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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Gregory Yount, et. al.,

No. CV11-08171-PCT-DGC

10

Plaintiffs,

ORDER

11

v.

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Kenneth Lee Salazar, Secretary of the
Interior, et al.,

13

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Defendant.

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16 Plaintiffs National Mining Institute (“NMI”) and Nuclear Energy Institute (“NEI”)
17 have filed a motion for reconsideration of the Court’s order of March 20, 2013.
18 Doc. 135. In that order, the Court found, as Plaintiffs had argued, that the legislative veto
19 provision in § 204(c) of the Federal Land Policy Management Act (“FLPMA”) was
20 unconstitutional, but also found, contrary to Plaintiffs’ arguments, that the legislative veto
21 was severable from that section’s grant of authority to the Secretary of the Department of
22 Interior to make large-tract land withdrawals. Doc. 130. Northwest Mining Association
23 (“NWMA”) has joined the motion. Doc. 136. For the reasons that follow, the Court will
24 deny the motion.

25

I. Legal Standard.

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27 Motions for reconsideration “are ‘disfavored’ and will be granted only upon a
28 showing of ‘manifest error’ or ‘new facts or legal authority that could not have been
raised earlier with reasonable diligence.’” *In re Rosson*, 545 F.3d 764, 769 (9th
Cir.2008) (citation and brackets omitted); *see S.E.C. v. Kuipers*, No. 09–36016, 2010 WL

1 3735788, at *3 (9th Cir. Sept.21, 2010); LRCiv 7.2(g)(1). Mere disagreement with an
2 order is an insufficient basis for reconsideration. *See Ross v. Arpaio*, No. CV 05-4177-
3 PHX-MHM, 2008 WL 1776502, at *2 (D. Ariz. 2008). Nor should reconsideration be
4 used to ask the Court to rethink its analysis. *Id.*; *see N. W. Acceptance Corp. v.*
5 *Lynnwood Equip., Inc.*, 841 F.2d 918, 925-26 (9th Cir.1988).

6 **II. Discussion.**

7 Plaintiffs argue that the Court’s severability finding was clear error because (1) the
8 Court overlooked or misapprehended matters showing that Congress’ intent in the
9 FLPMA was to constrain executive-branch withdrawal authority, (2) *Miller v. Albright*
10 weighs against severability, (3) severing the veto overlooks Congress’ plenary Property
11 Clause authority over land withdrawals, (4) the structure of the FLPMA confirms the
12 inseparability of the veto, and (5) the legislative history of the FLPMA supports
13 Plaintiffs’ position.

14 **A. Congress’ Intent.**

15 Plaintiffs note that the Court correctly cited to Congress’ dual intent in enacting
16 the FLPMA as reflected in the recommendations of the Public Land Law Review
17 Commission (the “Commission”) and stated in the FLPMA’s declaration of policy, that
18 Congress “(1) exercise its constitutional authority to withdraw or otherwise designate or
19 dedicate Federal lands for specified purposes” and (2) “that Congress delineate the extent
20 to which the Executive may withdraw lands without legislative action[.]” Doc. 135 at 6;
21 quoting 43 U.S.C. § 1701(a)(4); *see* Doc. 130 at 8. Plaintiffs argue, however, that the
22 Court overlooked the FLPMA’s singular intent to reign in executive authority and
23 erroneously concluded that Congress “was equally concerned with enabling the
24 Executive to act through controlled delegation as it was with preserving Congress’s
25 reserved powers.” Doc. 135 at 7-8. They reason that the FLPMA’s second purpose, “to
26 delineate the extent [of the Executive’s withdrawal authority] without legislation,” was,
27 itself, concerned with controlling and reigning in the executive more than with granting
28 the executive authority. *Id.* Thus, they argue, severing the legislative veto from the

1 FLPMA’s grant of authority would defeat Congress’ intent because it would give the
2 Executive unsupervised discretion to make withdrawals, returning it to the kind of
3 unfettered authority the FLPMA was intended to constrain. *Id.* at 7, citing George
4 Coggins & Robert Glicksman, Pub. Nat. Resources L. § 4:3 (2d. ed. 2011).

