

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*

RECEIVED
DEC 11 2020
VALERIE WYANT
Clerk of the Superior Court

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
13 Plaintiff,
14 v.
15 DESERT MOUNTAIN ENERGY CORP.,
16
17 Defendant.

No.: CV2020-00624
VERIFIED COMPLAINT
**(BREACH OF CONTRACT;
NEGLIGENT
MISREPRESENTATIONS OR
OMISSIONS; FRAUDULENT
MISREPRESENTATIONS OR
OMISSIONS; DECLARATORY
RELIEF; TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION)**

18
19 For its Complaint against Defendant Desert Mountain Energy Corp (“DME” or
20 “Defendant”), Plaintiff City of Flagstaff (“City” or “Plaintiff”) alleges as follows:

21 **I. PARTIES**

- 22 1. The City is a municipal corporation of the State of Arizona located within
23 Coconino County, Arizona.
24 2. DME is a foreign for-profit business domiciled in the State of Nevada and
25 authorized to conduct business in the State of Arizona.

26 **II. JURISDICTION AND VENUE**

- 27 3. Defendant DME is conducting business within Coconino County, Arizona.
28

1 4. 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 5. Jurisdiction is proper before this Court because the lands and conduct giving
5 rise to this Complaint occurred in Coconino County, Arizona.

6 6. 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 **III. 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 7. 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 8. 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 9. 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 10. 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 11. The City's plans for Red Gap Ranch are to drill multiple water supply wells
24 into the Coconino aquifer (the "C aquifer") to withdraw groundwater, which will then be
25 conveyed via pipeline and introduced into the City's existing municipal water infrastructure
26 system.

27 12. The City has completed certain aspects of its plans for Red Gap Ranch,
28 including completing a Phase I engineering analysis confirming the feasibility of the

1 pipeline project in 2009, drilling multiple water supply wells in 2011, securing a
2 Designation of Adequate Water Supply from the Arizona Department of Water Resources
3 in 2013, entering into an agreement with the Arizona Department of Transportation to
4 advance the process of approving a water pipeline right of way in 2016, and completing
5 multiple water quality analysis to confirm that the water underlying Red Gap Ranch
6 continues to be suitable for domestic uses.

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

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

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

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

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

22 17. In early 2019, after representatives of Desert Mountain Energy Corp.
23 approached the City for permission to cross Red Gap Ranch for the purpose of exploring
24 whether it could mine for helium on nearby lands owned by the Arizona State Lands
25 Department ("ASLD"), the City and DME engaged in discussions regarding the City's
26 safety concerns pertaining to DME's anticipated business activities.

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

1 19. 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 1**.

7 20. 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 21. 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 22. 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 23. 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 2**.

22 24. 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 25. 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 26. 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 3**.

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

9 **c. DME fails to notify the City of its on-going efforts to engage in helium**
10 **mining activities within two (2) miles of the City’s future municipal water**
11 **supply wells.**

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

15 29. The City’s notice of termination of the DME License Agreement did not, by
16 its terms, cause the agreement to end until six months after the date of notice of termination.

17 30. Upon information and belief, DME accessed Red Gap Ranch and completed
18 seismic testing during the six-month period that the DME License Agreement remained in
19 effect after the date of notice of termination.

20 31. The City did not charge DME licensing fees.

21 32. Upon information and belief, to date DME has not shared the results of the
22 Red Gap Ranch seismic testing with the City despite its obligation to do so pursuant to the
23 DME License Agreement.

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

28 ///

 ///

1 34. The Well is located within two miles of Red Gap Ranch. A map depicting
2 the location of the Well site and its proximity to Red Gap Ranch is attached hereto as
3 **Exhibit 4.**

4 35. Well permit No. 1255 was issued by the Arizona Oil and Gas Conservation
5 Commission (“AOGCC”) on November 18, 2020. A true and correct copy of Well Permit
6 No. 1255 is attached hereto as **Exhibit 5.**

7 36. The City has obtained documents submitted by DME to the AOGCC to secure
8 Well Permit No. 1255 (the “Well Permit Application”). True and correct copies of all
9 documents the City obtained from AOGCC related to DME’s Well Permit Application are
10 attached hereto as **Exhibit 6.**

11 **d. DME misrepresents “local support” of its proposed mining operations**
12 **and omits the City’s objections in its application to secure Well Permit**
13 **No. 1255.**

14 37. In the Well Permit Application, DME represents in the Application that it has
15 met with “local leaders” and “legislators” regarding its project and has been welcomed and
16 encouraged by those representatives.

17 38. DME does not identify the governments or local leaders that it met with, but
18 it has not met with representatives of the City with respect to the Well despite its knowledge
19 of the City’s objections to its operations being in such proximity to its drinking water
20 supplies.

21 39. DME does not disclose any of the past objections or concerns raised by the
22 City in its Well Permit Application.

23 40. DME represents government support of its project to AOGCC, despite that it
24 neglected to consult with the government that owns the land adjacent to its Well and has
25 previously voiced multiple concerns regarding any well or mining operations near Red Gap
26 Ranch.

27 ///

28

1 e. **DME's application to secure Well Permit No. 1255 indicates that it**
2 **intends to use pollutants, toxic materials or other harmful constituents**
3 **should it be allowed to proceed with construction and operations.**

4 41. Per documents that the City has been able to obtain to date, DME intends to
5 drill an exploratory well down to the "base treatable water" of the C aquifer.

6 42. It is unclear how DME derived the depth of "base treatable water" within the
7 C aquifer.

8 43. Upon information and belief, DME intends to (or at least believes it can)
9 contaminate waters within the C aquifer below the "base treatable water" level it has
10 identified.

11 44. DME intends to drill to a total depth of 2000 feet and cement the entire length
12 of the casing.

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

15 46. Although DME represents that the well casing will be sealed through the
16 Kaibab, Coconino, and Supai formations, which are the primary water bearing formations,
17 issues with construction, including inadequate maintenance or use of toxic constituents in
18 the mining process once perforations are completed along the well casing can allow a
19 variety of contaminants to be introduced into the C aquifer (and the other aquifers through
20 which DME's well will traverse) while the well is under construction and during its period
21 of use.

22 47. Wells of the type described by DME in its Well Permit No. 1255 are
23 frequently in operation for decades.

24 48. DME plans to drill using the air rotary method, with the addition of drilling
25 fluid additives, which are essentially "misting" agents to assist in lifting cuttings if
26 necessary.

27 49. The air rotary method disclosed by DME allows it to commence operations
28 quickly if the well strikes a deposit of the helium it wishes to extract, but the method that
29 DME has selected also creates the risk that if it encounters highly fractured zones or large

1 quantities of water, DME may have to change drilling methods, which would include
2 altering its drilling fluid additives.

3 50. Misting agents are usually detergent based foaming compounds.

4 51. Given that the boring will penetrate a drinking water aquifer, the drilling
5 fluids, including the foaming agent should be a National Sanitation Foundation (“NSF”)
6 certified product to ensure it is safe for drinking water use.

7 52. The same requirement should apply if they have to switch drilling fluids due
8 to formation conditions - all drilling fluids should be certified to NSF Standard 60.

9 53. Nothing in DME’s publicly available documents represents or guarantees that
10 DME will only use NSF Standard 60 drilling fluids.

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

13 55. Such additives are not safe for human consumption or other municipal uses.

14 56. Even if it does not use diesel fuel constituents, other drilling fluids, like brine,
15 degrade water quality, potentially rendering it unfit for human consumption.

16 57. The DME’s Well Permit Application has no oversight or monitoring plan.

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

19 58. If DME does not use NSF Standard 60 certified drilling fluids in the Well, it
20 could contaminate the C Aquifer.

21 59. The C aquifer is the source of the City’s municipal water supply wells at Red
22 Gap Ranch.

23 60. Based upon the stated location of the intended Well, any pollutants or toxic
24 substances introduced into the Well—now or in the future—or released by operations of
25 the well into the C aquifer will be upgradient of Red Gap Ranch.

26 61. Any pollutants or toxic chemicals or other harmful constituents like brine
27 introduced into the Well will migrate towards the municipal water supply wells located at
28 Red Gap Ranch.

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

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

6 64. DME has not indicated that it intends to secure an aquifer protection permit
7 from the Arizona Department of Environmental Quality (“ADEQ”).

8 65. DME has not pledged that it will not use harmful chemical additives or brines
9 that could degrade aquifer water quality.

10 66. DME has not pledged to allow oversight and monitoring by the City.

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

15 68. Via a press release issued in late November 2020, DME has stated that it
16 intends to begin construction of the Well, which would terminate within the C aquifer,
17 during the month of December 2020.

18 69. The Well, once completed, provides an avenue for introduction of harmful or
19 toxic chemicals that cannot be readily extracted once introduced into the aquifer, thereby
20 risking irreversible and irreparable harm and injury to the C aquifer, which is the source of
21 multiple municipal water supplies, including the City’s.

22 70. The City is particularly at risk of irreparable harm and injury as its wells at
23 Red Gap Ranch, the site of its future municipal water supplies, are down gradient and within
24 two miles of DME’s proposed Well such that any constituents introduced by DME will
25 migrate to the Red Gap Ranch wells.

26 ///

27 ///

28 ///

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

COUNT ONE

(Breach of Contract)

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

72. The DME License Agreement is a valid and binding contract between the City and DME.

73. DME materially breached the DME License Agreement by completing seismic testing on Red Gap Ranch and failing to share the results of that testing with the City as required by the DME License Agreement.

74. As a result of DME’s material breach of the DME License Agreement, the City has been harmed in an amount to be proven at trial, but in no event less than the full amount of licensing fees it waived in exchange for authorizing the testing that DME completed.

75. As this claim arises out of contract, the City is entitled to an award of its reasonable attorneys’ fees and costs pursuant to A.R.S. §§ 12-341 and 341.01.

COUNT TWO

(Fraudulent Misrepresentation and/or Omissions)

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

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

78. By the Well Permit Application, DME represented that:
- a. the operations it would be entitled to engage in upon issuance of Well Permit No. 1255 were known to “local leaders” and “legislators” and that those governmental officials were supportive of the project; and
 - b. that it will not use “large” hydraulic fracturing.

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

1 80. The City was not advised of DME's plans to proceed with a well on the ASLD
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 81. Notwithstanding its indication that "large hydraulic fracturing" will not be
6 used, DME does not identify what drilling additives it intends to use, does not warrant and
7 represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does
8 not commit to avoiding all fracking additives at any stage of construction.

9 82. The "base treatable water" level referenced by DME in its Well Permit
10 Application implies that DME may introduce harmful constituents, pollutants or toxic
11 chemicals below that level within the C aquifer.

