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IN THE SUPREME COURT OF IOWA

NO. 25-1219

CLAYTON COUNTY NO. CVCV011384

DRIFTLESS WATER DEFENDERS, 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

PETITIONERS-APPELLANTS DRIFTLESS WATER DEFENDERS, ET AL'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW SUBMITTED BY RESPONDENT-APPELLEE IOWA DEPARTMENT OF NATURAL RESOURCES

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QUESTION PRESENTED

I. WHETHER THE COURT OF APPEALS CORRECTLY HELD NO EXHAUSTION REQUIREMENT EXISTS FOR CLAIMS BROUGHT UNDER IOWA CODE SECTIONS 455B.134(8), 455B.174(1), AND IOWA ADMINISTRATIVE CODE RULE 561—3.3(1)(B)(1).

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STATEMENT IN RESISTANCE TO FURTHER REVIEW

The Application for Further Review by Respondent-Appellee Iowa Department of Natural Resources ("DNR") should be denied. The Court of Appeals unanimously and correctly reversed the district court's dismissal of Petitioners-Appellants Driftless Water Defenders, et al's ("Driftless")' judicial-review petition on the ground that Driftless had failed to exhaust administrative remedies by appealing to the Environmental Protection Commission ("EPC"), which is a panel that resides within the DNR. The Court of Appeals correctly held that no such exhaustion requirement exists for claims brought under Iowa Code sections 455B.134(8), 455B.174(1), and Iowa Administrative Code rule 561—3.3(1)(b)(1). The decision neither conflicts with Iowa error-preservation law nor presents any unsettled question warranting further review. Rather, the Court of Appeals applied longstanding exhaustion principles and correctly recognized that the statutory provisions relied upon by Driftless contain no administrative appeal mechanism comparable to Iowa Code section 455B.278.

The DNR's Application seeks a second review of issues fully considered and properly decided by the Court of Appeals. Further review should be denied.

ARGUMENT

I. The Court of Appeals did not violate Iowa law's error-preservation principles.

The principal theme of the DNR's Application is that the Court of Appeals reversed on an issue not decided by the district court. That characterization is incorrect.

At every stage of this litigation, the dispositive issue was whether Driftless was required to pursue additional administrative remedies before seeking judicial review of the DNR's failure to respond to, to take any action in consideration of, or to report back to Driftless its investigative findings with respect to Driftless's validly filed Complaint. The district court expressly, albeit wrongfully, decided that issue. It stated, "Petitioners were required to appeal to EPC, not petition for judicial review." D0014, Ruling on Resp.'s M to Dismiss at 3, Jun. 25, 2025.

. The district court further determined that, "Because petitioners have not exhausted their administrative remedies under Iowa Code Chapter 17A, this court does not have jurisdiction to consider this controversy on judicial review." *Id.* The district court did not fail to decide the exhaustion issue. It directly ruled on the exhaustion issue, and did so incorrectly, as a matter of law.

The DNR repeatedly attempts to redefine the relevant issue as whether Iowa Administrative Code rule 561—3.3(1)(b)(1) imposed a mandatory investigative obligation upon the DNR. But that was not the question decided by the district court and not the question that had to be decided before reaching the merits. The district

court did not dismiss Driftless's claims because it concluded rule 561—3.3 imposed no investigative duty. It dismissed Driftless's claims because it concluded, in error, that Driftless was required, first, to have pursued an appeal to the EPC before seeking judicial review.

The Court of Appeals addressed that exact ruling. It recognized that, "[t]he district court stated in its order, 'Petitioners were required to appeal to EPC, not petition for judicial review. Because petitioners have not exhausted their administrative remedies under Iowa Code chapter 17A, this court does not have jurisdiction to consider this controversy on judicial review.' " Court of Appeals Opinion at 7, Jun. 10, 2026. The Court of Appeals further noted that, "The district court did not specifically mention Driftless's claim brought under rule 561–3.3(1)(b)(1)." *Id.* The Court of Appeals then concluded: "[W]e agree that [the District Court] addressed the core issue of Driftless's claim: whether Driftless exhausted its administrative remedies." *Id.* That conclusion was correct.

