

DA 19-0112

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 243

LYMAN CREEK, LLC, a Montana Limited
Liability Company,

Plaintiff and Appellant,

v.

CITY OF BOZEMAN,

Defendant and Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DV-18-854B
Honorable Rienne H. McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jack G. Connors, Jacqueline R. Papez, Doney Crowley P.C., Helena,
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For Appellee:

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For Amicus Curiae:

Meg K. Casey, Laura S. Ziemer, Patrick A. Byorth, Trout Unlimited,
Bozeman, Montana

Submitted on Briefs: August 21, 2019

Decided: October 15, 2019

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Lyman Creek, LLC (Lyman) appeals an order of the Eighteenth Judicial District Court, Gallatin County, granting City of Bozeman's (City) motion to dismiss.

¶2 We affirm. We restate the dispositive issue as follows: Does § 85-2-114, MCA, of the Montana Water Use Act (Act) preclude an implied private right of action for judicial enforcement of the Act?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Lyman Creek is a perennial stream in Gallatin County that flows through private property owned by Lyman. Both Lyman and the City own water rights sourced by Lyman Creek.

¶4 In March 2018, Lyman submitted a complaint to the Montana Department of Natural Resources and Conservation (DNRC) containing allegations of unpermitted water use by the City. DNRC has not taken any enforcement action on Lyman's complaint. On August 6, 2018, Lyman filed a complaint in District Court alleging the City was in violation of the Act and seeking injunctive relief and attorney fees.

¶5 Lyman asserted that § 85-2-125(2), MCA, which allows a party to recover costs when enjoining the use of water by a person that does not have a water right, expressly provides a private right of action to enforce the Act. Lyman reasoned that § 85-2-125(2), MCA, would be meaningless if there is no private right of action to obtain injunctive relief. Lyman's complaint requested injunctive relief under the Act and § 27-19-102, MCA. Additionally, Lyman argued that even if § 85-2-125(2), MCA, does

not expressly provide a private right of action to enforce the Act, that right is implied by the Act in its entirety. The City moved to dismiss Lyman’s complaint for failure to state a claim pursuant to M. R. Civ. P. 12(b)(6), contending that the Act does not create a private right of action for enforcement through injunctive relief, just as it does not create a private right of action, citing *Faust v. Utility Solutions, LLC*, 2007 MT 326, 340 Mont. 183, 173 P.3d 1183, to enforce civil penalties. Instead, the City claimed, § 85-2-114, MCA, authorizes only DNRC, the attorney general, or the county attorneys to seek judicial enforcement of the Act, including injunctive relief. Importantly, the City acknowledged that Lyman was “not without recourse,” as “the mechanism for invoking a district court’s supervisory jurisdiction over water distribution is found in [§] 85-2-406, MCA.”

¶6 The District Court granted the City’s motion to dismiss under M. R. Civ. P. 12(b)(6) and dismissed Lyman’s complaint. The District Court held that § 85-2-125(2), MCA, may be invoked by a party with a water right to receive costs and attorney fees in an action to enjoin the use of water by a person that does not have a water right, and that, because Lyman and the City both had water rights originating from Lyman Creek, § 85-2-125(2), MCA, was inapplicable.¹ As the plain language of § 85-2-125(2), MCA, precluded its application, the District Court declined to consider whether § 85-2-125(2), MCA, created

¹ Lyman also argues that the District Court misconstrued § 85-2-125(2), MCA, by finding that the City had a water right, contending the City does not have a water right to illegally exceed its permitted amount of water. However, it is undisputed that both the City and Lyman have water rights on Lyman Creek and the District Court, therefore, did not err in how it applied § 85-2-125(2), MCA.

an express private right of action.² The District Court next concluded that § 85-2-114, MCA, which allows for judicial enforcement of the Act, does not support an implied private right of action for enforcement. In analyzing the plain language of § 85-2-114, MCA, the District Court held that the legislature did not intend to create a private right of action for enforcement, but instead left enforcement of the Act to DNRC, the attorney general, or the county attorneys. Lyman appeals.

