

# **Taxation Committee**

## **February 3, 2010**

***Sandi Tabor***  
***Lignite Energy Council***



# Federal Legislation – House – Waxman-Markey Bill

- ★ RES – 20% by 2020
- ★ GHG reduction below 2005 levels
  - 17% by 2020; 83% by 2050
- ★ Allowance allocation
  - 40% of all allowances allocated to local distribution companies
    - 50% based on retail sales
    - 50% based on CO<sub>2</sub> emissions
- ★ Includes funding for Carbon Capture and Storage (CCS)
- ★ Clean Air Act and State Preemption
- ★ At LEC urged Pomeroy to vote “no” and he did so



# Federal Legislation – Senate – Kerry-Boxer Bill

- ★ No renewable energy standard
- ★ GHG reduction below 2005 levels
  - 20% by 2020; 83% by 2050
- ★ Allowance allocation – same as House bill
- ★ Includes funding for Carbon Capture and Storage (CCS)
- ★ Weak state preemption ... no Clean Air Act preemption



# Federal Legislation – Senate – Energy Bill

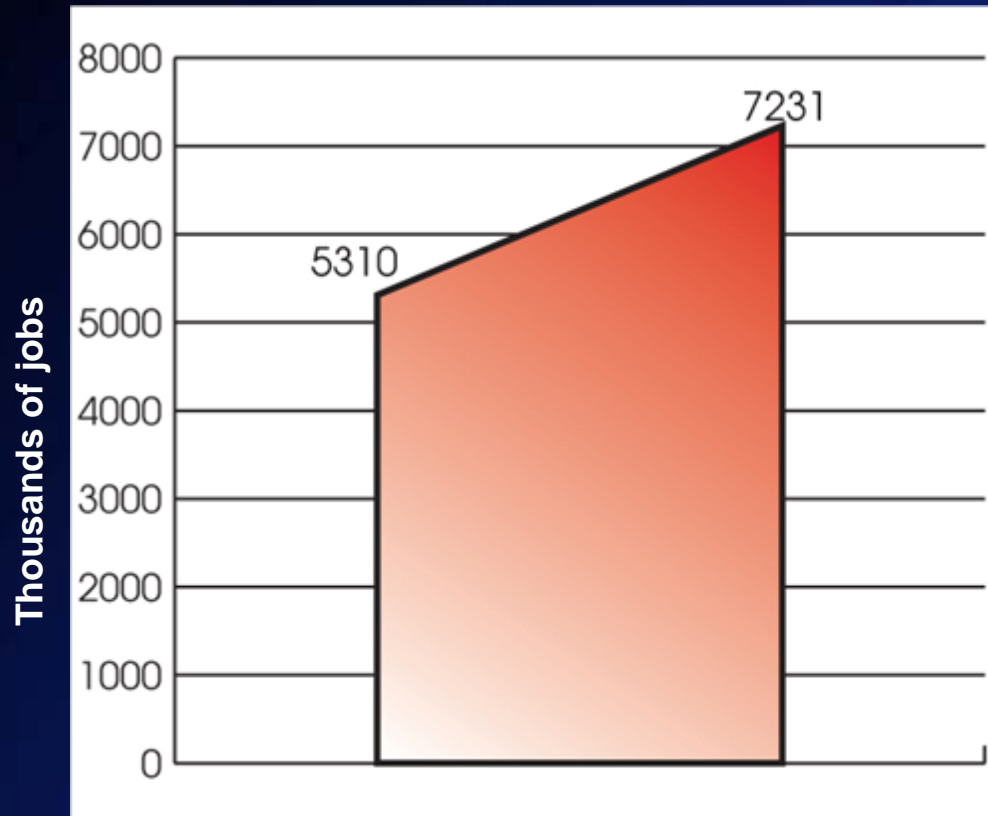
- ★ **Approved by Energy and Natural Resource Committee in June 2009**
  - **Includes RES – 15% by 2021**
    - Advanced coal powered plants with CCS excluded from baseline
    - Clean coal technology development eligible for funding from alternative compliance fee
  - **Establishes federal indemnity program for long-term CO<sub>2</sub> sequestration**
    - Applies to 10 commercial-scale projects
  - **Transmission – National Grid**





# Economic Impact to North Dakota Waxman-Markey (House Bill)

Range of job loss in 2030: 5,310 to 7,231

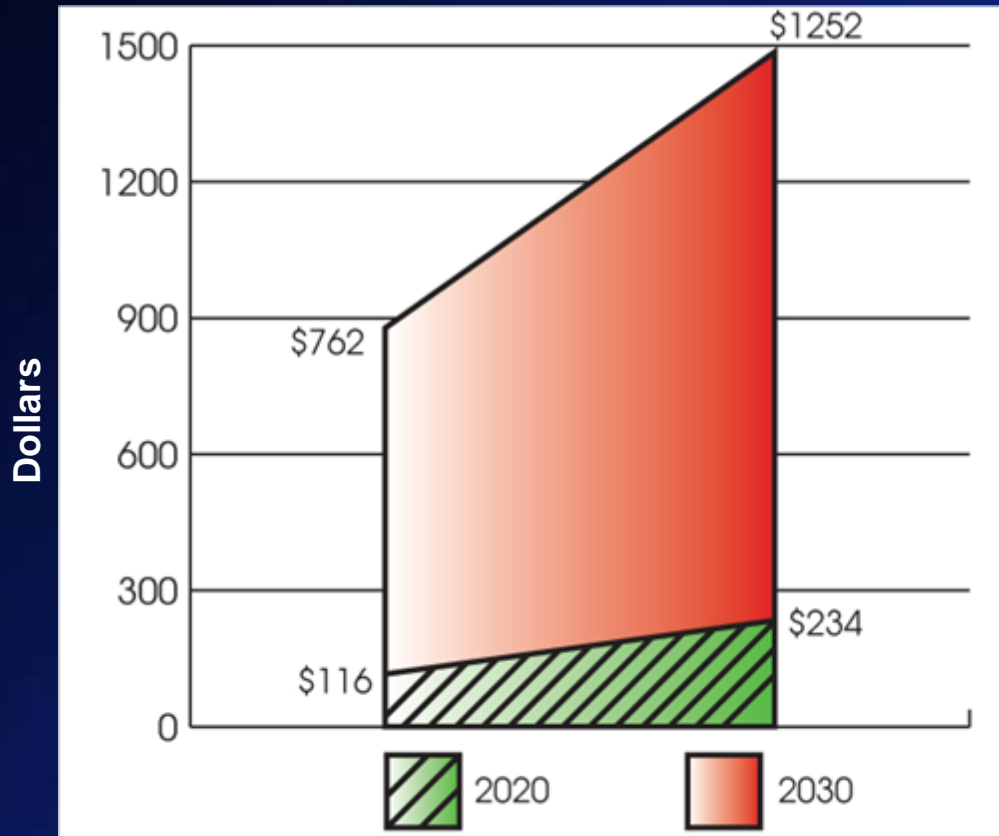


# Economic Impact to North Dakota Waxman-Markey (House Bill)

Range of decrease in disposable income:

2020 –  
\$116 to \$234

2030 –  
\$762 to \$1,252

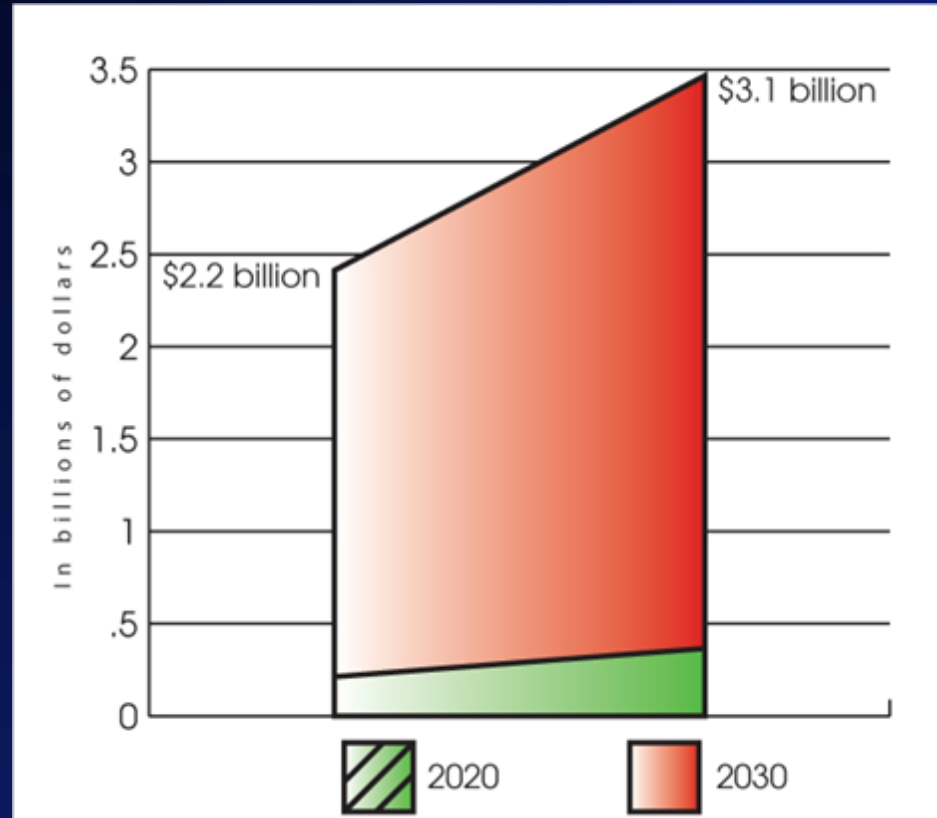


# Economic Impact to North Dakota Waxman-Markey (House Bill)

Range of decrease in gross state product:

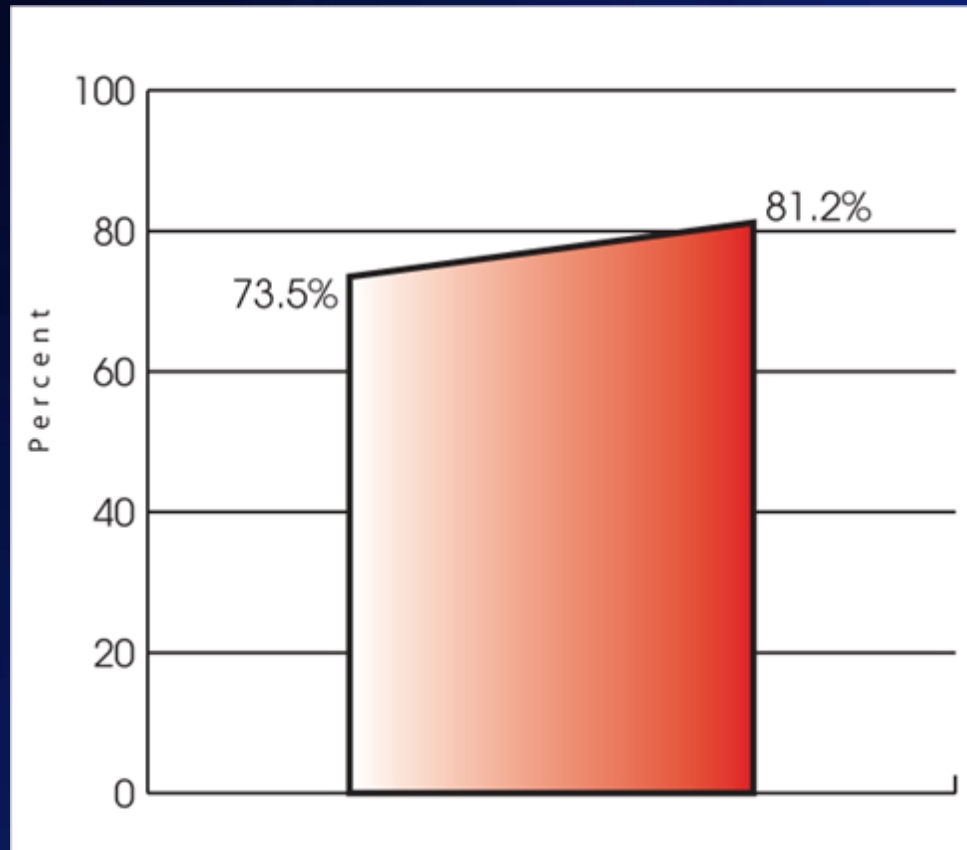
2020 –  
\$213 to \$366 million

2030 –  
\$2.2 to \$3.1 billion



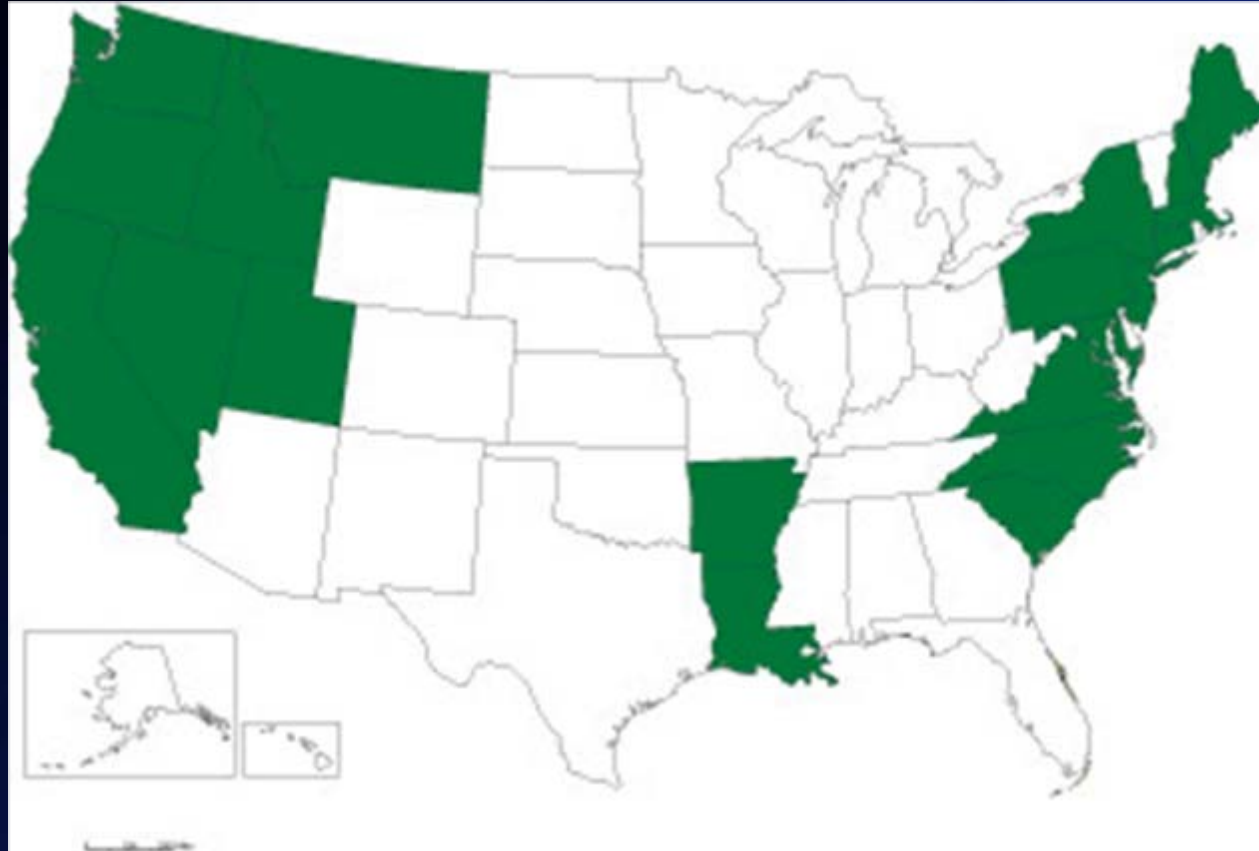
# Economic Impact to North Dakota Waxman-Markey (House Bill)

Range of decrease in coal production: 2030 - 73.5% to 81.2%





# Economic Impact of House Bill



# Other Federal Issues

## ★ CO<sub>2</sub> Regulation

- Endangerment Finding – final finding - Dec. 2009
- Proposed Regulation of CO<sub>2</sub> emissions on facilities emitting over 25,000 tons/year (Tailoring Rule)

## ★ Air Quality

- Proposed Sulfur Dioxide and Ozone rules
- New Mercury rules
- Proposed legislation to reduce SO<sub>2</sub>, NO<sub>x</sub> and Mercury emissions (Carper)



# **Federal Legislation – Control EPA Efforts – CO<sub>2</sub>**

## **★ Murkowski Resolution**

- Effectively veto EPA's Endangerment Finding
- Vote in late February/early March

## **★ Pomeroy Legislation**

- Amends definition of “air pollutant” in the Clean Air Act by excluding Greenhouse Gases
- Introduced but no hearing scheduled



# Other Federal Issues

- ★ **Coal Combustion Products – regulate as “hazardous waste”**
- ★ **Stream Buffer Zone – impacts where coal may be mined**
- ★ **Clean Water Restoration Act – birdbath law**



# EPA Regulatory Initiatives

## ★ Coal Combustion Byproducts –

- The solid residue left when combustible material is thoroughly burned includes:
  - Fly ash; Bottom ash; Boiler slag





# EPA Regulatory Initiatives

## ★ Coal Combustion Byproducts –

- EPA considering the possibility of regulating as a hazardous waste
  - Three separate determinations made by EPA that CCB are not hazardous waste
- Conrad circulated letter urging EPA to refrain from new regulation – Pomeroy signed similar letter in House
- Congressional pressure slowed EPA down ... but still anticipate proposed rules this year.



# Office of Surface Mining- Initiative

## ★ Stream Buffer Zone Rule

- Six year process led to new rule at end of 2008
- New administration wants to review the rules once again
- In ND – 10.6 million tons of coal could be impacted by change to present rule



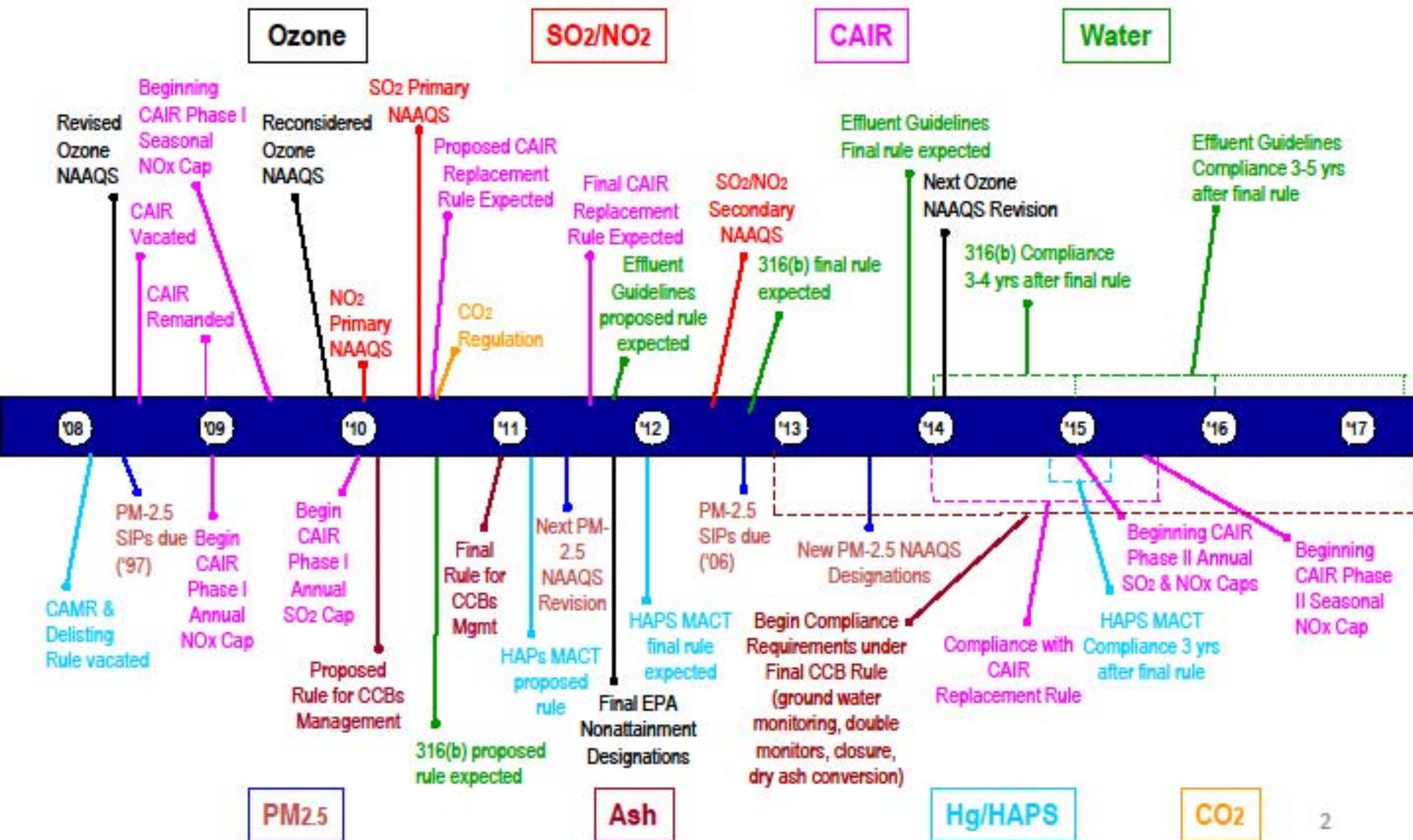
# Other Federal Legislative Efforts

## ★ Clean Water Restoration Act

- Dubbed “the birdbath bill”
  - Passed by Senate Energy and Public Works Committee in June 2009
- Changes definition of “navigable waters” in Clean Water Act
  - Federal government would take over jurisdiction of ALL waters anywhere in the U.S., including small isolated wetlands currently subject to state control



# Environmental Regulatory Timeline for Coal Units





# CLIMATE CHANGE TORT LITIGATION

- ★ Two Circuit Courts have allowed states and individuals to sue GHG emitters under common law tort principles:
  - *Connecticut v. AEP* (2nd Circuit, Sept. 21, 2009) is a federal common law action seeking abatement of ongoing emissions
  - *Ned Comer v. Murphy Oil* (5th Circuit, Oct. 16, 2009) allows tort suits under state common law for damages caused by Hurricane Katrina
- ★ *Kivalina* suit pending in 9th Circuit

