

UC ANR Water Webinar



How Dynamic are Property Rights in Water?

By: Professor Holly Doremus, Berkeley School of Law

Day/Time: Friday 9/18, 3 - 4 PM

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Speaker Bio: Professor Holly Doremus is a James H. House and Hiram H. Hurd Professor of Environmental Regulation at UC Berkeley. She is a Co-Director of Law of the Sea Institute and Co-Faculty Director, Berkeley Institute for Parks, People, and Biodiversity. Professor Doremus brings a strong background in life sciences and a commitment to interdisciplinary teaching and scholarship to her work at Berkeley Law. She earned her PhD in Plant Physiology from Cornell University and was a post-doctoral associate at the University of Missouri before making the transition to law.

Abstract: Law in general expresses and responds to the inevitable tension between drivers of change and drivers of stability. We want law to change as circumstances, knowledge, and social values change over time. At the same time, we want law to be stable in order to protect expectations and investments. Property law, has long been on the extreme stability end of the scale, in large part because it seeks to encourage long-term investment. Property rules do change, but slowly and fitfully. The law of appropriative water rights appears on its face to be more dynamic. It acknowledges the reality of seasonal and annual variability in water availability. Water rights holders are always at the mercy of the weather. It also incorporates the notion of "reasonable use." No one has a right to the unreasonable use of water, a concept that would seem necessarily to evolve over time. Yet there are also powerful drivers against a truly dynamic version of water rights, including the constitutional requirement that government provide compensation if it "takes" property rights. In this talk, I will use the evolving law of takings in the water rights context to ask how dynamic appropriative water rights currently are, whether they are sufficiently flexible to cope with a rapidly changing world, and if not whether they can be made more dynamic.

Host: Safeeq Khan, CE Specialist in Water and Watershed Sciences