STANDARD OF REVIEW

¶7 “A motion to dismiss pursuant to M. R. Civ. P. 12(b)(6) requires a district court to determine whether a claim has been adequately stated in the pleadings.” *Woods v. Shannon*, 2015 MT 76, ¶ 9, 378 Mont. 365, 344 P.3d 413 (citing *Meagher v. Butte-Silver Bow City-County*, 2007 MT 129, ¶ 15, 337 Mont. 339, 160 P.3d 552). “The pleadings should not be dismissed unless it appears certain that the petitioner will be unable to recover under any set of facts which could be proven in support of his or her claim.” *Woods*, ¶ 9 (citing *Kleinhesselink v. Chevron, U.S.A.*, 277 Mont. 158, 161, 920 P.2d 108, 110 (1996)). “The pleadings must be construed in the light most favorable to the petitioner, and all allegations of fact contained in the pleadings are taken as true.” *Woods*, ¶ 9 (citing *Plouffe v. State*, 2003 MT 62, ¶ 8, 314 Mont. 413, 66 P.3d 316).

² Section 85-2-125(2), MCA, provides:

The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, “enforce a water right” means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.

¶8 A district court's decision to grant a motion to dismiss under M. R. Civ. P. 12(b)(6) operates as a conclusion of law. *Faust v. Util. Solutions, LLC*, 2007 MT 326, ¶ 11, 340 Mont. 183, 173 P.3d 1183 (citing *Bar OK Ranch, Co. v. Ehlert*, 2002 MT 12, ¶ 31, 308 Mont. 140, 40 P.3d 378). We review a district court's conclusions of law to determine whether the trial judge's interpretation of the law is correct. *Carbon County v. Union Reserve Coal Co.*, 271 Mont. 459, 469, 898 P.2d 680, 686 (1995) (citing *Steer, Inc. v. Dep't of Revenue*, 245 Mont. 470, 474-75, 803 P.2d 601, 603 (1990)).

DISCUSSION

¶9 Lyman does not dispute that it is receiving water in accordance with its water right, nor does Lyman ask the District Court to supervise the distribution of water between it and the City pursuant to § 85-2-406, MCA, which provides for district court supervision of water distribution among appropriators. Instead, Lyman asks the District Court to declare various violations of the Act on the part of the City, and to enjoin the City from any further violations. In particular, Lyman alleges the City is diverting water at higher rates than authorized by its rights; installing and diverting from a spring box without authorization; increasing the period of use of its diversions; and diverting ground water when it is only authorized to divert surface water. Lyman does not allege that any of the City's conduct has interfered with its water right. Lyman consistently conflates the right to protect a water right and the right to enforce the Act. The distinction between protection of an established water right under § 85-2-406, MCA, and enforcement of the Act under § 85-2-114, MCA, is essential and warrants clarification.

¶10 The Montana Water Use Act was enacted in 1973 in response to a constitutional mandate requiring the legislature to “provide for the administration, control, and regulation of water rights and [to] establish a system of centralized records” of all water rights. Mont. Const. art. IX, § 3(4). In the general provisions of Title 85, Chapter 2 of the Act, the legislature made clear its “intent that the state, to the fullest extent possible, retain and exercise its authority to regulate water use and provide forums for the protection of water rights, . . . and resolve issues concerning its authority over water rights and permits.” Section 85-2-101(6), MCA.

¶11 In furtherance of the legislature’s intent that the state retain and exercise its authority to regulate water use, § 85-2-114, MCA, provides for judicial enforcement of the Act. Section 85-2-114(1), MCA, expressly authorizes particular entities or public officials, “by a means reasonably considered sufficient,” to seek enforcement of the Act in the district courts. The following specific judicial enforcement remedies are available where DNRC petitions the court:

- (a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;
- (b) order the person wasting, unlawfully using, or interfering with another’s rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or
- (c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order *must be* granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

