

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 )  
 )  
Debtor. ) FINAL MEMORANDUM OF DECISION  
 ) RE: FSA'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 (now the Farm Service Agency or FSA) on July 8, 1994 and Debtor's response thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Final 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 Debtor has not completed all plan payments because it owes \$192,093.15 in disposable income.

I.

Material facts are set forth in the Court's initial Memorandum of Decision entered December 18, 1995 and will not be repeated herein. Following the entry of that Memorandum, the Court directed Trustee Whetzal to provide to the Court by January 15, 1996 certain loan repayment information regarding P&R Partnership. That was not done. Instead, on March 27, 1996 Debtor filed some correspondence it had with Trustee Whetzal and copies of discovery material that it had provided to Trustee Whetzal and counsel for

FSA. It loosely addressed the Court's questions and indirectly raised several other issues regarding the Court's December 18, 1995 Memorandum. On May 2, 1996, FSA filed a post-trial brief and affidavit regarding the Partnership loans. FSA stated that the Court's preliminary finding on the amount of principal and interest the Partnership had repaid during 1994 on its loan was accurate. FSA also urged the Court not to address the other issues that Debtor raised indirectly because Debtor had not followed proper procedure in bringing those matters to the Court's attention.

Since the Court's primary concern is to determine accurately the amount of disposable income, if any, which Debtor must pay before it receives a discharge, the Court will address the other issues raised by Debtor, as well as the Partnership's loan matter on which the Court specifically requested additional information.

## II.

Applicable law is set forth in the Court's December 18, 1995 Memorandum of Decision.

## III.

A. *Disposable Income Payment Period.* The parties have agreed that the disposable income payment period 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 receivable 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 received in 1994	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.	25 Neuhauser yearling horses @ \$385.50 each	9,638.00
9.	Value of increase in Neuhauser cow herd by 172 @ \$837.00 per head	143,964.00
10.	Value of increase in Neuhauser mare herd by 25 head @ \$750.00 per head	18,750.00
11.	One-half interest in P&R's 40 head of cull cows	9,952.27
12.	One-half interest in P&R's 339 head of marketable steers & heifers	78,794.00
13.	One-half interest in P&R's 210 head of bred heifers	90,731.00
14.	One-half value of increase in Partnership cow herd	0.00
15.	One-half of operating credit available to P&R Partnership on December 31, 1993	<u>12,823.31</u>
TOTAL		\$561,125.14

NOTES 1, 2, 3, AND 4. Debtor and FSA 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 FSA 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 pockets to the other.

NOTE 5. On January 1, 1994, Neuhauser Ranch, Inc., and Raymond Neuhauser had ten mares to be culled from the herd that year. The market value of these mares was \$500.00 each or \$5,000.00 according to Debtor's June 30, 1995 letter. FSA 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. FSA 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 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 the method is reasonable.

In its letter dated June 30, 1995, Debtor advised the Court that 26 head of replacement heifers and 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. Except as further explained in Note 9, 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. FSA has not disputed these values.<sup>1</sup>

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.<sup>2</sup> On January 1, 1994, Ray Neuhauser also had another 70 head of replacement heifers and he expected to cull 22 head of cows during 1994. While Debtor's debt load increased as the herd increased and although any extra profits presumably went toward that debt load, Debtor presented no objective evidence that the increased herd size was necessary for Debtor to make its plan payments. Therefore, the value of the net increase of 172 head (429 head of cows on January 1, 1994 plus 70 head of raised

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<sup>1</sup> According to Debtor's Exhibit F and Debtor's letter dated June 30, 1995, Raymond Neuhauser or Neuhauser Ranch, Inc., had 50 mares in 1991 but sold only 26 or 27 yearlings in 1992. They had 60 mares in 1992 but sold only 28 yearlings in 1993. In 1993, they had 70 mares but sold only 25 yearlings in 1994. Even assuming that they kept an average of 10 head of offspring each year for replacement mares and that not all mares foaled each year or that not all foals born survived, Debtor may not have accounted for all foals produced during the disposable income period. Neither party presented good evidence on this area of Debtor's operation.

<sup>2</sup> The 429 head include the 135 head of replacement heifers discussed in Note 7.

replacements less 22 head of cows to be culled in 1994 less the 305 head held on January 1, 1991) must be recognized as disposable income. Unsecured plan creditors should not be forced to finance this herd expansion.

The Court used a weighted average of the cow and heifer values set forth by Debtor in its July 31, 1995 reply brief, as those values reasonably reflect the actual value of the extra breeding livestock at that time.

Following the Court's December 18, 1995 Memorandum of Decision, Debtor protested that counting both the increase in herd size and the 22 cull cows that Debtor had on December 31, 1993 improperly counted the 22 head twice. The Court agrees that would be true but only if the cull cows were not replaced by retained heifers.

According to Exhibit F, in 1994 Debtor retained 70 heifers to replace the 22 cull cows. Therefore, the 70 head have been included in determining the number of head the herd expanded. The twenty-two cull cows will be valued only once as set forth in Note 6.

If the 70 replacement heifers had been purchased after the disposable income period with non estate funds, see 11 U.S.C. § 1207(a), the replacement heifers would not have been considered part of the herd increase.

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. Of the 80 head, 10 were to be

culled in 1994. On January 1, 1994, Raymond Neuhauser also had 5 fillies that he had raised with which he intended to augment the herd. Again, Debtor presented no objective evidence that the increased mare herd was necessary for Debtor to make its plan payments. Therefore, the value of the 25 head increase must be recognized as disposable income (80 mares on January 1, 1994 plus 5 head of raised replacements less 10 head of mare to be culled in 1994 less the 50 mares held January 1, 1991). As stated above, unsecured plan creditors should not be forced to finance this expansion.

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

Following the Court's December 18, 1995 Memorandum of Decision, Debtor protested that counting both the increase in herd size and the 10 cull mares held on December 31, 1993 improperly counted these 10 head twice. The Court agrees that would be true but only if the cull mares were not replaced by retained fillies.

According to Exhibit F, on January 1, 1994 Debtor had 5 replacement fillies to partially replace the 10 cull mares. Therefore, the 5 head have now been included in determining the number of head the herd expanded. The 10 cull mares will be valued only once as set forth in Note 5.

If the 5 replacement fillies had been purchased after the

disposable income period with non estate funds, they would not have been considered part of the herd increase.

NOTES 11 - 13. 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 obligations exceeded its current inventory of marketable cattle. Debtor opined that since the Partnership's obligations exceeded its 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 adopt this analysis. In response to FSA's request, Debtor agreed at the commencement of the hearing that all of Debtor Neuhauser Ranch, Inc.'s, Ray Neuhauser's, and P&R Partnership's interests would be merged for the disposable income calculation.<sup>3</sup> Consequently, the Court has not considered each entity's disposable income separately. Instead, all marketable commodities are weighed against all current obligations and necessary carryover funds. Therefore, Raymond Neuhauser's one-half interest in all of the Partnership's marketable commodities, current obligations, and necessary carry-over funds are 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

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<sup>3</sup> 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, however, did testify that this Partnership never produces income for him.

\$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 for calculating the rate of gain was reasonable. Only Raymond Neuhauser's one-half interest in the Partnership's proceeds is included.

NOTE 13. Debtor reported in Exhibit A, page 17, that P&R Partnership sold 210 bred heifers in early 1994. Raymond Neuhauser's one-half interest in the actual sale proceeds, adjusted for related costs for these heifers from January 1, 1994 to the sale date as set forth by Debtor, is used for the value of these marketable heifers.

NOTE 14. When the sales of the Partnership's cull cows and heifers are considered, there was no net increase in the Partnership's cow herd during the disposable income period. Note 14, as set forth in the December 18, 1995 Memorandum, has been deleted.