The DNR's Further Review Application attempts to separate the exhaustion question from the statutory basis of Driftless's claims. But the two cannot be separated. The district court ruled that Driftless was obligated to proceed through the EPC. D0014, Ruling on Resp.'s M to Dismiss at 3, Jun. 25, 2025. Driftless argued that no such administrative avenue existed under Iowa Code sections 455B.134(8), 455B.174(1), and rule 561—3.3(1)(*b*)(1). The Court of Appeals resolved that dispute by siding with Driftless. Court of Appeals Opinion at 7, Jun. 10, 2026.

Accordingly, this case is not governed by the line of authorities discussed in the DNR's Application involving a district court's total failure to decide an issue. *See, e.g., Homan v. Branstad*, 887 N.W.2d 153, 161 (Iowa 2016); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002); *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). The district court, below, in fact, had decided the controlling issue, namely exhaustion, and the Court of Appeals reviewed, and appropriately reversed, that ruling. Moreover, Driftless expressly raised this exhaustion issue before the district court.

In resisting dismissal, Driftless argued that this matter was a challenge to the DNR's failure to investigate an Iowa Administrative Code rule 561—3.3 Complaint—one describing significant pollution of Bloody Run Creek, a body of water that, not long ago, had been characterized as one of Iowa's cleanest creeks, but which is now is damaged by extensive nitrate pollution. In the Complaint, in seeking an investigation of the water pollution situation, Driftless had expressed concerns that a large cattle-feeding operation allowed by DNR to be situated at the headwaters of that creek, owned by Supreme Beef, LLC, could be contributing to that pollution.[1] D0001, Pet. for Jud.

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[1]Consistently, the DNR conflates two separate issues and types of proceedings. One of the proceedings, captioned *Thompson et al. v. DNR*, which is not a part of this litigation, involves an application for the renewal of a water use permit submitted by Supreme Beef, LLC, necessary for its large cattle feeding operation. *See* Case No. 25-1220, Opinion (Iowa Court of Appeals, Jun. 10, 2026) (currently subject to an application for further review). *That* application process is the subject of Iowa Code and administrative rules that are not a part of this proceeding. *See* Iowa Code §§ 455B.262, 455B.264, 455B.278; Iowa Admin. Code r. 567—50.8. *This* proceeding, by contrast, focuses on the concern raised by citizens as to the presence of pollutants in Bloody Run Creek, from whatever source, and arises from a separate and distinct

Rev. at 2-3, Apr. 10, 2025. Driftless had further argued to the district court and to the Court of Appeals that Iowa Code section 455B.278(2) is not an exclusive remedy for all matters resulting from the agency's decision to renew a water use permit. *Id.* at 17-20. And, Driftless specifically argued that actions taken with respect to the issuance or renewal of a water use permit do not impact the DNR's separate and distinct obligations under Iowa Code section 455B.271. The district court rejected those arguments and dismissed for failure to exhaust. D0014, Ruling on Resp.'s M to Dismiss at 3, Jun. 25, 2025. Because the exhaustion issue was raised and decided (albeit incorrectly), *Meier* does not require a rule 1.904(2) motion. *See* 641 N.W.2d at 537.

Most importantly, even assuming the district court did not separately discuss each statutory provision cited by Driftless, Iowa appellate courts do not require district courts to write extended analyses of every subsidiary argument before an issue is preserved for review. *See Meier,* 641 N.W.2d at 537. The district court unmistakably ruled that Driftless was required to appeal to the EPC. The Court of Appeals reviewed that district court ruling and determined it had been legally incorrect. That is ordinary appellate review, not a departure from Iowa error-preservation doctrine.

For this reason alone, further review should be denied.

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legal regime, one involving DNR's legal obligation to conduct an investigation upon the filing of a Complaint by twenty-five or more persons. *See* Iowa Admin. Code r. rule 561—3.3.

II. The Court of Appeals correctly concluded that Driftless was not required to appeal to the EPC.

The Court of Appeals correctly applied Iowa's exhaustion doctrine. As that court recognized, exhaustion requires, "(1) an administrative remedy exists for the claimed wrong; and (2) the involved statute expressly or impliedly requires the remedy to be exhausted before resorting to the courts." Court of Appeals Opinion at 7-8, Jun. 10, 2026 (*citing Pruess Elevator, Inc. v. Iowa Dep't of Natural Res.*, 477 N.W.2d 675, 677 (Iowa 1991)). Both of these elements are missing here.

The DNR's Application never identifies an administrative remedy for Driftless's actual claims. Driftless did not bring suit challenging the DNR's issuance of a renewed water use permit under Iowa Code section 455B.278. Instead, Driftless alleged that the DNR had failed, when notified of a serious water pollution issue, to perform a mandatory statutory and regulatory duty to investigate the complained-of matter under Iowa Code sections 455B.134(8), 455B.174(1), and Iowa Administrative Code rule 561—3.3(1)(*b*)(1) and to have reported back to the complainants the results of that investigation. *See* D0001, Pet. for Jud. Rev. at 2-3, Apr. 10, 2025.

Those provisions unequivocally require *both* an investigation of matters set forth in qualifying citizen complaints *and* a report back to the complainants of the investigation's findings. Iowa Administrative Code rule 561—3.3(1)(b)(1) provides, "The department shall investigate" certain complaints. It further states, "The appropriate office shall conduct an investigation and notify the complainant of the

results of the investigation." Likewise, Iowa Code section 455B.134(8) requires that "[t]he director shall ... consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state." Similarly, Iowa Code section 455B.174(1) declares, "The director shall ... conduct investigations of alleged water pollution ... upon written request of ... twenty-five residents of the state." None of those provisions contains an appeal mechanism by complainants to the EPC. None references Iowa Code section 455B.278. And, none conditions judicial review on an EPC appeal or grants the EPC authority to determine whether the DNR has or has not undertaken a mandatory investigation and reported the investigation's findings to complainants.

The above was precisely the reasoning adopted by the Court of Appeals. The panel correctly recognized that section 455B.278 governs renewed water use permit-application proceedings, not citizen-complaint investigations. Driftless's lawsuit did not challenge the agency's renewed permit's issuance to Supreme Beef, LLC. Rather, Driftless challenged DNR's failure to perform an independent statutory duty after receiving an appropriately filed complaint signed by more than twenty-five Iowa residents. The Court of Appeals therefore correctly declined to graft section 455B.278's exhaustion requirement onto statutes that contain no such language.

The Court of Appeals' holding is fully consistent with settled principles of statutory interpretation. As the unanimous court observed, "If the legislature wanted to create an exhaustion remedy and requirement under these code sections, it could have done so." *See* Court of Appeals Opinion at 9, Jun. 10, 2026. The legislature did exactly that in section 455B.278. It did not do so in sections 455B.134(8), 455B.174(1), or rule 561—3.3. The Court of Appeals correctly respected that distinction.

III. The DNR's preclusion argument does not warrant further review and does not provide a basis for affirmance.

The DNR's second proposed issue asserts that the complaint proceeding was supposedly precluded by the contested-case proceeding involving Supreme Beef's permit renewal application proceeding. The argument fails for several reasons.

First, the district court never decided preclusion. It dismissed Driftless's petition for judicial review solely for failure to exhaust administrative remedies. Thus, the DNR asks this Court to grant further review principally to decide an alternative theory never adopted by the district court and never reached by the Court of Appeals. *See Homan*, 887 N.W.2d at 161; *Meier*, 641 N.W.2d at 537; *Benavides*, 539 N.W.2d at 356.

