

The New Mexico Green Amendment Will Support Needed Progress Towards Clean Energy Solutions & a Just Energy Transition. Executive Summary

The legal principles reflected in the NM Green Amendment language and constitutional Bill of Rights position, fully embraces our New Mexico and United States democratic system of governance, recognizing the role of all branches of government, including the legislative branch, executive branch and judicial branch.

The NM Green Amendment ensures that environmental justice is always given high priority and that even in those circumstances when existing laws and regulations are unable to ensure equitable protection of the rights of all people, to clean and healthy water, air, soils and environment regardless of race, ethnicity, socioeconomics, tribal membership status, gender or geography.

It would be disingenuous to suggest that existing laws ensure necessary environmental protection and environmental justice in all circumstances – the NM Green Amendment remedies that gap in protection and empowers government officials with the opportunity, obligation and authority to always ensure equitable protection of environmental rights for all New Mexicans.

NM's Green Amendment protections will place a priority focus on good government programs and decision-making that support a measured and just transition to clean and renewable energy, by:

- Recognizing that protecting climate stability is a priority goal of government decision making and thereby supporting government actions that advance clean energy projects and goals;
- Ensuring community and cumulative impacts on BIPOC and low income communities are included in permit reviews and early decision making;
- Ensuring complete environmental assessments, and if necessary adjustments to comply with the law and constitution, are made throughout decision making before an irretrievable commitment of financial resources have been invested in one alternative or another.

The New Mexico Green Amendment will help fend off legal challenges to well sited and planned renewable energy projects by recognizing that environmental degradation and climate change inflicts human suffering, irreversible natural resources damage, economic harm, and generational harm. The New Mexico Green Amendment will heighten the legal strength and integrity - including in the face of legal challenges – of government decisions that support appropriately sited, constructed and operated, clean and renewable energy projects in New Mexico.

There is nothing in the experience of Pennsylvania, Montana or New York to suggest that Green Amendment protections will do anything but support the strong and needed progress of clean and renewable energy projects.

Early precedents confirming the strict scrutiny level of judicial review will certainly affirm that addressing the climate crisis is a compelling state interest and constitutional obligation and will help develop a strong, cohesive and defensible body of law and decision-making that renewable energy developers can rely upon when developing their projects and in response to any inappropriate public opposition.

By recognizing and protecting the rights of all New Mexicans to clean water and air, healthy ecosystems and environment, and a stable climate; and complementing this recognition of individual rights with a trustee obligation to protect the state's natural resources for present and future generations, the New Mexico Green Amendment incentivizes government support of clean and renewable energy projects, and actually prioritizes clean energy over the perpetuation and ongoing creation of new dirty energy projects.

The passage of a constitutional entitlement to a clean and healthy environment does not displace or throw into disarray current environmental protections in New Mexico; to the contrary it strengthens the system by providing constitutional guidance for how government officials can best carry forward their obligation to protect the environment their constituents deserve, need and are entitled to.

New Mexico judges regularly render well informed and beneficial legal determinations that involves cases of policy, science, law, first impression and balancing of rights among impacted stakeholders; and so they are well equipped to address constitutional questions that involve environmental rights.

The standards set forth in the NM Green Amendment as state policy are appropriately broad, and are no more vague than the language in other rights enumerated in the New Mexico Constitution's Bill of Rights. Utilizing appropriately broad language ensures the constitutional right and obligation serves as a guide for legislative, executive and judicial government action and does not seek to displace it. New Mexico courts have effectively interpreted and applied similarly broad constitutional provisions. Indeed, it is the core function of the judiciary to define the boundaries of constitutional rights based on the broad language approved by the people of New Mexico.

It is cynical for opponents to suggest that words like "clean", "healthy" or "stable" are neither clear nor understandable. Terms such as these are used throughout state and federal environmental protection laws.

The NM Green Amendment will not displace the leadership role of the legislature, local government, the executive branch, or regulatory agencies; it simply embraces the proper inclusion of the judiciary to ensure the proper balance of power and protection of the fundamental rights of the people.

Among the specific outcomes with regard to the climate that may result from the NM Green Amendment:

- Government officials will be able to use the constitutional environmental rights provision to support and defend proactive government action to advance clean energy projects that will provide good jobs;
- Existing laws, regulations, and authorities will now be interpreted, applied and utilized in ways that are beneficial for addressing climate disruption, to protect the environmental rights of the people and to help government fulfill its trustee obligation to protect the state's natural resources; thereby creating new and strengthened opportunities for advancing clean energy projects;
- Recognition of the climate as compelling state interested, complemented by the constitution obligation to protect climate, environment and future generations, will help fend off inappropriate challenges to well developed and proposed clean energy projects
- There can be a pathway to check government action – e.g. legislation, regulation, permitting -- if it will unreasonably impair the rights of people to a clean and healthy environment, *including climate*; thereby helping to keep the playing field level and clear for advancing clean energy rather than the current prioritization of fossil fuel development;
- Government will be incentivized to analyze climate impacts as part of all decision-making, thereby strengthening the obligation and opportunity for supporting clean energy, and disincentivizing climate disrupting actions and decisions;
- The obligation to protect the right of the people to a healthy environment, including climate, and the duty to protect natural resources equitably for all communities, including future generations, provides not just the framework, but the constitutional duty, to prioritize government initiatives and decisions that proactively support and advance well planned, sited, and implemented clean energy projects; and
- Recognizing that all energy projects will bring a level of environmental impact – positive and negative - the constitutional obligation to guarantee equity in the implementation of the constitutional right will ensure that the impacts and protections of such projects are equitably advanced across New Mexico's communities.