

No. 108, Original

Supreme Court, U.S.

FILED

DEC 23 1994

OFFICE

CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

STATE OF NEBRASKA,

Plaintiff,

vs.

STATE OF WYOMING,

Defendant.

COLORADO'S REPLY BRIEF

GALE A. NORTON

Attorney General

STEPHEN K. ERKENBRACK

Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH

Solicitor General

WENDY C. WEISS*

First Assistant Attorney General

Natural Resources Section

Attorneys for State of Colorado

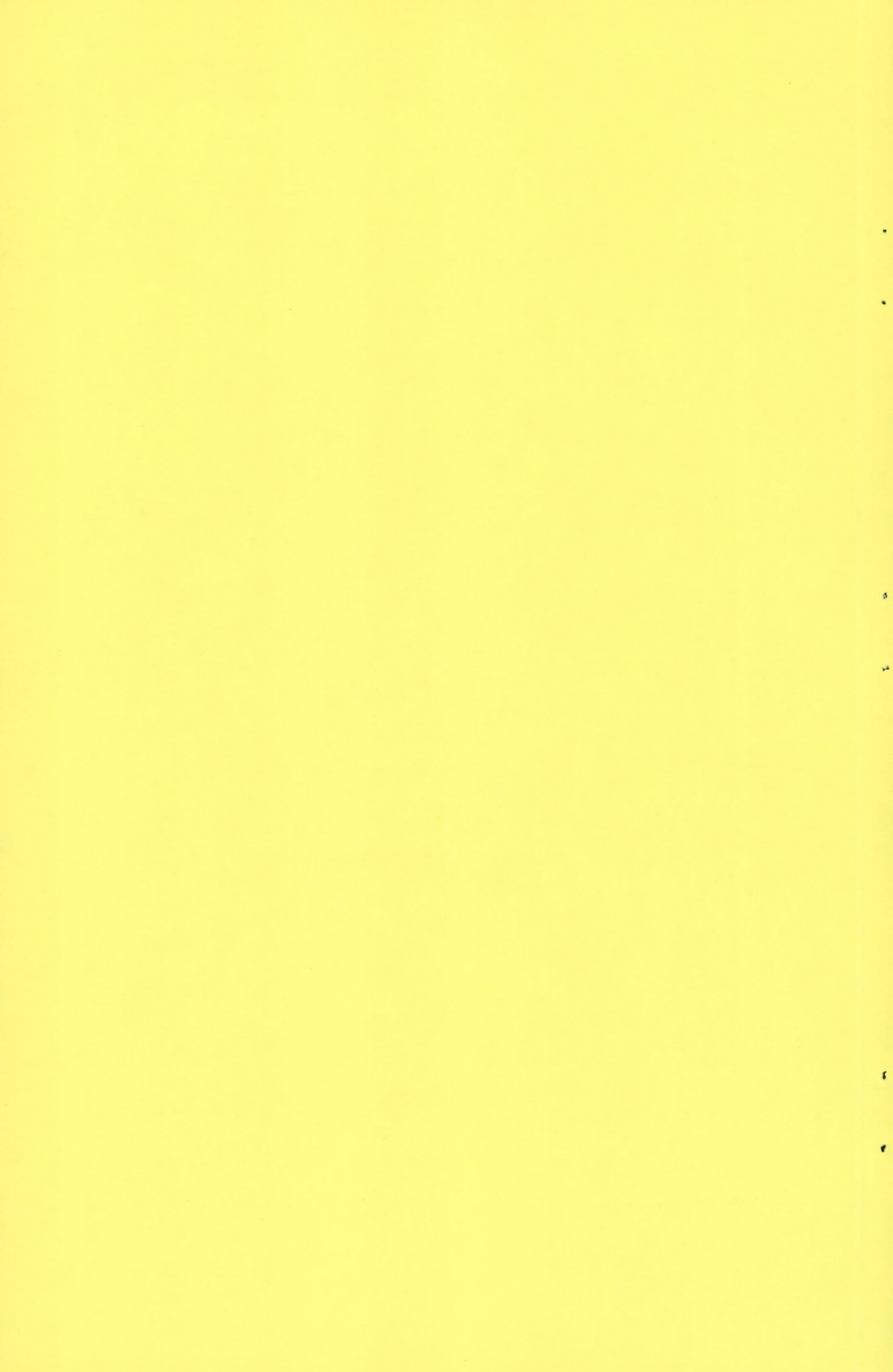
1525 Sherman Street, 5th Floor

Denver, Colorado 80203

Telephone: (303) 866-5110

FAX: (303) 866-3558

*Counsel of Record



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

STATE OF NEBRASKA,

Plaintiff,

vs.

STATE OF WYOMING,

Defendant.

COLORADO'S REPLY BRIEF

The State of Colorado submits this reply to the Exceptions of the State of Wyoming to the Third Interim Report of the Special Master and Brief in Support. For the reasons set forth below, Colorado supports argument V.C of Wyoming's brief and urges the Court to clarify that Nebraska's claims to modify the decree are limited to giving effect to the existing apportionment for the irrigation of lands served by diversions above Tri-State Dam.

I. INTRODUCTION

Colorado did not file any exceptions to the Special Master's Third Interim Report because none of the proposed amendments to the pleadings that the Master recommended be allowed directly affects Colorado's apportionment. However, Colorado has consistently and vigorously opposed efforts by Nebraska to seek a new apportionment for uses in the Platte River in central Nebraska downstream of the presently apportioned reach, and this Court has twice denied

Nebraska's motions for leave to amend its petition to add such claims.

II. ARGUMENT

Colorado shares Wyoming's skepticism that there can be "a *limited* inquiry into the endangered species and wildlife habitat issues that would apply only to requests for new injunctions against Wyoming." Wyoming Brief at 30. Rather, consideration of these uses would, as Wyoming cautions, entail "greatly expanded, complex, and expensive litigation." Wyoming Brief at 10. There is simply no reason for this Court to exercise its original jurisdiction to determine such complex technical issues when, as Wyoming correctly points out, they are presently being considered in other, more appropriate, fora. *Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 503 (1971) ("granting Ohio's motion for leave to file would, in effect, commit this Court's resources to the task of trying to settle a small piece of a much larger problem that many competent adjudicatory and conciliatory bodies are actively grappling with on a more practical basis."). Colorado is a party to the ongoing negotiations to develop a basin-wide recovery plan for the Platte River endangered species, as well as to the Federal Energy Regulatory Commission relicensing proceedings for Kingsley Dam, both of which are considering habitat needs and how to meet them. Not only would it be a waste of this Court's resources to determine the same issues, but it would subject Colorado and the other parties to those proceedings to additional expense and possibly inconsistent decisions.

III. CONCLUSION

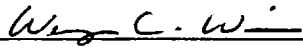
The State of Colorado joins Wyoming in requesting the Court to clarify that Nebraska's claims to modify the decree are limited to protecting the existing apportionment for the irrigation of lands served by diversions above Tri-State Dam.

Respectfully submitted,

GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General


WENDY C. WEISS*
First Assistant Attorney General
Natural Resources Section

Attorneys for State of Colorado

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5110
FAX: (303) 866-3558
*Counsel of Record

AG Alpha No. lw wc iadga

AG File No. P:\NR\NRWEISWC\NEBVWYO.BRF



