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Edgar Wayburn, President
Sierra Club
220 Bush Street
San Francisco, California

RE: Conflict of Interest of Directors

Dear Dr. Wayburn:

We have been asked to contact you and the Board of Directors of the Sierra Club on behalf of our clients, Melvin Wright and Francis J. Walcott. It is our understanding that Mr. Wright wrote in early December 1968 to Phillip S. Berry, as head of the Legal Committee, concerning what appears to be a substantial conflict of interest, and a possible impropriety, in connection with the substantial royalties which the Club has either paid or contracted to pay Director Elliot Porter in connection with some of the books published by the Club. I believe that you also received a copy of this letter at the time that it was sent. Subsequent to that letter being sent, Mr. Wright was advised in middle January 1969 that the matter had been presented to the Legal Committee for an opinion. I personally talked with one of the lawyers in the Lillick office who said he was working on the problem but did not expect to have an answer for several weeks. Because of the extraordinary amount of money which has either been paid or is due Director Elliot Porter, we felt it would be advisable for this matter to be taken up by the Board of Directors itself.

Unfortunately, some of the factual background of this case has been obtained second and third hand, so that our facts may be somewhat incomplete. In any event we are setting forth below what we believe to be the facts and the reasons for our concern as a member of the Sierra Club, and as attorney for Messrs. Wright and Walcott. Essentially, we understand that although the matter was never discussed by the Board of Directors until October 1968, Dave Brower signed contracts with Elliot Porter whereby Porter received or became entitled to receive royalties in excess of One Hundred Fifty Thousand Dollars ($150,000.00) over the past four or five years for his services in connection with books published by the Club. Royalties in

this amount would be considered unusual by most business standards, and certainly measured against the present financial condition of the Sierra Club, such amounts seem extraordinary. Inspite of this fact, Director Porter has continued to participate in discussions of the expansion of the Sierra Club's book program, and has, we understand, voted in favor of such a program on every occasion on which it was discussed by the Board. We understand also that there are other directors who have received royalties from the Club who may have voted on these issues as well.

It is our position that (1) because of the magnitude of the royalties being paid under these contracts it was improper for the Club to enter into such royalty agreement with Director Porter without the express consent and authority of the Board of Directors; (2) the reasonableness of the amounts involved is highly questionable; and (3) in all events Director Porter should have disqualified himself from any participation in discussions involving the expansion or modification of the book publishing program so long as he was one of the major beneficiaries of royalties to authors under the program. Our position stems basically from well established common law principals of corporation law and the provisions of California Corporations Code §820.

As I am sure your Legal Committee will advise you, the original position of the California Courts was that a contract between a director of the corporation and the corporation was invalid unless total disclosure of all aspects of it was made to the shareholders of the company. This rule was modified until it took its present form in 1947. The present law requires either complete disclosure or justification by the director whose actions are questioned whereby he must establish that any transactions between the corporation and himself are "just and reasonable as to the corporation at the time it is authorized or approved." In the case of Director Porter, it does not appear that his extensive financial interest in the book publishing program was disclosed to the Board of Directors, nor does it appear that the contract with him was ever approved or even presented to the Board of Directors for approval.

We are further concerned with the fact that the Sierra Club is a non-profit corporation, which until recently was also treated under tax law as a "charitable" non-profit corporation. The established standards of the fiduciary obligation of a director to a corporation appear to be even stronger in the case of a non-profit charitable corporation, where the law imposes an obligation on the organization to operate in such a manner that "no part of a net earnings inure in whole or in part to the benefit of a private shareholder or individual."

The tax law of the Federal Government says that this means "persons having a personal and private interest in the activities of the organization." It is our position that payments of royalties of this nature may in fact jeopardize the non-profit status of the Sierra Club, and thereby further complicate the Club's already difficult tax problems. Furthermore, we are convinced from an examination of cases in other jurisdictions that the duties and obligations of a director of a non-profit corporation are, if possible, higher than those of a director of a mere business corporation.

We therefore request that an unbiased and disinterested group of members of the Club be appointed for the purpose of looking into this matter, and that a comprehensive report on the matter be given to Mr. Wright and Mr. Walcott, as well as any other members who may be interested. We are concerned very much about the future of the Club when things like this can be permitted to happen, and when such activities may jeopardize the entire organization. It would seem thoroughly possible that members of the Sierra Club would have a right to bring an action against Mr. Porter for the recovery of excessive royalties paid on the theory of "constructive fraud". Certainly we would all hope that such an action would not be necessary in order to correct this situation.

Very truly yours,

G. Gervaise Davis III

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cc: Mr. Melvin Wright
cc: Mr. Francis J. Walcott