

3-11-2020 4:00pm  
S. Perez, Deputy

1 **MARK BRNOVICH**  
Attorney General  
2 State Bar I.D. No. 14000  
3 **ADAM J. SCHWARTZ**  
State Bar No. 028969  
4 **JAMES C. OLSON II**  
State Bar No. 035710  
5 Assistant Attorneys General  
Environmental Enforcement Section  
6 2005 N. Central Ave  
Phoenix, AZ 85004-1592  
7 Telephone: (602) 542-8530  
Environmental@azag.gov  
8 Attorneys for Plaintiff

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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR MARICOPA COUNTY**

12 STATE OF ARIZONA, *ex rel.* MISAEL  
CABRERA, Director, Arizona  
Department of Environmental Quality,

13 Plaintiff,

14 vs.

15 GOLD PARADISE PEAK, INC., a  
16 Nevada Corporation,  
17 Defendant.

Civil Action No: CV2019-005385

**PRELIMINARY  
INJUNCTION**

18 This matter having come before the Court on parties' Joint Motion for Order of  
19 Preliminary Injunction, and the Court having reviewed the Motion, the verified  
20 Complaint and attached exhibits filed in this matter, Plaintiff's Motion for Preliminary  
21 Injunction, and having considered the evidence presented, the Court hereby makes the  
22 following findings:  
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- 24 1. The Plaintiff State of Arizona's ("State" or "Plaintiff") and Defendant  
25 GOLD PARADISE PEAK, INC., a Nevada Corporation, ("Gold Paradise"  
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or “Defendant”) have stipulated and agreed to the entry of this preliminary injunction order without any admission of wrongdoing or violation of law, and, for purposes of this stipulated preliminary injunction or proceedings to enforce this injunction, without a finding by the Court of law or fact other than stated below.

2. Plaintiff is authorized to bring this action pursuant to A.R.S. § 49-262(A).
3. This Court has jurisdiction over the subject matter of this action pursuant to Ariz. Const. Art. 6, §14 and A.R.S. § 49-262(A).
4. This Court has personal jurisdiction in this matter because the violations alleged in the Complaint occurred in Arizona.
5. Venue is proper in this Court pursuant to A.R.S. § 12-401(17).
6. Plaintiff has satisfied the four-prong element test established for issuing a preliminary injunction under *Shoen v. Shoen*, 804 P.2d 787, 792 (Ariz. Ct. App. 1990).
7. Plaintiff has demonstrated: “(1) a strong likelihood of success on the merits, (2) a possibility of irreparable injury if the injunction is not granted, (3) a balance of hardships weighing in [its] favor, and (4) public policy favoring the requested relief.” *Id.*
8. Plaintiff has demonstrated a strong likelihood of success on the merits through A.R.S. §§ 49-241, and 49-255. These statutes require any person who is discharging to a Water of the United States (“WOTUS”) or who

1 owns or operates a surface impoundment, to obtain a permit from the  
2 Arizona Department of Environmental Quality. There is a strong likelihood  
3 that Plaintiff will prove by a preponderance of the evidence that Defendant  
4 is discharging without the appropriate permits to the Hassayampa River and  
5 Slate Creek, each of which is a WOTUS. Plaintiff has also shown a strong  
6 likelihood that it will prove by a preponderance of the evidence that Gold  
7 Paradise is operating surface impoundments in the form of mineral  
8 processing ponds at the Azurite Mine without the required permits.  
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11 9. Plaintiff has proved a possibility of irreparable injury if the injunction is not  
12 granted through *Ariz. State Bd. of Dental Examiners v. Hyder*, 562 P.2d  
13 717, 719 (Ariz. 1977) (*en banc*), which explains that the State does not  
14 need to show irreparable injury when “a state agency has been authorized to  
15 institute proceedings in equity to prevent and restrain specific violations of  
16 law.”  
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19 10. Plaintiff has proved as well that the “balance of the hardships weighs in  
20 [its] favor.” *Shoen*, 167 Ariz. at 63. To satisfy the balance of the hardships  
21 element, the State had to prove one of two sub-elements. *Id.* The first sub-  
22 element was “probable success on the merits and the possibility of  
23 irreparable injury.” *Id.* The second sub-element was “the presence of  
24 serious questions and ‘the balance of hardships tips sharply’ in [its] favor.”  
25 *Id.* Even though the State only needs to prove one, the State proved both.  
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1           Plaintiff established probable success on the merits and the  
2 possibility of irreparable injury through inspections reports prepared by  
3 ADEQ inspectors who visited the Defendant's mine sites and through  
4 photographs of the Defendant's mine sites. This evidence established that  
5 Gold Paradise purchased the Azurite and Senator mines and that those  
6 mines are discharging to Slate Creek and the Hassayampa River, both  
7 Waters of the United States. Plaintiff's evidence also established that there  
8 are unpermitted surface impoundments at the Azurite Mine. The possibility  
9 of irreparable injury must be presumed, under the *Hyder* case cited above.  
10 In addition to this presumption, surface water discharges from the Azurite  
11 and Senator Mines are causing contamination to Waters of the United  
12 States which are classified for human Full Body Contact, thereby  
13 endangering both public health and the environment.

14           The State also proved the second sub-element—"the presence of  
15 serious questions and 'the balance of hardships tips sharply' in [the State's]  
16 favor." *Shoen*, 167 Ariz. at 63. A mixture of mining waste material, plastic  
17 tarping and contaminants deleterious to human health are being discharged  
18 into protected Arizona waters. In contrast, the Defendant's hardship is the  
19 temporary cessation of mining and mineral processing activities until its  
20 mine sites are properly permitted. This contamination raises questions  
21 about the violation of the State's environmental laws. Under the  
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1 circumstances, the balance of hardships tip in the State's favor because  
2 something must be done to stop the illegal discharges and clean up the  
3 contamination the Azurite and Senator Mines are causing. Since the State  
4 proved both sub-elements— even though only one is required— the State  
5 demonstrated the four-prong test's third element.  
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7 11. Finally, the State proved that public policy favors the Court ordering Gold  
8 Paradise cease engaging in mining and mineral processing activities. The  
9 Legislature is the primary source of public policy and has authorized  
10 ADEQ to obtain injunctive relief in cases of this type. *See* A.R.S. § 49-  
11 262(A). Where entities commit unpermitted discharges to Arizona waters,  
12 the Director of ADEQ is entitled to seek and obtain an injunction ending  
13 the threat to public health. *Id.* An injunction must issue in this case to  
14 prohibit Gold Paradise from making any new type or expanding existing  
15 unauthorized discharges.  
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18 12. A.R.S. § 49-262(A) provides that a person who has violated any provision  
19 of Arizona's Water Quality Control statutes is subject to a preliminary  
20 injunction, a permanent injunction, or any other relief necessary to correct  
21 such violations and to protect the public health.  
22

23 13. Pursuant to A.R.S. § 49-262(A), Plaintiff is entitled to injunctive relief,  
24 including a preliminary injunction, requiring Defendant Gold Paradise to  
25 cease all alleged violations and terminate mining and mineral processing  
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1 activities at the Azurite and Senator Mines until such time as those mines  
2 are brought into compliance with Arizona law;

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5 THEREFORE, IT IS HEREBY ORDERED, GRANTING the Joint Motion for  
6 Order of Preliminary Injunction this 10<sup>th</sup> day of march, 2020;

7 IT IS FURTHER ORDERED vacating the Evidentiary Hearing in this matter set  
8 for March 13, 2020 and vacating the associated exhibit filing deadline of March 6, 2020.

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10 IT IS FURTHER ORDERED that Defendant Gold Paradise shall:

11 (1) Cease all mining and mineral processing activities at the Azurite Mine,  
12 Yavapai County Parcel ID 205-14-257, until such time as the Arizona  
13 Department of Environmental Quality (“ADEQ”):

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15 a. Makes a written determination that no Arizona Pollution Discharge  
16 Elimination System (“AZPDES”) or Aquifer Protection Permits are  
17 required for the Azurite Mine, which shall not be unreasonably  
18 withheld, or,

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20 i. Issues Gold Paradise all necessary AZPDES Permits for the  
21 Azurite Mine, which shall not be unreasonably withheld.

22 ii. Issues Gold Paradise all necessary Aquifer Protection Permits for  
23 the Azurite Mine, which shall not be unreasonably withheld.

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25 (2) Cease all mining and mineral processing activities at the Senator Mine,  
26 Yavapai County Parcel IDs 205-14-246P, and 205-14-246N, until such time as

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ADEQ either:

- a. Makes a written determination that no AZPDES permit is required for the Senator Mine, which shall not be unreasonably withheld, or,
- b. Issues Gold Paradise all necessary AZPDES Permits for the Senator Mine which shall not be unreasonably withheld.

“Mining and mineral processing activities” includes but is not limited to active excavation, decanting, mineral refining, mineral extraction, crushing and screening, construction or modification or usage of storing and settling ponds or other surface impoundments or discharging facilities, pump operation, or the transportation of ore, soil, dirt, tailings, process water, or rock, to or from the mine sites.

“Mining and mineral processing activities” does not include construction or modification of access routes to mine sites or other infrastructure improvements, the passive discharge of water from any historic adit at the Senator Mine, passive discharge from settling ponds or other surface impoundments or discharging facilities, remediation, site closure, site characterization including but not limited to sampling, testing, and surveying, or other activities undertaken either at the direction of ADEQ or with ADEQ’s written authorization, which may not be unreasonably withheld.

1 "Mine sites" include the entirety of Yavapai County Parcel IDs 205-14-257, 205-14-  
2 246P, and 205-14-246N.

3 This preliminary injunction is binding upon the Defendants and their agents, servants,  
4 employees, attorneys, and all persons in active concert of participation with Gold  
5 Paradise who receive actual notice of this Order regardless of the manner of such notice.  
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8 Dated 3/10, 2020.  
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Honorable Teresa A. Sanders  
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