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The Advisory Committee on Social Witness Policy has submitted this document to the 216th General Assembly (2004).  
Until approval, nothing in this document can be used to direct the mission program of the church.

**Report and Recommendations on Limited Water Resources and Takings**

The Advisory Committee on Social Witness Policy (ACSWP), after consultation with the Advisory Committee on Litigation (ACL), recommends that the 216th General Assembly (2004) approve the following recommendations and report:

1. Clarify existing social policy found in *Restoring Creation for Ecology and Justice* the environmental policy statement adopted by the 202nd General Assembly (1990) (*Minutes*, 1990, Part I, pp. 65, 85, 117, 121, 646-690).

a. In general, where water resources are limited, the basic needs of declining species should take priority over out-of-stream and other instream users.

b. In general also, the reserved rights of Native Americans to instream use of water established by courts and based on treaties that date from the nineteenth century should take priority over out-of-stream and other instream users.

c. Giving priority to these two categories of instream users does not mean that in conflicts over limited water resources the PC(USA) will always side with these instream users. Rather, these are priorities that will presumably hold in most situations of conflict. Each situation will have to be judged on its own merits.

d. The PC(USA) does not at this time take any position on the circumstances under which a holder of water rights should receive compensation from the government where the application of these priorities results in restriction of the holder's water rights.

2. Declare that it is not appropriate at this time to take a position on the legal resolution of the complex and undeveloped issues raised by governmental restriction of water rights, with regard to the circumstances under which compensation should be paid by the government under the Fifth Amendment of the United States Constitution.

3. Rescind, in accordance with the preceding paragraph, item 2 of *Commissioners' Resolution 01-29* on the Klamath Basin Drought approved by the 213th General Assembly (2001). Item 2 reads: "Affirm the taking of water rights is the taking of private property and that just compensation is due" (*Minutes*, 2001, Part I, pp. 62, 503-504).

4. Direct the Office of the General Assembly to publish the entire "Report and Recommendations on Limited Water Resources and Takings" in the *Minutes* and place the document as a whole with study guide on the PC(USA)'s website, distributing it to the presbytery and synod resource centers and the libraries of the theological seminaries, making available a copy for each requesting session or middle governing body; and direct the Stated Clerk to notify the church that it is available on the website.

5. Commend this report and the background paper in Appendix I to governing bodies and congregations, urging that they be used as a basis for study, action, and advocacy on matters of limited water resources and takings.

6. Direct the Office of the General Assembly to consider placing the document, *Restoring Creation for Ecology and Justice (1990)*, on the PC(USA)'s website with the understanding that technological problems or resource limitations may make such placement infeasible.

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*Rationale*

This report is in response to the following referral: Item 12-05: *Overture 02-51. On Developing a Social Witness Policy on "Takings"—From the Presbytery of Baltimore*, as amended and approved by the 214th General Assembly (2002), (*Minutes*, 2002, Part I, pp. 73, 595-596).

Paragraph 1 of Item 12-05 authorized and encouraged the General Assembly Council (GAC) through the Advisory Committee on Social Witness Policy (ACSWP), in consultation with the Advisory Committee on Litigation (ACL), to undertake a study in accordance with "Forming Social Policy" of a constitutional law issue concerning the taking of private property. The Fifth Amendment to the United States Constitution includes the so-called "takings clause" that reads: ". . . nor shall private property be taken for public use without just compensation." The subject of the study would be a particular legal theory put forward by some persons to the effect that any governmental action that restricted private property rights and thereby decreased the value of such rights should be considered a "taking" for which the government would have to pay compensation to the property owner.

Item 12-05 authorized and encouraged presentation of a proposed social witness policy to a future General Assembly "if appropriate." The rationale put forward by the Item's sponsoring Presbytery noted that a study would not be mandatory, and that church resource issues should be considered in determining whether to undertake such a study.

Item 12-05 was a response to the approval by the 213th General Assembly (2001) of *Commissioners' Resolution 01-2. On the Klamath Basin Drought* (*Minutes*, 2001, Part I, pp.62, 503–504), which itself was a response to the cutting off of water to farmers during a drought in the Klamath River Basin. *Commissioners' Resolution 01-29* stated that the General Assembly "affirm[s] that the taking of water rights is taking private property and that just compensation is due." Paragraph 2 of Item 12-05, approved by the 2002 General Assembly restricted the application of *Commissioners' Resolution 01-29* "to the specific water rights issues of the Klamath Valley Basin."

For several reasons the ACSWP determined that it would not be wise stewardship of the church's resources to undertake at this time the full study that "Forming Social Policy" would have required for new social policy.

First, the particular legal theory which would be the subject of the study has not been accepted by the courts, nor is there any realistic prospect that it will be accepted. To the contrary, governmental regulation of the use of private property generally has not been held to be a compensable taking unless all or nearly all of the value of the property has been destroyed by the regulation; even then compensation is not always required.

Second, the context in which the General Assembly's interest in this issue arose—the possible obligation of a government to compensate for restrictions on water rights—involves substantial legal complexity and uncertainty. ACSWP does not believe the PC(USA) is in a position to develop social policy that takes a particular position on what legal rules should govern compensation for restriction of water rights.

Third, ACSWP believes it is possible to provide a useful recommendation to the General Assembly on the social policy issues raised by limited water resources without incurring the expense of a full-blown study. To this end ACSWP presents a resolution with supporting material on limited water resources and the regulation of water supplies and water rights as a clarification of already established environmental policy.

ACSWP recognizes that Item 12-05 did not ask for clarification of social policy with regard to limited water resources. Such a recommendation is, however, responsive to the concerns behind Item 12-05 and also is independently appropriate for ACSWP to bring to the General Assembly.

A. *Background*

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#### 1. *The Ethic of Ecology and Justice*

This resolution is based on the theology, ethics, and social policy stated in the report *Restoring Creation for Ecology and Justice* adopted by the 202nd General Assembly (1990). This resolution is an effort to build on that report to keep the environmental policy of the Presbyterian Church (U.S.A.) current and to address issues that have arisen since the report was adopted.

The theology in the 1990 report is God-centered and speaks of a God who comes to judge the people for tilling without keeping, to deliver the vulnerable earth, and to restore the joy of creation. The theology is neither human-centered nor nature-centered, but deeply concerned about both human beings, other species, and their ecosystems as good creations of God.

Ten years later the theology of the PC(USA) remains God-centered. Presbyterians hold that God created the universe. Presbyterians do not claim to know exactly how this happened, rather however it happened that the God who is revealed in Jesus Christ as love, compassion, and justice was there to behold it and marvel at its goodness.

The rest flows from this. All creatures are good. Humans are created in the image of God with a special dignity that should be respected. This special dignity does not convey moral superiority but represents a call to responsibility, even servanthood, to the rest of creation, which has its own intrinsic value as part of God's created order. Humans are to have dominion, to keep and till the earth as careful stewards, and to enjoy God and the creation forever. This means in today's context to restore, protect, and preserve both human and natural communities. It means connection to the earth, appreciation of God's Spirit in nature, and awe at the wonder of it all. It also means redemption, for humans redemption from sin to respond with love and justice to the neighbor; and for other species freedom from human sin.

To spell out this high calling and to guide it, the 1990 report identified four norms: sustainability, sufficiency, participation, and solidarity. These norms are the foundation of the ethic of ecology and justice that has developed in ecumenical circles over the past twenty-five years. The ethic of ecology and justice is a biblical, theological, and tradition based ethic that addresses human caused problems that threaten both human and natural communities and considers both human and natural communities to be ethically important. The word ecological raises up other species and their habitats, the word justice points to the distinctly human realm and human relationships to the natural order.

