



GLEN AND MARIE TEAGUE

179 IBLA 324

Decided August 5, 2010



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

GLEN AND MARIE TEAGUE

IBLA 2010-85

Decided August 5, 2010

Appeal from decision of the State Director, Idaho State Office, Bureau of Land Management, rejecting request for first half final certificate. IDI-30280.

Affirmed.

1. Mining Claims: Patent

The Secretary has no authority to issue a mineral patent until satisfied that the applicant has fully complied with all statutory requirements, including a determination of validity and verification that all paperwork has been completed. Where the authority for the Department to process patent applications has been restricted by Congress prior to the applicant having completed all such requirements, the right to a patent, or equitable title, cannot vest.

2. Mining Claims: Patent

Under Section 112 of the Department of the Interior and Related Agencies Appropriations Act of 1995, Congress imposed a moratorium on the processing of mineral patent applications—none of the appropriated funds could be used to process mining patent applications, provided certain mining legislation was not enacted prior to adjournment of “103d Congress *sine die*.” The starting date of that moratorium was the date the Appropriations Act was enacted, not when date the 103rd Congress adjourned without acting upon the specified legislation.

3. Estoppel--Federal Employees and Officers: Authority to Bind Government

Estoppel is an extraordinary remedy, especially as it relates to the public lands. Estoppel will not be allowed where to do so would result in a party obtaining rights to which he is not entitled by law. Where a Congressional moratorium on the processing of mineral patent applications prevented the applicant from taking steps to perfect the application, such as filing paperwork and tendering payment, estoppel cannot be invoked to allow processing to continue whereby the applicant would acquire rights in a patent after the moratorium began, which would be contrary to law.

APPEARANCES: Gary D. Babbitt, Esq., Boise, Idaho, for appellants; Anne Corcoran Briggs, Esq., Office of the Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Glen and Marie Teague have appealed from a decision of the State Director, Idaho State Office, Bureau of Land Management (BLM), denying their request that a First Half Final Certificate (FHFC) be issued under Mineral Patent Application IDI-30280. The State Director rejected their request because a Congressional moratorium restricts further processing of the patent application, noting that the requirements for issuance of an FHFC were not satisfied as of the effective date of the statutory moratorium. He also determined that the Teagues should be refunded the \$2,650 purchase price monies. The Teagues have appealed, arguing that equitable title has vested and, therefore, that the FHFC, and eventually a patent, should issue. For reasons we will discuss, we affirm the State Director's determination.

*I. BACKGROUND*

The salient facts underlying this appeal are undisputed. The Teagues filed a mineral patent application with BLM on September 2, 1993, for 27 placer mining claims situated in Owyhee County, Idaho: XYZ 1 - XYZ 4 (IMC 115887 through IMC 115890), XYZ 5 - XYZ 11 (IMC 118752 through IMC 118758), XYZ 14 - XYZ 16 (IMC 118761 through 118763), XYZ 17 - XYZ 19 (IMC 119801 through 119803), W-2 and W-3 (IMC 97968 and IMC 97969), W-6 and W-7 (IMC 97972 and IMC 97973), W-10 - W-12 (IMC 97976 through IMC 97978), W-15 and W-16 (IMC 97981 and IMC 97982), and W-32 (IMC 143546). All 27 claims were located

by the Teagues and each contains 40-acres, except for W-12 which is a 20-acre claim. The claims are situated in Ts. 5 or 6 S., R. 1 E., Boise Meridian. The “W” claims were located in 1984 and 1989 and the “XYZ” claims were located in 1986 and 1987; amended notices of location were filed for all 27 claims on May 24, 1993. During the period from June 22 through August 24, 1994, notice of the patent application was published weekly in a local newspaper, and the required affidavit of publication was filed with BLM on September 8, 1994. On October 3, 1994, BLM sent a letter to the Teagues outlining the remaining actions required for an FHFC, and noting: “We will continue to process the application after we receive these items.”

Meanwhile, Congress imposed a moratorium on processing mineral patent applications through enactment of the Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332, 108 Stat. 2499 (Sept. 30, 1994). Under Section 112, Congress specifically precluded the expenditure of funds to accept or process applications for patent to mining or mill site claims for the 1995 fiscal year, with an exception under Section 113 for pending applications that had met all statutory requirements for patent to issue. 108 Stat. 2519. In response, BLM issued Instruction Memorandum (IM) No. 95-01 on October 4, 1994:

Effective October 1, 1994, no new mineral patent applications may be accepted by the BLM. All applications received on or after October 1, 1994 and through September 30, 1995, are to be returned to the filer without further action.

Only the following applications may be processed:

- (1) Those for which a FHFC was signed before October 1, 1994 and;
- (2) those for which a FHFC was pending in Washington, D.C. as of September 30, 1994.

