



HEIR OF JACK MOORE

174 IBLA 45

Decided March 7, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

HEIR OF JACK MOORE

IBLA 2007-65

Decided March 7, 2008

Appeal from a decision of the Alaska State Office, Bureau of Land Management, holding that a Native allotment application had been reinstated in error, and finally closing the case. A-02492.

Affirmed.

1. Alaska: Native Allotments

A BLM decision rescinding the reinstatement of a Native allotment application made pursuant to the Alaska Native Allotment Act of 1906, 43 U.S.C. §§ 270-1 through 270-3 (1970), and finally closing the case will be affirmed under the doctrine of administrative finality where there is no dispute of fact as to the Native's eligibility for a preference right under the Act, and there is no manifest injustice because no objection was filed either at the time of the rejection or for over 80 years thereafter.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant; James R. Mothershead, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE M^CDANIEL

Mary Ann Fawcett Flake, a surviving heir of Jack Moore, has appealed from a December 4, 2006, decision of the Alaska State Office, Bureau of Land Management (BLM), holding that Moore's Native allotment application, A-02492 (formerly Juneau 02492), had been reinstated in error and finally closing the case.

BACKGROUND

Jack Moore, described as a resident of Hoonah, Alaska, filed Native allotment application A-02492 on September 7, 1915, pursuant to the Alaska Native Allotment

Act of 1906, 43 U.S.C. §§ 270-1 through 270-3 (1970) (Native Allotment Act).¹ He sought 160 acres of unsurveyed land, which BLM places in protracted sec. 15, T. 44 S., R. 59 E., Copper River Meridian, Alaska, along the shores of Neka Bay, on Chichagof Island, about 10 miles south of Hoonah, Alaska.

In an Allotment Affidavit, corroborated by William S. Sheakly and David Lawrence, Moore attested to the fact that he had occupied the claimed lands under the Native Allotment Act since 1895, *i.e.*, starting when he was close to 20 years old.² Walter B. Heisel, General Land Office (GLO) (BLM's predecessor), examined the claimed lands in the field on July 14, 1922, and reported the results in an August 15, 1922, letter to the Commissioner, GLO. He stated that he attempted to contact Moore in Hoonah, but found that "he was fishing for the Columbia cannery at Tenakee Inlet," and thus evidently examined the lands by himself. Letter, dated Aug. 15, 1922, at 1-2. Heisel noted that during his field examination, he found "no signs of residence, cultivation or improvements except a shack," with no roof, surrounded by tall grass.³ *Id.* at 2. He stated that about half the lands were "flat and grassy," ideally suitable for pasturage, and the remainder were "heavily covered with timber." *Id.* Heisel concluded that Moore was unlikely to have used and occupied the claimed lands for any substantial period of time, based on the following analysis:

The place is very inaccessible, it being necessary to anchor a gas boat about 2½ miles from the place, and take a row-boat the balance of the way as the water is very shallow and swift in places where Neka River enters the bay. It is extremely improbable that an [I]ndian would make such an inaccessible place his home except as a base for trapping during a few weeks in the winter.

Id. Heisel recommended the rejection of Moore's Native allotment application, which recommendation was approved by the Chief, Alaskan Field Division, GLO, on September 16, 1922.

¹ The Native Allotment Act was repealed effective Dec. 18, 1971, subject to pending Native allotment applications, by section 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (2000).

² Both the application and affidavit were executed by Moore on Sept. 1, 1915, and appear to have been filed together. The asserted occupancy predated the Aug. 20, 1902, withdrawal of the land from "settlement, entry or sale," subject to "valid right[s]," for inclusion in the Alexander Archipelago Forest Reserve (now the Tongass National Forest). *See* 32 Stat. 2025 (1902).

³ Photographs attached to Heisel's letter show a two-room roofless structure that is labeled as a "cabin."

Based on Heisel's report, as approved, the Acting Commissioner, GLO, directed the Register of the Juneau Land Office to notify Moore that he had 60 days from receipt of notice "to show cause why this allotment application should not be rejected . . . and that in default of such action or appeal, this application, which is hereby held for rejection, will be finally rejected and the case closed without further notice from this office." Letter, dated Nov. 11, 1922, at 2-3.

