SUPREME COURT OF THE UNITED STATES

No. 108, Orig.

STATE OF NEBRASKA, PLAINTIFF *v.* STATES OF WYOMING AND COLORADO

ON PETITION FOR ORDER ENFORCING DECREE AND FOR INJUNCTIVE RELIEF

[May 30, 1995]

JUSTICE THOMAS, concurring in part and dissenting in part.

I agree with the decision of the Court to overrule all of Wyoming's exceptions to the Third Interim Report of the Special Master (Report). Accordingly, I join Parts I, II, and III of the Court's opinion. I do not agree, however, that we should overrule the exceptions of the United States and Nebraska to the Master's recommendation that Wyoming be allowed to proceed with its proposed Fourth Cross-Claim against the United States. I would sustain those exceptions and require Wyoming to pursue that claim in another forum.

Wyoming's Fourth Cross-Claim begins with the following allegation:

> "The equitable apportionment which the Decree was intended to carry into effect was premised in part on the assumption that the United States would operate the federal reservoirs and deliver storage water in accordance with applicable federal and state law and in accordance with the contracts governing use of water from the federal reservoirs." App. to Report E–11.

Wyoming then alleges generally that "[t]he United States has failed to operate the federal reservoirs in accordance with applicable federal and state laws and has failed to abide by the contracts governing use of water from the federal reservoirs." *Ibid.* According to Wyoming, these failures have "caused water shortages to occur more frequently and to be more severe, thereby causing injury to Wyoming and its water users." *Id.,* at E–12. In short, Wyoming alleges that "a predicate to the 1945 decree was that the United States adhered to [riparian law's] beneficial use limitations in administering storage water contracts, that it no longer does so, and that this change has caused or permitted significant injury to Wyoming interests." *Ante,* at 17.

In the abstract, these allegations are sufficient to state a claim for modification of the decree based on changed circumstances. Such relief is authorized by the decree's Paragraph XIII, which invited the parties to "apply at the foot of this decree for its amendment or for further relief." *Nebraska* v. *Wyoming,* 325 U. S. 589, 671 (1945) *(Nebraska I).* In particular, subdivision (f) of Paragraph XIII anticipates that we might modify the decree in light of "[a]ny change in conditions making modifications of the decree or the granting of further relief necessary or appropriate." *Id.,* at 672. Thus, in light of the Federal Government's failure to satisfy our expectation that it would comply with applicable riparian law and with its contracts, we might engage in "a reweighing of equities" and accordingly "reope[n]" the 1945 apportionment of the North Platte and modify the decree in Wyoming's favor. *Nebraska* v. *Wyoming,* 507 U. S. ___, ___ (1993) (slip op., at 7) *(Nebraska II).*

If Wyoming's Fourth Cross-Claim against the United States had actually sought such relief, I might agree with the Court's decision to allow the claim to proceed. But the cross-claim's prayer for relief seeks neither a reapportionment of the North Platte nor any other modification of the decree. Instead, it asks the Court "to enjoin the United States' continuing violations of federal and state law and . . . to direct the United States to comply with the terms of its contracts." App. to Report E–12. This prayer makes perfect sense: why seek to modify the decree based on a "change in conditions" if such change could be reversed or annulled by means of injunctive relief grounded in existing law? Indeed, were existing law sufficient to prevent the injuries alleged by Wyoming, the State could hardly point to the "considerable justification" necessary for "reopening an apportionment of interstate water rights." *Nebraska II, supra,* at ___ (slip op., at 7).[1]

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[1]To the Court, "[i]t seems very clear . . . that Wyoming is seeking a modification of the decree in order to enforce its predicate." *Ante,* at 17, n. 2. I would expect such clarity to show in the language of the Fourth Cross-Claim itself, but the prayer for relief notably fails to include the word "modify" or its synonyms. In this regard, the

Yet precisely because the injunctive relief requested by Wyoming arises out of and depends on a body of law that exists independently of the decree, the Court errs in asserting that Wyoming "states a claim arising under the decree itself." *Ante,* at 18. This is so for two reasons. First, a claim that the United States must comply with applicable law and with contracts governed by such law—here, §8 of the Reclamation Act of 1902, 32 Stat. 390, 43 U. S. C. §§372, 383, the Warren Act, ch. 141, 36 Stat. 925, 43 U. S. C. §§523–525, and other federal and state riparian law, see *ante,* at 14–15—necessarily "arises under" that body of law. See, *e.g., Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.,* 463 U. S. 1, 8–9 (1983) (approving, as a principle of inclusion, "Justice Holmes' statement, `A suit arises under the law that creates the cause of action'" (quoting *American Well Works Co.* v. *Layne & Bowler Co.,* 241 U. S. 257, 260 (1916))).

Second, although a decree entered by this Court could conceivably afford an additional and separate basis for ordering the United States to comply with applicable riparian law and with its storage contracts, our 1945 decree in fact does not. That is, we "*anticipated* that the storage [water] supply would `be left for distribution in accordance with the contracts which govern it,'" *ante,* at 14 (emphasis added) (quoting *Nebraska I,* 325 U. S., at 631), but we did not *mandate* that result. To the contrary, Paragraph VI of the decree states expressly that "[s]torage water shall not be affected by this decree" and that storage water shall be distributed "without interference because of this decree." *Id.,* at 669. Accord, Brief for Wyoming in Response to

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Fourth Cross-Claim stands in marked contrast to Wyoming's other cross-claims and its counterclaims against Nebraska. Compare App. to Report E–12 (Fourth Cross-Claim's prayer for relief), with *id.,* at E–6, E–7, E–8, E–10, E–11, E–12 (other prayers).