5 Plaintiffs have not shown that the Court’s analysis was in error. The Court did not
6 overlook Congress’s concern with placing limits on executive withdrawals, but expressly
7 noted that Congress was concerned with granting the executive a “controlled delegation”
8 of withdrawal authority. Doc. 130 at 9. This is consistent with the Commission’s
9 recommendation, quoted in the Court’s order, that “[a]ll other withdrawal authority
10 should be expressly delegated with statutory guidelines to insure proper justification for
11 proposed withdrawals, provide for public participation in their consideration, and
12 establish criteria for Executive action.” Doc. 102 at 40, quoting Commission Report at
13 54, Recommendation 8. The Court found a lack of “strong evidence” that the veto could
14 not be severed from Congress’s grant of authority. The Court based this finding, in part,
15 on the fact that the Commission did not propose a veto. Doc. 130 at 9. The Court also
16 noted that, structurally, the FLPMA set forth the procedures the Executive must follow to
17 effect particular types of withdrawals. *Id.* at 8-9. For withdrawals over 5,000 acres –
18 those to which the legislative veto in § 204(c) applies – Congress required the Secretary
19 to submit a detailed list of reports on such things as the reason for the withdrawal, the
20 environmental and economic impacts, consultations with local governments and other
21 impacted groups, public hearings, and a geological report. *Id.* at 14, citing § 204(c)(1).
22 The Court found that these requirements provide “a meaningful limitation on executive
23 action even if no legislative veto may be exercised.” *Id.* As the Court noted, this finding
24 is consistent with other cases in which courts have struck down veto provisions but
25 retained grants of authority on the basis of congressional reporting requirements. *See id.*
26 15-16, citing, *e.g.*, *INS v. Chadha*, 462 U.S. 919, 935 (1983); *Alaska Airlines v. Brock*,
27 480 U.S. 678, 689-90. Plaintiffs may disagree with the Court’s analysis that the FLPMA
28 contains sufficient restraints on executive land withdrawals absent the veto to satisfy

1 Congress's dual intent, but that disagreement is not a basis for reconsideration.

2 Plaintiffs also argue that severing the veto contravenes the FLPMA's repeal of
3 implied executive branch withdrawal authority. Doc. 135 at 8-9. They argue that the
4 Court failed to address how this historic repeal relates to Congress's purpose of
5 delineating executive withdrawal authority, and failed to address the centrality of the veto
6 to the repeal's efficacy. *Id.* at 9. The Court discussed FLPMA's repeal of *Midwest Oil*
7 and 29 grants of statutory authority as accomplishing Congress's first purpose of
8 reserving certain types of withdrawal authority to itself. Doc. 130 at 8. While the Court
9 did not expressly discuss how the repeal also fit with Congress's purpose of delineating
10 the extent of executive withdrawal authority, the FLPMA's repeal of prior sources of
11 authority and its concurrent enactment of a single, unified source of authority clearly go
12 hand in hand. Contrary to Plaintiffs' argument, severing the veto as one limitation on the
13 executive's newly-defined withdrawal authority does not negate Congress's purpose in
14 repealing prior grants of executive authority, nor does it effectively grant the executive
15 the same level of unfettered withdrawal authority it enjoyed prior to the FLPMA. As the
16 Court noted in its order, the FLPMA replaced a formerly "chaotic" scheme for the
17 management of public lands with one in which the respective roles of Congress and the
18 Executive are clearly set forth. Doc. 130 at 6-9. Congress included the legislative veto
19 as a check on executive withdrawals over 5,000 acres, but severing the veto provision
20 does not eviscerate the FLPMA's entire statutory scheme which, as noted, includes
21 reserving certain types of withdrawals exclusively to Congress, doing away with prior
22 grants of authority to the executive, and setting forth the procedures for three different
23 kinds of executive withdrawals. *See* Doc. 130 at 7-9. It also does not leave withdrawals
24 over 5,000 acres completely unregulated, but, as discussed above, requires a number of
25 substantive and procedural steps as part of the Executive's deliberative process, thereby
26 adding a significant check on executive withdrawals that did not exist prior to FLPMA.
27 In summary, the Court is not persuaded that severing the FLPMA's veto provision from
28 its grant of authority is inconsistent with Congress's intent to delineate executive

1 authority or its repeal of the Executive’s implied withdrawal authority under *Midwest Oil*.

2 **B. *Miller v. Allbright*.**

3 Plaintiffs argue that the Court erred by misapprehending the weight and
4 applicability of Justice Scalia’s opinion regarding the inseparability of a provision of the
5 Immigration and Nationality Act (“INA”) challenged on equal protection grounds in
6 *Miller v. Allbright*, 523 U.S. 420, 457-58 (1998). Doc. 135 at 9-10. Plaintiffs first argue
7 that the Court erred in identifying this part of Justice Scalia’s opinion as dicta because,
8 they note, *Miller* had no majority opinion; rather, its dismissal was decided on the
9 opinions of six justices put forth in three separate concurrences. *Id.* at 9. Plaintiffs argue,
10 without analysis, that Justice Scalia’s concurrence was on the narrowest grounds and is
11 therefore deemed the controlling opinion of the Court. *Id.* at 10, citing *Marks v. United*
12 *States*, 430 U.S. 118, 193 (1977). They also argue that the Court erred in finding that
13 Justice Scalia’s opinion did not apply to the facts in this case. *Id.* at 10. The Court need
14 not address whether and to what extent Justice Scalia’s opinion is entitled to precedential
15 weight because the Court ultimately based its analysis on distinguishing that opinion
16 from the facts in this case, and Plaintiffs have not shown that the Court’s analysis was in
17 error.

18 In *Miller*, the foreign-born daughter of a U.S. citizen father and an alien mother
19 challenged the constitutionality of a provision of the INA that required an affirmative act
20 establishing the paternity of U.S. citizen fathers not required of U.S. citizen mothers. 523
21 U.S. 425-25, 432. Justice Scalia opined that in light of Congress’s plenary power over
22 citizenship, the Court did not have the authority to remove a precondition of citizenship,
23 and the INA’s general severability clause did not override its more specific language
24 which stated that “[a] person may only be naturalized as a citizen of the United States in
25 the manner and under the conditions prescribed in this subchapter *and not otherwise.*” *Id.*
26 at 457-458, quoting 8 U.S.C. § 1421(d) (emphasis added by Justice Scalia). Plaintiffs
27 argue that the Court failed to recognize that the word “only” in § 204(a) of the FLPMA,
28 which states that the “Secretary is authorized to make . . . withdrawals, but only in

1 accordance with the provisions and limitations of this section” (43 U.S.C. § 1714(a)), has
2 the same meaning as “and not otherwise” in the INA. Doc. 135 at 10. The Court
3 addressed this argument in its order and found, among other things, that the single word
4 “only” was not the equivalent of the language Justice Scalia emphasized as overriding the
5 general severability provision in the INA, and that the word “only” was insufficient to
6 disregard Congress’s clear statement that “[i]f *any* provision of the [FLPMA] or the
7 application thereof is held invalid, the remainder of the [FLPMA] and application thereof
8 shall not be affected thereby.” Doc. 130 at 12, quoting Act of Oct. 21, 1976, Pub. L. No.
9 94-579, 90 Stat. § 707; 43 U.S.C. § 1701, historical and statutory notes (emphasis added).

10 Justice Scalia’s concurring opinion in *Miller* also relied on additional factors that
11 are not present here. Justice Scalia ultimately concurred in the dismissal in *Miller* on the
12 grounds that the Court was unable to grant the petitioner her requested declaratory relief
13 because she had not met the requirements for citizenship under any existing statute, and
14 there was no way to find she had citizenship under the INA without doing “radical
15 statutory surgery” beyond the purview of the Court. *Miller*, 527 U.S. at 459. This was
16 because in an equal protection challenge, courts are faced not with the question of
17 whether to sever a single provision that is clearly unconstitutional, but with having to
18 choose how to remedy alleged inequalities between separate provisions, something that is
19 not at issue here. *See id.* at 458-459.

20 Finally, Justice Scalia reaffirmed in *Miller* that a severability analysis requires an
21 individualized assessment “as to whether Congress would have enacted the remainder of
22 the law without the invalidated provision.” 527 U.S. at 457-58, citing *New York v.*
23 *United States*, 505 U.S. 144, 186 (1992). “The question of severance,” he went on to
24 note, “ultimately turns on ‘whether the provisions are inseparable by virtue of inherent
25 character,’ . . . which must be gleaned from the structure and nature of the Act.” *Id.* at
26 458, quoting *Carter v. Carter Coal Co.*, 298 U.S. 238, 322 (1936). Here, unlike the
27 documentation of parentage put forth as the exclusive criteria for establishing citizenship
28 under the INA, the veto provision in the FLPMA is not “inseparable by virtue of inherent

1 character” from the remaining provisions and limitations in that act. The veto did not
2 place any additional obligations upon the Secretary when making withdrawals, but rather
3 gave Congress the ability to assert its own limitation which was both optional and
4 entirely separate from what the Secretary is required to do. As demonstrated throughout
5 its order, the Court thoroughly analyzed the “structure and nature” of the FLPMA and
6 concluded that the veto provision was severable. *Miller* does not compel a different
7 result.

8 **C. Congress’s Plenary Property Clause Authority.**

9 Plaintiffs argue that because this case implicates Congress’s plenary power over
10 the disposal of federal lands under the Property Clause of the U.S. Constitution, it was
11 “manifest error” for the Court not to address this authority as part of its severability
12 analysis. Doc. 135 at 6. Plaintiffs misstate the proper analysis. The Court recognized
13 that the Property Clause “vests in Congress the ‘power to dispose of and make all needful
14 rules and regulations respecting . . . property belonging to the United States.’” Doc. 130
15 at 6, quoting U.S. Const., Art. IV, § 3, cl. 2. The question before the Court, however, was
16 not whether Congress had plenary power over land withdrawals, but whether there was
17 “strong evidence” that Congress would not have delegated § 204(c) withdrawal authority
18 to the Secretary in FLPMA absent the veto provision. *See* Doc. 130 at 5-6. The Court
19 concluded that such strong evidence was lacking. *Id.* at 28. The fact that Congress has
20 plenary power over land withdrawals does not change this result or show that the Court’s
21 analysis was in error. Moreover, the Court’s severance of only the unconstitutional veto
22 provision in § 204(c) is consistent with Supreme Court precedent holding that, whenever
23 possible, courts should limit their corrective action to invalidating only the
24 unconstitutional provision of a statute (*Ayotte v. Planned Parenthood of N. New England*,
25 546 U.S. 320, 328-29 (2006)) and with the Court’s finding of a lack of strong evidence
26 that Congress would not have delegated authority to the Secretary under § 204(c) without
27 the veto. The fact that Congress has plenary power over land withdrawals does not
28 compel a different conclusion.

1 **D. The Structure of the FLPMA.**

2 **1. Notice and Reporting Requirements.**

3 Plaintiffs argue that the Court’s reliance on the FLPMA’s notice and reporting
4 requirements as a significant restraint on executive authority was “manifest error.” Doc.
5 135 at 11. They note that the FLPMA’s statutory scheme, which allows Secretarial
6 withdrawals to take immediate effect at the time the required notice and reports are filed,
7 is substantially different from the “report and wait” provisions the Court cited to in
8 *Alaska Airlines*, in which Congress, upon receiving notice, would have 60 days in which
9 it “could attempt to influence the Secretary *during the waiting period*, and could enact
10 proper legislation to block the Secretary’s regulations *from going into effect*.” *Id.* at 7,
11 quoting Doc. 130 at 15. (emphasis added by Plaintiffs). Plaintiffs argue that the Court
12 overlooked these distinctions.

13 Contrary to Plaintiffs’ assertion, the Court squarely addressed the distinction
14 between the FLPMA and the “report and wait” statutes in *Alaska Airlines* and other
15 legislative veto cases, noting that “Plaintiffs are correct that the absence of a waiting
16 period gives Congress less opportunity to influence an executive decision before it takes
17 effect[.]” Doc. 130 at 17. “[B]ut,” the Court went on to say, “this point does not help
18 Plaintiffs.” *Id.* The Court reasoned that “[i]f anything, the fact that the FLPMA allows
19 executive withdrawals to go into effect immediately suggests that influencing executive
20 action or attempting to block it through a legislative veto was less important to Congress
21 in the FLPMA than in the ‘report and wait’ statutes.” *Id.* Significantly, even with these
22 timing differences, Congress retains the same ability, absent the veto, to overturn
23 disfavored executive actions under FLPMA through the normal legislative process that
24 the Supreme Court found significant to its severability analysis in both *Chadha* and
25 *Alaska Airlines*. See 462 U.S. at 935, n. 8; 480 U.S. at 689-990.¹ In addition, as the

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27 ¹ Plaintiffs argue that the Court put undue weight on the check provided by the
28 normal legislative process because it overlooked the differences between a veto, which
bypasses time-consuming and less-certain constitutional procedures, and full legislation
requiring presentment to the President. Doc. 135 at 13. The Court did not make this
error. Rather, it stated that “[t]he fact that Congress clearly wanted the ability to take

1 Court explained, the detailed reporting requirements in the FLMPA

2 not only inform Congress of the Secretary’s large-tract
3 withdrawals so that Congress can respond through the normal
4 legislative process if warranted, they also ensure that the
5 Secretary will consider environmental and economic impacts
6 of the withdrawal, consider current uses of the withdrawn
land, consult with local governments and other impacted
individuals, hold public hearings, and consult qualified
experts about the known mineral deposits, past and present
mineral production, and present and future market demands.

7 Doc. 130 at 17, citing 43 U.S.C. § 1714(c)(2). In light of these findings, it was not
8 “manifest error” for the Court to conclude that the FLPMA’s notice and reporting
9 requirements “will continue to have significant meaning even after the legislative veto is
10 invalidated.” *Id.*

11 Plaintiffs also argue that the Court sidestepped the D.C. Circuit’s specific holding
12 in *City of New Haven v. Pierce*, which recognized that “Congress was not ‘very much
13 concerned with, let alone determined to achieve, further detail [from reports] about future
14 Presidential impoundments *absent a mechanism for exercising control over them*’” (809
15 F.2d at 907, n.19 (emphasis in original)), because the Court did not explain how, absent
16 the veto provision in FLPMA, Congress would have a meaningful “mechanism for
17 exercising control” over large-tract withdrawals. Doc. 135 at 11-12. This argument lacks
18 merit. As already discussed, the Court pointed to numerous ways in which the reporting
19 requirements in the FLPMA provide meaningful checks on executive withdrawal
20 authority. Additionally, the Court distinguished *City of New Haven* because the
21 “overwhelming evidence of congressional intent” the D.C. Circuit relied upon for finding
22 the veto provision not severable is not present here. *See* Doc. 130 at 16-17, 27-28.

23 **2. Smaller-Tract Withdrawal Authority.**

24 Plaintiffs argue that the Court erred when it stated that any textual arguments that
25 Congress would not have granted large-tract withdrawal authority to the Secretary absent

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27 legislative action without presentment does not mean that, faced with the
28 unconstitutionality of that approach, Congress would have withheld its delegation of
power even when a proper legislative check on that power would still be available.”
Doc. 130 at 20. Plaintiffs merely seek to have the Court rethink its analysis on this issue.

1 the veto were “tempered by the fact that Congress gave the Secretary unfettered authority
2 to make 20-year and other unlimited withdrawals under § 204(d) where public uses of
3 smaller, but still significant, acreage was at stake.” Doc. 135 at 12, quoting Doc. 130 at
4 19. Plaintiffs argue that the Court wrongly characterized § 204(d)’s withdrawal authority
5 as “unlimited,” thus failing to acknowledge that it applies only to withdrawals of less
6 than 5,000 acres, an important distinction between such small-tract withdrawals and the
7 withdrawal at issue in this case. Doc. 135 at 12. Plaintiffs are in error. The Court
8 specifically noted that the withdrawal authority in § 204(d) was limited to withdrawals in
9 which “smaller, but still significant, acreage was at stake.” Doc. 130 at 19. Within the
10 context of these smaller withdrawals, the Court noted that Congress granted the Secretary
11 unfettered authority, a contrast to the multiple checks that apply to withdrawals
12 authorized under § 204(c). *See, e.g.*, Doc. 130 at 14-16, 20-21. The Court did not, as
13 Plaintiffs argue, collapse the distinctions in these two sections. Instead, it found that
14 Congress’s unfettered grant of authority in 204(d) tempered any reliance on the structure
15 and text of FLPMA to show that Congress was primarily concerned with reigning in
16 executive authority and would not therefore have delegated large-tract withdrawal
17 authority to the Secretary absent the veto. At most, the structural and textual differences
18 between Sections 204(c) and 204(d) cut both ways. On one hand, they show that
19 Congress wanted to treat large-tract withdrawals differently from small-tract withdrawals
20 and did so by placing these delegations of authority in separate sections and applying
21 separate constraints. On the other hand, they show that Congress favored allowing the
22 Executive to continue to make land-management decisions, including public land
23 withdrawals, even while it repealed implied and statutory authority to do so. In light of
24 this analysis, it was not error for the Court to conclude that the structure and text of these
25 provisions fail to provide strong evidence that Congress would have withheld its grant of
26 large-tract withdrawal authority absent the legislative veto.

27 **E. Legislative History.**

28 Plaintiffs argue that the Court overlooked strong evidence in the FLPMA’s

1 legislative history against severing only the legislative veto.

2 **1. Senate Bill.**

3 Plaintiffs do not dispute that, of the original House and Senate bills preceding the
4 FLPMA, only the House bill contained a legislative veto and a repeal of existing
5 executive withdrawal authority. *See* Doc. 130 at 21. Plaintiffs argue, rather, that the
6 Court erred in giving significance to this distinction because only the House bill
7 addressed withdrawals at all. Doc. 135 at 13-14. What this says, however, is that the
8 Senate bill would have kept the status quo, allowing the Executive to continue exerting
9 both implied and statutory withdrawal authority unchanged by the FLPMA. This hardly
10 comports with Plaintiffs’ arguments that in enacting the FLPMA Congress was primarily
11 concerned with reigning in the executive with respect to federal land management
12 decisions. Plaintiffs rightly argue that what is important is the final legislation which, in
13 this case, included the legislative veto. *Id.* at 14. But when posed with the question of
14 what Congress would have done had it known the veto was unconstitutional, it is relevant
15 to the Court’s analysis that one house of Congress initially had not included any curbs on
16 existing executive withdrawal authority as part of its proposed bill.

17 **2. The House Views.**

18 Plaintiffs argue that even if only the House would not have passed § 204(c) of the
19 FLPMA absent the legislative veto, the opposition of one house, alone, is enough to show
20 that it would not have passed. Doc. 135 at 14. Plaintiffs further argue that the Court
21 mischaracterized evidence from the House Report, the separate statements of House
22 members, and statements made in floor debate, all of which provide “strong evidence”
23 that the House, and – by extension – Congress as a whole, would not have enacted the
24 FLPMA absent the veto. *Id.* at 14-16.