By letter dated March 9, 1923, the Register informed the Commissioner that "[n]otice under your letter was issued on November 23, and was received some time during the month of December as shown by the enclosed return card." (Emphasis added.) The record does not contain a copy of the notice the March 9th letter states was sent on November 23, but attached to the March 9th letter was a Registry Return Receipt card, which bears the handwritten signature of "Jack Moore."⁴ The card provided in the record by BLM is a copy of the card, which bears no readable date or postmark. Although we are unable to discern the date of delivery or postmark, the Register concluded that the card showed that it was "received some time during the month of December[.]" *Id.* The Register further stated in his March 9, 1923, letter that "[n]o action was taken in response to this notice."

By letter dated March 31, 1923, the Commissioner notified the Register that he deemed the Acting Commissioner's November 11, 1922, decision to have "become final," and closed the case. He did so based on the report in the Register's March 9th letter, which forwarded alleged "proof of service of notice" of the November 11 decision, in the form of an attached "registry return receipt signed by the applicant December ___, 1922," and on his conclusion that "no action or appeal [was] taken" from the November 11th decision.⁵ *Id.* The Commissioner instructed the Register to

⁴ We note that both the allotment application and affidavit bear the handwritten signature "Jack Moore," with the first and last name separated by an "X." Above the "X" is the word "His" and below is the word "Mark." Appellant claims that "[t]he application was signed by Jack Moore with an 'X' indicating Mr. Moore's inability to write his name." See Statement of Reasons (SOR) for Appeal at 2. BLM theorizes that this indicates that Moore either could not sign his name or may simply have "affixed both his signature and the 'X[.]'" Answer at 2.

⁵ The original March 31 letter contains several blank spaces between the month and year.

“so note” the record,⁶ and “advise the parties in interest by ordinary mail.”⁷ *Id.* at 2. However, we find no evidence in the record as to whether Moore was so advised.

Moore died on August 19, 1927. After the passage of close to 60 years, BLM reinstated Moore’s Native allotment application on July 9, 1980. It closed the case again on February 7, 1983, by notice dated March 2, 1984,⁸ but again reinstated the application on January 16, 1987.

On two occasions, on July 24, 1990, and February 11, 1997, notice was sent in care of the Central Council of the Tlingit and Haida Indian Tribes of Alaska (Council) that BLM had suspended action on Moore’s application. That notice afforded 60 days from receipt to submit evidence supporting the application and stated that, absent the submission of sufficient evidence, action would be taken to

⁶ The Register was also directed to note his “records” to reflect final rejection of Moore’s application and closure of the case. BLM provides a copy of the Historical Index for T. 44 S., R. 59 E., Copper River Meridian, Alaska, dated Jan. 26, 1987, which discloses, with respect to the application: “Rej 3/31/19[2]3.”

⁷ Moore and the Superintendent of the Bureau of Education appear to have been the parties in interest. The Superintendent approved Heisel’s August 1922 letter, recommending rejection of the allotment application on Sept. 27, 1922, and was served with a copy of the Acting Commissioner’s Nov. 11, 1922, letter, holding the application for rejection.

⁸ In closing the case, BLM erroneously concluded that Moore’s application was covered by the final judicial disposition in the class action in *Shields v. United States*, 698 F.2d 987 (9th Cir. 1983), *cert. denied*, 464 U.S. 816 (1983), which basically held that a Native applicant was required to establish personal, not ancestral, qualifying use and occupancy prior to a withdrawal for a national forest. BLM later admitted its error when it again reinstated the application in 1987. See Native Allotment Review dated Jan. 15, 1987 (“Application reconsidered because . . . applicant’s [use and occupancy] date of 1895 predates the Tongass [National Forest] withdrawal date of 8/20/1902; previously closed in error under Shields”).

provide a hearing in accordance with *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976).⁹ We find no indication that the Council submitted any evidence.

