

July 23, 1968

Mr. David Brower  
The Sierra Club  
1050 Mills Tower  
San Francisco, California 94104

Dear Mr. Brower:

Sorry not to have answered your letter sooner but Mr. Porter's island is not very accessible. I have written him several times and talked to him over the phone, and we have at last come to a firm agreement on what he should have (He has given way on matters he still objects to so that these contracts can be completed--and I expect also that Sierra will give way.). I hope at this point that contracts can be prepared and with each contract, Baja California and Galapagos, we want a separate contract for Mr. Porter without any other contributor to the work being mentioned--e.g. since Mr. Porter's share of the California royalties is 70%, the 6% royalty will be called 4.2%, the 8% will be 5.6%, and so on. On the Galapagos work, we have been notified that the payment to the Conservation outfit is not legal, so Mr. Porter will have 80% of the royalties on that book.--And we feel that an 8% flat royalty on Galapagos is fair, so that Mr. Porter's share will be 6.4%.

Some other remarks about the contracts follow--:

Clause (2) on both contracts-- after "work" on second line, insert "in the English language". On third line after "grants all", cut out "other rights to the work, including, without limitation".

Clause (4) a--the royalties to be as in California sample contract, but specifically stated, as mentioned above to apply to Mr. Porter. In Galapagos to be stated as 6.4%.

Clause (4) b--for mail order sales one-half the regular royalties and add to clause that Mr. Porter will be notified as to any mail order campaign and its extent--receipts divided as mentioned above.

Clause (4) c--what are "other sales of the regular trade edition"? We would like a more specific description in order to determine the fair royalty.

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File  
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Clauses (4) e and (4) f--royalties mentioned are satisfactory.

Clause (4) g--Sierra's own paper edition, the royalties on these to be discussed.

Clauses (4) h and (4) i and the sentence in parentheses under (4) i to be excised.

Clause (5) is so catch-all that a new clause should be typed up and pasted over. Here are the changes. On line 1 cut out "all subsidiary" and put in "the following". On line 2 cut out "including but not limited to". Lines 3 and 4 cut from "dramatic rights" to "motion pictures rights". Lines 8 and 9 cut from "lyric rights" to "commercial use". On first serial rights 20% to Sierra seems ample--so Porter gets 80%--remember since this is an individual contract, this only refers to the use of his photographs or text alone. On foreign rights, after recovery of any translation costs, Sierra may have incurred, then Sierra takes 20%--Porter in the California contract will have 70% of the remaining 80% and in Galapagos 80% of that 80%.

Clause (6): 50/50 split on book club use--Porter to get 70% on California and 80% on Galapagos of the sums due the authors.

Clause (7) goes out-- this matter is well covered in Clause 18e.

Clause (8) The reserve for returns to be 10% and the period one year--this corresponds to general practice.

Clause (9) Free use of the material for promotion permitted. But all sales to carry a 10% royalty of list price and none of these royalties to be used for promotion--and since the posters are made from Porter photos, then all this 10% comes to him.

Clause (11)--Cut out "including the copyright or copyrights" and add at end of clause "and all rights shall revert to the author".

Clause (16)--Add at end of clause "and in all cases the author shall be consulted". No writer wishes to give a free right to the editing of his work and indeed it would be better if the whole clause was cut out since the matter seems fully dealt with in Clause (17).

Clause (19)--Cut out, since at this point Mr. Porter doesn't wish to grant an option.

Clause (21)--In each contract let it specifically mention no other work on Baja California or Galapagos. These contracts may be looked at by people who might think any work on conservation was a work "of similar character".

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Clause (23): This is one clause Mr. Porter feels rather harshly about-- but I have persuaded him to accept it provided it is rewritten to refer specifically to the Ballantine paper reprints. So the clause should run somewhat as follows--"In the case of the Ballantine paper Sierra editions, the author acknowledges the right of the Sierra Club for the use of its name and supervision of production to take 20% of the sums paid by Ballantine. The remaining 80% shall be divided equally between the Sierra Club and the authors of the work. In the case of California, Porter shall receive 70% of the sums due the authors and in the case of Galapagos, he shall receive 80% of such sums.

The last page with the description of sharings comes out since Mr. Porter's specific interests will be covered by the contracts as discussed here.

This covers the contracts--and I trust settles them. But I must take a strong objection to the statement in your last letter of July 5 about the money Mr. Porter put up to enable Galapagos to be done--the understanding is not that Mr. Porter will be repaid \$13,000 if the book succeeds. We talked about this before and I have checked with Mr. Porter--and it is clearly understood that \$8,000 is to be repaid after publication of Galapagos and has nothing to do with the work's success or lack of it--and we should have now a schedule of payments to be made following publication. The other \$5,000 withheld from his royalties should be repaid now since the return of this loan was not dependent on publication.

I have told Mr. Porter that I looked at some of the detail editing on his text and thought it well-done--but if there are to be any substantial cuts, he must see and consent, as in fact he must see and consent to the detail work.

The final matter is what theatrical people call the billing. I take it that Mr. Porter suggested Galapagos, put up some of his own money to enable the expedition, is totally responsible for all the photographs and a fair share of the text, and has at this point a substantial name. The only other person of note is Loren Eiseley--the other two contributors are not of general note. I have thought this matter over, with no advice or comment from Mr. Porter and feel the only thing to do is for the Jacket and cloth of the work to say "by Eliot Porter" and underneath to say "Foreword by Loren Eiseley". The title page of the book can say this and in lesser prominence the names of the other two contributors and their contributions can be mentioned. I hope there will be no argument about this since Mr. Porter and Mr. Eiseley are the two well-known names and to a greater or lesser extent the money they earn from their professional work is of importance to them as also is the use of their names.

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On the California contract no mention will be made of our agency, but the contract must come to me to be looked at. On the Galapagos contract, you will insert at the end our agency clause as follows--  
"The author hereby authorizes his agent, Russell & Volkering, Inc., 551 Fifth Avenue, New York City 10017, to collect and receive all sums of money payable under the terms of this agreement and the receipt of said agent shall be a good and valid discharge in respect thereof. The said agent is fully authorized and empowered to act on behalf of the author in all matters arising out of this agreement. The publisher shall, on publication, send to the agent one free copy of the work for the agent's files."

Yours sincerely,

Diarmuid Russell