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### **SB 2344 will prevent landowners from compelling damages for use of their pore space**

In a recent case handled by former assistant attorney general Charles Carvell (who served as general counsel to the ND Oil and Gas Division) on behalf of the Krenz family, the Krenz family lost their argument that a pipeline company that had constructed a pipeline on their property without authorization had to stop using the pipeline.

The court said the dispute was about the appropriate remedies and explained XTO used the Krenzes' property against their wishes with full knowledge of the possible consequences. The court reiterated that XTO's construction and operation of the pipeline in section 15 during the lawsuit was not an innocent trespass. ... The court ruled XTO's use of the road for that purpose was a trespass.

**The court declined to enjoin XTO from using the pipeline** in section 15 to service the Ward Well, or to enjoin XTO from using the Krenzes' private road in section 15 to access that well.

*Krenz v. XTO Energy, Inc.*, 2017 ND 19, ¶¶ 13-14, 890 N.W.2d 222.

The court awarded damages to the Krenz family, but **refused to force the pipeline company to even stop using the pipeline**. And this was even after the court acknowledged that it was NOT an innocent trespass. Although the district court awarded damages, the Supreme Court later overturned that award.

If a disposal company or operator uses pore space over the objection of a landowner, it should be a trespass. Section 4 of SB 2344 says it is not. It might be that a surface owner can still bring a trespass action for the facilities on the surface of their land, but as the Krenz family found out, this does not stop the company from continuing to use your land against your will. And a farmer in that situation might be able to bring an action and recover damages for the surface damage to a few acres of land in his alfalfa field, but that is not the same as getting compensation for use of the pore space.