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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
corporation,

Plaintiff,

v.

Clark Hill PLC, a Michigan limited
liability company; David G. Beauchamp
and Jane Doe Beauchamp, husband and
wife,

Defendants.

No. CV2017-013832

**MOTION TO SET RULE 16
TRIAL SETTING CONFERENCE**

(Assigned to the Honorable
Daniel Martin)

Pursuant to Ariz. R. Civ. P. 16, Plaintiff requests that the Court set a status conference to discuss a trial setting. The trial setting conference under the current case management order is now set in December 2019. For good cause, Plaintiff requests the Court set an earlier trial setting conference.

Lead trial counsel for the Receiver is also lead trial counsel for the Hopi Tribe in the Little Colorado River General Stream Adjudication. Determination of the Hopi Tribe's federal water rights were bifurcated into two trials before the Special Water Master: one trial on past and present water use and one trial on future water use. The trial on past and present water use took place in the fall of 2018. Trial started in September 2018 and, with breaks, concluded the day after Thanksgiving 2018. The future water trial is set for June 2020. Over 60 witnesses are listed for the future

1 water trial, and depositions will take place between July and December 2019. Given
2 the nature of the adjudication, now over 35 years old, settlement is not a possibility
3 between now and the trial date. Several attempts have been made to settle the
4 adjudication in the last 35 years, none have been successful, and a federal Indian
5 water rights settlement at the end of the day requires Congressional approval.

6 To accommodate a future Hopi trial that will stretch out for months starting in
7 June 2020, Plaintiff asks the Court to convene a conference to set a trial, if possible,
8 in March or April 2020, in this case. Plaintiff realizes that every Court has its own
9 unique plan for calendaring trials, but Plaintiff is aware that the variable nature of trial
10 calendars may have some divisions setting trial four or six months, or even more, after
11 the date of a trial setting conference. In the complex/commercial courts, sometimes a
12 complicated trial of some weeks may be a year after a trial setting conference.
13 Plaintiff is concerned that trial in this case may be unduly delayed because of the
14 Hopi water rights trial if it has to be set *after* the Hopi water trial.

15 This case was filed in October 2016. The discovery calendar was elongated to
16 nearly 18 months at Defendants' request to accommodate discovery for Clark Hill's
17 non-party at fault defenses. The case has proceeded briskly, well within the
18 scheduling order's discovery time guidelines. Plaintiff's fact witness depositions are
19 done except for one or two more witnesses. Case-in-chief experts for both sides have
20 been disclosed on schedule, and depositions of experts commence this week. Plaintiff
21 anticipates that the discovery deadline of October 2019 will be easily met.

22 Plaintiff has filed and will be filing motions addressing major issues in the case
23 well before the dispositive motion deadline.

24 Plaintiff requests that the Court convene a Rule 16 status conference to discuss
25 whether the case can be set for trial in March or April 2020. Plaintiff does not want
26 the further passage of time to block out dates to try this case before the start of the
27 Hopi future water rights trial.

1 RESPECTFULLY SUBMITTED this 13th day of May, 2019.

2 OSBORN MALEDON, P.A.

3
4 By /s/Colin F. Campbell
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this 13th day of May, 2019, on:

11
12 Honorable Daniel Martin*
Maricopa County Superior Court
13 101 West Jefferson, ECB-412
Phoenix, Arizona 85003

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ORDER

(Assigned to the Honorable
Daniel Martin)

Good cause appearing for a Rule 16 scheduling conference,

IT IS ORDERED:

A Rule 16 conference is set for _____, 2019, at _____ .m.

Counsel shall bring their trial calendars.

DATED this _____ day of _____, 2019.

Honorable Daniel Martin
Judge of the Superior Court