

TAXPAYER EXHIBIT

B3

May 30, 2012

Mervin L. George, Sr. and Laura Lee George
566204

Exhibits for:

Mervin L. George, Sr. and
Laura Lee George

EXHIBIT
5.1

STATE BOARD OF EQUALIZATION



Appeal Name: Mervin L. George and Laura Lee George

Case ID: 566204 ITEM #: B3

Date: 05/30/12 Exhibit No: 5.1

(TP) FTB DEPT PUBLIC COMMENT

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 399

January 19, 1977

RESERVATION INDIANS NOT TAXABLE ON INCOME DERIVED FROM
RESERVATION SOURCES

Syllabus:

Advice has been requested as to the extent native Americans (Indians) are subject to taxes imposed by the California personal income tax law.

On June 14, 1976, the United States Supreme Court in Bryan v. Itasca County, _____ U.S. _____, 44 Law Week 4832, held that Public Law 280 (28 USC 1360), which extends state civil laws to reservations, does not include state tax laws. Accordingly, the court concluded that Congress has not conferred to the states taxing jurisdiction as to Indians residing on reservations, and that, in the absence of such congressional consent, federal laws preempt state laws. The Supreme Court affirmed its earlier holding in McClanahan v. Arizona State Tax Comm., 411 U.S. 164, with respect to the taxation of reservation Indians, but concluded that the holding was applicable even though a state had not ceded jurisdiction to Indian reservation lands.

Personal Income Tax Regulation 17071(p) provides that income derived from allotted and restricted Indian land held by the United States as Trustee under Section 5 of the General Allotment Act of 1887 is exempt from taxation. Such exempt income includes rentals, royalties, proceeds of sale of cattle raised on or of crops grown upon the land and income from the use of the land for grazing purposes. In view of Bryan decision, supra, income received by reservation Indians from reservation sources is exempt in addition to the income described by Reg. 17071(p).

The exemption of income with respect to reservation Indians does not apply to income earned outside the reservation. The basis for the exemption is that federal laws preempt state laws as to tribal Indians with respect to income earned on the reservation. Therefore, the preemption is not applicable to tribal Indians who have left or never inhabited federally established reservations, or Indians "who do not possess the usual accouterments of tribal self-government." Accordingly, Indians living, working or deriving income outside their reservations are subject to the normal state income tax laws.

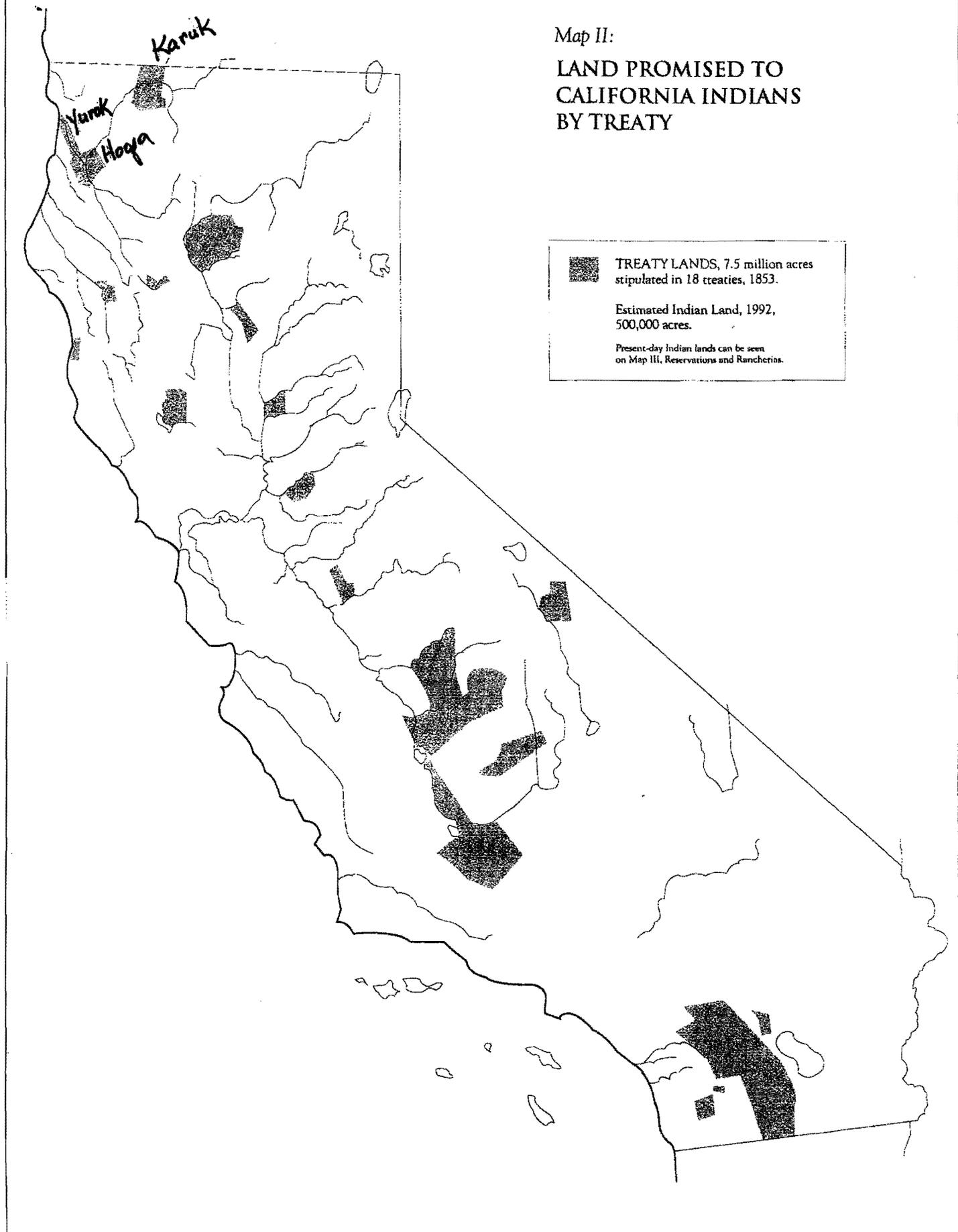
There is some uncertainty as to the individuals recognized as Indians, and their income tax status if they reside on a reservation of which they are not a member. In Mary Jo Fox v. Bureau of Revenue, 87 N.W. 261, cert. den. 88 N.M. 318 (1975), the court concluded that tribal affiliation was of no importance so

long as there was a coalescence of status of the two facts -- status as a reservation Indian and situs on a reservation. Also in John C. Moe et al v. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, et al., 96 S. Ct. 1634 (1976), the Supreme Court noted that the District Court in concluding a state cigarette tax could not be imposed on sales made on the reservation to Indians extended its holding to exempt sales of cigarettes to Indians living on the reservation irrespective of their membership in the plaintiff tribe.

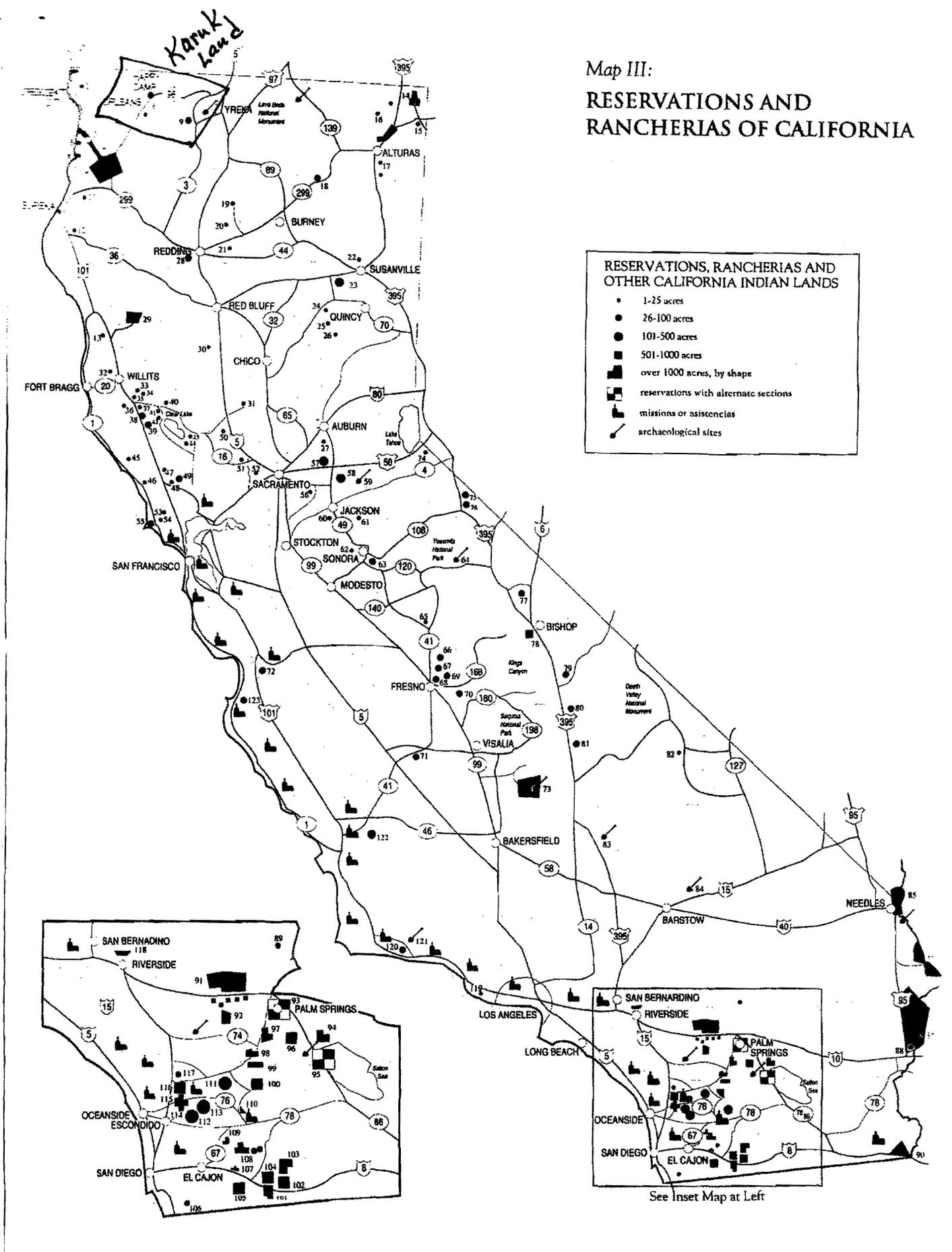
In view of the above it is concluded that the reservation source state income tax exemption will be allowed to any reservation Indian residing on a reservation. According to the Bureau of Indian Affairs, reservation status can be determined by their records and/or tribal records.

Map II:

LAND PROMISED TO CALIFORNIA INDIANS BY TREATY



Map III:
RESERVATIONS AND
RANCHERIAS OF CALIFORNIA



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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LAURA LEE GEORGE,

Plaintiff,

v.

UNITED STATES, *et al.*,

Defendants.

Case No. CV-11-06159-RS

**JOINT CASE MANAGEMENT
STATEMENT**

Pursuant to Civil Local Rule 16-9, parties to the above-entitled action, Plaintiff Laura Lee George, and Defendants the United States of America, and the Honorable Ken Salazar, Secretary of the Department of the Interior, submit this Joint Case Management Statement:

1. Jurisdiction and Service

The Court's jurisdiction is not presently in question. All parties have been served.