In compliance with BLM’s October 3 letter, after issuance of the IM, the Teagues submitted a proof of continuous posting and a statement of charges and fees paid as follows: Application fee, \$1,550; purchase price, \$2,650; and publication fee, \$1,539.72. The Teagues also tendered the purchase price monies on October 5, 1994, as evidenced by Receipt and Accounting Advice No. 1676626.

No further processing of the application was performed and nothing more appears in the record until December 15, 2008, when the Teagues filed copies of documents already filed and commented: “If there is any other thing that is lacking, please let us know.” On December 17, 2009, the Teagues petitioned the State Director as follows: “[We] acquired equitable title to the 27 XYZ and W mining claims totaling 1,060 acres as of October 5, 1994. The BLM did not process the Final Certificate as indicated. We request that the BLM immediately issue a Final Certificate . . . .”

## II. APPEALED DECISION

In his January 13, 2010, decision, the State Director initially acknowledged that the Teagues' "request is based on the belief that [they] acquired equitable title to these claims on October 5, 1994." Decision at 1. He then discussed the moratorium on patenting first enacted by Congress in 1994 and observed that this moratorium has been perpetuated by Congress "through every succeeding fiscal year, including fiscal year 2010." *Id.* He noted that the Teagues' purchase price monies and other required documents were not received until after the effective date of the moratorium and cited *R.T. Vanderbilt v. Babbitt*, 113 F.3d 1061 (9th Cir. 1997), which rejected an assertion of vested equitable title where the purchase price monies and other required documents were received after the effective date of the moratorium. The State Director concluded that the Teagues' mineral patent application "[did] not qualify under the grandfather clause and no further action can be taken until the moratorium is lifted." He further determined that because the purchase price monies and other required documents were received after September 30, 1994, there was no vesting of equitable title and, therefore, no authority for BLM to issue the FHFC.

The State Director also instructed that "a refund of your \$2,650.00 purchase price monies is in order. . . . You may be allowed to resubmit funds if Congress authorizes further processing of non-grandfathered mineral patent applications." Decision at 2.

## III. ARGUMENTS

In their statement of reasons, the Teagues contend that the State Director's decision is in error because he did not give appropriate recognition to the Teagues' timely payment of the purchase price per BLM's instruction, arguing that under the principles of equity they have a right to receive title. Their argument may be summarized as follows: BLM authorized payment of the purchase monies to complete the application process; BLM accepted payment and confirmed receipt; their application for patent was complete on October 5, 1994; and, therefore, they possess a constitutionally protected property right. Citing *Benson v. Alta*, 145 U.S. 428 (1892), and *Cook v. United States*, 137 Fed. Cl. 435 (1997), the Teagues assert that equitable title vested when the requested payment was tendered and confirmed. They argue that the Appropriations Act of FY 1995 did not invalidate the acts of filing and payment, only the processing of applications, and therefore equitable title was established despite the moratorium for processing. The Teagues distinguish their situation from that in *Vanderbilt v. Babbitt*, *supra*, stating that BLM's request for payment was issued in that case after the moratorium commenced and was implemented, while in this case the payment was requested and made prior to the State Office's receipt of the IM implementing the moratorium. They assert that the Appropriations Act did not invalidate their payment of the purchase monies and the

filing of required documents, whereby only the processing of those documents (not the vesting of equitable title) was prevented.

The Teagues also argue that BLM has deprived them of procedural and substantive due process, and assert that BLM's inaction has prejudiced and harmed them. They argue that BLM should therefore be estopped from returning their monies or denying them patent under these circumstances. Appellants first point to lapses in the subsequent annual Appropriations Acts under which the moratorium has been perpetuated, whereby, they argue, periods have occurred where BLM had the opportunity to process the application. They explain that the first such lapse was when the Interior Appropriations Act for FY 1996 was not signed until April 26, 1996, and contend that between October 1, 1995 (the start of the 1996 fiscal year), and April 26, 1996, there was no prohibition on BLM's processing patent applications. They state that there have been other years when the Interior Appropriations Acts were not signed until after the commencement of the fiscal year, including FY 2010. The Teagues assert that in each of those periods BLM had the opportunity and should have processed their application.

