ELECTRONICALLY FILED JUL 10, 2026 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1220
Clayton County No. CVCV011358

TAMMY THOMPSON, 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

RESISTANCE TO APPLICATION FOR FURTHER REVIEW

(Decision Date: June 10, 2026)

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

PATRICK C. VALENCIA
Deputy Solicitor General

CATHERINE FRAPPIER
Assistant Solicitor General
RUDRA REDDY
Assistant Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5132 / (515) 281-3648
catherine.frappier@ag.iowa.gov
rudra.reddy@ag.iowa.gov

ATTORNEYS FOR RESPONDENT-APPELLEE

QUESTION PRESENTED

Whether the court of appeals correctly held that Petitioners failed to exhaust administrative remedies by seeking judicial review without first appealing a final agency action of the Department of Natural Resources to the Environmental Protection Commission, as required by statute.

TABLE OF CONTENTS

QUESTION PRESENTED 2

TABLE OF CONTENTS 3

TABLE OF AUTHORITIES 4

STATEMENT OPPOSING FURTHER REVIEW 5

STATEMENT OF THE FACTS 7

I. Petitioners litigate the Department's renewal of Supreme Beef's water-use permit in a contested administrative proceeding. 7

II. The district court dismisses Petitioners' claims for failure to exhaust administrative remedies, and the court of appeals affirms. . 10

ARGUMENT 11

I. The court of appeals correctly held that Petitioners failed to exhaust their administrative remedies. 11

CONCLUSION 17

STATEMENT RESPECTING ORAL SUBMISSION 18

CERTIFICATE OF COMPLIANCE 19

CERTIFICATE OF FILING AND SERVICE 19

TABLE OF AUTHORITIES

Page(s)

Cases

Christiansen v. Iowa Bd. of Educational Examiners,
831 N.W.2d 179 (Iowa 2013) 15
Keokuk County v. H.B.,
593 N.W.2d 118 (Iowa 1999) 15
N. River Ins. v. Iowa Div. of Ins.,
501 N.W.2d 542 (Iowa 1993) 13, 15
Pro Farmer Grain, Inc. v. Iowa Dep't of Agric. & Land Stewardship,
427 N.W.2d 466 (Iowa 1988) 13

Statutes

Iowa Code § 17A.19 ..... 5, 6, 11, 12, 15
Iowa Code § 455B.262 ..... 7, 8, 9
Iowa Code § 455B.264 7
Iowa Code § 455B.267 7
Iowa Code § 455B.278 ..... 5, 11, 13, 14, 15

Rules

Iowa R. App. P. 6.1101 7
Iowa R. App. P. 6.1103 7

Regulations

Iowa Admin. Code r. 567-50.9 (2022) 14

STATEMENT OPPOSING FURTHER REVIEW

Petitioners' application presents no issues warranting further review. Petitioners challenged the Department of Natural Resources' decision to renew the water-use permit of Supreme Beef, LLC, a cattle operation. (Attachment to D0003, Petition for Judicial Review (First Amended) ¶ 54 (2/17/25).) After a contested-case hearing, an ALJ issued a proposed decision remanding to the Department to reconsider the renewal under certain statutory factors. (Attachment to D0008, Exh. A at 26–27 (3/6/25).) No party appealed that decision, so it became final. (Att. D0003, Petition ¶ 58.) On remand, the Department again reached the conclusion that the permit should be renewed. (Attachment to D0002, Final Agency Action at 1–2 (2/11/2025).)

Before they could seek judicial review of that decision, Petitioners—who were represented by experienced counsel throughout the proceedings—were required by statute to first exhaust their administrative remedies by appealing to the Environmental Protection Commission. Iowa Code §§ 17A.19(1), 455B.278(2). Instead, Petitioners sought judicial review directly from the Department's decision. (Att. D0003, Petition ¶¶ 59–61.) The district court therefore dismissed Petitioners' suit for failure to exhaust administrative remedies. (D0054, District Court Order at 3 (7/10/25).) The court of appeals affirmed. (Court of Appeals Opinion 2 (6/10/26).)

Petitioners—now in their fourth year of litigating a five-year permit—seek further review from this Court, arguing that the Department's description of its remand decision as its "final agency action" warrants an exemption from Iowa's statutory exhaustion requirements. But the law is clear that before litigants can seek judicial review, (1) an agency's action must constitute final agency action *and* (2) the petitioner must have exhausted its administrative remedies. Iowa Code § 17A.19(1). Just because an action was final as to the Department does not mean that the requirement to exhaust before the Commission was waived. Petitioners indisputably did not exhaust their remedies, so their suit is barred by straightforward, well-established law, which the district court and court of appeals correctly applied to this suit.

