

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 22 2010

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

JAMES DOVENBERG,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA, by and
through the United States Forest Service;
UNITED STATES FOREST SERVICE;
STATE OF OREGON, by and through the
Oregon Department of Forestry; OREGON
DEPARTMENT OF FORESTRY,

Defendants - Appellees.

No. 10-35007

D.C. No. 3:08-cv-00889-MO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Argued and Submitted December 7, 2010
Seattle, Washington

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Before: O'SCANNLAIN and TALLMAN, Circuit Judges, and EZRA, District Judge.**

James Dovenberg appeals from the district court's dismissal of his suit against the United States and the United States Forest Service ("Forest Service") for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). As the facts are known to the parties, we repeat them here only as necessary to explain our decision.

Dovenberg's complaint challenges broadly the government's allegedly negligent training, supervision, and instruction of Forest Service personnel working on Dovenberg's land while fighting and remediating damage from the 14,000-acre Shake Table Complex wildfire in 2006. Decisions regarding the training and supervision of government employees "fall squarely within the discretionary function exception" to the Federal Tort Claims Act, *Nurse v. United States*, 226 F.3d 996, 1001 (9th Cir. 2000), as does the Forest Service's choice of how to fight a wildfire, *see Miller v. United States*, 163 F.3d 591, 595–96 (9th Cir. 1998). Dovenberg's claims against the government are therefore barred. *See* 28 U.S.C. § 2680(a).

The district court's grant of the government's motion to dismiss is

AFFIRMED.

** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.