

MINUTES

OREGON RACING COMMISSION DECEMBER 21, 2001

The Oregon Racing Commission met on Friday, December 21, 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; Vice Chair Tom Towslee, Lisa Metcalf Jeff Gilmour and Todd Thorne. Agenda items were discussed in the following order with resulting actions:

1. Approval of November 15, 2001, Minutes

ACTION: MOTION(Metcalf) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

2. Changes in Implementing Policy Dealing With Approval for Agency Head Transactions

Steve Barham reported there was a rule change dealing with agency head transactions and his memo shows how certain approvals are currently being handled as well as his recommended methods in order to be in compliance with the rule change. In essence it delegates to the commission chair to provide the necessary approvals based on the recommendation of Carol Morgan.

ACTION: MOTION(Thorne) Approve the recommended changes submitted by Mr. Barham.

VOTE: 5 Aye, 0 Nay

3. The Racing Channel, Inc. 2001-2002 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Following is a transcript of the discussion portion of The Racing Channel, Inc. application for a hub license:

Walters: Welcome, gentlemen. If you could identify yourselves for our record, please.

Bosworth: Mr. Chair, commissioners, my name is Duane Bosworth, attorney representing The Racing Channel, Inc. here in its hub license application. With me today is Mr. William Hogwood who's the president of The Racing Channel, Inc., he's also the founder of Greenwood Racing, Inc. With me also are Mr. Hogwood's colleagues Mr. John Dixon and Mr. Joe Michaels.

Walters: Welcome, gentlemen. We have your license application. I think we've all gone through it and I know you've had some further discussions with the executive director concerning that, but do you have a presentation you'd like to make or some further remarks?

Bosworth: I don't believe so, Mr. Chair. I think that at this time we have submitted the application and we're here to answer any and all questions, but I believe that we won't take up your time further with a prepared presentation.

Walters: Are there any questions or comments by members of the commission? I might point out to the other commissioners that among the items handed out today is an insert to the proposed operating plan that has a more detailed description of the mitigation plan that Greenwood Racing or The Racing Channel intends to implement. They submitted that for our information. Are there any questions about that additional submittal or any other portions of the application? Steve, did you have any comments you wanted to make?

Barham: Just to advise the commission, Steve Roden and I went to Philadelphia to review the technology being used and found it very good. So anything as far as that is concerned we're recommending approval. In the operating plan you have starting on page 17 of the application... Oh, and background checks on all individuals came back clean, and you have a memo from Bob Mannix on

that. There are two portions of this operation. First is the multi-jurisdictional hub account wagering portion like we have in a number of other applications. The second is an international marketing service which takes wagers from the UK through legal bookmakers over there which is much like track to track merged pool simulcasting in this country. The methods of deposit on page 18 deal with those individual account holders. On page 20 you can, where they're talking about this merged pooling with the UK interests, the money is transferred and settlements are made on a weekly basis which is just like race tracks do that are merged pool simulcasting. So, this is an added thing from what we've had. In reviewing the rules of multi-jurisdictional hubs it's open, I mean, it's within those rules as long as they put it in their operating plan but it is something different and I need to point that out and the commission may or may not have any questions on that. Again, I kind of gasped a little bit when I first heard about it, but then the more I looked at it, the more I talked to people, it really is just about the same thing. I don't have anything else on it. I would recommend approval.

Walters: Gentlemen, when do you plan to start operations in Oregon?

Hogwood: Mr. Dixon.

Dixon: We're hoping by the middle of February at the latest. The only thing that might hold us up is the T-1 lines from the phone company and that's sixty days.

Walters: Yes, that's a problem dealing with them. If you would just for the benefit of the members of the commission if you could describe in a little more detail, I know you have a description in here, you plans for the international market and how you see that developing and the role that that plays in your proposed operating plan.

Hogwood: Mr. Dixon will do that because he'd be responsible for technical and operational issues.

Walters: That's fine.

Dixon: Essentially what we plan to do is to allow licensed wagering operators in those jurisdictions, we've got a list in the application, to accept wagers on American racing from their customers, their account holders, and then pool those bets through the Oregon hub and ultimately back to the host tracks in the US. Really, much the same as Steve just mentioned much the same way that the tracks simulcast in the US and merge pools between each other. It's really simple. Do you want me to get into detail on that?

Walters: I take it, one thing I was interested in was that you obviously have done market research and you know like this is a market that's worth developing. It seems like an exciting prospect to me, so if you could...

Dixon: If we just consider the UK for a moment, the horse racing wagering market in the UK is about a \$6 billion dollar annual market, so obviously there's a great interest in horse racing. We believe that American racing is a good place to... (coughing) It's an ideal time zone in Europe because afternoon product here is evening product in the UK and Europe and there is very little quality racing in the UK and Europe during that timeframe. Again, what we've done is we've got, as we say in the application, we have an associated company that has a television show that we put on over there showing American racing, so we believe we've created an interest in the product. We've filled in the market and that's going to be for the benefit of American racing, putting new money into the pools we weren't previously able to have access.

Walters: It's somewhat interesting, it's been ten years ago that I was over in the UK and I went to Ascot and I went to Goodwood, and the people I talked to there were actually scoffed a bit at American racing and said well, gee, it's very boring and they all run the same direction around the same size tracks and same surfaces and here you have to know whether a horse likes wide sweeping turns or how the horse runs uphill and downhill and it's a lot more interesting wagering. I take it you feel that you've developed an interest in American racing among bettors in the UK as well.

Dixon: We do. In recent years as well there are a couple of all-weather tracks now that run quite a lot through the winter in England, so they're used to the idea now of racing on dirt as well as turf. I believe there will be significant interest from that market.

Walters: Just one other question. When the licensed bookmaking operations in the UK take the bets and then they basically merge their pools, basically what they're paid is track odds here unlike, my understanding the way bookmakers usually take a bet is you get the odds at the time you bet in the UK, but this will be simply they're paying track odds just like everybody else.

Dixon: Yes, exactly.

Walters: And one last question. You did include a letter in your application confirming that as far as the UK is concerned this operation is perfectly legal.

Dixon: Yes, we did.

Walters: Any other questions by members of the commission? Is there a motion?

ACTION: MOTION(Thorne) Approve hub license application for 2001-2002 submitted by The Racing Channel, Inc.

VOTE: 5 Aye, 0 Nay

4. Backstretch Improvement Fund Budget

Dick Cartney presented a proposed backstretch improvement fund budget for the coming year which was agreed upon by representatives from the HBPA, OQHRA and Magna Oregon. Steve Barham noted \$15,000 is for the listed projects and the rest of the funds are to be directed toward the waste water project costs. The organizations feel that since Magna has invested so much on the backside already to get it in good working order for the race meet and has done more than any other race meet operator in the past, they decided to use some of the funds for the waste water project. Mr. Barham recommended approval of the budget.

ACTION: MOTION(Gilmour) Approve the backstretch improvement fund budget as submitted.

VOTE: 5 Aye, 0 Nay

5. Portland Meadows Race Meet Report

While waiting for representatives to come forward to present their report, Commissioner Jeff Gilmour commented that it was nice to see Roger Nyquist in the audience, to which Chair Walters asked the recorder to make sure that Commissioner Gilmour's statement got into the minutes.

Carl Wilson reported the live handle has continued to be very good compared to last year. Currently the average Oregon daily live handle is up 18%. The simulcast percentage is improving. Last month they were down 6.4% and they are now down 4.2%. The horse simulcast is down 2% and the greyhound simulcast is down 10%. The total Oregon handle is also gradually improving. The field size averaged 8.14 starters through last weekend since the beginning of the meet. Mr. Wilson reported on the events of Oregon Championship Day which took place last weekend.

Following is a transcript of Art McFadden's report:

McFadden: Here's the report regarding the EPA problem. We're going just as fast as we can and it's going very well. I think in the last month I predicted we were going to miss it by three to six weeks, I'll still stick with that, three to six weeks. If an ice storm came along I suppose you could add a couple of weeks and visa versa. Everything just seems to be moving perfectly now, and it could well be less than

that. But nevertheless, we're going to miss the February 15th date. So, what does that mean? We had three weeks ago a long eight-hour session with the two EPA lawyers from Washington, DC, David Allnutt and Fred Phillips and also Dan Opalski on the EPA side of the table, and on our side of the table was Tom Moyer's lawyer, Alan Laster, myself and Scott Daruty. It seemed like we were arguing over every sentence, but basically the 25-page Consent Decree grew to become a 35-page Consent Decree, and we're now in the third mark-up. It's going very well because we seem to be winning the big ones and losing the little ones, and I certainly don't consider the February 15th to be a little one, but they've got some really stringent requirements. On the BMPs, for instance, changing the wood chips once a month, and we've got 76 of them, so it's a problem for us but we agreed to that because the biggest thing that Scott is worried about is that even though we have a penalty matrix they've got in two different places in the Consent Decree they've got language that says in addition to the penalty matrix we can fine you whatever we feel like fining you. We just have to get that out of there or we don't want to spend the \$600,000 to put the project in, and Scott is succeeding in that regard. As I said, the big things seem to be going okay. As far as the timing, I've spent a lot of time with our planners as did Don Amos who was here last week. Don Amos is the chief operating officer of MEC, and he came out here specifically for that purpose and another purpose, but we spent the afternoon with our planners David Evans & Associates just to get the timing down where the problems are and where we're at, and it's going very well. The permit process is going well mainly because our lead planner, Dana Sigfried is her name, she and her associates have had many pre-application meetings with the planning staff of the City of Portland, and that has really kind of greased this thing so when it did hit about three weeks ago it just hit running. I'm hoping for a four week process to get the permit completed as opposed to 120 days which we all feared once upon a time, and Mr. Ferryman had to suffer through once upon a time. It took him 120 days to construct that manure transfer barn which he hoped to have in place in the fall. They were running against an order from the EPA saying he can't run if you're going to discharge and he kept running and they're having a lawsuit over that right now, but that's not our problem, although that's why Fred Phillips was in town. He was in town for conferences with the Ferryman Company regarding their EPA problems and then he's the Department of Justice lawyer with David Allnutt so he weighed in on our project as well. He seems to be a reasonable guy and easy to work with. Bub Loiselle is certainly a reasonable guy and good to work with. Mike Bissel, I believe is his last name, is the same, but we're having, I just don't mind saying it on the record, we're just having all kinds of problems with David Allnutt and now the local EPA guy whose name is Dan Opalski. Dan is extremely critical of our hotwalker setup. So, that's kind of where we're at with the EPA. I realize I'm not being very specific. Let me try to be a little more so. We planned the construction period to be 60 days, and that hasn't changed. We're going out to bid right now with our general which should be done before the first of the year. He'll be selected and select his subs and get going. If everything got started by January 15th we would miss it by, and then the 60 days was correct, we'd miss it by four weeks but I think we can do even better than that. It seems like we're moving right ahead, and certainly we will be underway with substantial progress by February 15th. We're not stopping no matter what. We're just plowing through with this deal regardless of our problem whether or not we have to remove the horses on February 15th which was our promise to them to give them to let us get open. A couple of other comments. When Don was here he bought a dump truck and a water truck. He also bought a second truck with just a cab which we're going to put our old water truck on so we'll have two water trucks. Our Hyster lift repair for the manure barn was also one of his projects while he was here. I only mention that, and these are past tense. We bought them, we didn't buy them on time. We spent a lot of money with track equipment. We have recently purchased \$163,000 worth of tractors. We certainly do not want to end the meet on February 15th. We've done all this to continue our progress which has been super in every way. The cooperation of the horsemen, the morale on the frontside, and it's just the end of the world for us if we have to end it all on February 15th. We all remember the conference call wherein Bub Loiselle said something about substantial progress or I will not be, my enforcement will not kick in if there is substantial progress, and so we're all hoping that that will be the case. While we were meeting with the two DOJ lawyers, Allnutt and Phillips, that morning the press release came out from the environmental group that is suing us. Sadly the press release said "for dumping manure into Columbia Slough", which is absolutely not true, of course, everybody knows that. But then if you read the 60-day letter, you know we're going to sue you unless you fix this within 60 days, that was correct. It did say that the contaminated waste water was going into the Columbia Slough. Anyway, we provided the DOJ lawyers because they asked, I'm not sure we would have volunteered it, they asked to see the letter which Scott and I gave them, and that morning they picked up *The Oregonian*

and read that story. That didn't bother us any. We're not going to lose any handle because people might think we're polluting or the wacko environmentalists are going to put us on their watch list. We don't think that hurt us a bit, but what it did do is it alerted these two guys that happened to be in town that day. They are sensitive to the public. The press release mentioned a public forum - we will sue you in federal court under the provisions of the Clean Water Act because there is a citizen input in some fashion, and they picked up those words out of the press release and it did make our job, it hurt us. That press release really hurt us. These people did hurt us because of our relationship with the EPA which worsened a little bit because of that article. You might be interested to know that Steve Pfeiffer is our local land use counsel and I asked Scott yesterday, are we answering that letter or not, and he said Steve has spent a lot of time on it, the notice to sue letter, and whether or not he does I'm not sure. He probably will in some fashion answer the letter, but we are not concerned about losing a lawsuit such as that because the Consent Decree will trump everything. As I say, we have been into this thing for it seems like six months now and we're into our third markup and we're moving along pretty well. We're losing the little ones, in my opinion and Scott's also, and winning the big ones. Dan Opalski's comments are that the significant issues remain, not just the details. The deal breakers will come from on high, it won't come from the Seattle office, it'll come from Washington, DC at the DOJ level, and then he defended his agency by saying some language is standard in all contracts and you guys are trying to get it out of this contract and, of course, we have to or we can't spend the money. We will probably, I believe I said the last commission meeting, we'd have it signed in two weeks. I'm still going to say two weeks. It's not signed yet, but it seems to be substantially completed, the Consent Decree. They do have allowable discretion for the compliance schedule. This is by precedent, they've done it in other regions, and we're continuing to argue we're the good guys - look what we're doing, we're spending the money, give us a break. It seems to be working. There's many issues, if you'd like me to get into them and I hope you don't, regarding the Consent Decree. It's quite complicated and quite legal, but I'd be glad to answer any questions regarding that, and also our construction deadline which we tried to put in the Consent Decree and failed. They would not permit that. We wanted something in there that if we have substantial compliance by February 15th that you will not force us to have the horses leave the grounds. Oh, also Christie Todd Whitman sent a letter to Senator Durfler and also a letter to Betsy Close wherein she mentioned that the horsemen and Magna had agreed to remove the horses from the grounds on February 15th if we hadn't completed the project. So, we've got in an odd way we've kind of got her against us also. I'm saying 50/50 and every time I say it Scott wincses. But anyway, I think we've got a 50/50 chance to have the, we're not going to finish by February 15th, but to have the EPA give us some more time to complete the project which will probably be three or four or five or six weeks later.