According to the 1990 report:

Sustainability is simply the capacity to continue indefinitely. For eco-justice, sustainability means . . . the capacity of natural systems to go on functioning properly, so that the living creatures that belong to these systems may thrive. As a norm for human behavior, sustainability expresses the meaning of God's call to earth-keeping: Relate to the natural world so that stability, integrity, and beauty may be maintained.

Sustainability refers, also, to the stability and healthy functioning of social systems or a whole society. Since social systems depend upon natural systems, the former are sustainable only if they permit the health of the latter to continue....

Picking up on our biblical metaphor of tilling and keeping, we may say that sustainability is the capacity of those who till to keep the garden with sufficient care for tilling to continue. But this is not quite adequate for eco-justice. Because the garden is intrinsically good as God's creation, it is to be cherished not only for tilling but for its own sake. Sustainability is the capacity of the natural order and the socioeconomic order to thrive together (*Minutes*, 1990, Part I, 40.657-40.659, p. 654).

With regard to sufficiency, the report has this to say:

Justice...insists that all participants be able to obtain a sufficient sustenance. Sufficiency means enough for a reasonable secure and fulfilling life. The imperative of sufficiency as a distinctive norm of justice for our time arises from the salient realities: the poverty which prevails massively in the Third World and plagues significant numbers in rich countries; the severe strains that modernization and industrialization have already put on natural resources and systems; and the certainty that the world's population will swell by additional billions before it stabilizes or drops. In this situation sufficiency for all will be achieved and sustained only if the good things of God's creation are shared according to a keen sense of what is needful (*Minutes*, 1990, Part I, 40.676, p. 656).

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On participation the report says:

In the context of the eco-justice crisis a distinctive meaning of justice that must be stressed is the requirement that economic arrangements provide for inclusive participation. In this context, participation means being included in the social process of obtaining and enjoying the good things of God's creation. Because the Creator's intention is that nature's gifts of sustenance be available to all members of the human family, all have a right and responsibility to participate, as able, in these arrangements. If any are excluded, something is unacceptably wrong (*Minutes*, 1990, Part I, 40.671, 40.671, p. 655).

Finally the report speaks to solidarity:

In the face of the widening gap between rich and poor, the alienation of humankind from nature, God's new doing comes as a call for reconciliation and the achievement of community. The norm of solidarity gives forceful expression to the affirmation of community. Solidarity means strong, vibrant community based on commitment and fidelity. In the context of the eco-justice crisis it embraces ecological, ethical themes of each individual's worth and dignity together with the fundamental interdependence and unity with the Creator's creatures. It affirms that human beings are all members of one human family, sharing common needs and aspirations, making an equal claim for basic sustenance, while belonging also to nature as integral components of one creation (*Minutes*, 1990, Part I, 40.680, p. 656).

Solidarity directs participants in the tasks of keeping and healing to link and stand with three particular sets of companions. First, it leads them to find and cherish immediate companions who share their concern for the liberation of the earth and people. These constitute their community of support and encouragement, enjoyment and persistence. Second, it directs them to stand supportively with those who suffer most from the oppression and poisoning directed against earth and people. And third, solidarity directs concerned people to join forces in broad coalitions to address the various dimensions of the eco-justice crisis (*Minutes*, 1990, Part I, 40.682, pp. 656-657).

## 2. *Fresh Water Resources*

Psalm 104 lavishly praises God for the earth's abundant resources. Water is very much in the Psalmist's mind:

Thou makest springs to gush forth in the valleys;  
They flow between the hills,  
They give drink to every beast of the field;  
Wild asses quench their thirst.  
By them the birds of the air have their habitation;  
They sing among the branches.  
From thy lofty abode thou waterest the mountains;  
The earth is satisfied with the fruit of thy work.

No longer! What was once abundant is now scarce in many locations in the U.S. and even in the hills and valleys of the Psalmist's experience. And while the springs still gush forth and the clouds still water the mountains, the human demand for fresh water has drastically reduced the flow between the hills. Fresh water is now in limited supply, and water quality and critical habitat are degraded. Water managers are finding it difficult to allocate the available supply equitably among those who need it and to keep rivers and streams clean enough to allow species that depend on them to thrive.

Their difficulty is exacerbated in the U.S. by the many groups making demands, by the quantity of these demands, and by a history of allocation decisions that all but ignored the needs of aquatic dependent species and marginalized groups. It is further exacerbated by drought and seasonal fluctuations in stream flows and lake levels. It is still further exacerbated by the degradation of ecosystems, the reduction of species diversity, the pollution of water and sediments, the modification of river channels and lands adjacent to lakes and streams, the introduction of non-native species, and the diversion of water to multiple human uses.

The best way to categorize the many groups making demands on limited water resources is a simple distinction between instream and out-of-stream users, recognizing that both are part of a larger ecological system. In the first category are the species that inhabit streams and lakes. Fishers are also instream users as are

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hydroelectric power producers and those who use streams and lakes for recreation. Native Americans are instream users for ceremonial and subsistence purposes, but out-of-stream users when they irrigate.

Out-of-stream users include farmers, farm workers, ranchers, residents of towns and cities, miners, loggers, and manufacturers. Among out-of-stream users in semi-arid regions, farmers who irrigate are by far the biggest consumers of water except in large urban areas where municipal and industrial uses sometimes dominate. Out-of-stream users secure their water not only from lakes and streams but also from groundwater. About fifty percent of the U.S. population gets its drinking water from groundwater. Groundwater that feeds lakes and streams is inter-related with surface water. In many areas both are overdrawn and polluted.

Environmentalists as individual users fit into one or more of the above categories, but also play a special role. They claim to represent instream species that otherwise would not have a voice in decisions that affect their lives. Government officials who legislate water rules and regulations and manage water allocations form still another group with interests in water supplies.

Problems of water allocation are particularly acute in the semiarid, intermountain western U.S. where years of drought and seasonal fluctuations make it difficult in some years simultaneously to meet the demands of all human users and to preserve fish and other species that depend on aquatic habitats. Conflict is increasingly frequent and sometimes intense especially between advocates for instream users and farmers, whose peak irrigation needs come in the dry summer months when water supplies decrease and fish are particularly vulnerable to low stream flows, high water temperatures, and concentrated pollutants. Complicating the conflict is the uneven enforcement of environmental laws and regulations by water managers and the long delayed recognition of Native American treaty rights. Prejudice against Native Americans, human centered attitudes toward nature, and resentment of the federal government add partisan fuel to the fire. Outside groups with both related and unrelated political agendas sometimes exploit conflicted situations for their own ends.

The church should be sensitive to these conflicts. Family farmers, agriculture-related businessmen and women, and agricultural workers are the core of many rural congregations. Family farms and businesses, indeed a way of life, are threatened not only by weather and market fluctuations but also by the economic squeeze caused by the shift from family farms to large-scale, often corporate dominated agriculture. Farmers have a legitimate concern to preserve a way of life that contributes substantially to the world's food supply, the U.S. economy, and American culture.

Farmers' sense of entitlement to water is increased by historical patterns of water allocation. In some cases farmers have paid for the construction of water storage facilities to tap instream sources during seasons of high flow. This is generally a sustainable practice that should be encouraged. In other cases federal, state, and local water managers encouraged farmers to use limited water resources and all but ignored other users. Water managers granted farmers liberal water rights during the twentieth century and in some places entered into compacts with irrigation districts to provide water. For years farmers were first in line for water and grew accustomed to having their water needs met. Some of them came to think of their annual allocation as a right with one primary responsibility, the production of food for other human beings.

In the process of food production farmers have also put pressure on limited water resources and contributed to habitat degradation and species decline. They are not alone in doing these things. Other human users have contributed significantly, for example, fishers who have over fished and urban users who have demanded water with little concern for conservation. Power producers have erected dams that alter habitat and impede fish runs. The problem of limited water resources and declining watersheds is complex and multifaceted.

