



GREEN AMENDMENTS FOR THE GENERATIONS

Pure Water. Clean Air. Healthy Environment.

NEW MEXICO GREEN AMENDMENT: Climate Guidance, Outcomes & FAQs

Proposed New Mexico Green Amendment:

SECTION 1. It is proposed to amend Article 2 of the constitution of New Mexico by adding a new section to read:

1. The people of the state have the natural, inherent and inalienable right to a clean and healthy environment, including water, air, soil, flora, fauna, ecosystems and climate, and to the protection of the natural, cultural, scenic and healthful qualities of the environment.
2. The protection of the state's environment is hereby declared to be of fundamental importance to health, safety and the public interest.
3. The state, including its political subdivision, shall serve as trustee of the natural resources of New Mexico and shall conserve, protect and maintain these resources for the benefit of all the people, including present and future generations.
4. The provisions of this section are self-executing. Money damages shall not be allowed under this section.

SECTION 2. It is proposed to amend Article 20 of the constitution of New Mexico by repealing Section 21.

**The NM Green Amendment addresses
climate disruption through two pathways:**

- 1** By creating enforceable individual rights to a clean and healthy environment including climate, that must be protected from government infringement;
- 2** By creating a trustee obligation on the NM government to protect the natural resources of the state that include climate and natural resources directly harmed by climate change.

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RIGHTS & RESOURCES IMPACTED BY CLIMATE DISRUPTION

In addition to climate being specifically included among the environmental rights of the people, climate disruption directly affects protected environmental rights & natural resources that are subject to the trustee obligations enumerated in the Amendment.

Affected rights and resources include, but are not limited to:



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- Water quality and quantity are directly affected by climate disruption – e.g. increased rainfall results in increased nonpoint source pollution; harmful algal blooms have been linked to the increased pollution and temperatures associated with climate disruption; and reduced rainfall causes increased drought, impacting both water quantity and quality;
- Air quality is directly impacted by climate disruption – e.g. climate change promotes increased ground level ozone, which is harmful to air quality;
- Ecosystems and the health and stability of plant and animal species, which are important ecologically, economically, and for human health, are directly impacted by pollution, temperature extremes, weather disruption and other impacts caused by climate disruption;
- Human health benefits of the environment are compromised by extreme heat and weather, increased pollution and other ecological harms that are caused by climate disruption.

Passage of the NM Green Amendment will ensure that the government does not act contrarily to the people's right to a healthy and stable natural climate, will ensure the government does not act in ways that cause climate disruption and takes appropriate, affirmative steps to protect the climate for present and future generations.

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CLIMATE-SPECIFIC POSSIBLE OUTCOMES

1

Government officials will be able to use the constitutional environmental obligations to support and defend proactive government action that protects against, and address, climate disruption.

2

There will be prevention of government action – e.g. legislation, regulation, permitting – that would unreasonably impair¹ the rights of people to a clean and healthy environment, including climate.

3

Government must analyze its actions' impact on climate as part of the decision-making and governing processes in order to ensure that only actions that fulfill its constitutional environmental obligations will be taken.

4

Existing laws, regulations, and authorities must be interpreted, applied and utilized in ways that are beneficial for addressing climate disruption in order to protect the environmental rights of the people and help government fulfill its trustee obligation to protect the state's natural resources.

5

Creates a duty to address climate disruption caused by greenhouse gas emissions but does not mandate any specific type of action nor approach.

6

Laws or mandates that prohibit government officials from taking action to address climate disruption will be constitutionally infirm, e.g. legislation that would prevent local government or regulatory agencies from using their existing authorities to consider and address climate change.

**DEMANDING & DEFENDING YOUR RIGHTS
TO CLEAN WATER, PURE AIR & A HEALTHY
ENVIRONMENT**

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NEW MEXICO GREEN AMENDMENT FAQs

How can a stable/healthy climate be defined? How will government officials know what level of protection is required?

As with the protection of other natural resources mandated by state and federal law, scientific data, analysis, and guidance will be primary pathways for guiding government goals and actions necessary to ensure environmental sustainability, healthy ecological functioning and human health protections. Not all pollution or environmental degradation results in ecological disruption – in all areas of environmental law, science helps to determine levels that are protective and those that are disruptive; the same will be true for constitutional environmental rights and natural resource protection. Within the climate context, international and national scientific experts have identified temperature and emissions goals necessary to appropriately address and limit anthropogenic greenhouse gases through reduced emissions and increased natural greenhouse gas sinks, including vegetation and soils. In the case of climate, international agreements can also help define the goals and mandates that must be achieved. Examples of resources that can guide government goals and actions include:

- [FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies](#)
- [IPCC: AR6 Climate Change 2021, The Physical Science Basis](#)
- [IPCC: Climate Change 2021, The Physical Science Basis, Summary for Policymakers](#)
- [Paris Climate Agreement and associated implementing documents/agreements](#)

How can legislators be responsible for protecting the right to a stable and healthy climate while complex state/regional boundaries and global governments' actions impact the climate simultaneously?

Rights enumerated in the NM Bill of Rights are those rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Bill of Rights, government has a duty to take what actions it can to protect these rights within its jurisdiction and to ensure that its own actions do not cause, induce, garner or allow for infringement. But just as government officials in one state do not have the power to prevent acts or activities outside of their jurisdictional control that might overreach and affect constitutional rights, the same holds true for environmental rights. With passage of the Green Amendment, New Mexico government will be bound to take what action it can to respect and protect the environmental rights of the people within its jurisdiction and control, and to ensure that its actions or activities do not result in infringement; but they are not duty bound (nor are they necessarily able) to take or prevent actions outside of their jurisdictional boundaries or legal control in order to address or prevent infringement.

NEW MEXICO GREEN AMENDMENT FAQs

What does it mean to be the trustee of natural resources for future generations? What if the rights of a future generation somehow conflict with those of the current generation? Could someone sue for future generations in order to force the state to take stronger action on climate change, even if it meant raising exorbitant taxes on the current generation?

As is the case with other fundamental rights protections articulated in the Bill of Rights/section of the New Mexico Constitution, the NM Green Amendment, is first and foremost, a limitation on government authority. Therefore, it is unlikely there would be a successful legal action for the government to undertake a specific task, tax, action or activity; instead the focus will be on preventing actions (or inactions) that are resulting in an infringement of the right, and to the degree that action is necessary to protect the right, the courts will be unlikely to require a specific approach, but instead leave it to government officials to put forth action which protects, conserves, and maintains environmental rights and natural resources.

The trustee language in the proposed NM Green Amendment provides important and helpful legal guidance and reduces vagueness. By using trust language, governmental entities, as trustee, must abide by the fiduciary duties of prudence, loyalty, and impartiality, when carrying out their obligation to conserve and maintain the state's natural resources for the benefit of current and future generations. The combination of the constitutional right of each person to a clean and healthy environment, complemented by the government's fiduciary duty as a trustee of the state's natural resources to treat all beneficiaries – including both present and future generations – equitably does put in place a strong obligation to consider the ramifications of government action and decision-making on future generations and to ensure protection of their climate rights. The mandate to protect the rights of all communities and all generations does, by its terms, require protection of present generations as much as it requires protection of future generations – this necessarily requires a balancing of benefits and impacts, and an obligation to ensure that government does not act in a way that sacrifices one community or one generation for the benefit of another.

As with other areas of law, the courts are obliged to consider impacts, to balance rights, and to ensure equitable justice under the law for all. The NM courts are as well equipped to handle this judicial obligation in the environmental rights context as they are to handle this obligation in every other constitutional, legislative, or private dispute context.

NEW MEXICO GREEN AMENDMENT FAQs

Does a Green Amendment mean government can never infringe on constitutional environmental rights?

As explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if “the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.”²

1 Robinson Twp, Delaware Riverkeeper Network, et.al. v. Commonwealth, 83 A.3d 901 (2013) at page 951, regarding the proper interpretation and application of Pennsylvania’s Green Amendment.

2 Montana Envtl. Info. Ctr. v. Department of Envtl. Quality, 1999 MT 248 (1999).

Additional helpful resource: J.C. Dernbach, R.B. McKinstry, Applying the Pennsylvania Environmental Rights Amendment Meaningfully to Climate Disruption, Widener University Commonwealth Law School Legal Studies Research Paper, Series no. 18-06