Idaho State Bar
Environment and Natural Resources Section

Meeting Minutes
September 23, 2015

Introduction and New Section Officer Meetings: This was the first Section meeting since the Section's new officers were elected. Dylan Lawrence reported on recent Idaho State Bar's section council orientation meeting and the Section's officer transition meeting. Dylan would like to conduct less Section business during the monthly CLE meetings to give the presenters more time for their topics, and he would like to review the Section's process to consider donation requests.

Financial Report: Tyson Nelson presented the Section's financial report dated August 31, 2015.

Non-Lawyer Members in the Section: Dylan asked for the members for ideas on how to involve non-lawyer professionals in the environment and natural resources fields to participate in the Section. The membership discussed inviting non-lawyers to participate as members of the Section, holding a networking event for membership and non-lawyer professionals, and inviting academics and other professionals to Section meetings.

Sponsoring an Advocate Edition: Practice sections must notify Dan Black at the Bar by September 30, 2015, if they would like to sponsor an edition of the Advocate. The Advocate has already scheduled practice section sponsors though April or May 2016. Nick Warden will be the Section's Advocate coordinator and will notify Dan Black that the Section would like to sponsor an edition of the Advocate.

Location of Monthly Section Meetings: The membership decided to hold monthly meetings at the office of Givens Pursley. Peter Barton and Preston Carter will coordinate the lunch at the meetings.

CLE Planning: The membership discussed ideas for Section's science and the law CLE in January 2016. Emmi Blades will coordinate the CLE. Possible topics include sage grouse, building coalitions, and the working with government as a co-party and opposing party in litigation. Members should send their topic ideas to Emmi, and she will narrow the general topic and contract speakers for the CLE.
The membership discussed the following topics for monthly CLE meetings:

- Legislative wrap-up in the Spring
- Clean power plan (topic for the October meeting)
- Sage grouse ESA no-listing decision and management plans
- Waters of the U.S. rule and lawsuit
- Food Safety Implement Act
- Simplot's genetically modified potato
- Oil and gas activities
- Clearwater Paper's new digester

The November meeting will be rescheduled to November 18.

ENVIRONMENT & NATURAL RESOURCES LAW SECTION of
IDAHO STATE BAR
As of December 31, 2013, 2014 & 9/30/15

| Year Ended 2013 | Year Ended 2014 | | Actual Sep 2015 | Budget 2015 | Variance-- Favorable (Unfavorable) |
|---|---|---|---|---|---|
| | | **INCOME STATEMENT** | | | |
| | | REVENUE (NON-CLE) | | | |
| 2,960 | 3,240 | Dues | 3,550 | 3,000 | 550 |
| 0 | 0 | Donations | 0 | 0 | 0 |
| 0 | 0 | Special event revenue | 0 | 0 | 0 |
| 0 | 0 | Other income | 0 | 0 | 0 |
| 2,960 | 3,240 | TOTAL NON-CLE REVENUE | 3,550 | 3,000 | 550 |
| | | EXPENSE (NON-CLE) | | | |
| 983 | 1,025 | Administrative fee to ISB | 809 | 1,368 | 559 |
| 6 | 16 | Postage | 9 | 10 | 1 |
| 3 | 27 | Copies | 7 | 10 | 3 |
| 0 | 16 | Supplies | 0 | 5 | 5 |
| 774 | 1,576 | Governing Board | 1,550 | 1,400 | (150) |
| 11 | 10 | Bank & credit card fees | 15 | 15 | 0 |
| 360 | 0 | Special event expense | 0 | 0 | 0 |
| 0 | 250 | Donations | 1,000 | 0 | (1,000) |
| 0 | 0 | Other | 0 | 0 | 0 |
| 2,137 | 2,920 | TOTAL NON-CLE EXPENSE | 3,390 | 2,808 | (582) |
| | | CLE, RECORDED PROGRAMS & PUBLICATIONS: | | | |
| | | Revenue: | | | |
| 0 | 3,299 | CLE registrations | 3,213 | 3,000 | 213 |
| 4 | 0 | Publications | 0 | 0 | 0 |
| 0 | 170 | Recorded programs | 170 | 50 | 120 |
| 0 | 422 | Royalties | 362 | 0 | 362 |
| 4 | 3,891 | CLE Revenue | 3,745 | 3,050 | 695 |
| | | Expense: | | | |
| 184 | 1,488 | CLE seminar expense | 1,254 | 1,500 | 246 |
| 9 | 1,244 | CLE administrative fee paid to ISB | 923 | 1,000 | 77 |
| 68 | 225 | Recorded program expense | 225 | 0 | (225) |
| 261 | 2,957 | CLE Expense | 2,402 | 2,500 | 98 |
| (258) | 935 | NET CLE INCOME (LOSS) | 1,344 | 550 | 794 |
| 566 | 1,255 | NET INCOME (LOSS) | 1,504 | 742 | 762 |

ENVIRONMENT & NATURAL RESOURCES LAW SECTION of
IDAHO STATE BAR
As of December 31, 2013, 2014 & 9/30/15

| Year Ended 2013 | Year Ended 2014 | | Actual Sep 2015 | Budget 2015 | Variance-- Favorable (Unfavorable) |
|---|---|---|---|---|---|
| | | **BALANCE SHEET** | | | |
| | | ASSETS | | | |
| 3,086 | 4,348 | Cash and cash equivalents | 5,278 | | |
| 0 | 241 | Accounts receivable | 181 | | |
| 535 | 166 | Due from (to) other funds | 377 | | |
| 0 | 226 | Prepaid expenses | 0 | | |
| 3,622 | 4,982 | TOTAL ASSETS | 5,835 | | |
| | | LIABILITIES AND FUND BALANCE | | | |
| | | LIABILITIES | | | |
| 0 | 0 | Accounts payable | 0 | | |
| 545 | 650 | Deferred revenue | 0 | | |
| 545 | 650 | TOTAL LIABILITIES | 0 | | |
| | | FUND BALANCE | | | |
| 2,511 | 3,077 | Beginning fund balance | 4,332 | | |
| 566 | 1,255 | Current year income (loss) | 1,504 | | |
| 3,077 | 4,332 | TOTAL FUND BALANCE | 5,835 | | |
| 3,622 | 4,982 | TOTAL LIABILITIES & FUND BALANCE | 5,835 | | |

Idaho State Bar – Environmental & Natural Resources Section
Section Meeting Agenda
October 28, 2015

Roll call / introductions

September minutes (Tyson Nelson; Dylan Lawrence)

Advocate update (Nick Warden; Dylan Lawrence)

- ENR section was assigned the June/July 2016 issue
- Articles would be due April 13, 2016
- Last sponsored the May 2015 issue
- Section can request to trade issues

Five new section members (Dylan Lawrence)

November meeting (Dylan Lawrence)

- Date change: Nov. 18
- Topic/speakers

Monthly CLE update (Dylan Lawrence)

Half-day CLE update (Emmi Blades)

Treasurer's report (Tyson Nelson)

Clean Power Plan presentation (Julia Hilton; Ben Otto)

