

Using Litigation and the Constitution to Address the Climate Crisis

Juliana, et al. v. United States of America, et al.

Philip L. Gregory
Co-Lead Counsel
Our Children's Trust

Held, et al. v. State of Montana, et al.



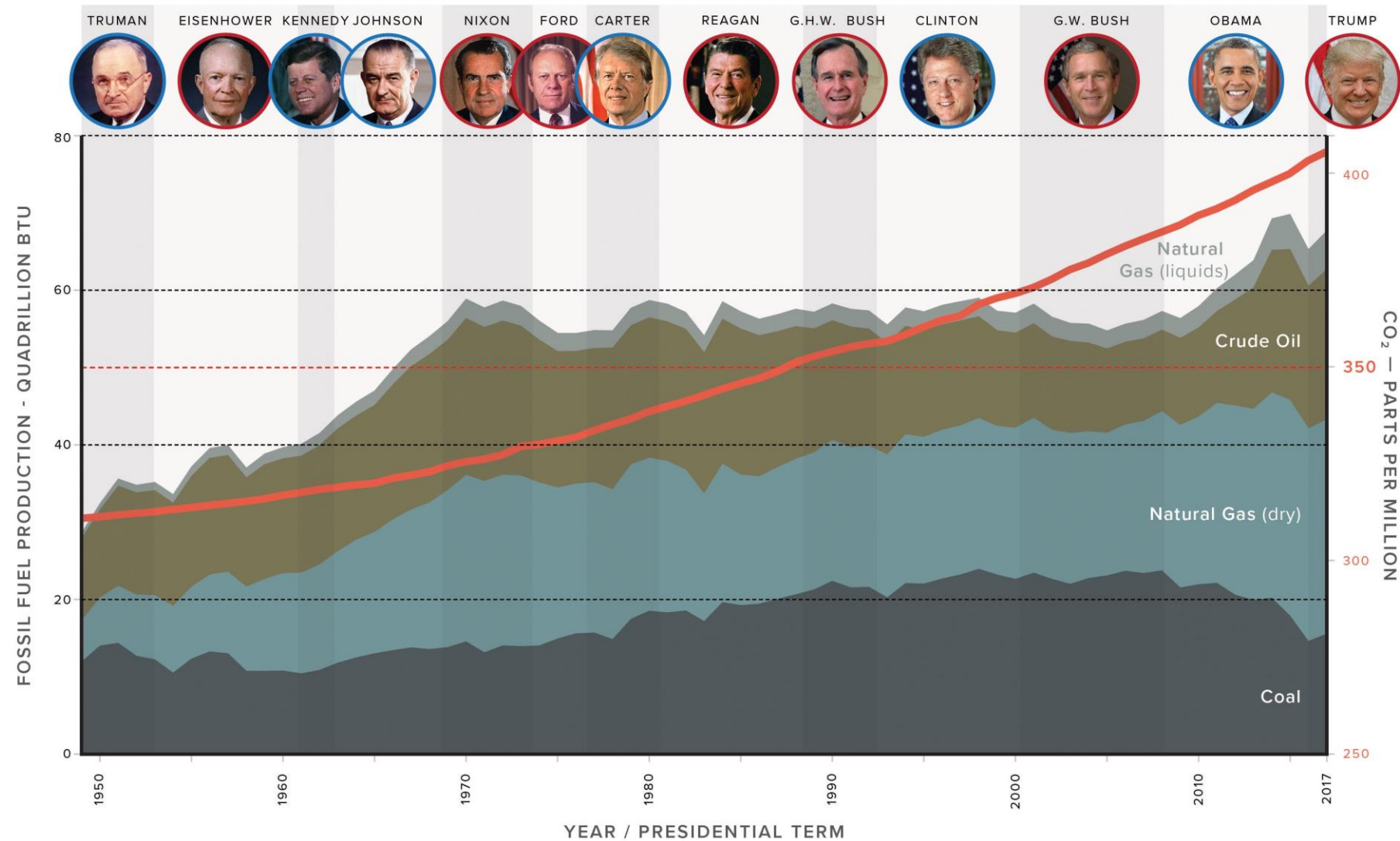
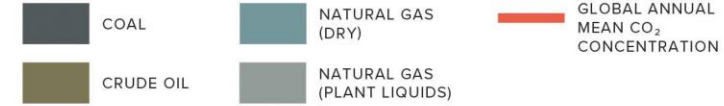
Juliana v. United States

21 Youth brought this case in August 2015 against the Obama Administration because Defendants' affirmative acts violate Plaintiffs' Constitutional Due Process Rights

- Affirmative, ongoing conduct, persisting over decades
- In creating, controlling, and perpetuating a national fossil fuel-based energy system
- Despite long-standing knowledge of the resulting destruction to our Nation and profound harm to these young Plaintiffs

U.S. FOSSIL FUEL PRODUCTION AND GLOBAL CO₂ CONCENTRATION

1949-2017



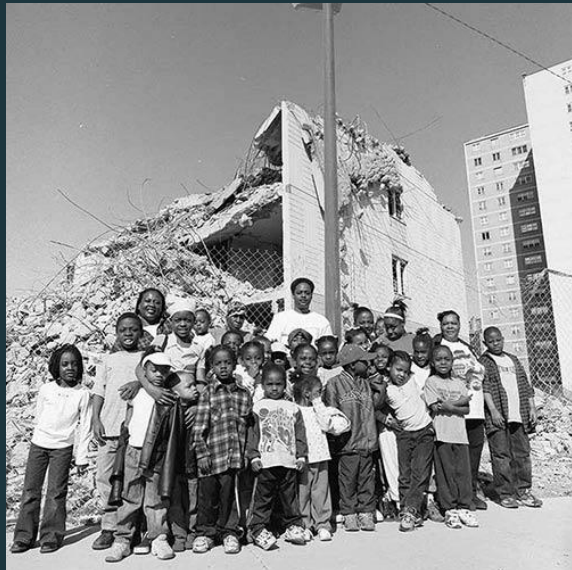
CO₂ concentration data source: 1959-Present: NOAA; pre-1959: NASA. Fossil fuel consumption data source: U.S. Energy Information Administration, Monthly Energy Review, May 2018. <https://www.eia.gov/totalenergy/data/monthly>

Examples of U.S. Litigation with Broad Structural and Systemic Judicial Remedies



Civil Rights: School Desegregation
(*Brown v. Bd. of Ed.*, 1955– Present)

Pacific Northwest
Treaty Rights Litigation
(1969 – Present)



Public Housing Desegregation
(*Gautreaux v. Hill* – 1976)

The California Prison Litigation
(*Brown v. Plata*, 1990 – Present)



REMEDIES IN *JULIANA*

The claims are not that the government must eliminate changes in the climate, but that it must refrain from actions that exacerbate the climate crisis to the point of causing actual injuries to Plaintiffs.

Plaintiffs do not ask courts to write the policies. They ask courts establish the boundaries of the constitutional right and ensure the government takes science-based actions that stay within those boundaries.



