Resolving Federal Farm Program Disputes: Recent Developments

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ARTICLES

RESOLVING FEDERAL FARM PROGRAM DISPUTES:
RECENT DEVELOPMENTS

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& SUSAN A. SCHNEIDER†

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I. INTRODUCTION

A. The Importance of Federal Farm Program Law

In recent years, the price and income support offered to producers through the federal farm programs has contributed significantly to the overall farm economy. Although the subsidization of farm income is controversial, its importance to the farm economy is reflected in the fact that approximately seventy-five percent or more of the nation's wheat, cotton, rice, and feed grain acreage has been enrolled in a federal farm program in each of the last several years.
Program enrollment remains high, notwithstanding the current fifteen percent reduction in the number of acres eligible to receive support payments. In past years when farm program enrollment was high, farm program payments often constituted a substantial portion of net farm income. For example, in 1987 when nationwide enrollment peaked above ninety percent for corn, rice, and cotton, and at eighty-eight percent for wheat, program payments to Indiana farmers accounted for seventy-four percent of their net farm income.  

B. The Lack of Attorney Involvement

Despite the importance of federal farm program payments to the agricultural sector in general, and to individual producers in particular, relatively few attorneys are asked to become involved in federal farm program matters. Even fewer attorneys agree to accept such a task. To some extent, attorneys have declined to handle federal farm program work because the monetary sum in dispute did not justify the expenditure in attorney’s fees. More commonly, however, attorneys have declined federal farm program work because of their lack of familiarity with it.

The reluctance of attorneys to become familiar with the law of federal farm programs has several consequences. First, it tends to discourage farmers from seeking the assistance of attorneys with farm program matters. Second, it tends to concentrate the work in the hands of a few attorneys, some of whom have developed specialized national federal farm program practices. The concentration of the practice tends to limit its availability. In particular, farmers with relatively small program payments at issue do not have access to legal advice regarding federal farm programs.  

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More significant, however, a lack of familiarity with federal farm program law can also affect an attorney's ability to serve farm clients in other areas. For example, estate planning, real estate transactions, including leases, and basic business organizational planning may result in actions being taken that affect the farm client's eligibility to receive all or a part of federal farm program payments. Examples of such instances are most commonly seen in the failure to coordinate estate, real estate, and business organizational planning with the federal farm program payment limitation rules.

Although these consequences have negative effects, they also suggest the presence of opportunities. First, recognizing farmers' general reluctance to use attorneys, an attorney with a basic familiarity of the law of federal farm programs could result in existing farm clients and potential farm clients having a greater "comfort level" with them. Second, the agricultural sector is an underserved legal market. Most attorneys who

6. The federal farm program payment limitation rules specifically address the eligibility of trusts and estates for program benefits. See 7 C.F.R. §§ 1497.102, 1497.103 (1992). Also, husbands and wives seeking to participate in the federal farm programs as separate "persons" must avoid estate planning arrangements that would disqualify either one of them under the payment limitation rules applicable to spouses. See 7 C.F.R. § 1497.104 (1992). See generally Christopher R. Kelley, Separate "Person" Determinations for Spouses under the 1990 Farm Bill, AGRIC. L. UPDATE, Mar. 1991, at 4.

7. See Christopher R. Kelley & Susan A. Schneider, Selected Issues of Federal Farm Program Payments in Bankruptcy, 14 J. AGRIC. TAX'N & L. 99 (1992) [hereinafter Kelley & Schneider, Selected Issues].

8. For example, the sale of all or part of a farm with a program base may present the need to "reconstitute" the farm for federal farm program purposes. See 7 C.F.R. § 719.1-719.14 (1992). In addition, lease arrangements may implicate the landlord's or the tenant's farm program eligibility under the payment limitations "cash rent tenants" rules, 7 C.F.R. § 1497.401 (1992), or under one of the several rules prohibiting unfair treatment of tenants. See, e.g., 7 C.F.R. §§ 1410.7, 1413.111 (1992).


serve it tend to confine their practice to areas that overlap the agricultural sector and the non-agricultural sector. Few attorneys have strategically positioned themselves to serve the uncrowded niche presented by the legal problems shared by the agricultural sector alone. Finally, familiarity with farm program requirements may enhance an attorney's ability to perform other basic services for farm clients such as estate planning, real estate transactions, and business organizational planning. For bankruptcy attorneys, it also may enhance the attorney's ability to assist the client in securing funding for the financing of plans or other debt resolution arrangements.

For those unfamiliar with the arcane world of federal farm program law, the task of becoming familiar with the program rules can appear to be daunting. Program requirements change frequently because of legislative and regulatory actions and because of shifts in the USDA's interpretations of the programs' rules. Even those who frequently handle farm program matters find that it is sometimes difficult to fathom program rules or to identify or obtain the needed resources to assist them in that endeavor.

This Article is divided into two major parts. Section II, immediately following this introduction, offers a basic starting point for those seeking to become familiar with federal farm program law. It offers a brief synopsis of the workings of several of the most important commodity programs, noting the significant primary sources for the law governing those programs and potentially helpful secondary materials. That synopsis is followed by several suggestions for avoiding federal farm program disputes.

Section III of the Article briefly reviews the Agricultural Stabilization and Conservation Service (ASCS) administrative appeal process. The review is followed by a discussion of

12. See generally Kelley & Schneider, Selected Issues, supra note 7.
13. Occasionally, the USDA seeks to rely on program rules without being able to establish the existence of the rule. Golightly v. Yeutter, 780 F. Supp. 672, 677-78 (D. Ariz. 1991) (rejecting the USDA's reliance on a "bright line rule" in the absence of any written interpretation establishing such a rule).
14. Because federal farm program law is largely a subspecies of federal administrative law, familiarity with federal administrative law is foundational. See BERNARD SCHWARTZ, ADMINISTRATIVE LAW (3d ed. 1991).
proposed legislation that would change the current administrative review process and a summary of some of the most significant recent judicial decisions involving federal farm programs. This section concludes with a discussion of common problems occurring in farm program litigation.

II. FEDERAL FARM PROGRAMS AND AVOIDING FEDERAL FARM PROGRAM DISPUTES

A. A Synopsis of the Major Federal Farm Programs

Federal farm programs are established or reauthorized by Congress, usually through legislation enacted every four to five years. The most recent five-year "farm bill" is the Food, Agriculture, Conservation, and Trade Act of 1990 (FACTA). The provisions of the 1990 farm bill govern the programs for the 1991-95 crop years. Additionally, several important farm program provisions for the 1991-95 crop years, including the reduction in acreage eligible for support, are found in the Omnibus Budget Reconciliation Act of 1990.

Congress has made the Secretary of Agriculture responsible for implementing the farm programs. In turn, the Secretary uses the Commodity Credit Corporation (CCC) as the fiscal agency for funding the programs and the personnel of the


16. See generally Congressional Budget Office, Farm Program Flexibility: An Analysis of the Triple Base Option (Dec. 1989) (explaining the policy considerations underlying the reduction in acreage eligible for support).


ASCS to administer them.18

Producer participation in the federal farm commodity programs is voluntary and it is incumbent upon each producer seeking to participate to know the program requirements. Most of the program statutes and program regulations are found in Title 7 of the United States Code and in Title 7 of the Code of Federal Regulations, respectively. There are, however, several statutes found outside Title 7.19 The ASCS’s county and state offices receive guidance on the implementation of the applicable statutes and regulations through an internal agency operating manual, the ASCS Handbook for State and County Offices (ASCS Handbook), issued by the ASCS Deputy Administrator for State and County Operations (DASCO).20

18. See Stegall v. United States, 19 Cl. Ct. 765, 768-69 n.2 (1990) (“In practice, the CCC handles funding of the subsidy programs, while state and county ASCS committees are responsible for day-to-day administration.”). See also infra note 60 (listing articles discussing the functions of the ASCS and the ASCS dispute resolution process).


20. The ASCS Handbook consists of approximately 170 separately titled, loose-leaf notebook volumes. Each volume is supplemented and modified through amendments and administrative notices with varying frequency. Some of the volumes change very often and, in some instances, multiple amendments to a volume may be issued nearly simultaneously. Because county and state ASCS personnel and committees are instructed to act in accordance with the directives contained in the various Handbook volumes, the Handbook should always be consulted.

Any volume of the Handbook may be inspected at any county or state ASCS office, and program participants may obtain a free copy of the volumes relating to the program in which he or she participates by writing or calling the Information Division, ASCS/USDA, P.O. Box 2415, Washington, D.C. 20013 (202-720-5875). Requests for Handbook volumes should specify the volume(s) desired. Frequent, periodic requests must be made in order to maintain a current version of any of the Handbook volumes.

1. Program Eligibility and Program Payment Limitations

Each program requires participants to meet certain initial and continuing eligibility criteria specific to the particular program. In addition, eligibility for most of the major domestic commodity programs is conditioned on the producer meeting the "person" and "actively engaged in farming" requirements of the program payment limitation rules.21 The program payment limitation rules also establish limits on the amount of program payments that a "person" may receive. Accordingly, the payment limitation rules are a particularly important aspect of federal farm program law.22

2. The Major Commodity Programs

For purposes of this Article, the major federal farm programs for agricultural commodities are divided according to their primary function: price support, income support, and


21. See 7 C.F.R. § 1497.1(a)(1992) (listing programs subject to the "person" and "actively engaged in farming" requirements); see also 7 C.F.R. § 1497.1(b)(1992) (listing programs subject only to the "person" requirement).

22. The statutory provisions for the current payment limitations are found at 7 U.S.C. §§ 1308-1-1308-5 (West 1988 & West Supp. 1992). The regulations are found at 7 C.F.R. § 1497 (1992), and the current ASCS Handbook volume on payment limitations is entitled "Payment Limitations" and is known by the short-reference of 1-PL (Rev. 1).

Explanations of the payment limitation rules can be found in Kelley & Malasky, Payment Limitations, supra note 9, and Looney & Beard, Farm Business Planning, supra note 9. Readers of both articles should be aware, however, that the ASCS renumbered the payment limitations regulations on April 18, 1991, after the preparation or publication of each article. 7 C.F.R. § 1497 (1992). In addition, the ASCS Handbook volume on payment limitations was revised subsequent to publication of the articles. See ASCS Handbook, Payment Limitations, I-PL (Rev. 1).

Because the payment limitation rules are extensive and complex, the potential for running afoul of one or more of the rules is significant, particularly if more than one individual or entity participates in the farming operation. Special attention should always be paid to the proscriptions regarding the source and type of contributions to the farming operation when more than one individual or entity participates in the farming operation. Those proscriptions are found in the definitions of "capital," land, and equipment in 7 C.F.R. § 1497.3 (1992).

Program participants should also be aware of the new "end-of-year" review procedures put into effect beginning with reviews of 1991 crop year compliance. In essence, those reviews are thorough examinations of whether the participants selected for review complied with their farm operating plan (Form CCC-502) for the crop year. The instructions and checklists for conducting the reviews are found at ASCS Handbook, Payment Limitations, I-PL (Rev. 1), § 3, ¶¶ 671-704 (Amend. 5).
conservation.  

a. Price Support: Nonrecourse Loans

Price support is primarily accomplished through nonrecourse loans for which participating producers pledge their crops as collateral. Crops eligible for nonrecourse loans include rice, feed grains, peanuts, oilseeds, upland cotton, and wheat. The loan period is normally nine months. While the commodity is under loan, the producer is responsible for maintaining the crop's grade, quantity, and quality if the commodity is stored on the farm. The producer has the

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23. Federal farm programs also have a "production adjustment" component which is implemented through acreage allotments, marketing quotas, cropland set-asides, acreage reductions, paid acreage diversions, farmer-owned reserves, and conservation reserves. See Geoffrey S. Becker, FUNDAMENTALS OF DOMESTIC COMMODITY PRICE SUPPORT PROGRAMS 15-23 (Cong. Res. Serv. No. 86-128 ENR, 1986).

24. The statutory provisions for nonrecourse loans are found beginning at 7 U.S.C. § 1421 (West 1988 & West Supp. 1992), with additional provisions found in the respective sections of Title 7 applicable to each supported crop. The regulations pertaining to price support for wheat, feed grains, rice, oilseeds, and farm-stored peanuts are found at 7 C.F.R. § 1421 (1992) and for cotton at 7 C.F.R. § 1427 (1992).

Most of the internal agency directives for administering the nonrecourse and other price support loan programs can be found in the following current revisions of ASCS Handbook volumes: Loans and Purchases, 1-LP; Loan and Purchase Programs for Barley, Corn, Oats, Rye, Sorghum, Soybeans, and Wheat, 2-LP Grain; Honey Loans and Purchases, 2-LP Honey; Peanut Loans and Purchases, 2-LP Peanuts; Rice Loans and Purchases, 2-LP Rice; Cotton Loans and Loan Deficiency Payments, 7-CN; and Acreage Compliance Determinations, 2-CP (containing instructions regarding fees for measurement services). Because the titles, short-reference designations, revision numbers, and contents of the Handbook volumes are subject to change, it is advisable to ascertain from the ASCS whether the volume and its contents are current when consulting a particular Handbook volume.

25. Price support is also accomplished through government purchases. See, e.g., 7 C.F.R. § 1421.21 (1992).

option of repaying the loan at the loan rate, a per bushel, pound, or hundredweight sum, or forfeiting the collateral. Receipt of the forfeited crop is the government's only recourse if the loan is not repaid. Because program participants can always receive the loan price no matter how low the market price falls, the nonrecourse loan program effectively establishes the minimum price for the commodity. Because the loan rate (or the market price) may be less than the sum that Congress has deemed to be a desirable return (target price), deficiency payments, which are discussed below, make up the difference.  

b. Income Support: Deficiency Payments

Deficiency payments are the primary means of providing income support to producers of certain commodities. They serve as an income "safety net" when market prices are low.

Deficiency payments are direct payments to participating producers of feed grains, wheat, rice, and upland cot-


35. 7 U.S.C. §§ 1441-2(c), 1444-2(c), 1444f(c), 1445b-3a(c) (Supp. III 1991)(the authority for deficiency payments for rice, upland cotton, feed grains, and wheat, respectively). See also, 7 C.F.R. pt. 1413 (1992) (deficiency payment program regulations).

The ASCS Handbook volumes applicable to the deficiency payment programs are the current versions of the following Handbooks: Feed Grain, Rice, Cotton, and Wheat Programs, 5-PA; Feed Grain, Rice, Cotton, and Wheat Program Payments, 7-PA; Acreage Compliance Determinations, 2-CP; Common Management and Operating Provisions, 1-CM; Common Farm and Program Provisions, 2-CM; Agricultural Conservation Program Development and General Provisions, 1-ACP; Agricultural Conservation Program Daily Operation and Automation Instructions, 2-ACP (Rev. 2); and Farm Reconstitutions, 2-CM. Because the titles, short-reference designations, revision numbers, and contents of the Handbook volumes are subject to change, it is advisable to ascertain from the ASCS whether the volume and its contents are current when consulting a particular Handbook volume.


37. 7 U.S.C. § 1444f(c) (Supp. III 1991). Feed grains include corn, grain sorghums, oats, and barley.


The payment rate is a per-commodity unit rate based on the difference between the target price and the averaged market price or the loan rate, whichever difference is less. To participate in the deficiency program, a producer may have to set-aside land, idling it from production. Under this set aside requirement, known as the acreage reduction program (ARP), the idled land must be put into conservation uses (CU), also known as the acreage conservation reserve (ACR).

Deficiency payments are not paid on the basis of actual production. Instead, they are based on the producer’s “base acres” minus the producer’s ACR acres. The resulting “permitted acres” are then multiplied by the program yield to determine program production. Program production is the quantity eligible for deficiency payments when the producer plants the maximum permitted acres.

Under the current payment acres and associated planting flexibility provisions of the deficiency program, the maximum acreage allowable for payment is now eighty-five percent of the crop acreage base established for the crop, minus acreage idled under the ARP. The net effect of the “nonpayment acres” is a fifteen percent reduction in potential deficiency payments.

c. Conservation

In addition to the ACR program, the Conservation Reserve Program (CRP), the Wetland Reserve Program (WRP), the highly erodible land (“sodbuster”), wetland protection (“swampbuster”), and conservation compliance requirements

41. See id.
also serve to promote the conservation goals of the federal farm programs. The CRP pays producers to take highly erodible and other qualifying land out of production, generally for ten years.\(^{50}\) The CRP, together with the WRP, is now referred to as "Environmental Conservation Acreage Reserve Program" (ECARP).\(^{51}\)

The WRP was created by the 1990 farm bill to enable the ASCS to purchase conservation easements on eligible wetlands.\(^{52}\) Under final rules published on June 4, 1992, the program began as a pilot program in nine states.\(^{53}\)

The sodbuster, swampbuster, and conservation compliance provisions applicable to federal farm program participants serve to penalize producers who plant crops on certain highly erodible land or wetlands, or producers who farm without an approved conservation plan.\(^{54}\) In implementing the conservation provisions, the ASCS shares responsibility with the Soil Conservation Service (SCS),\(^{55}\) which has published its internal guidelines in its *National Food Security Act Manual*.\(^{56}\)

d. Miscellaneous Matters

Other matters relevant to federal farm programs include the

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56. A free copy of the *National Food Security Act Manual* can be obtained by writing to Claudette Hayes, Soil Conservation Service, USDA, P.O. Box 2890, Washington D.C. 20013.
following: determination of acreage and compliance; determination of farms, allotments, normal crop acreage and preceding year planted acreage; computation of the expiration of time limitations; administrative appeals; administrative equitable relief for reasonable reliance upon ASCS "misaction or misinformation;" administrative equitable relief based on substantial compliance; Freedom of Information Act (FOIA) requests; debt settlement policies and procedures, including administrative offset; and assignment of payments.

B. Avoiding Federal Farm Program Disputes

The federal farm programs' complexity and changing requirements not only make it difficult for most producers to keep abreast of current program requirements, they also challenge the abilities of ASCS officials and committee members to be fully informed and to understand all of the various require-

62. See 7 U.S.C. §§ 1441-2(g) (rice), 1444-2(g) (upland cotton), 1444f(h) (feed grains), 1445b-3a(h) (wheat) (Supp. III 1991); 7 C.F.R. pt. 791 (1992); ASCS Handbook, Failure To Fully Comply, 4-CP.
64. 7 C.F.R. pt. 1403 (1992); ASCS Handbook, CCC Program Claims, 55-FI, Managing CCC and ASCS Claims, 58-FI SCOAP, & Management of ASCS Claims, 59-FI. See also Kelley & Schneider, Selected Issues, supra note 7.
ments. Additionally, despite the best of intentions, ASCS employees share the human shortcomings of losing or misplacing files and other paperwork, failing to follow instructions, and making other errors or omissions that can have serious consequences for a program participant. A few ASCS employees occasionally let bias, jealousy, and other improper motives interfere with the performance of their work. Therefore, program participants should deal with the ASCS in the manner most likely to protect their interests.

Producers desiring to participate in federal farm programs bear the burden of establishing their initial and continuing eligibility for program payments. Even if a mistake is clearly the ASCS's, the burden of correcting it will be borne by the producer.

Attorneys who represent program participants should consider advising their farm clients to adopt the following practices to ensure that producers may more easily carry the burden of establishing their eligibility for program benefits:

1. Make and keep a copy of each and every form or other document submitted or signed in connection with participation in a federal farm program.

Farming is difficult enough without the loss of program benefits because the county ASCS office lost or misplaced paperwork showing that a producer has timely and properly applied for the program. Nevertheless, benefits have been denied because of lost or misplaced paperwork. Ultimately, the producer will lose unless the producer can prove, with duplicate copies and persuasive testimony, that the appropriate forms were submitted timely.

Accordingly, program applicants and participants should always make and keep a copy of each and every form or other document submitted or signed in connection with participation in a program. Ideally, the copies should show that the original was received on a certain date by the county office. This can be done by requesting that the county office note on the copies the date on which the originals were received or processed and the name or initials of the person processing the documents. Likewise the use of return-receipt mail would ensure the same protection.
2. **Keep all records necessary to prove compliance with program requirements, including compliance with each year's farm operating plan (Form CCC-502), for at least six years.**

The statute of limitations for civil claims against program participants brought by the CCC is six years. Thus, the government generally has a six-year period within which to seek to recover improperly made payments.

Maintaining all records necessary to prove compliance with program requirements for at least six years is a good practice. The records should include all documentation needed to show full compliance with each annual farm operating plan, including records supporting the statements made on CCC Form 502 or one of that form's variants. Documents relating to such matters as the required annual crop reports and compliance with the conservation requirements should also be maintained.

3. **Program participants should carefully read all forms and contracts associated with the programs in which they participate.**

Federal farm program contracts are legally binding agreements. Program participants face full or partial loss of program benefits and, in some cases, the imposition of financial penalties, if the program requirements are not satisfied. In most situations, county and state ASCS personnel and county and state committees do not have the authority to waive pro-

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67. However, the 1990 farm bill makes certain ASCS determinations final after 90 days:

Decisions of the State and county committees . . . or employees of such committees made in good faith in the absence of misrepresentation, false statement, fraud, or wilful misconduct, unless otherwise appealed under this section, shall be final, unless otherwise modified under subsection (f) of this section within 90 days, and no action shall be taken to recover amounts found to have been disbursed thereon in error unless the producer had reason to believe that the decision was erroneous.


*See also 7 C.F.R. § 780.17(c), (d) (1992).* This “90-day finality provision” may give program participants substantially greater protection against requests for repayment of allegedly improperly paid program benefits than existed prior to the 1990 farm bill’s enactment. Nevertheless, the ASCS will likely be quick to assert that the producer obtained the improperly paid payments based on false statements, and, in any case, because the provision is new, the extent of the protection provided by it has yet to be judicially determined.
gram requirements. Hence, a producer who acts inconsistently with the terms of the program contract or the underlying regulations does so at his or her peril, even if the action was taken with the permission of a county or state ASCS official.

In some program contracts, the most significant program requirements are explicitly stated in the contract. Frequently, however, the requirements are incorporated by reference to the applicable regulations. Therefore, to be fully informed of the program requirements, the producer must read the contract, the regulations, and the interpretations of those regulations contained in the ASCS Handbook. To the extent possible or practical, those materials should be consulted before the producer enrolls in the program or undertakes actions while enrolled in the program that may affect his program eligibility.

III. ASCS Administrative Appeals and Recent Federal Farm Program Litigation

As previously discussed, the federal farm price and income support programs are an important component of federal farm policy, and their contribution to the agricultural economy is substantial. Although the long-term prospects for continued federal involvement in price and income support are uncertain, attorneys should not overlook the immediate importance of federal farm program law to their farm clients. Understanding the federal farm program dispute resolution process is an important aspect of providing legal services to federal farm program participants.

A. The ASCS Administrative Appeal Process

ASCS administration of the federal farm programs is decentralized. Most decisions are made at the local level by the ASC committee in the county where the affected farm is located. The activities of the county committees in each state are supervised by a state ASC committee. At the national level, the ASCS Deputy Administrator for State and County Operations

68. See, e.g., 7 C.F.R. §§ 1413.2(b), 1421.2(b), 1497.2(b) (1992).
(DASCO) oversees the county and state committees.\textsuperscript{72}

Prior to the enactment of the producer appeal provisions of the 1990 farm bill,\textsuperscript{73} an appeal of an adverse decision by the county committee went from the county committee to the state committee and then to DASCO, with DASCO making the final decision.\textsuperscript{74} The 1990 farm bill changed the appeal process by substituting the Director of the ASCS National Appeals Division (NAD) for DASCO as the final administrative appeal authority in the appeal process.\textsuperscript{75} Regulations implementing the revised appeals process were issued as interim final rules on November 25, 1991.\textsuperscript{76} Proposed changes to those rules were published on September 23, 1992.\textsuperscript{77}

1. Review by the County Committee

Participating producers generally receive most of their initial program decisions from the local county committee. However, on occasion, DASCO either makes initial determinations or instructs the county or state to make a certain initial determination. If the producer receives an appealable adverse decision from the county committee, the producer can, within fifteen days of the mailing of the adverse determination, request that the county committee reconsider its decision.\textsuperscript{78} The request for reconsideration must be in writing, and it must be signed by the producer or an authorized representative.\textsuperscript{79} The request must be accompanied by, or later supplemented with, a supporting written statement setting forth the facts.\textsuperscript{80} The producer can request an informal hearing to present relevant evidence to the county committee or request that the decision be made on the basis of a written statement.\textsuperscript{81} The producer is also entitled to request that a stenographic reporter transcribe the hearing at the producer's expense.\textsuperscript{82} The committee will

\begin{itemize}
  \item \textsuperscript{72} See Kelley & Harbison, \textit{A Guide}, supra note 20, at 27.
  \item \textsuperscript{73} 7 U.S.C. § 1433e (Supp. III 1991).
  \item \textsuperscript{74} 7 C.F.R. § 780.9 (1992).
  \item \textsuperscript{75} 7 U.S.C. § 1433e (Supp. III 1991).
  \item \textsuperscript{77} 57 Fed. Reg. 43,937 (proposed Sept. 23, 1992).
  \item \textsuperscript{78} 7 C.F.R. § 780.15(a) (1992).
  \item \textsuperscript{79} 7 C.F.R. § 780.16 (1992).
  \item \textsuperscript{80} \textit{Id}.
  \item \textsuperscript{81} 7 C.F.R. §§ 780.7(a), 780.16 (1992).
  \item \textsuperscript{82} 7 C.F.R. § 780.9(e) (1992).
\end{itemize}
then review its initial determination and issue its decision.\textsuperscript{83}

2. \textit{Review by the State Committee}

If, after reconsideration, the county committee affirms its adverse decision, the producer can appeal to the state committee.\textsuperscript{84} Again, there is a time limit of fifteen days within which this appeal must be filed.\textsuperscript{85} An informal hearing can be requested.\textsuperscript{86} Because of the informal nature of the hearings, however, witnesses are not sworn and the formal rules of evidence do not apply.\textsuperscript{87} The producer can request that the proceedings be transcribed at his or her expense.\textsuperscript{88}

3. \textit{Review by the National Appeals Division}

Adverse decisions by the state committee are appealed to the Director of the National Appeals Division (NAD).\textsuperscript{89} The fifteen day time period within which to appeal is also applicable at this level.\textsuperscript{90} The Director of NAD makes a decision based on a record developed and certified by a hearing examiner employed by NAD.\textsuperscript{91}

Although technically categorized as informal, the procedure for hearings before NAD is more formal than the lower proceedings. The director has the authority to issue subpoenas and to take testimony under oath.\textsuperscript{92} The hearing is held in Washington, D.C., although the producer has the option of presenting his or her case by telephone.\textsuperscript{93} The NAD determination technically constitutes the final level in the appeal process, although the Secretary of Agriculture, the Administrator of ASCS, the Executive Vice President of CCC or a designee has the authority to reverse or modify any determination of the

\textsuperscript{83} 7 C.F.R. § 780.17(a) (1992).
\textsuperscript{84} 7 C.F.R. § 780.7(b) (1992).
\textsuperscript{85} 7 C.F.R. § 780.15(a) (1992).
\textsuperscript{86} 7 C.F.R. § 780.7(b) (1992).
\textsuperscript{87} 7 C.F.R. § 780.9(g) (1992).
\textsuperscript{88} 7 C.F.R. § 780.9(e) (1992).
\textsuperscript{89} 7 C.F.R. § 780.8 (1992).
\textsuperscript{90} 7 C.F.R. § 780.15(a) (1992).
\textsuperscript{91} 7 C.F.R. § 780.19(6), (7) (1992).
\textsuperscript{92} 7 C.F.R. § 780.19(a)(4) (1992).
\textsuperscript{93} Recently, the USDA developed a statement entitled \textit{Administrative Procedures for National Appeals Division Hearings}. This statement explains the procedures to be followed in NAD appeal hearings and is now being incorporated in letters from NAD to producers who have filed appeals with NAD from adverse state committee or DASCO determinations.
RESOLVING FEDERAL FARM PROGRAM DISPUTES

Director of the National Appeals Division. While the ASCS administrative appeal process is conceptually simple, pitfalls are numerous. Two of the principal problems involve the de novo nature of the appeal process at each stage and the collaboration among the county, state, and national offices.

Review at each succeeding level in the administrative review process is de novo — the reviewing body looks at the case anew, as if no previous decision has been made. While under some circumstances this may be beneficial to the producer, it presents some serious perils because it allows the reviewing body to affirm an adverse determination on alternative, previously unrevealed grounds. Consequently, there will be some uncertainty over the issues that will arise during the review.

Another problem that may confront the producer seeking review of an adverse decision is the involvement of the higher tiers in the initial determination. In many cases, particularly in those that present novel issues, a county committee will seek the advice of the state committee prior to making its initial determination. The state, in turn, may seek direction from DASCO. While this procedure may be beneficial to the overall administration of the programs, it undercuts the objectivity of the appeal process.

Consider, for example, the recent case of Doty v. United States. In determining whether to fine Mr. Doty for alleged violations of the Dairy Termination Program (DTP), the county committee requested that the state ASCS office review the file and make a recommendation or determination. The state ASCS executive director, in turn, contacted DASCO for guidance. The state executive director then told the county committee how the case should be resolved. In order to exhaust his administrative appeal rights, Mr. Doty then had to seek reconsideration by the county committee, appeal the decision to the state committee, and finally appeal to DASCO.

94. 7 C.F.R. § 780.23 (1992).
95. 7 C.F.R. § 780.17(a) (1992).
97. Id. at 620.
98. Id.
99. Id.
100. Id. at 622-23.
Not surprisingly, throughout the appeal the same determination was made. 101 In the end, on judicial review, the Claims Court held that DASCO abused its discretion in failing to call a material witness requested by Mr. Doty. 102

While the new appeals system arguably provides a more objective final level of review, the regulations expressly provide that the Secretary, the ASCS Administrator, the Executive Vice President of CCC, or a designee, such as DASCO, can overturn NAD decisions. 103 This authority, even if not exercised, combined with the inclusion of NAD within the ASCS, leaves serious questions concerning the objectivity of the appeal process.

