2025 WL 944613 (C.A.5) (Appellate Brief)
United States Court of Appeals, Fifth Circuit.

Derick MILLER, Plaintiff-Appellant,
v.
FEDERAL CROP INSURANCE CORPORATION; The Risk Management Agency of the United States Department of Agriculture; Thomas J. Vilsack, Defendants-Appellees.

No. 24-10929.
March 19, 2025.

On Appeal from the United States District Court for the Northern District of Texas, Lubbock Division District Court No. 5:23-CV-69-C

Brief for Appellees

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*I *STATEMENT REGARDING ORAL ARGUMENT*

This appeal is from the district court's ruling on review of an administrative record, based on cross-motions for summary judgment filed by the parties, in litigation challenging the federal government's denial of a farmer's crop-insurance claim. Because the relevant portions of the record are not complex and the legal issues are straightforward ones, it is respectfully submitted that this appeal can be decided on the papers without the need for oral argument.

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*1 *STATEMENT OF JURISDICTION*

Plaintiff-appellant Derick Miller filed suit in the district court against defendants-appellees Federal Crop Insurance Corporation, the Risk Management Agency of the U.S. Department of Agriculture, and the Secretary of Agriculture (collectively referred to as the USDA herein) under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, to challenge the USDA's determination that Miller failed to use statutorily-required "good farming practices." (ROA.7.) The district court denied Miller's motion for judgment on the administrative record, granted the USDA's summary-judgment motion, and entered a final judgment dismissing all claims with prejudice on September 16, 2024. (ROA.7837-39.) Miller timely filed a notice of appeal on October *15*, 2024 (ROA.7840), and this Court has jurisdiction pursuant to 28 U.S.C. § 1291. *See* Fed. R. App. P. 4(a)(1)(B).

STATEMENT OF THE ISSUE

Miller's crop-insurance claim was denied after the USDA determined that he had failed to meet the statutory requirement of using "good farming practices" with respect to the crops in question. Specifically, in a written administrative decision, the agency explained--while pointing to and discussing various forms of evidence, including an expert report--that Miller had not properly seeded his fields, had not followed best practices for crop ***2** rotation (planting peanuts in the same fields two years in a row), had not adequately controlled weeds, and failed to sufficiently irrigate his fields. Applying the deferential standards of the Administrative Procedure Act, the district court determined that the agency's decision was based on substantial evidence and was not arbitrary, capricious, or otherwise unlawful. Although Miller's opening brief attempts to parcel out four separate issues concerning this decision, they all boil down to a single issue: did the district court err in granting summary judgment to the USDA under these circumstances?

STATEMENT OF THE CASE

1. The Federal Crop Insurance Act provides for a crop insurance system, but does not insure against losses resulting from failure to follow good farming practices.

The Federal Crop Insurance Act is designed to "promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance and providing the means for the research and experience helpful in devising and establishing such insurance." 7 U.S.C. § 1502(a). Congress created the Federal Crop Insurance Corporation, a government "corporation" acting as an agency of the USDA, to administer the Crop Insurance Act. *See R&R Farm Enter., Inc. v. Fed. Crop Ins. Corp.*, 788 F.2d 1148, 1150 (5th Cir. 1986); *see also* 7 U.S.C. § 1503. The USDA's Risk Management Agency (RMA) supervises the Federal Crop Insurance ***3** Corporation. *Adkins v. Silverman*, 899 F.3d 395, 398 (5th Cir. 2018) (citing 7 U.S.C. § 6933(b)(1)). "To fulfill its mission of overseeing crop insurance, the Risk Management Agency and the [Federal Crop Insurance Corporation] have traditional agency authority to issue regulations." *Id.* (citing 7 U.S.C. § *1506(o)).*

Crop insurance pursuant to the Crop Insurance Act is offered through private insurance companies that are referred to as "approved insurance providers" or "AIPs." *See* 7 U.S.C. § 1502(b)(2). The Federal Crop Insurance Corporation reinsures the AIPs and is the indemnitor for a covered loss. *Id.* Insurance is provided only against certain causes of loss that occur within the insurance period. 7 C.F.R. §§ 457.104 (cotton), 457.134 (peanuts). Loss due to adverse weather conditions is an insured cause of loss. *Id.* However, the Crop Insurance Act specifically provides for exclusion of losses resulting from "the failure of the producer to follow good farming practices." 7 U.S.C. § 1508(a)(3)(A)(iii); *see also* 7 C.F.R. § 457.8 (including the same exclusion in the Common Crop Insurance Policy).

