MINUTES

OREGON RACING COMMISSION
February 19, 2004

The Oregon Racing Commission met on February 19, 2004, at 1:30 p.m. in Room 140, 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair, Lisa Metcalf, Jeff Gilmour and Todd Thorne. The governor has not yet appointed an individual for the remaining commissioner position. Agenda items were discussed in the following order with resulting actions:

1. **Proposed Changes to Administrative Rules - 462-120-0020**
   Chair Walters opened hearing for proposed amendments, no testimony offered, hearing closed.

2. **Approval of January 22, 2003 Minutes**

ACTION: MOTION (Metcalf) Approved minutes as submitted.
VOTE: 4 Aye, 0 Nay

3. **Multnomah Greyhound Park Request for 2004 Race Dates**
   Jeff Grady: There has been a change submitted in live greyhound racing, they have a signed contract for the following dates:
   - Live Racing – May 1 through October 9
   - Simulcast Racing – April 29 through October 11
   Jodi recommends this be approved.

ACTION: MOTION (Metcalf) Adopt the recommendations as presented conditioned on submission and approval of proper license application. License application expected at next meeting.
VOTE: 4 Aye, 0 Nay

Chair Walters asked about booking contracts, Julie Delkamp reports revising contracts to reflect the OGA contract with MGP, Schedule A's (the list of their dogs that the kennels submit) which have been sent out and are expected to be back by 2/20. Ready to send out contracts by Feb.25.

Jodi thanked Tom Weaver for all his work and Scott Daruty for taking time to come in to discuss issues. Thanks to Jeff and Magna.

Paul Romain (OGA) commented that Jodi and Tom were essential to negotiations and deserves everyone's thanks. Magna was good to deal with. Dick Gage also deserves thanks. There is a planning meeting 2/25 for 2004 Greyhound season.

4. **Portland Meadows Race Meet Report**
   Jeff Grady reported that January was a challenging month with the ice storm. They lost 3 ½ simulcast days and 4 live days. With 3 less races in 2003 they're down about $380,000 in live handle, but $200,000 is attributed to the lost days. Export is up $2 million and simulcast is down $1.7 million, a lot is due to bad weather. The purse account has had 2 good simulating weeks and is now down to a $109,000 deficit. On 2/21 they will give away a race

horse from Ben Roots stable at Portland Meadows, look for radio and newspaper ads.

ACTION: MOTION (Gilmour) Adopt the make-up dates (3/9, 4/19, 23 and 26) which were submitted to the commission office earlier in the month.
VOTE: 4 Aye, 0 Nay

Magna put in a request for Mule racing. Their representative is going to the Reno mule convention this weekend. Chair Walters asked if they will be running a match race or mule card. Jeff says they are planning to have just one race, not a match race, but are trying to get some of the big name mules. Chair Walters said that rather than giving blanket authorization the Commission should delegate approval of a specific proposal to conduct a high profile mule race to Jodi. Commissioner Gilmour had no problem with that but pointed out that regarding other breeds they may have the right to do that right now. Chair Walters agreed as a matter of statute but their application would still have to be approved.

ACTION: MOTION (Thorne) Delegate approval of mule racing to the Executive Director.
VOTE: 4 Aye, 0 Nay

Chair Walters asked about Sunshine Millions Day. Jeff said it was down approximately $20,000, but that represents what they are down in Northern and Southern California all season. Attendance was good. No one hit the $5,000 mystery voucher that was sent out the 10,000 homes. It was a good day over all. They are dong the Magna pick-5. Washington is still out betting Oregon, but last week Magna had $571,000 wagered on the Magna-5, so it's building.

Commissioner Gilmour appreciates Jeff Grady bringing the balance of the Purse account and would like to get a monthly update on it. Jeff offers a weekly report if it would be more helpful.

Jodi mentioned her concerns that live handle is down across the country and suggested working with the Oregon Tourism Bureau to promote racing in Oregon, possibly with donations to purse money. She wants to brainstorm with others about how to promote racing in Oregon. Jeff Grady credits Patrick Kerrison with getting good press for many years, comments that it's tough to get the local paper to print the racing information.

5. Amendment to Operations Plans of Oregon Hubs US Off-Track and America TAB (cont'd from 1/22/04)

Chairman Steve Walters: Next item on our agenda is the Amendment to the Operation's Plan of Oregon hubs' US Off-Track and America Tab. This is continued from the last meeting. And we all have the proposed Amendment, which, I think, most people here know that. It is to allow simulcast wagering on merged and non-merged pari-mutuel wagering pools with respect to races run outside of the United States. We heard some testimony on this last time, and just for our records, so we have a clear record on this, we have received a number of letters from various groups on this issue. And just to state what we're including in our record, we have the Application itself and some supporting materials from the two hubs who are making the Application. We have a letter we received today addressed to Jodi from the National HBPA. We have a letter dated yesterday (February 18) from the Oregon HBPA on this subject. We have a letter from the Thoroughbred Owners of California that is dated February 17, 2004, and we have a letter from counsel for Magna Entertainment Corporation dated February 13, 2004, all of which will be included in the record of this request. Okay, excuse me. There is also a letter from the HBPA of the State of Florida dated

today that also will be included in our record, as well. I would like to ask at this time, first of all, the proponents of the Amendment would have the right to come up and make any additional presentation that they wish to make on the Amendment.

Ben Hayes: We presented our comments in support of the request last month, so we would like to reserve any further comments until everyone else has an opportunity to present their comments.

Chairman Walters: Right, and if there are comments, we'll give you a chance to respond. Is there anyone who would like to testify with respect to this proposed Amendment to the Operating Plan? Scott and Dave, sure, come on up. You can come together, singly or following each other.

Scott Daruty: I'm Scott Daruty from Magna Entertainment. Thank you for allowing us to be heard today. At the outset, I want to say, that we at Magna have spent a lot of time here in the state of Oregon and a lot of time before this Commission and have always been very impressed with the progressive view of this Commission. You seem to be on the cutting edge of a whole number of issues that are really of significance throughout the whole country, the whole racing industry. And you guys are often at the forefront of that, and we commend you for that and think for what it's worth, that you have done a wonderful job in sort of leading the way on a lot of these issues. The one thing that has been clear to us as we looked at the actions that this Commission has taken over the past several years, is it seems that one of the fundamental questions you've always asked is whether or not what you're considering is good for the racing industry, and I think, maybe this is presumptuous of me to say, but I think the reason you came to the conclusions you came to a lot of times was because you found that it was good for the racing industry. The issue that's before this Commission today is no less significant than all those other issues you have addressed, it is very significant. However, it's our belief that this is one circumstance where maybe we're taking technology too far. We think these Applications are actually against the best interest of the industry. We think they'll be harmful over the long term to live racing, to the racetracks, to the horsemen and quite frankly, we're just opposed to it. The reasons are many. We can talk from a technical, legal standpoint, and you can also talk from a more broad, sort of general, what's good and what's not good for the industry standpoint. And I'd like to just touch just quickly on the legal aspects. We've submitted a lengthy, our lawyers have submitted on our behalf, a lengthy legal analysis, but just to touch on a couple of issues. We generally believe that any business should have the ability to conduct its business as it wants to, we believe in free enterprise. And we believe that in this instance that we're not saying that the hubs should not be allowed to have non-co-mingled pools, we're not saying they should not be allowed to have foreign pools. What we are opposed to is the fact that they are proposing to do this without the consent of the host racing association and without the consent, presumably of the host jurisdiction horsemen. That to us is what we find wrong and what we find will ultimately be harmful to the industry. From a legal standpoint, clearly any wagers taking place within the United States are subject to the Interstate Horseracing Act, which by its very terms requires consent of the host racing association. We believe that that Act applies to these wagers and should be applied to these wagers for a couple of reasons. First, the Oregon Racing Commission's very Rules state that a hub can be licensed if it complies with the Interstate Horseracing Act. We read that to say it must follow those rules; it must get the consent of the host association in order to accept these wagers.