The Department neither waived nor should be estopped from asserting exhaustion. The Department said its conclusion was the "final agency action pursuant to this case." (Att. D0002 at 1.) And that was true. Petitioners' problem is that the Department's final agency action is not subject to judicial review; it must be exhausted to the Commission, then the Commission's final agency action is subject to judicial review. And the Department never told Petitioners the Department's decision was the final agency action of the Commission. Nor that Petitioners could skip ahead and seek judicial review from the Department's decision. And the Department has raised Petitioners' failure to exhaust administrative remedies at all stages of this litigation.

This is no "gotcha" game. This is a straightforward administrative exhaustion case. And Petitioners failed to exhaust. There are no issues warranting further review. *See* Iowa Rs. App. P. 6.1101(3), 6.1103(1)(*b*). This Court should deny Petitioners' application.

STATEMENT OF THE FACTS

I. Petitioners litigate the Department's renewal of Supreme Beef's water-use permit in a contested administrative proceeding.

The Department originally issued Supreme Beef's predecessor a water-use permit in 2017, which was later transferred to Supreme Beef. (Att. D0003, Petition ¶ 45.) The Department renewed Supreme Beef's water-use permit effective June 1, 2022. (Att. D0003, Petition ¶ 52.) Petitioners filed a notice of appeal of the permit-renewal decision with the Department on July 15, 2022. (Att. D0003, Petition ¶ 54.)

The Department then convened a contested-case proceeding before the Iowa Administrative Hearing Division on the challenge to Supreme Beef's permit. (Att. D0003, Petition ¶ 55.) The proceeding concerned whether Supreme Beef's water-use permit constituted a "beneficial use" as defined in Iowa Code sections 455B.262(2), 455B.264(2), and 455B.267(1), (4) ("Iowa Code § 455B.262 *et seq*.").

At the hearing, several Department employees testified about their role in examining water-use permits and were cross-examined by Petitioners through their counsel, Mr. Larew, including Carmily Stone,

a water supply engineering section supervisor, and Chad Fields, a geologist. (D0041, Administrative Record Part 30 at 254–55, 261, 282–83, 287 (3/7/25) (Tr. Admin. Hearing at 3:5–4:23, 10:13, 31:8–32:22, 36:8 (2/2/24).) Neither Department employee indicated that they worked for the Commission or had ever done so.

On November 12, 2024, 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. D0008, Exh. A at 26.) 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. D0008, Exh. A at 27.)

That proposed decision became final on December 12, 2024, 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." (Att. D0003, Petition ¶ 58.)

In January 2025, the Department sent Petitioners its decision on remand regarding the permit renewal. (Att. D0002 at 1.) As directed by the ALJ, that decision included a memorandum articulating "a reasonable and rational basis" for the existence of a beneficial use in connection with Supreme Beef's permit renewal. (Att. D0002 at 1–2.) The

cover letter was prepared by Department supervisor Carmily Stone, and the memorandum was prepared by Department geologist Chad Fields. (Att. D0002 at 1, 4.)

On remand, the Department again reached the conclusion that Supreme Beef's permit should be renewed. (Att. D0002 at 1–4.) In doing so, the Department fulfilled the ALJ's directive that it consider all the statutory factors in Iowa Code § 455B.262 *et seq*. in determining whether renewing Supreme Beef's permit constituted a "beneficial use."

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. D0002 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. D0002 at 3–4.)

The Department's cover letter also stated that the memo was the Department's "final agency action pursuant to this case." (Att. D0002 at 1.) Nowhere did the Department state that the memorandum constituted

the final agency action of the Commission nor that Petitioners could seek judicial review of the Department's determination.

Petitioners did not appeal that agency action to the Commission either. Instead, they petitioned for judicial review, asking the district court to "[r]everse the DNR's final decision finding that Supreme Beef's animal feed operation is a 'beneficial use'" and "[c]ancel Supreme Beef's water use permit." (Att. D0003 at 25.)

II. The district court dismisses Petitioners' claims for failure to exhaust administrative remedies, and the court of appeals affirms.

The Department moved to dismiss Petitioners' suit on the basis that they had failed to exhaust their administrative remedies. (D0008, Motion to Dismiss at 3–6 (3/6/25).) On July 10, 2025, the district court granted the Department's motion to dismiss, concluding that Petitioners were "required to appeal to EPC, not petition for judicial review." (D0054 at 3.) "Because petitioners have not exhausted their administrative remedies under Iowa Code Chapter 17A," it "d[id] not have jurisdiction to consider this controversy on judicial review." (D0054 at 3.)

