2025 WL 1115289 (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.
April 9, 2025.

On Appeal from the United States District Court
For the Northern District of Texas, Lubbock Division

Reply Brief of Appellant

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The USDA Risk Management Agency denied Miller's crop insurance claim on the basis that he had failed to use "good farming practices." In making this decision, the Agency disregarded the opinions of multiple experts which supported Mr. Miller's farming practices on the alleged basis that these experts were "not credible;" ignored the eyewitness testimony of third party insurance adjusters who verified that Miller's crops were comparable to others in the area and properly irrigated, and ignored the fact that Miller's farm was impacted by adverse weather conditions that were common to the area. In response, the Agency seems to concede that heavy winds and rain impacted Miller's crops but that "RMA simply determined that these adverse weather conditions were not the most likely cause of Miller's irrigation management and weed management problems." [1] How did the Agency come to this conclusion? Contrary to the suggestion of the Agency, "the deferential standards" for review of agency decision-making will not allow such determinations to stand when they are not based on substantial evidence. Substantial evidence requires more than speculation as to the primary cause of a loss.

The Appellant Derick Miller respectfully suggests that the Agency attempts to supply a "reasonable" basis for this Court to uphold the "good farming practices" ***5** determination adverse to Appellant Miller. However, the Agency completely omits any discussion of the following relevant issues:

1) That the Agency has not followed its own published regulations and procedures for the handling of "good farming practices" determinations where there are competing expert opinions;

2) That the Agency clearly erred in its finding that Miller had not engaged in crop rotation for all of his peanut fields;

3) That the Agency faulted Miller for not applying sufficient irrigation water while ignoring the fact that high winds (an insurable cause of loss) had overturned certain irrigation pivots so that they were not operable during certain periods of the growing season;

4) That over two hundred (200) crop insurance claims were paid in Miller's area during the year in question for losses resulting from causes of loss including wind, heat, hail, and excess moisture; [2] and

5) That eyewitness, third party inspectors working for the approved crop insurance provider concluded that Miller's crops were "comparable" to those in the general area of Miller's farms [3] and that the farm should not be reviewed at a later time. [4]

*6 *ARGUMENT*

Courts reviewing agency actions under an "arbitrary and capricious" standard are tasked with ensuring that the Agency has acted within a "zone of reasonableness" and has reasonably explained its decision. *Data Mktg. P'ship, LP v. United States DOL*, 45 F.4th 846 (2022). The Appellant Derik Miller suggests that disregarding expert witness and fact witness testimony, in

contradiction of the Agency's own procedures, constitutes arbitrary and capricious decision-making. The "failure to consider "relevant factors" will also render an agency's decreed result unlawful." *R.J. Reynolds Vapor Co. v. Food & Drug Admin.*, 65 F.4th 182, 189 (5th Cir. 2023). In this case, the Defendants departed from their own procedures, improperly ignored experts as to production practices and failed to consider relevant factors including: 1) the reports of inspectors who actually viewed the insured crops and found that the crops were "comparable" to others in Plaintiff's area; [5] 2) the impact of adverse weather conditions on the crop, the irrigation system, and weed control measures; 3) the fact that failure of irrigation water supply and failure of weed control are insurable causes of loss; and 4) the expert opinions of Dr. Justin Tuggle, Geoff Cooper, and Dana Porter.

*7 I. Miller's Peanut Crop

The USDA Risk Management Agency determined that Miller failed to use Good Farming Practices in regard to his peanut crop on three primary bases: 1) an alleged failure to rotate fields out of peanut production; 2) failure to control weeds; and 3) failure to supply sufficient irrigation water. The Agency also argues in its Responsive Brief that Miller's seeding rates were too low, but the Good Farming Practices determination appealed from does not clearly include that finding. The aforementioned conclusions should be reversed as they are not supported by substantial evidence or the evidence required by the applicable Federal Regulations.

