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Why the U.S. Claims Court Is Not a Viable Venue for Farmers: The U.S. Claims Court's Handling of Agricultural Cases, 1980-1990

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WHY THE U.S. CLAIMS COURT IS NOT A VIABLE VENUE FOR FARMERS: THE U.S. CLAIMS COURT'S HANDLING OF AGRICULTURAL CASES, 1980-1990

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I. INTRODUCTION

A number of federal programs are administered by the U.S. Department of Agriculture (USDA) in which qualifying farmers contract with the USDA to receive monetary or other assistance. If the USDA's selection or eligibility process denies a farmer due process or is otherwise arbitrary, or the farmer is allowed to participate and signs a contract but the contract is breached by the U.S.D.A., the farmer may seek administrative remedies. If the administrative process fails to grant the farmer relief, he may seek review in one of two courts, the U.S. Claims Court or the U.S. District Court.

This article shows that review in the U.S. Claims Court is often futile. Section II summarizes the USDA contract programs available to farmers; Section III explains how the USDA regulates contract programs and issues determinations; Section IV (a) analyzes the U.S. Claims Court's jurisdiction and scope of review, (b) reviews the agricultural cases decided by the U.S. Claims Court 1980-1990, and (c) compares those decisions with recent decisions issued by U.S. district courts.

The article concludes that a farmer is advised to seek the jurisdiction of and remedies from a U.S. district court, rather than the U.S. Claims Court.

II. USDA CONTRACT PROGRAMS PROVIDING SUBSIDIES OR ASSISTANCE TO FARMERS

There are many federal programs that provide direct or indirect subsidies or assistance to farmers. This section provides a brief summary of the major programs,[1] most of which are administered by the

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1. Price support programs; commodity loans; payments; purchases by the Commodity

USDA's Agricultural Stabilization and Conservation Service (ASCS).

USDA farm program payments each year constitute billions of dollars. For example, in 1989 (one of the more modest years), the USDA paid more than $9.3 billion to some 1.5 million farmers or farm entities (partnerships and corporations).[2] Because of farmers' reliance on these programs, disputes between the government and farmers are common, resulting in administrative hearings before the ASCS or other departments of the USDA, some of which lead to litigation in the United States Claims Court or district court.

A. Price Support Programs

Through price support programs, the USDA establishes minimum price levels for crops and minimum income levels for farmers.[3] The USDA controls crop production through quotas. Cropland set-aside, acreage limitations, and land diversion payments are three methods used to limit farm production and are mandatory for feed grains,[4] cotton, wheat, rice,[5] soybeans, peanuts, tobacco, honey, milk, sugar beets, and sugar cane.[6] Consequently, the majority of crop farmers in America receive price support benefits. Farmers who agree to grow wheat, feed grains, cotton and/or rice also sign contracts entitling them to deficiency payments.[7]

A third program involves disaster benefits. After widespread natural disasters, farmers may apply for relief on the major price support program crops.[8] For example, in the 1989 disaster program, a farmer could receive up to $250,000 in disaster payments.[9] Accordingly, both

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Credit Corporation; Conservation Reserve Program; Disaster Assistance Programs; Payment-in-kind Program; Dairy Termination Program; Milk Diversion Program; Federal Crop Insurance Corporation; Farm Credit Act Program, which is actually independent of USDA; Agricultural Conservation Program; and Emergency Conservation Program. Excluded from this summary are Farmers Home Administration Loan Programs and localized special contract programs.

2. Agriculture Payments/Effectiveness of Efforts to Reduce Farm Payments Has Been Limited, GAO/RCED-92-2, at 22 (December 1991).

3. Neil E. Harl, AGRICULTURAL LAW MANUAL, § 10.03, at 10-9 (1991).

4. Feed grains include corn, grain sorghum, barley, oats, and rye. 7 U.S.C. § 1442d (1988).

5. Harl, *supra* note 3, § 10.03, at 10-9.

6. 7 U.S.C. §§ 1428(c), 1441, and 1446 (1988).

7. Calculated at a rate not to exceed the difference between a prearranged target price and the market price. 7 U.S.C. § 1445 (1991).

8. Harl, *supra* note 3, § 10.03, at 10-20. These crops include wheat, feed grains, upland cotton, and rice. *Id.*

9. 7 U.S.C. § 1308(2)(A) (1988). On December 12, 1991, Congress passed the Dire Emergency Supplemental Appropriations and Transfers for Relief From Effects of Natural Disasters, Other Urgent Needs, and for Incremental Costs of Desert Shield/Desert Storm Act of 1992, Pub.

the eligibility of a farmer and the maximum payments he could receive have been the subject of litigation. Finally, diversion payments are also made available to the farmer when the USDA limits production of certain program crops such as rice and upland cotton.[10]

B. Commodity Loans

Farmers can contract for nonrecourse loans using eligible commodities as security.[11] Applications are made to the farmer's county ASCS office. Once eligibility is established, the farmer signs a promissory note and gives his crop as collateral.[12] When the loan matures, and is not paid in full, the crop collateral may be forfeited to the USDA; if the USDA sells the commodity for less than the loan amount, the defaulting farmer is not liable for the difference in price.[13]

C. Purchases by the Commodity Credit Corporation

The USDA, through the Commodity Credit Corporation (CCC), also purchases wheat, feed grains, and rice[14] as well as other crops[15] to assist in maintaining crop prices.

D. Conservation Reserve Program

Congress implemented a conservation acreage reserve program (CRP) in 1986.[16] Under the program, the Secretary of Agriculture contracts with landowners or operators of "highly erodible cropland" to remove land from crop production. The total annual acreage to be conserved is limited.[17] The program is popular (since 1986 over 34 million

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L. No. 102-229, 105 Stat. 1701 (1991), a combined disaster program for crop years 1991 and 1992.

10. 7 U.S.C. §§ 1441-2(e), 1444-2(e) (1988).

11. 7 U.S.C. §§ 1441-2 (1988), rice; 1444-2 (1988), upland cotton; 1444(h) (1988), long staple cotton, 1444(f) (1988), feed grains; 1445b-3a (1988), wheat; there are also provisions for peanuts, tobacco, oilseeds, honey, and sugar.

12. 7 C.F.R. §§ 1421.6(a) and 1421.2 for wheat, feed grains, soybeans, farm-stored peanuts, and farm-stored flue-cured tobacco and 1436.6 and 1434.1 for honey.

13. 7 U.S.C. § 1425 (1988).

14. 7 U.S.C. §§ 1441 and 1444d (1988).

15. 7 U.S.C. §§ 1441(b), 1446(b), and 1446(d) (1988). These other products included peanuts, honey, and dairy products.

16. 16 U.S.C. § 3831 (1988) and 7 C.F.R. § 704.5 (1992). The 1990 Farm Bill added CRP-related programs. The Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359 (1990).

17. During the 1986 crop year, the total reserve acreage was to be no less than 5 million acres and no more than 45 million acres. In each crop year since 1986, the minimum has in-

acres have been placed in the CRP[18]), even though the requirements a farmer has to meet to remain eligible are strict. The farmer forfeits rights to payment if the requirements are violated.[19] The CRP program and rules have been the focus of continuous administrative disputes with the ASCS, and the focus of landmark litigation on farmers' rights to fair administrative hearings.[20]

E. Disaster Assistance Programs

The Disaster Assistance Act of 1988[21] combined the Emergency Feed Program[22] and the Emergency Feed Assistance Program[23] to provide additional disaster assistance. These programs also allowed farmers to receive payment for crop losses "because of drought, hail, excessive moisture, or related condition in 1988."[24] The Disaster Assistance Act of 1989[25] supplemented the 1988 law by furnishing feed grains through dealers and manufacturers or by authorizing use of feed grain pledged as collateral for CCC loans.[26] The 1989 Act authorized payments for crop losses from "damaging weather or related condition in 1988 or 1989,"[27] including "drought, hail, excessive moisture, freeze,

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creased to 15, 25, 35, and 40, respectively (1988, 1989, and 1990). 16 U.S.C. § 3831(b) (1988).

18. R. Feist and P. Villa-Lobos, "USDA Announces Final Results of 10th Conservation Reserve Program Signup," U.S. Dept. of Agriculture, Office of Public Affairs, Office of Press and Media Relations, News Division (Nov. 13, 1991).

19. 16 U.S.C. § 3832 (1988) and 7 C.F.R. § 704.12 (1992).

20. Esch v. Lyng, 665 F. Supp. 6 (D.D.C. 1987), discussed *infra*.

21. Pub. L. No. 100-387, § 101, 102 Stat. 925 (1988), adding 7 U.S.C. § 1471 (1988).

22. This program provided fifty percent of cost-sharing for feed needed by eligible livestock producers.

23. This program provided for purchase of government-owned feed grains at certain percentages.

24. *Id.* § 201. There were other provisions in the 1988 Disaster Assistance Act including the "Soybeans and Sunflowers" provision, § 301(a), authorizing farmers to plant soybeans and sunflowers on not less than ten percent or more than twenty-five percent of their wheat, feed grain, upland cotton, extra long staple cotton, and rice acreage without affecting their bases for those crops. Another provision stated that for land under the CRP on which hay was harvested in 1988, CRP payments would not be reduced if a farmer could show that additional conservation practices were carried out. Finally, the Act contained a provision authorizing the Department of the Interior to supply "water users and others" on a temporary basis with water or canal capacity at existing federal reclamation projects, and to make loans to water users to relieve loans resulting from drought conditions in 1987, 1988, and 1989.

25. Pub. L. No. 101-82, § 202, 103 Stat. 581 (1989).

26. *Id.* § 201. Funding was also given for livestock transportation assistance and livestock water development projects. *Id.* §§ 202, 203.

