

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

JOHN PRICE

PLAINTIFF

VS.

CIVIL ACTION NO. 5:08-cv-16(DCB)(JMR)

JANET HYLAND DAIGRE; JOHN L.
HYLAND, III; LOOSA YOKENA, L.P.;
THE UNITED STATES ARMY CORPS
OF ENGINEERS; JOHN DOES 1-10

DEFENDANTS

ORDER

This cause is before the Court on defendant United States Army Corps of Engineers' motion to dismiss (**docket entry 22**) pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Having carefully considered the motion as well as the pleadings and the record in this case, the Court finds as follows:

Rule 12(b)(1) provides for dismissal of an action based upon lack of subject matter jurisdiction. In suits against the United States, the Court must find that the plaintiff has identified an applicable waiver of the United States' sovereign immunity in order to have subject matter jurisdiction. United States v. Mitchell, 463 U.S. 206, 212 (1983). The United States shows in its motion that the plaintiff has not identified such a waiver.

The Court previously ordered the plaintiff to respond to the United States' motion. The plaintiff has now done so, stating that he agrees with the United States that there has been no waiver of sovereign immunity. The Court therefore finds that the motion to

dismiss is well taken and that the United States Army Corps of Engineers should be dismissed with prejudice for lack of subject matter jurisdiction. Accordingly,

IT IS HEREBY ORDERED that the United States Army Corps of Engineers' motion to dismiss (**docket entry 22**) pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure is GRANTED;

FURTHER ORDERED that the United States Army Corps of Engineers is DISMISSED FROM THIS ACTION WITH PREJUDICE.

SO ORDERED, this the 30th day of September, 2009.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE