

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Western Division

In re:)
) Bankr. Case No. 87-50123
NEUHAUSER RANCH, INC)
) Chapter 12
Employer's Tax ID No.46-0264665)
) MEMORANDUM OF DECISION RE:
Debtor.) FmHA'S MOTION TO DISMISS
) FOR FAILURE TO COMPLETE
) PLAN PAYMENTS
)

The matter before the Court is the Motion to Dismiss for Failure to Complete Plan Payments filed by the Farmers Home Administration on July 8, 1994 and Debtor's response thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision and accompanying Order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that all plan payments have not been completed because Debtor has not paid over to the Trustee disposable income of at least \$58,450.25.

I.

Debtor filed a Chapter 12 petition on April 24, 1987. A plan was confirmed on June 6, 1991. Debtor filed its final report and final account on June 10, 1994. The Farmers Home Administration (FmHA) filed a Motion to Dismiss on July 8, 1994 on the grounds that Debtor had not completed all plan payments. Specifically, FmHA contended Debtor still owed disposable income pursuant to 11 U.S.C. §§ 1225(b) and 1228(a).

Debtor objected to FmHA's motion on August 18, 1994. It said

it had not earned any disposable income during the plan term.

Trustee Dennis C. Whetzal conducted a pre-discharge meeting on October 5, 1994. A settlement was not reached. Discovery continued over the next several months. The first evidentiary hearing date was rescheduled at Debtor's request to allow Debtor's accountant to complete his preparation.

The evidentiary hearing was held June 22 and 23, 1995. Appearances included Assistant U.S. Attorney Thomas A. Lloyd for FmHA and James P. Hurley for Debtors. Because of substantial commingled financial affairs after the confirmation of Debtor's plan, the parties agreed that the funds, assets, and obligations of Debtor Neuhauser Ranch, Inc., Raymond Neuhauser, Raymond Neuhauser's one-half interest in P&R Partnership,¹ and Neuhauser Partnership could be considered for this disposable income calculation.²

At trial, a certified public accountant for each party presented a disposable income analysis and testified about the similarities and differences between the two analyses. Raymond Neuhauser and a representative of the Bank of Hoven also testified.

By letter dated June 23, 1995, the Court directed Debtor to

¹ A written agreement for the P&R Partnership was not put into evidence. Therefore, the Court does not know the exact terms or size of Raymond Neuhauser's interest in the Partnership. The parties stipulated that he held one-half of the assets and liabilities.

² By virtue of the parties' agreement, when the term "Debtor" is used herein, it may encompass Debtor Neuhauser Ranch, Inc., Raymond Neuhauser, Raymond Neuhauser's one-half interest in P&R Partnership, and Neuhauser Partnership.

provide the Court and Assistant U.S. Attorney Lloyd with additional information about certain estate assets and liabilities. Debtor's accountant provided the requested information on July 3, 1995. Each party then submitted post-hearing briefs. For the most part, the parties did not dispute the numbers each used for their disposable income but disputed how those numbers KEYBOARD() should be used in a disposable income calculation as guided by *Broken Bow Ranch v. Farmers Home Administration (In re Broken Bow Ranch, Inc.)*, 33 F.3d 1005 (8th Cir. 1994), and earlier decisions by this Court.

II.

If the trustee or an unsecured creditor files an appropriate objection, a Chapter 12 debtor's plan must include a provision for paying any disposable income during the plan term to unsecured claim holders. 11 U.S.C. § 1225(b)(1). Payment of disposable income to unsecured claim holders is a requirement separate from the best interest of creditors test and serves a distinct purpose. *In re Wood*, 122 B.R. 107, 112 (Bankr. D. Idaho 1990).

Without regard to what creditors would receive in a liquidation setting, if a Chapter 12 debtor has the ability because of current income generated during the plan to pay the claims of unsecured creditors without jeopardizing his reorganization effort, the debtor should be required to do so. Otherwise, a debtor with little or no realizable equity in its assets could unjustly deprive creditors of the income enjoyed under a successful plan.

