MEDIATION SUCCESS STORIES:

Finding Common Ground in Agricultural and Other Rural Disputes

Introduction

The United States Department of Agriculture (USDA) has responsibility for administering hundreds, if not thousands, of programs. While many USDA program applicants and participants receive significant benefit from USDA programs, the administration of those programs can also lead to the denial of or reduction in benefits, foreclosure, monetary penalties, or even a suspension from or prohibition against participation in a USDA program. With these potential consequences, conflict is inevitable.

When government decisions have potentially serious impacts on people's lives, conflicts rarely "go away." Emotions run high, and people are ready to fight - through the appeals process, the courts or, sometimes, even through angry confrontations or violence. By and large, Federal employees are just doing their job. At times, however, a member of the public may not feel that way. Or, perhaps, a USDA employee believes it is the customer who is acting in an inappropriate manner. Will an appeal, litigation, or even harsh language, solve the conflict? Perhaps. However, there may be a better way for many of these conflicts to be resolved. It's called **mediation**. Since 1988, USDA has engaged in mediation in thousands of disputes over agricultural loans. And, since 1995, mediations have also taken place on issues relating to farm programs, conservation, wetlands, rural business, rural housing, crop insurance, and grazing.

While mediation has now been utilized in tens of thousands of disputes over farm credit, it is still a new concept to many at USDA, particularly when it comes to disputes involving issues other than farm credit. Understandably, lack of familiarity with mediation can result in skepticism, apprehension, or even resistance to the idea of mediating a dispute. So, without actually having experienced mediation first hand, how can one get a better sense of what it is really about?

This collection of success stories has been compiled so that individuals who face the prospect of mediation can get a sense of how mediation with customers has worked in connection with a variety of USDA programs. As you will see, "success" in mediation can occur in many ways. The key is to come away from mediation with some positive result: a stronger relationship, a farmer's better understanding of the program requirements, a USDA employee's better understanding of why the customer is upset or confused, or even discovery of an error or unclear regulatory requirement. We hope the stories that follow will answer some of your questions about mediation and help remove the mystery. ✷

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Wetlands Modification Case

Context: In 1997, a routine review of agricultural properties by the United States Army Corps of Engineers (Army Corps) revealed a potential violation of the Clean Water Act and the wetlands protections provisions of the 1985 farm bill, also known as the "swampbuster" laws. The Army Corps spotted a particular plot of land that appeared to have been cleared of vegetation. The land was mapped as a wetland. If ruled a violation, the producer would have risked losing federal farm subsidies. The producer appeared to have cleared about seven acres of wetlands. He owned and farmed over 400 acres of land and received more than $35,000 annually in federal benefits. It was assumed that the cleared land was intended for agricultural use, but no crops had been grown on the land when the apparent violation was discovered. The Natural Resources Conservation Service (NRCS) representative in this case sent the producer a notice of potential violation, and offered the producer three choices for addressing the potential violation: mitigation of the wetland, restoration of the wetland, or acceptance of the violation and consequences. This was the first case in this particular state under 1995 rules allowing mitigation of wetlands as an option. The producer did not take any action. When a determination of violation was issued against him, he asked for mediation of the case.

Intervention: The mediator conducted two sessions, each lasting about two hours. Participants in the mediation included the mediator, a Farm Service Agency (FSA) representative, the NRCS representative, the producer, the producer's son, and a representative of a farming advocacy group who served as an advisor to the producer.

During the first mediation session, "we tried to be sure that everyone understood what we were calling a violation, "the NRCS representative said. "We had to explain the swampbuster law to the producer, because this was a whole new thing to him. He was unaware that what he had done was a violation. We had to be as ready as

we could to help him understand the predicament he was in." Most of NRCS' evidence consisted of the Army Corps' aerial photographs of the site. Based on the photographs, the Army Corps and NRCS believed the land had been cleared beginning in 1991 or 1992. The producer insisted that the work had been done in 1989. "He questioned our evidence," the NRCS representative said. "He thought that we'd picked up the wrong year's photos. He swore up and down that the clearing had been done in 1989. If that was the case, he would have been safe as long as he did not grow any crops on the land." Federal wetlands law at the time stated that wetlands conversions without further modification of the land could be prosecuted only after 1990.

