No. 01-213

# In the Supreme Court of the United States

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, PETITIONER

*v.*

UNITED STATES FOREST SERVICE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether an organization of oil and gas producers has Article III standing to challenge the Forest Service's decision, under the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, not to authorize leasing of particular portions of a national forest.

2. Whether an organization whose interests are purely economic falls within the zone of interests of Section 102(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(C).

3. Whether NEPA prohibits federal agencies from considering public opposition to a proposed action in deciding not to proceed with that action.

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-5) is not yet reported. The opinion of the district court (Pet. App. 8-14) is not reported.

## JURISDICTION

The judgment of the court of appeals (Pet. App. 6-7) was entered on May 3, 2001. The petition for a writ of certiorari was filed on August 1, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Petitioner, an organization of oil and gas producers, seeks to compel the United States Forest Service to

authorize oil and gas leasing under the Mineral Leasing Act (MLA), 30 U.S.C. 181 *et seq.*, within a portion of a national forest. The district court dismissed the action on cross-motions for summary judgment, holding that petitioner lacked standing to sue and, alternatively, that it failed to establish that the Forest Service's actions were arbitrary, capricious, or in violation of any law. Pet. App. 8-14. A unanimous court of appeals affirmed. *Id.* at 1-5.

1. The MLA, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Leasing Reform Act), 30 U.S.C. 226(g)-(h), governs the issuance of oil and gas leases on public lands. The MLA grants the federal government broad discretion in managing mineral resources, including the "discretion to refuse to issue any lease at all on a given tract." *Udall* v. *Tallman*, 380 U.S. 1, 4 (1965).

The MLA originally granted the Secretary of the Interior exclusive management authority over mineral resources on federal lands. See 30 U.S.C. 226(a) and (c). The Leasing Reform Act amended that management scheme and required that the Secretary of Agriculture also authorize leasing before leases may be offered on federal lands within the National Forest System. See 30 U.S.C. 226(h). Accordingly, both the Secretary of the Interior, through the Bureau of Land Management (BLM), and the Secretary of Agriculture, through the Forest Service, must make affirmative decisions to allow leasing before a tract of national forest land may be leased.

The Forest Service's regulations implementing the Leasing Reform Act provide for a staged decision-making process. See 36 C.F.R. Pt. 228. First, Forest Supervisors develop a schedule for analyzing lands under their jurisdiction, with the exception of lands

that are legally unavailable for leasing. See 36 C.F.R. 228.102(b). As part of that analysis, each Forest Supervisor identifies areas as open or closed to leasing, projects reasonably foreseeable post-leasing activity, and analyzes the environmental impacts of such activity. See 36 C.F.R. 228.102(c). Lands designated as open to leasing as a result of that analysis are deemed "administratively available for leasing." 36 C.F.R. 228.102(d). Once the lands administratively available for leasing are identified, the Forest Supervisor may then authorize BLM to allow leasing of some or all of the available lands by making a separate decision allowing BLM to proceed with leasing. See 36 C.F.R. 228.102(e); see generally *Wyoming Outdoor Council* v. *United States Forest Serv.*, 165 F.3d 43 (D.C. Cir. 1999).

The Forest Service's mineral leasing decisions under the Leasing Reform Act occur against the backdrop of the overall management of the national forests under the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. 528 *et seq.*, and the National Forest Management Act of 1976 (NFMA), 16 U.S.C. 1600 *et seq.*

MUSYA provides for the management of the national forests for multiple uses in the manner the Forest Service deems will "best meet the needs of the American people [and] mak[e] the most judicious use of the land" under its jurisdiction. 16 U.S.C. 531(a). The uses expressly authorized are diverse and include outdoor recreation, range, timber, watershed, and wildlife and fish. See 16 U.S.C. 528. The Forest Service's "multiple use" mandate, however, relates only to "renewable surface resources." 16 U.S.C. 531(a). It does not require "the combination of uses that will give the greatest dollar return or the greatest unit output," and it presumes that "some land will be used for less than all of the resources." 16 U.S.C. 531(a).

NFMA provides for a two-stage approach to planning and resource management in each unit of the National Forest System. See generally *Ohio Forestry Ass'n* v. *Sierra Club*, 523 U.S. 726, 728-730 (1998). First, the Forest Service develops a land and resource management plan (forest plan), which provides overall management direction for each forest for a ten to fifteen year period. See 16 U.S.C. 1604; 36 C.F.R. 219.11. Forest plans may be amended "in any manner whatsoever after final adoption after public notice." 16 U.S.C. 1604(f)(4). In the second stage of planning, the Forest Service implements individual site-specific projects, such as timber sales, which must be consistent with the forest plan. See 16 U.S.C. 1604(i); *Ohio Forestry*, 523 U.S. at 729-730.

2. The Lewis and Clark National Forest is located in central Montana. The western part of that forest, which is administered as the Rocky Mountain Division, contains lands within the Rocky Mountain range on the eastern side of the Continental Divide. It is "[h]ome of one of the largest intact ecosystems in North America." See 2 C.A. Supp. E.R. (SER) 262. The Rocky Mountain Division has attracted interest for oil and gas exploration because the local geology indicates the potential presence of a large natural gas reserve. Nevertheless, oil and gas drilling in the area is extremely costly. It is characterized by "high risk of failure, * * * extremely complex geological conditions, and * * * added costs associated with complicated environmental mitigation." 1 SER 104. Thus, even though mineral leasing has taken place on the Lewis and Clark National Forest since the 1920s, only four oil and gas wells have ever been drilled within the Rocky Mountain Division. See *id.* at 107.

The 1986 Lewis and Clark Forest Plan took account of the interest in oil and gas leasing. The Plan set out as one of its long-range goals the "coordinat[ion of] resource development and use activities so as to protect and improve land and resource quality and productivity, including natural beauty and quality of air, water, and soil." See 4 SER 734. The Plan identified approximately 1.4 million acres as administratively available for mineral leasing. See *id.* at 739. The Plan, however, made no decision to lease any specific lands; rather, it set out only terms under which leasing might be allowed in subsequent lease authorization decisions. See *id.* at 707 ("Any new leases or reissuance of leases will undergo additional analysis."). Moreover, the Record of Decision approving the Forest Plan acknowledged "people's apprehension over the effects of oil and gas development and their desire for the land to remain unchanged," and concluded that "management of the Rocky Mountain Division should emphasize wildlife, recreation and scenic values." *Id.* at 708-709.

In September 1997, the Lewis and Clark Forest Supervisor, pursuant to 36 C.F.R. 228.102(e), authorized the leasing of administratively available lands within the eastern part of the Forest, but decided not to authorize the leasing of such lands within the Rocky Mountain Division at that time. 2 C.A. E.R. (ER) 358-392. The Forest Service noted that "[t]hese decisions were guided by the results of a comprehensive analysis that considered the cumulative effects of activities on the current and future resources, economics, and social patterns of this highly sensitive area." *Id.* at 361 (reproduced at Pet. App. 23). The decisions, which took account of "a great deal of public comment," *ibid.* (Pet. App. 23), ultimately attempted to strike "a balance between conflicts, public opinion, opportunities, supply

and demand, resource capability, and the needs of future generations." *Ibid.* (Pet. App. 24). The Forest Service also explained that "not leasing the Rocky Mountain Division at this time will preserve options for future use of these lands, whether that be for wilderness designation or other multiple uses." *Id.* at 366 (Pet. App. 32).

3. The Rocky Mountain Oil and Gas Association (RMOGA) filed a lawsuit challenging the Forest Service's decision not to authorize oil and gas leasing in the Rocky Mountain Division, and petitioner intervened as a plaintiff. The RMOGA and petitioner essentially contended that the Forest Service's consideration of public opposition to mineral leasing in its decisionmaking process was not consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, NFMA, MUSYA, and the Establishment Clause, U.S. Const. Amend. I. The district court dismissed the suit based on RMOGA's and petitioner's "lack of standing to sue and failure to establish that the agency's decision was arbitrary, capricious, or in violation of any law." Pet. App. 13. Petitioner, but not RMOGA, appealed that decision, and the court of appeals affirmed the judgment in an unanimous unpublished memorandum opinion. *Id.* at 1-5.

