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Submitted On: 8/27/2026

Docket Number: 26-SPPE-01

Requesting a full EIR, Complete and Stable Description, Additional Data Requests, and Enforceable Mitigation

Please see full comments in letter attached. An executive summary is below:

Taxpayers for Accountability for Our Groundwater (TAOG) submits these supplemental comments on the RB Inyokern Data Center (RBIDC) Small Power Plant Exemption application, Docket No. 26-SPPE-01, to address the record as it stands following the CEC's Data Requests Set 1, the applicant's data responses and appendix revisions, and comments from public agencies filed through TN 271977.

TAOG's central position is that the project is not yet ready for an exemption decision or for circulation of an environmental document. The application still lacks a stable, internally consistent description of the elements that control the location and magnitude of its impacts - including generator operating parameters, battery chemistry and capacity, cooling technology and water demand, both proposed SCE transmission routes, and the status of aviation and airport-compatibility review. Several of these items are directly contradicted elsewhere in the same filing (for example, conflicting statements on whether an FAA Form 7460-1 or an ALUC consistency determination has been obtained or remains pending), and CEC staff's own Data Requests Set 1 confirm that comparable gaps affect construction water use, emissions, sensitive receptors, and biological surveys.

Public agencies and service providers with direct expertise - the Indian Wells Valley Water District, the Naval Air Weapons Station China Lake, the Sierra Sands Unified School District, the Indian Wells Valley Airport District, and the Eastern Kern County Resource Conservation District - have submitted fact-supported evidence raising unresolved concerns about groundwater sustainability and supply reliability, air quality and health effects at a nearby elementary school, electromagnetic interference and thermal plumes affecting the Navy's mission, aviation safety, and biological and cumulative impacts. TAOG's technical appendix further shows that the applicant's July 28, 2026 emergency-well and geotechnical filings establish only that a well is likely physically feasible, not the site-specific yield, drawdown, or interference analysis needed to support a defined pumping envelope.

Under CEQA's fair-argument standard, this body of agency evidence independently warrants preparation of an Environmental Impact Report. TAOG asks the CEC to issue a Notice of Preparation and prepare an EIR or, at minimum, to hold the application in abeyance, issue further data requests, require a consolidated and corrected project description and approval-status matrix, and resolve improperly deferred studies and mitigation before circulating any environmental document. TAOG further requests that no exemption be granted unless the CEC adopts a fully enforceable mitigation

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August 27, 2026

California Energy Commission

Re: RB Inyokern Data Center - Additional Comments – Docket No. 26-SPPE-01

Subject: Supplemental Comments Requesting an Environmental Impact Report, a Complete and Stable Project Description, Additional Data Requests, and Enforceable Mitigation Before Any Small Power Plant Exemption Decision

Dear Commissioners and CEC Staff:

I am writing once again on behalf of Taxpayers for Accountability for Our Groundwater, a grassroots citizens group representing hundreds of residents of the Indian Wells Valley who are deeply concerned with local groundwater sustainability and its impact on our quality of life and local economic development. Taxpayers for Accountability for Our Groundwater (TAOG) submits these supplemental comments concerning the application by R&L Capital Inc. LLC for a Small Power Plant Exemption (SPPE) for the RB Inyokern Data Center (RBIDC).

As a preliminary matter, and as in our previous letter, we respectfully ask the Commission to keep in mind that we are concerned citizens, not attorneys or technical experts. We have made a good-faith effort to research and accurately describe the legal standards, regulatory citations, scientific data, and project facts discussed below that address our concerns as local community members, but we recognize that some of our characterizations may contain minor errors or imprecision in technical or legal matters. We respectfully request that the Commission consider the substance of our concerns on their merits, and that any inadvertent error in a citation, figure, or legal description not be treated as a basis for disregarding the underlying concern, the section in which it appears, or this comment as a whole. Where our understanding is imperfect, we ask the Commission and its staff, who possess the relevant expertise, to evaluate the genuine environmental and public-interest questions we raise.

TAOG previously submitted comprehensive comments on June 10, 2026. (TN 270472.) These supplemental comments address material filed or identified since then, including the California Energy Commission's Data Requests Set 1 (TN 270553), the applicant's Data Response Set 1 and supplements (including TNs 271054, 271057-271058, 271092-271099, 271129, 271585, and 271673-271675), comments from public agencies and affected service providers (TNs 270501, 270593, 270613, 271008, and 271977), and the current state of the docket through TN 271977. They focus on whether the project is ready for environmental review or an exemption decision, whether the record requires an environmental impact report (EIR), and whether proposed mitigation would be enforceable.