U.S. District Court Judge Aiken, Nov. 10, 2016,
denying Motions to Dismiss

“I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society”

U.S. District Court Judge Aiken, Nov. 10, 2016, denying Motions to Dismiss

“Where a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet’s ecosystem, it states a claim for a due process violation.”

The Position of the Ninth Circuit Panel

Issued on January 17, 2020, the decision set forth several important legal rulings before concluding the court lacked jurisdiction to hear the case.

“A substantial evidentiary record documents that the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change, and that failure to change existing policy may hasten an environmental apocalypse.”

The Ninth Circuit Majority Opinion

“[I]t is beyond the power of an Article III court to order . . . the plaintiffs’ requested remedial plan.”

The Ninth Circuit Dissent

“Such relief, much like the desegregation orders and statewide prison injunctions the Supreme Court has sanctioned, would vindicate plaintiffs’ constitutional rights without exceeding the Judiciary’s province.”

Seeking a Prompt Trial Date

In May 2023, Judge Aiken allowed the youth Plaintiffs to amend their complaint to seek a declaratory judgment as to their constitutional rights and whether the federal government is violating those rights.

Juliana remains a real controversy about harm to the health and safety of children. We await a decision by Judge Aiken on our motion for a prompt trial date.

YOUTH GOV



Watch YOUTH V GOV trailer here:

<https://www.youtube.com/watch?v=fPC9QFwI7XY>



Lander



Badge



Kian



Taleah



Sariel



Jeffrey



Nate



Grace



Olivia



Mica



Georgi



Claire



Ruby



Lilian

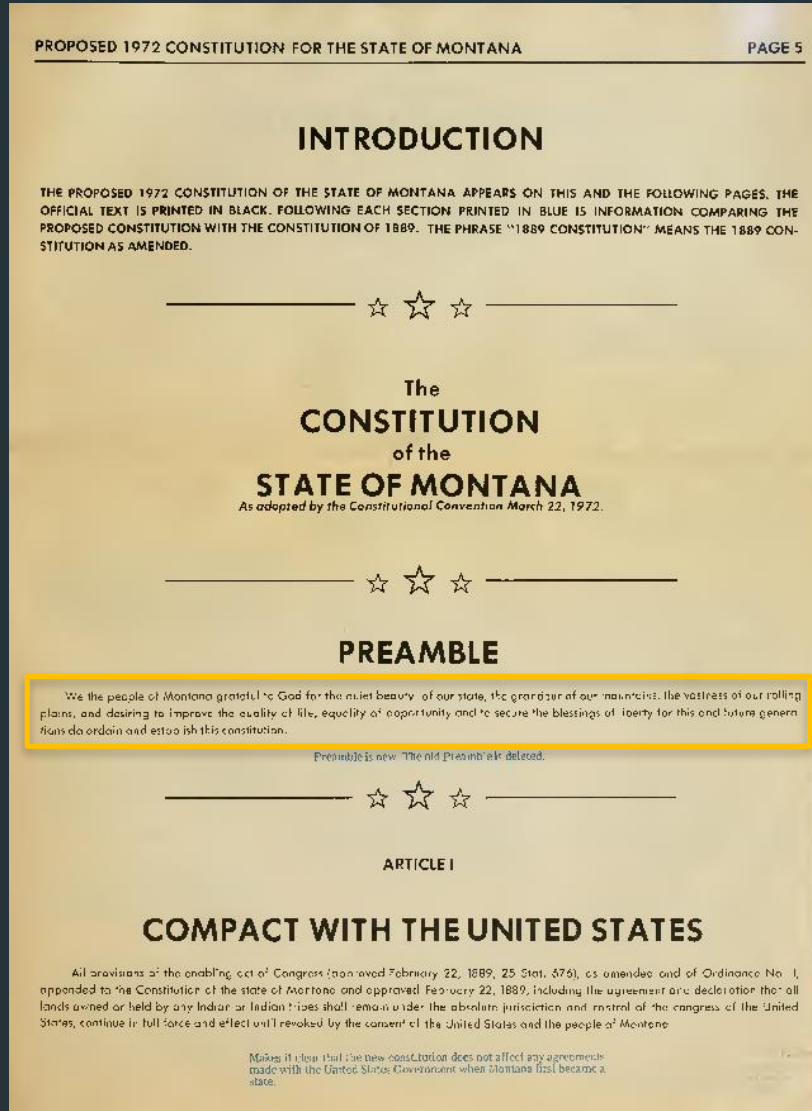


Eva

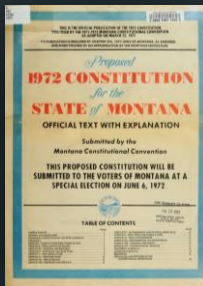


Rikki

Constitutional Preamble



We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.



*Held v. Montana
Mae Nan Ellingson*

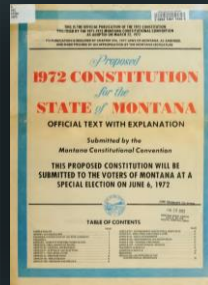
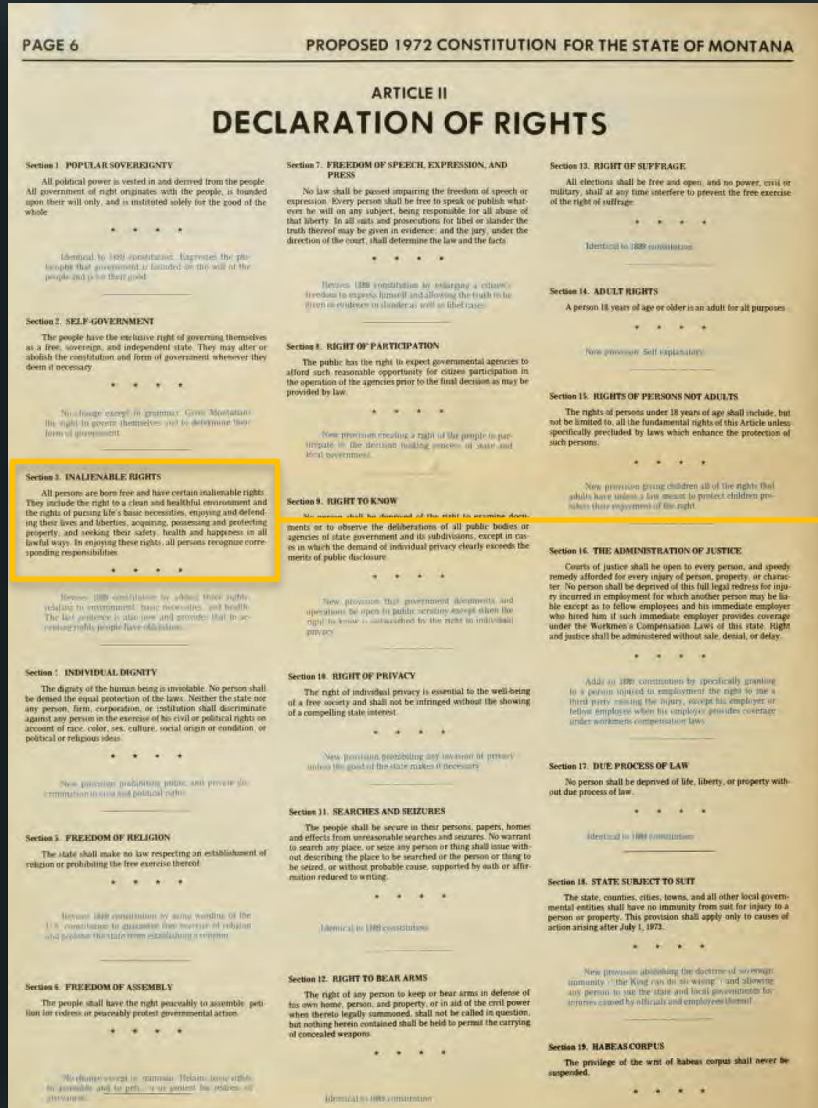
<https://archive.org/details/proposed1972cons00montrich/page/4/mode/2up>