Secondly, there is a provision, a rule, that the Oregon Racing Commission has adopted is that says any wager that takes place through an Oregon hub is deemed to be made in Oregon. Again, by your very Rules if this is an Oregon wager, it is subject to the Interstate Horseracing Act, and therefore, requires host association consent. Now again that's laid out in more detail in our written submission, and I won't spend a lot of time on that, but I did just want to touch on that and also make the point, that what we are objecting to is the conduct of these activities without the consent of the host association. Setting the legal, technical arguments aside for a minute and looking at what does this mean to the industry, what would happen and where can we expect things to move if these hubs are allowed to accept non-co-mingled wagers placed through an offshore pool on races run at racetracks who haven't consented. Obviously, live racing is expensive to put on. It's an expensive proposition; you've got a big facility, you've got a lot of employees, you've got horses and horsemen who need to be compensated and of course all of that money comes from the handle. Basically, what's going on here, is by moving these wagers offshore, and into non-co-mingled pools, the hubs are taking the position that they have no need to contract with or no requirement to

contract with the host association and therefore they can do it without the host association's consent. For example, they can take a Portland Meadows race and show it, and not pay anything back to Portland Meadows who's putting on the show -- not pay anything back to the horsemen who are putting on the show with their horses. Now I recognize that the Amendment submitted has limited their Application to non-US tracks, but I would make two points with respect to that. The first is just because something is taking place outside the US doesn't mean that it is okay. We shouldn't look at foreign tracks and say, well we would never allow this to happen with a US track, but it's a foreign track, so we don't care. We believe that this Commission should look at the global community in making this determination, and should treat the foreign tracks just as it would US tracks. And the reason that that's important is because there are regulators sitting in foreign jurisdictions who could turn around and make the same decision with respect to their operators and allow them to poach US tracks. So we think what we really need to focus on here is whether this is okay, and the question of is it a foreign track or a US track is secondary. Because once this is allowed, and once these hubs are up and running, I don't know this for a fact but I suspect at some point in the future, they may come back and amend their Amendment to the Amendment to say that we would like to now accept US tracks. So again, if they came to the host association and said we would like to accept wagers through a foreign hub through a non-comingled pool, and they reach an agreement with that host association, great, that's something that they should have the right to do, they should be able to conduct their business that way. But they shouldn't be allowed to take the intellectual property rights of a racing association and profit from it without a contractual relationship. The, it's an interesting question, and you know I thought myself, this came up in January not too long before the Super Bowl, and I thought to myself well, wait a minute, why isn't it okay what they are doing? I mean you have the Super Bowl taking place, and you have people taking bets throughout the country, you know, sometimes legally, sometimes not.

Chairman Walters: Including, in the lottery in the state of Oregon.

Scott Daruty: Yes, on the results of the Super Bowl, and the NFL is not getting a percentage of those wagers, and the people accepting the wagers have no contractual relationship with the NFL, why isn't it different? Well, the fundamental difference is, of course, is our industry is a wagering industry. Our industry is based on wagering and our revenues come from wagering. The value of the results, the Super Bowl score results the day after the Super Bowl has taken place is virtually non-existent, nobody cares, nobody's going to pay for that information, what they wanted to see was they wanted to see the game, they wanted to watch it and advertisers were going to pay revenue because they knew people were going to watch it. That's different from our situation, where you could literally take the results of a race from Santa Anita after it's been run and that has value because if people wagered on it, it's the outcome of that race that's going to determine whether or not a wager wins or a wager loses. So the intellectual property, I guess in the case of the NFL is watching the game, it's seeing the guys run around on the field and score touchdowns. Our intellectual property is that, it is the images of the race, but it's also the results of the race. And that's where I think we differ. It's the results of the race that determine whether a winner, or a bet's a winner or loser bet, and that's where we derive our revenues from. Without our revenues, obviously live racing goes away. So, um, we believe in the numbers of letters that you've received from the National HBPA, and the Oregon HBPA, and the Florida HBPA and the Thoroughbred Owners of California. All we want to do as a group is protect our intellectual property rights. And if we have a contractual relationship with somebody, and we've agreed to economic terms on which they can wager on our races, that's great, but we don't believe someone should be allowed to profit from our races without entering into a contractual relationship with us. And again, I recognize at this point, their Application is not asking to do that, I think it's likely that it could be amended in the future to do that…

Chairman Walters: Well, they could ask.

Scott Daruty: Well, and even so, even it is limited to foreign jurisdictions, we believe that as an industry, we should treat foreign tracks the same way we treat our own tracks.

Chairman Walters: Scott, thank you for those thoughtful presentation, and as usual your remarks are very thoughtful and very much on point. I had a couple of questions I would like to ask you. Do you, in the principle of paying and entering into contractual relationships with the providers of the

product, if you will, the people who are running the races, and compensating both the racetrack and very definitely as well, the horsemen's organizations and making sure there is contribution to purses and no "poaching" of bettors is something I believe very, very strongly and this Commission has supported very strongly. Among other reasons that's why we have insisted on what we call mitigation efforts in Operating Plans, so that hubs have to take steps to mitigate the effects of having a bettor living near Prairie Meadows in Iowa, if they choose to bet through TVG that there be compensation, so we're not pulling bettors away completely who would otherwise be betting on a simulcast or on a live product at Prairie Meadows.
So, we believe that very strongly and have promoted that very strongly. The other principle that we have attempted to advocate and regulate by, as you said, is sort of staying out of the business of the people we regulate and not forcing business decisions on them one way or another and trying in a regulated system to stay out of the market and pushing market forces one way or another. And the first example of that came up when we approved TVG's Application a number of years ago at Grants Pass, and the argument was made to have exclusive contracts, you should turn them down because that's illegal and it's bad for racing, it's all very terrible. And at that time the Commission said that's a market issue and if racetracks want to enter into contracts with TVG, they should be able to do that. Now having said all of that, the question that I know you are expecting from me is do you distinguish between a situation where someone simply says I'm going to set up a non-merged pool on races in say, Australia, from a situation in which the hub or the account wagering provider and putting aside the legal issues and putting aside the issues about are they properly regulated and that type of thing, which is something that is very important to us. But if they go to the track in Australia and say we would like to pay you a host fee and we plan to pay source market compensation from any places or where our bettors come from, and the track says, "No, we won't deal with you, you cannot have access for whatever reason, and no one's questioning the right of the racetrack to do that. But, what, is there a difference between that situation where the hub is trying to enter into an arrangement which would provide compensation on non-discriminatory terms to the racetrack, to the horsemen in a situation where they simply say, "Well, forget it, we're not even going to ask them, we're not even going to attempt to negotiate a deal with them, we're going to go off and go into a non-merged pool". Do you see a difference in that situation?

Scott Daruty: Well, I think it's a very good question. And I think that you can look at both sides of the coin, you can say, well the Commission likes to stay out of business decisions, yet in my opinion, authorizing somebody to do an end to run around a racetrack, forces that racetrack and makes a business decision for the racetrack. In other words, you are going to provide your signal to them, because if you don't do it, we're going to let them take for free.

Chairman Walters: You're going to make money on it, on doing it.
Scott Daruty: I mean, I guess we can say the same thing, I don't know a racetrack in the country that doesn't grumble when you know, they see the 8% or whatever Churchill Downs is charging for the Kentucky Derby these days. Um, you know, I guess, we could say, we don't want to do the 8% here in Oregon, let's do a non-merged pool. And shoot, we don't need their signal; it's going to be on NBC. So, at what point is there a difference between saying, we as a track aren't going to provide you with our signal, as opposed to we'll provide it to you, but we'll do it at 3%, or we'll do it at 8%, or we'll do it at 15%?

Chairman Walters: To me, there's a difference, and obviously we're having a discussion here. It seems to me, I can see a difference when Churchill Downs wants to charge and can obviously, charge 8% on the Kentucky Derby, that's their right to do it. And if that's the going rate, and it is not sort of a confiscatory rate, in that, nobody can make any money. And they're only doing it to be able to say well see, we offered it to them and they wouldn't take it. And then one can imagine an example where we say to get the signal, it's going to cost you 15% or 20%, there's no margin there for anybody, so they couldn't possibly take it. But, would you think that there may be a difference between 8%'s the going rate and you might not make as much as you like by paying 8%, but this is the Kentucky Derby? And this is how we offer it to everyone, as opposed to say, you know, we'll sell it to you, but we're not going to sell it to you, and you, and you, and you at any rate. We don't want your money, we don't want your money going into our pools, we don't want your money adding to the amount we pay in purses, we're just not going to do that. Do you think that there's a difference there? I definitely, if Churchill can charge 8% for the Derby, you know, more power to them. I also believe very strongly that it'd be nice for this industry if host track fees went up in

general. If, you know certainly, I don't know how much leverage we have here at Portland Meadows, my guess is it's not much, but if one had Santa Anita, people might be able to charge higher host track fees for Santa Anita just as they do with the Kentucky Derby.

Scott Daruty: Well, um, one comment, then I'll get back to your question, of course, is those host track fees go up, which we believe, you know, the pricing is kind of goofy that the person who's getting on the show, putting on the show is getting the smallest percentage, and that's one of the problems with the industry today, but that as that goes up and up, if these hubs are licensed obviously, that's going to drive more and more money through offshore non-co-mingled pools that may…

Chairman Walters: Once we put a restriction on them that says that they had to try to get the signal on non-discriminatory, commercial (???) and reasonable terms?

Scott Daruty: And that's a good point, because that gets me to the part where I answer your question, which is…

Chairman Walters: Great!

Scott Daruty: The business decision. I mean obviously, it's a complicated business decision, and obviously we respect the Commission not wanting to get into business decisions, but it's not as simple as Magna or other tracks saying we don't like you so we don't want to give you your signal. I mean, believe it or not, it all gets back to the point you made earlier about TVG and about certain people having exclusive rights and I mean, Magna went on the record, it was over two years ago, when we publicly declared we would gladly give our signal to any account wagering company that reciprocated.

Chairman Walters: Right.

Scott Daruty: And that was flatly rejected. So, we feel like we've been sort of forced into a position where the business decision we're making is the business decision we had to make. And, um…

Chairman Walters: And, I'm not questioning that business decision, I'm just wondering if there is a distinction.