2. Facts

This case concerns whether Plaintiff met the requirements for enrollment in the Hoopa Valley Tribe under the Hoopa-Yurok Settlement Act ("HYSA"), Pub. L. 100-580, 25 U.S.C. § 1300i *et seq.* Congress tasked the Secretary of the Interior with preparing a roll to determine those persons that qualified to be enrolled as members of the Hoopa Valley Tribe. Pub. L. 100-580 §§ 5, 6; 25 U.S.C. §§ 1300i-4, 1300i-5. The Secretary was also responsible for developing procedures to consider appeals for applicants not included on the roll and the Hoopa Valley Business Council, the Hoopa Valley Tribe's governing entity, was provided the right to appeal the Secretary's decisions under those regulations. Pub. L. 100-580 § 5(d)(2) and (4); 25 U.S.C. § 1300i-4(d)(2) and (4); 25 C.F.R. Part 62, Enrollment Appeals.

Subsequent to passage of the HYSA, Plaintiff applied to be enrolled as a member of the Hoopa Valley Tribe under the HYSA. The Superintendent of the Northern California Agency made a favorable determination on her application and the Hoopa Valley Tribe appealed. On January 23, 1992, the Act-

1 ing Area Director, Sacramento Area Office, Bureau of Indian Affairs, United States Department of the
2 Interior, denied the appeal of the Hoopa Valley Tribe finding that Plaintiff qualified for tribal enroll-
3 ment. On April 10, 1992, Plaintiff was notified that she had been placed on the membership rolls of the
4 Hoopa Valley Tribe. Plaintiff asserts that under the HYSA, this was the final appeal authorized by Con-
5 gress and set forth by the Department of the Interior under the HYSA. However, the Hoopa Valley
6 Tribe continued to challenge Plaintiff's enrollment. On August 10, 1999, the AS-IA sustained the
7 Hoopa Valley Tribe's challenge. Plaintiff sought reconsideration and on August 22, 2011, the AS-IA
8 denied the appeal. Plaintiff seeks implementation of the April 10, 1992 determination that placed Plain-
9 tiff, Laura Lee George, on the membership rolls of the Hoopa Valley Tribe and asserts that the subse-
10 quent challenge by the Hoopa Valley Tribe was not authorized under the HYSA and was fundamentally
11 unfair to Plaintiff as the Department of the Interior did not have the correct information regarding Plain-
12 tiff's qualifications for enrollment and did not provide a hearing. .
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14

15 3. Legal Issues

16 Plaintiff alleges that the Department of the Interior has a duty to implement the April 10, 1992
17 determination of the Bureau of the Indian Affairs, following appeal by the Hoopa Valley Tribe, where
18 Ms. George had been placed on the membership rolls of the Hoopa Valley Tribe pursuant to the HYSA.
19 Plaintiff maintains that Ms. George clearly qualifies for enrollment in the Hoopa Valley Tribe under the
20 HYSA and the Department of the Interior violated the HYSA by its failure to follow the procedures set
21 forth therein for her enrollment with the Hoopa Valley Tribe.

22 Defendants maintain that the AS-IA complied with all its obligations under the HYSA, the
23 APA, and the Constitution in reviewing and denying Plaintiff's appeal. Defendants further assert that
24 Plaintiff's claims fail for failure to join a required party, the Hoopa Valley Tribe. Plaintiff's claims
25 under the Supremacy clause of the Constitution fail for failure to state a claim upon which relief may be
26 granted.

27 4. Motions

1 Defendant intends to file a responsive motion to Plaintiff's Complaint on or by May 7, 2012.
2 Subsequently, the parties anticipate that the case will be resolved on cross-motions for summary
3 judgment. The parties anticipate that no other motions will likely need to be filed. However, as
4 described below, if the parties are unable to agree on the content and/or adequacy of the administrative
5 record prepared by Defendants, a motion to supplement and/or complete the record may be filed by
6 Plaintiffs.

7 5. Amendments of Pleadings

8 Given the current posture of this action, the parties cannot represent whether they may seek to
9 amend the pleadings.

10 6. Evidence Preservation

11 The Bureau of Indian Affairs will prepare the administrative record in accord with its duty to do
12 so under the APA, and there is no need for an evidentiary preservation order.

