

# MINUTES

## OREGON RACING COMMISSION FEBRUARY 21, 2002

The Oregon Racing Commission met on Thursday, February 21, 2002, 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 at the beginning of the meeting were Vice Chair Tom Towslee, Lisa Metcalf and Jeff Gilmour. Commissioner Metcalf had to leave at 2:30 p.m. at which time the commission recessed due to lack of quorum. The meeting was reconvened upon the arrival of Chair Steve Walters. Commissioner Todd Thorne was excused. Vice Chair Towslee called the meeting to order and agenda items were discussed in the following order with resulting actions:

### **1. Approval of January 17, 2002, Minutes**

ACTION: MOTION(Metcalf) Approve minutes as submitted.

VOTE: 3 Aye, 0 Nay, 2 Excused

### **2. Tillamook County Fair 2002 Race Dates Request - August 8, 9 and 10**

Steve Barham recommended approval of the race dates and recommended the bond amount be the same as last year which was \$2000.

ACTION: MOTION(Metcalf) Approve 2002 race dates request submitted by Tillamook County Fair subject to timely submission of an application for issuance of a race meet license and approval of that application by the commission.

VOTE: 3 Aye, 0 Nay, 2 Excused

ACTION: MOTION(Gilmour) Approve bond amount of \$2000.

VOTE: 3 Aye, 0 Nay, 2 Excused

### **3. Multnomah Greyhound Park 2002 Race Meet Window - May 1 through October 14**

Carl Wilson stated the race meet application will be submitted in time to be on the March commission meeting agenda. Steve Barham recommended approval of the race meet window request.

ACTION: MOTION(Metcalf) Approve the 2002 race meet window request submitted by Multnomah Greyhound Park subject to timely submission of an application for issuance of a race meet license and approval of that application by the commission.

VOTE: 3 Aye, 0 Nay, 2 Excused

### **4. Multnomah Greyhound Park Request for 2002 Plan for Operation and Maintenance of Training Track and Compound**

Steve Barham recommended approval.

ACTION: MOTION(Gilmour) Approve the 2002 plan for operation and maintenance of the training track and compound.

VOTE: 3 Aye, 0 Nay, 2 Excused

### **5. Grants Pass 2002 Race Meet Applications - May 18 through July 7**

Al Westhoff was present to respond to questions regarding the application. They have applied for up to twenty-two days of racing. The number of horses available to race will have an impact on whether or not there is Friday racing. They are having a problem of having enough stalls, so they are hoping Portland Meadows will be able to reopen by May 1 so that horses can train there and then haul down to Grants Pass to race. He said he'd like to have 400 stalls plus ship-in stalls. Mr. Westhoff stated they would like to be able to simulcast their live race meet, and he has also been contacted by

one of the hubs who is interested in including the Grants Pass meet to the group of tracks for which they already provide account wagering. Steve Barham stated any off-track sites would require commission approval and the hub is a slightly different matter, but generally that is just going to be a contract. He recommended delegating authority to the executive director to approve any simulcast and hub matters which would require commission approval. Regarding the funds provided to the fair meets from the hub, Vice Chair Towslee stated it was his understanding from the meeting that took place earlier this year that the intent was to give the fair meets as much latitude with how they applied that money to each race. Commission Gilmour clarified that the hub money is intended to be an addition to the amount of money already being provided for purses by each fair meet operator. Finally, Mr. Barham stated there are actually three applications being submitted for racing in Grants Pass, two are from Josephine County Fair and one is from Southern Oregon Horse Racing Association. The reason for this is due to the way the statute reads and the number of days each organization is allowed to race each fiscal year.

**ACTION: MOTION(Gilmour)** Approve all three race meet applications to conduct racing at Grants Pass Downs that run from May 18 through July 7, 2002, and that those race meets will be considered a continuous race meet for the purposes of outs and jockey incentives and will be run under one management.

**VOTE:** 3 Aye, 0 Nay, 2 Excused

#### **6. Request by Leonard Hammrich Regarding Lost Tickets**

Mr. Hammrich was not in attendance. It was decided to wait until the end of the meeting to revisit this item to allow time for Mr. Hammrich to be present.

#### **7. Request from Ron Martinez to Address The Commission Regarding Phone Lines at Off-Track Sites - continued from 1/17/02**

Mr. Martinez was not in attendance, however, Vice Chair Towslee asked Carl Wilson of MGP to come forward to provide information on what the expectations are of OTB operators, particularly who has the financial responsibility for certain pieces of equipment, telephone lines and services. Mr. Wilson reported the contract between the track and the OTB operator spells out there are certain phone lines that are the responsibility of the track and certain phone lines that are the responsibility of the OTB operator. In this particular instance, the problems occurred when the OTB site in Keizer was moved to a different location in Salem. Mr. Martinez is contesting being billed by MGP for the expenses the track incurred when tote and telephone company personnel showed up to do the necessary work and were turned away twice by Mr. Martinez. Mr. Barham also said he understood Mr. Martinez was also disputing long distance charges incurred on phone lines that would have not been incurred had the frame relay lines been installed at the appropriate time. It was decided to wait until the end of the meeting to revisit this item to allow time for Mr. Martinez to be present.

#### **8. Proposed Orders**

##### **a. Nick L. Lowe**

AAG Raul Ramirez stated this was a case of a second bute overage in the course of twelve months and the proposed order issued by the hearing officer is what the commission was requesting. He noted in this proposed order, as well as in the other two proposed orders, suggested wording had been written in by hand proposing that a statement regarding timing of payment of the fine be included in the final order.

ACTION: MOTION(Gilmour) Approve proposed order as final order with the modifications discussed by AAG Raul Ramirez.  
VOTE: 3 Aye, 0 Nay, 2 Excused

**b. Judith A. Williams**

This case concerned presence of lasix in a horse that was not entered to race on lasix. Mr. Ramirez stated the fine in the proposed order is the same as originally imposed by the board of stewards. Also, the proposed change regarding the timeline for payment of the civil penalty has been added.

ACTION: MOTION(Gilmour) Approve proposed order as final order with the modifications discussed by AAG Raul Ramirez.  
VOTE: 3 Aye, 0 Nay, 2 Excused

**c. Paul E. Vice**

Mr. Vice was fined for performing the duties of a groom before actually obtaining a license to perform those duties. The proposed fine is the same amount as originally imposed by the board of judges. The hearing officer raised a legal matter regarding propriety of the notice, however, Mr. Ramirez stated this was an issue that was never raised by Mr. Vice and was not something asked counsel to address at the time of the hearing. Again, the proposed change regarding the timeline for payment of the civil penalty has been added.

ACTION: MOTION(Metcalf) Approve proposed order as final order with the modifications discussed by AAG Raul Ramirez.  
VOTE: 3 Aye, 0 Nay, 2 Excused

**9. TVG Quarterly Report**

In the absence of Roger Nyquist, Vice Chair Towslee reported the total handle of the fourth quarter of 2001 was \$13.8 million of which 80% was returned to the bettors, 12% to the racing industry, 6.6% to TVG, .5% to the NTRA and .25% to the State of Oregon.

**10. Confirmation of Next Commission Meeting - March 21, 2002**

Commissioners Towslee, Metcalf and Gilmour stated they could be present.

**11. OQHRA Request Regarding Distribution of Funds from the Portland Meadows Quarter Horse Purse Account**

Dave Nelson and John Harris were present to answer questions regarding the request. Mr. Nelson went through the proposed budget based on projected revenue they presume the OQHRA will be receiving from simulcasting only following the last day of live racing at Portland Meadows. The most complicated is the AQHA Claiming Challenge Race which was originally supposed to run at Portland Meadows. With the closure of Portland Meadows and the AQHA did not want to reschedule the race to be run at Grants Pass in May or June, the race has been moved by the AQHA to Sun Downs at Kennewick and is scheduled to run in April. Since the OQHRA had budgeted \$5000 in added money for the race at Portland Meadows, they are requesting the commission to approve movement of those funds to Kennewick on a one-time basis to cover the added money for that race. Vice Chair Towslee stated that while this is a regional race and there will be Oregon horses in the race, he is not interested in setting a precedent of moving money out of purse accounts in Oregon to potentially give to horses in or from other states. In addition, he does not want to substitute the commission's judgement for the judgement of the AQHRA

board, but there are horses currently in Oregon that want to race in Oregon. If the money is moved to Kennewick it would mean that there would be \$5000 less that would be available to them to race in this state at the fair meets. Steve Barham voiced his concerns about transferring the funds out of Oregon and said he felt it was a bad precedent. Following discussion on this issue, it was decided to table this item to allow the OQHRA board the opportunity to revise their proposal and present a final plan at the March commission meeting.

(At this point the commission went into recess to allow Commissioner Metcalf to leave for her appointment and then reconvened upon the arrival of Chair Walters)

## **12. Portland Meadows Race Meet Report**

Following is a transcript of the Portland Meadows report:

McFadden: Art McFadden, MEC Oregon.

Wilson: Carl Wilson, Portland Meadows

Barham: And on the phone...

Daruty: Scott Daruty is here on behalf of MEC.

Walters: Who's going to start?

McFadden: Well, I'll begin, Mr. Chairman. I only have one quick thing to report and then Scott is going to report on the EPA and perhaps another matter, and then Carl will give our customary Portland Meadows report which you may or may not want to keep Scott on the line for. My one comment on my Portland Meadows report is that we have signed out agreement with the HBPA, we did it this morning. It's been negotiated in full many weeks ago but we just finally got around to signing the contracts this morning. I think the most interesting part of our report will be Scott's report on the EPA progress or lack of.

Walters: Okay. Scott, do you want to give us that report?

Daruty: First of all, I certainly appreciate the commission allowing me to participate by phone. I'm disappointed to report that we do not have a signed Consent Decree. We have not made a whole lot of progress over the past couple weeks to be honest, and we're waiting on the EPA. It was late January when we finally conceded on a number of points and the EPA conceded on some points, and we reached a document that we were willing to sign and that they were willing to recommend to their superiors for signature. Since that time things got complicated a little bit by the citizens group who had threatened the lawsuit. The citizens group and we got together and reached a settlement of that matter as well. The problem was that as part of the settlement the citizens group wanted the ability to direct the funds that were being paid the EPA. The owners of the facility are paying some penalties for past violations and that money typically, a penalty paid to the EPA, goes into the general United States fund. The citizens group asked for this money to be delivered to them so that they could do some environmental projects in the area. It certainly doesn't affect Magna in any way so we said we were perfectly willing to agree to that. Mr. Moyer, who was actually paying the funds, said the same thing. He was paying the money and he didn't care whether it went to United States Treasury or for these environmental projects, and we, Magna, and Mr. Moyer both agreed that we would cooperate and assist the citizens group [to receive the] funds from the EPA. What happened was at that point that led to a delay in the execution of the document because the EPA told us they needed to add a couple provisions to the Consent Decree. We said fine and we waited for that and we finally got that last week and low and behold what it had was Mr. Moyer responsible now not just to pay the money but to actually do all the environmental work, you know, plant flowers, do the reports, anything that's not done properly he gets fined for, and it really just wasn't at all what he agreed to. Again, it doesn't affect Magna. We'd be willing to sign it, but Mr. Moyer is not. So, we're a little bit back to the drawing board trying to reconcile the three competing interests: (1) Moyer and

Magna just wanted to get the thing signed and get going with the construction, (2) the EPA having its own requirements with respect to what happens to the money, and (3) the citizens group wanted to get its hands on the money. I think a way to work around it, but unfortunately David Allnutt has been unavailable since really late last week. No one's been able to reach him. I have a call into him myself as does the attorney for the citizens group. So, we have not made any headway on getting the agreement signed. I can tell you we met our contractor at the site, we did the pre-construction walkthrough and everything's ready to go. We've actually authorized them to do a few things that won't incur huge expenses prior to the time we have the Consent Decree signed, but we did want them to get everything out of the way they could possibly get out of the way so that when we have the Consent Decree they can get started working.

Walters: Scott, this is Steve. I take it that there's been no communication since you and I spoke earlier this week?

Daruty: The only communication, when you and I spoke earlier this week I told you I had not personally called David Allnutt, that we had agreed that Chris Winter, the environmental lawyer, was going to do that. Since you and I talked I personally called David Allnutt and left him a voice mail message, but I got the same thing. I got his message which said he was out all week. I left my number and asked him to call and he has not called.

Walters: It occurs to me as I reflected on it more that it seems a little odd that the government shuts down when David Allnutt's not available. Isn't there anybody who you could talk to about the urgency of this? Does he have a boss, does he have an assistant, does he have someone with whom you could talk in his absence to impress upon them the urgency of this?

Daruty: Well, what I tried to do was, the other person who's familiar with this matter, of course, is Fred Phillips at the Department of Justice, and I spoke with Fred. He's a little bit tied, too, because without David there he can't really agree to anything, but I tried to at least get moving forward. Fred was really trying to track weighing the logic and the reasoning behind the EPA's requirement that [unintelligible] possible for all this environmental, all these environmental programs. And I tried to put him in touch with Mr. Moyer's attorney to convince Mr. Moyer why he should ever do that. I just don't think he's ever going to agree to that, Mr. Moyer will ever agree to that. The other thing which we're willing to do at some point is just go back and sign the original Consent Decree and forget about these environmental programs, but we need to assess the risk, not just to us but to the facility and the industry when and if we do that, if the environmental group files a lawsuit.

Walters: They had not filed a lawsuit or have they?

Daruty: They have not filed a lawsuit and the reason they have not filed the lawsuit is because we have reached an agreement on the terms of the settlement they have agreed not to file the lawsuit while we're getting the settlement documented. The problem is one of the material terms of the settlement is taking control of this money.

Walters: Between you and me why don't you sign the Consent Decree real fast before they can file a lawsuit?

Daruty: That thought did cross my mind but I'm not sure it would be the most ethical move in the world, but I know you're joking by suggesting that.

Gilmour: Well...

Walters: I know some pretty good lawyers at my firm who have successfully used that strategy and it's fended off citizens suits.

Daruty: We have told Chris Winter that we only have a finite amount of time and, in fact, we've already used that up and that we're very close to just signing the Consent Decree and, you know, letting him do whatever he feels is appropriate.

Walters: Okay. Can you give us any thoughts at all, Scott, about when we're going have a resolution to this because obviously it's of more than a little urgency to you and to the industry here.

Daruty: I understand, and I understand the frustration of the commission. I think, I guess, the only good news is I've got to believe we are at the end of the road. When David Allnut gets back we will either figure out a way to satisfy the environmental group or I think we will just go back to the original Consent Decree after advising the citizens group that that's what we're going to do.

Walters: Now you don't want the commission to go writing letters again, do you?

Daruty: Well, um, you might want to wait another week or two before you send the letter. Hopefully it will be resolved by then.

Walters: Other questions or comments by members of the commission? Scott, did you have something you wanted to add?

Daruty: There's one other matter and I don't know whether we should raise it now or not, and that's the matter relating to account wagering and I wanted to inform the commission, give the commission some information on that front. Would you like me wait or should we do that now?

Walters: Why don't you go ahead and do that now as long as you're on the phone.

Daruty: Okay. What I wanted to advise the commission of is MEC has an operation, a subsidiary, that we call XpressBet. That entity was licensed late January by the State of California to begin account wagering operations. We have opened accounts in California and whole lot more states one of which includes Oregon, and we have been for the past couple of weeks since we were licensed in late January have been accepting wagers from Oregon residents through our system. We did have an agreement during the time Portland Meadows was running, which lasted only a few days but up until the end of their meet, that we had an agreement with them, and obviously in the future we plan to continue to work with the horsemen and make sure we have a mutually agreeable arrangement with respect to the account wagering. But I did just want to advise the commission that that was going on and be available to answer anybody's questions if they have any.

Walters: This is something that Scott and I had talked about at one time as well, and the question was raised whether or not any entity that foolishly chose to be licensed in a state other than Oregon could take accounts from Oregon without getting some sort of approval or subject to some sort of conditions imposed by the Oregon Racing Commission. My thought was that we did not have any regulations or statutory provisions that would require that. At least from my way of thinking if an entity was licensed by another jurisdiction and it was legal and regulated in the state in which it was organized and if it made appropriate arrangements to satisfy at least the Interstate Horseracing Act such as making agreements with the horsemen and that type of thing, that it wouldn't seem to me we necessarily would at this point impose any requirements or require them to come and get a license from Oregon or something of that sort. Frankly, part of my thinking on that is we license a number of hubs here in the State of Oregon and they have met with mixed results in other states. A number of the hubs just take accounts in other states and go about their business. Others, who will go unnamed, have gone in and asked for permission and have had big fights in places like New York and eventually they seem to be getting those worked out. But my own thought about the atmosphere I would like to see for our hubs is that since they are legal and they are regulated in the State of Oregon that they should be entitled to do business in other states without other states imposing a bunch of conditions on them and making them meet a lot of additional licensing requirements. My own thought is that that's consistent with all of the federal statutes on the subject and probably with the Constitution as well. But I thought it was a good idea for Scott to raise the issue so that the commission is aware of it and if there are any questions or thoughts about whether or not that's the way we should proceed or should we look at it further or whatever. So, I throw it open to other comments by other members of the commission.

Gilmour: You're recommending reciprocity.

Walters: Yes. Okay. Thank you, Scott.

Daruty: Alright. Thank you very much.

Walters: Carl, do you want to give...

McFadden: I had a comment just for your interest about XpressBet. We took it two days at Portland Meadows the last two days of the meet and we anticipate a 6.5% fee. We set aside half of that for the horsemen. The first day they bet \$1000...

Walters: That's pursuant to an agreement with the horsemen.

McFadden: Yes, well, that's our ongoing agreement. They get half of, we had to anticipate what it was because it's broke down by the pool whether or not it's 22% take-out or an 18% take-out. But anyway, we came up with that number and if we have to adjust it later we will, but then we're not talking about a great deal of money but I thought that might be of interest to you that the first day was \$1000 and I believe the second day was \$1800. So, I just wanted to make that comment about XpressBet. And I'll just add my couple of comments about the EPA situation. Scott, as he always is, was extremely courteous but we're just furious that David Allnutt created this problem and then disappeared for a week. We knew the problem last week and then all of this week we can't contact him. He was at Portland Meadows incidentally two Mondays ago and inspected the grounds, and among his comments, I said well it looks like it's all over and Scott had told me it would be signed two Tuesdays ago, and he said it will be done by the end of this week. So, even the other side is predicting that this is all over with.

Walters: Art, that was the reason for my comment to Scott about it's hard for me to believe that the government stops when David Allnutt decides to disappear. At some point I think we have to ask Magna and insist that Magna do whatever is necessary to get the proper approvals. At some point you've got to stop waiting for David Allnutt and approach other people within that agency. I said that only half or maybe less than half facetiously and similarly with maybe us hauling off and writing another letter, calling our good friend Christine Todd Whitman since we're on a corresponding basis with her now...

Barham: She didn't write back.

Walters: No, she didn't write back, exactly, but at least she delivered the letter to where it needed to be delivered.

McFadden: But if you did that wouldn't everything stop and she'd have to investigate what's going on?

Walters: Art, I don't know, but we can sit around and speculate about what might happen if we did something or we can do something. And at some point, as I say, I think that we also have to look to Magna, we're very sympathetic to the problems in dealing with this agency and these individuals, but we do need to insist that Magna push on this situation to get it done. One of the commitments to simulcast is that you will diligently push to resolve the situation and get it done, and if it's just hanging in limbo for a long time I'm going to have trouble continuing to explain to people like Vince Bruno why the simulcasting is continuing.

McFadden: I understand your point. I think it's well made, but remember, Mr. Chairman, that there's another defendant in this problem and Tommy Moyer's lawyer will not sign this Consent Decree the way it exists right now.

Walters: I understand and I don't blame him, but again I'm just suggesting that you need to solve this problem, whether it's splitting off this Consent Decree, and if I were Tom Moyer's lawyer I wouldn't let him a decree that says if the flowers don't get planted you have to pay a fine.

McFadden: Among other things Tommy's required to report and then he's fined if he doesn't timely report. He never signed off anything like that.

Walters: I understand, Art. I'm just suggesting that we need to see action on this side, too, as well as just, you know, David Allnutt's gone so there's nothing can be done.

McFadden: I understand.

Walters: Carl.

Wilson: As you know we did discontinue live racing after February 10th in compliance with the previous agreement we and the horsemen had with the EPA. Our average handle as of closing was up over \$27,000 per day which was a 23% increase in our live handle per day over what was last year.

Barham: Carl, was that in Oregon live handle or was that total.

Wilson: That was total live. Live Oregon handle was up over \$10,000 a day which was a 21% increase over the prior year. The horsemen were great and the average field was 8.6 starters per race. We were sad we couldn't get in all the races we wanted in the last couple of weeks but we did have three 14 race days and we got as many races in as we could. The simulcast handle has continued to slide for both horses and greyhounds, and as of February 10th the total handle was down 3.8%. We're continuing to invest in the facility. Some of these investments are voluntary and some of them are like this morning with the fire marshal coming back with a whole new list of things to do and some of those are pretty expensive but we'll get them done. The focus now is, you know the joint focus with Portland Meadows and Multnomah Greyhound Park, improving business at off-track locations. We now have a team that's contacted OTB operators and we're setting up promotions and other things to try to improve information systems and try to improve the experience and marketing at off-track locations. The advertising now has been focused on simulcasting, watch and wager on the best in horses and greyhounds from around the country and here are the locations throughout the state. Hopefully that helps somewhat at some locations especially those that are interested in improving business at their site. We do request to do simulcasting and have provided a letter making that request official during the duration of the Portland Meadows authorized race meet.

Gilmour: I have a comment and a couple questions basically for Art. Being an optimist I'm assuming that within the next week or so that this issue is going to be resolved with the EPA and the citizens group and construction will start and construction will be over at time certain.

McFadden: There's some mobilization already. The contractor has a 55 day requirement and we predict it will be 45 days.

Gilmour: It's my understanding that as soon as the completion of the renovation of the sewer system process is done and okayed and checked off that the intent is to open the track for training?

McFadden: The next day.

Gilmour: I think that's a great commitment, and I think for the county fairs and the other racing that goes on in the state it's a necessity, number one. Number two, the frustration level has obviously has been extremely high and it will all pass. I want to also commend you for assisting and further assisting if necessary with the Grants Pass operation. I think it's important to keep horses in Oregon racing. In this particular strange circumstance of the 02 race year I think Magna should find it very important to them and their future also to do what they can, as you plan on doing, as in opening the track for training and assisting and further assisting, if necessary, Grants Pass. Is that your understanding?

McFadden: Yes. We'll have a clocker two days a week and will be open for training as a training track and any other way we can help out. Probably, and I'm not sure the determination is final yet, but probably our racing secretary will work down there at the same time that he's full-time on our payroll.

Gilmour: And the reason I'm mentioning this, and I know we're moving beyond regulatory duties that we carry on this side, but if we don't have racing as I've often said there's no point in having a commission. We appreciate at least that Magna's in town and plans on staying here, and your cooperation at least with the commission I think has been very honorable at least from your side in doing that which reflects my vote on your continuation of simulcasting.

Walters: Which is a great segue and I agree with you. I think we do need to take action on the letter of request that we got to continue simulcasting and I think it's simply a continuation of the action that

we took at the meeting in I believe it was December on that issue. We have the letter now to request simulcasting, we know that the horses aren't there, live racing is not happening now. My memory was that we spelled out a number of conditions including working diligently to complete the storm water project so you could open the track for racing if at all possible, although it's probably not possible now in this race meet, but at least for a training track as soon as possible and to reach an agreement with the horsemen, which you have done, and fourthly, to make the commitment that you apply for and plan to run a race meet next year and the year after.

McFadden: Three more. And then another crisis I think.

Walters: At any rate I think we do need to take action on the letter request subject to those conditions.

Gilmour: I did not know the longevity of the request. That's the point I'm missing.

Walters: It's for the rest of this racing window.

Gilmour: Upon review each meeting that we have here?

Walters: Yes, to review the diligent progress and everything.

Gilmour: I think that's fair. That's contingent on my vote, too.

Walters: Is there a motion?

Towslee: I move that we grant Portland Meadows the right to simulcast through the rest of their race window subject to those conditions that we laid out.

Walters: Further discussion? All those in favor signify by saying aye.

Towslee: Aye.

Gilmour: Aye.

Walters: Aye. So that is approved.

#### **Items 6 and 7 - Requests by Leonard Hammrich and Ron Martinez**

Chair Walters asked if either Mr. Hammrich or Mr. Martinez were present. Since neither individual was present it was decided no further discussion would take place at this meeting and that they would not be placed on the April agenda for consideration.

There being no further business, the meeting was adjourned.