Scott Daruty: Well, you know, whether there's a distinction or not, I guess is debatable. But to me, the point is if you are to allow somebody to say, well Magna won't give us their signals, therefore, we should be able to take them for free…

Chairman Walters: Or TVG…

Scott Daruty: Or TVG, for that matter. I mean if you allow that, then you've just made the business decision for us. You've just said, Magna, we're requiring that you do a deal with these other hubs because, if you don't, they're going to get them for free. So you might as well do a deal with them, and get some money.

Chairman Walters: Which leads to my next question, then I'll stop monopolizing and allow my colleagues to ask you questions, Scott. Where do you think the bettors are going to go, if they don't have access to signals through legal, licensed hubs that are paying source market compensation, that are paying obviously of interest to us, taxes to the state of Oregon, which is why we have summer racing in Oregon today, aren't they going to go to some unregulated, perhaps crooked, offshore rebate shop, rather, if they don't have access to wagering through a legal, well regulated option?

Scott Daruty: I think that if the premise to your question is correct, then I agree with your conclusion, but I disagree with the premise, which is that there isn't a place to go. Whether it's a Magna track, or let me deflect some of the heat off of us and say…

Chairman Walters: Do, because I don't mean to point at you.

Scott Daruty: Say a TVG exclusive track, um, every person who wants to wager has an alternative. I know there's guys from the other hubs in this room, who will not like to hear this, just because they can't bet through America Tab, or just because they can't bet through US Off-Track, does not mean they can't bet through a legal, licensed, regulated hub. They can, if it's a Magna track, they can bet through Express Bet. If it's a TVG exclusive, they can bet through Youbet through its relationship or however they want to do it. So, I think that these races are available. They are not available at the present time through a single, account wagering provider. Is that bad for the industry? Yeah. Is that something that we believe needs to change and that we're trying to change? It is. And hopefully, we get there. We're not there right now.

Chairman Walters: And, I said I had one last question, but I'm going to ask one more, which is typical. And, then I really will let others ask questions. And as usual, I'm going to start with a little bit of a speech. I read all of the letters and the legal analysis, and it's all very thoughtful, and it's all very good. And I don't see one mention of the bettors, members of the public, who keep the industry alive. And I guess I have a great deal of concern with, trying to structure an issue of an industry in a way that says you bettor are going to have one option, and if you want to bet on our product, you're going to be this way, and that's the only way you're going to be able to get it. And the bettor who says, well, you know I don't want to, I hate TVG, I hate every one of their talking heads, and I don't want to have to open an account with TVG, or I hate TV Guide, which owns TVG. And rather than get an account with TVG, I know I have options. Now, they're not legal, they're not licensed, they're not regulated, but heck, you know I have options. You know, we have been in an evolution of this industry, where we started out, with the only place you could bet was the racetrack. And the industry was dying. The loss of the share of the wagering pie was happening, where all we said you could do was bet at the racetrack. And then we went to simulcasting, and that helped for a while, but the only place you could bet then was at the racetrack or the simulcasting outlet. And that varied widely among states. Now, we have a lot of technology, a lot of distribution, and racing has finally kind of said, well, you need to participate in the distribution and the new technology, but I'm worried about the step backward. And I really do believe, personally, and this is not a question at all, obviously this is just a speech (laughter by audience) that the bettors aren't stupid. And the bettors know they have choices out there. My own presumption is that most bettors would rather bet through a recognized, licensed operation, but have choices, then bet in a illegal, shady, gray environment, but that if they are told that they are only going to bet this way, that they will say, well, I, darn it, I don't want to bet that way, and I know I have other options out here. And that's just a speech, and if you'd like to respond to that, that's fine, but I'm going to open it up other people.

Scott Daruty: Well, I would, and I guess the way I would respond – couple points.
First, you're very correct about the evolution that wagering has gone through. From on track, to simulcast, to account wagering, but I would just caution the Commission that this step is of a very different nature than all prior steps. All the prior steps were based on requiring the consent of the host association. And that one step is, in my opinion, of a very different nature by saying you don't have to deal with them, you can take it yourself. There are certain circumstances where tracks have not have gotten in local battles, you know, some of the Florida tracks have gone back and forth and not provided their signals to one another for years and that's an exception, not a rule. But, at no point in history has any regulator said well we're requiring you to reach a deal, and we're requiring you to deal with your neighbor and provide them with your signal. And, I'm afraid that this Commission, if it takes this action, is going to be sending just that message.

Chairman Walters: But, Scott, you know the other activity is going on out there. You know that bettors have options in the gray zone of the wherever, and a lot of them are doing it. Story everyone in this room has heard a million times and are sick of, is that the Texas Attorney General was at a conference and was speaking on account wagering and hubs and followed the executive director of a racing commission in a significant state who said there will be no account wagering in our state. We have simulcasting, and that only can happen at the racetrack, and that's where you can only see it, and that's what we choose to do, and we can't have account wagering, because golly gee, we're already losing our big players to offshore operations. In the reaction to that is well, duh. Again, if you limit the options too much, well again, I'm sorry, I've dominated too much. I'd like to hea other questions by my colleagues.

Scott Daruty: You feel pretty strongly about this, don't you? (Laughter from audience).

Commissioner Gilmour: I've read all the material twice, and I've talked to a lot of people, and Chair Walters, you made some points I was going to make too. I never got a letter from a bettor, number one. Number two is I don't know that everybody in the hub business can or cannot get consent to show a race. I don't that. I don't whether they have tried. I don't know whether they have been rejected. I also know that Magna doesn't have their hub license in Oregon, we've talked about that. That…[*end of tape*]…legislation passed. And legally I think what US Off-Track and America Tab are asking is probably legal, but philosophically, I'm having some difficulties with it because one of the selling points of licensing hubs in Oregon was we were going to get in an area that it was regulated and to have some trust in the fact that the bettor could go – know that there's not going to be the gray areas and have some confidence with his credit card, his bet, his action on it. I like Chair Walters still believe in the free enterprise system and don't want to step across that line too harshly, but I think sometimes you come to a point where, you know and I'm sure a NAFTA hearing started off this way to a point, but we should encourage people to work things out before we have to step in. Now I've talked about seven different issues, but I'm sure that Mr. Hayes and you both got the point that I'm trying to make. We don't want to break this golden goose here in Oregon either and very frankly, the hub revenues have not been making projections as we had hoped they would lately and uh, there's some concern about we're at a point, and we might have to do something to move it to the next point. I guess I'm done.

Scott Daruty: I do want to respond to a couple things. First, on the bettor issue, you guys make a very valid point is where is the information from the bettor and perhaps we just sort of fell down on that one and that's an area where we should have provided information, and didn't. I guess I would just raise the question of whether ultimately it's a good thing for a bettor or for bettors to have a pool -- a non-co-mingled pool and a commingled pool on the same race if ultimately that ends up happening. I mean if basically, the next step from sort of the initial application would be, you know I think, a wholesale of moving pools offshore and your going to have racetrack pools, and your going to have non-merged pools offshore, and I worry that the little guy, the bettor that you know, who comes and sits in the stands and watches a live show is the one who's going to get hurt because he won't have access to the same sorts of information as the big bettors are playing really, just the difference between the odds in the two pools more than even betting or caring about the horserace. You're going to have guys doing basically arbitrage on your offshore non-co-mingled pool and your co-mingled pool. I'm not sure how that's going to all play out, I do think that will be an issue, and I don't thinks that it's to the benefit of the little guy, you know, the $2 bettor. I think you're going to find the guys with the complicated computer systems plugged into the tote and again, not really even betting races, but betting differences between the odds.

Chairman Walters: Aren't they already doing that? Don't they already have the ability to do that?

Scott Daruty: Well, what they have the ability to do, again, through these offshore hubs primarily, is have instantaneous electronic access to the pools that can be fed into a computer and run quick calculations to determine where they see an opportunity, and again with their access that the little guy doesn't have, shoot their bet in at the last minute and affect the odds, and that is harmful to the normal guy in the stands. I mean, this is taking even a step beyond because right now they are doing it, at least they are betting on the race, they won't even really be looking at the odds of the race versus whether they think a horse has a chance to win, they can do it just by playing the differences between the odds in the two pools.

Chairman Walters: But, the pools, and just to let you know, I have not made up my mind here, I'm playing devil's advocate a lot here Scott, if that helps.

Scott Daruty: Good, because I was kind of getting beat up.

Chairman Walters: And I'm sorry because you are the first witness and Dave Benson's smart enough to not come up first, so… (Laughter). But, the pools that US Off-Track and America Tab we're talking about already exist. The only difference would be whether or not bettors in the United States have access to them through a licensed hub, or directly from wherever they live to wherever you bet on those pools. So, they can do it.

Scott Daruty: Yeah, I think it's taking it a step beyond, it's giving them more legitimacy if it's licensed and certainly, my belief is it's going to grow if it's licensed. That it is a problem today, but it will be a bigger problem if it is a recognized licensed hub. I mean it's a little bit like even the philosophical debates over drug use in this country and it's taking place anyhow, so shouldn't we just legalize it. I mean at some point do you just give up and throw your arms up in the air and say it's anarchy, let everybody do whatever they want. I certainly know that that's not the position that this Commission advocates, and I know you are taking this decision very, very seriously, but again, I just want to stress the what we see is the harm to the industry. We're not alone, as you can tell from the four or five letters from horsemen's organizations you've received, and I guess on the issue if I might one last time just want to make sure I convey this thought. I think you are making a business decision if you basically pass a law that requires racetracks to make deals with people they don't necessarily want to make a deal with for their own reasons. I mean it's no different than saying if I make a reasonable offer for you to buy your house, and you say, I don't want to sell my house, I don't want to move, okay, then I get your house for free, that forces you to deal with me. It's your property, you can decide whether you want to sell it or don't want to sell it. And you know my belief is the racetrack owners and the horse owners that's their property, and if they want to make a deal, great, but if for their own reasons they decide it is not in their best interest, it doesn't all boil down to a dollar amount, there are other factors as to whether it's in their best interest or not.

Chairman Walters: But Scott, on that point, again, it's a valid point that people can differ on. But all of the decisions we make have an affect on business decisions people make, but we don't dictate any business decisions. I mean whichever way we would decide with respect to this Application will affect business decisions that people will make. But we wouldn't be telling people the business decisions that they have to make. So, I just…Are there other questions for Scott, or comments?

Commissioner Thorne: Well, I don't have any questions, I was going to bring up some points, but they've all been brought up. I guess I'll just repeat them with respect to free enterprise, I think we're all proponents of free enterprise because I think it's good business and I think Magna thinks it's good business, and the reason I think it's good business is it provides the customer (i.e., the bettor) with unbiased access to a product. And for me, exclusive contracting was something that came along before I was here, but in my mind, it's a little bit of an inhibitive issue with respect to free enterprise, so I'll note that. With respect to the legality of what's been requested, it has related, it has, I guess, been filtered back to justification or language in the Interstate Horseracing Act, which I don't think that particular document necessarily covers this issue. There's nothing in that document that talks about non-US tracks, this is all state language. I suppose that this discussion should be probably more accurately discussed at some other level besides this level.

Chairman Walters: So, just so you know, pardon for interrupting, we have asked our general counsel to review this and to advise on his views of the arguments for and against the…our legal authority to do this one way or another.

Commissioner Thorne: Okay.
Chairman Walters: I have an idea on what he's going to say because if he'd said you can't do it, we wouldn't be wasting anybody's time…

Commissioner Thorne: Uh, huh.

Chairman Walters: But, I will get that on the record a little later.

Commissioner Thorne: With that being said, I don't know that the Interstate Horseracing Act addresses this, however, in terms of language, but however I think the essence of what that Act represents is applicable to what we're talking about here. And from that perspective, I have problems with the request, but I don't have problems from the origination of the request (i.e., what's good for the consumer and what's good for the bettor). I don't know if you have any statements, but that's my perspective.

Scott Daruty: Well I guess, first I agree with you that the essence, I mean I would argue that the laws, the actual words of it do apply through some of the Oregon rules, but the essence clearly of

the Interstate Horseracing Act is that as long as people on both ends of the transaction agree, it should be okay. And here, you know clearly, one of those ends has not agreed, and your making the same point that Commissioner's Walter and Gilmour did about what is ultimately in the best interest of the betting public.
And setting aside for the moment, you know arbitrage between different pools and those sorts of issues, it all boils down to a pretty simple point, if the track is not being compensated and the horsemen are not being compensated, the tracks aren't going to be open, and the horsemen aren't going to have horses for very long. And ultimately, that's not in the interest of anybody within the industry that we can't let this money be poached out of the people putting on the show and into the pockets of people who aren't. They're providing a very valid, very useful service, as long as it's done through contractual arrangement. But to allow them to do it without consent, without payment is ultimately to the detriment of the industry, we believe.

Chairman Walters: Are there any more questions on it?

Commissioner Thorne: No.

Chairman Walters: Commissioner Metcalf?

Commissioner Metcalf: No.

Chairman Walters: Thank you very much, Scott. We do appreciate you coming here. Again, your analysis is thoughtful and very relevant to us, and obviously, these are very difficult questions for everybody up here, as well as everybody in the industry. And I'm very sorry that we made you feel beat up, none of it is personal, and we have the highest regard for you and for Magna and obviously, Magna is pretty much racing in this state right now, and we appreciate you taking the time and coming all the way up here because I know you had to rearrange things to do it. So, thanks very much.

Commissioner Gilmour: One last thing, I'm surprised this Mark guy that sent us this letter wasn't here. Is he the guy that's in Hong Kong or someplace or you know?

Chairman Walters: He's in LA. I looked him up. At least according his papers, he's a pretty good lawyer. Dave?

Scott Daruty: Thank you.

Chairman Walters: Thanks, Scott. Dave, Dick? We're exhausted now, Scott took one or more for you, so…

David Benson: Good afternoon Chairman Walters, members of the Commission, I'm David Benson, President of the Oregon HBPA. And while we're not attorneys, we're not going to try to talk about the law. We do however, have a couple of concerns that we would like to address. Oregon HBPA is an affiliate of the National HBPA, and one of the undertakings that the National has gotten quite involved in over the past couple of years is the elimination of piracy of American racing signals, and that bring back no revenue to the horsemen at our tracks. Research has shown that over 1700 locations have been discovered that illegally take US signals for US tracks without returning any of the revenue back to the horsemen or the tracks here in the United States. We fear that approval of this may cause reciprocal actions by various other countries and so on against the United States. Against tracks, take the same action that we're taking here, only on an illegal basis. At our last convention in New Orleans that concluded just two weeks ago, we had two gentlemen from British Columbia, I'm sorry, from Great Britain, that came and spoke with us, they likewise were concerned about the piracy of their signals, Australia, New Zealand and so on. And they want to do everything they can to help eliminate that piracy. Now, what's been proposed here today is not illegal as far as the hubs and so on, and what they're proposing, is a legal entity of it. But I guess, we talked about earlier, compensation to the horsemen and to the track, and to the country, or the city or the state, wherever that bet is made, whether it be in Europe or in the United States, and I've got to tell you I'm very concerned that I don't know how the Application reads, I don't know

if there's any provisions that provide for x amount of dollars to go to those horsemen or to the tracks where, that are putting on the show.
But I have be honest with you and right up front, I'm very concerned that one dime will ever be paid to any horsemen, at any track around the world. We have a program in Oregon that requires source marketing here. We have hubs in this room, we have hubs in the State of Oregon that are presently licensed that haven't paid source marketing for over a year. They are refusing to pay it today, and this is on bets made in Oregon by Oregonians, and we, the horsemen and the track are receiving zero. So, if it's happening right here under the Rules that we've put in already that were to protect us, I'm not quite sure how we're going to protect the same horsemen and the tracks around the world through this agency. My second concern is how are the state of Oregon, the Oregon Racing Commission going to maintain integrity and security for the bettors? Just a couple years ago, we had an issue right here in the United States of a Pick Six scandal and hubs located in Oregon and quite often reimbursed the bettor in that particular instance, while other hubs did not. We talking of an international situation here taking wagers internationally, you know outside the States, and if we have that same situation that would happen in Hong Kong, or Australia, or New Zealand or anything else. Is the Oregon bettor going to have any recourse, will they be protected, will any bettor in the United States be protected? We have somewhat protection here in the United States, through this Commission and so on. I'm not sure that we would…

Chairman Walters: Let me add just one thing on that point Dave, and I saw that in your letter, and I think it's a very good point. But by having again, just to look at it from the other side, by having a hub licensed here in Oregon, we would have the same control as we would have over the Pick Six scandal. We would have a hub here so we could regulate it and that we could direct the manner in which they responded to an issue such as that. On the other hand, if the bettor is going someplace in the Caribbean or something like that, nobody has any control over them. And nobody has any ability to protect the bettors there. But anybody, anywhere who bets through a hub in Oregon, we have the ability to protect them, so…

Dave Benson: And that's actually, I have said this is a concern that we have that those are maintained.

Chairman Walters: Right, it's a legitimate one, Dave.

Dave Benson: And those are the two primary issues. But the first one is compensation to the horsemen and piracy as we say, throughout the world right now, there's so much of it that it's hurt the track, the horsemen putting on the show with no compensation and unfortunately we've seen it right here, and I doubt very seriously that there's any control over it that it would provide the horsemen and the tracks around the world any compensation, and I hate to see them reflect that and come back on us.

Chairman Walters: Dick, did you have any comments?

Dick Cartney: Yes, I just have a brief comment. Dick Cartney, Oregon HBPA
(Executive Director). I just wanted to echo what Dave said that one other thing, we do very much appreciate the value of having the hubs in Oregon. We know that the Commission has done a fantastic job I think, of making sure that we were protected with communication or source market fees. We still have some rough spots to iron out on that, but we are…we know that.

Chairman Walters: And we are all working on those, as Dave was referring to.

