High Country News

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NEPA transformed federal land management — and has fallen short

A look back at the ground-breaking legislation on its 50th anniversary.

Adam M. Sowards | **ANALYSIS** | **Dec. 6, 2019** | *From the print edition*

A U.S. Forest Service employee assesses sagebrush ecosystems of the Curlew National Grassland in Idaho. With NEPA's passage, federal agencies were required to bring in specialists to study proposed project areas in depth.

U.S. Forest Service

Reckoning with History (https://www.hcn.org/topics/reckoning-with-history) is an ongoing series that seeks to understand the legacies of the past and to put the West's present moment in perspective.

In late January 1969, a blowout on Unocal's Platform A leaked 3 million gallons of crude oil into the Pacific Ocean, just 6 miles from Santa Barbara, California. The spill — at the time, the largest in U.S. history — spread over 800 square miles

(https://psmag.com/news/the-ocean-is-boiling-the-complete-oral-history-of-the-1969-santa-barbara-oil-spill), coated 8 miles of beaches and killed thousands of animals. Images of the devastation shocked a public increasingly worried about the environment and helped spur Congress to pass a sweeping law aimed at preventing similar disasters in the future — the National Environmental Policy Act (https://www.govinfo.gov/content/pkg/STATUTE-83/pdf/STATUTE-83-Pg852.pdf#page=1).

President Richard Nixon signed NEPA into law on Jan. 1, 1970, from his home office on the Pacific Coast. The signing was a fitting launch for the environmental decade of the 1970s (mailto:http://library.cqpress.com/cqresearcher/document.php%3Fid=cqresrre1979111600) — a time when "America pays its debt to the past by reclaiming the purity of its air, its waters, and our living environment," as Nixon said in his signing statement. "It is literally now or never (https://www.presidency.ucsb.edu/documents/statement-about-the-national-environmental-policy-act-1969)."

On the law's 50th anniversary, it is worth considering its origins, development and significance — including the ways it has transformed American environmental governance, and how its promise has diminished. Five decades ago, the federal government recognized its responsibility to reduce environmental problems. But while NEPA provided a road map, only some of those routes have been taken.

Congress introduced, amended and passed (https://ballotpedia.org/National_Environmental_Policy_Act) NEPA quickly and only 15 legislators voted against it, indicating a widespread consensus on the need for federal environmental regulation. The law is relatively straightforward: Besides creating the Council on Environmental Quality (mailto:https://www.whitehouse.gov/ceq/) to advise the president and issue guidance and regulations, it provided general principles to direct federal activities and devised a process to implement them.

At the heart of the legislation lay an optimistic belief that economic growth, environmental protection and human welfare might align without sacrifice or rancor. The law highlights the need to "create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." It clearly takes a long-range view, incorporating tomorrow's environmental fate into today's decisions.

These values, though, tend to be forgotten, overshadowed by a procedural hurdle that changed business-as-usual for federal planning and decision-making. Before undertaking "major Federal actions significantly affecting the quality of the human environment" — offering timber sales on federal land, for example, or building an interstate highway — federal agencies and their partners now had to submit "a detailed statement." That environmental impact statement, or EIS, needed to be interdisciplinary and thorough, detailing any environmental problems likely to result from the proposed project and listing alternatives, including more costly ones. Then, the public was invited to comment. The procedure significantly lengthened and complicated federal land-use planning and politicized it like never before.

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The new process was transformative. The interdisciplinary requirement meant that engineers had to consult biologists, foresters needed hydrologists, and so on, effectively forcing agencies like the Bureau of Land Management to hire a range of specialists and ask different and often harder questions than ever before. By investigating alternatives rather than simply presenting a proposal as a *fait accompli*, greater degrees of choice and openness came to the process, as well as a franker acknowledgement that building dams or offering gas leases cause environmental problems. The addition of a public comment period also made environmental decision-making more democratic. Although the final decision was not open to a popular vote, the EIS process involved the public much more directly than ever before.

But the EIS process with its public input also opened doors to lawsuits, a result as American — and as controversial — as the public lands themselves. Congress had added the EIS procedure to protect the "productive harmony" at the law's core. But the strategy failed. The year after Nixon signed NEPA, the D.C. Circuit Court declared its goals (https://law.justia.com/cases/federal/appellate-courts/F2/449/1109/240994/) flexible, but

not its procedures: Federal agencies could interpret "productive harmony" however they liked, as long as they filed an EIS. In 1989, in what has become a controlling opinion in *Robertson v. Methow Valley Citizens Council*, the U.S. Supreme Court went further, declaring that federal agencies did not even have to preserve "productive harmony." Instead, it found that "NEPA merely prohibits uninformed — rather than unwise — agency action (https://supreme.justia.com/cases/federal/us/490/332/)." In other words, the EIS needed to list all the options, but agencies were not required to choose the best one.

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In the decades since, NEPA's critics have periodically tried to gut the law further, such as the Trump administration seeking to exempt certain Forest Service projects from its rules (https://www.hcn.org/issues/51.12/u-s-forest-service-might-limit-public-comments). Detractors commonly bemoan the lengthy and litigious process that fulfilling NEPA requirements has become, which is easier to track than the law's successes (https://www.energy.gov/nepa/articles/quiet-success-stories-illustrate-nepa-s-value). Adherence is costly in time and personnel, especially for agencies already underfunded, understaffed and facing backlogs of work. NEPA's procedures can be rigid, and for a culture bent on efficiency, almost nothing seems as bad as that.

Yet returning to an era when government officials made decisions without considering environmental impacts or public input would erode democratic governance. NEPA's opening section ends by recognizing "that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment." That sentiment captures NEPA's essence from its birth to its golden anniversary: Citizens deserve healthy surroundings, and they also bear a responsibility for securing them through the faithful execution of the law.

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