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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. ¶

1 10.)

2 II. Legal Standard

3 Summary judgment is proper "if the movant shows that  
4 there is no genuine dispute as to any material fact and the  
5 movant is entitled to judgment as a matter of law." Fed. R. Civ.  
6 P. 56(a). A material fact is one that could affect the outcome  
7 of the suit, and a genuine issue is one that could permit a  
8 reasonable jury to enter a verdict in the non-moving party's  
9 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
10 (1986).

11 III. Analysis

12 A. Supremacy Clause

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

25 This principle is known as the doctrine of  
26 intergovernmental immunity. Under this doctrine, a state law is  
27 invalid if it "regulates the United States directly or  
28 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.<sup>1</sup> 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 <sup>1</sup> 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. Constitution<sup>2</sup> 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

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28           <sup>2</sup> 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,<sup>3</sup> 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

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26 <sup>3</sup> 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.

2. Severability

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

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

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

Dated: November 1, 2018



WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE