

FLIGHT SYSTEMS, INC.

IBLA 75-144

Decided February 25, 1975

Appeal from decision, (0401(B) 1018), of the District Manager, Bureau of Land Management, Bakersfield, California, rejecting special land use permit application.

Remanded.

1. Special Use Permits

Where a special land use permit application to use land in support of various military programs, as an impact area for all types of air delivered items including parachute drops, arms firing, and inert items dropped from dispensers, is rejected, on the basis that the issuance of a renewal permit could result in undue risk to the safety of the public, without the preparation of an environmental impact analysis and without consideration of possible limitations upon use, the case will be remanded for such action.

APPEARANCES: Mr. E. T. Binckley, Director of Test Programs, Flight Systems, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Flight Systems, Inc., has appealed from the decision of the District Manager, Bureau of Land Management, Bakersfield, California, dated August 1, 1974, rejecting appellant's application for a four-year renewal term under a special land use permit. That rejection was predicated upon the Manager's finding "that the granting of the requested permit could result in undue risk to the health and safety of the public \* \* \*." The decision also recited the opposition of the City Planning Director of the City of Ridgecrest to the requested renewal of the previous permit. All the land covered by the application has been classified for multiple use management, R-1250, 33 F.R. 11934 (August 22, 1968).

Appellant's earlier special land use permit, covering the same area, had been issued for a period of two years and expired in June 1974. The application in issue was filed May 24, 1974, and recited that the land would be used "[a]s an impact area for various types of air delivered items including parachute drops, arms firing, and inert items dropped from dispensers." The area applied for embraces some 14,700 acres.

Appellant stated in a letter accompanying its renewal application that it has an established policy that:

[A]nytime [sic] we are actively using the ranges we will have a radio- equipped lightplane [sic] circling the range area to assure that there is no foreign activity or inadvertant [sic] penetration of the test area. \* \* \*

We do not work on Saturdays or Sundays, so we have no problem with this condition. As you know, our work is all research and development and recovery of all items on the range is necessary to obtain evaluation data. This makes it easy for us to maintain a clean range. \* \* \*

Although these comments describe the use made of the permit area under its previous permit, appellant has also issued a brochure which, at first blush, suggested far more extensive usage. The brochure stated:

For over 5 years, Flight Systems Test (formerly Flight Test Research) has operated a mile square live ordnance range in the Mojave Desert. This range has been successfully used for bomb drops, rocket and missile firing, small arms firing, and flare evaluations. On some occasions, regrettably, work has had to be refused because larger or more isolated areas were required for specific tests. Now, this problem has been solved by the acquisition of a 15,000 acre range that is the perfect complement to the smaller calibrated range at Mojave. This acquisition greatly expands the services we can offer our customers.

This new range, called the "Panamint Valley Ordnance Range," is located about 90 air miles north of the Mojave Facility and is accessible by road and by air.

\* \* \* \* \*

The range floor is flat and partly occupied by a dry lake area which provides an extremely level and hard surface access throughout most of the length of the range. The range floor is 1600 feet above sea level. The floor is completely surrounded by mountains, providing a "horseshoe stadium" effect. For range safety there is a 3600 foot contour surrounding the range on three sides, providing perfect defilade. There are no man-made structures and no activity of any kind in the range area. Within one half mile of the range is a 2500 foot air strip. Within one mile of the range, is a small resort called Panamint Springs, which has a restaurant and a motel. On the southwest corner of the range is a mound about fifty feet high, accessible by auto. This mound has a flat top that provides perfect observation of every part of the range. It makes an ideal observation post and control center. This new range offers the following possibilities not before available at FST:

A range large enough for ground to ground missile firing.

Natural barriers providing safety features to permit drone work and drone ordnance drops.

An isolated area having freedom from light sources to allow testing of low light level devices.

An area free from electronic devices that could cause radiation or interference problems.

An area for mortar firing, large gun testing, or detonation of ordnances.

The underscored language relates to a discrete piece of land, about 90 miles south of the area sought in the application at bar.

Appellant now states that the brochure does not describe the use it would make of the area under application and suggests that it does not intend to use the area for other than inert ordnance.

By letter of June 12, 1974, Joseph L. Cloonan, Planning Director, City of Ridgecrest, expressed his concern to the District Manager that issuance of the permit might result in the acreage becoming

"unusable as a result of testing being done in this area \* \* \*." In response, the District Manager, by letter of June 28, 1974, apprised Cloonan as follows:

Thank you for the copy of the flyer being circulated by Flight Systems Test, Inc. We have spoken to a representative of the company, and he has indicated that the brochure has incorrectly misrepresented the activities which they have been conducting in Panamint Valley. During the past year, they have been using the land as an impact area for dummies ejected from jet aircraft seats and inert items dropped from wing dispensers. Some small charges have been used in order to observe the impacts and recover the devices, but no full strength ordnance has been allowed. Subsequent to each use of the range, the company has been required to recover the debris.