Appellants argue further that BLM has misinterpreted the statutory language in Section 112 of the 1995 Appropriations Act, and that such misconstruction was perpetuated by the court in *Vanderbilt*. They point to the beginning of Section 112, which reads that "[i]f the House-Senate Conference Committee on H.R. 322 fails to report legislation which is enacted prior to the adjournment of the 103d Congress sine die," as evidencing Congress' expressed intent that the moratorium not become effective until after adjournment *without* enacting new mining statutes. Therefore, they assert, the moratorium was effectuated at the end of November 1994 only when the 103rd Congress adjourned without having enacted new mining laws. To adopt a moratorium beginning sooner than that, they argue, would be contrary to Congress's intended plan to either enact new mining laws prior to adjournment or implement a backup plan for suspending patent applications. They conclude that, under these circumstances, they perfected their patent application with payment of the purchase price on October 5, 1994.

In its response, BLM argues that the Teagues' emphasis on BLM's receipt of the purchase price monies is misplaced and equitable title did not vest. BLM contends that equitable title cannot vest until the Secretary determines that the mining claims to be patented are valid (even when the purchase price has been tendered) and, in this case, the Secretary had not even received the application package. BLM further contends that, as Congress clearly precluded it from processing patent applications after October 1, 1994, BLM's receipt of purchase price monies and other documents on October 5 could not legally vest any rights in the Teagues. BLM also argues that the Teagues have mistakenly asserted a constitutionally protected right to their mining claims because (1) there is no right to a patent where the FHFC has not been

issued and (2) there is no taking without compensation where BLM retains the application for further processing when appropriate. BLM avers that *Vanderbilt v. Babbitt* was correctly decided, and since it is precluded under Sec. 112 from taking further action to process the patent application, the Teagues have not been harmed or prejudiced. BLM contends that any assertion they have been deprived of substantive and procedural due process is without foundation.

BLM contends that the Teagues' argument that the delays in the various Interior Appropriations Acts allowed the opportunity for BLM to process the application during the interim is without merit as the Department was obligated under the Continuing Appropriations Resolutions not to expend federal funds as stipulated under prior, and still efficacious, Appropriations Acts. BLM further asserts that it is not estopped from returning the purchase price or refusing to issue the FHFC in this case, *i.e.*, BLM was obviously unaware of the Appropriations Act prohibition when it sent its letter on October 3, BLM did not induce the applicants to do anything more than what they would have done in the normal course of pursuing their application, and there were no assurances in the October 3 letter that they would receive the FHFC even after all items were received. BLM contends that this is not a situation where estoppel could be justified, as requiring patent issuance would be against the will of Congress.

In a contested matter of procedure, the Teagues have moved to strike the affidavit of Lynn McClure, a land law examiner in the State Office, which BLM has attached to its answer. Arguing that it is not part of the administrative record, the Teagues contend that the document improperly presents facts not in evidence, introduces legal conclusions, and constitutes hearsay; they claim they are without procedural due process to challenge the affidavit. BLM counters that this affidavit merely explains activities not fully set forth in the record and does not prejudice the Board's review. We agree with BLM that the Teagues were afforded an opportunity to respond to the affidavit in their pleadings filed with the Board. We agree with BLM.

Ordinarily, the Board will not reject any evidence as inadmissible, but will weigh its credibility. *See, e.g., U.S. v. Lyle T. Thompson*, 168 IBLA 64, 94 n.21 (2006); *Elizabeth Box*, 166 IBLA 50, 62 n.16 (2005); *Ramona & Boyd Lawson*, 159 IBLA 184, 191 n.8 (2005); *David Q. Tognoni*, 138 IBLA 308, 319 n.8 (1997) ("The rules of evidence are somewhat more relaxed in administrative hearings than elsewhere, so that hearsay evidence may be allowed."). Under the Administrative Procedure Act, "[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence." 5 U.S.C. § 556(d) (2006). In *R.C.T. Engineering, Inc., v. OSMRE*, 121 IBLA 142, 149 n.7 (1991), the Board declined to strike a pleading, explaining that "[t]he Board is capable of discerning the arguments that have merit and those

that do not, and our analysis must ultimately be based on the relevant facts and pertinent law rather than arguments advanced by counsel.” The Board has considered this affidavit and recognizes it for what it is—a document that could have been prepared as an official note for the record, as is often seen with BLM files. Thus, we decline to grant the motion to strike.

#### IV. DISCUSSION

##### A. Equitable Title and Vesting of Right to Patent

[1] It is clear that the Teagues’ request for a patent to be issued pursuant to a vested right is grounded in their asserted claim to equitable title. See SOR at 3. The courts and the Department, including this Board, have given different meanings to the term “equitable title” over the decades. Some cases use the term in the sense in which it is traditionally used in property law, *i.e.*, a beneficial interest in property that usually gives the holder the right to acquire formal legal title. See *Black’s Law Dictionary* (9th ed. 2009) at 1622.<sup>1</sup> Other cases use the term in the sense of a conditional right to title subject to conditions that will nullify that right if not met.<sup>2</sup> Still other cases (though no Departmental decisions) use the term informally as a shorthand reference to a mining claimant’s right to exclusive possession of the claim, the right to extract minerals, and the right to sell, transfer, or mortgage the claim.<sup>3</sup>

