

1 Lee A. Storey (011989)
2 Alexandra M. Arboleda (016673)
3 Ethan B. Minkin (019022)
4 Sara V. Ransom (024099)
5 **TSL LAW GROUP, PLC**
6 8096 N. 85th Way, Suite 105
7 Scottsdale, Arizona 85258
8 Telephone: (602) 803-8811
9 lee@tsllawgroup.com
10 alex@tsllawgroup.com
11 ethan@tsllawgroup.com
12 sara@tsllawgroup.com
13 *Attorneys for the City of Flagstaff*

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9
10 **IN AND FOR THE COUNTY OF COCONINO**

11 THE CITY OF FLAGSTAFF,

12 Plaintiff,

13 v.

14 DESERT MOUNTAIN ENERGY CORP.,

15 Defendant.
16
17

No.: CV2020-00624

VERIFIED COMPLAINT (FIRST AMENDED)

(BREACH OF CONTRACT; PUBLIC NUISANCE; PRIVATE NUISANCE; TRESPASS; NEGLIGENCE; STRICT LIABILITY/NEGLIGENCE PER SE; DECLARATORY RELIEF; TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION)

18 By this Amended Complaint filed as of right pursuant to Arizona Rules of Civil
19 Procedure, Rule 15(a)(1)(B), Plaintiff City of Flagstaff (“City” or “Plaintiff”) hereby alleges
20 the following against Defendant Desert Mountain Energy Corp (“DME” or “Defendant
21 DME”):

22 **I. INTRODUCTION**

23 1. This is an action brought by the City of Flagstaff to protect its future drinking
24 water supply from the actions of DME, a thinly capitalized foreign corporation that has
25 declined to seek apparently applicable environmental permits or to explain why such
26 permits are not necessary. DME’s conduct and proposed conduct threatens to cause
27 significant, enduring harm to the City’s future drinking water supply, located below the City
28 owned Red Gap Ranch. That supply is in the Coconino Aquifer (the “C-Aquifer”), which

1 provides water not only to the City, but to multiple communities and hundreds of thousands
2 of people throughout the region. The C-Aquifer is located downgradient of at least one
3 well that DME proposes to utilize for oil, gas, and helium exploration, while steadfastly
4 refusing to disclose the chemicals it proposes to inject into the subsurface or to seek permit
5 approval from the Arizona Department of Environmental Quality “ADEQ”).

6 2. DME has publicly indicated that it wants to turn Northern Arizona into the
7 world’s largest helium producer, which it proposes to do via exploration and production
8 wells to be located on private, federal, and Arizona State lands. DME contends it can do so
9 without impacting the region’s precious groundwater. Yet DME has taken no visible steps
10 to obtain from ADEQ the permit (known as an Aquifer Protection Permit) that would ensure
11 its injection of chemicals into the subsurface does not contaminate the portion of the
12 C-Aquifer designated for future drinking water uses.

13 3. DME’s steadfast refusal to seek state permits or explain why they are not
14 necessary is all the more striking because the United States Bureau of Land Management
15 (“BLM”) recently halted DME’s operations on nearby federal land. In September 2018,
16 BLM entered into two leases with DME allowing DME to engage in oil, gas, and helium
17 exploration work on federal land, likewise situated above the C-Aquifer on which the City
18 relies. The Center for Biological Diversity and Sierra Club sued, contending that changes
19 in well stimulation, acidizing, and fracking practices required that the environmental
20 impacts of DME’s proposed operations be given further scrutiny under the National
21 Environmental Policy Act (“NEPA”). *First Amended Complaint, Doc. 25, Center for*
22 *Biological Diversity v. United States*, No. 3:19-cv-08204 (D. Ariz.) (Oct. 1, 2019). BLM
23 subsequently stipulated that additional NEPA analysis was required. Stipulation of
24 Dismissal without Prejudice, Doc. 41 (Feb. 19, 2020).

25 4. The scrutiny of the federal government has pushed DME to state land; NEPA
26 applies to federal actors but not state ones. Unfortunately, the well at issue in this litigation,
27 like the others halted by BLM, is drilled within the C-Aquifer. Even worse, the well is
28 directly upgradient of the City’s Red Gap Ranch water supply development property. Over

1 the past 15 years, the City has invested at least \$11,000,000 in the Red Gap Ranch, knowing
2 that additional access to the C-Aquifer would be required to meet the City's future needs.
3 In truth, at any price, Red Gap Ranch is unique and irreplaceable.

4 5. Among other things, Aquifer Protection Permits ("APP") require permit
5 holders to post financial assurance capable of addressing any environmental damages
6 caused by their operations. DME's circumvention of the ADEQ permitting process leaves
7 its negligible bond to the State of \$25,000 as the only readily accessible DME assets.

8 6. DME's most recent unaudited, condensed consolidated interim financial
9 statements through June 2020 ("2020 Financial Statement") acknowledged that the
10 company has "incurred operating losses since inception, does not have positive operating
11 cash flow, minimal income from investments, and there can be no assurances that sufficient
12 funding, including adequate financing, will be available to explore its mineral properties
13 and to cover general and administrative expenses necessary for the maintenance of a public
14 company." DME also reported an accumulated deficit of \$20,424,754. A true and correct
15 copy of the 2020 Financial Statement is attached hereto as **Exhibit 1**.

16 7. DME's 2020 Financial Statement indicates that it would not be able to pay
17 damages to the City or fund any remediation that may be required should it contaminate or
18 degrade C-Aquifer water quality.

19 8. An APP is required to prevent the irreparable injuries posed by the helium
20 and hydrocarbon mining activities DME has engaged in, and plans to continue to engage
21 in, within two (2) miles of Red Gap Ranch.

22 **II. PARTIES**

23 9. The City is a municipal corporation of the State of Arizona located within
24 Coconino County, Arizona.

25 10. DME is a foreign for-profit business domiciled in the State of Nevada and
26 authorized to conduct business in the State of Arizona.

27 **III. JURISDICTION AND VENUE**

28 11. Defendant DME is conducting business within Coconino County, Arizona.

1 12. Defendant DME has an interest in certain lands within Coconino County,
2 Arizona wherein it intends to conduct business including, but not limited to, well drilling
3 for exploration or operations related to helium and hydrocarbon mining.

4 13. Jurisdiction is proper before this Court because the lands and conduct giving
5 rise to this action occurred or may be found in Coconino County, Arizona.

6 14. Venue is proper in this Court pursuant to A.R.S. § 12-401(12) because it
7 relates to irreparable harm and damage to property owned by the City within Coconino
8 County, Arizona.

9 **IV. FACTUAL ALLEGATIONS SUPPORTING CLAIMS**

10 **a. The City purchased and has invested millions in Red Gap Ranch to**
11 **develop potable water supplies for its future population.**

12 15. The City, with more than 75,000 residents, is the largest community in
13 northern Arizona. It also hosts more than 5,000,000 tourists annually.