12 83. Upon information and belief, DME knew these representations to be false or,
13 at a minimum, misleading, but included them within the Well Permit Application for the
14 purpose of inducing AOGCC to issue Well Permit No. 1255 and avoiding the need to apply
15 for an aquifer protection permit.

16 84. Upon information and belief, AOGCC relied upon the false or misleading
17 representations in issuing Well Permit No. 1255.

18 85. Although it was aware, or reasonably should have been aware, that such
19 information was material to the AOGCC's determination to issue Well Permit No. 1255,
20 DME did not disclose that the City would not support DME's drilling of any well or
21 engaging in mining operations within the vicinity of the anticipated well in light of its
22 proximity to the Red Gap Ranch and the City's future municipal water supply.

23 86. Upon information and belief, DME omitted this material information for the
24 purpose of inducing AOGCC to issue Well Permit No. 1255.

25 87. Upon information and belief, AOGCC would not have issued Well Permit
26 No. 1255 had it known of the City's concerns and objections to DME's proposed project or
27 the potential for harmful constituents, toxic chemicals or other pollutants to be introduced
28 into the C aquifer.

1 88. AOGCC, as an agency of the State, is harmed by DME’s false or misleading
2 representations and omissions of material fact within its Well Permit Application, as the
3 mis-information interferes with AOGCC’s obligation to the public to properly evaluate the
4 facts and ensure compliance with applicable laws and regulations by an applicant before
5 issuing well permits.

6 89. A permit that is issued based upon inaccurate or false factual information is
7 invalid.

8 90. The City is harmed by DME’s false or misleading misrepresentations and
9 omissions of material fact within its Well Permit Application, as it has been deprived of the
10 opportunity to lodge objections, investigate and make public comment before its future
11 municipal water supply is potentially exposed to irreversible contamination.

12 **COUNT THREE**

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

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

16 92. By application dated November 2, 2020, DME submitted a request to the
17 AOGCC to issue Well Permit No. 1255.

18 93. DME had a duty to supply truthful and accurate information in the Well
19 Permit Application, and the information within the Well Permit Application was intended
20 for the guidance of AOGCC.

21 94. By the Well Permit Application, DME represented that:

- 22 a. the operations it would be entitled to engage in upon issuance of Well
23 Permit No. 1255 were known to “local leaders” and “legislators” and
24 that those governmental officials were supportive of the project; and
25 b. that it will not use “large” hydraulic fracturing.

26 95. Upon information and belief, these representations are false or misleading and
27 DME did not exercise reasonable care or competence in obtaining or communicating the
28 information in its Well Permit Application.

1 96. The City was not advised of DME's plans to proceed with a well on the ASLD
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 97. Notwithstanding its indication that "large hydraulic fracturing" will not be
6 used, DME does not identify what drilling additives it intends to use, does not warrant and
7 represent that the well drilling fluids it will use will be NSF Standard 60 certified, and does
8 not commit to avoiding all fracking additives at any stage of construction.

9 98. The "base treatable water" level referenced by DME in its Well Permit
10 Application implies that DME may introduce harmful constituents, pollutants or toxic
11 chemicals below that level within the C aquifer.

12 99. Upon information and belief, DME knew these representations to be false or,
13 at a minimum, misleading, but included them within the Well Permit Application for the
14 purpose of inducing AOGCC to issue Well Permit No. 1255 and avoiding the need to apply
15 for an aquifer protection permit.

16 100. Upon information and belief, AOGCC justifiably relied upon the false or
17 misleading representations in issuing Well Permit No. 1255.

18 101. Although it was aware, or reasonably should have been aware, that such
19 information was material to the AOGCC's determination to issue Well Permit No. 1255,
20 DME did not disclose that the City would not support DME's drilling of any well or
21 engaging in mining operations within the vicinity of the anticipated well in light of its
22 proximity to the Red Gap Ranch and the City's future municipal water supply.

23 102. Upon information and belief, DME omitted this material information for the
24 purpose of inducing AOGCC to issue Well Permit No. 1255.

25 103. Upon information and belief, AOGCC would not have issued Well Permit
26 No. 1255 had it known of the City's concerns and objections to DME's proposed project or
27 the potential for harmful constituents, toxic chemicals or other pollutants to be introduced
28 into the C aquifer.

1 104. AOGCC, as an agency of the State, is harmed by DME's false or misleading
2 representations and omissions of material fact within its Well Permit Application, as the
3 misinformation interferes with AOGCC's obligation to the public to properly evaluate the
4 facts and ensure compliance with applicable laws and regulations by an applicant before
5 issuing well permits.

6 105. A permit that is issued based upon inaccurate or false factual information is
7 invalid.

8 106. The City is harmed by DME's negligent misrepresentations and omissions of
9 material fact within its Well Permit Application, as it has been deprived of the opportunity
10 to lodge objections, investigate and make public comment before its future municipal water
11 supply is potentially exposed to irreversible contamination.

12 **COUNT FOUR**

13 **(Declaratory Relief—Violation of Aquifer Protection Permit Requirements,**

14 **A.R.S. §§ 49-241, et seq.)**

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

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

19 109. The Well will be drilled into the C aquifer, which is a source of drinking water
20 for multiple municipalities, including the City, and is the source of the City's future
21 municipal water supply field at Red Gap Ranch.

22 110. The ADEQ requires an Aquifer Protection Permit for discharges into an
23 aquifer.

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

26 112. DME's conduct will violate Arizona's statutes by discharging into an aquifer
27 without first obtaining an aquifer protection permit.

28 ///

1 113. The City asks this Court to issue an order declaring that DME must apply for
2 and secure an aquifer protection permit pursuant to A.R.S. §§ 49-241, *et seq.* before it
3 commences construction of or operates the Well.

4 **COUNT FIVE**

5 **(Injunctive Relief)**

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

8 115. DME Well Permit No. 1255 authorizes it to proceed with construction of a
9 well in the C aquifer.

10 116. DME intends to construct the Well during the month of December 2020, or
11 soon thereafter.

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

14 118. Once constructed, DME apparently intends to introduce harmful constituents,
15 pollutants, or toxic chemicals in the Well.

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

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

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

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

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

1 124. The Court should issue a temporary restraining order and a preliminary
2 injunction in the forms submitted with the contemporaneously-filed Application for
3 Temporary Restraining Order and Preliminary Injunction. Such order should include, but
4 not be limited to, requiring that DME:

- 5 a. Halt any construction of the Well until or unless it obtains an aquifer
6 protection permit;
- 7 b. Halt any construction of the Well until or unless DME certifies,
8 warrants and represents that it will use only NSF Standard 60 drilling
9 additives in its Well and other mining operations;
- 10 c. Certifies, warrants and represents that it will not use, inject or
11 otherwise introduce any “fracking” or other chemicals, constituents or
12 other materials into the Well that may degrade the existing water
13 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
16 the DME 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 Temporary Restraining Order submitted contemporaneously
20 herewith;
- 21 B. Enter the Preliminary Injunction submitted contemporaneously herewith;
- 22 C. 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 D. 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 E. For actual and compensatory damages in an amount to be determined at trial;
- 28

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

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

7 DATED this 11th day of December 2020.

8 TSL LAW GROUP, PLC

9 By: Lee A. Storey

10 Lee A. Storey

11 Sara V. Ransom

12 Attorneys for City of Flagstaff

13 **VERIFICATION**

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

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

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

22 DATED this 11th day of December, 2020.

23 By: Sterling Solomon
24 STERLING SOLOMON

25 SUBSCRIBED AND SWORN to before me this 11 day of December, 2020.

26 By: Stacy Saltzburg
27 Notary Public

28 My Commission Expires: 01/24/2022

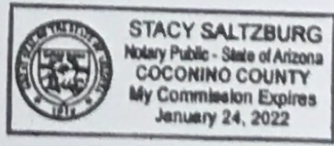
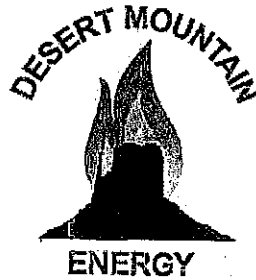


Exhibit 1



January 22, 2019

MEMORANDUM OF UNDERSTANDING

MUTUAL COOPERATION AND STRATEGIC DEVELOPMENT OF HELIUM AND HYDROCARBON RESOURCES IN THE GREATER FLAGSTAFF REGION AND IN COCONINO COUNTY, ARIZONA

WHEREAS, the CITY OF FLAGSTAFF ("Flagstaff") is the largest city in Northern Arizona and serves as the regional, cultural and county seat for Coconino County, and comprises over 64 square miles at the base of the San Francisco Peaks;

WHEREAS, Flagstaff is a governmental, educational, economic, cultural and Community center for Northern Arizona and Coconino County;

WHEREAS, Flagstaff desires to encourage appropriate economic development in order to create cash flow for Flagstaff and local communities, with a view toward furthering local education, job creation, increasing local and regional infrastructure and generally increasing the well-being of the people;

WHEREAS, Flagstaff desires to maintain and preserve the beautiful Northern Arizona landscape and environment as a long-term legacy, whilst at the same time encouraging reasonable, appropriate economic development that is mindful of preserving the environment and not impinging significantly on the rights and customs of local indigenous communities; and

WHEREAS, DESERT MOUNTAIN ENERGY CORP. ("DME"), a public energy company with offices in Phoenix, AZ that is focused on development of helium and hydrocarbon resources in Arizona, via an outlook using renewable resources where economically feasible, has an experienced and highly qualified technical team of professionals and senior management who are familiar with exploration, drilling, production and distribution of helium, oil & gas resources; and

WHEREAS, DME has identified potential targets for exploration and development of helium and hydrocarbon resources in the greater Flagstaff region and Coconino County, and is requesting the support of Flagstaff in carrying out reasonable exploration and development activities which do not significantly compromise the environment or impinge the material rights of the indigenous communities;

NOW THEREFORE, THE PARTIES DO HEREBY AGREE:

That Flagstaff and DME shall work together on a cooperative basis to evaluate potential resources and if mutually beneficial, to develop reasonable plans for the strategic development of helium and hydrocarbon resources in the greater Flagstaff region and in Coconino County generally;

That the parties shall share all available technical and geological data related to helium and hydrocarbon resources in the Flagstaff region and in Coconino County generally;

That DME will fully consult with Flagstaff concerning each major exploration, drilling, development and or production program in the area with a view toward limiting environmental impact whilst allowing for successful extraction of valuable resources in order to generate cash flow for Flagstaff and the local communities, to encourage job creation and enhancement of local infrastructure; and to generally improve the well-being of the people;

That the parties will work together on a cooperative basis to encourage access to areas identified as highly prospective for helium and hydrocarbon resources in Coconino County which are not in designated national or state parks or are otherwise recognized as highly sensitive from the standpoint of environmental, water resources, cultural, or existing grazing or livestock considerations.

