

This summer, the Earth Island Institute [filed a lawsuit](#) challenging active management projects in Yosemite National Park – those projects involve the cutting of trees to reduce the risk of fire (or that is the explanation of the National Park Service for the projects). The tree cutting was begun this past year, and the National Park Service [asserts that the projects are urgently needed to address fire risk](#), prompted in part by a series of fires in and around the park over the past several years, some of which have come close to damaging key park resources like sequoia groves or Yosemite Valley. The lawsuit alleges that the National Park Service violated the National Environmental Policy Act (NEPA) and the Park Service Organic Act in conducting the projects. A federal court [issued a temporary injunction in July](#) halting the project while the case proceeds.

This is an important lawsuit: It highlights a legal issue that will be increasingly relevant, and an underlying policy and scientific dispute that has been building for years. Both of these are driven by the dilemmas that public land managers must address as a result of both wildfire and climate change – namely, that passive management alone may not be adequate to achieve our management goals for our public lands and natural resources.

## **The law**

First, the legal question. The NEPA claims in the lawsuit are fairly straightforward, as these matters go – the plaintiffs claim that the park didn't do adequate environmental review for the tree cutting work. These claims are standard in lawsuits challenging federal public land management decisions. More interesting legally is another claim – that the tree cutting project violates the Park Service Organic Act. According to the plaintiffs, the tree removal is a violation of the Park Service's obligation under the Act to manage park resources such that they are "unimpaired for the enjoyment of future generations."

Is tree cutting on national parks necessarily a violation of the Organic Act? No. First, the Park Service has long done tree cutting in parks for a variety of management reasons – it would be odd to suddenly conclude that tree cutting is a per se violation of the Act. But more importantly, the Act is not a flat prohibition on any active management by the Park Service that might affect park resources. As [I've written before](#), the Organic Act in fact vests the Park Service with broad authority to do active management of park resources – in part because maintaining park resources "unimpaired" might well require active management. Climate change, combined with decades of fire suppression, is causing major changes in

forests in national parks. Those changes may well increase the risks of high-severity fires that are inconsistent with recent ecological history, even if the Park Service did nothing. Both climate change and fire suppression are anthropogenic. So does it make sense to prohibit the Park Service from actively managing park forests, if that prohibition would itself cause impairment?

That is the choice the Park Service is faced with. But the statute does not clearly resolve that choice, and thus, the statute gives the agency broad latitude to decide how it wishes to proceed – both action and inaction might be justifiable in this context. But the statute makes the Park Service the decisionmaker on this issue. Thus, courts in general would and should defer to the agency's choice, in part because of the agency's own expertise in management. (Moreover, there are other provisions of the Organic Act that appear to explicitly give the agency broad powers to undertake timber cutting where needed to protect park resources.)

There is a limit here – the Park Service can only undertake active management like timber cutting if the primary goal is preventing impairment of park resources. It can't do active management if the primary goal and outcome of the management is to facilitate commercial development of park resources. That may be a fine line, but it is an important one to draw to prevent Park Service discretion in this context from leading to abuse and damage of park resources.

### **The science**

That leads to the policy and scientific question. Even if the Park Service can legally undertake timber harvests in the park to address fire risk, will this management actually help address fire risk and respond to the impacts of climate change on our forests? The plaintiffs assert that tree cutting won't help reduce fire risk, and rely on a series of studies that they assert show that tree density was high in the past and that tree-cutting does not reduce fire risk. But the plaintiffs' assertions here cut strongly against the overall weight of the relevant scientific literature, where most researchers do believe that tree densities today are much higher than 200 years ago in California, and that active management, including tree-cutting, can reduce fire risks if done appropriately. (For a nice summary of that literature, [see this article](#).)

Again, as a legal matter, this conflict should make the decision for the court easy, at least with the Organic Act claims – deferring to the agency's expert choice about which of the various positions are more persuasive. But as a policy matter, the

debates in the scientific literature are just a reflection of a more fundamental value conflict. A strong tradition in the modern environmental movement takes the position that nature is best managed by being left alone, and that active human management in general is problematic – whether because active management might be counterproductive (because of limitations in our knowledge of natural systems), or because active management might be simply a disguise for efforts to extract resources for human benefit. Note that both of these concerns would lead to distrust of the expert management agency, whether on competence or on motivation.

But this approach is becoming harder and harder to maintain, at least in an absolutist form. In a world dominated by climate change, there are costs of a management approach that is predominantly passive. Climate change is a diffuse, indirect way in which humans affect ecosystems. Not acting in response to that diffuse, indirect impact is not “leaving nature alone.” It is making a choice that the indirect impacts of climate change are outweighed by the potential costs of active management. And that may well be true in certain cases. However, as the impacts of climate change and historical fire suppression become clearer and clearer, the burden of proof on those who strongly oppose active management necessarily increases.