

MINUTES

OREGON RACING COMMISSION October 4, 2001

The Oregon Racing Commission conducted a telephone conference meeting on Thursday, October 4, 2001, at 8:00 a.m. to discuss potential race meet at Portland Meadows. Commissioners in attendance were as follows: Stephen Walters, Chair; Tom Towslee, Lisa Metcalf, DVM; Jeff Gilmour and Todd Thorne. Also in attendance by telephone were Raul Ramirez, Asst. Atty. General for the ORC, Scott Daruty, Magna Entertainment Corp., Bub Loiselle, EPA, and Joe Roberto, EPA. After calling the meeting to order Chair Walters stated that he was going to recuse himself due to his conflict with respect to Magna Entertainment Corp., and therefore was turning the chair over to Commissioner Towslee.

Following is a transcript of the discussion:

Towslee: I guess we should probably start with a presentation from Magna. Is that that where you want to go here?

Daruty: That would be fine, Commissioner Towslee. We've been working over the past several days, really since last Thursday when we had our meeting up in Portland, to try to resolve our issues with EPA so that we can move forward to implement our backside storm water system and start the race meet. As of yesterday I put down on paper what we believe the proposal to be. I had previously discussed that with David Allnutt and incorporated some of his comments, and I sent that off yesterday to get a response to that says our understanding of the proposal is correct. We are willing to move forward at that point.

Towslee: Was that sent off the EPA in Seattle, to Bub?

Daruty: I sent it to Bub by fax yesterday and to David Allnutt, the attorney. A copy went to Steve Barham, so Steve, if you'd like to distribute a copy of that to the commission members that's fine.

Towslee: I think we have that.

Daruty: I sent a copy to the horsemen as well.

Loiselle: May I interject. This is Bub, and I did receive the fax. I did have the opportunity to discuss it briefly this morning with David Allnutt, and this morning I typed up a very brief response from my program's position and I faxed that to Art McFadden. If you have a fax number there that you want to give me I'll have that faxed immediately.

Barham: Okay. That fax number will be 503-731-4053.

Loiselle: Okay. To whose attention?

Barham: Just fax it to the number. There will be a person waiting for it up there.

Loiselle: Alright. It's on the way.

Towslee: Could you give us a brief explanation of what that says?

Loiselle: Yeah, it's fairly brief. If you'd like I'll read it into the record.

Towslee: That will be fine. Thank you.

Loiselle: "Gentlemen: This is a quick brief response to the letter from Scott Daruty that was faxed to me on October 3, 2001.

"First of all it must be clearly understood that neither David Allnutt nor myself have the authority to bind the DPA or DOJ into any contractual agreement outside the scope of what is being considered in the Draft Consent Decree that has been forwarded to Magna. Additionally, it is my understanding that Magna has not yet provided alternative language to be embodied in the Draft Consent Decree that was sent to counsel for Magna and Mr. Moyer in mid-August. I would suggest that if Magna wishes to move forward with a contractual agreement of any type it must focus its efforts on negotiating and agreeing on acceptable conditions and limitations that can be embodied in a consent Decree. Attempting to bind the parties involved (Magna, Moyer, Moyer's ownership entity, EPA and Department of Justice) outside the scope of a Consent Decree will only delay the process further.

"Also..." hang on just a moment please, I lost my place. "Also, Magna must clearly cease on insisting that EPA be put on the spot of approving or denying whether or not Magna can bring horses back to the Portland Meadows facility for racing purposes or on in order to operate the facility as a training center. As I have stated before, this is a decision to be made solely by Magna and their racing affiliates, whomever they may be.

"I can state for my program that Magna's suggestion of using February 15, 2001 as a start date for the effectiveness of the Consent Decree and for constructing waste water management facilities is acceptable to me. In closing I will again state that if Magna continues to work toward improving the environmental conditions at the Portland Meadows facility, i.e., employing all best management practices that they have offered up thus far, completing a waste water management system in a timely manner, working toward signing a Consent Decree as expeditiously as possible, etc., then NPDES compliance inspections of the race track will be a low priority for me. Also, if Magna continues to operate in good faith after the Consent Decree is signed, then I will certainly use enforcement discretion when dealing with the recorded or reported Clean Water Act violations, and I will always operate in good faith within the conditions and limitations of an Consent Decree signed by the parties in question." That's it, gentlemen.

Towslee: Very good. Thank you, Bub. Over to you, Scott for your instant analysis.

Daruty: I don't have an instant analysis. I certainly appreciate the effort that Bub and others at the EPA have put into it.

Towslee: Let me echo that as well, okay?

Loiselle: Thank you.

Daruty: We're very appreciative of all your efforts and all your time, and it is certainly not, not the response I was looking for. I, you know, there are some things that concern me, there are some things that please me, so I'm not in a position to respond right now.

Towslee: Okay. But is this, when you do have... When you are in a position to respond, will that be sufficient for you to say yes we're going to race at Portland Meadows, or no we're not going to race at Portland Meadows.

Daruty: Yeah. I mean, everybody has put their positions down on a piece of paper so that we can analyze it and I don't know how we're going to come out, but I don't think there's really any more information we need at this point in time. I hope everybody on the commission and all the public that is here listening understands that the reason we've always been so concerned, and we realize the number one priority with the EPA is to get a Consent Decree negotiated and finalized, but we've also been realistic in knowing that that's a several weeks process at a minimum which has to be then followed by a 30 day public comment hearing. I think everybody on this call realizes that if we wait until we have a formal signed Consent Decree with the EPA that it will be too late to save this fall meet. But that's why we've been trying to proceed the way we have. And again, I think the ball's squarely in our court to sit down when we have a little bit more time to review Bub's response and figure out what to do.

Loiselle: This is Bub. If I might add I can also state that if a Consent Decree was a heartbeat away from being signed and the only thing that was making it final was the 30 day comment period, I still

maintain the same things that I stated to you in my letter -- that I would not put this as a high priority for inspections and I would use enforcement discretion for anything that popped up.

Daruty: Thank you, Bub.

Towslee: Do other commissioners have anything to ask or add to this?

Thorne: I just had a question. I guess maybe it's directed toward Bub again. I don't have that faxed response in front of me obviously, but can you just summarize again with respect to dates, there is in the October 3rd fax that I have in front of me, it's to you from Scott Daruty, there was a date of January 1, 2002. Am I understanding your response right in that delaying that operational date is open for discussion?

Loiselle: Let me see if I can answer that in a bureaucratic way that's acceptable. It's my understanding that the date that was established for getting all this stuff underway was January 1, 2001. As things drug on and more hands became enmeshed in the cookie jar, a request was sent to the EPA, and I don't know whether it was directly from Scott or just in general from all the people that are involved, but we pushed that out a ways. And then that's when February 15, 2001, came on as a new date for establishing all this. EPA was reluctant to stretch it on any further than January 1, 2001, because that left a wide period of when we would be covered under the conditions of limitations or some type of binding contract, i.e., a Consent Decree. However, knowing that Magna was operating in good faith to try to get this all done the Racing Commission had a lot of concerns, the trainers and whatnot, my recommendation was to accept the new date that was proposed, February 15, 2001, and that is still something that is agreeable to myself, David Allnutt and to my supervisor. I don't know yet if David Allnutt has pounded out this issue with the Department of Justice. I can only assume that they have, but for me to state very clearly and emphatically that DOJ has agreed to that I couldn't do it, but I believe that if the EPA is comfortable with it and we work with the conditions that the Consent Decree or whatever other contract is going to be put in place between the main parties, Magna, EPA and DOJ, that that's acceptable to me too.

Barham: Bub, this Steve Barham. Just for the record you've been using the year 2001. I assume that what you really mean is 2002.

Loiselle: Thank you for your correction. That's exactly right. That's my error.