The Term of this Memorandum of Understanding shall be One year from the date hereof to and including January 10, 2020, unless terminated by either party on ten days' prior written notice and without further liability or obligation to the other party. It is contemplated that the parties may enter into one or more written agreements from time to time to further the objectives of this Memorandum of Understanding.

IN WITNESS WHEREOF, the parties do set their hand to this Memorandum of Understanding as of the date above written:

DESERT MOUNTAIN ENERGY CORP.

By _____
Irwin A. Olian, CEO & Director

THE CITY OF FLAGSTAFF

By Barbara Goodrich
BARBARA GOODRICH
CITY MANAGER

City of Flagstaff
Memorandum of Understanding
Desert Mountain Energy Corp.

ATTEST:

Stacy Salzburg
CITY CLERK

APPROVED AS TO FORM:

Myra White
CITY ATTORNEY

Exhibit 2

LIC-2019-146-AG1

CITY OF FLAGSTAFF
LICENSE FOR ACCESS AND SEISMIC TESTING
ON RED GAP RANCH

This License Agreement ("License") is entered into this 23 day of January, 2019 by and between the City of Flagstaff, a municipal property corporation ("City") and Desert Energy Corp., a Nevada for-profit corporation doing business as Desert Mountain Energy Corp. ("Licensee").

RECITALS

- A. City owns tracts of vacant land located east of the City of Flagstaff, and known as Red Gap Ranch. The lands were acquired for their water rights and are subject to grazing leases. The City lands are interspersed with State Land Department parcels ("state lands") in a checkerboard pattern.
- B. Desert Mountain Energy Corp. has obtained approximately 19 non-competitive oil and gas leases of state lands from the State Land Department to conduct seismic testing, drilling, and production of helium gas on state lands.
- C. City desires to grant Desert Mountain Energy Corp. a license across City lands so that Desert Mountain Energy Corp. is able to access State lands and conduct seismic testing.

NOW, THEREFORE, in consideration for the conditions of this License, the parties agree as follows:

1. Term. The License will commence on January 22, 2018 and continue for a period of one (1) year, unless sooner revoked or terminated pursuant to this License. The License may be renewed upon written approval of the City Manager and Licensee.

2. License for Ingress and Egress, and Seismic Testing. City hereby grants Licensee a non-exclusive license for ingress and egress, including the right to drive small equipment, four-wheelers, vibracoreis rubber track vehicle and small trucks (collectively "Equipment"), across City lands identified as:

Township and Range section numbers: T20N R12E Sections 3, 11, 13; and T20N R13E Sections 18, 19, 21, 22, 27, 29, and 33 also identified respectively as Coconino County Assessor Parcel Nos. 40607002C (690.24 acres), 40607002B (754.24 acres), 40808001K (2,473.74 acres), collectively ("City Lands")

but only within the existing roads ("Existing Roads") and within the transect lines ("New Paths") identified in the documents attached hereto as Exhibit A. The New Paths and the crossings at state/city owned corners are fifteen feet (15') wide. The crossings at the corners run at 45 degree angle and are often referred to as butterfly easements. Licensee shall use the same access routes in and out of City Lands where possible, so as to minimize disturbance to the land.

City hereby further grants Licensee a non-exclusive license to conduct seismic testing on City Lands using Equipment operated on the Existing Roads and New Paths. The seismic testing

activities involves operating the Equipment and Identifying the geologic structures at a depth of approximately 3,850 to 1,400 feet below surface by means of vibration. No explosives will be used.

3. Fees. In consideration of the grant, Licensee shall pay City:
 - a. A One-time administration fee of \$1,500.00;
 - b. A License fee for the initial term (one year) is waived in exchange for a copy of the report compiling seismic testing information on City Lands. Licensee will provide City with an electronic copy of both the underlying data and the report at no expense.
 - c. A Security Deposit of \$5,000 which may be drawn upon by City in the event Licensee does not promptly complete restoration work under this License, to pay for City costs in doing such restoration work. This deposit will not accrue interest to Licensee but will be refunded to Licensee upon conclusion of the License if not otherwise applied to restoration work. If the Security Deposit is drawn down, Licensee shall restore it to the original amount.
4. Adjustments to License Fee. Fees and deposits may be adjusted upon renewal of the License.
5. Reserved.
6. City Representative. The City of Flagstaff Water Services Director will serve as the City's representative and will have authority to approve Licensee's activities on City Lands. Any City approval shall not have the effect of waiving Licensee's obligation to comply with this License and other applicable laws and regulations. Contact information: Brad Hill, (928) 213-2400.
7. Request to Use Other Areas. Licensee shall submit a request to the City Representative at least 10 days prior to commencing any proposed activities on City Lands other than in the Access Ways and Butterfly Easements, except in case of an emergency and in such event, notice will be provided to City as soon as practicable (within 48 hours).
8. Responsibility for Employees, Contractors, and Subcontractors. Licensee shall ensure that all its employees, contractors and subcontractors ("Agents") comply with the terms and conditions of this License, and Licensee will be responsible for any violation of the License by an Agent. Prior to commencing any activities on City Lands, Licensee shall:
 - a. Provide a copy of this License to each of its Agents who will be engaged in the maintenance; and
 - b. Require compliance with this License as a condition of Licensee's contract with any contractor who will be engaged in the maintenance, and require each such contractor to include compliance with this License as a condition of its subcontracts.
9. Access Across Adjacent Properties. Licensee must obtain separate approval from adjacent property owners as necessary to access City Lands.

10. **Approvals.** Licensee shall acquire any necessary permits or approvals from the federal government, City of Flagstaff, Coconino County, Arizona Parks Department, Arizona Department of Transportation, Arizona State Museum and State Historic Preservation Office and/or the County Highway Department prior to grading or disturbing any City Lands.

11. **Archaeological and Historic Preservation.** City is not aware of any archaeological resources along Existing Roads, and has not conducted an assessment of all City Lands. If Licensee detects or finds any archaeological resources or historical artifacts on City Lands, all work shall cease, and Licensee shall notify the City Representative with the location, observations, and photographs. City Representative shall notify the Arizona State Museum and all work must comply with the Arizona Antiquities Act.

12. **Flora and Native Plants.** Prior to driving on New Paths, Licensee shall submit a request to the City of the amount of flora, if any, proposed to be cut, removed, or destroyed by use of the Equipment and shall pay the City such sum of money as the City may determine to be the full value of the flora to be so cut, removed or destroyed.

If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this License, the Licensee hereunder must previously acquire the written permission of the Arizona State Land Department and the Arizona Department of Agriculture to remove those plants.

13. **Grazing.** City has grazing leases across City Lands. Lease Agreement dated February 20, 2007 with Mamberla Sheep Company, Inc., an Arizona corporation ("Grazing Lease"), a copy of which has been provided to Licensee.

- a. Licensee or its Agents shall notify the grazing lessee(s) at least 10 days prior to entering City Lands.
- b. If Licensee activities on City Lands occur during periods of livestock grazing, Licensee will take the necessary measures to insure livestock protection and containment. This may require temporary fencing.
- c. Any damage to rangeland improvements by the Licensee or its Agents (i.e., fencing, gates, pipelines, earthen structures, etc.) will be replaced and/or reconstructed with new material to grazing lessee's satisfaction and at Licensee's expense.
- d. Licensee shall provide City with documentation of the grazing lessee's consent prior to making any alterations to existing improvements.
- e. Licensee shall not engage in any activity that will substantially interfere with or otherwise cause a breach of the Grazing Lease.

14. **Materials.** Licensee shall not remove or allow removal of any materials (including but not limited to dirt and rocks) from City lands without the prior written consent of the City.

15. **Public Use.** Licensee shall not exclude from use of U.S. Forest Service, State of Arizona, City of Flagstaff its lessees or licensees, or the general public the right of ingress and egress over

City lands. City may approve temporary fencing to protect work areas.

16. **Soil.** Licensee shall conduct all maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to, vegetation, drainage channels, and streambanks. Work methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Licensee shall take such other soil and resource conservation and protection measures on the land under grant or permit as determined necessary by the City.

17. **Trees.** Licensee shall not cut nor allow to be cut or removed any timber or standing trees on City lands, without the prior written consent of the City.

18. **Restoration following Activities.** Within thirty (30) days of completion of any activities on City Lands, Licensee shall submit to City a statement of work completed and thereafter shall restore any land or improvements it has disturbed including, but not limited to, restoration of the surface, revegetation, and fencing as determined necessary by the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. In the event Licensee does not promptly complete restoration work, City reserves the right to do such restoration work and Licensee shall pay for the City's costs. City will apply the Security Deposit towards City's costs and invoice Licensee for any remaining balance.

19. **Compliance with Laws.** Licensee shall adhere to all applicable laws, rules, regulations, ordinances and building codes related to use of the City Lands.

20. **Indemnification.** Licensee shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents, guests or invitees of Licensee or damages to any property arising or alleged to have arisen out of the negligent performance of the License, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the License.

21. **Environmental Indemnification.** Licensee shall protect, defend, indemnify and hold harmless the City from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any substance that came to be located on the City Lands due to Licensee's use or occupancy of the lands by the Licensee before or after the issuance of the License; or (b) any release, threatened release or escape of any substance in, on, under or from said City Lands that is caused, in whole or in part, by any conduct, actions or negligence of the Licensee, regardless of when such substance came to be located on the City Lands.

For the purposes of this License, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", "hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and

ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of City. This environmental indemnity shall survive the expiration or termination of this License and/or any transfer of all or any portion of the City Lands and shall be governed by the laws of the State of Arizona.

In the event any such action or claim is brought or asserted against the City, the Licensee shall have the right, subject to the right of the City to make all final decisions with respect to City's liability for claims or damages, (i) to participate with City in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the City Lands and (ii) to participate with the City in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

22. Termination by Licensee. Licensee may terminate this License upon at least thirty (30) days written notice to City for convenience. In such event Licensee shall provide City with a copy of any seismic testing on City Lands completed as of the termination date.

23. Revocation by City. City may revoke this License in the event of any of the following:

- a. Licensee has violated a term or condition of this License, City has provided written notice and reasonable opportunity to cure, and Licensee has failed to cure the same; or
- b. Licensee has engaged in activities that will have the effect of causing City to violate its Grazing Leases as determined in the discretion of City after consultation with the Lessee; or
- c. The City Manager shall have the right to revoke this License upon at least six (6) months' advance written notice to Licensee for convenience.

The City of Flagstaff shall be forever wholly absolved from any liability for damages which might result to the Licensee upon cancellation or revocation.

24. Restoration upon Conclusion of License. Within thirty (30) days after cancellation, revocation, expiration or termination of the License, Licensee shall, as far as is reasonably possible, restore and/or rehabilitate the land to its natural condition to the satisfaction of the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. Licensee may, with written permission of City, allow abandonment of improvements in place. If improvements are not removed and/or restoration is not completed within thirty (30) days or other reasonable time allowed by City, City shall do such work and charge the actual costs of such work against the Security Deposit and invoice Licensee for any balance of the costs incurred.

