



APPEARANCES

COMMISSIONERS

Keith Brackpool, Chairperson

David Israel, Vice Chairperson

Richard Rosenberg

Jesse Choper

Steve Beneto

Chuck Winner

STAFF

Kirk Breed, Executive Director

Robert Miller, Staff Counsel

Jacqueline Wagner, Regulations/Legislation Manager

Mike Marten

ALSO PRESENT

Jack Liebau, Stabling and Vanning Committee

Patrick Webb, Webb & Carey, San Luis Rey Downs

Laura Rosier, San Luis Rey Downs

Christopher Schick, Golden Bear Harness Racing

Benjamin Kenney, Golden Bear Racing

John Hindman, TVG

Gene Chabrier, XpressBet

Brad Blackwell, Churchill Downs Technology Initiatives Co.

Carlo Fisco, California Thoroughbred Trainers

Stephen Burn, Betfair U.S.

APPEARANCES (CONT.)

ALSO PRESENT (CONT.)

Tom Large, Betfair U.S.

Richard Specter, L.A. Turf Club/Pacific Racing Association

John Bucalo, Barona Resort and Casino

Lou Raffetto, Thoroughbred Owners of California

Joe Morris, Golden Gate Fields

Jim Morgan, Humboldt County Fair

Chris Korby, California Authority of Racing Fairs

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3. Discussion and action by the Board regarding the 3  
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Wagering Account; 2090, Posting Credits for Winnings from Exchange Wagers; 2090.5, Debits to an Exchange Wagering Account; 2090.6, Withdrawals by Account Holder; 2091, Closing an Inactive Exchange Wagering Account; 2091.5, Suspending an Exchange Wagering Account; 2091.6, Powers of the Board to Review and Audit Records; 2092, Exchange Wagers Placed After the Start of a Race; 2092.5, Prohibitions on Wagers to Lay a Horse to Lose; 2092.6, Suspension of Occupational License and Rule 2093, Certain Practices Related to Exchange Wagering. (Note: This concludes the 15-day public comment period. The Board may adopt the proposal as presented.)

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Wagering by Churchill Downs Technology Initiatives Company, for a period of up to two years.

13. Closed Session: For the purpose of receiving advice from counsel, considering pending litigation, reaching decisions on administrative licensing and disciplinary hearings, and personal matters, as Authorized by section 1126 of the Government Code. 131
- A. The Board may convene a Closed Session to confer with and receive advice from its legal counsel, considering regarding the pending litigation described in the attachment to this agenda captioned "Pending Litigation" as authorized by Government Code section 11126(c).
- B. The Board may convene a Closed Session to confer with and receive advice from its legal counsel regarding the pending administrative licensing or disciplinary matters described in the attachment to this agenda captioned "Pending Administrative Adjudications," as

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authorized by Government Code section  
1126(c).

- C. The Board may convene a Closed Session for  
the Purpose of considering personnel matters  
as authorized by Government Code section  
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P R O C E E D I N G S

9:43 p.m.

PROCEEDINGS BEGIN AT 9:43 A.M.

(The meeting was called to order at 9:43 A.M.)

INGLEWOOD, CALIFORNIA, THURSDAY, NOVEMBER 15, 2012

MEETING BEGINS AT 9:43 A.M.

EXECUTIVE DIRECTOR BREED: This meeting of the California Horse Racing Board will come to order. Everybody can take their seats. This is the regular noticed meeting of the California Horse Racing Board on Thursday, November 15th, 2012 at the Betfair-Hollywood Park Race Track, 1050 South Prairie Avenue, Inglewood, California.

Present at today's meeting are: Keith Brackpool, Chairman; David Israel, Vice Chairman; Steve Beneto, Commissioner; Jesse Choper, Commissioner; Richard Rosenberg, Commissioner; and Chuck Winner, Commissioner.

Before we go on to the business of the meeting I need to make a few comments. The Board invites public comment on the matters appearing on the meeting agenda. The Board also invites comments from those present today on matters not appearing on the agenda during a public comment period if the matter concerns horse racing in California.

In order to ensure all individuals have an opportunity to speak and the meeting proceeds in a timely

1 fashion, I will strictly enforce the three minute time limit  
2 rule for each speaker. The three minute time limit will be  
3 enforced during discussion of all matters stated on the  
4 agenda, as well as during the public comment period.

5           There is a public comment sign-in sheet for each  
6 agenda item on which the Board invites comments. Also,  
7 there is a sign-in sheet for those wishing to speak during  
8 the public comment period for matters not on the Board's  
9 agenda if it concerns horse racing in California. Please  
10 print your name legibly on the public comment sign-in sheet.

11           When a matter is open for public comment your name  
12 will be called. Please come to the podium and introduce  
13 yourself by stating your name and organization clearly.  
14 This is necessary for the court reporter to have a clear  
15 record of all who speak. When your three minutes are up the  
16 chairman will ask you to return to your seat so others can  
17 be heard. And we're almost done.

18           When the names have been called the chairman will  
19 ask if there is anyone else who would like to speak on the  
20 matter before the Board. Also, the Board may ask questions  
21 of individuals who speak.

22           If a speaker repeats himself or herself the  
23 chairman will ask if the speaker has any new comments to  
24 make. If there are none the speaker will be asked to let  
25 others make comments to the Board.

1 Mr. Chairman.

2 CHAIR BRACKPOOL: Thank you. On behalf of the  
3 Board, welcome back, Kirk.

4 EXECUTIVE DIRECTOR BREED: Thank you.

5 CHAIR BRACKPOOL: Good to see you back.

6 Well, good morning, everybody. We'll get right on  
7 here.

8 Item number one, approval of the minutes of  
9 October 18, 2012. Do I have any comments? May I have  
10 someone make the motion?

11 VICE CHAIR ISRAEL: Moved.

12 COMMISSIONER BENETO: Second.

13 CHAIR BRACKPOOL: Motion made by Vice Chair  
14 Israel, seconded by Commissioner Beneto. All in favor?

15 ALL COMMISSIONERS: Aye.

16 CHAIR BRACKPOOL: Item carries.

17 Item number two, public comment. I am told we  
18 have no public comment cards. That's good.

19 Item number three, discussion and action by the  
20 Board regarding the distribution of race-day charity  
21 proceeds of the Hollywood Park Racing Association in the  
22 amount of \$99,003 to 17 beneficiaries.

23 While I think this is self-explanatory, I really  
24 did like the little exhibit that was provided with this that  
25 actually explains what the charities are, rather than just

1 list them. So I don't know whether that was voluntary on  
2 the part of Hollywood Park, in which case, thank you. And  
3 then perhaps a message to everybody else, it would be really  
4 nice to have an exhibit like this. This is just a really  
5 helpful way of -- of seeing it.

6 VICE CHAIR ISRAEL: You don't even have to do a  
7 lot of original work because many of these charities are the  
8 ones that you also contribute to. You can just copy.

9 CHAIR BRACKPOOL: Right. So I'm happy to make a  
10 motion to approve those proceeds being distributed as per  
11 the schedule. All in favor?

12 ALL COMMISSIONERS: Aye.

13 CHAIR BRACKPOOL: Oh, I should have someone second  
14 it.

15 VICE CHAIR ISRAEL: I'll second.

16 CHAIR BRACKPOOL: So David Israel, second. All in  
17 favor?

18 ALL COMMISSIONERS: Aye.

19 CHAIR BRACKPOOL: Okay. Approved.

20 I'm actually going to make item number 4 item  
21 number -- it's going to come after what is currently item  
22 number 12. The whole Humboldt-Golden Gate Fields thing just  
23 can not take up the majority of everybody's time. It's not  
24 just our time. We're forced to deal with it. But you all  
25 sitting out there don't have to deal with it every time. So

1 I'm going to make it the -- the last item so that we get  
2 through the rest of -- of the business at hand.

3 So that takes us straight on to the Alice in  
4 Wonderland item of number five, discussion and action by the  
5 Board to approve the audit report by the California Horse  
6 Racing Board Auditing Unit of the Stabling and Vanning Fund,  
7 and to set a hearing date, forum and briefing schedule  
8 regarding the complaint of San Luis Rey Downs.

9 Counsel, why don't I have you lead with this.

10 MR. MILLER: Thank you, Mr. Chairman. Robert  
11 Miller, Counsel to the California Horse Racing Board.

12 The -- presently there is litigation in San Diego  
13 Superior Court brought by San Luis Rey Racing against  
14 various defendants, including the California Horse Racing  
15 Board. The court became aware that the California Horse  
16 Racing Board was performing an audit. And in light of that,  
17 and in light of the court's deference to administrative  
18 agencies, the litigation was stayed pending action by this  
19 Board regarding the audit.

20 And there are people here from San Luis Rey Downs  
21 who wish to address the Board on this matter. Also, there  
22 may be other entities that wish to discuss the matter with  
23 the Board. Also present is our counsel, Deputy Attorney  
24 General Michael Early (phonetic), who I would like the Board  
25 to hear from in closed session. But before we get to that I

1 think the -- the parties ought to have an opportunity to  
2 address the Board.

3 CHAIR BRACKPOOL: I'm going to allow the parties  
4 to address the Board. But given that it is a matter of  
5 litigation, given that we are a defendant, I don't believe  
6 it -- it appropriate that the Board get into an open  
7 discussion, necessarily, with the potential witnesses and  
8 co-defendants here. So I think we will probably take our  
9 comments into closed session afterwards.

10 But let me go ahead and go through the people who  
11 have given me speaker cards. First of all, Jack Liebau of  
12 the Stabling and Vanning Committee.

13 MR. LIEBAU: Good morning. My name is Jack  
14 Liebau. I'm president of the entities that run the race  
15 meets here at Betfair-Hollywood Park. I'm also chairman of  
16 the Southern California Off-track Wagering organization,  
17 which is usually referred to as SCOTWINC. I'm not here  
18 today appearing on behalf of those entities, but instead as  
19 a representative of the Stabling and Vanning Committee.

20 First, I'd to just say what the enabling  
21 legislation is for that committee and the section it  
22 operates and functions under. That section is 19607. That  
23 requires the organization that distributes the stabling and  
24 vanning funds to be formed and operated by thoroughbred  
25 racing associations, fairs conducting thoroughbred racing,

1 and the organization representing thoroughbred horsemen and  
2 horsewomen.

3           That organization is separate and apart from  
4 SCOTWINC because SCOTWINC does not fall within the statutory  
5 requirements because it has -- non-thoroughbred interests  
6 are a part of SCOTWINC. So the stabling and vanning fund is  
7 separate and distinct. And it is made up of the TOC, the  
8 Hollywood Park entities, the Los Angeles Turf Club, Del Mar,  
9 the Los Angeles County Fair, and, in the past, Oak Tree.

10           The section 19607 also requires the organization,  
11 each one of the members that I've listed before, the racing  
12 associations, the racing fairs, and the horsemen and  
13 horsewomen, to have meaningful representation. Because the  
14 stabling and vanning fund, if the money wasn't taken out of  
15 takeout and it's now set at 1.25 percent of the amount bet  
16 off-track, and that percentage can vary at the will of the  
17 California Horse Racing Board, and has been set at the past  
18 at 1.25 percent, and that is the highest it can go. If that  
19 money was not distributed to the stabling and vanning fund  
20 it would go to the -- roughly 50-50 to the horsemen and  
21 horsewomen for purses, and the other 50 percent to the  
22 racing associations.

23           Because of that, and where we get the meaningful  
24 representation, the voting power on that committee is -- 50  
25 percent of the voting power is vested in the TOC. And just

1 as an example of how things go, it was only recently -- and,  
2 in fact, if you recall at the last meeting Santa Anita was  
3 not in a position to submit the stabling and vanning  
4 agreement, which is necessary to get a license and part of  
5 the licensing process.

6           And the reason for that was that both Hollywood  
7 and Santa Anita had requested the committee to change the  
8 procedures as far as the time for which those two entities  
9 would be compensated for providing offsite stabling. And  
10 the reason for that was that the time that Santa Anita and  
11 Hollywood are required in front of their meets to be open is  
12 longer than is required for Fairplex and for Del Mar. And  
13 we thought on the basis of fairness that we should be  
14 treated the same. Unfortunately, we did not convince the  
15 TOC of that matter. And because they have 50 percent of the  
16 votes it did not pass and our request was denied.

17           So once again, I just want to bring to your  
18 table -- your attention that the stabling and vanning fund  
19 consists of the entities that I recited earlier, the racing  
20 associations and the TOC, and is separate and distinct from  
21 SCOTWINC. Thank you very much.

22           CHAIR BRACKPOOL: Yeah. Just one moment. Thank  
23 you for that clarification. I have on question from  
24 Commissioner Rosenberg.

25           COMMISSIONER ROSENBERG: Jack, I think you must be

1 probably one of the few people in the room who might know  
2 the answer to this question. In 19607 there's a reference  
3 to another code section, which is 19535, which is referred  
4 to as -- it talks about "the number of usable stalls the  
5 association or fair is required to make available and  
6 maintain pursuant to section 19535."

7 Evidently, there was -- in reading that other  
8 section, which I have read, they make reference to -- that  
9 the Racing Board is supposed to set the number of stalls for  
10 each meeting. I have no knowledge about that. Is that done  
11 regularly?

12 MR. LIEBAU: Well, what happens in that case or  
13 what the practice has been is if you review the applications  
14 that are filed by the proposed licensee -- in other words,  
15 when Santa Anita, if you looked at their license  
16 application, it specifically sets forth the amount of stalls  
17 that are required, and it also says where the offsite  
18 stabling is to take place. And again it also says how much  
19 is being paid for the offsite stabling. So the daily amount  
20 that was in Santa Anita's license application that was going  
21 to be paid to Hollywood Park was set forth there and  
22 presumably approved through the licensing process.

23 Also, as a condition of -- of getting a license it  
24 is required by -- by the Board and is set forth in the  
25 application for a license that we have to submit an

1 agreement pertaining to offsite stabling, and that is done  
2 on, usually, an annual basis, because all of the committee  
3 votes as to how the money is going to be distributed and  
4 it's memorialized in an agreement.

5 CHAIR BRACKPOOL: And I have one more from  
6 Commissioner Choper. These are two lawyers, so I trust they  
7 know exactly what they're doing.

8 COMMISSIONER CHOPER: Well, I just -- this you can  
9 answer in one sentence.

10 MR. LIEBAU: I'll try.

11 COMMISSIONER CHOPER: You pointed out that the  
12 Stabling and Vanning Committee is not made up wholly of  
13 racing associations. Why -- why do you tell us that?

14 MR. LIEBAU: It -- it is made up --

15 COMMISSIONER CHOPER: Would you -- would you be  
16 clear?

17 MR. LIEBAU: It is made up entirely of racing  
18 associations, racing fairs, and --

19 COMMISSIONER CHOPER: TOC.

20 MR. LIEBAU: -- TOC.

21 COMMISSIONER CHOPER: Which has a half. Okay.

22 MR. LIEBAU: And that's why when I named them  
23 off -- and I'll just do one more, though. TOC, Santa Anita,  
24 Hollywood Park --

25 COMMISSIONER CHOPER: No, I understand.

1 MR. LIEBAU: -- and the racing fair, of course, is  
2 Fairplex.

3 COMMISSIONER CHOPER: Why are you telling us that?

4 MR. LIEBAU: Because that's what the statute  
5 requires.

6 COMMISSIONER CHOPER: And what does the -- what  
7 does the statute say?

8 MR. LIEBAU: The statute says that the -- if I can  
9 just -- I'll paraphrase part of it, then I'll read --

10 COMMISSIONER CHOPER: That's fine.

11 MR. LIEBAU: -- the specific language if you --

12 COMMISSIONER CHOPER: No, no, you don't have to  
13 read it. What is it?

14 MR. LIEBAU: It talks about the money to whom it's  
15 distributed to. And it says -- and it states,

16 "The monies shall be distributed to an  
17 organization formed and operated by thoroughbred racing  
18 associations, fairs conducting thoroughbred racing, and the  
19 organization representing thoroughbred horsemen and  
20 horsewoman, and each party having a meaningful  
21 representation."

22 That's the code section, 19607.

23 COMMISSIONER CHOPER: That says monies --

24 MR. LIEBAU: The monies taken out of the takeout,  
25 the 1.25 percent --

1 COMMISSIONER CHOPER: Yes.

2 MR. LIEBAU: -- that's taken out of the handle.

3 COMMISSIONER CHOPER: Will go to?

4 MR. LIEBAU: To this stabling -- to this  
5 organization, which happens to be the indicated Stabling and  
6 Vanning Committee that I mentioned. Thank you.

7 CHAIR BRACKPOOL: Thank you. Next speaker on this  
8 issue, Patrick Webb, appearing on behalf of San Luis Rey  
9 Downs, my card says.

10 MR. WEBB: That's correct, Mr. Chairman. Good  
11 morning, Commissioners. My name is Patrick Webb of Webb and  
12 Carey, APC. We're the law firm in San Diego representing  
13 San Luis Rey Downs in the lawsuit that Mr. Miller referred  
14 to earlier.

15 I'd like to correct one comment. Mr. Miller and  
16 our side don't agree on everything, particularly the  
17 characterization of the lawsuit. We just want you to  
18 understand that from the Downs' perspective the way we  
19 understand the court's ruling, the CHRB is no longer a  
20 defendant to that action. All right. You're not a party to  
21 that action directly.

22 Now, you also know from the submissions from my  
23 firm to the Board with regard to agenda item number five  
24 that we object to the way the audit exists today. The  
25 reason is there is no evidence in the audit answering what

1 the court stayed the action pending this Board's  
2 determination. If, in other words, if you go forward today  
3 and approve the audit as it currently exists you don't have  
4 evidence in the audit or appended to the audit to come up  
5 with the primary reason the judge stayed the action in the  
6 first place because there's no determination as to what the  
7 need for offsite stabling has been at any of the meets in  
8 any of the years you looked at.

9           You're missing both the number of race-eligible  
10 horses at the meet, and the non-race-eligible horses at the  
11 meet, as well as a third and fourth category, the race-  
12 eligible horses that have been stabled offsite, and those  
13 non-race-eligible horses stabled offsite. You have to have  
14 all four categories of information to determine whether or  
15 not 19607 of the code was complied with, because the code  
16 requires the payment by SCOTWINC to be a reimbursement by  
17 the race-meet track to the offsite facility.

18           There's no evidence in the six-page audit report  
19 of any reimbursement. In fact, the evidence in your audit  
20 itself is the reverse. It's almost as if there's a  
21 subsidization of the offsite facilities at the beginning of  
22 the meet before you even know the breakdown of the race-  
23 eligible horses versus the non-race-eligible horses.

24           So with those four pieces of information not in  
25 the audit it's insufficient, it doesn't respond to what the

1 court wanted, and therefore we object to its approval.

2 Now, in addition to that, our claims go back to  
3 '06, and your audit does not cover the '06, '07, and '08  
4 years, and therefore is not a sufficient adjudication of the  
5 Downs' claims.

6 And finally, as we pointed out, 19607 requires  
7 there to be evidence of reimbursement before you are in  
8 compliance -- before SCOTWINC is in compliance with the  
9 distribution formulas between 19535, that was asked about  
10 earlier, and 19607 which requires that the money only be  
11 distributed to reimburse a meet for money that they actually  
12 had to spend, write a check for, send over to the offsite  
13 facility. None of that evidence is in the audit.  
14 Therefore, the second half of your agenda item requesting us  
15 to set a briefing schedule and some further hearing  
16 determination seems premature at this point.

17 If you're going to go ahead and approve the audit  
18 as it is, then the claims that we have pending in superior  
19 court in San Diego go forward, because you've done what you  
20 have told us there times -- we've been here over the last  
21 couple of years where you have said that the Downs doesn't  
22 have the standing to get you to make this determination.

23 If you approve the audit that doesn't have the  
24 evidence of the four categories of race-eligible horses at  
25 meets and at the offsite facilities, then our whole position

1 in San Diego Superior Court still needs to be resolved by  
2 the judge because you guys have said we -- you don't have  
3 jurisdiction over that piece of it, and your audit shows  
4 that you haven't exercised jurisdiction over what we're  
5 trying to get determined, which is that in none of the meets  
6 over any of the years from '06 to now is there evidence of  
7 any need for offsite stabling.

8           Take, for example, the methodology in your audits.  
9 You refer to using the CRIMS data. None of the CRIMS data  
10 ever shows a need for offsite stabling. In fact, take the  
11 last meet, the '12 number that have just been published that  
12 you can get in the CRIMS data onsite -- or online shows that  
13 at Santa Anita there were 1,950 stalls available, but only  
14 1,733 starts. Only 1,733 horses were running. Now, many of  
15 those horses ran more than once. So it wasn't 1,733  
16 individual horses.

