

**Administrative Procedure Act (APA)**  
**and the Administrative Record**



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**Sovereign Immunity**  
The King can do no wrong



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**Waivers of Sovereign Immunity**

- Administrative Procedure Act
- Federal Tort Claims Act
- Tucker Act



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Administrative Procedure Act

“A person suffering legal wrong ... or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”

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Relevant Statutes that Provide Basis for APA Suits

- FLPMA
- Mineral Leasing Act
- NEPA
- Wild Horse/Burro Act
- ESA
- Wilderness Act



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The Administrative Procedure Act

The reviewing court sets aside a BLM action found to be -

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

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The Administrative Procedure Act

The Statute of limitations under the APA is six years.



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Importance of the Administrative Record



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**CONNECTING THE DOTS**

Agency must “examine the relevant data and articulate a rational connection between the facts found and the decision made.”

– Tenth Circuit

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Importance of Administrative Records

“... the wisdom of [the BLM’s] actual decision is beyond the scope of the Court’s review.” - D. Colo.

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Importance of Administrative Records



**Deference**

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Importance of Administrative Records

“The record is silent regarding the source of BLM's determination ... We cannot defer to a void.”

- Tenth Circuit



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Importance of the Administrative Record

Courts consider whether the BLM:

- Acted within the scope of its legal authority
- Explained its decision
- Relied on facts that have some basis in the record
- Considered the relevant factors



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### Importance of Administrative Records

- Makes an impression on the Court
- DoJ and Court are your audience



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### The Administrative Record Rule



Courts review agency action based *only* on the information before the agency at the time of the decision.

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### Don't forget to Include

- Materials showing how agency addressed opposition
- Materials supporting or opposing the decision
- Memoranda for record
- Minutes of meetings



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### Who?

- An agency employee should be designated to compile the administrative record.
- That employee will be responsible for certifying the administrative record to the court.



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### Sample Index Headers

- Bates Number
- Folder Title
- Date of Doc.
- PDF Title
- Author
- Doc. Type
- Privilege Status

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### Privileged Documents

- Record index must identify privileged documents and materials.
- Show documents are being redacted/withheld and why.
- Keep track of withheld privileged documents.



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Sample Privileged Documents

- Attorney-Client Privilege
- Attorney Work Product
- Privacy Act
- Proprietary Information
- Indian Sacred Sites

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FOIA of the Project File v. Admin. Record

<b>FOIA of Project File</b>	<b>Administrative Record</b>
<ul style="list-style-type: none"><li>• Chilling effect on deliberative process is real.</li><li>• Retain deliberative process documents.</li></ul>	<ul style="list-style-type: none"><li>• No chilling effect when deliberation is complete.</li><li>• FOIA rules do not apply except for privileged documents.</li></ul>

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