

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

SMA Docket No. 04-0004

In re: Pacific Northwest Sugar Company, Inc.
(Appeal of Southern Minnesota Beet Sugar
Cooperative of Reconsidered Opinion of
Beet Sugar Marketing Allotment Allocation
Transfer From Pacific Northwest Sugar Company
By Executive Vice President, Commodity Credit Corporation)

Petitioner

ORDER

This action involves a Petition for Review filed by Southern Minnesota Beet Sugar Cooperative (hereafter "SMBSC") on March 22, 2004 of the Reconsidered Opinion of the Beet Sugar Marketing Allotment Allocation Transfer from Pacific Northwest Sugar Company to American Crystal Sugar Company (hereafter "ACS") by the Executive Vice President of Commodity Credit Corporation (hereafter "CCC"). It will be noted that this action involves the same transfer of quota which was the subject of *In re: Amalgamated Sugar Company, L.L.C.*, SMA Docket No. 04-0003, decided by Judge Victor W. Palmer on February 7, 2005.

An Answer and Motion to Dismiss was filed by the Executive Vice President of Commodity Credit Corporation on April 12, 2004. On April 22, 2004, the transferee,

American Crystal Sugar Company, filed a Notice of Intervention and Answer. SMBSC filed their Response to the Motion to Dismiss filed by CCC on May 3, 2004.

In its Motion to Dismiss, CCC asserted, *inter alia*,¹ that the doctrine of *res judicata* would apply as the transfer of the quota was the subject of the previously noted parallel litigation before Judge Palmer. In In re: Amalgamated Sugar Company, L.L.C., SMA Docket No. 04-0003, Judge Palmer held:

CCC employed inconsistent standards for the transfer of the allocation that it has not fully explained. American Crystal was only required to acquire some of Pacific Northwest's assets. But previously, both Washington Sugar and Amalgamated had been advised that they would need to acquire virtually all of Pacific Northwest's assets including the factory. ...

...the Reconsidered Determination by the Executive Vice President of CCC which is the subject of the appeal is hereby reversed. Upon this decision becoming final and effective, CCC shall distribute in future crop years, the amount of the marketing allocation that was transferred to American Crystal from Pacific Northwest to all sugar beet processors on a pro rata basis in accordance with 7 U.S.C. § 1359dd(b)(2)(E) of the Act. ... (Slip Opinion at pages 36 and 37)

The specific relief sought in this action (i.e. to reverse the Reconsidered Determination of the Executive Vice President of CCC transferring the allocation from Pacific Northwest to American Crystal and having the allocation distributed to all sugar beet processors on a pro rata basis) having been granted in the parallel action, there is no longer a cause in controversy and this action may be dismissed.

Accordingly, being sufficiently advised, there no longer being a cause in controversy, this action will be and hereby is **DISMISSED**.

¹ CCC asserted that Administrative Law Judges lacked subject matter jurisdiction and that the complaint failed to state a cause upon which relief could be granted. Both of these grounds were rejected by Judge Palmer. In the instant action, CCC additionally argued that there was no reconsidered opinion and that the claim was time barred. In view of the disposition in the companion case and CCC's position that *res judicata* is applicable, it is unnecessary to address those arguments.

Done at Washington, D.C.
this 14th day of February , 2005

PETER M. DAVENPORT
Administrative Law Judge

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