14 16. The City has enjoyed economic and population growth for several decades,
15 and anticipates that its population will double within the next fifty years.

16 17. To accommodate the municipal needs of its continued and anticipated
17 population growth, including providing safe drinking water for residents and visitors, in
18 2005 the City purchased 8,500 deeded acres of land and several thousand acres of State
19 lands with existing grazing leases along the I-40 corridor.

20 18. The City's plans to use the land, which is commonly referred to as "Red Gap
21 Ranch," as a future source of municipal water supply has been a frequent subject of attention
22 in the press and in the community.

23 19. The City's plans for Red Gap Ranch are to drill multiple water supply wells
24 into the C-Aquifer to withdraw groundwater, which will then be conveyed via pipeline and
25 introduced into the City's existing municipal water infrastructure system.

26 20. The City has completed certain aspects of its plans for Red Gap Ranch,
27 including completing a Phase I engineering analysis confirming the feasibility of the
28 pipeline project in 2009, drilling multiple water supply wells in 2011, securing a

1 Designation of Adequate Water Supply from the Arizona Department of Water Resources
2 in 2013, entering into an agreement with the Arizona Department of Transportation to
3 advance the process of approving a water pipeline right of way in 2016, and completing
4 multiple water quality analysis to confirm that the water underlying Red Gap Ranch
5 continues to be suitable for domestic uses.

6 21. A Phase II engineering analysis is slated for completion within the next year,
7 as are the City's other on-going measures to complete its plans to use Red Gap Ranch for
8 the purpose of supplying municipal water to its population.

9 22. The City has spent millions of dollars developing Red Gap Ranch to serve as
10 a future municipal water supply source.

11 23. The City continues to be committed to completing development of Red Gap
12 Ranch to serve as a future municipal water supply source.

13 24. Hydrogeologic analysis confirms that the area in and around Red Gap Ranch
14 is the only feasible source of water suitable for municipal use in the region available to the
15 City.

16 25. Maintenance of the quality of the existing waters, including ensuring that the
17 waters are free from harmful or toxic substances that will render it inadequate for human
18 consumption is paramount as the City has no feasible alternatives to supply its future
19 population with water suitable for its municipal needs.

20 **b. The dangers of helium and hydrocarbon mining.**

21 26. DME is in the business of mining for helium and hydrocarbons.

22 27. DME has secured access to thousands of acres of land throughout Northern
23 Arizona, including lands near the Grand Canyon as well as near Red Gap Ranch.

24 28. DME representatives publicly indicated a desire to significantly exploit any
25 helium and hydrocarbon reserves in Northern Arizona. DME's former Chief Executive
26 Officer commented that the "Holbrook Basin has the potential to be one of the world's
27 leading sources of helium ...[.]" See Helium producer leases land, environmentalists worry

1 - Elemental (elementalreports.com) (last accessed December 31, 2020), attached as
2 **Exhibit 2.**

3 29. DME’s mining operations include what is commonly referred to as acidizing
4 or “fracking.”

5 30. Even if DME’s mining operations do not amount to “fracking,” the
6 constituents that it may introduce during the course of its efforts to extract helium and
7 hydrocarbons may include chemicals and other compounds that are potentially harmful to
8 human health or otherwise degrade water quality.

9 31. Leases like those secured by DME for the purposes of mining in Northern
10 Arizona have already raised concerns of Arizona U.S. Representative Tom O’Halloran, and
11 resulted in lawsuits regarding water contamination and harms to endangered species. *See*
12 “Lawsuit claims leases threaten Northern Arizona groundwater,” July 15, 2019,
13 myheraldreview.com (last accessed December 31, 2020), attached as **Exhibit 3**; July 15,
14 2019 Press Release, Lawsuit Challenges Fracking Leases Threatening Northern Arizona
15 Groundwater - Center for Biological Diversity (last accessed December 31, 2020), attached
16 as **Exhibit 4**; Helium producer leases land, environmentalists worry - Elemental
17 (elementalreports.com) Exhibit 2.

18 **c. Since early 2019, DME has been on notice of the City’s objections to**
19 **mining activities that could threaten the quality or accessibility of its**
20 **future water supplies, including those underlying Red Gap Ranch.**

21 32. In early 2019, after representatives of DME approached the City for
22 permission to cross Red Gap Ranch for the purpose of exploring whether it could engage in
23 seismic testing to mine for helium on nearby lands owned by the Arizona State Lands
24 Department (“ASLD”), the City and DME engaged in discussions regarding the City’s
25 safety concerns pertaining to DME’s anticipated business activities.

26 33. DME knew that Red Gap Ranch was the site of the City’s on-going
27 development of its future water supplies.
28

1 34. The City signed a Memorandum of Understanding with DME (the “DME
2 MOU”) that provided, among other things, that DME and the City would “work together
3 on a cooperative basis to evaluate potential resources and if mutually beneficial, to develop
4 reasonable plans for the strategic development of helium and hydrocarbon resources in the
5 greater Flagstaff region and in Coconino County generally[.]” DME MOU at p. 2, attached
6 hereto as **Exhibit 5**.

7 35. In furtherance of the cooperative nature of the DME MOU, the parties agreed
8 to “share all available technical and geological data related to helium and hydrocarbon
9 resources in the Flagstaff region and Coconino County generally” and also that “DME will
10 fully consult with Flagstaff concerning each major exploration, drilling, development or
11 production program in the area....” DME MOU at p. 2.

12 36. The DME MOU noted the parties would only “encourage access” to helium
13 or hydrocarbon resources “which are not in designated national or state parks or are
14 otherwise recognized as highly sensitive from the standpoint of environmental, water
15 recourses, cultural or existing grazing or livestock considerations.” DME MOU at p. 2.

16 37. DME knew, or reasonably should have known, that Red Gap Ranch is a
17 “highly sensitive” area under the DME MOU wherein the City would *not* encourage DME’s
18 access for mining activities.

19 38. In addition to the DME MOU, the City and DME entered a License for Access
20 and Seismic Testing on Red Gap Ranch (the “DME License Agreement”). A true and
21 correct copy of the DME License Agreement is attached hereto as **Exhibit 6**.

22 39. By the DME License Agreement, the parties acknowledged that the lands
23 comprising “Red Gap Ranch” were acquired by the City “for their water rights.”

24 40. Also pursuant to the DME License Agreement, the City authorized DME to
25 cross Red Gap Ranch via designated rights of way to complete its due diligence on
26 neighboring ASLD lands and agreed that it would not charge licensing fees in exchange for
27 DME conducting limited seismic testing on City lands as long as DME bore the costs of
28 such testing and provided the City with the results of that testing.