MNE-12

Article II: Declaration of Rights

Section 3: Inalienable Rights

All persons are born free and have certain inalienable rights. They include the right to a **clean and healthful environment** and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize their corresponding responsibilities.



Held v. Montana
Mae Nan Ellingson

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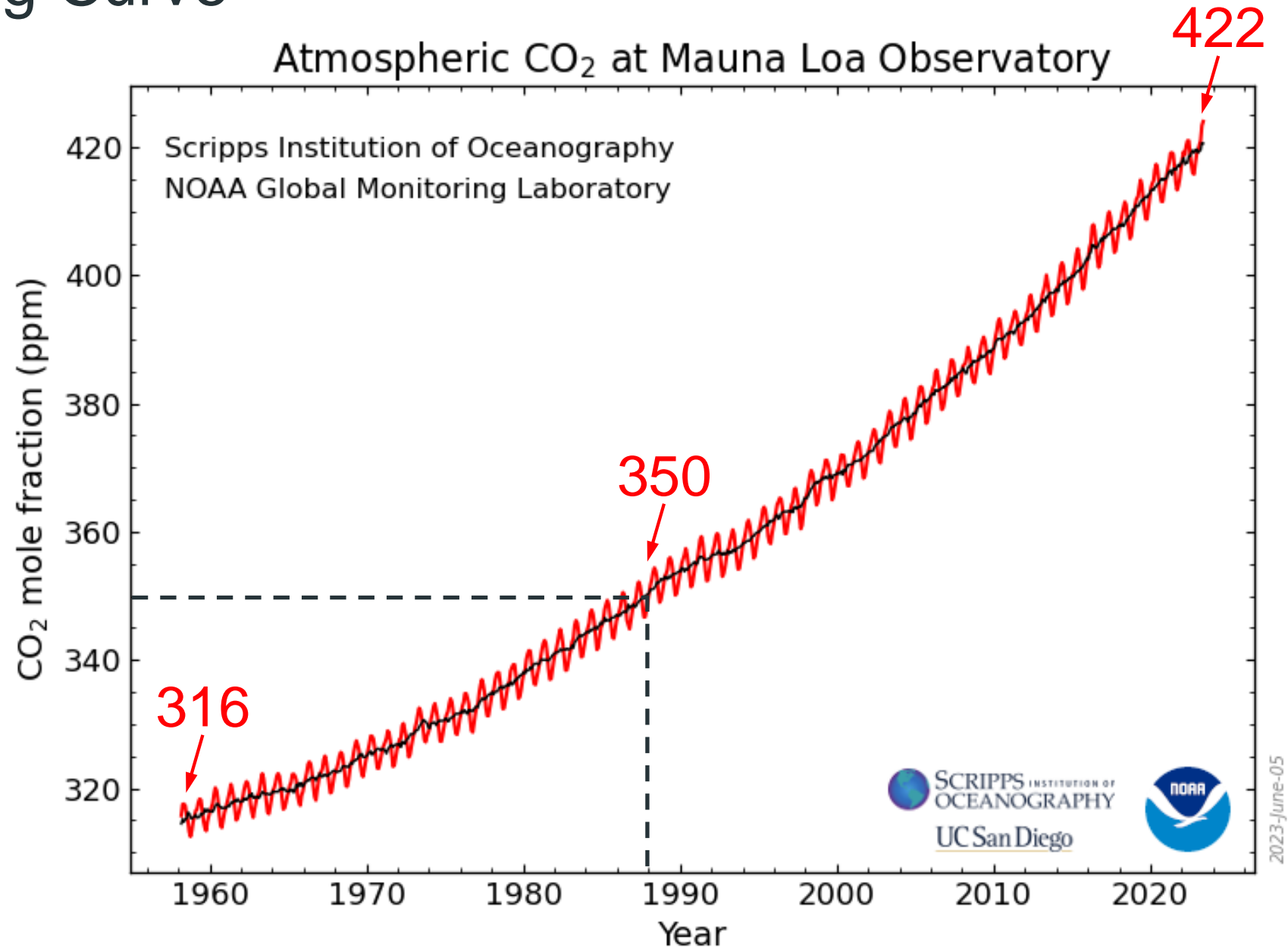
Actions by the 2023 Montana Legislature

