

UNITED STATES  
v.  
FRANK A. SPAULDING AND WALLACE SPAULDING

IBLA 72-222

Decided December 6, 1972

Appeal from a Riverside District and Land Office, Bureau of Land Management, decision (R-4374) holding a mining claim null and void.

Affirmed.

Contests and Protests: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

A mining claim is properly declared null and void when contestee fails to answer timely a government contest complaint which charged that there had not been a discovery within the claim, and the complaint and regulation provide that failure to answer within 30 days will be taken as an admission of the allegations of the complaint.

APPEARANCES: Frank A. Spaulding, Wallace Spaulding, pro se.

OPINION BY MR. RITVO

Frank A. Spaulding and Wallace Spaulding have appealed from a decision of the Riverside Land and District Office, Bureau of Land Management, dated November 2, 1971, holding the Sunset Lode Mining Claim null and void for failure to file a timely answer to a contest complaint.

On July 8, 1971, the Riverside District and Land Office issued a complaint charging that no valid mineral discovery had been made within the limits of the claim and requesting that the claim be declared null and void. The complaint contained a notice that unless the contestees filed an answer to the complaint in the Land Office within 30 days of service of the notice and complaint, the allegations of the complaint would be taken as admitted and the case decided without a hearing. 43 CFR 4.450-6 and 43 CFR 4.450-7(a).

The complaint was served on July 10, 1971, on Frank Spaulding, and, on July 12, 1971, on Wallace Spaulding, George C. Black, as

attorney for the estate of John Robert Spaulding, a missing person, and Nancy Dempsey, as administratrix of the estate of John Robert Spaulding, a missing person.

No answer having been filed within the time prescribed, the Land Office issued its decision holding that allegations of the complaint would be taken as admitted and declaring the claim null and void.

In their appeal, appellants review the history of the claim, but do not assert that they filed a timely answer. <sup>1/</sup> The Land Office decision was correct. When a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid and contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted and the claim declared null and void. United States v. Melvin McCormick, 5 IBLA 382, 79 I.D. \_\_\_\_ (1972).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Riverside Land and District Office is affirmed.

Martin Ritvo, Member

We concur:

Joan Thompson, Member

Newton Frishberg, Chairman.

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<sup>1/</sup> Since the other parties named in the contest complaint did not appeal, the decision became final as to them upon the expiration of the 30 day period allowed for filing a notice of appeal.