1 41. In March 2019, in response to public concerns, then Chief Executive Officer
2 of DME, Mr. Olian Irwin, is quoted by Scott Buffon of the Arizona Daily Sun stating that
3 DME “won’t do a well for helium if there’s any danger of contaminating the water supply
4 at all,” further remarking “It’s just not going to happen.” A true and correct copy of Mr.
5 Buffon’s article is attached hereto as **Exhibit 7**.

6 42. Following public outcry regarding the potential threats posed by DME’s
7 anticipated operations, in March 2019 the City determined not to proceed with the DME
8 MOU and terminated the DME License Agreement.

9 **d. DME turns to state trust lands near Red Gap Ranch after its efforts to**
10 **conduct operations on federal land in Northern Arizona come under**
11 **scrutiny.**

12 43. After DME leased tens of thousands of acres of land in the Holbrook Basin
13 in Northern Arizona for the purpose of engaging in helium and hydrocarbon mining,
14 environmental groups sued the Bureau of Land Management (“BLM”), asserting that BLM
15 did not undertake an adequate analysis of the potential impacts of DME’s operations before
16 authorizing the leases with DME (the “DME Lease Litigation”).

17 44. In the DME Lease Litigation, Plaintiffs alleged, among other things, that the
18 leases extended by BLM to DME and other mining interests cause water quality and
19 quantity degradation, “especially where oil and gas extraction relies on newer technologies
20 like hydraulic fracking and acidizing— both of which are likely to be used for development
21 of these parcels. These technologies require staggering quantities of water, which may
22 further deplete the C-Aquifer, dewater adjacent water wells, or reduce flows in nearby
23 surface waters. These production techniques also generate pollutants and wastewater which
24 can contaminate water supplies through surface spills or migration of injection liquids into
25 groundwater.” See October 1, 2019 First Amended Complaint, *Center for Biological*
26 *Diversity, et al. v. Bureau of Land Management, et al.*, United States District Court for the
27 District of Arizona, No. CV-19-08204-PCT-MTL at paragraph 113.

28 ///

///

1 45. Upon information and belief, the DME Lease Litigation was recently resolved
2 by stipulation, with BLM agreeing that it needed to update its NEPA analysis before issuing
3 the leases.

4 46. Upon information and belief, because the lands that are the subject of the
5 DME Lease Litigation are under further environmental scrutiny, DME turned its focus to
6 the Arizona state trust lands near the City's water supply wells.

7 **e. DME fails to notify the City of its on-going efforts to engage in helium**
8 **mining activities within two (2) miles of its future municipal water supply**
9 **wells.**

10 47. After it ended the DME MOU and noticed its termination of the DME License
11 Agreement, City did not hear further from DME regarding any plans to proceed with helium
12 exploration near Red Gap Ranch.

13 48. The City's notice of termination of the DME License Agreement did not, by
14 its terms, cause the agreement to end until six months after the date of notice of termination.

15 49. Upon information and belief, after the City noticed termination of the DME
16 License Agreement, but before it expired by its terms, DME entered Red Gap Ranch and
17 completed seismic testing.

18 50. DME did not notify the City that it was completing seismic testing at Red Gap
19 Ranch. The City did not charge DME licensing fees.

20 51. Until the City filed this lawsuit, DME did not share the results of the Red Gap
21 Ranch seismic testing with the City despite its obligation to do so pursuant to the DME
22 License Agreement.

23 52. Upon information and belief, DME did not notify the City of its entry into
24 and completion of seismic testing at Red Gap Ranch because DME knew that the City
25 would then inquire as to and monitor DME's plans to undertake mining operations near Red
26 Gap Ranch.

27 53. Upon information and belief, before this litigation was filed, DME did not
28 share the results of seismic testing at Red Gap Ranch with the City despite DME's
obligation to do so under the DME License Agreement because DME knew that the City

1 would then inquire as to and monitor DME’s plans to undertake mining operations near Red
2 Gap Ranch.

3 54. Via publicly available documents, in late November 2020, the City
4 discovered that DME had secured Well Permit No. 1255, which allows it to drill a well
5 labeled “Desert Mountain 26-1 State” (the “Well”) for the purpose of mining helium and
6 hydrocarbon.

7 55. The Well is located within two miles of Red Gap Ranch. A map depicting
8 the location of the Well site and its proximity to Red Gap Ranch is attached hereto as
9 **Exhibit 8.**

10 56. Well permit No. 1255 was issued by the Arizona Oil and Gas Conservation
11 Commission (“AOGCC”) on November 18, 2020. A true and correct copy of Well Permit
12 No. 1255 is attached hereto as **Exhibit 9.**

13 57. The City has obtained DME documents submitted by DME to the AOGCC to
14 secure Well Permit No. 1255 (the “Well Permit Application”). True and correct copies of
15 all documents the City obtained from AOGCC related to DME’s Well Permit Application
16 are attached hereto as **Exhibit 10.**

17 **f. DME misrepresents “local support” of its proposed mining operations**
18 **and omits its 2020 Financial Statement, the DME Lease Litigation, and**
19 **the City’s objections in its application to secure Well Permit No. 1255.**

20 58. In the Well Permit Application, DME represents in the Application that it has
21 met with “local leaders” and “legislators” regarding its project and has been “welcomed”
22 and encouraged by those representatives.

23 59. DME does not identify the governments or local leaders that it met with, but
24 it has not met with representatives of the City with respect to the Well despite its knowledge
25 of the City’s objections to its operations being in such proximity to its drinking water
26 supplies.

27 60. DME does not disclose any of the past objections or concerns raised by the
28 City in its Well Permit Application.

1 61. DME represents government support of its project to AOGCC, despite that it
2 neglected to consult with the government that owns the land adjacent to its Well Permit and
3 has previously voiced multiple concerns regarding any well or mining operations near Red
4 Gap Ranch.

5 62. Upon information and belief, DME made representations regarding support
6 for its operations in the Application and omitted reference to the City's objections to its
7 intended operations near Red Gap Ranch in the hopes that the City would not become aware
8 of DME's Application

9 63. In the Well Permit Application, DME omits reference to its 2020 Financial
10 Statement and the DME Lease Agreement.

11 64. Upon information and belief, DME omitted reference to its financial
12 statement and the DME Lease Litigation because the financials reveal that DME is not
13 financially capable of remediating any harms its operations may cause to the C-Aquifer,
14 and the DME Lease Litigation indicates that DME engages in acidizing, fracking and other
15 "discharge" activities in its operations.

16 **g. DME ignores the City's objections and requests for disclosure of its**
17 **construction and operation precautions, and drills the Well.**

18 65. Upon discovery of Well Permit No. 1255, the City wrote to DME to express
19 its objection to construction of any Well without assurances that the construction and
20 subsequent operations will utilize practices and materials that would not contaminate the
21 C-Aquifer underlying Red Gap Ranch.

22 66. The City requested that DME contact it to discuss its planned construction
23 and operations.

24 67. The City disclosed that if it did not hear from DME, it would proceed with
25 litigation, including a request for an order to prohibit or halt any drilling.