The court of appeals determined that petitioner "lacks Article III standing for its NEPA, NFMA and MUSYA claims because the Forest Service has discretion whether to authorize the leasing of any particular Forest Service lands for mineral leasing." Pet. App. 2. Petitioner correspondingly "has no 'right' to bid for leases on any Forest Service land or to compel the Forest Service to authorize leasing of its land for mineral exploration." *Id.* at 3. Consequently, petitioner "suffered no injury in fact as a result of the Forest

Service's decision not to lease land in the Rocky Mountain Division." *Ibid.* See *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560, 572 n.7 (1992).

The court of appeals also concluded, as alternative bases for affirming the district court's judgment, that (1) petitioner "lacks prudential standing on its NEPA claims because its interest in enforcing the statute is purely economic, and as such does not fall within NEPA's zone of interests," Pet. App. 3; (2) "[t]he Forest Supervisor acted within her authority and in a non-arbitrary manner" in taking into account public opposition to leasing in the Rocky Mountain Division, *ibid.*; and (3) petitioner's "Establishment Clause claim lacked merit" because "the Forest Service's decision had a secular purpose" and was not "an endorsement" of Native American religious beliefs, *id.* at 2, 3; see also *id.* at 3-4.

**ARGUMENT**

Petitioner seeks review of the court of appeals' determination that petitioner lacks Article III standing and the court's alternative rulings dismissing petitioner's NEPA claims. Petitioner's request for review should be denied because the court of appeals' unanimous unpublished decision is correct and does not conflict with any decision of this Court or of any other court of appeals.

1. The court of appeals correctly concluded that petitioner lacks Article III standing to challenge the Forest Service's determination not to authorize leasing tracts within the Rocky Mountain Division of the Lewis and Clark National Forest for oil and gas leasing. To establish its standing, petitioner must show that it has suffered "injury in fact" that was caused by the government's action and that would be redressed by a favor-

able decision. See, *e.g.*, *Lujan*, 504 U.S. at 560-561; see *Allen* v. *Wright*, 468 U.S. 737, 752 (1984). The court properly applied those principles to the facts of this case and concluded, consistent with the decisions of this Court and of other courts of appeals, that petitioner lacks standing.

a. The court of appeals correctly concluded that petitioner cannot show the requisite injury from the Forest Service's determination not to offer tracts within the Rocky Mountain Division of the Lewis and Clark National Forest for oil and gas leasing. The court recognized that the Forest Service is under no legal obligation to lease those lands. Pet. App. 3. To the contrary, while the MLA specifies procedures when oil and gas leases are to be issued, it "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall* v. *Tallman*, 380 U.S. 1, 4 (1965). Because petitioner therefore has no legal right to compel the federal government to issue a lease for particular forest lands, petitioner cannot establish cognizable injury to its members from the Forest Service's decision not to lease those lands. See, *e.g.*, *Lujan*, 504 U.S. at 560 (plaintiff must show "an invasion of a legally protected interest"); *Region 8 Forest Serv. Timber Purchasers Council* v. *Alcock*, 993 F.2d 800, 808-809 (11th Cir. 1993) (timber companies lacked injury despite alleged reduction in timber available for future contracts, because companies had no right to harvest set amount of timber), cert. denied, 510 U.S. 1040 (1994). For similar reasons, judicial review is unavailable because the decision not to offer particular lands for leasing is

"committed to agency discretion by law." 5 U.S.C. 701(a)(2).[1]

