

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In re Avenal Power, LLC
PSD Permit No. SJ 08-01

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) PSD Appeal No.: PSD 11-02
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**PERMITTEE’S OPPOSITION TO PETITIONER SIERRA CLUB AND CENTER FOR
BIOLOGICAL DIVERSITY’S MOTION FOR LEAVE TO FILE REPLY BRIEF**

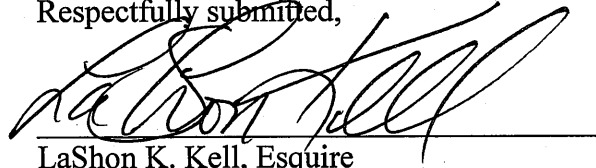
Permittee Avenal Power Center, LLC (“Avenal”) respectfully asks the Board to deny the Motion for Leave to File a Reply Brief (“Motion”) in the above-captioned matter filed by Petitioners Sierra Club and Center for Biological Diversity (collectively “Sierra Club”).

The Board recently explained that it will “apply a presumption against the filing of reply briefs and sur-replies in [New Source Review] appeals.” EAB Order Governing Petitions for Review of Clean Air Act New Source Review Permits § 3 (EAB April 19, 2011). Sierra Club has not overcome that presumption. Contrary to Sierra Club’s contention, Avenal did not “raise a new issue that Sierra Club did not previously have the opportunity to address.” Motion 1. Avenal argued that the Environmental Protection Agency (“EPA”), in a sworn affidavit that it submitted as a litigant in a federal court, made binding representations regarding its position on what standards apply to Avenal’s permit and that the Board, as a part of EPA, is bound by those representations. Avenal Response to Petitions 8-13. This argument was made in direct response to contentions by Sierra Club and the Center for Poverty, Race and the Environment (“CPRE”) that EPA had not properly established its position on that issue. Sierra Club Petition 39-41; CPRE Petition 19-21. Nor is this a case where a previously unknown issue has arisen, as Sierra Club was clearly aware of the affidavit and referred to it in its petition. Sierra Club Petition 4-5.

Sierra Club has not overcome the presumption against the filing of a reply brief. The Board should therefore deny the Motion. If the Board grants the Motion, Avenal respectfully requests leave to file a sur-reply.

Date: July 20, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July 2011, a true and complete copy of the foregoing *Permittee's Opposition to Sierra Club's Motion for Leave to File Reply Brief* (as electronically filed with the EPA on July 20, 2011), was served on the following by e-mail and/or by first-class mail, postage prepaid, on the following:

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