A. RMA Arbitrarily Determined Appellant's Peanut Stands Were Not Comparable to Neighboring Fields.

In making its initial adverse Good Farming Practices (GFP) determination and in response to the Appellant Miller's arguments on Appeal, the Agency continues to assert that "photographic evidence showed that Miller's peanut stands were not comparable to neighboring peanut fields." [6] In support of this proposition, the Agency cites to the administrative record at pages 7470 and 7475-86. However, there appear to be no photographs of "neighboring peanut fields" in the record. Most of the photographs cited by the Agency are fields clearly belonging to insured Derick Miller (as identified on each photograph). Only two (2) photographs depict fields ***8** that do not belong to Miller and there is no evidence in the record that they are neighboring fields. Instead, the evidence is that these fields were located miles from Miller's farms. These photographs note a general location of approximately 1 mile south of Seagraves Airport. [7] The Agency's determination that Appellants' fields were not "comparable" to "neighboring fields" is arbitrary, unsupported by the record evidence, and Counsel can only support this conclusion by citing two (2) photographs of an unknown date and location.

To the contrary, record evidence, including an affidavit from an area Agriculture Extension Agent, indicate that Plaintiff's "farms are in much better shape than surrounding farms at this time" [8] The Court doesn't have to rely on Expert Cooper, the third party insurance adjuster's who physically inspected the crop also reported that Miller's crops were "comparable" to those in the general area of his farms [9] The Defendant Agencies' reliance on two photographs of unknown origin and disregard for the sworn statement of an agricultural expert employed by the State of Texas *in addition to independent third party adjusters* who actually viewed the crop is clearly evidence of arbitrary and capricious fact finding.

*9 *B. RMA Arbitrarily Determined that Miller Failed to Rotate Fields out of Peanuts.*

The Agency determination that Miller failed in his cropping practices because he did not rotate his fields out of peanut production is contrary to the evidence of record. **There is no dispute that Miller did, in fact, rotate the majority of his peanut acres out of peanut production the year prior to the relevant claim.** There were only a minor number of acres which were "back to back" peanuts in the 2021 crop year and none of those acres were in Yoakum County. The Agency has committed a clear and obvious factual error in its Good Farming Practices Determination, relating to peanut cropping practices. The Agency Counsel does not even dispute this in their responsive pleading.

In 2021, Miller planted peanuts in *some* of the same fields where peanuts had grown in 2020. [10] The total number of the acres found on the farms which included "back to back" peanut production only contained a total of 639 acres. [11] All of these 639 acres on these fields were not planted to peanuts in 2020, but some of them were. There is no conclusion in the record as to how many peanut acres this "failure to rotate" determination may be applied to. Obviously, the Defendants should *not* have applied this determination to the Yoakum County peanut acreage, where all peanut acres were rotated out of production in the prior year. There also remains, *at least*, ***10** 558 acres of peanuts in Gaines County that this determination should not relate to, as they were not planted to peanuts in the prior year. The fact that the USDA applied a "failure to rotate" determination to all of Miller's acreage, ***where this determination is clearly not applicable*****,** is evidence of arbitrary and capricious conduct by the Defendants. It is certainly a determination not supported by substantial evidence of record.

It also cannot be overlooked that, while the Agency criticized peanut crop rotation, the actual in-field inspectors found that Miller met the rotational requirements detailed in the special provisions of insurance. [12] In its responsive brief on Appeal, the Agency cautiously asserts that "Miller planted peanuts in several of the same locations he planted peanuts in the prior years." The key fact here is that the Agency did not recognize this, at the time of their good farming practices determination adverse to Miller. The Agency generally applied an erroneous determination to over 800 acres of planted peanuts, which were not "back to back" peanut fields. As such, any determination that Miller failed to engage in crop rotation should be reversed as arbitrary and not supported by evidence of record. The clear negligence in fact finding by the Agency further supports a reversal of the entire adverse GFP determination.

***11** *C. RMA Erroneously Determined the Appropriate Seeding Rate*

The applicable Crop Insurance Policy and Federal Regulations require that good farming practices are "those generally recognized by agricultural experts . . . for the area." [13] In this case, the area is extreme West Texas. "Area" is actually defined in Federal Regulation and in the policy to include only "land surrounding the insured acreage with" . . . "conditions similar to the insured acreage." [14] In this case, the Agency suggests that "good farming practices" would have required Miller to plant more seed. However, this conclusion is based on a University of ***Georgia*** peanut production guide, which is based on ***Georgia*** production scenarios and practices. [15] The application of ***Georgia*** production practices to Texas farmers is not only arbitrary in the traditional legal sense, but violative of the Agency's own regulations and the crop insurance policy provisions cited herein. The application of the University of Georgia, "UGA," peanut production guide to peanut production in the High Plains of West Texas is in violation of the Agency's own published regulations and procedures and is properly reversed as arbitrary and capricious.

