The Executive and the Courts: Judicial Review

- **Standing**
  - *Lujan v. National Wildlife Federation*

- **Ripeness**
  - *Ohio Forestry Association v. Sierra Club*
  - Ripeness

- **Deference**
  - *Udall v. Tallman*
  - *Wilderness Society v. Morton* (The TAPS case)

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**Standing**

Section 10(a) of the APA –

“A person suffering a legal wrong because of an agency action within the meaning of the relevant statutes, is entitled to judicial review thereof.”

South Pass – Green Mountain, Wyoming
**Lujan v. National Wildlife Federation,**

**Standing**

- Injury in fact: injury is concrete, affecting plaintiff in personal and individual way and within the “zone of interest” that the statute is designed to protect
  - FLMPA & NEPA
  - Recreational and aesthetic enjoyment (general or specific)

- Causation: injury is fairly traceable to the actions of the defendant
- Redressibility: an order in plaintiff’s favor will redress the injuries complained of
Ohio Forestry Association v. Sierra Club,

Ripeness

• About timing, not about the ultimate availability of judicial review
• Fitness of Issues

Fitness of Issues

Whether--

1. delayed review would cause hardship to plaintiffs,
2. judicial intervention would inappropriately interfere with further administrative action, and
3. the courts could benefit from further factual development of the issues presented.
Ohio Forestry Association v. Sierra Club cont’d

Ripeness

• Before any logging, Service must complete additional tasks
• Parts of plan that are immediately effective may be ripe for review
• Cases and controversies
• Bifurcation and piecemeal litigation

Udall v. Tallman,
380 U.S. 1 (1965), p. 308

Scope of Judicial Review

• Did the agency comply with statutory and regulatory procedures?
• Did the agency act within the bounds of its statutory authority?
• Did the agency properly implement its statutory authority or did it abuse its discretion by acting arbitrarily and capriciously?

Kenai National Moose Range


**Udall v. Tallman cont’d**

**Executive and Secretarial Withdrawals**

- Did order reopening a portion of the range reinstate pending applications?
- Deference
  - Expertise
  - Congressional acquiescence
  - Especially for regulations (as opposed to statutes)

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**Wilderness Society v. Morton,**  
(The TAPS case)  
479 F.2d 842 (1973), p. 311.

- Statutory right-of-way – 50 feet
- SLUPs – special land use permits to extend the right-of-way
  - Revocable at will
  - Gravel bed would be permanent

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Prudhoe Bay
The TAPS case cont’d

- Longstanding practice
  - directly contrary to statute
  - *Midwest Oil*
- Congressional acquiescence
- Competing policy values