



A PROMISE UNFULFILLED: PUBLIC PARTICIPATION IN THE ENVIRONMENTAL IMPACT STATEMENT

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What is an EIS? The Environmental Impact Statement (EIS) is a requirement by the National Environmental Policy Act (NEPA) that provides information of environmental impact for federal agencies. It is a decision-making tool and provides the opportunity for the public to influence a project. The EIS serves as an



Introduction

Historically, decision-making at the federal level happened behind closed doors, but NEPA's EIS provided an open door for the public to influence agency decisions that impact the environment. However, federal agency implementation of the EIS can fall short of reaching its full potential when it comes to involving the public. The problem lies when the door between the public and agency, which is supposed to remain ajar, begins to shut. The consequences of federal agency failure to implement the EIS within NEPA's participatory framework can be a barrier to good decision-making, block consideration of viable alternatives, and obfuscate government-public transparency regarding projects that have a significant effect on the environment. **How does Congressional intent for public participation in the EIS compare to implementation of the EIS today?** It is important to fulfill NEPA's promise of public participation not only for the sake of basic democracy but also for the sustainability of the environment, yet public participation remains to be an objective thoroughly internalized within the federal bureaucracy.

Methods

I analyzed Congressional records, newspapers, and early evaluations of NEPA from the law's designers develop a basis of what public participation was intended to be under NEPA. Through administrative documents and court cases, I was able to compare the evolution of implementation of the EIS with Congressional intent to see if the two misaligned. I conducted over 20 interviews with professionals of NEPA-related expertise, including federal agency officials, law professors, and lawyers to evaluate EIS implementation today.

Congressional Intent for the EIS

President Nixon and the 91st Congress responded to public pressure to develop a national environmental policy. While Senators and Cabinet members were the main architects of NEPA, it was a professor, Lynton Caldwell, who developed the EIS to make NEPA's goals operational. One of the main objectives of the law was to open government decision-making to the public.

"You will mobilize public opinion; you will bring your influence to bear on the decision-maker; you will have great responsibility."

- Bill Van Ness, attorney counsel to Senator Jackson; Joint Senate-House Hearing regarding NEPA, 1968



Evolution of EIS Implementation

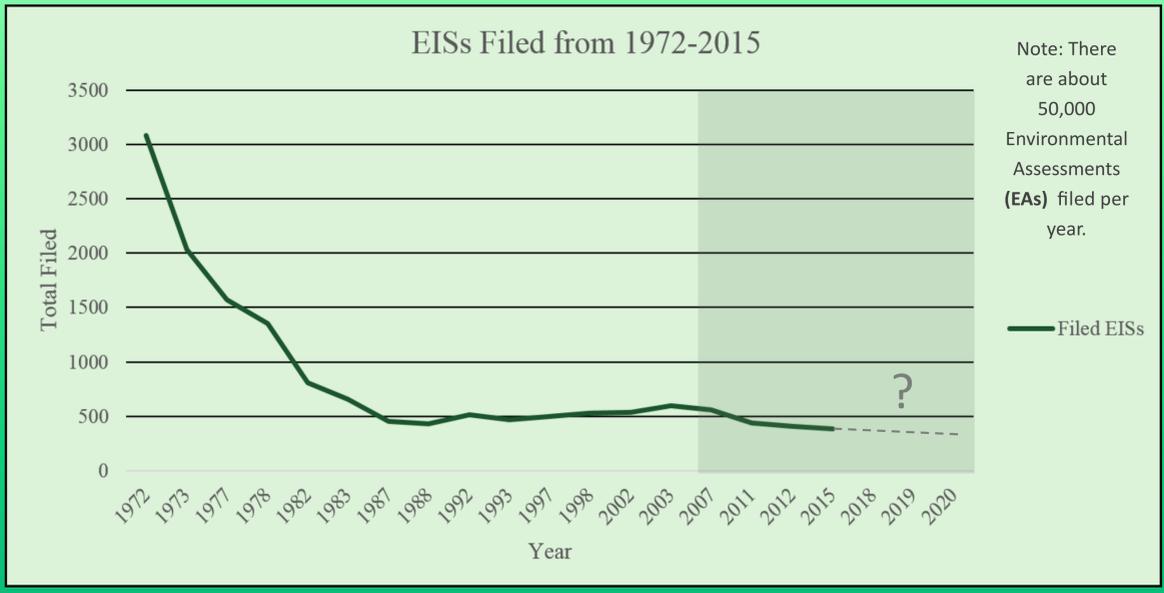
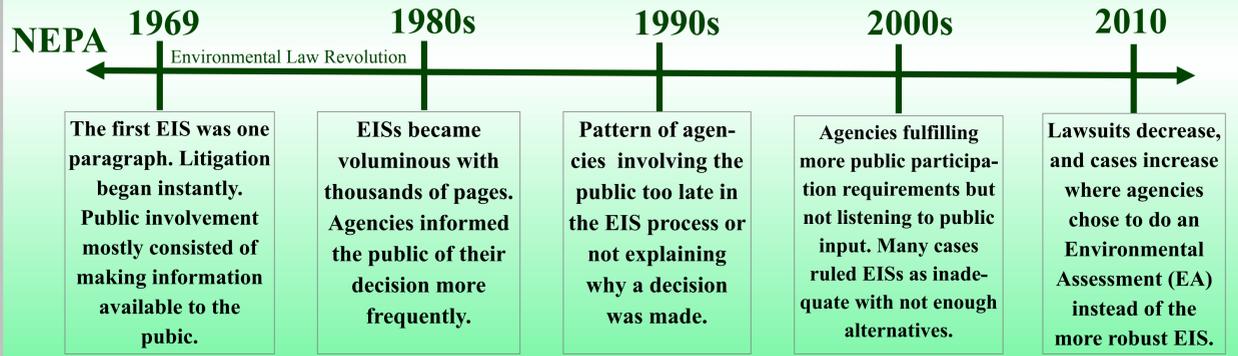


Figure 1: The total EISs filed per year reflect a significant decline between 1972 and the mid-1980s, with EISs leveling off at about 500 per year after 1987. While 3,000 EISs were filed in 1972, there were only 381 EISs filed in 2015 (lowest on record). NEPA specialists hypothesize a decline in EISs to continue throughout the next Administration.

Barriers to Public Participation in the EIS

Judicial Misinterpretation	Court rulings fostered procedural compliance of the EIS, where public participation becomes more symbolic than tangible because the EIS is viewed as separate from NEPA's goals.
"Agency Capture"	Special interests and political will can steer agencies away from prioritizing public input.
Exclusion of Value	Science-based public comments are deemed more substantive than value-based comments, thus value contributions by the public can be overlooked.
Timing	Late public involvement and pre-determined decisions block consideration of public input.
Funding	Lack of funding may result in achieving the "bare minimum" for public participation.
Scientific/Legal Jargon	As EISs become more lengthy and litigation-proof, content can be difficult to understand.

Results

- Within the EIS itself, implementation of public participation must grow stronger. While implementation improved since the 1970s, **the failure to interpret Congressional intent for public participation left a legacy.**
- While the EIS naturally declined from fewer federal projects and the rise in other NEPA documents (EAs and mitigated FONISs), evidence suggests agencies avoid EISs. Public participation requirements are among the factors that disincentive agencies from undertaking EISs, **which means less opportunity for public participation in federal agency decision-making.**



Approaching NEPA's 50th Anniversary:

NEPA is a wonderful law as it stands, but implementation of the EIS today has yet to match the spirit of NEPA's promise for public participation.

- Agencies should adopt NEPA's framework of **collaboration**. This means *listening* to the public and ensuring EISs are understandable versus "litigation-proof," which could ultimately **decrease citizen lawsuits**.

- As guidance for the executive branch, political leadership must take NEPA seriously in order for agencies to prioritize involving the public. **Public input can influence the EIS process in favor of environmental protection.**

References:

Caldwell, Lynton. *The National Environmental Policy Act: An Agenda for the Future*. Indiana University Press, 1998.
Greenberg, Michael. *The Environmental Impact Statement After Two Generations: Managing Environmental Power*. Routledge, New York.