Walters: Art, what is the status of the discussions on Consent Decree? Are there meetings scheduled? Where are you in that process?

McFadden: The one long meeting we had here in town was set up because Fred Phillips was in town. That's why it was set up here, but basically they're telephone conferences, well, they're not even conferences, it's a one-on-one deal between Scott and David Allnutt. Scott's in Los Angeles and David Allnutt is in Washington, DC, and they talk not daily but they talk more than weekly, twice a week. Incidentally, I should have mentioned this. Scott got snowed in in Toronto yesterday or he certainly would have been here, and he sends his apologies. Well, he got back to LA this morning and he could not attend the meeting, and he asked me to say that to you. But he is talking to David weekly, and Scott's confident we're going to get it signed and that is the biggy, that is everything. That Consent Decree is everything. It's got the BMPs, the best management practices, each one of which is seems like we argue...oh, they've also come up with some new ones. That's one reason this thing is delayed. Just last week they came up with a filtration requirement and I don't know where we're at on that. We were going, we don't mind doing it but what they're asking for is not a good idea. Remember, when the project's complete we're putting it all in the city sewer. Why clean it up since it's just going into the sewer? So, we're having a filtration argument now which is a new one but it is not significant. That one will not defeat the deal.

Walters: Are there questions or comments by members of the commission concerning the report? Commissioner Gilmour.

Gilmour: Did Scott have a boy or girl?

McFadden: He had a little girl which he named after his mother and his wife's mother.

Gilmour: Good. Just a comment. The new wave that's hit at least the State of Oregon and some other places is when they're dealing with a general contractor the incentive clause, as in if you can get this job done quicker there is more money involved, and you might think about that with this particular circumstance.

McFadden: I agree with you. That is what's going on in the contractor business, and as far I know that's not been discussed. David Evans & Company, they've sent out the application, solicited applications from the contractors and I'm not so sure that is in there. I will bring that up. I meet with them once a week.

Gilmour: I know the State of Oregon, particularly on the interstate bridge, that was very worthwhile to the contractor, but they got the job done right and quickly because of the incentive. So, in your case where time is of the essence it may be, whoever gets the contract, they might...

McFadden: That's a good idea.

Gilmour: Just a thought.

McFadden: And as far as I know we don't have such a thing in there.

Walters: Other questions?

Towslee: Are you asking for something today?

McFadden: In this regard, number one I'm giving a report because it's of interest to everybody including the audience.

Towslee: Right.

McFadden: And number two just to recap where we are, where are we Steve? It was the request of Scott...

Towslee: Let me tell you what I think you are.

McFadden: Okay.

Towslee: You want permission to simulcast past February 15th, correct?

McFadden: Ah, if, well hopefully we want the EPA to give us a break and the problem doesn't come up. That's number one. Number two, if it does come up we do have a problem with the dog simulcasting. That's just a problem we'd prefer to avoid. It's just cranking up Multnomah Greyhound Park in the wintertime, soliciting the dogs to run the meet...

Walters: Art, excuse me. Let me ask it to you this way, and I think what Commissioner Towslee is getting at is there are two February 15th scenarios. One is that, for whatever reason, whether this commission can do something or whether horse men and women can again get together and put some pressure on the EPA, whether they have a new awakening at the EPA about the fact that they finally have someone here who's ready to solve this problem and let you run past February 15th. Obviously, that's the best scenario. The other scenario is what happens if the EPA says no, absolutely not, you agreed that the horses are going to go off on February 15th, the horsemen agreed to that and they're going to go off on February 15th. What would you do then with respect to the storm water project? What would your plans be with respect to the rest of this race meet and what would your plans be for future race meets?

McFadden: That's an easy answer. We're here for four years for sure. We're going to, I've already told the horsemen that we plan to open this coming summer for training and no matter what happens we're going to continue with the EPA project. The only thing that could stop the EPA project is if the

Consent Decree doesn't get signed, and that's going to happen in the next week or two. But if it's signed we go forward just as fast as we can.

Walters: Assuming you had to take the horses out on February 15th and say, for example, you got the project done two weeks later, three weeks later. What would your views be about resuming and finishing out this race meet?

McFadden: If we can do it, we'll do it. We'll work out a deal with the horsemen, if they can return, it's going to be really hard...

Walters: Obviously there's an issue about where the horses go once they have to leave.

McFadden: Yes, that's the problem.

Walters: But if you could, subject to horse availability, would it be your intent to resume this race meet and finish it out?