Section 85-2-114(1), MCA, (emphasis added). Notably, § 85-2-114(1)(c), MCA, provides that temporary restraining orders “must be granted” where an affidavit or verified complaint filed by DNRC contains specific facts showing violations of the Act. The attorney general or county attorneys may also bring suit to enjoin waste, unlawful use, interference, or other violations of the Act. *See* § 85-2-114(3), (4), MCA. To be clear, the plain language of § 85-2-114, MCA, entitled “judicial enforcement,” refers only to actions initiated by DNRC, the attorney general, or the county attorneys. There is nothing in § 85-2-114, MCA, that expressly provides for a private right to an enforcement action. *See Faust*, ¶ 25 (“Section 85-2-114, MCA, does not provide expressly for an action brought by a private citizen.”).

¶12 Section 85-2-406, MCA, on the other hand, provides a statutory remedy for a water user when a controversy in distribution arises, and sets forth the method for invoking a district court’s supervisory jurisdiction over water distribution among appropriators. *See Kelly v. Teton Prairie, LLC*, 2016 MT 179, ¶ 22, 384 Mont. 174, 376 P.3d 143. The district court supervises the distribution of water among appropriators: (1) pursuant to a district court decree entered prior to July 1, 1973, § 85-2-406(2)(a), MCA; (2) pursuant to a petition filed by a party to the controversy for certification to the water court where not all existing rights on a source have been conclusively determined, § 85-2-406(2)(b), MCA; or (3) when a final decree has been issued pursuant to the Act, § 85-2-406(3), MCA. Unlike the mandatory issuance of temporary restraining orders required in § 85-2-114(1)(c), MCA, under § 85-2-406, “[t]he availability of injunctive relief is vested in ‘the sound discretion

of the district court.’” *Kelly*, ¶ 22. “[T]he principle that first in time is first in right” governs the district courts’ supervision. Section 85-2-406(1), MCA; *see also Mettler v. Ames Realty Co.*, 61 Mont. 152, 160, 201 P. 702, 704 (1921) (“‘First in time, first in right,’ or, in other words, priority of appropriation confers superiority of right” (citations omitted)).

¶13 Thus, a private right of action to protect a water right exists under § 85-2-406, MCA, and an aggrieved water user may seek redress by petitioning a district court to supervise the distribution of water and resolve a controversy between appropriators. We have often cited this right under § 85-2-406, MCA, to appropriators where water rights disputes arise. *See, e.g., Kelly*, ¶ 22 (“By statute a district court’s jurisdiction includes the supervision of water distribution amongst appropriators.”); *Giese v. Blixrud*, 2012 MT 170, ¶ 8, 365 Mont. 548, 285 P.3d 458 (“[Section 85-2-406(2)(b), MCA,] allows a water user to petition the district court to certify a dispute to the Chief Water Judge . . . for a determination of rights when the dispute involves water rights not all of which have been conclusively determined in prior court decrees.”); *Eldorado Coop Canal Co. v. Hoge*, 2016 MT 145, ¶ 16, 383 Mont. 523, 373 P.3d 836 (“Montana’s water rights system distinguishes water adjudication from water distribution. *Compare* § 3-7-501, MCA (granting exclusive jurisdiction to the Water Court to determine existing water rights), *with* § 85-2-406, MCA (granting jurisdiction to district courts to supervise the distribution of water among appropriators).”).

¶14 With these distinctions in mind, we now turn to whether § 85-2-114, MCA, of the Act precludes an implied private right of action for judicial enforcement.

¶15 Lyman asserts that the Act, in its entirety, implies a private right of action for enforcement through injunctive relief. In support of this argument, Lyman contends that references in other portions of the Act, such as in § 85-2-125(2), MCA, (“[t]he party obtaining injunctive relief”), and § 85-2-381(4)(a), MCA, (“any remedy legally available”), are consistent with an implied private right of action for enforcement. Lyman also asserts that, had the legislature intended to preclude a private right of enforcement by enacting § 85-2-114, MCA, it would have explicitly stated as much, and it would have made enforcement actions by DNRC, the attorney general, or the county attorneys compulsory, rather than permissive. *See* § 85-2-114(1), MCA, (“If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it *may* petition the district court supervising the distribution of water among appropriators” (emphasis added)).

