ELECTRONICALLY FILED OCT 28, 2025 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

No. 25-1220

TAMMY THOMPSON, ET AL.,

Petitioners-Appellants,

v.

IOWA DEPARTMENT OF NATURAL RESOURCES,

Respondent-Appellee,

AND

SUPREME BEEF, LLC,

Indispensable Party-Appellee.

APPEAL FROM THE DISTRICT COURT
OF CLAYTON COUNTY
NO. CVCV011358
HON. RICHARD D. STOCHL, JUDGE

BRIEF OF PETITIONERS-APPELLANTS

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN DISMISSING PETITIONERS-APPELLANTS' CLAIMS FOR JUDICIAL REVIEW UNDER IOWA CODE CHAPTER 17A ON THE GROUNDS THAT PETITIONERS-APPELLANTS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES, DESPITE THE IOWA DEPARTMENT OF NATURAL RESOURCES' EXPRESS REPRESENTATION THAT ITS JANUARY 21, 2025 MEMORANDUM CONSTITUTED "FINAL AGENCY ACTION," AND WITHOUT RECOGNIZING THAT PETITIONERS-APPELLANTS REASONABLY RELIED ON THAT REPRESENTATION IN FILING FOR JUDICIAL REVIEW.

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Iowa Supreme Court and because it presents substantial issues of first impression. *See* Iowa R. of App. P. 6.1101(2)(*c*) & (*d*).

NATURE OF THE CASE

Petitioners-Appellants Tammy Thompson, Scott Boylen, Alicia Mullarkey, Linda Appelgate, Larry A. Stone, Mary Damm, and Steve Veysey (hereafter, collectively, "Petitioners-Appellants"), appeal the District Court's July 10, 2025, ruling dismissing their petition for judicial review in *Thompson et al. v. Iowa Department of Natural Resources & Supreme Beef, LLC*, Case No. CVCV011358, D0054 at 1 (7/10/2025), but captioned for and also filed in *DWD et al. v. Iowa Department of Natural Resources & Supreme Beef, LLC*, Case No. CVCV011384, D0014 at 1 (6/25/2025).

Petitioners-Appellants are residents of Iowa, with shared concerns about the environmental impact of Supreme Beef, LLC's (hereafter, "Supreme Beef") cattle operation located on the headwaters of Bloody Run Creek, a protected

trout stream located near a cluster of sinkholes in the karst region[1] of Northeast Iowa. D0003, Amend. P. for Jud. Rev. at 3-8 &12 (2/17/2025). Their petition challenged the Iowa Department of Natural Resources' (hereafter, "DNR") January 21, 2025 memorandum reaffirming its renewal of Supreme Beef's water use permit, which followed a ruling and remand from Administrative Law Judge Toby Gordon in which he had directed the agency to articulate a rational basis for its finding of "beneficial use" when it had renewed the water use permit. *Id.* at 10-11.

The District Court dismissed the petition, concluding that Petitioners-Appellants had failed to exhaust administrative remedies by not appealing the DNR's memorandum to the Environmental Protection Commission (EPC) under Iowa Code section 455B.278(2), which governs water use permit procedures. D0054, R. on Resp.'s M. to Dismiss at 3 (7/10/2025). Petitioners-Appellants had relied on the DNR's express statement in its cover letter accompanying the memorandum, directing that the memorandum had constituted "final agency action," and had filed for judicial review under Iowa Code section 17A.19, accordingly. D0042, Res. to M. to Dis. at 2 (3/14.2025).

[1]Karst geology is a type of rocky landscape that is notable for its caves, sinkholes, and underground rivers, which allows surface water to directly enter the aquifers providing drinking water to area residents. *See* D0003, Amend. P. for Jud. Rev. at 5, 7 & 9-10 (2/17/2025).

Petitioners-Appellants maintain that the District Court erred by failing to recognize their reasonable reliance on the DNR's own characterization of its action as final, and by applying procedural requirements that were not clearly communicated or triggered properly in this context.

The resulting decision was made in error and should now be reversed by the Iowa Supreme Court.

STATEMENT OF THE FACTS

This matter arises from Petitioners-Appellants' challenge to the DNR's reaffirmation of a renewed water use permit issued to Supreme Beef, a large cattle-feeding operation located near the headwaters of Bloody Run Creek in Clayton County, Iowa, following an administrative law judge's determination that the agency's initial renewal of that permit had been unlawful. *See* D0003 at 12. Petitioners-Appellants are citizens who have shared interests in preserving the ecological integrity of Bloody Run Creek, one of Iowa's most pristine waterways and a protected trout stream. *Id.* at 3-8 & 12.