25. Reserved.

26. Fire Treatment Use. City reserves the right to engage in or allow fire treatment (including but not limited to, cutting of timber, clearing, prescribed burns, and fire-fighting) in the City Lands and such Fire Treatment Use shall have priority rights over any use permitted pursuant to this License.

27. **Other Non-Fire Treatment Uses.** City reserves the right to execute licenses or grants within the City Lands for other non-fire treatment uses, so long as the same do not interfere with Licensee's proper use of the Access Ways and Burtenly Easements.
28. **Laws.** City reserves the right to amend this License to conform with current law, including any amendments or repeals of existing laws as may hereafter be made, and no provisions of this License shall create any vested right in conflict with the same.
29. **Governing Law.** This License shall be construed in accordance with laws of Arizona. The courts of Arizona shall have exclusive jurisdiction and Cochino County shall be the venue.
30. **Non-discrimination.** The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 98-4.
31. **Conflict of Interest.** This contract is subject to cancellation pursuant to A.R.S. § 38-511.
32. **Assignment.** Licensee may assign this License with prior written consent of City, and upon assignee's assumption of all rights and obligations of the License.
33. **Notices.** All notices or other communications under this License shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered, return receipt requested, postage prepaid and addressed as follows:

<p>if to Licensee: Robert W. Rohlfing, Director Desert Mountain Energy Corp. 1153 56th Street Delta, B.C. V4L 2P8, Canada if to City:</p>	<p>With a copy to: Arizona Statutory Agent per Arizona Corporation Commission records With a copy to: City, Real Estate Manager City of Flagstaff 211 W. Aspen Avenue Flagstaff, Arizona 86001</p>
--	--

Or such other person designated by the party in writing.

In witness whereof, the parties have caused this License to be executed by their duly authorized representatives on the date(s) set forth below.

CITY OF FLAGSTAFF

Darlene Salinger
City Manager

LICENSEE

Robert W. Goff
Atty.
Scott Christensen

ATTEST:

Stacy Salinger
City Clerk

APPROVED AS TO FORM:

Kristin Anderson
City Attorney

Attachments:

Exhibit A - Documents showing Access Ways and New Paths

Exhibit 3

Council meeting to shed light on Red Gap Ranch helium mining

- [Scott Buffon](#)
- Feb 12, 2019 Updated Mar 19, 2019
- 0

SALE! Subscribe for \$1/mo.



Red Gap Ranch with the San Francisco Peaks in the distance.
Emery Cowan

- Facebook
- Twitter
- Email
- Print
- Save

Scott Buffon

The Flagstaff City Council hopes to clarify the city's stance on an agreement they entered into allowing Desert Mountain Energy to access city property for helium and hydrocarbon that could be present beneath the surface.

The land in question, Red Gap Ranch, was purchased by the city with taxpayer money for a different resource also found beneath the surface — potential drinking water. City voters **approved** a \$15 million bond for the purchase to extend the city's water resources, with city officials only spending \$6.9 million for the land and water access in 2005.

The city is holding a council meeting on Tuesday about a Desert Mountain Energy press release that city officials say "overstates" the city's commitment to their agreement that included exploration and production, according to the **online council agenda**.

Alicyn Gitlin, conservation coordinator at the Sierra Club, is concerned about the city's lack of transparency and communication on the mining and exploration prospect, which she believes could risk damaging the city's water.

"It's a very big violation of the public trust by not including public input and notification prior to making a decision like this that could affect our future water supply," Gitlin said.

Red Gap Ranch is located east of Flagstaff, south of the Navajo Nation and adjacent to the I-40 highway and has not yet been developed for city use.

Jessica Drum, spokesperson for the City of Flagstaff, encouraged people to attend the council meeting for further information.

The Desert Mountain Energy **press release** and focus for the concern states: "The parties agree to work together to limit the environmental impact of the work and production programs whilst allowing for the successful extraction of valuable resources."

Olian Irwin, CEO for Desert Mountain Energy, said he stands by the information in the press release as accurate, but said there is always a possibility of misinterpretation.

Irwin also alleged that the company had no intention to build a well on the city's land or damage the city's water supply, despite the press release stating it could allow for hydrocarbon resource development. Hydrocarbons can include multiple different compounds but often occur in petroleum and natural gas.

"We won't do a well for helium if there's any danger of contaminating the water supply at all," Irwin said. "It's just not going to happen."

A city council **report** from mid-January explains that the city will only allow seismic testing and mining if both Desert Mountain Energy and the city agreed to pursue the project.

"The memorandum of understanding: expresses the parties' desire to explore possibilities for helium exploration and mining if mutually beneficial and to cooperatively work together," the memo to the city council explained.

The agreement details the use of seismic testing to explore the presence for helium. Taylor McKinnon, public lands campaigner with the Center for Biological Diversity, said he is also concerned with how little public input has been allowed on the project, which he feels might endanger the Red Gap Ranch property.

"It's bad public policy," McKinnon said. "Secondly, a question arises, how does facilitating hydrocarbon exploration and development fit with the city's new **climate action plan**?"

Desert Mountain Energy describes itself as a producer of helium, oil and gas on their website. Irwin alleges they included hydrocarbon in the agreement, because other gases and minerals can be found while exploring for helium.

"There's no intent, this is not about looking for oil wells," Irwin said. "Maybe that will be clarified with an amendment to the agreement."

City officials also recommend revising the agreement to clarify their perspective, according to the council agenda item.

"Any decisions or forward path by the city would be fully vetted with the council and public to achieve a complete understanding of the process to do any extraction, the environmental impacts, water quality impacts, and other factors that would be related to any decision in moving forward should any helium resource be discovered," the city agenda said.

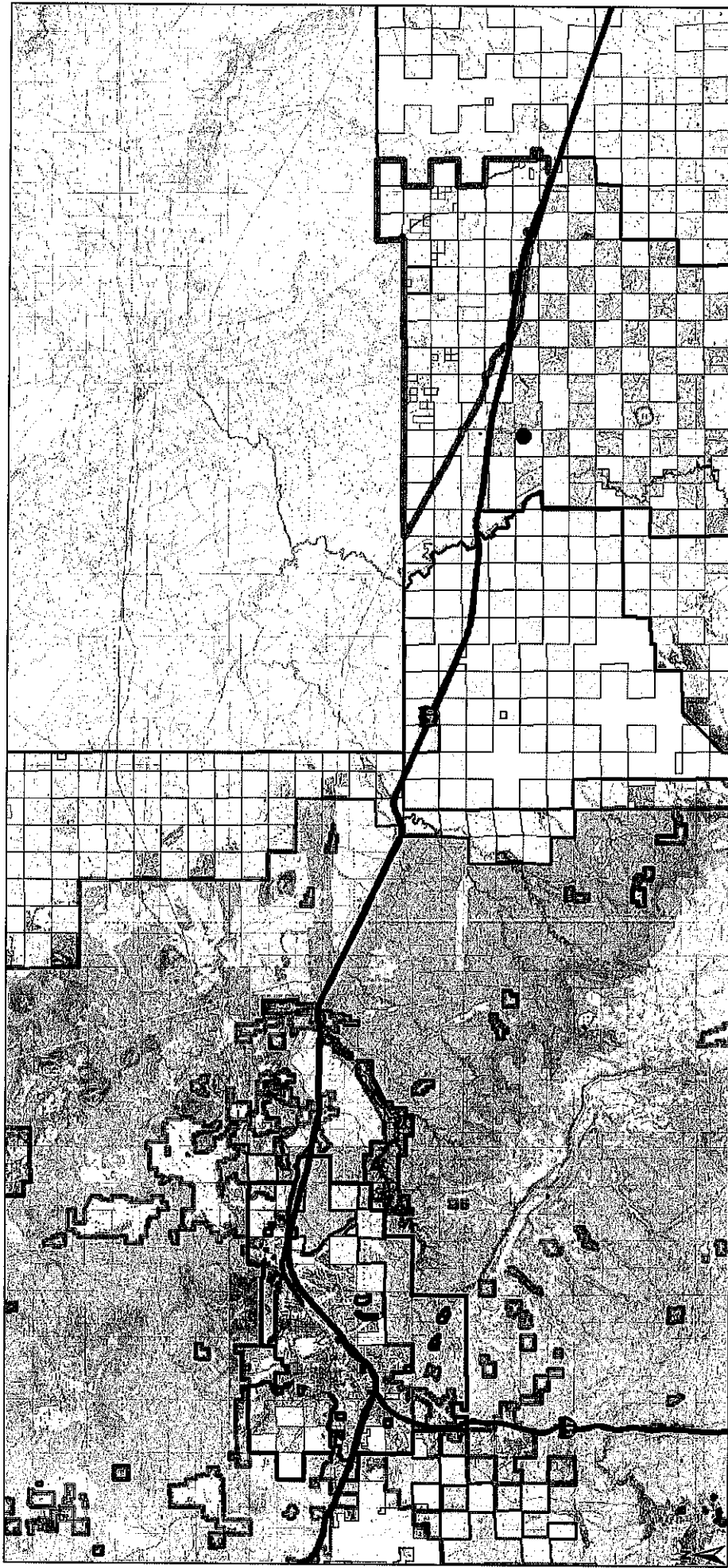
Helium is a nonrenewable resource and is used in items like computer hard drives and MRI machines as coolant.

Scott Buffon can be reached at sbuffon@azdailysun.com, on Twitter @scottbuffon or by phone at (928) 556-2250.

0 comments

Exhibit 4

Location of Desert Mountain Energy Drilling Permit Relative to Red Gap Ranch



- DME Permit for Helium and Hydrocarbon Well
- ◻ Navajo Reservation
- ◻ United States Forest Service
- ◻ Private Land
- ◻ State Trust Land
- ◻ City of Flagstaff
- ◻ Red Gap Ranch Property & Boundary
- ◻ Hopi Hart Ranch Property & Boundary
- ◻ Bar-T-Bar Ranch Property & Boundary



Map created on 08 December 2020

Exhibit 5

APPLICATION FOR PERMIT TO DRILL OR RE-ENTER

APPLICATION TO DRILL

RE-ENTER OLD WELL

INJECTION WELL
AIR QUALITY DIVISION

OIL

GAS

CO2

HELIUM WELL

OTHER Helium

NAME OF COMPANY OR OPERATOR

Desert Mountain Energy Corp

20 NOV - 9 PM 12:45

Address

City

State

Phone Number

6300 W. 23 St. N.

Muskogee

OK74401

918-752-7020

Drilling Contractor

To be Determined

Address

DESCRIPTION OF WELL AND LEASE

Federal, State or Indian Lease Number, or if fee lease, name of lessor

13-120004

Well number

26-1

Elevation (ground)

5451.8

Nearest distance from proposed location to property or lease line:

1,660'

feet

Distance from proposed location to nearest drilling, completed or applied-for well on the same lease:

Not Applicable

feet

Number of acres in lease

640

Number of wells on lease, including this well, completed in or drilling to this reservoir:

1

If lease purchased with one or more wells drilled, from whom purchased.