NOTE 15. On November 4, 1993, P&R Partnership obtained a loan from the Bank of Hoven that provided a \$44,000.00 line of credit to pay land leases. The loan was to be repaid April 15, 1994. On December 31, 1993, the end of the disposable income period, the

Partnership still had \$25,646.62 in the line of credit available. The remaining \$25,646.62 was advanced to the Partnership on January 3, 1994. The loan eventually was renewed on July 25, 1994.

One-half of the credit available on December 31, 1993 represents Raymond Neuhauser's interest in the funds available to pay Partnership obligations on December 31, 1993. This credit can serve as necessary carryover funds. Therefore, it is included in the disposable income calculation.

Contrary to FSA's argument, the entire \$44,000.00 from the loan renewal in July 1994 is not included. Since the loan was renewed, new money apparently was not advanced at that time which could have been used to pay 1993 or 1994 expenses.

Similarly, new loans to or other note renewals for the Partnership in 1994 or 1995 are not included in Debtor's "cash, marketable commodities, and accounts receivable at the end of the disposable income period." There was no evidence that these later loans were made to cover expenses incurred during the disposable income period or that the funds are appropriately considered in substitution for necessary carryover funds. Had the new loans or renewals been more contemporaneous with the disposable income period, they would more appropriately have been considered.

The loans that Raymond Neuhauser and Neuhauser Ranch did not have to repay in 1994 also will not be added to Debtor's cash, marketable commodities, and accounts receivable. When Raymond Neuhauser or Neuhauser Ranch initially received these loans, the credit would have been used at that time to pay bills, purchase

cattle, or other goods. That fact that Debtor did not have to repay the loans in 1994 did not generate additional credit in 1994. The renewals merely delayed when Raymond Neuhauser or Neuhauser Ranch had to repay the original credit.

If Raymond Neuhauser or Neuhauser Ranch had been lent additional funds in 1994 to meet 1993 and early 1994 obligations, those funds would have more appropriately been considered in determining how much carryover funds Debtor needed. There is no clear evidence before the Court on that issue.

*C. Transactions by Debtor during the disposable income period that were not in the ordinary course of business and which unnecessarily depleted disposable income.* FSA 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 was 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 the 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.

FSA has not argued 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. No other adjustments will be made for transactions that unnecessarily 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, Debtor's obligations at the end of the disposable income commodities available on December 31, 1993.

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 made first part of year	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 made first part of year	129,324.59
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	\$374,160.26

NOTES 15 AND 16. Debtors and FSA 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 1993 taxes that were due November 1, 1994.

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

NOTE 19. FSA initially argued that only the principal that Raymond Neuhauser and Neuhauser Ranch, Inc., 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 due in 1994 should be included as current obligations because Debtor was not assured that some of the operating notes would be renewed.

Following the first Memorandum, Debtor, in a letter to Trustee Whetzal dated January 10, 1996, argued that all 1994 loan payments (principal and interest) that Raymond Neuhauser or Neuhauser Ranch had to make in 1994, which totaled \$253,235.10, should be included as a current obligation to be paid from cash and marketable commodities available at the end of the disposable income period.

The Court has not adopted Debtor's argument. The Court has included as a current obligation the actual principal and interest that Raymond Neuhauser and Neuhauser Ranch, Inc., paid in early 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 Raymond Neuhauser, Neuhauser Ranch, Inc., 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 and because Debtor also would generate funds during 1994 to meet expenses, there is no justification for burdening the

unsecured creditors with all of the 1994 loan payments.

As stated in Debtor's post-hearing brief, Debtor paid Promissory Note number 97591 of \$9,292.43 in full and paid note number 99292 of \$53,948.45 in full. The remaining loans were renewed or were paid later in 1994. The \$63,240.88 actually paid in early 1994 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 written during January 1994. FSA 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 and outstanding checks totaling \$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 early 1994. Based on the information that the parties provided after the December 18, 1995 Memorandum, it appears that the Partnership paid the Bank of Hoven principal and interest totaling \$258,649.18 in the first three months of 1994 on notes 99224 and 93027. Raymond Neuhauser's one-half interest is \$129,324.59.

