

1 JOHN B. RUDQUIST, SBN 056059
 GEIGER, COON & KEEN LLP
 2 311 East Main Street, Suite 400
 Stockton, California 95202
 3 (209) 948-0434
 4 Attorneys for Respondents, CALIFORNIA
 RECLAMATION DISTRICT NO. 348, ALLEN
 5 BARONI, ALECK DAMBACHER, WILLIAM STOKES,
 in their official capacities as Trustees of California
 6 Reclamation District 348

7
 8

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
 10 STOCKTON BRANCH

11

12 MARY GRUNDMAN, ANDREW
 GRUNDMAN, JANET LIGHTFOOT,
 13 JAMES AMESTOY and BRUNO MORI,
 14 Petitioners,
 vs.
 15 CALIFORNIA RECLAMATION
 16 DISTRICT NO. 348, ALLEN BARONI,
 ALECK DAMBACHER, WILLIAM
 17 STOKES, in their official capacities as
 Trustees of California Reclamation
 18 District 348
 19 Respondents.

No. CV030243

RESPONDENTS' EX PARTE
 APPLICATION FOR ORDER
 CLARIFYING ORDER DATED
 OCTOBER 3, 2006, AND FOR
 ADDITIONAL TIME UNDER
 GOVERNMENT CODE § 6259;
 DECLARATION OF JOHN B.
 RUDQUIST; AND MEMORANDUM
 OF POINTS AND AUTHORITIES

Date: October 24, 2006
 Time: 1:15 P.M.
 Dept: 13
 Judge: Honorable Bob W. McNatt

20

21 APPLICATION

22

23 Respondents' Reclamation District No. 348 (hereafter "District"), Allen Baroni,
 24 Aleck Dambacher, and William Stokes, sued herein solely in their capacities as
 25 Trustees of the District, hereby apply ex parte for an order clarifying the court's order
 26 dated and filed herein on October 3, 2006, granting declaratory relief to petitioners for
 27 the production of records of the District under the California Public Records Act (Gov.
 28 Code, § 6250 et. seq.) (hereafter "CPRA") and for 20 days of additional time under

1 Government Code section 6259 in which to seek appellate review of the court's order
2 if the court concludes its order is final or the statute applies to non-final orders.

3 This application is made under Rule 379 of the California Rules of Court,
4 Government Code section 6259, and the court's inherent power to clarify its orders.

5 This application is based on the this application, the following supporting
6 declaration of John B. Rudquist, the following memorandum of points and authorities,
7 the pleadings, records and other papers in the file in this proceeding, and such other
8 documentary and oral evidence as the court may deem proper.

9 DATED: October 23, 2006

GEIGER, COON & KEEN LLP

10 JOHN B. RUDQUIST

11 By: _____
12 John B. Rudquist

13 **INTRODUCTION**

14 The petitioners sought declaratory and injunctive relief to compel the District's
15 Trustees to produce for inspection and copying various records that had previously
16 been requested and denied by the District under the CPRA. After a hearing on the
17 petition, the court granted in part, and denied in part, the petition. In its October 3,
18 2006, order, the court ordered the District to produce *all* of the documents in the
19 District's possession covering the period of 1990 to the present, regardless of whether
20 they were described in the petitioners' public records requests, and make them
21 available for copying by a licensed attorney's services or duplicating company within
22 20 days with the costs of copying being borne by the petitioners. The court also
23 ordered that the respondents, before producing the documents for inspection and
24 copying, inspect and remove all documents subject to the pending litigation exception
25 of the CPRA, or protected by the attorney-client privilege or attorney work product
26 doctrine. The court further ordered the respondents to prepare a privilege log
27 enumerating the documents the respondents claimed to be exempt from disclosure
28 under the pending litigation exception, the attorney-client privilege or the attorney work

1 product doctrine. The court stated that the documents so enumerated in the privilege
2 log would be subject to in camera inspection. Insofar as petitioners sought documents
3 created prior to 1990, the petition was denied as overbroad.

