# Limitations to Third-Party Buyouts of Federal Grazing Permits

Third-party grazing permit/lease buyouts are three-way agreements between:

(1) a federal grazing permittee/lessee who is willing to end his/her public lands grazing in exchange for compensation;

(2) a federal land management agency that has agreed to "retire" the allotment from further livestock grazing; and

(3) a conservation organization willing and able to pay the permittee/lessee to relinquish his/her permit or lease back to the government.

In a few situations, a second government agency has funded permit/lease buyouts. Perhaps two or three third-party buyouts occur each year, usually on specially designated landscapes where there is high political controversy over grazing in the area.[1]

Although they serve as worthy examples of the value of voluntary permit/lease buyout, several factors conspire to severely limit the wide-scale application of third-party permit/lease buyout as a tool to resolve grazing conflicts across the millions of acres of federal public lands where they occur.

## 1. Lack of Permanence

Permanent permit/lease buyout is generally prohibited on lands managed by the Forest Service and Bureau of Land Management (BLM) (where the vast majority of federal livestock grazing occurs). Current law requires agency managers to transfer grazing permits to new permittees/lessees upon the departure of the previous permittee/lessee. This is because the Taylor Grazing Act, Federal Land Policy and Management Act, and the National Forest Management Act require that if public lands can be grazed, they must be grazed. While other statutes often define public priorities differently, only when an agency finds a specific reason not to graze (a rare occurrence), and amends its land and resource management plan accordingly, will grazing be cancelled on a given allotment.

Where agencies do "retire" permits acquired by third-party conservation organizations, they only do so for 10-15 years, and often for lesser periods, by amending the current allotment and/or resource management plan to reallocate 100 percent of the available forage to wildlife and watersheds. These plans are regularly reviewed by the managing agencies pursuant to federal law, at which point they can choose to reopen allotments for grazing. Nothing prohibits an agency from reinstating livestock grazing on allotments retired by third-party buyout, and grazing could be reintroduced a variety of ways, including by a local federal land manager via another planning amendment or by order of a new administration in Washington, DC.

## 2. Uncooperative Government Agencies

Often Forest Service and Bureau of Land Management officials are not interested in facilitating grazing permit/lease buyouts and closing the associated allotments to livestock grazing. Agencies are unsually only cooperative when high political controversy has developed around a particular grazing allotment. In these cases, land managers are usually willing to help retire grazing permits as an expedient way to resolve the conflict. In other areas where the same level of controversy has yet to develop over public lands grazing, but a permittee/lessee and conservation organization still want to make a deal to retire grazing, agency cooperation is far more problematic. Making matters even more difficult, recent

[1] Salvo, M. and A. Kerr. 2001. Permits for cash: a fair and equitable resolution to the public land range war. *Rangelands* 23 (1): 22-24.

backsliding by Interior Department officials concerning third-party buyout of grazing permits in the Grand Staircase-Escalante National Monument has essentially chilled the prospect for any additional buyouts on Interior Department holdings (especially those managed by the BLM), even for allotments where there is high controversy.[2]

### 3. Fair Market Value Limitations

Regulations issued by the Internal Revenue Service governing nonprofit organizations prevent them from enriching private parties beyond the purposes of the organization.[3] Consequently, to protect their nonprofit tax-exempt status, conservation organizations are unable to pay more than the appraised market value of a federal grazing permit/lease (lest they violate the law by unduly enriching a permittee). However, in many cases, a permittee/lessee is only willing to sell their grazing interest for more than market value. Indeed, at market rate many permittees/lessees are not able to sell their permits/leases because the compensation they receive is not enough to repay their debts, restructure their grazing operations, and/or fund their retirement.

Fair market value is the mutually agreed upon price where neither the buyer nor seller is compelled to act. Because the Forest Service and BLM grazing programs cost at least $500 million annually and receives only about $7 million per year in grazing fees,[4] a compelling case can be made on behalf of federal taxpayers that the government ought to pay much more than market value to retire grazing permits/leases to encourage permitees/lessees to partake in a buyout program and thus relieve taxpayers of the perpetual subsidy they pay for federal livestock grazing every year. And Congress is purposefully not limited to paying fair market value in order to implement worthy programs like voluntary permit/lease buyout.

The Voluntary Grazing Permit Buyout Act (H.R. 3324) proposes to pay permittees/lessess $175/animal unit month (AUM) to retire their grazing permits/leases. At this rate, many permittees/lessees are interested in the buyout program who would not otherwise participate if only the market price ($40-$75/AUM) were offered.

### 4. Lack of Private Funds to Meet Demand

While third-party buyouts have been useful in removing livestock from specific areas, the current rate of species extirpation and watershed destruction caused by inappropriate livestock grazing — and permittee/lessee demand for buyout — far outpaces permit/lease retirement by this method. Only a funded federal voluntary grazing permit/lease buyout program can reverse the extinction curve for species and ecosystems.

Declines in the stock market have severely affected the ability of many foundations to maintain their recent levels of charitable giving to conservation organizations that buyout permits/leases. Not only is money tight, but also the lack of clear and consistent government policy on buyouts has caused many foundations to shy away from third-party buyouts of federal grazing permits.[5] Unfortunately, this comes at a time when conservation organizations and interested permittees/lessees are increasingly coming together to explore the buyout.

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[2] Wyss Foundation and William and Flora Hewlett Foundation. Letter to Interior Secretary Gail Norton (July 3, 2003).

[3] *See* Internal Revenue Service. 2001. Tax-exempt status for your organization. Publ. 557. US Dept. of the Treasury, Internal Revenue Service (rev. July 2001): 18 ("[n]o part of the net earnings of the [501(c)3 nonprofit] corporation shall inure to the benefit of...private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes [of the organization].").

[4] Moscowitz, K. and C. Romaniello. 2002. ASSESSING THE FULL COST OF THE FEDERAL GRAZING PROGRAM. Center for Biological Diversity. Tucson, AZ; NPLGC, "Estimating the $500 Million Cost of the Federal Livestock Grazing Program" (available at www.publiclandsranching.org/htmlres/fs_estimating_500_million.htm).

[5] Wyss Foundation and William and Flora Hewlett Foundation. Letter to Interior Secretary Gail Norton (July 3, 2003).

## Conclusion

Despite these severe limitations, a few voluntary grazing permit buyouts are still occuring.[6] These are a testament to the soundness of the concept as a way to fairly and equitably resolve pubic lands livestock grazing conflicts.

Voluntary buyout of federal grazing permits/leases and the retirement of associated allotment(s) is ecologically imperative, economically rational, fiscally prudent, socially just and politically feasible. However, due to the limitations noted above, it is imperative that Congress enact legislation that:

***(a)*** ***authorizes voluntary grazing permit/lease buyouts;***
***(b)*** ***directs federal agencies to retire the associated allotments from commercial livestock grazing;***
***(c)*** ***makes voluntary grazing permit/lease buyouts permanent; and***
***(d)*** ***provides sufficient funding for a federal permit/lease buyout program.***

[6] *See* T. Kenworthy. *Coalition retires grazing area in Wyo.* USA Today (Aug. 1, 2003); B. Israelson. *Room for bears*. Salt Lake Tribune (Sept. 4, 2003).