



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

February 2, 2009

L U Ranching Co.  
c/o Tim Lowry  
P. O. Box 132  
Jordan Valley, OR 97910-0132

Dear Mr. Lowry:

Attorney General Lawrence Wasden asked that I research and respond to your request for reimbursement of legal fees you incurred in defending your water rights against an adverse claim by the federal government. Specifically, you sought funds from Idaho's Constitutional Defense Fund. While I admire and commend you for successfully defending your water rights, unfortunately, this fund cannot be used to reimburse you. To assist you in understanding the limitations on the use of these funds, I have included the text of the law along with some legal analysis.

Idaho Code § 67-6301, which created the Council and the Fund, provides, in part, as follows:

- (2) The purpose of the council includes, but is not limited to, restoring, maintaining and advancing the *sovereignty and authority over issues that affect this state* and the well-being of its citizens.  
.....
- (4) The council, *in the name of the state or its citizens*, may examine and challenge by legal action, legislation or any other legal means:
  - (a) Federal mandates.
  - (b) Court rulings.
  - (c) The authority granted to, or assumed by, the federal government.
  - (d) Laws, regulations and practices of the federal government.
  - (e) Any other activity that is deemed appropriate by the council.
  - (f) Notwithstanding any other provisions of law to the contrary, the council may hire legal counsel for the purpose of this chapter and may utilize staff and resources within state government.

(Emphasis added.)

While the statute lacks clarity with regard to what constitutes a defense of "sovereignty and authority over issues that affect this state," subsection (4) only authorizes the Council to expend funds for actions brought "in the name of the state or its citizens." Idaho Code § 67-6301 authorizes the Council to only undertake the state's own examination and challenge of federal activities, either as a state or on behalf of its citizens (e.g., *parens patriae*). Thus, even if your challenge restored, maintained or advanced Idaho's sovereignty, the statute does not authorize expenditures for entities other than the Council to examine and challenge Federal activities.

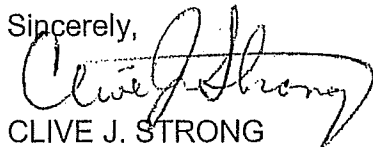
The Idaho Legislature is similarly limited in its ability to reimburse your legal fees. The Idaho Supreme Court has recognized implicit limitations on the legislative power to appropriate funds for the benefit of private parties. In *State ex rel. Walton v. Parsons*, 58 Idaho 787, 80 P.2d 20 (1938), the Idaho Supreme Court held unconstitutional an appropriation to persons injured by negligence of the State Highway Department on the grounds that it offended Article XI, § 12. *Parsons* states that there is an implied constitutional prohibition against appropriating public money for private purposes:

It is well recognized that the power to levy and collect taxes and the power to appropriate public funds are coexistent and rest upon the same principle. If a tax cannot be levied for a particular purpose, no appropriation of public money can be made for such purpose. ... ***It is also well settled that taxes cannot be levied and collected, or an appropriation made, for other than a public purpose or in furtherance of the public welfare, and that any attempt so to do is a violation of the implied limitations of the Constitution.***

58 Idaho at 792-793, 346 P.2d at 22 (emphasis added).

Although the state cannot provide the funding you seek, I empathize with your position as you continue to protect your rights, and wish you the best of luck.

Sincerely,



CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division

CJS/pb

C: Russ Hendricks  
Kent Lauer  
Wally Butler