On December 4, 2006, the State Office issued its current decision, holding that Moore's Native allotment application, A-02492, had been reinstated in error, and finally closing the case.¹⁰ It took such action "based on" the Board's June 27, 2001, decision in *Erling Skaflestad*, 155 IBLA 141 (2001), since it regarded that case as presenting the "same scenario" as presented in the case of Moore's application. Decision at 2, 3. BLM noted that both *Skaflestad* and the current appeal involved an allotment applicant who was "apprised of the deficiencies of his application that would result in its rejection and was given 60 days to respond to the allegation." *Id.* at 3. It stated that, despite receipt of the notice, the applicant in *Skaflestad* did not respond, and GLO rejected the application and closed the case, which decision was not protested or appealed by the applicant. The Board in that case found no basis for concluding that rejection of the application denied the applicant due process of law or treated him unjustly. 155 IBLA at 152. BLM concluded that in the instant case "we are unable to find that the applicant was denied due process of law in the adjudication of his application or treated unjustly when his application was rejected and [the case] closed in 1923." Decision at 3. BLM declared reinstatement of Moore's application to have been in error and finally closed the case. *Id.* at 2.

On January 3, 2007, Mary Ann Fawcett Flake filed, as "an heir of Jack Moore," a notice of appeal from the State Office's December 2006 decision.¹¹

⁹ In the July 24, 1990, notice, which was addressed to "Jack Moore (deceased)," in care of the Council, BLM stated that it appeared, based on Heisel's report of his July 14, 1922, field examination, that Moore had failed to satisfy the use and occupancy requirements of the Native Allotment Act and its implementing regulations (43 C.F.R. Subpart 2561). Notice, dated July 24, 1990, at 2. The Council received BLM's July 24th notice on July 27, 1990. The Feb. 11, 1997, notice, which was addressed to "Heirs of Jack Moore," in care of the Council, was received on Feb. 18, 1997. On June 4, 1997, BLM extended the time for submission to Aug. 31, 1997.

¹⁰ BLM's December 2006 decision was addressed to Mary Ann Fawcett Flake, as the "Probable Heir of Jack Moore," and to the "Heirs of Jack Moore," care of the Hoonah Indian Association (Association). Decision at 1. BLM sent an Aug. 26, 1998, letter to the Council and an Oct. 23, 2006, letter to the Association, requesting a list of Moore's heirs. BLM reports that the Association informed BLM of "the names of two probable heirs," Mary Johnson of Hoonah, Alaska, and Mary Ann Fawcett Flake of Juneau, Alaska. Memorandum to Case File A-02492, dated Feb. 17, 1999.

¹¹ Along with her notice of appeal, Flake filed a copy of a June 25, 1996, Order Determining Heirs, issued by Administrative Law Judge William E. Hammett in the

(continued...)

APPELLANT’S ARGUMENTS ON APPEAL

Appellant contends that BLM’s decision to rescind its reinstatement of Moore’s Native allotment application and close the case violates procedural due process, as determined by the court in *Pence v. Kleppe*, because neither Moore nor his heirs have ever been afforded notice and an opportunity for a hearing regarding GLO’s March 1923 determination that Moore had failed to satisfy the use and occupancy requirements of the Alaska Native Allotment Act. She argues that Moore and his heirs were entitled to such notice and an opportunity for a hearing in the absence of any showing that Moore’s application was “on its face . . . legally deficient.” SOR at 7.¹¹ Flake asks the Board to reverse the State Office’s December 2006 decision, and refer the case to the Hearings Division, Office of Hearings and Appeals, “for a fact-finding hearing pursuant to 43 C.F.R. 4.415.” SOR at 11.

ANALYSIS

When originally enacted, the Alaska Native Allotment Act stated that a qualified Native “shall have the preference right to secure by allotment the

¹¹ (...continued)

case of *In the Matter of the Estate of Jack Moore Deceased Tlingit* (Probate IP AS 328N 95), which declared Helen Moore to be the sole heir of Jack Moore. Flake also submits: 1) a copy of a May 6, 1953, Order Determining Heirs, issued by R.J. Montgomery, Examiner of Inheritance, declaring James Young to be the sole heir of Helen Moore, who died in 1936, and 2) a copy of the Sept. 5, 1966, Last Will and Testament of James Young, approved by Montgomery on Oct. 19, 1967, stating that he had no natural children, but had two adopted children. He bequeathed one dollar to his adopted son, William S. Johnson, and to his adopted daughter, Mary Ann Fawcett, “all of the rest, residue and remainder of my estate, real, personal and mixed which I now have or may hereafter acquire, and wherever situated.”