The permit authorizing this use has recently expired and the company has applied to use the land for four more years. We will prepare an environmental analysis prior to the issuance of a new permit.

We would appreciate any comments which you may have regarding this proposal.

By letter of October 18, 1974, appellant apprised a protestant as follows:

Our company, Flight Systems, Inc. conducts flight test work in support of various government programs. The reason that we do this is because the government test facilities are so loaded that many of the smaller tests never get done unless we help. When our flight work expanded where we were dropping items from aircraft, we approached the Bureau of Land Management and asked their assistance in locating some desert land that was isolated so we would not disturb anyone. In 1970, they issued us a permit to use a portion of Koehn Lake, near Mojave. This area was handy to our facility at Mojave and served the purpose well. When we asked to renew the permit, we were told that motorcyclists were wanting to use the area for recreation and that BLM would find us another area. In 1972 they issued us a permit to use the upper part of the Panamint Valley, and expanded our use to include firing small arms from helicopters. We had been queried [sic] by several customers to see if they could fire guns on our range, so our advertising department published a brochure called the "New Panamint Valley Range" which has caused us all the

trouble. We made considerable use of the range for two years, and never fired any guns there. When we asked to renew the 2 year license we were told that the City of Ridgecrest opposed our use of the land and the permit was denied because "granting of the requested permit could result in undue risk to the health and safety of the public".

I interpreted this to mean they were concerned that we might drop something on someone. We have extensive safety precautions and do no work on Saturday or Sunday when the recreational vehicles are out. In fact, we are so safety conscious that during a test we keep a small airplane circling the drop area at all times, to look for anyone that might possibly slip into the area. \* \* \* (Emphasis supplied.)

In its statement of reasons, appellant asserted as follows:

In the first place, after 8 years of operation of our ranges, we have never had an accident or a complaint from anyone. On the land covered by your permit #0401-1718, in the Panamint Valley, there is not the slightest basis to conclude that there is "undue risk to the health and safety of the public".

On all of the Panamint Valley tests we have a Safety Officer who operates a communications net that includes all personnel in the range area as well as the test aircraft. He has a complete view of the drop area as well as a view of Highway 190, and he controls the drop from the aircraft.

On all of the Panamint Valley tests, we have an Airborne Safety Officer flying in a lightplane [sic], circling the range area at all times. His sole duty is to look for individuals or motorcycles that could possibly come into the range area from out of the hills.

Such arrangements absolutely preclude the possibility of dropping items on anyone.

Once the test items are on the ground--and they are inert--they must be scored for location, collected and examined. There is no way the public could be hurt, since the items are inactive to begin with, and then the range is cleaned up prior to leaving.

Our tests are usually observed by Military Officers who sponsor the tests. They have never had an adverse comment on our safety procedures. On the other hand, major corporations such as Aerojet and Northrop could not afford to test if there was any chance of jeopardy to the public--yet they test with FSI repeatedly. These people are the experts and would be willing to furnish you documented evidence on safety if you find it necessary to require full hearing procedures.

As far as future tests are concerned, a long time ago, I agreed to clear any test with you that would be in any way, out of the routine. (Emphasis supplied.)

On August 5, 1974, the City of Ridgecrest forwarded a resolution to the District Manager opposing the issuance of a special land use permit to appellant and requesting that an environmental impact report be prepared. The record indicates that the resolution impelled the rejection.

[1] If appellant's contentions are true, they show that: its work on the site in issue is in support of various government programs; appellant has never fired any guns on the site; no work is performed on Saturday or Sunday to minimize contact with recreational vehicles; appellant keeps a small airplane circling the drop area during a test to look for anyone who might possibly get into the area; and only inert test items are employed.

While we can appreciate readily the concern of the various groups and persons who have protested the grant of the special land use permit, an environmental analysis, dated May 12, 1972, before the issuance of the first permit, found that "there will be no irreversible and irretrievable impacts and commitment of resources barring accidental shooting of wildlife."

We believe that the record does not now afford a sufficient predicate for determining whether the requested permit should be granted. A new environmental analysis should be made. Consideration should be given to limitations and conditions which might be imposed on the permit to insure that "undue risk to the health and safety of the public" would be avoided. After the preparation of such environmental analysis, and such consideration of conditions, and such further action as may be deemed appropriate, the District Manager should issue a new decision acting on the application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded for further action consistent with this decision.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Martin Ritvo  
Administrative Judge

