

MINUTES
OREGON RACING COMMISSION
OCTOBER 18, 2001

The Oregon Racing Commission met on Thursday, October 18, 2001, at 1:30 p.m. for their regular meeting in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair; Tom Towslee, Lisa Metcalf Jeff Gilmour and Todd Thorne. Agenda items were discussed in the following order with resulting actions:

1. Approval of September 27, 2001, Minutes

ACTION: MOTION(Thorne) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

2. Approval of October 4, 2001, Telephone Conference Minutes

ACTION: MOTION(Towslee) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

3. MEC Oregon Racing, Inc. Race Meet Issues

Scott Daruty, Magna Entertainment, reported they have reached an agreement in principle with the EPA which allowed the horses to return to Portland Meadows backside a little over a week ago. October 27th will be the first day of live racing with ten races on that day and eleven races on the second day. Art McFadden, Magna Oregon, reported they had a priority list for getting the facility ready for opening day. The backside was done first. The horsemen are particularly pleased about the race track. The second priority is the OTB area which has been moved from the Club House to the Main Line where it will be totally self-contained. The third priority is everything else, i.e., new carpet and painting in Turf Club, renovation of the Club House which will include table-top TVs, expansion of the women's jockey room which includes a new sauna and a newly built sauna in the men's jockey room. Commissioner Towslee stated he noticed this morning when at the track that the general attitude on the backside was more positive than he has ever seen and that they are really looking forward to the beginning of this race meet.

Chair Walters congratulated the people from Magna for taking quite a bit of risk to insure that there would be a race meet at Portland Meadows this year, stating this race meet is absolutely vital to Oregon racing. He also congratulated his colleagues on the commission with respect to their handling of issues relating to Magna's applications since he has had to sit out on those discussions due to conflict of interest. He also congratulated the horsemen for their show of support of this industry and particularly this race meet in their discussions with the EPA. Chair Walters stated in his ten years with the commission he couldn't remember a time when the industry pulled together better than it did over this issue. He concluded his comments by saying in the future there is going to be a need for more working together if racing is going to continue in Oregon and if Magna is going to be able to develop its plans in Oregon.

4. HBPA 2001-2002 Proposed Budget

Dave Benson and Dick Cartney were present to answer any questions. Steve Barham recommended approval.

ACTION: MOTION(Metcalf) Approve the proposed budget.
VOTE: 5 Aye, 0 Nay

5. OGA Request for Kennel Bonus from Proceeds of Real Estate Sale and Held Retirement Funds

Dick Gage, president; Curtis Washburn, board member; and Nancy Gorman, secretary; were present. Mr. Gage reported that when the new board went over their budget they discovered they had a surplus of money which was derived from the sale of property and also from a retirement program that was curtailed. The previous board felt there would not be enough funds available to cover the expenses of their budget. In order to reduce some of their expenses, the decision was made by the previous board to curtail the retirement program. The total amount of money in the retirement program was \$31,500. The money from the sale of the property, \$50,023, was put into the operating account. For the first two weeks of the racing season an additional \$2,000 was added to the purses. After the first two weeks of the meet the previous board, again as a cost-cutting measure, discontinued the additional funds to purses, which left a total of \$46,000 from the sale of the property. They also have money from volunteer mileage which came to \$2,500, bringing the extra amount to \$80,000. The current board is requesting approval to disburse the funds as follows: 65% of the \$80,000 to go to the thirteen booked kennels (\$52,000) and 35% to the Oregon-bred greyhounds that competed and earned money (\$28,000) and would be distributed on a percentage basis on their earnings. After hearing the report commissioners voiced concerns as to how the miscalculation of funds came about and the method of payments to the thirteen kennels, the commission decided to table this agenda item until the November meeting.

