

How to Waive a Federal Grazing Permit for Cash

Legislation that would facilitate the permanent retirement of a federal grazing permit that has been voluntarily waived has been introduced in various forms into the U.S. Congress since the 1990s. A recent version of such legislation is the Rural Economic Vitalization Act (REVA), first introduced by Congressman Adam Smith (WA-9) in November 2011, and reintroduced in May 2013. Although this legislation states the effects on a grazing permittee and obligations of the U.S. Government associated with retiring a grazing permit and permanently closing the associated grazing allotment(s), the legislation does not explain how a permittee might work with a “Payor” (financial donor) that would compensate the permittee for waiving a grazing permit. The Sierra Club’s Grazing Core Team has produced three sample documents, included in this file (“Agreement for Termination of Grazing Permit,” “Exhibit C,” and “Exhibit D”), that demonstrate the ease with which this transaction can be accomplished.

All required documents for donating a grazing permit back to the U.S. government are described below:

Agreement for Termination of Grazing Permit: the agreement between the Grazing Permittee and the Payor. The document is written from the perspective of the enabling legislation not having been enacted nor even introduced into Congress. If either case were satisfied, it would be a simple matter to appropriately modify this document.

Exhibit A: the Permittee’s federal grazing permit.

Exhibit B: the legislation that would enable the retirement of a federal grazing permit (Exhibit A) and the permanent closure of the associated grazing allotment(s).

Exhibit C (Permit Termination Letter): the Grazing Permittee’s letter to the U.S. Government stating the desire that the Permittee’s federal grazing permit be retired and the associated grazing allotment(s) be permanently closed to livestock grazing.

Exhibit D (Permittee’s Affidavit): a statement that actions and conditions specified by the Payor have been met.

The documents supplied here are for educational and informational purposes only and do not constitute legal advice. A Grazing Permittee who wants to retire his or her federal grazing permit should contact an attorney to obtain advice specific to their situation.

Sierra Club Grazing Core Team
June 24, 2013

AGREEMENT FOR TERMINATION OF GRAZING PERMIT

THIS AGREEMENT FOR TERMINATION OF GRAZING PERMIT (“Agreement”) is made by and between _____ (“Permittee”) and _____ (“Payor”) on this _____ day of _____, 20____, which date shall constitute the effective date of this Agreement.

RECITALS

A. Permittee is the holder of the authorized grazing permit issued by the USDA Forest Service/U.S. Department of the Interior (circle appropriate) described on Exhibit A attached hereto (the “Permit”).

B. Permittee and Payor desire to enter into an agreement whereby Permittee will receive compensation for participating in a voluntary federal grazing permit donation program described in the draft legislation (the “Legislation”) attached hereto as Exhibit B and as set forth more fully in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises, the agreements and undertakings of the parties set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Initial Payment to Permittee. Upon the execution of this Agreement by both Permittee and Payor, Permittee shall receive a payment in the amount of \$_____ (the “Initial Payment”) from Payor, which amount Permittee acknowledges as good and valuable consideration for this Agreement. The Initial Payment shall be nonrefundable except as provided under Section 8 of this Agreement.

2. Deposit of Additional Funds by Payor into Escrow. Payor shall deliver to and deposit the following sums with an escrow agent to be selected by Payor, which amounts (the “Escrowed Funds”) shall be held in an interest bearing account and released by the Escrow Agent to Payor or Permittee in accordance with this Agreement:

A. Upon the execution of this Agreement by both Permittee and Payor, Payor shall deposit the sum of \$_____ with the Escrow Agent.

B. Upon the introduction of the Legislation in the United States House of Representative or the United States Senate in accordance with the rules of those bodies, Payor shall deposit an additional sum of \$_____ with the Escrow Agent.

C. Upon the Legislation being enacted into law with an effective date of no later than _____, Payor shall deposit an additional sum of \$_____ with the Escrow Agent, such that the total of the Escrowed Funds shall equal \$_____ (the “Final Escrow Amount”).

3. Deposit of Permit Termination Letter by Permittee into Escrow. Upon the execution of this Agreement by Payor and Permittee, Permittee shall execute and deliver to the Escrow Agent a letter in the form attached hereto as Exhibit C (the "Permit Termination Letter"), which shall be held and released by the Escrow Agent in accordance with this Agreement.

4. Enactment of Legislation. Payor shall take such actions as it considers appropriate in its sole discretion to promote the enactment of Legislation having the same content and provisions set forth in Exhibit B. Permittee shall not oppose the Legislation and, if requested by Payor, shall take reasonable actions to support the passage of the Legislation into law. In the event that any modifications, additions or amendments are made to the Legislation by the House or Senate, or recommended by any committee or subcommittee thereof, Payor may terminate this Agreement in its sole discretion by delivering written notice of such termination to Permittee, in which event, the parties shall be released of all further rights and obligations hereunder, and all of the Escrowed Funds, and interest accrued thereon, shall be immediately released and returned to Payor. Payor shall exercise its right to terminate this Agreement in accordance with this Section 4 no later than ____ days after the Legislation is enacted into law. Notwithstanding any such termination by Payor, Permittee shall be entitled to retain the Initial Payment.

5. Notice to Permittee that Legislation has become Law. If the Legislation is enacted into law by _____ (the "Enactment Deadline") and Payor does not terminate or has not terminated this Agreement pursuant to Section 4, then within ____ days after the Legislation becomes law, Payor shall deliver to Permittee and the Escrow Agent written notice (the "Notice to Proceed") that the Legislation has become law and that Payor intends to proceed with the payment of compensation to Permittee in return for Permittee's relinquishment and termination of the Permit in accordance with the Legislation and this Agreement.

6. Process for Payment to Permittee for Relinquishment of Permit.

A. In the event that Payor has delivered a Notice to Proceed to Permittee and the Escrow Agent in accordance with Section 5 hereof, the Escrow Agent shall, within ____ days after the delivery of such Notice to Proceed, or _____, whichever is later, deliver by certified mail, return receipt requested, the original executed Permit Termination Letter to the Secretary of _____ (the "Secretary") at the following address:

Secretary of _____

The Escrow Agent shall also simultaneously deliver a copy of the Permit Termination Letter to:

(Agency Headquarters)

(Agency Field Office)

The Escrow Agent shall also simultaneously deliver a copy of the Permit Termination Letter to:

(Payor)

B. If, for any reason, the Permit Termination Letter is found by the Secretary or the _____ (Agency Headquarters) or _____ (Agency Field Office) to be inadequate or incomplete such that the permanent termination of the Permit cannot for any reason be effectuated in accordance with the Legislation as enacted into law, Permittee shall promptly take any and all necessary action to correct or otherwise provide the necessary documentation to the Secretary or _____ (Agency Headquarters) or _____ (Agency Field Office) to cause the Permit to be permanently terminated in accordance with the Legislation.

C. Upon written confirmation from the Secretary or _____ (Agency Headquarters) or _____ (Agency Field Office) that Permittee's Permit Termination Letter has been accepted and that the Permit is permanently terminated in accordance with and as required by the Legislation, Permittee shall, within _____ days after receipt of such confirmation, deliver to the Escrow Agent an affidavit executed by Permittee and in the same form as Exhibit D attached hereto ("Permittee's Affidavit"), with a copy delivered simultaneously to Payor, attesting, in addition to the other matters set forth therein, that the Secretary or _____ (Agency Headquarters) or _____ (Agency Field Office) has accepted the Permit Termination Letter in accordance with the terms and provisions of the Legislation as enacted into law and that the Permit, together with all rights and privileges associated with the Permit, is and has been permanently terminated in accordance with the Legislation. Permittee's Affidavit must have attached to it a true and accurate copy of the written confirmation received from the Secretary or _____ (Agency Headquarters) or _____ (Agency Field Office) that the Permit is terminated in accordance with the Legislation. In the event that the Secretary or _____ (Agency Headquarters) or _____ (Agency Field Office) fails to provide such written confirmation that the Permit is permanently terminated in accordance with the Legislation within _____ days after the Legislation is enacted into law, Payor may terminate this Agreement in its sole discretion by delivering written notice of such termination to Permittee, in which event, the parties shall be released of all further rights and obligations hereunder, and all of the Escrowed Funds, and interest accrued thereon, shall be immediately released and returned to Payor. Notwithstanding any such termination by Payor, Permittee shall be entitled to retain the Initial Payment.

D. Within _____ days following its receipt of Permittee's Affidavit, and subject to the conditions set forth herein, Payor shall provide the Escrow Agent with written consent ("Consent to Fund") to proceed with the release of the Total Escrow Amount to Permittee.

