

UNITED STATES  
v.  
WILLIAM R. SOREN

IBLA 80-76

Decided May 13, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims null and void. OR MC 4656 (Wash), etc.

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: John H. Anderson, Esq., Bellingham, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William R. Soren appeals from the October 1, 1979, decisions of the Oregon State Office, Bureau of Land Management (BLM), which declared the Dad's Girl, Ruth, Alice, Dolly, Mary, Laura (a.k.a. Laura Talc), Merna (a.k.a. Merna Talc), and Two Bills lode mining claims null and void. The BLM decision arose by the State Office taking as admitted the charges in the contest complaint after the contestee failed to file a timely answer to the complaint.

The contest complaint issued August 9, 1979, at the request of the National Park Service and the Forest Service. <sup>1/</sup> Each complaint, addressed to a single mining claim, charged "[t]here are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining law, sufficient in quantity, quality, and value to constitute a discovery." Copies of the complaints were sent by certified mail to appellant. The return receipt cards show that appellant was served with the complaints on August 17, 1979.

No response was submitted to the contest complaints within the time prescribed. Thereafter the decision of October 1, 1979, was issued.

In his statement of reasons, appellant argues that service of the complaint was incomplete, and the allegations within the complaints are contrary to fact. He did not amplify on the first point, relative to service of the complaints.

[1] Regulation 43 CFR 4.450-6 requires a contestee to file his answer to a contest complaint within 30 days after service of the complaint. In order to comply with this regulation, appellant's answer was due in the BLM office on or before September 17, 1979. The effect of failure to file an answer timely, applied to Government contests by 43 CFR 4.451-2, is stated in 43 CFR 4.450-7(a): "If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the [BLM officer] will decide the case without a hearing." This provision is also set out in the contest complaint.

The Department has consistently construed this regulation as mandatory. Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973); United States v. Brunker, 36 IBLA 36 (1978); United States v. Ragsdale, 20 IBLA 348 (1975); United States v. Weiss, 15 IBLA 198 (1974); United States v. Honeycutt, 15 IBLA 184 (1974); United States v. Spaulding, 8 IBLA 297 (1972). The time limit for filing an answer to a contest complaint cannot be extended. Pence v. Andrus, 586 F.2d 733, 741 (9th Cir. 1978).

Appellant's allegations are unsupported by any evidence. By failing to answer the contest complaint timely, BLM had no recourse but to invoke 43 CFR 4.450-7(a). BLM correctly interpreted the applicable rules and regulations in reaching its decision that the mining

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<sup>1/</sup> The following claims are located within the Ross Lake National Recreation Area under the jurisdiction of the National Park Service: Dad's Girl, Alice, and Mary. The following claims are located within Mount Baker National Forest: Laura and Merna. The following claims are partly within Ross Lake National Recreation Area and partly within Mount Baker National Forest: Ruth, Dolly, and Two Bills.

claims are null and void, as not being supported by a discovery of a valuable mineral deposit.

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.

Douglas E. Henriques  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

