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**DATE:** 8/9/02

**NUMBER OF PAGES SENT (INCLUDING COVER PAGE):** 11

**SPECIAL INSTRUCTIONS:** Enclosed at your request is a copy of the Joint Motion and Proposed Order filed today in NRDC v. Whitman, C-99-3701 WHA (N.D. Cal.)

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15 UNITED STATES DISTRICT COURT  
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

17 \_\_\_\_\_  
 18 NATURAL RESOURCES DEFENSE  
 COUNCIL, et al.,  
 19 Plaintiffs,

v.

20 CHRISTINE TODD WHITMAN,  
 Administrator of the United States  
 21 Environmental Protection Agency, et  
 al.,  
 22 Defendants.  
 23 \_\_\_\_\_

Case No. C-99-3701 CAL

JOINT MOTION FOR  
 APPROVAL OF AGREED-UPON  
 MODIFICATION TO CONSENT  
 DECREE

24 Plaintiffs the Natural Resources Defense Council, et al. ("NRDC"), and Defendants the  
 25 United States Environmental Protection Agency and Christine Todd Whitman, in her official  
 26 capacity as Administrator, et al. (collectively, "EPA"), hereby move the Court to enter the  
 27 attached Proposed Order modifying the Consent Decree entered by the Court in this action on

28 JOINT MOTION FOR APPROVAL OF AGREED-UPON MODIFICATION TO CONSENT DECREE  
 NO. C-99-3701 CAL

1 September 26, 2001. In support of this motion, the parties state as follows:

2 1. On September 26, 2001, the Court entered an Amended Partial Consent Decree  
3 (hereinafter "Consent Decree") settling NRDC's claims in Counts 1 through 5 of its Amended  
4 Complaint. In these counts, NRDC alleged that EPA had failed to meet deadlines under the  
5 Federal Food, Drug and Cosmetics Act ("FFDCA"), for the reassessment of pesticide tolerances  
6 pursuant to FFDCA section 408(q), 21 U.S.C. § 346a(q).

7 2. The Consent Decree sets a number of deadlines for EPA to perform specified risk  
8 assessments and other tasks that are part of EPA's reassessment of tolerances under the FFDCA  
9 and its related reregistration of pesticide uses under the Federal Insecticide, Fungicide and  
10 Rodenticide Act, 7 U.S.C. § 136a-1. See generally Consent Decree ¶¶ 4-11.

11 3. Sub-paragraph 8.e of the Consent Decree originally included a deadline of  
12 August 3, 2002, for EPA to sign an Interim Reregistration Eligibility Determination ("Interim  
13 RED") for the pesticide atrazine. The Parties extended that date by two weeks until August 17,  
14 2002, pursuant to Paragraph 22 of the Consent Decree. See Consent Decree ¶ 3.p (defining  
15 Interim RED), 8.e, 22 (the Parties may extend dates in the Consent Decree by written agreement  
16 and notice to the Court). Consistent with Paragraph 22 of the Decree, the parties provided notice  
17 to the Court of the two-week extension. See Notice of Agreed Modification to Consent Decree  
18 (filed July 12, 2002).

19 4. The parties have now agreed to a further modification of the Consent Decree that  
20 would delete the existing Sub-paragraph 8.e. In its place, language would be added to  
21 Paragraph 8 that would: (a) require EPA to sign an Interim RED for atrazine by January 31,  
22 2003; and (b) require EPA to sign by October 31, 2003, following Scientific Advisory Panel  
23 review, a revised Interim RED considering data relating to additional specified issues pertinent to  
24 atrazine, to the extent such data is timely received by the Agency and is not addressed in the  
25 January 2003 Interim RED. The parties have further agreed to include language in Paragraph 8  
26 permitting EPA to exclude consideration of a specific issue (potential risks to amphibians from  
27 atrazine exposure) from the October 2003 Interim RED – and invoke a further extension – if

1 EPA determines that it needs more data on the issue, provided that EPA: (a) takes steps to  
2 ensure that such data will be sought; and (b) issues a memorandum explaining its determination  
3 that more data is necessary. The proposed modification would also add a "Whereas" clause to  
4 the Consent Decree.

5 5. The parties' proposed modification will ensure that EPA has adequate time to  
6 consider recently received data that may be pertinent to the Agency's risk evaluation for atrazine,  
7 but which the Agency could not review in time to meet the existing Consent Decree deadline.

8 6. The parties' proposed modification would not alter any term of the Consent  
9 Decree other than the existing Paragraph 8.

10 7. The specific terms of the proposed modification are set forth in the  
11 Proposed Order accompanying this motion, and the parties' agreement to the modified terms is  
12 reflected by their respective signatures on the Proposed Order.

13 8. Paragraph 21 of the Consent Decree provides that "[t]his Consent Decree may be  
14 modified by written agreement of the parties and approval of the Court." *Id.* For that reason, the  
15 parties now seek the Court's approval and entry of the Proposed Order.

16 **CONCLUSION**

17 Wherefore, pursuant to Paragraph 21 of the Consent Decree, the parties respectfully  
18 request that the Court sign and enter the attached Proposed Order modifying the Consent Decree.

19 Respectfully submitted,

20 FOR PLAINTIFFS:

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27  
28 Dated: August 8, 2002

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Dated: August 8, 2002

  
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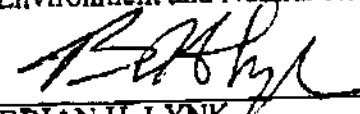
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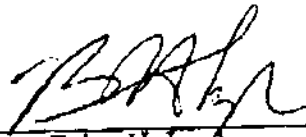
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The undersigned hereby certifies that on August 8, 2002, true and correct copies of the foregoing Joint Motion for Approval of Agreed-Upon Modification to Consent Decree and Proposed Order were sent via facsimile and regular mail, postage prepaid, to the following counsel of record:

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