AGREEMENT FOR LEGAL SERVICES

This Agreement is made and entered into this 5th day of June, 2001, by and between the County of Stanislaus, hereinafter referred to as "Stanislaus County," and Sulmeyer, Kupetz, Baumann & Rothman, a professional corporation authorized to practice in the State of California, hereinafter referred to as "Attorney."

1. **RETENTION OF ATTORNEY.** Stanislaus County retains Attorney and Attorney accepts retention to advise, counsel and represent Stanislaus County in that Pacific Gas & Electric Company bankruptcy action, No. 01 30923 DM in United States Bankruptcy Court, Northern District of California, San Francisco Division.

2. **SERVICES OF ATTORNEY.** (A) All of the services provided under this Agreement will be performed by Attorney's shareholders, associates, and employees. Consultants, experts, or subcontractors shall only be retained with the express written consent of Stanislaus County. Attorney shall be responsible for coordinating all work performed by any consultants, experts, or subcontractors employed by Attorney as well as those consultants or experts directly employed by Stanislaus County where such work effort is directly related to the work effort to be performed by Attorney hereunder.

(B) Attorney shall copy the Office of the County Counsel on all correspondence, pleadings or other writings relating to matters for which professional services are being provided to Stanislaus County.

(C) Attorney shall not institute any administrative proceeding, arbitration, or litigation unless directed to do so by Stanislaus County pursuant to written request from the Office of the County Counsel. Attorney shall not compromise or settle any claim, protest or dispute by or against Stanislaus County without prior consent of the Board of Supervisors of Stanislaus County.

(D) All materials developed, prepared or acquired by Attorney during the performance of services under this Agreement, including finished or unfinished documents, research, memoranda, briefs, data, studies, surveys, drawings, manuals, maps, models, photographs and reports (hereinafter collectively called "documents") shall be available to Stanislaus County upon request.

(E) Attorney acknowledges that the California County Counsels' Association has formed a committee of County Counsels and associated attorneys. Attorney shall, in addition to the services required hereunder, undertake appropriate steps to advise and consult with said Committee regarding the bankruptcy proceedings which are subject of this Agreement.

3. **TERM OF AGREEMENT.** This Agreement shall be effective as of the date set forth above and shall remain in effect until termination pursuant to paragraph 11 of this Agreement.

4. COMPENSATION AND PRICE CEILING. (A) Stanislaus County agrees that Attorney shall be compensated at the rate of \$295.00 per hour for attorney services and \$83.00 per hour for paralegal services performed hereunder in the manner further provided herein.

(B) Stanislaus County acknowledges that Attorney has been similarly retained by other California Counties to provide representation in the above-mentioned bankruptcy proceeding. Such counties are referred to herein as "represented counties." Many of the claims of those represented counties are of the same type or classification. The hourly rate charged to Stanislaus County shall be prorated as follows:

(1) For general legal services in connection with the subject of this agreement Attorney's hourly rate shall be prorated among represented counties in the same proportion as each county's total claims bears to the total claims of all represented counties except as provided below;

The County Counsels' Association Energy Bankruptcy Committee will provide Attorney a chart that shows each represented county's allocable percentage share of Attorney's fees and costs, based on this formula:

Stanislaus County's share = Stanislaus County's Claims (defined in sec. 4(B)(3)) divided by the claims of all counties Attorney represents in PG&E case.

Attorney shall use this information to calculate the dollar amount of each represented county's share of Attorney's fees and costs. Attorney shall send each represented county a separate invoice for that county's allocated fees and costs; that invoice shall also reflect the total amount of Attorneys' fees and costs before allocation.

(2) For legal services in connection with specific court action Attorney's hourly rate shall be prorated among those represented counties which agree to join in any such court action in the same manner as described in subparagraph (1).

The County Counsels' Association Energy Bankruptcy Committee will provide Attorney a chart that shows each represented county's total Claims. Attorney shall use this information to calculate each participating county's allocable share of Attorney's fees for the specific court action, based on this formula:

Stanislaus County's share = Stanislaus County's Claims (defined in sec. 4(B)(3)) divided by the claims of all counties that participate in the court action.

