

OUTDOORS

Judge rejects Colorado rafting outfitters' lawsuit protesting mandatory minimum wage for guides

Arkansas Valley Adventures, Colorado Rafting Outfitters Association sued Biden to block rule requiring at least \$15 an hour for federal contractors.

Jason Blevins 4:08 AM MST on Jan 28, 2022



Rafters paddle through rapids on the Arkansas River in Big Horn Sheep Canyon near Cotopaxi, Colorado, on



June 12, 2019. (Mike Sweeney, Special to The Colorado Sun)

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A federal judge has rejected a lawsuit filed by Colorado rafting companies seeking to block a new rule that raised the minimum wage for federal contractors to \$15 an hour.

“We will appeal and continue to press forward,” said Duke Bradford, the owner of Arkansas Valley Adventures who joined the Colorado River Outfitters Association in suing the federal government in December over the new wage rule.

Bradford and the association argued that the wage spike for rafting guides who operate on federal land could raise the cost of rafting trips across the country. They argued that President Joe Biden overstepped his authority by not running the wage hike through Congress and that his executive order issued last year was “arbitrary and capricious.”

TODAY'S UNDERWRITER

U.S. District Judge Philip Brimmer this week dismissed the lawsuit, ruling that since Bradford and the outfitters association “have not shown a likelihood of success on the merits of any of their claims, they have failed to demonstrate a ‘clear and unequivocal’ right to relief.”

This wage fight started in February 2014, when President Barack Obama issued an executive order establishing a minimum wage of \$10.10 for



federal contractors. In 2018, President Donald Trump used an executive order to exempt “seasonal recreational services” workers, like hunting, fishing and rafting guides, arguing the minimum wage hike “threatens to raise significantly the cost of guided hikes and tours on federal lands.”

In April 2021, Biden revoked Trump’s order and increased the minimum wage of federal contract workers to \$15 an hour. The rule, which requires employers to pay \$22.50 an hour for work beyond 40 hours a week, is set to go into effect at the end of January. The rule impacts about 327,000 employees whose wages will increase \$1.7 billion a year over the next decade.

In December, Bradford and the Colorado Rafting Outfitters Association sued the president and the U.S. Department of Labor in U.S. District Court in Denver. The lawsuit also asked the judge to temporarily halt enforcement of the minimum wage mandate until the litigation is over.

Bradford said he sued for rafting companies that rely more heavily on overnight trips. He only counts about 10% of his revenue from overnight trips. He employs anywhere from 250 to 350 guides from May to September.

His permit from the White River National Forest requires him to pay the Forest Service 3% of gross revenues generated by rafting trips on the Eagle



River. That permit expires in March and a new contract will require him to pay the wages set by the new Biden order. He pays his guides \$400 to \$500 each for three-night trips where they shepherd customers who pay about \$1,000 each. Bradford told the court that he would likely end overnight trips “because they will be too expensive for customers,” reads the judge’s decision.

The Colorado River Outfitters Association represents about 50 rafting companies in the state and most pay their guides a per-trip fee rather than an hourly wage. David Costlow, the association’s director, argued before the court that rafting companies “will have difficulty absorbing any increased costs due to the Biden Rule,” Brimmer recounted in his 47-page ruling.



One argument raised by Bradford and the association concerned the rule classifying rafting outfitters as contractors who provide services to the government. They argued that outfitters are not contractors, but permittees working under permits that allow operations on federal land. But Brimmer dismissed that argument, pointing to other federal rules outfitters must follow. He also dismissed the argument that Biden overstepped his authority by regulating minimum wage, pointing out precedent set by Obama and Trump in previous wage orders and exemptions.

Brimmer also dismissed the argument that Biden’s rule was arbitrary and capricious.



"Far from being a 'sudden and unexplained' change, AVA and others have known that the Trump Rule could be rescinded for nearly nine months and, as discussed previously, President Biden and (the Department of Labor) have explained the policy change," Brimmer wrote.

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