Id. at 112-13. It is designed to promote fairness and provide creditors "with an assurance that what can be done to protect their interests will be done. Disposable income is simply a measure of what can be done to promote fairness." *Rowley v. Yarnall*, 22 F.3d

190, 193 (8th Cir. 1994).

Disposable income is the difference between available income and necessary expenses during the disposable income payment period. 11 U.S.C. § 1225(b)(2). Available income includes all non exemptible funds and is not limited to income as defined by the federal tax code. *In re Martin*, 130 B.R. 951, 964-66 (Bankr. N.D. Iowa 1991). Necessary expenses are those "reasonably necessary . . . for the maintenance or support of the debtor [and his family]" or "the continuation, preservation, and operation of the debtor's business." *Id.* at 964. The disposable income payment period begins on the date that the first plan payment is due and ends three years later, or up to five years later if the term of the plan has been extended. 11 U.S.C. § 1225(b)(1)(B).

If a creditor or the trustee successfully argues that a Chapter 12 debtor has not paid all disposable income during the plan term, the debtor may not receive a discharge. 11 U.S.C. § 1228(a). The debtor has the ultimate burden of persuasion to show that all payments under the plan have been made, including payments of disposable income. *In re Kuhlman*, 118 B.R. 731, 738 (Bankr. D.S.D. 1990). Further,

[w]hen a determination of disposable income is presented to the Court as a contested matter, each case must be examined upon the evidence presented. The Court will determine under the totality of the circumstances whether the debtor's expenses were reasonably necessary for family support and [the] continuation, preservation, and operation of the farm as required by § 1225(b)(2). Factors the Court may consider include the amount of and reason for any variance in a debtor's actual income and expenses from those projected in the plan, the debtor's past borrowing practices, the availability of credit, and the necessity of any capital improvement.

.....
Undocumented numbers or mere estimates of past years' income and expenses will not be accepted. Projections of income and expenses offered to show the funds needed to continue the operation (such as seed and fertilizer for the coming crop year) must be grounded on historical figures.

Id. at 739.

In most Chapter 12 cases in which discharge is contested due to a debtor's alleged failure to pay disposable income, four questions need to be answered. First, what is the disposable income payment period? Second, what was the value of the debtor's cash, marketable commodities, and accounts receivable, including any earned but not-yet-paid government farm program payments, at the end of the disposable income period? Third, did the debtor incur any expense or make any capital purchase or other transaction during the disposable income period that was not in the ordinary course of business and that unnecessarily depleted disposable income? Fourth, what amount of income, if any, may be retained by the debtor as "reasonably necessary . . . for the maintenance or support of the debtor [and his family]" or "the continuation, preservation, and operation of the debtor's business," as permitted by § 1225(b)(2)? *In re Broken Bow Ranch, Inc.*, Bankr. No. 87-30137, slip op. (findings and conclusions entered on the record January 8, 1993 and order entered January 13, 1993), *aff'd*, *Broken Bow Ranch v. United States (In re Broken Bow Ranch, Inc.)*, Civ. No. 93-3016. slip op. (June 9, 1993), *aff'd*, *Broken Bow Ranch v. Farmers Home Administration (In re Broken Bow Ranch, Inc.)*, 33 F.3d 1005 (8th Cir. 1994); *In re Schmidt*, 145 B.R. 983, 987 (Bankr.

D.S.D. 1991). The debtor's disposable income is then the value of cash, marketable commodities, and accounts receivable at the end of the disposable income period, plus any unjustified expenses or capital expenditures or other transactions, less the funds necessary for family support or the continuation of the business.

III.

A. *Disposable Income Payment Period.* The parties have agreed that the disposable income payment period in this case is the calendar years 1991, 1992, and 1993.

B. *The value of Debtor's cash, marketable commodities, and accounts receivable, including any earned but not-yet-paid government farm program payments, at the end of the disposable income period.* The Court finds that Debtor had the following cash, marketable commodities, and accounts receivables on January 1, 1994. Explanatory notes follow.