The PC(USA) supports sustainable family farms. The policy of the PC(USA) is stated clearly in "We Are What We Eat," a report approved by the 214th General Assembly (2002) (*Minutes*, 2002, Part I, pp. 23, 533-559). The church also seeks the equitable distribution of limited water resources. All Presbyterians have a responsibility to minister to hard-pressed farmers and mediate disputes however difficult those responsibilities are to discharge when cooperation and sharing give way to animosity, racial division, and conflict.

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The PC(USA) also has responsibilities to other groups of water users and to nature. The church has developed a biblically based environmental policy that seeks justice for both humans and other species. The four norms of sustainability, sufficiency, participation, and solidarity have guided church policy for over twenty-five years and give considerable weight to the interests of other species. The church in general supports environmental laws and regulations and their enforcement. The church has backed and continues to support the legitimate claims of Native Americans under treaties negotiated with the U.S. Government in the nineteenth century. The church recognizes that water allocation decisions, which put irrigators first in line historically, in some cases, neglected the interests and rights of Native Americans.

The U.S. courts have also supported Native American claims. In a 1983 decision (U.S. v. Adair) the 9th Circuit Court held that treaties negotiated in the nineteenth century implied a reserved water right as was necessary to preserve traditional hunting, fishing, and gathering. The Court also held that Native American farmers owning land on a former reservation are entitled to water for agricultural needs with the date the suit was brought as their priority date. These claims have and continue to be neglected in water allocation decisions, a neglect that excludes Native Americans from participation. How much water is necessary to provide sufficient water for these purposes is a matter the courts are still deciding in many river basins.

Finally in assessing its responsibilities to other groups, the PC(USA) needs to consider the contributions of other human groups, both instream and out-of-stream users, who have claims on limited water resources and contribute to the pressures on limited water resources. Fishers, for example, are sometimes in conflict over stream flows with farmers who irrigate. Some municipalities covet the water that currently goes to irrigation. The church cannot, of course, settle these conflicts or support the claims of every group that makes demands. Perhaps the best it can do is to set its own priorities in policy statements such as this, offer itself as a vehicle for peaceful conflict resolution, and help those who suffer from the difficult but necessary decisions of water managers and the courts.

Decisions about the equitable distribution of limited water resources are never easy. There are many overlapping governmental jurisdictions and even more private property owners. Mandates governing natural resource agencies conflict. Environmental laws and traditional water allocation practices clash. Some laws have never been tested in the courts. Political pressures are immense. Other species and marginalized groups must now be included.

In general, however, the basic needs of declining species should take priority over out-of-stream and other instream users. Where no laws exist to establish this priority, responsible state and federal officials should legislate and enforce laws and regulations that stipulate minimum stream flows, sufficient temperatures, and clean habitat. Governments should create incentives to reward users who improve their practices above what is required by law. In general also, the reserved rights of Native Americans established by the courts and based on treaties that date from the nineteenth century should take priority over out-of-stream users and other instream users. Fortunately, meeting the basic needs of declining species will also meet most of the needs of Native Americans.

Giving priority to these two categories of instream users does not mean that the PC(USA) will in conflicts over limited water resources always side with these instream users. Rather it sets priorities that will presumably hold in most situations of conflict. Each situation will have to be judged on its own merits. Taking sides should only be a last resort after the parties in conflict have been unable to resolve their own disputes, the church has carefully studied the conflict, and the situation is of sufficient importance to warrant intervention.

Instream species have priority because extinction is forever, whereas farming and other human uses in specific places are not. Extinction is the "super killing" of an entire species and a show of disrespect for God's created order wherein other species have intrinsic value. Species extinction is now at unprecedented levels and unless humans self-limit their consumption, the very foundations of agriculture, not to mention the human species itself, erode. (See *Overture 01-60. On Preserving Biodiversity and Halting Mass Extinction---From the Presbytery of Susquehanna Valley* approved by the 213<sup>th</sup> General Assembly (2001), *Minutes*, 2001, Part I, pp.

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56,473-476.) Finally, degradation and extinction of species take the livelihoods of fishers and Native Americans who are primarily instream users.

Giving priority to these two categories of instream users also follows from the ethic of ecology and justice with its four norms of sustainability, sufficiency, participation, and solidarity. The PC(USA) has long stood in solidarity with marginalized groups. Native Americans have interests that should be included in decisions that affect their lives. The same goes for other species whose needs for clean and healthy habitats should be respected and included in human decisions. Farming and other human activities are not sustainable when they jeopardize species and degrade ecosystems. Consumption levels in the U.S., including the consumption of water, contribute to habitat degradation and are above what is sufficient or sustainable, widespread poverty notwithstanding. In summary, putting the basic needs of these instream users first accords with good stewardship of the environment and justice for humans and other species.

Putting these instream users first does not put farmers who irrigate second. Their role in food production is essential, and they need water resources. Rather, all human users are being called to a more equitable distribution of limited water resources and conservation. There will be ample water in most watersheds in years of abundant or average precipitation. The needs of these instream users are not unlimited. Conservation and technological improvements will help. Improved water efficiency, switching to less water-intensive crops or varieties, and restraint in granting new water rights will also ameliorate the situation. Improved water quality will help to restore critical habitats.

Nevertheless, giving priority to these instream users will hurt some farmers and other human users in certain watersheds in years of drought and in seasons of low stream flow. If nothing else, farmers and other users will face a high degree of uncertainty. Farmers operate on a tight margin, and it is difficult to implement some changes without risking financial loss.

While the church has only meager financial resources, compassion and justice call for responses. Pastors, indeed all Presbyterians, need to attend to the suffering of those who sustain losses. Regional and national bodies of the church should advocate for appropriate forms of assistance. Legislators and water managers need to be responsive to the appeals of farmers. Forms of assistance (such as voluntary land or water rights buy backs, disaster relief, the development of alternative water resources, the provision of new technologies to conserve water and to protect threatened species and aquatic habitat, funds for retraining and relocation, and mediation processes to resolve disputes) are appropriate governmental and community responses. The costs of supporting the common good should not be forced on one group alone. The community through its institutions has a responsibility to help shoulder the burden. For their part, urban residents should be aware of their contribution to the problems of limited water resources and environmental degradation through the food they purchase and the water they consume. Public education on water consumption should be a priority.

It is the task of scientists to determine what it takes to sustain instream users. The best science available should be the basis for policy decisions about specific streams and lakes. The term “best science” is ambiguous, however, since scientists are not always in agreement on any given topic, and scientific studies are frequently used selectively by the advocates of alternative positions. Scientists cannot solve political and ethical debates. Nevertheless, scientific grounding is essential to wise decision-making. Without it environmental debates degenerate into partisan wrangling.

It is the task of legislators and water managers to use the best scientific analysis available to formulate laws and regulations, to enforce them, and to make decisions about equitable distribution. It is the task of the courts to settle disputes. It is the task of all parties to cooperate in making decisions that avoid recourse to the courts. A cooperative process governed by a spirit of sharing is far better than litigation and force. The church should help model this process by bringing together people of diverse opinions to create a “safe place” dialogue. In so doing the Church should encourage local efforts to overcome the fish versus farmers divide that yields little but conflict. The church should also support farmers who have introduced more sustainable practices and seek to bridge the divide by their actions.

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### 3. *Water Rights and Takings*

The issues of water rights and regulatory takings are exceedingly complex. The Church must rely on legal scholars and the courts to sift through the complexities. There are, however, matters of justice to consider. In addition, the 214th General Assembly (2002) directed the Advisory Committee on Social Witness Policy in consultation with the Advisory Committee on Litigation to address these issues.

Rights language is one way to speak about justice and equity. The concept of rights came to the fore during the Enlightenment and was given prominence in Europe and the Americas by an emerging commercial class that sought to limit feudal privileges, balance the power of monarchs, and secure political participation for itself. The rising middle class was successful, and, as time passed, other groups claimed rights for themselves and were also included as participants. Today the process of extending rights to marginalized groups continues. Some environmental philosophers and theologians would even extend rights to other species and speak of biotic rights. Clearly human and biotic rights are not the same, however much they may overlap. For example, extending freedom of speech and the right to vote to animals would be absurd. To speak, however, of the right of other species to a healthy and whole habitat and to satisfy their basic needs makes sense.

The spirit of love and justice and the creation of humans in the image of God that give foundation to rights are God-given. The application of rights in specific situations and their extension to different groups are human decisions conditioned by historical circumstances. Rights are intended to protect the legitimate interests of individuals and groups over against the state and other groups. Rights are not absolute. Rights do not give unlimited privilege to the individuals that hold them, however. Rights are limited by the responsibilities of each right holder to respect the same rights in others and to self-limit his or her own claims. They are further limited by the community's responsibility to promote the common good and to restrain those who seek individual gain at the expense of others and the community as a whole. Finally, different rights occasionally come into conflict and must be adjudicated. In other words, rights limit each other.

Philosophers, theologians, and legal experts have reflected in great depth about the tension between the rights of individuals and provision for the common good. Christians have for a long time both championed the rights of individuals and recognized the community's right and responsibility to promote the common good. In keeping with the latter, the PC(USA) supports a well-ordered, just, and sustainable community. It participates in community processes and receives benefits. Laws and regulations to protect the environment, to establish land-use planning (zoning), and to preserve important historical and natural places serve both humans and other species.

In the past two decades efforts to enforce environmental laws and regulations have increasingly come into conflict with rights held by individuals. In a few cases enforcement has cost individuals dearly or placed a heavy burden on a few to preserve the common good of a sustainable environment. In the intermountain west of the United States one of the most prominent conflicts today is between farmers with water rights on the one hand and government officials, environmentalists, Native Americans, commercial and sport fishers and recreational users on the other hand seeking to protect and preserve declining species and ecosystem integrity.

In the process of extending rights to even more groups, water rights were established in the late nineteenth and early twentieth centuries to prevent conflicts and to reduce the risks of investments in irrigation systems. According to Rick Bastash, an authority on the subject speaking about water rights in Oregon:

A water right is the legal authorization given by the state to a party to use a specific amount of public water in a specific way at a specific location for a specific purpose. It is not a title to the water itself. Only the public owns the water. (Rick Bastash. *Waters of Oregon: A Source on Oregon's Water Management*. Corvallis: Oregon State University Press, 1998, p. 48.)

Certain rules with local variations govern water rights in the western U.S. They include:

- a. The water granted in a water right must be for beneficial use.

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- b. The right attaches to the property and may be sold with it.
- c. "First in time, first in right," that is, earlier rights have priority over rights granted later.
- d. "Use it or lose it," which means the right is forfeited in most states after five years of no use.
- e. Rights are forever.
- f. The water in a right is free.

Court decisions to uphold the treaty rights of Native Americans and legislation, such as the "Endangered Species Act," have in effect extended water rights even further. The treaties reserved to the tribes certain uses of water; and while these reservations were not described as rights, in the present context they are the equivalent of rights. So also with legislation to protect species and their habitats. Having ignored the impact of water diversions on other species, legislators woke up to the threat of extinction. As the decline of species and the degradation of their habitat became increasingly obvious, legislators took steps to protect both, if not extending rights at least recognizing that all species have needs that should be respected. The enforcement of treaties and environmental laws and regulations has occasioned, not caused, conflicts with the water rights of farmers.

It is also important to recognize that legislators enacted water rights laws and regulations in a different historical context. The context has changed dramatically over the past century, yet the laws and regulations have remained rather fixed. Review of existing laws and regulations is overdue. Given the contentious nature of present water allocation decisions, however, the prospect of successful review is not good. Expensive litigation will remain the primary recourse until such time as contention yields to cooperation.

Conflicts over water rights, Native American treaty rights, and environmental legislation have also raised the issue of "takings." The last clause in the Fifth Amendment to the U.S. Constitution, the so-called "takings clause," reads: "...nor shall private property be taken for public use without just compensation." The intent of this clause is to limit the power of the state to seize property arbitrarily and to protect the interests of property owners. Until the twentieth century the courts applied the clause only to the physical seizure of property through the government's power of eminent domain.

In 1922, however, the Supreme Court ruled in *Pennsylvania Coal Co. v. Mahon* that in addition some forms of regulation could effectively qualify as a taking of property. This decision opened the door to what has been called regulatory takings but not very wide. The courts have held that a taking has occurred only if the enforcement of a regulation permits little or no economic use. Thus according to the Supreme Court, a taking is a government action that either physically occupies property or removes nearly all its economic value. Short-term loss of income or partial loss of economic value do not usually qualify as a taking under existing court rulings. This narrow definition could change with subsequent rulings, of course, a change strongly endorsed by some property rights advocates.

In the 1990s property rights advocates and those who wanted to revise or reverse what they considered to be intrusive laws and regulations began lobbying legislatures to open the door wider. They also pressed their case in the courts. These groups sought to understand takings to include compensation to property owners for any possible financial loss from the enforcement of a regulation.

A good example of this comes from the Klamath River basin in southern Oregon when the U.S. Bureau of Reclamation withheld water without advance warning in April 2001 during a severe drought in order to protect three endangered fish species. Farmers who lost significant income and property rights activists claimed regulatory takings. The farmers' claims for compensation were bolstered not only by a loss of income but also by a compact between the Bureau of Reclamation and local irrigation districts to provide water.

Were these claims of takings to be accepted by the courts or a wide open takings provision enacted by legislatures, the cost of preserving critical ecological systems would certainly increase. In an unlikely, worst-case scenario the state might not have sufficient funds to compensate all claims. Added bureaucratic costs would be incurred figuring out the legitimacy of claims. Even more costs might be incurred compensating owners for potential loss of income, for example, future rental income from shopping centers. Government officials would at

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minimum be reluctant to enforce laws and regulations with such extensive price tags. Such a scenario would effectively eviscerate environmental laws and regulations, not to mention zoning, safety, and historic preservation laws.

These claims involve other problems. While they legitimately express a concern for human freedom, they also reflect in some cases a preoccupation with self- or group-interest. They view land and other species in economic terms and measure their value in terms of money. They assume that economic value should take precedence over other values. They overlook the intrinsic value of the land and other species as creations of God. They ignore hard to quantify use values, such as, life-support, recreational, scientific, aesthetic, historical, symbolic, character-building, and religious values. They also ignore the temporal nature of our land occupancy. Humans are not owners in perpetuity, but merely custodians for a finite lifetime with responsibilities to God, neighbors, and other species. To reduce nature to economic good alone is to enshrine mammon.

Then there are the legal questions involved in these claims. The area of water rights does not provide a good context for considering the extent to which government regulation of the use of property should require compensation to the owner of the property. When, for example, zoning regulations prohibit a landowner from building a strip mall on a parcel of land, the issue is clearly whether the regulation has taken away all or nearly all value of the land. When the government physically appropriates the land to build a road or a post office, the issue is much simpler. The government has physically taken or occupied the land and compensation generally must be paid. If the government, however, restricts an owner of water rights from using water that the owner claims, is that a mere regulation of the water rights? Or is it a physical taking of water to which the water right's owner had an entitlement?

