

Environmental Appeals

Professor Sean H. Donahue

Summer 2023 – Term 2

First Assignment:

Class 1: Introduction/Overview; Appellate Courts and their Powers

A. Introduction and Introductions

- Course overview: organization and objectives
- What is distinctive about appellate practice, and about environmental appeals?

B. Some Concepts and Distinctions

- Appeals of Lower Court Decisions v. Judicial Review of Agency Action
- Appeal as of Right; Appeal by Permission; Discretionary Review; Certification

C. Constitutional Bases for Federal and State Appellate Courts

Reading:

U.S. Constitution, Art. III (Reading Packet (“RP”) p. 1)

D. Appellate courts as institutions

Topics for Consideration:

- Why have appellate courts?
- Why have multimember panels?
- US federal appellate system: geographic and subject-matter divisions
- Judges: selection, tenure, culture
- Exclusive jurisdiction, specialization, generalism
- Support: law clerks, clerk’s office; staff attorneys

E. Subject Matter Jurisdiction: Statutory Appellate Jurisdiction

1. Appellate Review of District Court Decisions

Readings:

- 28 USC § 1331 (RP 2)
- 28 USC § 1291 (RP 2)
- 28 U.S.C. § 1292(a) and (b) (RP 2)

2. Judicial Review of Agency Decisions

Readings:

- Administrative Procedure Act, 5 U.S.C. §§ 702, 704 (RP 3)
- Clean Water Act, 33 U.S.C. § 1369(b)(1), (2) (RP 4)
- Clean Air Act, 42 U.S.C. § 7607(b) (RP 5)

F. “Standing” in Environmental Appellate Litigation

Reading:

- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) (excerpts) (RP 38)