

CROOKS CREEK COMMUNE

IBLA 72-249

Decided April 9, 1973

Appeal from letter decision of Medford District Office, Bureau of Land Management, dismissing protest against proposed timber sale.

Affirmed.

Rules of Practice: Appeals: Standing to Appeal -- Rules of Practice: Protests

A commune, whose members assertedly own land adjacent to federal land, has standing to appeal from a decision dismissing its protest against a proposed timber sale on the federal land.

Timber Sales and Disposals

The Oregon and California Revested Lands Act of August 28, 1937, as amended, 43 U.S.C. §§ 1181a-1181f (1970), providing for sustained yield management of timber resources, and 16 U.S.C. §§ 594, 594-1 (1970), which direct a policy of preserving forest resources from insect infestation and damage, envisage that the Department is under an obligation to protect timber from such ravages, including without limitation, the sale of timber so affected.

Timber Sales and Disposals

An owner of land, including a governmental unit, may remove timber from his land as an incident to the ownership of the ground. He would not be responsible in damages to an adjoining land owner, unless he committed some negligent act while removing the same. This doctrine holds even though the adjoining property might be damaged as a result of the timber removal.

Timber Sales and Disposals

A decision by a District Office to proceed with a proposed timber sale, which was made after consideration of all relevant facts, and which decision is supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error.

APPEARANCES: Brock Evans, Esq., San Francisco, California, for appellant; James A. Coda, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY MR. FISHMAN

The Crooks Creek Commune has appealed from a letter decision, dated October 26, 1971, rendered by the Acting District Manager, District Office, Medford, Oregon, Bureau of Land Management, in effect dismissing the Commune's protest against a proposed timber sale from some 200 acres in sec. 1, T. 38 S., R. 7 W., W.M., Oregon, referred to as the "Spider Hill" sale.

The protest, dated September 3, 1971, and filed September 8, 1971, recited in part as follows:

We would like to formally request that you consider changing the classification of Spider Hill to either rocky non-commercial or critical watershed area.

The timber (Douglas fir) in our canyon was heavily logged (but not clear cut) about 20 years ago. Some trees in the canyon have regenerated and are now perhaps 15 or 20 feet high. However, the forest has changed a great deal to oak and madrone. Where the canyon walls are very very steep, regeneration of fir has been even less successful. There is mostly madrone and oak, and in between there are no trees at all and no top soil (only clay and shale). Douglas fir seedlings (after all these years) have come back in old road beds, but very few on the steep canyon walls. The area which you propose to log is steeper than this in places, there is little top soil (in most places) and the head waters of our stream come from Spider Hill. As it is, our stream dries up for most of its length during the summer months. We feel that logging would be devastating to our stream, causing flooding during the winter months and totally drying up during the dry months.

A further very real consideration is that our stream is a major tributary of Crooks Creek (which feeds into Deer Creek which feeds into the Illinois River). The head waters of Crooks Creek have been heavily logged over the past 5 years or longer. The most recent cuts were poorly done. We have walked in this area and have seen cat tracks where there once were springs that fed the creek. Logs have been skidded down stream beds where heavy slash remains. The road already threatens to erode away in places and some culverts are plugged up.

According to Mr. Bob Goodrich, the 1/3 selective cut is a rather new method. He cannot show us 1/3 cuts which have similar conditions to Spider Hill (i.e. slope, facing, with a stream, etc.), where regeneration has been successful.

Frankly, from past logging in this canyon and surrounding areas, we are most skeptical of this proposed cut, and we certainly do not like the idea of having a new experiment in our canyon. The remaining timber is too precious to have a test which could easily be disastrous. All indications seem to be that cutting of Spider Hill is unjustifiable in terms of sustained yield forestry and would further damage the watershed in an area where extensive damage has already been done. For these reasons we urge you to reclassify this area.

The Acting District Manager responded on October 26, 1971, reciting in part as follows:

It is our considered opinion, after having foresters from this office go over the ground in detail, that the Spider Hill sale will have minimal effects on the environment in the vicinity and that not making the sale as proposed would most likely cause more damage, in the long run, than selectively cutting the area at this time.

As you will note from the attached memorandum to me from the South Area Manager, a large percentage of the timber in the proposed sale is already dead from insect attack or is heavily infested and will soon be lost. Should we allow the Douglas-fir bark beetle to continue to spread, not removing infected trees, the presently healthy trees will most likely be attacked also. They could be lost within a very few years with the resultant loss of a valuable resource.

