This past weekend President Obama visited Yosemite, helping the National Park Service celebrate its 100th anniversary. As part of his remarks, the President noted that climate change is already causing major impacts on the resources in National Parks around the country—for instance, causing the disappearance of the glaciers in Yosemite and increasing fire risks in the forests.

The President is quite correct that climate change will create large challenges for managing and protecting our National Parks. From a legal perspective, a fundamental question is whether the legal structure that that National Park Service operates under allows the Service the latitude to respond to the challenges of climate change. For instance, one response to the impacts of climate change on Western dry conifer forests like those in much of Yosemite is to use prescribed burns to reduce the risk of high-intensity, high-temperature fires (like the Rim fire of 2013).

Together with Berkeley Law graduate Elisabeth Long Esposito, I explored whether the Park Service Organic Act provides the Park Service with that kind of latitude. The Organic Act is the law that created the Park Service, and articulates the agency's powers and responsibilities. Our conclusion is that the Organic Act does give the agency wide latitude to conduct active management to address climate change impacts—so long as those active management efforts are directed towards the goals of protecting, restoring, or facilitating adaptive responses for the natural resources of the parks. The agency does have a burden to establish that its active management efforts are not hidden efforts to encourage improper development in parks (e.g., commercial logging activities)—but this is not new, as it is a burden the agency has long had, and courts have long scrutinized agency management decisions to ensure that they are conservation, not consumption oriented. We also note that active management may often not be the best approach to adaptation to a future of climate change. Passive management—protecting resources from a wide range of human impacts so that they are more resilient to climate change—will often be as or more effective than active management. But the Organic Act does provide the agency with a wide range of tools.

Our article was published this spring in the Natural Resources Journal for a special issue on the centenary of the National Park Service—you can read it here.