

Agricultural Mediation in Wyoming

Lucy Pauley

A small farm supply company is disputing with a customer over payment for a large order of irrigation supplies. A few months have passed and the company still has not been paid in full. Rather than take the case to small claims court, the company decides to offer mediation. The two sides sit down with their attorneys and a mediator and work out a payment plan that allows the irrigator to pay the bill in smaller portions but also ensures that the farm supply company will eventually be reimbursed for the entire amount.



Members of a multi-generational family have agreed that it's time to develop an estate and transition plan for the family ranch. While everyone agrees that a plan needs to be developed, no one agrees on what the plan should look like. The family, with the help of their accountant and attorney, decide to bring in a neutral facilitator to help them

talk about the big issues. After a few sessions with the facilitator and the estate planning professionals, the family agrees on a plan that ensures that the older generation will be taken care of financially and the transition of the ranch to the next generation will be smooth.



Two co-workers have a long history of misunderstandings and poor communication and their relationship is strained. Recently, the situation worsened when they had a heated argument over missed deadlines for an important project. The tension is now affecting other employees in the office and the supervisor decides to bring in a mediator to help clear the air. The mediator sits down with the two co-workers and helps them sort through the problems that have oc-

curred and design a plan for the future. While the two co-workers might never be good friends, mediation has given them the chance to put previous problems behind them and move forward.



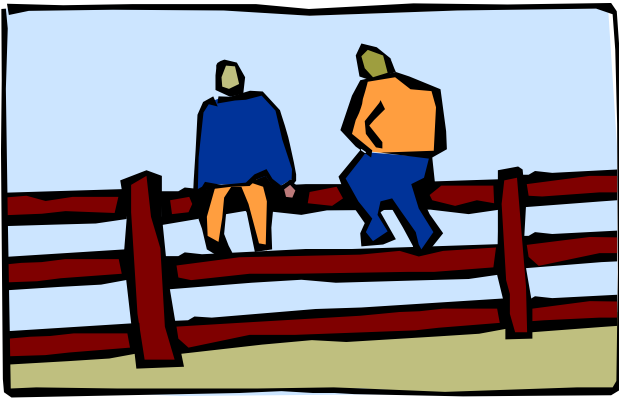
In the last issue of Mediation IDEAs, we discussed the variety of natural resource issues that can be mediated in Wyoming including split estate conflicts, disputes involving grazing on public lands, and farm credit issues. There is also a wide range of other issues involving personal relationships or communication breakdowns that can benefit from mediation.

There are several factors to consider in determining whether mediation is appropriate for a situation. In [The Mediator's Handbook](#), author Jennifer Beer offers the following list to determine when mediation can be useful:

- The issues are complicated by a strong emotional element
- The parties know each other
- Maintaining a relationship with the other party is important
- One party feels uncomfortable confronting the other side unless someone else is present
- The parties work or live

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Mediation Success Story

Past-Due Loan Case

Mediation helps two brothers communicate better and resolve a loan issue with USDA-FSA.

Editors note: The following article was compiled by the USDA-FSA and is re-printed with their permission.

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.

"The mediation was an opportunity for both brothers to come to an agreement on what needed to be done."

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. ●

UW to Develop Expertise in Collaborative Processes

Nicole Korfanta

In a state with a natural resource endowment as rich as Wyoming's, it isn't surprising that conflicts over natural resources are commonly in the news and on our minds. These conflicts have an unmistakable identity – they are typically messy, involve a swarm of stakeholders, have roots in cultural differences and perceptions, and they are often not satisfactorily remedied through litigation. An increasingly attractive option for addressing natural resource conflicts is collaborative process – a way of involving stakeholders in a facilitated discussion to reach an agreement, build relationships, or simply share information. Collaborative processes aren't the best approach for every dispute but they are a powerful addition to the conflict resolution quiver.

The WDA's mediation program and the University of Wyoming are playing a larger role in advancing collaborative processes in the state. Together, we tested the waters for state-wide interest in collaborative processes by offering short courses on facilitation. Consistently, our training courses are full and there is a demand for more. Most attendees understand

what makes a good facilitator – it's a search image borne from enduring a bad facilitator or being inspired by an excellent one. Our goal is to train more of the latter and help attendees recognize the fundamentals of a fair and effective collaborative process.



