

YELLOWSTONE COUNTY – A Commissioner’s response to the issues surrounding the data center “controversy”

The proposed Big Sky Digital Infrastructure (Broadview Data Center) sits in the center of competing legal statutes and government regulations.

The Montana Constitution unequivocally protects personal property rights. Real estate transactions are an example of personal property rights. One party has the right to sell their property to another party without government interference. Yellowstone County and the Yellowstone County Commissioners must and do adhere to the Montana Constitution.

Yellowstone County’s authority and powers are also limited by the power granted to it by the State of Montana. This authority is referred to as general powers. Yellowstone County, as a general-powers county, only has that limited authority. Most of the authority at issue in this dispute is reserved to the State of Montana. For example, the State manages water through the Department of Natural Resources and Conservation (DNRC), electric generation and transmission through the Public Service Commission (PSC) and hazardous waste through the Montana Department of Environmental Quality (MT DEQ).

Recently, the State limited Yellowstone County’s authority and passed the Right to Compute Act. This Act provides that local government could only restrict computational resources if those restrictions were narrowly tailored to fulfill a compelling government interest. Specifically, it states: “Government actions that restrict the ability to privately own or make use of computational resources for lawful purposes, which infringes on citizens’ fundamental rights to property and free expression, must be limited to those demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest.” This appears to be a very broad definition

of government action and one that, under the general powers rule, a County Commission must follow.

On June 15, 2026 a proposed initiative was submitted to the County to regulate the construction, expansion, and continued operation of data centers within Yellowstone County. A short time after that, the Montana Supreme Court issued a decision relevant to whether this type of citizen-led initiative was valid. The Supreme Court issued this decision on June 23, 2026, just two days prior to the County's approval of the initiative as to form.

Because of this legal decision, on July 8, 2026, Yellowstone County filed a lawsuit, which only the County is authorized to do under MCA 13-28-401, to determine the validity of the proposed initiative. The initiative sought to require the County to obtain voter approval before authorizing, licensing, permitting, or otherwise approving the construction, expansion, or continued operation of data centers and might even terminate certain existing land uses. The concern in the lawsuit is that the Legislature has not authorized counties to extinguish land uses through the initiative process.

The County, based on the recent Supreme Court decision and the Right to Compute Act, needed a court determination about the validity of this type of initiative and whether the initiative can move forward. The statutes under which the initiative was brought specifically authorize the County to file a validity determination lawsuit. This statute gives the County only 14 days after approving an initiative as to form to bring this suit and tells the Court to make the issue a priority. The reason that the Legislature gave this power to the County is so citizens can quickly understand whether this initiative process is valid and can proceed.

In its lawsuit, the County asked for expedited argument and briefing from the Court because of the tight deadlines for signature submission and certification to the petitioners. Unfortunately, on August 11, 2026, a District Judge ruled the deadline for

signature gathering expired on July 13, 2026. The court noted MCA Section 13-28-206(3) provides petitioners with the option to request a special election for a referendum. It is likely that the County, even if some interested parties would like a special election, will still need to seek a ruling on the validity of this type of initiative. The County cannot ignore the Montana Supreme Court, the Legislature, and the Right to Compute Act just because of public pressure.

Yellowstone County and the Commissioners are caught between individuals trying to invoke the citizen petition initiative process and state laws limiting the Commissioners' authority. In this matter, Yellowstone County is trying to stay neutral. We have only filed the lawsuit asking for a validity determination. The County did not join in other lawsuits regarding this issue. We cannot prevent an interested party on either side of this dispute from joining our filing or raising their own issues with the courts. The Commissioners need to be fair by treating all interested parties equitably or risk a lawsuit that could ultimately impact taxpayers from either side.

Mark Morse, Chair

Yellowstone County Commissioners