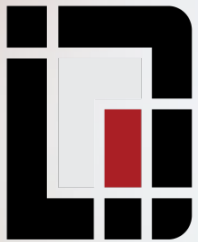


# Climate Change Law: Where Is It Going and What Does It Mean for Washington's PUDs?

WPUDA Municipal Attorneys  
Summer 2016 CLE  
June 16, 2016



Craig Gannett, Partner  
Davis Wright Tremaine LLP  
[craiggannett@dwt.com](mailto:craiggannett@dwt.com)  
(206) 757-8048



- Where is climate change law going?
- EPA's Clean Power Plan (CPP)
  - Goals, processes, and prospects
  - Impacts on PUDs
- Recent court decision on Columbia River biop
  - Climate change in ESA and NEPA analysis
  - Impacts on PUDs



- Where is climate change law going?
  - **What** is climate change law?
  - The law of all activities emitting GHGs and/or potentially affected by climate change
  - Mitigation and adaptation
  - Energy, transportation, infrastructure, water, forest management, agriculture, land use
  - FPA, ESA, NEPA, SEPA, SEC

# Overview of CPP



- Centerpiece of Obama strategy; powerplants are largest GHG source; 25 MW threshold
- By 2030, 32% below 2005
- BSER = improve efficiency of coal-fired, substitute gas-fired for coal-fired, increase renewables
- State goals to be met on state-chosen glide path between 2022 and 2030
  - WA has easy target; burden mainly on IOUs
- Encourages cap and trade
  - Revenue from allowances



- Rule finalized on October 23, 2015; appealed; stayed by USSC on February 9, 2016 on 5-4 vote; Scalia dies on February 13.
- Oral argument before D.C. Circuit on September 27; USSC decision as early as next June
- Presidential election is pivotal
- Does stay toll deadlines?

# CPP Pathways/Timelines



## Development



## Implementation





- Lots of state discretion, but must have authority under state law
- If state fails to submit SIP, EPA imposes FIP
- Clean Energy Incentive Program (CEIP) encourages early reductions in 2020-2021



Renewable energy



Energy efficiency (low income only)



Opportunity for PUDs?



- No. 1: How will the CAR intersect with the CPP?
  - CAR much more restrictive, but only in-state generation
  - “Baseline and reduce” not trade-ready
  - CAR ceases for power plants “at beginning of first compliance period,” i.e., 2022
  
- No. 2: How will the CPP affect the NW energy resource mix?
  - More pressure on coal; more value for renewables





- No. 3: How would I-732 (carbon tax) intersect with the CPP?
  - I-732 could complement or become the WA SIP under state measures approach
  
- No. 4: Overall affect of the CPP on WA PUDs?
  - Increasing carbon price is good for PUDs
    - BPA surplus sales more valuable
    - Except PUD-owned GHG-emitting facilities



- Did NOAA Fisheries err in concluding that federal Columbia River dams do not violate ESA because of reasonable and prudent alternatives (RPAs)?
- Did the feds violate NEPA by not conducting an EIS on RPAs?
- Did NOAA Fisheries give adequate consideration to climate change?
  - Climate change may diminish or eliminate RPA effectiveness
  - Inadequate consideration of latest climate science
  - Failure to consider long-term



- Closer to dam removal?
  - Who decides?
- What will EIS show?
  - Fewer dams = more GHGs
  - Kerr/Gates example
- Nexus to CPP
- Broader implications



- Breadth of climate change law
- CPP likely to survive; good for WA
- Intersection between CAR and CPP uncertain
- Courts will require latest climate science, long view