Philip L. Gregory Co-Lead Counsel Our Children's Trust Using Litigation and the Constitution to Address the Climate Crisis

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

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

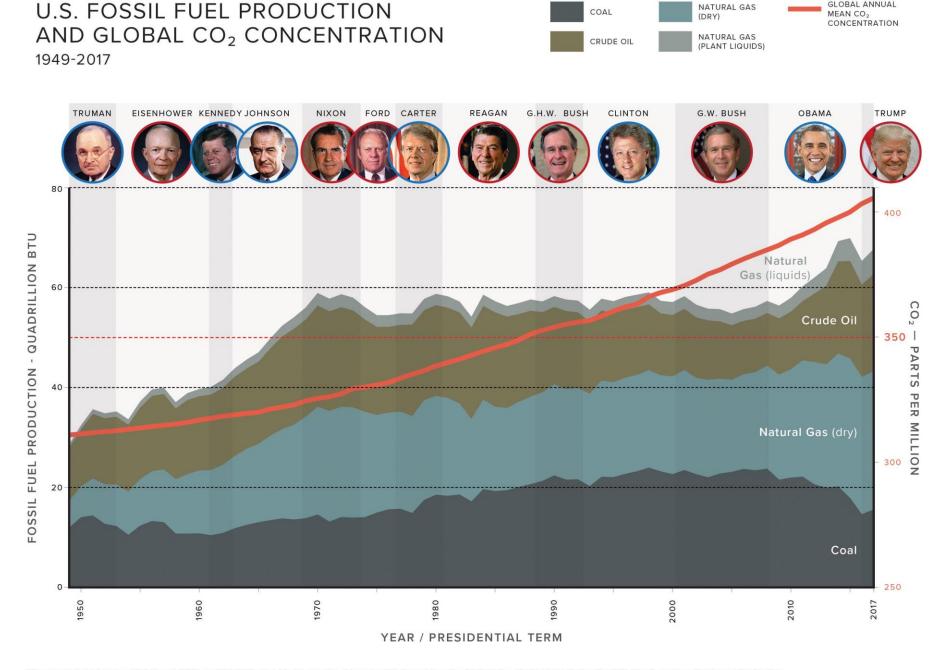
Children Trust

Juliana v. United States

SALEM

21 Youth brought this case in <u>August 2015</u> 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 fuelbased energy system
- Despite long-standing knowledge of the resulting destruction to our Nation and profound harm to these young Plaintiffs



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

4

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 <u>governmental action is</u> <u>affirmatively and substantially damaging the climate</u> <u>system</u> 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 <u>beyond the power of an Article III court</u> 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.

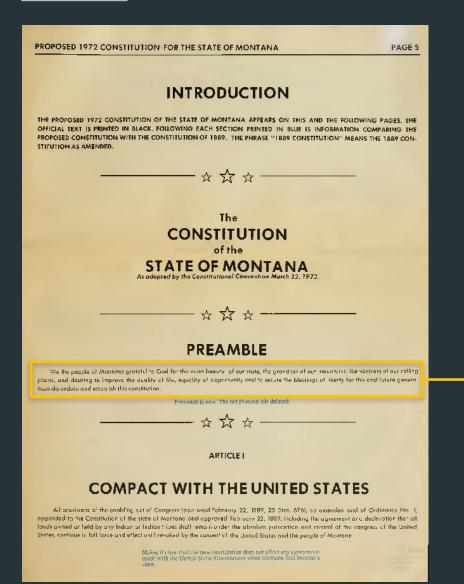
YOUTH V GOV



Watch YOUTH V GOV trailer here: <u>https://www.youtube.com/watch?v=fPC9QFwI7XY</u>



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

PROPOSED 1972 CONSTITUTION FOR THE STATE OF MONTANA PAGE 6 **ARTICLE II DECLARATION OF RIGHTS** Section 1 POPULAR SOVEREIGNTY Section 7. FREEDOM OF SPEECH, EXPRESSION, AND Section 13. RIGHT OF SUFFRAGE All political power is vested in and derived from the people All elections shall be free and open, and no power, crisi or military, shall at any time interfere to prevent the free exercise of the right of suffrage. All government of right originates with the people, is tounded inpon their will only, and is instituted solely for the good of the whole No law shall be passed ampairing the freedom of speech or expression. Every person shall be free to speak or publish what-ever he will on any subject, being responsible for all abase of that likery. In all suits and prosecutions for libel or allander the truth thereof may be given in evidence: and the jury, under the direction of the court, shall determine the law and the facts Identical to 1889 ennishilation Identical to 1989 constitution. Engrestes the pa-temptic that government is founded on the will of the people and p to their good. Newses 1389 constitution by colorging a citizen-Section 14 ADULT RIGHTS A person 18 years of age or older is an adult for all purposes Section 2. SELF-GOVERNMENT The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they Section 4. RIGHT OF PARTICIPATION Non-provision Self explanatory The public has the right to expect governmental agencies to alford such reasonable opportunity for citizes participation in the operation of the agencies prior to the final decision as may be deem it necessary. provided by law. Section 15. RIGHTS OF PERSONS NOT ADULTS. Non-theory except on gratimory Grow Monstana, in stable to govern thermolyses out to determine theo-form of government The rights of persons under 18 years of age shall include, but of be limited to, all the fundamental rights of this Article unless ortifically precluded by laws which enhance the protection of New provinion creating a radii of the purple in par-tirrpate on the dorition multing process of state and Section 3. INALIENABLE RIGHTS New provision giving children all of the rights the shalls have unless a law meant to protect children pro-All persons are born free and have certain inalignable right All persons are born tree and have certain materiante ingos. Tegi include the right to a clean and healtful environment and he rights of pursuing life's basic necessities, employing and defend-ing their lives and laberties, acquiring, possessing and perfecting receptly, and seeking their science, health and happeness in all availal ways. In mjoying these rights, all persons terogence corre-median responsibilities Section 9. RIGHT TO KNOW silves there receiverness of the right. ments or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases or as in which the demand of individual privacy clearly exceeds the merits of public disclosure Section 16. THE ADMINISTRATION OF JUSTICE Courts of particle shall be open to very person, and speedy remedy allorided for every nighty of person, property, at class-responses of the second states of the second states of the property of the second states of the second states of the heter second states of the second states of the second heter second states of the second states of the second heter second states and heter second states of the heter second states and the second states of the second heter second states states where the second states of the second states shall be administered without sale, details of defay. New provision this powermient documents and operations be open to public scruting except often the right to know a materialized by the right to individual Revises 1889 sized (Makine by addmit Holds High) Section 1 INDIVIDUAL DIGNITY Section 18 DECHT OF PRIVACY Adds to 18th constitution by specifically granting to a param injuiced in employment the night to use a furth prev mainty the night, exception his employer or fellow employee when his employer provides coverage The digraty of the human being is invisibile. No person shall be denied the equal protection of the laws. Norther the state nor any person, firm, corporation, or isofitivition shall discriminate against any person in the exercise of the civil or political rights on account of race, color, sex, culture, oscial origin to enabling or account or law, color, sex, culture, oscial origin to enablish or The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. Section 17. DUE PROCESS OF LAW No person shall be deprived of life, liberty, or property with-t due process of law. Section 11. SEARCHES AND SEIZURES The people shall be secure in their persons, papers, home and effects from unreasonable searches and sessures. No warrant to search any place, or seize any person or thing shall issue with-out describing the place to be searched or the person or thang to he seized, or without probable cause, supported by oath or affir-Attestical to 1988 constitutions Section 5 FREEDOM OF RELIGION The state shall make no law respecting an establishment of reduced to writing. Section 18. STATE SUBJECT TO SUIT The state, counties, eities, towns, and all other local govern-ential entities shall have no immunity from sait for injury to a eron or property. This provision shall apply only to causes of tion arising after July 1, 1973. laware law constitution or same wording of the a constitution to galaxies from worrar of religion of position through removes and along a commu-Identical in 1889 constitutions New provision abidiohing the doctrine of a Section 12. RIGHT TO BEAR ARMS Section 6 FREEDOM OF ASSEMBLY The right of any perion to keep or hear arms in delense of this own heme, person, and property, or in aid of the erril power when thereto legally summoned, shall not be called in question, but nothing been contained shall be held to permit the currying The people shall have the right peaceably to assemble peti in for rodress or peaceably protest governmental action ol concealed wespons Section 19. HABEAS CORPUS The privilege of the writ of habeas corput shall never be to assemble and to pets. It or president his resident of Identical as only consideration

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.

 responsibilities.
 Held v. Montana

 Mae Nan Ellingson

 https://archive.org/details/proposed1972cons00montrich/page/6/mode/2up

 MNE-16

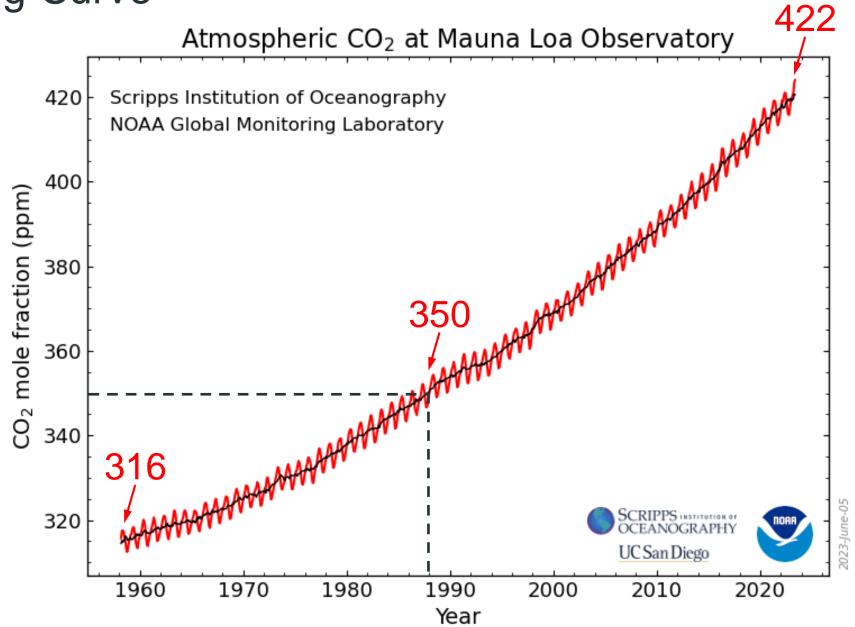
Actions by the 2023 Montana Legislature

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



Held v. Montana Steven Running

$Today = 422 PPM CO_2$

Stable Climate = 350 PPM CO₂

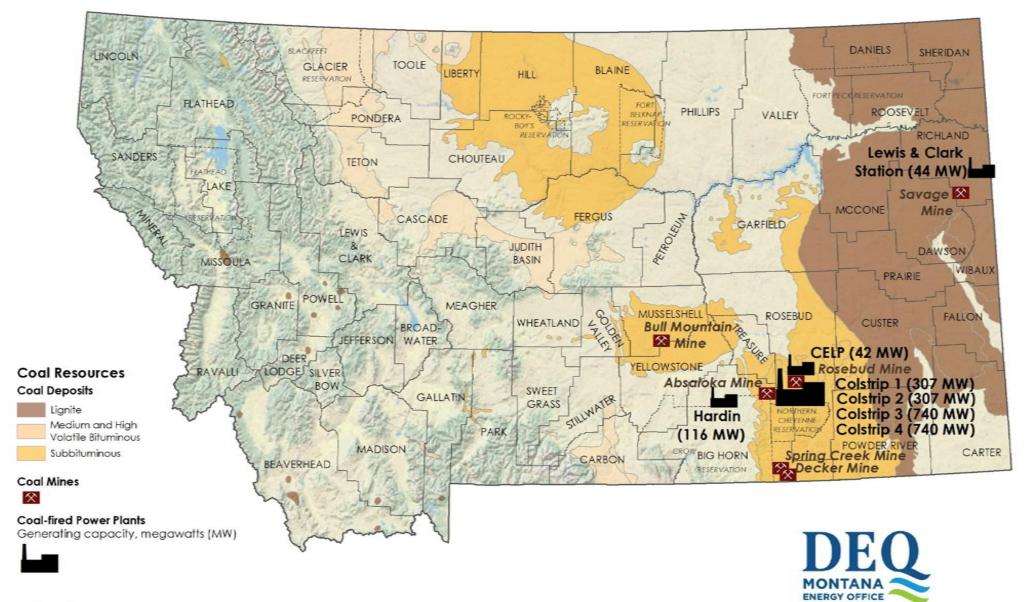
Held v. Montana

Grinnell Glacier Repeat Photography

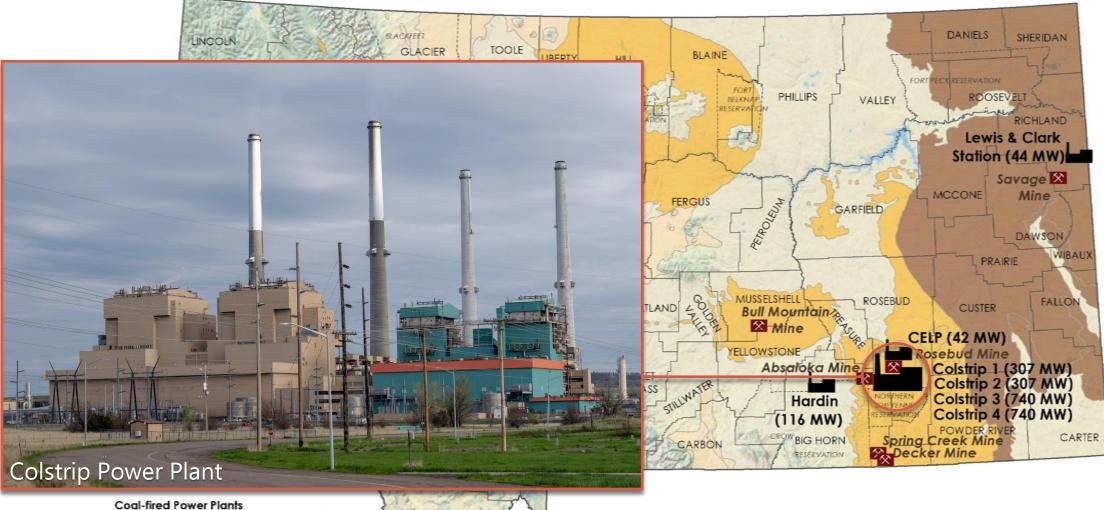


Held v. Montana Dan Fagre

Coal Mines and Power Plants



Coal Deposits and Mines



Generating capacity, megawatts (MW)

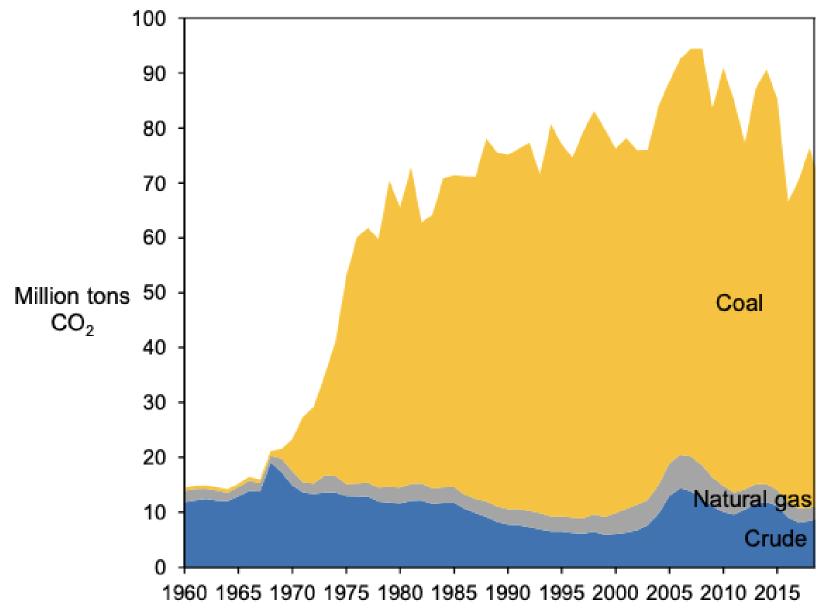


f summer



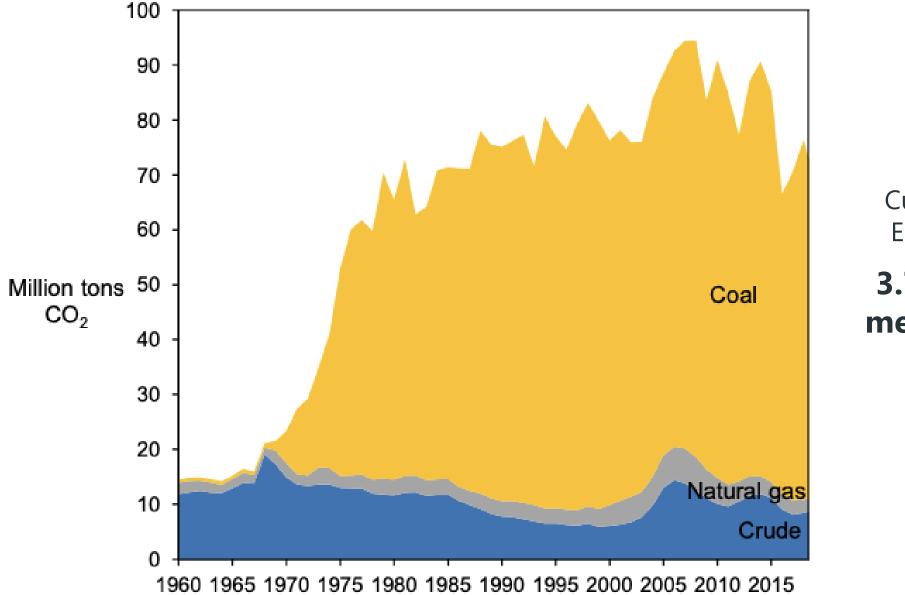
Held v. Montana Anne Hedges

CO₂ From Fossil Fuels Extracted in Montana, 1960-2019



Held v. Montana Peter Erickson

CO₂ From Fossil Fuels Extracted in Montana, 1960-2019

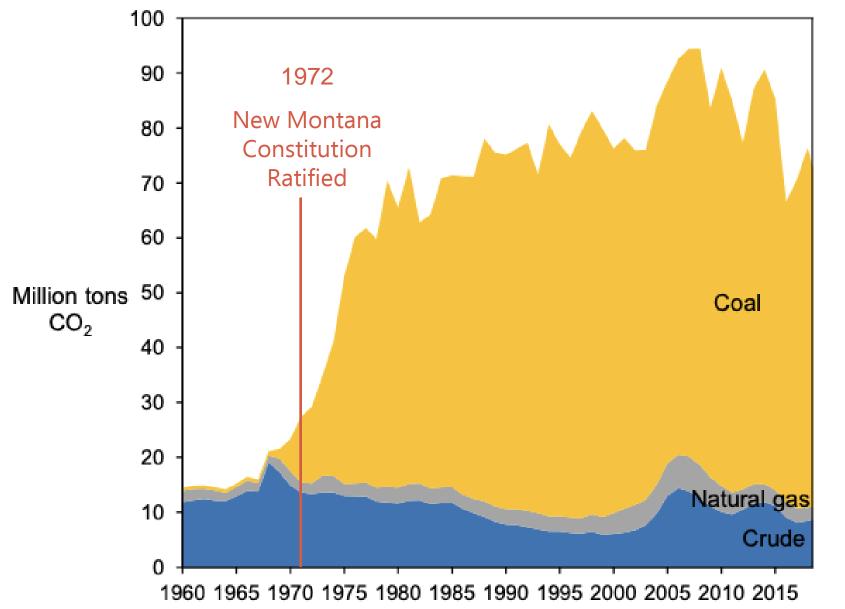


Total Cumulative Emissions:

3.7 billion metric tons CO₂

> *Held v. Montana Peter Erickson ER at 7, Fig. 2 PE-26*

CO₂ From Fossil Fuels Extracted in Montana, 1960-2019

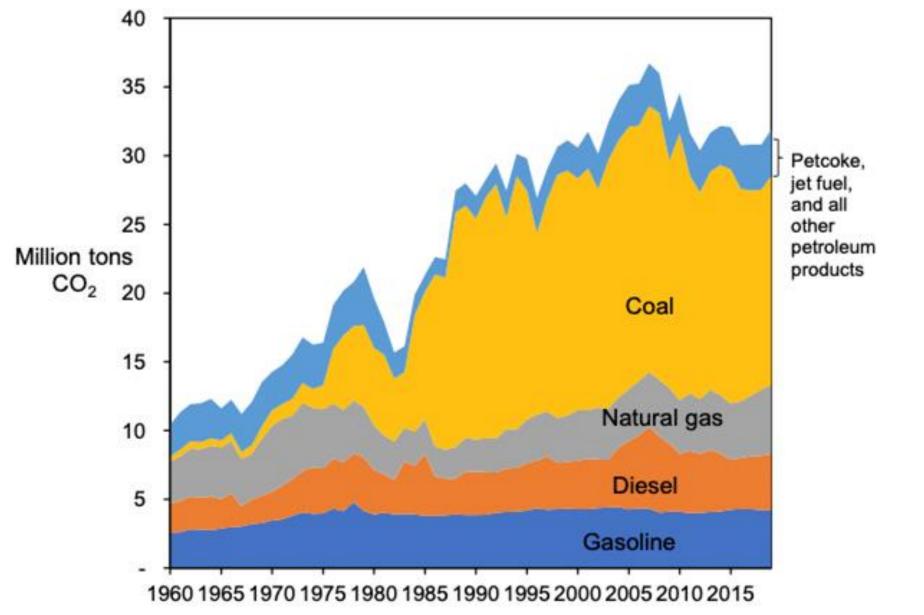


Total Cumulative Emissions:

3.7 billion metric tons CO₂

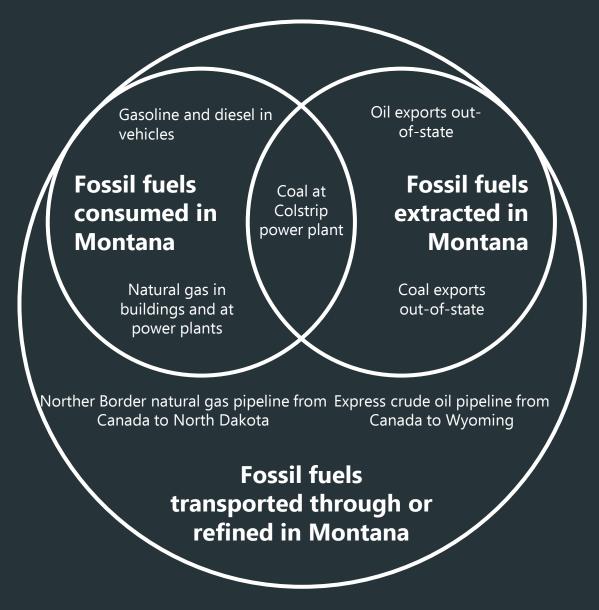
> *Held v. Montana Peter Erickson ER at 7, Fig. 2 PE-27*

CO₂ From Fossil Fuels Consumed in Montana, 1960-2019



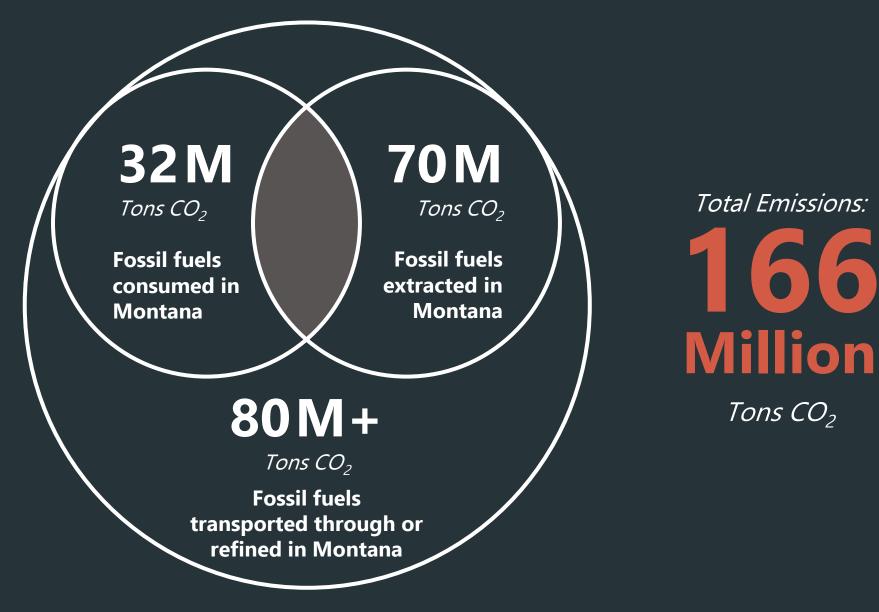
Held v. Montana Peter Erickson

Categories of Fossil Fuel Activities in Montana



Held v. Montana Peter Erickson ER at 5, Fig. 1 PE-11

Categories of Fossil Fuel Activities in Montana



Held v. Montana Peter Erickson PE-17

Montana Fossil Fuel Production and Reserves

6 Coal Mines **Annual Production:** 34 M Short Tons Reserves (as of 2019) 707 M Short Tons

4,000 Oil Wells

Annual Production: 23 M Barrels Reserves (as of 2019) 298 M Barrels



5,000 Gas Wells Annual Production: 43 B Cubic Feet Reserves (as of 2019) 613 B Cubic Feet Exported:

"SIGNIFICANT PORTION"



Held v. Montana Peter Erickson PE-37

Area is proportional to BTUs embodied by production / reserve quantity



Support Youth and their Climate Rights



www.ourchildrenstrust.org

