

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO**

In re:

FARMERS GRAIN, LLC

Debtor.

Case No. 17-00450-TLM

CHAPTER 11

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL AND GRANTING
ADEQUATE PROTECTION AND ADEQUATE PROTECTION LIENS; NOTICE OF
OPPORTUNITY TO OBJECT; AND NOTICE OF FINAL HEARING**

This matter having come before the Court on the “Emergency and Continuing Motion for Authorization to Use Cash Collateral”, Docket No. 4 (the “Cash Collateral Motion”) filed by Farmers Grain, LLC (“Debtor”); and

Rabo AgriFinance, LLC (“Rabo”) having objected to the Cash Collateral Motion in its “Objection to Emergency and Continuing Motion for Authorization to Use Cash Collateral,” docket no. 18 (“Objection”) and in that Objection having made its “Motion to Require Adequate Protection for the Use of Cash Collateral and Equipment” (the Cash Collateral Motion and the Objection and Adequate Protection Motion hereinafter being referred to as the “Motions”); and

The Motions having come before the Court for a preliminary hearing on April 24, 2017 at 1:30 p.m. MDT (the “Hearing”); and

Matt Christensen appeared at the Hearing on behalf of Debtor, Ron Kerl appeared on behalf of Rabo, David Newman appeared on behalf of the United States Trustee and Brent Wilson appeared on behalf of CHS, Inc. (a/k/a Connell Grain Growers, a creditor); and

The Debtor’s and Rabo’s attorneys having represented at the Hearing that they had reached a stipulation with respect to the Motions; and

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The Debtor and Rabo having stipulated to the interim use of cash collateral and the granting of adequate protection on the terms set forth herein; and

Good cause appearing therefor, it is

ORDERED, AND DECREED:

1. The Motions are granted to the extent set forth herein.
2. Debtor is authorized for the interim use of Cash Collateral (as defined in 11 U.S.C. § 363(a)) on the terms and subject to the conditions set forth in this Order for the period from April 24, 2017 through and including May 22, 2017. Specifically, during this interim period through May 22, 2017, the Debtor is authorized to use cash collateral for the following purposes and in the following amounts:

Purpose	Amount
Vehicle Expenses	\$319.44
Equipment rent	\$4,258.10
Freight and Trucking	\$242,903.24
Gas and Oil	\$17,741.90
Workers Comp	\$2,051.62
Other insurance	\$15,122.68
Office Supplies	\$1,819.44
Payroll	\$63,871.06
Payroll taxes	\$5,677.32
Postage	\$184.58
Repairs	\$10,645.14
Supplies	\$1,206.48

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Telephone	\$567.82
Truck Tires	\$4,258.10
Utilities	\$7,096.76
Wheat assessments	\$922.68
COGS	\$2,960,306.48

3.

4. Notwithstanding the foregoing, and except for any pre-petition wage claims approved by the Court for payment, Debtor shall not, in any event, pay any amount that is: (a) due and payable after May 22, 2017; or (b) for services or goods provided before April 18, 2017 (the “Petition Date”) other than as provided by order of the U.S. Bankruptcy Court; or (c) for goods or services to be provided after May 22, 2017. All parties claiming an interest in the Cash Collateral are ordered to endorse all checks so that the cash collateral proceeds can be deposited in the Cash Collateral account.

5. During this interim period, the Debtor shall not expend Cash Collateral to pay any amounts owed to pre-petition vendor or grain producer holding a statutory lien on the Debtor’s inventory without first providing information satisfactory to Rabo to establish the validity of the producer’s lien held by that producer. Notwithstanding the foregoing, during the interim period the Debtor shall not make any payments to producer Chris Unruh based on his pre-petition claims.

6. Debtor shall not, without Rabo’s prior written consent or except as provided in this Order, expend Cash Collateral: (a) for any purpose other than those specified in the Budget; or

(b) in amounts in excess of the total amount of any line item in the Budget; provided, however, Debtor may exceed the monthly amount for a line item expense by not more than 10% so long as the total expenditures for all budgeted line items do not exceed the total budgeted expense set forth in the Budget.

7. In an effort to provide Rabo with adequate protection for the Debtor's use of its Cash Collateral and the use of Rabo's other collateral:

A. Rabo is hereby granted adequate protection liens (the "Adequate Protection Liens"), in all farm products, inventory, accounts, equipment, general intangibles, hedging agreements, the motor vehicles described in Part 8 of the Debtor's Schedule A/B and real estate described in Part 9 of the Debtor's Schedule A/B, and the products and proceeds thereof which may be acquired by the Debtor after the Petition Date. The grant of a lien is only to the extent of Cash Collateral used by the Debtor. Further, the post-petition adequate protection lien on the vehicles and real estate (described in Part 8 and Part 9 of Debtor's Schedule A/B) is granted only to the extent Rabo's Petition Date security position in the remaining assets (in which Rabo held a pre-petition lien) is otherwise decreased or impaired by the Debtor's use of Cash Collateral, taking into account the value of the remaining collateral, the pre-petition producer liens held by applicable grain producers, and all Adequate Protection Payments made to Rabo.

B. The Adequate Protection Liens shall be for the purpose of providing Rabo with adequate protection for its interest in Cash Collateral and for the purpose of securing the repayment of the Cash Collateral used by the Debtor from and after the Petition Date. Except for the adequate protection liens in Debtor's motor vehicles and real estate, the extent, validity and priority of Rabo's Adequate Protection Liens shall be the same as the extent, validity and priority of its pre-petition security interests in Debtor's property.