Dick Cartney: We do realize that we've benefited greatly, especially in th Summer
Fair from the tax revenue that comes in through the hubs and we are very appreciative of that. One other thing that in regard to this particular Application, we just wanted to make the point that as horsemen, we are partners with the racetrack operator. And even though there may be some provision for the horsemen to receive some revenue, if there's anything that is detrimental to the operator of the track, we have to take cognizance of that because ultimately, if the track operator is harmed as being partners, we ultimately, could potentially suffer some harm ourselves. So, while we are very supportive of the hubs, we also have to look after the interest of the tracks to some

degree, so we have to be supportive of the tracks because we are partners with them in this endeavor.

Chairman Walters: How do you feel Dick, about an approach if the Horseracing Act applies, you have to get the consent of both the host racing association and of the horsemen's group in the host's jurisdiction? And obviously, you're partners with the track, and I'm glad you view it that way. But how do feel about a decision by a track for external business reasons whether they have an exclusive with TVG or something else saying we are going to limit our Rules, we are not going to take money from certain bettors who have accounts with legitimate hubs, we're just not going to do that? So that's money that is not going to go into the pools on which purses are not going to be paid, being in the pools, and obviously that helps the handle on the bettors and whatever host fee is charged, whether it's the Kentucky Derby fee or something less than that. We are going to limit our pools and just not take that money even though we have someone out there who wants to pay us the host fee, wants to be sure that the horsemen get compensated for this additional money coming in. How do you folks react to that?

Dick Cartney: Well obviously, I believe that for the overall health of the horseracing industry, I think it would be much better if the account wagering companies were to work out some kind of an agreement where they could share their product. That would be much better for the bettor, it'd be better for the horsemen, I think ultimately in the long run better for the tracks. I do realize that there are some business differences between the companies. I was happy to hear Scott say they are attempting to work out something with some of the other folks…

Chairman Walters: I read in the *Blood Horse* that Mark Wilson says that one of his priorities is to work something out about signal exchange with Magna, so maybe we won't be talking about this.

Dick Cartney: I think it would be great for the overall health of the industry if they were to do that. I realize that there's problems that I'm not privy to, but I would hope that in the future before too long that those things will get ironed out, so that as you mentioned the bettor will have a choice.

Chairman Walters: Thanks, Dick. Any other questions for… Dave, please go ahead.

Dave Benson: To just expound on what Dick has just said. I don't know that the bettor is precluded from betting on any given product. I personally have an account with TVG. I personally have an account with Express Bet. I personally have the ability to go to any live Oregon state or tracks or off-track betting parlors. And I have the ability myself to bet on any track I want to bet on, and I don't think that any bettor in this state is precluded from doing the same thing I'm doing. I don't bet very much, but at least if I want to bet, I have the opportunity to do so. It's not convenient, it's definitely not convenient, but we have the ability to do that.

Chairman Walters: Right, you answered what I was going to ask about it's not being convenient.

Commissioner Gilmour: I want to make a point too, just so you know, we're in a situation I think in this industry where we're trying to make it as convenient as possible for everybody. That's what makes things work and we had a handle problem and in my mind, it ought to be in our interest to make our product as convenient as possible so that maybe we can iron out some of these handle problems and purse deficit problems, etc.

Dave Benson: We would second that motion.

Chairman Walters: Any other questions or comments? Sure. Thank you very much gentlemen. That was pretty painless, wasn't it?

Unknown: We're losing our energy up here.

Chairman Walters: Yeah, we are. Anyone else like to testify? Ben, do you have any remarks you'd like to make in response?

Commissioner Gilmour: Is he going to bring the old, gray haired guy with him?

Chairman Walters: He's mature!!

Commissioner Gilmour: Oh!!

Ben Hayes: Thank you Mr. Chairman. Ben Hayes, attorney for US Off-Track and America Tab.

Brad Higbee: Brad Higbee, Ben's potted plant. (Laughter) And I might say just before I …

Chairman Walters: Would you like some water?

Brad Higbee: Not just now, but thank you. You'll be all happy to know that I'm going to let Ben speak, but I just wanted to say that although Ben is from Tampa Bay, the home of the Buccaneers, I don't think he's a very good pirate because he's actually coming here today seeking your permission to change the Operating Plans, but just wanted to make that one minor point.

Ben Hayes: Thank you. I sat here and listened to Magna and the HBPA representatives, and they made a lot of good points. But I think there are a lot of misconceptions also as to what's being attempted here. There were a lot of statements here saying that there was piracy, or we're trying to obtain signals for free, not compensating the horsemen, that's really as far away from the truth as it can be. In our first Amendment when we were talking about if the possibility of doing domestic races, there was a provision to provide the horsemen with a significant percentage of those wagers. In addition, everyone talks about the tracks being the ones that are going to be harmed. Well, the hubs US Off-Track and America Tab are owned by tracks, wholly owned by tracks. We understand the dynamics between the tracks and the horsemen and the dog men. We understand the relationship with the bettors, as well. And this is all about the bettors. Providing the bettors with an opportunity, our bettors, to wager on products that they are now being shut out of, or new opportunities that might exist in the world. When talking about the policy behind the Interstate Horseracing Act, the Congress specifically said that it was a very limited intervention into the gaming occurring in the United States. It was a very limited action taken in that the States, the Oregon Racing Commission are really the ultimate arbiter as to how gaming should occur in this state. Right now, the large tracks, the large market tracks, primarily controlled by TVGs, with their exclusive arrangements with those tracks, and Magna, the small tracks and the small hubs are getting pushed out. They're getting a very limited menu of opportunities, and the only way to potentially increase the menu of opportunities for bettors is to find other alternatives. However, there's no plan or intent to try to keep from compensating the horsemen or those tracks. We would want an opportunity to wager on those tracks, and if we were given that opportunity, I'm sure we would take that opportunity. I'm glad to hear that Magna understands and agrees that it's bad for business to exclude hubs from being provided their product. I think that that's been reflected, in what I read in the news, in *Blood Horse* and the *Thoroughbred Times*, the bettor's have commented about that and they have made some decisions about who they bet on and what they do. But, there is an opportunity here for the leveling of the playing field so to speak, and allowing the smaller hubs to go forward and provide their bettors with opportunities.

Chairman Walters: Ben, let me just ask you a couple of follow-up questions on those points. You folks take Australia now, or have in the past?

Ben Hayes: Yes, we have.

Chairman Walters: And in doing that, you have agreements with the host tracks in Australia?

Ben Hayes: Yes, we do.

Chairman Walters: And so you pay the host track fee and that sort of thing, and then from the markets in the United States where you get the bettors, the source market compensation policy applies to them, as well?
Ben Hayes: Yes, and none of the plans that we put forward were going to change that. And in fact, it was going to be an augmented mitigation plan, so that…

Chairman Walters: Right, for when you were talking about domestic?

Ben Hayes: Yes. There also are other policies from the federal government out there. One of them was -- is embodied in the Sherman Antitrust Act, where a group boycotts, and monopolies….

Chairman Walters: Excuse me, Ben, we heard all of this in Grants Pass. (Laughter).

Ben Hayes: I'm sorry, I wasn't there.

Brad Higbee: Sherman's march through Grants Pass, Ben.

Ben Hayes: Again, you know, with policy decisions, there are policy decisions out there with regard to the way business is conducted. I guess I could talk about some of the legal arguments that were put forward today – such as infringement of intellectual property rights. I'm primarily an intellectual property attorney and I have to disagree that I don't know of any intellectual property law or principle that would be…

Chairman Walters: Non-trademark use and all that stuff...

Ben Hayes: …that would be violated by this request. In fact, I believe, I'd like to hear from the assistant attorney general about the legality of this, but I believe the opinion is that it is legal.

Chairman Walters: Just so, we haven't asked him about intellectual property law because that has not been presented to us as an argument for or against. I know there are folks in the industry who are exploring issues related to intellectual property law and as I told one of them, if they are able to establish that principle, more power to them, literally.

Ben Hayes: Right.

Chairman Walters: But my own thought about that is sort of like the antitrust arguments in Grants Pass several years ago. At the very best, it's an argument that is a toss up and not something that I would think that this Commission ought to be deciding one way or another because it's a novel and creative theory and may someday prove accurate and may not, but it's not so clear that we should get into it one way or another.

Ben Hayes: Okay.

Chairman Walters: Any questions for Ben?
Commissioner Gilmour: I have one, Mr. Chair.

Chairman Walters: Sure.

Commissioner Gilmour: It kind of boils down to a couple things, and we've talked about those two issues, but I'd like to bring up another issue that was brought up somewhat today. If your company could get consent from the tracks you wish to have your bettors bet on, would you have made this proposal?

Ben Hayes: That would be speculation on my part…

Commissioner Gilmour: That's fair, that's fair.

Ben Hayes: But my answer probably would be no.

Commissioner Gilmour: Okay, because I really don't want to make a decision based on that. And it's hard to get there from here, but I'll try to make it in a short way. I'd rather have you try again, and this would be your last court of result is where I'm basically coming from.

Chairman Walters: Other questions or comments?

Brad Higbee: I'd like to, Mr. Chair.

Chairman Walters: Mr. Plant!

Brad Higbee: Yeah, since you offered water, apparently it worked, and I'll make it brief. Anyway.

Chairman Walters: It worked for me; I'm going to have to take a break after this!

Brad Higbee: I understand. I was trying to give you a break there. To clarify for the record, I understand from previous testimony some concern about local payment of source market fees. As I understand the request for the Amendment to the Operating Plan is only for those of US Off-Track and America Tab, both of which, I believe, are fully current…

Chairman Walters: Yes, good point.

Brad Higbee: And there's no problems, so on that point, I wanted to echo your comment that you are the regulator to these hubs. You have the official duty of oversight to make sure those sort of things happen, so there is a level of assurance that can be provided to the public that these things are going to be taken care of in due course. And there is a level of assurance. One additional point, I know that Commissioner Thorne mentioned some discomfort regarding this level of regulatory authority and perhaps there should be another higher level. I'm not sure what higher level there really would be to the extent that the states are regulating wagering activity and the hubs in particular…

Commissioner Thorne: Unfortunately, I think you are totally accurate. I don't think there is a level, but I think we are talking about an international issue here, and us as a state setting precedent at this level makes me a bit uncomfortable and I don't know, maybe the Attorney General can take care of those issues. What we're talking about is making a decision with respect to international commerce, which I think for me it's a stretch.

Brad Higbee: Then as a final comment before we all have to stretch because things have gone to sleep for sitting for so many hours in a row. (Laughter). I just wanted to say that while I appreciated Scott's argument of behalf of Magna, I think most of those arguments would be a little bit more on point if the original proposal was the one that was still on the table, as opposed to the narrower, just foreign tracks sort of experiment to see about slightly different approach as a way to keep the domestically-based hubs, not only in business but maybe competing a little more effectively with some of the offshore hubs. I mentioned the word "experiment" because really as we're all entrepreneurially heading off into the distant space, we're trying to find new ways to do things. Convenience for fans, new ways to generate revenue for racing, etc. and I think this might be an interesting experiment to see if it works. Perhaps you would limit it with an approval to a twelve-month period to see if there are problems or complaints or things like that. I think, as the Chair commented, if there is a request to further amend the Plans for these two hubs to apply this to domestically-based racetracks, then all those arguments are back on the table, and it's the prerogative of the Commission to decide whether or not they wish to approve those Amendments at that time. But in terms of an experiment, I think this would be an interesting way to go to see what can work and what can be beneficial for individual, smaller hubs, racing as a whole and racetracks. And probably it's akin to the experiment that I understand that the National HBPA is embarking on right now in setting up a non-co-mingled offshore hub to accept, I guess, foreign wagers on domestic tracks. You know maybe more power to them, maybe that's a way to sort of lure some of the current wagerers away from the many rebate shops and arbitrage offshore wagering operations and have them focused on the HBPA-encouraged or run offshore hub, as well.

Chairman Walters: Just so -- on that point because it is non-merged, that proposed hub would provide an arbitrage opportunity just of the sort that we are talking about now just by it's very nature.

Commissioner Thorne: But would Ben have agreements with the source tracks?

Ben Hayes: No. And it would be offshore where it wouldn't be necessarily regulated by a Commission with the interests and policies that the Oregon Racing Commission has.

Brad Higbee: Mr. Chair, Commissioner Thorne...
Chairman Walters: And they are talking about paying – making sure that compensation is paid to the tracks, and I don't know what the arrangements are they have for that, but it would because it is a separate pool, it would necessarily provide arbitrage opportunities.

Brad Higbee: And Mr. Chair, Commissioner Thorne, forgive me for bringing it up, I know that my good friends at the HBPA just approved the concept a couple of weeks ago at their conference in New Orleans, so they're probably just getting things fleshed out. I know they've got a consultant team and they're looking for a place, appropriate regulatory framework and such.

Chairman Walters: Thanks. Any other questions or comments for these gentlemen? Thank you very much.

Ben Hayes: Thank you.

Chairman Walters: And speaking of discomfort, we do need to take a break, or I need to take a break, and I'd like to take it for five minutes. When we come back, I would like to hear from our general counsel, Raul Ramirez, on his analysis of the legal arguments that have been made with respect to this proposal. I'd like to hear from our Executive Director if she hasn't completely lost her voice about the investigation that has been done regarding the proposal to participate in non-merged pools, specifically with respect to Euro Off-Track and the Isle of Man. So when we come back, we will do that. Thank you.

Ben Hayes: Okay.

[Five minute break].

Chairman Walters: We will come to order, please. We are back on the record. I had a request during the break that a request was made. There was a belief that Mr. Higbee's last remarks raised a new issue about this being an experiment, and I've had a request to respond to that portion of the remarks. So, Scott…

Scott Daruty: Scott Daruty with Magna Entertainment. And I'll be brief; I just wanted to raise a point. Towards the end, I did hear the comment that this is offshore, that this is not US, and that maybe we could do a twelve-month experiment or something like that and that this is designed to open up new markets for the existing hubs. I guess I would just point out that it was sort of eluded to that part of the reason in response to Commissioner Gilmour's question part of the reason was that TVG and Magna are not providing their signals, and therefore there's not an opportunity to obtain consent and that's why this sort of end-around process is necessary. I would just point out that if this is only going to be limited to foreign tracks, I'm not aware of any of the foreign tracks having taken the position that they are not willing to discuss with the hubs providing the signal, and therefore there's no reason to pass this Rule, which would allow the signals to be taken without the consent. In other words, if it's only Magna and TVG that are taking this position, then this should be unnecessary, they should be able to contact the hubs, contact the tracks and get their consent. That's the only point I wanted to make.

Chairman Walters: Okay, thank you Scott.

Commissioner Gilmour: I appreciate that.

Chairman Walters: I would like to at this point, I would like to ask for some, for our General Counsel, Raul Ramirez to address us briefly about the results of his review of the legal issues underlying this request.

General Counsel Raul Ramirez: Thank you, Mr. Chairman. I will be brief. I think the Commissioners are very understanding about the issues presented and the question that is before

the Commission is, “Is this legal?” And, some of the parties of interest to this issue and provided a lot of information to the Commission, which I have reviewed. And in summary, what I can say is that the analysis is essentially correct. The exemption under the Wire Act continues to apply in light of both of the Proposed Amendments to the Operational Plan. In addition, because of the way that the Interstate Horseracing Act is written, I believe that it is limited to interstate activity, which means that it would have no applicability in the scenario where the wagers are nonmerged and they are in foreign jurisdictions from foreign tracks. So I believe that it essentially answers the question about the legality and if you have more specific questions, I can try and clarify that, but having addressed the issue of the legality, one of the other things that I would mention is that this is very much a discretionary issue for the Commission. Most of the statutory provisions dealing with the regulation of hubs by the Commission has been delegated to the Commission in terms of adopting Rules. So, in that sense, the Commission does have a lot of latitude in placing conditions or requesting changes to the proposals before anything is approved. So, those are the comments I have.

Chairman Walters: Thank you, that’s very helpful. Any questions for our General Counsel?

Commissioner Gilmour: Yes, one. Do, this is along the same lines. I’m kind of concerned. The statement was made by one of our witnesses concerning payment source and whether or not we did or didn’t have review of hub contracts, whether or not they were paying source fees.

Chairman Walters: Yes, I have strong views on the subject.

Commissioner Gilmour: And my question would be to our attorney, is that also a construed as part of our legality of reviewing to see whether or not we are responsible or not responsible for assurance of those source fees being paid?

Raul Ramirez: I might need you to rephrase the question. Are you asking whether the Commission’s ability to regulate that would change in light of these proposals?
Commissioner Gilmour: No. It’s Chapter 2. Total different view. What I’m asking is, is when we review hub licensees, the assumption that somebody made that testified prior to us is that we could review those applications to see whether or not the Commission could rule, or has the regulatory authority to see that source fee marketing is paid. I’m wondering, is that an accurate statement?

Raul Ramirez: It is accurate to the extent that the hub is licensed in the State of Oregon and the State of Oregon has regulatory authority over that. Can the Commission condition a renewal of a license on the condition that certain fees be paid, I think, that that probably is the case.

Commissioner Gilmour: Okay, check that, I just like…

Chairman Walters: Just to elaborate on that. The source marketing, the mitigation plan is included in the operating plan, which is a part of the license application approval and certainly my view would be that as we have had conversations already addressing the issue raised by Dave Benson, that if my own view would be a hub is not paying source market compensation as provided in this operating plan, it is in violation of this application, and certainly in violation of the operating plan and probably in violation of the application. In my own view that would apply, not only if they are not paying in Oregon, but if they are not paying it in Iowa because their application, that’s part of their license application. I don’t know if you had other comments or thoughts on that Raul or not.

Raul Ramirez: I agree.

Chairman Walters: Thank you. Good comment.

Commissioner Gilmour: As you’ve pointed out, I’m not an attorney, and I don’t want to be.

Chairman Walters: You pointed out.