27. *Id.* §§ 101(a)(1) (for program participants), 102(a)(1) (for program nonparticipants), 103(a)(1) (for peanuts, sugar and tobacco), and 104(a)(1) (for soybeans and nonprogram crops).

tornado, hurricane or excessive wind, or any combination of those weather conditions."[28] Hundreds of administrative appeals have been made from 1988 and 1989 disaster applications. In 1991, Congress passed the Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Costs of "Operation Desert Shield/Desert Storm" Act of 1992 which entitled farmers to apply for disaster assistance for crops for years 1991 and 1992.[29]

F. Payment-in-kind Program

The popular Payment-in-kind (PIK) Program, implemented in 1983, provided for land to be diverted from the production of wheat, feed grains, cotton, and rice.[30] The reduction in production raised prices, again benefitting the farmer, who was paid in-kind.

G. Dairy Termination Program

The Dairy Termination Program (DTP)[31] authorized the Secretary of Agriculture (beginning April 1, 1986 and ending October 1, 1987) to pay milk producers to slaughter dairy cattle.[32] The contract required the producer to stay out of the "dairy business" for five years and imposed serious penalties for violations. Because many dairy farmers participated and "sold out" their livelihood, administrative disputes and litigation continue, despite the cessation of the program five years ago.

H. Milk Diversion Program

The Milk Diversion Program[33] came from the Dairy Production Stabilization Act of 1983,[34] by which the USDA entered into contracts with producers of milk to reduce the quantity of milk marketed for

28. *Id.* § 112(a)(1). Farmers who received 1989 disaster assistance, emergency loans, or forgiveness of advance deficiency payments were required to purchase federal crop insurance for their 1990 crops.

29. Pub. L. No. 102-229, 105 Stat. 1701 (1991).

30. 49 Fed. Reg. 2227 (1984).

31. 7 U.S.C. § 1446(d)(3) (1988). ASCS administered this program by regulations published at 7 C.F.R. §§ 1430.450-1430.470 (1986).

32. 7 U.S.C. § 1446(d)(3)-(7) (1988).

33. *Id.* § 1446(d).

34. Title I of the Dairy and Tobacco Act of 1983, Pub. L. No. 98-180, 97 Stat. 1128 (1983).

commercial use during a fifteen-month period beginning on January 1, 1984.[35] The producer agreed to reduce milk production during the contract period.[36] Penalties for breaching the contract included forfeiture of payments and marketing penalties.[37]

I. Federal Crop Insurance Corporation

Congress passed the Federal Crop Insurance Act[38] "to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance. . . ."[39] The Federal Crop Insurance Corporation provides insurance against loss of crops or crop damage.[40] The underlying statute provides that, in the event a claim for indemnity is denied, the farmer can seek relief in the United States district court for the district in which the insured farm is located.[41] Accordingly, these cases are not brought in the United States Claims Court, and are not discussed further in this article.

J. Farm Credit System Loans

The farm credit system has a long history of lending farmers money, originating with the Farm Credit Act of 1933.[42] After many legislative overhauls, the farm credit system is now administered by the Farm Credit Administration (FCA), an independent agency.[43] Farm credit banks are cooperatives owned by farmers. Although not a federal program, there is an administrative review process.[44] If unsuccessful,

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35. *Id.* Congress gave the Secretary the discretion to modify these contracts if the Secretary determined (i) there would be an excessive reduction in the level of milk production in the United States, or (ii) there had been a substantial hardship to producers of beef cattle, dairy cattle, hogs, or poultry sold for slaughter. 7 U.S.C. § 1446(d) (1988).

36. 7 U.S.C. § 1446(d) (1988).

37. *Id.*

38. 7 U.S.C. §§ 1501-28 (1988).

39. *Id.* § 1502.

40. 7 U.S.C. § 1508(a) (1988). The commodities eligible to be insured are set forth at 7 U.S.C. § 1518 (1988) and include wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, agricultural species or any other agricultural commodity, excluding livestock and stored grain, determined by the Board.

41. 7 U.S.C. § 1508(c) (1988).

42. 12 U.S.C. §§ 1131-1138f (1933).

43. Harl, § 11.01[2], p. 11-27.

44. 7 C.F.R. §§ 1900.51-1900.100 (1988).

farmers have usually litigated farm credit disputes in state courts (except for diversity cases). Similar suits in federal court have been consistently rejected on the grounds that there is no private right of action.[45]

K. Agricultural Conservation Program

The agricultural conservation program[46] shares with qualified farmers and ranchers the costs of approved conservation and environmental protection practices.[47] Farmers must obtain approval by both the county ASCS committee and the state ASCS committee.[48] The contract may be annual or long-term.[49]

L. Emergency Conservation Program

The emergency conservation program[50] allows farmers and ranchers to receive cost-sharing assistance for rehabilitating lands damaged by wind erosion, floods, hurricanes, or other natural disasters, and for implementing water conservation measures during severe droughts.[51] County ASCS committees determine eligibility on an individual basis considering the type and extent of damage and the farmer's capability (financial and otherwise) to rehabilitate the damaged farmland.[52]

M. Summary of Programs

The USDA limits total farm subsidies payable to each farmer. Section 1001 of the Food Security Act of 1985[53] limits the total amount of payments that a "person" can receive under the annual programs for wheat, feed grains, upland cotton, extra long staple cotton, and rice to $50,000. The law also places a $250,000 per person limit on all types of program payments.[54] The 1990 Farm Bill extended these

45. Four federal circuits have found no private right of action under the Farm Credit Act. Schroder v. Volcker, 864 F.2d 97 (10th Cir. 1988); Redd v. Federal Land Bank of St. Louis, 851 F.2d 219 (8th Cir. 1988); Bowling v. Block, 785 F.2d 556 (6th Cir. 1986); Smith v. Russellville Production Credit Assoc., 777 F.2d 1544 (11th Cir. 1985).

46. 16 U.S.C. §§ 590a-590q-3 (1935).

47. 7 C.F.R. § 701.30 (1980).

48. 7 C.F.R. §§ 701.14, 701.11 (1982).

49. *Id.* § 701.15(a).

50. 16 U.S.C. §§ 2201-2205 (1978).

51. 7 C.F.R. §§ 701.46, 701.47 (1978).

52. *Id.* § 701.54.

53. Pub. L. No. 99-198, 99 Stat. 1354 (1985).

54. *Id.*

limits through 1995 program crops and added a third limit of $75,000 on marketing loan and loan deficiency payments,[55] which, like the $50,000 limit, comes under the $250,000 maximum.

The payment limitation regulations, including the definition of the term "person," were originally set forth in 7 C.F.R. Part 795. On August 5, 1988, new payment limitation regulations were promulgated.[56]

Every year, each farmer, farming partnership, or farming corporation includes in his, her, or its application to the county committee a request to be determined as one or more "persons." The right to participate in the farm program and to be determined as one or more "persons," is part of an administrative process which begins at the local level. The following section explains the nature of the review process.

III. How the USDA Regulates Contract Programs and Issues Administrative Determinations

The USDA implements most federal farm subsidies and assistance programs.[57] Within the USDA, the CCC, through the Commodity Credit Corporation Charter Act, oversees the programs.[58] As stated earlier, administration of the programs is carried out by the ASCS.[59]

Farmers learn about contract programs from their local ASCS office. Each office has a local ASCS committee consisting of volunteer farmers (elected by other farmers in that county) and headed by a salaried county executive director. Together, they approve or disapprove each farmer's application for participation in the farm programs.[60] If a farmer's application is denied, he appears before his county committee for an informal hearing. At these informal hearings,[61] the farmer attempts to explain his right to participate in the program, or to receive

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55. Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101-508, §§ 1111(a)(1)(B), 1111(a)(1)(C), 1111(a)(2)(A), 104 Stat. 3497, 3498; 7 U.S.C. §§ 1308(1), 1308(2) (1988).

56. 7 C.F.R. § 1497 (1992). These new regulations were authorized by the Agricultural Reconciliation Act of 1987, Pub. L. No. 100-23, 101 Stat. 1330. For an excellent article on payment limitations, see Christopher R. Kelley and Alan R. Malasky, *Federal Farm Program Payment-Limitation Law: A Lawyer's Guide*, 17 Wm. Mitchell L. Rev. 199 (1991).

57. As noted, *supra*, the farm credit system loans are privately held and thus not administered by USDA. Federal Crop Insurance is administered by the Federal Crop Insurance Corporation.

58. 15 U.S.C. § 714c(g) (1948).

59. 7 C.F.R. §§ 2.21, 2.65 (1972).

60. 16 U.S.C. § 590h (1933).

61. The hearings before the county (and later, state and national) committees are not "adjudications" pursuant to the Administrative Procedures Act. 5 U.S.C. §§ 554, 556.

assistance, or to be determined a certain number of "persons" for payment limitation purposes. At these hearings, the Government does not present any testimony or other evidence but states that it will rely upon the farmer's oral testimony and the administrative record (generally, the letters to and from the farmer) to make its final determination.[62] The county committee then issues a written determination.

If a farmer disagrees with the written county determination, he can have a reconsideration hearing before the full county committee.[63] If again denied, he can appeal to his state ASCS committee,[64] which consists of farmers from the state, selected by the Secretary. Should he again lose, until late 1991 he could appeal to the Deputy Administrator, State and County Operations (DASCO).[65] In 1991, the USDA established a new appeals division, called the National Appeals Division (NAD), pursuant to section 1132 of The Food, Agriculture, Conservation, and Trade Act of 1990.[66] Because of delays within ASCS, NAD was not created until November 25, 1991.[67] NAD promises to provide a more formal and equitable review process. For example, until NAD became law, the farmer had no right to request discovery.[68]

Farmers receiving unfavorable final determinations may seek review in either the U.S. Claims Court or a U.S. district court. The USDA's longstanding position is that farmers must appeal all program cases to the U.S. Claims Court,[69] and not in U.S. district courts. The USDA's overwhelming success in the U.S. Claims Court, as explained below, justifies this preference.