The proposed Spider Hill sale will be a partial cut sale which will remove up to one-third of the volume from any given acre in the area. When viewed from a distance, I do not believe that the casual observer could detect any appreciable difference in the appearance of the stand before and after cutting. Soils in the area are stable and the method of logging is designed to minimize soil disturbance. By mobile yarding, or using cable-equipped machines, to pull the logs up hill to the roads, very little soil will be disturbed. Road

construction is, of course, a necessary part of logging and this too will be restricted to the most stable areas. The roads will be constructed to a minimum and will not cause further off-site erosion or stream sedimentation.

We are dealing with high-productivity timber lands in Section 1, T. 38 S., R. 7 W., and to not manage these lands for their highest potential would not be in the best interests of the general public. I therefore intend to offer the Spider Hill sale for January, 1972.

The letter of October 26, 1971, constitutes a denial of appellant's protest against the proposed timber sale. The appeal is directed to that denial.

Appellant's statement of reasons asserts that the commune "*** is an established entity of some ten people, who own the property immediately adjacent to the aforesaid sale and, since their property and the enjoyment thereof will be adversely affected if this sale proceeds, are adversely affected by the above decision of the District Manager." Appellant asserts that the proposed sale would have an adverse impact on the watershed, water supply of the commune, aesthetic resource and enjoyment of its property, and on the forest resource and its sustained yield capacity.

It is clear that appellant has standing ^{1/} to appeal from the dismissal of its protest. 43 CFR 4.410; 43 CFR 4.450.2; see County of Sonoma, John Francis Knopf, Sacramento 046652 (Approved by Assistant Secretary August 10, 1965).

Section 1 of the Act of August 28, 1937, 43 U.S.C. § 1181a (1970) provides in part that Oregon and California revested lands (hereinafter referred to as "O & C lands"):

*** classified as timberlands *** shall be managed *** for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity

^{1/} It is not entirely clear that the notice of appeal, filed December 14, 1971, was timely filed. The letter of October 26, 1971, to which the appeal is addressed, was not served by registered or certified mail. Consequently there is no evidence of date of service. In the circumstances, we are not disposed to deny consideration to an appeal based upon conjecture as to the date of service, albeit the notice of appeal was received some 49 days after the letter of October 26, 1971.

with the principal [sic] of sustained yield for the purpose of providing a permanent source of timber supply protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities [sic] * * *.

The foregoing statute must be read in pari materia with 16 U.S.C. §§ 594 and 594-1 (1970), which read as follows:

§ 594. Protection of timber owned by United States from fire, disease, or insect ravages.

The Secretary of the Interior is authorized to protect and preserve, from fire, disease, or the ravages of beetles, or other insects, timber owned by the United States upon the public lands, national parks, national monuments, Indian reservations, or other lands under the jurisdiction of the Department of the Interior owned by the United States, either directly or in cooperation with other departments of the Federal Government, with States, or with owners of timber; and appropriations are authorized to be made for such purposes. (Sept. 20, 1922, ch. 349, 42 Stat. 857.)

§ 594-1. Protection of all forest lands from insects and diseases; policy of Government.

In order to protect and preserve forest resources of the United States from ravages of bark beetles, defoliators, blights, wilts, and other destructive forest insect pests and diseases, and thereby enhance the growth and maintenance of forests, promote the stability of forest-using industries and employment associated therewith, aid in fire control by reducing the menace created by dying and dead trees injured or killed by insects or disease, conserve forest cover on watersheds, and protect recreational and other values of forests, it shall be the policy of the Government of the United States independently and through cooperation with the governments of States, Territories, and possessions, and private timber owners to prevent, retard, control, suppress, or eradicate incipient, potential, or emergency outbreaks of destructive insects and diseases on, or threatening, all forest lands irrespective of ownership. (June 25, 1947, ch. 141, § 1, 61 Stat. 177.)

Thus, it is clear that the Department is authorized to protect timber from insect ravages and to sell such timber. Moreover, it has a duty to do so. See 40 Op. Atty. Gen. 44 (1941). The record amply supports the conclusions that the timber stand is heavily infested with insect populations and is deteriorating. It follows that the proposed sale rather than having an adverse impact on the sustained yield capacity of the land, would, in all probability, enhance it.

The Bureau of Land Management contends that 30 percent of the timber on the land will be sold; appellant strongly urges that 50 percent removal is envisaged. However, the 50 percent figure relates to a greater area than the contemplated sale. Nevertheless, it is clear that the proposed timber sale will not denude the land and consequently will not affect its aesthetic value. However, it seems clear that only 30 percent of the Spider Hill Sale Area will be logged.

There are about 430 acres of land adjacent to or above the holdings of appellant, which land is in the watershed and which could have conceivably an impact on the water passing appellant's living quarters. Of the 430 acres, only 75 acres, or 17 percent is Bureau of Land Management land in the sale area. Moreover, the Bureau of Land Management, in accordance with its standard practices, will take precautionary measures to minimize any possible damage to the watershed, *i.e.*, permitting only partial cutting, using mobile yarding to reduce soil compaction and disturbance, and permitting cutting only during the dry seasons (summer) to minimize soil movement. The Bureau of Land Management suggests that selective logging of part of the overstory will allow more snow to fall below the tree canopy, which should provide more water, rather than less, as a result of a slower, more prolonged runoff in the spring.

Appellant asserts that the proposed sale would have an adverse impact on its enjoyment of its property and its aesthetic value. Concededly, any timber cutting is rarely welcomed by an adjoining landowner. However, appellant has not demonstrated that there will be any damage to its property or any violation of its legal rights. We proceed to consider whether appellant has any right to continuance of the status quo, *i.e.*, freedom from timber cutting by the Bureau on adjacent land.

In Stewart v. Birchfield, 15 Cal. App. 378, 114 P. 999 (1911), the court stated:

* * * It is not alleged in the complaint that defendant used his property in any manner other than such as he

had a right to use it, and no negligence is charged sufficient to create any responsibility on the part of the defendant for damages which might have resulted from any act committed by him. Briefly stated, it is simply alleged by plaintiff that the defendant cleared his land of the brush which was growing upon it, and that the wind thereafter blew some of the sand or soil therefrom onto the land of plaintiff, which would not have been so carried onto plaintiff's ground had the brush been allowed to there remain, or had defendant after clearing the ground irrigated it. If the defendant had the right to remove brush or trees growing upon his property, which right he undoubtedly possessed as an incident to the ownership of the ground, then, unless he was guilty of some negligent act while removing the same, he would not be responsible in damages to plaintiff. He had the right not only to clear his ground, but to leave it unirrigated, if he saw fit, thereafter, even though his failure to so irrigate it might have produced the damage of which plaintiff complains. "Every man may use his own land for all lawful purposes to which such lands are usually applied, without being answerable for the consequences, provided he exercises ordinary care and skill to prevent any unnecessary injury to the adjacent landowner. It is not, therefore, necessarily negligence on the part of a landowner to make a use of his land which inevitably produces loss to his neighbor; for as he may willfully adopt such a course, and yet not be a wrongdoer, much less is he liable for unintentionally doing that which he has a right to do intentionally." Sherman & Redfield on Negligence, § 700. See, also, Barrows on Negligence § 115; Phelps v. Nowlen, 72 N.Y. 39, 28 Am. Rep. 93; Middlesex v. McCue, 149 Mass. 103, 21 N.E. 230, 14 Am. St. Rep. 402; Pennsylvania Coal Co. v. Sanderson, 113 Pa. 126, 6 Atl. 453, 57 Am. Rep. 445; Brown v. McAllister, 39 Cal. 573; Tiffany on Real Property, § 295. [Emphasis supplied.]

114 P. at 1000.

Archer v. City of Los Angeles, 47 Cal. App. 2d 68, 119 P.2d 1 (1941), reiterates and exemplifies that doctrine and that a governmental unit, exercising proprietary powers over its lands is similarly free from liability.

Appellant seemingly relies upon an unqualified adherence to the common law as laid down in Rylands v. Fletcher, LR, 3 HL 300,

that one must in all events use his property (or refrain from using it) so as not to injure his neighbor's property. As stated in United Fuel Gas Co. v. Sawyers, 259 S.W.2d 466 (Ky. 1953), 38 A.L.R.2d 1261, 1264 (1953), the American rule is different:

* * * But present American law departs from the English common law. It exonerates the owner from legal liability if there was a "reasonable use" of his property.

* * * * *

* * * [T]he "American Rule" * * * [is] that in the absence of negligence there is no liability if there was a legitimate and reasonable use. "The doing of a lawful thing in a careful and prudent manner cannot be a nuisance." (Citing cases.)

259 S.W.2d at 468.

Cf. Louisville Refining Co. v. Mudd, 339 S.W.2d 181, 184 (Ky. 1960); Louisville and Jefferson County Air Board v. Porter, 397 S.W.2d 146, 150 (Ky. 1965). Family Clan, Inc. v. Philbrick, Civil No. 71-378 (D. Ore., filed July 12, 1972), enunciates recognition that consideration of impact of governmental timber cutting is " * * * committed to the expertise of the federal agencies charged with the management of these natural resources. Hi-Ridge Lumber Company v. United States, 443 F.2d 452 (9th Cir. 1971)." See Morris v. TVA, 345 F. Supp. 321 (D.C.N.D. Ala. 1972), 4 ERC 1678. Implicit in Philbrick is the finding that timber cutting is a reasonable use of the land by the Forest Service.

We find that the officer rendering the decision below gave consideration to all relevant facts prior thereto and that his decision to proceed with the proposed sale is supported by substantial evidence.

Appellant has requested a hearing before an Administrative Law Judge, in the event that the decision is not to cancel the sale. It also suggests that the Board investigate the situation on the ground with full representation by appellant and the Bureau of Land Management. It does not appear that the allegations of appellant, even if proved, would warrant the granting of the relief sought. In the circumstances, the request for a hearing is denied. See Leo J. Kottas, Earl Lutzenheiser, 73 I.D. 123 (1966); Jack A. Walker, A-30492 (April 28, 1966). Nor are we convinced that an on-the-ground inspection by representatives of the Board would

serve any useful purpose. Questions such as those raised by appellant have been decided by Bureau experts and, absent a clear showing of error, it would be inappropriate for the Board to substitute its judgment for that of the technical experts. Accordingly, the request for on-the-ground inspection is denied.

The dissent urges that the appeal be dismissed since the nature of the estate of individual members of the commune in the adjoining land has not been disclosed. To my mind this factor is completely irrelevant. Assuming, arguendo, that the members of the commune were on the land only by sufferance of the landowner, their legal posture would be no different. Whether they file a protest as an incorporated group or as individuals does not vitiate their involvement with activities on adjoining land.

The dissent states that the commune "* * *" has no right, title, claim or interest in the land at issue, nor does it seek any." Again, this is irrelevant since the protestant-commune is not seeking to initiate a contest. The criteria set forth in the dissent are pertinent to the initiation of a contest only. A reading of 43 CFR 4.450-1 confirms this view, and 43 CFR 4.450-2 treats protests discretely:

§ 4.450-1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein.

§ 4.450-2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

The dissent suggests, by quoting E. Lucian Keller, Salt Lake 064881 (October 30, 1967), that the " * * * lawful interests administered by the Bureau could be made subject to the appellate processes of the Bureau and the Department of the Interior by any person, regardless of his interest in the subject matter."

In Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965), the Court explicitly recognized " * * * an unincorporated association consisting of a number of non-profit conservationist organizations * * *", deprecating implicitly the rationale of Keller as follows:

We see no justification for the Commission's fear that our determination will encourage "literally thousands" to intervene and seek review in future proceedings. We rejected a similar contention in Associated Industries, Inc. v. Ickes, 134 F.2d 694, 707 (2d Cir.), vacated as moot, 320 U.S. 707, 64 S. Ct. 74 (1943), noting that "no such horrendous possibilities" exist. Our experience with public actions confirms the view that the expense and vexation of legal proceedings is not lightly undertaken.

In any case the Federal Power Act creates no absolute right of intervention; § 308(a), 16 U.S.C. § 825g(a), reads:

In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

Since the right to seek review under § 313(a) and (b) is limited to a "party" to the Commission proceeding, the Commission has ample authority reasonably to limit those eligible to intervene or to seek review. See Alston Coal Co. v. Federal Power Comm., 137 F.2d 740, 742 (10th Cir. 1943). Representation of common interests by an organization such as Scenic Hudson serves to limit the number of those who might otherwise apply for intervention and serves to expedite the administrative process.

354 F.2d at 617.

The dissent alludes to Sierra Club v. Morton, 405 U.S. 727 (1972). Sierra Club holds that the "special interest" of a group in a subject matter is insufficient to give that group standing. However, Sierra Club also recognizes the broadening of the scope of standing as follows:

The trend of cases arising under the APA and other statutes authorizing judicial review of federal agency action has been toward recognizing that injuries other than economic harm are sufficient to bring a person within the meaning of the statutory language, and toward discarding the notion that an injury that is widely shared is ipso facto not an injury sufficient to provide the basis for judicial review. ^{2/} We noted this development with approval in Data Processing, [397 U.S. 150] supra, at 154, in saying that the interest alleged to have been injured "may reflect 'aesthetic, conservational, and recreational' as well as economic values." But broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.

Some courts have indicated a willingness to take this latter step by conferring standing upon organizations that have demonstrated "an organizational interest in the problem" of environmental or consumer protection. Environmental Defense Fund v. Hardin, 138 U.S. App. D.C. 391, 395, 428 F.2d 1093, 1097. * * * It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review. See,

^{2/} The following appears as a footnote at this point in the Court's decision:

"See, e.g., Environmental Defense Fund v. Hardin, 138 U.S. App. D.C. 391, 395, 428 F.2d 1093, 1097 (interest in health affected by decision of Secretary of Agriculture refusing to suspend registration of certain pesticides containing DDT); Office of Communication of the United Church of Christ v. FCC, 123 U.S. App. D.C. 328, 339, 359 F.2d 994, 1005 (interest of television viewers in the programming of a local station licensed by the FCC); Scenic Hudson Preservation Conf. v. FPC, 354 F.2d 608, 615-616 (interest in aesthetics, recreation, and orderly community planning affected by FPC licensing of a hydroelectric project); Reade v. Ewing, 205 F.2d 630, 631-632 (interest of consumers of oleo-margarine in fair labeling of product regulated by Federal Security Administration); Crowther v. Seaborg, 312 F. Supp. 1205, 1212 (interest in health and safety of persons residing near the site of proposed atomic blast)."

e.g., NAACP v. Button, 371 U.S. 415, 428. But a mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA.

405 U.S. at 738-739 (footnotes omitted).

Appellant is claiming aesthetic, conservational, recreational, and economic damage will be caused to its land by the proposed timber sale on adjoining land. It is clear that an organization whose members are assertedly so injured has standing and may represent those members. See Annot., 11 A.L.R. Fed. 556 (1972).

The question is therefore presented whether landowners have standing to challenge an asserted misuse of adjoining or nearby land. The answer is clearly in the affirmative. See, e.g., Annot. 19 A.L.R.2d 1025 (1951); Annot., 92 A.L.R.2d 974, 984 (1963).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

I concur:

Douglas E. Henriques, Member.

I dissent:

Edward W. Stuebing, Member.

EDWARD W. STUEBING, DISSENTING

It is my opinion that the appeal should be dismissed.

In Flast v. Cohen, 392 U.S. 83 (1968), Chief Justice Warren observed:

The various rules of standing applied by federal courts have not been developed in the abstract. Rather, they have been fashioned with specific reference to the status asserted by the party whose standing is challenged and to the type of question he wishes to have adjudicated. (p. 101).

Appellants, in my opinion, lack both of these qualifications.

First, I am concerned with the nature, or status, of the appellant. What manner of being is this that commands legal cognition? Is it a corporation, a trust, a partnership, a governmental body, or a person? How can it be recognized in law? Can it hold property, sue and be sued in its own name? What responsibility is owed it by the United States? It is formed, I gather, of its individual constituent members. Do they each own an individual undivided interest in the adjacent land? If so, why do they not appear before us in their individual capacities, rather than in the guise of a collective pseudonym? Insofar as the record reveals, the Crooks Creek Commune has no better standing at law than a chowder and marching society, or an amateur bowling league. Summary dismissal is merited on this basis alone.

Next, even adopting the more liberal attitude that somehow the appellant properly represents the interests of the owners of the land adjacent to the site of the proposed timber sale, it is still my opinion that it lacks standing. It has no right, title, claim or interest in the land at issue, nor does it seek any. For this reason it could not appeal from the determination of the District Manager to offer for sale certain of the timber found thereon. Instead it could only protest the action in accordance with the procedure seemingly available to anyone, regardless of their standing, 1/ i.e., 43 CFR 4.450-2, which provides:

1/ The construction of 43 CFR 4.450-2 which holds that the regulation permits anyone to protest any action proposed by the Bureau is charitable, to say the least. We note that here there was not "any proceeding before the Bureau." We note further that the regulation is included in that part of the Code which deals with procedures in

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

The Crooks Creek Commune, by its attorney, duly protested the action proposed to be taken, and this prompted the consideration of the protest by the District Manager, who thereupon made the response alluded to in the majority opinion. I regard the actions of the District Manager as appropriate in the circumstances, and, therefore, fulfilling of the obligation imposed by the regulation for dealing with such matters.

The majority opinion, on the other hand, would construe the refusal of the District Manager to accede to the wishes of the protestant as an action adversely affecting the protestant within the context of 43 CFR 4.410, thereby conferring upon the protestant standing to appeal which it did not previously enjoy. In short, the majority opinion holds that the protestant has somehow gained a purely procedural right despite the absence of any substantive right, claim, or application which would afford it the right to appeal in the first instance under our rules.

In E. Lucian Keller, Salt Lake 064881 (October 30, 1967), it was stated:

* * * As early as 1883 the Department recognized the need to limit the right of appeal to those parties shown to be in interest and affected by a decision. Santa Rita Mines, 1 L.D. 579 (1883); Ewing v. Rourke, 12 L.D. 538 (1891); Cyr v. Fogarty, 13 L.D. 673 (1891); McChesney v. Aberdeen, 16 L.D. 397 (1893). This line of cases established the pattern of limiting the right of appeal to a party in interest which has since been embodied in Departmental regulations (43 CFR 1842.2) and Sec. 10(a) of the Administrative Procedure Act, supra. Were it otherwise, tens of thousands of oil and gas leases, grazing leases, timber sale contracts, ground leases,

(fn. 1 continued)

hearings. No hearing was involved in this instance. Therefore, a strict construction of the regulation would support a conclusion that this appellant had no standing even to protest, much less to appeal. However, since the protest has already been considered and disposed of in accordance with the regulation, we need not determine which construction is correct.

rights-of-way, and the myriad other lawful interests administered by the Bureau could be made subject to the appellate processes of the Bureau and the Department of the Interior by any person, regardless of his interest in the subject matter.

Any citizen may inquire into the conduct of public business and make a complaint concerning any irregularity in the conduct of such business. In such cases the officer responsible for the lawful administration of the activity should ascertain the facts and take such measures as may be indicated, as was done in this case. But the continuing dissatisfaction of one who is not a real party in interest will not afford him recourse to the appellate process. Here nothing more is involved than "the performance of the ordinary duties of the executive departments." [citation omitted].

Joseph Burden, 4 IBLA 197 (1971), supports the proposition that where an adjacent land owner protests an action proposed for federal land on the ground that his privately owned land may be adversely effected, the protest is properly dismissed, absent the showing of legal interest in the land which is the subject of the federal action.

Where the cities of Minneapolis and St. Paul sought review of an order of the Post Office Department discontinuing railway mail service on certain trains, charging that the Post Office Department did not comply with its own regulations and certain statutes in promulgating its order, the Court held that the municipalities lacked standing, as the statute under which the order issued was not enacted to protect plaintiffs as a class, and no statute specifically gave them "aggrieved persons" status. Rasmussen v. United States, 421 F.2d. 776 (8th Cir. 1970).

There must be an injury or threat of injury to be legally recognized rather than a personal interest. Perkins v. Lukins Steel Corp., 310 U.S. 113 (1940). In this instance, the Commune has not pointed to any legally recognized interest which is in jeopardy.

Where an incorporated neighborhood association sued to enjoin the Department of Housing and Urban Development from proceeding with a federally funded urban renewal project which entailed the demolition of several buildings which had been registered pursuant to the National Historic Preservation Act, 16 U.S.C. § 470, alleging that HUD had failed to consider the project's effect on the buildings and had failed to hold a hearing as required by statute, the Court held that

the association lacked standing because plaintiffs' status as taxpayers, residents and owners of property in the renewal area did not give them the required "personal stake in the outcome," and because they owned no interest in the buildings to be demolished. South Hill Neighborhood Association, Inc. v. Romney, 421 F.2d. 454 (6th Cir. 1969), cert. den. 397 U.S. 1095. I find close kinship between that case and the one at bar.

The United States Supreme Court, discussing the question of standing in Sierra Club v. Morton, 405 U.S. 727 (1972), in an opinion by Mr. Justice Stewart, said:

* * * The Sierra Club is a large and long-established organization, with an historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization, however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

* * * * *

The requirement that a party seeking review must allege facts showing that he is himself adversely affected * * * does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process.

Moreover, the Court noted in that case that "The Petitioner Sierra Club sued as a membership corporation * * *."

The majority cites County of Sonoma, John Francis Knopf as illustrative of the clarity by which appellants' standing can be perceived in cases such as these. That case involved a number of individuals who applied, pursuant to statute and the implementing Departmental regulations, to have certain public lands put up for public sale. The County of Sonoma filed a conflicting application

pursuant to the Recreation and Public Purposes Act and the Departmental regulations under that statute. The proposed Bureau of Land Management classification decision favoring disposal under the R. & P. P. Act was served on the parties, who were then accorded the right of appeal, which the public sale applicants proceeded to exercise. This case can be used to illustrate several points. First, there was no question of the capacity of either the appellants or the appellee to invoke the appellate process. That is not so in the instant case. Second, the parties were seeking the disposition of public lands under specific statutes expressly authorizing such disposition, and they were acting in conformity with the Departmental regulations. In the instant case the Commune has not invoked any statute or regulation, nor is it seeking any particular interest in or disposition of the land. It has merely expressed its disapproval. Third, properly or improperly, the appellants in the cited case were expressly accorded the right to appeal. No such right was accorded the Commune, either expressly or by implication. Fourth, we take official notice that the Department ultimately recognized that applicants should not be permitted to use the appellate process to protest such land classification orders, and amended its regulations, so that today such applicant-protestants do not have standing to appeal the Bureaus' proposed classification of public lands for a particular use or disposition, although they may protest. The Board of Land Appeals plays no role in the administrative review of such protests. See 43 CFR 2450.5. Included among the reasons for the change in the procedure was the fact that the appellate system was burdened by an excessive number of appeals by parties who were merely protesting land classification actions by BLM.

The majority opinion's reference to the case of Scenic Hudson Preservation Conf. v. FPC presents some interesting and pertinent discussion on the issue. However, in that case the Court was proceeding pursuant to a special provision of statute, sec. 313(b) of the Federal Power Act, 16 U.S.C. § 825 1(b) (1970), which reads:

(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States Court of Appeals for any circuit wherein the licensee or public utility to which the order relates is located * * *.

In consideration of the foregoing, the Court said, "We hold that the Federal Power Act gives petitioners a legal right to protect their special interests." (354 F.2d 608,616) (emphasis added). In the case at bar no special provisions for review are written into the statute. 43 U.S.C. § 1181(a) (1970).

I quite recognize the recent trend toward liberalizing the law of standing, so that whereas prior to 1968 the question depended upon the legal interest of the parties in the substance of the suit, today the courts look to whether the parties suffered or anticipate an injury in fact, and this trend has conferred standing on many who previously would not have been recognized. But I do not comprehend that all barriers have been swept aside so as to allow any conglomeration of persons to attack proposed federal activities on the ground of general concern. In Brooks v. Volpe, 329 F. Supp. 118, 119 (D.D.C. 1971) the court held that three conservation organizations did not have standing to sue to enjoin construction of a highway which, allegedly, was incompatible with an existing camp ground, saying that the requirements of standing are not met simply because an association "has as its purpose such laudable goals as preservation of the scenic, recreational and wilderness values of areas * * *", citing Alameda Conservation Asso. v. State of California, 437 F.2d 1087 (9th Cir. 1971).

The majority opinion makes the point that whether the Commune files a protest as an incorporated group or as individuals does not vitiate their involvement with activities on adjacent land. This is precisely the point. It is neither an incorporated group nor are its members acting as individuals, and this dissent is not addressed to its standing to protest, but rather to its standing to appeal after the protest has been considered and acted upon.

The Board of Land Appeals is a quasi-judicial body and it should function as such, reserving its concern to matters which are properly before it. The concept that any legal nonentity can invoke the appellate process is certainly not in harmony with any doctrine of adjudication, administrative or judicial. Even if the dissatisfied party were a person, actual or artificial, who could be recognized at law, I know of no body of administrative or judicial authority which would support the proposition that an administrative appeals board is the proper forum for the review of complaints of a general nature involving no substantive right or claim of privilege.

Accordingly, while I applaud the panel majority's affirmation of the District Manager's decision, I regard it as error to entertain the appeal.