"Good Farming Practices" are defined as "production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance ... which are those generally recognized by ***4** agricultural experts or organic agricultural experts, depending on the practice, for the area." 7 C.F.R. § 457.8 (definitions section of agency-prescribed insurance contract). The Crop Insurance Act authorizes the RMA to determine whether producers are following good farming practices. 7 U.S.C. § 1508(a)(3)(B); *see also* 7 C.F.R. § 400.98.

For the 2021 crop year, the Federal Crop Insurance Corporation issued a handbook describing the standards and procedures for the RMA's good-farming-practices determinations. (ROA.7787.) The handbook states that RMA employees should base good-farming-practices determinations on the agronomic situation of the insurance policyholder and an opinion from an agricultural expert. (ROA.7789-91.)

2. Miller purchases crop insurance for his peanut and cotton crops.

In 2021, Miller purchased crop insurance policies from an AIP, which insured his peanut and cotton crops against excess precipitation, drought, and other natural causes. (ROA.13; *see also* 7 C.F.R. §§ 457.8, 457.104, 457.134.)

In July 2021, the RMA opened a review on Miller based on a confidential complaint alleging that he was not following good farming practices, and informed Miller of this review. (ROA.152-53; *see also* ROA.149-51 (similar letter sent to Miller's AIP).) Shortly thereafter, the AIP's loss adjusters assessed and performed inspections of Miller's peanut and cotton ***5** crops. (*See* ROA.7590.)

In October 2021, Miller initiated a claim on his peanut crops for excessive wind, and provided documentation to his AIP over the next few months at its request. (*Id;* ROA.6816-17.) In May 2022, the AIP met with Miller to present its findings on his claim. (*See* ROA.6817.) The next month, the AIP issued Controversial Claim Letters to Miller, stating that he did not follow good farming practices. (ROA.6776-84, 7370-78.) The decision resulted in no indemnity due for Miller's claim as to his peanut crops, and a reduction in the indemnity on Miller's cotton crops. (*Id.*)

3. The Risk Management Agency determines Miller did not follow good farming practices.

Miller then requested a good-farming-practices determination from the RMA. (ROA.7223-36.) In October 2022, the RMA issued its determination, finding that Miller did not follow good farming practices. (ROA.7468-74; *see also* ROA.7369-467, 7475-86 (determination exhibits).)

To make its determination, the agency reviewed materials submitted by both Miller and the AIP, precipitation reports produced by the PRISM Climate Group at Oregon State University, and published materials. (ROA.7468-74.) The RMA noted that Miller's agricultural experts provided contradictory information to that from the AIP and the AIP's agricultural expert, and determined that the AIP expert's specific observational and photographic ***6** evidence were more credible than the general nature of the reports from Miller's experts. (ROA.7471.)

The RMA specifically reviewed Miller's farming practices in four categories: seeding rates, crop rotation practices, weed management, and irrigation management. (ROA.7470-72.) As to seeding rates, the AIP's photographic evidence showed that Miller's peanut stands "were not comparable to neighboring peanut fields." (ROA.7470; *see also* ROA.7475-86.) Miller's stated planting rate was also tens of thousands of seeds less per acre than recommended in published materials. (ROA.7470; *see also* ROA.7446-50.) Thus, Miller's planting rate was "lower than recommended by ag experts and sources." (ROA.7470.)

As to crop rotation practices, the RMA reviewed the AIP's growing season inspections and the agricultural experts' opinions. (*Id.*) Miller stated he planted peanuts in the 2021 growing season in several of the same locations he had planted peanuts during the 2020 growing season. (*Id.; see also ROA.7451*-62.) But published materials, including those cited by the AIP's expert, indicated that crop rotation was necessary. (ROA.7470.) For example, the Texas Peanut Production Guide states that peanuts should be planted in the same field only 1 year out of 3, or ideally, only 1 year out of 4. (*Id.; see also* ROA.7467.) The RMA determined Miller failed to follow recommended ***7** cropping practices for his 2021 peanut crop. (ROA.7472.)

As to weed management, the RMA reviewed the AIP's growing season inspections, photographs of the field, and the adjuster's loss report. (ROA.7470-71 (indicating the RMA reviewed the AIP's decision file); *see also* ROA.6777-78, 7372 (listing information reviewed by the AIP to reach its decision).) In his peanut crops, while Miller had applied pre-emergent weed control, as well as post-emergence chemical and mechanical weed controls, the post-emergence "methods were applied too late to adequately control the weeds." (ROA.7470.) And with respect to Miller's cotton crops, the AIP's expert explained that Miller's herbicide program was "lacking," as he did not apply a yellow herbicide before planting, he used non-labeled herbicides at planting on soils susceptible to crop injury, and he did not timely apply post-emergence herbicides. (ROA.7471; *see also* ROA.7379-94.) The photographic evidence, according to the AIP's expert, indicated that Miller had not done enough to reduce the weed competition. (*Id.*) The publication Weed Management in Texas Cotton also indicated that early-season weed management is a critical part of a cotton weed management program. (ROA.7471; *see also* ROA.7398-99.) The RMA determined Miller failed to follow recommended weed control practices for both his 2021 peanut and cotton crops. (ROA.7472.)

***8** As to irrigation management, the RMA determined that the PRISM precipitation reports and the archival rainfall reports from the National Weather Service indicated that Miller's reported rainfall amounts were overestimated by an average of 7.75 inches. (ROA.7472; *see also* ROA.7402-43.) Based on this information, along with Miller's irrigation reporting numbers, the water inputs in Miller's fields were below the total seasonal water requirement for maximum peanut yield identified in the Texas Peanut Production Guide. (ROA.7472; *see also* ROA.7444-45.) The RMA determined Miller failed to "follow the irrigated Good Farming Practice of supplying water at the critical time and the proper amount to establish and maintain a proper stand of peanuts." (ROA.7472.)

In sum, the RMA concluded that Miller "failed to follow a generally recognized good farming practice for [his] peanut and cotton crops, which is not an insurable cause of loss." (ROA.7472-73.)

4. Miller files suit for declaratory and injunctive relief, alleging the USDA erroneously determined he did not use good farming practices.

On March 30, 2023, Miller filed suit in the district court against the USDA under the Administrative Procedure Act (APA) and 7 U.S.C. § 6999, which provides for judicial review of USDA determinations. (ROA.7.) Miller asserted that the USDA's determination that he had failed to use good farming practices was arbitrary and capricious because the decision allegedly ***9** contradicted the evidence in the record, there was not a legally sufficient basis for the USDA's determination, and the decision ultimately resulted in the denial of his 2021 crop insurance claims. (ROA.8, 16.) Miller thus believed he was entitled to a court order setting aside the USDA's determination that he had failed to use good farming practices and declaring Miller entitled to a crop insurance indemnity for his 2021 crops. (ROA.15-18.)

The USDA answered (ROA.102), and subsequently filed the administrative record (ROA.123). The parties later filed cross-motions for summary judgment on the administrative record. (ROA.7732, 7754.)

In June 2024, the U.S. Supreme Court decided *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In light of the decision, the district court ordered the parties to file a joint notice indicating whether they wished to re-brief their pending dispositive motions. (ROA.7830.) The parties agreed that re-briefing was not necessary. (ROA.7831.) Miller indicated the *Loper Bright* decision did not affect the relevant standard of review and meant the agency's decision was not afforded deference, and the USDA explained the issue in the instant case was not one of statutory interpretation but rather the application of law to facts, which remained subject to the arbitrary-and-capricious review contemplated under the APA. (ROA.7831-33.)

***10 5. The district court grants the USDA's motion for summary judgment.**

After reviewing the parties' cross-motions, the district court issued a decision granting the USDA's motion for summary judgment. (ROA.7837.) The district court explained that the record did "not support [Miller's] claim that the RMA acted arbitrarily or capriciously in making its determination," nor did the record "support [Miller's] claims that the Defendants acted 'otherwise not in accordance with the law.'" (ROA.7837-38.) Miller's disagreement with the evidence relied upon by the RMA also did not mean the decision was arbitrary or capricious. (ROA.7838.) "Rather, the record indicates that the RMA based its determinations on substantial evidence and properly utilized discretion to reach its determination." (*Id.*)

The district court therefore denied Miller's motion for judgment on the administrative record and granted the USDA's motion for summary judgment (ROA.7837-38), and entered a final judgment dismissing all of Miller's claims with prejudice (ROA.7839). This appeal has followed.

STANDARD OF REVIEW

A grant of summary judgment is reviewed *de novo*, applying the same standard to review the agency's decision that the district court used (and as discussed below, those standards are the deferential standards of the APA). *Hayward v. U.S. Dep't of Labor, 536* F.3d 376, 379 (5th Cir. 2008).

***11** *SUMMARY OF THE ARGUMENT*

The district court did not err in granting summary judgment in favor of the USDA. As the district court correctly concluded, the RMA evaluated agricultural experts' opinions, reviewed evidence regarding Miller's crops, and examined published materials in determining whether Miller had engaged in good farming practices. The RMA also considered both the evidence provided by the AIP and that provided by Miller, and explained why it found some of these expert opinions more credible than others. The administrative record thus demonstrated that the RMA made its determination based on substantial evidence, and the agency did not act arbitrarily or capriciously in making its decision. Accordingly, the district court's judgment should be affirmed.