Even if it should be treated as a mere regulation, there is the further question whether the regulation eliminated all or nearly all value of the property. Further still, it would not be clear whether "the property" is the water right as a whole, or the water rights for a given year, or instead the land to which the water rights may be attached. That choice could determine the outcome. Finally, it is not clear that any one approach to the issue of water rights and takings is appropriate given the many situations in which such an issue might arise.

Given these problems and legal questions, it is inappropriate for the PC(USA) to take sides on these claims or to develop social policy that takes a particular position on what legal rules should govern compensation for the restriction of water rights. While the PC(USA) may from time-to-time take sides in future cases of a similar nature based on the priorities established in this resolution, the appropriate place to decide this matter is in the courts. Suffice it to say that the PC(USA) has a stake in laws and regulations that respond to suffering, enhance community life, protect private property, and preserve species and ecosystems.

Not only is it inappropriate to take sides or develop policy, but there are also other and better ways to seek redress in such situations than to claim takings. If the state is concerned about the suffering of farmers in seasons of drought, which it should be, it has the resources to respond. Such claims tie up the courts and perpetuate the adversarial relations that frequently plague water conflicts. They do not get at the real problems of the equitable distribution of limited water resources and the preservation of habitats. They block getting-on with the scientific research that is necessary to understand the complex nature of ecosystems. Only the willingness of those in conflict to sit at the negotiating table in a spirit of compromise will solve these problems. Cooperative processes have worked well in several places and produced equitable outcomes.

In facilitating cooperative processes the church can play a helpful role. Churches are an excellent place for relationship building, information sharing, and compassionate listening. In situations of conflict Christians should initiate processes where those in conflict can come together in a non-threatening environment.

### *Endnotes*

1. See Appendix I for a more comprehensive statement with biblical references of the ethic of ecology and justice.

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## Appendix I

### Limited Water Resources and Takings

by Robert L. Stivers

#### *1. Introduction*

Limited fresh water resources are a worldwide problem. They result not from any reduction in the overall supply of water, but rather from the degradation of watersheds and a dramatic increase in human demand. The increase in demand is a product of an expanding human population, higher per capita consumption in wealthy countries, and the enhanced technical capability to extract water from lakes and streams. Local and regional climate variations and more or less effective management of the water supplies available amplify or modulate these causes from place to place. Problems are particularly acute in arid regions with sizeable human populations and places with significant seasonal fluctuations in rainfall.

In the United States (U.S.) the landmass between the 100th meridian and the Pacific Ocean is generally dry with the exception of mountainous regions and the coast. Seasonal fluctuations with especially dry summers characterize much of the region. In most of the region's river basins humans have withdrawn so much water and so altered the character of watercourses that aquatic dependent species, especially fish, are threatened with extinction. Legislators have responded to this situation with new laws to protect species and their habitats. Water managers have a mixed record of enforcing these new laws and in the process of enforcement have occasionally withheld water allocations to certain users, in particular farmers who irrigate. The withholding of water supplies is a serious problem for farmers and has occasioned intense conflict in several locations.

One such location is the Klamath River basin in southern Oregon and northern California. Irrigators, using water delivery systems built by the U.S. Bureau of Reclamation, the State of Oregon, and local water districts, annually divert a significant portion of the water from the Klamath River and its tributaries to produce food crops. Irrigators are the single largest out-of-stream users in the watershed.

The basin is normally well watered by winter snows in the Cascade Mountains, but periodic droughts and seasonal fluctuations can severely limit the supply of water. Lake and river levels become dangerously low during the late summer months when the snow pack has melted, streams levels are low, water temperatures are high, and pollutants from agricultural runoff and other sources are most concentrated. The situation is more complex than this, of course. Stream degradation and species decline have multiple causes. Overlapping political jurisdictions, conflicting laws and regulations, differing ways of perceiving the situation, and diverse attitudes toward nature complicate things even more. In spite of these complexities, irrigators are the primary focus of attention, since they divert so much water.

The year 2001 was a drought year in the Klamath basin, not the worst on record but serious nonetheless. In April 2001 the U.S. Bureau of Reclamation announced there would be little or no water available for irrigation. Federal water managers had concluded that three threatened species of fish would be seriously jeopardized if normal diversions were allowed. Since these officials controlled water allocations to about 50 percent of the irrigated land in the region including the most fertile land, the decision promised a huge impact. Some farmers were threatened with at least a year's loss of income and substantial loss of property value due to the uncertainty of future allocations. Farmers rose up in protest. They organized large demonstrations at the point where water is diverted from the river to their fields in the city of Klamath Falls, Oregon. They even took matters into their own hands and illegally opened the gates to release the water.

The Presbyterian Church (U.S.A.) entered the picture in June 2001 when two Commissioners to the 213th General Assembly introduced a resolution in support of the farmers. The resolution included a deceptively simple statement: "The taking of water rights is the taking of private property." The resolution passed in the waning hours of the Assembly without much deliberation.

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The statement was deceptive because it seemed to run counter to the Church's long-standing policy on the natural environment. It further seemed to put the Church on record in support of property right's activists who have been seeking to eliminate environmental laws and regulations in the name of individual freedom. In their view, the enforcement of laws and regulations that occasions the loss of income or property value constitutes a seizure of property without due compensation under the so-called "takings" clause of the Fifth Amendment to the Constitution.

Such an interpretation, if accepted, would have widespread implications. It would not only eviscerate environmental laws and regulations but potentially all zoning, safety, and historical preservation laws and regulations. It would run counter to court interpretations that have consistently limited compensation to cases where enforcement of laws and regulations take all or substantially all economic value. It would radically shift the current balance between the protection of individual rights and the pursuit of the common good in the direction of individuals. It is unlikely that the Commissioners to the 213th General Assembly were aware of these and other implications.

Reaction was not long in coming. It took form in an Overture to the 214th General Assembly (2002) from the Presbytery of Baltimore calling for a study of the takings issue. The resolution also declared that the action of the 213th General Assembly applied only to the situation in the Klamath Falls basin and did not establish Presbyterian policy. This resolution passed overwhelmingly and The General Assembly referred the study to the Advisory Committee on Social Witness Policy (ACSWP) in consultation with the Advisory Committee on Litigation (ACL).

Given the expense of developing a full blown policy statement and the legal complexities of the "takings" issue, ACSWP in consultation with the Advisory Committee on Litigation decided to draft a resolution and report to the 216th General Assembly (2004). ACSWP considered this route appropriate, reasoning that the problems of limited water resources and the regulation of water supplies and water rights to achieve ecological and social ends constitute a clarification of already establish environmental policy.

ACSWP further determined that a consultation in Oregon on the basic issues was also appropriate. Such a consultation could tap the expertise that had developed in the Klamath Falls dispute, ensure wide participation of diverse groups, and send a message to a conflicted community with several Presbyterian churches that the larger church is concerned. The consultation was held in Medford, Oregon, on June 13 and 14, 2003 and included a field trip to Klamath Falls. Over forty participants discussed the specific problems in the Klamath River basin as well as the larger issues of limited water resources, water rights, and takings. Participants included members of ACSWP and the ACL; national, state, and local experts; farmers; ranchers; Native Americans; fishers; environmentalists; newspaper reporters; government officials; and members of Cascades Presbytery. Jananne Sharpless of Sacramento, California, and ACSWP chaired the consultation. Jenny Holmes of Portland, Oregon, and Cascades Presbytery and Tam Moore of Westminster Presbyterian Church in Medford pulled together the participants and made local arrangements. Belinda M. Curry represented the staff of ACSWP. Bob Stivers of Tacoma, Washington, and Olympia Presbytery drafted a proposal and an invitation for the consultation and agreed to mold the proceedings into a resolution to submit to ACSWP.