The producer provided bills from a contractor supporting the contention that the land had been cleared in 1989. We didn't want to run roughshod over this case, especially since it was the first mediation we'd participated in," the NRCS representative said. "So instead of insisting on the Army Corps photographs, we agreed that we would find another source of aerial photographs." The NRCS representative said he did not know where he might find additional evidence when he agreed to do so, but was concerned that the case proceed amicably. Prior to the second session, the NRCS representative contacted the farmer's advisor to tell him that aerial photographs confirming the government's position had been found at the state

Highway Department. At the second mediation session, the producer's son quickly recognized that he and his father had been mistaken about the dates of the clearing. The son recognized a barn in the new photographs that had been built on a piece of land other than the one in question. The identification of the barn dated the photographs to 1991. "After the acknowledgement of the evidence, we quickly started discussing what we could do to take care of the violation," the NRCS representative said.

Outcome: The participants in the mediation agreed that mitigation and restoration were the best outcomes for the producer and for the agencies involved. NRCS agreed to assemble a group of staff members to work with the producer to develop a mitigation plan. "We went out to the producer's land and discussed with him the value of the wetlands that were lost when he cleared the land," the NRCS representative said. "Then we looked at pieces of land where he could accept mitigation. Then it was up to him to execute the plan. NRCS and the Army Corps review the work to make sure it is completed."

Cost/Benefit: Generally speaking, the USDA representatives involved in this case feel that mediation is a useful tool. "The producers can ask questions they need to ask to understand the case," the NRCS representative said. "The mediator can help explain the situation in a way we can't. The mediator also will ask questions the landowner won't ask. The producers need face to face contact to feel like they are being listened to." The level of communication that is achieved through mediation is perhaps the most important aspect of this process. "We are able to explain to the producers all the possible outcomes of the case," the FSA representative said. "They may not like it, but we can come to terms. Some of that may have to do with the fact that it's often the first time the producer has come face to face with the USDA officials." Finally, the USDA officials in this case said they think that their producers understand what mediation has to offer. "People have more misconceptions about the appeals process than they do about mediation," the NRCS representative said. "By the time you get to appeal, there really is not much chance for working things out."

The benefit of mediation is closely linked with the type of case and the regulatory framework that applies to each case. "In wetlands cases involving NRCS, mediation has been very valuable," the FSA representative said. On the other hand, that FSA representative feels FSA-only mediations have not been as successful "because we don't have as much regulatory flexibility."

The ability to make decisions and arrive at creative solutions is crucial, both for the mediator in trying to effect a successful outcome and for the federal officials trying to serve the public. "Often we come up with a more creative solution through mediation than we otherwise would have," the NRCS representative in this case said. "We can't be very creative, but we do as much as we can. In this case, the producer had FSA payments held up. FSA could not release the payments without an agreement, so we were able to get the agreement signed, which frees up the payments sooner."

When innovative solutions to which everyone agrees are the outcome, all parties tend to leave mediations satisfied with the results. "I haven't seen mediation used as stalling, and no one in our program has pursued an appeal after the mediation process," the NRCS representative in this case said. "The benefits of mediation do outweigh the costs."

Multi-Family Housing Case

Context: Both the state and county Rural Housing Administration (RHA) offices had a long history of difficulty with a borrower who owned a multi-family housing (MFH) complex. During the summer of 1997, the borrower was unable to make payments on his MFH loan, had an additional $100,000 worth of debts to various creditors in the community, and would not respond to the many letters sent to him about the debt. A few years earlier, the agency had been involved in litigation against the borrower, and they had little hope that this current loan would ever be repaid. According to regulations, RHA could begin foreclosing on the property. However, the county RHA director was aware that recently, a new company had started managing the complex in question. He chose to contact this management group and asked both their representatives and the borrower to a meeting to discuss how to get the loan, and in effect the multi-family complex, out of the red.

Intervention: In this case, the "mediators" were two RHA officials rather than neutral third parties from outside the agency. It is unusual for a property management group to take an interest in the finances of the owner of the properties they manage, but by participating in the mediation, they became aware of the tenuous state of the loan. Not only did they not want to lose this property from their portfolio, they did not want their company associated with the negative publicity that would come from the owner declaring bankruptcy. They offered to take a more active role in the management of the property, including servicing the loan on the borrowers behalf, raising rents to help cover the loan, and most importantly, putting the owner in the "back seat" so that the property would no longer be threatened by his inattention to financial responsibilities.

Outcome: The RHA officials and the official of the management company wrote up a workout plan to address all of the owner's debts related to the property, including a written agreement outlining what would be paid when. The RHA officials assisted the management company in mapping out a plan to bring current the various other debts, and educated them on how to complete paperwork to comply with RHA's regulations. The company adhered to the written plan, paying the debt off within the original time frame. Thus, the borrower was able to avoid foreclosure. Three years later, all accounts were current, the property management company had regularly made payments on the USDA loan, the other creditors were paid, and the community had a well-run multi-family housing project.

Cost/Benefit: Instead of proceeding with a regulatory course of action and foreclosing on the loan, RHA talked with the parties to find an alternative that worked for all of them. By bringing in the property management company, the USDA officials raised its awareness of the borrower's problems and involved it in the solution. Because the management company took over responsibility for the loan, this RHA office was saved a great deal of work by not having to foreclose on the loan and initiate litigation against the borrower. RHA was able to develop a good working relationship with a reliable, trustworthy company and maintained good relations with the community in which their office is located. Mediation helped both the day-to-day work of this RHA office and advanced the larger goals of RHA -- to make and service loans that will provide stable housing for low-income residents of their community. ✹

Guaranteed Loan/Loss Claim Case

Context: The Farm Service Agency (FSA) regularly guarantees loans that local banks make to farmers on FSA's behalf. When a farmer defaults on the loan, the bank can then apply to FSA for reimbursement of its loss. However, eligibility for reimbursement is forfeited if the lender has not complied with FSA regulations on filing claims and issuing the loan. In the summer of 1999, a bank received a letter from the state FSA office giving notice of the refusal to reimburse the bank on a loan loss claim. The bank's vice president requested mediation in order to discuss face to face with the FSA official the reasoning behind the refusal.

Intervention: Upon receiving the request for mediation from the bank, the state Agricultural Mediation Program staff contacted one of the mediators under contract and set up a mediation session that included the FSA representative, the bank vice president and the mediator. Neither the FSA representative nor the bank vice president had participated in mediation previously. The vice president chose mediation because he wanted to further discuss the "dictum" stated within the refusal letter and because he believed that up to this point, FSA had been unresponsive to his requests for explanation. Although he was aware of FSA regulations regarding loan loss reimbursement, he believed that this reimbursement request fell into a "gray area." Both parties were surprised that they did most of the talking in the mediation session. The mediator saw that they were communicating well and decided to "take a back seat." The FSA representative clarified that the bank had allowed inappropriate use of the funds and had completed the required paperwork incorrectly. He made the reasons for FSA's denial of the reimbursement clearer to the bank vice president.

Outcome: Once the bank vice president understood what had been wrong in the loan processing, he accepted the State office's decision. The two men then decided to meet again, without the mediator, so that the FSA official could coach the vice president on how future guaranteed loans should be completed. This meeting soon followed, which, the bank vice president noted, was "useful for us."

Cost/Benefit: The FSA representative involved does not believe that mediation is always effective, but in this case felt it was necessary, as both men had come to a "hard stand" in their views and positions on the issue. According to the FSA representative, the mediation allowed the dispute to be resolved calmly without further escalation. The bank vice president sensed that before the mediation, he and the representative "did not see eye to eye," but the tenor of his relationship with the representative changed dramatically as a result of the mediation. "When people take the time to sit down one on one there's a lot of respect." Not only was an increasingly tense situation resolved, but also the working relationship between the two men is now on positive, productive footing. The bank in question holds $4.8 million dollars in guaranteed FSA loans, and its ability to continue making these loans is crucial to the small farming community in which it is located. The bank vice president now feels more assured in going to his board of trustees and urging them to continue making FSA guaranteed loans, and the FSA official feels confident the bank will now adhere closely to FSA regulations. This came at no cost to the FSA office, and involved only two short meetings of the office's director. As a result of the mediation, this FSA office now has a better working relationship with a key partner to its mission to assist farmers. FSA can now better serve its clients with less time spent doing so.

Family Farm Credit Case (FSA)

Context: In the rolling prairie of this state, farmers raise wheat and cattle and hope for rain. Tough terrain, cold winters, and dry summers make it hard. It is native pasture, with hills and gullies. For many families, this has been their life for over 100 years. In the last generation, more and more children have left the farms for jobs in the cities.

For one family, the pressures came to a head in 1999. A farmer found that low cattle and grain prices had taken a 2200-acre operation from successful to unsuccessful. The farmer and his family were ready to sell the land and move on. He had taken over operations on the family farm at age 23 when his father was killed in a farm accident. His brothers and sisters had all left the range to live in the cities and work in other industries. Over time, he had bought 640 acres to give his aging mother some cash and security. He initially operated the land himself, and later subleased it. Farm Service Agency (FSA) loans covered the entire 2200 acres. In the process of applying for a new FSA loan, the farmer realized the extent of the family debt crisis.

In 1999, the mother was still alive, but less active than before. Nominally, the mother still owned most of the land, but she played little role in the management of it. Her financial needs were increasing, and different family members had different ideas about how her needs should be met. Most family members didn't want to see the land go out of the family, but they didn't want to buy it either. They all had legitimate claims on a share of it. Some were critical of the management by the brother who had stayed behind. Communication was poor and family relations were strained, especially at large family functions and holidays. Without an agreement, the case was headed for bankruptcy court, and the family was headed for a further breakdown in relationships.

Intervention: When the FSA agent determined that the loans could not be restructured, he advised the farmer that he could ask for help from the state mediation service. The farmer admits that he had "never heard of mediation before this, but he knew he needed help and was open to any help he could get."

The mediator assigned to the case was a native of the state who had worked in real estate and was now retired. The mediation team called a meeting at the county courthouse to bring together the farmer, the FSA representative, and the farmer's mother and wife. In discussing the facts of the case, the mediator quickly realized that there were disagreements within the family about what had been promised and what was expected. Also, the case involved many other family members who were not present at the initial mediation session. Deep misunderstandings and differences within the family had been going on for years, long before the current credit crisis. Those outside of farming had very different expectations than those still involved in agriculture. There were differences about how the land should be managed, how much the farmer still owed his mother for the land he had bought, and how far behind he was on the payments. The mediator realized that before the credit issues could be resolved the unspoken family anger needed to be released.

By all accounts, that first meeting was not a success. However, a month later, another meeting was held in the home of one of the family members; this time, most of the brothers and sisters were involved. The meeting started off as angrily as the one before. Accusations and counter

claims flew back and forth. The stories about who did or didn't do various things got hopelessly tangled together. At one point, the mother left the room. Patiently, the mediator got family members to clarify what they thought, what they wanted, and what they could do to help.

The mediator said, "I had to really listen to what everybody was saying; not just with words but with their body language. Then, I could help them listen to each other. I gradually helped them get past all their hurts to focus on the positive possibilities. The negotiator asked family members, "Are you sure you want to keep the farm together even if it tears the family apart?"

Outcome: Eventually, everyone came to realize that if they wanted to keep the land in the family, they would all have to be part of the solution. It wasn't easy for them to raise the money, but together the family was able to buy back the 640 acres and formally reconnect it all in the mother's name. A third meeting was held back at the courthouse to finalize a formal agreement. The money was enough to repay the loans, including the one from FSA.

More importantly, with the debt question out of the way, the family was able to get back together personally. The farmer, his wife and his six children came back to family functions. A year later, the farmer reported that he was working full time for a telecommunications company and was glad to be out of farming. He reported that the mediation made it possible for all the family members, working together, to get what they wanted:

-- The mother, who worried about debt, saw the loans paid off.
-- FSA got its loans repaid in full.
-- The family members, who wanted to keep the farm together, got it reconsolidated.
-- Everybody got past blaming one another for the hard times they had experienced.

Cost/Benefit: The mediator summarized, "This was one of my toughest cases. I had to let people get their feelings out without letting the emotions get completely out of control. At the same time, I had to get the people focused on solutions and not just on the problems. It took a lot of effort and lot of patience, but I feel good about it."

An FSA official in the state said, "Ag mediation has come a long way in" our state. "We used to think of mediation as an adversary. Now we have a good relationship. Instead of arguing and trying to push our point of view, mediation has let us get out our point of view where it can be heard, and can help everybody accept a share of the responsibility and accountability." Commenting specifically about this case, the FSA official said, "The mediators get the tough cases. Sometimes there are no good solutions. But in this case, the mediation not only worked to settle the financial issues, but also got the family to start healing its wounds."

The farmer concluded, "We couldn't have done this without help. To finally work out what's going to happen with the land, we may need more help. For now though, things are better."

Past-Due Loan Case (FSA)

Context: During 1998, a Farm Service Agency (FSA) county office farm loan officer faced a situation involving a producer who was past due on a loan of approximately $200,000, as well as debts to two other creditors. The FSA loan was in the name of two brothers who shared the farm, one brother focusing on business operations, the other on production. The loan was heading toward foreclosure when the "business" brother requested mediation, mostly with the intent to buy some time until harvest. Prior to the mediation, the loan officer only had contact with the brother concerned with business operations. However, given that the two brothers were signatories to the loan, the attendance of both at the mediation was critical.

Intervention: Both brothers attended the mediation, along with the loan officer and a mediator from the state Agricultural Mediation Program. The mediation was an opportunity for both brothers to come to agreement on what needed to be done. The brother involved solely in production had been resistant to the decisions made by the brother focusing on business issues. However, through a preliminary separate session with the mediator, the brother who managed the business was able to explain why he was making these decisions. The mediator helped the two brothers communicate better and come to an understanding, which then enabled them to work as a team with the FSA county office.

Outcome: The loan officer set a deadline for the brothers to make payment on their loan. While this was a standard deadline, the brothers were helped by the additional time afforded from the mediation. The brothers, now working with each other instead of against each other, agreed that they could meet the deadline, and did.

Cost/Benefit: According to the loan officer, the great value of the mediation was that "everyone showed up. They knew what I was up against and the time frame they would have to work with."

Additionally, the mediator saw a significant change in how the brothers dealt with each other. Through the mediation the brother who focused just on finances was "forced to tell his brother what was going on." The officer observed that the brothers "seemed to deal a bit better with each other after the mediation." The benefit was not just that a $200,000 debt remains in the black. Since this time, the officer has dealt with both brothers on issues regarding their farm. The improvement of the relationship was crucial to an improvement in the business management. Because they now communicate better, they are better able to make decisions about their business and have been repaying their debts without difficulty since the mediation.

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Wetlands Conversion Case

Context: A producer ran a relatively small farm and received USDA subsidies for maintaining some parcels of his land as wetlands. The federal government protects wetlands under the provisions of several laws, including the Clean Water Act. In 1997, the Natural Resources Conservation Service (NRCS) conducted a standard compliance review of one tract of the producer's land. The producer passed the first review, but failed a follow-up review a year later because NRCS determined the producer had straightened an oxbow in a nearby creek by filling it in order to make farming somewhat easier. The producer claimed not to know that his action violated federal law. "This was not a little trickle of water," the NRCS representative involved in this case said. "It was a main creek, a perennial, constant stream. The creek had an eight-foot bank on each side, a stream three or four feet wide, and a foot deep. Filling it was not a minor change."

Filling a wetland carries a penalty of forfeiting wetlands protection payments from the time the violation was committed to the time NRCS discovers it. The producer was held liable for more than $160,000 in payments, as NRCS determined that the land had been filled in 1991 or 1992. NRCS notified the producer that the creek had to be restored to its original condition or mitigated, and that his Farm Service Agency (FSA) payments could be suspended until the work was complete. The producer failed to respond to NRCS until after he was found to be in noncompliance.

The producer conceded that he had filled the wetlands, but expressed concern about the cost of restoring the land. The producer asked for a field visit from NRCS, during which the NRCS representative described what work would need to be completed to restore the site. Following the site visit, the producer filed an appeal of the NRCS determination and requested mediation.

Intervention: In 1999, NRCS and FSA entered into mediation with the producer. The

mediation was conducted in the offices of a nonprofit advocacy agency for small farmers. The mediation took place in a single afternoon. This mediator uses a relatively informal approach to solving agricultural disputes. "I start out by telling them that I'm a farm boy myself," he said. "Then I tell the agency folks that I may appear to side more with the producer, but that it's because the farmer is typically less comfortable with the situation. I try to make them more comfortable, and I usually let them tell their side of the story first. People should be treated fairly, but that doesn't mean they should necessarily be treated equally. They aren't equal."

The mediator encouraged both sides to tell their story with as much detail as necessary. An important turning point came when the USDA representatives told the producer they could understand why he had straightened the creek. The action made sense in terms of making farming easier, the representatives said, but was not permissible under the law. "It was very important that the farmer knew USDA did not think he was a crook," the mediator said. From that point, the mediation moved forward to a resolution. "We went over all the choices open to the producer," the NRCS representative said. "Identifying the options open to the farmer and the ramifications of each was important," the FSA representative said. "That really cleared the air, and was good because we'd never had a time for all three parties to get together.

Outcome: It became obvious that re-bending the creek was the only solution. The producer agreed verbally that he was going to redig the channel in the original fashion. An agreement was reached in the form of a summary provided by the mediator to the parties. "The summary is the plan the parties have agreed to and the steps they say they will take," the mediator said. "I do not ask people to sign anything, because that makes the whole process too formal. This is a handshake deal, and a handshake is still good in this part of the country. If there has been a meeting of the minds, they should not have to sign anything. If there isn't a meeting of the minds, the agreement won't work anyway." The producer responded by the agreed-upon deadline, stating that he would restore the wetlands that had been filled. NRCS, therefore, staked out the appropriate path of the creek and reviewed their work with the Army Corps of Engineers. The producer dug out the stream and provided written evidence that the work was complete. Upon receipt of this letter, FSA restored the producer's compliance status as well as the wetlands protection payments that had been suspended.

Cost/Benefit: The NRCS representative in this case enjoyed working with the mediator and admits that mediation might hold some value for producers, but also expressed some concerns with mediation. "Producers seem to have a misconception that mediation means we can bend the rules," the NRCS representative said. "I can't bend the regulations to bring producers into compliance. Most of the mediations I've been involved in have been in my district. I've already been to the site to explain to the producer what's needed. It would be easier if the producer would just comply. It would save us a lot of staff time and paperwork. In this case, mediation was a way for the producer to delay by four or five months the work needed to get back into compliance." This case was particularly frustrating to the NRCS representative, he said, because USDA in the past 15 years has made a major effort to tell producers that disturbing wetlands will not be tolerated by the federal government.

One cost that the mediator and the NRCS representative mentioned is the time and effort required to travel to the mediations, which generally are conducted in a neutral location close to the producer's home. The state where this dispute arose appears to be responding to this problem by conducting some mediations by telephone, the mediator said. "Getting there often takes so much energy that the parties are worn out before they start the mediation," he said. "And then very often they do not have the materials they need to move forward." The mediator initially was skeptical about conducting mediations by telephone, but said the method has worked very well so far.

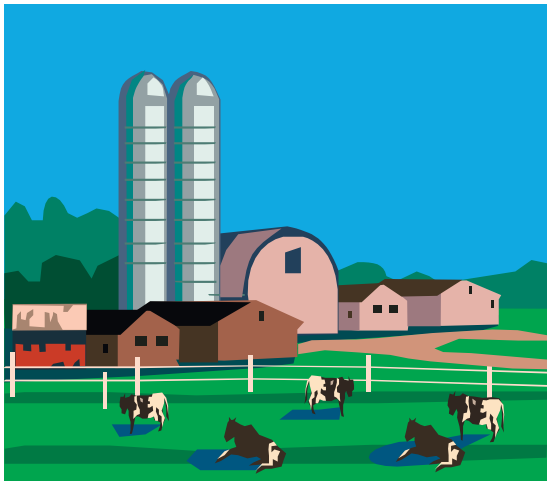
Despite the travel time required, however, mediation does appear to offer a quick alternative to the formal appeals process. "Mediation in this case really sped up the process," the FSA representative said. "We'd all talked to the producers individually, but never together. Bringing everyone together was maybe something we should have done at the local level. But mediation was really useful, because it brought out answers to questions we hadn't thought of before. I was satisfied." ✹

Loan Restructuring Case

Context: A family agricultural business was having serious financial problems. Due to a sharp drop in the prices paid for various agricultural commodities, farmers in a number of states have faced severe losses in recent years. Hog producers have been among the hardest hit by the crisis. The capital-intensive nature of farming often creates a situation of great debt and complicated financial situations.

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 courthouse 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 B quietly, inexpensively, and with more input."

"The benefits for FSA are many," said its representative. "We can in many cases sit in a nonthreatening, 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. ✹

Grazing Permit Case

Context: A large cattle producer held several grazing permits in a National forest along a state border, as well as in other parts of the region. The United States Forest Service (USFS) and the Department of Interior's Bureau of Land Management (BLM) were the agencies issuing the permits. The scope of the permits, including the length of the grazing season and the number of head of cattle allowed to graze on the land, is determined by the environmental impact grazing will have on the land. The permit-granting agency in this case, the USFS District Office, had primary responsibility for monitoring compliance with the permits, meeting with the producer to establish grazing plans, and working with the producer to improve performance if necessary.

According to the USFS district ranger, the producer had a history of non-compliance with a particular grazing permit. For three consecutive years, the producer overgrazed the land. Each year, the district ranger met with the producer to suggest ways to more successfully comply with the permit, but the producer was unwilling or unable to follow agreed-upon guidelines. In the district ranger's opinion, the producer was attempting to graze too many cattle on this piece of land. Annual meetings with the producer and other types of incentives failed to yield results, the district ranger said. At the end of the first noncompliant season, the producer received a warning letter from USFS. At the end of a second year of noncompliance, the producer received a light penalty. At the end of the third year, the producer received a one-year, 25 percent reduction of both the grazing season and the number of cattle allowed to graze under the permit.

Following a fourth year of noncompliance by the producer, the district ranger permanently canceled 25 percent of the permit, in terms of the length of the grazing season and the allowable number of cattle, and suspended an additional 25 percent of the permit. This determination would have reduced the permit by 50 percent for one year and 25 percent for the life of the permit. The producer appealed the district ranger's determination, then chose mediation largely due to dissatisfaction with the established USFS process. "There is no sort of due process in the USFS appeals process," the producer's attorney said. "There is no intrinsic accountability or fairness in the process. The district ranger makes the adverse determination in concert with the regional director and others in the first place. These are the same people to whom you appeal a decision."

Intervention: The mediation, which took place in 1997, was held in a USFS office. Included in the mediation were the producer's attorney, the USFS district ranger, the ranch foreman, and the rancher. The mediation took place in an afternoon. The mediator asked for a proposed settlement to be mailed to him by the parties several days before the actual mediation, but did not conduct preliminary interviews. During the mediation, the mediator's approach is to keep the parties together as long as possible to identify issues and begin building a dialogue. "I stress to the parties that they need to try to come to an agreement they both can live with and can both live up to, because they will be working together indefinitely."

Shortly after the mediation began, the attorney for the producer explained that the producer did not object to the cancellation or suspension in principle or with the facts as stated by USFS, but hoped to find an alternative to the permit cancellation due to further-reaching effects of this action. Under the Range Reform Act of 1995, BLM must reject permit renewals for 36 months from any livestock operator with a permit cancellation on

its record. The parent company of the ranch involved in the mediation was seeking a significant number of permit renewals from BLM at the time of the adverse USFS determinations. The producer wanted to keep the cancellation from becoming a part of its record with the federal government.

Outcome: In the agreement, USFS withdrew its adverse determination and allowed it to be replaced with the mediation agreement. The producer withdrew its appeal and agreed to voluntary nonuse of 25 percent of the grazing permit. Several other modifications were made to the permit through 2005. USFS agreed to give reasonable notice of monitoring activities to the ranch so ranch staff could participate. The agreement also required USFS and the ranch to identify key species by which permit compliance would be measured, and to participate in a joint monitoring effort. The parties also agreed to meet to discuss grazing management.

Cost/Benefit: The district ranger said he was pleased to come to a mutually acceptable arrangement. The legal aspects of withdrawing the adverse determination and revising the grazing permit were relatively easy to navigate, he said. "I don't think the regulations are so restrictive that we can't do anything," he said. "We still have a tremendous amount of discretion." An important part of this mediation was the improvement of a relationship that necessarily will continue. The district ranger said he is very impressed with how the producer and its parent company have improved their approach to grazing and cattle production not only in that state, but also throughout the region. In regard to this particular ranch, the district ranger said the relationship between USFS and the producer has improved since the mediation. In another case in 1998, USFS planned to suspend another grazing permit belonging to the same producer. The producer immediately came to USFS' offices and offered to voluntarily reduce the terms of the permit. "Solutions like that are good for the environment and bring kudos to the producer," he said.

"The mediation met my expectation of getting the people across the table from you," the attorney for the producer said. "If people don't come to the table with an agenda, more often than not it will work. Having people at the table that can make decisions also is very important. I have been in mediations where the person with the power does not participate. They stay behind their desks, wherever they are. Those cases are hopeless. Everyone who has a say in the outcome needs to be at the table." The producer is satisfied with the outcomes of the mediation, although some of the protocols for monitoring of the grazing permit are not fully satisfactory to the producer. "The protocols in the agreement are not the best in the world, but they are something," the attorney for the producer said. "We got something accomplished."

The district ranger has a similarly positive sense of mediation. "Most of the time in mediation, everyone is working toward the same purpose," he said. "All three mediations I've been in have worked. However, it makes the mediator's job easy when we have a three- or four-year record to provide to the mediator. We've already been over everything. The mediator reiterates what we've done. The mediation is the time for the other party to make a move." Having the third party present is essential to a positive outcome in agricultural mediation, the district ranger said. This is demonstrated by the four years of frustration the parties experienced before reaching a positive outcome in mediation. USFS has been very pleased with the mediation agreement and with the improved relationship between the USFS and the producer.

The mediator in the case said that the mediation outcome met his goals, which are primarily concerned with the relationship between the parties. "The hope of the mediator is to try to set up some expectations so that the rancher does not fail," he said. "The mediator should aim to set up expectations for the future."

Loan Deficiency Payment Case

Context: The Farm Service Agency's (FSA) county office sees up to 300 people a day. Many are applying for loan deficiency payments (LDP), most of which are processed without incident. Producers choose to take a LDP to make up for low commodity prices and because they already have previous liens or too many loans on their farms. Occasionally, however, an applicant is refused the LDP due to a lack of usable commodities on which to base the LDP.

In February 1999, an elderly producer applied for an LDP payment. Unfortunately, he misunderstood the procedure for receiving the payment. Instead of applying for the LDP, receiving an approval, and then bringing his stocks to the grain elevator, he did the reverse. He drove to the grain elevator, sold his stock, and then immediately drove 23 miles to the county office to claim his LDP. His application was refused as the grain had already been sold. The producer could not understand why he was refused the LDP and asked for mediation. The producer was an elder member of a long-established German-speaking farming community, so a language barrier contributed to both his difficulty understanding the decision and the office's difficulty in assisting him and explaining their actions to him. Until the mediation, the producer had only dealt with the office via telephone.

Intervention: The FSA county office contacted the state Agricultural Mediation Program, which then assigned a mediator to the case. The mediator arranged for the producer and the county office director to meet in her office. During this face-to-face meeting, the office director was able to take the time to review the producer's overall situation. By meticulously questioning and discussing the state of his farm with the producer, the director discovered the producer held other grain stocks that could also be used to qualify for LDP, provided he followed the procedure for doing so in the future.

Outcome: This producer received the LDP, which helped him get through tight times. As stated by the mediator involved, "before the mediation, he was out some money but now he isn't." The producer, who had been confused and angered, walked away satisfied. He continues to work with the county office, and now has a much clearer understanding of how to qualify for FSA assistance.

Cost/Benefit: As the FSA officer director noted, if the office staff and manager had taken the time to more carefully work with the producer, the case "would never have gone to mediation." But the director also was adamant that these things do happen when USDA county offices are under-resourced and overwhelmed. In this case, mediation worked as a safety valve to ensure that FSA could perform its central mission -- to serve and assist farmers. It also raised awareness of the need to take time with each applicant.

The mediator believes that there was value added through the mediation, as the producer had been distrustful of the county office. The mediation provided a third party "to clarify and repeat and to validate" what the county director told the producer. The mediation also enabled a longer discussion than is often possible in a busy county office.

This case also raised awareness of special needs when the client's first language is not English. Given the combination of the crushing workload and the language difference, this producer's need for slow, repeated explanations had been difficult to accommodate. By having the presence of a mediator, the producer had more confidence in the county office's instructions and decision. A less positive outcome to this case might have impacted negatively on the German-speaking community's views of this office and FSA in general. Most importantly, a farmer from a significant community was able to use FSA assistance to continue farming.