Name

Address

NA

Well location (give footage from section lines)

1660 ft FEL 2,335' FNL

Section - Township - Range or Block and Survey

S26 T20N R12.5E G&SRB&M

Dedication per A.A.C. R12-7-104(A)(3)

All of Sec

Field and reservoir (if wildcat, so state)

Wildcat

County

Coconino County, AZ

Distance in miles and direction from nearest town or post office

18 Miles East to Winslow, AZ 1.2 Miles North to Meteor Crater Interchange on I40

Proposed depth:

2,000'

Rotary or cable tools

Air/Mist

Approximate date work will start

11/12/20

Bond status

Amount \$25,000

Organization Report

On file

Or attached

X

Filing Fee of \$25.00

Attached

Yes

Remarks

RECEIVED
 NOV 09 2020
 ADEQ

CERTIFICATE: I, the undersigned, under the penalty of perjury, state that I am the CEO of the Desert Mountain Energy Corp (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

Mail completed form to:

Oil and Gas Program Administrator
 Arizona Oil & Gas Conservation Commission
 c/o Arizona Department of Environmental Quality
 1110 W. Washington Street
 Phoenix, AZ 85007

Signature

Date

e-mail completed form to: azogcc@azdeq.gov

Permit / LTF No.: 1255/ LTF#86784

Approval Date: November 18th, 2020

Approved By: [Signature]

NOTICE: Before sending in this form be sure that you have given all information requested. Much unnecessary correspondence will thus be avoided.

STATE OF ARIZONA

OIL & GAS CONSERVATION COMMISSION

Application to Drill or Re-enter

File two copies: one by mail, one electronically

Form No. 3

(Complete Reverse Side)

03/2018

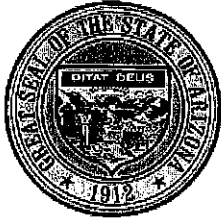
1. Operator shall outline on the plat the acreage dedicated to the well in compliance with A.A.C. R12-7-107.
2. A registered surveyor shall show on the plat the location of the well and certify this information in the space provided.
3. ALL DISTANCES SHOWN ON THE PLAT MUST BE FROM THE OUTER BOUNDARIES OF THE SECTION.
4. Is the operator the only owner in the dedicated acreage outlined on the plat below? YES NO
5. If the answer to question four is no, have the interests of all owners been consolidated by communitization agreement or otherwise? YES NO If answer is yes, give type of consolidation _____
6. If the answer to question four is no, list all the owners and their respective interests below:

Owner Desert Mountain Energy Corp	Land Description In the SW1/4 NE1/4 S26 T20N R12.5E
State 26-1	
<div style="border: 1px dashed black; width: 100%; height: 100%; display: flex; align-items: center; justify-content: center;"> X </div>	<p style="text-align: center;">CERTIFICATION</p> <p>I hereby certify that the information above is true and complete to the best of my knowledge and belief.</p> <p style="text-align: right;"><i>R W Rohlfing</i></p> <p>Name R W Rohlfing CEO</p> <p>Position CEO , President</p> <p>Company Desert MountainEnergy</p> <p>Date 11-2-20</p>
WELL SITE: 35°05'29.277"N 111°02'14.775"W 5448.6	<p>I hereby certify that the well location shown on the plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.</p>
	<p>Date Surveyed 8/21/2020</p> <p>Registered Land Surveyor Alisa J. Templeton</p> <p>Certificate No. AZ RLS 26406</p>

PROPOSED CASING PROGRAM

Size of Casing	Weight	Grade & Type	Top	Bottom	Cementing Depths	Sacks Cement	Type
7"	23#	J-55	Sur	500'	500'-Surface	150	reg
4.5"	11.6#		Sur	1,990'	1,900'-Surf	180	Prem

ARIZONA OIL and GAS CONSERVATION COMMISSION



State of Arizona
Oil and Gas Conservation Commission

1110 W. Washington Street, Phoenix, AZ 85007

602-771-4501

www.azogcc.az.gov

Marta Hodan, Oil and Gas Administrator

Commissioners:

Frank Thorwald, Chair

J. Dale Nations, Ph.D., Vice Chair

Stephen R. Cooper

William C. Feyerabend

**CERTIFICATE for PERMIT to DRILL an
OIL, GAS, INJECTION or GEOTHERMAL WELL
PERMIT / LTF NUMBER 1255 / LTF #86784**

Has been issued to **Desert Mountain Energy Corp.**

to drill a well known as **Desert Mountain 26-1 State**

located **1660 FEL 2335 FNL**

in Section 26 Township 20N Range 12.5E , Coconino County, Arizona

The entirety of Sec 26, T20N, R12.5E (640 acres) of said Section, Township and Range is dedicated to this well.

Said well shall be drilled substantially as described in the Application and as approved by the OGCC's letter dated November 19, 2020. Desert Mountain Energy Corp. is subject to terms and conditions of the permit to drill and all applicable Arizona Revised Statutes (A.R.S.) Title 27, Chap. 4, Art. 1 and 4, and the Arizona Administrative Code (A.A.C.) R12-7-104, R12-7-106 to 107 and R12-7-175 to 176.

Total Depth: 2,000 feet

Issued: November 18, 2020

API No.: 02-005-20036

Expires*: May 17, 2021

*The permit to drill expires if operations are not commenced within 180 days from date of this certificate (see A.A.C R12-7-104(D))

Marta Hodan, Oil & Gas Program Administrator

ogcc@azdeq.gov

**OPERATOR SHALL DISPLAY THIS CERTIFICATE
IN A CONSPICUOUS PLACE ON-SITE**

Exhibit 6

APPLICATION FOR PERMIT TO DRILL OR RE-ENTER

APPLICATION TO DRILL

RE-ENTER OLD WELL

INJECTION WELL
AIR QUALITY DIVISION

OIL

GAS

CO2

HELIUM WELL

OTHER Helium

NAME OF COMPANY OR OPERATOR

20 NOV - 3 PM 12:45

Desert Mountain Energy Corp

Address

City

State

Phone Number

6300 W. 23 St. N.

Muskogee

OK74401

918-752-7020

Drilling Contractor

To be Determined

Address

DESCRIPTION OF WELL AND LEASE

Federal, State or Indian Lease Number, or if fee lease, name of lessor

13-120004

Well number

26-1

Elevation (ground)

5451.8

Nearest distance from proposed location to property or lease line:

1,660'

feet

Distance from proposed location to nearest drilling, completed or applied-for well on the same lease:

Not Applicable

feet

Number of acres in lease

640

Number of wells on lease, including this well, completed in or drilling to this reservoir:

1

If lease purchased with one or more wells drilled, from whom purchased.

Name

Address

NA

Well location (give footage from section lines)

1660 ft FEL 2,335' FNL

Section - Township - Range or Block and Survey

S26 T20N R12.5E G&SRB&M

Dedication per A.A.C. R12-7-104(A)(3)

All of Sec

Field and reservoir (if wildcat, so state)

Wildcat

County

Coconino County, AZ

Distance in miles and direction from nearest town or post office

18 Miles East to Winslow, AZ 1.2 Miles North to Meteor Crater Interchange on I40

Proposed depth:

2,000'

Rotary or cable tools

Air/Mist

Approximate date work will start

11/12/20

Bond status

Amount \$25,000

Organization Report

On file

Or attached

X

Filing Fee of \$25.00

Attached

Yes

Remarks

RECEIVED
 NOV 09 2020
ADEQ

CERTIFICATE: I, the undersigned, under the penalty of perjury, state that I am the:

CEO

of the

Desert Mountain Energy Corp (company), and that I am authorized by said company to make this report; and that this

report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

Mail completed form to:

Oil and Gas Program Administrator
 Arizona Oil & Gas Conservation Commission
 c/o Arizona Department of Environmental Quality
 1110 W. Washington Street
 Phoenix, AZ 85007

Signature

11-2-20

Date

e-mail completed form to: azogcc@azdeg.gov

Permit / LTF No.: 1255/ LTF #86784

Approval Date: November 18th, 2020

Approved By: 

NOTICE: Before sending in this form be sure that you have given all information requested. Much unnecessary correspondence will thus be avoided.

STATE OF ARIZONA

OIL & GAS CONSERVATION COMMISSION

Application to Drill or Re-enter

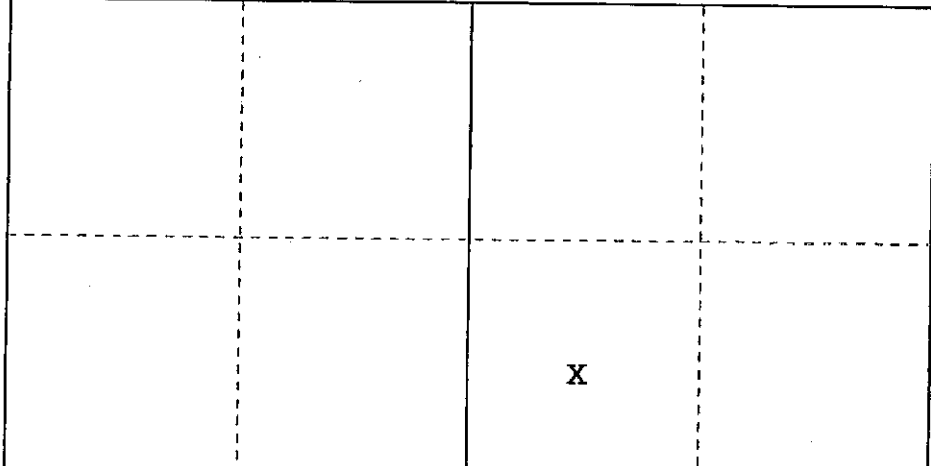
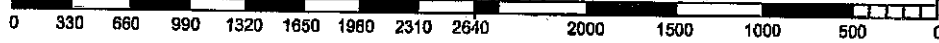
File two copies: one by mail, one electronically

Form No. 3

(Complete Reverse Side)

