

## **Grazing Agreements for Public Lands**

California was historically grazed by a variety of ruminants. With increasing population and development of land the vast herds of elk diminished and the state saw grazing become dominated by sheep, a trend driven by a high demand for wool. By the later part of the 20th century demand for wool had dramatically fallen and cattle became the primary grazers. As the 21st century began there was a growing public desire to preserve nature and eliminate human influences on public lands. Grazing to some became viewed as inappropriate. By 2020 however, the state was experiencing increasingly severe wild fires and attention became focused on what could be done to reduce fire risk. Much attention has been paid to longer term climate change issues, but more immediate responses focus on ignition sources and fuels available to spread and feed fires. Having animals consume and crush these materials has become an accepted means of fuel reduction. Grazing is more attractive in some circumstances than using herbicides or heavy machinery. In addition to reducing fuels, there is a growing body of evidence showing that properly planned and implemented prescribed grazing practices can also aid in improving habitat conditions for some key species of native plants and animals.

To the extent that agencies are interested in having the lands they manage grazed, there have been questions about what sort of contract would be appropriate between a potential grazer and an agency. This document is aimed at giving some guidance, recognizing that there are a multitude of conditions that will vary by location, mission of the agency, etc.

A grazing agreement can be as simple as a hand shake or as complex as a multi-page legal document. When executing a grazing agreement with a public agency on public land, often habitat goals and management constraints lend themselves to a more elaborate contract together with an associated site-specific management plan. The grazing agreement and management plan should be separate documents. The points below address what should be in the contract, which can incorporate, by reference, a management plan addressing performance standards for the grazer.

One major distinction within the grazing community is between sheep/goat grazers and cattle grazers. The former are typically paid to graze off vegetation to minimal levels. Their income is derived from fees for grazing. On the other hand, cattle (and sometimes sheep) grazers generally expect to pay to graze. In general, their income is derived from selling animals by the pound; therefore, they typically focus on weight gain. The selection of the type of grazer will depend on various factors such as type of vegetation, vegetation management objectives, parcel sizes, type of livestock in the vicinity, and available infrastructure. Those factors need to be considered before executing contracts and may involve a mixture of grazing animals.

Once a tentative decision has been made to contract with a grazer, the type of agreement needs to be chosen. Typically a “lease” gives the lessor the right of possession of the property. For instance, if Parcel X is ‘leased’ to Party Z then Z can occupy and use the whole parcel. Although a lease could provide that it does not cover various structures or locations, and use by others was to be allowed; those agreements are more properly defined as ‘licenses’ or ‘permits’. These licenses permit limited use (like grazing) on the property, which itself remains under the control of the landlord agency. A license or permit to graze a parcel would not normally entitle the grazer to exclusive possession of the property, but simply a right to graze in accordance with the terms of the license which may include a grazing management plan tailored to the specific property. In some circumstances it might be appropriate to enter into a ‘service contract’ for vegetation removal, for instance with a sheep / goat grazing operation.

### **Recommended items for consideration in a grazing agreement**

1. Identification of the parties
  - a. Legal description of “Landlord/Lessor/Licensor” and “Tenant/Lessee/Licensee”
  - b. If other than individuals are parties, the legal status of the contracting party should be identified (e.g. corporation authorized to do business in CA, registered partnership, etc. Operations using unregistered fictitious names should not be contracted with)
  - c. Public lands may require citation to authority to lease property
2. Description of the property
  - a. Legal description such as county assessor’s parcel numbers, Public Land Survey System description, etc.
  - b. Which fields are grazable and included
  - c. Map or aerial photo of property if feasible
  - d. Location or list of any pertinent infrastructure – wells, corrals, etc.
  - e. Address or nearest roads and county
3. Duration of agreement, termination, or extension
  - a. Should include effective date and termination date
  - b. What right to occupy is conveyed
  - c. Grazing season, on/off dates, and stocking rates if applicable / Include ability to modify on/off dates based on conditions / Include provision waiving pre-occupancy inspection by landlord if inspection was not timely performed (animals must eat and if they are scheduled to leave one location and move to the contracted land at a specific point in time they need to move to their new source of feed / water and the possibility of bureaucratic delay could discourage responsible grazers from participating)
  - d. Rules and notification for early termination, including rent refunds/payments in the event of early termination; cause for early termination (e.g. failure to comply with

- terms of incorporated Grazing Management Plan, or repeated failure to meet performance standards, or unforeseeable loss of forage or access thereto due to such things as fire / flood or other catastrophic event
- e. Extension/ Renewal terms and conditions
4. Rent or payment; credits for improvements
    - a. Amount of payments with due dates if payments are being made to the agency
      - i. Payments may be figured on an annual basis, monthly, per head, per animal unit month, by weight gain etc.
      - ii. May want to consider fee credits for approved site improvements in lieu of payments, e.g. installation of new fence at a certain price per linear foot could count toward rent payment (in which case fence specifications would be needed)
      - iii. Should outline which party is responsible for providing utilities
    - b. Amount of payments with due dates if payments are being made BY the agency.
      - i. Grazing service providers (primarily sheep and goat operations) charge for grazing with prices figured on size of area to be treated, the terrain, type of vegetation, season, need for and feasibility of temporary containments, access etc.
      - ii. Any costs such as utilities that are not included in the fees paid to the grazer should be identified
5. Taxes
    - a. Personal property taxes on site improvements and infrastructure should be considered
    - b. Real Property taxes are typically paid by landlord
    - c. Clarify whether there might be a Possessory Interest tax incurred. Those taxes are set by the local county to require a person in possession of otherwise tax exempt property to pay what would otherwise be the property tax. Some counties charge possessory interest tax even of USFS permittees who do not have exclusive possession and grazing 'service providers' may be exempt as service providers instead of lessees of land
6. Uses of the property
    - a. Need to determine if this is a license to graze or a lease of the property or a service being provided
    - b. Could include policies on other/associated aspects such as ATVs, horses, trucks, supplemental feeding, farming, hunting, etc. ATVs / UTVs are often essential for providing feed supplements like salt blocks and doing fence maintenance and are often allowed as 'implements of husbandry'
    - c. Policies on temporary living quarters for herders
7. Entry
    - a. Description of who is allowed to enter/use the property
    - b. Details of landlord's access to property
    - c. Details of any public access to property
    - d. Location of access gates to be used

8. Maintenance, repairs, and improvements
  - a. Typically a tenant/licensee is responsible for maintenance and repairs of infrastructure (fences, roads, ditches, drains, watering infrastructure, etc.) in compliance with applicable permits and laws
    - i. This could depend on the condition of infrastructure on entry and anticipated length of the contract period
    - ii. This could also depend on whether others will have use of the infrastructure
    - iii. A provision can be included to share costs e.g. if a well goes out a grazer might only be responsible for a limited share of the costs involved
  - b. Tenant/licensee typically gets permission in writing from landlord to construct permanent improvements and that documentation should include who pays for the projects
  - c. Typically no liens are allowed against the property or owner
9. Stewardship guidelines
  - a. Actual details regarding stewardship practices should be included in the incorporated grazing management plan if applicable; the license should have a clause incorporating the Grazing Management Plan by reference to ensure the plan is part of the agreement.
10. Additional limits or restrictions on ranching/farm practices
  - a. May include any soil altering practices that are allowed or not allowed
  - b. May include language on hazardous substances and/or dead animal disposal
  - c. Other restrictions on activities, such as recreational horse riding, camping, hunting, trapping, use of herding dogs, and pest animal control
  - d. Restrictions on temporary structures
  - e. Measures to avoid introduction of invasive species from feed or vehicles
11. Subcontracting
  - a. Typically subcontracting is not allowed without prior written consent from the landlord
  - b. Original tenant is still responsible for terms of agreement unless otherwise agreed, for instance by the landowner accepting assignment of the contract
12. Insurance and liability
  - a. Tenant should typically have comprehensive general liability, bodily injury and death liability, and broad form property damage liability insurance and the property owner may want to be named as an 'other insured.'
  - b. Tenant should also have workers compensation insurance if they have employees who will be working on the property
13. Indemnification
  - a. Some agreements call for the tenant to indemnify landlord and all affiliates except in the case of negligence or breach of the license terms on landlord's part.

- b. In the case of multiple use / public access lands where the grazer may have little role in the injury this requirement might be addressed by listing the landlord agency as an 'other insured' on the grazers liability insurance.

14. Damage or Destruction

- a. This should outline what happens with the grazing and license payments in the event that part of or all of the property is damaged through fire, vandalism, etc.

15. Condemnation

- a. This should detail what happens to the license and payments if the property is taken under eminent domain

16. Removal of personal property

- a. Tenant should remove personal property and temporary improvements prior to or upon termination of the agreement

17. Dispute resolution

- a. This should include details of how disputes will be handled including attorneys' fees and potential appeals

18. Notices/Communication

- a. This details how communication will be conducted between the parties
- b. Should include contact information for all involved parties