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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and
STATE OF CALIFORNIA,

Plaintiffs,

v.

IRON MOUNTAIN MINES, INC., and
T.W. ARMAN,

Defendants.

Case No. 91-0768-JAM-JFM
ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION

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This matter comes before the Court on Defendants' Iron Mountain Mines and T.W. Arman ("Defendants'") Motion for Reconsideration, (Doc. #1299), of the Court's October 1, 2002 Order, pursuant to Eastern District Local Rule 230(j). Plaintiff the United States of America ("United States") opposes the motion.¹ Plaintiff the State of California ("California") joined

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 in the United States' opposition. (United States and California
2 referred to collectively as "Plaintiffs"). For the reasons set
3 forth below, the Motion for Reconsideration is DENIED.
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5 I. FACTUAL AND PROCEDURAL BACKGROUND

6 This case, which has been ongoing for nearly 20 years,
7 involves the Environmental Protection Agency's cleanup of
8 hazardous waste on land where Defendant Iron Mountain Mines is
9 located. Iron Mountain Mines is owned and operated by Defendant
10 T.W. Arman. Previously, Plaintiffs moved for partial summary
11 judgment on the issue of Defendants' liability under the
12 Comprehensive Environmental Response, Compensation, and
13 Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq. Judge Levi
14 issued a 2002 order granting partial summary judgment in favor
15 of the United States. (Doc. #1241). Defendants request that the
16 Court reconsider the portion of Judge Levi's order regarding the
17 divisibility of harm defense.
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20 Judge Levi, in analyzing Defendants' "divisibility of harm"
21 defense, held that Defendants failed to show that the harm
22 caused by the hazardous waste was divisible. The Court stated
23 that "given the nature of the pollution at the site, it would be
24 difficult to identify distinct harms." Judge Levi did not
25 analyze whether there was a reasonable basis for apportionment
26 of liability, however he ordered that to the extent that
27 Defendants' might be less responsible than others for acid mine
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1 drainage, this factor could be raised at the contribution
2 proceeding. Partial summary judgment was granted in favor of
3 Plaintiffs, and the case moved forward with Defendants bearing
4 joint and several liability for the full cost of the cleanup.
5 Defendants now seek an order that their liability is subject to
6 apportionment and should be apportioned in the percentages set
7 forth in their original opposition papers. In the alternative,
8 Defendants ask the Court to deny the previous grant of partial
9 summary judgment and set the matter for trial on the issue of
10 apportionment of liability.
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13 14 II. OPINION

15 A. Legal Standard

16 Eastern District Local Rule 230(j) requires that a party
17 moving for reconsideration show "what new or different facts or
18 circumstances are claimed to exist which did not exist or were
19 not shown upon such prior motion, or what other grounds exist
20 for the motion, and why the fact or circumstances were not shown
21 at the time of the prior motion." E.D. Cal. L.R. 230(j). This
22 rule applies to "whenever a motion has been granted or denied in
23 whole or in part, and a subsequent motion for reconsideration is
24 made upon the same or any alleged different set of facts." Id.

25 To prevail on a motion for reconsideration, "a party must
26 set forth facts or law of a strongly convincing nature to induce
27 the court to reverse its prior decision." Hansen v. Schubert,
28 459 F.Supp.2d 973, 998 (E.D. Cal. 2006). "A party seeking

1 reconsideration must show more than a disagreement with the
2 Court's decision, and recapitulation of the cases and argument
3 considered by the court before rendering its original decision
4 fails to carry the moving party's burden." United States v.
5 Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2006)
6 (internal citations omitted).

