Thomas M. Donnelly (State Bar No. 136546)
tmdonnelly@jonesday.com
Daniel L. Corbett (State Bar No. 286103)
dcorbett@jonesday.com
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: 415.626.3939
Facsimile: 415.875.5700

Karen A. Mignone (pro hac vice)
kmignone@verrilldana.com
VERRILL DANA LLP
243 Tresser Blvd., 17th Floor
Stamford, CT 06901
Telephone: 203.355.3620

Attorneys for Defendant
FLUOR CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

California River Watch, a 501(c)(3) non-profit Public Benefit Corporation, **Plaintiff,** **v.** **Fluor Corporation,** **Defendant.**	**Case No. 3:10-cv-05105 WHO** **STIPULATED REQUEST FOR APPROVAL AND ENTRY OF CONSENT JUDGMENT**
The Shiloh Group, LLC, a California limited liability company, **Intervenor/Plaintiff,** **v.** **Fluor Corporation, a corporation, and DOES 31-60, inclusive,** **Defendants.**	

ED_001083_00000675-00001

Fluor Corporation,

Third-Party Plaintiff,

v.

Shiloh Road, LLC, West Coast Metals, Inc., and M&M Services, Inc. dba Pacific Sanitation or Ker Plunk Sanitary,

Third-Party Defendants.

Plaintiff California River Watch ("River Watch") and Defendant Fluor Corporation ("Fluor") (together, the "Settling Parties") have reached a settlement agreement which will provide a full, final and binding resolution of River Watch's claims against Fluor under the Resource Conservation and Recovery Act ("RCRA"), as set forth more fully in the Consent Judgment, attached as Exhibit A to the Proposed Order Approving and Entering Consent Judgment ("Proposed Order"), filed concurrently with this Stipulated Request. The Settling Parties hereby stipulate to and request that the Court approve and enter the Consent Judgment, without which approval and entry the Settling Parties' agreement will be null and void, as set out in Section 7 of the Consent Judgment. The Court should enter the Consent Judgment because it is a "fair, reasonable and equitable" resolution of the Parties' dispute which does not violate public policy or RCRA, and instead furthers the remedial objectives of that statute. *See Sierra Club, Inc. v. Electronic Controls Design, Inc.*, 909 F.2d 1350, 1356 (9th Cir. 1990).

I. BACKGROUND

Fluor (or its corporate affiliate) was an owner and operator of portions of the approximately 53-acre property in Windsor, California that is the subject of this litigation (the "Site"). The Site is the location of ongoing investigation and remediation under the jurisdiction of two California regulatory agencies: the California Department of Toxic Substances Control ("DTSC"), and the Regional Water Quality Control Board for the North Coast Region ("RWQCB"). Fluor has been and is continuing to investigate and remediate that portion of the Site referred to as the "Pond Site," under a Consent Order issued by DTSC. Fluor is in the process of revising its original remedial action plan to propose a remedy that will clean the

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property to unrestricted use standards. DTSC has approved the concept of the change and Fluor is in the process of revising its remedial action plan for the Pond Site, which it will submit to DTSC for review and approval. Former defendant Ecodyne Corporation is subject to the continuing jurisdiction of the RWQCB, pursuant to a Cleanup and Abatement Order ("CAO") requiring it to investigate and remediate soil and groundwater contamination at another portion of the Site referred to as the "Tower Site." In June 2014, DTSC issued site screening memoranda presenting the results of its investigation and review of environmental conditions at the remaining portions of the Site. DTSC has indicated that it will require further investigation of environmental conditions at some remaining portions of the Site.

River Watch initially asserted three claims against Fluor under the citizen suit provisions of the CWA, 33 U.S.C. § 1365(a), and RCRA, 42 U.S.C. § 6972(a)(1)(B). River Watch alleged that Fluor's operations at the Site between approximately 1955 and 1972 were and are causing discharges of pollutants from the Site into the waters of the United States without a permit in violation of the CWA, and that existing environmental conditions at the Site may present an imminent and substantial endangerment to human health or the environment, in violation of RCRA. The Court dismissed **with prejudice** River Watch's sole claim under the CWA, and one of its two claims under RCRA. ECF No. 138. The Court held that for its remaining claim, River Watch must plead that the "ongoing DTSC and RWQCB remediation plans are insufficient to address the [alleged] endangerment, such that an imminent threat exists" under 42 U.S.C. § 6972(a)(1)(B). ECF No. 138 at 14:15-18. In its Fifth-Amended Complaint, River Watch also sought an order requiring Fluor to investigate and remediate environmental conditions at the Site, as well as civil penalties and litigation costs (including attorneys' fees), pursuant to RCRA, 42 U.S.C. § 6972(a)(1)(B). ECF No. 146.

II. ANALYSIS

A "district court should enter a proposed consent judgment if the court decides that it is fair, reasonable and equitable and does not violate the law or public policy." *Sierra Club*, 909 F.2d at 1356. The court may approve a consent judgment as long as it "comes within the general scope of the case made by the pleadings, furthers the objectives upon which the law is based, and

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does not violate the statute upon which the complaint was based." *Id.* (quotations removed).

The Consent Judgment satisfies these requirements. The Consent Judgment was negotiated in good faith and at arms' length between the Settling Parties, through competent counsel, after nearly two years of litigation between the Settling Parties. Moreover, it is entered in light of the undisputed fact that investigation and remediation at the Site will continue under the supervision of DTSC and RWQCB. The "central purpose" of citizen suit provisions is to allow citizens to "abate pollution when the government cannot or will not command compliance." *Gwaltney of Smithfield v. Chesapeake Bay Found.*, 484 U.S. 49, 62 (U.S. 1987) (discussing citizen suit provisions in the CWA and the Clean Air Act). DTSC and RWQCB have the authority to command and are commanding compliance with California's programs for implementing and enforcing RCRA and the CWA at the Site. Thus, approval and entry of the Consent Judgment by the Court will advance the remedial purposes of RCRA's citizen suit provision (under which River Watch asserts its sole remaining claim) and will be consistent with that statute, because it allows for the ongoing investigation and remediation of the Site under the active supervision of DTSC and RWQCB.

The Consent Judgment includes a release of River Watch's claims against Fluor relating to this matter, including any claims River Watch may have against Fluor under the CWA. Because the Court previously dismissed with prejudice River Watch's CWA claim against Fluor, and because River Watch's operative complaint, the Fifth Amended Complaint, asserts a single claim under RCRA, River Watch and Fluor do not hereby request that the Court enter any findings or judgment on any CWA claim.

III. CONCLUSION

For the foregoing reasons, the Settling Parties respectfully request that the Court approve and enter the Consent Judgment, filed concurrently with this Stipulated Request as Exhibit A to the Proposed Order.

ED_001083_00000675-00004

DATED: December 22, 2014

JONES DAY

By: /s/ Thomas M. Donnelly
Thomas M. Donnelly

Attorneys for Defendants and Third-Party Plaintiffs
FLUOR CORPORATION

DATED: December 22, 2014

LAW OFFICE OF JACK SILVER

By: /s/ Jerry Bernhaut
Jerry Bernhaut

Attorneys for Plaintiff
CALIFORNIA RIVER WATCH

SFI-620889429v1

Thomas M. Donnelly (State Bar No. 136546)
tmdonnelly@jonesday.com
Daniel L. Corbett (State Bar No. 286103)
dcorbett@jonesday.com
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: 415.626.3939
Facsimile: 415.875.5700

Karen A. Mignone (pro hac vice)
kmignone@verrilldana.com
VERRILL DANA LLP
243 Tresser Blvd., 17th Floor
Stamford, CT 06901
Telephone: 203.355.3620

Attorneys for Defendant
FLUOR CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

California River Watch, a 501(c)(3) non-profit Public Benefit Corporation,

Plaintiff,

v.

Fluor Corporation,

Defendant.

The Shiloh Group, LLC, a California limited liability company,

Intervenor/Plaintiff,

v.

Fluor Corporation, a corporation, and DOES 31-60, inclusive,

Defendants.

Case No. 3:10-cv-05105 WHO

[PROPOSED] ORDER APPROVING AND ENTERING CONSENT JUDGMENT

ED_001083_00000675-00006

Fluor Corporation,

Third-Party Plaintiff,

v.

Shiloh Road, LLC, West Coast Metals, Inc., and M&M Services, Inc. dba Pacific Sanitation or Ker Plunk Sanitary,

Third-Party Defendants.

The matter before the Court is Plaintiff California River Watch's ("River Watch") and Defendant Fluor Corporation's ("Fluor") Stipulated Request for Approval and Entry of Consent Judgment (the "Stipulated Request"). Having fully reviewed all submissions regarding this matter, including the Stipulated Request and the proposed Consent Judgment, attached hereto as Exhibit A, and for the reasons stated in the Stipulated Request, the Court hereby finds that the terms and provisions of the Consent Judgment are a fair, reasonable and equitable settlement of River Watch's claims against Fluor on the basis of the facts alleged in its complaints and notices in this action—as set forth more fully in the Consent Judgment—under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a). The Court also finds that the terms and provisions of the Consent judgment are not in violation of law or public policy, and are consistent with and further the objectives of RCRA. The Court hereby approves the Consent Judgment, and separately will sign and enter the Consent Judgment.

IT IS SO ORDERED.

Dated: _____

_____
HON. William H. Orrick, III
United States District Judge

SFI-620882435v1

EXHIBIT A

Thomas M. Donnelly (State Bar No. 136546)
tmdonnelly@jonesday.com
Daniel L. Corbett (State Bar No. 286103)
dcorbett@jonesday.com
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: +1.415.626.3939
Facsimile: +1.415.875.5700

Karen A. Mignone (pro hac vice)
kmignone@verrilldana.com
VERRILL DANA LLP
243 Tresser Blvd., 17th Floor
Stamford, CT 06901
Telephone: +1.203.355.3620

Attorneys for Defendant
FLUOR CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

California River Watch, a 501(c)(3) non-profit Public Benefit Corporation, **Plaintiff,** **v.** **Fluor Corporation,** **Defendant.**	**Case No. 3:10-cv-05105 WHO** **[PROPOSED] CONSENT JUDGMENT**
The Shiloh Group, LLC, a California limited liability company, **Plaintiff,** **v.** **Fluor Corporation, a corporation, and DOES 31-60, inclusive,** **Defendant.**	

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between plaintiff California River Watch (hereinafter "River Watch"), on the one hand, and defendant Fluor Corporation (hereinafter "Fluor"), on the other hand, with River Watch and Fluor collectively referred to as the "Parties" and each of them as a "Party." River Watch is a California 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, dedicated to protecting, enhancing and helping to restore groundwater and surface water environs of California, including but not limited to its rivers, creeks, streams, wetlands, vernal pools and tributaries. Fluor is a Delaware corporation headquartered in Irving, Texas and which, through its subsidiaries, does business in California.

1.2 **General Allegations.** River Watch alleges that from approximately 1955 to 1972, Fluor owned a portion of an approximately 53-acre property located at 930 Shiloh Road and 590 Caletti Avenue in Windsor, California (the "Site"), and operated a wood treatment and manufacturing business there. River Watch alleges that during those historical operations, Fluor contributed to the handling, storage, treatment, transportation and disposal of solid and hazardous waste on the Site, and that as a result, current conditions on the Site may present an imminent and substantial endangerment to human health or the environment in violation of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B). River Watch also has alleged that Fluor discharged pollutants to navigable waters in violation of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311, 1342 and 1365, and that Fluor violated RCRA's prohibition against open dumping, 42 U.S.C. § 6945. Fluor has denied these and all other materials allegations made by River Watch.

1.3 Portions of the Site are currently being investigated and remediated by Fluor, under a Consent Order with the California Department of Toxic Substances Control ("DTSC"), and former defendant Ecodyne Corporation ("Ecodyne"), under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board for the North Coast Region ("RWQCB").

1.4 **Notices of Violation/Complaints.** On or about May 3, 2010, River Watch served Fluor, Ecodyne, and various other private parties and public enforcement agencies, with a

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document entitled "Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act ("RCRA")," alleging that Fluor, Ecodyne, and the other private parties were in violation of RCRA for, *inter alia* (i) using, handling, storing and disposing of wastes at the Site without a permit and in violation of regulations adopted under RCRA, (ii) contributing to the handling, storage, treatment, transportation and disposal of hazardous wastes on the Site, in a manner that may present an imminent and substantial endangerment to human health or the environment, and (iii) engaging in open dumping at the Site. River Watch threatened to file a citizen suit under RCRA with regard to these alleged violations. No federal or state agency has initiated a removal or remedial action at the Site, or enforcement action relating to River Watch's allegations, pursuant to 42 U.S.C. § 6972(b)(2)(B)-(C). River Watch initiated this action by filing its citizen suit complaint against Ecodyne (but not Fluor) on November 10, 2010.

1.5 On or about August 1, 2012, River Watch served Fluor, Ecodyne, and various public enforcement agencies with a new document entitled "Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act," alleging similar violations, on similar facts, as in the May 3, 2010 Notice. Also on August 1, 2012 River Watch served Fluor, Ecodyne, and various public enforcement agencies with a document entitled "Notice of Violations Under the Clean Water Act and Intent to File Suit," in which it alleged, *inter alia*, that as a result of their historical operations on the Site, Fluor and Ecodyne were in violation of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(a), (b), (p), and 1365(a), by discharging pollutants into the waters of the United States without a permit. River Watch threatened to file a citizen suit under RCRA and the CWA with regard to these alleged violations. No federal or state agency has commenced or is diligently prosecuting a civil or criminal action in any court relating to the violations alleged in River Watch's August 1, 2012 Notices.

1.6 On November 14, 2012, River Watch sought leave to file a third-amended complaint, adding Fluor as a defendant in this action. The Court granted River Watch's motion, and River Watch filed its third-amended complaint asserting citizen suit claims against Fluor and Ecodyne on January 15, 2013. River Watch asserted three causes of action against Fluor: First, that Fluor's operations on the Site contribute or contributed to conditions that may present an

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imminent and substantial endangerment to human health or the environment, in violation of 42 U.S.C. § 6972(a)(1)(B); second, that Fluor's operations constitute or constituted open dumping, in violation of 42 U.S.C. §§ 6945 and 6972(a)(1)(B); and third, that Fluor's operations at the Site cause or caused the discharge of pollutants into the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311, 1342 and 1365. River Watch subsequently settled with Ecodyne.

1.7 On or about July 8, 2013, River Watch served Fluor and various public enforcement agencies with two new documents, entitled "Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act," and "Notice of Violations Under the Clean Water Act and Intent to File Suit," alleging similar violations, on similar facts, as in the August 1, 2012 Notices. River Watch threatened to file a citizen suit under RCRA and the CWA with regard to these alleged violations. No federal or state agency has commenced or is diligently prosecuting a civil or criminal action in any court relating to the violations alleged in River Watch's July 8, 2013 Notices.

1.8 Following motion practice, River Watch filed a fourth-amended complaint on June 24, 2013, naming Fluor as the sole defendant, and asserting the same causes of action as in the third-amended complaint. On July 9, 2014, the Court dismissed ***with prejudice*** River Watch's RCRA open dumping and CWA claims (River Watch's second and third causes of action). The Court also required River Watch to allege that the "ongoing DTSC and RWQCB remediation plans are insufficient to address the [alleged] endangerment, such that an imminent threat exists" under 42 U.S.C. § 6972(a)(1)(B). ECF No. 138 at 14:15-18. River Watch filed its fifth-amended complaint (the "Fifth-Amended Complaint"), the operative complaint in this action, on July 29, 2014, alleging a single citizen suit claim under RCRA, 42 U.S.C. § 6972(a)(1)(B), against Fluor for causing or contributing to an alleged imminent and substantial endangerment to human health or the environment at the Site. Fluor filed its Answer to the Fifth Amended Complaint on August 25, 2014, in which it denied all material allegations and asserted numerous affirmative defenses.

1.9 DTSC and the RWQCB have exercised jurisdiction over environmental conditions at portions of the Site. On December 27, 1989, DTSC issued a Consent Order (which was

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subsequently amended) requiring Fluor to investigate and remediate that portion of the Site referred to as the "Pond Site." Fluor is in the process of revising its original remedial action plan to provide for excavation of contaminated soil to unrestricted use standards. Fluor will present its revised remedial action plan for the Pond Site to DTSC for review and approval. On April 14, 1989, the RWQCB issued its Cleanup and Abatement Order ("CAO") to Ecodyne, requiring investigation and remediation of soil and groundwater contamination found there. The Parties are informed that Ecodyne is performing the work required by the CAO. And in June 2014, DTSC issued site screening memoranda presenting the results of its investigation and review of environmental conditions at the remaining portions of the Site. DTSC has indicated that it will require further investigation of environmental conditions at some remaining portions of the Site.

1.10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Fluor as to the allegations contained in the Fifth-Amended Complaint, that venue is proper in the Northern District of California, and that this Court has jurisdiction to approve, enter, and enforce this Consent Judgment as a full and final binding resolution of all claims which were or could have been asserted in the Fifth-Amended Complaint based on the facts or conduct alleged therein and/or in the Notices.

1.11 River Watch and Fluor enter into this Consent Judgment as a full and final settlement of all claims which were or could have been asserted in the Fifth-Amended Complaint arising out of the facts or conduct alleged therein and/or in the Notices. Fluor denies the material allegations contained in the Notices and Fifth-Amended Complaint and maintains that it has not violated RCRA or the CWA. Nothing in this Consent Judgment shall be construed as an admission by Fluor of any fact, finding, issue of law, conclusion of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Fluor of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Fluor. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Fluor under this Consent Judgment. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other pending or future legal proceedings. This Consent Judgment is the product of

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negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving disputed issues. This Consent Judgment shall not be used for any other purpose or in any other manner.

2. DEFINITIONS

2.1 **Effective Date.** The term "Effective Date" shall mean the date this Consent Judgment is entered as a Judgment of the Court.

2.2 **Fifth-Amended Complaint.** The term "Fifth-Amended Complaint" shall have the meaning given in Section 1.8.

2.3 **Notices.** The term "Notices" shall mean the May 3, 2010, August 1, 2012, and July 8, 2013 Notice letters served on Fluor by River Watch, as described in Sections 1.4, 1.5 and 1.7.

3. SETTLEMENT PAYMENT

Within thirty (30) days of the Effective Date of this Consent Judgment, Fluor shall pay to River Watch the total sum of Fifty Thousand Dollars ($50,000.00) in full and complete settlement of all claims that were or could have been asserted by River Watch against Fluor under RCRA or the CWA based on the facts or conduct alleged in the Notices and/or in any complaints filed in this action, including (without limitation) any and all claims for penalties, fees, costs and any other monetary, declaratory or injunctive relief. Fluor shall make its settlement payment to "California River Watch" and send this payment via overnight delivery to River Watch's outside counsel, the Law Office of Jack Silver, 100 E Street, Suite 318, Santa Rosa, California 95404.

4. BINDING EFFECT, CLAIMS COVERED AND RELEASED

4.1 This Consent Judgment is a full, final, and binding resolution between River Watch, acting on behalf of itself, its members and the general public under the citizen suit provisions of RCRA and the CWA, on the one hand, and Fluor and its current and former parent companies, subsidiaries, sister companies, affiliates, partners, joint venturers, officers, directors, shareholders, divisions, subdivisions, employees, agents, contractors, consultants, and their respective successors and assigns ("Defendant Releasees"), on the other hand, of all claims that were or could have been asserted by River Watch against Fluor under RCRA or the CWA based

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on the facts or conduct alleged in the Notices and/or in any complaints filed in this action, including (without limitation) any and all claims for penalties, fees, costs and any other monetary, declaratory or injunctive relief under RCRA or the CWA arising from or relating to Fluor's alleged ownership or operation of any portion of the Site, any alleged release of hazardous substances, any alleged handling, storage, treatment, transportation or disposal of solid or hazardous wastes, any alleged discharge of pollutants, or the alleged presence of hazardous substances, hazardous or solid wastes, pollutants or contaminants at or emanating from the Site (hereinafter the "Released Claims"). River Watch, acting on behalf of itself, its members and the general public under the citizen suit provisions of RCRA and the CWA, releases, waives and forever discharges Defendant Releasees from the Released Claims.

4.2 In addition to the foregoing, River Watch, on behalf of itself and its current and former members, officers, directors, agents, representatives, and attorneys, and their respective successors and assigns, hereby releases, waives and forever discharges Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, arising from or relating to Fluor's alleged ownership or operation of any portion of the Site, any alleged release of hazardous substances, any alleged handling, storage, treatment, transportation or disposal of solid or hazardous wastes, any alleged discharge of pollutants, or the alleged presence of hazardous substances, hazardous or solid wastes, pollutants or contaminants at or emanating from the Site. River Watch and its current and former members, officers, directors, agents, and representatives, and their respective successors and assigns, also shall not institute, participate or assist (for example, by providing financial assistance, personnel time, advice or support), directly or indirectly, in any suits, claims or actions against any Defendant Releasees with regard to the claims released and waived in this Section 4.2, unless such action is to enforce this Consent Judgment. With respect to the foregoing waivers and releases in this Section 4.2, River Watch hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of the provisions of

Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

4.3 Fluor hereby releases, waives and forever discharges River Watch and its current and former members, officers, directors, agents, representatives, and attorneys, and their respective successors and assigns, from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any and all actions taken or statements made by River Watch and its attorneys and other representatives in the Notices or in this action.

5. INTEGRATION

5.1 This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

6. GOVERNING LAW

6.1 The terms of this Consent Judgment shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California.

7. MOTION FOR COURT APPROVAL AND ENTRY

7.1 Fluor shall prepare and file with the Court, and River Watch shall join in, a Motion for Approval and Entry of this Consent Judgment.

7.2 This Consent Judgment shall not be effective until it is approved and entered by the Court. If the Court disapproves or otherwise declines to approve and enter this Consent Judgment, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment to address the Court's concerns. If the Parties do not agree on a modified consent

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judgment within thirty (30) days after the Court enters its order disapproving this Consent Judgment, then this Consent Judgment shall be null and void, and this action shall proceed on its normal course.

7.3 If the Court approves and enters this Consent Judgment, but such order is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment to address the appellate court's concerns. If the Parties do not agree on a modified consent judgment within thirty (30) days after the appellate court enters its order reversing the trial court's approval of this Consent Judgment, then this Consent Judgment shall be null and void, and this action shall proceed on its normal course.

8. RETENTION OF JURISDICTION

8.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce this Consent Judgment.

9. MODIFICATION; CONSTRUCTION; SEVERABILITY

9.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court, or upon the granting of a motion brought to the Court by either Party.

9.2 The terms and conditions of this Consent Judgment have been reviewed by the Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and conditions with its counsel. In any subsequent interpretation or construction of this Consent Judgment, the terms and conditions shall not be construed against any Party based on any role it or its counsel may have played in drafting this Consent Judgment.

10. ATTORNEY'S FEES

10.1 In the event that a Party violates any term or condition of this Consent Judgment, the other Party may bring a motion to enforce this Consent Judgment and, if it prevails, seek an award of sanctions (including, without limitation, an award of reasonable attorney's fees and costs) pursuant to law.

10.2 Except as explicitly provided herein, each Party is to bear its own attorney's fees and costs.

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11. AUTHORIZATION

11.1 The undersigned are authorized to execute this Consent Judgment on behalf of the Party they represent, and to legally bind that Party to all terms and conditions of this Consent Judgment. The undersigned have read, understood and agree to all of the terms and conditions of this Consent Judgment.

12. NOTICES

12.1 Unless specified herein, all correspondence and notices required by this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier, to the following addresses:

For Fluor Corporation:

James Pike
Assistant General Counsel
Fluor Corporation
6700 Las Colinas Blvd.
Irving, Texas 75039

With a copy to:

Thomas M. Donnelly
Jones Day
555 California Street, 26th Floor
San Francisco, California 94104

For California River Watch:

Jack Silver
Law Offices of Jack Silver
100 E Street, Suite 318
Santa Rosa, California 95404

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

13. COUNTERPARTS; FACSIMILE SIGNATURES

13.1 This Consent Judgment may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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APPROVED AS TO FORM:

Date : Dec. 14, 2014

By: _____

Jack Silver
Law Offices of Jack Silver
Counsel for Plaintiff California River Watch

Date : Dec. 15, 2014

By: _____

Thomas M. Donnelly
Jones Day
Counsel for Defendant Fluor Corporation

IT IS HEREBY SO STIPULATED:

Date: _____

By: _____
Larry J. Hanson, President
California River Watch

Date: _____

By: _____
Paul Bruno, Managing General Counsel
Fluor Corporation

IT IS SO ORDERED:

Date: _____

By: _____
Hon. William H. Orrick
United States District Court Judge

SFI-620878872v4

APPROVED AS TO FORM:

Date : _____, 2014

By:_____

Jack Silver
Law Offices of Jack Silver
Counsel for Plaintiff California River Watch

Date : _____, 2014

By:_____

Thomas M. Donnelly
Jones Day
Counsel for Defendant Fluor Corporation

IT IS HEREBY SO STIPULATED:

Date: 12-15-2014

By:_____
Larry J. Hanson, President
California River Watch

Date: 19 DEC 2014

By:_____
Paul Bruno, Managing General Counsel
Fluor Corporation

IT IS SO ORDERED:

Date:_____

By:_____
Hon. William H. Orrick
United States District Court Judge

SFI-620878872v4

Thomas M. Donnelly (State Bar No. 136546)
tmdonnelly@jonesday.com
Daniel L. Corbett (State Bar No. 286103)
dcorbett@jonesday.com
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: +1.415.626.3939
Facsimile: +1.415.875.5700

Karen A. Mignone (pro hac vice)
kmignone@verrilldana.com
VERRILL DANA LLP
243 Tresser Blvd., 17th Floor
Stamford, CT 06901
Telephone: +1.203.355.3620

Attorneys for Defendant
FLUOR CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

California River Watch, a 501(c)(3) non-profit Public Benefit Corporation, **Plaintiff,** **v.** **Fluor Corporation,** **Defendant.**	**Case No. 3:10-cv-05105 WHO** **[PROPOSED] CONSENT JUDGMENT**
The Shiloh Group, LLC, a California limited liability company, **Plaintiff,** **v.** **Fluor Corporation, a corporation, and DOES 31-60, inclusive,** **Defendant.**	

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between plaintiff California River Watch (hereinafter "River Watch"), on the one hand, and defendant Fluor Corporation (hereinafter "Fluor"), on the other hand, with River Watch and Fluor collectively referred to as the "Parties" and each of them as a "Party." River Watch is a California 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, dedicated to protecting, enhancing and helping to restore groundwater and surface water environs of California, including but not limited to its rivers, creeks, streams, wetlands, vernal pools and tributaries. Fluor is a Delaware corporation headquartered in Irving, Texas and which, through its subsidiaries, does business in California.

1.2 **General Allegations.** River Watch alleges that from approximately 1955 to 1972, Fluor owned a portion of an approximately 53-acre property located at 930 Shiloh Road and 590 Caletti Avenue in Windsor, California (the "Site"), and operated a wood treatment and manufacturing business there. River Watch alleges that during those historical operations, Fluor contributed to the handling, storage, treatment, transportation and disposal of solid and hazardous waste on the Site, and that as a result, current conditions on the Site may present an imminent and substantial endangerment to human health or the environment in violation of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B). River Watch also has alleged that Fluor discharged pollutants to navigable waters in violation of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311, 1342 and 1365, and that Fluor violated RCRA's prohibition against open dumping, 42 U.S.C. § 6945. Fluor has denied these and all other materials allegations made by River Watch.

1.3 Portions of the Site are currently being investigated and remediated by Fluor, under a Consent Order with the California Department of Toxic Substances Control ("DTSC"), and former defendant Ecodyne Corporation ("Ecodyne"), under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board for the North Coast Region ("RWQCB").

1.4 **Notices of Violation/Complaints.** On or about May 3, 2010, River Watch served Fluor, Ecodyne, and various other private parties and public enforcement agencies, with a

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document entitled "Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act ("RCRA")," alleging that Fluor, Ecodyne, and the other private parties were in violation of RCRA for, *inter alia* (i) using, handling, storing and disposing of wastes at the Site without a permit and in violation of regulations adopted under RCRA, (ii) contributing to the handling, storage, treatment, transportation and disposal of hazardous wastes on the Site, in a manner that may present an imminent and substantial endangerment to human health or the environment, and (iii) engaging in open dumping at the Site. River Watch threatened to file a citizen suit under RCRA with regard to these alleged violations. No federal or state agency has initiated a removal or remedial action at the Site, or enforcement action relating to River Watch's allegations, pursuant to 42 U.S.C. § 6972(b)(2)(B)-(C). River Watch initiated this action by filing its citizen suit complaint against Ecodyne (but not Fluor) on November 10, 2010.

1.5 On or about August 1, 2012, River Watch served Fluor, Ecodyne, and various public enforcement agencies with a new document entitled "Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act," alleging similar violations, on similar facts, as in the May 3, 2010 Notice. Also on August 1, 2012 River Watch served Fluor, Ecodyne, and various public enforcement agencies with a document entitled "Notice of Violations Under the Clean Water Act and Intent to File Suit," in which it alleged, *inter alia*, that as a result of their historical operations on the Site, Fluor and Ecodyne were in violation of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(a), (b), (p), and 1365(a), by discharging pollutants into the waters of the United States without a permit. River Watch threatened to file a citizen suit under RCRA and the CWA with regard to these alleged violations. No federal or state agency has commenced or is diligently prosecuting a civil or criminal action in any court relating to the violations alleged in River Watch's August 1, 2012 Notices.

1.6 On November 14, 2012, River Watch sought leave to file a third-amended complaint, adding Fluor as a defendant in this action. The Court granted River Watch's motion, and River Watch filed its third-amended complaint asserting citizen suit claims against Fluor and Ecodyne on January 15, 2013. River Watch asserted three causes of action against Fluor: First, that Fluor's operations on the Site contribute or contributed to conditions that may present an

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imminent and substantial endangerment to human health or the environment, in violation of 42 U.S.C. § 6972(a)(1)(B); second, that Fluor's operations constitute or constituted open dumping, in violation of 42 U.S.C. §§ 6945 and 6972(a)(1)(B); and third, that Fluor's operations at the Site cause or caused the discharge of pollutants into the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311, 1342 and 1365. River Watch subsequently settled with Ecodyne.

1.7 On or about July 8, 2013, River Watch served Fluor and various public enforcement agencies with two new documents, entitled "Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act," and "Notice of Violations Under the Clean Water Act and Intent to File Suit," alleging similar violations, on similar facts, as in the August 1, 2012 Notices. River Watch threatened to file a citizen suit under RCRA and the CWA with regard to these alleged violations. No federal or state agency has commenced or is diligently prosecuting a civil or criminal action in any court relating to the violations alleged in River Watch's July 8, 2013 Notices.

1.8 Following motion practice, River Watch filed a fourth-amended complaint on June 24, 2013, naming Fluor as the sole defendant, and asserting the same causes of action as in the third-amended complaint. On July 9, 2014, the Court dismissed ***with prejudice*** River Watch's RCRA open dumping and CWA claims (River Watch's second and third causes of action). The Court also required River Watch to allege that the "ongoing DTSC and RWQCB remediation plans are insufficient to address the [alleged] endangerment, such that an imminent threat exists" under 42 U.S.C. § 6972(a)(1)(B). ECF No. 138 at 14:15-18. River Watch filed its fifth-amended complaint (the "Fifth-Amended Complaint"), the operative complaint in this action, on July 29, 2014, alleging a single citizen suit claim under RCRA, 42 U.S.C. § 6972(a)(1)(B), against Fluor for causing or contributing to an alleged imminent and substantial endangerment to human health or the environment at the Site. Fluor filed its Answer to the Fifth Amended Complaint on August 25, 2014, in which it denied all material allegations and asserted numerous affirmative defenses.

1.9 DTSC and the RWQCB have exercised jurisdiction over environmental conditions at portions of the Site. On December 27, 1989, DTSC issued a Consent Order (which was

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subsequently amended) requiring Fluor to investigate and remediate that portion of the Site referred to as the "Pond Site." Fluor is in the process of revising its original remedial action plan to provide for excavation of contaminated soil to unrestricted use standards. Fluor will present its revised remedial action plan for the Pond Site to DTSC for review and approval. On April 14, 1989, the RWQCB issued its Cleanup and Abatement Order ("CAO") to Ecodyne, requiring investigation and remediation of soil and groundwater contamination found there. The Parties are informed that Ecodyne is performing the work required by the CAO. And in June 2014, DTSC issued site screening memoranda presenting the results of its investigation and review of environmental conditions at the remaining portions of the Site. DTSC has indicated that it will require further investigation of environmental conditions at some remaining portions of the Site.

1.10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Fluor as to the allegations contained in the Fifth-Amended Complaint, that venue is proper in the Northern District of California, and that this Court has jurisdiction to approve, enter, and enforce this Consent Judgment as a full and final binding resolution of all claims which were or could have been asserted in the Fifth-Amended Complaint based on the facts or conduct alleged therein and/or in the Notices.

1.11 River Watch and Fluor enter into this Consent Judgment as a full and final settlement of all claims which were or could have been asserted in the Fifth-Amended Complaint arising out of the facts or conduct alleged therein and/or in the Notices. Fluor denies the material allegations contained in the Notices and Fifth-Amended Complaint and maintains that it has not violated RCRA or the CWA. Nothing in this Consent Judgment shall be construed as an admission by Fluor of any fact, finding, issue of law, conclusion of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Fluor of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Fluor. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Fluor under this Consent Judgment. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other pending or future legal proceedings. This Consent Judgment is the product of

negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving disputed issues. This Consent Judgment shall not be used for any other purpose or in any other manner.

2. DEFINITIONS

2.1 **Effective Date.** The term "Effective Date" shall mean the date this Consent Judgment is entered as a Judgment of the Court.

2.2 **Fifth-Amended Complaint.** The term "Fifth-Amended Complaint" shall have the meaning given in Section 1.8.

2.3 **Notices.** The term "Notices" shall mean the May 3, 2010, August 1, 2012, and July 8, 2013 Notice letters served on Fluor by River Watch, as described in Sections 1.4, 1.5 and 1.7.

3. SETTLEMENT PAYMENT

Within thirty (30) days of the Effective Date of this Consent Judgment, Fluor shall pay to River Watch the total sum of Fifty Thousand Dollars ($50,000.00) in full and complete settlement of all claims that were or could have been asserted by River Watch against Fluor under RCRA or the CWA based on the facts or conduct alleged in the Notices and/or in any complaints filed in this action, including (without limitation) any and all claims for penalties, fees, costs and any other monetary, declaratory or injunctive relief. Fluor shall make its settlement payment to "California River Watch" and send this payment via overnight delivery to River Watch's outside counsel, the Law Office of Jack Silver, 100 E Street, Suite 318, Santa Rosa, California 95404.

4. BINDING EFFECT, CLAIMS COVERED AND RELEASED

4.1 This Consent Judgment is a full, final, and binding resolution between River Watch, acting on behalf of itself, its members and the general public under the citizen suit provisions of RCRA and the CWA, on the one hand, and Fluor and its current and former parent companies, subsidiaries, sister companies, affiliates, partners, joint venturers, officers, directors, shareholders, divisions, subdivisions, employees, agents, contractors, consultants, and their respective successors and assigns ("Defendant Releasees"), on the other hand, of all claims that were or could have been asserted by River Watch against Fluor under RCRA or the CWA based

on the facts or conduct alleged in the Notices and/or in any complaints filed in this action, including (without limitation) any and all claims for penalties, fees, costs and any other monetary, declaratory or injunctive relief under RCRA or the CWA arising from or relating to Fluor's alleged ownership or operation of any portion of the Site, any alleged release of hazardous substances, any alleged handling, storage, treatment, transportation or disposal of solid or hazardous wastes, any alleged discharge of pollutants, or the alleged presence of hazardous substances, hazardous or solid wastes, pollutants or contaminants at or emanating from the Site (hereinafter the "Released Claims"). River Watch, acting on behalf of itself, its members and the general public under the citizen suit provisions of RCRA and the CWA, releases, waives and forever discharges Defendant Releasees from the Released Claims.

4.2 In addition to the foregoing, River Watch, on behalf of itself and its current and former members, officers, directors, agents, representatives, and attorneys, and their respective successors and assigns, hereby releases, waives and forever discharges Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, arising from or relating to Fluor's alleged ownership or operation of any portion of the Site, any alleged release of hazardous substances, any alleged handling, storage, treatment, transportation or disposal of solid or hazardous wastes, any alleged discharge of pollutants, or the alleged presence of hazardous substances, hazardous or solid wastes, pollutants or contaminants at or emanating from the Site. River Watch and its current and former members, officers, directors, agents, and representatives, and their respective successors and assigns, also shall not institute, participate or assist (for example, by providing financial assistance, personnel time, advice or support), directly or indirectly, in any suits, claims or actions against any Defendant Releasees with regard to the claims released and waived in this Section 4.2, unless such action is to enforce this Consent Judgment. With respect to the foregoing waivers and releases in this Section 4.2, River Watch hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of the provisions of

Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

4.3 Fluor hereby releases, waives and forever discharges River Watch and its current and former members, officers, directors, agents, representatives, and attorneys, and their respective successors and assigns, from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any and all actions taken or statements made by River Watch and its attorneys and other representatives in the Notices or in this action.

5. <u>INTEGRATION</u>

5.1 This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

6. <u>GOVERNING LAW</u>

6.1 The terms of this Consent Judgment shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California.

7. <u>MOTION FOR COURT APPROVAL AND ENTRY</u>

7.1 Fluor shall prepare and file with the Court, and River Watch shall join in, a Motion for Approval and Entry of this Consent Judgment.

7.2 This Consent Judgment shall not be effective until it is approved and entered by the Court. If the Court disapproves or otherwise declines to approve and enter this Consent Judgment, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment to address the Court's concerns. If the Parties do not agree on a modified consent

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judgment within thirty (30) days after the Court enters its order disapproving this Consent Judgment, then this Consent Judgment shall be null and void, and this action shall proceed on its normal course.

7.3 If the Court approves and enters this Consent Judgment, but such order is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment to address the appellate court's concerns. If the Parties do not agree on a modified consent judgment within thirty (30) days after the appellate court enters its order reversing the trial court's approval of this Consent Judgment, then this Consent Judgment shall be null and void, and this action shall proceed on its normal course.

8. RETENTION OF JURISDICTION

8.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce this Consent Judgment.

9. MODIFICATION; CONSTRUCTION; SEVERABILITY

9.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court, or upon the granting of a motion brought to the Court by either Party.

9.2 The terms and conditions of this Consent Judgment have been reviewed by the Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and conditions with its counsel. In any subsequent interpretation or construction of this Consent Judgment, the terms and conditions shall not be construed against any Party based on any role it or its counsel may have played in drafting this Consent Judgment.

10. ATTORNEY'S FEES

10.1 In the event that a Party violates any term or condition of this Consent Judgment, the other Party may bring a motion to enforce this Consent Judgment and, if it prevails, seek an award of sanctions (including, without limitation, an award of reasonable attorney's fees and costs) pursuant to law.

10.2 Except as explicitly provided herein, each Party is to bear its own attorney's fees and costs.

11. AUTHORIZATION

11.1 The undersigned are authorized to execute this Consent Judgment on behalf of the Party they represent, and to legally bind that Party to all terms and conditions of this Consent Judgment. The undersigned have read, understood and agree to all of the terms and conditions of this Consent Judgment.

12. NOTICES

12.1 Unless specified herein, all correspondence and notices required by this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier, to the following addresses:

For Fluor Corporation:

James Pike
Assistant General Counsel
Fluor Corporation
6700 Las Colinas Blvd.
Irving, Texas 75039

With a copy to:

Thomas M. Donnelly
Jones Day
555 California Street, 26th Floor
San Francisco, California 94104

For California River Watch:

Jack Silver
Law Offices of Jack Silver
100 E Street, Suite 318
Santa Rosa, California 95404

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

13. COUNTERPARTS; FACSIMILE SIGNATURES

13.1 This Consent Judgment may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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APPROVED AS TO FORM:

Date : Dec. 14, 2014

By: _____

Jack Silver
Law Offices of Jack Silver
Counsel for Plaintiff California River Watch

Date : Dec. 15, 2014

By: _____

Thomas M. Donnelly
Jones Day
Counsel for Defendant Fluor Corporation

IT IS HEREBY SO STIPULATED:

Date: _____

By: _____
Larry J. Hanson, President
California River Watch

Date: _____

By: _____
Paul Bruno, Managing General Counsel
Fluor Corporation

IT IS SO ORDERED:

Date: _____

By: _____
Hon. William H. Orrick
United States District Court Judge

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APPROVED AS TO FORM:

Date : _____, 2014

By:_____

Jack Silver
Law Offices of Jack Silver
Counsel for Plaintiff California River Watch

Date : _____, 2014

By:_____

Thomas M. Donnelly
Jones Day
Counsel for Defendant Fluor Corporation

IT IS HEREBY SO STIPULATED:

Date: 12-15-2014

By:_____
Larry J. Hanson, President
California River Watch

Date: 19 DEC 2014

By:_____
Paul Bruno, Managing General Counsel
Fluor Corporation

IT IS SO ORDERED:

Date:_____

By:_____
Hon. William H. Orrick
United States District Court Judge

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