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BMA Change of Venue request gets day in court

By Jessica Goode
The Bandera Prophet

A legal dispute spanning more than six years went back to court yesterday, this time to fight over where the case concerning Medina Lake should be heard. Bandera County and the Bandera County River Authority and Groundwater District (BCRAGD) have dug in their heels as the Bexar-Medina-Atascosa Water Control and Improvement District No. 1 (BMA) struggles to pull the rope over their side of the lake.

Stating the district is the rightful owner of the deeded property below the 1084 line, which runs from the lake to English Crossing in Pipe Creek, BMA authorities have tried to assert control over the lakefront properties for more than a decade.

Homeowners fought back, and Bandera County and BCRAGD joined the ranks in 2013, challenging BMA's claim of jurisdiction.

After numerous hearings and judgments, including a 2015 and 2016 ruling in BCRAGD's favor which BMA appealed, the case landed back in District Judge Rex Emerson's courtroom yesterday regarding a change of venue request from Bandera County to Medina County.

Hanging his hat on a coatrack of litigious objections to an addendum authored by BCRAGD General Manager Dave Mauk, BMA Attorney Shawn Fitzpatrick said many of Mauk's statements boiled down to hearsay and were irrelevant to the change of venue petition.

"There is no predicate...no basis for the statement(s) and does not relate to defendants in the case," Fitzpatrick said concerning the document referred to as Mauk's Affidavit, which BCRAGD Attorney Drew Miller said reiterated BMA's attempts to assert regulatory authority and diminish BCRAGD authority, inspect private water wells, enforce rules over surface groundwater and promulgate rules in Bandera County.

Miller said Mauk's declaration was intended to serve as a reminder in the case of the evidence that had already been presented.

"Most of what we're dealing with is statements made by the BMA district or its officials...The evidence is to show that they made the statements, not to show the

truth of the statements,” Miller said. “This is all evidence. It was presented to you a couple of years ago...The facts are already before you...This is icing on the cake and confirming this evidence in 2019. It’s not the pivotal point here.”

Fitzpatrick argued the point of yesterday’s hearing was not to determine jurisdiction, but rather venue.

“We’re not dealing with merits, we’re just dealing with where this case should be litigated,” Fitzpatrick said. “This is a clean slate. It’s going to start anew. It’s going to start from the beginning. At the time this case started, this court did not have jurisdiction.”

One of the reasons Fitzpatrick said the case should be heard in a Medina County court was because the BMA offices and officers named in the lawsuit all reside there.

“The venue affidavit establishes that all pleaded venue facts, if they occurred at all, occurred in Medina County,” Fitzpatrick said.

Calling it “forum shopping on steroids,” Miller said in cases where two venues could be justified, the plaintiff’s choice should prevail. Further, Miller said BMA’s statements and actions created significant concern among Bandera County residents, and caused a great deal of uncertainty in Bandera County.

“That was the reason for this lawsuit. Our allegations justify our position on venue is really what this case is all about. We’ve already prevailed in front of your honor, and your honor has already issued a declaratory judgment,” Miller said. “I’m presuming the BMA is doing this to restart this case from scratch in front of a different district judge. It’s wrong and it should not be allowed.”

Emerson said he was taking all of the objections under advisement, and would render a decision by 5 p.m. today.