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<sup>1</sup> See, *e.g.*, *Benson Mining & Smelting Co. v. Alta Mining & Smelting Co.*, 145 U.S. 429 (1892); *United States v. Shumway*, 199 F.3d 1093 (9th Cir. 1999); *R.T. Vanderbilt Co. v. United States*, 113 F.3d 1061 (9th Cir. 1997); *Swanson v. Babbitt*, 3 F.3d 1348 (9th Cir. 1993); *Neilson v. Champagne Mining & Milling Co.*, 119 F. 123, 125 (8th Cir. 1902); *Teller v. United States*, 113 F. 273, 279-82 (8th Cir. 1901); *United States v. Norman A. Whittaker (On Reconsideration)*, 102 IBLA 162 (1988); *United States v. Utah International, Inc.*, 45 IBLA 73 (1980); *Union Oil Co.*, 65 I.D. 245 (1958); and *United States v. Al Sarena Mines, Inc.*, 61 I.D. 280 (1954).

<sup>2</sup> See, *e.g.*, *Barrick Goldstrike Mines, Inc. v. Babbitt*, No. CV-N-93-550-HDM(PHA), 1995 WL 408667 (D. Nev. Mar. 21, 1994); *Cook v. United States*, 37 Fed. Cl. 435 (1997); *Mouat Nickel Mines, Inc.*, 165 IBLA 305 (2005); *Silver Crystal Mines, Inc.*, 147 IBLA 146 (1999); *United States v. Mineco (On Reconsideration)*, 130 IBLA 314 (1994).

<sup>3</sup> See *Marathon Oil Co. v. Lujan*, 751 F. Supp. 1454, 1459 (D. Colo. 1990), *aff’d in part and rev’d in part*, 937 F.2d 498 (10th Cir. 1991); *Oil Shale Corp. v. Morton*, 370 F. Supp. 108, 124 (D. Colo. 1973) (subsequent appeal and post-remand history (continued...))

In *Mouat Nickel Mines, Inc.*, 165 IBLA 305 (2005), this Board considered what is meant by “equitable title” when the Department is processing mineral patent applications. The appellants there argued that “issuance of the FHFC coupled with payment of the purchase price establishes compliance with the paper work requirements and vests equitable title in the applicant, subject to confirmation by a mineral examiner of a discovery of a valuable mineral deposit.” 165 IBLA at 309. In response, we emphasized the change in status of the application, which results when the paperwork is completed, the purchase price is tendered, *and* the FHFC is issued:

After the publication of notice, receipt of the publisher’s affidavit, receipt of final proof of compliance with the Mining Law, and acceptance of the purchase price, BLM causes the FHFC to be completed. (*BLM Manual*, at 3860, Glossary (Release 3-266, July 9, 1991)). Issuance of the FHFC grants equitable title to the claimant and segregates the land from all forms of entry and appropriation under the public land and mineral laws. *Id.*; see *International Silica Corp.*, 124 IBLA 155, 160 (1992); *Scott Burnham*, 100 IBLA 94, 109-110, 94 I.D. 429, 437 (1987). Issuance of the FHFC “[c]ertifies that the applicant has satisfactorily complied with all of the ‘paperwork’ requirements of the Mining Law (title, proofs, posting requirements, purchase money).” (*BLM Manual*, H-3860-1, ch. VI. A. 2 (Release 3-265, April 17, 1991)); see *United States v. Shumway*, 199 F.3d 1093, 1099 (9th Cir. 1999); *United States v. Garcia*, 161 IBLA 235, 238 (2004); *Solicitor’s Opinion*, M-36990 (Nov. 12, 1997).<sup>[4]</sup>

165 IBLA at 311. The key factor that distinguishes *Mouat Nickle Mines* from the Teagues’ case is issuance of the FHFC.<sup>5</sup> Under the rule there espoused, the Teagues do not have equitable title to the lands sought by their request for patent because the

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<sup>3</sup> (...continued)

omitted); *Hall v. United States*, 84 Fed. Cl. 463, 470-71 (2008); *Kunkes v. United States*, 32 Fed. Cl. 249, 252 (1994), *aff’d*, 78 F.3d 1549 (Fed. Cir. 1996).

<sup>4</sup> The Solicitor, *inter alia*, recommended that the *BLM Manual* be revised to delete discussion of equitable title to eliminate possible confusion as to its import. Sol Op. M-36990 at 10. No such revision has yet been made by BLM. Although IM 2000-111 (Apr. 25, 2000) directed BLM personnel to disregard the *BLM Manual* discussion of equitable title until those revisions were made, BLM allowed that IM to expire by its terms on September 30, 2001. Whether by design or through inadvertence, the discussion of equitable title remains in the *BLM Manual*.