1.	Cash	\$ 8,497.00
2.	Grain on hand	19,586.00
3.	Cattle care contract (receivable)	24,000.00
4.	1993 farm program payments	3,370.00
5.	10 Neuhauser cull mares @ \$500.00 each	5,000.00
6.	22 Neuhauser cull cows	9,566.56
7.	285 head of Neuhauser marketable steers & unbred heifers	126,453.00
8.	27 Neuhauser yearling horses @ \$385.50 each	9,638.00
9.	Value of increase in Neuhauser cow herd by 124	103,800.00
10.	Value of increase in Neuhauser mare herd by 30 head @ \$750.00 per head	22,500.00
11.	One-half interest in 40 P&R's cull cows	9,952.27
12.	One-half interest in P&R's 339 head of marketable steers & heifers	157,588.00
13.	One-half interest in P&R's 210 head of bred heifers	90,731.00
14.	One-half value of increase in P&R cow herd by 43 head	

	@ \$750.00 per head	<u>16,125.00</u>
TOTAL		\$606,806.83

NOTES 1, 2, 3, AND 4. Debtor and FmHA agree that these assets should be considered liquid and they agree that the values stated are correct. The cash balance recognizes that Debtor already had made its January 1994 payment to FmHA in late 1993.

NOTE 3. P&R Partnership owed Debtor or Raymond Neuhauser \$24,000.00 on January 1, 1994 under a cattle care contract. While it could be argued that one-half is a current obligation for Raymond Neuhauser arising from his half interest in the Partnership, the full \$24,000.00 is listed as a liquid asset. There is no corresponding deduction for Raymond Neuhauser's share of the payment owed by the Partnership to Debtor because these funds only shifted from one of Ray Neuhauser's pocket to the other.

NOTE 5. On January 1, 1994, Debtor had ten mares from the Neuhauser Ranch, Inc., or Ray Neuhauser herd to be culled that year. The market value of these mares was \$500.00 each or \$5,000.00 according to Debtor's June 30, 1995 letter. FmHA has not disputed this value.

NOTE 6. On January 1, 1994, Debtor had twenty-two cows from the Neuhauser Ranch, Inc., or Ray Neuhauser herd to be culled in 1994. The value of these cull cows was \$9,566.56 based on the actual sale prices received by Debtor during 1994. Debtor reported these sales in its June 30, 1995 letter to the Court. FmHA has not disputed these values.

NOTE 7. On page six of Exhibit A, Debtor's statement of disposable income, Debtor reported that Neuhauser Ranch, Inc., and

Raymond Neuhauser had sold 285 head of marketable steers and unbred heifers in early 1994. The January 1, 1994 value of these animals is based on the actual sale prices as adjusted for weight gain from January 1, 1994 to the sale date. The Court adopted Debtor's method of calculating the adjustment for weight gain as it is reasonable.

In its letter dated June 30, 1995, Debtor advised the Court that the 30 head³ of replacement heifers and the 110 head of bred heifers listed on page 7 of Exhibit A were *not* sold on February 4, 1994. Debtor said these heifers were kept in the breeding herd. The Court has not included these breeding animals in the disposable income analysis since they are not a commodity intended for market.

NOTE 8. In its June 30, 1995 letter, Debtor reported that it sold 25 head of yearling horses in 1994. The value attributed to these animals was based on the actual sale prices reported by Debtor in its June 30, 1995 letter. FmHA has not disputed these values.

NOTE 9. As set forth on Debtor's Exhibit F, Ray Neuhauser's herd of cows increased from 305 head on January 1, 1991 to 429 head on January 1, 1994. While Debtor's debt load increased as the herd increased and although the extra profits went toward that debt load, Debtor presented no objective evidence that the increased debt load was necessary for Debtor to make its plan payments.

³ At the hearing and in Debtor's post-hearing brief, Debtor's accountant made a correction for four head of the 30 replacement heifers. The Court did not understand the basis for this correction.

Therefore, the value of the 124 head increase must be recognized as disposable income. Unsecured plan creditors should not be forced to finance this herd expansion.

The Court used the values set forth by Debtor in its July 31, 1995 reply brief as they reasonably reflect the actual value of the extra breeding livestock.

NOTE 10. As set forth on Debtor's Exhibit F, Raymond Neuhauser's herd of mares increased from 50 head on January 1, 1991 to 80 head on January 1, 1994. Again, while Debtor's debt load increased as the herd increased and although the extra profits went toward that debt load, Debtor presented no objective evidence that the increased debt load was necessary for Debtor to make its plan payments. Therefore, the value of the thirty head increase must be recognized as disposable income. As stated above, unsecured plan creditors should not be forced to finance this expansion.

The Court used the average per head value of \$750.00 based on the \$500.00 average value that Debtor placed on the cull mares. These extra thirty mares are reasonably considered more valuable than the mares that were culled by Debtor during the plan term.

NOTES 11 - 14. In its disposable income analysis, Exhibit A at page 16, Debtor theorized that its one-half interest in P&R Partnership should be recognized only to the extent that the Partnership's obligation exceeded its current inventory of marketable cattle. Debtor opined that since the Partnership's obligations exceeded the marketable inventory by \$194,307.00, then Debtor's obligations in the disposable income calculation should be

increased by \$97,154.00 (one-half of \$194,307.00).

The Court does not agree with this analysis. In response to FmHA's request, Debtor agreed at the commencement of the hearing that all of Debtor Neuhauser Ranch, Inc., Ray Neuhauser's, and P&R Partnership's interests would be merged for the disposable income calculation.⁴ Consequently, the Court does not consider it appropriate to analyze each entity's disposable income separately. Instead, all marketable commodities will be weighed against all current obligations and necessary carryover funds. Therefore, Debtor's one-half interest in all of the Partnership's marketable commodities, current obligations, and necessary carry-over funds will be considered.

NOTE 11. On January 1, 1994, P&R Partnership had forty cows to be culled in 1994. One-half the value of these cull cows was \$9,566.56 based on the actual sale prices received by Debtor during 1994. Debtor reported these sales in its June 30, 1995 letter to the Court.

Note 12. Debtor reported in Exhibit A, page 17, that P&R Partnership sold 339 head of steers and unbred heifers in early 1994. The actual sale prices, adjusted for weight gain from January 1, 1994 to the sale date, as set forth by Debtor were used for the value of these marketable calves. Debtor's proposed method

⁴ The parties also agreed that the assets and obligations of the Neuhauser Partnership could be considered but virtually no evidence about that entity was presented. Therefore, the Court has not considered it in the disposable income calculation. Raymond Neuhauser did testify that this Partnership never produces income for him.

for calculating the rate of gain was reasonable.

Note 13. Debtor reported in Exhibit A, page 17, that P&R Partnership sold 210 bred heifers in early 1994. The actual sale price, adjusted for related costs for these heifers from January 1, 1994 to the sale date, as set forth by Debtor, were used for the value of these marketable heifers.

NOTE 14. As set forth on Debtor's Exhibit G, P&R Partnership's herd of cows increased from 536 head on January 1, 1991 to 623 head on January 1, 1994. While it may be true that the Partnership's debt load increased as the herd increased and that the extra profits went toward that debt load, Debtor presented no objective evidence that the increased herd size or the greater debt load were necessary for Debtor to make its plan payments. Debtor also offered no other explanation for the increased herd size. Therefore, one-half of the value of the 87 head increase must be recognized as disposable income. Unsecured plan creditors should not be forced to finance this expansion.

Neither party presented any evidence on the value of these cows. Therefore, the Court used an average per head value of \$750.00. This was based on Debtor's statements in its July 31, 1995 reply brief regarding the value of the additional cows in the Neuhauser herd.