4 A number of issues about the order have arisen that we believe need
5 clarification in order for the District to assess the possibility of seeking appellate review
6 of the order. First, there is the issue of the finality of the order. Presumably, the
7 traditional concept of finality of orders applies to the statutory writ of mandate under
8 Government Code section 6259 so as to prevent piecemeal appellate review of the
9 proceedings. Normally, an order is not final if there ^{are} still issues between the parties
10 that remain unresolved and subject to further action by the court. This appears to be
11 the case with the court's October 3, 2006, order, since it anticipates ^{an} in camera
12 review of the documents enumerated in the privilege log yet to be prepared by the
13 respondents. If the court deems its order as final or regards Government Code
14 section 6259 applicable to non-final orders, then the respondents respectfully request
15 that they be given the additional 20 days allowed under Government Code section
16 6259 in which to seek appellate review of the order.

17 Second, since the court ordered the District to produce *all* of its documents
18 covering the subject period, regardless of whether they were described in the
19 petitioners' records requests, there is an issue of whether that includes documents in
20 an electronic format (e.g., records stored on computers, PDA's, cell phones, etc.) The
21 issue was not specifically addressed in the parties' papers or in oral argument at the
22 hearing. If the order encompasses documents in an electronic format, it will make the
23 District's production of such largely duplicate records substantially more onerous and
24 greatly increase the cost to the petitioners.

25 Third, since the order allowed a representative of the District to be present
26 during the copying of the records to preserve the integrity of the records, there is a
27 practical problem that comes about if the records are produced other than at a place
28 controlled by the District and during normal business hours. In response to some

1 eight banker's boxes that were made available for the petitioners' inspection and
2 copying on October 17 and 18, the petitioners declined to avail themselves of that
3 opportunity and instead sent a letter stating that they wanted to have all the records
4 copied by a duplicating company of their choosing in Sacramento. Many duplicating
5 companies are now open 24/7 and do copying at all hours of the day and night,
6 especially rush jobs. It would appear unreasonable for the representative of the
7 District to have to be available on a 24/7 basis. Also, there would have to be a way for
8 the District representative to have an opportunity for reasonable rest breaks, meals,
9 and use of the bathroom. And, finally, the company may not be willing to allow the
10 District representative to monitor their work on their premises. One attorney's services
11 company in Stockton that we approached ultimately declined our copy request *inter*
12 *alia* because of confidentiality concerns the owner had with allowing the District
13 representative to monitor their work when they were also doing confidential copying
14 work for other attorneys in close proximity.

15 Fourth, since the order did not specify when the 20-day period to produce the
16 documents for copying commenced, the parties have not been able to agree on when
17 the deadline for production is. Petitioners take the position that the 20-day period
18 commenced with the date of the order. Respondents take the position that the 20-day
19 period did not begin until we actually received a copy of the order. Inexplicably, it took
20 three days for the clerk to process the court's order, as it was not mailed until Friday,
21 October 6, 2006. With the intervening Labor Day holiday, we did not receive our copy
22 of the order until Tuesday, October 10, 2006. The lead attorney in this case was out
23 of the office on that date and did not see the order until the following day. It seems
24 fundamentally unfair to have the time for performing acts compelled by the order
25 running without our even having knowledge of it.

26 Fifth, the order does not specify what details must be contained in the privilege
27 log, and the parties disagree on what description must go into it.

28

SUPPORTING DECLARATION OF JOHN B. RUDQUIST

I, JOHN B. RUDQUIST, declare:

1. I am an active member of the State Bar and an attorney licensed to practice before all courts of the State of California. I am "of counsel" to the firm of Geiger, Coon & Keen LLP, the attorneys for all of the respondents herein since these proceedings commenced.

2. I make this declaration in support of the respondents' ex parte application for an order clarifying the court's order dated October 3, 2006, and for an additional 20 days under Government Code section 6259 in which to seek appellate review if the court deems its order final or regards Government Code section 6259 applicable to non-final orders. All facts contained in this declaration are based on my firsthand personal knowledge and, if called as a witness, I could and would testify competently to them under oath.

