

GERALD D. HEDEN

IBLA 72-375

Decided July 6, 1972

Appeal from a decision of the Oregon State office, Bureau of Land Management (BLM), OR 9045, declaring mining claims void ab initio for being located on lands classified by Bureau motion under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970).

Dismissed.

Rules of Practice: Appeals: Dismissal

An appeal will be dismissed where the appellant did not timely file the notice of appeal in the proper office.

Mining Claims: Lands Subject to -- Public Lands: Classification --  
Recreation & Public Purposes Act

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations, and a mining claim located on lands so classified is null and void ab initio. Buch v. Morton, 449 F.2d 600 (9th Cir. 1971).

APPEARANCES: Gale K. Powell, Esq., for appellant.

OPINION BY MR. FRISHBERG

On March 14, 1972, a decision of the Oregon state office, BLM, was served on the appellant. The decision declared certain mining claims null and void, in whole or in part, for having been located on lands not then open to mineral location, the lands having been classified by Bureau motion for disposal under the Recreation and Public Purpose Act, 43 U.S.C. § 869 (1970). Heden's appeal was dated and mailed on the same day, i.e., April 20. Since this is beyond the 30-day period provided by the rules of practice and not within the grace period the late filing may not be waived. The failure being jurisdictional, the appeal must be dismissed. 43 CFR 4.411; 4.401; cf. Pressentin v. Seaton, 284 F. 2d 195 (D.C. Cir. 1960).

The BLM furnished a copy of a purported "Notice of Amended Location of Placer Claims" Nos. 2, 4, 6, 8, and 10 (dated May 22, 1972), and informed us that Mr. Heden is removing volcanic material from the lands involved. Because of this we point out that the decision below properly applied R. C. Buch, 75 I.D. 140 (1968), affirmed Buch v. Morton, 449 F. 2d 600 (9th Cir. 1971), that the Recreation and Public Purposes Act segregates the land from mineral location, and mining claims thereafter located on such lands are null and void ab initio. The mining claims involved remain void; the purported amendment cannot serve to validate them. The appellant is cautioned that continued operations on void mining claims constitutes a trespass.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 211 DM 13.5, the appeal is dismissed.

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Newton Frishberg, Chairman

We concur:

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Joan B. Thompson, Member

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Joseph W. Goss, Member

