

## **CLIVE J. STRONG**

6244 S. Survival Place • Boise, Idaho 83716  
(Phone): 208.344.4597 • (email): [cstrong@cableone.net](mailto:cstrong@cableone.net)

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### **PROFILE**

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AV rated attorney with extensive experience in natural resource, environmental, water and Indian law. Proven ability to negotiate and litigate complex multiparty cases in state and federal court, including the United States Supreme Court.

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### **LEGAL EXPERIENCE**

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#### **Office of the Idaho Attorney General**

Chief of the Natural Resources Division, 1985 – Present

- Coordinate legal representation for Departments of Agriculture, Environment, Fish and Game, Lands, Parks and Recreation, and Water Resources.
- Supervise Natural Resources Division legal staff.
- Manage all aspects of cases from inception through completion.
- Lead counsel in complex natural resource, environment, and Indian law litigation and negotiation in state and federal court.
- Provide legal representation for the Governor and the Idaho Legislature on natural resource, environment, and Indian law matters.

Deputy Attorney, Natural Resources Division, 1983 – 1984

- Represented the Idaho Department of Lands and the Idaho Department of Water Resources.
- Lead counsel in *Idaho Power Company v. State*, Case No. 62237, and *Idaho Power Company v. Idaho Department of Water Resources*, Case No. 81375 (Two cases in the Fourth Judicial District Court of Idaho related to subordination of hydropower water rights).

#### **University of Puget Sound Law School**

Faculty, 1979 – 1981

- Taught legal research and writing, introduction to legal learning and community property law.

#### **Law Office of Lynn Fransworth**

Associate, 1978 – 1979

- Engaged in a general law practice.
- Handled civil litigation cases from inception through completion.
- Counseled clients.

## EDUCATION

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**University of Michigan Law School, *Masters of Law*, 1983**

**University of Idaho, *Juris Doctorate*, 1977**

**University of Idaho, *B.S. Forest Business Management*, 1974**

## BAR MEMBERSHIPS

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**Idaho State and Federal District Courts**

**Washington State and Federal District Courts**

**United States Supreme Court**

**United States Court of Appeals for the Ninth Circuit**

**United States Court of Appeal for the District of Columbia Circuit**

## LITIGATION EXPERIENCE

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**United States v. Idaho ex rel. Director, Idaho Department of Water Resources**, 508 U.S. 1 (1993).

Trial and appellate counsel for the State of Idaho in state court and before the United States Supreme Court. This litigation presented the question of the scope of the waiver of federal sovereign immunity under the McCarran Amendment, 43 U.S.C. § 666.

**Idaho v. Coeur d' Alene Tribe of Idaho**, 521 U.S. 261 (1997).

Appellate counsel for the State of Idaho before the United States Supreme Court. This litigation presented the question of whether the Eleventh Amendment to the United States Constitution barred the Coeur d' Alene Tribe from suing the State of Idaho in federal court.

### **Snake River Basin General Stream Adjudication**

Lead Counsel for the State of Idaho in the general stream adjudication commenced in 1987 – Responsible for coordinating the defense of all water right claims of the State of Idaho and representing the State of Idaho in all federal reserved water right litigation.

Major litigation accomplishments:

- *In re Snake River Basin Water System*, 115 Idaho 1, 764 P.2d 78 (1988). Trial and appellate counsel for the State of Idaho in litigation related to the geographic scope of the Snake River Basin Adjudication.

- *In re SRBA Case No. 39576*, 128 Idaho 246, 912 P.2d 614 (1995). Defended the constitutionality of 1994 legislative amendments to the general stream adjudication statute before the Idaho Supreme Court.
- *Potlatch Corp. v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000). Trial and appellate counsel for the State of Idaho in the Wilderness federal reserved water right claims litigation.
- *United States v. State*, 135 Idaho 65, 23 P.3d 117 (2001). Trial and appellate counsel for the State of Idaho in the Deer Flat National Wildlife Refuge federal reserved water right claims litigation.

**Idaho Power Company v. State of Idaho, Case No. 62237, and Idaho Power Company v. Idaho Department of Water Resource, Case No. 81375.**

Trial counsel in cases related to the subordination of hydropower water rights. Assisted in drafting of the 1984 Swan Falls Agreement, and negotiated the 2009 Swan Falls Reaffirmation Agreement.

**California v. FERC**, 495 U.S. 490 (1990).

Lead counsel for 49 state amicus brief filed in support of the State of California's challenge to FERC's authority to establish instream flow requirements under the Federal Power Act.

**State of Idaho v. U.S. Department of Energy**, 945 F.2d 295 (9<sup>th</sup> Cir. 1991).

Appellate counsel for the State of Idaho in action alleging that the U.S. Department of Energy violated the Nuclear Waste Policy Act and the National Environmental Policy Act.

**Wasden v. State Board of Land Commissioners**, 153 Idaho 190, 280 P.3d 693 (2012).  
Appellate counsel in action challenging the constitutionality of Idaho Code § 58-310A.

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## NEGOTIATIONS EXPERIENCE

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**1990 Fort Hall Indian Water Rights Agreement**

Lead negotiator for the State of Idaho in settlement discussions related to the quantification of the federal reserved water right claims of the Shoshone-Bannock Tribes. Drafted and successfully advocated for congressional approval of the settlement agreement. H.R. 5308, P.L. 101-602 (1990).

**2004 Snake River Water Rights Settlement**

Lead negotiator for the State of Idaho in settlement discussions related to the quantification of the federal reserved water right claims of the Nez Perce Tribe. Drafted and successfully advocated for congressional approval of the settlement. P.L. 108-447 (2004).

### **2006 Shoshone-Paiute Settlement**

Lead negotiator for the State of Idaho in settlement discussions related to the quantification of the federal reserved water right claims of the Shoshone-Paiute Tribes. The tribal claims were quantified through a consent decree.

### **2001 and 2002-2003 Lemhi Conservation Agreements**

Lead negotiator for the State of Idaho in development of the Lemhi Conservation Agreements, which established a framework for obtaining incidental take coverage for water diversion from the Lemhi River. The Agreements led to the creation of a Lemhi water bank, which provides a market based mechanism for rental of water for instream flows for listed salmon and steelhead.

### **Wild and Scenic Rivers Federal Reserved Water Rights Settlement**

Lead negotiator for the State of Idaho in settlement of the United States federal reserved water right claims under the Wild and Scenic Rivers Act.

### **Conjunctive Management Negotiations**

Mediator for negotiations between surface and ground water users diverting water in the Upper Snake River Basin regarding the impact of ground water pumping on surface water rights. The negotiations led to agreements in 2001 and 2002 and ultimately to a mitigation agreement for the Blue Lakes delivery call.

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## **PUBLICATIONS**

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- *Understanding the SRBA*, 52 Idaho L. Rev. 53 (2016). *Co-authored with Natural Resource Division Deputy Attorney Generals*.
- *Understanding the Swan Falls Settlement*, 52 Idaho L. Rev. 223 (2016). *Co-authored with Michael Orr*.
- *The Origin and Evolution of Hydropower Subordination Policy on the Snake River: A Century of Conflict and Cooperation*, 46 Idaho L. Rev. 119 (2009). *Co-authored with Michael Orr*.
- *The First Twenty Years of the Snake River Basin Adjudication: Is There an End in Sight?*, Idaho Advocate at 14 (January 2007).
- Chapter 10, Water Resources, State Attorneys General Powers and Responsibilities (2<sup>nd</sup> ed. 2007).
- ABA Water Law Trends, Policies, and Practice, *The McCarran Amendment is Alive and Well*, at 164 (1995). *Co-authored with Steven Strack*.
- Chapter 12, Water Resources, State Attorneys General Powers and Responsibilities (1990).

- *National Forest Management Act of 1976 – What Impact on Federal Timber Management?*, 13 Idaho L. Rev. 263 (1977).

## **PROFESSIONAL ORGANIZATIONS**

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### **Conference of Western Attorneys General Litigation Action Committee**

- Serve on the Litigation Action Committee (1985 – Present).
- Served as Chair of the Litigation Action Committee three times.

### **Idaho Supreme Court Appellate Rules Committee**

- Serve as the civil litigation representative for the Office of the Idaho Attorney General

## **SELECTED PRESENTATIONS**

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- *Conjunctive Administration of Surface and Ground Water – The Crossroads Between Law and Economics*, Law Seminars International.
- *Idaho’s Conjunctive Management Conundrum*, Law Seminars International.
- *Is the Prior Appropriation Doctrine a Relic of the Past or the Foundation for Resolving 21<sup>st</sup> Century Water Supply Demands?*, 24<sup>th</sup> Annual ABA Water Law Conference.
- *Negotiation of Indian Reserved Water Rights*, presentation to the Agriculture and Natural Resources Interim Committee of the North Dakota State Legislature.
- *Water Law 101 – What’s a Water Right and Why Is It Important*, Association of Idaho Cities.
- *Water Rights: Ensuring Adequate Water for Agriculture and Rural Communities*, National Conference of State Legislators Agricultural Chairs.
- *Turning a Sow’s Ear Into A Silk Purse, Water Conflicts Create Opportunities for Conservation*, Idaho Chapter American Fisheries Society.
- *The Snake River Water Rights Agreement Of 2004*, National Conference of State Legislators.
- *Alternative Dispute Resolution in Water Rights Conflicts*, Western States Water Council.
- *The SRBA Mediation/Nez Perce Tribe Water Rights Settlement*, Legislative Council On River Governance.

- *Ethics and the Unitary Government: The Federal Lawyer and Her Client, and Considerations of the Public Good*, ABA 20<sup>th</sup> Annual Water Law Conference.
- *Untying the Gordian Knot, A Successful Strategy for Protecting Instream Flows Within National Forests*, United States Forest Service Water Resource Conference.
- *Western Water Law is Alive and Well, and Continuing to Adapt to Society's Changing Needs*, Conference of Western Attorneys General.
- *The Administration's Settlement Policy and Implementation of Settlements*, Western States Water Council.
- *Alternative Dispute Resolution*, Idaho State Bar Convention.
- *Proving Natural Resources Damages*, National Association of Attorneys General.

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## AWARDS AND HONORS

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- 2014 American Bar Association Environment, Energy, and Resources Government Attorney of the Year Award.
- Idaho State Bar Professionalism Award.
- Western Conference of Attorneys General Jim Jones Public Service Award (The award is given annually to a member of a state attorney general office that advances the legal interests of the Conference of Western Attorneys General).
- National Association of Attorneys General Marvin Award (The award is given annually to a member of a state attorney general office that advances the legal interests of the states and the organization).
- Idaho Statesman Distinguished Citizen (April 1991).
- Idaho Water Users Distinguished Service Award.

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## COMMUNITY INVOLVEMENT

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### **Idaho Chapter of the National Arthritis Foundation Board of Directors,**

- Served as chairman of the Board of Directors for two years.

### **Idaho White Pine Elementary School PTA**

- Served as Treasurer.

**Timberline High School Booster Club**

- Served as President of the Booster Club for two years.

**University of Idaho Law School Externship Program**

- Coordinate an education seminar for University of Idaho law school externs.