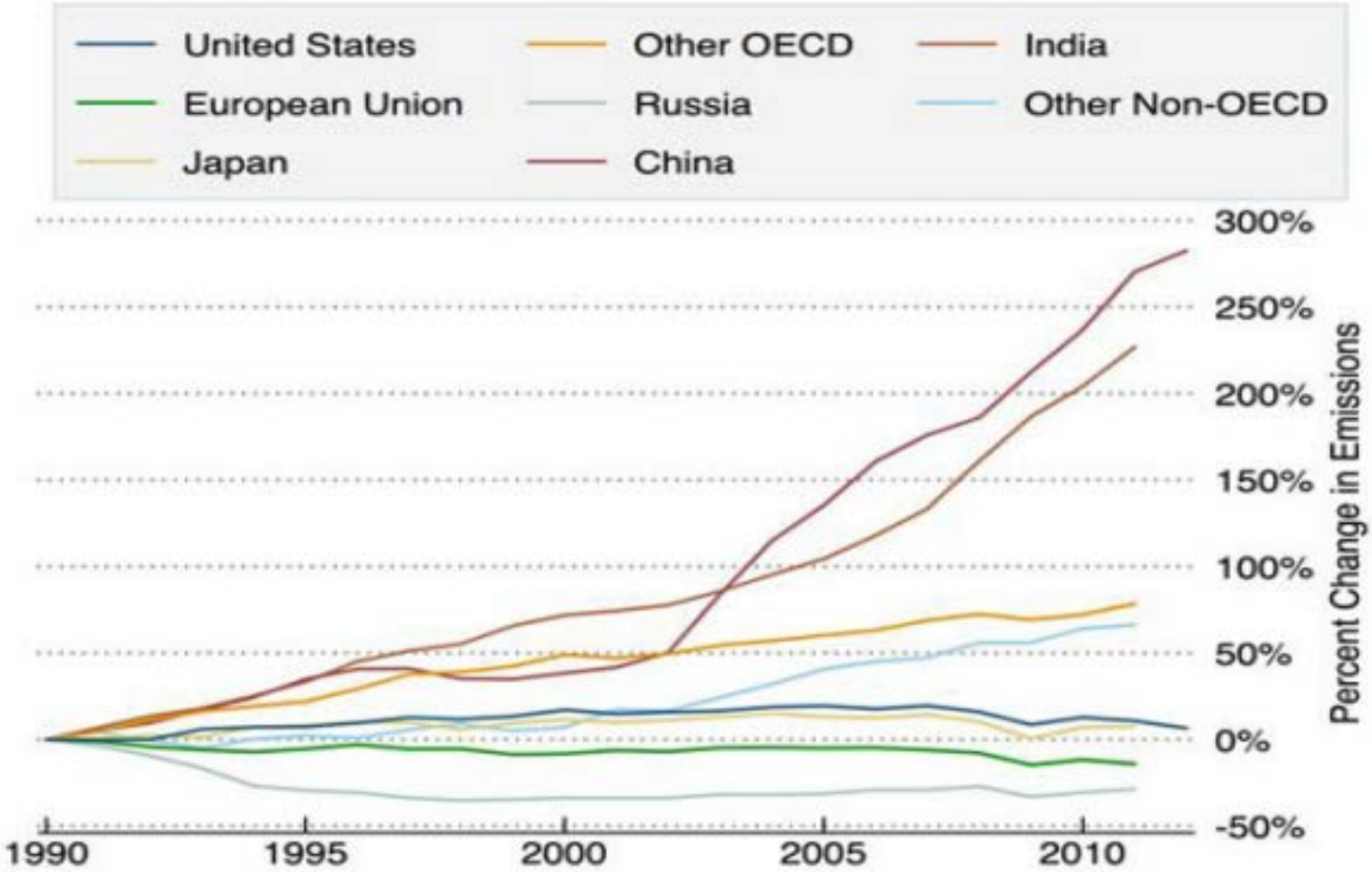
# Clean Power Plan

## Clean Air Act Section 111(d)

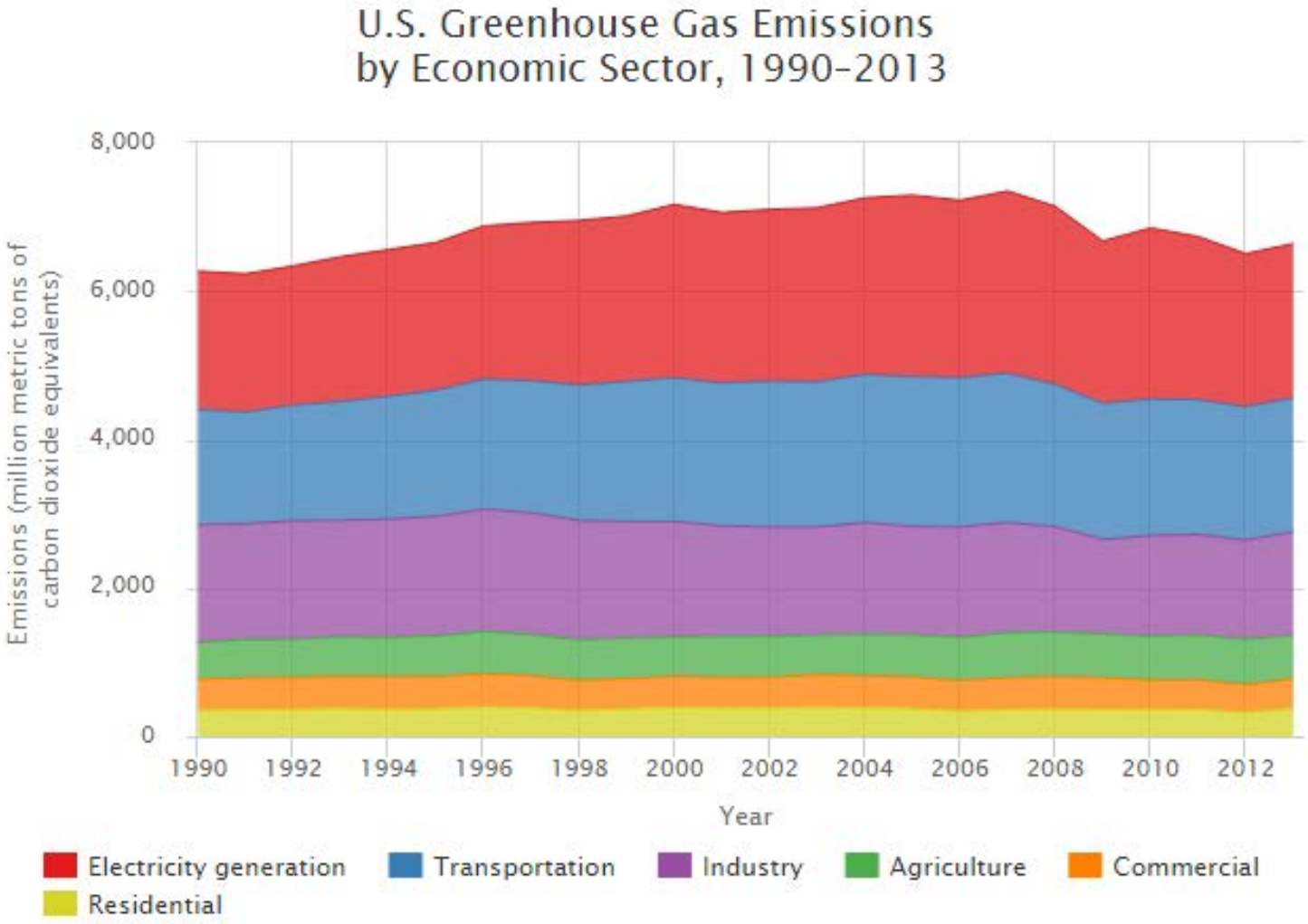
Julia Hilton

October 28, 2015

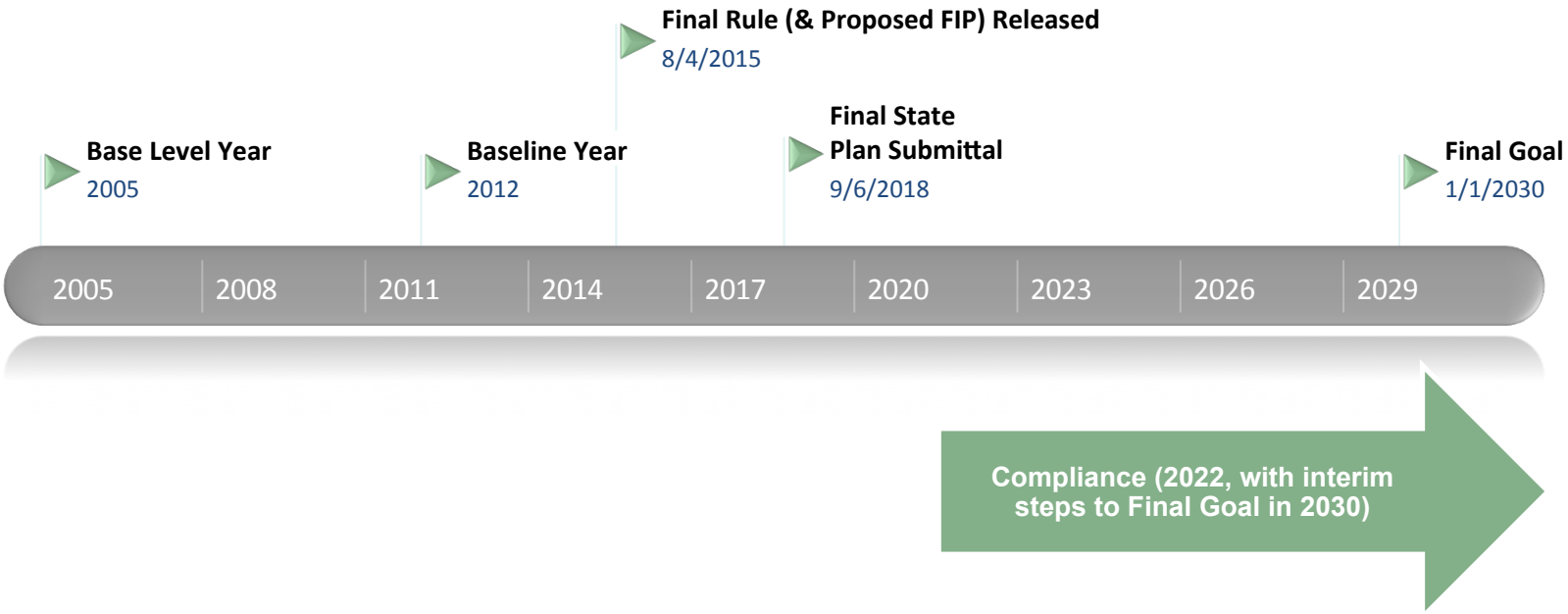
# Global $CO_2$ Trends




Source: Global Carbon Budget for 1990-2011 and International Energy Agency for 2012
http://www.yaleclimateconnections.org/2013/07/global-co2-emissions-increases-dwarf-recent-u-s-reductions/




Source: U.S. EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013.
http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html


Final Rule (& Proposed FIP) Released
8/4/2015
Base Level Year
2005
Baseline Year
2012
Final State
Plan Submittal
9/6/2018
Final Goal
1/1/2030
2005
2008
2011
2014
2017
2020
2023
2026
2029
Compliance (2022, with interim steps to Final Goal in 2030)