McFadden: Yes, subject to horse availability, yes. Perhaps a reduced schedule, perhaps Saturday and Sunday, I don't know. Whatever we could work out with the horsemen. Incidentally, we, there were four issues in the horsemen, HBPA and Magna contract this year, the three year contract that we're still working on it, it's unsigned as yet, and those issues have been worked out. One of them Dick Cartney told you about today which was the Backside Improvement Fund. There is one paragraph that I have to provide to the other side, Dave Benson basically. Dave Benson is going to provide one paragraph to me and then we're going to sign it, it's all wrapped up. The one paragraph coming back to me is this contingency. He's calling it the ten week issue. What happens during these ten weeks, and I haven't seen his language yet but perhaps he's got some ideas in there, so I guess it's on the table and we're negotiating, but if you're asking me today, and you are, yes, we would resume the meet. Let's just make an example, we're off for a month and we can get the horses back and, of course, again they won't be fit, we'll have the same problem we had last September but we certainly would continue the race meet.

Walters: And so then I think that gets to the next question. Assuming February 15th comes, you've committed to keep going with this project, getting it done as fast as possible.

McFadden: Yes.

Walters: You've committed to resuming the race meet if you can do that, you've committed to running a race meet next year and at least four years, Lord willing.

McFadden: We're planning on it.

Walters: What would your preference be? There have been discussions of well, should there be a greyhound meet, should there be something else? What is your preference?

McFadden: A greyhound meet this winter?

Walters: Yes.

McFadden: Well, that is not our preference. We don't think it's a good idea for the reasons I just mentioned, and also the bulk of the purse money for both breeds comes from simulcast, it does not come from the live, and so there would be an argument and it would be difficult to divide up that simulcast money if we were over at the dog track in the winter time during the traditional horse season.

Walters: Even assuming you could put together a greyhound meet...

McFadden: Assuming it could be done. So, that is not our preference. The other, too, whether if we continue to simulcast without live if that was permitted then there would be a tremendous buildup of purses for a later time, whatever the HBPA wanted to do with the money. Perhaps they would like to send it down to Grants Pass, but there would be a lot of money for later purses.

Walters: I think you're anticipating my next question. If you were permitted to simulcast for whatever period you were not able to run live at Portland Meadows because of EPA issues, whether that was a few weeks and you could resume the race meet or whether, the worst of all possible worlds, you couldn't resume before your window ran out. What would you propose to do with those simulcasting revenues?

McFadden: If what...

Walters: If you were allowed to simulcast during whatever period you couldn't run live.

McFadden: Right, and your question is what would we do with the accrued...

Walters: Simulcasting revenues.

McFadden: We would consider that to be part of the HBPA contract. It would accrue.

Towslee: It would go to purses?

McFadden: It would go to purses. It would go to the HBPA in the fashion that it does now.

Towslee: To be used in some future meet.

McFadden: To be used, yes, whatever we agree on in the future.

Walters: And you make the possibility of supplementing Grants Pass or rolling it over to a future Portland Meadows meet.

McFadden: Right. Especially if the horses had to leave I could see as Dick Cartney has told me many, many times we don't want money we want opportunity. So, I can see that they would like to go to Grants Pass as soon as possible, perhaps in May. Who knows. This has not been discussed or certainly not worked out, but there would be a lot of purse money approved.

Towslee: Is that the only option for that money is to put it into purses or have you just worked that out with the HBPA? Do we have some kind of role here?

McFadden: We have a contract and part of the money goes for other HBPA purposes. We have a monthly, or maybe it's weekly, distribution to the HBPA office for other reasons, dental insurance and whatever, but the money does go to the HBPA.

Towslee: So this is consistent with the existing contract and not some...

McFadden: I am predicting that it will be. It's not...

Barham: Basically, we've never had something that's happened just like this, but using past examples... Past example would be the rail project at Portland Meadows when they stopped running live so the rail could be fixed. The simulcasting continued and that money was distributed or the take-out of that money was distributed just like it always is based on contracts with HBPA and the quarter horse folks.

Towslee: So this is consistent with what we did there.

Barham: That would be correct.

Towslee: What Art and the HBPA work out is consistent with what we did with the Mayo situation.

Barham: That's correct. Now, the extra part would be that if Portland Meadows could not start back up to finish off this meet through April, the idea of moving some of that money down to another meet, the purse money, if HBPA wanted to do that that would be something new but, again, you get into a

thing you have the money but the horsemen need the opportunity to win it. So, that is really where you are.

Towslee: Well, Art, I'm glad to know that you dropped the idea of starting the greyhound meet early.

McFadden: Commissioner Towslee, the only reason that ever came up in the first place was that Scott was concerned at the time that the simulcasting not be interrupted, so that is our third choice. We'll do anything to prevent the simulcasting from being interrupted.

Towslee: Right, but I think at a previous meeting we recognized that you have a right to simulcast, to continue to profit while you're...

McFadden: Okay, I didn't realize that even if we were shut down.

Towslee: Yes. I believe, I think it can be read that way. Now, the February 15th date which is now taking on mystical proportions. First of all, I think there may be a misconception here that this is an EPA ordered date. As I read this, this is a date that you agreed to take the horses off. The EPA didn't tell you to do anything, is that correct?

McFadden: That's correct, but they accepted our offer and they're holding us to it.

Towslee: They accepted your offer. Damn! How'd that work out? I'm sure they were reluctant to do that.

McFadden: If you're saying that, I think you're kind of implying it was a bad idea. It wasn't, it was a great idea. If we hadn't have made that offer we wouldn't have opened last October. Even though we feared that we could not make it, we would have done anything to run.

Walters: It's my understanding it was a date proposed by the horsemen, right?

McFadden: That's correct. It was the horsemen's idea and it was a great idea. We didn't sit down and say can we make it or not, let's just get open, and now we're almost going to make it.

Wilson: I think there was a January 1st date at first and then the horsemen were successful in negotiating a deferral until February 15th if they would agree to that date.

McFadden: I agree with you, Carl, but David Allnutt does not agree to that. He said we never agreed to January 1st. He said that's like giving you a license to pollute to let you in, so they don't agree with what you just said. I thought we had a January 1st date once upon a time also.

Towslee: So, Mr. Chairman, do we need a motion here to...

Gilmour: Can I say something here before... You said something that I caught on, and you know, you're the only show in town and I'm happy you are. But you said something very important that shouldn't be overlooked, and that is we'll do everything or anything to keep simulcast going. As a commissioner fully understand that unless, as you know, there is progress, continued progress on it, I as a commissioner am not willing to let you have simulcast forever if there's not progress shown to me, which I'm sure there will be. I'm not saying there won't be, but that's the trust I have to have also before I'm going to give a carte blanche simulcast for the next four years. Just for the record.

McFadden: Fair enough, commissioner. I'd be glad to invite Steve Barham to one of our planning sessions in the future if you'd like to come to let him know where we're at just to observe.

Towslee: At the same time you still have to show that same progress I think Commissioner Gilmour's asking for is the same kind of progress that you have to demonstrate to the EPA that you are making progress on completing the work. I keep coming back to Bub Loiselle's comments and despite what Mr. Allnutt seems to want to go in a different direction, when push comes to shove and you're showing progress on February 15th, if we read Mr. Loiselle correctly you'll be allowed to race after February 15th. I still that that's, unless of course you don't want to race after February 15th.

McFadden: No, we want to race, commissioner. The problem with Bub Loiselle's comments is there was a sentence before the comments that said we cannot bind the EPA at the Seattle office whatever is done at the Washington, DC office. No, I guess he said we cannot change the Consent Decree. Whatever is in the Consent Decree and if the Consent Decree has this February 15th language in it we're dead.

Towslee: As I say, this date has taken on huge proportions in this debate and now it's probably a self-fulfilling prophecy that come February 15th everybody turns back into a pumpkin at Portland Meadows. I think that's unfortunate, but I'm willing to work with you here. If what you're asking for is a motion from us to allow simulcasting after February 15th after the horses are gone, I think it might be a little premature to do that. I don't think we've ever been reluctant to demonstrate our support of what you want to do, but I'm not willing to buy into this self-fulfilling prophecy that you have, Art, quite this early.

McFadden: My self-fulfilling prophecy is...?

Towslee: That they'll be gone on February 15th.

McFadden: No, no, I'm saying it's...

Walters: He's saying it's 50/50.

McFadden: I think we've got a really good chance here. We've got a great friend in Bub Loiselle. I kind of worry how we handle Bub Loiselle. I don't want to put him on the spot because he's the only real good friend we've got over there, but he is the one that has encouraged us that we could keep going if we show substantial progress. And there will be progress, I assure you.

Towslee: Absolutely, you're making it right now.

McFadden: Well, I assure you on February 15th you're going to see pipes laid and tanks up and bulldozers running around the backstretch. It's just the completion date that Scott is all worried about. And then how do we start and stop? It's so hard for the horsemen to go out and then come back. Or what do they want to do? Do they want to come back? They haven't had meetings in this regard, although as I said getting a paragraph back, and I don't know what's in the paragraph about how to handle the ten weeks. I suspect it's something like, well, I don't know what it is. It's certainly to reserve their purse money as if the meet had been, the live meet had gone as scheduled.

Towslee: The precedent for that has already been set in what we did with the rail and the Katy Mayo situation, so I would hope it wouldn't be a huge departure from that if any departure at all. The precedent has been made.

Metcalfe: May I make a few comments here? I guess I look at it was 50/50 as the cup being half full instead. And as I recall when we were first asking for extensions for the timeframe they gave us something like a six week or sixty day or something like that as we grasped, or you grasped, for whatever we could get and nobody really seemed to be charge here. And that's why the agreement, I think, became February 15th, thinking after Bub Loiselle's comments that we wouldn't be held to that agreement.

McFadden: I agree.

Metcalfe: But we also realized in that telephone conversation that we had here with the commission is that Bub was not in charge, it's David Allnutt. And he's really, even though Bub who's our friend, he's not in charge of this. It's ultimately David Allnutt who makes these decisions. Did David come to Portland? Was it a one-on-one meeting or was he on the phone?

McFadden: No, he came to Portland three weeks ago. We had two days with him.

Metcalfe: And you felt that at that point progress was really made other than the *Oregonian*?

McFadden: Scott particularly thought progress was made as far as resolving the issues on the Consent Decree which we have to have and both sides know that. And so yes, progress was made. But I also discovered, this is the first time I'd ever met David Allnut face to face except over the telephone, and I just recognized that we have a foe. He was very difficult to deal with.

Metcalfe: I guess I've always wondered in all of this why there aren't more face to face meetings. I understand that it's difficult to travel to Washington, DC, but something as important as this why we don't continue these if they are more productive than the telephone twice weekly.

McFadden: This is not in answer to your question but it might be interesting to you. On September 11th, I believe it was a Tuesday, on the Thursday of that week we did have a scheduled, we were just working out the time, we were all going back. The Magna leadership from Toronto was going and Scott and perhaps myself we hadn't quite worked it out on the Thursday after the Tuesday. And, of course, that all blew up the same time New York did, so we never had that meeting face to face. The only one, well, let's see now, how does this work? David Allnut has had meetings with the Ferrymans, it's just...

Metcalfe: But not with Scott and trying to...

McFadden: Not with Scott or I.

Metcalfe: I just wonder if in the next ten weeks that's not more productive.

McFadden: I agree. We seem to get a lot done.

Metcalfe: Don't bring him to Oregon. We don't want him to see *The Oregonian*. We now can go to Washington, DC.

McFadden: Well, the help when he was in Oregon was Fred Phillips, the fellow from the Department of Justice who came with him.

Metcalfe: But he's in Washington, DC, too.

McFadden: Yeah, he's in Washington, DC also. But that's a good point and I will relay that suggestion to Scott. I think you're right. I think meetings do better than telephone conferences, although I think they're pretty close, Commissioner Metcalfe. I think that Scott and David are pretty close to signing the Consent Decree. So then we have to look at all of our alternatives, what happens next and if somebody makes a decision that...., well, right now that's the way it is. We've got to get them to come off of the February 15th date. Right now it is the February 15th hard date, and I think we can do it. I think with Bub Loiselle's help...

Metcalfe: Put Bub Loiselle in charge of whatever goes on out here in the northwest.

McFadden: He's been very fair.

Walters: Other questions or comments by members of the commission. It seems to me, Art, that what I hear the sentiment from the commission and I think you're hearing it as well, obviously the last thing that this commission wants to do is create something that as Commissioner Towslee describes becomes a self-fulfilling prophecy. If you say things are going to end on February 15th and what's going to happen after that, people tend to get a defeatist attitude and that tends to happen. So I think on this commission there continues to be the hope and the optimism, and we have talked about and I think we probably will as Commissioner Towslee suggested that we write a letter to Christine Todd Whitman and I think that makes a great deal of sense and we will do that. I would hope that the horsemen would again rally on that issue and see if we can shake them off that date with the progress that you have shown and will show. But I think the other side of the coin is that you're hearing the sense of this commission that provided you continue to show the progress, you get the Consent Decree signed, you continue with the project, you make commitments to resuming the race meet if possible, racing next year, the handling of the money in a way that benefits racing in Oregon, I think you're hearing that there would not be opposition on this commission to your continuing to

simulcasting. I think the precedent is clearly there. At the time of the rail project those were exactly the terms. We said at the time if there is a hint that Portland management, the old Portland Meadows management was sort of milking the rail project in order to be able to simulcast without running live, the simulcasting was going to get revoked. But they did continue to make progress on the rail, they were permitted to continue to simulcast and I can't imagine that there would be anything different, that if Magna is forced to stop running for reasons beyond its control that it would be still authorized to race live within the meaning of the statute and that provided the other commitments and progress remains in place that you'd be able to do that.

McFadden: I see your point. I understand.

Towslee: So, if I may just clarify, Mr. Chairman, you're saying that if the request were made to us to allow Portland Meadows to stop live racing and to simulcast for the ten weeks between February 15th and April 30th that we would have review periods within there to see if that permission was justified.

Walters: Exactly. That would go just as a matter of course, and I guess I wouldn't initially necessarily do it for a whole ten-week period. My thought would be that, as we did with the rail how long does it take you to get the rail up, are you going to be able to keep running. If two weeks went by, as I said there's an issue unlike the rail situation where the horses could stay on the backside, there's an issue of what do you do with the horses, if there are training tracks around and there may be places where folks could go for a couple of weeks before they had to make decisions to move their horses elsewhere. I remain Pollyannaish enough to believe that even if we stopped on February 15th we might be able to start again and run The Mile and run The Derby and get the race meet done. It wouldn't be just a carte blanche to go ahead and simulcast for as long as you want.

