

NATIONAL PUBLIC LANDS GRAZING CAMPAIGN

The Effect of the Voluntary Grazing Permit Buyout Act on Third-Party Grazing Permit Buyouts

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 quarter of a billion acres of federal public lands where they occur.² Of particular concern is that permit/lease retirement by third-party buyout is not *permanent* under current law.³

There are two additional factors that negatively affect third-party buyouts:

- a. a decline in foundation funding for permit buyout after the stock market bubble burst; and
- b. an administration that has shown hostility toward third-party buyouts.

In fact, the Wyss Foundation and Hewlett Foundation have notified the Secretary of Interior that they will not support anymore third-party buyouts on Department of Interior holdings until the Department can guarantee that such buyouts are permanent.⁴

The effect of the Voluntary Grazing Permit Buyout Act (H.R. 3324) on third-party permit/lease buyouts must be considered in two parts: (1) effect on third-party buyouts prior to enactment; and (2) effect on third-party buyouts after enactment.

Prior to Enactment

Concerns have been expressed that the mere introduction of legislation that proposes voluntary buyout at a generous rate of \$175/AUM (animal unit month; the amount of forage necessary to sustain one cow/calf for one month) is causing federal grazing permittees/lessees who desire to retire their permit/lease to suddenly demand \$175/AUM from third-party conservation buyers, rather than a lesser market value or some other negotiable rate.

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.

² NPLGC. "Limitations of Third-Party Buyouts of Federal Grazing Permits" (factsheet), www.publiclandsranching.org/htmlres/PDF/FS_3rd_Party_Buyouts.htm.

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⁴ Wyss Foundation and William and Flora Hewlett Foundation. Letter to Interior Secretary Gail Norton (July 3, 2003).

While NPLGC is aware of a few instances where a permittee/lessee opens (or returns to) negotiations with conservation buyers demanding \$175/AUM (the westwide average market value of a federal AUM is \$35-75⁵), they have usually reduced their price and negotiations proceed once the conservation buyer explains that:

1. regulations issued by the Internal Revenue Service (IRS) governing nonprofit, tax-exempt organizations prevent them from enriching private parties beyond the purposes of the organization.⁶ Consequently, to protect their nonprofit tax-exempt status, conservation organizations are unable to pay more than the appraised market value for a federal grazing permit/lease (lest they violate the law by unduly enriching a permittee/lessee); and
2. if the permittee/lessee insists upon \$175/AUM – which only the government can pay and only if the law is changed to require that price – then they are welcome to join with conservationists and other permittees/lessees to lobby for H.R. 3324, which may or may not pass; and if it does pass, there is no guarantee that the final version of the bill will retain the proposed payment price of \$175/AUM; and if Congress actually appropriates funds for buyout, there is no guarantee that the individual permittee/lessee in question will be among the first payees under the new law.

After considering the IRS restrictions on nonprofit conservation buyers and the uncertainty of the legislative process, most permittees/lessees who wish to retire their permits/leases immediately would rather negotiate a lower (market) price with a conservation buyer for guaranteed compensation *now*, than wait (perhaps for years) for the possibility of a larger payoff from the federal government later.

A recent third-party buyout of the Blackrock/Spread Creek Allotment on the Bridger-Teton National Forest near Jackson Hole, Wyoming is illustrative.⁷ The permittee came to negotiations asking \$175/AUM. However, the parties soon settled on \$78/AUM, which is likely close to market value of a national forest grazing permit in the Northern Rockies.

As H.R. 3324 progresses through Congress and enactment appears imminent, it is reasonable to assume that third-party buyouts will drop to near zero in anticipation of the new law passing.

After Enactment

If H.R. 3324 is enacted into law as drafted, the new effective market value of a federal grazing permit/lease will be \$175/AUM. In addition to federal buyout, this would likely become the new price that permittees/lessees ask from third-party conservation buyers and even other ranchers who desire to buy their permit/lessee.

With the new law in place, if Congress follows through and appropriates adequate funding for the voluntary buyout program, conservation buyers will be able to save their money and withdraw from the permit/lease market. Even if Congress does not appropriate (adequate) funding, the new law will still require that any permits/leases bought by third-party conservation buyers must be permanently retired by the appropriate federal land management agency.

⁵ Bartlett, E. T., L. A. Torell, N. R. Rimbey, et al. Valuing grazing use on public land. *J. Range Manage.* 55: 426-438 (reporting permit values are between \$35-\$75 in seasonal grazing states, and higher rates in states where yearlong grazing occurs) (citations omitted); Torell, L. A., N. R. Rimbey, J. A. Tanaka, S. A. Bailey. 2001. The lack of profit motive for ranching: implications for policy analysis. *Proc. Current Issues in Rangeland Resource Economics Symp. Western Reg. Coord. Comm. on Rangeland Economics WCC-55.* New Mexico State University Res. Rep. Ser. 737. New Mexico State University. Las Cruces, NM (unpaginated) (reporting average permit value of \$40/AUM on public lands in Idaho and Wyoming).

⁶ 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].").

⁷ Israelsen, B. "Room for bears." *Salt Lake Tribune* (September 04, 2003).

Some third-party conservation buyers have expressed that they would be pleased to pay \$175/AUM to retire permits with the certainty that the permits/leases would be permanently retired. However, given that both the conservation community and grazing permittees/lessees would be requesting full federal funding for permit buyout, Congress will likely acquiesce and third-party conservation buyers will be spared from paying the higher price (or any price).

The worst case scenario for third-party buyouts might be that H.R. 3324 is enacted, but Congress refuses to fund the buyout program. However, even if this occurred, permit/lease values would eventually fall from the proposed \$175/AUM back to market value (approx. \$35-\$75/AUM) and perhaps a bit more to account for the prospect of future federal funding for a government buyout program. In this case, third-party conservation buyers would be very much back in the market to purchase federal grazing permits and leases, and now with the certainty that they would be permanently retired from livestock use.

There might still be a role for conservation organizations even if Congress did fully fund a permanent buyout program. For example, conservation organizations may wish to offer a permittee/lessee a "premium" bonus payment of some amount to induce them to take the government buyout at \$175/AUM. Such a premium might be as little as \$5/AUM or as much as \$50/AUM. Conservation organizations could also justify premium payments under IRS rules. Consider this example: To protect an endangered species harmed by grazing on public lands, a conservation organization is contemplating protracted and uncertain litigation under the Endangered Species Act (ESA). However, experts have confirmed that if domestic livestock were removed from the area, the species would benefit, possibly even more than if the grazing regime was simply adjusted by ESA litigation. Instead of paying attorneys, it would be rational (and defensible to the IRS) for the conservation organization to pay that money directly to the permittee/lessee as a permit buyout premium, bypassing the uncertain legal system.