

# Mediation Minute

North Dakota Department of Agriculture

Fall 2003

## ADMINISTRATOR'S CORNER . . .



Jeff Knudson

*The state's crop and livestock production cycle appears to be shaping up as one of the best in many years. The North Dakota Agricultural Statistics Service reports the average spring wheat yield at 39.5 bushels per acre, the highest average yield since 1992. The yields for other small grains were also good with quality problems virtually non-existent. Summer and fall drought conditions reduced the potential for some late season and row crops; however, the average yields for these crops are forecast to be mixed yet respectable compared to 2002 yields. Record calf prices are also giving a big boost to the financial prognosis for the production year.*

*I think everyone would agree that we were long overdue for a year of improved production and prices. However, the Risk Management Agency reports that losses paid by crop insurance to date are running higher than for the same period in 2002. This means it was not a good year for all producers, and we sympathize with those in regions of continuing production problems that did not share in this otherwise brighter production year.*

*This issue introduces the Agricultural Mediation Service staff. Also included is one in a series of mediation case studies published by USDA's Conflict Prevention and Resolution Center. The publication, "Mediation Success Stories: Finding Common Ground in Agricultural and Rural Disputes," consists of actual mediation case studies from certified state agricultural mediation programs. To protect the identities of involved individuals, the names, states, and other identifiers are not included in the publication's stories. However, the stories and experiences are common to most state mediation programs and provide a fair description of and insight into agricultural mediation cases not usually available to the public.*

## AGRICULTURAL MEDIATION SERVICE (AMS) STAFF

The mediation services provided by the AMS fall into two broad categories: formal mediation and informal mediation/negotiation. In formal mediation, AMS assigns both a "mediator" and a "negotiator" to the case. The mediator acts as a neutral third party in convening and moderating the mediation sessions and issuing a mediation report. The negotiator assists the producer by providing financial analysis relating to the pending dispute and the producer's overall operation and by providing information and guidance relating to the mediation process and the issues being mediated. The AMS negotiators also assist producers by providing financial analysis, counseling, and negotiation services through informal mediation. These early intervention efforts often help producers avoid formal mediation by planning for and resolving credit problems before the actual default occurs.

In addition to mediation services, the AMS provides assistance in a number of areas including beginning farmer financing and farm diversification efforts. AMS also provides referrals in specialized areas such as legal services, mental health services, social services, accounting and tax, farm management, and alternative financing.

Most of the AMS field staff work out of their homes; however, the AMS has field offices in Dickinson, Bismarck, and McVillage. AMS staff located in the state office are Jeff Knudson, administrator; Tom Silbernagel, coordinator; and Betty Nelson, administrative assistant. Field staff include Clarence Farber, negotiator from Dickinson; Rodney Foss, negotiator from Bismarck; Herman Haas, mediator from Bismarck; H. Donald Kuhn, negotiator from Grand Forks; James Mathiason, mediator from Mohall; Patsy Otto, negotiator from Bismarck; Paul Overby, negotiator from Wolford; Larry Smith, negotiator from Stanley; Ron Willardsen, negotiator from Napoleon; and Tony Wixso, negotiator from McVillage.

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## LOAN RESTRUCTURING CASE

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The family farm corporation in this case, which included parents and their children and spouses, had experienced occasional ups and downs, but nothing as significant as in the year preceding the mediation. Because the family had a reputation for being good managers and bill payers, they had little trouble obtaining informal loans for feed, seed, and other operating needs. Such credit allowed the farm to operate as it faced increasing financial peril. The farming crisis, however, resulted in the devaluation of many of the farm's assets, including the land and the livestock owned by the farm corporation. The valuation change greatly concerned the farm's lenders, including banks and the Farm Service Agency (FSA). The family requested mediation when it became apparent that the farm would not produce enough income to continue paying off loans obtained for the business.

**Intervention:** The producer and his family attended a clinic sponsored by the state Agricultural Mediation Program, where they received information on mediation opportunities. The mediation was held in 1999. "As with most of our sessions, we used the . . . meeting room in the county court-house in the county where the borrowers and lenders reside," the mediation program's representative said. The session lasted four hours, and included the producers, their pastor, a banker, and a local businessman from whom the family had borrowed. A representative from Farm Credit Services was available by telephone to answer questions if they arose.



The mediator attempted to work out some of the easier issues before moving to the more complicated problems. "I worked hard to get as many facts on the table as possible," the mediator said. "Some of the facts came out quickly, some came out after a few hours. This was not an easy process for the family. They were very upset, which is why their pastor came with them to the mediation." The producers were attempting to keep their farm rather than selling it, while the bank was insisting that the family sell the business.

