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RBIDC request for full EIR and complete review of. RB proposed data center.

California Energy Commission
Docket No. 26-SPPE-01
RB Inyokern Data Center â€" R&L Capital, Inc.
Application for Small Power Plant Exemption
Re: Recent data-center legislation reinforces the need to resolve material gaps before making the findings required for an SPPE
On September 21, 2026, Governor Newsom signed seven bills addressing data centers: AB 1577, AB 2383, AB 2469, AB 2619, SB 886, SB 887, and SB 1168.
These laws increase state and local oversight of data-center water use, energy demand, utility costs, environmental review, and permitting. They do not replace or reduce the Commission's obligation in this proceeding.
Public Resources Code section 25541 requires the Commission to find that construction and operation of the proposed facility will result in no substantial adverse impact on the environment or energy resources before granting an SPPE.
The record does not yet appear sufficient to support that finding.
1. Material questions identified by CEC staff remain dependent on future information.
When CEC staff issued Data Requests Set 1, it expressly stated that the requested information was â€œnecessary for the staff analysisâ€□ of the RB Inyokern Data Center. Staff sought additional information across numerous resource areas and stated that further data requests could be issued as necessary for a complete analysis. CEC Data Requests Set 1, TN 270553, p. 2.
R&L Capital responded by acknowledging that some information was not yet available because the project remained at the conceptual-design stage: â€œWhere information is not yet available at the conceptual design stage, responses identify the relevant items and commit to providing supplemental information upon completion of final engineering.â€□ Applicant Data Response Set 1, TN 271129, p. 1.
Future engineering is normal. The relevant question for this proceeding is narrower: Is any information being deferred necessary for the Commission to determine now that construction and operation of this project will result in no substantial adverse impact on the environment or energy resources?
The applicant's responses demonstrate the distinction. For example, formal architectural elevations were not available and were deferred until before the Kern County building-permit application, while final landscape plans were deferred to the Kern County permitting process. TN 271129, pp. 3â€“4, DR AES-2 and AES-3.
Those may ultimately prove to be matters appropriately resolved later. But the Commission should identify which deferred matters are merely final design details and which are necessary to its environmental determination under section 25541.
2. Water supply remains a material issue in a critically overdrafted basin.
R&L acknowledges that the Indian Wells Valley Groundwater Basin is critically

overdrafted, with an estimated current loss of groundwater storage of approximately 25,000 acre-feet per year and an estimated long-term average natural recharge/sustainable yield of approximately 7,650 acre-feet per year. TN 271129, p. 53, DR HYD-4.

The applicant relies substantially on the Inyokern Community Services District's April 2, 2026 Will-Serve letter and states that the project's estimated operational demand can be served within the CSD's existing allocation. TN 271129, pp. 53â€“55, DR HYD-3 and HYD-4.

However, the Indian Wells Valley Water District subsequently submitted comments directly challenging important assumptions underlying that conclusion.

The District stated that the project's claimed maximum annual water use of 49.1 acre-feet produces a theoretical Water Use Efficiency of approximately 0.1â€“0.12 L/kWh at 85 percent operation. The District concluded that this appears inconsistent with the applicant's own efficiency information for a hybrid cooling system containing evaporative/adiabatic components and stated that the discrepancy could mean substantially greater water consumption than projected. Indian Wells Valley Water District Comments, TN 271977, p. 2.

The District also questioned how the CSD could accommodate approximately 49.1 AFY of additional project demand when its annual groundwater allotment is identified as approximately 102 acre-feet. The District stated that the applicant had not adequately explained how the CSD would acquire the additional water needed to serve the project. TN 271977, pp. 2â€“3.

These are not merely generalized public concerns. They are technical and institutional concerns raised by the largest water purveyor in the Indian Wells Valley. They should be resolved before the Commission determines that the project will have no substantial adverse impact on water resources.

3. The proposed backup well remains a planning-level assumption rather than a demonstrated water source.

In response to CEC Data Request HYD-6, the applicant submitted a technical memorandum regarding the proposed on-site backup well.

That memorandum confirms that no water well presently exists on the project property and that the proposed well has not been verified through site-specific hydrogeologic evaluation, exploratory drilling, geologic logging, water-quality sampling, well development, or pump testing. Appendix E Supplement â€” Section E.5, TN 271675, pp. 2â€“3.

The memorandum expressly characterizes its conclusions as a planning-level assessment, not a final design-level capacity analysis, and states that final well depth, design, pumping capacity, and reliable yield will be determined through later site-specific work and testing. TN 271675, p. 2.

The memorandum's conclusion again states that final well depth, casing design, screened interval, pump size, pumping capacity, and reliable yield must be confirmed through site-specific hydrogeologic evaluation, drilling, logging, water-quality review, and pump testing. TN 271675, p. 10.

The issue is not whether a productive well may ultimately be drilled. The issue is whether an unconstructed and untested well should presently be relied upon in determining the environmental consequences or reliability of the project's water-supply

plan.
4. AB 2469 makes resolution of these water questions more consequential, not less.
AB 2469 prohibits a city or county from approving a discretionary or ministerial permit or other entitlement resulting in construction of a data center, or an expansion increasing maximum peak water use, unless specified water-related requirements are satisfied. Among those requirements are a water-supply assessment where applicable, specified water-use and efficiency information, and applicant responsibility for certain water-infrastructure costs. A separate water-scarcity-plan requirement begins January 1, 2028.
AB 2469 does not create a water supply for this project. Nor should later compliance with AB 2469 substitute for the Commission's present obligation to determine whether this project's water demand, water source, infrastructure requirements, and groundwater effects support the finding required by section 25541.
The Commission should require the applicant to identify all remaining Kern County water-related permits and entitlements and explain how AB 2469 will apply to approvals occurring on or after January 1, 2027.
5. The record confirms 120 MW of installed generator capacity while the requested SPPE is based on a 99 MW maximum.
CEC staff identified an apparent discrepancy between the project's proposed generating equipment and its stated maximum operational load.
The project proposes forty Caterpillar 3516E diesel generators rated at 3 MW each, for 120 MW of gross installed nameplate generating capacity. TN 271129, pp. 39â€“43, DR EFF-1 through EFF-3.
CEC staff specifically questioned how the applicant's original statement that each generator would operate at no more than 80 percent of rated capacity could be reconciled with a 99 MW maximum operational load, because 80 percent of 120 MW equals only 96 MW. TN 271129, pp. 41â€“42, DR EFF-3.
R&L responded by clarifying that the 80-percent figure is an operational guideline rather than an absolute technical ceiling. It states that 38 active generators can serve the full 99 MW load while operating at approximately 86.8 percent of rated capacity, leaving two generators in reserve. TN 271129, pp. 42â€“43, DR EFF-3.
That response explains how the system can produce 99 MW while preserving redundancy. It does not, however, identify an enforceable physical or operational limitation that prevents a generating facility with 120 MW of installed nameplate capacity from exceeding 99 MW.
The Commission should therefore require the applicant to identify the specific enforceable physical, permit, control-system, operational, or other mechanism that will limit simultaneous generation to no more than 99 MW throughout the life of the project. If no such enforceable limitation exists, the Commission should expressly address how the 120 MW of installed nameplate generation affects the project's eligibility for an SPPE.
6. Major air-district permitting remains ahead.
CEC staff stated that the project will require permits from the Eastern Kern Air Pollution Control District and requested the applicant's permitting schedule and continuing disclosure of correspondence with EKAPCD. CEC Data Requests Set 1, TN 270553, pp. 2â€“5, DR AQ-1 through AQ-17.

In response, R&L stated that, as of July 1, no formal EKAPCD correspondence â€” including permit applications, emails, or agency submittals â€” had been initiated or received, and that the EKAPCD permitting process had not yet commenced. TN 271129, pp. 4â€“5, DR AQ-1.
R&L further confirmed that the EKAPCD permit application had not yet been submitted and that the project remained in the pre-application and permitting-preparation phase. TN 271129, p. 5, DR AQ-2.
The Commission should therefore require the applicant to identify any assumptions in the present air-quality analysis that remain subject to EKAPCD review or could materially change through that permitting process.
Future air permitting may impose enforceable conditions on the project. But later permitting should not be presumed to cure information necessary for the Commission's present section 25541 determination.
7. The Water District has also raised an energy-resource issue directly relevant to the SPPE standard.
The Indian Wells Valley Water District noted that groundwater is the basin's sole local water supply and that groundwater production depends heavily on electricity. It identified approximately 800 electrically powered groundwater wells in the Indian Wells Valley and asked whether the local electrical grid can supply the proposed data-center load without adversely affecting existing users, including groundwater production during periods of high demand. TN 271977, pp. 1â€“2.
That concern bears directly on the statutory requirement that an SPPE produce no substantial adverse impact on energy resources, not merely environmental resources.
The Commission should address the Water District's questions concerning grid reliability, competing demand, and continuity of power for critical groundwater infrastructure before making the section 25541 finding.
8. Some CEC data requests have been answered. The issue is the material information that remains unresolved.
We recognize that R&L has supplied substantial additional information since submitting the original application, including revised technical appendices and additional biological, geological, noise, air-quality, and other materials.
Our concern is therefore not that every engineering detail must be final before an SPPE can be considered.
The concern is narrower and more consequential: The Commission should not rely on a promise of future study, engineering, permitting, verification, or mitigation where the missing information is itself necessary to determine whether a substantial adverse impact may occur.
9. The September 21 legislation does not provide a shortcut around that determination.
SB 887 reinforces that data-center entitlements are subject to CEQA rather than categorical exemption and establishes a separate, conditional environmental-leadership pathway for qualifying projects.
AB 1577 requires specified energy-generation and sound information in connection with applications for discretionary permits, entitlements, or land-use authorizations.
AB 2619 requires specified water-use and water-source information in connection with initial and renewed local business licenses, equivalent instruments, and permits.
AB 2469 establishes additional water-supply, water-use, and infrastructure

requirements before specified local approvals of data centers.
SB 886, AB 2383, and SB 1168 address utility tariffs, infrastructure costs, and protections against shifting large-load costs to other ratepayers.
These statutes may materially affect later stages of the RB Inyokern project. None substitutes for the Commission's present obligation under Public Resources Code section 25541.
Requested Action
1. Identify each CEC data request for which substantive information remains deferred to final engineering, construction design, later permitting, agency coordination, future study, or future verification, and determine whether that information is necessary to complete the Commission's environmental analysis and section 25541 finding.
2. Require the applicant to identify all remaining Kern County permits, entitlements, licenses, water approvals, air-district approvals, utility approvals, and other governmental authorizations, together with the anticipated timing of each.
3. Require the applicant to explain how AB 2469, AB 1577, AB 2619, and SB 887 will apply to remaining approvals occurring on or after January 1, 2027.
4. Require sufficient present evidence to resolve the project's lawful and reliable water supply, the implications of the critically overdrafted basin and ongoing adjudication, the concerns raised by the Indian Wells Valley Water District, and the proposed backup well to the extent that well is relied upon in the environmental analysis.
5. Require the applicant to reconcile its projected water demand and cooling-system assumptions with the Water Use Efficiency concerns raised by the Indian Wells Valley Water District in TN 271977.
6. Require the applicant to identify the enforceable mechanism that will limit a generating facility with 120 MW of installed nameplate capacity to no more than 99 MW of simultaneous generation throughout the life of the project.
7. Require the applicant to identify any air-quality assumptions or conclusions that remain subject to the Eastern Kern Air Pollution Control District permitting process.
8. Address the Indian Wells Valley Water District's concerns regarding the project's electrical demand and the reliability of electrical service to groundwater infrastructure and other existing users.
9. Require the applicant to identify any additional phases, buildings, generating equipment, electrical load, transmission infrastructure, or other development contemplated for the site or adjoining property that is reasonably related to the project now before the Commission.
10. Decline to make the finding of â€œno substantial adverse impact on the environment or energy resourcesâ€ unless the evidentiary record supports that finding without relying upon future studies, approvals, or verification necessary to determine whether such impacts exist.
11. If the record cannot support the findings required for an SPPE, deny the exemption and require the project to proceed through the applicable full review process.
A promise to study an impact later is not evidence that the impact is insignificant today. Reporting an impact is not the same as mitigating it.
And future permitting should not be used to supply information necessary for a finding the Commission is required to make now.

Respectfully submitted,
Kelli Cutts