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Natural resources attorney Trae Gray.

## Landowners could profit from pore space

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OKLAHOMA CITY – Natural resources attorney Trae Gray has found a potential revenue stream for landowners who don't own mineral rights: pore space, the empty space between rock formations underground.

There haven't been any cases recently, but the area is ripe for exploration, Gray said. Landowners could make money from millions of barrels of wastewater pumped into disposal wells, if his legal theory is successful. Yet oil and gas attorney Eric R. King said Gray's analysis would be better tested in Texas.

Gray said he has many clients in the oil and gas industry, but his bread and butter are surface owners at his

Coalgate-based law firm. He explored pore space for his thesis as a master of laws student at the University of Oklahoma, reviewing similar laws in 15 states.

Wyoming has well-developed case law, but its focus is carbon dioxide sequestration. Oklahoma case law on the topic was decided in *Ellis v. Arkansas Louisiana Gas Co.* in 1980. The decision gave landowners rights to lease the empty space left in reservoirs after oil and gas are extracted. It allowed those landowners to create lease agreements for void space that normally didn't earn any revenue.

The law is useful to residents in Coal and other Oklahoma counties, where natural gas can be stored in depleted oil and gas reservoirs.

In 2011, the Legislature amended

state statutes to clarify that landowners also own the right to the pore space between rocks that was once occupied by hydrocarbons. GableGotwals partner King said engineers and geologists collaborate to calculate how much a reservoir can hold when it is full.

"They can actually measure how much gas can be injected into the pore space; there is a value there," King said.

So if a commercial saltwater disposal well operator leased 5 acres of land to maintain its operations, the landowner should also lease the rights to the pore space where the saltwater will be contained underground, Gray said.

However, if landowners don't assert their rights to the pore space and an operator occupies it for enough years, it's considered forfeited. Pore space is

important because most landowners don't realize they have valuable assets that can be leased.

In the *Ellis* case, the gas company stored natural gas under other people's land, the landowners never asserted a claim for payment, and after 15 years the statute of limitations ran out.

"Arkansas Louisiana Gas Company had possessed the subsurface rights," Gray said. "Imagine if someone put in a saltwater disposal and it runs for 15 years?"

That could mean big money for landowners who leased surface space to a wastewater disposal well. Gray didn't have an estimate on the potential value for Oklahoma landowners.

"It's a good theory," King said. "The surface owner might have something to gain by marketing the pore space."