3. On Friday, October 20, 2006, I wrote petitioners' attorney, Cynthia J. Larsen, a letter informing her of my intention to make this ex parte application and advising her of the date, time and place of the ex parte hearing. The letter was sent first-class mail, postage prepaid, and hand delivered to a postal service employee as he was making the final pick up of the day at Stockton's Main Post Office. On Monday morning, I faxed a copy of my letter to Ms. Larsen at her office.

4. One of the problems with representing a small public entity that is well over a hundred years old is that there is nobody alive who has any personal memory of a lot of the entity's records. Although I have been an attorney who has worked on selected legal problems of the District for over 30 years, I certainly did not work on the vast majority of the District's files even during the last 30 years and am not familiar with what is in them. No one in Geiger, Coon & Keen LLP has that familiarity or current memory of what is contained in those files. One who worked on District litigation left Geiger, Coon & Keen's predecessor firm shortly before it dissolved in September of 2004. Thus, you have some members of Geiger, Coon & Keen LLP who are familiar

1 with certain files in certain time periods but no one person that has a current memory
2 of anywhere near all of the files for even the last 16 years. With attorneys who are
3 unavailable or have no current memory of what is in those files, it becomes a virtually
4 impossible task to accurately estimate how much work it would be to go through a
5 *minimum* of 60 banker's boxes of documents to inspect and remove what files contain
6 attorney-client privilege documents or ones protected by the attorney work product
7 doctrine. And, to make such an estimate ~~X~~ in the time period that is allowed by
8 Government Code section 6258, when the hearing must be set to secure a decision on
9 the petition "at the earliest possible time," is impossible.

10 5. In a perfect world, every public entity would have its records beautifully
11 organized, indexed and cross-referenced for easy access and retrieval. In the real
12 world, however, that is the exception rather than the rule with small special districts.
13 As I informed the court in the hearing on the petition, the District's files are a mixture of
14 files kept chronologically (e.g., correspondence) and some by subject matter (e.g.,
15 litigation, insurance, audit reports, conflict of interest, etc.) Because of different
16 attorneys handling certain matters over different time periods and the turnover in
17 secretarial personnel, it is not uncommon for a letter that should have been filed in a
18 particular subject matter file to wind up in a correspondence file for the particular
19 month of receipt. It is therefore often impossible to provide a comprehensive response
20 to a "category" type of public records request that involves a lengthy time period
21 without forcing the District "to look for a needle in a haystack." Often when one takes
22 on representation of a small special district from a retiring attorney or a district
23 secretary, the records are not well organized and may be in shambles. Prior to the
24 passage of the CPRA, public entities did not have to keep their records in such a
25 fashion that if inspection and copying did not promptly take place there would be
26 sanctions of attorneys' fees and costs. Thus, many small special districts did not
27 choose to spend much of their very limited resources on record keeping. From my
28 experience with Reclamation District No. 348, there is considerable evidence that the

1 predecessor firm inherited disorganized records and not much was done to cure that.
2 The District was subjected to a disastrous flood in 1986, which resulted in the District
3 incurring approximately five million dollars in debt and agreeing to pay it off in 16
4 annual installments of \$300,000, this when the District was only collecting
5 approximately \$550,000 annually from its fees and charges. (The District now collects
6 only about \$350,000 due to landowner pressure to reduce its assessment now that the
7 warrants have finally all been paid off.) Given the financial realities, the District was
8 not eager to spend its precious resources to cure a record keeping problem, especially
9 when public requests for records were extremely rare.

10 6. As stated in my declaration in support of my ex parte application for an order
11 seeking a settlement conference, the District has no office of its own and no staff; it
12 utilizes its attorneys, engineers and accountants to handle its administrative needs. In
13 that declaration, I stated that the District's records are maintained in the various offices
14 of these professionals. (In the court's order, it seemed to assume erroneously that the
15 records were all in one convenient place.) All of these offices have computers and
16 presumably have District records stored in them.

17 7. If one has never worked in a small law office, it may be difficult to
18 comprehend the realities of a viable legal practice in one. Geiger, Coon & Keen LLP
19 now has three partners, one associate and one "of counsel," me, a former partner of
20 the predecessor firm. As is typical with such small firms, each member of the firm
21 must keep his plate full in order for the firm to survive, especially in a community that
22 supports only a relatively low hourly rate for legal services. The District pays currently
23 \$175 per hour to Geiger, Coon & Keen LLP. Because the members have to keep their
24 plates full, it would be extremely onerous for the firm to precipitously take on a task
25 that would occupy hundreds of hours of legal resources in a short period of time. It
26 would force the members into compromising positions with their other clients that most
27 attorneys would find unacceptable given their professional responsibilities and ethics.
28 If the court were to conclude that records in an electronic format must be produced in

1 the 20-day period, the burden would be so overwhelming as to swamp the office and
2 severely impact our ability to properly serve other clients.

3 8. The issues involved in the production of documents in an electronic format
4 are beyond the expertise of anyone in the firm at Geiger, Coon & Keen LLP or to my
5 knowledge any of the other professional firms that serve the District administratively.
6 As the court probably knows, documents that are deleted in a typical office computer
7 are not truly deleted but may reside on the computer long afterward. Thus, the
8 documents are still in the District's possession or under its control. With the aid of a
9 forensic computer expert, even long-deleted documents, or portions of them, may be
10 retrieved. The petitioners have taken the position that public records in the District's
11 possession include those under the District's control including its agents and
12 employees and even former agents and employees. Due to time constraints, I have
13 not been able to determine the number of computers, PDA's, cell phones, etc. that are
14 within the District's possession or control and whether these District agents,
15 employees, etc., would be willing to allow a private forensic expert to rummage around
16 in their computers given their confidential relationships with other clients. I doubt that
17 they would and would resist any order compelling them to do so. Since these
18 electronic format issues are so sensitive, I am sure that the District would have to seek
19 appellate review if the Trustees are ordered to produce *en masse* all non-privileged
20 documents in an electronic format covering the period 1990 to present that are in the
21 District's possession or control. That would be extreme onerous and expensive.

22 9. The issue of how the District can maintain the integrity of its records during
23 the copying process is complex, and the court's order needs clarification. The order
24 states at page 7, lines 11-12: "A representative of the District may be present during
25 any copying and inspection." Shortly after I was able to get a licensed legal services or
26 duplicating company to consider taking the copying job, I had to be candid about what
27 could happen. The duplicating company could pick up numerous boxes of records and
28 bring them to their office only to have the petitioners either not show up at all for the

1 production, or show up, paw through a couple boxes, and say they did not want copies
2 of anything. Given that potential scenario, the copying job was not particularly
3 commercially attractive. The premiere licensed attorney's services and duplicating
4 company in Stockton, L & T Legal Services originally expressed interest in the job, but
5 after looking at a sample box of some eight boxes of financial records that have been
6 kept at the District's principal office, Croce & Company, Certified Public Accountants,
7 the owner of L&T Services ultimately declined to take the copying job. Because of
8 other confidential photocopying work the owner was doing for other attorneys, the
9 owner was reluctant to have as many as five of the petitioners going through boxes of
10 records while their staff was doing confidential work in close proximity. The owner also
11 expressed concerns about the length of time it might take to do the copying work,
12 which the owner described as "heavy litigation," given the other copying jobs she had
13 going, and about having a non-employee representative of the District in her office for
14 that length of time. The owner pointed out that it is one thing to feed deposition
15 transcripts through a copy machine, which the owner characterized as "light litigation
16 work," but quite another to photocopy documents that have been multiply stapled, are
17 of various sizes that must be placed on the photocopier's glass by hand, have post-it
18 notes attached, require two-sided copying, require color copying and other labor-
19 intensive aspects that the owner characterized as "heavy litigation work."

