

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

NOTICE OF HEARING

IN THE MATTER OF THE EXEMPTION OF THE MINING OF PLACER GOLD BY MEANS OF BUCKET DREDGES, DRAG LINES, AND OTHER METHODS EMPLOYING POWER MACHINERY 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 AS AMENDED OF THE REGULATIONS ISSUED THEREUNDER.

WHEREAS, on November 6, 1939, an authorized representative of the Administrator of the Wage and Hour Division, United States Department of Labor, after a public hearing held before him in Washington, D. C. on June 19 and 20, 1939, determined that the open-cut mining of placer gold in the States of Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, and Wyoming and the Territory of Alaska is a branch of an industry and of a seasonal nature and therefore entitled to the seasonal exemption provided in section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526 of the regulations issued thereunder, and

WHEREAS, on January 3, 1940, the Administrator made this exemption effective by publication in the Federal Register, and

WHEREAS, this exemption was extended on April 30, 1940 to include the open-cut mining of placer gold in the State of Colorado, and

WHEREAS, the exemption in the first instance was based upon the following findings:

- "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;" and

WHEREAS, the extension of the exemption to the open-cut mining of placer gold in Colorado was based upon a finding that such mining is similar in all material respects to 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, and

WHEREAS, the International Union of Operating Engineers and sundry other parties have protested the granting of these exemptions on the ground that the mining of placer gold from surface or open cuts by means of bucket dredges, drag lines, and other methods employing power machinery is a separable branch of the placer gold mining industry and does not operate in the same manner and during the same periods as the placer mining of gold by other methods and is therefore not of a seasonal nature within the meaning of Part 526 of the regulations, and


WHEREAS, on the basis of the objections made by the International Union of Operating Engineers and information obtained from other sources, it appears that the mining of placer gold from surface or open cuts by means of bucket dredges, drag lines, and other methods employing power machinery in the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, Wyoming and the Territory of Alaska may not have been properly included within the exemption granted to the mining of placer gold in the above-defined area, since it does not cease operations "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."

NOW, THEREFORE, notice is hereby given of a public hearing to be held at the Finlen Hotel, Butte, Montana, to commence at 10 o'clock a.m. on May 21, before Harold Stein, an authorized representative of the Administrator who shall take testimony, hear argument and receive written statements for the purpose of determining whether the mining of placer gold from surface or open cuts by means of bucket dredges, drag lines and other methods employing power machinery, in the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, Wyoming and the Territory of Alaska:

- (1) Was properly included within the seasonal exemption granted to the placer gold mining industry in the above-defined area, and
- (2) If not, whether it is a separable branch of the placer gold mining industry and of a seasonal nature within the meaning of Part 526 of the regulations.

Any person interested in being heard on this matter may appear at the hearing or file a written statement in lieu of personal appearance. Written statements should be filed with the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C. at any time prior to the date of the hearing or with the Presiding Officer at the hearing.

Signed at Washington, D. C. this 5th day of May, 1941.


Philip B. Fleming, Administrator
Wage and Hour Division
Department of Labor