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IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1219
Clayton County No. CVCV011384

DRIFTLESS WATER DEFENDERS, ET AL.,

Petitioners-Appellants,

vs.

IOWA DEPARTMENT OF NATURAL RESOURCES,

Respondent-Appellee,

AND

SUPREME BEEF, LLC,

Indispensable Party-Appellee,

Appeal from the Iowa District Court
For Clayton County
The Honorable Richard D. Stochl, District Judge

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STATEMENT OF THE ISSUES

I. Whether Petitioners preserved error by appealing an order that neither referenced nor addressed the sole issue they raise on appeal.

II. Whether Petitioners are precluded from collaterally attacking a water use permit in court after participating in a contested case proceeding at the Iowa Department of Natural Resources resulting in the renewal of that permit, based solely on a new theory of relief.

III. Whether Petitioners can petition a court to direct the Department that it "must" rescind a water use permit by relying on a statute stating that says the Department "may" rescind a permit in certain circumstances.

ROUTING STATEMENT

This appeal should be routed to the Iowa Court of Appeals because it presents a straightforward application of Iowa Supreme Court precedent on error preservation and the exhaustion of administrative remedies. Iowa R. App. P. 6.1101(3)(*a*).

NATURE OF THE CASE

Petitioners ("Driftless") seek a second bite of the apple after unsuccessfully contesting the renewal of Supreme Beef's water use permit in administrative proceedings before the Iowa Department of Natural Resources. Driftless appeals the district court's order dismissing its Petition for Judicial Review under the Iowa Administrative Procedure Act. (D0014, Dismissed per Court at 3 (6/25/2025)); (D0016, Certified Notice of Appeal at 1 (7/29/2025).)

Driftless tries to force the Department to revoke Supreme Beef's water use permit. (D0001, Petition at 20 (4/10/2025).) Driftless alleges that a cattle feedlot run by Supreme Beef "may or will result in increased nitrates and/or bacterial contamination" of the Bloody Run Creek, an Iowa cold-water creek. (D0001 ¶ 97.)

The Department renewed Supreme Beef's water use permit in 2022. (D0001 ¶ 24.) Then Driftless filed an administrative appeal of that renewal decision. (D0001 ¶ 26.) The Department held a contested case proceeding where Driftless's president, Christopher Jones, and at least one other named party, Steve Veysey, testified about Supreme Beef's alleged pollution. (Att. D0013, Administrative Complaint at 9–18 (5/2/2025).)

While those contested case proceedings were still ongoing, Driftless filed a duplicative administrative complaint, relying on Iowa Administrative Code rule 561—3.3 to claim that the Department was

obligated to reinvestigate Supreme Beef's alleged pollution because twenty-five state residents had signed its complaint. (D0001 ¶ 31.) Soon after, the Department informed Driftless that it would not rescind Supreme Beef's permit. (D0001 ¶ 34.) So Driftless sued the Department, seeking to compel reinvestigation of its allegations under Iowa Administrative Code rule 561—3.3 and rescission of Supreme Beef's water use permit. (D0001 at 20.)

But Driftless failed to preserve error on the lone issue it cites as grounds for reversal–whether "Iowa Administrative Code rule 561—3.3(1)(*b*)(1) require[d] the DNR to investigate a Complaint that is submitted by twenty-five or more residents and then respond." Appellants' Brief at 29. The district court dismissed Driftless's petition solely on the alternative ground that it failed to exhaust administrative remedies, without addressing or ruling on its argument under the administrative code. (D0014 at 3.) Without moving to reconsider, enlarge, or amend, Driftless appealed—citing the administrative code issue as the only grounds for reversal. Appellants' Brief at 29. But the district court never ruled on that issue. This Court should affirm the district court's entry of dismissal because Driftless failed to preserve error on the only issue it raises on appeal.

The district court was also correct that Driftless failed to exhaust its administrative remedies. Driftless sued without first appealing any of the Department's actions on the permit to the Environmental Protection

Commission, as required by Iowa Code section 455B.278. Now that the time for an appeal has passed, the Department's actions are final and foreclose Driftless from pursuing judicial review. More, Driftless is precluded from collaterally challenging Supreme Beef's water use permit in district court because Driftless participated in the Department's contested case proceedings.

Finally—error preservation, exhaustion, and preclusion issues aside—Driftless may not petition a court to compel the Department to cancel Supreme Beef's permit under Iowa Code section 455B.271. That statute says the Department "may" modify or terminate a permit under certain enumerated conditions, vesting the decision in the agency's discretion. Driftless thus lacks basis for a judicial order compelling the Department to cancel a permit.

Driftless now appeals.

STATEMENT OF THE FACTS

I. Driftless fully litigates Supreme Beef's alleged pollution before the Department in a contested administrative proceeding.