Attorney shall send each participating county a separate invoice for that county's allocated fees and costs; that invoice shall also reflect the total amount of Attorney's fees and costs for that specific court action before allocation. If Stanislaus County fails to notify Attorney of its refusal to participate in any such action within five (5) days of a request from Attorney, Attorney may assume that Stanislaus County is participating in such action.

(3) "Claims" as used herein shall include all amounts owed by PG&E to represented counties.

(4) Invoices from Attorney shall specifically identify the services for which payment is requested.

(C) All invoices, payments or notices or other writings authorized or required by this Agreement shall be deposited in the United States mail postage prepaid and addressed as follows:

<u>County</u>	<u>Attorney</u>
Office of the County Counsel County of Stanislaus 1010 Tenth Street Suite 6400 Modesto, CA 95353-0074	Sulmeyer, Kupetz, Baumann & Rothman 3000 South Grand Avenue 14th Floor Los Angeles, CA 90071-3142

Nothing in this provision shall preclude the giving of personal notice. The persons or addresses identified above may be changed in the manner specified in this paragraph.

6. INDEPENDENT CONTRACTOR. Attorney hereby acknowledges that it is an independent contractor and not an employee of Stanislaus County. Stanislaus County is not responsible for the manner in which Attorney performs its services, or for any acts, errors or omissions of Attorney.

7. AUTHORITY OF ATTORNEY. Attorney hereby acknowledges that it is to provide representation, information, research, advise, opinions, recommendations and consultation services to Stanislaus County. Attorney shall possess no authority with respect to any Stanislaus County decision. Stanislaus County is responsible for and shall make all governmental decisions related to work of Attorney.

8. PROFESSIONAL SERVICES. Attorney agrees that the work hereunder shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Attorney and any subcontractors are engaged. Attorney shall not, wither during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of Stanislaus County without the prior written consent of Stanislaus County. Publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by Stanislaus County.

9. INDEMNIFICATION AND INSURANCE. (A) Attorney agrees to hold harmless and indemnify Stanislaus County against all loss, liability, damage and expense caused by or connected with the negligent acts of Attorney relative to the services covered by this Agreement.

(B) Attorney shall maintain during the entire period this Agreement is in effect professional liability insurance with a policy limit of at least three (3) million.

(C) Stanislaus County may require Attorney to submit evidence of insurance coverage.

11. TERMINATION. (A) This Agreement and the Attorney-Client relationship between Attorney and Stanislaus County may be terminated in whole or in part by Stanislaus County at any time upon thirty (30) days written notice to Attorney.

(B) This Agreement and the Attorney-Client relationship between Attorney and Stanislaus County may be terminated by Attorney at any other time consistent with the California statutes, rules and codes governing attorneys.

(C) Upon termination of this Agreement, Stanislaus County will pay Attorney the fees, costs and expenses due under Section 4 as of the effective date of termination.

(D) In the event of termination of this Agreement, the Attorney shall transmit to Stanislaus County all records, materials, work product and other matters developed or collected pursuant to this Agreement.

12. RECORDS. Attorney shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with its general practices and generally accepted accounting practices. All such matters shall be available for inspection and copying by Stanislaus County upon reasonable request and notice.

13. AMENDMENTS. Modifications or amendments of this Agreement shall be in writing and executed by Stanislaus County and Attorney.

14. ENTIRE AGREEMENT. This instrument and any attachments hereto constitute the entire Agreement between Stanislaus County and Attorney concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have cause this Agreement to be duly executed as of the day and year first above written.

COUNTY OF STANISLAUS

Sulmeyer, Kupetz, Baumann & Rothman

By: _____
Chairperson of the Board of Supervisors
of Stanislaus County, California

By: _____
Attorneys

(SEAL)

ATTEST: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: *E. Vernon Seely*
County Counsel