Daruty: This is Scott Daruty. I might just add again we very much appreciate the flexibility the EPA is showing. I want to be clear to the commission because it's important obviously for you to understand what's going on. We do not believe that we can meet the February 15th date. What I understand to be, let me back up and let me explain why. When we first proposed this solution many, many months ago we believed we could accomplish, you know, have the whole thing operational by January 1. When we originally were informed by the EPA that it didn't meet their expectations and as we continued to discuss refinement of system or whether it was acceptable or not acceptable, obviously we didn't move forward with permitting and final engineering and construction of the system until we knew that it was okay. So, basically we haven't done anything to implement the system for the past several months as we've been negotiating with the EPA. Here we find ourselves in the beginning of October and obviously we can no longer meet that January 1 date. Our engineers have advised us that they have 30 days of final engineering work to do in order to have the permit application for the city of Portland ready. We've been advised that the city of Portland's building permit process will take approximately 120 days, and then we have 60 days of construction on top of that. So, we have probably 6 or 7 months of work which if we started now we could have done at the end of April. If I understand the EPA's proposal, we could bring the horses back, continue to work on the solution but on February 15th if we're not done the horses are going to have to leave. And what I want the commission to understand is that means that this would be a short horse meet and would not run through the typical April date.

Towslee: Scott, stop right there, sir. Bub, is that true? Is that the case based on what you read to us?

Loiselle: He said several things. Could you...

Towslee: Let's stop right there where on February 15th the horses have to leave.

Loiselle: No. That was a proposal that was put on the table by Art McFadden et al in a conversation that I had him the other day on the phone. That was not something EPA had said must be done. That was something that Art and whoever else he was working with said that if you guys won't go for the February 15th deadline then we will assure you that if we do not meet our commitments by that date then we will move them off. And a matter of fact, Art additionally told me that he had discussed this with trainers and some of the horse racers there and they agreed to that. So, it wasn't something that EPA said. Again, let me reiterate, the EPA can really only direct what's going to be done in relation to waste water discharges and potential violations. We have absolutely no authority to tell you folks or to tell Magna or anybody else to move those horses off or move them on.

Towslee: Thank you. I think that's an important that's probably been missed in some of this debate over the last couple of months. Thank you for clarifying that, Bub.

Loiselle: Sure, you bet.

Towslee: Any other comments. Commissioner Gilmour? Commissioner Metcalf?

Gilmour: Well, I've got one comment. It would seem to me that the EPA has really done whatever they could and I appreciate their feelings in this, from the Seattle point of view of keeping racing alive in Oregon. Reading the tea leaves I would suggest that if Magna was going to in earnest start on a plan trying to meet a February 15th deadline, horses came back on and started running and that if the plan for some reason took until March 15th but there was progress going on daily between now and then, I would assume that the EPA would look at that as they are doing the best they can and would be given credit for that even though they didn't meet the 15th of February 2002 deadline. Am I incorrect in my assumption?

Towslee: Well, I would agree with that assessment particularly since this problem at Portland Meadows has been there for quite awhile. I would think dragging it on from February 15th to March 15th is an issue that would be a great problem for the EPA. I don't want to speak for the EPA, but I think the problem that we face is what puzzle to we have in front of us. Is it one... Scott, do you continue with the proposal that was sent to use regarding the dog park or do you want to go back and reassess your situation based on what you heard from Bub and the EPA today and make another proposal?

Daruty: Well, our number one priority as I told you last week is to get this horse meet up and running on schedule if at all possible. And given...

Towslee: Based of what I've heard today, I believe you can do that. And I understand that you want to have all the "i's" dotted and the "t's" crossed, but it sounds to me like the EPA is giving you some breathing room here and I think that breathing room is enough to start a race meet at Portland Meadows on the 20th. Now, if you choose to present something else to us that's your prerogative, but that's how I see the situation right now.

Gilmour: I agree.

Loiselle: This is Bub Loiselle again. Let me address the issue just discussed here a second ago. Number one, the February 15th is a good target date in my opinion (and we have moved it twice?). And I can only speak right now for Bub and the management of my program so please keep in mind that what you're about to hear is coming from me and not from an official EPA point of view, meaning from headquarters. If construction efforts are continuing in good faith and making good improvements and that February 15th date someday or other slips here or there as long as it's not a gross amount that I can only tell you that I will still maintain my ability to use enforcement discretion. And if progress is moving forward I do not care to be the person that comes over and takes the baseball bat that crushes the cookie jar with all the hands in it. I'm concerned about environmental improvements and good faith efforts, and so that's what I'm telling you.

Towslee: And I believe that Magna's good faith efforts will exceed those that were attempted by the previous management at Portland Meadows.

Loiselle: I will tell you that I believe that. I was there on Monday, and what I saw on Monday was leaps and bounds ahead of what I had witnessed when I was down there with Joe Roberto shortly after the enforcement action had taken place against the Ferrymans. That's the kind of progress I like to see and that to me shows that there is a good faith effort on all parties to do something about this to clean the environmental mess that existed before. I want that to move forward, I want folks to think about deadlines and I want them to work with everyone(?) to hit those deadlines and then (unintelligible).

Towslee: From our experience with Magna, Bub, has been that's exactly what they'll do.

Loiselle: Okay.

Towslee: Scott, how do you want to proceed?

Daruty: My understanding is that we currently have a license from the commission to commence a thoroughbred meet in, I don't know the exact date, but the 15th or the 20th, somewhere around there. Is that correct?

Barham: Live racing on the 20th, simulcasting on the 17th.

Daruty: Seventeenth, okay. And that license is effective and in place right now. There's nothing we need to do on that, is that correct?

Towslee: As I understand it, Steve, is that right?

Barham: Yes, that's true.

Daruty: I think that's all we need. I certainly don't think there's any need to take action on the dog license right now. I do reiterate that I would like to sit down and read back through Bub's letter, but it certainly sounds very good. So, I think that's really all we probably need to do right now.

Towslee: Scott, you will race on the 20th?

Daruty: I don't...

Towslee: The horsemen are probably chomping on their own bridles right now trying to figure out whether they should go, stay and I don't want to leave them hanging any longer than possible.

Daruty: My direction from my board was that if I got back a response from the EPA that said yeah, we understand the terms you set forth in your letter and we're willing to move forward with the Consent Decree on those terms, if that was the letter that came back we were going to tell the horsemen to move in today. The letter we got is very close to that, it's not exactly that. I hope you understand I don't want to make a decision without having even seen the letter, just hearing a ,,,

Towslee: No, I understand that. How much time do you need to do that?

Daruty: I'm sure by the end of the day today we'll have an answer.

Towslee: That would be great.

Loiselle: This Bub. May I interject something?

Daruty: Sure.

Loiselle: Okay. To Scott and all, when you take a look at this please read between the lines, keep in mind that what sometimes I think Magna is looking for is a 100% iron clad iron proof guarantee that EPA won't do anything about Clean Water Act violations. Let me further state that I can't do that. I can just tell you that I will use enforcement discretion, and on the other side of that fence you've got to keep in mind as much as we've been negotiating here EPA doesn't have a 100% guarantee that all

of this will be done. So, with this sort of operating on good faith and there are some gray areas and we must accept that, but if Magna wants to come back and insist once again that there's this detailed (unintelligible) summary that EPA must follow with everybody and anybody (unintelligible) that may violate the Clean Water Act we're not going to make any headway. It's time to fish or cut bait. I think we've really discussed the bottom line as far as goals, objectives and expectations, and I say let's move forward. Decisions need to be made on whether to race or not to race and EPA can't make those.

Towslee: Very good. Well, Scott, at this point it doesn't look like you're asking us to do anything. Is that correct?

Daruty: That's correct.

Towslee: Okay. What I'll ask you then is if by the end of the day you can make a decision based on what you've heard from Bub, what you've heard from us and what the letter says and discussions with your own board, but I think there're three situations here: You're going to race at Portland Meadows, you're not going to race, or we're going to keep the horsemen hanging for another week or whatever. I think the third option is the worst, and I think the horsemen need some certainty about where they're going to go and what they're going to do and they need to make some plans. So, do you want to the end of the day and give us a decision one way or another or is that not enough time?

