

# MINUTES

## OREGON RACING COMMISSION SEPTEMBER 27, 2001

The Oregon Racing Commission met on Thursday, September 27, 2001, at 1:30 p.m. for their regular meeting at Portland Meadows located at 1001 N Schmeer Road, Portland, OR. Commissioners in attendance were Steve Walters, Chair; Tom Towslee, Lisa Metcalf and Jeff Gilmour. Commissioner Todd Thorne was excused. Before beginning the meeting, Chair Walters asked that those in attendance begin with a moment of silence for the victims of the September 11, 2001, terrorist attacks, the rescue workers, their families and their friends. Chair Walters then thanked the management of Portland Meadows for making the facilities available for the meeting. Agenda items were discussed in the following order with resulting actions:

### 1. Approval of August 16, 2001, Minutes

ACTION: MOTION(Towslee) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

### 2. MEC Oregon Racing, Inc. Race Meet Issues

Following is a transcript of this agenda item:

Walters: Do we have someone here from Magna to give us a report on those issues?

McFadden: Good morning, Mr. Chairman. Art McFadden, Magna Oregon.

Daruty: Scott Daruty with Magna Entertainment.

Walters: Carl Wilson with a variety of organizations. Welcome, gentlemen. Whoever would like to start please do.

Daruty: First of all, I'd like to say it's wonderful to see all these people out here today. We understand there's a lot of people who are very concerned about their futures and about how they're going to continue to earn a living, and we take that very seriously. We've been working very hard to try to solve a whole list of problems in getting this race meet open, and we believe we've done a pretty good job and have pretty much checked everything off the list except for the EPA problem on the backside. We've continued to work with the EPA. We've done that with a tremendous amount of cooperation from everybody in the racing community in Oregon. Everybody from commissioners, the executive director, the horsemen, the breeders, all of the organizations have really pulled together and put a lot of pressure on the EPA and made clear to them what the effect of their position has been on this industry. We honestly believe that the EPA is coming to the realization that the decision they were maintaining was going to put this industry out of business in the state of Oregon and that wasn't a good thing to do. We feel confident although not certain at this point that we're going to resolve our issues with the EPA any day. I hesitate to say that because there have been a lot of surprises along the way, and I guess there could be some more, but to let the commission know where we're at and everybody here today is wondering after literally six months of negotiations with the EPA they finally last Friday made a proposal to us in a telephone call that made sense. That was the first proposal that did make sense. In fact, I think some of you know that early on when I pointed out some of the flaws in the EPA's position one of the responses I got was, well, whether or not it makes sense that's what you're required to do. So, at least we've gotten them from the point where they didn't think anything other than what they wanted to believe, and through the efforts of the horsemen and everybody calling and writing and e-mailing, they're at least at a point where they want to make sense. They want to do what they can within the structure that they have to operate to allow this facility to open.

So, anyhow on Friday they made a proposal to us that was as far as we understand it acceptable. It was a little fuzzy around the edges, it didn't have all the details flushed out and it wasn't anything

written, it was just a telephone conversation. So, what we're attempting to do right now is put together what I'll term a short letter of intent for lack of a better term just hitting what the business agreement is with respect to the backside improvements that are going to be constructed out there by Magna. We hope people here understand this but we don't feel comfortable opening up the facility until we have something in writing from the EPA. We've not said we need a signed agreement with them because that's going to take several months by the time we work with the EPA, go through a public hearing process and everything else, we're not requiring that we wait until we have that signed agreement but we at least want a piece of paper that says what the terms are so that we can look at it and say yeah, that's right, and they can look at it and say yeah, that's right. That's our biggest hold up right now. I hope to have that within a few days or possibly within a week, but I can't say when it's going to happen. The only other piece that's open is we're waiting for our engineers to come back with some final engineering details that will make sure that what the EPA's asking is actually what our system's going to do. We believe it is, the engineers have already been through it, but we wanted them to go back and double check it. So, our number one priority, and I hope I don't bore you with all that background but I think it's important to understand where we are in the process, our number one priority is getting a race meet open at Portland Meadows and doing that as soon as possible. We recognize at this point it might be hard to hit our opening date. We're still going to do everything we can. We think if we can get in the next couple of days get this last detail or two worked out that we will be able to meet that opening date, but we can't commit to that right now. And it's possible that there could be a delay of anywhere from a week to a few weeks if it takes longer than I hope to work out the final details with the EPA, or I have to be honest, I know nobody wants to hear this and I don't think this is going to happen, but it's possible that we might not have understood their proposal the way they understood it and we might think that it's acceptable but when they come back and say no, here's what we really meant, I mean, it could fall apart. I don't think that's going to happen but that is a possibility and I think people have the right to know that that's a possibility. So that's where we are from a big picture standpoint. We are continuing to do the things we need to do to be ready for the opening of the Portland Meadows meet should the environmental situation be resolved and Art will speak to that, the things that have been going on here. We also, and I don't want to get ahead of myself or ahead of your agenda, but we also believe it's important for Magna, for the horsemen, the Racing Commission, for racing fans and for everybody involved in the industry to have a backup plan in place in case things don't work out with the EPA. I don't think it's going to happen, but we like to have a backup plan, and we'll get into that a little bit later. But that's all I have to say. I'd be very happy to answer any questions if anybody has any.

Walters: Assuming that you are able to sort of get the writing that you need from the EPA so there's no misunderstanding about what's required, how ready are you to start the race meet from the time that everyone signs off on that piece of paper, or maybe that's something for Art to answer or maybe you can answer.

Daruty: I think that Art might be better to answer that question.

McFadden: We anticipated 45 days of training for the race meet. We're now down to less than 30. The Oregon Racing Commission rules require certain amount of workouts and certain amount of time. The horsemen require this much time at least 30 days to weekend card ready. We could tinker with that I suppose with the help of the Racing Commission and perhaps open with one day of racing on our opening weekend just to close up the window to include the simulcasting to benefit the horsemen which is our hope and our intention. I don't know if that answers your question or not, but if this goes into next week I think the October 20th date is blown. If we can get the horses in the barn area next week I think we can make it. It's going to be ambitious and we're going to need the help of the horsemen and the commission.

Walters: Okay. What I think I'm hearing you say is that you need about three weeks from the time you get the we're going ahead with the EPA and that piece is put to rest, you need about three weeks. Is the three weeks for more work you have to do along the facility or is it principally to allow the horsemen the chance to get their horses ready to run?

McFadden: Simply the latter. We're behind in plans. The barn area is in good shape. We've done, of course we started over there first, but now we're working on the frontside and we're scurrying pretty good to

meet the October 20th deadline. But this whole conversation was for the horsemen to get the horses ready for card on opening weekend.

Walters: Again, your basic timeframe is you need three weeks to have horses ready.

McFadden: I agree with that, but as I said maybe in an emergency one day card to get us going would be appropriate and we could do that with perhaps even less than three weeks.

Walters: Have you been in conversation with Jerry Kohls, been in conversation with the horsemen to see what the status of horses is and whether folks are...

McFadden: Yes I have, and we're losing horses every day. We started out with, Ron Crockett was friendly to us. The rumor was he was charging the horsemen in Seattle, the Portland horses, Scott doesn't know this yet, but he did not charge the Oregon horsemen up there. We had heard he was charging \$5.00 a day, and I was saying hey, that's not fair. But he is not charging us, and we started out with 195 horses approved in Emerald barn area and we're now down to 60. And that's a microcosm of what's going on. That's how fast we're losing horses. If we can't get this fall meet going quickly we're not going to have a fall meet, we're not going to have any horses. They're turned out, they're not, well, some of them, two stables, one to Ohio and one to Canada, we know about, but basically they're just getting turned out. The horsemen have no place to go. They're just totally lost and they have, and some of the horsemen don't have farms to turn them out to, so it's really a super bad deal and we're still holding 60 at Emerald Downs as of this morning. So, we are losing horses every day, so we have to rush this as best we can.

Walters: Scott, just again I realize we're talking about dealing with a government agency, but do you have any idea, where are you in terms of putting together the draft of what you call maybe a letter of intent, and I realize that's not a technical term, to get to EPA to run this through? I assume you don't want to finalize what you believe the understanding is until your engineers tell you yes, we can do that, then you would need to get what you believe is the situation to EPA. Are you able to give us any timeframe on that?

Daruty: I took it upon myself yesterday to put the letter of intent together. I had waited and as it turns out the lawyer for the EPA is out all week this week, so they get a lot of vacations there apparently.

Walters: Apparently so.

Daruty: So I have prepared it myself and have already faxed it to them so the folks in Seattle have it or should by now, it was sent probably a couple of hours ago. The gentleman who is out will get it upon his return to the office and I'm meeting tomorrow morning with our engineers just to get their final blessing. As soon as we hear back from them...

Walters: And as I think that you said there at least seems to be some recognition at the EPA of the urgency of the situation finally.

Daruty: They do understand that finally.

Walters: Any other questions or comments by members of the commission or Steve?

Gilmour: I think there's one question that's missing and that is when are horses going to be on the backside, and being an optimist myself as I am sure you are at times, is there not the possibility that horses could come on tomorrow and start preparing even knowing that what you have said might not happen and they're gone?

Daruty: That is not a risk that Magna is willing to take. We're a public company, we have a responsibility to our shareholders, and before we bring horses back and have the potential for lawsuits to be filed against us and penalties and fines to be imposed on us, we need to know what the EPA's position is. So, it probably wouldn't be that case if they hadn't flipped on us so many times already. We might be willing to just go with the conversation on Friday, but we've had conversations in the past where

we went away thinking okay, we just resolved it, and as it turned out things changed. We need to wait until we have something written.

Gilmour: Okay. I just wanted to make sure that was Magna's decision on when the horses come on based upon what you've said about the letter of agreement.

Daruty: That is, but in all fairness it's Magna who would pay fines and penalties that the EPA imposed.

Gilmour: I understand.

Walters: Other questions or comments?

Towslee: I don't know whether this is appropriate to bring this up now or wait until we get to Item 4, Scott, so you just tell me which way you want to go with this. Obviously you're not confident enough in the EPA to want to scratch the proposal you're making under Item 4. Is that what I understand here?

Daruty: That's right. I guess our view is that we need to have a backup plan not just for Magna but for everybody, and we think it's critical and we'll get into this later, but we think it's critical that as an industry we retain the ability to have simulcasting and off-track wagering. And so we think it's critical that there's a license in place that can work.

Towslee: Does our action regarding your proposal for a winter meet at Multnomah Greyhound Park have any impact on you negotiations with the EPA? And what I'm saying is that if we were to approve that does that take the pressure off the EPA to act to the benefit, or as far as Magna's situation goes?

Daruty: I don't believe it does. I think just given the fact that a large part of the pressure on the EPA came from the horsemen. Given the turnout we see here today I think it's still critical to everybody, ourselves included, that we open the horse meet, and so I would expect that even if we have a backup license, so to speak, in place that the EPA will continue to get as much pressure as they have up to this point to get this problem solved so we can have a horse meet.

Towslee: Thank you.

Walters: Other questions or comments?

Metcalf: I have a question. Scott, I guess I'm somewhat confused about where this lack of communication with the EPA is and how it continues and how an attorney that is responsible for this communication can leave and not put anybody else in charge, and perhaps you are too. But I think if I'm confused everybody else is. How this lack of communication when it is so important not only to Magna and to the horsemen but the state of Oregon, what's happening and they just take off on vacation when time is so critical and maybe you could, can you give us any reason why there is this lack of communication, why everything's so fuzzy here, why you don't hear what they're saying and they don't hear what you're saying?

Daruty: I don't have an answer for that. If I had an answer for that then I would be able to come up with some sort of strategy to deal with it. Obviously we haven't been able to deal with it very well because it continued to happen. I don't want to bore everybody with the details, but just an example we've been planning for the October opening for a long, long time and Art and myself and our development guy from Magna went to Seattle to meet with the EPA in July. We had a meeting and described our plans and everything looked great. They were enthusiastic, they were happy, and I probably, I don't remember now specifically, but I probably even reported that to the commission at one point. Well, four weeks later we got their draft Consent Decree that was nothing at all what we talked about and, of course, four weeks later happened to be now mid August when we had always planned to have the horses back September 1. So it was really that mid August time period where we really started scrambling the next week or two weeks to try to get the issue solved and, of course, they took a full two weeks and on August 29th they formally and finally rejected our plan. That's what got us into this mess, but I think a lot of it, to get back to your question, a lot of it has to do with history, a lot of it has to do with their multi-year battle against this race track and a lot of it has to do with ill will and hard feelings that were built up over that time period. I think when Magna

came in, rightfully or wrongfully, we got saddled with a lot of that baggage that wasn't ours, and I think one thing again, we have a tremendous amount of gratitude for the horsemen and everything. One thing they've done to help break this loose has been the whole industry here in Oregon jumping up and putting a face to the problem, having a personal story, you know, here are the people who are going to lose jobs and are going to be affected by your decision. That, I believe, moved the EPA off of the viewpoint of well, this is just a troubled facility and we don't want it running, into a more problem solving type of mode.

Metcalf: So it's not an unwillingness on Magna's part as it was on the former owners to comply with the EPA's recommendations. That's not the communication problems.

Daruty: We have always told the EPA that we understood the historical problems and we were committed to solving them. Where our discussions with the EPA broke down was, you know, there's an economically reasonable solution to every problem and then there's the gold plated diamond studded solution to every problem that costs millions of dollars and cannot be economically justified. They were asking for the latter and we were arguing for the former.

Walters: I will say that last week early in the week I had the opportunity to sit in on a telephone conference with Scott, and Art was present in the commission as well as a number of horsemen and then the EPA folks from Washington and Seattle were on the phone. A couple of things that struck me was Scott did what I thought was a superb job of presenting the Magna proposal in a way that was hard for me to see how any reasonable people could say this doesn't sound like a terrific idea and an excellent solution. He had answers for all their questions, but the inability to communicate and comprehend is very for me to describe, but at one point during this conversation this lawyer from D.C. who shall go unnamed but is apparently on vacation says well, gee whiz I was involved in a dairy farm that built a 25 year storm water collection pond for \$32,000, so why aren't you doing that? And Scott had just laid out a proposal that Magna was going to spend \$600,000 to a million dollars to resolve the problem. Now, anybody in their right mind thinks that someone is going to spend \$600,000 on a solution when they can solve the whole problem for \$32,000 is, I can't begin to describe what this connect was there. But the most encouraging thing that came out of that telephone conversation I thought was at the conclusion of the discussion the horsemen spoke up and Dick Cartney did a great job of presenting the consequences, again, that shutting down this race meet essentially would have on the racing industry in Oregon. I think that took along with the letters and the contacts that the EPA had been getting from all of the horsemen as a result of the meeting that was held here a couple of weeks ago. The most encouraging thing from the discussion was when the folks from EPA said we will get back to you within a couple of days and apparently they did. So, to me that is a tremendous progress and breakthrough. I share Scott's concern that until it's done it isn't done, but I think because of the efforts particularly the horsemen as well as the tremendous amount of effort and money and time Magna's put into this I think we're very close to there. I hope the horsemen are able to hang on because in my heart of hearts I really believe we're going to have a race meet here beginning this fall.

Other questions or comments, any other report you need to make? I'm not going to take up right now the Multnomah Greyhound Park application because I'm conflicted out of it and there are other things we have to do on the agenda.

Barham: I have something just to report. Just so folks know, last commission meeting the motion that the commission made was to approve the Portland Meadows race meet application contingent upon receiving certain things one of which was a purse agreement between the horsemen's organizations and Magna, that the dates on this I'm going to ignore assuming that the commission would be willing to ignore those because it's all been pushed back because of the EPA issue - September 10th, I didn't get it by that date. My understanding is that there is an agreement between HBPA and Magna regarding the percentage of the handle going to the purse account. That's one provision in the statute that has to happen before the commission can approve the race meet. It's not signed, it's a report of a meeting that they had on Tuesday afternoon. I have the memo, I assume it's right, but as long as that one doesn't go sideways or there's a problem I would say that is met. I also had given to me today a stakes schedule that was another condition and also a certificate of insurance for Magna for both jock insurance and liability and those types of insurances that were required by the motion, and finally a new list of officials. So, the conditions that were put in the motion last meeting