# Final and Proposed Portions

**Final Rule**

- Performance Standard (goals)
- Implementation Periods (compliance timelines)

**Newly Proposed**

- Federal Implementation Plan
  - Clean Energy Incentive Program
  - Model Trading Rules

# Where we are, where we aren't

**Section 112**

- Authority to regulate listed hazardous air pollutants from new and existing stationary sources (MATS).
- $CO_2$ isn't on the list.

**Section 111(b)**

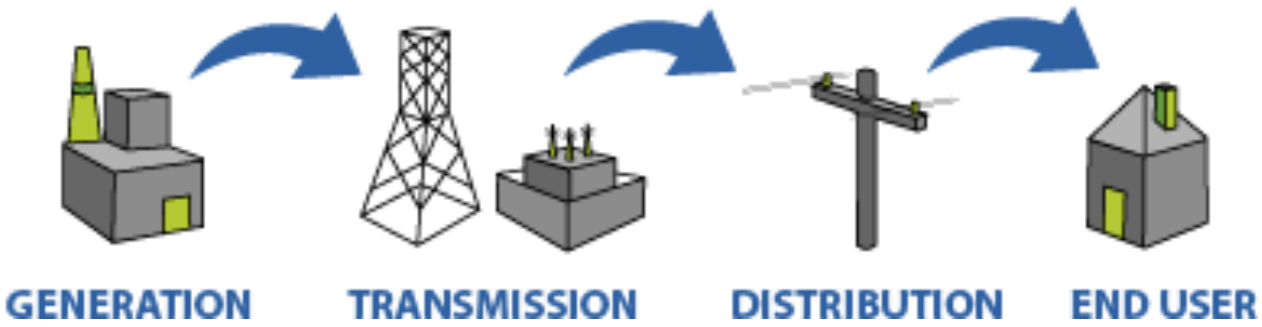
- Authority to regulate *new* stationary sources.
- *National* performance standard
- Drives changes to technology.

**Section 111(d)**

- Authority to regulate *existing* stationary sources.
- *State-by-state* performance standard
- Requires consideration of remaining useful life of source.

