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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF CALIFORNIA; and
CALIFORNIA STATE LANDS
COMMISSION, an agency of
the State of California,

Defendants.

No. 2:18-cv-721-WBS-DB

MEMORANDUM AND ORDER RE:
CROSS-MOTIONS FOR SUMMARY
JUDGMENT

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Plaintiff United States of America initiated this action against defendants State of California and California State Lands Commission ("Lands Commission"). It argues that a 2017 California law regulating the recording of conveyances of federal public lands in California ("SB 50") is invalid because it violates the United States Constitution's Supremacy Clause. Specifically, plaintiff argues both that the law runs afoul of the doctrine of intergovernmental immunity and that it is preempted by federal law. Defendants maintain that SB 50 is a

1 proper exercise of the state's right to regulate conveyances of
2 land within its borders.

3 Currently before this court are plaintiff's and
4 defendants' cross-motions for summary judgment. (Docket Nos. 20
5 & 24.)

6 I. Factual and Procedural Background

7 California's SB 50 states that it is the policy of the
8 State of California to "discourage conveyances that transfer
9 ownership of federal public lands in California from the federal
10 government." Cal. Pub. Res. Code § 8560(b)(1). California's
11 Governor Edmund G. Brown Jr. signed SB 50 on October 6, 2017.
12 (McVeigh Decl. Ex. 1 (Docket No. 20-2).) The law went into
13 effect on January 1, 2018. (Id.)

14 A central mechanism through which SB 50 seeks to
15 discourage conveyances of federal land is the requirement that,
16 in order to record a deed or other documents related to the
17 conveyance of federal land with a California county recorder, a
18 grantee of federal lands must present a certificate of compliance
19 from the Lands Commission. SB 50 also provides for a civil
20 penalty of up to \$5000 to be levied against any person who
21 knowingly presents for filing with a county recorder a document
22 related to the conveyance of federal land unaccompanied by a
23 Lands Commission certificate of compliance. Cal. Gov't Code §
24 6223(a).

25 SB 50 defines "conveyance" broadly to encompass "any
26 method, including sale, donation, or exchange, by which all or a
27 portion of the right, title, and interest of the United States in
28 and to federal lands located in California is transferred to

1 another entity." Cal. Pub. Res. Code § 8560(a)(2). It does
2 not, however, apply uniformly to all conveyances of federal
3 lands. There are six categories of conveyances for which the
4 Lands Commission is required to waive its right of refusal and
5 automatically issue a certificate of compliance. Cal. Pub. Res.
6 Code §§ 8560(b)(2)(D)(ii) & (f).

7 Four of these categories were included in Section
8 8560(f) of SB 50, as originally enacted. They are: conveyances
9 of federal public lands which the Lands Commission deems to be
10 "routine;" conveyances of federal public lands pursuant to a
11 conservation plan; the renewal of a lease that was in existence
12 as of January 1, 2017; and the "conveyance of federal public
13 lands to a federally recognized Native American tribe or lands
14 taken into or out of trust for a Native American tribe or
15 individual Native American." Id. § 8560(f)(3).

16 In June 2018, following the plaintiff's initiation of
17 this action, California amended SB 50 with Senate Bill 854. That
18 amendment established two new categories of conveyances for which
19 the Lands Commission must automatically issue certificates of
20 compliance. The first is conveyances of federal public lands to
21 the State of California. Id. § 8560(f)(5). The second is:

22 The conveyance of any federal public lands not
23 managed by the federal National Forest Service,
24 the federal Bureau of Reclamation, the federal
25 Bureau of Land Management, the United States Fish
and Wildlife Service, or the federal National
Park Service unless the land conveyed satisfies
any of the following:

- 26 a. Is part of a national monument or
27 national marine sanctuary.
28 b. Contains national conservation lands.
c. Is land placed in the National Register
of Historic Places.

1 d. Is designated for preservation or
2 conservation uses.
3 Id. § 8560(f)(4). Conveyances of federal land that fall
4 into any of the six above categories are automatically
5 entitled to a certificate of conveyance from the Lands
6 Commission. No timeframe is prescribed by statute within
7 which the Lands Commission must complete these automatic
8 certificate issuances. (Pl.'s Mot. for Summ. J. at 21
9 (Docket No. 20).) Lands Commission staff have never
10 refused to issue a certificate of compliance when requested
11 to do so. (Lucchesi Decl. ¶ 12 (Docket No. 24-3).)

12 Certificates of compliance are not automatically issued
13 for conveyances of federal land that fall outside the categories
14 enumerated above. Prospective purchasers in these conveyances
15 may only secure a certificate of compliance from the Lands
16 Commission if the commission is first provided with a right of
17 first refusal or the right to arrange for the transfer of the
18 federal public land to another entity ("refusal rights").
19 Additionally, under SB 50, conveyances of federal public land
20 subject to this requirement are "void ab initio" unless the Lands
21 Commission was provided with these refusal rights. Cal. Pub.
22 Res. Code § 8560(b)(2)(A).

23 SB 50 requires the Lands Commission to evaluate its
24 right of first refusal at a public hearing. Id. § 8560(b)(2)(C).
25 These meetings occur approximately every other month. (Lucchesi
26 Decl. ¶ 4.) To date, the Commission has declined to exercise its
27 putative right of first refusal to purchase any federal public
28 lands or arrange for their transfer to a third party. (Id. ¶

10.)

II. Legal Standard

Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material fact is one that could affect the outcome of the suit, and a genuine issue is one that could permit a reasonable jury to enter a verdict in the non-moving party’s favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

III. Analysis

A. Supremacy Clause

The Supremacy Clause of the United States Constitution governs conflicts between state and federal laws. It provides that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby[.]” U.S. Const. Art. VI, cl. 2. The Supreme Court has interpreted the Supremacy Clause as meaning that, “the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.” McCulloch v. Maryland, 17 U.S. 316, 317 (1819).

This principle is known as the doctrine of intergovernmental immunity. Under this doctrine, a state law is invalid if it “regulates the United States directly or discriminates against the Federal Government or those with whom

1 it deals.” North Dakota v. United States, 495 U.S. 423, 435
2 (1990).

3 Under the Supremacy Clause, state laws are also invalid
4 if they are preempted by federal law. “There are two types of
5 implied preemption: field preemption and conflict preemption.”
6 Whistler Invs., Inc. v. Depository Trust & Clearing Corp., 539
7 F.3d 1159, 1164 (9th Cir. 2008). Field preemption is implied
8 when Congress “‘so thoroughly occupies a legislative field’ that
9 it effectively leaves no room for states to regulate conduct in
10 that field.” Id. (quoting Cipollone v. Liggett Group, Inc., 505
11 U.S. 504, 516 (1992)). Conflict preemption occurs when
12 compliance with both federal and state law is impossible or when
13 state law frustrates Congress’s purpose in enacting a given
14 federal statute. See Whistler Invs., Inc., 539 F.3d at 1164
15 (Conflict preemption analysis looks to “whether a party’s
16 compliance with both federal and state requirements is impossible
17 or whether, in light of the federal statute’s purpose and
18 intended effects, state law poses an obstacle to the
19 accomplishment of Congress’s objectives.”).

20 1. Intergovernmental Immunity

21 a. Direct Regulation of the Federal Government

22 Defendants’ argument that SB 50 does not directly
23 regulate the United States’ operations or property rests on a
24 purported distinction between the conveyance of a given piece of
25 real property and the recordation of a document related to that
26 conveyance. SB 50, defendants argue, regulates the latter but
27 not the former. (Defs.’ Cross-Mot. for Summ. J. at 9.) In this
28 account, SB 50 is merely an expansion of existing California law

1 governing all aspects of the title recording process. Cf. Cal.
2 Gov't Code §§ 27201 et seq.; Id. §§ 27279 et seq.; Id. §§ 27320
3 et seq.; Id. §§ 27360 et seq.

4 This argument is colorable with respect to those
5 conveyances for which the Commission must automatically issue
6 certificates of compliance. There is certainty that the
7 certificates will be issued in these cases (Lucchesi Decl. ¶ 12.)
8 Given this, the regulation as it pertains to these conveyances is
9 not categorically dissimilar from the preexisting requirements
10 for title recordation under the California Government Code.
11 Thus, with respect to conveyances automatically entitled to
12 certificates of compliance, SB 50 is not an unconstitutional
13 "direct regulation" of the federal government.

14 Defendants' argument that SB 50's title recordation
15 requirements do not constitute a direct regulation of the United
16 States' operations or property fails, however, with respect to
17 those conveyances which are not automatically entitled to a
18 certificate of compliance from the Lands Commission. For these
19 conveyances, the issuance of a certificate of compliance is
20 conditioned on the extension of refusal rights to the Lands
21 Commission.

22 Importantly, the question before the court is not
23 whether defendants have, or will ever, in fact, directly regulate
24 the United States via SB 50's refusal rights. Rather, it is
25 whether the law, as written, seeks to directly regulate the
26 United States. The court's analysis is legal, not factual. For
27 this reason, it is of no moment that the Lands Commission has yet
28 to use the power delegated to it by SB 50 in a manner that

1 directly regulates the United States. See United States v. City
2 of Arcata, 629 F.3d 986 (9th Cir. 2010) (holding that two cities'
3 promise that they would only enforce ordinances banning federal
4 agents or employees from engaging in military recruitment to the
5 extent the ordinances were consistent with federal law was
6 irrelevant to the analysis of whether the ordinance violated the
7 doctrine of intergovernmental immunity).

8 Defendants argue that their track record of
9 implementing SB 50 in a manner that does not directly regulate
10 the United States is relevant because, on its face, the law
11 regulates purchasers of federal land, not the government itself.
12 (Defs.' Reply Br. in Supp. of Cross-Mot. for Summ. J. at 3
13 (Docket No. 26).) It is the purchasers who must secure a
14 certificate of compliance from the Lands Commission before
15 recording a conveyance and it is the purchasers who must, in
16 certain circumstances, offer the Lands Commission refusal rights
17 in order to get a certificate of compliance. (Defs.' Cross-Mot.
18 for Summ. J at 9.) In support of this claim, defendants argue
19 that "nothing prevents the legislature from structuring a right
20 of refusal so that it primarily regulates the purchasers, rather
21 than the United States." (Id.)

22 Defendants are correct that a right of refusal may be
23 imposed by statute. It does not follow, however, that the
24 legislature can structure a statutory right of refusal such that
25 it can be exercised against a party that lacks an interest in the
26 property at issue. Nowhere in their briefing do defendants
27 clarify how a purchaser of federal public lands could grant the
28 Lands Commission a right of first refusal to buy or arrange for

1 the transfer of land owned by the federal government.

2 Even if it were possible for the legislature to craft
3 such a right of first refusal, there is no evidence that the
4 California legislature has done so in this case. The plain text
5 of the statute lends no credence to this reading, and the Lands
6 Commission's own interpretations of SB 50 have placed the onus on
7 plaintiff, not on purchasers, to provide the refusal rights. For
8 example, in a February 12, 2018 letter to the Bureau of Land
9 Management regarding the conveyance of a parcel of land in Santa
10 Barbara County, the Lands Commission wrote that "[t]o comply with
11 state law and validly transfer the parcel, BLM must provide the
12 Commission with the right of first refusal or right to arrange
13 for the transfer of the parcel to another entity." (McVeigh Decl.
14 Ex. 9 (Docket No. 20-2).) In this letter, the Lands Commission
15 recognized what it now asks this court to deny: rights of first
16 refusal, even those created by statute, are exercised against the
17 owner of the real property at issue.

18 SB 50 may not expressly name the federal government as
19 its intended object of regulation, but that does not mean the law
20 does not directly regulate the United States. This direct
21 regulation is most immediately evident in section 8560(b)(2)(A),
22 which declares "void ab initio" certain conveyances of federal
23 land if the Lands Commission is not first offered refusal rights
24 to that land. The law's title recordation requirements also
25 impose direct and intrusive, though perhaps less proximate,
26 regulations on the federal government.

27 Title recordation is a significant and almost
28

1 inextricable component of the process of land conveyance.¹ As a
2 result, conditioning purchasers' ability to record a title to
3 recently acquired federal public lands on whether the government
4 provided the Lands Commission with refusal rights in those lands
5 trespasses on the federal government's ability to convey land to
6 whomever it wants. The law subjects federal determinations about
7 the conveyance of federal land to review by the Lands Commission;
8 its refusal rights requirement and declaration that certain
9 conveyances of federal land are "void ab initio" unless that
10 requirement has been complied with appropriate for California the
11 power to "directly obstruct the activities of the
12 Federal Government." North Dakota, 495 U.S. at 437-38.

13 For these reasons, the court agrees with plaintiff that
14 SB 50 unconstitutionally directly regulates the federal
15 government with respect to the federal public lands managed by
16 the federal National Forest Service, the federal Bureau of
17 Reclamation, the federal Bureau of Land Management, the United
18 States Fish and Wildlife Service, and the federal National Park
19 Service, as well as with respect to those federal lands that meet
20 the conditions enumerated in Section 8560(f)(4)(A)-(D).
21 Accordingly, these portions of SB 50 unconstitutionally violate
22 the doctrine of intergovernmental immunity.

23 b. Discrimination against the United States and
24 those with whom it deals

25 ¹ In California, nearly all grantees of real property
26 record the deed instrument in the county in which the property is
27 located. (Haase Decl. ¶ 23 (Docket No. 20-7).) Moreover, title
28 recordation is often required by financial institutions and
insurance companies considering providing financing or insurance
coverage to a land owner with respect to a given property. Id.

1 Even if a regulation does not directly regulate the
2 United States, it may still violate the doctrine of
3 intergovernmental immunity if it discriminates against the United
4 States or those with whom it deals. Discriminatory regulations
5 are those that are not imposed on "similarly situated
6 constituents of the State" and which have no "basis unrelated to
7 the object's status as a Government contractor or supplier."
8 North Dakota v. United States, 495 U.S. 423, 438 (1990).
9 Importantly, even regulations that discriminate against those
10 with whom the government deals may nonetheless survive if, "the
11 inconsistency is directly related to and justified by significant
12 differences between the two classes." Davis v. Mich. Dep't of
13 Treasury, 489 U.S. 803, 804 (1989) (citation and quotation marks
14 omitted).

15 The statutory language of SB 50 makes clear that it
16 applies only to purchasers and grantees of federal public lands:
17 only those trying to record documents related to conveyances of
18 federal public lands must present a certificate of compliance
19 from the Lands Commission, and only they are subject to monetary
20 penalties if they fail to do so. See Cal. Gov't Code § 6223(a).
21 In United States v. California, 314 F. Supp. 3d 1077 (E.D. Cal.
22 2018) (Mendez J.), Judge Mendez considered the constitutionality
23 of a California law that, among other things, imposed civil
24 penalties on California employers that allowed federal
25 immigration enforcement officials into nonpublic areas of their
26 places of business. Judge Mendez found the penalties
27 impermissibly discriminatory. They were, he ruled, a "clear
28 attempt to meddle with federal government activities indirectly

1 by singling out for regulation those who deal with the
2 government.” Id. at 1096 (quotations and citation omitted).

3 Requesting a Lands Commission certificate of compliance
4 to which one is automatically entitled may be a relatively minor
5 inconvenience. It is, however -- like SB 50’s threat of a \$5,000
6 monetary penalty for attempting to record a document without a
7 Lands Commission certificate of compliance -- a burden born
8 exclusively by those who deal with the federal government. These
9 aspects of SB 50 apply to all conveyances of federal public lands
10 in California except those acquired by a federal agency through a
11 foreclosure proceeding. Compare Cal. Pub. Res. Code §
12 8560(a)(3), with id. at § 8561. Like the monetary fine at issue
13 in United States v. California, 314 F. Supp. 3d 1077, these
14 recording requirements impermissibly discriminate against those
15 who deal with the federal government by singling them out for
16 discriminatory, if not particularly burdensome, regulation.

17 Defendants advance no argument that these aspects of SB
18 50 are constitutional. Accordingly, the court holds that SB 50,
19 as it applies to the categories of conveyances listed in §
20 8560(f), violates the doctrine of intergovernmental immunity by
21 discriminating against the land purchasers who deal with the
22 United States.

23 Under SB 50, purchasers of federal lands to which
24 California asserts refusal rights face an even greater burden
25 than grantees in conveyances encompassed by § 8560(f). Because
26 California may exercise a right of first refusal over the real
27 property these purchasers seek to acquire, they face a level of
28 uncertainty and potential delay that all others are spared from.

1 Defendants claim that the lands subject to SB 50's
2 right of first refusal are of an especially sensitive nature and
3 that they are therefore "not similarly situated to properties
4 that might be sold by non-federal parties in California."

5 (Defs.' Cross-Mot. for Summ. J. at 13.) Because SB 50's right of
6 first refusal is related to and justified by this significant
7 difference, defendants argue, it is constitutional. (Id. at 13-
8 14.)

