

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JUDY BUNDORF; et al.,

Plaintiffs – Appellees/  
Cross-Appellants,

v.

S.M.R. JEWELL; et al.,

Defendants/  
Cross-Appellees,

and

SEARCHLIGHT WIND ENERGY, LLC,

Intervenor – Defendant –  
Appellant/Cross-Appellee.

Nos. 15-17361, 15-17539

D.C. No.  
2:13-cv-00616-MMD-PAL  
District of Nevada,  
Las Vegas

ORDER

Before: W. FLETCHER, GOULD, and BYBEE, Circuit Judges.

Appellees' motion to dismiss appeal No. 15-17361 for lack of jurisdiction (Docket Entry No. 21) is granted, because the district court's order remanding proceedings to the agency is not a final order for purposes of 28 U.S.C. § 1291. *See Alsea Valley Alliance v. Dep't of Commerce*, 353 F.3d 1181, 1184 (9th Cir. 2004). A remand order is ordinarily final only for purposes of appeal by the

agency, and here, appellant “[is] not similarly situated to an agency litigant,” because it will have the opportunity to protect its interests on remand and, if necessary, on appellate review. *Pit River Tribe v. U.S. Forest Serv.*, 615 F.3d 1069, 1076 (9th Cir. 2010); *Alsea Valley Alliance*, 353 F.3d 1181 at 1184 (“No aspect of the district court’s ruling vitiates [appellant’s] access to appellate review of the eventual outcome of the district court’s decision. Before the proceedings even reach the appeal stage, it is possible that the action taken by [the agency] on remand will provide [appellant] with all the relief it seeks.”). *Cf. Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1185 (9th Cir. 2011) (allowing non-agency appeal of remand order where it was already clear that the remand would not address appellant’s interests); *Skagit County Pub. Hosp. Dist. No. 2 v. Shalala*, 30 F.3d 379, 384 (9th Cir. 1996) (allowing non-agency appeal of remand order where remand would be “meaningless” in terms of addressing appellant’s interests).

Because we dismiss appeal No. 15-17361, appellees’ motion for voluntary dismissal of cross-appeal No. 15-16539, contained within its motion to dismiss (Docket Entry No. 21), is granted. *See* Fed. R. App. P. 42(b).

Each party shall bear its own costs on appeal.

**DISMISSED.**