

Nos. 21-8047; 21-8048

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MERIT ENERGY COMPANY, LLC, and
MERIT ENERGY OPERATIONS I, LLC,
Plaintiffs/Appellants – Cross Appellees,

v.

DEBRA HAALAND, in her official capacity as Secretary of the Interior,
U.S. Department of the Interior, and the U.S. OFFICE OF NATURAL
RESOURCES REVENUE,
Defendants/Appellees – Cross Appellants.

Appeal from the United States District Court for the District of Wyoming
No. 20-CV-32-SWS-DB (Hon. Scott W. Skavdahl)

MEMORANDUM BRIEF FOR APPELLEES – CROSS APPELLANTS

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PRIOR OR RELATED APPEALS

There are no prior or related appeals in this matter.

INTRODUCTION

On April 1, 2022, this Court ordered the parties to file memorandum briefs addressing “any legal basis for this court to exercise appellate jurisdiction to consider these cross-appeals.” The Court noted that these appeals are from orders remanding proceedings to Interior and that under *Western Energy All. V. Salazar*, 709 F.3d 1040, 1047 (10th Cir. 2013), an “administrative remand is not ordinarily considered a final decision.” As explained below, the primary exception to that rule is when the agency itself appeals the remand order and it is the agency’s only opportunity to obtain review. *Id.* at 1050. Here, Interior has appealed the remand order and would otherwise have no opportunity for appellate review. This Court therefore has jurisdiction.

ARGUMENT

I. The administrative-remand rule does not deprive this Court of jurisdiction over these appeals.

This Court’s jurisdiction is grounded in statute. *Western Energy*, 709 F.3d at 1046-47 (citing *Century Laminating, Ltd. v. Montgomery*, 595 F.2d 563, 565 (10th Cir. 1979)). Absent a specific statutory grant of jurisdiction over a particular type of dispute, the court exercises jurisdiction over final decisions of a federal district court under 28 U.S.C. § 1291. *Id.* (citing *Bender v. Clark*, 744 F.2d 1424, 1426 (10th Cir. 1984)). As this Court has explained, it is well-settled law that “[t]he remand by a district court to an administrative agency for further proceedings is

ordinarily not appealable because it is not a final decision.” *Western Energy*, 709 F.3d at 1047 (quoting *Bender*, 744 F. 2d at 1426). That is known as the “administrative-remand rule.” *Id.*

But the administrative-remand rule does not foreclose appellate jurisdiction of every order remanding a case to an administrative agency. This Court has held that the administrative-remand rule allows the *agency* to appeal a remand order where it would have “no avenue for obtaining judicial review of its *own* administrative decisions.” *Bender*, 744 F. 2d at 1428. *See also Zen Magnets, LLC v. Consumer Prod. Safety Comm’n*, 968 F.3d 1156, 1165 (10th Cir. 2020) (allowing agency to appeal where the agency “would likely lose the chance to appeal” if court dismissed); *Western Energy*, 709 F.3d at 1050. As this Court has explained, an agency may immediately appeal a remand order because it is “necessary to ensure that we can review important legal questions which a remand may make effectively unreviewable, because administrative agencies may be barred from seeking district court (and thus circuit court) review of their own administrative decisions.”” *Miami Tribe of Oklahoma v. United States*, 656 F.3d 1129, 1140 (10th Cir. 2011).

Here, the district court remanded to Interior to “make appropriate adjustments to the [Location and Crude Type Differential], without limitation from any 10% cap, so that ‘value’ under these two leases more accurately reflects a

major portion price or Wind River asphaltic sour crude oil at the time of production.” ECF 39 at 25. If Interior were to comply with the remand order and calculate Merit’s royalties going forward on that basis, it would have no opportunity to go back to the district court to contest its own action. This case therefore falls squarely within the exception to the administrative-remand rule allowing an agency to appeal remand orders when it would have no other opportunity to do so. *Bender*, 744 F. 2d at 1428.

Because Interior has appealed, this Court may also consider Merit’s appeal under its pendant jurisdiction. *See Zen Magnets*, 968 F. 3d at 166-67 (exercising pendant jurisdiction over portions of a cross-appeal from an order remanding to an agency). If Interior were to prevail on the merits issue of its appeal, then there would be no remand to the agency, and Merit would have lost its opportunity to appeal the district court’s order insofar as it granted judgment to Interior.

Interior’s decision to appeal thus rendered the district court’s order a final judgment under 28 U.S.C. § 1291. Of course, as explained in Interior’s briefs on appeal, Interior maintains that the entire case is unripe and should be dismissed on that basis. *See* Principal and Response Br. 22-35; Reply Br. 2-12. But this Court has statutory jurisdiction over these appeals under 28 U.S.C. § 1291.

CONCLUSION

For the foregoing reasons, this Court should exercise jurisdiction over the appeal and should, as explained in Interior's merits briefs, reverse and order the case dismissed as unripe. If the Court were to reach the merits, it should affirm the district court's ruling upholding most of the regulation and reverse the conclusion that the regulation is invalid in one respect.

Respectfully submitted,

s/ Michael T. Gray

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April 15, 2022

90-1-18-15984

CERTIFICATE OF COMPLIANCE

I hereby certify:

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s/ Michael T. Gray
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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents; and
- (3) the digital submissions have been scanned for viruses with the most re-cent version of a commercial virus scanning program, Windows Defender Antivirus Version 1.363.412.0 (updated April 15, 2022), and according to the program are free of viruses.

s/ Michael T. Gray
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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2022, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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