

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 06 2007

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL J. DESFOSSSES,

Defendant - Appellant.

No. 06-35903

D.C. No. CV-04-00330-EJL

MEMORANDUM*

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted October 2, 2007**

Before: SKOPIL, BOOCHEVER, and LEAVY, Circuit Judges.

The United States brought this action against Paul J. DesFosses, alleging that his mining activities on national forest service land exceeded any authorized plan of operations. The court granted summary judgment and enjoined DesFosses's activities. We affirm.

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

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

The Forest Service is authorized to “impose numerous requirements on anyone running a mining operation in the National Forests.” United States v. Shumway, 199 F.3d 1093, 1107 (9th Cir. 1999). Specifically, the Forest Service may “regulate mining operations in national forests by requiring miners to submit . . . operating plans” Clouser v. Espy, 42 F.3d 1522, 1530 (9th Cir. 1994). Such plans describe “the type of operations proposed and the manner conducted” and are intended to permit the Forest Service to minimize “disturbance of surface resources.” Shumway, 199 F.3d at 1107. “The Forest Service may also require a mine or mill site operator to furnish a bond to secure compliance with the plan” and to adjust the bond periodically “when the plan of operations changes.” Id.

DesFosses contends he paid the requisite bonds and complied with his plans of operations. The record is replete, however, with evidence of noncompliance. Although the Forest Service approved a plan of operations for the mine in 1986, it never approved a plan of operations for the separate mill site. Moreover, it is undisputed that DesFosses's road construction violated the requirements, restrictions, and mitigation measures contained in the approved plan for the mine. DesFosses's claims to the contrary are conclusory and insufficient to avoid summary judgment.

AFFIRMED.