Now UW's role in advancing collaborative processes is about to grow by leaps and bounds, as we fulfill a long-held goal of bringing a collaborative process expert to our faculty. Collaborative processes have always been at the heart of UW's Haub School and Ruckelshaus Institute of Environment and Natural Resources' mission, which was inspired early on by our namesake, Bill Ruckelshaus. As the first administrator of the Environmental Protection Agency, Ruckelshaus argued the collaborative process could provide an effective antidote to litigation and top-down administrative edicts in controversies as complex as management of salmon fisheries in the Pacific Northwest. We agreed and now seek to bring

collaborative processes to bear on some of our most controversial natural resource challenges in the state. The Eldon and Beverly Spicer Chair of Environment and Natural Resources will help us realize that vision.

The Spicer Chair, made possible by the Spicer family of Rock Springs, will be filled by a distinguished collaborative process scholar and practitioner. The Spicer Chair will be a jointly held faculty position between the Haub School and another academic department that most closely aligns with the faculty member's intellectual roots. That could be law, geography, economics, agriculture, or any of the other disciplinary homes from which collaborative process professionals emerge. It's an unusual discipline in that regard – collaborative process practitioners evolve from any number of academic perspectives. With any luck, we will welcome the new Spicer Chair faculty member to the Laramie campus by the fall semester. With a boom in collaborative processes around the state, the opportunities for research and outreach are rich -- the new Spicer Chair will be busy. ●

Nicole Korfanta is the Assistant Director of the Haub School of Environment and Natural Resources at the University of Wyoming. Nicole also serves on the Wyoming Agriculture & Natural Resource Mediation Board.

Mediation IDEAs is a publication of the Wyoming Agriculture & Natural Resource Mediation Program. For more information on mediation or to obtain this publication in an electronic format, please contact Lucy Pauley at (307) 777-8788 or lpau@state.wy.us.

Strategies for Handling Difficult Conversations

Lucy Pauley

At some point, we are all involved in difficult conversations. We meet with a parent to talk about sharing management of the ranch operation. We confront a coworker about a recent argument involving a shared project that isn't going well. We meet with family members to discuss if it's time to find long-term care for an elderly grandparent. We decide to confront a neighbor about their barking dog.

These conversations are hard to start. We often anticipate that conflict will arise from these conversations. No matter how knowledgeable we are about the topic, the stress and anxiety leading up to it can make the situation even worse.

I recently was introduced to a great book that can help you prepare for a tough conversation. Difficult Conversations: How to Discuss What Matters Most co-authored by Douglas Stone, Bruce Patton and Sheila Heen of the Harvard Negotiation Project offers a step-by-step strategy to use before beginning the conversation. Their tips and techniques can help you approach a difficult conversation with less stress and ultimately have a more successful outcome.

The authors start off by explaining that all difficult conversations fall into three categories, the "What Happened" conversation, the feelings conversation and

the identity conversation. When starting the conversation, you should stop arguing about who is right but try to understand the other person's story. This doesn't mean that you have to agree with their story, but you should try to

"A mediator can assist both parties in getting their message through to the other person and finding a solution that works for everyone."

listen and ask questions to find out what's really important to them. As you are talking, you have to try to untangle the intent from impact. Intentions strongly influence how we judge the other person. If we think that they are trying to hurt us, we will judge them more harshly than if their actions are just an honest

mistake. During the conversation, you should try to abandon the idea of blame. Instead of thinking about who is to blame for something, you should think "how did we both contribute to the problem?" You also need to be honest about your feelings and ask yourself what's really at stake.

The book covers a lot of material that will really help you think about your next difficult conversation. There are tips on how to raise issues and how to let some of them go, and how to acknowledge the other persons issues and feelings without necessarily agreeing with them. The authors also provide several real-life examples that illustrate situations that we are involved in every day.

More information on Difficult Conversations can be found online at www.difficultconversations.com.

Another option to consider when you are getting ready to have a difficult conversation is to bring in a third-party neutral, usually a mediator, to help you have the conversation in a healthy and productive manner. A mediation can assist both parties in getting their message through to the other person and finding a solution that works for everyone. If you would like more information on mediation or need help finding a mediator, contact me at (307) 777-8788 or lpaul@state.wy.us.



photo by Lyndsay Griffin

Family Mediation: Why Mediate Divorce Cases?

Sonjia Serda

"In recent years, the use of mediation in matters involving domestic relations has grown dramatically. As the nation searches for better ways to respond to conflict in the most basic unit of society – the family – we have come to learn that the court and adversarial system are often less appropriate than the individual family members themselves in making decisions in this very private area of life."

Most of the information in this article comes from a Family Mediation training I attended at the Center for Conflict Resolution in Scottsbluff, NE and the training manual, Nebraska Office of Dispute Resolution, Family Mediation Manual, Brownyard, Burkey, and Severens; 1993 Revised 2007.

"The end of a spousal relationship has numerous characteristics that can be suited to mediation, especially when children are involved. There are most often strong emotional feelings and the process of separation has been compared to the grieving process. There are also important values relating to mothering and fathering as well as religion and morality. To be able to negotiate within this broad context can result in more satisfying outcomes."

It is estimated there is a 66% divorce rate. If these cases are settled in court, one has to wonder how much thought and weight is given to the children AND the parents. Courts can not accommodate family beliefs or values like mediation can.

Many of the most important aspects of divorce do not have a legal remedy. While divorce terminates a couple's legal status, in cases that involve children, there continues to be an

on-going relationship between the parents. Even without children, some relationships may continue as in the case of a family business.

"Courts cannot accomodate family beliefs or values like mediation can."

Deciding the best after-school activities or developing constructive communication processes usually doesn't occur through legal standards. The experts on these issues are family members themselves.

When children are involved, long-term *changing* relationships will exist beyond divorce. Court decisions often do not consider naturally occurring life changes such as remarriage, individual parents wanting to relocate, increased expenses, developmental issues of the children such as dating, how the parents will decide matters such as, can Susie get a tattoo, where the children will attend church, etc.

Divorce mediation is an affordable and efficient way to:

- Resolve issues surrounding finances, friends, and school. Stability and security are enhanced.
- Keep some semblance of the family intact.
- Lay a foundation for success both now and later v. litigation that is less future oriented.
- Reduce emotional trauma.

Children may be healthier because

the parents were involved. Positive modeling for future problem-solving is the result. During this time of upheaval, individual's emotional responses can be irrational. Mediation can be a healing process because the parties have a voice in the decisions that affect them. The outcome becomes "their's" rather than a judge imposed solution that most of the time doesn't satisfy either party.

Dealing with family systems is the distinguishing factor of family mediation. Knowledge of family types is helpful. There are families with clear boundaries, rigid boundaries, and diffuse boundaries. Mediation may involve dealing with a lot more emotions and requires an awareness of personal biases. There is a heightened responsibility because children are involved. Domestic intimate partner abuse (DIPA) may be involved and a child abuse screening is usually required. Parties should be assessed on ability to freely negotiate.

Notwithstanding the myriad components of divorce mediation, is the recommendation to be culturally aware. A recommended resource is Ethnicity in Family Therapy by McGoldrick, Pearce, and Giordano. Ethnicity may be an issue in how the parties resolve their issues, position, and interests.

Divorce mediation considers the similarities of how children and adults experience divorce.

There are at least four adult experiences of divorce: the economic di-

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orce, social divorce, emotional divorce, and legal divorce. Common features include feelings of anger, abandonment, and loss of self-identify. There are at least seven identified psychological tasks children must master to cope with divorce.

1. Understanding and accepting the realities of the divorce.
2. Strategic withdrawal.
3. Dealing with the loss.
4. Dealing with anger.
5. Working out guilt.
6. Accepting the permanence of

the divorce.

7. Taking a chance on love.

Parenting plans include time sharing arrangements, transportation arrangements, children's physical needs, special events, children's social life, financial support of children and extended family relationships. Knowledge of developmental stages of children in order to help parents decide on age appropriate tasks and schedules is valuable. Guidelines on dos and don'ts for parents that include how to talk to their children about the

divorce should be offered.

Divorce mediation, like all forms of mediation, entices parties with the promise of a collaborative process that involves them. While litigation may leave parties feeling discredited, the transformative power of validation in mediation spurs individuals on to work together. ●

Sonjia Serda offers Mediation services as part of her practice, Break Through Counseling, Mediation & Consultation, (307) 514-2781.

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together, or for other reasons cannot avoid conflict

- A decision must be reached soon
- The parties doubt their ability to work out the problem
- Many people are involved or indirectly affected
- One or both parties want to avoid formal proceedings

Mediation in the workplace has grown in popularity over the last several years. In Wyoming, many employers now offer a conflict resolution process as a tool for resolving employee disputes. The State of Wyoming even instituted a peer mediation program to assist state employees in resolving conflicts. In situations where both parties will have a continuing relationship with each other, such as in families or

in the workplace, mediation can be a valuable tool in helping both sides to move forward in a healthier manner.

If you have a situation and would like to talk about whether mediation might be right for you, please call Lucy Pauley at (307) 777-8788 or toll free at 1-888-996-9278. If you prefer, your call will remain confidential. ●



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The Wyoming Agricultural and Natural Resource Mediation Program seeks to encourage the use of mediation, technical review teams and other community/shared decision making processes to help people impacted by agricultural, natural resource, and related conflicts to find mutually agreeable solutions.

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