**Outcome:** The final agreement included concessions from both sides. "To make mediation work, everyone probably needs to give something they did not want to give when they came to the table," the FSA representative said. In this case, the compromise included the producers selling more than half of their farmland, the hog



farming facilities, and some cattle. The producers also agreed to finish the remaining hogs to raise some additional money and to pay FSA from personal assets. The bank agreed it would apply the proceeds from the sale of the farmland and other assets to the producers' personal loans. The bank also agreed to create an escrow account to cover some of the producers' taxes, to guarantee the rest of the producers' loan at a low interest rate, and to provide some operating money to the producers. Furthermore, the bank agreed to erase penalty interest charges accrued by the producers. No modifications were made to the family's FSA loan in the written agreement that came out of the mediation. Finally, the local businessman agreed to give the producers time to pay back their loans.

**Cost/Benefit:** The parties interviewed for this case were emphatic in their approval of mediation as a way to solve some agricultural credit cases. The parties and the mediator in this case defined success in several ways. Part of the success in this case includes the fact that the borrowers' account with FSA became current. Moreover, the producers' perilous financial situation was greatly improved. A written agreement was developed through the willingness of the parties to



negotiate. The parties stayed out of court. The mediator defined success in another way: "I don't evaluate the mediation by whether we got a written agreement. I try to review my own performance. Did I use every technique I know? Was I impartial? Was I not telling people what to do? Did I do everything I could to make this work?"

Success can also be measured by looking at the producers' social and emotional reaction to the outcome, according to the mediation program's representative. "In tight-knit communities, maintaining the good reputation of a family name is a high priority," the representative said. "For this reason, farm families in financial distress often view bankruptcy as a last resort. With good preparation, working together, borrowers and lenders can many times develop a feasible plan in mediation that is better than what could be accomplished in a Chapter 12—quietly, inexpensively, and with more input."

"The benefits for FSA are many," said its representative. "We can in many cases sit in a non-threatening, neutral ground and discuss the situation with a group of people. Mediation gets all the lenders together, which would be impossible to do in any other setting without involving attorneys. Mediation provides an opportunity for restructuring and retiring debt so it will work for the borrower." The time spent in mediation "is minimal compared to bankruptcy," he continued. "The most time I've ever spent in mediation is one day. In a bankruptcy case, I can spend half a day talking to just one of the lawyers."

The mediator, who previously had worked for a bankruptcy attorney, agreed on the savings realized in mediation. "The cost of attorneys is huge," he said. "We have to cost 10 percent or less than the costs of bankruptcy procedures. And if you don't like the agreement reached through mediation, you don't have to sign it. By its nature, mediation has a higher level of satisfaction. I think we also probably have a higher level of compliance with the agreement."

Perhaps the best evaluation of benefits, however, is in how the public is served. "The benefit is primarily to the individual farmer," the FSA representative said.

## FARM DIVERSIFICATION PROGRAMS

**Ag Pace:** The Bank of North Dakota's (BND) Ag Pace Program offers financing for projects to diversify farm income. Ag Pace is a commercial lender participation loan program. BND participation can range from 50 percent to 80 percent of the total loan. The program provides incentive financing to encourage North Dakota farm families to purchase equity shares in new or expanding value added agricultural processing facilities, develop irrigated acreage, develop a business that can be integrated into the farming operation, and improve or expand feeding/finishing facilities for livestock retention.

The program's interest rate is established at the lead lender's market rate for both the lead lender and BND. The interest rate on the entire loan is "bought down" by 5 percent for the borrower's effective rate. Loan repayment terms vary according to loan use and collateral.

**Ag Products Utilization Commission:** The Ag Products Utilization Commission (APUC) is a division of the North Dakota Department of Commerce. APUC's mission is to create wealth and jobs through the administration of a grant program that supports the development of new and expanded uses of North Dakota's agricultural products. Grant funding proposals are accepted on a quarterly basis for basic and applied research grants, marketing and utilization grants, farm diversification grants, and an agricultural prototype development grant program. North Dakota companies that add value to a raw North Dakota agriculture commodity can apply for APUC grants.

**North Dakota Development Fund:** Administered through the North Dakota Department of Commerce, the North Dakota Development Fund (NDDF) provides flexible "gap financing" to any primary-sector business with the exception of production agriculture. However, value-added projects such as investor owned dairies and feedlots which are detached from a farming operation are eligible for NDDF consideration. The NDDF provides loans and equity investments not available from most conventional lenders. The Fund is a secondary source of financing, subordinate to private sources. The Fund also coordinates efforts between all the sources of financing, the business and the community.

## ONLINE INFORMATION

Online fact sheets and information can be found on these and other programs at the following websites:

**Bank of North Dakota** - <http://www.banknd.com>

**North Dakota Development Fund** - <http://growingnd.com>

**Ag Products Utilization Commission** - <http://www.growingnd.com>

**USDA Conflict Prevention and Resolution Center** - <http://www.usda.gov/cprc/>

**USDA Ag Mediation Programs** - <http://www.fsa.usda.gov/pas/publications/facts/html/mediate03.htm>

**ND Agricultural Mediation Service** - <http://www.agdepartment.com/Programs/AMS.html>



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