Wyoming is not left "hanging" by its failure to seek a modification of the decree as to the United States' compliance with applicable riparian law and with its contracts. *Ante,* at 17, n. 2. As I explain *infra,* at 5–6, the State may seek its requested relief in another forum.

Exceptions of Nebraska and the United States 19 ("No one asserted [in 1945] a need for the Court affirmatively to require the [Federal Government's] compliance with federal law; such compliance was assumed").

Because Wyoming's Fourth Cross-Claim against the United States therefore involves neither "an application for *enforcement* of rights already recognized in the decree" nor a request for "a *modification* of the decree," *Nebraska II, supra,* at ___ (slip op., at 5), I do not understand why the Court chooses to entertain that claim as part of the present proceeding. It is well established that "[w]e seek to exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim." *United States* v. *Nevada,* 412 U. S. 534, 538 (1973) *(per curiam).* This particular reluctance applies squarely to "controversies between the United States and a State," of which we have "original *but not exclusive* jurisdiction." 28 U. S. C. §1251(b)(2) (emphasis added). Thus, in *United States* v. *Nevada,* we declined to exercise jurisdiction over a dispute between those parties about intrastate water rights, noting that such dispute was "within the jurisdiction of the District Court" in Nevada. 412 U. S., at 538. Accord, *id.,* at 539–540 ("Any possible dispute with California with respect to United States water uses in that State can be settled in the lower federal courts in California . . .").[2]

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[2]Our decision in *California* v. *Nevada,* 447 U. S. 125 (1980), is also on point. There, as here, we exercised our exclusive original jurisdiction over a dispute between two States, but we declined to expand the reference to the Special Master to include borderland ownership and title disputes that "typically will involve only one or the other State and the United States, or perhaps various citizens of those States." *Id.,* at 133. Instead, we explained, "litigation in other forums seems an entirely appropriate means of resolving whatever questions remain." *Ibid.*

Subsequent to our decision in *United States* v. *Nevada* in 1973, we have, in the majority of actions by States against the United States or its officers, summarily denied the motion for leave

These principles should be applied here. Although I agree with the Court that the mere existence of pending litigation brought by individual storage contract holders against the United States in the Federal District Court in Wyoming is not dispositive, see *ante,* at 18, I see no reason (and the parties offer none) why Wyoming could not institute its own action against the United States in that forum.[3] Moreover, given the number and variety of the other new or amended claims we have approved today, see *ante,* at 9–12—not to mention the issues left unresolved by our 1993 opinion, see *Nebraska II,*

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to file a bill of complaint. See *Georgia* v. *Nixon, President of the United States,* 414 U. S. 810 (1973); *Idaho* v. *Vance, Secretary of State,* 434 U. S. 1031 (1978); *Indiana* v. *United States,* 471 U. S. 1123 (1985); *Michigan* v. *Meese, Attorney General of the United States,* 479 U. S. 1078 (1987); *Mississippi* v. *United States,* 499 U. S. 916 (1991). Accord, *United States* v. *Florida,* 430 U. S. 140 (1977) *(per curiam)* (denying motion by Florida for leave to file counterclaim).

[3]The reason cannot be, as the Court seems to think, that "Wyoming's claim derives not from rights under individual contracts but from the decree, and the decree can be modified only by this Court." *Ante,* at 19. As I have explained, the first of these propositions is not correct. The second is correct, of course, but also irrelevant: Wyoming seeks not a modification of the decree but an injunction directing the United States to comply with applicable riparian law and with its contracts, thereby *obviating* the need for this Court to modify the decree. Thus, by "[p]utting aside . . . whether another forum might offer relief that, as a practical matter, would mitigate the alleged ill effects of the national government's contract administration," *ibid.,* the Court actually puts aside the only relief sought by the claim the Court allows to proceed.

As for standing, see *ante,* at 18–19, I thought not to repeat the Court's own discussion of this subject. In brief, Wyoming's standing is predicated upon its allegation that the United States has failed to "adher[e] to beneficial use limitations in administering storage water contracts . . . and that this [failure] has caused or permitted significant injury to Wyoming interests." *Ante,* at 17.

supra, at ___–___ (slip op., at 10–18)—the significant statutory and contractual issues raised by Wyoming's cross-claim against the United States would most likely be resolved in the District Court with far greater dispatch. Indeed, the present round of litigation has dragged on for almost *nine years,* but we are not even beyond the stage of considering amendments to the pleadings.

Finally, although I share the Court's distaste at the prospect of intervention by individual storage contract holders in this original action, see *ante,* at 19–20, I find it just as distasteful unnecessarily to deny private parties the opportunity to participate in a case the disposition of which may impair their interests. By remitting Wyoming's claim to the District Court, we would allow the storage contract holders to participate voluntarily by joinder or intervention, see Fed. Rules Civ. Proc. 20(a) and 24, or to be joined involuntarily in the interest of just adjudication, see Rule 19.

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The Court's decision to entertain Wyoming's Fourth Cross-Claim against the United States departs from our established principles for exercising our original juris-diction, ignores the relief requested by Wyoming, and needlessly opens the possibility to a reapportionment of the North Platte. In short, it constitutes "a misguided exercise of [our] discretion." *Wyoming* v. *Oklahoma,* 502 U. S. 437, 475 (1992) (THOMAS, J., dissenting). Accordingly, I respectfully dissent from the Court's decision in this regard.