

## **Environmental Appeals**

Professor Sean H. Donahue

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### 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)