Agricultural Law Update

VOLUME ONE, NUMBER THREE, WHOLE NUMBER THREE DECEMBER 1983

Official publication of the American Agricultural Law Association

INSIDE

IN FUTURE ISSUES

- Information on the taxation of oil and gas payments received independent of production
- Windfall profit tax and its impact on royalty owners
- The continuing story of the PIK program

"Many ideas grow better when transplanted into another mind than in the one where they sprung up."

—Oliver Wendell Holmes

More on PIK

The 1983 payment-in-kind program continues to pose significant tax problems. *Table 1* and *2* (inside) summarize the three basic categories of farmers as taxpayers — (1) no CCC commodities in storage, (2) CCC commodities in storage and CCC loans treated as loans, and (3) CCC commodities in storage and loans treated as income. *Table 1* discusses the income tax consequences of requesting PIK commodities. *Table 2* summarizes the effects of assignment where the assignment is for value. Where the assignment is as collateral for a loan, it would appear that the income to the farmer as assignor would come when the loan is cancelled or forgiven. In some instances, that might not come until the lender as assignee obtains the PIK commodities, sells the commodities and applies the proceeds on the loan.

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Reparation proceeding initiated under Packers and Stockyards Act

The following letter was received recently from the Iowa Department of Justice, Attorney General's office. Assistant Attorney General Timothy D. Benton thought that the case referred to would be of interest to the readers of AGRICULTURAL LAW UPDATE. Our thanks to Mr. Benton for his interest in AGRICULTURAL LAW UPDATE and for the following submission.

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The qualified use test

When the final special use value regulations were issued in 1980, the qualified use test emerged as a full-fledged test to be met for pre-death eligibility and to avoid post-death recapture. The basic idea behind the test, in the pre-death period, is that the decedent or member of the decedent's family must be "at risk" and have an equity interest in the farm operation. In the post-death recapture period, each qualified heir must meet the qualified use test except for the two year grace period immediately after death.

In the pre-death period, a cash rent lease to a family member is permissable but a cash rent lease to an unrelated tenant precludes special use valuation. Moreover, the test must be met at the instant of death as well as for five or more of the last eight years before death.

In a recent U.S. District Court case, *Schuneman v. United States*, 83-2 U.S.T.C. ¶13,540 (C.D. Ill. 1983), land was cash rented at death to an unrelated tenant. The lease provided for a reduction in rent if the revenue to the tenant was less than that derived from 70 bushels of corn per acre at $2.25 per bushel. The court held that the qualified use test was not met and the estate was not eligible for special use valuation.

Thus, although a cash rent lease is acceptable if to a family member as farm tenant, leases with unrelated tenants should be of the crop share or livestock share type. In the post-death period, there should be no cash renting (after the two year recapture period) even to a family member as tenant.

— Neil Harl

REPARATION PROCEEDING

CONTINUED FROM PAGE 1

Dear Mr. Herz:

In 1979, our office initiated a reparation proceeding under the Packers and Stockyards Act, 1921, as amended, on behalf of an Iowa livestock producer. The Secretary of Agriculture found that the respondent had committed an "unfair practice" in violation of 7 U.S.C.A. § 208, and ordered that the respondent pay the complainant $14,568.57 plus interest. The respondent then filed an action for declaratory judgment in Kansas Federal Court challenging the Secretary's jurisdiction to issue a reparation order in this case.

The Court in *Fort Scott Sale Co., Inc. v. Hardy,* 570 F.Supp. 1144 (D. Kansas 1983) dismissed the respondent's action finding that the exclusive method for the review of reparation orders under the Act is in an enforcement proceeding under 7 U.S.C.A. § 210(f). Please find enclosed a copy of this case. We thought that since it is the most recent construction in the Courts of the Act and the judicial review provisions of the statute, you might consider it for inclusion in the Agricultural Law Update.

Incidentally, we have now filed an action in the Federal District Court of Iowa Northern Division to enforce the Secretary's Order. Fort Scott has again challenged the Secretary's jurisdiction, so there may be a reported decision construing the Secretary's authority under the Act.

Thank you for your consideration.

Sincerely,

Timothy D. Benton
Assistant Attorney General
Farm Division

Fort Scott Sale Company, Inc.,
v.
Hardy,
570 F. Supp. 1144,
(D. Kansas 1983).

Defendant brought reparation proceeding under Packers and Stockyards Act.

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Agricultural Law Update

VOL 1, NO. 3, WHOLE NO 3 DECEMBER 1983
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MORE ON PIK

CONTINUED FROM PAGE 1

Table 1 — **PIK Tax Treatment** *(Assuming Farmer is a Qualified Taxpayer)*

Category of Taxpayer	Method of Account	
	Cash	Accrual
I. No commodities in CCC storage		
• PIK amount requested in 1983	PIK amount taxable when sold (or fed to animals and animals are sold)	Commodity on hand includible in closing inventory
• PIK amount requested in 1984	(same as above)	If taxable year ends before PIK entitlement date, contract right apparently not includible in closing inventory; not clear if year closes after PIK entitlement date
II. Commodities in CCC storage, CCC loan treated as loan		
• PIK amount requested in 1983	Gain on commodity given up taxable in 1983 PIK amount taxable when sold (or fed to animals and animals are sold)	Any gain on commodity given up taxable in 1983 (commodity may have a basis) Commodity on hand includible in closing inventory If taxable year ends before PIK entitlement date, contract right apparently not includible in closing inventory; not clear if year closes after PIK entitlement date
• PIK amount requested in 1984	Gain on commodity given up taxable in 1984 PIK amount taxable when sold (or fed to animals and animals are sold)	Any gain on commodity given up taxable in 1984 (commodity may have a basis) If taxable year ends before PIK entitlement date, contract right apparently not includible in closing inventory; not clear if year closes after PIK entitlement date
III. Commodities in CCC storage, CCC loan treated as income		
• PIK amount requested in 1983	Gain or loss recognized on commodity given up taxable in 1983 to extent amount differs from that reported in income earlier PIK amount taxable when sold (or fed to animals and animals are sold)	Gain or loss recognized on commodity given up taxable in 1983 to extent amount differs from that reported in income earlier Commodity on hand includible in closing inventory If taxable year ends before PIK entitlement date, contract right apparently not includible in closing inventory; not clear if year closes after PIK entitlement date
• PIK amount requested in 1984	Gain or loss recognized on commodity given up taxable in 1984 to extent amount differs from that reported in income earlier PIK amount taxable when sold (or fed to animals and animals are sold)	Gain or loss recognized on commodity given up taxable in 1984 to extent amount differs from that reported in income earlier Commodity on hand includible in closing inventory If taxable year ends before PIK entitlement date, contract right apparently not includible in closing inventory; not clear if year closes after PIK entitlement date

Neil Harl

Table 2 — ***Effects of Assignment***

I. No commodities in CCC storage		
• Assignment in 1983, PIK commodities received in 1983	Income recognized to assignor in 1983 from assignment (when value received) Assignee has income in 1983 from PIK commodities	Income recognized to assignor in 1983 from assignment (when value received) Assignee has income in 1983 from PIK commodities
• Assignment in 1983, PIK commodities received in 1984 by action of assignee	Income recognized to assignor in 1983 from assignment (when value received) Assignee has income in 1983 from constructive receipt of commodities	Income recognized to assignor in 1983 from assignment (when value received) Assignee has income in 1983 from constructive receipt of commodities
II. Commodities in CCC storage, CCC loan treated as loan		
• Assignment in 1983, PIK commodities received in 1983	Income recognized to assignor in 1983 from assignment (when value received) Assignor has gain on commodity given up in 1983 Assignee has income in 1983 from PIK commodities	Income recognized to assignor in 1983 from assignment (when value received) Assignor recognizes any gain on commodity given up in 1983 Assignee has income in 1983 from PIK commodities
• Assignment in 1983, PIK commodities received in 1984 by action of assignee	Income recognized to assignor in 1983 from assignment (when value received) Assignor has gain on commodity given up in 1984	Income recognized to assignor in 1983 from assignment (when value received) Assignor recognizes any gain on commodity given up in 1984

Neil Harl and Philip Harris — Assignee has income in 1983 from constructive receipt of commodities; Assignee has income in 1983 from constructive receipt of commodities

Farm products for purpose of Article 9 of the UCC

by Keith Meyer

Under 9-102(1) any credit transaction intended to create a security interest in personal property triggers the application of Article 9. Tangible personal property is divided into four classes of property: "consumer goods, "equipment," "farm products" and "inventory." These classifications are mutually exclusive and correct classification of the goods is crucial to proper creation and perfection of a security interest. Recently there has been considerable interest in the difference between "farm products" and "inventory."

In order to be "farm products" under section 9-109(3) the goods must be a crop or product of a crop or livestock, in the possession of the debtor who is engaged in a farming operation. The possession requirement is probably the most troublesome. Remember, however, that to have farm products all three of the reqnirements must be satisfied.

The possession issue can arise when a farmer stores grain in a commercial warehouse or when the debtor's cattle are being fattened in someone else's commercial feedlot. Each of these situations will be briefly considered.

At harvest a grain farmer will generally store some or all of the crop on the farm or at a local elevator because cash prices tend to be lowest at harvest. When the farmer stores the harvested grain on his farm there is no problem with the possession requirement inasmuch as the debtor-farmer has physical possession of the grain. The grain stored in an elevator or warehouse is another matter.

Upon deposit of the grain in the elevator, the farmer will generally receive either a negotiable or nonnegotiable warehouse receipt.[1] Clearly, the grain is still owned by the farmer and he will be entitled to sell it whenever he chooses, but he obviously does not have physical possession of the grain. Moreover, sinee it is a fungible product, the exact grain deposited will have been commingled with other similar grain. Assuming a warehouse receipt has been issued,[2] a document of title[3] is now involved and the question is, ean the grain still be classified as "farm products"? While there is a crop or a product of a crop, there is a problem with the requirement that the grain be in the possession of a debtor engaged in farming.

Possession is not defined in the Code and therefore it is unclear precisely what the drafters meant. If possession means physical possession by the farmer who owns the grain, it would mean that the grain deposited in the elevator ceased to be "farm products." Also, the elevator is not engaged in farming and this presents a problem in view of comment 4 to 9-109 which provides in part:

> "When crops or livestock or their products come into the possession of a person not engaged in farming operations they cease to be 'farm products.' If they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory."

Consequently, the creation and perfection of a security interest in the warehouse receipt would be of primary concern.[4]

On the other hand, it can be argued that if the drafters wanted possession to be construed broadly, the warehoused grain could still be considered to be in the possession of the farmer. Some Code sections certainly point in the direction of broad construction of "possession." For example, section 9-205's allowing the debtor significant control over the property might suggest this. Also, section 9-305 could support a broad construction of possession. This seetion provides in part: "If such eollateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee reeeived notification of the seeured party's interest."

While 9-305 obviously deals with perfection, the argument can be made that nonnegotiable warehouse receipts in the hands of the farmer should be sufficient to be possession for purposes of the definition of "farm produets." And, if there were a negotiable warehouse receipt issued, it would represent ownership of the goods and therefore the farmer possessing the title would be in possession of the goods.[5] In short, the farmer is still the owner of the harvested crop and it is simply in the hands of an agent. The farmer has to pay storage fees and the farmer, not the elevator, decides when to sell. It must also be noted that Professor Gilmore stated in his treatise that "Goods cease to be 'farm Products' when they are subjected to any manufacturing operation...or when they move from the *possession and ownership* of a farmer to that of a non-farmer (canner, cooperative, etc.).[6] In addition, it must be noted the drafters could have simply inserted the word "physical" before the word possession in the definition of farm products.

Assuming *arguendo* it was determined that the stored crops are not to be considered "farm products," the issue is what type of collateral do you have then. One possibility is that the warehouse receipt could some how be considered proceeds of "farm products." The argument would be that the warehouse receipt was received upon "exchange" for the crops.[7] This is probably an unpersuasive argument because the thrust of section 9-306 is that the debtor has given up all control and interest in the collateral.

If the stored grain were to be considered a "good," the only possibility would be "inventory." Comment 3 to section 9-109 states: "The principal test to determine whether goods are inventory is that they are held for immediate or ultimate sale. Implieit in the definition is the criterion that the prospective sale is in the ordinary course of business." But there are severe problems with concluding the grain is "inventory." While most grain farmers will hold their grain for sale, the drafters of the Code chose to treat the farmer differently by not defining the farmer's goods held for sale as "inventory." Also, Professor Gilmore, in describing "farm products" stated:

" 'Farm products' are in effect a farmer's inventory...although there is no 'held for sale' language in the definition, it is in highest degree unlikely that farm products not destined for sale will ever show up as collateral for loans."[8] All this appears to establish the stored grain would still be classified as "farm products." Finally, it must be noted that proper classifications of the good is still important even if the issuance of the warehouse receipt would make the document of title rules applicable.[9]

The reeent case of *Garden City PCA v. International Cattle Systems*, 32 UCC Rep. 1207 (DDC Kan. 1981), involved the possession requirement when livestock were the collateral. PCA had a security agreement which covered all of debtors' cattle, including after-acquired cattle. The cattle were not in the physical possession of the debtor-owner. Rather, ICS, a feedlot operation, apparently was fattening the cattle for debtor and always had possession of the cattle. ICA sold the cattle to meat paekers. PCA sued ICS and packers in conversion.

The court held the cattle were not "farm products" but were inventory. Its reasoning was that the debtor never had possession

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and ICA was not viewed as debtor's agent for purposes of establishing possession. In short, the court seems to read the possession requirement of 9-109(3) to be limited to physical possession.

Having determined that the cattle in the feedlot were inventory, the court concluded that the Packer which bought the cattle from ICS bought them in the ordinary course of business and took free of any perfected security interest in the cattle. The court relied upon 9-307(1) which provides that the buyer takes free of any security interest created *by his seller.* While not expressly stating it, the court must have concluded that ICS was acting as an agent of the debtor here when it sold the cattle to packer inasmuch as 9-307(1) only applies to security interests created by the seller. If ICS were considered the seller, 9-307(1) would not apply. Assuming that the court is correct that the cattle were inventory and PCA was not properly perfected, what result if ICS is considered the seller? See UCC §§ 9-201, 301, 1-109 and 2-403(2).

While the facts are not totally clear in *International Cattle Systems,* the analogy to the stored grain is striking. The farmer was apparently still the owner of the cattle, he was undoubtly paying the feedlot for its services, and he probably was determining when the cattle would be sold. Consequently, the agruments made about possession and stored grain apply when owned livestock are not in the physical possession of the debtor. This all assumes the cattle could always be identified.

The Kansas legislature responded to the *International Cattle Systems* ease by adding the underlined words to the definition of "farm products":

> (3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations *or if they are livestock being held in a feed lot, as defined in K.S.A. 47-1501, and any amendments thereto.* If goods are farm products they are neither equipment nor inventory;

Governor Carlin, however, vetoed the bill. The Governor's veto message suggested that this was a substantial change in the Uniform Commercial Code and all interested parties were not given an adequate opportunity to pursue the ramifications of the proposed change. Part of the opposition to this suggested change in the Code came from cattle buyers. They viewed it just as another extension of the protection extended financiers by 9-307(1).

The questions of what collateral is considered farm products and whether 9-307(1) should be changed exist in most farm states today. As one considers whether it is wise to change any "definitions" in the Uniform Commercial Code, or for that matter 9-307(1), the impact upon other provisions of the UCC must be carefully considered. Also, what impact the changing of the farm products exception of 9-307(1) would have upon the *"financing"* of farmers cannot be overlooked.

1. For definitions of warehouse receipts under the Code, see U.C.C. §§ 1-201(15), 2-201(45), 9-105(1)(f), 7-102(1)(e), 7-201, 7-104.

2. Most times the farmer will receive a weight or scale ticket first and then will receive a warehouse receipt. A weight or scale ticket will normally show the date, the name of the depositor, gross weight of truck or wagon, net weight, test weight of the kind of grain, and the signature of the agent of the elevator. Normally these tickets will be serially numbered. The warehouse receipt which will either be a state or federally approved form will contain, among other things, a statement whether the grain received is to be delivered to bearer, to a specified person, or to his order; the date of the issuance of the receipt, the net weight of the grain along with the grade; and the words "negotiable" or "nonnegotiable." For statutes dealing with the form of the warehouse receipt, see e.g., Iowa Code Ch. 543 (1980); Kan. Stat. Ann. § Ann. § 34.239 (1981); 7 U.S.C.A. § 260 (West 1980). It must also be noted that Section 7-202 prescribes a form for warehouse receipts. The failure to follow it will result in liability for any loss caused by the omission of a required term. Some state-and all federally licensed elevators must issue warehouse receipts. Those that do not issue receipts rely on weight tickets and settlement sheets. Clearly, farmers should obtain warehouse receipts. For cases dealing with the rights of warehouse receipt holders and weight ticket holders, see *United States v. Luther,* 225 F.2d (10th Cir. 1955); *Farmers Elevator Mut. Ins. Co. v. Jewett,* 394 F.2d 896 (10th Cir. 1968); *Hartford Accident & Indem. Co. v. Kansas,* 247 F.2d 315 (10th Cir. 1957); *In re Cheyenne Wells Elevator,* 251 F. Supp. 275 (D. Colo. 1966); *Stevens v. Farmer's Elevator Mut. Ins. Co.,* 197 Kan. 74, 415 P.2d 236 (1966).

3. See U.C.C. § 1-201(15), 1-201(45), 9-105(1)(f), 7-102(1)(e).

4. Clearly, a document of title is a separate type of collateral and can easily be pledged if negotiable. There also are different rules governing the creation and perfection of security interest in them. U.C.C. §§ 9-102(1), 9-203, 9-304, and Comments; cf. § 9-401(3). For general discussion of this area see Meyer, "Crops" as Collateral for an Article 9 Security Interest and Related Problems, 15 U.C.C.L.J. 3, 27-29 (1982).

5. See Comment 2 to U.C.C. § 9-304. The Comment to Section 9-305 reinforces this theory when it states: "Possession may be by the secured party himself or by an agent on his behalf; it is of course clear, however, that the debtor or a person controlled by him cannot qualify as such an agent for the secured party."

For some cases dealing with perfection by possession, see, *e.g., In re Copeland, 531* F.2d 1195 (3d Cir. 1976) (escrow agent can retain possession); *Lee v. Cox,* 18 U.C.C. Rep. 807 (M.D. Tenn. 1976) (registration papers of Arabian horses not possession); *Blumenstein v. Phillips Ins. Center, Inc.* 490 P.2d 1213 (Alaska 1971) (possession not established by creditor removing equipment from boat and preparing it for winter).

6. 1 Gilmore, *Security Interests in Personal Property* § 12.3, at 374 (emphasis added).

7. Section 9-306(1) provides in part: " 'Proceeds' includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds."

8. 1 Gilmore, note 6 *supra,* at 734. For some cases dealing with when a good is "farm products" or "inventory," see, *e.g., United States v. Hext,* 444 F.2d 804 (5th Cir. 1971); *In re Collins,* 28 U.C.C. Rep. 1520, 3 B.R. 144 (D.S.C. 1980); *K. L. Smith Enterprises, Ltd. v. United Bank of Denver,* 28 U.C.C. Rep. 534, 2 B.R. 280 (D. Colo. 1080); *Oxford Prod. Credit Ass'n v. Dye,* 368 So. 2d 241 (Miss. 1979); *First State Bank v. Products Livestock Mktg. Ass'n Non-Stock Coop.,* 200 Neb. 12, 261 N.W.2d 854 (1978); *In re Charolais Breeding Ranchers, Ltd.,* 20 U.C.C. Rep. 193 (Bankr. W.D. Wis. 1976); cf. *Baker PCA v. Long Creek Meat Co.,* 266 Ore. 643, 513 P.2d 1129 (1973).

9. See U.C.C. §§ 7-502-04, 9-304(2)-9-304(3).

Keith G. Meyer is a professor of law at the University of Kansas School of Law where he teaches courses in agriculture law and commercial law. He is editor-in-chief of the new Journal of Agricultural Taxation and Law and is one of four working on a case book on agriculture law to be published during the summer of 1984.

REPARATION PROCEEDING

CONTINUED FROM PAGE 2

Plaintiff was ordered to pay defendant sum of money plus interest thereon, whereupon plaintiff initiated action for declaratory judgment, asking that order be stricken on basis that Secretary of Agriculture did not have jurisdiction of subject matter. Defendant moved for dismissal. The District Court, O'Connor, Chief Judge, held that enforcement proceeding pursuant to Packers and Stockyards Act is exclusive method for review of reparation order.

MEMORANDUM AND ORDER

O'CONNOR, Chief Judge.

This matter is before the court on defendant's motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Defendant John Hardy, Jr., brought a reparation proceeding against Fort Scott Sale Company, Inc., under the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. §§ 181-229. A hearing on the defendant's reparation complaint was held on December 15, 1981, and on October 15, 1982, Donald A. Campbell, Judicial Officer of the United States Department of Agriculture, ordered that Fort Scott Sale Company, Inc., plaintiff herein, pay to Mr. Hardy $14,568.57, plus interest thereon at the rate of 13% per annum from December 1, 1979 until paid. Fort Scott Sale Company, Inc., initiated this action for declaratory judgment, asking that the Secretary's order be stricken on the basis that he did not have jurisdiction of the subject matter. The defendant John Hardy, Jr., has moved for dismissal, and the United States has intervened and filed its brief in support of the defendant's motion to dismiss.

The basis of defendant's motion is that an enforcement proceeding under 7 U.S.C. § 210(f) is the exclusive method for review of reparation orders. Plaintiff, on the other hand, argues that the enforcement proceeding is not the exclusive method for review and that a declaratory judgment action is proper in this case. We hold that the enforcement proceeding pursuant to 7 U.S.G. § 210(f) is the exclusive method for review of a reparation order and, therefore, this court does not have subject matter jurisdiction.

In *Maly Livestock Commission Co. v. Hardin,* 446 F.2d 4 (8th Cir.1971), it was held that the enforcement procedure set forth in 7 U.S.C. § 210(f) is the exclusive method for judicial review of reparation orders and, therefore, the court of appeals did not have jurisdiction to entertain a petition for direct review of a reparation order issued by the Secretary of Agriculture. The court in *Maly* relied on *I.C.C. v. Atlantic Coast Line Railroad,* 383 U.S. 576, 86 S.Ct. 1000, 16 L.Ed.2d 109 (1966), which interpreted a provision in the Interstate Commerce Act substantially identical to 7 U.S.C. § 210(f). The Court in *Atlantic Coast Line* stated the policy of the Act was to encourage prompt payment of reparation awards and, to effectuate that policy, Congress had provided for certain procedural and substantive benefits, in particular, choice of venue, which would not be available in an action brought by the carrier (the defendant in the reparation suit). The Court also found that there was ample opportunity to secure review of the reparation order through defense on an enforcement action. Therefore, carriers are precluded from obtaining review in a forum other than that chosen by the shippers. This same rationale applies to the identical provision of the Packers and Stockyards Act, 7 U.S.C. § 210(f). Although *Maly* was a situation in which direct review was sought in the court of appeals, the case on which it relies, *Atlantic Coast Line,* was an action involving direct review sought in the district court, which is the situation here.

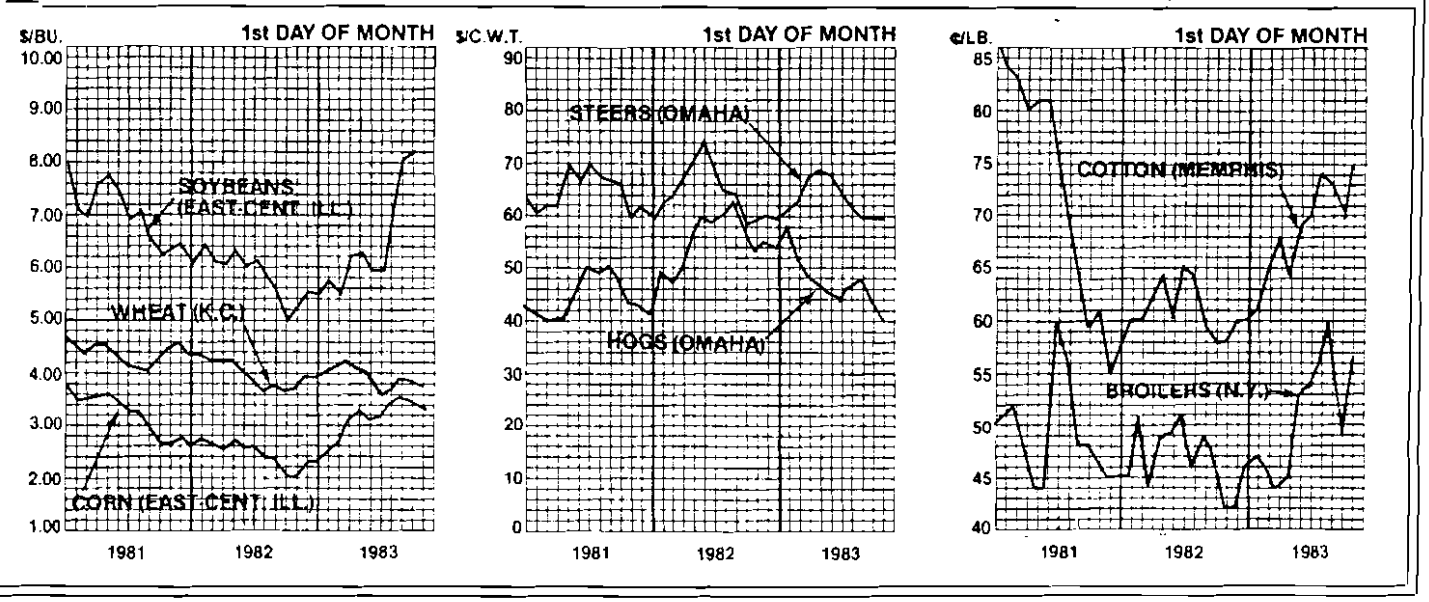
The plaintiff will not be denied judicial review of the reparation order. It will merely be denied its choice of forum. It will be required to challenge the validity of the reparation order in an enforcement proceeding brought by the defendant in the defendant's choice of forum. To rule otherwise would defeat the benefits given complaintants in enforcement proceedings, namely, choice of forum, treatment of the Secretary's findings as *prima facie* evidence of the facts, and reasonable attorney fees. If the plaintiff wishes to challenge the Secretary of Agriculture's jurisdiction to issue the reparation order, it may do so for the first time in the enforcement action. *Guenther v. Morehead,* 272 F.Supp. 721, 724 (S.D. Iowa 1967); *see also Rice v. Wilcox,* 630 F.2d 586, 589 (8th Cir. 1980).

The cases cited by plaintiff are inapposite. Plaintiff cites the Administrative Procedure Act (APA) for the proposition that it is entitled to judicial review. Plaintiff is not being denied judicial review. It is merely being denied its choice of forum. In fact, § 10(b) of the APA provides that "[t]he form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, *in the absence of inadequacy thereof,* any applicable form of legal action, including actions for declaratory judgments..." 5 U.S.C. § 703 (emphasis added). The statutory review proceeding in this case is adequate. Therefore, plaintiff must seek redress in its defense of the enforcement action.

Because we lack jurisdiction, it is unnecessary to consider defendant's motion to dismiss for failure to state a claim.

IT IS THEREFORE ORDERED that defendant's motion to dismiss be and hereby is granted.

TRENDS



AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

AALA requests nominees

The AALA Nominating Committee requests your candidate suggestions and selection comments for the 1984-85 Office of the President-Elect and *two* new members of the Board of Directors for the three-year term of 1984-87. Please communicate your nominee and ideas to:

Dr. Dale C. Dahl,
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University of Minnesota,
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