7 Additionally, "Under the law of the case doctrine, a court
8 is generally precluded from reconsidering an issue that has
9 already been decided by the same court, or a higher court, in
10 the identical case... A court may have discretion to depart from
11 the law of the case where (1) the first decision was clearly
12 erroneous; (2) an intervening change in the law has occurred;
13 (3) the evidence on reconsideration is substantially different;
14 (4) other changed circumstances exist; or (5) a manifest
15 injustice would otherwise result. Failure to apply the doctrine
16 of the law of the case absent one of the requisite conditions
17 constitutes an abuse of discretion." U.S. v. Iron Mountain
18 Mines, Inc. 987 F.Supp. 1244, 1246 (E.D. Cal. 1997) (citing
19 United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997)).
20

21 B. Grounds for Reconsideration

22 Defendants argue that the Court should reconsider its
23 previous finding of joint and several liability in light of the
24 Supreme Court's decision in Burlington Northern and Santa Fe Ry.
25 Co. v. U.S., 129 S.Ct. 1870 (2009). Defendants allege that this
26 case represents an intervening change in law, which mandates
27 reconsideration. Plaintiffs argue that the case does not
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1 represent a change of law, as the Supreme Court merely applied
2 existing law to decide a purely factual issue.

3 Defendants argue that the Supreme Court would not have
4 granted certiorari for this case if it was only dealing with a
5 factual dispute, and that the Supreme Court clearly meant to
6 send a signal to other courts that they must begin evaluating
7 apportionment in a different way. Furthermore, Defendants argue
8 that post Burlington Northern, district courts are now mandated
9 to consider apportionment. Plaintiffs contend that Defendants
10 misstate the holding, as there was no mandate to district courts
11 regarding apportionment.

12 13 C. Burlington Northern

14 The Court in Burlington Northern stated that "apportionment
15 is proper when there is a reasonable basis for determining the
16 contribution of each cause to a single harm." Id. at 1881. "Not
17 all harms are capable of apportionment however, and CERCLA
18 defendants seeking to avoid joint and several liability bear the
19 burden of proving that a reasonable basis for apportionment
20 exists. When two or more causes produce a single, indivisible
21 harm, courts have refused to make an arbitrary apportionment for
22 its own sake, and each of the causes is charged with
23 responsibility for the entire harm." Id. The Court based its
24 opinion on what it called the "seminal opinion on the subject of
25 apportionment in CERCLA actions," United States v. Chem-Dyne
26 Corp., 572 F.Supp. 802 (S.D. Ohio 1983). Id.

27 In Burlington Northern, both the district court and the
28 appellate court agreed that the harm, though singular, was

1 theoretically capable of apportionment. Id. Additionally,
2 neither party, nor the lower courts, disputed the principles
3 governing apportionment in CERCLA cases. Id. The only question
4 was whether the record provided a reasonable basis for the
5 District Court's conclusion that the railroad defendant was
6 liable for 9% of the harm. Id. After examining the record and
7 the District Court's findings, the Court ultimately reversed the
8 appellate court and sided with the district court, stating that
9 "we conclude that the facts contained in the record reasonably
10 supported the apportionment of liability." Id. at 1882-83.

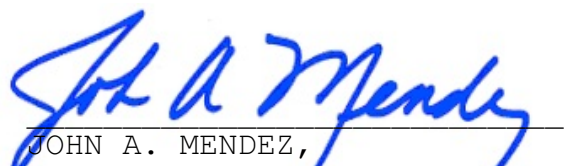
11 Despite Defendants efforts to argue that Burlington
12 Northern established new law regarding apportionment, Plaintiffs
13 are correct that Burlington Northern does not constitute a
14 change in law as required for reconsideration. Burlington
15 Northern simply reiterated the law as established in 1983 by
16 Chem-Dyne, and then examined the record to resolve a factual
17 question of whether the record supported apportionment.
18 Burlington Northern did not add a new mandate that District
19 Courts must apportion harm. Accordingly, as the Court does not
20 find that there has been an intervening change in law,
21 Defendants' Motion for Reconsideration is DENIED.

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23 III. ORDER

24 For the reasons set forth above, the Court hereby DENIES
25 Defendants' Motion for Reconsideration.

26 IT IS SO ORDERED.

27 Dated: May 5, 2010

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE