



Southwest Native Cultures



Common Ground Risina



Article XX Section 21 ≠ a New Mexico Green Amendment Checklist of Differences

Article XX Section 21	New Mexico Green Amendment
<p>Language is largely a <u>statement of policy</u>: “The protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare.”</p>	<p>Language is a <u>statement of rights</u>: “The people of the state, including future generations, have the right to a clean and healthy environment, including pure water, clean air, healthy ecosystems, and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment. “</p>
<p>Article XX of the constitution does not confer fundamental rights status or legal protection.</p>	<p>Article II of the constitution is the Bill of Rights where all constitutionally recognized inalienable and fundamental rights are given highest legal standing and protection.</p>
<p>State’s obligation is to:</p> <ul style="list-style-type: none"> ⇒ pass legislation, mandate regulations or to take action to <u>control pollution and the despoilment</u> of the air, water and other natural resources; ⇒ be guided by the balancing test of ensuring protection is “consistent with the use and development of these resources for the maximum benefit of the people.” 	<p>State’s obligation is to:</p> <ul style="list-style-type: none"> ⇒ <u>prevent violation of the constitutional rights</u> to pure water, clean air, healthy ecosystems, and a stable climate, and to the natural, cultural, scenic and healthful qualities of the environment; and ⇒ act as legal trustee to “conserve, protect, and maintain” the natural resources of the state including air, water, flora, fauna and climate.
<p>No mandate for environmental justice protection.</p>	<p>Trustee obligation specifically mandates environmental justice protection by requiring that the environmental rights and natural resources are protected equitably regardless of race, ethnicity, income or other differences.</p>

No mandate that government protect the environment for future generations.	Explicitly requires government to protect environmental rights and natural resources for future generations.
The public's recourse when the state fails to provide meaningful environmental protections is to vote legislators into or out of office.	The public's recourse when government fails to protect environmental rights or conserve, protect, and maintain natural resources is to bring a constitutional challenge to the courts to judge the actions of the state and protect the rights of the people.
The enforceable constitutional right is for the state legislators to pass laws, regulations and take action, to control environmental pollution and despoilment.	The enforceable constitutional right is the right of the people to "pure water, clean air, healthy ecosystems, and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment;" and to government action that will "conserve, protect, and maintain" the state's natural resources for present and future generations.
Pollution and environmental despoilment is allowed when consistent with the maximum benefit balancing test.	Environmental rights can only withstand infringement by government action or inaction if there is a compelling state interest.
The constitutional obligation is owed by state legislators.	The constitutional obligation is owed by <u>all</u> government officials at all levels of government – legislators, the governor, agency officials, town councils, etc.
There is no obligation that government engage in informed decisionmaking including consideration of cumulative impacts and applicable science.	The trustee obligation mandates that all government officials engage in informed decisionmaking including consideration of relevant science and resulting potential impacts prior to taking proposed government action.
Requires the state legislators to give definition to the environmental protections the people are entitled to.	Is self-executing, meaning that the language itself is enforceable in the courts; it is not up to government to determine when there is a viable legal claim or violation.

More info & Resources at: www.NMGreenAmendment.org



Southwest Native Cultures



Common Ground Risina



Article XX Section 21 ≠ a New Mexico Green Amendment Discussion of Differences

The New Mexico Green Amendment proposal is vastly more powerful than existing Article XX Section 21 by recognizing environmental rights as fundamental, inalienable, and entitled to the highest legal protection by all NM government officials and the courts. By contrast, Article XX Section 21 is simply a mandate that the state legislature take action to control pollution and despoilment of the environment and provides no meaningful recourse when those laws fail to provide needed environmental protections.

New Mexico Green Amendment

The New Mexico Green Amendment expressly recognizes that all the people of the state have an individual, inalienable and indefeasible right to a clean and healthy environment, including pure water, clean air, healthy ecosystems, and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment.

The placement of the language in the Bill of Rights recognizes these rights as fundamental and deserving of the highest legal scrutiny and protection when being considered in the courts.

The express recognition of the provision as being self-executing means that no further government action is necessary for the protected rights to be enforceable if they are infringed upon by government action or inaction.

And only a compelling state interest can support government infringement.

By focusing on protecting environmental rights and mandating the state “conserve, protect and maintain” the state’s natural resources, there is a priority placed on preventing pollution and environmental degradation, not simply controlling, permitting or managing harm.

The Green Amendment requires government prioritize environmental justice and generational justice. The rights articulated and protected belong to all the people of the state regardless of ethnicity, race or income, and belong to both present and future generations, thereby ensuring that government cannot sacrifice the environmental rights of one community or generation in order to protect or serve the environmental goals of others.

Proposed New Mexico Green Amendment

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

- A. The people of the state, including future generations, have the right to a clean and healthy environment, including pure water, clean air, healthy ecosystems, and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment.
- B. The state, including each branch, agency, and political subdivision, shall serve as trustee of the natural resources of the state, among them its waters, air, flora, fauna, climate and public lands. The state shall conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.

The trustee obligations established in the Green Amendment mandate informed government decisionmaking based on science and consideration of cumulative impacts.

All government action, including laws, regulations, programs and permits must fulfill the obligation to protect the environmental rights of the people and the natural resources of the state because the constitution provides the overarching legal structure, principles and obligations to which all branches of state government must conform. By its terms, the constitutional obligation applies to every government official at all levels of government and will not be limited to the state legislature only.

Article XX Section 21

By its terms, Article XX, Section 21 does not recognize or create judicially enforceable and independent environmental rights. Nowhere does the language speak to creating or recognizing a right of the people to clean water and air, and healthy environments, instead it is a state policy declaration that “protection of the state’s beautiful and healthful environment” is of “fundamental importance to the public interest, health, safety and the general welfare” and leaves it to the state legislature to decide how much protection is warranted.

Placement of the language in Article XX titled “Miscellaneous” does not provide heightened legal status or the protection conferred on recognized fundamental human, civil and political rights.

Article XX Section 21

The protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.

Article XX Section 21 instructs the state legislature to focus on controlling pollution and environmental degradation rather than preventing harm or protecting rights, and provides a broad balancing test that can justify almost all action. The language is also specific to the legislature as opposed to all government officials, thereby excluding other key agencies and government leaders from the constitutional language.

There is no guidance to strengthen environmental or generational justice, or to ensure that government decisionmaking is guided by science and consideration of resulting impacts.

The only solution provided by Article XX Section 21 for failed legislative environmental protection is for the people to elect legislators into or out of office at a future election. As the Court of Appeals of New Mexico explained, while Article XX Section 21 recognizes and embraces the public trust duties of the state to protect natural resources, the constitution “delegates the implementation” of these duties to the Legislature and the legislative process. While people have a right to participate in the legislative and regulatory processes created and advanced by the legislators, if the public does not like how the legislators are performing their environmental protection duties, “voters have the opportunity to exercise their desire for political change regarding complex environmental issues at the ballot box during each election cycle.”¹ But, as confirmed by the language Article XX Section 21 and the interpretation of the court, there is not a legal challenge in the courts based on environmental rights that can be brought to challenge government action that fails to conserve, protect or maintain the natural resources of the state.

In fact, [the Oil & Gas industry has referenced Article XX Section 21](#), as supporting their operations despite tremendous evidence of industry-caused water, air, climate and toxic environmental contamination.

More info & Resources at: www.NMGreenAmendment.org

¹ Sanders-Reed ex rel. Sanders-Reed v. Martinez, 350 P.3d 1221 (2015)