The Department issued Supreme Beef a permit for "diverting, storing, or withdrawing water from any surface or groundwater source," under Iowa Code § 455B.265. (D0001 ¶ 17.) The Department renewed Supreme Beef's water use permit effective June 1, 2022. (D0001 ¶ 24.) Driftless filed a notice of appeal of the decision to renew the permit with the Department on July 15. (D0001 ¶ 26.)

The Department then convened a contested case proceeding before the Iowa Administrative Hearing Division on the challenge to Supreme Beef's permit. (D0001 ¶ 27.) The Department solicited evidence and testimony about whether Supreme Beef's water use permit constituted a "beneficial use" as defined in Iowa Code sections 455B.262(2), 455B.264(2), 455B.267(4) ("Iowa Code § 455B.262 *et seq*."). The president of Driftless Water Defenders, Christopher Jones, and at least one other named party, Steve Veysey, testified at an evidentiary hearing on February 1–2, 2024 that Supreme Beef's use of its permit presented a risk to the cleanliness of Bloody Run Creek. (Att. D0013, Administrative Complaint at 9–18.) The evidentiary record closed after the hearing, and the parties were no longer allowed to present new evidence.

Later, Driftless attempted to enter a sworn declaration prepared by Jones, purporting to show new testing results. (D0001 at 14 n.4.) The

Administrative Law Judge rejected the declaration as untimely. (D0001 at 14 n.4.)

On November 12, the Administrative Law Judge issued a proposed decision remanding the matter to the Department to "articulate a reasonable and rational basis for finding a 'beneficial use' exists, or does not exist" based on statutory factors enumerated in Iowa Code section 455B.262 *et seq*. (Att. D0005, Proposed Decision at 26 (4/22/2025).) The decision made clear that it "d[id] not rescind the existing renewed permit and in no way intend[ed] to direct the DNR one way or the other in its ultimate conclusion, nor suggest[ed] that the DNR should speculate about the mere possibility of future harms." (Att. D0005, Proposed Decision at 27.)

The proposed decision became final on December 12 when neither "party appealed, when the DNR's Director made no changes to the ruling, and when the Environmental Protection Commission did not amend the proposed decision." (D0001 ¶ 30.) Driftless did not appeal the proposed decision to the Environmental Protection Commission within thirty days of its issuance. (D0001 ¶ 30.)

II. Driftless files an administrative complaint restating its allegations against Supreme Beef.

While the matter was on remand with the Department, Driftless filed an administrative complaint with the Department seeking rescission of Supreme Beef's permit on January 16, 2025. (D0001 ¶ 31.)

Driftless stated that it was filing the complaint under Iowa Administrative Code rule 561—3.3(1)(*b*)(1) and included the signatures of more than twenty-five Iowa residents. The administrative complaint restated the allegations Driftless had raised at the hearing before the Administrative Law Judge. (Att. D0013, Administrative Complaint at 7–19.) The bulk of the facts section of the complaint is a summary of the testimony heard by the Administrative Law Judge at the evidentiary hearing. (Att. D0013, Administrative Complaint at 9–18.) Though styled as an administrative complaint seeking an investigation, Driftless asked the Department to "cancel Supreme Beef's water use permit under Iowa Code section 455B.271(2)." (Att. D0013, Administrative Complaint at 22.)

Driftless also brought the sworn declaration prepared by its president to the Department's attention. (Att. D0013, Administrative Complaint at 7.) That was the same declaration that Driftless sought to enter into the evidentiary record after it had closed and which the Administrative Law Judge rejected as untimely. (D0001 at 14 n.4.)

On January 29, the Department sent Driftless a memorandum articulating "a rational and reasonable basis" of the existence of a beneficial use in connection with Supreme Beef's permit renewal. (Att. D0005, Exh. B at 1–2 (4/22/2025).) The Department thus declined to cancel Supreme Beef's permit and stated that the memo was the Department's "final agency action pursuant to this case." (Att. D0005, Exh. B at 1.) In doing so, the Department fulfilled the Administrative

Law Judge's directive on remand that it considers all the statutory factors in Iowa Code § 455B.262 *et seq*. in determining whether renewing Supreme Beef's permit constituted a "beneficial use."

In the memorandum, the Department also informed Driftless that it would not be "exercising its discretionary authority to cancel or modify a water use permit" under Section 455B.271(2) after considering "whether [Supreme Beef's] proposed use will negatively impact the public's health, safety, interests in lands or waters or cause injury to persons or property." (Att. D0005, Exh. B at 2.)

In reaching that conclusion, the Department observed that Supreme Beef's use was not "expected to impact the groundwater flow of the aquifer, or any other nearby surface watercourse such that issues of water quality or quantity resulting from the withdrawal would be a concern," and that Supreme Beef's use was not "expected to cause damage or alter the surrounding area's topography, nor will it deplete the underlying aquifer." (Att. D0005, Exh. B at 3–4.) The Department also observed that "watering livestock is a necessary and humane activity when animals are kept in captivity, which is authorized by law;" more, that industry "supports Iowa's economy by creating jobs and generating tax revenue." (Att. D0005, Exh. B at 3–4.)