6. Multnomah Greyhound Park End of Meet Report

Carl Wilson reported the live handle was up 6% over last year even though there was one less performance, on track live handle was up 1.5%, total handle was down 5% due to simulcast handle combined horses and greyhounds being down 10%. The week of September 11th they were down \$300,000. Highlights of the meet included the first repeat Derby winner since 1980 who also set a new track record, their first ordered finish since 1972, a wonderful group of young pups and a great Sapling Derby on closing night. There were four new kennels and one of the trainers from that group, Susan Titsworth of Premier Kennel, was the Trainer of the Year. Following the report there was discussion as to possible reasons for the decline in simulcast handle. In the horse handle short fields was thought to be a significant factor. Mr. Wilson also stated they have lost some big players over the past few years who wagered on both horse and greyhound simulcasts and he wasn't entirely sure as to why that has happened. Some of that could be attributed to players having not been successful and who are taking some time to build up their bankrolls. Others may be wagering through Las Vegas, wagering off shore or through our licensed hubs.

7. Confirmation of Next Commission Meeting - November 15, 2001

The next meeting will take place on Thursday, November 15, 2001.

8. OAR 462-120-0130 - Granting Race Meet Licenses for Both Classes of Racing to The Same Licensee or at The Same Location

Since commission action on this item would involve Magna Entertainment Corporation, Chair Walters recused himself and turned the meeting over to Commissioner Towslee. Steve Barham stated this proposed rule was the result of discussion at a prior meeting during which the commission directed the executive director to begin the rulemaking process.

ACTION: MOTION(Gilmour) Adopt OAR 462-120-0130 as presented.

VOTE: 4 Aye, 0 Nay, 1 Recused

The meeting was turned back over to Chair Walters.

9. Approval of OTBA 2001-2002 Fiscal Budget and 2001 Grants Pass Breeder Awards

a. Fiscal Budget for 2001-2002

Steve Barham recommended approval.

ACTION: MOTION(Thorne) Approve proposed 2001-2002 OTBA budget.

VOTE: 5 Aye, 0 Nay

b. Grants Pass Breeder Awards for 2001

Steve Barham recommended approval.

ACTION: MOTION(Metcalf) Approve breeder awards.

VOTE: 5 Aye, 0 Nay

10. Letter from Magna Entertainment Corp. Regarding 2002 Multnomah Greyhound Park Race Meet

Following is a transcript of this item:

Walters: We got a letter regarding contingency planning in case something happens with respect to the EPA compliance. I understood from the letter that that's something you didn't need action on today but you were looking for action perhaps at a later meeting that I would recuse myself from.

Daruty: Actually we would like some action today, and I'd be happy to come up.

Walters: Why don't you do that, Scott, and I will recuse myself and turn it over to Commissioner Towslee.

Towslee: Does everybody have a copy of that letter?

Morgan: It was attached to the agendas I handed out today.

Daruty: What we would like the commission to consider is what we view as a very unlikely scenario, but one that we feel should be addressed today. As we all know, the situation with the EPA has been resolved in principle but there're still a lot of things that have to happen before our system is built and they've fully signed off on it. The horsemen and Magna in working with the EPA to try to resolve the issue ultimately agreed with the EPA that if we get to February 15th of this coming year and our storm water system is not fully operational by that date, then if the EPA requires we would remove horses from the site. I've said this many times before and I'll repeat it again Magna's going to do everything it can possibly do to meet that February 15th date. We also acknowledge that that's going to be an incredibly difficult date to meet. That does not give us a lot of time, particularly with the permit process with the city we're going to have to go through. We think we're going to get a lot of help and cooperation from the city but we still are not sure we can meet that February 15th date. Magna, and this is no great secret, believes it's very important that year round simulcasting continue in the state of Oregon. It's also imperative to Magna that that simulcasting be done by Magna

through one of its tracks. What we are afraid because it's out of our control is if we use all of our efforts to meet this February 15th date but cannot do it and if the EPA follows through with what is hinted it might do, hasn't said it will do it but it's left itself the ability to require us to move the horses off on February 15th, we would all find ourselves as an industry in a situation where there's no live meet being run and the simulcasting could theoretically, unless we came up with some other solution, have to be shut down. What we would like is the commission to approve today, and it would be contingent, of course, upon us submitting a formal license application and having all the contracts in place and everything else, but we would like to know today that the commission would permit us to open the greyhound meet early in the event that the thoroughbred meet has to be shut down early. Again, this is a backup plan and this is only in the event that we use our diligent efforts to complete the system but aren't able to do it by the deadline the EPA has imposed.

- Towslee: Scott, in your letter you say here that the EPA has advised us that they may bring in enforcement action or impose fines or sanctions after February 15th. Who at EPA advised you of that?
- Daruty: They have not said that they will do that but what they have done is provided us with a Consent Decree draft, and it's still a work in progress, but the way it has been proposed is on the 15th they have the ability to tell us to get the horses off. If they tell us that and we don't, they're going to bring the hammer down on us.
- Towslee: Okay. How does that square with the comments made by Mr. Loiselle at our October 2nd [sic] conference call? I went back and read those minutes today and I saw a great deal of latitude on his part in how they would enforce, how this would be a priority for the enforcement efforts. Are you getting mixed messages from the EPA about how hard that February 15th date is or is that sort of an obvious question?
- Daruty: Well, we're getting the "read between the lines" kind of response and literally those words but at the same time they're holding that date over our head as a way, and I don't blame them for this in some respects, but as a way of making sure we're incentivized to work as quickly as we can. But I believe that that date, given all the things we have to do before our system's complete, that date is going to be extraordinarily difficult to meet.
- Towslee: I don't have a problem with giving some kind of extremely tentative approval to a meet that would start on the 15th of February 'cause I don't think you're ever going to get there. I don't think that's ever going to be an issue. I'm still going by what I heard and understood and insinuated from Mr. Loiselle's comments that this would, as long as you continue to make an effort to solve the problem and are making progress in doing the things that indicate that the problem will be solved in the near future that the February 15th was not a hard date in which everybody turns back into a pumpkin.
- Daruty: I'd like to give you two examples, if I may, of some of the continuing struggles we're facing and I ultimately think that this is all going to work out and be fine. I spoke with the EPA on Tuesday and was requested to submit information regarding a 25 year system. I kind of scratched my head and said I thought we had resolved that issue, but they want to see the information and make their own determination as to whether that is economically feasible or not. Again, everybody here was on the call when it pretty clearly was, I don't want to use the word agreed upon because they said it wasn't an agreement, but it was read between the lines, it's going to be okay. And here we are facing more questions on whether or not our system is appropriate or not. Another example I had clearly specified on a letter I sent to the EPA here are the best management practices, spelled out clearly on a numbered piece of paper. Here they are, this is what we're going to do. We got a phone call yesterday with another best management practice they wanted us to put in place, which is, I wasn't in the conversation, the phone call was to Art so Art correct me if I'm not saying this right. The way it started it was basically keep the horses inside when it rains, and that's a little problematic. So, we will continue to work with the EPA and I believe we will get this resolved, but they are a difficult organization sometimes because they have a lot of different people involved and that's what causes us concern. We're going to do everything we can, we're going to do what we say and we're going to go above and beyond that, but we are at a position where within the next week or so we're going to be making monetary investments in this state and in this industry that are going to make everything we've spent up to this date pale in comparison. And before doing that it's important to us that we

know that our long-term strategy is not in jeopardy by something the EPA might do or by them changing their mind. So, that's why we're here today asking for this, and I realize it's a little bit unusual but we're in a little bit of an unusual situation.

Towslee: Other commissioners, questions or comments?

Metcalfe: I have a couple of comments and questions. I think what it's going to come down to is the word diligent, and that's such a gray open-to-interpretation adjective that we're using here, and it's going to be first what you consider diligent and what the EPA does especially at the February 15th deadline because they're going to look at have you been diligent. And are they going to look at the amount of money you're spending or are they going to look at the improvements you're making or are they going to look at improvements to the environment. And so, really the whole gray area, and as you said it's very difficult because you're talking with different people. Can you review with me the process here that you're going through? First, you have to have something inked, an agreement between the two. Then you have your engineers coming up with plans. Can your engineers work at the same time?

Daruty: Yes.

Metcalfe: And where are they now if they are working? And thirdly, we have the public time that , and fourth, we go for the permit. That all has to happen.

