

Colorado River tour companies ask federal judge to suspend overtime wage laws on public lands

River Outfitters worry imposing a \$15 minimum wage and overtime rules would render multi-day trips unaffordable and do away with the tradition of "trip salary."

AMANDA PAMPURO / January 6, 2022



Rafters paddle on the Arkansas River in Colorado. (Redmarkviolinist/Wikimedia)

(CN) — Colorado River tour companies asked a federal judge for a preliminary injunction on Thursday that would suspend enforcement of wage laws requiring employees be paid \$15 an hour minimum wage and overtime as part of the special use permit required to operate on federal land.

Duke Bradford, owner of Arkansas Valley Adventure and the Colorado River Outfitters Association, which represents 150 independent operators, sued the U.S. Department of Labor and its Wage & Hour Division on Dec. 7, 2021.

The new rules, which are set to take effect on Jan. 30, 2022, require covered federal contracts and holders of Forest Service and Bureau of Land Management special use permits to pay a minimum wage of \$15 and overtime for work in excess of 40 hours per week.

The river outfitters claim the federal government is arbitrarily imposing the new wage rules on outdoor guides, rendering multi-day tours through the wilderness unaffordable. Colorado's minimum wage is currently \$12.56 and \$9.54 for tipped workers.

"The biggest thing it will do is put some of our products in jeopardy, like overnight rafting trips," testified Duke Bradford, who has owned Arkansas

Valley Adventures since 1998.

With two special use permits, Bradford takes visitors up the Colorado River. Through the White River National Forest, his guides raft the Upper Colorado and Eagle rivers, and run ATVs tours through the Wolford Mountain. One of the company's permits is set to expire in March.

A typical 3-day rafting trip costs \$1,000 per person. River guides are paid a set trip salary varying \$400-\$600 per trip. During a 72-hour expedition, Bradford estimated guides spent 8 to 10 hours per day working.

U.S. Attorney Kate Talmor pointed out that employers are only required to pay workers for hours worked, and not every hour spent away from base camp on a tour, rendering the wages well over \$15 an hour.

Bradford also said he was worried about the impact of replacing the former free-flowing policy of allowing workers to work as much as they wanted with a rigid 4-day, 40-hour work week.

"Many river guides want to work, work, work and save as much as they can," explained David Costlow, executive director of the Colorado River Outfitters Association, in his testimony. "It's a lifestyle choice."

On behalf of the river outfitters, Pacific Legal Foundation attorney Caleb Kruckenberg argued Biden's order went beyond the authority given under the Procurement Act by, "regulating non-government activities offered by non-government entities to non-government customers."

U.S. District of Colorado Chief Judge Philip Brimmer pushed back.

"Doesn't the Procurement Act give some scope of authority to the president to regulate those services such as those the outfitters are providing?" Brimmer countered.

The last three presidents have all weighed in on whether outdoor guides should get federal minimum wage.

Under President Barak Obama in 2014, guides and outfitters fell subject to federal minimum wage requirements under a broad rule implementing a \$10.10 minimum wage for federal contractors. In 2018, President Donald Trump carved out an exemption for seasonal recreation services including "river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps."

While Trump cites the industry's high turnover rate as a reason to exempt it from the federal wage scheme, Biden instead saw high turnover as a reason to enforce higher wage requirements on federal lands.

"A higher wage enhances worker productivity, generates higher quality work and reduces turnover and absenteeism," argued U.S. Attorney Taisa Goodnature in closing argument. "The federal government has an interest in ensuring there are high quality and safe services on its land, instead of fly by night operations."

Goodnature further argued that the river outfitters failed to demonstrate evidence of irreparable harm. She estimated 12,000 outdoor recreation workers will now fall under the wage scheme, though it was unclear how many of them are currently making fewer than \$15 an hour or working overtime hours.

Chief Judge Brimmer said he would issue a ruling before the rules go into effect at the end of the month. The George W. Bush appointee did not indicate how he would decide the motion.

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