Voluntary Grazing Permit Buyout Legislation: Price Per AUM

Both voluntary federal grazing permit buyout bills (H.R. 3324 and H.R. 3337) propose to pay ranchers $175 per AUM (animal unit month) to retire their grazing permits or leases.[1] Some conservationists object to this price and some object to paying for permits/leases at all. This paper discusses those objections and explains why paying above fair market value (FMV) is both justified and desirable. Following are common concerns and responses to paying above FMV to retire grazing on federal public lands.

Concern: *Why pay at all for permits/leases? Grazing permits do not convey grazing rights but only privileges that may be amended or revoked without compensation at any time.*
Response: Although federal management agencies are authorized to amend or revoke grazing permits/leases without compensation, they rarely do, as amending or revoking a permit is often time consuming and expensive, both fiscally and politically. Offering to buyout grazing permits would be well worth the time, effort and cost involved.

Concern: *Permit buyout will create a property right in grazing permits and leases.*
Response: No, it will *not* create any property right whatsoever. Both bills explicitly prevent such an interpretation. Permits and leases will still be amendable or revocable without compensation as they are now. It is also likely that revocation or modification of permits and leases to protect resource values may occur more often if a buyout program was established because local land managers would know that the grazing permittees/lessees have a financial out in case of permit/lease reductions. The wise rancher would opt for buyout long before any such reduction became official.

Concern: *Current efforts to negotiate third-party buyouts of grazing permits have suffered due to the high price set in the buyout bills. Conservation organizations negotiate buyouts at FMV but when ranchers hear of the higher price set in the bills, they demand that price instead.*
Response: • There are a few examples where third-party buyout negotiations have stalled over price per AUM since introduction of the buyout legislation. However, there have also been cases[2] in which the third-party conservation organization was able to talk the permittee into accepting a lower price. This involved explaining to the permittee that 1) nonprofit organizations are prohibited by the Internal Revenue Code from enriching private parties beyond the purposes of their organization (essentially limiting third-party buyouts to FMV); 2) it could be years (if ever) before the buyout bills are enacted; and 3) there is no guarantee that the price in the legislation as introduced will be maintained in subsequent versions of the bill(s).
• This effect will become more pronounced as the bill(s) approach enactment. However, if a rancher is willing to hold out for the higher, legislated price, he/she should help lobby for the legislation's passage.
• Under current law, third-party buyouts are not permanent and entirely dependent on the cooperation of the managing agency/administration.[3] A higher price is justified if it comes with statutory certainty that buyouts will be permanent.

[1] Grazing permits and leases specify the annual amount of grazing allowed in animal unit months. An AUM is defined as the amount of forage needed to sustain 1 cow-calf pair (or 1 horse, 5 sheep or 5 goats) for one month. For example: 4 cow-calf pairs left on the land for 3 months would consume 12 AUMs of forage. Likewise, 3 cow-calf pairs left on the land for 4 months would also consume 12 AUMs of forage.
[2] E.g., the National Wildlife Federation reportedly struck a deal with the permittee that ranches the 78,000-acre Blackrock/Spread Creek grazing allotment near Grand Teton National Park to pay her $78/AUM to retire her 800-head grazing permit—after the buyout legislation was introduced in Congress.
[3] E.g., the Grand Canyon Trust is currently holding permits they purchased from ranchers for allotments in the Grand Staircase-Escalante National Monument that the Bureau of Land Management/Bush Administration may reopen for grazing in two years.

Concern: *Paying above FMV is bad policy and sets a bad precedent.*
Response: •The status quo is bad policy. Taxpayers are currently subsidizing below fair-market-value giveaways of public lands forage and the resultant ecological damage. Why not devote funds that would otherwise be spent on grazing subsidies and use them to end the resource damage once and for all?
• Using a set price like $175/AUM would actually be cheaper for taxpayers and simpler for the government than paying FMV for each permit/lease. Paying FMV would require a separate appraisal for every permit/lease relinquished for buyout. Such appraisals would not only take time and money, but would also be contentious and open to challenge that could increase costs and further delay permit retirement.
• Ranchers can already get FMV by selling their permits to other ranchers. At FMV, what would compel a rancher to sell to a conservation organization or the government rather than to another rancher? And what would encourage them to take the initiative to lobby for buyout legislation?
• Setting a high price ensures that all permits will be covered by the buyout program. For some permits, FMV is $35/AUM and those permittees would be happy to sell for $50/AUM. However, at a legislated buyout price of $50/AUM, permits with a FMV of $80/AUM would continue to be bought and grazed by other ranchers (probably corporations).
• FMV is defined as the mutually agreed upon price where neither the buyer nor the seller are compelled to act. The federal government is not a typical *seller* (it has a political tradition of subsidizing public lands grazing to the tune of $500 million annually—$28/AUM *per year*, depositing only $7 million annually from grazing fees in the federal treasury). A compelling case exists for the seller to buy its way out of this costly political obligation. Paying $175/AUM has a benefit-cost ratio of 4.95-1, a return on investment of 16.2%, and a simple payback period of 6.1 years, while the environmental benefits would be priceless.
• Neither is the federal government a typical *buyer* of federal grazing permits. When the federal government buys a permit/lease (as opposed to another rancher or corporation), it then becomes politically possible to designate Wilderness or other protected areas where it was previously impossible due to resistance from public lands grazing permittees.
• If these bills do set a precedent, it will be much better than that already set by the Conservation Reserve Program which continually pays above fair market value "rent" for conservation on private lands rather than offering a one-time payment for permanent conservation like buyout or conservation easements do.
• Paying above FMV may not be justified to achieve other conservation goals, but in the specific case of public lands grazing, paying a premium is the politically pragmatic, economically feasible, socially just, and fiscally prudent way to promote environmental protection.
• No matter how you slice it, passage of either one of these bills would be a huge victory for the environment, especially in these times.

Concern: *It would take money away from other programs.*
Response: As evidenced by the deficit, the federal budget is not a zero-sum game. Support for permit buyout in the public lands ranching community is growing stronger every day. With permittees and conservationists lobbying for the same program, which also happens to be a good investment, Congress will find the additional money necessary to retire grazing permits/leases. When lobbying for increased NEPA funding, do we worry that it will take money away from ESA enforcement?

Concern: *Make the polluter pay.*
Response: The status quo for public lands grazing is that taxpayers *pay the polluter* to continue trashing the environment. Conservationists have attempted to raise the federal grazing fee (but not close to fair market value) and failed miserably.

<u>Summary</u>:
Paying $175 per AUM:
1) ensures all allotments will be covered,
2) encourages rancher participation both in the legislative process and in the resultant permit buyout program,
3) is fiscally justified because it ends ongoing subsidies for public lands ranching, and
4) can foster conservation alliances with the ranching community.