# Performance Standard

"[A] standard for emissions of air pollutants which reflects the *degree of emission limitation achievable* through the application of the *best system of emission reduction* [BSER] which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." 42 USC § 4711(a)(1)



# Performance Standard

| Component | Final Rule |
|---|---|
| BSER building blocks | 1 – heat rate improvements<br>2 – redispatch coal to natural gas<br>3 – incremental renewable generation |
| Performance standard | BBs to reach regional standards for each subcategory:<br>- fossil steam = 1,305 lbs $CO_2$/MWh<br>- natural gas = 771 lbs $CO_2$/MWh<br>Rates are not achievable at the unit level<br>More stringent standards for existing sources than new sources |
| State standard calculations | Performance standard applied to adjusted 2012 baseline<br>Obligation of the state |
| Types of goal | Rate- or mass-based |

# Rate v. Mass Compliance

IDAHO POWER
An IDACORP Company

**Rate-based**

- Lbs of $CO_2$/ MWh
- Emission Rate Credits (ERCs)

**Mass-based**

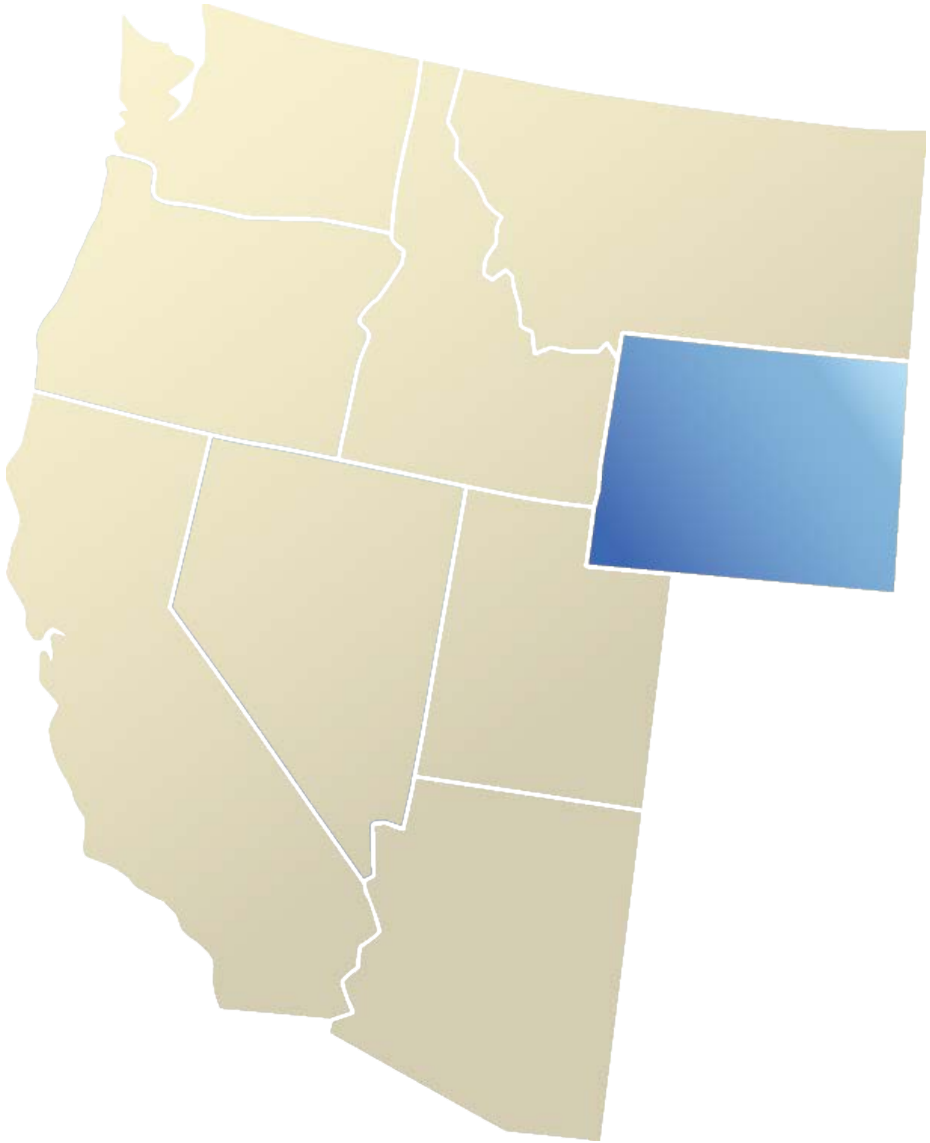
- Tons of $CO_2$
- Allowances

# Idaho is Already Awesome

- Second lowest total 2012 $CO_2$ emissions in the country
- No in-state coal generation; two new natural gas plants
- 87% of in-state generation from zero-carbon sources; 88% by 2020
- Robust energy efficiency programs
- Due to adjustments made to the 2012 baseline, both rate- and mass-based goals appear to be attainable in Idaho
- However, Idaho is a net importer of energy…

# Idaho Power's Importing States

- Oregon
  - Boardman
- Nevada
  - North Valmy
- Wyoming
  - Bridger
  - 2,331 lbs $CO_2$/MWh 2012 rate to 1,299 final goal



# Legal Vulnerabilities

## 10th Amendment

- Energy policy / environmental impact
- Definition of system

## Due Process

- Significant new elements in the final rule

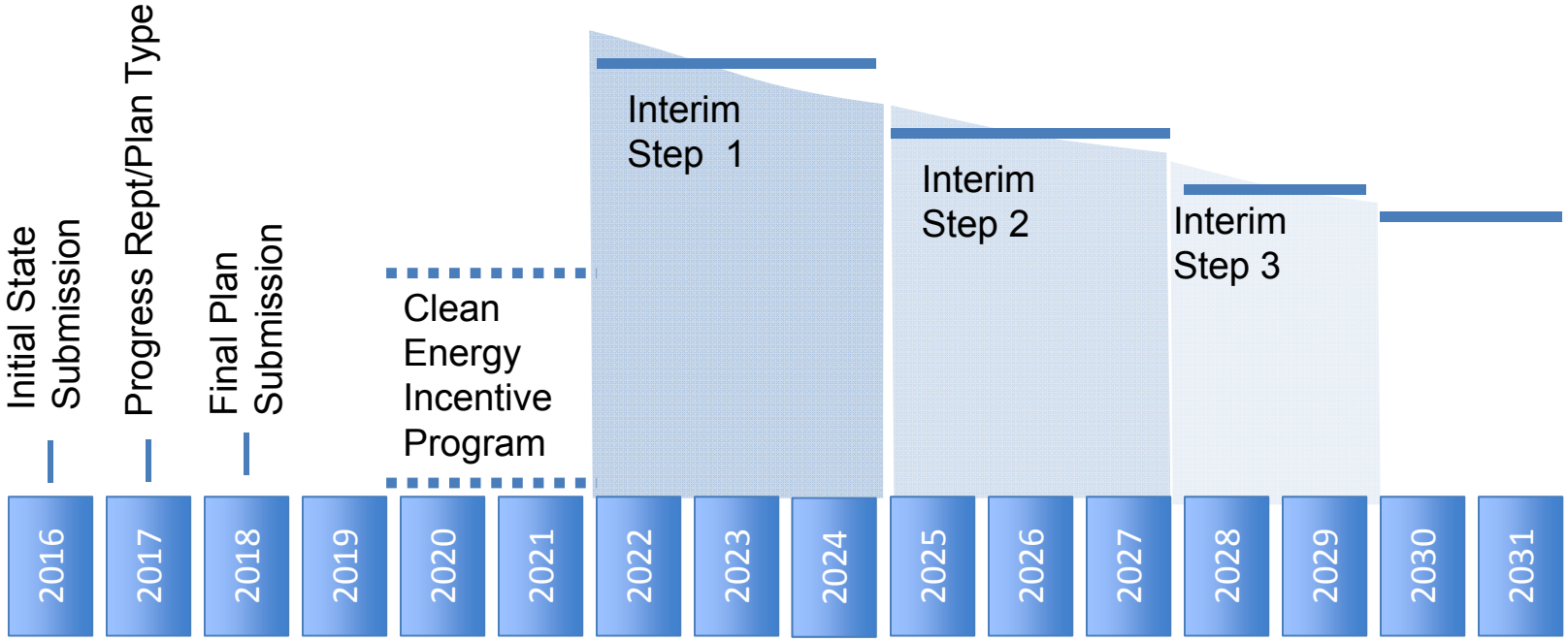
## the "Legislative Glitch"