C. Transactions by Debtor during the disposable income period that were not in the ordinary course of business and which unnecessarily depleted disposable income. FmHA contested that certain pigs that Debtor gave to Craig Neuhauser during the

disposable income period should be credited as disposable income. Raymond Neuhauser testified that in 1994 he gave his son Craig the remaining feeder pigs on the Neuhauser ranch. He did not know the number given to Craig but stated the value of the pigs was equal to or less than what he or Debtor owed Craig for wages.

In its June 30, 1995 letter, Debtor stated most of the pigs were sold in 1992 and that the balance were given to Craig. In its post-trial brief, Debtor stated Craig Neuhauser received the pigs in 1993. Debtor depreciated the pigs on its 1993 tax return. Therefore, the Court is uncertain when the pigs actually were given to Craig Neuhauser. Nevertheless, the Court concludes that pigs should be considered a marketable commodity that would have increased disposable income by \$5,128.27 but for the transfer to Craig Neuhauser during the plan term. Debtor did not provide any evidence that wages owed to Craig Neuhauser equaled or exceeded the value of the pigs given to him. Had Debtor's schedules not already indicated that Craig Neuhauser was being paid wages of \$900.00 per month, the Court may have accepted more readily the exchange of pigs for wages.

Neither party presented any objective evidence on the pigs' value at the time of the transfer. Therefore, the Court used the 1992 purchase price of the pigs to compute the pigs' value at the time of the transfer to Craig. The Court also adopted Debtor's statement in its June 30, 1995 letter that 75% of Debtor's pigs were sold in 1992 and that only the remaining 25% were given to Craig.

FmHA has not challenged that any other business or personal expenses or transactions by Debtor Neuhauser Ranch, Inc., Ray Neuhauser, or P&R Partnership during the plan term depleted disposable income.

D. *The amount of income, if any, Debtor may retain as "reasonably necessary . . . for the maintenance or support of the debtor [and his family]" or "the continuation, preservation, and operation of the debtor's business," as permitted by § 1225(b)(2).* As provided by § 1225(b)(2), the Court has set forth below, with notes, the current obligations that Debtor owed on December 31, 1994 and that should be paid from estate funds or marketable commodities available on December 31, 1994.

15.	CCC loan	\$ 12,593.00
16.	John Hancock loan payments due January 31, 1994	47,769.81
17.	One-half year's real estate taxes	5,541.83
18.	Neuhauser's accounts payable	49,882.64
19.	Neuhauser's Bank of Hoven loan payments	63,240.88
20.	One-half of P&R's accounts payable	16,108.47
21.	One-half of P&R's overdraft	18,544.49
22.	One-half of P&R's Bank of Hoven loan payments	308,649.18
23.	One-half of annual payments to John Deere and Duetz Allis for tractor and machinery	10,689.00
24.	Estate's Attorney Fees	<u>20,465.55</u>
	Total	\$553,484.85

NOTES 15 AND 16. Debtors and FmHA agree that Debtor should retain sufficient liquid assets to pay these current obligations. The parties agree that the amounts of these obligations are correct.

NOTE 17. The Court will allow Debtors to retain sufficient marketable commodities and funds on hand to pay the first half of

its 1993 real estate taxes that were due May 1, 1994. Debtor will generate sufficient income from its farm operation during 1994 to pay the last half of taxes due November 1, 1994.

NOTE 18. The Court will allow Debtors to retain sufficient marketable commodities and funds on hand to pay Debtor's and Raymond Neuhauser's accounts payable. The amount of these accounts payable was adopted from Debtor's Exhibit A, page 11 as they were verified by the actual checks Debtor and Raymond Neuhauser wrote during January 1994.

NOTE 19. FmHA argued that only the principal Debtor had to pay on its notes to the Bank of Hoven in 1994 should be included as current obligations. Debtor argued that all principal and interest should be included as current obligations because Debtor was not assured that some of the operating notes would be renewed.