20 10. Before the owner of L & T Legal Services ultimately declined to do the
21 copying job, I had sent a letter to petitioners' counsel advising her that approximately
22 ten banker's boxes would be available for inspection and copying on October 17 and
23 18, 2006. I stated in my letter that it seemed two days for her five clients would be
24 sufficient time for them to inspect the records and indicate which of them they wanted
25 copied at the licensed attorney's services' or duplicating company's office. When I
26 learned the day before the production that L & T Legal Services' office would not be
27 available for inspecting the documents, I hurriedly arranged for the documents to be
28 inspected in a small conference room at Croce & Company and advised petitioners'

1 counsel of the change in the place of production and inspection. The day of the
2 production, petitioner's counsel faxed a letter to me indicating that the petitioners
3 preferred not to inspect the records at our place of production but instead to have all of
4 the records copied by a duplicating company of their choosing in Sacramento.
5 Petitioners' counsel indicated that an opportunity for a representative of the District to
6 observe the copying could be arranged although no specifics were given. Many
7 duplicating companies (e.g., FedEx Kinko's) are now open 24/7 and photocopy
8 documents day and night, especially rush jobs. If the duplicating company of
9 petitioners' choosing decides to do the copying of the District's records on a 24/7
10 basis, it would be unrealistic to have a representative of the District there for such an
11 extended period of time. Because of these ^{logistical} logistics problems, particularly with regard
12 to how a representative of the District could observe the copying process to maintain
13 the integrity of the District's records, the first production of the District's records has not
14 taken place.

15 11. As the certificate of mailing of the court's order shows, the order was not
16 mailed until some three days after the order was dated and filed. With the intervening
17 Labor Day holiday, my office did not receive a copy of the order until Tuesday, October
18 10, 2006. I was out of town that day and did not receive notice of the arrival of the
19 court's order until the afternoon of Wednesday, October 11, 2006. Thus, over a third
20 of the 20 days the court allowed for producing the records and a privilege log had
21 already gone by from the date of the order before I even knew of its existence.
22 Because of the notice provisions of the Ralph M. Brown Act, I was not able to meet
23 with the Trustees of the District and discuss the order until late Thursday afternoon,
24 October 12, 2006. On Friday, October 13, 2006, I began contacting licensed
25 attorney's services and duplicating companies about the photocopy job. That
26 afternoon, I received initial interest in the photocopy job from one of the employees of
27 L & T Legal Services, who indicated that for such a potentially large copying job she
28 wanted the owner to make the decision on whether to accept the job. She said that it

1 would be necessary for them to see a typical sample box of the records to be copied,
2 so I arranged for Croce & Company to select a typical sample box and personally
3 drove it over L & T Legal Services' office so that they could examine the records.
4 Also, on Friday, October 13, 2006, I wrote a letter and faxed it to petitioners' counsel
5 about making approximately ten boxes of financial records kept at Croce & Company's
6 office available for the petitioners' inspection and copying during business hours on
7 October 17 and 18, 2006. Since then, petitioners' counsel has replied in a letter that
8 petitioners take the position that the 20-day period commenced on the date of the
9 order, not the date of receipt by my office. The parties need a clarification of this issue
10 by the court.

11 12. As noted above, the respondents were ordered within 20 days to prepare a
12 privilege log enumerating the documents that are subject to the pending litigation
13 exception of the CPRA or protected by the attorney-client privilege or by the attorney
14 work product doctrine. Petitioners' counsel has written a letter indicating what must be
15 contained in an acceptable privilege log: a description of each withheld document,
16 including its date, author, recipients, its subject matter and the privilege claimed.
17 Respondents disagree that the privilege log has to identify all of the recipients. The
18 parties need clarification from the court on what must be contained in the privilege log.

19 I declare under penalty of perjury under the laws of the State of California that
20 the foregoing is true and correct. Executed at Stockton, California, on October 23,
21 2006

22 JOHN B. RUDQUIST

23 John B. Rudquist

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 Respondents submit the following memorandum of points and authorities in
26 support of their ex parte application for an order clarifying the court's order and for
27 additional 20 days under Government Code section 6259 in which to seek appellate
28 review if the court deems its order final or the statute applicable to its non-final order:

1 **RULE 379 OF THE CALIFORNIA RULES OF COURT PROVIDES FOR EX**
2 **PARTE RELIEF UNDER THE CIRCUMSTANCES**

3 Rule 379 provides for ex parte relief when the applicant can show irreparable
4 harm, immediate danger or any statutory basis for ex parte relief. Without receiving
5 clarification on the above issues, the District will be forced to seek appellate relief,
6 perhaps needlessly, at great expense without any chance of compensation if the
7 District ultimately prevails.

8 **II. GOVERNMENT CODE SECTION 6259 PROVIDES THAT THE TRIAL COURT,**
9 **UPON A SHOWING OF GOOD CAUSE, MAY ALLOW UP TO AN**
10 **ADDITIONAL 20 DAYS FOR A PARTY TO SEEK APPELLATE REVIEW**

11 "Upon entry of any order pursuant to [Government Codes section 6259], a party
12 shall, in order to obtain review of the order, file a petition within 20 days after service
13 upon him or her of a written notice of entry of the order, or within such further time not
14 exceeding an additional 20 days as the trial court may for good cause allow." (Gov.
15 Code, § 6259, subd. (c).)

16 It is not clear from the statute whether the use of the word "any" would also
17 include orders that are not final. "Any" has been defined by the California Supreme
18 Court as meaning "without limit and no matter what kind." (*Delaney v. Superior Court*
19 (1990) 50 Cal.3d 785, 798.) An interpretation that would include not final orders would
20 seem to fly in the face of the appellate court's reluctance to decide cases on a
21 piecemeal basis.

22 It appears, however, that the California Supreme Court has indicated at
23 least in dicta that there must be a *final* order before appellate review may be sought.
24 In the Supreme Court's plurality opinion in *Powers v. City of Richmond* (1995) 10
25 Cal.4th 85, the high court stated: "Accordingly, where writ review is the exclusive
26 means of appellate review of a *final order* or judgment, an appellate court may not
27 deny an apparently meritorious writ petition, timely presented in a formally and
28 procedurally sufficient manner . . . "[Emphasis added.] In his concurring opinion, then
Justice George stated: "As an historical matter, there always have existed categories

1 of cases in which the *final* decision of a superior court has been subject ~~to~~^{to} review not
2 by direct appeal, but only by means of some form of extraordinary writ issuable by a
3 higher court." (*Powers v. City of Richmond, supra*, 10 Cal.4th at p. 122 (conc. opn. of
4 George, J.) [Emphasis added.]

5 The court's October 3, 2006, order on careful analysis does not appear to be a
6 *final* order. The court has ordered a privilege log to be prepared of records that
7 respondents contend are within the pending litigation exception of the CPRA or
8 protected by the attorney-client privilege or attorney work product doctrine. The order
9 also stated that such records are "subject to in camera inspection." (Decision on
10 Petition for Declaratory Relief Under the Public Records Act, dated October 3, 2006,
11 page 7, lines 15-16.) The traditional test for finality of an order or judgment is whether
12 there is between the parties any issue left for future consideration by the court.
13 "Where no issue is left for future consideration except the fact of compliance or
14 noncompliance with the terms of the first decree, that decree is final, but where
15 anything further in the nature of judicial action on the part of the court is essential to a
16 final determination of the rights of the parties, the decree is interlocutory." (*Griset v.*
17 *Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698; *Public Defenders'*
18 *Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1410.) Until the
19 privilege log is prepared and submitted to the court, there will be no resolution of the
20 issue of what documents may be withheld from the petitioners because they are within
21 the pending litigation exception of the CPRA, or protected by the attorney-client
22 privilege or the attorney work product doctrine. Although Government section 6259,
23 subdivision (a), appears to allow in camera inspection of the records *if permitted by*
24 *subdivision (b) of Evidence Code section 915*, at least one district of the Court of
25 Appeal has inexplicably ignored that limitation and stated that in camera review could
26 be ordered to inspect records that were protected by the *absolute* portion of the
27 attorney work product doctrine. (*County of Los Angeles v. Superior Court* (2001) 82
28 Cal.App.4th 819, 833.) It would be premature for the respondents to seek appellate