House Bill 971 – Clarification of the Climate Change Limitation

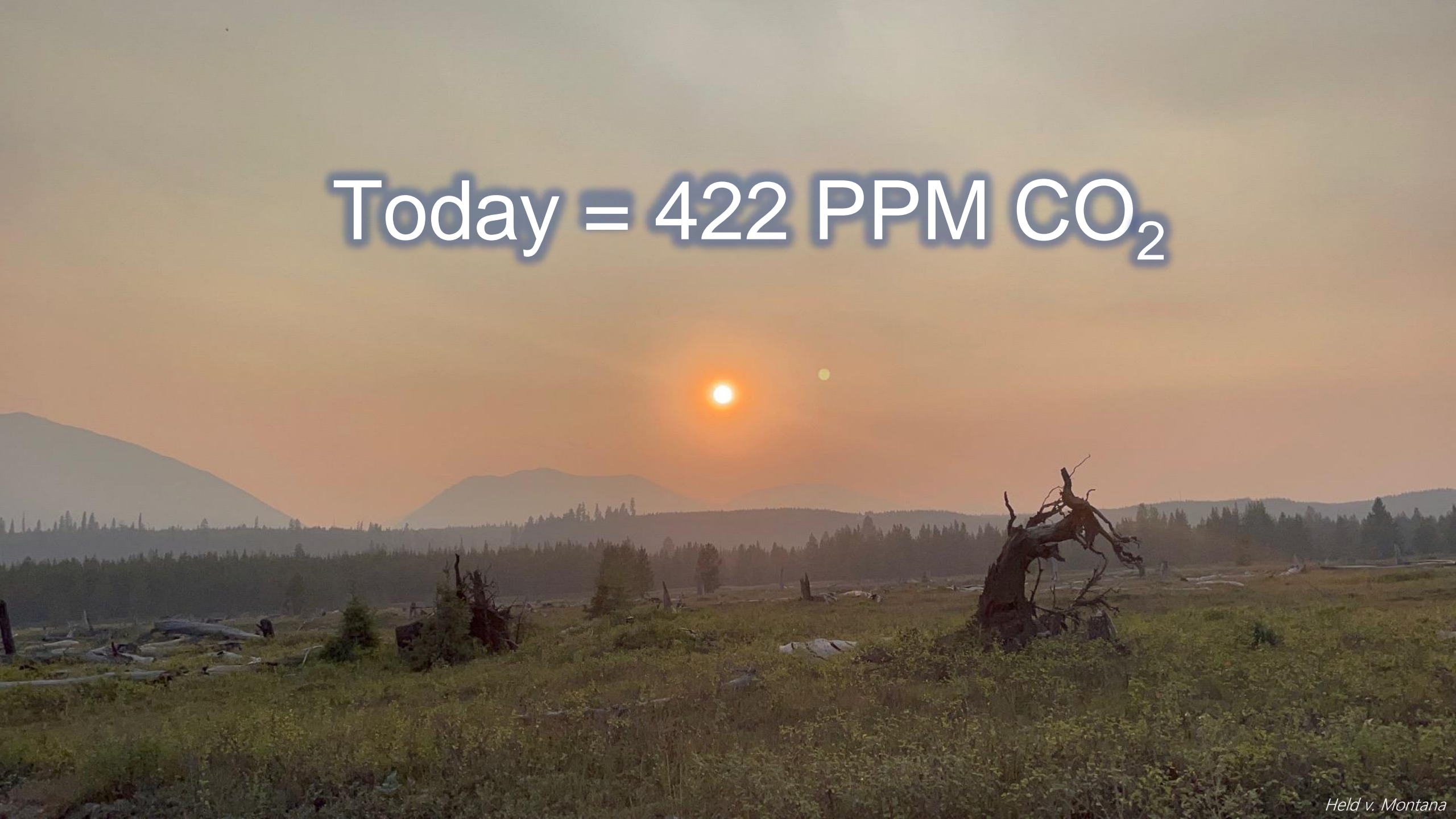
(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include an evaluation of greenhouse gas emissions AND corresponding impacts to the climate in the state or beyond the state's borders.

- *HB 971 amendments to subsection (2)(a)*

Keeling Curve



Today = 422 PPM CO₂



A scenic landscape featuring a range of rugged, snow-capped mountains under a clear blue sky. In the foreground, a dense forest of evergreen trees surrounds a calm, turquoise lake. The mountains and forest are reflected in the still water. A text overlay is centered across the middle of the image.