B. Proposed Changes To The ASCS Appeal Process

On July 31, 1992, Senators Conrad, Heflin, Daschle, Harkin, Bumpers, Kerrey (Neb.) and Wellstone, and Representatives Espy, Glickman, Johnson (S.D.) and Dooley introduced the USDA National Appeals Division Act of 1992. 104 If enacted, the legislation will create an independent administrative appeals division within the USDA, known as the National Appeals Division (USDA NAD). 105 The Director of USDA NAD will make the USDA's final administrative decision on producer appeals of ASCS, replacing the current NAD. 106 In addition, the new USDA NAD would hear appeals from CCC, FmHA, Rural Development Administration (RDA), and SCS determinations. 107

Currently, the ASCS, CCC, FmHA, RDA, and SCS have different administrative appeal systems, none of which are independent of the agency. 108 The new legislation consolidates the appeal systems for those agencies into one system at the final level of the administrative appeal process. 109 The final level in each agency's administrative appeal process will be

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101. Doty, 24 Cl. Ct. at 622-23.
102. Id. at 629-32.
105. Id.
106. Id.
107. Id.
before the USDA NAD.\textsuperscript{110} The legislation, however, does not alter the current appeal authority of ASCS county and state committees. Moreover, it does not alter the authority of the Secretary of Agriculture or the Administrator of ASCS or his designee from granting equitable relief to the producer.

Addressing the criticism that the present system does not provide objective review, the proposed legislation provides that the Director of the USDA NAD "shall be free from the direction and control of . . . any person other than the Secretary [of Agriculture]."\textsuperscript{111} It also provides that determinations of USDA NAD "shall be administratively final, conclusive, and binding on the relevant agency."\textsuperscript{112} Thus, under the proposed legislation, the final administrative appeal authority will be independent of the agency involved.\textsuperscript{113}

In addition, the proposed legislation provides that final decisions of the USDA NAD will be judicially reviewable under the APA.\textsuperscript{114} In essence, this means that the federal courts will be directed to set aside any decisions that are arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.\textsuperscript{115} The proposed legislation also repeals 7 U.S.C. sections 1385 and 1429.\textsuperscript{116} The 102d Congress did not report the legislation out of committee, however, and it remains to be seen whether the legislation or any variation of it will be enacted in the 103rd Congress.

C. Recent Cases Involving Judicial Review of ASCS Decisions

If a producer has exhausted his or her administrative remedies, or if one of the exceptions to the exhaustion of remedies doctrine applies, most ASCS decisions may be judicially reviewed.\textsuperscript{117} This section presents a brief summary of some of the most significant judicial decisions involving federal farm programs issued during the last year. These cases illustrate

\begin{itemize}
\item \textsuperscript{110} Id.
\item \textsuperscript{111} S. 3119, 102d Cong., 1st Sess. § 3(b)(3) (1992).
\item \textsuperscript{112} Id. § 7(h)(1).
\item \textsuperscript{113} Id.
\item \textsuperscript{114} Id. § 9 (referencing the Administrative Procedure Act, 5 U.S.C. §§ 701-706).
\item \textsuperscript{116} S. 3119, 102d Cong., 1st Sess. § 16 (1992).
\item \textsuperscript{117} See generally Kelley & Harbison, \textit{A Guide}, supra note 20, at 436-39, 470-72 (discussing the exhaustion of remedies requirement and issues of reviewability).
\end{itemize}
some of the complex issues brought before the court in ASCS judicial review actions.

1. Federal Court of Appeals Decisions

a. DCP Farms v. Yeutter

In *DCP Farms v. Yeutter*, the Fifth Circuit held that the district court erred when it enjoined the national level of the USDA, including DASCO, from participating in any determinations or administrative appeals concerning the plaintiffs’ farm program eligibility. The district court enjoined DASCO’s participation on the grounds that DASCO’s initial determination of the plaintiffs’ ineligibility for program payments was “impermissibly influenced” by Congressional interference and that DASCO’s participation in the administrative review of that determination would violate the plaintiffs’ due process rights.

The district court found that it was “abundantly clear” that Representative Jerry Huckaby, Chairman of the House Committee on Agriculture’s Subcommittee on Cotton, Rice, and Sugar, and his staff had used their influence in an effort to have DASCO “adopt the conclusion” that the plaintiffs had adopted a scheme or device to evade the farm program payment limitations rules. Specifically, the court noted that Representative Huckaby had written the Secretary of Agriculture to advise him that, “I feel strongly that the [plaintiffs’] operation violates both the spirit and letter of the law,” and, “[i]f the Department is unable to correct this situation, it is my intention to enact legislation making all trusts and estates ineligible for payments, beginning retroactively with the 1989 crop year.”

In reversing the decision, the Fifth Circuit held that the district court had erred in using the “mere appearance of bias” standard adopted in *Pillsbury Co. v. FTC*. The Fifth Circuit ruled that the *Pillsbury* standard did not apply to claims of improper congressional interference with an administrative de-

120. *DCP Farms*, 957 F.2d at 1189.
122. *Id.* at 1273-74.
123. *Id.* at 1271, 1273-74.
124. *Id.* at 1271.
125. 354 F.2d 952, 964 (5th Cir. 1966).
termination of eligibility for farm subsidies, so long as the
determination is neither quasi-judicial nor judicial.126 Instead,
"the proper standard for evaluating congressional interference
with non-judicial decisions of administrative agencies is
whether the communication actually influenced the agency’s
decision” by causing the administrator to consider extraneous
factors in reaching his decision.127

The Fifth Circuit also ruled that the district court’s reliance
on the Pillsbury standard was inappropriate because the con-
gressional contact at issue “occurred well before any proceed-
ing which could be considered judicial or quasi-judicial.”128
Specifically, the court concluded that “[t]his case would not
have reached the stage when it could fairly be called adjudica-
tive or quasi-judicial until the hearing [on the plaintiffs’ re-
quest for reconsideration],” a hearing which was never held
because the plaintiffs sought judicial relief before the sched-
uled hearing when they were unsuccessful in recusing the
USDA’s national office.129

In applying the “intrusion of extraneous factors into the
consideration” standard, the Fifth Circuit’s characterization of
Representative Huckaby’s motivations sharply diverged from
the district court’s. For example, while the district court found
that Representative Huckaby’s actions were “an effort to dic-
tate the outcome” of the plaintiffs’ application for program
payments,130 the Fifth Circuit concluded “[t]hat a congressman
expresses the view that the law ought not sanction the use of
fifty-one irrevocable trusts to gain $1.4 million in subsidies is
not impermissible political ‘pressure.’ It certainly injects no
extraneous factor.”131

In the Fifth Circuit’s view, “Congressman Huckaby was con-
cerned about the administration of a congressionally created
program,” and “[t]he dispute between the USDA and DCP
Farms was part of a larger policy debate.”132 From that per-
spective, the Fifth Circuit reasoned “that the force of logic and

126. DCP Farms, 957 F.2d at 1187-88.
127. Id. at 1188, (citing Peter Kiewit Sons’ Co. v. U.S. Army Corps of Engineers,
714 F.2d 163, 170 (D.C. Cir. 1983)).
128. Id. at 1187.
129. Id.
130. DCP Farms, 761 F. Supp. at 1274.
131. DCP Farms, 957 F.2d at 1188.
132. Id. at 1187.
ideas is not our concern. They carry their own force and exert their own pressure. In this practical sense they are not extraneous." The Fifth Circuit also held that the plaintiffs were not excused from exhausting their administrative remedies because they had neither challenged the lawfulness or constitutionality of the administrative process nor had they produced evidence sufficient to support a finding of futility. Finding that the USDA was justified in summarily rejecting the plaintiffs' "unreasonably broad" request for the recusal of the national level of the USDA, the court concluded that the USDA's denial of the request "does not convince us that the USDA would have unreasonably refused a request for a different hearing officer had DCP Farms made such a request," and "evidence that [the] hearing officer [appointed to review the determinations had] read a letter involving this case is weak evidence that pursuing administrative appeals would have been futile." characterizing the relief granted by the district court as "exceptional," the Fifth Circuit Court of Appeals stated "[t]he appropriate forum for resolving this dispute is an appeal from a final USDA decision." It ordered the dismissal of the district court action.

b. National Wildlife Fed'n v. ASCS

National Wildlife Fed'n v. ASCS involved a challenge to ASCS's authority to issue a "good faith exemption" from the "swampbuster" provisions of the Food Security Act. The challenge was brought by an environmental organization, the National Wildlife Federation (NWF), that had submitted affidavits from members who resided in the wetlands area at issue and who enjoyed the recreational use and the aesthetic beauty of the wetlands. The court held that the NWF had proper standing to pursue its challenge.

133. Id. at 1188.
134. Id. at 1188-89.
135. Id. at 1189.
137. 955 F.2d 1199 (8th Cir. 1992).
138. Id.
139. Id. at 1203.
On the issue of the good faith exemption, the court determined that although the lawsuit challenged the authority for the exemption at the time it was initially granted, since that time, Congress has specifically enacted a retroactive provision authorizing such an exemption.141 Accordingly, the court remanded the case to the district court for reconsideration as to whether the exemption fell within the guidelines contained in the new provision.142

c. Doko Farms v. United States

_Doko Farms v. United States_143 represents another chapter in a continuing, twelve year struggle between several Texas farmers and the USDA.144 The primary issue in the case was whether an earlier finding that the government’s claim was barred by the statute of limitations precluded the government from exercising administrative offset.145 The court held that the bar imposed by the statute of limitations only prevents a suit for money damages.146 The bar does not extinguish the debt, and it does not prevent recovering overpayments by administratively offsetting future payments.147

2. Federal District Court Decisions

a. Hanson v. Madigan

_In Hanson v. Madigan_,148 the district court reversed the ASCS denial of disaster payments to Christian and Evan Hanson.149 At issue was the ASCS interpretation of the eligibility criteria under the Disaster Assistance Act of 1988.150

The Act imposed a $100,000 limitation on the amount of

ASCs, 901 F.2d 673, 675-77 (8th Cir. 1990) (quoting Coalition for the Env’t v. Volpe, 504 F.2d 156, 167 (8th Cir. 1974))).
142. Id. at 1206.
143. 956 F.2d 1136 (Fed. Cir. 1992).
144. Id.
145. Id. at 1137-38.
146. Id. at 1141.
147. Id.
149. Id. at 405.
disaster benefits that any "person" could receive and directed the Secretary of Agriculture to define "person" for this purpose. The Act also set forth eligibility requirements, limiting benefits to producers whose "qualifying gross revenues" do not exceed $2,000,000 annually. The Act further provided that for purposes of computing "qualifying gross revenues," if a majority of the producer's annual income for the previous year was received from farming, only the gross revenues from farming were to be included. If, on the other hand, less than a majority of the producer's income was received from farming, the producer's gross revenues were computed from all sources of revenue. According to the court, the regulations promulgated by the Secretary mirrored this method of computation.

Applying the statute and the regulations to the Hanson's application for assistance, ASCS determined that less than a majority of the Hanson's income from the previous year was derived from farming. Therefore, computation of their "qualifying gross revenue" was to include all of their income, from both farming and nonfarming sources. ASCS went a step further, however, and included not only the personal gross revenues of the Hansons, but also included the gross revenues of the corporations controlled by the Hansons. ASCS based this analysis on the definition of "person," finding that, for payment limitation purposes, the corporation and each of the Hanson individuals could not qualify as "separate persons."

The court rejected the ASCS's interpretation as inconsistent with the provisions of the Act and the regulations. In response to the argument that the agency's interpretation should be given deference, the court noted that "deference is due only when the . . . interpretation is based on a permissible con-

151. Id. at 407 (citing The Act at § 211(a),(d)).
152. Hanson v. Madigan, 788 F. Supp. 403, 407 (citing The Act at § 231(a)).
153. Id. (citing The Act at § 231(b)(1)).
154. Id. at 407 (citing The Act at § 231(b)(2)).
155. Id. at 408-09 (citing 7 C.F.R. § 1477.3(g)(1989)).
156. Id. at 406.
158. Id. at 405.
159. Id. at 408-09.
160. Id. at 409.
struction of the . . . statute.” The court held that the Secretary’s combination of the Hansons and the corporation as one “person” was “not supported by the directives of the Act.”

The Hanson court also noted that ASCS’s denial of the Hanson’s benefits was “so lacking in explanation as to be arbitrary on its face and unreviewable,” criticizing the lack of basis for the findings in the record. In addition, the court flatly rejected the argument that it was constitutionally prohibited from ordering the government to make payment, stating that “it hardly merits discussion.” The court granted the Hanson’s motion for summary judgment and ordered the government to make the requested disaster payments.

The Hanson case is presently on appeal to the Seventh Circuit.

b. Vandervelde v. Yeutter

Vandervelde v. Yeutter concerned the DTP under which farmers contracted with the government, agreeing to dispose of their dairy herds and stop milk production in exchange for payments. The ASCS county committee had determined that the plaintiffs had breached their duties under the DTP contract. This determination was based primarily on an investigative report prepared by an agent of the Inspector General’s Office at the USDA. On appeal, both the state committee and DASCO affirmed the findings of the investigative report. At no time, however, was the agent who prepared the report called to testify. The Vanderveldes did not have an opportunity to cross examine the agent or to depose other witnesses identified in the report. The final DASCO

163. Id. at 409-10.
164. Id. at 410.
165. Id.
166. Appeal docketed, No. 92-1918 (7th Cir. Apr. 20, 1992).
170. Vandervelde, 774 F.Supp. at 646.
171. Id. at 647.
172. Id.
173. Id.
decision failed to include any findings of fact.\textsuperscript{175}

On review of the administrative record, the district court found that the “administrative hearings were not conducted in the manner deemed most likely to obtain the facts.”\textsuperscript{176} The court noted that the record was “replete with hearsay” and “plausible allegations of intimidation” of potential witnesses, with interference alleged by both sides.\textsuperscript{177} For these reasons, the court vacated the final DASCO determination and remanded the case back to DASCO for another hearing.\textsuperscript{178} The court further held that the new decision would be appealable to the newly formed National Appeals Division, where subpoena power would clearly allow the examination under oath of all witnesses.\textsuperscript{179}

c. Peterson Farms I v. Madigan

At issue in \textit{Peterson Farms I v. Madigan},\textsuperscript{180} a payment limitations case, was the jurisdiction of the district court.\textsuperscript{181} The plaintiffs, four farming partnerships, sought judicial review of the final ASCS administrative determination in district court.\textsuperscript{182} The partnerships requested a declaratory judgment for an entitlement to funds owed them.\textsuperscript{183} The government challenged the court’s jurisdiction, arguing that the United States Claims Court had exclusive jurisdiction over their claims.\textsuperscript{184} The court analyzed the distinctions between “money damages” and “monetary relief.”\textsuperscript{185} Even though the plaintiffs admitted that they did not seek another administrative hearing, did not expressly seek future benefits, and did not disavow “an interest in a sum certain”, the court held that the plaintiffs sought monetary relief, not money damages.\textsuperscript{186} Accordingly, the court held that while awards of money damages

\textsuperscript{175} Vandervelde v. Yeutter, 774 F. Supp. 645, 647 (D.D.C. 1991)).
\textsuperscript{176} Vandervelde, 789 F. Supp. at 25.
\textsuperscript{177} Id. at 25-26.
\textsuperscript{178} Id. at 27.
\textsuperscript{179} Id. at 26-27.
\textsuperscript{181} Id. at 3-4.
\textsuperscript{182} Id. at 1-2.
\textsuperscript{183} Id. at 2.
\textsuperscript{184} Id. at 3.
\textsuperscript{186} Id. at 3-4.
over $10,000 against the government must be litigated before the claims court, claims for monetary relief are within the jurisdiction of the district court.\textsuperscript{187} The \textit{Peterson} case, however, was recently dismissed by the district court on the government’s subsequent motion for summary judgment.\textsuperscript{188}

d. United States v. Goode

The defendant in \textit{United States v. Goode},\textsuperscript{189} Paul Goode, participated in the Milk Diversion Program.\textsuperscript{190} The government alleged that Mr. Goode violated the terms of the program by including certain cows in his base of production and then transferring those cows to another farm.\textsuperscript{191} Because of this alleged violation, ASCS determined that Mr. Goode was no longer eligible for continued participation in the program and that he must repay the moneys paid to him.\textsuperscript{192} The government sued to recover those payments already made.\textsuperscript{193} Mr. Goode denied any violation of the contract and specifically denied that the transferred cows were his or that they were ever part of his base for calculating production under the program.\textsuperscript{194} Additionally, Mr. Goode alleged that he relied on erroneous advice received from ASCS.\textsuperscript{195} Accordingly, he counterclaimed, seeking review of the final ASCS determination rendered by DASCO.\textsuperscript{196}

On the government’s motion for summary judgment, the court held that the government had “wholly failed to show” that the cows were included in Mr. Goode’s base, and the motion was summarily denied.\textsuperscript{197} On the issue of Mr. Goode’s counterclaims, the court rejected the government’s argument that the claims court had exclusive jurisdiction, concluding that because Mr. Goode asked the court to construe the program contract and assess his compliance therewith, the federal

\begin{itemize}
\item \textsuperscript{187} \textit{Id.} at 4.
\item \textsuperscript{188} Peterson Farms I v. Madigan, No. 91-2340(JHG), 1992 WL 118370 at 1 (D.D.C. May 20, 1992).
\item \textsuperscript{189} 781 F. Supp. 704 (D. Kan. 1991).
\item \textsuperscript{190} 7 U.S.C. § 1446(d) (1988).
\item \textsuperscript{191} \textit{Goode}, 781 F. Supp. at 705.
\item \textsuperscript{192} \textit{Id.}
\item \textsuperscript{193} \textit{Id.}
\item \textsuperscript{194} \textit{Id.}
\item \textsuperscript{195} \textit{Id.} at 707.
\item \textsuperscript{197} \textit{Id.} at 708.
\end{itemize}
district court had proper jurisdiction.\textsuperscript{198} The court, however, denied Mr. Goode's final claim of estoppel against the government.\textsuperscript{199} The court found that Mr. Goode had apparently based his argument on the ASCS rule which provides that otherwise unacceptable "performance rendered in good faith in reliance upon action or advice" of an ASCS representative may be permitted.\textsuperscript{200} The court construed Mr. Goode's sole reliance on this regulation as a "concession of the general rule precluding estoppel against the government . . . ."\textsuperscript{201} On this basis, the court granted the government's motion for summary judgment, but allowed Mr. Goode to seek review of the agency's exercise of its discretionary authority under the ASCS rule.\textsuperscript{202}

e. Golightly v. Yeutter

In Golightly v. Yeutter,\textsuperscript{203} the district court granted summary judgment in favor of three cotton producers, who had been combined as one "person" for 1987 and 1988 payment limitation purposes by DASCO.\textsuperscript{204} The court found the agency's actions arbitrary, capricious, and an abuse of discretion and entered a declaratory judgment entitling each producer to be treated as a separate "person" for the years at issue.\textsuperscript{205} DASCO found that one of the plaintiffs, Regis Land Corporation, a cotton gin, violated certain financing prohibitions by lending money to cotton producers and thus was not considered a separate person for payment limitation purposes.\textsuperscript{206} The plaintiffs countered that Regis' activities fell within an exemption for "[l]nstitutions established to provide commercial credit to individuals or entities."\textsuperscript{207} The government, in turn, argued that there was a "bright line rule" that limited this exemption to "lenders in the business of banking," and that Re-

\textsuperscript{198} Id. at 708-10.  
\textsuperscript{199} Id. at 710-11.  
\textsuperscript{200} Goode, 781 F. Supp. at 710 (citing 7 C.F.R. § 790.2).  
\textsuperscript{201} Id.  
\textsuperscript{202} Id. at 710 (citing 7 C.F.R. § 790.2).  
\textsuperscript{204} Id. at 679. "Person" determinations in 1987 and 1988 were governed by the payment limitation rules found at 7 C.F.R. pt. 795 (1987).  
\textsuperscript{205} Id. at 679.  
\textsuperscript{206} Id. at 678.  
\textsuperscript{207} Id. at 677 (citing ASCS Handbook 5-CM (Rev. 1)).
gis did not qualify as such a lender. The court, however, noted that the government was unable to cite to any written interpretation, even unpublished, to support the existence of the "bright line rule." Thus, the court found the "rule" to be "no more than a post-hoc rationalization of DASCO's application of the financing prohibition... rather than an official agency rule or guideline." On this basis, the court found that DASCO's refusal to apply the exception for financing institutions to Regis was arbitrary and capricious.

The Golightly court also rejected the government's argument that the producer financing was really provided by Regis' shareholders, who also had an interest in the land as landlords. The court stated that "absent an action to pierce the corporate veil, the corporate form... must be honored." The court noted that "DASCO appears to have misunderstood or ignored" certain facts concerning the relationships of the parties to each other and to the corporation.

Finally, the court concluded that DASCO abused its discretion in granting full relief to other similarly situated producers under the equitable relief provisions while denying relief to one of the plaintiffs, the Tiffany Farms partnership. The court rejected the government's argument that DASCO's exercise of discretion in granting or denying equitable relief is beyond judicial review. The court held that "where an agency discriminates among similarly situated producers under these provisions, the agency's discretion is circumscribed by the requirement that some reasonable basis be shown for such discrimination." In the present case, the court could find no such reasonable basis and, accordingly, held that DASCO had abused its discretion. The court granted the plaintiffs' motion for summary judgment and ordered that the plaintiffs be

209. Id.
210. Id.
211. Id. at 679.
212. Id. at 678.
214. Id.
215. Id. at 678-79 (referring to 7 C.F.R. §§ 790.2, 791.2).
216. Id. at 678-79.
217. Id. at 679, (citing Hilo Coast Processing Co. v. United States, 816 F.2d 629, 684 (Fed. Cir. 1987).
treated as three separate persons for purposes of payment limitations for the 1987 and 1988 crop years.\textsuperscript{219}

3. United States Claims Court Decisions
   a. Simons v. United States

   At issue in \textit{Simons v. United States}\textsuperscript{220} was a farmer’s objection to an ASCS determination that he was not entitled to payments under the DTP because he violated certain branding requirements.\textsuperscript{221} The farmer sought judicial review of the final DASCO decision in the Claims Court alleging breach of contract and requesting full payment of the DTP proceeds.\textsuperscript{222}

   The Claims Court, however, construed sections 1385 and 1429 of 7 U.S.C. as substantially restricting the scope of judicial review of final DASCO decisions.\textsuperscript{223} The court held that section 1385 precluded it from reviewing the factual findings of the agency and limited its review of the legal conclusions to determining whether DASCO acted rationally, given the facts found by the agency.\textsuperscript{224} The Claims Court ruled that “both the literal language of section 1385 and the consistent case authority constituting binding precedent for the Claims Court require a holding that factual findings of DASCO are simply unreviewable under any standard, however narrow, or for any reason, however compelling, ‘when officially determined in conformity with the applicable regulations.’”\textsuperscript{225}

   The Court also held that section 1429 limited review to the issue of whether DASCO acted rationally, and that “the rationality review permitted despite [section] 1429 is lawfully limited to a comparison of an administrator’s decision with the facts

\begin{footnotesize}
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\item \textsuperscript{219} \textit{Id.} The district court subsequently denied the plaintiffs’ application for an award of attorneys fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, holding that the defendant’s positions “at least had a reasonable basis in fact or law” and, as such, “were substantially justified.” \textit{Golightly v. Yeutter}, No. CIV 90-1272-PHX-RCB, slip op. at 5 (D. Ariz. July 2, 1992), appeal docketed, No. 92-16591 (9th Cir. Sept. 3, 1992). It did so despite having previously entered judgment in the case with the finding that defendant’s conduct was “not substantially justified.” \textit{Golightly v. Yeutter}, No. 90-1272-PHX-RCB, slip op. at 2 (D. Ariz. Jan. 9, 1992) (emphasis added).
\item \textsuperscript{220} 25 Cl. Ct. 685 (1992).
\item \textsuperscript{221} \textit{Id.} (interpreting the DTP provisions at 7 U.S.C.A. §§ 1446(d)(3)-(7) (West 1988)).
\item \textsuperscript{222} \textit{Id.}
\item \textsuperscript{223} \textit{Id.} at 687 (interpreting 7 U.S.C.A. §§ 1385, 1429).
\item \textsuperscript{224} \textit{Id.} at 697.
\end{itemize}
\end{footnotesize}
found by him."226 In other words, the "test for rationality must be conducted by comparing DASCO's legal conclusions and ultimate determination with the facts found by him rather than with the entire record."227

b. Gratz v. United States

In *Gratz v. United States*,228 the Claims Court upheld an ASCS decision to order delivery of a Wisconsin producer's collateral securing a Farm Storage Grain Reserve note and security agreement.229 In so doing, the court rejected a host of constitutional and other challenges to the ASCS's actions.230

Between January 1982, and December 1987, James and Therese Gratz stored corn under thirteen grain reserve nonrecourse loan contracts.231 Under the agreements, the Gratzzs were responsible for any loss in the stored corn's quality and quantity.232

Following a series of inconsistent quality evaluations, some of which rated the corn as "satisfactory", the county ASCS committee demanded delivery of the stored corn "due to unauthorized disposition, corn quality, passed due maturity dates, and lack of storage agreements."233 Ultimately, the county committee's decision to call the loans was affirmed on appeal by the ASCS state committee and DASCO.234 DASCO, however, "restored any loan which 'was not called due to deteriorating condition.'"235

Before the Claims Court, the Gratzzs raised numerous issues, including the claim that the Farm Storage Loan worksheet Form 677-1 used by the county committee did not use the grade terminology that is used in the Federal Grain Inspection Service (FGIS) standards.236 Although the Claims Court acknowledged that the grain storage regulations required the use of FGIS standards in making grain quality determinations and

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226. *Id.* at 698.
227. *Id.* at 699.
229. *Id.* at 418-19.
230. *Id.* at 419-20.
231. *Id.* at 414.
232. *Id.*
234. *Id.* at 418.
235. *Id.*
236. *Id.* at 418-19.
that "it was unclear whether the ASCS inspectors used FGIS criteria in assessing plaintiffs' corn," the court concluded that the county committee had "acted on the totality of those inspections, looking beyond the 'satisfactory' rating." Accordingly, the court held that the ASCS had acted rationally, notwithstanding the "satisfactory" ratings for most of the contracts.

The court also rejected the Gratzs' contention that they were entitled to an appeal hearing before the ASCS called their loans and demanded delivery of the grain. The court held that the post-demand administrative appeal process under 7 C.F.R. pt. 780 satisfied the Gratzs' due process rights. Finally, the court held the ASCS's actions did not constitute a "taking" under the Due Process Clause because the government was acting in a proprietary capacity, not as a sovereign under the loan program.

c. Bar 9 Farms, Inc. v. United States

Bar 9 Farms, Inc. v. United States was brought in response to a DASCO determination that combined the individual, trust and corporate plaintiffs into two "persons" under the then-applicable payment limitation rules. The plaintiffs challenged DASCO's determination in the Claims Court seeking money damages for breach of contract. The court affirmed the DASCO determination and granted the government's motion for summary judgment.

The court rejected the plaintiffs' primary argument that the

237. Id.
238. Gratz v. United States, 25 Cl.Ct. 411, 419 (1992) (citing Frank's Livestock & Poultry Farm v. United States, 17 Cl. Ct. 601, 606 (1989), aff'd, 905 F.2d 1515 (Fed. Cir. 1990) which held that "questions as to grain quality . . . are peculiarly within the expertise of [the ASCS]").
239. Id. at 420, (citing Frank's Livestock & Poultry Farm v. United States, 17 Cl. Ct. 601, 606 (1989) (holding that "subsequent hearings provided at the county, state and federal levels satisfy any applicable due process requirement" in the absence of prescriptive appeal hearing regulations)).
240. Id.
242. Id. at 393. The case was decided under the payment limitation rules applicable to the pre-1989 crop years. 7 C.F.R. pt. 795 (1987). Beginning with the 1989 crop year, the payment limitation rules applicable to most federal farm programs are found at 7 C.F.R. pt. 1497 (1992).
243. Id. at 395.
244. Id. at 399.

plaintiff's membership in a farm partnership excluded them from the regulations applicable to individuals. On the contrary, the court held that the "person" status of the corporation and its shareholders was the controlling issue. The corporate regulations require that in order for a stockholder to be considered a "separate person," the stockholder must comply with the individual regulations.

In Bar 9 Farms, the plaintiffs sold equipment to the corporation and deferred the sale proceeds, which the court equated to financing the corporation. Finding that the "separate person" regulation had been violated, the court held that the individuals were appropriately combined with the corporation.

The court also rejected the plaintiffs' argument that the family member financing exception authorized the deferred financing. The court held that the exception was "intended to allow interfamily financial cooperation" and as such did not apply to loans made to corporations.

The plaintiffs presented four additional arguments that were also rejected by the court. First, in response to the argument that the amount of the deferred financing was insignificant, the court disagreed with the assertion and noted that the plaintiffs had failed to provide authority for such an exception. Second, the court rejected the contention that because stockholders can sign for loans to corporations, they should also be allowed to make loans to corporations. Third, the plaintiffs argued that because the farmland was purchased in 1987, a substantive change in the farming operation occurred which justified an increase in the number of "persons." The court disagreed and held that, even if a substantive change had oc-

245. Id. at 395-96 (referring to 7 C.F.R. § 795.3 (1987)).
247. Id. at 397 (referring to 7 C.F.R. § 795.8 (1987) which refers to 7 C.F.R. § 795.3 (1987) regarding individual shareholders).
248. Id. at 397 (referring to 7 C.F.R. § 795.3 (1987)).
249. Id. (referring to 7 C.F.R. §§ 795.3, 795.8 (1987)).
250. Id. at 397-98 (referring to 7 C.F.R. § 795.4 (1987)).
252. Id. at 398.
253. Id. at 399.
254. Id. at 398.
curred, the plaintiffs still had to meet the separate person guidelines. Finally, the court rejected plaintiffs' argument that because the financing arrangement did not affect the tax status of their subchapter S corporation, it should not effect their separate person status.

\[\text{d. Schultz v. United States}\]

In *Schultz v. United States*, Donald and Beverly Schultz, and Don Schultz Farms, Inc., a Washington State corporation, challenged the ASCS's determination that they were one “person” for the 1986 crop year. Prior to 1986, Don Schultz Farms, Inc. operated two farms. One, the Davenport farm, was owned by the corporation. The other, the Landt farm, was leased by the corporation. Donald and Beverly Schultz owned all of the stock in Don Schultz Farms, Inc. Accordingly, under the majority stockholder rule, the Schultzs and their corporation had been combined as one “person” for the 1985 crop year.

Prior to the 1986 payment limitation deadline, the Schultzs transferred twenty five percent of their interest in the corporation to each of their two daughters, for a total of fifty percent. At the time, both daughters were full-time college students. After the transfer, Mr. and Mrs. Schultz individually leased and farmed the Landt farm that had been leased by their corporation in 1985. They leased the necessary equipment from the corporation. The corporation continued to operate the Davenport farm.

Based on the transfer of the corporate interests to the

\[\begin{align*}
255. & \text{Id. at 398-99.} \\
256. & \text{Bar 9 Farms, Inc. v. United States, 25 Cl. Ct. 392, 399 (1992).} \\
257. & \text{25 Cl. Ct. 384 (1992).} \\
258. & \text{Id. at 385. In 1986, “person” determinations for federal farm program payment limitation purposes were governed by the rules found at 7 C.F.R. pt. 795 (1986). Id. at 386.} \\
259. & \text{Id. at 387.} \\
260. & \text{Id.} \\
261. & \text{Id.} \\
262. & \text{Schultz v. United States, 25 Cl. Ct. 384, 387 (1992).} \\
263. & \text{Id. at 386-87 (referring to 7 C.F.R. § 795.8 (1987)).} \\
264. & \text{Id. at 387.} \\
265. & \text{Schultz, 25 Cl. Ct. at 387.} \\
266. & \text{Id.} \\
268. & \text{Id.}
\end{align*}\]
daughters, the Schultzs requested that for the 1986 crop year ASCS increase their “person” status from one to four. 269 Although the county committee initially approved the request, it subsequently combined the Schultzs and the corporation into one “person” because there was “no substantive change in the operation, [sic] it is the same individuals farming the same land with the same equipment as the [previous year].” 270 On administrative appeal, the county committee’s determination was upheld by DASCO. 271

The then-applicable regulations permitted program participants to increase the number of “persons” eligible for separate payment limits if the change in farming operations was “bona fide and substantive.” 272 However, the regulations provided that “any document representing a . . . transfer . . . [of property] which is fictitious or not legally binding as between the parties thereto shall be considered to be for the purpose of evading the payment limitation and shall be disregarded for the purpose of applying the payment limitation.” 273

In making its determination, ASCS relied on portions of the ASCS Handbook, volumes 5-PA and 5-CM. 274 As amended in 1985, 5-PA states that “[c]hanges [in farming operations] that are not substantive include ‘paper’ changes in which the same individuals or other entities continue to farm the same land, with the same equipment.” 275 In May 1986, 5-PA was replaced with 5-CM. 276 As amended in August 1986, after Donald and Beverly Schultz had transferred fifty percent of the corporate interests to their daughters, 5-CM provided that a “substantive” change included “[o]wnership of equipment changing from the existing individual or entity to the new individual or entity by gift or sale, with no arrangement to owe the original ownership for the equipment.” 277

As characterized by the Claims Court, the dispute “center[ed] around the ‘same people’ and the ‘same equip-
ment' determinations." The Schultz's argued that, because "different persons" were farming the two farms in the 1985 and 1986 crop years, it was "arbitrary and capricious" for DASCO to conclude otherwise. They also contended that they had no prior notice that the equipment leasing agreement they had made with the corporation would be proscribed in the subsequently issued ASCS Handbook 5-CM. They alleged that this absence of notice violated the APA as well as their due process rights under the Fifth Amendment of the United States Constitution. In upholding ASCS's "same person" determination, the Claims Court, without citing any other authority, concluded that "[a] change is substantive when a meaningful break from the past has occurred." The court concluded that the change in the corporation's stockholders was not such an event.

The Claims Court also upheld ASCS's "same equipment" determination, rejecting the Schultzs' argument that they did not have prior notice that ASCS would deem their leasing of equipment from the corporation to not constitute a "substantive" change. In support of its decision, the court provided three reasons. First, the court reasoned that the regulation placed the Schultzs on notice that a "substantive" change was required. Second, the court found that the "same equipment" provision in ASCS Handbook 5-PA gave sufficient notice, notwithstanding the more specific proscription in the subsequently issued ASCS Handbook 5-CM. Finally, the court found that the provisions of 5-CM were sufficiently similar to the comparable provisions in 5-PA so as to be "interpretive in nature." The provisions were thus "exempt from the notice and comment requirements of the APA."

278. Id. at 389.
280. Id. at 389.
281. Id.
282. Id. at 389.
283. Id.
284. Id. at 392.
286. Id. at 389.
287. Id. at 392.
288. Id.
e. Doty v. United States

In Doty v. United States, the Claims Court held that the failure of DASCO to call a material witness requested by the aggrieved farmer at his appeal hearing was an abuse of discretion. Implicitly recognizing the significance of its decision, the court expressly limited its holding to the special circumstances of this case and cautioned that its holding did "not suggest that a reviewing authority must grant every request by a participant to call and cross-examine witnesses." 

At issue in Doty v. United States was James Doty's eligibility for DTP payments. Mr. Doty alleged that ASCS's failure to make the payments due under his DTP contract and the government's demand for a refund of payments previously paid constituted a breach of contract. Additionally, Doty contended that he had been denied due process during his administrative appeals.

Doty operated a dairy farm in Minnesota and employed a herdsman to help care for the cows. The herdsman kept heifers of his own on Doty's farm and elsewhere. The pivotal issue in the dispute was the number of the herdsman's heifers located on Doty's farm on or after January 1, 1986. The applicable regulations required that DTP participants include in their contracts all cattle located on their farm on or after January 1, 1986, and that all cattle subject to the contract be destroyed. Also at issue were the branding requirements necessary to insure the animals' destruction.

The county committee received conflicting testimony regarding the destruction and branding of the cattle, including testimony against Mr. Doty by his herdsman. Based on the unsworn testimony of the herdsman, which contradicted his previous statements, the county committee determined that

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290. Id. at 631.
291. Id.
293. Id. at 616.
295. Id. at 617.
296. Id.
297. Id. at 618.
298. Id.
300. Id. at 619.
Doty should refund the previously paid DTP payments.\textsuperscript{301} Nevertheless, when it informed Doty of its determination, the county committee neither provided Doty with a copy of the herdsman’s written statement nor did it make clear to him “the precise allegations against him.”\textsuperscript{302}

Doty appealed the county committee’s determination to the state committee.\textsuperscript{303} Although the state committee gave Doty’s attorney a copy of the written statement prior to the hearing, it refused Doty’s request that the herdsman be present and subject to examination at the hearing.\textsuperscript{304}

At the hearing, Doty submitted an affidavit and a statement from two persons with knowledge of the destruction and branding of the cattle.\textsuperscript{305} The Claims Court noted that each statement contradicted material parts of the herdsman’s written statement and, when coupled with other information in the administrative record, refuted the written statement.\textsuperscript{306} Without advising Doty of its reasons for doing so, the state committee denied Doty’s appeal and increased the penalties assessed by the county committee.\textsuperscript{307} Doty appealed the state committee’s determination to DASCO.\textsuperscript{308}

Prior to his hearing before DASCO, Doty submitted additional documents challenging the accuracy of the herdsman’s written statement.\textsuperscript{309} A telephone hearing was conducted, but DASCO refused to call the herdsman as a witness notwithstanding Doty’s request that he be present.\textsuperscript{310} DASCO denied the appeal on the grounds that Doty had violated regulations proscribing false representations of fact and false statements as to the number of cattle sold for slaughter.\textsuperscript{311}

After concluding that it had jurisdiction to review DASCO’s decision under the Tucker Act\textsuperscript{312} and the Commodity Credit

\begin{itemize}
\item \textsuperscript{301} Doty v. United States, 24 Cl. Ct. 615, 621 (1991).
\item \textsuperscript{302} Id. at 621.
\item \textsuperscript{303} Id.
\item \textsuperscript{304} Doty v. United States, 24 Cl. Ct. 615, 617-18, 621 (1991).
\item \textsuperscript{305} Id.
\item \textsuperscript{306} Id. at 622.
\item \textsuperscript{307} Id. at 622.
\item \textsuperscript{308} Id.
\item \textsuperscript{309} Id. at 622.
\item \textsuperscript{310} Id. at 623.
\item \textsuperscript{311} Id. at 623.
\item \textsuperscript{312} Id. at 623 (citing 28 U.S.C. § 1491(a)).
\end{itemize}
Charter Act, the Claims Court addressed Doty’s argument that a de novo review standard applied because the action involved a breach of contract. In rejecting that argument and finding that the Administrative Procedure Act’s (APA) standards of review applied, the court held that when Doty “entered into the DTP contract, he agreed to be bound by the statutory and regulatory framework governing the dairy termination program which effectively limited the availability of de novo judicial review over a claim for breach of contract.”

Turning to Doty’s due process claims, the Claims Court rejected Doty’s argument that the APA’s formal adjudication requirements applied to the administrative appeal process. The court also noted that it “was not persuaded” that Doty’s allegations rose to the level of constitutional due process claims, but that it would avoid addressing the constitutional issue because another means of resolving the dispute was available.

The court accepted Doty’s argument that DASCO had abused its discretion with regard to conducting the administrative appeal. The regulations give reviewing authorities the discretion to “request or permit persons other than those appearing on behalf of the participant to present information or evidence at such hearing and, in such event, [to] permit the participant to question such persons.” The court noted that:

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\text{[i]n a case such as this where there are conflicting versions of the facts and testimony which is in direct conflict, in order to discern the truth as accurately as possible, agency discretion to permit or deny cross-examination of a pivotal witness is subject to abuse to a much greater extent than in most other aspects of informal hearings.}
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313. Id. (citing 15 U.S.C. § 714b(c)).
316. Doty, 24 Cl. Ct. at 626 (footnote omitted).
318. Id. at 628-29.
319. Id. at 630.
320. Id. (citing 7 C.F.R. § 780.8(c), which has subsequently been amended to appear at 7 C.F.R. § 780.9(g) (1992)).
f. Rivercrest v. United States

Rivercrest v. United States\textsuperscript{322} involved review of a DASCO decision denying disaster payments.\textsuperscript{323} ASCS determined that the farmers were ineligible because the late planting of their wheat crop was not calculated to produce a normal harvest.\textsuperscript{324} The farmers challenged this determination and also claimed that because they had relied to their detriment on advice given them by their ASCS county executive director (CED), the government should be estopped from denying the benefits.\textsuperscript{325}

Reviewing only the administrative record and applying a deferential standard of review, the court limited its role to determining "whether a rational basis in the administrative record underlies the decision reached."\textsuperscript{326} The court found such rational basis and accordingly affirmed the ASCS determination.\textsuperscript{327} On the issue of equitable estoppel, the court held that the farmers could not have reasonably relied on the CED's advice because the regulations expressly provide that his decision is not the final authority.\textsuperscript{328} On appeal, the Federal Circuit Court affirmed the Claims Court's decision.\textsuperscript{329}

g. Ryder Farms, Inc. v. United States

At issue in Ryder Farms, Inc. v. United States\textsuperscript{330} was the DASCO determination that the plaintiffs, a corporation and an individual, were ineligible for deficiency payments. This determination was based on an ASCS finding that the plaintiffs submitted an erroneous crop acreage report. Pursuant to the liquidated damages clause in the deficiency program contract, ASCS assessed damages.\textsuperscript{331}

The plaintiffs sought review of the ineligibility determination and an award of damages.\textsuperscript{332} The government counterclaimed to collect the liquidated damages and insurance

\begin{itemize}
\item [322.] 24 Cl. Ct. 454 (1991).
\item [323.] \textit{Id.} at 457-58.
\item [324.] \textit{Id.}
\item [325.] \textit{Id.} at 458.
\item [326.] \textit{Id.} at 459.
\item [328.] \textit{Id.} at 460.
\item [329.] Custom Ag Serv. v. United States, No. 92-5051 (Fed. Cir. Aug. 11, 1992).
\item [331.] \textit{Id.} at 279-81.
\item [332.] \textit{Id.}
\end{itemize}
premiums allegedly owed for federal crop insurance for a previous crop. Mr. Ryder acknowledged that he owed the insurance premiums, but sought to offset the amount owed with the government payments to which he was arguably entitled. Mr. Ryder counterclaimed to recover for insurance losses.

The primary issue was whether Mr. Ryder filed an erroneous crop acreage report. Accordingly, the case largely turned on factual issues. The Claims Court determined that it was "precluded from reviewing factual findings made by the agency" under 7 U.S.C. section 1385. On that basis, it assumed the fact finding to be correct and affirmed the DASCO determinations as rationally based on the facts as determined. On Mr. Ryder's constitutional claims, the court stated that it did not have jurisdiction over due process claims.

4. Unpublished Decisions

a. Doane v. Madigan

In Doane v. Madigan, the plaintiff, Russell Doane was denied disaster assistance benefits. After exhausting his administrative appeal rights, Mr. Doane filed an action in federal district court challenging the ASCS determination that he was ineligible for benefits. Surprisingly, the government moved for a remand of the case to DASCO. The court reluctantly granted the request, stating that the Deputy Administrator "failed to provide a basis for his decision," and that the limited explanation for the determination was "incomplete and unclear." The court found that the denial of benefits did not set forth enough information to permit the court to even determine whether the decision was arbitrary and capricious.

333. Id. at 281.
334. Id.
336. Id.
337. Id. at 282.
338. Id. at 283.
339. Id.
341. Id. slip. op. at 3.
342. Id. slip. op. at 7.
343. Id. slip. op. at 8.
344. Id. slip. op. at 9.
b. Lucio v. Yeutter

Lucio v. Yeutter\(^{346}\) concerned plaintiff Joe Lucio's participation in the DTP.\(^{347}\) Mr. Lucio purchased cattle as replacements for cattle sold prior to the promulgation of the DTP regulations.\(^{348}\) Subsequently, Mr. Lucio had a dispute with ASCS as to the number of replacement cattle purchased.\(^{349}\) Despite an investigation and report by the Office of the Inspector General (OIG) supporting Mr. Lucio's contention that 264 cattle had been purchased, DASCO held fast to its determination that only 200 cattle had been purchased.\(^{350}\) On review, the court found that ASCS had "failed miserably in following its procedural appeal requirements" by failing "to employ the 'means most likely to obtain the facts relevant to the matter at issue.'"\(^{351}\) The court also noted that DASCO failed to prepare a formal statement of the issues or a written record containing a clear concise statement of material facts as required by 7 C.F.R. section 780.9. Moreover, the court concluded that the ASCS determination was "against all evidence."\(^{352}\) On this basis, the court had "no problem in finding" that the agency's determination was "arbitrary and capricious and unsupported by the evidence."\(^{353}\) The court remanded the case to the agency, requiring specific findings of fact and an adjustment of the plaintiff's base consistent with the results of the OIG report.\(^{354}\)

D. Recurring Problems in ASCS Litigation

1. Choice of Forum

Final ASCS decisions may be challenged in either the federal district court or in the United States Claims Court in Washington, D.C. Although the selection of one forum over the other involves many considerations, the most significant consideration may be the relief available from each court.

\(^{347}\) Id. slip. op. at 1.
\(^{348}\) Id. slip. op. at 1, n.1.
\(^{349}\) Id. slip. op. at 5-6.
\(^{350}\) Id. slip. op. at 6.
\(^{352}\) Id. slip. op. at 14.
\(^{353}\) Id.
\(^{354}\) Id. slip. op. at 16-17.
On this consideration alone, the federal district court forum offers more options for potential relief. In reviewing a final ASCS decision, the district court has the authority to render a declaratory judgment, 355 issue a writ of mandamus, 356 use its general equitable powers to grant an injunction, 357 and award damages up to the sum of $10,000. 358 In contrast, the Claims Court is essentially limited to awarding monetary damages pursuant to the Tucker Act. 359 Recent litigation has confirmed the limitations of the Claims Court. 360

Perhaps because of the jurisdictional limitations, and despite strong authority to the contrary, ASCS frequently challenges the jurisdiction of the district court. This challenge is based on the argument that the plaintiffs are in fact seeking an award of "money damages" even if their request for relief is an order declaring that they are entitled to the payments under the farm program at issue. The majority of courts have rejected this argument and found in favor of district court jurisdiction. 361 Recent decisions have reflected a following of this pattern. 362

2. Scope of Judicial Review

In non-Tucker Act actions seeking judicial review of an adverse administrative determination, the requisite waiver of sovereign immunity by the government will be the APA. 363 Under the APA, with certain limited exceptions, judicial review is con-

360. See Ryder Farms, Inc., v. United States, 24 Cl. Ct. 278, 282 (1991) (Claims Court does not have jurisdiction over claims based on alleged violation of due process rights); Hicks v. United States, 23 Cl. Ct. 647 (1991) (Claims Court's jurisdiction does not extend to actions which sound in tort); Knaub v. United States, 22 Cl. Ct. 268 (1991) (Claims Court does not have jurisdiction to consider promissory estoppel claims).
fined to a review of the administrative record for the purpose of determining whether ASCS's action was: "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [and] (D) without observance of procedure required by law. . .".

Similarly, in Tucker Act litigation, although the APA is not needed for its waiver of sovereign immunity, the Claims Court has adopted the APA standard of review. For example, in Doty v. United States, the plaintiffs sought review by the Claims Court, requesting money damages for breach of contract. At issue was the plaintiffs' participation in the DTP, a program in which dairy farmers entered into contracts with the government. Because the contract and the alleged breach of it was the basis of the plaintiffs' cause of action, the plaintiffs argued that the court should apply the standard of review applicable to contract actions. As the court conceded, ordinarily breach of contract claims are reviewed de novo. However, the court noted that the Claims Court "traditionally limited its review in such cases to the administrative record" under the APA's standards and after a lengthy analysis concurred with that approach.

Moreover, as has been referenced earlier, two statutes, 7 U.S.C. section 1385 and 7 U.S.C. section 1429, apply to the judicial review of most final ASCS decisions and serve to restrict the scope of that review. In relevant part, section 1385 provides that "facts constituting the basis for . . . any . . . price support operation, or the amount thereof, when officially determined in conformity with the applicable regulations . . . shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government." Section 1429, in relevant part, provides that "[d]etermination made by the

366. Id. at 616.
367. Id.
368. Id. at 624.
369. Id. at 624 (citing Northbridge Elecs. v. United States, 444 F.2d 1124, 1127 (1971)).
Secretary under [the Agricultural Act of 1949] shall be final and conclusive. . . .”

These sections purport to grant finality to ASCS’s findings of facts by precluding a court from redetermining facts when those facts have been officially determined in accordance with the relevant regulations. The ASCS has argued that section 1385 grants complete finality to the agency’s findings of fact and precludes a court from reviewing those findings.

Courts have responded to sections 1385 and 1429 in divergent ways. On one extreme is the recent case of Simons v. United States. In applying section 1385, the Simons court espoused the harsh interpretation that “factual findings of DASCO are simply unreviewable under any standard, however narrow, or for any reason, however compelling, when officially determined in conformity with the applicable regulations.”

The court also held that section 1429 limited review to the issue of whether DASCO acted rationally, and that “the rationality review permitted despite section 1429 is lawfully limited to a comparison of an administrator’s decision with the facts found by him.” In other words, the “test for rationality must be conducted by comparing DASCO’s legal conclusions and ultimate determination with the facts found by him rather than with the entire record.”

In contrast, other courts have interpreted sections 1385 and 1429 far less restrictively and applied the APA’s “arbitrary, capricious, abuse of discretion” standard. Under either interpretation, however, the creation of a complete and accurate administrative record is critical to the success of subsequent judicial review.

IV. CONCLUSION

Federal farm programs are important for a significant

373. See, e.g., Garvey v. Freeman, 397 F.2d 600, 604-05 (10th Cir. 1968).
375. Id. at 697.
376. Id. at 698.
377. Id. at 699.
number of America’s agricultural producers. Accordingly, a basic knowledge of the law governing federal farm programs and the process for resolving federal farm program disputes is essential for the attorney serving producers participating in those programs. In its references to the principal, primary and secondary authority regarding federal farm programs and to recent federal farm program litigation, this Article should serve as a beginning point for those attorneys who seek to become more familiar with federal farm program law.