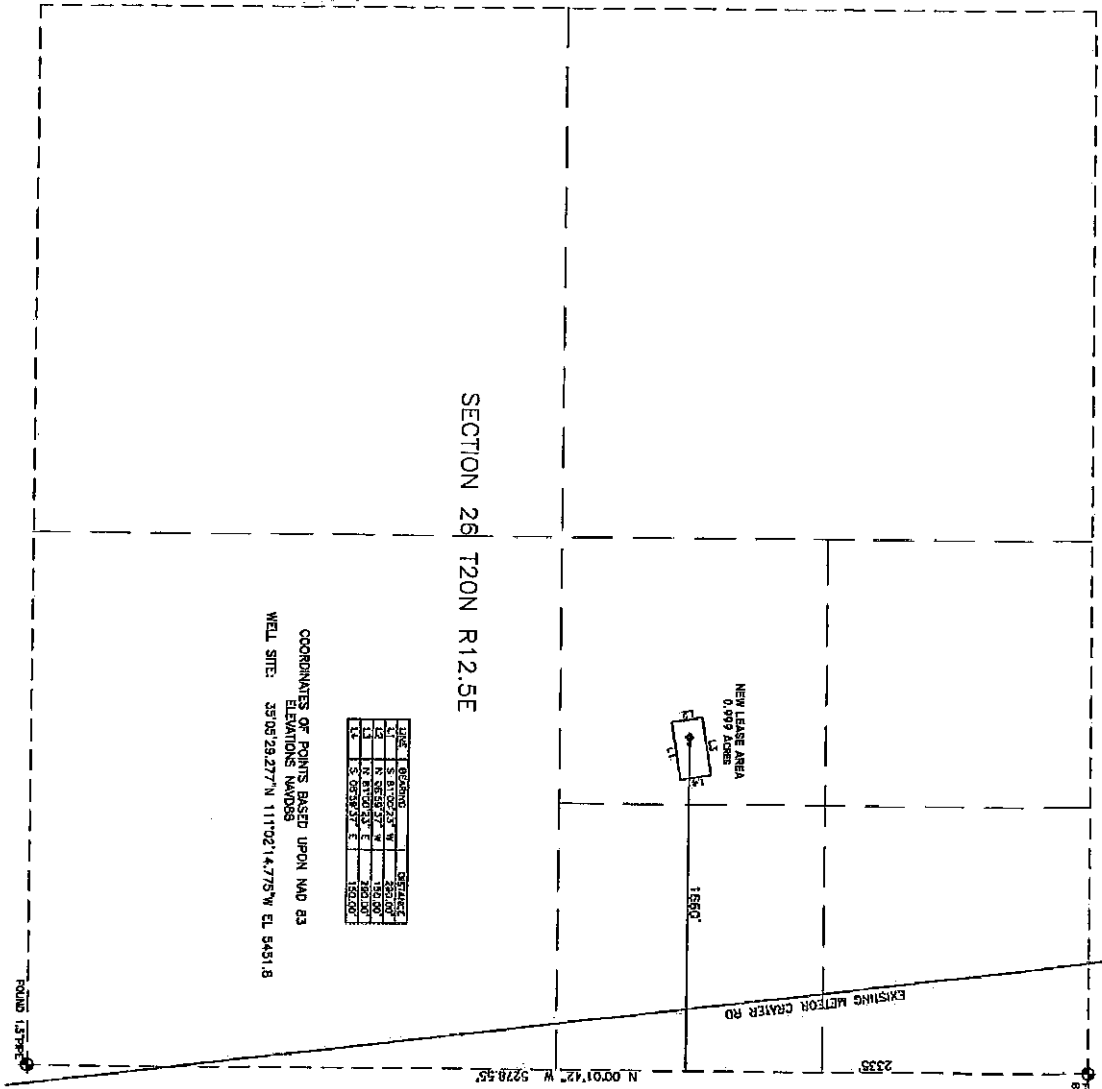
03/2018

- Operator shall outline on the plat the acreage dedicated to the well in compliance with A.A.C. R12-7-107.
- A registered surveyor shall show on the plat the location of the well and certify this information in the space provided.
- ALL DISTANCES SHOWN ON THE PLAT MUST BE FROM THE OUTER BOUNDARIES OF THE SECTION.
- Is the operator the only owner in the dedicated acreage outlined on the plat below? YES NO
- If the answer to question four is no, have the interests of all owners been consolidated by communitization agreement or otherwise? YES NO If answer is yes, give type of consolidation _____
- If the answer to question four is no, list all the owners and their respective interests below:

Owner Desert Mountain Energy Corp	Land Description In the SW1/4 NE1/4 S26 T20N R12.5E	
State 26-1		
		<p style="text-align: center;">CERTIFICATION</p> <p>I hereby certify that the information above is true and complete to the best of my knowledge and belief.</p> <p style="text-align: center;"><i>R W Rohlfing</i></p> <p>Name R W Rohlfing CEO</p> <p>Position CEO , President</p> <p>Company Desert MountainEnergy</p> <p>Date 11-2-20</p>
<p>WELL SITE: 35°05'29.277"N 111°02'14.775"W 5448.6</p>		<p>I hereby certify that the well location shown on the plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.</p>
		<p>Date Surveyed 8/21/2020</p> <p>Registered Land Surveyor Alisa J. Templeton</p> <p>Certificate No. AZ RLS 26406</p>

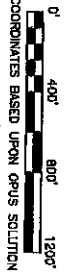
PROPOSED CASING PROGRAM

Size of Casing	Weight	Grade & Type	Top	Bottom	Cementing Depths	Sacks Cement	Type
7"	23#	J-55	Sur	500'	500'-Surface	150	reg
4.5"	11.6#		Sur	1,990'	1,900'-Surf	180	Prem



LINE	BEARING	DISTANCE	ORDERING
1	S 81°02'27\"/>		

COORDINATES OF POINTS BASED UPON NAD 83
ELEVATIONS NAVD83
WELL SITE: 35°09'29.277\"/>



THIS IS TO CERTIFY THAT THE WELL LOCATION SHOWN UPON THIS PLAT WAS PLOTTED FROM FIELD NOTES OF AN ACTUAL SURVEY MADE BY ME AND THE SAME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DRAWN: 8/24/2022

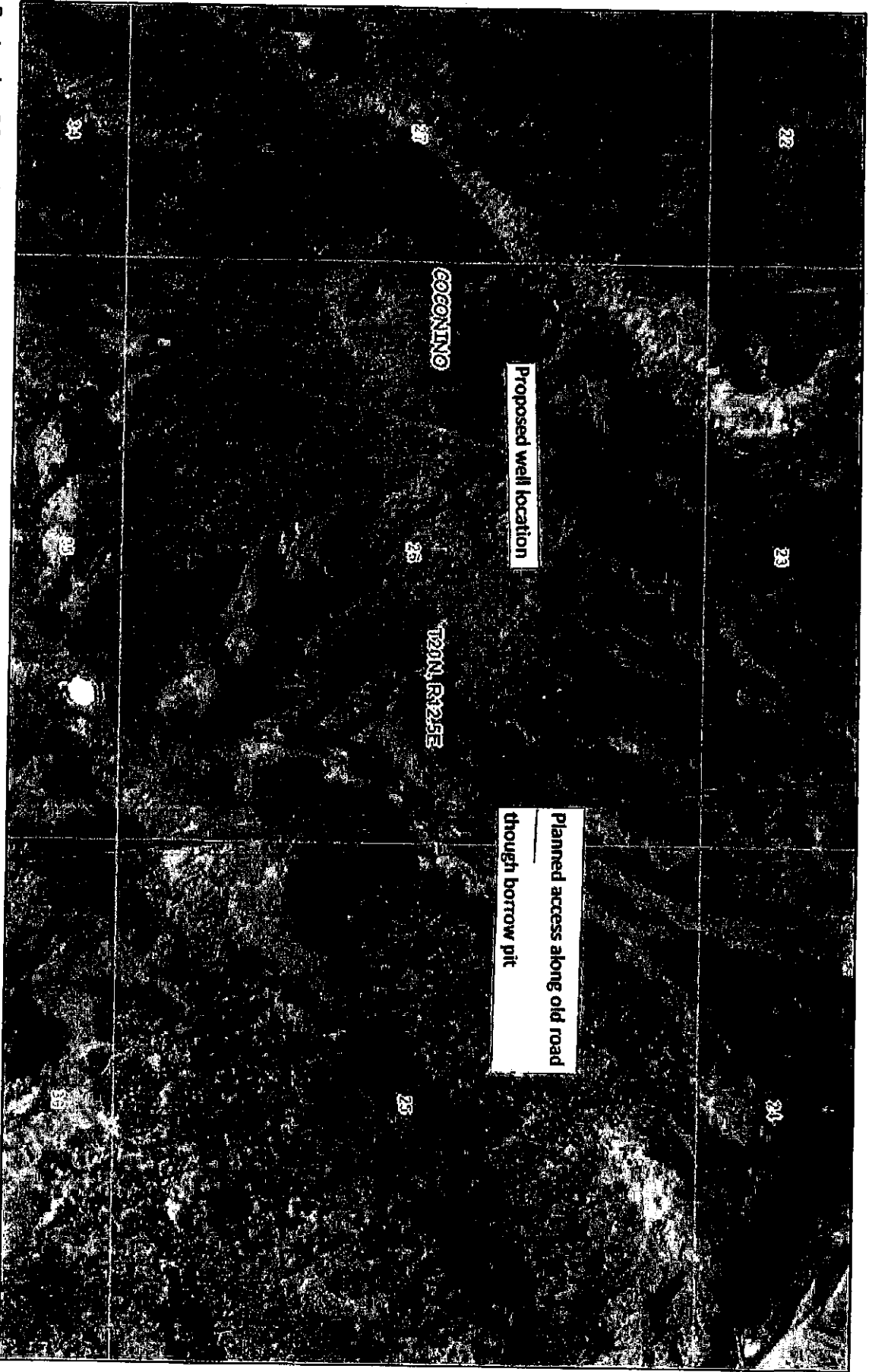
20-18
SHEET 1 OF 1

PLAT OF PROPOSED WELL SITE AND LEASE AREA IN THE SW1/4 NE1/4 SECTION 26, T20N, R12.5E, G&SRB&M COCONINO COUNTY, ARIZONA

EXTREME MEASURES LAND SURVEYS, INC.
10800 NIGHTHAWK LANE FLAGSTAFF, ARIZONA 86004
928.853.3861 extremeasures1997@outlook.com

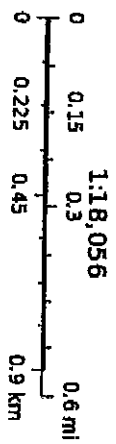
SCALE: 1"=400' (PRINTED ON 11x17)
DRAWING: ALISA TRIPLETON
DESIGN: ALISA TRIPLETON
CLIENT: DESERT MOUNTAIN ENERGY CORP
DATE: 24 AUGUST 2022

Arizona State Land Department



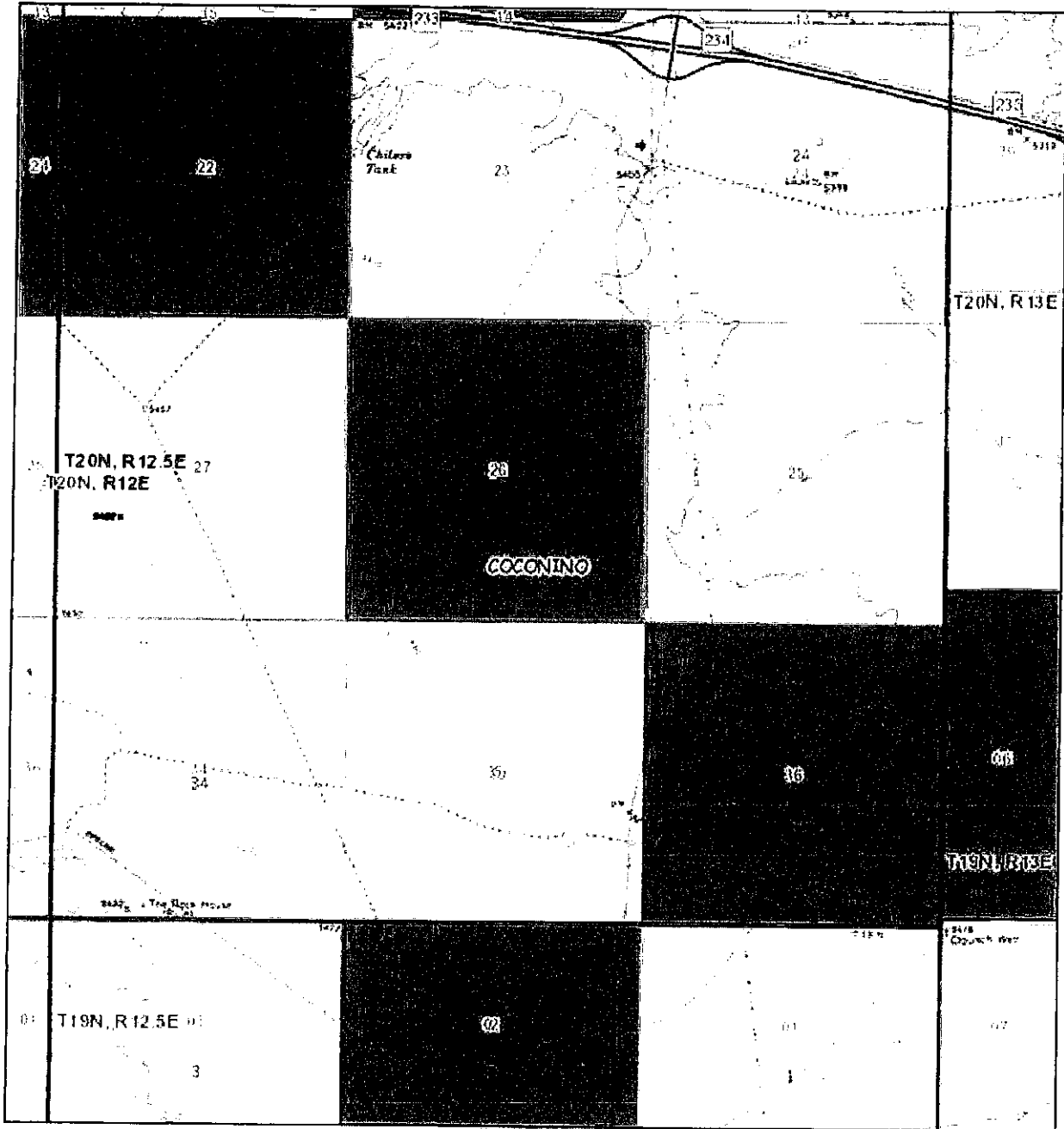
September 28, 20 Desert Mountain Energy Corp.

STATE 26-1, Coconino County, Arizona

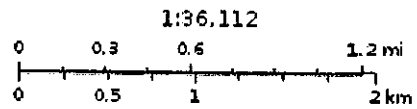


Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Arizona State Land Department



November 6, 20



Copyright:© 2012 National Geographic Society, I-cubed

APPENDIX A

STATE OF ARIZONA LAND DEPARTMENT
1616 W. ADAMS
PHOENIX, AZ 85007

RUN DATE: 21 May 2018
RUN TIME: 9:56 AM
PAGE: 1

KE-LEASE# 013-120004-00-100 APPTYPE: NEW
AMENDMENT#: 0

LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
19.0-N-12.5-E-02-03-030-1000	LOTS 1 THRU 4 S2N2 S2	0.00	640.600
19.0-N-12.5-E-12-03-053-1000	ALL	0.00	640.000
19.0-N-12.5-E-26-03-053-1000	ALL	0.00	640.000
19.0-N-12.5-E-36-03-030-1000	ALL	0.00	640.000
	TOTALS	0.00	2,560.600

IN WITNESS HEREOF, the parties hereto have signed this Lease effective the day and year set forth previously herein.

DESERT MOUNTAIN ENERGY CORP

Lessee

R. W. Phillips Director
Authorized Representative

R. W. Phillips 5-22-15
Signature Date

STATE LAND DEPARTMENT
Arizona State Land Commissioner

BY Jennifer H. [Signature] 05-22-18
Date



Desert Mountain Energy Corp.

6300 W. 23 St. N. Muskogee, OK. 74401

To: Marta Hodan, Director

11/02/20

Arizona Oil & Gas Conservation Commission

C/O Arizona Department of Environmental Quality

1110 W. Washington Street

Phoenix, AZ. 85007

RE: Justification and well planning for well Sec 26 20N 12.5E, Coconino County.

Good Day

Desert Mountain Energy Corp. is seeking to permit and drill a well on the above listed ASLD lease. The company finds both the current and future demands for Helium and the associated pricing to be the most compelling for profitability. The greatly elevated prices provide additional profit margins which ten years ago simply did not exist. As such it not only increases the likelihood for operators to operate successfully on lower volumes, also providing the maximum potential for meaningful royalties being paid to mineral owners and in this case, the Arizona State Land Department. It is our plan to further maximize profits from all wells we drill by processing the helium and selling to end users located in Arizona.

The State 26-1 planned well site, (ASLD Lease#13-120004 ASLD GFOP#041-121486), is situated on the apex of an anticlinal structure which has been previously documented by USGS mapping, numerous geologists and confirmed by our proprietary seismic. This specific anticlinal feature runs from approximately three miles west of location to three miles NE of proposed location. Review of available existing geological data in addition to our physical study of the area and seismic, supports this placement as the location to intersect multiple probable helium bearing zones with the highest porosities and permeabilities. Thereby providing the minimums to eliminate the need to conduct hydraulic fracturing operations. Furthermore, the use of air mist drilling through the prospective zones reduces the damage to the near well bore via intrusion by heavy bentonite clay drilling fluids. The nearest well, (Townsend / Gus Berry State 26-1, Sec 26 19N 13E), approximately 7 miles SE of the intended site did not encounter any H₂S. Therefore we do not anticipate encountering any H₂S. However, well logs indicate the gas / water contact point was present in all zones. Our location should be approximately 530' structurally higher than the Townsend / Gus Berry well and therefore we would anticipate water free production if gas is present. The Triassic Formation is present at varying locations with the Moenkopi present in outcrops.

Proprietary seismic indicated formation tops are as follows; Permian Kaibab LS 55', Coconino SS 180', Supai 1,250', Ft Apache 1,620' Amos Wash 1,750', with planned TD at 2,000'. The Ft. Apache and Amos Wash are the target formations in this well.

This location is 1,660' from the nearest lease line and therefore does not require a well spacing exemption. Planned access utilizes an old road directly off paved roadway, (paved roadway traverses N/S through section containing drill site,) thence westerly across exposed sand rock then through a small borrow pit to the proposed drill location. This location was selected to use old existing access along with the area containing the least amount of any form of vegetation. As the planned drill location is flat grading is not considered a requirement to drill. Utilization of a smaller air mist drill rig enables us to reduce the drill location to just under one acre. This well will be a vertical single zone completion and large hydraulic fracturing will *NOT* be used. If the well is deemed non-commercial it will be plugged and abandoned in accordance with AZOGCC rules and regulations, nor will any attempt be made to recover any casing.

Well planning calls for two small pits which will be dewatered and backfilled upon completion of operations. 20' of 10" surface conductor is to be set and cemented into place. Followed with drilling an 8.75" hole to approximately 510', setting 500' of 7" 23# casing using approximately 150 sacks of cement. Then drill a 6.25" hole to approximately 2,000'. If a decision to set pipe is made, run 1,990', 4.5", 11.6# J-55 casing and cemented to surface with approximately 180 sacks of premium lite. A 5000# double ram hydraulic BOP with blind rams will be used by the drilling contractor.

The small footprint for shallow Helium wells also minimizes the impacts to the surface of the state lands, whilst providing a unique opportunity for financial rewards to the taxpayers of the State of Arizona. The area we have targeted has and continues to suffer tremendous negative economic impact with the closing of many facilities which paid meaningful wages. In our meetings with local leaders and legislators, we have been welcomed and encourage to take the chance on this opportunity not only to help them locally with good paying jobs, but to help the children in the education system via the royalties paid to ASLD.

Respectfully submitted,

Robert W. Rohlfing, CEO

Desert Mountain Energy Corp.



Douglas A. Ducey
Governor

State of Arizona
Oil and Gas Conservation Commission
1110 W. Washington Street, Phoenix, AZ 85007
602-771-4501
www.azogcc.az.gov

Commissioners:
Frank Thorwald, Chair
J. Dale Nations, Ph.D., Vice Chair
Stephen R. Cooper
William C. Feyerabend

FORM 1 - ORGANIZATION REPORT

(File two copies: by mail, and electronically)

Principal:

Legal name and business address of the person required to obtain a permit to drill an oil or gas well under Arizona Revised Statutes (A.R.S.) §27-113, as registered with the Arizona Corporation Commission:

Desert Mountain Energy Corp
6300 W. 23 ST. N. Muskogee, OK 74401

If a reorganization, give name and address of previous organization:

State of incorporation: Nevada

Date of permit to do business in the state of Arizona: 01/09/18

Name and mailing address of state agent: Paracorp Inc. 8825 N. 23 Ave. Phoenix, AZ 85021

Authorized to do business in Arizona as a:

- Domestic or Foreign Corporation A.R.S. §10-1028 Certificate of Good Standing
- Limited Liability Company A.R.S. §29-614 Certificate of Good Standing
- Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership certificate or certificate of registration on file at Arizona Secretary of State
- Individual or Sole Proprietorship doing business under a Certificate of Trade Name registered at Secretary of State pursuant to A.R.S. §44-1460.01

Principal Officers or Partners (if partnership)

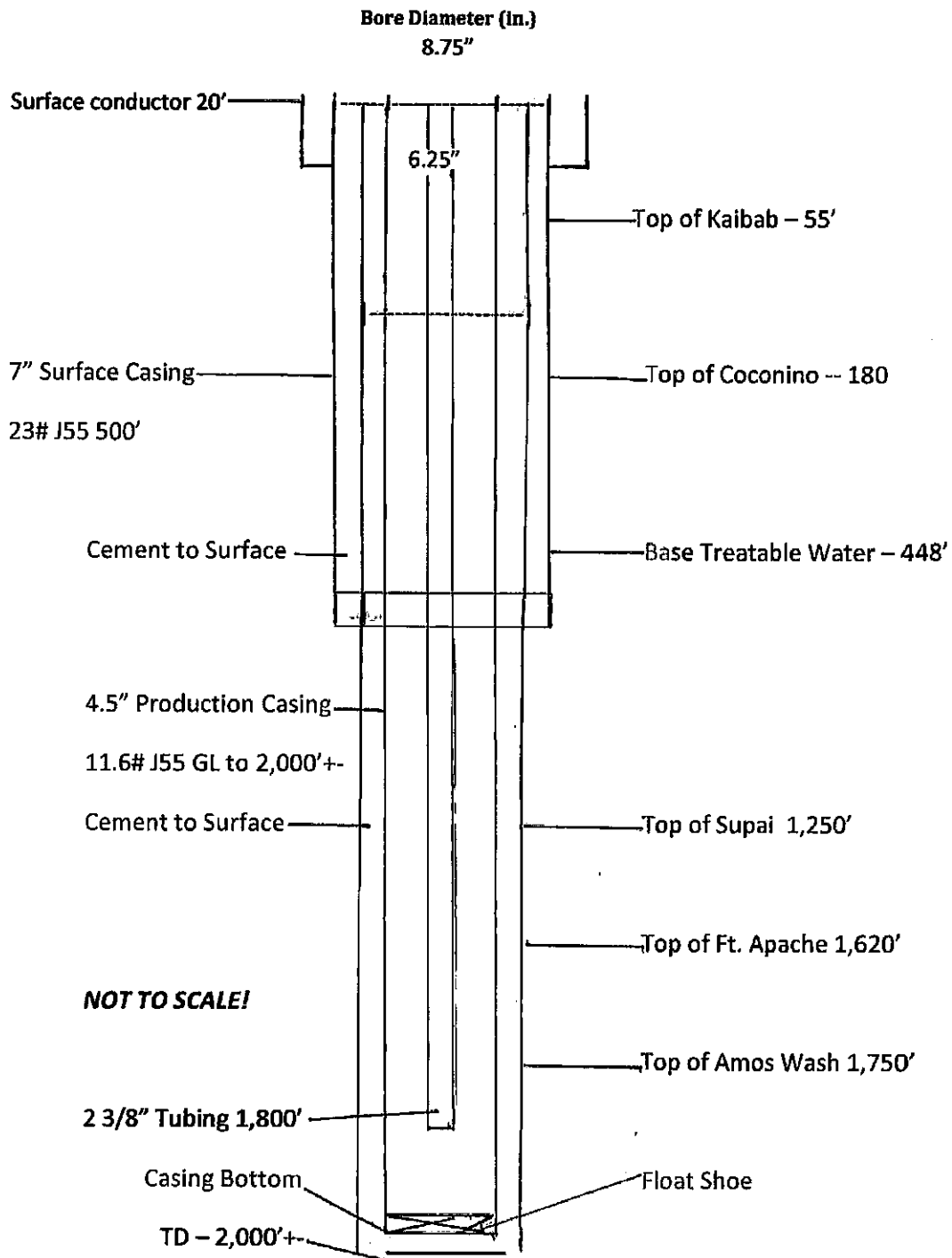
Name / Title	Mailing Address
<u>Robert W. Rohlfing CEO/Director</u>	<u>6300 W. 23 ST. N. Muskogee, OK. 74401</u>
<u>Scott Davis CEO/Director</u>	<u>510-580 Hornby St. Vancouver, BC V6C 3B6</u>

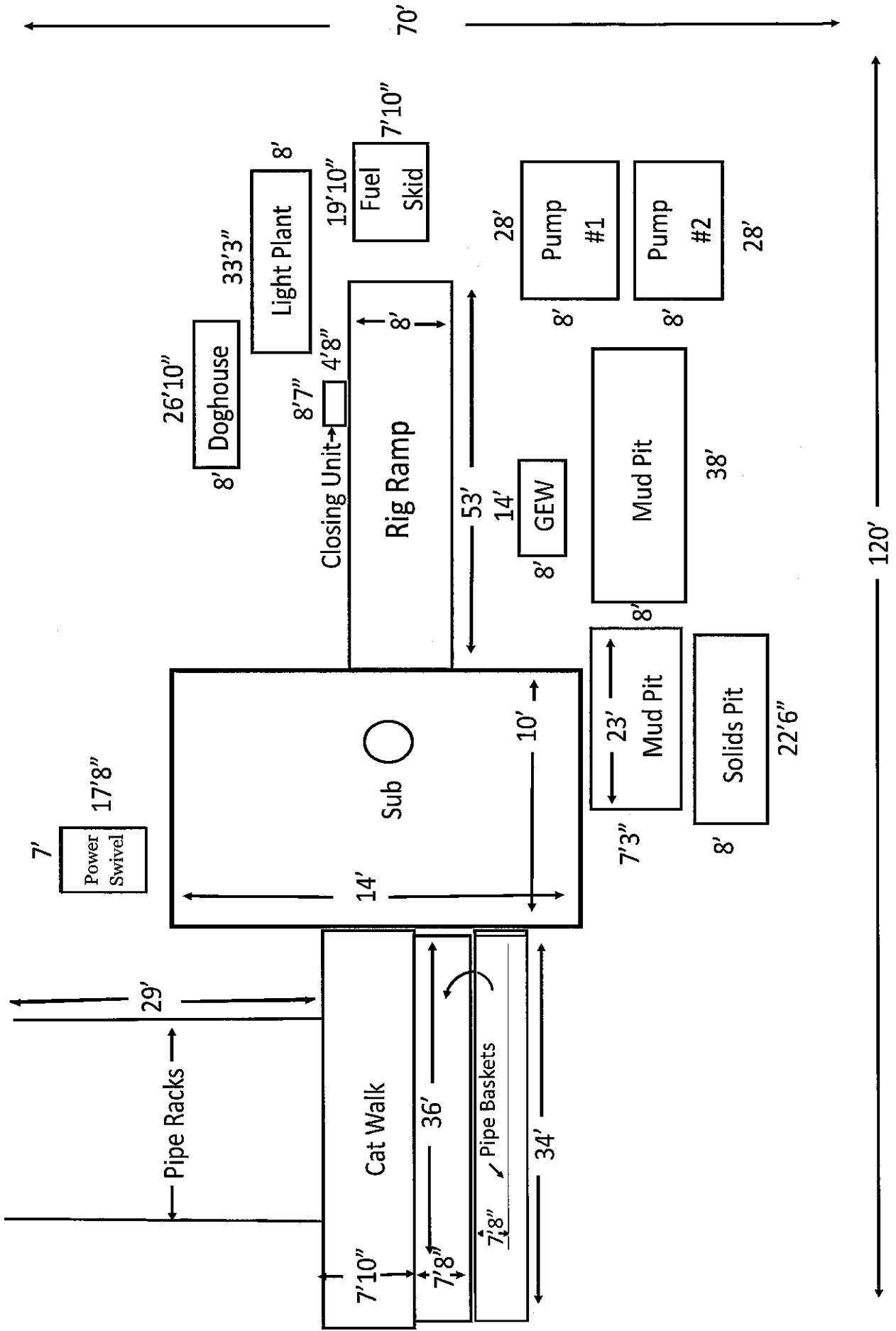
Director's Name	Mailing Address

CERTIFICATE I, the undersigned, under the penalty of perjury state that I am the CEO of the Desert Mountain Energy Corp. (company), and that I am authorized by said company to make this report; and that this report was prepared under my supervision and direction and that the facts stated therein are true, correct and complete to the best of my knowledge.

[Signature]
Signature
11-2-20
Date

DESERT MOUNTAIN ENERGY CORP. STATE 26-1 WELL DESIGN





STATE OF ARIZONA



Office of the
CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

I, the undersigned Executive Director of the Arizona Corporation Commission, do hereby certify that:

DESERT MOUNTAIN ENERGY CORP.

ACC file number: F22500845

a foreign corporation, was authorized to transact business or conduct affairs in the State of Arizona on 01/09/2018;

That all annual reports owed to date by said corporation have been filed or delivered for filing, and all annual filing fees owed to date have been paid; and

That, according to the records of the Arizona Corporation Commission, said corporation is in good standing in the State of Arizona as of the date this Certificate is issued.

This Certificate relates only to the legal existence of the above named entity as of the date this Certificate is issued, and is not an endorsement, recommendation, or approval of the entity's condition, business activities, affairs, or practices.

IN WITNESS WHEREOF, I have hereunto set my hand, affixed the official seal of the Arizona Corporation Commission, and issued this Certificate on this date: 03/02/2020



Matthew Neubert

Matthew Neubert, Executive Director

SECURITIES SAFEKEEPING
1700 WEST WASHINGTON ST. - PHOENIX, ARIZONA 85007

DATE: 5-11-2020

STATE AGENCY NO. _____

STATE AGENCY AZ Dept of Environmental Quality

State Treasurer's Use Only

COMPANY Desert Mountain Energy Corp
6300 W. 33rd Street North
Muskogee, OK 74401

DOMESTIC FOREIGN

C.D. NO. Cashier's Check 7684601944 **DEPOSIT** (for financial assurance)

BANK: Wells Fargo Bank, NA.

MAY 12 PM 3:44

MATURITY DATE: 3/23/2021 INTEREST RATE: NA %

AMOUNT \$ 25,000.00

C.D. ASSIGNMENT MUST BE ATTACHED UNLESS C.D. IS PAYABLE TO STATE TREASURER

C.D. NO.: **RELEASE**

BANK:

MATURITY DATE: INTEREST RATE: %

AMOUNT \$

STATE TREASURER VALIDATION NO. _____

RECEIVED THE ABOVE RELEASE		STATE AGENCY AUTHORIZATION	
BY _____	_____	BY <u>[Signature]</u>	_____
Authorized Signature	Date	Authorized Signature	
_____	Bank or Firm	STATE TREASURER AUTHORIZATION	
		BY <u>[Signature]</u>	_____
		Authorized Signature	
FOR BANK USE ONLY		BANK AUTHORIZATION	
Checked by _____	Verified by _____	BY _____	_____
		Authorized Signature	
STATE'S DEPOSITORY BANK			