Driftless did not appeal that agency action to the Environmental Protection Commission within thirty days either. Instead, Driftless filed a Petition for Judicial Review on April 10 under Iowa Code Section

17A.19(1), alleging that it had "exhausted all adequate administrative remedies and [was] aggrieved or adversely affected by [a] final agency action[.]" (D0001 ¶ 95.) Driftless contended that an "investigation [was] mandatory when twenty-five residents of Iowa make a complaint to the DNR" under Iowa Administrative Code rule 561—3.3(1)(*b*)(1). (D0001 ¶ 76.) Driftless then asked the district court to "[o]rder the DNR to perform its mandatory investigation of Petitioners' complaint pursuant to Iowa Administrative Code r. 561—3.3(1)(*b*)(1)" and "[d]irect the DNR that it must cancel Supreme Beef's renewed water use permit[.]" (D0001 at 20.)

III. The district court dismisses Driftless's claims, citing Driftless's failure to exhaust its administrative remedies.

On June 25, the district court dismissed Driftless's claims. (D0014 at 3.) The district court reasoned that Driftless was "required to appeal [the Department's final agency actions] to EPC, not petition for judicial review." (D0014 at 3.) "Because petitioners have not exhausted their administrative remedies under Iowa Code Chapter 17A," the district court determined it "d[id] not have jurisdiction to consider this controversy on judicial review." (D0014 at 3.) The district court's order did not mention Iowa Administrative Code rule 561—3.3(1)(*b*)(1), much less decide whether that regulation created a mandatory obligation for the Department to investigate a complaint once twenty-five state residents signed it.

Driftless did not move to reconsider, enlarge, or amend the district court's order under Rule 1.904(2). Instead, Driftless appealed, seeking to reverse the order of dismissal, arguing that "Iowa Administrative Code rule 561—3.3(1)(*b*)(1) require[d] the DNR to investigate a Complaint that is submitted by twenty-five or more residents and then respond." Appellants' Brief at 29.

Since this litigation started, Iowa Administrative Code rule 561—3.3 has been rescinded. But because the rescission became effective on August 27, 2025, after Driftless filed its administrative complaint and Petition for Judicial Review, the Department does not contest Driftless's position that it remains operative for the purposes of this litigation.

ARGUMENT

I. Driftless failed to preserve error, failed to exhaust its administrative remedies, is precluded by the contested case proceeding it participated in unsuccessfully, and fails on the merits.

Iowa law states that a person who is "diverting, storing, or withdrawing water from any surface or groundwater source" must get a permit from the Iowa Department of Natural Resources. Iowa Code § 455B.268. To issue a permit under this subsection, the Department must determine whether the "diversion, storage, or withdrawal is consistent with the principles and policies of beneficial use and ensuring

conservation[.]" Iowa Code § 455B.265(1). Supreme Beef holds a permit granted by the Department under this subsection. (D0001 ¶ 41.)

To determine whether a permit is directed towards a "beneficial use," the Department must consider a range of statutory factors—including the "best interests and welfare of the people," the "effect of the water use upon the owners of any land which might be affected," and whether granting the permit "[would] 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.262 *et seq*.

The Court should affirm the district court's order of dismissal because Driftless did not preserve error on whether the Department had to conduct a mandatory investigation, Driftless is precluded from collaterally challenging a water use permit issued after participating in a contested renewal proceeding, and Section 455B.271 entrusts the decision to modify or cancel a permit to the agency's discretion.

A. Error preservation and standard of review.

Driftless did not preserve error on the single issue it raises in support of reversal. Driftless argues that "Iowa Administrative Code rule 561—3.3(1)(*b*)(1) require[d] the DNR to investigate a Complaint that is submitted by twenty-five or more residents and then respond." Appellants' Brief at 29. But the district court did not decide that issue. Thus, that issue is not preserved.

This Court has repeatedly held that "[i]t is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before [the Court] will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002); *see also Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998) ("issues must be presented to and passed upon by the district court"); *Peters v. Burlington N. R.R.*, 492 N.W.2d 399, 401 (Iowa 1992) (same).

Thus, "[w]hen a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a [rule 1.904(2)] motion requesting a ruling in order to preserve error for appeal." *Meier*, 641 N.W.2d at 537; *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995); *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206 (Iowa 1984). Rule 1.904(2) of the Iowa Rules of Civil Procedure states that "the findings and conclusions [of a district court] may be reconsidered, enlarged, or amended and the judgment or decree modified accordingly or a different judgment or decree substituted" on motion by an adversely affected party. Indeed, this Court has held that "[w]hen a rule 1.904(2) motion requests a ruling on an issue properly presented to but not decided by the district court, the motion is proper even if the issue is a purely legal one." *Homan v. Branstad*, 887 N.W.2d 153, 161 (Iowa 2016) (citing *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 641 (Iowa 2013)).

Neither party disputes that the district court did not rule on or address Driftless's argument that Iowa Administrative Code rule 561—3.3(1)(*b*)(1) required the Department to investigate a complaint of water pollution if twenty-five Iowa residents signed it. That is despite Driftless presenting that issue to the district court by raising it in its Petition for Judicial Review and its Resistance to the Department's Motion to Consolidate and Dismiss. (D0001 at 18, 20; D0013 at 5–10.)

The district court dismissed Driftless's Petition on the alternative grounds that Driftless had "not exhausted their administrative remedies under Iowa Code Chapter 17A" by appealing the Department's final decision to the Environmental Protection Commission as required by statute. (D0014 at 3.) The district court's order does not mention Iowa Administrative Code rule 561—3.3(1)(*b*)(1) much less address whether it creates a mandatory obligation on the Department to investigate Driftless's duplicative administrative complaint.

Indeed, throughout its brief, Driftless laments the district court's failure to address its argument under the Iowa Administrative Code. *See, e.g.,* Appellants' Brief at 8 ("The District Court's Dismissal of this action . . . was issued on grounds that should have been applicable, if at all, only to the . . . separate, but parallel action."); *id.* at 21 ("DNR, Joined by Supreme Beef, Moved to Consolidate and Dismiss and the District Court Dismissed the Matter Based on Reasoning Only Applicable to a Related Case."); *id.* at 29 ("The District Court Erred in Dismissing the

Complaint Based on Failing to Exhaust Administrative Remedies in a Related, but Separate, Matter in a Different Case."). Each time Driftless points out that the district court did not address its legal argument, Driftless admits it did not preserve error on that issue.

Yet Driftless did not move the district court to reconsider, enlarge, or amend under rule 1.904(2). *See* Iowa R. Civ. P. 1.904(3) ("[A] rule 1.904(2) motion to reconsider, enlarge, or amend . . . will be considered timely if filed within 15 days after the filing of the order, judgment, or decree to which it is directed.") Instead, it filed an appeal, raising its argument under the Iowa Administrative Code as the sole grounds for reversal.

Because Driftless failed to preserve error on the sole issue it raises as grounds for reversal, the Court should affirm the district court's dismissal of its claims.

Driftless also raises a slew of legal arguments throughout its Statement of Facts. *See* Appellants' Brief at 8–28. But because those contentions were not raised in the argument section of Driftless's brief and are unsupported by citations to legal authority, they are waived, and the Department does not address them. *See* Iowa R. App. P. 6.903(2)(*g*)(3) (requiring an appellant's brief contain "*[a]n argument section* containing the appellant's contentions and the reasons for them with citations to the authorities relied on . . . Failure to cite authority in support of an issue may be deemed waiver of that issue.") (emphasis added); *State v. Tyler*,

867 N.W.2d 136, 166 n.14 (Iowa 2015) (noting a "passing reference" [to a legal argument] in a brief constitutes waiver).

The "standard of review for a district court's ruling on a motion to dismiss is for correction of errors at law." *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016); *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). The Court will "affirm a district court's grant of a motion to dismiss if [a] petition fails to state a claim upon which relief may be granted." *Hedlund*, 875 N.W. at 724; *King v. State*, 818 N.W.2d 1, 8 (Iowa 2012). "For purposes of reviewing a ruling on a motion to dismiss, [the Court] accept[s] as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014).

B. Driftless failed to exhaust its administrative remedies by failing to appeal the Department's actions; that failure should now be given preclusive effect.

The Iowa Administrative Procedure Act permits only persons or parties who have "exhausted all adequate administrative remedies" and have been "aggrieved or adversely affected by a final agency action" to seek judicial review. Iowa Code § 17A.19(1). A district court is "deprived of jurisdiction of the case if administrative remedies are not exhausted." *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998); *Keokuk Cnty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999). Thus, "when a litigant requests judicial review before exhausting administrative remedies, the district court

merely lacks authority to entertain a particular case." *Keokuk*, 593 N.W.2d at 122.

This Court's precedent requires two conditions to be satisfied before imposing an exhaustion requirement on a petitioner. *First*, an administrative remedy must exist for the claimed wrong. *N. River Ins. Co. v. Iowa Div. of Ins.*, 501 N.W.2d 542, 545 (Iowa 1993). *Second*, a statute must expressly or implicitly require that remedy be exhausted before resorting to the courts. *Id.*; *see also Hornby v. State*, 559 N.W.2d 23, 24 (Iowa 1997); *Jew v. Univ. of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987).