Commissioner Gilmour: Yes I did, and you’ve made some clarifying statements, but my point is before this gets hashed around, I wanted to put that on the record so that we were all aware as the

Commission members of what is the true, legal standing we have when we review the contracts, because I do remember that there is that part in those contracts.

Raul Ramirez: Right.

Chairman Walters: Thank you for clarifying that point. The next thing I would like to do is get again, given your voice concerns, as quick summary as we can. And just for background, when this Application first came in, in its original iteration, Jodi and other members of the Racing Commission staff conducted a investigation of the proposed non-merged pool host, an entity called Euro Off-Track that is, has its base of operations and is regulated in the Isle of Man, and the investigation went to two points…[End of tape]…concerns about it and its prior history a licensee in the Isle of Man, and second what is the regulatory structure in the Isle of Man and is it sufficient to satisfy us that there is proper regulation of this entity similarly to what we would assume if we were somebody based in Florida was asking to do business in the State of Oregon, so Jodi.

Executive Director Jodi Hanson: Okay. We actually started looking at Euro Off-Track back in May 2003 when we had a concern that Euro Off-Track was letting Oregon wagerers wager on jai alai. So, Steve Roden started that aspect of the investigation and established a relationship with Bill Mummery who I also have been working with. Basically in 1986, this gambling control commission came into being in the Isle of Man. In 2001, they implemented laws that are really not as specific as ours, but there's a lot more to it than I originally planned on seeing and it's called the Online Gambling Regulation Act of 2001. And they have enforcement, and their enforcement for violations of laws actually require six months to two years in jail and up to 5000 pounds, I guess, whatever their money is over there.

Chairman Walters: Euros, maybe.

Jodi Hanson: Yeah, Euros. So there is this structure, and they not only supervise and control the conduct of casinos, but they are now trying to be more aggressive with the online gambling, and they go out and inspect quote, "the betting offices". Euro Off-Track has a tote that's operated by AmTote in the Isle of Man and they got the assistance during back in May of AmTote Hunt Valley to ensure that the eight accounts of jai alai that they had were no longer continued, they blocked that. So, they did comply with us in that respect, which I see that as a good point. So, there's only five of them that do the inspecting of the betting facilities, and I really don't know how many there are, I can't give specifics and I don't have specifics on actions taken, but Euro Off- Track, under betinternet.com, which is one of their partners, has received a license to open a public betting office in June 2003. They also have a bookmaker's permit from June 2002, and a restricted betting office license issued in June 2003. They received approval from the Treasury Department to sponsor pool betting in June 2001, right about the time that this new legislation -- well, I call it legislation – these new laws came into play for online wagering. There aren't any problems with Euro Off-Track. They haven't had any action or issues. We did make a call last week to find out if Oregon account holders could wager on jai alai, and the woman said yes, so we'll deal with that too, again. So…

Chairman Walters: Just a question I have Jodi, on the -- you say they have a tote, and they have a bookmaker's permit. Obviously, bookmaking is legal in the UK.

Jodi Hanson: Yes.

Chairman Walters: But with this Application, I assume that there is no… that any bookmaking operations are entirely separate from wagers into the tote.
Jodi Hanson: Oh yeah, this is a separate system from what I'm understanding. And they also have a voice call center there, as well, kind of like the setup here with ours.

Chairman Walters: Any questions of Jodi on the investigation that was done?

Jodi Hanson: There is a lot more, but…

Chairman Walters: Yeah, Jodi, just so we make clear for the record, are you satisfied based on your investigation that Euro Off-Track is a legitimate, legal operation, and that it is properly

regulated in the spot where it's located, and the third thing I guess I would ask is that what we are talking about here is pari-mutuel wagering not making book.

Jodi Hanson: Um, you just threw me off when you said is it pari-mutuel versus making book when they have the bookmaking license, but they are doing pari-mutuel wagering online.

Chairman Walters: And that's through their tote?

Jodi Hanson: Right, through their tote.

Chairman Walters: Okay, but the other two parts of my question about them being a legitimate, legal operation that doesn't have derogatory information that we've turned up and that it is properly regulated under the license and properly regulated under the laws of the Isle of Man.

Jodi Hanson: According to the information I've received, I would say yes. Of course, in the back of my mind as a regulator, I'm always wondering well do they actually go out like they say they do, and so forth, but I would say yes.

Chairman Walters: Any questions of Jodi? Okay, I think we are at the point where the Commission needs to make a decision on this. I'd like to make a few observations, and then open it up to my colleagues on the Commission. A lot of my thoughts and comments were made and questions that I asked the various people who testified before us, and I do want to start by saying I am very grateful for the witnesses who came here, for the written input we have had that we have included in our record. Obviously, this is an important issue and one can gather it by the interest that has been shown here by Scott rearranging his schedule to come and be able to testify in person. And so we recognize the very important nature of any action we take with respect to this Application. I would like to emphasize again, my belief, and I think it has been the history of this Commission that it is very important to us. We really are about live racing here in Oregon. We are really about the live racing industry. And I don't think anybody up here would be sitting here if all we were doing was regulating hubs and simulcasting and internet gambling because it is about the racing. And it has always been about the contributions that distribution of the product, distribution of the racing product is – the benefits that it can give for the live racing industry and no one on this Commission would like to do anything that would harm the live racing industry in this country or internationally for that matter. And that we have, as I've said before, we have a history of making sure that things such as source market compensation are paid; that where it applies, the Interstate Horseracing Act is adhered to. Another point that I would like to address briefly is the issue about piracy of signals. That's a big problem in racing, in the United States now and again, I'm sure internationally, as well. And regardless, of what we would do on this Application, if this Commission ever found out that any of our hubs was engaged in signal piracy, that is getting the signal that is broadcast by any racetrack, either internationally or here, and getting it illegally without an agreement with the track and the appropriate consents, we would take swift and severe disciplinary action on that type of operation. I also would like to acknowledge the concerns that Scott expressed so well, and I think Dave and Dick adverted to as well, about the notion of not just saying well, all we are talking about here is foreign tracks because more and more this is an international community. There are efforts to try to attract wagerers, bettors and dollars from overseas to wager in this country, and I think a lot of the hubs and a lot of providers and a lot of the racetracks in this country have found that it benefits their product and benefits their industry by bringing in signals, races from – internationally, and so, I wouldn't say, heck, it's just foreign tracks so we can do anything we want to them. This is a broader community. I've been told of something called "The Good Neighbor Policy," where tracks in one jurisdiction or international jurisdiction will make agreements that we won't pirate your signals – or we won't do business with people who pirate signals, if you won't do business with people who pirate our signals, and I certainly approve of that. Having said all that, I do have the concerns that I expressed in the dialogue that I had particularly with Scott, but also with Dave and Dick about whether it really is in the best interest of racing to allow people to build walls or attempt to build walls around their tracks, their products, their state, their country, however you want to phrase it. And just going back to the gee whiz, we're already losing big players offshore. I think bettors are becoming increasingly sophisticated, and
I think they are going to vote, if not with their feet with their dollars. And if they are told you don't have a choice you are going to do it our way or it's the highway that that is not in the best interests

of racing. I think what is in the best interest of racing is having entities such as the hubs here in Oregon that are legal in their operations, that are regulated, that are good citizens, and the point was made here, and it's absolutely true, we have an Application here from two hubs that have been very good citizens in racing, and there are no suggestions that they would pirate signals or that they would engage in any type of improper behavior such as that. They've paid their source market compensation, they have done everything that this Commission has asked of them, and I recall the original Application when there were policies when America Tab came here that they had, that we asked them to change, and they changed them. So, I think it is in the best interest of racing for, and now as it was pointed out, rather than just saying, well if we can't get signals, we're going to go offshore and run our own little shop there, they are coming to the Regulator and asking for permission and asking, where they know that there is the possibility and certainly the likelihood that conditions would be placed on any permission they would get, or they would be turned down altogether. My own thoughts on this very difficult issue, and then I would put them out there and let them -- for my colleagues to discuss and share their ideas are that with respect to this Proposed Amendment, which is to allow these two hubs to participate in non-merged pools offshore relating to betting only on races in other countries that we grant the Application on a number of conditions. And the conditions that occur to me would be (1) that they could only do that with respect to signals, not signals, if they're going to get a signal, they going to pay for it, but with respect to races at tracks where the signal the access to the merged pools, is not available to them on non-discriminatory, commercially reasonable terms so that as my colleague, Commissioner Gilmour observed, we'd like you to try some more. We would like you to see if you can get the consent of the track on a reasonable basis and for a particular signal, it may be ten percent. I mean getting the Arc de Triomphe may cost you ten percent or eight percent, like the Kentucky Derby costs you eight percent, and if that's the going rate to accept wagers on the Arc, then that's what you would have to pay. So, that would be my first condition on it. The second would be that and I think that it is obvious, that the normal source market compensation policies of those hubs, the requirements that we require of them remain in place. Because remember we're talking about bettors in the United States betting into these pools, just as we do with respect to domestic pools, or tracks in other countries such as Australia, and I believe, there are some others that our hubs have taken. So if there is somebody in Iowa or Oregon or anywhere else, who is participating into those pools, betting into them, the normal source market compensation policies would apply. The third, which I think is equally obvious, is that it would have to be a legitimate non-merged pool in a legitimate organization. An organization that is licensed by the jurisdiction in which is does business and that it is there is real regulation regarding that entity, such as it appears to be the case in the Isle of Man. And I would like to compliment Jodi for the job she did investigating this because I saw a bunch of the documents that she was getting come across my desk and believe me it was voluminous and she was having various conversations with the regulators in the Isle of Man, so it can't be some just fly by night rebate shop out in the Caribbean. It has to be in a legitimate jurisdiction, it has to be licensed, it has to have a good record of compliance with the regulations there, and it has to be, as I said real regulation. And then there's another issue with respect to our hubs that we have discussed from time to time and that's the issue of video streaming. We've had a concern that a significant portion of the wagering opportunities granted by our hubs, whether it's TVG, if TVG doesn't show every race, you can bet on at TVG, or Youbet and they don't either, or our current hubs now, but that a significant portion of the wagering opportunities you have there be subject to video streaming because our statute after all does refer to simulcasting hubs. We haven't required it with respect to all, but we require it for a significant portion, and we would not want it to get out of whack that someone was just sort of lining up non-merged pools and not getting the signals, because they couldn't do that without paying for them so that they didn't become too lopsided for that type of wagering opportunity. And I think the last thing that I would – condition that I would suggest is that this – that we do treat this as an experiment. That we allow it for say a year, but subject to our ability to revoke the permission in the event that something goes very wrong in terms of the regulation, in terms of the way the pools work, and obviously, any particular signal I would suggest, signal – again I keep saying that, we're not talking signals here because you got to pay for those. Any particular wagering opportunity that would be permitted under this Amendment would be we'd delegate authority to the Executive Director to approve it to make sure that the conditions are met. So, those are my thoughts on the subject and I'd be delighted to hear other thoughts from my colleagues. That much enthusiasm, huh?