Daruty: Yes, but there's two tracks going simultaneously. Let me set aside the Consent Decree issue for a moment and let's just talk about what do we need to do to get out system built. First thing, we need to have the engineers finish the final plans. I spoke with them yesterday and they've told me they're going to have them to me next Friday, so eight days from now we'll have the final plans. We need a little bit of time, not a lot, but a little bit of time to review them and make sure they fit with our budget and everything else. Basically by the end of the month we will be able to go to the city and start moving forward with the permitting. Now, that's subject to the EPA, we have a decision to make that we haven't made yet, but the EPA wants to review the plans as well.

Metcalfe: That's the seven day request they have that they move from thirty days to seven days or thirty days to ten days they have to review those plans, too?

Daruty: Yeah.

Metcalfe: Are they still telling you that?

Daruty: I haven't heard anybody actually say yeah, we'll do it in seven days. They said we'll do it in less than thirty. In any event, I think we're going to submit both of those at the same time, and if the EPA's okay with our plans, which we expect they will be, then we'll be that far down the road. On the other hand if the EPA comes back and says move this and do that then we'll have to start the city process over again. Once we start the city process we've been told it was a 120 day process. A lot of people have made a lot of inquiries and offered support to help reduce that time period, so we are hopeful that that will happen. We were also informed by the city for the first time last week that because we're spending a certain amount of money on a site that they consider a nonconforming use that we get the honor of spending a bunch of more money on a bunch of other stuff that we don't really want to do but that the city wants us to do. We've got to work through all those issues which are time consuming. Let's be honest. This is another wrinkle. So, while our engineers originally came back and said yeah, with all the help we're getting we think that 120 days be significantly reduced, they then came back and said the time we saved is probably going to be used on this other thing that they brought up. And then when we're done with that process we still have to build the thing. We don't want to underestimate that there's a lot of work that has to be done, and we anticipate thirty to sixty days for that.

Metcalfe: I guess my own interpretation of diligent is if you have the plans into the EPA that even by February 15th that they cannot deny that that is, that you are doing your part.

Daruty: In our request, if I didn't make this clear, we can and whatever wording the commission adopts it or so chooses, but I would leave to you the question of where we go with it. That's not something that we're going to come to you and say we were diligent so we get this.

Metcalf: I want there to be no misinterpretations and that's why we're talking about it now. What will we find when you request, if your requesting this meet if you would, and I agree with Commissioner Towslee that the chances are not very good but I want to leave no stone unturned here.

Daruty: In this very unfortunate circumstance if it happens we would show you what we did and you would make a determination were these guys diligent or not, and we're perfectly willing leaving that to your discretion.

Thorne: I'm just going to comment. I want to echo my fellow commissioners' comments. I'm a little bit nervous and tentative about doing what you're proposing that we do and it has to do with the diligent issue. I'm going to be very interested in seeing that that's carried through. But from your standpoint I also understand that you have a business risk here and I understand that, and I think we all do, so that would be the reason where I can overcome my tentativeness, but I am a little bit tentative just so you all know and that's on the record and I think we all are.

Daruty: I understand that very much, and one thing that I think that's important , I see your perspective. To help explain Magna's perspective, we were very, very nervous ten days ago when we made the decision to allow the horses to come back and to do that with much, much less comfort than we would have liked to have had. At the time we knew that we were taking a risk, but at the same time knew we had another commission meeting prior to the point where we were going to be irrevocably committed on the significant investment. Again, it's important to us in our business strategies to know that when we basically close on the purchase of the greyhound track within the next week or so and make some other significant financial commitments that we know that we control our own destiny in terms of simulcasting. If we screw up that's our fault, but if we do everything we say we're going to do we know what the outcome will be.

Towslee: I think in defining diligence here I would not hold you hostage to the time it takes to get a permit either local or federal bureaucracy. That's going to be their call, but if you can demonstrate to us, and I sure that you'll be able to, that you're making the effort to get through this bureaucracy in the time it takes to get a permit I don't know how we could hold you hostage to their timelines. I don't know what we want to do in the way of a...

Metcalf: Can I suggest something that we can determine if it's fair and acceptable as I still like things really well defined. The only thing depends on the EPA's acceptance of those plans, and if they come up with a 25 year rule with these plans we will be on your side on this. It's unfair. What if we trade the plans for what you're asking? You submit those engineering plans as predicted by the end of the month and by the next commission meeting. Is that acceptable that, as far as I'm concerned that's more than diligent. They are not only making amendments to the facility but they're also looking at plans to the EPA, and if the EPA is screwing around with them, I don't know.

Thorne: I'd sort of be interested in Scott's comments.

Daruty: I appreciate the suggestion. I'm not sure if I were the commission that would be enough for me and I'm also not sure, honestly, that well let's say it takes us a week longer to get our plans but we still do everything and get it done. I'd rather have, it's worse for me to have a non defined definition, but I'd rather say the diligence and the discretion of the commission.

Metcalf: You're asking us to decide today, though.

Daruty: No. I'm asking you to...

Metcalf: Oh, I thought that's what this letter we wanted to decide today.

Daruty: No. If we come back in several months and say here we've hit all these problems, here's the twenty things we did and here's the EPA's response.

Metcalf: We're obviously open to it.

Towslee: I think what we probably want to do here is agree in theory that you have a right to continue simulcasting year round and that we would prefer that that be horse racing until April and dog racing in May. We can address moving those dates at some time in the future, but I think tentatively all we want to do here is just say to you that you have the right to continue simulcasting year round since you do have the license for both tracks. If we have to make adjustments in the seasons to accommodate other problems we can do that at a later date. Does that get you where you want to be?

Daruty: Absolutely.

McFadden: Mr. Chairman, I have a comment on diligence but I'd like to check with Scott if it's appropriate. Could I have just a second?

Towslee: Feel free to huddle.

(Discussion between Scott Daruty and Art McFadden)

McFadden: I'm not going to make a comment on diligence. Had a good idea but my boss overruled.

Gilmour: I'd like to make a comment. I think it's pretty evident to the commission members and Magna that we're trying to work together. You're the only show in town basically and we're going to work with you. We need the comfort, and I think it's been well spoken here, we need the comfort of due diligence from you which I think means you come to every meeting and tell us where you're at. Let us know where the problems are, let us know where the politics need to be applied. We want to work with you because, very frankly, without you we have county fair meets, pure and simple, bottom line.

Daruty: We will here at the regular meetings to provide updates, and I never hesitate to pick up the phone and call Mr. Barham and let him know what's going on as well, so we'll continue to do that. We do acknowledge the cooperation of the commission and of everybody in the industry and we wouldn't be where we are today if it wasn't for everybody's assistance.

Towslee: Also, from my perspective I'm dealing with what I heard Bub say on October 2nd[sic]. Until I hear something different from the EPA or see something different in writing I'm going to take him at his word that the latitude that he was providing in that conversation still exists. That's why I don't have a problem with some kind of tentative commitment to a February 15th meet because based on what I heard in that conference we're not going to get there. But I appreciate your cautiousness as always, Scott. Do we need a motion here? I don't believe that we do.

Barham: If Scott or Magna wants a formal commitment to what you just said, where he said that yeah, that would be good, I would think you would need a motion to make it formal. If he's saying I got a public record and tape recording of a meeting and that's formal enough, then maybe you don't.

Daruty: If it would be okay with the commission, my preference would be to have a formal motion to what you just said if you can remember it and repeat it.

Barham: We have it on tape so you can just move it.

Gilmour: I'll move that. He needs something tangible to take back.

Thorne: I'll move whatever Commissioner Towslee said.

Towslee: To make sure that we're clear here is that we recognize your right to simulcast year round as the operators of both the horse track and the dog track. Is that the extent of the motion?

Daruty: And I think you mentioned that if we need, because of circumstances beyond all of our control, to juggle the windows a little bit that's...

Gilmour: No, to present us with change of dates for applications.

Towslee: Right.

Daruty: I'm sorry.

Gilmour: You would need to bring us change of dates, and we would welcome under the circumstance your right to bring us change of dates for our consideration.

Towslee: I have a motion? Any more discussion? All those in favor say aye.

Thorne: Aye.

Gilmour: Aye.

Metcalf: Aye.

Towslee: Aye. Opposed? Thank you.

Daruty: Thank you.

The meeting was turned back over to Chair Walters.

There being no further business, the meeting was adjourned.