IV. Appeals of Agriculture Cases Involving Contracts With Farmers to U.S. Claims Court, 1980-1990

A. Jurisdiction and Scope of Review

Two similar statutes provide jurisdiction in the United States

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62. What is placed in the official "administrative record" becomes critical when the case is appealed to the U.S. Claims Court. *See infra* section IV A.

63. 7 C.F.R. § 780.3 (1991).

64. *Id.* § 780.7(b).

65. *Id.* § 1421.2.

66. Pub. L. No. 101-508, § 1132, 104 Stat. 1388-11 (1990).

67. 26 C.F.R. § 780 (1991). The interim regulations were issued on November 25, 1991.

68. NAD's interim regulations provide some mandatory and some discretionary right to discovery.

69. An exception exists, however, where there is explicit statutory jurisdiction to U.S. district court.

Claims Court for claims against the United States: 28 U.S.C. § 1346(a)(2) and 28 U.S.C. § 1491(a)(1). The statutes read as follows:

Section 1346(a)(2):

> Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

Section 1491(a)(1):

> The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

Under section 1346(a)(2), district courts and the U.S. Claims Court are vested with concurrent jurisdiction for claims less than $10,000; under section 1491, the U.S. Claims Court's jurisdiction is exclusive. In sum, there are two jurisdictional rules: (1) the U.S. Claims Court has jurisdiction over all claims against the government for breach of contract, and (2) district court jurisdiction terminates whenever claims exceed $10,000.

Whether a dispute between a farmer and USDA over subsidy payments is a breach of contract dispute or a dispute over eligibility, or

whether the denial was the result of an arbitrary or capricious act can be critical. The Government (through United States attorneys, who handle suits in U.S. district courts, or Justice Department attorneys, who handle suits in the U.S. Claims Court) usually argues that disputes over farm subsidies are Tucker Act[70] breach of contract suits rather than suits for administrative procedural review and therefore must be heard in the U.S. Claims Court. The purpose of such an argument is to keep these cases out of U.S. district courts. Administrative review cases raise issues of due process and equity—the province of U.S. district courts in which jurisdiction, scope of review, and relief are more liberal, and therefore more pro-farmer. Beginning with the Farm Bill of 1985, when subsidy payments became a substantial part of most farmers' incomes and litigation became more prevalent, the government became more insistent on this position.[71]

Because suits in excess of $10,000 are within the exclusive jurisdiction of the U.S. Claims Court, agricultural lawyers wanting to keep their clients in a U.S. district court began in the late 1980s to plead for injunctive and declaratory relief. Since the U.S. Claims Court has no jurisdiction over these remedies, suit could be filed in a district court. The USDA complained that these suits for "equitable relief" were suits for money damages in disguise since restraining suspension of subsidy payments could lead to payments in excess of $10,000. Nevertheless, U.S. district courts have consistently ruled, beginning with *Esch v. Lyng*,[72] that claims for injunctive and declaratory relief resulting in payments are not necessarily suits for "money damages."

The USDA also prefers to defend subsidy cases in the U.S. Claims Court rather than federal district courts because of the U.S. Claims Court's precedent that its scope of review is limited to deciding whether the USDA's denial of benefits had a "rational basis." In that limited context, U.S. Claims Court judges address only questions of law and do not hold trials. They decide all cases on motions for summary judgment.[73]

Summary judgment assumes that the administrative record is

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70. 28 U.S.C. §§ 1346(a)(2) and 1491(a)(1) are generally referred to as the Tucker Act.

71. In each of the last six suits filed by the authors in 1989-1990 in U.S. district courts, the government moved that the case be transferred to the U.S. Claims Court. The government's motions were denied.

72. 665 F. Supp. 6 (D.D.C. 1987), *aff'd as modified sub nom.* Esch v. Yeutter, 876 F.2d 976 (D.C. Cir. 1989).

73. Carruth v. United States, 627 F.2d 1068, 1076 (1980).

complete and fairly reflects the evidence in the case. Because the ASCS county and state administrative hearings are so informal, however, most administrative records lack key documentary evidence and often contain no testimony. Since farmers are not allowed to cross-examine witnesses or obtain discovery at county or state hearings, the administrative record can be one-sided, incomplete, and misleading. In the past four years, all five cases brought by the authors on behalf of farmers in U.S. Claims Court were scheduled for disposition by court-ordered summary judgment motions, even though in four of those cases, counsel for plaintiffs sought discovery to supplement the administrative record.

In contrast, federal district courts often examine the evidence and policy behind the specific farm program under a broader scope of review and in a manner similar to Administrative Procedures Act precedents.[74] U.S. district court judges often look beyond the initial administrative record, allow testimony and admission of new evidence not found in the administrative record, allow evidence on the issue of granting injunctive or declaratory relief, and carefully analyze whether the farmer was granted a fair and impartial due process administrative hearing consistent with the U.S. Constitution. Throughout this process they often give credence to the farmer's prior denial of a due process hearing at the county and state level. Consequently, the USDA always seeks transfer of larger federal farm program cases to the U.S. Claims Court, where the court is less inclined to undertake such an exhaustive analysis.[75]

The U.S. Claims Court's limited scope of review also precludes issues involving equitable standards. In *Pope v. United States*,[76] the court admitted it had no jurisdiction to hear a farmer's claim based on an equitable relief provision.[77] Moreover, when a contract dispute involves allegations of error in the USDA administrative procedure, the farmer needs an historical and careful analysis of the facts by the reviewing court. This is not always available in U.S. Claims Court.

These claims for denial of due process, suits for declaratory judgments, or requests for injunctive relief[78] are outside the scope of review of the Claims Court. The need to obtain injunctive relief or a declara-

74. The Administrative Procedures Act is found at 5 U.S.C. § 551-576 (1966).

75. Divine Farms, Inc. v. Block, 679 F. Supp. 867, 868 (S.D. Ind. 1988); Gibson v. Block, 619 F. Supp. 1572, 1575 (N.D. Ind. 1985).

76. 9 Cl. Ct. 479 (1986).

77. *Id.* at 485.

78. Morgan v. United States, 12 Cl. Ct. 247, 253 (1987).

tory judgment, however, is often critical to a farmer trying to avoid bankruptcy or a date-certain land foreclosure. Traditionally, hearings for preliminary injunctions involve testimony of witnesses who provide the court with evidence not in the administrative record. Finally, complaints seeking injunctive relief often seek declaratory judgments—rulings as to the respective rights between the parties, including a farmer's right to receive certain payments. Yet, as stated by the U.S. Court of Appeals for the District of Columbia Circuit in *Esch v. Yeutter*, the U.S. Claims Court "lacks the general equitable powers of the district court . . . ."[79] and cannot entertain these actions.[80]

These limitations on review make the U.S. Claims Court a poor choice for a farmer needing timely review of administrative error, an emergency injunction, declaratory judgment, or supplementation of the administrative record.

As shown in the next section, the U.S. Claims Court has also seldom granted relief to farmers. When relief has been granted, it has been limited to a remand of the case to the USDA. The court has the authority, pursuant to its jurisdictional statute, "to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just."[81] The court implements this remand power by sending ASCS cases back to the USDA for further hearings, usually in the form of additional fact finding. This is a far less meaningful remedy than a granting of injunctive or declaratory relief.

Examples of cases in which remands to USDA were ordered by the court (all of which are discussed in section IV B *infra*) include: *Hilo Coast Processing v. United States*[82] (instructing the agency to reexamine the record, supplement it, and state reasons why plaintiffs should or should not be treated differently from other sugar cane growers); *O'Connell v. United States*[83] (ordering the agency to permit the farmer to present evidence on her damages consisting of benefits she

79. Esch v. Yeutter, 876 F.2d 976, 982 (D.C. Cir. 1989) *modifying* Esch v. Lyng, 665 F. Supp. 6 (D.D.C. 1987).

80. *Id.* at 983. In addition to the limited scope of review, bringing suit in claims court can also create delays since a farmer cannot file for relief until after USDA's payment deadline passes. This delay can be harmful since prompt receipt of payments is essential to many farmers' existence.

81. 28 U.S.C. § 1491(a)(2) (1978).

82. 7 Cl. Ct. 175 (1985).

83. 14 Cl. Ct. 309 (1988).

was qualified for under the program); and *Stegal v. United States*[84] (requiring the agency to address specific questions and articulate its rationale for its decision on each question).

B. U.S. Claims Court Agricultural Decisions, 1980-1990

In the decade 1980 to 1990, the U.S. Claims Court issued decisions in thirty agricultural cases.[85] A review of these cases presented, generally, in chronological order reveals that farmers obtained meaningful relief in only a few cases, and even in those cases, the relief granted was minimal.

In two consolidated cases known as *Carruth v. United States*,[86] peanut farmers challenged the authority of the Secretary of Agriculture to reduce or withhold (in 1973-1977) price support from these peanut crops. They alleged breach of contract, and that a department regulation known as the "24-hour rule" denied them due process of law and violated constitutional equal protection safeguards. Plaintiffs further contended that defendant's eligibility procedures were arbitrary and capricious. The court ruled on cross-motions for summary judgment, and as to the issue of the testing procedures for segment 3 peanuts, the cross-motions were denied, and the issue remanded to the trial division for trial or other disposition.[87] The portion of defendant's motion which involved a laches defense was also denied. Defendant's motion for summary judgment was granted on all other issues, and plaintiffs' cross-motion for summary judgment was denied. Entry of final judgment in the case was deferred pending a determination of the testing procedure issue on remand.[88]

During 1981, in *Hawks v. United States*,[89] plaintiff sued for compensation under a herd depopulation contract with the USDA. Defendant moved for summary judgment. Defendant's regulations facilitate the control and eradication of contagious diseases among livestock. Plaintiff contracted with defendant whereby plaintiff agreed to slaugh-

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84. 19 Cl. Ct. 765 (1990).