Commissioner Metcalf: I'll start off with some comments. As usual when I sit on this end of the bench during the Commission Meetings, I kind of have a little different perspective and we can talk about the bettors and how our concerns lie with them, but sitting down here my primary concern is always the welfare of the horse. And, as I've listened to and read about all that's been going on in the last month since this was first proposed to us, I wanted to know how is this ultimately going to benefit the horse and in doing so, of course the horsemen as well because they have to go hand-in-hand. I've watched over the last three years as Magna has come on the track and improved conditions so much for both the horses and the horsemen and women. And I support the highly regulated notion of, the regulations that you promote, I support those in looking at something like this. I certainly would not want to do anything that Magna would not approve of.

Chairman Walters: Other thoughts?

Commissioner Thorne: Mr. Chairman, I guess, you know, the one issue I had with respect to this whole proposal was, despite the fact that I still have questions about language and statute and our rules that are applicable here, the problem I had was, you know, what we do here are authorities granted on the basis that we promulgate rules that are in the best interest of racing and that includes horsemen, the horses and the betting public. My thoughts with respect to the initial request was that it was questionable, but with your contingencies and that means source market fees, etc. paid to the tracks where the signal is originated, that will help me to essentially satisfy what we're doing with respect to the good of racing. I guess I'd be interested in, I mean we had a lot of letters here from interests and I guess, I don't know if this satisfies them or not, but I guess it satisfies me more and I'll just make that statement.

Chairman Walters: Thoughts?

Commissioner Gilmour: I think you're headed in the right direction. If I had my personal choice, I think I'd like to see it in writing and I think I'd be a lot more prepared to vote on it at the next meeting.

Chairman Walters: Thoughts about putting… My only concern about that is that we did put it over from the last meeting and said at that last meeting that we would make a decision. So, that is my only concern about putting it over and allowing for further thought.

Commissioner Gilmour: And I fully understand that, although the last meeting I think, if I remember right it was late on the Agenda and we didn't get all of the…
Chairman Walters: No, it was on the Agenda. We had --- actually the revised proposal – the original proposal came in plenty of time and we got this, look familiar?

Commissioner Gilmour: Yes.

Chairman Walters: And the Amendment, which changed this to just international tracks, foreign tracks, was what came in a little later in the day. And people like Magna, at that point had not had an opportunity to comment on that, which is why we put it over and got the additional comments.

Commissioner Thorne: Mr. Chairman, what will we be allowing them to do, brin Jodi an Operating Plan with the details of an agreement with the source tracks, etc.?

Chairman Walters: Well, what I think it would be doing is subject to the conditions I laid out. Among other things, they would have to present to Jodi, if they wanted to wager on races pursuant to this Amendment that they would have to present to Jodi evidence that they had tried in good faith to obtain the signal and the race from the track on which they want to take wagers, and couldn't do it -- that they were not offered nondiscriminatory, commercially reasonable terms. And as I said that doesn't mean any particular notion on what a host track fee would be. You know, twenty percent would be too high because you couldn't make any money doing that, but something less than that may be just that's what it cost to take the signal, and you have to do that. Secondly, obviously the source market fees would have to be paid under their current Operating Plan. They would have to present evidence and allow the investigation into where the merged pool has been done. Now if it were Euro Off-Track, that investigation has been done. And I think that there is satisfaction, unless

there is something else that came to us that they would have to do that. So, if they wanted to use anybody other than Euro
Off-Track, there would have to be the additional investigation and review done of the sort that Jodi did for this.

Commissioner Thorne: Okay.

Chairman Walters: So I think that's what they'd be doing. And they would have to be doing it on a racetrack-by-racetrack basis and I think the other issue that Jodi would have to consider is okay, what's this doing to your video streaming? Are you video streaming to tracks and taking wagers on one hundred fifty, well, that won't cut it, so? That's what my thought on what the process would be.

Commissioner Thorne: But if they don't have an agreement with an originating track, we're not saying, well, you can just go ahead and…

Chairman Walters: I think that what we would be saying is, if they don't have an agreement with an originating track, but can demonstrate that they attempted in good faith to obtain such an agreement on non-discriminatory, commercially reasonable terms, which is obviously the phrase I keep tossing out there, that then it would be approved, subject to the other conditions. Now that may require inquiry of that track and something of that sort. But it would sort of follow-up on Commissioner Gilmour's suggestion that I'd like to see you try. And Scott Daruty was suggesting that with respect to international tracks, there may not be a problem here. They may be able to get all the signals that they would want to show and not have to use this non-merged pool alternative.

Dave Benson: (Inaudible.)

Chairman Walters: It probably is, Dave, because we've had a lot of input on this. Other thoughts or comments? We probably ought to ask if there's a Motion. I mean if there's not a Motion one way or another, it automatically gets put over. If there is a Motion, we can discuss it and see if it passes. If there is not going to be a Motion, then we could opt to… well, there could be a Motion to put it over to the next meeting, and we could make a Motion to approve it.

Commissioner Gilmour: I say we do that.

Chairman Walters: Okay. Discussion on the Motion to put it over to the next meeting? All those in favor, signify by saying "Aye".

Response: Aye.

Chairman Walters: I'm going to vote "No" because I really feel we ought to address it here, but the Motion passes to set it over to the next meeting. Thank you all very much for coming and thank you for your testimony. We do have some other items on the Agenda. The next one is the discussion on possible meeting date changes.

ACTION: MOTION (Gilmour) Put over Amendment to the next meeting.
VOTE: 3 Aye, 1 Nay (Walters)

6. Discussion on Possible Commission Meeting Date Changes

a. March 18, 2004
b. April 15, 2004
c. June 11, 2004

Based on requests, Chair Walters proposed that March 18 meeting be changed to March 25 (at Portland Meadows), April 15 meeting be changed to April 22 (in Room 140) and June 11 meeting be changed to June 18 at the

Josephine County Fair. Walters won't be available at all in April. All date changes were approved.

7. Action on Proposed Changes to OAR 462-120-0020 – Search; Warrant/Warrantless

Raul presented the proposed change: add a section to allow investigators to perform periodic inspections of the jockey room including spaces assigned to a particular jockey, and allow inspectors to use a metal detector to assure jockeys are not carrying contraband when they leave the jockey area. Jodi says there has been no public comment regarding the rule. Raul has reviewed the issue raised by Commissioner Gilmour regarding the constitutionality of such a rule and feels there is no problem because the licensees consent to warrantless searches when they are licensed. Commissioner Gilmour asked that we clarify that we will not allow a male investigator to surprise a female jockey in the jockey room at an inappropriate time. Raul says that there is an understanding of that issue. Gilmour wanted it on the record that "we're going to use common sense in this rule."

ACTION: MOTION (Gilmour) Rule is approved as submitted.
VOTE: 4 Aye, 0 Nay

Chair Walters wanted to observe the passing of Michael Roland, a jockey in the Midwest that died as a result of a crash at Turfway Park, 2 wins short of 4,000, and to use this as a reminder that this is an industry about animals and human beings and brings home the fact that jockeys at all levels are constantly putting their safety and lives on the line.

There being no further business, the meeting was adjourned.