

TOWN OF KREMMLING

IBLA 79-489

Decided March 27, 1980

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting application for Recreation and Public Purposes Lease C-9915.

Affirmed.

1. Applications and Entries: Generally -- Recreation and Public Purposes Act

The rejection of an application for a lease under the Recreation and Public Purposes Act for land to be used as a rifle range is a proper exercise of the Secretary's discretion where the facts show that size and topography of the land are not suitable for such range and the site is not safe, notwithstanding the fact that the land had been classified for lease under the Recreation and Public Purposes Act.

APPEARANCES: Richard P. Doucette, Town Attorney, Hot Sulphur Springs, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Town of Kremmling appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated May 21, 1979, rejecting its application for lease application C-9915 filed pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 through 869-4 (1976).

Appellant filed its application dated November 4, 1969, to lease 19.4 acres of public land in Grand County, Colorado, to be used as a rifle range which would be operated, maintained, and managed by the Kremmling Volunteer Fire Department. The requested lease would run

for 25 years. By decision of March 29, 1971, the lands were classified for lease under the Recreation and Public Purposes Act, supra.

On May 21, 1979, the State Office issued its decision in which it stated it must reject the application in order to protect the public safety and Federal property. The following information in the decision provided a basis for the rejection:

Bureau representatives have reported that the subject land is not physically suited to the proposed land use as a rifle-range facility. The geographic orientation, size, and topography of the site does not lend itself to accommodate existing and proposed facilities.

The facilities at the site do not provide for the protection of participants, spectators, and adjoining land users. The site is not safe or suitable for use as a rifle range in view of recent residential developments in the vicinity.

A suitable public rifle-range facility is operated by the State of Colorado Division of Wildlife (DOW) at Parshall, Colorado, 10 miles east of the subject land (about 13 miles east of Kremmling). The DOW facility has all the features of the applicant's rifle-range except for a trap range. A trap range had been installed in the past, but has since been removed. The DOW is willing to consider a request from a private organization to reestablish a trap range and to conduct organized public shooting events at its facility. The availability of this public facility within reasonable driving distance for county residents provides a well-equipped alternative facility to serve the community.

In its statement of reasons appellant contends that with the rejection of this application all rifle ranges in west Grant County and the northern portion of Summit County will be eliminated with the exception of the range located at Parshall; that the town needs a new rifle range because of increased population; that 80 percent of all land in the county is Federal and State land, but BLM has advised the town that there is no adequate site available for the range.

In response to BLM's statement that the site is not safe, appellant contends that the facility has been used by private gun clubs for 10 years with no injuries and that if there is a danger in operating the range, the town is prepared to consider provisions for incorporation into the lease to protect participants and adjacent land owners. Appellant claims that unsupervised shooting will occur without a range and thereby increase the potential for injury to individuals and property.

Appellant asserts that the BLM's concern for maintenance of the property can be solved by incorporating into the lease the requirement that the town post bond and insurance necessary for the operation of the range.

Finally, appellant argues that it is inconvenient and wasteful to travel to the Parshall rifle range and inconsistent with the need to conserve gasoline.

[1] The answer to appellant's contentions is clearly stated in the law itself. The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. 43 U.S.C. § 869 (1976). Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (1975); Mountaineering Club of Alaska, Inc., 19 IBLA 198 (1975). Thus, the Secretary or his duly authorized representative may reject an application without abusing his discretion if he determines that the public interest is best served by such rejection. Board of County Commissioners, Ouray County, Colorado, *supra* at 189.

In a memorandum dated March 16, 1979, to the Craig Adjudication Team Leader, the Area Manager for Kremmling set forth reasons why the subject application should be rejected. He stated that appellant's development and management plans were deficient and that the financial plan was nonexistent. He noted that appellant has been involved in a continuing unauthorized occupancy of the property since 1969 and from that time has not demonstrated the ability to finance, develop, or manage and maintain a shooting range facility. He explains that the improvements have deteriorated and that the landscape is littered with scrap lumber, used tires, cans, bottles, and other junk. He notes that the applicant has not restricted use of the facility to weekends only between the hours of 11 a.m. and darkness in accordance with its management plans.

As for safety, he states that the topography of the site does not offer natural, adequate protection while the size of the site is not sufficient to permit construction of adequate artificial protection for a safe facility. Regarding the existing building (approximately 18 feet by 85 feet), he believes that it is not physically sized for housing an indoor fixed .22 caliber rifle range, a warming area, and lunch space.

We find that the rejection of the application for the rifle range is a proper exercise of the Secretary's discretion under the Recreation and Public Purposes Act, *supra*, reflecting concern for public safety and the need for protecting the public lands. The fact that the land had previously been classified for lease under the Recreation and Public Purposes Act pursuant to applicant's petition, does not matter here where after a thorough evaluation of the applicant's plans

and all alternatives it is determined that the application to lease for a rifle range should not be granted.

Therefore, 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 affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