85. There are a few other cases, including those involving USDA employees, which are not included in this review—McGrath v. United States, 1 Cl. Ct. 236 (1982) and Hedman v. United States, 21 Cl. Ct. 385 (1990). These cases involved employees who challenged their employer's decision to terminate their employment with the agency, and as such are irrelevant to this article.

86. 627 F.2d 1068 (Ct. Cl. 1980).

87. *Id.* at 1083.

88. *Id.* The authors were unable to determine whether the plaintiffs prevailed on remand.

89. 226 Ct. Cl. 707 (1981).

ter his herd of cattle with the expectation of receiving indemnities. Defendant claimed depopulation of the entire herd never occurred. The court denied defendant's motion for summary judgment because it found the case could not be decided as a matter of law on the uncontroverted facts before the court and remanded the case to the trial division for further proceedings.[90] There is no recorded case as to whether the farmer prevailed on remand.

In 1982, the court ruled on two cases involving the Beekeeper Indemnity Payment Program, *Hoffland v. United States*,[91] and *Jim's Valley Apiaries, Inc. v. United States*.[92] In the first case, plaintiff sought payment for damages to his bee colonies. Defendant moved for summary judgment, and the court granted defendant's motion. Plaintiff claimed that the use of poisonous chemicals for economic purposes in the area caused him losses of sizable numbers of his honey bees. The court found plaintiff had no implied or express contract with defendant which would create an obligation for defendant to pay plaintiff in spite of failure to appropriate funds. Furthermore, the court dismissed plaintiff's claims against defendant for willful or negligent behavior, as those claims sound in tort, and the court found them beyond its jurisdiction, pursuant to 28 U.S.C. § 1491.[93] In the second case, *Jim's Valley Apiaries, Inc.*, the court also granted defendant's motion for summary judgment, based on its finding in *Hoffland*, since plaintiff was in a similar factual posture.[94]

In *Amalgamated Sugar Co. v. United States*,[95] decided in 1983, sugar beet processors who participated in the 1977 price support loan program were found to be entitled to recover costs of storing sugar because the regulations prohibiting the accounting method they used were not clear. This case was originally brought in the U.S. Court of Claims, where plaintiffs prevailed on summary judgment. Defendant appealed to the U.S. Court of Appeals for the Federal Circuit which affirmed the claims court's decision, finding that plaintiff appellees were entitled to their recovery despite the finding that they used an accounting method under the loan program which was different than the method they used

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90. *Id.* at 711. This case was heard before the U.S. Court of Claims (predecessor to the U.S. Claims Court) which had both a trial division and an appellate division.

91. 231 Ct. Cl. 922 (1982).

92. 231 Ct. Cl. 995 (1982).

93. *Hoffland*, 231 Ct. Cl. at 922-24.

94. *Jim's Valley Apiaries, Inc.*, 231 Ct. Cl. at 995.

95. 770 F.2d 1042 (Fed. Cir. 1985).

when they participated in an earlier payment program.[96] The Federal Circuit further found that the regulation prohibiting the exchange of accounting methods applied only to the payment program and not to the loan program.

In *Pettersen v. United States*[97] the USDA's determination that farmers were ineligible for the 1984 feed grain program (because they allegedly erroneously reported the planted and approved conservation reserve acreage) was upheld on cross-motions for summary judgment. The court further found that it was statutorily precluded pursuant to the Agricultural Adjustment Act of 1938[98] from reviewing DASCO's refusal to grant equitable relief to plaintiff farmers. As explained, *infra*, there have been many cases in U.S. district courts where this use of 7 U.S.C. § 1385 by the USDA has been rejected.[99]

The government's determination of a farmer's ineligibility for the 1983 PIK program was found not arbitrary or capricious in *Gibson v. United States*.[100] The court found the farmer had forced a tenant off land so that he could participate in the program and had failed to exhaust his available administrative remedies. The court further held that the federal statute making determinations by the Secretary of Agriculture final and conclusive, 7 U.S.C. § 1429,[101] did not prevent the claims court from having jurisdiction over plaintiff's challenge of the USDA's decision, but noted its review power was limited. The court opined it had the authority to examine the Secretary's decision only to determine whether the Secretary had acted "rationally" and within his statutory

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96. *Id.* at 1043-44.

97. 10 Cl. Ct. 194 (1986).

98. 7 U.S.C. § 1385. This provision states:

> The facts constituting the basis for any . . . payment under the wheat, feed grain, upland cotton, extra long staple cotton, and rice programs . . . when officially determined in conformity with the applicable regulations prescribed by the Secretary or the Commodity Credit Corporation, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government.

99. Compare this refusal to review the denial of equitable relief to the United States District Court for the District of Arizona's ruling in Golightly v. Yeutter, 780 F. Supp. 672 (D. Ariz. 1991), where the court not only reviewed USDA's denial of equitable relief but found the denial an abuse of discretion.

100. 11 Cl. Ct. 6 (1986).

101. 7 U.S.C. § 1429 (1949) states:

"Determinations made by the Secretary under this Act shall be final and conclusive: Provided, That the scope and nature of such determinations shall not be inconsistent with the provisions of the Commodity Credit Corporation Charter Act." The CCC Charter Act appears at 15 U.S.C. § 714 (1949).

authority.[102] Secondly, the court held that while factual determinations by the USDA are unreviewable under 7 U.S.C. § 1385, the court could review the legal conclusions based on the Secretary's determination of those facts, and was not prevented from judicial review of questions of law or of allegations and proof that the Secretary's decision was arbitrary or capricious.[103] This type of analysis became the standard approach used in many of the USDA cases before the U.S. Claims Court in the late 1980s.

Haupricht Brothers, Inc. v. United States[104] involved farmers found ineligible for the 1983 PIK program by the agency. The court affirmed the agency decision on cross-motions for summary judgment. The court found the evidence which the agency relied on reasonable, including the findings that no producer could or did devote any part of the farm to an approved conserving use (required of the producers and operators who entered the 1983 program), and that none of them operated or produced crops on the farm during the 1983 crop year.[105] Plaintiffs originally brought this case in the U.S. District Court for the Eastern District of Michigan, but that court concluded that it did not have subject matter jurisdiction and transferred the case to the claims court.[106] The court held that while it had no broad equitable powers to grant plaintiffs some of the relief they sought, it had the authority to determine whether the Secretary acted beyond his statutory authority or whether he denied plaintiffs their procedural rights. The claims court found that there was no genuine issue of material fact essential to the disposition of the case, and that the defendant was entitled to judgment as a matter of law.

In *Hilo Coast Processing, Co. v. United States*,[107] the claims court granted plaintiffs' motion for summary judgment, but remanded the matter to the agency for further administrative action. Plaintiff sugar cane growers had brought the action challenging an agency determination denying coverage to part of their 1977 sugar crop under the sugar price support program. The court held the USDA's refusal to amend the regulation providing for price support payments for cane and beet

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102. 11 Cl. Ct. at 11.

103. *Id.* at 14.

104. 11 Cl. Ct. 369 (1986).

105. *Id.* at 374.

106. Haupricht Brothers, Inc. v. United States, No. 84CV-7405-AA (E.D. Mich. May 6, 1985).

107. 7 Cl. Ct. 175 (1985).

sugar growers was improper in light of the different treatment of similarly situated sugar cane growers. That the regulation was rational when it was first promulgated was not a controlling factor.[108] The agency was instructed in the court's order to review the record and supplement that record as it saw fit and then to state the reasons why plaintiffs should or should not be treated differently from the other growers.[109] The U.S. Claims Court heard the matter again after the Secretary released its supplemental determination of July 22, 1985. The court released an unpublished order of September 27, 1985, at which time it held against plaintiffs on cross-motions for summary judgment, finding that defendant's decision was not arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in light of defendant's supplemental decision.[110] Therefore, the court authorized the Secretary to retain payments which plaintiffs sought. On appeal, the Federal Circuit reversed,[111] finding plaintiffs eligible for payment under the 1977 sugar crop price support payment program. The Federal Circuit further held that the internal transfer of raw sugar to refinery operations constituted "marketing" under the program regulations, so that plaintiffs were eligible to receive program payments.[112] The court concluded that although the Secretary of Agriculture's determinations are entitled to substantial deference, these determinations cannot be inconsistent with what Congress clearly intended and that plaintiffs were treated unjustly because they had been singled out for special and seemingly unfair treatment.[113]

Plaintiff's case in *Morgan v. United States*[114] was dismissed when the court held plaintiff's submission of an application to participate in the 1984 milk diversion program was insufficient to create an implied-in-fact contract entitling plaintiff to program benefits and the court's jurisdiction. The application was treated by the court as an "offer" by plaintiff to contract with defendant, *not* plaintiff's "acceptance" of an offer from defendant.

In an action for breach of a 1983 PIK program contract, *Raines v. United States*,[115] plaintiffs sought relief in the form of wheat, diversion

108. *Id.* at 194.
109. *Id.* at 194-95.
110. For a summary of the unpublished opinion, see 816 F.2d at 633.
111. 816 F.2d 629 (Fed. Cir. 1987).
112. *Id.* at 633.
113. *Id.* at 634.
114. 12 Cl. Ct. 247 (1987).
115. 12 Cl. Ct. 530 (1987).

payments, and treatment and storage costs. The court granted defendant's motion to dismiss. With regard to jurisdiction, the court found it had the authority to address plaintiffs' claim for money under breach of PIK contract theory, but plaintiffs' claim for wheat due under the original contract term was outside the claims court's "incidental equitable powers" under 28 U.S.C. § 1491(a)(2),[116] and could not be construed as a claim for a money judgment. The court upheld the agency's decision revising the downward PIK compensation because the original contract terms were based on defendant employee's erroneous calculation, which needed to be corrected by defendant. Plaintiffs failed to show that defendant employee's error was purposeful or that plaintiffs' reliance on the error was reasonable. The court noted that the sections of the Agricultural Adjustment Act providing that facts constituting the basis for payment under these programs shall be final and conclusive[117] did not preclude judicial review of plaintiffs' allegation that the PIK contract was breached by the administrative decisions, because, even accepting the factual findings of the agency as conclusive, the question of whether the facts gave rise to a breach of contract was a legal, rather than a factual, determination.