## 2. *Presbyterian Environmental Policy*

The basis for this resolution on limited water resources and takings is the environmental policy of the Presbyterian Church (U.S.A.), in particular *Resolution on Restoring Creation for Ecology and Justice* adopted by the 202nd General Assembly (1990), *Minutes*, 1990, Part I, pp. 65,85,117, 121, 646-690. This report begins with a call to restore God's creation and goes on to summarize the crisis of ecology and justice. In Part II the report sets forth the biblical and theological foundations for restoring creation. These reflect a growing body of ecumenical theology calling attention to the resources within Christian traditions that support extending the principle of justice to other species and maintaining the Church's long standing commitment to human justice and the participation of marginalized groups.

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Part II also states the basic norms for ecology and justice:

- a. sustainability;
- b. sufficiency;
- c. participation; and
- d. solidarity.

Variations of these four norms have governed ecumenical as well as Presbyterian policy since the mid-1970s and are given further statement below.

Part III reviews existing General Assembly policy. Presbyterian attention to the natural environment dates from the early 1970s and has been given repeated expression in policy statements and resolutions ever since. It is an impressive record of concern equaled by few other traditions. Presbyterians have a right to be proud of this emerging tradition and its dual emphases on the integrity of natural ecosystems and justice in human relationships.

From a review of policy the report moves to address five areas of social policy including one on water quality. The section on water quality is, however, only peripherally related to limited water resources. The report calls for “increased efforts to address the problems of pollution from urban and rural runoff.” This relates insofar as the runoff from irrigated fields and animals grazing near streams further degrades the habitat of instream species already stressed by low stream flows, high water temperatures, and other human disturbances.

Several other sections also relate indirectly to this resolution. In a section on renewable resources, the report identifies croplands and fisheries as biological systems strained by “human demands, human numbers, and abusive treatment” (*Minutes*, 1990, Part I, 40.597, p. 648).

The report goes on to say that human beings have “demanded too much from natural systems” [so that] “the abused creation cannot provide the gifts that the Creator intended to be continuously available for the sustenance of all.” Specifically related is the following statement on water:

Humans are making excessive demands upon and doing reckless damage to the lakes and streams, the ground water, and even the oceans. Poorly planned and inefficient irrigation systems not only waste water and deplete aquifers, but lead to soil degradation from waterlogging and salinization. Industrial discharges, agricultural runoff, and municipal sewage contaminate rivers and lakes. Pesticide residues and landfill leachate seep into ground water (*Minutes*, 1990, Part I, 40.602, p. 649).

On nonhuman creatures the report has this to say:

In the face of a projected doubling of human numbers in four decades or so, the question is not only whether the planet can carry those numbers, but what other creatures it can carry as well. The expansion of the human species threatens the entire realm of animals and plants, the total biotic community interacting with nonliving forces. The essential lesson from the study of ecology is that the individual of whatever species depends on the healthy functioning of its community and that the human community depends upon the vitality and stability of the biotic community....

The eco-justice crisis displays the anthropocentric attitude that only human interests really count. As economic development proceeds and cities expand, developers give little attention to the consequences for nonhuman creatures whose habitats are lost or threatened (*Minutes*, 1990, Part I, 40.612, 40.614, p. 650).

With regard to farming, the report cites the 1978 UPCUSA policy statement that advocated the “sharing of costs connected with long-range soil conservation practices,” raised “questions about excessive use of fertilizers and pesticides,” and asked “the government to enact and enforce strict laws protecting surface and underground water, particularly for agricultural use” (*Minutes*, 1990, Part I, p. 40.711, p. 660). In addition, there is a lengthy section on sustainable agriculture (*Minutes*, 1990, Part I, 40.723-40.729, pp. 662-664) which it describes as “a movement, a direction, aiming at an agricultural system that would be

- ecologically sound (suitable to the local environment; protective of the lands regenerative capacity);
- economically viable (allowing farmers a decent livelihood); and

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- humane (supportive of rural communities and cultures, quality of life, and the well being of animals).

It concludes with several recommendations, two of which are relevant.

- shift the basic focus of farm policy toward an ecologically, economically viable, and socially sustainable system of food production, and
- improve the conservation provisions of farm legislation.

In another section on wildlife and wildlands, the report states: “Anyone who would destroy species in the name of development takes, in monstrous arrogance, the prerogatives of God” (*Minutes*, 1990, Part I, 40.779, p. 665). The report recommends:

- Keep[ing] wildlife wild and free.
- Avoid[ing] irreversible change.
- Optimiz[ing] natural diversity and natural stability.
- Think[ing] of nature as a community more than a commodity (*Minutes*, 1990, Part I, 40.781, p. 666).

To implement basic policies the report further recommends:

- Protect[ing] wetlands, showing special concern for critical environments that support internationally migratory wildlife.
- Provid[ing] interpretation and economic support for those persons whose lives and jobs must be altered in the interest of long-range environmental quality.

The report did not say much directly about limited water resources, water rights, or takings that are the primary subjects of this resolution. These problems were not as prominent a decade ago as they are today. The report does, however, provide the foundation for addressing these problems, and therefore a resolution based on the report and clarifying its policy recommendations is fitting.

### 3. *The Ethic of Ecology and Justice*

If human beings are to renegotiate their fit into natural ecosystems before these systems force the issue, a new ethic is needed. Christians have not been silent in this renegotiation. For over twenty years what is here called the ethic of ecology and justice has been emerging in ecumenical circles. It offers a Christian perspective to guide those who seek changes in the structures of globalization and the basic assumptions that will ground such changes in biblical theology.

#### a. *Justice*

The norm of justice used in the title of this ethical perspective is an inclusive concept. Its full meaning is given greater specificity by the four norms of sustainability, sufficiency, participation, and solidarity. Justice is, however, a norm in its own right with a distinct history in Christian ethics and Western philosophy. In Christian traditions justice is rooted in the very being of God. It is an essential part of God’s community of love and calls human beings to make fairness the touchstone of social relations and relations to other species and ecosystems. Justice is not the love of Christ (agape). Justice involves a calculation of interests and has a more impersonal quality than love. Nevertheless, justice divorced from love easily deteriorates into a mere calculation of interests and finally into a cynical balancing of interest against interest. Without love inspiring justice, societies lack the push and pull of care and compassion to move them to higher levels of fairness. Love forces recognition of the needs of others. Love judges abuses of justice. Love lends passion to justice. Justice, in short, is love worked out in arenas where the special needs of each individual are impossible to know.

The biblical basis for justice with its special sensitivity for the poor starts with God’s liberation of the poor and oppressed Hebrew slaves in Egypt and the establishment of a covenant, one of whose cardinal features is

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righteousness (Ex. 22:21-24). The biblical basis continues in the prophetic reinterpretation of the covenant (Micah 6:8; Amos 2:6, 8:4-8, 5:11; Isa. 10:1-2; Jer.22:13-17).

In the Christian scriptures the emphasis on justice is muted in comparison to the prophets, but the concern for the poor may be even stronger. Jesus himself was a poor man from a poor part of Israel. His mission was among the poor and directed to them (Luke 4:16-20). He blessed the poor and spoke God's judgment on the rich (Luke 6:20-26; Matt.5:1-14).

The early church carried this tradition beyond the time of Jesus. Paul's concern is frequently the weak members of the community. This is his concern as he addresses a question that now seems quaint, eating meat sacrificed to idols (1 Cor. 8). He affirms the new freedom in faith that is one important foundation for political freedom. Freedom is not, however, licensed to ignore or prosecute the weak in the pursuit of one's own consumption.

Paul is even more emphatic on equality, which with freedom is the backbone of the modern concept of justice. His statement on the ideals of freedom and equality are among the strongest in the entire biblical witness (Gal. 3:28). In the Christian community in Jerusalem (Acts 1-5), equality was apparently put into practice and also involved sharing. In this practice early Christians set themselves apart from the prevailing Roman culture.

