

UNITED STATES
v.
JAMES HAWKESWOOD ET AL.

IBLA 78-566

Decided June 27, 1979

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim null and void. Contest No. CA 4941.

Affirmed.

1. Contests and Protests: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests
Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

APPEARANCES: James Hawkeswood, Betty Hawkeswood, Sharon A. James, and John E. James, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James Hawkeswood, Betty Hawkeswood, John E. James, and Sharon A. James appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated June 8, 1978, declaring the Wild Rose mining claim null and void. The State Office gave the following as a basis for this declaration:

Adverse proceedings were ordered against the claim listed in the above caption and directed to the contestees named in this decision.

The complaint, dated April 17, 1978, charged in substance that the claim was invalid. Service was had by certified mail on the contestees on April 18, 19, and 26, 1978.

To date, no answer has been filed by the contestees. The failure of the contestees to file an answer within the time allowed which specifically meets and responds to the allegations of the complaint, as provided in Title 43, Code of Federal Regulations, Part 4 (formerly Part 1850), is considered an admission of the truth of the charges, and the claim is hereby declared null and void.

On June 30, 1978, appellants filed their notice of appeal and statement of reasons with the Board. Appellants allege that the "validity test" performed by the mining engineers was unfair and not in keeping with good mining practices. No mention was made of their failure to answer the contest complaint.

We agree with BLM's decision declaring this claim null and void. 43 CFR 4.450-6 and 4.450-7 provide as follows:

§ 4.450-6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 4.450-5(b)(3). The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 4.450-7 Action by Manager.

(a) 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.

This rule is mandatory. Sainberg v. Morton, 363 F. Supp. 1259, 1262-3 (D. Ariz. 1973); United States v. Prock, 39 IBLA 148 (1979). Accordingly, the Board will affirm BLM's decision declaring a mining claim null and void in contests in which no answer has been filed. United States v. Prock, supra; United States v. Bruner, 36 IBLA 36 (1978).

Also, we note that the complaint served on appellant contained the following warning in bold type:

Unless contestees 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 4 (formerly Part 1850), a copy of which is attached (Circular 2164).

Appellant failed to comply with the regulations, and BLM properly took the allegations in the complaint as admitted.

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:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

