

# Supreme Court of Louisiana

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NEWS RELEASE #004

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 29th day of January, 2020 are as follows:

**PER CURIAM:**

2018-C-00950 C/W  
2018-C-00956

W&T OFFSHORE, L.L.C. VS. TEXAS BRINE CORPORATION AND  
TEXAS BRINE COMPANY, L.L.C. C/W TEXAS BRINE COMPANY,  
L.L.C. VS. W&T OFFSHORE, L.L.C. (Parish of Lafourche)

We granted defendants' application for rehearing in this case on October 15, 2019. After receiving briefing from the parties and reviewing the record of the matter, we recall our order of October 15, 2019, as improvidently granted, and we deny defendants' application for rehearing.

REHEARING RECALLED.

Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

Johnson, C.J., dissents.

Weimer, J., dissents from the recall of the rehearing grant and assigns reasons.

Hughes, J., additionally concurs with reasons.

Boddie, J., dissents for the reasons assigned by Weimer, J.

01/29/20

**SUPREME COURT OF LOUISIANA**

**No. 2018-C-00950**

**C/W**

**No. 2018-C-00956**

**W&T OFFSHORE, L.L.C.**

**VS.**

**TEXAS BRINE CORPORATION AND TEXAS BRINE COMPANY, L.L.C.**

**C/W**

**TEXAS BRINE COMPANY, L.L.C.**

**VS.**

**W&T OFFSHORE, L.L.C.**

On Writ of Certiorari to the Court of Appeal, First Circuit,  
Parish of Lafourche  
On Rehearing

**PER CURIAM \***

We granted defendants' application for rehearing in this case on October 15, 2019. After receiving briefing from the parties and reviewing the record of the matter, we recall our order of October 15, 2019 as improvidently granted, and we deny defendants' application for rehearing.

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\* Retired Judge James Boddie, Jr., appointed as Justice ad hoc, sitting for Justice Clark.

**01/29/20**

**SUPREME COURT OF LOUISIANA**

**No. 2018-C-0950**

**W&T OFFSHORE, L.L.C.**

**VS.**

**TEXAS BRINE CORPORATION AND TEXAS BRINE COMPANY, L.L.C.**

**C/W**

**2018-C-0956**

**TEXAS BRINE COMPANY, L.L.C.**

**VS.**

**W&T OFFSHORE, L.L.C.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST  
CIRCUIT, PARISH OF LAFOURCHE**

**ON REHEARING**

**JOHNSON, C.J., dissents.**

01/29/20

**SUPREME COURT OF LOUISIANA**

**NO. 2018-C-00950**

**CONSOLIDATED WITH**

**No. 2018-C-00956**

**W&T OFFSHORE, L.L.C.**

**VERSUS**

**TEXAS BRINE CORPORATION AND TEXAS BRINE  
COMPANY, L.L.C.**

**C/W**

**TEXAS BRINE COMPANY, L.L.C.**

**VS.**

**W&T OFFSHORE, L.L.C.**

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIRST CIRCUIT, PARISH OF LAFOURCHE  
ON REHEARING*

**WEIMER, J.**, dissenting from the recall of the rehearing grant.

I very respectfully dissent for the reasons previously assigned.

This matter involves a quintessential civilian analysis, based on an agreement and provisions of the Louisiana Civil Code related to property law.<sup>1</sup> This court’s original consideration of this case resulted in a *per curiam* opinion that declared which litigant prevailed, but does not discuss the law, nor address the facts.<sup>2</sup> The role

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<sup>1</sup> See, in particular, La. C.C. arts. 639-645, involving rights of use.

<sup>2</sup> The *per curiam* contains the following language that gives rise to many unanswered questions: “highly unique facts and unusual circumstances of this case,” “the precise and narrow facts before th[e] court,” and “should not be interpreted expansively beyond the specific factual confines presented.” **W & T Offshore, L.L.C. v. Texas Brine Corporation**, 18-0950, 18-0956, p. 1 (La. 6/26/19), \_\_ So.3d \_\_. The litigants and public are left to speculate as to what this court found to be “unique facts” and “unusual circumstances,” and whether the opinion has any jurisprudential

of a court is primarily to resolve disputes between the immediate parties, but appellate courts and the supreme court write opinions to provide guidance so that the litigants and others similarly situated know how the law applies, and can conduct their affairs accordingly. Property law demands stability, predictability, and clarity. Such a goal is particularly true in this case given the prevalence of pipelines throughout Louisiana and the impact the right-of-use laws have on industries and property owners throughout our state.

By voting to grant the rehearing, it was my hope that whatever the outcome, this court would improve upon the cursory *per curiam* opinion. However, with the vote to rescind the rehearing, I am left to conclude that the *per curiam* means little if anything as to the future rights of the present parties, and contributes nothing to industry and property owners looking for clarity in Louisiana property law when evaluating the viability of existing pipeline servitudes or considering future pipeline projects.

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value in future cases between these parties (when Texas Brine may claim a need to eventually replace the replacement pipeline and then maybe with one of an even larger diameter) or in other right-of-use cases.

01/29/20

**SUPREME COURT OF LOUISIANA**

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**Hughes, J., additionally concurring.**

In this case all of the landowners entered into a contract in 1979. The cause of the contract is to transport brine from mine to consumer. A right of way was provided for, but no width of use or diameter of pipe was specified in the contract. Location is not an issue; it was set when the original pipe was laid.

The burden on the landowners both environmentally and economically must be considered.

The uncontroverted testimony at trial was that removing the old pipe and dragging it out through the swamp would be more damaging to the environment than leaving it in place and using an additional eight feet to lay new pipe, the industry standard.

Replacing the pipe in the original trench would cause additional economic damage to the landowners by necessarily halting the flow of brine.

Texas Brine chose the most reasonable option, least burdensome to the landowners, to fulfill its obligations under the contract in an environmentally safe and economically feasible fashion.

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Parish of Lafourche  
On Rehearing

Boddie, J., dissents for the reasons assigned by Justice Weimer.