

JAMES D. LINDSAY ET UX.

IBLA 73-94

Decided April 9, 1973

Appeal from decision (NM 284-A etc.) by New Mexico State Office, Bureau of Land Management, declaring mining claims null and void.

Affirmed.

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

Where a Government contest complaint against mining claims contains charges which, if proved, would render the claims invalid, and the contestees fail to file a timely answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestees and the claims are properly declared null and void. This rule will be adhered to in all cases involving late filings of contest answers, except in extraordinary circumstances.

APPEARANCES: James D. Lindsay, pro se.

OPINION BY MR. FISHMAN

James D. Lindsay and his wife have appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated August 14, 1972, which declared their interests in the mining claims, listed in Appendix A, attached hereto, to be null and void.

Complaints were served on contestees charging that a valid mineral discovery did not exist within the limits of the claims, and that the land embraced within the limits of the claims was nonmineral in character. In mining contests NM 284-C and 284-F it was further charged that some of the claims were not located in good faith for mining purposes.

The State Office decision states that contestees failed to file timely answers to the complaints. The claims therefore were declared null and void without a hearing pursuant to 43 CFR 4.450-7(a) which provides: "If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the

Manager will decide the case without a hearing." Under 43 CFR 4.450-6 contestees were required to file their answer to the complaint "within 30 days after service of the complaint \* \* \* in the office where the contest is pending \* \* \*."

Contestees argue that they should have been granted a hearing because they filed timely answers to the complaints. The record, however, does not substantiate their contention.

Contestees filed a letter purported to be an answer to the complaints within 30 days from the date of service; however, contestees did not send the letter to the proper office. The letter was sent to the Department of Agriculture and received there August 1, 1972, rather than the New Mexico State Office, Bureau of Land Management. 1/

The complaints were served on contestees by registered mail on July 8, 1972 (a Saturday). The answers, therefore, were required to be filed in the New Mexico State Office, Bureau of Land Management, on August 7, 1972. The Department of Agriculture by letter of August 8, 1972, informed contestees that they were required to file their answers with the Bureau of Land Management, and on August 9, 1972, contestee James D. Lindsay sent a registered letter to the Bureau of Land Management enclosing a copy of the answer which had been received by the Department of Agriculture within 30 days from service of the complaint. The registered letter sent by Lindsay on August 9, 1972, was received by the Bureau on August 10, 1972, or three days late. 2/

The complaints contained the following caveat:

NOTICE

This complaint is filed in the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New

1/ While contestees assert that a letter was sent to the Bureau of Land Management as well as a registered letter to the Department of Agriculture within the 30-day period prescribed by 43 CFR 4.450-6, no such letter appears in the case file transferred to this Board from the Bureau. No probative facts as to the mailing of the letter to the Bureau were offered, nor was any explanation offered as to why it was not sent by registered mail in the same manner as the letter to Agriculture.

2/ The ten-day grace period provided by 43 CFR 4.422 cannot be invoked in the present case because contestees' answer, by their own admission, was transmitted on August 9, 1972, and was not, therefore, transmitted "before the end of the period in which it was required to be filed."

Mexico 87501, and any papers pertaining thereto shall be sent to such office for service on the contestant, and copies of said papers must be served on \* \* Mr. Richard L. Fowler, Attorney in Charge.

Unless contestee(s) files (file) an answer to the complaint in such office within thirty (30) days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing. Any answer should be filed in accordance with Title 43, Code of Federal Regulations, Part 1852.2 a copy of which is attached.

Dated this    day of July 7, 1972

\* \* Mr. Richard L. Fowler  
Attorney in Charge  
Office of the General Counsel United States of America  
United States Department of Agriculture  
517 Gold Avenue, S.W.  
Albuquerque, New Mexico 87101 By /s/ Paul E. Martinez

Enclosure: Part 1852.2 (Cir. 2164)

Bureau of Land Management Department of the Interior

cc: Regional Forester  
Richard L. Fowler  
[Emphasis supplied.]

The fact that contestees sent a letter within thirty days to the Department of Agriculture cannot cure the defect of their failure to file a timely answer with the Bureau of Land Management. See United States v. August Ebbert and Verdabelle Ebbert, A-30984 (June 3, 1968).

Where a Government contest complaint against mining claims contains charges which, if proved, would render the claims invalid, and the contestee fails to file a timely answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee and the claims are properly declared null and void. United States v. J. Hubert Smith, 67 I.D. 311 (1960). This rule applies even if the answer is filed one day late, and will be adhered to, United States v. Ray L. Pruett & Freida C. Pruett, 3 IBLA 23 (1971); United States v. Nelson E. Devine, 2 IBLA 258 (1971), except in extraordinary circumstances. United States v. Humboldt Placer Mining Co., 71 I.D. 434, 442 (1964). Such extraordinary circumstances do not exist in this case.

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.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Joseph W. Goss, Member.

APPENDIX A

The following mining claims of the appellants are located in T. 29 and 30 N., R. 13 E., N.M.P.M., Taos County, New Mexico:

NAME OF CLAIM	CONTEST NO.
The L.A. Nos. 1 through 18, inclusive	NM 284-A
The L.A. Nos. 19 through 46, inclusive	NM 284-B
The L.A. No. 47 and the L.A. Nos. 49 through 55, inclusive	NM 284-C
The L.A. Nos. 48, 56 and 57	NM 284-D
The L.A. Nos. 58 through 61, inclusive	NM 284-E
The M. Nos. 1 through 8, inclusive	NM 284-F

