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AVA Rafting sues federal government

by Robert Boczkiewicz Herald Correspondent
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A Buena Vista-based outdoor company is suing the federal government, asking a judge to bar the government from implementing a new hourly wage rule. Arkansas Valley Adventures, doing business under the name AVA Rafting and Zipline, filed the lawsuit Dec. 7 in Denver at the U.S. District Court for Colorado.

According to AVA Rafting and Zipline’s website, the business offers “a variety of outdoor activities all across the state.”

Duke Bradford, the company’s owner, and Colorado River Outfitters Association are plaintiffs in addition to the company.



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Their lawsuit states that the association is a nonprofit group representing river rafting outfitters and has more than 150 independently operating members. The vast majority “operate on federal lands under special use permits” from the U.S. Forest Service or Bureau of Land Management.

The plaintiffs are represented by attorneys in Washington, D.C. with Pacific Legal Foundation, based in Sacramento, California. The foundation’s website states it “is a national nonprofit legal

organization that defends Americans from government overreach and abuse.”

Defendants are the labor department, its wage and hour division and President Joe Biden.

“Outfitters and guides on federal lands are not federal contractors,” the 20-page lawsuit states. “Yet President Biden, acting through the U.S. Department of Labor, has now ordered them to be lumped in with federal contractors, and adopt a wage model that is fundamentally incompatible with the way that the guiding industry operates.”

The rule requires the plaintiffs and certain other businesses to pay employees a minimum wage of \$15 per hour, regardless of locality, and overtime wages of at least \$22.50 per hour if they work more than 40 hours per week, according to the lawsuit. The rule takes effect Jan. 30.

According to the lawsuit, the outdoor companies typically pay their employee guides a flat fee on a per-trip basis. “The guides are generally considered covered employees under the Fair Labor Standards Act, and outfitters, therefore, calculate applicable federal minimum wages for the length of a trip and pay a fixed wage above that rate,” the lawsuit states. “The work is seasonal, and many guides work as many hours as they can through the busy season — almost always working more than 40 hours in a week.

“Increasing the wages for guides to \$15 per hour and paying overtime based on that wage would dramatically alter the wage structure for (the association’s) members,” the lawsuit asserts. “The only way many of these outfitters could continue to operate would be to significantly raise the costs of their services to customers and eliminating some multi-day trips.”

The lawsuit contends that if the rule’s wage model is implemented, the company and association members “will have to radically alter how they operate and take away the opportunity for extended adventures in the outdoors, just so they can comply with hourly wage rules that make no sense for backcountry guides.”

“The rule will harm the industry, deprive the guides themselves of their livelihood, and restrict the outdoors to the very wealthy,” the lawsuit further argues. “The agency does not have the authority to issue this rule and it should be set aside by this court.”

Among other arguments, the plaintiffs claim the rule violates the U.S. Constitution because only Congress, not the president, has the authority to enact the rule.

The plaintiffs are asking a judge to issue an order, known as an injunction, to stop the rule from being implemented, as well as a judgment striking down the rule. Under court rules, the defendants are required to respond to the lawsuit after it is served on them.

The Department of Labor estimated the rule would affect more than 500,000 private firms nationwide, including approximately 40,000 firms that provide concessions or recreational services pursuant to special use permits or licenses on federal lands, the lawsuit states. The department estimated the rule would result in transfers of income from employers to employees in the form of higher wage rates of \$1.7 billion per year over 10 years, according to the lawsuit. It also states the department estimated that the average annualized direct employer costs to be \$2.4 million for each firm.

To justify the costs, the Department of Labor listed purported benefits: increased morale and productivity, reduced turnover, reduced absenteeism and reduced poverty and income inequality.