

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*

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF COCONINO**

16 THE CITY OF FLAGSTAFF,

17 Plaintiff,

18 v.

19 DESERT MOUNTAIN ENERGY CORP.,

20 Defendant.

No.: CV 2020-00624

**TEMPORARY RESTRAINING
ORDER AND ORDER SETTING
HEARING ON PRELIMINARY
INJUNCTION**

21 The Court, having received the *Emergency Application for Temporary Restraining*
22 *Order And Preliminary Injunction With Notice* (“Application”) filed by Plaintiff City of
23 Flagstaff (“Plaintiff”), and having considered all briefing and arguments submitted before
24 the Court hereby issues this Order:

25 **GRANTING** the City’s request for a Temporary Restraining Order as to Defendant
26 Desert Mountain Energy Corp (“DME), as set forth herein based upon the following
27 findings:

28 1. DME has publicly represented that it will not conduct mining operations that
contaminate public water supplies,

2. DME Well Permit No. 1255 authorizes it to proceed with construction of a
well in the C aquifer,

1 3. The well to be constructed pursuant to DME Well Permit No, 1255 would be
2 built within two miles of Red Gap Ranch, which DME knows to be the site of the City's
3 future municipal water supplies,

4 4. DME previously agreed that it would cooperate with the City and share
5 information related to its efforts to locate and develop areas for helium or hydrocarbon
6 resources,

7 5. DME knew of the City's objections to helium or hydrocarbon development
8 near Red Gap Ranch, but did not advise the City of its well permit application, nor did it
9 notify the City directly of its plans to commence construction of the Well,

10 6. Although DME knew of the City's objections, it did not disclose the City's
11 position within its application for a well permit. Rather, it represented that "local leaders"
12 were supportive of and encouraged DME's project.

13 7. DME knew that its representations regarding local support of drilling a well
14 for hydrocarbon or helium mining near the City's future municipal water supplies were false
15 or misleading, but made those representations in its well permit application to induce the
16 Arizona Oil and Gas Conservation Commission to issue the permit,

17 8. Although it previously represented that it does not intend to engage in
18 operations that would contaminate water supplies, DME has not certified that it will only
19 use constituents certified to be safe for drinking water in its operations,

20 9. DME has not suggested any monitoring plan with regard to its operations,

21 10. DME has not disclosed any of the constituents it plans to use in its operations,

22 11. The evidence indicates that DME seeks to preserve the right to introduce
23 harmful constituents, pollutants, or toxic chemicals in the Well,

24 12. DME has not secured an aquifer protection permit and has not disclosed the
25 drilling fluids that it intends to use to conduct Well operations,

26 13. When introduced into the C aquifer via the Well, harmful constituents,
27 pollutants, or toxic chemicals may degrade water quality to such an extent that it is not
28 suitable for human consumption,

1 14. Red Gap Ranch is down gradient of DME's Well site,

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

5 16. The City has invested millions of dollars in developing Red Gap Ranch to
6 serve as the future municipal water supply for its residents,

7 17. Aside from Red Gap Ranch, there is no feasible, alternative site in the region
8 for the City to develop its future municipal water supplies, and

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

11 19. The City has demonstrated a likelihood of success on the merits of one or
12 more of its claims in its Complaint, it has demonstrated irreparable injury, and it has shown
13 that serious questions exist regarding DME's existing and planned operations and that the
14 balance of harms favors injunctive relief.

15 Based upon these findings,

16 **IT IS HEREBY ORDERED** that, with respect to Well Permit No. 1255, Defendant
17 shall immediately:

18 a. Halt any construction of the Well and other mining activities or
19 operations until or unless it obtains an aquifer protection permit;

20 b. Halt any construction of the Well and other mining activities or
21 operations until or unless DME certifies, warrants and represents that
22 it will use only NSF Standard 60 drilling additives in its Well and other
23 mining operations;

24 c. Certify, warrant and represent that it will not use, inject or otherwise
25 introduce any "fracking" or other chemicals, constituents or other
26 materials into the Well that may degrade the existing water quality
27 underlying Red Gap Ranch; and
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d. Enters into an oversight and monitoring plan with the City and other necessary parties to ensure the foregoing representations for the life of the project.

IT IS FURTHER ORDERED that Defendant shall comply with State law and its own past representations requiring that DME's construction practices and operations ensure the safety and integrity of Plaintiff's future municipal drinking water supply at Red Gap Ranch.

^{IS}
IT IS FURTHER ORDERED that this Order shall expire on December 17, 2020, unless extended by further order of this Court or by stipulation of the Parties.

IT IS FURTHER ORDERED that a hearing to consider issuance of a Preliminary Injunction is scheduled for December 16, 2020 before this Court.

DATED: December 11, 2020.



JUDGE OF THE SUPERIOR COURT