17           But even if it was 1,733 horses, you had 1,950  
18 stalls for race-eligible horses. There weren't enough race-  
19 eligible horses that actually ran at the meet for there to  
20 have ever been a need for offsite stabling. And that's  
21 true, from what we understand, that the evidence would be if  
22 there was to be a true hearing where we were allowed  
23 discovery of all of the evidence at all of the meets between  
24 '06 and '12.

25           It's for those reasons that we suggest you not

1 approve the audit, and that there's no real need for any  
2 further briefing schedule, unless you're not going to  
3 approve the audit and you want to go forward and have the  
4 kind of evidentiary hearing that we think is necessary where  
5 we get the real data, not just the CRIMS data, that shows  
6 how many race-eligible horses were actually at the meets  
7 versus offsite.

8 CHAIR BRACKPOOL: Thank you. Yes, on question  
9 from Commissioner Choper.

10 COMMISSIONER CHOPER: How do you stand to benefit  
11 by this?

12 MR. WEBB: Well, I'm not sure that that's before  
13 you today. I'd be happy to explain it. It's part of what  
14 the lawsuit is all about.

15 COMMISSIONER CHOPER: Yeah. Just a couple of  
16 sentences.

17 MR. WEBB: The Downs has not been able to  
18 fairly --

19 COMMISSIONER CHOPER: I understand your problem.  
20 You are stabling horses you're not getting paid for. But  
21 how do you -- but how do you plan to benefit by this? Is  
22 there anything mandatory about your getting the -- the  
23 monies?

24 MR. WEBB: I'm not sure exactly what you mean,  
25 Dean. And --

1           COMMISSIONER CHOPER:   Suppose the monies --

2           MR. WEBB:   -- if --

3           COMMISSIONER CHOPER:   -- have not been paid, as  
4 you allege, to the proper recipients; right?

5           MR. WEBB:   Well, there's two halves of this.  
6 Either there's going to be a disgorgement of what's already  
7 been previously paid -- but set that aside for the moment.

8           COMMISSIONER CHOPER:   That is --

9           MR. WEBB:   Going forward from this point forward  
10 the Downs still should be provided a fair opportunity to  
11 compete where people have to pay for what they're getting,  
12 and where there isn't a subsidy program, which the statute  
13 doesn't provide for, and there is a true reimbursement. So  
14 at the end of the day SCOTWINC needs to have the Board tell  
15 it not to distribute the money the way it's been done from  
16 today back to 2006, but that it needs to do a true analysis  
17 of the true offsite stabling needs.

18                   And if we don't need any offsite stabling, which  
19 it appears, given the horse inventories that we've been  
20 dealing with the last four or five years, there's no need  
21 for a reimbursement because no track is truly paying for  
22 that offsite stabling now. Some tracks, some race meets are  
23 getting a subsidy, and that not what the statute requires.  
24 So in that sense it's mandatory that it not be done that  
25 way.

1           COMMISSIONER CHOPER: But the money doesn't go to  
2 you?

3           MR. WEBB: The money that the Downs makes would be  
4 different.

5           COMMISSIONER CHOPER: The money that the Downs  
6 makes?

7           MR. WEBB: In other words, to have fair  
8 competition we would be getting paid for the offsite  
9 stabling if there was truly a need for offsite stabling.  
10 Right now we can't fairly compete with entities that are the  
11 race meets that are essentially keeping the horses 100  
12 percent of the time of the year.

13           COMMISSIONER CHOPER: Yeah, I understand what  
14 you're saying. But where does it say that you are -- if  
15 there's money left over, which you hope to demonstrate,  
16 right --

17           MR. WEBB: Uh-huh.

18           COMMISSIONER CHOPER: -- that it should go to you,  
19 that it will go to you?

20           MR. WEBB: It goes back into what Mr. Liebau  
21 talked about, this 50-50 split between the race meets  
22 getting their 50 percent for the commission, and the 50  
23 percent going back to the owners, the horsemen and  
24 horsewomen themselves. The purses have been essentially --

25           COMMISSIONER CHOPER: There's nothing --

1 MR. WEBB: -- upward of \$3 million a year.

2 COMMISSIONER CHOPER: But the -- but the Downs  
3 doesn't get any of that money.

4 MR. ROSIER: Yeah, we do.

5 MR. WEBB: Please. The Downs will be getting it  
6 in the sense of being able to fairly compete when people are  
7 actually paying for the stalls that they use.

8 COMMISSIONER CHOPER: You mean you can ask for it?

9 MR. WEBB: And the horsemen and horsewomen that  
10 have to put their horses somewhere will have an opportunity  
11 to use the Downs and the Downs can fairly compete, where  
12 right now they can't fairly compete because --

13 COMMISSIONER CHOPER: All right.

14 MR. WEBB: -- some stalls are being subsidized.

15 COMMISSIONER CHOPER: Okay. Thank you.

16 CHAIR BRACKPOOL: Thank you. Commissioner  
17 Rosenberg.

18 COMMISSIONER ROSENBERG: You're not answering the  
19 question in terms -- Commissioner Choper's question really  
20 relates to are there any other causes of action in your --  
21 in your -- in the lawsuit that -- that could possible result  
22 in San Luis Rey, the plaintiff, receiving damages for the  
23 past? We understand that the -- that the past money in  
24 terms of the calculation couldn't go directly to them. But  
25 what about the -- aren't there other counts, such as

1 interference with contractual rights --

2 MR. WEBB: Yes.

3 COMMISSIONER ROSENBERG: -- etcetera?

4 MR. WEBB: The short answer is, yes --

5 COMMISSIONER ROSENBERG: Okay. So there's --

6 MR. WEBB: -- Commissioner Rosenberg. That's why

7 I was having difficulty with Mr. Choper's question. But

8 those causes of action are not in front of the Board.

9 COMMISSIONER ROSENBERG: I see.

10 MR. WEBB: And the stay that the court put in

11 place was not to get those causes of action resolved by the

12 Board. Our understanding of Judge Dato's ruling was that he

13 was going to stay things until an audit was done to

14 determine whether there was any offsite stabling that was

15 needed under the definitions in -- in 19607. And your audit

16 seems to not answer that question.

17 So we think that Judge Dato will then take the

18 case back up over what you're asking about, which are the

19 damage claims that the Down has for unfair competition among

20 the other race meets.

21 CHAIR BRACKPOOL: Thank you. Next speaker, Laura

22 Rosier.

23 MR. ROSIER: Hi. Laura Rosier, San Luis Rey

24 Downs. I've -- I don't want to duplicate anything. And

25 I'm --

1 CHAIR BRACKPOOL: Good.

2 MR. ROSIER: -- very quick. The issues that --  
3 that we have with the November 6 audit is number one. It  
4 should have been completed and submitted for public review  
5 by November 1st.

6 Secondly, again, it doesn't address whether  
7 section 19607 funds have been disbursed properly under the  
8 law. That was what we were supposed to have addressed in  
9 this audit.

10 And number three, the audit is disingenuous in  
11 that it speaks about CRIMS data that was used, but doesn't  
12 report that the CRIMS data clearly reflect no need for  
13 stabling funds. For example, the CRIMS data for 2010 Oak  
14 Tree meet shows that there were 1,950 stalls available for  
15 the meet, and that there were 1,400 runners, of which many  
16 of them were multiple runners.

17 So Mr. Choper asked the benefit to San Luis Rey  
18 Downs by this lawsuit. There's over \$3 million being  
19 disbursed through, in my opinion, the illegal use of the  
20 SCOTWINC fund. That \$3 million would go back, 50 percent to  
21 the tracks, 50 percent to the horsemen, which confuses me  
22 why TOC wouldn't want to get this corrected because they are  
23 to represent the owners of California of which San Luis Rey  
24 Downs owners are. They should be represented by TOC.  
25 They're not being represented by TOC when TOC is letting

1 that money be illegally disbursed, rather than going into  
2 purses where it should be at this time.

3 CHAIR BRACKPOOL: Thank you. Unless Commissioners  
4 have any further comments on this I would like to move this  
5 item into closed session.

6 MR. MILLER: Yes, I believe that's the correct  
7 action to take.

8 CHAIR BRACKPOOL: Thank you. So we will -- we  
9 will adjourn this item into closed session.

10 MR. MILLER: Thank you.

11 CHAIR BRACKPOOL: Item number six, discussion and  
12 action by the Board regarding the request from Watch and  
13 Wager, LLC to amend it's November 22nd, 2012 through  
14 December 22nd, 2012 harness license application to allocate  
15 December 23rd as an additional race day.

16 Actually, before you do anything, Jackie, just  
17 tell us what this is.

18 MS. WAGNER: Jackie Wagner, CHRB staff. The  
19 proposal before you is a request from Watch and Wager to  
20 essentially have the date December 23rd allocated as an  
21 additional race date to their current race meeting. The  
22 Board allocated their original -- the current race meeting  
23 that they're running, and that race meets end on, I believe,  
24 the --

25 CHAIR BRACKPOOL: And we're also talking about

1 changing the post time --

2 MS. WAGNER: Correct.

3 CHAIR BRACKPOOL: -- to daylight hours.

4 MS. WAGNER: To daylight hours.

5 CHAIR BRACKPOOL: And it's been agreed by Los Al?

6 MS. WAGNER: It has been agreed by Los Al. With  
7 the additional allocation of the date it will allow Los  
8 Alamitos and Watch and Wager to run a daytime program  
9 beginning with the post time at 2:30 -- 2 o'clock, I think,  
10 for Los Alamitos, 2:35 for Watch and Wager on December 21st,  
11 22nd and 23rd. During that timeframe there are no  
12 thoroughbreds running. And they're -- both parties are in  
13 agreement with the proposal.

14 CHAIR BRACKPOOL: Thank you. Do we have any  
15 comments from Commissioners?

16 VICE CHAIR ISRAEL: Yeah. It's always good if  
17 somebody wants to race an extra day.

18 CHAIR BRACKPOOL: All right. Is there anything in  
19 particular you guys would like to say? Because you're about  
20 to get a vote in favor, so I wouldn't be saying a whole lot  
21 if I was you.

22 MR. SCHICK: I'll just say good morning, and that  
23 will be enough, I think.

24 CHAIR BRACKPOOL: How about that? That's the sort  
25 of testimony I like.

1 Do I have --

2 VICE CHAIR ISRAEL: Motion.

3 CHAIR BRACKPOOL: So Commissioner Israel makes a  
4 motion in favor. Can I have a second?

5 COMMISSIONER WINNER: Second.

6 CHAIR BRACKPOOL: Commissioner Winner, second.  
7 All in favor?

8 ALL COMMISSIONERS: Aye.

9 CHAIR BRACKPOOL: Thank you.

10 MR. SCHICK: Thank you.

11 CHAIR BRACKPOOL: Motion approved.

12 Let's do seven, eight and nine, the ADW companies,  
13 all at once. So if I could have a representative from each.  
14 So names and affiliations for the record. But, again, for  
15 the record, I'm combining items seven, eight and nine into  
16 one item.

17 MR. HINDMAN: Good morning, Commissioners. John  
18 Hindman appearing as general counsel for TVG.

19 MR. CHABRIER: Gene Chabrier with Xpressbet.

20 MR. BLACKWELL: Brad Blackwell on behalf of  
21 Churchill Downs Technology Initiatives Company.

22 CHAIR BRACKPOOL: Okay. Thank you, everybody.

23 Jackie, could I ask you to sit up, as well. My --  
24 before we get to Commissioners' questions, my question on  
25 this is they each have slightly differing documents that are

1 missing. I sort of understand the need when there's a  
2 common document that's missing. But can you just explain to  
3 me why we have differing documents missing from the parties?

4 MS. WAGNER: Jackie Wagner, CHRB staff. The  
5 differing documents that are missing from the parties  
6 basically are happening because of the negotiations between  
7 each individual provider that they have with the separate  
8 associations.

9 CHAIR BRACKPOOL: Right. But these are for  
10 licenses that take place again January the 1st; right?

11 MS. WAGNER: Correct.

12 CHAIR BRACKPOOL: So any approval we make is  
13 obviously subject to them reaching --

14 MS. WAGNER: Correct.

15 CHAIR BRACKPOOL: -- those agreements? Apart from  
16 horsemen's agreement, is there anything else from any of  
17 them? I mean, you know, TVG's, for instance, says there are  
18 a remaining nine racing venues, which is different to the  
19 others.

20 MS. WAGNER: Right. It's -- it's -- basically,  
21 all three parties are -- are waiting for the -- the final  
22 negotiations on the Monarch content.

23 CHAIR BRACKPOOL: Right.

24 MS. WAGNER: And that is the -- the document --

25 CHAIR BRACKPOOL: It's just described

1 differently --

2 MS. WAGNER: Correct.

3 CHAIR BRACKPOOL: -- in the staff report --

4 MS. WAGNER: Correct.

5 CHAIR BRACKPOOL: -- is all?

6 MS. WAGNER: That's --

7 CHAIR BRACKPOOL: Okay.

8 MS. WAGNER: That's the missing --

9 CHAIR BRACKPOOL: So --

10 MS. WAGNER: -- the missing document.

11 CHAIR BRACKPOOL: Commissioner Rosenberg?

12 COMMISSIONER ROSENBERG: It's still not done,  
13 though, the Monarch part?

14 CHAIR BRACKPOOL: No. The Monarch will, as -- as  
15 Mr. Daruty told us last time, will be done closer to the end  
16 of the year. And any approval we're making here is subject,  
17 obviously, to that. I was just trying to discern, was there  
18 a difference between the overall agreement and the nine,  
19 because you describe TVG's as nine and the others you don't  
20 describe the same way.

21 MS. WAGNER: Correct. TVG has submitted license  
22 agreements that they have negotiated or represented as being  
23 completed with Hollywood Park, Los Al, and Del Mar, and Cal  
24 Expo. In addition, they are, I believe, parties to the  
25 Monarch agreement, which is the missing document for all

1 three parties.

2 CHAIR BRACKPOOL: John, would you add anything to  
3 that?

4 MR. HINDMAN: No, that's correct.

5 CHAIR BRACKPOOL: Okay. Do I have comments from  
6 other Commissioners here?

7 VICE CHAIR ISRAEL: Well, my -- my only comment  
8 would be I think we should just extend the licenses for a  
9 year, given that we may be embarking on the grand experiment  
10 of exchange wagering, which could change things or might not  
11 change things. But I just think it will be prudent, in the  
12 words of the first Bush, to grant a one-year license and  
13 then revisit it again next year.

14 CHAIR BRACKPOOL: We've been doing one-year  
15 licenses --

16 VICE CHAIR ISRAEL: Yes.

17 CHAIR BRACKPOOL: -- for the last two years;  
18 right?

19 MS. WAGNER: Yes, we have.

20 VICE CHAIR ISRAEL: That's right.

21 CHAIR BRACKPOOL: And part of that was the hope  
22 that, you know, we would continue to have these discussions.  
23 I happen to concur with Vice Chair Israel. I think one  
24 year is good because I think that anything can change on the  
25 economics of these. So I think it's --

1 VICE CHAIR ISRAEL: Right.

2 CHAIR BRACKPOOL: -- it keeps everybody's feet to  
3 the fire a little more to -- to be doing that.

4 So with that I have no speakers on that item.

5 Do I have any other comments from Commissioners?  
6 Commissioner Winner.

7 COMMISSIONER WINNER: I agree with the suggestion  
8 of both you and Commissioner Israel with respect to the one  
9 year --

10 CHAIR BRACKPOOL: Okay.

11 COMMISSIONER WINNER: -- especially, as he said,  
12 since we may be embarking to a grand experiment.

13 CHAIR BRACKPOOL: Okay. Well, with that is there  
14 anything else you'd add, Jackie?

15 MS. WAGNER: No, that's it.

16 CHAIR BRACKPOOL: Any of the witnesses like to say  
17 anything else?

18 MR. HINDMAN: No.

19 CHAIR BRACKPOOL: Okay. Then I would make a  
20 motion to approve these for one year. Can I have a second?

21 VICE CHAIR ISRAEL: Second.

22 CHAIR BRACKPOOL: Seconded by Commissioner Israel.  
23 All in favor?

24 ALL COMMISSIONERS: Aye.

25 CHAIR BRACKPOOL: Okay. ADW licenses are extended

1 for one year.

2 MR. HINDMAN: Thank you.

3 MR. BLACKWELL: Thank you.

4 CHAIR BRACKPOOL: Thank you. Jackie, stay where  
5 you are, please.

6 VICE CHAIR ISRAEL: Nice try.

7 CHAIR BRACKPOOL: Item number ten, the small  
8 matter of exchange wagering rules and the proposed approval  
9 thereof. This was the item that we were hoping to have  
10 heard at the October meeting, but the 15-day clock was not  
11 quite in sync --

12 MS. WAGNER: That's correct.

13 CHAIR BRACKPOOL: -- with Greenwich Mean Time or  
14 whatever. And therefore we've allowed the clock now to be  
15 cleansed and here we are where we sit today. I think we've  
16 had countless hours of comments and etcetera on this.

17 VICE CHAIR ISRAEL: Yeah. I'd like to say that we  
18 don't need to discuss this any further.

19 CHAIR BRACKPOOL: So I think what I would like to  
20 do is I have only one speaker card in front of me. I think  
21 this pertains to the rules. I think the rest pertain to the  
22 application. And that is Carlo Fisco of CTT. And I've just  
23 been handed some more. So let's start with Carlo Fisco of  
24 CTT. And then we'll do Commissioner comments at the end.

25 MR. FISCO: Good morning, Commissioners. Carlo

1 Fisco, CTT. Some brief comments on behalf of CTT as of this  
2 stage of the rules.

3 CTT, throughout this process, has diligently and  
4 timely submitted comments via letters on the various  
5 versions of the rules. We'd ask that the Board review those  
6 and continue to issue comments.

7 The documents that are referred to in the CHRB  
8 online packet for this meeting refers to comments and  
9 documents made by at least three entities, CTT, Churchill  
10 Downs, and GBE. For some unknown reason, and unlike the  
11 other packets, those documents were not attached to the, at  
12 least, online packet. I hope that those documents are  
13 certainly in your binders. But as has been the process  
14 throughout, documents have been produced, shared and  
15 disseminated among all the industry stakeholders. And CTT  
16 would certainly like to get a copy of those documents. We  
17 don't understand why they weren't included in the packet.

18 That's important because that leads into a very  
19 important point that even though the staff has taken the  
20 tact that this latest version, the comments made for this  
21 latest version were not, in their opinion, directed to the  
22 language changes made for this meeting, CTT, for one, has  
23 repeatedly and continually made comments on the various  
24 versions and has notified the CHRB that many of these  
25 comments have gone without response. What is important

1 about that is you are obligated under the Administrative  
2 Procedures Act under California Law in your final submission  
3 to the OAL to respond to every single comment that's made,  
4 whether it's from us or anybody else.

5           So with that background, it's important to have  
6 CTT assured, as well as the other entities that have made  
7 comments, that these comments are being discussed and  
8 considered by the Board as per California Law. And because  
9 of the missing documents and the lack of comments or  
10 responses to issues that we have raised, among other  
11 parties, we want to make sure that that gets done so that  
12 it's a proper submission.

13           One other comment.

14           CHAIR BRACKPOOL: Very quickly, because your three  
15 minutes are up.

16           MR. FISCO: Okay. In particular, the -- the  
17 proposed rule of 2092.6, we'd ask the Board to take a very,  
18 very close look at the comments that CTT made. CTT has just  
19 received information that this issue has arisen again.  
20 There's -- there's a matter pending involving a licensee who  
21 has been charged with a violation. And once again, as has  
22 been the case in -- in litigation over the years, this 19461  
23 that's included in your proposed regulation is causing  
24 difficulty with licensees' ability to obtain total and full  
25 disclosure of discovery. And we ask that -- 2092.6, in our

1 opinion, is not needed in the first place. But if you're  
2 going to continue on with this, that it be revised  
3 substantially.

4 CHAIR BRACKPOOL: We have the point. Thank you.

5 MR. FISCO: Thank you.

6 CHAIR BRACKPOOL: Thank you. Before I get to the  
7 next -- well, actually, I'm going to go to the next speaker.  
8 And then I'd just like staff to respond to what was said  
9 there. But let me go to the next speaker first.