Hanson v. United States[118] involved allegations by dairy farmers, pursuant to FmHA regulations, of breach of an implied-in-fact contract. The court found no cause of action for money damages under regulations and statutes implementing emergency agricultural loans and stated the recognition of a damages remedy would not further the purpose of making loans available to applicants who could not obtain credit elsewhere. As in many prior cases, the court held it had no jurisdiction of plaintiff's due process claims. The court found a valid basis for the agency's denial of the loan and also rejected plaintiff's argument that defendant be estopped from denying an implied-in-fact

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116. To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Claims Court shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978.
28 U.S.C. § 1491(a)(2) (1988).

117. 7 U.S.C. §§ 1385, 1421 (1988).

118. 13 Cl. Ct. 519 (1987).

contract.[119]

Willson v. United States[120] involved the 1985 price support and production adjustment programs for wheat and barley. The court found the ASCS decision (in which plaintiffs were determined to be one "person") to be "rationally based." The county committee had found plaintiffs eligible for payments as separate "persons," but the state committee overruled that decision. The court affirmed the decision of the state committee as having a reasonable basis in the administrative record. The court held that the state committee was not precluded from reviewing the county committee's determination on its own initiative and not equitably estopped from determining plaintiffs' eligibility upon completion of the production contracts where plaintiffs could not show they had changed their position and suffered any injury after the county committee's determination of their "person" status. The court also accepted defendant's position that the county committee's decision in favor of the farmers had been made in contravention of federal regulations.

In a 1984-85 milk diversion program case, *O'Connell v. United States*,[121] the court found no breach of contract by defendant when defendant rejected plaintiff's application for participation in the milk diversion program, even though the county committee had already accepted the application. The court ruled the agency's finding (that production from plaintiff's husband's cows was production from plaintiff's unit for purposes of determining plaintiff's eligibility) not arbitrary and capricious. The court noted that damages recoverable for improper denial of eligibility for the program would be limited to benefits for which plaintiff was qualified. Plaintiff would be unable to recover consequential damages resulting from the sale of cows which plaintiff claimed she was forced to sell after being denied participation in the program. The court also pointed out that the plain language of the contract between plaintiff and defendant reserved defendant's right to deny a farmer's request for payment under the program based upon any failure to qualify under the regulations. The court noted, however, that while the agency determined that the dairy cows belonging to plaintiff's husband had to be included within plaintiff's contract reduction, neither plaintiff nor the agency ever calculated what that reduction would be at any

119. *Id.* at 534.
120. 14 Cl. Ct. 300 (1988).
121. 14 Cl. Ct. 309 (1988).

point in the administrative process. Because the court found the record silent on this point, the case was remanded to the agency for the purpose of allowing plaintiff to present her data on what the new calculation would be. The remand instructions required the agency to render a decision as to whether plaintiff met her contract reduction taking into account the new calculation.

In another milk diversion program case, *Grav v. United States*,[122] farmers alleged that the USDA promulgated regulations inconsistent with the program's statutory scheme and won on cross-motions for summary judgment. Under the milk diversion program, the Secretary was required to enter into contracts for payment of money to any producer who qualified for the program. The court found that an implied-in-fact contract existed, and, therefore, the court had jurisdiction to hear the case. The court found that plaintiffs did not improperly "transfer" cattle after the date specified in the statute, even though the buyer picked up the cattle and paid for them after that date. Under South Dakota law, title passed at the time and place of the contracting which was prior to the specified date in the statute. Not surprisingly, defendant appealed this decision to the U.S. Court of Appeals for the Federal Circuit.[123] The U.S. Court of Appeals affirmed the claims court's jurisdiction and its decision granting plaintiffs' participation in the program, concluding that the statute governing the program gave the Secretary no discretion to refuse participation to any qualified applicant, qualified as a money-mandating statute and, thus, triggered Tucker Act jurisdiction in the claims court.

In *Swartz v. United States*[124] plaintiff farmers sought review of defendant's decision denying them refunds of monies paid to the Commodity Credit Corporation under the 1982-83 commodity price support program. The court, ruling on cross-motions for summary judgment, held plaintiffs were not entitled to refunds based upon the bankruptcy of the grain elevator involved and that defendant's denial was rational and within statutory authority.

A civil penalty had been assessed against milk producers in *Parks v. United States*[125] for knowingly violating provisions of the 1984-85 milk diversion program. The agency found the producers had engaged in a "scheme or device tending to defeat the purpose of the program."

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122. 14 Cl. Ct. 390 (1988).
123. Grav v. United States, 886 F.2d 1305 (Fed. Cir. 1989).
124. 14 Cl. Ct. 570 (1988).
125. 15 Cl. Ct. 183 (1988).

On appeal to the U.S. Claims Court, the producers challenged their termination from the program. The court upheld the agency's "scheme or device" finding and granted defendant's motion for summary judgment. The court concluded that past payments under the program were recoverable by defendant and that the scienter necessary for imposing the civil penalty could be imputed to plaintiffs. While the record did not contain evidence that plaintiffs concealed the existence of the agreement, the court found plaintiffs could be charged with the knowledge of the basic operation of the program, so that they should have reasonably known that their agreement defeated the purpose of the program. The court noted that it can grant affirmative, non-monetary relief only if that relief is associated with and subordinate to a claim for a money judgment. Interestingly, as to plaintiffs' claim for declaratory relief, the court found that it was not bound by the label plaintiffs used and that the declaratory relief was unnecessary since it was duplicative of plaintiffs' claim for money damages.

In *Chavez v. United States*,[126] plaintiff contractor sought damages to recover costs of replacing portions of an irrigation line pursuant to oral contract with defendant for construction of the line, which had been requested by the Soil Conservation Service and the ASCS. The court denied defendant's motion to dismiss, holding that it had jurisdiction over a contract implied-in-fact but not a contract implied-in-law, the latter being one in which there exists no agreement between the parties, but a duty is imposed by law to prevent injustice. A contract implied-in-fact requires the same contractual elements as those required for an express contract: mutuality of intent, offer, acceptance, consideration, and lack of ambiguity. A contract with the United States can only be established if it is entered into with a government agent with direct authority to obligate funds of the United States. The court also found that an issue of material fact existed as to whether a federal officer or employee was present at a meeting which gave rise to the oral contract for construction work at issue. The court held plaintiff could raise a new issue in response to defendant's motion to dismiss which addressed two agencies' authority to enter into the contract in support of its motion: that both government agencies requested plaintiff to perform the repair work on the irrigation line which formed the basis for the suit. The court gave plaintiff the option to elect to continue with the litigation by filing an amended complaint within thirty days.

126. 15 Cl. Ct. 353 (1988).

The court noted that it can employ equitable doctrines incidentally to its general monetary jurisdiction to arrive at money judgments or to arrive at substantial principles upon which a money judgment may be based.[127]

Farmers in *Durant v. United States*,[128] claimed breach of contract against the ASCS for failure to make feed grain payments under the 1985 price support and production adjustment programs. The court granted defendant's motion for summary judgment and rejected plaintiffs' promissory estoppel claim, finding such a claim not within the court's jurisdiction. The court further found plaintiffs failed to demonstrate an equitable estoppel claim and could not demonstrate the mutuality of intent necessary to support a finding of a unilateral contract. The court noted that plaintiffs, as participants in the ASCS programs, were charged with a knowledge of the applicable regulations. These regulations informed all farmers involved in the programs that determinations of the county and state committees were not binding on defendant and that the federal administrator could modify or review any such determination. Throughout the 1980s, defendant, with the assistance of the U.S. Claims Court, consistently and successfully argued that its county and state determinations, even when in favor of the farmer, were not binding on DASCO. With the passage of The Food, Agriculture, Conservation and Trade Act of 1990, however, Congress required that all rulings of county and state committees be final and binding if not reviewed by DASCO (now NAD) within ninety days. The interim regulations released on November 25, 1991, reflect this new ninety-day rule, but grant exceptions if it is later determined that the farmer's actions were not in good faith or were based upon misrepresentation, false statements, fraud, or wilful misconduct.

By 1989, the increase in agricultural litigation and the occurrence, as shown below in section IV D, of pro-farmer decisions in district courts around the country, incited hope that the U.S. Claims Court might also be more liberal with its authority. *Frank's Livestock & Poultry Farm, Inc. v. United States*[129] dispelled those hopes. Farmers alleged, among other things, constitutional violations which did not state claims for monetary relief against the United States; plaintiff's due process claims were essentially that plaintiff had no prior notice as

127. This quasi-equitable authority is found at 28 U.S.C. § 1491(a)(2) (1988).
128. 16 Cl. Ct. 447 (1988).
129. 17 Cl. Ct. 601 (1989).

to the agency determinations. The court found that the ASCS procedure of sending a letter notifying plaintiff of noneligibility and providing for a subsequent redetermination hearing did not violate any applicable due process standard. The court further opined that it had no jurisdiction over the constitutional claims, other than the taking claim under the Fifth Amendment. The court held that plaintiff had no "property interest" in obtaining farm-stored loans, so that it could not support a "taking" claim against defendant based on the agency's denial of the loan applications. Plaintiff also asserted a "Bivens" claim,[130] over which the court likewise found no jurisdiction. In sum, plaintiff's claim for wrongful denial of benefits due under the 1985 grain reserve and price support programs was denied by the court which found a rational basis for the decision in the record and hearings sufficient to satisfy due process.