9 This argument assumes that some categories of federal
10 land, e.g. those designated for conservation use or managed by
11 the National Park Service, are categorically different from all
12 other real property in California. In other words, the
13 defendants implicitly argue that if a given piece of real
14 property is part of a national monument or is managed by the
15 Bureau of Land Management, its sensitivity and uniqueness are
16 intrinsically greater than those of all other real property in
17 California. The court rejects this supposition and, with it,
18 defendants' arguments about the constitutionality of SB 50's
19 right of refusal requirement.

20 Defendants may be correct that much of the real
21 property encompassed by SB 50's refusal rights is qualitatively
22 different from a typical residential or commercial real estate
23 transaction. What they do not argue, and what they have not
24 proven, however, is that there are categorical differences
25 between the lands SB 50 subjects to a right of refusal and all
26 other lands within California, including those of special
27 historical, cultural, or natural value not owned by the federal
28 government. Defendants come closest to making this argument with

1 the claim that federal lands are dissimilarly situated from all
2 other lands in California because they are "preserved for the
3 public's benefit, while privately held lands are not." (Defs.'
4 Reply Brief in Supp. Of Cross-Mot. for Summ. J at 6.) This
5 quality of federal public lands, however, is so directly linked
6 to their federal status that it cannot serve as the basis for
7 non-discriminatory differentiation.

8 Defendants' argument also fails because they have not
9 shown that SB 50's right of refusal requirement is "related to"
10 any distinguishing characteristics of the regulated lands as a
11 class. The law does not, for example, enumerate a set of
12 characteristics associated with "sensitive" or "unique" lands and
13 then subject some federal lands to a right of first refusal
14 because they meet the relevant statutory definition of
15 "uniqueness." The law does not even apply broadly to all
16 sensitive or unique lands preserved for the benefit of the public
17 by any public or private entity, e.g., a trust or foundation.
18 Rather, SB 50 uncritically uses federal administrative and
19 institutional categories to target the federal government and
20 those with whom it deals for regulation. For this reason, SB
21 50's right of first refusal requirement violates the Supremacy
22 Clause by discriminating against purchasers of land who deal with
23 the federal government.

24 2. Preemption

25 Plaintiff also argues that SB 50 is unconstitutional
26 because it is preempted by federal law. Specifically, plaintiff
27 argues that SB 50 both intrudes into a field reserved exclusively
28 to Congress, i.e. the disposal of federal property, and directly

1 conflicts with federal laws authorizing the disposal of federal
2 lands. Both plaintiff's field and conflict preemption arguments
3 cite the Property Clause of the U.S. Constitution² and the Act
4 for the Admission of the State of California ("Admission Act"),
5 ch. 50 9 Stat. 452 (1850). The latter is particularly explicit
6 in its circumscription of California's ability to legislate in
7 the field of federal lands disposal. It provides that the state
8 of California is admitted to the Union:

9 upon the express condition that the people of said
10 state, through their legislature or otherwise, shall
11 never interfere with the primary disposal of the public
12 lands within its limits, and shall pass no law and do
13 no act whereby the title of the United States to, and
14 right to dispose of, the same shall be impaired or
15 questioned.

16 9 Stat. at 452. Regardless of whether or not there is a
17 presumption against preemption, given the express language of the
18 Property Clause reserving for Congress the power to dispose of
19 federal lands and the Admission Act's explicit prohibition on
20 California interfering with Congress's ability to dispose of
21 federal lands, both of plaintiff's preemption arguments appear
22 compelling. However, because the court finds that SB 50
23 unconstitutionally violates the doctrine of intergovernmental
24 immunity, it need not reach the question of whether federal law
25 preempts SB 50.

26 B. Remedy

27 1. Injunctive Relief

28 ² The Property Clause of the Constitution states that,
"Congress shall have power to dispose of and make all needful
rules and regulations respecting the territory or other property
belonging to the United States." U.S. Cons. Art IV § 3, cl. 2.

1 Plaintiff's claim that SB 50 unconstitutionally
2 regulates the United States is more than just speculation. The
3 record before this court makes clear that SB 50, as implemented
4 by defendant SLC, both directly regulates the United States by
5 obstructing its operations, and discriminates against the United
6 States and those with whom it deals. These injuries are "actual
7 or imminent, not 'conjectural' or 'hypothetical.'" Lujan v. Defs.
8 of Wildlife, 504 U.S. 555, 560 (1992) (citing Whitmore v.
9 Arkansas, 495 U.S. 149, 155 (1990)).

