

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 16 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID D. EVERIST,

Defendant - Appellant.

No. 09-30314

D.C. No. 1:09-mj-04012-CL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Mark D. Clarke, Magistrate Judge, Presiding

Submitted April 5, 2010\*\*

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

David D. Everist appeals pro se from the conviction and fine imposed for leaving refuse, debris, and litter on U.S. Forest Service property, in violation of

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

36 C.F.R. § 261.11(b). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Everist contends that the district court erred by denying his motion to dismiss because the Forest Service lacks jurisdiction to regulate the use of his land. The district court did not err because the Forest Service properly acted within its authority to regulate the surface use of forest lands. *See United States v. Goldfield Deep Mines Co. of Nev.*, 644 F.2d 1307, 1309 (9th Cir. 1981); *see also* 16 U.S.C. §§ 478, 551.

Everist also contends that he is entitled to just compensation because the regulation amounted to a regulatory taking. The record reflects that no constitutional taking occurred. *See Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538-39 (2005).

**AFFIRMED.**