Stable Climate = 350 PPM CO₂

Grinnell Glacier

Repeat Photography



Hileman photo
GNP Archives

1938



Key photo, USGS

1981



Fagre photo, USGS

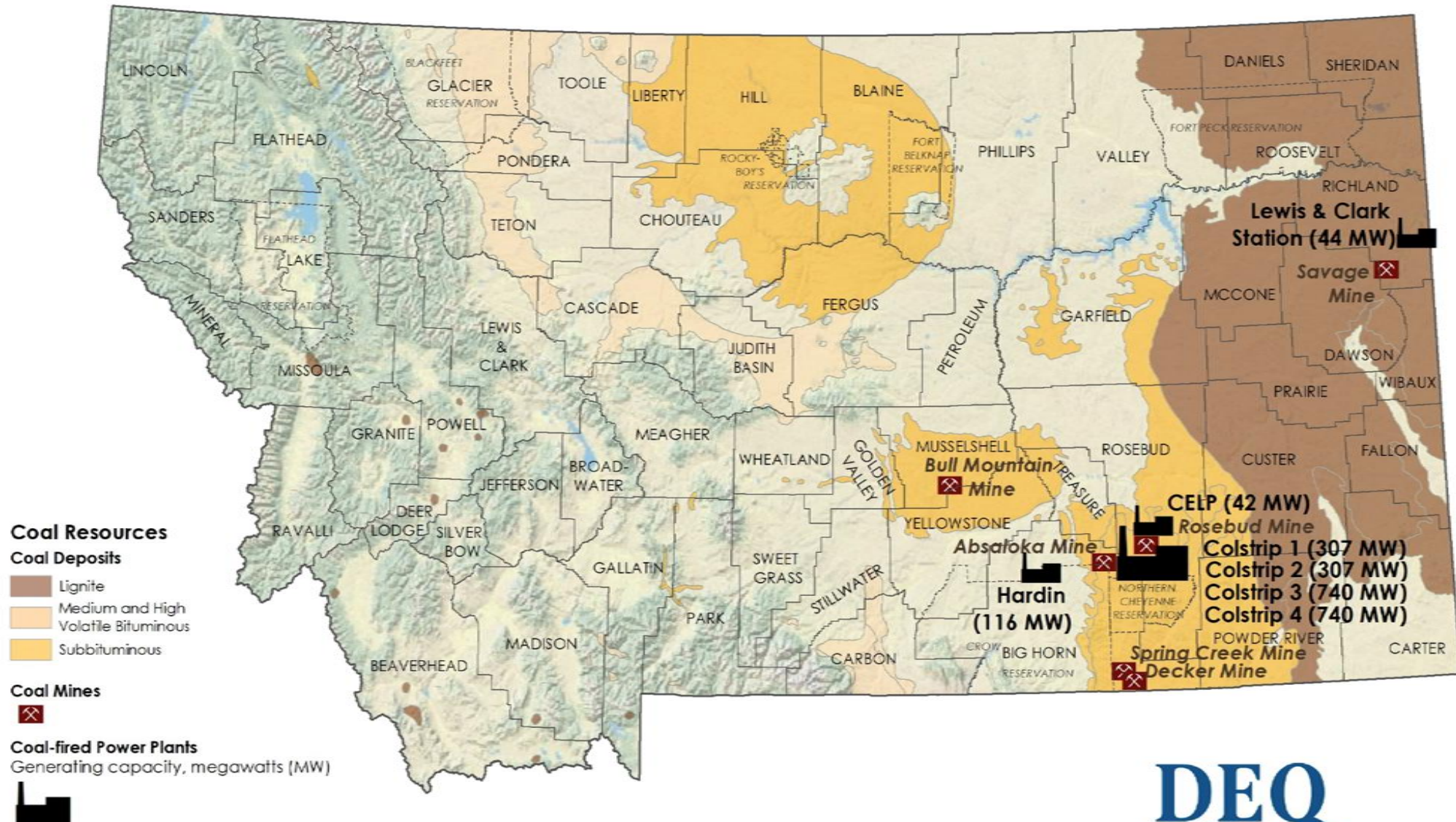
1998



Bengtson photo, USGS

2009

Coal Mines and Power Plants

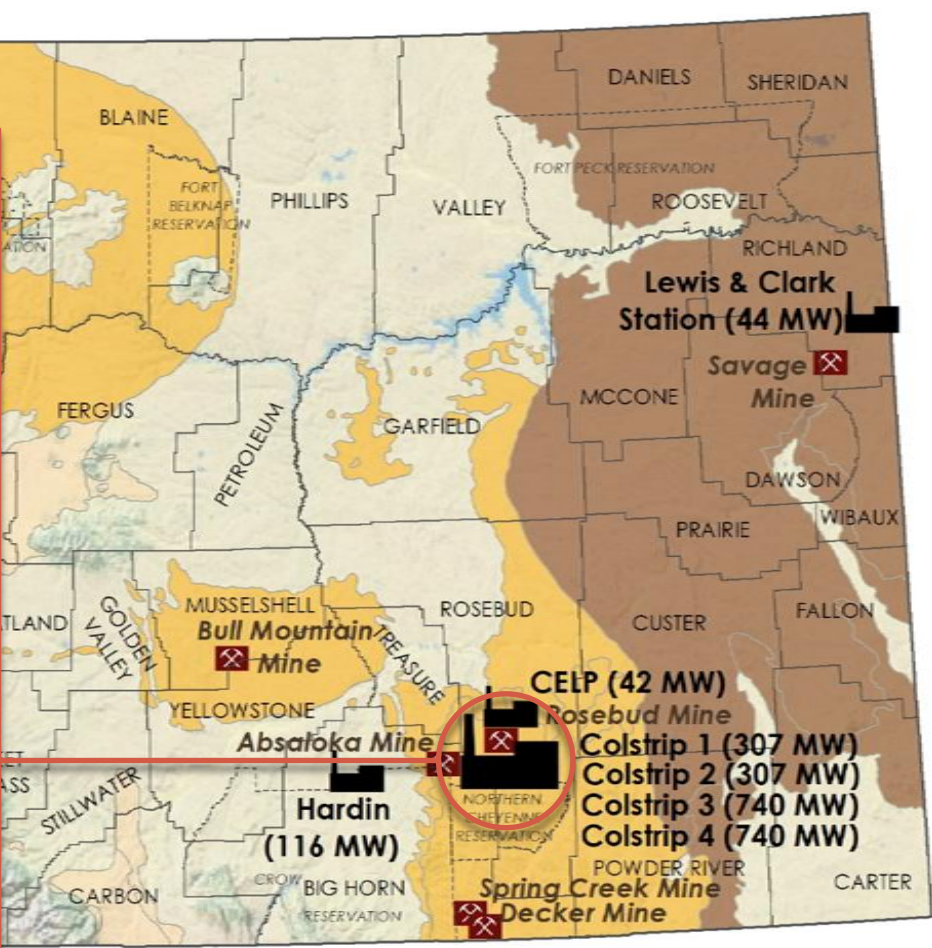


Last updated January 2018



Held v. Montana
Anne Hedges
Ex. P9, P-0001404
AH-7

Coal Deposits and Mines



Coal-fired Power Plants
Generating capacity, megawatts (MW)