¶16 In *Faust*, this Court decided that the Act does not create an implied private right of action to enforce the civil penalty provisions of § 85-2-122, MCA, because the enforcement framework of § 85-2-114, MCA, precludes such an implied right. *See Faust*, ¶ 30. Section 85-2-122, MCA, allows a penalty to be imposed when a person violates, or refuses or neglects to comply with, an enforcement action initiated under § 85-2-114, MCA. However, we declined to address § 85-2-125(2), MCA—the specific provision upon which

Lyman primarily tethers its arguments—because the issuance by DNRC of the final groundwater permits in *Faust* rendered moot the request for injunctive relief. *Faust*, ¶ 16. Importantly though, our analysis in *Faust* counsels the same conclusion here, regardless of which provision of the Act is invoked. Now, we definitively resolve, to the extent the question remained unanswered in *Faust*, that the Act does not contain an implied private right of action to judicially enforce violations, because the terms of § 85-2-114, MCA, preclude that possibility.

¶17 As we explained in *Faust*, “[w]hether a statute creates by implication a private cause of action presents a matter of statutory construction.” *Faust*, ¶ 24 (citing *Wombold v. Assocs. Fin. Servs. Co. of Mont., Inc.*, 2004 MT 397, ¶ 35, 325 Mont. 290, 104 P.3d 1080, *overruled on other grounds by Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 17 & n. 3, 338 Mont. 423, 166 P.3d 451). This Court considers four factors when analyzing a statute to determine whether a private cause of action is implied: “(1) consistency within the statute as a whole; (2) the intent of the legislature considering the statute’s plain language; (3) the avoidance of absurd results; and (4) any construction of the statute by the agency charged with its administration.” *Faust*, ¶ 24 (citing *Montana Power Co. v. Cremer*, 182 Mont. 277, 280-81, 596 P.2d 483, 485 (1979)). An examination of legislative history is also helpful in determining whether a statute creates a private cause of action by implication. *Faust*, ¶ 24 (*see Wombold*, ¶ 34).

¶18 Addressing the first factor, implying a private right of action for enforcement would not be consistent with the Act as a whole. “In the construction of a statute, the office of

the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” Section 1-2-101, MCA. Section 85-2-114(1), MCA, entitled “judicial enforcement,” provides for injunctive relief specifically as an enforcement mechanism to enjoin “wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of [Chapter 2]” However, the statute expressly authorizes only DNRC, the attorney general, or the county attorneys to petition the district court. *See* § 85-2-114(1)(c), (3), (4), MCA.

¶19 When we consider the entirety of the Act, it is clear that private disputes arising from a water right are addressed in other statutory provisions. Where private disputes arise between appropriators, those individuals may seek distribution of their water rights in district courts under § 85-2-406, MCA. Accordingly, other sections of the Act provide Lyman with a remedy to protect its interest; that interest being that Lyman may use the water authorized by its water right. Here, the Water Court has issued a Preliminary Decree for Basin 41H, which contains abstracts of the decreed claims of both Lyman and the City. In addition to remedies available under § 85-2-406, MCA, because Lyman Creek is a decreed source, Lyman could petition the district court for appointment of a Water Commissioner to administer the source. *See* § 85-5-101(1), MCA. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right

issued under Chapter 2 of the Act. A water user dissatisfied with how the commissioner is administering a decree may file a dissatisfied water user complaint pursuant to § 85-5-301, MCA.

¶20 Second, we consider whether interpreting the Act to contain an implied right of action for enforcement would reflect the intent of the legislature by considering the plain language of the statute. Reading the plain language of both § 85-2-114, MCA, and § 85-2-406, MCA, there is no reason to believe that an interpretation implying a private right of action for enforcement would reflect the legislature’s intent. On the contrary, such a reading would subvert the role of DNRC in enforcing compliance with the Act by allowing private actors to side-step statutory guidelines and invoke the judicial enforcement remedies that were clearly meant for DNRC, the attorney general, or the county attorneys.