26 68. A true and correct copy of the City's correspondence to DME is attached
27 hereto as **Exhibit 11**.

28

1 69. The City encountered difficulties serving the letter upon DME’s statutory
2 agent.

3 70. Specifically, DME’s statutory agent at first inaccurately claimed that it was
4 *not* DME’s statutory agent, and refused to accept the correspondence from the City until
5 the City’s runner showed the agent a print-out identifying it on the Arizona Corporation
6 Commission website.

7 71. DME received the City’s December 7, 2020 correspondence no later than
8 December 8, 2020.

9 72. DME did not contact the City to discuss or alleviate the concerns expressed
10 in the City’s correspondence. Instead, on December 8 DME allegedly “completed drilling”
11 of the Well, and on December 9, 2020, DME completed “initial remediation.” *See*
12 December 14, 2020 Press Release issued by DME, attached as **Exhibit 12**.

13 **h. DME’s application to secure Well Permit No. 1255 indicates that it has**
14 **and will use pollutants, toxic materials or other harmful constituents**
15 **should it be allowed to proceed with construction and operations.**

16 73. Per documents that the City has been able to obtain to date, DME intends to
17 drill an exploratory well down to the “base treatable water” of the C-Aquifer.

18 74. It is unclear how DME derived the depth of “base treatable water” within the
19 C-Aquifer.

20 75. Upon information and belief, DME intends to (or at least believes it can)
21 contaminate waters within the C-Aquifer below the “base treatable water” level it has
22 identified.

23 76. DME reportedly intends to drill to a total depth of 2000 feet and cement the
24 entire length of the casing.

25 77. DME would then use a perforating tool to punch holes through the well casing
26 in the zones that appear most promising for production of helium gases and hydrocarbon.

27 78. Although DME represents that the well casing will be sealed through the
28 Kaibab, Coconino, and Supai formations, which are the primary water bearing formations,
issues with construction, including inadequate maintenance or use of toxic constituents in

1 the mining process once perforations are completed along the well casing can allow a
2 variety of contaminants to be introduced into the C-Aquifer (and the other aquifers through
3 which DME's Well traverses) while the Well is under construction and during its period of
4 use.

5 79. Wells of the type described by DME in its Well Permit No. 1255 are
6 frequently in operation for decades.

7 80. DME reportedly drilled the Well using the air rotary method, with the addition
8 of drilling fluid additives, which are essentially "misting" agents to assist in lifting cuttings
9 if necessary.

10 81. The air rotary method disclosed by DME allows it to commence operations
11 quickly if the Well strikes a deposit of the helium it wishes to extract, but the method that
12 DME has selected also creates the risk that if it encounters highly fractured zones or large
13 quantities of water, DME may have to change drilling methods, which would include
14 altering its drilling fluid additives.

15 82. Misting agents are usually detergent based foaming compounds.

16 83. Given that the boring will penetrate a drinking water aquifer, the drilling
17 fluids, including the foaming agent should be a National Sanitation Foundation ("NSF")
18 certified product to ensure it is safe for drinking water use.

19 84. The same requirement should apply if they have to switch drilling fluids due
20 to formation conditions - all drilling fluids should be certified to NSF Standard 60.

21 85. Nothing in DME's publicly available documents represents or guarantees that
22 DME will only use NSF Standard 60 drilling fluids.

23 86. DME represents itself to be a concern with experience in drilling oil wells,
24 which frequently use diesel fuels or diesel fuel additives as drilling fluids.

25 87. Such additives are not safe for human consumption or other municipal uses.

26 88. Even if it does not use diesel fuel constituents, other drilling fluids like brine
27 degrade water quality, rendering it unfit for human consumption.

28

1 89. The DME’s Well Permit Application has no oversight or monitoring plan.

2 **i. Any pollutants, toxic materials or other harmful constituents introduced**
3 **by DME threaten to contaminate the City’s Red Gap Ranch wells.**

4 90. If DME does not use NSF Standard 60 certified drilling fluids in the Well, it
5 could contaminate the C-Aquifer.

6 91. The C-Aquifer is the source of the City’s municipal water supply wells at Red
7 Gap Ranch.

8 92. Based upon the location of the Well, any pollutants or toxic substances
9 introduced into the Well—now or in the future—or released by operations of the well into
10 the C-Aquifer will be upgradient of Red Gap Ranch.

11 93. Any pollutants or toxic chemicals or other harmful constituents like brine
12 introduced into the Well will migrate towards the municipal water supply wells located at
13 Red Gap Ranch.

14 94. As the Well is within two miles of the City’s Red Gap Ranch wells, and is
15 up-gradient of the Red Gap Ranch wells, any such contaminants would migrate to the City’s
16 future municipal supply wells, and may result in water unfit for human consumption.

17 95. Despite its request, the City has not received documentation from DME
18 confirming that it has, and will continue to, use NSF Standard 60 certified drilling fluids
19 and otherwise adhere to best practices with respect to its operations to guard against
20 contamination of the C-Aquifer groundwater that will migrate to Red Gap Ranch.

21 96. Should DME’s air rotary method result in the need to change drilling
22 additives, it is unclear whether DME would disclose its changed chemical additives.

23 97. DME has not indicated that it intends to secure an Aquifer Protection Permit
24 from ADEQ.

25 98. Despite request, DME has not pledged that it will **not** use harmful chemical
26 additives or brines that could degrade aquifer water quality.

27 99. DME has not pledged to allow oversight and monitoring by the City.

28

1 100. DME’s reference in its Well Permit Application to “base treatable water”
2 indicates that DME is making a distinction regarding the lowermost extent of potential
3 drinking water, which implies that DME inaccurately believes it is authorized to pollute
4 water below this depth.

5 101. In December 2020, despite known objections of the City, DME purportedly
6 completed construction of the Well, which terminates within the C-Aquifer.

7 102. The Well provides an avenue for introduction of harmful or toxic chemicals
8 that cannot (or at least cannot easily) be extracted once introduced, thereby risking
9 irreversible and irreparable harm and injury to the C-Aquifer, which is the source of
10 multiple municipal water supplies, including the City’s. The City is particularly at risk of
11 irreparable harm and injury as its wells at Red Gap Ranch, the site of its future municipal
12 water supplies, are down gradient and within two miles of DME’s proposed Well such that
13 any constituents introduced by DME will migrate to the Red Gap Ranch wells.

14 103. The City is not the only government irreparably injured by contamination of
15 groundwaters that has or will occur by virtue of DME’s well construction and mining
16 operations.

17 104. In 2011, the City and the Navajo Nation entered a stipulated agreement
18 concerning development of the City’s future municipal water supply at Red Gap Ranch (the
19 “Navajo Stipulation”). A true and correct copy of the Navajo Stipulation is attached as
20 **Exhibit 13.**

21 105. Red Gap Ranch is bordered by the Navajo Reservation to the north, and the
22 Hopi Tribe’s Hart Ranch to the west.

23 106. The C-Aquifer flows from the DME Well north through Red Gap Ranch
24 before reaching the Navajo Reservation.

25 107. Among other things, the Navajo Stipulation provides the Navajo Nation with
26 access to certain municipal water supplies developed by the City at Red Gap Ranch.

27 108. The Navajo Stipulation provides for pumping protection zones where the City
28 may withdraw groundwater without objection by the Navajo Nation.

1 119. DME’s reference in its Well Permit Application to “base treatable water”
2 indicates that DME intends to pollute C-Aquifer water below that “base treatable water”
3 depth.

4 120. DME’s assertion that it will not engage in “large hydraulic fracturing”
5 indicates that it will engage in hydraulic fracturing at a smaller scale.

6 121. Upon information and belief, DME will engage in acidizing, which involves
7 the injection of acids and other chemicals down the well, which may remain in the
8 C-Aquifer.

9 122. Based upon the location of the Well, any pollutants or toxic substances
10 introduced into the Well—now or in the future—or released by DME’s operations of the
11 Well into the C-Aquifer will be upgradient of Red Gap Ranch.

12 123. As the Well is within two miles of the City’s Red Gap Ranch wells, and is
13 up-gradient of the Red Gap Ranch wells, any such contaminants would migrate to the City’s
14 future municipal supply wells, and may result in water unfit for human consumption.

15 124. DME’s refusal to apply for an Aquifer Protection Permit, its refusal to
16 disclose its drilling additives, and its decision to proceed with drilling the Well over known
17 objections of the City and the proximity of its Well to Red Gap Ranch, demonstrate that
18 has, and will continue to, engage in an unreasonable interference with the rights of the
19 citizens of Northern Arizona to safe, potable municipal water supplies.

20 125. DME’s activities and planned operations cause an unreasonable and
21 substantial interference with the City’s use of Red Gap Ranch as a future municipal water
22 supply by degrading C-Aquifer waters or rendering those waters unfit for human
23 consumption.

24 126. DME’s 2020 Financial Statement indicates that it is unable to pay for any
25 aquifer remediation that its activities may require.

26 127. The City is entitled to injunctive relief to prevent irreparable injury to water
27 quality of the C-Aquifer.

28

1 COUNT THREE

2 (Private Nuisance)

3 128. The City incorporates and re-asserts the prior paragraphs of the Complaint as
4 if fully set forth herein.

5 129. The City’s municipal wells at Red Gap Ranch tap into the C-Aquifer.

6 130. DME’s reference in its Well Permit Application to “base treatable water”
7 indicates that DME intends to pollute C-Aquifer water below that “base treatable water”
8 depth.

9 131. DME’s assertion that it will not engage in “large hydraulic fracturing”
10 indicates that it will engage in hydraulic fracturing at a smaller scale.

11 132. Upon information and belief, DME will engage in acidizing, which involves
12 the injection of acids and other chemicals down the well, which may remain in the
13 C-Aquifer.

14 133. Based upon the location of the Well, any pollutants or toxic substances
15 introduced into the Well—now or in the future—or released by DME’s operations of the
16 Well into the C-Aquifer will be upgradient of Red Gap Ranch.

17 134. DME’s conduct drilling the Well, and other anticipated conduct and
18 operations of DME have, and continue to, threaten to contamination the C-Aquifer in close
19 proximity to Red Gap Ranch, thus invading the City’s interest in the private use and
20 enjoyment of property that it owns and has openly developed as a municipal water supply
21 source.

22 135. DME’s refusal to apply for an Aquifer Protection Permit, its refusal to
23 disclose its drilling additives, and its decision to proceed with drilling the Well over known
24 objections of the City and the proximity of its Well to Red Gap Ranch, demonstrate that
25 DME’s conduct is both intentional and unreasonable, negligent, or at a minimum,
26 undertaken in reckless disregard for the harms caused and continuously threatened.

27 ///

28 ///

1 146. Contaminants introduced into the Well have, or will, migrate to the City's
2 future municipal supply wells, and may result in water unfit for intended uses.

3 147. DME's activities and planned operations have, or at they continue will, result
4 in a tangible invasion of the City's property.

5 148. DME is aware that its activities and planned activities will result in
6 groundwaters flowing under and thus intruding into Red Gap Ranch, including within
7 hydrologically connected fractured zones or cones of depression of the wells at Red Gap
8 Ranch that withdraw such migrating groundwaters.

9 149. Should DME be allowed to continue operations that may contaminate
10 C-Aquifer groundwater, the City will suffer injury in the form of loss of the millions of
11 dollars it has invested developing Red Gap Ranch as a future municipal drinking water
12 supply.

13 150. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate
14 water contamination or compensate the City for injuries to Red Gap Ranch.

15 151. The City is entitled to injunctive relief to prevent the irreparable harms to
16 water quality and the Red Gap Ranch property and municipal wells.

17 152. Alternatively, or additionally, the City is entitled to an award of damages in
18 an amount to be determined at trial but in no event less than the millions in tax payer dollars
19 the City has spent developing Red Gap Ranch over the past 15 years or the diminution of
20 property value resulting from DME's trespass.

21 **COUNT FIVE**

22 **(Negligence)**

23 153. The City incorporates and re-asserts the prior paragraphs of the Complaint as
24 if fully set forth herein.

25 154. DME engages in well construction and related mining operations for profit.

26 155. DME's well construction and related mining operations involve use and
27 potential introduction of potentially hazardous chemicals, constituents or other materials
28 into underground aquifers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

156. DME owes a duty to the public to engage in its operations in a manner that does not pose or result in harms to the public health, welfare and safety by contaminating or degrading aquifer water quality.

157. DME’s well construction and related mining operations impose harms upon society by threatening to or actually contaminating or degrading municipal water supplies of the City, thereby breaching its duty of care to the City.

158. The City has invested millions in developing Red Gap Ranch wells as a future municipal water supply source.

159. DME’s 2020 Financial Statement demonstrates that it cannot pay to remediate water contamination or compensate the City for injuries to Red Gap Ranch.

160. The City is entitled to injunctive relief to prevent the irreparable harms to water quality and the Red Gap Ranch property and municipal wells.

161. Alternatively, or additionally, the City is entitled to an award of damages in an amount to be determined at trial but in no event less than the millions in tax payer dollars the City has spent developing Red Gap Ranch over the past 15 years or the diminution of property value resulting from DME’s breach of its duty to conduct operations in a manner that prevents degradation or contamination of the City’s future municipal water supplies.

COUNT SIX

(Strict Liability/Negligence per se)

162. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

163. DME’s well construction and related mining operations constitute an abnormally dangerous activity.

164. DME engages in well construction and related mining operations for profit.

165. DME’s well construction and related mining operations impose harms upon society by, specifically, threatening to or actually contaminating or degrading municipal water supplies of the City.