<sup>5</sup> Even then, we noted that the equitable title created by issuance of the FHFC does not constitute an absolute right to a patent. 165 IBLA at 311 n.5 (“A vested right to a mining claim is not established by issuance of the FHFC”); see Sol. Op. M-36990 at 6.

FHFC has yet to issue. But even if it had, their equitable title would not grant them a vested right to patent issuance.

The difficulties of the Department's, and this Board's, past practice of assigning the status of "equitable title" to the bundle of rights earned as a result of completing the "paperwork" requirements by the patent applicant was addressed in a Solicitor's Opinion, *Entitlement to a Mineral Patent Under the Mining Law of 1872*, M-36990 (Nov. 12, 1997), in which the Secretary concurred. While the 1997 Solicitor's Opinion did not specifically address when a patent applicant obtains equitable title, the Solicitor emphasized that a right to patent does not vest until the Secretary has determined that the applicant has complied with all the terms and conditions entitling the applicant to a patent.<sup>6</sup> Sol. Op. M-36990 at 6.

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<sup>6</sup> The processing of an application is well described as follows in the Solicitor's Opinion:

The filing of an application with the BLM commences the mineral patent process. BLM reviews the application to ensure that the applicant has complied with all the paperwork requirements of the Mining Law. If BLM concludes that the paperwork is complete, it requests payment of the patent purchase price. Upon receipt of the purchase money, the BLM State Director forwards the application, together with evidence of posting, publication, payment of the purchase price, and the FHFC, [for review and concurrence, in order, by the Regional Solicitor's Office, the Solicitor, the BLM Director, and the Assistant Secretary of Land and Minerals Management].

With the concurrence of these officials, the Secretary signs an FHFC. The FHFC is the Department's internal administrative recordation of an applicant's compliance with the initial paperwork requirements of the Mining Law – i.e. that the title, proofs, posting requirements, and purchase money have been submitted to the BLM. The FHFC informs the applicant that the “[p]atent may issue if all is found regular and upon demonstration and verification of a valid discovery of a valuable mineral deposit . . . .”

After the Secretary signs the FHFC, the patent application is returned to BLM for verification that the applicant has made a valuable mineral discovery. If the mineral report verifies the discovery of a valuable mineral deposit . . . and BLM believes that all other statutory requirements have been met, BLM recommends that the Secretary sign the Second Half-Mineral Entry Final Certificate (SHFC) and issue the mineral patent.

With BLM's recommendation, the patent follows a path similar to FHFCs [for review and concurrence in issuance of the SHFC and the

(continued...)

Equitable title is not the same as legal title, and while equitable title is a step along that path, it is not the destination sought by appellants—patent issuance. We have found no Board precedent holding, stating, or implying that equitable title, the completion of paperwork, and/or the payment of purchase monies creates a vested right to a patent. The law is clear that as long as legal title remains in the government, the Secretary has the power and duty to determine whether a claim is valid. *E.g.*, *Cameron v. United States*, 252 U.S. 450, 460 (1920); *Ideal Basic Industries v. Morton*, 542 F.2d 1364, 1367-68 (9th Cir. 1976); *see also* Sol. Op. M-36990 at 4.

In *R.T. Vanderbilt v. Babbitt*, the Ninth Circuit Court of Appeals addressed two concerns—the moratorium and equitable title.<sup>7</sup> 113 F.3d at 1065, 1067. As for the latter issue, the Court expressly stated:

Vanderbilt also seeks an order recognizing that it acquired equitable title<sup>6</sup> to the claims, arguing that it fully complied with the statutory requirements for a patent at the time it filed its valid applications and tendered the proper payment. This issue is straightforward as a result of our holding that the moratorium started on October 1, 1994; by that date, Vanderbilt had not yet tendered the payment upon which it bases its claim to equitable title.

....

. . . In fact, the Secretary has no authority to issue a patent until he is satisfied that the applicant has fully complied with the requirements. *Swanson v. Babbitt*, 3 F.3d 1348, 1353 (9th Cir. 1993).

We have twice rejected an argument that *Benson Mining* establishes that the rights to the patents vest upon application. [*Independence Mining Co. v. Babbitt*, 105 F.3d 502, 508 (9th Cir.

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<sup>6</sup> (...continued)

patent] before approval by the Secretary. . . . The SHFC expressly provides that, once the form is signed, the lands are approved for patenting. . . . Legal title to the land is transferred as of the date the Secretary signs the patent.  
Sol. Op. M-36990 at 3-4.

<sup>7</sup> Unlike the Ninth Circuit Court of Appeals, the Department does not so use these phrases because they have very different meanings depending on the specific context in which they are used by BLM. *See Mouat Nickel Mines, Inc.*, 165 IBLA at 311, 311 n.5.

1997)]; *Swanson*, 3 F.3d at 1354. Rather, a claimholder has a right to a patent only after it has complied with the requirements that entitle it to the patent; because validity is one of the requirements, a party's rights do not vest upon application. *Independence*, 105 F.3d at 508. Thus, "no rights [in a patent claim] vest before the Secretary has decided whether to contest the patent claim." *Independence*, 105 F.3d at 508. Upon confirmation that the application is proper, equitable title is treated as having vested on the payment date. *Benson Mining*, 145 U.S. at 430, 12 S.Ct. at 878. Equitable title is not definitively acquired when payment is made.

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<sup>6</sup> We use the phrases "right to a patent," "vested interest," and "equitable title" interchangeably. See *Benson Mining & Smelting Co. v. Alta Mining & Smelting Co.*, 145 U.S. 428, 433, 12 S.Ct. 877, 879, 36 L.Ed. 762 (1892).

113 F.3d at 1067-68.<sup>8</sup> Thus, the Solicitor in 1997 accurately and succinctly expressed the rule, as affirmed by the Secretary, which guides us here:

Under established federal case law, the right to a mineral patent does not vest in the applicant until the Secretary of the Interior determines that the applicant has met all the terms and conditions of the patent, including verification that the applicant effectively discovered a valuable mineral claim.

Sol. Op. M-36990 at 9. The Teagues have not demonstrated, and the record is quite clear on this point, that all statutory requirements leading to patent have been satisfied and therefore they cannot be vested with a right to patent. Further, as long as the Congressional moratorium on patenting remains effective, we find that the Teagues will be unable to obtain equitable title through issuance of an FHFC or proceed further in satisfying those statutory requirements and, thus, that their entitlement to a patent will remain unachievable under the current circumstances.

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<sup>8</sup> Since the Ninth Circuit has jurisdiction over appeals from District Courts within the State of Idaho and this appeal is of a BLM decision in Idaho, *Vanderbilt* is binding on the Board's resolution of this case. While appellants contend that *Vanderbilt* was wrongly decided because the court misread the statute by failing to apply the rules of grammar to dependent clauses, see SOR at 10-11, it is for that court (not this Board) to correct that claimed error.

*B. Effective Date of the Moratorium*

[2] Despite appellants' multiple arguments against the Congressional moratorium on processing patent applications applying to their own application, we cannot find any exception that would change their circumstances when applying the principles set forth in *Vanderbilt*:

As part of the Department of the Interior and Related Agencies Appropriations Act of 1995 ("Appropriations Act"), Congress imposed a moratorium on processing mining patent applications unless revisions were made to the General Mining Act of 1872 by the time Congress adjourned *sine die*.<sup>2</sup>

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<sup>2</sup> Adjournment *sine die* means final adjournment for the session. See Black's Law Dictionary 1385 (6th ed. 1990).

....

... It is undisputed that the date of enactment, and thus the effective date for the grandfather clause [under section 113], was September 30, 1994.

Congress adjourned *sine die* on December 1, 1994,<sup>3</sup> without having enacted legislation from the Conference Committee on H.R. 322. Indeed, Congress has not yet enacted any revisions. Instead, Congress has extended the moratorium and the accompanying grandfather clause through the present in subsequent appropriations acts, employing language with no differences relevant to this case. *E.g.*, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

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<sup>3</sup> See 140 Cong. Rec. S15, 470-71 (Dec. 1, 1994).

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... The district court held that section 112 unambiguously set the starting date of the moratorium as the date of adjournment *sine die* – that is, December 1, 1994. We disagree.

... [T]he district court acted as if the asserted ambiguity was the date of adjournment *sine die*; in fact, the ambiguity identified by the Secretary was whether the effective date was the date of adjournment *sine die* at all (whatever that date turns out to be) or whether it was the date of enactment. Section 112 imposes a moratorium subject to a

condition subsequent – enactment of mining reform legislation by Congress. See Appropriations Act § 112; 108 Stat. at 2519. We agree with the Secretary that the conditional language of section 112 describes the date by which Congress had to enact mining reform legislation in order to stop the moratorium; it does not define the moratorium’s effective date.

....

... [W]e hold that the moratorium began on October 1, 1994[.]

....

... [Vanderbilt] contends that the moratorium only stopped the Secretary’s processing of applications, but that the moratorium did not prevent Vanderbilt from acquiring equitable title under the General Mining Act of 1872 simply by its act of submitting valid applications and tendering the purchase price.