1 review of the court's order not knowing whether there is any issue regarding compelled
2 disclosure of any records within the pending litigation exception to the CPRA or
3 protected by the attorney-client privilege or the attorney work product doctrine.
4 If the court deems its order final or believes that appellate review is proper of a non-
5 final order, the District would request the additional 20 days in which to seek appellate
6 review. In any event, the District believes that it needs clarification of this issue from
7 the court.

8 **III. THE PLAIN MEANING OF GOVERNMENT CODE SECTION 6259,**
9 **SUBDIVISION (A), PRECLUDES AN IN CAMERA INSPECTION OF**
10 **DOCUMENTS THAT ARE WITHIN THE ABSOLUTE PROTECTION OF THE**
11 **ATTORNEY WORK PRODUCT DOCTRINE**

12 Government Code section 6259, subdivision (a), in relevant part, states: "The
13 court shall decide the case after examining the record *in camera*, *if permitted by*
14 *subdivision (b) of Section 915 of the Evidence Code*, papers filed by the parties and
15 any oral argument and additional evidence as the court may allow." [Emphasis
16 added.](Gov. Code, § 6259, subd. (a).)

17 Evidence Code section 915, subdivision (b), in relevant part, states:

18 "When a court is ruling on a claim . . . under subdivision (b)
19 of Section 2018.030 of the Code of Civil Procedure
20 (attorney work product) and is unable to do so without
21 requiring disclosure of the information claimed to be
22 privileged, the court may require the person from whom
23 disclosure is sought or the person authorized to claim the
24 privilege, or both,, to disclose the information in chambers
25 out of the presence and hearing of all persons except the
26 person authorized to claim the privilege and any other
27 persons as the person authorized to claim the privilege is
28 willing to have present."

Code of Civil Procedure section 2018.030, subdivision (b) states in full:

"The work product of an attorney, *other than a writing*
described in subdivision (a), is not discoverable unless the
court determines that the denial of discovery will unfairly
prejudice the party seeking discovery in preparing the
party's claim or defense or will result in injustice. {Emphasis
added.}

Code of Civil Procedure section 2018.030, subdivision (a), states in full:

1 "A writing that reflects an attorney's impressions,
2 conclusions, opinions, or legal research or theories is not
3 discoverable under any circumstances."

4 From the foregoing statutory scheme, it is clear that any writing that reflects an
5 attorney's impressions, conclusions, opinions, or legal research or theories is not
6 subject to the provisions of Code of Civil Procedure section 2018.030, subdivision (b),
7 and thus not covered by the provisions of Evidence Code section 915, subdivision (b),
8 and therefore not permitted to be the subject of in camera review by Government Code
9 section 6259, subdivision (a). Government Code section 6259, subdivision (a),
10 appears to indicate that only the *general* attorney work product and not the "brain
11 work" *absolute* attorney work product may be subject to in camera inspection. "The
12 Legislature's intent is best deciphered by giving words their plain meanings. (Citation
13 omitted.) 'We have declined to follow the plain meaning of a statute only when it would
14 inevitably have frustrated the manifest purposes of the legislation as a whole or led to
15 absurd results. (Citation omitted.)'" (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363,
16 376.) "The function of the court is simply to ascertain the meaning of the statute from
17 its inherent terms or substance and not to insert what has been omitted or omit what
18 has been inserted." (*Franklin v. Appel* (1992) 8 Cal.App.4th 875, 886.) "Whenever
19 possible, effect should be given to a statute as a whole, and to its every word and
20 clause, so that no part or provision will be useless or meaningless." (*People v. Molina*
21 (1988) 202 Cal.App.3d 1168, 1174.) The Evidence Code section 915, subdivision (b)
22 limitation in Government Code section 6259, subdivision (a) was clearly meant as a
23 restriction on the court's power to examine in camera some kinds of records. An
24 interpretation that Government Code section 6259, subdivision (a), allowed in camera
25 inspection of *absolute* attorney work product would make the restriction meaningless.

25 Respectfully submitted,

26 GEIGER, COON & KEEN LLP

27 By: JOHN B. RUDQUIST
28 John B. Rudquist

PROOF OF SERVICE
(Code of Civil Procedure section 1013a)
Grundman et. al. v. California Reclamation District No. 348 et. al.

I am a citizen of the United States and am employed in San Joaquin County; I am over the age of eighteen (18) years and not a party to the within action; my business address is 311 E. Main Street, Suite 400, Stockton, California 95202.

On October 23, 2006, I served the following document(s):

**RESPONDENTS' EX PARTE APPLICATION FOR ORDER
CLARIFYING ORDER DATED OCTOBER 3, 2006, AND FOR
ADDITIONAL TIME UNDER GOVERNMENT CODE §6259;
DECLARATION OF JOHN B. RUDQUIST; AND MEMORANDUM OF
POINTS AND AUTHORITIES**

PROPOSED ORDER CLARIFYING ORDER DATED OCTOBER 3, 2006

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein listed:

Cynthia J. Larson
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497

- BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Geiger, Coon & Keen LLP's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.
- BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the addressee(s) designated.
- BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.
- BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Stockton, California, on October 23, 2006.

Angela N. Yess, CP

1 JOHN B. RUDQUIST, SBN 056059
 GEIGER, COON & KEEN LLP
 2 311 East Main Street, Suite 400
 Stockton, California 95202
 3 (209) 948-0434

4 Attorneys for Respondents, CALIFORNIA
 RECLAMATION DISTRICT NO. 348, ALLEN
 5 BARONI, ALECK DAMBACHER, WILLIAM STOKES,
 in their official capacities as Trustees of California
 6 Reclamation District 348

7
 8

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
 10 STOCKTON BRANCH

12 MARY GRUNDMAN, ANDREW
 GRUNDMAN, JANET LIGHTFOOT,
 13 JAMES AMESTOY and BRUNO MORI,

14 Petitioners,

vs.

15 CALIFORNIA RECLAMATION
 16 DISTRICT NO. 348, ALLEN BARONI,
 ALECK DAMBACHER, WILLIAM
 17 STOKES, in their official capacities as
 Trustees of California Reclamation
 18 District 348

19 Respondents.

No. CV030243

[PROPOSED] ORDER
 CLARIFYING ORDER DATED
 OCTOBER 3, 2006

Date: October 24, 2006

Time: 1:15 P.M.

Dept: 13

Judge: Honorable Bob W. McNatt

21 After having read the papers regarding the ex parte application for clarification
 22 of the court's October 3, 2006 order and requesting additional time under Government
 23 Code section 6259, and having heard argument of counsel, and good cause
 24 appearing,

25 IT IS HEREBY ORDERED that the court's October 3, 2006, order is clarified in
 26 the following respects:

27 1. The 20-day period for producing for copying the records in the District's
 28 possession or under its control shall run from October 10, 2006, the date the order

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

was received in the office of respondents' counsel.

2. Respondents shall have the additional 20 days provided for in Government Code section 6259 in which to seek appellate review of the court's October 3, 2006, order as clarified.

3. Respondents will not have to produce for copying any records in an electronic format.

4. The records shall be produced at a place under the respondents' control during normal business hours so that a representative of the District can be present to monitor the copying process at all times and maintain the integrity of the District's records.

5. The privilege log need not include all of the recipients but simply for identification purposes the person to whom the document was addressed or directed.

DATED:

HONORABLE BOB W. MCNATT
Judge of the Superior Court