# Questions?

# Evolution of the CPP

| Component | Proposed Rule | Final Rule |
|---|---|---|
| State plan due date | 2016 – initial<br>2017 – final (for solo states)<br>2018 – final (for mult. states) | 2016 – initial<br>2017 – update<br>2018 – final |
| Implementation date | 2020 | 2022 |
| Interim standards (pre-2030) | One step (2020) | 3 steps (2022, 2025, 2028) |
| BSER building blocks | Four | Three |
| Performance Standard | State-specific | Regional standards for each technology |
| State standard calculations | BSER applied to 2012 baseline | Tech-specific rates applied to an adjusted 2012 baseline |
| Types of goals | Rate-based, but states can calculate mass | Rate- and mass-based |
| Potential for trading | Allowed with joint plan | Allowed with joint plan or trading-ready option |
| Reliability concerns | Yup | Reliability safety valve |

# CPP Compliance Timing




Source: Modified Nicholas Institute graphic



Source: David Littell, Regulatory Assistance Project

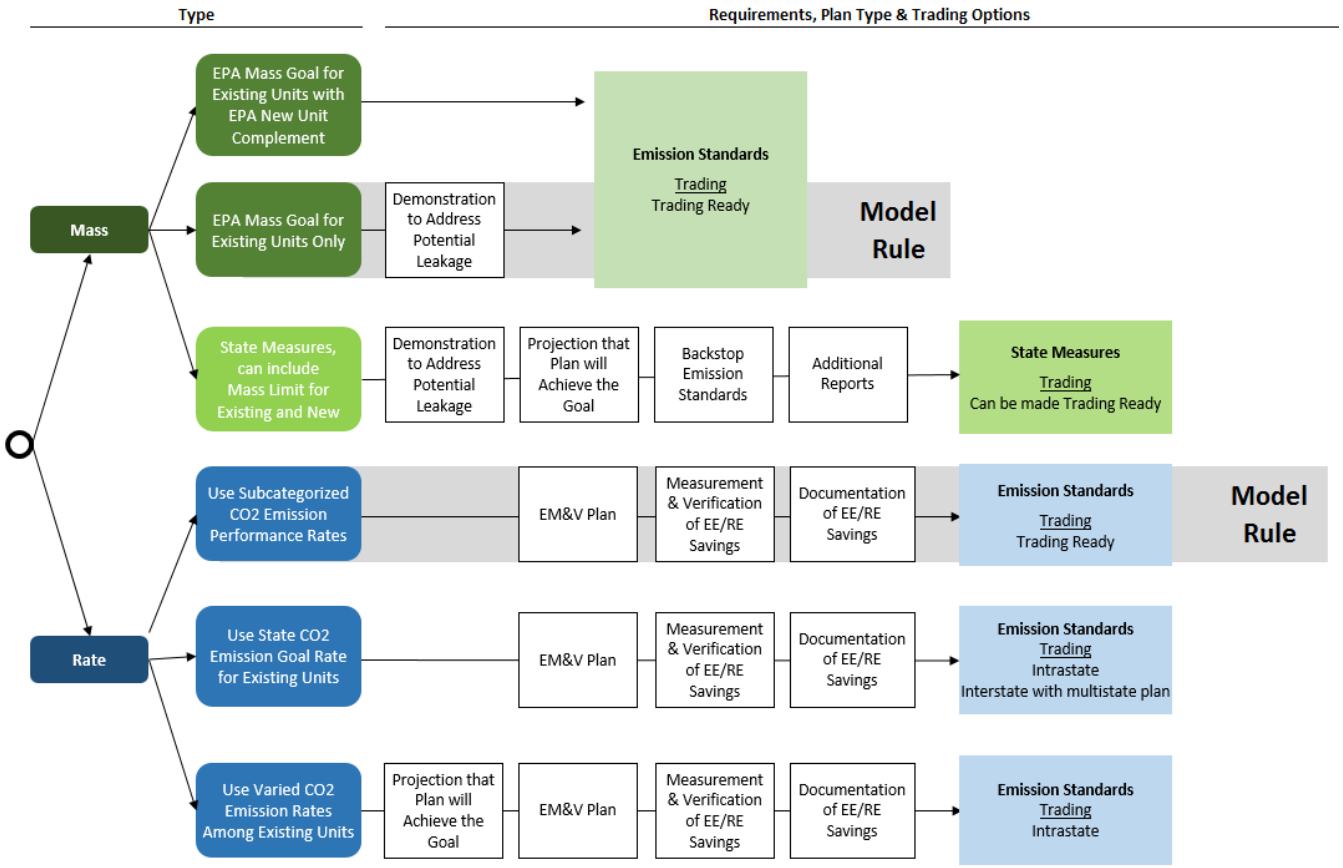
# Many $CO_2$ Reduction Opportunities

- Heat rate improvements
- Fuel switching to a lower carbon content fuel
- Integration of renewable energy into EGU operations
- Combined heat and power
- Qualified biomass co-firing and repowering
- Renewable energy (new & capacity uprates)
  - Wind, solar, hydro
- Nuclear generation (new & capacity uprates)
- Demand-side energy efficiency programs and policies
- Demand-side management measures
- Electricity transmission and distribution improvements
- Carbon capture and utilization for existing sources
- Carbon capture and sequestration for existing sources

# **State Plans:** More State Options, Lower Costs

- This chart shows some of the compliance pathways available to states under the final Clean Power Plan. Ultimately, it is up to the states to choose how they will meet the requirements of the rule.
- EPA's illustrative analysis shows that nationwide, in 2030, a **mass-based approach is less-expensive** than a rate-based approach ($5.1 billion versus $8.4 billion).
- Under a mass-based plan, states that anticipate continuing or expanding investments in energy efficiency have unlimited flexibility to leverage those investments to meet their CPP targets. EE programs and projects do not need to be approved as part of a mass-based state plan, and EM&V will not be required.
- For states currently implementing mass-based trading programs, the "state measures" approach offers a ready path forward.
- Demand-side energy efficiency is an important, proven strategy that states are already widely using and that can substantially and cost-effectively lower $CO_2$ emissions from the power sector.

