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IN THE SUPREME COURT OF IOWA

NO. 25-1220

CLAYTON COUNTY NO. CVCV011358

TAMMY THOMPSON, ET AL.,

Petitioners-Appellants,

v.

IOWA DEPARTMENT OF NATURAL RESOURCES,

Respondent-Appellee,

AND

SUPREME BEEF, LLC,

Indispensable Party-Appellee.

ON APPEAL FROM THE DISTRICT COURT OF CLAYTON COUNTY
HONORABLE RICHARD D. STOCHL, JUDGE

APPLICATION FOR FURTHER REVIEW

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QUESTION PRESENTED

I. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS-APPELLANTS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE SEEKING JUDICIAL REVIEW, DESPITE THE DEPARTMENT OF NATURAL RESOURCES' EXPRESS REPRESENTATION THAT ITS JANUARY 2025 MEMORANDUM CONSTITUTED THE "FINAL AGENCY ACTION PURSUANT TO THIS CASE," AND DESPITE THE CONFUSING AND UNUSUAL PROCEDURAL POSTURE IDENTIFIED IN CHIEF JUDGE MARY TABOR'S DISSENT.

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STATEMENT SUPPORTING FURTHER REVIEW

Petitioners-Appellants request that the Supreme Court grant further review of this case on the grounds that the Court of Appeals decided a case where there is an important question of changing legal principles, Iowa R. App. P. 6.1103(1)(*b*)(3) and the case presents an issue of broad public importance that the Supreme Court should ultimately determine, Iowa. R. App. P. 6.1103(1)(*b*)(4).

This case presents significant questions concerning the interplay between the final-agency-action requirement and the exhaustion-of-administrative-remedies doctrine under Iowa Code chapter 17A, particularly when an agency expressly advises adverse affected parties that the agency has taken the "final agency action" regarding a contested matter, yet later argues that additional administrative review was required before judicial review could be sought. Chief Judge Tabor's dissent recognized that the procedural posture of this case was unusually confusing, that the Department of Natural Resources' (DNR) own characterization of its action as "the final agency action pursuant to this case" reasonably created uncertainty as to the proper avenue for further review, and that application of the exhaustion doctrine should not become a procedural "gotcha" that prevents resolution of disputes on their merits. The dissent further identified substantial ambiguity concerning whether the DNR's post-remand memorandum constituted a permit decision appealable to the Environmental Protection Commission, whether the matter remained pending before the

administrative law judge on remand, or whether judicial review was the proper next step.

Because these issues affect not only the parties to this case but also, potentially, all persons seeking judicial review of environmental permitting decisions and other agency actions under chapter 17A, further review is necessary to provide guidance concerning when agency action is sufficiently final for judicial review and when exhaustion requirements may be excused in the face of misleading or ambiguous agency procedures and statements.

ARGUMENT

I. Statement of Facts and Procedural History.

This matter arises from Petitioners-Appellants' challenge to the Department of Natural Resources' ("DNR") reaffirmation of a renewed water use permit issued to Supreme Beef, LLC, ("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. *Id.* 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 have found, 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 DNR's published notice of intent to approve Supreme Beef's water use renewal permit application, members of the public, including Petitioners-Appellants, demanded a public hearing and submitted written comments expressing opposition to the issuance of the renewed 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 harms already caused, and potentially caused in the future 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). ALJ Gordon 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 to the Environmental Protection Commission ("EPC"), 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 earlier approval of the renewed permit application 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 that Petitioner Appellants believed had been 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 renewed 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 any failure to exhaust administrative remedies. 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 have appealed the DNR's decision to the EPC before seeking judicial review and that their reliance on the DNR's cover letter had been insufficient to bypass the statutory exhaustion requirement. *Id.*

Petitioners-Appellants appealed. In a divided decision filed June 10, 2026, the Iowa Court of Appeals affirmed the district court's dismissal. *Thompson et al. v. DNR*, Case No. 25-1220 at *5–8 (June 10, 2026 Iowa Ct. App.). The majority concluded that Iowa Code section 17A.19 imposed two independent requirements for judicial review: (1) a final agency action and (2) exhaustion of all adequate administrative remedies. *Id.* at 4–6. Although acknowledging that the DNR's January 2025 cover letter expressly stated that the memorandum constituted the "final agency action pursuant to this case," the majority held that this characterization did not excuse Petitioners-Appellants from first appealing to the Environmental Protection Commission under Iowa Code section

455B.278(2). *Id.* at 5–7. The majority further rejected Petitioners-Appellants' arguments based on waiver and the equitable estoppel doctrine, reasoning that the DNR's use of the phrase "final agency action" did not eliminate the statutory appeal process and that section 455B.278 authorized EPC review of DNR permit actions regardless of whether the action was characterized as final. *Id.* at 6–7. The majority therefore concluded that Petitioners-Appellants' failure to seek EPC review had deprived the district court of authority to consider the merits of their challenge. *Id.* at 8.

Chief Judge Tabor dissented. *Id.* at 9–12 (Tabor, C.J., dissenting). The dissent emphasized that "final agency action" is a legal term of art ordinarily associated with the availability of judicial review and concluded that the DNR's express designation of its memorandum as the "final agency action pursuant to this case" reasonably created confusion regarding the proper procedural path. *Id.* at 9–11. Chief Judge Tabor observed that the case presented an unusual procedural history, including the fact that the DNR's memorandum was issued only after the deadline to appeal the administrative law judge's remand order had expired; that the memorandum merely purported to supply the analysis required on remand; and that uncertainty existed regarding whether the matter had previously proceeded through the EPC or remained before the administrative law judge. *Id.* at 10–11. Concluding that "[t]he choice was far from obvious" and that exhaustion principles should not operate as a "game of gotcha," the dissent would have remanded the matter for further proceedings rather than dismissing

the case on procedural grounds, thereby allowing the parties' dispute concerning Supreme Beef's permit renewal to be resolved on its merits. *Id.* at 11–12.

Petitioners-Appellants now seek further review.

II. The Court of Appeals Erred by Concluding Petitioners-Appellants Failed to Exhaust Administrative Remedies Because the DNR Represented that the January 2025 Memorandum was the "Final Agency Action Pursuant to This Case."

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' petition for failure to exhaust administrative remedies after the DNR expressly represented that its January 21, 2025 memorandum constituted "the final agency action pursuant to this case." D0042 at 2; D0054 at 3.

The DNR's cover letter unequivocally advised Petitioners-Appellants that "[t]he attached memo represents the final agency action pursuant to this case." D0042 at 2. Relying on that representation, Petitioners-Appellants timely filed a petition for judicial review within the thirty-day deadline imposed by Iowa Code section 17A.19(3). *Id.* at 4. Having characterized its decision as final agency action, the DNR should not have been permitted to reverse course and seek dismissal of the resulting judicial-review action.

"Final agency action" is a legal term of art. Iowa Code section 17A.19 distinguishes between "final agency action" and "preliminary, procedural, or

intermediate agency action." Iowa Code § 17A.19(1). Iowa courts likewise treat final agency action as the point at which judicial review becomes available. *See Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 229–30 (Iowa 2021); *Pro Farmer Grain, Inc. v. Iowa Dep't of Agric. & Land Stewardship*, 427 N.W.2d 466, 468 (Iowa 1988). Petitioners-Appellants were entitled to rely upon the DNR's use of this established legal term.

