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# SUPREME COURT OF THE UNITED STATES

Syllabus

NEBRASKA v. WYOMING ET AL.

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 108, Orig. Argued March 21, 1995—Decided May 30, 1995

A 1945 decree rationing the North Platte River among users in Wyoming, Nebraska, and Colorado enjoins Colorado and Wyoming from diverting or storing water above prescribed amounts on the river's upper reaches; sets priorities among Wyoming canals that divert water for the use of Nebraska irrigators and federal reservoirs; apportions the natural irrigation-season flows of the river's so-called "pivotal reach" between Nebraska and Wyoming; and authorizes any party to apply to amend the decree for further relief. *Nebraska v. Wyoming*, 325 U. S. 589. Nebraska sought such relief in 1986, alleging that Wyoming was threatening its equitable apportionment, primarily by planning water projects on tributaries that have historically added significant flows to the pivotal reach. After this Court overruled the parties' objections to the Special Master's First and Second Interim Reports, *Nebraska v. Wyoming*, 507 U. S. \_\_\_, Nebraska and Wyoming sought leave to amend their pleadings. The Master's Third Interim Report recommended that Nebraska be allowed to substitute three counts of its Amended Petition and that Wyoming be allowed to substitute three of its proposed counterclaims and four of its proposed cross-claims. Wyoming has filed four exceptions to the Master's recommendations and Nebraska and the United States a single (and largely overlapping) exception each.

*Held:* The exceptions are overruled. Pp. 5-20.

(a) The requirement of obtaining leave to file a complaint in an original action serves an important gatekeeping function, and proposed pleading amendments must be scrutinized closely to see whether they would take the litigation beyond what the Court reasonably anticipated when granting leave to file the initial pleadings. As the decree indicates, the litigation

here is not restricted solely to enforcement of rights determined in the prior proceedings. However, while the parties may ask for a reweighing of equities and an injunction declaring new rights and responsibilities, they must make a showing of substantial injury to be entitled to relief. The Master duly appreciated these conclusions when considering the proposed amendments to the pleadings. Pp. 5-7.

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(b) Wyoming takes exception to the Master's recommendation that it be denied leave to file its First Amended Counterclaim and Cross-Claim, which allege that Nebraska and the United States have failed to recognize beneficial use limitations on diversions of canals and that Nebraska has violated the equitable apportionment by demanding natural flow and storage water from sources above Tri-State Dam for use below the dam. However, by seeking to replace a proportionate sharing of the pivotal reach's natural flows with a scheme based on the beneficial use requirement of the pivotal reach irrigators, presumably to Wyoming's advantage, Wyoming in reality is calling for a fundamental modification of the scheme established in 1945, without alleging any change in conditions that would arguably justify so bold a step. Pp. 7-8.

(c) The Master's intention to consider a broad array of downstream interests and to hear evidence of injury not only to downstream irrigators, but also to wildlife and wildlife habitat, when passing on Nebraska's request that the decree be modified to enjoin Wyoming's proposed developments on the North Platte's tributaries does not, as Wyoming argues in its exception, run counter to this Court's denial of two of Nebraska's earlier motions to amend. Those earlier claims sought to assign an affirmative obligation to protect wildlife, while, here, the effect on wildlife is but one equity to be balanced in determining whether the decree can be modified. Moreover, Nebraska is seeking not broad new apportionments, but only to have discrete Wyoming developments enjoined. If its environmental claims are speculative, Nebraska will not be able to make the necessary showing of substantial injury. Pp. 9-10.

(d) Nebraska's allegations that Wyoming's actions along the Horse Creek tributary threaten serious depletion of return flows, with injury to Nebraska's interests, describe a change in conditions sufficient, if proven, to warrant the injunctive relief sought. Thus, Wyoming's exception to the Master's recommendation that Nebraska be allowed to proceed with its challenge cannot succeed. Pp. 10-11.

(e) Nebraska's allegation that Wyoming's increased groundwater pumping threatens substantial depletion of the river's natural flow also describes a change in conditions posing a threat of significant injury. In excepting to the Master's recommendation that the claim go forward, Wyoming asserts that Nebraska's failure to regulate groundwater pumping within its own borders precludes Nebraska from seeking pumping limitations in Wyoming. However, Wyoming alleges no injury to its interests caused by the downstream pumping, and the effect

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that any such injury would have on the relief Nebraska is seeking is a question for trial. Pp. 11–12.

(f) Both the United States and Nebraska take exception to the recommendation that Wyoming's Fourth Amended Cross-Claim—which alleges that federal management of reservoirs has contravened state and federal law as well as contracts governing water supply to individual users—be allowed to proceed. Although the 1945 decree did not apportion storage water, a predicate to that decree was that the United States adhered to beneficial use limitations in administering storage water contracts. Wyoming's assertion that the United States no longer does so, and that this change has caused or permitted significant injury to Wyoming interests, states a serious claim that ought to go forward. This claim arises from the decree, and thus cannot be vindicated in district court litigation between individual contract holders and the United States. Nor is it likely that this proceeding will be overwhelmed by the intervention of individual storage contract holders. Since a State is presumed to speak for its citizens, requests to intervene will be denied absent a showing, unlikely to be made here, of some compelling interest not properly represented by the State. Pp. 12–20.

Exceptions overruled.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined, and in Parts I, II, and III of which THOMAS, J., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part.