1
2 166. DME’s well construction and related mining operations create a likelihood of
3 degradation or contamination of drinking water supplies of the C-Aquifer to such a degree
4 that it would be extremely expensive to remediate, or potentially irreversibly degraded or
5 contaminated.

6 167. The City has invested millions in developing Red Gap Ranch wells as a future
7 municipal water supply source.

8 168. DME’s 2020 Financial Statement demonstrates that it cannot pay to remediate
9 water contamination or compensate the City for injuries to Red Gap Ranch.

10 169. The City is entitled to injunctive relief to prevent the irreparable harms to
11 water quality and the Red Gap Ranch property and municipal wells.

12 170. Alternatively, or additionally, the City is entitled to an award of damages in
13 an amount to be determined at trial but in no event less than the millions in tax payer dollars
14 the City has spent developing Red Gap Ranch over the past 15 years or the diminution of
15 property value resulting from DME’s abnormally dangerous activities.

16 **COUNT SEVEN**

17 **(Declaratory Relief—Well Permit No. 1255 is invalid)**

18 171. The City incorporates and re-asserts the prior paragraphs of the Complaint as
19 if fully set forth herein.

20 172. By application dated November 2, 2020, DME submitted a request to the
21 AOGCC to issue Well Permit No. 1255.

22 173. By the Well Permit Application, DME represented that:

23 a. the operations it would be entitled to engage in upon issuance of Well
24 Permit No. 1255 were known to “local leaders” and “legislators” and that those
25 governmental officials were supportive of the project; and

26 b. that it will not use “large” hydraulic fracturing.

27 174. In maintaining that it was not required to secure an APP, DME did not
28 disclose the DME Lease Litigation or its resolution in the Well Permit Application.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

175. Upon information and belief, these representations are inaccurate, false or intentionally calculated to be misleading, and were made to the AOGCC with the intent that AOGCC rely upon the statements in issuing Well Permit No. 1255.

176. Upon information and belief, DME will deny that the statements it made were inaccurate, false or intentionally misleading, and will further deny that such statements, even if inaccurate, false or intentionally misleading, invalidate Well Permit No. 1255.

177. There exists a dispute as to whether DME’s statements in the Application, if inaccurate, false, or intentionally misleading, invalidate Well Permit No. 1255.

178. Under Arizona law, a permit issued under mistake of fact due to incorrect information in the application, subsequent revocation of the permit is appropriate. *See., e.g., Rivera v. City of Phoenix*, 186 Ariz. 600, 602-03 (App. 1996).

179. The City asks that the Court to declare that Well Permit No. 1255 was secured via submission of incorrect, false or misleading information, and direct the AOGCC to revoke Well Permit No. 1255.

COUNT EIGHT

(Declaratory Relief—Application of Aquifer Protection Permit Requirements, A.R.S. §§ 49-241, et seq.)

180. The City incorporates and re-asserts the prior paragraphs of the Complaint as if fully set forth herein.

181. The Well Permit Application implies that DME intends to engage in well stimulation during the course of exploratory or mining operations related to the Well.

182. The Well will be drilled into the C-Aquifer, which is a source of drinking water for multiple municipalities, including the City, and is the source of the City’s future municipal water supply field at Red Gap Ranch.

183. The ADEQ requires an Aquifer Protection Permit for discharges into an aquifer.

1 184. DME intends to discharge into an aquifer that serves as a drinking water
2 supply for much of the northern Arizona region's populace.

3 185. DME denies that it is obligated to secure an Aquifer Protection Permit.

4 186. DME's admissions demonstrate that it is required to secure an Aquifer
5 Protection Permit before proceeding with any further construction or operations of the Well.

6 187. If DME continues to engage in well construction or operations involving
7 discharge into the Well, it will do so in violation of Arizona's statutes by discharging into
8 an aquifer without first obtaining an Aquifer Protection Permit.

9 188. The City asks this Court to issue an order declaring that DME is a discharger
10 and must apply for and secure an Aquifer Protection Permit pursuant to A.R.S. §§ 49-241,
11 *et seq.* before it commences further construction of or operates the Well.

12 **COUNT NINE**

13 **(Fraudulent Misrepresentation and/or Omissions)**

14 189. The City incorporates and re-asserts the prior paragraphs of the Complaint as
15 if fully set forth herein.

16 190. In March 2019, in response to public concerns, then Chief Executive Officer
17 of DME, Mr. Olian Irwin, publicly stated that DME "won't do a well for helium if there's
18 any danger of contaminating the water supply at all," further remarking "It's just not going
19 to happen." *See Exhibit 7.*

20 191. DME was obligated to disclose seismic testing data it completed on Red Gap
21 Ranch to the City.

22 192. DME failed to disclose the seismic data to the City.

23 193. Upon information and belief, DME failed to disclose the seismic data to the
24 City because it did not want the City to be aware of its on-going efforts to develop a helium
25 and hydrocarbon mining operation in close proximity to the City's future municipal
26 groundwater supplies.

27 194. By application dated November 2, 2020, DME submitted a request to the
28 AOGCC to issue Well Permit No. 1255.

1 205. The City was not advised of DME’s plans to proceed with a well on state
2 lands neighboring Red Gap Ranch, and does not support such project absent assurances of
3 safety precautions that do not presently exist including, but not limited to, confirmation that
4 DME will only use NSF Standard 60 certified drilling fluids in the Well.

5 206. Although it knew of the City’s concerns and objections to DME’s planned
6 operations, DME did not notify the City of the Well Permit Application.

7 207. By the Well Permit Application, DME represented that:

8 a. the operations it would be entitled to engage in upon issuance of Well
9 Permit No. 1255 were known to “local leaders” and “legislators” and that those
10 governmental officials were supportive of the project; and

11 b. that it will not use “large” hydraulic fracturing.

12 208. Upon information and belief, these representations are false or intentionally
13 calculated to be misleading.

14 209. Notwithstanding its indication that “large hydraulic fracturing” will not be
15 used, DME does not identify what drilling additives it intends to use, does not warrant and
16 represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does
17 not commit to avoiding all fracking additives at any stage of construction.

18 200. The “base treatable water” level referenced by DME in its Well Permit
19 Application implies that DME may introduce harmful constituents, pollutants or toxic
20 chemicals below that level within the C-Aquifer.

21 201. Upon information and belief, DME knew these representations that it would
22 not be engaging in fracturing to be false or, at a minimum, misleading, but included them
23 within the Well Permit Application for the purpose of inducing AOGCC to issue Well
24 Permit No. 1255 and avoiding the need to apply for an Aquifer Protection Permit.

25 202. Upon information and belief, AOGCC relied upon the false or misleading
26 representations in issuing Well Permit No. 1255.

27 203. Although it was aware, or reasonably should have been aware, that such
28 information was material to the AOGCC’s determination to issue Well Permit No. 1255,

1 DME did not disclose that the City would not support DME's drilling of any well or
2 engaging in mining operations within the vicinity of the anticipated well in light of its
3 proximity to the Red Gap Ranch and the City's future municipal water supply.

4 204. DME omitted reference to or disclosure of the DME Lease Litigation in its
5 Well Permit Application.

6 205. DME omitted its 2020 Financial Statement, which shows that it is not
7 financially capable of funding remediation efforts that may be required by its operations.

8 206. Upon information and belief, DME omitted this material information for the
9 purpose of inducing AOGCC to issue Well Permit No. 1255.

10 207. Upon information and belief, AOGCC would not have issued Well Permit
11 No. 1255 had it known of the DME Lease Litigation, the 2020 Financial Statement, City's
12 concerns and objections to DME's proposed project or the potential for harmful
13 constituents, toxic chemicals or other pollutants to be introduced into the C-Aquifer.

14 208. AOGCC, as an agency of the State, is harmed by DME's false or misleading
15 representations and omissions of material fact within its Well Permit Application, as the
16 mis-information interferes with AOGCC's obligation to the public to properly evaluate the
17 facts and ensure compliance with applicable laws and regulations by an applicant before
18 issuing well permits.

19 209. A permit that is issued based upon inaccurate or false factual information is
20 invalid and should be revoked.

21 210. DME actively concealed or omitted its seismic testing data from the City and
22 its Well Permit Application because it knew of the City's objections and intent to investigate
23 any helium and hydrocarbon mining operation in close proximity to the City's future
24 municipal groundwater supplies.

25 211. Upon information and belief, DME concealed or omitted the seismic testing
26 data and its Well Permit Application from the City because it knew, or reasonably should
27 know, that omitting the information would prevent the City from investigating and filing a
28 lawsuit to halt DME's planned Well and mining operations where, as has occurred here,

1 DME refused to disclose information regarding its Well construction practices, drilling
2 additives or other operations that may introduce harmful constituents, substances or toxins
3 into the C-Aquifer and Red Gap Ranch.

4 212. The City is harmed by DME’s false or misleading misrepresentations and
5 omissions of material fact with respect to the DME License Agreement, DME’s failure to
6 disclose its Well Permit Application, DME’s failure to disclose the DME Lease Litigation,
7 and by DME’s statements in news media outlets, as it has been deprived of the opportunity
8 to lodge objections, investigate, make public comment or initiate these proceedings to halt
9 DME’s conduct before its future municipal water supplies were exposed to potentially
10 irreversible contamination or degradation.

11 213. DME’s 2020 Financial Statement demonstrates that it cannot pay to remediate
12 water contamination or compensate the City for injuries to Red Gap Ranch.

13 214. The City is entitled to injunctive relief to prevent the irreparable harms to
14 water quality and the Red Gap Ranch property and municipal wells.

15 215. Alternatively, or additionally, the City is entitled to an award of damages in
16 an amount to be determined at trial but in no event less than the millions in tax payer dollars
17 the City has spent developing Red Gap Ranch over the past 15 years or the diminution of
18 property value resulting from DME’s fraudulent misrepresentations and omissions.

19 **COUNT TEN**

20 **(Negligent Misrepresentations and/or Omissions)**

21 216. The City incorporates and re-asserts the prior paragraphs of the Complaint as
22 if fully set forth herein.

23 217. In March 2019, in response to public concerns, then Chief Executive Officer
24 of DME, Mr. Olian Irwin, publicly stated that DME “won’t do a well for helium if there’s
25 any danger of contaminating the water supply at all,” further remarking “It’s just not going
26 to happen.” *See Exhibit 7.*

27 218. DME was obligated to disclose seismic testing data it completed on Red Gap
28 Ranch to the City.

1 219. DME failed to disclose the data to the City before December 2020.

2 220. Upon information and belief, DME failed to disclose the seismic data to the
3 City because it did not want the City to be aware of its on-going efforts to develop a helium
4 and hydrocarbon mining operation in close proximity to the City's future municipal
5 groundwater supplies.

6 221. By application dated November 2, 2020, DME submitted a request to the
7 AOGCC to issue Well Permit No. 1255.

8 222. The City was not advised of DME's plans to proceed with a well on the ASLD
9 lands neighboring Red Gap Ranch, and does not support such project absent assurances of
10 safety precautions that do not presently exist including, but not limited to, confirmation that
11 DME will only use NSF Standard 60 certified drilling fluids in the Well.

12 223. Although it knew of the City's concerns and objections to DME's planned
13 operations, DME did not notify the City of the Well Permit Application.

14 224. DME had a duty to supply truthful and accurate information in the Well
15 Permit Application, and the information within the Well Permit Application was intended
16 for the guidance of AOGCC.

17 225. By the Well Permit Application, DME represented that:

18 a. the operations it would be entitled to engage in upon issuance of Well
19 Permit No. 1255 were known to "local leaders" and "legislators" and that those
20 governmental officials were supportive of the project; and

21 b. that it will not use "large" hydraulic fracturing.

22 226. Upon information and belief, these representations are false or misleading and
23 DME did not exercise reasonable care or competence in obtaining or communicating the
24 information in its Well Permit Application.

25 227. Notwithstanding its indication that "large hydraulic fracturing" will not be
26 used, DME does not identify what drilling additives it intends to use, does not warrant and
27 represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does
28 not commit to avoiding all fracking additives at any stage of construction.

1
2 228. The “base treatable water” level referenced by DME in its Well Permit
3 Application implies that DME may introduce harmful constituents, pollutants or toxic
4 chemicals below that level within the C-Aquifer.

5 229. Upon information and belief, DME knew these representations regarding
6 avoiding hydraulic fracturing to be false or, at a minimum, misleading, but included them
7 within the Well Permit Application for the purpose of inducing AOGCC to issue Well
8 Permit No. 1255 and avoiding the need to apply for an aquifer protection permit.

9 230. Upon information and belief, AOGCC justifiably relied upon the false or
10 misleading representations in issuing Well Permit No. 1255.

11 231. Although it was aware, or reasonably should have been aware, that such
12 information was material to the AOGCC’s determination to issue Well Permit No. 1255,
13 DME did not disclose that the City would not support DME’s drilling of any well or
14 engaging in mining operations within the vicinity of the anticipated well in light of its
15 proximity to the Red Gap Ranch and the City’s future municipal water supply.

16 232. DME omitted reference to or disclosure of the DME Lease Litigation in its
17 Well Permit Application.

18 233. DME omitted its 2020 Financial Statement, which shows that it is not
19 financially capable of funding remediation efforts that may be required by its operations.

20 234. Upon information and belief, DME omitted this material information for the
21 purpose of inducing AOGCC to issue Well Permit No. 1255.

22 235. Upon information and belief, AOGCC would not have issued Well Permit
23 No. 1255 had it known of the DME Lease Litigation, the 2020 Financial Statement, the
24 City’s concerns and objections to DME’s proposed project or the potential for harmful
25 constituents, toxic chemicals or other pollutants to be introduced into the C-Aquifer.

26 236. AOGCC, as an agency of the State, is harmed by DME’s false or misleading
27 representations and omissions of material fact within its Well Permit Application, as the
28 misinformation interferes with AOGCC’s obligation to the public to properly evaluate the

1 facts and ensure compliance with applicable laws and regulations by an applicant before
2 issuing well permits.

3 237. A permit that is issued based upon inaccurate or false factual information is
4 invalid and should be revoked.

5 238. DME actively concealed or omitted its seismic testing data from the City and
6 its Well Permit Application because it knew of the City's objections and intent to investigate
7 any helium and hydrocarbon mining operation in close proximity to the City's future
8 municipal groundwater supplies.

9 239. Upon information and belief, DME concealed or omitted the seismic testing
10 data and its Well Permit Application from the City because it knew, or reasonably should
11 know, that omitting the information would prevent the City from investigating and filing a
12 lawsuit to halt DME's planned Well and mining operations where, as has occurred here,
13 DME refused to disclose information regarding its Well construction practices, drilling
14 additives or other operations that may introduce harmful constituents, substances or toxins
15 into the C-Aquifer and Red Gap Ranch.

16 240. The City is harmed by DME's false or misleading misrepresentations and
17 omissions of material fact with respect to the DME License Agreement, DME's failure to
18 disclose its Well Permit Application, and by DME's statements in news media outlets, as
19 it has been deprived of the opportunity to lodge objections, investigate, make public
20 comment or initiate these proceedings to halt DME's conduct before its future municipal
21 water supplies are exposed to potentially irreversible contamination or degradation.

22 241. DME's 2020 Financial Statement demonstrates that it cannot pay to remediate
23 water contamination or compensate the City for injuries to Red Gap Ranch.

24 242. The City is entitled to injunctive relief to prevent the irreparable harms to
25 water quality and the Red Gap Ranch property and municipal wells.

26 243. Alternatively, or additionally, the City is entitled to an award of damages in
27 an amount to be determined at trial but in no event less than the millions in tax payer dollars
28

1 the City has spent developing Red Gap Ranch over the past 15 years or the diminution of
2 property value resulting from DME's negligent misrepresentations and omissions.

3 **COUNT ELEVEN**

4 **(Injunctive Relief)**

5 244. The City incorporates and re-asserts the prior paragraphs of the Complaint as
6 if fully set forth herein.

7 245. DME Well Permit No. 1255 authorizes it to proceed with construction of a
8 well in the C-Aquifer.

9 246. DME has commenced construction, and intends to continue to construct, the
10 Well.

11 247. DME has not secured an Aquifer Protection Permit and has not disclosed the
12 drilling fluids that it intends to use to conduct Well operations.

13 248. DME intends to introduce harmful constituents, pollutants, or toxic chemicals
14 in the Well.

15 249. When introduced into the C-Aquifer via the Well, harmful constituents,
16 pollutants, or toxic chemicals may degrade or contaminate water quality to such an extent
17 that it is not suitable for human consumption.

18 250. Red Gap Ranch, the site of the City's future municipal water supply well field,
19 is down gradient of DME's Well site.

20 251. Waters contaminated by DME's Well will migrate to Red Gap Ranch, and
21 may irreversibly contaminate the waters underlying Red Gap Ranch such that it is no longer
22 suitable for human consumption or other municipal use.

23 252. The City has invested millions of dollars in developing Red Gap Ranch to
24 serve as the future municipal water supply for its residents, and as a regional water supply,
25 and there is no feasible, alternative site in the region for the City to develop.

26 253. The City has no adequate remedy at law as monetary relief will not suffice to
27 clean the contaminated aquifer or locate a new site for municipal water supplies.

28

1 254. The Court should issue a preliminary injunction in the form submitted with
2 the Application for Temporary Restraining Order and Preliminary Injunction. Such order
3 should include, but not be limited to, the following:

4 a. Halt any construction of the Well or other mining operations related to
5 the Well until or unless it obtains an Aquifer Protection Permit;

6 b. Halt any construction of the Well or other mining operations related to
7 the Well until or unless DME certifies, warrants and represents, and discloses
8 documentation confirming that it has and will use only NSF Standard 60 drilling
9 additives in its Well and other mining operations;

10 c. Certifies, warrants and represents and discloses documentation
11 confirming that it has and will not use, inject or otherwise introduce any
12 “fracking” or other chemicals, constituents or other materials into the Well that
13 may degrade the existing water quality underlying Red Gap Ranch; and

14 d. Enters into an oversight and monitoring plan with the City and other
15 necessary parties to ensure the foregoing representations for the life of the
16 project.

17 WHEREFORE Plaintiff City of Flagstaff requests that the Court enter judgment
18 against Defendant Desert Mountain Energy Corp as follows:

19 A. Enter the Preliminary Injunction submitted contemporaneously herewith,
20 which should be converted to a permanent injunction upon presentation of further proof at
21 trial;

22 B. For a declaration that Well Permit No. 1255 is invalid and of no effect by
23 virtue of the misrepresentations and material omissions detailed herein;

24 C. For a declaration that Defendant DME is required to secure an Aquifer
25 Protection Permit before drilling, constructing, or operating any well in the C-Aquifer for
26 the purpose of exploring or extracting helium or hydrocarbons;

27 D. For actual and compensatory damages in an amount to be determined at trial;

28

1 E. For Plaintiff's reasonable attorneys' fees and costs incurred herein and
2 accruing after judgment, plus interest on such fees and costs at the legal rate per annum
3 from the date of judgment until paid in full;

4 F. For an award of interest on the judgment at the legal rate until paid in full;
5 and

6 G. For such other and further relief as the Court.

7 DATED this 4th day of January, 2021.

8 TSL LAW GROUP, PLC

9 By: Lee A. Storey

10 Lee A. Storey

11 Alex M. Arboleda

12 Ethan B. Minkin

13 Sara V. Ransom

14 *Attorneys for City of Flagstaff*

15 **VERIFICATION**

16 I, Sterling Solomon, City Attorney for Plaintiff, being first duly sworn upon my oath, depose
17 and state:

18 1. I am over the age of 18 years and am competent to make this Verification based on
19 my personal knowledge and based on the business records of Plaintiff, of which I am a custodian.

20 2. I have reviewed the foregoing Verified Amended Complaint, know the contents
21 thereof and exhibits attached thereto, and affirm that, to the best of my knowledge, its contents and
22 exhibits are true and accurate.

23 DATED this 4th day of January, 2021.

24 By: Sterling Solomon
25 STERLING SOLOMON

26 SUBSCRIBED AND SWORN to before me this 4th day of January, 2021.

27 By: [Signature]
28 Notary Public

My Commission Expires: 11-27-21