For the Greeks justice meant "treating equals equally and unequals unequally." This simple statement of the norm of justice hides the complexities of determining exactly who is equal and who is not and the grounds for justifying inequality. It leads in modern interpretations of justice, however, to freedom and equality as measures of justice. It also leads to the concept of equity, which is justice in actual situations where a degree of departure from freedom and equality are permitted in the name of achieving other social goods. So, for example, most societies give mentally and physically impaired individuals extra resources and justify it the name of greater fairness. This is a departure from equal treatment, but not from equitable treatment. The problem, of course, is that self-interested individuals and groups will always ask for departures from freedom and equality and use spurious justifications. This is one reason justice needs love as its foundation and careful scrutiny of claims for justice in practice.

In summary, justice in Christian thought is the social and ecological expression of love and means a special concern for the poor, a rough calculation of freedom and equality, and a passion for establishing equitable human and biotic relationships. The ethical aims of justice in the absence of other consideration should be to relieve the worst conditions of poverty, powerlessness, exploitation, and environmental degradation and provide for an equitable distribution of burdens and costs.

The Bill of Rights in the U.S. Constitution and more generally the various declarations of human rights that have appeared from time to time over the past two hundred years are ways to spell out justice and equity in greater detail and to protect individuals and minority groups against the arbitrary power of the state. Rights are not God-given or inherent in the natural order of things. They are tentative social expressions of justice and a historical testimony to the concern for balancing the well being of both the community and individuals. They are hard won and express cultural lessons developed over a long period that should be respected.

In other words, rights are not sacrosanct or carved in stone. What has been constructed can be reconstructed as conditions change, albeit usually with some peril. More important, individual rights are limited by responsibilities. The community may with due process and convincing arguments legitimately restrict certain rights in the pursuit of the common good. Rights sometimes conflict and limit each other.

In a situation of limited water resources where available supplies cannot meet the demands of all users, the state also has the responsibility to allocate what it ultimately owns in an equitable fashion to serve community and biotic goods. In some places in some years this may mean withholding the water implied in water rights. The withholding of water should always be a reluctant decision based on calculations of equity, the best scientific

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knowledge, and applicable laws. It should never be a matter of political expediency, even though there are numerous examples where bias and political pressure have been determining factors.

Communities should never ignore the hardships that result from difficult decisions about the allocation of limited water. Justice as well as Presbyterian policy calls for an equitable distribution of costs and pays special attention to pain and suffering. Communities should support those who lose the most, both human and other species. The exact nature of this support, however, should be determined locally in dialogues between those in positions of responsibility and those affected, or, in the case of other species, those who defend their interests.

Claims of takings in situations where water allocations are withheld and recourse to the courts is necessary to make good on those claims are appropriate only when all or substantially all economic value is lost due to enforcement of laws and regulations. This is as much a pragmatic and legal judgment as it is ethical. The consequences of weakening or eliminating legitimate laws and regulations that promote important community and biotic goods are too severe. Moreover, claims of takings raise economic value out of proportion to other values and the individual out of proportion to the community. Finally, litigation that pits person against person or group against group is no substitute for cooperation. Claims of takings and resort to the courts are poor instruments for helping those in need.

#### b. *Sustainability*

Sustainability may be defined as the long-range supply of sufficient resources to meet basic human needs and the preservation of intact natural communities. It expresses a concern for future generations and the planet as a whole, and emphasizes that an acceptable quality of life for present generations must not jeopardize the prospects for future generations.

Sustainability is basically good stewardship and is a pressing concern today because of the human degradation of nature. It embodies an ongoing view of nature and society, a view in which ancestors and posterity are seen as sharing in present decisions. The present generation takes in trust a legacy from the past with the responsibility of passing it on in better or at least no worse condition. A concern for future generations is one aspect of love and justice. Sustainability precludes a shortsighted stress on economic growth that fundamentally harms ecological systems and any form of environmentalism that ignores human needs and costs.

There are several significant biblical and theological foundations for the norm of sustainability. The doctrine of creation affirms that God as Creator sustains God's creation. The creation is also good independently of human beings (Genesis 1). It is not simply there for human use, but possesses an autonomous status in the eyes of God. The goodness of matter is later picked up in Christian understandings of the incarnation and the sacraments.

Psalms 104 and 145 are splendid hymns of praise that celebrate God's efforts at sustainability. Similarly, Psalm 145 rejoices in the knowledge that God gives "them their food in due season" and "satisfies the desire of every living thing" (Ps. 145:15-16). The doctrine of creation also emphasizes the special vocation of humanity to assist God in the task of sustainability. In Genesis the first creation account describes the responsibility of stewardship in terms of "dominion" (Gen. 1:28), and the second creation account refers to this task as "to till and keep it" (Gen. 2:15). In both cases the stress is on humanity's stewardship of God's creation.

The covenant theme is another important biblical and theological foundation for the norm of sustainability. The Noahic covenant (Gen. 9) celebrates an "everlasting covenant between God and every living creature of all flesh that is on the earth." The biblical writer repeats this formula several times in subsequent verses, as if to drive the point home. The text demonstrates God's concern for biodiversity and the preservation of all species (Gen. 9:16).

In Romans 8:18 the whole creation suffers and in 8:22 "groans in travail." But suffering, according to Paul, does not lead to despair. "The creation awaits in eager longing for the revealing of the children of God" (Rom. 8:19), and "in this hope we are saved" (Rom. 8:24). Suffering, as in the suffering of Jesus Christ on the cross,

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points beyond to the hope that is already partially present. Part of this hope is a return to the good stewardship of Genesis 1 and 2 before the Fall in Genesis 3.

#### c. *Sufficiency*

The norm of sufficiency emphasizes that all forms of life are entitled to share in the goods of creation. To share in the goods of creation in a Christian sense, however, does not mean unlimited consumption, hoarding, or an inequitable distribution of the earth's goods. Rather it is defined in terms of basic needs, sharing, and equity. It repudiates wasteful and harmful consumption and encourages humility, frugality, and generosity.

This norm appears in the Bible in several places. As the people of God wander in the wilderness after the Exodus, God sends "enough" manna each day to sustain the community. Moses instructs the people to "gather as much of it as each of you need" (Ex. 16). The norm of sufficiency is also integral to the set of laws known as the jubilee legislation. These laws fostered stewardship of the land, care for animals and the poor, and a regular redistribution of wealth. In particular the jubilee laws stressed the needs of the poor and wild animals to eat from fields left fallow every seven years (Ex. 23:11). All creatures were entitled to a sufficient amount of food to live.

In Christian scriptures sufficiency is linked to abundance. Jesus says: "I came that you may have life, and have it abundantly" (John 10:10). Jesus rejected the notion, however, that the "good life" is to be found in the abundance of possessions (Luke 12:15). Instead, the "good life" is to be found in following Christ. Such a life results not in the hoarding of material wealth but rather in its sharing so that others may have enough.

The norm of sufficiency is also supported by biblical and theological understandings of wealth, consumption, and sharing. Two general and not altogether compatible attitudes dominate biblical writings on wealth and consumption. On the one hand there is a qualified appreciation of wealth, on the other a call to freedom from possessions that sometimes borders on deep suspicion. The Hebrew scriptures generally take the side of appreciating wealth, praising the rich who are just and placing a high estimate on riches gained through honest work.

Both sides are found in the teachings of Jesus. The announcement of the coming community of God carries with it a call for unparalleled righteousness, freedom from possessions, and complete trust in God. The service of God and the service of riches are incompatible (Matt. 6:24; Mark 8:36, 9:43-48, 10:17-25; Luke 12:15, 8:14, 11:18-23, 19:1-10). Jesus himself had no possessions and prodded his disciples into the renunciation of possessions and what later has been called "holy poverty," that is, poverty that is freely chosen as a way of life (Matt. 8:20; Mark 1:16, 6:8f.; Luke 9:3, 10:4).