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C. The Adequate Protection Liens shall be, and they hereby are, declared to be valid and perfected without the need for the execution, recording or filing of any further document or instrument or the taking of any further act otherwise required under non-bankruptcy law. Notwithstanding the foregoing, Rabo shall be entitled to take, if it chooses, any and all steps advisable or necessary to perfect its security interests in accordance with non-bankruptcy law. Debtor shall execute such agreements and instruments in that regard as are reasonably requested by Rabo.

D. The Debtor shall pay Rabo the sum of \$100,000.00, as an Adequate Protection Payment, on May 1, 2017.

E. To the extent the following is not already included in a Monthly Operating Report filed by the Debtor, the Debtor shall provide Rabo's counsel, by fax, ECF Notice or e-mail, the following financial information and reports:

i. a report setting forth the below-described information for, unless otherwise specified, the period **April 18, 2017** through **May 22, 2017** (the "Applicable Period"):

(a) A report specifying for each line item of the Budgets the actual receipts and payments made during the Applicable Period;

(b) All income or other receipts during the Applicable Period separately setting forth the source of the income and the amount attributable to such source;

(c) Copies of all bank statements for the Applicable Period (including copies of checks, if provided by the Debtor's bank with the bank statements);

ii. On or before May 8, 2017, a report identifying the location, quantity and estimated market value of all of Debtor's inventory; the existence of or potential claim by any

creditor of the Debtor, other than Rabo, to a lien or security interest of any kind or nature to the Debtor's inventory or the products and proceeds thereof.

iii. On or before May 8, 2017, all state and federal tax returns for the years 2015 and 2016; and any quarterly or other financial reports prepared by or received from the Debtor's accountant within 2 business days of being received by Debtor; and any other financial information reasonably requested by the United States Trustee.

iv. On or before May 8, 2017, a report identifying, and continuing on a monthly basis thereafter, a "Borrowing Base Certificate" as defined in the Loan Documents between Rabo and the Debtor, in the form to be provided to the Debtor by Rabo.

F. The Debtor shall not propose granting a security interest in the Cash Collateral to any person, firm or entity except for statutory liens and liens approved by the Court and granted to Rabo. Nothing herein, however, shall restrict statutory lienholders from perfecting their liens.

G. The Debtor shall allow Rabo the right to inspect its collateral at any reasonable time of Rabo's choosing, and will cooperate with Rabo in the appraisal of Rabo's collateral, including the motor vehicles disclosed in Debtor's Schedules (Part 8) having a fair market value of \$1,184,093.38 and real estate disclosed in Debtor's Schedules (Part 9) having a fair market value of \$4,131,899.56. In the event Rabo acquires an appraisal of Rabo's collateral (including the vehicles and real estate), Rabo shall provide a copy of the appraisal(s) to the Debtor within five (5) days of Rabo's receipt of the appraisal.

H. The Debtor shall provide Rabo with proof of adequate insurance coverage for its collateral, the Cash Collateral, Debtor's motor vehicles and real estate, and the Debtor's business operations.

8. Rabo expressly reserves its rights under Section 507(b) of the Bankruptcy Code to seek a priority claim in the event the proposed adequate protection is not sufficient.

9. Nothing in this Order shall prevent or prejudice Rabo from requesting the Court, on an emergency basis or otherwise, to terminate the use of Cash Collateral prior to May 22, 2017, or from seeking any other relief including, without limitation, stay relief or dismissal or conversion of this case.

10. Debtor's authorization to use Cash Collateral under this Order shall terminate on May 22, 2017, unless extended by an order of the Court. Provided, however, the terms and conditions of this Order and the rights and adequate protection provided in this Order shall remain binding, valid and in full force and effect as to the Cash Collateral and other collateral used by the Debtor during the term of this Order irrespective of whether:

A. A further order authorizing the continued use of Cash Collateral is entered; or

B. This bankruptcy case is dismissed or converted to a bankruptcy case under a different chapter. The terms and conditions of this Order and the rights and adequate protection provided in this Order shall remain binding, valid and in full force and effect as to any successor bankruptcy trustee.

11. Debtor's authorization to use Cash Collateral shall terminate immediately upon:

A. The conversion of this case to a proceeding under Chapter 7; or

B. Dismissal of this bankruptcy case.

10. The final hearing on the Motions shall be held before the above-captioned Court on May 22, 2017 at 1:30 p.m. in Boise, Idaho. The U.S. Courthouse in Boise, Idaho is located at 550 W. Fort St., Boise, Idaho.

12. This Order, entered on the basis of the parties' stipulation, is subject to the objection of parties in interest in accordance with Federal Rule of Bankruptcy Procedure 4001(d). Any party in interest shall timely file its objection with the Court and serve the objection upon the undersigned counsel pursuant to Local Bankruptcy Rule 2002.2(b).

13. The Debtor is authorized to use Cash Collateral effective April 18, 2017, in accordance with the terms of this Order notwithstanding a delay in the entry of the Order.

//end of text//

DATED: April 26, 2017



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE

Submitted by:

/s/ Matthew T. Christensen
Matt Christensen, Attorney for the Debtor.

**APPROVED AS TO FORM
AND CONTENT:**

By /s/ (email authorization 4/26/17)
Ron Kerl,
Attorney for Rabo AgriFinance, Inc.

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APPROVED AS TO FORM:

By /s/ David Newman
David Newman,
Attorney for the United States Trustee