Towslee: Good, good.

McFadden: I hope so, too. The McFadden Memorial is in that time period. There's also an issue, we talked about this a lot last fall, of whether or not to have a ship-in, you know, off the grounds and shipping in. We've got to be careful about that because the EPA might think that's an end run around their desires. All of this is on the table and in play, and the only thing you're asking me, and I assure you it will be done, and that is that we push ahead as fast as we can.

Walters: And continue even if you had to get the horses off on February 15th that wouldn't affect your commitment to this project and to racing at Portland Meadows.

McFadden: Yes.

Walters: Other questions?

Gilmour: One closing thing. Commissioner Metcalf and I being optimists, would you convey a message to Scott for us that Commissioner Metcalf and I are ready and willing to go to Washington, DC for a signing ceremony and we would like it to be the first of February.

McFadden: Oh, signing of the...

Gilmour: Yes. Let's think on a positive fashion.

McFadden: Wait a minute, maybe I don't understand Commissioner Gilmour. What are we signing?

Wilson: The Consent Decree, I believe.

McFadden: The Consent Decree.

Gilmour: Yes.

McFadden: I hope, and I should probably bite my tongue, I'm almost going to promise you it'll be done long before that.

Gilmour: Well, that's why we're trying to set a date. We've got our calendars out. It's like the 15th in reverse.

Walters: Just don't use your car for personal purposes, okay?

Gilmour: I'm not driving. No, seriously I think you have to set a date. Tell Scott that we need to set a date that Commissioner Metcalf and I want to be in DC and we'll see if Senator Gordon Smith would like to come over and we'll have a signing ceremony on a particular date.

McFadden: I think it's a great idea and I'm sure that was not considered.

Walters: Anything further. Thank you very much.

6. Proposed Order for Susan D. Titsworth

ORC Counsel Raul Ramirez provided an explanation of the proposed order. The proposed order raises and illustrates a very important principle of the Administrative Procedures Act, which is that if you are affected by agency action you are entitled to notice and due process with respect to that action. In this particular case the trainer, Ms. Titsworth, was noticed for a hearing which resulted in a fine and redistribution of purses. The owners, however, were not noticed with respect to this proposed action. Under the Administrative Procedures Act it dictates that owners as a result of being affected by the redistribution of purses should be entitled to notice of the proposed action. Mr. Ramirez did make a recommendation that the wording be changed in the last sentence to clarify that the owners are entitled to a hearing on the initial question as to whether or not the racing animals raced while on a prohibited drug and not that they are entitled to contest whether or not purses are to be redistributed. In response to a question from Chair Walters, Steve Barham explained to the commission how staff would handle cases in the future of notifying owners if a hearing is being conducted for a trainer during which action may be taken to redistribute the purse.

ACTION: MOTION(Towslee) Approve proposed order as final order with the modifications provided by AAG Raul Ramirez.

VOTE: 5 Aye, 0 Nay

7. OAR 462-210-0030 and 462-210-0040 - Amendments to Account Wagering Rules

Steve Barham reported a hearing was conducted on November 27 in response to a petition submitted by TVG to amend the rules. Testimony taken at the hearing was in favor of the rule modification which takes the minimum deposit in Oregon from \$250 down to \$50 and also changes the timing of when funds are available to be done in accordance with financial institution funds availability schedules rather than the set days that Oregon rules now require. These changes bring Oregon accounts in line with account holders residing in other states. Mr. Barham recommended approval of the amendments.

ACTION: MOTION(Gilmour) Adopt the proposed amendments to the account wagering rules.

VOTE: 5 Aye, 0 Nay

8. Confirmation of Next Commission Meeting - January 17, 2002

Meeting date is okay as scheduled.

9. US Off-Track First Quarter Report (July 1 - September 30, 2001)

Ben Hayes reported the number of jurisdictions in which account holders reside is up as is the number of race tracks, both horse and greyhound. The handle is slightly down from the previous quarter, however, that is not unexpected since the first and second quarters of the licensure period are

their slower times due to the fact the greyhound tracks come on in January. The distribution of handle was provided to the commission in a written report.

On another matter, on behalf US Off-Track Mr. Hayes expressed their appreciation to the commission and to ORC staff for their professionalism, their availability whenever requested and their friendliness when dealing with US Off-Track personnel over the last two years during which they have been licensed as a hub operator.

10. Youbet Oregon Third Quarter 2001 Report (July 1 - September 30, 2001)

Steve Barham reported Youbet is starting to shift some accounts. This is the first report received from them and covers the first quarter they were licensed to conduct business in Oregon. It does not reflect a full quarter's worth of earnings as they did not begin taking wagers until mid August.

There being no further business, the meeting was adjourned.