On June 1, 2022, after many citizens had objected to the DNR's notice of its intent to approve Supreme Beef's water use permit renewal application, the agency proceeded to renew it: Permit No. 10172-R1, which allowed the company to withdraw water for its large, enclosed cattle-feeding operation. *Id.* at 14. The permit renewal decision followed an application that had been submitted on

March 17, 2022, and the permit had been issued without any investigation into the potential adverse environmental impacts of the operation, despite public concern and the unique ecological sensitivity of the area. *Id.* at 13. DNR's position had been that its consideration of water use permits was primarily restricted to water quantity issues, alone, and not water quality or environmental concerns. Under that approach, the agency had never denied a water use permit application in nearly 50 years, save one which the DNR appears to have formally dismissed rather than affirmatively to find no beneficial use. *See* D0041, Certified Agency Record Part 30 at 29 (3/7/2025) (summarizing the unclear dismissal status of the Pattison Sand water use permit); *id.* at 289-90 (cross-Examination of DNR geologist Chad Fields of the water use program; Pattison Sand only water use permit of which Mr. Fields was aware that was not granted). In response to the renewal permit application, members of the public, including Petitioners-Appellants, demanded a public hearing and submitted written comments expressing opposition to the permit. *Id.* The DNR held a public hearing on April 25, 2022, and accepted written comments, the vast majority of which raised concerns about the impact of Supreme Beef's operations on water quality in Bloody Run Creek and surrounding aquifers. *Id.*

Despite this public outcry, the DNR made no changes to its proposed approval and issued the renewed permit with an effective date of June 1, 2022, and an expiration date of May 31, 2027. *Id.* at 14. Petitioners-Appellants and

others then filed an administrative appeal, which was heard by Administrative Law Judge Toby Gordon on February 1 and 2, 2024. *Id.* at 15. At the hearing, substantial evidence was presented regarding the environmental harm caused by Supreme Beef's operations, including nitrate and bacterial contamination of surface and groundwater, and the pollution of private wells. *See id.* at 15-16.

On November 12, 2024, ALJ Gordon issued a proposed decision finding that the DNR had failed to consider critical statutory factors in its determination of "beneficial use," including the impact on public health, water quality, and the environment. *Id.* at 16. He wrote, in relevant part:

> Because the DNR did not fully consider certain factors except through the lens of quantity of water, the 2022 water permit renewal issued to Supreme Beef in this matter should be REMANDED to the DNR to consider factors beyond the mere quantity of water, such that the DNR should articulate a reasonable and rational basis for finding a "beneficial use" exists, or does not exist, when considering the following:
>
> 1) The "effect of the water use upon the owners of any land which might be affected," and "the interest of the people" and the "best interests and welfare of the people." Iowa Code §§ 455B.262(2), 455B.264(2).
>
> 2) Whether the granting of the permit "will unreasonably impair the long-term availability of water from a surface or ground water source in terms of quantity or quality, or otherwise adversely affect the public health or welfare." Iowa Code § 455B.267(4).
>
> 3) The beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served. Iowa Code § 455B.262(2)[.]
>
> 4) The public's health, safety, interests in lands or waters, and prevention of injury to persons or property. Iowa Code § 455B.271(2)(*d*).

Id. at 17 (quoting Proposed Decision p. 26, Nov. 12, 2024). The decision remanded the matter back to the DNR for further consideration of these factors but did not rescind the renewed permit. *Id.*

Neither party appealed the proposed decision, and it became final on December 12, 2024. *See id.* at 16-17; D0054 at 2. On remand, the DNR issued a memorandum dated January 21, 2025, reaffirming its approval of the permit and asserting that Supreme Beef's water use qualified as a beneficial use under Iowa law. D0003 at 11 & 17. The memorandum did not make fact findings or perform the type of analysis required by Judge Gordon's ruling. *See id.* In the cover letter accompanying the memorandum, signed by Carmily Stone, on behalf of the agency, she stated: "The attached memo represents the *final agency action* pursuant to this case." *Id.* at 17 (emphasis added).

Relying on this express representation, Petitioners-Appellants filed a Petition for Judicial Review on February 11, 2025, under Iowa Code § 17A.19, seeking a district court order setting aside the DNR's decision and canceling Supreme Beef's water use permit, later amended on February 17. D0002, P. for Jud. Rev. at 1 (2/11/2025); D0003 at 1; D0005, Order Grant. M. to Amend at 1 (2/20/2025). Petitioners-Appellants argued that the DNR's own characterization of its memorandum as its "final agency action" triggered their right to judicial review and that they had reasonably relied on this representation

when filing a petition with the district court to avoid missing the statutory deadline for filing under Iowa Code section 17A.19(3). D0003 at 21.

On March 6, 2025, the DNR filed a Motion to Dismiss, asserting that Petitioners-Appellants had failed to exhaust administrative remedies by not appealing the January 21, 2025 memorandum to the EPC under Iowa Code section 455B.278(2). D0008, M. to Dismiss at 3-5 (3/6/2025). Supreme Beef joined the DNR's motion. D0011, Supreme Beef's Joinder at 1 (3/6/2025).

Petitioners-Appellants resisted the motion, arguing that the DNR's own language in the cover letter constituted a waiver of the exhaustion requirement and that the agency should be equitably estopped from asserting failure to exhaust. D0042 at 3-4. They cited Iowa and Eighth Circuit caselaw recognizing that agencies may waive exhaustion and standing for the proposition that courts should defer to an agency's express determination of finality, especially when citizens rely on such representations in good faith. *Id.*; *see, e.g.*, *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 875 (Iowa 2007); *Brumley v. U.S. Dep't of Labor*, 767 F.2d 444, 445 (8th Cir. 1985).

The DNR, in its reply to Petitioner-Appellants, contended that the term "final agency action" referred only to the DNR's internal decision and not to a final decision of the EPC, and that Petitioners-Appellants had misinterpreted the procedural requirements of Iowa Code section 455B.278(2). D0043, Respondent's Reply to Pet.'s Res to M. t. D. at 2–3 (3/19/2025). The agency

further argued that equitable estoppel could not be invoked against a government entity absent exceptional circumstances and that Petitioners-Appellants had failed to meet the high burden required to establish such a claim. *Id.* at 3–4. Supreme Beef joined in the DNR's reply. D0045, Supreme Beef's Joinder at 1 (3/21/2025).

On July 10, 2025, the District Court granted the DNR's motion to dismiss, concluding that Petitioners-Appellants had not exhausted administrative remedies and that the DNR's memorandum was not a final agency action of the EPC. D0054 at 3. The court held that Petitioners-Appellants were required to appeal the DNR's decision to the EPC before seeking judicial review and that their reliance on the DNR's cover letter was insufficient to bypass the statutory exhaustion requirement. *Id.*

Petitioners-Appellants now appeal the District Court's dismissal, asserting that the court erred in its interpretation of the exhaustion requirement, failed to recognize the legal significance of the DNR's express statement of finality, and improperly applied procedural rules that were not clearly communicated or required under the circumstances.

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT DISMISSED PETITIONERS-APPELLANTS' PETITION FOR JUDICIAL REVIEW UNDER IOWA CODE CHAPTER 17A ON THE GROUNDS THAT PETITIONERS-APPELLANTS FAILED TO EXHAUST

ADMINISTRATIVE REMEDIES, DESPITE THE IOWA DEPARTMENT OF NATURAL RESOURCES' EXPRESS REPRESENTATION THAT ITS JANUARY 21, 2025 MEMORANDUM CONSTITUTED "FINAL AGENCY ACTION," AND WITHOUT RECOGNIZING THAT PETITIONERS-APPELLANTS REASONABLY RELIED ON THAT REPRESENTATION IN FILING FOR JUDICIAL REVIEW.

A. Error Preservation and Standard of Review.

Petitioners-Appellants preserved error by resisting the DNR's Motion to Dismiss, which was ruled upon by the District Court in its July 10, 2025 dismissal order. *See* D0042 at 1–2; D0054 at 1–3); *see generally Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002) (requiring an issue to be raised and decided for error to be preserved).

An appellate court reviews a district court's ruling on a motion to dismiss for correction of errors at law. *Struck v. Mercy Health Services-Iowa Corp.*, 973 N.W.2d 533, 538 (Iowa 2022). For the purposes of a motion to dismiss, the Court accepts as true all well-pled factual allegations. *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). The petition is viewed in its most favorable light, resolving all doubts and ambiguities in the petitioner's favor. *Benskin, Inc. v. West Bank*, 952 N.W.2d 292, 298 (Iowa 2020). The appellate court will affirm the dismissal only if the petition shows no right of recovery under any state of facts. *Id.*

B. The District Court Misapplied the Exhaustion Doctrine and Failed to Recognize the Legal Effect of the DNR's Express Statement of Finality.

Under Iowa Code section 17A.19(10)(*c*), judicial relief is warranted when agency action is "based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure." The District Court erred by dismissing Petitioners-Appellants' claims for failure to exhaust administrative remedies, despite the DNR's express representation that its January 21, 2025, memorandum constituted "final agency action." *See* D0042 at 2; D0054 at 3.

In the DNR's cover letter, signed by Carmily Stone, the Supervisor of the Water Supply Engineering Section of the DNR, she stated unequivocally: "The attached memo represents the final agency action pursuant to this case." *See* D0042 at 2. Petitioners-Appellants relied on this representation in good faith and filed their Petition for Judicial Review within the thirty-day deadline prescribed by Iowa Code section 17A.19(3). *See id* at 4. The DNR's own language triggered the statutory right to judicial review and should have estopped the agency from later asserting that Petitioners-Appellants failed to exhaust remedies by not appealing to the EPC.

"Final agency action" is a legal term of art meaning that an action may be brought in district court pursuant to Iowa Code section 17A.19(1), which states a final agency action is one in which a party is adversely affected and the party

has exhausted all adequate administrative remedies. Iowa Code section 17A.19(1) stresses that a preliminary, procedural, or intermediate agency action is only appealable if pursuing the matter with the agency until the administrative action is final would not provide an adequate remedy. In other words, there must be some reason excusing failing to exhaust administrative remedies if a preliminary, procedural, or intermediate agency action is appealable under section 17A.19(1). A "final agency action" is therefore by statutory definition incompatible with an action that is "preliminary, procedural, or intermediate," which would require something less than total exhaustion of administrative remedies.

Iowa caselaw recognizes that "final agency action" means exactly what Iowa Code section 17A.19(1) states that it means, an agency action in which a party has exhausted all adequate administrative remedies. *See, e.g., Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 229 (Iowa 2021) (explaining that had the agency dismissed the action, this "would seemingly be a final agency action on which the complainant could seek judicial review"); *Pro Farmer Grain, Inc. v. Iowa Dep't of Agriculture & Land Stewardship*, 427 N.W.2d 466, 468 (Iowa 1988) (holding that administrative exhaustion was required because "judicial review of the final agency action on the merits would have ultimately provided an adequate remedy for restoring petitioner's license").

The purpose of requiring administrative exhaustion is to give an agency a full and fair opportunity to hear the parties' arguments and to allow the agency to make a well-reasoned decision. *See UE Local 893/IUP v. State*, 928 N.W.2d 51, 56 (Iowa 2019). If the agency itself asserts that it considers the matter exhausted, a court should defer to the agency's judgment as to its need for internal review of a matter. *See Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 875 (Iowa 2007) (holding that administrative exhaustion is the type of defense that can be waived if not raised, meaning that an agency can consent to waive the exhaustion requirement); *see also Brumley v. U.S. Dep't of Labor*, 767 F.2d 444, 445 (8th Cir. 1985) (holding that agency may waive an exhaustion requirement in a Freedom of Information Act case by failing to comply with statutory time limits).

Petitioners reasonably relied upon the DNR's analysis of its own statutes as to what administrative procedures are required to review water use permit renewal applications, and promptly brought an Iowa Code section 17A.19 review of a contested case hearing in district court as soon as they could in order to avoid missing the thirty-day deadline for filing an Iowa Code section 17A.19 judicial review action. *See* Iowa Code § 17A.19(3) ("…the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case."). The DNR should therefore be equitably estopped from arguing that Petitioners failed to exhaust their administrative remedies because

Petitioners reasonably relied on the DNR's January 21, 2025, cover letter and Memo stating that the DNR's decision was a final agency action. *See Bailiff v. Adams County Conf. Bd.*, 650 N.W.2d 621, 627 (Iowa 2002) (stating that in exceptional circumstances an administrative agency will be equitably estopped from raising an argument); *Mowery v. City of Carter Lake*, 961 N.W.2d 739, 758 (Iowa Ct. App. 2021) (noting that Iowa caselaw does not clearly illustrate what sort of exceptional circumstances are required to apply equitable estoppel against an administrative agency).

Under these exceptional circumstances, Petitioners believe that the filing of a Petition for Judicial Review was their only option and that this matter, under the doctrine of equitable estoppel, should not be dismissed. However, should the Court find that exceptional circumstances do not exist to apply equitable estoppel and that, therefore, this matter is not yet ripe for judicial review, Petitioners believe that the appropriate remedy would be to remand this matter to the DNR for the next appropriate review of the "final" agency action at the agency level as specified and directed by the Court because of the nature of DNR's misleading January 21, 2025, cover letter.

C. The DNR's Argument Ignores the Distinction Between Final Agency Action and Exhaustion Requirements Specific to the EPC.

The DNR argued that Petitioners-Appellants were required to appeal its memorandum to the EPC under Iowa Code section 455B.278(2), which governs

water use permit procedures. *See* D0043 at 2–3. However, this argument conflates two distinct concepts: the finality of agency action and the procedural path for exhaustion. The DNR's own memorandum was issued in response to a remand from the ALJ and was presented as the culmination of the agency's decision-making process. Petitioners-Appellants were not appealing a new permit issuance, but rather the DNR's reaffirmation of its prior decision, which it labeled as final.

Moreover, the DNR's reply fails to cite any statute, administrative rule or caselaw that overrides its own declaration of finality. The agency's insistence that Petitioners-Appellants should have appealed to the EPC is unsupported by any clear authority and contradicts the plain language of its own communication.

D. The District Court's Dismissal Undermines Public Participation and Agency Accountability.

Petitioners-Appellants participated in the administrative process, submitted public comments, and engaged in a contested case hearing. They relied on the DNR's finality statement to seek judicial review in a timely manner. To penalize them for not pursuing an additional layer of administrative appeal, one not clearly required or communicated, undermines the principles of transparency and fairness in agency proceedings.

The District Court's ruling effectively allows the DNR to characterize its actions as final when convenient and then retreat from that characterization

when challenged. This creates procedural uncertainty and discourages public engagement in environmental oversight.

E. The DNR's Conclusory Memo Violated Its Statutory Duties.

It is important to note that, contrary to the express directives of Administrative Law Judge Toby Gordon, the DNR's January 21, 2025, memorandum failed to address the environmental concerns raised in the contested case hearing, including nitrate contamination and water quality degradation. *See* D0042 at 3–4. The memo offered conclusory statements about "beneficial use" without referencing any specific evidence or conducting a meaningful investigation. *See id.* at 4.

The DNR's failure to consider water quality and environmental impacts caused by its proposed issuance of a renewed water use permit to Supreme Beef, despite Judge Gordon's directive to do so, further supports Petitioners-Appellants' claim that the agency did not follow the prescribed decision-making process. The agency's narrow interpretation of its authority, focusing solely on water quantity and a narrow scope of water use, ignores the statutory mandates to protect public health and environmental welfare that Judge Gordon required the agency to consider. *See* Iowa Code §§ 455B.262(2), 455B.264(2), 455B.267(4), 455B.271(2)(*d*).

CONCLUSION

The District Court erred in dismissing Petitioners-Appellants' Petition for Judicial Review. The DNR's express statement that its memorandum constituted "final agency action" triggered the right to judicial review under Iowa Code section 17A.19. Petitioners-Appellants reasonably relied on that representation, and the agency should be estopped from asserting failure to exhaust. They pray that the District Court's order dismissing this matter be reversed and that the matter be remanded for further proceedings.

REQUEST FOR ORAL ARGUMENT

Petitioners-Appellants respectfully request oral arguments.

CERTIFICATE OF COST

Petitioners-Appellants will not submit a Certificate of Cost given the electronic filing of this Brief.

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on October 28, 2025, I electronically filed the foregoing Brief of Petitioners-Appellants with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Pursuant to Iowa Rules of Electronic Procedure 16.315(1)(*b*), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(*i*)(1) because: this brief contains 3,509 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(*g*) and the type-style requirements of Iowa R. App. P. 6.903(1)(*h*) because: this brief has been prepared in a proportionally spaced typeface using Word for Microsoft 365 in size 14 Garamond.

Dated this 28th day of October 2025.

Respectfully submitted,

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