10 John Hindman of Betfair. You're an applicant. Do  
11 you need -- do you need to be saying anything?

12 MR. HINDMAN: No, I'm sorry.

13 CHAIR BRACKPOOL: Okay. Good.

14 MR. HINDMAN: I just --

15 CHAIR BRACKPOOL: Then sit down. Thank you. That  
16 would be good. All right.

17 So go ahead and respond, because otherwise Staff  
18 are going to lose their train of thought here, I can tell.

19 MS. WAGNER: Jackie Wagner, CHRB staff. Regarding  
20 the -- the documents that Carlo Fisco is making reference  
21 to, I want to put on the record that the Board has received  
22 all of those documents. Those documents have been submitted  
23 to the Board.

24 CHAIR BRACKPOOL: That's what I thought.

25 MS. WAGNER: And the Board has had the opportunity

1 to review them and make comments, and pass on instructions  
2 to Staff in the development of the proposals. I want to  
3 ensure this industry that nothing has been left undone or  
4 has been kept from this Board. Everything that we have  
5 received the Board has been made aware of.

6 CHAIR BRACKPOOL: Thank you. I think I'd also  
7 like to say at this stage, as well, that we have had many,  
8 many hearings on this. We've had public committee hearings,  
9 very ably led by Vice Chair Israel and Commissioner  
10 Rosenberg. And we have had various comments made during the  
11 meetings and by submissions by people telling us what, you  
12 know, is legal or not legal or whatever. I think at this  
13 stage it's going to be for OAL and/or the courts to  
14 determine whether that's the case or -- or not.

15 I think what we were charged with as a Board was  
16 the implementation of a set of rules based on the  
17 legislature's directive that, you know, exchange wagering  
18 was -- was there. So -- and I certainly feel that we have  
19 read and looked.

20 But I'm going to ask the two committee members to  
21 speak first. Commissioner Israel.

22 VICE CHAIR ISRAEL: I would just urge that we  
23 adopt the rules, and acknowledge that adopting the rules is  
24 not approving the implementation of any particular exchange  
25 wagering program, that any exchange wagering program that is

1 to be used will be reviewed thoroughly by the Board at the  
2 time that it comes to grant the license for that -- that  
3 program. But we were charged by the legislature with an  
4 obligation to create and approve a series of rules to  
5 oversee exchange wagering, and we've done that. I don't,  
6 obviously, agree with every rule we've approved. There's  
7 one in particular that I adamantly disagree with. But as a  
8 whole I'm willing to accept them.

9 CHAIR BRACKPOOL: Commissioner Rosenberg.

10 COMMISSIONER ROSENBERG: I would say those words  
11 are mine, as well.

12 CHAIR BRACKPOOL: Okay. Commissioner Choper.

13 COMMISSIONER CHOPER: Mr. Coburn, for the record,  
14 would you respond, briefly if you can, to the two points  
15 that Mr. Fisco emphasized? One has to do with whether -- in  
16 your judgment as the -- has the Board responded to all of  
17 the comments submitted? And the second has to do with  
18 section 19461, the problem that he raised in connection with  
19 that.

20 MR. COBURN: Harold Coburn, CHRB staff. Mr. Fisco  
21 was concerned that we would not respond to all the comments  
22 received. The final document we prepare for the Office of  
23 Administrative Law is called a final statement of reasons.  
24 In that document we have to take all comments that we have  
25 received and point-by-point respond to each document. We

1 can not complete the file unless we do that. That's part of  
2 the process.

3 COMMISSIONER CHOPER: So in respect to that  
4 question, I mean, this -- if -- I'm just -- I'm putting  
5 words in your mouth.

6 MR. COBURN: Uh-huh.

7 COMMISSIONER CHOPER: But if what he said is true  
8 it won't be -- it won't be approved by the Office of  
9 Administrative Law?

10 MR. COBURN: No. We could not submit the --

11 COMMISSIONER CHOPER: Okay.

12 MR. COBURN: -- the completed file unless we did  
13 that.

14 COMMISSIONER CHOPER: And the other one having to  
15 do with -- Mr. Fisco, would you -- 19461, would you  
16 briefly -- may I?

17 VICE CHAIR ISRAEL: It's --

18 COMMISSIONER CHOPER: Just --

19 VICE CHAIR ISRAEL: It's 2092.6.

20 MR. FISCO: 2092.6 is the rule.

21 MS. WAGNER: That's -- that's the rule --

22 VICE CHAIR ISRAEL: 2092.6.

23 MS. WAGNER: -- 2092.6.

24 VICE CHAIR ISRAEL: It's toward the back.

25 MR. FISCO: 2092.6 is a proposed regulation

1 dealing with the suspension or penalty against an  
2 occupational license if there's some violation of the  
3 exchange wagering law. In the way it's written it seeks to  
4 utilize Business and Professions Code 19461, which is how  
5 hearings are set up before the CHRB. The problem has arisen  
6 in past and present litigation where CHRB has walked into  
7 court and said that it's not a formal enough hearing. And  
8 so we don't have to disclose or give full discovery to the  
9 licensee or the licensee's attorney. There's a better way  
10 to do it, in my opinion, to change it to Chapter 5. But  
11 that's the issue, that 19461 is dealing with that.

12 MR. COBURN: I would defer to Counsel for that  
13 question.

14 MR. MILLER: This is an issue that has come up  
15 before as to the invocation of the Administrative Procedures  
16 Act. That takes place when the Board is seeking to -- Staff  
17 of the Board is seeking to revoke a license. It does not  
18 come into -- the Administrative Procedures Act does not come  
19 into play when it's merely a suspension. And that is an  
20 opinion given to us by the attorney general's office.

21 COMMISSIONER CHOPER: Thank you.

22 CHAIR BRACKPOOL: Does that conclude your  
23 question, Commissioner Choper?

24 COMMISSIONER CHOPER: Yes.

25 CHAIR BRACKPOOL: Commissioner Winner.

1           COMMISSIONER WINNER: I was just going to ask, do  
2 you have other speakers --

3           CHAIR BRACKPOOL: No.

4           COMMISSIONER WINNER: -- on that subject? That's  
5 it? Okay.

6           I just wanted to ask staff if -- if they had a  
7 chance to read Mr. Couto's letter representing GBE, and do  
8 they have any comment with respect to that letter?

9           MR. COBURN: Yes, I did read his letter.

10          CHAIR BRACKPOOL: Speak a little louder, please.

11          MR. COBURN: I said, yes, I did read his letter.

12 Any comments specifically to that?

13          COMMISSIONER WINNER: I don't have any specific  
14 question. But obviously the letter had a lot of -- raised a  
15 lot of questions --

16          MR. COBURN: It raised a lot of questions.

17          COMMISSIONER WINNER: -- about this. And I just  
18 want to make sure that Staff has read that and --

19          MS. WAGNER: Yes.

20          COMMISSIONER WINNER: -- and considered whether --

21          MR. COBURN: Yes.

22          COMMISSIONER WINNER: -- whether or not they wish  
23 to make any comment?

24          MS. WAGNER: Overall -- Jackie Wagner, CHRB staff.

25 We have read Mr. Couto's letter. Overall, Mr. Couto is

1 somewhat indicting Staff in terms of the procedure that was  
2 followed for the promulgation of these proposed rules.

3 My opinion is this, we have not gone outside of  
4 the procedures that we are -- were to follow. We have been  
5 above board and transparent. Again, the comments that we  
6 have received we've submitted to the Board for review. We  
7 have followed the APA. We have noticed things as we were  
8 required to do. Quite frankly, I do not agree with this  
9 allegations that we have not followed the proper procedure  
10 in doing the promulgation of these rules.

11 COMMISSIONER CHOPER: And once again I take it if  
12 he's right and you're wrong we're going to hear from him --

13 MS. WAGNER: Absolutely.

14 COMMISSIONER CHOPER: -- on review? Okay.

15 MS. WAGNER: The Board needs to be aware of that.  
16 This is -- if these rules are adopted by the Board this is  
17 the initial step. This will give us the go-ahead to go  
18 ahead and close this file, respond to every single comment  
19 that we have, and submit it to the Office of Administrative  
20 Law, which, quite frankly, will have the final adjudication  
21 as to whether or not this package will be approved. Should  
22 they approve this package as presented without any -- any  
23 revisions we will be able to move forward with the  
24 implementation of exchange wagering.

25 Should there be any question on -- on what we are

1 proposing, the Office of Administrative Law will let this --  
2 will let us know. And at that point we will have the  
3 opportunity to make those corrections and correct those  
4 deficiencies as they will outline to us in what they call a  
5 disapproval opinion. Again, that will be something that  
6 this Board will have, be able to review, so we will be able  
7 to go forward into correcting the deficiencies on the file.

8 This is really the first step. We've got a few  
9 more hurdles to get through before we're able to -- to move  
10 forward.

11 COMMISSIONER CHOPER: And if anybody disagrees  
12 with the conclusions reached by the Office of Administrative  
13 Law, what happens?

14 MS. WAGNER: Mr. Choper, I'm going to have to  
15 review that because I have not had that happen. This Board  
16 has -- very rarely do we have any files disapproved. So  
17 if -- if a member of the public --

18 COMMISSIONER CHOPER: No, no.

19 MS. WAGNER: If a member --

20 COMMISSIONER CHOPER: Suppose they approve it and  
21 the promulgation is that they made the same mistake we have,  
22 all right, what happens then?

23 MS. WAGNER: They can bring it before the Board.  
24 We can bring that concern before the Board. And if they  
25 want to propose to adopt amendments to the 25 rules --

1 COMMISSIONER CHOPER: Yes.

2 MS. WAGNER: -- we can go through this all over  
3 again.

4 CHAIR BRACKPOOL: Yes.

5 COMMISSIONER CHOPER: Well, it's not going to help  
6 them very much to raise the opposition to the Board again  
7 because they've lost here, they've lost at the Office of  
8 Administrative Law.

9 CHAIR BRACKPOOL: I think --

10 COMMISSIONER CHOPER: What I'm suggesting is can  
11 they sue?

12 VICE CHAIR ISRAEL: Yeah.

13 MS. WAGNER: Absolutely they can sue.

14 COMMISSIONER CHOPER: That's all.

15 CHAIR BRACKPOOL: That's --

16 MS. WAGNER: They can sue.

17 COMMISSIONER CHOPER: That's --

18 MS. WAGNER: At any time they can sue.

19 CHAIR BRACKPOOL: Exactly.

20 MS. WAGNER: At any time.

21 VICE CHAIR ISRAEL: Another full employment act  
22 for lawyers. You should be thrilled.

23 CHAIR BRACKPOOL: Moving along --

24 COMMISSIONER CHOPER: I'm not licensed to practice  
25 law now.

1 VICE CHAIR ISRAEL: I know. But all those skills  
2 of yours, you'll make plenty of money.

3 CHAIR BRACKPOOL: Commissioner Beneto.

4 COMMISSIONER BENETO: No.

5 CHAIR BRACKPOOL: You're good?

6 COMMISSIONER BENETO: Yeah.

7 CHAIR BRACKPOOL: Okay. Well, with that, would  
8 the two committee members like to make the -- make the  
9 motion?

10 VICE CHAIR ISRAEL: You go ahead, Richard.

11 COMMISSIONER ROSENBERG: Let's do it by age. You  
12 go first -- by your title, excuse me.

13 VICE CHAIR ISRAEL: Okay. Thanks, whatever. I  
14 move to accept the promulgated for exchange wagering as they  
15 are presented in today's package.

16 CHAIR BRACKPOOL: Okay. Motion made by Vice Chair  
17 Israel, seconded by Commissioner Rosenberg. Commissioner  
18 Beneto?

19 COMMISSIONER BENETO: I -- I was going to second  
20 it, but --

21 CHAIR BRACKPOOL: Oh, okay.

22 COMMISSIONER BENETO: -- I wasn't very --

23 CHAIR BRACKPOOL: All right.

24 COMMISSIONER BENETO: I'm in favor.

25 CHAIR BRACKPOOL: In favor. Commissioner Winner?

1           COMMISSIONER WINNER: I have -- I continue to have  
2 serious concerns about the situation, but I agree with  
3 everything that's been said with respect to what we're doing  
4 today. So I support the motion.

5           CHAIR BRACKPOOL: You support the motion.  
6 Commissioner Choper?

7           COMMISSIONER CHOPER: Oh, yes.

8           CHAIR BRACKPOOL: Okay. The motion carries  
9 unanimously. The rules are approved. Thank you.

10           Item number 11, which we could only hear -- 11 and  
11 12 we could only hear if 10 had been approved -- is the  
12 discussion and action -- I'm going to hear them together --  
13 discussion and action by the Board on the application for  
14 license to operate exchange wagering by Betfair U.S., LLC,  
15 for a period of up to -- up to two years.

16           Item 12, discussion and action by the Board on the  
17 application for license to operate exchange wagering by  
18 Churchill Downs Technology Initiatives Company for a period  
19 of up to two years.

20           VICE CHAIR ISRAEL: Can I -- I'd like to ask  
21 Counsel a question before we start.

22           CHAIR BRACKPOOL: Please, Commissioner Israel.

23           VICE CHAIR ISRAEL: Is there any real point in  
24 proceeding on these two requests, given that we've not been  
25 cleared through the Office of Administrative Law?

1 MR. MILLER: Robert Miller, counsel of the  
2 California Horse Racing Board.

3 The only action you can take is -- is contingent  
4 upon approval by the Office of Administrative Law of the  
5 just-adopted, just-approved regulations.

6 VICE CHAIR ISRAEL: And how long does that take?

7 MR. MILLER: That -- it takes 30 days at a  
8 minimum.

9 VICE CHAIR ISRAEL: At a minimum. So do you guys  
10 think this might be a bit premature? Wouldn't you rather  
11 see how it turns out? Okay. Then explain why.

12 MR. BURN: I'm Stephen Burn. I'm the president  
13 and CEO of TVG, and I head up Betfair in the U.S.

14 MR. BLACKWELL: Brad Blackwell on behalf of  
15 Churchill Downs Technology Initiatives Company.

16 COMMISSIONER BENETO: I'm joined by John Hindman  
17 who is our general counsel at TVG, and Tom Large who is  
18 going to head up the exchange in the U.S. if the --

19 COMMISSIONER BENETO: Can you pull the mike  
20 closer?

21 MR. BURN: I'm sorry. Tom Large who is the  
22 exchange director in the U.S. and will operate Betfair here  
23 if and when it ever operates.

24 The reason that we think it's important today to  
25 address our license application is multi-faceted. But from

1 our perspective -- I can't, obviously, speak for  
2 Twinpires -- we're trying to get some kind of clarity from  
3 the Board. You referred to a grand experiment for next  
4 year. From our perspective I think we need to feel that  
5 there is some realistic opportunity of there being an  
6 exchange next year so that we can carry on making an  
7 investment and actually operate.

8           We're not asking today for a license to do  
9 anything at any specific place. We're asking specifically  
10 as a company that we're -- just as you have licensed us for  
11 an ADW, that you would license us and, indeed, will license  
12 us, hopefully, for exchange wagering so that we can carry on  
13 making the investment we need to make. It isn't for us an  
14 off switch that we can just flick and then suddenly have  
15 exchange wagering, and we need to have a run-up for this,  
16 and it's going to take several months for us to get ready  
17 for launch. And in order to get some kind of product out  
18 there, let's say by next spring or potentially next summer,  
19 I think we need something more than this is just going to be  
20 continually kicked into the long grass indefinitely and  
21 we're never sure what's going to be happening.

22           CHAIR BRACKPOOL: I think there's also -- I'm  
23 going to ask Jackie Wagner to respond to that as well -- I  
24 think there's also a practical application that I think,  
25 from what I've been told by Staff, we also can not just turn

1 on a switch either, that there's quite a lot of work that's  
2 going on in parallel here.

3 But, Jackie, why don't you just respond to  
4 Commissioner Israel's important question.

5 MS. WAGNER: Jackie Wagner, CHRB staff. I just  
6 want to echo exactly what Counsel said, and what Mr. Burn  
7 said to -- to some extent.

8 Again, the adoption or the consideration of these  
9 applications prior to the approval of the red -- red package  
10 (phonetic) by the Office of Administrative Law does not in  
11 and of itself mean that they can go ahead and proceed with  
12 exchange wagering without the approval being rendered. It  
13 will show and give the industry an idea of where we intend  
14 to go with exchange wagering. That also has been indicated  
15 by the Board adopting the proposed rules.

16 I do want to let you know that the timeframe that  
17 we are working with in terms of completing the rule-making  
18 file, Counsel characterized that as the minimum of 30 days.

19 That is absolutely correct. But we still have to complete  
20 the rule-making file. And that in and of itself, the volume  
21 of comments that we have to respond to, we need to tap that  
22 lead time on and that's going to take us a couple of weeks  
23 to do. And then once we submit that rule-making file the  
24 Office of Administrative Law has 30 days, 30 working days  
25 with which to review the file and make the --

1 VICE CHAIR ISRAEL: Well, working days is six  
2 weeks.

3 MS. WAGNER: Yeah.

4 VICE CHAIR ISRAEL: So we're looking -- we're at  
5 least two months away.

6 MS. WAGNER: Yes. And depending on the final  
7 determination, if that file is approved we will move  
8 forward. It will become effective 30 days after it is filed  
9 with the secretary of state. Should the file be disapproved  
10 for any particular reason we will have to make those  
11 corrections to the file. Depending on what that is, that  
12 can entail going out for another comment period. We may be  
13 able to -- to work out the deficiencies, you know, without  
14 going through a comment period, but that adds additional  
15 time.

16 CHAIR BRACKPOOL: Let me just -- I'm going to ask  
17 Kirk to further respond. Because my understanding is that  
18 what actually has to happen here is that we need some pretty  
19 extensive work on software and other forms of monitoring  
20 that need to be in -- need to be in place. And that's the  
21 real purpose of starting this in parallel.

22 EXECUTIVE DIRECTOR BREED: Right. Kirk Breed,  
23 CHRB. In the -- in the wisdom or lack thereof, crafting  
24 this particular law requires that monies that's used are  
25 actual -- monies used to monitor and enforce or regulate the

1 law has to be appropriated. That is not possible to do  
2 until probably May or June, given the timeframe that this  
3 administration is working on.

4           So what that means is the applicant -- the  
5 applicant for a license, if -- you would give us some money,  
6 but we can't spend the money. And we don't want to do that.  
7 We don't want any money hanging around, any of your money  
8 hanging around that we're charging against because this  
9 administration, and given the situation with the budget,  
10 could come in and sweep that money and take it away and use  
11 it for other things, and that's all legal.

12           So therefore we have about two to three months  
13 work of training, implementation of new software, and  
14 getting our staff ready to go. We have to have designated  
15 lines that are separate and independent from anything that  
16 we do.

17           VICE CHAIR ISRAEL: What causes that to commence?  
18 What's the trigger?

19           EXECUTIVE DIRECTOR BREED: The trigger is having  
20 money to spend.

21           VICE CHAIR ISRAEL: You just told them that --

22           EXECUTIVE DIRECTOR BREED: That's right. So in  
23 lieu of the money what we're asking them to do is to buy  
24 this training and buy this software and give it to us so  
25 that we can begin this process.

1           COMMISSIONER CHOPER: With the hopes they'll get  
2 paid later?

3           EXECUTIVE DIRECTOR BREED: With the hope that --  
4 yes.

5           VICE CHAIR ISRAEL: No, no, they don't get  
6 anything.

7           COMMISSIONER WINNER: It becomes an offset.

8           CHAIR BRACKPOOL: It become an offset.

9           COMMISSIONER CHOPER: That will be offset against  
10 the amounts later.

11          EXECUTIVE DIRECTOR BREED: Yes. Right. Yes.

12          COMMISSIONER CHOPER: So that means that we give  
13 it with -- with the agreement of any licensee we can proceed  
14 with the implementation matters directly?

15          CHAIR BRACKPOOL: If they concur with providing  
16 this --

17          COMMISSIONER CHOPER: With the deal.

18          CHAIR BRACKPOOL: -- equipment and the offset  
19 arrangement the way that we've been told, as far as I  
20 understand that --

21          VICE CHAIR ISRAEL: And for that to proceed we  
22 need to have them licensed.

23          CHAIR BRACKPOOL: Right.

24          VICE CHAIR ISRAEL: Okay. So there actually is a  
25 practical reason for doing this.

1 CHAIR BRACKPOOL: Right.

2 VICE CHAIR ISRAEL: I just wanted to make sure  
3 I -- because --

4 CHAIR BRACKPOOL: Right.

5 VICE CHAIR ISRAEL: -- it seemed presumptuous and  
6 we were putting the cart before the horse.

7 CHAIR BRACKPOOL: Right.

8 VICE CHAIR ISRAEL: But if it's not, the I  
9 understand.

10 CHAIR BRACKPOOL: No.

11 MR. BURN: From past experience --

12 CHAIR BRACKPOOL: Name and affiliation again. I'm  
13 sorry.

14 MR. BURN: Stephen Burn from TVG. We're  
15 absolutely not looking to bash anybody here at all. We're  
16 trying to follow the proper process, to give ourselves a  
17 chance -- not just us but anyone else who wants to apply --  
18 of actually rolling this thing out at some point next year.  
19 That's all this is about.

20 VICE CHAIR ISRAEL: And it's mutual? You're  
21 willing to take the same position on the contribution of  
22 funds, etcetera?

23 MR. BLACKWELL: Brad Blackwell on behalf of  
24 Churchill Downs Technology Initiatives Company.

25 And, Vice Chairman Israel, I actually agree with

1 your first point about, you know, whether this is premature.  
2 And certainly we have expressed concern regarding that  
3 throughout the process and have preserved space in the  
4 application process with an interest in obtaining a license.  
5 But this is the first time that we have heard this  
6 particular issue about obtaining money up front to be spent.

7           And one of the things that we have commented on  
8 throughout this process is the lack of clarity associated  
9 with the \$1.4 million license fee because our reading of the  
10 law and regulation is that the CHRB has the right to recoup  
11 costs and expenses associated with regulation and licensing.  
12 So we've been asking for information through the process of  
13 where did the \$1.3 million application fee come from, how it  
14 would be spent, things of this nature, and we haven't  
15 received any feedback. And so we do have concern with that  
16 approach of providing money up front, it being spent or it  
17 may not be spent or it may get allocated somewhere else.  
18 There's a lot of concern with how the money will be spent --

19           VICE CHAIR ISRAEL: Right.

20           MR. BLACKWELL: -- and how it's being allocated.

21           VICE CHAIR ISRAEL: Right. I have two questions.

22 Two whom did you pose those questions?

23           MR. BLACKWELL: We posed one in the formal  
24 regulatory process in our comments that we submitted to CHRB  
25 and Staff --

1 VICE CHAIR ISRAEL: Okay.

2 MR. BLACKWELL: -- in multiple rounds.

3 VICE CHAIR ISRAEL: And nobody responded?

4 EXECUTIVE DIRECTOR BREED: No, I responded to --  
5 to those comments, directly to your counsel in -- in  
6 Sacramento.

7 MR. BLACKWELL: Well, I mean, I have not seen  
8 anything in the record to suggest that there's -- how this  
9 would be addressed. We certainly don't feel that that  
10 particular feeling has been addressed adequately. And we  
11 feel that --

12 CHAIR BRACKPOOL: Hold on one second.

13 Kirk, when did you respond to the counsel?

14 EXECUTIVE DIRECTOR BREED: Probably six months  
15 ago.

16 CHAIR BRACKPOOL: But, therefore, that must be a  
17 part of the record. I mean, if anything that you send on  
18 this issue to an applicant is part of the record; right?

19 MS. WAGNER: And that was part of the rule-  
20 making --

21 MR. BLACKWELL: And if I may --

22 MS. WAGNER: That would be included in the  
23 completed rule-making file.

24 MR. BLACKWELL: And if I may, Chairman, Israel, I  
25 think it would be more prudent of the applicants and the

1 CHRB to move the regulations through the approval process  
2 because we fell confident this will be an issue that OAL  
3 will take up. And I've been told that there is some  
4 precedent out there with how these fees are enforced.

5 VICE CHAIR ISRAEL: But would you -- would you  
6 have any objectives -- it seems that -- I don't intend to  
7 speak for TVG or Betfair, but they seem to be willing to  
8 provide some of this advance funding. Would Churchill be  
9 willing to provide the same kind of funding if we also  
10 approve this request for a license?

11 MR. BLACKWELL: That's something that we would  
12 have to consider, and based on how that's structured.  
13 Again, this is something that we're being told for the first  
14 time. And it's certainly much different than the way the  
15 enabling law was for how fees are handled.

16 VICE CHAIR ISRAEL: Well, I mean --

17 MR. BLACKWELL: It's -- it's --

18 VICE CHAIR ISRAEL: Well, I'm not a lawyer, but I  
19 actually have read the Constitution and I know equal  
20 protection under the law is a principle tenant; correct?

21 MR. BLACKWELL: Well, yes, it's there.

22 VICE CHAIR ISRAEL: Okay. So I believe -- I would  
23 think we have to treat each of you the same way, otherwise  
24 there would be a cause for action. So --

25 CHAIR BRACKPOOL: Well, the disconnect I have is I

1 have the executive director telling me here that he has been  
2 liaising with your counsel. But you're saying you know  
3 nothing of it. So somewhere there's a disconnect there.

4 COMMISSIONER ROSENBERG: Commissioner, the comment  
5 you made, the issue that we're talking about I don't think  
6 has only to do with whether or not the -- his question --  
7 the question of Churchill Downs was answered. But in terms  
8 of -- Churchill Downs is not in a position to respond today  
9 as to whether they would go along with the concept that was  
10 laid out by Mr. Breed.

11 CHAIR BRACKPOOL: Right.

12 COMMISSIONER ROSENBERG: So the real question is  
13 can we do it with one and not the other? Can one  
14 voluntarily do this? This is a legal question, I think.

15 COMMISSIONER CHOPER: I would think that we could  
16 grant one license provisionally and delay the other. I  
17 don't think -- I mean, I can understand your position, and  
18 that is you -- this is something you're not prepared to deal  
19 with at this point. But it does seem to me that you will,  
20 in all likelihood, eventually reapply for the license. And  
21 you'll be prepared at that particular -- you can do it next  
22 meeting, as a matter of fact, and you'll be prepared to  
23 determine whether or not you want to apply and get one  
24 without making the advances that TVG has agreed to; is that  
25 right?

1 MR. HINDMAN: Let me just say for the record,  
2 aside from the rules, the statute makes it very clear that  
3 the licensees pay for the costs of their own regulation,  
4 full stop. So sooner or later --

5 COMMISSIONER CHOPER: Sooner or later.

6 MR. HINDMAN: -- this -- the licensees are going  
7 to pay for their cost of the regulation. And that was done  
8 in lieu of a license fee being assessed during the  
9 legislative process. That's why that format was come up.

10 So we understand the limitations that the Board is  
11 working under. We are happy to go forward by ourselves, on  
12 our own, in terms of helping to put the infrastructure in  
13 place that will benefit all licensees, whoever chooses to  
14 come forward in the future and get a license. That is  
15 absolutely fine by us.

16 And, you know, I think getting back to what we've  
17 kind of talked about and what Executive Director Breed  
18 talked about is moving today will -- will allow something to  
19 happen next year. But it takes a long lead time to get all  
20 of these things in place. And the longer we wait the more  
21 that lead time will lag into limiting opportunity for racing  
22 associations and horsemen who wish to take advantage of this  
23 in the future take advantage of it. And I want to stress  
24 that nothing we're doing here today is the go switch for  
25 exchange wagering. The go switch for exchange wagering is

1 when a track comes forward and says they want to do it with  
2 their horsemen, and we come forward in concert or we're  
3 provider, a supporting customer of them. That's the go  
4 switch. This is not.

5 VICE CHAIR ISRAEL: Have a financial arrangement  
6 with whomever that might be. But --

7 MR. HINDMAN: And where that has to apply.

8 VICE CHAIR ISRAEL: The question that was brought  
9 here is did Churchill apply for this license today? I mean,  
10 you -- there is a full license application here.

11 MR. BLACKWELL: Yes, Vice Chairman Israel, and --

12 VICE CHAIR ISRAEL: And without -- without  
13 anticipating having to pay any fee whatsoever?

14 MR. BLACKWELL: No.

15 VICE CHAIR ISRAEL: Every license granted by the  
16 Board requires a payment of something.

17 MR. BLACKWELL: Right. And that was -- Vice  
18 Chairman Israel, and back to your question, Commissioner  
19 Choper, we applied for a license based on draft rules or  
20 draft regulations. And so that's part of the difficulty in  
21 applying for something in the same draft form is, of course,  
22 it's subject to change.

23 CHAIR BRACKPOOL: Well, it's --

24 MR. BLACKWELL: So the application --

25 CHAIR BRACKPOOL: Well, it's not in draft form.

1 It's in a form that this Board has approved and may or may  
2 not be modified by comments from OAL. It's no longer in  
3 draft form.

4 MR. BLACKWELL: Chairman Brackpool, when we  
5 submitted the application it was in draft form. So it is in  
6 approved form as of ten minutes ago.

7 VICE CHAIR ISRAEL: Which is, as I understand it,  
8 the -- the financial pieces that we're discussing isn't so  
9 much a part of the rules and regulations as it is a part of  
10 the law, the statute that was passed more than two years  
11 ago, I think, by the state legislature; is that correct?

12 MR. BLACKWELL: Yes.

13 CHAIR BRACKPOOL: More than two years now.

14 VICE CHAIR ISRAEL: Yeah, more than two years.  
15 Yeah.

16 MR. BLACKWELL: And so if I may --

17 CHAIR BRACKPOOL: As I said, the only way we would  
18 be hearing this item today is had we approved, which we did,  
19 the rules.

20 MR. BLACKWELL: Right.

21 CHAIR BRACKPOOL: So I don't want you hiding too  
22 much behind the draft language, because they were either  
23 going to be approved or they weren't going to be approved.

24 MR. BLACKWELL: Right. And --

25 CHAIR BRACKPOOL: They weren't going to be

1 modified by this Board today and hear the applications  
2 because we don't have the legal ability to do that.

3 MR. BLACKWELL: Correct. And, Chairman Brackpool,  
4 the regulations that were drafted has a \$1.4 million  
5 application fee. So when I read through the Board package  
6 both applicants have not -- both applicants have not  
7 submitted that payment.

8 EXECUTIVE DIRECTOR BREED: The rule says 1.4  
9 million, or whatever the Board determines as a fee. It  
10 doesn't just specifically say 1.4 million.

11 MR. BLACKWELL: We were asked for a \$1.4 million  
12 cashier's check earlier in the year to complete the  
13 application.

14 EXECUTIVE DIRECTOR BREED: Well --

15 MR. BLACKWELL: It's -- as to materials, neither  
16 applicant had submitted the application fee. Those were  
17 both listed as outstanding items. So if -- if our license  
18 would be contingent upon submitting whatever fee then that  
19 would be a contingency approval. But if one party comes to  
20 the party at the last minute and says we're willing to go  
21 ahead and cut a check, to me that's outside the process and  
22 the regulations that have just been approved.

23 MR. HINDMAN: I just want to -- this is John  
24 Hindman from TVG. I just want to reiterate the point I made  
25 earlier is -- is I agree with Executive Director Breed's

1 characterization of the rule which is consistent with the  
2 statute in that the cost is what it is. And we are going to  
3 pay it, and we are going to pay it now or we're going to pay  
4 it in the future or we're going to pay it along the way.

5 CHAIR BRACKPOOL: Go ahead.

6 MR. HINDMAN: The point of the matter is that --  
7 that to put this process in place, you know, there needs to  
8 be enough lead time and enough education and enough training  
9 to be sure it's done properly. So by acting today you're  
10 actually giving yourselves the opportunity to do that.

11 CHAIR BRACKPOOL: No, we understand. I'm trying  
12 to get to the specific question that -- that Commissioner  
13 Israel started with which -- and then was modified by  
14 Executive Director Breed, which is, you know, if we go into  
15 the following items are outstanding and will be submitted,  
16 number one is license fee. But we're not asking for the  
17 license fee today. What we are asking for what  
18 specifically?

19 EXECUTIVE DIRECTOR BREED: We're asking -- what  
20 we're asking for is that the CHRB be provided with all  
21 hardware, software and training to monitor exchange wagering  
22 for the first year of operation in an amount not to exceed  
23 \$530,000. That's what we're asking for.

24 VICE CHAIR ISRAEL: From each of them.

25 CHAIR BRACKPOOL: From each of them?

1 EXECUTIVE DIRECTOR BREED: No. Total. So if it's  
2 two applicants it would be half that much.

3 COMMISSIONER CHOPER: And that's the amount that  
4 you believe will permit us to move forward without any  
5 delay, despite the --

6 EXECUTIVE DIRECTOR BREED: That's correct.

7 COMMISSIONER CHOPER: -- the budget year?

8 EXECUTIVE DIRECTOR BREED: Yes.

9 COMMISSIONER ROSENBERG: For verification, we're  
10 not asking for the money, we're asking them to --

11 EXECUTIVE DIRECTOR BREED: We're --

12 COMMISSIONER ROSENBERG: -- pay for these  
13 expenses; correct?

14 EXECUTIVE DIRECTOR BREED: That's correct.

15 COMMISSIONER ROSENBERG: Okay.

16 EXECUTIVE DIRECTOR BREED: We're asking for them  
17 to buy this material.

18 COMMISSIONER WINNER: Can I ask a question?

19 CHAIR BRACKPOOL: Please, Commissioner Winner.

20 COMMISSIONER WINNER: Am I to understand that this  
21 question that's being raised, this issue of advancing money  
22 or paying for, that you at Churchill didn't know anything  
23 about this until this meeting?

24 MR. BLACKWELL: That's correct.

25 COMMISSIONER WINNER: And am I to understand that

1 you at Betfair did?

2 MR. HINDMAN: I had an understanding that it was  
3 necessary for the Board to buy equipment.

4 COMMISSIONER WINNER: Well, how did you learn  
5 that?

6 MR. HINDMAN: But a specific proposal --

7 COMMISSIONER WINNER: How -- how -- I'm trying to  
8 figure out whether Betfair knew certain things in advance  
9 that others didn't. That's the question.

10 MR. HINDMAN: No.

11 COMMISSIONER WINNER: A very simple question.

12 MR. HINDMAN: No. From our experience we know  
13 that --

14 CHAIR BRACKPOOL: But this amount that's been  
15 quoted by -- to go to Commissioner Winner's point, the  
16 amount that Executive Director Breed just quoted to you and  
17 the language, have either of you heard this language before  
18 as a requirement?

19 MR. HINDMAN: No.

20 CHAIR BRACKPOOL: Okay.

21 VICE CHAIR ISRAEL: That -- that's the part that  
22 troubles me a little bit, frankly.

23 CHAIR BRACKPOOL: So what are we doing, just  
24 surprising people --

25 VICE CHAIR ISRAEL: Yeah.

1 CHAIR BRACKPOOL: -- at hearing?

2 VICE CHAIR ISRAEL: It seems like we're making up  
3 stuff as we go here. That's -- that's -- I --

4 EXECUTIVE DIRECTOR BREED: No. I don't think  
5 we're surprising anybody at all. We're just telling you the  
6 facts. We can not spend money that we don't have.

7 COMMISSIONER ROSENBERG: Well, in a way you're  
8 asking for less than -- you could -- you could be asking for  
9 1.4 million to --

10 VICE CHAIR ISRAEL: Yes. Well, but he won't  
11 because then it goes to the general fund.

12 COMMISSIONER ROSENBERG: I know that. But I'm  
13 saying --

14 CHAIR BRACKPOOL: So what we're doing --

15 COMMISSIONER ROSENBERG: -- the surprise is  
16 irrelevant, I think.

17 CHAIR BRACKPOOL: Just so I understand, what we're  
18 saying is --

19 COMMISSIONER WINNER: Well, I'm not sure the price  
20 is irrelevant.

21 CHAIR BRACKPOOL: What I'm saying is that -- that  
22 you're asking, really, the Board to modify the license  
23 application and to say -- I'm putting words in your mouth,  
24 but based on what it says here -- that each applicant, given  
25 there's only two of them, would be paying \$265,000 worth of

1 equipment, to be ordered at our direction.

2 EXECUTIVE DIRECTOR BREED: That's correct.

3 CHAIR BRACKPOOL: And that would be, presumably, a  
4 credit against their ultimate \$1.4 million license fee?

5 EXECUTIVE DIRECTOR BREED: Yes. That would be  
6 their -- their fee for one year of operation. The manpower  
7 we would eat ourselves.

8 COMMISSIONER CHOPER: Cover that again, five what?

9 CHAIR BRACKPOOL: 530,000.

10 EXECUTIVE DIRECTOR BREED: 530,000.

11 COMMISSIONER ROSENBERG: The real question that we  
12 have is --

13 COMMISSIONER WINNER: Is the 1.4 established?

14 CHAIR BRACKPOOL: No. Because --

15 COMMISSIONER WINNER: It's out discretion?

16 CHAIR BRACKPOOL: It's our discretion.

17 COMMISSIONER WINNER: Okay. So it's a credit  
18 against the amount, whatever that amount is?

19 VICE CHAIR ISRAEL: Right.

20 CHAIR BRACKPOOL: Correct.

21 VICE CHAIR ISRAEL: And what would happen if next  
22 month Xpressbet applies or some other provider, do you --  
23 would you expect that 530 to be subsequently reduced?

24 MR. HINDMAN: It doesn't really matter because  
25 it's -- it's going to be credited it's --

1 VICE CHAIR ISRAEL: It's just a surprise.

2 MR. HINDMAN: -- it's going to be credited towards  
3 whatever our ongoing costs are.

4 VICE CHAIR ISRAEL: Okay.

5 MR. HINDMAN: So it doesn't really matter to us.

6 VICE CHAIR ISRAEL: And everybody's going to have  
7 to pay the license fee ultimately?

8 MR. HINDMAN: Yeah.

9 COMMISSIONER CHOPER: Ultimately is the support,  
10 because ultimately it will be. And --

11 VICE CHAIR ISRAEL: Well, but it's not --

12 COMMISSIONER CHOPER: -- my understanding, tell  
13 me, I could be wrong, I've been -- anyway, what you are  
14 risking with this is it will come to naught; is that right?

15 MR. BURN: That's correct.

16 COMMISSIONER CHOPER: So -- so, Mr. Blackwell, it  
17 seems to me that, I mean, if -- it may put them in a  
18 different position, but that's not the best different  
19 position to be. And in the end at any point along the way I  
20 take it you can apply for a license.

21 Are we making this a condition? That there is a  
22 more important question. Are we making this --

23 CHAIR BRACKPOOL: Yeah.

24 COMMISSIONER CHOPER: -- a condition?

25 CHAIR BRACKPOOL: Let's -- let's get back to

1 exactly what we're asking them in a moment. Before we do,  
2 Commissioner Rosenberg has a question, and then I want to  
3 make a clarification.

4           COMMISSIONER ROSENBERG: I just want to ask Mr.  
5 Blackwell, is your objection -- you seem to be objecting to  
6 the procedure of issuing anyone a license at this time for  
7 the reasons you stated. Are those reasons related to the  
8 fact that you're not ready to proceed forward with this  
9 exchange wagering? You're not ready yet or -- and if you  
10 are ready, you haven't told us that. So I'm trying to get  
11 to the bottom of your -- of your concerns.

12           The second thing is I presume your second reason  
13 might be because you personally don't have authority to  
14 speak for the parent company or the subsidiary that you're  
15 representing, whereas your competitors happens have to have  
16 people here who are committing.

17           MR. BLACKWELL: Right.

18           COMMISSIONER ROSENBERG: Correct?

19           MR. BLACKWELL: Commissioner Rosenberg, this  
20 really gets to being able to complete an application when  
21 regulations are still in doubt. There's still concerns with  
22 those that we feel have not been addressed.

23           CHAIR BRACKPOOL: Answer the question.

24           MR. BLACKWELL: Certainly as to --

25           CHAIR BRACKPOOL: Answer the question, please.

1 MR. BLACKWELL: I am answering. I am answering  
2 the question. And so essentially we have worked our way  
3 through this process a little bit in the dark, not knowing  
4 what's going to happen. And, again, today is a perfect  
5 example of something being thrown out of nowhere that we  
6 could have been informed of going into this meeting and  
7 could have been prepared. So certainly we don't feel that  
8 this was adequately addressed. And we have moving in good  
9 faith through the application process for the purpose of  
10 obtaining the license. And just as we heard today, Betfair  
11 is not ready to go. There still is lead time.

12 So are we ready to go?

13 CHAIR BRACKPOOL: Please answer the question.

14 MR. BLACKWELL: It has to be in proper context for  
15 me to answer the question. So as I mentioned before, we're  
16 not ready to go right now, but neither is Betfair. And the  
17 CHRB is not ready to go with this. The regulations are  
18 still moving through the process, and no one is ready to go  
19 right now.

20 CHAIR BRACKPOOL: You didn't answer -- let's just  
21 say you didn't answer the question. Let me ask you a  
22 different question. You applied for a license.

23 MR. BLACKWELL: Correct.

24 CHAIR BRACKPOOL: The statute says it might be 1.4  
25 million.

1 MR. BLACKWELL: That's correct.

2 CHAIR BRACKPOOL: So forget all of this nonsense  
3 of how government appropriates money, etcetera.

4 MR. BLACKWELL: Right.

5 CHAIR BRACKPOOL: If we sat here today and said to  
6 you, we will give you the license, it requires a \$1.4  
7 million check, do you have authority to say yes?

8 MR. BLACKWELL: No. I'll never have authority to  
9 say yes right now because --

10 CHAIR BRACKPOOL: What are you applying for a  
11 license for then?

12 MR. BLACKWELL: We're applying for a license but  
13 we have to -- the questions and concerns that have been  
14 related throughout this process is that there's not enough  
15 clarity with the \$1.4 million.

16 CHAIR BRACKPOOL: So you're not really -- you're  
17 not really applying for a license?

18 MR. BLACKWELL: Yes, we are applying for a  
19 license.

20 CHAIR BRACKPOOL: Okay. So you're applying for a  
21 license.

22 MR. BLACKWELL: It's because of the --

23 CHAIR BRACKPOOL: You're applying for a license,  
24 although you're saying that you would not be able to commit  
25 to paying the license fee. So if we said to you today we

1 will give you the licenses subject to a license a fee, what  
2 would your response be?

3 MR. BLACKWELL: Yeah. That's -- that's the  
4 conditions that we're applied is contingent upon these other  
5 deliverables. And, again, we are confident that OAL will  
6 address the lack of clarity associated with --

7 CHAIR BRACKPOOL: I'm sorry --

8 MR. BLACKWELL: -- the \$1.4 million.

9 CHAIR BRACKPOOL: -- how about a yes or a no? If  
10 we gave you a license approval today subject to the payment  
11 of the license fee, would you accept the license, yes or no?  
12 Yes or no?

13 MR. BLACKWELL: And I need to clarify because --

14 CHAIR BRACKPOOL: No.

15 MR. BLACKWELL: -- you're trying to put me on the  
16 spot and say --

17 CHAIR BRACKPOOL: I am trying to put you on the  
18 spot.

19 MR. BLACKWELL: -- and --

20 CHAIR BRACKPOOL: You applied for a license.

21 MR. BLACKWELL: Yeah. And I'm trying to answer  
22 your question. You're asking us to hand over a \$1.4 million  
23 check without any guarantee what that goes towards or how  
24 long of a period that goes towards.

25 CHAIR BRACKPOOL: So the answer is, no, until we

1 know those things we would not accept the license and pay  
2 this?

3 MR. BLACKWELL: Right. And so if it's -- and what  
4 we've applied for is a license contingent upon completing  
5 the deliverables. So if you come back and say it's \$1.4  
6 million we know that once we deliver the \$1.4 million we  
7 have a final application or a final approval license.

8 COMMISSIONER WINNER: Yeah. I just, again, want  
9 to clarify this. Are you saying, as I understand it, that  
10 you -- what you want is a license contingent, but that  
11 contingency really is up to you to -- to be determined by an  
12 amount, and therefore you can either accept or object at  
13 some later point?

14 MR. BLACKWELL: Yes. It's no different than the  
15 contingent applications --

16 COMMISSIONER WINNER: So you're not applying for a  
17 license today, you're applying for --

18 MR. BLACKWELL: No. We --

19 COMMISSIONER WINNER: -- the right to apply for a  
20 license at some later time if you agree with the terms and  
21 conditions?

22 MR. BLACKWELL: We're -- we're applying for a  
23 license, contingent upon finalizing what other deliverables  
24 are left.

25 COMMISSIONER WINNER: Okay.

1 MR. BLACKWELL: It's not different than the ADW  
2 applications --

3 COMMISSIONER WINNER: I just --

4 MR. BLACKWELL: -- that we've --

5 COMMISSIONER WINNER: I just want to understand  
6 right now. Isn't it true that -- that, on the other hand,  
7 your competitor Betfair is applying for a license based on  
8 what they know today, not based on what they may know at  
9 some time in the future; is that correct?

10 MR. BLACKWELL: Yes.

11 MR. BURN: That is correct.

12 CHAIR BRACKPOOL: Let me make this perhaps --  
13 well, a actually, let's go to the speakers, and then we can  
14 perhaps make this a little -- a little clearer. First --  
15 stay where you are because we may have questions after the  
16 speakers.

17 First speaker, Richard Specter, Los Angeles Turf  
18 Club.

19 MR. SPECTER: Good morning. Richard Specter on  
20 behalf of the Pacific Racing Association and Los Angeles  
21 Turf Club. We heard from Staff moments ago that this is a  
22 first step. This is not enactment of the law. And as the  
23 chairman acknowledged, the Board doesn't have the legal  
24 ability to grant a license.

25 Now, the Exchange Wagering Act includes a

1 provision for how one applies for a license and how it's  
2 granted. You can not consider that until that becomes law.  
3 And it doesn't become law until it gets past the OAL and  
4 until the secretary or state signs it. And this whole  
5 process is getting ahead of itself because at the end of the  
6 day if it becomes law, if and only if it becomes law, you  
7 will then be able to entertain applications, and you will  
8 then be able to grant licenses. You can't do it in advance  
9 because it's not the law yet. So you lack the authority to  
10 do it.

11           And this process, I'm not sure where it's supposed  
12 to lead. You know, you can indicate, well, if you submit an  
13 application it will be considered, but you can't bind  
14 yourself. Because by the time the application is properly  
15 submitted circumstances may change. Whatever you consider  
16 in terms of finances now is meaningless because you've got  
17 to consider what they are the time of the application.

18           COMMISSIONER CHOPER: Mr. Specter, granted that  
19 we can't -- or granted -- agreed that we can't grant a  
20 license. All right.

21           MR. SPECTER: Correct.

22           COMMISSIONER CHOPER: Can't we grant a conditional  
23 or provisional license contingent on all of the requirements  
24 that you suggest being satisfied?

25           MR. SPECTER: No. Because you're granting it

1 under rules that aren't the law yet. And you're going to be  
2 required --

3 COMMISSIONER CHOPER: We're not granting it.

4 MR. SPECTER: Well, you're -- conditionally,  
5 you're saying that here's what I will commit to do in the  
6 future, when under the rules you're going to have to  
7 consider those factors in the future. So all you can say is  
8 if you want to submit your application we'll grant it,  
9 subject to us having a completely new review at the time.

10 COMMISSIONER CHOPER: I think Betfair who, you  
11 know, wants one and ready to go is willing to undertake that  
12 risk. That's what I understand them to be saying.

13 So, I mean, I understand your point, too, but it  
14 seems to be that the response is -- we haven't granted a  
15 license to do anything specific; it's all condition.

16 MR. SPECTER: Well, therefore, what conditional  
17 approval would you be giving?

18 CHAIR BRACKPOOL: Well, this is not a question and  
19 answer session.

20 MR. SPECTER: I understand.

21 CHAIR BRACKPOOL: But thank you for your comments.

22 MR. SPECTER: Okay.

23 CHAIR BRACKPOOL: Next speaker, John Bucalo.

24 MR. BUCALO: Good morning, Chairman Brackpool,  
25 Vice Chairman Israel, and distinguished Members of the

1 Board. I just want to mention about the 19605, section G,  
2 which states,

3 "A racing association, a fair, satellite wagering  
4 may enter into an agreement with an ADW provider to accept  
5 and facility the placement of any wager from a patron at its  
6 facilities that a California resident could make through the  
7 ADW provider."

8 How is that going to fit into the new exchange  
9 wager, and is Betfair prepared to be in compliance with that  
10 rule? Because the last thing we want to see at our facility  
11 is people going to satellites and getting on the telephone  
12 and making bets through Betfair or any other ADW provider,  
13 and we make absolutely no commission and have no financial  
14 gratification from that whatsoever, and they're betting in  
15 our facility. Thank you.

16 CHAIR BRACKPOOL: Thank you. Next speaker, Carlo  
17 Fisco, CTT, with different points to the points you made  
18 speaking on the last item.

19 MR. FISCO: Yes.

20 CHAIR BRACKPOOL: Thank you.

21 MR. FISCO: That's why it's item number 11 and not  
22 10.

23 CHAIR BRACKPOOL: I'm just reminding you.

24 MR. FISCO: And 12 can be consolidated into 11,  
25 obviously.

1 CHAIR BRACKPOOL: I understand.

2 MR. FISCO: I filled out a card for 12.

3 In answer to Professor Choper's question, which is  
4 the fundamental question here, the answer why your  
5 consideration, whether on a contingent basis or otherwise,  
6 is invalid and improper at this time is in California Law.  
7 It begins with Government Code 11340.5. What you're doing  
8 today, in your packet you have two applications under -- to  
9 conduct exchange wagering. If you look in that packet  
10 you'll see that in that application you seek to utilize on  
11 four or five different occasions proposed regulations;  
12 2086.6 is one that comes to mind. Government Code in  
13 California prohibits you from doing that. It states,

14 "No state agency shall issue, utilize, enforce, or  
15 attempt to enforce any guideline criterion or regulation  
16 which has not been adopted."

17 Adopted means filed with the secretary of state.  
18 It does not mean adopted by the Board today.

19 COMMISSIONER CHOPER: I understand that. But  
20 why -- why can't you do it conditionally?

21 MR. FISCO: Because you are utilizing -- you are  
22 utilizing regulations which are specifically prohibited by  
23 the Government Code. Now --

24 COMMISSIONER CHOPER: Wait. Wait.

25 MR. FISCO: -- let me -- let me finish.

1 CHAIR BRACKPOOL: I'm sorry, Mr. Choper was about  
2 to speak.

3 COMMISSIONER CHOPER: No, no.

4 MR. FISCO: Okay.

5 COMMISSIONER CHOPER: I mean, I don't know what  
6 utilizing means.

7 CHAIR BRACKPOOL: Exactly.

8 MR. FISCO: Utilizing means the -- the plain  
9 meeting of utilizing. You have an application in front of  
10 you, and in the application it actually states rules,  
11 proposed regulations which have not yet been adopted.

12 Now, Exchange Wagering Law subsection M states,  
13 "The legislature stated that in order to effectuate the  
14 Exchange Wagering Law you shall adopt regulations."

15 So while this may have been possible on what's  
16 called a self-executing statute, that's not available to you  
17 here today --

18 COMMISSIONER CHOPER: Uh-huh.

19 MR. FISCO: -- because you -- the legislature has  
20 told you that you shall adopt regulations in order to  
21 effectuate the law.

22 CHAIR BRACKPOOL: Thank you. I think we  
23 understand your point. Thank you.

24 MR. FISCO: Thank you.

25 CHAIR BRACKPOOL: So what it appears we are saying

1 here is that if an applicant wished to proceed with a  
2 license with -- with all of the -- approving the license  
3 with all of the risks associated with the fact that we  
4 haven't gone through OAL and continued lawsuits, etcetera,  
5 yet, they would have to provide us with all hardware,  
6 software and training to begin the training of staff to  
7 monitor exchange wagering in an amount, right, that would  
8 realistically -- if there's -- if there's only, you know,  
9 going to be one, I don't know how this would work. Because  
10 the idea that you said is you're dividing this between the  
11 two of them.

12 EXECUTIVE DIRECTOR BREED: Correct.

13 CHAIR BRACKPOOL: So welcome to the world of state  
14 government, which is a good reason and a very good example  
15 of why the State of California doesn't work very well. But  
16 I'm trying to think how we can -- how we can best, you know,  
17 do this and move this along, if people want to move this  
18 along. Because, you know, if you're prepared to put up 530,  
19 and yet, you know, they're -- they're prepared, and I'm  
20 prepared to, you know, give Brad ten days to go back to his  
21 people and say do we want to put up our share of it -- I  
22 mean, I want to make sure it's fair to both sides to be able  
23 to do that and give him a chance to say yea or nay. I'm not  
24 going to give him an open-ended but, you know, give him some  
25 period of time.

1           MR. BURN: Chairman Brackpool, we're not in a rush  
2 to do anything. We just want to try and facilitate the  
3 process as effectively and efficiently as, in fact, I think  
4 the legislatures compelled us all to do when they passed the  
5 law two years ago. We -- we continue to want to work with  
6 the industry and to do whatever we can in order to get this  
7 thing deployed next year.

8           I think the best way of doing that, from my  
9 perspective with regard to the issues that I face, you know,  
10 internally, is to get some clarity from the Board that there  
11 is a meaningful attempt to try and get something launched  
12 next year. I think a conditional license subject to all of  
13 the things that you've said gives us the chance to do that.

14           And we're more than prepared to go -- to go ahead  
15 and take the liability along the lines that Executive  
16 Director Breed alluded to, the 530 or whatever the figure  
17 was. We hadn't heard that figure before today, but we did  
18 read initially that there was potentially a 1.4 million  
19 license fee that was out there. And anything that's less  
20 than that is, obviously, going to be favorable for us  
21 because it's money that we can then share, both with  
22 ourselves and the rest of the industry.

23           CHAIR BRACKPOOL: Well, but -- but here's --  
24 here's what I don't know. I mean, we're talking about  
25 fiscal year. So we had said 1.4 or whatever it is. What

1 Executive Director is now telling the Board is that in his  
2 estimate --

3 VICE CHAIR ISRAEL: Yes.

4 CHAIR BRACKPOOL: -- between now and the end of  
5 June it's going to be 530.

6 EXECUTIVE DIRECTOR BREED: For one year of --  
7 that's the startup cost. And for one year of operation  
8 that's all we're -- that's what we're asking for.

9 MR. BURN: Some hardware, software, and some  
10 personnel. But, obviously, we don't know.

11 COMMISSIONER WINNER: And, again, the purpose --  
12 since this is a conditional license and since there are  
13 other processes that one has to -- would have to take place,  
14 the purpose of having this startup gear is what?

15 EXECUTIVE DIRECTOR BREED: It's to be able to  
16 monitor exchange wagering.

17 COMMISSIONER WINNER: Yeah. But we don't even  
18 know if we're going to have exchange wagering.

19 MR. BURN: There is -- there is currently exchange  
20 wagering on U.S. racing that Betfair runs. And if -- if the  
21 CHRB or Staff wanted to run some kind of trial on how you  
22 would audit trail things like Bet One, which we've offered  
23 to give to the Board so you can regulate in real time, ahead  
24 of the fact, not after the fact, and see bets as they're  
25 placed, obviously, we can do that.

1           COMMISSIONER WINNER: Well, okay. But I still  
2 want to get a clarification. If we don't have exchange  
3 wagering then -- and I'm not suggesting we won't or we  
4 shouldn't, I'm just asking the question -- then what is the  
5 purpose of having this money to buy the software to test  
6 something that may never be needed?

7           EXECUTIVE DIRECTOR BREED: There is no --

8           COMMISSIONER CHOPER: To move the process along as  
9 quick --

10          EXECUTIVE DIRECTOR BREED: Well, there is no --

11          COMMISSIONER CHOPER: May I say something?

12          CHAIR BRACKPOOL: Please.

13          COMMISSIONER CHOPER: I hope I'm wrong in what I'm  
14 going to say, right, but this ain't going to happen for a  
15 while. My sense is that OAL will approve it, and someone,  
16 someone, as Commissioner Israel reminds me all the time,  
17 they call them lawyers, will be retained to bring a lawsuit  
18 complaining about the very same things that they've been  
19 complaining about all along. And, you know, those are --  
20 these are not frivolous, certainly not all of them, I don't  
21 think. That doesn't mean that they're right. But there  
22 are -- there are -- there are different reasons different  
23 people want to delay this thing as long as possible.

24                 So it's perfectly clear, as well, that -- you  
25 know, I could use some pun like saying your engaging in

1 exchange wagering, or something like this, by putting up  
2 this money, but that's what you're doing. You -- you are  
3 hoping; right? I don't even want to say betting. You're  
4 just hoping that it's going to come through. My guess is  
5 that ultimately it will come through. And -- but that's not  
6 worth much, my guess.

7           So I don't see really why we shouldn't move ahead  
8 and get -- get the thing started. Sooner or later, we hope,  
9 I think that it will come to fruition. And let's not delay  
10 it any longer. You're willing to -- you're -- you're  
11 willing to do -- you know perfectly well that Twinspires and  
12 the other company Global are probably going to come in and  
13 ask to be licensed. If they qualify, I don't see why they  
14 won't be licensed and that they'll have to -- in the end  
15 they'll have to put up the same kind of money that you do.  
16 But if it doesn't happen you've taken the risk and you lose.  
17 And one last sentence.

18           VICE CHAIR ISRAEL: All right.

19           COMMISSIONER CHOPER: And I think that if the  
20 system works, then whoever is in favor of the system are the  
21 beneficiaries of your taking the risk.

22           VICE CHAIR ISRAEL: Okay. But I have a concern  
23 that requires a legal opinion. So, Bob, I'd appreciate if  
24 you'd listen and respond. I'm concerned if it doesn't  
25 happen -- and there's a probability of some magnitude that

1 it might not happen because, you know, there will be suits  
2 that allege this as bookmaking and other things. And if it  
3 doesn't happen and we've accepted this half million dollars  
4 and it's not an offset against a license fee, it's then a  
5 contribution to the CHRB by a license holder. And I'm not  
6 sure, whether it's in-kind or cash, that's legal. And if  
7 it's not legal then the CHRB will be liable for paying that  
8 back and it will cause real financial harm down the line.

9           So if it requires us to wait a month to get a real  
10 fix on that issue, separate and apart from all the OAL  
11 stuff, I mean, I'm willing to wait a month. I mean,  
12 that's -- I've never heard of -- of a government entity  
13 accepting a half million dollars that's not a tax or a  
14 license, you know, on the come from some entity that appears  
15 before the Board and requests licenses and other -- and  
16 other -- and other permissions.

17           MR. MILLER: Robert Miller, Counsel to the  
18 California Horse Racing Board. As I understand the proposal  
19 we're not accepting any cash.

20           VICE CHAIR ISRAEL: But I said in-kind.

21           MR. MILLER: In-kind.

22           VICE CHAIR ISRAEL: It has a value. It's --

23           MR. MILLER: And --

24           VICE CHAIR ISRAEL: -- \$530,000.

25           MR. MILLER: And it would be -- the hardware and

1 software is going to be purchased by the licensee. And  
2 title will only come to the California Horse Racing Board  
3 once the license is approved.

4 VICE CHAIR ISRAEL: But there's also training  
5 involved for our employees.

6 MR. MILLER: Yes.

7 VICE CHAIR ISRAEL: That's -- that's -- that's not  
8 a capital investment. That's -- that's -- that's a cost  
9 that -- that it's not -- it can't be returned as the  
10 capital -- as a piece of capital to them.

11 MR. MILLER: Uh-huh.

12 EXECUTIVE DIRECTOR BREED: Well --

13 VICE CHAIR ISRAEL: So --

14 EXECUTIVE DIRECTOR BREED: -- one addition on that  
15 item. We -- we require in -- every applicant for a license  
16 to run in California, we require them to provide office  
17 space for our investigators, office space for --

18 VICE CHAIR ISRAEL: I know.

19 EXECUTIVE DIRECTOR BREED: -- and utilities for --

20 VICE CHAIR ISRAEL: I understand that. But there  
21 are --

22 EXECUTIVE DIRECTOR BREED: That's an in-kind  
23 contribution.

24 VICE CHAIR ISRAEL: But they are -- yeah, but  
25 they're running. The problem is what if this never comes to

1 fruition? Okay. That's considered part of the license fee  
2 that's being paid. If they're never -- if there's a legal  
3 case or if the OAL kicks this back and says, forget it, you  
4 can't do it, and there never is exchange wagering, they're  
5 not going to pay a license fee so there's no offset against  
6 it. You know, that -- that office space is an offset  
7 against a cash -- an additional cash contribution in the  
8 form of a license fee.

9 COMMISSIONER WINNER: Mr. Chairman?

10 CHAIR BRACKPOOL: Yes, Commissioner Winner.

11 COMMISSIONER WINNER: I want to just clarify  
12 with -- with Mr. Miller. What you're saying is that the  
13 title rests -- in this case it would be with Betfair to at  
14 least the capital investment, the -- the equipment, the  
15 software equipment.

16 MR. MILLER: That's correct.

17 COMMISSIONER WINNER: And, therefore, if they  
18 never got -- if -- if exchange wagering never went forward  
19 or for one reason or another they never got a license they  
20 would own that software; correct?

21 MR. MILLER: That's correct.

22 COMMISSIONER WINNER: So -- so what we're really  
23 talking about are the soft costs --

24 VICE CHAIR ISRAEL: Right.

25 COMMISSIONER WINNER: -- that -- that Vice --

1 VICE CHAIR ISRAEL: The training costs or  
2 whatever.

3 COMMISSIONER WINNER: -- yeah, yeah, that Vice  
4 Chairman Israel is raising. So what's your response to  
5 that?

6 MR. MILLER: My quick analysis is that those soft  
7 costs would only be incurred once exchange wagering  
8 regulations were approved by AOL [sic].

9 COMMISSIONER WINNER: Is that true, Mr. Breed?

10 MR. MILLER: But --

11 EXECUTIVE DIRECTOR BREED: Yes.

12 VICE CHAIR ISRAEL: OAL. AOL isn't --

13 COMMISSIONER CHOPER: That's all right.

14 MR. MILLER: OAL. Okay. So that we would not --  
15 the Board would not be expending those soft costs in advance  
16 of approval from the Office of Administrative Law.

17 COMMISSIONER WINNER: So why do we need that money  
18 now?

19 MR. MILLER: We're not -- we're not receiving any  
20 money now.

21 COMMISSIONER WINNER: Well, why do we need that  
22 commitment now to -- why wouldn't we just ask for the  
23 commitment for the hard costs, for the software that's  
24 required now, since nothing will be done with the other  
25 money or there's no other use for that money since it's not

1 going to be used until after the Office of Administrative  
2 Law --

3 MR. MILLER: There -- there's -- we could do that.

4 COMMISSIONER WINNER: So I'm asking, Mr. Breed,  
5 why are we requiring -- requesting that?

6 EXECUTIVE DIRECTOR BREED: The training?

7 COMMISSIONER WINNER: Yeah, the training. The  
8 training costs; why are we requesting that?

9 COMMISSIONER ROSENBERG: The hard costs to buy the  
10 equipment, which could be done in a month.

11 EXECUTIVE DIRECTOR BREED: Well, we can do that.

12 COMMISSIONER ROSENBERG: Yeah.

13 CHAIR BRACKPOOL: I mean, realistically, this is a  
14 week before Thanksgiving. The next meeting of the CHRB is  
15 January the 17th. We may or may not have a ruling from OAL  
16 by then, probably by, you know, the February one. I  
17 understand what these people are trying to do is to move as  
18 much along in parallel. I also want to make sure that the  
19 playing field is level for any applicant to decide if they  
20 want to participate.

21 So if people are prepared to take the risk, and if  
22 Counsel tells us that we're not, you know, putting ourselves  
23 in legal harms way here, if people are prepared to take the  
24 risk we could grant -- I mean, a possible motion would be to  
25 grant a motion that says we will give you a provisional

1 license that is subject to the rules being adopted as we  
2 voted on them as OAL, and that any other applicant for a  
3 license can, if they meet the other requirements, can pay  
4 their pro rata share of this, you know, \$530,000  
5 contribution.

6 COMMISSIONER ROSENBERG: It won't be 530 though.

7 CHAIR BRACKPOOL: Why won't it be 530?

8 EXECUTIVE DIRECTOR BREED: Not to exceed.

9 COMMISSIONER ROSENBERG: Because of the -- the  
10 soft -- the hard costs of --

11 CHAIR BRACKPOOL: Well, whatever it is. Whatever  
12 the number is, not to exceed 530,000.

13 COMMISSIONER ROSENBERG: Right. Right.

14 CHAIR BRACKPOOL: That gives Mr. Blackwell a  
15 chance to go back and say do we want to apply for this or do  
16 we just want to wait until February and see where we are.  
17 And you're still going to be able to join in with your pro  
18 rata at that stage. And so, you know, I want this to be a  
19 level playing field. If TVG-Betfair want to move the  
20 process along and take the risk, they're taking the risk and  
21 all of the other applicants are -- I'm going to make sure of,  
22 can be in the same position, right, you know, at that stage.  
23 So if that's what it takes and it takes a  
24 conditional license, which I don't really understand what it  
25 means because it's a conditional license that's subject to

1 the rules being approved by OAL, and they're prepared to  
2 take that risk and move it along.

3 COMMISSIONER WINNER: I apologize. If the OAL  
4 approves the provisional license --

5 CHAIR BRACKPOOL: Uh-huh.

6 COMMISSIONER WINNER: -- does it come back to us  
7 to grant a permanent license?

8 CHAIR BRACKPOOL: OAL is not approving their  
9 license; right?

10 MS. WAGNER: Yes.

11 CHAIR BRACKPOOL: OAL is approving the rules. We  
12 are approving the license --

13 COMMISSIONER WINNER: Okay. I'm sorry. I  
14 apologize.

15 CHAIR BRACKPOOL: -- subject to OAL approving the  
16 rules.

17 COMMISSIONER WINNER: I asked the wrong questions.  
18 Does it come back to us for a permanent license?

19 CHAIR BRACKPOOL: Yes.

20 COMMISSIONER WINNER: So it comes back to the  
21 Board under any circumstances?

22 CHAIR BRACKPOOL: Because we have to continue to  
23 set these license fees.

24 COMMISSIONER WINNER: Right. Okay.

25 CHAIR BRACKPOOL: Commissioner Beneto?

1           COMMISSIONER BENETO: So is the license fee 1.5  
2 million or 500,000?

3           EXECUTIVE DIRECTOR BREED: It's whatever the Board  
4 decides.

5           CHAIR BRACKPOOL: It's whatever the Board decides.  
6 And we're sitting here today and saying that between now and  
7 June 30th, which is the end of the fiscal year, it won't be  
8 more than 530. Between now and then we will have to get a  
9 budget from Staff and come up and see what a full year's  
10 operation would actually look like.

11           COMMISSIONER BENETO: Well, I thought that before  
12 we started -- we started this meeting all at once it was  
13 1.4; now we're down to 500. You've got me confused.

14           VICE CHAIR ISRAEL: No, no, no, no, no. It's  
15 because they're not operating --

16           CHAIR BRACKPOOL: They're not operating.

17           VICE CHAIR ISRAEL: -- between now and the end of  
18 the fiscal year. In an operating year it could be 1.4, it  
19 could be 2.4, it could be 700,000, nobody -- it depends on  
20 the costs, just like all our other licenses.

21           But in accordance with this, the one other  
22 question on the issue of fairness that Chairman Brackpool  
23 brought up is who is going to promulgate the protocols for  
24 all of this work that's going to be done. Is it going to be  
25 done -- are those protocols going to be established by the

1 CHRB or are they going to be established by Betfair because  
2 it's going to be providing the -- the revenue?

3 EXECUTIVE DIRECTOR BREED: Those protocols --  
4 those protocols are established by the -- the company that  
5 we're buying them from. We did it for the British Racing  
6 Authority.

7 VICE CHAIR ISRAEL: Who does that come from?

8 EXECUTIVE DIRECTOR BREED: The CIS. I can't --

9 VICE CHAIR ISRAEL: It's a completely independent  
10 company?

11 EXECUTIVE DIRECTOR BREED: Yes. SAS.

12 VICE CHAIR ISRAEL: Oh, I see it.

13 EXECUTIVE DIRECTOR BREED: SAS.

14 VICE CHAIR ISRAEL: Okay.

15 EXECUTIVE DIRECTOR BREED: It's a completely  
16 independent company. It has nothing to do with Betfair.

17 VICE CHAIR ISRAEL: Okay. So, all right. So  
18 those --

19 COMMISSIONER BENETO: Well, we haven't --

20 VICE CHAIR ISRAEL: Those protocols will be  
21 established the same way, regardless of who contributes to  
22 the fund that pays for them? Yes?

23 CHAIR BRACKPOOL: And the answer to your question,  
24 Commissioner Beneto, is on a full year of operations, which  
25 is not going to happen this year because we're already in

1 November and the year ends June the 30th, it could be as  
2 much as 1.4 million per applicant. It will be whatever the  
3 Board decides with the information in front of us. Between  
4 now and June 30th it's a total of 530,000 to be divided  
5 either between one applicant or four applicants.

6 COMMISSIONER BENETO: That's just for programming?

7

8 CHAIR BRACKPOOL: Correct.

9 COMMISSIONER BENETO: That's for the programming;  
10 correct?

11 CHAIR BRACKPOOL: Correct, programming and  
12 training.

13 COMMISSIONER BENETO: Now if I come in and want to  
14 do the deal I've got to pay \$1.4 million to --

15 CHAIR BRACKPOOL: No.

16 COMMISSIONER BENETO: -- wait a minute -- to get a  
17 license?

18 CHAIR BRACKPOOL: No.

19 COMMISSIONER BENETO: Well, what the hell is 1.4  
20 then you guys keep --

21 EXECUTIVE DIRECTOR BREED: That's an estimate.

22 COMMISSIONER BENETO: All right.

23 COMMISSIONER CHOPER: But even for everybody.

24 CHAIR BRACKPOOL: It's up to 530 for this year.

25 It will undoubtedly be considerably larger in -- in an

1 operational year.

2 COMMISSIONER BENETO: Okay.

3 VICE CHAIR ISRAEL: There is not going to be any  
4 exchange wagering in fiscal -- whatever year we're in, 2012.  
5 Is it fiscal '13?

6 CHAIR BRACKPOOL: Of any consequence. '12-13.

7 VICE CHAIR ISRAEL: Whatever the hell it is.

8 CHAIR BRACKPOOL: Right. So let's move this  
9 along, because I think we all understand what we're doing;  
10 right? What we're trying to do here --

11 COMMISSIONER BENETO: I'm trying to.

12 CHAIR BRACKPOOL: -- is to say if Betfair want to  
13 voluntarily take the risk of spending the whole \$530,000 --

14 COMMISSIONER CHOPER: For the benefit of all  
15 future licensees.

16 CHAIR BRACKPOOL: -- benefit of all future  
17 licensees --

18 VICE CHAIR ISRAEL: No, that wouldn't be.

19 CHAIR BRACKPOOL: Yes, it is.

20 COMMISSIONER CHOPER: It is.

21 CHAIR BRACKPOOL: Because the others can come in  
22 and just pay their share.

23 COMMISSIONER CHOPER: Come in, it will be there  
24 sooner.

25 VICE CHAIR ISRAEL: Yeah.

1 COMMISSIONER CHOPER: It will be there sooner.

2 CHAIR BRACKPOOL: Right.

3 VICE CHAIR ISRAEL: Yeah.

4 CHAIR BRACKPOOL: But we would grant a provisional  
5 license that is subject only to OAL approving the rules in  
6 their entirety so that they're not draft rules, they would  
7 become the absolute rules, and that other applicants can --  
8 I'll give you, because you've applied for a license today,  
9 you can join in within -- you can agree within ten days to  
10 pay your share of this, which will go own if others come in,  
11 but you can do that by Staff, go to Staff on that, and then  
12 others can apply during next year. All this is doing is  
13 moving the process along in -- in parallel.

14 VICE CHAIR ISRAEL: Yeah.

15 CHAIR BRACKPOOL: There is no exchange wagering  
16 allowable until this Board grants a specific application for  
17 an association through the horsemen agreement.

18 Does that -- I mean, if that's what it takes to  
19 move it forward I'm --

20 COMMISSIONER WINNER: Well, are you specific  
21 saying -- specifically saying in your motion that Twinpires  
22 has ten days? That's okay with me. I just want to know if  
23 that's --

24 CHAIR BRACKPOOL: Yeah. I mean --

25 COMMISSIONER WINNER: -- if you --

1 CHAIR BRACKPOOL: -- they've got other -- both --  
2 both of them have other conditions they have to meet as  
3 detailed in the staff report here. Licenses, various  
4 documents need to be filed, etcetera. But in terms of the  
5 license fee, if you wanted a license right now you would be  
6 committing to pay, you know, at least half of that amount of  
7 money. And that number would go down if two other  
8 applicants were in by then. That does not mean that would  
9 be the license fee starting next year. Make sense?

10 MR. MILLER: Over and above.

11 MR. BLACKWELL: It does not totally make sense.  
12 So this fee is for this year, but you can not conduct  
13 exchange wagering this year?

14 CHAIR BRACKPOOL: Well, we don't know if you can  
15 conduct exchange wagering this year.

16 MR. BLACKWELL: So it sounds like, as opposed to a  
17 period of time, you could essentially submit an application  
18 at any time. And at that point the CHRB would accept what  
19 fees you owe, one way or the other, whether you're paying  
20 for last year or next year?

21 CHAIR BRACKPOOL: Correct.

22 MR. BLACKWELL: So you're not -- the CHRB has not  
23 spent this money yet?

24 CHAIR BRACKPOOL: Correct.

25 MR. BLACKWELL: But this is an up-front fee to

1 rush exchange wagering through?

2 CHAIR BRACKPOOL: I completely disagree with what  
3 you just --

4 COMMISSIONER CHOPER: Proceed expeditiously.

5 CHAIR BRACKPOOL: It's to proceed in parallel with  
6 the training necessary for monitoring, if and when any  
7 applications for exchange wagering are approved.

8 COMMISSIONER ROSENBERG: You're serious about  
9 pursuing exchange wagering, I presume.

10 MR. BLACKWELL: Right.

11 CHAIR BRACKPOOL: If that's what everybody wants  
12 to do, we'll do that.

13 Commissioner Beneto.

14 COMMISSIONER BENETO: I want to address the -- on  
15 these -- this programming and hardware and stuff that you're  
16 going to have to front, what happens as years come? Are you  
17 guys going to -- do you pay them for updates and so on and  
18 so forth or --

19 MR. HINDMAN: We have to.

20 COMMISSIONER BENETO: -- is this a one-shot deal?

21 MR. HINDMAN: The law says we have to pay for the  
22 cost of our own regulation, whatever that is.

23 COMMISSIONER BENETO: What?

24 MR. HINDMAN: I'm sorry. The law says -- the law  
25 says that we have to pay for the cost of our own regulation,

1 whatever that is. That's the law. So on an ongoing basis  
2 whatever the cost of our regulation is, is what our cost for  
3 regulation is. And to the chairman's point earlier, it  
4 could be more than 1.4 million, it could be less. It could  
5 be some subset based on what the activity is. But we have  
6 to pay the cost ourselves.

7 COMMISSIONER BENETO: That's like three years out  
8 it all becomes junk and you got to update and you spend  
9 another 500,000, that's on you; right?

10 MR. HINDMAN: Yeah.

11 COMMISSIONER BENETO: Okay. Thank you.

12 CHAIR BRACKPOOL: Okay. Commissioner Choper.

13 COMMISSIONER CHOPER: Nothing.

14 CHAIR BRACKPOOL: Would you like to make that  
15 motion?

16 COMMISSIONER CHOPER: I move.

17 CHAIR BRACKPOOL: Commissioner Choper makes the  
18 convoluted motion --

19 COMMISSIONER CHOPER: In ten -- in ten days.

20 CHAIR BRACKPOOL: -- that says --

21 MR. BUCALO: Ten working days.

22 CHAIR BRACKPOOL: -- it's a provisional license  
23 that, obviously, is subject to the OAL approving the rules.  
24 It requires licensees in exchange wagering prior to June  
25 30th, 2013 to -- to submit hardware, software and training

1 in an amount not to exceed \$530,000. The actual amount will  
2 be divided between how ever many licensees there are prior  
3 to June 30th, 2013. Understand that post June 2013 there  
4 will be a completely different license fee which will be  
5 based on the exchange wagering if exchange wagering is by  
6 then approved. Okay.

7 MR. BLACKWELL: Can I get some clarification,  
8 Chairman Brackpool? What's the significance of June of  
9 2013?

10 CHAIR BRACKPOOL: Fiscal --

11 COMMISSIONER CHOPER: The budget.

12 CHAIR BRACKPOOL: The fiscal year. It's the state  
13 budget.

14 MR. BLACKWELL: Okay. Thank you.

15 CHAIR BRACKPOOL: It's the state budget. And do  
16 that. So, obviously, all of the other conditions that have  
17 to be met in the staff report, licensees, etcetera, would  
18 have to be good. So, you know, as far as I'm concerned all  
19 we're doing is allowing them to proceed with the parallel  
20 monitoring and training.

21 May I have a second for that?

22 COMMISSIONER WINNER: I'll second.

23 CHAIR BRACKPOOL: Commissioner Winner seconds it.  
24 All in favor?

25 ALL COMMISSIONERS: Aye.

1 CHAIR BRACKPOOL: Motions 11 and 12 are approved,  
2 subject to those conditions.

3 MR. HINDMAN: Thank you.

4 MR. BLACKWELL: Thank you.

5 CHAIR BRACKPOOL: All right. Back to item number  
6 four, discussion and action by the Board regarding the 2013  
7 allocated race dates to Pacific Racing Association at Golden  
8 Gate Fields and the Humboldt County Fair at Ferndale, and  
9 the overlap in host fee revenues associated.

10 VICE CHAIR ISRAEL: Oh, this thing.

11 CHAIR BRACKPOOL: Before we get to this, well, I  
12 have one speaker in a minute. Can I ask, probably in vain,  
13 but can I ask whether the conversations you had outside were  
14 any more productive than the conversations we've had over  
15 the last four months?

16 VICE CHAIR ISRAEL: We did notice you walk out, by  
17 the way, discreet though you may have been.

18 MR. MORGAN: Jim Morgan, Special Counsel, Humboldt  
19 County.

20 COMMISSIONER BENETO: And can you pull that mike  
21 closer?

22 MR. MORGAN: Yes, I can.

23 I believe that we've narrowed the gaps  
24 significantly. We haven't reached agreement but we've --  
25 we've come -- we've shared some numbers that we didn't have

1 access to before this morning. We've come to a little  
2 understanding about where our differences are, and so I  
3 think we're closer.

4 CHAIR BRACKPOOL: Joe, name and affiliation,  
5 characterize it. And this is going to end fairly quickly,  
6 so --

7 MR. MORRIS: Joe Morris, Golden Gate Fields. We  
8 did a one-pager last night that they sent in and the Board  
9 has in front of them. I reviewed that with the -- with the  
10 Humboldt Fair people today so they could understand it.

11 These -- the numbers are complicated, and the original set  
12 they had weren't quite right. So we -- we made -- we got  
13 them accurate to where we could go over them. One thing --

14 CHAIR BRACKPOOL: Can I have quiet in the back,  
15 please, because it comes through to here.

16 MR. MORRIS: Yeah. So we've gone down through to  
17 see, you know, where we're at. And we're still not on the  
18 same page, although close.

19 CHAIR BRACKPOOL: Look, I have, unfortunately,  
20 been far more involved in this than other commissioners.  
21 Let me see if I can summarize. We had approved the dates.  
22 What we were arguing about was who was going to get host  
23 fees on which date and whether any other form of subsidies  
24 would come in to this.

25 What we have, unfortunately, not been able to

1 agree to is the statement of uncontested facts, and the  
2 numbers, therefore, making the argument incredibly  
3 difficult. Because if this was an issue where Party A was  
4 saying I want 100 and Party B was saying I only want to  
5 offer 90, it's much easier for the Board to determine, do we  
6 go with 90, 100, or do we split the baby somehow. Okay.  
7 What makes this incredibly difficult is that neither of you  
8 ever agree on the same set of numbers.

9           Now -- and I'm not putting words in anybody's  
10 mouth here or taking a position. What I understand is that  
11 the spreadsheet in front of the Board right now, which is  
12 what I've been trying to get for the last four weeks, was  
13 actually put together by NOTWINC.

14           MR. MORGAN: Correct.

15           CHAIR BRACKPOOL: Correct. Not put together by  
16 either of you, but put together by NOTWINC; right?

17           MR. MORGAN: Correct.

18           CHAIR BRACKPOOL: So I'm hoping that this is the  
19 most independent version of an of the numbers that we have.  
20 Now, whoever doesn't like the end result of this, I  
21 understand, is going to say they don't think it's the most  
22 independent version. But to me, you know, there's nobody in  
23 a better position than NOTWINC to put these numbers together  
24 and do that.

25           So just assume for the -- for the moment, and I'm

1 not taking this position and I know the Board won't, but  
2 just assume that these numbers are correct; right? Can you,  
3 Joe, try and explain what you're offering, just a final  
4 number, not all the narrative, the final number, and what  
5 Humboldt is asking, so that we can understand what the delta  
6 remaining is that needs to be fixed?

7 MR. MORRIS: Okay.

8 CHAIR BRACKPOOL: Okay.

9 MR. MORRIS: And there's actually other dollars  
10 over and above this sheet. We only took the ones that  
11 pertain to the host and -- and the situation we're at.

12 So if you look at the first column, GGF 2013 --

13 CHAIR BRACKPOOL: I don't want to go through this  
14 in detail.

15 MR. MORRIS: I'm not. I want to --

16 CHAIR BRACKPOOL: I want a summary for the Board.

17 MR. MORRIS: Go to the first column, you go to the  
18 bottom of it, it's \$190,000 in commissions. And some of it  
19 is checks from Golden Gate, TOC, some of it is legislative  
20 money, but it's \$190,000. You keep following that column  
21 down and you get to the purse side of it. And, again,  
22 they -- they generate purses in other places, also -- this  
23 is just a part that we're dealing with here -- it's \$90,000.

24 CHAIR BRACKPOOL: Right.

25 MR. MORRIS: And then on the Humboldt -- the next

1 column is Humboldt at -- so here's one thing on that. On --  
2 on our proposal they would be the full host on both  
3 Wednesdays, so for purses and for commissions. And you'll  
4 see the 42,000 there. On the Humboldt proposal it goes  
5 down. And the difference is they also want to be host the  
6 Thursday of the first week, and they want to split the  
7 weekend commissions.

8 CHAIR BRACKPOOL: I understand. But your position  
9 is the far left column on commissions and purses?

10 MR. MORRIS: Yes, 190 and 90.

11 CHAIR BRACKPOOL: Their most recent position was  
12 the third column, which is compromise.

13 COMMISSIONER WINNER: That's correct.

14 CHAIR BRACKPOOL: Right.

15 MR. MORRIS: Okay.

16 CHAIR BRACKPOOL: So I'm trying to make this --  
17 I've been doing this too long; right? So on this we are  
18 \$46,000 apart on commissions, and we are \$62,000 apart on  
19 purses.

20 MR. MORRIS: Yeah. And the purses -- that's one  
21 part of the purses. If they pay out what they're looking to  
22 pay out for the year they will be overpaid by about \$20,000.  
23 So -- so that's --

24 CHAIR BRACKPOOL: Let's just do the commissions  
25 first of all before -- before that. So basically what we're

1 saying is the first column on the top, Steve, says GGF 2013  
2 commissions.

3 COMMISSIONER BENETO: Right.

4 CHAIR BRACKPOOL: That is Golden Gate's and TOC's  
5 proposal. Right. The third column, which is HUM 2013  
6 compromise is, on the same top, is Humboldt's last proposal.

7 COMMISSIONER BENETO: Which is 236 and 156.

8 CHAIR BRACKPOOL: 236. The gulf between those two  
9 is \$46,000, which is the far right-hand --

10 COMMISSIONER BENETO: Got it.

11 CHAIR BRACKPOOL: -- summary column.

12 COMMISSIONER BENETO: Got it. Got it.

13 CHAIR BRACKPOOL: Right?

14 COMMISSIONER BENETO: Got it.

15 CHAIR BRACKPOOL: So those are the only three you  
16 need to look at. So in terms of payments -- in terms of  
17 payments on commissions, subsidies, whatever people are  
18 calling it, there's a \$46,000 gulf. In terms of purses  
19 there is a bigger gulf because it shows here there's a  
20 \$62,000 on purses. So they would be overpaid.

21 MR. MORRIS: And the differences on that, the --  
22 if that \$63,000 were generated by the \$57,000 underpay, if  
23 they ran it that way. If they paid the purses straight up  
24 it would be a \$20,000 overpay --

25 CHAIR BRACKPOOL: Okay.

1 MR. MORRIS: -- so -- so that, you know, some of  
2 the funding is going to cushion in the purse account, and  
3 that doesn't make sense to me.

4 CHAIR BRACKPOOL: Right.

5 COMMISSIONER ROSENBERG: I just have one thing.  
6 In this first column -- both first columns, that's Golden  
7 Gate's proposal, where's the -- it doesn't say compromise  
8 proposal. Has this always been your proposal?

9 CHAIR BRACKPOOL: No.

10 MR. MORRIS: No. We've -- we've --

11 COMMISSIONER ROSENBERG: So you're showing --  
12 you're showing the Humboldt changes but you're not showing  
13 that.

14 MR. MORRIS: Well -- and -- and the Humboldt  
15 structures came like yesterday. So that's the first --  
16 that's the first we got it. Golden Gate has improved their  
17 position at least four times --

18 CHAIR BRACKPOOL: Exactly.

19 MR. MORRIS: -- trying to get closer to resolving  
20 this.

21 COMMISSIONER ROSENBERG: Right. Right.

22 CHAIR BRACKPOOL: And this is not just GGF. This  
23 is a GGF-TOC-Del Mar --

24 COMMISSIONER ROSENBERG: Right.

25 CHAIR BRACKPOOL: -- final proposal.

1           VICE CHAIR ISRAEL: I'm confused about the  
2 overpayment on the payment situation. You're saying that  
3 there's a cushion. What -- what do you mean by a cushion?

4           MR. MORGAN: If I could address that. Jim Morgan,  
5 Humboldt County.

6           COMMISSIONER WINNER: Jim, would you speak closer  
7 to the mike?

8           MR. MORGAN: Yes. There --

9           COMMISSIONER WINNER: Move the mike closer.

10          MR. MORGAN: There is a consolidated purse fund  
11 that's managed by Mr. Korby at CARF. And it replaces what  
12 used to be the state fund that would add to the fairs and  
13 supplement their purses. That consolidated purse fund, I  
14 believe is dwindling and going down in numbers. If there is  
15 an underpayment to Humboldt it reimburses the consolidated  
16 purse fund which spends money for Santa Rosa and Pleasanton  
17 to make -- to care of their overpayment. And so it stays --  
18 it stays in the purse family.

19                 But that's -- that's what happens, to answer your  
20 question, to the underpayment money. It benefits the  
21 industry and it goes to the CARF consolidated purse fund.

22          MR. MORRIS: But it's built into a subsidy. I  
23 mean, I don't know why we would be paying for an  
24 underpayment in purses. It doesn't make sense.

25          VICE CHAIR ISRAEL: The subsidies ended, right, by

1 law?

2 MR. MORRIS: From the state, yes.

3 VICE CHAIR ISRAEL: Right. And that subsidy came  
4 out of the -- out of the -- out of where?

5 MR. MORGAN: You mean, this -- this --

6 VICE CHAIR ISRAEL: You've got -- I think the  
7 answer is the general fund; correct?

8 MR. MORRIS: That is correct.

9 VICE CHAIR ISRAEL: So the state made a decision  
10 in its wisdom to no longer subsidize the fairs; correct?  
11 Therefore they're not spending the tax money. So basically  
12 what you want, you're basically taxing Golden Gate Fields,  
13 Del Mar and TOC without the authority to tax in order for  
14 Humboldt to keep operating the way it always has been in the  
15 face of the state changing its priorities.

16 MR. MORGAN: In answer to your question, Mr. Vice  
17 Chairman, is Humboldt, unlike all other race meets, does not  
18 have host status. All other race meets, all of the CARF  
19 meets rely upon the host status. And the host status  
20 generates commissions and purses. When Humboldt lost what  
21 you call the state subsidy it didn't have any host status to  
22 fall back on, so it relies upon the discretion of this Board  
23 in order to produce sustaining purses and revenues, like  
24 every other race meet that you authorize. We're the only  
25 one that doesn't have host status --

1 VICE CHAIR ISRAEL: But that --

2 MR. MORGAN: -- unless you authorize it.

3 VICE CHAIR ISRAEL: That wasn't a change either.

4 MR. MORGAN: I know we had this discussion about  
5 aberration versus the normal.

6 VICE CHAIR ISRAEL: Yeah.

7 MR. MORGAN: There is no other place for Humboldt  
8 to go, except to have what every other race meet has which  
9 is not all but a share of the host fees.

10 CHAIR BRACKPOOL: Every other race meet is  
11 supported by TOC and by CARF. CARF, nor TOC, support your  
12 request. That is the fundamental difference here. Because  
13 the other meets, they believe, are self-sustaining meets in  
14 terms of purse account, purse generation, etcetera. So  
15 that's why last year I twisted everybody's arm so far behind  
16 their backs that I heard snapping to make it work; right?  
17 And I implored you, go out, get sponsorships, do different  
18 things, do everything else; right?

19 MR. MORGAN: Yes.

20 CHAIR BRACKPOOL: You know, you said you went and  
21 you got a lot of those things done.

22 MR. MORGAN: Yes.

23 CHAIR BRACKPOOL: If you got a lot of those things  
24 done then we certainly should be on a path. So this year,  
25 because you got a lot of those things done, I took the other

1 arm of TOC, Del Mar, Golden Gate Fields and I snapped it the  
2 other way; right? There are no more arms left to keep  
3 snapping to make this deficit work. We're down to a \$46,000  
4 difference between you here for -- for the fair. And I'm  
5 told we're down to a non-difference on purses at this stage.

6 So if this Board is really sitting here right now  
7 and what we have in front of us is a \$46,000 decision, then  
8 I'm going to ask for suggestions as to, you know, do we want  
9 to go with zero, do we want to go with 46, or do we want to  
10 go with the split the baby and -- and move on.

11 But I'm going to ask Commissioner Beneto -- I know  
12 he's taken a particular interest in this issue -- to respond  
13 to that. And then I know Commissioner Rosenberg has a  
14 question.

15 COMMISSIONER BENETO: Question: What's your  
16 bottom-line offer? I didn't -- here on paper.

17 VICE CHAIR ISRAEL: 190.

18 MR. MORRIS: So Golden Gate's is the \$190,000 on  
19 the commissions, so the first column. And it's \$90,000 on  
20 purses. And then, you know, it's tough for Golden Gate to  
21 subsidize anything with our numbers. So what we've done --  
22 and we -- and we're trying to improve our position, also.  
23 So there's some non-monetary things that we've added that  
24 are going to help the fair. We're not racing that first  
25 Thursday. Well, we -- I'd like to race the Thursday. We're

1 not racing for horse population.

2 We're going to run a turf festival. That will --  
3 that will help those two weeks for Humboldt. That's going  
4 to hurt me later in the week because I'm going to have run  
5 those horses over two weekends instead of a whole summer  
6 meet. We're going to not run less than \$5,000 claimers.  
7 I'm going to have an end-of-the-meet hurt to that, also, but  
8 those are all helping things, other than the dollars that  
9 we've added that are different than last year.

10 COMMISSIONER BENETO: So we're looking at 280,000  
11 bottom line; is that right?

12 MR. MORRIS: Yes, between the two.

13 COMMISSIONER BENETO: Yeah.

14 MR. MORGAN: That -- that's consistent with their  
15 proposal. I would like to add that the \$25,000 for the  
16 satellite extension is a contingency. It's not guaranteed  
17 to Humboldt. And, also, the AB 763 imports are -- are -- is  
18 monies that we did not get last year. So it's considered in  
19 our books as sort of a contingency, as well. So that's a  
20 \$37,000 difference.

21 MR. MORRIS: Well, they didn't get it for last  
22 year because they didn't run the extra simulcast.

23 COMMISSIONER BENETO: Are you going to --

24 MR. MORRIS: It's as simple as that.

25 COMMISSIONER BENETO: Are you satisfied with

1 what's on this proposal?

2 MR. MORGAN: Am I satisfied with --

3 COMMISSIONER BENETO: The proposal.

4 MR. MORGAN: I'm satisfied it's the highest and  
5 best proposal we've received. I would -- Humboldt sustains  
6 when it has 4 days of host status in its 12-day fair, 8  
7 racing days. Last year we had 4 days of host status we  
8 sustained. In 2010 we had 4 days of host status -- or 5  
9 days of host status; we did well. We're asking -- we would  
10 like the opening Thursday when Golden Gate Fields hasn't run  
11 in seven weeks, we'd like to have host status on that day.  
12 And that goes a long way to cure the difference between us.

13 COMMISSIONER BENETO: What are you going to get  
14 now, four or three?

15 MR. MORGAN: Two.

16 COMMISSIONER CHOPER: Two?

17 COMMISSIONER BENETO: Right.

18 MR. MORGAN: Two. And that's -- that's something  
19 that I learned for the first time this morning, that Golden  
20 Gate had upped its offer to that.

21 COMMISSIONER BENETO: Okay. Joe, you can't give  
22 them -- because you're not racing on Wednesday and Thursday.  
23 You can't let them have host status those days?

24 MR. MORRIS: They have the host on both Wednesdays  
25 already. We've put that in. And the Thursday we're not

1 racing because we're trying to help them with the horse  
2 population. The four-day weeks is what works best for  
3 Golden Gate. Every day our -- when we're not the host  
4 this -- it costs us \$17,000 a day to have that barn area  
5 open. And when you're not the host, not getting the  
6 revenues, the costs are just too high there.

7 COMMISSIONER BENETO: Yeah. But we're talking --  
8 they're asking for four days. And, you know, this fair has  
9 been in business since -- or 117 years and --

10 MR. MORRIS: No, I -- no, I understand that.  
11 We're not trying to put them out.

12 COMMISSIONER BENETO: And --

13 MR. MORRIS: Actually, where we get painted as the  
14 villain --

15 COMMISSIONER BENETO: I'm not.

16 MR. MORRIS: -- this is the kind of villain you  
17 need to be --

18 COMMISSIONER BENETO: No, I'm not.

19 MR. MORRIS: This would go as the no -- no good  
20 deed goes unpunished.

21 COMMISSIONER BENETO: I'm just trying to get this  
22 thing resolved.

23 MR. MORRIS: We put 300,000 in last year. We've  
24 280 on the table for this year. I think it's more than  
25 fair. And where -- and I've moved our position four times

1 through these negotiations.

2 COMMISSIONER CHOPER: Are you saying -- are you  
3 saying that you've only come in with \$20,000 less than last  
4 year in terms of reality?

5 MR. MORRIS: I'm saying the -- last year we put in  
6 around \$320,000 between commissions and all of the rest of  
7 it. And this year we have 280,000 on the table.

8 COMMISSIONER CHOPER: And that's the 40?

9 MR. MORRIS: Yeah. We asked for a weaning --

10 VICE CHAIR ISRAEL: Right.

11 MR. MORRIS: -- and that's what we delivered.

12 COMMISSIONER CHOPER: Yeah.

13 MR. MORRIS: We're giving them four days to two  
14 days, and we're asking them to do some things. You know,  
15 the 25,000, I'm saying we'll write a \$50,000 check if  
16 they'll open a mini-satellite. Every other racing fair has  
17 a minisatellite. So --

18 COMMISSIONER ROSENBERG: How does this impact all  
19 the other tracks and the TOC?

20 COMMISSIONER BENETO: Take a guess.

21 VICE CHAIR ISRAEL: Wait, wait, wait. Let him --  
22 let him answer the damn question.

23 MR. RAFFETTO: Lou Raffetto, TOC. I think it's  
24 important for this Board to understand the predicament  
25 Golden Gate is in realistically. And just so you understand

1 that right now you have an agreement in your possession that  
2 we have with Golden Gate, but you do not have a purse  
3 schedule, simply because we have issues to deal with, with  
4 purses alone, because the workers comp situation, and also  
5 with the starter situation in the north.

6           And when we sit here and agree that \$26,000 is  
7 coming out of the Del Mar purse account, and I'm looking at  
8 Joe who has moved the ball quite a bit up the field to work  
9 with them, I'm looking at \$52,000 in host commissions that  
10 he's willing to give up from those Wednesdays, and I think  
11 that's extremely generous if you really understand what  
12 we're going through with Golden Gate right now. Because of  
13 the workers comp situation we're -- we're considering to  
14 have to actually share some purses to make the numbers work  
15 up north, yet Golden Gate is willing to not only, you know,  
16 give up our host -- our host purses, they're reaching in  
17 their pocket also and giving up money of their own.

18           So I -- in that sense I just wanted the commission  
19 to -- the Board to understand really what's going on behind  
20 the scenes. This is -- I mean, I think that Golden Gate,  
21 with all due respect to Ferndale, they've bent over  
22 backwards. And -- and, you know, and we're willing to work  
23 with them, but they are giving up \$50,000 in purse money on  
24 those Wednesdays, they're being willing to put it on the  
25 table. And that's money they could certainly use in light

1 of their purse situation.

2 VICE CHAIR ISRAEL: All right.

3 COMMISSIONER ROSENBERG: Is that 50,000? You  
4 didn't answer the question.

5 CHAIR BRACKPOOL: You need to lean into the  
6 microphone.

7 COMMISSIONER ROSENBERG: You didn't answer the  
8 question. Is that \$50,000 in purse money Golden Gate's  
9 share of the purse money?

10 MR. RAFFETTO: That is the horsemen's, yes. By  
11 giving up -- if they had host -- I'm sorry. If they had  
12 host status --

13 COMMISSIONER ROSENBERG: Yeah.

14 MR. RAFFETTO: -- that would have been \$50,000 in  
15 the Golden Gate purse account.

16 COMMISSIONER ROSENBERG: And which is split  
17 between TOC and Golden Gate or is it --

18 MR. RAFFETTO: Totally -- totally TOC.

19 COMMISSIONER ROSENBERG: Totally TOC, the \$50,000?

20 VICE CHAIR ISRAEL: And there's more. I  
21 understand you work pro bono because you wrote that to me --

22 MR. MORGAN: Yes, that's true.

23 VICE CHAIR ISRAEL: -- in a letter. But I assume  
24 the rest of the staff and Humboldt County are not pro bono;  
25 right?

1 MR. MORGAN: Just our executive director.

2 Every -- every meeting --

3 VICE CHAIR ISRAEL: Has he taken a pay cut?

4 MR. MORGAN: Yes. He took over a \$10,000 pay cut.

5 And he's -- that's a significant --

6 VICE CHAIR ISRAEL: And -- and are you -- you  
7 depend on horse racing to sustain the whole fair?

8 MR. MORGAN: Horse racing is a component.

9 COMMISSIONER BENETO: It's part of the fair.

10 MR. MORGAN: It's part of the fair. And the  
11 revenues generated from the fair and the attractant of  
12 having a racing fair in Humboldt in a unique setting and in  
13 an historical village brings in \$6.4 million worth of  
14 revenue, estimated, into the community which the community  
15 is dependant upon.

16 VICE CHAIR ISRAEL: And \$6.4 million? And have  
17 you gone to the beneficiaries of that \$6.4 million and asked  
18 them to kick in so they can sustain their business? And --

19 MR. MORGAN: At --

20 VICE CHAIR ISRAEL: And what kind of response have  
21 you gotten? I mean --

22 MR. MORGAN: No. I --

23 VICE CHAIR ISRAEL: -- I think it's incumbent upon  
24 them to contribute. What you're asking is -- is private  
25 businesses to basically pay a tax that the state decided it

1 didn't want to pay any longer --

2 MR. MORGAN: I'm happy to --

3 VICE CHAIR ISRAEL: -- to sustain this -- to  
4 sustain the -- the -- you know, basically, you want  
5 socialized horse racing. And, of course, what I find most  
6 amazing about it is -- is that the republicans are in favor  
7 it and not the democrats. So, you know, these crazy  
8 republican socialists are in favor of -- they hate Obama-  
9 Care, but they want to socialize horse racing.

10 COMMISSIONER BENETO: David, I think the little  
11 guy -- the big guy is pushing the little guy out here.

12 VICE CHAIR ISRAEL: No. There's no Goliath.

13 COMMISSIONER BENETO: Wait a minute now.

14 VICE CHAIR ISRAEL: There's no Goliath in this.

15 COMMISSIONER BENETO: Wait a minute.

16 VICE CHAIR ISRAEL: This is David against David.  
17 This is Golden Gate. There's no way you can construe Golden  
18 Gate Fields as a big guy.

19 COMMISSIONER BENETO: What happens -- what happens  
20 here if you didn't have Del Mar, Joe? How would you sustain  
21 your expenses at that point?

22 MR. MORRIS: We --

23 VICE CHAIR ISRAEL: I mean --

24 COMMISSIONER BENETO: Del Mar has been a bonus to  
25 you.

1 MR. MORRIS: Del Mar helps us. They're a prime --

2 COMMISSIONER BENETO: And you just started --

3 MR. MORRIS: -- a prime signal, but the one Santa  
4 Anita does, that's our -- that's our most popular signal to  
5 bet on at Golden Gate. Saratoga is on that time of year;  
6 that certainly helps. You get to the bigger picture, I'm  
7 going to look to fix the northern model where we won't even  
8 be racing in the summertime. I'd like to get out of the  
9 summers. We just have to get this done so we can get to the  
10 2014 schedule.

11 The other thing I'll tell you, just so you can see  
12 the bigger picture, if you take that 280 and put it with  
13 your other dollars the racing is going to be \$437,000 at  
14 Humboldt. And the number that they have is 519. You add  
15 the 120,000 in sponsorship, you're at 550.

16 VICE CHAIR ISRAEL: And 437 is what -- what piece  
17 of your budget, what part of your budget?

18 MR. MORGAN: The 457 would be our compromise.

19 VICE CHAIR ISRAEL: No, I asked -- the number that  
20 he said, 437 is -- as a percentage of your total operating  
21 budget is what?

22 MR. MORGAN: That would be approximately 80  
23 percent. I would like to address some of your comments if  
24 given the opportunity.

25 VICE CHAIR ISRAEL: Sure.

1 MR. MORGAN: Basically, we were asked in a county  
2 of 125,000 people and are basically running a city of 1,300  
3 people to increase our contributions with the people who  
4 benefit. We more than doubled our contributions in cash,  
5 and you've read this before. The Ferndale Foundation made  
6 \$46,000. We raised the equivalent of \$1.00 for every person  
7 in Ferndale over and above what we got before. Our on-track  
8 handle was up. Mr. Korby, correct me if I'm wrong, but we  
9 were the only CARF meet with increased on-track handle. The  
10 community is behind this.

11 You can call it a subsidy, you can call it  
12 welfare, but the reality is, gentlemen, every other track  
13 has host status to sustain its purses and its -- and its  
14 commissions and its revenues. And it's Golden Gate that  
15 encroached upon our historic dates.

16 Yes, Mr. Israel, there's a history of -- of  
17 overlap.

18 VICE CHAIR ISRAEL: Yeah. And --

19 MR. MORGAN: But -- but the overlap occurred  
20 before -- before the statement, anyway, and all other  
21 tracks, all these CARF --

22 VICE CHAIR ISRAEL: It's what I keep saying. This  
23 is about losing the state subsidy.

24 MR. MORGAN: It's about not having horse status.

25 VICE CHAIR ISRAEL: Let's face it, you're a

1 typewriter. Okay. In a computer world, you're a  
2 typewriter; all right?

3 MR. MORGAN: We are, and that's the --

4 VICE CHAIR ISRAEL: Typewriters are obsolete.  
5 Things get obsolete. Your quaint, but quaint ain't that  
6 important all the time.

7 MR. MORGAN: We understand your position.

8 COMMISSIONER CHOPER: Can I ask you a question?  
9 What is the attendance at -- the annual attendance at the  
10 fair? At the fair.

11 MR. MORGAN: At -- I believe it averages around  
12 3,000 a day. Is that -- is that correct?

13 MR. RAFFETTO: About 60,000.

14 MR. MORGAN: 60,000 for our meet. We charge to  
15 get in. We charge to get into the racing.

16 COMMISSIONER CHOPER: So if you raise it 50  
17 cents --

18 MR. MORGAN: We raised it \$1.00.

19 COMMISSIONER CHOPER: No, no. Raise it 50  
20 cents --

21 MR. MORGAN: Uh-huh.

22 COMMISSIONER CHOPER: -- again --

23 VICE CHAIR ISRAEL: That's 30,000.

24 COMMISSIONER CHOPER: -- that's 30,000. Look, you  
25 know, this is just -- it's sad, isn't it?

1 MR. MORGAN: Yes.

2 COMMISSIONER CHOPER: I mean, the whole thing is  
3 sad, but it's a reality. You know, the economic condition  
4 of this state is sad, and it's a reality. And pretty soon  
5 it's going to be national. Now we lead -- you know, we're  
6 leading the country down the tubes. So -- so something is  
7 going to have to give.

8 I think Golden Gate continues to -- I mean, you  
9 talked about weaning; right? I think that's a fair  
10 characterization. It is a question of weaning. It's less.  
11 It's supposed to be less every year; right? I mean, that  
12 was the sort of thing that we talked about last time.

13 So I'm, look, I'm -- you know, I like quaint  
14 things, I'm old enough to like them, but there's a reality  
15 that has to be faced.

16 CHAIR BRACKPOOL: I have some other Commissioner  
17 questions.

18 COMMISSIONER BENETO: Well, I --

19 CHAIR BRACKPOOL: Commissioner Beneto first.

20 COMMISSIONER BENETO: My -- my remark is going to  
21 Cal Expo had those dates and was the host for Del Mar 2 or 3  
22 years ago, because I was on that board for 11 years. And  
23 when they were stupid enough to move their dates back, you  
24 jumped in and took over the dates. And instead of running  
25 four days, like we used to do, we cut it down to three days,

1 and you got the host commissions.

2 I think that this thing should be split in half  
3 during those two weeks. Because fairs, racing in general is  
4 in the toilet. We all know that. I mean, you can give away  
5 \$1.00 hot dogs and \$1.00 drinks, that ain't bringing people  
6 in.

7 So I think my -- what I'd like to see happen here  
8 is you guys work this proposal out and get Humboldt closer  
9 to the 500 that they need to keep the fair going and racing  
10 going.

11 CHAIR BRACKPOOL: Commissioner Rosenberg.

12 COMMISSIONER ROSENBERG: Can someone answer a  
13 simple question? I tried to get at this before. I dollars  
14 and cents, how much money under your proposal would --  
15 compared to last year's proposal would Del Mar, which is one  
16 of the entities you list, and the TOC specifically give up?

17 MR. RAFFETTO: This year it would be 52,000 in  
18 total.

19 COMMISSIONER ROSENBERG: Total? It's 26,000 each?

20 MR. RAFFETTO: It's 26 a piece. But 52 in total,  
21 versus the 104 last year.

22 COMMISSIONER ROSENBERG: Because, in my opinion,  
23 and contrary to my conservative democratic colleague here, I  
24 think with Del Mar in particular that's a drop in the bucket  
25 to them, and so is the 26,000 in purses. So we're looking

1 only at, you know, feeling sorry for Golden Gate. But I  
2 don't feel sorry for the other two entities. This is a  
3 small amount of money we're talking about to let something  
4 survive that's been around for years, which you hear all  
5 positive things about. The chairman raved about it last  
6 year when he went up there.

7           So I would say that -- and -- and we don't know  
8 really the guts -- the nuts and bolts of Golden Gate's  
9 finances. We really don't know. We get financial  
10 statements, but we really don't know. So I don't feel sorry  
11 for Golden Gate either, actually, at this point. So I'd be  
12 in favor of pushing further to --

13           CHAIR BRACKPOOL: Commissioner Winner.

14           COMMISSIONER ROSENBERG: -- work out something.

15           COMMISSIONER WINNER: Commissioner, can I just  
16 ask, what -- bottom line, when we keep hearing about  
17 Humboldt basically going out of business, the fair no longer  
18 existing, what -- what's the line? Where's the number? In  
19 reality, what is the real number that you can not exist  
20 without?

21           MR. MORGAN: Thank you for that question.  
22 According to our numbers it's \$457,000. We put that in the  
23 weaning process. Last year, according to Brian Wilt's  
24 (phonetic) race numbers, which we received from Joe for the  
25 first time this morning, we received a total package, thanks

1 to Chairman Brackpool's efforts in brokering that deal, a  
2 \$556,000. The monies that we're receiving by contribution  
3 from TOC and Del Mar this year are cut in half. The monies  
4 that -- that go from the 566 we receive this year down to  
5 our delta this year, according to our -- our compromise  
6 position, is \$457,000, that's Brian Wilt's numbers that we  
7 got today, and that's what we need to sustain.

8 To put it in simpler terms, four days of host  
9 status. Four days.

10 COMMISSIONER WINNER: Okay. Let me -- are you  
11 saying that if you don't get that amount you are telling us  
12 today you'd close up?

13 MR. MORGAN: No, I didn't say that. No, I'm  
14 not -- I'm not telling you that. I'm telling you that --

15 COMMISSIONER WINNER: Okay. So what is the number  
16 that would cause you to close up? That's what I'm trying to  
17 get at.

18 MR. MORGAN: The number that --

19 COMMISSIONER WINNER: Because we're sitting here  
20 talking about \$46,000 or whatever the amount is.

21 MR. MORGAN: Another -- another -- 2011, I  
22 believe, we had two-and-a-half days of host status.

23 COMMISSIONER WINNER: So in other words --

24 CHAIR BRACKPOOL: Just answer -- no, just answer  
25 him, the numerical question that the commissioner is asking

1 you.

2 MR. MORGAN: Okay. I don't have that answer. I  
3 look to my executive director.

4 CHAIR BRACKPOOL: I think you answered the  
5 question with respect -- I think what Commissioner Winner  
6 asked you was based on the Golden Gate proposal, right, if  
7 that was the only proposal and that was the decision would  
8 you close down. And I think your answer was, no, we  
9 wouldn't close down; right? I'm not putting words in your  
10 mouth. I think you said you wouldn't close down.

11 MR. MORGAN: That's my impression as their  
12 counsel. I'm not the board.

13 CHAIR BRACKPOOL: Right.

14 COMMISSIONER WINNER: Okay. So then since we  
15 don't know what that number is at what point, and since one  
16 of the issues here is, at least as I understand the  
17 discussion, is the value of having the fair and the meet  
18 continue, which obviously has great value, versus the cost  
19 to, among others, Golden Gate, and the -- and to the purses  
20 and the disadvantage of that, when, in fact, what you're  
21 saying is that that's not really what the discussion is  
22 about because -- because Ferndale would not necessarily  
23 close at that number.

24 So taking that to the next step, would going  
25 with -- with what both Commissioner Beneto and -- and

1 Commissioner Rosenberg suggested, splitting the baby down  
2 the middle, would that be satisfactory to you, and do you  
3 feel, since you're not going to -- may not close anyway,  
4 even without that, that that would be not only a reasonable  
5 compromise but, frankly, a very good compromise for you; is  
6 that correct?

7 MR. MORGAN: Our -- our position is to try to get  
8 a fair deal. And -- and if it means splitting the baby down  
9 the middle and instead of two days versus four days it's  
10 three days, that would be acceptable.

11 CHAIR BRACKPOOL: Yeah. I just want to make the  
12 point that splitting the baby down the middle after  
13 negotiations have been going on this long is not necessarily  
14 the middle because sometimes the sides are moved.

15 Look, there's a pretty easy way to resolve this.  
16 There's a \$46,000 gulf; right? Splitting the baby down the  
17 middle, as you say, by going three days of host instead of  
18 four days of host happens to be exactly half of that gulf.  
19 I don't think it should be just on one entity. So one way  
20 of doing this would be to say that the \$23,000, which is  
21 half of, you know, the 46, gets split between Golden Gate,  
22 TOC and Del mar, and we move on and do it.

23 COMMISSIONER BENETO: What's the bottom line?

24 COMMISSIONER WINNER: 23,000.

25 CHAIR BRACKPOOL: 23,000, which is half the 46.

1           COMMISSIONER BENETO:  So you aren't going to fill  
2 in this 280,000, roughly, and you're going to give them  
3 another 26,000?

4           COMMISSIONER WINNER:  23,000.

5           COMMISSIONER BENETO:  23,000?

6           CHAIR BRACKPOOL:  No.  The gulf is 46,000, and  
7 we're saying we split the baby on the gulf.

8           COMMISSIONER ROSENBERG:  This 90 is nowhere.  Is  
9 this --

10          COMMISSIONER BENETO:  What's -- what's the bottom  
11 line?

12          CHAIR BRACKPOOL:  No, that's the purses.  It's  
13 different, Commissioner.

14          COMMISSIONER ROSENBERG:  Oh.

15          COMMISSIONER WINNER:  So the -- the 23,000, and  
16 that would be split amongst the entities, as you suggested  
17 Mr.  Chairman?

18          CHAIR BRACKPOOL:  Well, I don't -- I don't want to  
19 sound like the president here where this is an immediate  
20 wealth distribution.  But I would like to end the meeting  
21 and --

22          COMMISSIONER BENETO:  I want to get this over  
23 with, too, but I want to clear up my mind before I leave  
24 this meeting.

25                           What's that going to give you, bottom line?

1 MR. MORGAN: 23,000 more than what Golden Gate has  
2 proposed.

3 COMMISSIONER BENETO: So that --

4 CHAIR BRACKPOOL: And 23,000 less than you're  
5 asking for.

6 MR. MORGAN: Right.

7 COMMISSIONER WINNER: The 23 --

8 MR. MORGAN: That number.

9 COMMISSIONER WINNER: We're talking 23.

10 CHAIR BRACKPOOL: Yeah. It's a \$46,000 gulf. And  
11 I'm saying 23,000 resolves it and we all get to eat.

12 MR. MORGAN: Not to -- not to delay anything, but  
13 that does not include the purses. And so CARF and -- an  
14 the -- the consolidated purse fund would take a hit because  
15 the purses aren't benefitted by that. From our perspective  
16 we would prefer to bridge the gulf by having host status on  
17 the extra Thursday. That would assist us in providing more  
18 purses, which is -- it's important to CARF and ourselves.

19 CHAIR BRACKPOOL: I think you and CARF need a lot  
20 of time together over the course of the next year to  
21 reestablish that working relationship.

22 MR. MORGAN: We have yet had to have the -- the  
23 ya-ya moment.

24 CHAIR BRACKPOOL: So is that a good proposal?

25 COMMISSIONER BENETO: No.

1 CHAIR BRACKPOOL: Well, I know you -- did you want  
2 to say something, Chris?

3 MR. KORBY: We'll make it work.

4 CHAIR BRACKPOOL: Okay.

5 COMMISSIONER WINNER: I thought it was your  
6 proposal to split the baby.

7 CHAIR BRACKPOOL: All right. So the proposal --  
8 the proposal is -- right. So the -- the motion -- well,  
9 Steve can make his motion, as well. But the motion I would  
10 make is that we take the \$190,000, which is the left-hand  
11 column -- and the reason I'm referring to this is that it's  
12 made up specifically of these three items, the line items --  
13 and we add \$23,000 to that number split between Golden Gate,  
14 TOC and Del Mar, and I'll look around the room and see if  
15 there's anyone else that we can split it with, as well, but  
16 we do it -- do it that way.

17 MR. RAFFETTO: Mr. Chairman, if I may, obviously,  
18 at this point I've only been authorized to give the \$26,000.

19 And assuming that the Board would go along with the extra  
20 \$8,000, and again I'm making an assumption on that, that I  
21 would ask that that be -- that also go to purses, that is  
22 the \$26,000 that we put up from -- from Del Mar, that it  
23 would go towards purses. That was a stipulation with the  
24 first 26,000, so --

25 VICE CHAIR ISRAEL: So -- so it -- it should be

1 proportional, based on what you're offering.

2 MR. RAFFETTO: Well --

3 MR. MORGAN: That's -- that was our point, Mr.  
4 Chairman, is -- is that where the purse is concerned it's a  
5 \$108,000 difference. So when --

6 COMMISSIONER WINNER: Well, are we saying 26,000  
7 or 23,000?

8 VICE CHAIR ISRAEL: 23,000.

9 COMMISSIONER WINNER: I thought it was 23,000.

10 CHAIR BRACKPOOL: 23,000.

11 VICE CHAIR ISRAEL: 23,000 divided proportionately  
12 as these three entities are kicking in now.

13 COMMISSIONER WINNER: Right.

14 VICE CHAIR ISRAEL: Yeah.

15 COMMISSIONER BENETO: Well, I'm only getting  
16 310,000; right?

17 MR. MORRIS: Off of this sheet. They're -- this  
18 is Joe Morris from Golden Gate Fields. If you -- if you  
19 take the whole fair and -- and the other parts to it that  
20 they get through the pari-mutuel side of it they're going to  
21 be at \$437,000.

22 COMMISSIONER BENETO: Well, that should have been  
23 on here.

24 MR. MORRIS: And -- and they'll have a \$20,000  
25 overpay in purses. It's that close on that. And if -- they

1 said they raised 120,000 in sponsorship. I don't know how  
2 that doesn't make them at 560, which is where they were this  
3 year. I don't -- I don't get the math on it, but --

4 COMMISSIONER BENETO: Jim, are you going to -- can  
5 you live with this deal so we can vote on it?

6 MR. MORGAN: That -- the deal we would -- we would  
7 like to live with is the third day of horse status --

8 COMMISSIONER BENETO: We're going to give you --

9 MR. MORGAN: -- because of -- because of the  
10 purses. Because of the purses.

11 VICE CHAIR ISRAEL: You don't have a vote for  
12 that.

13 MR. MORGAN: Okay. I understand that.

14 COMMISSIONER BENETO: Well, can't we give them the  
15 third day?

16 CHAIR BRACKPOOL: We're going to give them 23,000  
17 split between the parties.

18 MR. MORGAN: It's the same thing. The TOC is  
19 putting a condition on it that goes to purses, and you're  
20 only splitting the commission difference. You're not  
21 addressing the purse difference. Only giving us host status  
22 for the third day gives us the purses that CARF needs, that  
23 we need. And it's not going to hurt Golden Gate that much.

24 COMMISSIONER BENETO: They're entitled to that.

25 MR. MORGAN: Golden Gate has been vacant for seven

1 weeks. They don't run on that first Thursday. They don't  
2 start until the next day.

3 VICE CHAIR ISRAEL: You don't understand how horse  
4 racing works. When race tracks are vacant they operate as  
5 off-track facilities all the time. Hollywood Park does when  
6 Santa Anita runs. Santa Anita does when Hollywood Park  
7 runs. Los Alamitos is open right now, so you can -- you can  
8 get the races at -- you guys just don't do the off-track  
9 business. You don't understand what their principle  
10 business is. They're not -- they're not -- they're not  
11 these enormous real estate shells that sit empty all the  
12 time.

13 CHAIR BRACKPOOL: Right.

14 VICE CHAIR ISRAEL: They attract people all year  
15 round, even when they're not running races. If you can't  
16 grasp that concept you can't grasp what is going on here.

17 MR. MORGAN: No, I understand that concept.

18 COMMISSIONER BENETO: It's a fair.

19 CHAIR BRACKPOOL: The proposal -- the -- the  
20 motion --

21 VICE CHAIR ISRAEL: Every fair has an off-track  
22 facility but this one, Steve.

23 CHAIR BRACKPOOL: The motion --

24 VICE CHAIR ISRAEL: Yes, it's fair.

25 CHAIR BRACKPOOL: -- is \$23,000 more to

1 commissions. I will work out between Golden Gate, Del Mar  
2 and TOC how that comes to commissions. All right. You will  
3 rebuild your relationship with CARF on the purse account,  
4 etcetera. And because of the conditions that Golden Gate  
5 has agreed to, which is turf festival, no claimers under  
6 five, etcetera, etcetera, you will have a much better meet  
7 than normal and this will get to a permanent solution.

8           So my motion is we go with the table on the left,  
9 which Jackie will submit the exact numbers for the record,  
10 we add \$23,000. It's going to be paid between the three.  
11 And I'll go find limbs that they didn't know they had to  
12 snap them into paying that 23. And do I have a second to  
13 that motion?

14           VICE CHAIR ISRAEL: Yeah, I'll second it. Yeah.

15           CHAIR BRACKPOOL: And Commissioner Israel is  
16 actually seconding a motion to increase payments to  
17 Humboldt. So I want this noted for the record --

18           VICE CHAIR ISRAEL: Yeah.

19           CHAIR BRACKPOOL: -- at 12:10 on Thursday.

20           VICE CHAIR ISRAEL: But the next time you get a  
21 welfare check --

22           CHAIR BRACKPOOL: Hold on one second.

23           VICE CHAIR ISRAEL: -- and you complain that it's  
24 too small --

25           CHAIR BRACKPOOL: Hold on one second, Steve.

1 VICE CHAIR ISRAEL: -- you're not going to -- I'm  
2 not going to be very empathetic.

3 CHAIR BRACKPOOL: Hold on one second. On this  
4 motion, Commissioner Choper?

5 COMMISSIONER CHOPER: Yes.

6 CHAIR BRACKPOOL: Commissioner Rosenberg?

7 COMMISSIONER ROSENBERG: No.

8 CHAIR BRACKPOOL: No. Commissioner Winner?

9 COMMISSIONER WINNER: Yes.

10 CHAIR BRACKPOOL: Commissioner Beneto?

11 COMMISSIONER BENETO: No.

12 CHAIR BRACKPOOL: No. Motion carries four to two.

13 Commissioner Beneto, you had --

14 COMMISSIONER ROSENBERG: On the motion.

15 COMMISSIONER WINNER: I thought it was your

16 motion? You called for the motion.

17 COMMISSIONER BENETO: I didn't think it was mine.

18 CHAIR BRACKPOOL: Okay. Motion carries four to  
19 two. That concludes the open part of this meeting. Thank  
20 you.

21 (The Commission meeting adjourned at 12:14 p.m.)

22 --oOo--

23

24

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## CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Horse Racing Board Meeting; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of November, 2012.

/s/ Martha L. Nelson  
MARTHA L. NELSON

## CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Martha L. Nelson  
MARTHA L. NELSON, CERT\*\*367

November 20, 2012