

INTERIOR BOARD OF LAND APPEALS

Mary Coles, et al.

132 IBLA 398 (June 15, 1995)

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Appeal from a decision of the California State Director, Bureau of Land Management, denying protests against issuance of a lease under the Recreation and Public Purposes Act. CACA 30669.

Reversed.

1. Applications and Entries: Generally—Public Lands: Disposals of: Generally—Recreation and Public Purposes Act

An environmental assessment of the effects of leasing public lands under the Recreation and Public Purposes Act, 43 U.S.C. § 869-1 (1988), for use as a shooting range, that failed to adequately consider the effect of shooting noises on near-by homeowners provided an insufficient basis for finding that a lease should issue.

APPEARANCES: Mary and Alvin Coles, Bridgeport, California, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Mary and Alvin Coles have appealed from a December 15, 1994, decision of the California State Director, Bureau of Land Management (BLM), that denied their protests of a proposed lease of public lands to Mono County, California (CACA 30669), and approved lease issuance pursuant to 43 U.S.C. § 869-1 (1988), a provision of the Recreation and Public Purposes Act.

On July 20, 1994, a notice of realty action (NORA) was published by BLM in the Federal Register (59 FR 37048) stating that approximately 40 acres in sec. 10, T. 5 N., R. 25 E., Mount Diablo Meridian, Mono County, California, would be leased to the County for use as a public gun range facility. Citing a July 8, 1994, decision record, finding of no significant impact, and environmental assessment (EA) CA-017-04-20 (which originated in BLM's Bishop Resource Area), the NORA found that leasing the land for use as a shooting range was in the public interest and that detailed information concerning the gun range proposal could be obtained from BLM.

Appellants timely protested the proposal, raising seven objections that were considered and rejected by the December 15, 1994, BLM decision, which modified the proposed lease in matters not relevant hereto. A timely appeal was filed.

Some arguments previously made to BLM by appellants have not been argued on appeal and will not be considered by this opinion. The four objections now urged before this Board concern anticipated noise from shooting at the range proposed to be located about a half-mile from appellants' residence. Appellants argue that the level of noise at their house from shooting will be unreasonably high, that the EA failed to apply proper standards or to consider variables affecting noise (including temperature, wind, elevation, terrain, and current sound levels at their site), that no tests to determine actual noise volumes that would be produced by the range were conducted as part of the EA by BLM, and that BLM has failed to provide adequate mitigation standards and monitoring controls over operation of the proposed facility.

BLM has requested that this appeal be advanced on the Board's docket for expedited consideration because safety considerations inherent in the situation in which the appeal arises require immediate action; BLM explains that the proposed lease was approved as a substitute for an outdated facility that continues in use pending construction of a replacement range and that considerations of public safety require present review. The Mono County Board of Supervisors has made a similar request for expedited review. While appellants do not oppose immediate action on their appeal (they have not sought to stay the effectiveness of BLM's decision, an action that could have delayed construction of the range by the County), they argue that the public safety is not at risk at the present gun range and that the proposed range site near their house is unsuitable for the purpose intended.

In considering the request for expedited consideration, therefore, we are required by the conflicting contentions made by the parties to evaluate the merits of the case, much as would have been required had there been a request for stay pending appeal pursuant to 43 CFR 4.21. Having done so, we grant expedited consideration and reverse the December 15, 1994, BLM decision.

While applications under the Recreation and Public Purposes Act, 43 U.S.C. § 869-1 (1988), are addressed to the discretion of the Department, rejection of a properly qualified application must be supported by the record developed during consideration of the application. See City of Chico, 119 IBLA 136, 138-40 (1991), and cases cited therein. The record on appeal now before us establishes that Mono County has facially complied with guidelines for leases under the Act established by Departmental regulation. See 43 CFR 2741.5. Appellants do not question the qualifications

of the County to receive the lease or the process by which it has been pursued, but argue instead that issuance of the lease will unreasonably interfere with their nearby private residential use. Compare Lloyd Heger, 121 IBLA 321, 326 (1991) (amendment of a shooting range development plan was needed to require mitigation and monitoring of excessive dust generated by an access road built to serve the range). Appellants contend that the EA, upon which the BLM decision under review was ultimately based, failed to provide sufficient information concerning shooting noise to allow BLM to make a fully informed decision; they contend that BLM was required to take into account the effect of the range on their adjacent residential use, and that the record does not support approval of the lease because BLM failed to do so.

[1] The record on appeal supports the position taken by appellants. The effect of the sound of shooting on residential property values in the vicinity was considered in the EA on pages 24, 25, and 32 through 34. To evaluate the noise question, BLM relied exclusively on the National Rifle Association (NRA) Range Manual Sound Abatement on Shooting Ranges. This document, which is included in the case file, is intended to provide a guide for conducting sound level studies of small arms fire for the purpose of integrating firing ranges into communities with a minimum amount of disruption, while recognizing that such activities constitute "noise parks" and should be recognized as such. Id. at I-6-2. The EA finds, using the NRA manual as guide, that sound levels, stated in decibel (dB) units, are "unacceptable" if they exceed "90 dB(A) for 1 hour out of 24 or * * * 85 dB(A) for 8 hours out of 24 and the receiver is less than 1/4 mile from the sound source" (EA at 33). (A decibel is defined by the NRA manual at page I-6-4 as a "unit used to measure the relative loudness or level of a sound. The range of human hearing is from about 0 decibels to about 140 decibels." The abbreviation dB(A) refers to a measurement that assigns weighted values to frequencies to reflect how the ear perceives a sound). Applying the standard stated by the NRA manual to the Coles house, BLM found that:

The proposed action lies within a confined drainage (separated from the residence by a ridge 80 feet high) and the predominant vegetation is shrubs and pinyon trees. Both the site location and the vegetation would reduce the sound levels at the facility boundary and the residence to levels between the discretionary and acceptable levels. The sound levels originating from the proposed facility and experienced by the receivers at the residences would not continue or total more than 6 hours out of 24.

Id. Under the NRA standard, "discretionary" levels are considered "normally acceptable" where the noise level does not exceed 80 dB(A) for more than 8 hours at the range boundary and the receiver (Coles' house in this case) is a mile away, or if the noise is not over 75 dB(A) for more than 6 hours and the receiver is over a half-mile away. Id. An "acceptable"

noise level is attained if the sound is less than 65 dB(A) for not more than 8 hours and does not occur at night. Id. To conclude that the noise level at the Coles house would not exceed reasonable limits, BLM's EA reasoned that

[d]iscussions with NRA Assistant Manager of the Range Development Division Robert Partridge in Washington, D.C. indicate that an observer within 10 feet of the firing line of a high-power rifle will experience a 110-120 dB sound level. Using the following data: sound level 120 dB at 10 feet, 500 feet distance from firing line to boundary where there is an unobstructed path to residence, .5 mile distance from boundary to residence and sound dissipation of 6 dB as distance double; the sound level at the shooting facility boundary would be about 87 dB and at the [Coles] residence it would be approximately 71 dB.

Id.

Appellants argue that the NRA standard, as it was applied by BLM, did not provide a reliable guide for decision on this issue because it was not objectively applied and related by BLM to the effect of the proposed firing range on their residential use. They argue that BLM failed to independently test or to properly analyze the conclusions drawn by the NRA employee concerning the assumed noise level of 71 dB, but mistakenly accepted his opinions as though they were facts; they challenge such uncritical use by BLM of the NRA standards: " Because the noise is of the impact variety (short blasts), the disturbance factor is much greater than a continuous noise such as vehicles along a highway. The intrusion of this noise at our residence will be an exceptional burden on our lives" (Statement of Reasons at 2).

While the NRA standards are cited and quoted as the basis for the EA's conclusion that it would be reasonable to impose a 71 dB noise level on appellants' residence, the NRA manual does not lend support to the EA developed by BLM for use in this case. Instead, the NRA manual recommends that planners of such ranges conduct an environmental analysis of the effect of the noise of firing that includes actual testing using suitable equipment (id. at I-6-9) and requires that persons planning a firing range test the effect of noise on surrounding houses or other noise "receivers" by making precise sound measurements. Id. at I-6-11. Procedures are established for making an acoustical survey under conditions described at page I-6-11 of the NRA manual; actual sound measurement must then be conducted using multidirectional microphones set 4-5 feet above ground on a tripod under specified wind conditions and using properly calibrated sound level meters. Id. at I-6-13. Sound sampling using such methods must be representative (id.), properly recorded (id.), and must include time, date, location, topography, position, names of observers, general weather conditions, and site characteristics. Id. at I-6-14. Instrumentation and sound

measurement techniques must meet defined standards to insure that measuring techniques and instruments are accurate if the environmental analysis outlined by the manual is to be accomplished. Id. at I-6-16, I-6-17. None of these things were done in this case.

The EA made by BLM, which adopted an untested conclusion concerning an hypothetical sound level at the Coles house, did not conform to standards and follow procedures required by the NRA manual. As a result, the EA did not support the finding made by BLM that a lease for the proposed firing range might reasonably issue despite the noise that it might send to the Coles house. See Lloyd Heger, 121 IBLA at 326; NRA manual at I-6-13. The record does not, therefore, support the BLM decision to issue the lease, for, while BLM purported to apply the NRA manual standards and follow required procedures, in fact it failed to conduct any of the testing in the manner and with the devices required by the manual (see NRA Manual at I-6- 13 through I-6-19). As the manual observes at page I-6-9, "[d]eveloping a master plan for a specific site may seem to be a lot of unnecessary work in some cases, but it's smart planning."

Furthermore, appellants have pointed to an inconsistency in the EA concerning the topographic cover which is assumed to provide an acoustic shield between the range and the residence (EA at 34, 35). The EA establishes that trap and skeet shooters will be located on a "north facing gentle slope" (EA at 25, Map B). This slope is referred to by appellants as a "ridge that is clearly visible from our residence." It appears that the orientation of this facility has been changed from the initial proposal for the range, so that it may have a greater effect than was first planned on the nearby residence (compare EA, Map C with Map B, and see EA at 24). This being the case, the conclusions by the EA that the "proposed action lies within a confined drainage" and that it is "separated from [Coles] by a ridge 80 feet high," are not supported on the record compiled by BLM. These erroneous findings, which were relevant to the finding by the EA that noise would be at an acceptable level, further undermine the factual foundation for the decision and also require reversal of the BLM decision.

It is therefore concluded that the failure of BLM to consider range orientation, wind, temperature, elevation, weather, terrain, and the present low ambient noise level at the Coles' house resulted in an inadequate study that cannot support a finding that a lease for a firing range may reasonably issue at the location selected (see NRA manual at I-6-17, I-6-19). Not to consider these matters, in the context of this case, was error (see NRA manual at I-6-9). Appellants also complain that BLM failed to conduct any on-site tests, such as the NRA manual requires, to determine the effect of noise in the vicinity of the proposed action. While the case file contains correspondence and a memorandum indicating that some tests were planned or may even have been conducted, the EA does not describe them, as would have been the case if the NRA manual were followed (see id. at I-6-19). It is apparent, however, that the tests contemplated

(and possibly conducted) were not those required by the NRA manual, although BLM paid lip service to that guide when an estimate of noise was derived using a formulation appearing on page I-6-10. This was, however, an incorrect application of the manual. Nonetheless, the NRA manual appears to provide a reasonable guide to the sort of study that must be conducted if there is to be a meaningful environmental assessment of the effects of noise from the proposed range, should BLM decide to pursue this lease application further. While appellants have suggested that the manual may be biased, they have not pointed to any provision of the document that is inaccurate, and none is apparent; it seems to be a realistic attempt to guide planners in evaluating and controlling the noise of firing ranges, just as it purports to be.

Finally, appellants complain that BLM failed to establish mitigation standards for noise reduction on nearby residences or to provide for monitoring of noise levels and allow for corrective action once the shooting range is constructed and operating. In Lloyd Heger, 121 IBLA at 326, mitigation measures were required to insure that dust from a road constructed to give access to a shooting range would not damage Heger's crops, so as to insure that use of the public lands would not "unreasonably interfere with adjacent private uses." The nature of the anticipated disturbance in this case requires that measures be taken to continue to monitor noise levels from any shooting range that may ultimately be constructed (see NRA manual at I-6-3). In the event that BLM should decide, following further study, to continue consideration of a lease for this disputed site, the NRA manual describes how such mitigation measures should be monitored, if they are to be effective. Id. at I-6-8.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Franklin D. Amess
Administrative Judge

I concur:

James L. Burski
Administrative Judge