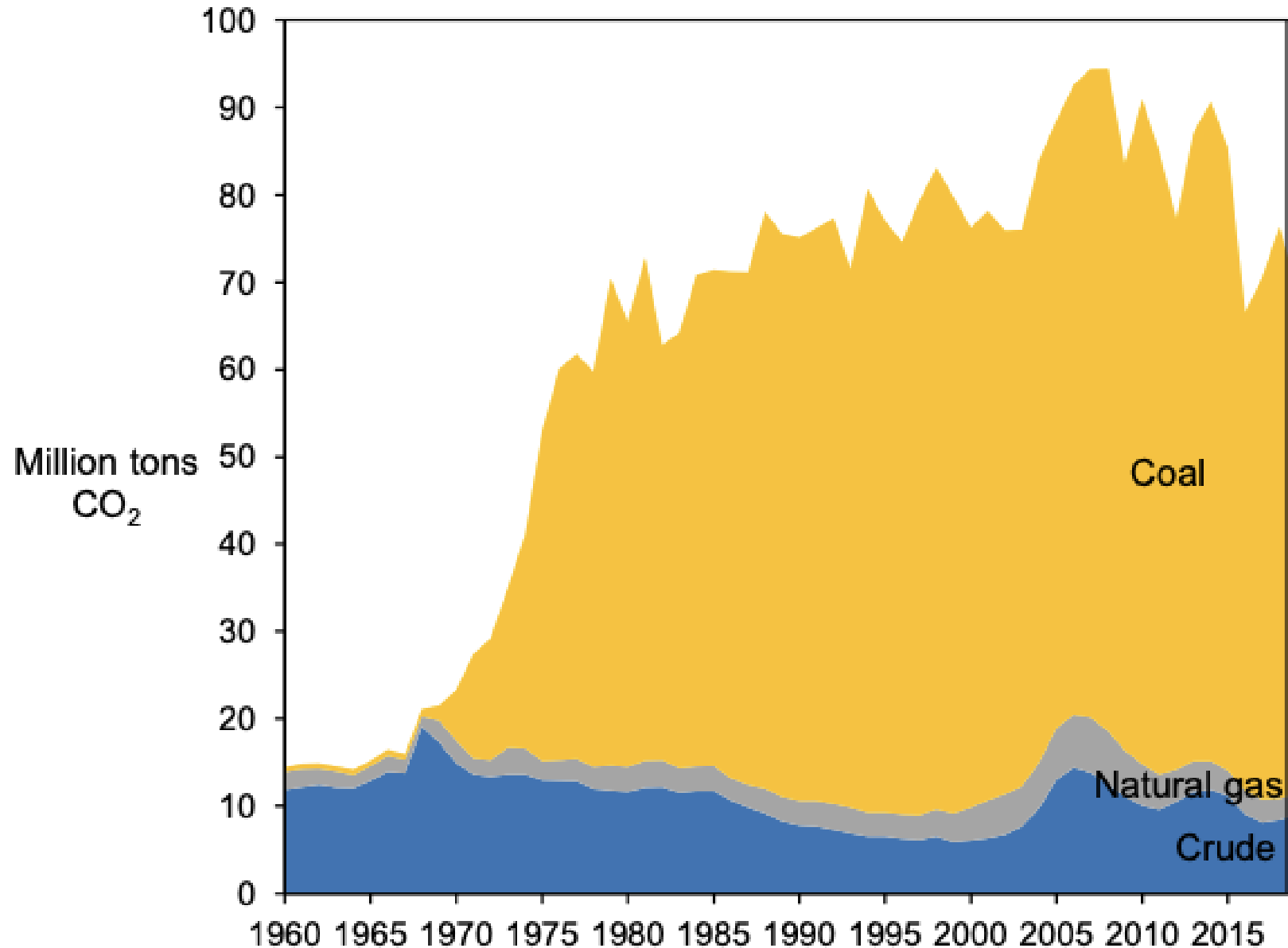


Last updated January 2018

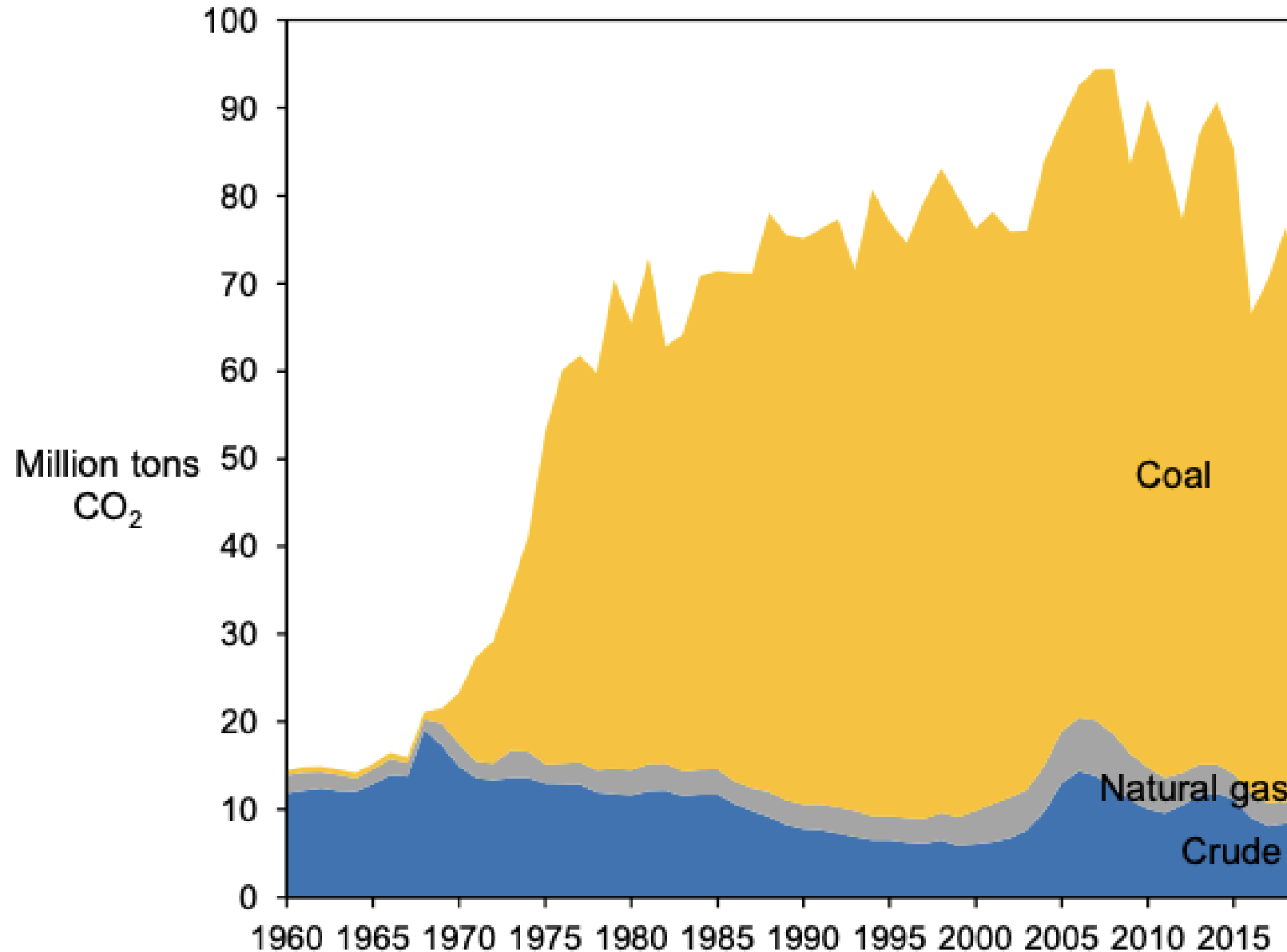


*Held v. Montana
Anne Hedges*

CO₂ From Fossil Fuels Extracted in Montana, 1960-2019