E. Within _____ days following the Consent to Fund, the Escrow Agent shall release the Final Escrow Amount to Permittee and any accrued and unpaid interest thereon to Payor.

7. Payment of Escrow Agents' Fees; Interest on Escrowed Funds. Payor shall pay all fees charged by the Escrow Agent for its services provided pursuant to this Agreement. All interest earned and accrued on the Escrowed Funds shall be released and paid by the Escrow Agent to Payor quarterly and automatically deposited into an account specified by Payor. Interest earned on the Escrowed Funds is not part of any funds to be paid to Permittee under this Agreement.

8. Additional Rights of Termination. Payor shall have the option to terminate this Agreement upon the occurrence of any of the following, by delivering notice of such termination to Permittee, in which event, the parties shall be released of further rights and obligations hereunder, the Escrowed Funds and all interest accrued thereon, shall be immediately released to Payor and, notwithstanding anything herein to the contrary, Permittee shall repay to Payor the Initial Payment within seven (7) days of such termination:

A. Permittee breaches this Agreement, including, but not limited to, a breach of any representation and warranty given by Permittee;

B. Permittee sells, assigns, conveys, or transfers any or all of the Permittee's interest in the Permit, or any portion thereof, to a person or entity other than Permittee, or enters into an agreement, contract or instrument intended to accomplish any of the foregoing;

C. The Permit is transferred, conveyed or assigned by operation of law to a person or entity other than Permittee;

D. Permittee commits any act or omission that causes Permittee to be unable to perform under this Agreement; or

E. The Permit is terminated, revoked or becomes invalid for reasons other than a termination of the Permit in the manner contemplated by this Agreement.

Permittee shall deliver written notice immediately to Payor upon the occurrence of any of the foregoing.

9. Forum Selection; Attorney's Fees. In the event of any dispute between the parties to this Agreement relating to the performance, breach or validity of this Agreement, the sole and exclusive forum for the resolution of such dispute shall be the _____ (court of jurisdiction). The parties hereby consent to the jurisdiction and venue of said court. The prevailing party in any action for the breach or enforcement of this Agreement shall recover from the non-prevailing party its reasonable attorneys' fees and costs incurred.

10. Indemnification. Permittee shall indemnify and hold Payor harmless from any and all claims of any kind or nature, including but not limited to costs, expenses and attorney's fees, arising from any claim by any person or entity, including, but not limited to, any interest holder in base property (as defined in 36 C.F.R. § 222.1(b)(3)) but excluding Permittee, seeking compensation or damages from Payor arising from or relating to the termination of the Permit or any portions thereof, in accordance with the Agreement.

11. Automatic Termination. In the event that the Legislation does not become law by the Enactment Deadline, then this Escrow Agreement shall automatically terminate at midnight of the Enactment Deadline, in which event, the parties shall be released of all further rights and obligations hereunder, the Escrowed Funds and all unpaid and accrued interest thereon shall be immediately released to Payor, and the Permit Termination Letter shall be immediately returned to Permittee. Notwithstanding any such termination, Permittee shall be entitled to retain the Initial Payment.

12. Notices. All notices and communications required or permitted between the Permittee and Payor under this Agreement shall be in writing and shall be deemed given and delivered to, and received by, the receiving party (a) when hand-delivered to the address of the receiving party set forth below, (b) one day after deposit with a national overnight courier addressed to the receiving party at the address set forth below; or (c) five (5) days after deposit in the U.S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the address set forth below. Any party may change the address and facsimile telephone number set forth below upon delivering notice thereof to the other party(ies) in accordance herewith. The address of the Escrow Agent to which all documents and notices shall be delivered in accordance with this Agreement shall be delivered in writing by Payor to Permittee upon selection of the Escrow Agent.

Payor:

Address:

Permittee:

Address:

13. Representations and Warranties of Permittee. Permittee represents and warrants to Payor that the following are true, complete and correct as of the date of this Agreement and shall be true, complete and correct throughout the term of this Agreement:

A. Permittee is the sole and lawful holder and permittee under the Permit;

B. Subject only to the termination of the Permit pursuant to the Legislation as contemplated by this Agreement, the Permit is valid, in full force and effect, has not been revoked or terminated, and Permittee is not in default under the Permit; and

C. Permittee has full authority to execute this Agreement and to take all actions required or contemplated of Permittee hereunder.

14. Recitals. Each and all of the recitals set forth at the beginning of this instrument are hereby incorporated herein by this reference.

