

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOREST GUARDIANS; WILDLIFE
DAMAGE REVIEW; CARSON FOREST
WATCH; ANIMAL PROTECTION OF
NEW MEXICO, INC.; OREGON
NATURAL DESERT ASSOCIATION;
PREDATOR DEFENSE INSTITUTE; T&E
INC.; IDAHO WATERSHEDS PROJECT;
COMMITTEE FOR IDAHO'S HIGH
DESERT; WILDERNESS WATCH; THE
PREDATOR EDUCATION FUND;
SINAPU; ANIMAL PROTECTION
INSTITUTE; FRIENDS OF NEVADA
WILDERNESS; HELLS CANYON
PRESERVATION COUNCIL; GILA
WATCH; JOHN HORNING,
Plaintiffs-Appellants,

v.

ANIMAL & PLANT HEALTH
INSPECTION SERVICE, an agency of
the United States Department of
Agriculture; UNITED STATES FOREST
SERVICE, an agency of the United
States Department of Agriculture,
Defendants-Appellees,

ARIZONA, STATE OF
Intervenor-Appellee.

No. 01-15239
D.C. No.
CV-99-00061-WDB
OPINION

Appeal from the United States District Court
for the District of Arizona
William D. Browning, District Judge, Presiding

Argued and Submitted
February 14, 2002—San Francisco, California

Filed October 31, 2002

Before: J. Clifford Wallace, Alex Kozinski, and
Richard A. Paez, Circuit Judges.

Per Curiam Opinion

COUNSEL

Steven Sugarman, Belin & Sugarman, Santa Fe, New Mexico,
for the plaintiffs-appellants.

Greer Goldman, Susan Pacholski, U.S. Department of Justice,
Environment and Natural Resources Division, Washington,
D.C., for the defendants-appellees.

Jay R. Adkins, Assistant Attorney General, Phoenix, Arizona,
for the defendant-intervenor-appellee.

OPINION

PER CURIAM:

The Animal and Plant Health Inspection Service (“APHIS”) and the United States Forest Service have been killing mountain lions in the Santa Teresa Wilderness to protect private livestock. A coalition of conservation organizations and one individual (“Forest Guardians”) sought to enjoin this practice on the ground that it violates the Wilderness Act. Forest Guardians also claimed that APHIS and the Forest Ser-

vice failed to conduct adequate environmental studies — as required by the National Environmental Policy Act (“NEPA”) — before deciding to kill the mountain lions. The district court granted summary judgment to the federal defendants. We affirm.

BACKGROUND

In 1984, Congress designated an area of the Coronado National Forest in Arizona as the Santa Teresa Wilderness. *See* Arizona Wilderness Act of 1984, Pub. L. No. 98-406, § 101(a)(23), 98 Stat. 1485. In May 1997, the Regional Forester delegated authority to APHIS to perform predator control in wilderness areas, including the Santa Teresa Wilderness, to “prevent serious losses of domestic livestock.” The Regional Forester defined “serious loss” as “a determination made by APHIS or State Game and Fish after investigations, historical evidence and patterns of loss show the habitual nature of kills.” APHIS killed six mountain lions between July 18, 1997, and March 22, 1999, at the request of a rancher who grazed cattle within the Santa Teresa Wilderness.

DISCUSSION

[1] The district court did not err in concluding that the Forest Service may authorize APHIS to perform lethal predator control of mountain lions in the Santa Teresa Wilderness in order to protect private livestock. Nor did it err by allowing predator control in areas where it had not been used in the past. The Wilderness Act of 1964 and the Arizona Wilderness Act of 1984 do not expressly prohibit predator control in wilderness areas. 16 U.S.C. §§ 1131-1136; Arizona Wilderness Act § 101(a)(23), (f)(1); H.R. Rep. No. 96-617, at 10-13 (1979). They do, however, allow pre-existing grazing operations to continue in areas later designated as wilderness. *See* Arizona Wilderness Act § 101(f)(1). We agree with the Forest Service that “private livestock grazing implicitly includes

operations to support that grazing, such as lethal control of predators.” *Forest Guardians v. Animal & Plant Health Inspection Serv.*, No. CV 99-61-TUC-WDB, slip op. at 6 (D. Ariz. Nov. 14, 2000). We therefore defer to the Forest Service’s conclusion that the Act authorizes predator control as one of the “flexible opportunities to manage grazing in a creative and realistic site specific fashion,” H.R. Rep. No. 96-617, at 11. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

Forest Guardians’s reliance on congressional grazing guidelines is unavailing. These guidelines, set out in a House of Representatives report on the Colorado Wilderness Act of 1980, clarified that certain grazing uses that pre-existed wilderness designation should not be phased out. *See* H.R. Rep. No. 96-617, at 10-13. The Arizona Wilderness Act of 1984 incorporated these grazing guidelines by reference. *See* § 101(f)(1). Forest Guardians asserts that, because the guidelines permit the maintenance of only pre-existing supporting facilities, by implication they prohibit predator control unless it pre-existed the wilderness designation. But the guidelines do not address the conflict between predator control and grazing in wilderness, and thus do not undermine our conclusion that the Act allows lethal predator control where necessary to protect pre-existing grazing operations.

Forest Guardians’s assertion that the Forest Service Manual bars predator control in wilderness areas except where it was used before the wilderness designation is also unpersuasive. Even if the Manual did prohibit predator control in those areas, we previously made clear that the Manual does not have the force of law and does not bind the agency and is therefore not entitled to deference. *See Southwest Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1450 (9th Cir. 1996); *W. Radio Servs. Co. v. Espy*, 79 F.3d 896, 901 (9th Cir. 1996).

Finally, the Forest Service’s decision that its existing environmental assessments complied with the National Environ-

mental Policy Act and sufficiently considered the effects of predator control in the Santa Teresa Wilderness was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” *Hells Canyon Alliance v. United States Forest Serv.*, 227 F.3d 1170, 1176-77 (9th Cir. 2000) (internal quotation marks omitted). APHIS and the Forest Service have performed a number of environmental studies since the 1990s, among them a statewide study that specifically addressed the effects of lethal predator control in wilderness areas including the Santa Teresa Wilderness. Forest Guardians may prefer that the federal defendants conduct a separate analysis that solely evaluates the environmental impact of predator control in the Santa Teresa Wilderness, but the agency has direction to determine the geographic scope of its NEPA analyses. *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

AFFIRMED.