***12 II. Weed Control in Cotton and Peanuts**

RMA made a significant *legal* error in its determination that the presence of weeds serves as a basis for making an adverse good farming practices determination. The Agency's own procedures indicate that losses resulting from weeds are insurable if they were the result of adverse weather conditions. In its adverse "good farming practices" determination, the Agency completely overlooked the undisputed evidence of record that adverse weather conditions negatively impacted weed control efforts. This is a relevant factor because such losses are insurable. A relevant factor impermissibly overlooked by the Defendant Agency.

The GFP determination appealed from concedes that Miller made multiple efforts to control weeds, stating that "while post-emergence chemical and mechanical controls (cultivation hoeing, and mowing were applied; it appears that these methods were applied too late to adequately control the weeds." [16] The Agency never considered the question of why these methods were "too late." Evidence in the record indicates that adverse weather conditions impeded weed control. These facts were ignored by the Defendants in their determination as to good farming practices. Defendants appear to have simply determined that the presence of weeds ***13** must result in a finding that weed control measures were insufficient and that losses were uninsurable. Such decision-making is properly reversed as arbitrary.

In RMA Final Agency Determination FAD-239, the Agency established that "**An insect, disease, or weed infestation that was not due to insufficient or improper application of control measures could still cause damage to the crop and this is a covered cause of loss**." [17] The Administrative Record includes evidence that "heavy rains and standing water after planting were main causes of weed breakthrough," [18] that "washing rains were main problem leaching and washing herbicides down the elevations," [19] and that "we received a 1" rain on the acres before we could spray any type of preemergent." [20] Weather data in the administrative record supports Miller's recollection of excess rainfall. Even an expert relied on by the Defendant agency noted that "May was wet and cool" and that "June was unusually wet. [21] " The Defendants refusal to consider these insurable causes of loss, which could have hampered weed control supports a finding by this Court that the Defendants' GFP determination failed to consider relevant factors and is properly reversed.

*14 III. Irrigation of Peanuts and Cotton

A. The Only "Substantial" Evidence of Record Indicates that Irrigation was Adequate.

The Agency Defendants' decision that Miller's crops did not receive adequate irrigation is not based on "substantial evidence" and ignores relevant factors and the results of the growing season inspection which determined that the irrigation system and water was adequate for the insured crops. In summary, the Agency offers the Court no actual record of how much rainfall Miller's crops received. Nor did the Agency have a record of the actual amount of irrigation water that was needed, or used, by the insured crops. The record simply does not include this information. The Agency Defendants relied on estimates (based upon historical data instead of data for the year in question) and disregarded the opinions of fact witnesses (independent GSI Inspectors) who concluded that irrigation was adequate. Experts Dr. Justin Tuggle and Geoff Cooper (County Ag Agent) also suggested that irrigation was adequate. These individuals were also ignored on the unsubstantiated basis that they were not "credible." The reliance, by Defendant RMA, assumptions as opposed to the testimony of fact witnesses is not reasonable. [22]

The "boots on the ground" inspectors (employed by the approved insurance provider) confirmed with a "yes" that the irrigation system was adequate and the ***15** irrigation water was adequate. [23] The Agency Defendants ask the Court to disregard actual eyewitness testimony for estimates made by a hired expert. Moreover, the Agency Defendants did not address, in their GFP determination, the fact that "such estimates typically rely on assumptions of evapotranspiration, irrigation efficiency, pumping capability, and the actual depth of irrigation wells. Soil temperature and plant size/growth stage will also have a significant impact on the moisture needs of any agricultural crop." [24]

