

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Michael E. Pesola

Cindy L. Pesola

Debtors.

Case No. 04-60495

Chapter 7 Case

**NOTICE OF HEARING AND MOTION BY DEBTORS TO REINSTATE
CONSERVATION RESERVE PROGRAM CONTRACT AND DIRECT AND COUNTER
CYCLICAL PROGRAM CONTRACTS**

TO: CREDITORS AND OTHER PARTIES IN INTEREST.

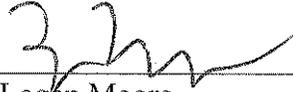
1. Michael E. and Cindy L. Pesola, hereafter collectively "debtors" move the Court to reinstate their Conservation Reserve Program Contract and Direct and Counter Cyclical Program Contracts.
2. The Court will hold a hearing on the Motion on October 27, 2004, at 11:00 a.m., via telephone conference. If you want to participate in this telephone conference, please contact the undersigned at least 48 hours before said hearing.
3. Any response to this motion must be filed and delivered not later than 11:00 o'clock a.m. on October 26, 2004, which is 24 hours before the time set for the hearing, or served and filed by mail not later than October 22, 2004, which is three business days before the time set for the hearing.
4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and § 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The Petition commencing this case was filed on April 26, 2004. The debtors were granted a discharge dated July 26, 2004. The case was closed on August 3, 2004. Application to reopen the Chapter 7 Case was filed on August 25, 2004 and an order to reopen the case was issued on August 26, 2004. The bankruptcy case remains open.
This Motion arises under 11 U.S.C. §§ 105 (a) and Bankruptcy Rule 9014 and Local Rules 9013-1 and 9013-2.
5. The debtors request relief with respect to the Court entering an order which reinstates their Conservation Reserve Program Contract and their Direct and Counter Cyclical Program Contracts with the United States Department of Agriculture, and further allows them to renew their contracts with said party.
6. The Debtors live in Otter Tail County, Minnesota. They own approximately 100 acres of

farm real estate upon which their homestead is located. They entered into a Conservation Reserve Program Contract with the Farm Service Agency on October 1, 2000, contract #2057, annual payments from that contract are, \$555.00, the contract continues to September 30, 2015. The debtors depend upon this contract payment to assist them with their real estate mortgage payments. The Debtors entered into the Direct and Counter Cyclical Program whose Contract is renewed annually and is an important part of the debtors' farming operation.

7. The debtors filed their Chapter 7 petition with the Sixth District of Minnesota on April 26, 2004, Tamara Yon was appointed as the Chapter 7 Trustee. The Trustee filed a report of no assets, a discharge was granted on July 26, 2004. On or about July 24, 2004, the debtors executed and through their attorney mailed the Reaffirmation Agreement reaffirming their Conservation Reserve Contract and the Counter Cyclical Program Contracts. The Reaffirmation Agreement was stamped received on July 30, 2004 which was four days after the discharge was issued. The Farm Service Agency takes the position that because the Reaffirmation was received after the discharge was issued the Agency cannot file the reaffirmation agreement.
8. The debtors wish to receive the benefit of the USDA programs and believe their enrollment visits no hardship or adverse effect on the Farm Service Agency. Further, the debtors wish to reaffirm and honor their contracts with the Farm Service Agency

WHEREFORE, the debtors, Michael E. and Cindy L. Pesola, hereby move the Court for the issuance of an order reinstating their Conservation Reserve Program Contract and their Direct and Counter Cyclical Contracts through the Otter Tail County Farm Service Agency Office. The debtors further move the Court to issue an order which grants them the right to receive any and all past, present and future payments due and owing under the Conservation Reserve Program Contract and the Direct and Counter Cyclical Program Contracts referenced above moreover, debtors move the Court to order that they be allowed to apply for new contracts with the Farm Service Agency without prejudice. The debtors move the Court for such other relief as may be just and equitable.

Dated this 10th day of October, 2004



Logan Moore
Attorney for Debtors
1118 Broadway
Alexandria MN 56308
Attorney ID No. 312083

VERIFICATION

We Michael E. Pesola and Cindy L. Pesola, the movants in the foregoing notice of hearing and motion to reinstate their Conservation Reserve Program Contract and their Direct and Counter Cyclical Program Contracts, declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information and belief.

Dated: 10/2/04

Michael E. Pesola
Michael E. Pesola

Dated: 10/2/04

Cindy L. Pesola
Cindy L. Pesola

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MEMORANDUM OF LAW IN SUPPORT OF MOTION

Facts which constitute the basis for this Memorandum are contained in the debtors Notice of Hearing and Motion to Reinstate their Conservation Reserve Program Contract and their Direct and Counter Cyclical Program Contracts included with this Memorandum.

ARGUMENT

THE BANKRUPTCY COURT HAS THE EQUITABLE AUTHORITY PURSUANT TO 11 U.S.C. § 105(a) TO REINSTATE THE DEBTORS CONSERVATION RESERVE PROGRAM CONTRACT AND THEIR DIRECT AND COUNTER CYCLICAL PROGRAM CONTRACTS THROUGH THE OTTER TAIL COUNTY FARM SERVICE AGENCY OFFICE.

The debtors filed their voluntary Chapter 7 bankruptcy petition with the Sixth District of Minnesota. The debtors had every intention of reaffirming their Conservation Reserve Program Contract #2057, as well as their Direct and Counter Cyclical Program Contracts with the Farm Service Agency when they filed their petition. They were in compliance with their contracts at the time of filing. The Reaffirmation agreement was mailed on or about July 24, 2004, and the bankruptcy case was discharged on July 26, 2004. The typical number of days for the U. S. Mail to be delivered from Alexandria, Minnesota to the East Otter Tail FSA Office in Perham Minnesota would be one and possibly two days. This mailing was not typical, the debtors counsel did not receive the returned and unsigned Reaffirmation agreement from the Farm Service Agency until August 12, 2004, (the cover letter dated August 10, 2004, was just two days earlier) and was not aware of the problem until August 12, 2004 at which time the bankruptcy case had not only been discharged but the Court had closed the case on August 3, 2004.

The Debtors need their Conservation Reserve Program payments as well as their Direct and Counter Cyclical Program payments as they are a very important part of their income. Not to allow the reinstatement of these program contracts would create a serious hardship for the debtors. Under the above circumstances, the debtors and their counsel believe that the most fair and equitable result would be to allow the reaffirmation and reinstatement of their Conservation Reserve Program Contract #2057 and the Direct and Counter Cyclical Program Contracts. Counsel for the debtors

believes that no undue hardship would be visited upon the Farm Service Agency by allowing the debtors to honor their pre existing contracts with said agency.

11 U.S.C. § 105(a) provides as follows:

The Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the Court from sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

When this statute is viewed in the light of the facts and circumstances described above, the debtors and their counsel believe that this Court does have the equitable authority to reinstate the debtors Conservation Reserve Program Contract #2057 and their Direct and Counter Cyclical Program Contracts through the East Otter Tail Farm Service Agency Office.

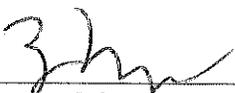
CONCLUSION

The Court has the statutory and equitable authority pursuant to 11 U.S.C. § 105(a) to reinstate the debtors Conservation Reserve Program Contract #2057 and the Direct and Counter Cyclical Program Contracts through the East Otter Tail Farm Service Agency Office. Allowing the reinstatement of these contracts would allow them to be reaffirmed. These reaffirmed contracts would allow the debtors to continue receiving the annual payments under the contracts and also further the underlying purpose of the Conservation of land and continued stability of the farming operation.

With the debtors having shown good cause for the reinstatement of their Conservation Reserve Program Contract # 2057 and the reinstatement of their Direct and Counter Cyclical Program Contracts under the facts and circumstances of this case and as such, the debtors motion for reinstatement should be granted.

Dated this 10th day of October 2004

Respectfully submitted ,



Logan Moore
Attorney for Debtors
1118 Broadway
Alexandria MN 56308
Attorney ID No. 312083

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Michael E. Pesola

Cindy L. Pesola

Debtors.

Case No. 04-60495

Chapter 7 Case

**ORDER TO REINSTATE THE CONSERVATION RESERVE PROGRAM CONTRACT
#2057 AND THE DIRECT COUNTER CYCLICAL PROGRAM CONTRACTS**

Fergus Falls, Minnesota

_____, 2004

The above-entitled matter came before the Court pursuant to a motion filed by Logan Moore on behalf of the debtors to reinstate their Conservation Reserve Program Contract #2057 and their Direct Counter Cyclical Program Contracts through the East Otter Tail Farm Service Agency Office. Logan Moore, Attorney at Law, Alexandria, Minnesota appeared by and on behalf of the debtors. Other appearances, if any, were noted on the record.

Based upon all of the files and proceedings herein, the statements of counsel relative thereto and the Court being fully advised on the premises,

IT IS HEREBY ORDERED:

The motion of the debtors to reinstate their Conservation Reserve Program Contract #2057 and their Direct and Counter Cyclical Program Payment Contracts be and hereby is granted. Said Conservation Reserve Program Contract #2057 and the Direct and Counter Cyclical Program Contracts through the East Otter Tail Farm Service Agency Office be and is hereby reinstated. The debtors shall have the right to receive any past, present or future payments due and owing under said contracts and allow them to apply for future programs without prejudice.. All of the other terms and conditions of said contracts are hereby reinstated.

Dated this _____ day of _____, 2004.

Dennis D. O'Brien
U.S. Bankruptcy Judge

STATE OF MINNESOTA)
) ss.
COUNTY OF DOUGLAS)

Colleen M. Ouimet, of the City of Alexandria, County of Douglas, in the State of Minnesota, being duly sworn, says that on the 4th day of October, 2004, she served the attached Notice of Hearing and Motion by Debtors to Reinstate Conservation Reserve Program Contract and Direct and Counter Cyclical Program Contracts, Memorandum of Law, and Order, by electronically filing with:

US Bankruptcy Court
204 PO Building
118 S. Mill Street
Fergus Falls MN 56537

and mailing to a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Alexandria, Minnesota, directed to said at:

Mr. Habbo G. Fokkena
U S Trustee
1015 U S Courthouse
300 South 4th Street
Minneapolis , MN 55415

Farmers & Merchants State Bank
PO Box 278
New York Mills, MN 56567-0278

Tamara Yon
Trustee
PO Box 605
Crookston, MN 56716

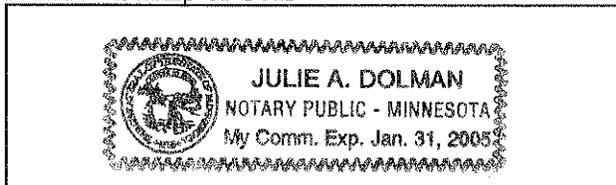
Roylene A. Champeaux
Assist. U.S. Attorney
600 U.S. Courthouse
300 S. 4th Street, Rm. 600
Minneapolis, MN 55415



Colleen M. Ouimet

Subscribed and sworn to before me this 4th day of October, 2004.

Notarial Stamp or Seal





Notary Public