TAOG recognizes that every construction drawing and final equipment detail need not be completed before CEQA review. That is not our contention. The problem is that RBIDC still lacks or contradicts information that controls the identity, footprint, operating envelope, and environmental effects of the project. Several purported mitigation measures would leave later studies or permits to perform the first meaningful analysis of those effects. The CEC should not circulate an environmental document or recommend an exemption until those deficiencies are corrected. The existing fact-supported agency evidence independently warrants preparation of an EIR under CEQA's fair-argument standard.

Requested Action

TAOG respectfully requests that the CEC:

1. Announce that it will prepare an EIR and issue a Notice of Preparation for public and agency scoping.
2. Alternatively, hold the SPPE application in abeyance and issue additional data requests before selecting or circulating a CEQA-equivalent document.
3. Require a consolidated, accurate, stable, and internally consistent project description that identifies the complete project and all reasonably foreseeable phases and connected infrastructure.
4. Require a corrected, verified approval-status matrix supported by the underlying submissions and agency determinations.
5. Require the applicant to supply the analyses and commitments needed to replace improperly deferred studies and open-ended mitigation.
6. Prepare and circulate a CEC environmental document that reflects the CEC's independent judgment and addresses the whole project and the entire administrative record.
7. Recirculate the environmental document if later engineering, agency review, or mitigation materially changes the project or discloses a new or substantially more severe impact.
8. Adopt no exemption unless every mitigation measure is definite and enforceable through a CEC-adopted mitigation monitoring and reporting program (MMRP), with identified responsible agencies that have accepted their duties in writing.
9. Deny the SPPE if the completed record does not support the finding required by Public Resources Code section 25541 that the project will cause no substantial adverse impact on the environment or energy resources.

I. The CEC Must Complete Its Own CEQA Review Before Granting an SPPE

Public Resources Code section 25519, subdivision (c), designates the CEC as lead agency under CEQA for an SPPE. Current CEC regulations expressly require compliance with CEQA and the CEQA Guidelines. (20 Cal. Code Regs., sections 1936, subd. (c), 1940-1942.) Public Resources Code section 21082.1 requires the lead agency to independently review and analyze the environmental document, circulate a document reflecting its independent judgment, and make an independent-judgment finding when adopting or certifying it.

The SPPE therefore is not a preliminary clearance that may be granted while Kern County, Southern California Edison (SCE), the Inyokern Community Services District (ICSD), Eastern Kern Air Pollution Control District (EKAPCD), the Federal Aviation Administration (FAA), or another agency later determines what will be built and whether its impacts can be avoided. Those agencies possess important expertise and later permitting authority, but their proceedings cannot substitute for the CEC's lead-agency analysis.

Current CEC practice confirms the required sequence. In the STACK Infrastructure Hayward Backup Generating Facility proceeding, the CEC adopted a Final Initial Study/Mitigated Negative Declaration and an MMRP before granting the exemption. It independently reviewed the record, found that the environmental document reflected its independent judgment, and treated the data center, generators, onsite substation, utility switching station, and transmission facilities as the CEQA project. The CEC followed the same basic sequence for the AVAIO Digital Partners Pittsburg Backup Generating Facility.

For the Bowers Backup Generating Facility, the CEC certified a Final EIR and adopted enforceable mitigation before granting the SPPE. The CEC's August 5, 2026 Notice of Preparation for the Vernon Backup Generating Facility likewise shows that an EIR is fully compatible with an SPPE proceeding.

These precedents do not dictate the substantive outcome here, but they demonstrate that the CEC must finish an appropriate CEQA document, make the required findings, and adopt enforceable mitigation before deciding whether section 25541 has been satisfied. TAOG asks the CEC to state expressly in this docket that future County and third-party approvals will implement, rather than replace, the CEC's environmental review.

II. The CEC Must Analyze the Whole Action, Including Connected Infrastructure

CEQA Guidelines section 15378 defines the project as the whole action that may cause a physical environmental change. Section 15063 requires an initial study to consider all phases of project planning, implementation, and operation. CEQA prohibits dividing a single undertaking into smaller approvals that conceal its aggregate effects. (See *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376.)

The whole RBIDC action includes more than the forty diesel generators. The application describes forty 3-megawatt generator sets, totaling 120 megawatts of aggregate nameplate capacity, while proposing to limit operation to 99 megawatts. (TN 269893, sections 1.4.2 and 1.4.8.) At minimum, the whole action includes the data-center buildings and mechanical systems; generator yards and stacks; fuel storage and delivery; battery energy storage; onsite solar; onsite substation; SCE substation modifications, switching, and subtransmission lines; water supply and emergency well facilities; sewer connections and cooling-water discharge; stormwater and drainage facilities; access roads and construction staging; telecommunications routes; parcel reconfiguration; annexation-dependent service extensions; landscaping and

lighting; and any proposed helicopter landing area or functionally related aviation component. Temporary construction areas and offsite utility work also must be included wherever they may cause physical effects.

The CEC should require one map and narrative showing the boundaries, ownership, permitting responsibility, construction footprint, and operating relationship of every component. It should also determine, based on objective evidence rather than labels, whether the publicly described second 99-megawatt phase or other development on commonly controlled adjoining land is a reasonably foreseeable phase, a cumulative project, or neither. If it is sufficiently definite and a consequence of the present approval, it belongs in the project description; at minimum, any probable future development belongs in the cumulative-impact analysis.

III. Impact-Controlling Portions of the Project Description Remain Unstable or Incomplete

An accurate, stable, and finite project description is indispensable to informative environmental review. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.) Conceptual design is not automatically unlawful; bounded design options can be analyzed when the environmental document discloses their parameters and evaluates the reasonably foreseeable effects of each. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321.) RBIDC's problem is not merely that final engineering remains. The unresolved matters include variables needed to determine the location or magnitude of impacts.

The application itself contains a section titled "Pending Project Elements." It states that its list is "not intended as a complete itemization of future submittals." It identifies, among other things, transmission right-of-way width and route documentation, EMF calculations, switchyard and transmission-line noise calculations, final hazardous-material identities and quantities, cooling-water recirculation and final mechanical design, a complete water balance, and final service documentation as awaiting engineering or third-party action. (TN 269893, application section 3.) Several of those subjects are expressly identified as Appendix B information.

CEC staff's Data Requests Set 1 confirms that the omissions matter to environmental review. Staff stated that it needed architectural elevations and landscape plans "to complete the review." Staff found that the application omitted or inadequately quantified construction water, water-hauling and haul-truck emissions, onsite truck travel, temporary access roads, staging and laydown areas, lower-load generator impacts, warm-up emissions, testing scenarios, sensitive-receptor information, and other matters. (TN 270553, pp. 3-8.) Staff requested revised project descriptions and impact analyses where temporary facilities had not been included. These are not requests for decorative drafting details; they concern environmental baselines, footprints, receptors, emissions, and operating limits.

The applicant's later responses supplied useful information but did not establish a single final description. Some responses request extensions, depend on future SCE engineering, or promise later supplements. Continued revisions to appendices in late July further demonstrate

that the environmental record is evolving. The CEC should require the applicant to submit a consolidated replacement project description, with redlines against the version accepted for review, rather than requiring staff and the public to reconstruct the current project from a 1,000-page application, a response set, and numerous separately revised appendices.

The consolidated description should fix or bound at least the following:

- The number, rating, operating modes, testing limits, emergency-use assumptions, stack parameters, and emissions-control warm-up characteristics of all generators.
- The number, location, chemistry, capacity, fire-protection design, and worst-case hazard envelope of all battery systems.
- The cooling technologies that may be used, their operating triggers, maximum consumptive water demand, blowdown quantity and quality, and enforceable performance limits.
- The routes, right-of-way widths, pole or structure characteristics, construction areas, and noise and EMF parameters for both proposed SCE supply paths.
- All onsite and offsite water, wastewater, natural-gas, telecommunications, access, drainage, staging, and laydown facilities.
- Maximum building, stack, pole, and crane heights; lighting and glare parameters; and any helicopter-related facilities or operations.
- The project construction schedule, workforce, haul routes, truck trips, and overlap among construction packages.

IV. The Record Contains Material Status and Configuration Contradictions

The application does not consistently describe the status of aviation review. Its consolidated compliance matrix says a Kern County ALUC consistency determination was "obtained" and an FAA Form 7460-1 was "submitted as required." (TN 269893, application p. 80.) But Table 4.11-3 says no Form 7460-1 is required, and the land-use analysis says compatibility will be confirmed through the future County CUP review. (Id., p. 584.) The application's compliance matrix elsewhere says a formal consistency determination is "part of [the] entitlement package" and that County review will culminate in that determination. (Id., pp. 600-601.) A determination cannot simultaneously have been obtained and remain a future step; a filing cannot simultaneously have been submitted as required and be unnecessary.

The electrical record presents a related configuration problem. The applicant states that both independent 115-kV routes will be constructed, but acknowledges that its public one-line diagram depicts only one connection "for schematic clarity at the conceptual design stage" and will be updated during final engineering. It further states that detailed Inyokern Substation upgrade parameters have not been completed and will be supplied later. (TN 271129, Data Response to DR PD-1, pp. 77-78.) The application also identifies final route right-of-way widths and photographic documentation as pending SCE final engineering. (TN 269893, section 3.2.) The public record therefore does not yet contain a final, internally consistent depiction of both routes and associated substation work.

These are material discrepancies. Airport compatibility determines permissible heights, lighting, glare, wildlife attractants, thermal plumes, construction cranes, and other design constraints. The number and location of utility routes determines construction disturbance, biological impacts, visual effects, noise, EMF, and reliability. An approval that has not occurred cannot be treated as proof that an impact has been resolved.

TAOG requests a corrected approval-status matrix signed by an authorized applicant representative. For every permit, consultation, or determination, it should identify the agency; application or case number; date and substance of the request; current status; outstanding information; conditions or design changes requested by the agency; and the docketed document supporting the representation. Where an agency has not acted, the matrix should say "pending" rather than "obtained," "complete," or "not required." The CEC should independently confirm disputed status representations with the affected agency.

V. Later Permits Cannot Supply the First Meaningful Impact Analysis

CEQA permits an agency to defer selection among mitigation details when it commits to mitigation, adopts specific performance standards, identifies feasible means capable of satisfying those standards, and makes the measure enforceable. It does not permit postponing formulation of mitigation or postponing the study needed to determine whether an impact is significant. (CEQA Guidelines, section 15126.4, subd. (a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.)

The distinction is practical:

- A later grading permit may verify compliance with drainage measures already analyzed and adopted. It may not supply the first hydrologic study that determines the drainage impacts and invents whatever mitigation proves necessary.
- A later air permit may implement CEC-analyzed limits. It may not determine the first enforceable limits on simultaneous testing, hours, low-load operation, or warm-up emissions after the CEC has already found the impacts less than significant.
- A later biological survey may stake and monitor resources already adequately surveyed and analyzed. It may not survey a newly defined staging area or utility corridor for the first time after project approval.
- A later FAA or airport review may verify compliance with analyzed height, glare, plume, and wildlife-hazard limits. It may not decide whether an undefined project configuration is compatible after the CEC has completed CEQA.
- A later service agreement may implement a water supply already shown to be legally and physically reliable. It may not establish for the first time whether the provider has capacity, lawful supply, infrastructure, or a feasible fallback.

The application's section 3 attempts to classify unresolved plans, studies, permits, and reports collectively as "mitigation measures" and asserts that none affect its less-than-significant conclusions. That assertion is not a substitute for the CEC's independent analysis. For every

future submittal, the CEC should determine whether it is (1) an ordinary implementation detail, (2) missing project-definition information, (3) missing impact analysis, or (4) deferred mitigation. Items in categories 2 through 4 must be resolved or made legally adequate before approval.

VI. Substantial Evidence Supports a Fair Argument That the Project May Cause Significant Effects

Public Resources Code section 21080, subdivision (d), requires an EIR when substantial evidence in light of the whole record shows that a project may have a significant environmental effect. Substantial evidence includes facts, reasonable assumptions based on facts, and expert opinion supported by facts. (Pub. Resources Code, section 21080, subd. (e).) Under CEQA Guidelines section 15064, subdivision (f), a lead agency must prepare an EIR when such evidence supports a fair argument, even if contrary substantial evidence also exists. In marginal cases, disagreement among fact-supported expert opinions requires an EIR. (CEQA Guidelines, section 15064, subd. (g).)

TAOG does not rely on the existence or intensity of public controversy alone. The docket contains the following fact-supported evidence from agencies and affected service providers:

A. Water demand, supply reliability, and energy-water interaction

The Indian Wells Valley Water District, the valley's largest water purveyor, explained that the basin is critically overdrafted and groundwater is the community's sole water source. It identified approximately 800 electrically powered groundwater wells near the proposed project and questioned whether a 99-megawatt load could impair power needed for critical pumping during extreme heat or constrained-grid conditions. (TN 271977, pp. 1-2.)

The District also identified a quantitative inconsistency in the claimed water-use efficiency. Based on the applicant's operating assumptions, the asserted annual use corresponds to approximately 0.1 to 0.12 liters per kilowatt-hour. The applicant's own Environmental Sustainability Plan, Appendix O, Table B.1, identifies a range of 0.1 to 0.3 liters per kilowatt-hour for closed-loop chilled water and 0.5 to 2.0 liters per kilowatt-hour for adiabatic cooling. (TN 269666, Appendix O, Table B.1.) Because the proposed hybrid system includes evaporative or adiabatic components, the District concluded that the discrepancy creates the potential for substantially greater water use than disclosed. (TN 271977, p. 2.) It further questioned how ICSD could serve demand approaching half its stated annual groundwater allotment, identified State Water Board concerns regarding ICSD's ability to sustainably provide safe and affordable drinking water, and stated that ICSD's ability and capacity to provide future water and wastewater service remain unclear. (Id. at pp. 2-3.)

NAWS China Lake independently identified long-term water sustainability as a primary concern. It stated that the basin is the sole water source for surrounding communities and the Navy mission, questioned the reliability of compressor-based cooling in 100-plus-degree conditions, warned that fallback to wetter cooling could substantially increase consumption, and identified

the potential for ICSD and onsite-well pumping to expand the cone of depression near Navy potable wells. NAWS also noted the lack of specific well-size and depth data. (TN 270501.)

These are factual and expert-agency disputes over the project's operating assumptions, service capacity, groundwater effects, and reliability. They cannot be resolved under the fair-argument standard merely by choosing the applicant's estimates over the agencies' evidence.

B. Air quality and sensitive receptors

CEC staff found that enforceable limits on concurrent testing, testing hours, daily and annual emissions, and warm-up conditions had not been established. Staff requested lower-load modeling because prior CEC experience showed that lower loads can produce higher modeled PM10 and PM2.5 concentrations. It also requested vendor evidence for selective catalytic reduction and diesel particulate filter performance and warm-up time. (TN 270553, pp. 5-7.)

The Sierra Sands Unified School District identified Inyokern Elementary School and its preschool-through-sixth-grade students as a nearby sensitive receptor. The District requested analysis of generator testing at different loads, particulate exposure, cooling and mechanical noise, construction dust and vibration, transportation safety, emergency response, and cumulative infrastructure effects. (TN 270593.) The Water District separately raised concern about unlimited emergency or Public Safety Power Shutoff operation near schools. (TN 271977, p. 2.)

Until the CEC has analyzed the reasonably foreseeable operating envelope and adopted enforceable limits, the record supports a fair argument concerning air quality and public-health effects at sensitive receptors.

C. Military mission, EMI, thermal plumes, and aviation safety

NAWS China Lake identified water sustainability, electromagnetic interference (EMI), and thermal plumes as critical mission concerns. It stated that empirical information was lacking on EMI propagation into weapons-testing, telemetry, and range facilities and requested an in-depth analysis. It further stated that cooling systems and forty diesel generators would create a considerable thermal plume that prevailing winds would likely carry over the NAWS test range. (TN 270501.)

The Indian Wells Valley Airport District separately submitted aviation-safety and airport-compatibility concerns. (TN 270613.) These agency concerns are especially important because final structure heights, construction cranes, lighting, cooling and exhaust plumes, stormwater and landscaping features, and the status of FAA and local compatibility review have not been presented consistently. The CEC should obtain formal written determinations from the Airport District, Kern County acting in its airport-land-use capacity, NAWS, and the FAA as applicable, and analyze the environmental consequences before approval.

D. Biological resources and construction footprint

CEC staff found that the application and biological report did not identify whether temporary access, staging, or laydown areas would occur outside the analyzed footprint. Staff required maps, acreage, surveys, and analysis for any omitted areas. (TN 270553, pp. 7-8.) The Eastern Kern County Resource Conservation District identified habitat and movement-corridor concerns for sensitive Mojave Desert species, including Mohave ground squirrel, desert tortoise, and migratory birds, and explained that additional industrial development and groundwater extraction may contribute to habitat degradation and ecosystem stress. (TN 271008, pp. 2-3.) Kerncrest Audubon likewise requested rigorous groundwater modeling and biological assessment of impacts to riparian and migratory-bird resources. (TN 271075.)

The project footprint must be fixed before biological conclusions are drawn. Surveys of one footprint cannot establish absence of impacts in a subsequently selected utility route, staging area, or access corridor.

E. Cumulative and infrastructure effects

The Resource Conservation District supplied data regarding basin recharge and pumping, discussed the possible second phase and additional commonly controlled acreage, and requested analysis of groundwater, wastewater, air, biology, military compatibility, and cumulative impacts. (TN 271008.) The Water District described the interaction between project load, grid reliability, and hundreds of groundwater wells. (TN 271977.) The School District requested cumulative analysis of substations, transmission, backup power, sewer, traffic, and foreseeable expansion. (TN 270593.)

These comments contain more than generalized opposition. They provide facts, agency expertise, reasonable inferences from those facts, and concrete technical disputes. Under sections 21080 and 15064, contrary applicant evidence does not eliminate the fair argument. An EIR is required so these disputes can be examined transparently through alternatives analysis, interagency consultation, public review, and reasoned responses.

VII. An MND Cannot Be Based on Revisions or Mitigation Formulated After Circulation

A mitigated negative declaration is permissible only when revisions made by or agreed to by the applicant before public circulation avoid or reduce all potentially significant effects to a point where clearly no significant effect would occur, and no substantial evidence supports a fair argument concerning the revised project. (Pub. Resources Code, section 21080, subd. (c)(2); CEQA Guidelines, sections 15064, subd. (f)(2), 15070.)

That standard is not met by promising that SCE, EKAPCD, Kern County, ICSD, FAA, or a future consultant will later refine the project or identify appropriate measures. Nor can an MND rely on the expectation that uncertain measures will prove feasible. Sundstrom rejected approval

conditioned on future studies that would determine impacts and recommend whatever mitigation later appeared necessary. The same principle applies here.

If the CEC nevertheless elects first to prepare an Initial Study/MND, TAOG requests that it circulate only after all impact-controlling revisions are incorporated into a consolidated project description and accepted by the applicant. If comments or later engineering identify a new avoidable significant effect, demonstrate that proposed mitigation is inadequate, or show that the revised project may have a significant effect that cannot clearly be mitigated, the CEC must recirculate or proceed to an EIR as required by CEQA Guidelines section 15073.5.

VIII. Any Environmental Document Must Be Recirculated When Later Information Materially Changes the Analysis

Project and engineering changes do not always require recirculation. Clarifications, amplification, and insignificant modifications generally do not. But recirculation is required when new information deprives the public of a meaningful opportunity to comment on a substantial adverse effect or a feasible means of avoiding it. (CEQA Guidelines, sections 15073.5, 15088.5.)

Material changes could include a different SCE route or expanded right-of-way; a new offsite construction area; a changed battery chemistry or capacity; increased building, stack, pole, or crane heights; substantially different cooling demand or blowdown; a new well design; changed simultaneous generator-operation assumptions; newly identified habitat; or aviation and mission mitigation considerably different from what was analyzed. The CEC should commit in advance to docketing and reviewing final engineering against the recirculation standards, supported by a written determination. It should not use generic statements that later design is "substantially conforming" without comparing environmental effects.

IX. The CEC Must Adopt an Enforceable MMRP and Retain Ultimate Responsibility

Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require a monitoring or reporting program for mitigation adopted with an MND or EIR. Mitigation must be fully enforceable through permit conditions, agreements, or other legally binding measures. (CEQA Guidelines, sections 15091, subd. (d), 15126.4, subd. (a)(2).) Monitoring may be delegated only to a public agency or private entity that accepts the delegation, and the lead agency remains responsible for ensuring implementation until mitigation is complete. (CEQA Guidelines, section 15097, subd. (a).)

The CEC's recent SPPE decisions illustrate the necessary structure. The City of Hayward accepted MMRP oversight for STACK, the City of Pittsburg accepted oversight for AVAIO, and the City of Santa Clara agreed to enforce the Bowers MMRP. No comparable, comprehensive acceptance by Kern County or another local entity appears in the current RBIDC record.

Before any exemption, the CEC should adopt an MMRP that identifies for every measure:

- The precise performance requirement and prohibited conduct.
- The implementation deadline and duration.
- Required plans, data, inspections, and public reports.
- The responsible implementing and verifying entities.
- Written acceptance by any entity receiving delegated duties.
- The source of authority to enforce the requirement after CEC jurisdiction otherwise ends.
- Corrective action, stop-work authority, penalties, and procedures for unresolved noncompliance.
- A CEC audit and enforcement backstop.

Measures should not be deemed complete merely because the applicant submitted a plan. The responsible agency must review the plan against objective standards, verify field implementation, document compliance, and make nonconfidential records available to the public.

X. Processing Deadlines Do Not Authorize an Incomplete Environmental Decision

Former title 20 SPPE hearing and deadline provisions in sections 1943 through 1948 were repealed in December 2022. TAOG therefore does not rely on those former procedures as current law. Ordinary CEQA processing periods apply from acceptance of a complete application, subject to applicable extensions. CEQA Guidelines section 15109 also provides that unreasonable applicant delay in supplying information necessary for a negative declaration or EIR suspends the relevant period and permits disapproval in appropriate circumstances.

No deadline permits the CEC to adopt an unsupported environmental document or grant an exemption without the findings required by current law. The applicant's preferred construction schedule is not substantial evidence that unresolved impacts are insignificant. The appropriate response to missing information is to request it, suspend or extend processing as legally available, and circulate a complete document.

XI. A Full EIR Does Not Automatically Decide the SPPE, but Residual Substantial Adverse Impacts May Preclude It

TAOG recognizes an important distinction. Preparation of an EIR does not itself decide whether the CEC ultimately may grant an SPPE. The Bowers proceeding confirms that the Commission may certify an EIR and then grant an exemption when the record supports all necessary findings and mitigation reduces the relevant impacts.

Public Resources Code section 25541 nevertheless imposes an additional substantive condition: the CEC may grant an SPPE only if it finds that no substantial adverse impact on the environment or energy resources will result. A CEQA statement of overriding considerations does not erase that separate statutory prerequisite. If the Final EIR identifies a substantial adverse impact that remains after all feasible mitigation, the CEC must explain how an

affirmative section 25541 finding could lawfully be made. If it cannot make that finding based on substantial evidence, it must deny the SPPE.

Conclusion

The present record does not support treating RBIDC as a fully defined project whose effects can be resolved through routine permit details. Material aspects of its utility configuration, construction footprint, water and cooling assumptions, operating limits, aviation review, and enforcement remain incomplete, evolving, or contradictory. CEC staff's own data requests establish that many of these facts are necessary to complete environmental review. Public agencies and affected service providers have supplied fact-supported evidence of potentially significant groundwater, air-quality, sensitive-receptor, biological, aviation, military-mission, grid-reliability, and cumulative effects.

TAOG therefore requests that the CEC issue a Notice of Preparation and prepare a full EIR. At minimum, the CEC should hold the application in abeyance, issue additional data requests, require a consolidated and stable whole-project description and corrected status matrix, and resolve improper deferral before circulating any environmental document. No exemption should be granted unless the Commission first completes its own CEQA review, adopts an enforceable MMRP, and can make the finding required by Public Resources Code section 25541 on the basis of the whole record.

TAOG requests that these comments and every cited docket filing be considered part of the administrative record for all subsequent CEC actions concerning RBIDC. TAOG also requests notice of all workshops, hearings, environmental documents, proposed decisions, and Commission meetings concerning Docket No. 26-SPPE-01 at the email address below.

Respectfully submitted,

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Technical Appendix A: July 28 Emergency-Well and Geotechnical Filings

This appendix addresses two applicant filings submitted July 28, 2026: the On-Site Emergency Backup Well Engineering Evaluation in Appendix E.5 (TN 271675) and the revised geotechnical investigation in Appendix K.1 (TN 271674). These filings add useful information, but they do not establish site-specific well yield, a sustainable pumping supply, or the absence of impacts from emergency groundwater extraction. The distinction matters because a geotechnical investigation of shallow soils and a planning-level review of nearby wells answer different questions from a hydrogeologic investigation of the proposed production well.

A. What the Emergency-Well Memorandum Establishes

TN 271675 describes the onsite well as an emergency backup or supplemental source, not the project's primary operational supply. ICSD is expected to provide the primary supply. Using the project's estimated maximum-day demand, the memorandum states that the well may be called upon over "say, a three day period" and "would ideally be capable" of supplying approximately 45 to 50 gallons per minute. (TN 271675, memorandum p. 2.) Continuous pumping at that rate for three days would equal approximately 194,400 to 216,000 gallons, or about 0.60 to 0.66 acre-feet per event.

The memorandum itself identifies two different demand bases. Its table reproduces the ICSD Will-Serve estimate of approximately 42.1 gallons per minute for maximum-day demand, while footnote 1 derives approximately 47 gallons per minute from the Water Supply Assessment's 49.1-acre-foot annual demand and a 1.5 peaking factor. The memorandum then selects a planning range of 45 to 50 gallons per minute without fixing which demand calculation controls. (Ibid.) The CEC should require one reconciled and enforceable demand basis.

The memorandum also offers a planning-level concept for the well. Based on nearby public-water-supply well records, it identifies a preliminary depth of approximately 600 to 900 feet and reports pumping capacities of comparable wells ranging from approximately 300 to 2,000 gallons per minute. It concludes that constructing a well capable of meeting the stated 45-to-50-gallon-per-minute demand is likely technically feasible. (Id. at pp. 9-10.)

TAOG does not disregard that conclusion. It is evidence that groundwater probably can be physically developed in the project vicinity. Physical feasibility, however, is not the same as a demonstrated site yield, an analyzed pumping envelope, a lawful and sustainable supply, or an absence of effects on other wells and groundwater-dependent resources.

B. The Memorandum Expressly Admits Its Limitations

TN 271675 makes the following material admissions:

- No water well currently exists on the project property.
- Yield and pumping-capacity estimates are derived from published regional groundwater information and nearby well records.
- The observations are preliminary and planning-level.
- They have not been verified by a site-specific hydrogeologic evaluation, exploratory drilling, geologic logging, water-quality sampling, well development, or pump testing.
- Final depth, casing, screened interval, pump size, pumping capacity, and reliable yield remain for final engineering and installation.
- Actual performance may vary with site geology, aquifer materials, water quality, construction, and testing.
- Physical constructability is separate from permitting, allocation, GSP, fee, and adjudication requirements governing extraction.

- The applicant intends to provide final design and pump-test results in a later supplemental filing. (TN 271675, memorandum pp. 2, 10.)

These qualifications are appropriate, but they mean the July 28 memorandum cannot itself support a definitive finding about reliable yield, drawdown, interference with nearby wells, water quality, recovery after pumping, or cumulative basin effects.

C. What the Geotechnical Investigation Does and Does Not Show

TN 271674 reports seventeen onsite investigations, consisting of borings B-1 through B-16 and CPT-01, conducted in June and July 2026. The investigation characterized near-surface materials to a maximum explored depth of 85 feet below ground surface. It encountered no groundwater within that explored interval. Using Kern County Water Agency maps and California Department of Water Resources data rather than a completed project well, the report states that 2026 depth to water within one mile of the site ranges from approximately 240.8 to 256.1 feet below ground surface. It also states that groundwater in the surrounding area has been deeper than 190 feet since at least the 1940s. (TN 271674, geotechnical report p. 5.)

