



NM Green Amendment For Climate

The NM Green Amendment will help address New Mexico's contribution to climate disruption through multiple pathways, including:

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

In addition to climate being specifically included among the environmental rights of the people, climate disruption directly affects protected environmental rights and natural resources that are subject to the trustee obligations enumerated in the Amendment. Affected rights and resources include, but are not limited to:

- * 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 causing increased drought impacts both water quantity and quality;
- * Air quality is directly impacted by climate disruption – e.g. climate change results in 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, extreme weather, increased pollution and other ecological harms caused by climate disruption.

Passage of the NM Green Amendment will ensure government does not act contrary to the people's right to a safe climate, will ensure government does not act in ways that causes climate disruption and takes appropriate affirmative steps to protect the climate for present and future generations. Among the specific outcomes with regards to the climate that may result from the NM Green Amendment:

- ⇒ Government officials will be able to use the constitutional environmental obligations to support and defend proactive government action to protect against, and address, climate disruption, including advancing good quality (properly sited, constructed, operated) clean energy projects.
- ⇒ Government must analyze the impact of its actions on climate as part of the decision-making/governing process to ensure it will fulfill its constitutional environmental obligations, including to protect future generations and ensure a safe climate.
- ⇒ Existing laws, regulations, and authorities must be interpreted, applied and utilized in ways that are beneficial for addressing New Mexico's contribution to climate disruption in order to protect the

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environmental rights of the people and help government fulfill its trustee obligation to protect the state's natural resources.

- ⇒ Creates a duty to address New Mexico's contribution to climate disruption, including greenhouse gas emissions, but does not mandate any specific type of action/approach.
- ⇒ Laws or mandates that prohibit/block 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.
- ⇒ Government action – e.g. legislation, regulation, permitting -- that will unreasonably impairⁱ the rights of people to a clean and healthy environment, which specifically includes a safe climate, may raise constitutional concerns that need to be addressed.
- ⇒ Good government actions and decisions that advance protections for the climate, such as good quality renewable energy projects and programs – including in legislation and regulations passed/implemented, permitting decisions, and programs – can secure constitutional support against inappropriate legal or political challenge.

How can a safe 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 function and human health protections. In all areas of environmental law, science helps determine levels of pollution and/or environmental harm that are unsustainable and ecologically disruptive, the same will be true for constitutional environmental rights and natural resource protection. In 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 safe climate when the climate does not know state/regional boundaries and is impacted by the actions of governments all over the world?

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 exacerbate 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

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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 constitutionally bound to prevent actions outside of their jurisdictional boundaries or legal control in order to address or prevent infringement.

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?

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 equitably – including both present and future generations – 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, including for climate, as they are to handle this obligation in every other constitutional, legislative, or private dispute context.

Does a Green Amendment mean government can never infringe on 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.”ⁱⁱ This guidance and balancing may prove helpful when assessing the potential impacts of clean and renewable energy options with localized environmental impacts and demonstrated long-term climate and generational benefits. It will similarly prove beneficial when considering false climate solutions that create near term and long term impacts for environment and climate by perpetuating fossil fuel reliance, extraction and usage.

ⁱ *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.

ⁱⁱ *Montana Env'tl. Info. Ctr. v. Department of Env'tl. 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