Even when the USDA loses a case in U.S. Claims Court, the court's view of its very limited powers can provide USDA an opportunity to redeem itself. In *Stegall v. United States*[131] two partnerships sought review of a "one-person" determination regarding the 1986 farm subsidy program. A key issue in the case was which regulation applied (chapter 7, part 795.3 or chapter 7, part 795.7 of the *Code of Federal Regulations*) to plaintiffs. The court denied both parties' motions for summary judgment and stated that it could not resolve the issues of the case without more complete factual findings, remanding the case to the USDA. The court ordered that specific questions be addressed by DASCO and ordered DASCO to make explicit factual findings on each of the questions and articulate its rationale for the decision. DASCO did so on remand and again denied plaintiffs any relief.[132] In sum, the court granted DASCO an opportunity to clean up its earlier defective determination. While this may not be uncommon in other judicial reviews, it is often devastating to a farmer who long prior to the review signed a contract and perhaps spent the money under contention.

In *Pender Peanut Corp. v. United States*,[133] defendant contended that plaintiff peanut handler failed to dispose of peanuts pursuant to

130. *See* Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

131. 19 Cl. Ct. 765 (1990).

132. The authors have been unable to determine whether plaintiffs again appealed to the U.S. Claims Court.

133. 20 Cl. Ct. 447 (1990).

defendant's applicable statutes and regulations under the peanut price support program. Consequently, defendant imposed a penalty on plaintiff; plaintiff sued, arguing that defendant assessed the penalty without authority. On cross-motions for summary judgment, the court held defendant lacked statutory authority to impose monetary penalties for mishandling of "additional," as opposed to "quota," peanuts. The court further rejected defendant's argument that the penalty should be upheld because plaintiff had "notice" of potential liability through defendant's regulation. The court noted that while the Administrative Procedures Act (APA) does not establish an independent basis for jurisdiction in the claims court over such an action, the APA provides guidelines for determining when and how it may review agency action when plaintiffs bring claims for monetary damages stemming from agency action. The court further noted that in cases where plaintiffs allege agency action exceeded the authority delegated by Congress, courts should accord only limited deference to the agency's interpretation of a statute.

Abound Corp. v. United States[134] involved the 1986 and 1987 price support and production adjustment programs for wheat and feed grains. Plaintiffs' attempt to obtain limited discovery in the claims court was denied, and the government's ruling that plaintiffs adopted a "scheme and device to evade payment limitation regulations" was thereafter upheld on cross-motions for summary judgment and affirmed by the U.S. Court of Appeals for the Federal Circuit.[135] Plaintiffs also argued that the administrative decision in the case was based on new rules implemented by defendant, of which plaintiffs had no advance knowledge because they were in the federal register, but not included in the regulations or circulated to farmers. The court ruled that plaintiffs should have known of the new rules (even though they were never formally published or circulated to farmers) because defendant had advised plaintiffs of the rule changes orally and (after plaintiffs had signed the contract) by letter.

In *Martin v. United States*,[136] plaintiff dairy farmer sought to enforce his dairy termination program contract with defendant and receive payment under the contract even though DASCO found plaintiff ineligible to receive compensation. The court, applying the "rational

134. No. 739-88C (Cl. Ct. June 22, 1990).
135. Abound Corp. v. United States, 940 F.2d 678 (D.C. Cir. 1991).
136. 20 Cl. Ct. 738 (1990).

basis" test, upheld defendant's finding that plaintiff was ineligible to receive payment under the contract due to substantial violations of the contract. The court further held DASCO's decision rationally connected to the facts and evidence and affirmed that plaintiff violated the contract by failing to export or slaughter the cows located on his farm on the bid date.

Stevens v. United States[137] was a 1986 wheat price support and production adjustment program case. Plaintiffs' application for participation in the program was originally approved by the state committee, but was later denied. The court noted various inconsistencies within the administrative record, but still upheld DASCO's final decision. The court held that the doctrines of equitable estoppel and contract implied-in-law cannot form the basis for a money claim against the U.S. government and rejected plaintiffs' claims that there was an express contract, or alternatively, an implied-in-fact contract, formed between the parties which defendant breached. This case is an excellent example of an administrative record replete with errors by defendant which the court refused to review in a due process-equity mode.

Defendant has also been successful in streamlining issues found in complex cases into a more simplified format upon which the U.S. Claims Court can rule. In *Rieschick v. United States*[138] the court granted defendant's motion for summary judgment and denied plaintiffs' motion for transfer to the district court or, in the alternative, for summary judgment. Defendant argued that since plaintiffs sought money damages in excess of $10,000, and because there were no genuine issues of material fact in dispute, defendant was entitled to judgment as a matter of law. Plaintiffs moved to return the case to the district court where plaintiffs originally brought the case,[139] alleging that the U.S. claims court lacked jurisdiction to hear their claims for declaratory and injunctive relief. In the alternative, plaintiffs moved for summary judgment, alleging that the Secretary of Agriculture's promulgation of title 7 of the *Code of Federal Regulations*, Part 1430.455(c)(1), a preliminary milk base reduction provision, was unlawful, and its application to plaintiffs' dairy termination program contract, due to the presence of a contrary, informal policy (allowing some

137. 21 Cl. Ct. 195 (1990).

138. 21 Cl. Ct. 621 (1990).

139. *Id.* at 622-24. The U.S. District Court for the District of Kansas transferred the case to the claims court by order of August 31, 1988, holding that the claims court had exclusive jurisdiction pursuant to the Tucker Act. *Id.* at 622.

milk producers to escape the milk base reduction regulation) was arbitrary, capricious, and an abuse of discretion. In determining whether this case rightfully belonged in the district court or the claims court, Judge Robinson examined the factual allegations of the complaint rather than the framing of plaintiffs' claims for relief and concluded the case was, in essence, a contract dispute. Defendant's motion was then granted based on the court's finding that the regulations were permissible and that defendant's refusal to apply informal policy allowing some producers to escape reduction provisions of the regulations was also reasonable.

In the last case of 1990, *Doko Farms v. United States*,[140] cotton farmers sought return of cancelled cotton allotments, release of funds owed them, and removal from the government's debt register. All these remedies were based on their contract for participation in the cotton price support program. This case has a long procedural history which includes four decisions from the District Court for the Northern District of Texas, two decisions by the claims court, two decisions by the Court of Appeals for the Fifth Circuit, and one by the Court of Appeals for the Federal Circuit. The decisions are summarized as follows: (1) the government filed suit against Doko Farms (and other parties) in federal district court to recover excessive payments based upon an agency determination that Doko Farms and others had violated program requirements. Doko Farms counterclaimed to remove their names from the federal debt register, return all cancelled cotton allotments, and release money due Doko Farms based on participation in other programs. The district court found that the government's suit was barred by the statute of limitations and that the regulation upon which the agency decision was based was unconstitutionally vague and overbroad. The court entered judgment for Doko Farms and severed Doko's counterclaim to be tried separately;[141] (2) the district court then heard Doko's motion for summary judgment on its severed counterclaim and again entered judgment for Doko Farms finding no legal basis for retention of monies owed Doko Farms based on the court's earlier ruling of no liability for alleged overpayments;[142] (3) the government appealed the decision on Doko's counterclaim to the Fifth Circuit, which affirmed the district court's original decision on the government's suit

140. 21 Cl. Ct. 696 (1990).
141. United States v. Doko Farms, No. CA-5-79-72 (N.D. Tex. 1981).
142. Doko Farms v. United States, 588 F. Supp. 867 (N.D. Tex. 1984).

against Doko Farms and reversed and remanded the case to the district court, ordering the lower court to establish jurisdiction over Doko's counterclaims (a separate case by virtue of the severance);[143] (4) on remand, the district court held it had jurisdiction to grant Doko the relief it sought in the counterclaim pursuant to 28 U.S.C. § 1361;[144] (5) the government again appealed to the Fifth Circuit. The Fifth Circuit ruled that the claims court, and not the district court, had exclusive jurisdiction over Doko's counterclaim, granting Doko Farms leave to refile the case in the claims court;[145] (6) Doko Farms then filed its case in the U.S. Claims Court, and the government counterclaimed. The claims court held that it did not have jurisdiction over government claims for money damages against private parties, or Doko's claim for equitable relief. Therefore, the court transferred the action back to the district court where it originated;[146] (7) the district court, handling the case for the fourth time, granted Doko Farms' motion for summary judgment and denied the government's motion for summary judgment on its counterclaim;[147] (8) the government again appealed the district court's decision, this time to the Federal Circuit Court of Appeals, arguing that jurisdiction was proper in the claims court rather than the district court. The Federal Circuit held that the Fifth Circuit's finding of exclusive jurisdiction in the U.S. Claims Court was the law of the case, and retransferred the case to the U.S. Claims Court;[148] (9) finally, the case was again before the claims court, in which Doko Farms was found entitled to judgment based on the res judicata effect of the prior action which had been brought by the government in the district court to recover allegedly excessive subsidy payments. In sum, it took the farmers seven years of litigation to obtain relief.

C. Comparison with Recent U.S. District Court Agricultural Decisions, 1981 to 1991

In the period 1987 to 1991,[149] federal district courts decided im-

143. United States v. O'Neil, 709 F.2d 361 (5th Cir. 1983).
144. Doko Farms v. United States, 588 F. Supp. 867 (N.D. Tex. 1984).
145. United States v. O'Neil, 767 F.2d 1111 (5th Cir. 1985).
146. Doko Farms v. United States, 13 Cl. Ct. 48 (1987).
147. Doko Farms v. United States, 588 F. Supp. 867 (N.D. Tex. 1984).
148. Doko Farms v. United States, 861 F.2d 255 (Fed. Cir. 1988).
149. In 1982, a group of individuals brought a class action challenging USDA's failure to implement a loan program. The court both certified the class and found defendant's failure to implement the program arbitrary, capricious, and an abuse of discretion. The court reversed defendant's prior decision in which the Secretary had declined to implement the program. Kjeldahl

portant agricultural issues arising from federal farm programs. In those cases, a number of farmers obtained meaningful substantive relief far beyond that ever granted in the U.S. Claims Court.

