

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
NEW YORK, NEW YORK

IN THE MATTER OF THE APPLICATION FOR QUALIFICATION OF THE EXEMPTION THAT HAS BEEN GRANTED TO THE OPEN-CUT MINING OF PLACER GOLD 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 January 3, 1940, an exemption was made effective by the Administrator for 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 as a branch of an industry of a seasonal nature, pursuant to section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526 of the regulations issued thereunder; and

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

WHEREAS, the International Union of Operating Engineers and sundry other parties have applied for the exclusion of open-cut mining of placer gold by means of power machinery from the exemption that had previously been granted; and

WHEREAS, in view of these objections and as a result of information obtained from other sources, it was deemed advisable to hold a public hearing at Butte, Montana, on May 21, 1941, before Harold Stein, an authorized representative of the Administrator, who took testimony, heard oral argument, and received written statements for the purpose of determining whether the mining of placer gold from surface or open-cuts by means of bucket dredges, draglines 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; and

WHEREAS, following such hearing the said representative made and duly filed with the Administrator the following findings of fact and determination:

1. There exist separable branches of the placer gold mining industry which are identified by the various methods used to excavate and move the gravel.
2. Placer gold mines employing power machinery to mechanically excavate and move the gravel, within the Territory of Alaska, generally cease operations completely during regularly, recurring times of the year for periods of six months or more, because, due to climatic or other natural conditions, the gravels handled by the industry are not available in the form in which they are normally handled.

3. The open-cut mining of placer gold by means of power machinery in the Territory of Alaska is a branch of an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and Part 526, as amended, of the regulations issued thereunder, and was properly included in the exemption granted on January 3, 1940.

4. About ninety percent of all the placer gold produced by open-cut placer gold mines employing power machinery to excavate and move the gravel within the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington and Wyoming, is produced by those placer mines which, through the use of power machinery, are able to overcome climatic and other natural conditions. These mines, employing power methods, generally operate in excess of six months during each calendar year and maintain an operating season which has no reasonable relation to the 14-week exemption provided in section 7(b)(3) of the Fair Labor Standards Act.

5. The open-cut mining of placer gold by means of power machinery within the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, and Wyoming is a branch of an industry, but is not of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and Part 526, as amended, of the regulations issued thereunder, and should not have been included in the seasonal exemption granted to the open-cut mining of placer gold in the above-mentioned States; and

WHEREAS, on December 30, 1941, the Administrator caused to be published in the Federal Register a Notice of Opportunity, pursuant to the provisions of section 526.7 of the aforesaid regulations, for any person aggrieved by said determination to file a petition with the Administrator requesting a review of the findings and determination of the said representative upon the record of the hearing before such representative; and

WHEREAS, a petition for review of the presiding officer's findings and determination qualifying the exemption granted the open-cut mining of placer gold was filed by the Northwest Mining Association; and

WHEREAS, I have duly considered the issues raised by the petition; and

WHEREAS, the findings and determination of the Administrator's representative have been found to be supported by the record of the proceeding in this case;

NOW, THEREFORE, the petition for review is denied and notice is hereby given that:

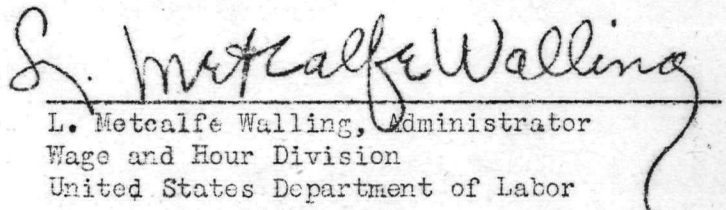
(1) The open-cut mining of placer gold by means of power machinery within the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, and Wyoming is a branch of an industry but is not of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act of 1938 and

Part 526, as amended, of the regulations issued thereunder and should not be included in the seasonal exemption for the open-cut mining of placer gold in the above-mentioned States;

(2) The exemption heretofore granted to the above-mentioned area will cease to become effective on the date this notice appears in the Federal Register.

The notice in the matter of the open-cut mining of placer gold published in the Federal Register on May 1, 1942, (vol. 7, p. 3252) is hereby revoked.

Signed at New York, New York, this 25th day of May, 1942.

  
L. Metcalfe Walling, Administrator  
Wage and Hour Division  
United States Department of Labor

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