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**Testimony on "RESTORING PUBLIC ACCESS TO THE PUBLIC'S LANDS: ISSUES
IMPACTING MULTIPLE-USE ON OUR NATIONAL FORESTS"**

Monday, September 19, 2011 10:00 AM

Testimony – Statement by Charles Hirst, President of California Enduro Riders Association (CERA), relating experience with obtaining special use permits for historical motorcycle events within the Rock Creek Recreational Trails Area of the Eldorado National Forest.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today to share my views, the views of California Enduro Riders Association, and views of other multiple-use interests within the Eldorado National Forest.

My name is Charles Hirst; I am a native of Sacramento County in Northern California. I currently live in El Dorado Hills, California in the Foothills of the Sierra Nevada mountains. I am a husband and father, an engineer, a motorcyclist and a recreationist. I am currently the President of the California Enduro Riders Association motorcycle club.

Mr. Chairman, before getting into the substance of my concerns, I would like to give the Committee an overview of California Enduro Riders Association and the Rock Creek Recreational Trails Area of the Eldorado National Forest.

California Enduro Riders Association (CERA) is a California mutual benefit membership corporation, incorporated in the State of California in 1971 that currently has more than 60 enthusiast members. CERA and their families and friends enjoy the off-highway motorcycle recreation opportunities provided by the lands of the Eldorado National Forest (ENF). CERA has organized recreational endurance trail riding events (enduros) since 1970 in the Rock Creek Recreational Trails Area (RCRTA) on the Georgetown Ranger District of the Eldorado National Forest.

The Rock Creek Recreational Trails Area is managed by the Georgetown Ranger District, within the Eldorado National Forest, within the Pacific Southwest Region 5. Rock Creek is a designated off-road / off-highway (OHV) management area by the Forest Service. The area's low elevation, 2700 ft to 4800 ft offers year-round access, and an extensive network of trails and skid-roads provide an ideal recreation opportunity for OHV enthusiasts. The Rock Creek Area consists of approximately 22,000 acres of public land that has had historical OHV use since the late 1950's. In the early 1970's, CERA, in cooperation with the Forest Service, began connecting trails to make loops for motorbike pleasure riding and enduros, organized motorbike endurance riding events. The enduro events that CERA promotes are not races. These events are more akin to a road rally, where participants are asked to maintain a predetermined speed

along a marked course in order to be at any given mileage on course at a designated time. Secret checkpoints are located along the course to verify participant's ability to keep time, and points are added to participants who are either early or late to the checkpoint. The penalty is far worse for being early than it is for being late to discourage racing and / or cutting the course. Our events typically range from approximately 50 miles for our youth and family events to greater than 100 miles for our AMA District 36 Championship Series events. The volunteer efforts of CERA for these events have greatly improved the recreational experience in the area for all users.

CERA is dedicated in preserving the environmental quality of this area and the OHV experience provided in this National Forest through volunteer labor. Members provide maintenance to these trails to protect and preserve the resources of the National Forest through work opportunities organized by the Forest Service and through preparation for our enduro events. Through our hundreds, and some years thousands, of hours of volunteer labor, we help assure that the National Forest will remain as a recreational asset for generations to come. The vast majority of our maintenance activities occur on trails open to the general public for use by all types of recreationists—motorized, bicycle, equestrian and hiking. There are several trails open only for special use permit holders during such events, and to the best of my knowledge, CERA is the only group that actively maintains these trails. Finally, there are also trails that are only open to non-motorized use. CERA helps to maintain these trails, also, through a commitment to stewardship of the area regardless of any benefit directly to CERA.

ISSUE ONE—Title 36 CFR 251.58 Regulations Require Collection of Cost Recovery Drives Costs to Untenable Levels for Historic Recreation Events

For many years, the only fee required for a special use permit for these events was the \$30 application fee. Unfortunately, Mr. Chairman, over the past several years, these costs have skyrocketed.

This is primarily due to the adoption of the final Forest Service cost recovery regulations at Title 36 CFR 251.58. Finalized in February 2006, these regulations require the collection of cost recovery fees for all special use permit applications received after March 23, 2006 that were estimated to require more than 50 hours of Forest Service time to process and / or monitor. For CERA, the effect was noticed initially for the 2007 Fools Gold Enduro and Crazy Miner Family Enduro events when the application, processing and monitoring costs for the two events combined jumped from \$554.55 in 2006 to \$6,851.60 in 2007. That's greater than a 12-fold increase in one year for historic use events run on designated system trails. And yet, Mr. Chairman, CERA was willing to pay these fees in order to be able to host two of the premier enduro events on the West Coast.

For the 2008 events, the combined costs for the two events increased only slightly to \$7,100.58. At the beginning of May of 2008, after discussions with the Forest Service related to ways to reduce the now exorbitant permit fees, CERA submitted an application for ten events over the course of five years commencing in May 2009. Finally, in early September 2008, the Forest Service provided CERA with the cost recovery estimate for the 5-year, 10-event permit and the Environmental Assessment (EA) that the Forest Service said was required. The total was

\$15,523.45 with \$11,146.11 for processing and \$4,377.34 for monitoring. The requirement for a new EA, and the costs associated therewith, were surprising, as the Environmental Impact Statement (EIS) for the RCRTA, circa 1999 and supplemented in 2006, includes provisions for two motorcycle events per year and all events are run on designated trails. CERA disputed the processing fees and in late October they were eventually lowered to approximately \$10,700.

Despite this amount being a tremendous expenditure for a small recreation club, it was decided to pay the money because the amortization over 10 events was advantageous in light of the fee escalation we had recently seen. The email communication from the Forest Service representative with the original cost estimate in September 2008 indicated that the required EA should be complete and available for public comment by November 2008, and that this would easily support the first event covered by the permit in May 2009. Approximately 1.5 months were lost due to the fee dispute process, and the processing fees were paid in early November 2008.

Immediately after the fees were verified as paid, the delays began. CERA was notified of a series of setbacks that would delay data entry for the EA, then of conflicting work priorities, etc., all of which would delay the completion of the EA in time to support the Fools Gold Enduro in May 2009. It was proposed by the Forest Service, and accepted by CERA, to reduce the EA to cover only nine (9) events beginning in October 2009, and to process a single-event permit under the existing EIS Record of Decision (ROD) for the May 2009 event without any additional fees.

The EA was finally released for public comment in late Spring 2009 and a decision to grant the permit was issued in the Summer of 2009. The decision to grant the permit was appealed by the Center for Sierra Nevada Conservation (CSNC) and Center for Biological Diversity (CBD) on various grounds, but primarily due to lack of analysis for an endangered species of frog called the California Red-Legged Frog (CRLF). CERA also appealed the decision to retain standing in any appeals resolution meetings and potential lawsuits. An informal appeals resolution meeting was held amongst the Forest Service and the appellants in late-September 2009. No resolution of the appeals was achieved through this meeting, so the decision and appeals were forwarded to the Appeals Review Team (ART) of the ENF. The ART decided to rescind the decision to grant the permit based upon their determination that analysis of the CRLF within the EA was lacking and needed to be included. By the time this decision was rendered, it was too late to process a single-event permit under the ROD for the October 2009 event and the event had to be cancelled.

The requirements for additional analysis were presented to CERA at a meeting with the Forest Service on November 6, 2009. The required analyses would prevent the EA from being updated in time for the event in May 2010, so it was requested that this be broken out into another single-event permit under the ROD and that the cancelled event from October 2009 be added to the end of the permit to make up for its loss. Correspondence from the Forest Service related to the addition of the lost event to the end of the permit, a shifting of the permit time frame, stated that such a change would result in additional processing fees.

In February 2010, a decision was made that the May 2010 event could be run on a single-event permit under the ROD. The proposed costs for this single-event permit under the existing ROD and for the additional analysis related to the 5-year permit EA were submitted to CERA—\$6,700

for processing of the single-event permit and an additional \$18,000 for the 5-year permit EA that only need some “touch-ups”.

Mr. Chairman, to say that the numbers were shocking would be an understatement of gargantuan proportions. When CERA agreed to pay for the approximately \$11,000 in processing fees for the 5-year permit in Fall 2008, we were under the impression that we were paying for the finished product, not falling into a bait-and-switch scheme. The processing fees paid in 2008 drained more than 50% of our available funds. Due to terms and conditions related to our permit, the May 2009 event was postponed to late-September 2009 and resulted in such reduced attendance that the event was a loss of greater than \$2,000. The loss of the October 2009 event due to Forest Service ineptitude further harmed CERA through the fact that we were denied an opportunity to raise funds needed to offset payments already made towards this permit. CERA disputed the proposed processing fees, and in early March 2010 a revised estimate was provided—\$6,300 for the May 2010 event and \$17,000 additional for the 5-year permit.

