

NATIONAL PUBLIC LANDS GRAZING CAMPAIGN

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A PROJECT OF
AMERICAN LANDS ALLIANCE

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Dear Public Lands Grazing Permittee/Lessee:

When I last wrote to you in April 2002, I told you about a new legislative proposal by a coalition of conservation organizations – the National Public Lands Grazing Campaign – to create a *voluntary* federal grazing permit/lease buyout program. I am pleased to inform you that legislation to authorize such a program has been introduced in Congress. The Voluntary Federal Grazing Permit Buyout Act (H.R. 3324) has been introduced by a bipartisan team of Rep. Christopher Shays (R-CT) and Rep. Raúl Grijalva (D-AZ). As introduced, H.R. 3324 would:

- **Allow any federal permittee/lessee to waive their interest in a federal grazing permit/lease in exchange for compensation at a rate of \$175/animal unit month (AUM).** Payment would be based on the average of the last 10 years of actual grazing use under the permit/lease. Years of non-use would be excluded from this average. To offer an example – if this legislation becomes law – a permittee/lessee who grazed an average of 300 cow/calf pairs on public lands for five months per year over the last 10 years (300 x 5 = 1,500 AUMs) would receive \$262,500 (1,500 AUMs x \$175) under the voluntary buyout program. An on-line calculator is available at www.permitbuyout.net to help you determine what your buyout would be under H.R. 3324. The legislation does not affect any private property or water rights you may have. The buyout price is set high enough to compensate you for any developments you made on public lands. In case Congressional appropriations fall short of demand for buyout, permits/leases would be ranked by conservation priority, with the highest ranked permits receiving buyout first.
- **Require that the associated grazing allotment be permanently retired from commercial livestock grazing.** If a permittee/lessee elects to waive their permit/lease for compensation, commercial livestock grazing would end on the associated allotment(s). The forage would be reallocated to wildlife and watershed health. If an allotment is jointly grazed by multiple permittees/lessees, the legislation requires that all parties elect a buyout at the same time. The exception would be when a permittee/lessee demonstrates that an area of the common allotment could be secured from livestock grazing proportional to the amount of grazing authorized by their permit/lease.

This letter has been sent to every Forest Service and Bureau of Land Management grazing permittee/lessee in the West. The proposed buyout program would also be available to lessees who graze public lands managed by the National Park Service, U.S. Fish and Wildlife Service, Department of Defense and the Department of Energy.

Tax Treatment by the IRS

Since we first proposed this voluntary federal grazing permit/lease buyout, many permittees/lessees have inquired how the Internal Revenue Service (IRS) might treat the income received from permit/lease buyout. The National Public Lands Grazing Campaign commissioned the law firm of Perkins Coie to prepare a legal opinion on the matter. In summary, tax attorneys at Perkins Coie believe that the IRS would generally treat income from permit/lease buyout as long-term capital gains, making it eligible for "Section 1031" exchanges. While you should consult your own attorney and/or accountant on the matter, you may also wish to download a copy of the Perkins Coie memo at www.permitbuyout.net. If you do not have Internet access, please contact me and I will mail you a copy.

An Equitable Way to Resolve Public Lands Grazing Conflicts

For the following and other reasons, public lands grazing is becoming increasingly problematic:

- ***Changing Needs and Desires of Permittees/Lessees.*** Since devising this proposal, I have communicated with scores of grazing permittees/lessees who are interested in the option of permit/lease voluntary buyout. Their situations are as varied as the people themselves. Some want to continue grazing for now. Some want to end their public lands grazing as soon as practicable. Some have all their equity invested in their ranch and associated federal permits/leases, so the buyout option would serve to protect them from permit/lease reductions or cancellation in the future. Many have heirs who are uninterested or unable to continue the family's ranch operation. Some want to use the equity that is tied up in their federal grazing permit/lease for retirement or to create a legacy for their loved ones. Some are fed up with the increasing paperwork and hassle associated with a federal grazing permit/lease. Some might use a buyout to restructure their cattle operations to rely solely on private lands, out of reach of federal overseers.

- ***Increased grazing conflicts.*** Environmental and recreational conflicts with domestic livestock grazing are increasing. Under current law, federal agencies are not required to compensate permittees/lessees for lost grazing privileges when closing an allotment or reducing livestock numbers to protect and restore natural resources. Federal law is clear that no compensable property right is vested in federal grazing permits/leases. However, as you know, financial and real estate markets do place a monetary value on such permits/leases. H.R. 3324 recognizes the investment that permittees/lessees have made in public lands grazing by

compensating those who voluntarily relinquish their permits/leases to the government.

- **Changing economics.** Foreign beef imports, increased efficiency in domestic production, the changing American diet, fears over mad cow disease and other factors have combined to render public lands grazing increasingly difficult and, in most cases, unprofitable. For many permittees/lessees, voluntary permit/lease buyout could be a timely tool for managing these economic realities.

Voluntary grazing permit/lease buyout is a fair and equitable way to resolve grazing conflicts and aid permittees/lessees in economic transition. The average westwide market value of a federal AUM is \$35-\$75. (Your banker or a realtor can tell you what an AUM you currently possess is worth.) The fixed price of \$175/AUM in H.R. 3324 is generous and independent of market value to avoid expensive appraisal costs for each grazing permit/lease, putting more money in the pockets of grazing permittees/lessees. The \$175/AUM would also cover any taxes on permit/lease retirement and any improvements a permittee/lessee may have made to an allotment.

Why Conservationists Support H.R. 3324

Most conservationists believe that public lands livestock grazing is extremely harmful to watersheds, ecosystems, and native flora and fauna. Scientific studies support this position. Traditionally, conservationists have filed litigation to enforce federal environmental protection standards for public lands and wildlife. They are successful tools and we will continue to use them when the laws of the land are broken. However, conservationists also seek a new, voluntary and equitable way to resolve disputes over public lands livestock grazing that avoids the acrimony of traditional conservation strategies. We believe that the Voluntary Federal Grazing Permit Buyout Act is a win-win solution for everyone.

We Can Agree to Disagree as Long as We Agree on One Thing

Conservationists and permittees/lessees will never agree on the environmental impacts and economic contributions of public lands grazing. We don't need to. Most coalitions that successfully persuade Congress to enact a new law do not always have the same reasons for wanting the new law. Conservationists and federal grazing permittees/lessees only need to agree that if you ever want to relinquish your federal grazing permit/lease, you should be paid \$175/AUM for doing so.

Many Permittees/Lessees Support H.R. 3324

Since my last letter to you, I have received many calls, letters and e-mails from federal grazing permittees/lessees around the West. Most were positive. Some were not. One permittee from Utah noted that the voluntary federal grazing

permit/lease buyout proposal had all his neighbors talking and dividing into two camps: "those who want to be able to sell their federal grazing permit, and those who don't want their neighbors to be able to sell their federal grazing permit." One Idaho permittee and his banker called to see how soon this proposal would become law. I was sorry to have to tell them it wouldn't be soon enough to help them out of their immediate bind.

Press reports, as well as informal conversations with members and leaders of the public lands grazing industry, suggest that a majority of permittees/lessees favor the voluntary grazing permit/lease buyout option.

Most of the Public Lands Grazing Industry Leadership Currently Opposes H.R. 3324

I admit that I was initially surprised by the opposition of the public lands grazing industry leadership to the concept of voluntary grazing permit/lease buyout. How could the American Farm Bureau Federation, Public Lands Council, National Cattlemen's Beef Association and its various state affiliates oppose giving federal grazing permittees/lessees the *option to voluntarily* sell their interest in a federal grazing permit/lease for *much more than market value*? As I visited informally with many permittees/lessees and formally with several public lands grazing industry leaders, I began to understand the reasons for their opposition—and why the interests of most of the industry's leadership are different than those of most of the industry's membership.

In general, those holding leadership positions in the public lands grazing industry are deeply vested in its continuation. Most who volunteer for leadership positions or serve as paid lobbyists are committed to a continuation of the status quo. They do not wish to see the public lands grazing industry decrease. They fear the loss of dues-paying members that may result from a permit/lease buyout program (even though public lands ranchers comprise only 3 percent of the livestock industry). These leaders also fear the proposed \$175/AUM compensation rate, which effectively becomes the new price for a federal AUM. Such a price could thwart their own business survival plans – which often depend on their getting bigger by buying out their neighbors go broke or retire.

Much of the public lands grazing industry membership, on the other hand, is simply trying to survive. Many depend on non-ranch income to sustain their public lands grazing operations. Voluntary permit/lease buyout would provide welcome relief to those who are looking to move on or restructure their operations.

This is a case where the interests of an industry's leadership is in conflict with those of the industry's membership. Although the majority of federal grazing permittees/lessees do not belong to any industry association, these associations still purport to represent them anyway and currently oppose H.R. 3324.

You may be interested to read the following confidential memorandum from Jeff Eisenberg, director of the National Cattlemen's Beef Association's Public Lands Council, to his fellow industry leadership:

Federal Support For Permit Buyouts 7/30/03

I learned this a.m. that the NWF [National Wildlife Federation] is going to hold either hold a press conference or issue a press release this coming Friday announcing the buyout of the grazing permit of the Walton Ranch, Blackrock/Spread Creek allotment, which is NE of Jackson Hole in Wyoming. While the transaction involved a willing buyer and seller in the private market, the deal wouldn't have been completed unless the FS [Forest Service] facilitated it by saying it would close the allotment. The area is in "situation 1 or 2" (?) grizzly bear habitat, but my understanding is that the bears were doing fine with the cows there. The bears, on the other hand, caused some loss to local livestock.

Similar deals were recently closed in the Targhee NF in Idaho and the Gallatin in MT, another recent one in Wyoming, not to mention the Grand Staircase Escalante in Utah.

PLC/NCBA supports choices made by individuals in a free market. On the other hand, none of the deals would have happened if this administration had not stepped in to facilitate them through some guarantee about the retirement of the subject allotment.

Industry opposes this role of the government. We oppose dismantling the infrastructure needed for public land ranching, here the elimination of allotments. On the other hand, there is undeniable widespread activity of environmental groups buying out permittees and a noticeable number of agreements from ranchers.

Do we need further elaboration of our policy? I think it's entirely appropriate for us to just say no. The problem is the activity is going forward anyway, even in a friendly administration. Do we need a broader policy that would try to counteract this, shape this? Maybe not.

I seek input and guidance from our members. In the meantime (a few weeks), we're going to have a meeting on the hill with all the offices of western republicans to discuss the question of a broader strategy and proactive approach.

Let me know what you think.

*thanks
Jeff*

What Must Happen to Enact H.R. 3324

Convincing Congress to enact a voluntary permit/lease buyout program will require the joint efforts of conservation and related organizations, taxpayer watchdog groups, and public lands grazing permittees/lessees interested in the buyout option (either now or in the future). Expressions of support from individual permittees/lessees will be crucial to the political debate.

Much work must be done to enact the Voluntary Federal Grazing Permit Buyout Act into law. In my last letter, I promised you that conservationists would get the legislation introduced in Congress, and we have. The next step is to expand the list of the legislation's co-sponsors to show political support for hearings in the House Resources and/or Agriculture Committees and, ultimately, a full vote in the House of Representatives (and then it is on to the Senate). The conservation community is working to secure the support of environmentally inclined Democrats and Republicans. The National Public Lands Grazing Campaign is also working to round up the support of fiscally conservative members of Congress in both parties who are concerned that the federal grazing program costs taxpayers at least \$500 million annually and returns no more than \$7 million to the U.S. Treasury each year.

However, conservationists have less influence with many Congressional members from the rural areas of the West who generally listen to the livestock grazing industry. These representatives and senators *must* hear from individual grazing permittees/lessees who are interested in voluntary grazing permit/lease buyout, as they are currently being advised to oppose H.R. 3324 by the public lands grazing industry leadership.

While a majority of permittees/lessees favor the voluntary grazing permit/lease buyout option, a silent majority is not worth anything in Washington, DC. Eighty percent of democracy is showing up and making yourself known and your voice heard. Fearing controversy within their industry and among their neighbors, some permittees/lessees may be tempted to seek a "free ride" by laying low and letting other permittees/lessees do the work of passing a permit/lease buyout program. If too many do that, H.R. 3324 will not become law.