It must also not be overlooked that the Agency's own expert conceded that "evapotranspiration data" for the area "was unavailable for the 2021 crop year" so he "determined that historical ET data could be used." [25] There is no scientific or rational basis for the use of a different year's evapotranspiration data, nor is this individual qualified as a weather expert. It has been well documented that 2021 was not an average year. Even rainfall *estimates* in the Administrative Record indicate that precipitation for the months of May, June, and August, were above the historical average [26] and that August and September were wetter than usual. [27] The expert adverse to Miller admitted in his report that May and June were "wet," [28] yet his ***16** report relies on precipitation estimates and historical evapotranspiration data which does not factor in these very-present adverse weather conditions. The experts relied on by the Defendants also appear to have relied on "PRISM reports" of precipitation [29] which are not actual records of rainfall received but instead the results of a model developed to "reveal short and long-term climate patterns." [30] The Appellant respectfully suggests that the complete disregard for eyewitness and expert testimony concerning adverse weather conditions, in favor of assumptions made by hired experts, is not within the "zone of reasonableness" required of Agency action.

B. Even if Irrigation Water was Inadequate, the Agency Failed to Consider that Irrigation was Interrupted by Adverse Weather Conditions

The Agency Defendants have also erroneously assumed in their GFP determination that a lack of irrigation water, or the inability of a farmer to apply a certain amount of water to insured acreage, is an uninsurable failure to employ good farming practices. Such a conclusion is contrary to the guiding law and applicable RMA procedures. Federal Regulation and the Basic Provisions of crop insurance provide that the failure or breakdown of irrigation equipment is not a covered cause of loss "***unless the failure, breakdown or inability is due to a cause of loss specified*** ***17** ***in the Crop Provisions***."[31] In the present case, both the peanut crop provisions and the cotton crop provisions of insurance provide insurance against "failure of the irrigation water supply" if such a failure results from "adverse weather conditions."[32]

Despite the written assurance that RMA "considered all weather conditions," there is no discussion in the "analysis" portion of the GFP determination as to what weather conditions were considered. There was no discussion or consideration of the possibility that the failure of the irrigation water supply or increased weed pressure could be the result of adverse weather conditions. **The Defendants ignored clearly relevant factors *including that wind blew over the irrigation pivots*!** The Agency Defendants ignored uncontroverted facts in the record which indicated that weather events did interrupt the irrigation capability of the Plaintiff. This is not a failure to employ good farming practices but is, instead, an unavoidable cause of loss.

A primary reported cause of loss for the damages to the Miller's peanut and cotton crops was high wind.[33] **The wind was so severe that it "flipped over" two** ***18** **of Plaintiff's center pivot irrigation systems.**[34] Certain of Miller's irrigation pivots were taken out of commission by high winds. Mark Scott, whom the Defendants relied on in their GFP determination, conceded "straight and tornadic winds" . . . "did overturn some center pivots. Repair and replacement timing was delayed by a shortage of new pivots and repair materials."[35]

It cannot be overstated that failure to irrigate due to the destruction of irrigation systems by high winds, specifically center pivot irrigation systems, is not a failure to employ good farming practices. Instead, this is an unavoidable loss which is insured under the crop insurance policy. The Agency's refusal to consider the impact of weather on irrigation capability provides further support for the reversal of the GFP determination appealed from.

IV. The Agency's Failure to Follow its Own Regulations and Procedure.

A fundamental problem with the Agency decision-making process in this case is the Agency's failure to follow its own regulations and procedures for making good farming practices determinations. The Agency makes no meaningful response or argument to the fact that the Agency did not follow its own published procedures for making a "good farming practices" determination when considering Miller's claims. Federal Regulation and the Crop Insurance policy itself advises insureds such as ***19** Appellant Miller that their crop insurance policies will be administered pursuant to these handbooks and procedures.[36] The leadership of the USDA Risk Management Agency has previously promulgated a directive guiding its offices to follow this published procedure. The Law requires that Federal Crop Insurance be provided pursuant to the terms of the Federal Crop Insurance Act and the regulations and procedures implemented thereunder. Agency action that "disregards applicable law is arbitrary and capricious and must be set aside." *Am. Stewards of Liberty v. Dep't of the Interior*, 370 F. Supp. 3d 711 (W.D. Tex. 2019).

It is agreed in this case that there is a dispute among agricultural experts. The Agency admits this in its responsive brief where it wrote that "the RMA noted that Miller's agricultural experts provided contradictory information to that from the AIP and the AIP's agricultural expert." At this point, the published USDA RMA procedure requires that, when there is a dispute among agricultural experts, **RMA is required to consider certain factors including**:
1) whether there is a long standing agreement among experts in an area;

2) whether the producer can prove that similarly situated producers in the area use the practice in question;

3) "whether the opposing opinion or published materials are more general in applicability to the specific crop, area, or practice than the opinion or materials relied on by the producer;

***20** 4) whether the opposing opinion is issued by an expert whose experience is less directly applicable to the specific practice; and

5) whether other relevant factors would lead a reasonable person to conclude that one expert opinion is more applicable, credible, or reliable. [37]

Instead of considering the aforementioned factors in relation to competing expert opinions, the Defendants ignored the opinions of Dr. Justin Tuggle and County Ag Extension Agent Geoff Cooper while relying exclusively on the reports of Mark Scott and James Todd when making their GFP determination. The Defendants disregarded expert affidavits from Geoff Cooper and Dr. Justin Tuggle, in addition to correspondence from Dana Porter, which are all found in the Administrative Record. There is no genuine dispute that there were opposing expert opinions, and the Defendants did not consider the factors listed in their manager's bulletin referenced above. The Defendants did not consider whether other producers in Miller's area were using the same production practices or whether Dr. Tuggle and Agent Cooper might have more direct experience in the area of Miller's farms. This is a clear violation of the Agency's own published procedure, which it is required to follow pursuant to the Federal Crop Insurance Act and regulations promulgated ***21** thereunder. The Agency should not be rewarded with an affirmation of Agency action in violation of its own published commitments to America's insured farmers.

A. The Agency Disregarded its Own Procedures in Reviewing Cotton Production Practices.

Appellant Miller asks the Court to recognize that Defendants' "Good Farming Practices" determination relating to Miller's Cotton Crop was specifically not completed in accordance with Defendant RMA's published policy and procedure. In the relevant GFP determination, the criticism of Miller's Cotton farming practices is primarily the allegation that Miller failed to properly control weeds. Defendants relied solely on the report of Mark Scott for their findings relating to weed control in Cotton. Mr. Scott's report is vague and makes the general finding that "the herbicide program used on Mr. Miller's farms during 2021 were lacking." [38] The Mark Scott cotton weed control opinion relied on by the Defendants is not supported by an "additional expert opinion" as required by the Defendant's Good Farming Practices Standards Handbook. [39] While the Agency argues that the Appellant is flatly wrong on this point, the Agency points to no additional expert opinion supporting the Scott determination that weed control in Miller's cotton was deficient.

***22** When a written opinion is not supported by published documentation, the crop insurance policy requires an "additional expert opinion." [40] While the Scott report does cite publications concerning herbicide use in cotton, *they do not state that a "preplant incorporated" herbicide is necessary for cotton production in the Plaintiff's area* - the only alleged failure of Miller. Mark Scott's report concedes that the Miller did use a preemergence herbicide and post emergence herbicides. No publication is cited in support of the conclusion that Miller's post-emergence herbicide control was "lacking." Given the lack of support for the Scott report's conclusion, RMA's own published procedure required an additional expert opinion. Defendants ignored this procedural protection for the farmer and relied on one (1) single opinion while disregarding expert Dr. Justin Tuggle's affidavit which clearly stated "Mr. Miller's herbicide and fungicide program was adequate." [41] Defendants' similarly disregarded Geoff Cooper's expert opinion affidavit. The Plaintiff suggests that the aforementioned disregard for the procedures outlined in the GFP handbook provides sufficient basis for this Court to reverse the Agency's GFP determination in this case.

V. The Agency's Abject Disregard for Opposing Expert Opinions Constitutes Arbitrary Decision-Making as a Matter of Law.

As has been well established in the record and prior briefing to the Court, agronomists and agricultural experts Dr. Justin Tuggle, and County Ag Agent Geoff ***23** Cooper provided sworn affidavits [42] verifying that the production practices employed by Miller were "good farming practices" for the Appellant's area. In determining that Miller's weed control measures failed to meet "good farming practices," Defendants simply deemed the opinion of Mark Scott as "more credible" than the affidavits of Geoff Cooper and Justin Tuggle. There was no factual basis for this "credibility" determination.

While the Agency argues that RMA explained why it found some expert opinions more credible than others," [43] the purported explanation does not provide any evidence to support a "credibility" determination. It has been well-established around the Country that "**An agency may discredit the uncontradicted witness testimony based on credibility grounds, but only if the agency provides reasons for its credibility determination**. *Id*. Citing *Tieniber v. Heckler*, 720 F.2d 1251, 1254-55 (11th Cir.1983); *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 406-07 (1962).

In the present case, the Agency argues that the Report's of experts Tuggle and Cooper were "more general" and shorter than others provided. Surely, an Agency cannot be permitted to ignore expert testimony just because one expert's writing is more concise than another's. Regardless, the general nature or length of an opinion cannot be construed as a basis to find that an expert is not "credible." There is no ***24** genuine reasoning that could result in such a conclusion. In addition, the Defendant Agencies' position that the expert reports of Dr. Justin Tuggle and area County Agricultural Extension Agent Expert Geoff Cooper were "based primarily on their review of narratives provided by Miller and their conversations with Miller" is absolutely false.

Dr. Tuggle and Agent Cooper live and work in the area of Miller's farms. Dr. Tuggle affirmed in his report that he personally experienced weather extremes during 2021 which impacted his own Clients in Gaines and Yoakum Counties. [44] Dr. Tuggle's and Agent Cooper's affidavits further affirm that they are personally familiar with Miller's area and commonly accepted production practices for cotton and peanuts in the area. [45] These experts are also fact witnesses to certain weather events. These undoubtedly "expert" individuals have undisputed knowledge as to the accepted production practices for Miller's area, yet they were determined not to be credible. Such is not reasonable decision-making for a Federal Agency.

There is no dispute as to the production practices that were present on Miller's farms. The question is whether those production practices were "good farming practices." In this case, Experts Tuggle, Cooper, and Porter supported Miller. Purported experts Mark Scott and James Todd (hired by the insurance company) ***25** were doubtful of Miller's practices. If the Defendant Agency had followed its own published regulations and procedures, it would have initiated a review of the factors identified at Section IV of this argument, above. Instead, it chose simply to disregard certain experts as being not credible. This action is properly reversed by this Court.

It must also be noted that the Experts relied upon by the Agency seemed oblivious to adverse weather conditions that triggered over two hundred (200) crop insurance claims in Miller's area. Mark Scott, for example, opined, in his report, that "2021 was a good year for growing peanuts," [46] while James Todd wrote that "no weather events were noted that should have had an extreme detrimental effect on yield" [47] and that "2021, was an ideal year for peanut production." [48] The arbitrary nature of Defendant's reliance on these reports is readily apparent when one recognizes that the Defendants had knowledge and have now published on their own public website that farmers in Gaines and Yoakum Counties were suffering severe losses from adverse weather conditions, during this same time period that the purported experts considered "ideal" for production. [49]

26** ***CONCLUSION

This Court should reverse the District Court's Order granting Defendants' Motion for Summary Judgment and denying Plaintiff's Motion for Judgment on the Administrative Record and Grant Plaintiff's Motion, thereby reversing Defendants' "good farming practices" determination as arbitrary, capricious, unsupported by substantial evidence, and not made in accordance with the guiding Federal Law. A "good farming practices" determination is properly reversed where it is found to be arbitrary and capricious. See 7 C.F.R. § 400.98(f) (2021). An Order reversing a GFP determination and deeming crop insurance claims as payable is the proper relief where a GFP determination is arbitrary and capricious. See *Owen v. Fed. Crop Ins. Corp.*, No. 3:19-CV-00161, 2020 WL 5913668, at *6 (S.D. Tex. July 27, 2020, report and recommendation adopted, No. 3:19-CV-161, 2020 WL 5912602 (S.D. Tex. Oct. 6, 2020); citing *Mt. Valley Farms & Lumber Prod., L.L.C. v. Fed. Crop Ins.*, No. 1:10-CV-2327, 2012 WL 400729, at *1 (M.D. Pa. Feb. 7, 2012 (reversing an administrative decision of the RMA and entering "judgment in favor of Plaintiffs, finding that they followed good farming practices ..., thus permitting their crop ***27** insurance claims be paid"). Appellant Miller specifically requests this relief and all other relief to which the Court finds him entitled.