The Court has included as a current obligation the actual principal and interest that Debtor paid in 1994. This fairly recognizes what assets or funds Debtor needed to retain on January 1, 1994 to keep interest payments current and make reasonable payments on principal. It also recognizes Debtor's and the Bank of Hoven's history of renewing some operating notes each year. To recognize all the principal due would have overstated what Debtor reasonably could be expected to pay in 1994 and would have forced the unsecured creditors to provide Debtor with its annual operating loan. Because Debtor historically has received operating loans from the Bank of Hoven, there is no justification for placing that burden on the unsecured creditors.

As stated in Debtor's post-hearing brief, Debtor paid Promissory Note number 97591 of \$9,292.43 in full, paid note number 99292 of \$53,948.45 in full, and renewed the remainder. The \$63,240.88 actually paid is the current obligation recognized by the Court.

NOTE 20. The Court will allow Debtor to retain sufficient marketable commodities and funds on hand to pay one-half of P&R Partnership's accounts payable at the end of the disposable income period. The amount of these accounts payable was adopted from Debtor's Exhibit A, page 19 as verified by the actual checks wrote during January 1994. FmHA has not challenged this obligation.

NOTE 21. The Court will allow Debtor to retain sufficient marketable commodities and funds on hand to pay one-half of P&R Partnership's bank overdraft of \$37,088.98 that existed at the end of the disposable income period.

NOTE 22. For the same reasons discussed at NOTE 19, the Court will allow Debtor to retain sufficient marketable commodities and funds on hand to pay one-half of the principal and interest payments that P&R Partnership made to the Bank of Hoven in 1994.

The only clear evidence that the Court could find on what principal and interest P&R Partnership paid on its notes to the Bank of Hoven is page 21 of Exhibit A. If some of these payments actually were refinancings only, then the \$308,649.18 allowed in carry over funds must be reduced by the amounts that were refinanced. This is the principal reason why the Court's calculation of disposable income is only approximate. Trustee

Whetzal, counsel for FmHA, and counsel for Debtor will need to verify what principal and interest P&R Partnership actually paid to the Bank in 1994. That is the amount that should be allowed as a carry over.

NOTE 23. Ray Neuhauser is purchasing a tractor from John Deere and another tractor from Duetz Allis. FmHA has not challenged the necessity of these capital purchases. The Court has allowed as a necessary expense the payments on these tractors that Ray Neuhauser makes in the spring. The remainder of the annual payments that are due in late fall can be paid from 1994 income.

NOTE 24. A separate Memorandum of Decision and Order regarding the final fee application by Debtor's counsel has been entered. Pursuant to that Order, Debtor may retain \$20,465.55 to pay Attorney Hurley. The balance of fees owed to Attorney Hurley shall be paid by Debtor or Raymond Neuhauser after the disposable income is paid to Trustee Whetzal.

Other Available Income in 1994. In addition to allowing carry over funds to meet the obligations discussed above, Debtor will have sufficient income during 1994 to meet its remaining 1994 operating, capital, and living expenses. This 1994 income includes 1994 calves, 1994 foals, 1994 wheat crop, farm program payments (including CRP payments of approximately \$25,000.00), and miscellaneous income. The Court also will allow Debtor to retain its feed on hand, valued by Debtor at \$73,868.00, since it is not intended for resale but will be used to maintain Debtor's livestock in 1994.

Based on historical figures, these income sources will be sufficient to cover the other expenses and capital payments set forth on Exhibit D that are considered carry over funds listed above.⁵ While Exhibit D covered 1995 "Required Payments," the Court presumes that Debtor's 1994 required payments were similar since an exhibit with this information for 1994 was not presented by Debtor.⁶

Calculation of Disposable Income. As stated in Broken Bow, 33 F.3d at 1008-10, the formula for calculating disposable income is the value of cash, marketable commodities, and accounts receivable at the end of the disposable income period, plus any unjustified expenses or capital expenditures or other transactions, less the funds necessary for the continuation of the business. When applied to the Court's findings and conclusions above, the disposable income in this case is at least \$58,450.25 [cash, marketable commodities, and accounts receivable of \$606,806.83 plus \$5,128.27 for the unjustified gift of pigs to Craig Neuhauser minus \$553,484.85 as the funds necessary to continue the business].

⁵ Testimony elicited at trial clarified Exhibit D further by providing when the payments were due. Some are paid in early winter after calves are sold. Several have the full or second half payment due after the wheat harvest. The testimony also clarified that the loans to the Bank of Hoven would not be repaid in full in 1995. Instead, Ray Neuhauser's livestock loan would be repaid over five years. His operating loan would be repaid over three years. P&R Partnership's operating loan and cow loan were each to be paid down thirty percent in 1995.

⁶ Debtor's Exhibit A was good. However, it would have been more complete if it would have included a statement of all projected 1994 income and projected 1994 operating, living, and capital expenses. This is the information the Court needs to assess accurately the necessary carryover funds for 1994.

Payment of Disposable Income. A troubling aspect of this case is the fact that all of Debtor's and Raymond Neuhauser's assets and income apparently have been pledged by Raymond Neuhauser to the Bank of Hoven as security for Raymond Neuhauser's post-confirmation loans. Debtor uses this fact to argue that no disposable income possibly could exist until the Bank is paid in full. Under the facts of this case, however, that argument is without merit.

Debtor's confirmed plan did not contemplate the commingling of Debtor's financial affairs or additional borrowing after confirmation. Further, Debtor did not seek a post-confirmation modification of its plan or file a motion to incur secured debt. See 11 U.S.C. §§ 364 and 1229. Consequently, Debtor did not have authority before discharge to pledge any estate asset, which includes all property acquired post-petition, without the Court's approval. See 11 U.S.C. §§ 364, 1207(a), and 1229.⁷ In the absence of a motion to modify a confirmed plan or a motion to incur secured debt, unsecured creditors, Trustee Whetzal, and the Court were not given the opportunity to review the proposed secured transactions with the Bank and determine whether such borrowing was necessary and reasonable or whether the borrowing merely expanded Debtor's or Raymond Neuhauser's operations. Moreover, since the proper procedures were not followed, it is doubtful that the Bank obtained a security interest in Debtor's assets that are superior

⁷ Even if it could be argued that under 11 U.S.C. § 1227(c) confirmation of the plan vested all estate property with Debtor, Debtor, in its confirmed plan, pledged all present and future income to fulfill its plan obligation.

to the unsecured creditor's claims.

Therefore, the unsecured creditors will not be penalized for Debtor's and the Bank's oversight regarding post-confirmation secured loans. The Bank of Hoven, Raymond Neuhauser, and Debtor should cooperate and insure that the disposable income is paid promptly.

An appropriate order shall be entered.

Dated this _____ day of December, 1995.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Western Division

In re:)
) Bankr. Case No. 87-50123
NEUHAUSER RANCH, INC)
) Chapter 12
Employer's Tax ID No.46-0264665)
) ORDER RE: FmHA's MOTION
Debtor.) TO DISMISS FOR FAILURE TO
) COMPLETE PLAN PAYMENTS

In recognition of and compliance with the Memorandum of Decision Re: FmHA's Motion to Dismiss for Failure to Complete Plan Payments entered this day,

IT IS HEREBY ORDERED that Trustee Dennis C. Whetzal, James P. Hurley, counsel for Debtor, and Assistant U.S. Attorney Thomas A. Lloyd, counsel for the Farmers Home Administration, shall confer to determine what principal and interest P&R Partnership actually paid to the Bank of Hoven on its notes in 1994. The Trustee shall make a report to the Court on or before January 15, 1996. The Court will then enter an order setting forth the amount of disposable income that Debtor must pay promptly to avoid dismissal of its case.

So ordered this _____ day of December, 1995.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk
(SEAL)