¶21 Lyman asserts that the legislature’s use of the permissive term “may” in § 85-2-114, MCA, evidences an intention to imply a private right of action for enforcement. However, the legislative history of § 85-2-114, MCA, discredits this theory. Senator Greg Jergeson provided insight into the intent of the legislature as to the permissiveness of the language of § 85-2-114, MCA: “The Department would investigate [conflicts over the use of water] rapidly and seek, *if necessary*, the proper temporary or permanent injunction to resolve the problem.” *Hearing on S. 368 Before the S. Agric., Livestock & Irrigation Comm.*, 52d Leg., Reg. Sess. 52, at 5 (Mont. 1991) (statement of Senator Greg Jergeson, Bill Sponsor) (emphasis added). Reading the permissive language in the context of § 85-

2-114, MCA, in its entirety, it is clear the legislature intended DNRC and the other state actors referenced to exercise discretion in petitioning for judicial enforcement of the Act. A decision by DNRC not to enforce against a senior appropriator based on allegations of violations of the Act by a junior appropriator does not deprive the junior appropriator of its right to seek district court supervision over water distribution.

¶22 We also conclude that interpreting an implied right of action for enforcement could produce absurd results and undermine the bedrock principle of “first in time is first in right.” Section 85-2-406(1), MCA, provides that the district courts’ supervisory authority over distribution controversies “must be governed by the principle that first in time is first in right.” In application, this means the district courts must consider the appropriations’ seniority in supervising water distribution disputes. In contrast, § 85-2-114, MCA, states that DNRC, the attorney general, or the county attorneys may file an action to enforce the Act against any “person . . . wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, *or* violating a provision of [Chapter 2 of the Act].” Section 85-2-114(1), MCA, (emphasis added). This list is written in the disjunctive, giving DNRC authority to enforce the Act’s provisions without regard to the impact enforcement could have on the priority of the water rights at issue. Were we to read the Act to imply a right of action for enforcement, junior appropriators could seek to improve their position by alleging conduct from the disjunctive list in § 85-2-114(1), MCA, thereby sidestepping the priority considerations required in private distribution actions under § 85-2-406, MCA. Allowing this sort of collateral attack by

junior appropriators against holders of senior rights would create absurd results not intended by the legislature in promulgating the Act.

¶23 Finally, we analyze whether the agency charged with the administration of the Act has placed a construction on the statute. Lyman argues that a DNRC publication titled “Water Right Dispute Options” reveals DNRC’s construction of the Act to include an implied private right to petition a district court for enforcement of the Act through injunctive relief. *See* Water Right Dispute Options, 609INS, Water Resources Division (DNRC 2010), <https://perma.cc/U5RU-J267>. The DNRC publication is meant to be instructive to a water user who feels his or her water rights are being adversely affected by another water user by providing a number of options for water dispute resolution. Water Right Dispute Options (DNRC 2010), <https://perma.cc/U5RU-J267>. One of those options provides:

You can file a court action in the appropriate district court asking for a temporary restraining order and preliminary injunction. See MCA § 27-19-101, 201, 314. This will probably be the fastest way to obtain relief, but it is also the most expensive, as for most water uses it will require the hiring of an attorney. This option is very formal and often polarizes the parties after one party “wins.”

Water Right Dispute Options, at 1 (DNRC 2010), <https://perma.cc/U5RU-J267>. Lyman surmises that the District Court’s rejection of the DNRC publication as evidence of DNRC’s construction of the Act was based on the court’s finding that “the publication [was not] an authoritative construction of the Act, because the DNRC had not adopted a formal administrative rule interpreting the statute.” However, Lyman mischaracterizes the

basis for the District Court’s rejection of Lyman’s reading of the DNRC publication. In its Order Dismissing the Complaint, the District Court found:

While [the publication] represents that a water user can file for a temporary or preliminary injunction, it *does not provide any authority* for the underlying cause of action available to a private party. DNRC’s publication *does not cite to § 85-2-114, MCA as authority for an individual to bring an action before the district courts.*

(emphasis added). Based on this finding, the District Court held the “Water Right Dispute Options” publication was not a statutory construction by DNRC of § 85-2-114, MCA, and was therefore inapplicable in analyzing the fourth factor in the implied cause of action balancing test. For the same reasons provided by the District Court, we find the “Water Right Dispute Options” DNRC publication is not a statutory construction of § 85-2-114, MCA. Lyman provides no other agency authority for this Court to analyze and weigh under the fourth factor.