25 Plaintiffs first argue that the Court failed to recognize the veto as representing the
26 kind of “oversight” the House Report identified as a “major objective” of the FLPMA.
27 *Id.* at 14. Plaintiffs misconstrue the Court’s analysis. The Court recognized that “one of
28 the ‘major objectives’ of the bill, as stated in the House Report, was to ‘[e]stablish

1 procedures to facilitate Congressional oversight of public land operations entrusted to the
2 Secretary of Interior.” Doc. 130 at 21, quoting H.R. Rep. No. 94-1163, at 6,176, sec. (4)
3 (1976). It went on to cite the Report’s reference to the veto provision as part of that
4 oversight. *Id.* at 21-22. But the Court also noted that

5 [w]here the Report discusses the veto provision specifically, it
6 does so in the context of a number of other “procedural
7 controls,” including that the Secretary must provide notice to
8 Congress, must include with this notice other information as
9 specified in the bill, must promulgate the withdrawal on the
10 record and provide an opportunity for hearings, may
11 segregate lands only for one year before taking definitive
12 action, and may act only through the Secretary and “policy
13 officers in the Office of the Secretary appointed by the
14 President with the advice and consent of the Senate.”

15 *Id.* at 22, citing H.R. Rep. No. 94-1163, at 6,183-84. The Court found that, “[t]aken as a
16 whole, the House Report does not provide ‘strong evidence’ that the veto provision alone
17 was essential to the House’s approval of the delegation of authority in § 204(c).” *Id.*
18 Plaintiffs’ disagreement with this conclusion is not grounds for reconsideration.

19 Plaintiffs also argue that the Court erred in citing the views of House Committee
20 members who voiced opposition to the veto because it overlooked that the statements
21 made by Representative Udall were presented as “separate views,” and those made by
22 Representative Sieberling on behalf of himself and seven other members were presented
23 as “dissenting views,” thus representing the views of only a small minority of the House
24 Committee. Doc. 135 at 15.² The Court correctly identified these statements as separate
25 and dissenting views and noted simply that they “cast further doubt on the centrality of
26 the veto.” Doc. 130 at 22-23. Given that a presumption of severability applies absent
27 “strong evidence” that Congress would not have passed FLPMA without the veto, the
28 Court does not agree that it was insignificant or erroneous to note that eight members of
the committee that recommended the House bill specifically objected to – and
presumably would readily have eliminated – the veto.

² Plaintiffs state that the Committee consisted of 46 members. The voting totals listed in the House Report, however, indicate a total of 36 members. H.R. Rep. No. 94-1163, at 6,207.

1 Plaintiffs argue that they put forth sufficient contrary evidence showing that
2 “Congress’s dominant views as a whole” would not have favored severability. Doc. 135
3 at 15-16. They refer to statements made by House members in floor debates and to the
4 Court’s recognition that some members who pushed for less congressional oversight did
5 not oppose the veto directly, possibly in order to “appease those who would disfavor any
6 less restricted delegation of authority.” Doc. 135 at 16, quoting Doc. 130 at 26.
7 Plaintiffs argue that the Court’s acknowledgment of the need of those disfavoring a high
8 degree of oversight to appease members who thought differently shows that “Congress,
9 on the whole, would not settle for any broader delegation, *i.e.*, one lacking the veto.” *Id.*
10 Plaintiffs’ arguments fail to recognize, as the Court pointed out, that the statements
11 concerning the veto during floor debates represent only a handful of comments going
12 both ways and are insufficient to show that Congress would not have enacted the FLPMA
13 but for the veto. *See* Doc. 130 at 26. Where, as here, severability is presumed on the
14 basis of the FLPMA’s severability clause, those opposing severability bear the burden of
15 putting forth “strong evidence” that severance would violate Congress’s intent. The
16 Court’s finding that this evidence was lacking in the legislative record which, unlike *City*
17 *of Newhaven*, provides no “overwhelming evidence of congressional intent” with respect
18 to the veto, was not clear error.

19 **IT IS ORDERED** that Plaintiffs’ motion for reconsideration (Doc. 135) is
20 **denied.**

21 Dated this 16th day of May, 2013.

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26 David G. Campbell
27 United States District Judge
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