

Theme or Title of Presentation

Judicial Review of Scientific Uncertainty in Climate Change Lawsuits: Deferential and Nondeferential Evaluation of Agency Factual and Policy Determinations

Presentation Abstract (300 words)

We conducted empirical research analyzing cases decided by the federal courts over a period of thirty years which presented issues involving scientific uncertainty tied to climate change that arose under two key environmental statutes, the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Our study provides both quantitative and qualitative analysis of those cases, focusing on ascertaining the factors that drove courts to apply either deferential or non-deferential review. We found, as might be expected, that the courts applied deferential review in the majority of climate change cases arising under these two laws presenting disputes in which litigants challenged agency resolution of factual or policy matters characterized by scientific uncertainty. In the remaining cases, however, the courts, applying the arbitrary and capricious standard of judicial review, refused to defer, engaging instead in relatively rigorous review of agency science. They did so for any one of several reasons, including irrationality in agency reasoning, incomplete analysis of record science, evidentiary shortcomings, and end result-oriented reasoning. These practices induced courts to reject rote acceptance of agency pleas for deference to their scientific expertise.