Here, Section 455B.278 of the Iowa Code satisfies both conditions. It empowers the Environmental Protection Commission to "adopt, modify, or repeal rules establishing procedures by which permits required [for water diversion, storage, and withdrawal] shall be issued, suspended, revoked, modified, or denied." Iowa Code § 455B.278(1). It then expressly provides an administrative remedy for the wrong Driftless complains of, stating: "Action by the department [of Natural Resources] upon an application for a permit . . . may be appealed to the [Environmental Protection] commission by the applicant or any affected person within thirty days of the department's action." Iowa Code § 455B.278(2). As a result, Driftless was required to exhaust administrative remedies by appealing to the Environmental Protection Committee before petitioning the district court.

1. Driftless admits that it did not appeal the Department's decision to the Environmental Protection Commission within thirty days.

Driftless had two opportunities to appeal the Department's decision to the Commission and failed to appeal both times. First, on November 12, 2024, the Administrative Law Judge in the contested case about the renewal of Supreme Beef's water permit remanded the case to the Department for the limited purpose of considering statutory factors in Iowa Code § 455B.262 *et seq.* defining what constitutes a "beneficial use" and "articulating a rational and reasonable basis upon those factors of the existence, or lack of existence, of a beneficial [use] in connection with the water use permit renewal." (Att. D0005, Exh. A at 27.) The Administrative Law Judge made clear that it "d[id] not rescind the existing renewed permit and in no way intend[ed] to direct the DNR one way or the other in its ultimate conclusion, nor suggest[ed] that the DNR should speculate about the mere possibility of future harms." (Att. D0005, Exh. A at 27.)

In its Petition for Judicial Review, Driftless admits that it did not appeal this proposed decision within the statutory timeframe, stating that the proposed decision "became final when no party appealed, when the DNR's Director made no changes to the ruling, and when the Environmental Protection Commission did not amend the proposed decision." (D0001 ¶ 30.) As a result, Driftless failed to exhaust its administrative remedies.

Second, the Department sent Driftless a memorandum on January 29, 2025, articulating "a rational and reasonable basis" of the existence of a beneficial use in connection with Supreme Beef's permit renewal. (Att. D0005, Exh. B at 1–2.) In doing so, the Department fulfilled the Administrative Law Judge's directive on remand in the contested case proceedings that it considers all the statutory factors in Iowa Code § 455B.262 *et seq.* in determining whether renewing Supreme Beef's permit constituted a "beneficial use." Accordingly, the Department declined to cancel Supreme Beef's permit and stated that the memo was the Department's "final agency action pursuant to this case." (Att. D0005, Exh. B at 1.) Driftless did not appeal this determination to the Environmental Protection Commission either.

Rather than appeal either agency action to the Commission as required by Section 455B.278(2), Driftless seized on the Department's assertion that the memorandum constituted a "final agency action" to argue that it had exhausted its administrative remedies and could petition for judicial review under Section 17A.19. (D0001 ¶ 94.) But section 455B.278(2) requires any "[a]ction by the department [of Natural Resources] upon an application for a permit" to be appealed to the Environmental Protection Commission within thirty days to constitute exhaustion. That includes the Department's final agency actions. As the district court correctly noted, "[t]he letter correctly states that the memorandum represented the final agency action of the DNR. However,

it was not the final agency action of the EPC. Petitioners were required to appeal to [the] EPC, not petition for judicial review." (D0014 at 3.)

Thus, the district court correctly dismissed Driftless's claims for failing to exhaust administrative remedies as required by Section 455B.278(2).

2. The contested case proceeding leading to the renewal of Supreme Beef's permit precludes collateral judicial challenges like Driftless's.

This Court has held that "the final adjudicatory decision of an administrative agency" is entitled to "res judicata effect as if it were a judgment of a court." *Bennett v. MC No. 619, Inc.*, 586 N.W.2d 512, 517–18 (Iowa 1998). "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." *Toomer v. Iowa Dept. of Job Serv.*, 340 N.W.2d 594, 598 (Iowa 1983) (quoting *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966) and citing Restatement (Second) of Judgments § 83 ("[A] valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court.")).

Here, what Driftless alleges in its Petition and administrative complaint about the contested case proceedings that led to the Department's renewal of Supreme Beef's water use permit entitles them

to preclusive effect. Iowa courts generally follow section 83 of the Restatement (Second) of Judgments in considering whether administrative actions are entitled to preclusive effect. *Ghost Player, LLC v. Iowa Dep't of Econ. Dev.*, 906 N.W.2d 454, 462–63 (Iowa 2018); *George v. D.W. Zinser Co.*, 762 N.W.2d 865, 868 (Iowa 2009); *Bennett*, 586 N.W.2d at 517. Section 83 states that an adjudicative determination of an administrative tribunal is entitled to preclusive effect if its proceedings entail "the essential elements of adjudication," including the following:

> (a) Adequate notice to persons who are to be bound by the adjudication....
>
> (b) The right on behalf of a party to present evidence and legal argument in support of the party's contentions and fair opportunity to rebut evidence and argument by opposing parties.
>
> (c) A formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof;
>
> (d) A rule of finality, specifying a point in the proceeding when presentations are terminated and a final decision is rendered; and
>
> (e) Such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question, having regard for the magnitude and complexity of the matter in question, the urgency with which the matter must be resolved, and the opportunity of the parties to obtain evidence and formulate legal contentions.