13 7. Disclosures

14 This action is exempt from initial disclosures pursuant to Federal Rule of Civil Procedure 26
15 because it is an action for review on an administrative record. *See Fed. R. Civ. P. 26(a)(1)(B)(i).*

16 8. Discovery

17 The parties do not anticipate any discovery because this case is an action for review on an
18 administrative record.

19 9. Class Actions

20 Not applicable.

21 10. Related Cases

22 The parties are not aware of any related cases.

23 11. Relief

24 Plaintiffs seek a declaratory judgment for the Department of the Interior to implement the April
25 10, 1992 determination of the Bureau of the Indian Affairs where Ms. George had been placed on
26 Schedule B of the membership rolls of the Hoopa Valley Tribe pursuant to the HYSA.

27 Defendants maintain that Plaintiffs are not entitled to this relief. There are no counterclaims.
28

1 12. Settlement and ADR

2 The parties do not believe that settlement is likely or that ADR proceedings would assist the
3 disposition of the case.

4 13. Consent to Magistrate Judge for All Purposes

5 Defendants do not consent to the determination of this case by a Magistrate Judge.

6 14. Other References

7 The parties do not believe at this time that this case is suitable for additional references.

8 15. Narrowing of Issues

9 The parties believe that this case is best resolved on cross-motions for summary judgment.

10 16. Expedited Schedule

11 The parties do not believe an expedited schedule is appropriate.

12 17. Scheduling

13 The parties propose the following page limits and schedule for resolution of this case on cross-
14 motions for summary judgment:

15 June 1, 2012: Defendants shall submit the Administrative Record to the
16 Court.

17 July 16, 2012: Plaintiffs' Motion for Summary Judgment (limited to 35
18 pages of text)

19 August 31, 2012: Defendants' Cross-Motion for Summary Judgment and
20 Opposition to Plaintiffs' Motion (limited to 35 pages of
21 text)

21 September 14, 2012: Plaintiffs' Reply in Support of Motion for Summary
22 Judgment and Opposition to Defendants' Cross-Motion
23 (limited to 25 pages of text)

24 October 1, 2012: Defendants' Reply in Support of Motion for Summary
25 Judgment (limited to 25 pages of text)

26 The Parties request that, if the Court elects to set a hearing, the hearing be set at some date
27 convenient to the Court that is as near as possible to the close of briefing.

28 In the event the parties are unable to resolve any disputes regarding the adequacy of the

1 Administrative Record, the schedule above would likely need to be amended to allow for resolution of
2 any such dispute.

3 Before filing any motion, the prospective moving party shall confer with the other party in order
4 to attempt resolution without judicial intervention. The parties believe that any record dispute can likely
5 be resolved by the Court without the need for a hearing. In the event a motion regarding the record is
6 filed, the parties will confer following the Court's ruling on the motion and propose to the Court a
7 revised schedule for resolution of the merits of the case.

8 18. Trial

9 The parties anticipate that this case will be resolved on cross-motions for summary judgment,
10 and that as a result, a trial will not be necessary.

11 19. Disclosure of Non-party Interested Entities or Persons

12 Plaintiff's position is that there are no non-party interested entities or persons.

13 Defendant's position is that the Hoopa Valley Tribe is a non-party interested entity.

14 20. Other Matters

15 The parties respectfully request that they be permitted to participate in the initial Case
16 Management Conference set for May 10th by teleconference.

17
18 Dated: May 3, 2012

Respectfully submitted,

19 s/Frank A. Grant IV by consent

20 FRANK A . GRANT IV

21 Attorney for Plaintiff
LAURA LEE GEORGE

22 s/Stephen Finn

23 IGNACIA S. MORENO, Assistant Attorney General
24 STEPHEN FINN, Trial Attorney (NY Bar No.
25 2574986)

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Attorneys for Defendants

Defendants UNITED STATES, KEN SALAZAR,
Secretary of Interior, LARRY ECHO HAWK, Assistant
Secretary-Indian Affairs

Attestation Pursuant to General Order No. 45.X

I hereby attest that I have obtained the concurrence of Frank A. Grant, IV, in the filing of this document

/s/Stephen Finn
STEPHEN FINN
Trial Attorney