*Updated Aug. 5, 2015 5 pm*

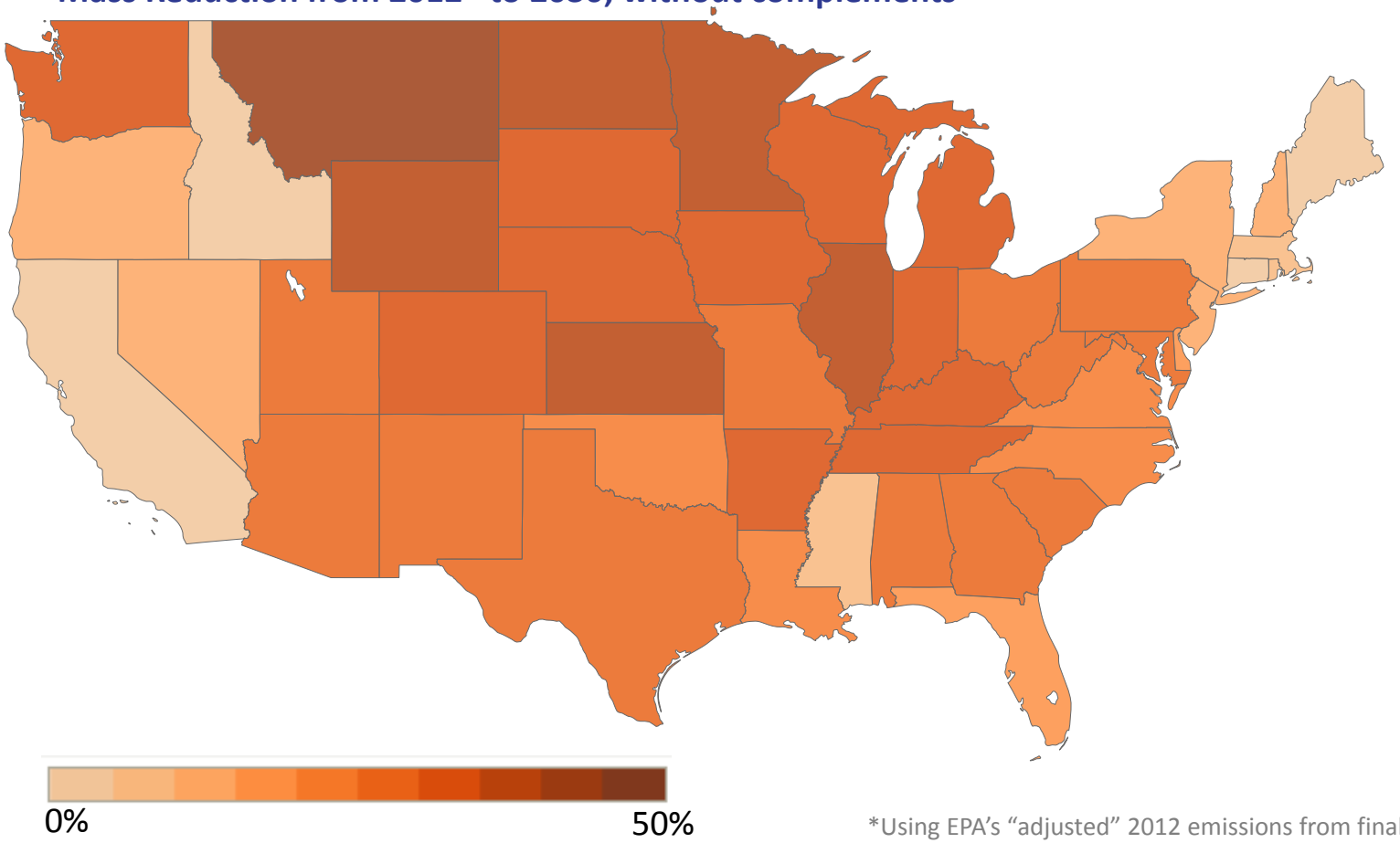



Idaho Conservation League

Source: EPA at http://www2.epa.gov/sites/production/files/2015-08/documents/flow_chart_v6_aug5.pdf

# Final Rule Reductions

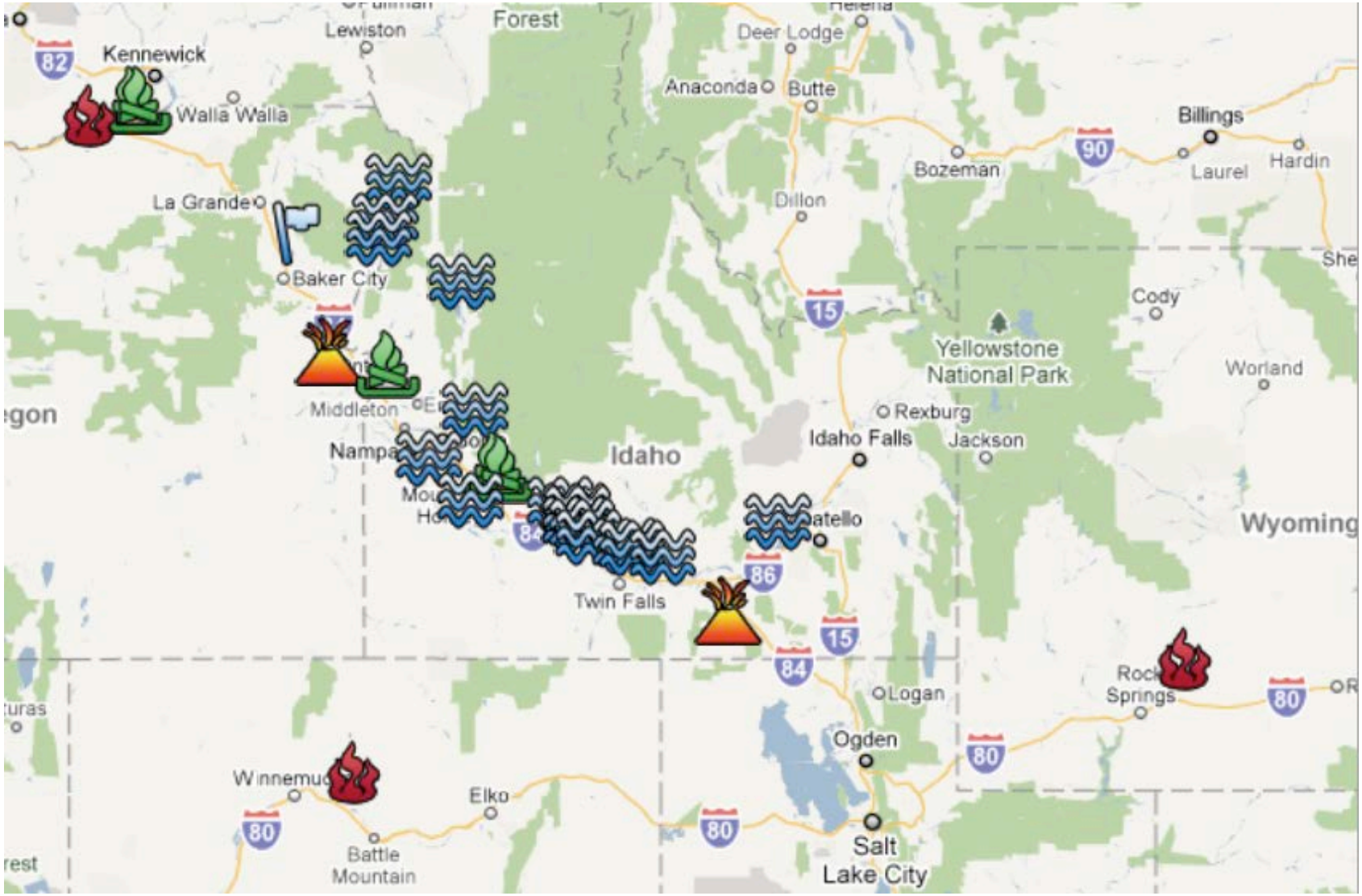
## Mass Reduction from 2012* to 2030; without complements