We reject this contention for two reasons. First, the moratorium prevented Vanderbilt from acquiring any additional interest in its mining claims after October 1, 1994. Vanderbilt could not continue to take steps, such as tendering payment, to acquire equitable title after the moratorium began. Second, equitable title does not vest unless the Secretary determines that the claims are valid.

113 F.3d at 1064, 1066, 1067.

Not unlike the Teagues, the applicant in *Vanderbilt* had patent applications pending when the Appropriations Act of 1995 was enacted. By notice issued on September 29, 1994, the applicant was required by BLM to file additional information and to remit payment of the purchase price. Vanderbilt timely mailed these materials and checks for the purchase price to BLM on October 20, 1994, but the purchase monies were returned on the ground that the moratorium suspended all further processing of the patent applications. 113 F.3d at 1064. Adhering to the holding in *Vanderbilt*, we must find that the Teagues had not satisfied certain statutory requirements by the effective date of the moratorium, including the payment of the purchase price and, therefore, conclude that they were not entitled to further processing of their patent application under the moratorium’s grandfather clause (Section 113 of the Appropriations Act).

### C. Continuing Moratorium

We find the Teagues' argument that the moratorium was suspended during periods when the Department was operating under Continuing Resolutions (rather than Appropriations Acts) to be spurious.<sup>9</sup> The example offered by appellants is the Appropriations Act for the 1996 fiscal year. Congress determined on September 30, 1995, under Pub. L. No. 104-31, CONTINUING APPROPRIATIONS, 1996, to fund the activities of the Department as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary *under the authority and conditions provided* in the applicable appropriations Act for the fiscal year 1995 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this joint resolution) which were conducted in the fiscal

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<sup>9</sup> Congress has renewed the moratorium language annually since 1994 except during the fiscal year ending Sept. 30, 2007. See Pub. L. No. 104-134, § 322, 110 Stat. 1321-203 (Apr. 26, 1996) (fiscal 1996); Pub. L. No. 104-208, § 314, 110 Stat. 3009-221 (Sept. 30, 1996) (fiscal 1997); Pub. L. No. 105-83, § 314, 111 Stat. 1591 (Nov. 14, 1997) (fiscal 1998); Pub. L. No. 105-277, § 312, 112 Stat. 2681-287 (Oct. 21, 1998) (fiscal 1999); Pub. L. No. 106-113, § 312, 113 Stat. 1501A-191 (Nov. 21, 1999) (fiscal 2000); Pub. L. No. 106-291, § 311, 114 Stat. 988 (Oct. 11, 2000) (fiscal 2001); Pub. L. No. 107-63, § 309, 115 Stat. 465 (Nov. 5, 2001) (fiscal 2002); Pub. L. No. 108-7, § 307, 117 Stat. 270 (Feb. 20, 2003) (fiscal 2003); Pub. L. No. 108-108, § 307, 117 Stat. 1302 (Nov. 10, 2003) (fiscal 2004); Pub. L. No. 108-447, § 307, 118 Stat. 3093 (Dec. 8, 2004) (fiscal 2005); Pub. L. No. 109-54, § 408, 119 Stat. 550 (Aug. 2, 2005) (fiscal 2006); Pub. L. No. 110-161, § 408, 121 Stat. 2145 (Dec. 26, 2007) (fiscal 2008); Pub. L. No. 111-8, § 408, 121 Stat. 745 (Mar. 11, 2009) (fiscal 2009); Pub. L. No. 111-88, § 408, 123 Stat. 2904 (Oct. 30, 2009) (fiscal 2010); cf. Pub. L. No. 110-5, 121 Stat. 8 (Feb. 15, 2007) (full year continuing resolution for fiscal 2007). However, only in 1996 and 2005 did Congress manage to enact the appropriation acts for the Department prior to the start of the fiscal year and continuing resolutions were necessary.

year 1995 and for which appropriations, funds, or other authority would be available in the following appropriations Acts:

....

The Department of the Interior and Related Agencies Appropriations Act, 1996;

....

SEC. 103. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 104. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

109 Stat. 278. As applied to the circumstances of this case, the language of Congress is clear—the moratorium on processing patent applications continued: Section 103 of the Continuing Appropriations, 1996, provided that the Department was to operate in accordance with the guidelines of the yet to be enacted Appropriations Act for 1996 (which continued the moratorium); and Section 104 precluded the use of funds on activities for which 1995 appropriations were not available. Congress has employed such language for all subsequent continuing resolutions.<sup>10</sup> Accordingly, there has been, contrary to appellants' assertions, no

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<sup>10</sup> See Pub. L. No. 105-46, 111 Stat. 1153 (Sept. 30, 1997) (continuing resolution fiscal 1998); Pub. L. No. 105-240, 112 Stat. 1566 (Sept. 25, 1998) (continuing resolution fiscal 1999); Pub. L. No. 106-62, 113 Stat. 505 (Sept. 30, 1999) (continuing resolution fiscal 2000); Pub. L. No. 106-275, 114 Stat. 808 (Sept. 29, 2000) (continuing resolution fiscal 2001); Pub. L. No. 107-44, 115 Stat. 223 (Sept. 28, 2001) (continuing resolution fiscal 2002); Pub. L. No. 107-229, 116 Stat. 1465 (Sept. 30, 2002) (continuing resolution fiscal 2003); Pub. L. No. 108-84, 117 Stat. 1042 (Sept. 30, 2003) (continuing resolution fiscal 2004); Pub. L. No. 108-309, 118 Stat. 1137 (Sept. 30, 2004) (continuing resolution fiscal 2005); Pub. L. No. 109-289, 120 Stat. 1311 (Sept. 29, 2006) (continuing resolution fiscal 2007); Pub. L. No. 110-92, 121 Stat. 989 (Sept. 29, 2007) (continuing resolution fiscal 2008); Pub. L. No. 110-329, 122 Stat. 3574 (Sept. 30, 2008) (continuing resolution fiscal 2009); and Pub. L. No. 111-69, 123 Stat. 2044 (Oct. 1, 2009) (continuing resolution fiscal 2010) (note that for fiscal years 1997 and 2006 (continued...))

period since October 1, 1994, when the Department has not been subject to the restrictions placed by Congress regarding the processing of mineral patent applications.

*D. Estoppel*

[3] Despite the fact that the Teagues had not satisfied the requirements for patenting by the effective date of the moratorium on October 1, 1994, they argue that BLM is estopped from applying that moratorium to preclude its processing of filings and the payment made by them on October 5, as directed on October 3 with BLM's assurance that their patent would issue upon its receipt of those materials. We have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. *See e.g., Wolfram Jack Mining Corp.*, 176 IBLA 183, 190 (2008). For estoppel to apply under the circumstances of this case, it must be shown that BLM deliberately misled the appellants and that they were ignorant of the moratorium and had relied on BLM's assurance to their detriment. *See Darrell Ceciliani*, 166 IBLA 316, 326 (2006) (quoting the necessary elements for an estoppel established by the Ninth Circuit Court of Appeals in *United States v. Georgia-Pacific Co.*, 421 F.2d 92, 96 (1970), and *Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 104 (1960)). Since no such showing is here made, we reject the Teagues' claim that an equitable estoppel required BLM to issue patent to them.

The record shows that the individuals who sent the BLM letter on October 3, 1994, which requested and represented that patent would issue upon receipt of certain materials, simply did not know that a moratorium had been enacted 3 days earlier. Thus, it cannot be gainsaid that they (or BLM) intended to mislead the Teagues, as by knowingly and intentionally inducing them to act contrary to the Congressional moratorium. A person dealing with the Government is presumed to have knowledge of relevant statutes pertaining to their circumstances. *See e.g., Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007) (citing *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)). Thus, if knowledge of the moratorium were imputed to the BLM personnel who requested additional materials, we would impute that same knowledge to the Teagues when they provided those materials, which would obviate any claim of detrimental reliance based on their erroneous representation that patent would then issue.

Regardless, while estoppel may be invoked where reliance on Governmental statements deprives an individual of a right which he could have acquired, estoppel

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<sup>10</sup> (...continued)

continuing resolutions were not necessary while there was no appropriations act, but a year-long continuing resolution, enacted for fiscal year 2007).

does not lie where the effect of such action would be to grant an individual a right not authorized by law. *Ron Coleman Mining, Inc.*, 172 IBLA at 391; *see also* 43 C.F.R. § 1810(3)(c); *Darrell Ceciliani*, 166 IBLA at 328, and cases cited. Given that their estoppel argument implies the granting of rights through the processing of the patent application contrary to the express will of Congress, we find no merit to the Teagues' estoppel claim. As stated in *Vanderbilt*, 113 F.3d at 1067, an applicant cannot continue to take steps, such as tendering payment, to acquire equitable title after the moratorium began.

#### V. CONCLUSION

The Teagues are not entitled to have their patent application processed by the Department at this time. As they have not shown error in the Director's determination, his assessment regarding the conditional return of the purchase monies appears appropriate – *i.e.*, that it may be resubmitted without prejudice should Congress again allow processing of patent applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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/s/  
James F. Roberts  
Administrative Judge

I concur:

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/s/  
James K. Jackson  
Administrative Judge