¹² Specifically, Flake challenges the adequacy of GLO’s alleged service on Moore of notification (whether in the form of a copy of the Acting Commissioner’s Nov. 11, 1922, letter or some other undisclosed letter) that his application was being held for rejection, pending a 60-day opportunity to provide evidence of qualifying use and occupancy. She states: “The record only shows that someone other than Mr. Moore signed a receipt that something was received from the GLO. It obviously was not Mr. Moore’s signature on this receipt because Mr. Moore could not sign his name as evidenced by his signing with an ‘X’ on his allotment application.” SOR at 4. She also concludes that neither Moore or his heirs were ever notified, pursuant to *Pence*, of their opportunity for a hearing to her address the factual question of his qualifying use and occupancy.

nonmineral land *occupied by him* not exceeding one hundred and sixty acres.”¹³ 43 U.S.C. § 270-1 (1970) (emphasis added). A Native was required to establish the existence of a preference right, arising from occupancy of lands, which predated, and thus survived, a prior withdrawal of the lands.¹⁴ *BLM v. Heirs of James Rudolph, Sr.*, 163 IBLA 252, 257 (2004). “[I]f claiming under the preference right clause the date of the beginning of [the applicant’s] occupancy must be given, and its continuous nature stated.” *Id.* at 258, quoting Departmental Circular, 35 L.D. 437 (1907).

In *Pence v. Kleppe*, the U.S. Court of Appeals for the Ninth Circuit held that applicants for Native allotments have a sufficient property interest to warrant procedural due process protection under the U.S. Constitution. It held that,

at a minimum, applicants whose claims are to be rejected must be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and, if they request, granted an opportunity for an oral hearing before the trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment. . . .

¹³ A qualified Native was described as “any Indian or Eskimo of full or mixed blood who resides in and is a Native of [the] district [of Alaska], and who is the head of a family, or is twenty-one years of age[.]” 43 U.S.C. § 270-1 (1970). In 1956 the Native Allotment Act was amended to condition issuance of any allotment upon a showing of “substantially continuous occupancy of the land for a period of five years.” Section 3, Act of Aug. 2, 1956, 70 Stat. 954, 43 U.S.C § 270-3 (1970). This requirement, however, only applies to land for which occupancy began after 1935, when by Circular No. 1359 the Department issued rules requiring Native allotment applicants to complete 5 years of use and occupancy as a precondition for obtaining an allotment.

¹⁴ In the case of a withdrawal which predated enactment of the Native Allotment Act, a Native would be deemed to hold a valid right that survived the withdrawal where, at the time of withdrawal, he was engaged in “notorious, exclusive, and continuous use and occupancy which is also required by the Native Allotment Act)[.]” *Forest Service (Heirs of Frank M. Williams)*, 141 IBLA 336, 339 (1997). *Also see United States v. Flynn*, 53 IBLA at 227, 88 I.D. at 383 (“[P]ermissive Native occupation under the [Native Allotment Act and its predecessors] . . . was required to be ‘notorious, exclusive and continuous, and of such a nature as to leave visible evidence thereof so as to put strangers upon notice that the land is in the use or occupancy of another, and the apparent extent thereof must be reasonably apparent,’” quoting *United States v. 10.95 Acres of Land in Juneau*, 75 F. Supp. 841, 844 (D. Alaska 1948)).

529 F.2d at 143. In *Pence v. Andrus*, 586 F.2d 733, 743 (9th Cir. 1978), the Ninth Circuit expounded further that a hearing was not required in all cases, agreeing with our conclusion in *Donald Peters*, 26 IBLA 235, 241 n.1., 83 I.D. 308, 311 n.1, *reaffirmed*, *Donald Peters (On Reconsideration)*, 28 IBLA 153, 83 I.D. 564 (1976), that where BLM determines an application must be rejected as a matter of law, assuming the truth of all relevant matters stated in the application, it may reject the application without a hearing. *See also United States v. Heirs of Harry McKinley*, 169 IBLA 184, 189-90 (2006).

In *Heirs of George Brown*, 143 IBLA 221 (1998), BLM had refused, in 1994, to reinstate an application, filed in 1909, which, following a field investigation, the GLO finally rejected.¹⁵ On appeal we stated that

what *Pence* required and what section 905(a) of ANILCA [the Alaska Native Interest Lands Conservation Act, *as amended*, 43 U.S.C. § 1634(a) (2000)] authorized was the Departmental reexamination of those past cases in which an allotment application had been rejected with finality to determine whether or not due process was afforded the applicant and the reinstatement of those applications where either the minimum requirements of due process, as delineated by the court in *Pence v. Kleppe*, *supra*, were not met or where a manifest injustice would occur were the application not to be reinstated. *See generally*, *Lord v. Babbitt*, 943 F. Supp. 1203, 1208 (D. Alaska 1996).

Judged by the foregoing standard, it seems clear that the application herein should not have been reinstated. As we noted above, there is nothing in the application which asserted occupancy by George Brown of the land sought prior to or even after the filing of the application. . . .

Id. at 229-30 (footnote omitted). And, as we explained in *McKinley*, 169 IBLA at 186, first quoting from *Brown* (143 IBLA at 230),

¹⁵ Notice of the decision in *Brown* holding the application for rejection (“subject to the right to appeal within thirty days from notice”) had been sent by registered mail to the applicant; evidence of receipt of that notice consisted of a return receipt card “signed by Pelion Holton as addressee’s agent”; no response to the notice was received; the case was ordered to be closed by letter dated Jan. 15, 1925, and a copy of that letter was directed to be sent to “the parties in interest by ordinary mail.” 143 IBLA at 224.

“in 1909, the Department was authorized to allot [to a Native] any 160-acre tract of nonmineral land which he requested; [such Native] had a ‘preference right’ to obtain an allotment, however, only to those parcels which were ‘occupied by him.’”

Without occupancy, the application merely served as a request for a specific parcel of land, along the lines of a homestead application. See Circular 491, Acquisition of Title to Public Lands in the Territory of Alaska, 45 L.D. 227, 228 (July 19, 1916) (discussing application of Act of May 14, 1898, 30 Stat. 409, to homesteading on Alaska public lands). A preference right to a particular tract was established only by occupancy. . . . [footnote omitted, emphasis added]

We concluded in *Brown* that: “The failure of either the applicant or the witnesses to indicate a *present occupancy* of the land described must properly give rise to a conclusion that *no such occupancy was being asserted*. Nor is this conclusion contradicted by anything else of record.” *Brown*, 143 IBLA at 230 (emphasis added). When GLO adjudicated the application in 1925, there was no evidence supporting Brown’s occupancy. When GLO held the application for rejection in 1924 because of lack of occupancy, there was no disputed issue of fact. Absent a disputed issue of fact, the due process procedures cited in *Pence* were not necessary and the application was rejected as a matter of law.

Furthermore, we also noted that “no objection to GLO’s rejection of George Brown’s allotment application was made in 1924, though notice was provided pursuant to then-prevailing procedures” and no apparent questions were raised about the rejection over the next 50 years. We concluded: “Thus, at the time that this file was initially examined by BLM in 1978 there was no basis on which it could be concluded that the rejection of this application in 1924 either violated the requirements of due process or worked a manifest injustice.” *Id.* As we stated in *Skaflestad*, 155 IBLA at 148:

Under the doctrine of administrative finality--the administrative counterpart of the doctrine of *res judicata*--when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice. *Melvin Helit v. Goldfields Mining Corp.*, 113 IBLA 299, 308-09, 97 I.D. 109, 114 (1990); *Lloyd D. Hayes*, 108 IBLA 189, 192-93 (1989).

In the present case, at the time of GLO's 1922 notice holding the application for rejection and its 1923 decision rejecting the application, Moore was on record as asserting back in 1915 that he had occupied the 160 acres of claimed land in the Neka Bay area since 1895, prior to the 1902 withdrawal and in accordance with the Native Allotment Act. September 1, 1915, Allotment Affidavit submitted with his application. Although he attempted to talk to Moore, Heisel found that "he was fishing for the Columbia cannery at Tenakee Inlet," and thus Heisel evidently examined the lands by himself. In his field examination of the claimed lands Heisel found "no signs of residence, cultivation or improvements except a shack," with no roof, surrounded by tall grass. He concluded that Moore was unlikely to have used and occupied the claimed lands for any substantial period of time. Heisel's Letter, dated Aug. 15, 1922, at 1-2.

[1] The question is whether Moore's claim of occupancy compared to the field examination report raises a disputed issue of fact. We find the facts here are quite similar to those in *Skaflestad*; both Native applicants filed in 1915, claimed that occupancy commenced in 1895, corroborated each other's application, lived in Hoonah, and worked at the cannery. 155 IBLA at 142-43. In both cases the field examiner found, in 1922 as to Moore and in 1924 as to Lawrence (*Skaflestad*), no signs of any occupation or use of the land for many years past, confirming that such occupancy was not continuing at the time of his field examination as well as shortly thereafter when the applications were adjudicated by GLO and held for rejection. *Id.* at 143-44. We also note that, similar to *Brown*, the record in both cases fails to show any evidence contradicting this conclusion. *Id.*; 143 IBLA at 230. Further, in neither case did the applicant respond to notice sent according to the then-prevailing practice, giving 60 days to object to the deficiencies found in the application that would result in its rejection. 155 IBLA at 145. After discussing the facts determined in the 1928 rejection of the Native allotment application at issue in *Skaflestad*, we observed and concluded: "When the applicant was advised of the proposed rejection of his application [in 1924], *no protest was made or appeal filed.* In this context, we are unable to find that the applicant was denied due process of law in the adjudication of his application or treated unjustly." 155 IBLA at 152 (emphasis added).¹⁶

Here we draw the same conclusions as we did in *Skaflestad*: there was no disputed issue of fact and closing this matter has not resulted in manifest injustice. In *Skaflestad*, there was evidence that Lawrence never occupied the land, but only intended to do so in the future. That evidence was confirmed by a field examination finding a few remaining poles from a very old shack and some evidence of a small area of land that at one time may have been used for garden purposes, but no

¹⁶ Moreover, in both cases, and as in *Brown*, no objection was made for many years thereafter, for 50 years in *Skaflestad* and for more than 80 years in the instant case.

evidence of any occupation or use of the land for many years past. In the instant case, we need not determine whether Moore had occupied the land as far back as 1895, as his application claimed. When Heisel examined the site less than seven years after the application was filed, he found “no signs of residence, cultivation, or improvements. . . .” The only evidence he found of possible prior use was the remains of an old shack which no longer had a roof and clearly had been unused for many years. Considering these factors, combined with the difficulty in accessing the site (a trip of about 2½ miles by rowboat after the point where a motorboat could go no further) and Moore’s own identification of Hoonah as his residence, we find that the record provides sufficient support to conclude that Moore did not occupy the site when he filed his application. Further, though Moore had the opportunity to dispute Heisel’s conclusions, and the consequent proposed rejection of his claim, by filing a protest or appeal, he did not do so.¹⁷ Moreover, under these circumstances and given that more than 80 years elapsed without objection, closing this matter has not resulted in manifest injustice.

Based on the doctrine of administrative finality, because Moore and his heirs had an opportunity to obtain review within the Department and no appeal was taken, and absent a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice, the GLO’s decision rejecting the application and closing the case will stand.

¹⁷ We are unpersuaded that Jack Moore did not receive the GLO’s proposed decision in December 1922. *See supra* n.12. Under strikingly similar circumstances, we have noted and determined:

As in *Heirs of George Brown*, McKinley was served under then-proper procedures, the service form was signed by someone other than the person who signed the application as “Harry McKinley.” We will not presume either that the signer was not McKinley or that McKinley was never notified of the decision.

McKinley, 169 IBLA at 201 n.9. To the contrary, we presume that the U.S. Post Office properly delivered that proposed decision to its identified addressee (Jack Moore), as reflected in its return receipt card. *See Phillips Petroleum Co.*, 147 IBLA 363, 370 (1999).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
R. Bryan McDaniel
Administrative Judge

I concur:

_____/s/_____
Geoffrey Heath
Administrative Judge