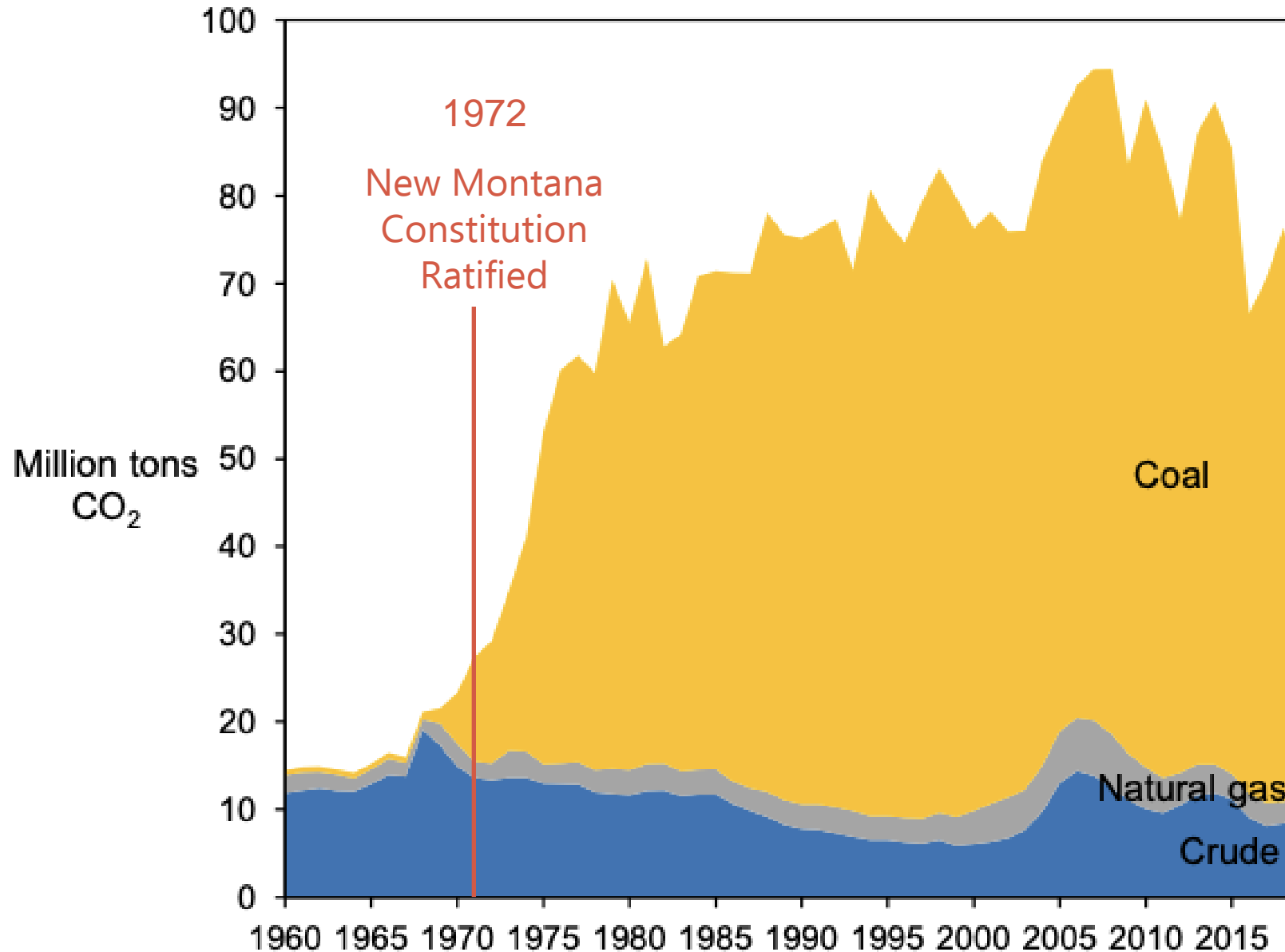


CO₂ From Fossil Fuels Extracted in Montana, 1960-2019



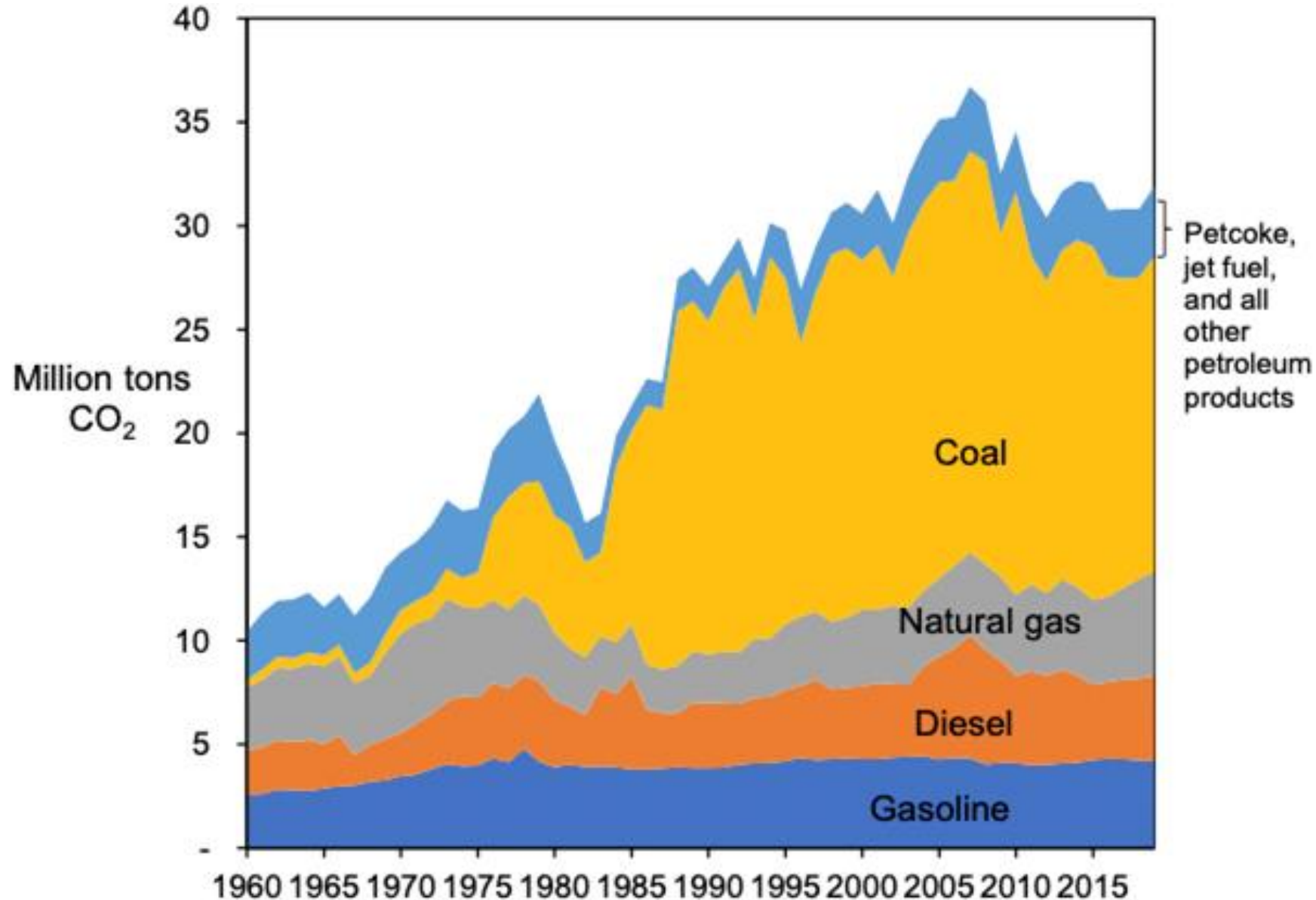
Total
Cumulative
Emissions:
**3.7 billion
metric tons
CO₂**

CO₂ From Fossil Fuels Extracted in Montana, 1960-2019

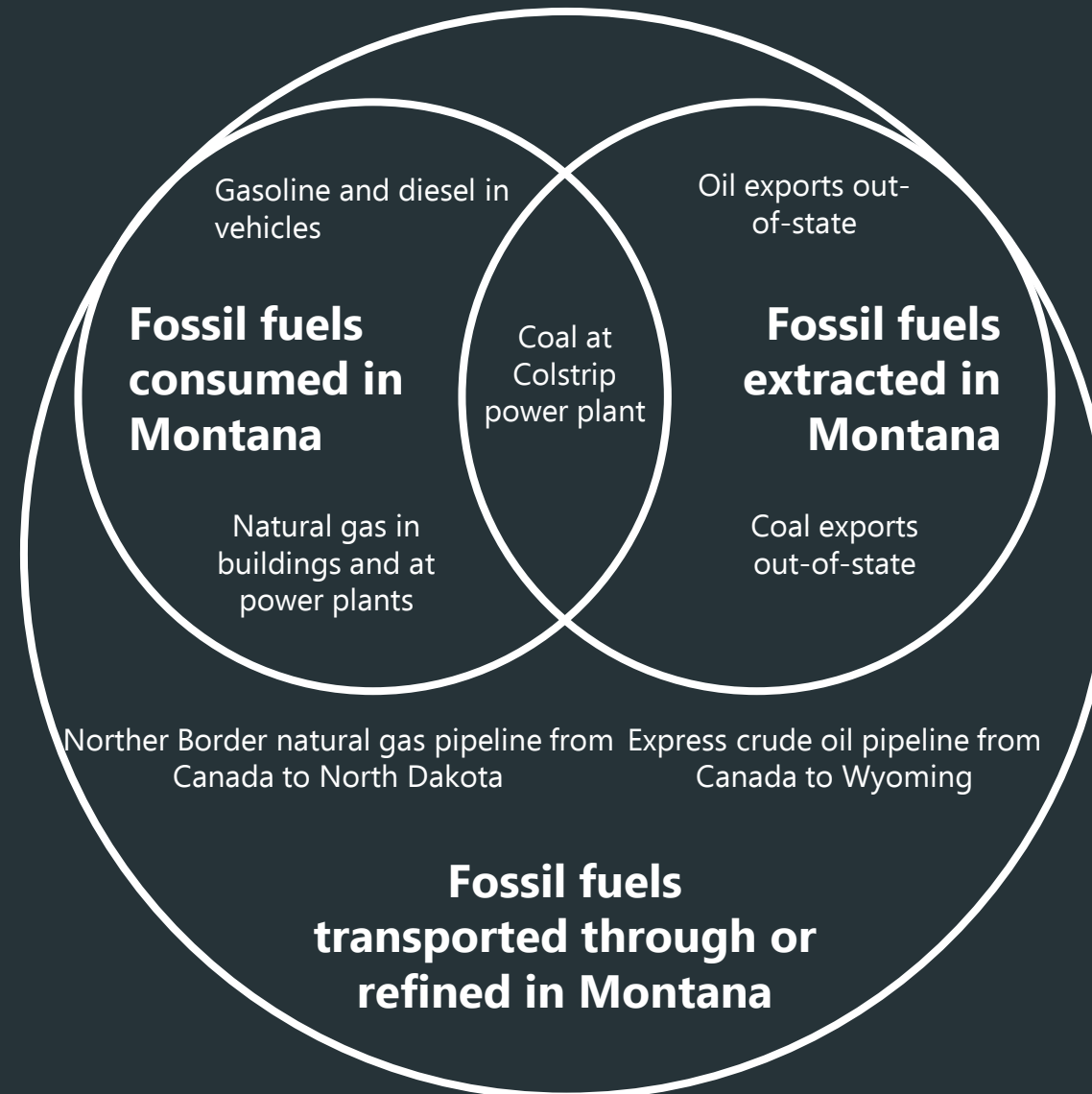


Total
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Emissions:
**3.7 billion
metric tons
CO₂**

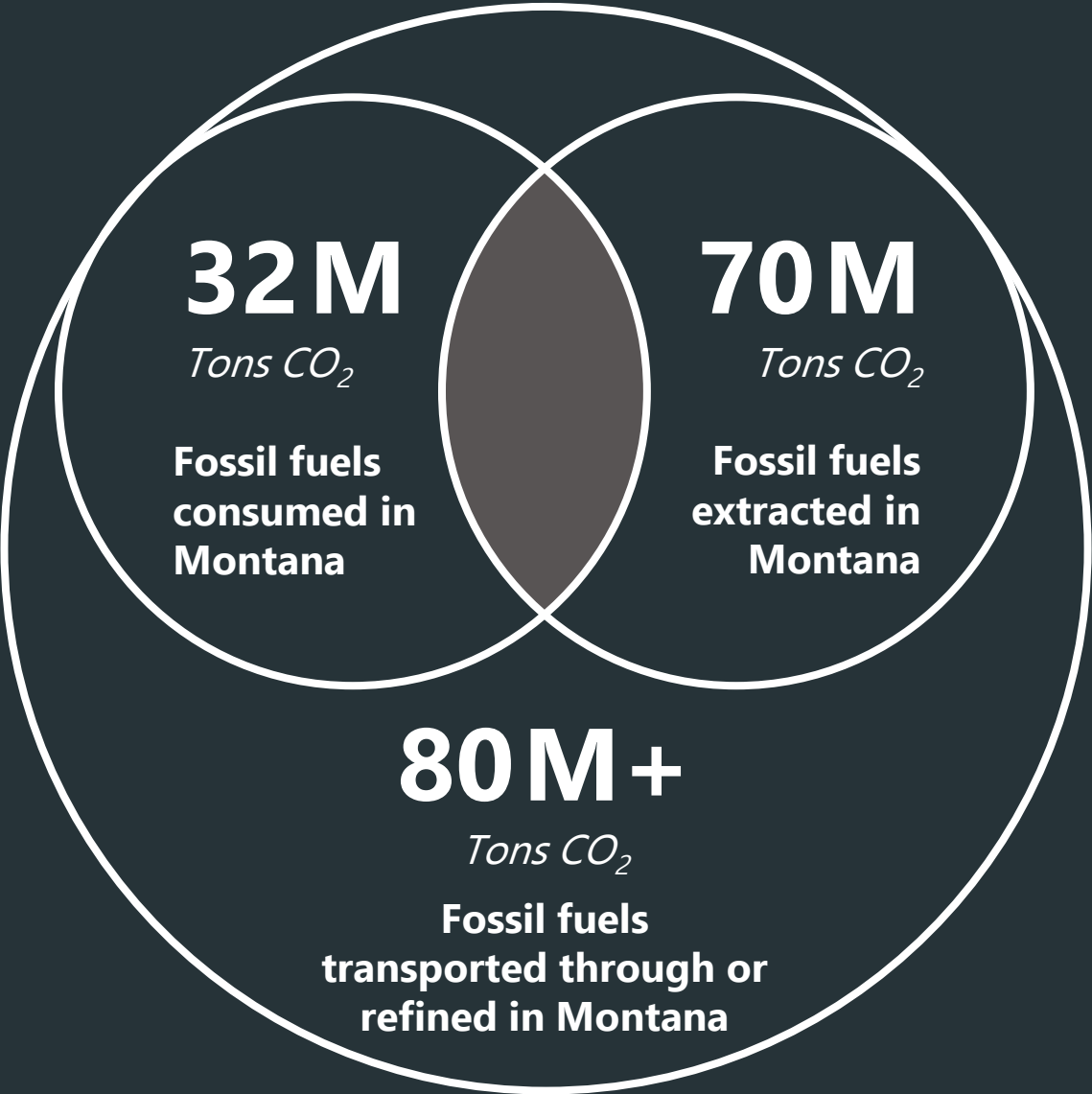
CO₂ From Fossil Fuels Consumed in Montana, 1960-2019



Categories of Fossil Fuel Activities in Montana



Categories of Fossil Fuel Activities in Montana



Total Emissions:
166
Million
Tons CO₂

Montana Fossil Fuel Production and Reserves

6 Coal Mines

Annual Production:
34 M Short Tons



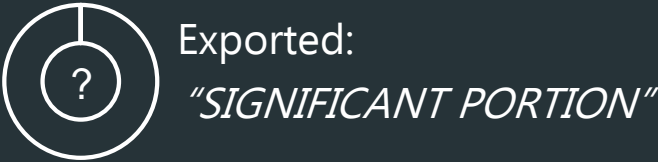
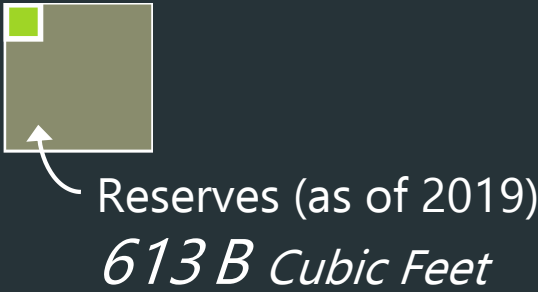
4,000 Oil Wells

Annual Production:
23 M Barrels



5,000 Gas Wells

Annual Production:
43 B Cubic Feet



Area is proportional to BTUs embodied by production / reserve quantity



Support Youth and their Climate Rights



www.ourchildrenstrust.org [#youthvgov](https://twitter.com/youthvgov)