Restatement (Second) of Judgments § 83(2) (1982).

Based on what Driftless alleges in its Petition and administrative complaint, the contested case proceedings that led to the Department's renewal of Supreme Beef's water use permit satisfied those elements.

First, Driftless had adequate notice of the proceedings because the Department published notice of its intent to renew Supreme Beef's permit in a local newspaper on April 5, 2022, and heard comments from the public at a hearing on April 25, 2022. (D0001 ¶¶ 20, 21.) Challengers of Supreme Beef's permit also presented evidence of "the effects of Supreme Beef's water use on the quality of the public water supply" at the evidentiary hearing before the Administrative Law Judge on February 1–2, 2024. (Att. D0013, Administrative Complaint at 9.)

Second, Driftless had the opportunity to "present evidence and legal argument" about its contentions and rebut evidence and argument presented by the Department and Supreme Beef at the contested case proceeding. Indeed, Driftless's administrative complaint states that its own president, Christopher Jones, and at least one party named here, Steve Veysey, testified at the evidentiary hearing before the Administrative Law Judge and offered evidence of Supreme Beef's alleged pollution of Bloody Run Creek. (Att. D0013, Administrative Complaint at 10–18.)

Third, the Administrative Law Judge heard testimony and considered evidence to determine whether renewing Supreme Beef's permit involved a "beneficial use" of the State's water resources, as

statutorily defined in Iowa Code § 455B.262 *et seq*. (Att. D0013, Administrative Complaint at 10–18.) Thus, the contested case adjudication included a "formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status." *Bennett*, 586 N.W.2d at 517 (quoting Restatement (Second) of Judgments § 83(2) (1982).)

Fourth, the contested case proceedings also had a "rule of finality," establishing a specific point where presentations were terminated and a final decision was rendered. The evidentiary hearing in the contested case was held on February 1–2, 2024, after which the record was closed. (Att. D0013, Administrative Complaint at 9.) Indeed, Driftless notes that it was barred from submitting an untimely sworn declaration from its president, Christopher Jones, after the record had closed. (Att. D0013, Administrative Complaint at 14 n.4.) The Administrative Law Judge later issued his proposed decision in the case on November 12, which became final on December 12, 2024. (D0001 ¶ 71.) The Department sent its final memorandum to Driftless on January 29, 2025, concluding that Supreme Beef's use constituted a "beneficial use" as defined in statute. (D0001 ¶ 79.) Both agency actions are now final because neither was appealed to the Environmental Protection Commission within thirty days, as required by statute.

Finally, the contested case proceedings had all the "procedural elements" to conclusively adjudicate the factual and legal issues

surrounding the renewal of Supreme Beef's permit. Section 17A.12 states that all parties in a contested case proceeding "shall be afforded an opportunity for hearing after reasonable notice" and have the opportunity "to respond and present evidence and argument on all issues involved[.]" Iowa Code §§ 17A.12(1), (4). Driftless was given an adequate opportunity to offer evidence relevant to the contested case proceedings at the evidentiary hearing before a neutral Administrative Law Judge. Having failed to secure the relief it wanted in the contested administrative proceedings it participated in, Driftless now seeks to collaterally attack the Department's decision to not revoke Supreme Beef's permit. The Court should deny its attempt to do so.

Because the contested case proceedings that led to the renewal of Supreme Beef's permit entailed all the essential elements of adjudication, Driftless is precluded from collaterally challenging the Department's decision.

3. Under this Court's precedent, Driftless's attempts to resist the preclusive effect of the contested case proceedings fail.

This Court has held that "a party must try all issues growing out of the claim at one time and not in separate actions." *Bennett*, 586 N.W.2d at 517 (quoting *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 441 (Iowa 1996)). "An adjudication in a prior action between the same parties on the same claim is *final* as to all issues that could have been

presented to the court for determination." *Id.* A party "is not entitled to a 'second bite' simply by alleging a new theory of recovery for the same wrong." *Id.* The "policy of the law underlying claim preclusion is that a claim cannot be split or tried piecemeal." *Id.* at 516–17.

Driftless admits that it is trying to bring its claims piecemeal. Driftless says it is not precluded from bringing this action because it is "seeking review under a different provision of the Iowa Code than those which were considered in the water use permit process." Appellants' Brief at 27. Far from bringing all issues that "could have been presented" for adjudication in one action, Driftless argues that it can bifurcate its claims arising out of Supreme Beef's permit renewal in separate actions so long as it alleges "a new theory of recovery for the same wrong" in each action. *Bennett*, 586 N.W.2d at 517. The Court has repeatedly rejected that proposition. It should do so again.

Besides, Driftless is also incorrect in its contention that it is "seeking review under a different provision of the Iowa Code than those which were considered in the water use permit process." Appellants' Brief at 27. In his proposed decision, the Administrative Law Judge expressly directed the Department to consider "[t]he public's health, safety, interests in lands or waters, and prevention of injury to persons or property" pursuant to Section 455B.271(2), the statute under which Driftless brings its claims here. (Att. D0005, Exh. A at 26.) In its final memorandum to Driftless, the Department stated that it would not be

"exercising its discretionary authority to cancel or modify a water use permit" under Section 455B.271(2). (Att. D0005, Exh. B at 2.) So even if Driftless was correct that it could bring its claims arising from Supreme Beef's permit renewal piecemeal, its arguments under Section 455B.271(2) were fully considered and rejected by the Department in the contested case proceedings.

"The rule [of claim preclusion] applies not only as to every matter which was offered and received to sustain or defeat the claim or demand, but also as to any other admissible matter which could have been offered for that purpose." *Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315 (Iowa 2002). Yet Driftless argues that there is "no issue or claim preclusion here because . . . the presence of new facts as alleged in [Driftless's] Complaint . . . means that the DNR's prior factual determination does not have preclusive effect in this case." Appellants' Brief at 25–26. The "new facts" in Driftless's Petition is a reference to a sworn declaration of its own president, Christopher Jones. (D0001 ¶ 69.) The declaration was prepared after the evidentiary record in the contested case proceedings had closed and was rejected as untimely by the Administrative Law Judge. (D0001 ¶ 69 n.4.)

Driftless's argument turns this Court's requirements for an agency adjudication to have preclusive effect on its head. To have preclusive effect, this Court has required agency adjudications to have a "rule of finality, specifying a point in the proceeding when presentations are

terminated[.]" *Bennett*, 586 N.W.2d at 517. But as Driftless would have it, an agency's final adjudications would lose their preclusive effect each time a party presented new facts after the specified point of finality. The Court should reject Driftless's invitation to deprive the Department and its permittees of repose each time a challenger provides new evidence after a contested case has been closed.

Finally, this Court has explained the rationale behind affording preclusive effect to the adjudications of administrative agencies: "[T]he social importance of stability in the results of [administrative adjudications] corresponds to the importance of stability in judicial judgments. The rules of res judicata thus generally have application not only by courts with respect to administrative adjudications but also by agencies with respect to their own adjudications." *Bennett*, 586 N.W.2d at 517 (quoting Restatement (Second) of Judgments § 83 cmt. b).

Bennett's observations apply here. Supreme Beef's water use permit renewal was adjudicated after an exhaustive contested case proceeding in the Department, where all interested parties were able to present relevant facts and testimony. (Att. D0013, Administrative Complaint at 10–18.) While the matter was pending on remand to the Department, Driftless filed a duplicative administrative complaint, arguing that a sworn declaration produced by its own president after the evidentiary record had closed required the Department to reinvestigate Supreme Beef's operations and revoke their permit. (Att. D0013, Administrative

Complaint at 22–23.) After the Department concluded that Supreme Beef's permit should not be revoked, Driftless filed this case in district court without appealing any of the Department's actions to the Environmental Protection Commission, as required by the statute. (D0001 at 1.)

Driftless admits that its own president, Christopher Jones, and at least one other party named here, Steve Veysey, participated in the contested agency adjudication that led to the renewal of Supreme Beef's water permit. (Att. D0013, Administrative Complaint at 10–18.) Still, Driftless argues that it is insulated from the preclusive effects of a contested agency adjudication because its president later produced an untimely declaration. Appellants' Brief at 25–26, 27. Far from asserting a new claim for relief, Driftless asserts one that could have been raised in the agency proceedings.

If a plaintiff armed with untimely presented facts and a different section of the Iowa Code can sidestep the binding effect of a contested agency adjudication, the social importance of stability in the results of such adjudications will be greatly undermined. The Court should heed its precedent and conclude that Driftless is precluded from collaterally attacking Supreme Beef's water use permit.

C. Driftless's duplicative administrative complaint is not among the "type" of complaints the Department was obligated to investigate under Iowa Administrative Code rule 561—3.3(1)(*b*)(1).

Even if the Court concludes that Driftless preserved error, exhausted its remedies, and was not precluded by the contested agency adjudication, it should affirm the district court's entry of dismissal because Driftless's complaint does not allege a violation under the statutes listed in the rule it relies on.

The Department and the Iowa Environmental Protection Commission have enacted administrative rules to enforce the environmental protections codified in Chapter 455B of the Iowa Code. One such rule allows individuals to bring complaints "alleg[ing] violations of departmental statutes or rules" to "the appropriate department office." Iowa Admin. Code r. 567—10.1(1). If a complaint is submitted by a known complainant, the rule states that such office "shall notify the complainant of the investigation results or of its decision not to investigate the complaint." Iowa Admin. Code r. 567—10.1(2).

By contrast, Driftless invokes a rescinded rule of the Department which stated that the Department "shall investigate the following types of complaints: . . . alleged violations of air or water pollution statutes, rules or permits when requested by . . . 25 residents of the state pursuant to Iowa Code subsections 455B.134(8) and 455B.174(1)." Iowa Admin. Code r. 561—3.3(1)(*b*)(1). But Driftless's administrative complaint asked

the Department to "cancel Supreme Beef's water use permit under Iowa Code section 455B.271(2)," a different statute from those listed in the rule. (Att. D0013, Administrative Complaint at 21.) Indeed, neither Driftless's Petition for Judicial Review nor its administrative complaint state that it was seeking an investigation pursuant to subsections 455B.134(8) or 455B.174(1) of the Iowa Code. Thus, the Department was not obligated to investigate Driftless's administrative complaint because it was not among the "type" of complaints that required a mandatory investigation under the rule.

And even if Section 455B.271(2) were listed in the rule, a court still may not direct the Department to rescind Supreme Beef's permit. Section 455B.271(2) states that "a permit *may* be modified or canceled by the [Department]" if any of the following conditions occur: breach of the terms of the permit, violation of the law relating to the permit by the permittee, nonuse, or if "[t]he department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner." Iowa Code § 455B.271(2) (emphasis added).

As this Court has held, "[t]he word 'may' usually is employed [in a statute] as implying permissive or discretionary rather than mandatory action or conduct." *Lenning v. Iowa Dep't of Transp., Motor Vehicle Div.*, 368 N.W.2d 98, 101 (Iowa 1985); *John Deere Waterloo Tractor Works of*

Deere & Co. v. Derifield, 110 N.W.2d 560, 562 (1961). Further, the Iowa Administrative Procedure Act asks courts to "give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(11)(*c*).

Section 455B.271(2) uses "permissive or discretionary" language to vest the decision to modify or cancel a water use permit in the Department's discretion, if any of the four events listed in the statute occurs. As a result, Driftless may not petition a district court to "[d]irect the DNR that it must cancel Supreme Beef's renewed water use permit" pursuant to Section 455B.271(2). (D0001 at 20.)

Here, the Department informed Driftless that it would not "exercise[e] its discretionary authority to cancel or modify a water use permit" under Section 455B.271(2) after considering "whether [Supreme Beef's] proposed use will negatively impact the public's health, safety, interests in lands or waters or cause injury to persons or property." (Att. D0005, Exh. B at 2.) In doing so, the Department "articulate[d] a reasonable and rational basis for finding a 'beneficial use' exists" with respect to Supreme Beef's permit. (Att. D0005, Exh. B at 1.)

In reaching that conclusion, the Department explained its reasoning in detail—observing that Supreme Beef's use was not "expected to impact the groundwater flow of the aquifer, or any other nearby surface watercourse such that issues of water quality or quantity

resulting from the withdrawal would be a concern," nor was it "expected to cause damage or alter the surrounding area's topography, nor will it deplete the underlying aquifer." (Att. D0005, Exh. B at 3–4.) The Department also observed that "watering livestock is a necessary and humane activity when animals are kept in captivity, which is authorized by law" and it "supports Iowa's economy by creating jobs and generating tax revenue." (Att. D0005, Exh. B at 3–4.) After balancing these diverse interests, the Department concluded that Supreme Beef's water use constituted a "beneficial use" as defined in Iowa Code § 455B.262 *et seq*. (Att. D0005, Exh. B at 3–4.)

Throughout its Appellants' Brief, Driftless makes clear that it believes that the Department's conclusion was "conclusory," "without reference to any specific evidence adduced in the course of the public hearing and submitted comments, initially, or at the evidentiary trail, convened thereafter," or erroneous. Appellants' Brief at 19–21. But Section 455B.271(2) entrusts the decision to modify or cancel Supreme Beef's permit to the Department's discretion, not Driftless's.

Therefore, the Court should affirm because Driftless's administrative complaint was not among the "type" of complaints that required a mandatory investigation under the rule it relies on. Even if it was, Driftless may not ask a court to direct the Department to cancel Supreme Beef's permit under a statute that entrusts such a decision to the Department's discretion.

CONCLUSION

This Court should affirm the district court's dismissal of all Driftless's claims.

REQUEST FOR ORAL SUBMISSION

The Department requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*e*), 6.903(1)(*g*)(1), 6.903(1)(*h*), and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 7,070 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

/s/ Patrick C. Valencia
PATRICK C. VALENCIA

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 16th day of October, 2025, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ Patrick C. Valencia
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