In 1987, the USDA was battling large farmers over the new conservation reserve program (CRP). In a case entitled *Esch v. Lyng*,[150] plaintiff farmers sued the USDA, challenging their suspension from the federal farm programs, including the CRP program in which they had enrolled some 20,000 acres.

In *Esch*, the USDA determined that nine brothers and sisters were only one "person" for payment limitation purposes.[151] Without prior notice, the USDA suspended the Esch family from participation in the farm programs and withheld payments. As a result, creditors repossessed their farm equipment, and their lenders instituted foreclosure. Plaintiffs were denied relief before the county and state ASCS committees and were not apprised of the official reasons for their suspension until they reached DASCO.

In U.S. District Court, plaintiffs could have brought an action for damages. To avoid a Tucker Act motion to transfer, however, they asked only for equitable relief: (1) injunctive relief, prohibiting the Secretary from suspending their participation in the farm program as nine "persons," (2) a declaration that they were eligible to participate as nine "persons," and (3) an order pursuant to the APA that the ASCS's "person" determination was arbitrary and capricious, in violation of due process, and unwarranted by the facts.

U.S. District Court Judge Joyce Hens Green acknowledged that the claims court would have exclusive jurisdiction *if* "the primary object of a suit [was] to recover money damages . . . in excess of $10,000 . . . ."[152] The court noted, however, that if a plaintiff seeks equitable relief that would have "significant prospective effect or considerable value," the district court could assume jurisdiction over the non-monetary claims.[153]

Plaintiffs provided evidence that a preliminary injunction would

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v. Block, 579 F. Supp. 1130 (D.D.C. 1983). In that case, Judge Joyce Hens Green granted plaintiffs' motion for a temporary restraining order and enjoined the Secretary from making any disbursements from the fund. This use of injunctive powers became a predecessor to actions Judge Green would take a few years later in a number of key agricultural cases.

150. 665 F. Supp. 6 (D.D.C. 1987), *aff'd as modified sub nom.* Esch v. Yeutter, 876 F.2d 976 (D.C. Cir. 1989).

151. *Id.* at 10.

152. *Id.* at 11.

153. *Id.* (quoting Noot v. Heckler, 718 F.2d 852, 853 (8th Cir. 1983)).

"immediately inure to their benefit by placating creditors who at the moment [were] threatening to shut down plaintiffs' farm."[154] The court ruled defendants had denied the plaintiffs a fair and impartial administrative hearing and that the decision was reached in the absence of due process. Thus, plaintiffs' motion for a preliminary injunction was granted.[155]

The government appealed. Two years later, in 1989, the District of Columbia Circuit Court of Appeals affirmed the district court's decision in *Esch v. Lyng*.[156] The decision negated the USDA's long standing argument that farm subsidy disputes are contract claims within the meaning of the Tucker Act:

> If appellees' suit is not based on a contract with the Federal Government, it cannot lie within the Claims Court's contractual jurisdiction. See 28 U.S.C. § 1491(a). Although appellees signed "contracts" with the Federal Government, and although the Department's regulations denominate the documents executed by the Federal Government and program participants as "contracts," see 7 C.F.R. § 704.1 (1988) (conservation reserve program); *id* §§ 713.49, 713.50 (1988) (price support program), we see no reason to assume that what is involved here is a contract within the meaning of the Tucker Act. As the Supreme Court recently noted "[u]nlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy." [Appellees'] claims arise under a federal grant program and turn on the interpretation of statutes and regulations rather than on the interpretation of an agreement negotiated by the parties. It seems to us, then, that [appellees'] claims are not contract claims for Tucker Act purposes.[157]

The court also relied upon the Supreme Court's recent decision in *Bowen v. Massachusetts*,[158] which ruled that the U.S. Claims Court has inadequate procedures to displace the district court's APA jurisdiction over agricultural cases:

> [I]t is doubtful that the jurisdictional power of the Claims Court extends to the suit in question. Appellees, we repeat, assert no claim for

154. *Id.* at 12.
155. *Id.* at 15.
156. Esch v. Yeutter, 876 F.2d 976 (D.C. Cir. 1989).
157. *Id.* at 978 n.13 (quoting Maryland Dep't of Human Resources v. Department of Health and Human Serv., 763 F.2d 1441, 1449 (D.C. Cir. 1985)).
158. 487 U.S. 879 (1988).

> a sum immediately due and owing by the Federal Government. The statute undergirding their suit does not mandate compensation. Similarly to the one involved in *Bowen*, it "directs the Secretary to pay money[,] . . . not as compensation for a past wrong, but to subsidize future . . . expenditures." Nor do appellees predicate their bid for relief upon the provisions of the contract they have negotiated with the Department of Agriculture. And, like the *Bowen* Court, we believe that district courts are better equipped to understand and evaluate the various factual circumstance of these cases than is the Claims Court, headquartered in Washington, far removed from the controversy, and inconvenient to most of those likely to become litigants. Accordingly, we conclude that the Claims Court does not possess the kind of review procedures which would displace the District Court's APA jurisdiction over appellees' suit.[159]

The circuit court followed the Supreme Court's two-part test in *Bowen*,[160] involving an analysis of sections 702[161] and 704[162] of the APA, and concluded the district court possessed jurisdiction.[163]

Esch thus opened the door to U.S. District Court jurisdiction over farm subsidy cases. The Tucker Act no longer precludes review of the USDA's actions when the relief sought is other than money damages, even if the relief forms the basis for a money judgment.

A few months after Judge Green's decision in *Esch v. Lyng*, but before the District of Columbia Circuit's affirmance in *Esch v. Yeutter*, another subsidy case came before the U.S. District Court for the District of Columbia. In *Baker v. Lyng*,[164] plaintiffs sought: (1) preliminary and permanent injunctive relief prohibiting the Secretary from suspending their participation in the farm program, (2) a declaration that they were eligible to participate, and (3) an order pursuant to setting aside the ASCS's person determination as arbitrary and capri-

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159. *Esch*, 876 F.2d at 985.

160. In *Bowen*, the Supreme Court rejected the argument that any action against the Government for money damages must be brought in the claims court. *Bowen*, 487 U.S. at 904-05.

161. Addressing the § 702 inquiry, the court noted that appellees sought an injunction against an arbitrary or capricious administrative denial of subsidy payments due them and held this suit for relief was "certainly not an action for money damages." *Esch*, 876 F.2d at 984 (citing Bowen v. Massachusetts, 487 U.S. at 893).

162. In its § 704 analysis, the court doubted whether the claims court could provide the Esches with an adequate review procedure that would oust the district court of its jurisdiction under the APA, because, *inter alia*, the claims court lacked jurisdiction to award injunctive relief. *Id.* at 984.

163. *Id.* at 983.

164. No. 87-1643-LFO, 1987 WL 123789 (D.D.C., Aug. 4, 1987).

cious, in violation of due process, and unwarranted by the facts.

The USDA contended that plaintiffs were seeking money damages and that the case should be dismissed because it fell within the exclusive jurisdiction of the U.S. Claims Court. The court granted defendant's motion to dismiss, finding a lack of subject matter jurisdiction. The court characterized the case as one based on a contract with the government and relied on the CCC anti-injunction statute, 15 U.S.C. § 714b(c), as the grounds for dismissal. The court concluded that what plaintiffs sought was, in essence, an injunction against CCC,[165] which was prohibited by statute.

Baker v. Lyng was in direct conflict with *Esch v. Lyng* and was a blow to farmers. Less than two years later, however, *Esch v. Lyng* was upheld in *Esch v. Yeutter*, negating the short term negative impact of *Baker*.[166]

Women Involved in Farm Economics v. United States Department of Agriculture,[167] challenged the USDA regulation treating a husband and wife as one "person" for purpose of the $50,000 payment limitation applicable to most of the federal farm programs. The district court (again Judge Joyce Hens Green), ruling on cross-motions for summary judgment, found the regulation unconstitutionally discriminatory on the basis of marital status and not rationally related to the achievement of a legitimate government purpose.

The court found that the regulation excluded married women from participation in the program and undermined the basic purpose of the program, *i.e.*, to reduce the quantity of planted acreage of certain crops.

The case illustrates that review of a USDA regulation is obtainable in federal district court, but not in the U.S. Claims Court. The claims court cannot grant declaratory relief and seldom reviews the constitutionality of a regulation, preferring to address only substantive contract issues.

Tom's Foods Inc. v. Lyng[168] was a traditional challenge of a USDA program. Plaintiff, a food distributor, appealed a penalty im-

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165. The court ignored the distinction between the ASCS, the entity which plaintiffs were attempting to enjoin, and CCC, the entity addressed in the statute.

166. *See also* Vandervelde v. Yeutter, 774 F.Supp. 645, 648-49 (D.D.C. 1991), wherein Judge Oberdorfer distinguishes his earlier ruling in *Baker* and sides with *Esch v. Lyng*, holding that district courts can and should review these types of federal program cases.

167. 682 F. Supp. 599 (D.D.C. 1988).

168. 703 F. Supp. 1562 (M.D. Ga. 1989).

posed for violation of peanut price support regulations. After having made an APA review, the court granted plaintiff's motion for summary judgment, ruling that plaintiff did not violate the price support regulations, that the penalty assessed was void and unenforceable, and that the USDA was equitably estopped. Again, the district court demonstrated that relief was available as long as damages were abandoned as a remedy.

In *Justice v. Lyng*,[169] plaintiffs sought declaratory relief regarding their eligibility to participate in an ASCS program. The USDA raised its usual defense that a judgment would result in money damages in excess of $10,000. The court disagreed and found plaintiffs' action was not an action for actual presently owed monies, but rather an action seeking a determination that plaintiffs were eligible to participate in a federal farm program from which benefits could be earned. The court granted plaintiffs' injunctive relief, in effect placing plaintiffs back in the program and making them eligible for payment.

Farmers could now sue for injunctive relief to compel prospective payments and not be forced into the U.S. Claims Court. The USDA responded with some new defenses.