Petitioner's argument (Pet. 14-15 n.4) that the statutory language of the MLA gives rise to a "right to bid" is incorrect. The language of Section 226(a)—"[a]ll lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits *may* be leased by the Secretary"—makes clear the government has discretion whether or not to lease particular tracts. 30 U.S.C. 226(a) (emphasis added); see *Udall*, 380 U.S. at 4; see also *Burglin* v. *Morton*, 527 F.2d 486, 488 (9th Cir. 1975) (explaining that "[t]he permissive word 'may' in Section 226(a) allows the Secretary to lease such lands, but does not require him to do so"), cert. denied, 425 U.S. 973 (1976); *McDonald* v. *Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (describing

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[1] Because the Forest Service's inaction is not the sole reason why leases are not available—the Secretary of the Interior must also approve any leasing decisions—petitioner has not established a causal connection between the Forest Service's conduct and any alleged injury to its members, see *Lujan*, 504 U.S. at 560, or demonstrated that the alleged injury would be redressed by entry of a judicial order against the Forest Service, see *id.* at 568-571 (opinion of Scalia, J.). In addition, because the courts have no authority to compel the Forest Service to authorize BLM to offer particular tracts for leasing, petitioner's lawsuit cannot redress any alleged injury for that reason as well. *Id.* at 560-561. The court of appeals also correctly concluded that petitioner lacked standing to bring its procedural claims, including its NEPA claims. As the court explained, petitioner's lack of any right to bid for leases "forecloses [its] argument that it has a procedural right to the proper administration of the various environmental laws." Pet. App. 3. See *Lujan*, 504 U.S. at 573 n.8. (a plaintiff has standing to enforce procedural claims only where "the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing").

power to lease as "discretionary" and explaining that leasing is not required even where land has been offered for lease and a qualified applicant selected). The statutory provisions that petitioner cites do not give petitioner a "right to bid," but merely govern how leases are to be issued after the government has made its discretionary decision to lease particular lands. See, *e.g.*, 30 U.S.C. 226(b)(1)(A) ("All lands *to be leased* which are not subject to leasing under paragraphs (2) and (3) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder.") (emphasis added).

b. Petitioner mistakenly argues (Pet. 14-15) that *Bryant* v. *Yellen*, 447 U.S. 352 (1980), establishes that its members have suffered "injury in fact." The *Bryant* decision involved a challenge to the land ownership limitations of the reclamation laws. This Court affirmed the court of appeals' determination that a group of intervenors had standing to take an appeal because, if the intervenors prevailed in their interpretation of the land ownership limitations, existing land owners would have an increased incentive to sell them "excess" lands. In that case, the court of appeals had made a fact-specific determination, based on its assessment of the likely future conduct of third parties, that the intervenors' injury would be redressed by a favorable decision. See *id.* at 368. Here, by contrast, petitioner, who asserts a claim for relief under a different body of laws and readily distinguishable facts, has failed to establish a redressable injury. See Pet. App. 10 (the government's "main point is that this court is unable to order the executive branch to issue oil and gas leases on the Rocky Mountain Division to Plaintiffs and that therefore no substantial likelihood exists that Plaintiffs' complaints can be redressed"); see also note 1, *supra*.

Indeed, in this case, "a third-party not before the court, the Secretary of the Interior, exerts control over whether oil and gas leases are issued in the Rocky Mountain Division." See Pet. App. 10. Petitioner has made no showing that, even if a court could lawfully compel the Forest Service to alter its decision not to authorize leasing of the lands at issue, the Secretary of the Interior would give its consent to issuance of leases. Cf. *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 615 (1989) (finding no standing where redressability "depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict"); *Lujan*, 504 U.S. at 568-571 (opinion of Scalia, J.). The court of appeals' decision that petitioner lacked standing rests on the particular circumstances of this case and does not conflict, even in principle, with this Court's decision in *Bryant*. See Pet. App. 2-3.

c. Petitioner is also mistaken in suggesting (Pet. 15-16) that the court of appeals' decision conflicts with *Northeastern Florida Chapter of the Associated General Contractors* v. *City of Jacksonville*, 508 U.S. 656 (1993), and *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200 (1995). Those cases involved challenges to procedures for awarding bids after a decision was made to accept competitive bids. In each case, a plaintiff was found to have standing to ensure that the procedures for awarding bids were conducted in accordance with the Equal Protection Clause or a governing statute.

For example, the Court ruled in *City of Jacksonville* that "[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the

barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing." 508 U.S. at 666. That ruling recognized the distinct nature of an equal protection claim. The plaintiffs claimed injury from "the denial of equal treatment resulting from the imposition of the barrier." *Ibid.* Similarly, in *Adarand Constructors*, the Court stated that "[t]he injury in cases [alleging equal protection claims] is that a 'discriminatory classification prevent[s] the plaintiff from competing on an equal footing.'" 515 U.S. at 211 (quoting *Jacksonville*, 508 U.S. at 667). Here, in contrast, petitioner does not allege the denial of equal treatment among potential bidders, and *Jacksonville* and *Adarand* are simply irrelevant.[2]

d. Petitioner's contention (Pet. 20) that it has standing because it is "the object of the [government's] action" is without merit. Petitioner relies on a passage from *Lujan* that distinguishes between instances in which a plaintiff is directly regulated by the government, and is therefore the "object" of government action, and instances in which a plaintiff's asserted injury arises from the regulation (or lack of regulation) of someone else. See *Lujan*, 504 U.S. at 561-562. The Court explained that standing is "substantially more difficult to establish" in the latter instances. *Id.* at 562. That distinction, however, is irrelevant to this case,

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[2] Contrary to petitioner's suggestion (Pet. 17-18), the court of appeals' decision also poses no conflict with the Eighth Circuit's decision in *Arkla Exploration Co.* v. *Texas Oil & Gas Corp.*, 734 F.2d 347 (1984), cert. denied, 469 U.S. 1158 (1985). In *Arkla*, a decision had already been made to offer lands for mineral leasing—in contrast to the instant case—and the court of appeals held only that a would-be bidder had standing to challenge the offering of leases on a noncompetitive rather than a competitive basis, as was allegedly required by statute. See *id.* at 353-354.

which involves the management of federal resources, and not the direct regulation of petitioner.

2. Petitioner also challenges (Pet. 21-25) the court of appeals' alternative ruling that petitioner "lacks prudential standing on its NEPA claims because its interest in enforcing the statute is purely economic, and as such does not fall within NEPA's zone of interests." Pet. App. 3. The court of appeals' analysis is consistent with *Bennett* v. *Spear*, 520 U.S. 154 (1997), and other decisions of this Court addressing prudential standing.

Under the doctrine of prudential standing, a plaintiff must allege an interest within the "zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Valley Forge Christian Coll.* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982) (quoting *Association of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 153 (1970)). This Court has explained that "the 'zone of interest' inquiry * * * seeks to exclude those plaintiffs whose suits are more likely to frustrate than to further statutory objectives." *Clarke* v. *Securities Indus. Ass'n*, 479 U.S. 388, 397 n.12 (1987).

The zone-of-interests of a statute is determined "by reference to the particular provision of law upon which [a] plaintiff relies." *Bennett*, 520 U.S. at 175-176. The particular provision of NEPA cited by petitioner, 42 U.S.C. 4331(a), however, is *not* the provision that forms the basis of petitioner's legal claims.[3] Those claims arise out of 42 U.S.C. 4332(C), which requires the

[3] Indeed, the subsection of the statute on which petitioner relies is part of NEPA's general "declaration of national environmental policy," see 42 U.S.C. 4331, which does not give rise to an actionable claim. See *Keith* v. *Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997).

government to prepare an environmental impact statement for major federal actions significantly affecting the quality of the human environment. See 1 ER 8 (Compl. paras. 31-34) (alleging deficiencies in environmental impact statement process).

Congress has required the government to prepare an environmental impact statement to ensure that the government fully considers the environmental consequences of major federal actions. See *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA "focus[es] the agency's attention on the environmental consequences of a proposed project"). In contrast to the provision of the Endangered Species Act at issue in *Bennett*, which required the use of "the best scientific and commercial data available" and had the objective of avoiding needless economic dislocation, see 520 U.S. at 176-177, the NEPA provision at issue here implements Congress's objective of ensuring that the government brings to light the environmental impacts of proposed action. Petitioner does not contend that the Forest Service has failed to identify sufficiently the environmental impacts of the proposed government action, and it has no apparent interest in ensuring that it do so. Petitioner accordingly lacks prudential standing to challenge the adequacy of the Forest Service's environmental impact statement. See, *e.g.*, *Central S.D. Coop. Grazing Dist.* v. *USDA*, No. 00-3567, 2001 WL 1111471, at *2-*4 (8th Cir. Sept. 24, 2001).

Contrary to petitioner's contentions (Pet. 24-25), the court of appeals' observations on prudential standing present no conflict with *Friends of the Boundary Waters Wilderness* v. *Dombeck*, 164 F.3d 1115 (8th Cir. 1999). The plaintiffs at issue in *Boundary Waters* included counties, individuals, and outfitters that sought

to challenge the adoption of a management plan regarding visitor and motorboat use in a wilderness area. See *id.* at 1120. In contrast to petitioner, which characterizes its interests as "solely economic" (Pet. i), the *Boundary Waters* plaintiffs asserted as injury "their own inability to fully enjoy the BWCA Wilderness as a result of the visitor use restrictions," in addition to their alleged economic injuries. 164 F.3d at 1126. The Eighth Circuit was thus not confronted with the issue of whether a party whose interests are "purely economic" falls within NEPA's zone of interests, and accordingly, there is no conflict between *Boundary Waters* and the decision below. Indeed, the congruity between the two circuits' views is reflected in *Presidio Golf Club* v. *National Park Service*, 155 F.3d 1153, 1158-1159 (9th Cir. 1998), where the Ninth Circuit found prudential standing under NEPA based on a golf club's interest in "maintaining an environment, both natural and built, suitable for the game of golf and post-game activities," in addition to its economic interests. See Pet. App. 3 (citing *Presidio*).

Finally, it should be noted that although petitioner's lack of prudential standing served as a proper alternative ground for dismissing petitioner's NEPA claims, it was not necessary to the resolution of the case. Accordingly, this Court has no occasion for reviewing the court of appeals' discussion of that issue.

3. Petitioner's final argument (Pet. 25-30), that consideration of emotional impacts and public opposition to a proposed action is *forbidden* by NEPA, rests on a misreading of *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766 (1983). As the district court succinctly characterized petitioner's argument, "[t]his would be an odd rule of law to ascribe to NEPA, which has the goal of providing notice to the

public of proposed agency action and an opportunity for public input." Pet. App. 11.

This Court held in *Metropolitan Edison* that the Nuclear Regulatory Commission was not *required* by NEPA to consider potential psychological harm caused by the risk of a nuclear accident. See 460 U.S. at 775-779. The Court did not, however, hold that the government was prohibited from considering such harm. See *id.* at 778 ("Until Congress provides a more explicit statutory instruction than NEPA now contains, we do not think agencies *are obliged* to undertake the inquiry.") (emphasis added). Indeed, the Court noted that effects on human health, including psychological health, are cognizable under NEPA. See *id.* at 771. Contrary to petitioner's misreading, NEPA imposes only a procedural requirement that agencies consider the environmental impacts of a proposed action, see *Robertson*, 490 U.S. at 350; it by no means forbids an agency from also considering non-environmental effects. Under petitioner's argument, the government would be barred from considering all sorts of non-environmental impacts, such as national security, economic, or social impacts, even where such impacts might be the motivating policy rationale for a proposed action.

The Forest Service properly considered public opposition to leasing on the Rocky Mountain Division along with other factors that supported the decision not to offer new leases. See Pet. App. 11-12 & n.3. *Metropolitan Edison* does not forbid federal agencies from considering such concerns. The court of appeals' recognition of that established principle does not warrant this Court's review.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2001