

County road sets the stage for modern range war



Photo by Rachel Anne Seymour/Bigheart Times

The first of two hearings on requests to vacate county roads that oil producers want kept open to access drilling sites drew a crowd on Monday and took on the hue of a modern-day – and unarmed – range war.

In February, less than a week after oil company BGI Resources asked permission and received verbal assent to grade and gravel County Road 4575 near Foraker, Osage County Commissioners voted unanimously to vacate the road, acting on a petition signed by the owners of the Drummond, Briggs and Reed ranches. Very soon thereafter, a locked gate was erected on the road, the key to which was never provided to BGI.

BGI struck back, asking that the road be reopened because commissioners had failed to follow state law regarding vacating roads, which requires that the board hold a public hearing after advertising it three times.

Commissioners rescinded the February vote to vacate and held the required public hearing on Monday after giving proper notice.

It was not pretty, and highlighted increasing discord between oilmen and ranchers over surface rights, access and the environment.

Members of the Osage Minerals Council had little patience with any proposal that

would hinder BGI's access to its drilling sites, which BGI's Terry Vancil said are planned for both sides of the road, which runs north-south a mile west of Foraker. One well has already been delayed by four months by the road wrangle.

Osage Minerals Councilor Sonny Abbott brought up the fact that the Osage Nation funnels about \$5 million a year in transportation money, most of it spent on Osage County roads.

"Can that be withdrawn at any time?" he asked R.J. Walker, who was in the audience and used to oversee the tribal roads program before he was elected to the Osage Nation Congress.

Walker replied that the money could be spent on state or federal roads, too.

Steve Holcombe, a lawyer representing rancher Lee Briggs, stood up: "Is there some sort of threat here?" he asked.

Replied Abbott: "I'm not making a threat. I'm just trying to clarify the money we're paying them."

Terry Vancil of BGI said the company wants to work with the landowners. BGI, which employs 3D seismic imaging to determine where to drill its wells, has a concession in the entire area. Vancil said that it uses the road as its main access to wells, including several prospective wells to which no other roads lead. BGI, he added, fully accepts responsibility for maintaining the road north of a bridge that washed out 12 years ago – which is what prompted the county to cease maintenance of the road. He also pointed out that the Folsom ranch, which also adjoins the road, had filed a letter objecting to the road being vacated, and that the petition to vacate did not contain the signatures of all landowners.

Plus, he pointed out, "It's a section line road. If it is closed it could be reopened under other methods."

He was referring to the Osage Allotment Act, which provides, by act of U.S. Congress, that all section lines can be opened as roads without compensation. Holcombe and Lee Briggs said that BGI has access to its well, Briggs No. 2, via a pasture road.

"What we have here is that there are plans," Holcombe said. "But those plans may never happen."

Nona Roach, an oilfield accountant, said that BGI just completed analysis of seismic data and has definite intentions of drilling. "Using the existing county road is better than tearing up a pasture for another road," she said. "And the gates being locked is stopping access. We have a right to get in to those wells. Permitting takes 60-70 days and we've been hung up on this road issue.

"We need it. It's already there."

Briggs countered that he would give access using existing pasture roads.

“That’s really great,” Roach said, noting that pasture roads are usually awash with gates and locks that hinder access. “This is a county road that is not supposed to have any gates on it.”

In fact, Oklahoma statute makes obstructing a county road a crime, a misdemeanor punishable by a fine of \$50-\$500.

“If that is a public road, there’s shouldn’t be any gate on it,” county Planning Director Jake Bruno said. “Any section line road that is open, we keep it open.”

Commissioners were torn over the dispute. “This is tough,” summed up Darrin McKinney of District 3 before he made a motion to deny the request to vacate the road.

District 2’s Scott Hilton also agonized. “If we leave it open, then the gate will have to come down,” he said. “Then Bob Jackson (District 1 commissioner) will have to maintain it.”

Vancil reiterated that BGI would maintain the road, but absent a formal agreement to that effect, District Attorney Rex Duncan suggested tabling a decision.

Holcombe suggested tabling the decision for six months but Duncan said that was too long.

The commissioners voted 2-1, with Bob Jackson dissenting, to take no action on the Briggs-Drummond petition, which left the road a county road. That decision by itself spawned confusion as commissioners moved to the next agenda item: A petition by BGI to remove the gate blocking its access.

The road is officially a county road, and it is illegal to obstruct a county road, but Vancil waffled a bit, saying that BGI would like a key to the gate or to double-lock it by cutting a link and putting on its own padlock.

Roach, however, said that BGI’s drilling rig can’t fit through the open gate.

“You can’t say it’s a public road and still have an obstacle in place,” she pointed out. James Sicking of the Osage Producers Association also weighed in: “We had a vote and the vote was to leave the road open and that means the gate comes down. The law says you can’t block a county road so that means you’ll be removing the gate.” Holcombe: “They (the county) are not going to maintain the road so they’re not going to cut a gate down.”

Sicking: “You still don’t have the right to block a county road. The first step is to rip the gate out.”

Roach: “You have caused the loss of production and now we’re looking at another six months because they don’t want to take the gate down.”

The road has been a county road, by all accounts, for about 100 years, except for a brief few weeks in March when it was improperly vacated by the county.

DA Duncan, however, said that 12 years of “non-maintenance qualifies as

abandonment,” adding that there are “nuances.”

But Oklahoma, like other states, bars adverse possession of public land, or so-called “squatters rights,” and even when adverse possession is used to take over private property it takes 15 years. Governments are exempt from adverse possession laws to avoid such scenarios as people building homes in remote parts of a state or federal park, evading detection for 15 years, then saying the land belongs to them. In the end, Commissioner Jackson said that the commissioners would contact the person who has the key to the gate, identified as Ladd Drummond, and tell him to open it or provide a key to BGI.

Said Sicking: “We want access by the county road – he can give us the key or he can open it and leave it open for fishermen, too.”

On Tuesday, May 28, at 10 a.m., commissioners are set to have a similar hearing on another petition to vacate, this time County Road 4461 on Drummond land just west of Bluestem Lake – a road on a Spyglass Energy concession. Spyglass is expected to object.

By [Louise Red Corn](#) *Bigheart Times Award Winning Newspaper*