ARGUMENT AND AUTHORITIES

1. The district court did not err in granting summary judgment in favor of the USDA.

A. The district court correctly determined that the RMA's decision was not arbitrary or capricious.

The APA provides that federal courts shall "hold unlawful and set aside agency action" that is found be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

An agency's decision is arbitrary and capricious when it "entirely failed to consider an important aspect of the problem [or] offered an explanation for ***12** its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). This inquiry is "narrow." *Id.* If the agency considers the evidence and "articulates a rational relationship between the facts found and the choice made, its decision is not arbitrary or capricious." *Louisiana ex rel. Guste v. Verity*, 853 F.2d 322, 327 (5th Cir. 1988).

When an agency's factual findings are being challenged, these findings "are reviewed to determine only whether they are supported by substantial evidence." *Buffalo Marine Servs. Inc. v. United States*, 663 F.3d 750, 753 (5th Cir. 2011) (internal quotation marks omitted). Under the substantial-evidence standard, a court asks whether the administrative record "contains sufficient evidence to support the agency's factual determinations." *Biestek v. Berryhill*, 587 U.S. 97, 102 (2019) (cleaned up). "[T]he threshold for such evidentiary sufficiency is not high." *Id.* at 103 (explaining that "substantial evidence" means there is relevant evidence that a reasonable mind might accept as adequate to support the agency's conclusion).

As this Court has explained, "[o]ur task is merely to ask whether the agency considered the relevant facts and articulated a satisfactory explanation for its decision; we cannot substitute our judgment for the agency's." *Amin v. Mayorkas*, 24 F.4th 383, 393 (5th Cir. 2022) (citing *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019)). ***13** "The agency's decision does not have to be ideal so long as the agency gave at least minimal consideration to relevant facts contained in the record." *Wright v. United States*, 164 F.3d 267, 268-69 (5th Cir. 1999).

Here, the RMA considered numerous pieces of evidence in determining whether Miller had engaged in good farming practices. It evaluated growing season reports, photographic evidence, the adjuster's loss report, Miller's expert opinions, the AIP's expert opinions, several precipitation level sources, and a variety of published materials in making its determination. (*See* ROA.7468-74.) It cited to this evidence throughout its decision to support its factual findings regarding Miller's seeding rate, crop rotation, weed management, and irrigation management practices. (*Id.*) And the RMA addressed why it found the AIP expert's opinion to be more credible than those of Miller's experts. (ROA.7471.)

The agency's determination indicates that the RMA considered the evidence, and it articulated a rational relationship between the facts and its determination. *See Verity*, 853 F.2d at 327. As a result, the district court correctly concluded that the administrative record did "not support [Miller's] claim that the RMA acted arbitrarily or capriciously in making its determination." (ROA.7837.)

***14** The district court succinctly explained Miller's position: he "disagree [d] with the agriculture experts, materials, and evidence relied upon by the RMA." (ROA.7838.) But this disagreement did "not make the final action arbitrary or capricious." (*Id.*)

Instead, the administrative record--encompassing all this information evaluated by the RMA when making its good-farming-practices determination, and its analysis of these materials--contained "sufficient evidence to support the agency's factual determinations." *Biestek*, 587 U.S. at 102. The district court thus correctly concluded that the administrative record showed the RMA had based its determination "on substantial evidence," indicating the determination did not violate the APA. (ROA.7838.)

Therefore, the district court's decision that Miller failed to demonstrate the RMA's determination was arbitrary or capricious should be affirmed.

B. Miller's arguments to the contrary are unavailing.

Miller includes a variety of other arguments in his brief, but these claims ignore the actual facts in the administrative record. No error is shown.

Miller argues that the district court erred in its decision because he believes the USDA "disregarded opposing expert opinions" and "refus[ed] to consider relevant opinions" of Miller's experts in determining Miller failed to follow good farming practices. (Br. at 21-29.) But the RMA's determination ***15** explicitly did consider these experts' opinions, and references these opinions throughout the determination. (*See* ROA.7470-71.) The RMA just decided these experts' opinions were more general than the detailed opinion prepared by the AIP expert, and thus the RMA found the AIP expert's opinion more credible. (ROA.7471.)

The exhibits included with the RMA's determination demonstrate this: the AIP expert provided a report with 13 pages of analysis based on information provided to the expert by both AIP and Miller, including PRISM precipitation reports, satellite imagery, photographic evidence, and Miller's own seasonal crop history information. (ROA.7379-94.) It also included a page listing multiple published materials and other reference sources used in the analysis. (ROA.7394.) Another AIP expert also provided a lengthy report included in the administrative record. (ROA.6982-96.) This report similarly includes analysis based on the expert's visits to the fields, satellite imagery, and PRISM precipitation reports, and references several published materials. (*Id.*)

Miller's experts, instead, provided one-page affidavits based primarily on their review of narratives provided by Miller and their conversations with Miller. (ROA.7396, 7464.) The administrative record also includes the experts' reports, in which each expert provided two pages of analysis that cursorily determine Miller engaged in good farming practices based on a ***16** review of unknown records provided by Miller (for one expert), and based on general 2020-2021 weather data in the region (for the other). (ROA.7229-30, 7235-36.) Thus, there is a rational reason--demonstrated in the administrative record--for the RMA's decision to credit the detailed, substantiated opinions provided by the AIP expert, in lieu of the more conclusory opinions provided by Miller's experts. The district court did not err in finding the RMA's determination based on its review of these expert opinions was not arbitrary or capricious.

For these same reasons, Miller's argument that the district court erred in its decision because the RMA relied on a "vague" report by the AIP expert with "general finding[s]" and without "support[] by published documentation" fails. (Br. at 40-42.) A review of the report at issue, described above, shows that Miller's assertions are flatly wrong. (ROA.7379-94; *see also supra*, at 15.)

Miller also argues that the RMA determination was arbitrary and capricious because it allegedly ignored relevant factors, such as the inspectors' reports during the growing season, adverse weather conditions, the fact that failure of irrigation supply and failure of weed control can be insurable causes of loss, and Miller's expert opinions. (Br. at 29-40.) But again, a review of the determination shows this argument is incorrect. (ROA.7468-74.) These factors were considered. Miller just does not like the RMA's conclusions ***17** about these factors.

For example, the RMA reviewed the photographs provided by the inspectors (ROA.7476-86), reviewed the AIP's determination letter based on the inspections (ROA.7370-78), and indicated it had reviewed the AIP's file regarding the AIP's decision (ROA.7470). Similarly, the information about the adverse weather conditions that Miller claimed caused the crop loss was addressed in the AIP's determination letter and the file, and the RMA explained that it considered "all weather conditions" Miller outlined in his response. (ROA.7470.) While the RMA did not extensively describe its conclusions about these alleged adverse weather conditions in its determination, the determination itself explains that they were considered. (*Id.*)

As for the potential insurable causes of loss, Miller himself explains that the failure of irrigation supply and failure of weed control may be insurable (Br. at 35-40)--inherently meaning they are not automatically covered losses. The RMA did evaluate

the rationale Miller provided for the failures of his irrigation supply and failures of weed control (heavy winds and rain), as noted above. It also reviewed the AIP expert's opinion which discussed the potential rain- and wind-related issues. (ROA.7385-86, 7391-92.) The RMA simply determined that these adverse weather conditions were not the most likely ***18** cause of Miller's irrigation management and weed management problems. (AR.7470-73.) And as explained above, the RMA *did* consider Miller's expert opinions. *See supra*, at 14-16. The RMA did not fail to consider these factors that Miller believes are relevant. The district court did not err in finding this determination to be neither arbitrary nor capricious.

Finally, Miller argues that the RMA's determination was not supported by substantial evidence and therefore that the district court erroneously granted the USDA's motion for summary judgment. (Br. at 42-49.) But Miller appears to misunderstand what "substantial evidence" means in the context of an APA claim. As the Supreme Court has explained, the phrase "means--and means only--'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Biestek*, 587 U.S. at 103 (quoting *Consolidated Edison Co. v. NLRB, 305* U.S. 197, 229 (1938)). "And whatever the meaning of 'substantial' in other context, the threshold for such evidentiary sufficiency is not high." *Id.*

The administrative record demonstrates that there was "substantial evidence" for the RMA's determinations about seeding rate, crop rotation practices, weed management, and irrigation management. *See supra*, at 5-8. Miller again just appears to disagree with the RMA on its analysis, rather than pointing to any actual factual gaps in the administrative record. He also ***19** misconstrues the RMA's determination, particularly as to crop rotation practices. The RMA's determination that Miller had not followed good farming practices was based on its overall review of these factors, not any one issue. (*See* ROA.7468-74.) Thus, as the administrative record reflects that there was substantial evidence for the RMA's determination, the district court did not err in granting the USDA's motion for summary judgment.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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