On the other side Jesus took for granted the owning of property and was apparently supported by women of means (Luke 8:2). He urged that possessions be used to help those in need (Luke 6:30, 8:2f., 10:38f.). He was fond of celebrations, talking often about feasts in the community of God.

The biblical witness on consumption follows much the same pattern. The basic issue has been between self-denial and contentment with a moderate level of consumption. The side of self-denial evolved into the monastic movement of later ages. The way of moderation is expressed well in 1 Timothy 6:6-8: "There is great gain in godliness with contentment; for we brought nothing into the world, and cannot take anything out of the world; but if you have food and clothing, with these we shall be content."

Sufficiency and sustainability are linked, for what the ethic of ecology and justice seeks to sustain is the material and spiritual wherewithal to satisfy the basic needs of all forms of life. They are also linked through the increasing realization that present levels of human consumption, especially in affluent countries, are more than sufficient and in many respects are unsustainable. Only an ethic and practice that stresses sufficiency, frugality, and generosity will ensure a sustainable future.

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Finally, the norm of sufficiency offers an excellent example of how human ethics is being extended to nature. The post World War II stress on economic growth has been anthropocentric. Economists and politicians have been preoccupied by human sufficiency. The anthropocentric focus of most Christian traditions reinforced this preoccupation.

With increasing environmental awareness, however, this preoccupation no longer seems appropriate. And while other species are not equipped to practice frugality or simplicity, indeed to be ethical at all in a human sense, the norm of sufficiency does apply to humans in how they relate to other species. To care is to practice restraint. Humans should be frugal and share resources with plants and animals because they count in the eyes of God. All of creation is good and deserves ethical consideration. The focus on sufficiency is part of what it means to practice justice.

#### d. *Participation*

The norm of participation likewise stems from the affirmation of all forms of life and the call to justice. This affirmation and this call lead to the respect and inclusion of all forms of life in human decisions that affect their well being. Voices should be heard, and, if not able to speak, which is the case for other species, then humans will have to represent their interests when those interests are at stake. Participation is concerned with empowerment and seeks to remove the obstacles to participating in decisions that affect lives.

The norm of participation is also grounded in the two creation accounts in Genesis. These accounts emphasize the value of everything in God's creation and the duty of humans to recognize the interest of all by acting as good stewards. Through their emphasis on humanity's creation in the image of God, the writers of Genesis underline the value of human life and the equality of women and men.

The prophets brought sharp condemnation upon kings and people of Israel for violating the covenant by neglecting the interests of the poor and vulnerable. They repudiated actions that disempowered people through the loss of land, corruption, theft, slavery, and militarism. The prophets spoke for those who had no voice and could no longer participate in the decisions that affected their lives. (Amos 2:6-7; Isa. 3:2-15; Hos. 10:12-14)

With Jesus comes a new emphasis, the kingdom or community of God (Mark 1:14-15). While the community of God is not to be equated to any community of human beings, it nevertheless is related. It serves as a general model for human communities and is to some degree realizable, although never totally.

The community of God has its source in a different kind of power, God's power of love and justice. This power alone is capable of producing genuine and satisfying human communities and right relations to nature's communities. The community of God cannot be engineered. Technology, material consumption, and economic growth may enhance human power, but offer little help in developing participatory communities. Reliance on these powers alone can in fact make matters worse by creating divisions.

The concern for the poor evident in the Gospels is another support for the norm of participation. Without some semblance of justice there can be little participation in community. Extremes of wealth and poverty and disproportions of power create an envious and angry underclass without a stake in the community. Equality of worth, rough equality of power, and political freedom are prerequisites for genuine communities.

Achieving rough equality and freedom and participatory communities is difficult, the more so in industrialized societies even with their full range of communications. A multitude of decisions each requiring expert technical judgments and having wide-ranging consequences must be made in a timely way. Popular participation in decisions, especially when there is conflict as there is in environmental disputes, can paralyze essential processes. Expedience often results in the exclusion of certain voices and interests. Impersonal, functional ways of relating become easy and further reduce participation. The norm of participation calls for a reversal of this trend. At minimum it means having a voice in critical decisions that affect one's life.

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Finally there is the difficult problem of how to bring other species and ecosystems into human decision-making. In one sense they are already included since there is no way to exclude them. Humans are inextricably part of nature, and many human decisions have environmental consequences that automatically include other species and ecosystems. The problem is the large number of negative consequences that threaten entire species and systems and ultimately the human species, for humans are dependent on other species and functioning ecosystems. The task is to reduce and eliminate where possible these negative consequences. One reason is obviously pragmatic. Humans are fouling their own nests. Beyond this anthropocentric reason, however, it helps to see plants, animals, and their communities as having interests that humans should respect. They have a dignity of their own kind. They experience pleasure and pain. The norm of participation should be extended to include these interests and to relieve pain, in effect to give other species a voice. Humans have an obligation to speak out for other forms of life that cannot defend themselves.

#### e. *Solidarity*

The norm of solidarity reinforces this inclusion as well as adding an important element to the inclusion of marginalized human beings. The norm of solidarity emphasizes the kinship and interdependence of all forms of life and encourages support and assistance for those who suffer. The norm highlights the communal nature of life in contrast to individualism and encourages individuals and groups to join in common cause with those who are victims of discrimination, abuse, and oppression. Underscoring the reciprocal relationship of individual welfare and the common good, solidarity calls for the powerful to share the plight of the powerless, for the rich to listen to the poor, and for humanity to recognize its fundamental interdependence with the rest of nature. The virtues of humility, compassion, courage, and generosity are all marks of the norm of solidarity.

Both creation accounts in Genesis emphasize the profound relationality of all of God's creation. These two accounts point to the fundamental social and ecological context of existence. Humanity was created for community. This is the foundation of solidarity. While all forms of creation are unique, they are all related to each other as part of God's creation.

Understood in this context and in relation to the concept of stewardship in the Gospels, the *imago dei* tradition that has its origins in Genesis also serves as a foundation for solidarity. Creation in the image of God places humans not in a position over or apart from creation but rather in the same loving relationship of God with creation. Just as God breathes life into the world (Gen. 7), humanity is given the special responsibility as God's stewards to nurture and sustain life.

In their descriptions of Jesus' life and ministry, the gospels provide the clearest examples of compassionate solidarity. Jesus shows solidarity with the poor and oppressed; he eats with sinners, drinks from the cup of a gentile woman, meets with outcasts, heals lepers, and consistently speaks truth to power. Recognizing that Jesus was the model of solidarity, Paul used the metaphor of the body of Christ to emphasize the continuation of this solidarity within the Christian community. Writing to the Christians in Corinth, Paul stresses that by virtue of their baptisms they are all one "in Christ." Thus if one member suffers, all suffer together; if one member is honored, all rejoice together (1 Cor. 12:26). It would be hard to find a better metaphor to describe the character of compassionate solidarity. The implication is clear. Christians are called to suffer with each other and the rest of the creation, to change their ways, and to enter a new life of solidarity and action to preserve and protect the entire creation.

#### *Conclusion*

The problems associated with limited water resources and their equitable distribution are part of a larger whole. In the past two hundred years humans have developed powerful technologies to wrest resources from nature to improve the material conditions of human life. Improvements have been spectacular.

Now on the back of this good rides increased materialism, ecological degradation, and new forms of injustice. The present task is to orient these technologies to sustainable and sufficient ends and to balance the power of

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those who own and manage these technologies. Issues of limited water resources, water rights, and takings are only one part of this larger task. In setting policy the Presbyterian Church (U.S.A.) should not lose sight of the larger task as it focuses on these issues.