

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 CALIFORNIA RIVER WATCH,
4 Plaintiff,

5 v.

6 FLUOR CORPORATION,
7 Defendant.

Case No. [10-cv-05105-WHO](#)

**ORDER REGARDING CONSENT
JUDGMENT**

Re: Dkt. No. 194

8
9 THE SHILOH GROUP,
10 Intervenor/Plaintiff,

11 v.

12 FLUOR CORPORATION,
13 Defendant.

14 FLUOR CORPORATION,
15 Third-Party Plaintiff,

16 v.

17 SHILOH ROAD, WEST COAST METALS,
18 INC., M&M SERVICES, INC.

19 Third-Party Defendants.

20
21 **INTRODUCTION**

22 Plaintiff California River Watch and defendant Fluor Corporation have filed a stipulated
23 request for approval and entry of a consent judgment. Dkt. No. 194. This litigation involves three
24 separate complaints relating to 53 acres of real property located in Windsor, California (the
25 “Site”): (i) River Watch filed a citizen suit against Fluor under the Resource Conservation and
26 Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), alleging that Fluor created an endangerment to
27 health or to the environment at the Site. Dkt. No. 146 ¶¶ 1-3 (fifth amended complaint); (ii)
28

1 intervenor plaintiff, The Shiloh Group, the current owner of 28 of the 53 acres on the Site, filed a
2 complaint-in-intervention against Fluor, seeking contribution for cleanup costs under CERCLA
3 and asserting related claims. Dkt. No. 147 (complaint in intervention); and (iii) Fluor filed a third-
4 party complaint against Shiloh Road, M&M Services, Inc. and West Coast Metals, Inc., the
5 current industrial operators of the site. Dkt. No. 157 (third-party complaint).

6 Intervenor plaintiff The Shiloh Group and third party defendant Shiloh Road have objected
7 to the proposed consent judgment because the release contained in it is overbroad and would
8 preclude them from bringing RCRA and CWA claims if circumstances change. Dkt. Nos. 195,
9 196, 206, 207. River Watch and defendant Fluor filed a statement addressing the objections. Dkt.
10 No. 204.

11 **DISCUSSION**

12 The settlement agreement essentially provides that Fluor will pay River Watch \$50,000
13 and will present its revised remedial action plan for the Site to the California Department of Toxic
14 Substances Control (“DTSC”) for review and approval. While I do not doubt that the settlement
15 between River Watch and Fluor is the result of an arms-length negotiation and, as a settlement
16 between those two parties, is appropriate, I have concerns about the res judicata effect of the
17 proposed release.

18 “[A] district court should enter a proposed consent judgment if the court decides that it is
19 fair, reasonable and equitable and does not violate the law or public policy.” *Sierra Club, Inc. v.*
20 *Elec. Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990). Besides perhaps the payment to
21 River Watch, it is not clear to me what benefit the “general public” obtains from the proposed
22 consent judgment other than the continued jurisdiction of DTSC, which would occur absent the
23 agreement. And, as both the remedial action that DTSC requires and this litigation are on-going, it
24 seems possible that additional issues at the Site will be uncovered. If that occurs, consenting to a
25 broad release for the general public now seems imprudent.

26 Fluor refers to this concern as hypothetical, and it may be right. The Environmental
27 Protection Agency was provided notice of this action and opted not to intervene. Fluor argues that
28 the proposed consent judgment only precludes The Shiloh Road and the Shiloh Group from

1 asserting a second citizen suit claim under the RCRA that seeks the same relief sought by River
2 Watch, and that they would be barred from doing so in any event because they did not bring a
3 RCRA claim as a compulsory counterclaim. In addition, it is not clear to me why The Shiloh
4 Road and the Shiloh Group cannot get complete relief in this action with the claims already
5 asserted.

6 Fluor minimizes the scope of the release for the general public. I read it more broadly.
7 Section 4.1 states in relevant part:

8 This Consent Judgment is a full, final, and binding resolution
9 between River Watch, acting on behalf of itself, its members and the
10 general public under the citizen suit provisions of RCRA and the
11 CWA, . . . of all claims that were or could have been asserted by
12 River Watch against Fluor under RCRA or the CWA based on the
13 facts or conduct alleged in the Notices and/or in any complaints filed
14 in this action River Watch, acting on behalf of itself, its
15 members and the general public under the citizen suit provisions of
16 RCRA and the CWA [Clean Water Act], releases, waives and
17 forever discharges Defendant Releasees from the Released Claims.

18 *Id.* As currently drafted, the proposed judgment may preclude the general public from bringing a
19 RCRA or CWA suit in the future or based on facts not presently known or if conditions at the Site
20 change.

21 My concerns would be alleviated if Section 4.1 were revised to make the release narrower.
22 For example, the section could be revised, in its entirety, as follows:

23 This Consent Judgment is a full, final, and binding resolution
24 between River Watch, acting on behalf of itself, its members and the
25 general public under the citizen suit provisions of RCRA and the
26 CWA, on the one hand, and Fluor and its current and former parent
27 companies, subsidiaries, sister companies, affiliates, partners, joint
28 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 asserted by River Watch against Fluor under
RCRA or the CWA.

Section 4.2 could remain the same to provide the broader release sought by Fluor against River
Watch. In this way, River Watch’s citizen suit would be concluded and Fluor’s potential
defenses to any new action by the public, if any, or the current litigants, would be preserved.

Only the parties can change the terms of the proposed consent judgment. I will set a Case

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Management Conference for **Tuesday, February 3, 2015 at 2:00 p.m.** to see if River Watch and Fluor are willing to modify the proposed consent judgment as discussed above, whether there are any additional concerns about the revised consent judgment, and what impact the outcome of this discussion will have on the case management schedule. The parties shall file a Joint Status Report on February 2, 2015 after they have met and conferred about those topics.

IT IS SO ORDERED.

Dated: January 22, 2015



WILLIAM H. ORRICK
United States District Judge