¶24 Lastly, we examine the legislative history to determine whether a statute creates a private cause of action by implication. The legislative history of § 85-2-114, MCA, sows further doubt on the availability of an implied private right of action to enforce the Act. Senate Bill (SB) 368 was sponsored by Senator Greg Jergeson in 1991. *See* S. 368, 52d Leg., Reg. Sess. (Mont. 1991). SB 368 amended § 85-2-114, MCA, at the request of DNRC and other interested parties, with hopes that the “bill would allow [DNRC] to go into court and get a temporary restraining order against [a] particular permit holder and prevent use of . . . water during that irrigation season.” *Hearing on S. 368*, 52d Leg., Reg. Sess., at 6 (statement of Don MacIntyre, Legal Counsel, DNRC). Those testifying in

support of SB 368 felt the bill gave DNRC “a tool it d[id] not have . . . to enforce violations of the water laws, and much more rapidly.” *Hearing on S. 368*, 52d Leg., Reg. Sess., at 7 (statement of Ted Doney, Water Law Attorney). “The purpose of this bill is to clarify the Department’s responsibility and strengthen its ability to enforce water rights violations that adversely affect other water users.” *Hearing on S. 368*, 52d Leg., Reg. Sess., at Exhibit No. 6 (statement of Don MacIntyre, Legal Counsel, DNRC). When analyzing the fiscal impact of § 85-2-114, MCA, the legislature evaluated the expense and funding needed by DNRC to implement the law’s judicial enforcement requirements. Office of Budget and Program Planning, *Fiscal Note for S. 368*, Form BD-15, 52d Leg. (Mont. 1991).

¶25 Interpreting the Act to contain an implied right of action for enforcement would not be consistent with the legislative history of § 85-2-114, MCA, or the overall statutory scheme of the Act, which accounts separately for State actors regulating and enforcing the Act, and for private actors protecting their individual water rights as against other appropriators. Reading an implicit right of action for enforcement into the Act would undermine the clear role delineations the legislature so carefully crafted and would be inconsistent with the Act when viewed in its entirety.

¶26 The issue before this Court is whether there is a private right of action to enforce the Act by injunction. Instead of asking the District Court to supervise the distribution of water on Lyman Creek, Lyman filed this action to enjoin alleged violations of the Act which were unrelated to a distribution controversy. In *Faust*, this Court held:

To allow private citizens to enforce the civil penalty provisions of the Montana Water Use Act would run counter to the judicial enforcement

framework set forth in the Act. Both the plain language of the statute and legislative history reveal the legislature's intent to task DNRC, the attorney general, or the county attorney with enforcing the Water Use Act's civil penalty provisions.

Faust, ¶ 30. The same reasoning applies to the issues presented here. The exclusive authority to seek judicial enforcement, pursuant to § 85-2-114, MCA, is charged to DNRC, the attorney general, or the county attorneys. While Lyman cannot enjoin the City's water use through an enforcement action, Lyman may still protect its water right by petitioning the district court for supervision of the distribution of water among users on Lyman Creek pursuant to § 85-2-406, MCA.

CONCLUSION

¶27 The Montana Water Use Act does not provide an implied private right of enforcement of the Act, because the provisions of § 85-2-114, MCA, preclude that possibility. Only those entities and public officials named in § 85-2-114, MCA, may petition a district court for judicial enforcement. We affirm the District Court's February 2019 Order Dismissing the Complaint.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE