

# Ethical Issues for Water Lawyers

Carrick Brooke-Davidson  
Mary Mendoza

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- Background
- Hypothetical
- Ethical Considerations
- Legal Considerations
- Measures to Minimize Ethical and Legal Risks

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## Background

- Environmental laws involve public health and welfare.
- Administrative and civil penalties are based on strict liability.
- Criminal liability for some statutes, *e.g.*, the Clean Water Act, is predicated on simple negligence, see *U.S. v. Hanousek*, 176 F.3d 1116 (9<sup>th</sup> Cir. 1999), and for the Migratory Bird Treaty Act, on strict liability.
- “Responsible Corporate Officials” may be held personally responsible criminally based on their authority to exercise control over a corporation’s activity. See *U.S. v. Iverson*, 162 F.3d 1015 (9<sup>th</sup> Cir. 1998).

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## Background (cont’d)

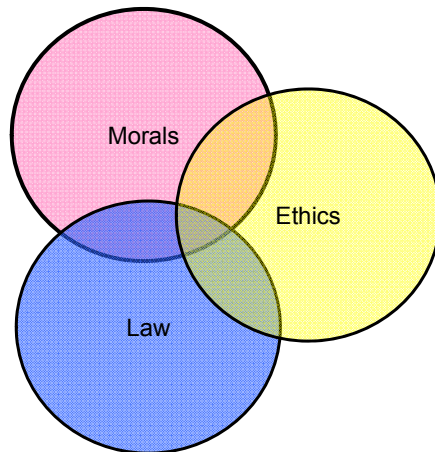
- “Environmental laws reflect philosophical values and the need to conserve and protect the environment for its inherent value as well as for utilitarian reasons. *Issues of Legal Ethics in the Practice of Environmental Law*, Irma Russell, ABA SEER (2003), p. xvi.
- “The ethics rules that apply to the legal profession should also serve the public interest generally . . .” *Id.* at xix.
- The practice of environmental law, because it involves public health and welfare, may impose additional ethical responsibilities on lawyers.

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## The Relationship of Morals, Ethics, and Law



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## Texas Disciplinary Rules of Professional Conduct

- Jurisdiction specific
- “Minimum standards of conduct”
- Do not define standards of civil liability

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"Ethical Issues in Environmental Law—It's Not Easy Being Green"