The Court of Appeals majority acknowledged that the DNR labeled its memorandum "final agency action" but concluded that Petitioners-Appellants nevertheless remained obligated to pursue review before the Environmental Protection Commission. *Thompson et al. v. DNR*, Case No. 25-1220 at *5–7 (June 10, 2026 Iowa Ct. App.). The dissent persuasively explained why that conclusion overlooks the significance of the DNR's own characterization. *Id.* at 9–11 (Tabor, C.J., dissenting). Chief Judge Tabor recognized that "final agency action" ordinarily signals the availability of judicial review and concluded that the DNR's express use of that phrase created substantial uncertainty regarding what procedural step remained available, if any. *Id.*

The purpose of exhaustion is to provide the agency a full opportunity to consider and resolve the dispute before judicial intervention. *UE Local 893/IUP v. State*, 928 N.W.2d 51, 56 (Iowa 2019). When an agency expressly advises parties that it has issued its final agency action, courts should give considerable weight to that representation. Iowa law recognizes that exhaustion defenses may be waived. *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 875 (Iowa 2007). Federal courts likewise

recognize that agencies may waive exhaustion requirements through their conduct. *Brumley v. U.S. Dep't of Labor*, 767 F.2d 444, 445 (8th Cir. 1985).

At minimum, the DNR should be equitably estopped from arguing that Petitioners-Appellants pursued the wrong procedural path. Petitioners-Appellants received a written communication from a person with executive authority over the contested subject matter, expressly stating that final agency action had occurred. Faced with the thirty-day jurisdictional deadline in Iowa Code section 17A.19(3), they promptly sought judicial review. Under exceptional circumstances, equitable estoppel may be invoked against a governmental entity. *Bailiff v. Adams Cnty. Conf. Bd.*, 650 N.W.2d 621, 627 (Iowa 2002); *Mowery v. City of Carter Lake*, 961 N.W.2d 739, 758 (Iowa Ct. App. 2021). If those circumstances are not exceptional, it is difficult to imagine what would qualify as such.

Chief Judge Tabor further recognized that this case presents a uniquely confusing procedural history. The DNR memorandum was issued after the appeal deadline from the ALJ's remand order had expired. The memorandum merely purported to provide the analysis required by the remand order rather than clearly initiating a new permit-renewal proceeding. Even during oral argument, uncertainty remained regarding whether additional proceedings should have been directed to the EPC, returned to the administrative law judge, or pursued through judicial review. *Thompson et al. v. DNR*, Case No. 25-1220 at *1011 (June 10, 2026 Iowa Ct. App.) (Tabor, C.J., dissenting). As the dissent observed, "[t]he choice was far from obvious." *Id.* at 11.

Under these circumstances, dismissal elevates procedural formality over substantive review. As Chief Judge Tabor explained, exhaustion principles are not intended to operate as a "game of gotcha." *Id.* at 11. Iowa precedent favors resolution of disputes on their merits whenever possible. *McFadden v. Dep't of Transp.*, 877 N.W.2d 119, 121–24 (Iowa 2016). Likewise, in *Christiansen v. Iowa Board of Educational Examiners*, the Court excused a prematurely filed petition for judicial review where the unique circumstances of the case created procedural uncertainty and no prejudice resulted. 831 N.W.2d 179, 191 (Iowa 2013). The same equitable principles warrant review here. *See Thompson et al. v. DNR*, Case No. 25-1220 at *11-12 (June 10, 2026 Iowa Ct. App.) (Tabor, C.J., dissenting).

Even if this Court concludes that additional administrative review was required, dismissal was not the appropriate remedy. Consistent with Chief Judge Tabor's dissent, the matter should have been remanded to permit completion of any remaining agency review rather than terminated outright. *See id.* Petitioners-Appellants followed the procedure the DNR itself identified. They should not lose their opportunity for merits review because the agency subsequently adopted a different interpretation of its own instructions.

CONCLUSION

Petitioners-Appellants request that the Supreme Court grant further review of this case, vacate the ruling of the Court of Appeals, reverse the dismissal of this case by the District Court, and remand the case to the District Court for further proceedings.

CERTIFICATE OF COST

Tammy Thompson, et al., 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 June 30, 2026, 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) and 6.1103(5)(*a)* because: this brief contains 3,081 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 30th day of June 2026.

Respectfully submitted,

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