Petitioners appealed, contending that the Department's description of its remand decision as "final agency action" exempted them from exhausting their administrative remedies. This Court transferred the case to the court of appeals, which affirmed the dismissal. As the court of appeals concluded, Chapter 17A clearly requires both final agency action

and the exhaustion of administrative remedies before litigants can seek judicial review, so the Department's description of its remand decision as "final agency action" did not excuse Petitioners' failure to exhaust their remedies by appealing to the Commission. (Op. 5–8.) The court of appeals also rejected Petitioners' waiver and estoppel arguments, concluding that accepting their waiver argument would allow the Department to circumvent the Commission's review authority and that the Department's statement was accurate and thus did not provide a basis for estoppel. (Op. 6–7.) Chief Judge Tabor dissented. (Op. 9–12.)

Petitioners then filed this application for further review.

ARGUMENT

I. The court of appeals correctly held that Petitioners failed to exhaust their administrative remedies.

Chapter 17A explains that only a person "who has exhausted all adequate administrative remedies *and* who is aggrieved or adversely affected by any final agency action" may seek judicial review. Iowa Code § 17A.19(1) (emphasis added). And the process for exhausting administrative remedies in the context of the Department's water-use permitting decisions is equally clear: "Action by the department" on a permit application "may be appealed to the commission . . . within thirty days of the department's action." *Id.* § 455B.278(2). Then decisions of the Commission are subject to judicial review. *Id.*

So to exhaust administrative remedies, Petitioners needed to appeal the Department's action to the Commission. Petitioners concede that they never did so. The court of appeals correctly affirmed the district court's dismissal of their petition for judicial review.

Petitioners' failure to appeal the Department's remand decision to the Commission resolves this case. Petitioners and the dissent in the court of appeals assert that Petitioners should be exempt from Iowa's statutorily mandated exhaustion requirement, but their arguments all fail.

First, Petitioners (App. 14) and the dissent (Op. 9) contend that the phrase "final agency action" is a term of art signifying that an agency's action is both final and that administrative remedies have been exhausted. But Chapter 17A's text, which requires the litigant to both "ha[ve] exhausted all adequate administrative remedies" "and" be harmed by a "final agency action" before seeking judicial review, clearly refutes that suggestion. Iowa Code § 17A.19(1). Final agency action is thus a necessary—but not sufficient—condition for judicial review.

To the extent any further confirmation is needed, Chapter 17A's exception from the finality requirement for certain preliminary agency actions proves the point. Even when Chapter 17A allows immediate review of an agency's "preliminary, procedural, or intermediate" action, it still permits judicial review only "if all adequate administrative remedies have been exhausted." Iowa Code § 17A.19(1). This Court's

precedents (including Petitioners' own case) likewise confirm that finality alone is not enough to seek judicial review. (App. 15.) Instead, judicial review requires "the final decision at the highest agency level." *Pro Farmer Grain, Inc. v. Iowa Dep't of Agric. & Land Stewardship*, 427 N.W.2d 466, 469 (Iowa 1988). No case cited by Petitioners or the dissent says otherwise.

Indeed, simply because a decision is final for enforcement purposes does not also make it exhausted for purposes of judicial review. *N. River Ins. v. Iowa Div. of Ins.*, 501 N.W.2d 542, 546 (Iowa 1993). As the court of appeals correctly concluded, the Department accurately described its action on remand as final because "[a]bsent an appeal, the agency would not have taken any further action." (Op. 7.)

Second, Petitioners' contention (App. 16–17) matched by the dissent (Op. 9–11) that this case warrants remand rather than dismissal fares no better. The dissent questions whether the Department's remand memorandum was "[a]ction by the department upon an application for a permit" under section 455B.278(2). But it clearly was. As part of Petitioners' administrative appeal from the Department's decision to renew the permit, the ALJ directed the Department to reconsider its permit-renewal decision under certain factors but left to the Department the ultimate decision whether to renew the permit. (Att. D0008 at 26–27.) The Department duly reconsidered its original decision as directed by the ALJ and again reached the conclusion that Supreme Beef's water-

use permit should be renewed. The permit renewal was thus directly at issue in the Department's remand decision, so section 455B.278's exhaustion procedure applies. *See* Iowa Code § 455B.278(2).

The dissent (Op. 10–11) and Petitioners (App. 16) suggest that this case should not be dismissed because it was supposedly unclear whether Petitioners should have appealed the Department's decision on remand to the ALJ, the Commission, or sought judicial review. But out of those possibilities, Petitioners chose the only one that was clearly not available, judicial review.

The dissent further suggests (Op. 10–11) that it was unclear whether the contested-case proceeding before the ALJ was an appeal to the Commission. That is immaterial since Petitioners' failure to appeal the Department's remand decision alone resolves this case. But in any event, Petitioners do not dispute that they never appealed to the Commission at any stage of proceedings.

Petitioners' appeal from the Department's initial decision to renew the permit was to the Department director under Iowa Administrative Code rule 567-50.9 (2022). (Att. D0003, Petition ¶ 54; D0012, Administrative Record Part 1, at 2 (3/7/25).) As Petitioners' own pleadings describe, the ALJ's decision in that appeal became final 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." (Att. D0003, Petition ¶ 58.) Simply

allowing a decision to become final through inaction, of course, does not constitute exhaustion. *N. River Ins.*, 501 N.W.2d at 546.

Because Petitioners failed to exhaust their administrative remedies, the correct outcome is dismissal, not remand. "The failure to exhaust all required administrative remedies deprives the court of its authority and requires dismissal when properly raised." *Keokuk County v. H.B.*, 593 N.W.2d 118, 123 (Iowa 1999). The court of appeals therefore correctly affirmed the district court's dismissal of this suit.

Third, Petitioners (App. 17) and the dissent (Op. 11) cite *Christiansen v. Iowa Board of Educational Examiners*, 831 N.W.2d 179 (Iowa 2013), for the proposition that Petitioners should be excused from the exhaustion requirements of sections 17A.19(1) and 455B.278(2). But in *Christiansen*, the petitioner merely filed his petition for judicial review early while agency proceedings were still ongoing. 831 N.W.2d at 189–90. So the Court's decision in that case enforced the exhaustion requirement rather than exempting the litigant from it. *Id.* (emphasizing the importance of "[s]trict enforcement of the exhaustion requirement").

So far from establishing an equitable exception to exhaustion, *Christiansen* shows the path Petitioners—represented by able counsel—could have taken out of an abundance of caution if concerned about losing their right to judicial review while administrative appeals were ongoing.

Fourth, Petitioners reassert (App. 15–16) their waiver and estoppel arguments, but those arguments are meritless. The court of appeals

rightly rejected those arguments (Op. 6–7), and the dissent did not address them.

Petitioners cannot point to any false or misleading statement made to them by a Department employee. The Department correctly informed Petitioners of the Department's own final agency action, an action which started the clock for an administrative appeal. Nothing in the Department's decision on remand stated or implied that Petitioners could seek judicial review without appealing to the Commission. And the Department indisputably raised exhaustion at every step of this litigation.

Nor can Petitioners claim that the Department suggested that its decision on remand was on behalf of the Commission. After all, Petitioners cross-examined the two Department employees who issued the Department's decision on remand and knew that they were employees of the Department, not the Commission. (D0041 at 254–55, 261, 282–83, 287 (Tr. Admin. Hearing at 3:5–4:23, 10:13, 31:8–32:22, 36:8).) Petitioners therefore have no basis for either a waiver or estoppel argument.

* * *

The law is clear: Petitioners were required to appeal to the Commission before seeking judicial review. Petitioners indisputably did not do so. The district court and court of appeals therefore both correctly

concluded that Petitioners' suit must be dismissed. This case presents no issues worthy of this Court's review.

CONCLUSION

For these reasons, this Court should deny further review.

STATEMENT RESPECTING ORAL SUBMISSION

This case does not warrant further review, so this Court should deny Petitioners' application. But if this Court grants further review, Respondent-Appellee requests oral submission.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

PATRICK C. VALENCIA
Deputy Solicitor General

/s/ Catherine Frappier
CATHERINE FRAPPIER
Assistant Solicitor General
RUDRA REDDY
Assistant Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5132 / (515) 281-3648
catherine.frappier@ag.iowa.gov
rudra.reddy@ag.iowa.gov

ATTORNEYS FOR RESPONDENT-APPELLEE

CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(5) because this resistance has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 2,723 words, excluding the parts of the resistance exempted by Iowa R. App. P. 6.1103(5)(*a*).

/s/ Catherine Frappier
CATHERINE FRAPPIER

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 10th day of July, 2026, I, or a person acting on my behalf, filed this resistance and served it on counsel of record to this appeal via EDMS.

/s/ Catherine Frappier
CATHERINE FRAPPIER