In *Justice v. Lyng*, the USDA raised the "Charter Act Defense." The CCC, a federal corporation,[170] has authority to implement farm programs. The USDA contended that any lawsuit involving farm subsidy monies (CCC funds) must have a basis for jurisdiction in federal district court separate from the CCC's Charter Act.[171] Although the jurisdictional argument was defeated in *Justice v. Lyng*, a few courts have held that actions involving CCC-funded programs must be brought in the claims court when the amount of relief sought exceeds $10,000.[172]

The USDA also relied upon a second section of the CCC Charter Act to keep farmers out of U.S. District Court whenever the farmer's complaint pleads for injunctive relief. The Charter Act's "anti-injunction" provision states that CCC "[m]ay sue and be sued, but no attachment, injunction, garnishment, or other similar process . . . shall be

169. 716 F. Supp. 1570 (D. Ariz. 1989).

170. 15 U.S.C. §§ 714-714b (1988).

171. *Id.* at § 714b(c).

172. *See* United States v. O'Neil, 767 F.2d 1111, 1113 (5th Cir. 1985); Amalgamated Sugar Co. v. Bergland, 664 F.2d 818, 823 (10th Cir. 1981); Gibson v. Block, 619 F. Supp. 1572, 1575 (N.D. Ind. 1985); Raines v. Block, 599 F. Supp. 196, 198 (D. Colo. 1984); Raines v. United States, 12 Cl. Ct. 530, 534 (1987); Gibson v. United States, 11 Cl. Ct. 6, 11 (1986); Pettersen v. United States, 10 Cl. Ct. 194, 197, *aff'd*, 807 F.2d 993 (Fed. Cir. 1986).

issued against the Corporation or its property."[173] This argument was successfully used by the USDA in *Baker v. Lyng* and in other cases,[174] but has not been universally accepted.[175]

In one of a series of disaster act cases, plaintiff in *Vculek v. Yeutter*,[176] challenged the USDA's determination that he was ineligible for farm disaster payments. Defendant moved for summary judgment. Although the court granted defendant's motion, holding that the USDA's determination was not arbitrary and capricious, it rejected defendant's argument that plaintiff's claim be dismissed for failure to have a third and final administrative hearing. The court noted that the exhaustion of administrative remedies doctrine need not be applied inflexibly and is subject to exceptions. The court did not require plaintiff to appeal his case to DASCO since he had already appealed at the county and state level, and there were no facts in dispute. The court held that requiring a third administrative determination would be redundant. This analysis was typical of those found in district courts in the late 1980s when courts focused on the substance of the problem as opposed to the procedural requirements.

In a case litigated throughout 1990 and ruled on in early 1991, *DCP Farms v. Yeutter*,[177] (also the subject of a television story on *60 Minutes* in December 1991), due process of the USDA's appeals system was again before the federal court. Plaintiffs challenged the USDA's 1990 determinations which found plaintiffs ineligible for farm program benefits for three crop years (1989, 1990, and 1991), as invalid under the Due Process Clause of the Fifth Amendment because the decisions were arrived at after congressional interference. Plaintiffs proved that defendant had been lobbied heavily by a congressman pressuring defendant to deny plaintiffs' benefits. Plaintiffs further argued that defendants' conduct had been arbitrary, capricious, an abuse of discretion, and contrary to the law, causing plaintiffs irreparable harm. Defendant raised its traditional jurisdictional arguments in an attempt to avoid litigating the case in U.S. District Court.

The first argument was to ask that the CCC be permitted to inter-

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173. 15 U.S.C. § 714b(c) (1988).

174. *See* Stroud v. Benson, 254 F.2d 448, 450 (4th Cir. 1958); Moon v. Freeman, 245 F. Supp. 837, 839 n.3 (E.D. Wash. 1965); Lazar v. Benson, 156 F. Supp. 259, 268 (E.D.S.C. 1957).

175. *See* Iowa *ex. rel.* Miller v. Block, 771 F.2d 347, 348 n.1 (8th Cir. 1985), *cert. denied*, 478 U.S. 1012 (1986); Justice v. Lyng, 716 F. Supp. 1567, 1569 (D. Ariz. 1988); Mitchell v. Block, 551 F. Supp. 1011, 1015-16 (W.D. Va. 1982).

176. 754 F. Supp. 154 (D.N.D. 1990).

177. 761 F. Supp. 1269 (N.D. Miss. 1991), *rev'd*, 957 F.2d 1183 (5th Cir. 1992).

vene as a real party in interest. Defendant attempted to have CCC intervene so that it could invoke the anti-injunction provision of the CCC Charter Act, 15 U.S.C. § 714b(c), and thereby grant the USDA immunity in matters involving injunctive relief, an effort previously suggested in *Justice v. Lyng*. The court, as in *Justice v. Lyng*, rejected defendants' argument and denied CCC's motion to intervene.

Defendants also argued that the court had no subject matter jurisdiction pursuant to the Tucker Act. The court noted that the Tucker Act only applies to claims for monetary damages and that a district court's review of claims for relief other than money damages (even if such non-monetary relief may form the basis for a future money judgment) is not limited by the Tucker Act's restriction on jurisdiction. The court referenced *Bowen v. Massachusetts*[178] for its finding that while the relief plaintiffs sought

> may serve as a basis for monetary relief, it is not a substitute remedy at all but an attempt to give the plaintiff the very thing to which he was entitled in the first place and is not "money damages" as the term is contemplated and used in the Tucker Act.[179]

This reasoning was parallel to the prior holdings in *Esch v. Lyng* and *Justice v. Lyng* rejecting the application of the Tucker Act to suits for equitable relief.

In one of the nation's largest dairy termination program (DTP) cases, *Vandervelde v. Yeutter*,[180] the court reaffirmed federal district court jurisdiction in CCC/ASCS cases, originally established in *Esch v. Lyng* and *Esch v. Yeutter*, and denied defendant's motion to dismiss. Plaintiffs requested review of the agency's action and injunctive and declaratory relief alleging that defendant: (1) illegally suspended their payments under their DTP contract, (2) denied them the right to participate in the DTP in violation of law, (3) made an arbitrary and capricious determination, (4) violated their due process rights, (5) failed to make factual findings in violation of the law and plaintiffs' contract, and (6) took plaintiffs' property without compensation in violation of the Fifth Amendment. Defendant moved to dismiss, contending that the action, seeking declaratory and injunctive relief on its face, was in reality an action for money damages. Defendant further argued that the case should be subject to the exclusive jurisdiction of the claims

178. 487 U.S. 879 (1988). *See supra* note 158 and accompanying text.
179. *DCP Farms*, 761 F. Supp. at 1274-75.
180. No. 90-1372-LFO (D.D.C. Apr. 15, 1992).

court under the Tucker Act. The court denied defendant's motion, distancing itself from its earlier holding in *Baker v. Lyng*[181] and noting the many similarities between the case at bar and *Esch*.

Finally, the U.S. District Court for the District of Arizona recently decided *Golightly v. Yeutter*,[182] in which it held DASCO's findings to be unreasonable and lacking a rational basis when DASCO denied some plaintiffs relief provided to other producers. DASCO had found the plaintiff in *Golightly* had purposely indicated bank financing rather than financing from a local ginning company on farm record in an effort to avoid payment limitation provisions. The court found DASCO's refusal to apply an exception for financing institutions to the cotton gin to be arbitrary and capricious. The court further found DASCO's determination that its "handbook" rule, allowing loans by financial institutions, applied only to banks and lending institutions and not cotton gins, was without basis in agency statutes or regulations. Finally, and perhaps most importantly, the court held that DASCO abused its discretion in relieving some but not all producers from the penalty because no rational basis existed in the administrative record for such selectivity.

V. CONCLUSION

This article illustrates that in but a few cases, farmers have not obtained meaningful relief in the U.S. Claims Court. The major reason is the U.S. Claims Court's limited jurisdiction; it has no injunctive or declaratory powers. Without equitable jurisdiction, resolution of most agricultural cases that require immediate or short-term relief to avoid irreparable harm or declarations of a party's rights, are a practical impossibility. In addition, the U.S. Claims Court usually insists on resolution by summary judgment, which reduces the case to overly simplistic issues of law and limits supplementation of the administrative record. The court also gives strict deference to the USDA's determination, even when the administrative procedure followed by the USDA lacks normal due process. The U.S. Claims Court has a limited scope of review: the "rational basis test," which is a test often too elementary for federal farm program disputes and which leaves key issues of equity generally ignored. Additionally, the court frequently refuses to examine whether due process was followed in the eligibility process, a critical

181. No. 87-1643-LFO, 1987 WL 123789 (D.D.C. Aug. 4, 1987).
182. 780 F. Supp. 672 (D. Ariz. 1991).

issue since many USDA programs change each year. The U.S. Claims Court has consistently refused to allow supplementation of the administrative record, which is often devoid of critical pro-farmer evidence. Furthermore, the court often uses the lack of administrative procedural requirements, such as the exhaustion of administrative remedies, to avoid discussing substantive issues. Finally, the court prefers, when a plaintiff farmer has proven he has been wronged, to remand the case to the USDA for a new hearing rather than to grant judgment to the plaintiff farmer; a remand often does no more than provide the USDA a second opportunity to strengthen its findings against the farmer.

Farmers will want their cases reviewed in U.S. District Court instead of the U.S. Claims Court. To accomplish this, the case must be pled carefully and should adhere to the following general guidelines: (1) do not plead a breach of contract count, (2) plead for equitable relief—injunctive relief and a declaratory judgment, (3) do not include the Commodity Credit Corporation as a defendant—the sole defendant need be only the Secretary of the USDA, (4) challenge the administrative record, and (5) carefully challenge and plead all APA and due process issues, including whether the farmer received a full opportunity to submit and rebut all evidence cited against him. Taking these precautions will hopefully ensure a review in the U.S. District Court, enabling the farmer to receive more complete and expedient relief.