other than the dates have been met with the exception of the bond or bond substitute which comes later and the signed contract with tote. I guess I would recommend that the commission delegate to the executive director the final approval of each of those items 1 through 6 in the motion that was made last month just so the signed agreement can be made between the horsemen and Magna and the bond and those things can happen. That will simply allow, if in fact horses can come on the grounds next week and that the race meet can start on the 20th, we can take care of all of this stuff in the office and it won't have to come back before you at your next meeting.

Walters: I just have a question, Steve. What if, for example, the start date got kicked back a week or something like that?

Barham: I would still make the same recommendation. If it did get kicked back an additional week or two that would simply give the commission more time that you could take it up at your next meeting, but that's the only change that it would have. This stuff is so close I don't even see it really as an issue other than just legally and technically you have to have it approved and it has to happen, and I think that they have done that.

Walters: You're looking for a motion to that effect?

Barham: Yes.

Walters: I have to declare a conflict at this point because my law firm does some work for Magna. So, I will recuse myself from the motion or the vote. You're in charge, Tom.

Towslee: Do I have a motion to delegate these last two and accept the first (unintelligible)?

Barham: I would recommend the motion be grant delegated authority to the executive director to approve Items 1 through 6 of our motion last month.

Metcalf: So moved.

Towslee: All those in favor say aye.

Gilmour: Aye.

Towslee: Aye.

Metcalf: Aye.

Gilmour: With the understanding the director is going to call the commissioners and let them know up to date what's happening obviously as always. Thank you.

Walters: Again, for the folks here I know there remains a lot of uncertainty and a lot of concern. The point of this action is that as I understand it if Magna gets the situation worked out with the EPA, as soon as that happens they're in position to run a race meet. Their license application is approved and they are ready to go subject to the concerns that Art expressed earlier that the time needed to get horses ready to run. So, we're not there yet but we're getting a lot closer. Thank you, gentlemen.

### **3. Request by Karen Knapp for Reinstatement of Jockey License**

Karen Knapp reported she is now at riding weight and has maintained that weight for about a month and that she had completed her treatment program in July. Robert Webb, jockey, was also present and stated Ms. Knapp had been helping him at the ranch and has consistently been there every morning, has been working hard at keeping her weight down and has had perfect attendance. Mr. Webb recommended to the commission that they reinstate her jockey license. Steve Barham suggested if the commission want to reinstate her license, they could do it based on receipt of documents from the treatment facility stating she had successfully completed the

program, signing an updated agreement for random testing and providing a negative test. Other horsemen have given positive reports on Ms. Knapp's work at Windy Ridge training facility. Before taking action on this request Chair Walters strongly stated our rules are very clear in that if Ms. Knapp gets set down again she will be gone for good and that the commission could not ever reinstate her license.

ACTION: MOTION(Towslee) Approve request submitted by Ms. Knapp for reinstating her jockey license with the condition that the proper paperwork is submitted to the ORC office.

VOTE: 4 Aye, 0 Nay, 1 Excused

#### **4. Petition to Amend Account Wagering Rules**

Roger Nyquist, TVG, referred the commission to a request of proposed changes to the account wagering rules submitted by TVG. Steve Barham recommended the commission direct the executive director to serve notice of proposed rulemaking to the Secretary of State.

ACTION: MOTION(Towslee) Begin the rulemaking process with the recommended amendments as requested by TVG.

VOTE: 4 Aye, 0 Nay, 1 Excused

#### **5. Multnomah Greyhound Park Update**

Carl Wilson reported since the last meeting the Oregon live handle is up .8%. The total live handle is up 6%, the total Oregon handle is down 8.2% and simulcast is down 11.3%. Total attendance is down .8%, however, on-track attendance is up 2.9%. System Pita Rita, who won the Derby last year, won it again this year on August 25th and also set a new 670 yard track record. Chair Walters stated he noticed that wagering on the live handle at the off-tracks appeared to be up since removing the surcharge and wondered if the trend was continuing, to which Mr. Wilson responded affirmatively. Art McFadden added OTB operators are not happy with the change because their income has gone down.

Prior to taking action on the proposed orders, Chair Walters introduced Raul Ramirez who is the new assistant attorney general assigned to the Oregon Racing Commission.

#### **6. Proposed Orders**

##### **a. Richard D. Barry**

ACTION: MOTION(Towslee) Adopt proposed order as final order.

VOTE: 4 Aye, 0 Nay, 1 Excused

##### **b. Randy L. Jordan**

Prior to taking action on this order there was discussion regarding the issue of interpreting the way a substance is "intended for use". Chair Walters suggested approval of the final order enforcing the interpretation of the phrase "intended for use" advocated by the assistant attorney general in her memorandum. After further discussion Chair Walters stated the commission's prior precedence is consistent with proposed order

ACTION: MOTION(Towslee) Adopt proposed order with the definition of "intended for use" as proposed by the assistant attorney general as final order.

VOTE: 4 Aye, 0 Nay, 1 Excused

#### **7. Old Business**

Under old business Commissioner Gilmour stated there was a matter he wished to discuss. He wanted to know if the commission received a report

concerning the county fairs. Chair Walters stated end of meet reports are provided are sent to commissioners in separate mailings. In the past they have not been placed on the agenda, however, they could be added if the commission so desires. It was decided to have end of meet reports put on the agenda for each of the summer race meets beginning with the 2002 summer racing season.

## **8. Default Orders**

### **a. Robert W. Carroll**

ACTION: MOTION(Towslee) Approve default order.  
VOTE: 4 Aye, 0 Nay, 1 Excused

### **b. Jeffrey Wilcox**

ACTION: MOTION(Towslee) Approve the default order with the amendment that the stay was for the fine only.  
VOTE: 4 Aye, 0 Nay, 1 Excused

### **c. Michelle Brown**

ACTION: MOTION(Towslee) Approve default order.  
VOTE: 4 Aye, 0 Nay, 1 Excused

## **9. Confirmation of Next Commission Meeting - October 18, 2001**

The next commission meeting will take place on October 18, 2001.

## **10. Application for Winter Race Meet at Multnomah Greyhound Park**

Carl Wilson, MGP, Scott Daruty, MEC, and Art McFadden, Magna Oregon, were present to discuss this request. Again, Chair Walters declared a conflict because his law firm does work for Magna Entertainment. Due to the conflict he recused himself from discussion and any commission action and turned the meeting over to Commissioner Towslee to chair. Carl Wilson stated this application was being presented as a backup plan in case there is no race meet authorized to conduct the simulcasting following the close of the current MGP race meet. Scott Daruty reiterated the first priority is to conduct a horse meet, however, if that is not possible it is their feeling everyone in the industry is better off to have some sort of live racing that will permit simulcasting. There was extended discussion on the logistics of cancelling the winter MGP meet if some resolution with the EPA were to be reached during the course of that meet which would allow for horse racing to begin at Portland Meadows. It was acknowledged that this uncertain situation has raised a lot of difficulty for the horsemen as well as for the dogmen and that everyone has been inconvenienced. Commissioner Towslee raised the question as to rather than considering the application of a winter race meet that the commission instead consider the possibility of an extension of the current race meet. After taking a ten minute break, the commission took testimony from the following individuals: Dick Cartney and Dave Benson, HBPA; Dick Occhiuto; Bruce Loudon and Jack Root, DVM, OTBA; Curtis Washburn, OGA; Vince Bruno, OGBA; Sam Dronen; Arthur Kennedy, DVM; Sue Hurley; Frank Shirk and Juanita Jones. After hearing testimony and discussing the options available to them, it was the consensus of the commission not to grant a winter race meet.

ACTION: MOTION(Gilmour) One week from today prior to noon (October 4, 2001) have the commission meet telephonically to review the status of the Portland Meadows/EPA situation and, if necessary, consider the possibility of granting a two week extension of the current MGP race meet.

VOTE: 3 Aye, 0 Nay, 1 Excused, 1 Recused

There being no further business, the meeting was adjourned.