If you support the voluntary federal grazing permit/lease buyout option, your elected officials in Washington, D.C. — as well as those officials within the livestock industry — need to hear from you. Your letters, e-mail, faxes and phone calls will help H.R. 3324 become law. Here are three crucial actions you can take today:

1. Tell your federal elected officials that you want the right to be bought out. If the voluntary permit/lease buyout option is attractive to you, now or possibly in the future, please contact your elected representatives to inform them of your support for H.R. 3324. You can write to your elected federal officials at:

Senator _____
United States Senate
Washington, DC 20510

Representative _____
U.S. House of Representatives
Washington, DC 20515

If you have Internet access, you can e-mail or find the fax number of your elected officials by visiting www.house.gov or www.senate.gov. If you do not know who your U.S. representative or senators are, you can find out by entering your zip code at www.house.gov or by contacting your county election office or local library. Your U.S. representative can also send you a copy of H.R. 3324.

2. Tell your public lands grazing industry leadership that you want the right to be bought out. Elected political leaders tend to respond to interest-group leaders, and interest-group leaders tend to listen to their membership, or neither remain leaders for long. Besides contacting your local livestock industry leaders, you may also wish to contact:

Jeff Eisenberg, Director of Federal Lands
National Cattlemen's Beef Association
1301 Pennsylvania Ave. NW, Suite 300
Washington, D.C. 20004
(202) 347-0228 voice
(202) 638-0607 fax
jeisenberg@beef.org

3. Stay informed on the progress of H.R. 3324, the Voluntary Federal Grazing Permit Buyout Act. You may wish to subscribe to our Voluntary Grazing Permit/Lease Buyout e-mail list service. You'll receive periodic updates on the status of voluntary grazing permit/lease buyout and what must to be done to move H.R. 3324 through Congress. If you subscribe, your e-mail address will *not* be used for any other purpose. To subscribe, visit www.permitbuyout.net or send an e-mail to "subscribe@permitbuyout.net." Please include your zip code in the message body. If you do not have an e-mail address, perhaps a friend or family member does who can print out the updates for you.

Arizona Leading the Way

I want to close by telling you about a cooperative effort between federal grazing permittees/lessees and conservation organizations in Arizona. After we first announced the voluntary federal grazing permit/lease buyout proposal, a group of Arizona permittees/lessees and conservationists began to develop a statewide permit/lease buyout proposal specifically for Arizona. Since then, these permittees/lessees and conservationists organized the Arizona Grazing Permit Buyout Campaign (www.azbuyout.org). This alliance could well result in the creation of a voluntary grazing permit/lease buyout program just for Arizona. Rep. Grijalva (D-AZ) has already introduced H.R. 3337, the Arizona Voluntary Grazing Permit Buyout Act. So far, no other members of the Arizona Congressional Delegation have co-sponsored the legislation. (If you are from Arizona, you will want to express support to your congressional delegation for both H.R. 3324 and H.R. 3337.)

If you have questions or comments about H.R. 3324, H.R. 3337 or the voluntary federal grazing permit buyout concept, please visit our website at www.permitbuyout.net, e-mail me, write me, or give me a call.

Thank you for your time and consideration of the Voluntary Federal Grazing Permit Buyout Act (H.R. 3324) and the Arizona Voluntary Grazing Permit Buyout Act (H.R. 3337).

Sincerely,

Andy Kerr
Director

P.S. It will take some time to persuade Congress to enact a comprehensive voluntary permit/lease buyout program. If you are interested in proceeding more quickly, as permittees/lessees and conservationists have in Arizona, it may be possible to work with local conservation groups to draft legislation for a site-specific buyout program that could be jointly proposed to your congressional delegation. To begin this process, please contact the organization below that works in your state:

- Martin Taylor, Center for Biological Diversity (Arizona, California)
- John Horning, Forest Guardians (Arizona, New Mexico, Nevada)
- Ronni Egan, Great Old Broads for Wilderness (Colorado, Utah)
- Bill Marlett, Oregon Natural Desert Association (Oregon, Washington)
- Jon Marvel, Western Watersheds Project (Idaho, Montana, Nevada, North Dakota, South Dakota, Utah, Wyoming)

If you do not find a local contact here, please contact me and I will connect you with the appropriate people.