CERA membership in its entirety was shocked and offended by the proposed fee schedule and what was considered nothing short of fraud on the part of the Forest Service related to the 5-year permit costs. How could the Forest Service not do its job to satisfactory completion, then expect us to pay for their problems? If this were any other sort of business arrangement, the customer is always right and the service provider is obligated to make it good. If actual costs are significantly out of line with proposed costs, equitable adjustments are often made. However, such was not the case here. Even when asked to justify and adjust the proposed additional costs, the result was far from equitable for CERA.

I engaged in negotiations with the Forest Service to try to work out further reduction of, or to develop a payment plan for, the proposed fees to no avail. We were told that processing fees must be paid in full before any work could be started—period.

After significant debate and discourse within CERA leadership and the general membership, the decision was made to pay the fees for the single event in May 2010, but there were insufficient funds to even entertain payment of the additional fees for the 5-year permit. Little did we know at that point in time that this event would not happen either due to claimed sightings of a California Red-Legged Frog in the area.

Due to the claimed frog sighting and lack of a permit covering the traditional October event, CERA did not host any enduros in 2010.

The draining of the bank account for a 5-year permit that is still in limbo, a Summer 2009 in miserable conditions, and no events in 2010 left CERA in a position of being nearly broke with no relief in sight. Without events to promote, membership declined to less than half of what it was when the 5-year permit fees were paid. A revision in strategy was required or CERA would die.

Starting in Summer 2010, CERA reorganized to be able to promote events under noncommercial group use (NGU) regulations located in Title 36 CFR 251.54. After several false starts, an NGU permit was granted for an event in May 2011. The event was 100% free of any participation or

membership fee, and we even created a rider classification for participants who did not want to compete as part of the AMA and District 36 series. Benefits to this type of permit are swift determination of the acceptability of the permit (required within 48 hours) and a requirement that any additional analyses required for the event must be funded by the Forest Service. However, there is one very large drawback—the event is free, so there is no guarantee of income.

Still, CERA would rather put on free events and rely on donations from participants and organizations for its survival, than to be defeated by the cost recovery scheme currently employed.

ISSUE TWO—Permit Issues and Event Delays to Permit Terms and Conditions Cause Economic Harm to CERA and the Local Georgetown Area

CERA events in Rock Creek have been operated under some of the tightest weather and wildlife terms and conditions of any historical event in the area. The 1999 Rock Creek EIS borrowed Limited Operating Periods (LOPs) and proximity distances to nests of Northern Goshawks and Spotted Owls, originally developed for logging operations and applied them to OHV events. Discoveries of goshawk and owl nests have resulted in last-minute course reroutes and postponement of events to times of the year when riding in the area is less than ideal.

Since approximately 2002, wet weather constraints have led to the postponement or cancellation of the majority of the spring enduro events. These constraints are so tight that they even include provisions that would allow for suspension of an event due to a forecast for rain or an event in progress.

These conditions are excessive, but are seen as part of the entry price to use an area as unique as Rock Creek.

However, there is an economic impact on both CERA and the local Georgetown area when events are postponed or cancelled. The attendance limit for our events is 300 participants per the 1999 EIS. Typical CERA membership and volunteers for an event number around 100. By the time those 400 participants and volunteers have completed a weekend, for participants, and three to five days for CERA volunteers, it is not a stretch to claim that each is likely to spend between \$100-300 on gas, groceries, sundries, motorcycle parts, and the like in the area. That total quickly is in the neighborhood of \$40,000 - \$120,000 per event. With two events per year, the economic impact to the Georgetown area due to CERA events can quickly approach \$250,000 per year.

When events are postponed, especially in May, the attendance drops sharply. It is typical to only see attendance or 150-200 riders at a rescheduled date on the first weekend of June, and when events are delayed beyond that date, the attendance is typically around 100. This was experienced in 2009, when the May enduro was rescheduled to September due to an owl nest in an area that could not be re-routed. The result was an event in hot, dusty conditions that were miserable for workers and participants alike.

This affect is dramatic to CERA, which may make \$2,000 on a full-attendance event, but it is devastating to a small town that relies heavily on events such as CERA enduros and the Jeepers Jamboree to the Rubicon Trail for its livelihood.