10 While some of plaintiff's arguments about SB 50's
11 unconstitutional direct regulation of the United States are
12 largely speculative,³ others speak to immediate and ongoing
13 constitutional injuries suffered by plaintiff because of SB 50.
14 Even where the United States has not conveyed or attempted to
15 convey title to its lands, that property is still impermissibly
16 regulated by SB 50's assignment of refusal rights in it to the
17 SLC. Moreover, SB 50 directly regulates the disposal of federal
18 land by clouding the United States' marketable title. (Id. at
19 24-25.) Section 8560(b)(2)(A) of the California Public Resources
20 Code voids "ab initio" some conveyances of federal lands unless
21 the SLC was provided with refusal rights in those lands. Given
22 that the federal government has never provided the SLC with
23 refusal rights, all conveyances of federal lands subject to SB
24 50's refusal rights requirement are arguably void ab initio under

25
26 ³ For example, plaintiff notes that "[i]f Congress were
27 to authorize agencies to dispose of rights of first refusal,
28 there would be apparently competing rights—thus impairing the
federal agency's ability to carry out authorized activities."
(Pl.'s Mot. for Summ. J. at 24.)

1 SB 50. That the SLC issued certificates of compliance for these
2 conveyances is of no moment here since the statute expressly
3 conditions a conveyance's validity on the provision of refusal
4 rights to the SLC, not on the issuance of a compliance
5 certificate by the SLC.

6 As implemented to date, SB 50 has also actually
7 discriminated against the United States and those with whom it
8 deals. For example, other than the plaintiff, no seller in a
9 California real estate transaction has ever received a letter
10 like the one the SLC sent the Department of the Interior,
11 explaining that under SB 50 in order to "validly transfer [a 5.9
12 acre parcel of lands in Santa Barbara county], BLM must provide
13 the [SLC] with the right of first refusal or right to arrange for
14 the transfer of the parcel to another entity." (McVeigh Decl.
15 Ex. 9.) Similarly, only grantees of federal land have had to
16 deal with the hassle of requesting a certificate of compliance
17 from the SLC or the threat of a \$5,000 fine if they attempt to
18 record a deed to their land without an accompanying certificate
19 of compliance from the SLC.

20 Though the defendant SLC has never exercised its
21 putative refusal rights, plaintiff has already been injured
22 through the enforcement of SB 50: the statute's direct regulation
23 of federal lands and their disposal, and its discrimination
24 against the federal government and its grantees are ongoing.
25 These unconstitutional harms to plaintiff are likely to persist
26 as long as SB 50 is in force. For these reasons, the court
27 concludes that declaratory and injunctive relief are the
28 appropriate remedies.

1 2. Severability

2 Section 8560(g) of the California Public Resources Code
3 states that "[i]f any provision of this section or its
4 application is held invalid, that invalidity shall not affect
5 other provisions or applications that can be given effect without
6 the invalid provision or application." Given the presence of
7 such a clause, there is a presumption in favor of severability.
8 Santa Barbara Sch. Dist. v. Superior Court, 13 Cal. 3d 315, 331
9 (1975). That presumption can be overcome, however, if the
10 invalid provision is grammatically, functionally, and
11 volitionally inseparable from the remainder of the statute. Cal.
12 Redevelopment Ass'n. v. Matosantos, 53 Cal. 4th 231, 271 (2011).
13 Here, Section 8560(b)(2)(A) of the Public Resources Code and
14 Sections 223 and 27338 of the Government Code may be
15 grammatically separable from the remainder of the law, but
16 functionally and volitionally they are not. The presumption in
17 favor of severability is overcome and the court declines to sever
18 any part of SB 50.

19 IT IS THEREFORE ORDERED that plaintiff's motion for
20 summary judgment (Docket No. 20) be, and the hereby same is,
21 GRANTED. Defendants' cross-motion for summary judgment (Docket
22 No. 24) be, and the hereby same is, DENIED.

23 The court DECLARES that SB 50 is unconstitutional
24 because it violates the doctrine of intergovernmental immunity,
25 and PERMANENTLY ENJOINS defendants from enforcing SB 50.

26 Dated: November 1, 2018

27 

28 **WILLIAM B. SHUBB**
UNITED STATES DISTRICT JUDGE