Those findings are relevant to foundations, shallow construction, and the expectation that groundwater lies well below the investigated soils. They do not test the aquifer at the proposed well screen, establish the site's transmissivity or sustainable yield, determine drawdown at neighboring wells, or validate the memorandum's 600-to-900-foot well concept. No groundwater was encountered because the geotechnical investigation stopped roughly 156 to 171 feet above the mapped 2026 depth-to-water range.

The two filings therefore are consistent rather than contradictory: TN 271674 supplies useful shallow geotechnical information, while TN 271675 candidly acknowledges that the deep production-well characteristics remain planning assumptions.

D. Correct CEQA Treatment of the Unbuilt Well

TAOG does not contend that CEQA invariably requires construction and pump testing of every proposed well before an environmental document may circulate. The CEC may analyze an unbuilt component if the project description establishes a sufficiently definite and conservative operating envelope, the impact analysis evaluates that envelope, and enforceable measures prevent later design from exceeding it without further review.

The current record does not yet provide that complete framework. The stated 45-to-50-gallon-per-minute need is far below the memorandum's 300-to-2,000-gallon-per-minute comparison range. The memorandum uses a tentative three-day example, but does not establish enforceable instantaneous, daily, per-event, or annual pumping limits. It also does not clearly state every permissible trigger for well use, the maximum number or cumulative duration of events, or whether the well could serve construction, commissioning, cooling interruptions,

routine supplementation, or fire protection. These choices affect well design and environmental impacts and cannot be left entirely to later implementation.

The CEC should therefore require one of two legally adequate paths before making final CEQA and section 25541 findings:

1. Obtain and publicly review sufficient site-specific hydrogeologic information to define reliable yield and analyze the proposed well's effects; or
2. Analyze a conservative worst-case pumping envelope now and adopt enforceable limits, performance standards, monitoring, and a later-data review procedure that prevents material expansion without supplemental environmental review.

E. Additional Data and Enforceable Conditions Requested

TAOG requests that a further data request or the CEC environmental document require:

1. A definitive statement of the well's permitted purposes, including whether it may serve construction, commissioning, cooling, routine supply supplementation, fire protection, or only a defined ICSD service interruption.
2. Maximum installed pump capacity and enforceable limits stated in gallons per minute, gallons per day, gallons per event, consecutive operating days, events per year, and acre-feet per year.
3. The proposed well location, total depth, screened intervals, construction details, water-quality requirements, and relationship to nearby domestic, ICSD, and Navy wells.
4. A drawdown and interference analysis for the maximum enforceable pumping envelope, including cumulative pumping, drought and extreme-heat conditions, and repeated or prolonged ICSD or electrical-service interruptions.
5. Identification of the legal pumping right, allocation, fee, reporting, and adjudication assumptions on which emergency use depends, plus a fallback that does not assume later regulatory approval.
6. Docketing of final drilling, geologic, water-quality, well-development, and pump-test records, followed by review against the CEQA assumptions before the well may operate.
7. Metering, event logs, water-level monitoring, public annual reporting, threshold-based corrective action, and authority to suspend pumping when a limit or performance standard is exceeded.
8. A written CEC determination under CEQA's recirculation or subsequent-review standards if final testing changes the assumed rate, duration, design, water quality, drawdown, or affected-well analysis.

This approach neither dismisses the applicant's planning evidence nor allows later well construction to supply the first meaningful impact analysis. It uses the July 28 admissions for their proper purpose: defining what is presently known, what remains uncertain, and what must be bounded and enforced before the CEC may find that the whole project will cause no substantial adverse environmental or energy-resource impact.

Principal Docket Materials Cited

TN 269893, RB Inyokern Data Center SPPE Application.
TN 269666, Applicant Environmental Sustainability Plan, Appendix O.
TN 270472, TAOG Comments.
TN 270501, Naval Air Weapons Station China Lake Comments.
TN 270553, CEC Data Requests Set 1.
TN 270593, Sierra Sands Unified School District Comments.
TN 270613, Indian Wells Valley Airport District Letter.
TN 271008, Eastern Kern County Resource Conservation District Comments.
TNs 271054, 271057-271058, and 271092-271099, Applicant Appendix Supplements and Revisions.
TN 271075, Kerncrest Audubon Society Comments.
TN 271129, Applicant Data Response Set 1.
TN 271585, Applicant Appendix M Supplement.
TN 271673, Applicant Appendix N Supplement, Section N.2 Revision 2.
TN 271674, Applicant Appendix K.1 Revision 1 Geotechnical Investigation.
TN 271675, Applicant Appendix E.5 On-Site Emergency Backup Well Engineering Evaluation.
TN 271977, Indian Wells Valley Water District Comments.