15. Exhibits. Each and all of the Exhibits stated herein and attached hereto are hereby incorporated herein by this reference.

16. Calculation of Time. Any time period herein calculated by reference to "days" shall mean calendar days, i.e. including Saturdays, Sundays and federally recognized holidays; provided, however, that if a time period designated in this Agreement expires on a Saturday, Sunday or federally recognized holiday, the applicable time period shall be automatically extended until the next day that is not a Saturday, Sunday or federally recognized holiday.

17. Captions. The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Agreement.

18. Survival of Agreement. The provisions of this Agreement shall survive the closing of the transaction contemplated hereunder and shall not be merged, extinguished or superseded by the execution or delivery of any document required hereunder including any conveyance or assignment.

19. Severability. If any provisions of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

20. Governing Law. This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of _____.

21. Modification. Any modification of this Agreement must be made in writing and must be executed by the parties.

22. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties and any other prior agreements between the parties, written or oral, are merged herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

PAYOR:

Name: _____

Title: _____

PERMITTEE:

Name: _____

EXHIBIT C
TO AGREEMENT FOR TERMINATION OF GRAZING PERMIT

(Permit Termination Letter)

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Secretary of _____

Dear Secretary of _____:

I, _____, hold the valid, authorized grazing permit/lease issued by the _____ and more fully described on Exhibit A attached hereto (the "Permit").

Pursuant to _____ that was enacted into law on _____, I hereby donate without reservation now and forever, the above described Permit in its entirety and all associated privileges.

I understand that by donating the Permit to the United States Department of Agriculture/Interior (circle appropriate agency), I will relinquish all privileges of any kind provided by the Permit and the federal government will permanently retire livestock grazing on the associated grazing allotment(s). I further understand that I have had the right to consult with an attorney regarding this donation prior to having signed and submitted this letter to you. I make this donation with a full understanding of its implications and of my own free consent.

DATED this _____ of _____, 20____.

Sincerely,

/s/ _____

(Permittee)

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me on _____, 20____.

/s/ _____

Notary Public for _____

My commission expires: _____

EXHIBIT D
TO AGREEMENT FOR TERMINATION OF GRAZING PERMIT

(Permittee's Affidavit)

AFFIDAVIT

STATE OF _____

COUNTY OF _____

I, _____, being first duly sworn and subscribed, state as follows:

1. I was the holder of the authorized grazing permit issued by the USDA Forest Service/U.S. Department of the Interior (circle appropriate) attached hereto as Exhibit A (the "Permit").

2. In accordance with that certain Agreement for Termination of Grazing Permit between me and _____ (the "Payor") dated _____ (the "Agreement") and the Legislation (as defined in the Agreement and enacted into law on _____), I have donated the Permit without reservation and forever, together with all privileges associated with the Permit, to the USDA Forest Service/ U.S. Department of the Interior (circle appropriate) with the intent and understanding that the federal government will permanently retire livestock grazing on the associated grazing allotment(s) in accordance with the Legislation as enacted into law.

3. A true and complete copy of the following are attached hereto: (a) my letter dated _____ to the Secretary of _____ (attached hereto as Exhibit C) donating the Permit to the federal government in accordance with the Legislation and the Agreement and (b) the written acceptance of my donation of the Permit issued to me by the federal government (attached hereto as Exhibit A).

4. I further represent and warrant to the Payor that the following are complete and correct:

A. As of the date that the federal government accepted my donation of the Permit, I was the sole and lawful holder of the Permit;

B. As of the date that the federal government accepted my donation of the Permit, the Permit was valid and in full force and effect, had not been previously terminated or revoked; and

C. As of the date that I signed this Affidavit, the Permit is and has been donated to the federal government in accordance with the Legislation and the Agreement and that the Permit, and all grazing allotments and privileges associated with the Permit, are forever and permanently retired with my knowledge and free consent and that I forever relinquish all rights,

title, interests, privileges and claims of any or nature in and to the Permit and all grazing allotments associated therewith.

5. I swear under penalty of perjury under the laws of the State of _____ that the matters set forth in this Affidavit are true, correct and complete. I further acknowledge and understand that the Payor and the escrow agent to whom this Affidavit is delivered will rely upon the truth of the matters set forth in this affidavit in authorizing the release of funds to me pursuant to the Agreement.

/s/ _____

SUBSCRIBED AND SWORN TO before me on _____, 20____