

BEFORE THE UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

In the matter of	:
	:
APPLICATIONS	:
	:
OF	:
	:
THE ARCTIC CIRCLE EXPLORATION	:
COMPANY AND SUNDRY OTHER PARTIES	:
	:
For the exemption of the mining	:
of placer gold from surface or	:
open cuts, from the maximum hours	:
provisions of the Fair Labor	:
Standards Act of 1938 as an	:
industry of a seasonal nature,	:
pursuant to Section 7(b)(3) of	:
the Act and Part 526 of the	:
Regulations issued thereunder.	:
	:
Placer Gold	:

	FINDINGS AND DETERMINATION
	OF THE
	PRESIDING OFFICER
	November 6, 1939

Finding on Hearing on
Surface or Open-Cut Mining of Placer Gold

The Arctic Circle Exploration Company and sundry other parties having filed a petition with the Administrator for the exemption of the mining of placer gold from surface or open-cuts from the maximum hours provisions of the Fair Labor Standards Act of 1938 as an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act and Part 526 of the Regulations issued by the Administrator, the Administrator gave notice of a combined public hearing on several surface or open-cut mining industries to be held at the Raleigh Hotel, 12th Street and Pennsylvania Avenue, N. W., Washington, D. C., to commence at 10:00 o'clock, a.m., June 19, 1939, before the undersigned as presiding officer. Pursuant to notice, the undersigned convened the hearing and an opportunity was afforded to all who appeared to present testimony and to question witnesses through the presiding officer. Appearances were entered and supplementary statements filed for and against the application.

As used in this notice of hearing, the mining of placer gold from surface or open-cuts was defined to mean the extraction of such gold from pit, bank or marine deposits by hand or power methods but was not considered to embrace any underground operations.

The scope of this hearing was declared by the notice of hearing to include taking of testimony, hearing of argument and determining whether the surface or open-cut mining of placer gold as defined therein or any subdivision thereof is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder. The present findings relate to the open-cut mining of placer gold in the "more northerly and higher altitude states"^{1/} of Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington and Wyoming and the Territory of Alaska. While the record indicates that the open-cut mining of placer gold is not restricted to the states and territory above listed, no pertinent testimony was offered concerning the operations in other parts of the Continental United States and Territories.^{2/}

The American Mining Congress appeared in support of the applications on behalf of the majority of placer mining operations in the above states and the Territory of Alaska. Specifically, the record shows that the American Mining Congress represents the Alaska Miners Association, the Oregon Mining Association, the Washington Miners and Prospectors Association, the Northwestern Mining Association, the Idaho Mining Association, the Utah Chapter of the American Mining Congress, and the Nevada Mining Operators' Association.

^{1/} Official report of proceedings before the Department of Labor in the matter of application for the exemption of placer gold and clay, etc., p. 314.

^{2/} Id. pp. 314, 315.

The American Federation of Labor appeared in opposition to the application, and a statement in opposition was filed by the International Union of Mine, Mill and Smelter Workers.

The Alaska Miners Association represents approximately two-thirds of the placer gold production of Alaska. It represents for the most part the smaller miners.^{3/}

The Oregon Mining Association represents all of the placer mining operations in that state. The remainder of the Associations apparently represent over 50 per cent of the production in their respective states.

The American Mining Congress, although representing placer mining in California and Colorado, does not ask exemption for operations in these states because the operators therein take the position that they are not covered by the Fair Labor Standards Act.

The general nature of the placer gold mining industry was stated to be the recovery of gold from alluvial materials.^{4/} The recovery process embraces the preparation of the ground (including stripping overburden, thawing, etc.), the excavation of the gold bearing earth and screening and washing this earth to separate out the gold.

Gold bearing earth may be excavated in a number of ways. It is most commonly excavated by bucket dredges, drag lines and by hydraulicking or shooting water under high pressure against bank deposits. Particularly in dredging operations, the preparation of the ground requires most of the productive man-hours. In all instances, the excavated materials together with water are run over sluice boxes in which the gold is recovered either in free state or amalgamated with added mercury. The petitioner states that the raw materials from which gold is extracted may be considered to be water and gold bearing earth.

Approximately 50 per cent of the placer gold production in the Continental United States, territories and possessions is produced in the area covered by the application. This area includes in general, the "more northerly and higher altitude states" and Alaska, but, for reasons set forth above, California and Colorado are not included in this group. The findings made herein are limited to the states on which evidence was presented and do not prejudice the possibility of additional findings for the other placer gold producing states. More than one-half of the placer

^{3/} Id. p. 328.

^{4/} Various publications of the Bureau of Mines define open-cut or surface mining of placer gold as the extraction of gold from auriferous sands and gravel from pit, bank or marine deposits by hand or power methods.

gold produced in the area thus defined is excavated by floating connected bucket dredges. Of the total gold produced in this area more than three-fourths is produced in the Territory of Alaska. 5/

The record indicates that there were some 550 placer mines operating in Alaska during 1938. A few of these were drift mines and several of them were engaged in placering platinum or tin. Almost 3,500 men were employed in these mines in 1938. The typical placer operation employs only a few men. The smaller operations have less than 5 men while the larger dredging operation may employ as many as 100 men. The record does not reveal the number of placer operations and employees outside of Alaska.

Without exception, all Alaska placer mines cease operation at some time during the year. The length of the working season varies from region to region within Alaska. The operating season, in the accepted meaning and practice, is approximately 100 to 130 days. Dredge operations, which have a longer operating season than other types of operations, averaged 133 days during 1937. The firm conducting the largest operations in Alaska operated its dredges during an elapsed period of 266 days in 1937. This period was measured from the date on which the earliest dredge commenced operation until the last dredge ceased operation in the late fall. The span of 266 days does not necessarily refer to the working days of any one of the five dredging operations of this company. Although some of the dredge operations thus continue during a period in excess of six months, the number of workers employed on the dredges themselves is a very small proportion of the total number of employees of those employers 6/ and a negligible proportion of the total number of Alaskan placer mining employees.

In Idaho it is indicated that the placer mining operating season opens between April 15 and May 1 and closes between October 1 and October 15 each year, an over-all period of operation of from five to six months. Operations may not be continuous even during this period due to water shortage.

In Montana operations usually begin May 1 and end November 1 extending over a period of six months. The average normal operating season is only three months, however, due to water shortage.

In Nevada operations may continue sporadically over a period of six months. Limitations to operations in this state seem to be chiefly due to lack of water although in the northern part of the state, freezing temperatures also prohibit operations.

In the State of Oregon there are recognized two production districts,

5/ A negligible proportion of Alaskan placer gold production is recovered from drift mines, which are not included within the scope of these findings because they are underground operations.

6/ This is related to the fact that certain operations such as thawing must precede dredging by several seasons. See p. 73, Bureau of Mines Bulletin No. 259, Placer Mining Methods and Costs in Alaska.

one in the southwest and one in the northeast. In the southwest, the operating season generally extends from January to June while the northeast season extends from March to August or a maximum of six months in both areas.

In Washington, placer operations are limited both by drought and by freezing temperatures. Frost free operations are ordinarily possible over a period of approximately eight months but all operations are shut down from November or December through March and during the frost free season, most of the operations are normally shut down in July and August. Thus, in general, the mines operate actively about three months in the spring and two to three months in the fall.

In the States of Wyoming and South Dakota, the season is said to extend from May 1 to November 15 or about six and one-half months. The controlling factor here is freezing temperatures although water shortage also affects the operations.

Opposition to the granting of an exemption was stated on the basis that the operators of placer mines could more easily afford to comply with the law by paying overtime than those operating lode mines. The petition in opposition indicates that the largest placer mining operator in Alaska produced gold at half of the cost of the largest lode operator in that Territory. This cost advantage enjoyed by placer mine operators over lode mine operators in Alaska was stated also to cover the situation as it exists in the Continental United States. Further objections allege that the exemption would be inapplicable to California and Colorado, for which no application was made, and that the applicants have not yet availed themselves of Section 7(b)(1) of the Act.

The opposition presented no evidence to refute the claim of the applicant that all operations ceased in Alaska and in the "more northerly and higher altitude states" (as defined above) for which exemption is claimed. Neither did the opposition offer any statement in contradiction to the claim of the applicant that such cessation was due to unavailability of materials because of climatic or other natural conditions.

Finding of Fact and Determination

Upon the basis of the whole record I find that:

1. The open-cut mining of placer gold in the States of Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, Wyoming and the Territory of Alaska, is a branch of the open-cut placer gold mining industry as defined in the Notice of Hearing; and

2. The mining of placer gold from surface or open cuts in the above-defined area is characterized by annually recurrent cessation of operations caused by freezing temperatures and water shortage; and
3. Except for maintenance, repair, and sales work the open-cut mining of placer gold in the above-defined area ceases completely at regularly recurring times of the year for a period of approximately six months or more in each part of the area, because due to climatic and other natural causes the materials used by the industry are not available in the form in which they are handled or processed; and
4. The open-cut mining of placer gold in the above-defined area is a branch of an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder.

The application is granted.

This determination is without prejudice to a determination on applications from other placer gold producing states and territories.

Signed at Washington, D. C., this 6th day of November, 1939.

Harold Stein

Harold Stein
Presiding Officer