

FILED

October 27 2015

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 14-0813

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 14-0813

THE CLARK FORK COALITION, a non-profit
organization, *et al.*,

Petitioners and Appellees,

v.

JOHN E. TUBBS, in his capacity as Director of the Montana
Montana Department of Natural Resources and Conservation
and THE MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION, an executive branch
agency of the State of Montana,

Respondents,

v.

MONTANA WELL DRILLERS ASSOCIATION,

Intervenors and Appellants,

v.

MONTANA ASSOCIATION OF REALTORS and
MONTANA BUILDING INDUSTRY ASSOCIATION,

Intervenors and Appellants,

v.

MOUNTAIN WATER COMPANY,

Intervenor.

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ORDER

The Clark Fork Coalition, et al., moves to dismiss this appeal on grounds that there is no "final judgment" in the case. Appellants Montana Well Drillers Association and Montana Association of Realtors and Montana Building Industry Association have filed written objections to the motion to dismiss. Although the Clark Fork Coalition, et

al., has requested leave to file a reply, we will observe the explicit provision of M. R. App. P. 16(3) that no reply shall be filed on a motion.

This is an appeal from an order and judgment in an action for judicial review of an agency decision. In that order and judgment, the First Judicial District Court invalidated an administrative rule and remanded the case for additional rulemaking by the Department of Natural Resources and Conservation. The Department has not appealed; the appellants are intervenors in the action. The Clark Fork Coalition argues that, in the federal courts, there would be no appeal from such an order and judgment. Appeals in federal cases are governed by 28 U.S.C. § 1291, under which an order of remand to a federal agency generally is not treated as a “final decision” from which appeal may be taken. *See, e.g., Alsea Valley Alliance v. Dep’t of Commerce*, 358 F.3d 1181, 1184-86 (9th Cir. 2004). However, this is not a federal court appeal, and we are not operating under the federal rules.

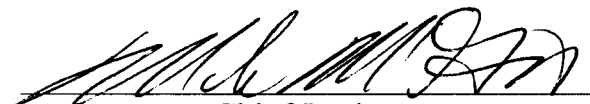
The District Court’s order of remand constitutes an appealable final order under M. R. App. P. 4(1)(a). *Grenz v. Mont. Dep’t of Natural Res. & Conservation*, 2011 MT 17, ¶ 20, 359 Mont. 154, 248 P.3d 785; *Whitehall Wind, LLC v. Mont. Pub. Serv. Commn.*, 2010 MT 2, ¶¶ 16-18, 355 Mont. 15, 223 P.3d 907. Appeals in judicial review proceedings are governed by the Montana Administrative Procedure Act. Under § 2-4-711, MCA, any “aggrieved party” may appeal a final judgment of a district court in an action for judicial review of an agency decision. *See also Montco v. Simonik*, 285 Mont. 280, 947 P.2d 1047 (1997). The Appellants were parties in the judicial review proceeding and have a right to appeal the District Court’s decision.


Therefore,

IT IS ORDERED that the motion to dismiss this appeal is DENIED.

The Clerk is directed to provide copies of this Order to all counsel of record.

Dated this 27th day of October, 2015.



Chief Justice


Juan P. Khan
Patricia Cotter

Justices