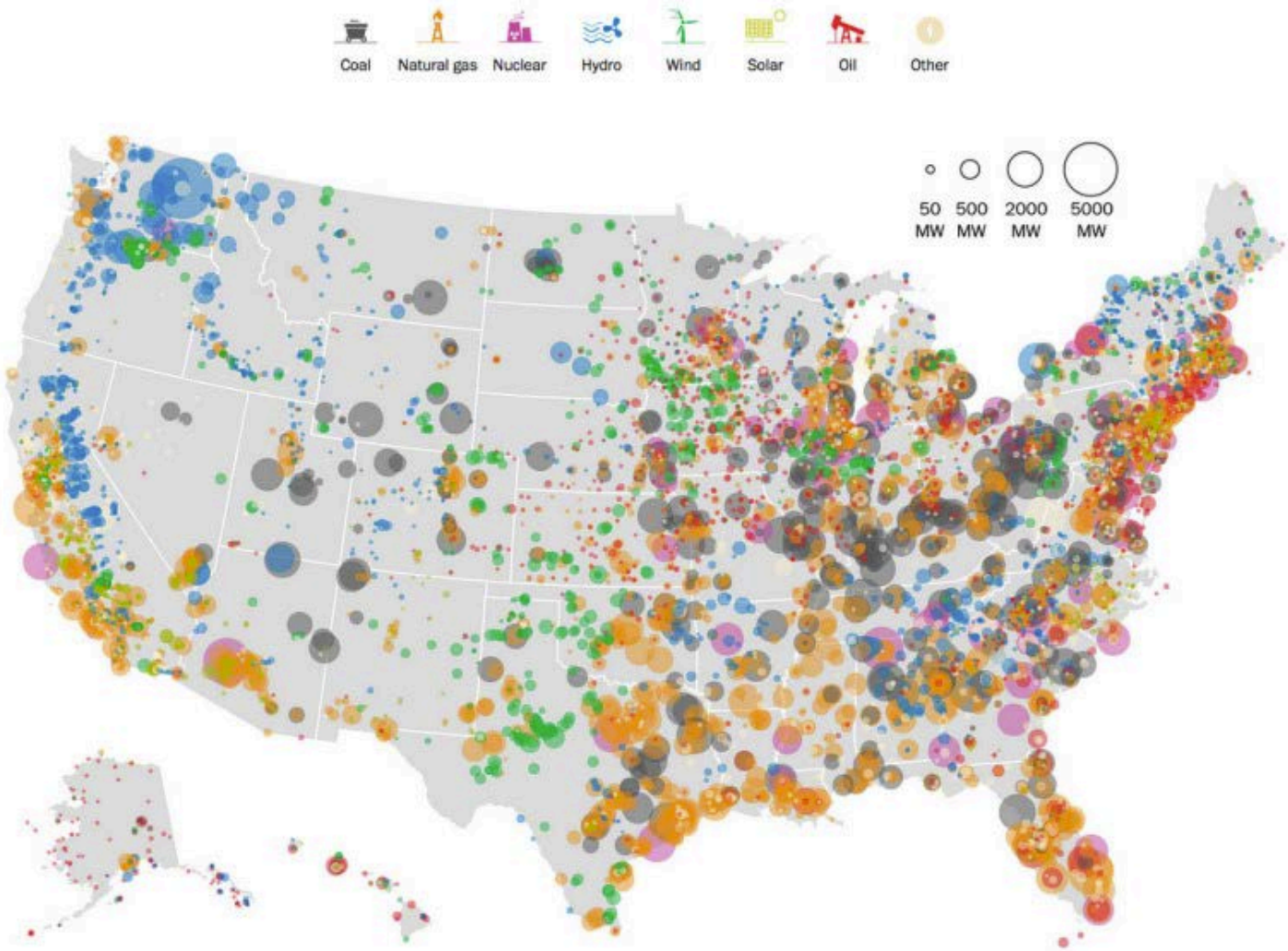

*Using EPA's "adjusted" 2012 emissions from final

©2015 Synapse Energy Economics Inc. All rights reserved.


Idaho Conservation League




Idaho Conservation League




Idaho Conservation League

Source: Washington Post at https://www.washingtonpost.com/graphics/national/power-plants/

# How Mass-Based Trading Works

Emissions Budget

State's Mass-Based Goal →

= allowed tons, or "allowances"

Emissions budget = total number of tons that can be emitted

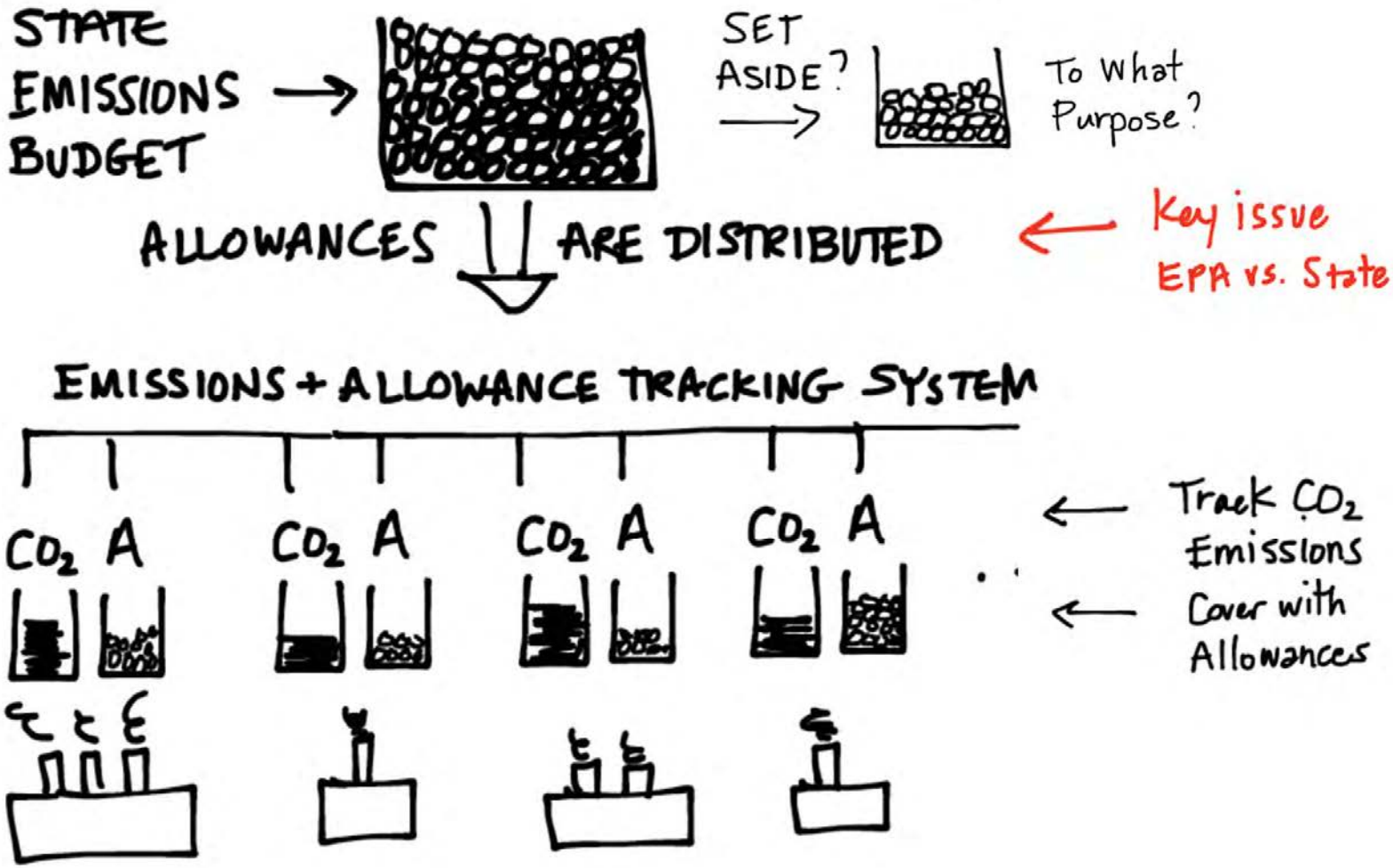
State must distribute allowances

(under federal plan EPA makes this decision)

Idaho Conservation League

Source: Franz T. Litz, Litz Energy Strategies, LLC

# How Mass-Based Trading Works




Idaho Conservation League

Source: Franz T. Litz, Litz Energy Strategies, LLC

# RATE-BASED TRADING

- Every plant measures, monitors + reports $CO_2$ emissions + generation (MWhrs)
- Every plant must meet prescribed emissions rate, either actually or after ERCs are added to generation.

Idaho Conservation League

Source: Franz T. Litz, Litz Energy Strategies, LLC

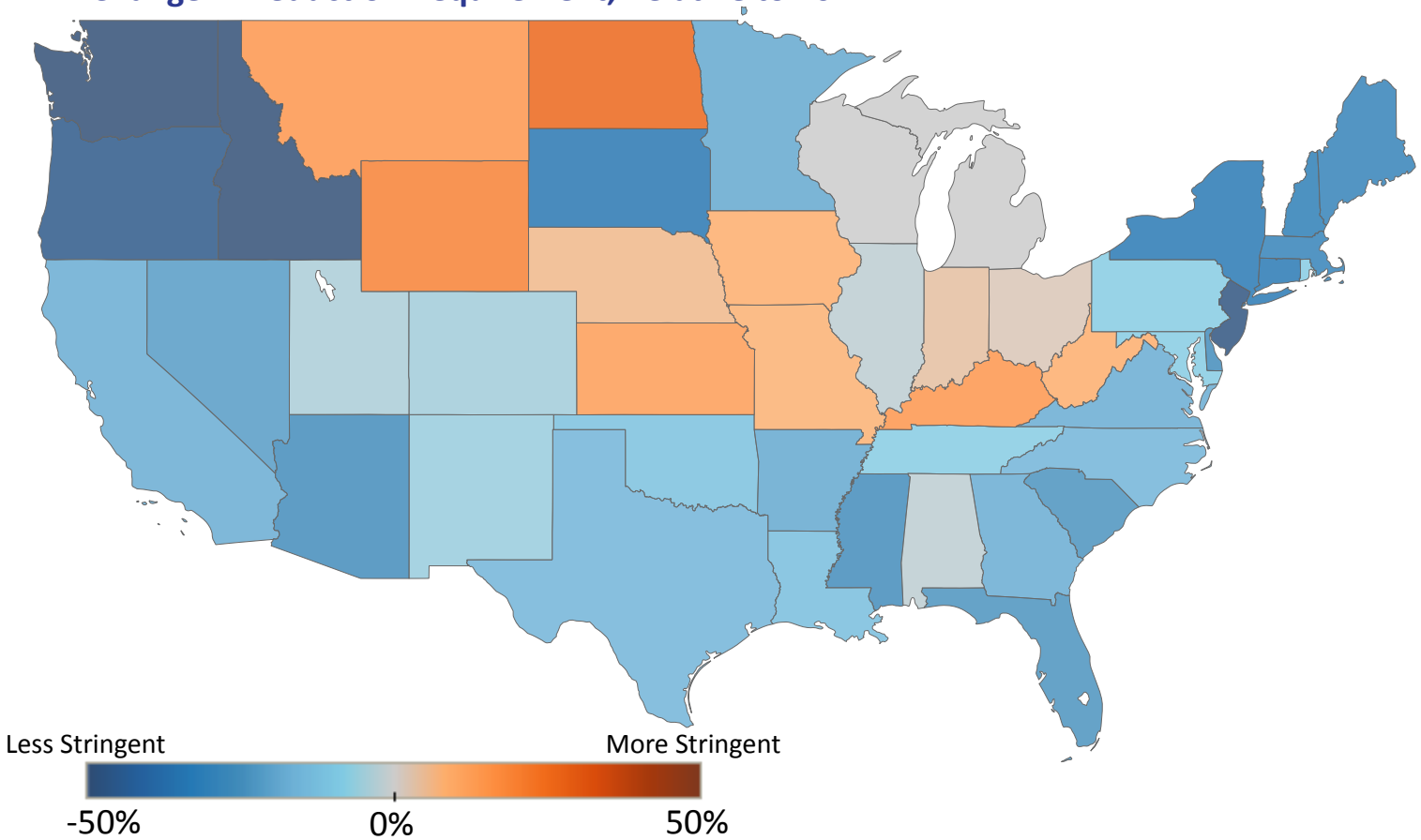
| | UPFRONT EFFORT | ONGOING EFFORT |
|---|---|---|
| Mass-based Trading Ready | Allocations<br>New Sources/Leakage | Compliance Statement $CO_2$ = A<br>+<br>ENFORCEMENT |
| Rate-based Trading Ready | "ERCs Desk"<br>ERCs<br>• Rules<br>• Procedures < Issuance, Appeals<br>• Budget < Tracking, Staffing<br>$ $ | "ERCs Desk"<br>ERCs<br>• Administer 2-Step Process<br>• Defend Challenges<br>• Enforce Buyer Liability<br>Compliance Statement Adjusted = Rate Prescribed Rate<br>+<br>ENFORCEMENT |

Idaho Conservation League

Source: Franz T. Litz, Litz Energy Strategies, LLC

# Change in Stringency from Proposal to Final

## Change in Reduction Requirement, Relative to 2012




©2015 Synapse Energy Economics Inc. All rights reserved.


Idaho Conservation League

1. In order to participate in the meeting via telephone, please follow the instructions in Dayna Ferrero's Oct. 20 meeting notice (dial 888-706-6468 and enter participant code 7850540).

2. For those who would like to watch the webcast, you should receive an email with a link to the webcast immediately prior to the meeting, i.e., sometime around 11:45 a.m., mountain time.

3. Please note, there have been occasions where participants have reported not receiving the e-mail link to the webcast. Therefore, please be sure to check your spam folder if you do not receive it. If you still do not receive the e-mail link, then sorry about that, and please plan to participate via telephone as a back-up.

4. Also, webcast participants have reported some lag time. Therefore, I would recommend participating in the business portion of the meeting via telephone, and then switching over to the webcast for the CLE presentation.

5. After the meeting, please provide me with any feedback about how it went and what we can do to improve the experience.

Thanks,
Dylan