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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN J. HALL, III, and
NANCY S. HALL, his Wife

PLAINTIFFS

VS.

CIVIL ACTION NO.3:99-cv-171EN

DAN GLICKMAN, in his capacity as
SECRETARY of the UNITED STATES
DEPARTMENT of AGRICULTURE, et al.

DEFENDANTS

ORDER

On March 5, 1999, the Plaintiffs filed a Complaint in this Court seeking, *inter alia*, judicial review pursuant to the Administrative Procedure Act, codified at 5 U.S.C. § 701 *et seq.*, of actions taken by the Defendant in his official capacity as the Secretary of Agricultural. This Court previously found that the sole issue before it relates to the validity of the decision by the Farm Service Agency ("FSA") to recapture \$35,256.00 from the Plaintiffs secondary to the sale of fifty-two acres of timber which triggered the Shared Appreciation Agreement ("SSA") executed by the parties in 1994. See Opinion and Order of July 19, 2000, at 19. The Court, in its July 19, 2000, Opinion and Order, found that there existed an "error with the method in which FSA utilized both the 1992 appraisal and the 1996 appraisal in calculating the SAA recapture amount." Id. at 23. Specifically, the Court found that a genuine issue of material fact existed with regard to whether the

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Director Review Determination was arbitrary or capricious as, "the SAA calculation utilized by FSA fail[ed] to isolate appreciation in the property that was actually sold, the timber," but instead, also considered the "appreciation, if any, in the underlying timberland acreage" that was not sold by the Plaintiffs. Id. at 25.

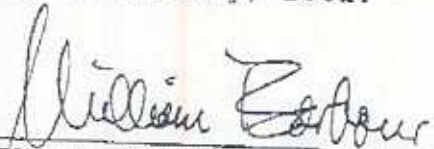
The United States Court of Appeals for the Fifth Circuit has held that "[j]udicial review of an agency's decision consists of determining 'whether [that] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'" United States v. Garner, 767 F.2d 104, 116 (5th Cir. 1985) (quoting Bowman Transp. Inc. v. Arkansas Best Freight Sys., Inc., 419 U.S. 281, 285 (1974)). This Court, while finding that there existed a genuine issue of material fact with regard to whether agency decision was arbitrary or capricious, found that the Farm Service Agency did not consider all relevant factors when it upheld the recapture amount that was based, in part, on the appreciation of property that was not sold by the Plaintiffs. The United States Supreme Court has held that "[i]f the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare

circumstances, is to remand to the agency for additional investigation or explanation." Florida Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985). The Court therefore finds that the appropriate course of action is to remand the case to the FSA for further proceedings consistent with the findings of this Court in its Opinion and Order of July 19, 2000.

IT IS THEREFORE ORDERED that the Motion of the Defendant to Remand to Agency and Dispense with Trial [45-1] is hereby granted.

IT IS FURTHER ORDERED that the Motions of the Plaintiff to Allow the Introduction of Evidence Outside the Administrative Record [46-1] and Reconsideration of the Order of the Court to Limit Review [46-2] is hereby dismissed as moot.

SO ORDERED this the 9th day of January, 2001.


UNITED STATES DISTRICT JUDGE