Principal and interest payments on loan number 97193 have not been allowed as the obligor on the note was the Pete Knight Cattle Company, not P&R Partnership. There is no evidence that the Partnership formally assumed this obligation as it had with note number 93027. The Partnership did not make any payments on note 99740 in 1994.

Following the Court's December 18, 1995 Memorandum and its request for more information about the Partnership's loans, FSA argued that the loan renewals and new credit that the Partnership received in 1994 and 1995 should be recognized as an "offset" against Debtor's allowed carryover funds. The Court has not done so. There is no clear evidence that the Bank's renewal of note number 99740 into note 628 in July 1994 provided new funds to meet the Partnership's 1993 or 1994 expenses. The funds originally were received on a line of credit in late 1993 and very early 1994.

Note 99740, however, did have an unused line of credit of \$25,646.62 at the end of the disposable income period. This amount properly is considered funds available to meet 1993 year-end obligations and to serve as carry-over funds. See note 15, above.

NOTE 23. Ray Neuhauser is purchasing a tractor from John Deere and another tractor from Duetz Allis. FSA 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 had to make in the spring of 1994. The remainder of the annual payments that are due in the late fall can be paid from 1994 income.

NOTE 24. A separate Memorandum of Decision regarding the final fee application by Debtor's counsel was entered June 20, 1995. Pursuant to the related Order entered December 18, 1995, 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.<sup>4</sup> 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

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<sup>4</sup> 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.

not presented by Debtor.<sup>5</sup>

*Calculation of Disposable Income.* As stated in *Broken Bow Ranch, Inc. v. Farmers Home Administration (In re Broken Bow Ranch, Inc.)*, 33 F.3d 1005, 1008-10 (8th Cir. 1994), 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, 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 \$192,093.15 [cash, marketable commodities, and accounts receivable of \$561,125.14 plus \$5,128.27 for the unjustified gift of pigs to Craig Neuhauser minus \$374,160.26 for carryover funds necessary to continue the business].

The disposable income now calculated by the Court is substantially higher than the disposable income calculated in the preliminary Memorandum of Decision. The differences include a revaluation of the cow and mare herd increases (Notes 9 and 10), a correction of the value of the Partnership's steers and heifers that were sold to reflect only Raymond Neuhauser's one-half interest (Note 12), a deletion of the value for any increase in the Partnership's cow herd (Note 14), the addition of Raymond Neuhauser's interest in a line of credit the Partnership had at the

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<sup>5</sup> Debtor's Exhibit A was good. However, it would have been more complete if it had included a statement of all actual or projected 1994 income and all actual or projected 1994 operating, living, and capital expenses. This is the information the Court needs to assess accurately the necessary carryover funds for 1994.

end of the disposable income period (Note 15), and a correction to reflect only Raymond Neuhauser's obligation for one-half of the Partnership's loan repayments in early 1994 (Note 22).

*Payment of Disposable Income.* Debtor will face two roadblocks in trying to promptly pay the disposable income due. First, as the Court noted in its earlier Memorandum, all of Debtor'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 with Raymond Neuhauser's or P&R Partnership's financial affairs. Debtor's confirmed plan also did not contemplate that Debtor would borrow more funds 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.<sup>6</sup> 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

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<sup>6</sup> Even if it were 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.

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

The second problem Debtor will face in paying this disposable income is the drastic drop in cattle prices since this disposable income question entered litigation. If Debtor does not have ready cash or liquid assets, Trustee Lovald and Debtor's counsel will need to work out a suitable payment schedule.

An appropriate order will be entered.

Dated this \_\_\_\_\_ day of June, 1996.

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

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

IT IS HEREBY ORDERED that Debtor is not eligible for a discharge because it has not paid disposable income of \$192,093.15, as required by its confirmed plan; and

IT IS FURTHER ORDERED that this case will be dismissed unless within a reasonable time Debtor pays \$192,093.15 in disposable income to Trustee Dennis C. Whetzal for distribution to unsecured creditors.

So ordered this \_\_\_\_\_ day of June, 1996.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

Charles L. Nail, Jr., Clerk

By: \_\_\_\_\_  
Deputy Clerk  
(SEAL)