Second, Driftless's Complaint and the permit-renewal application proceeding are not the same action. As set forth in Driftless's briefs, the two separate matters involve different legal theories, different statutory authorities, different procedural mechanisms, different types of relief, and different evidence. As Driftless explained in its brief to the Court of Appeals, "This action arises under Iowa Administrative Code rule 561-3.3 for

citizen complaints to the DNR. This claim is legally distinct from an Iowa Code section 455B.278 case governing water use permit renewals," namely, *Thompson et al. v. DNR,* the case DNR argues precludes this matter. However, only two Petitioners-Appellants in this matter overlap with the petitioners-appellants in *Thompson et al. v. DNR*—namely, Steve Veysey and Larry Stone. The remaining 77 individual complainants and Driftless Water Defenders were not parties to the contested case proceeding involving Supreme Beef, LLC's application for a renewed water use permit. D0001, Pet. for Jud. Rev., Apr. 10, 2025.

Driftless also identified different evidence in this matter, including Dr. Christopher Jones's August 2024 declaration documenting extraordinarily high nitrate levels exceeding forty milligrams per liter in Bloody Run Creek, as recorded by a sensor located a few hundred feet downstream from Supreme Beef, LLC's cattle feeding operation. That exact evidence had been excluded from the contested case record with respect to the application for a renewed water use permit, at the objection of DNR, and, therefore, had never been considered in that proceeding. And, perhaps most significantly, the relief sought in the water use permit renewal application contested case proceeding was different than in the present instance. This matter concerns the DNR's mandated duties to investigate allegations of pollution, to determine whether further action under Iowa Code section 455B.271(2) was warranted, and to report back to complainants the results of the mandated investigation: none of which duties were fulfilled by the agency.

The DNR repeatedly mischaracterizes Driftless's Complaint as merely a disguised attack on permit renewal. But the Complaint expressly invoked statutory and regulatory provisions that impose investigative duties separate from permit-renewal procedures. *See* D0001, Pet. for Jud. Rev., Apr. 10, 2025. The DNR's position effectively reads Iowa Code sections 455B.134(8), 455B.174(1), and Iowa Administrative Code rule 561—3.3 out of existence whenever a water use permit holder is involved. Nothing in those provisions contains such a limitation.

Indeed, the Department's theory would mean that once a water use permit is issued, twenty-five Iowa residents could never trigger a mandatory pollution investigation if facts relating to the permit holder were previously discussed in some form of administrative proceeding. Neither the statutes nor the rule contemplate such an exception.

Finally, the Department's argument overlooks Driftless's central claim—that the DNR never conducted the investigation that Iowa law required. The issue before the district court was never whether the issuance of a renewed water use permit had already been litigated. The issue was whether DNR could avoid fulfilling its mandatory duties (investigate, make findings, report back to complainants) by issuing a conclusory memorandum, without benefit of investigation, and characterizing its document as a final agency action.

The Court of Appeals properly focused on that question, and answer it in a manner that has disappointed the DNR. But disappointment does not provide a basis for an appeal.

CONCLUSION

The Court of Appeals correctly held that Petitioners-Appellants Driftless Water Defenders, et al.'s action arose under Iowa Code sections 455B.134(8), 455B.174(1), and Iowa Administrative Code rule 561—3.3(1)(b)(1), not under the water use permit renewal-appeal procedures of Iowa Code section 455B.278. Because no administrative appeal mechanism existed for the wrong alleged by Driftless, the district court erred in dismissing the petition for failure to exhaust administrative remedies. The Court of Appeals' unanimous decision reversing the district court was correct. The decision does not conflict with Iowa error-preservation law, it does not create any uncertainty in Iowa jurisprudence, and it does not warrant further review.

Petitioners-Appellants respectfully request that the Application for Further Review be denied.

CERTIFICATE OF COST

DWD, et al., will not submit a Certificate of Cost given the electronic filing of this Brief.

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I hereby certify that on July 10, 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 2570 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 10th day of July 2026.

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