/s/ Grant Ballard

J. Grant Ballard

Counsel of Record for Plaintiff-Appellant Derick Miller

Dated: April 9, 2025

Footnotes

1 See Agency Response at pages 17 (last paragraph) and page 18 (first paragraph).

2 See publicly available "Cause of Loss Historical Data Files" at https://www.rma.usda.gov/SummaryOfBusiness/CauseOfLoss as referenced for the District Court at ROA 24-10929.7764.

3 ROA 24-10929.6617.

4 ROA 24-10929.6618.

5 ROA 24-10929.6617.

6 ROA 7470 and ROA 7475-86.

7 ROA 24-10929.7481-7482

8 ROA 24-10929.7192.

9 ROA 24-10929.6617.

10 ROA 24-10929.7470.

11 ROA 24-10929.6628.

12 ROA 24-10929.6617.

13 See Definition of "Good Farming Practices" at 7 C.F.R. § 754.8 (2021).

14 ROA 24-10929.22.

15 ROA 24-10929.7470.

16 ROA 24-10929.67

17 ROA 24-10929.7801.

18 ROA 24-10929.6746.

19 *Id*.

20 ROA 24-10929.7227.

21 ROA 24-10929.7049.

22 Please refer to the Growing Season Inspection Report at ROA 24-10929.6617.

23 ROA 24-10929.6617.

24 ROA 24-10929.7629.

25 ROA 24-10929.6982.

26 ROA 24-10929.7244- ROA 24-10929.7247.

27 ROA 24-10929.6913 and ROA 24-10929.6918.

28 ROA 24-10929.6983.

29 ROA 24-10929.7472.

30 https://www.prism.oregonstate.edu/.

31 See the Basic Provisions beginning at ROA 24-10929.20 and codified at 7 C.F.R. 457.8 (2021), see ¶ 12 (d).

32 See Peanut Crop Provisions at ¶ 11(h) *codified in Federal Regulation at* 7 C.F.R. § 457.134 and the Cotton Crop Provisions at ¶ 8 (h) *codified in Federal Regulation at* 7 C.F.R. § 457.104.

33 ROA 24-10929.6767.

34 ROA 24-10929.7183.

35 ROA 24-10929.7391.

36 7 C.F.R. § 457.8 (2021).

37 ROA 24-10929.7796.

38 ROA 24-10929.7471.

39 ROA 24-10929.7795.

40 ROA 24-10929.7795.

41 ROA 24-10929.7629.

42 ROA 24-10929.7627 (Affidavit of Geoff Cooper) and ROA 24-10929.7629 (Affidavit of Dr. Justin Tuggle).

43 Response at Page 11.

44 ROA 7672.

45 ROA 7627- 7629.

46 ROA 24-10929.6892.

47 ROA 24-10929.6987.

48 ROA 24-10929.6994.

49 These documented claims are not included in the Administrative Record but are relevant to the dispute and were offered to the District Court as an exception to the record-only review rule. No objection was raised by the Defendants during the District Court proceedings. The Fifth Circuit has recognized there are exceptions to prohibitions concerning consideration of documents outside of the administrative record. See *Robinson v. Aetna Life Ins. Co.*, 443 F.3d 389 (5th Cir., 2006 and *Estate of Bratton v. Nat'l Union Fire Ins.*, 215 F.3d 516, 521 (5th Cir.2000. Relevant exceptions which support consideration of numerous paid crop insurance claims based on adverse farming conditions in Gaines and Yoakum Counties, include but are not limited to showing "bad faith on the part of the Agency" in regard to its suggestion that other farmers did not suffer from adverse weather conditions in 2021 and the fact that supplementation is necessary to demonstrate the Defendants have not considered "all relevant factors" in reaching their conclusions.

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