Daruty: I believe that's enough time. I have a number of people I need to talk to, so I just, and I know where they are and they're planning on me calling them, and so I don't think it'll be a problem. But, if I can't get in touch with somebody and it slips to tomorrow morning you know that could happen, but I realize what you say. The worst thing of all is to keep the horsemen hanging. I'm very optimistic that by the end of the day today we're going to have the answer that everybody wants to hear.

Towslee: That's excellent to hear. That's very good to hear.

Gilmour: You know, it needs to be said that while we are a regulatory commission we have changed I think physically in the last few years. The point that we have expressed a greater interest than more than regulatory in issues like this. And I think this trend personally is very healthy for both the dogs, horses and everybody involved. I want to publicly say being in politics in the past in different views that I want to give my sincere appreciation to the EPA. I do not believe I have ever in the past seen a willingness to work with an industry in Oregon and go as far as they have gone over these issues. And I want to publicly let Bub know that I appreciate it as an Oregonian and I'm ready to race.

Loiselle: Thank you very much for your comments.

Towslee: I agree with that, Bub. Thank you. I'm not sure where to proceed from here.

Gilmour: Well, I want to know, excuse me, Tom, one more thing. Scott, I want to be informed personally on what's going on with this decision. I'm sure you can find my phone number, I'm sure Lisa and Todd, we all would like to know. So, whenever you can get that to us since people call us from the industry also separately we would like to know ASAP.

Daruty: I understand.

Metcalf: This is Metcalf. I have one question and I completely echo my fellow commissioners' praises of the EPA. I had a wonderful discussion with Mr. Allnutt yesterday. Are the powers that be in the EPA available today to discuss with Magna as far as this Consent Decree because that's where the concern lies right now. Can they work out the agreement where everybody is comfortable with the gray areas?

Loiselle: This is Bub Loiselle. Scott can probably give you a better answer than I can. I can state that I have been involved in negotiating Consent Decrees and settlements and whatnot and they're never easy. They are never ever something that is going to happen overnight as badly as we would like to believe that it can happen. I can state that if Scott gets a hold of David today and they put their heads to the grindstone and work on this whether it can or cannot be done or however they want to

do it , that's fine with me and still back off until something's in place. I have no desire to go down and stir up the trouble if folks are working toward a positive end point. So, I do know David Allnutt is in today and I know that he'll be available to discuss this, and if there are any new legal glitches then it's up to David and Scott to put their heads together, as I said, and iron out those wrinkles.

Daruty: Lisa, can I just respond to that quickly?

Metcalf: Sure.

Daruty: Just so you know, that document is about a 25 page very, very detailed document and while I think you have a great idea, my experience tells me it will literally be a period of weeks to try to get that into final form and I think my time today is better spent trying to sell my board on the comfort that was provided by Bub's letter than trying to get the EPA in final form.

Metcalf: Absolutely. I realize, Scott, nothing will be inked today, however, I just wanted to make sure the EPA, if your board called, that EPA is available for discussion.

Daruty: Right. Thank you.

Towslee: Alright. I guess at this point...

Daruty: I think the ball's in my court.

Towslee: Yeah, the ball's in your court. I will add that you know you are in the gambling industry, and I understand that we're asking you to take something of a gamble here, but from what I've heard today it sounds like it's probably even money or better. It's probably as close to a sure thing as you're probably going to get at this point. Okay. Steve Barham, if and when, when you hear from Scott hopefully by the end of the day communicate to us and to the people in the industry, and let the racing begin if that's the case.

Barham: I will.

Towslee: Send out the white puff of smoke or however we do that. Are we adjourned at this point? Are there any objections to adjourning? Okay. Thank you all very much. Scott, thank you. Bub, thank you very much. I appreciate all both of you have done on this issue and I hope the horse industry and those people that are in the audience there understand what's gone on here, and appreciate the efforts of both of these organizations have gone through to make this work. Fellow commissioners, I'll see you soon. We're adjourned.