ISSUE THREE—Lawsuit Avoidance by the Forest Service has led to Cost Recovery Being Used as a Tool to Eliminate Historic Recreation Events

The Eldorado National Forest has been subject to numerous lawsuits since the 1980's related to legal operation of OHVs on designated trail systems, particularly within Rock Creek. A particular individual moved in the area immediately adjacent to the designated riding area in the early 1980s, and had an unfortunate experience with local youth riding OHVs near this individual's property. After failing to gain satisfaction from the District Ranger at that time, this individual created or joined a series of activist groups and began filing lawsuits against the Forest Service with the intent of eliminating motorized recreation in the Rock Creek Area. These groups, with names such as Friends Aware of Wildlife Needs (FAWN), Public Employees for Environmental Responsibility (PEER) and Center for Sierra Nevada Conservation (CSNC), have or have had financial backing from national organizations such as Center for Biological Diversity (CBD). Lawsuits from these organizations related to perceived or imagined adverse effects on various wildlife within the area have tied up Forest Resources on an ongoing basis for nearly 30 years. While the cause for this series of lawsuits might change, the sought after relief is nearly always the same—elimination of motorized recreation within the area or the Forest.

Following a meeting in May 2010 related to the cancellation of the 2010 Fools Gold Enduro due to the claimed discovery of endangered California Red-Legged Frogs (CRLF) within the RCRTA and near the proposed course, the Forest Supervisor for the ENF stated that one of his goals was "lawsuit avoidance". He refused to use the authority granted to him as a Line Officer with the Forest Service to allow historical recreation events on designated trail systems due to the threat of lawsuit by the organizations referenced above.

To this date, there have been no sightings of CRLF within the motorized trails area of the RCRTA, despite two years worth of surveys for four attempts at our spring enduros (one in 2010 and three in 2011 due to weather postponements). There continues to be only the claimed sighting of a couple of frogs in Little Silver Creek, northwest of the motorized trails. By coincidence, the claimed sightings are in a creek that is more than 10 miles as the crow flies, across freeways, steep ravines and fast-flowing creeks and rivers from the nearest documented breeding sight in Placerville, CA. Again, by sheer coincidence, the creek where the claimed sightings were made happens to border the property of the disgruntled individual and vexatious litigant described above. None of this coincidence matters because the claimed sighting of an endangered species in an adjacent area trumps any historical human use of an area, recreational or not.

Summary:

California Enduro Riders Association (CERA) has been promoting motorcycle endurance rides in the Rock Creek Recreational Trails Area (RCRTA) of the Eldorado National Forest (ENF) since 1970 on trails that have been used since at least the 1950's. An Environmental Impact Statement

(EIS) of the area was released in 1999 and supplemented in 2006 that includes provisions for two motorcycle events per year on the designated trail system, in addition to general OHV riding the area. CERA's motorcycle endurance events are very the definition of historical use (40+ years) on a designated trail system, the EIS of which even includes analysis of these events.

For many years, the permit costs included only the application costs. Slowly, over time, the permit costs grew to include monitoring of event usage of the trails. Then, with the adoption in February 2006 of the cost recovery regulations in Title 36 CFR 251.58, permit costs skyrocketed overnight.

These skyrocketing costs for permits, along with ultra-conservative wildlife and weather restrictions on our events and an attitude of lawsuit-avoidance at all costs by the Forest supervision has led to economic harm of CERA and of the local area, Georgetown, CA, where the events take place.

Recommendation:

Congress should consider bipartisan legislation that recognizes the legitimacy of historical recreation uses of designated trail systems and areas without subjecting these permits to the same burdensome cost recovery regulations as large corporations seeking to establish infrastructure projects on public lands. As the vast majority of these historical recreation users are contained to designated trail systems and areas, which by definition have been analyzed for all typical uses, it is only fair that such historical uses be categorically excluded from additional analyses and the associated cost recovery fees.

On behalf of myself, CERA, and other access stakeholders, I thank the subcommittee for travelling to Sacramento and for inviting me to testify on this all too important issue. I look forward to working with Congress and the agency to find a way to reform cost recovery regulations in such a manner as to eliminate the punishment of historical recreational uses of designated trail systems and areas. At this time, I would be happy to answer any questions.

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